

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Central Illinois Light Company |) | |
| d/b/a AmerenCILCO, |) | No. 06-0070 |
| |) | |
| Central Illinois Public Service Company |) | No. 06-0071 |
| d/b/a AmerenCIPS |) | |
| |) | |
| Illinois Power Company d/b/a AmerenIP |) | No. 06-0072 |
| |) | |
| Proposed general increase in rates |) | (Consol.) |
| for delivery services. |) | |

REPLY BRIEF OF
CONSTELLATION NEWENERGY, INC.
AND
PEOPLES ENERGY SERVICES CORPORATION

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**REPLY BRIEF
OF CONSTELLATION NEWENERGY, INC.
AND PEOPLES ENERGY SERVICES CORPORATION**

Constellation NewEnergy, Inc. (“NewEnergy”) and Peoples Energy Services Corporation (“PES”) (collectively, “NewEnergy/PES”), by and through their attorneys, DLA Piper US LLP, pursuant to Section 10-101 of the Public Utilities Act (the “Act”) and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submit their Reply Brief responding to the Initial Briefs filed by Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (collectively “Ameren” or the “Companies”) and the Staff of the Commission (“Staff”) in the above-referenced consolidated proceedings.¹ For the Commission’s reference, attached hereto and made a part hereof as Attachment A, is a proposed Draft Order, summarizing the positions of NewEnergy/PES.

¹ The positions set out in this Reply Brief represent the joint positions of NewEnergy and PES collectively, but do not necessarily represent the positions of the individual companies.

EXECUTIVE SUMMARY:

**THE COMMISSION SHOULD ENTER AN
ORDER THAT APPROPRIATELY ALLOCATES
SUPPLY-RELATED COSTS TO AMEREN'S SUPPLY CUSTOMERS**

The single outstanding competitive market issue before the Commission in the instant consolidated proceedings concerns the proper allocation of Ameren's costs between Ameren's supply service (or "bundled service") customers and its delivery services customers. As explained in the Initial Brief of NewEnergy/PES, the Memorandum of Understanding that NewEnergy and PES negotiated with Ameren resolves many of the bureaucratic barriers that have thus far impeded customers from participating in the competitive markets. While the issue of proper cost allocation remains unresolved, it is fair to say that NewEnergy/PES, Ameren, and Staff nevertheless have agreed on many of the components necessary for a more complete resolution.

NewEnergy/PES and Ameren agree that the Companies should be permitted to recover their supply-related costs and expenses. Additionally, Ameren agrees with Staff and NewEnergy/PES that:

- The Companies should recover all supply-related costs through the generation component of their rates and the Companies' Supply Procurement Adjustment mechanisms ("SPAs");
- Supply-related costs include both direct and indirect costs of procuring and administering power and energy supply for all customers; and
- Cost-causation principles should guide the Commission in determining what costs should be charged to Ameren's supply customers and its delivery services customers.

(See Ameren Initial Br. at 56-57, 138; Staff Initial Br. at 55-56, 148-49; NewEnergy/PES Initial Br. at 5, 8-10.)

Notwithstanding these points of agreement, Ameren disagrees with Staff and NewEnergy/PES regarding how and from which customers Ameren should be permitted to recover these costs. As Staff and NewEnergy/PES have explained, Ameren's proposal violates the cost-causation principles that Ameren itself asserts that the Companies support. (*See* Staff Initial Br. at 55; NewEnergy/PES Initial Br. at 10.) Specifically, Ameren proposes to allocate to delivery service customers all of the expenses associated with the Companies' Post-2006 Procurement and Provider of Last Resort ("POLR") obligations, as well as related Post-2006 proceedings. Ameren does so notwithstanding the fact that the Companies incurred these expenses not to maintain their distribution infrastructure, but rather to determine how they would procure supply for their supply service customers. (*See* Ameren Initial Br. at 57-58.) As Staff concludes, Ameren's proposal improperly assigns costs based on eligibility, rather than on cost-causation, which is a well-established ratemaking principle. (*See* Staff Initial Br. at 55.) Ameren's improper allocation would result in overcharges to delivery services customers, market distortions due to the creation of cross-subsidies, and inaccurate price signals. These results would frustrate customer choice and the development of competition in the Ameren service territories.

NewEnergy/PES respectfully request that the Commission enter an order directing Ameren to collect supply-related costs and expenses from supply service customers via the Companies' proposed SPAs.

II. OPERATING EXPENSES AND REVENUES

D. RATE CASE EXPENSE

2. Post-2006 Basic Generation Services

As discussed further in Section IV(F), the Commission should not permit Ameren to recover from its delivery services customers expenses related to the Companies' participation in the Post-2006 Procurement proceedings. Although NewEnergy/PES agree with the position outlined by Ameren in its Initial Brief that the Companies should be allowed to recover the full amount of their Post-2006 expenses, NewEnergy/PES and Staff agree that those expenses should not be paid for by delivery services customers who are not also Ameren's supply service customers. (*See* NewEnergy/PES Initial Br. at 2-3; Ameren Initial Br. at 56; Staff Initial Br. at 54.) If the costs associated with the Post-2006 Procurement proceedings, which were focused on the method by which the Companies would procure Basic *Generation* Services for their supply service customers, remain in the proposed *delivery services* rates, Ameren delivery services customers would be charged costs related to Ameren's procurement of the power supply. Ameren incurred these supply-related costs on behalf of the Companies' *supply service* customers only. Accordingly, those supply-related costs should be recovered from the Companies' supply service customers via the Companies' respective SPAs.

Therefore, as discussed further in Section IV(F), NewEnergy/PES respectfully request that the Commission permit Ameren to recover the Companies' prudently incurred Post-2006 Procurement expenses through the Companies' SPAs.

IV. RATE DESIGN

F. SUPPLY PROCUREMENT ADJUSTMENT

The Commission should ensure the proper allocation of costs between Ameren's supply service customers and Ameren's delivery services customers. Both Staff and NewEnergy/PES explain that the Commission should order Ameren to revise the Companies' proposal to ensure that all supply-related costs are allocated to Ameren's supply service customers, because those customers should pay the costs that Ameren incurs to provide their utility-specific bundled service.

Ameren's proposal would artificially deflate Ameren's generation supply costs by improperly allocating supply-related costs to all delivery services customers, and in so doing would distort the market by creating cross-subsidies and false price signals. In the end, this improper allocation of supply-related costs would frustrate customer choice and the development of competition. (*See* NewEnergy/PES Initial Br. at 5-7.)

In order to ensure proper allocation, the Commission should require Ameren to allocate all direct and indirect supply-related costs for recovery via the Companies' SPAs. In particular, the Commission should reject Ameren's assertion that its POLR obligation somehow justifies the inclusion of these supply-related costs in the Companies' delivery service rates.

NewEnergy/PES respectfully request that the Commission enter an Order instructing Ameren to recover, via the Companies' SPAs, all expenses incurred for the Companies' Post-2006 Initiative efforts and the Companies' consolidated Post-2006 Procurement Dockets (ICC Docket No. 05-0160c) (collectively, "Post-2006 Rate

Cases”). Additionally, the Commission should ensure that all other supply-related expenses are allocated to the Companies’ SPAs.

**AMEREN’S POLR OBLIGATIONS ARE IRRELEVANT TO
PROPER ALLOCATION OF SUPPLY-RELATED COSTS TO THE SPA**

Ameren improperly asserts that its POLR obligation justifies the recovery of the Companies’ Post-2006 Rate Cases costs from delivery services rates. (*See* Ameren Initial Br. at 57.) Ameren’s proposal would allow the supply-related costs from the Post-2006 Rate Cases to be allocated among all Ameren customers, regardless of whether those customers obtain all or none of their electricity supply from Ameren. As explained by NewEnergy/PES and Staff, the fact that Ameren has a POLR obligation does not justify allocating supply-related costs to delivery services rates.

Ameren contends that the Companies’ POLR obligation was “secured through the Post-2006 Rate Case” and that “[a]ll Ameren Companies’ customers thus benefited from the Post-2006 Rate Case.” (Ameren Initial Br. at 57.) To justify this assertion, Ameren claims that “[c]ost causation principles thus dictate that Post-2006 Rate Case costs should be allocated to all the Ameren Companies’ customers.” (*Id.*) Although Ameren should be allowed to recover the Companies’ expenses related to the Post-2006 Rate Cases, these supply-related costs should be recovered from supply service customers via the Companies’ respective SPAs.

Ameren’s POLR obligations exist separate and apart from the Post-2006 Rate Cases, which merely established the means by which Ameren’s supply obligations would be met. As properly explained by Staff, “the fact that the Ameren Companies must offer services to whoever wants it is an ongoing obligation that predates the [Post-2006 Rate Cases].” (Staff Initial Br. at 55 *citing* 220 ILCS 5/8-101.) Whereas Ameren argued that

the Post-2006 Rate Cases provided the Companies with the *ability* to be a POLR, Staff clarified that the Post-2006 Rate Case merely established the *methodology* for how Ameren will procure power beginning in January 2007. (*Compare* Ameren Initial Br. at 57 *with* Staff Initial Br. at 55.) Because not all of Ameren’s customers will be obtaining supply from Ameren after January 2007, it follows that not all of Ameren’s customers should be required to bear the costs associated with Ameren developing the method for procuring its Post-2006 supply.

Moreover, Ameren’s proposed misallocation, if approved, would require that customers who elect to purchase their energy from RESs unfairly subsidize those customers who remain with Ameren. (*See* NewEnergy/PES Initial Br. at 7.) Under Ameren’s proposal, RESs’ customers would pay twice: once to compensate Ameren for developing a methodology to obtain supply for the Companies’ supply customers; and then, again, to the RESs for the procurement of RES supply. (*See id.*)

The Commission’s decision in the recent Commonwealth Edison Company (“ComEd”) delivery services rate proceeding supports the Staff and NewEnergy/PES position in this regard.²

² In its Final Order in the ComEd delivery services rate case, the Commission concluded that the expenses ComEd incurred during ComEd’s Post-2006 procurement proceeding (ICC Docket No. 05-0159) were incurred on behalf of ComEd’s supply customers, and, therefore, ordered ComEd to recover these charges via ComEd’s Supply Administration Charge (“SAC”). (*See* ICC Docket No. 05-0597, Final Order at 50.) ComEd’s SAC is the equivalent of Ameren’s SPAs. Although differently named, both ComEd’s SAC and Ameren’s SPAs serve as mechanisms by which the respective utilities can recover costs incurred in order to procure electricity and supply for their respective supply customers. By its Order in ComEd’s proceeding, the Commission endorsed a non-controversial principle: delivery services rates should only recover delivery services costs and expenses; supply-related costs and expenses should be recovered from supply customers through a separate recovery mechanism. (NewEnergy/PES Initial Br. at 6; *see also* Staff Initial Br. at 56.)

**AMEREN'S PROPOSAL VIOLATES
COST-CAUSATION RATEMAKING PRINCIPLES**

Ameren improperly redefines the ratemaking concept of cost-causation. As Staff concludes, Ameren's proposal would assign costs "based on eligibility, rather than on the traditional ratemaking tenet of cost causation." (Staff Initial Br. at 55 *citing* Jones Reb., ICC Staff Exhibit 14.0, pp. 11-12)

To support the Companies' allocation proposal, Ameren relies upon cost-causation principles stating that as "[a]ll Ameren Companies' customers thus benefited from the Post-2006 Rate Case . . . [c]ost causation principles thus dictate that Post-2006 Rate Case costs should be allocated to all the Ameren Companies' customers." (Ameren Initial Br. at 57.) NewEnergy/PES agree with the Staff that Ameren's argument improperly skews the cost-causation principle by predicating the imposition of these supply-related costs on customers who *might* cause the costs rather than those customers who actually caused the costs. In other words, as Staff correctly points out, Ameren improperly seeks to assess these supply-related charges based on customers' *eligibility* to purchase electricity from the Companies. (Staff Initial Br. at 55.) (*See also Central Ill. Pub. Serv. Co. v. Illinois Commerce Comm'n*, 243 Ill. App. 3d 421,428, 610 N.E.2d 1356, 1361; 220 ILCS 5/1-102(d)(iii).)

As Staff correctly notes, customers do not cause Ameren to incur costs merely by being eligible for a particular supply rate. Indeed, the Staff opposed and the Commission rejected similar arguments made by Ameren in the Post-2006 Rate Cases, wherein Ameren sought to impose capacity charges on customers who were eligible to take service from Ameren. (*See* ICC Docket No. 05-0160c, Order entered Jan. 24, 2006 at 245-52.) The Commission properly concluded there, as it should here, that such

proposals run counter to sound ratemaking principles and, therefore, should be rejected. (*See id.* at 252.)

To the extent that Ameren misallocates the costs associated with the Companies' Post-2006 Rate Cases, all delivery service customers, regardless of their energy supply choice, will unfairly subsidize Ameren's supply customers. (*See* NewEnergy/PES Initial Br. at 5.) Because the Companies incur these costs and expenses in order to procure electricity and power for Ameren's supply customers, under the principles of cost-causation, Ameren should recover these costs exclusively from the Companies' supply customers.

AMEREN'S PROPOSED AMOUNT AND TRACKING OF THE SPA

As noted by Staff, NewEnergy/PES provided an initial, broad overview of those categories of costs for which Ameren bears the burden of demonstrating a proper allocation between the Companies' supply and delivery functions. (*See* Staff Initial Br. at 149; CNE/PES Ex. 4.0 at lines 132-86; *see also* 220 ILCS 5/9-201(c).) Once Ameren properly categorizes those expenses that are delivery-service oriented, the Commission can appropriately order that the remaining supply-related costs be included in the Companies' SPAs. By doing so, the Commission will ensure that Ameren's supply services customers are exclusively charged for costs incurred on their behalf.

CONCLUSION

The Commission must ensure the proper cost allocation between Ameren's supply service customers and its delivery services customers. NewEnergy/PES and the Staff agree that Ameren's proposal should be revised because, without a proper allocation of

supply-related costs to the Companies' SPAs, Ameren's delivery services customers would improperly subsidize Ameren's supply service customers.

NewEnergy/PES and Ameren have resolved many competitive issues in the instant consolidated proceedings. The successful resolution of these issues will minimize and perhaps even obviate many of the barriers to competition that exist in the Ameren service territories. NewEnergy/PES and Ameren agree that the Companies should be permitted to recover their supply-related costs and expenses. However, whereas Ameren believes that the Companies should recover these supply-related costs from all delivery services customers, including those delivery services customers that elect supply service from RESs, NewEnergy/PES and Staff believe that Ameren should recover these costs only from those customers on whose behalf the Companies incurred them. The Commission should require Ameren to recover its supply-related costs from the Companies' supply services customers via the Companies' generation rates and SPAs. Such a result would be consistent with the letter and the spirit of the Act, basic cost causation principles, recent Commission Orders and simple fairness.

For the reasons stated herein and in their testimony and initial brief, NewEnergy/PES respectfully request that the Commission enter an Order that:

- (1) Requires Ameren to allocate electric supply costs in a manner that ensures that customers that do not receive their electric supply from Ameren do not pay for Ameren's electric supply-related costs;
- (2) Is otherwise consistent with the recommendations made by the Constellation NewEnergy, Inc. and Peoples Energy Services Corporation as outlined herein and in their testimony;
- (3) Is consistent with the agreed resolution of issues outlined in the July 21, 2006 Memorandum of Understanding executed by the Ameren Companies, Constellation NewEnergy, Inc. and Peoples Energy Services Corporation; and
- (4) Grants such further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

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

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