STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
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Petition of Commonwealth Edison Company for Approval of Initial Procurement Plan.	:	**07-0528**
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	:	
Commonwealth Edison Company	:	**(Cons.)**
	:	
Verified Petition for Approval of Tariffs Implementing a New Competitive Procurement Process and Recovering Procurement Costs.	:	**07-0531**
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ORDER

DATED: December 19, 2007

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By the Commission:

I. PROCEDURAL HISTORY/STATUTORY AUTHORITY

Section 16-111.5(j) of the Public Utilities Act ("PUA" or "Act"), 220 ILCS 5/16-111.5, requires certain electric utilities to file an "initial procurement plan." That section further provides, "The initial procurement plan shall identify the portfolio of power and energy products to be procured and delivered for the period June 2008 through May 2009, and shall identify the proposed procurement administrator . . . ."

The initial procurement plan shall include the components identified in Section 16-111.5(b). They include (1) an hourly load analysis; (2) an analysis of the impact of any demand side and renewable energy initiatives; (3) a plan for meeting the expected load requirements that will not be met through preexisting contracts; and (4) proposed procedures for balancing loads.

Section 16-111.5(c) provides that the "procurement process" shall be administered by a "procurement administrator." The duties of the procurement administrator ("PA") are detailed in 16-111.5(c)(1).

Section 16-111.5(k) provides in part, "In order to promote price stability for residential and small commercial customers during the transition to competition in Illinois, and notwithstanding any other provision of this Act, each electric utility subject to

this Section shall enter into one or more multi-year financial swap contracts that become effective on the effective date of this amendatory Act."

Section 16-111.5 (l) provides in part, "An electric utility shall recover its costs of procuring power and energy under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (l), will be recovered."

Regarding the **timeline** following the filing of the initial plan, Section 16-111.5(j)(i) provides:

- Within 14 days following filing of the initial procurement plan, any person may file a detailed objection with the Commission contesting the procurement plan submitted by the electric utility. All objections to the electric utility's plan shall be specific, supported by data or other detailed analyses.

- The electric utility may file a response to any objections to its procurement plan within 7 days after the date objections are due to be filed.

- Within 7 days after the date the utility's response is due, the Commission shall determine whether a hearing is necessary. If it determines that a hearing is necessary, it shall require the hearing to be completed and issue an order on the procurement plan within 60 days after the filing of the procurement plan by the electric utility.

Pursuant to 16-111.5(j)(ii), "The order shall approve or modify the procurement plan, approve an independent procurement administrator, and approve or modify the electric utility's tariffs that are proposed with the initial procurement plan." The Commission "shall approve the procurement plan if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability."

On October 29, 2007, Commonwealth Edison Company ("ComEd," "the Company," or "the Utility") filed its plan in Docket No. 07-0528 and related tariffs in Docket No. 07-0531, which were intended to comply with the statutory requirements. As discussed below, these two cases were subsequently consolidated by the Administrative Law Judge.

Petitions for leave to intervene in this proceeding were filed by the People of the State of Illinois through the Attorney General, Lisa Madigan (the "AG"), the Citizens Utility Board ("CUB"), Dynegy Inc. ("Dynegy"), Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. ("Constellation"), the Retail Energy Supply Association ("RESA"), PSEG Energy Resources & Trade LLC, the Coalition of

Energy Suppliers and Invenergy Wind North America LLC ("Invenergy"). An appearance in this proceeding was filed on behalf of the City of Chicago by its counsel.

On November 13, 2007 objections to ComEd's plan, or comments, were filed by the AG, CUB, Dynegy, Constellation, RESA, Invenergy, and the Staff of the Illinois Commerce Commission ("Staff"). On November 20, 2007, ComEd filed its Response to the Objections to its Initial Procurement Plan.

On November 20, 2007, pursuant to Section 16-111.5(j) of the PUA, the Illinois Commerce Commission ("Commission"), in conference, approved the holding of a hearing. On November 21, 2007, parties were advised by letter of the action of the Commission. Notice of the hearing was served on parties and on Municipalities served by ComEd.

On November 28, 2007, Supplemental Comments were filed by the AG and by CUB; Staff filed Reply Comments as did RESA; Dynegy filed Additional Comments. On November 30, 2007, ComEd filed a Reply (a/k/a "Supplemental Reply").

Pursuant to Notice, a hearing was held in this in this matter on December 3, 2007 at the Commission's Office in Springfield, Illinois. Appearances were entered by various parties. At the conclusion of that hearing the record was market "heard and taken."

A proposed order was served on all parties of record on December 11, 2007. On December 13, 2007, briefs on exceptions to the proposed order ("BOEs") were filed by CUB, Staff, the AG, ComEd, and Constellation. Those BOEs have been duly considered in this final Order.

II. COMED'S PROCUREMENT PLAN

The Illinois Power Agency Act ("IPA Act" or "IPAA") and the PUA provide specific guidelines regarding the procurement process. However, the responsibility for such procurement activities by the Illinois Power Agency ("IPA") does not commence until the planning period beginning June 1, 2009, with the Utilities bearing responsibility to acquire supply resources until such time. 220 ILCS 5/16-111.5(a) of the PUA requires the Utilities procure power and energy for their eligible retail customers in accordance with the applicable provisions set forth in Section 1-75 of the IPA Act and Section 16-111.5 of the PUA.

The ComEd Plan is divided into four sections. Section I contains an introduction and summary. Section II addresses the Load Forecast. Section III covers Portfolio Design. Section IV concerns the Selection of the Procurement Administrator. Various tables and appendices are attached to the Plan.

A. Introduction and Summary (Section I)

ComEd's plan includes a five-year hourly load forecast for the period June 1, 2008 through May 31, 2013. Under the Act, this initial plan provides for procurement of supply for the One-year period beginning on June 1, 2008 and ending on May 31, 2009. Procurement plans for periods after May 31, 2009 will be prepared and filed by the Illinois Power Agency ("IPA") and may propose use of procurement contracts for longer periods of time.

This Procurement Plan takes into account the existing contracts for supply entered into by ComEd as a result of the September 2006 Illinois Auction process. Those contracts extend for periods ending on May 31, 2008, May 31, 2009 and May 31, 2010. The plan also reflects the multi-year financial swap contract entered into with Exelon Generation Company ("ExGen"), pursuant to the Act's revisions to the PUA (220 ILCS 5/16-111.5(k)), in order to promote price stability for residential and small commercial customers during the transition to competition in Illinois. The swap contract provides a financial hedge for the purchase of 1,000 MW of Around the Clock ("ATC") energy during the June 1, 2008 through May 31, 2009 period. The request for proposal process proposed in this initial plan, therefore, provides for procurement of supply in excess of amounts that will be acquired under the existing Illinois Auction contracts or subject to the financial swap contract.

ComEd's five-year hourly load forecast is based on the Act's provisions identifying eligible retail customers. Eligible retail customers include residential and other customers who are entitled to purchase fixed-price bundled electric service from ComEd. Because the Act provides that service to retail customers with peak demand of 400 kW and above is declared to be competitive, that customer group will no longer be entitled to fixed-price bundled service after May 2008. As a result, the expected load of the 400 kW and above customer class is not included in the load forecast for eligible retail customers.

Similarly, ComEd recently received approval from the Commission in Docket No. 07-0478 to have the 100 kW to 400 kW customer class declared competitive under the new standards established by the Act. Therefore, the 100 kW to 400 kW customers would no longer be considered eligible retail customers under the Act. However, customers in the 100 kW to 400 kW group who are taking bundled service as of the effective date of the Act would be entitled to remain on bundled service through May 31, 2010. The Act provides that it is the utility's option whether or not to include the load of such customers in its procurement plan. ComEd has opted to do so, and the load of such customers is, therefore, included in the forecast and the Plan. Customers in the 100 kW to 400 kW group who have already switched from bundled service are not eligible to return to bundled service; as a result, their load is not included in the Plan.

The portion of the forecasted load for Included Retail Customers for the June 1, 2008 through May 31, 2009 period that is not already being served by the full requirements Auction Supplier Forward contracts ("SFCs") or the swap agreement is

roughly 882 MW on-peak and 541 MW off-peak on average. However, the expected monthly on-peak and off-peak loads during the year vary noticeably from the average. For example, the on-peak expected loads (net of the auction and swap contracts) vary from a low of 450 MW in April 2009 to a high of 1,488 MW in July 2008; while the net off-peak expected loads vary from a low of 194 MW in April 2009 to a high of 964 MW in July 2008.

This Procurement Plan proposes procurement of 24 different monthly on-peak and off-peak standard block forward products through the RFP, in quantities that reflect the 24 forecasted average monthly on-peak and off-peak loads. Each of the 24 products corresponds to one of the monthly on-peak/off-peak periods during June 2008 through May 2009. This approach recognizes that providing the best fit of standard wholesale products to the expected load shape increases price stability for customers by hedging the greatest amount of the expected energy requirements. There are no available standard products currently traded in the wholesale market that involve delivery quantities for periods shorter than the twenty-four (24) monthly on-peak and off-peak periods, so a more granular matching of standard products to the expected load shape is not possible.

Furthermore, subject to certain constraints yet to be determined, bidders in the RFP will be provided the opportunity to bundle their bids for various products. For example, a bidder might be able to offer a bid for the July 2008 on-peak period and the August 2008 on-peak period combined. By providing some flexibility for bundled bids, bidders will be better able to bid on the products for which they can offer the most competitive prices. The procurement administrator will accept the bids that together represent the lowest cost portfolio of products for providing the desired monthly on-peak and off-peak quantities being solicited through the RFP.

In addition to the energy procured through the RFP process, it will be necessary to acquire or to sell balancing energy to address differences between the amount of procured energy and the actual load of Included Retail Customers. This balancing energy will be procured in the day-ahead and real-time energy markets administered by the PJM Interconnection LLC ("PJM"). PJM-administered markets will also be used to acquire capacity and ancillary services.

The Federal Energy Regulatory Commission ("FERC") approved PJM-administered Reliability Pricing Model program will produce capacity prices to meet the capacity obligation of Included Retail Customers. Similarly, PJM-administered markets for ancillary services provide efficient pricing for Included Retail Customers by being highly visible and easily accessible. No active procurement efforts by ComEd are required to obtain the benefits of PJM-administered markets for capacity and ancillary services. PJM will simply bill ComEd for these services and ComEd will pass through those costs to customers without mark-up.

The plan provides that a Procurement Administrator will design and implement the RFP procurement process, which will be monitored by an ICC-appointed

Procurement Monitor. The Procurement Administrator will also recommend all of the detailed requirements for bidder qualification, credit and collateral, standard form contracts and other necessary elements. ComEd has considered potential candidates who have the qualifications to serve as procurement administrator and has selected National Economic Research Associates, Inc ("NERA"), subject to ICC approval.

Finally, the Plan provides for use of energy efficiency and demand response programs complying with the requirements of the Act, as well as for satisfaction of the renewable energy standards through acquisition of renewable energy credits ("RECs"). The Plan anticipates that these standards will be observed in full compliance with the Act's requirements, subject to the defined rate impact test.

Simultaneous with the filing of its Plan, ComEd also filed tariffs with the Commission to comply with the provisions of the Act and provide for recovery of the costs of the procurement process and other matters. The tariff filing was assigned Docket No. 07-0531.

B. Load Forecasting (Section II)

In accordance with Section 16-111.5(b) of the Act, ComEd's Plan includes a multi-year historical analysis of hourly loads, a review of switching trends and competitive retail market development, a discussion of known and projected changes to future loads and growth forecasts by customer classes. The impacts, if any, of renewable energy initiatives, as well as demand response and energy efficiency programs are also addressed.

1. Development of Five-Year Load Forecast (II.B)

In presenting the load forecast, ComEd's Plan focuses on average usage or load during the 12 monthly on-peak and 12 monthly off-peak periods experienced during a year. This approach provides the most useful information when identifying the necessary standard wholesale products because the two most visible platforms on which electricity products are traded, the New York Mercantile Exchange ("NYMEX") and the Intercontinental Exchange, Inc. ("ICE"), use on-peak and off-peak delivery periods when reporting prices for products. As a result, the primary standard wholesale electricity products traded on those platforms are monthly or annual on-peak (5x16) and off-peak (wrap) products. The hourly load forecast, therefore, presents load requirements using the 24 different time periods covered by these standard products.

2. Hourly Load Analysis (II.B.1)

According to ComEd, the multi-year historical analysis of load during the 24 monthly on-peak and off-peak periods is based on hourly profile data for the period from June 2002 to January 2007. The profiles are based on statistically significant samples from ComEd's residential and small commercial and industrial ("C&I") customer population. ComEd states that customer load profiles provide the best basis for an

analysis of historical hourly usage of Included Retail Customers because the meters used by most of these customers do not record usage on an hourly basis.

Although actual hourly usage data is not available for the entire population, ComEd says statistical sampling is a proven means of determining the hourly load profiles for the Included Retail Customers. Further, ComEd claims the profiles show clear and stable weather-related usage patterns that are indicative of how residential and small C&I customers use electricity. In ComEd's view, the customer load profiles provide reliable information on the historical hourly usage of customers.

ComEd analyzed the hourly load profiles for all the major customer groups within the Included Retail Customers. As a result of that analysis, ComEd developed hourly load models for those major customer groups that determined the average percentage of monthly sales that each customer group used in each hour of that month. Those hourly models were then used to develop the monthly on-peak and off-peak usage percentages for the planning periods. These percentages were applied to ComEd's forecasted monthly sales to obtain the forecasted procurement quantities.

The **residential** single-family non-space heating customer segment represents approximately half of the annual sales of the Included Retail Customer segment and provides a good example of how the hourly load profile data were analyzed and modeled.

Hourly models were developed to account for the strong weather relationship and to account for numerous other factors that influence residential usage. The models explicitly account for the differing effects of energy use at various temperatures. Variables are included to allow for seasonal usage patterns in water heating, refrigeration and other seasonal uses. Weekend and holiday variables are included to allow for behavioral differences on those days relative to weekdays. The amount of daylight on each day is included to account for seasonal differences in lighting loads. Weather variables for prior days are included in the model to account for the dynamic effects of temperature buildup.

According to ComEd, its model is effective in determining variations in electrical usage patterns; thus, it provides a sound basis for identifying the standard wholesale products that will be needed to meet expected load requirements in the future.

ComEd also performed an **analysis of switching trends** and retail market development required by Section 16-111.5(b) of the Act. (II.B.1.b) In determining the expected load requirements for which standard wholesale products will have to be purchased, it is important to forecast the extent to which Included Retail Customers are likely to switch to alternative providers.

ComEd says its commercial and industrial market has developed into one of the largest competitive retail markets in the country. Approximately three-quarters of its non-residential energy sales are currently being provided by retail electric suppliers

("RESs"). The RES sales within the ComEd service territory reflect approximately 11% of the non-residential customer choice sales for the entire United States. ComEd's non-residential customer choice sales are just slightly less than the customer choice sales for the entire state of New York. Of all the utilities in the U.S. only two service territories (both in Texas) have more customer choice sales than ComEd. In ComEd's view, this is a significant achievement that has occurred over several years.

According to ComEd, each year the participation in retail markets has grown. The outlook is for continued movement of non-residential customers to RES service. Large customers were the first to migrate to competitive supply during the transition period. That movement has become so pronounced that it has effectively reached full saturation for the very large customers. Approximately 95% of ComEd's larger than one-megawatt customers are currently procuring their electricity from a RES provider. The recently approved competitive declaration for customers in the 100 to 400 kW delivery services class coupled with the legislative declaration of competitiveness for customers greater than 400 kW will further accelerate this trend of growing RES supply.

ComEd states that smaller customers (< 100kW) recently have also shown a greater tendency to migrate to RESs, but not at the same pace as the larger customers. RESs are currently serving approximately 25% of the 0 to 100 kW group. That percentage is expected to grow to almost 35% by June of 2009. ComEd's retail market has consistently grown over time. The number of RESs in ComEd's service territory has more than doubled in less than 12 months. ComEd alleges that this influx is the result, in part, of additional clarity provided by legislators and regulators.

ComEd expects the market development trends related to the non-residential sector to migrate to the residential markets. Residential retail market development is expected gradually over the next few years. Several RESs have expressed interest in serving residential customers within ComEd's service territory. Of the 22 RESs in the ComEd service territory, five are certified to provide residential service. ComEd says that many of these same RESs already provide residential electricity service in other states and residential natural gas service in ComEd's service territory. ComEd believes that residential retail market development is highly probable.

ComEd concludes that its service territory has been one of the most fertile grounds in the United States for retail development. ComEd states that while this phenomena is subject to market conditions, ComEd expects this trend to continue in the near term.

ComEd suggests that termination of the transition period on January 1, 2007 could give a boost to competition. ComEd adds that, because the then-existing bundled retail rate freeze expired at the beginning of 2007, RESs may find it easier to compete against higher current market prices rather than bundled rates that were frozen in 1997. According to ComEd, this factor plays an important part in shaping the future of retail development in ComEd's service territory.

Although residential choice has not yet developed, ComEd believes that this portion of the competitive market will become more active. Residential retail markets have not developed prior to 2007 because the reduced and frozen bundled rates were below market. The new pricing environment in the post-2006 period is likely to offer more opportunity for RESs to compete for residential customers. Second, in assessing future residential customer choice, there are legislative proposals that should be taken into consideration.

Public Act 95-0311 regarding municipal aggregation has now been enacted to be effective January 1, 2008. SB1299, requiring a utility consolidated billing/purchase of receivables ("UCB/POR") program and easier enrollment requirements (allows telephonic enrollment), could result in greater participation by RESs in the residential retail market. In addition, the ICC has set up an Office of Retail Market Development that will be working with suppliers and utilities to consider ways to promote competition.

Regarding known or projected **changes to future load** (II.B.1.c), ComEd states that when it forecasts future loads, it typically considers whether there are any major customer decisions, such as the relocation of part or all of a business that would impact load. For the Included Retail Customers, other than the factors discussed elsewhere, e.g. switching, energy efficiency measures, growth, etc., there is only one known or projected change that ComEd is aware of that would affect future loads for this group of customers. This is the residential real-time pricing program ("RRTP"). In compliance with Section 16-107(b-5) of the PUA, the ICC recently approved revisions to RRTP that are projected to significantly increase residential participation in that program. ComEd says the program could potentially expand beyond 2010, but is subject to ICC review at the end of the fourth year. Customers that switch to RRTP would no longer be considered in the forecasted load of Included Retail Customers.

Subsection II.B.1.d addresses **growth forecasts by customer class**. According to ComEd, the forecasting process is model-based, subject to adjustments and judgment. A suite of econometric models is used to produce monthly sales forecasts for ComEd's revenue customer classes with the major customer classes, those being Residential, Small C&I and Large C&I. That monthly forecast is adjusted for other considerations (e.g., switching activity) and allocated to more granular delivery service classes (e.g., the residential customer class is composed of four delivery services classes). The forecast sales are combined with the input from the hourly models to obtain on-peak and off-peak quantities for each month and delivery services class.

ComEd's econometric modeling process forecasts revenue class sales for its service territory based on a "top-down" approach. The top-down approach provides a forecast of total sales for the entire service territory and allocates the sales to various customer classes using the models specific to each class. The "zone" forecast model takes into account a number of economic variables that affect electric energy use. For example, the gross metropolitan product for the Chicago and Rockford areas ("GMP") is a good measure of economic activity in ComEd's service territory. As GMP increases, use of electric energy rises as well.

Similarly, the zone model considers the total number of residential customers in ComEd's service territory. As the number of customers increases, total usage is also affected. ComEd also says there is a significant relationship between weather and energy usage, and the zone model contains sophisticated variables to reflect the effects of temperature and humidity, as well as seasonal usage patterns and other factors.

ComEd states that residential sales growth has averaged 2.2% per year from 2002 to 2006. The expected 2007 growth is -0.2% because of such factors as a residential increase in supply cost, weaker housing market and general energy efficiency trends. The growth in 2008 is 2.1%, after adjusting for a leap-year in 2008. This is also very consistent with past experience. The annual growth rate is progressively lower in the following years as the legislative energy efficiency programs are implemented. The same is generally true of the Small C&I growth rates. The 2002 to 2006 average growth rate is 1.2% per year. The 2007 growth rate is expected to be 1.1% in spite of the adverse economic conditions previously noted. The 2008 growth rate is 1.9% after adjusting for leap-year, which is a very reasonable growth rate for this customer class. Energy efficiency programs also influence future sales in this customer class.

3. Impact of Demand Side and Renewable Energy Initiatives (II.B.2)

The Act sets out annual targets for the implementation of cost-effective demand side and energy efficiency measures and for the procurement of renewable energy resources. ComEd believes those targets are achievable and plans to meet them in planning year 2008. Meeting the demand response target will result in the potential to reduce peak demand in 2008 by an additional 11.7 MW. Meeting the energy efficiency target will reduce energy needs for the Included Retail Customers by 19.5 GWh in 2008. Since ComEd plans to purchase RECs to meet its renewable energy resources target for 2008, there will be no supply impact in 2008.

New Section 12-103(c) of the PUA establishes a goal to implement demand response measures, providing that:

> (c) Electric utilities shall implement cost-effective demand response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act. This requirement commences June 1, 2008 and continues for 10 years.

ComEd says it will provide a detailed description of the demand response measures it intends to implement to meet the legislative goals in the energy efficiency and demand response plan that it must file by November 15, 2007. That filing was made and was assigned Docket No. 07-0540.

ComEd states that since demand response programs do not impact load forecasts they will not have an impact on the decision as to the type or amounts of standard wholesale products to procure. This decision is derived from the forecasts. However, demand response programs will impact the overall procurement plan in one way. When a demand response measure is called it reduces energy usage at the system peak. This will result in less energy that ComEd will need to procure from the spot market at a time when energy prices are typically at their highest.

Regarding ComEd's **approach to meeting renewable energy resources standards** (II.B.2.b), ComEd states that it has the responsibility to develop a renewable energy resource procurement plan as part of its supply plan for the June 1, 2008 through May 31, 2009 delivery period. The IPA will be responsible for developing and implementing the supply plan and competitive procurement process for standard wholesale products and renewable energy resources for subsequent delivery periods. The goal of the renewable energy resource procurement plan is to procure cost effective renewable energy resources, up to the minimum percentage, while satisfying the resource type, location and rate impact criteria specified in the Act.

ComEd states that for the 2008 – 2009 delivery period, purchase agreements will be entered into for procuring 796,040 MWh of renewable energy credits, subject to the resource type, location and rate impact criteria in the Act. This amount corresponds to 2% of the load of 39,802 GWh for eligible retail customers for the June 1, 2006 through May 31, 2007 planning year. For each delivery period, the procurement quantity is based on eligible retail customer load for the planning year ending immediately prior to the procurement.

In addition to procurement quantity, the Act has resource type, location and rate impact criteria for procuring renewable energy resources. According to ComEd, to the extent available, cost-effective wind energy resources from projects located first in Illinois, then in adjacent states and then in other states, must make up a minimum of 75% of the total quantity of renewable energy resources purchased. The remainder of the procurement may be satisfied with the lowest cost remaining wind and eligible non-wind resources, first from projects located in Illinois, then from adjacent states and then from other states until the total quantity of wind and non-wind resources procured meets the minimum percentage required for each year, subject to the rate impact criteria.

According to ComEd, the amount paid by eligible retail customers for electric service during the June 1, 2006 through May 31, 2007 planning year is $3,737 million. The total cost of renewable energy resources for the June 1, 2008 through May 31, 2009 delivery period is limited to 0.5 percent of this amount, which equals $18,685,000 ("Renewable Energy Resource Budget"). The Renewable Energy Resource Budget will cover the cost of the RECs procured and all other costs incurred in the procurement of the RECs and in the development, implementation and administration of the renewable energy resource portion of the Procurement Plan.

ComEd intends to solicit REC supplies for one year. Evaluating multi-year bids requires a forward price curve for RECs that would be difficult to develop, given the lack of transparency in the REC market. Long-term REC purchase agreements involve speculating on future REC prices. A one-year REC supply agreement avoids speculation and provides the IPA with maximum flexibility in designing and implementing future REC supply plans. ComEd will take delivery of RECs beginning June 1, 2008 for the twelve months of the June 1, 2008 through May 31, 2009 delivery period.

PJM Environmental Information System ("EIS")'s Generation Attribute Tracking System ("GATS") and the Midwest Renewable Energy Tracking System ("M-RETS") will be utilized to independently verify the location of generation, resource type and month and year of generation. GATS tracks generation attributes and the ownership of the attributes as they are traded or used to meet renewable portfolio standards ("RPS") and other programs, typically for generators whose energy is settled in the PJM market or whose facility is located in the PJM footprint. M-RETS tracks renewable energy generation and assists in verifying compliance with individual state/provincial RPS requirements or voluntary programs, typically for generators located in the MISO footprint and other RTOs outside of PJM.

The Act requires ComEd to implement cost-effective energy efficiency measures beginning June 1st, 2008. The Act provides annual kWh targets based on a projection of the upcoming years' energy usage for all delivery service customers. Additionally, there is a spending cap that limits the amount of expenditure on energy efficiency measures in any year. For purposes of the Act, the energy efficiency year is defined as June through May. ComEd says the annual energy efficiency goals were determined based on the kWh targets and the rate impact criteria, as discussed above.

The rate impact criteria are not expected to impact the energy efficiency targets through the 2010 planning year. The energy efficiency/demand response plan will address only the 2008-2010 planning years, as required by the Act. Thereafter, for purposes of this Plan, ComEd assumed that the rate impact criteria will not affect the achievement of the targets. Also, for purposes of this Plan only, the allocation of the kWh targets to the various customer classes was based on the percentage of delivered energy for the 12 month period ending May 31, 2007.

ComEd states that energy efficiency measures directly impact the amount of energy used by customers throughout the year. As such, they will directly impact the forecasts of future load.

4. Five-Year Monthly Forecast (II.B.3)

As shown in Tables II-13, 14 and 15, ComEd developed low-load and the high-load scenarios are based upon a change to two of the main variables impacting load: switching and load growth. The low-load scenario assumes that switching picks up and occurs at twice the rate as in the expected forecast and that load growth occurs at a

rate 1% less than is expected. The high-load scenario assumes that switching remains generally where it is today, and that load growth occurs at a rate 1% more than is expected.

C. Portfolio Design (III)

1. Plan for Meeting Load Requirements (III.B)

ComEd says it will not need to procure the full energy requirements shown in Section II.B.3 in order to serve that load. This is due to certain contracts for supply that ComEd has previously executed. Pursuant to the Order of the ICC in Docket No. 05-0159, ComEd entered into a number of SFCs with the winners in the 2006 Illinois Auction to supply power, energy and ancillary services to serve the full electrical requirements of the residential and smaller than 400kW C&I customers. SFCs serving approximately one-third of this load will expire on May 31, 2008. The remaining SFCs, which will supply energy to serve approximately two-thirds of the load of these customers, will remain in effect, with SFCs serving one-third of the load expiring on May 31, 2009 and the SFCs for the remaining one-third expiring on May 31, 2010.

In addition, pursuant to Section 16-111.5(k) of the PUA, ComEd indicates that it entered into a five-year swap contract with ExGen that became effective on the effective date of the Act. This agreement will provide price certainty for 1,000 MW of Around-The-Clock ("ATC") energy that ComEd will procure through the PJM spot markets for the period June 1, 2008 through May 31, 2009.

"Residual supply requirements," being projected demand for June 1, 2008 through May 31, 2009, net of pre-existing SFCs and the swap agreement, is shown in Table III-I.

Subsection III.B.3 addresses **wholesale supply products to be procured** in order to meet the requirements of the Included Retail Customers. These include energy, capacity, and ancillary services. The determination of the appropriate portfolio (i.e., form, term-lengths, and mix) of these products is guided by the specific goals for this Procurement Plan as defined in the Act:

> The Commission shall approve the procurement plan if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

ComEd plans to procure the **capacity and ancillary services** required by the Included Retail Customers from several sources. First, the existing SFCs supply approximately two-thirds of these customers' capacity and ancillary services requirements. Second, ComEd will procure the remaining capacity and ancillary services required by these customers directly from PJM administered markets. Under the Reliability Pricing Model ("RPM") program approved by the FERC and administered

by PJM, ComEd is able to purchase capacity directly from PJM administered markets. The RPM capacity prices for the June 2008 - May 2009 period have already been determined through a competitive bid process, so direct procurement from PJM results in a reasonable approach to procuring capacity for these customers. Furthermore, ComEd claims the PJM-administered markets for ancillary services are the most visible and easily accessible markets for these services, so direct procurement from these markets is a reasonable approach for providing these services to customers.

ComEd plans to provide the **energy** required by the Included Retail Customers from four sources. First, the SFCs cover approximately two-thirds of these customers' energy requirements. Second, the swap contract with ExGen provides a financial hedge on 1,000 MW of ATC energy during the June 2008 – May 2009 period. Third, ComEd will solicit standard wholesale products through a sealed-bid RFP per this Plan. Finally, balancing energy will be procured from the PJM-administered day-ahead and real-time energy markets.

In determining the granularity of the standard wholesale products to be procured through the RFP, ComEd says it recognized that if the products are defined in a way such that the megawatt amount contracted in each given hour is equal to the actual customer load in that hour, then the wholesale products will effectively provide price stability for customers because the fluctuations in the cost to supply the load will effectively be hedged. Yet, standard products traded in the wholesale market do not involve delivery quantities that vary within the twenty-four monthly on-peak/off-peak periods throughout the year, so the quantities of energy procured in the form of standard wholesale products cannot approximate customer load shapes on a more granular basis than a monthly on-peak/off-peak basis.

Given these facts, ComEd proposes to issue an RFP for 24 monthly on-peak and off-peak standard wholesale block energy products for delivery during the June 2008 – May 2009 period. The MW quantities of the standard wholesale energy products to be procured are determined by subtracting the forecasted average MW quantity to be covered by the SFCs, and the 1,000 MW ExGen swap quantity, from the average forecasted load in each monthly on-peak/off-period. By procuring a portfolio of the most granular standard wholesale products available in quantities reflective of forecasted loads, ComEd claims it will minimize the forecasted net amount of energy transacted in the volatile spot market.

ComEd also asserts that bidders will be provided an opportunity to bundle their bids for various products. By providing some flexibility for bundled bids, bidders will be better able to bid on the products for which they can offer the most competitive prices. The procurement administrator will accept the bids that together represent the lowest cost portfolio of products that provide the desired monthly on-peak and off-peak quantities being solicited through the RFP.

Regarding the **form of standard wholesale energy products**, ComEd plans to issue an RFP for on-peak and off-peak monthly and bundled monthly products for

delivery during the June 2008 – May 2009 period. The Act provides that it is the duty of the procurement administrator to develop the standard contract form that will be used for the standard wholesale products to be procured through the RFP. In doing so, the procurement administrator is to consult with the utilities, the Commission, and other interested parties and is subject to Commission oversight. ComEd states that every aspect of the contract form is not discussed in its Plan; however, ComEd describes its recommendation to settle the contracts physically rather than financially.

ComEd indicates that the standard wholesale products to be procured through the RFP could be settled physically or financially. In both cases, ComEd would contract to purchase or hedge specific quantities of energy at fixed prices. In the case of financial settlement, ComEd would procure energy in the day-ahead or real-time markets and debit or credit a dollar amount to the seller based on the difference between the agreed-upon fixed contract price and an index price, whereby the index price would be specified in the contract to be either the day-ahead or real-time energy price. Financial contracts are generally referred to as “contracts for differences” (CFD). The swap contract with ExGen is an example of a financially settled contract.

In the case of physical settlement, the contracting parties would transact through PJM. In this case, both parties must be PJM members in good standing. ComEd and the seller would execute an agreement, under which the seller transfers energy to ComEd via a PJM eSchedule. ComEd would then directly pay the seller the agreed-upon fixed contract price for the specified amount of energy.

According to ComEd, the choice between settling physically and financially does not affect service reliability. Whether the products settle physically or financially, PJM will still dispatch the system in such a way to ensure that customers’ requirements are met. ComEd asserts that the decision to settle physically or financially affects the logistics regarding cash flows, the administrative tasks that are required of the various parties involved, the non-performance risks and the standard of legal review. ComEd recommends that the contracts to be procured through the RFP be settled physically.

ComEd asserts that physical contracts are lower risk. The exposure of a supplier under a CFD is limited only by the PJM energy price cap of $999 per MWh. While it would be very rare for prices for a sustained period to be at or near the energy price cap, a primary value of a hedge is to protect against such occurrences. It is not inconceivable that a supplier may in fact be unable to pay the difference between spot and contract prices if there is a sustained price spike. If the contract is physical, the supplier will be liable to PJM, and until the supplier’s PJM market privileges are revoked, ComEd will receive the energy at the contract price. Default costs would be spread over PJM. If the contract were financial, ComEd would owe PJM the high spot prices and would bear the cost of the supplier being unable to pay the difference. While increased collateral may reduce this risk, ComEd claims it is not clear that there are adequate credit provisions to equalize this risk; therefore, ComEd believes the physical contract is lower risk for customers.

According to ComEd, physical contracts reduce its credit requirements and overall credit costs. Under a financial contract, ComEd would be considered by PJM to be buying all load in the spot market and would have to provide credit for all volumes. Under a physical contract, the supplier is responsible. While the credit cost is not eliminated it may be reduced as suppliers may have lower financing costs. Further as the PJM credit requirement is net, ComEd says a supplier with an offsetting long position would have a lower PJM credit requirement.

ComEd also asserts that physical contracts provide screening criteria. To perform a physical contract a supplier must be qualified to do business in PJM, which requires not only credit, but FERC authorizations. These criteria are not so onerous to limit participation by those involved in the market, but do help ensure that suppliers will be qualified to perform. Under a financial contract procured through an RFP, ComEd says there may be no external regulatory criteria. While this does open the field to participation, it could invite participation from unqualified entities and require more extensive RFP minimum requirements that could end up reducing participation. Given that many parties could and would compete for the physical product, ComEd believes it is not necessary to take this risk.

Finally, ComEd states that physical products are FERC jurisdictional. ComEd says that while this may seem inconvenient as FERC will have the authority to review the contracts, it provides certain protections. Among these are that any affiliate purchases would have to meet the *Edgar/Allegheny* standards; FERC would maintain the authority to modify the contracts under the public interest standard and in the event of a supplier bankruptcy, FERC may be able to supersede the bankruptcy court. A financial contract lacks these protections. For these reasons, ComEd prefers buying power for its customers under a contract that is subject to FERC jurisdiction.

Subsection III.B.4 addresses **Product Term Structures**. The Act limits the term of the standard wholesale products to be solicited pursuant to this Procurement Plan to one year. Therefore, ComEd did not consider contract term lengths that extend outside of the June 2008 – May 2009 period, other than in regard to renewable energy resources. ComEd repeats that the Procurement Administrator will provide the opportunity for bidders to bundle their bids for various products.

Subsection III.B.5 addresses **Risk Assessment**. The 2007 Illinois Power Agency Act requires that this Procurement Plan include:

> ". . . an assessment of the price risk, load uncertainty, and other factors that are associated with the proposed procurement plan; this assessment, to the extent possible, shall include an analysis of the following factors: contract terms, time frames for securing products or services, fuel costs, weather patterns, transmission costs, market conditions, and the governmental regulatory environment; the proposed procurement plan shall also identify alternatives for those portfolio measures that are identified as having significant price risk."

ComEd states that one method to assess the potential impact of various risk factors would be to change the assumption pertaining to a given uncertainty, or "variable," related to a given risk factor without changing the assumptions for the other variables, and then observe the resulting effect of each variable on procurement portfolio costs. For instance, by adjusting the assumption with respect to spot prices in order to represent a high-price scenario, it would be possible to isolate the effect of high spot prices on portfolio costs. Similarly, by adjusting the assumption with respect to loads to represent a low-load scenario, ComEd says it would be possible to isolate the effect of low loads on portfolio costs.

In ComEd's view, however, this approach could result in a misleading assessment of overall risk. For example, assume a scenario in which spot prices are low. If the quantities of load supplied under this scenario are assumed to be unchanged from the base case assumptions, then the resulting portfolio costs, in dollars per MWh, will be somewhat low. However, ComEd states that a low-price scenario is also likely to be accompanied by relatively low quantities of load to be served, due to the tendency for customers to switch to competitive suppliers when market prices are low, and due to the fact that decreased usage throughout the market may be one of the reasons for the lower prices.

As a result, in the scenario in which spot prices are low, portfolio costs in dollars per MWh may be higher than base case levels, because there may be relatively low quantities of load from which the associated losses on the block contracts would be recovered. ComEd says this possible outcome would not be captured in a risk assessment approach that simply changes the assumption for a single variable in isolation.

ComEd states that in order to perform a clear and insightful assessment of the various risks, it developed seven scenarios, each of which represents a general course of events, and each of which reflects the real-world interplay between various variables that affect portfolio costs. Each scenario is defined by the combination of outcomes (i.e., "settings") for six specific variables, which are in turn influenced by the risk factors identified in the Act.

According to ComEd, it is likely that forward prices for delivery during the June 2008 – May 2009 period will change between the time that this risk analysis was performed (NYMEX forward prices were taken as of close on October 18, 2007, over seven months before June 1, 2008, when delivery begins under the contracts that result from the RFP) and the time of the RFP (ComEd assumed the RFP is held approximately four months before June 1, 2008). ComEd says the uncertainty regarding the change in forward prices over this time period is a risk that affects portfolio costs, because the prices in the contracts that result from the RFP will be reflective of forward price levels at the time of the RFP. ComEd assumed that the prices in the contracts procured through the RFP are consistent with the assumed forward prices at that time.

To represent the magnitude of this uncertainty, ComEd analyzed actual historical forward price movements for annual electricity products during periods that begin over seven months before delivery begins, and that end four months before delivery begins. Specifically, the volatilities of Calendar Year 2006 and Calendar Year 2007 ATC forward prices, as reported by NYMEX, were calculated for the trading period between mid-May and the end of August of the preceding years.

The calculated volatilities were used to derive low, base, and high price multipliers, which were then applied to recent forward prices (as of October 18, 2007) to represent low, base, and high settings for the "RFP Contracts Price" variable. These low, base, and high settings represent possibilities for the forward prices as of the time of the RFP. According to ComEd, the settings are defined such that there is only a 10% chance that the actual June 2008 – May 2009 forward price at the time of the RFP will be lower than the forward price reflected in the low setting, there is only a 10% chance that the actual forward price at the time of the RFP will be higher than the forward price reflected in the high setting, and the base setting reflects no change in the forward prices.

Regarding "spot price versus RFP price," in ComEd's view it is likely that the average spot prices during June 2008 – May 2009 will not be equal to the forward prices at the time of the RFP for the June 2008 – May 2009 period. ComEd says the uncertainty regarding the difference in these prices is a risk that affects portfolio costs, because (1) these prices impact the cost of spot purchases that must be made, (2) the difference in these prices affects the gains or losses on the contract with ExGen and on the contracts that result from the RFP, and (3) there is a relationship between prices and the quantities of load that must be served.

To represent the magnitude of this uncertainty, ComEd analyzed actual historical price movements for annual electricity products during the period beginning four months before delivery begins and ending at delivery (i.e., spot). ComEd states that this time period could be split into two time periods during which prices may change. First, forward prices may change between four months before delivery begins (approximately analogous to the time of the RFP) and the beginning of the annual delivery period. Second, spot prices may differ from the forward prices observed at the beginning of the annual delivery period. To evaluate the potential magnitude of the price change during the combined period, ComEd analyzed historical price volatility during each of the two periods, four months before delivery until the start of delivery and as of the start of delivery until spot, and combined the two volatilities.

To assess the uncertainty regarding the change in the forward price from four months before delivery begins until the beginning of delivery, ComEd calculated the volatilities of Calendar Year 2006 and Calendar Year 2007 ATC forward prices, as reported by NYMEX, for the trading period between the end of August and the end of December of the preceding years.

To assess the uncertainty regarding the difference between the forward price at the beginning of the delivery period and the spot price, ComEd calculated the ratio of the actual average real-time spot price during a given annual period to the forward price for that period, as reported by NYMEX, on the last trading date preceding the beginning of that period. This ratio was calculated for multiple annual periods, and the volatility was calculated from the resulting ratios. Next, ComEd combined the calculated volatility of forward prices between four months before delivery begins (analogous to the time of the RFP) and the beginning of delivery with the calculated volatility of prices from the beginning of the delivery period to spot, to develop an overall volatility of prices from four months before delivery begins to spot.

ComEd emphasizes that the multipliers for the “Spot Price vs. RFP Price” variable are applied to the forward prices at the time of the RFP, which may themselves be assumed to be high or low in a given scenario. For instance, the assumed average spot price that results from the application of a high multiplier to a high assumed forward price at the time of the RFP does not represent the average spot price for which there is only a 10% chance that the actual average spot price will be higher. According to ComEd, the probability that the actual average spot price will be higher than that calculated under a “high-high” scenario is less than 10%.

ComEd states that the “Spot Price Driver” variable refers to the main reason for the difference between the June 2008 – May 2009 ATC forward price at the time of the RFP and the average spot price for this period. ComEd says a difference between these prices could exist for several different reasons. For example, an increase in natural gas prices could cause the average spot price to be higher than the forward price. While an increase in natural gas prices would affect electricity prices during at least a portion of every month during the June 2008 – May 2009 period, the effect on the average electricity price would be greatest during on-peak periods and during months in which usage is the greatest, as these periods correspond to times in which the marginal costs of generation units fueled by natural gas are most likely to influence electricity prices.

ComEd says it has identified three different major reasons for differences between the June 2008 – May 2009 ATC forward price at the time of the RFP and the average spot price for this period, and each of these three major reasons is treated as a different setting for the “Spot Price Driver” variable. In the scenarios ComEd developed, the chosen “Spot Price Driver” setting for a given scenario does not affect the average spot price for the June 2008 – May 2009 period; instead, this average spot price is determined by the settings for the “RFP Price” and the “Spot vs. RFP Price” variables. However, the chosen setting for the “Spot Price Driver” determines the price changes in each of the 24 monthly on-peak/off-peak periods during June 2008 – May 2009, from their levels represented by the forward prices at the time of the RFP, that together result in the average spot price for the June 2008 – May 2009 period.

According to ComEd, the first major reason for a difference between the forward price and the average spot price for June 2008 – May 2009 is general changes in supply and demand relationships that apply throughout the year, such as changes in

customer usage, the economy, energy efficiency, plant availability, transmission availability and, overall fuel costs. A price difference driven by this reason is represented by the “Supply/Demand in All Months” setting of the “Spot Price Driver” variable. ComEd says that if a scenario incorporates this setting of the “Spot Price Driver” variable, then each monthly on-peak and off-peak forward price at the time of the RFP is adjusted proportionally to derive average monthly on-peak and off-peak spot prices for that scenario.

ComEd states that the second major reason for a difference between the forward price and the average spot price for June 2008 – May 2009 is a summer price spike, such as those experienced in 1998 and 1999. A price difference largely driven by this reason is represented by the “Summer Price Spike” setting of the “Spot Price Driver” variable. If a scenario incorporates this setting of the “Spot Price Driver” variable, then the difference between the June 2008 – May 2009 forward price at the time of the RFP and the average spot price for this period is assumed to be primarily driven by an increase in the on-peak prices for June, July, and August.

The third major reason for a difference between the forward price and the average spot price for June 2008 – May 2009, ComEd states, is an increase in natural gas prices. A price difference largely driven by this reason is represented by the “Natural Gas Price Increase” setting of the “Spot Price Driver” variable. If a scenario incorporates this setting of the “Spot Price Driver” variable, then the difference between the June 2008 – May 2009 forward price at the time of the RFP and the average spot price for this period is assumed to be primarily due to changes in electricity prices during hours in which the marginal costs of generation units fueled by natural gas are most likely to influence electricity prices.

In order to determine the extent of the price increase during each monthly on-peak and off-peak period during June 2008 - May 2009, ComEd performed an analysis of actual historical real-time ComEd Zone electric energy prices and Chicago City Gate natural gas prices. ComEd calculated implied heat rates during each hour of the most recent 24-month historical period from the electricity and natural gas prices during this period, and generation units fueled by natural gas were assumed to influence electricity prices during the hours in which the implied heat rate was above a heat rate commensurate with combined cycle gas-fired units. By adding $1/MMBtu to the actual historical natural gas price during these hours and reapplying the market heat rate, an “adjusted” real-time electricity price for that hour was estimated, and the resultant impact of this $1/MMBtu gas price increase on the average spot electricity price for each monthly on-peak and off-peak period throughout the calendar year was calculated.

Finally, with this characterization of the relationship between a $1/MMBtu natural gas price increase and the corresponding increases in the average spot electricity prices during each monthly on-peak and off-peak period of a given year, ComEd determined, for any given scenario that employed the “Natural Gas Price Increase” setting for the “Spot Price Driver” variable, the necessary proportional difference between the forward natural gas price for each month of the June 2008 – May 2009

period as of the time of the RFP and the average spot natural gas price for each month of the June 2008 – May 2009 period such that the average ATC spot electricity price for June 2008 – May 2009 is equal to the desired level for the given scenario. ComEd then calculated the resulting average spot electricity prices for each monthly on-peak and off-peak period under the given scenario.

Regarding "Load-weighing gross-up," ComEd notes that customers do not use a constant amount of energy in each hour of any given monthly on-peak/off-peak time period; instead, their usage varies from hour to hour. As a result, ComEd is responsible for providing real-time energy that reflects a load-weighted average price. ComEd says that for the customers applicable to this Procurement Plan, load-weighted average real-time prices are generally higher than simple average real-time prices in a given monthly on-peak/off-peak period, due to the positive correlation between the prices and loads.

The standardized block products to be procured in this proposed Procurement Plan and the contract with ExGen involve constant quantities over a monthly on-peak/off-peak period, and hence only provide a hedge against movements in simple average prices across these periods. ComEd asserts that these contracts still leave it, and ultimately the customers, exposed to the uncertainty associated with a changing difference between the load-weighted average prices and the simple average prices. As a result, ComEd says its risk assessment includes a "Load-Weighting Gross-Up" variable, for which the low, base, and high settings correspond to various sets of percentage differences (i.e., gross-ups) between the load-weighted average prices and the simple average prices for the 24 monthly on-peak and off-peak periods during June 2008 – May 2009.

In order to develop the low, base, and high sets of gross-ups, ComEd first calculated the historical gross-ups, based on actual simple and load-weighted average real-time prices, at both the ComEd Zone and at PJM Western Hub. Prices at the ComEd Zone were weighted using retained CPP-B loads, and prices at PJM Western Hub were weighted using PJM East regional loads. For each monthly on-peak/off-peak period for which both price and load data was available, from May 2004 through June 2007 for the ComEd calculation and from April 1998 through September 2007 for the PJM Western Hub calculation, the percentage difference between the load-weighted average price to the simple average price was calculated. Based on the relationship between the gross-ups for ComEd and the gross-ups for PJM Western Hub during May 2004 through June 2007, and based on the gross-ups for PJM Western Hub for April 1998 through April 2004 and for July 2007 through September 2007, ComEd calculated implied gross-ups for ComEd for April 1998 through April 2004 and for July 2007 through September 2007.

For each calendar year monthly on-peak/off-peak period (e.g., January on-peak, January off-peak, February on-peak, February off-peak, March on-peak, etc.), the minimum, average, and maximum ComEd gross-up was calculated. The resulting set of minimum gross-ups was used as the "low" setting for the "Load-Weighting Gross-Up" variable and applied to the 24 monthly on-peak/off-peak periods during June 2008 –

May 2009, the resulting set of average gross-ups was used as the "base" setting, and the resulting set of maximum gross-ups was used as the "high" setting.

Regarding "**Retention**," ComEd states that subject to certain rules, the customers applicable to the Procurement Plan may elect to obtain service from a competitive retail supplier, and may return from such service to utility-provided service. ComEd claims this ability to switch service providers contributes to the portfolio cost uncertainty. If market prices increase after fixed-price block contracts have been signed, ComEd says competitive retail suppliers may not be able to provide service at a lower cost than that reflected in the utility service offering, and customers may return to utility service, resulting in the need for supply in excess of the quantities reflected in the contract with ExGen and the contracts procured through the RFP. ComEd would then be required to purchase the incremental energy at high spot prices, and pass through these increased costs to customers.

ComEd states that if market prices decrease after fixed-price block contracts have been signed, then competitive retail suppliers may have an increased ability to provide service at a lower cost than that reflected in the utility service offering; more customers may leave utility service and elect to be served by a competitive retail supplier, resulting in the need for supply in amounts that are less than the quantities reflected in the contract with ExGen and the contracts procured through the RFP. ComEd would then effectively be required to sell its excess supply procured through these contracts at low spot prices, and pass through these losses to the customers who remain on utility service. In order to capture the potential effect of customer migration, ComEd developed low, base, and high settings for the "Retention" variable.

In addition to the retention level, ComEd claims other factors such as weather, the state of the economy, etc., will affect the amount of load that is required to be served. ComEd developed low, base, and high settings for "Usage" for the monthly on-peak/off-peak periods for each of the three "Retention" settings, resulting in nine different scenarios for load.

In Subsection III.B.5.c, the Plan addresses **risk assessment scenarios and results**. According to ComEd, in order to perform a clear and insightful assessment of the various risks, it developed seven scenarios, each of which represents a general course of events, and each of which reflects the real-world interplay between the six variables that it developed. Each scenario is defined by the combination of the outcomes (i.e., "settings") for the variables, which are in turn influenced by the risk factors identified in the Act.

ComEd states that the "Low Price/Base Retention" scenario illustrates the effect of a decline in prices between the time of this filing and the time of the RFP, combined with base retention and usage. In this scenario, block contracts are procured at favorable prices relative to forward prices at the time of ComEd's filing. ComEd says that spot prices are even lower, but retention and usage levels remain as forecasted, due to the relatively low propensity of the customers to switch suppliers in this scenario.

ComEd adds that customers enjoy the pass-through of the low price levels, and while the losses on the contract with ExGen and the contracts procured through the RFP are implicitly passed through to customers, the incremental effect on rates is smaller than it would be if retention and usage assumptions were lower and hence the losses were allocated to fewer retained MWh.

In the "Increased Costs Due to Contract Losses" scenario, ComEd says that prices increase from the time of this filing until the time of the RFP, and then drop. Customers tend to elect service from competitive suppliers, who have an increased ability to provide service at a lower cost in this somewhat lower-price environment. Furthermore, general customer usage is low. On a dollar per retained MWh basis, however, ComEd says total portfolio costs are higher than they would be in the base case due to the fact that losses on the contract with ExGen and the contracts procured through the RFP are allocated to a relatively small amount of load due to low retention and usage.

In the "Base Case" scenario, all variables are set at their base settings. Average spot prices are equal to forward prices at the time of this analysis.

ComEd says that in the "High Spot Price in All Months" scenario, forward prices are high at the time of the RFP, and spot prices are even higher. Customers return to fixed-price, bundled service, usage is high, and the load-weighting gross-ups are high. ComEd states that while the contracts help to prevent portfolio costs from becoming exceptionally high, they do not hedge the increased costs associated with the incremental load or the increased load-weighting gross-ups.

ComEd indicates that the "High Spot Price Due to Gas Price Increase" scenario is similar to the previous scenario, except that the differences between forward prices at the time of the RFP and average spot prices are primarily driven by an increase in natural gas prices.

The "High Spot Price Due to Summer Price Spike" scenario, ComEd states, is similar to the previous two scenarios, except that the differences between forward prices at the time of the RFP and average spot prices are primarily driven by a price spike in summer (June – August) on-peak periods.

According to ComEd, the "High Spot Price Due to Summer Price Spike, Base Retention" scenario is identical to the "High Spot Price Due to Summer Price Spike" scenario, except that customer retention is assumed to remain at base case levels. As a result, there is less incremental supply that must be purchased in the high-price spot market than there is in the "High Spot Price Due to Summer Price Spike" scenario.

ComEd states that the total portfolio costs for the seven scenarios, as shown in Chart III-2, generally fall in a range of between \$60/MWh and \$70/MWh. ComEd says these estimates include the costs associated with the existing SFCs, the existing

contract with ExGen, the contracts procured through the RFP, spot market energy, capacity, and ancillary services.

In ComEd's view, these scenarios provide a good illustration and understanding of portfolio cost risk. While there are an infinite number of possible future scenarios, ComEd states that the selected scenarios were chosen because they are plausible, internally consistent, and represent fairly extreme market conditions. Other scenarios could have been analyzed, such as a scenario in which market prices spiked in just one summer month, but such scenarios would represent less risk and hence would not be informative.

According to ComEd, it is also important to recognize that stability in total portfolio costs during the June 2008 – May 2009 period is heavily driven by the SFCs, which cover approximately two thirds of the load and are fixed-price contracts in which the suppliers assume a great deal of the risks that we have previously described. Hence, ComEd says a scenario that involves a market price increase of $10/MWh may involve much less than a $10/MWh change in total portfolio costs.

Section III.B.5.d contains a discussion of the "**specific risk factors identified in the Act**." The Act also provides that ". . . this assessment, to the extent possible, shall include an analysis of the following factors: contract terms, time frames for securing products or services, fuel costs, weather patterns, transmission costs, market conditions, and the governmental regulatory environment . . . ."

ComEd states that "contract terms" includes several aspects of the contracts solicited through the RFP, but perhaps the most visible aspects of "contract terms" are the durations of the contracts, and the MW quantities to be procured through the contracts in aggregate. The quantities of energy to be procured through the contracts will reflect the forecasted average loads in these periods. Specifically, the quantities to be procured reflect the forecasted load, minus the portion of the forecasted load covered by the SFCs, minus the 1,000 MW covered by the contract with ExGen. ComEd says this approach reduces the net amount of energy that must be purchased and sold in the spot market.

ComEd indicates that it tested approaches that involved procuring different quantities of energy through the RFP than its recommended quantities. For example, in the RFP ComEd could procure quantities of energy which are 10% greater or less than the proposed RFP quantities. These approaches were evaluated in the seven scenarios. Based on the results of this analysis, ComEd believes that such refinements to the proposed quantities are unnecessary.

ComEd asserts that moderate deviations (i.e., +/-10%) in the quantities procured through the RFP have a small effect on overall portfolio cost uncertainty. The overall portfolio cost is higher if a lower quantity is procured in the RFP and market prices increase between the time of the RFP and the time of delivery, and the overall portfolio cost is lower if a lower quantity is procured in the RFP and market prices decrease

between the time of the RFP and the time of delivery. Similarly, the overall portfolio cost is higher if a greater quantity is procured in the RFP and market prices decrease between the time of the RFP and the time of delivery, and the overall portfolio cost is lower if a greater quantity is procured in the RFP and market prices increase between the time of the RFP and the time of delivery. ComEd states that procurement of quantities in excess of the forecasted load may provide greater price protection against summer price spikes as one would expect, but would be costly if prices drop and load is not retained. ComEd states that its recommendation should not be interpreted as a belief that refinements of this nature to the quantities procured would necessarily be inappropriate in the future under different market conditions.

ComEd analyzed two additional approaches. In the first additional approach, the quantities procured through the RFP for all of the monthly on-peak and off-peak periods except for July on-peak and August on-peak are equal to the proposed quantities, but the quantities procured for July on-peak and August on-peak are 10% lower. In the second additional approach, the quantities procured through the RFP for all of the monthly on-peak and off-peak periods except for July on-peak and August on-peak are equal to the proposed quantities, but the quantities procured for July on-peak and August on-peak are 10% higher.

ComEd states that again, the overall portfolio costs are not much different under the different approaches analyzed. While there is a cost advantage to procuring more July and August supply through the RFP in the scenarios in which market prices rise between the time of the RFP and the time of delivery, ComEd says this is largely due to the fact that many of our high spot price scenarios (in which prices rise between the time of the RFP and the time of delivery) are designed to involve very significant price increases in both of these summer months. ComEd claims that in reality, for every possible real-world scenario in which summer prices rise over time, there is a scenario in which summer prices fall over time. ComEd also states that a scenario involving weather-induced price spikes could involve high prices during one summer month and low prices during another summer month, so the small difference in total portfolio costs under one approach versus another approach shown here could easily be even smaller.

ComEd believes its analyses indicate that the overall portfolio cost is unlikely to be changed significantly by varying the RFP procurement quantities from the forecasted average monthly on-peak/off-peak unhedged load quantities. ComEd adds that moderate refinements to its proposal have little impact. The effect on costs of procuring a different quantity through the RFP is dependent upon market price movements between the time of the RFP and the time of delivery. ComEd asserts that since it cannot predict future market prices, it is impossible to select a priori the procurement approach that will ultimately result in the lowest rates. According to ComEd, it is clear from its analysis that its proposed approach is likely to result in reasonably stable rates for customers, given the guidance provided in the Act to purchase standard products.

ComEd states that in addition to the duration of the contracts and the MW quantities to be procured through the contracts, “contract terms” include credit

requirements, payment procedures, dispute resolution mechanisms, etc. ComEd says the decisions regarding these aspects of the contract are being finalized in a process that involves collaboration with the procurement administrator, the procurement monitor and the ICC Staff. According to ComEd, the final decisions should encourage participation and competition by creditworthy entities, help ensure reasonable contract prices given prevailing market prices, and reduce customers' risks.

Regarding "time frames for securing product and services," ComEd says the RFP is likely to occur roughly four months before delivery begins given the desire to provide reasonable rate stability and given logistical considerations. Market prices will change between now and this time, and this will directly affect portfolio costs. Furthermore, ComEd says market prices will change between the time of the RFP and delivery. ComEd maintains that this will also affect total portfolio costs, due both to the direct effect on spot prices and on the indirect effect that changes in market prices have on retention rates.

Increases in retention rates can result in supply shortages that must be compensated for by increased purchases in the high price spot market (e.g., the "High Spot Price Due to Summer Price Spike" scenario), and decreases in retention rates can result in excess supply that must be sold into the low price spot market at a loss (e.g., the "Increased Costs Due to Contract Losses" scenario). ComEd states that in all of the seven scenarios that it analyzed, it accounted for the timing of procurement, and through the results of these scenarios it assessed the risks associated with price movements before and after the RFP is held.

With respect to **fuel costs**, ComEd says fuel prices, especially natural gas prices, are a significant driver of electricity prices, and therefore fuel price uncertainty leads to cost exposure for customers. ComEd evaluated the risks associated with changes in natural gas prices in the "High Spot Price Due to Gas Price Increase" scenario, and found that the recommended portfolio of products to be procured through the RFP, in combination with the existing portfolio of contracts, provides a reasonable hedge against movements in natural gas prices. Furthermore, scenarios such as "High Spot Price in All Months" reflect increased electricity prices of magnitudes that are based on historical price movements; since these movements are in part driven by fuel price movements, this scenario also indirectly reflects risks associated with fuel price increases. This scenario indicates that the recommended portfolio of products to be procured through the RFP, in combination with the existing portfolio of contracts, provides a reasonable hedge against various fuel price movements.

ComEd states that **weather patterns** affect portfolio costs because they tend to increase or decrease load for heating and cooling purposes. This increased or decreased load can affect market price levels and can affect the load-weighting gross-ups involved with customer usage. The possibility of mild or severe weather conditions results in portfolio cost uncertainty. For example, if mild weather were to reduce load and result in low spot prices, then the amount of energy procured in the various block contracts may be in excess of the supply required, and this excess energy would

effectively be sold in the low-price market. The resulting financial losses would be recovered over a relatively small amount of MWh, increasing the portfolio cost per MWh. ComEd indicates that this dynamic is illustrated in the "Increased Costs Due to Contract Losses" scenario. As another example, if severe weather were to increase load and cause spot prices to be high, then ComEd would be forced to purchase expensive energy from the spot market. According to ComEd, this high-load, high-spot-price environment is reflected in each of the four high price scenarios that were analyzed.

ComEd states that in PJM, **transmission "congestion" costs** are a component of the locational prices that load-serving-entities must pay to serve load. As a result, the risk associated with transmission congestion costs is already incorporated in the various market price scenarios that were developed. ComEd adds that in performing its analysis, it assumed that forward prices applicable to the Northern Illinois Hub also reflect the forward price levels at the ComEd Zone, a location for which transparent forward prices are not available. For the purposes of scenario development and risk assessment, ComEd believes it is reasonable to assume that the difference between the price expectations for these two locations is negligible.

ComEd says it also faces the risk that RTO-related costs will increase. ComEd states, however, that RTO costs are small relative to total portfolio costs and hence have a small impact on overall costs. Generally, PJM RTO costs have been declining in $/MWh terms since before the time in which ComEd became a member of PJM.

Market conditions generally relate to the drivers of market prices, customer usage, and retention levels. ComEd says these factors are explicitly addressed by the variables that serve as the foundation for the scenarios that we developed, as well as by the settings of these variables in each of the seven scenarios.

ComEd next addresses the "governmental regulatory environment." According to ComEd, the passing of the Act may help to alleviate bidders' concerns about regulatory or legislative action that could cause ComEd to default on its contracts. Still, ComEd believes it is crucial that bids be evaluated and selected quickly after they are submitted. If the time period to evaluate bids were extended, then ComEd says bidders would be likely to incorporate premiums in their bids or not to bid at all, and they would be less likely to bid in future solicitations. The legislation, ComEd asserts, provides a framework of stability to wholesale suppliers because legislative certainty produces a greater level of financial stability for ComEd. ComEd also claims the legislation may be perceived by suppliers as strengthening the sanctity of the supply contracts.

ComEd states that while no analysis can cover every possible risk, it believes that its analysis provides a reasonable representation of the significant risks associated with the June 2008 – May 2009 procurement portfolio. While the risk scenarios analyzed are within the bounds of possibility, they are generally at the outer bounds of probability.

In subsection III.B.5.e, ComEd discusses "**considerations regarding future risks**." The Act requires that this Procurement Plan ". . . shall also identify alternatives for those portfolio measures that are identified as having significant price risk." Given the guidance provided under the Act, ComEd believes its recommended portfolio provides reasonable protection for customers from various risk factors. As a result, ComEd does not recommend an alternative to its recommended portfolio.

ComEd states that after May 2009, the percentage of load supplied under the fixed-price full-requirements SFCs will decrease as these contracts expire, and the percentage of load supplied through the standard product procurement approach will increase, and therefore customers will face greater exposure to the risks associated with the standard product procurement approach. ComEd says the IPA must consider these increased risks as it develops its procurement portfolio for June 2009 and beyond. In this Procurement Plan, ComEd asserts that it has evaluated the portfolio costs in terms of dollars per retained customer MWh, including the costs and loads associated with the fixed-price full-requirements SFCs because these contracts are a large part of the overall supply portfolio during the time period applicable to this Plan.

ComEd claims it has analyzed the incremental risk associated with the portfolio of standard supply products including the swap contract with ExGen. ComEd asserts that its analysis understates the uncertainty regarding portfolio costs after May 2009 for several reasons. First, the uncertainty regarding market price movements between now and 2009 is greater than it is between now and 2008. Second, customer retention further into the future is more uncertain. ComEd says that as the SFCs expire after May 2009, customers will remain exposed to the same types of risks, but certain risks will become more pronounced, resulting in greater portfolio cost uncertainty on a dollars per MWh basis. ComEd contends that risks related to two variables in particular will become more pronounced: the load-weighting gross-up and customer retention.

ComEd maintains that uncertainty regarding load balancing reflected in the load-weighting gross-up variable cannot be hedged through standard block contracts. ComEd says it is hedged under fixed-price full-requirements contracts such as the SFCs because suppliers under fixed-price full-requirements contracts assume responsibility for the exposure to uncertainty regarding the load balancing (load-weighting gross-ups). As a result, as the SFCs expire, customers will face increased risks due to the uncertainty regarding load balancing (load-weighting gross-ups).

With respect to customer retention, ComEd maintains that uncertainty about customer retention results in portfolio cost uncertainty. If market prices increase after the fixed-price block contracts have been signed, then competitive retail suppliers may not be able to provide service at a lower cost than that reflected in the utility service offering, and customers may return to utility service, resulting in the need for supply in excess of the quantities reflected in the contract with ExGen and the contracts procured through the RFP. ComEd would then be required to purchase the incremental energy at high spot prices, and pass through these increased costs to customers.

On the other hand, if market prices decrease after fixed-price block contracts have been signed, then competitive retail suppliers may have an increased ability to provide service at a lower cost than that reflected in the utility service offering, and more customers may leave utility service and elect to be served by a competitive retail supplier, resulting in the need for supply in amounts that are less than the quantities reflected in the contract with ExGen and the contracts procured through the RFP. ComEd would then effectively be required to sell its excess supply procured through these contracts at low spot prices, and pass through these losses to the customers who remain on utility service. ComEd says the SFCs act as a hedge in these situations because the risks associated with load uncertainty and load balancing are the responsibility of the SFC suppliers. As the SFCs expire, a greater portion of the forecasted supply is likely to be procured through standard block products. This magnifies the dynamics and could be especially significant in the case in which market prices are low and losses are incurred on the block contracts, but due to the resulting increased customer switching, these losses are allocated to only a small amount of retained MWh, resulting in very high rates in a low market price environment.

ComEd states that this situation is self-perpetuating, as the higher rates would likely result in greater switching and even higher rates, thereby further magnifying the problem. According to ComEd, the possibility of this situation must be understood in the context of procurement for June 2008 – May 2009, and is especially important when the procurement portfolio for delivery after May 2009 is developed.

2. Procedures for Balancing Loads (III.B.6)

ComEd indicates that it will utilize the PJM-administered day-ahead and real-time energy markets to balance its loads. ComEd says this will be a purely passive activity, involving no discretionary activity on the part of ComEd. Each day, ComEd will report to PJM its estimate of its total load requirements for the following day. This is a non-discretionary activity, because ComEd will be a price-taker bidding the full amount of its expected energy supply needs into the PJM-day-ahead market each day. ComEd will not alter the amounts it procures based on changes in PJM spot prices. ComEd will then submit its day-after estimate to PJM via a daily load responsibility schedule and the estimate will in turn be settled by PJM based on the real time market prices.

ComEd says that assuming the ICC approves the use of supply contracts that settle physically, PJM will either charge or credit ComEd in the day-ahead market. If the delivered physical power exceeds the day-ahead estimate, PJM will credit the difference to ComEd at the day-ahead price; if the delivered physical power is less than the day-ahead estimate, PJM will charge ComEd the difference at the day-ahead price. ComEd maintains that the process for balancing loads will be a purely passive activity involving no more than reporting total load estimates to PJM on a daily basis. It will not require ComEd to engage in any discretionary dealing in the competitive market.

When ComEd submits its day-after estimate to PJM, ComEd indicates that PJM will perform a similar settlement function in the PJM real-time market. To the extent the

day-ahead estimate reported by ComEd is less than the day-after estimate, ComEd says PJM will charge ComEd the difference at the real-time price. To the extent that the day-ahead estimate reported by ComEd is greater than the day-after estimate, PJM will credit ComEd with the difference at the real-time price.

The Act also requires ComEd to provide the criteria for portfolio re-balancing in the event of significant shifts in load. According to ComEd, the most significant drivers of shifts in load levels include customer load growth, customer switching and the energy efficiency/demand response initiatives required by the Act. Given the relatively short one-year time period for this initial procurement event, and given the relatively small energy efficiency/demand response target levels during the one-year period, ComEd does not anticipate significant variances from its load forecasts over this period that would warrant a need to re-balance the portfolio.

ComEd acknowledges that Illinois has limited experience with residential switching, and as a result actual residential switching levels could be significantly different from the forecasted levels. If residential customer switching levels are significantly different from forecasted levels, a re-balancing of the portfolio could be warranted. ComEd currently forecasts that approximately 8.4% of residential blended (fixed price) sales will switch by June 2009, the end of this one-year procurement period. ComEd's Low-Load scenario is premised on approximately 16.4% of fixed price residential sales switching during this period.

ComEd proposes that if at any given time after the standard wholesale contracts procured through the RFP are signed, ComEd's monthly customer switching report to the ICC indicates that the percentage of retained residential fixed price sales is less than 83.6%, then ComEd will convene a meeting with the ICC staff, the IPA (if in existence) and the Procurement Administrator to determine whether it is appropriate to re-balance the portfolio and, if so, how that should be done.

3. Contingency Procurement Plan (III.B.7)

ComEd has developed a plan to procure power and energy for its Included Retail Customer load should all or any part of that load not be met due to the advent of: 1) supplier default; 2) insufficient supplier participation; 3) ICC rejection of procurement results; or 4) any other cause. ComEd claims its plan is substantially based on the contingency plan as specified in the Illinois Power Agency Act and Section 16-111.5 (e)(5)(i) of the Public Utilities Act. ComEd also has a plan to procure power and energy in the event of a default under an existing SFC.

Subsection III.B.7.a addresses **energy and power obtained pursuant to this procurement plan**. In the event of a supplier default which results in contract termination where the amount of load provided by that supplier is 200 MW or greater and there are more than 60 days remaining on the defaulted contract term, ComEd says it will immediately notify the IPA, ICC Staff and the Procurement Administrator that another procurement event must be administered. The Procurement Administrator will

execute a procurement event to replace the same products and amounts as that initially approved by the ICC in this plan. The ICC Staff and its monitor will oversee the event.

The replacement plan will to the maximum degree possible seek to replace the defaulted products with the same or similar products to those that were defaulted on. This substitute plan would continue to seek energy-only standard block products. All ancillary services, capacity and load balancing requirements will continue to be procured through the PJM-administered markets. During the interim time period beginning at time of default and continuing through the contingency procurement process, all electric power and energy will be procured by the utility through PJM administered markets. ComEd states that if a particular required product is not available through PJM, it shall be purchased in the wholesale market.

In the event of a supplier default which results in contract termination where the amount of load provided by that supplier is less than 200 MW or there are less than 60 days remaining on the defaulted contract term, ComEd plans to procure the required power and energy directly from the PJM-administered markets. This procurement would include day ahead and/or real time energy, capacity, and ancillary services. ComEd states that should a required product not be available directly through the PJM administered markets, it will be procured through the wholesale markets.

In the event that the ICC rejects the results of the initial procurement event or the initial procurement event results in under subscription, ComEd says a meeting of the Procurement Administrator, the Procurement Monitor, and the ICC Staff will occur within 10 days to assess the potential causes and to consider what remedies, if any, could be put in place to either address the ICC's concerns or would result in full subscription to the load. If revisions to the procurement event are identified that would likely either address the ICC's concerns or enhance the possibility of having a fully subscribed load, the Procurement Administrator will implement those changes and run a procurement event predicated on a schedule established within the aforementioned meeting. ComEd states that the new procurement event will be executed by the Procurement Administrator within 90 days of the date that the initial procurement process is deemed to have failed.

According to ComEd, should a procurement event be required subsequent to the initial event, the Procurement Administrator and the Procurement Monitor will separately submit a confidential report to the ICC within 2 business days after opening the sealed bids. The Procurement Administrator's report will put forth a recommendation for acceptance or rejection of bids based on the established benchmarks as well as other observed factors to include any modifications necessary to run a subsequent procurement event if necessary.

ComEd states that in all cases where the factors are such, either for an interim period or otherwise, that there would be insufficient power and energy to serve the required load, ComEd will procure the required power and energy requirements for the eligible load through the PJM administered markets. ComEd says direct procurement

activities would thus include day ahead and/or real time energy, along with the normal direct procurement of capacity and ancillary services. Also, in the case that a particular required product is not available through PJM, ComEd says it will purchase that product through the wholesale market.

ComEd next discusses **energy and power procured pursuant to an SFC** (III.B.7.a). ComEd indicates that the SFCs with terms of 29 months and 41 months will continue in effect until May 2009 and May 2010, respectively. According to ComEd, it is conceivable that some of these contracts could be terminated early due to various events, e.g. bankruptcy. The contingency plan for procuring replacement power and energy for the SFCs is set forth in ComEd's Rider CPP, which is proposed to be cancelled in the tariffs filed with this Plan. Therefore, ComEd says it will be necessary to devise a new contingency plan for the SFCs. That plan is set forth in ComEd's new Rider PE – Purchased Electricity.

For situations in which the remaining term of the defaulted SFC (the "Defaulted Part") is 120 calendar days or less, ComEd proposes to procure such Defaulted Part through purchases in the PJM-administered markets for the remaining term of the Defaulted Part. For situations in which the remaining term for the procurement of any Defaulted Part is more than 120 calendar days, ComEd proposes to issue a Solicitation for Replacement Procurement ("SRP") for the procurement of such Defaulted Part.

If an SRP is required, ComEd says eligible bidders will be requested to submit binding offers to provide full requirements electric supply for the Defaulted Part for its remaining term. The SRP will employ sealed bids submitted in a single-round process. ComEd states that due to the nature of such a process, there will be no maximum boundary level with respect to the provision of full requirements electric supply imposed on the eligible bidders in this process. The Procurement Administrator will oversee and administer the process.

The Procurement Administrator will contact bidders, evaluate all offers and select the offers with the lowest priced bids, in succession, until such offers include the provision of full requirements electric supply in an amount equal to the Defaulted Part. In addition, the Procurement Administrator will report the results of the process to ComEd and the ICC. The Procurement Administrator will be responsible for preparing the SRP Manual which will describe the eligibility criteria, bid preparation and submittal, evaluation, and other applicable items in the SRP process in more detail.

In addition, ComEd proposes to procure full requirements electric supply for the Defaulted Part from the PJM-administered markets beginning at the time that the SFC previously applicable to the Defaulted Part is terminated, and continuing until full requirements electric supply in an amount equal to the Defaulted Part is procured and delivery commences under new contracts. If any component(s) of such Defaulted Part is not available in PJM-administered markets, ComEd proposes to purchase any such component(s) in the wholesale electricity market.

4. Summary Regarding Portfolio (III.C)

ComEd asserts that its Plan ensures that ComEd will procure adequate supply to meet customers' requirements, because it involves procurement of the necessary supply components from PJM. PJM administers markets for all of the fundamental components of electricity supply: energy, capacity, and ancillary services. With regard to the energy markets, PJM provides the opportunity for buyers and suppliers to procure and sell energy in the day-ahead market, and use the real-time market to purchase and sell deviations between their day-ahead market energy quantities and their actual energy quantities. Under its Plan, ComEd will participate in both markets, thereby ensuring that adequate energy is purchased to meet customers' energy requirements. Similarly, ComEd plans to procure the capacity and ancillary services required to serve the customers directly from PJM, and pass these costs on to customers.

According to ComEd, adequacy regarding the bids obtained through the sealed-bid RFP has been reasonably ensured by allowing bidders the option to bid on separate monthly on-peak/off-peak products, or to bundle their bids for these products. With this option, ComEd says bidders will be better able to customize the products for which they desire to submit bids. In ComEd's view, this should encourage participation in the RFP, and allow bidders to effectively create the products for which they can offer the most competitive prices.

Regarding reliability, ComEd asserts that its Plan ensures supply reliability through its purchase of capacity from the PJM-administered capacity market. PJM requires all generators desiring to serve load in the PJM footprint to be available to this central market, either by bidding into the market or by being scheduled bilaterally to serve load in PJM. PJM imposes this obligation through its Operating Agreement, which all generators must sign. Under the RPM program that FERC approved and PJM adopted for its capacity market, PJM ensures that enough capacity is purchased long before a delivery period begins to meet forecasted peak load requirements plus a reserve requirement to account for possible system contingencies. ComEd states that as a result, PJM ensures an adequate quantity of generation.

PJM also mandates deliverability requirements for generators to ensure that the transmission system can reliably deliver the aggregate output of the units to the total load in PJM. If the prices that clear in the capacity market are high, then there is a financial incentive to build more generation or increase demand response in the appropriate regions, and this helps to ensure that customer requirements will be met. PJM also incorporates backstop mechanisms to further ensure system reliability. ComEd concludes that the Plan ensures reliability through its purchase of capacity, a product that is specifically designed to ensure reliability, from PJM, the 80-year-old independently-managed organization that has successfully ensured the reliability of the largest centrally-dispatched grid in the world.

According to ComEd, **affordability** of service is driven by three major factors. First, service is likely to be affordable if the underlying cost of the service is as low as

possible. The second driver is the design of the products to be procured. ComEd says its proposal to procure 24 monthly products, in the forecasted monthly on-peak and off-peak load quantities, minimizes the forecasted net amount of energy that must be transacted in the volatile spot market, given that the RFP is for standard wholesale block products. ComEd claims this reduces cost risk for customers. The third driver is ComEd's intent to meet the energy efficiency and demand response standards set out in the Act, as well as the expansion of the residential RTP program. All of these measures are intended to offset and reduce the amount and thus the cost of supply.

ComEd claims its **energy efficiency and demand response** portfolio will ensure that cost-effective energy efficiency measures are implemented across all customer classes. It will also ensure the deployment of incremental demand response measures to eligible customer classes, as defined in the Act. ComEd says its plan will satisfy the quantity and rate screen requirements of the Act, it will target appropriate levels of implementation to households at or below 150% of the poverty level, and it will satisfy the other statutory requirements of the Act. Finally, ComEd says it will ensure that verifiable energy efficiency and demand response measures are installed beginning with the 2008-2009 planning year.

ComEd asserts that its **renewable energy** resource procurement plan and the associated REC procurement process implemented by NERA will ensure that cost-effective renewable energy resources are included in the company's electricity supply portfolio for the 2008/2009 delivery period. The plan and procurement process will satisfy the quantity, location, resource type, and rate impact criteria as described in the Act. NERA will prepare and implement a competitive RFP process to procure RECs that satisfies the requirements of ComEd's renewable energy resource procurement plan. NERA will report the results of the solicitation to the Commission and notify ComEd of the winning bidders. ComEd will enter into standard form REC purchase agreements with the winning bidders. PJM Environmental Information System ("EIS")'s Generation Attribute Tracking System ("GATS") and the Midwest Renewable Energy Tracking System ("M-RETS") will be utilized to independently verify the location of generation, resource type and month and year of generation.

ComEd believes its Plan meets the requirements of the Act at the **lowest expected cost over time** through its carefully designed RFP for standard wholesale products. ComEd says the solicitation is open to all bidders that meet transparent and reasonable eligibility requirements, ensuring that any party with the resources to honor the contracts that result from the RFP are eligible to compete on the basis of the lowest price to ComEd. The benefits of this open competition, ComEd argues, are passed on to customers. Furthermore, given the numerous opportunities in the market for bidders to manage a standard wholesale product obligation, ComEd says bidders should be able to offer competitive prices for the standard products solicited through the RFP administered by an independent third party. Finally, by providing some flexibility for bundled bids, ComEd claims bidders will be able to effectively create the products for which they can offer the most competitive prices.

According to ComEd, its Plan's reliance on the PJM markets for capacity, ancillary services and balancing energy is another reason why the Plan meets the requirements of the Act at the lowest expected cost over time. The prices that ComEd will pay for its energy result from PJM's central energy market, which ComEd says is optimized to dispatch generation at the least cost. This optimized dispatch reduces costs to buyers of energy within PJM. While ComEd believes its Plan meets the requirements of the Act at the lowest expected cost over time, ComEd says it is important to note that this does not mean that the Plan will result in the lowest supply costs with perfect hindsight. Finally, ComEd believes it is important to note that the Act does not permit this Plan to outline the approach for the procurement of power and energy for delivery periods extending outside of the June 2008 – May 2009 period. Therefore, ComEd's Plan is designed to result in the lowest expected cost for the June 2008 – May 2009 delivery period.

ComEd asserts that its Plan is designed to provide **price stability** for customers. In ComEd's view, the aspect of the Plan that most effectively contributes to price stability is the portfolio of the standard wholesale products to be solicited in the RFP. These products are designed to act as hedges against future energy price movements, and a reasonable approach to provide price stability for customers involves procuring in quantities commensurate with forecasted loads, which is what this Plan entails. ComEd asserts, however, that if the actual megawatt-hour load deviates substantially from the total megawatt-hour quantity associated with the forward supply contracts, then price stability could erode.

D. Procurement Administrator (V)

Section 16-111.5(c) provides that the "procurement process" shall be administered by a "procurement administrator."

The duties of the procurement administrator ("PA") are detailed in 16-111.5(c)(1) and may be summarized as follows: (i) design the final competitive procurement process in accordance Section 1-75 of the IPA Act; (ii) develop benchmarks in accordance with 16-111.5 (e)(3) to be used to evaluate bids; (iii) serve as the interface between the Utilities and suppliers; (iv) manage the bidder pre-qualification and registration process; (v) obtain the AIU's consent to the final form of all supply contracts and credit collateral agreements; (vi) administer the request for proposals process; (vii) have the discretion to negotiate to determine whether bidders are willing to lower the price of bids that meet the benchmarks approved by the Commission; (viii) maintain confidentiality of supplier and bidding information; (ix) submit a confidential report to the Commission; (x) notify the Utilities of contract counterparties and contract specifics; and (xi) administer related contingency procurement events.

The components of the "procurement process" are identified in Section 16-111(e) and may be summarized as follows: (1) solicitation, pre-qualification and registration of bidders; (2) standard contract forms and credit terms and instruments; (3) establishment

of a market-based price benchmark; (4) request for proposals competitive procurement process; and (5) a plan for implementing contingencies.

With regard to the **selection of the procurement administrator**, ComEd states that it researched potential administrators and invited the most highly qualified candidates to offer proposals. Six such candidates were identified and four of them submitted proposals. ComEd says it evaluated the proposals against the criteria set forth in the Act. ComEd also considered the ability of the candidates to contribute to the development of ComEd's procurement plan. ComEd took into account pricing considerations as well.

After evaluating the proposals with respect to all of these factors, ComEd says it selected NERA because: (1) NERA provided extensive lists of examples of past and current work that demonstrates the ability to satisfy the requirements outlined in the Act; (2) NERA exhibited successful implementation of the most extensive collection of directly comparable events; (3) NERA's observed performance in all aspects of such processes has been of the highest caliber; and (4) NERA is widely and highly respected for their work in this arena, including within the context of the Illinois environment.

According to ComEd, NERA's response to the RFP also demonstrated that they were highly qualified to conduct the procurement process for renewable energy resources, and accordingly, they were selected to implement and oversee that process, as well. ComEd believes that NERA is very well qualified to implement the 2008 procurement process in a manner that will ensure the provision of adequate, reliable, affordable, efficient and environmentally sustainable electric service.

III. OBJECTIONS TO THE PLAN; PARTIES' COMMENTS; COMED'S REPLIES

A. Load Forecast

ComEd's plan, as filed in Docket No. 07-0528, includes a forecast for eligible load. According to ComEd, and as summarized more fully above, this is a multistage process combining zone output models; customer class usage models; projections of switching activity; and projections of energy savings due to newly-required energy efficiency programs. The forecast is described in some detail in the summary of ComEd's Plan above.

Staff indicates that at the time if filed Objections, it had unresolved questions pertaining to some of these components of ComEd's load forecasting process, as well as to the precise manner in which ComEd combined these components. (Objections at 10) In its Reply Comments, Staff did not address ComEd's forecast.

Having reviewed the filings, the Commission notes that no party proposed any modifications to ComEd's forecast. The Commission finds that the forecast appears reasonable and that no modifications are required.

B. Portfolio Design

1. Introduction

The portfolio design components of ComEd's Plan are summarized in some detail above. Major categories include, among others, a description of the analytical approach; identification of wholesale products to be acquired, risk assessment including sensitivity analyses; and descriptions of procedures for balancing and contingency purchases.

As explained by Staff, ComEd's plan is entirely focused on securing electricity supply for the 12-month period beginning June 2008. Thus, ComEd does not consider longer-term contracts or investments in hard assets. Also consistent with the Act, Staff says, ComEd takes into account existing supply contracts, which include the Supplier Forward Contracts ("SFCs") that were entered into in September 2006 following the 2006 Illinois Auction, as well as a financial swap contract with Exelon that was entered into pursuant to Section 16-111.5(k) of the Act.

The SFCs account for a full two-thirds of the demand of included customers. Staff states that the SFCs are load-following contracts ("vertical tranches") and include both energy and capacity requirements, as well as certain transmission and ancillary services. Staff indicates that the new swap contract, on the other hand, is not a load following contract. Rather, it specifies a fixed Megawatt quantity for all hours of the year (1000 MW for the initial planning year). For those fixed quantities, it provides a price hedge against energy-only spot market prices. Specifically, the swap settles hourly against the day-ahead PJM ComEd Zone locational marginal prices ("LMPs"). Staff says it does not provide any hedge against capacity cost, ancillary cost, or quantity risk.

Furthermore, the swap settles financially (rather than physically), meaning that ComEd will still have to find a means of physically purchasing the energy associated with the swap quantities. ComEd proposes to do this by purchasing energy directly from PJM in the day-ahead energy market. Staff indicates that ComEd will be required to purchase capacity, ancillary services, and transmission services associated with the one-third of load not covered by the existing SFCs from PJM. For the difference between demand and the existing supplies discussed above, Staff says ComEd's plan relies on standard block forward market contracts and PJM organized markets.

Staff indicates that for a significant portion of the expected level of the difference between demand and the existing supplies, ComEd's plan is to use an RFP process to acquire new forward market contracts for fixed blocks of power within 24 different time periods: the on-peak and the off-peak periods covering each of the 12 months from June 2008 through May 2009. To the extent actual requirements vary from these blocks of power, Staff says ComEd would make purchases or sales in the day-ahead and real-time PJM energy market.

In this proceeding, a number of parties filed objections, comments and proposed modifications to ComEd's proposed portfolio design, as discussed below.

2. Hedging, Risk Assessment and Related Issues

a. The AG's Position

The **AG** filed "Objections and Proposed Modifications" supported by the affidavit of Robert McCullough. According to the AG, the ComEd plan exposes customers to unnecessary risk because ComEd fails to hedge the cost of purchasing supply in excess of the forecasted load. (AG Objections at 3-4) The AG says the potential for harm is greatest during critical peak periods when prices are high, conditions that occur frequently on hot summer afternoons. The AG believes that the risk to ComEd customers cannot be ignored and ComEd's failure to hedge these costs will force consumers to pay higher rates for electricity procured at high prices in the PJM spot market if they need more electricity than predicted in the utility forecast. The AG reiterates this position in its November 28th "Supplemental Comments," also supported by the affidavit of Robert McCullough. (AG Supplemental Comments at 2-3)

The AG claims there is a well-known aphorism that describes utility planners' typical strategy to avoid the problem created by ComEd's failure to adequately hedge supply: "If you're wrong, be long." The AG says this strategy recognizes that the penalties for being long unnecessarily are often preferable to the penalties of failing to be long when in need when prices are likely to be at their highest.

According to the AG, the extent of ComEd's forward position, either physical or financial, should exceed forecasted load during critical peak periods by amounts greater than those proposed by ComEd. The AG argues that the specific monthly and on/off peak distribution of deviation of forward position from forecasted load should be explicitly evaluated based on a realistic estimation of the expected joint distribution of various key variable, especially overall load, the price of natural gas and the market price of electricity. In the AG's view, increasing ComEd's forward position during critical peak periods (e.g., summer afternoons) will avoid exposing ComEd customers to unnecessary costs.

The AG filed **Supplemental Comments** on November 28, 2007, supported by an affidavit from Robert McCullough. The AG argues that the Commission should require the utility to limit spot market purchases to non-summer off-peak periods to reduce costs to consumers. (AG Supp. Comments at 2-3) The AG states that ComEd's proposed procurement plan relies primarily on forward contracts for standard products with the remainder of the portfolio to be purchased in the spot market; the AG maintains that the proposed spot market purchases expose customers to significant price risk.

The AG claims its analysis, which is discussed further below, shows that costs to consumers would be reduced if ComEd were to limit spot market purchases to non-summer off-peak periods. The AG believes that during the rest of the year, hedging is more cost-effective. That is, costs to consumers would be reduced if ComEd were to

purchase electricity in the forward markets as insurance for those instances when their forecasts of demand during the summer and on-peak non-summer periods are too low.

The AG requests that the Commission condition approval of the ComEd procurement plan on modifications to the plans that would eliminate spot purchases throughout the summer and during on-peak non-summer periods. The AG also wants the Commission to require ComEd to specify the standard forward products that they propose to procure as a substitute for those spot purchases. The AG claims these modifications will protect ComEd customers from price risk, as required by PA 95-0481. (AG Sup. Comments at 2-3)

The AG says its analysis shows that forward prices tend to be higher during on peak months. In Illinois, that means that forward prices are higher in summer and the months of December and January than during the rest of the year. In order to avoid these higher prices, the AG requests that the Commission direct ComEd to conduct the 2008 procurement in March and April.

In its supplemental filing, through the affidavit and analysis of Mr. McCullough, the AG provides an ex-post (after the fact) estimate of the cost of hedging. The affidavit also addresses the use of load forecast point estimates in the calculation of optimal hedge ratios, and it provides estimates of hedging cost and volatility by season and product.

According to the AG, forward markets ultimately depend on the presence of speculators who are willing to risk capital in exchange for a risk premium. In practice, the AG says it is only possible to infer the size of the risk premium by observing price in the market. This is ex-post evidence – the results are evident only after all other impacts on spot prices have taken place. The AG asserts that new forward markets, like the NYMEX market in Northern Illinois, tend to be volatile as different market participants enter the market due to observed profits or leave the market due to observed losses. (Affidavit at 2)

The AG asserts that the level of volatility in returns for speculators offering unhedged forward contracts is quite high: fully 35% of forward on-peak NYMEX contracts were out of the money between February 2005 and November 2007. For contracts related to the time horizon relevant to the current proceeding – those sold four to sixteen months before settlement – the AG says 28.3% of unhedged contracts were in the red.

The AG contends that in a perfect world, it is possible to calculate ex-ante pricing decisions from ex post market data. This generally requires that a substantial time period is available. The AG states that here, however, there is approximately 33 months of pricing data in a thin and immature market. According to the AG, ex-post data reflects a variety of economic events including many that could not have been foreseen by those making hedging decisions months or years ahead. In pricing forward contracts, the AG claims market participants themselves rely heavily on ex-post data in

formulating their pictures of the risks involved. In the AG's view, while the available ex-post data is far from ideal, it does reflect the same dataset that market participants use to price their forward contracts. (Affidavit at 2-3)

To provide an estimate of the cost of hedging, the AG used all of the available data and calculated the average margin between NYMEX forward contracts and the corresponding actual spot prices. In order to avoid idiosyncratic results on such a small dataset, the analysis was performed by the summer (June through September) and non-summer (all other months) periods for both on-peak and off peak hours.

The analysis restricted the NYMEX contracts to a subset ranging from four months before delivery to sixteen months before delivery. The AG also addresses the curve shift phenomena – the tendency for forward markets to put an unduly high weight on spot prices in formulating forward prices. For the purpose of this analysis, the AG accepts the ComEd assumption that forward contracts will be purchased in February for hedges from June 2008 through May 2009. (Affidavit at 3)

The AG states that for the period where data is available, the observed costs are:

	Summer months	Non-summer months
On peak hours	$ 4.88	$ 5.71
Off peak hours	$ 0.37	$ (2.01)

The AG notes that contracts settled from four to sixteen months before delivery during off-peak hours in non-summer months actually lost money over the short period for which data is available. The AG says this is simply an outcome of a limited dataset and a new market. The AG claims that no amount of theory or sophisticated statistical analysis can fully protect sellers of futures contracts from losses when the data available to make their decisions is limited. This is the case for Northern Illinois NYMEX over this short period. The AG asserts that because it would be naïve to believe that sellers of forward contracts would price future deals as poorly as historical results suggest, it used the Summer Months Off-Peak Hours price for both summer and non-summer periods in its analysis. (Affidavit at 3)

The AG notes that ComEd focused its procurement plan on the point estimate of loads for the period June 2008 through May 2009. The AG says that while this is a reasonable approach for traditional utility planning, it may not adequately mitigate risk in the new procurement planning process mandated by Public Act 95-0481.

The AG states that a significant component of risk is the uncertainty of future loads. In the new procurement planning process, the AG claims this is critical since there is a high correlation between market price and loads: periods when loads are high are also periods when prices are high. The AG asserts that whenever loads are high, the impact on the consumer is magnified by the presence of higher than normal prices

as well. The AG suggests that the correlation between load and price is significant at the 99% level for both on-peak and off-peak periods. (Affidavit at 4)

While calculating a specific, most likely value for future load is common in the industry, the AG believes it is not the best approach when considering risk. The AG claims a better approach is to recognize that the estimate is just that – an estimate – and that the actual loads will lie in a distribution around the estimate. The AG asserts that hedging above the point estimate of load is logical if the cost of loads higher than forecast is greater than the cost experienced when loads underrun forecasts.

To evaluate the impact of load risk as well as price risk on the optimal hedging ratio, the AG's analysis divided the year into four periods: summer on-peak (June through September), summer off-peak, non-summer on-peak (all other months), and non-summer off-peak. The AG calculated costs and a measure of volatility across different hedge ratios as applied to the forecasted mean load. The phrase "hedge ratio" represents the ratio of hedge to the estimate of load. If 50% of the load was hedged, the hedge ratio is 50%. (Affidavit at 6)

The AG states that mathematically, if hedges were free, total cost would not change if the hedge ratio was adjusted. The AG says such a mathematical result is hostage to a number of assumptions seldom observed in the real world. In its analysis, the AG calculated the expected profits or losses on a daily basis for summer on-peak hours, summer off-peak hours, non-summer on-peak hours, and non-summer off-peak hours at a variety of hedge ratios. Given the relatively low cost of hedges observed since the start of the NYMEX Northern Illinois market, the AG claims it is possible to purchase significant reductions in risk at relatively low costs. The AG says if the cost of the hedge is $4.88/MWh, increasing the hedge ratio 10% costs the consumer only $0.49/MWh. The AG claims this may be a very low price if it purchases a significant reduction in volatility.

The AG contends that its analysis shows that when loads are above the load forecast, prices are also above expected levels. The AG believes a risk-averse strategy would be to hedge above the load forecast level during summer on-peak hours. According to the AG, the lowest risk occurs at a hedge ratio of 140%. The AG says that costs are higher at higher hedge ratios and that for summer on-peak hours, moving from a 100% hedge ratio to a 140% hedge ratio will cost less than $2.00/MWh, but reduce volatility to its minimum level – a reduction of 50%. (Affidavit at 7)

In the AG's view, hedging at levels lower than the very probable levels of load that may occur during summer months is the more dangerous of the two alternatives. The AG insists that the prudent plan is to hedge above the point estimate for loads: that is, to make purchases in the forward markets as insurance against errors in the load forecast during periods of high demand rather than risking purchases in the spot market on hot summer afternoons.

The AG asserts that during off-peak hours reaching the point of minimum volatility is relatively inexpensive. According to the AG, for non summer on-peak hours the minimum volatility is a 125% hedge ratio and moving to this level will only cost $1.43/MWh. (Affidavit at 8)

The AG states that for non-summer off-peak hours the effect is not noticeable, and the optimal hedge ratio falls to 100%. The AG's analysis for non-summer off-peak hours indicates that the optimal hedging ratio is 100% and raising the hedge ratio for these hours will not reduce risk.

The AG concludes that relatively nominal increases in expected costs can purchase significant reductions in risk during summer months and during on-peak hours during non-summer months. The AG claims that the evidence does not support higher hedge ratios for off-peak periods during non-summer months. (Affidavit at 10)

Regarding "Curve Shift and Optimal RFT Timing," the AG asserts that there is an empirical benefit to making long term purchases during off-peak months. In other words, it is less generally less expensive to purchase electricity in forward markets during off-peak months than in on-peak months. The AG states that while it seems illogical that traders would allow seasonal issues to affect long term pricing calculations, evidence indicates that this is a widespread phenomenon. The AG says a commonly used phrase for this effect is "curve shift."

The AG says the so-called "curve shift" phenomena are the subject of continued debate in the industry. As a practical matter, the AG claims surprising influence of spot prices on forward prices is a common feature in commodity markets. The AG asserts that many of Enron's market manipulation schemes in the Western Market Crisis of 2000-2001 depended on the manipulation of spot prices in order to raise long term markets. (Affidavit at 10-11)

The AG contends that although the phrase "curve shift" has "general currency" among traders, the impact on spot prices on forward markets has been debated extensively at FERC. The AG asserts that well-known econometrician, Robert Pindyck, conducted a very detailed analysis of the phenomena in chapter five of the Final Report on Price Manipulation in Western Markets in 2003 and found that spot prices do, in fact, impact long term prices. The AG says traders use this phrase to reflect a tendency for forward curves to be marked up across the board in response to a change in spot prices.

Based upon its analysis, the AG asserts that for Northern Illinois, a logical period to take advantage of the "curve shift" phenomena would be March or April when loads are significantly lower. (Affidavit at 13)

In conclusion, the AG recommends that ComEd raise its hedge ratio for summer months and for the peak hours of non-summer months. The AG also concludes that there is no indication that it is necessary to raise the hedge ratio for non-summer off-

peak hours. Finally, unless there is a compelling reason to contract for a hedge in the early months of the year, the AG believes it is reasonable to wait until March or April to make the procurement decision. (Affidavit at 13)

In its **BOE**, the AG comments on the conclusion in the Proposed Order that would modify the plan to require ComEd to use forward contracts to meet 110% of forecasted load for on-peak hours of July and August, 2008. The AG requests that in addition to requiring ComEd to make those forward purchases, the Commission grant ComEd discretion to purchase additional forward contracts to cover up to 140% of load during summer on-peak hours and 125% of load during summer off-peak and non-summer peak hours. The AG also requests that the prudency of ComEd s decisions as to whether to purchase in the spot or forward markets should be subject to annual review by the Commission. (AG BOE at 3, 7)

According to the AG, its witness recommended that ComEd purchase forward contracts in amounts that exceed projected requirements during summer on-peak hours and, to a lesser extent, during summer off-peak and non-summer peak hours, based on price data purportedly showing that over a historical period, a hedge ratio of 1.40 minimizes daily price volatility during summer peak periods and a hedge ratio of 1.25 minimizes daily price volatility during summer off-peak and non-summer peak periods. (AG BOE at 5) In its BOE, the AG also characterizes Mr. McCullough's position as one that would limit spot purchases throughout the summer and during the on-peak non-summer periods, not eliminate them. (AG BOE at 5)

b. CUB's Position

In its second objection, CUB asserts that ComEd failed to sufficiently support its selection of a load portfolio that meets the average forecasted load in each monthly on-peak and off-peak period. (CUB Objection at 2-3; Thomas at 14-17) CUB contends that ComEd's scenario analysis does not adequately address the mix of contract quantities that will meet customers' demands at the lowest total cost over time. In that regard, CUB claims ComEd failed to evaluate different scenarios and adequately evaluate risk premiums in different wholesale products. (Thomas at 16)

In addition, CUB claims that ComEd does not adequately explain its choice to hedge its energy supply with **physical energy contracts instead of financial swap agreements**. Consequently, CUB requests that the Commission revise ComEd's initial procurement plan to produce the lowest total cost over time, as required by the PUA. This issue is discussed below.

c. Staff's Position

According to Staff, ComEd subjected the plan to a sensitivity analysis in which per unit costs were estimated under several different scenarios. (Objections at 15) The scenarios included the base case (the most likely scenario in ComEd's view), as well as six alternative scenarios based on alternative assumptions concerning RFP prices, spot

prices, customer demand, the relationship between customer demand and spot prices ("load-weighting gross-up"), and customer retention/switching rates. Staff indicates that ComEd's sensitivity analysis suggest that the average cost of electricity supply (including energy, capacity, and ancillary services) from the existing SFCs, the August 28, 2007 swap, as well as the anticipated forward contracts and spot purchases included in the plan, would range between $60 and $70 per MWH.

Since the existing SFCs account will account for two-thirds of the load, Staff says this $10 range for the combined portfolio translates into a range of $30 for the new costs. Pending Company responses to Staff data requests, Staff believes this range is approximately $63 to $83.

Staff states that ComEd also reported the results of a sensitivity analysis, using the same scenarios, but with four alternative portfolios. According to Staff, the variation in the combined portfolio cost, for any given scenario, is relatively minor when compared to the variation between scenarios. In Staff's view, this result provides some evidence that small modifications to the hedging quantities are unlikely to have a significant effect on ratepayers.

Staff believes that ComEd's approach toward risk analyses is basically sound. However, Staff was somewhat concerned that the analysis was limited to a very small number of scenarios. Furthermore, Staff says it had not had adequate time to assess the Company's characterizations of each scenario's likelihood. (Objections at 17)

In its Reply Comments, Staff did not further address the risk assessment issue.

d. ComEd's Position

ComEd says the AG's hedging proposal is that the extent of ComEd's forward position should exceed forecasted load during critical peak periods (e.g., summer afternoons) by as much as 160%. (ComEd Response at 8) ComEd responds that its Plan proposes procurement of 24 different monthly on-peak and off-peak standard block forward products in quantities that reflect 100% of the 24 forecasted average monthly on-peak and off-peak loads. ComEd maintains that in its Plan that the 100% approach provides the best fit of standard wholesale products to the expected load shape and therefore increases price stability for customers by hedging the greatest amount of the expected energy requirements.

As explained in the affidavit of Scott Fisher, ComEd asserts that its 100% hedge proposal is designed to meet the standard in Section 16.111.5(j)(ii), which requires the Commission to determine if the plan provides electric service at the lowest total cost over time, taking into account any benefits of price stability. ComEd says the analysis supporting the Plan shows that the 100% hedged position achieves the least total cost over time while increasing price stability for customers. According to ComEd, the analysis on which the AG's 160% hedge position is based is flawed and does not focus

on price stability for customers but instead focuses on hourly variability of ComEd's total energy costs. (ComEd Response at 8-9)

ComEd states that the 100% versus 160% hedging issue, therefore, presents a policy and a legal issue for the Commission. ComEd contends that if the Commission determines that price stability for customers is the appropriate standard under the statute, then ComEd's 100% hedging proposal should be approved. In ComEd's view, there is no valid basis for establishing hedge ratios in the 135% to 160% range advocated by the AG. ComEd claims such excessive hedge ratios would present a risk of much higher prices for customers in various scenarios. (ComEd Response at 8-9)

As noted above, CUB claims that ComEd does not adequately explain its choice to hedge its energy supply with **physical energy contracts** instead of financial swap agreements. (Objections at 2; see also CUB Supp. Comments at 2)

In response to CUB's questions regarding the use of physical contracts, ComEd maintains that the Commission should approve the use of physical contracts as proposed in ComEd's initial procurement plan. According to ComEd, CUB does not contend that the statute prohibits the use of physical contracts or requires the use of financial agreements. (ComEd Response at 16)

ComEd also claims that CUB is incorrect in asserting that ComEd's Plan does not adequately explain the reasons for recommending use of physical contracts. ComEd's Plan describes in detail the reasons for proposing use of physical contracts. (Response at 16, citing Plan at 40-42) For example, ComEd says the plan explains that physical contracts are lower risk than financial contracts; reduce ComEd credit requirements and overall credit costs; and provide screening criteria. Physical products are FERC jurisdictional, and thus provide protections, such as the Edgar/Allegheny affiliate purchase standards, that financial contracts lack. (Response at 16-17; see also ComEd Reply at 27-28)

ComEd also observes that no party in this docket is recommending the use of financial agreements. ComEd says CUB makes no such recommendation; it simply notes that in another docket, Ameren is recommending the use of financial agreements. ComEd claims no party in this proceeding has presented any evidence in support of the use of financial agreements, nor any evidence rebutting the statements above supporting the use of physical agreements. In ComEd's view, there is absolutely no basis in this proceeding upon which the Commission could make a finding in favor of the use of financial agreements. (ComEd Reply at 28)

According to ComEd, there is nothing inappropriate about ComEd and Ameren using different standard contract forms. Other aspects of their procurement plans, e.g. the selection of standard wholesale products, the procurement administrator, differ as well. ComEd notes that it and Ameren are different utilities, exist in different RTO regions and have different customer bases. ComEd believes there is no compelling reason to standardize every aspect of the procurement process and the Act does not

require as much. ComEd states that it is in a transition to the Illinois Power Agency; having some variety in approaches will provide the IPA with some experience in the use of different form contracts upon which it can base its decision in the future on the preferred approach. (ComEd Reply at 28)

In its November 30th **Supplemental Reply**, supported by an affidavit from Scott Fisher, ComEd asserts that the actual market evidence indicates that there is no clear, systematic difference between forward prices and spot prices for energy in Northern Illinois. Therefore, ComEd concludes that expected costs to customers will not increase if ComEd's proposal to purchase forward contracts is implemented. In other words, ComEd's asserts that its proposal does not include noticeable incremental hedging costs. (ComEd Supplemental Reply at 2)

ComEd states that while the AG reached a different conclusion, the AG's analysis was not as comprehensive or robust as was Mr. Fisher's. According to ComEd, the AG's analysis looked at price data only back to February 2005, while ComEd analyzed data as far back as February 2002. In ComEd's view, the AG's conclusions should not be relied upon. (ComEd Supplemental Reply at 2-3)

ComEd states that additional costs, such as regulatory and administrative costs, will be incurred as a result of the forward contract procurement process. However, ComEd says these costs generally do not vary with quantity. Instead, these costs are incurred regardless of the quantity of forward contracts procured. Further additional credit-related costs may also be incurred due to the procurement of forward contracts. According to ComEd, these costs are likely to be small particularly for contracts of shorter-term length, like the contracts ComEd has proposed. ComEd says the cost of credit collateral for suppliers will increase with longer-term contracts and will increase when market prices rise above the level of the contract price. However, ComEd claims this cost provides protection to customers in the event a supplier defaults and replacement power must be purchased at higher prevailing prices than the initial contract price, so there is a direct benefit associated with this cost. (ComEd Supplemental Reply at 3)

In its filing, ComEd summarizes the analysis contained its plan which is already outlined elsewhere in this order. ComEd claims to have presented actual market evidence that indicates that its proposal does not include noticeable hedging costs. According to ComEd, it is appropriate to procure quantities of forward contracts that provide reasonable price stability for customers. ComEd believes it has developed a proposal that minimizes the forecasted net amount of energy to be transacted in the volatile spot market, and has shown that implementation of its proposal will result in reasonable price stability for customers. ComEd says it has discussed and analyzed the potential impacts of deviations in the quantities to be procured. (ComEd Supplemental Reply at 5)

ComEd contends that the AG's proposal to eliminate spot market purchases is unsupported and impossible to implement under the Act. (ComEd Supplemental Reply

at 6) ComEd argues that the primary flaw in the AG's analysis is its failure to recognize the risks associated with purchasing excess quantities of forward contracts as the AG has proposed. ComEd says the AG effectively assumes that once any premium is paid for the significant amount of hedges that the AG proposes, customers are protected from any further risks, much like how an insurance policy works. However, ComEd believes this analogy has been incorrectly applied. ComEd claims that procuring significantly more energy than it is anticipated will be needed on average subjects one to the risk of having to sell significant amounts of power during a period in which market prices are low. ComEd submits that its analysis shows that over the last five years, market prices have declined about as frequently as they have risen, with the largest decline being about 31.7% and the largest increase about 28.0%19. In ComEd's view, the AG totally ignores these important facts. (ComEd Supplemental Reply at 7-8)

ComEd argues that AG's recommendation to eliminate spot purchases is impossible to implement consistently with the PUA. (ComEd Supplemental Reply at 9) To be consistent with the PUA, ComEd would need to procure standard wholesale products to replace spot market purchases. However, the most granular standard wholesale products available in the market are monthly contracts for delivery in on- and off-peak periods. These monthly products provide a fixed amount of energy in each hour of a given monthly on- or off- peak period. ComEd asserts that as a practical matter, it will almost certainly be either long or short as load changes from hour to hour. The only way to eliminate the need to purchase in the spot market, ComEd claims, is to accurately forecast the highest hourly usage that will occur during each monthly on- and off-peak period and procure these amounts.

Theoretically, this would eliminate the need to make spot market purchases. However, ComEd asserts that this approach would result in the need to make massive amounts of spot market sales, effectively creating the price volatility that was sought to be avoided by eliminating spot market purchases. ComEd says this result is unavoidable with the use of standard wholesale products. The only product in the market that could eliminate the need to make spot market purchases or sales, ComEd contends, is a full requirements product similar to the SFCs. According to ComEd, the Act does not permit the procurement of full requirements products. Thus, given the existing statutory framework, ComEd believes the AG's latest recommendation is simply impossible to implement. (ComEd Supplemental Reply at 9)

ComEd indicates that the AG recommends that the RFP for forward contracts be held in March or April. However, ComEd believes this is not an appropriate issue for a decision in this proceeding. ComEd says the Act delegates the design of the procurement process to the **procurement administrator** (see Section 16-111.5(c)(1)(i)). According to ComEd, nothing in the Act requires the inclusion of this issue in the Plan. ComEd recommends that the Commission leave this decision to the determination of the procurement administrator. (ComEd Supplemental Reply at 12)

In support of its November 30th Reply, ComEd provided the **affidavit of Scott G. Fisher**, a Principal with the NorthBridge Group ("NorthBridge"), an economic and strategic consulting firm that serves the electric and natural gas industries.

In his analysis, Mr. Fisher presents a "**Forward and Spot Price Comparison**." (Fisher at 2-11) In its Procurement Plan, ComEd proposed to purchase forward contracts ("forwards") in order to hedge customers' financial exposure associated with the energy that will be required during the June 2008 – May 2009 period that is not already covered by pre-existing contracts. A forward contract requires the buyer to pay the seller an agreed-upon fixed "forward price" for a specified amount of electricity to be delivered at a specified time in the future. (Fisher at 2)

As opposed to purchasing the commodity at the future market price, ComEd says a buyer of a forward receives a net benefit if the future market price is higher than the agreed-upon forward price or incurs a net loss if the future market price is less than the agreed-upon forward price. ComEd asserts that purchasing forwards is a useful hedging strategy for an entity such as ComEd because its customers are exposed to uncertainty regarding future market prices in the June 2008 – May 2009 period. (Fisher at 2-3)

According to ComEd, agreed-upon forward prices are strongly tied to expectations about future market prices. ComEd claims that its analysis of actual market data indicates that there is no clear systematic difference between forward prices and expected spot prices for energy delivered in Northern Illinois. Specifically, ComEd compared forward prices for delivery over given periods to the average spot prices over the same periods. ComEd performed several analyses of this nature, and claims that these analyses do not indicate any clear systematic difference between forward prices and spot prices. (Fisher at 3)

In his first analysis, Mr. Fisher compared on-peak forward prices quoted at the end of each month for delivery throughout the following month with the average spot prices during the same on-peak delivery periods. In other words, he measured the percentage difference between the forward price for delivery in May 2004 (as quoted at the end of April 2004) and the average spot price for May 2004; he measured the percentage difference between the forward price for delivery in June 2004 (as quoted at the end of May 2004) and the average spot price for June 2004, etc. The forward prices used in the analysis are those published in Megawatt Daily7 for delivery at the Northern Illinois Hub ("NiHub"), which ComEd says is the closest trading hub to ComEd. The spot prices used in ComEd's analysis are the real-time locational marginal prices ("LMPs") at NiHub. The analysis included all months extending back to May 2004, the first month in which ComEd was part of PJM. (Fisher at 4)

ComEd states that of the 42 months studied, the forward price was higher than the spot price in exactly half of these months and the spot price was higher than the forward price in exactly half of these months. On average, the difference between forward prices and spot prices has been 0.7% (on average, the average spot price has been 0.7% greater than the average forward price). (Fisher at 5)

Mr. Fisher's second analysis extended the first analysis back before May 2004 when ComEd joined PJM, to February 2002, the first month for which forward prices were available for energy delivered in Northern Illinois. Day-ahead on-peak prices published by Megawatt Daily were used to estimate the average on-peak spot price for months prior to May 2004 because applicable real-time LMPs did not exist before ComEd joined PJM. (Fisher at 5-6) ComEd states that of the 69 months studied, in 35 months the average spot price was higher than the forward price and in 34 months the average spot price was lower than the forward price. On average, the difference between forward prices and spot prices has been 1.4% (on average, the average spot price has been 1.4% greater than the average forward price).

In his third analysis, Mr. Fisher studied the same period studied in the first analysis (May 2004 – October 2007), except it studied the on-peak forward price quoted at the end of each month for delivery throughout the following 12 months, and compared these forward prices with the average spot prices during the same on-peak delivery period. (Fisher at 6)

The percentage differences between forward and spot prices are correlated with each other because the 12-month delivery periods overlap. In other words, if the spot/forward price percentage attributable to a given 12-month period is positive, then the percentage attributable to the next 12-month period is more likely to be positive. ComEd says there is a smoother trend than associated with monthly delivery periods, which do not include overlapping periods. ComEd says that of the 31 12-month periods studied, in 16 of these periods the average spot price was higher than the forward price and in 15 of these periods the average spot price was lower than the forward price. On average, ComEd says the difference between forward prices and spot prices has been -1.2% (on average, the average spot price has been 1.2% less than the average forward price). (Fisher at 7-8)

In his fourth analysis, Mr. Fisher extended the third analysis back before May 2004 when ComEd joined PJM, to February 2002, the first month for which forward prices were available for energy delivered in Northern Illinois. ComEd asserts that of the 58 12-month periods studied, in 37 of these periods the average spot price was higher than the forward price and in 21 of these periods the average spot price was lower than the forward price. On average, ComEd says the difference between forward prices and spot prices has been 4.5% (on average, the average spot price has been 4.5% greater than the average forward price). (Fisher at 8-9)

For its fifth analysis, Mr. Fisher studied off-peak prices but was unable to use Megawatt Daily for this analysis because Megawatt Daily does not report applicable off-peak prices. Instead, ComEd indicates that it used off-peak forward prices reported by NYMEX. There is less historical data available for the off-peak period. As a result, ComEd's analysis of off-peak prices is more limited than its analysis of on-peak prices. The analysis included all delivery months beginning with August 2005. (Fisher at 9) Mr. Fisher claims that of the 27 months studied, in 14 months the average spot price was

higher than the forward price and in 13 months the average spot price was lower than the forward price. On average, the difference between forward prices and spot prices has been 1.6% (on average, the average spot price has been 1.6% greater than the average forward price).

A summary of the five analyses is shown in a table on page 10 of Mr. Fisher's affidavit. It purports to show that at times the average spot price has been greater than the forward price, and at times the average spot price has been less than the forward price; on average, forward prices have approximated spot prices. ComEd concludes that the actual market evidence indicates that there is no clear systematic difference between forward prices and spot prices for energy in Northern Illinois.

Mr. Fisher states that the AG reaches a different conclusion regarding the costs of hedging than ComEd does. ComEd notes that Mr. Fisher's analysis incorporates price data from a historical period that is over twice as long as the period studied by Mr. McCullough. ComEd asserts that this is important because the AG's analysis incorporates price data pertaining to delivery periods as early as February 2005, while ComEd's analysis incorporates price data pertaining to delivery periods as early as February 2002. ComEd asserts that the AG appears to caveat the results of its analysis on numerous occasions due to the limited amount of historical data that he used. (Fisher at 10-11)

ComEd states that in his discussion of the cost of hedging, Mr. McCullough asserts, "Forward markets ultimately depend on the presence of speculators who are willing to risk capital in exchange for a risk premium." According to ComEd, this is not true. ComEd claims that forward markets can exist without speculators demanding risk premiums. Some parties, ComEd asserts, may sell forward contracts to reduce their financial exposure, just as some parties may purchase forward contracts to reduce their financial exposure. Examples of parties who can reduce their financial exposure by selling forward contracts include power plant owners with relatively fixed generation costs, and parties who previously purchased forward contracts that have yet to be delivered. (Fisher at 11)

The next section of Mr. Fisher's affidavit is titled, "Rebuttal to the AG's Recommendation to Increase Forward Contract Quantities." (Fisher at 11-21) In its supplemental comments, the AG recommends that ComEd procure forward contracts in quantities that eliminate spot market purchases throughout the summer and during on-peak non-summer periods. ComEd contends that this proposal is vague at best, because it does not recommend specific quantities of forward contracts. (Fisher at 11)

According to Mr. Fisher, the AG's analysis implies that the lowest risk for customers occurs if the hedge ratio is 140% for summer on-peak delivery periods, about 125% for summer off-peak delivery periods, 125% for non-summer on-peak delivery periods, and 100% for non-summer off-peak delivery periods. The term "hedge ratio" refers to the megawatt quantity of forward contracts procured divided by the forecasted average megawatt load during the relevant delivery period.

ComEd asserts that the hedge ratios implied by the AG's analysis do not necessarily correspond to the quantities of forward contracts that would need to be procured to eliminate spot market purchases throughout the summer and during on-peak non-summer periods, as proposed by the AG. ComEd says this adds further ambiguity to the AG's proposal. (Fisher at 11-12)

In ComEd's view, the AG's recommendation to significantly increase the forward quantities above proposed levels is flawed. ComEd says the AG dwells on the point that there is a positive correlation between loads and market prices. The AG notes that "periods when loads are high are also periods when prices are high." ComEd says the AG then uses this argument to support its assertion that excess forward contract quantities would be prudent to procure as "insurance against errors in the load forecast during periods of high demand rather than risking purchases in the spot market . . . ." According to ComEd, the statement and use of the term "insurance" is misleading and helps to illustrate why the AG's logic for purchasing excess quantities of forward contracts is flawed. (Fisher at 13-14)

ComEd contends that in important ways, forward contracts are not like insurance, and purchasing greater and greater quantities of forward contracts, as the AG recommends, involves risks that are not associated with excess purchases of insurance, such as disability insurance. ComEd states that insurance products, such as disability insurance, involve an up-front premium payment from the buyer of the insurance to the seller. After this premium payment is made, there is no downside to the beneficiary of the insurance policy. If a specific type of event occurs, which in the case of disability insurance is a disability then the buyer will be provided compensation. If the event does not occur, then no additional money will change hands.

Mr. Fisher asserts that a forward contract is materially different. Unlike insurance, there is no up-front premium payment, but like insurance the forward contract can provide the buyer with a financial benefit if a certain event occurs such as an increase in spot market prices above the forward price. But, unlike insurance after it is purchased, the forward contract also involves a potential incremental financial loss to the buyer (versus purchasing energy at the spot market price) which would occur if the spot market price drops below the forward price. (Fisher at 14)

According to ComEd, it is dangerous to underestimate the potential for drops in spot market prices, and hence this downside risk. ComEd says the average spot price over any given 12-month period can be significantly lower than the forward price for that period, just as it can be significantly higher than the forward price. Mr. Fisher claims that since ComEd joined PJM in May 2004, the maximum percentage drop in the 12-month average on-peak spot price across a 12-month delivery period was roughly the same as the maximum percentage increase in the 12-month average on-peak spot price. Specifically, the maximum drop was 31.7%, and the maximum increase was 28.0%. (Fisher at 14-15)

ComEd contends that the AG fails to recognize the downside risk and its undesirable effects when it advocates significantly increasing the quantity of forward contracts to be procured above forecasted load levels. ComEd says that while the AG's proposal is vague at best, the AG has requested ". . . that the Commission condition approval of the ComEd and Ameren procurement plans on modifications to the plans that would eliminate spot purchases throughout the summer and during on-peak non-summer periods." In ComEd's view, the AG's intent appears to be to reduce customers' exposure to volatile spot prices by ensuring that forward contracts are purchased in quantities high enough to exceed load in all hours (except possibly the peak hour), but this would actually expose customers to the volatile spot prices on all of the excess energy that was procured for hours in which the load did not reach peak hour levels. (Fisher at 16-17)

ComEd also provide an example intended to illustrate this risk. ComEd claims that its example shows a sample distribution of customer price outcomes using estimates of loads and market prices derived from actual data presented and discussed in the Procurement Plan. According to ComEd, its example indicates that significant increases in the quantities of forward contracts to be procured would subject customers to greater risk. (Fisher at 17)

Mr. Fisher states that in his example, if the hedge ratio were 100%, as ComEd has proposed, the resulting prices paid by customers in this illustrative example range from $54.76/MWh to $58.14/MWh with a standard deviation of $1.73/MWH. If the hedge ratio were 120%, which is the weighted-average hedge ratio implied by the AG's analysis, the resulting prices paid by customers in this illustrative example range from $54.76/MWh to $60.61/MW with a standard deviation of $3.21/MWH. In addition, ComEd says the customer price is highest in the low market price scenario. (Fisher at 18-19)

ComEd asserts that the difference between the prices paid by customers under the two hedging approaches is a result of the gains and losses on the hedges and the way that these gains and losses are allocated to the retained load. In the low load and market price scenario, ComEd indicates that both hedging strategies result in losses. In the high load and market price scenario, ComEd says both hedging strategies result in gains. ComEd asserts, however, larger gains and losses are generated when a 120% hedge ratio is adopted than when a 100% hedge ratio is adopted. ComEd claims adopting a 120% hedge ratio is helpful if the high market price scenario occurs because large gains on the forward contracts offset relatively expensive spot energy purchases. However, ComEd argues that adopting a 120% hedge ratio is not helpful if the low market price scenario occurs because large losses on the forward contracts offset relatively inexpensive spot energy purchases. ComEd also contends that adopting a 120% hedge ratio is especially unhelpful in the low market price scenario, because the large losses are allocated to a smaller amount of retained load. (Fisher at 20)

ComEd asserts that its example indicates that significant increases in the quantities of forward contracts to be procured would subject customers to greater risk.

Yet, the AG's analysis seems to contradict this fact, indicating that increasing the hedge ratio from 100% to values between 125% and 140% for much of the year will result in the lowest risk. ComEd suggests that the AG's analysis has significant flaws that are the likely reason for its results. (Fisher at 20)

Mr. Fisher also asserts that the mathematical approach that the AG employs is incorrect. When calculating its recommended forward contract quantities, the AG focuses on the variability regarding ComEd's total dollar costs, but does not consider the uncertainty regarding the prices that customers would pay under his recommended procurement portfolio. (Fisher at 21)

ComEd claims that the AG misapplies historical hourly load and price data in its analysis, and therefore does not appropriately characterize the relevant future load and market price uncertainty. ComEd also asserts that the AG's measure of risk, which is the standard deviation of outcomes, is not descriptive enough in this case to adequately characterize the risk to which customers are exposed under a given procurement strategy. (Fisher at 21)

Mr. Fisher next addresses the AG's recommendation **to hold the RFP for forward contracts in March and April**. This recommendation is based on the contention that it is generally less expensive to purchase forward contracts during "off-peak months" than during "on-peak months." According to the AG, this alleged phenomenon is commonly known as the "curve shift." Mr. Fisher argues that the alleged existence of this phenomenon is unsupported for a number of reasons.

ComEd claims that the two documents that the AG uses to support the existence of the curve shift phenomenon pertain to a specific situation of market manipulation, in a different geographical region (Western markets) in 2000 and 2001. ComEd says neither of these documents addresses the present-day PJM market for energy. (Fisher at 22)

ComEd claims that scatter-plots, which the AG used to show the curve shift phenomenon is applicable to prices for Northern Illinois, are designed to portray the relationship between forward prices and spot prices. ComEd says that despite any claim that these scatter-plots indicate any relationship between spot and forward prices, no clear relationship can be determined by viewing the scatter-plots, and this lack of a clear relationship is further supported by the very low R-squared values for each of the scatter-plots (0.14 and 0.04). ComEd also says the Mr. McCullough acknowledges that this alleged phenomenon is not universally accepted, and acknowledges that it is a "subject of continued debate in the industry." (Fisher at 22)

According to ComEd, even if one assumes in the hypothetical that this phenomenon was real, trades made by market participants to take advantage of the opportunities presented by the phenomenon would quickly remove the possibility for arbitrage, and the curve shift would quickly disappear. (Fisher at 23)

Finally, Mr. Fisher states that contrary to the AG's claim, ComEd explicitly addressed load uncertainty on Pages 49-51 of its Plan, and it presented a risk assessment that evaluated customer prices in various well-developed scenarios that reflect load uncertainty associated with both customer retention and usage. (Fisher at 23)

e. Commission Analysis and Conclusions

Currently, ComEd acquires all power and energy required by its bundled customers through SFCs entered into pursuant to the Illinois Auction. Approximately one-third of the SFCs will expire on May 31, 2008, an additional one-third of the SFCs will expire on May 31, 2009 and the SFCs for the remaining one-third of ComEd's bundled load will expire on May 31, 2010. Thus, for the period in question, existing SFCs will provide approximately two-thirds of the needs of ComEd's bundled customers. ComEd has also entered into a swap contract with ExGen which provides a financial hedge for 1000 MW of around-the-clock energy.

In its proposed Plan, for the difference between demand and the existing supplies described above, ComEd plans to solicit standard wholesale products through a sealed bid RFP, and to rely on the PJM-administered day-ahead and real-time energy markets to supply the balancing energy requirements of its bundled customers.

Apparently, it is this balancing energy requirement that ComEd plans to acquire through the spot market, representing the quantities by which actual load requirements exceed contracted load (which is equal to forecasted load), with which the AG has concern. The AG wants ComEd to acquire additional forward contracts such that ComEd would not be required, or permitted, to make purchases on the spot market except during non-summer off-peak hours. The AG's witness seems to suggest that during summer on-peak hours, ComEd should purchase forward contracts in amounts that exceed projected requirements by 40%. He also seems to suggest that during off-peak hours, ComEd should purchase forward contracts in amounts that exceed its projected requirements by 25%. He claims that hedge ratios of 140% and 125% minimize price volatility.

Among other things, the AG asserts that forward electric prices tend to be higher during on-peak periods. Based in part on this assumption, the AG recommended that the Commission condition approval of ComEd's Plan on modifications to the plan that would eliminate spot purchases throughout the summer and during the on-peak non-summer periods. In its BOE, the AG clarified that the intent is to limit, not eliminate, spot purchases during those periods. The AG's recommendation is also founded in its analyses regarding the cost of hedging which is summarized above. The AG's recommendation in its BOE is further described above.

ComEd argues that if its Plan is adopted, including its proposed quantities of forward contracts and spot purchases, the forecasted net amount of energy to be transacted in the spot market will be minimized and customers will receive the benefits

of reasonably stable prices. ComEd claims that procuring significantly more energy than is anticipated to be needed would subject it to the risk of selling significant amounts of power when market prices are low.

In its Supplemental Reply, ComEd argues that the conclusions in the AG's supplemental filing are wrong. There ComEd not only criticizes the AG's analysis but also presents its own analysis that it asserts is more comprehensive and robust. Based upon its analysis, ComEd concludes that there is no clear, systematic difference between forward prices and spot prices in Northern Illinois. ComEd claims that its Plan does not include noticeable hedging costs. Finally, ComEd asserts that its proposal minimizes the forecasted net amount of energy to be transacted in the volatile spot market and is expected to provide reasonable price stability for customers.

In its review of this issue, the Commission next observes that as part of its original Plan, ComEd performed sensitivity analyses that were intended to show the impact on the cost of acquiring more supply and less supply than the forecasted amount required. (ComEd Plan at 55-57) Specifically, the studies performed by ComEd included scenarios in which the quantities procured through the RFP were increased, and then decreased, by 10% from the proposed quantities. Regarding this study, ComEd stated that procurement of quantities in excess of the forecasted load may provide protection against summer price spikes as one would expect, but would be costly if prices drop and load is not retained.

ComEd performed two additional studies. In one it analyzed the cost of procurement in which the quantities procured through the RFP process for all of the monthly on-peak and off-peak periods except for July on-peak and August on-peak are equal to the proposed quantities, but the quantities procured for July on-peak and August on-peak are 10% lower. In a second analysis, the quantities procured through the RFP process for all of the monthly on-peak and off-peak periods except for July on-peak and August on-peak are equal to the proposed quantities, but the quantities for the July on-peak and August on-peak are 10% higher.

The Commission has reviewed all of the information provided by the parties regarding this issue. As an initial matter, the Commission believes the AG's position, at least to the extent it argues that quantities available through contracts should exceed projected requirements, warrants some consideration. ComEd performed a similar though less extreme analysis than the AG, and the results of that analysis support consideration of this notion. The Commission finds, however, that the specific modification to ComEd's Plan, as proposed by the AG, cannot be adopted at this time. The Commission believes that prohibiting purchases from the spot market, except during non-summer off-peak hours, is simply too extreme. The Commission is concerned that requiring ComEd to purchase so much excess supply for so many hours would likely result in additional costs as ComEd suggests. As noted above, in its BOE, the AG clarified that the intent is to limit, not eliminate, spot purchases during those periods.

In the Commission's view, ComEd's statement that "for every real-world scenario in which summer prices rise over time, there is a scenario in which summer prices fall over time" (ComEd Plan at 56), while relevant, does not fully satisfy concerns regarding high spot prices during the summer on-peak periods. In other words, while ComEd's sensitivity analyses seem rather thorough, the Commission remains concerned about the possible adverse impact on customers that could result if prices during the summer on-peak hours increase more than anticipated.

Accordingly, the Commission directs ComEd to modify its Plan to acquire 10% more supply through forward contracts than is forecasted to be needed for the on-peak hours of July and August 2008. In assessing this "forecast plus 10%" scenario, ComEd acknowledges that "[p]rocurement of quantities in excess of the forecasted load may provide greater price protection against summer price spikes as one would expect, but would be costly if prices drop and load is not retained." (Plan at 55)

This modification appears to mitigate many of ComEd's concerns about "significantly" increasing the forward quantities acquired. This modest modification is largely consistent with ComEd's own suggestion that refinements of this nature to the quantities procured would not necessarily be inappropriate in the future under different market conditions. (Plan at 55) The Commission notes that ComEd did not file an exception to this modification. The AG's exceptions are summarized above.

Having reviewed all of the information provided by the parties, the Commission concludes that now is the appropriate time for the modification given current market conditions. While acknowledging that balancing these competing factors is a difficult proposition, the Commission believes, all things considered, that this modification to ComEd's Plan strikes an appropriate balance between price protection and other factors.

As discussed above, the AG recommends that the Commission direct ComEd to **conduct the 2008 procurement in March and April**. The AG asserts that by doing so, ComEd can avoid forward prices that are higher in summer and the months of December and January than during the rest of the year.

ComEd says this recommendation is based on the contention that it is generally less expensive to purchase forward contracts during off-peak months than during on-peak months, what the AG refers to as the curve shift phenomenon. As discussed above, ComEd suggests the curve shift phenomenon may not actually exist and that a statistical analysis of the data underlying the AG's assertion with respect to Northern Illinois does not support its assertion.

Having reviewed the information and arguments of the parties, the Commission will not adopt the AG's recommendation in this proceeding. The Commission believes that the timing of the RFP process by which ComEd will acquire energy to meet the needs of its bundled customers is best left to the process that will be overseen by the procurement administrator with input from other parties. The Commission notes that

unlike in the Ameren proceeding, Docket 07-0527, where Ameren and the AG agreed on the timing of acquiring financial swaps, ComEd plans to employ an RFP process. Given the fundamentally different nature of these two acquisition strategies, as well as the information provided by the AG and ComEd, the Commission does not believe it would be appropriate to strictly mandate that ComEd conduct its 2008 procurement in March and April.

CUB also claims that ComEd does not adequately explain its choice to hedge its energy supply with **physical energy contracts instead of financial swap agreements**. Consequently, CUB requests that the Commission revise ComEd's initial procurement plan to produce the lowest total cost over time, as required by the Act.

As discussed above, ComEd claims that its Plan explains that physical contracts are lower risk than financial contracts; reduce ComEd's credit requirements and overall credit costs; and provide screening criteria. ComEd also asserts that physical products are FERC jurisdictional, and thus provide protections, such as the *Edgar/Allegheny* affiliate purchase standards, that financial contracts lack.

Having reviewed the filings, the Commission declines to modify the Plan based on the argument that ComEd has not adequately explained the basis for its decision to settle on a physical basis the standard wholesale products procured through the RFP process. That explanation is contained at pages 40 through 42 of ComEd's Plan. There is no specific indication of what, if anything, is lacking from ComEd's explanation. Additionally, there appears to be no real criticism of the rationale underlying ComEd's decision. Finally, the Commission notes that in addition to operating in different regional transmission organizations, Ameren and ComEd plan to use fundamentally different means to meet the energy requirements of their bundled customers. The Commission would expect that this fact, as much as anything else, could lead to the different decisions by Ameren and ComEd.

3. Contingency Plans

a. Positions of the Parties

ComEd has contingency plans in the event of significant changes in demand or supply levels.

One such event is forward contract supplier default. If a supplier subject to one of the existing SFCs defaults with at least 120 days remaining in the contract, ComEd plans to issue an RFP to replace the SFC. Staff claims this is consistent with the current contingency plan in effect for SFC defaults. If a supplier subject to one of the new block forward contracts defaults with at least 60 days remaining in a contract for at least 200 MW, then ComEd plans to issue an RFP. Staff also indicates this is consistent with the new Act. For other defaults, ComEd would simply seek to replace the lost resources through the relevant PJM markets.

Another such event is that the Commission rejects the results of the RFP for new block forward contracts, or there is insufficient bidder response to the RFP and the sought-after quantities are undersubscribed. In these events, the Act prescribes certain actions that appear to Staff to be included in ComEd's plan. For all other events, ComEd's plan specifies that it will secure the necessary resources from PJM or, if the resources are not available directly from PJM, the wholesale market.

Staff notes that ComEd's plan does not specifically identify what happens in the presumably unlikely event that Exelon defaults on the 1000 MW swap contract. (Objections at 15) Instead, the "for all other events" provision would apply. Staff states that since the PJM market does not include a forward market for energy, the hedge would be eliminated for the remainder of the planning year. As an alternative, Staff claims it may be preferable for ComEd to apply a modified version of the contingency plan for SFC defaults. Specifically, Staff recommends that if Exelon defaults on the swap with at least 120 days remaining in the June 2008-May 2009 planning year, then ComEd would attempt to replace the swap for the remainder of that planning year through an RFP process.

In its Reply, **ComEd** indicates that it has considered Staff's proposal and agrees with Staff that the Procurement Plan should address the issue of a contingency plan in the event that ExGen defaults under the swap agreement. ComEd says it has intended to include the ExGen swap under the same contingency plan that applies to the block products ComEd proposes to procure pursuant to the Plan. ComEd claims it can revise the Plan to make this clear. While Staff has proposed a slightly different contingency plan for the swap agreement, ComEd says the swap is essentially a contract for block products (albeit with financial settlement). ComEd sees no reason to treat this agreement any differently from the other contracts for block products. (ComEd Response at 20, Reply at 25)

In its Reply Comments, page 3, **Staff** indicates that it finds ComEd's proposed resolution acceptable.

b. Commission Analysis and Conclusions

Staff and ComEd now agree that the contingency plan should be clarified for the reasons outlined by Staff. The Commission concurs. The swap is intended to provide an important hedge; thus, appropriate contingency measures need to be in place to replace the swap in the event of a default. Therefore, the Commission finds that the procurement plan should be modified in the manner recommended by Staff.

4. Renewable Energy Standard and Related Issues

a. Overview; Statutory Authority

Section 1-75(c) of the IPAA, "Renewable Energy Standard," requires, in subsection (1), that "the procurement plans shall include cost-effective renewable

energy resources." Renewable energy resources are defined in Section 1-10 of the IPAA to include "energy and its associated . . . renewable energy credits from wind, solar thermal energy" and other resources. 20 ILCS 3855/1-75

Section 1-75(c)(1) provides, "A minimum percentage of each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be generated from cost-effective renewable energy resources: at least 2% by June 1, 2008; at least 4% by June 1, 2009 . . . ."

Section 1-75(c)(1) further provides:

> To the extent that it is available, at least 75% of the renewable energy resources used to meet these standards shall come from wind generation. For purposes of this Section, "cost-effective" means that the costs of procuring renewable energy resources do not cause the limit stated in paragraph (2) of this subsection (c) to be exceeded."

Section 1-75(c)(3) contains "locational requirements." It provides in part:

> Through June 1, 2011, renewable energy resources shall be counted for the purpose of meeting the renewable energy standards set forth in paragraph (1) of this subsection (c) only if they are generated from facilities located in the State, provided that cost-effective renewable energy resources are available from those facilities. If those cost-effective resources are not available in Illinois, they shall be procured in states that adjoin Illinois and may be counted towards compliance . . . .

b. Priorities Intended by Statute

Staff says that while the IPAA is not exceedingly clear on the priority of the wind and locational requirements, Staff submits that it is consistent with the statutory language and reasonable to read the locational requirements as having a higher priority than the percent wind requirements. Thus, Staff submits that ComEd's plan and related decisional rules for RECs should reflect the following priorities: (1) achieving the required level of renewable energy resources within the cost cap (i.e., meet the goal with cost-effective resources); (2) meeting the locational requirements; and (3) meeting the percent wind requirement. Staff states that since there are varying levels of locational requirements, the wind requirement should be applied such that wind resources within each locational level are utilized before non-wind resources. (Objections at 21)

Assuming that the Commission agrees with Staff's view of renewable energy resource priorities under the IPA Act, then ComEd's decisional rules should be modified accordingly. Staff acknowledges that there may be more than one way to meet a given priority scheme. Staff has not edited ComEd's rules to achieve the proper priority

scheme, but Staff did propose a set of rules in the Ameren utilities procurement docket (Docket 07-0527). Staff says it is open to an amendment of ComEd's decisional rules that accomplish the correct priority scheme, but Staff proposes, as an acceptable set of decision rules, the decision rules proposed by Staff in the Ameren procurement docket.

For the June 2008-May 2009 planning period, Staff says the renewable energy standard requirement is 2% of the "actual amount of electricity (megawatt-hours) supplied by the electric utility to eligible retail customers in the planning year ending immediately prior to the procurement," which ComEd reports as 2% of 39,802 GWh, or 796,040 MWh. Staff notes that ComEd's plan is to issue an RFP for acquiring renewable energy credits representing electricity produced from renewable resources during the June 2008-May 2009 planning period.

In its Response, pages 26-27, **ComEd** explains that its Procurement Plan reflected ComEd's belief that it was the intent of the Act to give priority to wind resources. ComEd based this opinion on the language in the Act, which requires that at least 75% of the renewable energy resources shall come from wind. ComEd claims the only direct limitation on this requirement is that it be "available." ComEd says this language contrasts with what the Act provides in regards to the location from which the generation is to be procured. ComEd states that in this situation, the Act requires that the generation be procured from facilities in Illinois, provided that those facilities are cost-effective. According to ComEd, from a priority perspective, there appears to be an intent to procure at least 75% wind even if such resources are more expensive than other renewable resources that could be used to fulfill the requirements of the Act.

Nevertheless, ComEd does believe that the Act is susceptible to several reasonable interpretations. Staff's proffered interpretation -- that within the budget cap, first priority should be given to meeting the 2% procurement requirement, second priority to location and third priority to wind -- is in ComEd's view, a reasonable interpretation of the language in the Act that takes into account the emphasis that the Act does place on the renewable resources being "cost-effective." However, ComEd says it does not necessarily agree with the priority Staff places on location over wind. ComEd claims the Act can also be interpreted to give priority to wind over location.

Should the Commission agree with Staff's interpretation, ComEd indicates that the Procurement Administrator will work with Staff to finalize decision rules that implement the Staff's priority scheme. (ComEd Response at 15; Reply at 26-27) That is, ComEd believes that the detailed resource selection rules are best addressed by the Procurement Administrator, subject to Staff review. (ComEd Reply at 25-27)

In its Reply filed November 28, 2007, page 3, Staff reiterates is position that the language of PA 95-0481 established that the highest priority must be given to the 2% cost effective renewable resources requirement, followed by locational criterion and then the wind resource criterion. Staff acknowledges that it would be possible to interpret the Act to give the wind resource criterion priority over the locational criterion (although Staff believes the opposite is a better construction for the reasons indicated in

Staff's Response); however, Staff does not believe it would be reasonable to give the wind resource criterion or the locational criterion priority over the 2% cost effective renewable resources requirement for the reasons stated in Staff's Response. (Staff Reply Comments at 3-4)

The only party to file a BOE on the issue of priorities was Constellation, which had not previously addressed the issue in its previous filings. (BOE at 1-4)

The **Commission** has reviewed the positions of the parties; as the parties have observed in this case and the Ameren docket, in 07-0527, Section 1-75(c) of the IPAA is susceptible to multiple interpretations in terms of ranking, and reconciling, the competing priorities of cost-effectiveness, wind preference and locational requirements.

Having reviewed the statute and the arguments, the Commission agrees with Staff that the highest priority under the IPAA is to meet the renewable energy resource standards with resources that are cost-effective. Absent a clear indication in the statute that an option which is not cost-effective is to be favored over resources which are cost-effective, the Commission believes it should err on the side of the cost-effective resources.

Next, whether the wind preference should take priority over the locational requirement, or vice versa, is a difficult call. Of all the available renewable energy resources, only wind generation is singled out in Section 1-75(c) as a resource of preference. Therefore, to the extent the Commission needs to make a determination at this time, it appears that wind generation should receive priority over the locational requirement.

With regard to the resource selection rules, the Commission notes that the Staff modifications provide a good starting point, subject to the findings above. The Commission believes the final details can best be addressed by the Procurement Administrator, subject to Staff review.

c. Use of Energy Credits

Invenergy, a developer of wind power generation, believes that one of the key goals of Illinois' new renewable portfolio standard ("RPS") is to encourage the construction of new renewable generation in Illinois. Invenergy says that meeting RPS goals solely through renewable energy credit purchases is a concern, as the only providers of this product will be existing renewable providers in the region. Similarly, Invenergy asserts that short-term, year-to-year utility procurement plans will not provide the necessary certainty needed for the establishment of new renewable generation in Illinois that is contemplated by the WS. If the Commission does approve ComEd's Procurement Plan, Invenergy is of the belief that, following the one-year period between June 2008 and May 2009, a utility procurement plan that is short-term and/or "REC-only" is not a suitable way to proceed and is contrary to the long-term goals of the RPS. (Comments at 2)

In its Response, pages 17-18, **ComEd** says Invenergy's intervention petition questions whether satisfaction of the statute's renewable energy goals through the use of RECs will provide sufficient encouragement for the construction of new renewable generation in Illinois. ComEd states that Invenergy does not contend that the statute prohibits the use of RECs. Nor does it argue that the long-term agreements with wind-powered generators it favors are required by the Act. In ComEd's view, Invenergy's policy arguments do not provide a basis for modification of ComEd's Plan, which ComEd claims complies with all statutory requirements relating to renewable energy. ComEd maintains that these policy positions can be considered in connection with the development of future procurement plans addressing longer procurement periods and they warrant no action by the Commission at this time.

The **Commission** first notes, as indicated above, Section 1-10 of the IPAA defines renewable energy resources to include associated renewable energy credits. The IPAA, in Section 1-75(c), also contains provisions prioritizing the use of wind generation. Invenergy does not appear to be arguing that ComEd's plan is out of compliance with the IPAA in that regard. Further, the Commission observes that its role in reviewing ComEd's proposed procurement plan and tariffs is to approve or modify that plan and tariffs. It does not appear that Invenergy is proposing any modifications to that plan.

The Commission's approval of the plan, as modified, is not intended to create any presumptions regarding the use of energy credits in the future procurement plans. Beyond that, while the Commission appreciates Invenergy's comments and suggestions, the Commission does not believe the instant docket is the place for the Commission to make any determinations on Invenergy's policy concerns.

d. Renewable Energy Credits – Timing Issues

Constellation also comments on the "Renewable Portfolio Standard Procurement Plan." (Comments at 4) ComEd indicates that it intends to satisfy the requirement that 2% of its portfolio be made up of renewable energy, through the purchase of Renewal Energy Credits ("RECs"). Constellation claims that other markets will likely need or want some of the same renewable resources as would ComEd, and that holders of RECs may participate in these other markets. Constellation argues that dates relating to RECs should be set promptly, such as identifying when offers will be out for bid, and when final decisions regarding RECs will be made. Additionally, Constellation says the Plan should be clarified to state that the RECs used to satisfy the renewable standard must match the delivery period, and historical RECs should not qualify as compliant with the standard.

In its Response, **ComEd** says Constellation raised the argument that RECs used to satisfy the renewable standard must match the delivery period and ComEd says Staff alluded to this issue as well. While the Procurement Plan is silent on this issue, ComEd and its proposed Procurement Administrator had not envisaged a requirement for RECs

to be generated during the delivery period of June 1, 2008 through May 31, 2009. ComEd states that instead, taking into consideration the fact that a REC generated in a given month is not immediately available for sale, due to the possibly multiple month lag time involved in the REC tracking and settlement processes, ComEd and its proposed Procurement Administrator had envisaged that ComEd would procure RECs generated from January 1, 2008 through May 31, 2009. ComEd believes allowing for an inventory period that begins January 1, 2008 is reasonable, given the business processes involved. It will also increase the likelihood of meeting the procurement requirements of the Act. (ComEd Response at 15-16)

In terms of matching the RECs with the delivery period, the **Commission** finds that the timing of the procurement of RECs should be undertaken in a manner that takes into account the lags that can result between procurement and availability.

Beyond that, the Commission observes that the specific timeline for the REC bidding process appears, generally speaking, to be part of the "procurement process" administered by the Procurement Administrator under Section 16-111.5(c). As such, the Commission does not believe the record supports a finding that more specific direction to the Procurement Administrator is necessary with respect to this issue.

5. Demand Response; Energy Efficiency; Related Issues

a. Positions of the Parties

CUB's objections were supported by the testimony of Mr. Christopher Thomas. According to CUB, ComEd has not shown that its proposed plan will result in the lowest total cost electricity for customers because it has not evaluated all available supply options, including cost effective demand response and energy efficiency, in constructing its plan. (CUB Objection at 2; Supplemental Comments at 1-2; BOE at 1-6) Consequently, CUB requests that the ComEd's initial procurement plan be revised to include the procurement of all available cost effective demand response and energy efficiency resources. CUB maintains this position in each of its filings up to and including its BOE. (CUB Supplemental Comments at 5; BOE at 1-6)

In supplemental comments supported by an affidavit from Mr. Thomas, CUB argues that contrary to ComEd's position, the Act's requirement that it procure standard wholesale products does not preclude it from procuring demand response resources. (CUB Supplemental Comments at 2-3) CUB states that PJM has an active capacity market, whose rules allow demand response resources to fulfill its standard wholesale capacity products. (Thomas Supplemental at 10) According to CUB, ComEd must issue an RFP requesting bids for cost-effective demand response resources to fulfill its capacity needs. In doing so, it should grant contracts only to those resources that provide capacity at the lowest total cost for customers, taking the benefits of price stability into account, as required by the Act.

In CUB's view, ComEd takes the narrowest possible view of demand response, arguing that the limitations of ComEd's own existing residential air conditioner cycling program preclude demand response from effectively balancing loads and reducing spot market purchases. CUB asserts that the market, however, contains many more demand response resources than ComEd's program. (CUB Supplemental Comments at 3) CUB's Objection proposes that ComEd take advantage of these resources, if they are cost-efficient, by expanding its proposed RFP process to accommodate them. CUB believes that only by doing so can ComEd assure that it has procured the resources that provide electric service at the lowest total cost, taking any benefits from price stability into account, as required by the Act. In addition, CUB asserts that expanding ComEd's RFP will actively encourage innovation in demand responsive technologies through competitive market forces, encouraging a wider range of demand response resources for the future.

CUB contends that ComEd misunderstands CUB's proposals when ComEd argues that energy efficiency is not useful to hedge spot market pricing because it reduces consumption at all times. CUB claims the non-curtailable nature of energy efficiency resources is irrelevant. CUB says the fact that efficiency reduces total load during all hours is precisely the point of CUB's proposal that ComEd procure energy efficiency resources before buying electricity in the spot market. (CUB Supplemental Comments at 3-4) If ComEd can reduce total load by buying verifiable load reductions, CUB claims it will not need to buy as much power, at any hour, in the spot market. According to CUB, these load reductions are an automatic hedge and ComEd must purchase these resources if they cost less than the expected price of energy and capacity.

CUB believes that ComEd's misunderstanding of its proposal also leads ComEd to believe that there is not enough time to implement the energy efficiency and demand response that we recommend. (CUB Supplemental Comments at 4) CUB does not propose that ComEd start its own additional energy efficiency and demand response programs by June 1, 2008. CUB instead proposes that it expand its RFP process to allow bidding by resources that already exist in the marketplace and are provided by other companies. CUB asserts that this task can be completed within the existing time frame.

According to CUB, the Act's rate impact criterion does not limit ComEd's ability to buy cost effective energy efficiency and demand response resources in its procurement plan. CUB says ComEd incorrectly applies the rate impact limitation for energy efficiency and demand response programs to the procurement plan, asserting that it is already implementing the maximum amount of EE measures allowed by the Act. CUB claims that ComEd also incorrectly notes that it cannot implement any additional energy or demand-response measures to balance load. In doing so, CUB believes that ComEd misinterprets the Act and CUB's recommendation. (CUB Supplemental Comments at 4)

CUB says the Act requires ComEd's plan to procure all energy efficiency and demand response resources that result in the lowest total cost over time, taking into

account any benefits of price stability. While the Act requires ComEd to institute energy efficiency and demand response measures that include a rate cap, CUB argues that it does not prohibit ComEd from purchasing additional energy efficiency and demand response resources from the marketplace, so long as they comply with the Act's procurement plan standard. CUB also asserts that if ComEd procures these resources where they are less expensive than supply, they would never hit the rate cap, even if it did apply. CUB argues that if ComEd is able to procure energy efficiency and demand response resources that are less expensive than other sources of supply, then the Act's procurement section requires that it do so. (CUB Supplemental Comments at 4-5)

CUB asserts that it does not recommend that ComEd procure energy efficiency or demand response resources that would increase rates. Instead, CUB says it proposes that ComEd take a market-based approach to determine which cost effective energy efficiency and demand response programs are available from the marketplace. CUB wants ComEd to expand the proposed RFP process to procure verifiable demand side resources from energy efficiency and demand response providers that can be used to offset ComEd's supply and capacity obligations, prior to the procurement of electricity supply. CUB maintains that relying on competitive market forces will prevent innovative products from being disqualified unnecessarily by an unduly restrictive RFP or utility planning process. (CUB Supplemental Comments at 5-6)

The AG asserts that ComEd's plan "fails to incorporate cost-effective demand response measures to reduce load uncertainty and price risk." (Objections at 4-5) According to the AG, ComEd simply states that details of the company s demand response programs will be provided in a separate docket on November 15, 2007. The AG objects to ComEd's failure to include a demand response component in the proposed plan -- as an alternative to spot purchases that the AG believes pose significant price risk for ComEd customers.

The AG states that ComEd's proposed plan relies primarily on forward contracts for standard products with the remainder of the portfolio to be purchased in the PJM spot market. The AG maintains that ComEd's proposal exposes customers to significant price risk associated with the potential for purchases in the PJM spot market during critical peak when customer demand spikes and prices are at their highest. The AG adds that PA 95-0481 requires ComEd to identify alternatives for those portfolio measures that are identified as having significant price risk. The AG says demand-response is one such alternative. According to the AG, there is no evidence that ComEd has assessed the effectiveness of demand response as an alternative to spot purchases during summer peaks. The AG claims that ComEd s failure to consider this alternative is contrary to the statutory mandate in 220 ILCS 5/16-11.5(b)(3)(v).

According to the AG, ComEd's portfolio should be modified to include additional demand response measures to reduce load uncertainty and price risk. Increased use of direct load controls on central air conditioning systems, along with smart meters and appliances, could be dispatched on an economic basis to shave peak demand by ComEd s bundled customers and reduce the need for purchases of expensive on-peak

electricity to serve these customers. The AG says the plan should be modified to specify that demand response measures will be implemented in lieu of purchases of electricity where the cost of a demand response measure is less than the cost of procuring electricity in the spot or forward markets. The AG asserts that demand response is an essential least cost strategy to avoid purchases in the spot market during critical peak periods.

In addition to the specific objections set forth above, the AG complains that the data and analysis in the proposed plan lack detail. (Objections at 5-6) According to the AG, the data and analysis included in ComEd's filing is not sufficient to support a finding that the plan, as filed, meets the applicable legal standard. The AG contends that ComEd has failed to present sufficient evidence and analysis to support a finding that the plan will ensure adequate, reliable, affordable, efficient and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

ComEd responds to CUB's contention that the ComEd Plan does not adequately evaluate all available supply options, including cost effective demand response and energy efficiency. (ComEd Plan – Response at 9, 11-13) ComEd claims that these demand response/energy efficiency objections raise both legal and policy issues. (ComEd Reply at 15) The Commission observes that many of ComEd's arguments regarding CUB's objections are the same as those made in response to the AG and they will not, therefore be repeated in their entirety here.

ComEd maintains that demand response measures cannot have a substantial impact on the overall quantity of spot market purchases. (ComEd Response at 11, citing William McNeil affidavit) ComEd says the energy efficiency and demand-response measures that ComEd intends to implement cause it to meet the rate impact limit set out in the Act. The impact of these measures on ComEd's Procurement Plan has already been taken into consideration. According to ComEd, demand-response measures are not an effective manner to balance loads to the extent recommended by CUB. That is because they are typically only available for a relatively small number of hours each year.

ComEd also contends that energy efficiency measures are generally not useful as a hedge on spot market pricing. The main reason for this is that an energy efficient technology typically reduces energy consumption during all hours that it is in use, and such devices are not dispatchable during peak hours in the same way that supply-side resources are. ComEd also maintains that in order to be an effective alternative to spot market purchases, any additional energy efficiency or demand-response measures would need to be in place by June 1, 2008. ComEd says the Act effectively compresses this timeframe to 10 months and the ramp up of demand response resources would happen over multiple years. ComEd believes that trying to acquire additional energy efficiency or demand response resources prior to the June 2008 launch is unrealistic given this short timeframe.

ComEd contends that CUB's proposal to substitute energy efficiency measures for block power fails for similar reasons. (ComEd Response at 12-13) First, ComEd says it is already implementing the maximum amount of energy efficiency measures allowed by the Act. Second, the Act does not permit the use of energy efficiency measures to supply load above those set out in the Act. The Act provides that ComEd is to take into account the impact of these energy efficiency measures in determining the amount of supply to procure, which ComEd did. The Act then provides that ComEd is to procure standard wholesale products to serve this residual load. ComEd argues that energy efficiency measures are not standard wholesale products. Third, ComEd claims that additional energy efficiency measures cannot be in place in time to have any significant impact on the amount of supply that will need to be procured for the June 2008 to May 2009 planning year.

ComEd states that its Plan contains procedures for balancing loads through energy purchases in PJM administered markets. In ComEd's view, CUB's objections do not contain specific proposals supported by data or other detailed analysis for use of demand response as an alternative to the load balancing procedures specified in ComEd's Plan.

According to ComEd's Reply filed November 30, 2007, CUB contends that the Act requires ComEd to consider all available supply options and to procure all energy efficiency and demand-response resources that result in the lowest total cost electricity for customers. ComEd contends that this argument is wrong and is based upon a misinterpretation of the Act. CUB would have the Commission interpret the "lowest total cost" provision in Section 16-111.5(j)(ii) as if it also included the phrase "regardless of all of the other requirements and provisions in the Act." ComEd asserts that it is only by ignoring all of those other statutory requirements that CUB is able to make the recommendation that it does. (ComEd Reply at 15-16)

ComEd argues that the Act does not require that the Plan ensure lowest total cost "considering all available supply options" or "regardless of all the other requirements of the Act" as CUB contends. ComEd says this section must be interpreted to give effect to and be consistent with all the other requirements of the Act. "Lowest total cost," ComEd avers, must be interpreted to mean that the rate impact limits set out in section 12-103(d) are complied with, and that the proposed selection and mix of standard wholesale products results in the lowest total cost for such products. ComEd contends that the analysis included in its Procurement Plan demonstrated that its proposed selection of standard wholesale products does indeed result in the lowest total cost to customers, taking into account any benefits of price stability. (ComEd Reply at 17, citing Plan at 42-60, 67-8)

ComEd says CUB argues, in its Supplemental Comments, that standard wholesale products exist for demand response resources, and it cites PJM's current capacity market, whose rules allow demand response resources to fulfill its standard wholesale capacity products. ComEd fully recognizes and agrees with CUB that demand response resources can indeed participate in PJM's capacity market.

According to ComEd, that is the same capacity market from which ComEd has proposed to procure all of its capacity needs. ComEd states that all capacity resources (including generation and demand response) are used in PJM's centrally administered capacity market to secure the amount of capacity resources needed to meet the capacity obligations for the load of the PJM RTO. (ComEd Reply at 17-18)

ComEd says the amount of demand resources in PJM reduces the amount of generation needed. These demand resources, ComEd asserts, are paid the market clearing price as determined by PJM. ComEd claims that alternatively, demand resources can choose to bid to determine the market-clearing price in the same way as a generator. In either case, demand resources are paid the market clearing price as determined by PJM; that is, the price of the marginal capacity resource needed to reliably meet the required load obligation (including reserves). ComEd states that once the market-clearing price is determined, it establishes the market value for capacity in the respective planning year. (ComEd Reply at 18)

According to ComEd, CUB fails to explain how this process would result in a lower price than the market-clearing price of PJM's capacity auction or why resources that failed to clear in PJM's capacity auction would later be willing to sell at a price below what the market has already established. ComEd assets that these demand response resources also have access to the same capacity market-clearing price directly from PJM through the Interruptible Load for Reliability (ILR) program; the availability of this known market value makes it highly unlikely a demand response resource owner would accept a lower price through a separate auction process. (ComEd Reply at 18)

ComEd maintains that demand response measures cannot have a substantial impact on the overall quantity of spot market purchases. First, the energy efficiency and demand-response measures that ComEd intends to implement cause it to meet the rate impact limit set out in the Act; therefore, ComEd cannot implement any additional energy or demand-response measures to balance load. Second, demand-response measures are not an effective manner to balance loads to the extent recommended by the AG and CUB because they are typically only available for a relatively small number of hours each year. Third, ComEd says in order to be an effective alternative to spot market purchases, any additional energy efficiency or demand-response measures would need to be in place by June 1, 2008, whereas developing a meaningful portfolio of demand side programs or launching an energy efficiency portfolio would take far longer. (ComEd Reply at 18-19)

ComEd states that the load connected to its system changes day-to-day, hour-to-hour, minute-to-minute and second-to-second, and demand response measures cannot follow these instantaneous changes. ComEd also asserts that demand response measures are not load-following and are no more effective at eliminating the inevitable imbalances between predicted load and arranged supply than standard supply products. Finally, ComEd says demand response resources cannot be dispatched with sufficient speed and agility to eliminate the need for balancing energy. ComEd claims

that CUB asks the Commission to ignore the statutory framework for selecting and procuring demand response measures and to implement a wholly unworkable and impractical process. (ComEd Reply at 19)

ComEd states that CUB would have the procurement administrator solicit bids for demand-response measures and then instantaneously and unilaterally make a "total resource cost test" evaluation and select those measures which pass that test. ComEd claims that CUB does not explain how the program administrator could even apply such a test without first already having solicited bids for supply so that a price for supply could be obtained to compare with the price of the demand response resources. ComEd also asserts that since the remaining load to be served could not be determined until the impact of the demand-response measures on that load was determined, the nature and amount of standard wholesale products to be procured could not be determined in advance or be subject to the ICC approval process set out in Section 16-111.5 of the Act.

ComEd states that instead, it would appear that after the demand-response RFP, the utility would have to immediately and unilaterally determine what products and how much to procure and hurriedly conduct the RFP process in order to have the products available for delivery by June 2008. According to ComEd, CUB's proposal totally eviscerates the framework set out in the Act and is simply not workable. (ComEd Reply at 20-21)

ComEd next responds to the AG's objection regarding demand response. (ComEd Plan – Response at 9-12) ComEd says the AG objects that ComEd's Plan implements only enough demand response to comply with the minimum demand response standards in Public Act 95-0481 and thereby exposes customers to significant price risk associated with the potential for purchases in the spot market during peak periods when prices are high. ComEd claims the AG raises both legal and policy issues.

According to ComEd, the threshold legal issue presented by the AG's objection is whether its reliance on Section 16-111.5(b)(3)(v) of the Act is misplaced. The AG contends that ComEd's procurement plan should include acquisition of demand response resources because Section 16.111.5(b)(3)(v) requires an assessment and analysis of alternatives for those portfolio measures that are identified as having significant price risk. ComEd argues that what the AG overlooks and does not contest is the fact that its Plan concluded that its recommended portfolio provides reasonable protection for customers from various risk factors, and therefore, it was not necessary to consider alternatives. ComEd says the fact that it will continue to procure full requirements products for two-thirds of its load from the existing supplier forward contracts during this initial planning year minimizes the amount of energy it will need to procure from the spot markets. ComEd claims its risk analysis demonstrated that the risk from making purchases in the spot market was not significant.(ComEd Response at 9-10)

ComEd asserts that the AG's position is inconsistent with the statute because the recommended portfolio to meet expected load requirements under Section 16-111.5(b)(3)(iii) must consist of standard wholesale products. Section 16-111.5(b)(3)(v) then requires an assessment of the risk associated with this proposed mix of standard wholesale products, and, if significant risk is identified with this proposed mix, the identification of alternative mixes of products that might lessen that risk. ComEd says that demand response resources are not standard wholesale products and, therefore, are not among the alternative portfolio measures that may be considered under Section 16-111.5(b)(3)(v).

According to ComEd, the AG's arguments are also inconsistent with Section 12-103 of the Act. Section 12-103 (c) establishes the demand-response goal to reduce peak demand by 0.1% over the prior year for eligible retail customers. Section 12-103(d) provides that the amount of demand response measures implemented in any single year shall be reduced to limit the estimated average increase in amounts paid by retail customers due to the cost of such measures. The AG contends that the 0.1% peak demand reduction goal is "the minimum demand response" standard under the statute and that ComEd's Plan should provide for additional demand response measures as an alternative to purchasing balancing energy in the spot market.

ComEd argues that Section 12-103(c) standard is not a "minimum demand response" standard, as the AG contends, because the Act specifically provides for reduction of demand response measures when the rate impact criteria are applicable. Section 12-103(c) sets a reasonable requirement for a level of demand response measures the General Assembly believed utilities should implement, provided they can do so without exceeding the rate impact criteria. ComEd believes the AG's position that Section 12-103(c) establishes minimum demand response levels should therefore be rejected as a matter of law. (ComEd Response at 11)

ComEd says that in order to be an effective alternative to spot market purchases, any additional demand-response measures would need to be in place by June 1, 2008. Developing a meaningful portfolio of demand side programs, however, takes time and planning. ComEd claims this is why the Act provides for a phased deployment of energy efficiency and demand-response measures over a multi-year period.

b. Commission Analysis and Conclusions

According to the AG, ComEd's portfolio should be modified to include additional demand response measures to reduce load uncertainty and price risk. Increased use of direct load controls on central air conditioning systems, along with smart meters and appliances, could be dispatched on an economic basis to shave peak demand by ComEd's bundled customers and reduce the need for purchases of expensive on-peak electricity to serve these customers. The AG says the plan should be modified to specify that demand response measures will be implemented in lieu of purchases of electricity where the cost of a demand response measure is less than the cost of procuring electricity in the spot or forward markets. The AG asserts that demand response is an

essential least cost strategy to avoid purchases in the spot market during critical peak periods.

CUB claims that ComEd has not shown that its proposed plan will result in the lowest total cost electricity for customers because it has not evaluated all available supply options, including cost effective demand response and energy efficiency, in constructing its plan. CUB requests that the ComEd's initial procurement plan be revised to include the procurement of all available cost effective demand response and energy efficiency resources. According to CUB, ComEd must issue an RFP requesting bids for cost-effective demand response resources to fulfill its capacity needs. In doing so, CUB says ComEd should grant contracts only to those resources that provide capacity at the lowest total cost for customers, taking the benefits of price stability into account, as required by the Act.

Among other things, ComEd argues that demand response resources are not standard wholesale products and, therefore, are not among the alternative portfolio measures that may be considered under Section 16-111.5(b)(3)(v). Additionally, ComEd believes that CUB and the AG's arguments are inconsistent with Section 12-103 of the Act. Section 12-103 (c) establishes the demand-response goal to reduce peak demand by 0.1% over the prior year for eligible retail customers. Section 12-103(d) provides that the amount of demand response measures implemented in any single year shall be reduced to limit the estimated average increase in amounts paid by retail customers due to the cost of such measures.

The Commission has reviewed the arguments of the parties. As an initial matter, the Commission wishes to emphasize that it encourages the implementation of demand response and energy efficiency in the State of Illinois. Additionally, the Commission observes that the statutory framework within which it is evaluating ComEd's proposed Plan is complex and the time for this evaluation is short.

In any event, the Commission believes that ComEd's Plan regarding demand response and energy efficiency complies with the statute. Section 16-111.5(b) requires that a compliant plan include an hourly load analysis that includes an evaluation of both demand response programs and energy efficiency programs. ComEd's plan at pages 25 to 32 contains the required analyses.

Section 12-103 of the Act contains the provisions that govern utilities' obligations with regard to energy efficiency and demand response measures. ComEd's obligations under Section 12-103 are being litigated in Docket No. 07-0540.

The Commission does not mean to suggest that demand response and energy efficiency are irrelevant to this proceeding; they are not. However, given the very general nature of the recommendations in the filings of CUB and the AG – that ComEd's plan "be revised to include the procurement of all available cost effective demand response and energy efficiency resources" – the Commission believes adoption of those recommendations would serve as little more than a vague direction to ComEd,

leaving too many question unresolved to serve as an appropriate modification to the plan as discussed below.

The Commission does not believe the record in this case shows whether or how it would be feasible to include additional cost-effective demand side resources in an RFP process in ComEd's Plan. What DR products that would entail, and which resources it would replace, if that is the intent, is unclear. Thus, while DR resources may be available, there is no showing they include products that are suitable replacements – in terms of type, cost or availability – for the resources they would replace in ComEd's plan. This is particularly relevant in the instant case, where only a small fraction of ComEd's requirements are being procured through the plan, inasmuch as two-thirds of ComEd's requirements in the plan year will be met by existing supplier contracts, and another 1000 MW will be provided via statutorily mandated swaps.

Similarly, there are unresolved issues as to whether CUB's recommendation is consistent with the statutory scheme in Section 16-111.5(b) and other provisions of the law. For example, Section 16-111.5(b)(2) requires the utility to describe in its Plan the impact that these energy efficiency and demand-response measures will have on its load forecasts. Once this impact is determined, the utility is to propose the mix of standard wholesale products that are needed to supply the resulting expected load. (16-111.5(b)(3)) Finally, the utility is to propose a procedure for the hourly balancing of loads. (16-111.5(b)(4)) The record in this brief docket does not support a finding that ordering the utility to consider "all available supply options, including cost effective demand-response and energy efficiency" would be compatible with the statutory structure.

Thus, the Commission will not adopt the proposals of the AG and CUB with regard to demand response and energy efficiency. This conclusion creates no presumptions regarding the role of DR in the planning process in other dockets, including those involving future procurement plans where there will be more time to evaluate these issues.

6. Supplier Contracts and Related Issues

a. Positions of the Parties

Dynegy is a wholesale supplier with over 4000 MW of generation. First, Dynegy complains that ComEd's plan did not include draft standard contracts. (Objections at 2-4) Dynegy says that without such draft standard contracts, the Commission cannot know how ComEd believes the contractual risks should be apportioned. Dynegy suggests that in the absence of draft standard contracts, ComEd could develop contracts that favor its affiliates and drive up the price to consumers.

Dynegy states that language in ComEd's plan seems to suggest it is permissible for bids to differ by price and contractual terms. Dynegy says if differing contracts are permitted, the Plan does not specify how anyone will be able to determine how the

winners of the procurement will be determined. Dynegy suggests that the process outlined by ComEd may not result in electric service at the lowest total cost over time nor in the best interests of retail customers.

Second, Dynegy also complains that ComEd's plan fails to describe the credit terms and conditions that ComEd proposes. Dynegy says it is impossible to evaluate a Plan that fails to include important factors such as whether the credit provisions will be bilateral.

Finally, Dynegy observes that ComEd is now proposing a procurement process whereby it, not suppliers, will bear substantial risk relating to variation in supply, load, price, and the like. (Objections at 4-5) Dynegy says that in prior proceedings, ComEd argued such risks were better managed by suppliers. Dynegy wants ComEd to explain how its now portfolio will result in lower cost to customers than the previous full requirements portfolio. (Dynegy Additional Comments at 3-4)

In its Additional Comments filed on November 28th, Dynegy asserts that ComEd's response fails to address meaningfully the points made in Dynegy's Objections. Dynegy also claims that ComEd failed to provided the information Dynegy believes is essential for it provide before the Commission can make the findings required under Section 16-111.5(j) of the Act. (Dynegy Additional Comments at 1)

According to Dynegy, ComEd claims it is not its place to supply draft contracts or credit information because that role is for the procurement administrator. Dynegy says it agrees that the subsection quoted by ComEd provides for a further part of the process during which form contracts are to be finalized. But the fact that a subsequent process will finalize the contracts, Dynegy argues, in no way precludes ComEd from submitting at this time its conception of the contracts, or from explaining how it believes various contractual provisions can be used to meet the statutory requirement of total lowest cost. Dynegy says there is nothing that bars the inclusion of such drafts as a part of filing the Plan and implicitly, supplying them is required because they directly impact on the statutory determination this Commission must make. Dynegy says ComEd does not deny that contractual terms can and do make a difference on price, that credit terms in particular can and do make a difference on price, or that contractual terms can be used to advantage some parties and not others. (Dynegy Additional Comments at 2-3)

Dynegy suggests that unless the answers are not what one would hope from a fair, transparent, competitively neutral process, ComEd would presumably have little trouble answering the questions. Dynegy contends that, regardless, ComEd has an obligation to answer them as a means of demonstrating to the Commission that their plan does indeed meet the statutory requirements. (Dynegy Additional Comments at 3)

ComEd's response to certain arguments by Constellation, as summarized below, was intended to apply also to Dynegy. (ComEd Response at 6-8) According to ComEd, Sections 16-111.5(j) and (b) do not require the Plan to include draft standard contracts with suppliers, credit terms and instruments to be utilized or any of the other

details of the final procurement process that Dynegy proposes to specify in the Plan. (ComEd Reply at 14)

In its Reply filed November 30, 2007, ComEd says Section 16-111.5(c)(1)(i) provides that the final procurement process is to be designed by the procurement administrator following Commission approval of the procurement plan. ComEd says that Section 16-111.5(c) addresses such matters as "credit collateral agreements," the "final form of all supply contracts," benchmarks "to be used to evaluate bids" and other topics raised by Dynegy. At this stage, ComEd claims, the Commission must approve an independent procurement administrator as required by Section 16-111.5(j)(ii). Specification of the details of the process at the outset in the Plan proposed by the utility is, in ComEd's view, not appropriate under the Act. (ComEd Reply at 14-15)

b. Commission Analysis and Conclusions

The Commission appreciates Dynegy's concerns regarding the contracts, credit terms and related issues. As ComEd points out, however, Dynegy's attempt to litigate these issues in the instant docket appears to be inconsistent with the process outlined in the statute.

Section 16-111.5(c)(1) provides that the procurement process shall be administered by the procurement administrator and monitored by a procurement monitor. The procurement administrator has numerous duties and responsibilities. Section 16-111.5(e)(2), "Standard contract forms and credit terms and instruments," provides, in part:,

> The procurement administrator, in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard **contract forms** for the supplier contracts that meet generally accepted industry practices. **Standard credit terms** and instruments that meet generally accepted industry practices shall be similarly developed. (emphasis added)

It further states:

> The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.

Thus, the development of standard contract forms and credit terms is the responsibility of the procurement administrator, subject to Commission oversight. Furthermore, the process to be followed in that regard is spelled out in some detail in the statute. Interested parties do have a role in the process; however, contrary to Dynegy's contention, that role is the one defined in 16-111.5(e)(2). In the Commission's opinion, requiring parties to litigate those same issues in this proceeding would be inconsistent with the structured statutory process set forth in the IPAA.

7. Customer Information; Bidding Process

a. Positions of the Parties

Constellation says care should be taken to ensure that customers are informed of the risks they bear. (Comments at 2-3) In accordance with the procurement plan structure as set forth under Section 16-111.5 of the Act, ComEd has estimated its load for the June 2008 – May 2009 procurement cycle, a portion of which ComEd will acquire through the day-ahead market. Constellation states that under the Plan, for this portion of ComEd's load, retail customers bear all weather- and migration-related risks associated with ComEd's supply of electric power and energy.

According to Constellation, ComEd's forecast for its projected load, and the corresponding energy prices, are merely estimates; the actual volumes and prices will differ, potentially dramatically, based on variables such as weather, market changes, and world events. Constellation asserts that it is virtually guaranteed that ComEd's forecast will be different than actual consumption. This may result in ComEd procuring more energy than is needed, after which it will then be forced to sell the excess supply in a potentially low market. Conversely, ComEd's supply needs may exceed its forecast and force it to procure additional energy at a time during which market prices are high. Constellation complains that ComEd's Plan fails to address this reality or set forth a proposal by which to inform customers of this potential volatility. Constellation recommends that customers be sufficiently informed of the risks for which they will ultimately bear responsibility under this new procurement plan.

Constellation next argues that "minimizing regulatory delay and uncertainty benefits customers." (Comments at 2-4) In accordance with Section 16-111.5, under the Plan, a time lag of up to seven business days exists between the time that sealed bids are submitted and the time that the contracts with the winning bidders are ultimately executed, after several rounds of review. Constellation states that the longer that bids must remain open, and the greater the possibility that bids will be renegotiated or rejected during the review process, the greater the likelihood that consumers will ultimately be economically harmed.

While bids are held open during the review process, bidders retain the risk that market prices will change suddenly or unexpectedly, and that procurement administrators or regulators will treat the extensive review period as a "call" period, accepting bids only in a market which rises over the course of the seven business day

period, and renegotiating or rejecting bids in a market which falls over that period. Constellation says such “option” products typically carry with them an extra cost. Constellation states that similarly, potential bidders will treat broad review criteria as creating broad options for procurement administrators or regulators to accept or reject otherwise competitively procured bids.

Constellation states that potential suppliers have to incorporate such risks in their bids to account for this time lag as well as the possibility that the Procurement Administrator will attempt to further negotiate the price. According to Constellation, absent greater clarity regarding the review process, potential suppliers will have to address the risks associated with the multi-layered review by the Procurement Administrator and the Commission, and may forego the process altogether and sell their products elsewhere. In Constellation’s view, the possibility that otherwise winning bids may be rejected only exacerbates the issue.

Constellation claims that a potential solution to the above concerns can be addressed with three changes to the procurement plan. First, Constellation suggests that winning and losing bidders should be notified, subject to ICC approval, within hours of submission. Given that the products are standardized, Constellation says the review of bids should be relatively straightforward, and should not require additional time.

Second, Constellation suggests that there should be a shorter time period between the submission of bids and ultimate approval by the Commission, as well as final execution of contracts by ComEd. Constellation says bids should be approved as soon as possible, and contracts should be executed within one business day following Commission approval. Third, Constellation asserts that the possible grounds for recommending rejection of a bid, and the Commission authority to reject bids, must be clear, well-defined and focused on whether the procurement abided by the approved process, rather than on prices or other extraneous criteria. Constellation believes the causes for rejection should be limited to objective criteria made publicly available well in advance of bid submissions, in order to minimize the regulatory risk to the greatest extent possible.

Finally, Constellation comments that “details provided well in advance will improve the procurement process.” (Comments at 4-5) According to Constellation, the sooner that the specific details of the proposed procurement are provided to potential bidders, the greater likelihood that participation will be vibrant, and that the most attractive bids will be received. In addition to the concerns identified above, Constellation asserts certain important details have not been provided, which should be finalized and made available to market participants as soon as possible. Constellation says these details include:

- Standard contract forms and credit terms and instruments to be utilized;
- Date for bid submissions;
- The time at which bidders will be notified of the Procurement Administrator’s recommendation; and

• The time at which bidders will be notified of the Commission approval of bids.

In its response, **ComEd** says many of these suggestions raise questions that are important and will be resolved as the process of finalizing procurement procedures proceeds. However, ComEd believes they do not identify matters that should be included in the Plan. (ComEd Response at 6-8) The subjects to be covered in the Plan are specified in Sections 16-111.5(j) and (b). ComEd says its Plan addresses each of those subjects and complies with all of the provisions of Sections 16-111.5(j) and (b).

According to ComEd, Sections 16-111.5(j) and (b) do not require the Plan to include draft standard contracts with suppliers, credit terms and instruments to be utilized or any of the other details of the final procurement process that Constellation proposes to specify in the Plan. ComEd states that Section 16-111.5(c)(1)(i) makes clear that the final procurement process is to be designed by the procurement administrator following Commission approval of the procurement plan. ComEd adds that Section 16-111.5(c) addresses such matters as "credit collateral agreements," the "final form of all supply contracts," benchmarks "to be used to evaluate bids" and other topics raised by Constellation. ComEd claims that the Commission must approve an independent procurement administrator as required by Section 16-111.5(j)(ii). Specification of the details of the process at the outset in the Plan proposed by the utility, ComEd argues, is not appropriate under the Act.

ComEd also asserts that the proposal to limit the Commission's authority to reject bids is not a proper subject for inclusion in the Plan. Section 16-111.5(f) and other provisions of law establish the Commission's authority to accept and reject bids based on recommendations from the procurement administrator and the procurement monitor. ComEd contends that the Commission's authority cannot be changed by adding provisions to the Plan that are not included in the statute, and it would be inappropriate for ComEd to include such proposals in the Plan.

b. Commission Analysis and Conclusions

Constellation recommends that customers be sufficiently informed of the risks for which they will ultimately bear responsibility under this new procurement plan.

Constellation also expresses concern relating to various time lags in the RFP process. Constellation suggests that winning and losing bidders should be notified, subject to Commission approval, within hours of submission. Second, Constellation suggests that there should be a shorter time period between the submission of bids and ultimate approval by the Commission, as well as final execution of contracts by ComEd. Third, Constellation asserts that the possible grounds for recommending rejection of a bid, and the Commission authority to reject bids, must be clear, well-defined and focused on whether the procurement abided by the approved process, rather than on prices or other extraneous criteria. In addition to the concerns identified above, Constellation asserts that certain important details have not been provided, which should be finalized and made available to market participants as soon as possible.

In its response, ComEd says many of these suggestions raise questions that are important and will be resolved as the process of finalizing procurement procedures proceeds. ComEd states that Section 16-111.5(c)(1)(i) makes clear that the final procurement process is to be designed by the procurement administrator following Commission approval of the procurement plan.

Regarding Constellation's first argument, the Commission agrees with Constellation as to the importance of effective communications with customers. In the instant case, however, the scope of the Commission's charge under Section 16-111.5 is basically to approve or modify the procurement plan and related tariffs. In that regard, given the lack of more specific recommendations and the absence of citation to any statutory authority by which its recommendations fall within the scope of this proceeding, the Commission will decline to take formal action on those recommendations.

With respect to Constellation's second set of concerns, the Commission will not adopt Constellation's proposals regarding RFP-related procedures and timelines. The Commission believes that many aspects of the procurement process simply will not be decided in this proceeding. Instead, the Act provides that other processes, some of which includes the Procurement Administrator, will determine the type of issues Constellation wants decided here. Section 16-111.5(c)(1) provides that the procurement process shall be administered by the procurement administrator and monitored by an procurement monitor. The procurement administrator has numerous duties and responsibilities, some of which relate specifically to the RFP process. There is not a sufficient basis in the record in the instant case to support a finding that Constellation's recommendations should be imposed, in this order, on the procurement administrator.

8. Use of Short-Term Contracts

a. Positions of the Parties

The Retail Energy Supply Association ("**RESA**") filed an "Objection." In "Issue 1," RESA addresses the "use of short-term contracts." RESA submits that continued progress toward a competitive electric market is the best way to help all consumers cope with rising energy prices. RESA states that successful retail competition should produce downward pressure on price, increase conservation incentives, enhance customer service, improve environmental management and hasten the introduction of new, innovative products. Retail energy competition requires that default service pricing be properly structured; customers must see a default price that reflects the market, otherwise consumers cannot make informed and thoughtful decisions.

According to RESA, Illinois' residential and small and medium-sized businesses need a default service rate providing better price signals to spur more thoughtful efficiency investments and wise energy usage. RESA says the market is always the relevant measure for energy prices, so it makes sense to acquire energy using

mechanisms that reflect market prices and to then price energy accordingly. Without more market reflective price signals, consumers become less concerned about managing their energy usage. Thus, in order to promote conservation effectively, RESA believes that consumers need better price signals.

In the event that the company's procurement costs are higher than those available in the wholesale market, then RESA claims customers are harmed by having to pay higher prices. If wholesale market prices rise above the locked in utility costs, then, RESA says, competition will not develop. According to RESA, long-term procurement contracts will recreate one of the unintended consequences of the rate freeze that Illinois has experienced over the past several years: competition cannot develop in the face of artificially lowered prices.

RESA suggests that ComEd take this opportunity to use the short-term contracts in its plan to allow the full default price to adjust on a periodic basis (e.g. quarterly). RESA suggests that the Commission take this opportunity to set the stage for implementation of the new Illinois Power Agency Act by encouraging a greater mix of market-reflective procurement opportunities that would properly reflect the changes in supply costs.

In "Issue 2," RESA addresses "Riders and Surcharges." It is RESA's understanding that costs associated with supply administration (i.e. legal and consultant costs, cost of utility personnel who manage the process, and other costs associated with managing default service procurement) may be recovered from customers in an adjustment charge. Due to the shortened time frame, RESA has not been able to determine the appropriateness of assigning any of those charges to customers and whether they are being properly allocated. If the Commission decides to open hearings to investigate the procurement plan, RESA suggests that it, and other parties, should have a better opportunity to question these charges.

In its November 28th "Reply Comments," RESA indicated that these comments are intended to provide the data ComEd believes is necessary to consider RESA's proposal. (RESA Reply Comments at 1-2) RESA asserts that the goal of price stability does not trump all other concerns. If that were the case, then RESA says ComEd should be entering into the longest contracts possible ignoring the fact that market prices vary over time with customers potentially paying vastly more than the market price. In RESA's view, the Act should be read to require a balancing of price stability against the goal of providing customers with proper economic signals that will lead to better decisions on power consumption levels and timing, investments in equipment and choice of supplier. According to RESA, the issue is whether one-year contracts or quarterly contracts provide the better balance.

Along with its Reply Comments, RESA provides a study that it says provides information relating to historical forward prices and quarterly pricing. RESA asserts that its analysis shows that forward quarterly prices averaged from 2004 through current have been similar to forward prices for one and two year terms. According to RESA,

this data demonstrates that, while the quarterly forward prices over time have been similar to the forward prices for one and two year contracts, quarterly pricing provides customers with more frequent price signals. RESA argues that market responsive pricing remains the better path to foster the development of retail competition for the benefit of Illinois ratepayers. RESA asserts that customers in a competitive market could choose an electricity product that varies in term and composition. In RESA's view, price signals empower customers to make choices based on their individual energy usage, needs and desires.

According to **ComEd**, RESA's three-month contract suggestion is not "supported by data or other detailed analysis," as required by Section 16-111.5(j)(i) of the Act. (ComEd Plan - Response at 13; Reply at 22) ComEd states that RESA provides no analysis on which the Commission could base a determination that a procurement plan requiring use of three-month supply contracts would provide electric service at "the least total cost over time, taking into account any benefits of price stability." ComEd asserts that there is no supporting data showing the impact that short-term contracts would have on the statutory price stability standard. ComEd believes the analysis provided in support of its Plan shows that the plan satisfies all of the Act's requirements, including the total cost and price stability standards of Section 16-111.5(j)(ii) of the Act.

According to ComEd, RESA attempts to correct its deficient objection by submitting two PowerPoint slides containing numbers it contends satisfy its statutory burden under Section 16-111.5(j)(ii). In ComEd's view, the slides do not satisfy RESA's burden for two reasons. First, ComEd claims the submission is untimely because any supporting data and detailed analysis should have accompanied the objection. Second, ComEd says the two slides submitted by RESA do not contain a "detailed analysis" or any evidentiary showing that could support RESA's proposal. ComEd says one of the slides simply compares the degree to which daily movements in rolling three-month prices vary with the degree to which daily movements in rolling 12-month and 24-month forward prices vary. The other slide simply presents averages of PJM Western Hub forward prices on a 3-month, 12-month and 24-month basis. Neither analysis provides adequate support for RESA's vague proposals. (ComEd Reply at 22-23)

ComEd also contends that the purported analysis is seriously flawed. In the slides, ComEd says that RESA correctly calculated the "1 Year" summary statistics, but incorrectly calculated standard deviation and standard deviation percentages at the quarterly and 2-year levels by failing to annualize them. To properly calculate the annualized standard deviation of the quarterly data, ComEd claims RESA should have multiplied its calculated standard deviation by the factor 2 ($= \sqrt{(12/3)}$). According to ComEd, otherwise, the calculation for standard deviation of quarterly data would not be comparable to the standard deviation of the annual data found in the second column of Attachment 1. ComEd also asserts that to properly calculate the annualized standard deviation of the 2-year data, RESA should have multiplied the calculated standard deviation by the factor $\sqrt{0.5}$ ($= \sqrt{(12/24)}$). Otherwise, ComEd says the resulting standard deviation for the 2-year period would not be comparable to the 1-year standard deviation calculation. (ComEd Reply at 23)

ComEd asserts that correcting to the formulas used by RESA demonstrates that using quarterly data would have led to significantly more volatile pricing than using either one year or two-year pricing. Therefore, ComEd concludes that RESA's recommendation to favor quarterly pricing over annualized strip pricing should be rejected. According to ComEd, the corrected version of RESA's analysis clearly favors annualized strip pricing vs. a shorter pricing contract in terms of reduced price risk customers would face. (ComEd Reply at 24)

ComEd avers that the corrections to RESA's Attachment 1 contradict RESA's statement that forward quarterly prices averaged from 2004 through current have been similar to forward prices for one and two year terms. ComEd says that while averages were similar, the variability of prices using quarterly periods at-a-time historically were more than twice that using annual periods, and more than three times that using 2-year periods. In ComEd's view, these findings indicate that RESA's recommendation is unfounded and should be rejected. (ComEd Reply at 24)

ComEd reads RESA's objections to the Plan to mean that a separate procurement event would be run for each quarter of the delivery period. ComEd claims that this suggestion not only subjects customers to additional costs related to administering multiple procurement events, but also exposes customers to much greater price uncertainty. ComEd believes that the level of price uncertainty this suggestion would pose to customers is contrary to the basic construct of the legislation that stipulates that any procurement will "take into account the benefits of price stability." ComEd notes that none of the other parties to this proceeding has recommended or supported RESA's suggested approach. (ComEd Reply at 25)

In ComEd's view, another reason why RESA's objection should be rejected is that it is based on the incorrect premise that ComEd's Plan proposes procurement through the use of 1-year agreements. ComEd says its Plan does not propose the use of 1-year agreements; it proposes to acquire 24 separate monthly products and to give bidders some opportunity to bundle their bids for various products. ComEd argues that because RESA's objection assumes that 1-year contracts will be used and because the Plan makes clear that they will not, the Commission should determine that RESA's objection lacks merit. (ComEd Reply at 25)

b. Commission Analysis and Conclusions

RESA argues that ComEd should be directed to include, in its procurement plan, the use of quarterly contracts. RESA contends that such contracts will provide better price signals. RESA also claims the study attached to its Reply Comments shows that forward quarterly prices averaged from 2004 through current have been similar to forward prices for one and two year terms.

The Commission notes that RESA's study appears to consist of two one-page power-point slides using historic pricing data from the NYMEX PJM West hub. While the

Commission believes the issue raised in RESA's comments is relevant to this proceeding, its analysis lacks the detail necessary to determine whether or to what extent it supports RESA's conclusions. Accordingly, RESA's proposed modifications to ComEd's plan will not be adopted.

C. Procurement Administrator

As summarized in more detail above, ComEd proposes to utilize the firm of NERA as its Procurement Administrator, and lists the lead NERA team members that would be working on the assignment.

Staff indicates that it has no basis for opposing ComEd's choice of Procurement Administrator. (Staff Objections and Comments at 22-23) Staff further notes that NERA, with the same lead team members, was approved by the Commission to act as the Auction Manager for the 2006 Illinois Auction. During the 2006 Illinois Auction, Staff found the NERA team to be highly professional and competent.

Section 16-111.5(j) provides that the Commission shall approve an independent procurement administrator. It appears that no party has objected to ComEd's proposal to utilize the firm of NERA. The Commission finds that ComEd's proposal to utilize the firm of NERA as its Procurement Administrator is reasonable; it shall be, and is hereby, approved.

IV. TARIFF RELATED ISSUES

A. Introduction

Section 16-111.5 (l) provides in part, "An electric utility shall recover its costs of procuring power and energy under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (l), will be recovered."

In its petition in Docket No. 07-0531, ComEd seeks "approval of tariffs implementing a new competitive procurement process and recovering procurement costs."

B. Rider AAF – Accuracy Assurance Factors

Rider AAF contains true-up mechanisms for over or under collections from fixed-price customers.

Currently, ComEd charges a separate Accuracy Assurance Factor ("AAF") to (1) the residential and small/medium C&I and lighting customers and (2) all customers 400 kW and greater. Thus, the costs of the SFCs for the residential, small/medium C&I and lighting customers, along with the related AAF for these customers, were charged only

to the residential, small and medium C&I and lighting customers. Similarly, the costs of the SFCs for the 400 kW and greater customers, along with the related AAF for these customers, were charged only to those larger customers.

Beginning with the June 2008 monthly billing period, ComEd will no longer be required to provide electric supply to customers 400 kW and greater, as these customers have been declared competitive. However, for several additional months, ComEd and PJM Interconnection L.L.C. ("PJM") will be concluding the settlement process for contracts associated with the 400 kW and greater customers.

In this proceeding, ComEd proposes that any credit or debit settlement balance for the A-AAF, as determined in ComEd's settlement process with PJM for the effective periods associated with February through May 2008, should then be assigned to the residential and small/medium C&I customers because the 400 kW and greater customers will no longer be a supply group responsibility of ComEd.

1. Positions of the Parties

While **Staff** is in agreement that ComEd's new proposed Rider AAF is necessary, Staff has concerns about ComEd's proposal. (Staff Objections at 28) ComEd's proposed Rider AAF will ensure that ComEd recovers its full cost of providing electric supply for the 400 kW and greater customer segment. However, to ensure full cost recovery, residential and small/medium C&I customers would be assigned the credit or debit balance of the A-AAF as caused by the 400 kW and greater customers.

According to Staff, to the extent that the 400 kW and greater customers cause an underpayment balance for additional months after May 2008, ComEd proposes that the residential and small/medium C&I customers would be required to pay for, and subsidize, that underpayment balance that resulted from the purchase of electric supply for the 400 kW and greater customers. Conversely, to the extent that the 400 kW and greater customers cause an overpayment balance for additional months after May 2008, ComEd proposes that the residential and small/medium customers would receive the overpayment amount and be subsidized by the 400 kW and greater customers.

While Staff is not objecting to the Companies' proposed A-AAF assignment method, Staff is expressing its concern and providing its comments to the Commission so that the Commission is more fully informed about ComEd's proposal. Staff has concerns about the Rider AAF proposal because of the subsidization issue.

It appears to Staff that there may be at least **two alternatives**, other than ComEd's proposal, for the disposition of the credit or debit balance of the A-AAF, which will occur for the effective periods associated with February through May 2008. The first possible alternative would be that any underpayment or overpayment from the 400 kW and greater customers not be assigned to the residential and small/medium C&I customers and, instead, that the final credit or debit amounts for these effective periods would be assigned to the Company.

Staff acknowledges that ComEd may be concerned with the possibility of not being able to fully recover costs. Further, Staff in no way questions the prudence of these costs. However, as between ComEd and the residential and small/medium non-residential customer group, Staff asserts that ComEd has more input and responsibility for any over- or under-recovery of supply costs related to the 400 kW and greater customer group.

Staff says a second possible alternative would be that ComEd is allowed to assign the over- or under-payment to the customers who were the likely causers of the final A-AAF amount. The customers who are served under this rider over the final three months of February through May 2008 would likely be the customers who caused the final A-AAF amounts for the remaining effective periods. The amount to be charged or refunded could be prorated on a usage basis for those three months of use. (Staff Objections at 29-30)

According to **ComEd**, Rider AAF – Accuracy Assurance Factor is a new interim rider that provides a transition from the application of the current AAF for fixed price service determined under Rider CPP to the new Purchased Electricity Adjustment ("PEA") determined under Rider PE. ComEd's proposed Rider AAF preserves the AAF provisions of terminated Rider CPP for fixed price service for electricity provided through May 2008 and provides for application of such AAFs in the corresponding monthly billing periods as previously provided in Rider CPP. (ComEd Response at 16-17)

ComEd urges the Commission to approve ComEd's proposed Rider AAF, without modification. Section 16-111.5(j)(i) of the Act provides that all objections to the electric utility's plan shall be specific, supported by data or other detailed analysis. ComEd states that Staff's concern is not a specific objection supported by data or other detailed analysis. ComEd says even Staff admits that it is not objecting to the Company's proposed A-AAF assignment method. (ComEd Response at 17)

ComEd argues that Staff's proposal would deny ComEd a fundamental ratemaking principle: cost recovery. ComEd asserts that rates must allow a utility to recover prudently and reasonably incurred costs. In ComEd's view, there is no question that these costs are prudent; they are incurred pursuant to existing SFCs declared by law to be prudent. If the Commission were to prohibit recovery of prudent costs that ComEd necessarily must incur, ComEd claims it would run afoul of both Illinois law and the Illinois and U.S. Constitutions. ComEd believes that Staff's first alternative, in which ComEd simply absorbs the costs, clearly violates this basic ratemaking principle, as ComEd is denied recovery outright.

Staff's second alternative would require ComEd to allocate costs to a customer group declared competitive and which, by the June 2008 monthly billing period, will likely no longer be taking electric supply service from ComEd. Thus, ComEd says it would likely absorb these costs.

ComEd also contends that the costs, which are incurred as a result of the SFCs, are expressly required to be fully recoverable under Section 16-111.5(l). That Section provides that an electric utility shall "recover its full costs of procuring electric supply for which it contracted before the effective date of [PA 95-0481] in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006." ComEd asserts that this provision prohibits any alternative that would prohibit recovery of the balance.

Finally, ComEd says Staff argues that the Commission should not assign "AAF [balances] determined for the customers in one auction segment (400 kW or greater) … to the AAF for customers of another auction segment (residential and small/medium C&I)." According to ComEd, this argument must also be rejected; it is not necessarily unjust or unreasonable to assign costs or refunds to current customers. In fact, ComEd claims it is often done.

Preliminarily, **Staff** in its Reply Comments says its Response provided more analysis about this issue than ComEd has provided, cumulatively, in ComEd's Petition, affidavits and Reply Comments. (Staff Reply at 4)

On the merits, Staff finds ComEd's dismissal of Staff's second alternative interesting, in light of the Ameren Utilities' conditional acceptance of the same Staff alternative in Docket No. 07-0527. (Staff Reply at 5-6)

Staff's says its second alternative would allow the Company to assign the over or underpayment to the customers who were the likely causers of the final AAF amount for 400 kW and greater customers and that the likely customers would be the customers who are served under this rider over the final three months of February through May 2008.

Staff is aware that this proposed language allows for the possibility that during the months of February through May 2008, there may not be any customers being served under this rate; in which case the final amounts would be assigned to the residential and small/medium C&I customers in a manner similar to that which the Company originally proposed in its filing. However, this alternative provides the best opportunity to assign any over or underpayment to customers who likely caused the over or underpayment.

Thus, Staff argues, the Commission should require ComEd to change its Rider AAF to continue a separate over or under true-up mechanism for 400 kW and greater customers beyond May 2008, until just after the settlement of May 2008 costs are determined and charged (the month of September). Staff finds that this alternative, including 'true-up' language similar to that proposed by Ameren in 07-0527, is acceptable and recommends that the Commission order ComEd to incorporate similar language into its Rider AAF. (Reply at 6-7)

In supplemental comments filed November 28, 2007, the **AG** expresses agreement with the "second alternative" recommendation in Staff's Objections (filed November 13, 2007) that costs incurred on behalf of large customers should follow the customer after they leave the system, without limitation. (AG Supp. Comments at 3-4)

In its Reply filed on November 30, 2007, **ComEd** states that it accepts Staff's second alternative proposal to recover these costs, as clarified in Staff's reply comments; ComEd proposes revised tariff language accordingly. (ComEd Reply at 2, 5) Staff, in its BOE, confirmed that the revised language attached to ComEd's reply was acceptable to Staff. (Staff BOE at 3)

ComEd disagrees with the AG's position to the extent that position differs from Staff's current recommendation. (ComEd Reply at 6)

2. Commission Analysis and Conclusions

As explained above, Rider AAF contains true-up mechanisms for over- or under-collections from fixed-price customers; the true-up mechanism is necessary because the amounts are not immediately quantifiable due to the settlement process and other factors. The issue raised in this case is what to do about over- or under-payment balances associated with fixed-price service to 400 kW and greater customers, who will no longer receive fixed-price service after the May 2008 billing period, since those balances will not be known until some months later.

Staff's second alternative, as clarified in its Reply Comments, would continue to use a separate true-up mechanism for these customers through the monthly billing period in which the settlement costs from May 2008 are applied in the true-up mechanism. That is, the true-up costs or credits would follow the customers until then. After that, such amounts would be assigned to remaining fixed-price customers. The Commission believes this approach is appropriate under the circumstances, inasmuch as it assigns the costs or credits to those who gave rise to them, for a reasonable period of time. Thus, it shall be approved.

C. Rider PE – Rate Mitigation

1. Positions of the Parties

ComEd proposes to limit the annual increase in overall electric charges for any customer group or subgroup taking service under Rate BES to no more than 5% above the average increase for all customers served under Rate BES. The cap would be implemented through adjusting the supply charges determined under Rider PE. ComEd described its mitigation plan as "proposed revisions to the Mitigation Plan originally approved in Docket No. 05-0159" which "allowed bundled rates for customer groups or subgroups to increase by the higher of 20% or 150% of the average for all customers in the subject groups and subgroups." (Response at 19-20)

According to **Staff**, rate mitigation has become an important issue for the design of ComEd's retail rates. Interest in rate mitigation has risen in conjunction with the growing concern by ComEd ratepayers about bill impacts. In Staff's view, now is the appropriate time to consider mitigation proposals. A new procurement plan has now been proposed and the Commission must decide how any cost changes resulting from the new procurement process are to be allocated among bundled ratepayers. Thus, Staff argues, the supply rate mitigation issue should be revisited because this docket provides the final opportunity, absent opening a subsequent new docket, to address associated bill impacts before the new procurement costs become effective with the June 2008 monthly billing period. (Staff Objections at 30-31)

ComEd, for its part, has presented a mitigation proposal with its filing which limits bill increases for individual customer groups to no more than 5% above the average for bundled customers. Staff says this proposal would certainly narrow the range of potential increases from the current mitigation plan for the auction process which allows increases to rise to the maximum of 20% or 150% of the average.

Staff is concerned because ComEd's proposed mitigation plan would allow some realignment of supply costs and overall bills, between customer classes, for bundled ratepayers. Furthermore, what that realignment will be is not known at this time. Staff believes it would be undesirable to adopt a proposal to realign costs between customer classes for bundled customers with the June 2008 monthly billing period, because the Commission has just concluded its rate design investigation for the Company (Docket No. 07-0166) and has identified a rate design which it believes appropriately balances bill impacts for bundled ratepayers. Staff believes it would be risky policy to change these relationships at that time. (Objections at 33)

According to Staff, the better alternative would allocate any increase or decrease in supply charges resulting from the procurement of power on an **across-the-board** basis among all bundled customers. That across-the-board approach would include bundled customers with demands of less than 400 kW. (Objections at 33)

Staff claims the across-the-board approach would maintain consistency with the Commission's recently concluded rate redesign process. It would ensure that no customer group, or groups, receives an inordinate supply cost increase when supply costs change with the June 2008 monthly billing period. Given the current lack of information about what these changes will be, Staff asserts that the across-the-board approach will best ensure that no group of customers receives an inordinate increase over the current supply charges.

ComEd proposes to limit the annual increase in overall electric charges for any customer group or subgroup taking service under Rate BES to no more than 5% above the average increase for all customers served under Rate BES. The cap would be implemented through adjusting the supply charges determined under Rider PE. Although Staff acknowledges that ComEd's proposal "would certainly narrow the range of potential increases from the current mitigation plan for the auction process which

allows increases to rise to a maximum of 20% or 150% of the average," Staff nevertheless expresses concern that ComEd's proposal would "allow some realignment of supply costs and overall bills, between customer classes, for bundled ratepayers," and that "what that realignment will be is not known at this time." Instead, Staff proposes to use an "across-the-board" approach, wherein the percentage change (increase or decrease) in overall supply costs resulting from future procurements of power and energy would form the basis for the percentage change in all supply charges, without regard to the cost of serving the group or subgroup.

According to ComEd, the key difference between its and Staff's proposals is that Staff's will perpetuate and exacerbate intra- and inter-class subsidies indefinitely. (ComEd Response at 20) ComEd claims its proposal is conceptually consistent with the original Mitigation Plan approved by the Commission, which also provided for some movement toward cost, although it is more moderate. ComEd's proposal would continue to move bundled rates toward full cost of service, but at a much, much slower pace than that in the Mitigation Plan originally sponsored by Staff in Docket No. 05-0159. That plan's cap allowed bundled rates for customer groups or subgroups to increase by the higher of 20% or 150% of the average for all customers in the subject groups and subgroups. Under ComEd's proposal, the bundled rates for such customers would be allowed to increase by no more than 5% over the average increase, thereby allowing for a very gradual movement toward full cost-based rates.

ComEd claims that under Staff's proposal, the current intra- and inter-class subsidies would essentially be locked in – or made worse – and no progress toward cost-based rates would be made. For example, if there is no change in supply costs between procurement cycles, the bundled rates for residential and non-residential electric space heating and dusk-to-dawn lighting customers would remain unchanged under Staff's proposal, perpetuating the existing subsidies. Under Staff's proposal, ComEd asserts that there also would be the undesirable result that as costs increase, subsidies actually would become more pronounced. (ComEd Response at 20-21)

ComEd believes the notion that the gradual realignment that ComEd proposes is somehow "not known at this time" is misplaced, and no reason to reject ComEd's approach. ComEd claims that the rate impact under its proposal is no less known than the impact under Staff's proposal. ComEd says it is certain that under ComEd's proposal, bundled rates for any group or subgroup served under Rate BES would not increase by more than five percentage points above the average increase for all customers served under Rate BES.

ComEd also asserts that it is not clear if Staff's across-the-board proposal is intended to disregard certain provisions in the Commission's Order in Docket No. 07-0166. That Order directed ComEd to reduce the non-summer supply charge for residential electric space heating customers beginning with the December 2007 monthly billing period. The Commission also allowed ComEd to increase the summer supply charge for these customers for the June through September 2008 monthly billing periods to provide for revenue neutrality. ComEd says it included provisions in Rider

PE to provide for this adjustment to the summer supply charge. According to ComEd, Staff's across-the-board increase proposal, on its face, appears to completely ignore ComEd's right to provide for an additional increase in the 2008 summer period supply charge for residential electric space heating customers and thereby appropriately recover its costs. (Response at 22)

In its **BOE**, ComEd does not seek to change the ultimate conclusion in the Proposed Order, which would approve Staff's proposal to allocate any increase or decrease in supply charges resulting from the procurement of power on an across-the-board basis among all bundled customers; however, ComEd does propose certain clarifying language to ensure that this conclusion does not limit the consideration of other rate design proposals in the future. (ComEd BOE at 3-4) ComEd's clarifying language has been added to the conclusion below. Staff agrees with the main clarification proposed by ComEd. (Staff BOE at 4)

2. Commission Analysis and Conclusions

Pursuant to the ComEd Procurement Order in Docket No. 05-0159, the results of the blended segments of the 2006 auction were entered into series of formulae, sometimes known as the "prism" or "rate prism." The prism is designed to allocate fixed price generation supply costs to each participating customer class and translate those charges into retail supply rates for customers.

In addition, the Procurement Order approved a Staff-proposed rate mitigation mechanism. Generally speaking, that plan limited increases for individual customer classes in the first CPP-B auction to a maximum of 20%; however, if the overall increase in the CPP-B auction were greater than 13.33%, the maximum increase for an individual class would be 150% of the CPP-B auction group's average increase. The rate mitigation plan was applicable on a total bill basis, and was intended to mitigate large increases in the bills of customers in any given rate class to which the results of the blended auction segment is applied, and the plan is still in effect.

Additionally, the Commission recently issued an Order, in October, 2007, approving redesigned electric rates for ComEd electric rates in Docket No. 07-0166. The rates approved in that docket were designed to provide rate relief to those customers who have faced the largest increases, particularly electric space-heating customers, while ensuring that other customer groups are not unduly impacted by these rate mitigation measures.

In the instant proceeding, ComEd proposes to limit the annual increase in overall electric charges for any customer group or subgroup taking service under Rate BES to no more than 5% above the average increase for all customers served under Rate BES. The cap would be implemented through adjusting the supply charges determined under Rider PE.

Staff proposes to allocate any increase or decrease in supply charges resulting from the procurement of power on an across-the-board basis among all bundled customers. That across-the-board approach would include all bundled customers with demands of less than 400 kW. Staff's primary concern seems to be that no customer group, or groups, receives an inordinate supply cost increase when supply costs change with the June 2008 billing period.

As the Commission understands it, ComEd's recommendation appears to be premised upon the assumption that the goal of any rate mitigation in this proceeding should be supply rates that are set in a way that continues to move toward cost. That is, ComEd's proposal seems to assume that the customers will immediately begin to move from electric rate redesign recently adopted in Docket 07-0166.

While the Commission is not under the illusion that the rates resulting from Docket No. 07-0166 were perfect, they were at least the result of a collaborative effort on the part of ComEd and Staff, as well as months of proceedings involving only rate mitigation issues. In contrast, the instant proceeding is being conducted on a much more expedited basis. It also involves numerous issues going well beyond rate mitigation, and the record on rate mitigation is far less developed than in Docket No. 07-0166.

As a general proposition, the Commission does not favor increasing or decreasing rates on an across-the-board rate basis. Such an approach, by definition, ignores the underlying cost of service. All else equal, the Commission generally prefers cost-based rates. In this case, however, applying the increase on an across-the-board basis would offer one benefit in comparison to ComEd's proposal. Staff's across-the-board proposal appears to begin with the rates that were recently established in Docket No. 07-0166, and then adjusts those rates; thus it would maintain the protections built into those rates in response to concerns expressed by customers and others about the magnitude of increases to some customers, particularly space-hearing customers.

The Commission further observes that the question of how ComEd's supply rates should be designed over the medium or long term simply cannot reasonably be determined in this proceeding. In the Commission's view, the issue is too complicated, and there is not an adequate basis for making an informed decision on it. Also, it is not clear to the Commission what impact, if any, the expected changes to ComEd's delivery service rates in 2008 would or should have on ComEd's rate mitigation proposal. ComEd also seems to suggest that if the Commission adopts its rate mitigation proposal in this proceeding, it will remain in effect when supply rates change in subsequent years. As noted above, the limited record in the instant docket simply does not support the adoption of a long-term approach to redesigning electric rates. Rather, the Commission believes that, at best, it will be able to make a short-term, interim decision on how ComEd's supply rates should be designed in this proceeding.

All things considered, the Commission reluctantly concludes that for purposes of this proceeding, it will adopt Staff's proposal to allocate any increase or decrease in

supply charges resulting from the procurement of power on an across-the-board basis among all bundled customers. As noted above, in its BOE, ComEd does not seek to change this ultimate conclusion. ComEd does propose certain clarifying language which has been added to the conclusion.

The Commission expects the question of how ComEd's electric rates should be designed will be addressed in ComEd's recently opened delivery rate case, where rate mitigation on a total bill basis, including supply charges, could also be addressed. Additionally, there are other avenues available to redesign rates on a revenue neutral basis, should any party believe such a change is necessary. Especially given the uncertainty concerning costs and rates in the future, the Commission does not intend its decision to approve an across-the-board rate design in this order to limit future consideration of any rate design proposal. (ComEd BOE at 4; Staff BOE at 4)

Finally, ComEd expressed a concern that Staff's proposed across-the-board increase would nullify a portion of the decision in Docket No. 07-0166 that provides for ComEd to recover costs that were effectively deferred from the non-summer period to the summer period. Specifically, the Commission found that "the costs that would have otherwise been reflected in the charges currently in effect for the December 2007 through May 2008 billing periods may be reflected in the supply charges to be established for these customers for the June 2008 through September 2008 billing periods." (Docket No. 07-0166, Order at 9) The Commission wishes to emphasize that its decision here does not have the effect that causes ComEd concern. The Commission affirms that the language quoted above remains in effect.

D. Rider PE – Purchased Electricity; Recovery of Costs; Review of Reasonableness of Costs

1. Introduction; Statutory Authority

Section 16-111.5(k) provides in part, "In order to promote price stability for residential and small commercial customers during the transition to competition in Illinois, and notwithstanding any other provision of this Act, each electric utility subject to this Section shall enter into one or more multi-year financial swap contracts that become effective on the effective date of this amendatory Act."

16-111.5(k) later provides, in part, "Costs incurred pursuant to a contract authorized by this subsection (k) shall be deemed prudently incurred and reasonable in amount and the electric utility shall be entitled to full cost recovery pursuant to the tariffs filed with the Commission."

Section 16-111.5(l) provides in part, "An electric utility shall recover its costs of procuring power and energy under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (l), will be recovered." It further provides:

> The tariffs shall include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return on the price paid by the utility for that supply, plus any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy. The formula rate or charge shall also contain provisions that ensure that its application does not result in over or under recovery due to changes in customer usage and demand patterns, and that provide for the correction, on at least an annual basis, of any accounting errors that may occur.

It further provides:

> A utility shall recover through the tariff all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into effect pursuant to Section 1-75 of the Illinois Power Agency Act and this Section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs. The electric utility shall also recover its full costs of procuring electric supply for which it contracted before the effective date of this Section in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006.

That section continues, "All such costs shall be deemed to have been prudently incurred."

The tariffs proposed by ComEd, mainly in Rider PE – Purchased Electricity, contain provisions stating that various costs "shall be deemed to have been prudently incurred."

For example, in Rider PE, Sheet No. 637 sets forth three types of costs to be included in Purchased Electricity Prices ("PEPs"). The proposed tariff states that, "the Company is entitled to 'recover its costs of procuring power and energy under this Section (Section 111.5 of the Act)' and 'all such costs shall be deemed to have been prudently incurred.'"

2. Positions of the Parties

Staff takes issue with many of those tariff provisions which state that costs "shall be deemed to have been prudently incurred." Staff believes some of the types of costs should be subject to a reasonableness, i.e. prudency, review.

Staff also contends that including such language in tariffs is not appropriate. Staff submits that statements in a tariff paraphrasing statutory language addressing whether certain costs are to be deemed prudent or allowed by the Commission do not belong in

a tariff establishing the rates to be charged to bundled customers. (Staff Objections at 34-35)

Staff argues that whether the specific costs subject to the foregoing language are to be deemed prudent, eligible for recovery or ineligible for recovery is governed by statute, and does not require inclusion of the statutory language in a tariff to be effective. Thus, Staff believes this language is simply unnecessary. Moreover, since the language is more than a mere quotation of the statute, Staff says it involves or presents an interpretation of these statutory requirements, limitations and prohibitions that may conflict with the actual intent and meaning of the statute.

For instance, Staff submits that while the legislature deemed entering into the SFC's and swap contracts as prudent, there is no indication the legislature intended to excuse utilities from the consequences of future discretionary conduct that could increase the costs otherwise incurred under the SFCs or swap contract. Thus, not only is such language unnecessary, but Staff claims it also runs the risks of creating a conflict with the statute and impeding the Commission's efforts to determine the reasonableness of these costs in subsequent proceedings. Therefore, Staff recommends that all language pertaining to the standards for recovery of procurement costs be removed from the tariff. (Staff Objections at 35-36)

In Staff's view, language on 1) preexisting contracts – supplier forward contracts, 2) preexisting contracts – financial swaps contracts and 3) the discussion of the purchased electricity price should be removed from the tariff, because that language is already enacted by a statute and is inappropriately included in a tariff because it does not further the relationship between the customer and the utility. Staff argues that inclusion of such language merely confuses the relationship which the remainder of the tariff attempts to govern, and should consequently be removed. (Staff Objections at 36)

In Rider PE, Sheet No. 637 sets forth three types of costs to be included in Purchased Electricity Prices ("PEPs"). The proposed tariff states that, "the Company is entitled to 'recover its costs of procuring power and energy under this Section (Section 111.5 of the Act)' and 'all such costs shall be deemed to have been prudently incurred.'" (Staff Objections at 36-37)

Staff states that while the legislature did provide that certain costs shall be deemed to have been prudently incurred, Staff disagrees with ComEd's proposed language because it is contrary to the provisions of Section 16-111.5(l) to the extent it indicates or implies that all three cost categories are to be deemed prudently incurred. (Staff Objections at 37) Staff asserts that while new Section 16-111.5(l) contains a sentence stating "All such costs shall be deemed to have been prudently incurred," the context in which that statement is made indicates that it applies only to the costs of procuring power under supply contracts entered into before the effective date of Section 16-111.5 for the provision of full requirements service to bundled customers as described in the immediately preceding sentence.

According to Staff, ComEd's proposed language would also render similar language regarding the prudency of certain costs in Section 16-111.5(k) meaningless, contrary to the rule that a statute must be construed so that no term is rendered superfluous or meaningless. (Staff Objections at 38) Staff says that according to ComEd's tariff language, the cost of swap contracts would be deemed prudent under the language of Section 16-111.5(l), thus rendering the deemed prudent language of Section 16-111.5(k) superfluous and meaningless, contrary to principles of statutory construction. (Staff Objections at 39)

In Section IV.E.4 of its Objections, "**Reasonableness of Purchased Electricity Costs**," Staff asserts that language in ComEd's tariffs gives the impression that none of the costs which a utility is allowed to recover pursuant to Section 16-111.5 need to be found reasonable by the Commission on an annual basis. While Section 16-111.5(l) does address the need to address accounting errors that may occur, Section 16-111.5(l) also provides that an electric utility's tariff among other costs set forth in that section can only recover for "just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy" and "all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into effect pursuant to Section 1-75 of the Illinois Power Agency Act and this section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs." (Objections at 44)

Given that Section 16-111.5(l) puts a qualifier of reasonableness on certain cost recoveries by the utilities, Staff recommends that ComEd's tariff language be revised so that the tariff is clear to all interested parties and consistent with the law that the reconciliation to take place beginning in 2009 shall also involve a determination that the costs incurred in arranging and providing the supply of power and energy are reasonable and that the costs incurred to implement or comply with any procurement plan developed and put into effect pursuant to the Illinois Power Agency Act, including fees assessed by the Agency, costs associated with load balancing and contingency plan costs are reasonable as well. Staff proposed specific language to address its concerns.

In addition, Staff states that tariff language on Original Sheet No. 630 indicating the Purpose of Rider PE insinuates that "all" costs incurred by the Company related to the procurement of power must be allowed to be recovered through Rider PE. For the same reasons provided for original sheet no. 648 regarding reasonableness of costs, Staff proposes the language changes to mitigate a similar concern. (Objections at 45-46)

ComEd responds to several claims made by Staff concerning ComEd's right to recover the costs of procuring electricity. ComEd says it appreciates the validity of several of these concerns and has proposed modifications to its tariffs accordingly. In other respects, however, ComEd believes Staff's challenges go too far, running contrary to the spirit and letter of PA 95-0481, as well as federal and constitutional law. (Response at 6)

According to ComEd, Section 16-111.5(1) specifies procurement costs that ComEd is entitled to recover in its procurement tariffs; in so doing, it treats ComEd's supply costs differently from its internal costs of administration. Supply costs, ComEd argues, such as those for energy, capacity, ancillary services, collateral and other security, load balancing, contingency plans, and Illinois Power Agency fees charged to ComEd, are absolutely recoverable in full.

ComEd states that with respect to administrative costs, Section 16-111.5(l) provides that ComEd's tariffs recover "any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy." ComEd acknowledges that this provision allows the Commission to determine the reasonableness of ComEd's administrative costs, including in periodic review proceedings. ComEd says its revised tariffs expressly recognize that fact and provide for any adjustments that may result. (Response at 7)

According to ComEd, PA 95-0481 implements an independent procurement process, not controlled or managed by utilities. The procurement process is proposed, reviewed, and regulated in advance and then set out in the Commission-approved procurement plan. Under this structure, ComEd claims its role is to implement the plan, not to exercise control over what resources to purchase, or in what quantity. ComEd is to follow the procurement plan, with only very limited discretion. Recognizing this, ComEd says PA 95-0481 specifically allows ComEd to recover its supply costs.

ComEd argues that the statute calls for the tariffs to include a "formula rate or charge" to pass through "costs incurred by the utility in procuring a supply" and "just and reasonable costs" incurred in "arranging and providing for the supply." According to ComEd, that formula rate or charge is to include provisions to prevent certain over- and under-recovery and to permit correction of accounting errors.

Subsection (l) further explains that the tariff recovery will include "all reasonable costs incurred to implement or comply with any procurement plan," listing as examples of reasonable costs "any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs." The subsection, ComEd says, also provides for recovery of an electric utility's "full costs of procuring electric supply for which it contracted before the effective date of this Section [16-111.5] in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006." Then, consistent with the full recovery for future supply costs, the subsection provides that "[a]ll such costs [under the pre-existing contracts] shall be deemed to have been prudently incurred." (Response at 7-8)

ComEd asserts that proposed Rider PE recognizes its entitlement to recover its procurement costs, and the provision that "all such costs shall be deemed to have been prudently incurred." Staff notes that this particular finding of prudence should be read to apply only to the costs noted in the immediately preceding sentence in Section 16-111.5(l) – namely, an electric utility's "full costs of procuring electric supply for which

it contracted before the effective date of this Section in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006." Although the prudence finding could be applied more broadly, ComEd accepts Staff's view, and has modified its proposed Rider PE to make this clarification. However, the fundamental distinction in Section 16-111.5(l) between supply costs and administrative costs remains, and ComEd asserts that its right to recover fully its supply costs is not dependent on this presumption of prudence.

In response to Staff's assertion that ComEd's proposed tariffs should not paraphrase or quote statutory language embodying ComEd's right to cost recovery, ComEd claims this position is baseless and illogical. ComEd says no law, regulation, or principle prohibits including statutory language in tariffs. In ComEd's view, Staff's inability to cite any authority for this position underscores this fact. ComEd asserts that statutes are commonly referenced and paraphrased in approved tariffs. (Response at 10)

According to ComEd, this is not surprising because including statutory provisions in tariffs makes sense, especially in the case of tariffs like these that implement a specific statute. ComEd says tariffs implementing specific statutes need to be consistent with those statutes. One way to help ensure consistency is by incorporating the applicable statutory language into tariffs, through quotation, paraphrasing, and/or reference. ComEd asserts that it and other utilities most often include statutory language in such cases.

In response to Staff's complaint that ComEd's tariffs actually interpret the statute and that such interpretation is unnecessary, ComEd contends there is nothing odd or illegal about interpretation. ComEd says the legislature saw a need for translating the law into tariff language; it would not have required implementing tariffs in the first place if it had viewed the statute as self-executing. ComEd adds that in implementing a statute, the tariffs will – of necessity – interpret it. ComEd asserts that there is no other way to apply the statute's general directives to the specific charges, classes, and circumstances specified in a rate book. In ComEd's view, faithful interpretation may be accomplished by a combination of direct quotation, paraphrasing, and/or appropriate application, and Staff can cite no authority to the contrary. According to ComEd, while there is nothing wrong with interpreting the statute, ComEd has attempted to mitigate Staff's concern by quoting the statutory language wherever possible. ComEd says an analogous need to interpret and apply statutes is evident in the Commission's own regulations. (Response at 10-11)

Finally, Staff asserts that tariffs define a utility-customer relationship. According to ComEd, this hardly supports removing from tariffs references to statutes that speak to that same utility-customer relationship.

In Section I.C of its Response, ComEd replies to Staff's "claim that the tariffs should be modified to add an after-the-fact reasonableness review of procurement costs." ComEd believes this claim is too broad. While such a review is lawful and may

be appropriate with respect to ComEd's own administrative costs, ComEd contends it is illegal with respect to supply costs, under both state and federal law. (Response at 12)

ComEd says the requirement that utilities be permitted to recover their full costs of supply procured on the FERC-regulated wholesale markets follows controlling federal law. ComEd contends that federal regulation of such wholesale electricity transactions is supreme and exclusive. (Response at 13, citing *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 964 (1986)) ComEd states that the U.S. Supreme Court has declared that "Congress has drawn a bright line between state and federal authority in the setting of wholesale rates and in the regulation of agreements that affect wholesale rates." *Mississippi & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 374 (1988). ComEd says because of this exclusive federal jurisdiction, state utility commissions generally may not reevaluate the "prudence" or "reasonableness" of wholesale procurements of electric power, such as the wholesale purchases at issue here. (Response at 12-16)

ComEd says the *Pike County* exception cannot apply here because ComEd exercises no discretion over the quantity purchased. (Response at 15, citing *Pike County Light Power Co. v. Pa. Pub. Util. Comm'n*, 465 A.2d 735 (Pa. Commw. Ct. 1983))

According to ComEd, Staff is seeking a Commission determination of the reasonableness of supply costs incurred under a FERC-approved rate – something that the Commission simply cannot do. The Commission, ComEd argues, may not prevent ComEd from recovering the costs of those wholesale purchases "through the artifice of a prudence review."

ComEd contends that there is no basis for any review of its supply costs under the new procurement process. ComEd's federally-regulated costs include not only energy, capacity, and ancillary services, but also two of the three supply costs that subsection (1) specifically deems reasonable, namely "costs associated with load balancing, and contingency plan costs." Likewise, ComEd claims there is no basis for a reasonableness review of the supply costs incurred under pre-existing contracts for "the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006." Nor, ComEd argues, is there any basis for a post hoc review of costs imposed on ComEd by the Illinois Power Agency. Not only is such a review contrary to Section 16-111.5(l), but ComEd believes it also makes no sense for the Commission to put ComEd in peril depending upon the Commission's view of the "reasonableness" of costs imposed by another state agency, over which ComEd has no discretion. To the extent that Staff's position and proposed tariff language include any such costs, ComEd believes they should be rejected. (Response at 15-16)

At the same time, ComEd acknowledges that Staff correctly points out that certain other types of procurement-related administrative costs identified in subsection (l) are subject to Commission oversight as to reasonableness. For instance, subsection 16-111.5(l) plainly provides that the "formula rate or charge" within the tariffs is

"designed to pass through . . . any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy." Accordingly, ComEd has proposed modifications to its proposed tariffs to expressly reflect Commission review of such internal administrative costs. (Response at 16)

In its Reply Comments filed November 28, 2007, **Staff** says ComEd acknowledged the validity of some of Staff's concerns, in particular, that costs a "utility incurs in arranging and providing for the supply of electric power and energy" can only be passed through if they are just and reasonable as provided for in Section 16-111.5(l). (Staff Reply Comments at 9, citing ComEd Response at 16)

However, ComEd did not agree with other elements of the Staff position. For example, ComEd argued that "[s]upply costs such as those for energy, capacity, ancillary services, collateral and other security, load balancing, contingency plans, and Illinois Power Agency fees charge to ComEd are absolutely recoverable in full." (ComEd Response at 6)

In Staff's view, only supply costs not involving utility discretionary action incurred specifically pursuant to and in strict adherence with a Commission-approved procurement plan are immune from a subsequent review for reasonableness. (Reply Comments at 10)

In its Reply filed November 30, 2007, **ComEd** says it and Staff remain in disagreement over whether load balancing, contingency plans, and IPA costs are to deemed prudently incurred, and thus insulated from a prudency review, under 16-111.5(l). (ComEd Reply at 7)

In ComEd's view, it is not necessary to resolve these disputed questions now, in the abstract, in the context of approving tariffs. ComEd therefore proposes that the tariff language concerning load balancing, contingency plan costs, and IPA fees be replaced either by a neutral direct quotation of the whole sentence of Section 16 111.5(l) that addresses those costs or a reference to that section. (Reply at 7) This preserves all parties' rights on these questions and assures the Commission that it can consider recovery of the costs of load balancing, contingency plans, and IPA fees based on a full record with actual facts and circumstances before it. (Reply at 2-3, 7)

ComEd also expresses a concern that Staff appears to propose language that would absolutely bar recovery of any procurement costs resulting from activities outside the plan. While ComEd intends to follow the Commission-approved plan, if there is an unforeseen circumstance such as an emergency, it should not automatically lose the ability to recover any costs related to those actions. ComEd acknowledges that such actions are not entitled to deference under Section 16-111.5(l), but if the Commission later determines that ComEd acted reasonably and prudently under the circumstances, there is no reason to deny ComEd any prospect of cost recovery in advance. ComEd, accordingly, has proposed language making clear that in such case, ComEd cannot rely

on the plan and can recover only those costs that the Commission independently determines to be reasonable and prudent. (ComEd Reply at 8)

In its Supplemental Comments filed November 28, 2007, the **AG** argues that the Commission has authority to conduct a prudence review of the 2008 procurement. (AG Supp. Comments at 4-6) A full prudence review of the 2008 procurement is necessary and proper, the AG asserts, because under PA 95-0481 the utilities, rather than the Illinois Power Agency, will be conducting the initial procurement. The utilities tariffs should be modified, as proposed by Staff, to remove any language which suggests that the Commission is precluded from reviewing the reasonableness of costs incurred during the 2008 procurement process.

In the AG's view, the utilities are wrong when they assert that they will not be exercising discretion during the initial procurement; the utilities will exercise a great deal of discretion over a multitude of decisions during the initial procurement.

According to the AG, the Illinois Supreme Court has noted that under the *Pike County* exception, States retain the authority to review the prudence of a distributor's actions in incurring FERC-approved supply charges when the distributor had a choice whether to incur the charge. *General Motors*, 143 Ill. 2d at 421-22, 574 N.E.2d at 658, citing *MP*&L, 487 U.S. 354, 373-74, 108 S.Ct. 2428, 2440; *Nantahala*, 476 U.S. 953, 972, 106 S.Ct. 2349, 2359-60.

In *Pike County*, *Pike County Light and Power Co. v. Pennsylvania Public Utility Comm'n, 77 Pa. Commw.* 268, 273-74, 465 A.2d 735, 737-38 (1983), the court found that FERC approval of the [electric supplier's] tariffs means only that, as a matter of law, it is reasonable for [the electric supplier] to charge such rates; FERC approval does not mean that it is reasonable for [a utility] to incur such costs. 77 Pa. Commw. at 278, 465 A.2d at 739. Hence, the court concluded that a state commission can compare the cost of wholesale electricity purchased by a regulated utility at FERC-approved rates with alternative costs of purchased power. Id. at 275, 465 A.2d at 738.

Noting that state retail ratemaking authority and federal wholesale ratemaking authority do not overlap, the court also held that there is nothing in the federal legislation which preempts the [state commission's] authority to determine the reasonableness of a utility company's claimed expenses. In fact . . . the Federal Power Act . . . expressly preserve[s] that important state authority. Id. (footnote omitted).

In its reply filed November 30, 2007, **ComEd** argues a Commission post hoc review of the reasonableness of supply contract and ancillary service costs would be illegal under both state and federal law. (ComEd Reply at 11-15)

At the state level, Section 16-111.5(l) provides that "[a]n electric utility shall recover its costs of procuring power and energy under this Section [16-111.5]." It requires ComEd to file tariffs "through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan . . . will be recovered,"

and requires the tariffs to include a "formula rate or charge designed to pass through . . . the costs incurred by the utility in procuring a supply of electric power and energy . . . ." 220 ILCS 5/16-111.5(l). These provisions are unequivocal, ComEd argues, allowing full recovery of supply costs incurred under the plan; they provide for no post hoc review of those costs.

On the federal level, ComEd argues, the justness and reasonableness of wholesale supply costs and ancillary transmission service rates is not within the Commission's jurisdiction, but is exclusively within FERC's jurisdiction; federal regulation of such wholesale electricity transactions is supreme and exclusive. See *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 964 (1986). The Federal Power Act thus explicitly provides that "Federal regulation" shall govern "the sale of electric energy at wholesale in interstate commerce."

In *Mississippi Power*, ComEd asserts, the Court ruled that state authorities may not issue an order "'trapping' the costs" of wholesale power purchases by a local utility, including by conducting a "prudence review" to determine whether those costs will be passed on to utility customers or disallowed. 487 U.S. at 372 & n.12. See also *General Motors v. Illinois Commerce Comm'n,* 143 Ill. 2d 407, 423 (1991) (holding that "[t]he ICC is not empowered, through the artifice of a prudence review, to trap federally mandated costs").

ComEd argues that the *Pike County* exception does not apply here. In the *Pike County* case, the utility had made no effort even to consider whether "lower cost power" was available from suppliers other than its own parent. (ComEd Reply at 13-14)

In its **BOE**, ComEd states that ComEd and Staff have agreed on tariff language. (ComEd BOE at 7) Staff concurs. (Staff BOE at 4-7) In that regard, language clarifications proposed by ComEd and Staff have been added to the conclusions below.

3. Commission Analysis and Conclusions

As indicated above, Staff, ComEd and the AG have addressed the issue of whether or to what extent costs incurred for procurement of supply, and related activities and transactions, should be subject to a post-incurrence review for reasonableness or prudency. Staff and ComEd also address the question of whether the tariffs should specify which types of costs are immune from a prudency review.

To some extent, provisions in Sections 16-111.5(k) and (l), as quoted above, address the prudency issue. These sections contain language that certain costs shall be "deemed prudently incurred."

To the extent that Section 16-111.5 does specifically exempt certain pass-through expenditures from a post-incurrence prudency review, then further debate would be irrelevant. No prudency review by the ICC would be permissible with respect to those expenditures, regardless of what may otherwise have been either (1) required

under Article IX of the PUA or (2) allowed under the *Pike County* exception and Illinois cases that cite it. Not surprisingly, however, there is some disagreement over the scope or types of expenditures to be “deemed prudently incurred” within the meaning of 16-111.5.

In this case, Staff has taken the position that “only supply costs not involving utility discretionary action incurred specifically pursuant to and in strict adherence with a Commission-approved procurement plan are immune from a subsequent review for reasonableness.” (Reply Comments at 9)

Staff believes its proposed tariff revisions are necessary to make it clear that costs incurred for implementation and compliance, such as, load balancing, contingency plans, and Illinois Power Agency fees charged to ComEd, will require a subsequent determination of their just and reasonableness.

ComEd acknowledges that certain other types of procurement-related administrative costs identified in subsection (l) are subject to Commission oversight and review as to reasonableness. Staff and ComEd remained in disagreement over whether load balancing, contingency plans, and IPA costs are to deemed prudently incurred, and thus insulated from a prudency review, under 16-111.5(l).

In any event, upon consideration of the parties’ comments, the Commission believes the Staff language quoted above represents a reasonable effort to interpret the statute, as implemented by the tariff language proposed by ComEd with its reply and accepted by Staff in its brief on exceptions,

Beyond that, the Commission does not believe it is necessary to approve specific tariff language containing prudency pronouncements for each type of cost, except in those instances where Staff and ComEd, who are the parties who actually offered tariff language on this issue, have agreed to such language.

That is, while there is still some debate over exactly which costs should be subject to a prudency review, the Commission does not believe that issue needs to be further resolved in this docket. There appear to be no objections to a prudency review, at least for some types of costs, inasmuch as no party is arguing that every type of cost involved in the process is insulated from a prudency review. Further, it appears that ComEd will be collecting these various types of costs on a pass-through basis through its tariffs, regardless of whether or not the tariffs contain specific prudency pronouncements for each such cost. To the extent there is ultimate disagreement over which costs actually incurred by ComEd should be immune from the prudency review, that issue can be taken up in as part of the above-referenced review process. This decision is reflected in the above-referenced tariff language.

With regard to any procurement costs incurred outside the approved plan due to unforeseen circumstances, the Commission agrees with ComEd that these costs should

not be barred from recovery; rather, they should be recoverable subject to a prudency review. The result is also reflected in the tariff language approved herein.

Finally, the Commission will consider whether the quoted Staff language and related findings above are consistent with caselaw regarding prudency reviews of wholesale purchases of power, assuming such cases are relevant in the instant docket. The Commission observes that these cases address whether state commissions like the ICC are allowed to conduct prudency reviews of such purchases, not whether they are required to do so.

As a general rule, wholesale power purchases have been deemed by federal courts to be subject to federal, not state, jurisdiction. (E.g. see *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 964 (1986)) However, there is caselaw holding that states have authority to review the prudency of utility purchases under the under the *Pike County* exception, in situations where the utility had a choice, or discretion, over whether to incur the charge or from whom. (See *General Motors*, 143 Ill. 2d at 421-22: "For example, a State regulatory agency could find that purchase of a particular quantity of power from a particular source was unreasonable if lower cost power was available elsewhere, even if the cost of the purchased power had been approved by FERC and therefore deemed reasonable.")

As indicated above, the quoted Staff language focuses on whether there is "discretionary action" by the utility. As such, Staff's proposal would appear, generally speaking, to be in keeping with the distinctions in the caselaw involving jurisdiction over wholesale power purchases and the authority of the states to conduct reviews thereof.

E. Collateral/Security Costs

Staff takes exception to the language that ComEd is allowed to recover "costs to meet collateral requirements or other forms of security requirements" for two reasons. (Staff Objections at 39-40) First, if ComEd were to rely on the same sources of credit for power procurement that it relies on for other liquidity needs, the costs of those sources of credit would have to be allocated between power procurement and general corporate purpose, based upon Staff's review of ComEd tariffs. ComEd proposes no means of allocating those costs. Second, Staff asserts that the cost of credit is a function of credit rating, which itself is a function of management actions. Hence, Staff claims that the actions of ComEd's management could be responsible for increases in the costs of collateral requirements. If those actions were imprudent, Staff believes the resulting increase in the cost of collateral requirements should not be recovered from customers. Staff has provided specific language to address its concerns.

ComEd opposes Staff's position that (1) the language in Rider PE addressing the recovery of "collateral requirements or other forms of security requirements" should be stricken from Rider PE, sheet no. 637 and (2) those costs should not be recovered from rate payers through Rider PE. ComEd argues that collateral and other security requirement costs are supply costs, not administrative costs. (ComEd Response at 9)

Staff believes ComEd's arguments should be rejected. (Staff Reply at 12) Without more specificity in the plan and tariff, Staff is concerned that ComEd could attempt to recover through Rider PE collateral costs that have nothing to do with power procurement.

In support for this position, **Staff** recommends that the Commission consider ComEd's current collateral costs. (Staff Reply Comments at 12-13) Currently, ComEd's most likely source of collateral, its October 3, 2007, credit agreement, has three types of fees: a facility fee, a utilization fee, and a letter of credit fee. The facility fee is assessed on the credit facility commitment amount. The utilization fee is assessed on the amount of borrowings outstanding for any day on which total borrowings exceed 50% of available credit under Agreement; and (3) the letter of credit fee is payable on the undrawn amount of all facility letters of credit ("LC"). Of these three fees, only the last is traceable to a particular activity, e.g., the issuance of a letter of credit. The first two fees, i.e. the facility fee and the utilization fee, depend on aggregate use of the credit facility, which, as Staff stated in its Response to Petition and Objections (Staff Response to Petition and Objection at 39-40) could also be used for purposes other than power procurement, i.e. general corporate purposes. Therefore, whether a portion of the facility fee or utilization fee is a cost of procuring power and energy will be subject to debate.

Staff recommends that ComEd be required to clearly define which fee or costs it wants to pass through Rider PE. Staff also states that ComEd has agreed to Staff elimination of the language "all such costs shall be deemed to have been prudently incurred." (Staff Reply Comments at 13, citing ComEd Response at 9)

In its Reply Comments filed November 30, 2007, page 3, **ComEd** proposes tariff revisions which purportedly assure that only those costs solely related to procurement activities are recovered through the procurement rider. Such costs will also be subject to review in the annual reconciliation proceeding. In addition, ComEd offers new language intended to assure Staff that ComEd will review its procurement-related collateral and security plans with Staff, each procurement cycle, in advance. (ComEd Reply at 3, 10-11)

Having reviewed the arguments, the **Commission** notes that ComEd and Staff further address this issue in their BOEs. (ComEd BOE at 5; Staff BOE at 7-8) These parties state that they are now in agreement on tariff language, although there still appear to be some differences in the actual language provided with their BOEs. The Commission concludes that the tariffs providing for recovery of costs associated with collateral requirements shall be based on the language included in the ComEd and Staff BOEs.

F. Method for Determining Supply Administrative Costs

In Section IV.E.2 of its Objections, **Staff** proposes that the reasonable supply administrative costs to be recovered through Rider PE be set in ComEd's last rate proceeding rather than ComEd recovering all actual supply administrative costs as

proposed by ComEd. (Staff Objections at 41-42) By allowing all actual supply administrative costs to be recovered through Rider PE, Staff claims there is no incentive for ComEd to be conservative in incurring costs that can be related to the procurement of power and energy supply. Staff asserts that there is an incentive for ComEd to classify common costs as costs attributable to procuring power supply. In addition, Staff believes the tariff language describing costs that are recoverable through Rider PE is overly broad and ambiguous. To avoid the confusion that would have to be settled in each annual reconciliation proceeding before the Commission, Staff proposes that the language be changed.

According to Staff, the Commission's order in this proceeding should clearly state that the supply administrative costs incurred by the Company in arranging and providing for the supply of electric power and energy in accordance with the procurement obligations section of the rider, would be as set in the Company's last rate proceeding. (Staff Objections at 41-42; see also Staff Reply Comments at 11)

In Section II.C of its Response, **ComEd** disagrees with Staff's proposal. (Response at 22) ComEd believes that Staff's argument must be rejected because it is contrary to law. ComEd says that whatever Staff's misgivings, the General Assembly authorized recovery of current costs on a pass-through basis. ComEd claims there is no statutory support for limiting those costs to those in an earlier test year, or for requiring ComEd to file a general rate case to update them for each Illinois Power Agency plan. According to ComEd, Section 16-111.5(l) treats them like every other such administrative cost and provides that, subject only to their being reasonable, current costs are recoverable.

In its Reply filed November 30, 2007, page 3, **ComEd** argues that test year costs from a prior rate case are simply not representative of the costs of administering the new procurement structure, and tying ComEd's rates to obsolete administrative costs is not consistent with the Act. To balance these concerns with Staff's, ComEd proposes a revised version of Staff's language intended to assure that its administrative costs will be reviewed by the Commission and making clear that recovery of current costs is subject to full refund pending that review. That is, any administrative costs will be reviewed for reasonability and that recovery of current costs pending that review is subject to a full refund through the adjustment process set out in the tariff. (ComEd Reply at 8)

In their BOEs, Staff and ComEd appear to have reached agreement on the treatment of these costs. (ComEd BOE at 6-7; Staff BOE at 10-11) More specifically, ComEd has further agreed to meet with Staff's Accounting Department, in advance, and brief them each cycle on any increases in ComEd's internal procurement administration costs. These meetings are included in revised tariff language set forth in Staff's brief on exceptions, and the Commission approves that language. Finally, as Staff states and ComEd acknowledges, no one yet knows how variable ComEd's administration costs may be under plans first proposed by the Illinois Power Agency; this discussion and

decision is not meant to foreclose re-examination of this issue after gaining more experience with administering IPA-authored plans.

Therefore, having reviewed the comments of the parties, the **Commission** agrees with ComEd to the extent it contends that the supply administrative costs actually incurred should be recovered, subject to a prudency review in the annual reconciliation proceeding called for by this Order and the revised tariff language attached to ComEd's reply.

G. Internal Controls and Audit of Purchased Electricity Costs

In Rider PE, original sheet no. 648 provides for an internal audit of costs recovered pursuant to Rider PE. Given the possibility for costs to be recovered more than once in rates (i.e., the possibility that costs recovered through the rider are also included in base rates), **Staff** recommends that the Commission order ComEd to put in place accounting controls to prevent the double recovery of these costs. Staff believes ComEd should be further ordered that in performing its internal audits referenced on Sheet No. 648, it should audit those controls and provide copies of the audits to the Commission Staff on an annual basis. (Staff Objections at 42-43)

Consistent with Staff's arguments above, Staff recommends revisions to the tariff language for Riders PPO and Rider BES–H with regard to the internal audit referenced on Sheet No. 668 and 336.3, respectively.

ComEd accepts the substance of most of Staff suggestions with respect to internal controls and audits. ComEd strongly disagrees with Staff's suggestion that the audit examine the supply costs recovered pursuant to Rider PE to verify that they are "reasonable."

The **Commission** agrees that ComEd should put in accounting controls to avoid double recovery of costs, and should audit those costs and provide copies of the audits to Staff. There is not sufficient information in the record to support a finding that the audit should also examine the supply costs for reasonableness.

H. Basic Electric Service, Miscellaneous General Provisions

In Section IV.F, Rate BES – Basic Electric Service, Miscellaneous General Provisions, **Staff** states that throughout its tariffs, ComEd has taken the position that a reconciliation proceeding does not involve a determination of the reasonableness of costs, but rather the reconciliation proceedings exists solely to correct for "accounting errors" (See e.g., Rate BES-H, original sheet nos. 336.2 (3rd par. "accounting error"), and 336.3 (3rd and 4th par., "accounting error") and Rider PE original sheet no. 647, definition of Factor A, ("accounting error")) Consistent with Staff's arguments regarding the reasonableness of costs in Rider PE, Staff believes the previously mentioned tariffs and any other tariffs with similar language should be revised consistent with Staff's

proposed language for Rider PE to include language that the reconciliation proceeding includes a reasonableness of cost determination. (Objections at 47-48)

Staff states that ComEd's Rider BES, tariff Sheet No. 658 refers to certain **uncollectible** factors to be used in the determination of the Purchased Electricity Charges and PJM Service Charges in accordance with the Purchased Electricity Charges subsection and the PJM Services subsection, respectively, of the Monthly Charges section of this tariff. Staff asserts that the application of the factors contained in the tariff to the cost of purchased electricity grosses up the entire Purchased Electricity Charge and PJM Services Charge such that the charges related to recovery of uncollectibles are indistinguishable from the cost or purchased electricity and transmission services expense billed by PJM.

In the interest of transparency and accountability, Staff suggests that the charges for uncollectibles should be separately identified and not comingled with other charges. Staff proposed specific language intended to accomplish its recommendation. (Staff Objections at 47-48)

Staff proposes specific tariff language that ties the determination of updated uncollectibles factors to ComEd's most recent rate case, Docket No. 05-0597. Staff provides suggested language to be incorporated into ComEd's proposed Rider PE (Original Sheet No. 648), Rate BES-H - Basic Electric Service-Hourly Energy Pricing (Original Sheet No. 336.3), and Rider PPO - Power Purchase Option (Original Sheet No. 668).

In response, **ComEd** disagrees with Staff's proposed language because ComEd believes it is based on a false premise, that the uncollectibles are commingled with other charges. (Response at 24) ComEd asserts that the uncollectible components are separately identified in ComEd's accounting system and are not commingled with other charges. ComEd currently applies an uncollectibles factor to the "base" supply charges and separately tracks and accounts for the uncollectibles component in its accounting system.

ComEd says that when its Accounting Department determines the AAF, it uses only the "base" supply charges (i.e., excluding the uncollectibles component) that are tracked and accounted for separately because uncollectibles must be excluded from that calculation. This same separate accounting of uncollectibles components versus the "base" charges would continue under the proposed tariffs. ComEd asserts that Staff's proposed language, if adopted by the Commission, could result in ComEd's having to separately state the uncollectibles component charges on customer bills. ComEd does not believe that Staff intends that uncollectibles components should be billed as separate line items on customer bills.

ComEd indicates that it does agree with Staff in supporting the principle of transparency and accountability. As a result, ComEd has proposed revisions to its proposed tariff, Original Sheet No. 658 to clarify that if the Commission does not

approve Rider UF, the uncollectible factors listed in Rate BES would be updated pursuant to the Commission order in any subsequent rate cases. ComEd has shared its proposed alternative language with Staff prior to filing this Response and Staff has confirmed that this alternative language is acceptable to Staff. Thus, ComEd recommends that the Commission approve the revised tariff language as proposed. (Response at 26)

Having reviewed the filings, it appears to the **Commission** that Staff and ComEd are no longer in disagreement over these issues and related language. To the extent that is the case, the language provided should be approved.

I. Deferral of Determinations on Tariffs

The **AG** argues that the Commission should defer assessment of the justness and reasonableness of the proposed tariff until the final mix of products, commodities and services to be included in the procurement plan has been established. The AG claims the Commission has discretion to defer this assessment because the review of tariffs is governed by Article IX of the Public Utilities Act, rather than the expedited procedures specified for procurement plan review in 220 ILCS 5/16-111.5(j)(i). (Objections at 7)

ComEd disagrees with the AG's position. According to ComEd, the AG overlooks Section 16-111.5(j)(ii), which specifically governs approval of procurement tariffs. It makes clear that the Commission is to "approve or modify" the procurement tariffs in the same order as it approves or modifies the procurement plan. The Commission cannot wait to conduct this process until the plan's product mix is approved. (ComEd Response at 5-6)

Moreover, ComEd argues, nothing in PA 95-0481 conditions ComEd's right to recover the cost of supply on the particular supply resources chosen. To the contrary, Section 16-111.5(l) provides that "an electric utility shall recover its costs of procuring power and energy under this Section," without reference to any particular product mix. The choice of resources will be spelled out in the approved plan, and the debate over what mix is appropriate should take place there. Once resolved, ComEd should be able to recover the costs of procuring those products. Moreover, because the product mix may vary from period to period or plan to plan, the tariffs must be sufficiently flexible to permit recovery of the costs regardless of the product mix. ComEd's tariffs provide that flexibility. (Response at 5-6)

Having reviewed the positions of the parties, the **Commission** finds that determinations on tariff proposals should be made at this time, except as otherwise noted. It appears that such action is contemplated by Section 16-111.5(j). After requiring that an order be entered within 60 days, Section 16-111.5(j) further provides, in part, "The order shall . . . approve or modify the tariffs . . . ."

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporation engaged in the retail sale and delivery of electricity to the public in Illinois, and is a "public utility" as defined in Section 3-105 of the Public Utilities Act and an "electric utility" as defined in Section 16-102 of the Public Utilities Act;

(2) the Commission has jurisdiction over the parties and subject matter of this proceeding;

(3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and/or conclusions of law;

(4) subject to the modifications explicitly adopted in the prefatory portion of this order, the Plan filed by Commonwealth Edison Company pursuant to Section 16-111.5 of the Act should be approved; as modified, the Plan will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability;

(5) subject to the determinations made and conditions imposed herein, the tariffs proposed by Commonwealth Edison in Company its initial filing, as modified to reflect the findings herein, are just and reasonable; Commonwealth Edison Company should be authorized to file and place into effect such tariff sheets, as modified;

(6) the new tariff sheets authorized to be filed by this Order should reflect 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;

(7) Commonwealth Edison Company should be subject to annual reconciliation proceedings, including notice and hearing, related to its power purchases as described and approved in the prefatory portion of this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed Procurement Tariff Sheets filed by Commonwealth Edison Company with its Petition on October 29, 2007 are approved for filing as revised and modified in this Order, and Commonwealth Edison Company is authorized and directed to file tariff sheets in accordance with the Findings of this Order.

IT IS FURTHER ORDERED that Commonwealth Edison Company shall be subject to the annual reconciliation proceedings related to its power purchases as described and approved in the prefatory portion and in the findings of this Order and in the tariffs approved for filing by this Order.

IT IS FURTHER ORDERED that all petitions for leave to intervene, to the extent not heretofore ruled upon, are granted.

IT IS FURTHER ORDERED that any motions, objections, or other matters in this proceeding that remain unresolved are hereby deemed disposed in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 19th day of December, 2007.

(SIGNED) CHARLES E. BOX

Chairman