
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
)	
On Its Own Motion)	
)	
v.)	No. 07-0166
)	
COMMONWEALTH EDISON COMPANY)	
)	
Investigation of Rate Design Pursuant to)	
Section 9-250 of the Public Utilities Act)	

**INITIAL BRIEF
OF
THE BUILDING AND MANAGERS ASSOCIATION OF CHICAGO**

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Date: June 29, 2007

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I. INTRODUCTION

As noted in the Illinois Commerce Commission's ("ICC" or "the Commission") Order Initiating Investigation in the within proceedings, the Commission's approval of the increases and restructuring by Commonwealth Edison Company ("ComEd") of its electric rates pursuant to the Commission's Order in Docket No. 05-0597 ("05-0597") has engendered numerous complaints by ComEd's customers of financial hardship created by these sweeping changes.

The adverse impacts to the customer classes represented by BOMA, which include most of the rentable commercial building area in downtown Chicago, have been particularly acute. ComEd's elimination of its nonresidential space heating tariff, Rider 25, has resulted in nonresidential space heating customers paying approximately 88% more for electricity under ComEd's new, 2007 rates than previously under ComEd's 2006 rates. The mitigation features which ComEd alleges to have incorporated in its new rates do not in any meaningful way cushion the rate shock experienced by nonresidential space heating customers, nor does obtaining supply from competitive suppliers adequately mitigate the hardships experienced by these customers.

In 05-0597, and in its pending appeal of the Commission's Final Order therein, BOMA has asserted that the elimination of differential rate treatment for nonresidential space heating customers was neither just nor reasonable and could not be justified by any cost basis information provided by ComEd. Moreover, BOMA asserts that ComEd's discontinuance of Rider 25 service prior to same being declared competitive or formally abandoned by the Commission is expressly contrary to law.

BOMA appreciates and supports the Commission's initiation of these proceedings, and its express recognition that ComEd's rate structure may require changes in order to make such rate structure more just and more reasonable. As posited hereby, more equitable alternatives exist to the outright and unlawful abandonment of Rider 25 service. BOMA urges the Commission's due consideration of such alternatives.

II. LEGAL STANDARDS

Section 9-250 of the Public Utilities Act (the "Act") vests the Commission with authority, on its own motion or upon complaint, to investigate a schedule of rates, charges or classifications and to establish new rates, charges or classifications. If following a hearing it is determined that the rates, charges or classifications of any utility, or the rules, regulations and practices affecting same, are unjust, unreasonable, discriminatory, or are in any way in violation of any provision of law, the Commission shall determine and fix by order the just, reasonable or sufficient rates, charges, classifications, rules, regulations or practices to be thereafter observed. 220 ILCS 5/9-250. The Commission has the responsibility of balancing the rights of the utility's investor to a fair rate of return against the public's right to pay no more than the reasonable value of the utility's service; however, if the expectations of the utility's investor are not compatible with those of the consuming public, it is the public which must prevail. Camelot Utilities, Inc. v. Illinois Commerce Commission, 51 Ill.App.3d 5 (1977). If it has made sufficient findings of fact at a proper hearing, the Commission has the power under Section 9-250 to hold that collection of certain charges by a utility constitutes an unreasonable rate. New Landing Utility, Inc. v. Illinois Commerce Commission, 58 Ill.App.3d 868 (1977).

Section 9-201 of the Act mandates that the Commission establish only those rates, charges, practices, rules and regulations which are just and reasonable. 220 ILCS 5/9-201. The Commission cannot fulfill its statutory duty under Section 9-201 without properly taking into account the impact of proposed rates on ratepayers. Abbott Laboratories, Inc. v. Illinois Commerce Commission, 289 Ill.App.3d 705 (1997). Unreasonable differences as to rates or other charges between classes of service are expressly prohibited, ILCS 5/9-241, and the question of whether difference in rates is reasonably related to the costs of providing services is always to be based solely on the factual evidence presented. Austin View Civic Association v. City of Palos Heights, 85 Ill.App.3d 89 (1980).

III. FACTS AND ARGUMENT

A. Nonresidential Customers Have Been Subjected To Rate Shock As Or More Severe As Residential Customers

The Staff Report to the Commission dated March 1, 2007 estimated increases in the residential space heating customer class to be in the range of 42.6% to 54.3% over the previous rates. (Staff Report, pg. 1). However, the Staff Report was silent about the effect the end of the transition period and the new tariffs would have on nonresidential space heating customers. As shown below, many nonresidential space heating customers have experienced rate shock equal to or exceeding that of residential space heating customers.

Rider 25 provided bundled tariff service to both residential and nonresidential customers using electric power as their primary source of heating. Significant capital investments were made by customers to use electric space heating that are very difficult and expensive – if not

impossible – to replace with an alternative fuel source for space heating once a building is completed. (05-0597 Tr. at 2250). BOMA estimates that nearly every office building constructed in Chicago after the adoption of Rider 25 in the 1950s was designed and equipped with electric space heating systems in reliance upon the availability of that tariff. (BOMA Direct Panel Testimony p. 8, ll 169-173) Converting those electric space heating systems to alternative fuel systems is very difficult and expensive. In many instances, such conversions are economically impossible. In other instances, such conversions pose serious engineering and financial burdens on the building owners. (BOMA Direct Panel Testimony p. 11, ll. 222-223). Now, having induced nonresidential customers to invest countless dollars in electric space heating systems, ComEd has abruptly eliminated the fundamental economic assumption upon which those investments were made – i.e., the availability of reasonable electric space heating charges under Rider 25.

Pursuant to the Electric Service Customer Choice and Rate Relief Law of 1997 (the “Rate Relief Law”), ComEd’s bundled tariff services in effect as of December 31 1997 were essentially “frozen” at 1997 rates. 220 ILC 5/16-101 et. seq. At this time and through the end of the transition period (January 1, 2007), customers in specific residential rate classes received a 15% discount on their electric service. 220 ILCS 5/16-111. Additionally, pursuant to specific amendments related to the sale of ComEd generation assets taking effect during the transition period, residential customers were given an additional 5% discount to approved electric service rates, bringing the total discount for residential customers to 20% below rates the Commission approved to be just and reasonable pursuant to 9-201 of the Act. Id. While most other customer rates were frozen through the transition period ending January 1, 2007, residential customers actually paid 20% less than the cost of providing service, at least as determined by the

Commission in ComEd rate cases prior to the effective date of the Act. Therefore, if the Commission is going to make quantitative findings based on percentage increases in rates, they must also take into account effective increases (inclusive of such discounts) in rates. To do otherwise does not provide for an accurate quantitative or qualitative analysis.

B. Non Residential Space Heating Customers Have Been Adversely Impacted In The Post 2006 Period On A More Severe Scale Than Residential Space Heating Customers.

BOMA Panel Witnesses provided uncontroverted calculations that the elimination of Rider 25 and the implementation of the CPP-A auction prices result in an astronomical **88%** increase in the price of electricity to nonresidential electric space heating customers. (BOMA Direct Panel Testimony, p. 8, ll.162-163). For example, a building paying \$136,000 per annum under ComEd's former bundled rates will now pay \$256,000. (BOMA Direct Panel Testimony pg. 9, ll. 183-186). The increase could be partially mitigated to **47.1%** if a competitive retail electric supplier ("RES") were used—a still-exorbitant increase. (BOMA Direct Panel Testimony p. 11-12, Direct ll. 233-239).

The Staff Report prepared before the initiation of this proceeding estimated that residential space heating customers would experience increases in the range of 42.6% to 54.3% for the month of January 2007 versus January 2006. However, this statistic is misleading. ComEd witness Crumrine in ComEd Exhibit 1.2, page 2 of 2, provides a better analysis of the actual impacts this customer class experienced. This exhibit corrects for differences in usage and allows us to calculate a change (exclusive of discounts during the transition period) in the average rate paid for single-family home customers of **51%** and for multi-family dwellings of **33%**. In other words, a single-family home using electric space heating has experienced a percentage increase similar in magnitude to that experienced by a Rider 25 customer; a multi-

family customer using electric space heating experienced an increase significantly lower than a Rider 25 customer.

However, the Commission must consider that residential customers, both space heating and non space heating, received an approximate 20% rate **decrease** during the transition period. 220 ILCS 5/16-111. When these rate decreases are included and the pre-transition rate increases are calculated, we see that residential single-family space heating customers experience a **27%** increase and that residential multi-family dwellings experience an **11%** increase. This is significantly less severe than the increases faced by nonresidential space heating customers following the elimination of Rider 25, which are **88%** for those taking service under the CPP-A Auction product and **47.1%** for those taking supply purchased from the hypothetical RES.

The Table below summarizes the rate increases imposed on residential spaceheating and on former Rider 25 nonresidential space heating customers:

Nonresidential space-heating customers		Residential Spaceheating Customers			
CPP-A Auction	Hypothetical RES Service	Post 1997 Tariffs		Pre 1997 Tariffs	
		Single Family	Mult-Dwelling	Single Family	Mult-Dwelling
88%	47%	51%	33%	27%	11%

The Commission must question an increase of this magnitude to any customer group. The reasons for this increase are twofold. First, the CPP-A resulted in a price of 9.012 cents per KWH. The CPP-A price was significantly greater than the bundled rate of Rider 25, which averaged 6.149¢ per KWH for the sample used in BOMA Exhibit 1, or for CPP-B auction product that was available to residential and small commercial customers. Second, the charges for transmission and distribution service from ComEd impacted Rider 25 customers. It is clear that the magnitude of the rate impacts to the residential space heating and nonresidential space heating customer groups are not significantly different. However, as set forth below, meaningful

rate relief is provided only to the residential space heating customers. Such discrimination is arbitrary and contrary to the mandates of Section 9-241 of the Act. 220 ILCS 5/9-241.

C. Rate Relief Was Not Provided to All Impacted Customers in A Uniform Manner

ComEd has alleged that “features...are built into Post Transition Rates to cushion their impact on customers.” (ComEd Ex. 1.0 p.14 ll. 294-295). However, as BOMA witnesses testified, there are absolutely no “features” or mitigation measures for nonresidential space heating customers with peak monthly demands of greater than 400 kW. (BOMA Direct Panel Testimony, p. 10, ll. 203-205). Constellation NewEnergy witnesses reference Rider CABA, which Rider CABA provides rate relief for the common areas of condominiums, some of which previously took service under Rider 25. (CNE Ex. 1.0 p.10-11 ll. 190-209). Like the nonresidential space heating customers, this special class of condominium customers experienced significant rate shock following the 2007 rate increases. However, after applying Rider CABA, the increase to which condominium customers will be subject is materially less than the 88% increase for nonresidential space heating customers, who receive no corresponding relief. The huge increase to nonresidential space heating customers is borne not by large companies, but by small and medium-sized businesses, who effectively must absorb such costs in the form of increased rents. (BOMA Direct Panel Testimony p. 10 ll. 208-212).

Constellation New Energy witnesses confusingly argue that the Commission has already approved a rate mitigation plan (the “Lazare Rate Mitigation Plan”) in Docket 05-0159. (CNE Ex. 1.0 p. 8-9, ll. 153-162). However, they also admit that the Lazare Rate Mitigation Plan “...applies to residential and commercial customers eligible for ComEd’s CPP-B Auction Product...” (CNE Ex. 1.0 p. 8, ll. 155-157). Most of the nonresidential users represented by BOMA are too large for the CPP-B auction, and if they were to opt into an auction would receive

the significantly higher prices of the CPP-A auction and not have the benefits of the Lazare Rate Mitigation Plan. Clearly, Section 9-241 of the Act further precludes the Commission from promulgating the disproportionate rate impacts to which the nonresidential space heating customers are now subject.

D. BOMA's Proposes Reinstatement Of Rider 25 And/Or Mitigation Of Charges To Avoid Rate Shock

In the absence of any effective relief for the rate shock incident to the elimination of Rider 25, BOMA has proposed to the Commission that the Commission order ComEd to reinstate Rider 25 service as same was provided prior to its elimination and additionally or alternatively, to reduce electricity demand charges for nonresident electric space heating customers in the 400-1000 kw, 1,000-10,000kw and 10,000kw + delivery service classes by an amount equal to the average percentage of non-summer demand from electric space heating customers in each customer class, and submitted, such reduction should apply to those nonresidential customers previous eligible to be served under Rider 25. (BOMA Direct Testimony p. 12 ll 245-255). Admittedly, there are other methodologies to mitigate this rate shock treatment, including applying Rider CABA to all buildings with common areas.

E. Section 16-103(a) of the Act Requires ComEd to Continue to Offer Rider 25 to Retail Customers Because Rider 25 is a Distinct and Identifiable Electric Service That Has Not Been Declared Competitive Pursuant to Section 16-113, or Abandoned Pursuant to Section 8-505 of the Act.

As a threshold matter, BOMA asserts that even if a substantial basis exists for a finding that the elimination of differential rate treatment for nonresidential space heating customers is justified, and that the rates imposed on nonresidential space heating customers are not discriminatory, the Commission's approval of the discontinuance of Rider 25 service violated the

provisions of Section 16-103(a) of the Act. Accordingly, such approval should be reversed in these proceedings.

Section 16-103(a) of the Act is quite explicit in its construction; a utility must continue to offer each tariffed service it offered in on the effective date of the implementation of Article 16. Section 16-103(a) of the Act provides:

An electric utility shall continue offering to retail customers each tariffed service that it offered as a distinct and identifiable service on the effective date of this amendatory Act of 1997 until the service is (i) declared competitive pursuant to Section 16-113, or (ii) abandoned pursuant to Section 8-508. Nothing in this subsection shall be construed as limiting an electric utility's right to propose, or the Commission's power to approve, allow or order modifications in the rates, terms and conditions for such services pursuant to Article IX or Section 16-111 of this Act. 220 ICLS 5/16-103(a).

In effect, the Act provides that the declaration that a service is competitive requires compliance with the formal petition and Commission hearing process. 220 ILCS 5/16-113(a).

Rider 25 is a separate and distinct electric service provided to specific customers that heated their facilities with electric space heat, until ComEd proposed and the Commission approved its discontinuation after January 1, 2007. According to the express terms of Rider 25: “This rider is available to any customer using [ComEd’s] electric service through electric space heating facilities or combination of such facilities and solar energy collectors providing space heating through heat exchangers to provide all of the space heating requirements of his premises or any part of his premises which is sufficiently separated from the remainder so that there will be no material heat transfer between such part and the remainder. In no event will this rider be available for heating supplementary to that provided by other means.” ComEd’s Rider 25.

It is undisputed Rider 25 has been in existence for over three decades and was in effect on the effective date of the Rate Relief Law. (BOMA Direct Panel Testimony, p.7 ll. 138-140). According to the Act, “tariffed service” means services provided to retail customers by an

electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of the Act (other than competitive services). 220 ILCS 5/16-102. “Retail customer” is defined in Section 16-102 as a single entity using electric power at a single premises. 220 ILCS 5/16-102. It is inarguable that Rider 25 electric space heat service is a separate and distinct tariffed service provided to retail customers.

It is also indisputable that to date, ComEd has not petitioned for, and the Commission has not declared, Rider 25 electric space heating service competitive. The only customers the Commission declared competitive within ComEd’s service territory is the very large commercial, governmental and industrial customers with more than three megawatts (“3 MWs”) of peak electric demand. *See* Commonwealth Edison Company Petition for declaration of service currently provided under Rate 6L to 3MW and greater customers as a competitive service pursuant to Section 16-113 of the Public Utilities Act and approval of related tariff amendments, ICC docket no. 02-0479; March 28, 2003; *reh’g denied*, April 28, 2003; *aff’d*, Caterpillar, Inc. v Illinois Commerce Commission, 348 Ill.App.3d 823 (1st Dist. 2004). To date, ComEd has not petitioned for, nor has the Commission determined, that competitive service exists for customers other than the 3 MWs and above customers. The Commission has not determined that competitive service exists for any residential nor most nonresidential customers.

Notwithstanding the foregoing, in upholding the elimination of Rider 25, the Commission nowhere addresses the mandates of Section 5/16-103(a); rather the Commission appears to assert that the discount in distribution facilities (demand) charges embodied in Rider 25 is not justified on the basis of cost. (05-5097 Final Order at 218). More distressingly, the Commission opines, without evidentiary basis, that “[t]he Commission would expect that to the extent nonresidential space heat customers provide benefits to generation suppliers, such customers would be

attractive to alternative suppliers.” Id. at 219. Clearly, whether or not competitive electric suppliers in fact exist to provide service to the nonresidential space heat customers is simply irrelevant; unless and until a service is formally declared competitive by the Commission pursuant to 5/16-113, or is formally abandoned pursuant to 5/8-508, Section 16-103(a) mandates that the service cannot be discontinued. 220 ILCS 5/16-103(a).

In the present case, the provisions of 16-103(a) are wholly unambiguous—simply stated, where a tariffed service has been offered prior to the enactment of the 1997 Rate Relief Law, it must continue to be offered until formally declared competitive or formally abandoned. Had the Illinois General Assembly intended to permit the utility to simply cease offering the service, it would have expressly so provided.

F. Rider 25 Has Not Been Abandoned Pursuant to Section 8-508 of the Act.

The abandonment, discontinuation or modification of service by a public utility is governed by 220 ILCS 5/8-508, which provides in pertinent part:

. . . no public utility shall abandon or discontinue any service or, in the case of an electric utility, make any modification as herein defined, without first having secured the approval of the Commission,....
In granting its approval, the Commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. Provided, however, that any public utility abandoning or discontinuing service in pursuance of authority granted by the Commission shall be deemed to have waived any and all objections to the terms, conditions or requirements imposed by the Commission in that regard.
220 ILCS 5/8-508.

By filing a tariff canceling Rider 25 service after January 1, 2007, ComEd is actually “abandoning” a particular service for a particular customer segment. However, ComEd has failed to petition for or expressly request the right to abandon the service under Section 8-508 of the Act; rather it merely filed a proposed tariff sheet (05-5097 35th Revised Sheet No. 88 canceling

the effective 35th Revised Sheet No. 88) which, in actual effect provides that the tariffed service therein described is not available after January 1, 2007. Correspondingly, nowhere does the Final Order in any case, including in 05-0597, state that Rider 25 service may be abandoned pursuant to Section 8-508; rather the Commission, confusingly, approves ComEd's filed tariff sheet, and effectively thereby approves the elimination of Rider 25 without any reference to or findings under Section 8-508.

In order to lawfully eliminate Rider 25, ComEd is required to have obtained the approval of the Commission to abandon or discontinue a distinct and identifiable service in effect in 1997, which it did not. Illinois law is explicit that under Section 8-508, service cannot be voluntarily abandoned or discontinued without initiating proceedings for that purpose and securing Commission approval. Illinois Central. Railroad. Co. v. Illinois Commerce Commission, 398 Ill. 19 (1947). Pursuant to a petition to abandon or discontinue service, the Commission is allowed to impose terms and conditions on the abandonment in order to protect the public interest, such as mitigation of rate shock to the Rider 25 customers, which it did not. Further, a utility abandoning or discontinuing the service pursuant to authority granted under Section 8-508 is deemed to have waived any objection to any term or condition imposed by the Commission. 220 ILCS 5/8-508.

ComEd's petition for approval of its new tariffs in Docket No. 05-0597 did not expressly seek to abandon Rider 25 service under 5/8-508; correspondingly the Commission failed in its Final Order to formally recognize or make findings specific to this abandonment, and failed to use their ability to impose conditions on Rider 25 abandonment to protect the public interest as provided in Section 8-508; in this case, to mitigate rate shock treatment to nonresidential electric space heating customers.

There being no declaration that Rider 25 service is competitive, or approval of abandonment under Section 5-808, the elimination of Rider 25 plainly contravenes the mandates of Section 16-103(a) of the Act.

G. Proper Rate Design Does not Permit the Disproportionately Adverse Impacts of the New Rates on Nonresidential Space Heating Customers.

Statutory mandates aside, it seems inarguable that the 88% increase faced by nonresidential space heating customers is indicative of improper rate design. As the Commission is aware, the seminal reference on utility pricing and regulation is set forth in Bonbright, Janes C., Albert L. Danielsen and David R. Kamerschen, Principles of Public Utility Economics, 2nd Edition 1988, Public Utility Reports (herein referred to as “Bonbright”). The criteria set forth in Bonbright for sound rate design is generally referred to as “Bonbright’s Criteria.”

CUB witness Thomas correctly states in his direct testimony that Bonbright’s Criteria should be used as the guiding principles in this proceeding (CUB Ex. 1.0 p.6 ll. 121-134). BOMA further urges that Bonbright’s Criteria should be the guiding principles in all rate design matters.

BOMA notes that Bonbright’s Criteria addressing rate design generally endorsed the use of marginal costs. (Bonbright p.408-477). The Commission formerly used marginal costs for the purposes of establishing prices and cost allocations in the past. Competitive markets, such as the one nonresidential customers are subjected, are based on marginal cost, PJM pricing is based on marginal cost, yet confusingly, this practice was abandoned in the late 1990s with the introduction of the Delivery Service Tariff (DST) proceedings. The use of allocated cost of service studies for the purpose of pricing would generally not be consistent with Bonbright.

BOMA further reiterates to the Commission that Bonbright’s Criteria also include “public acceptability and feasibility of application” (Bonbright, p. 384).Rate impacts of the size

experienced by the former Rider 25 customers do not fall into the category of “publicly acceptable.”

As the Commission is further aware, in 2006 Illinois’ electric utilities and other stakeholders conducted a series of meetings (the “Post 2006 Initiative”) to discuss the important issues confronting the electric industry following the end of the transition period. Often cited in various cases, the Post 2006 Initiative reached some consensus on certain issues, including rate design principles. According to the Post 2006 Initiative Report: “... rate and pricing structures that properly reflect cost causation and equitable cost recovery principles, along with other traditional rate design principlesshould be considered when addressing loads that have been eligible for service under such special rates.” (Post 2006 Initiative Rates Working Group Final Report (undated) p.28-29)

Staff and all other parties in various Commission cases deciding rate design issues have uniformly ignored this consensus, until residential condominiums prevailed on imploring the Commission to provide rate relief culminating in the Rider CABA. It is unreasonable to fail to recognize the documented rate shock for Rider 25 customers, while coextensively justifying subsidizing condominiums, many of which took service under Rider 25 previously.

Regardless, the Commission must still decide this case with keeping in line with Section 9-241 of the Act, which prohibits discrimination between rates and classes of services. 220 ILCS 5/9-241. It is time for the Commission to address the concerns of nonresidential customers and correct the rate shock that arose for all customers that previously took service from Rider 25.

IV. CONCLUSION

As hereinabove stated, Rider 25 service was discontinued in contravention of the Act, and the Commission should, as a matter of law, reverse and rescind its approval of such discontinuance. BOMA has also urged that ComEd's 2007 rates result in arbitrary and discriminatory treatment of the nonresidential space heating customer classes.

Purely from the basis of rate design, it cannot be argued that the disproportionately adverse impacts experienced by the nonresidential space heating customers are proper, just and reasonable. These customers have been subjected to increases in their electric costs of as much as 88%. Unlike other electric space heating customer classes, no effective mitigation or rate relief has been posited for the nonresidential space heating customers.

These proceedings afford the Commission a salient opportunity for correcting the disproportionate impacts and inequities resulting from its approval of ComEd's new rates. Accordingly, BOMA urges the Commission to:

1. Reverse its approval of the elimination of Rider 25 and order ComEd to Reinstate Rider 25 service as same was provided prior to its elimination in connection with Docket No. 05-0597;
2. Order ComEd to reduce electricity demand charges for nonresident electric space heating customers in the 400-1000 kw, 1,000-10,000kw and 10,000kw + delivery service classes by an amount equal to the average percentage of non-summer demand from electric space heating customers in each customer class, and submitted, such reduction should apply to those nonresidential customers previous eligible to be served under Rider 25.
3. Afford nonresidential electric space heating customers the same rate relief treatment as provided to residential in Rider CABA.
4. Provide any additional relief the Commission deems just and reasonable.

Respectfully submitted,

THE BUILDING OWNERS AND
MANAGERS ASSOCIATION OF
CHICAGO

A handwritten signature in black ink that reads "Michael Munson". The signature is written in a cursive style with a prominent initial "M".

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