CES Ex. 1.0

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION On Its Own Motion	: : :	
Investigation of Rider CPP of Commonwealth Edison Company, and Rider MV of Central Illinois Light Company d/b/a AmerenCILCO, of Central Illinois Public Service Company d/b/a AmerenCIPS, and of Illinois Power Company d/b/a AmerenIP, pursuant to Commission Orders regarding the Illinois Auction.	:	Docket No. 06-0800

DIRECT TESTIMONY OF

JOHN DOMAGALSKI
AND
KATIE PAPADIMITRIU

CONSTELLATION NEWENERGY, INC.

ON BEHALF OF THE
COALITION OF ENERGY SUPPLIERS

COMPRISED OF:

CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. A VIBRANT COMPETITIVE ELECTRIC MARKET HAS DEVELOPED IN ILLINOIS 4

III. POTENTIAL REFINEMENTS TO THE ILLINOIS AUCTION PROCESS 13

A. ENROLLMENT OR SIGN-UP WINDOW 15
(Issues List Items II(E)(1), (2))

B. MIGRATION RULES 17
(Issues List Item II(E)(3))

C. POTENTIAL CHANGES TO THE TRANSLATION TARIFFS 18
(Issues List Item II(G) (1), (2))

D. PROPOSALS TO MODIFY THE COMED AND AMEREN AUCTION PRODUCTS 18
(Issues List Item II(G) (1), (2))

I. INTRODUCTION

Q. Ms. Papadimitriu, please provide your name, employment, address and background relevant to your appearance as a witness in this proceeding.

A. My name is Katie Papadimitriu and I am employed by Constellation NewEnergy, Inc. ("NewEnergy"), an intervening party in this proceeding, as Manager, Regulatory Affairs. NewEnergy is licensed to operate as an alternative retail electric supplier in Illinois, and is located at 550 W. Washington Blvd. in Chicago, Illinois. I have been employed by NewEnergy since 2003, and I am responsible for managing the company's regulatory matters in Illinois. I received an A.B. in Political Science with General Honors from the University of Chicago. I also hold a M.S. in Financial Markets from the Illinois Institute of Technology's Stuart School of Business.

Q. Mr. Domagalski, please state your name, employer, business address, and professional background.

A. My name is John Domagalski. I have been employed by NewEnergy since 2004, and I am responsible for electric supply pricing for the customers served by NewEnergy in Illinois, Michigan, and Ohio. My title is Director of Pricing, Structuring, Products and Programs. In my position at NewEnergy, I oversee the development of new products and services such as metering, curtailable options, energy efficiency and other services. Prior to joining NewEnergy, I worked for over ten (10) years as a consultant (Ernst & Young, PricewaterhouseCoopers and Palmer Bellevue) advising retail energy suppliers around the world on business

planning and corporate strategy, finance, and regulatory matters. I am a graduate of the Kellogg School of Management's International Executive MBA program (Kellogg-WHU program in Germany) and received a B.S. from DePaul University *magna cum laude* in Finance.

Q. On whose behalf are you testifying?

A. We are testifying on behalf of the Coalition of Energy Suppliers ("CES" or the "Coalition"). The members of the Coalition are NewEnergy, Direct Energy Services, LLC, MidAmerican Energy Company, and Peoples Energy Services Corporation.

This *ad hoc* coalition has been formed to propose measures to foster the development of a competitive retail electric market in Illinois. The positions set out in this direct testimony represent the positions of the Coalition as a group, but do not necessarily represent the positions of individual Coalition member companies.

Q. What is the purpose of your testimony?

A. Consistent with its Orders in the procurement proceedings (ICC Docket Nos. 05-0159 and 05-0160, 05-0161, 05-0162 (consol.) ("Procurement Dockets")) of Commonwealth Edison Company ("ComEd") and Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Power Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP (jointly "Ameren"), the Illinois

Commerce Commission ("ICC" or "Commission") initiated this proceeding as a docketed review of the auction procurement process (the "Illinois Auction").

The main purpose of our testimony is to discuss the status of the truly vibrant competitive retail market for business customers in Illinois. Additionally, we strongly urge the Commission to continue to adopt polices aimed at empowering customers, and to avoid adoption of any supply mechanisms that would unduly limit customers' fundamental right to choose. A review of the status of the competitive market is directly relevant to the issues before the Commission in this proceeding. After completing that review, we will discuss certain proposals from the Commission Staff ("Staff") as well as other potential modifications to the Illinois Auction process.

Specifically, we will address the following topics:

- Staff's suggestion that an "enrollment window" be established for small non-residential customers served under the ComEd and Ameren blended products (BES-NRB and BGS-LFP, respectively);

- Staff's suggestion that a shortened enrollment window or replacement of the enrollment window with a pre-enrollment procedure be established for large customers served on the ComEd and Ameren annual products (BES-NRA and BGS-FP, respectively);

- Staff's recommendations to limit customers' ability to migrate off the utilities' Fixed Price blended and annual products (ComEd: BES-NRB & BES-NRA; Ameren: BGS-FP & BGS-LFP);

- The potential need for the utilities' translation tariffs to include a migration risk premium; and

- The Coalition's position regarding potential modifications to the existing Illinois Auction products.

II. A VIBRANT COMPETITIVE ELECTRIC MARKET HAS DEVELOPED IN ILLINOIS

Q. Please describe the major developments in the Illinois regulatory climate since the passage of the Electric Customer Choice and Rate Relief Law of 1997 ("Customer Choice Act").

A. Electric restructuring and customer choice have been a resounding success in Illinois. For example, ComEd's January 31, 2007 filing with the Commission entitled *Supply Options Chosen by Customers of Commonwealth Edison Company*, which reflects the most recent switching statistics report published by the Commission, states that roughly 62% of ComEd's non-residential load is currently served by retail electric suppliers ("RESs") like the Coalition members. (*See* Illinois Commerce Commission, ComEd Monthly Report filed pursuant to ICC Docket No. 03-0303, *available at* http://www.icc.illinois.gov/en/switchstats.aspx, attached hereto and incorporated herein as CES Exhibit 1.1.

Q. What role has the Commission played in the development of the retail electric market?

A. The most important feature of the Illinois regulatory environment has been the Commission's positive and steady stewardship and implementation of the Customer Choice Act. The Customer Choice Act provided the Commission with

considerable flexibility to adapt its regulations to market conditions. The Commission has exercised its authority to foster competitive market development and generally has chosen a progressive path in decisions regarding competitive market implementation. As a result of these actions, the market has shown a considerable ability to serve business customers in Illinois.

Q. Please describe how the Commission has fostered such a positive regulatory environment.

A. The Commission's leadership has proven to be a steadying force in the evolution of the competitive market in Illinois. The Commission's decisions helped cultivate an atmosphere in which all market participants, including utilities, consumer groups, and competitive RESs were increasingly able to focus attention and effort on improving commercial conditions and conducting business rather than expending resources on contentious regulatory proceedings with uncertain outcomes.

Over the course of the mandatory transition period, the Commission demonstrated leadership and concern for business customers by ratifying the dockets that implemented the Global Settlement that ComEd, consumer groups, businesses, and RESs negotiated in early 2003. (*See* ICC Docket Nos. 01-0423, 02-0479, 02-0656, 02-0671, 02-0672, and 02-0834.) By doing so, the Commission fostered certainty in the energy markets and, in doing so, provided the conditions necessary for businesses to enter into multi-year retail contracts, allowing them to

hedge their supply procurement.

Q. When was the Illinois Auction held and how was it initially reviewed?

A. The Illinois Auction was held in early September 2006. Pursuant to the applicable tariffs of Ameren and ComEd two (2) separate reports were released on December 6, 2006 that provided reviews and assessments of the structure, execution, and outcome of the Illinois Auction:

(1) the "Public Report Presented to the Illinois Commerce Commission" by National Economic Research Associates ("NERA") ("NERA Report"); and

(2) the "Post-Auction Public Report of the Staff" ("Staff Report" and collectively, "the Auction Reports").

Q. Does the Coalition agree with the findings in the Auction Reports?

A. The Coalition agrees with many of the findings of the Auction Manager and many of the observations espoused by Staff.

Q. Please highlight the findings in the Auction Reports of the Auction Manager and the Staff.

A. First and foremost, it should be noted that both NERA and Staff concluded that the Illinois Auction was a resounding success. Specific findings included:

- The first Illinois Auction was conducted in a transparent, equitable, and highly professional manner, consistent with both the ICC's Orders in the utilities' Procurement Dockets and the Illinois Auction rules. (*See* Staff Report at iii;

NERA Report at 30);

- No fundamental revisions to the Fixed Price section of the Illinois Auction are necessary. Instead, NERA recommended certain minor adjustments designed to optimize the existing framework. (*See* NERA Report at 151-58);

- There was no evidence of collusive behavior or other anticompetitive actions by bidders. Further, Staff posited that the relatively large number of bidders proved that the bidders perceived the Illinois Auction to be a fair process. (*See* Staff Report at iii; NERA Report at 24);

- Bidding in the Illinois Auction was competitive. Sixteen (16) of the twenty-one (21) registered bidders in the Illinois Auction won Fixed Price tranches to serve. More specifically, fourteen (14) bidders won and entered into wholesale supply contracts to serve the various ComEd Fixed Price products; nine (9) bidders won and entered into wholesale supply contracts to serve the Ameren Fixed Price products. Eight (8) wholesale bidders participated in the Hourly Price Sections. (*See* Staff Report at 6-10; NERA Report at 106-17);

- ComEd's switching rules for its BES-NRA (over 400 kW) eligible customers provided more flexibility than Ameren's switching rules for BGS-LFP (over 1 megawatt ("MW")) eligible customers, and these switching rules added to the risk borne by the bidding suppliers, and auction prices reflected this additional flexibility. (*See* NERA Report at 117);

- Levels of final Illinois Auction prices appear consistent with underlying markets. (*See* NERA Report at 123); and

- No other auction format could deliver a better result for customers and, thus, the Commission should retain the basic Illinois Auction design and continue procurement of the utilities' Fixed Price products through subsequent auctions. (*See* Staff Report at 36; NERA Report at 54)

Q. Were there particular recommendations in the Staff Report?

A. Yes. Staff recommended certain revisions regarding the nature of the Illinois Auction and of the term of certain products for subsequent auctions. Staff also recommended certain modifications to establish new and truncated enrollment windows, and to limit customers' ability to migrate off the utilities' products.

Q. Does the Coalition agree with Staff's recommendations to alter the enrollment windows and migration rules?

A. No. To date, Staff has failed to adequately identify the asserted "problem" to be solved. Staff also provides no threshold or empirical analysis to support its recommendations. These recommendations, if accepted by the Commission, would unnecessarily limit customers' flexibility and freedom to choose competitive service. Thus, although it remains unclear whether Staff's enrollment window and migration rules recommendations do or do not address a "problem" that may or may not exist, it is unquestionably clear that these recommendations would limit customers' ability to choose a competitive supplier. The trade-off that results from Staff's proposal simply is not justified.

Q. Has the competitive retail market been able to continue to develop in conjunction with the conduct of the Illinois Auction?

A. Yes. Even prior to the end of the mandatory transition period, the commercial and industrial market in Northern Illinois had developed well, though development was less progressive in the Ameren service territories. Now,

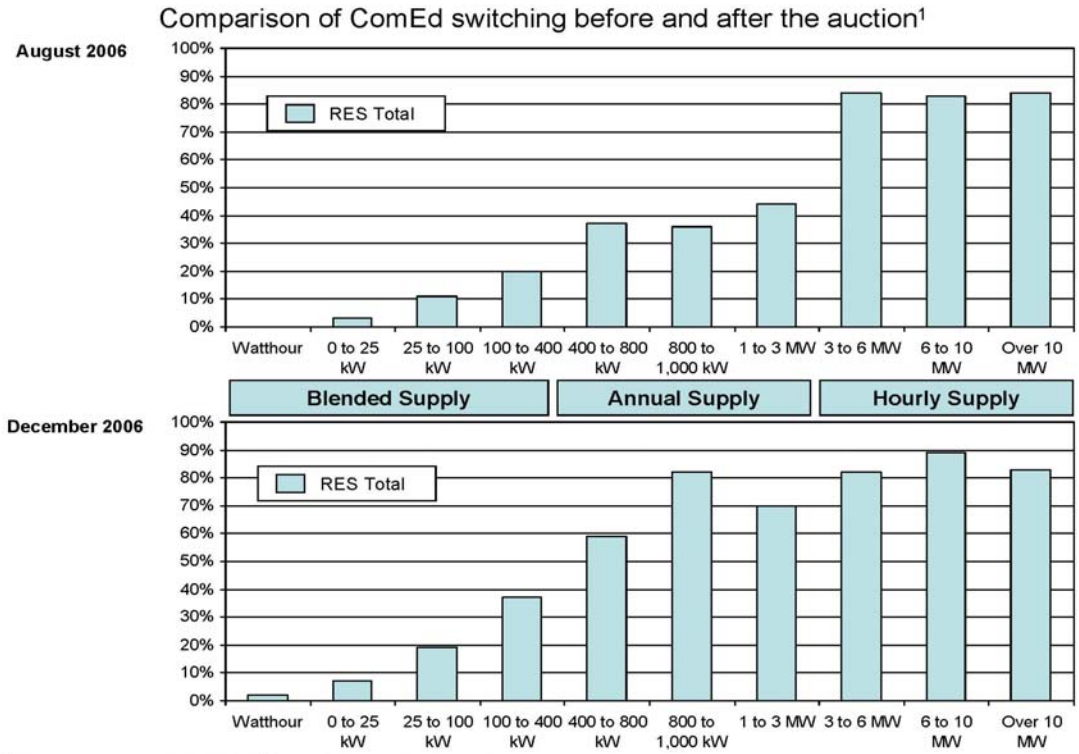
following the conclusion of the Illinois Auction, the Ameren commercial and industrial markets have taken a quantum leap to join the progress of the ComEd market. The flourishing competitive Ameren retail markets demonstrate the fundamental tenet that, for competition to thrive and provide customers with all of the resulting benefits, a greater number of customers must see market-reflective retail prices such as that which resulted from the Illinois Auction.

Q. Are there empirical measures that demonstrate the success of the competitive retail electric market?

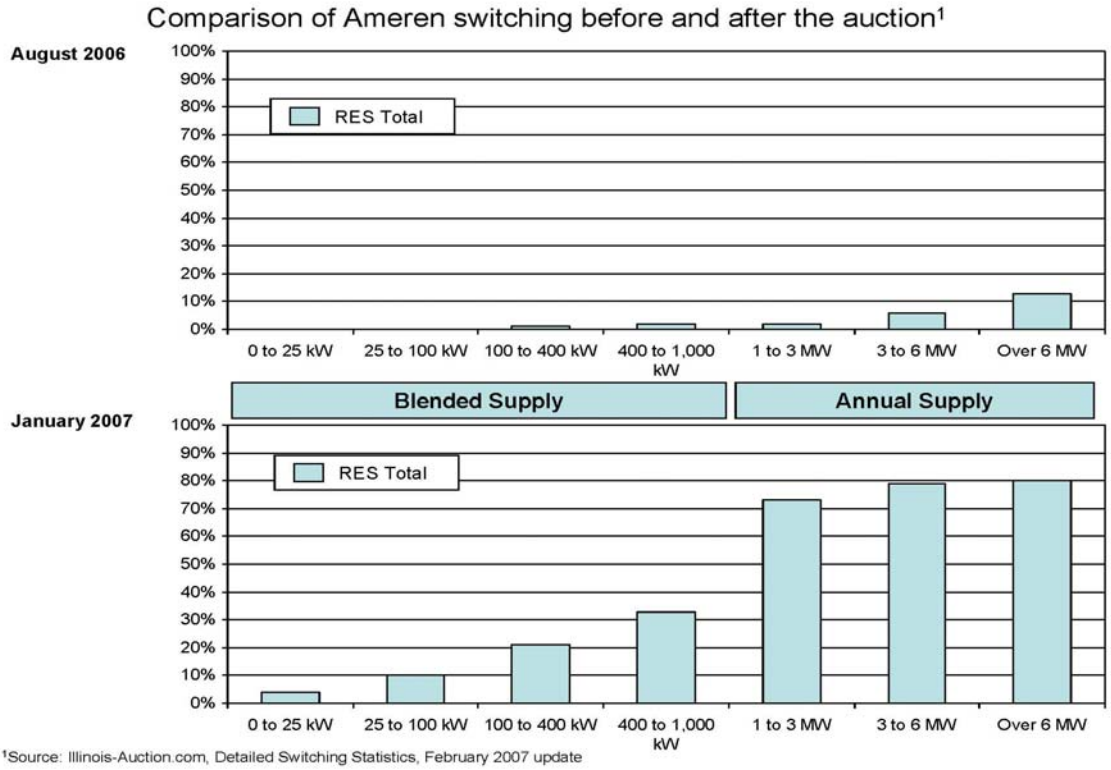
A. There are a number of empirical measures demonstrating that there has been substantial market development in Illinois. Certainly, the switching statistics that show the amount of load that has moved from bundled service to service with a RES is probably most relevant. Another relevant factor is the number of RESs that are participating in the Illinois retail electric market.

Q. Please discuss the portion of load that has migrated away from bundled service.

A. The amount and portion of load that has switched away from ComEd and Ameren's bundled service to service with a RES is reported on the Commission's website and in the Annual Reports on the status of competition that are submitted to the General Assembly. CES Exhibit 1.1, together with the tables below, demonstrate the amount of load, and the portions of load, that have switched from traditional bundled service rates to alternatives offered by RESs.



[1]Source: Arlene Juracek, KEMA's 18th Executive Forum, March 8-9, 2007



[1]Source: Illinois-Auction.com, Detailed Switching Statistics, February 2007 update

In the ComEd service area at the end of January 2007, almost 31,000 business customers had chosen to take service from someone other than ComEd, accounting for almost 62% of all usage by business customers above 15,000 kWh per year. (*See* Illinois Commerce Commission, ComEd Monthly Report filed pursuant to ICC Docket No. 03-0303, *available at* http://www.icc.illinois.gov/en/switchstats.aspx.) For the same period, in the combined Ameren service territories, over 4,500 business customers have elected to take service from a RES, accounting for almost 56% monthly kWh of all non-residential load. (*See id.*) We also note that due to the use of billing cycles that do not follow the calendar month, the utilities' January 2007 switching reports do not show the additional load that actually switched during January. Therefore, it is possible that this data is understated. The combined amount of switched load for ComEd and Ameren is 59.7%. (*See* i*d.*)

These switching statistics should be expected given similar experiences with other network industries' restructuring. Customer choice does not displace monopoly structures all at once. On average, larger customers tend to move toward choice sooner in competitive transitions than do smaller customers.

Q. Please discuss the level of participation in the market by RESs.

A. As of March 6, 2007, the Commission website identified more than twenty (20) RESs eligible to serve non-residential customers above 15,000 kWh per year. (*See* Illinois Commerce Commission, *List of Alternative Retail Electric Suppliers*,

available at http://www.icc.illinois.gov/docs/en/ARESBusList.doc.) Those RESs that have been actively engaged in the Illinois market are serving a considerable number of customers and, on a continuing basis, seeking out additional customers.

Q. Please discuss how this high level of participation by RESs translates into an expansion of the types of products and services that are available to non-residential customers in the competitive retail electric market.

A. Competitive RESs offer a wide range of products and services to consumers ranging from fixed price to real-time or hourly-priced products. Some customers, for instance, purchase block products, while others are interested in a fixed price for on-peak hours and a variable price for off-peak hours. The competitive retail market also offers renewable energy, demand response, and curtailment type products.

Q. Are there products and service options for consumers in the competitive market that are different than those offered by others?

A. Yes. Contract term flexibility is one of the many benefits enjoyed by customers as a result of the vibrant competitive retail electric market in Illinois. In the competitive retail electric market, customers and suppliers are free to contract for any term upon which they agree. Some customers prefer month-to-month or shorter-term contracts; some customers prefer one-year contracts; some customers prefer terms similar to the supply term for the ComEd and Ameren auction products; other customers prefer long-term contracts of greater than one (1) year.

In addition, RESs employ myriad electronic and web-accessed billing systems that enable customers to have electronic access to a single bill that contains the electric commodity portion and the utilities' respective transmission and distribution charges.

III. POTENTIAL REFINEMENTS TO THE ILLINOIS AUCTION PROCESS

Q. Does the Coalition agree that the Illinois Auction should be retained?

A. Yes. The Coalition agrees with the Auction Manager and Staff that the Illinois Auction worked extremely well. Additionally, we agree that the Illinois Auction remains the best available method for ComEd and Ameren to obtain reliable electric supply for customers that do not have competitive options or wish to remain with ComEd and Ameren.

Q. How should the Commission review proposed revisions to the Illinois Auction process?

A. Given the success of the Illinois Auction, the Coalition strongly urges the Commission to continue to adopt policies aimed at empowering customers, and to avoid adopting a supply mechanism that would unduly limit customers' fundamental right to choose. The key to the success of competitive markets has been the establishment of viable, market-based rate structures, as established in the Illinois Auction and in other related Commission proceedings, that do not limit customers' ability to buy, and energy suppliers' ability to offer, competitive products and services. Because of a greater freedom for contract design in the

competitive retail energy market than that permitted under tariffed services, many customers have been able to tailor their electric supply needs to better match the required flexibility of their operating needs, leading to both direct energy cost savings per unit of production and to other operational savings.

Q. What aspects of the energy market should the Commission consider when evaluating rate design and translation tariff issues?

A. As the Coalition noted in the Procurement Dockets, the real pinnacle of the competitive market comes with the ability of customers to take advantage, individually, of the timing of supply purchases rather than being limited to a utility or regulatory schedule as largely had been the experience during the transition period. Many business customers are interested in contracting for a known price for their energy supplies in order to take advantage of dips in wholesale market prices. By doing so, business customers are better able to estimate their energy budgets and thereby better plan investment, hiring, production and operations. Assuring that businesses in Illinois have the ability to arrange their energy supplies through forward contracts represents an advantage for the state and an important condition for in-state job creation.

Market-based rates as obtained in the Illinois Auction enhance the transparency of supply and provide signals to the market. They, therefore, enable customers to make intelligent and informed decisions regarding their competitive supply options, and allow RESs to compete on the basis of their ability to offer lower-

cost energy, better risk management techniques, and creative product and service offerings.

Ultimately, the success of the competitive retail market will be a function of the Commission's ability to establish default rates that accurately reflect the all-in cost of electricity supply to retail customers of all rate classes. As has been demonstrated elsewhere, a proper market-based pricing structure for electricity supply, supported by the availability of current usage and market data to large commercial and industrial customers, will foster the development of a workably competitive retail energy market. To remain viable, it is imperative that the Commission's rate design accurately reflects supply conditions in the energy marketplace.

A. <u>ENROLLMENT OR SIGN-UP WINDOW</u>
Issues List Items II(E)(1), (2)

Q. Please discuss the enrollment window that is to apply during the next auction.

A. Under the applicable ComEd and Ameren tariffs, customers eligible for the CPP-A wholesale product are given forty-five (45) days during which to affirmatively elect ComEd's annual product for the 2008 Auction cycle. While customers eligible for the CPP-B wholesale product were also subject to an enrollment window, the utilities' respective switching rules for these customers rendered this window less important. Accordingly, for all practical purposes, there is no enrollment window for ComEd or Ameren customers that are eligible

for the CPP-B or blended product. Under the applicable Ameren tariffs, customers above 1 MW have a thirty (30) day enrollment window.

Q. Have there been any proposals for changes to those rules?

A. Yes. As discussed briefly above, in its Post-Auction Public Report, Staff recommended certain modifications that Staff asserts will lower the risk of supplying these customers, including:

- Use of an "enrollment window" for small non-residential customers served under the ComEd and Ameren blended products (BES-NRB and BGS-LFP, respectively). (*See* Staff Report at 40-49); and

- A shortened enrollment window or replacement of the enrollment window with a pre-enrollment procedure for large customers served on the ComEd and Ameren Annual Products (BES-NRA and BGS-FP, respectively). (*Id.*)

Q. Does the Coalition support Staff's recommendations?

A. No. The Commission should not adopt measures that unnecessarily limit the flexibility of customers to exercise their choices beyond those currently included in the Illinois Auction structure. Quite simply, Staff's enrollment window recommendations would unnecessarily limit customers' flexibility and freedom to choose competitive service. Certainly, given the widespread success in the competitive market, the RESs' ability to provide products desired by consumers, and the Commission's legislative mandate to promote competition, those who propose changes to the Illinois Auction structure that would disenfranchise customers should be required to meet a very high burden of proof. No one has clearly articulated the "problem" associated with giving customers added

flexibility to choose that is provided under the current Illinois Auction structure, much less presented any empirical evidence that would justify revisions. We look forward to reviewing Staff's and other interveners' testimony. Of course, we reserve the right to respond to any such proposals in our rebuttal testimony.

B. <u>MIGRATION RULES</u>
Issues List Items II(E)(3)

Q. Please summarize the existing "migration rules" of ComEd and Ameren.

A. The existing ComEd and Ameren tariffs enumerate various rules regarding customers' ability to switch to and from the various electricity options outside of enrollment windows. For both ComEd and Ameren, a term of service extends for twelve (12) monthly billing periods. ComEd permits relatively large non-residential customers who automatically renew fixed price electricity service from ComEd to elect to obtain electric supply service from an alternative supplier prior to the end of such customer's following May monthly billing period. Ameren does not permit such flexibility.

Q. Have there been any proposals for changes to those rules?

A. Yes. As discussed briefly above, in the Staff Report, Staff recommended that the Commission limit customers' ability to migrate off the utilities' Fixed Price blended and annual products (ComEd: BES-NRB & BES-NRA; Ameren: BGS-FP & BGS-LFP). (*See* Staff Report at 42-49.)

Q. Does the Coalition support Staff's recommendations?

A. No. The Coalition has not seen any justification for any such proposal. As such, the Coalition reserves the right to respond to any such proposals in its rebuttal testimony. However, the Coalition is opposed to any changes that restrict customers' ability to exercise the fundamental right to choose beyond the measures currently included in the Illinois Auction structure. The Commission should be wary of modifying the Illinois Auction in a manner that further restricts customers' ability to choose RES service.

C. POTENTIAL CHANGES TO THE TRANSLATION TARIFFS
Issues List Items II(G)(1), (2)

Q. Is the Coalition proposing any changes to the ComEd and Ameren translation tariffs?

A. Not at this time. Any need for a change in the translation tariffs will depend greatly upon whether, and in what manner, other parties propose to redefine the Illinois Auction products for both ComEd and Ameren.

D. PROPOSALS TO MODIFY THE COMED AND AMEREN AUCTION PRODUCTS
Issues List Items II(G)(1), (2)

Q. What proposals have there been to modify the ComEd and Ameren Auction products?

A. The Post-Auction Public Report of the Staff indicated that Staff is interested in exploring revisions to the Illinois Auction products and the Coalition believes that other parties to the instant proceeding will propose revisions to the customer class

product groupings in both the ComEd and Ameren markets.

Q. Does the Coalition support such product grouping revisions?

A. Because parties have not yet provided specific details of their proposals, the Coalition cannot yet evaluate such operational and structural changes. The Coalition looks forward to reviewing any such proposals to modify the auction products.

Q. Is the Coalition recommending any changes to the auction products used to supply residential consumers?

A. Not at this time. As stated earlier, the key to success of competitive markets has been the establishment of viable, market-based procurement structures, such as the Illinois Auction, that do not limit customers' ability to buy, and energy suppliers' ability to offer, competitive products and services. The Coalition remains committed to fostering the development of competitive retail electric markets in Illinois for all customers.

Q. Does this conclude your direct testimony?

A. Yes.