

II.

The HEPO Inappropriately Rejects ComEd's Proposed Uniform Customer And Supplier Delivery Services Tariff Outlines

The Commission should adopt ComEd's proposed uniform outlines for customer and supplier delivery services tariffs. They are supported by evidence. The outlines recommended by the HEPO are supported by no evidence and were not even proposed until after the hearing was over. Adopting the HEPO's recommendation would be legal error and would be contrary to the evidence in the record.

A. ComEd's Proposed Customer And Supplier Delivery Services Tariffs Outlines Should Be Used

ComEd's specific proposals for greater tariff uniformity in this docket include a compromise proposal to restructure customer and supplier delivery service tariffs using uniform outlines, and ComEd supported those outlines with evidence at the hearings. ComEd's proposed uniform tariff outlines are fully supported by the evidence in the record. (ComEd Init. Br., pp. 11-14). They enjoy support not just from ComEd, but from other participants as well. ComEd's proposed customer and supplier delivery services tariff outlines are endorsed by several parties, including AmerenCIPS, AmerenUE, IP, and Peoples Energy Services Corporation, an Alternative Retail Electric Supplier. (Initial Post Hearing Brief ["Ameren Init. Br."], pp. 6-7; Initial Brief of IP ["IP Init. Br."], p. 5; Initial Brief of Peoples Energy Services Corporation ["Peoples Init. Br."], pp. 2-3). Indeed, if ComEd's proposals and compromises are approved by the Commission, customer and supplier delivery services tariffs will have uniform outlines, tables of contents, and common definitions found at the front of each tariff, as well as numerous common terms and conditions.

No evidence in the record calls into question the structure or content of ComEd's proposed uniform outlines. The only party that had any specific objection to the structure or content of ComEd's proposed uniform outlines was Staff and even Staff recognized that, in many ways, ComEd's proposed uniform outlines were an improvement over the outlines initially offered by Staff. (Staff Init. Br., pp. 20, 22). Moreover, the HEPO recognizes some, but not all, of the improvements that ComEd's proposed uniform outlines for customer and supplier delivery services tariff have made to the outlines offered by Staff witness Lazare in his direct testimony. (HEPO, pp. 16-17, Appendix A; Lazare Dir., Staff Ex. 2, pp. 2-11, 16-18; Alongi Reb., ComEd Ex. 4.0, pp. 4-6, and Exs. 4.1, 4.2).

Nonetheless, the HEPO directs, without discussion, that the utilities be directed to adopt the "revised" customer and supplier delivery services tariffs outlined contained in Appendix A to the HEPO. (HEPO, pp. 16-17). These outlines are not supported by any testimony. They significantly depart from the outlines that were supported by Staff in its testimony, and they were proposed by Staff for the first time in post-hearing briefing. Indeed, as a result, the record contains no support for the "revised" outlines adopted by the HEPO. The unsupported outlines recommended by the HEPO cannot be properly adopted for this reason alone.

In addition, the record shows that several of the specific departures from the uniform outline proposed by ComEd are flawed and counterproductive. For example:

- The HEPO proposes to rename the section titled "Electric Power and Energy Supply Options" to "Supply Options." The record shows that entitling this section "Supply Options" may wrongly lead a user to conclude that a description of all of a customer's various service options can be found within this particular tariff. That is simply not the case. Renaming the section as the HEPO does potentially causes confusion for customers. (Alongi Reb., ComEd Ex. 4.0, p. 10).
- The HEPO proposes that utility tariffs contain a section entitled "Customer Information." The record shows that such a section is appropriately part of an implementation plan or educational materials, not the tariff. Tariffs are the basic

contract between customers and utilities. A tariff is the operative contract between a customer and a utility. The purpose of the tariff is to set forth the terms and conditions that apply to the particular service being provided under the tariff. (Alongi Reb., ComEd Ex. 4.0, p. 10). They are not a means to inform and educate delivery services customers as to all of the possible combinations of services, *i.e.*, as if they were customer education brochures. Customers are better educated through, for example, ComEd's customer handbook and its Open Access Non-Residential Implementation Plan, the latter of which, as noted by Staff witness Dr. Eric Schlaf, is "choked full of information that is useful for suppliers of [*sic*] [and] customers." (Schlaf Tr. 52). In addition, in the current age of restructuring, customers are bombarded with an unprecedented level of information, from a variety of sources, regarding customers' electric power and energy service options. (Alongi Reb., ComEd Ex. 4.0, p. 11).

- The HEPO's "revised" supplier outlines add sections entitled "Electronic Data Exchange" and "Load Profiling". (Staff Init. Br., p. 23). The HEPO's conclusion is inappropriate, for a number of reasons. First, elements of electronic exchange of data naturally fall into a variety of section headings under ComEd's proposed outlines: Definitions; Application for and Commencement of Services; Technical and Operational Requirements; and Miscellaneous General Provisions. Similarly, issues relating to load profiling would naturally fall under Technical and Operational Requirements. Moreover, those issues are better addressed in ComEd's Open Access Non-Residential Implementation Plan, which was approved by the Commission in Docket No. 99-0117, as well as in ComEd's supplier guide.

In sum, there is no basis for the HEPO's rejection of the uniform customer and delivery services outlines offered by ComEd that are supported by the majority of interested parties, and have been opposed by no customer group or RES.

B. Replacement Language

ComEd recommends that the following language, as reflected in legislative style, appear in the Commission's discussion of ComEd's position, appearing on pages 3 and 4 of the HEPO:

ComEd insists that competition will be enhanced through greater uniformity in business processes and has worked diligently toward that goal. ComEd states that it has also worked towards greater uniformity in the delivery services tariffs to the degree it has made sense to do so.

ComEd argues that uniformity is not an end in itself and that uniformity does not play as large a role in a developing competitive markets as many other factors. ComEd notes that it has agreed to uniform customer and supplier tariff outlines, will provide convenient tabs or electronic bookmarks for use on its web

page, will place tables of contents at the front of its delivery services tariffs, and will work with other parties on common definitions.

ComEd contends that its proposed customer and supplier delivery services outlines, developed in cooperation with AmerenUE, AmerenCIPs, and Illinois Power improve upon the customer and supplier delivery services tariff outlines originally proposed by Staff. ComEd notes that the revised delivery services tariffs outlines introduced in Staff's Initial Brief were not the subject of testimony or any evidentiary support, and argues that the Commission should not consider Staff's revised outlines. ComEd contends that its proposed structure is superior to the revised outlines, in any event, in that ComEd's proposed outlines best reflect the purpose of the particular tariffs and include an appropriate level of detail.

ComEd argues that another docket to develop pro forma tariffs or template tariffs is unlawful, unwarranted, unwise, and ill timed. ComEd asserts that each utility has the right to develop its own tariffs, including delivery services ones. According to ComEd any attempt by the Commission to require uniform tariffs exceeds the Commission's jurisdiction.

ComEd also argues that utilities were not provided with specific notice that pro forma tariffs would be considered in this docket and to proceed with a pro forma tariff would deny ComEd due process. Additionally, ComEd believes that the timing for any further proceedings would violate its due process rights. According to ComEd, a timeline of only five months would not allow for the full development of a record, including discovery and a meaningful opportunity to be heard.

ComEd asserts that its own delivery services tariffs are understandable in their current form and have been found by the Commission to be just and reasonable. ComEd notes that the MidAmerican and NewEnergy witnesses understood ComEd's tariffs and that no complaints were identified as being based on a lack of understandability of the delivery services tariffs.

ComEd states that a number of factors contribute to the perceived lack of competition including low rates, energy imbalance tariffs, special contracts, transition charges, current volatility of the wholesale market, a limited pool of customers, ability to site and build generation, customer density and load shape distribution. ComEd avers that no party listed the lack of pro forma tariffs as a bar to competition. First, ComEd notes that in the Uniform Business Practices process, parties identified lack of uniform business process, rather than lack of uniform delivery services tariffs, as the key to opening markets to competition. Second, ComEd states that lack of uniform delivery services tariffs among utilities was not on the list of topics that the Commission is considering in this Docket. Third, ComEd notes that no party indicated that it had failed to enter a particular Illinois service territory, or the Illinois market in general, based upon a

lack of uniform delivery services tariffs among the various Illinois electric utilities.

Finally, ComEd takes issue with MidAmerican's proposals, stating that it considers MidAmerican's tariffs flawed citing many objections. ComEd asserts that if any tariffs are to be used as a template, then its own tariffs are the most suited for the reason that most switching activity is taking place in ComEd's service territory.

ComEd further requests and that the Commission's Findings and Orderings paragraphs, on pages 16 and 17, respectively, be modified as follows, as shown in legislative style:

- (3) the revised customer tariff outline and revised supplier tariff outline as set forth in the Appendix attached hereto ComEd Exhibits 4.1 and 4.2 , attached to the Rebuttal testimony of ComEd witness Lawrence S. Alongi, are should be adopted by the Commission;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the utilities be and are hereby directed to adopt the ~~revised~~proposed customer tariff outline and ~~revised~~proposed supplier tariff outline set forth in ComEd Exhibits 4.1 and 4.2 , attached to the Rebuttal testimony of ComEd witness Lawrence S. Alongi.~~Appendix A.~~

III.

The HEPO Makes Unnecessary Findings That Are Inconsistent With The Law And The Evidence In The Record

Although the HEPO does not and cannot find that the evidence in the record supports the adoption of *pro forma* tariffs. However, the HEPO may be read to express legal support for the Commission theoretically having the authority to impose *pro forma* tariffs on utilities, tariffs that would limit what terms and conditions a utility could propose or establish a presumption against such terms if they differed from a predetermined standard. Such a finding is not only unnecessary to the result reached by the HEPO, it would potentially support taking action that is illegal would be contrary to the Commission's express past statements, would be contrary to the

Initiating Order and the Interim Order establishing the scope of this proceeding, and would be contrary to the evidence in the record. The Commission should delete those portions of the HEPO that are unnecessary for its decision and that adopt prejudicial presumptions about additional uniformity that are contrary to law, the Commission's own orders, and the evidence in the record.

A. Discussions Of *Pro Forma* Tariffs Are Premature And Unsupported

The issue of *pro forma* tariffs is well outside the scope of this Docket and is unlawful based upon a lack of notice to the parties. The parties agreed to a number of questions that were to be the potential candidates for litigation in this Docket, attached as Appendix B to the Interim Order (Interim Order, App. B), none of which related to the development or implementation of uniform tariffs. (*Id.*; Schlaf Tr. 41). Utilities were not provided any notice that uniform delivery services tariffs would be discussed even as a general matter. (Alongi Sur., ComEd Ex. 8.0, pp. 3-4). In fact, the issue of *pro forma* tariffs was specifically excluded from consideration as an issue in this Docket. In its July 6, 2000, report to the Commission, Staff wrote: "Staff emphasizes that the purpose of the proceeding will not be to develop '*pro forma* tariffs' that all utilities would be required to use in place of their existing tariffs." (Schlaf Tr. 39). (The Staff report was made a part of the record by the Initiating Order.)

Throughout the course of this proceeding, some parties at times have used the terms "uniform tariffs" and "*pro forma* tariffs" interchangeably. Those two concepts are, in fact, radically different. The Commission can and will achieve greater uniformity in many respects in the utilities' customer and supplier delivery services tariffs through its Order in this Docket. Still further, uniformity can be achieved by the utilities' demonstrated commitment to move toward uniformity through workshops and other agreements, where such uniformity makes sense. In

keeping with this approach, ComEd will participate in any future workshops toward that end. For example, utility delivery services tariffs will, at the conclusion of such workshops, share common definitions. Unless otherwise contrary to law, the Commission also is empowered to determine, in reviewing utility tariff filings, that similar or identical terms, conditions, or tariffs should be adopted in additional respects if and when the law and the evidence in the record show that lack of uniformity would be unjust and unreasonable. No such conclusions can be made based upon the evidence in the current Docket, however.

1. The HEPO Confuses Uniform and *Pro Forma* Tariffs, And Incorrectly Finds That The Commission Has The Authority To Direct *Pro Forma* Tariffs

The HEPO errs in concluding that the Commission has been granted the authority to mandate uniform tariff language and/or *pro forma* or “template” tariffs. The HEPO states:

The Commission finds that the arguments that pro forma tariffs are unlawful are not convincing. The Commission unmistakably has the authority to direct changes to a utility’s delivery services tariffs and along with the authority is the right to mandate uniform language provisions and/or a pro forma tariff.

(HEPO, p. 9) That sentiment is found nowhere in the law, however, and violates both fundamental principles of due process and the Act, under which a Commission Order must fall within the Commission’s jurisdiction and authority, must be lawful, must be supported by substantial evidence, and may not be contrary to the manifest weight of the evidence. 220 ILCS 5/10-201(e)(iv)(A); *Citizens Utilities Co. of Illinois v. Illinois Commerce Comm’n*, 124 Ill. 2d 195, 206, 529 N.E.2d 510, 516 (1988). The Commission has limited jurisdiction under the Act. 220 ILCS 5/10-201(e)(iv). The Commission does not have the authority to mandate uniform utility delivery services tariffs, a conclusion that is borne out by a review of the Act.

Because the Act is in derogation of common law, no requirement to be imposed on public utilities can be read into the Act by intendment or implication. *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 251, 630 N.E.2d 1318, 1330 (2d Dist.), *appeal denied*, 157 Ill.2d 524, 642 N.E.2d 1305 (1994). There is no provision whatsoever in the Act authorizing the Commission to impose *pro forma* tariffs. Consequently, the Commission has no authority to impose *pro forma* tariffs on Illinois electric utilities.

A utility's right to propose its own tariffs is grounded in the Act and in the utilities' right to manage its business, subject to appropriate regulation. 220 ILCS 5/9-201, 16-108; *Lowden v. Illinois Commerce Commission*, 376 Ill. 225, 231, 33 N.E.2d 430, 434 (1941). (Juracek Sur., ComEd Ex. 6.0, pp. 5-6). The Act provides that utilities file tariffs which are then either passed to file or suspended. 220 ILCS 5/9-201, 16-108. It is left to utilities to write those tariffs. Moreover, Section 16-108 specifically directs utilities to file their own proposed delivery services tariffs. The Commission has the responsibility to review the utility's proposed tariffs and to either approve them if they are just and reasonable, or to direct necessary modifications. 220 ILCS 5/9-201, 16-108; (Juracek Sur., ComEd Ex. 6.0, pp. 5-6). If, based upon the evidence in the record, the Commission determines that a particular tariff provision is unjust and unreasonable based upon a lack of uniformity, then the Commission has the authority to direct lawful necessary changes. However, that situation is dramatically different than *pro forma* tariffs, in which the Commission decides in advance of a utility's filing the particular language that the tariff must include, effectively barring utilities from filing their own proposed tariffs or creating presumptions against the utilities' proposals. Had the legislature wanted the Commission to have the power to create *pro forma* delivery services tariffs, it could have granted the Commission that authority (setting aside constitutional issues). For example, the act

expressly gave the Commission the authority to require that ARES adopt uniform disclosure forms for prices, as well as terms and conditions. 220 ILCS 5/16-117(h). In sharp contrast, the Act gave the Commission no authority to impose *pro forma* or “template” tariffs on the utilities.

2. The HEPO Misstates What Is And Should Be The Commission’s Approach To Uniformity

The HEPO compounds its error by suggesting, in essence, that a presumption in favor of uniform delivery services tariffs exists. The HEPO concludes:

The Commission, initially, needs to state again that it is the goal of this Commission to arrive at uniform tariff provisions for delivery services tariffs to the extent possible ... It has been and continues to be the Commission’s intent to have uniform delivery services tariffs, uniform business practices and uniform delivery services implementation plans to the extent possible.

(HEPO, p. 8). Not surprisingly, the HEPO does not specify the basis for its conclusion. That is because there is no valid support for any such presumption.

The Commission, in arriving at its conclusions in the current Docket, must be governed exclusively by the record in this Docket. *E.g.*, 220 ILCS 5/9-201(c), 10-103, 10-201(e)(iv). In addition, previous Commission Orders are not legal precedents or *res judicata*. *United Cities Gas Co. v. Illinois Commerce Comm’n*, 163 Ill.2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Field Corp. v. Illinois Commerce Comm’n*, 1 Ill.2d 509, 513, 116 N.E.2d 394, 396-97 (1953).

The HEPO’s conclusion stands in direct conflict with the Initiating Order and the Interim Order in this Docket, the only Commission Orders that are applicable to this proceeding. First, the Commission limited the issues for consideration in this Docket to particular questions, directed to the Appendix to the Initiating Order, none of which relate to discussion of the development or implementation of *pro forma* or uniform tariffs. (Initiating Order, App.).

Second, the Commission was not, by including a particular topic among the list for discussion, intimating that uniformity was either necessary or desirable as to that issue. To the contrary, the Commission specifically stated the following:

The Commission wishes to clarify that it does not, by including any issue in the Appendix to this Order, intend to establish any presumption that uniformity among electric utility tariffs is or is not appropriate as to that issue.

(Initiating Order, p. 3).

Nor did the language in the Interim Order indicate that the Commission was operating under any presumption as to the propriety of uniformity on any delivery services tariff issue or provision. From that initial list of permissible topics set forth in the Initiating Order, the parties subsequently agreed to a number of questions that were to be the possible candidates for litigation in this Docket, as stated in the Stipulation and the agreed issues list attached to the Interim Order. (Interim Order, App. A, B). As in the Initiating Order, the Commission, in its Interim Order, did not indicate any desire for uniformity with respect to utilities' delivery services tariffs as a whole or with regard to any particular tariff provision. (Interim Order, App. A, B). Questions surrounding the development or implementation of *pro forma* or uniform tariffs are not among the list of issues that could be litigated. (*Id.*; Schlaf Tr. 41).

It is not the stated position of the Commission in this Docket, nor is there evidentiary support for the proposition, that delivery services tariffs should be uniform "to the extent possible." The language contained in both the Initiating Order and the Interim Order reflects the Commission's acknowledgment that the desirability of uniformity as to any particular business process or tariff provision must be decided on a case-by-case basis.

The Commission must weigh the benefits of a given approach with its associated costs, risks, and burdens and, in doing so, must be guided strictly by the evidence in the record in the

current Docket. *E.g.*, 220 ILCS 5/9-201(c), 10-103, 10-201(e)(iv). (*E.g.*, Clair Dir., ComEd Ex. 1.0, p. 3). A review of the record demands that *pro forma* tariffs be rejected. The evidence presented in this Docket does not allow the Commission to conclude that the potential benefits of uniform tariffs outweigh the associated costs, burdens, and risks. No such showing has been made with respect to substantive restrictions of utilities' right to propose tariff terms or presumptions against terms and conditions that are not part of a predefined *pro forma* tariff. For that matter, there has been no evidence to show that *pro forma* tariffs are necessary or warranted as a general proposition. In contrast, the evidence overwhelmingly demonstrates that *pro forma* tariffs will impose financial costs on utilities and ratepayers, as well as create additional burdens and risks through the imposition of untested, and likely unworkable, unspecified tariff provisions.

Pro forma tariffs are neither sensible nor lawful, as demonstrated by the evidence in the record in this Docket and as reflected by the HEPO's findings and orderings paragraphs. To begin with, no party has demonstrated that any single provision of ComEd's customer or supplier delivery services tariffs, or ComEd's customer or supplier delivery services tariffs in their entirety, are unlawful, unjust, or unreasonable by virtue of their lack of uniformity to other utilities' tariffs. Moreover, the proponents of *pro forma* delivery services tariffs have failed to prove that the purported benefits of *pro forma* delivery services tariffs outweigh the costs, risks, and burdens of such an endeavor.

ComEd's Initial Brief and its Reply Brief demonstrated that *pro forma* or "template" tariffs are unnecessary as a general matter in Illinois and, more specifically, are unwarranted in ComEd's service territory, as evidenced by the following:

- ComEd's customer and supplier delivery services tariffs already are understandable to customers and RESs, and are appropriately crafted. No customer testified in this

Docket that it was unable to understand ComEd's customer delivery service tariffs, nor has there been a single formal complaint filed by any IIEC member over the meaning or application of ComEd's delivery services tariffs. (Alongi Sur., ComEd Ex. 8.0, p. 5).

- Customers and RESs already are able to compare delivery services tariffs of the utilities. ComEd's customer and supplier delivery services tariffs facilitate easy comparisons of ComEd's bundled services tariffs to its delivery services tariffs (Alongi Dir., ComEd Ex. 2.0, pp. 6-7; Juracek Sur., ComEd Ex. 6.0, pp. 15-16), which is the most important comparison for the vast majority of customers in ComEd's service territory. (ComEd Init. Br., pp. 6, 7).
- Proponents of *pro forma* tariffs have failed to show that competition in Illinois has been affected in any way due to any lack of uniformity of delivery services tariffs. In fact, a good deal of competition exists in ComEd's service territory, particularly considering the amount of time in which the market has been opened. (ComEd Init. Br., p. 21). Multiple RESs have entered the market and are supplying electric power and energy. (*Id.*) Customer switching volume in ComEd's service territory also has been impressive. (*Id.*) There is no evidence that *pro forma* customer and supplier delivery services tariffs will have even a negligible effect on competition within Illinois.
- Proponents of *pro forma* tariffs fail to produce any evidence of costs associated with comparing various Illinois electric utilities' customer and supplier delivery services tariffs. Not surprisingly, Peoples Energy Services Corporation, an Alternative Retail Electric Supplier, stated the following: "[t]here are more useful issues and areas for PE Services to devote its limited resources in order to continue to develop customer choice." (Peoples Init. Br., p. 3).

In addition to the fact that proponents of *pro forma* tariffs have failed to produce any evidence to prove that *pro forma* tariffs are necessary, the record demonstrates that *pro forma* tariffs would, in fact, impose significant burdens, costs, and risks.

ComEd's tariffs govern its relationship with its customers, and generally provide the single authority for ComEd to collect charges and take other actions, as appropriate. (Juracek Sur., ComEd Ex. 6.0, pp. 8-9). Based upon the role of tariffs, it is imperative that they be complete, accurate, and precise. (*Id.*; Alongi Reb., ComEd Ex. 4.0, p. 17). As acknowledged by Staff witness Dr. Schlaf, a *pro forma* tariff that is not drafted in such a way can actually create confusion and disputes. (Schlaf Tr. 35). Such a result would be particularly disastrous in

ComEd's service territory where, if only one tenth of one percent of its 3.5 million customers was affected, *pro forma* tariffs would be responsible for causing at least 3,500 problems. (Juracek Sur., ComEd Ex. 6.0, p. 9; Alongi Reb., ComEd Ex. 4.0, pp. 17-18).

Proponents of *pro forma* tariffs acknowledge that such tariffs may require new or different business processes. Implementing new or different business processes could require modifications to information systems, additional training, and changes to business practices. Any one or all of these changes from current practice could require substantial costs. (Stephens Tr. 663-64; Schlaf Tr. 34).

In addition to the initial resource and training costs that would be required to implement a new business process, it is likely that *pro forma* tariffs would contain provisions that are legally and practically untested, and have not even been "workshopped." Even proponents of *pro forma* tariffs admit that the Commission could expect some of the newly imposed *pro forma* tariff provisions to be unworkable, as a practical matter. (Stephens Reb., IIEC Ex., p. 5). There is no basis for requiring utilities to modify their terms and conditions from something that is currently working as in ComEd's service territory to terms and conditions that are untested and potentially unworkable, and that require substantial expense.

B. The HEPO Provides An Incomplete Discussion Of The Evidence Against The Initiation Of A Follow-on Docket

The HEPO correctly rejects the attempts by certain parties -- namely, NewEnergy, IIEC, MidAmerican, and Staff -- to create a new Docket after the conclusion of the instant Docket to develop *pro forma* or "template" tariffs. The HEPO notes:

The Commission believes that the workshop process, if continued, will result in additional uniformity. Pursuing uniformity through Staff-sponsored workshops, rather than through another docketed proceeding, is the appropriate course of

action in light of the significant resources that will be devoted to the residential DST filing to be made by all electric utilities this year. Staff is instructed to continue to conduct workshops to develop common definitions and uniform language. Adopting either the short schedule as articulated by Staff or the longer schedule advocated by MidAmerican in a docketed proceeding, could result in the utilities revising their filed tariffs midway through the residential DST proceedings.

(HEPO, p. 9).

The HEPO is incomplete, however, in that it suggests that the only reason for rejecting the notion of a follow-on docket at the conclusion of the instant docket is the resource demands created by the electric utilities' upcoming residential delivery services cases. That is simply not the case. The resource demands of the utilities' upcoming residential delivery services cases is only one of a number of reasons that a follow-on Docket is appropriately rejected by the Commission. The evidentiary record has demonstrated that the specific proposals calling for *pro forma* or "template" tariffs through initiation of a new proceeding are unwise, for a number of additional reasons:

- The proposed time allotted for the proposed follow-on Docket violates the utilities' due process rights in denying them the opportunity for meaningful and thoughtful consideration of the issues. (ComEd Reply Br., pp. 19-20).
- The proposed follow-on docket would be tantamount to a consolidated state-wide rate case which would create a host of legal, as well as practical, problems. (*Id.* at 20-21).
- The proposed scheme may violate the due process rights of those parties that are not participants to the follow-on Docket but who are parties to the residential delivery services tariffs and implementation plan cases. (*Id.* at 21-22).
- Now is a uniquely bad time to consider *pro forma* or "template" tariffs given the relative infancy of open access and the fact that processes pertaining to residential customers have not yet been developed. (Juracek Sur., ComEd Ex. 6.0, pp. 7-8). Attempts to implement changes prematurely may result in costly mistakes that ultimately hinder the development of the market. (ComEd Reply Br., pp. 32-33).

C. Replacement Language

ComEd recommends that the following language, as shown in legislative style, appear as the Commission's Conclusion on the subject of uniformity on pages 8 and 9 of the HEPO:

The Commission, initially, needs to state again that it is the goal of this Commission to ensure that the delivery services tariffs of Illinois electric utilities are lawful, just and reasonable. To that end, the Commission will approve the delivery services tariffs filed by electric utilities, where lawful, just, and reasonable, or will direct necessary modifications arrive at uniform tariff provisions for delivery services tariffs to the extent possible. It is not the Commission's intent to mandate identical tariff provisions among the various Illinois delivery service providers. ~~It has been and continues to be the Commission's intent to have uniform delivery services tariffs, uniform business practices and uniform delivery services implementation plans to the extent possible.~~ The Commission acknowledges that the parties have made great strides towards this uniformity through numerous workshops, both in this docket and many previous ones. It is through the efforts of the utilities, customers, marketers, and Staff that Illinois has developed many common protocols to achieve customer choice. For example, the direct access service request ("DASR") process is a case where uniformity has been achieved. There are many other instances where uniformity exists. To some extent, the provisions of the DSTs of the utilities are quite similar, even uniform in concept, ~~but not language. Some parties have argued that Illinois has reached the level of diminishing returns in uniform provisions.~~

Yet a perusal of the various existing DSTs indicates that they are dissimilar with respect to structure, and definitions. Based upon the evidence in the record, the Commission finds that adopting a common structure and definitions, while it may yield only nominal benefits, if any, will not be overly burdensome to electric utilities. The proposed customer and supplier delivery services tariffs proposed by several of the major Illinois electric utilities – AmerenUE, AmerenCIPs, ComEd and IP – contain appropriate headings and best fulfill the purpose of the tariffs. These outlines also enjoy the support of an ARES, Peoples Energy Corporation.

There are many terms that now possess a common meaning within the tariffs of the Illinois electric utilities. It is therefore appropriate that the parties work to identify the particular terms for which there is a common meaning, and to develop uniform definitions to be used in the utilities' delivery services tariffs, and wording.

The Commission finds that the arguments that pro forma tariffs are unlawful are not convincing. The Commission unmistakably has the authority to direct changes to a utility's delivery services tariffs. However, the Commission is

limited to directing necessary modifications to ensure that the tariffs of the various Illinois electric utilities are lawful, just and reasonable. The Commission has not been granted the ~~and along with that authority is the right~~ to mandate uniform language provisions and/or a pro forma tariff.

Section 16-108 provides:

(a) An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. In making any such determination the Commission shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois.

(b) The Commission shall enter an order approving, or approving as modified, the delivery services tariff no later than 30 days prior to the date on which the electric utility must commence offering such services. The Commission may subsequently modify such tariff pursuant to this Act.

The Commission agrees with the arguments that major impediments to a competitive marketplace lie outside the Commission's control or jurisdiction. However, uniform delivery services tariffs are one area over which the Commission has jurisdiction. Therefore, the Commission being of the opinion that greater uniformity in common definitions is desirable, the question remains how best to develop and implement that uniformity. The Commission believes that the workshop process, if continued, will result in additional uniformity. Pursuing uniformity through Staff-sponsored workshops, rather than through another docketed proceeding, is the appropriate course of action in light of the significant resources that will be devoted to the residential DST filing to be made by all electric utilities this year, the lack of evidence of the benefits of pro forma tariffs, and the infancy of the open access market. Staff is instructed to continue to conduct workshops to develop common definitions and uniform language. Adopting either the short schedule as articulated by Staff or the longer schedule advocated by MidAmerican in a docketed proceeding, could result in the utilities revising their filed tariffs midway through the residential DST proceedings.

IV.

The HEPO's Findings Regarding Interval Metering Are Incomplete

The HEPO correctly did not adopt a proposal -- made by Alliant in passing in two sentences of testimony -- that interval metering requirements should be the same for bundled and delivery services customers. (HEPO, p. 16). However, the HEPO does not reflect the evidence that ComEd presented regarding its interval metering program. ComEd's level of demand at which delivery services customers must have interval metering -- in brief, over 400 maximum kW delivered -- is specified in ComEd's approved customer delivery services tariff and is entirely appropriate given the added functions that interval meters serve as to delivery services customers. (Clair Reb., ComEd Ex. 7.0, pp. 41-42). There is no good reason to alter ComEd's requirement, especially given that the circumstances differ and given the prevalence already of interval meters among ComEd's bundled services customers with over 400 maximum kW delivered. (Clair Reb., ComEd Ex. 7.0, pp. 41-42).

The HEPO, at page 16 should be modified as follows to reflect the testimony that ComEd presented:

~~No party other than Alliant raised the issue of interval metering and then only~~ to note that the requirements regarding use of interval metering should not differ for similarly situated delivery services and bundled service customers. IP in response to this testimony requests that the Commission not impose any requirements concerning interval metering in this docket. ComEd states that the level of demand at which delivery services customers in ComEd's service territory must have interval metering (over 400 kW maximum delivered) is appropriate for its service territory. The Commission agrees that ComEd's current practice with regard to interval is appropriate for its service territory. Given the limited record on this issue, ~~it~~ further discussion of interval metering will be left for another time.

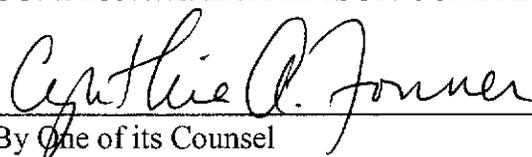
CONCLUSION

For the reasons stated in Commonwealth Edison Company's Initial brief, its Reply Brief and herein, and all reasons appearing of record, Commonwealth Edison Company respectfully requests that the Commission adopt the recommendations stated in its Initial Brief, its Reply Brief and herein.

Dated: February 23, 2001

Respectfully submitted,

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I, Cynthia A. Fonner, one of counsel to Commonwealth Edison Company, hereby certify that copies of the foregoing Brief on Exceptions of Commonwealth Edison Company were served on the persons on the attached Service List, at the addresses specified, by deposit in the United States mail, first class postage prepaid, at Three First National Plaza, 70 W. Madison St., Chicago, Illinois 60602, on February 23, 2001.



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