

**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	:	ICC Docket No. 05-0159
	:	
	:	

**REPLY BRIEF ON EXCEPTIONS OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code Section 200.830, respectfully submits this Reply Brief on Exceptions to the briefs on exceptions filed by the People of the State of Illinois ("AG BOE"), the Building Owners and Managers Association of Chicago ("BOMA BOE"), the Cook County State's Attorney's Office ("CCSAO BOE"), Constellation NewEnergy, Inc., Direct Energy Services, LLC, MidAmerican Energy Company, Peoples Energy Services Corporation, and U.S. Energy Savings Corp. (collectively, the "Coalition of Energy Suppliers" or "CES") ("CES BOE"), Commonwealth Edison Company ("ComEd BOE"), the Citizens Utilities Board ("CUB BOE"), Direct Energy Services, LLC ("DES") and U.S. Energy Savings Corp. ("USESC") ("DES-USESC BOE"), the United States Department of Energy ("DOE BOE"), Dynegy Inc. ("Dynegy BOE"), Illinois Industrial Energy Consumers ("IIEC BOE") and Midwest Generation EME, LLC ("MWGen BOE") in response to the Proposed Order issued by the Administrative Law Judge ("ALJ") on December 5, 2005 ("Proposed Order" or "PO").

I. INTRODUCTION

In general, the parties' briefs on exceptions raise issues or arguments previously presented in their Initial and Reply Briefs. Staff previously responded to these arguments in its Initial and Reply Briefs, and will not repeat those arguments here. Thus, the absence of a specific response indicates that Staff continues to advocate and rely on the positions and arguments advanced in its Initial Brief ("Staff IB"), Reply Brief ("Staff RB") and Brief on Exceptions ("Staff BOE"). Some arguments advanced in the parties' Briefs on Exceptions raise new matters or otherwise merit an additional response, and Staff's response to those arguments are set forth below.

II. ARGUMENT

A. Post Hoc Prudence Reviews (Sections III.E.3, III.E.5 & V.L.3 of PO)

Response to ComEd

ComEd disagrees with the Proposed Order's conclusions calling for an after-the-fact prudence review of auction-based electricity purchases. (See ComEd BOE, pp. 12-26) Although Staff did not take exception to the Proposed Order's proposal for after-the-fact prudence reviews subject to a presumption of prudence, Staff also confirmed that it continues to believe that it would be appropriate for the Commission to make a prudence finding in this proceeding for auction-based purchases of electricity as well as certain contingency purchases of electricity. (Staff BOE, pp. 2-16) Consistent with Staff's previously stated position, Staff does not oppose ComEd's proposed exception to eliminate the Proposed Order's after-the-fact prudence review provisions.

Although Staff did not take exception to the Proposed Order's general proposal for after-the-fact prudence reviews subject to a presumption of prudence, Staff did propose that the language of the Proposed Order be modified to clarify the Commission's intent and findings. ComEd makes a very similar proposal in the event the Commission decides to maintain the Proposed Order's requirement for annual prudence reviews. (ComEd BOE, p. 14) Although ComEd's and Staff's clarifying language are somewhat similar, Staff continues to recommend that the Commission adopt Staff's clarifying language. ComEd does recommend that the Commission include the following sentence as part of its clarifying language; "This means that the company will be presumed to have acted prudently absent evidence produced by Staff of a substantial and material change in circumstances on which we relied in approving the auction where such change in circumstances was known or reasonably should have been known to ComEd." (ComEd BOE, p. 23) Staff does not take a position on this proposed language, although the language should be modified to refer to "Staff or other parties" if it is adopted by the Commission. Although the language proposed by ComEd may be appropriate and reasonable, the fact is that Staff did not present testimony on the appropriate scope of an annual prudence review since no party was making such a proposal. As a result, Staff is not in a position to specifically endorse or oppose such language.

B. Annual Reconciliation Proceedings (Section III.E.6 and Section V.L.1 of the PO)

Response to ComEd

Staff recommends that the Commission reject ComEd's proposed language changes to pages 56, 138, and 241 of the PO regarding the PO's finding that "annual reconciliations provide the better balance of accuracy, transparency and efficiency" (PO, page 56). (ComEd BOE, pp. 33-34) In its BOE, ComEd complains that annual reconciliation proceedings are unnecessary and would be unduly burdensome. (ComEd BOE, p. 27) ComEd also complains that it has already agreed to a host of other provisions with regards to Rider CPP "that will ensure both that only properly 'includable' costs are included within the charges/credits and that they are calculated accurately, effectuated in a manner that is transparent and auditable" (*Id.*, pp. 28-29). Staff maintains its position that annual reconciliations are simply an appropriate regulatory mechanism that provides penny for penny recovery of "several billions of dollars" of costs each year. (Staff RB, p. 94) Given the magnitude of pass-through costs involved, an automatic annual reconciliation is certainly a reasonable process to provide assurance that the mechanism is properly functioning on an ongoing basis. The changes to Rider CPP that ComEd has made to Rider CPP do not provide the necessary assurance that an annual automatic reconciliation process would provide.

ComEd continues to propose that Staff review the information supplied by ComEd annually and within six months issue a report to the Commission regarding Staff's findings and, when applicable, provide a recommendation for a formal investigation. (ComEd BOE, p. 31) ComEd's proposal should not be accepted in lieu of an automatic annual reconciliation proceeding. First, ComEd's proposal shifts the burden to Staff. Second, if the responses provided to Staff's inquiries are inadequate, Staff could be forced to make additional inquiries and await responses, a process that

could consume most, if not all, of the allotted six month period. In such an event, a Staff recommendation for formal investigation by the 6 month deadline might not be based upon a conclusive review particularly if the Company chooses not to be timely and forthcoming in its responses to Staff. (Staff IB, p. 177)

The conclusion reached by the PO is proper. An annual automatic reconciliation proceeding is consistent with the Post-2006 Initiative Procurement Working Group's first recommendation that a utility's procurement process should be highly transparent. Ameren has agreed that an annual automatic reconciliation process is proper and Robert J. Mill, an Ameren witness, testified that, "(t)he Annual Reconciliation process seems reasonable as presented in the testimony, the focus being the accuracy of accounting and to make sure that the MVAF reflects actual costs and the reconciliation of revenues with actual costs." (Staff IB, pp. 177-178; ICC Docket Nos. 05-0160, 05-0161, and 05-0162 (Cons.), Resp. Ex. 16.0, p. 7, lines 164-167).

C. Annual Reconciliation Proceedings for Rider TS-CPP (Section III.E.6 of the PO)

Response to ComEd

Staff recommends that the Commission reject ComEd's proposed language changes to page 56 of the PO that removes the requirement for the automatic annual reconciliation process to apply to the TSC(s) under Rider TS-CPP. (ComEd BOE, p. 36) ComEd states that Rider TS-CPP parallels the existing Rider TS-Transmission Services and that those tariffs do not require an automatic annual reconciliation. (*Id.*, p. 35) However, Rider TS-Transmission Services was only available to a limited number of customers that took unbundled service. When the rates from Rider TS-CPP become

effective in January 2007, all customers of ComEd will be eligible for unbundled service and be subject to rates under Rider TS-CPP. (Staff RB, p. 94) Thus, the importance that a reconciliation of the costs recovered under Rider TS-CPP and the associated revenues be reviewed by the Commission in an automatic annual reconciliation has significantly increased. When a utility receives penny-for-penny recovery of all “recoverable costs” through a Rider, ratepayers need the assurance that the rates charged were proper. This can be accomplished through the annual automatic reconciliation proceeding adopted by the PO.

ComEd also states in its BOE that “ComEd does not understand the term ‘power purchases’ as employed there [page 241 of the PO] to include the transmission and ancillary transmission services costs that are the subject of the TSC(s).” (ComEd BOE, p. 36) To clarify the intent of the PO, Staff recommends the following language changes:

Proposed Modification (PO, p. 53)

Accordingly, the Commission finds that power purchases made pursuant to the auction and all other pass-through costs recovered through Riders CPP, PPO-MVM, and TS-CPP should be subject to an annual reconciliation proceeding to determine prudence as outlined in Section 9-220. As discussed below, the proceeding will also be used to reconcile amounts collected with actual costs as described in Section 9-220.

Proposed Modification (PO, p. 56)

6. Accounting Reconciliations

As more fully explained elsewhere in this order, Staff recommends that annual docketed accounting reconciliation proceedings be conducted to reconcile the cost of full requirements electric supply purchased under Rider CPP with such revenues recorded. Staff also recommends that

other pass-through costs billed under Rider PPO-MVM and Rider TS-CPP be reconciled with revenues recorded in annual docketed proceedings. ComEd objects to these proceedings as burdensome and unnecessary.

The Commission agrees with Staff that the reporting favored by ComEd does not assure the level of detail necessary to properly identify and compare procurement costs and other pass-through costs to revenues, especially by class. Of the two recommendations before the Commission, the annual reconciliation proceeding proposed by Staff appears to provide the better balance of accuracy, transparency and efficiency.

Furthermore, an annual accounting reconciliation would appear to be consistent with the procedures outlined in Section 9-220 of the Act as noted above in the discussion of prudency reviews. The Commission also observes, however, that even if annual prudency reviews were not conducted, annual accounting reconciliation proceedings should still be held for the reasons indicated above.

Proposed Modification, p. 241

IT IS FURTHER ORDERED that Commonwealth Edison Company shall be subject to the annual reconciliation proceedings related to its power purchases and other pass-through costs billed under Riders CPP, PPO-MVM, and TS-CPP with the associated revenues as described and approved in the prefatory part of this Order.

D. Post-2006 Initiative (Section III.D of the PO)

Response to AG and CCSAO

The AG and CCSAO continue to argue that the use of the reports resulting from the Post-2006 Initiative in this proceeding violates the Commission's promise that the

process would not be used in subsequent litigation. (AG BOE, pp. 8-13, and CCSAO BOE, pp. 12-14) In support of its argument, the AG cites the Commission's promise that in order to facilitate free and open discussions, statements made, positions taken, and documents and papers provided by the stakeholders in the Post 2006 Initiative Process will not be used by the stakeholders in any subsequent litigation. (AG BOE, p. 8) The AG concludes that "[t]he Commission is estopped from relying on or citing the Post 2006 Initiative reports and discussions in the Order in this docket." (*Id.*, p. 11) The AG further claims that "the use of the Post-2006 Initiative process to build the appearance of momentum and consensus violates the Commission's promise ...". (*Id.*)

The arguments set forth by the AG and CCSAO must be rejected. The PO correctly concludes

Parties who disagreed with the thrust of or characterizations in the references to the Post-2006 process or results thereof were given a full opportunity to express their views in this docket, as they were in the Post-2006 Initiative itself, and their comments have been duly considered.

(PO, p. 47) The PO's conclusions are supported by Section II the Post-2006 Initiative: Final Staff Report to the Commission ("Final Staff Report"), which states

... the working groups were charged with reaching consensus positions on the various issues. Common ground was found on numerous issues, and identification of common ground is an important first step towards preparing for the Post 2006 era. However, where consensus was not reached on substantive issues, action is still required. ... This report does not attempt to exhaustively address all the discussions of the working groups, but Staff makes recommendations in each of the main issue area.

(Final Staff Report, p. 2) The Final Staff Report sets forth Staff's recommendations based upon reports from the Working Groups. Experienced, knowledgeable professionals in the regulatory field, representing the public and private sectors, contributed great time and effort in the Working Groups so that Staff could formulate the

report and provide guidance to the Commission. To put it and the related reports aside would do a great disservice to the Commission, these professionals and Illinois ratepayers. As noted by the PO, "... the Post-2006 Initiative was an innovative and inclusive process that provided a valuable opportunity to explore and develop alternatives on the critical issues relating to Post-2006 electric supply acquisition." (PO, p. 47) Further, the Post-2006 reports did not prohibited parties in this proceeding from arguing against its recommendations or challenge any consensus items. In fact, the Final Staff Report acknowledges that "this report does not attempt to exhaustively address all the discussions of the working groups"

Thus, the Commission should reject the arguments and language set forth by the AG and CCSAO with respect to the Post-2006 Initiative reports and conclusions (Section III.D of the PO).

E. Proposed Blends for Residential and Small Commercial Customer Supply (Section V.H.1 of Proposed Order)

Response to DES/USESC

DES/USESC's proposes that the Commission should drastically revise ComEd's auction proposals. DES/USESC advocates holding multi-year auctions (monthly or quarterly) for smaller-use customers and allowing ComEd to only offer hourly pricing to customers with a demand greater than one megawatt (DES-USESC BOE, Appendix B). These proposals were not supported by any customer group and were properly rejected by the PO. It is clear that both larger-use and smaller-use customers currently prefer the relative price stability offered by the ComEd proposal over potentially volatile wholesale rates. The Commission should not adopt the DES/USESC proposal.

F. Nature of Auction Product and Tariffed Services for 1 – 3 MW Customers (Section V.I.1 of the PO) and for 400kW – 1 MW Customers (Section V.I.2 of the PO)

Response to BOMA (Exceptions 4 and 5)

BOMA disagrees with the PO's conclusion that ComEd's two-tiered pricing proposal should be adopted. Under ComEd's proposal, customers with a peak demand under 400 kW would be eligible for a "blended" rate (CPP-B) that would consist of contracts of varying lengths, and customers with a peak demand greater than 400 kW would be eligible for a generation rate that varies on annual basis (CPP-A). BOMA recommends, instead, that all customers (perhaps not including, however, customers with a demand of greater than 3 MW) should become eligible for the blended rate. (BOMA BOE, pp. 14, 17) Presumably, under BOMA's proposal, the CPP-B rate would be the only generation service that ComEd would offer.

BOMA accepts ComEd's argument that larger-use customers are more sophisticated than smaller-use customers, but nevertheless contends that larger-use customers should not be treated differently than smaller-use customers unless and until the larger-use class is declared competitive. (BOMA BOE, p. 16) Staff disagrees with BOMA. Customers that differ in material respects such as demand size are routinely served under different rates. For example, ComEd currently has two three main customer classes – residential, Rate 6 (demand under one megawatt) and Rate 6L (demand greater than one megawatt). Different prices apply to the different customer classes.

In this proceeding, ComEd proposes to differentiate service by demand class on the basis of a number of factors, including different degrees of customer sophistication about available supply options and a different capacity for managing risk. (ComEd Ex. 3.0, p. 23, lines 509-510) Staff also notes that ComEd's delineation of demand classes is supported by the dissimilar switching rates for different-sized customers. The switching rate for customers with a demand greater than 400 kW is significantly different than the switching rate of smaller-use customers. (CES Ex. 1.0, p. 16, lines 33-340) Each of these reasons supports ComEd's proposal to offer an annual rate to larger-use customers and a blended rate to smaller-use customers.

G. Customer Supply Group Migration Risk Factor (Section VII.A.10 of the PO)

Response to Coalition of Energy Suppliers

CES continues to press for adoption of a migration risk factor in its BOE. (CES BOE, pp. 10-15) In doing so, the CES presents again the arguments that Staff has previously refuted in this proceeding. (ICC Staff Exhibit 6.0, pp. 24-30; ICC Staff Exhibit 14.0, pp. 6-13; Staff IB, pp. 160-163; Staff RB, pp. 79-81)

The CES presents an unsubstantiated interpretation of the PO on this issue, stating:

The Proposed Order does not dispute that customer migration will result in additional costs to suppliers, but instead takes issue with the "divergence" of methodologies proposed for estimating the magnitude of those costs and the apparent "weak" record with regard to the issue.

(CES BOE, p. 11) This claim amounts to a liberal and unreasonable interpretation of the PO which discusses the issue of cost in quite limited terms:

In the Commission's view, it seems entirely logical that the [sic] when developing bidding strategies and prices suppliers will consider the likelihood and level of possible customer switching. However, the record does not support including a migration risk factor.

(PO, p. 187) The above passage provides no basis for the CES claim that the PO in some manner validates their claim that migration risk poses a significant cost for suppliers. The statement suggests that suppliers may consider possible customer switching strategies in their bids but that does not mean the suppliers attribute a meaningful, substantial cost to this activity.

Furthermore, the CES fails to grasp the meaning of the PO's concern about the "divergence of opinions regarding the anticipated level of customer switching". (PO, p. 187) This divergence exists because these costs are so ephemeral. If suppliers do consider possible switching in their bids, then issues arise concerning how much of a concern switching presents, what kind of costs result from this concern, and what the magnitude of those costs might be. The fact that no party was able to establish a reasonable estimation method calls into question whether this is a meaningful cost at all. Ironically, the estimation method proposed by ComEd and endorsed by CES never even sought to identify or estimate the migration risk costs that suppliers might incur. Instead, it used as a proxy an estimate of the value to customers presented by the option to switch suppliers. (ICC Staff Exhibit 6.0, pp. 28-29, lines 640-643) This approach is an illogical stretch that the PO rightly rejected.

The second argument by CES is deeply flawed. It focuses, not on the legitimacy of the costs, but rather on the end-result of applying a migration risk factor. The CES argues:

By rejecting the proposals to implement a migration risk factor, the Proposed Order recommends a step that would harm residential customers.

(CES BOE, p. 12) In other words, regardless of the merits from a cost standpoint, the Commission should approve the migration risk factor because it lowers residential costs relative to other customers.

This argument is deficient on two counts. First, the existence of a cost is not determined by who benefits and who is harmed by the imposition of that cost. If the concern is potential impacts, then there is no need to even look at the costs as they would be essentially irrelevant.

Second, it is not so clear that a migration risk factor would lower costs for residential customers. Imposition of such a factor would raise supply costs for larger customers which, in turn, would give them greater incentive to gravitate away from bundled service to an alternative supplier. This potential for greater migration would create further risk and instability for suppliers. The suppliers may very well seek to recover the costs associated with this risk from all customers, including residential customers. And so, the apparent benefits to residential customers of a migration risk factor could prove illusory. (ICC Staff Exhibit 6.0, pp. 27-28, lines 616-622)

The CES concludes its discussion by complaining that “[t]he Proposed Order improperly discounts the evidence and experience that parties have brought to developing the record in this proceeding supporting of a migration risk factor”. (CES BOE, p. 14) That statement does not accurately reflect the record in the case which is that the evidence in favor of a migration risk factor has been found to be deeply flawed and poorly supported. As a result, the PO has no choice but to reject the proposal.

Finally, the CES seeks to buttress its argument by citing the “evidence” its witnesses provided concerning “the observed pattern of migration between PPO and RES [Retail Electric Supplier] service for most customer groups in the ComEd service territory” with commercial customers seeking the lowest cost option while residential customers have little inclination to switch. (CES BOE, p. 14)

This discussion is confusing because the referenced arguments were presented in support of an alternative migration risk factor to the proposal presented by ComEd. It is not clear which proposal CES seeks to buttress with this argument, ComEd’s or its own. Furthermore, the claim that commercial customers are only concerned about the lowest price is unfounded. The decision to receive RES service is also about whether to rely on market forces, rather than regulation, to set the price and quality of the power received. In deciding to migrate to RES service, customers must have confidence that the market can meet their needs over the longer term. To argue that this decision is solely based on price oversimplifies a more complicated decision-making process. This argument offers no tangible support to either the migration risk proposal offered by ComEd or by CES. Therefore, the Commission should not include an explicit migration risk factor and reject CES’s arguments and proposed language.

H. Monthly Informational Reports (Section VII.A.12 of the PO)

Response to ComEd

Staff recommends that the Commission not accept the language changes on pages 199-200 of the PO proposed by ComEd (ComEd BOE, pp. 52-54). ComEd proposes that the Commission allow it to file its monthly informational reports just three

business days before the monthly billing period. This proposal inappropriately deprives Staff sufficient time to review the monthly information reports.

ComEd claims that Staff's position is "based simply on the possibility that Staff might find a mistake in those calculations." (ComEd BOE, p. 46) Based on Staff's experience with monthly filings relating to the Fuel Adjustment Clause and the Purchase Adjustment Clause, however, errors do occur. (ICC Staff Exhibit 10.0, pp. 4-5, lines 78-80) There is no guarantee ComEd's filings will always be free from error.

ComEd tries to clarify its position that the question is not whether the AAF calculations will be reviewed by Staff or whether any errors will be corrected, but rather "...when the monthly filings will be reviewed and when any errors in the AAF calculations, however unlikely, will be corrected." (ComEd BOE, p. 47) Further, ComEd states that "there is no issue whether the AAF calculations will be reviewed by Staff....They will." (*Id.*, p. 49) The foregoing suggests that ComEd is unconcerned about the effect of the limited time frame it proposes on the quality and depth of Staff's review of the Company's information filing. Because a more limited Staff review could benefit the Company's interests more than ratepayer interests, it is unsurprising that the Company has taken the position that it has on this issue. However, the PO has clearly struck the proper balance and should continue to reject the Company's proposal on this matter.

To further rationalize its cause for less review time by Staff, ComEd inflates the magnitude of the dollars that could be refunded or collected through the AAF and then concludes, therefore, that a month's delay is a "serious consideration for both customers and ComEd" (ComEd BOE, p. 48). This argument fails in two ways. First,

the AAF is simply an automatic monthly mechanism within Rider CPP that compares the costs incurred to obtain full requirements electric supply with the revenues collected to recover those costs. Thus, the monthly AAF should be minimal because if the procurement process adopted is properly implemented then translated rates should mirror the costs incurred. The AAF is merely the difference between the costs incurred in a prior period compared to the revenues that were collected to recover those costs. If the AAF were to become as significant as ComEd implies, then that would indicate that the translation mechanism to set the translated rates within Rider CPP is seriously flawed and the procurement tariffs approved by the Commission should be reevaluated. Second, timing is not as important as ComEd alleges because any amount that is refunded or collected through the AAF is subject to interest, rendering the Company and ratepayers indifferent as to when the refund or collection occurs.

ComEd makes the unsupported and questionable argument that adopting a due date of the 20th of the month for the monthly informational reports “overlook the critical steps relating to ComEd’s designing and testing the changes in its billing system that are needed to avoid billing error and implement and accurately issue the AAFs.” (ComEd BOE, p. 48) The requirement for a monthly informational report to be filed by a utility by the 20th of the month is not new. Illinois gas utilities have filed their PGA monthly filings by the 20th of the month since November 1, 1995. No Illinois gas utility has ever expressed to the Commission a problem in getting the new monthly rates into the billing system within this time frame. Absent any convincing evidence that ComEd’s billing system is so unique that it needs extensive time for monthly designing and testing, the Commission should reject the Company’s argument.

ComEd tries to rebut the PO's reference to Part 525 of the Commission's rules regarding the Purchased Gas Adjustment Clause as being "inapplicable here." (ComEd BOE, p. 52) However, ComEd gives no rationale for its statement and should be rejected by the Commission.

I. Supply Administration Charge (Section VII.B.2 of the PO)

Response to Coalition of Energy Suppliers

The Commission should reject the replacement language proposed by the CES regarding the Supply Administration Charge (CES BOE, Appendix A, pp. 3-4). The PO is correct that ComEd's current rate case, Docket No. 05-0597, is a more appropriate forum in which to make the specific decisions regarding the Supply Administration Charge. (PO, p. 212)

Furthermore, the Commission should reject CES' proposal to track the Supply Administration Charge through the Accuracy Assurance Factor ("AAF") (CES BOE, Appendix A, pp. 3-4). Tracking the Supply Administration Charge and supply-related uncollectible costs through the AAF would not accomplish the stated goal of ensuring that ComEd neither over nor under-collects for these expenses. Staff explained in its testimony and initial brief how this approach would mismatch costs and recoveries from two different periods that reflect different levels of sales and costs. This kind of mismatch would not accomplish the kind of true-up of costs and recoveries that CES desires. (ICC Staff Exhibit 17.0, pp. 8-9, lines. 180-192; Staff IB, pp. 186-187) Staff also explained why the kind of true-up that CES seeks is not necessary, given that the

Supply Administration Charge and adjustment for supply-related uncollectible costs will be set in a rate case. (ICC Staff Exhibit 17.0, pp. 9-10, lines. 193-200; Staff IB, p. 187)

Response to ComEd

The Commission should accept the additional language proposed by ComEd regarding the revised tariff language upon which ComEd and Staff agreed. (ComEd BOE, p. 64) Staff agrees that the language in the Commission's Analysis and Conclusions section on page 212 of the PO includes appropriate findings that logically support the approval of the Staff-ComEd proposed revised language, which is supported by evidence from both Staff and ComEd. As the PO notes, Staff's Initial Brief presents the language for the Supply Administration Charge upon which Staff and ComEd agreed. (PO, p. 212; Staff IB, p. 191) The Commission should make clear its acceptance of this language by incorporating the change proposed by ComEd.

J. Legality of Rider PPO-MVM (Section VII.B.3 of the PO)

Response to BOMA

BOMA continues to argue that proposed Rider PPO-MVM does not comply with Section 16-112(a) of the Act and that the Commission "... order ComEd to continue to offer its current Rider PPO-MI or alternatively a PPO determined by a neutral fact finder ...". (BOMA BOE, p. 14) In support of its argument, BOMA provides an incorrect interpretation of Section 16-112(a) of the Act. Staff addressed the proper statutory construction of Section 16-112(a) in its Initial Brief and its Reply Brief. (Staff IB, pp. 206-209; Staff RB, pp. 100-103) For the reasons set forth in both Staff's Initial Brief and

Reply Brief, the PO correctly concludes that Rider PPO-MVM complies with Section 16-112(a) of the Act and the Commission should reject the argument and language set forth by BOMA.

K. Illinois Open Meeting Act/ Illinois Ethics Law/ Regulation of Public Records/ Ex Parte Communications/ Record Evidence (Section VIII.C of the PO)

Response to CCSAO

In its Exceptions 23, 24, 25, 26 and 27, the CCSAO continues to raise its misplaced concerns with respect to the Auction Process and the Illinois Open Meeting Act, the Illinois Ethics Law, the Regulation of Public Records, Ex Parte Communications and Record Evidence. (CCSAO BOE, pp. 34-39) Except for stating that the PO narrowly construes the Illinois Ethics Law (CCSAO BOE, p. 35) for which it provides no support, the CCSAO provides no further explanation on how the Auction Process will prevent the Commission or Staff from complying with the Illinois Open Meeting Act, the Illinois Ethics Law, the Regulation of Public Records, Ex Parte Communications and Record Evidence. In its Reply Brief, Staff addressed why such laws will not be violated. (Staff RB, pp. 103-108) The PO correctly finds in each instance that the Commission will comply with the Act or Provision. (PO, pp. 236-239) Thus, the Commission should reject the replacement language offered by CCSAO with respect to Section VIII.C of the Proposed Order.

III. CONCLUSION

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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