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 COALITION OF ENERGY SUPPLIERS

COMPRISED OF:

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

Christopher J. Townsend
Joseph E. Donovan
Christopher N. Skey
William A. Borders
DLA Piper US LLP
203 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601
(312) 368-4000

Dated: May 30, 2007

TABLE OF CONTENTS

Page

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 COALITION OF ENERGY SUPPLIERS

Constellation NewEnergy, Inc., Direct Energy Services, LLC, MidAmerican Energy Company, and Peoples Energy Services Corporation (collectively the "Coalition of Energy Suppliers," "Coalition," or "CES"), by their attorneys DLA Piper US LLP, pursuant to Section 10-101 of the Public Utilities Act (the "Act") and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), hereby submit their Initial Brief in the instant proceeding regarding the power procurement tariffs of Commonwealth Edison Company ("ComEd") and Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (collectively, "Ameren").[1]

---

[1] The positions set forth in the instant Initial Brief represent the positions of the Coalition as a group but do not necessarily represent the positions of the individual Coalition member companies.

I.

EXECUTIVE SUMMARY:

THE COMMISSION SHOULD ENTER AN ORDER CONSISTENT WITH ITS ORDERS IN THE PROCUREMENT DOCKETS

In the original procurement dockets, the Commission established a reasonable and coherent structure for the first Illinois Auction (the "2006 Auction") and mandated the commencement of a docketed proceeding to analyze the 2006 Auction. Specifically, the Commission mandated a thorough review to determine what, if any, changes should be made to the tariffs of ComEd and Ameren that embody the Illinois Auction process. (*See* January 24, 2006 Order in ICC Docket Nos. 05-0160, 05-0161, and 05-0162, *hereinafter* "*Ameren Procurement Order*," at 157-58; January 24, 2006 Order in ICC Docket No. 05-0159, *hereinafter* "*ComEd Procurement Order*" at 154. The utilities' procurement dockets are referred to respectively as the "ComEd Procurement Docket" and the "Ameren Procurement Docket" and collectively, those dockets are referred to herein as the "Procurement Dockets.")

In initiating the instant proceeding, the Commission specifically precluded unfettered re-litigation of issues that the Commission addressed in its Orders in the Procurement Dockets. (*See* ICC Docket No. 06-0800 Initiating Order at 5.) Instead, the Commission articulated a more limited purpose: an intent to explore matters that arose as a result of the 2006 Auction or that address facts that were unknown at the time that the Commission entered its Orders in the Procurement Dockets. (*See id*.) Lastly, the Commission stated its intent to provide sufficient time to incorporate any modifications into the next scheduled Auction. (*See id*.)

Against this backdrop, parties proposing modifications to the Auction process bear the heavy burden of justifying their positions. As discussed herein, the various proposals to modify the enrollment window length and customer migration rules lack sufficient evidentiary foundation and fall short of the attendant evidentiary burden that applies in the context of this proceeding. The proponents of those modifications provide no quantification or empirical evidence to demonstrate the necessity of their proposals. In fact, other than what amounts to mere rhetoric, these proponents fail to demonstrate that the proposals actually will deliver the benefits they allege. Therefore, the Commission should reject these proposed modifications because the record evidence fails to support a finding that adoption of these proposals leads to any clear net benefits.

A. Overview of the Positions of the Coalition of Energy Suppliers

The Coalition of Energy Suppliers is an *ad hoc* collection of Retail Electricity Suppliers ("RESs") that advocates measures designed to foster the development of competitive retail and wholesale electric markets in Illinois. (*See* CES Ex. 1.0 at lines 35-36.) The Coalition was created by companies that understand the link between electric utilities' wholesale procurements for bundled service customers and the competitive retail electric market.

Since the inception of restructuring in Illinois, the Commission has provided a positive, steadying force in the evolution of the Illinois competitive market, encouraging parties to reach negotiated settlements, and to look for opportunities to increase certainty in the retail electric markets. The Commission's positive, proactive posture in administering the Electric Customer Choice and Rate Relief Law of 1997 ("Customer Choice Act") has been "[t]he most important feature of the Illinois regulatory environment." (CES Ex. 1.0 at line 94.) The Customer Choice Act provides the Commission with considerable flexibility to adapt regulations to market conditions, and the Commission has exercised its authority to foster competitive market development by following a progressive path in decisions regarding competitive market implementation. (*See id*.) As a result, market participants, utilities, and competitive suppliers increasingly have been able to focus less on contentious regulatory proceedings and more on meeting customers' energy needs. (*See id*.) In short, the Commission's commitment to focusing on consumers' needs has resulted in tangible benefits to retail customers in Illinois.

The Coalition presents testimony of three (3) industry practitioners: John Domagalski and Katie Papadimitriu (CES Exhibits 1.0 and 2.0) from Constellation NewEnergy, Inc.; and Vu Nguyen (CES Exhibit 3.0) from MidAmerican Energy Company. The Coalition's testimony explains why the Commission should continue to adopt polices that ensure customers' access to market solutions and should avoid adoption of any revisions that unduly limit customers' fundamental right to choose RES service. Specifically, the testimony advocates the following positions on the following contested topics:

- **Enrollment Window --** The Commission should reaffirm its prior decisions in its Orders in the Procurement Dockets and maintain a 45-day enrollment window, which represented a compromise reached by ComEd and the Coalition (Issues Outline topic III.D);

- **Multiple Enrollment Windows --** The Commission should reject the Illinois Industrial Energy Consumers' ("IIEC") proposed multiple enrollment windows because they are unworkable and overly burdensome (Issues Outline topic III.D);

- **Migration Rules --** The Commission should preserve and expand customers' ability to switch to a RES after the enrollment window closes if the aforementioned customers default to the utilities' fixed price bundled rate (ComEd's Rate BES-NRA or Ameren Rate BGS-LFP) (Issues Outline topic III.D.3); and

- **Customer Groups --** The Commission should rely upon pro-competitive principles in evaluating the various proposed revisions to the utilities' customer groups (Issues Outline topic III.F).

In each instance, the Coalition's recommendation empowers customers, maintains an orderly auction process, and remains true to the goals of the Commission's Orders in the Procurement Dockets.

B. The Illinois Retail Electric Market Is Flourishing

Testimony in the Procurement Dockets established that non-residential customers saved more than **one billion dollars** as a result of entering into competitive supply contracts, during the transition period. (*See* ComEd Procurement Docket, Direct Testimony of Philip R. O'Connor, CES Ex. 1.0 at lines 804-813; Ameren Procurement Docket, Direct Testimony of Philip R. O'Connor, CES Ex. 1.0 at lines 1009-1018.) The record evidence in the instant proceeding demonstrates that the Illinois competitive retail electric market has continued to develop since the conclusion of the transition period. (*See, e.g.,* CES Cross Exs. 4, 9.)

Even prior to the end of the mandatory transition period, the commercial and industrial competitive market in ComEd's service territory had developed well, but competition lagged in the Ameren service territories. (*See* CES Ex. 1.0 at lines 197-99.) Since the conclusion of the September 2006 Auction, the competitive market in the Ameren service territory for commercial and industrial customers has taken a quantum leap and caught up with market development in the ComEd service territory. (*See id*. at lines 199-202; CES Cross Ex. 9.) For the first time since Illinois restructured the electricity industry, the Commission can conclude that vibrant retail competition has developed throughout a broad swath of the State of Illinois.

The Coalition enumerates a number of empirical measures to gauge the substantial development of the Illinois retail electric market. (*See* CES Ex. 1.0 at lines 214-72.) The **first** empirical measure represents the total portion of customer load that has switched from the utilities' bundled service to RES service. (*See id*.) As of March 31, 2007, roughly 89% of the load of ComEd's customers with annual demands greater than 1 megawatt ("MW"), or roughly 38,000 business customers, had switched from the utility's service to RESs. In the combined Ameren utilities' service territories, roughly 80% of the load of similar customers' (i.e., with annual demands greater than 1 MW), or roughly 4,500 business customers, had switched from Ameren's service to RESs. (*See* CES Cross Exs. 4, 9.) These load percentages represent roughly 75% of ComEd's total non-residential load. (*See* CES Cross Ex. 9.)

The **second** empirical measure is the range of business customers that contract with RESs. (*See* CES Ex. 1.0 at 242-72.) A wide variety of customers have turned to the competitive market to meet their energy needs. (*See* CES Cross Exs. 1-4, 6-9.) For example, customers with annual demands greater than 400 kilowatts ("kW") are especially prepared to consider their energy purchase as a separate matter from delivery. (*See id*.) The utilities' switching statistics demonstrate that this customer willingness extends to business customers with annual demands less than 400 kW of demand as well. (*See id*.)

The **third** empirical measure is the intense price competition created by RESs' competition with each other for customers. (*See* CES Ex. 1.0 at lines 242-72.) This competition serves to squeeze out any premiums in RESs' bids. The Commission has certified twenty (20) RESs to serve non-residential customers above 15,000 kilowatt-hours ("kWh") per year. (*See id*. at lines 243-44.) The RESs actively engaged in the Illinois market have built considerable customer support and, on a continuing basis, seek out additional customers. (*See id*. at lines 246-48.)

Thus, the Commission should recognize that many aspects of the Illinois retail electric market now work very well and deliver significant benefits to consumers. The Commission should take care to adopt policies that preserve and enhance the competitive market for commercial and industrial customers, as well as other smaller consumers.

II.

USE OF AN AUCTION

(Issues Outline topic III.A.1)

The Coalition agrees with Staff, ComEd, the Auction Manager, and the IIEC, each of whom acknowledged, to varying degrees, that the 2006 Auction was a success. (*See* Staff Ex. 1.0 at lines 100-104, 166-180; ComEd Ex. 1.0 at lines 21-26; IIEC Ex. 1.0 at lines 90-96, 122-129; Auction Manager Ex. 1.0 at lines 296-364.) The Coalition also agrees with the Auction Manager's ("NERA") assessment that the 2006 Auction's resulting prices for the Fixed Price segment were consistent with market conditions that existed at the time the 2006 Auction was conducted. (*See* Auction Manager Ex. 1.0 at lines 302-03.)

III.

TARIFF AND RATE DESIGN ISSUES

A. Overview of the Existing 45-Day Enrollment Window and Proposed Revisions

(Issues Outline topic III.D)

The enrollment window is the period of time during which customers may review competitive options and ultimately decide to take utility service or contract with a RES. The length of the enrollment windows was one of the most contentious issues in the Procurement Dockets. In the Procurement Dockets, the Coalition initially proposed retention of the 75-day PPO enrollment window for the utilities' annual products and other parties proposed a 30-day enrollment window.[2] Ultimately, ComEd set forth a compromise position, recommending a 50-day enrollment window for the 2006 Illinois Auction and a 45-day window for each subsequent auction.[3] As ComEd then noted, the compromise proposal struck the right balance between "customer flexibility, excessive risk premiums in auction bids, and avoiding interference with the auction timeline."[4] The Coalition agreed to ComEd's proposed settlement, applauding ComEd for its pro-consumer compromise.[5] In the Procurement Dockets' Orders, the Commission commended the parties for settling this contentious issue and adopted the 50/45 day enrollment windows for most customers eligible for the annual product.[6]

Accordingly, the Coalition believed, with good reason, that the enrollment window issue had been settled in the Procurement Dockets. In its Post-Auction Report, however, Staff speculated that the enrollment windows' duration rendered the utilities' Annual Products too expensive. Thus, in the instant proceeding, Staff recommends certain modifications that it contends would lower prices to Annual Product customers by reducing the risks associated with supplying these customers. Specifically, Staff recommends:

---

[2] *See, e.g.*, ComEd Procurement Docket, Direct Testimony of Philip O'Connor, CES Ex. 1.0 at lines 556-606; Direct Testimony of William P. McNeil, ComEd Ex. 3.0 at lines 820-23; Direct Testimony James C. Blessing, Ameren Ex. 3.0 at lines 191-202.

[3] *See* ComEd Procurement Docket, ComEd Initial Brief at 132. In addition, Staff likewise acknowledged in the Procurement Dockets that a 45-day enrollment window would be a reasonable compromise. (*See* ComEd Procurement Docket, Staff's Initial Brief at 153-54; *see also ComEd Procurement Order* at 177.) Under cross examination in the ComEd Procurement Docket, Staff witness Dr. Schlaf testified that a 45-day window was a "reasonable compromise." (ComEd Procurement Docket, Schlaf Tr. at 1339-40.). Staff noted in its briefs that one rationale for adopting a 45-day enrollment window was to provide RESs and customers with more time to negotiate deals. (ComEd Procurement Docket, Staff's Initial Brief at 154.) The Commission too, observed that a 45-day window would give the customers additional time "to implement and complete the decision-making steps necessary to evaluate available alternatives." (*See ComEd Procurement Order* at 182.)

[4] *See* ComEd Procurement Docket, ComEd Reply Brief at 111.

[5] *See* ComEd Procurement Docket, CES Reply Brief at 18.

[6] *See ComEd Procurement Order* at 174. In response to a request by the IIEC, the Commission established a 30-day enrollment window for customers with demands greater than 3 MW. (*See ComEd Procurement Order* at 182-83; *see also Ameren Procurement Order* at 214.)

- Use of an enrollment window for small non-residential customers eligible for the ComEd and Ameren Blended Products (BES-NRB and BGS-FP, respectively); and

- A shortened enrollment window for large non-residential customers eligible for the ComEd and Ameren Annual Products (BES-NRA and BGS-LFP, respectively).

(*See* Staff Ex. 1.0 at lines 272-75; 295-97).

Other parties similarly propose revisions to the enrollment window in this proceeding:

- ComEd recommends reducing the enrollment window for CPP-A eligible customers, from 30 days to 20 days for customers over 3 MW that are in the Very Large Load Customer Group and from 45 days to 20 days for all other customers in the Large Load Customer Group (*see* ComEd Ex. 1.0 at lines 289-308);

- Ameren recommends shortening the enrollment window for BGS-LFP eligible customers, from 45 days to 20 days (*see* Ameren Ex. 1.0 at lines 168-94); and

- IIEC witness Stephens recommends three (3) enrollment windows of different lengths for customers eligible for the utilities' annual products (*see* IIEC Ex. 1.0 at lines 207-17, 337-47).

The Commission should reject each of these proposed modifications, and instead retain the existing 45-day enrollment window.

B. The Commission Should Retain The Existing 45-Day Enrollment Window

Staff, ComEd, Ameren, and the IIEC seek to cut by more than 50% the amount of time that customers have to make supply decisions after the resulting retail electric rates are filed with the Commission. If the Commission adopts these proposals, customers would have less than half the number of days that the Commission deemed appropriate for such decisions (and less than a third of the amount of time the Commission approved for PPO enrollment during the transition period). These parties support shortening the window to, at most, 20 days but do not demonstrate how a truncated enrollment window will yield material benefits. (*See* CES Ex. 1.0 at lines 101-18; CES Ex. 2.0 at lines 54-58.) In fact, under cross-examination, ComEd and Ameren could not state how much, if any, premium was included in the suppliers' bids in the

2006 Auction due to the length of the enrollment window. (*See* McNeil Tr. at 571-72; Nelson Tr. 298-99.) Further, no party presents a customer survey to ascertain customers' perceptions and valuations of the 45-day window. (*See, e.g.*, McNeil Tr. at 564-65; Kennedy/Zuraski Tr. at 658.) These parties' respective proposals are particularly surprising given their positions regarding the enrollment window at the conclusion of the Procurement Dockets; their general agreement that the 2006 Auction was a success; and the evidence from potential bidders indicating that shortening the enrollment window would not make their bids for the annual products lower. (*See* Staff Ex. 1.0 at lines 100-104; ComEd Ex. 1.0 at lines 190-202; IIEC Ex. 1.0 at lines 119-29; Auction Manager Ex. 1.8; Huddleston Tr. at 253.)

Although the Coalition understands and appreciates the parties' desires to reduce the bid prices for the Annual Product, the evidence in the record fails to demonstrate how the proposed modifications would achieve that goal. The record in the instant proceeding demonstrates that a truncated 20-day enrollment window is inappropriate and unnecessary. (*See* CES Ex. 1.0 at lines 328-68; CES Ex. 2.0 at lines 147-360.) The Commission should reject these proposals and retain the current 45-day window. (*See* CES Ex. 1.0 at lines 355-68.)

1. A Shorter Enrollment Window Would Significantly Limit Customers' Ability To Receive And Evaluate Competitive Options

Pragmatic and practical facts demonstrate the infeasibility of a shortened enrollment window. The Coalition members have negotiated thousands of competitive retail energy contracts with business customers. Based upon this experience, the Coalition explains that retail customers simply require more than 20 days to analyze their supply options. (*See* CES Ex. 2.0 at lines 288-302.) Such real-world experience should guide the Commission in its evaluation of, and rejection of, the truncated enrollment window proposals. As the Commission noted in the

Procurement Dockets' Orders, the Commission's decision with respect to the duration of the enrollment window will have a direct, immediate, and significant impact upon the development of the Illinois retail electric market. (*See ComEd Procurement Order* at 182; *Ameren Procurement Order* at 213.)

For the most part, business customers consider buying electricity to be an occasional, rare activity and, accordingly, do not have experienced personnel dedicated to the task. (*See* McNeil Tr. at 547.) ComEd and Ameren acknowledge that the 2008 Auction may be the first time many customers have ever attempted to negotiate a contract with a RES and that these customers may need more than 20 days to complete the requisite tasks inherent in the supply decision-making process. (*See* Nelson Tr. at 305, 308; McNeil Tr. at 549-51.) Ameren admits that 82% of the customers eligible for its utilities' Annual Products took more than 20 days to make their decision following the 2006 Illinois Auction. (*See* Nelson Tr. at 305-06.) Similarly, ComEd admits that a clear majority of customers eligible for its Annual Product took more than 20 days to elect supply options. (*See* McNeil Tr. at 544-45.)

As Staff witnesses Kennedy and Zuraski acknowledge, the retention of the 45-day enrollment would provide sufficient time for customers to complete the myriad tasks inherent in the supply contracting process. (*See* Kennedy/Zuraski Tr. at 658; *ComEd Procurement Order* at 182.) The Coalition explains that customers require sufficient time to:

1) Gather usage and billing information and review internally their expected needs and desired service options;

2) Investigate and decide what types of supply options are available;

3) Analyze utility products and RESs' competitive alternatives;

4) Disseminate Requests for Proposals to RESs;

5) Compile and analyze RESs’ proposals;

6) Submit proposals to corporate executives and/or Boards of Directors for review and approval; and

7) Finalize and execute approved contracts.

(*See* CES Ex. 2.0 at lines 288-302.) Additionally, RESs require sufficient time to obtain and analyze customer usage data, prepare pricing proposals, and enter into contract negotiations with the thousands of potential Illinois customers during the enrollment window. (*See id*. at lines 305-08.) Notably, no party presents any evidence or customer survey to demonstrate that customers generally support a reduced enrollment window or to suggest that customers need or want less than 45 days following the establishment of the utilities’ default rates to review competitive options and ultimately select supply options.

The proposals to shorten enrollment windows could produce the unintended consequence of having large customers take utility supply due to administrative or bureaucratic fiat and not based on the supply arrangement that best meets their needs, while doing little to reduce the price of the Annual Products derived from the Illinois Auction. (*See id*. at lines 349-54.) In fact, the Coalition’s unrebutted evidence shows that a 20-day enrollment window effectively will preclude certain customers, such as governmental entities, park and school districts, universities, and hospitals, from accessing the competitive market, thereby barring them from obtaining customized supply options to best meet their energy needs. (*See id*. at lines 310-19.)

2. The Proposed 20-day Enrollment Window Would Not Guarantee A Lower Auction Price

No party has proven that a 20-day truncated window will produce less-expensive utility products. Instead, all that is assured is that if the Commission accepts those proposals customers will have less time in which to make a decision – a result that does not comport with meaningful customer choice or robust customer protection.

No wholesale supplier has testified that it would significantly alter its bids as a result of a shorter enrollment window. In fact, Dynegy, one of only two wholesale suppliers to submit testimony into the record of the instant proceeding, explains that wholesale suppliers most likely will include additional premiums into their bids in order to account for expectations of serving the additional load of customers forced to remain on the utilities' service. (*See* DYN Ex. 1.6 at lines 199-208; Huddleston Tr. at 253-56.) Further, in NERA's Supplier Survey, potential bidders state that shorter enrollment windows alone would not affect their bids. (*See* CES Ex. 2.0 at lines 154-91 *citing* Auction Manager Exhibit 1.8 at B-15-16.) Moreover, Dynegy testified that if the Commission's purpose in the instant proceeding is to minimize risk premiums, the Commission should maintain as many of the components of the 2006 Auction as possible. (*See* Huddleston Tr. at 253.)

The Commission should not rely on Mr. McNeil's "analysis" that truncating the enrollment window, from 45 days to 20 days, *might* reduce wholesale suppliers' bid price by $0.06/kWh. (*See* ComEd Ex. 1.0 at lines 434-39.) ComEd is not a wholesale supplier and Mr. McNeil acknowledges that he cannot attest, with any level of certainty, how wholesale suppliers may factor the truncated window into their next bids because "data are not available to perform a comprehensive quantitative analysis." (*Id*. at lines 329-30.) The Coalition presents unrebutted testimony that Mr. McNeil's inputs were incorrect, improper, and significantly overstated the alleged risk premiums. (*See* CES Ex. 2.0 at lines 211-40.) No other party attempts to quantify this asserted "premium," and no other party endorses ComEd's analysis. NERA's Supplier Survey also successfully exposes the theoretical nature of ComEd's proposition by indicating that shorter enrollment windows alone would not affect suppliers' bids. (*See* Auction Manager Ex. 1.8 at B-15-16; *see also* CES Ex. 2.0 at lines 155-78.)

Nevertheless, Mr. McNeil attributes 100% of the price differential to wholesale suppliers' perceptions of switching risk – despite (or in spite of) the NERA Supplier Survey's findings that shorter enrollment windows would not affect potential bidders' bids. (*See* ComEd Ex. 1.0 at lines 434-39; *but see* NERA Ex. 1.8.) Mr. McNeil's analysis ignores the fact that wholesale suppliers' bids are comprised of numerous inputs, many of which fluctuate from one product to the next, as well as from one auction to the next. (*See* McNeil Tr. at 568, 572.) To this point, no party endeavors to isolate the alleged risk premium into individual components, such as load-following risks; RTO costs; laws or rules changing; fuel price increases; the utilities' creditworthiness, or product diversification risks (*e.g.* customers want "green" products or RES-designed demand-response programs). (*See* Nelson Tr. at 287, 294-99; McNeil Tr. at 561, 567-69.) It is pure folly to suggest that changing one component -- such as the enrollment window -- will magically guarantee prices lower than those that resulted from the 2006 Auction.

Far from supporting a truncated enrollment window, the instant record greatly refutes and undermines the case for it. Moreover, the record contains no evidence that customers want, need, or would benefit from a shorter enrollment window. The Coalition respectfully requests that the Commission reaffirm the 45-day window established in the Procurement Dockets.

C. The Commission Should Decline the IIEC Proposal to Implement Multiple Enrollment Windows

The Commission should reject the IIEC's proposal to implement multiple enrollment windows of differing durations. The IIEC fails to demonstrate benefits from adoption of its proposal. Moreover, the record is replete with logistical and administrative strains that adoption of the IIEC's proposal would place on the Auction process as well as on the utilities' respective Information Technology ("IT") and billing systems. While the Coalition appreciates the IIEC's motivations, the IIEC's proposal is overly burdensome and would unnecessarily complicate customers' enrollment processes without providing any clearly defined benefits.

In Direct Testimony, the IIEC recommends a three-part pre-qualification process:

> Based on their prequalification choices, customers would identify themselves as (1) willing to pre-commit to procure their power supply through the auction, (2) willing to endure a very short enrollment period (such as five business day) or (3) requiring a longer enrollment period, such as 30 to 50 days. Once customers have used the prequalification to sort themselves into one of the three segments, those segments can be defined by the utility in terms suitable for the purpose of bidding. Suppliers then would bid according to their perception of the relative risks and the load profiles of each segment.

(IIEC Ex. 1.0 at lines 220-27.) In Rebuttal Testimony, the IIEC modifies its proposal to consist of two options, again predicated on customers' abilities to select their supply options within a certain period of time. Specifically, the IIEC's revised two-option approach would require customers to select supply options within a very short enrollment window of seven (7) calendar days or a longer 20-day enrollment window (hereafter referred to as "IIEC's 7/20 proposal"). (*See* IIEC Ex. 2.0 at lines 98-102.) The IIEC did not propose a timeline for implementation of its revised proposal. Furthermore, the IIEC fails to provide the requisite details regarding customer education and utility administrative efforts for implementation of its proposal.

ComEd and Ameren each propose modifications to IIEC's 7/20 proposal. Specifically, ComEd and Ameren propose requiring the Auction Manager's certification of sufficient customer interest in the 7-day enrollment window. (*See* ComEd Ex. 2.0 at lines 178-209; Ameren Ex. 6.0 at lines 313-24.) Staff does not endorse the IIEC's 7/20 proposal in Rebuttal Testimony and expresses its interest in hearing if "significant problems of practicality are likely to arise . . ..” (*See* ICC Staff Ex. 4.0 at lines 222-23.) Lastly, during the evidentiary hearings, it became apparent that no party could articulate either clear benefits to the IIEC’s ambitious 7/20 proposal or how implementation could surmount serious and persistent logistical and administrative problems that have plagued the utilities’ implementation of current projects. (*See e.g.*, Staff Cross Ex. 13; Papadimitriu/Domagalski Tr. at 730-32. For the Commission’s convenience, Staff Cross Ex. 13 is attached hereto and made a part hereof as Attachment 1.)

1. The Record is Devoid of Evidence Demonstrating Any Tangible Benefits Associated With Adopting The IIEC Multiple Enrollment Window Proposal

The Coalition fully supports customers’ desire to receive a reasonable utility default product. However, the IIEC failed to clearly articulate any demonstrable benefit that would result from implementation of its 7/20 proposal. According to the IIEC, adoption of the 7-day enrollment window would create an option for a customer that “has the potential to avoid unnecessary risk premiums in prices for those customers who can decide more quickly whether or not to elect the utility option.” (IIEC Ex 2.0 at lines 90-92.) The IIEC predicates its rationale solely on an unsupported and assumed correlation between a longer enrollment window and an increased risk premium.

If the goal of the IIEC’s 7/20 proposal is to mitigate price, the wholesale suppliers’ responses in the NERA Supplier Survey demonstrate why the proposal should fail. The wholesale suppliers explicitly state that a truncated enrollment window would not render the Annual Product less risky than the blended product, and that revising products in a manner that limits the ability of customers to switch suppliers will result in additional risks. (*See* CES Ex. 2.0 at lines 155-78 *citing* Auction Manager Ex. 1.8; Huddleston Tr. at 253.)

2. The IIEC 7-day Proposal Would Place Substantial Strain On The Auction Process

At first blush, the IIEC's 7/20 proposal seems to provide a rather elegant solution. Upon further review, however, implementation of the IIEC's 7/20 proposal is fraught with logistical and administrative problems. As ComEd witness McNeil observes, the IIEC's 7/20 proposal is more complex for the utilities, customers, and the RESs. (*See* McNeil Tr. at 582-83.) The Coalition demonstrates how these practical problems would overwhelm both customers and the auction process itself. (*See*, *e.g.*, Staff Cross Ex. 13 attached hereto as Attachment 1; *see also* Papadimitriu/Domagalski Tr. at 730-32; CES Cross Exs. 10-13.)

One very important and practical barrier to implementation of the IIEC's 7/20 proposal is the short time remaining before commencement of the 2008 Auction. The Coalition demonstrates the multitude of steps, including customer and utility personnel education, and IT and billing system revisions that would have to occur well in advance of the 2008 Auction. The IIEC's 7/20 proposal runs counter to the underlying purpose of the Consumer Choice Act, which is to foster a competitive wholesale and retail electricity market to benefit all Illinois citizens. (*See* 220 ILCS 5/16-101(d).) Importantly, customers must "receive sufficient information to make informed choices among suppliers and services." (220 ILCS 5/16-101(e).) Thus, the Commission must enact policies that give the customers adequate and timely information to make their choices.

As noted above, the schedule in the instant proceeding was intended to allow enough time for incorporation of any material changes in the tariffs in time for the changes to be implemented in a timely manner prior to the next auction, which is scheduled to occur no later than January 2008. (*See* ICC Docket No. 06-0800 Initiating Order at 5.) The Coalition notes that the instant schedule was revised earlier, upon a joint motion of the utilities and the AG. To this point, Staff warned that "Suspending the schedule in this docket, even for a short time, would virtually guarantee that potential improvements would not be able to be incorporated into the next scheduled reverse auction that is set to take place in January of 2008." (*See* Staff's Response to Motion to Suspend Schedule at 4.) The Coalition shares Staff's concerns.

Moreover, the Auction Manager states that customers must finalize their pre-designations (7 or 20 days) by September 6, 2007. (*See* Auction Manager Tr. at 504.) The Auction Manager states on cross-examination that her proposed schedule calls for the Commission to issue its Final Order on or about August 6, 2007. (*Id.*) Accordingly, then, customers would have less than one (1) month between the date of the Commission's Final Order and the final day upon which they must register their enrollment window preference.

Implementation of the IIEC's 7/20 proposal requires more than a customer's "X" in a check box, as Staff witness Kennedy attempted to assert. (*See* Kennedy/Zuraski Tr. at 679.) In order to satisfy the Auction Manager's timeline, the following procedural steps, must occur during this one month period:

1) Incorporation of the Commission findings into customer education materials (ComEd has acknowledged that it has not even begun the process of putting together any educational material (*see* McNeil Tr. at 586));

2) Preparation, review, and finalization of the utilities' customer education, which includes (but is not limited to): mailings and media releases (Ameren discussed at length the education that was necessary for the first auction and confirmed that a similar effort would be appropriate to implement the IIEC 7/20 proposal) (*see* Staff Cross Ex. 13 attached hereto as Attachment 1; Blessing Tr. at 342-44);

3) Training and education of utilities' internal personnel (*see* Blessing Tr. at 344-45);

4) Revisions and dissemination of any revised General Account Agent designation forms that entitle Agents to designate enrollment window preferences on behalf of customers (*see* McNeil Tr. at 581-87);

5) Dissemination of customer education materials to customers, agents and consultants. This could take as long as a week to occur (*see* Kennedy/Zuraski Tr. at 679-80);

6) Scheduling of open houses, subject meetings, seminars, and other educational meetings for customers, agents, consultants, and consumer advocates so that they fully understand the importance of the 7/20 designation in August 2007 for an enrollment window that opens in February 2008 for power that flows in June 2008;

7) Attaining all required corporate or governmental approvals from customers and/or their Agents or consultants for their specific window designation;

8) Attaining customers' pre-designations by September 1, 2007 to allow for appropriate time to properly enter and verify the data;

9) Reviewing and ensuring the accuracy of the utilities' data input process for customer notices;

10) Addressing errors or questions with respect to customer pre-designations or the data inputs (the utility must follow-up with any customers for which the designation is not clear) (*see* McNeil Tr. at 588-89); and

11) Verifying the sufficiency of the 7-day window designations with the Auction Manager (*see* Auction Manager Tr. at 504; McNeil Tr. at 585).

If the Commission were to adopt IIEC's 7/20 proposal, ***all eleven*** **(11) of these steps must occur in a single month**. After the September 7, 2007 release to the Auction Manager, but prior to the opening of the enrollment windows, the utilities would have to notify customers whether a sufficient number of customers pre-selected the 7-day window. The utilities also would have to confirm a customer's selection of the 7-day or 20-day enrollment window and confirm when that customer's respective enrollment window opens and closes. (*See* McNeil Tr. at 586, 588; Blessing Tr. at 342-43; Auction Manager Tr. at 504-05.) The IIEC's 7/20 proposal is simply not feasible.

Finally, the implementation of the IIEC's 7/20 proposal depends largely on the nature and quality of the utilities' efforts. The Coalition does not question the utilities' desires to implement the IIEC's 7/20 proposal; rather, the Coalition questions the utilities' *abilities* to do so. To date, and as a result of recent billing debacles, the Coalition is not optimistic that the utilities can implement the IIEC's 7/20 proposal without significant disruption to the market, to customers' operations, and to RESs' operations. The instant record demonstrates Ameren's and ComEd's respective difficulties in educating customers about the structure and in executing enrollment of customers following the 2006 Auction. IIEC witness Stephens provides examples of Ameren's failure to properly prepare and submit these materials. (*See* IIEC Ex. 1.0 at lines 305-19.) The Coalition provides significant details regarding the operational difficulties that ComEd has encountered regarding the January 2007 transition – resulting in a failure to accurately enroll, switch, and bill customers that as of the time of hearings had persisted for nearly four (4) months. (*See* CES Cross Ex. 10-13; Papadimitriu/Domagalski Tr. at 732.) Moreover, Ameren admits that the utilities could have communicated better with customers during the 2006 auction process. (*See* Blessing Tr. at 345.) Finally, it appears that the utilities' have not begun to prepare materials to educate consumers about the IIEC's 7/20 proposal. (*See* Blessing Tr. at 341-42; McNeil Tr. at 586.)

Simply put, the current schedule does not provide sufficient time to implement the IIEC's 7/20 proposal and the Coalition questions the utilities' ability to implement the IIEC's 7/20 proposal without causing serious market disarray or customer confusion. ComEd has admitted as much. (*See* McNeil Tr. at 577-78.) For the reasons cited above, the Coalition asks the Commission to reject the IIEC's 7/20 proposal.

D. Conclusion: The Commission Should Affirm Its Conclusions in the Procurement Dockets, and Maintain the 45-Day Enrollment Window

The Commission should retain, if not expand, the 45-day enrollment window. In the Procurement Dockets, the Commission found that 45 days provided the appropriate balance between providing customers with flexibility and mitigating any risks to the auction process. Nothing in the evidentiary record of the instant proceeding should cause the Commission to abandon its prior findings.

A reasoned analysis of this issue indicates that if the enrollment window is too short, many customers simply will accept the utility supply option, not because it is the most economical option, but rather because customers lack sufficient time within the confines of the enrollment window to implement and complete the decision-making steps necessary to evaluate the available alternatives. (*See* CES Ex. 2.0 at lines 333-43.) The Coalition respectfully asks the Commission to reaffirm its prior decisions and retain the 45-day enrollment window.

IV.

AUCTION DESIGN ISSUES

(Issues Outline topic III.F)

The parties' positions regarding the appropriate Auction design and customer groupings continued to evolve up until (and even throughout) the evidentiary hearings. With the number of modifications and changes proposed, it is difficult to assess accurately and understand fully the positions of some of the parties, much less the related implications of the proposals, until the proposals are submitted formally in the parties' Initial Briefs. The Coalition looks forward to reviewing the final auction design proposals that the parties make in their Initial Briefs, and reserves its right to comment upon those proposals.

Regardless of the ultimate details of the proposals, in evaluating the merits of the proposed changes to the Auction design, there are four (4) distinct principles the Commission should consider:

1. **Increase Customer Flexibility:** *Does the proposed change maintain and enhance customers' flexibility in choosing their electricity supply?*

Successful competitive markets require the adoption of policies and structures that do not limit the customers' ability to buy, and energy suppliers' ability to offer, competitive products and services. (*See* CES Ex. 1.0 at lines 287-91.) The Commission should adopt revisions to the Auction products only to the extent that such revisions enhance customer flexibility and encourage the development of competitive options for Illinois customers consistent with the mandate in Section 16-101A(d) of the Customer Choice Act that the Commission promote competition.

2. **Group Similar Customers Together**: *Does the proposed change properly group together like-customers with similar switching risks?*

Ultimately, grouping similar customers together through product symmetry between the utilities will enable wholesale suppliers to allocate more accurately the costs and risks associated with serving comparable customer classes. (*See* CES Ex. 3.0 at lines 230-33.) The Coalition, Staff, CUB, and even the utilities have endorsed the principle of grouping together customers with similar switching propensities, so that switching risk can be reflected more accurately in the Auction bids. (*See id.*; Staff Ex. 1.0 at lines 237-50; CUB Ex. 1.0 at lines 511-15; ComEd Ex. 1.0 at lines 291-308, 318-25; Ameren Ex 6.0 at lines 262-76.) Indeed, this principle was the basis for the Commission establishing the customer groupings for the 2006 Auction. (*See ComEd Procurement Order* at 123-24.)

3. **Increase Product Uniformity:** *Does the proposed change enhance the uniformity of products the different utilities offer?*

The Commission should judge the merits of the various proposals to modify the Auction products based on the principle that symmetry between the products of ComEd and Ameren would benefit customers and suppliers. (*See* CES Ex. 3.0 at lines 202-33.) Having similar product definitions between the utilities will facilitate the development of inter-product competition among suppliers, which, as Staff observes, "increases the willingness for suppliers to switch between the products, further increasing competition," that "benefits customers." (*See* Staff Ex. 1.0 at lines 345-49. *See also* CES Ex. 3.0 at lines 224-28.) Staff further observes that inter-product competition is important because it allows customers to be served in an efficient manner and allows the suppliers to find the product that is best for them, which they can then make available to the customer cheaply. (*See* Kennedy/Zuraski Tr. at 685.) Ameren witness Nelson likewise acknowledges that allowing interchangeability between the Ameren and ComEd products allows suppliers to adjust and move their bids among the products to ultimately reach a more efficient market price. (*See* Nelson Tr. at 314.)

4. **Avoid Unnecessary Change**: *Does the proposed change produce solutions that are the least disruptive to the status quo?*

Changes to the Auction design run the risk that they could disrupt the successful policies already incorporated in the current Auction process. Absent clear and convincing evidence of customers' benefits, the Commission should be extremely reluctant to alter the structures that have allowed the competitive market to flourish for commercial and industrial customers. (*See* CES Ex. 1.0 at lines 413-17.)

The Coalition looks forward to applying these principles in its review of the various proposals the parties will submit in their Initial Briefs. By asking these questions and properly applying these principles, the Commission should adopt only those auction design proposals that empower customers to exercise choice and bolster the development of the competitive market.

V.

MIGRATION RULES

(Issues Outline topic III.D.3)

ComEd and Staff propose certain modifications that would restrict the flexibility of ComEd's customers to choose RES service. Limiting customers' ability to choose alternative providers of their electricity supply flies in the face of the goals of the Customer Choice Act, and neither ComEd nor Staff justify the proposed new limits.

The existing ComEd and Ameren tariffs enumerate various rules regarding customers' ability to switch to and from the various electricity options outside of enrollment windows. For both ComEd and Ameren, a term of service extends for twelve (12) monthly billing periods. (*See* CES Ex. 1.0 at lines 376-77.) However, while ComEd currently permits large non-residential customers who automatically renew fixed-price electricity service from ComEd to elect to obtain electric supply service from an alternative supplier prior to the end of such customers' May monthly billing period, Ameren does not. (*See Ameren Procurement Order* at 214-15.) In other words, ComEd's tariffs currently permit customers that default to ComEd's Annual product (as opposed to those that affirmatively elect to take BES-NRA service) to switch to RES service outside of the 45-day enrollment window and during the supply term.[7]

[7] There are two ways in which a customer can take a utility's fixed-price default service. First, the customer can affirmatively elect to take the utility's fixed-price default service. Second, the customer presently taking the utility's fixed price default service will continue to do so through no affirmative action it its part.

Conversely, Ameren's current tariffs do not provide customers that default to Ameren's Annual product with similar flexibility.

In the Staff Report, Staff recommended that the Commission limit customers' ability to migrate off the utilities' Fixed Price Blended and Annual Products (ComEd: BES-NRB & BES-NRA; Ameren: BGS-FP & BGS-LFP). (*See* Staff Report at 42-49.) In addition to recommendations in the Staff Report, Staff filed Direct Testimony that proposes the Commission modify ComEd's large non-residential customers' rights to leave fixed-price service from ComEd. (*See* ICC Staff Exhibit 1.0 at lines 300-15.) ComEd indicates its support of Staff's recommendation, which would render ComEd's migration rules more akin to Ameren's. (*See* ComEd Ex. 1.0 at lines 443-62.) The practical effect of these modifications would be to restrict customers' access to the competitive market until the next enrollment window. The Commission should reject this unjustified proposal.

Limiting a customer's ability to switch to RESs is not justified, especially when considered in tandem with proposals to truncate the enrollment window from 45 days to 20 days. (*See* CES Ex. 2.0 at lines 383-84.) This proposal targets customers that do not elect RES or ComEd service during the enrollment window. Setting aside the reasonable assumption that a portion of these customers may have failed to make an election because they lacked sufficient time in which to make a supply decision, it is imperative that the Commission maintain structures that foster competitive market conditions in which customers are allowed to switch and have access to the competitive retail market. If customers can obtain supply arrangements by switching to alternative suppliers that meet their needs, they should have the right to do so, free of any newly-instituted switching restrictions that differ from those currently in effect. (*See id*. at lines 422-24.)

Staff and ComEd justify their respective proposals by claiming these restrictions are necessary to reduce risk premiums embedded in the utilities' Annual Products. (*See* Staff Ex. 1.0 at lines 310-15; ComEd Ex. 1.0 at lines 446-48.) However, neither Staff nor ComEd provide any evidentiary justification for their unsubstantiated claims that customer switching outside of the enrollment window leads to any measurable level of increased risk. (*See* CES Ex. 2.0 at lines 383-86.) Significantly, neither the Auction Manager nor any wholesale supplier provides any testimony identifying this issue as a meaningful risk. With no evidentiary support, the Commission has no legitimate basis upon which to conclude that customer switching outside of the enrollment window leads to risk and a related risk premium. To do so would amount to pure speculation.

The underlying purpose of the Customer Choice Act is to foster a competitive wholesale and retail electricity market to benefit all Illinois citizens. (*See* 220 ILCS 5/16-101(d).) Staff and ComEd would have the Commission deliberately thwart this mandate. This danger would be increased if the Commission were to constrict the enrollment window to just 20 days. The Coalition respectfully asks the Commission to reject these proposals as being contrary to the pro-competitive goals of the Customer Choice Act, and affirmatively preserve and expand the customers' ability to switch to a RES after the enrollment window closes if the customer defaults to the utilities' fixed-price, bundled rate (ComEd's Rate BES-NRA or Ameren Rate BGS-LFP).

CONCLUSION

The Commission's leadership has provided a steadying force in the evolution of the competitive market in Illinois. The Commission now must decide whether it is appropriate to significantly modify the rules governing the next Illinois Auction. Given the success of the Illinois Auction, the Coalition strongly urges the Commission to continue to adopt policies aimed at empowering customers and to avoid adopting administrative or bureaucratic mechanisms that unduly restrict customers' access to competitive options.

The key to the success of competitive markets has been the establishment of viable, market-based rate structures, as established in the Illinois Auction and in other Commission proceedings, that do not limit customers' ability to buy, and energy suppliers' ability to offer, competitive products and services. Because of a greater freedom for contract design in the competitive retail energy market than that permitted under tariffed services, many customers have been able to tailor their electric supply needs to better match the required flexibility of their operating needs, leading to both direct energy cost savings and other operational benefits.

The Coalition respectfully requests that the Commission enter an Order that:

(1) Affirms and maintains the Commission's previous findings in the Procurement Dockets that approved a 45-day enrollment window for customers to evaluate their supply options during this second and subsequent Illinois Auctions;

(2) Declines to adopt the IIEC's 7/20 proposal as it is too administratively cumbersome;

(3) Rejects certain parties' recommendations to restrict eligible ComEd customers that default to the Annual Product from switching to RES service after the enrollment window closes; and

(4) Grants such other further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

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

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

Christopher J. Townsend
Joseph E. Donovan
Christopher N. Skey
William A. Borders
DLA Piper US LLP
203 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601
(312) 368-4000

DATED: May 30, 2007

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

ATTACHMENT 1 TO THE INITIAL BRIEF OF THE COALITION OF ENERGY SUPPLIERS

ICC Staff Cross Ex. 13

THE RESPONSE OF THE COALITION OF ENERGY SUPPLIERS TO DATA REQUEST POL-CES 1.01 OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

POL-CES 1.01:
On page 6 of their rebuttal testimony, CES witnesses Mr. Domagalski and Ms. Papadimitriu state, "We believe that Mr. Stephens' proposal is overly burdensome and will only serve to unnecessarily complicate customers' enrollment process." Please state to whom Mr. Stephens' proposal would be overly burdensome. Please provide the witnesses' complete basis for their position that Mr. Stephens' proposal would be overly burdensome.

Response:
The Coalition objects to Staff's request as being overly broad and unduly burdensome. Without waiving and subject to its general and specific objections, the Coalition believes that the most obvious burden would fall on customers who must familiarize themselves with and thoroughly digest these modifications that, particularly in tandem with other proposed modifications that limit access to the competitive market, would require them to make supply decisions within very short timeframes. Mr. Stephens came to a similar conclusion when he stated that "customers would need to prepare in advance, so that decision-making could be done very quickly." (IIEC Ex. 1.0, lines 197-201)

The education of other integral stakeholders in the competitive retail electric market, including agents, brokers, consultants, and RESs, also would be necessary. In addition, Mr. Stephens' proposal may require a greater number of customers to retain agents, brokers, or consultants to assist them with their binding one-year electric supply decision within a mere 7 calendar days. Given the short time frame within which decisions would have to be made, it would be reasonable to assume that this proposal may increase the costs associated with customer retention of agents, brokers, or consultants.

Mr. Stephens' proposal may also very well require revisions to the ComEd and Ameren General Account Agency forms to specifically acknowledge such Agents' authority to make "7-day" or "20-day" enrollment windows decisions.

Moreover, the utilities would have to educate their own personnel that will be charged with carrying out the proposal. We have witnessed countless examples of accidental gaps in notifications and unintended IT and billing system glitches, both during and after the mandatory transition period. This problem was particularly pervasive during the implementation of the new rate structures on January 2, 2007. We assume that the Staff is aware of these significant problems that have been experienced by customers and RESs in the ComEd service territory. Accordingly, Mr. Stephens' proposal would require substantial IT changes to the ComEd and Ameren billing and IT systems to support this administrative task. If this task cannot be accommodated by existing IT systems, a manual process could be required. Due to the large number of affected customers, a manual process would be fraught with the potential for errors. Regardless, the utilities must first develop very clear and succinct processes to implement Mr. Stephens' proposal.

Therefore, sufficient testing and safeguards would have to be implemented to prevent history from repeating itself.

Further, clearly defined timetables and criteria must be formed so as to render the process as objective and transparent as possible. For instance, the utilities would have to establish very clear rules to determine if a customer had properly submitted its choice for inclusion in the shorter window; provide notice to the customer (and/or the customer's agent, broker, or consultant) that the submission had been accepted; and allow for the customer or the customer's agent to appeal any preliminary determination. The Commission's review and approval of the utilities' communication pieces would be appropriate to ensure that the utilities adhere to the Commission's integrated distribution company regulations, among other reasons.

Moreover, Mr. Stephens' proposal, as modified by ComEd, would require the Auction Manager, in consultation with Staff and the utilities, to evaluate the eligible load under each window option. According to ComEd, if there is an insufficient amount of load of customers electing the 7-day window to create a viable new auction product, all of the CPP-A eligible load would be considered as a single product and all CPP-A eligible customers would be subject to the standard 20-day enrollment window to make their elections. If this situation arises, this will also require the adoption of very detailed processes and procedures for how customers are notified of such a situation. These detailed processes and procedures would have to be created, communicated, and understood well in advance of the Auction.

Additionally, customers' decisions, the Auction Manager's determination that sufficient load elected the 7-day window, and communication regarding these steps all must occur prior to completion of the Part 2 Bidder Application process, during which each Qualified Bidder must submit indicative offers for each Section for which it is applying, provide its preliminary interest in each product of each Section for which it is applying; and post a letter of credit proportional to its indicative offer for each of the Sections for which it is applying.

Lastly, we note that the creation of an additional, somewhat contingent, Auction product may create new costs and expenses that presumably the utilities will seek to recover. Questions regarding the prudency of these costs in the event that insufficient load elected the 7-day window must be settled before the utilities began incurring them.

These are some of the aspects of Mr. Stephens' proposal, however well-intentioned, that we find to render it overly burdensome.