

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of tariffs implementing	:	No. 06-0411
ComEd's proposed residential rate stabilization	:	
program	:	

**POST-HEARING BRIEF OF**  
**COMMONWEALTH EDISON COMPANY**

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Commonwealth Edison Company (“ComEd”), by and through its attorneys, and pursuant to the Rules of Practice of the Illinois Commerce Commission (the “Commission”) and the direction of the Administrative Law Judge (the “ALJ”), submits its Post-Hearing Brief in support of its Petition to Establish a Residential Rate Stabilization Program (“Petition”).

## **INTRODUCTION**

ComEd’s Petition to Establish a Residential Rate Stabilization Program (the “RRS Program” or the “Program”) is a concluding piece of Illinois’ electricity restructuring process. As part of that process, ComEd’s bundled residential rates were reduced by a total of 20%, and have remained frozen for approximately nine years. That rate freeze will end on January 1, 2007. The following day, January 2, 2007, ComEd’s rates will begin to reflect its actual costs of providing electric service. As those costs, particularly the cost of electricity supply, have risen significantly since ComEd’s bundled service rates were last reset in 1995, the new rates will be higher.

Recognizing that rate increases can be difficult for customers, ComEd implemented its Customers’ Affordable Reliable Energy (“CARE”) initiative. This initiative is designed to help soften the impacts of those increases on residential customers’ budgets, and to empower customers to take control of their energy bills even before the rate changes take effect. The RRS Program is an important part of the CARE initiative. This voluntary program will benefit customers by giving them the option to defer part of the rate increase, and therefore to smooth their transition to paying actual costs.

Throughout this proceeding, ComEd has worked cooperatively with the Commission’s Staff (“Staff”) and intervenors to address various concerns about the RRS Program. As a result, the proposal now before the Commission – the major elements of which ComEd and Staff now

agree upon – contains several modifications, including 10% rate increase caps in each of the years 2007-2009, optional participation, tracking of deferred amounts individually by customer, and an extended enrollment period. The record supports each of the modifications, and shows that the currently proposed RRS Program is just and reasonable. A summary of key elements of the RRS Program is set forth in the Appendix to this Brief. As all reasonable concerns have been addressed, the Commission should approve ComEd’s RRS Program and authorize ComEd to file tariffs, as requested in the Petition, implementing the modified program.

## **ARGUMENT**

### **I. THE COMMISSION SHOULD APPROVE THE RRS PROGRAM**

#### **A. The RRS Program Will Benefit All Residential Customers**

The central goal of the RRS Program is to help ComEd’s residential customers manage the transition from long-frozen reduced rates to rates set using ComEd’s actual costs. Each of ComEd’s residential customers will benefit from this Program. Those who participate will be able to phase in their rate increase, and thus reduce its immediate impact. Moreover, all residential customers will have the option to participate. As ComEd President J. Barry Mitchell explained: “Every customer receives something – the choice to defer payment of a portion of a rate increase. This choice is a valuable option that customers may choose to exercise or not.” Mitchell Surrebuttal (“Sur.”), ComEd Exhibit (“Ex.”) 9.0, 5:111 – 6:113. Even Illinois Attorney General (“AG”) witness Scott Rubin, a critic of the RRS Program, while mischaracterizing it as a benefit solely to ComEd, conceded that the Program will cause “the avoidance (or at least a deferral) of any adverse effects on customer consumption and dissatisfaction due to steep increases in the price of electricity.” Rubin Rebuttal (“Reb.”), AG Ex. 2.0, 2:36-40.

**B. The RRS Program, with the Modifications Agreed to by Staff and ComEd, is Just and Reasonable**

The RRS Program now before the Commission is just and reasonable and should be approved. Many elements of the current proposal stem from consultation and compromise between ComEd and other parties to this Docket, most particularly Staff. Staff and ComEd now agree on the basic structure of the program being proposed, including various modifications discussed below. Other parties have posited additional suggestions, as well, but those propositions are not supported by the evidence and should be rejected.

**1. The RRS Program, As Modified, Is Just and Reasonable**

Three key elements of the RRS Program – 10% annual rate increase caps for the first three years of the Program (2007-2009), optional participation, and an extension of the enrollment period to August 22, 2007 – each reflect a just and reasonable compromise between Staff and ComEd, and are unopposed. For instance, Staff proposed the rate caps (Lazare Direct (“Dir.”), Staff Ex. 3.0, 4:70-74), and ComEd agreed to them (Mitchell Reb., ComEd Ex. 4.0, 1:18-20). This agreement was reasonable, as the rate caps will help protect customers against immediately experiencing the full impact of the rate increases. *Id.*, 1:12-20, 5:91-101. The Citizens Utility Board, the Cook County State’s Attorney Office, and the City of Chicago (collectively, “CCC”) also supported this proposal (Wallach Reb., CCC Ex. 2.0, 6:130-38; 7:154-55), and the AG, although not endorsing it, did not object (*see* Rubin Reb., AG Ex. 2.0, 7:137-40).

Similarly, after ComEd’s originally proposed mandatory program drew objections from other parties, Staff proposed making the RRS Program optional with deferred balances individually calculated and tracked for each participating customer. Lazare Dir., Staff Ex. 3.0,

4:70-74; Staff Stipulation (“Stip.”), Staff Ex. 7.0, at 2. CCC echoed the suggestion of a voluntary approach. Wallach Dir., CCC Ex. 1.0, 7:144-51. ComEd thereafter adopted Staff’s proposal (Mitchell Reb., ComEd Ex. 4.0, 2:24-25; Crumrine Sur., ComEd Ex. 11.0, 2:41), and none of the other parties objected to it. This proposal is clearly reasonable, as it allows customers to choose whether to participate in the RRS Program. As AG witness Mr. Rubin stated, “[e]ach customer would need to decide for himself or herself whether the program makes sense given their financial circumstances.” Rubin Reb., AG Ex. 2.0, 3:54-56. In addition, CCC witness Jonathan Wallach concluded that the opt-in approach offers “major advantages over the mandatory version” of the RRS Program, including “providing consumers the opportunity to decide whether to finance their power-supply costs ... or to simply pay the full market price of power upfront.” Wallach Reb., CCC Ex. 2.0, 6:130-33.

Likewise, after ComEd proposed to end the period for enrolling in the RRS Program in March 2007 (*see* Meehan Reb., ComEd Ex. 8.0, 9:178-88), Staff suggested extending that period, explaining that additional time would “allow customers to receive a set of bills for the summer period when rates and usage are at their peak” (Lazare Reb., Staff Ex. 6.0, 5:127-32). As a result, ComEd and Staff agreed to change the enrollment end-date to August 22, 2007. Crumrine Sur., ComEd Ex. 11.0, 2:59-63; Stip., Staff Ex. 7.0, at 1. This proposal also makes sense, as it provides customers with ample time to educate themselves and weigh their options. No other party has objected to this extended enrollment period.

Finally, ComEd accepted, for the purposes of this proceeding, that deferral balances under the Program will accrue carrying charges at the rate of 6.5% per year.\* This is in accord with Staff's stipulation that it would be "beneficial to customers" for ComEd to offer a tariff including the 6.5% carrying charge. Staff Stip., Staff Ex. 7.0, at 1.

**2. The Commission Should Affirm That ComEd Will Be Permitted to Seek Recovery of Its Prudent and Reasonable Implementation Costs in a Future Ratemaking Proceeding**

The Commission should affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS Program. These costs have not yet been determined, and ComEd does not seek their approval or recovery here. Rather, ComEd is simply seeking a ruling that incurring such costs is appropriate.

The record supports such a ruling. As discussed in detail by ComEd Director of Post-2006 Business Implementation Michael Meehan, implementation of the RRS Program will require considerable effort. Among other things, it will entail 2000 person-days of work from IT personnel, and will require modifications to several IT applications and business processes. Meehan Reb., ComEd Ex. 8.0, 5:96-97, 6:116 – 7:143. Customer education materials also will be needed, as will considerable call center resources. *Id.* at 7:146-50; 8:163-74. Mr. Meehan projected that ComEd will incur approximately \$16.27 million in implementation and ongoing business operations costs, an additional \$9 million in uncollectibles expense, and a further \$2.4 million to extend the enrollment period through August 22, 2007. *See* Meehan Sur., ComEd Ex. 12.0, 3:50-73; 4:90 – 5:110; Meehan Reb., ComEd Ex. 8.0, 11:223-26. Although the figures are

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\* Although other parties argued to the contrary, this rate is below ComEd's full cost of money, which is the Commission-approved total cost of capital. As ComEd Chief Financial Officer Robert McDonald testified, "ComEd will finance the deferral amount the same way it finances everything else – with a blend of internally generated cash (equity) and debt." McDonald Reb., ComEd Ex. 5.0, 5:99-100. ComEd is entitled to earn a return at that full rate. The Commission need not resolve this dispute if it concludes that carrying charges should accrue at the rate of 6.5% per year.

only projections, and cannot substitute for actual costs incurred that would be provided in future rate cases, they do demonstrate the reasonableness of a plan to incur these costs.

In contrast, the AG's proposal to "cap" ComEd's recovery of implementation costs is untenable and unfair. The AG claimed that ComEd's recovery should be capped "in light of the significant benefits for ComEd" of the program and to "provide an incentive for ComEd to implement such a program as cost-effectively as possible." Rubin Reb., AG Ex. 2.0, 3:45-52. This position is not supported by any evidence and should be rejected. Among other things, by agreeing to a 6.5% carrying charge on deferral balances, ComEd will not even be breaking even. *See Mitchell Sur.*, ComEd Ex. 9.0, 6:118-25. Additionally, the proposal to "cap" ComEd's cost recovery as a supposed means to encourage ComEd to be efficient is contrary both to established law and fact. ComEd is legally entitled to an opportunity to recover its costs under the Public Utilities Act (the "Act") (*e.g.*, 220 ILCS 5/16-108(c)) and constitutional law. *See U.S. Const.*, amend. XIV; *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944); *Bluefield Waterworks v. Public Service Comm'n*, 262 U.S. 679, 690 (1923); Ill. Const. Art. I, § 15. There is no precedent for abridging those rights based on the notion that a utility deprived of cost recovery will thereby be forced to be more "efficient." Moreover, ComEd already has ample incentive to be efficient. The Commission, in the rate case where recovery is requested, will review its costs for prudence and reasonableness – the same "incentive" applicable to every other operating cost.

Nor is there any legal or factual basis for impairing ComEd's right to cost recovery because of claims that the utility itself also benefits from the program. Were this odd notion true, such broadly beneficial programs as reliability and customer service improvements would result in rate cuts or incomplete cost recovery, discouraging utilities from benefiting their

customers simply because they might also benefit. The right to recover reasonable and prudent costs is simply not conditioned on the absence of utility benefit.

Additionally, the Commission should reject the AG's suggestion that only the customers who enroll in the RRS Program bear the cost of implementation. As noted above, all customers benefit from having the option to participate in the RRS Program – that option is itself a benefit. *See Mitchell Sur., ComEd Ex. 9.0, 5:107-6:117; Crumrine Sur., ComEd Ex. 11.0, 7:153-64.* Thus, imposing implementation costs only on those customers who enroll would be fundamentally unfair, as they alone would be funding a benefit to all customers. Such disproportionate imposition of costs also would be counterproductive, as it would be harming the very customers whose interests the RRS Program is designed to protect, and could in fact deter some of those customers from availing themselves of the Program in the first place. Moreover, absent certainty over which customers will bear implementation costs, no customer can reasonably be expected to evaluate Program participation against any other option. That is an additional reason why ComEd is requesting that the Commission determine in this Docket that prudent implementation costs should be recovered from all residential customers.

**3. The Commission Should Treat Deferred Balances in the Same Way That It Treats Other Amounts Due from Customers**

The AG's proposals to change the accounting treatment of payments and ComEd's rights to enforce payment are unsupportable and should be rejected. The AG proposes that payments received by ComEd in the years of recovery from customers participating in the RRS Program be applied first to the current month's charges and then to repayment of the deferral. *Rubin Reb., AG Ex. 2.0, 6:113-15.* Similarly, the AG proposes that ComEd be barred from disconnecting customers for non-payment of the deferrals so long as the customer pays the amount associated with the provision of service for the current month. *Id.*, at 6:116-19. AG witness Mr. Rubin

claims that these provisions “are necessary to protect participants” (*id.*, at 5:101), but fails to explain why.

More fundamentally, these proposed changes in payment philosophy are unsupportable and contradicted by the record. As ComEd Director of Regulatory Strategies & Services Paul Crumrine noted, “ComEd still incurs ... actual and real costs that need to be recovered.” Crumrine Sur., ComEd Ex. 11.0, 9:213-14. Deferred amounts reflect charges incurred for valuable electric utility services rendered, and there are no grounds for making those amounts less collectible. In addition, customers must be treated fairly, and must all “face the same consequences for nonpayment of deferred amounts that they do for other current charges each month.” *Id.*, at 10:221-23. The AG, in contrast, has provided no evidence showing a need to distinguish repayment terms between customers opting into the RRS Program and those not opting in. That suggested distinction should be rejected.

#### **4. The Commission Should Reject Calls for an Investigation into Securitization of Deferred Balances**

The Commission should reject CCC’s proposal for an investigation into securitization in this Docket. Securitization is not a practical option at this time, primarily because it would require both passage of highly technical state legislation and an irrevocable pledge by the state to insure the stream of revenues that constitute the pledged asset. *See McDonald Reb.*, ComEd Ex. 5.0, 10:213-16. To be practical, it also would require a large deferral balance as opposed to the more moderate deferral balance likely with the proposed plan. *See id.*, at 9:185-88; 3:66 – 4:91.

## **II. APPROVAL OF THE RRS PROGRAM IS FULLY WITHIN THE COMMISSION’S AUTHORITY AND LEGAL**

The Commission has full authority to approve the RRS Program. The AG asserted in its initial motion to dismiss that the Commission supposedly does not have such authority because

ComEd has not yet filed tariffs for the Program. After full briefing, the ALJ correctly indicated that this motion will be denied. Fundamentally, the tariffs that ComEd plans to file in connection with the Program constitute a “rule, regulation, practice or contract” relating to a “rate or other charge” under the Act, and are therefore subject to the Commission’s jurisdiction under Section 9-201(a) of the Act. 220 ILCS 5/9-201(a). Moreover, proposing tariffs by petition, as opposed to filing, is a common, longstanding and authorized practice (*e.g.*, petition filings are specifically authorized by Part 255 of the Commission’s rules, which provides that a request “by a public utility for special permission should be in the form of a petition” (83 Ill. Adm. Code §255.30(j))).

The RRS Program is also clearly legal. The AG claimed in its supplemental motion to dismiss that the RRS Program would somehow violate test-year principles with respect to implementation and carrying costs. Once again, after full briefing, the ALJ correctly indicated that this motion will be denied. As noted above, ComEd rightly intends to seek the recovery of its prudently incurred implementation costs in a future ratemaking proceeding. Moreover, the carrying costs of the RRS Program are not subject to the test-year requirements discussed in *Business & Prof’l People for the Pub. Interest, et al. v. Ill. Commerce Comm’n*, 146 Ill. 2d 175 (1990) (“*BPI I*”). Among other things, test-year rules do not apply when costs are recovered through a rider, as riders are themselves designed to appropriately match costs and revenues on a continuing basis. *See Citizens Util. Bd. v. Ill. Commerce Comm’n*, 166 Ill. 2d 111, 136-40 (1995) (rejecting arguments that *BPI II* prohibited the deferral and subsequent recovery of coal tar clean-up costs).

Each of these arguments is discussed in greater detail in ComEd’s responses to the AG’s motions, which responses – if these issues are reconsidered – are incorporated.

### **III. ACCOUNTING ISSUES**

In the course of this proceeding, the structure of an RRS Program acceptable to ComEd has evolved, as noted above. In particular, in response to suggestions from Staff and others, ComEd has agreed to accept an RRS Program that includes, among other things, both a voluntary opt-in feature that makes the Program applicable only to those residential customers who choose it, and individual calculation and tracking of deferred balances and repayments by customer. If the Commission approves an RRS Program that does include these features, then ComEd is not asking the Commission to review or comment on the creation of a regulatory asset to account for the balances of amounts deferred. Rather, such balances will be accounted for as long-term customer receivables.

**CONCLUSION**

**WHEREFORE**, for the reasons set forth above, Commonwealth Edison Company respectfully requests that the Commission adopt the Residential Rate Stabilization Plan, the major operative features of which are described in the attached Appendix, and approve the tariff sheets in evidence as ComEd Exs. 11.1 and 11.2.

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Respectfully submitted,

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## APPENDIX

Key elements of Commonwealth Edison Company's ("ComEd") proposed Residential Rate Stabilization Program (the "RRS Program" or the "Program") include the following:

1. Under the RRS Program, the increase in average annual residential rates per kilowatt-hour will be capped at 10% per year in each of the years 2007, 2008, and 2009 (the "rate caps"). Crumrine Surrebuttal ("Sur."), ComEd Exhibit ("Ex.") 11.0, 1:20-21; Staff of the Illinois Commerce Commission ("Staff") Ex. 7.0, pg. 1.
2. Customers will receive with their bills in January 2007 an explanation of the Program and a form for enrolling in the Program (the "enrollment form"). ComEd will review the content of the enrollment form with the Staff ("Staff") of the Illinois Commerce Commission (the "Commission"). Crumrine Sur., ComEd Ex. 11.0, 1:22-23; Staff Ex. 7.0, pg. 1.
3. Participation in the Program will be voluntary, and thus the Program will apply only to those residential customers who choose to participate (the "opt-in feature"). Mitchell Rebuttal ("Reb."), ComEd Ex. 4.0, 2:24-25, 6:129-30, 8:156-179; McDonald Reb., ComEd Ex. 5.0, 5:95-97; Crumrine Sur., ComEd Ex. 11.0, 2:24-25, 9:211-12; Staff Ex. 7.0, pg. 1.
4. Only customers who are customers of record at the end of the December 2006 billing period (*i.e.*, December 29, 2006) will be eligible to participate in the Program. Crumrine Sur., ComEd Ex. 11.0, 2:32-33; Staff Ex. 7.0, pg. 1.
5. To participate in the Program, customers will fill out the enrollment form, sign it, and send it to ComEd. Crumrine Sur., ComEd Ex. 11.0, 2:24-25; Staff Ex. 7.0, pg. 1.

6. Customers will be able to enroll in the Program any time from January 2007 through August 22, 2007 (the “signup window”). Crumrine Sur., ComEd Ex. 11.0, 2:29, 3:73-74, 3:79-83; Staff Ex. 7.0, pg. 1.
7. Only customers who voluntarily enroll in the Program during the signup window will be able to participate in the Program. Crumrine Sur., ComEd Ex. 11.0, 2:30-31; Staff Ex. 7.0, pg. 1.
8. Customers who choose to participate in the Program will receive credits on their bills for amounts above the rate caps. Crumrine Dir., ComEd Ex. 2.0, 7:126-31, 11:228-29.
9. Program credits will not applied to customers’ bills before the April 2007 billing period. Crumrine Sur., ComEd Ex. 11.0, 2:26; Staff Ex. 7.0, pg. 1.
10. Customers who enroll in the Program prior to March 24, 2007 will receive Program credits during the April 2007 billing period. Crumrine Sur., ComEd Ex. 11.0, 2:27-28 Staff Ex. 7.0, pg. 1.
11. Credits will be applied to bills only on a going-forward basis subsequent to customer enrollment. If ComEd receives the customer’s enrollment form no later than seven calendar days before the next regularly scheduled billing date, the first credit will appear on that next bill; if ComEd receives the form later, the first credit will appear on the customer’s following bill. Crumrine Sur., ComEd Ex. 11.0, 2:34-40; Staff Ex. 7.0, pg. 1.
12. ComEd will track both the amounts of customers’ bills that are deferred via credits (the “deferral amounts”) and the repayments of such amounts on an individual customer basis. Crumrine Reb., 8:167-68; Mitchell Sur., 9.0, 3:48-55; Crumrine Sur., ComEd Ex. 11.0, 2:41; Staff Ex. 7.0, pg. 2.

13. ComEd will collect the deferral amounts during the billing periods from January 2010 through December 2012, with a final adjustment in the March 2013 billing period, if required. Crumrine Sur., ComEd Ex. 11.0, 2:42-43 Staff Ex. 7.0, pg. 2. Earlier recovery of deferral amounts is possible. For example, if the average increase in residential rates in 2008 or 2009 is lower than 10%, charges can be increased up to the cap to begin recovery of prior deferred amounts. Crumrine Dir., ComEd Ex. 2.0, 13:272 – 14:276;.
14. Participating customers who “final” their accounts, but provide another service address to which they are immediately relocating within the ComEd service territory and establish a new account with ComEd, will have the option to transfer the balance of their Program deferral amounts from their old account to their new account and continue in the Program. Crumrine Sur., ComEd Ex. 11.0, 2:44-47; Staff Ex. 7.0, pg. 2. For participating customers who “final” their accounts, but do not provide such other service address, establish such a new account, and choose to make such a transfer, the entire balance of deferral amounts will be due with the final bill. Crumrine Sur., ComEd Ex. 11.0, 2:48-50 Staff Ex. 7.0, pg. 2.
15. Customers will be able to terminate their participation in the Program voluntarily, with the balance of deferral amounts due immediately. Crumrine Sur., ComEd Ex. 11.0, 2:51-52; Staff Ex. 7.0, pg. 2.
16. Balances of deferral amounts will accrue carrying charges at a 6.5% annual rate. Crumrine Sur., ComEd Ex. 11.0, 2:53; Staff Ex. 7.0, pg. 2.
17. ComEd will be able to recover in a future rate case its reasonable and prudently incurred costs associated with offering and maintaining the RRS Program. Crumrine Sur., ComEd Ex. 11.0, 2:54-55. This recovery will be from all residential customers, not just those

customers participating in the Program. Mitchell Sur., ComEd Ex. 9.0, 5:107-6:117; Crumrine Sur., ComEd Ex. 11.0, 7:153-64.

18. If the Commission approves an RRS Program that includes both the voluntary opt-in feature and individual calculation and tracking of deferral amount balances and repayments by customer, then ComEd is not asking the Commission to review or comment on the creation of a regulatory asset for such balances. Rather, those balances will be accounted for as long-term customer receivables.