**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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| CENTRAL ILLINOIS LIGHT COMPANY D/B/A AMERENCILCO | : | |
| | : | Docket No. 07-0588 |
| Proposed general decrease in gas delivery service rates | : | |
| | | |
| CENTRAL ILLINOIS PUBLIC SERVICE CO. D/B/A AMERENCIPS | : | |
| | : | Docket No. 07-0589 |
| Proposed general increase in gas delivery service rates | : | |
| | | |
| ILLINOIS POWER COMPANY D/B/A AMERENIP | : | |
| | : | Docket No. 07-0590 |
| Proposed general increase in gas delivery service rates | : | |
| | | (cons.) |

**REPLY BRIEF OF**
**CONSTELLATION NEWENERGY-GAS DIVISION, LLC**


Christopher D. Young
Constellation Energy Group, Inc.
111 Market Place, Suite 500
Baltimore, MD 21202
410-470-3540
christopher.young@constellation.com

Randall S. Rich
Bracewell & Giuliani LLP
2000 K Street. NW
Washington, DC 20006
202-828-5879
Randy.Rich@bgllp.com

Attorneys for

**Constellation NewEnergy-Gas Division, LLC**


Dated: July 15, 2008

INDEX

# CONSTELLATION NEWENERGY-GAS DIVISION, LLC[1]

Constellation NewEnergy – Gas Division, LLC ("CNE-Gas"), by its attorney, hereby submits to the Illinois Commerce Commission ("Commission") its Reply Brief in response to the Initial Brief ("IB") submitted by AmerenIP, AmerenCILCO, and AmerenCIPS (jointly referred to as "Ameren" or the "Company") in the above-captioned proceeding.

## VII.
## RATE DESIGN: TARIFF TERMS AND CONDITIONS

### A. Introduction

Ameren argues it has proposed "a simple and fair approach to rate design" and urges the Commission to approve tariff uniformity in order to "allow their customers to benefit from standardized provision of service." (Ameren IB at 314.) While perhaps simple, Staff and intervenors have shown that Ameren's proposal is far from fair. Further, the benefits of tariff standardization, while real, are substantially negated by Ameren's proposed changes, including its surrebuttal proposals, which result in reduced levels of service for transportation customers.[2]

Ameren lauds its self-proclaimed "best practices" philosophy and the efforts it undertook to develop standardization. (Ameren IB at 324-326.) Unfortunately Ameren's

[1] As required by the ALJs, CNE-Gas' Reply Brief follows the common briefing outline. CNE-Gas takes no position on issues addressed elsewhere in the outline. The CNE-Gas Reply Brief is limited to the issues addressed. The absence of any issue included in CNE-Gas' Initial Brief should not be construed as a change to CNE-Gas' position.

[2] For example, Ameren argues: "As the Companies move from the current bank services offered under the existing tariffs to those that have been proposed by Ameren Illinois Utilities, any balance in excess of the new bank limit maximums will be cashed out at the average of the Chicago City Gate first of the month price for the prior 12 month period after the customers avails itself of any bank balance trading with other customers." (Ameren IB at 375.) If proposed service levels were comparable with existing service levels, there would be no need to cash out volumes.

efforts were internally-focused; neglecting to elicit any customer input into what its standardized tariffs should look like or even determine from the customer's perspective what actually are "best practices." (ICC Staff IB at 298.)

**C. Contested Issues**

**2. Gas**

**b. Size of Storage Banks/Method by which to Determine**

**AMEREN CONFUSES CNE-GAS' POSITION.**

The summary table in Ameren's Initial Brief (Ameren IB at 332, 355) is confusing and must be clarified. The table describes CNE-Gas' position as "Daily +/- 20%, Monthly none, Bank Limit of 14-16 x MDQ." It is correct that CNE-Gas witnesses argued for a bank size of 14-16 times MDQ *if* Staff's Daily Cashout Proposal, which has no monthly component, is adopted. However, "Monthly none" could reference the lack of a monthly cashout, as is the case under Staff's proposal, or be interpreted as no changes proposed to existing Ameren monthly cashout as CNE-Gas actually testified. CNE-Gas proposes a bank limit of between 10 to 13.5 times MDQ, depending upon the percentage level of the daily tolerance band when monthly cashout is retained. (CNE-Gas Exhibit 2.0, lines 785-788, 938-939.) Moreover, CNE-Gas' testimony stated a preference for daily *and* monthly cashout over daily cashout alone. Further, CNE-Gas' proposal was not offered in the context of a Bank Limit service, because CNE-Gas' testimony was filed prior Ameren's surrebuttal testimony proposing a Bank Limit service. (CNE-Gas Exhibit 2.0, lines 941-949.)

**AMEREN'S THEORY OF BANKING SERVICE IS INCORRECT AND INCONSISTENT WITH ITS OWN TESTIMONY.**

Ameren suggests that: "Banking services do not have any direct relationship to natural gas storage." (Ameren IB at 332.) CNE-Gas disagrees. Ameren confuses the uses of storage, such as balancing and price hedging, with physical storage assets. Depending upon the characteristics of storage assets, some types of storage may be better suited for certain purposes than other types of storage assets, but there are not distinctly "banking" and "storage" assets. Ameren has acknowledged that it does not separately manage its assets according to banking or storage. (CNE-Gas Exhibit 2.0, lines 693-698.) While imbalances may be mitigated using assets other than physical storage, such as line pack, it is beyond dispute that storage is one of the assets through which banking is accomplished. (CNE-Gas Exhibit 2.0, lines 683-716.)

Further, Ameren cannot have it both ways. It cannot argue that banking and storage are not directly related (Ameren IB at 332) when its own testimony provides that: "Ameren utilities have some storage costs allocated to the transportation customers to support daily balancing and banking provisions." (Ameren Exhibit 30.0, lines 545-546.) Storage cannot be related to banking for cost allocation purposes, but not for service purposes.

**CURRENT ENERGY MARKET CONDITIONS DO NOT JUSTIFY AMEREN'S PROPOSALS.**

Ameren's Initial Brief devotes nine pages to the current business environment of increased price volatility, increasingly constrained capacity, the growing use of natural gas for gas-fired power generation, and the globalization of the energy complex. (Ameren IB at 333-342.) While these may be key challenges facing the energy industry, Ameren does not establish any credible link between these factors and its specific transportation service proposals. All may be present market realities, but none *require* the response proposed by Ameren.

If Ameren's concerns were valid, utilities would be flocking to state public utility commissions nationwide to request greater limits and constraints on transportation service and to reduce options available to customers. Yet, reduction in transportation services of the magnitude proposed by Ameren is not universally occurring. (CNE-Gas IB at 13; ICC Staff IB at 315.) Further, if Ameren's claims are correct regarding increased stress being placed on Ameren's system by the load and peak demands of certain types of customers, the cost of meeting the needs of a subset of customers should not be allocated to all transportation customers generally. (Ameren IB at 336.)

Ameren argues its proposals are warranted because interstate pipelines are operating with tighter tolerances. (Ameren IB at 336.) The record does not support Ameren's position. In fact, interstate pipeline tolerances have remained constant for more than a decade. (ICC Staff Exhibit 11.0, lines 598-605.) Similarly, Ameren argues these phantom "tighter tolerances" justify daily cashout for imbalances +/- 15%. (Ameren IB at 357.) Yet, in reality the upstream pipelines do not require a daily cashout. (Ameren Exhibit 54.0, lines 398-401; CNE-Gas IB at 21; ICC Staff IB at 316.)

Undaunted by the facts, Ameren suggests an increase in the operational restraints invoked by interstate pipelines supports its proposal to tighten daily tolerances. (Ameren IB at 340.) CNE-Gas agrees with Staff that Ameren's allegation of increased frequency of upstream pipeline operational constraints does not justify reducing daily cashout tolerances. (ICC Staff IB at 315.) Ameren has failed to establish a cause and effect correlation.

Ameren improperly seeks to shift the burden of proof with respect to alleged interstate operating constraints to CNE-Gas. (Ameren IB at 342.) It is black letter law that in a utility rate case, the applicant bears the burden of proof. *See* 220 ILCS 5/9-201(c) ("In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility.") *See also Central Illinois Public Service Co. v. Illinois Commerce Commission*, 5 Ill. 2d 195, 125 N.E.2d 269, 277 (1955) ("the burden of proof falls on the proponent of the rate"). Moreover, Illinois courts have recognized that "[r]equiring intervenors to establish unreasonableness is therefore no substitute for requiring proof of reasonableness." *People ex rel. Hartigan v. Illinois Commerce Commission*, 117 Ill.2d 120, 510 N.E.2d 865, 871 (1987). Ameren has failed to meet its burden in this case to support its allegation that intrastate operating constraints require diminished banking and balancing flexibility for Ameren's transportation customers. Ameren cannot slough-off its burden on CNE-Gas.

Ameren attempts to support its proposals to narrow tolerances and limit balancing flexibility by suggesting that CNE-Gas did not make any special requests to customers to reduce their usage during a Panhandle Eastern Pipe Line Company ("Panhandle") mainline rupture. (Ameren IB at 341.) Ameren then jumps to the conclusion that CNE-Gas' customers used system supply. Ameren simply ignores the reality that CNE-Gas, as a customer-focused company in a competitive environment, purchased additional gas supply for its customers in order to compensate for any quantities of gas curtailed as a result of the Panhandle event. (CNE-Gas Exhibit 2.0, lines 319-328.) The transportation customers did not use system supply resources to maintain normal usage levels, but rather delivered additional gas supply to cover the cuts.

### AMEREN'S FAILS TO SUPPORT GAMING AND CROSS-SUBSIDIZATION ALLEGATIONS.

Ameren further attempts to recast its anecdotal evidence of gaming as adequate justification for its proposed reduction in transportation service levels. (Ameren IB at 342-346.) CNE-Gas will not repeat all the criticism of this purported evidence; the detailed testimony of Staff witness Sackett and CNE-Gas witnesses Germain and Rozumialski on the topic speaks for itself. (CNE-Gas Exhibit 2.0, lines 335-618; CNE-Gas IB at 22; ICC Staff Exhibit 11.0, lines 160-166; ICC Staff Exhibit 23.0, lines 328-412; ICC IB at 308-310.) Ameren ignores this testimony and continues to argue that acceptance of Staff's recommendations would *certainly* result in transportation customers being subsidized by residential and small commercial customers. With or without the underlying math, Ameren's conclusions are flawed; the underlying math simply quantifies those flaws. As Ameren provided no evidence showing that cross subsidization has systematically occurred, the Commission cannot accept its argument that cross-subsidization will be a "certainty" if the Commission accepts Staff's recommendations. (Ameren IB at 343.)

### OTHER ERRORS IN AMEREN'S INITIAL BRIEF REQUIRE CORRECTION.

Ameren incorrectly alleges that CNE-Gas "completely ignores" Ameren's response to Data Request POL 6.05(g). (Ameren IB at 344-46.) CNE-Gas' response can be found at CNE-Gas Exhibit 2.0, lines 672-681, where CNE-Gas explained how the inclusion of daily balancing provisions in *all* Ameren utility transportation tariffs would remedy these problems. Ameren did not offer any surrebuttal testimony to this section of CNE-Gas rebuttal testimony.

Ameren incorrectly states: "Banking service does not exist for AmerenIP transportation customers." (Ameren IB at 348.) However Mr. Glaeser's direct testimony describes the bank limits for AmerenIP Rider OT (Optional Transportation) customers. (Ameren Exhibit 16.0G, lines 139-151.) Also, elsewhere Ameren's Initial Brief states: "Banks are provided to AmerenIP transportation customers served under Rider OT…" (Ameren IB at 351.)

Ameren incorrectly states: "banks essentially allow the transportation customers to borrow gas from Ameren Illinois Utilities on days that such a customer may under-schedule and end-up short on gas delivered by suppliers." (Ameren IB at 349.) Mr. Sackett correctly describes banked gas as gas delivered by the transportation customer that is not needed for immediate consumption, but is returned to that transportation customer at some later point in time. It is the transportation customer's gas; not gas *borrowed* from the utility. (ICC Staff IB at 307.)

**CONCLUSION.**

CNE-Gas disagrees with Ameren's conclusion that the Commission should adopt Ameren's surrebuttal positions. (Ameren IB at 353.) As detailed in CNE-Gas' Initial Brief, the Commission must modify Ameren's surrebuttal proposal, including adjustments to the size of the bank, injection and withdrawal limits on non-critical, Critical and OFO days, establishment of bank transfer rules that offer the functionality of imbalance trading, and a retention of a daily imbalance tolerance of 20%. (CNE-Gas IB at 10-24, 28-29.)

### C. Contested Issues

#### 2. Gas

##### e. Appropriate Daily Balancing Tolerances from 20% to 15%[3]

Ameren states its "current transportation services suffer from a lack of consistent and standardized balancing provisions." (Ameren IB at 354.) Whether the daily tolerance level is reduced to 15%, or remains at 20%, in either case Ameren achieves consistent and standardized balancing provisions as it desires. Yet even with a 20% tolerance, Ameren's modifications to its balancing provisions will be significant. Some customers currently have no daily cashout; thus, while Ameren's proposal to implement a daily cashout for such transportation customers has been generally accepted by intervenors, it is undeniably a major change for this group. Contrary to Ameren's suggestion, a move to +/- 15% tolerance is not "a gradual move" for customers who currently have no daily cashout whatsoever. (Ameren IB at 358.)

Ameren supports the proposed reduction to 15% by claiming that a 15% band "will more closely align with the tolerance ranges of the LDC's upstream interstate pipelines." (Ameren IB at 357.) However, closer examination shows that the tolerances of these pipelines are not based on daily cashout. For Ameren's two primary pipelines, Natural Gas Pipeline Company of America and Panhandle, the pipelines' daily tiers include minimum thresholds before they are operative or incorporate storage rights in any variance charge. (CNE-Gas Exhibit 1.0, lines 373-395.) Ameren concedes that none of the pipelines serving Ameren require daily cash out of Ameren's imbalances. (Ameren IB at 358.)

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[3] CNE-Gas' reply to the table on page 355 of Ameren's Initial Brief are included under *b. Size of Storage Banks/Method by which to Determine* and will not be repeated here.

Ameren further contends that the "actions necessary to balance the system can result in increased costs to Ameren Illinois Utilities PGA customers." (Ameren IB at 356.) While certain actions of transportation customers could result in increased costs, Ameren has only described the *potential* for increased costs; it has not shown that balancing *has* resulted in increased costs to PGA customers in the past. Depending upon the circumstances, as ICC Staff's witness testified, transportation imbalances could actually benefit sales customers. (ICC Staff IB at 309.)

The Commission should reject Ameren's proposed daily tolerance level of 15%. (Ameren IB at 358.) While CNE-Gas supports the addition of a daily cashout in AmerenCILCO tariffs, a very substantial change by itself, all of Ameren's daily tolerance bands should be standardized at 20%. A tolerance band of 20% will provide Ameren with the "consistent and standardized balancing provisions" it desires.

**C. Contested Issues**

**2. Gas**

**f. Monthly/Daily Cashouts**

Ameren's Initial Brief suggests "the utilities' were moving from a monthly to a daily cash-out in order to negate the incentive to transportation customers to 'short' … or 'go-long' … the system for economic benefit." (Ameren IB at 359.) Ameren's suggestion appears to presume that daily cashout replaces monthly cashout; however, according to Ameren Exhibit 30.8 and Original Sheet No. 25.002 of Schedule E-1, Ameren actually proposes to require *both* daily and monthly cashout for transportation customers. Because Ameren did not file pro forma tariff sheets with its surrebuttal proposal, it is unclear whether its surrebuttal proposal includes or excludes a monthly cashout mechanism. (Ameren Exhibit 54.0, lines 896-901.) Ameren's surrebuttal proposal never states that Ameren is withdrawing a monthly cashout mechanism.

Ameren's surrebuttal proposal is described in its Initial Brief. (Ameren IB at 360.) However, there are no details specifically describing how injections and withdrawals are accomplished under Ameren's proposal. In its Initial Brief CNE-Gas discussed how it understands Ameren's proposal to work regarding storage injection and withdrawals, leading to the conclusion that Ameren's proposed daily injection and withdrawal limits are too restrictive. (CNE-Gas IB at 18-20.)[4] If the Commission approves Ameren's surrebuttal proposal, this defect certainly needs to be cured by requiring Ameren to adopt storage and injection limits that are no more restrictive than one times MDQ. CNE-Gas has similar concerns with the restrictiveness of injections and withdrawals under Staff's Daily Cashout Proposal. (CNE-Gas IB at 23-24; ICC Staff IB at 303)

Ameren further describes what happens with daily cashout and bank limits during an Operational Flow Order ("OFO") and Critical Day. (Ameren IB at 360-361.) In both instances Ameren has proposed extreme measures, yet as this testimony was first filed in surrebuttal testimony and no detailed tariff sheets were offered in support, intervenors had little opportunity to respond. Ameren has provided no evidence to justify why zero Critical Day tolerance is acceptable, nor why it is reasonable to discount excess gas supply under such conditions while doubling the cashout price of purchases. On a Critical Day a primary concern is having sufficient supplies delivered on Ameren's system, yet if a marketer over delivers gas, Ameren wants to penalize the overdeliveries

[4] CNE-Gas replies here to Ameren's Initial Brief at Section f. Monthly/Daily Cashouts, however, in its Initial Brief CNE-Gas addressed Ameren's injection and withdrawal limits under section b. Size of Storage Banks/Methods by which to Determine. (*See* CNE-Gas IB at 10-20.)

as well by cashing them out at 90% of market. In order to avoid the substantial penalties associated with underdeliveries on Critical Days, a prudent marketer may attempt to overdeliver to some degree in order to avoid the underdelivery penalties. Yet Ameren proposes to also penalize marketers for overdelivery even though on a Critical Day adequate gas supply is critical for system integrity. Penalties for overdelivery during an OFO or Critical Day simply fail any logic.

At the prices in today's market, financial penalties for cashout would be in excess of $1 per therm; this would likely be significantly higher during OFO and Critical Day situations. The harshness of Ameren's proposal can be seen through a simple example of its plan. (Ameren Exhibit 54.0, lines 865-885.) Assuming the market index price of gas was $10.00/dekatherm, during an OFO:

| | **OFO Overdelivery** | | **OFO Underdelivery** | | |
|---|---|---|---|---|---|
| | Over 15% | Under 15% | Under 15% | Between 15%-50% | Over 50% |
| LDC charge for gas purchased | | | Withdrawn from bank, once bank balance used $1.10/therm | $1.50/therm | $2.00/therm |
| LDC reimbursement for excess gas remaining | $ 0.90/therm | Injected into bank, once bank limits met $0.90/therm | | | |

During a Critical Day, the situation becomes even more extreme:

| | **CD Overdelivery** | **CD Underdelivery** | |
|---|---|---|---|
| | Over 0% | Between 0-50% | Over 50% |
| LDC charge for gas purchased | | $1.50/therm | $2.00/therm |
| LDC reimbursement for excess gas remaining | $ 0.90/therm | | |

The effect of Ameren's OFO and Critical Day proposal is that if a transportation customer wants to avoid the steep 150% and 200% premiums Ameren would assess if the customer was short of gas on a Critical Day or during an OFO, it would reduce consumption and perhaps schedule even more gas than needed on a given day as a cushion. However, on a Critical Day, Ameren would not only prohibit the customer from injecting any gas in its bank, but, as the above example shows, it further would punish the customer by only reimbursing the customer $0.90 per therm for any of the excess gas.

Ameren's position is even more irrational in light of its proposal to prohibit a customer that is short on gas from accessing its storage bank for that gas, and further to charge that customer at least $ 1.50 for any therm of imbalance (in this example), with that price increasing to $2.00/therm if the imbalance is greater than 50%. Based upon Ameren's proposal, if a customer has an imbalance of just one therm, but is overdelivered, it would be reimbursed $0.90 for that gas, whereas if another customer was short just one therm, the Company would charge $1.50 for that imbalance. During such times it would seem logical Ameren would want to encourage gas being delivered into its system, rather than penalize those able to help the system and other customers by cashing out under deliveries at 90%. It is more reasonable that the overdelivery reimbursement is set at 100%, not 90%.

Further, Ameren proposes to also implement a $ 6.00/therm charge for unauthorized gas charge during Critical Days. This is in addition to the premiums just discussed that are applied to cashout. (Ameren Exhibit 16.0G, lines 480-485.) CNE-Gas does not object to implementation of the unauthorized gas charge penalty per se, but does object to the cumulative unfavorable treatment of transportation customers during OFOs and on Critical Days.

Ameren's proposal during OFO and Critical Days is unduly harsh to transportation customers; Ameren has not provided adequate evidence that such extreme penalties are necessary nor has it justified why imbalances as low as 1% deserve such treatment. Moreover, the injection and withdrawal limits placed on transportation customers appear to be not well conceived as they are too restrictive to allow reasonable use of storage banks by transportation customers.

**C. Contested Issues**

**2. Gas**

**g. Intraday Nominations**

Ameren states there has been "no credible demand" for intraday nominations. (Ameren IB at 363.) As CNE-Gas is the only third party supplier of natural gas that actively testified on natural gas transportation issues, it is not surprising that CNE-Gas has been the lone advocate of intraday nominations in addition to Staff. While no other marketers have requested intraday nominations in this proceeding, it is likely that if asked, all marketers would support such a change, because intraday nominations provide an additional tool to more closely match customer consumption with deliveries to the city gate.

The balance of Ameren's objection to intraday nominations were previously addressed in CNE-Gas' Initial Brief at pages 24-27 and will not be repeated here.[5]

[5] At Section h. on page 364 of Ameren's Initial Brief there is a heading of (1) CNEG. CNE-Gas believes this heading is an error.

**C. Contested Issues**
**2. Gas**
**l. Imbalance Trading**

CNE-Gas' Initial Brief at pages 28-29 fully responded to Ameren's Initial Brief on this issue. (Ameren IB at 374-375.)

**C. Contested Issues**
**2. Gas**
**m. Utility Right to Purchase (Confiscate) Customer-Owned Gas**

Ameren ignores CNE-Gas rebuttal testimony and continues to suggest that CNE-Gas "understands that the right to purchase customers gas is a necessary step during a system emergency." (Ameren IB at 376.) CNE-Gas' rebuttal directly addressed this issue. (See CNE-Gas Exhibit 2.0, lines 178-207.) The utility's "right to purchase" cannot be unilateral. Ameren should only have the opportunity to negotiate a voluntary purchase.

Ameren claims CNE-Gas "misunderstands how the process works." CNE-Gas stated such a practice would "not result in any increase in the volume of gas that is flowing." (CNE-Gas Exhibit 2.0, lines 190-193.) Ameren concurs. (Ameren Exhibit 54.0, lines 749-751.) CNE-Gas understands precisely the impact of this proposal.

Ameren proposes to confiscate this gas at 110% of the daily market price. (Ameren IB at 376.) As the daily market price is based upon the price that gas traded at the morning prior to flow, it is likely that by the time the Critical Day takes effect, as no advance notice must be provided, the daily market price from the previous day is no longer representative of the market price at that point in time when the gas is seized.

CNE-Gas does not request modification of approved curtailment priorities; rather Ameren's new proposal seemingly increases the likelihood of curtailment and the foreclosing of mitigating actions by transportation customers. Ameren's proposal ignores the reality of the transportation market in that Ameren can only see one possibility; specifically that transportation customers cease consumption. (Ameren IB at 377-378.) However, transportation customers and their suppliers may also have the option to secure additional gas supply; with its tunnel-vision Ameren cannot even conceive of this flexibility, nor does its proposal accommodate such action. Instead such action could be met with additional costs and penalties from Ameren, even though additional gas supplies on a Critical Day is precisely the outcome Ameren desires. Consequently, if Ameren's proposal is approved, transportation customer should not be penalized or charged for delivering additional gas supplies under such circumstances. CNE-Gas urges the Commission to require waiver of such additional costs as detailed on page 31 of CNE-Gas' Initial Brief. However, CNE-Gas contends that any purchase of third party gas supplies should only occur as a voluntary transaction. (CNE-Gas IB at 29-30.)

## C. Contested Issues

### 2. Gas

#### n. Critical Day and OFO Notice Provisions

As CNE-Gas testified, if force majeure conditions occur, the standard notice intervals may require suspension due to extreme circumstances. (CNE-Gas Exhibit 1.0, lines 558-569.) That caveat addresses Ameren's objections. (Ameren IB at 380-381.) Consequently, when force majeure conditions do not exist, transportation customers should receive a more reasonable notification commitment than Ameren provides.

## VIII.
## CONCLUSION

WHEREFORE, in accordance with arguments herein, CNE–Gas respectfully requests that the Commission enter an order consistent with the positions taken in CNE-Gas' Initial and Reply Briefs.

Respectively submitted,

**CONSTELLATION NEWENERGY-GAS DIVISION, LLC**


By: /s/ Randall s. Rich
Randall S. Rich
Bracewell & Giuliani LLP
2000 K Street, NW
Washington, DC 20006
202-828-5879
Randy.Rich@bgllp.com

Christopher D. Young
Constellation Energy Group, Inc.
111 Market Place
Baltimore, MD 21202
410-470-3540
christopher.young@constellation.com


July 15, 2008

Jeffrey D. Adkisson
Grain & Feed Association
3521 Hollis Dr.
Springfield, IL 62711-9440

John D. Albers
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Neil Anderson
Vanguard Energy Services LLC
850 E. Diehl Rd., Ste. 142
Naperville, IL 60563

Richard C. Balough
Atty. for Cities of Champaign & Monticello
53 W. Jackson Blvd., Ste. 936
Chicago, IL 60604

Kurt J. Boehm
Atty. for the Kroger Co.
Boehm Kurtz & Lowry
36 E. Seventh St., Ste. 1510
Cincinnati, OH 45202

Mike Brosch
Utilitech, Inc.
740 North Blue Parkway
Lees Summit, MO 64063-3820

Linda M. Buell
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Andrew J. Campbell
Atty. for Ameren Illinois Utilities
Jones Day
325 John H. McConnell Blvd.
Columbus, OH 43215-2673

Phillip A. Casey
Atty. for Atty. for Ameren Illinois Utilities
Sonnenschein Nath & Rosenthal LLP
233 S. Wacker Dr.
Chicago, IL 60606

Kavita Chopra
Citizens Utility Board
309 W. Washington, Ste. 800
Chicago, IL 60606

John B. Coffman
Atty. for AARP
John B. Coffman, LLC
871 Tuxedo Blvd.
St. Louis, MO 63119-2044

Trisha A. Crowley
City of Champaign
102 N. Neil St.
Champaign, IL 61820

Janice A. Dale
Assistant Attorney General
Public Utilities Bureau
100 W. Randolph St., 11th Fl.
Chicago, IL 60601

Elizabeth Davies
Paralegal
Citizens Utility Board
309 W. Washington, Ste. 800
Chicago, IL 60606

Jay H. Dillavou
MidAmerican Energy Company
PO Box 657
666 Grand Ave.
Des Moines, IA 50303

Erika Dominick
Paralegal
Legal Dept.
Ameren Services Company
1901 Chouteau Ave.
PO Box 66149
St. Louis, MO 63166-6149

Joseph E. Donovan
Atty. for the Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle St., Ste. 1900
Chicago, IL 60101-1293

Laura M. Earl
Central Illinois Light Company
d/b/a AmerenCILCO
Jones Day
77 W. Wacker
Chicago, IL 60601-1692

David J. Effron
12 Pond Path
North Hampton, NH 03862

Darcy A. Fabrizius
Constellation NewEnergy, Inc.
N16 W23217 Stone Ridge Dr.
PO Box 2226
Waukesha, WI 53187-2226

David I. Fein
Vice President
Energy Policy - Midwest/MISO
Constellation NewEnergy, Inc.
550 W. Washington Blvd., Ste. 300
Chicago, IL 60661

Edward C. Fitzhenry
Ameren Services Company
PO Box 66149 (M/C 1310)
1901 Chouteau Ave.
St. Louis, MO 63166-6149

Christopher W. Flynn
Central Illinois Light Company
d/b/a AmerenCILCO
Jones Day
77 W. Wacker, Ste. 3500
Chicago, IL 60601-1692

Cynthia A. Fonner
Senior Counsel
Constellation Energy Group, Inc.
550 W. Washington St., Ste. 300
Chicago, IL 60661

Coralette Hannon
AARP
6705 Reedy Creek Rd.
Charlotte, NC 28215

Michael Haugh
Integrys Energy Services, Inc.
300 W. Wilson Bridge Rd., Ste. 350
Worthington, OH 43085

Sarah Hayden
Paralegal
for Ameren Illinois Utilities
Jones Day
77 W. Wacker
Chicago, IL 60601-1692

Alan R. Jenkins
Atty. for The Commercial Group
Jenkins at Law, LLC
2265 Roswell Rd., Ste. 100
Marietta, GA 30062

Amanda C. Jones
Atty. for the Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle St., Ste. 1900
Chicago, IL 60601

Michael L. Kurtz
Atty. for the Kroger Co.
Boehm Kurtz & Lowry
36 E. Seventh St., Ste. 1510
Cincinnati, OH 45202

Peter Lanzalotta
Lanzalotta & Associates, LLC
14250 Royal Harbour Ct., #914
Ft. Myers, FL 33908

Karen L. Lusson
Illinois Attorney General's Office
100 W. Randolph, 11th Fl.
Chicago, IL 60601

Carla S. Meiners
MidAmerican Energy Company
PO Box 657
666 Grand Ave.
Des Moines, IA 50303-0657

Elias D. Mossos
Illinois Attorney General's Office
100 W. Randolph St., 11th Fl.
Chicago, IL 60601

Kristin Munsch
Asst. Attorney General
Public Utilities Bureau
Illinois Attorney General's Office
100 W. Randolph St., 11th Floor
Chicago, IL 60601

Scott Musser
AARP Illinois
300W. Edwards St., 3rd Fl.
Springfield, IL 62704

Vu Nguyen
MidAmerican Energy Company
PO Box 657
666 Grand Ave.
Des Moines, IA 50303

Paul Noble
Chairman
System Council U-05
106 N. Monroe St.
West Frankfort, IL 62896

James V. Olivero
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Rochelle Phipps
Case Manager
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Erica Randall
Paralegal
Office of the Illinois Attorney General
100 W. Randolph St., 11th Fl.
Chicago, IL 60601

Meggan A. Rawlin
Atty. for Ameren Illinois Utilities
Jones Day
901 Lakeside Ave.
Cleveland, OH 44114-1190

Niloy Ray
Atty. for Ameren Illinois Utilities
Jones Day
77 W. Wacker
Chicago, IL 60601-1692

Conrad Reddick
Atty. for IIEC
1015 Crest
Wheaton, IL 60187-6271

Randall S. Rich
Atty. for Constellation NewEnergy - Gas Division, LLC
Bracewell & Patterson, LLP
2000 K St. N.W.
Washington, DC 20006

Teresa L. Ringenbach
Integrys Energy Services, Inc.
2000 Auburn Dr.
Beachwood, OH 44122

Eric Robertson
Atty. for IIEC
Lueders, Robertson, Konzen
1939 Delmar Ave.
P.O. Box 735
Granite City, IL 62040

Ryan Robertson
Atty. for IIEC
Lueders Robertson & Konzen
PO Box 735
1939 Delmar Ave.
Granite City, IL 62040

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815

Susan L. Satter
Illinois Attorney General's Office
11th Floor
100 W. Randolph
Chicago, IL 60601

Christopher N. Skey
Atty. for the Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601-1293

Rochelle G. Skolnick
Atty. for IBEW & System Council U-05
Schuchat,Cook & Werner
1221 Locust St., 2nd Flr.
St. Louis, MO 63103

Julie Soderna
Director of Litigation
Citizens Utility Board
309 W. Washington, Ste. 800
Chicago, IL 60606

Frederick C. Stavins
City Attorney
City of Champaign
102 N. Neil St.
Champaign, IL 61820

William P. Streeter
Atty. for Grain & Feed Association of Illinois
Hasselberg Williams Grebe Snodgrass & Birdsall
124 SW Adams, Ste. 360
Peoria, IL 61602

Albert D. Sturtevant
Atty. for Ameren Illinois Utilities
Jones Day
77 W. Wacker
Chicago, IL 60601

Steven R. Sullivan
Sr. Vice President
Central Illinois Light Company
d/b/a AmerenCILCO
1901 Chouteau Ave.
PO Box 66149, MC 1300
St. Louis, MO 63166-6149

Lisa M. Tapia
Administrative Law Judge
Illinois Commerce Commission
527 E. Captiol Ave.
Springfield, IL 62701

Marilyn S. Teitelbaum
Atty. for IBEW & System Council U-05
Schuchat Cook & Werner
1221 Locust St., 2nd Fl.
St. Louis, MO 63103

Christopher C. Thomas
Sr. Policy Analyst
Citizens Utility Board
309 W. Washington, Ste. 800
Chicago, IL 60606

Matthew R. Tomc
Ameren Services Company
PO Box 66149, MC 1310
1901 Chouteau Ave.
St. Louis, MO 63166

Christopher J. Townsend
Atty. for the Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle St., Ste. 1500
Chicago, IL 60601-1293

Jackie K. Voiles
Central Illinois Light Company
d/b/a AmerenCILCO
607 E. Adams St.
Springfield, IL 62739

Janis Von Qualen
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Mark A. Whitt
Atty. for Ameren Illinois Utilities
Jones Day
77 W. Wacker
Chicago, IL 60601-1692

Jonathan M. Wier
Atty. for Vanguard Energy Services, L.L.C.
Eimer Stahl Klevorn & Solberg LLP
224 S. Michigan Ave., Ste. 1100
Chicago, IL 60604

Stephen Yoder
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Christopher D. Young
Constellation Energy Group, Inc.
111 Market Place, Ste. 500
Baltimore, MD 21201

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