STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Table of Contents

Page

I. INTRODUCTION 1
II. ARGUMENT 2
A. Recovery of Program Implementation Costs 2
B. The Commission Should Approve a 6.5% Annual Carrying Charge 3
C. The RRS does not violate BPI II 6
D. ComEd's filing meets the requirements of the PUA 6
III. CONCLUSION 7

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Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission's ("Commission"), respectfully submits its Reply Brief in the above-captioned matter.

I. INTRODUCTION

Initial briefs were filed in this matter by Staff, Commonwealth Edison Company ("ComEd" or the "Company"), the Citizens Utility Board ("CUB") and the City of Chicago ("City") (jointly "CUB-City"), the People of the State of Illinois by the Illinois Attorney General ("AG"), and the Cook County State's Attorney's Office ("CCSAO")

Some of the issues raised in the parties' initial briefs were addressed in Staff's Initial Brief and, in the interest of efficiency, Staff has not raised or repeated every argument or response previously made in Staff's Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff

stands on the position taken in Staff's Initial Brief because further or additional comment is neither needed nor warranted.

II. ARGUMENT

A. Recovery of Program Implementation Costs

The Commission should reject the Company's argument that the Commission weigh-in on future recovery of program implementation costs. The Company argues that: "[t]he Commission should affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS program". (ComEd IB, p. 5) While the Company is not asking for approval of any specific amount of costs, it is "seeking a ruling that incurring such costs is appropriate". (Id.) Additionally, ComEd discusses the kinds and levels of activities that will be undertaken on behalf of the program in the areas of IT, customer education and uncollectibles. (*Id.*, pp. 5-6) Further, ComEd criticizes the AG's argument for placing a cap on the Company's expenditures for this program. (*Id.*, p. 6)

There is simply no basis for the Commission to address costing issues related to the program in this proceeding. First, the Company has not identified any specific costs that it is asking the Commission to approve. According to ComEd, "[t]hese costs have not yet been determined, and ComEd does not seek their approval or recovery here". (*Id.*, p. 5) The cost estimates provided by the Company amount to unsupported numbers reflecting estimates of future costs that may or may not accurately reflect reasonable expenditures on the program. It would be inappropriate to provide any guarantees to ComEd for recovery of costs that do not yet exist. Similarly, there is no

basis in this proceeding for the Commission to place a cap on unknown program costs as proposed by the AG. (*Id.*, p. 5)

Second, Staff believes that any expenditure on the program should be treated in the same manner as all other utility costs. For example, the costs associated with the program should be considered only at the time that ComEd seeks to include them in the test year chosen for determining the revenue requirement in any future rate proceeding. It would be inappropriate for the Commission to guarantee in this case recovery of Rider RRS costs in an unknown test year for a future rate case. Rather, the standards that apply to other utility costs should apply to RRS costs as well. Thus, when ComEd files its next rate case, it must provide the appropriate level of support for inclusion of RRS costs in the revenue requirement for the proposed test year. That is how other costs are treated by the Commission, and that is how RRS program costs should be considered as well.

B. The Commission Should Approve a 6.5% Annual Carrying Charge

As set forth in Staff's Initial Brief, Staff stipulated and agreed that it would be appropriate for the customer deferred balances arising from ComEd's residential rate stabilization plan to accrue carrying charges at the annual rate of 6.5%. (Staff IB, pp. 13-14; Staff Stip., ICC Staff Exhibit 7.0) CUB-City take issue with the 6.5% carrying charge, arguing that it is unreasonably high. They contend that "[a]ny rate stabilization plan should offer consumers the lowest interest rate possible." (CUB-City IB, pp. 1-2) CUB-City imply that the Company should be ordered to use short term debt to finance the deferral balance, but only if ComEd is also ordered to pursue securitization of that debt. (CUB-City IB, p. 2) Indeed, CUB-City argue that the approval of any rate

stabilization plan should be made contingent on legislative approval of securitization. (CUB-City IB, pp. 2-3) CCSAO also takes issue with the 6.5% carrying charge. CCSAO argues that the carrying charge should be set at the lowest reasonable interest rate, suggesting the Commission use the interest rate on customer deposits (4.5% for 2006) as proposed by the AG's witness Rubin. (CCSAO IB, p. 3) The AG in its Initial Brief does not directly take issue with the 6.5% carrying charge.

The Commission should reject CUB-City's and CCSAO's arguments concerning the 6.5% carrying charge Staff and ComEd propose. Contrary to CUB-City's claim, the "lowest interest rate possible" is not the appropriate carrying charge applicable to the deferral balance. Rather, as Staff explained, the appropriate carrying charge is, more accurately, the actual cost of the capital used to finance that balance. (Staff IB, p. 13) For all the reasons set forth in Staff's Initial Brief, which Staff will not repeat here, 6.5% is a reasonable estimate of that cost. (Staff IB, p. 14) Thus, CCSAO's argument that the Commission should use the customer deposit rate of 4.5% should be rejected as well. As ComEd witness McDonald pointed out, AG witness Rubin provided no explanation why the customer deposit rate was appropriate; moreover, that rate is not representative of any measure of ComEd's financing costs. (ComEd Ex. 10.0, McDonald Sureb, p. 3) In contrast, Staff explained why 6.5% is a reasonable estimate of the actual cost of financing the deferral balance and, thus, should be adopted as the carrying charge.

In addition, CUB-City's arguments that the risk to ComEd of the deferral balance is lower than that of "normal utility assets" (CUB-City IB, p. 2) and that ComEd bears little risk of non-recovery (CUB-City IB, p. 1) are misguided. Staff does not agree that

the deferral balance should be considered as a distinct asset from “normal” utility assets. A rate stabilization plan does not provide a service that generates its own cash flows. Rather, its very purpose is to modify the cash flows produced by “normal” utility assets. Fortunately, given the very small expected size of the deferral balance relative to ComEd’s overall operations, this program is not likely to change ComEd’s overall risk profile at all. Thus, ComEd’s actual financing cost will not change due to the relatively low risk of this small program.

Finally, CUB-City’s proposal to categorically disallow any rate stabilization program that does not include securitization is too extreme. Such a proposal would, if the deferral balance asset is not securitized, deny all customers the option to defer payments altogether – the proverbial cutting off of the nose to spite the face. Even if the Commission concludes that the securitization of the deferral balance asset would be preferred, Staff believes it is still better to offer customers the option to decide for themselves if the proposed deferral program is right for them, whether securitization is included in the proposal or not, than to automatically preclude that option if it is not. Given that the plan is optional, to the extent that a customer believes that a 6.5% carrying charge is too high of an interest rate, that customer can simply elect to not participate in the program offered by ComEd, but would be free to seek financing from sources like banks, credit unions, and credit card companies, should he or she so choose.

C. The RRS does not violate BPI II

The AG argues that Business and Professional People for the Public Interest, et al. v. Illinois Commerce Comm'n, 146 Ill. 2d 175 (1990) ("BPI II") applies to the facts in this proceeding and that when applied ComEd's proposal would result in a mismatch of expenses and revenues in violation of the test year principle. (AG IB, pp. 17-19) While Staff most certainly does not want the Commission to violate its test year principle, Staff does not agree with the AG that the facts and circumstances of this proceeding result in such a violation of BPI II. First, the AG's Supplemental Motion to Dismiss, which raised the same BPI II arguments, was denied. (Tr., p. 38) Second, a significant fact which the AG's BPI II argument does not address is that under the rate stabilization program agreed to by ComEd and Staff ('optional program"), ComEd is no longer seeking approval of a regulatory asset, which would have accounted for costs deferred over a period of time for recovery in a subsequent rate case. (ComEd IB, p. 10) Given this important fact, under the optional program, it is Staff's position that BPI II is no longer at issue. Since it will account for customers participating in the program by recording a customer receivable, ComEd eliminates any need to record deferred balances which results in test year principles not even coming into play. (Staff IB, pp. 14-17)

D. ComEd's filing meets the requirements of the PUA

The AG in its Initial Brief also argues again that ComEd's filing does not meet Article IX of the Public Utilities Act's requirements. (AG IB, pp. 11-16) The AG made the same argument in its motion to dismiss which the Administrative Law Judge denied on September 7, 2006. (Tr., p. 38) Staff opposed the AG's motion to dismiss and

responded to those arguments concerning Article IX in a response dated July 5, 2006. Accordingly, those arguments are incorporated into this Reply Brief.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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