

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Petition of the Citizens Utility Board for an :
Investigation of ComEd’s Participation in a :
Marketing Campaign by CORE that Threatens : Docket No. 05-0691
Consumers with Blackouts and Inquiry into :
the Ability of ComEd to Provide Reliable :
Electric Service :

COMMONWEALTH EDISON COMPANY’S
REPLY CONCERNING ITS RESPONSES TO STAFF QUESTIONS

Commonwealth Edison Company (“ComEd”)¹, by its attorneys, submits this Reply to the Responses of Staff and CUB to ComEd’s “Responses to Staff’s Questions Concerning Service Reliability.” The Responses by Staff and CUB show that this Docket should remain open no longer. As demonstrated in ComEd’s Motion to Dismiss (“Motion”) and the pleadings filed thereafter, the Commission should close this proceeding, either by granting ComEd Motion or, alternatively, by denying the Petition on the merits.

Reply to Staff’s Response

Staff initially expresses some uncertainty concerning the meaning of a portion of ComEd’s response to question REL-1. ComEd confirms Staff’s understanding that ComEd does not “anticipate imminent reliability problems will result in the event of a rejection or dismissal of its auction proposal provided some alternative method or mechanism is in place by January 1, 2007 to allow ComEd to recover its just and reasonable cost of procuring electric supply.” (Staff Resp. at 4 and 6). ComEd regrets any confusion that its effort to explain further its answer has caused. ComEd’s statement -- that rejection by the Commission of the tariffs proposed in Docket 05-0159 would not stand alone -- was intended to convey the fact, as noted by Staff, that

¹ Capitalized terms defined in ComEd’s Motion to Dismiss have the same meaning here.

such a rejection would inevitably be followed by other regulatory actions and by responses in the financial markets to ComEd's condition. As Staff said, "subsequent or additional events having potential service reliability consequences could occur as a result of an order failing to approve the tariff filings in Docket 05-0159 (and in that manner such an order would not stand alone)." (*Id.* at 3). It is not rejection of the proposed auction standing alone, but rather the devastating financial effects on ComEd if the recovery of its just and reasonable procurement costs is not credibly assured, that poses reliability risks post-2006.

Staff also asks ComEd to confirm that it "has not advocated that the Commission's determination in Docket 05-0159 should be influenced one way or the other by potential service reliability concerns." (Staff Resp. at 7). ComEd so confirms. ComEd has not advocated that the Commission's decision be influenced by anything other than the evidence in that docket. To be clear, the record in Docket 05-0159 does include testimony concerning the effect on reliability of preventing ComEd from recovering its just and reasonable procurement costs. Examples of this evidence are cited and discussed in ComEd's Motion to Dismiss at fn.5 and at 10-12 (*e.g.*, Direct Testimony of Frank M. Clark, ComEd Ex. 1.0, at 13-14; Direct Testimony of John Landon, ComEd Ex. 2.0, at 40-41) and in ComEd's Reply Brief in Support of its Motion to Dismiss at 5-6 (*e.g.*, Clark, Tr. 133:22 - 134:10, 135:12-19). However, ComEd did not and does not argue that the tariffs proposed therein should be approved because of service reliability risks. Rather, ComEd demonstrated in Docket 05-0159 -- and ALJ Wallace's Proposed Order in that docket finds -- that the tariffs should be approved because ComEd must procure electricity from the wholesale market, because the proposed action is the least-cost means of doing so, and because the proposed tariffs implement a just and reasonable means of recovering ComEd's procurement costs. *See* ALJ's Proposed Order, Docket 05-0159, at, *e.g.*, 9, 51, 241 (December 5, 2005).

Given these clarifications, Staff concurs with ComEd's position that this proceeding should be terminated. (Staff Resp. at 9). There is no "imminent service reliability problem that warrants investigation" in this docket. (*Id.* at 6). Questions concerning the effect on future service reliability of failing to afford ComEd the cost recovery to which it is legally entitled are best addressed in ComEd's pending rate case, Docket 05-0597.

Reply to CUB's Response

CUB's Response underscores why this docket should be dismissed. ComEd answered, in detail, inquiries about if and when it would be at real risk of not being able to provide its customers with reliable utility service. ComEd did so both in response to Staff's questions and in testimony in other dockets. In short: "If the retail rates that ComEd is allowed to charge after January 1, 2007 are not sufficient to allow ComEd to recover fully its costs of service, including both of providing delivery services and of purchasing required supply from the wholesale market, then there will be a substantial risk of reliability problems both in the supply of electricity and, in the longer term, the delivery of that electricity." (ComEd Answer to REL-1 at 1). Indeed, although it will not take "years," CUB's Response acknowledges that a failure to recover its costs will cause any business, including ComEd, to "fail." (CUB Resp. at 2).

CUB's Response casts off any pretense that ComEd's viability is what the Petition is about. What CUB continues to complain about is not the risk to ComEd's ability to operate reliably that impaired cost recovery would pose, but rather that ComEd has not "dispelled" or "mooted" CORE's political speech (CUB Resp. at 1). What CUB seeks, in its own plain words, is to use this docket as a vehicle for further investigation into "whether there is a factual basis to the ads," *i.e.*, to CORE's political speech. (*Id.* at 3). Indeed, CUB proposes still further "questions" on that subject. As ComEd has shown -- without doubt or serious rebuttal -- an

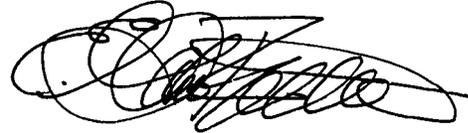
investigation into CORE's political speech would be both outside of the Commission's statutory jurisdiction and flatly unconstitutional. *See* Motion at 12-16 and fn.4; ComEd Reply Br. at 6-9).

Conclusion

For the reasons stated in ComEd's Motion and subsequent filings, this docket should be dismissed. Alternatively, the pleadings and verified supporting submissions make clear that the Petition should be denied on its merits. The relief CUB requests is unlawful, and Staff and the parties remain free in appropriate dockets, including ComEd's pending general rate case (Docket 05-0597), to explore properly any reliability issues or risks that would arise from a future failure to afford ComEd the cost recovery to which it is lawfully entitled.

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