

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Commonwealth Edison Company	:	Docket No. 08-0532
	:	
Investigation of Rate Design Pursuant	:	
to Section 9-250 of the Public Utilities Act	:	

**COMMONWEALTH EDISON COMPANY’S
RESPONSE TO REACT’S MOTION TO COMPEL**

Commonwealth Edison Company (“ComEd”) hereby submits to the Illinois Commerce Commission (“Commission”) its Response to the Verified Motion to Compel of the Coalition to Request Equitable Allocation of Costs Together (“REACT”). As demonstrated below, the Administrative Law Judges should deny REACT’s Motion to Compel (“Motion”). In support of this Response, ComEd states as follows:

I.
ARGUMENT

A. ComEd’s Data Request Responses Are Complete And Do Not Require Further Elaboration

REACT offers no reasonable basis, either legal or otherwise, to support granting its Motion. ComEd’s responses to the subject data requests (“DRs”) are full and complete and, where appropriate, are subject to valid objections. The following addresses each DR response in turn.

1. REACT DR 2.02

REACT’s claim regarding ComEd’s response to DR 2.02 is wrong for several reasons. Motion at 3. First, it ignores ComEd’s stated objection that the DR mischaracterizes the testimony of ComEd witness Meehan. Plain reading of lines 159-70 of Mr. Meehan’s direct

testimony (which REACT fails to include in the Motion) demonstrates that REACT's DR does not comport with the testimony. (The relevant portion of Mr. Meehan's testimony is attached hereto as Exhibit A.) ComEd's response to this DR, subject to its valid objection, explains the basis of Mr. Meehan's testimony on lines 159-70. No further response is required.

The second flaw with REACT's claim is that it fails to recognize that ComEd has served on REACT all workpapers and analyses that support Mr. Meehan's direct testimony. (Attached as Exhibit B is a copy of the April 28, 2009 emails demonstrating the delivery of the subject materials to REACT.) While REACT claims that ComEd failed to provide such information in response to this DR, the fact is—even if REACT's characterization of Mr. Meehan's testimony were correct, and it is not—that ComEd has supplied the workpapers and analyses that support Mr. Meehan's testimony. Accordingly, ComEd has responded fully to this DR.

2. REACT DR 2.07

REACT's claim that ComEd's response to DR 2.07(a) "dodges the question" is wrong. Motion at 3. ComEd has fully responded to this DR. In reality, REACT does not like ComEd's response and seeks another answer. REACT's disagreement with the answer provides no basis to force ComEd to restate its response.

In order to avoid the mischaracterization of Mr. Meehan's testimony, as exemplified in REACT DR 2.02 above, ComEd's response first provides the full text of the testimony subject to the DR for context. That testimony demonstrates that in order to calculate a customer's "supply services charges," ComEd must first calculate a customer's usage. And, ComEd is responsible for calculating the usage for all of its delivery service customers, regardless of supplier. Accordingly, ComEd's response to this DR is succinct, but complete: "ComEd is required to calculate usage for all customers regardless of supplier." Put another way, ComEd's cost to calculate supply service charges does not vary based on the number of customers that may

switch to alternative suppliers. While REACT may not like that response, that is Mr. Meehan's position in response to DR 2.07(a). ComEd's response to this DR provides a complete description of Mr. Meehan's position, which is what REACT's DR seeks. As such, REACT's attempt to obtain a different answer should be rejected.

With regard to DR 2.07 (b)-(d), REACT's claim is flawed for exactly the same reasons as described for DR 2.07(a). Accordingly, REACT's claim for ComEd to supplement these DR responses should be rejected as well.

3. REACT DR 2.11

This DR focuses on a certain portion of a spreadsheet entitled "Call Center Analysis.xls."¹ (The relevant portion of this spreadsheet is attached hereto as Exhibit C.) Comparing the information presented under Column A of Exhibit C with ComEd's response to DR 2.11 shows that ComEd has provided a specific explanation for the following applicable Call Groups under Column A: "Outage", "Moving", "Other" and "Unidentified." Upon further review of ComEd's DR response, it appears that ComEd inadvertently omitted an explanation for the "Billing" call group rows subject to the DR. ComEd will supplement this DR response to include an explanation related to the "Billing" Call Group rows the week of June 1, 2009. In all other respects, though, ComEd has provided a complete response to explain why "there will be no impact on the number of calls if there is customer switching" for each row subject to the DR 2.11.

4. REACT DR 2.35-2.37

ComEd's response to REACT DRs 2.35-2.37 properly responds to the question, subject to valid objections. First, REACT seeks a list of customers in the Extra Large Load Delivery Class (Over 10MW non-high voltage). ComEd did provide the average number of customers in

¹ Notably, this spreadsheet was provided to REACT as part of the workpapers and analyses supporting Mr. Meehan's testimony. Compare with REACT's claim about such information for DR 2.02.

that class for 2006, the test year for ComEd's 2007 rate case filing. ComEd cannot provide the names of customers taking service in that class, as it is precluded from providing a customer's billing information without a customer's consent. 220 ILCS 5/16-122. In its normal course of business, ComEd does not divulge customer-specific billing information without the consent of the customer. Here, REACT seeks to obtain the names of customers taking service at a particular rate. However, the rate at which a customer takes service is part of a customer's billing information. Consequently, ComEd cannot produce that information to REACT.

REACT next claims that ComEd must have more information about the equipment used to serve the Extra Large Load Delivery Class customers, and the investment in such equipment, because ComEd provided similar information in response to Department of Energy's ("DOE") DR 2.01. Motion, pp. 3-4. REACT is wrong. As set forth in the objections to the subject DR responses, ComEd does not "compile or maintain the information requested." The reason for the difference is straightforward: the high voltage loads of the High Voltages customers (such as DOE) served through the High Voltage Electric Service Stations ("ESS") are tracked separately for transmission planning purposes. The load served through the High Voltage ESS is explicitly represented in power flow models of the transmission system. The non-High Voltage customers, which includes customers in the Extra Large Load Delivery Class, are represented in the power flow models by the loads of the distribution substations serving these customers. Because these distribution substations do not serve the loads served through the High Voltage ESSs, ComEd tracks the facilities related to serving such customers. Meanwhile, this is not the case for the customers taking service under the rates identified in REACT's DRs. Rather, no tracking of the over 10MW customers (non-High Voltage) is necessary, as their load is measured at the distribution substations. Put simply, ComEd does not track the information REACT seeks in these DRs for the customers being served in the rate classes identified. Accordingly, ComEd

provides a valid objection to producing information that it does not have available in the manner that REACT requests.

For the foregoing reasons, REACT's claims concerning ComEd's responses to REACT DRs 2.35-2.37 are without merit and should be rejected.

5. REACT DR 2.38

REACT's claims regarding its DR 2.38 should be rejected for several reasons. First, as to REACT's request for customer-specific test year billing units, ComEd's response offered to provide such information upon "receipt [from REACT] of the requisite account numbers of these customers and a meter number for each account requested." Although this response was provided to REACT on April 29, 2009, to date, ComEd has not received such information from REACT.

Second, as demonstrated in the preceding section, ComEd does not compile or maintain the information requested. REACT's reliance on ComEd's response to DOE DR 2.01 is of no value because, as described above, ComEd tracks separately High Voltage ESS customers, and the customers listed in DR 2.38 may or may not take service under that rate.

The third reason to reject REACT's claim is based on the Commission's Order in ComEd's last rate case, Docket No. 07-0566. In that proceeding, certain parties, including REACT, unsuccessfully argued that ComEd should conduct individual cost studies for certain customers.² Less than one year ago the Commission stated:

² In fact, REACT witness Fults presents testimony in this proceeding again seeking individual cost studies. (Fulfs Dir., REACT Ex. 1.0, 6:118-122.)

Given the time constraints inherent in rate making, *the Commission finds that requiring ComEd to extend the level of cost study scrutiny to that of evaluation of each individual large customer would be unwise.* A granular analysis of costs on a customer by customer basis, even for a small class of customers would likely significantly increase the number of issues and the number of litigants in these proceedings. *The Commission rejects the individual cost study proposal.*

Docket No. 07-0566, Order at 210 (entered September 10, 2008)(emphasis added). Like the last rate case, ComEd has objected to REACT DR 2.38 based on the facts that: 1) in its normal business practice, it does not compile or maintain the information sought; and 2) the DR would require a special study that is unduly burdensome and costly. There is no basis, and REACT offers none, to depart from the Commission's recent ruling rejecting calls for individual cost studies and require ComEd to engage in a special study to develop information not presently available.

For all of these reasons, therefore, REACT's claims regarding its DR 2.38 should be rejected.

6. REACT DR 2.39

ComEd's response to DR 2.39 is complete in light of its response to DR 2.35. In particular, ComEd cannot provide the customer lists that REACT seeks. Given ComEd's appropriate response to DR 2.35, its claims concerning DR 2.39 should be rejected.

B. REACT's Request For Leave To File Supplemental Direct Testimony Should Be Rejected

Even assuming that one or more of the DR responses subject to this Motion require additional information, and they do not, REACT's request for leave to file supplemental direct testimony should be denied.³ Any timing issues surrounding the production of information to

³ REACT claims in a footnote that it "reserves the right" to file supplemental direct testimony. Motion, p. 2. However, REACT cites to no legal authority for that proposition because no such "right" exists. For the reasons discussed herein, REACT's claim should be denied.

REACT is entirely of REACT's own making. There is no reasonable basis to award REACT special treatment and alter the Commission-approved schedule.

REACT's Motion omits the following facts:

- First, despite being an active party in ComEd's last rate case, Docket No. 07-0566, REACT did not file a Petition to Intervene ("Petition") in this proceeding until almost six months after the Commission initiated this Docket, and more than three months after the Commission approved the schedule for this proceeding.⁴ Moreover, REACT sought intervention more than one month after ComEd filed its direct testimony in this proceeding, which was January 30, 2009. In addition, when REACT filed its Petition, it was flawed, and only corrected through a subsequent pleading.
- Second, REACT fails to explain why it delayed seeking intervention, despite the fact that REACT's counsel "appeared" at the first and second status hearings, on October 1 and October 15, 2008, respectively. Tr. at 3, 7, 14, 18. Clearly, REACT was aware of this proceeding and demonstrated an interest from the very earliest stages of this case.
- Third, while its Petition was granted on April 8, 2009, REACT did not file its first set of DRs until April 15, 2009, which include all of the DR responses subject to this Motion.
- Fourth, all of the DR responses subject to this Motion were timely served on REACT's counsel on or before May 13, 2009, pursuant to Section 200.410(b) of the Commission's Rules of Practice.⁵ 83 Ill. Admin. Code 200. The response to REACT DR 2.38 was served on April 29, 2008, while the remaining responses were served on May 12 and 13, 2009.
- Fifth, despite receiving the subject DR responses on or before May 13, 2009, and knowing the evidentiary schedule, REACT did not raise an issue with these responses until REACT's counsel sent an email to ComEd counsel at 7:10 p.m. on Tuesday, May 19, 2009. Motion, Exhibit I. Furthermore, despite receiving ComEd's response before 3 p.m. the following day, Wednesday, May 20, 2009, REACT did not file the Motion until the afternoon of Friday, May 22, 2009.

⁴ The Commission initiated this proceeding on September 10, 2008, and approved the schedule on November 13, 2008. REACT filed its Petition to Intervene on March 5, 2009.

⁵ REACT's claim that ComEd was untimely in responding to REACT's DRs is false. Motion, p. 2, fn 1. ComEd's responses to the subject REACT DRs were submitted on or before the 28 days allowed under the Commission's Rules of Practice. (See Exhibit D, which are copies of three emails serving the DR responses subject to this Motion.) In fact, in certain circumstances ComEd responded to REACT DRs within seven days, even though REACT served such DRs at 4:56 p.m. on a Friday afternoon. See REACT's Motion, Exhibit J.

- Finally, REACT's Petition states that it would accept the current state of the record. Pet. at 2. At the time REACT intervened, and at the time intervention was granted, REACT was aware of the schedule, and the fact that the timing for submitting DR responses was 28 days, not some other expedited response schedule.

The foregoing discussion demonstrates clearly that REACT, not ComEd, is solely responsible for any timing issues related to the collection of information necessary for the filing of testimony. In all respects, ComEd responded in a timely fashion to REACT's DRs and questions concerning ComEd's responses. While there is no basis to grant this Motion, should it be determined that ComEd must provide additional information related to the subject DRs, REACT should not be given special treatment as a result of its inactivity during the first seven months of this proceeding.

II. **CONCLUSION**

WHEREFORE, for all of the reasons set forth above, Commonwealth Edison Company respectfully requests that the Administrative Law Judges deny REACT's Motion to Compel.

Dated: May 29, 2009

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

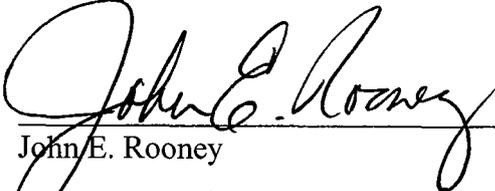
By: /s/ John E. Rooney
One of its attorneys

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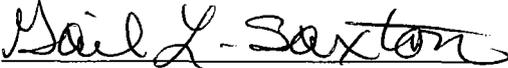
VERIFICATION

I, John E. Rooney, being first duly sworn, depose and state that I am an attorney for Commonwealth Edison Company, that I have read the foregoing Response to REACT's Motion to Compel, that I am familiar with the facts stated therein, and that to the best of my information and belief, the facts are true and correct.



John E. Rooney
Attorney for Commonwealth Edison
Company

Subscribed and sworn to before me
this 29th day of May, 2009.



Notary Public



CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I caused a copy of Commonwealth Edison Company's Response to REACT's Motion to Compel to be served upon the service list in Docket No. 08-0532 by email on May 29, 2009.

/s/ John E. Rooney

John E. Rooney