

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission                    )  
On Its Own Motion                                )  
  )  
      - vs -   )  
  )  
Commonwealth Edison Company                )  
Investigation of Rate Design                    )  
Pursuant to Section 9-250 of the                )  
Public Utilities Act                                )

Docket No. 08-0532

**REPLY BRIEF ON EXCEPTIONS OF THE COMMERCIAL GROUP**

Now comes the Commercial Group (or “CG”) and hereby respectfully files its Reply 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”).

The Commission set forth five class cost of service issues to be decided expeditiously in this proceeding. The briefs on exceptions (“BOE”) filed by the various parties demonstrate why the decision in the Proposed Order (“P.O.”) to defer ruling on many of these issues until after an undefined workshop process is an unworkable and tardy solution. As Staff recognizes, there is no guarantee that a lengthy workshop process would even resolve issues. *Id.* at 5-6. Instead, as urged by ComEd and the Commercial Group, the Commission should rule on these issues now and resolve the proceeding, based on the evidentiary record compiled over the last 18 months.<sup>1</sup>

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<sup>1</sup> By addressing in this reply brief on exceptions only the flawed workshop process, the Commercial Group does not waive any of its other arguments but relies on its brief on exceptions and post-hearing briefs previously filed. For example, the Commercial Group agrees with ComEd and IIEC that the P.O. errs in abandoning the widespread utility practice and this Commission’s practice of allocating primary feeder and distribution substation costs on an NCP basis, and ignoring that ComEd designs such facilities to meet loads whenever they occur and not simply on the absolute system peak as assumed by the CP allocation.

**I. The Workshop Process Is Hopelessly Flawed and Should Be Abandoned**

**A. The parties agree that the workshop process is fundamentally flawed.**

There is consensus among the parties that the P.O. workshop process is fundamentally flawed. As Metra/CTA succinctly stated (BOE, p. 6), “this process is flawed . . . .” Staff correctly points out (BOE, p. 4) that the assumption in the P.O. that “the workshop process will necessarily move the parties toward a consensus on all out standing issues” is unrealistic. Further, given the “significant discord” on cost of service issues, Staff notes that “it would be presumptuous to assume that a workshop process followed by two rounds of comments would necessarily produce an ECOSS that could be used as the foundation for ratemaking in future dockets.” *Id.* To try to correct these fundamental flaws, Staff, CTA/Metra, the AG, and REACT all propose significant additional evidentiary procedures be added to this already non-expeditious proceeding, which additional procedures would benefit only lawyers, consultants, and subsidized ratepayers. See Section I.C, *infra*.

On the other hand, ComEd takes a reasoned position and urges that the Commission determine the issues based on the evidentiary record (BOE, p. 2):

[T]he present evidentiary record, compiled in a proceeding that is now in its 18th month, contains ample information upon which to rule on all these issues now. There is no need to further prolong this proceeding.

The Commercial Group agrees. The Commercial Group also agrees with ComEd (BOE, p. 24) that, if any workshops are necessary, such “workshops should take place subsequent to the conclusion of this proceeding” and should explore potential refinements of the ECOSS adopted in this proceeding, instead of a panoply of contentious issues.

**B. The one fact convincingly proven is that the Medium, Large, and Very Large Load classes are bearing an unfair subsidy burden.**

ComEd's ECOSS has now been litigated for 28 months and the P.O. would extend this process indefinitely, contrary to the Commission's order for an expeditious process. Not surprisingly, the customer groups enjoying rate subsidies support continued litigation. But continued delay in implementing just and reasonable rates to discuss issues in a workshop is not a mere intellectual exercise; the delay substantially harms the Illinois businesses, schools, hospitals, and government entities that are bearing the subsidy burden. As the P.O. correctly points out (p. 36), many cost of service issues, including the "dividing line between primary and secondary voltages" is "based on judgment" and not hard-and-fast scientific fact. That makes the following fact all the more salient - that 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 is the one thoroughly documented fact to emerge from 28 months of litigation and 28 more months of litigation will not change this fact.

**C. Unending litigation benefits only lawyers, consultants, and subsidized ratepayers; instead a measure of finality is needed now.**

The Commercial Group recognizes that ComEd's ECOSS is not perfect and can (and should be) improved. Nevertheless, the ECOSS as improved in this proceeding is a reasonable basis for setting rates and the Commission should so order. Notably, even parties advocating additional evidentiary procedures urge the Commission to make final determinations now (on the issues those parties deem to be in their favor). For example, IIEC argues (BOE, p. 6 [emphasis removed]) that "the workshops should not revisit the functional approach or settled determinations of the Commission's Interim Order in this case." REACT also urges continued proceedings yet requests (BOE, p. 10) that "the Commission should adopt REACT's cost study

immediately.” However the Commission resolves those issues, the Commercial Group joins these parties and ComEd in urging the Commission to bring finality to the issues now.

As mentioned briefly above, because of the hopelessly flawed P.O. workshop process, the AG recommends (BOE, p. 2) additional discovery and evidentiary hearings with testimony and cross-examination. CTA/Metra makes similar recommendations (BOE, pp. 6-7), including a request for a “full evidentiary hearing,” as does REACT (BOE, p. 7). Staff takes a different and more realistic view that the workshop process at best might provide “a good starting point” (BOE, p. 4) that would likely “require a full evidentiary record that would only be possible in the context of a full rate case.” *Id.* at 5. Thus, Staff recognizes that a foreseeable result of even an improved workshop process is for the revised ECOSS to not be “sufficiently accurate to serve as a foundation for ratemaking in future proceedings.” *Id.* at 6. In other words, even after additional months or years of delay, we would likely be no closer to resolution of cost of service disputes that are inherently matters of judgment.

This result is assured by various parties seeking to stuff the workshop process with any and all cost of service issues. As the Commercial Group demonstrated in its Brief on Exceptions, the P.O. already includes a broad set of issues that will not likely be resolved through workshops. ComEd notes, for example, that it may not even be possible to conduct the new analyses and create a new ECOSS required by the P.O. in the timetable provided. ComEd BOE, p. 7. Nevertheless, several parties seek to expand the workshop issue list even further. For example, REACT goes so far as to argue (BOE, p. 9) that “all issues raised by the parties to this proceeding should be considered in the Workshop Process.” Why after 28 months of litigation and continued dispute would a six month (or longer) workshop process resolve these issues? As

the Staff recognizes, the issues probably would not be resolved but would require even more litigation.

Clearly, the only entities benefiting from the open-ended process contemplated by the P.O. are lawyers, consultants, and subsidized ratepayers. Nor would the flawed process achieve ultimate “justice” as litigation would continue, customer groups unable to afford protracted workshops and litigation would be disadvantaged, and in the end, judgment calls would still have to be made. In the meantime, customer classes burdened by on-going rate subsidies would continue to suffer and this burden would be a drag on the Illinois economy.<sup>2</sup> Finally, this unending litigation would also add to the Commission’s administrative burden and cost Illinois taxpayers, all at a time when funds and resources are scarce.

## **II. Conclusion**

As ComEd correctly states, 28 months of litigation has produced a sufficient evidentiary record for the Commission to resolve the issues. The Commission should do so and implement revised rates (presumably in Docket 07-0566) that would be just and reasonable and recognize what every cost study variation has shown – that rates for the Medium, Large, and Very Large Load classes are well above cost and should be lowered. If any fine-tuning needs to be done, the Commission can institute a focused, non-binding workshop process following its final decision that might assist the parties and Commission in future ratemaking.

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<sup>2</sup> The Commercial Group represents 85 percent of all retail sales in Illinois. CG. Ex. 1.0, p. 2, lns. 24-40.

WHEREFORE, the Commercial Group requests that the Commission grant the relief requested herein and in the Brief on Exceptions and post-hearing briefs of the Commercial Group.

Respectfully submitted this 22nd day of February, 2009.

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