STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	**)**	
	)	
Petition to Approve an Advanced Metering	**)**	**Docket 09-0263**
Infrastructure Pilot Program and Associated Tariffs	**)**	

METRA'S INITIAL POST HEARING BRIEF

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra ("Metra"), provides intercity passenger rail service over its 475 mile track system serving 230 stations in the six county Chicago metropolitan region. [Metra/CTA Joint Ex. 1.0 at 2:45 to 3:58]. Metra operates an electric train service district which extends from downtown Chicago to the south suburbs, and is powered by electricity referred to as traction power. Metra pays for the traction power electricity used to power its electric train service district under rates charged to the Railroad Delivery Class of service. The only other member of the Railroad Class is the Chicago Transit Authority ("CTA"), which also pays for its traction power at the rates established for the Railroad Class.

I. SUMMARY OF METRA'S POSITION

Metra does not oppose the AMI project proposed by Commonwealth Edison Company ("ComEd") in this proceeding or the related Customer Applications pilot project. Metra does, however, oppose the use of a rider as a cost recovery mechanism for these projects, and believes that use of a rider is neither lawful nor appropriate. Metra also submits that it should not be required to bear any of the costs of these pilot projects, as there is no evidence that they will have any direct or indirect benefit to Metra other than as a general member of society. If the decision is made to assess any costs to Metra, then Metra submits that the costs of the AMI project should

be assessed utilizing the weighted meter allocation factors as described in the testimony of Dr. Robert Stephens sponsored by the Illinois Industrial Energy Consumers ("IIEC").[1]

II. BRIEF DISCUSSION OF PUBLIC POLICY CONSIDERATIONS CONCERNING THE RAIL CLASS'S DELIVERY SERVICE RATE

The unrebutted testimony in this case is that the Railroad Class generates enormous environmental and economic benefits through congestion mitigation and the replacement of automobiles with more environmentally friendly and efficient public transportation. [Metra/CTA Joint Ex. 1.0 at 4:85 to 5:98]. In the last two ComEd delivery services rate cases, the Commission has instructed ComEd that the rates set for the Railroad Class should account for the important public policy considerations associated with the Railroad Class due to the environmental benefits, energy services and overall public benefits generated by the public transportation providers. [July 26, 2006 Final Order at 189-90, ICC Dkt. 05-0597; September 10, 2008 Final Order at 223, ICC Dkt. 07-0566]. According to ComEd's Director of Regulatory Affairs, ComEd paid no heed to the Commission's public policy directives in setting the rate design for the rider at issue in this proceeding. [Tr. at 233:12-17].

As discussed below, the record in this case reflects that ComEd's proposed rider violates some basic ratemaking principles. It also reflects continued resistance to the Commission's directives concerning public policy considerations to be taken into account in the ratemaking process.

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1 This brief does not address ComEd's request for approval of a recovery mechanism for potential federally funded ARRA Smart Grid projects, as that request was stricken from this case.

III. USE OF A RIDER TO RECOVER THE AMI AND CUSTOMER APPLICATION PROJECT COSTS IS NEITHER LAWFUL NOR APPROPRIATE

A. Approval Of ComEd's Rider Would Violate The Prohibition On Single-Issue Ratemaking.

The prohibition on single-issue ratemaking is "a ratemaking principle which recognizes that the revenue formula is designed to determine a utility's revenue requirement based on the utility's aggregate costs and demand." *Citizen's Utility Board v. Illinois Commerce commission*, 166 Ill.2d 111, 137, 651 N.E.2d 1089, 1102 (1995). It therefore is unlawful for an order to isolate and require full recovery through a rider of an operating expense "without considering whether changes in other expenses or increased sales and income obviates the need for increased charges to consumers, which may result impermissibly in ratepayers fearing additional charges for direct and indirect additional revenues to cover Edison's expenses and pay a return to its investors." *A.J. Finkl & Sons Co. v. Illinois Commerce Commission*, 250 Ill. App. 3d 317, 325, 620 N.E.2d 1141, 1147 (1st Dist.), *appeal den'd*, 153 Ill.2d 557, 624 N.E.2d 804 (1993).

While it is true that the single-issue ratemaking prohibition only applies in the context of a complete base rate proceeding, the Commission's Final Order in ICC Docket 07-0566 is in fact what ComEd claims as the source of authority for its proposed rider in this proceeding. Because what ComEd seeks to recover is its AMI and customer applications project costs without regard to fluctuations in other revenues and costs, the proposed rider is unlawful and violates the prohibition on single-issue ratemaking.

B. Use Of A Rider In This Case Is Inappropriate Because The Traditional Justifications For Rider Use Are Not Present Here.

The courts have recognized that riders may appropriately be utilized to recover costs and alleviate "the burden on a utility in meeting *unexpected, volatile,* or *fluctuating* expenses. *A.J. Finkl & Sons*, 250 Ill. App. 3d at 327, 620 N.E.2d at 1148 (emphasis in original). Thus, the

Illinois Supreme Court has approved use of riders to authorize recovery of the fluctuating and unpredictable wholesale cost of natural gas, as well as recovery for wide variations and unpredictable costs of residual coal tar investigation and remediation requirements imposed by law. See, *City of Chicago v. Illinois Commerce Commission*, 13 Ill.2d 607, 612-14, 150 N.E.2d 776, 779-80, (1958); *Citizen's Utility Board*, 166 Ill.2d at 138-39, 651 N.E.2d at 1103. In contrast, where the costs are known, readily calculable and not significant, use of a rider has been rejected. *See, e.g., A.J. Finkl & Sons*, 250 Ill. App. 3d at 327, 620 N.E.2d at 1148.

The Commission has a somewhat broader view of its authority to approve imposition and use of riders. In the Final Order in the consolidated North Shore and Peoples Gas Light and Coke Company natural gas rate cases issued on February 5, 2008, in ICC Consolidated Dockets 07-0241 and 07-0242 (Cons.) ("North Shore Final Order"), the Commission acknowledged that the courts closely scrutinize riders. North Shore Final Order at 159. In rejecting a rider proposed by both North Shore and Peoples Gas for accelerated recovery of gas main replacements, the Commission listed a series of considerations that might have made it easier to approve the proposed "Infrastructure Cost Recovery" rider:

> [A] detailed description and cost analysis of the proposed system modernization; an identification and evaluation of the range of technology options considered and analysis and justification of the proposed technology approach; a detailed identification and description of the functionalities of the new system, related both to system operation as well as on the customer side of the meter, as well as an identification and justification of functionalities foregone; analysis of the benefits of the system modernization, both to system operation as well as to customers; these benefits should include reductions in system costs as well as an analysis of the range and benefits of potential new products and services for customers made possible by the system modernization; an analysis of regulatory mechanisms to allow companies to both recover their costs of system modernization as well as to flow reduced system costs back to customers; and an identification and analysis of legal

> or regulatory barriers to the implementation of system modernization proposals.

Id. at 162. In the North Shore case, the Commission refused to approve the proposed rider, finding that "Rider ICR provides no estimate of the costs or savings under the accelerated program, nor does it demonstrate that the savings will outweigh the additional costs paid by ratepayers under the proposed rider." *Id*. at 161. The Commission concluded that: "Absent a clear evidentiary record which demonstrates the benefit of Rider ICR, the Commission must reject the proposal." *Id*. at 162.

There is no basis in this record to authorize the use of a rider. In his prefiled rebuttal testimony, ComEd's new Director of Regulatory Affairs, Dr. Ross Hemphill, had attempted to defend use of a rider on general ratemaking principles on the grounds that riders are appropriate where costs are significant, unpredictable and uncontrollable. [ComEd Ex. 8.0 at 12:254 to 13:258]. However, Dr. Hemphill testified at the hearing that ComEd's costs associated with the AMI project are neither significant, unpredictable nor uncontrollable:

> Q. Do you consider the costs of the AMI pilot to be significant?
> A. I think of the AMI pilot alone, I wouldn't view it significant. But, again, these were written with the ARRA in mind, as well.
> Q. Okay. Do you view the cost of the AMI pilot to be unpredictable?
> A. No, they're not unpredictable.
> Q. Do you view the costs of the AMI pilot to be uncontrollable?
> A. No, they're not uncontrollable because, as in this case, we have as budget that we are proposing.

[Tr. at 261:2-14].

The traditional justifications for use of a rider do not exist in this case. Even ComEd admits that AMI project costs are not significant, unpredictable or uncontrollable, and there is

absolutely no evidence in the record of a meaningful cost benefit analysis. Whether one applies the court's or the Commission's standards for approval of a rider, ComEd's proof fails to meet any accepted applicable standard, and use of a rider therefore is not justified.

IV. COMED'S PROPOSED COST RECOVERY MECHANISM VIOLATES FUNDAMENTAL RATE DESIGN PRINCIPLES AND IMPOSES EXORBITANT COSTS ON THE RAILROAD CLASS FOR PROJECTS AFFORDING NO BENEFIT TO THE RAILROAD CLASS

The testimony in this case is clear that there are no benefits flowing to the Railroad Class from the AMI and Customer Applications projects. Accordingly, if use of a rider is approved by the Commission, requiring the Railroad Class to pay anything for these projects is unwarranted. Under no circumstances should the Railroad Class be required to pay the substantial annual amounts sought by ComEd.

ComEd proposes to recover the cost of the AMI and Customer Applications by assessing costs to customers based on a percentage of revenues basis. Since Metra and the CTA are large users of traction power, that means that ComEd is seeking authority to recover in excess of $48,000 annually from the Railroad Class. [ComEd Ex. 5.02]. When ComEd's Director of Regulatory Affairs, Dr. Ross Hemphill, initially testified at the hearing, he knew that the proposed costs to the Railroad Class was in the neighborhood of $48,000 annually, but he did not know whether the Railroad Class in fact would receive any of the AMI meters. [Tr. at 216:6 to 217:4]. After checking with his staff, Dr. Hemphill later testified that the "Railroad Class would receive 6 of the 141,000 AMI meters" proposed for installation as part of the AMI project. [Tr. at 280:13-17]. There is no testimony as to the exact functions these meters will perform, where they will be installed, how they will be integrated with the Railroad Class's existing SCADA systems and AMR meters, or what they will cost.

With respect to the customer applications analysis, the Railroad Class, like all other non-residential classes using 400kW or more annually, is not included in the study group and will not benefit from the project. Dr. Hemphill's testimony is clear on that point:

> Q. And the vast majority of those [141,000 AMI meters] are going into the residential class, correct?
> A. Within the footprint, all customers will get AMI meters, not just residential. The customer applications will apply to just the residential, but all customers within the footprint will get an AMI meter. [Tr. at 239:21 to 240:8].
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> * * *
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> Q. And now, as I understand it, based on your testimony earlier today, none of the customer application's programs will benefit the customer's 400 kW and over, is that correct, they're all intended to affect the residentials?
> A. There will be no customer applications tests on those customers, that's correct. [Tr. at 267:4-10].

The testimony of Metra's expert witness, James G. Bachman, was quite clear that there are no benefits to Metra from the AMI project. As explained by Mr. Bachman, Metra and the CTA have invested their money in SCADA systems and have AMR meters installed at each substation. Metering information regarding the Railroad's traction power usage is sent instantaneously to Metra and CTA dispatchers where it is continuously monitored. [Metra/CTA Joint Ex. 1.0 at 60-66]. Mr. Bachman concisely testified that there is no benefit to the Railroad Class from the AMI pilot program and no justification to recover costs from the Railroad Class:

> Q. Please address Rider AMP cost recovery.
> A. Rider AMP cost recovery is projected to be spread across all customer delivery classes, regardless of the cost causation and potential benefits of the AMI Pilot Program. This Program is identified as primarily a residential customer and secondarily a small commercial customer advanced metering pilot. The customers that will obtain the benefits from the increased knowledge gained from the Program should bear the costs of the Program through the operation of Rider AMP.

> Q. How does the lack of cost causation impact the Railroad Class?
>
> A. The Railroad Class has been paying for advanced metering for many years as well as the advanced communication system to provide the metering information from each railroad class meter to the CTA or Metra dispatch system. As I stated earlier, both the CTA and Metra have invested their own funds to build and operate their own SCADA systems for traction power. There is no cost causation rational to charge the Railroad Class for an AMI Pilot Program from which the Class will not gain any benefit.

[*Id*. at 6:104-117].

In his rebuttal testimony, Dr. Hemphill testified that Mr. Bachman's claim that Metra would not benefit from the proposed pilot projects was "untrue" and that AMI and other Smart Grid applications would benefit the Railroad Class because:

> They enable reliability improvements, improve the potential for demand response and energy efficiency, and allow ComEd to better and more efficiently manage its system. Those benefits go far beyond just metering residential customers.

[ComEd ex. 8.0 at 34:726-728]. When examined at the hearing, however, Dr. Hemphill admitted that none of the benefits identified in his rebuttal testimony would be generated by the AMI project alone. He could not identify any reliability improvements that would directly benefit the Railroad Class; he could not identify any aspect of the proposed project that would improve the potential for demand response or energy efficiency of the Railroad Class; and he could not identify any way in which ComEd would be able to better and more efficiently manage its system to the benefit of the Railroad Class. [See, e.g., Tr. at 241:13 to 242:14; Tr. at 246:17-22; Tr. at 247:13-20; Tr. at 249:13-21; Tr. at 256:3-9]. When pressed as to the testimony in his rebuttal testimony that "all customers will benefit from the operational, financial and reliability gains", Dr. Hemphill testified that operational, financial and reliability gains were merely

"spoken of in a hypothesis." [Tr. at 257:10-16]. He testified that he could not identify any operational, financial or reliability gains that would flow to the Railroad Class from the AMI and Customer Applications projects. [Tr. at 257:10 to 259:3].

Instead of pointing to direct tangible benefits, Dr. Hemphill repeatedly characterized the AMI and Customer Applications projects as a study in which hypothetical benefits were being explored. [E.g., Tr. at 241:19-242:8; 256:3-9; 257:10-16]. When pressed as to any possible benefits to the Railroad Class, Dr. Hemphill resorted to testifying about the general overall societal and economic benefit to be enjoyed by everyone if the AMI and Customer Application projects concluded that AMI meters could in fact reduce electrical usage and costs. [E.g., Tr. at 241:19-242:1; 254:1-14 and 257:17 to 258:19].

Assessing charges to ratepayers based on the societal benefits arising from reduced energy usage, as Dr. Hemphill's back-up rationale suggests, is a concept that was squarely rejected in the *A.J. Finkl & Sons* case:

> Requiring ratepayers to bear the expense of services they avoid due to conservation or DSM programs is not only incredible, but runs afoul of basic ratemaking principles. The Act requires that rates be set which "accurately reflect the long-term cost of such services and which are equitable to all citizens." (Ill.Rev.Stat. 1989, ch. 111 2/3, par. 1-102 (now 220 ILCS 5/1-102 (West 1992)) (section 1-102).) Both in *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n* (1973), 55 Ill.2d 461, 483, 303 N.E.2d 364, and in *Candlewick Lake Utilities Co. v. Illinois Commerce Comm'n* (1983), 122 Ill.App.3d 219, 227, 77 Ill.Dec. 626, 460 N.E.2d 1190, the courts have asserted that ratepayers are not to pay certain costs unless they directly benefit from them. The lost revenue charge here does not reflect the cost of providing electric service, does not reflect a cost that benefits ratepayers and, further, adds to Edison's revenues without regard to whether Edison's demand or revenues increased because of factors unrelated to DSM programs. This is yet another basis for reversal.

A.J. Finkl & Sons, 250 Ill. App. 3d at 329, 620 N.E.2d at 1149. The same rationale applies here, certainly with respect to the Railroad Class. There simply is no benefit to the Railroad Class of the AMI and Customer Applications projects, and therefore, no lawful or principled basis to justify charging the Railroad Class for a significant part of the cost of these projects.

V. AT MOST, THE RAILROAD CLASS SHOULD PAY COSTS BASED ON WEIGHTED METER METERING ALLOCATION FACTORS

Dr. Stephens testified on behalf of the IIEC that, if the Commission approved use of a rider to recover costs of the AMI pilot project, the costs should be assessed based on the weighted meter allocation factors used in the last ComEd delivery services rate case, which matches how meter costs would be allocated to customer classes in a rate case. [IIEC Ex. 1.0 at 2:34 to 3:41]. Dr. Stephens testified that under ComEd's proposal, there is a mismatch between benefits and costs:

> Although only approximately 1% of the meters will be installed on non-residential customer accounts above 400 kW, ComEd proposes to collect over 22% of the costs of the program from these customers. Furthermore, basically none of the Customer Applications costs will be expended on any non-residential customers, making the recovery of such costs from non-residential customers inequitable.

[*Id*. at 10:194-98 (footnote omitted)]. Instead of adopting ComEd's approach, Dr. Stephens explained that use of weighted meter allocation would be more logical and fair:

> Since Rider AMP is essentially an interim or stop gap measure to recover meter-related costs, in periods between rate cases (when the investment cost can be properly attributed to customers through a cost of service study) it makes sense to recover those costs through the rider in a comparable way to how they ultimately will be recovered in base rates.

[*Id*. at 12:243:247].

ICC Staff witness, Peter Lazare, also agreed that use of the weighted meter allocation factors would be more appropriate for the allocation of costs. [Tr. at 445:20 to 446:18]. The only difference between Dr. Stephens and Mr. Lazare is that Dr. Stephens believes that the weighted meter allocation factors should be applied to the cost of the AMI meters, but that the costs of the Customer Applications project should be assessed only to the residential classes because that analysis only involves study of the residential classes' meter usage, whereas Mr. Lazare advocates usage of the weighted meter allocation factors to both projects. [Tr. at 446:8-18]. Given that the Customer Applications project does not involve the Railroad Class in any respect and offers it no benefits, if rider usage is approved and the Railroad Class is required to pay some portion of the costs, Metra believes that Dr. Stephens' approach is more logical and fair that that advocated by Mr. Lazare.

VI. CONCLUSION

For all the reasons set forth above, the Commission should not approve usage of a rider to recover the AMI and Customer Application projects. If usage of a rider is approved, ComEd should be required to restructure the rider so that no costs are assessed to the Railroad Class, as there are no practical or legally cognizable benefits flowing to the Railroad Class from those projects. If the Commission nevertheless determines that the Railroad Class should pay some costs, then Metra submits that the Railroad Class should be assessed costs for the AMI meter costs only using weighted meter allocation factors.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Edward R. Gower, an attorney for the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra, certify that I caused to be served copies of the foregoing METRA'S INITIAL POST HEARING BRIEF via electronic delivery from the law office of Hinshaw & Culbertson LLP, 400 South Ninth Street, Suite 200, Springfield, Illinois, 62701, to the persons named on the Illinois Commerce Commission's service list for ICC Docket No. 09-0263, on September 8, 2009.

Respectfully Submitted,

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