STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION On Its Own Motion v. COMMONWEALTH EDISON COMPANY Investigation Pursuant to Section 9-250 of Commonwealth Edison Company's Rate Design	: : : : : : : : :	No. 07-0166

COMMONWEALTH EDISON COMPANY'S
REPLY BRIEF

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Commonwealth Edison Company ("ComEd") hereby submits its Reply Brief to the Illinois Commerce Commission (the "Commission").

I. Introduction

The Commission initiated this Docket with the specific and limited purpose of considering "on the basis of the record" whether the design of ComEd's rates applicable beginning January 2, 2007 (the "Post-Transition Rates") should be changed. Initiating Order ("Initiating Order"), Docket 07-0166, at 3. The Commission expressly provided that the Docket will not consider changes to ComEd's revenue requirement or revisit conclusions it reached in ComEd's procurement docket (Docket 05-0159) unrelated to rate design. *Id.*; ComEd Initial Post-Hearing Brief ("Init. Br.") at 1.

The record demonstrates that, given the significant steps that the Commission and ComEd already have taken to cushion the impact of moving customers toward cost-based rates, only the most limited changes to ComEd's rate design are appropriate. ComEd recommends only a reduction to an annual rate increase cap included in its Commission-approved mitigation plan. The other parties' Initial Briefs do not directly challenge this recommendation, nor the

many efforts already undertaken to help customers. In fact, in several instances, they lend support.

The other parties' briefs do, however, argue for several other changes to ComEd's rates. ComEd is neutral on some of these changes, but none of these changes is necessary. Many should be rejected for various reasons including a lack of evidentiary basis, a potential for causing harm, and/or for being outside the Commission-defined scope of this Docket.[1]

II. Residential Customer Rate Design

A. There Is No Dispute That Ongoing Initiatives Are Helping Residential Customers Adjust to New Rates

No party contests the substantial efforts undertaken by the Commission and ComEd to help residential customers make the transition to more cost-based rates. As described in detail in ComEd's Initial Brief (at 3-4), those initiatives include: (1) the Mitigation Plan originally proposed by Staff in Docket 05-0159, which smooths out total bill charge changes for certain subsets of customer supply groups; (2) ComEd's Customers' Affordable Reliable Energy ("CARE") program, which helps customers manage their current electric bills through a group of programs outside formal ratemaking; (3) ComEd's Rider RRS – Residential Rate Stabilization Program ("Rider RRS"), which gives customers the choice to adjust to Post-Transition Rates over time); and (4) ComEd's Rate Relief and Assistance Program ("RRAP"), which addresses certain customer groups experiencing larger increases in Post-Transition Rates, including space heating customers and common area customers.

[1] Thus, the Citizens Utility Board's ("CUB's) discussion of supposed issues outside the scope of this proceeding is not relevant, and, as CUB itself notes, such issues not subject to Commission action here. CUB Init. Br. at 1-2.

Staff expressly recognizes several of these efforts. Staff recognizes that the Mitigation Plan "effectively prevented inordinate bill increases for customers in the CPP-B auction group." Staff Init. Br. at 8. Staff also acknowledges the reasonableness of the tariff revisions providing credits to approximately 850 ComEd accounts for common areas that had been reclassified from residential to commercial.[2] Staff Init. Br. at 5-8.

On this basis, Staff concludes that – other than its proposal to levelize further rates for residential space heating customers discussed below – no additional changes in ComEd's retail rates are necessary at this time. Staff reaches this conclusion in light of the reasonableness of the average 23.7% increase for residential customers, the success of the Mitigation Plan, and the ability of non-residential customers to mitigate bill impacts by participating in the competitive market and receiving service from alterative suppliers. Staff Init. Br. at 8-9.

Constellation NewEnergy, Inc. ("CNE") also strongly supports the ongoing initiatives. CNE Init. Br. at 5-8. Even the Building Managers and Owners Association ("BOMA"), while noting that the ongoing initiatives focus mostly on residential customers, in no way argues that these many efforts are anything but beneficial. BOMA Init. Br. at 9-10.[3]

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[2] These revisions were implemented as part of RRAP pursuant to special permission granted in Docket 07-0286 (Rider RBI 2007 – Residential Bill Impact 2007, offering one-time credits to residential space heating customers) and in Docket 07-0285 (Rider CABA – Common Area Billing Adjustment ("Rider CABA")), as well as through adjustments to three existing riders.

[3] BOMA's suggestion that these efforts somehow constitute undue discrimination under Section 9-241 of the Public Utilities Act (the "Act") (220 ILCS 5/9-241) is baseless. BOMA Init. Br. at 8-10, 16. The Commission approved the Mitigation Plan in Docket 05-0159, and BOMA fails to indicate any material circumstances that should affect that approval. *Commonwealth Edison Co.*, Docket 05-0159 (Order, Jan. 24, 2006) at 231-32. Moreover, although BOMA recognizes (at 7-8) the mitigation provided by the competitive market, such as the availability of alternative supply from Retail Electric Suppliers ("RESs"), it fails to account for such mitigation in making its Section 9-241 argument. In addition, it is more than a little ironic for BOMA to discuss discrimination when it is simultaneously arguing against "the elimination of differential rate treatment" that it had found favorable under former Rider 25. BOMA Init. Br. at 10.

B. Changes in ComEd's Residential Rate Design Are Largely Unnecessary

1. Changes To Residential Electric Space Heating Rate Design Are Not Needed

Further modifications to rate design for residential electric space heating customers are unnecessary. Staff proposes additional rate design changes to levelize monthly bills for these customers, beginning with the October 2007 billing period. Staff Init. Br. at 3-4. Although ComEd is neutral on this proposal, the record shows that it is largely unneeded. As ComEd explains in its Initial Brief (at 5-6), its existing budget billing program already permits customers – including residential electric space heating customers – to levelize payments throughout the year. Crumrine Reb., ComEd Ex. 4.0, 5:105-11, 7:162-8:164, 8:173-75. At the same time, the record shows that budget billing options, both at ComEd and at northern Illinois' gas utilities, are not widely used, suggesting that customers both prefer to and can manage for themselves seasonal swings in energy bills. Crumrine Dir., ComEd Ex. 3.0, 8:171-9:191.

Moreover, the Commission should evaluate carefully Staff's specific proposal to implement additional levelization by reducing the average increase for residential electric space heating customers during the upcoming non-summer period (relative to 2006 non-summer period bills) by 4.6% and increasing the average summer rate by 15%. Staff Init. Br. at 3-5; Crumrine Reb., ComEd Ex. 4.0, 6:117-32, 7:159-62, 8:165-75. The Commission should consider and balance whether, even in theory, the benefit of an estimated 4.6% non-summer reduction is worth the cost of a proposed 15% increase next summer and whether such a change would upset any balance established after this summer. Staff Init. Br. at 5; ComEd Init. Br. at 6. Furthermore, in making this evaluation, the Commission also should consider the uncertainty associated with estimates of this nature. Although the Commission may with certainty reduce non-summer rates by 4.6% and shift cost recovery of a corresponding dollar amount to the

summer months based on estimates in the record, it may not be feasible actually to limit the increase next summer to 15%. The revenue generated by a 15% average increase during summer 2008 – which is the basis for the 4.6% non-summer reduction – is only a rough estimate based on current summer 2007 supply charges. Actual summer 2008 charges could be higher or lower than 15% depending on the 2008 auction and possible changes to the cap in the Mitigation Plan. Crumrine Reb., ComEd Ex. 4.0, 6:117-32, 8:165-75.[4]

The evidence also shows that the Commission-approved Mitigation Plan has already successfully moderated the rate impacts of the Post-Transition Rates on residential electric space heating customers. Crumrine Info., ComEd Ex. 1.0, 31:640-32:650; Crumrine Reb., ComEd Ex. 4.0, 4:77-84. CUB's request that the Commission "correct the rate design issues that lead to disproportionate impacts on residential space heat customers" (CUB Init. Br. at 3) ignores the fact that ComEd and the Commission have already addressed such impacts. Nonetheless, as described below and in ComEd's Initial Brief (at 7-8), ComEd believes that the cap in the Mitigation Plan can be adjusted to create a more gradual transition to cost-based rates for these and other customers during the coming years. Crumrine Reb., ComEd Ex. 4.0, 4:84-86.

2. The Mitigation Plan Should Be Modified To Use A 5% Rate Cap, But Otherwise Need Not Be Changed

No party opposes ComEd's recommendation that the Mitigation Plan be modified for the period June 2008 through July 2009 to provide that annual rate increases for the eight supply groups and sub-groups in the blended segment of the Illinois Auction be capped at 5% (rather than the current 20%) over the previous year's rates. Crumrine Reb., ComEd Ex. 4.0, 2:33-35,

[4] Staff's proposed implementation date of October 1, 2007 also needs to be considered carefully. Staff Init. Br. at 14-15. If the Commission approves Staff's proposal, ComEd would need at least two weeks to adjust its billing systems to effect the change in time. Thus, if the Commission's final order in this Docket is issued no later than September 17, 2007, Staff's proposed date should work; otherwise, it will have to be adjusted to be later to allow ComEd sufficient time to implement the proposal.

9:193-96. As ComEd explains in its Initial Brief (at 7), this 5% cap proposal would provide a more gradual progression towards cost-based rates for electric space heating and dusk-to-dawn lighting customers. Thus, this recommendation would provide even further relief for customers on top of the ongoing initiatives discussed above.[5]

Staff, too, recognizes the advantages of the Mitigation Plan, and notes ComEd's rate cap reduction proposal. Yet, Staff advocates jettisoning the Commission-approved "rate prism" that sets supply charges based on cost contribution and instead using a 100% "across-the-board" approach under which the average rates for all supply groups and sub-groups within the blended auction segment would be increased or decreased by the same percentage depending on the auction clearing price. Staff Init. Br. at 11-12, 14. This approach raises a number of concerns. For example, the resulting subsidy, unlike ComEd's proposed rate cap reduction, would lead to <u>indefinite</u> continuation of lighting and electric space heating discounts. This subsidy would come at the expense of other customers and at a continuing annual cost ($77.1 to $83.5 million) that would be difficult to sustain in a competitive market. ComEd Init. Br. at 7-8. Moreover, as CNE notes, this proposal would not promote competition. CNE Init. Br. at 12-14. ComEd's proposed rate cap reduction remains a superior approach.

ComEd's proposal also is consistent with CUB's recommendation that residential customers "not see any additional increases in their bills" from this Docket. CUB Init. Br. at 3; Crumrine Reb., ComEd Ex. 4.0, 9:197-201. As ComEd explains in its Initial Brief (at 8), considering only the impact of the subsidy that would be borne by residential customers (multi-family and single-family customers without electric space heating) under the various approaches

[5] CUB claims that the Commission "must ensure" the provision of "some tangible relief for residential customers" in this Docket. CUB Init. Br. at 2. The evidence supports no general requirement to reduce further residential customers' rates, particularly in light of ongoing initiatives. But, ComEd's 5% cap proposal would provide such additional "tangible relief."

to reducing the rate increase cap proposed or presented in this proceeding, residential customers would be no worse off with this limited redesign. The Commission should be aware, however, that the more that charges for electric space heating and dusk-to-dawn lighting customers are reduced below cost (the specific proposals to do so are discussed below), the more costs other residential and non-residential customers will have to bear. ComEd Init. Br. at 8.

There is only limited dispute over how to recover the costs of the Mitigation Plan. No party challenges the fact that non-residential customers' switching to alternative suppliers affects the Accuracy Assurance Factor ("AAF") (which helps assure that over time supply charge revenues match supply costs), as well as the amount of subsidies borne under the Mitigation Plan by customers who remain on ComEd supply. ComEd Init. Br. at 8. They do differ, however, on ComEd's suggestion that the Commission could address this situation by converting the existing funding structure for the Mitigation Plan into a non-bypassable charge, either for blended auction customers only or for all customers. ComEd Init. Br. at 8-9. Staff and the Illinois Industrial Energy Consumers ("IIEC") both note the issue, but suggest addressing it in a future proceeding. Staff Init. Br. at 15-16; IIEC Init. Br. at 4, 11. Their claim that ComEd agrees with deferring the issue must be clarified. Staff Init. Br. at 16; IIEC Init. Br. at 4, 11. Although ComEd is at this time neutral on the underlying question, it presented the issue for consideration in this Docket as well as any appropriate future proceeding.

CNE, by contrast, rejects the proposed non-bypassable charge. CNE Init. Br. at 8-11. Given ComEd's neutrality on the issue, it will not address each of CNE's arguments here. Nonetheless, ComEd does object to CNE's implications that the subsidies involved are supply-related, and the concomitant assertion that "competitive supply customers would pay twice for supply services." CNE Init. Br. at 10-11. As ComEd notes in its Initial Brief (at 9-10), such

claims mischaracterize the Mitigation Plan, which compares old and new bundled rates and then caps the increase in the total bill. While supply charges are thereby reduced to implement the cap, it is a cap on the total bill, and any reduction cannot be definitively traced to its source – distribution, transmission, or supply. That is because the pre-January 2, 2007 Transition Period rates were bundled. ComEd Init. Br. at 9-10 n.2. In addition, CNE does not explain why only those customers that choose ComEd supply should be forced to continue to bear the burden of an interclass subsidy, regardless of its purpose. ComEd Init. Br. at 10. Moreover, no party directly comments on ComEd's alternative proposal to employ historical switching data in setting supply charges as part of the Mitigation Plan, beginning with the June 2008 through May 2009 application. Crumrine Dir., ComEd Ex. 3.0, 15:332-16:341. As ComEd explains, such a change would reduce the amount of the subsidy recovered through the AAF and thereby reduce customer confusion concerning monthly AAF charges. ComEd Init. Br. at 10.

Finally, CUB claims that the Commission should ensure that "… no customer faces a rate increase significantly above that of other customers in the same rate class." CUB Init. Br. at 3-4. CUB's suggestion should be rejected for several reasons. As ComEd explains in its Initial Brief (at 10-12), CUB provides no detail behind this notion, nor suggests how that Commission could accomplish this given the inherent variations in millions of customers' use and the changes in their lives that alter their use and, in numerous cases, their rates. Not only is a "significant increase" undefined and subjective, but more generally, CUB has offered no specific rate design proposal at all – just ambiguous aspirations, citing various Bonbright principles instead of offering concrete propositions. CUB Init. Br. at 4; Crumrine Reb., ComEd Ex. 4.0, 12:250-54.

By contrast, the record demonstrates that CUB's concept is incomplete, inappropriate, and tantamount to completely overhauling the Mitigation Plan. Crumrine Reb., ComEd Ex. 4.0,

12:249-50. Moreover, attempting to levelize the rate impact for the customers in the same supply group and/or delivery class would require that charges be reduced based solely on the estimated rate increases over 1996 rates – not accounting for the actual costs to serve customers or changes based on increased usage. Crumrine Reb., ComEd Ex. 4.0, 12:250-54, 12:261-13:278. ComEd's just and reasonable costs would remain, and some group of customers still would have to bear the cost of this rate mitigation effort. Crumrine Reb., ComEd Ex. 4.0, 12:254-57. Furthermore, although CUB acknowledges that customers' usage and timing of that usage can affect their respective bills, it fails to appreciate fully the importance of those differences. CUB Init. Br. at 3. As ComEd explains in its Initial Brief (at 11-12), CUB's proposal would have the perverse effect of reducing the rate increase (costs) for the higher-use customers, and of shifting those costs to lower-use customers. Shifting costs in this way ignores cost-causation principles, and would discourage energy efficiency and demand management. ComEd Init. Br. at 11-12.

3. Common Area Accounts Do Not Need Further Reclassification

The Commission should not adopt CUB's recommendation that "residential building accounts with common areas with more than 6 units" be reclassified as residential (or not pay more than residential rates). CUB Init. Br. at 4. As ComEd explains in its Initial Brief (at 12), the evidence shows that there is no need for this proposal. Such customers whose demands are less than 400 kW will continue to pay the lower applicable non-residential charges for delivery service under Rider CABA, while their supply costs will be reduced because of their incorporation into the residential electric space heating supply group. In addition, the record shows that reclassifying these common-area accounts could harm these customers through significantly higher Distribution Facilities Charges, as well as limitation of competitive supply

options and possible disruption of existing contracts with RESs. Crumrine Reb., ComEd Ex. 4.0, 14:298-302. Nothing in CUB's brief cites any evidence to the contrary.

III. Non-Residential Customer Rate Design

The Commission should not modify ComEd's non-residential customer rate design. The evidence shows that the end of the bundled rate freeze, along with movement toward cost-based rates, have together promoted competitive retail supply, and that changing non-residential rate design could thwart this progress. It would also require unjustified subsidies. *See* discussion and evidence cited in ComEd Initial Brief at 13-15. Staff concurs, noting that non-residential customers both inside and outside the CPP-B auction could "mitigate bill impacts by participating in the competitive market and receiving service from alternative suppliers." Staff Init. Br. at 8-9.

BOMA's proposals to subsidize further its own non-residential electric space heating customers should plainly be rejected. Its lead proposal – to reduce non-summer electricity demand charges for non-residential electric space heating customers in the 400 kW and greater delivery service classes (those previously served under ComEd's Rider 25 and heating with light service) by an amount equal to the average percentage of total non-summer demand from electric space heating for the non-residential space heating customers in each class (the "Free Delivery Proposal") – is just another shot at obtaining the equivalent of free delivery service for the eight non-summer months. BOMA Init. Br. at 10. The Commission has repeatedly rejected these attempts. This attempt, too, should be rejected. Crumrine Reb, ComEd Ex. 4.0, 3:48-50, 15:332-16:341. *See Commonwealth Edison Co.*, Docket 05-0597 (Order, July 26, 2006) at 218-19. Staff and IIEC concur, and also urge the Commission to reject BOMA's proposal. Staff Init. Br. at 10; IIEC Init. Br. at 4, 7-10.

The Commission should reject BOMA's other proposals, as well. Its proposition that Rider 25 be reinstated is, among other things, blatantly outside the Commission's scope for this proceeding: BOMA is just rearguing the Commission's decision in ComEd's most recent rate case (Docket 05-0597) in which the Commission, after full briefing on a complete record, eliminated the rider. BOMA Init. Br. at 10; *Commonwealth Edison Co*., Docket 05-0597 (Order, July 26, 2006) at 218-19. BOMA's third proposition – that Rider CABA be extended to non-residential customers – fares no better. BOMA Init. Br. at 17. Among other things, this novel expansion is not well supported by evidence. Moreover, what the evidence does show is that effective mitigation is already provided by the competitive market – and almost 86% of former Rider 25 customers have switched to RES supply as of April 2007 – is significant and BOMA's proposal would risk significant double-dipping. ComEd Init. Br. at 13-14.

Indeed, BOMA goes to great lengths to avoid acknowledging the vibrancy of the competitive market available to these customers. It tries to change the subject to a parade of horribles that its constituents could have been experiencing through increased charges under the Post-Transition Rates. BOMA Init. Br. at 1-2, 5-10, 15-17. BOMA does not show, however, that those charges are in fact above market, and perhaps for good reason: if they were unreasonably high, those customers could – and would be expected to – switch; if they are not, BOMA's position collapses. Either way, BOMA's extraordinary claim to essentially free delivery service is unjustified.

Beyond this fundamental failure to consider the market, BOMA's Free Delivery Proposal suffers from several additional shortcomings. As ComEd, Staff, and IIEC all point out, there is simply no evidentiary basis that can support the proposal. ComEd Init. Br. at 13-14; Staff Init. Br. at 9-10; IIEC Init. Br. at 9-10. BOMA rather offers an assortment of assertions, including

that non-residential space heating customers are facing "particularly acute" impacts under the Post-Transition Rates without enough mitigation, Rider 25 provided such customers with economic advantages, the 1997 Restructuring Law provided residential rate reductions, and the elimination of Rider 25 violated the "Bonbright Criteria" for utility pricing and regulation. BOMA Init. Br. at 1, 5-10, 15-16. Yet, all BOMA can point to are small, essentially non-verifiable samples, that do not reflect RES supply. BOMA Init. Br. at 1. For instance, BOMA's claim of an 88% increase in cost stems from a purportedly random sample of only 20 customers. BOMA Init. Br. at 7; Crumrine Reb., ComEd Ex. 4.0, 17:366-72. As ComEd notes in its Initial Brief (at 13), this sample is wholly inadequate for assessing bill impacts for non-residential space heating customers. Staff likewise describes the difficulty in trying to assess such impacts, given its inability to confirm whether even BOMA's "'randomly' selected customers were actually currently taking bundled service from ComEd." Staff Init. Br. at 10. Of course, nearly 86% do not, and the customers with the greatest individual impacts also have the greatest incentive to mitigate through RES supply.

In fact, the record undermines BOMA's claims about these rate impacts. Reliable data shows that rate increases experienced by former Rider 25 customers with demands over 400 kW were not markedly higher than those experienced by non-electric space heating customers, and were reasonable given the elimination of the no longer justified discount for electric space heating customers. ComEd Init. Br. at 13. In fact, the record shows that, should they choose hourly service, "[t]he estimated increase from 2006 to 2007 is 10% for the electric space heating customers with demands over 400 kW up to 3000 kW, and 1% for the non-electric space heating customers with demands over 400 kW up to 3000 kW." Crumrine Supp., ComEd Ex. 2.0, 7:120-23. The record also shows that in any event, whatever the impacts, few of the former Rider 25

customers are actually experiencing them, because, as noted above, the vast majority of such customers (almost 86% as of April 2007) have already switched to a RES for energy supply. ComEd Init. Br. at 13-14.

BOMA's position breaks down further with respect to former Rider 25 customers with demands over 400 kW that have switched to RES supply. Although BOMA claims that these customers have experienced a 47.1% increase in bills following their switch, BOMA has again used an extremely small (ten-customer) sample that is not readily verifiable, and has chosen not to offer an analysis based on its entire membership. BOMA Init. Br. at 7; Crumrine Reb., ComEd Ex. 4.0, 18:395-19:406. Similarly, Staff notes that it could not independently assess these purported increases given the insufficient information on which they were supposedly based. Staff Init. Br. at 10. IIEC adds that BOMA has failed to provide "sufficient analysis" regarding rate impacts experienced by non-residential customers that moved to unbundled rates before January 2, 2007. IIEC Init. Br. at 9-10. More fundamentally, as ComEd explains in its Initial Brief (at 14), these bill increases are not even relevant here, as they pertain to customers that were included in the separate annual segment of the Illinois Auction.

Furthermore, as ComEd also explains in its Initial Brief (at 14-15), BOMA's Free Delivery Proposal would come at the expense of other non-residential customers, without any timeframe for termination. BOMA seeks a perpetual subsidy, to the detriment of other customers. Like ComEd, IIEC objects to this proposed cross-subsidy, as among other things, it would be inconsistent with the Commission's adherence to cost-causation principles in delivery services rates. ComEd Init. Br. at 14-15; IIEC Init. Br. at 7-9. Moreover, IIEC points out that

BOMA has not shown a "special circumstance" that could justify departing from such principles. IIEC Init. Br. at 8.[6]

In addition, as ComEd also explains in its Initial Brief (at 15), BOMA's attempt to reduce in this Docket the rates of those former Rider 25 customers with demands over 3 MW is inappropriate in a number of other ways. BOMA Init. Br. at 10. For instance, as BOMA itself notes, service to such customers was already declared competitive pursuant to the provisions of Section 16-113 of the Act (220 ILCS 5/16-113); as a result, the availability of Rider 25 to any such customers still remaining on ComEd bundled service was scheduled to end no later than the December 2006 billing period (Docket 02-0479, Interim Order, at 71-72), and thus that expiration was not the result of any rate or rate design adopted in Dockets 05-0159 and 05-0597 (the focus of this proceeding). BOMA Init. Br. at 12; *see also* ComEd Init. Br. at 15. Further, IIEC explains that this aspect of BOMA's proposal would create cross-subsidies from customers "ineligible for a ComEd fixed price electric supply product" to "former Rider 25 customers that are eligible." IIEC Init. Br. at 8-9.

Finally, the Commission should disregard BOMA's discussion of the elimination of Rider 25 and the Public Utilities Act. BOMA Init. Br. at 10-15. Fundamentally, the entire discussion is outside the scope of this proceeding. By contesting the elimination of Rider 25 under the Act, BOMA is simply rearguing the Commission's decision to eliminate the Rider in ComEd's most recent rate case (Docket No. 05-0597). As BOMA expressly acknowledges, this

[6] While Staff recognizes that BOMA may argue rate design issues in ComEd's next rate case (Staff Init. Br. at 10), there is no basis in this record to conclude that rearguing its Free Delivery Proposal yet again would add even a speck of merit to that proposal. Certainly, there is no evidence or reason to support any provision in the order in this Docket expressly preserving the argument. As the Commission concluded in its Order in Docket 05-0597 and as Mr. Crumrine testified here, "[t]here is no overriding public policy benefit to BOMA's proposal. It is solely an endless rate discount …." Crumrine Reb., ComEd Ex. 4.0, 20:443-44; *see Commonwealth Edison Co.*, Docket No. 05-0597 (Order, July 26, 2006) at 218.

very issue was raised in that rate case docket and is on appeal right now in the Illinois Appellate Court. BOMA Init. Br. at 1. Pages 10 through 15 of BOMA's Initial Brief merely repeat – often word for word – the arguments included in its recent appellant brief. The Appellate Court, not this focused proceeding, is the proper forum for evaluating these BOMA claims.[7]

IV. Conclusion

Based on the record and for the reasons stated in this Reply Brief and in ComEd's Initial Post-Hearing Brief, the Commission should modify ComEd's rate design only as stated herein.

Dated: July 10, 2007

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[7] As ComEd will discuss in detail in its appellate response to be filed on July 30, 2007, BOMA's claims – essentially, that under Section 16-103(a) of the Act, ComEd was required to continue offering Rider 25 forever until there was a declaration of competitiveness under Section 16-113 or abandonment under Section 8-508 – fail on multiple grounds. 220 ILCS 5/16-103(a), 16-113, 5-508. Among other things, BOMA confuses the concepts of "tariffed service" and "rate" under the Act (220 ILCS 5/16-102, 3-116), ignores post-Transition Period provisions of the Act in effect prohibiting these types of backward-looking challenges (220 ILCS 5/16-111(i)), and disregards the requirement under Section 16-108(c) of the Act that the delivery portion of bills be "cost-based" (220 ILCS 5/16-108(c)).