

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON)
COMPANY)
)
Proposal to implement a)
competitive procurement process)
by establishing Rider CPP, Rider)
PPO-MVM, Rider TS-CPP and)
revising Rider PPO-MI.)

Docket No. 05-0159

Direct Testimony of

Robert R. Stephens

On Behalf of

Illinois Industrial Energy Consumers

June 8, 2005
Project 8363



BRUBAKER & ASSOCIATES, INC.
ST. LOUIS, MO 63141-2000

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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1 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A My name is Robert R. Stephens. My business address is 1215 Fern Ridge Parkway,
3 Suite 208; St. Louis, Missouri 63141.

4 Q PLEASE STATE YOUR OCCUPATION.

5 A I am a consultant in the field of public utility regulation with Brubaker & Associates,
6 Inc. (BAI), energy, economic and regulatory consultants.

7 Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

8 A This is summarized in Appendix A to my testimony.

9 Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?

10 A I am appearing on behalf of the Illinois Industrial Energy Consumers (IIEC). The IIEC
11 is an ad hoc group of industrial customers eligible to take power and energy or
12 delivery service from Commonwealth Edison Company (ComEd or Company).

13 **Q** **WHAT IS THE SUBJECT MATTER OF YOUR TESTIMONY?**

14 A In addition to introducing the other IIEC witnesses and the topics that they cover, I will
15 address a significant deficiency in ComEd's proposal as it relates to large energy
16 consumers. Specifically, I will propose that ComEd provide fixed price supply options
17 for all customers, including those Rate 6L customers with demand of 3 MW or more
18 for which a declaration of service as competitive has been allowed to go into effect by
19 operation of law. I will also recommend specific measures to improve the viability of
20 such fixed price options.

21 My failure to address an issue should not be interpreted as tacit approval of
22 any position taken by ComEd.

23 **Q** **WHAT OTHER WITNESSES ARE TESTIFYING ON BEHALF OF IIEC IN THIS**
24 **PROCEEDING?**

25 A My BAI colleagues James Dauphinais and Brian Collins are also testifying.
26 Mr. Dauphinais addresses the need for a joint power procurement auction in Illinois,
27 the need for daily billing units for capacity charges for self-generation customers, the
28 need for ComEd to maintain its proposed CPP-H auction and the need to provide
29 better demand response opportunities. Mr. Collins addresses a number of specific
30 auction-related issues.

31 **Q** **PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

- 32 A
- 33 1. ComEd should offer to customers for whom service has been declared
34 competitive a one-year annual fixed price product, similar to what it has
proposed to offer to customers in the 1 to 3 MW range.
 - 35 2. In an effort to mitigate load risk to auction suppliers associated with this
36 customer group, customers which have interest in this service should
37 prequalify their load prior to the auction. This action should provide greater
38 load certainty to suppliers.

- 39 3. In developing retail rates associated with the translation of the fixed price
40 auction results, ComEd should include a capacity component to the price to
41 more fully recognize the benefits of load factor and overall customer cost. The
42 capacity component of the price can be based on the capacity costs
43 developed for the purposes of the hourly price option.
- 44 4. Finally, since a one-year option may not satisfy the total needs of large
45 customers, a solicitation for a multi-year product should be considered in
46 addition to the one-year product.

47 **BACKGROUND**

48 **Q WHY IS THE IIEC INTERESTED IN COMED'S POST-2006 POWER**
49 **PROCUREMENT PROCESS?**

50 A IIEC companies consume large quantities of energy and have a direct interest in
51 economical power prices both in the near and longer terms. IIEC companies are
52 concerned about the effect of limitations on the competitive retail power supply
53 market. In particular, the "Reciprocity Clause," discussed below, severely limits the
54 number of retail suppliers. As a result, access to the benefits of a competitive supply
55 market for large customers requires that there be viable utility default supply options.

56 ComEd proposes only an hourly supply product for certain large customers.
57 The auction and ratemaking process it proposes fails to recognize the need for a
58 fixed price product for those customers. The Commission should assure that its
59 determinations in this case accommodate or do not preclude appropriate rate design
60 decisions in subsequent proceedings initiated by ComEd. In addition, because the
61 auction and ratemaking process approved by the Commission will have an impact on
62 the overall market for electric power and energy in Illinois, and IIEC companies are
63 large consumers in that market, they have an interest in seeing that any auction and
64 ratemaking process approved by the Commission is reasonable.

65 Q WHAT FORM OF DEFAULT UTILITY SERVICE DOES COMED PROPOSE TO
66 OFFER TO LARGE CUSTOMERS?

67 A As explained in its testimony, ComEd proposes to offer both an annual, auction-
68 based, fixed price service and an hourly energy price service to customers in the 1 to
69 3 MW size range. In addition, ComEd has indicated that once service to customers in
70 the 1 to 3 MW range is declared competitive, it will discontinue the annual fixed price
71 service to this group.

72 As previously mentioned, for customers larger than 3 MW, for whom Rate 6L
73 service has been declared competitive (which ComEd calls the “Competitively
74 Declared Customer Group”), ComEd proposes to offer only the hourly energy price
75 option.

76 IIEC does not believe that having only an hourly energy price option will be a
77 sufficient utility default option for any customer group. That single, price-volatile
78 option does not allow customers to enjoy the full benefits of the available competitive
79 markets.

80 Q DO YOU BELIEVE THAT LARGE CUSTOMERS CURRENTLY ARE GETTING THE
81 FULL BENEFITS OF A COMPETITIVE RETAIL MARKET?

82 A No, I do not. One of the primary reasons is the effect of what is commonly known as
83 the “Reciprocity Clause,” which is a provision of the 1997 revisions to the Public
84 Utilities Act (PUA) that conditions retail market supplier eligibility.

85 **The Reciprocity Clause has severely limited the number of**
86 **potential suppliers that can become certified in Illinois as Retail Electric**
87 **Suppliers (RESs).**

88 Based on information provided by ComEd and my own investigation as to the
89 parties showing interest in this docket, it appears that there are in excess of 30
90 wholesale suppliers who might participate in the proposed auctions.¹ In contrast, in
91 2004, only eight RESs, including ComEd's affiliate, were active as retail suppliers in
92 the ComEd territory.² Of these, it is unlikely that all eight are marketing to customers
93 with demand of 3 MW and above. In 2002, there were only five ComEd-unaffiliated
94 RESs offering service to customers 3 MW and larger, one of which is no longer
95 offering retail service.

96 The ComEd power procurement process provides a means for retail
97 customers to have access to the greater anticipated competition in the wholesale
98 market, compared to what will be available at retail because of the Reciprocity
99 Clause-constrained retail market. The wholesale and retail markets are not the same,
100 and an effectively competitive retail market is more meaningful for retail customers.
101 Nonetheless, universal availability of a fixed price service through the proposed
102 auctions provides the potential for customers to have access to a market with several
103 times as many competitive suppliers of fixed price service as are available in the retail
104 market in the ComEd service territory. The arrangement I propose will provide a
105 better opportunity for customers to benefit from competition than the limited supplier
106 and service options of Illinois' constrained retail markets.

¹ ComEd's response to Data Request IIEC 3-14 lists 28 potential auction participants (suppliers) of which ComEd is aware. In addition, I have identified at least three others that have expressed some active interest and that are not included in ComEd's list.

² ICC report "Competition in Illinois Retail Electric Markets in 2004," April 2005 at page 4.

107 ComEd's proposed exclusion of the 3 MW and above customers from the
108 fixed price component of the proposed procurement process will not allow these
109 customers to benefit from the available competition, which is mainly in wholesale
110 markets. However, as pointed out by ComEd witness William McNeil, the PUA
111 specifically envisioned that "[A]ll consumers must benefit in an equitable and timely
112 fashion from the lower costs for electricity that result from retail and wholesale
113 competition . . ."³ [Emphasis added]

114 **Q COMED INDICATES IN ITS TESTIMONY THAT IT IS NOT REQUIRED TO**
115 **PROVIDE A FIXED PRICE OFFERING TO CUSTOMERS LARGER THAN 3 MW**
116 **FOR WHOM RATE 6L SERVICE HAS BEEN DECLARED COMPETITIVE.⁴ HOW**
117 **DO YOU RESPOND?**

118 A First, let me state that I am not an attorney and cannot offer a legal opinion. Having
119 said that, I do note that ComEd has proposed to provide a default service for this
120 customer group, but it has chosen to offer only the hourly priced option available
121 through its CPP-H customer segment of the auction to serve that function. From a
122 customer's perspective, this product alone is not sufficient to provide either the
123 benefits or the protections of available, effective competition. My recommendation
124 that a fixed price service be made available to all customers provides an alternative to
125 ComEd's offer for the Commission to consider.

126 As to ComEd's obligation to provide a fixed price service, that should not be
127 determinative, since ComEd does not even acknowledge an obligation to offer the
128 hourly service to which I have proposed an alternative. IIEC asked ComEd this

³ This language appears in Section 16.101A(e) of the Illinois PUA.

⁴ See, e.g. ComEd Witness McNeil's testimony at page 8.

129 question in its Data Request IIEC 3-5(c). The pertinent part of the request and
130 ComEd's response are reproduced below:

131 Request

132 Please state whether ComEd is statutorily obligated to provide real
133 time pricing service to 3 MW and larger customers who were
134 formerly taking or eligible to take service under ComEd's Rate 6L.
135 If not, please explain why not. If yes, please explain why.

136 ComEd's Response

137 ComEd objects to this request because it calls for a legal
138 conclusion and is vague and ambiguous. Subject to and without
139 waiving this objection, ComEd states that regardless of whether
140 there is any 'statutory obligation,' as a practical matter, ComEd will
141 have an hourly pricing tariff for the 3 MW and larger customer
142 segment.

143 **Q ARE ALL CUSTOMERS LARGER THAN 3 MW CURRENTLY TAKING DELIVERY**
144 **SERVICE, WITH POWER SUPPLY FROM A RETAIL ELECTRIC SUPPLIER?**

145 A No. In fact, this is especially true for the largest of these customers, that is, those
146 over 10 MW. According to ComEd's response to Data Request CUB 1.1, as of March
147 2005 less than half of electricity consumption of such customers (i.e., 43% of
148 customer kWh) is provided through RES service. The remainder of the load is
149 served through either bundled service or Power Purchase Option (PPO) service from
150 ComEd. For the other customer groups larger than 3 MW, that is, the 3 to 6 MW
151 class and the 6 to 10 MW class, ComEd shows the percentages of customer kWh
152 through RES supply at 57% and 64%, respectively. Clearly, there are large
153 customers who, despite the competitive service declaration and inducements by
154 ComEd to favor RES supply over bundled service and PPO, still rely on bundled
155 service from ComEd.

156 **Q DID THE COMMISSION DECLARE RATE 6L SERVICE TO CUSTOMERS 3 MW**
157 **AND LARGER AS COMPETITIVE IN DOCKET NO. 02-0479?**

158 A The Commission neither granted nor denied ComEd's petition in that case. In an
159 Interim Order entered on November 14, 2002, by a vote of 3 to 2, the Commission
160 found that:

161 [C]ompetitive conditions in the ComEd service territory for Rate 6L
162 customers 3 MW and greater exist in considerable degree;
163 however, there are sufficient concerns about recent developments
164 that cause the Commission to refrain at this time from either
165 granting or denying ComEd's petition; . . . In recognition of many
166 of the intervenors' arguments concerning future possibilities that
167 could lead to a decrease in competition for this particular customer
168 segment the declaration will take effect by operation of law.⁵

169 The Commission went on to initiate a proceeding to monitor the ongoing
170 development of the marketplace for customers 3 MW and greater.⁶

171 **Q IN YOUR PROFESSIONAL OPINION, IS THE COMMISSION ACTION IN THAT**
172 **CASE AN ENDORSEMENT OF THE ROBUSTNESS OF THE COMPETITIVE**
173 **RETAIL MARKET FOR CUSTOMERS 3 MW AND LARGER?**

174 A No. My reading of the findings quoted above, along with the Commission's action to
175 initiate a proceeding to monitor the competitiveness of the market, suggests to me the
176 Commission had significant doubt about the existing and future competitiveness of
177 service to this customer group.

⁵ Interim Order, Docket No. 02-0479 at 79.

⁶ Id at 80.

178 **Q PLEASE DESCRIBE YOUR UNDERSTANDING OF THE MARKET MONITORING**
179 **PROCESS THAT WAS INITIATED IN THAT CASE.**

180 A My understanding is that the Commission opened Docket No. 03-0056 in order to
181 collect information from ComEd and RESs and to monitor the ongoing development
182 of the marketplace. In its findings in initiating that docket, the Commission
183 recognized:

184 . . . that a full picture of the competitive nature of the ComEd
185 marketplace depends on the numbers of customers actually being
186 served by all providers of electricity and the prices customers are
187 actually paying for electric power and energy, the provision by
188 RESs of the information described in items 8.) and 9.) in the
189 prefatory portion of this Order is reasonably necessary to carry out
190 the purposes of the Public Utilities Act.⁷

191 **Q HAS THERE BEEN RECENT ACTIVITY IN THAT DOCKET?**

192 A Other than the periodic data reports to Staff presumably made by ComEd and the
193 RESs, there has been no activity in that docket since 2003. The last substantive item
194 shown in the Commission's e-Docket system is dated December 2003 and is the first
195 and only Staff report to the Commission under this docket.

196 **Q HAVE YOU REVIEWED THAT STAFF REPORT?**

197 A Yes, I have. In the report, Staff reports on switching data among Rate 6L customers
198 3 MW and larger, highlighting developments affecting customer decisions and overall
199 trends in switching data.

200 **Q WHAT DID THE STAFF CONCLUDE IN ITS REPORT?**

201 A Staff reached a number of conclusions including the following:

⁷ Order Initiating Proceeding, Docket No. 03-0056 January 23, 2003, at 6.

202 • The portion of customers on delivery service of some kind or on bundled
203 service has changed little.

204 • The market did see an increase in the market share of unaffiliated retail
205 suppliers among customers 3 MW and larger; however the lack of
206 significant movement from bundled service to delivery service options
207 between 2002 and 2003 maintains the concern that RCDS options may
208 not be economically viable alternatives to some portions of the 3 MW and
209 larger customer group.

210 • This concern is particularly related to those that have taken service via
211 certain riders.

212 Staff goes on to describe the impacts that the Market Value Index docket
213 (Docket No. 02-0656) should have on switching statistics:

214 The changes coming from the final order in Docket 02-0656
215 should generally promote RES service as a customer choice, all
216 else held equal. The multi-year CTC is designed to reduce the
217 price risk of customers taking long-term service with RES relative
218 to what was available with ComEd's original year-to-year CTC
219 calculation. The modifications to the MVI calculations were also
220 designed to make RES service more attractive than other RCDS
221 options. In particular, both changes are expected to reduce the
222 number of customers taking PPO service. In addition, customers
223 opting for the multi-year CTC forfeit the PPO option⁸ for the
224 duration of their CTC arrangement.⁹

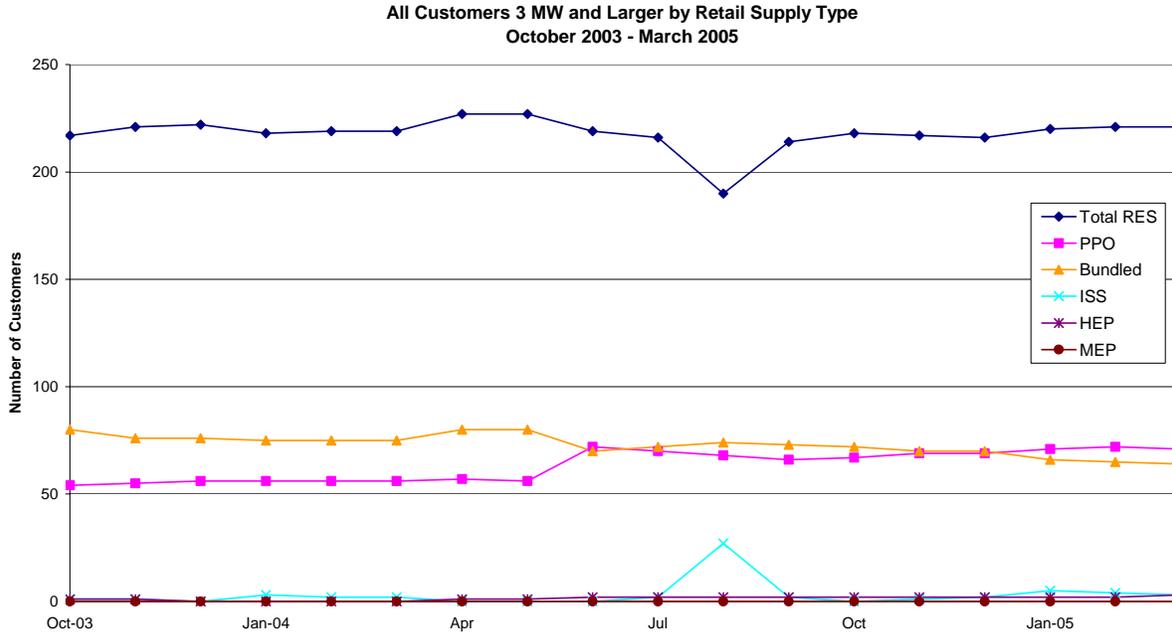
225 Staff then shows the overall trend in switching data. In Figure 1, below, I have
226 provided an update to Diagram 1 from the Staff report, which shows the switching
227 history of all customers 3 MW and larger by retail supply type. This update covers the
228 time period from the date of the Staff report through March 2005, and is based on the
229 quarterly reports made by ComEd to the Staff.¹⁰

⁸ Such customers also forfeit service under any bundled service tariff except Rate HEP, as specified in ComEd's Rider CTC-MY – Customer Transition Charges – Multi-Year at Sheet No. 235.

⁹ "Staff of the Illinois Commerce Commission's Initial Market Monitoring Report, December 2003," Docket No. 03-0056, at page 2.

¹⁰ These reports were provided in response to IIEC Data Request 3-12.

230 **Figure 1. Updated Version of Diagram 1**
231 **from the Dec. 2003 Staff Report in Docket No. 03-0056**
232



237
238
239
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243
244 As can be seen by reviewing Figure 1, since the time of the Staff report, there
245 appears to have been little overall change in the number of customers 3 MW and
246 larger who are taking RES supply, with some months showing small increases while
247 others show small decreases.¹¹

248 **Q DOES THE FACT THAT THE NUMBER OF CUSTOMERS ON BUNDLED RATE 6L**
249 **SERVICE HAS NOT INCREASED IN THE TIME SINCE THE COMPETITIVE**
250 **DECLARATION MEAN THAT COMPETITION IS WORKING?**

251 **A** No. As Staff properly points out in its report, this is not a meaningful statistic:

252 "Since bundled service is no longer an option for customers who
253 have left, or will leave bundled service, net increases in the

¹¹ The true status of retail competitive activity cannot be determined from this graphed data because the data do not reveal the number of competitors or the proportion of RES customers served by ComEd's affiliates, or the ultimate source of the power.

254 number of *bundled* customers can no longer be used to measure
255 the declining health of the retail market for service alternatives.
256 While the continued eroding of the number of bundled customers
257 would indicate the delivery services market was improving its
258 appeal to bundled service customers. In contrast, times of
259 stagnation in bundled rate desertions, concurrent with a decrease
260 in the proportion of customers on unaffiliated supply alternatives,
261 and a net reduction in customers in the affected class, would
262 provide initial indications that the retail delivery services market
263 might be failing to provide viable alternatives to ComEd or ComEd
264 affiliated service.¹² [Emphasis added]

265 **Q IS THE ONE-YEAR FIXED PRICE OPTION YOU ARE PROPOSING THE SAME AS**
266 **RATE 6L SERVICE?**

267 A No, it has several significant differences, a few of which are:

- 268 • The one-year product is not a bundled service, but a supply option that
269 would be used with unbundled delivery service.
- 270 • Prices for the one-year product are subject to change each year.
- 271 • Prices for the one-year product are market based.
- 272 • There will only be one brief period each year for customers to elect the
273 one-year product service.
- 274 • Customers will not be allowed to leave the one-year product service on
275 short notice as they are allowed under Rate 6L.
- 276 • The one-year product does not distinguish between customers with and
277 without electric heating and light service.
- 278 • The one-year product would not have a cap on the maximum charge per
279 kWh.
- 280 • The one-year product would not have a cap on the maximum charge per
281 kWh.

¹² Id at pages 4 and 5.

282 Q HAS THE ICC STAFF EXPRESSED AN OPINION AS TO WHETHER ALL
283 CUSTOMERS SHOULD HAVE ACCESS TO A FIXED PRICE, AUCTION-BASED
284 PRODUCT?

285 A Yes. At page 49 of the Staff Report issued subsequent to the Post 2006 Workshops
286 of last year (Staff Report), the ICC Staff recommends the following:

287 Competitive customers should be permitted to obtain service
288 at the fixed rates available to non-competitive customers.¹³

289 * * *

290 The Commission should examine whether larger customers
291 would be better served by having fixed rather than hourly
292 prices. Furthermore, if an hourly price plan is adopted, Staff
293 recommends the Commission consider limiting that plan to
294 only the largest utility customers, perhaps in the 3 MW and
295 above range.¹⁴

296 * * *

297 Staff believes that price stability is an important consideration
298 for all ratepayers large and small.¹⁵

299 Hence, ICC Staff acknowledges the need for such a service.

300 Q IS COMED AWARE OF THE NEED FOR A FIXED PRICE OFFER TO CUSTOMERS
301 3 MW AND LARGER?

302 A I believe so. ComEd cites to the Staff Report mentioned above for other purposes in
303 its testimony in this case and attaches a copy as ComEd Exhibit 1.2 In addition, I
304 understand that the desire for such a service was made clear in the Post 2006
305 process in the presence of ComEd representatives.¹⁶ IIEC also attempted to

¹³ Post 2006 Staff Report at page 49.

¹⁴ Id at page 31.

¹⁵ Id at page 26.

¹⁶ Given the confidentiality understanding in the workshop process, I will not discuss comments or positions of others that were not reflected in public reports.

306 determine if ComEd would provide such a product to 3 MW and larger customers in
307 this case.

308 **Q WOULD PROVISION OF A ONE-YEAR FIXED PRICE PRODUCT FOR**
309 **CUSTOMERS 3 MW AND LARGER HARM COMED?**

310 A I do not see how it could harm ComEd, given that ComEd has made clear that the
311 various risks associated with supplying customer groups would be borne by the
312 auction participants. ComEd would fully recover the auction costs, including an
313 opportunity for true-ups of mismatches in payments and supply costs.

314 In addition, as a wires-only company, that earns revenue based on the
315 amount of power it delivers, ComEd should be interested in its customers getting
316 access to the lowest power costs available. Economic concepts suggest that for price
317 sensitive products, the lower the price of a product the greater the demand, and
318 hence the greater potential for higher delivery service revenue.

319 For example, to the extent customers have choices on where to produce a
320 product -- for example, in the ComEd territory or in other plants outside the ComEd
321 territory, there is the potential to increase ComEd's delivery revenues and also to
322 improve the economic well-being of the region as well. More generally, making local
323 facilities more competitive in national and global markets has the same effect. Similar
324 considerations apply to the siting of new facilities as well.

325 Q WILL OFFERING THE ONE-YEAR FIXED PRICE PRODUCT TO CUSTOMERS
326 WHOSE SERVICE HAS BEEN DECLARED COMPETITIVE HARM OTHER
327 CUSTOMERS?

328 A No, particularly if such a product is subject to a separate auction or solicitation which
329 would insulate the other customers from any possible migration risk premium.

330 Q IN THE NEW JERSEY PROCUREMENT PROCESS, AFTER WHICH COMED
331 PATTERNS ITS PROCUREMENT PROPOSAL, IS A FIXED PRICE SERVICE
332 OFFERED BY THE UTILITY TO LARGE CUSTOMERS?

333 A No. However, at least one key difference between the Illinois market and the New
334 Jersey market is the lack of a restrictive Reciprocity Clause in the New Jersey market.
335 As a result, there are at least 18 active retail competitive suppliers as compared to the
336 aforementioned eight in the ComEd territory.¹⁷

337 Q IF COMED WERE TO MAKE A ONE-YEAR FIXED PRICE OPTION AVAILABLE TO
338 CUSTOMERS, ARE YOU CONCERNED THAT IT WOULD IMPEDE THE
339 DEVELOPMENT OF A COMPETITIVE RETAIL MARKET?

340 A No. By 2007, the Illinois retail market will have been open for over seven years.
341 During this period, several suppliers have come and gone for a variety of reasons and
342 others have been denied certification due to the Reciprocity Clause. Further
343 development of the competitive market is likely to depend on factors other than the

¹⁷ The website of the New Jersey Board of Public Utilities lists the active and inactive suppliers by service territory. The Board's homepage is <http://www.bpu.state.nj.us>

344 existence of a one-year fixed price option, such as the aforementioned continued
345 restrictions of the Reciprocity Clause, the end of transition charge collections, and
346 development of joint and common RTO markets.

347 Having a utility default service such as a one-year fixed option should not
348 hinder market development. However, to the extent it becomes the preferred option
349 for customers, this is an indication that such access to wholesale market competition
350 may be very important in bringing benefits of competition to all customers until greater
351 retail market competition develops. If competitive retail electricity supply is to be
352 viable for large customers in Illinois, retail suppliers should be able to offer a more
353 attractive service option than the default one-year fixed price option I propose.

354 **Q COULD COMED ACTIVELY MARKET THE ANNUAL FIXED PRICE SERVICE TO**
355 **CUSTOMERS?**

356 A I have been advised by counsel and it is my understanding that it could not, under the
357 rules governing Integrated Distribution Companies. ComEd is an Integrated
358 Distribution Company.

359 **Q WOULD COMED OFFERING AN ANNUAL FIXED PRICE OPTION PREVENT RESs**
360 **FROM BEING ABLE TO SERVE CUSTOMERS?**

361 A No, for a number of reasons. First and foremost is the fact that competitive retail
362 suppliers can provide customized products and prices to individual customers that
363 reflect the customer's unique operating characteristics and service needs. Such
364 customization will not be available through the fixed price auction, as suppliers will be
365 bidding for an entire group of customers and will not be differentiating among
366 individual customers in the way retail suppliers can.

367 Also, there would only be a once-a-year opportunity for customers to take the
368 fixed price service with a relatively brief signup window. Retail suppliers face no such
369 restraints in their marketing or transactions with potential customers.

370 Another advantage retail suppliers have is their ability to package the power
371 supply with other value-adding services such as billing, real time usage information
372 access, and facility services, to provide a more complete package of products than
373 would be available to customers from ComEd under the auction process.

374 The auction-based price will likely be relatively high, since it will incorporate a
375 degree of load risk. Not all customers in the class are likely to take the service.

376 Finally and perhaps more importantly, the annual fixed price will include an
377 optionality cost premium since the auction price must be held by the potential
378 suppliers for a period in excess of 30 days.¹⁸ RESs typically hold prices for much
379 shorter periods, e.g. 24 hours. ComEd also believes the one-year fixed price option
380 is likely to be expensive, as it indicated in response to Staff Data Request No. EPS
381 1.04.

382 **Q IF THE ONE-YEAR FIXED PRICE OPTION YOU ARE PROPOSING IS NOT**
383 **CERTAIN TO BE LESS EXPENSIVE AND LACKS SOME OF THE POSITIVE**
384 **ATTRIBUTES OF COMPETITIVE RETAIL SUPPLY OFFERS, WHY IS ITS**
385 **AVAILABILITY IMPORTANT TO LARGE CUSTOMERS?**

386 **A** It provides a ceiling under which suppliers in a retail market that lacks numerous
387 competitors should compete. Although this ceiling would be relatively high, it is better
388 than no ceiling at all, which would be the result of ComEd's proposal. With such a

¹⁸ The proposed enrollment window is 30 days from the time auction prices are posted to customers, which will add to the time between the auction itself and the date on which customers must decide whether or not to take the service.

389 limited number of RESs vying for these customer loads, there is no other way to
390 ensure that benefits of competition will flow to this group. Having a fixed price annual
391 option as a default provides a measure of discipline to a retail market that lacks
392 numerous, vigorous competitors, even though ideally the option, which relies on
393 wholesale market competition, would not be the primary choice of customers.

394 Secondly, hourly-only products simply are not a desirable default service for
395 most business customers.

396 **Q WHY ARE HOURLY ONLY PRODUCTS NOT THE DESIRABLE DEFAULT**
397 **SERVICE FOR MOST BUSINESS CUSTOMERS?**

398 A Hourly products are often volatile and uncertain. Most business customers prefer
399 certainty and stability in the costs they will incur, especially costs (like electricity
400 prices) that are outside their control. The uncertainty and volatility of hourly pricing
401 limits the planning capability of production for large customers and introduces risk in
402 the overall product cost.

403 As of August 2002, only one eligible customer (out of over 500,000 non-
404 residential customers) had taken service under ComEd's Rate HEP – Hourly Energy
405 Pricing (Rate HEP), even though the service had been available since October 1,
406 1998. Since that time, Rate HEP has been restructured in a form that is somewhat
407 more workable for customers and it appears that over 60 customers now have taken
408 service under Rate HEP more recently. However, this result must be qualified, as it is
409 likely that many of those customers are not on the rate because they desire hourly
410 prices.

411 Q WHY WOULD CUSTOMERS BE ON RATE HEP IF THEY DO NOT DESIRE
412 HOURLY PRICES?

413 A There are at least two ways other than specifically requesting hourly energy prices
414 that customers may be put on Rate HEP. First, if customers are larger than 3 MW
415 and therefore no longer qualify for Rate 6L service due to the competitive declaration,
416 and if they were unable to find attractive offers in the competitive retail market, the
417 only available bundled service option from ComEd would be Rate HEP. Second, as
418 mentioned earlier in the discussion of the ICC Staff Report in Docket No. 03-0056, in
419 an effort to stimulate the development of a competitive market in late 2002, ComEd
420 introduced multi-year CTCs. However, for customers to sign up for multi-year CTCs
421 they had to waive the right to PPO service or standard bundled service from ComEd.
422 Some of the Rate HEP customers could be multi-year CTC customers no longer
423 eligible for PPO.

424 Despite these factors that tend to inflate the number of Rate HEP customers,
425 the increased use of HEP in recent months is still miniscule compared to the total
426 number of eligible customers, indicating that it is generally not a desirable product. At
427 the same time, however, it also may be an indicator of the lack of competitive retail
428 supply opportunities as customers who might not otherwise elect the hourly service
429 are left with it as the only option. IIEC recently asked ComEd for a breakdown for the
430 existing HEP customers in terms of whether such customers qualify for Rate 6L
431 service and whether they have signed up for multi-year CTCs. However, ComEd has
432 not had time to respond prior to the filing of this testimony.

433 **IIEC REQUESTED SERVICE**

434 **Q PLEASE DESCRIBE THE FIXED PRICE OPTION THAT YOU WOULD**
435 **RECOMMEND BE MADE AVAILABLE FOR CUSTOMERS WHOSE SERVICE HAS**
436 **BEEN DECLARED COMPETITIVE (3 MW AND LARGER).**

437 A This would be very similar to the product which ComEd has already agreed to make
438 available to customers in the 1 MW to 3 MW range. Specifically, ComEd proposes to
439 include a segment in its auction for the annual price product, designated the CPP-A
440 segment. Once the auction is complete and retail prices are known, customers will
441 have a 30-day enrollment period to commit to taking the service for the full one-year
442 period. Because customers contract for service for the one-year service period, there
443 is minimal, if any, migration risk (the risk that customers will leave the service for a
444 third-party supply). In addition, I have some other suggestions related to the process
445 that I will outline later in this testimony.

446 Although this product would be similar to the one ComEd proposes to offer to
447 customers in the 1 MW to 3 MW range, I recommend the ICC make it subject to a
448 separate auction, as the load characteristics of the customers in the 3 MW and larger
449 range may be significantly different from the customers in the 1 MW to 3 MW range.
450 In addition, for suppliers associated with the 3 MW and larger customer group, there
451 may be more load risk (the risk that actual load will vary from the projection used for
452 the auction), although I will propose a way to mitigate this load risk. Although this
453 separate solicitation for the 3 MW and larger customers loads could be done in an
454 auction form at the same time as the other CPP auctions, a properly designed RFP
455 could also work.

456 Q PLEASE DESCRIBE YOUR PROPOSAL TO MITIGATE LOAD RISK TO AUCTION
457 SUPPLIERS.

458 A Because there is a smaller number of customers in the 3 MW and above range than
459 in other customer classes, and because the participation of individual customers can
460 have a significant impact on the load profile, it would be helpful to suppliers if the load
461 profile on which they bid had greater certainty of occurring than one that included all
462 customers, irrespective of whether they might opt for the fixed price product. Stated
463 differently, if a customer was precluded from electing the fixed price service due to
464 external circumstances, such as a long-term contractual arrangement with another
465 supplier, or is otherwise not interested in being a part of the auction, it would make
466 sense to try to eliminate such a customer's load from the auction.

467 The way that I propose to do this is to have customers in this group
468 "prequalify" their load for the auction. That is, if they want their load put into the
469 auction, they must notify ComEd in advance of the auction date of their desire to do
470 so. In this notification, they would need to certify their eligibility to elect the fixed price
471 service should they ultimately desire it. This prequalification would not be a
472 commitment to take the ultimate fixed price offer, as the pricing will not be known at
473 that point. Rather, it will be an affirmative indication of eligibility. If a customer does
474 not prequalify its load, ComEd will not need to include that load in the customer group
475 for the fixed price auction. This should provide greater load certainty to suppliers and
476 allow them to bid more efficiently.

477 Q **WOULD EDUCATION BE NEEDED TO ENSURE AFFECTED CUSTOMERS ARE**
478 **AWARE OF THE REQUIREMENT TO PREQUALIFY?**

479 A Yes. Based on information provided by ComEd, it appears there are around 350
480 customers in the 3 MW and larger class. They will need to understand that if they
481 want to be eligible for the annual service they will need to notify ComEd and certify
482 their eligibility. A simple certification and prequalification form may need to be
483 developed.

484 Q **WOULD THE PREQUALIFICATION PLACE AN UNDUE BURDEN ON COMED TO**
485 **TRY TO POLICE CUSTOMER ELIGIBILITY?**

486 A No, I do not believe it would. If a customer certifies that it is eligible to receive the
487 service, it would have to intentionally misrepresent its status if that were not the case.
488 Furthermore, I can see no benefit to a customer in prequalifying its load for the
489 auction if it is contractually or otherwise precluded from accepting the resulting price.
490 Hence, I do not foresee a difficult administrative issue. More important, this simple
491 step should reduce load risk for the bidders, and make ComEd's auction more
492 efficient.

493 **TRANSLATION OF FIXED PRICE AUCTION RESULTS**

494 Q **HAVE YOU REVIEWED COMED'S TESTIMONY AS IT RELATES TO**
495 **TRANSLATION OF THE ANNUAL FIXED AUCTION PRICE FOR CUSTOMERS IN**
496 **THE 1 MW TO 3 MW GROUP?**

497 A Yes, I have. However, there is little, if any, description of the form of final pricing to
498 customers. My understanding is that ComEd will file the retail tariffs in a future
499 proceeding. The DRAFT "exemplar" tariff shown in ComEd Exhibit 7.5 does not
500 include the 1 MW to 3 MW annual auction segment. Based on what I have been able

501 to glean from the testimony and data responses, though, it appears that the ultimate
502 prices to this group are to be energy-only prices.

503 Energy-only prices, as apparently contemplated by ComEd, would not fully
504 recognize the benefits of load factor in overall customer cost. Consequently, I
505 recommend that the energy price resulting from the auction be modified to isolate a
506 capacity component which can then be charged on a per kW basis with the remainder
507 of the auction price being charged on an energy basis. This capacity charge would
508 not be an adder to the auction price.

509 Currently, capacity charges are relatively low; however this may not always be
510 the case and a proper recognition of capacity costs will result in more appropriate
511 pricing.

512 **Q WHAT DO YOU PROPOSE BE USED FOR THE CAPACITY CHARGE?**

513 A The most straightforward approach would be to use the capacity charges that result
514 from the capacity auction associated with the product offered to the hourly price
515 customers. ComEd has indicated that for the CPP-H segment, either it will perform
516 an auction for capacity or use the PJM capacity market once it is sufficiently
517 developed and approved to no longer require the auction. In either case, the
518 resulting capacity charges for the hourly price product could form the basis for the
519 capacity charge under the fixed price option.

520 IIEC would be willing to consider alternative approaches suggested by others
521 as well.

522 **MULTI-YEAR PRODUCT FOR LARGE CUSTOMERS**

523 **Q WOULD AN ANNUAL PRODUCT SATISFY THE TOTAL NEEDS OF LARGE**
524 **CUSTOMERS?**

525 A It may not. IIEC members have indicated to me a desire for a multi-year product,
526 such as a three-year product. Hence, a solicitation for a multi-year product should be
527 considered in addition to the one-year product. I would recommend the same general
528 procedures be used as for the one-year fixed price product; that is, the product would
529 be bid each year, based on the prequalified load. Customers then would have a
530 limited enrollment period once prices are known, and must commit to the full multi-
531 year term. This multi-year product, rebid each year for those customers who
532 prequalify for the service, if any, should not be confused with a blended price product
533 such as that proposed by ComEd under the CPP-B auction, for customers less than 1
534 MW.

535 **Q WHAT BENEFITS TO LARGE CUSTOMERS WOULD OCCUR FROM A MULTI-**
536 **YEAR PRODUCT?**

537 A It would provide greater production and operation certainty than the one-year fixed
538 price option. Often production cycles and investment decisions for manufacturers
539 involve budgeting for periods greater than one year.

540 It would also provide a more efficient procurement method for customers, as
541 they would not have to solicit competitive offers each year to make sure they are
542 getting the best supply arrangement. Under the one-year option, customers most
543 likely will have to conduct significant research to assess the value of the competitive
544 retail market products before electing or rejecting the fixed price option from ComEd.

545 **Q ARE THERE ANY BENEFITS OF A MULTI-YEAR PRODUCT TO THE AUCTION**
546 **BIDDERS?**

547 A Yes. A multi-year offer would provide more load and revenue certainty than the one-
548 year offer.

549 **Q WOULD A MULTI-YEAR PRODUCT BE DETRIMENTAL TO COMED?**

550 A No, I do not believe it would be because, under its proposal, ComEd would still be
551 able to pass through all supply costs, with the opportunity to reconcile costs with
552 charges.

553 In addition, to the extent there is an incremental cost to ComEd to administer
554 a multi-year product solicitation, this cost would be borne by the customers eligible for
555 the multi-year product, either directly or through the auction price.

556 **Q IS THIS RECOMMENDATION PERMANENT IN NATURE?**

557 A It would not need to be, depending on circumstances. Over time, we may find that
558 the multi-year product may be sufficiently unattractive to customers that they may not
559 elect to even prequalify for the product. If no customers elected to prequalify or take
560 the product for a number of option cycles, such as three, it may be appropriate to
561 discontinue the offering. The process could be resurrected in the future if
562 circumstances warranted. I do not recommend a similar discontinuance for the one-
563 year annual fixed price offering however, as that default option will be needed for the
564 foreseeable future.

565 **Q DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

566 A Yes.

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Qualifications of Robert Stephens

567 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

568 A Robert R. Stephens. My business address is 1215 Fern Ridge Parkway, Suite 208,
569 St. Louis, Missouri 63141.

570 Q PLEASE STATE YOUR OCCUPATION.

571 A I am a consultant in the field of public utility regulation with the firm of Brubaker &
572 Associates, Inc. (BAI), energy, economic and regulatory consultants.

573 Q PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

574 A I graduated from Southern Illinois University at Carbondale in 1984 with a Bachelor of
575 Science degree in Engineering. During college, I was employed by Central Illinois
576 Public Service Company in the Gas Department. Upon graduation, I accepted a
577 position as a Mechanical Engineer at the Illinois Department of Energy and Natural
578 Resources. In the summer of 1986, I accepted a position as Energy Planner with City
579 Water, Light and Power, a municipal electric and water utility in Springfield, Illinois.
580 My duties centered on integrated resource planning and the design and
581 administration of load management programs.

582 From July 1989 to June 1994, I was employed as a Senior Economic Analyst
583 in the Planning and Operations Department of the Staff of the Illinois Commerce
584 Commission. In this position, I reviewed utility filings and prepared various reports
585 and testimony for use by the Commission. From June 1994 to August 1997, I worked
586 directly with a Commissioner as an Executive Assistant. In this role, I provided

587 technical and policy analyses on a broad spectrum of issues related to the electric,
588 gas, telecommunications and water utility industries.

589 In May 1996, I graduated from the University of Illinois at Springfield with a
590 Master of Business Administration degree.

591 In August 1997, I joined Brubaker & Associates, Inc. as a Consultant. Since
592 that time, I have participated in the analysis of various utility rate and restructuring
593 matters in several states and the evaluation of power supply proposals for clients. I
594 am currently an Associate in the firm.

595 The firm of Brubaker & Associates, Inc. provides consulting services in the
596 field of energy procurement and public utility regulation to many clients, including
597 large industrial and institutional customers, some utilities, and on occasion, state
598 regulatory agencies. More specifically, we provide analysis of energy procurement
599 options based on consideration of prices and reliability as related to the needs of the
600 client; prepare rate, feasibility, economic and cost of service studies relating to energy
601 and utility services; prepare depreciation and feasibility studies relating to utility
602 service; assist in contract negotiations for utility services; and provide technical
603 support to legislative activities.

604 In addition to our main office in St. Louis, the firm also has branch offices in
605 Phoenix, Arizona; Chicago, Illinois; Corpus Christi, Texas; and Plano, Texas.