

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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

**BRIEF ON EXCEPTIONS OF THE COMMERCIAL GROUP**

Now comes the Commercial Group (or “CG”) and hereby respectfully files its Brief on Exceptions to the Proposed Order (“P.O.”) in this proceeding pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”).

**I. INTRODUCTION**

The Commercial Group is an association of retail companies that own and operate retail stores within ComEd service territory, including Best Buy Co., Inc., J.C. Penney Corporation, Inc., Macy’s, Inc., Safeway, Inc., and Wal-Mart Stores, Inc, as well as the Illinois Retail Merchants Association. Accordingly, the Commercial Group represents approximately 85 percent of all retail sales in Illinois. CG Ex. 1.0 (Baudino Direct), p. 2, lns. 24-40.

**II. EXCEPTIONS**

The Commercial Group takes exception to:

- 1) Findings of Fact #9 (P.O. p. 84), which states: “the ECOSS to be filed by ComEd, in its next rate case and at the completion of the workshop process, should reflect that the allocation of costs to substations and primary lines should be made on a coincident peak basis”;

2) Findings of Fact #12 (P.O. p. 84), which states: “Staff should commence a workshop proceeding to be completed within six months to address issues relating to the primary/secondary split, street lighting and customer care costs as discussed above”; and

Findings of Fact # 13 (P.O. p. 84), which states: “at the conclusion of the workshop process, ComEd should file an updated ECOSS for consideration and approval in this docket as outlined herein.”

### III. ARGUMENT

#### **EXCEPTION 1: In Ordering the Allocation of Distribution Substation and Primary Line Costs on a Coincident Peak Basis, the Proposed Order Errs by Ignoring How ComEd Designs Its Facilities and by Departing from Commission Precedent and the Standard Utility Practice For Allocating Such Costs.**

The ALJs recommend a radical departure from ComEd’s actual system design, the Commission’s precedent and the standard utility practice across the United States of allocating distribution substation and primary feeder costs on a non-coincident peak (NCP) basis. The ALJs do so with little supporting evidence.

The Commercial Group is involved in utility proceedings across the country, as is its expert witness in this case, Richard A. Baudino. Mr. Baudino testified that distribution load diversity and not the system peak determines the size of distribution equipment. CG Ex. 2.0 (Baudino Rebuttal) p. 3, Ins. 57-60; 3: 50-4:79. This is the way such costs routinely are allocated across the country, as reflected in the *NARUC Electric Utility Cost Allocation Manual* (Jan. 1992), p. 97:

The load diversity at distribution substations and primary feeders is usually high. For this reason, customer-class peaks are normally used for the allocation of these facilities.

In other words, it is not the system peak that determines the size of distribution substations and primary feeder lines but the amount of load diversity at the distribution level, which diversity is

high. Put another way, such facilities must meet the maximum load of customers served by such facilities, whenever that local maximum occurs. And because of the diversity of customer class loads on the distribution system, it is unlikely that the local maximum loads will occur at the time of the system coincident peak.

This is why ComEd designs its primary lines and substations to meet non-coincident loads and not the overall (coincident) peak usage. Alongi Sur., ComEd Ex. 10.0C, 27:565-70. No party offered evidence showing that ComEd does not design its primary lines and substations to meet non-coincident peak loads. Accordingly, ComEd (with Commission approval) has allocated these costs on an NCP basis. *See* Docket No. 01-0423, Interim Order at 128 (4/1/02).

Not only does the Proposed Order ignore cost causation and how ComEd's system is designed, it does so in an arbitrary and capricious manner. With respect to the allocation of overall primary and secondary costs, the ALJs found fault with ComEd because it had "not actively reviewed studies of primary and secondary costs prepared by other utilities" (P.O. p. 13), and the ALJs directed that the cost allocation practices of other utilities must be reviewed in a workshop. However, when it came to the allocation of the distribution substation and primary feeder cost subset, the ALJs ordered a change in allocation to the CP method even though there is no evidence that any other utility uses the CP method for such costs, and without directing that the allocation practices of other utilities be studied for this subset of costs.

The ALJs erred by recommending a radical departure from cost causation, system design, Commission precedent and standard utility practice based only on unsupported conjecture. The Commission instead should continue its practice of allocating distribution substation and primary feeder costs based on non-coincident peak load.

**EXCEPTION 2: The ALJs Should Not Have Passed Substantial Issues to an Undefined Workshop Process That Will Favor Well-Funded Ratepayer Groups, Harm Customer Classes Burdened by Rate Subsidies, and Add Even More Delay to What the Commission Ordered Should be an Expedited Proceeding.**

Contrary to the Commission's order for an expedited process, the Proposed Order would continue this rate design case for three years or more by instituting a workshop process that is undefined, likely to fail, and that will not afford rate relief to the customer classes burdened by large rate subsidies. Instead, the Commission should decide the primary/secondary issues in dispute and order ComEd to implement tariffs consistent with such decision.

Having recognized in the final order in the underlying rate case (Docket No. 07-0566) that some customer classes were subsidizing other classes, the Commission directed that this current rate design proceeding should be completed on an expedited basis:

(7) that the Administrative Law Judge or Judges assigned to this proceeding should be directed to expeditiously create, and to require all parties to adhere to, a schedule that will put the Commission in a position to have an order before it for consideration at the earliest possible time consistent with statutory mandates and due process of law. The Administrative Law Judge or Judges are directed, at the earliest possible date, to present for Commission approval the schedule agreed to among the parties.

Order Initiating Proceeding, Docket No. 08-0532, p. 3 (emphasis added).

Once already, this proceeding was to be delayed for ComEd to perform additional cost studies but the Commission reversed this decision. Notice of Corrected Commission Action, p. 1 (August 27, 2009). Now, 1½ years after the beginning of this “expedited process” and 2½ years after the beginning of the underlying rate case, the ALJs would direct that many issues raised in this proceeding be discussed further in an undefined workshop process. These workshops would take yet another six months “unless extended by the ALJs” (P.O., p. 83), followed by ComEd filing another ECOSS, which could take another six months or more to prepare. After this, the

parties are to file initial and reply comments before the ALJs who are to issue yet another recommended decision to be followed by more exceptions by the parties and deliberation by the Commission. This entire “expedited” rate design process will likely take at least three years. Such a lengthy and costly process only favors those parties that are well-funded and harms those parties with limited litigation budgets. Tr. 539, lines 4-8 (Alongi).

To make matters worse, this process would not address the large rate subsidies already proven in this case and the underlying rate case. Notably, under all cost studies performed in the underlying 07-0566 rate case and this rate design proceeding, customers in the Medium Load, Large Load, and Very Large Load customer classes continue to subsidize heavily other customer classes. This rate inequity, which has continued for years, handicaps the ability of Illinois businesses to expand operations and also harms Illinois schools, hospitals, and government entities, all of which are part of these burdened classes. Rather than granting these customer classes relief, the Proposed Order would continue to burden these customers by denying them any rate relief even after the lengthy workshop process is completed. Instead, the Commission, having ordered this rate design proceeding to be expedited, should resolve the issues raised in this proceeding and direct ComEd to file revised rate tariffs based on the cost study it adopts so as to reduce or eliminate the on-going rate inequities. If additional workshops need to be held, they should not delay the implementation of just and reasonable rates.

Nor does the Proposed Order provide any workshop process that will advance resolution of the issues. Whereas ComEd is directed to file a revised ECOSS following the workshops, there is no direction for how the workshops should inform ComEd on what to file. Must all parties agree on each point discussed in the workshop? Will “consensus” be reached based on a vote of those parties present? Should that vote be weighted by the number of customers a party

represents? Or should ComEd file any ECOSS it deems satisfies its own objectives? And how would another Proposed Order by the ALJs resolve disputed issues when the ALJs would have no new record evidence to review?

Since the rate case began in 2007, the hearings have involved significant dispute on almost all rate design points. Unless some parties are unable to participate in the workshops because of budgetary constraints (which unfortunately is likely), there will probably not be unanimity in the workshops. Instead, the workshops will likely be a waste of time and resources and retail businesses, schools and hospitals will suffer in the meantime. The Commission should resolve disputed issues and order new rate tariffs be filed consistent with such resolution.

#### **IV. SPECIFIC LANGUAGE FOR ADOPTION**

The Commercial Group respectfully requests that:

##### **Exception 1**

Findings of Fact #9 should be amended as follows:

(9) ~~the any~~ ECOSS to be filed by Commonwealth Edison Company, ~~in its next rate case and at the completion of the workshop process,~~ should reflect that the allocation of costs to substations and primary lines should be made on a non-coincident peak basis”

##### **Exception 2**

Findings of Fact 12 should be deleted:

~~Staff should commence a workshop proceeding to be completed within six months to address issues relating to the primary/secondary split, street lighting and customer care costs as discussed above.”~~

Findings of Fact 13 should be amended to read:

~~at the conclusion of the workshop process,~~ ComEd should file within ten days of this Order new tariff sheets for immediate effect (with supporting workpapers) that shall replace those tariff sheets currently in effect, all in accordance with this Order an updated ECOSS for consideration and approval in this docket as outlined herein.”

## V. CONCLUSION

WHEREFORE, the Commercial Group requests that the Commission grant the relief requested herein.

Respectfully submitted this 16th day of February, 2009.

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