

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

**COMMONWEALTH EDISON)
COMPANY)
)
)
Proposal general increase in electric rates,)
general restructuring of rates, price)
unbundling of bundled service rates, and)
revision of other terms and conditions of)
service.)**

No. 05-0597

**REPLY BRIEF OF
THE COALITION
OF ENERGY SUPPLIERS**

COMPRISED OF:

**CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION
U.S. ENERGY SAVINGS CORP.**

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REPLY BRIEF
OF THE COALITION OF ENERGY SUPPLIERS

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,” “Coalition,” or “CES”), by their attorneys DLA Piper Rudnick Gray Cary US LLP, pursuant to Section 10-101 of the Public Utilities Act (the “Act”) and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submit their Reply Brief responding to the Initial Briefs filed by Commonwealth Edison Company (“ComEd” or the “Company”) and the Staff of the Commission (“Staff”) in the above-referenced proceeding.¹

¹ The positions set out in the instant Reply Brief represent the positions of the Coalition as a group, but do not necessarily represent the positions of individual Coalition member companies.

EXECUTIVE SUMMARY:

DESPITE COMED'S ASSERTIONS TO THE CONTRARY, THE COMMISSION SHOULD ENTER AN ORDER ADOPTING PRACTICAL AND REASONABLE SOLUTIONS TO BUSINESS AND OPERATIONAL ISSUES

The Coalition of Energy Suppliers has proposed measures that the Commission could establish now to foster the development of a competitive retail electric market in Illinois, consistent with the Electric Service Customer Choice and Rate Relief Law of 1997 ("Choice Act"). The Coalition has provided the evidentiary support necessary in this proceeding to allow the Commission to order ComEd to adopt tariffs, policies, practices, and procedures that will result in a more effective and efficient competitive retail electric market in the "post-transition" era.

In its initial brief, ComEd opposes many of the Coalition's recommendations. Forced to defend positions that are clearly anti-customer and anti-choice, ComEd resorts to misstatements of the Coalition's positions and improper delay tactics. In some instances, Staff also shies away from opportunities to support appropriate measures that will aid in the development of customer choice and in the development of competition. The Commission, however, has a statutory obligation to promote the development of competitive markets. (*See* 220 ILCS 5/16-101A(d).) The General Assembly assigned this task to the Commission in 1997, at the start of the restructuring of the Illinois electric industry. (*See id.*) Inherent in the General Assembly's directive is the understanding that the Commission is in the best position to promote the development of competitive markets. In turn, the promotion of competitive wholesale and retail markets will result in benefits for Illinois consumers.

The Commission has the opportunity to initiate changes here that will translate directly into customer benefits. Specifically, as discussed further herein and in the Coalition's initial brief, the Coalition respectfully requests that the Commission enter an Order that directs ComEd to:

- Modify its tariffs to clarify its switching rules.
- Recover in its delivery services rates only the delivery services component of its General & Intangible expenses, Administrative & General expenses and call center expenses.
- Properly recover supply-related expenses in its Supply Administration Charge ("SAC").
- Adopt a competitively neutral real-time pricing program, that provides that administrative conditions apply equally to ComEd and retail electric suppliers ("RESs").
- Revise its General Account Agent ("GAA") form and business processes to (i) include an effective date; (ii) acknowledge the reality that there are two distinct functions that agents perform; and (iii) provide that former agents are presumed to retain limited access to customer billing and payment information generated during the time the agency was effective.
- Utilize the Electronic Data Interchange ("EDI") systems for communications with EDI-certified companies, to improve the efficiency of customer enrollments and communication.
- Provide RESs with direct access to smart meters to allow for more accurate price signals and enhance efficiency.
- Modify its standardized Meter Summary and Interval Data Reports to provide RESs with important operational data in formats that are more user-friendly.

- Adopt a Utility Consolidated Billing program with a Purchase of Receivables component similar to the programs utilized by ComEd's sister company PECO and soon-to-be sister company PSEG.

The Coalition is confident that by entering an Order that adopts the Coalition's proposals, the Commission will act in a manner that delivers the benefits of competition to all customers.

II. STATEMENT OF UNCONTESTED ISSUES

B. PROPOSALS TO WHICH CERTAIN PARTIES HAVE AGREED

3. Modifications To ComEd Business Processes To Aid RESs And Customers

d) Clarification Of Switching Rules

The Commission Should Reject Arguments That Counsel Against Providing Market Participants With Greater Clarity Regarding The Customer Enrollment And Switching Rules

Staff's initial brief suggests that the Commission should reject the Coalition's recommendation that ComEd clarify its switching rules in its tariffs -- even though ComEd has agreed to accept the Coalition's proposed revision. (*Compare* Staff Initial Br. at 134-35 *with* ComEd Initial Br. at 26-27, CES Initial Br. at 14.) Staff asserts that it is sufficient for ComEd to revise its customer and RES handbooks. It is unclear why Staff would suggest that the Commission reject the *common goal* of the Coalition and ComEd to ensure clear and easy-to-follow customer switching rules in ComEd's tariffs. Given that ComEd has agreed with the Coalition's consumer-friendly, competition-enhancing recommendation, the Commission should endorse ComEd's current position, to ensure that the switching rules in ComEd's tariffs are clarified.

III. ARGUMENT ON CONTESTED ISSUES

B. RATE BASE

2. General Plant – Functionalization And Amount

3. Intangible Plant – Functionalization And Amount

ComEd Should Be Allowed To Recover All Appropriate General Plant And Intangible Plant Costs; But Any Costs Associated With Supply Can Only Be Recovered Through The SAC

In its initial brief, ComEd claims to have proven that all General Plant and Intangible Plant (“G&I”) costs that it proposes to include in rate base belong in delivery services rates rather than in its supply costs. (*See* ComEd Initial Br. at 50.) ComEd asserts that it has provided adequate support to justify its proposed recovery methodology. (*See id.*) ComEd bears the burden of proof to demonstrate that its proposed allocation of its costs between delivery services, rate base and the SAC is appropriate; ComEd has failed to satisfy its burden.

As an initial matter, ComEd misstates the Coalition’s position. Contrary to ComEd’s assertions, the Coalition recognizes that an appropriate level of G&I expenses should be included in the delivery services rate base. (*See* CES Initial Br. at 18-19.) The Coalition also does not challenge ComEd’s right to fully recover its supply-related expenses with a reasonable rate of return. (*See id.*) At issue simply is the appropriate amount of G&I plant that should be allocated to the supply function rather than the delivery services function. (*See id.*) The Coalition and Staff believe that any supply-related expenses should be allocated to SAC, so that collection for that portion of G&I expenses comes only from customers taking supply service from ComEd. (*See id.*; Staff Initial Br. at 58-61.) The fact is that in ICC Docket No. 99-0177, the Commission

rejected ComEd's assertion that more of its G&I expenses should be included in the delivery services rate base. (*See Commonwealth Edison Company: Petition for Approval of Delivery Services Tariffs*, 1999 Ill. PUC LEXIS 647,*27 (Order August 25, 1999).) Now, without providing adequate justification, ComEd has requested that the G&I expenses in question, previously functionalized as supply-related, be re-functionalized as delivery-related.

ComEd falsely suggests that the Coalition's testimony is "wholly conclusory" on this point. (*See* ComEd. Initial Br. at 50.) On the contrary, the Coalition's testimony cogently explains the reasons that ComEd's approach will result in undesirable cross-subsidization. (*See* CES Ex. 5.0, lines 150-76.) With respect to particular problems with ComEd's approach, the Coalition's testimony also incorporates by reference the detailed analysis contained in the testimony of Staff witness Peter Lazare. (*See* CES Ex. 5.0 at line 152, *citing* Staff Ex. 6.0 at pages 5-15.) Mr. Lazare's testimony is far from "conclusory." In fact, it contains a detailed discussion of the particular problems with ComEd's approach. Thus, it is ComEd's attempted rebuttal to the Coalition that is "conclusory" and insufficient to meet the burden of proof that rests with ComEd.

The Commission should allow ComEd to fully recover all just and reasonable and prudently incurred G&I Plant expenses. However, the Commission should adopt Staff's recommendation that all supply-related G&I costs be recovered through a proper allocation to the SAC – not as part of the delivery services rate base.

C. OPERATING EXPENSES

3. Administrative & General Expenses

a) Functionalization

**The Commission Should Order ComEd To Adopt
The Recommendation Of Staff And The Coalition
To Appropriately Allocate Supply-Related Expenses To The SAC**

As with its discussion of G&I expenses, ComEd's initial brief seeks to convince the Commission that it is unreasonable for the Coalition to request that Administrative and General ("A&G") expenses related to ComEd's supply function appropriately be allocated to the SAC rather than be recovered through delivery services rates. ComEd asserts that the Coalition's testimony provides no basis for disallowing any A&G expenses or assigning or allocating them to the production function. (*See* ComEd Initial Br. at 88-89.)

Again, ComEd misstates the Coalition's position. The Coalition seeks nothing more (and nothing less) than the equitable and appropriate allocation of the supply-related expenses to the SAC. (*See* CES Initial Br. at 20.) Staff agrees with the Coalition's position and has suggested that ComEd has proposed such a shift of supply expenses to delivery service without an adequate explanation of the service being provided. (*See* Staff Initial Brief at 58-61; Staff Ex. 6.0 at lines 454-514; CES Initial Br. at 20.)

As with G&I expenses, the Coalition supports the Commission providing ComEd the opportunity to receive full recovery of supply-related A&G expenses with a reasonable rate of return. However, the Coalition believes that ComEd's supply-related expenses should be allocated to the SAC, so that collection for these costs comes only

from customers taking supply service from ComEd. To the extent the Commission finds that ComEd improperly has allocated A&G expenses to delivery services, the Commission should direct ComEd to reallocate the expenses and collect such costs in its SAC. (*See* CES Ex. 5.0 at lines 171-86; CES Initial Br. at 20.)

H. RATE DESIGN

26. SUPPLY ADMINISTRATION CHARGE

The Commission Should Adopt The Coalition's Consistent Position That Supply-Related Expenses Be Allocated To The SAC

ComEd's initial brief fails to address the Coalition's arguments, in any meaningful fashion, regarding the proper allocation of ComEd's supply-related expenses to the SAC. (*See* ComEd Initial Br. at 255-58.) This is somewhat surprising, since ComEd Chairman and CEO Frank Clark agreed with the conclusion of Coalition witness Dr. O'Connor that in order for effective competition to develop, ComEd's supply costs must be reflected in the generation component of ComEd's rates. (*See* CES Ex. 5.0 at lines 251-54; Clark, Tr. at 200-01.) As discussed above, the supply-related G&I and A&G costs should be recovered via ComEd's SAC.

Likewise, ComEd's call center expenses should be functionalized between supply and delivery services. ComEd asserts that the Coalition's recommendation to allocate no less than one-fourth of call center costs to supply is "pulled out of thin air," and should be rejected. (*See* ComEd Initial Br. at 258.) However, ComEd provides no reasonable explanation of how *all* of ComEd's call center costs could be delivery-related, despite the uncontested fact that ComEd will be providing supply service to a significant number of its customers. As stated above, CES does not object to ComEd's recovery of supply-related costs, but merely requests that the Commission order that ComEd properly

allocate supply expenses to the SAC. As repeatedly noted in the rebuttal testimony of CES witnesses Dr. O'Connor and Mr. Domagaski, ComEd holds a monopoly on the information needed to calculate the appropriate allocation of call-center-related costs. (*See* CES Ex. 5.0 at lines 204-207; 221-231.) If ComEd is unwilling to provide record evidence to support its position, the Commission is fully justified in utilizing its expertise to develop an estimate of the appropriate allocation of call center expenses. (*See id.*)

As ComEd's call center operations will be devoted partially to explaining supply options to customers, making arrangements for customers to buy such supplies from ComEd, and for answering questions about supply-related billing, appropriate allocation of these costs to the SAC is completely reasonable. (*See id.* at lines 189-96.) However, no one can know precisely what percentage of these costs is supply-related because ComEd has failed to provide a good faith estimate of the appropriate allocation. Simply stated, while ComEd has a monopoly on the relevant information, that monopoly does not justify ComEd's passing competitive supply costs to its monopoly delivery operations.

In sum, ComEd, which is the only party to the case with access to the information, should have provided information upon which a good faith, reasonable estimate of call center supply-related operations can be made. In the absence of such information, and recognizing that supply revenues will easily account for more than half of all of the Company revenues, the Coalition presented expert testimony of a former Chairman of the Commission and a Director of Pricing and Product Development that it would be reasonable for the Commission to allocate no less than one-fourth of call center costs to

the supply function and allow ComEd to recover such costs through the SAC. (*See id.* at lines 224-31.)

The Commission should order ComEd to allocate at least one-fourth of its call center costs to its supply function and to collect such costs in its SAC.

27. REAL-TIME PRICING METERS AND ENERGY SMART PRICING PLAN

ComEd's Recommendations Regarding A "Competitively Neutral" RTP Program Should Apply To RESs And ComEd Alike

In response to the Coalition's recommendation that any provision of interval data recording ("IDR") meters for real-time pricing ("RTP") programs offered by alternative suppliers also be implemented in a "competitively neutral" manner, ComEd proposes several conditions. (*See ComEd Initial Br.* at 260-61.)

Those conditions are, in summary, as follows:

- (1) The program must contain a cap upon the number of residential customers for which ComEd would waive metering installation and removal costs. The proposed cap must be approved because including RESs in the Proposal would place upward pressure on the number of participating customers.
- (2) Any RES seeking to provide RTP to residential customers must:
 - (a) provide a sworn statement to ComEd that all such customers are, in fact, on an hourly energy pricing program, where the hourly prices directly reflect PJM Interconnection, L.L.C. ("PJM") spot prices;
 - (b) provide advance notice to ComEd of when pricing in the customer's contract changes to something other than hourly energy pricing, so that the IDR metering can be exchanged, as it would for a Rate BES-H customer;
 - (c) agree to submit to a periodic audit conducted by Staff (for which ComEd will reimburse the Commission for its travel and business expenses) of its applicable customer contracts; and
 - (d) assume financial responsibility for all charges and fees waived for such customer in the event it is determined that such customers are not (or are no longer) on a legitimate hourly energy pricing service from the RES.

(*See id.* at 260.)

While these conditions appear reasonable on their face, the Commission should order the implementation of these conditions if, and only if, ComEd is subject to the same requirements and ComEd's related costs are recovered via the SAC for these customers.

Specifically, the Coalition respectfully requests that the Commission order ComEd to:

- (1) provide a sworn statement to the Commission that all Rate BES-H customers are, in fact, on an hourly energy pricing program, where the hourly prices directly reflect PJM spot prices;
- (2) provide advance notice to the Commission when pricing in the customer's contract changes to something other than hourly energy pricing;
- (3) agree to submit to a periodic audit conducted by Staff (for which ComEd will reimburse the Commission for its travel and business expenses) of its applicable customer contracts; and
- (4) assume financial responsibility for all charges and fees waived for RTP customers in the event it is determined that such customers are not (or are no longer) on a legitimate hourly energy pricing service from ComEd.

Requiring ComEd to assume the same kind of confirmation, notice, audit, and financial obligations as those it seeks to impose on RESs will help level the residential competitive playing field (upon which RESs compete with ComEd). Further, facilitating the implementation of RTP programs and IDR meters will provide customers with more accurate market price signals and further advance the goals of the Illinois General Assembly to encourage the development of vibrant retail electric competition in Illinois.

IV. CUSTOMER CHOICE AND RETAIL SUPPLIER ISSUES

B. GENERAL ACCOUNT AGENCY

The Coalition has made three (3) straightforward recommendations regarding improvements that should be made to ComEd's GAA form and related business processes:

First, the Coalition recommended that ComEd add an agency effective date to its GAA form. (*See* CES Initial Br. at 22.)

Second, the Coalition recommended that ComEd's GAA form be modified to acknowledge two (2) distinct types of agency. (*See id.*)

Third, the Coalition recommended that ComEd's GAA form and related "policy" be modified to provide that, absent specific instructions to the contrary, even after the agency terminates, the former agent retains limited access to customer billing and payment information that was related to the time that the agency was effective. (*See id.*)

Each of these recommendations would reduce customer confusion and minimize the inefficiencies that market participants have experienced as a result of ComEd's current GAA form and business practices.

The Commission Should Act Now And Disregard The Arguments To Defer Consideration Of The Coalition's Practical GAA Recommendations

ComEd opposes the Coalition's practical recommendations regarding changes to ComEd's GAA form, while Staff suggests that the Commission agree to ComEd's proposal to discuss the Coalition's proposals in an informal workshop setting, rather than in the instant proceeding. (*See* ComEd Initial Br. at 265-66; Staff Initial Br. at 135.) The Coalition responds to each of ComEd's objections below. With respect to the Staff's endorsement of workshops, the Commission should be aware that ComEd itself has made it clear that a workshop is very unlikely to be productive, and would only serve to delay implementation of Coalition's recommendations to streamline and clarify the options associated with customers' designation of a GAA. (*See* Meehan, Tr. 751-54; CES Ex. 5.0 at lines 437-64; CES 6.0 at lines 60-134.) Accordingly, the Commission should act now to resolve this issue in this proceeding.

ComEd has failed to provide the Commission with a valid basis upon which to reject the Coalition's recommendations. First, ComEd asserts that the Coalition's proposal "confuses the duties and rights of a RES with that of a GAA essentially treating the two entities as synonymous" and that such a perspective does not comport with the Act or ComEd's tariffs. (ComEd Initial Br. at 265.) Rather than confusing the roles of a RES and a GAA, the Coalition's proposal merely recognizes the reality of the existing competitive retail electric marketplace. (See CES Initial Br. at 22-26.) In fact, ComEd's own witness Mr. Meehan agreed, noting that in many instances customers retain a RES to perform the function of both GAA and RES. (See Meehan, Tr. at 716.) ComEd fails to recognize this reality. As a result, ComEd's GAA form and business practices have continued to frustrate the competitive market at the expense of its customers. The Commission should not be swayed by ComEd's efforts to discount the Coalition's recommendations, particularly when ComEd's own witness has testified to the facts underlying the Coalition's simple recommendation.

Second, ComEd asserts that "there is no place to record multiple agents, whether current or future, in ComEd's billing system." (ComEd Initial Br. at 266.) Interestingly, ComEd's asserted objection to the Coalition's recommendation is essentially an admission or restatement of the problem that the Coalition has identified. Upon cross-examination, ComEd witness Meehan admitted as much. (Meehan, Tr. at 745.) As discussed at length in the Coalition's initial brief, there are many benefits to customers in having the ability designate *two (2)* agents (not "multiple" agents): one to receive bills and other utility communications, and another agent to analyze and select supply options on the customer's behalf. (See CES Initial Br. at 22-28.) Further, ComEd already has

admitted that it is in the process of evaluating and revising **all** of its billing system, forms, and business processes for potential revision in anticipation of the post-2006 timeframe. (*See* Meehan, Tr. at 775.) Moreover, making revisions to the GAA form would be consistent with ComEd's stated desire to have its GAA form parallel the form used by the Ameren companies. (*See* ComEd Ex. 43.0 at lines 58-60. *See also* Meehan, Tr. at 730-31; CES Cross Ex. 2.0; CES Initial Br. at 27.) The overwhelming record evidence demonstrates that a solution to correct this problem is well within ComEd's capability, and the Commission should rule accordingly.

Third, ComEd asserts that the Coalition's proposals "could create confusion if customers appointed multiple agents to perform the same function, potentially providing conflicting instruction to ComEd." (ComEd Initial Br. at 266.) ComEd's objection here is disingenuous, at best. The unrefuted testimony of the Coalition witnesses demonstrates that the real confusion arises under ComEd's current practice, when ComEd's forms and business processes fail to recognize that customers may want to designate two (2) different agents, each acting in a separate and distinct role: one to receive and process bills; the other to make tariff selections. The Coalition has requested that ComEd merely revise its practices and GAA form to mirror Ameren's, acknowledging these two (2) different functions. (*See* CES Initial Br. at 8, CES Exs. 2.0 at lines 294-329, 6.0 at lines 245-64.)

Fourth, ComEd asserts that "given the lack of certification requirements, the Commission should be cautious so as not to create a situation in which an unscrupulous agent could make changes to a customer's account that the customer did not intend." (ComEd Initial Br. at 266.) ComEd's assertion is simply a red-herring and is completely

unpersuasive. In no way would the revisions that the Coalition seeks enhance the ability of an agent to engage in unscrupulous behavior. In fact, the Coalition's recommendations would bring *greater clarity* to ComEd's business practices and forms, making the process *less confusing*, and minimizing the risk that customers could be misled. Further, to the extent that ComEd believes such activity exists now or in the future, both the Act and Illinois' consumer fraud statutes provide means by which unethical behavior by agents can be prosecuted. (*See* 220 ILCS 5/1, *et seq.*; 815 ILCS 505/1, *et seq.*)

Fifth, ComEd asserts that "a customer can take advantage of services available in the marketplace, such as energy consulting, without appointing vendors offering such services as the customer's agent." (ComEd Initial Br. at 266.) This circular statement, while perhaps true, fails to acknowledge that customers want additional flexibility, and that such flexibility would allow the marketplace to operate more efficiently. (*See* CES Initial Br. at 21-28.) In considering the recommendations of the Coalition and other parties to the instant proceeding, the Commission should look to adopt proposals that *facilitate* choice. By facilitating the efficient and extensive use of agents to assist with procurement and billing, the Commission can help to encourage a vibrant and sophisticated competitive retail electric market, consistent with its statutory obligation to promote the development of the retail electric market. (*See* 220 ILCS 5/16-101A(d).)

Finally, ComEd asserts that the Coalition's proposals "have statewide implications, and are more appropriate for a workshop forum than for a decision in this rate case." (ComEd Initial Br. at 266.) ComEd continues to propose "workshops" – without providing any structure or definition to such a workshop process. In short,

ComEd's workshop proposal simply would defer decisions regarding issues that should be resolved prior to the end of the mandatory transition period. As demonstrated by the Coalition throughout the proceeding, ComEd's suggestion that the Commission initiate workshops is too little too late, and amounts to nothing more than a delay tactic. (*See* ComEd Ex. 40.0 at 1881-1908, Meehan, Tr. at 752, 754.)

Moreover, to the extent that statewide uniformity is a goal of the Commission, which ComEd appears to acknowledge, ComEd's form should be revised in the instant proceeding to mirror that of Ameren, and any inconsistency in their business practices could be resolved both in the instant proceeding and in Ameren's rate cases, ICC Docket Nos. 06-0070, 0071, 0072 (consol.). (*See* ComEd Initial Br. at 266.)

The Commission should not be swayed by ComEd's delay tactics that seek to preclude the adoption of the Coalition's straightforward proposals regarding the GAA form and procedure. The Coalition respectfully requests that the Commission acknowledge the existing operational realities, and adopt the Coalition's recommendations for enhancements to the GAA form and the business practices associated with the GAA form.

C. ELECTRONIC DATA INTERCHANGE ("EDI")

The Commission Should Not Allow ComEd To Resist Using Existing And Well-functioning Technology To Replace Legacy "Paper" Transactions

As the Commission analyzes the issues in the instant proceeding, the Commission should take note of the obvious incongruity between the strong push for electronic automation that exists in virtually every corner of every sector of the American economy, on one hand, and ComEd's resistance to the idea of substituting existing electronic systems

for its existing manual system, on the other. ComEd's attachment to manual processes is simply beyond explanation, and the Coalition recommends that the Commission order ComEd to pursue any and all means to ensuring wider deployment of the existing EDI systems as we enter the post-transition period.

ComEd asserts that there is "no demonstrable need" for electronic communication and implementation of the systems for "customer enrollment on ComEd products, active meters on an account at the time of sign-up, real-time drop notifications, additional account information, and alteration of the time in which a customer's bundled balance is checked for purposes of Rider SBO - Single Bill Option ("SBO")." (ComEd Initial Br. at 267.) However, aside from a general objection to the recommendation, ComEd provides no specific explanation as to why expanded use of the EDI platform would *not* be beneficial to customers and RESs, nor does ComEd provide any explanation or rebuttal for the Coalition's substantial testimony and real-world examples of the "demonstrable need" of such expanded EDI systems. (*See generally* CES Ex. 2.0, 6.0; *see also* CES Initial Br. at 28-34.) Under the circumstances, it would seem to be ComEd's burden to explain why the Commission should endorse ComEd's intransigence to wider deployment of the existing EDI systems. Yet, ComEd offers nothing more than general statements and generic excuses.

Further, ComEd cryptically states that the Coalition's request for the implementation of expanded EDI systems "is coming from the CES, one or more of whose members have employed agency to enroll customers on ComEd supply services to varying degrees in the past, begs larger policy questions regarding the appropriate roles of both RESs and agents in a competitive marketplace and consumer protection, just to name a

few.” (ComEd Initial Br. at 267.) Despite this broad statement, ComEd does not elaborate on what any of the “larger policy questions” might be given that the Coalition is the entity making the proposal. Instead of attempting to obfuscate the issues around wider deployment of EDI in the instant proceeding, ComEd should acknowledge the practical benefits of improving efficiency through the implementation of electronic exchange for critical daily customer-ComEd interactions. These benefits and efficiencies are obvious and well-recognized. However, lest there be any doubt, the Coalition has introduced record evidence of real-world examples of the benefits that would accrue to all participants in the competitive retail electric market through electronic data exchange. (See CES Initial Br. at 28-29.)

Lastly, ComEd and the Commission Staff suggest that EDI implementation may be best addressed through the workshop process. (See ComEd Initial Br. at 267.) However, as discussed above, ComEd has provided little to no indication that it intends to initiate or meaningfully participate in such workshops, nor will ComEd commit to implementing any wider deployment of EDI prior to the end of the transition period. (See *id.*) Therefore, the Coalition respectfully requests that the Commission order ComEd to ensure that customers and RESs in ComEd’s service territory are granted the basic efficiencies of associated with expanded use of EDI.

D. DATA EXCHANGE FOR POWERPATH

The Commission Should Recognize The Benefit To Customers And Competition That Would Result From The Provision Of Detailed Meter And Report Information

As the Coalition explained in its Initial Brief, the elimination of legacy bundled rates and the simultaneous introduction of new tariffs for bundled service and delivery service rates, in tandem with the attendant switching rules applicable to those rates and

tariffs, necessitates that ComEd modify and/or supplement the PowerPath website so that customers and RESs easily may obtain the necessary information. (*See* CES Initial Br. at 35; *see also* CES Ex. 2.0 at lines 144-49; *See* ComEd Ex. 26.0 at 439-43.) The Coalition acknowledged that ComEd has agreed to implement the majority of the Coalition's recommendations for revisions to PowerPath necessitated by the new market structure for the post-transition period. (*See id.*; *see also* ComEd Ex. 26 at lines 33-41.) However, certain other revisions remain necessary and appropriate: RESs should have direct access to smart meters, and Meter Summary and Interval Data Reports should be revised.

ComEd responds to the Coalition's recommendations regarding access to smart meters by referencing the Commission's October 4, 2000 Order in ICC Docket No. 99-0013. (*See* ComEd Initial Br. at 268.) Ignoring the numerous regulatory and market changes that have occurred in the intervening five-and-a-half years since the referenced order was issued, ComEd provides no meaningful explanation regarding the relevancy or applicability of this Order. Access to smart meters will result in enhanced efficiency and more accurate price signals to customers (ComEd does not contest either of these facts). (*See* CES Initial Br. at 35-36; CES Ex. 2.0 at lines 865-73.) Accordingly, it is quite clear that today, permitting direct access to smart meters comports with the Choice Law and the General Assembly's directive regarding the development of competition.

ComEd mischaracterizes the Coalition's recommendations regarding reasonable revisions to Meter Summary and Interval Data Reports, suggesting that ComEd will be required to produce customized reports at the "whim" of RESs. (ComEd Initial Br. at 268.) It would appear that ComEd either misunderstands the Coalition's recommendations or merely is resorting to hollow rhetoric in response to what is nothing

more than a reasonable and appropriate revision that will promote efficiency and foster competition. Importantly, the Coalition is not disputing the relevancy of the data provided by ComEd. Instead, the Coalition’s recommendations merely seek to enhance the efficient presentation and delivery of that data, taking into account the realities of how RESs operate and the information that is needed to make a competition market work. Specifically, with respect to the Meter Summary Report, ComEd should provide reconciliation of billing period data with PowerPath summaries, address Space Heat data, and identify the appropriate demand figure for use in the calculation of the customer’s billing demand. (*See* CES Initial Br. at 36.) With respect to the Interval Data Reports, ComEd should provide additional flexibility to customers and RESs to order Interval Data Reports in differing durations (e.g., provide options for 1 month, 6 months, etc.). (*See id.*)

**F. UTILITY CONSOLIDATED BILLING
WITH PURCHASE OF RECEIVABLES**

The Commission Should Reject ComEd And Staff’s Efforts To Restrict The Development Of Competition For Residential And Small Commercial Customers

ComEd and Staff proffer a multitude of reasons for not wanting to implement a UCB/POR program. ComEd’s approach to the Coalition’s UCB/POR proposal is best summed up as follows: we can’t do it with the existing billing system; we don’t want to do it; we’re not convinced it will promote competition; and the Commission can’t make us do it. (*See* ComEd Initial Br. at 269.) Meanwhile, Staff asserts, “from a policy perspective,” that UCB/POR “has to the potential to interest RESs in serving smaller-use customers.” (Staff Initial Br. at 137.) Nevertheless, Staff recommends the idea be rejected because Staff believes ComEd cannot be compelled to offer such a program. (*See id.*) In addition,

Staff notes, it is possible that some Commission rules might need to be changed to allow such a program. (*See id.* at 137-38.) Staff also “shares ComEd’s concern” that the costs to implement the program could be significant. (*See id.* at 137.) Staff also fears that a POR program might encourage RESs to market to customers with low credit scores. (*See id.*)

As demonstrated by substantial record evidence in the instant proceeding, UCB/POR offers the Commission the opportunity to provide customer benefits through the promotion of retail competition. (*See generally* CES Exs. 4.0, 7.0.) UCB/POR programs enable RESs to serve residential customers in a more cost effective manner and they do so in a way that fully compensates the utility for operating the program. UCB/POR is good policy. (*See* CES Initial Br. at 36-45; Staff Initial Br. at 137.) UCB/POR is a policy tool used successfully in a number of deregulated markets to promote choice for residential and small commercial customers. (*See* CES Initial Br. at 37-39.) The Coalition has responded to each of ComEd and Staff’s concerns below:

ComEd’s Billing Infrastructure

Although ComEd and Staff express concerns regarding the viability of incorporating a POR/UCB program into the existing ComEd billing system, the record evidence demonstrates that such concerns are overstated. (*See* CES Initial Br. at 36-45.) Furthermore, to the extent there are material differences, the record evidence shows that ComEd is currently in the process of revising its billing systems and should be able to incorporate any needed changes quite easily. (*See id.* CES Initial Br. at 44-45; Meehan, Tr. at 775.)

ComEd already is in the business of assessing and managing customers’ receivables and the Coalition’s proposal does not require ComEd to manage different risks from those

that it currently manages for its bundled customers. (*See* CES Initial Br. at 44-45; CES Ex. 7.0 at lines 264-82.) Although ComEd currently does not purchase RES receivables, it does manage the commodity-related uncollectible risk of most small commercial customers and all residential customers. (*See id.* at lines 273-76.) Further, as discussed above, ComEd already has made clear in the instant proceeding that it is in the process of evaluating **all** of its billing systems, forms, and business processes for potential revision in anticipation of the post-2006 timeframe. (*See* Meehan, Tr. at 775.) To the extent that additional revisions to the billing system are required to accommodate the proposed POR/UCB program, such revisions should not be significant, and further could be minimized by ComEd's ability to model its billing infrastructure on the existing POR/UCB billing structures of its sister company PECO and soon-to-be sister company PSEG. (*See* CES Initial Br. at 37-38.)

Additionally, ComEd should appreciate that by allowing **all** customers, not just those with the best credit histories, to make the choice for electric supply that best meets their needs, a POR/UCB program should place greater downward pressure on price and provide greater opportunity for ComEd to lower its exposure to bad debt. (*See* CES Ex.7.0 at lines 161-71, 296-300.) That is, all else being equal, a lower price should mean that fewer customers default. (*See id.*) Additionally, a POR program would eliminate the risk that ComEd otherwise would have associated with trying to predict the uncollectible rate associated with a changing base of "bundled" customers, as customers with better credit scores are able to be served by RESs. (*See id.* at 165-67.) The Commission should Order ComEd to realize the added efficiencies of incorporating a POR/UCB program into its existing collection protocol, in accordance with the recommendations of the Coalition.

Development of Competition

ComEd asserts that the Coalition has failed to demonstrate that the introduction of a POR/UCB program into the Illinois market would improve competition. (*See* ComEd Initial Br. at 269.) The Commission should disregard ComEd's bare assertion here because ComEd makes no effort to address the multiple examples of jurisdictions that successfully have developed POR/UCB programs.

As discussed at length in the Coalition's initial brief and testimony, most deregulated retail energy markets across North America currently have UCB programs -- this includes the markets of ComEd's sister utility, PECO, and likely sister-to-be, PSEG, which both have POR/UCB practices in place. (*See* CES Initial Br. at 36-42, CES Exs. 4.0 at lines 65-69, 7.0 at lines 45-47.) ComEd Chairman and CEO Frank Clark has noted the value of examining those companies' experiences with residential competition to inform the Commission regarding policies that might encourage residential competition in Illinois. (*See* Clark, Tr. at 204.) Here again, the Commission should listen to ComEd's leadership, not its lawyers, in evaluating these policy issues. The Commission should order ComEd to examine the PECO and PSEG POR/UCB systems with the objective of efficiently and effectively implementing the proposals made by the Coalition in the instant proceeding.

POR/UCB as a "New Service"

In a final effort to dissuade the Commission from considering the benefits of a POR/UCB program in the ComEd service territory, ComEd suggests that the Coalition has failed to address the potential statewide ramifications of UCB/POR as a "new service" under Section 16-103(e) of the Act, 220 ILCS 5/16-103(e); suggesting that ComEd cannot be compelled to offer this "new service." (*See* ComEd Initial Br. at 269.) Quite the

contrary, the Coalition is not proposing POR/UCB as a “new service” but instead as a component of ComEd’s delivery services that would be offered as a billing option, facilitating the entry of competitors for residential and small commercial customers. (*See* CES Initial Br. at 39-42.) The Coalition’s proposal does not recommend that ComEd provide a new “bad debt” collection service; ComEd would continue to perform its own existing bad debt collection function. (*See* CES Initial Br. at 42-43; CES Ex. 7.0 at lines 77-84.) The proposed POR/UCB program simply frees RESs from having to duplicate ComEd’s existing billing and debt collection function. (*See id.*)

The fact of the matter is that the proposed POR/UCB program would help foster competition and open up the options and benefits of the competitive market to customers who would otherwise be unattractive customers for RESs. ComEd’s objections simply fall flat, especially in light of the fact that ComEd’s own sister company and future sister company both currently maintain POR/UCB systems. The Commission should order ComEd to do the same.

CONCLUSION

In keeping with the General Assembly's charge to the Commission to encourage the development of retail electric competition, the Coalition has made consumer-centered recommendations designed to minimize the bureaucracy embodied in ComEd’s current and proposed delivery services tariffs. ComEd oftentimes mischaracterizing the Coalition's position in an attempt to confuse the Coalition's proposed straightforward solutions.

However, the record demonstrates that the Coalition's recommendations would clarify the GAA assignment process, facilitating customers' selection of different agents;

eliminate cross-subsidies that are inimical to the growth of the competitive markets; improve the efficiency of access to customer data through the replacement of manual systems with electronic document processing and notifications; and encourage the development of residential and small commercial retail electric competition through a POR/UCB program, similar to those used by ComEd's sister-companies.

Accordingly, for the reasons stated herein and in its initial brief, the Coalition respectfully requests that the Commission enter an Order that:

- (1) Provides for specific revisions to the GAA form and process, including:
 - (a) the addition of an effective date;
 - (b) the inclusion of two separate fields (or two check boxes) to facilitate customers' selection of different agents to perform different services; and
 - (c) the recognition that former agents will be presumed to have access to customer information that is generated when the agency is effective;
- (2) Requires that EDI processes and procedures, including but not limited to 810, 814, 820, and 867 data, be used for Customer Enrollment and Drop Procedures for all customers, regardless of their supply source;
- (3) Improves the flow of information and data via use of EDI with 814 enrollment response, monthly Capacity Obligation and Peak Load Contribution, electronic, real-time drop notices, and electronic updating of taxpayer information;
- (4) Directs Commonwealth Edison Company to adopt a Purchase of Receivables and Utility Consolidated Billing program;
- (5) Is otherwise consistent with the recommendations made by the Coalition of Energy Suppliers as outlined herein, in its initial brief and in its testimony; and
- (6) Grants such further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

**CONSTELLATION NEWENERGY, INC.
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