

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,
On its Own Motion

vs.

Central Illinois Light Company,
Central Illinois Public Service
Company,
Commonwealth Edison Company,
Illinois Power Company,
Interstate Power Company,
MidAmerican Energy Company,
Mt. Carmel Public Utility Company,
South Beloit Water, Gas and
Electric Company, and
Union Electric Company.

Docket No. 00-0494

Proceeding on the Commission's own Motion
concerning delivery services tariffs of all
Illinois electric utilities to determine what if
any changes should be ordered to promot
statewide uniformity of delivery services
related tariff offerings.

ILLINOIS POWER COMPANY'S
INITIAL BRIEF

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January 12, 2001

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I. PROCEDURAL HISTORY AND SUMMARY OF ILLINOIS POWER'S POSITION

A. Procedural History

This proceeding was opened by the Commission on its own motion by order issued July 11, 2000 (“Initiating Order”). The Initiating Order directed that the electric utilities and other parties first engage in a series of workshops to consider a list of 50 issues relating to delivery services tariffs (“DSTs”) set forth in the Appendix to the Initiating Order. Any agreements were to be reflected in an interim order to be issued by the Commission in October 2000, with any resulting changes to the electric utilities’ tariffs to be filed so as to be effective on January 1, 2001. The workshops were to be followed by a hearing phase, to be scheduled to permit entry of a final order by April 1, 2001.

The parties participated in a series of workshops during the months of June through September to attempt to reach agreements concerning the issues listed in the Appendix. The workshops resulted in a Stipulation among the parties which essentially divided the issues into three categories: (i) issues as to which the parties reached substantive agreement; (ii) issues which the parties agreed should not be litigated in this docket; and (iii) issues which the parties agreed could be litigated in the hearing phase of this docket. By Interim Order issued October 18, 2000, the Commission adopted the Stipulation (Appendix A to the Interim Order). The Interim Order also included an Appendix B which listed “Questions That May Be Litigated [in] Docket 00-0494.”

In the hearings phase of this docket, parties filed direct, rebuttal and surrebuttal testimony. Hearings were held on December 12-14, 2000.

B. Summary of Illinois Power's Positions on the Litigated Issues

Single Bill Option Issues. Illinois Power Company (“Illinois Power”, “IP” or “Company”) does not send to a retail electric supplier (“RES”) which is providing the “single bill option” (“SBO”) pursuant

to §16-118(b) of the Public Utilities Act (220 ILCS 5/16-118(b)), prior balances for bundled electric services provided by IP, or prior balances for delivery services provided by IP when the customer was served by a different RES, for the current RES to bill to and collect from the customer pursuant to the SBO. For purposes of its customer credit-scoring system, IP posts the customer payments received from the RES to the customer's oldest outstanding balance first, even if the oldest balance is for bundled service, in order to reduce the likelihood that the customer will be sent a disconnection notice. However, for purposes of the billing information sent to the RES in subsequent billing periods for the RES to use in billing the customer, IP treats all customer payments that were received from the RES as having been applied to the customer's delivery services charges. Thus, IP's practices do not cause RESs the same problems with respect to the SBO which Staff and some RESs testified are created by certain other utilities' practices in this area. Illinois Power has expended substantial resources to develop and implement a system which works for all parties, and about which no RES has complained.¹

Therefore, if the Commission concludes that the practices of one or more utilities other than IP are causing problems in the application of the SBO, and should be changed, the Commission should *not* adopt a "one size fits all" solution that would require IP to change its existing practices, about which no party has complained. In particular, IP should *not* be required to adopt a practice of closing a customer's existing account and opening a new account when the customer switches from bundled service to delivery services, or switches from one RES to another RES. Such a practice would impair Illinois Power's efforts to collect

¹In fact, MidAmerican Energy Company ("MEC") witness Debra Kutsunis and NewEnergy Midwest, LLC ("NewEnergy") witness Ken Walsh testified that IP's practices were acceptable and did not cause the problems in using the SBO which these parties testified were created by certain other utilities' practices. (MEC Ex. 6.0, pp. 2-3; Tr. 603-04)

past due balances, would increase IP's uncollectibles, and would result in an inability to provide suppliers with the customer's historic usage data that was recorded under the customer's previous, closed account numbers.

Further Development of Pro Forma Delivery Services Tariffs. Illinois Power is not opposed per se to ultimate development of a pro forma DST template.² In fact, during the first five months of 2001, IP will be engaged in an initiative to simplify and improve its DST, which will include eliciting and considering input from RESs, customers and Commission Staff as to how IP's DST could be simplified and improved. The objective of this initiative is to develop a simplified and improved DST to be filed in the Company's upcoming delivery services rate case, which is to be filed on or about June 1, 2001.³ Illinois Power believes that this initiative will be an appropriate use of resources in the January - May 2001 period leading up to the June 2001 delivery services rate case filing. However, IP does not believe that it is necessary for the Commission to take any specific action in the final order in this docket towards mandating further uniformity among the utilities' DSTs. IP believes that any incremental benefits which would be gained from developing and implementing a pro forma DST in the near term would fall far short of justifying the diversion of resources necessary to develop the pro forma DST, away from other, more important initiatives.. The Commission should wait until the completion of the utilities' delivery services rate cases that are to be filed in 2001 and concluded by approximately April 1, 2002, to assess whether there is a need

²Witnesses in this case used the terms "uniform" and "pro forma" somewhat interchangeably. In this brief, IP will generally use the term "pro forma DST."

³IP and other utilities have agreed to a Staff request to file their DST rate cases by on or about June 1, 2001, significantly in advance of the statutorily-required date of October 1, 2001. (See 220 ILCS 5/16-104(a) and 16-108(a), IP Ex. 1.3, p. 11, and Tr. 90, 139, 177, 371-72, 435-36)

for further proceedings to develop more uniform DSTs. At that time the Commission could, if it deems it necessary, initiate a new docket for the purpose of developing more uniform DSTs among the utilities, either generally or with respect to specific tariff topics.

However, if the Commission concludes that some further action towards uniformity among the utilities' DSTs is needed in the final order in this docket, the only specific action which the Commission should consider taking in this docket is to direct the utilities, in their delivery services rate cases which are to be filed in 2001, to file reorganized DSTs consistent with the tariff outlines (the "Joint Outlines") jointly developed and supported by IP, Commonwealth Edison Company ("ComEd"), and the Ameren companies (Central Illinois Public Service Company and Union Electric Company) in this case.⁴ The Joint Outlines were developed by these four major delivery services providers based on the DST outlines initially presented by Peter Lazare of the Commission Staff. The Joint Outlines improve upon, but achieve the same objectives as, Mr. Lazare's outline. No party objected to the four utilities' Joint Outlines.

The proposals of Staff and MEC to initiate a new proceeding immediately upon conclusion of this docket, which would result in a pro forma DST that all utilities would be required to follow, should not be adopted, for a number of reasons:

- L The most significant benefits of uniformity have already been achieved through the efforts of the electric utilities and other parties, since 1998, to develop and implement uniform business processes for the provision of delivery services.
- L Development and implementation of a pro forma DST at this time would not materially advance the development of competitive electricity markets in Illinois, because there are

⁴The Joint Outlines are set forth in IP Exhibit 1.4 as well as in ComEd Exhibits 4.1 - 4.2 and in Attachments A and B to Ameren Exhibit 4.

numerous other, more significant factors that are impacting the development of the competitive market.

- L Further proceedings towards developing a pro forma DST are premature until, at a minimum, the utilities have developed and filed, and the Commission has approved, the initial residential DSTs.
- L It is unrealistic to think that the parties and the Commission could, through workshops and litigation, arrive at a pro forma DST within the short time frames (i.e. three to six months) contemplated by the Staff and MEC proposals.
- L The further proceedings proposed by Staff and MEC would necessarily divert significant resources from IP's and other utilities' efforts to prepare their upcoming DST rate cases for filing on or about June 1, 2001.
- L The proceedings envisioned by Staff and MEC would not ultimately result in a pro forma DST to be rigorously followed by all utilities.
- L The DST template submitted by MEC is not sufficiently developed to be used as the basis for negotiations and litigation to arrive at a pro forma DST template, particularly in the expedited proceedings proposed by Staff and MEC.

Information on Utility Web Sites. Illinois Power's plans to make (i) customer-specific usage and related information, and (ii) delivery services contract forms available on IP's web site satisfy Staff's recommendations.

Interim Supply Service. Under Illinois Power's DST, Interim Supply Service ("ISS") is available to a delivery services customer that loses its power supplier without having arrangements in place for a successor supplier. Under IP's DST, the customer can remain on ISS for two billing cycles, i.e., for 30 to 65 days. In addition, IP sends the customer written notice that the customer has been placed on ISS on the next business day following the day that IP receives notice from the customer's power supplier that it will no longer serve the customer. These provisions and practices satisfy Staff's recommendations.

Interval Metering for Delivery Services Customers. One of the issues the parties stipulated may be litigated in this docket is, “At what level of demand is interval metering required to take delivery services.” No party proposed a specific level of customer demand for this purpose. However, Alliant Energy suggested that any utility that requires customers above a certain demand or usage level to have interval metering should be required to impose that provision equally on both delivery services customers and bundled services customers.

Illinois Power does not believe that this issue received sufficient attention in this docket to warrant a substantive conclusion by the Commission. In particular, Alliant’s proposal should not be adopted in this docket. Interval metering is needed for delivery services customers in order to properly bill charges under the electric utility’s Open Access Transmission Tariff (“OATT”), a need that does not exist in billing bundled service customers. Thus, interval metering may be necessary for a customer taking delivery services whereas it may not be needed to record the usage of, or bill, the same customer under the applicable bundled service tariff. Therefore, the proposal that electric utilities be required to apply requirements for interval metering at the same demand or levels for both delivery services customers and bundled service customers is inappropriate and unwarranted.

However, if the Commission concludes that it should establish in this docket a uniform level of customer demand at which utilities may require interval metering for delivery services customers, the most logical level, in light of the limited record in this docket, is the 400 kW demand level which the Commission approved in ComEd’s initial DST case, Docket 99-0117. In that case, the Commission authorized ComEd to require delivery services customers with demands of 400 kW or greater to install interval metering. (Order in Docket 99-0117, p. 134)

II. IP SHOULD NOT BE REQUIRED TO CHANGE ITS PRACTICES REGARDING BILLING AMOUNTS DUE FOR BUNDLED SERVICES PREVIOUSLY PROVIDED TO CUSTOMERS WHO HAVE SWITCHED TO A RES AND ARE BEING BILLED PURSUANT TO THE SBO, ABOUT WHICH NO PARTY HAS COMPLAINED, IN FAVOR OF A “ONE SIZE FITS ALL” APPROACH

In this proceeding, issues have been raised by certain parties concerning the practices of some utilities with respect to (i) requiring a RES who is providing “single bill option” (“SBO”) service to a customer to bill the customer for outstanding balances due to the utility for bundled service previously provided to the customer by the utility (or due for delivery services provided by the utility when the customer was served by a different RES); and (ii) posting customer payments remitted by the RES against outstanding unpaid customer balances for bundled service previously provided by the utility (or against outstanding unpaid balances for delivery services provided by the utility to the customer when the customer was served by another RES). It is the position of Staff and of certain RESs (*i.e.*, MEC and NewEnergy) that (i) a RES should not be required to bill the customer for, or collect from the customer, amounts due the utility for bundled services previously provided to the customer (or due for delivery services provided by the utility when the customer was served by another RES); and that (ii) payments received by the RES from the customer for delivery services charges, and remitted by the RES to the utility, should only be applied to balances owed by the customer for delivery services provided by the utility while the customer is being served by the RES. This issue was the subject of extensive testimony in this docket by witnesses for Staff, MEC, NewEnergy and various utilities.

Regardless of what the Commission may decide with respect to the practices and procedures employed by any other utility, the record is abundantly clear that IP’s practices and procedures in this area are not problematic for RESs using the SBO. No party has complained about IP’s practices; to the

contrary, witnesses for MEC and NewEnergy confirmed that IP's practices are acceptable. Therefore, even if the Commission decides that one or more other utilities must modify their practices and procedures in this area, there is no basis for requiring IP to modify its practices.

As explained by IP witnesses Mr. Gudeman and Ms. Smith, Illinois Power does *not* require a RES to bill outstanding balances previously incurred for bundled service to a delivery services customer that the RES is billing under the SBO. Instead, IP continues to send a paper bill directly to this customer to collect any unpaid balance for bundled service that may have been incurred prior to the customer switching to the RES and being billed by the RES under the SBO. (IP Ex. 1.3, p. 14) Similarly, Illinois Power does *not* require a RES that is billing a customer under the SBO to bill the customer for outstanding delivery services charges incurred while the customer was served by a prior RES. In this situation as well, IP continues to send a paper bill directly to this customer in order to collect any delivery services balances that were incurred prior to the customer being billed by the new RES under the SBO. (*Id.*, p. 15)

Mr. Gudeman and Ms. Smith described how IP handles a situation in which a customer currently being served by a RES and billed under the SBO has a prior unpaid balance with IP for bundled service. Assuming the customer has a \$1000 prior balance for bundled service and \$5000 of charges in the current month for delivery services, IP would transmit the \$5000 of delivery services charges to the RES for billing, but would not transmit the \$1000 of prior bundled service charges to the RES. Assuming the customer paid its current month bill to the RES in full and the RES in turn remitted \$5000 back to IP, Illinois Power would post this payment to the customer's oldest outstanding balance first, *i.e.*, \$1000 would be posted to the customer's prior bundled service balance and \$4000 would be posted to the customer's delivery services balance. This is the cash posting process that is followed for all of IP's customers. However, IP's

Customer Information System (“CIS”) will recognize the fact that a \$5000 bill for delivery services for this customer was sent to the RES and a \$5000 payment was received from the RES. Therefore, the next monthly statement sent to the RES for billing to the customer will not show any past due balance for the customer’s delivery charges. IP will continue its efforts to collect the \$1000 of bundled service charges directly from the customer. (IP Ex. 1.3, pp. 15-16)

Mr. Gudeman and Ms. Smith explained that IP’s CIS posts payments received from the RES to the customer’s oldest balance first (i.e., to the customer’s outstanding bundled service balance, if any) because one of the factors used by IP’s credit scoring system in determining whether to issue a disconnection notice to the customer is the age of the customer’s arrearages. IP’s CIS “scores” each customer’s account monthly, giving the account points based on different credit conditions.⁵ One of these credit conditions is the age of the customer’s arrearages. The number of points given to the account is increased as the age of the arrearages increases. If a certain number of points is reached, a disconnect notice is sent to the customer. Thus, a customer is more likely to receive a disconnect notice as the age of the customer’s arrearages increases. However, because IP’s CIS posts payments to the customer’s oldest balance first, the customer is less likely to receive a disconnect notice, and therefore is less likely to be disconnected for non-payment. Avoiding disconnection is beneficial to all parties: the customer, IP, and the RES (which cannot sell electricity to a disconnected customer).⁶ (IP Ex. 1.3, p. 16; IP Ex. 1.5, p. 10)

⁵IP’s credit scoring system considers the date the account was opened; amount of the arrears; age of the arrears; prior credit contacts with the customer; and whether IP has a deposit. (Tr. 255)

⁶Staff witness Dr. Schlaf testified that “generally it’s not in anyone’s interest” to have disconnection occur. (Tr. 99)

Certain RESs suggested that the problems they claim to be experiencing with some utilities' billing practices in relation to the SBO could be solved by requiring the utility to close a customer's account and open a new account for the customer when the customer switches from bundled service to delivery services, or when a delivery services customer switches from one RES to another RES. (MEC Ex. 2.0, pp. 6-7; NewEnergy Ex. 1, p. 12) However, imposing such a requirement would be problematic for Illinois Power, for several reasons:

- # IP's CIS only allows one account to be active at a premise. If a customer's account were closed and a new one opened for service to the same premise, IP's ability to disconnect the account for non-payment of amounts due under the first account would cease, since the account would become inactive (and thus cannot be disconnected). (IP Ex. 1.3, p. 16)
- # IP would still be able to pursue collection efforts against the closed account through manual processes; however, without CIS-driven disconnection, the collection efforts would not be as effective. The manual collection efforts would be more costly, less efficient and less effective than CIS-driven collection efforts. A significant increase in IP's uncollectible accounts would result. (Id., p. 17)
- # The practice of closing a customer's account and opening a new one when the customer switches would create the opportunity for customers to avoid disconnection for non-payment by periodically switching suppliers. (Id.)
- # The approach of closing a customer's account and opening a new one when the customer switches would cause customer confusion by switching the customer to a new account number each time the customer switches suppliers. (Id.)
- # This approach would also add complexity for RESs attempting to obtain historical usage information for the customer from IP, since the customer's usage history would be split among accounts. IP's CIS does not track account numbers as they change for a customer or link the usage history under a customer's account to the usage history under a previous account. Thus, if the customer's usage history were requested, the only usage IP could provide through CIS would be the usage history for the current account, and not for any prior, closed accounts. (Id.; IP Ex. 1.5, p. 12)

No party in this proceeding complained about IP's billing and posting practices relating to the SBO, or recommended that IP be required to change any of its practices. To the contrary, MEC witness Ms. Kutsunis, one of the witnesses who raised the SBO issues, testified that she agreed with IP's position that "IP's current billing practices relating to SBO do not result in any of the problems articulated by other parties in their direct testimonies." (MEC Ex. 6.0, p. 2) She stated that IP's practices "alleviate my concerns regarding RESs being used as an uncompensated collection agency and customer confusion regarding the outstanding balance." (*Id.*, p. 3) She also testified that "IP's current billing system appears to effectively avoid the problems related to unrelated arrearages." (*Id.*) With respect to her proposal that utilities be required to close the customer's existing account and open a new one when the customer switches, Ms. Kutsunis testified that IP's approach "allows them to accomplish the same goal that I had", albeit through a different methodology. (Tr. 288)

Similarly, NewEnergy witness Mr. Walsh testified that "Illinois Power . . . **do[es] not** require RESs to collect for unpaid balances for bundled services and thus do[es] not require RESs to include unpaid balances for bundled service on single bills." (NewEnergy Ex. 2 Rev., p. 5; emphasis in original) Mr. Walsh stated that, based on his review of IP's practices in this area as described in the testimony of IP witnesses Mr. Gudeman and Ms. Smith, his recommendations as to what the Commission should require utilities to do (NewEnergy Ex. 1, p. 17; NewEnergy Ex. 2, p. 16) were *not* applicable to Illinois Power. (Tr. 603-04)

Staff witness Dr. Schlaf, the other witness who raised concerns with respect to the impacts of certain utilities' billing practices on the SBO, testified that the underlying, practical business issues in this area are (1) a RES using the SBO wants to bill only the utility's charges for delivery services, and not its

charges for bundled service, to the RES's customer; (2) the RES wants the utility to collect its own bundled service charges; and (3) if the RES's customer pays the full amount of the delivery services charges that the RES has billed to the customer, and the RES remits that payment to the utility, the RES does not want to get billing information from the utility in the following month showing that the customer has a past-due balance for delivery charges. (Tr. 95-96, 98) Dr. Schlaf agreed that so long as the utility has a system in place that achieves these results, that system should be acceptable from the RES's perspective and from Dr. Schlaf's perspective.⁷ (Tr. 96-97) As shown above, Illinois Power's system achieves these results, and therefore should be acceptable.

In summary, Illinois Power's current billing practices relating to unpaid balances for prior service and the SBO do not result in any of the problems articulated by MEC, NewEnergy and Staff. IP does not send unrelated arrearages for prior service to a RES which bills under the SBO. IP's posting practices are designed to keep the customer connected to the system so that the customer may receive, and the RES may sell, electricity. Whatever problems the billing and posting practices of other utilities may be causing for RESs, those problems do not arise under IP's practices. IP has invested considerable resources in achieving these results, and should not be required to implement a one-size fits-all "solution" that would result in IP having to expend resources to change its system, which does not disadvantage any market participant and about which no party has complained. (IP Ex. 1.3, pp. 17-18; IP Ex. 1.5, p. 12; Tr. 258)

⁷Dr. Schlaf testified that "it's the utility's obligation to make sure that this happens, but how it happens is really the utility's – up to the utility." (Tr. 96)

III. THE COMMISSION SHOULD NOT ORDER FURTHER ACTIONS OR PROCEEDINGS TOWARDS DEVELOPING A PRO FORMA DELIVERY SERVICES TARIFF AT THIS TIME

A. The Commission Should Consider Directing the Utilities to Reorganize Their Delivery Services Tariffs to Conform to the Joint Outline Developed by ComEd, IP and Ameren, But Should Defer Any Further Action Towards Developing a Pro Forma DST Until After Completion of the Residential DST Proceedings

Illinois Power is not opposed per se to ultimate development of a pro forma DST. In fact, during the January - May 2001 period, IP will be engaging in an initiative to simplify and improve its DSTs, based in part on input which it will elicit from RESs, customers and Commission Staff. Illinois Power does not believe, however, that the Commission should require the utilities to undertake further efforts towards developing and implementing a pro forma DST until after the completion of the delivery services rate cases which are to be filed in 2001. Illinois Power believes that the primary, and most readily attainable, benefits of uniformity among the Illinois electric utilities in the provision of delivery services have already been achieved through the implementation of substantially similar business processes and practices by the utilities. To expend further efforts in the near term towards developing and implementing a pro forma DST would not yield sufficient incremental benefits to justify the expenditure of resources, and their diversion from other, more important activities, that would be necessary. No party has made a convincing argument that adoption of a pro forma DST is a critical element in expanding the Illinois electric market at this juncture, or that the effort and resources which would be required to develop a pro forma DST in the near term would produce commensurate benefits. Moreover, efforts to develop a pro forma DST would be premature until after the utilities have developed and filed their initial residential DSTs, and the Commission

has reviewed those filings and approved the initial residential DSTs. (IP Ex. 1.3, pp. 11, 14; IP Ex. 1.5, pp. 2-5) The bases for IP's position are discussed in detail in §III.B below.

However, if the Commission were to conclude that some further movement towards uniformity is appropriate in the near term, Illinois Power is willing to reorganize and refile its DSTs to conform to a common outline of the tariffs that each utility would be required to follow. Illinois Power, ComEd and the Ameren companies jointly developed, and presented in this docket, such tariff outlines (i.e., an outline for the "customer" DST and an outline for the "supplier" DST) which each of these utilities would be willing to employ.⁸ (IP Ex. 1.3, pp. 5-6, 14; see also ComEd Ex. 4.0 Rev., pp. 5-6; Ameren Ex. 4, pp. 11, 15-16) Under this approach, each utility would re-organize its existing DSTs to follow the Joint Outlines. Each utility would use its own tariff language, including subheadings, within each outline; however, the subject matter under the outline headings in each utility's tariff would be similar. Illinois Power would be willing to reorganize its DSTs in accordance with the Joint Outlines and to file the reorganized DSTs as part of its upcoming delivery services rate case, which it intends to file on or about June 1, 2001. (IP Ex. 1.3, pp. 6, 14)

The utilities' Joint Outlines are based on proposed outlines for the "customer" and "supplier" DSTs that were filed by Staff witness Peter Lazare in his direct testimony in this docket. (Staff Ex. 2 Rev., Sched. 1 and 2) While the utilities' Joint Outlines have many similarities to Mr. Lazare's outlines, IP believes that the utilities' Joint Outlines are more descriptive of the information contained in the DSTs, would be easier

⁸The utilities' Joint Outlines were submitted by IP witnesses Gudeman and Smith as IP Ex. 1.4 and were also submitted by ComEd witness Alongi as ComEd Exs. 4.1- 4.2 and by Ameren witness Carls as Attachments A and B to Ameren Ex. 4.

for users to follow, and in general represent improvements over Mr. Lazare's original proposal.⁹ (IP Ex. 1.3, p. 6; see also ComEd Ex. 4.0 Rev., pp. 5-6; Ameren Ex. 4, pp. 15-16, 18-19)

If the Commission decides to order the utilities to reorganize and refile their DSTs in accordance with a common outline, the Commission should direct that the Joint Outlines developed and submitted by IP, ComEd and the Ameren companies be used for this purpose, rather than the outlines submitted by Mr. Lazare. The utility witnesses submitted detailed explanations of the changes and improvements to Mr. Lazare's originally proposed outlines that IP, ComEd and the Ameren companies made in arriving at the Joint Outlines. (See IP Ex. 1.3, pp. 6-10; ComEd Ex. 4.0 Rev., pp. 5-6; Ameren Ex. 4, pp. 15-19) Without going into these details, however, IP notes that the utilities submitted their Joint Outlines in the rebuttal testimony phase of this docket, and that in the surrebuttal phase, no party (including Mr. Lazare) raised any issues with or objections to the utilities' Joint Outlines. In fact, Mr. Lazare testified that under his proposal, each utility would use the section headings that are in his tariff outlines, that each utility's DST would be required to have the sections in the order that they are presented in the outline, and that each utility would be required to cover basically the same subject matter under each of the headings. (Tr. 128-29) He testified that the foregoing is the essence of his proposal. (Tr. 129) The utilities' Joint Outlines would accomplish these same objectives. Since it would be the utilities that would have to reorganize and refile their DSTs in conformance with a common outline, and since no party has stated any objection to or raised any issue with the utilities' Joint Outlines, the utilities should be allowed to use the Joint Outlines that they developed.

⁹In addition, the utilities' Joint Outlines are similar to the outline of the proposed pro forma DST submitted by MEC in this docket. (Tr. 329-30)

B. Further Efforts at This Time Toward Developing and Implementing a Pro Forma DST Would Not Yield Sufficient Incremental Benefits to Justify the Additional Burden on Resources That Are Already Constrained by Existing Regulatory Initiatives

MEC and Staff have proposed that the Commission open a new proceeding immediately following the conclusion of this case, to be conducted on an expedited basis, to develop through workshops and litigation a pro forma DST template that each electric utility would be required to implement.¹⁰ (MEC Ex. 1.0, p. 3; Staff Ex. 3, p. 12) The record shows, however, that any further action or proceedings at this time to attempt to develop and implement a pro forma DST would not advance the development of competitive electricity markets in Illinois, would be premature, would divert the utilities' resources from other more important tasks including the preparation of their upcoming DST rate cases, and would not produce sufficient incremental benefits to justify the diversion and expenditure of resources that such proceedings would require. Accordingly, the MEC and Staff proposals should not be adopted. No further, specific actions or proceedings to develop and implement a pro forma DST should be considered until after completion of the upcoming round of DST rate cases.

1. Development of a Pro Forma DST as Proposed by Staff and MEC Would Not Materially Advance the Growth of the Competitive Market, Because There Are Numerous Other Factors, Outside the Commission's Control, That Are Impacting the Growth of the Market

As noted earlier, Illinois Power is not opposed per se to the ultimate development and implementation of a pro forma DST template. It has been asserted by the parties advocating development

¹⁰Staff and MEC witnesses testified that, following adoption by the Commission of a pro forma DST, utilities would be allowed to make individual tariff filings with the Commission proposing tariff provisions which differed from those in the template DST. (MEC Ex. 1.0, p. 13; Tr. 33, 81)

and adoption of a pro forma DST that these actions would advance the growth of the competitive electricity market in Illinois, principally because (1) it would make it easier for RESs to do business in the service areas of all of the Illinois utilities, and (2) it would make it easier for retail customers that operate in more than one utility service area to enter the competitive market.¹¹ (MEC Ex. 1.0, pp. 7-8; NewEnergy Ex. 1, p. 5; IIEC Ex. 1.0 Rev., p. 2; Staff Ex. 2 Rev., p. 5) The record shows, however, that further efforts towards this objective at this time would not materially advance the development of the competitive electricity markets, for a number of reasons.

First, with respect to making it easier for RESs to do business in multiple service areas and for customers operating in more than one service area to enter the competitive power supply market, it is much more important to put in place uniform *business practices* among the utilities, rather than uniform tariff language. (IP Ex. 1.5, p. 2; ComEd Ex. 1.0, p. 2) In fact, beginning in 1998 – even before the initial delivery services tariffs were filed – and continuing through this proceeding, substantial efforts have been expended, and substantial success achieved, by the utilities, RESs, customers and Staff to develop and implement substantially uniform *business practices* among the utilities relating to the provision of delivery services. Thus, for example, a RES must follow essentially the same processes in submitting a Direct Access Service Request to any utility to switch a customer. (Tr. 227) Certification of suppliers and provision of customer information are other common business practices that are already reflected in the utilities' DSTs. (Tr. 472-73).

¹¹It is also asserted that a pro forma DST would make it easier for Commission Staff to respond to questions from customers, and lead to more consistent regulation. (See MEC Ex. 1.0, p. 8; Staff Ex. 2 Rev., p. 5; Staff Ex. 3, p. 9; IIEC Ex. 1.0 Rev., p. 3)

Second, and more significantly, due to the presence of other factors that are impacting the growth of competitive electricity markets in Illinois, it is extremely unlikely that development and implementation of a pro forma DST at this time would yield any noticeable improvement in the rate of growth of this State's competitive retail electricity market. Most if not all of these other factors are the result of statutory provisions, federal requirements or economic factors which are beyond the Commission's control. Both the witness sponsoring the Staff proposal, Dr. Eric Schlaf, and the witness sponsoring the MEC proposal, Charles Rea, acknowledged this reality:

I would not claim that a lack of tariff uniformity is the sole reason that the vast majority of customers eligible for delivery services have opted not to seek service from suppliers, or that few suppliers have entered the downstate markets, but a lack of uniformity will *eventually* retard the growth of competitive markets, if it hasn't already. Regardless of whether tariff uniformity is a large factor in the slow growth of competitive markets, it is Staff's position that uniform tariffs be in place *by the time that other factors presently hindering the development of the competitiveness of the Illinois market become less problematic.* (Staff Ex. 3, p. 9; emphasis added)

A number of changes ultimately need to occur to assist the competitive market to fully develop in Illinois. Unfortunately, many of those changes are beyond the Commission's ability to implement either because of a lack of jurisdiction or because of legislative requirements. (MEC Ex. 1.0. p. 14; emphasis added)

As Dr. Schlaf and Mr. Rea acknowledged, other factors adversely impacting the growth of competitive electricity markets in Illinois include the following (see Tr. 70-73, 355-56 and 374-76):

- # Transition charges that must be paid by customers who elect to purchase unbundled electric power supplies. Pursuant to §16-108(f) of the Act, a utility may collect transition charges from delivery services customers through December 31, 2006, so long as the statutory formula in §16-102 produces a positive transition charge.
- # Volatility in the *wholesale* electric power and energy markets.

- # The “market values” produced by the statutory neutral fact finder (“NFF”) process. These NFF market values are used in calculating transition charges and in setting prices for power purchase option service. (See §§16-102 and 16-110(b) of the Act)
- # In the view of at least some suppliers and some customers, the energy imbalance provisions of the utilities’ OATTs, which are under the jurisdiction of the Federal Energy Regulatory Commission, impose too great a risk on suppliers in serving unbundled retail load, and on customers in purchasing unbundled electric power.
- # The “reciprocity” provision of the Customer Choice Law (220 ILCS 5/16-115(d)(5)) may be deterring out-of-State electric utilities and their affiliates from entering the Illinois retail electricity market.
- # Not all retail customers in Illinois are eligible to choose their power suppliers at this time, with the result that there are not as many prospective customers for RESs as there will be when all customers have supplier choice.¹²
- # Some customers that are eligible for supplier choice have elected to enter into competitive contracts with their incumbent electric utility, which has reduced the number of potential customers for RESs.

Indeed, according to Mr. Rea, the statutory entitlement of customers to return to bundled service from the incumbent utility, at a regulated price that is below market price, is an impediment to the development of the competitive market. (Tr. 374-75)

Chairman Mathias’ October 2000 “Report of Chairman’s Fall 2000 Roundtable Discussions Re: Implementation of the Customer Choice and Rate Relief Law of 1997” (“Chairman’s Fall Report”), which was relied on by NewEnergy witness Mr. Walsh (NewEnergy Ex. 1 Rev., pp. 4-5), reflects the views of participants in the Illinois electricity markets that there are many factors, other than the lack of uniformity

¹² All remaining non-residential customers became eligible for delivery services on January 1, 2001, and residential customers become eligible for delivery services on May 1, 2002. (See §16-104(a) of the Act)

among the electric utilities' DSTs, that are impacting the growth of the competitive market in Illinois and the success of the Customer Choice Law.¹³ For example:

- # The Chairman's Fall Report indicates that participants agreed there is a real need for new generating capacity to serve Illinois and that new/increased capacity is essential for the Customer Choice Law to be successful. (Tr. 608)
- # The Chairman's Fall Report notes that participants generally agreed that the development of a competitive retail electric market in Illinois is inextricably linked to the development of competition in the Illinois wholesale market, and that there cannot be retail electric competition until a robust wholesale market for power and energy develops. (Tr. 609-10)
- # The Chairman's Fall Report indicates that participants felt that energy imbalance provisions of OATTs are an impediment to development of the competitive market. (Tr. 610)
- # The Chairman's Fall report states that some participants felt the "reciprocity" provision of the Customer Choice Law may be inhibiting development of competitive markets in Illinois, or at least limiting the number of new suppliers. (Tr. 610)
- # The Chairman's Fall Report indicates that the ability of incumbent utilities to sign customers to special contracts, or to offer billing and pricing experiments, may be impeding development of competitive markets in Illinois. (Tr. 610-11)
- # The Chairman's Fall Report notes that the fact that only a portion of the State's customers are eligible for customer choice may be limiting the development of the competitive market, because there are fewer potential customers over which to spread an ARES' or RES' start-up costs. (Tr. 611)

The views of Illinois electricity market participants as to the principal factors affecting the growth of the competitive market, as reported in the Chairman's Fall Report, are consistent with the views of Staff witness Dr. Schlaf and MEC witness Mr. Rea summarized above. In fact, the Chairman's Fall Report notes that the participants encouraged the Commission to pursue a total of eight actions to further the goals

¹³The Chairman's Fall Report states that it reflects the views of the Fall 2000 Roundtable participants as well as an analysis of statistical data and responses to specific inquiries which was received from ARES, RES and incumbent electric utilities. (Tr. 606)

of the Customer Choice Law. The eight recommended actions *did not* include adopting a pro forma DST template to be implemented by all DSTs. (See Tr. 611-12)

In short, development and implementation of a pro forma DST template at this time is *far down the list in importance* among actions that could have a beneficial impact on development of the competitive electric market in Illinois. Development and implementation of a pro forma DST at this time – or in the near term, before some of the other, much more significant factors impacting development of the competitive market are mitigated or eliminated – *would not have a material impact on the growth of the competitive retail electricity market.*¹⁴

2. The Proceedings Proposed by Staff and MEC to Develop a Pro Forma Delivery Services Tariff Would be Premature

To conduct a new proceeding to adopt a pro forma DST at this time, as proposed by Staff and MEC, would be premature. Most of the utilities have not yet filed their initial residential DSTs, nor, obviously, has the Commission approved initial residential DSTs for the utilities. Staff's and MEC's proposals would require utilities to begin negotiating, and possibly even litigating, the terms of a pro forma residential DST before they even file their initial residential DSTs, and before the Commission approves a residential DST for any utility.¹⁵ (Tr. 86-87) In the utilities' upcoming delivery services rate cases, a number of presently unknown or unanticipated tariff issues may arise relating to residential delivery

¹⁴Illinois Power also notes that supplier choice has been in place for non-residential gas customers in Illinois for some 15 years, and has been quite successful, even though the transportation tariffs of the local gas utilities are not uniform. (See Tr. 263)

¹⁵IP notes that on December 15, 2000, subsequent to the close of the record in this case, the Ameren companies filed their proposed residential DSTs with the Commission.

services.¹⁶ It would be more efficient to identify and resolve these issues in the context of the initial residential DST cases prior to moving into another proceeding to develop uniform DSTs covering both residential and non-residential delivery services. (IP Ex. 1.5, p. 5; Tr. 86)

Further, Illinois Power (and, it appears, many of the other utilities) will be filing, along with their initial residential DSTs, proposed revisions to their non-residential DSTs. (IP Ex. 1.5, pp. 8-9; Tr. 92, 139, 177, 221, 372) It is possible that in the upcoming delivery services rate cases, the Commission, in resolving contested issues, will order a number of changes to terms and conditions in the utilities' DSTs that will make the tariffs more uniform. (IP Ex. 1.5, pp. 5, 9-10; Tr. 234)

Illinois Power intends to engage in a comprehensive process to simplify and revise its DSTs prior to filing its delivery services rate case in June 2001. IP is initiating this process because it recognizes that improvements can be made to its existing DSTs. The Company will meet with internal users of its DSTs (including employees in IP's RES Business Center, which interacts daily with suppliers) to identify and better understand current problems or concerns with the DSTs. Meetings will also be held with interested external groups to obtain their input, including customers, suppliers and Staff. Based on the input received from all these interactions, IP will rewrite its DSTs, with the objective of making them easier to understand. The end result of this process will be the filing of simplified DSTs as part of IP's delivery services rate case, on or about June 1, 2001. (IP Ex. 1.1, p. 4; IP Ex. 1.5, pp. 8-9) Illinois Power anticipates that one of the outcomes of rewriting its DSTs in response to the comments of external parties may well be greater consistency with the DSTs of other utilities. IP's rewritten DSTs will, of course, be subject to further

¹⁶For example, in developing the residential DSTs, issues may arise with respect to aggregating customers that did not arise in developing the non-residential DSTs. (Tr. 231-32, 433)

comment by interested parties, and to review and further revision by the Commission, during the upcoming delivery services rate case.

Accordingly, the Commission should, at a minimum, complete the upcoming delivery services rate cases before it determines whether it is appropriate to initiate another proceeding with the objective of developing a pro forma DST.

3. The Expedited Proceedings Proposed by Staff and MEC to Develop a Pro Forma DST Would Require Substantial Expenditures of Resources by the Utilities, Staff and Other Interested Parties, and Would Divert Resources from Other Activities that Are More Critical to the Development of Just and Reasonable Delivery Services Tariffs

While development and implementation of a pro forma DST in the near term, through the type of expedited proceeding proposed by Staff and MEC, would have immaterial impact on growth of the competitive market, the resources required of the parties to develop such a DST would be substantial. Under MEC's proposal, the Commission would initiate a new docket in April 2001 with a target completion date of September 1, 2001 -- a duration of only *five months*. During that five month period, there would be workshops among all the interested parties (using the DST filed by MEC in this docket as the basis for discussion) to attempt to agree on as many provisions as possible, followed by a litigation phase which would end with the Commission deciding on the content and language for those provisions of the pro forma DST that parties could not agree on in workshops. (MEC Ex. 1.0. p. 3; Tr. 330-31, 362-63) In contrast, in this docket, the hearings phase alone was scheduled such that the parties' direct testimony was filed (after several months of workshops) in early November 2000, and the other activities (rebuttal and surrebuttal testimony, hearings, briefs, proposed order and exceptions) were sequenced to allow for issuance of the Commission's final order by April 1, 2001 -- *a duration of five months for the hearing, briefing and decision process alone*. (Tr. 85) Clearly, MEC's proposed proceeding would require a significant commitment of resources by the utilities, Staff, RESs and other interested parties in order to complete the proceeding within the allotted time.

Staff's proposal would require an even more aggressive schedule and an even more extensive commitment of resources. Under Staff's proposal, the new docket would be initiated in April 2001 and

would be completed by July 15, 2001 -- a period of **only 3-1/2 months**. Staff's proposed proceeding, like MEC's, would include both workshops and a litigation phase. (Staff Ex. 3, p. 12; Tr. 75-76, 84) As Staff witness Dr. Schlaf testified with characteristic understatement, "It would be a very quick proceeding." (Tr. 84)

Further, the issues involved in arriving at a pro forma DST in the proceedings proposed by MEC and Staff would be much more numerous and difficult to resolve than were the issues in this docket. Although in prior workshops relating to delivery services, the parties have been able to agree on a large number of business practices and on various broad principles relating to delivery services, the objective of the proposed proceedings would be to establish specific delivery services tariff language acceptable to utilities, RESs, consumer groups, Staff and other interested parties.¹⁷ As ComEd witness Mr. Alongi observed, "Developing uniform tariff language requires close attention to items that span an enormous scope." (ComEd Ex. 4.0 Rev., p. 24) It is readily foreseeable that only limited agreements would be reached in the workshops – leaving the Commission to resolve numerous disputes over specific tariff language.

¹⁷Staff witness Dr. Schlaf and MEC witness Mr. Rea agreed that in the new proceeding, any party would be allowed to submit a complete proposed pro forma DST, or alternative language for particular provisions of pro forma DSTs submitted by others. (Tr. 74-75, 76-77, 331, 361) Indeed, Dr. Schlaf touted this opportunity as one of the advantages of Staff's proposed proceeding; he observed with favor that "utilities might consider proposing their existing tariffs as templates." (Staff Ex. 3, p. 12) Thus, in the proceedings proposed by Staff and MEC, there may be numerous competing alternatives for the parties and the Commission to consider and evaluate for each section of the pro forma DST.

In short, even with substantial commitment of resources by the utilities, Staff, the other parties, and the Commission, it is difficult to see how the proposed proceeding could be completed in the time frames contemplated by Staff and MEC.

Of greatest concern to Illinois Power, however, is the reality that the significant expenditure of utility time and effort that would be required during 2001 in the proceedings proposed by Staff and MEC would divert those resources from other activities that are more critical to the development of just and reasonable DSTs. At Staff's request, IP and other utilities have agreed to file their initial residential DSTs by on or about June 1, 2001, even though the utilities are not required by statute to file their residential DSTs until October 1, 2001. (See IP Ex. 1.3, p. 11; Tr. 90, 371-72, 435-36; 220 ILCS 5/16-104(a) and 16-108(a)) As Dr. Schlaf explained, Staff has requested that the utilities file their residential DSTs four months in advance of the statutorily-required date in order to provide additional time in the ensuing rate cases (which must be completed by April 1, 2002, see 220 ILCS 5/16-108(b)) for Staff to review the filings and for the cases to be conducted in a time frame consistent with that of a traditional rate case. (See Tr. 91) Dr. Schlaf testified that lengthening the duration of the DST rate cases through the requested early filings is important to Staff. (Tr. 91) MEC witness Mr. Rea acknowledged that the utilities have agreed with Staff to file their delivery services rate cases on or about June 1, 2001 "primarily for the purpose of allowing Staff more time to review the financial and rate design aspects of each rate case filing." (MEC Ex. 5.0, p. 8)

Further, not only are the residential DSTs and revisions to the non-residential DSTs to be filed on or about June 1, 2001, in compliance with Staff's request, but also the utilities' supporting direct testimony and exhibits, and supporting schedules and workpapers comparable to the materials that were filed along with the utilities' initial DSTs in March 1999. (Tr. 92-93) Obviously, the several months leading up to June

1, 2001, are a critical period for the utilities in the development of the filing packages for the delivery services rate cases.

The pro forma DST proceedings proposed by Staff and MEC would commence on or about April 1, 2001, shortly after issuance of the final order in this docket, and would be concluded by about mid-July 2001 (Staff proposal) or early September 2001 (MEC proposal). These time frames coincide directly with the development and filing of the next round of delivery services rate cases on or about June 1, 2001. (IP Ex. 1.3, p. 11) IP is concerned that the resources which would be required for IP to participate effectively in the expedited proceedings proposed by Staff and MEC to develop a pro forma DST, should such a proceeding be ordered by the Commission, would have to be diverted from the Company's preparation of its delivery services rate case filing, and could result in IP being unable to file its delivery services rate case by June 1, 2001.¹⁸ Dr. Schlaf also acknowledged the potential for such a slippage in the filing dates for the utilities' upcoming delivery services rate cases, due to resource constraints.¹⁹ (Tr. 93-94)

¹⁸ComEd witness Mr. Alongi also expressed concern that ComEd would have to redirect resources off its residential delivery services effort in order to accommodate further proceedings on DST uniformity. (Tr. 436)

¹⁹MEC witness Mr. Rea cavalierly brushed off the concerns about MEC's proposed pro forma DST proceeding interfering with preparations for the June 1, 2001 delivery services rate case filings by observing that the commitments of the utilities to file their rate cases by on or about June 1 are not statutory obligations, and that "there is no overlap caused by statutory obligations." (MEC Ex. 5.0, pp. 8, 17, 29) While IP takes seriously its commitment to Staff to file its delivery services rate case by June 1, 2001, Mr. Rea has correctly pointed out that the June 1 filing date is not mandated by statute (nor is it embodied in any Commission order, see Tr. 93). In contrast (as Dr. Schlaf acknowledged (Tr. 93-94), participation in a new proceeding opened by the Commission to adopt a pro forma DST, under an expedited procedural schedule, would be mandated by a Commission order, and thus in the event of insufficient resources would necessarily take precedence over preparation of the June 1, 2001 delivery services rate case filings.

Nor will the utilities, Staff and the other parties be able to rest in the delivery services rate case proceedings once the tariffs and supporting materials are filed on or about June 1, 2001. As Dr. Schlaf acknowledged, under the typical procedural schedule for a rate case, the ensuing three to four months will be the period in which Staff and other parties will be reviewing and evaluating the utilities' filings, conducting discovery, and preparing their own direct cases for filing. (Tr. 94-95) Obviously, during this period the utilities will be working to respond to the data requests of Staff and other parties on a timely basis.

In short, as stated by IP witnesses Gudeman and Smith, "Devoting resources to the additional proceeding proposed by MEC simultaneously with preparation for, and participation in, the DST Rate Cases would be difficult for **all** participants. (IP Ex. 1.3, p. 11; emphasis in original; see also Tr. 268-69) The Commission should **not** initiate the proceedings proposed by MEC and Staff, but rather should defer consideration of any further actions to develop and implement a pro forma DST until after the conclusion of the upcoming delivery services rate cases.

4. The Proceedings Proposed by MEC and Staff Would Not Result in a Pro Forma DST That Each Utility Would Be Required to Implement

The proceedings proposed by MEC and Staff would not ultimately result in a pro forma DST to which each utility would be required to adhere. Both Mr. Rea and Dr. Schlaf emphasized that once the pro forma DST is adopted by the Commission, any utility would be allowed to make individual tariff filings to implement specific provisions for its DST that differed from the comparable provisions in the pro forma DST. (MEC Ex. 1.0, p. 13; MEC Ex. 5.0, pp. 12, 13, 14-15, 25, 26-27, 32-33, 39; Tr. 33, 81, 363-64) Mr. Rea testified that "It is not the intent of MEC or any other proponent of a pro forma tariff that all utility tariffs be exactly the same." (MEC Ex. 5.0, p. 27) He stated that utilities would be allowed "to essentially

customize the final template to their own needs with modifications to template terms and conditions that fit each utility's individual circumstances, allowing for special language where each utility sees fit" (*id.*, pp. 32-33), and that "There is nothing in the final pro forma tariff that is absolutely binding on the utilities in terms of actual business practices because MEC's proposal allows utilities to file for alternative terms and conditions in specific areas based on individual needs, innovations and creativity." (*Id.*, p. 39) In fact, he testified that the pro forma DSTs which he proposed be used as the starting point for discussions in the new proceeding "are not entirely compatible with MidAmerican's delivery services operations and we would likely file for different terms and conditions in certain situations from those in the proposed tariffs" (MEC Ex. 1.0, p. 7), and that "MEC expects to be one of those utilities that takes advantage of this opportunity to craft a delivery service tariff based upon a common template for its own needs." (MEC Ex. 5.0, p. 15)

Illinois Power appreciates, and agrees with, MEC's and Staff's recognition that individual utilities will require, and should have the opportunity to implement, specific tariff provisions that differ from those in a pro forma DST, if one is developed. Obviously, however, to the extent the utilities file individual DST provisions that vary from the pro forma DST, the utilities' DSTs will not be uniform. (Tr. 364) One must question the point of requiring the utilities and other parties to expend significant resources to arrive at a pro forma DST in an expedited proceeding, if the utilities can then immediately file (as they necessarily must be allowed to) tariff provisions that vary from the pro forma DST template.²⁰

²⁰Further, the standards that would apply to the Commission's review of a utility's individual DST filings are problematic. Mr. Rea indicated that the Commission's review of individual utility DST provisions would be "no different than the tariff approval process in place today" (MEC Ex. 5.0, p. 27); but he also testified that a utility should be required "to provide sufficient justification to the Commission" as to why a DST provision that differs from the pro forma template should be approved. (MEC Ex. 1.0, p. 13; see also Tr. 332-33, 367) Illinois Power submits that a utility is entitled to have its proposed tariff terms and

C. The Parties Have Already Identified Numerous Problems with MEC’s Proposed Template DSTs Which Render Them Unsuitable to be the Basis for the Expedited Proceeding Proposed by MEC

MEC submitted in this proceeding proposed pro forma DSTs, which it proposes be used as the basis for negotiations and litigation in the new proceeding that MEC recommends be initiated to develop a pro forma DST.²¹ (MEC Ex. 1.0, p. 3) If the Commission does at some point initiate a proceeding for the purpose of developing a pro forma DST template, Illinois Power believes that MEC or any other party should be entitled to submit a proposed pro forma DST template or parts thereof. However, the proposed template tariffs filed by MEC in this docket have not been subjected to sufficient review, and have too many open issues, to be adopted as template DSTs or even to serve as the starting point for discussion in the expedited proceeding proposed by MEC.

Although the hearing phase of this docket was preceded by several months of workshops, MEC did not present its proposed pro forma DSTs for consideration by the parties in the workshop process. (Tr. 43) MEC did circulate a draft of its pro forma DST template to selected parties that MEC thought “might be sympathetic to significantly more uniformity in the tariffs”, including Staff and NewEnergy, about one month prior to the filing date for direct testimony. (Tr. 43, 340; NewEnergy Ex. 1, pp. 7-8) However, MEC did not reveal its proposed pro forma DSTs – which consists of some 141 pages of tariff

conditions approved and placed into effect if it demonstrates that the provisions are (i) just and reasonable and (ii) in compliance with any other applicable statutory provisions and/or Commission regulations. (See 220 ILCS 5/9-101 and 9-201) To impose as an additional standard a requirement that the utility must also demonstrate why it should be allowed to place into effect a tariff provision that varies from the pro forma template, but is otherwise just and reasonable, would be of questionable validity.

²¹MEC Exhibits 1.1, 1.2 and 1.3 are proposed template DSTs for, respectively, customer, energy supplier, and meter provider service.

sheets – to Illinois Power or, apparently, to any of the other utilities, until MEC filed its direct testimony on November 3, 2000.

In the time available under the procedural schedule in this docket to file rebuttal testimony, IP was unable to conduct anything more than a superficial review of MEC’s proposed DST templates. Illinois Power did observe a number of substantive differences between IP’s current DSTs and MEC’s proposed pro forma DSTs. (IP Ex. 1.3, p. 20) ComEd witness Mr. Alongi also testified that ComEd did not have adequate time between receipt of MEC’s direct testimony and the filing date for rebuttal to review MEC’s proposed pro forma DSTs in the level of detail required. (ComEd Ex. 4.0 Rev., p. 23) However, based on ComEd’s preliminary review of the MEC pro forma DSTs, Mr. Alongi supplied extensive comments on the MEC DSTs. (ComEd Exs. 4.3, 4.4, 4.5) He testified that ComEd’s preliminary review of the MEC pro forma DSTs revealed a large number of problems and issues. He also observed that MEC’s proposed pro forma DSTs “are overly simplistic and flawed.” (ComEd Ex. 4.0 Rev., pp. 23-24) IP agrees that the preliminary analysis of the MEC pro forma DSTs presented by Mr. Alongi indicates that the MEC DSTs are not ready to be used as the basis for development of a pro forma DST, particularly in a highly expedited proceeding such as that proposed by MEC. (IP Ex. 1.5, p. 4)

MEC witness Rea, in surrebuttal, characterized Mr. Alongi’s comments as being in large part “technical in nature,” such as changes in punctuation, minor changes in definitions, addition of definitions, and minor wording changes for clarification, which Mr. Rea contended could easily be accepted and made. (MEC Ex. 5.0, p. 31) It is telling, however, that Mr. Rea did not attempt to make any of these technical revisions in the MEC pro forma DSTs when he submitted his surrebuttal testimony, despite having two weeks to do so. (Tr. 352-53) Further, while any one of the “technical” issues identified by Mr. Alongi

in the MEC pro forma DSTs might be easily addressed, the *sheer volume* of the “technical” issues he identified makes the MEC DSTs unsuitable as the starting point for a proceeding that MEC believes can be completed (including both workshops and a litigation phase) in *less than six months*.

Moreover, in addition to the numerous “technical” issues which ComEd identified in MEC’s proposed pro forma DSTs, ComEd also identified substantive issues in the MEC tariffs. (Tr. 430-31) Illinois Power has also identified substantive issues in its initial review of MEC’s proposed pro forma DST, such as the following:

- K** MEC’s pro forma DST defines “Delivery Service Customer” to include a customer’s “designated agent.” (See, e.g., MEC Ex. 1.1, Sheet 4) This is inconsistent with IP’s current DST and, more important, with the Public Utilities Act. Section 16-102 of the Act defines “retail customer” as the end user. (220 ILCS 5/16-102) While any retail customer may appoint an agent, the agent (whether or not a RES) is not entitled to purchase delivery services or to exercise the other rights of a “retail customer” under Article 16 of the Act.
- K** MEC’s pro forma DST introduces the concept of an “Energy Supply Coordinator”, i.e., “an entity that aggregates Delivery Services Customers.” (See, e.g., MEC Ex. 1.1, Sheet 4) This concept is not reflected in IP’s current DSTs. It will be necessary to decide what the duties, responsibilities, obligations and limitations of an “Energy Supply Coordinator” should be, particularly with respect to residential customers. This topic is one which could merit an entire proceeding by itself.
- K** The “Billing Arrangements” section of MEC’s pro forma DST appears to enable a delivery services customer to require its RES to provide the SBO or to provide separate billing, even if the RES only wishes to offer one of these options. (See MEC Ex. 1.1, Sheet 9)
- K** In a number of places, MEC’s pro forma DST incorporates by reference provisions of the Utility’s bundled tariffs, e.g., the provisions on Remittance (MEC Ex. 1.1, Sheet 14), Credit (MEC Ex. 1.1, Sheet 25), Service Applications (MEC Ex. 1.1, Sheet 26), and Disconnection (MEC Ex. 1.1, Sheet 26). (Tr. 379) In addition, MEC’s pro forma DST states as follows:

In addition to the terms and conditions in this tariff schedule (including all riders to this tariff), service hereunder shall be subject to the Company’s

terms and conditions and rules and regulations applicable to the Company's Bundled Tariff Rates. (MEC Ex. 1.1, Sheet 36) (Tr. 379)

Mr. Rea testified that it is not MEC's intent that the provisions of the utilities' bundled tariffs would also have to be made uniform, and that there could be any manner of varying terms and conditions in the utilities' bundled tariffs to which delivery services customers could be subject. (Tr. 379-80) This therefore becomes another respect in which the pro forma DST will not result in uniformity – raising again the question, *is this trip necessary?*

- K** MEC's pro forma DST provides that where a RES has elected the SBO option whereby the RES guarantees payment of the utility's charges to the utility, the retail customer will not be liable for payment of the utility's charges to the utility if the customer has paid those charges to the RES. (MEC Ex. 1.1, Sheets 15 and 29) Illinois Power disagrees with this provision. The retail customer, not the utility, selects the RES it wishes to do business with, and agrees to pricing, terms and conditions with the RES as a matter of private contract. The retail customer should, therefore, always be ultimately responsible to the utility for payment of the utility's delivery services charges.²²
- K** MEC's pro forma DST requires the RES to make various disclosures to the RES's customer with respect to the prices, terms and conditions of the RES's service and certain related matters. (MEC Ex. 1.1, Sheet 20) Since the utility is required to enforce its tariff, this provision places an obligation on the utility to police the RES's compliance with these disclosure requirements, and would involve the utility in the commercial relationship between the RES and the customer. (Tr. 382-83) IP believes that the nature and extent of disclosures by a RES to its potential or actual customers are matters between the RES and the customer and that the utility should not be involved in either specifying the scope of, or overseeing, these disclosures.
- K** MEC's pro forma DST requires a utility to disclose to a RES usage information for a customer that has caused its account to be "blocked," if the RES presents a letter of authorization ("LOA") from the customer. (MEC Ex. 1.1, Sheet 16) The MEC DST does not require that the customer expressly direct the utility to unblock the customer's account. This creates the possibility for confidential customer information to be divulged because an LOA is given in error by the customer, or by someone within the customer's organization who lacks proper authority, or because the LOA is not authentic. (Tr. 384-85)

²²However, the utility can be required to undertake reasonable efforts to secure payment by moving against any deposit or other credit security that the customer's RES has posted with the utility, before the utility is allowed to seek payment directly from the retail customer.

- K** The PPO Rider included in MEC’s pro forma DST indicates that if a PPO customer’s transition charge becomes zero during the term of the customer’s PPO contract, the customer is nevertheless entitled to continue to receive PPO service for the balance of the contract. This provision imposes an obligation on the utility to provide PPO service that goes beyond the service obligation imposed by §16-110 of the Act. Further, the parties agreed in the Stipulation in this docket that this issue would be litigated in other proceedings. (IP Ex. 1.3, p. 12; see item 8 under “PPO Tariff Issues for Utilities Currently Collecting CTCs” in the Stipulation (App. A to the Interim Order issued Oct. 18, 2000))
- K** MEC’s pro forma Meter Provider Service tariff incorporates, in a number of places, the provisions of “Utility’s MSP Operating Requirements Handbook.” (MEC Ex. 1.3, Sheets 20 (Estimated Reads; Inquiry Resolution) and 21 (MSP Metering); see Tr. 385-86) This suggests that adoption of MEC’s proposed pro forma DST would also require agreement on, or Commission approval of, the terms of a pro forma MSP Operating Requirements Handbook (which MEC has not submitted in this docket).²³ Moreover, this provision would in effect give the provisions of the utility’s “MSP Operating Requirements Handbook” the same force as the tariff.²⁴ So far as IP is aware, the “MSP handbooks” of those utilities that have elected to prepare such documents have not been subject to Commission review and approval in the same manner as their DSTs.

In sum, even the limited, preliminary review of MEC’s proposed pro forma DSTs that the other parties have been able to conduct in the brief time available under the procedural schedule for the hearings phase of this docket reveals so many technical and substantive issues that the MEC DSTs cannot be considered sufficiently well developed to be used as the basis for negotiation and litigation in a proceeding to develop a pro forma DST – particularly in a proceeding that is to be *completed in less than six months after it is opened*.

²³On the other hand, if it is MEC’s position that the utilities’ MSP Operating Requirements Handbooks would not have to be uniform (see Tr. 387), this would constitute a further departure from “uniformity”, and again raise questions as to the purpose of this entire exercise.

²⁴Note that MEC’s pro forma Meter Provider Service tariff authorizes the utility to cancel the registration of an MSP for (among other reasons) “Failure to comply with the terms and conditions of this tariff.” (MEC Ex. 1.3, Sheet 9)

IV. ILLINOIS POWER IS MAKING CUSTOMER INFORMATION AND CONTRACT FORMS AVAILABLE ON ITS WEB SITE IN ACCORDANCE WITH STAFF'S RECOMMENDATIONS

Staff witness Dr. Schlaf made the following recommendations with respect to the information that the utilities should make available on their web sites:

- (1) Most, if not all, delivery services-related contracts should be available on utility web sites. Utilities should describe their contract processing procedures in tariffs or in their delivery services implementation plans.
- (2) All the information that suppliers need to create a power and energy offer that is reasonably available to the utility should be accessible in real-time through utility web sites. (Staff Ex. 1 Rev., p. 6)

Illinois Power witness Mr. Gudeman provided a comprehensive listing of the types of information that is available to customers and RESs, or will be available by January 1, 2001, on IP's web site, and described the processes by which a customer or a RES may access this information. (IP Ex. 1.1, pp. 2-4; IP Ex. 1.2) Dr. Schlaf testified in rebuttal that he had no objection to IP's plan for providing web site access to customer information. (Staff Ex. 3, p. 2)

With respect to delivery services-related contracts, IP has its PPO and transition charge contracts available on its web site. (IP does not require a contract for delivery services.) IP's RES Handbook (which is available on its web site) also contains copies of these contracts and describes the processes for submitting them. (IP Ex. 1.3, p. 20) IP has not placed on its web site the form of contract required of a customer that splits its load between or among a bundled service, service from a RES and/or PPO, because these contracts must be individually developed based on the specifics of how the customer wishes to split its total load. (Id.) Dr. Schlaf acknowledged that there is a limited set of circumstances in which a utility

might reasonably prefer to create contracts that are tailored to individual customer needs. (Staff Ex. 1 Rev., p. 12)

Based on the record, Illinois Power believes that it has satisfactorily responded to Dr. Schlaf's recommendations with respect to the availability of customer information and of delivery services-related contracts on IP's web site.

V. ILLINOIS POWER'S TARIFF PROVISIONS AND PRACTICES RELATING TO INTERIM SUPPLY SERVICE SATISFY STAFF'S RECOMMENDATIONS

Staff witness Dr. Schlaf made several recommendations relating to the utility's tariff provisions for "interim supply service" ("ISS"). He recommended that a delivery services customer should be eligible for ISS in circumstances in which the customer has lost its source of supply. He also recommended that the tariffs state that a customer placed on ISS will be provided prompt notification of the switch to that service. Finally, he indicated that utilities should allow a customer to remain on ISS for at least two billing cycles before the customer is switched back to bundled service. (Staff Ex. 1 Rev., pp. 2, 7-9)

Illinois Power witnesses Mr. Gudeman and Ms. Smith explained that under IP's ISS provisions (Service Classification 110, §16), if the procedures specified in the tariff are followed, a delivery services customer that has lost its supplier will be placed on ISS. They also testified that IP's CIS automatically generates a letter to notify the customer it has been placed on ISS, which is mailed to the customer on the next business day after IP receives notice from the supplier that it will no longer serve the customer. Finally, they explained that IP's DST allows a customer to remain on ISS for a maximum of two billing cycles, i.e., for 30 to 65 days. (IP Ex. 1.3, pp. 18-19) Accordingly, Illinois Power believes its tariff provisions and practices satisfy Dr. Schlaf's recommendations with respect to ISS.

VI. THE COMMISSION SHOULD NOT IMPOSE ANY REQUIREMENTS RELATING TO INTERVAL METERING IN THIS DOCKET; HOWEVER, IF THE COMMISSION DETERMINES THAT A UNIFORM USAGE LEVEL AT WHICH DELIVERY SERVICES CUSTOMERS MUST INSTALL INTERVAL METERING SHOULD BE ESTABLISHED, THE COMMISSION SHOULD ADOPT THE 400 KW AND ABOVE LEVEL THAT IT HAS ALREADY APPROVED FOR COM ED.

One of the issues which the parties agreed “may” be litigated in this proceeding is “At what level of demand is interval metering required to take delivery services.” (See p. 7 of the Stipulation, App. A to the Interim Order; see also the list of “Questions that May Be Litigated”, App. B to the Interim Order) Only one witness submitted any direct testimony on this topic, Mr. Neilsen of Alliant Energy. However, Mr. Neilsen did not propose a particular level of demand at which interval metering should be required to take delivery services. Rather, he simply testified that “Requirements regarding use of interval metering should not differ for similarly situated delivery services and bundled services customers. Doing otherwise could create a barrier to retail access.” (Alliant Ex. 1, p. 13)

Although no other party submitted any direct testimony on this topic, MEC’s proposed pro forma DST contains a provision to the effect that the utility will not require a customer to take any metering or metering capability as a condition of taking delivery service that would not be required under the customer’s bundled service tariff. (MEC Ex. 1.1, Sheet 13) In his surrebuttal testimony, MEC witness Rea observed that this provision is in conflict with existing provisions in several utilities’ DSTs that require interval metering at or above a specific level of demand.²⁵ (MEC Ex. 5.0, p. 34) Even though MEC did not submit any testimony on this topic prior to surrebuttal (Tr. 376-77), and even though Mr. Rea testified that the MEC

²⁵The conflict between this provision of MEC’s pro forma DST and ComEd’s existing, approved DST was also noted in one of ComEd witness Alongi’s exhibits that commented on the MEC DSTs. (ComEd Ex. 4.3, p. 7)

pro forma DSTs would be subject to negotiation and litigation in the new proceedings that MEC recommends the Commission open (see, e.g., MEC Ex. 5.0, pp. 2-3, 18), he testified during cross-examination that MEC intends for the Commission to resolve the interval metering issue substantively in this docket. (Tr. 376) However, aside from including this provision in its proposed pro forma DST, MEC never actually presented any testimony in support of the Alliant proposal.

The only other testimony submitted on this topic was 20 lines of rebuttal testimony by ComEd witness Sally Clair. (ComEd Ex. 3.0, pp. 41-42) Staff submitted no testimony on this topic.

Illinois Power does not believe that the Commission should reach a substantive decision in this docket on the topic of the level of demand at which interval metering is required to take delivery services, nor substantively accept or reject the Alliant proposal, because an adequate record on this topic has not been developed in this proceeding. The Commission should not reach a substantive decision on this topic until it has compiled a record that adequately addresses the circumstances in which interval metering should be required to accurately record usage and bill customers, the costs of installing and maintaining interval metering, and the impact on utilities of requiring changes in existing, previously-approved DST provisions on this topic.

If, however, the Commission is inclined to reach a substantive conclusion in this docket on the issue of “At what level of demand is interval metering required to take delivery services,” the outcome that makes the most sense, given the limited record in this case, is to authorize all utilities to include in their DSTs the provision which the Commission has already approved for ComEd in its initial DST case (Docket 99-0117), namely, that the utility may require customers with maximum demands of 400 kW and above to install interval metering as a condition of taking delivery services. (See ComEd Ex. 4.3, p. 7; ComEd Ex.

3.0, p. 41) In approving this provision in Docket 99-0017, the Commission, after summarizing the evidence presented in that docket, stated:

Edison's proposal strikes the appropriate balance between accurate metering and the associated cost. ComEd has demonstrated that the installation of interval metering, at least for the group with greater than 400 kW of demand is both fair and economically beneficial to all. It not only promotes accurate cost recovery for the utility, it helps to insure that the costs are being recovered from the correct customer. (Order in Docket 99-0017, p. 134)

Further, the Commission should *not* adopt in this proceeding the Alliant proposal that "Requirements regarding use of interval metering should not differ for similarly situated delivery services and bundled services customers." In addition to the inadequacy of the record, the adoption of a requirement that could in effect result in establishing a mandatory level at which interval metering could be required for bundled service customers is beyond the scope of this proceeding, which is limited to the consideration and adoption of uniform or consistent provisions on various topics in the utilities' delivery services tariffs. Moreover, adoption of such a provision -- because it would not establish a single level of kW demand for mandatory interval metering which all of the utilities would have to follow -- would not contribute to uniformity and consistency among the utilities' DSTs. In fact, such a provision could lock in non-uniformity, because it would tie the level at which each utility could require interval metering as a condition for delivery services to the particular interval metering requirements in each utility's existing bundled service tariff.

In addition, the Alliant proposal is inappropriate on its merits. Interval metering can be necessary and appropriate for a customer taking delivery services even though it may not be necessary for the same customer taking bundled service. Interval metering is more relevant in a delivery services environment than in a bundled service environment because interval metering helps to determine the load requirements with

a greater degree of precision than a non-interval meter. (Tr. 483) In particular, interval metering is used in the provision of delivery services to record the customer's hourly usage in order to accurately bill charges under the utility's OATT, and to give a complete picture of the customer's energy requirements to the delivery services provider and the energy supplier. (Tr. 483-84) The usage and billing information that interval metering provides is needed in the provision of delivery services but not in the provision of bundled service. (Tr. 484)

Although load profiling can also be used to develop the customer's hourly energy usage, load profiling is only a generic estimation process, not an actual measurement of the customer's hourly usage. At some level of customer demand, the additional cost of interval metering is justified by the more accurate recording of usage and billing of charges it provides. As noted above, the Commission made the determination in ComEd's initial DST case, Docket 99-0117, that interval metering is justified for delivery services customer at customer maximum demand levels of 400 kW and above. In contrast, a 400 kW customer may take bundled service under a tariff that does not base charges on hourly usage, and thus interval metering is not necessary to accurately record the customer's bundled service usage or to bill the customer under the bundled service tariff.

Finally, Mr. Neilsen's one-sentence assertion that "doing otherwise could create a barrier to retail access" (Alliant Ex. 1, p. 13) does not justify imposing a requirement that the customer kW demand level at which interval metering is required must be the same for a utility's bundled service tariffs and its DSTs. As shown above, interval metering can be justified and appropriate for billing a customer for delivery services, yet may be totally unnecessary for billing the same customer for bundled services. This distinction

is not a “barrier”, but rather a real, substantive difference in requirements which arises when a customer elects to take unbundled service rather than bundled service.²⁶

VII. CONCLUSION

For the reasons set forth in this brief, the Commission’s final order in this proceeding:

- (1) Should not adopt the proposals of MEC and Staff to initiate a new proceeding immediately following the conclusion of this docket to develop and adopt a pro forma DST. Instead, the Commission should defer further consideration of the development of a pro forma DST until after the completion of the utilities’ upcoming delivery services rate cases.
- (2) Should not require Illinois Power to make any changes in its current billing and posting practices and procedures relating to customers being billed by a RES under the SBO.
- (3) Should find that IP’s plans for placing customer information and delivery services-related contracts on its website satisfy Staff’s recommendation.
- (4) Should find that Illinois Power’s tariff provisions relating to Interim Supply Service satisfy Staff’s recommendations.

²⁶The Public Utilities Act expressly requires that “An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission.” (220 ILCS 5/16-108(a)) There is no such requirement with respect to the electric utility’s provision of bundled tariffed service.

- (5) Should not reach any decision on the customer kW demand level at which interval metering can be required as a condition of taking delivery services, and should not adopt the Alliant proposal that any such demand level in a utility's DST must also apply to its bundled tariffs. However, if the Commission determines that it needs to reach a substantive conclusion on this topic, the Commission should authorize utilities to require customers with maximum demands of 400 kW and above to install interval metering as a condition of taking delivery services, a provision which the Commission approved for ComEd in Docket 99-0117.

Respectfully submitted,

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