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**

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

JOHN C. FEELEY
CARMEN L. FOSCO
CARLA SCARSELLA
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
cfosco@icc.illinois.gov
cscarsel@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

May 30, 2007

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Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission's ("Commission"), respectfully submits its Initial Brief in the above-captioned matter.

I. Introduction and Summary

On December 20, 2006 the Commission initiated this proceeding, under Section 9-250 of the Public Utilities Act, to review Rider CPP of Commonwealth Edison Company ("ComEd") and Rider MV of Central Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"), of Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS"), and of Illinois Power Company d/b/a AmerenIP

(“AmerenIP”) (Collectively, “Ameren” or the “Ameren Companies”), to determine whether the Commission should order any changes in the auction process embodied in those tariffs. (Docket 06-0800, Initiating Order dated December 20, 2006, p. 6) In Docket Nos. 05-0159 and 06-0070/06-0071/06-0072 (Cons.) (collectively, the “Procurement Dockets”), the Commission approved the auction process (“Illinois Auction”) by which Illinois utilities would purchase the electricity used to serve most of their retail electric service customers on or after January 2, 2007.

As a result, the following parties either filed appearances or Motions to Intervene that were granted: the Ameren Companies; ComEd; the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (“AG”); Dynegy Inc. (“Dynegy”); the Citizens Utility Board (“CUB”); Constellation NewEnergy, Inc., Direct Energy Services, LLC, MidAmerican Energy Company, and Peoples Energy Services Corporation (collectively, “Coalition of Energy Suppliers” or “CES”) ; the Illinois Industrial Energy Consumers (“IIEC”); Constellation Energy Commodities Group, Inc. (“CECG”); Retail Energy Supply Association; J. Aron & Company; Morgan Stanley Capital Group Inc., Midwest Generation EME, LLC; City of Chicago; Edison Mission Marketing & Trading, Inc. (“EMMT”); and Commerce Energy, Inc..

At a status hearing held on January 23, 2007, the following procedural schedule was adopted: Workshops held on February 2 and 15, 2007, simultaneous direct testimony, March 15, 2007; simultaneous rebuttal testimony, April 6, 2007 (with the exception of Staff witnesses Kennedy and Zuraski which was filed on April 13, 2007); and hearing held on April 24, 2007 through April 26, 2007. Notice of Withdrawal as a party to this proceeding was filed by CECG, J. Aron & Company, and Morgan Stanley Capital Group Inc.

The following witnesses submitted testimony on behalf of Staff: Thomas E. Kennedy and Richard J. Zuraski (ICC Staff Exhibit 1.0; ICC Staff Exhibit 4.0) and Rochelle Phipps (ICC Staff Exhibit 2.0; ICC Staff Exhibit 3.0). During the course of the proceeding, Staff made various proposals to improve ComEd's Rider CPP and Ameren's Rider MV. Certain of Staff's proposals are uncontested and Staff withdrew others. Staff recommends the Commission adopt its proposals and recommendations as set forth below. Staff notes that while it did not provide testimony with respect to every issue and does not address in this initial brief every issue in the jointly developed brief outline, it reserves the right to respond in its reply brief to other parties' arguments with respect those issues.

II. Uncontested Issues[1]

A. Use of an Auction

1. Continued use of the alternative procurement methods for the Hourly Price Section.

The Commission rejected the hourly-price section of the September 2006 Illinois Auction due to various concerns. (*See* In re: Initiation of investigation regarding the Hourly Price Section of the Illinois Auction under Commonwealth Edison Company's Rider CPP, and under Rider MV of Central Illinois Public Service Company d/b/a AmerenCIPS, of Central Illinois Light Company d/b/a AmerenCILCO, and of Illinois

[1] Uncontested issues will be discussed, as required, in the opening briefs of the parties sponsoring any change or proposing any finding relating to that issue. Changes proposed by the Auction Manager may also be discussed in the briefs of Staff, ComEd, and/or the Ameren Utilities.

Power Company d/b/a AmerenIP. Ill. C.C. Docket No. 06-0624, Order Initiating Investigation (Sept. 14, 2006)) Ameren and ComEd have been procuring resources to provide hourly price services under the contingency provisions of their respective tariffs. (ICC Staff Ex. 1.0, p. 9) Staff presented uncontested testimony that "Ameren and ComEd [should] continue to use their best efforts to prudently acquire the resources needed to provide hourly price services without the Illinois Auction." (*Id.*, p. 10)

Similarly, ComEd witness McNeil testified that

> ComEd's cost of procuring supply for its hourly priced retail load should be based on direct procurement from PJM rather than an Hourly Priced Product in the auction. Under the Reliability Pricing Model ("RPM") program approved by the Federal Energy Regulatory Commission ("FERC") to become effective June 1, 2007, ComEd will procure directly from PJM-administered markets electric energy, capacity, ancillary services and all other such requirements to serve retail customers taking service under Rate BES-H – Basic Electric Service – Hourly ("Rate BES-H"). Procurement directly from PJM-administered markets is an efficient and effective means of procuring those resources for customers who are on hourly priced rates.

(ComEd Ex. 1.0, pp. 5-6) He also stated:

> In accordance with Rider CPP as approved by the Commission, after PJM's RPM is in place, ComEd will no longer actively procure the electric power and energy needed to serve its Hourly Customers through the Illinois Auction. Supply will instead be procured directly from PJM-administered markets. While participation in RPM is not voluntary, ComEd is asking that the Commission's Order in this proceeding reflect its approval of ComEd's elimination of what, for ComEd, would be its obsolete Hourly Price Section auction product, since it will procure electric power and energy for Hourly Customers through PJM-administered markets.

(ComEd Ex. 1.0, p. 28)

While Ameren witness Blessing discussed three changes that could improve upon the hourly price auction (Ameren Illinois Utilities' Ex. 2.0, p. 6), he nevertheless concluded that these changes would be unlikely to sufficiently satisfy the concerns that led to the ICC initiating an investigation of the results of the hourly price section of the first Illinois Auction, adding:

> As a consequence, the Ameren Illinois Utilities support the Staff's recommendation to procure supply for the BGS-LRTP product outside the auction until such time as these alternative processes can be fully evaluated.

(*Id.*, p. 7)

For all the above reasons, Staff recommends that the Commission terminate its support for the Illinois Auction as a mechanism for procuring electric power and energy for the hourly priced retail customers of Ameren and ComEd. As a result, the Commission (i) should order that Ameren and ComEd modify their respective tariffs to exclude the hourly price section from the Illinois Auction until otherwise ordered by the Commission, and (ii) that Ameren and ComEd should continue to use their best efforts to prudently acquire the resources needed to provide hourly price services without the Illinois Auction pursuant to the contingency provisions of their tariffs.

2. Changes to the Hourly Price section product for the Ameren Utilities.

As noted above, Ameren witness Blessing put forward three changes that he claimed could render Ameren's hourly price product more viable and attractive in the next auction:

- Reduce the uncertainty of load served by capping the amount of Hourly Price capacity with both an upper and lower limit (for example 200 to 500 MW).
- Remove components that create risk for the suppliers, such as ancillary services, which could be addressed through a "pass through" mechanism.
- Use seasonal payment factors for capacity in an effort to mitigate risk borne by the suppliers that is created by customers switching

> on and off the hourly product on a seasonal basis because seasonal payment factors better reflect the actual cost of capacity at the time it is being used.

(Ameren Illinois Utilities' Exhibit 2.0, p. 6)

With respect to these proposed changes, Staff witnesses Kennedy and Zuraski testified that they may marginally enhance bidders' response to the hourly-price products. (ICC Staff Ex. 4.0, p. 16) Dr. Kennedy and Mr. Zuraski also agreed entirely with Mr. Blessing's assessment that these changes would not sufficiently satisfy the concerns that led to the Commission initiating an investigation of the results of the hourly price section of the first Illinois Auction. (*Id.*) Hence, if the Commission allows Ameren and ComEd to continue to use their best efforts to prudently acquire the resources needed to provide hourly price services without the Illinois Auction, then the proposal to make these three potential enhancements is moot.

B. Application Process

1. Clarification of application forms including Section A.6 of Part 1 Application, Section A.7 of Part 1 Application, and Section B.2 of Part 2 Application.

2. Additional documentation regarding Registered Agent requirement.

3. Modification of pre-auction letter of credit.

4. Establishment of time window for applications to be processed.

C. Credit Issues

1. All modifications to pre- and post-auction security instruments that were accepted in the 2006 auction should also be accepted in the next auction so that only new revisions will be considered during the '08 application process.

To streamline the application process for the next auction, Staff recommends that all modifications to the pre- and post-auction letters of credit that were accepted for the 2006 auction should also be accepted in the next auction so that only new revisions will be considered during the application process for the next auction. (ICC Staff Ex. 2.0, p. 6) Staff also recommends that, where applicable, revisions to the letters of credit that are adopted in this auction improvement proceeding should supersede revisions that were found acceptable during the 2006 Illinois Auction application process. (ICC Staff Ex. 3.0, p. 3) These particular recommendations were not contested by any party.

2. A guarantor will be provided with a single line of credit to cover all suppliers whose obligations it guaranties.

The supplier forward contracts ("SFCs") limit ratepayers' exposure to risk of loss arising from a supplier default by limiting the amount of unsecured credit granted per supplier or per financial guaranty; however, the SFCs do not limit the amount of unsecured credit granted per ***guarantor***. If this deficiency in the credit requirements is not corrected, then the potential would exist for a single entity that provides financial guarantees to more than one supplier to circumvent the unsecured credit limits provided in the SFCs, which would reduce the amount of protection to ratepayers in the case of a supplier default. Thus, Staff recommends revising the first paragraph of Section 6.4(i)(b) of ComEd's and Ameren's SFCs as follows (even though this illustration uses the SFC for ComEd's CPP-B Supply):

> If the CCP-B Supplier chooses to rely upon a Guarantor to satisfy the requirements of this Section 6.4(i) the requirements of this subsection 6.4(i)(b) shall apply. If the CPP-B Supplier has a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's or Fitch, and (2) must have a minimum senior unsecured debt rating equal to the Minimum Rating. In the event that senior unsecured debt ratings are unavailable from S&P and Fitch, the corporate issuer rating, discounted by one notch will be used. In the event that senior unsecured debt ratings are unavailable from Moody's, the issuer rating will be used. The Company will only rely on senior unsecured debt ratings, or if unavailable, issuer or corporate issuer ratings. If the Guarantor does not have a senior unsecured debt rating and does not have an issuer rating from a rating agency, it will be deemed by the Company not to be rated by that rating agency. If the Guarantor is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. A Guarantor will be granted a single Credit Limit to be applied to all CPP Supply agreements for which it guarantees payment obligations on behalf of one or more CPP Suppliers. The maximum level of the Credit Limit to cover the Total Exposure Amount that could be provided to the Guarantor ~~through the financial Guaranty~~ will be determined in accordance with Table A.

(ICC Staff Ex. 2.0, pp. 6-7)

In direct testimony, the utilities also proposed language to address this "loophole" that exists in the current SFC credit requirements. In rebuttal, ComEd agreed with Staff's proposed language whereas Ameren continued to recommend approval of its originally proposed language. (ComEd Ex. 3.0, pp. 4-5; Ameren Illinois Utilities' Ex. 8.0, p. 5) Ameren's proposal is less accurate than Staff's proposal for the following two reasons: (1) it is incorrectly included in a section of the SFCs that applies to suppliers not relying on guarantors to meet the SFC credit requirements; and (2) it is inconsistent with another sentence contained in Section 6.4(i)(b) of the SFCs that could be misconstrued to mean that the Credit Limit is applied on a guaranty basis rather than a guarantor basis. (ICC Staff Ex. 3.0, pp. 3-4) For those reasons, Staff opposes

Ameren's proposed language and recommends approval of Staff witness Phipps' proposed revision to Section 6.4(i)(b) of the SFCs, which should increase the amount of protection to ratepayers in case of a supplier default by limiting the amount of unsecured credit granted per guarantor rather than per guaranty.

3. Accelerated payments provision of the SFCs, if a Buyer is below investment grade.

4. Unsecured credit will be divided appropriately among participating affiliates.

D. Enrollment Windows and Other Switching Rules

1. Timeline revisions reducing the number of days between a Commission decision and the start of the applicable enrollment window.

G. Other Contract Change Proposals

1. Clarifications to reflect: (a) changes in the dates applicable to future auctions and purchases, (b) changes in applicable RTO tariffs and charges since the 2006 auction; and (c) changes made in response to questions received and issues raised both internally and externally during the 2006 auction.

2. Revise the line of demarcation for taxes in the SFCs.

3. Delete provisions (a) regarding the priority of payment of penalties in the event of a RES default; and (b) that the CPP Supplier must be registered to do business in Illinois.

4. Permit suppliers to satisfy their PJM Supplier Responsibility Share from a single PJM E-Account.

5. Provision of data to winning CPP Suppliers.

6. Update and clarify delineation in Schedule C of Buyer / Supplier RTO costs.

7. The damages due to default provisions should be made symmetrical.

8. **Reasonable supplier consent should be required if a utility wishes to assign the SFC.**

9. **Form letter of credit should be revised to eliminate unnecessary provisions, correct errors and make clarifications.**

10. **Revisions to implement PJM changes for accounting for transmission losses and for RPM.**

I. Post-Auction Commission Review of Results

1. **Change schedule to allow Staff one day to review the Auction Manager's Confidential Report to the Commission prior to submitting the Staff's Confidential Report to the Commission, and to require the Auction Manager's Confidential Report to be submitted one day after the close of the auction.**

J. Confidentiality of Bidder Information

1. **Added detail in the tariffs about confidential treatment of information.**

2. **Clarify that supplier data and auction data provided to the Commission through the Confidential Reports of Staff and the Auction Manager that is not otherwise released or designated as public remains confidential.**

3. **Specify items to be released in the Public Reports.**

K. Information Dissemination

1. **Archive the 2006 Web site to an accessible location, and update the Illinois Auction Web site for the 2008 auction.**

2. **Add an information session well in advance of the Part 1 Application.**

3. **Invite all stakeholders to the first information session conducted well in advance of qualification and direct information dissemination efforts to the public and press during that period.**

4. **Provision of additional documentation targeted on areas that generated a high volume of questions in the prior Illinois Auction (tariff and switching rules, end of auction process, and examples for auction rules).**

5. **Additional content on General Information page of the web site.**

6. **Provide a summary and overview of the auction for the general public and for the press.**

7. **Schedule conference calls or web casts to provide updates to all stakeholders between the Part 1 Application deadline and the auction.**

8. **Provide updated switching statistics and hourly load data.**

9. **Provide CPP-A suppliers at an earlier time with a more certain estimate of CPP-A customer load that reflects the results of customer actions during the enrollment window.**

M. Timeline

1. **Market Cost data and final prism provided by Utilities at a time closer to the Auction Commencement Date.**

2. **Utilities should submit the Retail Supply Charge Informational within two business days of the Declaration of a Successful Result.**

3. **The Public Report will be divided into two portions. The first, containing the bulk of the report including recommendations will be released within 15 business days after Commission review of the results; the second, within 60 business days.**

4. **Change the order of events in the timeline to ensure better consistency and clarity for potential suppliers. The tranche targets would be announced first, then the auction rules would be provided in final form (because they rely on the tranche targets), and finally the Part 1 Application would be released (since the Part 1 Application references the final auction rules). Currently, applications are posted first, then final documents are posted, and then tranches are announced.**

5. **Compress the timeline between the Part 1 Application and the Auction to provide additional time to integrate the Commission's Order with the controlling documents, to provide bidders sufficient time to consider final documents before having to submit an application, and to reduce the burden on bidders of a lag between the Part 2 Application and the Auction.**

6. **Include in the timeline a specific time when the auction would be re-run in the event that the Commission initiates an investigation into the auction results, and the Staff, Auction Manager and utilities determine that the auction should be re-run, and provide that pre-auction security stays in effect until that time.**

7. **The process of updating the SFCs for the next auction should be clarified:**

   a. **Items previously decided by the Commission (*e.g.*, credit, supply group definitions, and contract term structure) require Commission approval to modify.**

   b. **Changes that clarify existing language or implement changes to market rules do not require Commission approval, as long as they comply with Commission orders in the procurement cases and this proceeding.**

   c. **Suppliers have the opportunity to comment on the SFCs.**

   d. **A compliance filing will be made including the final SFCs to demonstrate that they substantively comply with the conditions underlying the Commission's approval of the tariffs and use for retail ratemaking of the auction results as provided in the tariffs.**

   e. **Signed SFCs would be submitted to the Commission for informational purposes only.**

N. Ameren-only SFC Issues

1. **Retention of Ameren SFC provisions that allow suppliers to self supply ancillary services.**

2. **Requirement in Ameren SFC that suppliers identify the capacity resources used to satisfy their resource adequacy requirements.**

3. Use of separate SFCs for each Ameren Utility, instead of one SFC with special language limiting joint and several liability.

4. Ameren SFC revisions to address MISO rules changes.

O. Contingency Purchases

1. Clarify tariff language calculating the charges required to recover supply costs in the event the Commission initiates an investigation of the auction (not a proposal to change the ultimate recoverability of costs, but rather to clarify the tariff language).

III. Contested Issues

A. Use of an Auction

1. For the Fixed Price section, should the auction be modified as follows:

a. Modifications to the starting price.

As addressed in the Commission's orders in the previous procurement dockets, the nature of a reverse clock auction such as the Illinois Auction is to begin with prices high enough to attract significantly more supply than is actually needed (the tranche targets).[2] In subsequent rounds, the prices are methodically reduced, and bidders revise their bids, until there is just enough supply to fill all the tranche targets. No witness proposed an alternative starting price that fits within that basic mold of the Illinois Auction.

However, AG witness Rose testified that benchmarks could be used "to set a ***starting price*** or a 'reserve price' in the auction." (AG Exhibit 1.0, p. 11, emphasis added) Specifically, he testified that

> The ICC may consider a reserve price based on the wholesale market price. This would indicate that, if the auction is unable to secure sufficient

[2] See Docket 05-0159, Final Order, p. 93; and Docket 05-0160/1/2, Final Order, pp. 111-112.

> supply at that price, the distribution company or some other entity could purchase power on the wholesale market, at least for short term purchases.

(*Id.*)

Since Dr. Rose's proposed alternative starting price is fundamentally a "reserve price," it is addressed further below, under item 1.d (Use of "reserve prices"). As far as Staff is aware, no other party proposed an alternative to the principles--approved by the Commission in the Procurement Dockets--governing how the Auction Manager should go about setting initial prices.

b. Use of demand-side bidding

CUB presented two witnesses who addressed the potential for "energy efficiency and demand response" to lower the total cost of electric service to consumers. CUB witness Thomas testified that the structure of the Illinois Auction did not permit bidders to offer energy efficiency and demand response. (Second Corrected CUB Ex. 1.0, pp. 6-8) CUB witness Crandall proposed three alternative means of incorporating energy efficiency and demand response into the utilities' resource procurement mix:

> [1] First, the most efficient way to select resources is to have the utilities and state agencies involved in planning energy efficiency and demand response programs for customers.
>
> [2] In the alternative, another possibility is that the auction process be redesigned to separately bid parts of a portfolio with different resources to meet different utility system needs. I would call this mechanism a three-tier bidding approach. Such a mechanism could help deliver all resources in a cost effective manner.
>
> Under the three-tier approach, the utilities would first hold an auction to bid a block of energy efficiency options. In this phase, the utilities would purchase all energy efficiency resources they perceive to be cost effective. Once the bids in phase one are made and the resulting load shape and level impacts have been determined, a second auction focusing on

dispatchable, peak-reducing demand response resources would be held. Again, utilities would purchase all demand response resources that they perceive to be cost effective. After the first two phases are complete, the utility would examine the full portfolio of resources that it purchased, and then determine its remaining needs. The resulting load curve would become the basis for the supply auction.

[3] The third way to alleviate these barriers is to redesign the auction process to separately bid peak, base, and intermediate loads. Such a system would be very useful with regard to bidding certain demand response resources. Bidders specializing in dispatchable demand response strategies (that is, ones that the utility can engage remotely, such as air conditioner cycling) would be able to bid their specific resources without incurring the risk of having to supply base load resources.

(CUB Ex. 2.0, pp. 10, 14-15, 16)

However, Mr. Crandall dismissed the third approach as "only a partial solution." (*Id.*, p. 17) He concluded that

the most efficient way to procure demand side resources would be to have the utilities and state agencies involved in planning energy efficiency and demand response programs for customers. The second best approach is the three-tier demand bidding process, discussed above. While less optimal, the Commission can implement it within the existing auction framework.

(*Id.*, p. 18)

Staff witnesses Kennedy and Zuraski agreed with Mr. Crandall's ranking of the alternatives, stating,

If it is determined that energy efficiency and demand response should be more heavily relied upon by ComEd and Ameren, we agree entirely with Mr. Crandall that the least desirable approach would be to implement it within the existing auction framework. The concept of *demand side resources* is fundamentally different than the concept of *supply side resources.* There is no direct way of measuring a <u>reduction</u> in electricity demand, as there is of measuring a <u>supply</u> of electricity, and even if such measurement problems could be adequately solved, it would be simply impossible to "supply" a vertical tranche of energy efficiency (which presumably would be a constant portion of load in every hour of the year

> that has been reduced). Hence, the provision of demand side resource cannot be adequately compared against the supply of vertical tranches in a manner that would enable them both to be treated interchangeably in the same auction.

(ICC Staff Ex. 4.0, p. 9)

Ameren witness Nelson also testified in opposition to the three-tiered demand bidding process, stating, “there is no feasible way to introduce this as part of the 2008 auction.” (Ameren Illinois Utilities’ Ex. 5.0, p. 8) He also questioned whether the proposal had any merit, since, “there is no guarantee how and to what degree customers’ actual load requirements or usage patterns will be changed, especially lacking any historical context.” (*Id.*)

ComEd witness Tierney also urged the Commission not to adopt the three-tier demand bidding process, stating, among other things,

> [T]here is no evidence that the auction has inhibited efficient demand management. Moreover, as a matter of policy, there is nothing inconsistent between a full requirements auction and other policies that promote efficient use of demand management. To goal of promoting efficient demand management does not require revision to the auction, let alone effectively abandoning it.
>
> Apart from this, changes that the CUB witnesses propose are not fleshed out in their direct testimony in ways that could allow them to be carefully weighed and considered, or even surgically combined with the current procurement process.

(ComEd Ex. 4.0, p. 14)

As to the more fundamental question about whether utilities should commit greater dollars and rely more heavily upon energy efficiency and demand response, Ameren witness Nelson stated that he did not necessarily disagree that there were benefits from such a commitment. (Ameren Illinois Utilities’ Ex. 5.0, p. 8) ComEd witness McNeil expressed ComEd’s appreciation for such measures and claimed that

ComEd is an industry leader with respect to demand response programs. (ComEd Ex. 2.0 Revised, p. 26) He and ComEd witnesses Eber and Brandt described both ComEd's current programs and PJM's own programs, and stated that the Illinois Auction design presented no barriers to these programs. (ComEd Ex. 2.0 Revised, pp. 26-27; ComEd Ex. 6.0, pp. 3-8)

While not expressing an opinion on whether utilities should be committing greater dollars and relying more heavily upon energy efficiency and demand response, Staff witnesses Kennedy and Zuraski agreed with Mr. Crandall that such matters would be better suited for a separate docket. They also raised an important threshold issue regarding the Commission's current mandate with respect to demand-side resources, stating,

> We would also note that the Commission Staff's infrastructure for evaluating energy plans and conservation programs was eliminated shortly after the 1997 repeal of Sections 8-402 and 8-404 of the Illinois Public Utilities Act ("PUA").
>
> Section 8-402 required utilities to provide 20-year energy plans, and to include in those plans, among other things, "a demonstration that the plan fully considers and utilizes all available, practical and economical conservation, renewable resources, cogeneration and improvements in energy efficiency." Section 8-402(e) required the Commission to hold hearings on the plans, and Section 8-402(f) allowed the Commission to choose a plan that would "result in the greatest likelihood of providing adequate, efficient, reliable and environmentally safe energy services at the least cost to consumers… ."
>
> Similarly, Section 8-404 stated:
>
>> Irrespective of any energy plan submitted or adopted pursuant to the provisions of Section 8-402, the Commission is also authorized to require any public utility to implement energy conservation, demand control, or alternative supply programs, including but not limited to, programs promoting energy efficient light bulbs and motors, whenever the Commission determines after hearing, that such programs are likely to be cost-effective. The Commission is also herein authorized to require the

> implementation of such programs on an experimental basis for the purpose of determining their cost effectiveness. (Amended by P.A. 87-812, effective July 1, 1992; repealed by P.A. 90-561, effective 12-16-97)

(ICC Staff Ex. 4.0, pp. 7-8)

It is Staff's position that changes to the Public Utilities Act ("PUA") such as the repeal of Sections 8-402 and 8-404 raise issues regarding the current scope of the Commission's authority with respect to its oversight of utility-funded demand-side management programs. Indeed, the Commission's Initiating Orders in Docket Nos. 06-0388 and 06-0389 appeared to recognize that such issues exist by stating in each order that the Commission only wanted to consider energy efficiency and demand response proposals "that are based on the Commission's statutory authority as it exists at this time." (Docket No. 06-0388, Initiating Order dated May 17, 2006, p. 1; Docket No. 06-0389, Initiating Order dated May 17, 2006, p. 1) Moreover, such issues may have played a role in the Commission's decision to dismiss those dockets on its own motion on October 12, 2006, prior to reaching any conclusions.

Staff thus recommends that the Commission should not commence another general proceeding to consider demand response and energy efficiency programs given the open issues regarding the scope of the Commission's authority, and the current Staff resources to address those issues. If the Commission were inclined to open another round of dockets to examine the economic merits of demand response and energy efficiency programs, Staff believes it would be prudent to first define the boundaries of what the PUA allows with respect to Commission oversight of utility-funded demand-side management and energy efficiency programs.

c. Change contract length(s)

Various proposals were made for changing the time period over which new supply contracts should extend. These proposals were limited to changes in those contracts used to serve the small to medium size customers, and are discussed in section III.E, below. There were no proposed changes to the 12-month commitments included in the supply contracts used to serve large customers (over 1 MW for Ameren and over 400 kW for ComEd).

d. Use of "reserve prices."

As noted in subsection III.A.1.a, above, AG witness Rose proposed that

> The ICC may consider a reserve price based on the wholesale market price. This would indicate that, if the auction is unable to secure sufficient supply at that price, the distribution company or some other entity could purchase power on the wholesale market, at least for short term purchases.

(AG Ex. 1.0, p.11) Dr. Rose's proposal was criticized on several grounds.

First, as noted by Staff witnesses Kennedy and Zuraski, Dr. Rose suggests adopting a "reserve price based on the wholesale market price," but he does not specify which "wholesale market price" would form the basis for his proposed reserve price, or how that particular "wholesale market price" would be translated into the reserve price. (ICC Staff Ex. 4.0, pp. 5-6; see also AM Ex. 2.0, p. 30) So Dr. Rose's reserve price is largely theoretical rather than practical. In other words, it is not specified well-enough to be implemented at the end of this proceeding.

Second, to the extent to which Dr. Rose does provide some hints about his electricity cost benchmark and reserve price, they would seemingly ignore many of the costs and risks borne by the winning bidders that are inherent in the supplier forward contracts approved by the Commission. To drive their critiques home, some of the rebuttal witnesses evoked similar images:

> His is the proverbial "apples to oranges" comparison.

(Ameren witness Nelson, Ameren Illinois Utilities' Ex. 5.0, p. 11)

> Dr. Rose makes no attempt at an apples-to-apples comparison.

(ComEd witness McNeil, ComEd Ex. 2.0 Revised, p. 27)

> Calling all of them "wholesale electricity prices" does not make them the same product any more than calling both apples and oranges "fruits" makes them the same product in the marketplace.

(ComEd witness Tierney, ComEd Ex. 4.0, pp. 11-12)

> This is not a matter of apples and oranges; it is more akin to apples and anchovies.

(Dynegy witness Huddleston, DYN Ex. 1.6, p. 7)

> Dr. Rose is taking an apple and pretending that it is a pineapple or, more precisely, taking a pineapple core and pretending it's the whole pineapple -- core, pulp, skin, stem, leaves, and all.

(ComEd witness Naumann, ComEd Ex. 5.0, p. 20)

Staff witnesses Kennedy and Zuraski avoided metaphors and even analogies, but noted,

> [T]he products of the Illinois Auction are premium products that can be expected to exact premium prices. Not only are they load-following full requirements long-term forward contracts (which can be expected to carry a premium above fixed block long-term forward contracts), they are load-following full requirements contracts in retail open-access service territories (which, due to the risk of customers switching between utility supply and alternative supply, would add additional premium to the price). In the September 2006 auction, the supply contracts also included one-sided mark-to-market protection for ratepayers, which presumably added a further premium to the price.
>
> Thus, when Dr. Rose states, "if the auction is unable to secure sufficient supply at that price, the distribution company or some other entity could purchase power on the wholesale market, at least for short

> term purchases," this is simply another way of saying that when the auction price for these premium products inevitably turns out to be above the price of lower-grade products, the utility will have to purchase these alternatives through some kind of alternative procurement method. It is somewhat surprising that Dr, Rose does not more precisely describe the alternative products and the alternative procurement method that he has in mind. However, since his benchmark seems destined to reject the premium products of the Illinois Auction, we believe it is prudent to know what the inevitable alternatives are going to entail.

(ICC Staff Ex. 4.0, pp 5-6)

Ameren witness Nelson was also quite specific about the flaws in Dr. Rose's benchmark:

> The auction price certainly includes his "wholesale market price" but necessarily also includes costs or premiums associated with switching risk, load following, MISO charges, the risk of laws or rules changing, the risk of change in fuel prices, utility credit risk, administrative costs, transactional costs and other charges suppliers have to incur to market and deliver the product. These charges would still be reflected in the end price paid to suppliers even in bilateral transactions. Further, if products are restructured to remove these risks from suppliers, it does not mean that these risks no longer exist. To the contrary, they are simply transferred to the Ameren Illinois Utilities and then ultimately to end-use customers.

(Ameren Ex. 5.0, p. 11)

ComEd witnesses McNeil (ComEd Ex. 2.0 Revised, pp. 27-42), Tierney (ComEd Ex. 4.0, pp. 9-11), and Naumann (ComEd Ex. 5.0, pp. 19-20) each presented similar testimony, elaborating on these and other flaws in Dr. Rose's benchmark.

Third, constructing an appropriate benchmark for rejecting auction results would be inherently difficult. As ComEd/Ameren witness LaCasse stated,

> [T]he products that are procured through the Auction – i.e., fixed-price full requirements service for Illinois utilities' customers – do not have an analogue in the wholesale markets. There is no visible product that is traded in the wholesale market upon which a direct comparison can be made. Any wholesale market price benchmark is therefore at best imperfect.

(AM Ex. 2.0, pp. 29-30)

Fourth, even if a more appropriate benchmark could be devised (and used to construct a reserve price), Dr. Rose presents no credible evidence that, in this instance, using a reserve price would lead to an improvement (e.g., a reduction in auction prices). ComEd/Ameren witness LaCasse, on the other hand, explained from the perspective of an auction expert, the conditions and circumstances under which reserve prices can be expected to lead to such an improvement. She testified that few of the conditions can be met in the case of an auction for vertical tranches and, as a result, Dr. Rose's proposal would not constitute an improvement. (AM Ex. 2.0, pp. 29-33) In addition, ComEd witness Tierney described an important difference between situations where reserve prices make sense and the procurement task confronting the utilities:

> Consider what a "reserve price" typically means in an auction environment. In an auction process, such as takes place thousands of times a day on eBay's electronic auction platform, the seller may decide ahead of starting the auction that she has a floor price (or minimum offer amount) below which she is unwilling to sell the product. If a reserve price has not been met by bidders, then the seller will not sell the product. The same concept applies to a reverse auction, where the buyer may have a reserve price or a standing "maximum position" – the maximum price at which he will be or is willing to buy the product. If the price in the auction fails to go down to that level, the buyer walks away from the deal.
>
> …
>
> Now, let's transfer this example to the type of auction being considered in this docket. This is an auction for wholesale supplies of electricity with the purpose of having the buyers (Illinois electric utilities) procure all-requirements, load-following electric resources at market prices to meet the needs of its customers at fixed prices for a certain term length and other terms and conditions in the contract. Each utility must obtain term length and other terms and conditions in the contract. Each utility must obtain power from the market, and all parties know that, since it otherwise has no generating resources with which to supply electricity to its customers. These utilities are not entities with an option to walk away from buying power. The utility must procure power to meet the needs of

> its customers. The principal task for the auction, then, is to assure that there are sufficient sellers so that the offer prices are competitive.

(ComEd Ex. 4.0, pp. 7-8)

In conclusion, for all the above reasons, Staff recommends that the Commission reject Dr. Rose's recommendation concerning the use of a reserve price.

e. Procure some auction energy / capacity on a longer-term basis (e.g., 10 years)

To the best of Staff's knowledge, no party presented evidence supporting the procurement of energy / capacity for any period longer than three years. However, if any proposals to procure some auction energy / capacity on a longer-term basis (e.g., 10 years) are raised in the initial brief of other parties, Staff reserves the right to address the issue in its reply brief.

2. Alternatives to the auction whereby the utility, or some other procurement manager, separately procures baseload, intermediate, and peaking load resources to meet expected load requirements. a. Is this issue properly within the scope of this Docket?

As noted above, Cub witness Crandall proposed a third way to alleviate barriers to demand-side resources, whereby the auction process would be split into three parts: peak, base, and intermediate loads. But Mr. Crandall dismissed his third approach as "only a partial solution." (CUB Ex. 2.0, pp. 16-17) ComEd witness Tierney, speaking not only of Mr. Crandall's proposal, but of a common element in the testimony of Mr. Crandall, CUB witness Thomas, and AG witness Rose, stated,

> These witnesses would instead require significant utility portfolio management and administrative planning functions inconsistent with the approved auction and inconsistent with the notion of the utility providing supply at no risk and with no return. In my opinion, this would be a costly

> policy that is inconsistent with Illinois' regulatory framework and creates economic and regulatory inefficiencies not in the best interest of consumers.

(ComEd Ex. 4.0, p. 17)

Staff agrees with Dr. Tierney that Mr. Crandall's third option (and to a large extent his second option, as well) is tantamount to abandoning the basic policy inherent in the Illinois Auction. That is, it would abandon the policy of relying on market forces and self-interested suppliers guiding investment and generation portfolio management decisions. It would return to relying on the technocratic hand of utilities and their regulators, which would shift risk back from suppliers to ratepayers. Not only does Mr. Crandall's third option constitute a collateral attack on the policy approach adopted by the Commission in the Procurement Dockets; it is also beyond the scope of the current docket, which was initiated to improve upon the Illinois Auction rather than to replace it entirely with a partially-specified alternative. (*See* Order Initiating Investigation, pp. 5-6 (December 20, 2006)) For all the above reasons, Staff agrees that Mr. Crandall's proposed base-load, peak-load, intermediate-load procurement process should not be adopted at this time.

B. Application Process

1. Revision of Part 1 Applications to require suppliers to provide and support their Tangible Net Worth.

Illinois Auction applicants may be granted an unsecured credit limit that can be used to satisfy the SFC collateral requirements, which equals the lesser of a percentage of Tangible Net Worth ("TNW") or a cap, both of which depend on the applicant's (or the guarantor's) credit rating as set forth in Table A, provided in Section 6.4 of the SFCs. The Illinois Auction credit and application team, which includes representatives from

ComEd, the Ameren Illinois Utilities, the Auction Manager team and Commission Staff, calculates each applicant's unsecured credit limit using financial statements and credit rating information provided in the Part 1 Application. Staff witness Phipps recommends modifying the Part 1 Application to require applicants to provide their calculation of TNW, to show how they calculated it, and to provide citations to their financial statements for each component of that calculation. The applicant's TNW calculation would supplement the current review process in which the credit and application team calculates each applicant's TNW. (ICC Staff Ex. 2.0, pp. 3-4)

The SFCs define TNW as total assets, less intangible assets and total liabilities. Staff witness Phipps explained that calculating TNW is not necessarily straightforward because intangible assets, *e.g.* goodwill, patents, copyrights and trademarks, are not always provided in a uniform format and some entities present intangible assets in the notes or discussions of their financial reports rather than in the balance sheet. Moreover, the financial statements used to calculate TNW often contain well in excess of one hundred pages and may include information for the supplier as well as affiliated entities. Staff's recommendation would improve the accuracy of the TNW calculation as it would provide an estimate of TNW against which the credit and application team can compare its own estimate. If those two estimates differ, the credit and application team would be able to determine the sources of any differences and assess which estimate is more accurate. (ICC Staff Ex. 2.0, pp. 4-5; ICC Staff Ex. 3.0, p. 6)

The Auction Manager and Dynegy oppose Staff's TNW proposal, arguing that it may cause suppliers to dedicate more resources to the application process. (AM Ex. 1.0, pp. 57-58; DYN Ex. 1.6, p. 10) Any additional resources committed to the application process would be immaterial since the TNW components come from that applicant's own financial statements and no entity is in a better position to identify the components of a supplier's TNW than the supplier itself. (ICC Staff Ex. 3.0, p. 5) Applicants' financial reports are prepared by personnel at the applicant with specialized accounting skill and knowledge. In response, the Auction Manager offered that members of her team would provide to the credit and application team a TNW calculation for each applicant that would be documented and checked. However, having the Auction Manager team calculate TNW would not necessarily improve the accuracy of TNW calculations because the Auction Manager team does not include any accountants and its members have not prepared financial reports for companies in accordance with the Securities and Exchange Commission regulations. (ICC Staff Cross Ex. 11) In contrast, applicants, including "in-house" accounting personnel, are more knowledgeable about an entity's intangible assets than an outside party, such as the Auction Manager team, and would likely provide more accurate TNW calculations (including citations) and do so more efficiently than would the Auction Manager team.

The Auction Manager and Dynegy also argue that the TNW calculation is prone to error and can only increase the number of deficiencies associated with the Part 1 Application. (AM Ex. 1.0, pp. 57-58; DYN Ex. 1.6, p. 10) Deficiencies occur only if an applicant provides incomplete or incorrect information regarding its TNW calculation in the Part 1 Application; no deficiencies occur when an applicant provides a TNW calculation with consistent and complete references to the financial statements even if the credit and application team reaches a different conclusion regarding that supplier's TNW.[3] (ICC Staff Cross Ex. 10)

The Auction Manager, Dr. LaCasse, proposed amending Staff's TNW proposal to make it optional for suppliers, which she asserts will minimize deficiencies at the Part 1 Application stage as it will provide an incentive for suppliers to calculate TNW accurately with correct citations. AM Ex. 2.0, p. 35) To the extent suppliers attempt to avoid deficiencies that must be remedied during the application review process, they must exercise the same degree of care in completing the TNW calculation as they would other Part 1 Application requirements. It is illogical to assume that making the TNW calculation optional provides a greater incentive to provide accurate information than would if the TNW calculation were a requirement.

Dr. LaCasse testified that, in her opinion, applicants may not use the same degree of care in providing a TNW calculation as they might for other application requirements because all of the unsecured credit limits for suppliers during the 2006 auction were based on the credit rating "cap" rather than the percentage of TNW. (Tr., p. 496) Nonetheless, it is possible that during the next auction, a TNW calculation could serve as the basis for a supplier's unsecured credit limit, and the most accurate TNW calculation should serve as the basis for that determination. Thus, Staff recommends approval of its TNW proposal because it would improve the validity of any TNW calculation that might be used to determine a supplier's unsecured credit limit cap.

[3] If the credit and application team reaches a different conclusion that the applicant regarding TNW, then the credit and application team's TNW calculation would serve as the basis for any unsecured credit granted to a supplier.

2. Clarification of requirements for prospective suppliers that choose to participate in the Illinois Auction through the use of an agent under an agency arrangement.

Introduction

One of the Auction Manager's proposed changes to the application process is to establish requirements for prospective suppliers that choose to participate in the Illinois Auction through the use of an agent under an agency arrangement. (AM Ex. 1.0, pp. 18-19; AM Ex. 1.3; Tr., pp. 464-465) Dr. LaCasse testified that specifying the requirements for a prospective supplier that participates in the Illinois Auction through an agent under an agency arrangement would eliminate any uncertainty regarding how the auction requirements apply to such suppliers and would serve to increase participation and competition in the auction process. (AM Ex. 1.0, p. 20; Tr., pp. 465-466) While Staff agrees with this general proposition, Staff submits that the proposed Illinois Auction "requirements" for prospective suppliers participating pursuant to an agency arrangement do not appropriately minimize or eliminate certain additional risks to the utilities and their customers that arise from an entity's participation in the Illinois Auction through an agency arrangement. While Staff is cognizant of the goals and concerns that support the Auction Manager's proposal, Staff proposes certain modifications to the specific language proposed by the Auction Manager to minimize certain potential risks to the utilities and their customers. Staff also supports other minor language modifications to clarify certain aspects of the requirements proposed by the Auction Manager.

Agency Agreements

Dr. LaCasse testified that from a functional perspective in the context of the auction, "an agency agreement is a legal relationship whereby one party (the agent) can in defined circumstances act on behalf of another party (the principal)." (AM Ex. 1.0, p. 18) Under Illinois law, "'[a]gency' is a consensual, fiduciary relationship between two legal entities created by law by which the principal has the right to control the conduct of the agent and the agent has the power to effect the legal relations of the principal." (I.L.P. Agency § 2) While agency agreements for potential suppliers may or may not be subject to and created under Illinois law, it will be useful to review certain aspects of Illinois law regarding agency to understand the issues that may arise when an agency is involved.

Like any other contact, "[t]he scope and extent of an agency depend on the terms of the agreement and the intention of the parties . . . ." (*Id.*) "The principal is the source of power in an agency, it cannot be created by the declarations of the agent." (*Id.*, § 3) Agency must be proved or inferred from facts proved, and the burden of proving agency is on the person who asserts it. (*Id.*, § 5) While an agent may be called as a witness to establish facts demonstrating the existence of an agency, "[t]he existence of an agency cannot be established by the admissions of the supposed agent, or by his own statements or declarations . . . . This is in recognition of the rule that the principal is the source of power and that the agent's authority can be proved only by tracing it to that source in some word or act of the alleged principal." (*Id.*, § 6)

The above-described legal principles establish that one of the risks associated with allowing prospective suppliers to participate pursuant to an agency agreement is the risk that the agency does not actually exist or, if it exists, is limited or restricted with respect to the scope of the agent's authority. Moreover, the above-described legal principles demonstrate that an agent's admission or certification to the existence of an agency is, in and of itself, ineffective to establish an agency since an agency must be proved by tracing it to some word or act of the principal. With these principles in mind, Staff will review the requirements proposed by the Auction Manager.

Review of Auction Manager Proposal

The Requirements for Applicants Applying Under Agency Agreements proposed by the Auction Manager are set forth in Auction Manager Exhibit 1.3. Auction Manager Exhibit 1.3 sets forth requirements based on two cases or scenarios. (AM Ex. 1.3; *see also,* Tr., pp. 467-468) The first case ("Case 1") controls the situation where the principal will execute the supplier forward contract(s) ("SFC(s)"). (AM Ex. 1.3, pp. 1-2) The second case ("Case 2") controls the situation where the agent will sign the SFC(s). (*Id*., pp. 2-3) The requirements for both cases set forth documents and information that must be provided to the Auction Manager. (AM Ex. 1.3) In broad terms, applications for potential suppliers submitted by an agent pursuant to an agency agreement must identify the party or parties acting as Principal(s), provide a copy of the applicable agency agreement, and provide various certifications concerning the existence of the agency agreement. (*Id*., pp. 1-3)

Staff Cross Exhibit 9 is a comparison of the Case 1 and Case 2 language proposed by the Auction Manager in Auction Manager Exhibit 1.3, showing the differences between the Case 1 and Case 2 language in legislative style. (Staff Cross Exhibit 9; Tr., pp. 471-472) As discussed in more detail below, one of the main differences between the Case 1 (SFC executed by principal) and Case 2 (SFC executed by agent) requirements is that in the Case 1 scenario the certifications must be provided by the principal and in the Case 2 scenario the certifications may be provided by the agent or the principal. (Staff Cross Exhibit 9) Subject to some minor revisions discussed below to clarify the requirements proposed by the Auction Manager, Staff has no concerns or objections to the Case 1 scenario requirements. Staff does have concerns, as explained below, regarding the Case 2 requirements. So that it is easy to follow, Staff will review the differences between the Case 1 and Case 2 requirements in the order in which they appear in Staff Cross Exhibit 9.

The first difference between the Case 1 and Case 2 requirements is the following modification of certain language in the introductory sentence under the "Additional Documents" heading in the Case 2 scenario:

> If the Applicant, as agent for a Principal, intends to bid in the auction and~~, should the Applicant be a winning bidder in the auction, the Principal would~~ execute the applicable SFC(s), then the Applicant is required to provide the following documents with its Part 1 Application:

Staff Cross Exhibit 9. The Auction Manager explained that in the Case 2 scenario the agent executes both the application and the SFC, so the deleted language referring to execution of the SFC by the principal is inapplicable and unnecessary. (Tr., pp. 472-473) Staff agrees with and has no objection to this modification between the Case 1 and Case 2 requirements.

The next difference between the Case 1 and Case 2 requirements is the deletion of the following language from the description (in paragraph number 2 in the Case 2 scenario) of the "agency agreement" that must be provided:

> . . . would bind the Principal to execute the SFC should the Applicant win at the auction.

Staff Cross Exhibit 9. The Auction Manager explained that this language is contained in the Case 1 requirements to ensure that the agency agreement binds the principal to execute the SFC, and that such language is again unnecessary in the Case 2 scenario where the agent will be executing the SFC. (Tr., pp. 473-474) Staff agrees with and has no objection to this modification between the Case 1 and Case 2 requirements.

The next difference between the Case 1 and Case 2 requirements is the modification of the certification requirement in paragraph number 3 to allow the certification to be provided by “the Applicant [i.e., agent] or the Principal” instead of just the “Principal.” (Staff Cross Exhibit 9; Tr., p. 474) The Auction Manager testified that since the applicant executes the SFC in the Case 2 scenario, the “officer certificate could come from the applicant, the signer of the SFC, or the principal, given that the applicant is the agent and ultimately is acting on behalf of the principal who is the ultimately legally responsible entity. So it could come from either.” (Tr., pp. 474-475) While the Auction Manager agreed that it is important to protect the utilities and their customers from any additional risks that arise due to supplier participation in the Illinois Auction through an agency arrangement (Tr., pp. 466-467), she did not believe that additional protection or security would be provided by requiring the certification to be provided by the principal since the Case 2 requirements already require a copy of the agency agreement, a certification from the agent that the agency agreement will remain in full force and effect, and a statement as to the basis of authorization of the agency agreement. (Tr., p. 475)

The Auction Manager further testified that one reason she would not require the certification to come from the principal or principals in the Case 2 scenario is the burden this may place on the principal(s) and the agent in a situation where the "principal" will not have an ongoing relationship with the utility (i.e., will not be signing the SFC(s)). (Tr., p. 476) Notwithstanding this concern, the Auction Manager agreed that if there were "some mistake or a misrepresentation by the agent, the utilities' customers are less protected where there is not an officer certificate or other certificate from the principal." (Tr., pp. 476-477) Staff notes that the Auction Manager has already inserted language in Auction Manager Exhibit 1.3 regarding the situation where "several entities act as the Principal", and providing that in such situations the creditworthiness assessment will be based on "the entity with the lowest credit rating." (AM Ex. 1.3, pp. 2, 3) Thus, this specific scenario (multiple entities constituting principal) appears to be a significant factor in the Auction Manager's concerns with requiring certifications to be provided by the principal or principals where the agent will be executing the SFC(s).

The Case 2 requirements allowing the certifications to be provided by the agent are of significant concern to Staff. While Staff understands the reasons supporting the Auction Manager's proposal to allow certifications to be provided by the agent in the Case 2 scenario, concerns remain regarding the additional risk to the utilities and their customers in situations where certifications are provided only by the agent. The prior discussion of Illinois agency law indicates that agent certifications or admissions will not be adequate in and of themselves to ensure that an agency exists if litigation over that issue later develops. While the requirement for a copy of the agency agreement itself would appear to be evidence that could establish the creation of the agency, the Auction Manager testified that she did not plan to review the content of agency agreement itself to make substantive determinations. (Tr., p. 480) Further, reliance on a copy of the agency agreement is much more likely to involve litigation than would reliance on a certification from the principal. While the chance of mistake, misrepresentations or fraud may seem remote, the recent experience with Enron Corporation demonstrates that such concerns should not be ignored or totally discounted. Staff also notes that while the certifications and representations by the agent would presumably allow the utilities to pursue the agents in the event of some mistake or misrepresentation, there is nothing in the current auction requirements establishing or requiring that agents in and of themselves meet certain creditworthiness standards. Thus, the ability to pursue an agent is at best of uncertain value. For all the foregoing reasons, Staff recommends that the Case 2 requirements allowing the certifications to be provided by the agent be modified.

One means of modifying the Case 2 language is to simply delete the added language allowing the certification to be provided by the agent (applicant) so that Case 2 also requires the certifications to be provided by the principal. While the record suggests that this may discourage some prospective suppliers that would participate pursuant to an agency agreement, this risk has to be weighed against the benefit of significantly reducing if not eliminating risks related to the existence and scope of the agency by obtaining a certification from the principal. Putting aside for the moment any concerns by the Auction Manager related to the difficulty of obtaining certifications where there are multiple entities acting as principal, Staff submits that the record does not demonstrate that providing a certification is so burdensome that it will discourage participation by prospective suppliers. Simply put, Staff cannot understand how requiring a single principal to execute a short certification is so burdensome that it will cause the prospective supplier to forego participation.

Staff is more sympathetic to the Auction Manager's concerns in situations where an agency involves multiple entities acting as principal. That is, practical considerations of dealing with multiple entities could add significant delay to obtaining proper execution of the certification(s) by the multiple entities acting as principal. To accommodate this practical concern, Staff would not object to allowing the certifications to be provided initially by the agent subject to a requirement that such certifications be provided by the principals prior to the execution of the SFC(s). Allowing initial agent certifications for multiple-entity principals would eliminate initial burdens that could discourage participation by multiple-entity principals, while at the same time providing extra protection to the utilities and their customers prior to execution of the SFC(s). Delaying the date by which multiple-entity principals must provide the principal certifications would address the practical difficulties and extra time needed to obtain such certifications.

The next difference between the Case 1 and Case 2 requirements is the deletion of the first two bullet points (in paragraph number 3 in the Case 2 scenario) of the representations to be included in the certification:

- ~~the Principal is familiar with the agency agreement submitted by the Applicant;~~
- ~~the Principal is familiar with the Part 1 and Part 2 Applications to participate in the Illinois Auction;~~

(Staff Cross Exhibit 9; Tr., p. 477) Staff does not believe that the second bullet point is related to the existence or scope of the agency, and therefore does not object to its deletion in the Case 2 scenario. The same is not true of the first bullet point, which requires a representation that the principal is familiar with the agency agreement submitted by the agent. This seems to go to the heart of whether an agency agreement exists, and it seems to Staff that the principal must necessarily be familiar with the agency agreement if one in fact exists. Thus, Staff recommends that the first deleted bullet point remain in the Case 2 requirements.

<u>Other Language Revisions</u>

The requirements proposed by the Auction Manager specify that an "officer's certificate" be provided under Case 1 and Case 2 for the certifications concerning the existence of the agency agreement. (Tr., pp. 468-469) The Auction Manager testified on cross examination that potential suppliers would not necessarily be corporations, and that the appropriate certification (e.g., officer's certificate) would vary with the type of entity involve. (*Id*.) Staff Cross Exhibit 8 contained revisions to the Auction Manager's proposed language that deleted the reference to "officer's certificate" and replaced it with "A certificate from the Principal, executed by an officer. partner or similar official of the Principal". (Staff Cross Exhibit 8; Tr., pp. 470-471) Staff Cross Exhibit 8 also added a requirement that the "certification" include a statement setting forth how the execution, delivery and performance of the agency agreement was authorized. (*Id*.) The Auction Manager agreed to all of the revisions set forth in Staff Cross Exhibit 8 (Tr., pp. 470-471) and, subject to the other language modifications proposed by Staff, Staff submits that the revised language set forth in Staff Cross Exhibit 8 more fully sets forth the certification requirement and should be approved by the Commission.

The Auction Manager also confirmed that participation through an agency agreement does not change the entity to be relied upon for the creditworthiness examination. (Tr., p. 482) That is, creditworthiness will be based on an examination of the principal or, if applicable, a guarantor, but not the agent. (*Id*.) Thus, the Auction Manager confirmed that in submitting Subpart A.6. of the Part 1 Application under an agency agreement, the agent should check the "Guarantor" or "Principal" check boxes (to indicate the entity that will be fulfilling the financial and credit requirements) but not the "Applicant" check box. (AM Ex. 1.4, p. 14; Tr., pp. 480-482) The Auction Manager also agreed that it would be helpful to add a parenthetical to the "Applicant" checkbox indicating "not to be used for Applicants applying under an agency arrangement". Staff recommends adding such clarifying language.

3. Length of time of the window in which applications are to be processed.

C. Credit Issues

1. Bilateral credit.

Staff witness Rochelle Phipps testified that bilateral credit requirements would reduce the level of risk suppliers face, which should reduce the level of any risk premium that may be reflected in the Illinois Auction price (the "contract risk premium"), to the benefit of Illinois ratepayers. Nevertheless, the utilities would incur costs in connection with posting collateral, which would be passed onto Illinois ratepayers through the utilities' tariffs. Consequently, Illinois ratepayers would be harmed if the cost associated with this proposal exceeds any reduction in the contract risk premium. Ms. Phipps testified that quantitative analysis demonstrating the benefits that will accrue to ratepayers will exceed any costs or risks associated with bilateral credit requirements is imperative in order to recommend approval of this proposal for future auctions. (ICC Staff Ex. 2.0, pp. 8-9)

Dynegy proposes modifying the SFCs to require the utilities to post collateral under the same terms applicable to suppliers under the current SFCs. (DYN Ex. 1.0, pp. 7-8) However, Dynegy never estimated the contract risk premium associated with utility credit risk. (DYN Ex. 1.0, p. 6; Tr., pp. 248-249) Rather, Dynegy witness Huddleston testified that Dynegy's risk premium calculation is not so "scientific" as to distinguish individual premiums for each component of the total contract risk premium. (Tr., pp. 250-251) He also admitted that "it is very difficult in the abstract to say definitely" whether adopting bilateral credit requirements would be the lower cost alternative for ratepayers in light of the utilities' cost estimates for posting collateral under the SFCs. (Tr., pp. 240-244)

Nevertheless, Staff witness Phipps testified that the amount of credit risk and regulatory risk facing the utilities has increased since the 2006 auction, which may warrant re-allocating credit risk between suppliers and the utilities. Specifically, Staff witness Phipps testified that on March 12, 2007, Moody's Investor's Service ("Moody's") downgraded the Ameren Illinois Utilities' issuer credit ratings to Ba1, which is one notch below the lowest available investment grade credit rating, stating:

> [The Ameren Illinois Utilities'] ratings reflect a difficult political and regulatory environment for electric utilities operating in the state of Illinois. Strong opposition to rate increases resulting from a state commission approved auction for power procurement has resulted in the passage of rate freeze legislation by both the Illinois House and by a committee of the Illinois Senate with growing support for a rate freeze in both chambers… A rate freeze would result in a severe deterioration of financial metrics and could result in further ratings downgrades.

(ICC Staff Ex. 3.0, p. 7)

Similarly, Moody's downgraded ComEd's senior unsecured and issuer credit ratings to Ba1, stating:

> If rate freeze legislation is enacted and implemented, ComEd's financial and liquidity profiles will worsen materially as the rate that it will be able to collect from its customers will be substantially below the terms of its power purchase contracts entered into as part of the reverse-auction in 2006… In the event that rate freeze legislation is adopted, ComEd's ratings would likely drop multiple notches depending on the tenor and terms of the rate freeze legislation.

(ICC Staff Ex. 3.0, p. 7)

Currently, the utilities' issuer ratings from Fitch Ratings are below investment grade and ComEd's Standard & Poor's ("S&P") unsecured credit rating is below investment grade. (ICC Staff Ex. 3.0, pp. 7-8)

Staff witness Phipps testified that utility credit risk should be allocated to the party that can manage it most efficiently because unlike utilities and suppliers,[4] Illinois ratepayers pay the price for utility credit risk regardless of its allocation between utilities and suppliers. However, identifying which party is more efficient at managing default risk (i.e., risk of nonpayment) is not trivial. While utilities clearly have more control over their risks than suppliers, as rate-regulated entities, utilities have less incentive to efficiently manage their costs than suppliers.

Because of the latter consideration, Staff generally prefers that suppliers manage risk rather than the utilities. Nevertheless, Staff recognizes that default risk could become too high for some suppliers to manage efficiently. Thus, in rebuttal testimony, Staff witness Phipps provisionally recommended imposing collateral requirements on a utility if its' "Minimum Rating" (as defined in Section 6.4 of the SFCs) falls below

[4] Utilities pass through to ratepayers the price for energy procured through the Illinois Auction. (Tr. p. 133) Suppliers include in their auction bids their perceived price for utility credit risk. (See Order dated January 24, 2006, Docket Nos. 05-0160/0161/0162 (Cons.), p. 171)

investment grade (*i.e.*, BBB- from S&P, Baa3 from Moody's and BBB- from Fitch Ratings).[5]

Staff's proposal differs from Dynegy's proposal and the SFC collateral requirements for suppliers because it would require the utilities to post collateral only when they do not satisfy the Minimum Rating requirement outlined in Section 6.4 of the SFCs. This modified approach to bilateral credit requirements would reduce suppliers' exposure to utility default risk, which should ultimately be reflected in the final 2008 auction price, but would not require the utilities to post collateral during periods when suppliers' exposure to utility default risk should be low enough for suppliers to manage efficiently. (ICC Staff Ex. 3.0, p. 9)

Each utility estimated the cost for posting collateral under the SFCs. Ameren's annual cost estimate was substantially less than ComEd's estimate due to the size of the credit facility and the higher price for ComEd's proposed unsecured facility in comparison to Ameren's secured facility. (Confidential ICC Staff Cross Exhibit 6; ICC Staff Cross Exhibit 7) ComEd estimates the annual cost would range from $50 to $125 million, plus approximately $30 million in upfront fees. (ComEd Ex. 3.0, p. 5) ComEd's annual cost estimate for a $2.5 billion credit facility would be less than 5% of the $3.5 billion that ComEd expects to pay suppliers under its auction contracts this year. During cross-examination, ComEd witness Mr. Robert McDonald agreed that, all else equal, if the price ComEd pays to suppliers during the next auction is 5% lower than today and ComEd were required to post collateral, then the net amount that ratepayers pay could

[5]Currently, all of the utilities' senior unsecured and issuer credit ratings fall below the Minimum Rating threshold. (ICC Staff Ex. 3.0, lines 129-144)

be lower. (Tr., pp.158-159) Yet, there is no basis for assuming that requiring utilities to post collateral under the SFCs would cause a 5% reduction in the auction clearing price. Staff estimated that implied contract risk premiums range from 7% - 25%. (*The September 2006 Illinois Auction Post-Auction Public Report of the Staff,* December 6, 2006, p. 17) Nevertheless, the Auction Manager's report identified seven different risks suppliers face, including utility credit risk and regulatory risk. (*Public Report presented to the Illinois Commerce Commission,* prepared by the Illinois Auction Manager, NERA Economic Consulting, December 6, 2006, p. 123) Consequently, the portion of the 7-25% implied contract risk premium associated utility credit risk remains unknown. No party to this proceeding has quantified the price for utility credit risk or the proportion of utility credit risk relative to the entire contract risk premium. As such, this comparison of ComEd's collateral costs relative to its supply costs does not reveal the impact that bilateral credit requirements would have on ratepayers; rather, it only suggests that if the auction clearing price does not fall by at least 5%, then requiring the utilities to post collateral might increase ratepayers' energy costs.

The potential advantages and disadvantages associated with bilateral credit requirements are summarized below:

Advantages

- Limits amount of any contract risk premium for credit risk; all else equal, the lower contract risk premium could translate into a lower auction clearing price than would be expected under the current SFCs; and
- During the term of a SFC, utilities might have flexibility in managing collateral costs. That is, absent bilateral credit requirements, auction clearing prices will

include a contract risk premium reflecting suppliers' perceived "price" for credit risk throughout the term of the SFCs, even if that risk diminishes before the SFCs expire. In contrast, if a utility's credit risk declines during the term of a SFC, it might be able to reduce its collateral costs by renegotiating its credit agreements.

Disadvantages

- At this point, the benefit this proposal would provide ratepayers is theoretical because it is not certain any reduction in the risk premium would exceed the costs associated with the utilities posting collateral; that is, the expected benefit – *i.e.* a lower contract risk premium, which translates into a lower auction clearing price than would the current SFCs - has not been quantified;
- Incurring new debt to satisfy SFC collateral requirements could negatively pressure credit ratings and limit the utilities' ability to finance future projects necessary to maintain and improve utility service; and
- The regulatory process reduces the efficiency of utilities' management of credit risk in two ways: utilities charging cost-based rates have less incentive to efficiently manage costs than suppliers; and, the regulatory review and approval process increases the cost of utility credit risk management.

Based on the foregoing, Staff withdraws its provisional recommendation for modified bilateral credit requirements because the record on whether potential benefits that might accrue to ratepayers in connection with Staff's modified bilateral credit proposal outweigh costs that ratepayers would certainly incur under this proposal remains ambiguous at best. Utilities have more control over their credit risk than suppliers, which, in isolation, might make utilities' management of that credit risk more efficient than suppliers. Nevertheless, the regulatory process imposes costs to utilities that reduce that efficiency. Consequently, Staff cannot conclude that bilateral credit requirements are the lower cost alternative for ratepayers. Staff is particularly concerned about the potential for bilateral credit requirements – whether modified as Staff initially proposed or otherwise - to further constrain utilities' liquidity, which in turn, could limit their ability to maintain service quality. (ComEd Ex. 3.0, pp. 8, 11, Confidential ICC Staff Cross Exhibit 6) With the measurement of the net benefit to ratepayers of a bilateral credit requirement so elusive and the potential negative impact collateral requirements could have on utilities' ability to maintain service quality undeniable, Staff recommends that no bilateral credit requirement be added to the SFCs for the 2008 auction.

D. Enrollment Windows and Other Switching Rules

With respect to the September 2006 Illinois Auction results, Staff witnesses Kennedy and Zuraski remarked on the significant differences between the auction prices for large non-residential customers and those for smaller customers. They attributed these differences to risk premiums:

> Generally, the large customer groups possess less variable and less weather-sensitive load and hence higher load factors, and tend to use a smaller portion of their total energy consumption during the on-peak summer hours when market prices tend to be at their highest. Hence, Staff does not believe that the higher auction prices for the large customers groups reflect fundamental differences in the expected costs of the power needed to supply them. Rather, it is our belief that the differences between the prices for the large and for the small-to-medium customer products reflect differences in the perceived risk of the load to be served of winning tranches of these products. It was reasonable to expect that larger customers would be more highly motivated to shop for energy savings. Thus, depending on the relative prices between the utility's standard offer and the offers from alternative retail electric suppliers, large customers would be more prone to switch between utility

> service and alternative supplier service. Furthermore, by the conclusion of bidding, wholesale suppliers would have made a commitment to serve the entirety of the utilities' eligible load, whether 100%, 75%, 50%, or 1% of that eligible load actually ended up on the applicable retail service. However, during the period over which customers could decide to switch, the closing auction price would remain the same, but offers from alternative retail suppliers would presumably fluctuate with the larger market. Wholesale suppliers that won tranches in the auction could anticipate that they would be on the losing side of such market swings: losing load when market prices went down and gaining load when market prices went up. It is likely that such considerations made their way into the bidding for the large customer auction products. Such considerations were probably also at play, albeit to a much lower extent, in the bidding for the small and medium customer auction products.

(ICC Staff Ex. 1.0, pp. 11-12)

Various proposals were set forth by Staff witnesses Kennedy and Zuraski, and others, for mitigating the size of risk premiums in future auctions. These proposals are addressed in the sub-sections, below.

1. Enrollment window for smaller non-residential customers.

Staff witnesses Kennedy and Zuraski recommended that an enrollment window of 20 days be used for all customers above 400 kW. Since there is already an enrollment window for ComEd customers above 400 kW and for Ameren customers above 1 MW, this proposal would simply introduce an enrollment window for Ameren customers between 400 kW and 1 MW.

In response, Ameren witness Jones argued, "This, however, would place a substantial administrative burden on the utilities, and in the absence of any quanitification [sic] of the benefit that Staff foresees, I cannot say that the benefit outweighs the costs." (Ameren Illinois Utilities' Ex. 7.0, p. 4) CES witnesses Papadimitriu and Domagalski expressed general mistrust and opposition to introducing enrollment windows for any additional class of customers. (CES Ex. 1.0, pp. 16-17 and CES Ex. 2.0, pp. 4-5)

Finally, IIEC witness Stephens testified,

> [I]n response to a data request, Staff clarified its position to keep the groups separate for bidding purposes, recognizing that the 400 kW to 1 MW customers should remain in the BGS-FP (not BGS-LFP) customer group, but at the same time using a common enrollment window for all customers 400 kW and over. Because such customers are not required to prequalify, it makes sense for these customers' enrollment period to coincide with the longer enrollment period option of my proposed two-option approach, should the Commission decide to adopt Staff's recommendation with respect to the enrollment period for 400 kW – 1 MW customers.

(IIEC Ex. 2.0, p. 7, footnote excluded)

Mr. Stephens' two-option approach was explained in his testimony as giving the large customer fixed product customer groups the option of a 5-day or a 40-50 day enrollment window. Hence, Mr. Stephens does not appear to oppose the proposal to introduce an enrollment window for Ameren's 400 kW to 1 MW customers, but would use an enrollment window of 30-50 days, rather than Staff's proposed 20 days. Mr. Stephen's two-option approach is discussed in more detail in sections III.D.2 and III.F.3, below.

In Staff's view, a 20-day enrollment window for Ameren's 400 kW to 1 MW customers is justified. An enrollment requirement for 400 kW to 1 MW customers has worked in the ComEd service territory and will work in the Ameren service territory, as well. Under Staff's proposal, these customers would remain in the smaller customer group for purposes of defining auction products and translating auction prices to retail rates. However, introducing an enrollment period for the 400 kW to 1 MW customers protects not only these customers, but ***everyone*** in the smaller customer group, from excessive price premiums associated with potential switching activity.

2. Pre-commitment or a shortened enrollment period for larger non-residential customers.

Witnesses for Ameren, ComEd, and Staff all proposed shortening the enrollment window to 20 days for larger customers (those above 400 kW in ComEd's case and above 1 MW in Ameren's case). (See: Ameren Ex. 1.0, pp. 3, 8-9; ComEd Ex. 1.0, pp. 3, 13-14; AM Ex. 1.0, p. 53; ICC Staff Ex. 1.0, p. 14) This would be a reduction from the current enrollment windows of 30 days (for customers over 3 MW) and 45 days (for all other large customers).

No witness supported "pre-commitment" as the ***only*** option available to larger non-residential customers. However, it was mentioned as one of three options that could be made available to these customers as part of a "prequalification process." (IIEC Ex. 1.0, pp. 2, 3, 10-16) That is, IIEC witness Stephens proposed that larger customers could be asked, well before the auction, to commit to making their enrollment decision within one of three time frames: (1) just prior to the auction (pre-commitment), (2) within a short period, such as 5 days after the auction, or (3) within 30-50 days of the auction. (IIEC Ex. 10, pp. 10-11) The decision would be concerning their use of the utility's large-customer fixed price retail service in the upcoming planning year (June through May).

In response to Mr. Stephen's proposal, Staff witnesses Kennedy and Zuraski expressed guarded support:

> We are intrigued by the approach suggested by Mr. Stephens. It would seem to be a means of allowing customers themselves to take responsibility for deciding what enrollment period is best for them. Thus,

> unless other testimony demonstrates that significant problems of practicality are likely to arise, we have no objection to the implementation of Mr. Stephens' proposal.

(ICC Staff Ex. 4.0, p. 10)

Ameren and ComEd witnesses believed that the proposal, or at least a modified version of it, would be feasible to implement. However, they proposed dropping the pre-commitment option and recommended that the two remaining enrollment window options be within 7 days and within 20 days following the auction. In addition, they recommended that the Auction Manager be given the authority (in consultation with the utilities) to determine if customers' actual selections left enough load within each of the two groups to viably offer separate products through the auction; otherwise, only the 20-day product would be used. (ComEd Ex. 2.0 Revised, pp. 8-10; Ameren Illinois Utilities' Ex. 6.0, pp. 13-14)

In his rebuttal testimony, Mr. Stephens agreed that the first of his three options (pre-commitment) could be dropped to simplify the plan, especially since he anticipated very few if any customers would select this option if it were offered. (IIEC Ex. 2.0, p. 4)

In Staff's view, the Ameren/ComEd-modified version of Mr. Stephen's multi-option approach strikes the most reasonable balance between the various proposals for shortening the enrollment window for large customers.

However, there was some opposition to all these proposals to shorten the enrollment windows. In particular, CES witnesses Papadimitriu and Domagalski expressed general mistrust and opposition to shortening any of the enrollment windows. (CES Ex. 1.0 and 2.0) For instance, they argued that the Commission "should be wary of modifying the Illinois Auction in a manner that further restricts customers' ability to choose RES service." (CES Ex. 1.0, p. 18) Staff actually agrees with this sentiment, but notes that Staff has been cautious about restricting customers' ability to choose alternative retail suppliers. As noted by Staff witnesses Kennedy and Zuraski,

> [T]he CES witnesses neither contradict nor question that this issue involves a balancing of the trade-off between tighter switching rules and lower auction prices versus looser switching rules and higher auction prices. Furthermore, the CES witnesses have not demonstrated that our proposed rebalancing of competing goals--favoring tighter switching rules and lower auction prices--is unwarranted.

(ICC Staff Ex. 4.0, p. 2)

As for the IIEC's multi-option approach, Ms. Papadimitriu and Mr. Domagalski argued that it was unnecessary, cumbersome, overly burdensome, and unnecessarily complicated. (CES Ex. 2.0, pp. 4 and 6)

Notwithstanding the opposition expressed by the CES, Staff recommends that the Commission approve the use of the Ameren/ComEd-modified version of Mr. Stephen's multi-option approach toward enrollment windows. However, if that proposal is rejected, then the Commission should approve the use of 20-day enrollment windows for these larger customers. The record is clear that the risk premiums associated with the large customer products can be mitigated, at least to some extent, by reducing the enrollment window.

3. Customers' rights to leave fixed price electricity service outside of the enrollment window.

Staff witnesses Kennedy and Zuraski testified,

> The existing tariffs possess various rules about switching to and from the various power and energy options, outside of enrollment windows. ComEd's switching rules are somewhat more liberal than Ameren's which could conceivably account for some of the additional premium embedded in ComEd's large customer fixed price product. In particular, ComEd permits relatively large nonresidential customers who automatically renew fixed price power and energy service from ComEd to elect to obtain electric power and energy supply service from an

> alternative supplier prior to the end of such customer's following May monthly billing period, while Ameren does not permit such flexibility. ComEd's tariff places additional risk on suppliers, since suppliers have no way to determine how many customers will leave throughout the year. Thus, to reduce the premium embedded in the price of ComEd's large customer fixed price supply service, Staff recommends that ComEd's tariff be modified to eliminate this additional flexibility, rendering ComEd's tariff like Ameren's tariffs. The proposed changes are shown in ICC Staff Exhibit 1.1.

(ICC Staff Ex. 1.0, pp. 14-15)

ComEd witness McNeil supported the Staff's recommendation, but persuasively argued that it should only apply to customers who default to Rate BES-NRA as a result of their actions or inactions during the enrollment window following the 2008 Illinois Auction:

> That is, customers who defaulted to Rate BES-NRA on January 2, 2007 are allowed to leave Rate BES-NRA to switch to a RES at any time during the term of the CPP-A delivery period, which extends through the end of the May 2008 billing period. The recommendation that ComEd makes here would not retroactively affect the ability of those customers to exercise that choice through the May 2008 billing period. However, if those customers who are currently being served under Rate BES-NRA either affirmatively elect Rate BES-NRA or make no other rate option or supply choice during the enrollment window following the next auction (scheduled for January 2008), and they do not elect to switch to a RES on or before the start of their June 2008 monthly billing period, then they will be obligated to take service under Rate BES-NRA for the full term beginning June 2008 through the May 2009 billing period.

(ComEd Ex. 1.0, pp. 23-24)

Staff agrees that Mr. McNeil's suggestion presents the fairest and most appropriate way of implementing the Staff proposal.

Nevertheless, CES witnesses Papadimitriu and Domagalski argued that the Staff/ComEd proposal restrictions on switching "may prevent customers from receiving the wide array of products and services that are available in a competitive retail marketplace." (CES Ex. 2.0, p. 19) Additionally, they testified,

> While we do not take lightly the need for the Commission to protect those customers that truly need to be protected - e.g., through the continued availability of a reliable, market-based service - the Commission should be careful not to throw the baby out with the bath water. Therefore, if customers can obtain supply arrangements by switching to RESs that meet their needs, they must have the right to do so, free of any newly-instituted switching restrictions that differ from those currently in effect.

(*Id.*, pp. 18-19)

For Staff, the CES position rings hollow because Alternative Retail Electric Suppliers ("ARES") are under no similar obligation to allow their customers to walk away from contracts on a moments' notice. Furthermore, ARES that do voluntarily provide this option would surely extract compensation for it (a risk premium). Of course, ARES work in a free-market environment where they can flexibly customize each contract for each customer, providing one level of optionality for some, different levels for others, and no optionality for the rest. In contrast, the utilities work in a regulated environment, where such matters are typically subject to protracted proceedings and then reduced to tariffs. Allowing meaningful flexibility between such proceedings would be difficult to impossible. In this environment, it is necessary to make choices that may not be optimal for every individual customer, but are still just and reasonable and in the public interest.

Thus, notwithstanding the objections of the CES, the Staff recommends that the Commission approve the Staff proposal, as clarified by ComEd, obligating customers beginning the June 2008 to May 2009 planning year on Rate BES-NRA to remain on that service for the entire planning year. This proposal would not only eliminate one difference that currently exists between the ComEd tariff and Ameren Illinois Utilities tariffs, it can also be expected to lower the risk premium for the ComEd large-customer product in the next auction.

4. Ameren-specific revisions designed to reduce load uncertainty in the Large Customer product.

While Staff did not provide testimony with respect to this issue, it reserves the right to respond to other parties' arguments with respect to the Ameren specific revision designed to reduce load uncertainty in the Large Customer product.

E. Fixed Price Product Supplier Contract Durations for Residential and Small Commercial Customer Groups

1. Continued use of multiple contract types.

To accommodate an ultimate plan for rolling three-year contracts, one third of which expire each year, the initial auction held in September 2006 included 17-month, 29-month, and 41-month contracts, each contract type in sum covering one-third of the eligible load. Starting with the next auction, the fixed price contracts would all have three year terms, with one-third of the eligible load available each auction. (ICC Staff Ex. 1.0, p. 18)

Staff witnesses Kennedy and Zuraski expressed concern that relying solely on three-year contracts may have the unintended effect of deterring some suppliers from bidding in future Illinois Auctions. It is quite conceivable that some suppliers have a comparative advantage in making shorter-term commitments, while other bidders have a comparative advantage in making longer-term commitments. The use of only three-year contracts may deter participation by the supplier who may have a comparative advantage in making shorter-term commitments. On the other hand, moving entirely to one-year contracts for the small to medium sized customer groups may deter participation by the supplier who may have a comparative advantage in making longer-term commitments. (ICC Staff Ex. 1.0, pp. 18-19)

Therefore, in future auctions, Staff proposes to utilize a blend of 1-year, 2-year, and 3-year contracts. (ICC Staff Ex. 1.0, p. 19; ICC Staff Ex. 4.0, p. 19-21; Tr., pp. 648-649) Staff witnesses Kennedy and Zuraski recommended targeting an eventual mix of 50% 1-year, 20% 2-year (10% per auction), and 30% 3-year contracts (10% per auction), as shown in ICC Staff Exhibit 4.1 accompanying their rebuttal testimony. They explained "We believe this mix would solicit more bidder interest, greater competition, and lower supply costs in the upcoming auctions, while still providing adequate inter-year price stability." (ICC Staff Ex. 4.0, p. 21)

Ameren witness Blessing and ComEd witness McNeil first proposed using a blend of 1 and 3 year contracts (Ameren Ex. 2.0, p. 9; ComEd Ex. 1.0, pp. 24-25). From her perspective as an auction expert, this proposal was supported by Ameren/ComEd witness LaCasse. (AM Ex. 1.0, p. 53) However, during cross examination, Mr. Blessing expressed support for the Staff alternative and indicated that the Staff alternative would support the twin goals of market-based rates that are stable for residential and small business customers and also attract the maximum amount of interest in the auction (Tr., pp. 328-330), and both Mr. McNeil and Dr. LaCasse also testified that they had no opposition to the Staff proposal (Tr., pp. 543 and 488).

For the above reasons, Staff proposes that the contract durations for the smaller customer products be secured through the combination of 1-year, 2-year, and 3-year contracts specified by Staff witnesses Kennedy and Zuraski (ICC Staff Ex. 4.0, p. 21; and ICC Staff Ex. 4.1).

2. Use of shorter contracts.

See Section III.E.1., directly above, and Section III.F.2, below, for Staff's recommendations concerning the length of contracts.

F. Customer Supply Group Definitions

1. Combining Ameren 400 kW to 1 MW customers with larger customers.

In the Procurement Dockets, the Commission accepted recommendations from Staff and other parties to combine ComEd's 400 kW to 1 MW customer group with ComEd's 1 MW to 3 MW customer group. Together, these two groups made up ComEd's CPP-A group, whereas customers below 400 kW comprised ComEd's CPP-B group.

In Ameren's case, due to the lack of hourly metering on all 400 kW to 1 MW customers, the Commission found that the analogous proposal to combine these customers with larger customers would be impractical. However, the Commission agreed with Staff that given the relatively low cost of installing the necessary metering, Ameren should be required to begin the process of installing such meters, and to complete that process within two years.[6] The Commission further concluded that the proposal to combine the 400 kW to 1 MW customers with the larger customers may appropriately be revisited in subsequent auctions when the necessary data is available by virtue of metering or other means.

Upon review of the most current switching statistics, which indicate that the majority of Ameren's 400 kW to 1 MW customers have not switched to ARES whereas

[6] Ameren witness Jones indicated that the installation of those demand meters is now complete. (Tr., p. 208)

the vast majority of Ameren's above 1 MW customers have switched but the 400 kW to 1 MW customers only represent 6 percent of the total kilowatt hours on the Company's BGS-FP service, Staff witnesses Kennedy and Zuraski were concerned that Ameren's 400 kW to 1 MW customers have more to lose by being grouped with larger customers then they had to gain by such a change. Given that concern Staff witnesses Kennedy and Zuraski recommended against combining Ameren's 400 kW to 1 MW customers with Ameren's above 1 MW customers, at this time. (ICC Staff Ex. 1.0, pp. 20-21) IIEC witness also argued that the 400 kW to 1 MW group should not be combined with the above 1 MW group. (IIEC Ex. 1.0, pp. 17-18) No witnesses expressed any opposition to this testimony. Hence, Staff recommends that the Commission not combine Ameren's 400 kW to 1 MW customers with Ameren's above 1 MW customers, at this time.

2. Separate auction product for residential and/or small business customers.

CUB witness Thomas proposed that the Commission order the utilities to construct a separate auction product for residential and small non-residential customers. (CUB Ex. 1.0, pp. 17-18) He noted that the current products—which include both residential and small non-residential customers as well as medium-sized non-residential customers (up to 400 kW in ComEd's case and up to 1 MW in Ameren's case)—also include risk premiums associated with customer switching risk. However, he also noted that the switching risk associated with the residential and small non-residential customers segment is significantly below the switching risk of the medium-sized segment. Therefore, to insulate the smaller customers from the risk premium associated with the switching risk of the larger customers, Mr. Thomas proposed the segregation of these groups for purposes of defining auction products. Staff witnesses Kennedy and Zuraski testified that they did not oppose such a recommendation in principle. (ICC Staff Ex. 1.0, p. 21-22)

Ameren witness Blessing also testified that he did not object to the CUB proposal, and he suggested how to implement it in the case of the Ameren Illinois Utilities:

> The Ameren Illinois Utilities do not object to dividing the Residential and Small Business ("R&SB") customer group into two customer procurement groups: 1) including all residential customer and those non-residential customers with peak demands up to and including 150 kW; and 2) including those non-residential customers with peak demand greater the 150 kW up to including 1,000 kW.
>
> ***
>
> The Ameren Illinois Utilities would propose procuring the residential and non-residential with peak demands up to and including 150 kW with a mix of one-year and three-year contract supply periods for the reasons discussed at lines 197-223 of my direct testimony (Ameren Illinois Utilities' Exhibit 2.0). For the customer group which includes non-residential customers greater than 150kW and up to and including 1000 kW, the Ameren Illinois Utilities recommend procuring 100% of the supply using one-year contract supply periods.

(Ameren Ex., 6.0, pp. 11)

Similarly, ComEd witness McNeil indicated that he did not oppose the CUB proposal, and he suggested how to implement it in the case of ComEd:

> ComEd believes this is a reasonable proposal and offers the following approach to accomplish the objectives that CUB identifies. First, ComEd proposes to separate the load of the CPP-B eligible customers into two distinct groups. One group would include the load of the Residential Customer Group, the Watt-Hour Customer Group, and the Small Load Customer Group as defined in Rider CPP. Generally, these are the residential and small business customers with demands of 100 KW or less. The other group would consist of the Medium Load Customer Group, also as defined in Rider CPP. These customers are the non-residential customers with demands greater than 100 KW, but less than 400 KW.

> There are approximately 18,000 customers and 2,400 MW of eligible load in the Medium Load Customer Group.
>
> ComEd proposes that both of these groups would be in the CPP Blended Segment of the auction. That is, the products procured and the term structures of those products would be identical for each group. If the mix of products for the Blended Auction Segment were a mix of 1, 2, and 3-year contract terms, there would be a total of 6 products in the Blended Auction Segment under this proposal. ComEd also proposes that the switching rules for the customers in the Medium Load Customer Group remain unchanged.

(ComEd Ex. 2.0 Revised, p. 23)

While Staff is not opposed to the Ameren and ComEd recommendations for implementing the CUB proposal, Staff notes that Ameren and ComEd approaches are not uniform; the former subjects Ameren's medium-sized non-residential customers to 1-year wholesale supply contracts while the latter subjects ComEd's medium-sized non-residential customers to whatever blend of contracts is deemed appropriate for the smaller customers. As previously discussed, the unopposed Staff proposal for smaller customers is a blend of 50% 1-year, 20% 2-year (10% each auction), and 30% 3-year contracts (10% each auction); hence the ComEd recommendation would double that for ComEd's medium sized customers. Adding in the very large customer groups would leave seven different auction contracts for ComEd, and five for Ameren, for a total of twelve different contracts included in the same auction. Furthermore, Staff notes that the percentage of 100 kW to 400 kW customers and load remaining on ComEd's fixed price service is less than 50%. Hence, of the 2,400 MW of eligible load, it is reasonable to believe that no more than 1,200 MW will be available for winning suppliers. If that 1,200 MW is bought exclusively through 1-year contracts for 50 MW tranches, that would amount to 24 tranches up for auction. In contrast, if that 1,200 MW is further split into sub-categories of 50% 1-year, 10% 2-year, and 10% 3-year contracts, there can only be twelve 50 MW tranches of 1-year contracts and 2.4 each of the 2-year and 3-year contracts. Hence, to maintain greater uniformity between the Ameren and ComEd supply contracts, to slightly simplify the process, and to retain a reasonable number of tranches available through the auction for each separate product, Staff recommends that ComEd, like Ameren, utilize only 1-year wholesale supply contracts for its medium sized customers.

3. Separate auction products depending on choice of enrollment window.

As discussed in Section III.D.2, IIEC witness Stephens proposed giving large customers a choice of enrollment window: a shorter period and a longer period. Furthermore, the load of customers choosing the shorter enrollment period would be served by one pair of auction products (one for each utility) and the load of customers choosing the longer enrollment period would be served by another pair of auction products. As already noted, above, Ameren and ComEd witnesses believed that the Stephens proposal, or at least a modified version of it, would be feasible to implement. As for their modifications, they proposed to drop the pre-commitment option, which was accepted by Mr. Stephens. They also proposed 7 days for the shorter enrollment option and 20 days for the longer option. In addition, they recommended that the Auction Manager be given the authority (in consultation with the utilities) to determine if customers' actual selections left enough load within each of the two groups to viably offer separate products through the auction; otherwise, only the 20-day product would be used.

CES witnesses Papadimitriu and Domagalski argued that the Stephens proposal was unnecessary, cumbersome, overly burdensome, and unnecessarily complicated.

(CES Ex. 2.0, pp. 4 and 6) However, the testimony of ComEd, Ameren, and IIEC witnesses demonstrates that, at least from the point of view of the utilities and large customers, the Stephens proposal is neither excessively cumbersome, burdensome, nor complex, and that it should be implemented. Staff witnesses Kennedy and Zuraski also indicated support for the proposal. Therefore, Staff supports the Ameren/ComEd-modified version of IIEC Stephens' proposal to include within the auction separate large-customer products depending on the choice of enrollment window.

G. Other Contract Change Proposals

1. Amend the Ameren SFCs to share the impacts of changes in MISO rules.

Dynegy witness Huddleston recommended that Ameren share some of the supplier's risk of Midwest Independent Transmission System Operator ("MISO") market rule changes. (DYN Ex. 1.0, pp. 12-14) However, this recommendation was opposed by Staff witnesses Kennedy and Zuraski, who argued:

> We believe that Mr. Huddleston's proposal would likely generate future controversy over what constitutes a "market rule change" and even more controversy over computing the level of financial consequences brought about by those changes. The Commission Staff would likely be an indirect cause of such disputes, since Ameren might reasonably anticipate that, to protect ratepayers, the Staff would use annual prudence reviews to dissect each instance where market rule changes led to utility payments to suppliers (assuming of course that Ameren would seek reimbursement of such costs through one or more of its retail rate riders). Thus, in our view, this proposal should be rejected.

(ICC Staff Ex. 4.0, p. 3)

Ameren witness Blessing also opposed Mr. Huddleston's proposal, arguing that it unfairly "shared" only the negative consequences of MISO rule changes, but would still permit suppliers to retain all positive consequences. (Ameren Ex., 6.0, p. 4) Mr.

Blessing also remarked that the proposal's long list of possible MISO rule changes included nebulous, ambiguous, and far-reaching terms that left no limits to what would constitute an applicable MISO rule change. Mr. Blessing also testified that the proposal's requirement to determine "adverse financial consequences" of such MISO rule changes would often be difficult or impossible. Like Staff witnesses Kennedy and Zuraski, Mr. Blessing forecasted that the proposal would result in "near-constant litigation over the minutia of each change that any given supplier may divine." (*Id.*)

For all the above reasons, Staff recommends that the Commission reject Dynegy witness Huddleston's proposal to amend the Ameren SFCs to share the impacts of changes in MISO rules.

2. Imposition of a penalty on utilities if suppliers are unable to supply due to infrastructure problems on the utilities' systems.

Dynegy witness Huddleston proposes that the SFCs be modified "to include language that requires utilities to pay Suppliers damages for instances where the utilities did not follow Prudent Utility Practice resulting in load not being served by Suppliers." (DYN Ex. 1.0. p. 14) This proposal was opposed by Ameren witness Blessing on several grounds:

First, Mr. Huddleston's proposal would change the nature of the SFCs from a full requirements product for the amount of energy actually consumed to a "take or pay." Second, under his proposal, every outage on the system could be subject to a potential prudence review and likely result in frequent dispute and possibly litigation between the parties. Third, it would also result in a transition from a regulatory process where prudence review is initiated by customer complaints to review initiated by suppliers. Fourth, even if imprudence were determined for a given outage, the payment of damages requires the calculation of the "as if" load and a proof by suppliers of what their actual, even specific damages were – neither of which is an exact science, and would likely lead to further litigation. Fifth, Mr. Blessing opined that the purpose of including damage provisions into a contract is to incent proper behavior, and to provide a remedy when this does not occur, but that the Ameren Illinois Utilities already have incentives to minimize outages.

For all the above reasons, Staff finds the Dynegy witness Huddleston's proposal to be undesirable, unworkable and unnecessary. Staff therefore recommends that the Commission reject the proposal to impose penalties on utilities if suppliers are unable to supply due to infrastructure problems on the utilities' systems.

3. Authorizing the Auction Manager to redefine tranche sizes so that the share of load expected to be associated with a tranche would approximate 50 MW of anticipated load.

Staff witnesses Kennedy and Zuraski recommended that the Auction Manager be authorized to redefine, by customer group (such as CPP-B versus CPP-A) the size of tranches prior to the finalization of the auction rules, based on her analysis of the utilities' switching statistics. (ICC Staff Ex., 1.0, pp. 16-17) Rather than each tranche representing approximately 50 MW of eligible load, each tranche would represent approximately 50 MW of anticipated (or expected) load. The rationale for this change is to maximize the advantages of the simultaneous auction process, where competition among bidders is enhanced by their ability to switch between different products during the auction, as relative prices evolve. Having products of similar size increases the willingness for suppliers to switch between the products, further increasing competition. But it is now clear that under the current process where the 50 MW tranches are based on eligible load, there are significant differences between the products due to the relative propensity for large versus small customers to switch from utility supply to alternative retail supplier supply. Taking ComEd migration figures as an example, Dr. Kennedy and Mr. Zuraski noted that the percent of the ***actual*** peak load on CPP-A is about 14% of the ***eligible*** peak load. Based on these migrations from CPP-A to alternative suppliers, the nominal 50 MW tranche of CPP-A load has turned out to be closer to 7 MW. The Kennedy/Zuraski proposal is aimed at adjusting tranches so that they are likely to be closer to 50 MW than to 7 MW (using CPP-A as an example).

Several witnesses supported the basic concept proposed by Staff. (ComEd Ex. 2.0, Revised, p. 13; AM Ex. 2.0, p. 5) However, some witnesses raised concerns, while recommending modifications to address those concerns. For instance, Ameren witness Blessing argued,

> If the Commission should decide to accept Staff's proposal to redefine the size of tranches based on the Auction Manager's analysis of the utilities' switching statistics, an upper limit should be placed on the eligible load that can be included in a tranche. That upper limit, for example, 300 MW of eligible load, would be determined by the Auction Manager in consultation with the Staff and the Ameren Illinois Utilities.

(Ameren Illinois Utilities' Ex. 6.0, p. 16)

While Ameren/ComEd witness LaCasse agreed with the basic concept, she also recommended modifications or added details to avoid certain potential problems:

> My first proposed modification is in setting the target for tranches for residential and smaller non-residential customers of the CPP-B and BGS-FP load categories. I propose that the tranches for residential and smaller non-residential customers target 50 MW of actual load (by which I mean PJM peak load contribution for the CPP-B customers and the actual MISO peak load for the BGS-FP customers). This calculation would be made shortly before tranche targets are finalized (by September 17, 2007 according to the timeline in Auction Manager Exhibit 1.9b). The calculation would use the actual load for each of the CPP-B and BGS-FP load categories and would apply to all terms or products associated with

> the load category. This avoids the necessity to define expected load (i.e., to define the quantity to forecast) and it avoids the necessity to consider this notion over a several-year horizon.
>
> My second proposed modification is in setting the target for tranches for larger non-residential customers. I agree with Staff that the target for these tranches should use an expected load notion that would account for switching statistics, as well as any other relevant information. I propose that this information be used to obtain a range of reasonable estimates of the expected load for the CPP-A and BGS-LFP load categories. I propose using the highest of these reasonable estimates to set the number of tranches for the CPP-A and BGS-LFP load categories. The number of tranches would be set so that the target for the tranche size is 50 MW (in terms of the PJM peak load contribution for the CPP-A customers and the actual MISO peak load for the BGS-LFP customers).

(AM Ex. 2.0, pp. 7-8)

Finally, Dynegy witness Huddleston testified,

> From a Supplier's perspective, we agree with Staff that very small volumes may be problematic if created by switching. (Indeed, as I discuss later with respect to proposals to segment load classes, small volumes may be problematic regardless of what created the low volume.) But, the opposite problem may arise as well under Staffs proposal. If the Auction Manager increases the tranche size to account for anticipated switching and if that switching does not in fact occur, a Supplier may end up serving substantially more load than expected.

(DYN Ex. 1.6, pp. 9-10)

However, in Staff's view, Mr. Huddleston's concern is unfounded, since, with or without the Staff's proposed modification to tranche sizes, the bidder is still subject to exactly the same risk that he will end up with more load than was expected. This risk cannot be avoided as long as suppliers are buying vertical tranches. This was illustrated quite plainly by an example employed during cross examination of Mr. Huddleston, where he agreed that the Staff proposal added no risk. (Tr., pp. 235-239)

Based on the above-referenced testimony, Staff recommends that the Commission authorize the Auction Manager to redefine, by customer group the size of tranches prior to the finalization of the auction rules, based on her analysis of the utilities' switching statistics. Rather than each tranche representing approximately 50 MW of eligible load, each tranche would represent approximately 50 MW of anticipated (or expected) load. Based more specifically on the testimony of Ameren witness Blessing and Ameren/ComEd witness LaCasse, Staff also recommends that the Auction Manager, after consultation with ComEd, Ameren and Staff, be authorized to use her judgment in creating and/or capping the anticipated (or expected) loads to be utilized for this purpose.

4. Redefine a tranche to cap load obligations of suppliers.

a. Is this issue properly within the scope of this Docket?

Staff is unaware of any witness raising this issue in the docket.

H. Other Proposed Operational Changes

1. Possible revisions to the process of acquiring and recovering the cost of ancillary services in MISO, if the MISO ancillary services market does not develop in a timely manner.

Dynegy witness Huddleston describes several contingencies related to MISO's eventual treatment of ancillary services and, based on which contingency prevails during the life of the supplier forward contracts, he recommends various alternative processes related to the purchase of ancillary services and the recovery of the costs for such purchases. (DYN Ex. 1.0, pp 14-16, lines 309 to 345)

As noted by Staff witnesses Kennedy and Zuraski, and from reading Mr. Huddleston's testimony, it would seem impossible or at least unwieldy to unambiguously write his contingencies into the SFCs. In fact, while Mr. Huddleston provided numerous changes to the SFCs reflecting some of his other recommendations, he did not do so for this particular recommendation. Therefore, Dr. Kennedy and Mr. Zuraski recommended against adopting Mr. Huddleston's recommendation on the grounds that it would likely lead to unnecessary and costly disputes over its implementation. Staff generally believes that suppliers should be responsible for making the decisions for arranging whatever generation, transmission, and ancillary services are required to meet the load requirements under the SFCs. Hence, Staff recommends that the Commission reject the ambiguous proposal by Dynegy that pertains to acquiring and recovering the cost of ancillary services in MISO, if the MISO ancillary services market does not develop in a timely manner.

I. Post-Auction Commission Review of Results

While Staff did not provide testimony with respect to this issue, it reserves the right to respond to other parties' arguments with respect to Post-Auction Commission Review of Results.

1. Degree of public access to Commission's deliberations.

2. Creation of advance criteria and price benchmarks that the Commission must apply in its review of the auction results.

3. Judicial review of Commission auction deliberations.

J. Confidentiality of Bidder Information

1. Appropriate definition for confidential information

Except for Staff's definition of "confidential bidding data" as described in Section III.M.2 below, Staff did not provide testimony on this issue. However, Staff reserves the right to respond to arguments made by other parties with respect to the definition of confidential information.

K. Information Dissemination

1. Focus of information dissemination efforts on bidders starting with the second information session close to the Part 1 Application.

2. Combination of MVA and SCA factors in the Ameren rates (and analogous charges in ComEd rates) with the base Retail Supply Charge on the customer bills.

3. Public access or participation in pre-auction bidder only meetings conducted by the Auction Manager.

M. Timeline

1. Eliminate pre-qualification of LFP Load from the Ameren tariffs.

IIEC witness Stephens proposed retaining a modified version of the pre-qualification process. This proposal is discussed in Sections III.D.2 and III.F.3, above.

2. Date for release of the second part of the Public Report and the signed SFCs.

Ameren/ComEd witness LaCasse recommended that

> the Public Report of the Auction Manager have two parts that are released at different times. The first part, containing the bulk of the information generated by the auction process and the Auction Manager's recommendations, would become available no earlier than 15 business days of the close of the auction. The second part, containing information that should be kept confidential for a longer period of time after the auction, such as the supplier-product match, would be released 60 business days after the close of the auction.

(AM Ex. 1.0, p. 35; also see pp. 36-41)

Staff witnesses Kennedy and Zuraski responded as follows (at ICC Staff Ex. 4.0, pp. 12-13):

> We believe that the above-cited recommendations of the Auction Manager are similar to recommendations made by us at lines 506 to 532 of our direct testimony (ICC Staff Exhibit 1.0) in this docket, although Dr. LaCasse has also recommended an alternative timeline for releasing certain information. Upon further consideration, we concur with her

> alternative timeline, due to the practical difficulties that she explains with the current timeline if the next auction is to be followed by another improvement proceeding. To reconcile Dr. LaCasse's proposal with ours, we would propose the following modification to our recommended definition of "confidential bidding data" found on lines 506 to 532 of our direct testimony (ICC Staff Exhibit 1.0):
>
> all bidding data except for: (1) the names of the winning bidders, which shall be revealed to the public when the Auction Manager issues a Declaration of a Successful Auction Result; (2) the precise number of registered bidders, the ranges of excess supply for each section and the going prices for each product reported to bidders during the auction, which shall be reported by the Auction Manager and by the Staff to the public within the first part of their Public Reports 15 business days after the close of the auction; (3)~~and~~ the number of tranches of each product won by each of the winning bidders, which shall be reported by the Auction Manager and by the Staff to the public within the second part of their Public Reports 60 business days after the close of the auction~~within May of the year in which the auction takes place~~; and (~~3~~4) any other information that the Auction Manager and the Staff, to fulfill their respective responsibilities, deem necessary to convey in their public reports on the auction, as described in [the CPP Documents section of the Competitive Procurement Process part of this Rider [for ComEd] or the CPA Documents section of the Competitive Procurement Auction Process part of this Rider [for the Ameren Illinois Utilities]].

(ICC Staff Ex. 4.0, pp. 12-13)

While there was some objection to what was characterized as the "broad discretion" given to the Auction Manager and Staff in preparing their reports (see, DYN Ex. 1.6, pp. 4-5), the Staff recommends that these proposals be approved.

3. Extend the time during certain certifications must hold through the signing of the SFCs.

Ameren/ComEd witness LaCasse recommended that the end of the time period during which the following bidder certifications must hold be extended to (or established to be) the date that the SFCs are signed or until the results of the auction are rejected:

> A certification that the bidder is not associated with any other bidder according to the criteria given in the Auction Rules;

> A certification that the bidder agrees that the submission of any bid creates a binding and irrevocable offer to provide service under the terms set forth in the Supplier Forward Contract;
>
> A certification that if the auction is successful, a binding and enforceable contract to provide service for the number of tranches won arises under the Supplier Forward Contract, and that the bidder will execute such contract and comply with the creditworthiness requirements;
>
> A certification that the bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as a bidder to another entity, and that the bidder understands that any such substitution, transfer, or assignment is null and void, and will result in its exclusion from participation in the auction.

(AM Ex. 1.0, pp. 43-44)

Staff witnesses Kennedy and Zuraski concurred with this recommendation. (ICC Staff Ex. 4.0, p. 14) No other witness objected to the proposal. Therefore, Staff recommends that it be accepted by the Commission.

4. The day(s) on which that auction would be re-run in the event that the Commission initiates an investigation into the auction results, and the Staff, Auction Manager and utilities determine that the auction should be re-run.

Ameren/ComEd witness LaCasse proposed that Rider CPP and Rider MV specify when the auction would be re-run in the eventuality that the Commission initiates an investigation into the auction results and that ICC Staff, the Auction Manager and the utilities determine that the auction should be re-run (and that prospective suppliers be made aware of the specific time at which the auction would be re-run). (AM Ex. 1.0, pp. 45-47)

Staff witnesses Kennedy and Zuraski concurred with the proposal, in principle. However, they noted that although Dr. LaCasse "proposes that Rider CPP and Rider MV specify when the auction would be re-run…," she did not actually "specify when." (ICC Staff Ex. 4.0, p. 15) Thus, they recommended that Rider CPP and Rider MV be revised to state that the Auction Manager shall provide a timeline to potential bidders as part of the auction rules, and that this timeline shall include a date or a range of dates within which the auction would be re-run in the eventuality that the Commission initiates an investigation into the auction results and that ICC Staff, the Auction Manager and the utilities determine that the auction should be re-run. (*Id.*) No witness objected to Dr. LaCasse's proposal in principle, and Staff recommends that it be adopted with the modification suggested by Dr. Kennedy and Mr. Zuraski.

P. Other

1. Utility efforts to work with their respective RTOs toward implementing a "common deliverability test" to the "extent such efforts are within its control."

A joint deliverability standard would be "a standard such that every generator [that chose to be a capacity resource] within PJM would be deliverable to all load in PJM and all load in MISO, and all generators in MISO [that chose to be capacity resources] would be deliverable to all load in PJM and MISO." (Tr., p. 98) A joint deliverability test would be "the analysis that you would perform to determine whether the generators could do so without violating any of the reliability criteria." (Tr., p. 98)

In his direct testimony, IIEC witness Stephens pointed out that the Commission previously found

> Although ComEd is opposed to cooperating in a joint effort with Ameren, PJM and MISO to implement a common deliverability test, it appears to the Commission that such cooperation by ComEd in such an effort has potential benefits. ComEd should do so to the extent such efforts are within its control. (Order, Docket No. 05-0159 at 117).
>
> *and*
>
> As noted above, the Ameren Companies are not opposed to cooperating with ComEd, MISO and PJM in a joint effort to implement a common deliverability test. As Ameren Companies observe, however, they control

> neither the existence or results of such joint effort. The Commission finds that cooperation by Ameren in such an effort has potential benefits and Ameren should do so to the extent such efforts are within its control. (Order, Docket Nos. 05-0160 et al. at 127).

(IIEC Ex. 1.0, p. 19)

Mr. Stephens also indicated that, to his knowledge, neither ComEd nor Ameren had been actively pursuing the joint deliverability issue, despite the issue's importance. (IIEC Ex. 1.0, pp. 18-20) However, Mr. Stephens made no specific recommendations.

Ameren provided no testimony with respect to the issue. However, ComEd witness Naumann testified that ComEd, as well as other Exelon companies, has actively participated in workshops, technical conferences, and other PJM/MISO proceedings relating to the continued development of the PJM-MISO Joint and Common Market. Mr. Naumann also indicated that PJM and MISO completed a joint deliverability study in 2006. He cited one of the Study's conclusions:

> "The common generator deliverability analysis demonstrated numerous constraints on the MISO and PJM systems. If not resolved through system upgrades, these constraints would result in small amounts of restricted generation on both the MISO and PJM systems." (MISO/PJM Inter-Regional Planning Stakeholder Advisory Committee (IPSAC), at 19 (Dec. 7, 2006)).

(ComEd Ex. 5.0, p. 24)

Mr. Naumann opined that the above conclusion would likely slow down the adoption of joint deliverability. He also opined that, among the broad group of stakeholders throughout the PJM/MISO region, joint deliverability is not considered a high priority at present, adding, "ComEd will nonetheless continue to support, in appropriate forums, the establishment of a PJM/MISO Joint and Common Market and to support additional beneficial operational integration between PJM and MISO including, in accordance with the Commission's order, development and implementation of a common deliverability test." (ComEd Ex. 5.0, pp. 24-25)

Staff recommends that the Commission take notice that the establishment of a PJM/MISO Joint and Common Market, including the development and implementation of a common deliverability test, are currently in a state of flux. However, since no witness in this docket made any other recommendations concerning this issue, Staff advises against taking specific actions.

IV. Conclusion

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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JOHN C. FEELEY
CARMEN L. FOSCO
CARLA SCARSELLA
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
cfosco@icc.illinois.gov
cscarsel@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

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