STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTAL ILLINOIS PUBLIC SERVICE COMPANY and UNION ELECTRIC COMPANY	)))	
	)	Docket No. 02-0656
Petition for approval of tariff sheets implementing revised Market Value Index methodology.	))	
COMMONWEALTH EDISON COMPANY	)	
	)	Docket No. 02-0671
Proposed revision of Rider PPO (Power Purchase Option - Market Index), Rate CTC (Customer) Transition Charge) and Rider ISS (Interim Supply Service), and to establish Rider CTC - MY (Customer Transition Charge - Multi-Year Experimental). (Tariffs filed on October 1, 2002)	)))))	
ILLINOIS POWER COMPANY	)	
	)	Docket No. 02-0672
Proposed establishment of Rider MVI II, Market Value Index II. (Tariffs filed October 1, 2002))	)	(Cons.)

BRIEF ON EXCEPTIONS OF THE
ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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Come now the Illinois Industrial Energy Consumers ("IIEC")[1], by their attorneys, Lueders, Robertson, Konzen & Fitzhenry, and pursuant to 83 Ill.Adm.Code Part 220.830, offer the following brief on exceptions to the Administrative Law Judge's ("ALJ") Proposed Order (the "Proposed Order") dated February 19, 2003.[2] IIEC will address the following issues:

1. The Proposed Order's acceptance of the capacity backed adjustment for Central Illinois Public Service Company, Union Electric Company ("Ameren") and Illinois Power Company ("IP").

2. The Proposed Order's inclusion of a placeholder for potential RTO imposed costs (e.g. capacity adjustments).

3. The Proposed Order's recommendation that odd lot adjustments be made as applicable to Ameren.

4. The Proposed Order's allocation of sales and marketing expenses as applicable to Ameren.

5. The Proposed Order's illiquidity adjustment as applicable to Ameren.

6. The Proposed Order's adoption of IP's floating adder proposal.

7. The Proposed Order's recommendation on availability of multi-year contracts in the IP service territory.

8. The Proposed Order's rejection of the proposal for market value adders based on the length of the multi-year contracts.

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[1]IP Dkt. 02-0672 - Air Products & Chemicals Company, Granite City Steel Company, U.S. Silica Company, Cargill, Inc, Illinois Cement Company, Olin Corporation, Caterpillar Inc. and PPG Industries, Inc; Ameren Dkt. 02-0656 - Keystone Steel and Wire Company and Caterpillar Inc; and ComEd Dkt. 02-0671 - Ford Motor Company and Caterpillar, Inc.

[2]Citations to the Proposed Order are based on the PDF version on the e-docket.

9. The Proposed Order's recommendation on use of Rider ISS for default service and the suggestion that IP place customers on an applicable real time pricing ("RTP") rate in the event of supplier default under the multi-year option.

B. Summary

The Proposed Order recommends the Illinois Commerce Commission ("Commission") accept Ameren's capacity backed adjustment adder to market value, stating that the use of such an adder is reasonable. Proposed Order at 16. The Proposed Order also tacitly recommends that a capacity adder be adopted for IP without any mention of the voluminous record evidence related to the existence or non-existence of capacity value already included in the underlying wholesale market prices. Proposed Order at 51. Neither IP nor Ameren has provided a valid justification for such an adder in the record in this proceeding. In addition, Ameren has suspended or will suspend transition charge recovery and as a result will not offer PPO to its customers. Therefore, it is premature and unnecessary to make any modification to the Ameren MVI, including, but not limited to, the adoption of a capacity adder. Therefore, the Proposed Order should be modified to make this adjustment inapplicable to the Ameren tariff until and unless Ameren seeks to reinstate a transition charge.

The Proposed Order accepts the recommendation of the RES Coalition that a placeholder be added to the MVI tariffs for utilities to reflect capacity costs associated with future PJM and/or MISO actions which would require transmission customers to demonstrate that their transmission transactions are backed by generation capacity. Proposed Order at 19. The adoption of this recommendation is inconsistent with the Commission's decision in the Illinois Power Delivery Service Rate Case. *See* Illinois Power Company, ICC Dkt. 01-0432, Order at 115 (March 28, 2002). In addition, because

Ameren will no longer collect a transition charge or offer the Power Purchase Option ("PPO"), modifications to the Ameren tariff to incorporate such a placeholder are premature and unnecessary. Therefore, the Proposed Order should be modified to make this adjustment inapplicable to the Ameren tariff until and unless Ameren seeks to reinstate a transition charge. Also, to the extent the floating adder approach is adopted for IP, the need for a separate placeholder is moot and inclusion of one would amount to double counting.

The Proposed Order accepts a proposal of the RES Coalition that an Odd Lot Adjustment be incorporated into market value as an adder for both Ameren and ComEd. Proposed Order at 21. The adder will be $0.55 per MWh. The specific adder appears to be the result of a recommendation the RES Coalition made for the adjustment of ComEd's market value energy charge ("MVEC") not to Ameren. *See* RES Coalition Ex. 4.0 at 13. In addition, as noted above, the modification of the Ameren MVI tariff to incorporate such an adder is premature and unnecessary because Ameren has or will forego the collection of a transition charge and the offering of the PPO to customers in its service territory. Therefore, the Proposed Order should be modified to make this adjustment inapplicable to the Ameren tariff until and unless Ameren seeks to reinstate a transition charge.

The Proposed Order recommends acceptance of a proposal made by the RES Coalition to adjust market value upward to reflect an allocation of sales and marketing expense to customer classes on the basis of kWh consumed rather than the number of customers in the class. Proposed Order at 30. This would result in an increase in market value of 0.026¢ per kWh for ComEd and Ameren. The specific adjustment was recommended for ComEd, not Ameren. In addition, because Ameren has acted or will act to forego recovery of transition charges and to discontinue offering the PPO to its customers, such a modification of the MVI tariff in the Ameren service territories is premature and unnecessary. Therefore, the Proposed Order should be modified to make this adjustment inapplicable to the Ameren tariff until and unless Ameren seeks to reinstate a transition charge. At such time, an Ameren-specific value can be determined.

The Proposed Order adopts a recommendation to make an illiquidity adjustment of $0.88 per MWh on the basis of a differential used to adjust price data obtained from the energy hub for use in calculating Illinois market values, to reflect the fact that prices taken from the Cinergy hub (and used for market value calculation) are taken from a market that is substantially more liquid than the Illinois market in which power and energy is actually sold. Proposed Order at 35. This adjustment applies only to Ameren and ComEd. For the reasons stated above, the Proposed Order should be modified to reject the adjustments application to Ameren until and unless Ameren reinstates its transition charge.

The Proposed Order recommends that the Commission accept the use of a floating adder approach for IP. Proposed Order at 50-52. In this portion of the Proposed Order, it is recommended that a capacity demand credit of $12.00 per kW year and a floating adder starting at 3.5 mills per kWh. Proposed Order at 51. The Proposed Order rejects IIEC's recommendation that the floating adder not be adopted unless PPO customers are protected from harm. Proposed Order at 52. The Proposed Order should be modified to provide protection for PPO customers in the IP service territory, or the floating adder approach as set forth in the Memorandum of Understanding ("MOU") signed by IP and the RES Coalition, should be rejected because the methodology is inconsistent with the requirements of Section 16-112 of the Public Utilities Act (the "Act"). (220 ILCS 5/16-112). Further, the inclusion of the capacity demand credit for IP should be rejected under any circumstance. IP has not justified such an adder in the context of the record in this proceeding.

The Proposed Order accepts in part and rejects in part IIEC's proposal to modify IP's calculation of the multi-year market values. Proposed Order at 57. First, the Proposed Order rejects IIEC's recommendation that the multi-year market value be calculated on a bi-monthly basis, in the same way the single year market value is calculated. The Proposed Order accepts IIEC's recommendation that IP establish a data hierarchy for calculation of the multi-year market values similar to the data hierarchy used to calculate single year market values. In accepting this data hierarchy, the Proposed Order obviates IP's rationale (erroneous though it may be) in the first instance for calculating the multi-year MVI only once a year, in December.

The Proposed Order is incorrect in concluding a relatively large number of customers will have the opportunity in both 2004 and 2005 to obtain a multi-year RES contract for the remainder of the transition period and is further incorrect in concluding that under IIEC's proposed modification, this would not be the case. In fact, the opposite is true. IP's proposal will be limited to a relatively small number of customers in 2004 and 2005 whereas IIEC's proposal would substantially expand the availability of this option to customers.

The Proposed Order rejects the recommendation that market value adders should be based on the length of the multi-year market value contract. Proposed Order at 68. The Proposed Order should be modified to accept the proposal for multi-year value adders.

Finally, the Proposed Order recommends that to the extent IP offers multi-year market values, IP should provide default service to multi-year market value option customers under Rider ISS and IP's real time pricing rate. Proposed Order at 71-72. Because the proposal to use Rider ISS as a default rate was first presented to the parties during cross-examination, and was apparently decided upon by IP less than 24-hours before the commencement of cross-examination, (*See* Peters Tr. 313-314) and because no party actively proposed that IP's real time pricing rate be used as the default rate once the term of service for Rider ISS had been completed, the Proposed Order should be modified to state that IP should allow customers to choose among IP's bundled service rate options, including the use of the real time pricing rate.

II. Capacity Backed Adjustment

A. Argument

1. IP

The Proposed Order overlooks or misapprehends the fact that IP has not justified a capacity demand credit ("capacity adder" or "CDC") in this case. The Proposed Order is conspicuously silent on this major issue in the case. IIEC addresses this issue in its initial and reply briefs. *See* IIEC Initial Brief at 6-9; IIEC Reply Brief at 5-8. IIEC will not repeat those arguments. However, it notes that the Proposed Order appears to adopt, de facto, the $12.00 per kW-year capacity demand credit for IP because it is contained in IP's MOU. *See* Proposed Order at 51. A review of the MOU fails to disclose how the $12.00 per kW was determined or why it is appropriate for use as IP's capacity demand credit in this proceeding. *See* IP Ex. 1.9. Neither IP nor any other party has offered any cost justification for the proposed adder. Indeed, IP was unable to justify its original proposal for a capacity demand credit of $9.00 per kW/year in its direct case.

In fact, IP appears to argue that the capacity demand credit was really equivalent to a demand charge in a bundled tariff. IP intends to apply this "demand charge" to PPO customers. Thus, IP appears to see this as a “rate design” issue. *See* IP Initial Brief at 9. IP offers no cost basis for this “demand charge” applicable to PPO customers other than its express desire to add a fixed cost component to PPO. *See* IP Initial Brief at 9.

IP has made no determination that $9.00 per kW-year or $12.00 per kW-year reflect the value of any portion of the market price for power and energy as referenced in Section 16-112 of the Act. Of course, IP could not do so because its position has been the capacity values are already reflected in the market price of power and energy that underlie its MVI approach. Peters Tr. 286.

In its reply brief IP argues that the capacity demand credit was intended to reflect any “residual error” from the total value determination, including failure of base values to fully account for capacity. *See* IP Reply Brief at 7-8. However, the record in this proceeding is devoid of any evidence to support the existence of such a residual error in the first instance or to quantify it in the second instance.[3]

IP has suggested that the $12.00 per kW-year falls within the range of the testimony in this proceeding. IP Reply Brief at 8-9. However, such an argument is misleading and does not support the adoption of $12.00 per kW-year capacity demand credit. First, the lower end of the range (zero) was proposed by IIEC because it did not believe, and still does not believe, IP has justified any value for a CDC in this proceeding. The current planning reserve adjustment, 0.61 cents per kWh, found appropriate by the Commission in Docket No. 00-0259, et al., should be retained. The higher end of the range is $18.00 per kW-year and the only support for this value in the record is the following

[3]IIEC notes that the Proposed Order explicitly rejected the “residual error” adjustment recommended by the RES Coalition even though the RES Coalition quantified such an error. Proposed Order at 24).

statement:

> "Since under Illinois Power's tariffs an MVI is calculated on a more frequent basis than other utilities, the RES Coalition has proposed an approach specific to Illinois Power, where IP will have a fixed value of \$18.00 per kW-year assigned to capacity costs . . . ." (RES Coalition Ex. 3.0 at 11).

There is no testimony to support the development of the \$18.00 per kW-year or to otherwise justify its use as a capacity demand credit for IP or an adder to market value.

IP's arguments, in response to IIEC's criticism of IP for supporting a \$9.00 per kW/year CDC in its direct case and a \$12.00 per kW-year CDC in the MOU presented in rebuttal, are telling. IP argues:

> "There is no obvious reason in the record that makes any one of these (values) better than any other. . . ." (IP Reply Brief at 8) (Explanation Added)

IP is correct, but only because it has offered no obvious basis for using either value (or any value) for the CDC in this proceeding. IP has the burden of proving the appropriateness of its proposed CDC. It utterly failed to do so (and in fact did not really attempt to do so). Without evidentiary support for IP's proposal, it must be rejected.

For these reasons and for the reasons identified in IIEC's initial and reply briefs, the Proposed Order should be modified to reject IP's CDC proposal regardless of whether or not the Commission adopts the IP MOU.

2. Ameren

The Proposed Order recommends the Commission approve a capacity backed adjustment for Ameren of \$205.15 per MW/day. Proposed Order at 16. The Proposed Order overlooks the fact that the Commission Staff, like IIEC, concluded there was no justification for inclusion of a capacity adder component to the Ameren market value. Staff Initial Brief at 12. Indeed, the Proposed Order includes no discussion related to the need, or lack thereof, to change Ameren's MVI tariff in light of its suspension of transition charge collection and PPO offering, despite several parties, including Ameren, addressing this issue in the case. IIEC agrees with the Staff that Ameren has not justified its capacity adder. IIEC addresses the issues in its initial and reply briefs. IIEC Initial Brief at 9-11; IIEC Reply Brief at 8-9.

In the matter involving Ameren Corporation acquisition of CILCORP, including CILCO, Ameren agreed that AmerenUE, AmerenCIPS and CILCO would not seek recovery of transition charges for the period of June 2003 through May 2005 and, consequently, would not be offering the PPO. IIEC Ex. 1.0 at 13. Mr. Stephens opined that given the current projections of future market prices increasing and the potential for an increase in delivery service rates and the known increases in the mitigation factor, he did not believe there was a high probability that Ameren would subsequently seek to reinstate the recovery of transition charges and the PPO. He suggested, though, that even if Ameren were to seek reinstatement, that the Commission would have the benefit of the other utilities' experience with their modified MVI tariffs.

IIEC also notes also that all of the parties in this proceeding, other than Ameren, have basically agreed that because Ameren has eliminated or is in the process of eliminating its transition charge recovery and PPO service for its customers, therefore there is no need or may be no need to modify or amend the Ameren MVI tariff at this time. *See* Staff Initial Brief at 12; RES Coalition Initial Brief at 26; IIEC Initial Brief at 12-15 and IIEC Reply Brief at 9.

Indeed, in its initial brief, in response to the RES Coalition proposal to offer a multi-year transition charge for the remainder of the transition period, Ameren indicated that it would be willing to propose an option for customers to subscribe to an 18 month transition charge, which would be modeled on any offering approved for ComEd or IP in this proceeding. Ameren Initial Br. at 14-15. Further, Ameren witness Bob Mill admitted that its MVI tariff would sometime change in light of Ameren joining the MISO: "Once Ameren joins the MISO, that tariff may change. Consequently, the MVI calculation will reflect whatever the MISO capacity charge in their tariff would be at that point." Mill, Tr. 460. Thus, it is likely that Ameren's MVI will change or require modification at some point in time if it is reinstated. Therefore, there is not much point in modifying it now when it will not be used to help calculate a transition charge or the price of the PPO for customers in the Ameren service territory.

The Commission should also take into consideration that as a result of the Ameren acquisition of CILCO, Ameren Corporation has agreed to sell power and energy to non-affiliated entities in the CILCO and Ameren service territories, priced on the basis of the Ameren MVI. Central Illinois Light Company and Ameren Corporation, ICC Dkt. No. 02-0428, Order at App. A, D.1 and 2 (Dec. 4, 2002). In this respect, the Ameren MVI establishes a wholesale price to suppliers in the CILCO and Ameren service territories. Under these circumstances, it is unnecessary and inappropriate to consider changes to the Ameren MVI. IIEC Ex. 1.0 at 15.

Moreover, changing the Ameren MVI does not mean, nor should it mean, that it accurately reflects the value of power and energy in the CILCO service territory. There is no dispute the Ameren MVI is unique and specific to matters relating to the Ameren companies and their service territories. For example, the market price for on and off-peak power is determined by forward contracts for power and energy delivered into the Into Cinergy hub. The Ameren MVI includes a locational basis adjustment and specific customer classifications and a load profile for each customer classification. *See* Ameren Petition, Rider MVI - Market Value Index of Power and Energy, ICC Docket No. 02-0656. Therefore, there is no critical need to refine the Ameren MVI for purposes of Ameren Corporation selling wholesale power into the CILCO service territory.

However, if the Commission was to direct Ameren to make certain changes to its MVI tariff, even though that tariff will have no application to delivery service customers in the Ameren service territory until at least May, 2005 and maybe not even then, it should direct Ameren to file a tariff incorporating those changes on January 1, 2005 to be effective upon May 1, 2005, assuming Ameren elects to restore the CTC and offer PPO service at that time. Under such an approach, Ameren and its customers will know well in advance the exact MVI methodology which will be applicable in the Ameren service territories. Such MVI methodology will have the benefit of nearly two years experience with the new MVI tariffs of IP and ComEd. Further, the evidentiary record in this proceeding will not be wasted.

Also, assuming the Commission retains the placeholder for potential RTO costs for Ameren, (Proposed Order at 19), should eliminate the capacity adder for Ameren discussed above. Capacity requirements proposed by MISO and any other RTO can be reflected in the Ameren tariff through the placeholder mechanism when and if Ameren reinstates transition charge recovery and PPO service after May 2005. Ameren itself has noted that its proposal for a capacity backed adjustment already captures all known generation-related RTO imposed costs. *See* Proposed Order at 19. If the placeholder is adopted for Ameren the Proposed Order's adoption of a capacity charge of $205.15 per MW/day should be rejected. The insertion of a placeholder into the Ameren tariff would allow Ameren and the Commission to reflect the appropriate capacity charge in May 2005 when and if Ameren reinstates its transition charge recovery and PPO service. To include such a charge in its MVI tariffs at this time would be inappropriate since this value may change based upon decisions made by MISO between now and May 2005. In addition, it not is necessary to reflect the capacity charge in the Ameren tariff at this time since the tariff will not apply to customers in the Ameren service territory until and unless Ameren reinstates transition charge recovery and PPO service.

B. Suggested Language

The conclusion in the last full paragraph at the bottom of page 16 of the Proposed Order should be eliminated and the following language inserted in its place:

5. Conclusion

> "The Commission finds that Ameren's use of a capacity value for the MVI calculation is not reasonable at this time. The Commission agrees that because Ameren has eliminated or is in the process of eliminating its transition charge and PPO service within its service territory, there is no immediate need to modify its MVI to reflect such an adder. Also, given the Commission's decision to authorize a "placeholder" for capacity requirements imposed by RTO and given the fact that Ameren's MVI tariffs will not be applicable to delivery service customers in its service territories until May 2005 at the very earliest, the Commission does not deem it necessary to include a specific capacity value in the Ameren MVI tariff at this time. Therefore, Ameren's proposal to include a capacity value in the calculation of its market value will not be adopted at this time.
>
> The Commission finds that IP's use of a capacity demand credit is not reasonable at this time. The Commission agrees with IIEC that IP has not justified or adequately explained the credit. IP's initial case recommended a CDC of $9.00 per kW and in its rebuttal case it offered a CDC of $12.00 per kW. In neither instance did IP explain

> how the credit was quantified or offer sufficient evidence to justify its implementation. Therefore, such a credit will not be adopted at this time and the previously approved 0.061 cents per kW adder for planning reserves established in Docket No. 00-0259 et al., and for which IP has offered no valid reason for deletion, shall be maintained."

In the alternative, if the Commission elects to make this adjustment applicable to Ameren, the conclusion in the last full paragraph at the bottom of Page 16 of the Proposed Order should be modified by adding the following language to the paragraph:

5. Conclusion

> "The Commission directs Ameren to file a new MVI tariff on or after January 1, 2005 to be effective June 1, 2005, in the event Ameren elects to collect a CTC and restore PPO service effective June 1, 2005. The tariff should reflect the capacity charge of $205.15 per MW/day discussed above or the charge then specified in Schedule 4A of the applicable Open Access Transmission Tariff as well as the market value of other adjustment made applicable to Ameren in this Order."

III. <u>Inclusion of "Placeholder" for Potential RTO Cost (e.g. Capacity Adjustment)</u>

A. <u>Argument</u>

The Proposed Order concludes the utilities have not adequately addressed how PJM/MISO capacity requirements will be incorporated into their MVI models. Therefore, it concludes it is appropriate to direct the utilities to include a placeholder in their MVI tariffs for the PJM/MISO charges that impact the capacity value in the utility's MVI filings. IIEC has addressed this issue in the arguments made in its initial brief. (IIEC Initial Brief at 11-12). It will not repeat its arguments. However, IIEC respectfully disagrees with the Proposed Order's recommendations and request the Proposed Order be modified to eliminate the placeholder requirement for Ameren and IP if the Commission adopts capacity backed adjustments for these two utilities.

First, if the Commission orders capacity backed adjustments for each of these two utilities and at the same time creates a placeholder for capacity backed adjustments associated with PJM/MISO capacity requirements, it could lead to double counting.

Second, the Commission has previously rejected this type of approach in its order in IP's more recent delivery service case. There, the Commission rejected a placeholder proposed by IP for items ". . . that could change in unknown ways in the future." Illinois Power Company, ICC Dkt. No. 01-0432, Order at 115 (March 28, 2002). Certainly the treatment of the capacity issue by PJM/MISO is unknown at this time. Therefore, the use of a placeholder should be rejected, as it was rejected in the IP delivery service case.

Finally, to the extent the floating MVI adder proposal is adopted for IP, it, by design, will adjust upward to capture any costs imposed on RESs that prevent them from competing against the PPO. Hence, such a placeholder would be redundant. IP witness Peters noted that the Commission had previously rejected the inclusion of a placeholder in IP's last delivery service order. IP Ex. 2.1 at 40. He also noted that the argument for the placeholder is framed and referenced to policies related to designation of network resources by both RESs and utilities. He noted that IP would soon join the Midwest ISO and that organization's current policy regarding the designation of network resources is similar to that of IP in that both require physical resources to be identified. He stated he was unaware of any potential change in that policy and, therefore, a placeholder was not justified in this instance. He further opined that the floating adder concept made such a placeholder moot. IP Ex. 2.1 at 40-41. Therefore, a placeholder for IP is not necessary.

B. Suggested Language

The conclusion in the third full paragraph on page 19 of the Proposed Order should be eliminated and the following language inserted in its place:

6. Conclusion

> "In the instant proceeding, the Commission does not believe it is appropriate to include a placeholder. The future capacity requirements of PJM/MISO are uncertain at this time. These requirements could change in unknown ways in the future. If circumstances change, IP and Ameren are free to request a change in their MVI tariffs to accommodate the RTO capacity requirements. The record indicates that PJM capacity policies will likely be implemented during the middle of the first Period A MVI proposed in ComEd's current filing. Therefore, a placeholder for ComEd will be appropriate. The Commission thus directs ComEd to take steps at this time to include a placeholder in its MVI tariffs for PJM changes that impact capacity values. IP and Ameren are free to file for changes in their MVI tariffs when and if such requirements are established for MISO."

IV. Odd Lot Adjustment

A. Argument

The Commission concludes that odd lot costs exist and proposed that both Ameren and ComEd MVI tariffs be adjusted upwards by $0.55 per MWh. Proposed Order at 21. IIEC has not previously addressed this issue, but believes that such an adjustment is inappropriate with regard to Ameren. It is premature and unnecessary given the fact that Ameren will not be collecting a transition charge or offering PPO service until at least May, 2005. Therefore, it is not necessary to modify Ameren's current MVI tariff to reflect such an adjustment.

However, if the Commission wishes to direct Ameren to make such an adjustment, it should do so by directing Ameren to file a modified MVI tariff on or after January 1, 2005 to be effective on June

1, 2005 and said tariffs should incorporate this adjustment, in the event Ameren seeks to collect a transition charges and offers PPO service.

B. Suggested Language

The conclusion in the second full paragraph on page 21 of the Proposed Order should be modified to read as follows:

4. Conclusion

> "The Commission finds that an odd lot costs do exist and it proposes that ~~both~~ the ~~Ameren and~~ ComEd MVI tariff~~s~~ be adjusted upward by $0.55 per MW."

V. Sales and Marketing Expense Adjustment

A. Argument

The Proposed Order recommends that the Commission agree with the proposal of the RES Coalition to allocate sales and marketing expense on a per kWh basis rather than a customer case basis among the various customer classes. This would result in a uniform adjustment of 0.026¢ per kWh market value. The Commission proposes that ComEd and Ameren modify their tariffs to reflect this change. Proposed Order at 30 IIEC did not address this issue previously. However it disagrees that this adjustment is appropriate for Ameren. It further recommends that even if the floating adder approach for IP is rejected, this adjustment would not be appropriate in the context of the IP MVI tariff as it not an IP-specific value. Any such adjustment to the Ameren MVI case is premature and unnecessary for the reasons stated above, and because it is not an Ameren-specific value. *See* RES Coalition Initial Brief at 35-37.

However, if the Commission wishes to direct Ameren to make such an adjustment, it should do so by directing Ameren to file a modified MVI tariff on or after January 1, 2005 to be effective on June 1, 2005 and said tariffs should incorporate this adjustment, in the event Ameren seeks to collect transition charges and offer PPO service.

B. Suggested Language

The conclusion in the last full paragraph at page 30 of the Proposed Order should be modified to read as follows:

4. Conclusion

> "The Commission agrees with the proposal set forth by the RES Coalition and finds that a uniform adjustment of 0.026¢ per kWh for ComEd is warranted. The Commission proposes ComEd ~~and Ameren~~ modify ~~their~~ its tariff~~s~~ to reflect this change."

In the alternative, if the Commission rejects IP's MOU and elects to require such an adjustment for Ameren, the last full paragraph at page 30 of the Proposed Order should be modified to read as follows:

4. Conclusion

> "The Commission agrees with the proposal set forth by the RES Coalition and finds that a uniform adjustment of 0.026¢ per kWh is warranted. The Commission proposes that ComEd modify its tariffs to reflect this change. The Commission further proposes that IP develop a corresponding adder reflection of its unique costs and file it for review and incorporation into IP's new MVI tariff. Said adjustment is premature and unnecessary for the Ameren MVI tariffs since Ameren will not be collecting a transition charge or offering PPO service until May, 2005 or later."

VI Illiquidity Adjustment

A. Argument

The Proposed Order finds there should be an illiquidity adjustment of $0.88 per MWh as a static adjustment. Proposed Order at 35. IIEC did not previously address this adjustment. However, it recommends the Proposed Order be modified so that the adjustment is not applicable to Ameren. As noted above, the Ameren MVI tariff will not be applicable to delivery service customers in its service territory until at least May, 2005 and possibly longer. Ameren is surrendering or will surrender its right to recover CTCs and will no longer offer PPO service to those customers. Therefore it is unnecessary and premature to amend the Ameren tariff to reflect this adjustment.

However, if the Commission wishes to direct Ameren to make such an adjustment, it should do so by directing Ameren to file a modified MVI tariff on or after January 1, 2005 to be effective on June 1, 2005 and said tariffs should incorporate this adjustment, in the event Ameren seeks to collect transition charges and offer PPO service.

B. Suggested Language

The conclusion in the fourth full paragraph at page 35 of the Proposed Order should be modified to read as follows:

e. Conclusion

> "The Commission finds that there should be an illiquidity adjustment of \$0.88 per MWh as static adjustment. The Commission agrees that the Cinergy hub is more liquid than the Illinois market for both peak and off-peak products and a certain illiquidity differential exists when using the Cinergy hub as a proxy. Using the Cinergy hub as a proxy makes it necessary to have an illiquidity adjustment to the basis differential. The Commission proposes that ComEd ~~and Ameren~~ modify ~~their~~ <u>its</u> tariff~~s~~ to reflect the change."

In the alternative, if the Commission wishes to require Ameren to make such an adjustment, the fourth full paragraph at page 35 of the Proposed Order should be modified to read as follows:

E. Conclusion

> "The Commission finds that there should be an illiquidity adjustment of $0.88 per MWh as static adjustment. The Commission agrees that the Cinergy hub is more liquid than the Illinois market for both peak and off-peak products and a certain illiquidity differential exists when using the Cinergy hub as a proxy. Using the Cinergy hub as a proxy makes it necessary to have an illiquidity adjustment to the basis differential. The Commission proposes that ComEd and Ameren modify their tariffs to reflect the change. <u>The Commission directs Ameren to reflect this adjustment in the MVI tariffs to be filed on or after January 1, 2005 and to be effective June 1, 2005, in the event that Ameren elects to collect a CTC and restore PPO service effective June 1, 2005.</u>"

VII <u>Floating Adder</u>

A. <u>Argument</u>

The Proposed Order adopts the floating adder approach set forth in the IP MOU between it and various RES parties. IP Ex. 1.9; Proposed Order at 50-52. The Proposed Order suggests a number of reasons for adoption of the MOU. First, it reasons that the Commission may lawfully adopt the floating adder approach. Second, it suggests this approach will reduce the risk that MVECs will be too high or too low. Third, it opines the MOU is a settlement by some of the parties and supported by the evidence. Fourth, it reasons the MOU balances the risk of not implementing the methodology with the risk of customers potentially losing PPO as a competitive supply option. Fifth, it suggests IP could suspend transition charge recovery, as Ameren has, and customers would lose the PPO without any affirmative commitment of suppliers to register and undertake marketing activities in the IP service territory.

The Proposed Order's suggestion that the floating adder is supported by applicable case law and derived from a market-based index are not well founded. The Proposed Order fails to identify the case law upon which it relies or to provide an analysis of such law. To the best of IIEC's knowledge, there are no specific Illinois Appellate or Supreme Court cases endorsing or adopting the floating adder approach as it relates to calculation of market value. In fact, the Commission has not previously adopted such an approach. Further, cases cited by the RES Coalition, in their reply brief, in support of the floating adder, are cited for the purpose of supporting that portion of the MOU which would have assigned to Staff the role of determining when upward movement in the adder should be suspended.[4] *See* RES Coalition Reply Brief at 30, citing Hoardwood, Inc., v. Department of Public Aid, 175 Ill.App.3d 432, 529 N.E.2d 1009 (1st Dist. 1988); Board of Trustees v. Illinois Labor Relations Board, 173 Ill.App.3d 395, 527 N.E.2d 538 (4th Dist. 1998); Citizens Utility Board v. Illinois Commerce Commission, 275 Ill.App.3d 329, 655 N.E.2d 961 (1st Dist. 1995)).

The RES Coalition cites one case in support of its suggestion that the Commission may establish "rate parameters". This is the Citizens Utility Board case. However, even the RES Coalition admits that the language from the case upon which it relies is dicta. *See* RES Coalition Reply Brief at 34. Thus, it is not a controlling factor in the ultimate conclusion reached by the appellate court. Therefore, there are no cases specifically supporting or authorizing the adoption of the floating adder.

Further, even the language in the Citizens Utility Board case relied upon by the RES Coalition is not supportive of the conclusion that a floating adder can be legally adopted by the Commission in this proceeding. The Citizens Utility Board case referenced a decision from a Virginia court allowing rates

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[4]IIEC would also note the Proposed Order suggests that the Commission adopt an alternative procedure for determining whether the floating adder will increase or decrease. Proposed Order at 51-52.

to fluctuate in accordance with the price of gas. This would be equivalent to a purchased gas adjustment clause in Illinois. However, there are important differences between that situation and the case at bar. First, it should be noted that the Virginia court relied upon the fact that the wholesale cost of natural gas was fixed by federal authority. Further, the clause in question was designed to reflect not only increases, but decreases in the wholesale price of gas and provided for customer refunds. *See* Norfolk v. Virginia Electric Power & Co., 197 Va. 505, 511-512, 90 S.E.2d 140, 145 (Va. 1955). In the case at bar, there has been no quantification of the costs reflected in the adder and there is certainly no indication that any of the costs reflected in the adder have been approved as just and reasonable, etc., by another regulatory agency. Nor is there any provision for refunds to customers.

The Proposed Order concludes that the floating adder approach addresses the fact that market values will be too high or too low. Proposed Order at 50. However, because the adder is not a function of change in the cost of power and energy, but rather a function of customers load switching to and from PPO and RES service, it will only be pure coincidence if it happens to produce a market value reflecting accurately the market value of power and energy which IP sells and customers in its service territory buy. As even Illinois Power admits, market value of power and energy cannot be measured by customer switching. *See* IP Reply Brief at 17.[5]

The floating adder does not balance the risk of customers potentially losing PPO as a competitive supply option. All the RESs promise to do under the terms of the MOU is to register to

[5]At page 17 of its Reply Brief IP suggests that market value ". . . is what it is and certainly does not vary depending on whether a customer chooses RES or PPO." However, changes to the floating adder in IP's approach are in fact a function of customer switching.

do business in the IP service territory and conduct marketing. They are not obligated to offer or provide any service of any kind. In contrast, IP is required to provide the PPO as a competitive option to customers paying transition charges. Thus, customers are asked to surrender a competitive supply option that must be offered to them in return for the promise that RESs will register and conduct marketing activities. This is an imbalance, not a balance.

Further, as noted at page 9 in the Commission's "Assessment of Competition in the Electric Industry" (2003), (the "Assessment") is 2002, only 16 of IP's customers were taking RES supply and 976 customers were on PPO. Therefore, the potential for losing PPO as a competitive option is relatively large and hardly representative of a balanced approach.

Finally, there is no evidence in the record which suggests or implies that IP will give up the right to recover transition charges. *See* Proposed Order at 52. Indeed, IP has securitized portions of its future revenue stream. *See* Illinois Power Company, Ill.C.C. Dkt. No. 98-0488, 1988 Ill. PUC Lexis 811 (September 10, 1998). Therefore it is highly unlikely that IP will give up the right to recover transition charges before the end of the mandatory transition period. *See* Peters Tr. 311. However, if IP would do so, it would certainly be a step in the right direction to encouraging true competition in its service territory. Further, one must wonder why IP would give up its transition charge, when it can both retain the transition charge and drive customers off the PPO at the same time, through the use of the floating adder approach. IP will be able to have its cake and eat it too under such a circumstance. It has no incentive to give up the transition charge.

The suggestion that the MOU is a settlement is correct. Proposed Order at 51. However, the suggestion that it is supported by evidence and based upon a market index are not correct. IP has argued the MOU was reached among parties with disparate interests. IP Reply Brief at 9. The fact that the MOU is supported by one or more parties is not in and of itself evidence of the validity or accuracy or reasonableness of the particular values or numbers set forth in the MOU.

The fact that MOU values fall within a range of numbers, which themselves have no reasonable support or basis in the record, is not evidence of their validity, accuracy or reasonableness. Proposed Order at 51. For example, IP was not able to justify the $9.00 per KW-year CDC in its direct testimony. *See* IIEC Initial Brief at 6-8; IIEC Reply Brief at 6-8. While the RES Coalition, as noted in Section II. A. 1. above, simply pulled the $18.00 per KW-year for its capacity backed adder out of thin air.

In addition, the floating adder itself apparently reflects costs which the Proposed Order determines elsewhere are inappropriate additions to market value. For example, the RES Coalition argues that the floating adder will take the place of adjustments to reflect costs associated with such things as "imbalance risk management." RES Coalition Reply Brief at 32; RES Coalition Ex. 4.0 at 63. It also appears to argue that the floating adder will reflect capacity costs as well. RES Coalition Reply Brief at 33. However, the Proposed Order rejects an adjustment to market value to reflect imbalance costs because they are delivery service costs. Proposed Order at 12. Therefore, this artificial adder apparently reflects costs that are otherwise inappropriate for inclusion in market value.

Finally, no party has offered any evidence which suggests that the values in the MOU are somehow a function of an exchange traded or market traded index. They obviously are not.

The Proposed Order also rejects IIEC's recommendation that PPO customers be protected from the effects of the floating adder. Proposed Order at 52. IIEC addressed this issue in its initial brief. IIEC Initial Brief at 20-21. The Proposed Order suggests that market value should not be intentionally understated for the sole purpose of preserving PPO eligibility. IIEC respectfully responds that it has not suggested that market values be intentionally understated. However, when a market value approach incorporates costs, which are not otherwise deemed appropriate for inclusion in market value, as the MOU does, it is difficult to see how market values under this approach are anything other than intentionally overstated. Further, the intentional overstatement will have the effect, all else equal, of depriving customers of PPO as a competitive supply. It is IIEC's argument that market value should not be intentionally overstated for the purpose of allowing RESs to compete with an option, which has been and will likely continue to be the most viable competitive supply option in the IP service territory or to simply deprive customers of such option.

The Proposed Order suggests that it has rejected IIEC's approach because customers run the risk of being ineligible or PPO service under the statutory structure in any event. While this may be true, it is not correct to assume that the statutory structure referenced envisioned a situation where market values were artificially increased to discourage the use of the PPO. The MOU, by design, contemplates movement of customer load, on a relative basis, from PPO to RES supply.

If IP was truly intending to encourage competition in its service territory, it could do so by simply eliminating the transition charge, which has been identified as a barrier to competition. Assessment at 19. It could make the terms and conditions of its bundled service more conducive to customer choice, by allowing a SC 24 customers to leave SC 24 service on less than one year's notice thereby making the multi-year market value a viable option for such customers. Also, it could release the 1332 customers it currently has on "competitive supply contracts," to take delivery service. *See* Assessment at 10.

IIEC offered two mechanisms to protect PPO customers. The first would be to utilize Rider MVI (current) for PPO application and Rider MVI-II (IP proposed) for RES supply applications. Alternatively, IP could simply offer PPO service to all delivery service customers requesting it (irrespective of transition charge levels). In both instances, RESs would have a better chance of competing against the PPO in light of the higher MVI and lower transition charges necessarily produced under the MOU.

For all these reasons, the Proposed Order should be modified to require IP to protect PPO customers from the adverse effect of the floating adder approach, or, in the alternative, to reject the MOU.

B. Suggested Language

The language in the conclusion, at the bottom of page 50 through the first full paragraph on page 52 of the proposed order, adopting IP's MOU should be deleted and the following language inserted in its place:

F. Conclusion

> "While the floating adder approach has some merit, application of such an approach without modification would not be appropriate in this case. The Commission is concerned about the legal problems identified by Staff and IIEC in regard to this approach. The Commission is also concerned by the fact that the approach appears to be arbitrary and has the potential to include costs in market value which the Commission has determined are otherwise inappropriate for inclusion. The fact that RESs have committed to register to do business and to initiate marketing activities in the IP service territory does not in and of itself demonstrate there is a balance in the IP proposal to the risk of customers losing the most viable competitive

> supply option now in existence in the IP service territory. The Commission is also concerned that the values contained in the IP MOU will not be fully supported in the record.
> However, if IP will undertake one of the approaches recommended by IIEC, to protect PPO customers from the potentially adverse effects of the floating adder approach, the Commission will reluctantly approve the MOU. However, the Commission intends to closely monitor the situation and revisit the issue if warranted"

In the alternative, if the Commission rejects the proposal to protect customers, the language in the conclusion on page 50-52 of the Proposed Order should be deleted and the following language inserted in its place:

> "While the floating adder approach has some merit, application of such an approach without modification would not be appropriate in this case. The Commission is concerned about the legal problems identified by Staff and IIEC in regard to this approach. The Commission is also concerned by the fact that the approach appears to be arbitrary and has the potential to include costs in market value which the Commission has determined are otherwise inappropriate for inclusion. The fact that RESs have committed to register to do business and to initiate marketing activities in the IP service territory does not in and of itself demonstrate there is a balance in the IP proposal to the risk of customers losing the most viable competitive supply option now in existence in the IP service territory. The Commission is also concerned that the values contained in the IP MOU will not be fully supported in the record. Therefore the Commission rejects the use of the MOU at this time."

VIII <u>Availability of Multi-year Market Value Contracts</u>

A. <u>Argument</u>

The Proposed Order rejects IIEC's recommendation that multi-year market values be calculates on a bi-monthly basis. Proposed Order at 57. IIEC witness Stephens noted that IP calculates its single year market values six times per year but proposed to offer multi-year market values only once per year.

He further noted that as a result only customers whose anniversary date happens to fall in January or February have the opportunity to directly compare and choose between the single year market value and the multi-year value (and associated transition charges). IIEC Ex. 1.0 at 4. He further noted that IP had offered no explanation for offering multi-year market values once per year in its direct testimony. IIEC Ex. 1.0 at 5.

In the rebuttal phase of the case IP argued that it was inappropriate to offer the multi-year value more than once per year because the availability of data (actual trades) to support the multi-year calculation was limited and most likely to be available in December of each year. IP Initial Brief at 24-25. Further, IP suggested it was not important or reasonable for customers to be able to compare the multi-year option and one year option. *See* IP Reply Brief at 21. Finally, it suggests that because the actual offering of the multi-year market value would be a function of the availability of data and data was best available in December of each year, it was more likely that IP would actually calculate multi-year market values to be applicable in the January and February billing period and, thus, more likely that the multi-year market value option would be available to a larger number of customers than under the bi-monthly approach recommended by IIEC, when data might not be readily available. IP Reply Brief at 21-22; Proposed Order at 54. The Proposed Order appears to rely on these arguments in reaching its recommended conclusion. However that reliance is misplaced.

First, the Proposed Order has correctly directed IP to establish a data hierarchy similar to that used for single year market values which are calculated on a bi-monthly basis. To the best of IIEC's knowledge, IP has never failed to calculate a market value on a bi-monthly basis. In addition, contrary to IP's suggestions, in its arguments in response to IIEC, the record demonstrates that data for calculation of multi-year market values is available on a daily basis in industry pricing publications such as Platts. Blackburn Tr. 244-245; McNeil Tr. 589 . IP uses the data from Platts to calculate the multi-year market value in the first instance. Blackburn Tr. 243. Finally, contrary to the suggestion by IP (Proposed Order at 54) it is not necessary for such values to be available every day of the year. IP only surveys the market for 10 business days, six times per year to calculate its single year market values. IP Ex. 1.7 at 4 of 9 and 8 of 9. IP needs only <u>one</u> valid forward market data point in each snapshot period to have a valid forward price for use in calculating multi-year MVIs. Thus, concerns that using the bi-monthly approach will result in fewer customers having multi-year market value options would be misplaced.

Further, IP's approach is a thinly disguised method of actually limiting the number of customers who have the multi-year option, not expanding it. As IIEC pointed out, for all intents and purposes, current SC 24 customers will not have this option until 2005. *See* Proposed Order at 58. Further, as noted by IIEC and RES Coalition witnesses, as well as ComEd witnesses, customers would prefer and would expect to be able to compare the multi-year option with the one year option for market values. IIEC Ex. at 4-5; *See* McNeil at 596-597. In response IP suggests it is not necessary for customers to be able to make such comparisons. IP Reply Brief at 21-22. IP's position is truly ironic. On the one hand it wishes to make artificial additions to market value in order to enhance competition (drive customers off the PPO) and on the other, it argues, it is not necessary or desirable for customers to be able to compare the pricing components of various options, in its version of the competitive market. The inability to make such comparisons will, in IIEC's opinion, make it less likely the customers will elect the multi-year option.

IP also argued because it will not publish multi-year values that extend beyond the end of the mandatory transition period, its annual approach is somehow preferable to IIEC's bi-monthly approach. IP's argument is nonsense. First, does anyone doubt that IP intends to collect transition charges through the end of the mandatory transition period? If it does, it will be necessary for it to calculate single year market values in each of the bi-monthly periods through the last year of the mandatory transition period in order to collect such charges. Customers taking delivery service during the last year of the mandatory transition period will inevitably have supply contracts from RESs which extend beyond the end of the mandatory transition period and the one year period for which the market value in their transition charge formula was calculated or will have truncated single year MVIs, to coincide with December 31, 2006. Thus, there will always be a mismatch between supply contracts and transition charge recovery. In addition, under IIEC's proposal, customers would be able to enter into multi-year contracts consistent with their anniversary period for delivery service. Customers taking the multi-year option after July 1, 2003, (the effective date of IP's tariff), would be able to have two year or three year contracts ending July 2006. Customers taking service in July 2004 would be able to take a two year contract or a contract running through the duration of the transition period.

The Proposed Order should be modified to adopt IIEC's bi-monthly approach.

B. <u>Suggested Language</u>

The conclusion in the third and fourth paragraphs on page 58 should be deleted and the following language inserted in its place:

3. Conclusion

"The Commission first observes that, as with many other issues in this

> proceeding, this is one that has no easy resolution. The Commission believes it is important for customers to be able to compare the pricing components of the various options. The IP approach does not lend itself to this and further, the IP approach has the practical effect of limiting the ability of current bundled service customers on SC 24 from taking the multi-year market value option prior to 2005 because of the one year notice period for termination of service under that rate. If IP were to allow customers on SC 24 to terminate service on 30 days notice, the Commission would be less concerned about the impact of IP's annual approach. However, since IP has been adamant against this in the past(*See* Order Dkt. No. 01-0432 at 123-5), the Commission will adopt IIEC's bi-monthly approach since it gives customers greater flexibility."

IX. <u>Market Value Adder Based on Length of Contract</u>

A. <u>Argument</u>

The Proposed Order rejects the use of an additional adder to market value based on the multi-year market value approach. Proposed Order at 68. IIEC addressed this issue in its Initial and Reply Briefs. IIEC Initial Brief at 24-26; IIEC Reply Brief at 23-24. It elects to rely upon those arguments in the context of its brief on exceptions.

B. <u>Suggested Language</u>

The conclusion in the third and fourth full paragraphs on page 68 of the Proposed Order should be deleted and the following language inserted in its place:

7. Conclusion

> "The Commission finds arguments in support of the additional adders for the multi-year market value to be persuasive. Therefore, utilities offering the multi-year approach should incorporate them into their multi-year market value tariffs, consistent with IIEC's recommendation a value of 1 mill per kWh for 2 year contracts, 2 mill per kWh for 3 year or more contracts."

X. IP Rider ISS and IP Real Time Pricing Rate

A. Argument

The Proposed Order adopts the suggestion that IP's Rider ISS should be made available to customers who elect the multi-year market value option and subsequently lose their supplier. It also rejects IP's suggestion that it should have the discretion to place customers permanently on Rider ISS or any other rate to IP's economic advantage at the end of the initial service period under Rider ISS in the event the customer is unable to find another supplier. The Proposed Order directs IP to place these customers on the IP real time pricing rate. Proposed Order at 71-72. As a matter of practicality, IIEC agrees that some provision needs to be made for multi-year market value customers who lose their suppliers and are unable to obtain a new supplier. Given the special circumstances of this case, in which IP proposed its MOU in rebuttal, with no opportunity for parties to reply, and made substantial adjustments to the MOU at the time of cross-examination, again without giving parties an opportunity to conduct discovery, prepare reply testimony or otherwise analyze all of the potential effects of the IP proposal, and given the desirability of the multi-year option, it may be necessary for the Commission to agree to the use of Rider ISS at this time. However, IIEC companies would prefer the option to take any applicable bundled service rate in the event they lose or otherwise are unable to obtain a supplier, just as they are able to do now under the single year market value. Since IP is making such service available to single year MVI customers it can and should make it available to multi-year customers until the Commission can otherwise address the issue.

The use of the real time pricing rate, per se, to the best of IIEC's knowledge was not suggested by any witness in this proceeding, nor was it suggested in the context of briefs filed by IP, IIEC, the RES

Coalition, or the Staff.[6] IIEC appreciates that IP will not be able to use its discretion to place customers on the rate that IP chooses for them. However, the decision to use the RTP rate to the exclusion of any other available bundled option should be the subject of further consideration and should not be considered final disposition of this matter, since no party has had the opportunity to adequately consider and respond to such a possibility. Therefore, IIEC recommends that the approach contained in the Proposed Order, if adopted, be adopted as a temporary solution to this problem and that the Commission direct the Staff to evaluate the situation and report to the Commission within 60 days after the first anniversary date of the multi-year market value tariff on the appropriateness and desirability of continuing to use Rider ISS and the real time pricing rate in the manner suggested by the Proposed Order.

B. Suggested Language

The last full paragraph on page 71 of the Proposed Order should be modified to read as follows:

> "The Commission also finds unacceptable, IP's proposal whereby it could choose whether a customer should remain on Rider ISS or be placed on a bundled tariff for the remainder of the multi-year term. Rider ISS contains a section entitled "term of service" to govern when the customer commences service on Rider ISS and when the customer ceases to be served on Rider ISS. The Commission will not grant IP sole discretion to determine under which rate classification it will provide service to the customer. Such matters are better stated in a tariff. The Commission proposes that IP modify Rider ISS to provide that in the event a multi-year transition charge customer is placed on Rider ISS, the customer will be subsequently placed on IP's appropriate bundled service tariff, in the event that such customer does not commence service with a new RES. Because this issue was

[6] IIEC acknowledges that IP's Rider ISS uses energy pricing elements from IP's real time pricing rate, but this issue relates to the period after ISS expires.

> discussed so late in this proceeding, the Commission's determination here is not to be the final word on this matter. The Commission will consider in a future case the appropriate fallback rate or rates for multi-year market value customers on the IP system.

In the alternative, in the event the Commission elects to require customers to be returned to the IP real time pricing tariff, the last full paragraph on page 71 of the Proposed Order should be modified to add the following language at the end of the paragraph:

> "The Commission also finds unacceptable, IP's proposal whereby it could choose whether a customer should remain on Rider ISS or be placed on a bundled tariff for the remainder of the multi-year term. Rider ISS contains a section entitled "term of service" to govern when the customer commences service on Rider ISS and when the customer ceases to be served on Rider ISS. The Commission will not grant IP sole discretion to determine under which rate classification it will provide service to the customer. Such matters are better stated in a tariff. The Commission proposes that IP modify Rider ISS to provide that in the event a multi-year transition charge customer is placed on Rider ISS, the customer will be subsequently placed on IP's appropriate real time pricing tariff, in the event that such customer does not commence service with a new RES.
>
> The Commission recognizes that the decision of IP to offer customers taking the multi-year market value option a default service of any kind came at a point in this proceeding when parties did not have a fair opportunity to evaluate and respond to the IP proposal or to suggest alternatives. Therefore, the Commission's resolution of this issue should not be considered as precedential or permanent. The Commission directs the Staff to prepare a report to the Commission on the use of Rider ISS and the real time pricing rate in the fashion contemplated. The report should include, but not be limited to, identification of any problem or inequities in the use of Rider ISS and the RTP rate and proposed solutions."

XI. CONCLUSION

IIEC recommends the Proposed Order be modified as suggested above. IIEC's failure to address a particular provision or recommendation of the Proposed Order should not be considered acquiescence in or agreement to the recommendations.

Respectfully submitted,

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