STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	**:**	
	:	
Petition 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**
	: : :	

REPLY BRIEF

OF

THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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* NOTE: This Table of Contents includes only the sections and subsections from the Issues Outline for this case which are addressed in this Reply Brief of the Building Owners and Managers Association of Chicago.

Now comes the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO ("BOMA"), by its attorneys GIORDANO & NEILAN, LTD., and hereby files its Reply Brief in this proceeding pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (the "Commission" or "ICC").

V. AUCTION DESIGN ISSUES

D. CLEARING PRICE: UNIFORM VS. PAY AS BID

1. BOMA Witness Dr. Arthur Laffer has Proposed That ComEd's Proposed Descending Clock Auction be Modified From a Uniform Price Approach to a Pay as Bid Method

As we fully discussed in BOMA's Initial Brief in this proceeding, BOMA witness Dr. Arthur B. Laffer has recommended that ComEd's proposed auction procurement process be changed from a descending clock, uniform price format to a descending clock, pay as bid approach. (BOMA In. Br., pp. 4-17). The record evidence establishes that in all likelihood Dr. Laffer's proposed pay as bid approach will result in ComEd paying a lower price for its electricity supply than ComEd's proposed uniform, "market clearing" price method. (See BOMA In. Br., pp. 4-17).

The essential features of Dr. Laffer's proposed descending clock, pay as bid auction which differ from ComEd's proposed descending clock, uniform price auction are: (a) instead of stopping the auction when the amount of electricity supply offered by bidders equals ComEd's full electricity supply requirements, prices would continue to tick down lower until no bidder was willing to supply electricity at a lower price; (b) bidders would not be informed when the amount of electricity supply being bid equaled ComEd's full requirements; and (c) bidders would not be provided with round-to-round information on excess supply being bid during the auction in order to prevent implicit collusion among bidders on when they should stop bidding. (BOMA Ex. 1.0, pg. 14, ll. 307-316; BOMA Ex. 3.0, pg. 2, ll. 27-36; ComEd Tr., pg. 393, ll. 11-19; pg.

398, ll. 1-19; pg. 404, ll. 14-17; pg. 409, ln. 20 to pg. 410, ln. 3).

ComEd and Commission Staff criticize Dr. Laffer's proposal on the grounds it is being proposed by someone, Dr. Laffer, whose experience is not specific to electricity auctions and markets. (ComEd In. Br., pg. 95; Staff In. Br., pg. 60). ComEd and Commission Staff also claim that Dr. Laffer's proposal is not workable, has not been previously used and is not supported by professional literature. (ComEd In. Br., pp. 92, 95; Staff In. Br., pp. 60, 62).

ComEd further contends that Dr. Laffer's approach eliminates one of the principal benefits of the auction by not providing bidders information on the volume of bids into the auction (i.e., the amount of excess supply). (ComEd In. Br., pg. 92). According to ComEd, providing information regarding excess supply "will affect bidder behavior tending to result in more aggressive bids and therefore lower prices." (ComEd In. Br. Pg. 92). In its vain attempt to contradict Dr. Laffer's effort to achieve true competition for ComEd's electricity supply, ComEd even argues that Dr. Laffer's approach would allow bidders to "game" the auction in a way that would not be possible under ComEd's approach. (ComEd In. Br., pg. 94).

As we fully discuss below, the criticisms of Dr. Laffer's proposed descending clock, pay as bid auction expressed by ComEd and Commission Staff are totally unfounded.[1] Dr. Laffer is an internationally renowned economist who reviewed the relevant literature and applied economic principles directly to ComEd's proposed descending clock auction in forming his recommendations. (BOMA Ex. 3.0, pg. 12, ll. 277-283; ComEd Tr., pg. 372, ln. 19 to pg. 373, ln. 4; pg. 390, ln. 14 to pg. 391, ln. 11; pg. 394, ll. 16-19; pg. 412, ln. 18 to pg. 413, ln. 7). Dr. Laffer concluded that a pay as bid auction was preferable in a descending clock auction for

[1] Midwest Generation also criticized Dr. Laffer's proposal in its Initial Brief. (MWGen In. Br., pp. 18-20). However, since Midwest Generation has a direct conflict with the interests of consumers because it is a potential electricity supplier and therefore wants auction prices to be as high as possible, this Reply Brief will focus primarily on the arguments of ComEd and Commission Staff regarding Dr. Laffer's proposal.

ComEd's electricity supply requirements because ComEd's proposed uniform price approach does not use the whole supply curve. (BOMA Ex. 3.0, pg. 12, ll. 281-283). The record evidence clearly shows that Dr. Laffer's descending clock, pay as bid approach is feasible to implement. (BOMA Ex. 1.0, pp. 7-9, ll. 143-205; BOMA Ex. 3.0, pg. 4, ll. 69-76, ll. 80-91; pg. 5, ll. 94-104; pg. 6, ll. 126-139; pg. 7, ll. 142-159; BOMA Ex. 3.1; ComEd Tr., pg. 394, ln. 20 to pg. 398, ln. 19). In fact, ComEd President Frank Clark testified that if the Commission adopted Dr. Laffer's approach, ComEd would implement it. (ComEd Tr., pg. 140, ln. 9 to pg. 141, ln. 6). Moreover, ComEd auction designer Dr. LaCasse testified that she was willing to be the auction manager if the Commission made such a decision. (Joint Tr., pg. 902, ln. 19 to pg. 903, ln. 1).

Especially in light of ComEd's corporate affiliation with electricity supplier Exelon Generation, which plans to bid in ComEd's auction, bidders clearly should be allowed to bid as low as they desire in ComEd's auction as Dr. Laffer has proposed. (ComEd Tr., pg. 137, ll. 14-18; pg. 134, ll. 9-18; pg. 170, ll.12-15; BOMA Ex. 1.0, pp. 15-16, ll. 340-367; ComEd Tr., pg. 398, ll. 6-19; pg. 392, ln. 4 to pg. 393, ln. 19). Although ComEd has attempted to salvage its sinking auction ship by arguing that bidders will bid more aggressively if they are told how much excess supply is being bid during the auction, Dr. Laffer has shown that this information actually will enable bidders to implicitly collude on a high uniform, "market clearing" price that all successful bidders would receive under ComEd's approach. (BOMA Ex. 1.0, pg. 14, ll. 307-316; BOMA Ex. 3.0, pg. 2, ll. 27-36; ComEd Tr., pg. 393, ll. 11-19, pg. 398, ll. 1-19, pg. 404, ll. 14-17, pg. 409, ln. 20 to pg. 410, ln. 3). Therefore, Dr. Laffer's proposed descending clock, pay as bid auction method rather than ComEd's proposed descending clock, uniform price approach should be used by ComEd to acquire its post-2006 electricity supply requirements.

a. Dr. Laffer is Well Qualified to Review and Propose a Modification to ComEd's Proposed Descending Clock Auction

Incredibly, despite Dr. Laffer's impressive credentials, ComEd and Commission Staff have criticized Dr. Laffer's qualifications to evaluate ComEd's proposed auction.[2] (ComEd In. Br., pg. 60; Staff In. Br., pg. 60; Joint Tr. pg. 1078, ln. 12 to pg. 1079, ln. 2; Staff In. Br., pg. 60). Review of just a small portion of Dr. Laffer's background reveals the rank absurdity of these criticisms.

Dr. Laffer's entire career has been dedicated to the development of effective competitive markets. He was the Chief Economist for the Office of Management and Budget (OMB) from October 1970 to July 1972. (BOMA Ex. 1.0, pg. 2, ll. 37-39). From 1972 to 1977, Dr. Laffer served as a consultant to Secretary of the Treasury William Simon, Secretary of Defense Don Rumsfeld, and Secretary of the Treasury George Shultz. (BOMA Ex. 1.0, pg. 2, ll. 35-37). Dr. Laffer was a member of President Reagan's Economic Policy Advisory Board for both of his terms (1981-1989). (BOMA Ex. 1.0, pg. 2, ll. 43-44). Dr. Laffer also served as an economic adviser to Prime Minister Margaret Thatcher. (BOMA Ex. 1.0, pg. 7, ll. 156-158).

Time Magazine's March 29, 1999 cover story listed Dr. Laffer as one of "The Century's Greatest Minds" and called Dr. Laffer's invention of the Laffer Curve "one of a few of the advances that powered this extraordinary century." (BOMA Ex. 1.0, pp. 3-4, ll. 67-70) In May 2005, Forbes Magazine included the Laffer Curve as one of the "Ten Laws of the Modern World." (BOMA Ex. 1.0, pg. 4, ll. 74-76).

Dr. Laffer also has written several articles that are often referenced in the economics

[2] Commission Staff criticizes Dr. Laffer's ability to evaluate ComEd's proposed auction despite the fact that the expert witness Staff hired to evaluate and testify regarding ComEd's proposed auction was aware that Commission Staff was supporting ComEd's proposed auction design at the time he was hired. (Joint Tr., pg. 1078, ln. 12 to pg. 1079, ln. 2).

literature on auctions and competitive markets. (BOMA Ex. 1.0, pp. 4-5, ll. 84-94). Nevertheless, ignoring Dr. Laffer's distinguished career and relevant experience, ComEd and Commission Staff have attacked Dr. Laffer on the grounds that he has not designed or managed an auction for electricity procurement and was not an expert on the specific rules of the PJM electricity market. (ComEd Tr., pg. 366, ln. 11-19; pg. 367, ln. 21 to pg. 368, ln. 8; ComEd In. Br., pg. 95; Staff In. Br., pg. 60). On redirect examination, Dr. Laffer testified that he would not have agreed to testify if he thought experience as an auction designer or specific expertise on the PJM markets was relevant to his recommendations. (ComEd Tr., pg. 390, ln. 14 to pg. 391, ln. 2). Clearly, Dr. Laffer's own judgment on whether he is qualified to evaluate and recommend modifications to ComEd's proposed auction is more persuasive than the criticisms of his qualifications by ComEd and Commission Staff. According to Dr. Laffer himself, neither experience as an auction manager nor specific expertise on the PJM markets is relevant "because this is a general economic phenomenon here and it's not a market–specific phenomenon that has different rules from general economics." (ComEd Tr., pg. 391, ll. 4-7). In short, the record in this proceeding clearly shows that Dr. Laffer was well qualified to evaluate ComEd's descending clock uniform price auction proposal and make his recommendation that it be modified to a descending clock, pay as bid format.

b. Dr. Laffer's Descending Clock, Pay as Bid Auction Proposal is Feasible to Implement and Should be Implemented by ComEd

Although Dr. Laffer has accepted much of ComEd's proposed auction design (ComEd Tr., pg. 407, ln. 6 to pg. 408, ln. 21), ComEd also criticizes Dr. Laffer's proposed modifications as "a fundamental change in the auction design that would render it unworkable." (ComEd In. Br., pg. 91). Commission Staff echoes this criticism. (Staff In. Br., pp. 61-64). The reality is that Dr. Laffer's proposed descending clock, pay as bid approach does not fundamentally alter the basic descending clock auction procurement process that ComEd has proposed in this proceeding, but does include modifications designed to achieve lower auction prices. (ComEd Tr., pg. 407, ln. 6 to pg. 408, ln. 21; pg. 389, ln. 12 to pg. 390 ln. 13).

The record in this proceeding, including relevant testimony by ComEd's own witnesses, shows that it is entirely feasible to modify ComEd's proposed descending clock auction in the manner proposed by Dr. Laffer. (BOMA Ex. 1.0, pp. 7-9, ll. 143-205; ComEd Tr., pg. 394, ln. 20 to pg. 395, ln. 12; ComEd Tr., pg. 140, ln. 9 to pg. 141, ln. 6; Joint Tr., pg. 902, ln. 19 to pg. 903, ln. 1). Perhaps most significantly, ComEd auction designer Dr. LaCasse herself testified that ComEd's proposed auction in this case and the electricity auction now being used in New Jersey were patterned after the FCC's spectrum auction, which is a pay as bid auction. (ComEd Tr. pg. 890, ln. 20 to pg. 891, ln. 6; see also ComEd Ex. 4.0, pp. 3-4, ll. 72-86; pg. 11, ll. 235-246). Evidence presented by ComEd witness Andrew Parece, which showed that Mr. Parece recommended that a pay as bid approach be used by electric utilities in Massachusetts, also undermines ComEd's argument that the pay as bid auction format is unworkable. (See ComEd Ex. 12.2, pg. 12; ComEd Tr., pg. 1197, ll. 13-18). Moreover, Dr. Laffer provided a concrete example of how his proposed descending clock, pay as bid auction would work as part of his testimony. (BOMA Ex. 3.1).

The record also includes evidence that the electric utilities in England and Wales used a uniform, "market clearing" price auction beginning in 1990 but were forced to switch to a pay as bid auction by the United Kingdom's utility regulator in 2001. (BOMA Ex. 1.0, pg. 8, ll. 164-171; pg. 9, ll. 191-194). Dr. Laffer discussed extensively the use of a pay as bid approach in the electricity market in the United Kingdom ("U.K.") in his testimony, including the fact that annual baseload prices fell by 20% and peak prices fell by 27% in the year after the switch from the uniform price method to the pay as bid approach. (BOMA In. Br., pg. 16; BOMA Ex. 1.0, pg. 7, ln. 152 to pg. 10, ln. 220; BOMA Ex. 1.0, pg. 9, ll. 191-205, citing Office of Gas and Electricity Markets, The Review of the First Year of NETA, July 2002, at 50).

Midwest Generation argues in its Initial Brief that "Dr. Laffer's implication that the precipitous price decline in the U.K. was in whole or in part due to the change to a pay as bid method was grossly disingenuous." (MWGen In. Br., pg. 19). However, Dr. Laffer did not imply anything; rather, he merely stated the facts as reported by the UK's utility regulator. (BOMA Ex. 1.0, pg. 9, ll. 197-205). Moreover, Midwest Generation did not mention the following excerpt from Dr. Laffer's testimony, which made it clear that the U.K.'s utility regulator believed that the uniform price approach grossly inflated electricity prices:

> Since 1990 wholesale electricity prices have been largely unchanged, while the costs of generation in terms of fuel costs and capital and operating costs have reduced by almost 50%. The present trading arrangements have facilitated the exercise of market power at the expense of customers by enabling all generators to receive a uniform price which in practice has been set by just a few of them.

(BOMA Ex. 1.0, pg. 8, ll. 176-185, citing Office of Gas and Electricity Markets, The New Electricity Trading Arrangements, Volume 1, July 1999, at 2). In 2005, after four years of experience with pay as bid pricing in England and Wales, the U.K.'s utility regulator adopted pay as bid pricing throughout the U.K. (BOMA Ex. 1.0, pg. 9, ll. 191-194; BOMA Ex. 3.0, pg. 23, ll. 529-532).

In sum, the record clearly indicates not only that Dr. Laffer's proposed pay as bid approach is feasible to implement but also that it should be implemented by ComEd.

2. Dr. Laffer's Pay as Bid Approach is Correct in Not Providing Information to Bidders on the Amount of Excess Supply Being Bid into the Auction

As discussed above, ComEd and Commission Staff also criticize Dr. Laffer's position that information regarding the amount of excess supply being bid into the auction should not be revealed to the bidders. (ComEd In. Br., pg 92; Staff In. Br., pg. 41). ComEd's auction designer, Dr. LaCasse, and Dr. Laffer actually are in agreement that providing bidders with information on excess supply provides signals to bidders on what other bidders are doing during the auction, and that bidders will adjust their bidding behavior based on these signals. (ComEd In. Br., pg. 92; ComEd Tr., pg. 396, ln. 20 to pg. 398, ln. 19; pg. 407, ll. 8-18). Therefore, the issue for the Commission to decide is whether this signaling to bidders and the resulting "adjustment" in behavior by bidders is a good thing or a bad thing for consumers. (See BOMA In. Br., pg. 11). That is, will the "adjustment" of bidders' behavior when they are informed of the excess supply remaining in the auction result in a lower price or a higher price than if this information were not revealed to the bidders?

Midwest Generation argues in its Initial Brief that Dr. Laffer's pay as bid approach "may affect auction pricing, such as the ability of bidders to change their auction strategy to avoid acceptance of lower pricing…." (MWGen In. Br., pg. 19). Midwest Generation hit the nail squarely, but perhaps unintentionally, on the head.

ComEd's plan to provide information on the amount of excess supply being bid will enable the bidders to arrive at an implicit consensus of the value of the tranche (i.e., slice) of ComEd's full electricity supply requirements on which they are bidding. (ComEd Tr., pg. 411, ll. 8-10; pg. 409, ln. 20 to pg. 410, ln. 15). The sophisticated bidders expected in ComEd's auction, such as Exelon Generation, Midwest Generation, Morgan Stanley and Goldman Sachs, do not need the excess supply information to protect them from the "winner's curse." (BOMA Ex. 3.0, pp. 13-14, ll. 294-322; ComEd Tr., pg. 397, ll. 4-22; pg. 407, ll. 6-18). Clearly, informing bidders of the excess supply remaining in the auction would result in a higher auction price than if this information were withheld and therefore should not be allowed by the Commission.[3]

Despite the arguments of ComEd and Commission Staff that Dr. Laffer's pay as bid approach could be "gamed" (ComEd In. Br., pp. 91, 95; Staff In. Br., pp. 63-64), a bidder cannot game play Dr. Laffer's proposed pay as bid auction because the bidder will have no information regarding the amount of excess supply being bid into the auction. In contrast, under ComEd's uniform price approach, a bidder's refusal to bid at a particular price could possibly stop the auction even if another bidder was willing to bid lower if the bidder's failure to bid results in the uniform, "market clearing" price being reached. (BOMA Ex. 1.0, pg. 13, ll. 288-301). Therefore, game playing is more likely under ComEd's uniform price approach than under Dr. Laffer's pay as bid approach. (BOMA Ex. 1.0, pg. 14, ll. 307 – 309). Dr. Laffer framed this issue succinctly: "Why on earth would anyone ever prohibit a supplier from offering a lower price?" (BOMA Ex. 3.0, pg. 4, ll. 83-84).

Although ComEd argues in its Initial Brief that particular auction products could be undersubscribed if bidders don't know the amount of the excess supply being bid, this ComEd argument is ludicrous. (ComEd In. Br., pp. 93-94). As discussed in BOMA's Initial Brief, ComEd's auction is the only opportunity for suppliers to obtain long-term contracts from ComEd. (BOMA In. Br., pg. 10; BOMA Ex. 3.0, pg. 11, ll. 244-252). Since there is substantial excess generating capacity in ComEd's service territory and large additional amounts of generating capacity in the large PJM region, there is little doubt that sufficient electricity supply

[3] Likewise, the auction price should not be lowered based on a formula which factors in the amount of excess supply as ComEd has proposed in order to avoid giving bidders information from which they can indirectly discern the amount of excess supply. (BOMA Ex. 3.0, pg. 4, ll. 86-91). Instead, the auction prices should be lowered in equal decrements as Dr. Laffer has proposed. (BOMA Ex. 3.0, pg. 4, ll. 86-88).

will be bid for ComEd's 1-year, 3-year and 5-year contracts regardless of whether the Commission adopts a pay as bid or a uniform price approach. (See BOMA In. Br., pg. 10).

The bottom line is that if bidders are not provided with information regarding excess supply and the auction is not stopped at a uniform, market clearing price as Dr. Laffer has recommended, bidders still will bid to provide sufficient electricity supply for ComEd auction products but will do so at prices closer to their marginal costs of production and thereby lower the charges for electricity paid by consumers to ComEd. (BOMA Ex. 1.0, pp. 10-11, ll. 234-242; pg. 15, ll. 329-334; pg. 16, ll. 372-374; ComEd Tr. pg. 393, ll. 4-10; pg. 413, ln. 8 to pg. 415, ln. 21). Therefore, the Commission should order ComEd to use Dr. Laffer's proposed descending clock, pay as bid auction.

I. FIXED PRICE AUCTION PRODUCT AND TARIFFED SERVICES FOR LARGER CUSTOMERS

1. Nature of Auction Product and Tariffed Services for 1 – 3 MW Customers

For the reasons discussed below in Section V.I.2 on page 10 of the Reply Brief, 1 – 3 MW customers should be offered ComEd's CPP–B auction product if an auction process is approved by the Commission.

2. Nature of Auction Product and Tariffed Services for 400 KW – 1 MW Customers

ComEd's Initial Brief states that its "initial proposal envisioned that supply for 400 kW to 1 MW customers would be procured in the 1, 3 and 5 year blended [CPP-B] auction that also served residential customers" but that "after considering the views expressed by the Coalition [of Energy Suppliers] and the Staff, ComEd revised its proposal to include supply for 400 kW to 1 MW customers in the 1-year fixed price [CPP-A] auction segment, rather than in the blended auction segment." (ComEd In. Br., pg. 105). The Initial Briefs of Commission Staff and the Coalition of Energy Suppliers ("CES") indicate that they do not oppose ComEd's current proposal based on their beliefs that 400 kW – 1MW customers have exhibited similar switching characteristics (from ComEd bundled tariff service to competitive supplier service) as 1 – 3 MW customers. (Staff In. Br., pg. 101; CES In. Br., pg. 26).

ComEd contends in its Initial Brief that "there is now widespread agreement on appropriate supply terms for customers with peak demands between 400 kW and 3 MW." (ComEd In. Br., pg. 105). Actually, the agreement to which ComEd refers is not "widespread" at all. In fact, no consumer representative expressed support in its initial brief for ComEd's proposal to offer the CPP-A auction product (rather than the blended CPP-B auction product) to both the 400 kW – 1 MW and 1 MW – 3 MW customer classes. Rather, the only consumer representative which has taken a position on this issue (i.e., BOMA, which represents consumers in these customer classes) opposes ComEd's proposal. (BOMA Corr. Ex. 2.0, pg. 6, ln. 130-135; BOMA In. Br., pp. 17-19).

As BOMA has stated throughout this proceeding, BOMA's position is that the Commission should require that ComEd's CPP-B auction product, rather than the CPP-A auction product, be made available to the 400 kW – 1 MW and 1 MW – 3 MW customer classes. (BOMA Corr. Ex. 2.0, pg. 6, ln. 130-135; BOMA In. Br., pg. 17). The 400 kW – 1 MW and 1 MW – 3 MW customer classes, like ComEd's classes of smaller customers, have not been declared competitive. (BOMA In. Br., pg. 17). Therefore, as BOMA discussed in its Initial Brief, the CPP-B auction product should be made available to these customer classes in order to provide these customers the same mitigation of the volatility of ComEd's charges that ComEd has proposed for its other customer classes that have not been declared competitive. (BOMA In. Br., pg. 17, 19).

CES argues that the 400 kW – 1MW and 1 MW – 3 MW customer classes should be treated differently because competitive declarations are "likely" for these customer classes. (CES Ex. 1.0, pg. 15, ll. 321-323). However, there is no reason to treat these customers differently than other customer classes unless and until competitive declarations actually take place. The fact that customers in the 400 kW – 1 MW and 1 MW – 3 MW customer classes have switched to competitive suppliers more frequently than other customers is insufficient reason to deny these customers an auction product designed to minimize the volatility of ComEd's charges.

While ComEd has characterized the CPP-B auction product as "price protection" that could somehow retard the development of competitive retail markets, this contention is unsupported and unsupportable. (See BOMA In. Br., pg. 18). Although ComEd charges for the CPP-B auction product will be less volatile than ComEd's charges for CPP-A auction product, ComEd's CPP-B charges will still be a far cry from ComEd's current frozen bundled rates under which substantial retail competition has already developed for 400 kW – 3 MW customers. (See BOMA In. Br., pg. 18). Simply put, as BOMA witnesses Brookover and Childress testified, retail competition for 400 kW – 3 MW customers will not be inhibited if the CPP-B auction product is offered to these customers. (BOMA Corr. Ex. 4.0, pg. 17, ll. 377-378). Therefore, the Commission should reject ComEd's proposed CPP-A auction product and order that ComEd provide the CPP-B auction product to the 400 kW - 1 MW and 1 MW – 3 MW customer classes if an auction process is approved by the Commission.

VII. TARIFF AND RATE DESIGN ISSUES

B. MATTERS CONCERNING RIDER CPP

6. Rider CPP – Translation to retail charges

a. Customer Supply Group Migration Risk Factor

ComEd's Initial Brief claims that its current proposal to include the 400 kW - 1 MW customer class in the CPP-A auction segment (together with the 1 MW – 3 MW customer class) has the collateral effect of eliminating the need for a migration risk factor in ComEd's translation of auction prices into ComEd's retail rates to customers. (ComEd In. Br., pg. 142; ComEd Ex. 21.0, pg. 12, ll. 254-264). If the Commission does not approve ComEd's current proposal, however, then ComEd's position is that the Commission should approve ComEd's original proposal to use a customer supply migration risk factor in the translation of CPP-B auction segment prices into ComEd's retail rates. (ComEd In. Br., pg. 142).

ComEd attempts to support its contention that a migration risk factor should be used to translate CPP-B auction segment prices into retail rates unless 400 kW – 1 MW customers are included in the CPP-A auction segment with the following argument:

> In that scenario, while the migration risk adjustment does not perfectly estimate the supplier risk premium resulting from migration risks within the CPP-B Auction Segment, it remains the case that ComEd's original proposal is a more reasonable mechanism to assign the associated costs in accordance with cost causation principles than either the proposed modified version or having no such factor at all.

(ComEd In. Br., pg. 144 citing ComEd Ex. 21.0, pg. 13, ll. 269- 276). In other words, ComEd admits that it cannot accurately estimate the supplier risk premium resulting from migration risks within the CPP-B auction segment but wants approval to use it anyway if the 400 kW – 1MW customer class is included in this segment.

As BOMA witnesses Messrs. Brookover and Childress and Commission Staff witness Mr. Lazare all testified, ComEd has not provided any empirical evidence that the methodology ComEd used to formulate its migration risk factor is a reasonable or meaningful estimate of the risk premium a winning bidder in the auction might add to its supply price to account for migration risks. (BOMA Corr. Ex. 2.0, pg. 15, ll. 307-315; Staff Ex. 6.0, pg. 29-30, ll. 664-666;

21.0, pg. 13, ll. 272-274). Therefore, regardless of whether the Commission approves or rejects ComEd's current proposal to include the 400 kW – 1 MW customer class in the CPP-B auction segment, the Commission should not allow ComEd to use a customer supply group migration risk factor in translating CPP-B auction prices into retail rates.

D. ADDITIONAL TARIFF AND RATE DESIGN ISSUES

1. Staff's Rate Increase Mitigation Proposal

ComEd's Initial Brief does not challenge, much less rebut, the impending rate shock facing nonresidential space heating customers post-2006. (ComEd In. Br., pp. 167-169,170-171). ComEd simply does not dispute that these customers will face huge rate increases post-2006 if the Rider 25 electric space heating tariff is eliminated as is proposed by ComEd. (See BOMA Corr. Ex. 2.0, pg. 11, ll. 212-218). Nevertheless, ComEd has opposed any efforts to mitigate this rate shock, including BOMA's proposal that nonresidential space heating customers be included as a separate subgroup in Staff's rate increase mitigation plan unless the Commission accepts BOMA's proposal that ComEd exempt nonresidential space heating customers from demand charges on electricity used for space heating in ComEd's delivery service tariffs. (ComEd In. Br., pg. 169).

BOMA witnesses Messrs. Brookover and Childress testfified that nonresidential space heating customers will face rate shock from a rate increase of between 27.2% (at an auction price of 5 cents per kWh) and 46.5% (at an auction price of 6 cents per kWh) in 2007 if a rate mitigation plan is not adopted for these customers. (BOMA Ex. 2.1). Messrs. Brookover and Childress estimate that the rate increase for nonresidential space heating customers would be 10.7% greater than the increase for nonresidential, non-space heating customers in the absence of rate shock mitigation. (BOMA Corr. Ex. 4.0, pg. 3, ll. 51-56).

Commission Staff witness Mr. Lazare's proposed rate mitigation plan would "adjust increases in power costs to limit overall bill increases for customers to the greater of the following: 20% or 150% of the average for customers in the CPP-B auction." (ICC Staff Exhibit 6.0, pg. 21, ll. 473-475). In order to lessen the rate shock identified by BOMA witnesses Messrs. Brookover and Childress, nonresidential space heating customers must be included as a subgroup in the implementation of Mr. Lazare's mitigation plan unless the Commission accepts BOMA's proposal regarding delivery service demand charges. Moreover, Commission Staff's rate mitigation plan should apply to all customers under 3 MW regardless of which auction product the Commission determines should be offered to the 400 kW – 1 MW and 1 MW – 3MW customer classes. [4]

2. Elimination of Rider ISS

ComEd's Initial Brief contends that BOMA's proposal that ComEd continue to offer Rider ISS-Interim Supply Service ("Rider ISS") is beyond the scope of this docket. (ComEd In. Br., pg. 169). At the same time, however, ComEd restates in its Initial Brief what it has stated throughout this docket: ComEd is not willing to provide Rider ISS post-2006 because ComEd believes it will no longer be necessary. (ComEd In. Br., pg. 170). Since ComEd has made it clear that it does not intend to offer Rider ISS post-2006, it is not beyond the scope of this docket for the Commission to determine based on the record in this proceeding whether Rider ISS should continue in 2007.

[4] As discussed in Sections V.I.1. and V.I.2 on page 10 of this Reply Brief, BOMA proposes that all customers under 3 MW be offered ComEd's CPP-B auction product. If, however, the Commission approves ComEd's proposed CPP-A product for any customer class under 3 MW, then BOMA advocates that Mr. Lazare's mitigation plan apply to all customers to which either the CPP-A or CPP-B auction product is applicable. That is, regardless of which auction product applies to a particular customer class, the rate increase for the customer class should be limited to 20% of 150% of the average of al customer classes being offered either of the CPP-A or CPP-B auction products by ComEd and any shortfall should be shared on an equal percentage by the other customer classes.

ComEd's Initial Brief argues that Rider ISS will not be needed post-2006 because ComEd's "post-2006 bundled electric service rates will provide the necessary service that Rider ISS provides today." (ComEd In. Br., pg. 170 citing ComEd Ex. 13.0, pg. 56, ll. 1224-1225). This statement simply is not true. As BOMA witnesses Brookover and Childress testified, "none of the tariffs mentioned by [ComEd witnesses] Messrs. Alongi and Crumrine provide the important three months of time to purchase from ComEd at a stable price and then choose a competitive supplier." (BOMA Corr. Ex. 4.0, pg.21, ll. 461-470). ComEd has not provided any proof that its post-2006 bundled rates will adequately replace the important function that Rider ISS provides to consumers. Therefore, the Commission should request that ComEd continue to offer Rider ISS post-2006.

3. Non-Residential Space Heating Customers

ComEd's Initial Brief argues against the adoption of BOMA's proposal that ComEd exempt nonresidential electric space heating customers from delivery service demand charges on electricity used for space heating for the purpose of making the rate increase for nonresidential space heating customers comparable to the increase for nonresidential non-space heating customers. (ComEd In. Br., pp. 170-171). However, ComEd does not contest the testimony of BOMA witnesses Childress and Brookover that nonresidential space heating customers will experience severe rate increases of 27.2% - 46.5% post-2006 if the Commission does not take action specifically designed to lessen the rate increases for these customers. (BOMA Ex. 2.1).

Rather than propose any plan to prevent the massive rate shock for nonresidential space heating customers, ComEd focuses on urging the Commission to reject BOMA's proposal on the grounds that it is beyond the scope of this docket because it involves amending or establishing delivery services tariffs not before the Commission. (ComEd In. Br., pg. 170). Consideration of

BOMA's nonresidential space heating proposal in this proceeding not only is appropriate but also is advisable. Should the Commission decide to take action to lessen the rate increases for nonresidential space heating customers, the Commission has two methods by which it can accomplish this goal: it can modify either ComEd's rates for electricity supply or ComEd's rates for electricity delivery (i.e., ComEd's delivery service tariffs). It will be too late for the Commission to weigh both options during ComEd's currently pending delivery services rate case because ComEd's rates for electricity supply will have already been decided in this case. Therefore, this proceeding is the only opportunity for the Commission to compare its two available options for lessening the massive rate shock for nonresidential space heating customers.

As ComEd, CES and Dynegy have all acknowledged, BOMA's proposed demand charge exemption for nonresidential space heating customers will not have an adverse impact on either the competitive market or the auction results. (ComEd Tr., pg. 756, ln. 14 to pg. 757, ln. 5; Joint Tr., pg. 249, ln. 20 to pg. 250, ln. 7; Joint Tr., pg. 1038, ln. 11 to pg. 1039, ln. 6; *see also* DYN In. Br., pg. 23). Therefore, this is the preferable approach to prevent rate shock for nonresidential space heating customers and should be adopted by the Commission in this proceeding.

VIII. CONCLUSIONS AND MIXED LEGAL/FACTUAL ISSUES

B. LEGALITY OF RIDER PPO-MVM

ComEd did not make a specific argument regarding the legality of ComEd's proposal to replace its current Rider PPO-MI with its proposed PPO-MVM. Instead, ComEd merely asserted that Section III and the "factual sections" of ComEd's Initial Brief (which ComEd leaves unidentified) show that ComEd's proposed Rider PPO-MVM complies with all legal requirements. (ComEd Init. Br. pg. 174). Review of ComEd's Initial Brief reveals that it actually includes no argument whatsoever as to why its proposed Rider PPO-MVM complies with the Public Utilities Act. This is not surprising because ComEd's proposed Rider PPO-MVM and ComEd's proposed bundled rates include the same proposed charges. (ComEd Ex. 7.0, pg. 20, ll. 444-448). Clearly, if the legislature had intended that charges under ComEd's bundled rates and PPO rates to be the same, it would not have enacted a statute which requires ComEd to offer both bundled rates and PPO rates to its customers. (220 ILCS 5/16-103(a), 16-110(c) and (d)).

As fully explained in BOMA's Initial Brief, ComEd's PPO-MVM simply is not a valid tariff under Section 16-112(a) of the Public Utilities Act because its "market value" charges for electricity supply are not determined as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy. (See 220 ILCS 5/16-112(a); BOMA In. Br., pg. 24). Therefore, in order to comply with Section 16-112(a), the Commission should require ComEd to either continue to offer service under Rider PPO-MI or under a PPO tariff for which the market value is determined by a neutral fact finder.

CONCLUSION

WHEREFORE, for the above-stated reasons and the reasons stated in our Initial Brief the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO requests that the Commission:

(a) enter an order adopting Dr. Laffer's proposed pay as bid modification to ComEd's proposed auction procurement process;

(b) enter an order providing that all nonresidential consumers with peak demands equal to or greater than 400 kW and less than 3 MW be offered the CPP-B auction product if the Commission approves an auction procurement process;

(c) enter an order requiring ComEd to not include a customer supply group migration risk factor in its CPP-B auction retail rate translation mechanism, regardless of whether the 400 kW to 1 MW and 1 MW to 3 MW customer classes are included in the group being offered the CPP-B auction product;

(d) enter an order requiring that Commission Staff's rate mitigation plan apply to the subgroup of all nonresidential space heating customers under 3 MW if the Commission approves Staff's rate mitigation proposal;

(e) enter an order that ComEd's proposed Rider PPO-MVM shall not go into effect on grounds that such proposed tariff does not comply with Section 16-112(a) of the Public Utilities Act;

(f) enter an order requiring ComEd to continue to offer its current Rider PPO-MI or alternatively a PPO determined by a neutral fact finder in order to comply with Section 16-112(a) of the Public Utilities Act;

(g) enter an order requesting that ComEd continue Rider ISS post-2006;

(h) not approve any tariffs for ComEd in this proceeding until ComEd revises its delivery services tariffs currently pending before the Commission to exempt nonresidential space heating customers from demand charges for electricity used for space heating; and

(i) grant such other relief the Commission deems just and proper.

Respectfully submitted,

BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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