ORDER INITIATING INVESTIGATION

By the Commission:

Introduction

Pursuant to prior orders of the Illinois Commerce Commission (“Commission” or “ICC”), the four largest electric public utilities in the State of Illinois (Central Illinois Light Company, d/b/a AmerenCILCO, Central Illinois Public Service Company, d/b/a AmerenCIPS, Commonwealth Edison Company (ComEd), and Illinois Power Company, d/b/a AmerenIP), have implemented tariffs that create an auction process under which they will purchase the electricity used to serve their retail electric service customers on and after January 2, 2007.

As is more fully described below, the two Sections of the Illinois Auction are to be declared successful if the Commission has not initiated an investigation or other formal proceeding within the period that ends at the close of the fifth business day following the completion of the relevant Section of the Auction. For reasons discussed below, the Commission is entering this Order to initiate such an investigation of the Hourly Price Section of the Illinois Auction. In order to provide the context for this action, it is necessary to describe the history of the relevant tariffs, highlight the provisions of those tariffs related to this investigation, and lay out provisions of the Public Utilities Act under which this investigation is conducted. Following those sections will be a discussion of the reasons for initiating the investigation, and the concluding provisions of this Order.

Filings and Proceedings Related to Rider CPP (ComEd)
On February 25, 2005, ComEd filed proposed rate sheets describing a competitive procurement process ComEd would use to procure electricity at wholesale, including an auction the results of which would determine the wholesale prices ComEd would pay for the electricity it would supply to various classes of its retail customers. The proposed rates also described the methodology that ComEd would use to determine retail charges to recover the costs that ComEd incurs for wholesale electricity procurement.

The Commission suspended ComEd’s proposed tariffs on March 9, 2005, thereby initiating Docket No. 05-0159. On January 24, 2006, the Commission entered its Order in that proceeding (“ComEd Order”). In the ComEd Order, the Commission found the tariff proposed by ComEd in its initial filing, as modified in accordance with the findings in the Order, to be just and reasonable [ComEd Order, finding (6), p. 247]. New tariff sheets reflecting the modifications authorized by the Commission were to bear an effective date not less than 30 days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period [ComEd Order, finding (7), pp. 247-248]. The ComEd Order permanently canceled the originally proposed tariff sheets, and authorized and directed ComEd “to file new tariff sheets with supporting workpapers in accordance with the Findings of this Order, applicable on and after the effective date of said tariff sheets and operational on and after January 2, 2007.” [ComEd Order, p. 248.]

On June 9, 2006, ComEd filed a number of rate sheets in reliance on the authority conferred in the Order, including the rate sheets comprising Rider CPP (Commonwealth Edison Company, ILL.C.C. No. 4, First Revised Sheet No. 244 through Original Sheet No. 294.38). Rider CPP took effect July 9, 2006. It defines a number of terms related to the auction process, establishes detailed procedures and methodologies for the conduct of the auction and the translation of auction results into retail charges, and outlines the responsibilities of various persons and entities with respect to these processes and methodologies.

Filings and Proceedings Related to Rider MV (the Ameren Companies)

On February 28, 2005, AmerenCILCO, AmerenCIPS, and AmerenIP (jointly “the Ameren Companies” or “Ameren”) filed proposed rate sheets describing a competitive procurement process they would use to procure electricity at wholesale. As with the tariffs that ComEd proposed, the Ameren Companies’ proposed rates described the methodology to be used to determine retail charges to recover the costs Ameren incurs for wholesale electricity procurement. The Ameren proposal also included an auction the results of which would determine the wholesale prices Ameren would pay for the electricity it would supply to various classes of its retail customers.

The Commission suspended the proposed Ameren tariffs on March 9, 2005, thereby initiating Docket Nos. 05-0160, 05-0161, and 05-0162. The cases were consolidated on April 8, 2005. On January 24, 2006, the Commission entered its Order in the consolidated
proceedings (“Ameren Order”). The Commission found that, subject to the determinations made and conditions imposed in the Ameren Order, the tariffs proposed by the Ameren companies in their initial filing, as modified to reflect the findings in the Ameren Order, were just and reasonable [Ameren Order, finding (5), pp. 258-259]. New tariff sheets reflecting the modifications authorized by the Commission were to bear an effective date not less than 30 days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period [Ameren Order, finding (6), pp. 259]. The Order permanently canceled the originally proposed tariff sheets, and authorized and directed the Ameren companies “to file new tariff sheets with supporting work papers in accordance with the findings of this Order, applicable on and after the effective date of said tariff sheets and operational on and after January 2, 2007.” [Ameren Order, p. 259.]

On July 7, 2006, the Ameren companies filed a number of rate sheets in reliance on the authority conferred in the Ameren Order, including the rate sheets comprising Rider MV (AmerenCILCO, Ill. C. C. No. 18, 1st Revised Sheet No. 27 through Original Sheet No. 27.086; AmerenCIPS, Ill. C. C. No. 16, 1st Revised Sheet No. 27 through Original Sheet No. 27.086; AmerenIP, Ill. C. C. No. 35, 1st Revised Sheet No. 27 through Original Sheet No. 27.086). Rider MV took effect for all of the Ameren companies on July 10, 2006. It defines a number of terms related to the auction process, establishes detailed procedures and methodologies for the conduct of the auction and the translation of auction results into retail charges, and outlines the responsibilities of various persons and entities with respect to these processes and methodologies.

Relevant Tariff Provisions

A number of the provisions of ComEd's Rider CPP and the Ameren Companies’ Riders MV are relevant to this Order Initiating Investigation. In the case of each portion of ComEd’s Rider CPP quoted below, the language in the Ameren Companies’ Riders MV is substantially the same, with appropriate citations to the Ameren Order rather than the ComEd Order. Citations to the relevant portions of the Ameren tariffs are provided below.

The tariffed responsibilities of the Auction Manager include the following:

17. Review the Illinois Auction immediately following the Auction Completion Date, and submit a confidential report to the ICC by the end of the second business day following the Auction Completion Date. Such report is described in the Confidential Report of the Auction Manager to the ICC subsection of the CPP Documents Section of this Competitive Procurement Process part[.]

Commonwealth Edison Company, ILL.C.C. No. 4, 1st Revised Sheet No. 259 [See
The Confidential Report of the Auction Manager to the ICC portion of the tariff, in turn, reads as follows:

The Auction Manager submits a formal, confidential report to the ICC by the end of the second business day following the Auction Completion Date. Such report provides a factual summary and evaluation of the activities and events that occurred during the course of the Illinois Auction. Such report also addresses the processes and activities undertaken prior to the commencement of the Illinois Auction and external events that may have affected the Illinois Auction results. Such report also includes the Auction Manager’s conclusions with respect to whether the Illinois Auction met its goals. It also provides the Auction Manager’s confirmation, under oath, that such confidential report is an accurate summary of the Illinois Auction as it was conducted and an accurate assessment of whether such auction was conducted fairly and appropriately following the Illinois Auction Rules and applicable procedures established in accordance with the ICC’s Order entered in Docket No. 05-0159 and this rider.

Under Rider CPP, the responsibilities of the Commission Staff (Staff) include the following:

4. Submit a confidential report to the ICC by the end of the second business day following the Auction Completion Date. Such report is described in the Confidential Report of the Staff to the ICC subsection of the CPP Documents Section of this Competitive Procurement Process part[.]
assessment to the ICC as to whether the Illinois Auction was conducted fairly and appropriately and all necessary actions to ensure the competitiveness and integrity of such auction were followed. Such report also addresses activities undertaken prior to the commencement of the Illinois Auction, external events that may have affected the Illinois Auction results, and any issues or concerns identified by the Staff, and any recommendations the Staff has regarding further action by the ICC.

Commonwealth Edison Company, ILL.C.C. No. 4, First Revised Sheet No. 262 [See 1st Revised Sheet Nos. 27.026 and 27.027 of AmerenCILCO’s Ill. C. C. No. 18, AmerenCIPS’s Ill. C. C. No. 16, and AmerenIP’s Ill. C. C. No. 35]

Rider CPP describes the process following the Commission’s receipt of the reports of the Auction Manager and of the Staff, in part, as follows:

If, during the period that ends at the end of the fifth business day following the Auction Completion Date, the ICC initiates a formal investigation or other formal proceeding regarding the Fixed Price Section or the Hourly Price Section of the Illinois Auction, then the Company does not execute the SFCs [Supplier Forward Contracts] pertaining to auction products in such Illinois Auction Section. The Company, the Staff, and the Auction Manager determine, within ten (10) business days after the ICC takes such formal action, if the descending-clock auction phase for such Illinois Auction Section can be conducted again, starting over with the same Round 1 price(s) in a manner that timely addresses and resolves the concern(s) that led to the ICC’s formal action. If the Company, the Staff, and the Auction Manager make such a determination, then the descending-clock auction phase for such Illinois Auction Section is repeated in accordance with terms consistent with this rider in a timely fashion, and the steps following such auction phase are followed as provided in this rider, except that the schedule for such steps must conform to reflect that the descending-clock auction phase is repeated on a later date. Upon completion of such repeated auction phase and no rejection of its results by the ICC, the Auction Manager issues a Declaration of Successful Result for such Illinois Auction Section. In the event that the Company, the Staff, and the Auction Manager determine that such Illinois Auction Section cannot be repeated in a manner that timely addresses and resolves the concern(s) that led to the ICC’s formal action, and the ICC has not approved an alternative procurement mechanism, then the provisions provided in the Limitations and Contingencies part of this rider become operative.

In the event that the ICC takes no formal action as described in the preceding paragraph, the Auction Manager issues a Declaration of a Successful Result for such Fixed Price Section or Hourly Price Section, as applicable, at the end of business on the fifth business day following the Auction Completion Date.
Relevant Statutory Provisions

Section 9-250 of the Act provides as follows:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof.

220 ILCS 5/9-250

Section 10-101 of the Act states in part as follows:

The Commission, or any commissioner or hearing examiner designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish.
Subsection (i) of Section 16-111 of the Act provides as follows:

Subsequent to the mandatory transition period, the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, shall consider only (1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services; (2) collection of transition charges in accordance with Sections 16-102 and 16-108 of this Act; (3) recovery of any employee transition costs as described in Section 16-128 which the electric utility is continuing to incur, including recovery of any unamortized portion of such costs previously incurred or committed, with such costs to be equitably allocated among bundled services, delivery services, and contracts with alternative retail electric suppliers; and (4) recovery of the costs associated with the electric utility’s compliance with decommissioning funding requirements; and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services. In setting rates for tariffed services, the Commission shall equitably allocate joint and common costs and investments between the electric utility’s competitive and tariffed services. In determining the justness and reasonableness of the electric power and energy component of an electric utility’s rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility’s tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112, and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%. In any such case, the Commission may also elect to extend the provisions of Section 16-111(e) for any period in which the electric utility is collecting transition charges, using information applicable to such period.

220 ILCS 5/16-111(i) [Emphasis supplied.]

Hourly Price Section Reports of the Auction Manager and of the Commission Staff

Both the Ameren Order and the ComEd Order addressed whether the products sought by ComEd were to be part of the same auction as the products sought by Ameren, or if the ComEd and Ameren products were to be part of an auction conducted separately. In
both the ComEd Order and the Ameren Order, the Commission determined that there would be two separate sections of the Illinois Auction: the Fixed Price Section and the Hourly Price Section. During the Illinois Auction, bidders would be permitted to switch between ComEd and Ameren products within the Fixed Price Section, and within the Hourly Price Section, but no bidder would be permitted to switch between those two Sections [ComEd Order, pp. 113-115; Ameren Order, pp.123-125]. For this reason, the determination as to whether to investigate is made separately as to the Fixed Price Section and as to the Hourly Price Section of the Illinois Auction.

The Illinois Auction began on September 5, 2006. On September 8, 2006, the Auction Manager announced the close of the Hourly Price Section of the Illinois Auction. The Auction Manager submitted its confidential report concerning the Hourly Price Section of the Illinois Auction to the Commission on September 12, 2006, and the Staff submitted its confidential report to the Commission concerning the Hourly Price Section of the Illinois Auction on the same day.

The Commission has reviewed and considered these confidential reports. The reports outline the procedures followed before and during the Illinois Auction, discuss whether any external events occurred which could be seen as having an effect on the auction results, and provide information on a number of other matters related to the Illinois Auction. The reports also contain information on the level of participation in the Hourly Price Section of the Illinois Auction, and they state the final prices of the products that were the subject of the Hourly Price Section.

Based on these reports, the Commission finds the auction process itself worked in the manner anticipated. To be clear, we have no concerns with the nature of the auction or the way it was conducted. It was managed well, all of the relevant rules were carefully followed and there was no evidence that collusive or coordinated bidding behavior undermined competitiveness. However, in our assessment, the Hourly Priced Section did not generate as much interest as initially thought. This is likely attributable to the high level of uncertainty associated with the demand for this product. The hourly prices produced by the auction may make real-time pricing an uneconomic alternative for retail customers. For these reasons, the Commission hereby initiates a formal investigation into the Hourly Price Section of the Illinois Auction pursuant to the Public Utilities Act, the ComEd Order, the Ameren Order, ComEd’s Rider CPP and the Ameren Companies’ Rider MV. The Commission emphasizes that this investigation is not a rejection of the auction process. Rather, it serves to identify a means to better meet the needs of hourly priced customers.

Findings and Ordering Paragraphs

The Commission, having reviewed the record in this proceeding, which consists of the Reports of the Auction Manager and of the Staff, concerning the Hourly Price Section of the
Illinois Auction, and being fully advised in the premises, is of the opinion and finds as follows:

(1) that it has jurisdiction over the subject matter of this proceeding and the parties hereto;

(2) the recitals set forth in the prefatory portion of this order are hereby adopted as findings of fact;

(3) the report of the Auction Manager and the report of the Staff concerning the Hourly Price Section of the Illinois Auction should be made a part of the record of this proceeding, and should be determined to be confidential at this time pursuant to Section 4-404 of the Act, subject to further order of the Commission;

(4) an investigation should be initiated regarding the Hourly Price Section of the Illinois Auction pursuant to the provisions of tariff, of the ComEd Order and the Ameren Order, and of statute cited in the prefatory portion of this Order, for the reasons stated in the prefatory portion of this Order.

IT IS THEREFORE ORDERED that an investigation is initiated into the matters recited in the prefatory portion of this Order.

IT IS FURTHER ORDERED that the report of the Auction Manager and the report of the Staff concerning the Hourly Price Section of the Illinois Auction are hereby made a part of the record of this proceeding, and ordered confidential at this time pursuant to Section 4-404 of the Act, subject to further order of the Commission.

IT IS FURTHER ORDERED that a copy of this Order be served on all parties of record to Docket No. 05-0159, and on all parties of record to Docket Nos. 05-0160, 05-0161, and 05-0162, Consolidated; electronic service to the e-mail addresses of such parties as most recently provided to the Commission in the context of those dockets will be deemed to be sufficient for purposes of this ordering paragraph.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.
By order of the Commission this 14th day of September, 2006.

(SIGNED) CHARLES E. BOX

Chairman