

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission                    )  
On its own Motion                                    )  
                                                                  )  
Proceeding to monitor the ongoing                )                No. 03-0056  
Development of the marketplace for             )  
Commonwealth Edison Customers                )

**INITIAL COMMENTS OF THE  
COALITION OF ENERGY SUPPLIERS IN  
RESPONSE TO SECOND MARKET MONITORING REPORT  
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Constellation NewEnergy, Inc., MidAmerican Energy Company, and Peoples Energy Services Corporation (collectively, the “Coalition of Energy Suppliers” or “Coalition”), by and through their attorneys DLA Piper Rudnick Gray Cary US LLP, hereby present to the Illinois Commerce Commission (“Commission” or “ICC”) their initial comments<sup>1</sup> in response to the Second Market Monitoring Report (“Second Report”) of the Commission Staff (“Staff”) regarding the status of competition to provide retail electric service to customers with demands of three megawatts or greater (“3 MW Customers”) in the service area of Commonwealth Edison Company (“ComEd” or the “Company”).

---

<sup>1</sup> The positions set forth herein represent the positions of the Coalition as a group, and do not necessarily represent the positions of individual Coalition member companies.

## I.

### **EXECUTIVE SUMMARY: THE COMPETITIVE RETAIL ELECTRIC MARKET CONTINUES TO SHOW SIGNS OF POSITIVE DEVELOPMENT FOR CUSTOMERS WITH PEAK DEMAND OF THREE MEGAWATTS AND GREATER**

The Coalition of Energy Suppliers is an *ad hoc* coalition formed to propose measures to foster the development of a competitive retail electric market in Illinois that offers true choice to customers, consistent with the Electric Service Customer Choice and Rate Relief Law of 1997 (“Choice Act”). The Coalition and its members have been involved in most, if not all, of the Commission proceedings relating to ComEd’s tariffs, policies, practices, and procedures (as well as proceedings relating to the Ameren Companies), advocating for results that will foster a more effective and efficient competitive retail electric market, now as well as in the “post-transition” era.

Staff’s Second Report reveals that the retail electric market for the 3 MW Customers has continued to develop since the Commission declared service to these customers competitive in 2002. To be sure, Staff’s Second Report includes data that demonstrate that there have been consistent positive trends in the switching activity of the 3 MW customers, the number of customers taking service from unaffiliated retail electric suppliers (“RESs”), and the number of RESs competing to serve those customers.

The 3 MW Customers have shown a strong appetite for choice. As of July 2005, 83% of the 3 MW Customers -- 300 of 363 customers -- had chosen a supply option other than bundled service from ComEd. (*See* Second Report at 4.) Likewise, the number of customers taking service from RESs has increased steadily since January 2002. (*See id.* at 5.) In fact, the number

of customers taking service from RESs more than doubled from January 2002 to December 2005. (*Id.*)

Certainly one of the signs of a competitive market is the ability of competitors to enter the market. To the extent that certain conditions exist to bar entry into the retail electric market to serve the 3 MW Customers, RESs have demonstrated an ability to overcome those barriers. The Commission has granted certificates to almost twenty (20) alternative retail electric suppliers (“ARES”), and there is at least one (1) additional electric utility company that actively participates in the retail electric market as a RES. (*See* Second Report at 12-13, Diagram 15; *see also* <http://www.icc.illinois.gov/docs/en/arescertlist.doc>.)

## II.

### **STAFF’S ANALYSIS OF THE DATA AND SWITCHING ACTIVITY DISPLAYS A VIBRANT COMPETITIVE MARKET FOR THE 3 MW CUSTOMERS**

The 3 MW Customers actively have participated in the competitive retail electric market during the past several years. Staff’s Second Report demonstrates that, from the perspective of the 3 MW Customers, a vibrant and dynamic competitive retail electric market exists.

Of particular note, Staff’s Second Report observes:

- **As of July 2005, the vast majority -- 83% (300 of 363) -- of the 3 MW Customers had chosen a supply option other than bundled service from ComEd.** Staff’s Second Report confirms the robust switching statistics for the 3 MW Customers. (*See* Second Report at 3-7.)
- **Nearly All Of The 3 MW Customers Who Have Not Switched Are On Special Rates.** Staff’s Second Report highlights that the vast majority of the 3 MW customers who took “plain old” Rate 6L service have entered the competitive retail electric market. Most of the customers that remained on Rate 6L did so because these customers also received service under legacy discount rates (Riders 26 and 27). In fact, eligibility for these legacy discount rates is predicated on enrollment on Rate 6L; as such, the vast majority of customers who are currently taking Rate 6L service are doing so in order to receive the benefits of these legacy discount rates. The expiration

of these legacy discount rates, at the end of the mandatory transition period, will remove this perverse incentive to remain on the Company's Rate 6L. (*See* Second Report at 9-12.)

- **The Number of RES Customers Has Steadily Increased Since January 2002.** A perusal of the switching trends leads one to conclude that RES-served customers now far outnumber all other customers combined. (*See id.* at 5.)
- **The Number of RES-Served Customers Has More Than Doubled Between January 2002 and December 2005.** The increase in RES direct serve customers during the aforementioned period almost exactly mirrored the decline in the number of Power Purchase Option ("PPO") and Bundled Service customers – representing a 50% decline in PPO and Bundled Service. (*See id.*)
- **The Use Of Rate ISS Has Not Been Significant.** The average number of 3 MW Customers on ISS has, on average, been insignificant – the 2004-2005 average was just seven (7) customers. (*See id.*)

The information contained in the Staff's Second Report demonstrates the 3 MW Customers' *very strong* inclination to evaluate their service options and, when appropriate, to migrate away from ComEd's bundled service and toward RES direct service. Accordingly, these trends suggest that 3MW Customers are very sophisticated and, moreover, that a healthy competitive market has evolved to meet those customers' needs.

### III.

#### **STAFF'S ANALYSIS SHOWS INCREASING ACTIVITY BY RETAIL ELECTRIC SUPPLIERS**

Staff's Second Report contains significant information regarding the steady or increasing level of activity by RESs, both generally, and specifically in providing service to the 3 MW Customers.

Of particular note, Staff's Second Report observes:

- **The Number of RESs Certified by the Commission Has Steadily Increased.** The Second Report notes that twenty (20) RESs currently are certificated to provide service to non-residential customers in Illinois, and that thirteen (13) of these RESs are registered to serve customers in the ComEd service area. (*See* Second Report at

12-13, Diagram 15.) Significantly, large, national suppliers, with experience in other restructured electric markets, are the most recent entrants to the Illinois retail electric market. (See <http://www.icc.illinois.gov/docs/en/arescertlist.doc>.)

- **At Least Seven (7) RESs Served 3 MW Customers During Each Month Between January 2002 and December 2005.** During this time, a minimum of seven (7) RESs provided electric service to the 3 MW Customers. (See Second Report at 13, Diagram 15.)
- **Market Concentration Has Been Decreasing Over Time.** Staff's Second Report included a market concentration analysis, presenting the results of a Herfindahl-Hirschman Index ("HHI") study. Staff concluded that, although the market for 3 MW Customers can be considered to be "concentrated," this concentration has been decreasing over time. (See Second Report at 13-14.)
- **RESs Offer A Wide Array of Services.** Staff correctly observes that RESs offer the 3 MW Customers myriad options, including, but not limited to, firm (non-interruptible) service with a variety of pricing options, including: seasonal; on-peak/off-peak; and index-based pricing. (See Second Report at 15.)

This information demonstrates that Illinois is an attractive, evolving market that includes an increasing number of RESs that offer an increasing number of options to serve the needs of these sophisticated 3 MW Customers.

#### IV.

**CONCLUSION:  
THERE ARE VIABLE ECONOMIC ALTERNATIVES  
TO BUNDLED SERVICE FOR VIRTUALLY ALL CUSTOMERS WITH DEMANDS OVER 3 MWs**

Time has demonstrated that the Commission correctly determined that retail electric service to the 3 MW Customers was sufficiently competitive as to obviate ComEd's obligation to serve said customers. The 3 MW Customers have an array of competitive options available to them, and they have shown that they are capable of making informed decisions regarding their electric supply. Staff's Second Report shows that the competitive market for these customers has continued to develop, and is currently more robust than when the Commission entered its original competitive declaration order. Indeed, more certificated ARES compete to serve these

customers, more 3 MW Customers participate in the competitive market, and more 3 MW Customers have contracted with unaffiliated RESs to fulfill their energy supply needs.

Simply put, no valid basis, let alone an evidentiary record, exists upon which the Commission could effectively rescind the competitive declaration

WHEREFORE, Constellation NewEnergy, Inc., MidAmerican Energy Company, and Peoples Energy Services Corporation respectfully request that the Commission:

1. Enter an Order reaffirming its decision to declare competitive retail electric service to customers with demands of three megawatts or greater in the service area of Commonwealth Edison Company; and
2. Grant such further relief as the Commission deems just and appropriate.

Respectfully submitted,

**CONSTELLATION NEWENERGY, INC.,  
MIDAMERICAN ENERGY COMPANY,  
PEOPLES ENERGY SERVICES CORPORATION**

By: /s/ Christopher J. Townsend  
One of Their Attorneys

Christopher J. Townsend  
Christopher N. Skey  
William A. Borders  
Kalyna A. Procyk  
DLA Piper Rudnick Gray Cary US LLP  
203 N. LaSalle Street, Suite 1900  
Chicago, Illinois 60601  
312-368-4000 (phone)  
312-630-6300 (fax)

Dated: May 19, 2006