STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its own motion	)	
	)	
vs.	)	**Docket No. 07-0166**
Commonwealth Edison Company	)	
Investigation pursuant to Section 9-250 of the Public Utilities Act of Rate Design.	)	

REPLY BRIEF OF

THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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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

The initial brief of the Staff of the Illinois Commerce Commission ("Staff's Initial Brief" or "Staff IB") was filed on June 29, 2007. The initial briefs of Commonwealth Edison Company's ("ComEd" or the "Company"); the Illinois Industrial Energy Consumers ("IIEC"); Constellation NewEnergy, Inc ("CNE"); the Citizens Utility Board

("CUB") and the Building Owners and Manager Association of Chicago ("BOMA") were also filed on June 29, 2007.

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. Reply to ComEd

ComEd argues in its initial brief that "only the most limited changes to ComEd's rate design are appropriate" in this docket. (ComEd IB, p. 2) The only proposal ComEd makes is for the next power auction. The Company proposes to revise the current mitigation plan by reducing the maximum from 20% or 150% of the auction average down to 5% or 150% of the auction average. (ComEd IB, p. 7) As a reminder, the rate mitigation mechanism limits average bill increases for customer classes to a set maximum percentage (20% under the current tariff but 5% under ComEd's proposal in this docket (*Id*.) or 150% of the CPP-B auction group's average bill increase. (ICC Staff Ex. 1.0, p. 15) Most of the Company's initial brief consists of a discussion of rate design proposals presented by other parties.

ComEd indicates it is "neutral" with respect to Staff's proposal to increase summer rates for space heating customers by 15% over current levels and reduce non-

summer rates by a commensurate amount. (ComEd IB, p. 5) Nevertheless, the Company argues that the Staff proposal "is largely unnecessary and, in any event, should be evaluated carefully". (*Id*.) To show that the rate redesign is unneeded, ComEd points to its budget billing plan which allows ratepayers to levelize their electricity bills over the full year. (*Id*.)

This argument falls short for two reasons. For one, the Staff proposal to increase summer bills sends a more appropriate message to ratepayers about the higher cost of receiving electric service in that period. Under current rates, summer rates for electric space heating customers have actually declined from 2006 levels. These lower summer rates send an inappropriate signal to ratepayers.

A proper signal would reflect the higher cost of meeting summer electricity demands. Demand for electricity increases in summer. This can strain the supply of power and the ability of the delivery system to carry that power to consumers. If summer prices are too low, they will not convey to ratepayers the full cost of serving their demands and inefficient and expensive usage could result. The Staff proposal to raise summer prices by 15% would present a more accurate price signal to ratepayers and therefore should be adopted by the Commission. (ICC Staff Ex. 2.0 Corrected, p. 3)

The second issue raised by the Company concerns the proper strategy to mitigate electricity prices in the upcoming 2008 power auction. ComEd seeks to argue that its proposed 5% or 150% cap on supply costs is superior to Staff's across-the-board approach. The Company expresses concern that Staff's approach would perpetuate the discounts for lighting and electric space heating customers. Furthermore,

ComEd argues that the overall cost of the subsidy (rising from $77.1 to $83.5 million) "would be difficult to sustain in a competitive market". (ComEd IB, pp. 7-8)

In Staff's estimation, the overriding concern for the Commission in this proceeding is to address the significant ratepayer concerns about bill impacts. The Staff proposal to replace the prism with an across the board increase or decrease will effectively address this concern by ensuring that supply charges currently paid by ratepayers will not change relative to each other. If the prism was used again, there is no assurance how supply costs will be allocated among customer classes or whether inordinate bill increases for customer groups will occur again. (ICC Staff Ex. 1.0, p. 17) While the Company proposal to narrow the range of increases for each rate class under the rate mitigation mechanism would reduce the chances for inordinate increases, it would not eliminate the possibility entirely. The best approach to prevent inordinate bill impacts is to revise existing supply charges up or down on an across the board basis to meet the supply costs that result from the early 2008 auction. (*Id*., p. 18)

Furthermore, the Staff proposal to change supply charges across-the-board would have a minimal impact on suppliers' decisions. It would maintain the relative relationship between supply charges that currently exist and as a result suppliers should be able to determine what the relative supply charges for retail customers will be that emerge from the next auction. (*Id.*) While substituting the across-the-board increase/decrease for the rate prism deviates from the Commission's long standing objective of cost based rates, it is necessary at this juncture because the critical issue for the Commission to address is bill impacts. (*Id.*, p. 19)

B. Reply to CNE

CNE expresses its opposition to Staff's proposal to abandon the prism for the 2008 auction. (CNE IB, p. 4) CNE states it "is not unsympathetic to the motivations upon which Staff predicates their across-the-board application". Nevertheless, CNE claims to have demonstrated that Staff's proposal undermines competition and conflicts with the historical method of ratemaking in Illinois. CNE argues that suppliers based their bids for service to bundled customers on continued application of the prism and it would be unfair to alter those terms after they have begun to serve customers. (*Id*., p. 12)

CNE's concerns about competition are flawed in two respects. First, the concern about the adverse impact for competition fails to consider the larger issue which is the extraordinary impact of current rates on ComEd ratepayers, particularly space heating customers. The concern expressed by customers has been unprecedented and the need to address those concerns is critical. If the solution impacts suppliers, that is a necessary side-effect to solving the problem.

In addition, CNE has failed to demonstrate how competitors or energy-efficiency will be adversely affected by adoption of the Staff proposal. They claim that suppliers are basing their plans on the results of the rate prism, but how the prism will work in the 2008 auction and what supply charges will result for customers is unknown today. Thus, it cannot be said what the impact will be on suppliers, competitors or conservation from the application of the rate prism in next years auction. If the first auction is any

guide, the full effects of the rate prism may not be understood until after the auction is conducted.

In addition, the Commission by initiating this proceeding is signaling its intention to revise the prism results in the immediate future. The Commission has clearly decided that addressing unreasonable bill impacts for ratepayers takes precedence over not clearly articulated supplier concerns about changes to the prism. The Staff proposal would only serve to extend the changes adopted by the Commission in this proceeding through the next supply auction. CNE has failed to demonstrate that this reasonable proposal to address a significant bill impacts problem would disadvantage suppliers in any way. Thus, CNE's criticism should be rejected and the Staff proposal for across-the-board changes in supply charges resulting from the next auction should be adopted.

C. Reply to BOMA

BOMA presents two proposals for the Commission's consideration. One proposal is for the Commission to continue to require ComEd to offer Rider 25, the bundled service rate offered to non-residential electric space heating customers before January 2nd of this year. Second, BOMA seeks discounts in delivery service demand charges for non-residential space heating customers. (BOMA IB, p. 10)

BOMA presents two sets of arguments for its proposals. One set of arguments seeks to justify the proposals on the basis of bill impacts. BOMA argues that non-residential space heating customers have experienced extraordinary bill increases in the transition to post-2006 rates. BOMA claims to have provided uncontroverted calculations demonstrating that these customers received bundled rate increases of

approximately 88% based on the results of the CPP-A auction. For those non-residential electric space heating customers gravitating to competitive supply, BOMA claims increases on the order of 47.1% (*Id*., p. 7) Given the level of increase for non-residential space heating customers, BOMA questions why rate relief was provided to residential space heating customers but not them. (*Id*., p. 8-9)

Staff found this argument problematic. (ICC Staff Ex. 1.0, p. 7) For one, Staff was unable to independently verify the impacts claimed in BOMA's analysis. Staff could not confirm whether the alleged increases of 88% and 59% for ten "randomly" selected customers were actually currently taking bundled service from ComEd. Without this information, it is difficult to assess the actual bill impacts for non-residential space heating customers. (*Id.*, p. 8)

Staff was also unable to independently assess the alleged increases incurred by space heating and non-space heating customers under competitive supply. While BOMA provided a competitive supply cost which was based up on a competitive supply proposal to one customer, BOMA failed to provide any detail on that proposal and BOMA failed to demonstrate that the proposal was a reasonable standard upon which to determine the average increases experienced by space heating or non-space heating customers. (*Id.*)

The lack of supporting evidence impedes BOMA's argument that non-residential space heating customers are incurring inordinate impacts relative to either residential space heating customers or other non-residential customers. Without this information, it is difficult to determine whether non-residential space heating customers warrant additional relief as proposed by BOMA. Therefore, Staff recommends that the

Commission not accept the BOMA proposal. Staff further notes that BOMA would have the opportunity in ComEd's next rate case to present a more complete analysis on the issues it raised in this proceeding. (*Id.*, p. 9)

BOMA presents another argument for reinstatement of Rider 25 based upon a flawed interpretation of Section 16-103(a) of the Public Utilities Act ("PUA"). Section 16-103(a) provides that:

> 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.

BOMA argues that because Rider 25 was cancelled, ComEd "is actually 'abandoning' a particular service for a particular customers segment" and ComEd never filed a petition pursuant to Section 8-508 with the Commission to "abandon" the service. (BOMA IB, p. 13)

Staff disagrees with BOMA's claim that service to the former Rider 25 customers has been abandoned under Section 8-508. The former Rider 25 customers are still receiving service from ComEd as that term is defined under Section 5/3-115 of the PUA. Under Section 5/3-115 service is defined as follows:

> "Service" is used in its broadest and most inclusive sense, and includes not only the use or accommodation afforded consumers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any public utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public.

The services now available to former Rider 25 customers under the rates approved in Docket No. 05-0597 meet the definition of "services". Former Rider 25 customers are receiving service from ComEd. BOMA even acknowledges that fact in its own brief when it complains about the rate impact of the new rates on non residential space heating customers. ("[t]he CPP-A price was significantly greater than the bundled rate of Rider 25 …the charges for transmission and distribution service from ComEd impacted Rider 25 customers." (BOMA IB, p. 8)

BOMA's real complaint is with the price charged for the service provided under the new rates approved in Docket No. 05-0597. BOMA wants the rate for Rider 25 reinstated (BOMA IB, p. 17) and it appears it wants that rate to continue forever. However, the former Rider 25 customers are not entitled to Rider 25 rates forever. BOMA acknowledges as much when it states in its initial brief that rates in effect on December 31, 1997 were only frozen during the mandatory transition period. (BOMA IB, pp. 6-7). With regard to the new rates, as previously discussed, BOMA's failure in this docket to provide supporting evidence impedes its argument that non-residential space heating customers are incurring inordinate impacts relative to either residential space heating customers or other non-residential customers. Without this information, it is difficult to determine whether non-residential space heating customers warrant additional relief as proposed by BOMA. Therefore, Staff recommends that the Commission not accept the BOMA proposal.

III. CONCLUSION

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

Respectfully submitted,

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