STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its own motion	)	
Investigation of Rider CPP of Commonwealth Edison Company, and Rider MV of Central Illinois Light Company d/b/a AmerenCILCO, of Central Illinois Public Service Company d/b/a AmerenCIPS, and of Illinois Power Company d/b/a AmerenIP, pursuant to Commission Orders regarding the Illinois Auction.	)	**Docket No. 06-0800**

REPLY BRIEF ON EXCEPTIONS

OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

JOHN C. FEELEY
CARMEN L. FOSCO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
cfosco@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

August 27, 2007

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, and pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code Section 200.830, respectfully submits this Reply Brief on Exceptions to the briefs on exceptions filed by certain parties on July 23, 2007 in response to the Administrative Law Judges' Proposed Order ("Proposed Order" or "PO") issued July 12, 2007[1].

[1] The PO set the due date for reply brief on exceptions as July 30, 2007. The ALJs later granted a motion of Commonwealth Edison Company to extend the due date to August 13, 2007. Subsequently on August 13, 2007, the ALJs notified the parties via e-mail that the due date for reply brief on exceptions was being extended to August 27, 2007.

I. Introduction

On July 12, 2007 the ALJs issued a PO in this matter. Staff found the PO to review the issues in a clear and concise manner, to be well written, and to accurately reflect the positions taken by Staff and the other parties. However, Staff did take exception to the PO on two issues, calculation of tangible net worth and the definition of confidential information. Briefs on exceptions were also filed by .Commonwealth Edison Company ("ComEd"); Direct Energy Services, LLC ("DES") and Commerce Energy, Inc ("CEI") (jointly "DES-CEI"); Constellation NewEnergy, Inc. ("CNE"), DES, MidAmerican Energy Company, and Peoples Energy Services Corporation (collectively the "Coalition of Energy Suppliers" or ("CES"); the Retail Energy Supply Association ("RESA"); the Illinois Industrial Energy Consumers ("IIEC"); and the Citizens Utility Board ("CUB"). Staff will respond to certain exceptions filed by DES-CEI, RESA, CES and CUB. Some of the issues raised in the parties' exceptions were addressed in Staff's Initial Brief and Reply Brief, and in the interest of efficiency, Staff has not raised or repeated every argument or response previously made in those briefs. Thus, the omission of a response to an exception simply means that Staff stands on the position taken in Staff's Initial Brief and Reply Brief because further or additional comment is neither needed nor warranted.

Staff acknowledges that on July 31, 2007 Senate Bill 1592 and its various amendments (collectively "new legislation") was sent to the Governor to be signed into law. It is Staff's understanding that the new legislation if signed into law by the Governor would, among other things, eliminate the future power auctions for ComEd and the Ameren Companies as contemplated by the orders in ICC Docket No. 05-0159 and ICC Docket No. 05-0160, 05-0161 and 05-0162 (consolidated) which are the

subject of this proceeding. Although it is possible that issues in this proceeding may become moot, Staff will still respond to certain exceptions made by certain parties as indicated above in light of the fact that the new legislation has not yet become law.

II. Argument

A. Response to Direct Energy Services/Commerce Energy, Inc. and the Retail Energy Supply Association Regarding Short term Contracts.

DES-CEI and RESA take exception to the PO on the issue of the use of a blend of one, two and three year contracts rather than all short term contracts as they proposed. (DES-CEI BOE, pp. 3-7; RESA BOE, pp. 1-2) Both argue that the evidence does not support the claim that reliance on short term contracts will harm customers. (DES-CEI BOE, p. 4; RESA BOE, p. 1) DES-CEI's and RESA's arguments ignore the testimony of Staff panel witnesses Kennedy and Zuraski that if the auction moved entirely to one year contracts that could deter participation by a supplier who may have a comparative advantage in making longer term contracts. (ICC Staff Ex. 1.0, pp. 18-19) Based in part upon that testimony the PO found that a move to short-term contracts could have an adverse impact on customers, particularly smaller customers. (PO, p. 42) The PO appropriately concluded that Staff's proposal which is designed to stimulate bidder participation yet still provides a reasonable level of practicality and price stability is a more reasonable proposal then DES-CEI's and RESA's which would subject customers to short-term price volatility. As Ameren pointed out in its reply brief, the Commission found in its order in ICC Docket Nos. 05-0160, 05-0161 and 05-0162 (Consolidated) that one of the Commission's objectives for the auction was to "protect against price unpredictability and instability for smaller customers" (citing the Final order in ICC Docket Nos. 05-0160, 05-0161 and 05-0162 (Consolidated). (Ameren RB, p. 18)

The proposal to use short term contracts as proposed by DES-CEI and RESA, which would subject customers to short term price volatility, is at odds with that objective. In addition, while DES-CEI and RESA argue that they are for a competitive market (DES-CEI BOE, p. 3; RESA BOE, p. 2) they fail to recognize as the PO correctly does that ”customer choice has more meaning when customers have options which include, among others, access to power and energy at a relatively reasonable price from the utility.” (PO, p. 98) Short term contracts as DES-CEI and RESA propose are not consistent with that goal. Accordingly their exception should be rejected.

B. Response to the Coalition of Energy Suppliers and the Retail Energy Supply Association Regarding Enrollment Windows.

CES and RESA take exception to the PO’s adoption of a 20-day enrollment window for most customers and a 7-day window for certain customers. (CES BOE, p. 5; RESA BOE, p. 2) CES and RESA dispute that a shortening of the window will reduce the risk premium on supplier’s bids associated with longer windows. (CES BOE BOE, p. 5; RESA BOE, p. 2) CES also argues that the issue was “fully litigated in the procurement dockets” and therefore the Commission should leave the issue alone. (CES BOE, pp. 6-7) Given the fact that the length of the enrollment window adopted in the procurement dockets was based upon a compromise made between ComEd and CES (CES BOE, p. 7), CES’s claim that the issue was fully litigated is not accurate. In any event, there was new evidence introduced in the instant docket that strongly supports the PO on its decision to shorten the enrollment window. This new evidence includes, among other things, the survey offered by the auction monitor, which showed that suppliers believe that the risk of customer switching directly puts a risk onto suppliers. (PO, p. 92) Other witnesses including Staff witnesses Kennedy and Zuraski

came to the same conclusion. (ICC Staff Exhibit 1.0, pp. 12-13) Staff agrees with the PO when it states that the length of the window is a matter of judgment. (PO, p. 92) However, in this proceeding the number of those in support of shortened windows is far greater and more diverse than those opposed. Accordingly, CES's and RESA's exceptions should be rejected

C. Response to CUB Regarding the Incorporation of Demand Side Resources into the Auction Process.

CUB takes exception to the PO regarding the rejection of CUB's proposal that the Commission investigate in a separate proceeding the incorporation of bidding by demand side resources into the auction process. (CUB BOE, p. 2) Staff in its initial and reply briefs pointed out that "if demand management is to be considered by the Commission, it should be outside the context of the vertical tranche auction" since "the concept of demand side resources is fundamentally different than the concept of supply side resources." (Staff IB, p. 15; Staff RB corrected, p. 13) Staff also pointed out the legal concerns with the CUB proposal and the Commission's authority to order the adoption of CUB's proposal. (Staff RB corrected, pp. 13-18) Given the fundamental difference between demand side resources and the concept of supply side resources, the PO's rejection of CUB's proposal is appropriate. Accordingly, for this reasoning and those previously stated in Staff's initial and reply brief CUB's exception should be rejected.

III. Conclusion

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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JOHN C. FEELEY
CARMEN L. FOSCO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
cfosco@icc.illinois.gov

Counsel for the Staff of the
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