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**ILLINOIS COMMERCE COMMISSION**  
CHIEF CLERK'S OFFICE

**COMMONWEALTH EDISON COMPANY** )  
)  
Petition for expedited approval of implementation )  
of a market-based alternative tariff, to become )  
effective on or before May 1, 2000, )  
pursuant to Article IX and Section 16-112 )  
of the Public Utilities Act. )

Docket No.00-0259

**EXCEPTIONS OF NEWENERGY MIDWEST, L.L.C.**  
**TO HEARING EXAMINER'S PROPOSED ORDER**

**I. INTRODUCTION**

NewEnergy Midwest L.L.C. ("NewEnergy") files these Exceptions to the Hearing Examiner's Proposed Order dated April 21, 2000. In making these exceptions, NewEnergy will demonstrate that the Hearing Examiner's decision to recommend approval of the Petition of Commonwealth Edison Company for Expedited Approval of a Market-Based Alternate Tariff (the "Petition") with an automatic expiration date was appropriate, yet should have included additional mechanisms for assuring that an accurate Market Value is reflected in any Market Value calculation used as an alternative to that provided by the Neutral Fact Finder ("NFF") under the Electric Service Customer Choice and Rate Relief Law (the "Act"). As described more fully herein, even the proposed methodology does not accurately reflect the price at which ComEd sells, and its customers buy, power and energy. See 220 ILCS 5/116-112(a). Since the NFF Market Value calculation is otherwise available to Commonwealth Edison Company ("ComEd")

if it does not agree with any further refinements to its proposed methodology, NewEnergy believes that the Commission should require ComEd to revert to the NFF Market Value calculation as of January 1, 2001 in the event the Illinois Commerce Commission (“Commission”) suggests, and ComEd rejects, further improvements to its proposed methodology.

Accordingly, while NewEnergy supports approval of ComEd’s Petition with any modifications deemed reasonable by the Commission and will detail in these Exceptions certain recommendations previously discussed in its Verified Comments yet not adopted by the Proposed Order, NewEnergy believes that at a minimum the Commission should modify the Proposed Order so as to require ComEd to use the NFF Market Value calculation as of January 1, 2001 should it not agree to further modifications advanced by the Commission as part of a workshop process agreed to by ComEd or otherwise.

## **II. DISCUSSION**

NewEnergy supports the Hearing Examiner’s decision to recommend approval, with certain modifications, of ComEd’s Petition. A key element to NewEnergy’s support of ComEd’s Petition has been the Commission’s continued ability to monitor the operation of the proposed methodology and recommend reasonable modifications to the Market Value calculation over time. At NewEnergy’s request, ComEd agreed to participate in Commission sponsored workshops regarding the sufficiency and inadequacies of the proposed Market Value calculation (Verified Comments of

NewEnergy, p 10). Importantly, NewEnergy does not support use of the proposed methodology indefinitely for reasons previously identified in its Verified Comments.<sup>1</sup>

In considering the positions of the various parties on the Petition, the Hearing Examiner suggested the Commission should require ComEd to modify its proposed tariff to limit its application via an automatic expiration of May 2001 (Proposed Order, p 25). NewEnergy supports the use of a “sunset provision” in a tariff as a means of requiring ComEd to maintain an accurate and fair Market Value calculation. NewEnergy believes, however, that the objective of maintaining an accurate Market Value calculation would best be accomplished were the Commission to also require ComEd to update the methodology with any specific Commission recommended improvements which become known in the future as part of the workshop process or otherwise. Should ComEd not wish to implement the improvements suggested by the Commission, the Commission should require ComEd to return to the Market Value calculation provided by the Neutral Fact Finder as of January 1, 2001. As noted by NewEnergy in its Verified Comments at pages 13-20, even the Market Value calculation proposed in the Petition is lacking in its reliance on a Mid-Point Methodology and may require further Commission refinement at the appropriate juncture.<sup>2</sup>

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<sup>1</sup> See NewEnergy’s Verified Comments at page 9 where NewEnergy identifies several areas in which the proposed Market Value calculation is inadequate.

<sup>2</sup> “Mid-Point Methodology” refers to the process of averaging the bid and ask prices identified in certain price reporting services as a means of determining the price at which ComEd sells, and customers buy, power and energy. As noted by NewEnergy on pages 13-20 of its Verified Comments, the averaging of prices inaccurately reflects the price at which ComEd sells power and energy and as a result sets prices too low. See also, *infra* p 9.

**A. THE ACT PROVIDES COMED MAY ELECT TO CALCULATE MARKET VALUE USING THE NFF IN THE EVENT IT OBJECTS TO COMMISSION MODIFICATIONS TO ANY ALTERNATE METHODOLOGY.**

Significantly, the Act provides a process by which ComEd and the Commission are to consider alternate Market Value calculations to that provided by the NFF. Notably, nothing in the Act requires the Commission to approve an alternate to the NFF Market Value calculation, nor requires ComEd to accept a specific methodology advanced by the Commission. Rather, the Act appears designed to rely on the NFF to establish a market value where ComEd and the Commission are unable to agree to an alternate methodology that meets the Act's objective of fair competition and serves the public interest. As noted in its initial Verified Comments, NewEnergy believes that in approving the Petition, the Commission should not relinquish its role in supervising ComEd in these early days of competition. Importantly, ComEd has made great progress in filing the Petition, yet the expedited nature of this proceeding – and the alleged deficiencies of the Petition even now – suggest Commission involvement and oversight of any alternate methodology is warranted.

**B. CONTINUED COMMISSION REVIEW OF THE MARKET VALUE CALCULATION IS IN THE PUBLIC INTEREST.**

Any approval of ComEd's Petition should have as its primary objective the calculation of a Market Value which is consistent with the Act, is fair to ComEd, and meets the public interest. As noted in its Intervention in this case and Verified Comments,<sup>3</sup> NewEnergy believes ComEd's Petition meets these general principles but may require further modification at the appropriate time to adapt to changing conditions and to more accurately reflect Market Values.

Importantly, the Hearing Examiner suggested a sunset provision as a way to further these objectives, stating “If it wishes, ComEd may attempt to demonstrate that Rider PPO-MI should be adopted on a longer term basis in a proceeding with a less restrictive schedule that will provide the opportunity for a more comprehensive review of the proposal.” Proposed Order, p 25. While NewEnergy supports this approach, NewEnergy also believes that continued Commission supervision of the Market Value calculation proposed in this case is in the public interest. Indeed, given the expedited nature of the Petition and the positions of other parties, further Commission consideration of the methodology through its supervision of the workshop process may reveal a need for modification to the proposed methodology before May 2001. Accordingly, NewEnergy recommends that the Commission fashion – in combination with the sunset provision suggested by the Hearing Examiner – a mechanism which allows for timely revisions to the methodology should the Commission deem them appropriate in the future.

Notably, continued review of the methodology is consistent with the objective of the Petition – advancement of competition rather than a near certain return of all of ComEd’s customers to service under Rider PPO (NFF) for a twelve month period. The re-monopolization of the market which ComEd is facing this summer could have simply been avoided through a summer wholesale offer by ComEd at existing NFF rates, yet ComEd instead chose to seek Commission review and approval of an alternate methodology for calculating Market Value. NewEnergy has stated throughout the workshop process that the wholesale offer originally presented by ComEd was nothing more than the PPO in a multi-colored top-coat. (*i.e.*, wholesale service selected, by

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<sup>3</sup> See generally the principles suggested by NewEnergy in its Verified Comments at page 3.

customer, for all volumes metered through the May of 2001 billing period priced at the same Market Value used to determine the customer's CTC).<sup>4</sup> Indeed, a core aspect of this Petition that advances competition is ComEd's willingness to make wholesale power and energy available at those prices to ARES on a full requirements basis for a limited period of time. Such willingness would provide ARES access to summer wholesale supplies at the existing NFF rates, with the ability to directly serve from other sources thereafter. Since allowing ARES who currently directly serve their retail customers through procurement of wholesale power in the competitive markets to continue doing so is a primary objective of finding an alternative to the NFF, NewEnergy believes it reasonable to condition the continued availability of the alternate methodology to ComEd to its willingness to incorporate further Commission recommendations should they be deemed appropriate.

**C. THE PUBLIC INTEREST FAVORS SPEEDY IMPLEMENTATION OF ANY REASONABLE MODIFICATIONS TO THE MARKET VALUE CALCULATION.**

In filing the Petition on March 31, 2000, ComEd has asked the Commission and other parties to support adoption of an alternative to the market value calculation provided by the NFF under the Act on effectively less than thirty (30) days notice. Clearly, ComEd recognizes that the public interest favors regulatory review of the Market

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<sup>4</sup> ARES already have the ability to take assignment of customers' interest in the PPO pursuant to Section 16-115 of the Act (220 ILCS 5/16-115) yet ComEd has required that this service be taken for a period of not less than twelve months. This assignment is also at rates equal to the Market Value used to determine a customer's CTC.

Value calculation on an expedited schedule where an existing methodology is found lacking and harmful to competition.<sup>5</sup>

Given many of the uncertainties identified by various parties with the methodology advanced by the Petition in this case, the public interest may again require a timely mechanism to improve its operation. Simply put, in approving any alternate methodology, it would be unwise in this early stage of competition and via an expedited proceeding to risk having a Market Value calculation which does not reflect the marketplace and does not allow for appropriate modifications. ComEd itself acknowledges that “competitive markets turn on a dime” and has committed itself to “work with the Commission and interested parties [to] improve this methodology if needed in the future.” Com Ed Verified Response, p 2, p 6. In keeping with these statements, ComEd has agreed to participate in workshops to address these questions. Accordingly, the Commission will soon have additional opportunities to review the sufficiency of any alternate Market Value calculation.

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<sup>5</sup> ComEd explained the filing of its Petition in this case with a press release stating:

The NFF is coming up with numbers that are stale and not reflective of more current views of future market prices . . . It is critical that this market value be accurate. Electric utilities are required to offer to sell electricity at this price.

If the price is wrong – too low or too high – both the utilities and competitors are adversely affected. This summer, for example, the NFF’s established market value is much lower than actual market prices. As a consequence, it is difficult for other retailers to compete with the price, at which ComEd is required to sell power, virtually ensuring that customers who have switched will return to ComEd service. ComEd proposes using marketplace indices as a more accurate alternative. Those indices reflect what consumers are willing to pay to purchase power. *See* “ComEd Urges ICC to Spur True Competition” dated March 31, 2000, Commonwealth Edison Company Press Release.

**D. THE HEARING EXAMINER'S RECOMMENDATION OF A SUNSET PROVISION WAS AN APPROPRIATE, YET INCOMPLETE, MEANS OF ESTABLISHING AN ACCURATE MARKET VALUE CALCULATION.**

Neither ComEd nor the Proposed Order, however, suggests an appropriate mechanism for maintaining an accurate Market Value Calculation other than requiring ComEd to re-file with the Commission should it wish to continue using the proposed methodology. Approval of the Petition along with an automatic end date as recommended by the Hearing Examiner does advance the interests of competition over the short term. Further, such approval would require ComEd to further support the basis for its methodology in the future should it desire its continued use as an alternative to the Market Value provided by the NFF. While NewEnergy agrees generally with the approach of this recommendation by the Proposed Order, NewEnergy believes that if the Commission questions whether the operation of the methodology will be sufficient to advance the public interest as an alternate to the NFF, additional safeguards should be included in the Commission's approval. Specifically, NewEnergy recommends approval of a Market Value calculation authorized for use only through May 2001 and allowing for Commission-recommended modifications as a result of the workshop process or otherwise. NewEnergy believes this modification more effectively furthers the public interest and advances the interests of competition and certainty in the marketplace.

As is made clear by the detailed criticisms of ComEd's Petition by parties such as Enron Energy Services, Inc. and the Illinois Industrial Energy Consumers, significant issues exist with the potential operation of the proposed methodology. If after implementation of any approved alternate methodology it appears those concerns or others bear further scrutiny by the Commission, the public interest supports a return to

the NFF on January 1, 2001 in the event ComEd does not agree to implement any changes recommended by the Commission.

Accordingly, NewEnergy recommends the Proposed Order be modified to include a mechanism allowing for revisions to the proposed methodology that the Commission deems appropriate after a thirty (30) day notice and comment procedure by interested parties. In the event ComEd does not agree to the recommended revisions, ComEd shall inform the Commission that it will instead elect to utilize the Market Value calculation provided by the NFF as of January 1, 2001. Specifically, NewEnergy recommends the Proposed Order be modified to require ComEd to include in its tariff a provision stating as follows:

In the event ComEd is notified in writing by the Commission of an initial request for modification in this tariff at any time, ComEd shall respond to such request in writing supported by affidavit and such other information as the Commission may require and shall make such response publicly available. Further, if after responding to such request, ComEd does not elect to implement the modification suggested by the Commission within thirty (30) days of the initial request, ComEd shall inform the Commission that it has elected to return to the NFF Market Value calculation as of January 1, 2001.

**E. THE PROPOSED MARKET VALUE CALCULATION DOES NOT ACCURATELY REFLECT THE PRICE AT WHICH COMED SELLS, AND CUSTOMERS BUY, ENERGY.**

ComEd claims that its Market Index proposal is reflective of the market in which ComEd sells and customers in its service area buy electric power. Contrary to ComEd's noble claims, ComEd's proposal actually provides equal recognition to not only the value ComEd can sell electricity but also the value ComEd can buy electricity. (Verified Comments at 13)

Section 16-112(a) of the Act provides, in part, that the determination of Market Value should be “. . . applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy” (220 ILCS 5/16-112(a)). The Act is clear that Market Value shall be determined based on the market in which the utility sells electric power and energy. The Act makes no reference, whatsoever, that *Market Value shall be determined based on the market in which the utility buys electric power and energy.* Moreover, NewEnergy has noted that throughout this proceeding, as well as prior proceedings in Docket Nos. 99-0117 and 99-0171, ComEd has stated that Market Value is to reflect the value of freed-up electricity that ComEd can sell when retail customers choose delivery services and move to an ARES. (Id. at 14) ComEd’s proposed index methodology, where equal recognition is given to the value ComEd can sell and buy electricity, is inconsistent with both its stated objective and the definition of Market Value found in the Act.

NewEnergy proposes to expand on the position summary statements found in the last partial paragraph starting at the bottom of Page 21 of the Proposed Order. Prior to the full sentence that starts on Line 8, NewEnergy recommends insertion of the following language:

NewEnergy states that ComEd’s Market Index proposal is purportedly reflective of the market in which ComEd sells and customers in its service area buy electric power. (Verified Comments at 13) NewEnergy notes that ComEd’s witness Arlene Juracek states: “The market value to be used in the calculation of transition charges is intended to represent the value of the freed-up electricity that ComEd can sell when retail customers move to an ARES.” (Id. at 13) Throughout this proceeding, as well as prior proceedings in Docket Nos. 99-0117 and 99-0171, NewEnergy notes that ComEd has taken the identical position that Market Value is to reflect the value of freed-up electricity that ComEd can sell when retail customers choose delivery services and move to an ARES. (Id. at 14) NewEnergy contends that despite ComEd’s stated objective, ComEd’s proposal

“gives equal recognition to not only the value ComEd can sell electricity but also the value ComEd can buy electricity” (Id. at 14).

NewEnergy’s Verified Comments offered potential modifications to bring ComEd’s proposed index methodology in-line with ComEd’s stated objective that Market Value should reflect “the value of freed-up electricity that ComEd can sell.” (Verified Comments at 15-19) Correction of the computational errors underlying ComEd’s proposal will allow ComEd to provide the benefits of a Market Index it espouses while also meeting its stated objective. (Id. at 20)

The methodology proposed by ComEd provides equal recognition to not only the value that ComEd sells power and energy, but also the value that ComEd buys power and energy. This methodology runs in direct opposition to ComEd’s stated objective, as well as the definition of Market Value found in the Act. By taking the midpoint of the bid to offer/ask spreads found in the Altrade and Bloomberg electronic exchanges (where virtually 100% of the data points used to calculate the monthly Forward Market Price reflects ComEd postings and not actual transactions), ComEd’s proposed methodology provides equal recognition to the value ComEd can sell and buy power and energy in the peak period, thereby artificially depressing the monthly Forward Market Price component of ComEd’s proposal. (Verified Comments at 15-16) In addition, by taking the midpoint of the historical daily trading ranges from Power Markets Week’s *Daily Price Report*, ComEd’s proposed methodology provides equal recognition to the value ComEd may have historically sold and bought power and energy in the off-peak period, thereby artificially depressing the monthly Off-Peak Market Price component of ComEd’s proposal. (Id. at 17-19) The end result is that the Peak and Off-Peak Market Values have

been artificially depressed and this, in turn, results in ComEd's proposed transition charges being artificially inflated. (Id. at 14)

As NewEnergy noted in its Verified Comments, ComEd has never sold off-peak power to NewEnergy in the \$11-\$15 monthly range underlying its index proposal. However, ComEd has bought off-peak power and energy from NewEnergy in the low end of this \$11-\$15 monthly range. (Verified Comments at 18) This is due to the fact that ComEd, like all utilities, makes purchasing decisions based on economically dispatching its generation resources, unlike an ARFS that makes purchasing decisions based on contractual requirements to serve retail load. (Id. at 18)

NewEnergy proposes to expand on the position summary statements found in the first partial paragraph starting on Page 22 of the HEPO. At the end of the paragraph found at the very top of Page 22, NewEnergy recommends insertion of the following language:

NewEnergy states that ComEd's Market Index proposal provides equal recognition to the value ComEd can sell and buy power and energy in the peak period. (Verified Comments at 15) NewEnergy argues that use of the midpoint of the paired bid and offer provides equal weighting to both an offer to buy (bid) and sell (offer/ask). (Id. at 15) NewEnergy offers an example to illustrate the undesirable outcome of this methodology in the peak period, noting that it is not consistent with ComEd's position that market value is "the value of the freed-up electricity that ComEd can sell." (Id. at 16) NewEnergy presents a proposed solution to correct the shortfall in ComEd's methodology for the peak period whereby only the offer/ask price is utilized in the peak period daily hierarchy. (Id. at 16) NewEnergy also states that ComEd's Market Index proposal provides equal recognition to the value ComEd may have historically sold and bought power and energy in the off-peak period. (Id. at 17) NewEnergy argues that use of the midpoint of the historical daily trading range provides equal weighting to both the value ComEd may have bought and sold power in the off-peak period. (Id. at 17) NewEnergy offers an example to illustrate the undesirable outcome of this methodology in the off-peak period, noting that it is not consistent with ComEd's position that market value is "the value of the freed-up electricity that ComEd can sell." (Id. at 17-18) NewEnergy also argues that use of the midpoint of the Power Markets Week's *Daily Price Report* trading range encompasses the

entire range where utilities are buying in the off-peak period (below the incremental cost of generation) and selling in the off-peak period (incremental cost of generation plus a margin plus a contribution to fixed costs). (Id. at 18-19) NewEnergy states that ComEd has never sold off-peak power to NewEnergy in the monthly range reflected in ComEd's proposal, but ComEd has bought off-peak power from NewEnergy in the low end of the monthly range reflected in ComEd's proposal (Id. at 18) NewEnergy presents a proposed solution to correct the shortfall in ComEd's methodology for the off-peak period whereby the upper limit of the historical daily trading range is utilized in the off-peak period. (Id. at 19)

### III. CONCLUSION

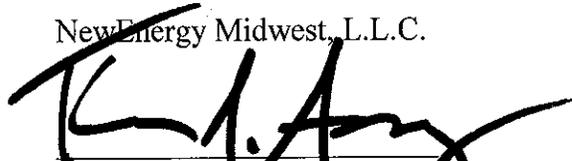
Specifically, NewEnergy recommends the Commission adopt an order in response to the Petition that: (1) Approves an alternate market based Market Value calculation in the form submitted by ComEd with any limited modifications deemed reasonable by the Commission; (2) Modifies the Proposed Order consistent with these Exceptions; (3) Sets a time schedule for initiation and completion of workshops regarding the sufficiency and inadequacies of any alternate methodology that is approved; (4) Provides that continued availability of any alternate methodology remains subject to Commission jurisdiction and modifications consistent with the public interest; (5) Establishes that if at any time before January 1, 2001 ComEd does not agree with modifications to the methodology recommended by the Commission, ComEd will be required to revert to the market values derived by the Neutral Fact Finder for transition charges and Rider PPO effective January 1, 2001; and (6) Conditions continued availability of use of the alternate methodology upon ComEd making available wholesale power and energy to energy marketers serving retail customers at a price equal to the Market Value calculation. NewEnergy believes



that adoption of such an order appropriately balances the necessity for action to preserve competition under the current situation and the need for improved long-term cooperation by ComEd in the design and operation of alternates to the Neutral Fact Finder process.

Respectfully submitted,

NewEnergy Midwest, L.L.C.



DATED: April 24, 2000

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**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission :  
On Its Own Motion :  
 :  
-vs- : ICC Docket No. 00-0259  
 :  
Commonwealth Edison Company :  
 :  
Petition for expedited approval of implementation :  
of a market based alternative tariff, to become :  
effective on or before May 1, 2000, pursuant to :  
Article IX and Section 16-112 of the Public Utilities :  
Act. :

**NOTICE OF FILING**

To: Attached Service List.

**PLEASE TAKE NOTICE** that on this 24<sup>th</sup> day of April, 2000, NewEnergy Midwest, L.L.C. has filed via next day mail with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois, the Exceptions

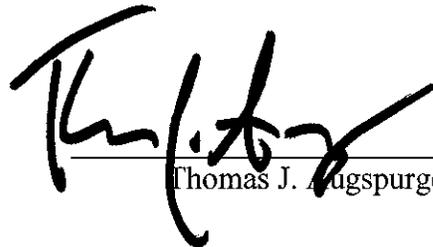
of NewEnergy Midwest, L.L.C. To Hearing Examiner's Proposed Order, a copy of which is hereby served upon you.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that copies of the above Notice, together with copies of the documents referred to therein, have been served upon the parties to whom the Notice is directed by messenger, electronic mail, facsimile and/or first class mail, proper postage prepaid, from Chicago, Illinois on the 24<sup>th</sup> day of April, 2000.



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