

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On its own motion)	
)	
)	
Investigation of Rider CPP of)	
Commonwealth Edison Company, and)	
Rider MV of Central Illinois Light)	Docket No. 06-0800
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.)	

REPLY BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION

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**REPLY BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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

I. Introduction

A. Background

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

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

The Initial Brief of the Staff of the Illinois Commerce Commission (“Staff’s Initial Brief” or “Staff IB”) was filed on May 30, 2007. The Initial Brief Of The People Of The State Of Illinois (“AG’s Initial Brief” or “AG IB”), Dynegy Inc.’s Opening Brief (“Dynegy’s Initial Brief” or Dynegy IB”), the Initial Brief Of The Coalition Of Energy Suppliers (“CES’s Initial Brief” or “CES IB”), Commonwealth Edison Company’s Initial Post-Hearing Brief (“ComEd’s IB” or ComEd IB), Ameren Illinois Utilities’ Initial Brief (“Ameren’s Initial Brief” or “Ameren IB”), the Initial Brief Of The Citizens Utility Board (“CUB’s Initial Brief” or “CUB IB”), the Initial Brief Of Illinois Industrial Energy Consumers (“IIEC’s Initial Brief” or “IIEC IB”), the Initial Brief of The Retail Energy Supply Association (“RESA’s Initial Brief” or “RESA IB”), the Initial Brief of Direct Energy Services, LLC and Commerce Energy, Inc. (“DES/CE’s Initial Brief” or “DES/CE IB”), and the Joint Initial Brief of Midwest Generation EME, LLC and Edison Mission Marketing & Trading, Inc. (“MWG/EMMT’s Initial Brief” or “MWG/EMMT IB”) were also filed on May 30, 2007.

B. The AG's argument that the auction violates Section 16-113

Inexplicably, in the Introduction to its Initial Brief, the AG argues that the auction fails as a rate setting mechanism because it is in violation of Section 16-113 of the Public Utilities Act ("PUA"). (AG IB, p. 3) First, this argument is outside of the scope of this proceeding as set forth in the Commission's Initiating Order, which stated:

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

(Docket No. 06-0800, Initiating Order dated December 20, 2006, pp. 4-5 (emphasis added)) Since this argument **was specifically addressed and disposed of** in the Procurement Dockets, the AG has improperly raised it in this proceeding. (Docket 05-0159, Final Order dated January 24, 2006, pp. 48-50; Docket 05-0160/0161/0162 (Cons.), Final Order dated January 24, 2006, pp. 76-78)

Second, the AG's argument is simply wrong. The Commission has determined that the auction process does not violate the PUA and has specifically rejected the AG's argument. (Docket No. 05-0159, Final Order dated January 24, 2006, pp. 49-50; See also Docket Nos. 05-0160/0161/0162 (Cons.), Final Order dated January 24, 2006, pp. 76-78) Therefore, the Commission should reject the AG's argument that the auction violates Section 16-113 of the PUA.

C. Issues Previously Addressed

Some of the issues raised in the parties' initial briefs were addressed in Staff's Initial Brief and, in the interest of efficiency, Staff has not raised or repeated every

argument or response previously made in Staff's Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's Initial Brief because further or additional comment is neither needed nor warranted.

D. Dropped Issues

Pursuant to the Administrative Law Judges' ("ALJs") direction, all parties and Staff worked together to develop a joint brief outline that was filed on e-Docket. Certain issues contained in the joint brief outline were not addressed in any party's initial brief. To the extent that an issue identified in the joint brief outline was not raised in any party's initial brief, it is no longer an issue in this proceeding. Consequently, Staff submits that it would be improper for any party to raise those issues for the first time in its reply brief, and such issues should be dropped from the headings included in the proposed order to be issued by the ALJs.

II. Uncontested Issues

A. Use of an Auction

- 1. Continued use of the alternative procurement methods for the Hourly Price Section.**
- 2. Changes to the Hourly Price section product for the Ameren Utilities.**

B. Application Process

- 1. Clarification of application forms including Section A.6 of Part 1 Application, Section A.7 of Part 1 Application, and Section B.2 of Part 2 Application.**
- 2. Additional documentation regarding Registered Agent requirement.**
- 3. Modification of pre-auction letter of credit.**
- 4. Establishment of time window for applications to be processed.**

C. Credit Issues

- 1. All modifications to pre- and post-auction security instruments that were accepted in the 2006 auction should also be accepted in the next auction so that only new revisions will be considered during the '08 application process.**
- 2. A guarantor will be provided with a single line of credit to cover all suppliers whose obligations it guaranties.**

Ameren supports its proposed language for Section 6.4 of the Supplier Forward Contracts (“SFCs”), which is intended to resolve this uncontested issue, stating, “[t]his language, proposed by the Ameren Illinois Utilities and by ComEd, would serve the same purpose as the language proposed by Ms. Phipps.” (Ameren IB, p. 18) Ameren proposed no other justification for its language. It offered no argument that its proposal is in any manner superior to Staff’s proposed language. In contrast, Staff has explained why its proposed language, which ComEd supports (ComEd IB, p. 6), is preferable to

Ameren's flawed revision to Section 6.4 of the SFCs. (Staff IB, pp. 8-9) Staff opposes Ameren's proposed language and recommends approval of its proposed revision to Section 6.4(i)(b) of the SFCs, which is intended to close the existing loophole that could allow a guarantor to receive double the amount of unsecured credit it should be granted under the SFCs.

3. **Accelerated payments provision of the SFCs, if a Buyer is below investment grade.**
 4. **Unsecured credit will be divided appropriately among participating affiliates.**
- D. Enrollment Windows and Other Switching Rules**
1. **Timeline revisions reducing the number of days between a Commission decision and the start of the applicable enrollment window.**
- G. Other Contract Change Proposals**
1. **Clarifications to reflect: (a) changes in the dates applicable to future auctions and purchases, (b) changes in applicable RTO tariffs and charges since the 2006 auction; and (c) changes made in response to questions received and issues raised both internally and externally during the 2006 auction.**
 2. **Revise the line of demarcation for taxes in the SFCs.**
 3. **Delete provisions (a) regarding the priority of payment of penalties in the event of a RES default; and (b) that the CPP Supplier must be registered to do business in Illinois.**
 4. **Permit suppliers to satisfy their PJM Supplier Responsibility Share from a single PJM E-Account.**
 5. **Provision of data to winning CPP Suppliers.**
 6. **Update and clarify delineation in Schedule C of Buyer / Supplier RTO costs.**
 7. **The damages due to default provisions should be made symmetrical.**
 8. **Reasonable supplier consent should be required if a utility wishes to assign the SFC.**
 9. **Form letter of credit should be revised to eliminate unnecessary provisions, correct errors and make clarifications.**
 10. **Revisions to implement PJM changes for accounting for transmission losses and for RPM.**
- I. Post-Auction Commission Review of Results**

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

J. Confidentiality of Bidder Information

1. **Added detail in the tariffs about confidential treatment of information.**
2. **Clarify that supplier data and auction data provided to the Commission through the Confidential Reports of Staff and the Auction Manager that is not otherwise released or designated as public remains confidential.**
3. **Specify items to be released in the Public Reports.**

K. Information Dissemination

1. **Archive the 2006 Web site to an accessible location, and update the Illinois Auction Web site for the 2008 auction.**
2. **Add an information session well in advance of the Part 1 Application.**
3. **Invite all stakeholders to the first information session conducted well in advance of qualification and direct information dissemination efforts to the public and press during that period.**
4. **Provision of additional documentation targeted on areas that generated a high volume of questions in the prior Illinois Auction (tariff and switching rules, end of auction process, and examples for auction rules).**
5. **Additional content on General Information page of the web site.**
6. **Provide a summary and overview of the auction for the general public and for the press.**
7. **Schedule conference calls or web casts to provide updates to all stakeholders between the Part 1 Application deadline and the auction.**
8. **Provide updated switching statistics and hourly load data.**

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

M. Timeline

1. **Market Cost data and final prism provided by Utilities at a time closer to the Auction Commencement Date.**
2. **Utilities should submit the Retail Supply Charge Informational within two business days of the Declaration of a Successful Result.**
3. **The Public Report will be divided into two portions. The first, containing the bulk of the report including recommendations will be released within 15 business days after Commission review of the results; the second, within 60 business days.**
4. **Change the order of events in the timeline to ensure better consistency and clarity for potential suppliers. The tranche targets would be announced first, then the auction rules would be provided in final form (because they rely on the tranche targets), and finally the Part 1 Application would be released (since the Part 1 Application references the final auction rules). Currently, applications are posted first, then final documents are posted, and then tranches are announced.**
5. **Compress the timeline between the Part 1 Application and the Auction to provide additional time to integrate the Commission's Order with the controlling documents, to provide bidders sufficient time to consider final documents before having to submit an application, and to reduce the burden on bidders of a lag between the Part 2 Application and the Auction.**
6. **Include in the timeline a specific time when the auction would be re-run in the event that the Commission initiates an investigation into the auction results, and the Staff, Auction Manager and utilities determine that the auction should be re-run, and provide that pre-auction security stays in effect until that time.**
7. **The process of updating the SFCs for the next auction should be clarified:**
 - a. **Items previously decided by the Commission (e.g., credit, supply group definitions, and contract term structure) require Commission approval to modify.**

- b. Changes that clarify existing language or implement changes to market rules do not require Commission approval, as long as they comply with Commission orders in the procurement cases and this proceeding.**
- c. Suppliers have the opportunity to comment on the SFCs.**
- d. A compliance filing will be made including the final SFCs to demonstrate that they substantively comply with the conditions underlying the Commission's approval of the tariffs and use for retail ratemaking of the auction results as provided in the tariffs.**
- e. Signed SFCs would be submitted to the Commission for informational purposes only.**

N. Ameren-only SFC Issues

- 1. Retention of Ameren SFC provisions that allow suppliers to self supply ancillary services.**
- 2. Requirement in Ameren SFC that suppliers identify the capacity resources used to satisfy their resource adequacy requirements.**
- 3. Use of separate SFCs for each Ameren Utility, instead of one SFC with special language limiting joint and several liability.**
- 4. Ameren SFC revisions to address MISO rules changes.**

O. Contingency Purchases

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

III. Contested Issues

A. Use of an Auction

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

a. Modifications to the starting price.

The AG states in this section of its Initial Brief that “The Commission Should Use Appropriate Benchmarks to Evaluate Whether Procurement Costs are Reasonable.” (AG IB, pp. 3-6) However, the AG fails to make any recommendations in this section for modifying the starting price of the auction. In fact, the AG only argues that the September 2006 auction prices were higher than a pair of benchmarks relied upon by AG witness Rose. (*Id.*, pp. 5-6) The AG fails to mention that Dr. Rose’s benchmarks were roundly criticized by numerous other witnesses in this proceeding. These criticisms were summarized in Staff’s Initial Brief at pages 19-23. They will also be discussed in Section III.A.1.d, below, where Staff replies to the AG argument that such benchmarks should be used for purposes of computing “reserve prices.” Since no party has raised a specific argument to modify the starting prices for the auction, it is no longer an issue in this proceeding

b. Use of demand-side bidding

CUB proposes to redesign the auction to create separate, consecutively bid auction products for energy efficiency, demand response, and generation. CUB refers to this as a “three-tier bidding” approach. (CUB IB, pp. 3-9) CUB argues that this is necessary to address “barriers” to demand response inherent in the current auction. Oddly, CUB does not offer the preferred approach of its own witness to address these barriers. That is, CUB witness Crandall stated,

First, the most efficient way to select resources is to have the utilities and state agencies involved in planning energy efficiency and demand response programs for customers.

(CUB Ex. 2.0, p. 10) Mr. Crandall offered the three-tier bidding approach only as a second-best solution to the barrier problem. (*Id.*, p. 13, 18)

The unenthusiastic proposal for a three-tier approach was received even less enthusiastically. Ameren witness Nelson testified that “there is no feasible way to introduce this [three-tier bidding approach] as part of the 2008 auction.” (Ameren Illinois Utilities’ Ex. 5.0, p. 8) He noted that “there is no guarantee how and to what degree customers’ actual load requirements or usage patterns will be changed, especially lacking any historical context.” (*Id.*) Similarly, ComEd witness Tierney opined that CUB’s ideas are “too far-reaching and complex and too ill-formed to be considered in the context of this proceeding.” (ComEd Ex. 4.0, p. 15) According to Dr. Tierney, CUB’s three-tier approach is inherently incompatible with the auction process. CUB’s proposal would require significant utility portfolio management and administrative planning functions inconsistent with the approved auction process and inconsistent with the notion of the utility providing supply at no risk and with no return. (*Id.*, pp. 17-19)

Furthermore, Dr. Tierney and other witnesses argued that the “barriers” to which CUB refers are more imaginary than real:

[T]here is no evidence that the auction has inhibited efficient demand management. Moreover, as a matter of policy, there is nothing inconsistent between a full requirements auction and other policies that promote efficient use of demand management. To [SIC] goal of promoting efficient demand management does not require revision to the auction, let alone effectively abandoning it.

(ComEd Ex. 4.0, p. 14) In fact, ComEd witnesses McNeil and Eber and Brandt provided several examples of ComEd and PJM demand-side management programs, which are

currently co-existing with the Illinois Auction. (ComEd Ex. 2.0 Revised, pp. 26-27; ComEd Ex. 6.0, pp. 3-8)

In Staff's view, if demand management is to be considered by the Commission, it should be outside the context of the vertical tranche auction. As explained by Staff witnesses Kennedy and Zuraski,

The concept of *demand side resources* is fundamentally different than the concept of *supply side resources*. There is no direct way of measuring a reduction in electricity demand, as there is of measuring a supply of electricity, and even if such measurement problems could be adequately solved, it would be simply impossible to "supply" a vertical tranche of energy efficiency (which presumably would be a constant portion of load in every hour of the year that has been reduced). Hence, the provision of demand side resource cannot be adequately compared against the supply of vertical tranches in a manner that would enable them both to be treated interchangeably in the same auction.

(ICC Staff Ex. 4.0, p. 9)

Finally, there are legal concerns with this and other proposals for the Commission to get involved in mandating demand-management. In this regard, CUB misconceives or misunderstands the legal issues concerning the Commission's authority. (See CUB IB, pp. 9-10) The rebuttal testimony of Staff witnesses Kennedy and Zuraski (ICC Staff Ex. 4.0, pp. 7-9) noted the repeal of Sections 8-402 and 8-404 of the PUA and the implication of that repeal on the Commission's authority with respect to demand management. CUB responds in its Initial Brief by asserting that it "is not proposing that the utilities provide a 20-year energy plan or that Staff evaluate energy plans or conservation programs" (CUB IB, p. 10) Staff's concerns with Commission authority do not go to the specifics of what was previously required as assumed by CUB. Rather, the repeal of those PUA sections raises the broader

question of whether the legislature has removed or limited the Commission's authority to impose, mandate or require energy efficiency/demand response programs.

As stated in Staff's testimony, with P.A. 90-561, effective December 16, 1997, the General Assembly repealed what were sections 8-402 and 8-404 of the Illinois Public Utilities Act. Section 8-402 required utilities to provide 20-year energy plans, which considered and utilized all available, practical and economical conservation, renewable resources, cogeneration and improvements in energy efficiency. (220 ILCS 5/8-402 (1996)) Similarly, Section 8-404 authorized the Commission to "require any public utility to implement energy conservation, demand control, or alternative supply programs" (220 ILCS 5/8-404) As a result of the repeal of these PUA sections, the Commission Staff's infrastructure for evaluating energy plans and conservation programs was eliminated. (ICC Staff Ex. 4.0, p. 7)

In addition to repealing Sections 8-402 and 8-404 of the PUA, P.A. 90-561 created an Energy Efficiency Trust Fund, to be funded by Illinois electric utilities, and managed by the Illinois Department of Commerce and Community Affairs rather than utilities or the Commission. Thus, by virtue of P.A. 90-561, the legislature clearly revised certain aspects of the Commission's authority and responsibility with respect to demand management and energy efficiency.

Furthermore, P.A. 94-977, which became effective June 30, 2006, amended Section 16-107 of the PUA, which generally deals with real-time pricing. The amendments added, among other provisions, these of Section 16-107(b-15):

(b-15) If the Commission issues an order pursuant to subsection (b-5), the affected electric utility shall contract with an entity not affiliated with the electric utility to serve as a program administrator to develop and implement a program to provide consumer outreach, enrollment, and

education concerning real-time pricing and to establish and administer an information system and technical and other customer assistance that is necessary to enable customers to **manage electricity use**. The program administrator: (i) shall be selected and compensated by the electric utility, subject to Commission approval; (ii) shall have demonstrated technical and managerial competence in the development and administration of **demand management programs**; and (iii) may develop and implement risk management, **energy efficiency**, and other services related to energy use management **for which the program administrator shall be compensated by participants in the program receiving such services**. The electric utility shall provide the program administrator with all information and assistance necessary to perform the program administrator's duties, including, but not limited to, customer, account, and energy use data. The electric utility shall permit the program administrator to include inserts in residential customer bills 2 times per year to assist with customer outreach and enrollment.

(220 ILCS 5/16-107(b-15)) Again, in this recent legislative change, it is not the utility, but an independent administrator of a real-time pricing program, that may provide energy efficiency services, as long as the compensation for those services comes from “participants in the program receiving such services.” (*Id.*)

It is well establish that the Commission only has those powers given it by the legislature through the PUA. (*Union Electric Co. v. Illinois Commerce Comm'n*, 77 Ill. 2d 364, 383 (1979)) Thus, P.A. 90-561 and P.A. 94-977 raise several questions for Staff regarding the scope and extent of the Commission’s authority with respect to energy efficiency/demand response programs. First, can the Commission require Illinois utilities to offer energy efficiency or demand response programs? CUB asserts that it is not asking the Commission to require the utilities to implement any conservation programs (CUB IB, p. 10); however, by proposing that the energy efficiency and demand response providers be allowed to bid in the auction, CUB is asking the Commission to require the utilities to purchase and offer energy efficiency and demand response programs. With the repeal of Section 8-404, which authorized the

Commission to require any public utility to implement energy conservation, demand control, or alternative supply programs, Staff is not certain that the Commission has the authority to require the utilities to purchase and offer energy efficiency and demand response programs through the auction process.

Second, can the Commission require all customers to pay for efficiency and demand response programs that only benefit a small group of customers? In enacting P.A. 94-977, the Legislature provided that energy efficiency services may be provided as long as the compensation for such services are paid for by “participants in the program receiving such services.”

Subject to applicable legal standards, Staff generally supports a broad interpretation of the Commission’s authority so as to promote and ensure the provision of adequate, efficient, reliable, environmentally safe and least-cost public utility service under the PUA. However, Staff understands that there are limits to the Commission’s authority. In this instance, given that the Legislature has repealed the specific sections in the PUA relating to energy efficiency/demand response programs without replacing such sections with similar authority, Staff is not certain whether CUB’s proposal could be subsumed within the Commission’s authority to ensure just and reasonable rates (see CUB IB, p. 9). Furthermore, in light of the Legislature’s actions in P.A. 94-977, it seems that the Legislature is moving in the opposite direction.

While Staff’s position is not that the Commission has no authority whatsoever with respect to demand response and energy efficiency, the repeal of key provisions of the PUA providing specific authority with respect to demand response and energy efficiency cannot be disregarded as meaningless legislative action. As explained in

Caterpillar Finance Corp. v. Ryan, 266 Ill. App. 3d 312, 318-319 (3rd Dist. 1994), the legislature's intent in repealing a specific statutory authorization is assumed to be the elimination of that specific authority:

The legislature's intent to disallow liquidating distributions as a method of reducing paid-in capital is also evidenced by the repeal of section 9.15 of the Act. (Pub. Act 84-1412, Art. 14, par. 2, eff. Jan. 1, 1987 (repealing Ill. Rev. Stat. 1985, ch. 32, par. 9.15).) Section 9.15 specifically permitted corporations to reduce paid-in capital through "distributions as liquidating dividends as permitted by law." (Ill. Rev. Stat. 1985, ch. 32, par. 9.15.) When the legislature repealed section 9.15, it eliminated the provision of the Act which authorized reductions in paid-in capital by liquidating distributions. We must assume that the legislature eliminated the above-quoted language with the intent of eliminating that method of reducing paid-in capital.

(*Id.*)

At the same time, the legislature did not repeal Section 8-401 which imposes a duty on utilities to "provide service and facilities which are in all respects adequate, efficient, reliable and environmentally safe and which, consistent with these obligations, constitute the least-cost means of meeting the utility's service obligations." (220 ILCS 5/8-401) Illinois Court's have recognized that Sections 8-401, 8-402 and 8-404 addressed similar but different powers. (See *City of Chicago v. Illinois Commerce Comm'n*, 233 Ill. App. 3d 992 (1 Dist. 1992)) Applying the above-referenced cases and concepts to the instant case, the repeal of Section 8-404 would indicate that the legislature intended to eliminate the specific authority previously granted by that Section. At the same time, the Commission continues to have the power and authority conferred by Section 8-401 (as well as the general ratemaking authority of Section 9-201). While Staff would agree that the Commission has some authority with respect to demand response and energy efficiency pursuant to Section 8-401, Staff would also submit that the repeal of Sections 8-402 and 8-404 clearly calls into question the scope

of the Commission's authority to impose requirements previously authorized by those Sections. While some authority may remain, there can be no doubt that it is more limited than it was prior to repeal of Sections 8-402 and 8-404 and there are serious questions regarding the authority to impose the requirements proposed by CUB.

In summary, Staff recommends that the Commission reject CUB's proposed three-tier approach, for the following reasons. First, CUB's own witness presented the three-tier approach as inferior to developing demand-side resources outside the context of the Illinois Auction. Second, the record raises serious doubts that the three-tier approach can be effectively integrated into the Illinois Auction. Third, the record shows that demand-side resources can be (and have been) furnished outside the scope of the Illinois Auction, so the three-tier approach is unnecessary. Fourth, there exists uncertainty that specifically-mandating utility-sponsored demand management programs is within the scope of the Commission's current legislative mandate and authority.

c. Change contract length(s)

d. Use of "reserve prices."

In its Initial Brief, the AG renames this section of the "joint" brief outline to read, "Future procurement processes should use wholesale market prices and generation cost as benchmarks to set a starting price or 'reserve price' and to assess clearing prices at the end of the procurement process." (AG IB, p. 6) Furthermore, the AG proposes that such benchmarks "could be applied at the end of the process or used as a 'reserve price' that is set prospectively." (*Id.*) The AG also suggests that "The

Commission may also wish to consider additional benchmarks.” (*Id.*) The AG provides no arguments in its brief in support of these proposals. To the extent to which the AG tacitly relies upon its discussion of Dr. Rose’s proposed wholesale market price and generation cost benchmarks (see Section III.A.1(a) of the AG’s Initial Brief), the Staff has already provided numerous reasons why these benchmarks should not be adopted by the Commission. (Staff IB, pp. 19-23)

First, while Dr. Rose provided a couple of benchmark examples, he does not specify which, if either, should be used and which should form the basis for a reserve price. (ICC Staff Ex. 4.0, pp. 5-6; see also AM Ex. 2.0, p. 30) Furthermore, as Dynegy notes, “the reserve price proposal is too undeveloped to be debated much less adopted.” (Dynegy IB, pp. 6-7)

Second, no less than five witnesses criticized Dr. Rose’s proposed benchmarks as comparing apples to oranges. (Ameren Illinois Utilities’ Ex. 5.0, p. 11; ComEd Ex. 2.0 Revised, p. 27; ComEd Ex. 4.0, pp. 11-12; DYN Ex. 1.6, p. 7; ComEd Ex. 5.0, p. 20) That is, Dr. Rose’s benchmarks ignore many of the costs and risks borne by the winning bidders that are inherent in the supplier forward contracts approved by the Commission. Thus, as Staff witnesses Kennedy and Zuraski noted, the Illinois Auction products are expected to exact premium prices. (ICC Staff Ex. 4.0, pp 5-6) More specifically, Ameren witness Nelson enumerated several costs or premiums that would be included in the Illinois Auction product prices but are excluded in Dr. Rose’s benchmarks. (Ameren Ex. 5.0, p. 11) These would include 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.

(Id.)

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

Third, attempts to correct these flaws and create directly-comparable benchmarks would likely fail since the Illinois Auction products do not have analogues in the wholesale markets. Any wholesale market price benchmark is therefore at best imperfect. (AM Ex. 2.0, pp. 29-30)

Fourth, even if a more appropriate benchmark could be devised (and used to construct a reserve price), Dr. Rose presents no credible evidence that, in this instance, using a reserve price would lead to an improvement (e.g., a reduction in auction prices). ComEd/Ameren witness LaCasse explained, from the perspective of an auction expert, the conditions and circumstances under which reserve prices can be expected to lead to such an improvement. She testified that few of the conditions can be met in the case of an auction for vertical tranches and, as a result, Dr. Rose's proposal would not constitute an improvement. (AM Ex. 2.0, pp. 29-33) In addition, ComEd witness Tierney described how a reserve price would only reduce the chances that all the supply that is needed would be procured. (ComEd Ex. 4.0, pp. 7-8) In its Initial Brief,

ComEd reiterates this testimony and concludes that “Dr. Rose is essentially calling for a different process from the competitive auction process successfully used by the Commission.” (ComEd IB, p. 20)

For all the above reasons, Staff recommends that the Commission reject the AG’s recommendation concerning the use of a reserve price.

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?

If its proposed three-tier approach is rejected by the Commission (see Section III.A.1.b, above), CUB proposes “modifying the current auction to create separate auction products for the base, intermediate, and peak loads.” (CUB IB, p. 11) CUB’s own witness, Mr. Crandall, ranked this as the worst of his three proposals and referred to it as “only a partial solution.” (CUB Ex. 2.0, pp. 16-17) While CUB acknowledges certain disadvantages of this proposal relative to its three-tier approach, CUB fails to mention the most pressing disadvantages. First, there is no record evidence showing that the proposal would reduce the price of power passed on to ratepayers. Second, there is no record evidence supporting the appropriate portions of base, intermediate, and peak loads. Third, CUB provides no details of how the proposal would be implemented, and there is no proposed timeline for accomplishing all the tasks that would be necessary to develop such details. Fourth, as argued in Staff’s Initial Brief, CUB proposal would be tantamount to abandoning the policy of relying on market forces

and self-interested suppliers guiding investment and generation portfolio management decisions. It would return to relying on the technocratic hand of utilities and their regulators, which would shift risk back from suppliers to ratepayers. Not only does Mr. Crandall's third option constitute a collateral attack on the policy approach adopted by the Commission in the Procurement Dockets; it is also beyond the scope of the current docket, which was initiated to improve upon the Illinois Auction rather than to replace it entirely with a partially-specified alternative. (See Docket 06-0800, Order Initiating Investigation, pp. 5-6 (December 20, 2006)) Staff addressed the scope of this docket in Section I, B, of this brief. For all the above reasons, Staff recommends that the Commission reject CUB's proposal, at this time.

B. Application Process

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

Dynegy and ComEd object to Staff's proposal to require suppliers to provide and support their Tangible Net Worth ("TNW") calculation in the Part 1 Application. Dynegy argues that (1) Staff's proposal will increase the work needed to complete the Part 1 Application, and (2) there may be insufficient time available to resolve deficiencies. Dynegy opposes Staff's TNW proposal and recommends either retaining the *status quo* or implementing the Auction Manager's proposal to make the TNW calculation optional for suppliers. (DYN IB, p. 7) For similar reasons, ComEd also prefers the Auction Manager's proposal over Staff's proposal. (ComEd IB, pp. 24-26)

Contrary to Dynegy's and ComEd's arguments against Staff's TNW proposal, as Staff explained in detail in its Initial Brief, requiring suppliers to provide a TNW calculation with citations should not require significantly more time or resources as the

TNW calculation is based on each supplier's own financial statements and avoiding deficiencies only requires that suppliers use the same care in preparing the TNW calculation as they would for other Part 1 Application requirements. (Staff IB, pp. 25-27) In fact, Staff's TNW proposal is very similar to the existing Part 1 Application requirement that an applicant provide its current credit ratings and supporting documentation, e.g. a print-out from the rating agency's website, showing the name of the rating agency, the type of rating, and the rating of the entity. Nonetheless, when reviewing applications, the credit and application team independently verifies the applicant's credit ratings and reaches consensus regarding the amount of unsecured credit that should be granted to an applicant. (Staff Ex. 3.0, pp. 5-6)

Even if additional demands on supplier resources were accepted as a legitimate concern, that concern could and should be addressed without rejecting Staff's TNW proposal. For example, the Auction Manager, Dr. LaCasse, admitted that the current requirement that suppliers provide credit rating documentation in the Part 1 Application is unnecessary for the credit and application team to perform its evaluation and could potentially lead to deficiencies. (ICC Staff Cross Ex. 12) Those are the same arguments Dr. LaCasse presents against Staff's TNW proposal. (ComEd IB, p. 24-25) In Staff's judgment, if limiting supplier resources required during the application process is such a great concern, it would be better to eliminate the requirement that suppliers provide their current credit ratings and supporting documentation, which is easily obtained through the Internet free of charge, than to omit a requirement on suppliers to provide a TNW calculation with citations. (ICC Staff Ex. 3.0, p. 6)

Dr. LaCasse also described the following positive aspects of requiring suppliers to provide credit rating documentation in the Part 1 Application: (1) it increases the accuracy with which applicants fill out the Part 1 Application and (2) it is simple – printing a page from a website requires little specialized knowledge or skill. (ICC Staff Cross Ex. 12) Like the first advantage mentioned above with respect to credit rating documentation, requiring suppliers to provide a TNW calculation with citations would aid in achieving Staff’s objective to obtain the most accurate TNW calculation because suppliers would naturally verify their TNW calculation just as they would their credit ratings. Moreover, in Staff’s judgment, greater benefit would be derived from requiring suppliers to provide their TNW calculation – which is relatively complicated given that various methods exist for reporting intangible assets and the length of financial statements - rather than current credit ratings, which is relatively simple in comparison to the TNW calculation and requires little specialized knowledge or skill.

Although Dynegy’s and ComEd’s arguments against Staff’s TNW proposal attempt to call into question the validity and reliability of the TNW calculation when calculated by the supplier itself (let alone an outside party, such as the credit and application team), in reality, Staff’s TNW proposal is similar to existing Part 1 Application requirements. Moreover, it would be more beneficial than the existing Part 1 Application requirement relating to credit rating documentation and would likely increase the accuracy of any TNW calculations that may be used as the basis for a supplier’s unsecured credit limit during the next auction. Staff does not consider the Auction Manager’s proposal to make the TNW calculation optional a reasonable compromise. As explained above, requiring suppliers to provide and support their TNW calculation

will assist the credit and application team, and this benefit should not be diminished or jeopardized by making the TNW calculation optional for suppliers. Staff also considers it unlikely that suppliers would be inclined to volunteer their TNW calculation as it could only limit the amount of unsecured credit they are granted under the SFCs because unsecured credit limits equal the lesser of a percentage of TNW or a cap that varies according to credit rating.

Under Dr. LaCasse's compromise proposal the Auction Manager team would calculate and annotate the TNW for each applicant that does not provide its own TNW calculation. (See ComEd IB, p. 25) This aspect of the compromise proposal misses the point of Staff's proposal. Staff's proposal promotes more accurate TNW calculations by supplying a TNW calculation for comparison purposes from an entity with firsthand knowledge regarding the financial statements used to obtain data to perform the calculation. The Auction Manager team is in the same position as the credit application team, and has no independent knowledge of the particular methods used to report intangible assets. Further, the implication that this aspect of the compromise proposal represents a material revision to the procedure employed for the 2006 auction review process is, at best, suspect. ICC Staff Data Request 1.04(D) directly asked Dr. LaCasse whether her team provided an estimate of each applicant's TNW to the credit application team. (ICC Staff Cross Ex. 11) Although Dr. LaCasse stated she could not confirm what information her team actually provided to the credit application team, she agreed it would be typical for the Auction Manager team to provide a "preliminary and unchecked" TNW calculation. Her testimony implies the Auction Manager team could provide a verified TNW calculation but this implication is implausible since the Auction

Manager team has no expertise in financial reporting. (Staff IB, p. 26; ICC Staff Cross Ex. 11, subparts D, E, F and H) For all the foregoing reasons, Staff recommends rejecting the Auction Manager's proposal to make the TNW calculation optional for suppliers and continues to support its proposal to *require* suppliers to provide their TNW calculation and supporting citations in the Part 1 Application.

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.

Both ComEd and Ameren support the specific recommendations of Dr. LaCasse to clarify the way in which the application requirements apply to prospective suppliers that choose to participate in the Illinois Auction through the use of an agent under an agency arrangement, with ComEd specifically supporting the language revisions Dr. LaCasse accepted during cross examination by Staff. (ComEd IB, pp. 26-27; Ameren IB, pp. 39-41) Although Staff supports the general proposition advanced by Dr. LaCasse, Staff recommends eliminating some of the differences between the language proposed by Dr. LaCasse for the scenario where the principal will execute the SFC ("Case 1") versus the scenario where the agent will execute the SFC ("Case 2"). (Staff IB, pp. 28-37) Staff's basic concern, as explained in Staff's Initial Brief, is that the utilities (and ultimately their customers) are exposed to unreasonable additional risks by not requiring or obtaining a certification from the principal in the Case 2 scenario. Neither Ameren nor ComEd addressed this specific issue in their initial briefs, and Staff continues to recommend the language modifications described in Staff's Initial Brief for the reasons set forth therein.

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

C. Credit Issues

1. Bilateral credit.

Based on the relative advantages and disadvantages associated with bilateral credit requirements, Staff withdrew its provisional recommendation for modified bilateral credit requirements. (Staff IB, pp. 37-43) In contrast, Dynegy and MWG/EMMT support bilateral credit requirements. Dynegy summarizes the bilateral credit issue as follows:

...the disagreement appears to center on two points. First, whether there is quantitative analysis to show that retail customers will pay less if bilateral credit is imposed than if status quo is maintained. Second, whether the Utilities “have less incentive to efficiently manage their costs than suppliers.

(DYN IB, p. 9) MWG/EMMT assert that “[r]isk is a considerable component of the auction price...” (MWG/EMMT IB, p. 12) Yet, the portion of the total risk premium relating to utility credit risk has not been determined. (Staff IB, p. 42; Dynegy IB, p. 10) No witnesses testified that the portion of the risk premium included in the auction clearing price relating to utility credit risk is either “considerable” or greater than the price the utilities – and ultimately ratepayers – would pay if the utilities were required to post collateral. Nevertheless, Dynegy and MWG/EMMT incorrectly equate including bilateral credit requirements in the SFCs to lowering the overall price to ratepayers. (DYN IB, p. 13; MWG/EMMT IB, p. 14)

Both MWG/EMMT and Dynegy argue that retail customers will pay more under the current SFC credit requirements than if bilateral credit requirements were adopted

because they assume utilities can manage risk more efficiently than suppliers. (MWG/EMMT IB, p. 13; Dynegy IB, p. 8-9, 12-13) Specifically, MWG/EMMT assert that bearing risk is relatively inexpensive for the utilities. (MWG/EMMT IB, p. 13) Dynegy argues further that if utilities do not justify their costs as prudent in the context of either an annual reconciliation proceeding or a rate case, then shareholders – not ratepayers – should incur those costs. (DYN IB, pp. 12-13) Although Staff agrees with Dynegy that the Commission should not compensate utilities for imprudent costs, it is undeniable utilities would incur regulatory costs, such as financing fees, rate case and reconciliation administrative and legal costs regardless of whether the Commission deems a utility's costs prudent. As unregulated entities, suppliers do not incur those costs. (Staff IB, pp. 39-42) Moreover, Staff notes that even if the mark-to-market calculation is in the utilities' favor and they are not required to post collateral under the SFCs, they would still incur costs to have available a credit facility in case the mark-to-market calculation would move in the opposite direction. Assuming that is deemed to be a prudently incurred cost, it would be passed through to ratepayers even though the utilities would not be required to post collateral. For all those reasons, MWG/EMMT's and Dynegy's arguments regarding the ability of utilities to manage risk more efficiently than suppliers are not convincing.

Dynegy and MWG/EMMT also argue that industry standard contracts include bilateral credit provisions because it reduces risk, especially over the course of long-term contracts during which once strong counterparties may weaken due to future events. (DYN IB, footnote 6; MWG/EMMT IB, p. 14) The Commission previously rejected similar arguments based on industry standard contract terms in the initial

Ameren procurement proceeding. Specifically, the Commission's Order stated, "[b]ecause the contracts at issue are not the result of arms length negotiations, the Commission does not believe it is appropriate to compare the provisions of such contracts to competitive contracts." (Order, Docket No. 05-0160/0161/0162 (Cons.), Dated January 24, 2006, p. 171)

In summary, Dynegy's and MWG/EMMT's arguments in favor of bilateral credit requirements are based on assumptions that have not been shown to be true in this case. As suppliers, Dynegy and MWG/EMMT are primarily concerned with reducing the amount of risk that suppliers bear in comparison to utilities. However, from Staff's perspective, the crux of the bilateral credit issue relates to its net impact on ratepayers. No party presented an analysis that shows definitively ratepayers would pay less if bilateral credit requirements were adopted for the next auction. To the contrary, the only analyses presented on this issue show that if the utilities were required to post collateral under the SFCs, ratepayers would incur costs that they do not incur under the existing SFCs. Thus, Staff opposes bilateral credit requirements and recommends that no bilateral credit requirement be added to the SFCs for the 2008 auction.

D. 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.

RESA notes that the prices for those auction products utilized for large non-residential customers were significantly higher than the prices for those products utilized for residential and smaller non-residential customers. (RESA IB, pp. 5-6) RESA correctly recognizes that the differential is due to a greater degree of risk to wholesale supplier that large customers will switch to RES service. (*Id.*) However, RESA then leaps to the unsubstantiated conclusion that such risk exists “regardless of the [enrollment] windows given to each group.” (*Id.*, p. 6) To the contrary, record evidence and common sense indicates that the risk is proportional to how far forward market prices can wander between the point that the supplier commits to supplying the service and the point that customers must commit to taking that service. (ICC Staff Ex. 1.0, pp. 11-12; Ameren Illinois Utilities’ Ex. 1.0, p. 4) The degree to which those forward market prices can wander are a function of their volatility and the length of time over which that volatility is allowed to manifest itself. (*Id.*) As ComEd witness McNeil explained,

ComEd believes that this difference [in auction prices for the large CPP-A customer products versus the small CPP-B customer products] is largely explained by the switching risk premium necessary to compensate the CPP-A suppliers for the risks associated with holding open a fixed price to the CPP-A eligible customers, who are generally sophisticated purchasers of electricity, and allowing them to observe market price movements before they decide whether or not to elect the utility service.

(ComEd Ex. 1.0, pp. 13-14) There is nothing that the Commission can do to reduce market volatility. However, by modifying the enrollment window, the Commission can control the length of time over which that volatility is allowed to manifest itself.

CES argues that a shorter enrollment period will not reduce the auction price. In support of this assertion, they cite testimony by CES witnesses Domagalski and

Papadimitriu (CES Ex. 2.0, pp. 7-8), where the witnesses grossly mischaracterize a NERA's Supplier Survey (AM Ex. 1.8 at B-15-16) as saying "potential bidders state that shorter enrollment windows alone would not affect their bids." (CES IB, pp. 13-14). In fact, as the witnesses admitted during cross examination, the survey only asked about how a shortened enrollment window would affect suppliers' **ranking** of the risk associated with bidding on the large customer group **relative** to the small customer group. (Tr., pp. 716-724) The survey did not come anywhere close to asking how a shortened enrollment window would affect bids, the amount of premium that a bidder would need to commit to serving the large customer group, or the final resulting auction prices. However, one supplier volunteered that "Shortening the enrollment window would certainly reduce the risk," while another supplier stated, "...the cost of the **option** would be based on the number of days between the auction certification and the known decision date." (AM Ex. 1.8, p. B-16, emphasis added)

Ameren/ComEd witness LaCasse also referred to options and "optionality" (AM Ex. 1.0, pp. 51, 52) and opined that "There is an inherent trade-off between optionality and price." (AM Ex. 1.0, p. 53) She testified that reducing the length of the enrollment window would "shrink the time between auction close and the time at which suppliers know the load that they will have to serve," and "works to reduce the level of optionality in the A and LFP products," so that "the prices resulting from the auction can be expected to be lower than they otherwise would have been." (AM Ex. 1.0, p. 51-52)

CES also argues that a 20 day enrollment window is simply too short as a matter of practicality. Unfortunately, in the course of this argument, CES mischaracterizes testimony when it states, "As Staff witnesses Kennedy and Zuraski acknowledge, the

retention of the 45-day enrollment would provide sufficient time for customers to complete the myriad tasks inherent in the supply contracting process. (See Kennedy/Zuraski Tr. at 658)” (CES IB, p. 11) In fact, at the cited portion of the transcripts, when the Staff witnesses were asked to describe “the benefits associated with the 45-day window for the enrollment as compared to the 20-day enrollment window,” Mr. Zuraski merely indicated that the 45-day window would provide “more time” for the administrative process of enrolling customers to take place. (Tr., p. 658) Neither Mr. Zuraski nor Dr. Kennedy indicated that 45 days was “sufficient” and 20-days insufficient.

Furthermore, and notwithstanding CES’ concerns, witnesses for ComEd and Ameren did not indicate that they would have problems managing the administrative process with only a 20 day window. Ameren also notes that

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.

(Ameren IB, p. 50)

Finally, the IIEC, representing several large-customers, “has no objection to recommendations that the enrollment window for larger customers be reduced to 20 days.” (IIEC IB, p. 8) Indeed, as IIEC notes,

IIEC witness Stephens testified that some larger customers would and could manage a shortened enrollment window in order to access lower power prices that might be associated with such an option. (Stephens, IIEC Ex. 1.0 at 9:187-189). Based on his experience and discussions with IIEC companies, a period as short as five business days could be manageable for larger customers. (*Id.* at 9:195-197).

(IIEC IB, p. 8)

In rebuttal, IIEC witness Stephens testified that the shorter period for large customers could be either five business days or seven calendar days. (Stephens, IIEC Ex. 2.0 at 5:100-102). The practical effect for customers is the same for either definition. Ameren and ComEd both support the use of the seven-day window as an option for larger customers. (See, Blessing, Ameren Ex. 6.0 at 13:318-324, 14:326-331; McNeil, ComEd Rev. Ex. 2.0 at 9:187-200).

(IIEC IB, p. 10)¹

Staff recommends, based on ample record evidence, that the Commission reduce the enrollment window for larger non-residential customers to 20 days. The contrary and self-serving view of RESA and CES is insufficiently supported.²

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

RESA opposes Staff's proposal, as modified by ComEd witness McNeil, to limit customers' rights to leave fixed price utility service outside of the enrollment window. (RESA IB, pp. 6-8) As RESA notes, "The arguments in favor of and in opposition to rules that restrict customers from leaving fixed price electricity service outside of the enrollment window are similar to those discussed in the previous section of this brief discussing the duration of enrollment windows." (*Id.*, p. 7) Staff agrees with that assessment, and therefore refers the Commission back to the previous section of this brief for its answer to RESA's opposition to the proposal to limit switching outside of the enrollment window.³

¹ As discussed in Section III.F.3, below, IIEC recommends that customers' choice of enrollment window (20-day or 7-day) be used to segment them into separate auction product groups. (IIEC IB, p. 12)

² Staff discusses in Section III.F.3, CES's opposition to the IIEC proposal to have separate auction products for large customers that opt for a 7-day enrollment window versus a 20-day enrollment.

³ CES also claims that while "Staff and ComEd justify their respective proposals by claiming these restrictions are necessary to reduce risk premiums embedded in the utilities' Annual (continued...)

On the other hand, CES raises the additional argument that

The underlying purpose of the Customer Choice Act is to foster a competitive wholesale and retail electricity market to benefit all Illinois citizens. (See 220 ILCS 5/16-101(d).) Staff and ComEd would have the Commission deliberately thwart this mandate.

(CES IB, p. 26)

Despite CES's claims, Staff and ComEd are not thwarting the development of a competitive wholesale and retail market in Illinois. In addition, CES provides no authority for its position that "fostering a competitive wholesale and retail market" is the "underlying purpose" of the Customer Choice Act. CES fails to acknowledge that under the Customer Choice Act the Legislature also found that safety, reliability and affordability of electric power is not to be sacrificed to competitive pressures and safeguards are to be implemented in order to ensure that the public interest is served. (220 ILCS 5/16-101A(c)) As discussed above, a shortened window will reduce risk which should lead to more affordable electricity which clearly is in the public interest. Finally, the Declaration of findings and intent section is "nothing more than prefatory" and "[a]s such, it is of no substantive or positive legal force" (Monarch Gas Co. v. Illinois Commerce Commission, 261 Ill.App.3d 94, 99 (1994))

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

(continued from previous page)

Products, ... neither Staff nor ComEd provide any evidentiary justification for their unsubstantiated claims that customer switching outside of the enrollment window leads to any measurable level of increased risk." (CES IB, p. 26) As with RESA's objections, CES' objections are answered in the previous section of this brief.

E. 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.**

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

IIEC proposes giving large customers a choice of enrollment window: a shorter period and a longer period. (IIEC IB, pp. 12-14) Furthermore, the load of customers choosing the shorter enrollment period would be served by one pair of auction products (one for each utility) and the load of customers choosing the longer enrollment period would be served by another pair of auction products. (*Id.*) ComEd and Ameren express some concerns with the proposal, but offer proposed modifications to alleviate those concerns. (ComEd IB, pp. 53-56; Ameren IB, pp. 54-55) Ameren and ComEd propose that the two enrollment options would be 7 days and 20 days. Ameren and ComEd also propose to allow the Auction Manager, in consultation with the Staff and the utilities, to decide whether there is sufficient interest in each of the products to include them all in the auction (or, in the case of insufficient interest, to include only the 20-day enrollment window products). IIEC and Staff accede to these modifications. (IIEC IB, p. 14; Staff IB, pp. 57-58)

CES objects to these proposals. (CES IB, pp. 14-20) First, CES recycles its argument that shorter enrollment windows do not reduce risk and would not have any beneficial effect on auction prices. This is the same argument used by CES for its opposition to the 20-day enrollment window discussed in Section III.D.2, above, and that section of Staff's Reply Brief serves equally well to rebut the reoccurrence of CES's argument in the context of the IIEC's 7/20 proposal.

Second, CES alleges that "practical problems would overwhelm both customers and the auction process itself." (CES IB, p. 17) While acknowledging that "the IIEC's 7/20 proposal seems to provide a rather elegant solution," CES argues that "upon further review, ..., implementation of the IIEC's 7/20 proposal is fraught with logistical and administrative problems." (*Id.*) To implement the "7/20 proposal," CES presents an imposing list of 11 steps that it claims would have to be taken within a single month, which CES claims is infeasible. (CES IB, pp. 18-19) Without accepting the validity of the CES position that the 7/20 proposal is infeasible, Staff would ask the Commission to consider the worst that could happen if CES is correct. In that case, the default, which is built into the 7/20 proposal, is to utilize only a 20-day enrollment window. That is, if CES's practical/logistical problems prove intractable, there is already a solution.

In summary, Staff continues to recommend that the Commission approve the IIEC proposal, as modified by ComEd and Ameren and then reaffirmed by IIEC and Staff, to utilize separate auction products depending on large customers' choices of 7-day or 20-day enrollment windows.

G. Other Contract Change Proposals

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

Dynergy proposes to amend Ameren's SFCs to institute a sharing the supplier's risk of Midwest Independent Transmission System Operator ("MISO") market rule changes with Ameren and/or its customers. (DYN IB, pp. 13-14) Both Staff and Ameren oppose the Dynergy proposal. According to Dynergy, Ameren is merely "picking nits" and "grousing" about Dynergy's proposed language, and if Ameren does not offer different language, the Commission should accept the Dynergy proposal. (*Id.*) Sure, as both Ameren and Staff point out, Dynergy uses ambiguous and "nebulous" terms, which one might be able to improve upon if one knew what Dynergy really meant to say. (Ameren IB, pp. 55-56; Staff IB, pp. 58-59) However, how is Ameren to know what Dynergy really meant to say? It is up to Dynergy, not Ameren, to make *Dynergy's* proposals clear.

In other cases, though, the problem is not ambiguity in Dynergy's language, but in its fundamental concepts. For instance, Ameren and Staff concur that the proposal would require difficult to impossible determinations of "adverse financial consequences" of MISO rule changes. (Ameren IB, p. 56; Staff IB, p. 58) As Ameren argues,

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.

(Ameren IB, p. 56)

Equally troubling is where Dynergy is clear, like where it calls for the Ameren Illinois Utilities to bear 100% of the negative consequences of any such MISO change

that they initiated or proposed. As Ameren states, “The very premise behind this proposal is in error, as no single participant is able to dictate change.” (Ameren IB, p. 57) Furthermore, the proposal would “discourage the utilities from proposing changes at MISO that could be beneficial to the overall market.” (*Id.*)

For the above reasons, Staff continues to disagree with Dynegy’s proposal to amend the Ameren SFCs to share the impacts of changes in MISO rules.

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

Dynegy proposes that the SFCs penalize the utilities if suppliers are unable to supply due to infrastructure problems on the utilities’ systems. (Dynegy IB, pp. 14-15) Counter-arguments concerning this proposal are discussed in Staff’s Initial Brief, and Staff continues to oppose Dynegy’s position. (Staff IB, pp. 59-60)

Staff would further add that under Section 5/8-102 of the PUA (220 ILCS 5/8-102) the Commission has the authority to investigate a utility if it has concerns with a utilities infrastructure (“The Commission is authorized to conduct or order a management audit or investigation of any public utility or part thereof. ...The Commission may conduct or order a management audit or investigation only when it has reasonable grounds to believe that the audit or investigation is necessary to assure that the utility is providing adequate, efficient, reliable, safe and least cost service ...”) (220 ILCS 5/8-102). Given this authority and tool the SFC penalty provisions which Dynegy proposes are not necessary to deal with infrastructure issues.

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.**
4. **Redefine a tranche to cap load obligations of suppliers.**
 - a. **Is this issue properly within the scope of this Docket?**

H. Other Proposed Operational Changes

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

Dynegy witness Huddleston describes several contingencies related to MISO's eventual treatment of ancillary services and, based on which contingency prevails during the life of the supplier forward contracts, he recommends various alternative processes related to the purchase of ancillary services and the recovery of the costs for such purchases. (DYN Ex. 1.0, pp 14-16, lines 309 to 345) Staff objected that it would seem impossible or at least unwieldy to unambiguously write these contingencies into the SFCs. (Staff IB, pp. 63-64) However, Dynegy clarified in its Initial Brief that it is seeking a "process improvement" rather than an SFC change, and that Ameren has adequately addressed Dynegy's concerns. (Dynegy IB, p. 16) Specifically, Ameren notes that

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.

(Ameren IB, pp. 60-61) Given this clarification, Staff withdraws its previous objection.

I. Post-Auction Commission Review of Results

- 1. Degree of public access to Commission's deliberations.**
- 2. Creation of advance criteria and price benchmarks that the Commission must apply in its review of the auction results.**
- 3. Judicial review of Commission auction deliberations.**

J. Confidentiality of Bidder Information

- 1. Appropriate definition for confidential information**

Staff presented testimony that both ComEd's Rider CPP and the Ameren's Rider MV included the following provision in the description of the Auction Manager's responsibilities:

20. Retain confidential bidding data, application forms, and notifications of status to bidders associated with an Illinois Auction Section in a confidential manner for a period of time extending at least two (2) years beyond the date of the expiration of the longest term SFC executed in accordance with the results for such Illinois Auction Section.

(ICC Staff Ex. 1.0, pp. 23-24) In order to clarify the above-quoted provision, Staff witnesses Kennedy and Zuraski provided a definition of "confidential bidding data," which they proposed be included in these riders (*Id.*). The definition was modified in their rebuttal testimony, in order to address timing issues (rather than the substance of the definition). According to their proposed definition, confidential bidding data would include:

all bidding data except for: (1) the names of the winning bidders, which shall be revealed to the public when the Auction Manager issues a Declaration of a Successful Auction Result; (2) the precise number of registered bidders, the

ranges of excess supply for each section and the going prices for each product reported to bidders during the auction, which shall be reported by the Auction Manager and by the Staff to the public within the first part of their Public Reports 15 business days after the close of the auction; (3) the number of tranches of each product won by each of the winning bidders, which shall be reported by the Auction Manager and by the Staff to the public within the second part of their Public Reports 60 business days after the close of the auction; and (4) any other information that the Auction Manager and the Staff, to fulfill their respective responsibilities, deem necessary to convey in their public reports on the auction, as described in [the CPP Documents section of the Competitive Procurement Process part of this Rider [for ComEd] or the CPA Documents section of the Competitive Procurement Auction Process part of this Rider [for the Ameren Illinois Utilities]].

(ICC Staff Ex. 4.0, p. 13) The Auction Manager stated that she agreed with Staff's proposals. (AM Ex. 2.0, p. 36)

Dynergy had some concerns with Staff's definition of confidential bidding data (Dynergy IB, pp. 16-17) as did MWG/EMMT. (MWG/EMMT IB, p. 16) Both Dynergy and MWG/EMMT characterize the third exception to Staff's definition of confidential bidding data as being overly broad and allowing too much discretion to be in the hands of the Auction Manager and Staff. (*Id.*) Despite their claims, Staff's definition is not overly broad and does not put too much discretion in Staff's and the Auction Manager's hands. As set forth in the definition, Staff and the Auction Manager can only disclose that information which is necessary to carry out their duties in preparing the public reports on the auctions. If disclosure of the information is not necessary to carry out those duties with regard to the public report, then under the definition set forth above Staff and the auction manager cannot disclose that bidding data.

Dynergy and MWG/EMMT argue that Staff and the Auction Manager have not testified as to the necessity for the exception. (Dynergy IB, p. 17; MWG/EMMT IB, p. 16) This argument should be rejected as well. The necessity for the provision is clearly set forth in the exception's language. That language makes it clear that Staff and the

Auction Manager are under a duty to prepare public reports and as part of carrying out that duty, it is conceivable certain information contained in the bidding data may need to become public.

Dynegy next argues that the provision may undermine the confidence of potential suppliers (Dynegy IB, p. 17) and MWG/EMMT argues that the provision may discourage supplier's participation in the auction (MWG/EMMT IB, p. 16). It is significant to note that neither MWG/EMMI nor Dynegy state that they will not participate in the auction because of the provision and in fact MWG/EMMT states that it does not believe Staff and the Auction Manger would purposefully seek to undermine the auctions by releasing confidential information publicly." (MWG/EMMT IB, p. 16) Dynegy and MWG/EMMT's fears are nothing but unsupported speculation.

For the reasons set forth above, Staff's language regarding the definition of confidential bidding data should be approved by the Commission.

K. Information Dissemination

- 1. Focus of information dissemination efforts on bidders starting with the second information session close to the Part 1 Application.**
- 2. Combination of MVA and SCA factors in the Ameren rates (and analogous charges in ComEd rates) with the base Retail Supply Charge on the customer bills.**
- 3. Public access or participation in pre-auction bidder only meetings conducted by the Auction Manager.**

M. Timeline

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

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

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

LaCasse's proposal be adopted, with the modification suggested by Dr. Kennedy and Mr. Zuraski. (Staff IB, pp. 67-68)

Dynergy also supports the concept of providing to bidders, prior to the auction, the specific timeframe that would be used if auction results are rejected by the Commission, and then the Staff, Auction Manager and utilities determine that the auction should be re-run. (Dynergy IB, p. 17) However, as Staff just mentioned, Dynergy also notes that the record does not contain that specific timeframe. (*Id.*) Dynergy does not refer to the Kennedy/Zuraski proposal that Rider CPP and Rider MV be revised to state that the Auction Manager shall provide such a timeline to potential bidders as part of the auction rules. Rather, Dynergy states, "Absent this detail, the proposal should not be adopted until such time as the parties have been given an opportunity to see the entire proposal and provide their input accordingly." (*Id.*)

Staff finds Dynergy's alternative to be untimely made, unnecessarily burdensome, and wholly unnecessary. Dr. LaCasse's proposal was made in her direct testimony, yet no Dynergy witness weighed in on the issue in the rebuttal stage. In fact, Dynergy fails to cite any testimony that such a minute detail of the auction process is so important that it needs to be further litigated. Finally, Dynergy does not even mention the less burdensome approach proposed by Staff, which resolves the issue. For all the above reasons, Staff recommends that the Commission reject Dynergy's proposal to delay resolution of this issue.

P. Other

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

IV. Conclusion

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

Respectfully submitted,

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