STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	**:**	
	:	
Proposed general increase in electric rates, General restructuring of rates, price unbundling of bundled service rates, and revision of other terms and conditions of service	**:**	**Docket No. 05-0597**

INITIAL BRIEF
OF
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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

I. INTRODUCTION

Commonwealth Edison Company ("ComEd") has requested in this proceeding that its currently authorized delivery services revenue requirement of $1.508 billion be increased to $1.864 billion. BOMA urges the Commission to reject ComEd's requested delivery services revenue requirement increase and instead adopt the $1.512 billion revenue requirement recommended by Commission Staff. In addition to requesting a more than 20% increase in its revenue requirement, ComEd has proposed drastic changes to the design of its tariff rates which will cause massive rate shock for particular classes of ComEd customers regardless of the revenue requirement adopted by the Commission in this case. These changes are the proposed consolidation of ComEd's nine current nonresidential delivery services customer classes segmented by peak demand into only four customer classes and the elimination of separate rate treatment for nonresidential consumers who heat their facilities with electricity ("nonresidential space heating consumers").

If ComEd's proposed changes are adopted, consumers with more than 10 megawatts ("MW") of peak electricity demand ("over 10 MW consumers") would receive an incredible 133% increase in their delivery service charges. Meanwhile, nonresidential space heating consumers would no longer receive the 17% discount from ComEd's generally applicable charges which these consumers currently receive. Fortunately for these consumers, the embedded cost of service presented by ComEd did not provide any cost basis for either ComEd's proposed consolidation of its nonresidential delivery services customer classes or the elimination of separate rate treatment for nonresidential space heating consumers. As a result, BOMA witness Mr. David McClanahan, who previously directed numerous cost of service studies for Southern Company, recommended that whatever revenue requirement increase (or decrease) is adopted by the Commission be allocated on an equal percentage, across-the-board basis to ComEd's existing nonresidential customer classes and that ComEd continue to provide separate rate treatment for nonresidential space heating consumers.

BOMA urges the Commission to retain the existing nonresidential customer classes and adopt the across-the-board methodology, which the Commission has done in numerous utility rate cases in the past. This approach should include the retention of a Rider HVDS credit on distribution facilities charges for consumers who take electricity delivery service from ComEd at 69,000 volts or higher and the allocation of all lost revenues from the credit on an equal percentage basis to all nonresidential customer classes (as ComEd currently does).

With respect to nonresidential space heating consumers, BOMA witnesses Messrs. T.J. Brookover and Kristav Childress proposed that these consumers continue to receive the exemption from demand charges on electricity used for space heating in ComEd's delivery service tariffs which is currently present in ComEd's bundled rate Rider 25. This approach would allow ComEd to eliminate its bundled rate Rider 25 but preserve separate rate treatment for space heating consumers through ComEd's delivery service tariffs. BOMA represents many consumers who do not heat with electricity as well as consumers who do heat with electricity. BOMA believes that the proposal by Messrs. Brookover and Childress balances the interests of these two groups of consumers because it would result in nonresidential space heating consumers receiving an overall rate increase comparable to the rate increase for nonresidential non-space heating consumers.

In addition to the aforementioned issues, BOMA also is concerned about the weighting factors used by ComEd in its cost of service study as well as the study's classification of distribution costs in FERC accounts 364-368 as solely demand related. However, since ComEd's revenue requirement increase (or decrease) should be allocated on an across-the-board basis rather than using ComEd's flawed cost-of-service study, these problems can be corrected in ComEd's next delivery service rate case.

Finally, BOMA challenged ComEd's proposed replacement of its current Rider 12 with a proposed tariff known as Rider Resale because the proposed tariff included language that would have prevented buildings currently reselling electricity to their tenants under Rider 12 from recovering the full costs of reselling electricity to those tenants. BOMA provided alternative language for Rider Resale that has been accepted by ComEd, the Illinois Industrial Energy Consumers ("IIEC") and the Coalition of Electricity Suppliers ("CES"). Significantly, BOMA's alternative language does not change the restriction of the class of permitted resellers to buildings that have been continuously reselling electricity to tenants since 1957, which is the same restriction that exists in ComEd's current Rider 12.

III. ARGUMENT ON CONTESTED ISSUES

A. Total Revenue Requirement and Base Rate Revenue Increase

In March 2003, the Commission approved a delivery services revenue requirement for ComEd of $1,507,636,000.[*] (Ill. C.C. Docket No. 01-0423, Final Order, Findings and Ordering Paragraphs No. 7, pg.155; Com[1]Ed Rev. Ex. 36.0, pg. 6, ll. 114-116; Trans., pg. 797, ll. 6-11). In this proceeding, Commission Staff recommends a delivery services revenue requirement for ComEd of $1,512,008,000. (Staff Ex. 12.0, Schedule 12.1; Trans., pg. 1714, ll. 8-12; ComEd Rev. Ex. 36.0, pg. 5, ll. 108-110). In stark contrast, ComEd is requesting that the Commission increase its authorized delivery services revenue requirement to $1,863,796,000. (ComEd Rev. Ex. 36.0, pg. 5, ll. 104-105). For the reasons stated by witnesses for Commission Staff, BOMA urges the Commission to adopt Staff's recommended delivery services revenue requirement of $1,512,008,000.

F. Cost of Service Issues

1. Embedded Cost of Service Study

As discussed in detail below in Sections III.G.3. Revenue Allocation – Other and III.H.1.b.2. Very Large Load Customers, ComEd's embedded cost of service study should not be used to allocate any revenue requirement increase (or decrease) for nonresidential consumers in this proceeding because the cost of service study only allocated costs based on ComEd's proposed nonresidential customer classes rather than ComEd's existing nonresidential customer classes. (Trans., pg. 2242, ln. 12 – pg. 2243, ln. 1). Rather than utilize ComEd's embedded cost

[*] ComEd's pro forma operating revenues for the test year 2004 based on ComEd's current delivery service tariffs are $1,579,469,527. (ComEd Rev. Ex., 36.0, pp. 6-7, ll. 134-136; Transcript, pg. 790, ln. 12 – pg. 791, ln. 7). Therefore,as ComEd witness Mr. Jerome Hill acknowledged on cross examination, ComEd's currently approved delivery services rates would generate $72 million more than ComEd's currently authorized revenue requirement based on the test year 2004 used by ComEd in this proceeding. (Trans., pg. 802, ll. 10-19).

of service study, the Commission should retain ComEd's existing nonresidential delivery service customer classes and allocate any revenue requirement increase (or decrease) to nonresidential customers on an equal percentage, across-the-board basis to these existing customer classes. (BOMA Ex. 2.0, pg. 10, ll. 212-225).

Another flaw in ComEd's embedded cost of service was the weighting factors that were used to allocate certain types of costs to ComEd's proposed customer classes throughout ComEd's cost of service study. (BOMA Ex. 2.0, pg. 14, ll. 309-314). As BOMA cost of service expert witness Mr. McClanahan testified, the weighting factors used to allocate certain types of costs such as ComEd's metering services and billing and accounting expenses should not vary significantly across customer classes because these costs should be essentially the same on a per customer basis. (BOMA Exhibit 4.0, pg. 9, ll. 203-209). Nevertheless, as Mr. McClanahan showed in BOMA Exhibit 2.5, the weighting factors used by ComEd to allocate metering services and billing and accounting expenses varied widely among ComEd's proposed delivery services customer classes. For example, ComEd's Billing and Accounting weighting factor for ComEd's proposed Very Large Load class of 147.556 was approximately 60 times greater than the Billing and Accounting weighting factor for the Medium Load class of 2.427. (BOMA Ex. 2.5). ComEd offered no explanation in testimony for the substantial difference in weighting factors used to allocate certain costs among ComEd's proposed customer classes in ComEd's embedded cost of service study. (BOMA Ex. 2.0, pg. 14, ll. 315-323).

If ComEd's embedded cost of service study is not used to allocate the revenue requirement increase (or decrease) in this proceeding for the reasons discussed in Sections III.G.3. Revenue Allocation – Other and III.H.1.b.2. Very Large Load Customers below, the problems with ComEd's weighting factors will not adversely impact ComEd's consumers at this time. However, this is a problem which BOMA urges the Commission to order ComEd to address in its cost of service study to be used in ComEd's next delivery services rate case.

2. Minimum Distribution System

BOMA witness Mr. McClanahan also showed that ComEd's embedded cost of service study does not comply with guidelines published by the National Association of Regulatory Utility Commissioners ("NARUC") with respect to FERC accounts 364-368 because ComEd's cost of service study classifies all distribution plant and associated costs in these accounts as solely demand-related and thereby ignores the customer-related portions of these accounts. (BOMA Ex. 4.0, pg. 8, ll. 184-192; ComEd Ex. 11.1, Schedule 1b). Mr. McClanahan further testified that the operating electric utilities of Southern Company never failed to consider the customer-related component of distribution system costs associated with FERC accounts 364-368 during his thirty years of cost of service experience with Southern Company. (BOMA Ex. 4.0, pg. 8, ll. 189-192). Additionally, Mr. McClanahan testified that the determination of the proper amount of customer related costs is critical to the accurate classification of these costs and the development of a cost based customer charge. (BOMA Ex. 2.0, pg. 14, ll. 304-306). ComEd never disputed Mr. McClanahan's testimony that ComEd's embedded cost of service study does not comply with NARUC guidelines with respect to FERC accounts 364-368. (BOMA Ex. 4.0, pg. 8, ll. 192-194).

IIEC witness Mr. Chalfant agreed with Mr. McClanahan that ComEd's failure to allocate any distribution plant in FERC accounts 364-368 to customer-related costs misallocates costs to ComEd's consumers. (BOMA Ex. 4.0, pg. 8, ll. 194-197; IIEC Ex. 2.0, pg. 14, ll. 277-281). IIEC witness Mr. Chalfant testified this misallocation could change the allocation of distribution plant costs to consumers by 30% to 50%. (IIEC Ex. 2.0, pg. 2.0, pg. 15, ll. 292-294).

Illinois Attorney General ("AG") witness Mr. Scott Rubin and Commission Staff witness Mr. Peter Lazare oppose the testimony of Mr. McClanahan on this issue but do not contest that ComEd's approach is inconsistent with the NARUC guidelines intended for nationwide use by utilities. (Staff Ex. 17.0 Corr., pp. 40-42, ll. 990-1035; Trans., pg. 1052, ll. 1-7). In fact, Mr. Lazare testified on cross-examination that he believed that the NARUC guidelines were wrong with respect to this issue. The following is the relevant except from Mr. Lazare's cross-examination:

> Q Is it your position that NARUC is wrong -- that's N-A-R-U-C -- NARUC is wrong when it says that distribution plant in FERC accounts 364 to 370 involve both customer costs and demand costs?
>
> A Yes.

(Trans., pg. 570, ln. 5 – pg. 571, ln. 2).

As with the weighting factors issue discussed above, the Commission need not order ComEd to correct its cost of service study in this proceeding if the Commission does not allocate the revenue requirement increase (or decrease) on the basis of ComEd's embedded cost of service study as BOMA recommends. However, the Commission should order ComEd to follow the NARUC guidelines for allocating costs in FERC accounts 364-368 in ComEd's cost of service study for ComEd's next delivery services rate case.

G. Revenue Allocation

3. Other

As discussed further in Section III.H.1.b.2. of this Initial Brief below, ComEd proposes to consolidate its present nine nonresidential delivery service customer classes segmented by peak demand into only four customer classes. (ComEd Ex. 9.0 Corr., pp. 37-38, ll. 797-809; ComEd Ex. 23.0, pg. 23, ll. 497-498). BOMA and other parties showed that the class consolidation would cause massive rate shock – a 133% rate increase – to over 10 MW consumers. (BOMA Ex. 1.0, pp.13-14, ll. 284-299; IIEC Ex. 1.0, pp. 6-7, ll. 146-156; DOE Ex. 1.0, pp. 3-4, ll. 61-65).

ComEd's primary argument in its direct testimony in favor of its proposal to dramatically reduce its number of nonresidential delivery service customer classes was the following: The costs of providing delivery services to the classes ComEd proposes to combine must be very similar because the charges currently in effect and approved by the Commission for these classes of consumers are very similar. (ComEd Ex. 9.0 Corr., pg. 38, ll. 811-815). BOMA has shown that ComEd's statement that delivery services charges currently in effect for the classes ComEd proposes to combine "are very similar" is flatly untrue. As BOMA witnesses Messrs. Brookover and Childress testified, over 10 MW consumers currently pay distribution facilities charges of \$2.34 per kW, while customers with peak demands of 6-10 MW, 3-6 MW and 1-3 MW pay distribution facilities charges of \$4.47, \$4.63 and \$4.45 per kW, respectively. (BOMA Ex. 1.0, pp. 13-14, ll. 280-289; Ill. C. C. No. 4, 3rd Revised Sheet No. 119-119.1). Messrs. Brookover and Childress were hardly alone in identifying this glaring flaw in ComEd's rationale for its proposed class consolidation; IIEC witness Mr. Stephens also testified that the charges for the over 10 MW class are approximately one-half of the charges for the three other customer classes ComEd is proposing to group with the over 10 MW consumers. (IIEC Ex. 1.0, pg. 11, ll. 197-201). Clearly, ComEd's primary justification for consolidating its nonresidential delivery customer classes is fundamentally flawed because the charges currently in effect for these classes are not similar at all.

Moreover, ComEd presented no cost of service study in its direct case which showed that the costs of service for the customer classes which ComEd is proposing to consolidate are similar enough to justify such consolidation. (BOMA Ex. 4.0, pg. 6, ll. 140-143; pg. 7, ll. 158-159). As IIEC witness Mr. Chalfant testified, ComEd's embedded cost of service study simply did not separate costs by ComEd's existing nonresidential customer classes. (IIEC Ex. 2.0, pg. 9, ll. 165-171). On cross examination, ComEd's witness Mr. Crumrine admitted that ComEd did not do any cost of service study for ComEd's existing classes:

> Q. So in your direct case, you didn't show a cost study of the cost of serving ComEd's existing customer classes, correct?
>
> A. No, we didn't need to.
>
> MR. GIORDANO: I'd like to move to strike everything after "no."
>
> MR. BERNSTEIN: I object to that. He's entitled to a few words of explanation. The question was certainly not --
>
> MR. GIORDANO: I think that was a yes or no question.
>
> JUDGE DOLAN: We'll strike the rest after "no."

(Trans., pg. 2242, l. 12 – pg. 2243, l. 1).

As BOMA witness Mr. McClanahan testified, the proper approach for ComEd would have been to conduct the cost of service study based on the current rate classes and then propose consolidation of rate classes if the costs indeed proved to be similar. (BOMA Ex. 2.0, pg. 9-10, ll. 205-208). This approach would have allowed the Commission to determine whether consolidation was justified. (BOMA Ex. 2.0, pg. 10, ll. 209-211).

In rebuttal testimony, ComEd attempted to remedy its glaring error by presenting a re-run of its embedded cost of service study. However, the over 10 MW class was the only existing ComEd rate class that was addressed in ComEd's re-run of its cost study. (ComEd Ex. 23.0, pg. 25, ll. 525-527). Simply put, ComEd has not segmented its embedded cost of service study based on ComEd's existing nonresidential customer classes and therefore has not justified its proposed consolidation of its rate classes. Moreover, as IIEC witness Mr. Chalfant testified, ComEd's re-run embedded cost of service study greatly overstates the costs of serving over 10 MW customers. (IIEC Ex. 6.0, pp. 2-3, ll. 32-37).

Because ComEd's embedded cost of service study does not separate costs according to ComEd's existing rate classes, ComEd's proposal to consolidate these classes violates the requirement of 83 Ill. Adm. Code 285.5110 that utilities with more than $5 million in annual revenues present a cost of service study which allocates costs to the utility's rate classes. Due to this violation of the Illinois Administrative Code and the flaws in ComEd's approach discussed above, the Commission should order ComEd to keep its existing nonresidential delivery service classes and allocate any revenue requirement increase (or decrease) to the existing customer classes on an equal percentage, across-the-board basis. (BOMA Ex. 4.0, pg. 7, ll. 167-171).

H. Rate Design

1. Customer Class Delineations

b) Non-residential

2) Very Large Load Customers

As discussed in Section III.G.3. Revenue Allocation – Other of this Initial Brief above, ComEd proposes to consolidate its current nine nonresidential delivery service customer classes segmented by peak demand into only four customer classes. (ComEd Ex. 9.0 Corr., pg. 38, ll. 805-807). ComEd's proposed consolidation would eliminate the over 10 MW customer class and group these consumers into a new Very Large Load customer class for all consumers with peak demand exceeding 1 MW. (ComEd Ex. 9.0 Corr., pg. 38, ll. 805-807). ComEd would then raise its distribution facilities charge for all customers in this new over 1 MW customer class to $5.45 per kW, which amounts to a 133% increase for over 10 MW consumers who are currently charged $2.34 per kW. (Ill. C. C. No. 4, 3rd Revised Sheet No. 119-119.1; Proposed Ill. C. C. No. 4, Original Sheet No. 369; BOMA Ex. 3.0, pp. 7-8, ll. 156-168).

In its surrebuttal testimony, ComEd made an alternative proposal regarding over 10 MW consumers under which ComEd would maintain a separate over 10 MW customer class and phase in the rate increase for this class by one half in this rate case and one half in ComEd's next delivery services rate case. (ComEd Ex. 40.0 Corr., pp. 7-8, ll. 146-157). ComEd proposed that any shortfall in revenue resulting from this proposal be recovered by allocating the shortfall on a pro rata basis to the other nonresidential customer classes and that half of its proposed rate increase for the over 10 MW class would be allowed regardless of the amount of the revenue requirement granted by the Commission in this proceeding. (ComEd Ex. 40.0 Corr., pp. 7-8, ll. 141-156). ComEd also stated that it would implement this alternative proposal for over 10 MW consumers only if the Commission also approved ComEd's proposed 24-hour clock for calculating the Maximum Kilowatts Delivered ("MKD") used to determine consumers' distribution facilities charges. (ComEd Ex. 40.0 Corr., pg. 7, ll. 136-137).

In BOMA's view, ComEd's alternative proposal is preferable to the outrageous rate increase for over 10 MW consumers proposed by ComEd in its direct testimony. However, it is BOMA's position that the best approach for the Commission is still the retention of all of ComEd's existing nonresidential customer classes and the allocation of any revenue requirement increase (or decrease) on an equal percentage, across-the-board basis to the existing customer classes. This approach not only is the best approach to avoid rate shock for over 10 MW consumers but also is the best way to handle the fact that ComEd's embedded cost of service study did not justify ComEd's proposed consolidation of its delivery service rate classes. In the event the Commission rejects this approach, however, BOMA urges the Commission to order

ComEd to have a separate rate class for over 10 MW consumers and phase in the rate increase for these consumers regardless of whether the Commission adopts ComEd's 24-hour MKD proposal.

3) High Voltage Class Rates

ComEd proposes to establish a separate rate class for all consumers who take service at or above 69,000 volts ("high voltage consumers") and eliminate its practice of providing a high voltage credit on distribution facilities charges to these consumers under its current Rider HVDS tariff. ComEd claims that its proposal to create such a separate high voltage delivery services class is comparable to ComEd's current practice of giving a credit to high voltage consumers through Rider HVDS. (ComEd Ex. 9.0 Corr., pp. 38-39, ll. 821-833, ComEd Ex. 23.0, pg. 29, ll. 621-622).

ComEd's proposal to create a separate high voltage class will cause massive rate shock to over 10 MW consumers who do not take electricity delivery service at high voltage ("non-high voltage over 10 MW consumers"). As BOMA witnesses Messrs. Brookover and Childress testified, the separate high voltage class approach proposed by ComEd does not have the same impact as the HVDS credit approach on non-high voltage over 10 MW consumers. (BOMA Ex. 3.0, pg. 9, ll. 179-181). This is demonstrated clearly by the 133% rate increase to non-high voltage over 10 MW consumers proposed by ComEd in this case. (BOMA 3.0, pg. 9, ll. 181-182). Therefore, BOMA urges the Commission to order ComEd to continue its current practice of providing a credit to high voltage consumers through Rider HVDS and allocating the lost revenues resulting from the credit to all nonresidential customer classes on an equal percentage, across-the-board basis. (BOMA Ex. 1.0, pg. 14, ll. 293-299).

8. Elimination of Rider 25

ComEd is proposing in this proceeding the elimination of its bundled rate tariff Rider 25, which currently provides separate rate treatment for nonresidential space heating consumers in the form of an exemption from demand charges on electricity used for space heating during non-summer months. (ComEd Corr. Ex. 9.0, pp. 21-22, ll. 479-484; BOMA Ex. 1.0, pg. 9, ll. 187-194). BOMA has shown that ComEd's elimination of separate rate treatment for nonresidential space heating consumers will cause massive rate shock for these consumers because they currently are charged approximately 17% less under Rider 25 than they would be under ComEd's otherwise applicable charges. (BOMA Ex. 1.0, pg. 8, ll. 164-174, pg. 10, ll. 207-213; BOMA Ex. 1.1; BOMA Ex. 1.2). As BOMA witness Mr. McClanahan stated in his direct testimony, during his 30 year tenure at Southern Company they strove to avoid rate shock to consumers caused by changes in rate design. (BOMA Ex. 2.0, pg. 1, ll. 12-14, pg. 11, ll. 231-233). In order to avoid rate shock to nonresidential space heating consumers from the elimination of Rider 25, BOMA proposes that ComEd continue its practice of exempting nonresidential space heating consumers from demand charges on electricity used for space heating in the delivery services tariffs adopted by the Commission in this proceeding. (BOMA Ex. 1.0, pg. 11, ll. 237-241, BOMA Ex. 2.0, pg. 11, ll. 239-242).

BOMA's nonresidential space heating proposal is designed to continue the separate rate treatment for these consumers that was begun nearly three decades ago when Rider 25 was first instituted. (BOMA Ex. 1.0, pg. 11, ll. 243-245). ComEd incorrectly describes BOMA's proposal as proposing free delivery service for eight months. (ComEd Ex. 23.0, pg. 35, ll. 747-748). BOMA makes no such sweeping proposal. Rather, BOMA's proposal exempts nonresidential space heating consumers only from demand charges for electricity actually used for space heating. (BOMA Ex. 1.0, pg. 11, ll. 237-241). Just as it is under ComEd's current Rider 25, electricity used by a nonresidential space heating consumer in non-summer months for any other purpose (e.g., lighting, elevators, computers, etc.) would not be exempted from demand charges under BOMA's proposal. ComEd's "spin" on BOMA's nonresidential space heating proposal is inaccurate and should be disregarded by the Commission. As BOMA witnesses Messrs. Brookover and Childress testified, BOMA's proposal merely would make the overall rate increase for nonresidential space heating consumers comparable to the rate increase for nonresidential non-space heating consumers. (BOMA Ex. 3.0, pg. 4, ll. 76-84). This evidence was unchallenged by ComEd. (Trans. pg. 2246, ln. 21 – pg. 2247, ln. 11).

ComEd witness Dr. John Landon testified that ComEd implemented Rider 25 in the mid-70's because there was insufficient year-around load to support operating ComEd's nuclear plants at maximally efficient levels over all seasons and it made sense to encourage consumption during low usage months to support operational efficiency. (ComEd Ex. 15.0, pg. 10, ll. 211-214). Now, after three decades of countless buildings being constructed with space heating facilities in reliance on the separate rate treatment set forth in Rider 25, it would be prohibitively expensive for these buildings to switch to natural gas heating facilities, as ComEd witness Mr. Crumrine admitted under cross examination in the following exchange:

> Q. Are you aware that most customers cannot practically and economically change their heating system to use another energy source other than electricity?
>
> A. It's my understanding that it would be pretty prohibitively expensive to change to natural gas today, yes.

(Trans. pg. 2250, ll. 11-17).

ComEd witness Dr. Landon tried to justify ComEd's proposed elimination of separate rate treatment for nonresidential space heating consumers by stating that it is no longer necessary to promote the local use of nuclear and large coal basedload power to support operational efficiency because the competitive market for wholesale power has grown since the mid 70's. (ComEd Ex. 15.0, pg. 11, ll. 223-227). However, BOMA witness Mr. McClanahan pointed out in his rebuttal testimony that operational efficiency of the electric system in ComEd's service territory is of course still improved by promoting the use of nuclear and coal baseload plants at off-peak times, but ComEd may not want to promote such operational efficiency so that its affiliate company Exelon Generation can sell more electricity from its generating plants in high cost electric markets rather than in Illinois. (BOMA Ex. 4.0, pp. 4-5, ll. 98-113).

Clearly, ComEd's justification of its proposal to eliminate separate rate treatment for nonresidential space heating consumers is suspect at best and just as importantly does not take into account the detrimental consequences such action would have on the very nonresidential space heating customers that stepped up to help improve ComEd's operational efficiency when this was important to ComEd. Perhaps most significantly, ComEd has not provided any cost basis for the elimination of separate rate treatment for nonresidential space heating customers. (BOMA Ex. 4.0, pg. 2, ll. 47-55). ComEd witness Mr. Crumrine admitted that ComEd has not analyzed the cost of providing delivery service to nonresidential space heating customers. (ComEd Ex. 23.0, pg. 35, ll. 739-740). In fact, Mr. Crumrine testified under cross examination that ComEd has never even kept records of the costs to serve nonresidential space heating consumers on the "wires portion" of the business during his extensive experience with ComEd. (Trans. pg 2239, ln. 11 - pg. 2240, ll. 1). As BOMA witness Mr. McClanahan testified: "Unless ComEd can show that there is a cost basis for eliminating separate rate treatment for nonresidential space heating consumers, ComEd should not be allowed to do so." (BOMA Ex. 4.0, pg. 3, ll. 58-60).

In the absence of a cost basis, ComEd has attempted to justify its opposition to BOMA's proposal by claiming that BOMA's proposal inappropriately deals with a supply related issue through delivery service tariffs, sends inappropriate price signals concerning the cost of distribution capacity and creates a subsidy that other nonresidential consumers would have to fund. (ComEd Ex. 23.0, pg. 32, ll. 685-692). ComEd's three criticisms simply are not supported by the record in this case.

First of all, BOMA's proposal does not address a supply related impact through delivery service tariffs because ComEd's bundled rate Rider 25 currently provides an exemption from demand charges for both supply and delivery of electricity used for space heating. (BOMA Ex. 3.0, pg. 4, ll. 70-71) BOMA's proposal is designed to merely continue that exemption for nonresidential space heating consumers on ComEd's delivery of electricity in ComEd's delivery service tariffs because these tariffs will now be applicable to all ComEd consumers if ComEd's rate proposals in this case are accepted by the Commission. (BOMA Ex. 3.0, pg. 3, ll. 71-73).

Secondly, ComEd's argument regarding inaccurate price signals for the cost of distribution capacity also is without merit because ComEd has not offered any analysis of the cost of providing delivery services to nonresidential space heating consumers versus the cost of providing delivery services to nonresidential non-space heating consumers. (BOMA Ex. 4.0, pg. 1, ll. 18-27, pp. 2-3, ll. 43-66). Without this cost of service evidence, ComEd cannot show that BOMA's proposal sends inaccurate distribution cost price signals.

Thirdly, ComEd's statement that BOMA's proposal creates a subsidy that other nonresidential consumers would have to fund simply is incorrect. (ComEd Ex. 23.0, pg. 32, ll. 691-692). To the contrary, as discussed above, BOMA's proposal makes the overall rate increase for nonresidential space heating consumers comparable to the overall rate increase for nonresidential non-space heating consumers. (BOMA Ex. 3.0, pg. 4, ll. 76-84),

BOMA represents both nonresidential space heating consumers and nonresidential non-space heating consumers in this proceeding. BOMA is in a vastly superior position to ComEd to determine whether BOMA's proposal is equitable to both nonresidential space heating consumers and nonresidential non-space heating consumers and is necessary to avoid massive rate shock. The Commission's adoption of Staff's mitigation plan in ComEd's procurement case (ICC Docket 05-0159) does not adequately address the massive rate shock which nonresidential space heating consumers would experience as a result of the elimination of Rider 25. Although the Staff rate increase mitigation plan applies to nonresidential space heating consumers with less than 400 kW of peak demand, 79% of the total nonresidential space heating load is ineligible for this rate mitigation plan. (BOMA Ex. pp. 6-7, ll. 127-138). Moreover, for those nonresidential space heating consumers for whom the Staff mitigation plan does apply, the threshold for rate mitigation is extraordinarily high (i.e., 20% or 150% of the average class rate increase, whichever is *greater*). (BOMA Ex. 3.0, pg. 7, ll. 145-147). Therefore, for all the reasons stated above, the Commission should order ComEd to exempt nonresidential space heating consumers from demand charges in its delivery services tariffs on electricity used for space heating starting in January 2007.

17. Rider RESALE

a) Issues That Have Been Resolved

ComEd's current Rider 12 tariff restricts the resale or redistribution ("resale") of electricity to third persons ("tenants") to those retail customers ("resellers") that have resold electricity continuously since 1957. (Ill.C.C. No. 4, 12th Rev. Sheet No. 74). In this proceeding, ComEd proposes to replace Rider 12 with ComEd's proposed Rider Resale tariff. (Proposed Ill. C.C. No. 4, Original Sheet No. 468). In their direct panel testimony, BOMA witnesses Messrs. Brookover and Childress proposed alternative language for the Rider Resale tariff to revise provisions that would have inadvertently prevented landlords from both properly allocating and fully recovering the costs of reselling electricity to tenants. (BOMA Ex. 1.0, pg. 15, ll. 322-325; pp. 17-18, ll. 379-399). ComEd agreed that these were legitimate concerns which were addressed by BOMA's alternative language and that BOMA's revised Rider Resale language would be acceptable to ComEd if approved by the Commission. (ComEd Ex. 24.0, pp. 23-24, ll. 596-628). BOMA's alternative language also is acceptable to CES and IIEC. (CES Ex. 5.0, pp. 5, ll. 56-68; IIEC Ex. 5.0, pg. 20, ll. 446-456).

Significantly, as ComEd witness Mr. Alongi testified, BOMA's language does not change the restriction in ComEd's proposed Rider Resale tariff that resellers must have been continuously reselling electricity since 1957 to qualify as resellers. (Proposed Ill. C.C. No. 4, Original Sheet No. 468; Trans. pg. 1294, ll. 9-13). Resellers comprise a limited group of buildings that were "grandfathered" as of 1957 under ComEd's currently effective Rider 12. BOMA's agreed-upon alternative language merely will allow this limited group of customers to continue to resell electricity as they have done for half a century. Therefore, the Commission should approve BOMA's alternative Rider Resale language in its Final Order in this proceeding.

CONCLUSION

WHEREFORE, for the above-stated reasons the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO requests that the Commission:

a) enter an order providing for an authorized delivery service revenue requirement of $1,512,008,000;

b) enter an order that ComEd retain all of its existing nonresidential delivery service customer classes and allocate any revenue requirement increase (or decrease) to these existing nonresidential customer classes on an equal percentage, across-the-board basis;

c) enter an order that ComEd retain Rider HVDS and its approach of giving a credit on distribution facilities charges to consumers who take electricity delivery service at high voltage, with all lost revenue as a result of this credit being allocated on an equal percentage, across-the-board basis to all nonresidential customer classes;

d) enter an order requiring ComEd to address the problems with the weighting factors used in its cost of service study in the cost of service study presented in ComEd's next delivery services rate case;

e) enter an order requiring that ComEd follow the NARUC guidelines for allocating costs in FERC accounts 364-368 in ComEd's cost of service study presented in ComEd's next delivery services rate case;

f) enter an order providing for continued separate rate treatment for nonresidential space heating consumers in the form of an exemption from demand charges on electricity used for space heating during non-summer months in ComEd's delivery service tariffs; and

g) enter an order approving BOMA's alternative language for ComEd's proposed Rider Resale.

Respectfully submitted,

BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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