

**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' REPLY BRIEF**

**JUNE 7, 2007**

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## **AMEREN ILLINOIS UTILITIES' INITIAL BRIEF**

### **I. Introduction and Summary**

The Ameren Illinois Utilities hereby submit their Reply Brief, in response to the initial briefs of the Attorney General (“AG”), the Citizens Utility Board (“CUB”), the Coalition of Energy Suppliers (“CES”), Commonwealth Edison Company (“ComEd”), Direct Energy Services, LLC and Commerce Energy, Inc. (“DES/CE”), Dynegy, Inc. (“Dynegy”), the Illinois Industrial Energy Consumers (“IIEC”), Midwest Generation EME, LLC and Edison Mission Marketing & Trading, Inc. (“MWGen/EMMT”), the Retail Energy Supply Association (“RESA”), and Staff of the Illinois Commerce Commission (“Staff”). Positions stated in the Ameren Illinois Utilities’ Initial Brief are incorporated herein by reference and will not be repeated here for sake of brevity.

### **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.**
  - 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.**

As more fully set forth in the Initial Brief (AIU Init. Br. pp. 7-13) and in testimony, the Ameren Illinois Utilities agree with Staff’s recommendation (Staff Init. Br., pp. 3-5) that the

utilities continue to procure supply for their hourly priced retail customers in accordance with the contingency provisions of their tariffs.

**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.**

Please see the Ameren Illinois Utilities' Initial Brief at pages 13-16.

**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; AIU Init. Br., p. 17.) This language, initially 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.) The Ameren Illinois Utilities do not disagree with the amendatory language proposed by Staff. (Staff Init. Br., pp. 8-9.)

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

Please see the Ameren Illinois Utilities' Initial Brief at page 18.

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

Please see the Ameren Illinois Utilities' Initial Brief at page 18.

**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.**

Please see the Ameren Illinois Utilities' Initial Brief at page 19.

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

Please see the Ameren Illinois Utilities' Initial Brief at page 19, Dynegy's Initial Brief at pages 4-5.

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.**

Please see the Ameren Illinois Utilities' Initial Brief at pages 22-24.

**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.**

Please see the Ameren Illinois Utilities' Initial Brief at pages 24-25, and the Auction Manager Dr. Chantale 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.**
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.**

Please see the Ameren Illinois Utilities' Initial Brief at pages 25-27.

**J. 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.**

Please see the Ameren Illinois Utilities' Initial Brief at pages 28-31.

**K. 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).**

Please see the Ameren Illinois Utilities' Initial Brief at pages 31-32.

### **III. Contested Issues**

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

Please see the Ameren Illinois Utilities' Initial Brief at page 33.

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

###### **a. Modifications to the starting price.**

The Ameren Illinois Utilities agree with Staff's assessment regarding Dr. Rose's "starting price" proposal, for the reasons stated in Staff's Initial Brief at pages 13-14 and 19-23, consistent with the Ameren Illinois Utilities' Initial Brief at pages 61-63. The Ameren Illinois Utilities agree with ComEd that the Auction Manager should continue to set the auction's starting price in consultation with Staff. (ComEd Init. Br., p. 16.)

###### **b. Use of demand-side bidding.**

The Ameren Illinois Utilities agree with Staff's assessment regarding the testimony of CUB witnesses Christopher Thomas and Geoffrey Crandall on demand-side bidding, as stated in Staff's Initial Brief at pages 14-18, consistent with the Ameren Illinois Utilities' Initial Brief at pages 34-35. (*See also* ComEd Init. Br., pp. 16-19.)

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

Please see the Ameren Illinois Utilities' Initial Brief at pages 35-39, and below at III.E.2. Consistent with Staff's Initial Brief at page 52, the Ameren Illinois Utilities do not object to Staff's proposal to procure 50% of the BGS-FP load using 1-year contracts, 20% using 2-year contracts, and 30% using 3-year contracts. (Tr. pp. 328-330; AIU Init. Br., p. 38.)

###### **d. Use of "reserve prices."**

The Ameren Illinois Utilities agree with Staff's assessment regarding Dr. Rose's "reserve price" proposal, for the reasons stated in Staff's Initial Brief at pages 13-14 and 19-23, consistent

with the Ameren Illinois Utilities' Initial Brief at pages 61-63. (*See also* ComEd Init. Br., pp. 16-19.)

- 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?**

The Ameren Illinois Utilities agree with Staff and ComEd, that the third option presented in CUB witness Crandall's testimony is inconsistent with the Illinois Auction process, as stated in Staff's Initial Brief at pages 23-24.

## **B. 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.**

As set forth in the Initial Brief (pages 39-41), the Ameren Illinois Utilities agree with Auction Manager Dr. 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.) The Ameren Illinois Utilities do not disagree with Staff's modification proposals in briefing on this issue. (Staff Init. Br., pp. 28-37.)

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

The Ameren Illinois Utilities do not disagree with Dynegey's 10-day processing window proposal, set forth in Dynegey's initial brief at page 8.

**C. Credit Issues**

**1. Bilateral credit.**

The Ameren Illinois Utilities disagree with Dynegy's bilateral credit proposal (Dynegy Init. Br., pp. 8-13), for the reasons set forth on pages 41-43 of the Ameren Illinois Utilities' Initial Brief. (*See also* ComEd Init. Br., pp. 29-32.) The Ameren Illinois Utilities also agree, generally, with Staff's rationale prompting withdrawal of its rebuttal provisional recommendation for modified bilateral credit requirements. (Staff Init. Br., pp. 37-43.) The Ameren Illinois Utilities note Staff's conclusion that, based on the record facts, "...Staff cannot conclude that bilateral credit requirements are the lower cost alternative for ratepayers." (Staff Init. Br., p. 43.) We concur. The record does not support Dynegy's misguided assumption that adding bilateral credit requirements to the Supplier Forward Contracts will result in lower costs to ratepayers. For all of the reasons stated in briefing, the Commission should continue its rejection of Dynegy's bilateral credit requirement proposal, as it did in ICC Dockets 05-0160, -0161, and 0162 (*see* Final Order, p. 171), and adopt Staff's well-supported recommendation that "...no bilateral credit requirement be added to the SFCs for the 2008 auction." (Staff Init. Br., p. 43.)

**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.**

The Coalition's argument, supported by the Retail Electric Supply Association, that shortening the enrollment window would "significantly limit customers' ability to receive and evaluate competitive options" (CES Init.Br., pages 10-12; RESA Init. Br., page 5) is simply without merit. As Ameren Illinois Utilities' witness Craig Nelson testified, customers are not

precluded from evaluating their competitive options and negotiating with an ARES prior to the designated enrollment window period. (Tr. at pp. 324-25.) Further, customers in the Ameren Illinois Utilities' service territories in the 2008 Illinois Auction are in a far different position than they were in 2006, in that 95% of those customers are taking service other than the BGS-LFP product, and would be required to opt into, rather than opt out of, the BGS-LFP product during the 20-day enrollment period. (Tr. at pp. 323-24.) The default product is now BGS-LRTP, and a customer is free to switch on and off of that product at any time. (*Id.*) If a customer does not opt in, the customer could simply choose to take the Ameren Illinois Utilities' BGS-LRTP product for a period of time, while continuing to negotiate a contract with an ARES. (*Id.*) Both CES and RESA fail to even acknowledge these persuasive facts.

Contrary to their arguments, the record does indeed support a finding that a shorter enrollment period will reduce the auction price. NERA's post-auction supplier survey shows that suppliers agree the risk and thus the price of the BGS-LFP product would be lower with a shorter enrollment window. (AM Ex. 1.8, B-16.) Whether supplier ranking of the product would necessarily change with a shorter enrollment window, as CES and RESA repeat often, is not determinative. It is self-evident that a lower price should make that product more attractive to customers and competitive in the auction. As Mr. Nelson testified:

The "problem" is rather obvious – it's an 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. . . . [T]his level of switching is an indication that eligible customers did not view this as an economical supply option.

(AIU Ex. 5.0, Nelson Rebuttal, pp. 3-4.) There is simply no support in the record for RESA's claim that contract length is the reason behind the non-competitive BGS-LFP auction price.

(RESA Init. Br., p. 3.) To the contrary, the price differential Mr. Nelson notes between the BGS-LFP and the smaller customer fixed price product tells an entirely different story.

For all of the reasons stated above and in the Ameren Illinois Utilities' Initial Brief, and as consistent with Staff's, ComEd's and IIEC's positions on this issue, the Commission should approve a shortened enrollment window of 20 days for larger non-residential customers, adopting IIEC's multi-option approach toward enrollment windows as modified in the Ameren Illinois Utilities' and ComEd's testimony. (AIU Init. Br., pp. 43-51; Staff Init. Br., p. 48; ComEd Init. Br. p. 46; IIEC Init. Br. pp. 8-10.)

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

For all of the reasons stated in the Ameren Illinois Utilities' Initial Brief (AIU Initial Brief, pages 51-52), the Commission should approve IIEC witness Mr. Stephens' proposal reversing the opt-out policy to an opt-in policy for future auction periods, consistent with IIEC's Initial Brief at pages 10-11.

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

For all of the reasons stated in the Ameren Illinois Utilities' Initial Brief (AIU Init. Br., pages 51-52), the Commission should approve IIEC witness Mr. Stephens' proposal modifying the pre-qualification form (IIEC Init. Br. pages 10-11), whereby a customer would certify they are eligible to take the auction product.

**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.**

Please see the Ameren Illinois Utilities' Initial Brief at pages 35-39, and above at III.A.1.c. Consistent with Staff's Initial Brief at page 52, the Ameren Illinois Utilities do not object to Staff's proposal to procure 50% of the BGS-FP load using 1-year contracts, 20% using 2-year contracts, and 30% using 3-year contracts. (Tr. pp. 328-330; AIU Init. Br., p. 38; *see also* ComEd Init. Br., p. 58; MWGen/EMMT Init. Br., pp. 8-9.)

DES/CE's arguments in support of shorter contract terms merely rehash the same arguments made, and which the Commission properly rejected, in ICC Dockets 05-0160, -0161, and -0162. In those dockets, the Commission found that the short-term contract mix supported by DES was not the best option for protecting consumers from "price unpredictability and instability":

The Commission finds that the record supports adoption of the Ameren Companies' proposal for an annually-revised portfolio of three-year supply contracts for serving the residential and small commercial customer included in the BGS-FP segment. Use of the overlapping contracts in the three-year rolling procurement structure will help protect against price unpredictability and instability for the smaller customers.

The Commission believes the Ameren approach better balances the objectives of price stability, efficiency, practicality and bidder participation than does the DES/USESC proposal for monthly and quarterly products.

Final Order, 05-0160, -0161, and -0162, p. 129.

The record in this docket similarly does not support DES/CE's proposal to adopt short-term wholesale contracts. The proposed longer-term mix of 1-, 2-, and 3-year contracts incorporates longer-term, and thus more stable, trends in energy pricing, and is designed to protect consumers from short-term volatility in energy prices. For these and all the reasons set forth in initial briefing, the record supports the Commission's continued adoption of a longer-term mix of contract options, as supported by Staff, the Ameren Illinois Utilities, ComEd, and MWGen/EMMT.

**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.**

As set forth more fully in the Initial Brief (p. 53), 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 accepts Mr. Thomas’ recommendation, the Ameren Illinois Utilities 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.**

As set forth in the Initial Brief at page 54, and above in subsection III.D.2, the Ameren Illinois Utilities agree with a modified version of Mr.Stephens’ proposal regarding this issue.

**G. Other Contract Change Proposals**

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

Please see the Ameren Illinois Utilities’ Initial Brief at page 55.

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

Please see the Ameren Illinois Utilities' Initial Brief at page 58.

- 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.**

As set forth in the Initial Brief, the Ameren Illinois Utilities support the recommendations of Dr. LaCasse with respect to the specific methodology of resizing tranches, should the Commission decide to do so. (AIU Init. Br., pp. 59-60; 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?**

#### **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.**

Please see the Ameren Illinois Utilities' Initial Brief at page 60.

#### **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.**

Please see the Ameren Illinois Utilities' Initial Brief at page 61-63, and above at subsection III.A.1.

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

#### **J. Confidentiality of Bidder Information**

- 1. Appropriate definition for confidential information**

**K. Information Dissemination**

- 1. Focus of information dissemination efforts on bidders starting with the second information session close to the Part 1 Application.**
- 2. Combination of MVA and SCA factors in the Ameren rates (and analogous charges in ComEd rates) with the base Retail Supply Charge on the customer bills.**

Please see the Ameren Illinois Utilities' Initial Brief at page 63.

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

**L. 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.**

**M. 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**

Dated: June 7, 2007

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**CERTIFICATE OF SERVICE**

I, Laura M. Earl, certify that on June 7, 2007, I served a copy of the foregoing Reply Brief of the Ameren Illinois Utilities by electronic mail to the individuals on the Commission's Service List for Docket 06-0800.

/s/ Laura M. Earl  
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