

**Docket Nos.:** 00-0259/00-0395/00-0461 (Cons.)  
**Deadline:** 00-0461: 05-01-01  
00-0259/00-0395: N/A

## MEMORANDUM

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**TO:** The Commission

**FROM:** Larry M. Jones, Hearing Examiner

**DATE:** March 14, 2001

**SUBJECT:** 00-0259 - Commonwealth Edison Company  
Petition for expedited approval of implementation of a market-based alternative tariff.

00-0395 -Central Illinois Public Service Company  
Union Electric Company  
Petition for approval of revisions to market value tariff, Rider MV.

00-0461 - Illinois Power Company  
Proposed new Rider MVI and revisions to Rider TC.

**COMMENT:** Hearings on reopening are concluded. A copy of a hearing examiner's proposed order on reopening ("proposed order on reopening") is attached hereto. Exceptions are due March 20, 2001, and replies thereto are due March 26.

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In these consolidated proceedings, Commonwealth Edison Company ("ComEd"), Illinois Power Company ("IP") and Central Illinois Public Service Company and Union Electric Company (collectively "Ameren") seek authority to implement their respective market value index or "MVI" tariffs pursuant, in part, to Section 16-112 of the Public Utilities Act. These MVI tariffs would govern the methodology used by those companies for computing market values ("MVs"), and the resulting computations would replace the default determinations of market values produced each year by a Neutral Fact Finder ("NFF") under Section 16-112 of the Act. ComEd presently has a MVI tariff in place by virtue of an Interim Order entered on April 27, 2000.

Under Section 16-112(a), the Commission may approve a market index tariff, but in the absence of such a tariff, the NFF process is the default mechanism to be utilized in the derivation of the market values which are used in the calculation of transition charges.

Regarding the NFF process, I would note that in Docket **01-0053**, the Commission initiated a proceeding to determine whether to continue or terminate the NFF process. The initiating order in 01-0053 contemplates a final order from the Commission by April 30. A hearing examiner's proposed order in that docket will be issued March 22. From a timing standpoint, Docket 01-0053 is somewhat dependent on the actions taken by the utilities following an order in the consolidated MVI dockets. Under Section 16-112(m), the Commission has the authority to *propose* modifications to a utility's market index tariff, but the utility may, at its option, reject the Commission's modifications and rely instead on the NFF market values for purposes of computing transition charges. Thus, if either Ameren, IP or ComEd chooses not to file an MVI tariff following entry of the order in 00-0259, then the NFF process cannot be terminated even assuming there are no other barriers to doing so.

As the Commission is aware, an accurate calculation of market value is of significance in the transition to competition, in part because the MV is one of the components in the formula for computing customer transition charges ("CTCs"). Underestimating the MV that is used in calculating the CTC will raise transition charges and reduce the extent to which RESs can create savings opportunities for delivery service customers, thereby potentially undermining the development of a competitive retail market for power and energy during the transition period. In addition to affecting the CTC paid by delivery services customers, the MV affects both the CTCs and MVs paid by customers who take service under the Power Purchase Option ("PPO"), as well as eligibility for PPO service, pursuant to Section 16-110 of the Act.

Ameren, ComEd, and IP believe the record reflects the likelihood that their MVI tariffs will increase, relative to the NFF, the MVs used in the computation of CTCs. These parties contend that the proposed indices can be viewed as a net improvement over the NFF-based default mechanism from the perspective of customers that want to consider unbundled alternatives to traditional utility service.

Numerous **parties** intervened in this case. Most parties say they favor a properly designed MVI method over the NFF. A number of them have proposed pricing-related adjustments or other modifications to the utilities' MVI proposals. One utility, IP, says it will *not* accept several of the party-proposed proposed revisions to its MVI tariff. Some of the parties proposing modifications to the utilities' MVI tariffs, such as NewEnergy Midwest LLC ("NewEnergy"), assert that unless flaws in the utilities' MVI proposals are remedied by means of such modifications, the proposals should be rejected, even if that means returning to the NFF, whereby the Commission and others would maintain some measure of influence over the process.

One Intervenor, Illinois Industrial Energy Consumers ("IIEC"), believes the utilities' MVI proposals contain serious legal and other deficiencies which are beyond correction in these dockets, and should be rejected in favor of the NFF. In the alternative, IIEC recommends various modifications to the MVI proposals.

A hearing examiner's proposed order ("proposed order" or "HEPO") was issued on December 22, 2000. Exceptions to that proposed order, and replies thereto, were filed January 12, 2001 and January 26, 2001, respectively.

On January 23, 2001, the Commission **reopened** the record for further hearings on certain issues identified in the motions to reopen. Hearings on reopening were held, and briefs on reopening were filed on March 6, 2001.

The attached proposed order on reopening has been served on the parties. Exceptions and replies are due March 20, 2001 and March 26, 2001, respectively.

In the copy of proposed order on reopening attached hereto, all changes made since the earlier proposed order was issued are identified in legislative style. Some PEPO-related revisions pertain to exceptions and replies. Other revisions pertain to issues addressed on reopening. Please note that a shorter version of the proposed order on reopening was sent to the parties. For the most part, that version addresses only the issues that were the subject of evidence and argument on reopening.

In the attached proposed order on reopening, the design and mechanics of the ComEd, IP and Ameren MVI proposals are described in Section I. The parties' positions on most substantive issues, such as design of the tariffs; respective MVI methodologies; pricing and market-definition related adjustments; and time period and notice-related issues, are discussed primarily in Sections II, III and IV. Some of these sections have been expanded due to the reopening, but the format of the order is the same.

Section V, entitled "Commission **Conclusions**," contains an analysis of and conclusions on the issues in this proceeding, including those addressed on reopening. This section also contains a brief recap of the parties' positions.

The proposed order on reopening would conclude that the ComEd, IP and Ameren MVI proposals should be approved, subject to a number of adjustments and other modifications.

Some of the adjustments found appropriate include modifying the ComEd, IP and Ameren tariffs to include an additional source of on-peak data (Section V.B); to modify the IP and Ameren tariffs to provide for a planning reserve adjustment as proposed by several parties (Section V.C); and modifying IP's tariff to allow customers a longer "decision window" for selecting delivery services or PPO service. (Section V.D) At the urging of several parties, such as NewEnergy, Nicor Energy and IIEC, the

proposed order on reopening would also find that the MVI tariffs should be subject to a “sunset provision” (Section V. A).

As noted above, under Section 16-112(m), the Commission has the authority to *propose* modifications to a utility’s market index methodology, but the utility may, at its option, reject the Commission’s modifications and rely instead on the NFF market values for purposes of computing transition charges.

The **deadline** for action in the IP case, 00-0461, is May 1, 2001. The ComEd and Ameren dockets do not have formal deadlines.