

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| COMMONWEALTH EDISON COMPANY | : | |
| | : | |
| Petition for Approval of Initial | : | Docket No. 07-0528 |
| Procurement Plan | : | |

**REPLY COMMENTS ON BEHALF OF
THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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November 28, 2007

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, respectfully submits these reply comments in connection with the petitions for approval of initial procurement plan and tariffs implementing a new competitive procurement process and recovering procurement costs, filed by Commonwealth Edison Company (“ComEd” or the “Company”).

I. INTRODUCTION

The Response to Petition and Objections to Initial Procurement Plan by the Staff of the Illinois Commerce Commission (“Staff Response” or “Staff’s Response”) was served on November 13, 2007. The Objections and Proposed Modifications to Commonwealth Edison’s Initial Procurement Plan and Tariff and Request for Hearing by the People of the State Of Illinois (“AG Objections”); AG Exhibit 1.0, Affidavit of Robert F. McCullough (“McCullough Affidavit”); Comments of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (“Constellation Comments”); Objection of the Citizens Utility Board to Commonwealth Edison’s Petition and Request for Hearing (“CUB Objections”); Testimony of Christopher C. Thomas on Behalf of the Citizens Utility Board, CUB Exhibits 1.0 – 1.05 (“Thomas Direct

Testimony”); Verified Objections of Dynegy, Inc. (“Dynegy Objections”); Petition to Intervene and Comments of Invenergy Wind North America LLC (“IWNA Comments”); and Objection of the Retail Energy Supply Association to the Procurement Plan (“RESA Objection”) were also served on November 13, 2007. In Docket 07-0528 the Response Of Commonwealth Edison Company To Objections To Initial Procurement Plan (“ComEd Reply Comments”) was served on November 20, 2007. In Docket 07-0531, the Response Of ComEd In Support Of Its Proposed Tariffs Implementing A New Competitive Procurement Process And Recovering Procurement Costs (“ComEd Tariff Reply Comments”) was served on November 20, 2007. On November 20, 2007, the Commission “[d]etermined that a hearing is necessary, and approved the holding of a hearing, pursuant to 220 ILCS 5/16-111.5(j).” (Notice of Commission Action, Docket 07-0528 (Nov. 21, 2007)) Also on November 20, 2007, the Administrative Law Judge (“ALJ”) issued a Notice Of Administrative Law Judge’s Procedural Ruling (“ALJ Procedural Ruling”) providing as follows:

that the due date for any additional filings by the Commission Staff and Intervenors, to further address (1) the objections raised in the filings made by the Staff and Intervenors on November 13, 2007, and (2) the response thereto from Commonwealth Edison Company (“ComEd”) filed November 20, 2007, is November 28, 2007. ...

Notice is also given by the Administrative Law Judge that these filings are limited in scope to those objections specifically identified in the November 13 filings, including, among others, hedging during peak periods and related issues. ...

(ALJ Procedural Ruling, Docket 07-0528 (Nov. 20, 2007))

II. OBJECTIONS AND COMMENTS REGARDING PROPOSED PROCUREMENT PLAN

As noted in Staff's Response, the only specific objections to the procurement plan identified by Staff are the decision rules for selecting Renewable Energy Credits ("RECs") and the contingency plan in the presumably unlikely event that Exelon Generation Company, LLC defaults on the 1000 MW swap contract. Staff was not able to conduct further analysis regarding the Company's proposed procurement plan in connection with these Reply Comments. Thus, except as set forth below, Staff's position remains as expressed in its original objections

With respect to the contingency plan in the event that Exelon Generation Company, LLC defaults on the 1000 MW swap contract, ComEd acknowledges Staff's concern and recommends including the swap contract under the same contingency plan that applies to block products. (ComEd Reply Comments, p. 14) Staff finds this resolution acceptable.

With respect to the decision rules for selecting RECs, ComEd acknowledges that different interpretations as the Act are possible and that Staff's interpretation of the relative priority of the 2% cost effective renewable resources requirement, the wind resource criterion and the locational criterion is a reasonable one. (ComEd Reply Comments, p. 15) As set forth in Staff's Response, Staff believes the language of PA 95-0481 established that the highest priority must be given to the 2% cost effective renewable resources requirement, followed by locational criterion and then the wind resource criterion. Staff would acknowledge that it would be possible to interpret the Act to give the wind resource criterion priority over the locational criterion (although Staff believes the opposite is a better construction for the reasons indicated in Staff's

Response), but Staff does not believe it would be reasonable to give the wind resource criterion or the locational criterion priority over the 2% cost effective renewable resources requirement for the reasons stated in Staff's Response.

III. OBJECTIONS AND COMMENTS REGARDING PROPOSED TARIFFS

A. Rider AAF

In ComEd's Reply Comments, it suggested that "[t]he Commission should approve ComEd's proposed Rider AAF, without modification," and based its conclusion on the statement that "Staff's concern is not a specific objection supported by data or other detailed analysis." (ComEd Tariff Reply Comments, p. 17) While Staff is very aware that recovery of the costs of power supply purchases by the Company is important to ComEd, that does not mean that the issue should be summarily dismissed without full and complete discussion -- which Staff has provided for the Commission's review.

It would be expected that, while support by "data or other detailed analysis" is required, it would also be expected that some issues may arise for which "data and other detailed analysis" would not be needed or appropriate. Frankly, the issue of subsidization is not one that requires "data or other detailed analysis." This is a significant issue, as described in Staff's Response, and should not be rejected, as the Company wishes, on a claim that it is not "supported by data and other detailed analysis." Staff would also submit that its analysis of this issue is a "detailed analysis" as described under the statute. The issue has been very succinctly described and discussed in Staff's Response, which provided more analysis about this issue than ComEd has provided, cumulatively, in its Petition, its affidavits and its Reply Comments.

On the merits, the Company argues that “Staff’s proposal would deny ComEd a fundamental ratemaking principle: cost recovery.” (ComEd Tariff Reply Comments, p. 18) First and foremost, Staff’s proposal, which consists of two potential alternatives, is to ensure that the Commission is fully apprised of the ramifications and impacts of ComEd’s plan to have one customer class subsidize another customer class. “Staff has concerns about the Rider AAF proposal because of the subsidization issue.” (Staff Response, p. 29.

Regarding Staff’s second possible alternative, “that the Company is allowed to assign the over- or under-payment to the customers who were the likely causers of the AAF amount” (Staff Response, p. 29), ComEd dismisses it with only two sentences of ‘analysis’. “Staff’s other alternative would require ComEd to allocate costs to a customer group declared competitive and which, by June 2008, will no longer be taking electric supply service from ComEd. Thus, ComEd would likely again absorb these costs.” (ComEd Tariff Reply Comments, p. 18)

Staff finds ComEd’s dismissal of Staff’s second alternative interesting, in light of the Ameren Utilities’ response to the same Staff alternative in Docket No. 07-0527.

The Staff’s second alternative adequately addresses the subsidy issue since any over or under amounts would continue to follow BGS-LFP customers after May 2008. This ensures these customers receive any credits or charge that may have accrued in providing them service. Implementing this provision is not without concern. Present customers on BGS-LFP may have an expectation that after May 2008, no provisions of BGS-LFP service are applicable. While customers may not question a possible credit (in the event of a subsequent over recovery), they may question a possible charge (in the event of a subsequent under recovery). **Should the Commission share Staff’s concern, the Ameren Illinois Utilities would not object to changing Rider MVA to continue a separate over or**

under true-up mechanism for BGS-LFP customers beyond May 2008, until just after the settlement of May 2008 costs are determined and charged (the month of September). After September, the Ameren Illinois Utilities propose that any subsequent true-up costs (due to billing corrections, or further MISO market settlements occurring after 55 days) fall within the reconciliation bucket for smaller fixed price customers.

(Ameren Reply Comments, Docket 07-0527, pp. 9-10 (emphasis added)) If the Ameren Illinois Utilities are able to recover their electric supply costs through this alternative, it would seem that ComEd would be able to do so also.

Staff's second alternative would allow the Company to assign the over or underpayment to the customers who were the likely causers of the final AAF amount for 400 kW and greater customers and that the likely customers would be the customers who are served under this rider over the final three months of March through May 2008. Staff is aware that this proposed language allows for the possibility that during the months of March through May 2008, there may not be any customers being served under this rate, in which case the final amounts would be assigned to the residential and small/medium C&I customers in a manner similar to that which the Company originally proposed in its filing. However, this alternative provides the best opportunity to assign any over or underpayment to customers who likely caused the over or underpayment.

Thus, the Commission should require ComEd to change its Rider AAF to continue a separate over or under true-up mechanism for 400 kW and greater customers beyond May 2008, until just after the settlement of May 2008 costs are determined and charged (the month of September). Staff finds that this alternative, including 'true-up' language similar to that proposed by Ameren in 07-0527, is

acceptable and recommends that the Commission order ComEd to incorporate similar language into its Rider AAF.

Additionally, ComEd misrepresents comments made in the Staff Response.

ComEd states

Finally, Staff argues that the Commission should not assign “AAF [balances] determined for the customers in one auction segment (400 kW or greater)...to the AAF for customers of another auction segment (residential and small/medium C&I).”

(ComEd Resp. at 18-19) Nowhere in Staff’s Response did Staff argue “that the Commission should not assign AAF balances....” Since the Company is not able to correctly state Staff’s position, it is imperative for Staff to correctly restate its position.

In summary, Staff believes that no language can be found in existing Rider CPP or the ComEd Procurement Order that specifies that the AAF determined for the customers in one auction segment (400 kW and greater) can be assigned to the AAF for customers of another auction segment (residential and small/medium C&I). Staff believes that if the Commission finds ComEd’s proposed AAF assignment method to be appropriate, then the order in this docket must approve that recovery method.

If the Commission finds that ComEd’s proposed A-AAF assignment method is not appropriate, then the Commission should order the Company to modify its proposed tariffs so that residential and small/medium C&I customers are not responsible for the underpayment, or overpayment, of electric supply incurred by customers who are not served by ComEd after May 2008.

(Staff Resp. at 30)

B. Riders PE – General Tariff Language Concerns

ComEd fails to provide any reasonable argument why its retail tariffs should contain language that defines the costs it is entitled to recover in the regulatory arena.

As Staff has noted, what the Company can and cannot recover is spelled out in the law.

There is no need to confuse matters by erecting a parallel set of standards that may or may not be consistent with the statute.

Staff will limit itself to two points in response to ComEd's arguments. First, the fact that the law does not prohibit this language (ComEd Reply, p. 10) is not a compelling argument for its inclusion. There is nothing in the law that prevents ComEd from including language in the tariffs about a whole host of subjects that are not considered appropriate for a retail tariff.

Second, Staff would note that Ameren has expressed its willingness to remove similar references to cost recovery standards from its proposed procurement tariffs. It is not clear why ComEd needs to be shielded by an extra layer of protective language that Ameren is willing to forgo. At a minimum, Ameren's divergent position undermines ComEd's arguments that this tariff language is necessary for utilities to conform to the new procurement standards.

C. Rider PE - Purchased Electricity

1. Determination of the Just and Reasonableness of Purchased Electricity Costs

Staff in its Response to Petition and Objections took issue with ComEd's tariff language that gave the impression that costs recoverable pursuant to Section 16-111.5 need not be found to be reasonable by the Commission on an annual basis. (Staff Response, p. 44). Staff noted in several instances Section 16-111.5(l) provided that costs were to be just and reasonable. (Id.) Staff took the position that in the reconciliation proceedings a determination should be made that not only must costs incurred to implement or comply with the procurement plan be just and reasonable, but

also that costs incurred in arranging and providing the supply of power and energy be found reasonable as well as fees assessed by the Agency, costs associated with load balancing and contingency plan costs as well are reasonable. (Id., p. 45) ComEd acknowledged the validity of some of Staff's concerns and accordingly modified its tariffs. In particular, ComEd acknowledged that costs a "utility incurs in arranging and providing for the supply of electric power and energy" can only be passed through if they are just and reasonable as provided for in Section 16-111.5(l). (ComEd Response, p. 16) However, ComEd did not agree with all of Staff's position, and Staff maintains its wariness over ComEd's interpretation and paraphrasing of statutory requirements in its tariff.

Staff further believes that its apprehension to agree to ComEd's proposed tariff language was born out in ComEd's interpretations and explanations in its Response. Specifically, ComEd argued, in opposition of the clear language of Section 16-111.5, that "[s]upply costs such as those for energy, capacity, ancillary services, collateral and other security, load balancing, contingency plans, and Illinois Power Agency fees charge to ComEd are *absolutely recoverable in full.*" (ComEd Response, p. 6 *emphasis added*) First, the tariff can only be designed to recover supply costs incurred pursuant to a Commission-approved procurement plan. Unless the procurement plan specifically defines "energy, capacity, ancillary services, collateral and other security," how they will be procured and within what limits, the tariff does not automatically allow for their absolute recovery in full. Secondly, ComEd misinterprets Section 16-111.5(l) to include Illinois Power Agency fees, load balancing, and contingency plans as recoverable

without a showing of reasonableness, when the plain language of the statute is in absolute contradiction:

A utility shall recover through the tariff all **reasonable** costs incurred **to implement or comply with any procurement plan** that is developed and put into effect pursuant to Section 1-75 of the Illinois Power Agency Act and this Section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs.

(220 ILCS 5/16-111.5(l) (emphasis added))

Staff therefore submits that only supply costs not involving utility discretionary action incurred specifically pursuant to and in strict adherence with a Commission-approved procurement plan are immune from a subsequent review for reasonableness. In this regard, ComEd's and Staff's positions may not be that far apart. The fact that there will be an approved procurement plan means that the decisions reflected in the plan have been found to be prudent and reasonable. Further, the Act specifies that certain procurement costs related to the the SFCs and financial swap contracts are to be deemed prudent. That being said, Staff strongly believes that any cost dependent upon a future discretionary act or determination by a utility is subject to a finding that such act or determination was not reasonable or prudent. Ensuring the Commission's ability to make such determinations is at the heart of Staff's concerns and recommendations. Therefore, subject to certain revisions Staff finds ComEd's revised tariff to be acceptable.

Staff has two sets of revisions for ComEd's revised tariffs. Staff's first set of revisions are necessary to make it clear that if ComEd procures power not in accordance with an approved procurement plan, those power costs and any related costs for arranging and providing for the supply of electric power and energy purchased

outside of the approved procurement plan are not just and reasonable and therefore not recoverable.

Staff's second set of revisions are necessary for the following reasons. First, Staff's proposed revisions parallel the treatment of administrative costs in the Ameren Companies' procurement tariffs. Second, historically, administrative costs have been recovered in base rates. Establishing administrative costs for a normal year's amount would be consistent with normal ratemaking treatment. Staff acknowledges that the costs may vary from year to year and in some years actual will be greater than the normal amount but in other years actuals will be less. To the extent that ComEd believes that the normal administrative costs are no longer representative, ComEd could make a filing with supporting documentation to adjust the administrative cost amount. Finally, by adopting a normal amount, the administrative burden on all the parties including Staff and ComEd will be reduced. Parties will not have to expend resources to analyze and verify the administrative costs in each reconciliation year.

However, Staff still objects to ComEd's tariff language which seeks recovery for collateral and other security costs. Staff objects to these costs being recovered from ratepayers pursuant to Rider PE to the extent that ComEd cannot establish that the costs are not related to non procurement activities.

ComEd opposes Staff's position that (1) the language in Rider PE addressing the recovery of "collateral requirements or other forms of security requirements" should be stricken from Rider PE, sheet no. 637 and (2) those costs should not be recovered from rate payers through Rider PE. ComEd argues that collateral and other security requirement costs are supply costs, not administrative costs. (ComEd Response, p. 9)

ComEd's arguments should be rejected. ComEd in its procurement plan and tariffs failed to adequately define the collateral costs for which it seeks recovery through Rider PE. Without more specificity in the plan and tariff Staff is concerned that ComEd could attempt to recover through Rider PE collateral costs that have nothing to do with power procurement.

In support for this position, Staff recommends that the Commission consider ComEd's current collateral costs. Currently, ComEd's most likely source of collateral, its October 3, 2007, credit agreement, has three types of fees: a facility fee, a utilization fee, and a letter of credit fee. The facility fee is assessed on the credit facility commitment amount. The utilization fee is assessed on the amount of borrowings outstanding for any day on which total borrowings exceed 50% of available credit under Agreement; and (3) the letter of credit fee is payable on the undrawn amount of all facility letters of credit ("LC"). Of these three fees, only the last is traceable to a particular activity, e.g., the issuance of a letter of credit. The first two fees, i.e. the facility fee and the utilization fee, depend on aggregate use of the credit facility, which, as Staff stated in its Response to Petition and Objections (Staff Response to Petition and Objection, pp. 39-40) could also be used for purposes other than power procurement, i.e. general corporate purposes. Therefore, whether a portion of the facility fee or utilization fee is a cost of procuring power and energy will be subject to debate.

All three fees in ComEd's credit agreement are based on its senior unsecured unenhanced long-term credit ratings. Since credit ratings are a function of the Company's management decisions, which (a) might be imprudent; and (b) might have

nothing to do with power procurement it is further objectionable that the entire LC fee should be recovered through Rider PE as power procurement activity costs.

Finally, the fee structure of credit agreements might change over time. ComEd's next credit agreement might include a whole new set of fees that the Commission may have never seen or contemplated before. Given that possibility the lack of specificity in ComEd's tariff and plan should not be permitted to recover collateral costs that are unrelated to power procurement. While Staff can see some merit in allowing some LC fees or some portion of them to pass through Rider PE (if the fees can be directly traced to specific procurement transactions), the Commission should require ComEd to first establish that none of the LC fees for which it seeks recovery are related to non-power procurement activities. Therefore, Staff recommends that ComEd be required to clearly define which fee or costs it wants to pass through Rider PE.

Staff notes that ComEd has agreed to Staff elimination of the language "all such costs shall be deemed to have been prudently incurred." (ComEd Tariff Reply Comments, p. 9)

a. Staff's Proposed Revisions to ComEd's Tariffs

The following reflects ComEd Rider PE, Original Sheet No. 630 as proposed by ComEd in its November 20, 2007 filing (Attachment D) with revisions proposed by Staff (shown in bolded and yellow highlight):

* * *

Bundled electric service is the provision to the retail customer of electric power and energy by the Company. Such provision includes the procurement of all the component services the Company requires to meet retail customer instantaneous electric power and energy requirements at any given time under the Company's tariffs, applicable tariffs on file with the Federal Energy Regulatory Commission (FERC), and other applicable law, including, without limitation, all required

electric energy, energy to satisfy losses, electric generation capacity, volumetric risk management, transmission services, ancillary transmission services, renewable energy resources, administrative services, and other necessary services procured by the Company. In accordance with Section 16-111.5(l) of the Public Utilities Act (Act), ~~the primary purpose of this rider is to allow the Company to recover~~ all the ~~costs as required by Section 16-111.5 of the Public Utilities Act (Act)~~ it incurs related to the procurement of all such component services. Under this rider, the Company “recover[s] its costs of procuring power and energy” pursuant to such Section 16-111.5. In particular, this rider provides for the recovery of the Company’s “costs of procuring power that are incurred pursuant to the Commission-approved procurement plan” **and are specifically identified in the Commission-approved procurement plan** through a “formula rate or charge” “with no mark-up or return on the price paid by the [Company] for that supply, plus any just and reasonable costs that the [Company] incurs in arranging and providing for the supply of electric power and energy.” **Included in the costs that are found reasonable and fully recoverable under this rider, are “any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs.”** However, this rider also recognizes that the Illinois Commerce Commission (ICC) may determine the reasonableness of the Company’s costs of arranging and providing for supply **or costs of implementing or complying with the procurement plan, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs** in periodic review proceedings and expressly provides for the adjustments that may result from such proceedings.” **Costs for procurement power that are not included in the Commission approved procurement plan are not recoverable under this rider.**

The following reflects ComEd Rider PE, Original Sheet No. 637 as proposed by ComEd in its November 20, 2007 filing (Attachment D) with revisions proposed by Staff (shown in bolded and yellow highlight):

PURCHASED ELECTRICITY PRICE.

For the purpose of developing Retail Purchased Electricity Charges, as described in the Retail Purchased Electricity Charges section of this rider, that allow the Company to recover the costs it incurs in procuring certain component services the Company is required to procure and requires to meet retail customer instantaneous electric power and energy requirements at any given time under the Company's tariffs, applicable tariffs on file with the FERC, and other applicable law, the Company determines four Purchased Electricity Prices (PEPs). Specifically, the four PEPs are (1) the Summer Peak PEP, (2) the Summer Off-Peak PEP, (3) the Nonsummer Peak PEP, and (4) the Nonsummer

Off-Peak PEP. Each PEP is equal to the load weighted average time of use unit cost, in dollars per megawatt-hour (\$/MWh), for all such component services pertaining to the corresponding monthly billing periods for which Retail Purchased Electricity Charges are being determined. Costs included in the PEPs include (a) applicable costs incurred by the Company in meeting its obligations in accordance with the Procurement Obligations section of this rider; (b) costs incurred by the Company in arranging and providing for the supply of electric power and energy in accordance with the Procurement Obligations section of this rider, **including costs to meet collateral requirements or other forms of security requirements**; and (c) costs incurred by the Company in relation to the development, approval, or implementation of or compliance with any preexisting contract or any procurement plan that is put into effect pursuant to Section 1-75 of the IPA Act and Section 16-111.5 of the Act, including any fees assessed by the IPA, and including **without limitation**, attorney, consultant, and expert witness fees. Costs that are recoverable in a tariff authorized by Section 16-111.5 of the Act and that are included in the PEPs are segmented into **three two (32)** categories. The **threetwo (32)** categories are the Company's (i) costs incurred to acquire the required electric resources and services, **and (ii) internal administrative and operational costs associated with the procurement of those electric resources and services, and (iii) costs of implementing or complying with the procurement plan, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs. The internal administrative and operational costs referenced in (ii) shall be those approved in the Companies most recent rate case or other proceeding to establish a just and reasonable amount of such costs for cost recovery through this rider.** As provided in Section 16-111.5(l) of the Act, ~~the Company is entitled to "recover its costs of procuring power and energy under this Section (Section 16-111.5 of the Act)," and "all such costs shall be deemed to have been prudently incurred."~~ The Company is not allowed to mark-up or include a return on such costs.

Costs incurred by the Company to procure certain services from PJM, including but not limited to, Network Integration Transmission Service (NITS) and PJM-associated expenses, are not included in the development of the PEPs. Instead, such costs are included in the development of the PJM Services Price (PSP), as described in the PJM Services Price section of this rider.

Generally, the aforementioned PEPs are expected to be determined on an annual basis and used to determine Retail Purchased Electricity Charges for a period that extends from the beginning of a June monthly billing period through the end of the following May monthly billing period corresponding to a given PJM Planning Year. However, the PEPs must be recomputed each time the ICC approves the results of a procurement event. In addition, the PEPs may be recomputed at such time that FERC-approved or accepted changes in charges related to costs identified for inclusion in the PEPs become effective.

IV. CONCLUSION

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

Respectfully submitted,

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