

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

CENTRAL 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	)	(Cons.)
Value Index II. (Tariffs filed October 1, 2002)	)	

**REPLY BRIEF ON EXCEPTIONS**  
**ON BEHALF OF THE**  
**ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

Pursuant to the schedule in this proceeding, the Illinois Industrial Energy Consumers (IIEC) respond to the briefs on exceptions of the parties as described below. IIEC's failure to comment on any argument or position taken by a party should not be construed as an endorsement of same.

**I. ILLINOIS COMMERCE COMMISSION STAFF**

The Illinois Commerce Commission Staff (Staff) takes issue with the Proposed Order's conclusion with respect to the Ameren Companies' (Ameren) proposed capacity adder to the MVI. The Staff argues the Proposed Order's conclusion is deficient, because it fails to take into account there is now a second

capacity adder being included in the MVI. Staff asserts Ameren has not shown the current capacity charge adder is deficient, nor has it justified a second or additional capacity charge adder. Staff BOE at 1-2.

IIEC is in agreement with Staff and recommends that the Illinois Commerce Commission (Commission) reject adding charges to the MVI that are already accounted for in the MVI, or otherwise have not been justified. IIEC had also objected to this capacity backed adjustment, for similar reasons. IIEC BOE at 8-9.

## **II. AMEREN COMPANIES**

Ameren takes exception to the use of the RES Coalition proposal to use a Commonwealth Edison Company (ComEd) specific adjustment to account for sales and marketing expenses as part of the Ameren MVI. Ameren explains that the RES Coalition method to formulate an adder of 0.026¢ per kWh was a charge specific to the ComEd MVI methodology. Ameren BOE at 2. Ameren correctly acknowledges there are different cost structures for it and ComEd. Ameren BOE at 4. Ameren reasons, therefore, the ComEd adder should not be summarily applied to the Ameren MVI. Though Ameren disputes the appropriateness of the specific adder because it is based on ComEd specific data and information, Ameren does not object to modifying its MVI using the same methodology proposed by the RES Coalition. Ameren BOE at 4. IIEC respectfully disagrees.

IIEC has also argued against the appropriateness of this adjustment for Ameren, explaining it is not an Ameren - specific value. There is nothing in this record that identifies the Ameren specific sales and marketing expenses. Therefore, the value of the appropriate adder for Ameren is unknown. In the alternative, IIEC recommended that to the extent the Commission accepted this adjustment, it should direct Ameren to file a modified MVI tariff reflecting this adjustment on or after January 1, 2005, to be effective

on June 1, 2005. IIEC BOE at 16-17.

Finally, with regard to IIEC's recommended date for Ameren to file a new MVI, no earlier than January 1, 2005, in the event Ameren seeks to reinstate its transition charge effective June 1, 2005, IIEC is advised that in the context of Docket No. 02-0657, Ameren has agreed to make such a filing on December 1, 2004, Ill. C.C. Docket 02-0657. IIEC would not object to an Ameren filing a modified tariff as early as December 1, 2004 in lieu of IIEC's proposed January 1, 2005 date.

### **III. ILLINOIS POWER COMPANY**

#### **A. IP's Floating Adder**

In its Introduction & Summary, Illinois Power Company (IP) touts its support for the floating adder. IP BOE at 2-4. IIEC has addressed the legality and propriety of the floating adder in its Brief on Exceptions and other briefs, and will not repeat those arguments. IIEC Int. Br. at 15-21; IIEC Reply Br. at 10-16; IIEC BOE at 19-26. Nevertheless, there are certain statements made by IP that warrant a response.

IP argues that the floating adder contains the input of alternative suppliers, consumers and the utility. Therefore, IP reasons incentives to bias the market value high or low have been effectively mooted. IP BOE at 3. However, IIEC notes that no end use customer group signed the MOU. It is supported by a coalition of Retail Electric Suppliers (RESs), IP, and the Illinois Energy Consortium, a kind of aggregator of power and energy. *See*, Grace Tr. 112-113. All of these parties (other than IP) have an incentive to overstate the market value in order to increase headroom, which benefits RESs. IP has an incentive to overstate the market value in order to drive customers off PPO. So, IP's claims to the contrary, the floating adder does not remove incentives to bias the market value, and does not "effectively moot" this issue.

Moreover, the market value produced by the floating adder is not a function of the change in the price for power and energy, but instead is a function of customer load switching. Further, IP argues that under its floating adder approach, if the adder is too high and switching increases at an accelerated rate, the adder will fall and if the adder is too low, it will rise, and if it is just right, the adder will remain the same. IP BOE at 4. The record in this proceeding is devoid of any evidence to suggest that any particular level of customer load switching justifies an increase or decrease in the market value. As IIEC pointed out in its brief on exceptions, even IP admitted the market value of power and energy cannot be measured by customer switching. IIEC BOE at 21.

Similarly, the Commission should be aware the levels of load switching selected by IP and its supporters as triggers for adjustments of the floating adders, are arbitrary levels which were the end result of negotiations among certain parties in this proceeding. The floating adder and load switching levels are not supported by any analysis in the record and certainly not supported by evidence in the record demonstrating there is any valid relationship between the value of power and energy in the market and the level of RES activity or customer switching in the IP service territory. Thus, there is no evidence in the record to substantiate that any particular level of market value under the negotiated floating adder is “just right.”

B. IP’s Concerns With Regard To Multi-Year Option

IP recommends certain modifications to the Proposed Order, as it relates to the multi-year option.

1. Data Hierarchy

In regard to data hierarchy IP states it does not wish to use historical data to calculate the multi-year market value in the absence of actual traded values or bid/offer data to calculate the market for the

multi-year value. IP suggests it is willing to expand the data hierarchy for the multi-year data to include bids and offers, but is not willing to expand it to include the use of historical data in the absence of bids and offers (although IIEC notes this is a 180 degree reversal of position by IP. *See* Blackburn, Tr. 245-246). IP BOE at 8-9. IIEC has no objection to this particular clarification of the Proposed Order.<sup>1</sup> However, for reasons stated below the Commission should not adopt IP's position based on IP's statement not compelled by statute to offer the multi-year CTC. *See* IP BOE at 9.

Section 16-112 contemplates that utilities will offer multi-year market values when market data are available to make multi-year market value calculations. IP (and other utilities in this proceeding) have suggested that multi-year market data are available. Therefore, to the extent the data are available, IIEC believes the utilities are compelled to offer the multi-year option.

Section 16-112(a) of the Illinois Public Utilities Act (Act) (220 ILCS 5/16-112(a)) provides that if the market value index tariffs fail to establish market values for "each of the years specified in the neutral fact-finder process," a tariff incorporating the market values resulting from the neutral fact-finder (NFF) values will be used to develop such values. Thus, the NFF approach is a default approach for establishing multi-year market values in the event the MVI tariff established by the electric utilities fails to do so. In this case the utilities have suggested there is sufficient market data available to offer a multi-year option under the MVI approach.

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<sup>1</sup> Indeed, IP was not limiting itself to actual trades in the first instance. IP indicated in response to a data request and confirmed on cross examination that it will use Platt's Energy Trader prices for calculating multi-year market values. Blackburn, Tr. 243-246. The information to be used is "long term forward assessments" as published by Platt's. There is no record evidence that Platt's relies solely on actual trades in making its assessments Blackburn, Tr. 244. Rather, the record reflects that Platt's uses surveys of brokers and other market participants McNeil, Tr. 588-589.

Further, the Commission is empowered to require electric utilities to place into effect tariffs that provide for a determination of market value as a function of an “exchange traded or other market traded index, options or futures contract or contracts,” once an electric utility serving at least 300,000 customers has placed such a tariff into effect. *See* 220 ILCS 5/16-112(m). Thus, if there are sufficient data available to make multi-year market value calculations, the Commission may compel electric utilities in Illinois to offer such an MVI tariff.

## 2. Backstop Service

IP also addresses the Proposed Order’s conclusion that multi-year market value customers who lose their RES supply should be able to take the appropriate RTP rate. IP BOE at 10. In support of its suggested modifications, IP argues that while it understands the concerns about the multi-year market value option without providing “backstop” service for customers losing their suppliers, the obvious solution is for customers to obtain a back-up service from a separate RES at the same time it enters into a long-term contract with the RES providing its power and energy under the multi-year option. IP BOE at 10. Thus IP’s position appears to be that customers should contract with two RES at once. IP’s argument is naive. The Commission has reported that only 16 customers out of 66,000 eligible customers on the IP system are currently taking RES supply. Therefore, customers have been lucky to find one supplier at a time on the IP system, let alone two.

IP also recommends that the Proposed Order be amended to allow it to impose a 10% adder on Rider ISS used to serve multi-year market value customers that lose their supplier. IP argues the adder is necessary because otherwise the rate would be too attractive and would prevent RESs from stepping in to provide backstop service. IP also suggests that such an adder is appropriate because it is not

compelled to offer backstop service under Section 16-112(o). IP BOE at 10.

IP's proposal to use Rider ISS in this manner was clearly an afterthought in this case. IP determined it would offer such a service only hours or minutes before its witnesses appeared for cross-examination in this proceeding. Peters Tr. 313-314. Therefore, no party, including IP, had the opportunity to explore the use of Rider ISS or its modification for use under such circumstances. Thus, there is absolutely no evidence supporting IP's argument that a 10% adder is necessary in order to ensure that Rider ISS is not an attractive alternative to RES service or it is necessary in order not to discourage RESs from supplying such service. IIEC further notes the IP MOU, according to its supporters, is designed specifically to encourage RESs to enter the market, but there is no suggestion in the MOU or elsewhere in the record, that it is necessary to make backup service a punitive service to encourage RESs to enter the market. *See* IP Ex. 19.

IP, in a footnote, states the General Assembly does not share the Commission's concerns regarding backstop service because it enacted Section 16-112(o), which specifically provides that the utility need not provide backstop service. IP BOE at 10, fn. 6. IP's statement as to the law is in error. Section 16-112(n) multi-year transition charge contracts are based on summaries provided to the NFF. Section 16-112(o) applies only to those contracts while arise out of Section 16-112(n). The backstop service at issue in this proceeding does not involve the NFF summaries, but instead IP's proposed market value index methodology.

IP expresses a concern that use of RTP pricing may have unforeseen consequences for certain customers or in certain situations, and then again in a footnote indicates its understanding that the appropriate real time pricing tariff means DA-RTP for eligible customers, DA-RTP II for non-residential

customers not eligible for DA-RTP and SC 3 for residential customers. IP BOE at 11, fn. 8.

IP's proposal should be rejected. There is no basis in the record in this proceeding for any of the choices identified by IP. IP apparently finds the use of Rider DA-RTP as the "appropriate retail time pricing rate" to be attractive because the recovery factor is much greater under that Rider than it is under Rider DA-RTP II. While the current Rider ISS calls for hourly pricing based on Rider DA-RTP, which includes the onerous recovery factor, it is palatable because Rider ISS is in place for up to only two billing cycles. However, to the extent Rider DA-RTP is used in the manner suggested in the Proposed Order, where customers use the rate for much longer periods of time than two billing cycles, the onerous recovery factor only adds insult to injury. The Commission acknowledged the inappropriateness of the Rider DA-RTP recovery factor when it approved Rider DA-RTP II. Illinois Power Company, Ill. C.C. Dkt. No. 98-0348, 1998 Ill. PUC LEXIS 825,\*28 (Sept. 23, 1998). While IIEC continues to support customers being able to return to the applicable bundled tariff service option, if they lose their supplier, if the Commission allows the use of an RTP rate for back-up service, it should direct the use of Rider DA-RTP II not Rider DA-RTP.

#### Clarification of Findings Paragraph

IP proposed that Finding paragraph 4 in the Proposed Order be clarified. That paragraph requires a compliance tariff to be filed "no later than May 1, 2003." IP explains the evidence in the record demonstrates why its new MVI tariff would only become applicable to those customers with Anniversary Dates in, or first commencing delivery services in, the July - August 2003 bill cycle months. IP correctly asserts there is no testimony or evidence to the contrary. IP BOE at 13-14. IP proposes that Finding paragraph number 4 be clarified to indicate that while its new MVI tariffs should be filed no later than May

1, 2003, they should not be effective before the July - August 2003 bill cycle months for existing customers.

IIEC is in agreement with this needed clarification, subject to further clarification. In IP's proposed language it provides that the first customers who will have market values calculated under MVI II are those with anniversary dates in the July-August, 2003 billing cycle months. Conceivably, a customer's July billing cycle could actually begin with a customer's meter read in June 2003. Nonetheless, it would appear based on the record cited by IP and IP's reasoning for that clarification, that it does, in fact, intend that the MVI II values will not apply prior to July 2003. *See* IP Ex. 1.7 at 1.

There would be a benefit to both IP and its customers to know that the first customers who will have market values calculated under MVI II will be those "customers commencing Delivery Services or with Anniversary Dates on or after bill cycle one of July 2003." *See* IP Ex. 1.7 at 1.

### **RES COALITION**

The RES Coalition argues that ComEd should not move the data collection to January for Applicable Period A market value energy calculations, and puts forth a number of arguments in support for this position. RES Coalition at BOE at 19-22. IIEC believes there is merit to the RES Coalition's recommendations in this regard, and supports same.

The RES Coalition asserts that the Commission should require ComEd to make individual CTCs available on Power Path. RES Coalition BOE at 25-26. In response, while IIEC has no objection to the RES Coalition proposal, the Commission should continue to ensure that customers will have the right to block the release of CTC information, if that is their choice. Further, the Commission should make clear the customer has the right to impose a separate CTC block from the usage block, as customers may want to make usage history available to RESs, but not the CTC.

Respectfully submitted,

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