

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION :  
On Its Own Motion :  
 :  
Investigation of Rider CPP of Commonwealth : Docket No. 06-0800  
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. :

**AMEREN ILLINOIS UTILITIES' INITIAL BRIEF**

**MAY 30, 2007**

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## AMEREN ILLINOIS UTILITIES' INITIAL BRIEF

### I. Introduction and Summary

The Ameren Illinois Utilities hereby submit their Initial Brief. The chart below provides a summary of the Ameren Illinois Utilities' proposed products for the 2008 Illinois Auction:

**Ameren's Proposed Products**

Size of Customer	Affirmative Election*	Result of Failure to Elect**	Annual v. Blended	Enrollment Window	Ability to Return***
1 MW and above	Yes	Default to Hourly	Annual Product #1	7 or 20 days	No
150 kW - 999 kW	No	Default to Annual, able to migrate at any time	Annual Product #2	No	Yes, with a 12-month minimum stay
0 - 149 kW	No	Default to Blended, able to migrate at any time	Blended (1,2 & 3 year contracts)	No	Yes, with a 12-month minimum stay

\* Refers to whether action is necessary for a customer presently on fixed-price default service to continue to take fixed-price default service.

\*\* Refers to the failure of customers on fixed-price default service to make an election during the enrollment window.

\*\*\* Refers to the ability to return to a fixed price annual service. The customer can return to an hourly product.

Failure to address any of the issues noted in the Brief Outline does not indicate concession of that issue. The Ameren Illinois Utilities reserve the right to address any such issue in their reply brief.

### II. Uncontested Issues

#### A. Use of an Auction

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

The first Illinois Auction included two sections: the fixed price section and the hourly price section. Each section included the products for Commonwealth Edison Company and the Ameren Illinois Utilities. The Ameren Illinois Utilities' product in the hourly price section was the BGS-LRTP product, which is a full requirements supply product to serve those customers

with peak demands greater than or equal to 1 MW, who did not choose either the fixed priced option (BGS-LFP) or to take supply from a Retail Electric Supplier (“RES”). BGS-LRTP is priced with a fixed capacity charge and energy prices that vary hourly with the MISO real-time markets. (AIU Ex. 2.0, Blessing Direct, p. 2-3.)

The first Illinois Auction resulted in a price for the BGS-LRTP product of \$276.19/MW-Day for 29 of the 37 tranches originally sought in the auction. At a September 14, 2006 meeting, the ICC voted to open an investigation of the results of the hourly price section, stating:

[T]he hourly price section did not generate as much interest as initially thought. This is likely attributable to the high level of uncertainty associated with the demand for this product. The hourly prices produced by the auction may make real-time pricing an uneconomic alternative for retail customers.

Docket No. 06-0624, September 14, 2006 Initiating Order.

As outlined in the Illinois Auction rules, because the ICC opened an investigation of the hourly price section, the Auction Manager did not issue a Declaration of Successful Result for that section and the Ameren Illinois Utilities did not execute the associated SFCs. Effectively, the results of that section were rejected. In the manner provided by the terms and provisions of Rider MV, the Ameren Illinois Utilities instead procured the BGS-LRTP supply outside of the auction process using bilateral contracts for necessary capacity and acquiring energy through the MISO markets. (AIU Ex. 2.0, Blessing Direct, p. 3.)

In testimony, the Ameren Illinois Utilities identified three factors that they believe contributed to the lower than expected level of interest in this product: 1) uncertainty of the expected supply obligation; 2) the risks borne by suppliers; and 3) costs borne by suppliers related to customers taking service from a RES. (AIU Ex. 2.0, Blessing Direct, p. 4.) *First*, as stated in the ICC order, there is a high level of uncertainty associated with the demand for this product. This uncertainty arises given the multiple supply options (BGS-LFP, BGS-LRTP, RTP-

LI and RES) available to the pool of customers who could be supplied via BGS-LRTP Supply. While all of the Ameren Illinois Utilities' retail customers have the right to choose, this pool represents the largest customers; a group which has the greatest propensity to switch between supply options. This combination of both the availability of supply options and propensity to switch creates a considerable amount of volumetric uncertainty for potential suppliers. In other words, the suppliers could have made necessary arrangements and incurred cost to serve load that may never materialize. (AIU Ex. 2.0, Blessing Direct, p. 5.)

*Second*, As with all of the BGS products, the BGS-LRTP product shifted much of the risk in the marketplace to the suppliers, including those associated with ancillary services, capacity volume, capacity price, and the MISO Revenue Sufficiency Guarantee ("RSG") costs, among others. While this was true of the BGS-LFP and BGS-FP products as well, it must be noted that for the BGS-LRTP product the costs associated with these items had to be recovered through the fixed cost component. Once more, BGS-LRTP suppliers were faced with the risk of incurring costs that they may not be able to recover. (*Id.*)

*Third*, unlike BGS-LFP customers who are obligated to take such service for a fixed term (17 months in the first auction), the switching rules permit a BGS-LRTP customer to switch back and forth to RES supply upon just seven days notice. As such, the BGS-LRTP suppliers were expected to stand ready to serve all customers who choose to take service from a RES. (*Id.*)

Ameren Illinois Utilities' witness Leonard Jones testified that more detail should be included in the tariffs on how purchases of power and energy from bilateral markets will occur in the event of a contingency, in the form of an appendix added to Rider MV. (AIU Ex. 3.0, Jones Direct, p. 7.) Such an appendix would detail how capacity and ancillary services are procured by each of the Ameren Illinois Utilities and the associated calculation of charges to customers. The

process itself would not be changing under this proposal, but clarifying language would better explain the process in effort to minimize any confusion in this area.

Specifically, the Ameren Illinois Utilities recommend submitting Day Ahead demand bids based upon the expected loads for the next day if purchases from MISO Locational Marginal Price (“LMP”) markets are necessary, thus reducing exposure to MISO Revenue Sufficiency Guarantee (“RSG”) charges. (AIU Ex. 3.0, Jones Direct, p. 6.) In the MISO Markets, load that is bid and cleared day ahead is settled at the day-ahead LMP price. Any deviation from the load which clears day ahead is settled at Real Time LMP prices and is subject to RSG charges. While day ahead LMP prices have averaged slightly above real-time LMP prices since the start of the MISO Markets, real time LMP combined with RSG is noticeably higher than day ahead LMP. (AIU Ex. 3.0, Jones Direct, pp. 7-9; AIU Ex. 2.0, Blessing Direct, pp. 16-18.) Presently, Rider MV points only to the real-time market, thereby subjecting 100% of this load to real time LMP plus RSG. Bidding the expected load into the day-ahead market is therefore expected to result in lower cost contingency supply purchases.

An appendix to Rider MV that would address contingency purchases would address procurement of three main cost components of contingency purchases, specifically, capacity, ancillary services, and energy-related costs (including market settlement). (AIU Ex. 3.0, Jones Rebuttal, p. 7.) In the event any of the categories of service are not provided through the auction and the Commission has not approved an alternative procurement mechanism, the appendix would also address recovery of costs from customers. The categories of service are BGS-FP (Company-supplied customers with demands under 1,000 kW), BGS-LFP (Company-supplied customers at a fixed price with demands at 1,000 kW or more), and BGS-LRTP (Company supplied customers at an hourly price with demands at 1,000 kW or more).

Procuring capacity, ancillary, and energy-related services will have common threads across all categories of service. Capacity purchases would be made in advance of the summer season to cover expected capacity requirements for summer months, and in advance of each non-summer month for recovery in the non-summer month. Ancillary services would continue to be purchased from MISO-administered markets. Energy-related service would also be purchased from MISO-administered markets, but instead of relying entirely on real-time market purchases, day-ahead demand bids would be allowed in an effort to reduce RSG cost exposure. (AIU Ex. 3.0, Jones Rebuttal, pp. 7-8.)

Recovery of each of the cost components may vary among each of the categories of service. (AIU Ex. 3.0, Jones Rebuttal, p. 8.) For the BGS-FP category, the majority of these customers are metered with watt-hour metering. Accordingly, recovery of costs would be through a monthly per kWh charge, similar to the present recovery mechanism. For the BGS-LFP category, metering that records at least hourly intervals is used. Accordingly, a demand based charge may be used for the recovery of demand-related costs, and a \$/kWh energy charge would be used for recovery of energy costs. Customers in the BGS-LRTP category also are interval metered, and thus a demand based charge may be used for the recovery of demand-related costs, and a \$/kWh energy charge would be used for recovery of energy costs.

Certain costs of providing contingency supply may not be known or realized until after the customer's normal billing period. (*Id.*) Because customers in the BGS-LRTP are able to switch to and from this service to service with a Retail Electric Supplier ("RES") on relatively short notice, waiting to recover costs based on future customer usage is problematic. For example, energy-related costs such as RSG charges incurred to serve customers in March may not be known until April. If recovery of costs applies to May estimated usage, several customers

who took BGS-LRTP service in March could have switched to service with a RES after March. In this case, costs incurred to serve those customers will be borne by remaining BGS-LRTP customers (which is how current tariff language would direct recovery of the costs). The new appendix would also address this cost/rate imbalance by recovering costs to serve directly from customers that used BGS-LRTP service.

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

Staff made the following recommendation regarding the Hourly Price section product for the Ameren Illinois Utilities:

For the Hourly Price section, plan on using the alternative procurement methods adopted following the September 2006 rejection of the HP Section auction results, until such time that such alternatives can be fully evaluated.

Post-Auction Report of Staff (Dec. 20, 2006, 06-0800, p. 35.) The Ameren Illinois Utilities agree with Staff's assessment, and presented testimony regarding three recommendations that could make the BGS-LRTP product more attractive in the auction: (1) 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); (2) remove components that create risk for the suppliers, such as ancillary services, which could be addressed through a "pass-through" mechanism; (3) 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. (AIU Ex. 2.0, Blessing Direct, p. 6.)

While these recommendations should make the BGS-LRTP product more attractive to suppliers in the auction, it is unlikely that they would increase the level of interest to levels sufficient to satisfy the concerns that led to the ICC opening an investigation of the results of the

hourly price section of the first Illinois Auction. (AIU Ex. 2.0, Blessing Direct, p. 7.) For that reason, 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.

- a. **Bounding the amount of Hourly Price capacity procured from suppliers with both an upper and lower limit, with the utilities being responsible for other amounts under an alternative procurement method.**
- b. **Remove components that create risk for the suppliers, such as ancillary services, and that could be procured through a "pass-through" mechanism.**
- c. **Use seasonal payment factors for capacity.**

**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.**

The Ameren Illinois Utilities support Auction Manager Chantale LaCasse's recommendation that certain aspects of the application forms that appear confusing to bidders be clarified, including the requirement to obtain a registered agent. (AM Ex. 1.0, LaCasse Direct, pp. 20-21.) In general, making the application forms clear and easy to complete minimizes the risk that a prospective supplier will submit a deficient application and be unable to remedy the deficiencies by the time required. Minimizing the risk of deficiencies, while maintaining all the necessary requirements to the auction process, maximizes participation at the auction. Maximizing such participation furthers the goal of obtaining reliable supply for customers at competitive market prices.

Dr. LaCasse recommends implementing this proposal through modification of the application forms to clarify aspects that appeared confusing to bidders. These include:

- Section A.7 of the Part 1 Application where prospective suppliers signify their ability to comply with the PJM requirements of the CPP Supplier Forward Contracts;
- Section A.6 of the Part 1 Application where prospective suppliers provide financial information or indicate that such information is unavailable; and
- Section B.2 of the Part 2 Application where qualified bidders specify the pre-auction security that is provided with their application.

The modified Part 1 Application Form and the Part 2 Application Form have been entered into evidence as Auction Manager Exhibit 1.4 and Auction Manager Exhibit 1.5, respectively.

**2. Additional documentation regarding Registered Agent requirement.**

The Ameren Illinois Utilities support Auction Manager Chantale LaCasse's proposal to provide prospective suppliers an additional document regarding the Registered Agent requirement well in advance of the application process. (AM Ex. 1.0, pp. 21-22.) This additional information will allow prospective suppliers and their guarantors to begin the process of obtaining such agents sooner and will assist them in meeting this obligation. This document was entered into evidence as Auction Manager Exhibit 1.6, and provides additional information regarding the requirement to be a Registered Agent. Dr. LaCasse further proposed that a list of entities be developed that are willing to act as Registered Agents to Illinois Auction applicants and guarantors, and that this list be made available to prospective suppliers upon request.

**3. Modification of pre-auction letter of credit.**

Staff witness Rochelle Phipps recommends that all modifications to the respective formats for pre- and post-auction letters of credit that were accepted for the 2006 auction be

accepted in the next auction so that only new revisions to the standard format will be considered during the application process for the next auction. (ICC Staff Exhibit 2.0, lines 86-89.) Ameren Illinois Utilities' witness Mr. Moloney agreed with Ms. Phipps that modifications that were acceptable as a part of the 2006 Illinois Auction process should also be acceptable for the 2008 auction. (AIU Ex. 4.0, Moloney Rebuttal, p. 4.) However, consistent with the views expressed by Ms. Phipps, Mr. Moloney testified that if a new standard letter of credit format is established that would make previously-accepted changes inapplicable, then the new format should supersede such previously acceptable changes. Any new standard letter of credit format should be seen as an enhancement to the prior letter of credit format and should become the new baseline off of which suppliers may pursue changes in accordance with Illinois Auction processes.

The Ameren Illinois Utilities support the Auction Manager's recommendation that the Pre-auction Letter of Credit be re-worded to eliminate the word "therefor." (AM Ex. 1.0, LaCasse Direct, pp. 22-23.) While the current form of the Pre-auction Letter of Credit is not incorrect, many financial institutions assumed that the Pre-auction Letter of Credit contained a typographical error and replaced "therefor" with "therefore." In so doing, they changed the meaning of the text in an unacceptable manner, and prospective suppliers were required to work with their financial institution to provide an amendment to this letter of credit. The suggested change, as well as changes to conform the letter of credit to the 2008 Auction, are provided in Auction Manager Exhibit 1.7.

This recommendation, if implemented, contributes to minimizing the risk that a prospective supplier will submit a deficient application and be unable to remedy the deficiencies by the time required. (*Id.*) Minimizing the risk of deficiencies, while maintaining all the

necessary application requirements of the auction process, maximizes participation at the auction. Maximizing such participation furthers the goal of obtaining reliable supply for customers at competitive market prices.

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

The Ameren Illinois Utilities support the Auction Manager Chantale LaCasse's proposal to introduce a time window during which applications would be processed. (AM Ex. 1.0, LaCasse Direct, pp. 23-24.) Prospective suppliers could submit their applications at any time before or during the application window. If an application were submitted before the application window, it would be processed on the first day of the application window. If an application were submitted during the processing window, it would be processed on the day it was received.

Implementing this proposal would improve the auction process because it would allow the Auction Manager's Office to adequately manage its resources, potentially lowering the cost of running the auction. (*Id.*) Processing applications requires a minimum of three staff members to ensure a thorough evaluation of the application. When a processing window is not specified, from the time at which the Part 1 Applications are posted in final form, the Auction Manager's Office must be staffed with at least three individuals on a full-time basis to process applications in advance of the deadline 'just in case' any should arrive. Announcing a specific date range during which applications are processed would eliminate the need to maintain additional staff at the Auction Manager's Office during the weeks leading up to the application deadlines and potentially reduce the cost of administering the auction.

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

The Ameren Illinois Utilities' witness Timothy I. Moloney testifies that suppliers using a common guarantor should not be eligible individually for the full amount of unsecured credit as indicated in the Table in Section 6 of the SFCs. (AIU Ex. 4.0, Moloney Direct, pp. 3-4.) Rather, the guarantor should be eligible for unsecured credit in accordance with Section 6 of the SFCs, and unsecured credit for such guarantor should be divided appropriately among those entities for which the guarantor is providing a guaranty. If a single guarantor is responsible from a creditworthiness standpoint for more than one supplier (*i.e.*, provides a guaranty for more than one supplier), then dividing that guarantor's unsecured credit among such suppliers will ensure that the guarantor will not receive amounts of unsecured credit in excess of what is indicated in the Table in Section 6 of the SFCs.

Staff witness Rochelle Phipps also testified that language should be included in the SFCs clarifying that a guarantor will be granted a single credit limit to be applied to all auction supply agreements for which it guarantees payment obligations, and that this single line of credit would be applied whether the guarantor is providing a guaranty for one supplier or for more than one supplier, and proposed language modifications. (ICC Staff Exhibit 2.0, lines 99-138.) The Ameren Illinois Utilities agree with Ms. Phipps' view and recommend that the following sentence be inserted just prior to the final sentence within BGS-FP SFC Section 6.4(i)(a) as follows: "Similarly, a Guarantor will be granted a single Credit Limit to be applied to all BGS-FP Suppliers and BGS-LFP Suppliers whose payment obligations under BGS Supply agreements

the Guarantor guarantees.” This language, proposed by the Ameren Illinois Utilities and by ComEd, would serve the same purpose as the language proposed by Ms. Phipps. (AIU Ex. 4.0, Moloney Rebuttal, pp. 5-6.)

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

Ameren Illinois Utilities’ witness James Blessing proposed modifying Section 9.2 of the SFC to provide for weekly, rather than bi-monthly payments to suppliers in the event the Ameren Illinois Utilities’ credit rating drops below a minimum rating, which is expected to reduce the suppliers’ credit risk related to utility default and thus result in a lower overall expected cost. (Blessing Direct, p. 15.)

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

The Ameren Illinois Utilities proposed that affiliates who qualify for credit on their own should not each be eligible for the full amount of credit as indicated in the Table in Section 6 of the SFCs. (AIU Ex. 4.0, Moloney Direct, pp. 3-4.) Rather, unsecured credit for affiliates should be divided appropriately among such affiliates. The Ameren Illinois Utilities’ experience is that this approach is consistent with credit risk management practices in use throughout the energy industry. This approach limits credit exposure concentration that could otherwise set in if multiple affiliates under a single ultimate parent were allowed to qualify individually for material amounts of unsecured credit.

**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.**

**E. 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 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.**

In direct testimony, Dynegy proposed language changes in SFC damage provisions related to the failure of the Ameren Illinois Utility to accept Basic Generation Service – Fixed Pricing (“BGS-FP”) Supply that is symmetrical to the damage provisions contained in Section 5.3.b that result of a BGS-FP Supplier default. (DYN Exhibit 1.0 at page 10.) After reviewing Mr. Huddleston’s testimony and proposed changes to the SFC, the Ameren Illinois Utilities accepted the change in concept and agreed to make the following modifications to the SFC in order that Sections 5.3.b and 5.3.c be symmetrical:

**5.3.c Failure By the Company to Accept BGS-FP Supply Tendered by the BGS-FP Supplier**

Damages resulting from the failure of the Company to accept BGS-FP Supply tendered by the BGS-FP Supplier necessary to meet the BGS-FP Supplier Responsibility Share of BGS-FP Load under this Agreement shall consist of the positive difference (if any) between the amounts that would have been payable to the BGS-FP Supplier hereunder had the Company accepted the BGS-FP Supply tendered by the BGS-FP Supplier necessary to meet the BGS-FP Supplier Responsibility Share of BGS-FP Load under this Agreement minus the amount realized by the BGS-FP Supplier in disposing, in a reasonable commercial manner, of the BGS-FP Supply not accepted by the Company; provided, however,

that the Company shall not be required to accept quantities of Energy, Capacity or any other component of BGS-FP Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customers' instantaneous consumption of such component of BGS-FP Supply. **Damages include, but are not limited to the following:**

**(i) all charges that are assessed by the MISO to the BGS-FP Supplier that, but for the Company's failure to accept delivery, would not have been charged to the BGS-FP Supplier;**

**(ii) reasonable administrative and legal costs associated with disposing of the BGS-FP Supply for which the Company failed to accept delivery; and**

**(iii) financial hedging costs reasonably incurred by the BGS-FP Supplier as a result of having to dispose of BGS-FP Supply for which the Company was obligated, but failed, to accept delivery pursuant to this agreement.**

(AIU Ex. 6.0, Blessing Rebuttal, pp. 2-3.)

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

Dynegy proposes to modify Section 15.3 of the Ameren SFC to make this provision symmetrical. After reviewing Mr. Huddleston's testimony and proposed changes to the SFC, the Ameren Illinois Utilities are willing to accept the change as proposed with the exception that the proposed language will be inserted at the end of the third sentence rather than at the end of the second sentence. (AIU Ex. 6.0, Nelson Direct, pp. 9-10.) The following is a revised Section 15.3 of the Ameren SFC, with Mr. Huddleston's modification included:

15.3 Assignment

Parties shall not assign any of their rights or obligations under this Agreement without obtaining (a) any necessary regulatory approval(s) and (b) the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the Company agrees that it shall grant its consent to a proposed assignment by the BGS-FP Supplier if the proposed assignee meets all of the Company's creditworthiness requirements then in effect under Article 6. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 15.3 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement

with prior written notice to the BGS-FP Supplier but without the BGS-FP Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions and all necessary regulatory approvals are obtained **and further provided, however, that the proposed assignee meets all of the creditworthiness requirements then in effect under Article 6.** The BGS-FP Supplier may, with prior written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the BGS-FP Supplier under this Agreement directly to the designated assignee; **provided, however,** that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the BGS-FP Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement. The Company further agrees that, in the event necessary regulatory approvals to effectuate an assignment have been sought in good faith but that action by the regulatory body is pending, the Company shall accept the performance of the proposed assignee as a Party to this Agreement, as co-obligor with the BGS-FP Supplier proposing to assign its interest, until such approvals are obtained; **provided, however,** that, in the event the regulatory body declines to grant its approval, the request for approval of the assignment shall be deemed to have been rejected for good reason.

- 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.**

**F. 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.**

**G. 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.**

The Ameren Illinois Utilities support the Auction Manager's recommendations regarding the confidentiality of bidder information. (AM Ex. 1.0, pp. 32-37.) As Dr. LaCasse testified, it is inappropriate to make public all bidder information in the context of an auction like the Illinois Auction process. The auction process should provide as much information as possible to all stakeholders while preserving the confidentiality of bidder information necessary to promote participation. As stated in the Public Report of the Auction Manager, some types of information are appropriately made public, but making other types of information public is not in the public interest. Making this information public, or making it public too soon, can discourage participation by prospective suppliers and thus reduce competition at the auction, and in some cases could even promote anti-competitive behavior.

As an example of how releasing confidential information could hamper the auction's ability to meet its goals, some suppliers may consider their status in the auction (as a qualified bidder, for example) to be sensitive business information that reveals the suppliers' business plan and outlook. (*Id.*) This belief is not unreasonable. Not keeping this information confidential could deter participation from qualified suppliers that hold this point of view. Furthermore, if a supplier's status were known, it could only harm the supplier's bargaining position in the market when making supply arrangements to bid in the auction. Similarly, if shortly after the auction, the quantity and type of tranches that a supplier had won were to be made public, the supplier

would be put in a worse negotiating position to make any needed supply arrangements as any counterparty would know the obligations faced by the supplier. None of these results are desirable.

Keeping the confidentiality of certain auction methodologies is also important to getting the best prices for customers. (*Id.*) The auction volume guidelines are one such methodology. If bidders knew these guidelines, they could manipulate the system. If bidders, knowing the guidelines, are able to hide the true level of competitiveness from the Auction Manager, and if the Auction Manager, had it known the true level of competitiveness, would have cut back the volume, then the auction will close at prices higher than they otherwise would have.

This does not mean that no information should be released regarding the auction process. To the contrary, the Public Report of the Auction Manager provides a comprehensive narrative of the implementation of the auction process and includes information that had been kept confidential up to the release of this Report. The 2006 Auction established practices delineating the type of bidder and auction information that should be kept confidential during the auction process and determining whether such information would eventually be released.

The Ameren Illinois Utilities agree with Dr. LaCasse's recommendation to maintain practices regarding confidential information from the 2006 Auction in future auctions. (*Id.*) The 2006 Illinois Auction process struck the right balance between making information public where and when appropriate, and keeping it confidential when that serves the public interest and the goals of the auction. Confidentiality should generally be maintained in the same way for future auctions, with Dr. LaCasse's proposed improvements:

*First*, after completing one cycle of the auction process, the various kinds of information generated by the auction process are now better understood and the kinds of

information that should be kept confidential, as well as the kinds of information that could eventually be released, can be more precisely identified and documented. *Second*, the timing of the release of bidder and auction information should be revised to take into account the Commission's decision to conduct formal reviews after each of the first three auctions and to take into account the possibility of formal reviews of future auctions (although possibly such dockets would be held less frequently).

Specifically, the following changes should be implemented:

- Modify Rider MV and Rider CPP so that these Riders specify the information items that would be released in the Public Report of the Auction Manager and that could be released in the Public Report of the Staff;
- Modify Rider MV and Rider CPP to state that any information other than the information released in the Public Report of the Auction Manager would remain confidential, unless publicly released by the Commission;
- Prepare the Public Report of the Auction Manager in 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.

#### **H. 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.**

The Ameren Illinois Utilities agree with Auction Manager Chantale LaCasse's recommendations regarding dissemination of information for the 2008 Illinois Auction, detailed above and in Dr. LaCasse's direct testimony at pages 24-32. (AM Ex. 1.0, pp. 24-32.)

#### **I. Timeline**

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

The Ameren Illinois Utilities proposed providing final Market Cost data and prism at a point closer to the Auction Commencement Date. (AIU Ex. 3.0, Jones Direct, pp. 3-5.) The rate prism is used to shape the single winning auction values for the fixed price categories (BGS-FP and BGS-LFP) into seasonal, time of use, and class differentiated prices. The Market Cost data flowing through the rate prism provides the basis for seasonal and time-of-use price differentiation reflected in the Retail Supply Charge Informational Filing provided by each Ameren Illinois Utility. For example, the final auction price for the Ameren BGS-FP category of

approximately \$65/MWh, is split into summer and winter prices for residential and smaller commercial customers, and further into on- and off-peak prices for larger non-residential customers with demands of less than 1,000 kW. The Market Cost data also forms the basis for the seasonal supplier payment ratios, and thus has a direct impact on the amount suppliers are paid in the summer and non-summer seasons.

The current timeline calls for the final Market Cost data and prism 135 calendar days, or more than four months, prior to the Auction Commencement Date. The Ameren Illinois Utilities recommend that providing final Market Cost data and prism about 75 calendar days prior to the Auction Commencement Date will provide more current pricing and a more current reflection of seasonal pricing to retail customers. (AIU Ex. 3.0, Jones Direct, p. 4.) Reducing the number of days before the final Market Cost data and prism are provided would provide a more current reflection of seasonal pricing to retail customers and, also may improve the likelihood of Market Cost being more consistent with what potential suppliers also see as the appropriate seasonal splits.

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

Mr. Craig Nelson states in his direct testimony that the Ameren Illinois Utilities could reduce the number of days by which the utility has to submit the Retail Supply Charge Informational Filing from nine to two business days within the Declaration of Successful Result. Ameren Illinois Utilities' witness Leonard Jones testified that he is unaware of any issues that would prevent the Retail Supply Charge Informational Filing within two business days of the Declaration of Successful Result. (AIU Ex. 3.0, Jones Direct, pp. 4-5.)

- 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.**

The Ameren Illinois Utilities support the Auction Manager’s timeline modification recommendations detailed above in outline items I.3 – I.7, and in direct testimony at pages 35-47. (AM Ex. 1.0, LaCasse Direct, pp. 35-47.)

**J. Ameren-only SFC Issues**

The Ameren Illinois Utilities recommended changes to Appendix C of the SFCs, to specify the specific MISO charges for which the supplier is responsible. (AIU Ex. 2.0, Blessing Direct, p. 15.) In the original Appendix C, MISO charges that were the financial responsibility of the Ameren Illinois Utilities were specified. All other MISO charges, including additional charges in the future, were the responsibility of the supplier. However, several of the items for which the supplier was responsible under the original SFC’s Appendix C are items for which the supplier has no practical means of mitigating the cost. A further review also indicated that certain of these costs are more closely correlated to transmission service than to supply (for example, charges related to future period network upgrades). By transferring the responsibility for such costs from the supplier to the Ameren Illinois Utilities, and leaving only those costs directly related to their activities as a MISO Market Participant or which are more typically thought of as “generation related” (specifically Schedules 3 – regulation, 5 – spinning reserves, and 6 – non-spinning reserve), it is believed that a more appropriate balance of risk is achieved and a lower overall cost is expected.

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

The Ameren Illinois Utilities recommended modifying SFC Section 2.1.a to remove the BGS Suppliers option to “self-supply” those Ancillary Services for which the MISO Tariff provides the option for the transmission customer to self-supply. (AIU Ex. 2.0, Blessing Direct, p. 16.) This recommendation was based on the fact that the option was not elected by any of the

suppliers in the first auction. Additionally, the expected start of the MISO Ancillary Services Market (“ASM”) renders the provision moot. In the ASM proposal, there are no “self-supply” provisions, but rather, these services must be acquired via the ASM and the associated charges will be settled through the MISO Market Settlement process and not through the transmission service settlement process as it is today. These same modifications were made to the BGS-FP SFC and the BGS-LFP SFC.

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

Section 2.1.a of the Ameren Illinois Utilities’ SFC was modified to remove the supplier’s option, upon the applicable certifications, to not identify to the Ameren Illinois Utilities the capacity resources they intend to use to satisfy their resource adequacy requirements under the SFC. (AIU Ex. 2.0, Blessing Direct, p. 13; AIU Ex. 1.0, Nelson Direct, pp. 10-14.) Removal of this provision will enhance the reliability of power supply, because the statutory obligation for providing power and energy to customers rests with the Ameren Illinois Utilities themselves. Not allowing the Utilities themselves access to the very information that confirms that this obligation is met places the Ameren Illinois Utilities in an untenable situation. Removing this provision will provide the Utilities with timely access to the information necessary to verify that this obligation and related resource adequacy obligations are met and to allow them to take action to remedy the deficiency if they are not.

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

The Ameren Illinois Utilities restructured the SFCs such that in the second Illinois Auction separate SFCs will be executed by each of the three Ameren Illinois Utilities and each of the winning BGS suppliers. (AIU Ex. 2.0, Blessing Direct, p. 12.) The reason for this change is

to address the suppliers' concern regarding the issue of joint and several liability that was expressed in the regulatory process that took place prior to the initial Illinois Auction and again in the auction improvement workshops. This modification required numerous changes throughout the contract. For example, there are numerous occurrences within the SFC in which the phrase "one or more of the Companies" is replaced by "the Company." (AIU Ex. 2.0, Blessing Direct, p. 14.)

#### **4. Ameren SFC revisions to address MISO rules changes.**

Ameren Illinois Utilities' Exhibit 2.1 is a redline version of the BGS-FP SFC, which highlights these changes against the BGS-FP SFC that was used in the first Illinois Auction. These modifications are being proposed to: 1) modify the SFCs for the next auction, including changing dates to be consistent with the next auction and making language changes to provide further clarification of the responsibilities of the parties to the SFC; and 2) transfer from suppliers certain risks for which they do not have a practical means by which to mitigate that risk. The ultimate goal is an SFC that strikes an appropriate balance of risk shared by the Ameren Illinois Utilities (and their customers) and the suppliers that will result in the lowest overall cost for customers.

These changes include:

- Modifying Appendix C to limit the MISO charges for which a supplier is responsible to those settled through the Market Settlement Statement and Ancillary Service Schedules 3, 5 and 6;
- Modifying Section 15.14 to provide additional clarity that the line of demarcation for taxes is the delivery point;

- Modifying Section 2.1.b to remove the section that addressed amounts received from a RES as damages, penalties or forfeited security, because this provision is a meaningless carry over from the New Jersey Auction SFC. A RES serving load in one of the Ameren Illinois Utilities' service territory is not subject to such damages, penalties or forfeited security. (AIU Ex. 2.0, Blessing Direct, p. 15.)

- Modifying Section 3.1(i) replacing the (AIU Ex. 2.0, Blessing Direct, p. 12.) requirement of the supplier to be registered to do business in the state of Illinois with a requirement that the BGS supplier to be registered to do business in all jurisdictions in which registration and authorization is required in order to perform its obligations associated with the SFC.

- Modify Section 15.15 to require the BGS supplier to consent to the jurisdiction of the courts of Illinois for the resolution of any disputes associated with the administration of the SFC.

- Adding definitions for various load switching statistics and added sections 2.1.b.v.(c), (d) and (e), to provide additional data to suppliers regarding the potential and actual load obligations, expected to improve supplier ability to define their expected load obligations, thus reducing the risk related to uncertainty of this obligation and again leading to a lower expected cost. (AIU Ex. 2.0, Blessing Direct, pp. 12-14.)

#### **K. Contingency Purchases**

The Limitations and Contingencies portion of each of the Ameren Illinois Utilities' Rider MV describes three scenarios in which the Ameren Illinois Utilities may need to purchase supply outside of the auction process. (AIU Ex. 2.0, Blessing Direct, pp. 16-17.) The contingency purchase plans for each of these scenarios includes purchases from MISO Administered Markets,

which is defined in the riders as the markets for capacity and real-time energy, if any, administered by the MISO. This means the Ameren Illinois Utilities purchase 100% of the required energy from the MISO real-time energy markets and, given the operations of that market, 100% of the required energy is subject to RSG charges. Since the start of the MISO LMP energy markets, on average, the sum of the real-time energy price and the RSG charge has exceeded the day-ahead energy price. The hourly day-ahead prices, real-time prices and RSG charges for the MISO Illinois Hub are attached as Ameren Exhibit 2.2 of this testimony.

The Ameren Illinois Utilities propose modifying each of their Rider MVs to allow a portion or all of the required energy to be acquired and priced in the MISO day-ahead market, as a cost-reducing measure. This would be accomplished by modifying each of their Rider MVs to allow the utilities to submit a good faith nomination of the expected hourly energy usage to MISO on a day-ahead basis. (AIU Ex. 2.0, Blessing Direct, pp. 17-18.)

RSG charges in MISO are only applied to that portion of the load which does not clear in the day ahead market. Stated otherwise, RSG is assessed on the difference between the cleared day-ahead demand bid and the actual usage in real time. As detailed above, the difference between the historical day ahead and real time prices is less than the average RSG for the same period. Thus, by submitting good faith estimates of the applicable loads as demand bids into the MISO day-ahead market, the associated RSG and thus net total cost to the customer is expected to be reduced. (*Id.*)

- 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).**

Ameren Illinois Utilities agree that in the event an Illinois Auction Section result is rejected, clarification of the calculation of charges recovering supply costs is appropriate. (AIU

Ex. 3.0, Jones Direct, p. 5.) The Ameren Illinois Utilities determined that clarification was appropriate and previously proposed Appendix B to the Rider MV – Market Value of Power and Energy (Rider MV) to clarify the recovery of costs for power and energy acquired in the MISO-Administered Markets for customers served under Rider RTP-L – Real Time Pricing – Large (Rider RTP-L). Additional modifications can be made to Rider MV as an appendix to clarify how costs will be recovered in the event that auction results are rejected for any Illinois Auction Section and the contingency supply requirements are enacted under the Section 5 – Limitations and Contingencies under Rider MV, as proposed in testimony. (AIU Ex. 3.0, Jones Direct, p. 5.) This is not a proposal that will change the ultimate recoverability of the costs at issue.

### **III. Contested Issues**

#### **A. Use of an Auction**

The Ameren Illinois Utilities disagree with Mr. Thomas’s claims that auction results were not least cost. (AIU Ex. 5.0, Nelson Rebuttal, pp. 9-10.) The declining price auction is a workable means to bring the lowest overall cost to consumers. It is worth noting that the use of these auctions as a viable means of competitively procuring products and services is recognized beyond the limited scope of the Illinois Auction. For example, Senate Bill 1620 was recently introduced in the 95th General Assembly. It would amend the Illinois Procurement Code and authorize state agencies to use a reverse auction as the means by which to procure needed supplies.

- 1. For the Fixed Price section, should the auction be modified as follows:**
  - a. Modifications to the starting price.**
  - b. Use of demand-side bidding.**

The testimony of CUB witnesses Geoffrey Crandall and Christopher Thomas proposed the need to use energy efficiency and demand response in Illinois as a part of a procurement strategy. Both witnesses candidly note there may not be enough time to implement their strategies. The Ameren Illinois Utilities do not necessarily disagree that such benefits exist at some level, but differ in opinion as to their immediate bearing on the upcoming auction itself. (AIU Ex. 5.0, Nelson Direct, pp. 8-10.) For example, Mr. Crandall states that the most efficient way to select resources is to have state agencies and utilities involved in planning energy efficiency and demand response programs, and that the programs would reduce the total and peak amounts of generation. Without commenting on the veracity of this assertion, Mr. Nelson questioned what information this would add regarding the Ameren Illinois Utilities' continuing obligation to buy power and energy in the wholesale market.

Mr. Crandall suggests a three-tier bid approach, where utilities would first ask for bids on a block of energy efficiency options, then conduct an auction for dispatchable, peak-reducing demand resources and then conduct an auction for the remaining load. First, it is important to acknowledge that there is no feasible way to introduce this as part of the 2008 auction, as CUB's witnesses apparently do. Further, Mr. Nelson testified regarding doubts as to the merits of this proposal. (*Id.*) Even assuming there are suppliers that will offer energy efficiency options, there is no guarantee how and to what degree customers' actual load requirements or usage patterns will be changed, especially lacking any historical context. The second auction for peak products provides no assurance of cost benefits as Mr. Crandall implies. Mr. Nelson testified that suppliers attempting to formulate bids for such a product would be faced with great uncertainty on what they were actually obligated to serve and would price such uncertainty into their bids.

(*Id.*) As a consequence, the resulting price could include premiums which significantly reduce any potential benefit gained by such an energy efficiency program.

Mr. Crandall also proposes an auction that calls for peak, base and intermediate load products to be bid separately. While it is conceivably possible to design an auction that includes these separate products, or a large number of products, it is uncertain as to benefits and to the ultimate cost borne by customers. (*Id.*) One of the benefits of the current auction design is that it has been structured to encourage supplier participation. The competitiveness of the process is enhanced by having many suppliers competing. Further segmenting the auction as Mr. Crandall proposes may result in fewer suppliers competing for a given product, which could increase the price for that product.

Further, there is concern about the lack of interchangeability among these products in the auction. (*Id.*) Another feature of the current auction is that products are designed to be interchangeable – so that suppliers can shift their bids round by round among very similar products – helping all the products to settle at market. It is unlikely that suppliers would view peak, base-load and intermediate-load products as interchangeable.

**c. Change contract length(s).**

The Ameren Illinois Utilities recommend changing the contract supply periods that should be procured to serve the load of residential and small business (“R&SB”) customers (< 1MW) in the next Illinois Auction, by transitioning into procuring a mix of one-year contract supply periods for 25% of the BGS-FP load and overlapping three-year contract supply periods for the remaining 75%. (AIU Ex. 2.0, Blessing Direct, pp. 7-8.) This new mixed portfolio, once fully implemented, will provide slightly less price stability for this customer group in exchange

for a larger variety of products in each auction, and, it is hoped, thus an increase in bidder interest.

In the first Illinois Auction, supply to serve the load of the R&SB customers was procured for three supply periods: the first for 17 months, the second for 29 months and the third for 41 months, each representing approximately one-third of the load of these customers. (AIU Ex. 2.0, Blessing Direct, pp. 7-8.) These overlapping supply periods were selected to allow the Ameren Illinois Utilities to transition into overlapping three-year contracts. Under this ladder approach, each expiring contract would be replaced by a new three-year contract, thereby resulting in roughly one-third of the supply to serve the load of the R&SB customers being procured each year. This approach provides market-based prices for this customer group while at the same time provides some price stability once the process is established.

Staff witnesses Kennedy and Zuraski expressed their concern that including only three-year contracts for the R&SB customers in future auctions may have the unintended effect of deterring some suppliers from bidding in future Illinois Auctions, and propose two possible solutions (the latter option being Staff's preferred approach): 1) using a mix of varying length contracts, such as 12-month, 24-month, and 36-month; and 2) using contracts for one-year delivery periods that cover different time periods.

The Ameren Illinois Utilities are concerned that Staff's preferred approach to procure contracts for one-year delivery periods that cover different time periods would cause some suppliers to be disinterested in committing to supply a one-year contract with deliveries beginning more than two years after the close of the auction. (AIU Ex. 6.0, Blessing Rebuttal, pp. 17-18.) Based on this lack of interest, suppliers may choose to reduce their participation in the auction or not participate at all in order to avoid getting stuck serving a product with

deliveries beginning more than two years in the future. As Mr. Blessing testified, a supplier who is only interested in serving the full three year term would bid equal quantities of each of the three one-year contracts in the auction in order to get to the three-year supply obligation it desires. As long as the average price of the three contracts remains at or above the price at which the supplier is willing to supply for the three-year term, then the supplier is fine. But, if the average price were to drop below the price the supplier is willing to supply, the supplier would want to withdraw some or all of the tranches from all three products. The supplier gets stuck if, because there are other suppliers bidding only on the contracts for year one and/or year two, there is excess supply for the year one contract and excess supply for the year-two contract but no excess supply for the year three contract. In this case, the supplier withdrawing some or all of its tranches from all three products would have withdrawal approved for the year-one product and the year-two product but his withdrawal denied for the year-three product. And, if no tranches are switched to the year-three product in subsequent rounds of the auction, that supplier would be stuck serving a product it does not want to serve. While this might tend to drive the auction price lower by providing additional incentive to this type of supplier to keep bidding on all three products at lower prices, it is also possible that this type of supplier could choose to reduce his level of participation in the auction or choose not to participate at all, which would likely result in higher final auction prices.

The Ameren Illinois Utilities continue to believe that for this group of customers the price should be market based yet reasonably stable. At the same time the auction products should be designed to attract the maximum amount of interest in the auction. With these goals in mind, the Ameren Illinois Utilities propose to transition into a process of procuring a mix of one-year contract supply periods for 25% of the BGS-FP load and overlapping three year contract

supply periods for the remaining 75%. (AIU Ex. 2.0, Blessing Direct, p. 9.) This new mixed portfolio, once fully implemented, will provide slightly less price stability for this customer group in exchange for a larger variety of products in each auction, and, it is hoped, thus an increase in bidder interest. The Ameren Illinois Utilities also do not object to Staff's proposal to procure 50% of the BGS-FP load using 1-year contracts, 20% with 2-year contracts, and 30% using 3-year products.

Transitioning from overlapping three-year contracts for 100% of the load to a new mixed portfolio would require the 35 tranches of BGS-FP load that will be up for bid in the next auction would be procured as follows: In the January 2008 Illinois Auction, nine tranches representing approximately 450 MW of BGS-FP load would be procured using a supply period of one year. The remaining 26 tranches would be procured using a supply period of three years. Then, in the 2009 Illinois Auction, when there would be a total of 45 tranches up for bid (36 tranches from the 2006 Illinois Auction and nine tranches from the 2008 Illinois Auction). Of these, 18 tranches representing approximately 900 MW of BGS-FP load, would be procured using a one-year supply period, and the remaining 27 tranches would be procured using a three-year supply period. Finally, in the 2010 Illinois Auction the transition would be complete and the Ameren Illinois Utilities would procure 27 tranches using a one-year supply period and 27 tranches using a three-year supply period. (AIU Ex. 2.0, Blessing Direct, p. 10.)

The results of the supplier survey on auction improvements, conducted by the Auction Manager and detailed in her testimony (see Auction Manager Exhibit 1.8 and App. A) indicates some support from suppliers for a mix of one- and three-year supply periods. Section II of that survey asked suppliers to rank three supply period options: Option A – Ladder of 36-Month Contracts; Option B – Consecutive 12-Month Contracts and Option C – 12-Month and 36-Month

Contracts. Of the 13 suppliers who responded to this section of the survey, all 13 ranked Option C as their first or second preferred option. In contrast, seven suppliers ranked Option A as their least preferred and six suppliers ranked Option B as their least preferred. In addition, four suppliers indicated that Option A would reduce or preclude their participation in future auctions. (AIU Ex. 2.0, Blessing Direct, p. 10.)

**d. Use of “reserve prices.”**

Please see discussion below in subsection III.I.2.

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

**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?**

**IV. Application Process**

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

**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.**

The Ameren Illinois Utilities agree with Auction Manager Chantale LaCasse’s proposal to clarify the 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, LaCasse Direct, pp. 18-20.) 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).

While in the usual circumstance the creditworthiness of the applicant or its guarantor is evaluated in the Part 1 Application, for an applicant that acts as agent, the creditworthiness of the

principal (or the principal's guarantor) is evaluated in the Part 1 Application since it is the principal that would ultimately have legal responsibility for the contract. All requirements of the application process are the same for all prospective suppliers, but the documents that are provided to fulfill these requirements may be different for prospective suppliers applying under an agency agreement.

Dr. LaCasse proposes that the applicant be required to provide a copy of the agency agreement and assurances that the agency agreement will remain in place until the time at which the Supplier Forward Contract is executed should the applicant win at the auction. These documents provide the assurance that the applicant has the ability to bind the principal to execute the applicable Supplier Forward Contract if the applicant becomes a winning bidder at the auction. This is to fulfill the same requirement that other prospective suppliers (prospective suppliers that do not apply under an agency agreement) fulfill by certifying that any bid they submit is a binding offer under the terms of the Supplier Forward Contract. Auction Manager Exhibit 1.3, "Qualification Requirements for Applicants Under an Agency Agreement," specifies the required documents for prospective suppliers qualifying under an agency agreement and explains how the application requirements apply to their particular circumstance.

This recommendation works to fulfill the goals of the auction process, including the goal of obtaining reliable supply at competitive market prices, and promoting the participation of all market participants on a fair and equal basis. (*Id.*) Clarifying how the application requirements apply to prospective suppliers that qualify under an agency agreement in advance of the auction confirms for them that such participation is possible and provides advance notice of documents that these prospective suppliers may have to provide. This can only increase participation and competition in the auction process.

For these reasons, the Commission should make available to prospective suppliers the document entered into evidence as Auction Manager Exhibit 1.3. The Part 1 Application should also be modified to provide specific instructions for prospective suppliers seeking to qualify under an agency agreement.

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

**B. Credit Issues**

**1. Bilateral credit.**

Dynegy witness Mr. Huddleston proposes adopting bilateral credit provisions. (Dynegy Ex. 1.0, lines 191-192). The Ameren Illinois Utilities disagree with this proposal. While a risk premium may be present within auction clearing prices in the event that the utilities are not required to post collateral, it is not clear that any such risk premium would be larger than the cost to the utilities and ratepayers of posting collateral. Mr. Huddleston's direct testimony includes no conclusive evidence that demonstrates that bilateral credit provisions: (1) would be "relatively inexpensive for ComEd or the Ameren Utilities to bear compared to Suppliers..."; or (2) would be "...the lower cost alternative...".

Ameren Illinois Utilities' witness Mr. Moloney agreed with Staff witness Ms. Phipps' testimony that the proposal to make the collateral requirements bilateral "...would likely cause ComEd and Ameren to incur costs in connection with posting collateral, which could be passed onto Illinois ratepayers through the utilities' tariffs." (Phipps Direct, lines 151-153.) Further, Ms. Phipps testifies at lines 161-165 the direct cost in connection with adopting bilateral credit provisions "...might exceed any reduction in the contract risk premium, which would harm Illinois ratepayers." Ms. Phipps indicates at lines 166-167 the impact that a proposal to adopt bilateral credit provisions would have on risk premiums in auction clearing rates has not been

quantified. Finally she states a view at lines 167-171 that quantitative analysis of any proposal to adopt bilateral credit provisions "...demonstrating the benefits that will accrue to ratepayers will exceed any costs . . . is imperative in order to recommend approval of those proposals for use in the next Illinois Auction." The Ameren Illinois Utilities agree with Ms. Phipps' observations. (AIU Ex. 4.0, Moloney Rebuttal, pp. 6-7.)

In the end, the posting of collateral by utilities under the SFCs would unquestionably drive one component of total costs upward for the utilities and ratepayers. (*Id.*) Mr. Huddleston testifies at lines 152-153 "...if the utilities were required to post collateral under the same criteria as the Suppliers, then the risk to Suppliers would be lower and the risk premium built in to the auction bidding for this risk would be lower." Yet, he is unable to demonstrate that reductions in risk premiums built into auction bidding would match or exceed the incremental cost to the utilities of posting collateral.

Mr. Huddleston offered no persuasive evidence as to an offset in the risk premium. Mr. Huddleston states at line 150 that "...I do not have a quantitative analysis..." and again at lines 208-209 "I do not have any quantitative analyses that demonstrate the cost of the embedded premium...". Indeed, while asserting on the one hand at line 161 that adopting bilateral credit provisions would be the "lower cost alternative," he compromises the certainty of his own assertion within lines 156-157 by stating "...it is not at all clear that the cost of that posting would be higher than a risk premium that is embedded in every kilowatt-hour paid for by the retail customer...". Mr. Huddleston's testimony does not include an attempt at the quantitative analysis that Ms. Phipps indicates would be imperative as a component of the analysis on this matter, and it otherwise does not conclusively demonstrate that bilateral credit provisions represent the lower cost alternative for ratepayers. (AIU Ex. 4.0, Moloney Rebuttal, pp. 6-7.)

**C. Enrollment Windows and Other Switching Rules**

- 1. Enrollment window for smaller non-residential customers.**
- 2. Pre-commitment or a shortened enrollment period for larger non-residential customers.**

The Ameren Illinois Utilities proposed a reduced enrollment window for BGS-LFP customers. Ameren Illinois Utilities' witness Craig D. Nelson testified that shortening the enrollment window would lower the cost of power for customers taking the BGS-LFP service. (AIU Ex. 2.0, Nelson Direct, pp. 3-9.) BGS-LFP suppliers face an uncertain load obligation until such time as the enrollment window closes. After the enrollment window closes, suppliers must serve the resulting load obligation at the price determined in the auction. The closer that these two events occur (the end of the auction and the end of the enrollment window), the less risk these suppliers face. Conversely, the further apart these two events occur, the more risk these suppliers face. This risk exists regardless of whether the supplier commits supply resources for its maximum potential obligation and then disposes of any excess once the obligation is known, or waits until the obligation is known and then commits the needed supply resources.

This uncertain load obligation and the risk that the price of electricity may change during this period, to the detriment of the supplier, is reasonably expected to be factored into a supplier's willingness to serve this load at a given price. And, the greater the risk, the greater the premium one would expect a supplier to include in its calculations. The significant difference between the final auction price for BGS-FP Supply and BGS-LFP Supply gives a strong indication that suppliers applied such a risk premium in determining their bids. Given that (1) there is no switching uncertainty after the window closes (as opposed to the BGS-FP where such switching could continue throughout the term of the contract), (2) the load shape of the BGS-

LFP eligible load has had a higher load factor in every month since June 2003 and (3) the SFC for BGS-LFP was virtually identical to that of BGS-FP, that seemingly leaves the great uncertainty regarding the ultimate load obligation and the price volatility risk during the window as the driving force for the price disparity.

Customers in the BGS-FP class are not locked in, but rather can switch throughout the contract term; thus, one might expect an even larger premium associated with the BGS-FP Supply than with the BGS-LFP Supply, *if* the customers in that class were known to have the same propensity to switch as BGS-LFP customers. However, this is not the case. (AIU Ex. 2.0, Nelson Direct, pp. 4-5.) To the contrary, experience indicates a much higher propensity to switch by BGS-LFP customers. The existence of the enrollment window itself was an acknowledgement of the BGS-LFP group's propensity to switch.

The length of the window was the subject of considerable debate in Dockets 05-0160/0161/0162 Cons. – one which attempted to balance providing customers with sufficient time to analyze competing offers and the price premium associated with the load uncertainty created by the enrollment window. In its Final Order, the Commission stated its belief that “the duration of the enrollment window will have a direct, significant and immediate impact on the development of the Illinois retail electricity market.” (05-0160/0161/0162 (cons.) Final Order, p. 213) Mr. Nelson testified that the length of the enrollment window for BGS-LFP suppliers in fact did contribute to a substantial price premium for the BGS-LFP product in the Illinois auction, and that this created substantial headroom for ARES. In the face of BGS-LFP prices which included this premium only 28 out of the 540 customers (5.2%) eligible to take BGS-LFP Service did so (the 28 customers represent only 50 of 1853 MW's of peak demand (2.7%)). Customer switching activity has been extremely robust since the close of the enrollment window.

While switching is not undesirable in and of itself, the goal should be to provide economical choices to customers, not to turn the Utilities’ fixed price rate offering into a non-economical alternative for customers, in effect forcing them off of the service.

Another step that can be taken to reduce uncertainty for BGS-LFP Suppliers is for the Ameren Illinois Utilities to provide BGS-LFP Suppliers with frequent updates of customer activity during the enrollment period. (AIU Ex. 2.0, Nelson Direct, pp. 6-7.) Specifically, postings on enrollment statistics would be provided to Suppliers. As shown in the table below notices were received by the Ameren Illinois Utilities throughout the enrollment period. Providing updates on this data during the enrollment period could provide suppliers with indications of enrollment behavior.

**Notices Received/Numbers Enrolled**

Day	> 3 MW	1- 3MW	Enrolled
1-10	19	14	1
11-20	53	50	0
21-30	98	71	2
31-40		39	0
41-50		184	13
	170	358	16

Updates would be provided throughout the enrollment period no later than the close of business of each Monday, for responses received during the prior week.

Another factor to consider in the second auction regarding the enrollment period is that, in first auction, most BGS-LFP eligible load was already on utility supply (including PPO) and had to opt-out of the BGS-LFP group. In this coming auction, the opposite is the case – the vast majority of BGS-LFP eligible load is being served by ARES, and as such, must opt-in. This issue is significant because, in the first auction, the large majority of BGS-LFP-eligible

customers all had to make an enrollment decision at the same time, and if they enrolled or took no action they lost access to all other supply alternatives for a full year. Now, with the tables turned, the availability of BGS-LFP at a point in time is just one of the options available to them. If they fail to act during that window, they still have multiple alternatives available to them. Additionally, they may have no need to act during this time, as they may have entered into longer term agreements with alternate suppliers, and thus would not view BGS-LFP as an available option anyway. (AIU Ex. 2.0, Nelson Direct, pp. 8-9.) Also, given the high level of switching that has already occurred, it is reasonable to assume that much of the marketing groundwork has already been laid. Customer contact has been made, relationships developed and customers have experience under their belt. This should facilitate the process when the next BGS-LFP enrollment is available.

Additionally, it must be recognized that during the enrollment period there was considerable debate in the Illinois General Assembly related to a potential extension of the rate freeze. The debate in the General Assembly introduced uncertainty for customers, effectively holding out the possibility of another rate option for them. It is reasonable to assume that customers may have held back from making definitive elections regarding their power supply while they waited to see what happened on this issue.

Mr. Nelson testified that 20 days strikes the appropriate balance between providing customers with sufficient time to compare the outcome of the auction and the desire to limit the price premium associated with the length of time between the end of bidding and the close of the enrollment window. A significant portion of customers have already demonstrated the ability to take action within this time period. As demonstrated in the chart above, 42% of the over 3 MW and 18% of the 1-3 MW responses received during the enrollment period came in during the first

20 days. Of the remainder, 40% (49% of the > 3 MW and 35% of the 1-3 MW) were received on the final three business days of the applicable enrollment window. This suggests that it is reasonable to believe that whether the period is 20, 30 or 50 days there is a significant group of respondents that will wait until the last day to provide such a notice to eliminate a supply option.

Reducing the window to 20 days, when combined with the reduction in the amount of time provided to make the Retail Charge Informational Charge filing will significantly reduce the lag between the close of the auction – the point at which the suppliers potential obligation is truly created – and the end of the enrollment window – the point at which the obligation is known with reasonable certainty. (AIU Ex. 2.0, Nelson Direct, p. 9.) To illustrate this reduction, the following chart compares the timeline using the current deadlines with that using the Ameren Illinois Utilities’ proposed changes for a January 2008 Auction where bidding would end on January 18, 2008. (Please note that this date is for illustration purposes only and is should not be viewed as a recommendation for when the auction should be held.) This chart demonstrates that the Ameren Illinois Utilities’ proposal would reduce the time lag between the close of bidding and the end of the auction by more than 50%.

<u>Current Timeline</u>		<u>Proposed Timeline</u>	
Fri 1/18	Close of Bidding	Fri 1/18	Close of Bidding
Mon 1/28	Declaration of Successful Result	Mon 1/28	Declaration of Successful Result
Fri 2/8	Informational Filing/Supply Charge	Wed 1/30	Informational Filing/Supply Charge
Sat 2/9	Start of Enrollment Period	Thurs 1/31	Start of Enrollment Period
Mon 3/10	End of 30 Day Enrollment Period	Tues 2/19	End of 20 Day Enrollment Period
Tues 3/25	End Of 45 Day Enrollment Period		
<u>67</u>	<u>Total Days From Close of Bidding</u>	<u>32</u>	<u>Total Days From Close of Bidding</u>

In direct testimony, CES witnesses Mr. Domagalski and Ms. Papdimitriou recommend that “(t)he Commission should not adopt measures that unnecessarily limit the flexibility of customers [to] exercise their choices beyond those currently included in the Illinois Auction

Structure,” and go on to assert that “Staff’s enrollment window recommendations would unnecessarily limit customer’s flexibility and freedom to choose competitive service.” (CES Ex. 1.0, lines 355-359.) This assertion suggests that in the absence of a lengthy enrollment window customers will be more captive to utility supply, but, as Mr. Nelson testified, the evidence shows otherwise. (AIU Ex. 5.0, Nelson Rebuttal, pp. 1-3.) Customers have demonstrated their ability to make decisions in a time frame much shorter than the existing enrollment window. While stating some reservation regarding certain governmental and institutional customers, IIEC witness Stephens indicated his belief that certain customers could comply with an enrollment window as short as five days.

As noted above, a significant portion of customers made their enrollment elections within 20 days, even though the window was obviously much longer. Additionally, a significant number of notices were received in the final three days of the window. It is reasonable to assume that some decision-makers will leave this seemingly “free option” open as long as possible, regardless of the length of the window. Further, the uncertainty related to actions in the Illinois General Assembly may have caused some customers to delay making any decision until absolutely required to do so. Finally, BGS-LFP customers clearly were not captive to this rate as evidenced by the fact that only 5% of eligible customers enrolled.

It is worth noting that these customers were able to make this decision despite having an enrollment window substantially shorter than a CES panel (including Mr. Domagalski) testified was necessary, in Dockets Nos. 05-0160, 05-0161 and 05-0162, (cons.). In those dockets, at lines 249-252 of CES Ex. 6.0, the CES panel claimed:

A 30-day enrollment window, as proposed by Ameren, would not provide customers with sufficient time to decide which option best suits their needs. Accordingly, Ameren’s proposal, if adopted, would certainly hamper customer choice in the Ameren service territories.

At lines 257-260, the panel stated:

Our experience strongly indicates that a 30-day window may work only in limited instances in which the auction price meets customer expectations and for the rare customer who does not have the inclination to shop for alternatives.

And finally, at lines 266-268, the panel stated:

In instances in which auction prices are materially different than expected, customers require more time than the “plug-and-chug” scenario potentially contemplated by Ameren.

As noted in Mr. Nelson’s testimony, each of these predictions were incorrect. (AIU Ex. 6.0, Nelson Rebuttal, p. 3.)

In this docket, CES witnesses Mr. Domagalski and Ms. Papadimitriou testified that “[n]o one has clearly articulated the “problem” associated with giving customers added flexibility to choose that is provided under the current Illinois Auction Structure.” (CES Ex. 1.0, lines 363-365.) But the Ameren Illinois Utilities believe that the problem is rather obvious – the resulting auction price of about \$85 /MWH for BGS-LFP supply, as compared to a price in the \$65-range for smaller customer supply. It’s also obvious that the vast majority of potential BGS- LFP customers did not consider \$85/MWH to be an economic alternative, with 95% of them clarifying the problem by not choosing the BGS-LFP alternative. (AIU Ex. 6.0, Nelson Rebuttal, p. 3.)

It is important also to recognize that, under current circumstances, the dynamic is changed from one in which a vast majority of the eligible group must make a decision in a certain time frame or be locked out of all other options to one in which 95% of eligible customers must now make a positive election (opt-in) to receive the service. This is significant because, as noted by IIEC witness, Mr. Stephens (IIEC Ex. 1.0, 333-335), there may be customers who have already entered into supply contracts with RESs, and thus do not need to make a decision within the enrollment period, reducing the potential marketing contacts for

RESs. More importantly, a customer who fails to opt-in is not shut out of all of the other market offerings available to that customer, such as the utility's own hourly-priced product or competitive RES products and services. The fixed-price utility offering is simply one choice. The consequences of failing to act within the enrollment window are not as limiting as they were in the first auction. (AIU Ex. 6.0, Nelson Rebuttal, p. 4.)

IIEC testimony indicates that long enrollment windows result in a time-based risk premium which has increased the price for this supply option above that which most eligible customers are willing to accept. Mr. Stephens (IIEC Ex. 1.0 line 84-85) states that "IIEC companies were disappointed in the outcome of the first auction, as it relates to fixed price supply for Ameren's BGS-4 (above 1 MW) customers." Clearly these customers did not find a benefit in the BGS-LFP product due to its price, which was driven upward by this time-based risk premium incorporated by suppliers.

It must be remembered the only customers actually paying for that risk premium are those that elect BGS-LFP supply. For all of the other customers eligible for the service that select alternative supply, this is a seemingly free option, but one for which, if the embedded risk premium is too high, is of little use. Having 95% of eligible customers reject this offering is a clear indication that its price was too high for customers.

As Mr. Nelson testified, while customers and suppliers do not benefit from longer enrollment windows, RESs do. This is because BGS-LFP supply in effect provides a price to beat alternative to RES supply. The higher the price, the easier it is to beat. It is thus in the RESs' best interest to have long enrollment windows and the associated high embedded risk premiums.

Assuming the Commission approves the continuation of BGS-LFP supply, as recommended by Staff, BGS-LFP should remain an economical supply alternative – otherwise, there would be no reason to incur the cost of offering the product in auction in the first place. Having a supply alternative unacceptable to the vast majority of eligible customers does not benefit customers. For all of these reasons, the Commission should adopt the Ameren Illinois Utilities’ proposal to shorten the length of the enrollment window to 20 days, with modifications as recommended in Section IV.E.3 (pp. 54-55.)

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

The Open Enrollment Period begins after the “Declaration of a Successful Auction Result” and the Ameren Illinois Utilities have submitted the “Retail Supply Charge Informational Filing” to the ICC. The “Open Enrollment Period” in the first auction (September 2006) allowed customers with demands at or above 3,000 kW up to 30 calendar days to opt out of service under Rider BGS-L. Customers with demands less than 3,000 kW were allowed 50 calendar days to opt-out of Rider BGS-L. In subsequent auctions, customers with demands under 3,000 kW are allowed 45 calendar days to opt-out of Rider BGS-L.

IIEC witness Mr. Stephens testified that a reversal of the opt-out policy to an opt-in policy may be the better consumer protection in future auction periods. The Ameren Illinois Utilities agree with this assessment. (AIU Ex. 3.0, Jones Rebuttal, pp. 2-4.) Service under Rider BGS-L represents a commitment for service for the next year. The requirement of opting-in would ensure that customers are aware of this one year commitment to Rider BGS-L service, as opposed to being defaulted to a one-year commitment. Moreover, customers who do not elect to opt-in retain the option to elect a third-party supply contract, or to default to or elect service from the Ameren Illinois Utilities under the hourly energy price rate (Rider RTP-L). Service under

RTP-L does not require a one-year commitment and, therefore, customers can opt-out at any time and switch to a third-party supply contract. Under the current tariff provisions, a customer who fails to opt-out would no longer have those two supply options available.

The present switching rules within Rider MV – Market Value of Power and Energy (“Rider MV”) calls for only customers presently served under Rider BGS-L to opt-out of service. The Ameren Illinois Utilities serve less than 30 customers under Rider BGS-L. Approximately 510 customers, who are presently served through a third-party supplier or through the Ameren Illinois Utilities’ Rider RTP-L, are already subject to an “opt-in” policy.

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

Ameren Illinois Utilities’ customers taking service under BGS-LFP (also known as “Rider BGS-L” or “BGS-4”) must have a demand of 1,000 kilowatts (“kW”) or more. Customers with demands at or over 3,000 kW must have also signed and returned a non-binding “Pre-Qualification Form” stating they wish to remain eligible for the BGS-LFP product. Customers meeting one of these two conditions may elect to take BGS-LFP service during the Open Enrollment Period.

IIEC witness Mr. Stephens proposed modifying the pre-qualification form, whereby a customer would certify they are eligible to take the auction product. The Ameren Illinois Utilities agree this change is warranted. (AIU Ex. 3.0, Jones Rebuttal, pp. 3-4.) Prior to the initial auction, all current customers with demands at or above 3,000 kW returned their Pre-Qualification Forms affirming their desire to have their loads included in the auction segment, but not requiring them to either certify eligibility or commit to Rider BGS-L service. Such result provided suppliers with no new information to assess the potential risk, and cost, of serving the BGS-LFP load. Mr. Stephens’ suggestion to modify the form so that customers certify that they

are eligible to take the auction product should they elect to do so is more likely to result in some customers removing themselves from consideration. This is so because these customers are likely taking service from a third party supply whereby the contractual provision may preclude the customer from the abandoning the contract earlier than the contract term.

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

- 1. Continued use of multiple contract types.**
- 2. Use of shorter contracts.**

**E. Customer Supply Group Definitions**

- 1. Combining Ameren 400 kW to 1 MW customers with larger customers.**
- 2. Separate auction product for residential and/or small business customers.**

CUB recommends that the Ameren Illinois Utilities develop a separate auction product for it DS-1 and DS-2 customer classes (customers with demands up to 150 kW). (CUB Exhibit 1.0, lines 489-523.) Mr. Thomas makes this recommendation in an attempt to isolate those small customers whose supply options (and thus switching risk) are “extremely limited” at this time so as to reduce the risk premiums associated with volumetric uncertainty.

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. If the Commission were to accept Mr. Thomas’ recommendation, 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 in Mr. Blessing's direct testimony. (AIU Ex. 2.0, lines 197-223.) 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. (AIU Ex. 6.0, Blessing Rebuttal, p. 11.)

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

In direct testimony, IIEC witness Stephens recommends continuing the use of an auction prequalification process, but recommends expanding the scope of the process – segmenting customers subject to an enrollment window into one of three groups: 1) those willing to pre-commit (prior to the auction) to take the fixed price services; 2) those willing to accept an enrollment window of five days; and 3) those who desire a longer enrollment window. Mr. Stephens then recommends that the next Illinois Auction include separate products for each of these three customer groups.

The Ameren Illinois Utilities agree with Mr. Stephens' opinion that dividing customers based on enrollment requirements may be a good approach, but have concerns with IIEC's proposed products, for several reasons. (AIU Ex. 6.0, Blessing Rebuttal, p. 13.) *First*, it is highly unlikely that any one customer, much less a sufficient number of customers to even come close to constituting at least one full 50 MW tranche, would be willing to pre-commit, prior to the auction, to take a product not knowing the price that will result from the auction. *Second*, dividing the load as Mr. Stephens has suggested would likely result in one or more products with very little load in them which then may doom those products to failure.

To alleviate these concerns, the Ameren Illinois Utilities recommend, first, eliminating the idea of creating a product for customers who may choose to pre-commit, and second, allowing the Ameren Illinois Utilities and the Auction Manager the flexibility to procure the

entire load using a single product or to divide the load into two products (one product for those customers who elect a seven-day enrollment window in the prequalification process and a second product for those customers who elect a longer enrollment window in the prequalification process) based on the results of the prequalification process. (AIU Ex. 6.0, Blessing Rebuttal, p. 14.) The Ameren Illinois Utilities' proposal summary is as follows: The Ameren Illinois Utilities would be required to complete a pre-qualification process for all customers with peak demands greater than 1 megawatt. As part of that survey, each customer who elects to make its load eligible for the fixed price product would then be asked to check one of two boxes: 1) that they would like their load included in the seven calendar day enrollment window product; or 2) that they would like their load included in the 20 day enrollment window product. This customer survey would need to be completed at least one week prior to the date that the final tranche size data is announced. The Auction Manager, in consultation with the Ameren Illinois Utilities and Staff, would then analyze the results and determine if there is a sufficient amount of load (i.e. at least 50 MW of eligible load) in each of the two products to divide the customers, if feasible, into these two products. If the answer is no, a single product would be procured using the enrollment window indicated by the results of the pre-qualification process. (AIU Ex. 6.0, Blessing Rebuttal, p. 14.)

**F. Other Contract Change Proposals**

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

Dynegy proposes that the SFCs be modified to provide for a sharing of the cost of MISO rule changes between suppliers and the Ameren Illinois Utilities. The Ameren Illinois Utilities do not agree with this change, for several reasons. (AIU Ex. 6.0, Blessing Rebuttal, pp. 3-5.) *First*, a detailed reading of DYN Ex. 1.1, reveals that the actual language Dynegy witness

Huddleston proposes to include in the SFC does not represent a simple sharing of such consequences, but rather, it is clear that Dynege only proposes to share the consequences of such a rule change when it is negative to the supplier – thus continuing to have 100% of any positive consequence accrue to the benefit of the supplier. Intentional or otherwise, this is not an appropriate allocation. *Second*, the long list of changes referenced in the language goes far beyond MISO rule changes to include such nebulous terms as MISO “pricing,” “market conditions” and “market rules.” The limits – if any – of what Dynege is suggesting is wholly unclear. This language indicates that any changes in market conditions – *e.g.*, something as simple as the supply and demand balance, the price of crude oil, changes in weather patterns or a change in forward pricing – will now result in a sharing of any negative consequences (as the positive consequences are fully retained by the supplier). Such far-reaching, ambiguous language is clearly unacceptable. *Third*, it is unclear how the “adverse financial consequences” Mr. Huddleston refers to could reasonably be determined. While it may appear easy to determine the consequence of a price change, for example, with specified prices and volumes; attempting to quantify the cost of a change such as what time MISO closes the day-ahead demand bidding, for example, is nearly impossible, and even then purely theoretical. For that reason, adopting Mr. Huddleston’s proposal will result in near-constant litigation over the minutia of each change that any given supplier may divine. (*Id.*) The SFCs should not be modified to incorporate such sharing language – particularly language that is so broad in scope as to be nonsensical and would force the Ameren Illinois Utilities to share the cost of negative consequences without being able to enjoy any of the benefit of positive consequences. This is especially so when one considers that the consumer bears the ultimate cost of a MISO rule

change, whether borne by the supplier and incorporated in its pricing, or shared between such a supplier and the utility, with the latter including such costs within the customer's rate.

Dynergy's proposal also includes a provision that the Ameren Illinois Utilities' would bear 100% of the negative consequences of any such change that they initiated or proposed. The very premise behind this proposal is in error, as no single participant is able to dictate change. The MISO Stakeholder process involves a wide variety of market participants; including suppliers, generators, LDCs, regulators, municipalities, cooperatives, customer groups and industry consultants. The voting structure within this process is such that those with common ownership have a single vote. For example, all of the Ameren utilities – both in Illinois and Missouri, Ameren Services Company, Ameren Energy Marketing, Ameren Energy Resources, etc. – collectively have one vote. Similarly, Dynergy, and all of the associated entities within Dynergy have one vote. The smallest co-op member of MISO has one vote. Change in the stakeholder process is effected through majority support of the 96 stakeholders who hold a vote and clearly having only one vote for the entire corporate family does not allow the Ameren Illinois Utilities to dictate change. Given the voting structure within MISO, it is unclear how Dynergy would determine whether one of the Ameren Illinois Utilities had initiated or proposed a change. Even more dispute and litigation over this issue may occur, as suppliers may attempt to cast any proposal by any Ameren entity – even one which was itself a BGS Supplier – as initiated by one of the three Ameren Illinois Utilities. Dynergy's proposed language would seemingly only inject uncertainty into the provision and attempt to discourage the utilities from proposing changes at MISO that could be beneficial to the overall market. (AIU Ex. 6.0, Blessing Rebuttal, pp. 4-6.)

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

Dynegy 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.” The Ameren Illinois Utilities disagreed with this proposal in ICC Dockets 05-0160/0161/0162 (cons.) (Resp. Ex. 18), and in this docket as well (AIU Ex. 6.0, Blessing Direct, pp. 7-8.) There is no evidence supporting the change Dynegy suggests.

Dynegy’s proposal would change the nature of the SFCs from a full requirements product for the amount of energy actually consumed to “take or pay.” As an example of the impropriety of the Dynegy 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. It would also result in a transition from a regulatory process where prudence review is initiated by customer complaints to review initiated by suppliers. 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.

The purpose of including damage provisions into a contract is to incent proper behavior, and to provide a remedy when this does not occur. The Ameren Illinois Utilities already have such incentive without including such an unmanageable provision in the SFCs.

Dynegy witness Huddleston claims that a cost reduction would result from implementing this recommendation. Ameren Illinois Utilities’ witness James Blessing dispelled that notion, by showing that, during periods of outage, a supplier will either be able to sell what would be the excess supply (if the supplier were long), or avoid the purchase of supply (if the supplier were

short). Thus, the amount of damages is substantially less than the simple loss of revenue. (AIU Ex. 6.0, Blessing Rebuttal, p. 7.) In this regard, it is important to remember that the goal is to achieve the lowest overall cost to consumers – not the lowest possible auction price. Even if including this provision in the SFC may result in a slightly lower price for the auction products, that does not necessarily translate into a lower overall cost to consumers, as one must now figure in the potential cost of litigation every time an outage occurs. (*Id.*)

**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.**

In their direct testimony, Staff witnesses Kennedy and Zuraski recommend 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.” Staff bases this recommendation on the desire to keep the actual load served under the tranches of the various products roughly equal and thus facilitating competition between the products.

The Ameren Illinois Utilities are concerned that this approach may have an unintended negative consequence. To illustrate, consider the BGS-LFP product which only represents approximately 50 MW of load in total, spread across 37 tranches. If the Auction Manager were to use these statistics to redefine the tranche size as recommended by Staff, this would result in only one tranche of the BGS-LFP product in the next Illinois Auction with the winner of the one tranche being responsible for serving 100% of the BGS-LFP load. The concern is that while this single tranche is expected to serve roughly 50 MW of load based on historical switching statistics; the reality is that the supplier who wins this single tranche will be expected to serve 100% of the BGS-LFP actual load up to the full 1850 MW in the albeit extreme case that all

customers eligible to take the product choose to do so. While it is unlikely that the full 1850 MW of BGS-LFP load would sign up for the product following the next Illinois Auction, it is possible if not likely that with the adoption of certain modifications to the product design, such as significantly reducing the time between the close of the auction and the end of the enrollment period, the BGS-LFP tariff could become more economic for eligible customers and a significant amount of load could sign up for the product. This may make suppliers reluctant to bid on this product. (AIU Ex. 6.0, Blessing Rebuttal, p. 15.)

The Ameren Illinois Utilities recommend that, 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. (AIU Ex. 6.0, Blessing Rebuttal, p. 16.) The Ameren Illinois Utilities support the recommendations of Dr. LaCasse with respect to the specific methodology of resizing tranches. (AM Ex. 2.0, LaCasse Rebuttal, pp. 8-11.)

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

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

**G. 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 Mr. Huddleston discusses the process in which the Ancillary Services required to serve the BGS Load is procured from the market and states that "Ameren should be required to procure ancillary services in a timely manner so that Suppliers will know the cost before the auction." The Ameren Illinois Utilities' current contracts for Ancillary Services will

expire on December 31, 2007. Therefore, it will be necessary for the Ameren Illinois Utilities to procure the required Ancillary Services prior to January 1, 2008. With the next Illinois Auction scheduled for mid-January 2008, this means the procurement will be complete and the Ameren Illinois Utilities' estimate of the resulting Ancillary Services rates will be posted to the MISO OASIS site prior to the auction. The posting of estimated rates rather than actual rates is necessary due to the nature of the pricing terms included in the ancillary services purchase contracts. The existing ancillary services contracts include a variable pricing structure and it is anticipated that the contracts that result from future procurements of ancillary services will include variable pricing as well.

#### **H. 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.**

AG witness Kenneth Rose recommended implementing benchmark comparisons of the wholesale market prices and production costs of electricity. Mr. Rose asserts that such benchmarking is necessary because the auction clearing price is higher than (1) the wholesale market price he selected and (2) some (but not all) of the costs of producing, marketing and delivering electricity to the point of sale. Mr. Rose testified that the cost of capacity, transmission, and ancillary services be considered, however, such cost components would only account for a portion of the difference in the auction-clearing price and wholesale price upon which he focuses.

As noted in Mr. Nelson's testimony, Mr. Rose's market comparisons do not help to enhance the auction process. (AIU Ex. 5.0, Nelson Rebuttal, pp. 11-13.) His is the proverbial "apples to oranges" comparison. 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.

Equally unrealistic is Mr. Rose’s proposal to rely upon the generation or production cost as an appropriate benchmark. (*Id.*) While Mr. Rose may wish that wholesale suppliers would willingly sell at production cost and ignore their other costs and the many volumetric and operational risks associated with supplying full requirements, this is not the reality of the marketplace from which the Ameren Illinois Utilities must procure supply to fulfill their obligations. No wholesale entity is obligated to offer to sell any product at any particular price to the Ameren Illinois Utilities at all, let alone an obligation to offer to sell at Mr. Rose’s expectation of what the price should be.

Furthermore, whether supply is obtained from BGS Suppliers, through bilateral contracts, or from the MISO-administered LMP markets, someone bears these risks. (*Id.*) Risks which are not transferred to suppliers will be borne by the Ameren Illinois Utilities and their customers. Transferring certain risks from suppliers, such as that which is done with a shortened enrollment window, can be expected to result in a price benefit which exceeds any incremental risk borne by customers. However, this is not true of all risks. While the price of the auction product may indeed be lowered by transferring from suppliers all of these risks, this does not necessarily suggest that the overall total cost to consumers is reduced.

Mr. Rose also recommend use his benchmark proposal to set a “reserve price” for the auction. Presumably, if the auction price results are higher than his reserve price, the auction evidently fails and supply must be procured in the wholesale market. (*Id.*) For the reasons noted above, Ameren Illinois Utilities believe that setting a “reserve price” that does not include all supplier costs or consider all supplier risks would be unrealistic. Failing to factor volumetric and operational risks, and all other costs, into this reserve price will necessarily guarantee that the reserve price is invalid and unachievable. Setting an unachievable price as the benchmark will doom the auction to failure and result in the entire supply requirement being acquired via contingency purchase plans, thus exposing customers to other major risks (e.g., price uncertainty and resource adequacy).

Finally, setting a “reserve price” only makes sense if one knows that one or more suppliers will serve the load at that price. (AIU Ex. 5.0, Nelson Rebuttal, p. 13.) But, in reality, there is no way to determine at what price suppliers will serve a particular load without going to the market and soliciting bids – which is exactly what a transparent, competitively-bid, auction procurement process is designed to accomplish. For all of the above reasons, AG witness Mr. Rose’s benchmarking and reserve price proposal is not helpful and should be rejected.

### **3. Judicial review of Commission auction deliberations.**

#### **I. Confidentiality of Bidder Information**

##### **1. Appropriate definition for confidential information**

#### **J. 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.**

Ameren Illinois Utilities' witness Mr. Jones testified that the Market Value Adjustment ("MVA") and Supply Cost Adjustment ("SCA") factors should be combined with the base Retail Supply Charge on the customer's bill in an effort to minimize confusion and misunderstanding. (AIU Ex. 3.0, Jones Direct, pp. 9-10.) Presently, the Ameren Illinois Utilities separately state the Retail Supply Charge, MVA, and SCA charges. The MVA represents the Ameren Illinois Utilities' monthly over-under adjustment where costs and revenue are balanced. The SCA represents a combination of the Uncollectible, Cash Working Capital Adjustment, and the Supply Procurement Adjustment factors. All of these SCA components must be set or determined in a delivery services rate case, and for the fixed price auction products, the total SCA amount only changes when new auction results are incorporated.

The Ameren Illinois Utilities have received anecdotal feedback indicating that customers, especially residential and small commercial customers, are confused by three line items for cost of power on their bill. (*Id.*) For that reason, the Ameren Illinois Utilities support a recommendation to combine the MVA and SCA components into a single component on a customer's bill to help minimize confusion and misunderstanding. Thus, customers would see a MVA line item, plus the appropriate Retail Supply Charge. This would be done for both the BGS-FP and BGS-LFP categories of service.

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

**K. Timeline**

- 1. Eliminate pre-qualification of LFP Load from the Ameren tariffs.**
- 2. Date for release of the second part of the Public Report and the signed SFCs.**
- 3. Extend the time during certain certifications must hold through the signing of the SFCs.**

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.**

**L. 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.”**

**V. Conclusion**

Dated: May 30, 2007

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**CERTIFICATE OF SERVICE**

I, Laura M. Earl, certify that on May 30, 2007, I served a copy of the foregoing Initial Brief of the Ameren Illinois Utilities by electronic mail to the individuals on the Commission's Service List for Docket 06-0800.

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