



**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Ameren Illinois Company	)	
d/b/a Ameren Illinois,	)	
Petitioner	)	
	)	No. 12-0244
Smart Grid Advanced	)	
Metering	)	
Infrastructure Deployment	)	
Plan	)	

**INITIAL BRIEF ON REHEARING OF  
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association (“ICEA”) is an Illinois-based trade association of competitive energy suppliers dedicated to ensuring that Illinois citizens, businesses, and other energy consumers have the opportunity to enjoy the many benefits that robust competitive energy markets can bring. ICEA members include alternative retail electric suppliers and alternative gas suppliers whose focus is preserving and championing customer choice of energy supply and Illinois' competitive electric and natural gas markets.<sup>1</sup> These companies serve residential, commercial and industrial, and public sector customers such as those involved in the manufacturing industry; retail businesses; local units of government; cultural, sporting and educational institutions; hospitals, hotels, and restaurants. In addition, ICEA members are actively engaged in municipal aggregation programs and have been the winning supplier in nearly every municipal aggregation solicitation program announced to date.

The ICEA has maintained a long and strong interest in smart grid advanced metering infrastructure deployment. ICEA members were actively engaged in the Illinois Statewide Smart

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<sup>1</sup> The ICEA Members include Ameren Energy Marketing d/b/a Homefield Energy; Champion Energy Services; Constellation NewEnergy; Direct Energy Services; Exelon Energy Company; FirstEnergy Solutions Corp.; Integrys Energy Services; MC Squared Energy Services; Nordic Energy Services; and Reliant. The comments expressed in this filing represent the positions of the ICEA as an organization but may not represent the views of any particular member of the ICEA.

Grid Collaborative (“ISSGC” or “Collaborative”) established by the Illinois Commerce Commission (“Commission” or “ICC”) in September 2008, by its Order in Docket No. 07-0566,<sup>2</sup> in which the ISSGC established stakeholder working groups to address pertinent issues -- including a strategic plan to guide deployment of smart grid in Illinois and to recommend policies that the Commission can consider for adoption -- during 2009 and 2010. In particular, ICEA members were active participants in the ISSGC's Consumer Policy Issues Working Group and contributed to the Working Group's discussions and recommendations on the competitive retail market structure, utility rates in a smart grid environment, and smart grid consumer education. The result of those stakeholder working groups lead to the ISSGC's Collaborative Report of October 1, 2010 to the Commission. Moreover, an ICEA member<sup>3</sup> was appointed by Governor Quinn to the Illinois Smart Grid Advisory Council ("ISGAC"), representing alternative retail electric suppliers ("ARES") -- a statutory requirement. Finally, the ICEA was an intervenor in Commonwealth Edison Company's (“ComEd”) Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan pursuant to Section 16-108.6 of the Public Utilities Act.<sup>4</sup> Given ICEA's mission, as well as its experience to date in smart grid advanced metering infrastructure matters before the Commission, ICEA has a great interest in the Ameren Illinois Company's (“Ameren Illinois” or “AIC”) Petition for Approval of Smart Grid Advanced Metering Infrastructure (“AMI”) Deployment Plan (“AMI Plan”) in this Commission docket.

The ICEA respectfully submits this Initial Brief in support of Ameren Illinois' Rebuttal Testimony on Rehearing of AIC witness Leonard Jones. (AIC Exhibit 11.0RH). As ICEA understands it, Comverge proposes a Critical Peak Pricing (“CPP”) Program and a Direct Load

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<sup>2</sup> Commonwealth Edison Company, ICC Docket No. 07-0566, Final Order, September 10, 2008.

<sup>3</sup> Sharon Hillman, Executive Vice President of Business and Regulatory Affairs, MC Squared Energy Services.

<sup>4</sup> ICC Docket No. 12-0298.

Control (“DLC”) Program and the Citizens Utility Board (“CUB”) and Environmental Law and Policy Center (“ELPC”) propose a Time of Use (“TOU”) rate as components of AIC's smart grid advanced metering infrastructure deployment plan.

For the reasons set forth in the rebuttal testimony of Leonard Jones as well as the reasons enumerated by ICEA below, the Commission should defer taking action on the Converge CPP and DLC programs and the CUB/ELPC TOU rate program at this time. Instead, just as the Commission did with ComEd regarding the Intervenors' TOU rate and tariff issue advanced in ComEd's AMI Plan docket<sup>5</sup>, the Commission should similarly order Ameren Illinois to work and dialog with the SGAC and interested stakeholders on potential dynamic pricing structures and rates. Ideally, the Commission's order would result in an AIC-led workshop process concerning the Intervenors' CPP, DLC, and TOU rate program proposals along with market-based proposals from the retail electric suppliers and other market participants in order to enhance and enable customer use of smart grid technology.

**I. Reasons for Deferring Action on Intervenors' CPP, LCD and TOU Programs.**

**A. Introduction.**

In ICEA's opinion, there are numerous complications with approving the Intervenors' CPP, DLC and TOU programs as a utility tariffed service at this time, which compel the ICEA to recommend that the Commission defer taking action on these programs, and, instead, order a workshop-like process in lieu thereof. In short, ICEA agrees with AIC that it is premature for the Commission to consider such pricing and rate proposals at the outset of AIC's AMI deployment (Leonard Jones Rebuttal Testimony, Ameren Ex. 11.0RH, lines 87-99, at 5; lines 180-182, at 9) and believes that the following complications need to be resolved before approving and implementing the Intervenors' pricing and rate programs.

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<sup>5</sup> ICC Docket No. 12-0298 at 44-45.

First, ICEA believes that the Intervenor's CPP, DLC and TOU programs, which appear to be new or additional end use customer products and services for AIC to provide, are outside the scope of this docket, lack statutory authority, and should not be implemented until AIC's AMI Plan is introduced and fully functional. Second, ICEA believes that should AIC offer and promote the Intervenor's pricing and rate programs, AIC would be (or should be) subject to the Integrated Distribution Company ("IDC") rules<sup>6</sup>. Third, ICEA believes that the Intervenor's CPP, LCD and TOU programs are inappropriate as a utility offered service in view of the substantial switching statistics among residential and small commercial customers and the resulting load shift that is occurring and will continue to occur in AIC's service territory. Fourth, ICEA believes that the same price risk, supply strategy and supply cost, and retail market concerns expressed by the Illinois Power Agency ("IPA") in ComEd's AMI Plan docket regarding a ComEd-based TOU rate, are present in AIC's AMI docket and apply to the Intervenor's CPP, DLC and TOU programs. (IPA, Brief on Exceptions, ICC Docket No. 12-0298, at 2).

**B. The Intervenor's CPP, LCD and TOU Programs Are Outside the Scope of This Docket, Lack Statutory Authority, and Are Premature.**

ICEA agrees with AIC that the purpose of this Commission docket is to consider whether AIC's revised AMI Plan is cost beneficial and that the Intervenor's CPP, DLC and TOU programs expand the scope of this proceeding. (*Id.*, lines 42-44, at 3). ICEA believes that Section 16-108.6 of the Public Utilities Act ("PUA") provides specific criteria and detailed definitions, particularly "smart grid functions," that the Commission is required to use in reaching its decision whether AIC's AMI Plan is cost beneficial. In ICEA's opinion, requiring AIC -- or any participating utility for that matter -- to provide end use products or services is not

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<sup>6</sup> 83 IL Administrative Code, Part 452, Part B.

among those legislatively prescribed criteria and definitions. Moreover, ICEA agrees with AIC's rebuttal testimony that “[T]he task of the Commission here is to judge whether implementation of the AMI Plan is cost beneficial, not whether the introduction of DLC technology is cost beneficial.” (*Id.*, lines 166-168, at 8). ICEA believes that AIC's conclusion applies to the Intervenor's CPP and TOU programs as well. In sum, ICEA believes that Section 16-108.6 of the PUA does not provide for new products and services to end use customers that are to be utility offered in an AMI environment and that Section 16-103(e) of the PUA provides that “[t]he Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service.” (*See* 220ILCS 5/16-103(e)).

ICEA believes that the Intervenor's pricing and rate programs are worthy of consideration, along with proposals from retail electric suppliers, but the present time is not ripe for implementing a CPP or DLC or TOU program at the outset of AIC's AMI Plan deployment. Simply put, doing so is like the proverbial “putting the cart before the horse.” ICEA agrees with AIC's Rebuttal Testimony in which it states “... [w]e are not yet in a position to know the ‘best’ programs for AIC's customers and which suppliers will be in the 'best' position to offer them. That process will require the input and participation of other parties, as well as market pressures.” (*Id.*, lines 97-99, at 5). ICEA agrees with and supports AIC's rebuttal testimony on a CPP, DLC and TOU program offer to its power supply customers as follows: “... [i]t is too early for AIC to offer and market those programs now. Market forces will dictate what demand response programs are offered in AIC's service territory, and which suppliers offer those programs, once AMI functionality has been achieved. The Commission should not preempt that process or take action that would manipulate or cause inefficiencies in the market for dynamic

supply rates.” (*Id.*, lines 102-106, at 5). In ICEA's opinion, it is far more important that AIC implement its AMI Plan, as prescribed by law and as approved by the Commission, in a timely manner and that its AMI deployment be fully functional before adding programs beyond AIC's currently offered residential real-time pricing (“RRTP”) program and its statutorily required Peak Time Rebate (“PTR”) program.

**C. The IDC Rules Would Apply If AIC Were to Offer the Intervenors' End Use Customer Products and Services.**

In ICEA's opinion, AIC's marketing or advertising or offering of the Intervenors' end use programs and services would be (or should be) a competitive offering and that the Commission's IDC rules, Part 452 Standards of Conduct, would (or should) apply because AIC is an IDC. As ICEA understands it, the IDC rules govern the limitation that AIC and ComEd have on marketing rates, programs and services so as not to impede the development of competitive retail electricity markets. ICEA believes that it is highly likely that retail electric suppliers would challenge AIC's ability to promote such offers and that AIC must seek a waiver to the IDC rules from the Commission before it can offer CPP, DLC and TOU programs and services. ICEA observes that, as to past precedent, the Commission has exercised much caution and care in granting a waiver to the IDC rules in order to comply with its legislative mandate to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.<sup>7</sup>

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<sup>7</sup> ICEA is aware of only two instances in which the Commission granted waivers to the IDC rules. ComEd was granted a waiver to promote its RRTP rate, which the governing statutory provisions authorized. ComEd was granted a limited waiver under its Customer Applications Program associated with its AMI Pilot in which ComEd investigated customers' use of AMI functionality under different rate scenarios. ICEA believes that none of the factors considered by the Commission in granting waivers in those instances are present in this docket.

**D. An AIC-Offered CPP, DLC and TOU Program Is Inappropriate for an Increasingly Competitive and Load Shifting Residential and Small Commercial Market.**

ICEA strongly agrees with AIC that it is unlikely to be the dominant power supplier by the time full AMI functionality is achieved based on the substantial residential and small non-residential customer switching to competitive supply service that has occurred and will be occurring in the AIC service territory due to the success of individual customer contracts with retail electric suppliers and government aggregation programs served by RES'. (*Id.* lines 119-132, at 6-7). While AIC states in its rebuttal testimony that residential switching has exceeded 275,000, or 26% of its residential customers, as of July 2012, ICEA is aware that 299,871 such customers have switched to RES supply service as of August 31, 2012<sup>8</sup> -- nearly 25,000 customers in a month's time.

ICEA believes that customer migration will continue to grow substantially as more residential and small non-residential customers switch to RES supply service, and that AIC's currently served-load will continue to shift to RES supply either through individual customer contracts, through announced government aggregation program solicitations, and through an estimated 100 communities with government aggregation referendum on the November general election ballot in the AIC service territory. Given, at present, the robust and evolving competitive residential and small non-residential market, in terms of customer switching and load shifting, within AIC's service territory, the Intervenor's CPP, DLC and TOU programs are inappropriate as a utility only offering.

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<sup>8</sup> <http://www.pluginillinois.org> (Detailed Report).

**E. IPA's Price Risk, Procurement, and Retail Market Concerns Expressed in the ComEd AMI Plan Docket Are Present in AIC's AMI Plan Docket.**

The ICEA believes that the Commission should carefully consider and weigh the IPA's comments on the Intervenor's TOU rate tariff proposal in the ComEd AMI Docket<sup>9</sup> because the same factors regarding whether to require such a tariff are present in this docket regarding the Intervenor's CPP, DLC, and TOU programs. ICEA fully concurs with the IPA's concerns, which for the convenience of the ALJ are set forth below:

First, if ComEd files a TOU rate and customers using the TOU are considered 'eligible retail customers' and thus load subject to IPA procurement process, an unquantified but potentially significant price risk will accrue to all eligible customers due to load shifts among the various retail tariffs. Second, in order to follow the Commission's longstanding policy of assigning costs to rate payers causing the costs, the TOU tariff's pricing provisions will need to be understood well in advance of the need to procure the underlying supply, so that supply strategies may be incorporated in the IPA's Procurement Plan and that supply costs may be aligned with the retail tariff pricing structure. Finally, the retail market is a more appropriate provider of TOU and other dynamic rates.

(IPA Verified Brief on Exceptions (BOE), ComEd's AMI Plan Docket, ICC Docket No. 12-0298 at 2).

As mentioned previously, ICEA believes that these pricing, procurement and retail market issues are not only complicated, but are serious implementation issues which must be resolved well in advance of approving the Intervenor's pricing and rate programs. Furthermore, such programs should be offered by the competitive market. The IPA recognized this fact by stating in its BOE that “[t]he competitive market is in a superior position to offer TOU products because competitive suppliers, unlike the IPA, are able to nimbly adjust supply acquisition strategies in response to new products and customer demand, are far better situated to offer a wide variety of dynamic pricing options to take advantage of ComEd-installed advanced

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<sup>9</sup> ICC Docket No. 11-0282.

meters.” (*Id.*, at 4) The competitive market is in a superior position to offer such products and services in AIC's service territory.

## **II. ICEA Supports a Collaborative Approach on the Intervenors' CPP, LCD, TOU Programs and RES' Market-Based Solutions.**

ICEA strongly supports and has actively participated in Commission and utility sponsored workshops and workshop-like processes to reach consensus with all parties to resolve vexing issues and programs. ICEA strongly urges the Commission to order an AIC-led workshop to consider the Intervenors' programs and RES alternatives. ICEA believes that the core policy issues and program details need not, nor should they be, decided upon in this proceeding. A workshop process is better suited to work out such proposals. All the particulars should be developed through comprehensive and timely exchanges among all stakeholders working together to achieve consensus on dynamic pricing structures and rates in the AIC service territory that work for all consumers, are consistent with the Commission's legislative directive to promote competition and the competitive retail electric market, and are appropriate and reasonable for AIC.

## **III. Conclusion.**

As noted throughout its Initial Brief, ICEA brings a firm understanding of the competitive retail electric market and knowledge of the AMI Plans before the Commission. ICEA strongly urges the Commission to defer the Intervenors' CPP, DLC and TOU program proposals for the compelling reasons that ICEA has enumerated above. Instead, the Commission should order AIC to commence a dialog with SGAC and interested stakeholder regarding the Intervenors' pricing and rate programs, along with RES proposals and the marketing of AIC existing RRTP rate, just as the Commission ordered ComEd to do in its AMI Plan docket.

WHEREFORE, ICEA respectfully requests the Illinois Commerce Commission defer the Intervenor's CPP, DLC and TOU program, and order AIC to commence a dialog with SGAC and interested stakeholders regarding the Intervenor's pricing and rate programs, along with RES proposals and the marketing of AIC existing RRTP rate, and grant further relief as may be deemed just and appropriate.

Dated: October 3, 2012

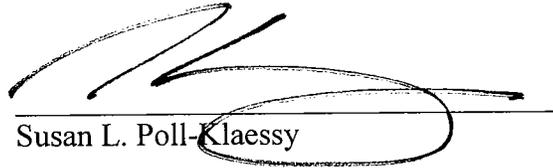
Respectfully submitted,

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**VERIFICATION**

I, Susan L. Poll Klaessy, being first duly sworn, hereby state that (i) I am an attorney for the Illinois Competitive Energy Association and am authorized to make this Verification on its behalf; (ii) I have knowledge of the facts stated in the foregoing Initial Brief on Rehearing of the Illinois Competitive Energy Association; and (iii) the facts as stated therein are true and correct to the best of my knowledge, information and belief.

  
Susan L. Poll-Klaessy

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this 3<sup>rd</sup> day of October, 2012.

  
Notary Public "OFFICIAL SEAL"  
KATHLEEN M. MCKAY  
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MY COMMISSION EXPIRES 11/13/2012

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the *Notice* and *Initial Brief on Rehearing of the Illinois Competitive Energy Association (“ICEA”)*, has been served upon all parties in the service list below on the 3<sup>rd</sup> day of October , 2012.

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