STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	No. 01-0053
Proceeding under Section 16-112(m)	)	
of the Public Utilities Act to determine	)	
whether to continue or terminate the	)	
neutral-fact-finder procedure.	)	

REPLY COMMENTS
OF
THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

The Staff of the Illinois Commerce Commission ("Staff") submits the following Reply Comments on the issue of whether the Illinois Commerce Commission ("Commission") should continue or terminate the neutral fact-finder ("NFF") process under Section 16-112(m) of the Public Utilities Act ("Act" or "PUA").

Initial Comments were filed by Commonwealth Edison Company ("ComEd"), Central Illinois Public Service Company ("AmerenCIPS") and Union Electric Company ("AmerenUE"), (jointly "Ameren"), MidAmerican Energy Company ("MidAmerican"), Illinois Power Company ("IP"), the People of the State of Illinois ("AG"), Peoples Energy Services Corporation ("PE Services"), and the Illinois Industrial Energy Consumers ("IIEC").

ComEd, Ameren, MidAmerican and IP all recommend that the NFF process be terminated if the necessary preconditions are met. The AG, PE Services and IIEC are opposed to terminating the NFF process for various reasons.

In its Initial Comments filed in this proceeding on February 23, 2001, Staff noted the preconditions to a Commission determination that the neutral fact-finder procedure could be terminated, and reserved the right to review Initial Comments filed by any party, and to respond if it feels a response is necessary. Having reviewed the Initial Comments filed by the parties to this proceeding, Staff respectfully submits for the Commission's consideration the following responsive comments.

Any Commission Order terminating the NFF process must allow for reinstatement if circumstances warrant it

MEC believes the NFF process should be terminated for the time periods that the Market Value Indexes ("MVI") are in place, but commented that one possible outcome of the MVI cases would be market value index tariffs for ComEd, IP, and Ameren that did not establish a market value after May 2004. MEC suggests that this may require a resumption of the NFF process in 2003, for 2004. MEC IC, p. 2. PE Services recommended the appointment of a neutral fact-finder for 2001, but also alluded to the possibility that the Commission could find a market value index tariff unjust or unreasonable in the future. PE Services IC, pp. 2-3. The AG makes a similar point in its comments. AG IC, p. 2. On the basis of these comments, Staff is persuaded if the Commission determines in this proceeding that it will terminate the NFF process for 2001 and for any subsequent years, it

should make clear in its order that it reserves the right to reinstate the NFF process at any future point at which it determines the process to be necessary.

The Commission has discretion as to whether to terminate the process or not

In its Initial Comments, IIEC suggests that PUA Section 16-112(m) must be read in conjunction with Section 16-112(n) and 16-110, and that when so read, would not allow the Commission to terminate the NFF process until market value index tariffs are in place that establish market values for the lesser of five years or all remaining years in which transition charges may be implemented. Staff does not concur with this construction of Article XVI.

Staff agrees with ComEd that if MVI tariffs similar to what the Commission is currently considering in MVI case(s) are implemented by each of the three largest electric utilities, there will in fact be a tariff for each of these utilities that, by its terms, will cover each succeeding period into the future (ComEd IC, p. 7), and unless terminated by order of the Commission or by proposed electric utility action approved or passed to file by the Commission, these tariffs may (barring the operation of a sunset clause) last until transition charges are no longer collected.

IIEC argues that Section 16-112(m), which provides the Commission with authority to terminate the NFF process, must be read in conjunction with Section 16-112(n). The latter subsection reads in part as follows:

> To the extent that the summaries list a sufficient number of actual con-tracts to represent a viable market and market values can be determined for more than one year, the electric utility shall offer customers that are obligated to

> pay transition charges contracts that establish for one or more years, up to a maximum of the lesser of 5 years or the remaining number of years until December 31, 2008, the market value or values to be used in calculating the customer's transition charges in such years and for which market value determinations have been made.

IIEC IC, p. 2.

There are several flaws in this argument. First, subsection (a), which creates the NFF process as an alternative to an MVI tariff, refers to the "neutral fact-finder process set forth in subsections (b) through (h) of this Section." There is no mention of subsection (n). More to the point, subsection (b), which is one of the subsections referred to in the subsection (a) description of the NFF process, expressly holds out the possibility that the Commission may terminate the process by its direct reference to subsection (m): "Except as provided in subsection (m) of this Section, on or before April 30, 1998, …" While (b) directly refers to (m), there are no references to (n) at any point in subsections (b) through (h). This fact, coupled with the opening clause of subsection (n) ("To the extent the summaries list a sufficient number of actual contracts to represent a viable market and market values can be determined for more than one year"), lead one to the conclusion that the subsection (n) provisions under which customers may enter into contracts which set the market value to be used in the customer's transition charge are not so much a mandate restricting the Commission's subsection (m) authority as a statement that <u>if</u> contract summaries continue to be prepared, and <u>if</u> such summaries list sufficient contracts to represent a viable market, and <u>if</u> market values can be determined for more than a year, then the electric utilities must offer customers the subsection (n) contracts.

Accordingly, the Commission could exercise its discretion and terminate the NFF process. If the Commission determines in this proceeding that it will terminate the NFF process for 2001 and for any subsequent years, it should make clear in its order that it reserves the right to reinstate the NFF process at any future point at which it determines the process to be necessary.

Respectfully submitted,

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