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

STAFF'S RESPONSE TO MOTION TO SUSPEND SCHEDULE

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to Section 200.190 of the Rules of Practice of the Illinois Commerce Commission's ("Commission"), 83 Ill. Admin. Code 200.190, responds as follows to the Motion to Suspend Schedule ("AG Motion") filed by the People of the State of Illinois, by and through the Illinois Attorney General, Lisa Madigan ("AG") on April 6, 2007:

1. The AG Motion requests that the schedule be suspended unless and until Commonwealth Edison Company ("ComEd") and the Ameren Illinois Utilities ("Ameren") (collectively, the "Utilities") propose one or more viable alternatives to the reverse auction. (AG Motion, p. 5) The AG argues that the next logical step in this proceeding is for the Utilities to develop alternatives to the reverse auction. (AG Motion, p. 4) The AG also argues that such alternatives are within the scope of this proceeding. (*Id*.)

2. The basis for the AG Motion is the AG's argument "that this proceeding has been overtaken by outside events"[1] and the speculation that it is "increasingly unlikely that a reverse auction will be held in January 2008." (AG Motion, p. 3) Staff submits that the AG motion does not provide any valid basis to suspend the schedule, seeks relief that would unduly and unfairly prejudice parties, and suggests a course of inaction that could potentially harm ratepayers. Staff also notes that while it does not have any basis to contest or dispute the exhibits attached to the AG Motion, the motion is not verified and the facts relied upon by the AG are not of record.

3. The outside events cited in the AG Motion do not provide a basis for the Commission to assume or predict that legislative, judicial or other action will halt, eliminate or prohibit the Illinois Auction approved by the Commission in Docket No. 05-0159 and in Docket Nos. 05-0160, 05-0161, and 05-0162 (Consolidated) (collectively referred to as the "Procurement Dockets"). While the Illinois legislature is considering whether to roll back and freeze electric rates, such legislation continues to be debated and has not been passed by both the Illinois House of Representatives and the Illinois Senate. Until such legislation has been passed by both the Illinois House and the Illinois Senate, and signed into law by the Governor, it is merely speculation on the AG's part that legislative action will render the reverse auction moot. Similarly, while the AG motion refers to a scheduled oral argument in the consolidated appeal of the

[1] Those events include a letter from the Governor to the Speaker of the House of Representatives expressing support for a rate freeze, the favorable vote by the Illinois House of Representatives on HB 1750 which would require Ameren and ComEd to reinstate 2006 rates and freeze rates until 2010, comments by Ameren's CEO indicating that the auction be modified or replaced, Exelon's CEO, John Rowe's, statement that there is a willingness to consider an alternative to the auction, SB 1592 which would reinstate 2006 rates and freeze rates for a year, the scheduling of oral argument by the Second District Appellate Court of Illinois on the appeals of the procurement dockets and a number of bills that would require changes to the procurement process. (AG Motion, pp. 2-3)

Commission's orders approving the reverse auction (AG Motion, p. 3), there is no basis for the AG to assert or the Commission to assume that a reversal will occur. Indeed, it is Staff's understanding that the AG's requests to stay the Commission's orders on appeal have been denied by the Illinois Supreme Court and the Second District Appellate Court, and the Commission has denied the prior AG motions to stay the tariff's approved by its orders in the Procurement Proceedings. (Docket 05-0159, Notice of Commission Action (Dec. 21, 2006); Dockets 05-0160 / 05-0161 / 05-0162 (Consol.), Notice of Commission Action (Dec. 21, 2006)) Finally, while executives of Exelon and the Ameren Illinois Utilities may have made statements expressing a willingness to consider other options to the auction, the statements cited by the AG do not amount to any kind of current firm commitment to implement alternatives or abandon the Illinois Auction. Thus, those "events" also fail to provide any basis to assume or predict that the Illinois Auction will be withdrawn by ComEd or the Ameren Illinois Utilities.

4. Even if one ignored the fact that the AG Motion has not established a basis to assume or predict that legislative, judicial or other action will halt, eliminate or prohibit the Illinois Auction, it would not be reasonable to suspend the schedule in this proceeding. The Illinois Auction is the current approved method for the Utilities to acquire power and energy, and the purpose of this proceeding is to consider improvements to that process. The current schedule in this proceeding was intended to allow enough time for any changes ordered by the Commission to be incorporated into the auction documents for the next scheduled auction. Amending auction documents will take some time, and those documents must be posted or distributed well in advance

of the auction per the timeline approved by the Commission. Suspending the schedule in this docket, even for a short time, would virtually guaranty that potential improvements would not be able to be incorporated into the next scheduled reverse auction that is set to take place in January of 2008 (The September 2006 Illinois Auction Post-Auction Public Report of the Staff, p. 1). The Commission does not have the benefit of time to suspend this proceeding to pursue other issues, and delay addressing issues related to the only procurement method that is in effect and has been approved by the Commission for the utilities to acquire power and energy. Thus, the relief sought by the AG Motion would ensure that no improvements could be incorporated in the next Illinois Auction, and that would mean that ratepayers would be exposed to higher costs for power and energy than would have otherwise been the case if such improvements had been implemented.

5. Staff and numerous other parties (including prospective bidders) invested significant time and effort by participating in workshops to develop an issues list and reach agreement where possible, and in preparing testimony to propose improvement or modifications to the Illinois Auction. Moreover, parties proceeded in an expeditious manner so as to comply with the Commission's expressed desire to conclude this proceeding in time for "changes to be implemented in a timely manner prior to the next auction." (Initiating Order, p. 5) The relief sought by the AG Motion would convert that effort into a fruitless and wasteful use of time and resources, to the prejudice of all parties.

6. Further Staff disagrees that the scope of this proceedings includes proposing alternative procurement methods. In its Initialing Order for this proceeding, dated December 20, 2006, the Commission could not have been clearer when it stated:

> The Commission also wishes to emphasize that in initiating this proceeding, we are not inviting wholesale relitigation of issues the Commission disposed of in its orders in the Procurement Dockets. Rather, it is our intention that the issues in this case be directly related to matters that have come to the attention of the parties as a result of the conduct of the auction process itself, or that relate to proposed changes to the auction process to address facts or circumstances that are new or different from those considered in the Procurement Dockets.

(Docket 06-0800, Initiating Order dated December 20, 2006, p.5-6) As a result, the Utilities were not required to propose alternative procurement methods, as it would have been outside the scope of this proceeding..

7. In conclusion, given that the AG motion fails to provide any reasonable basis to suspend the schedule, seeks relief that would unduly and unfairly prejudice parties, suggests a course of inaction that could potentially harm ratepayers and is an attempt to transform this proceeding into something beyond that which was contemplated by the Initiating Order, the AG motion should be denied.

WHEREFORE, for the foregoing reasons, Staff respectfully requests that the Administrative Law Judges deny the AG Motion.

Respectfully submitted,

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