

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :
: **Docket No. 10-0467**
Proposed General Increase in Electric :
Rates :

**VERIFIED PETITION FOR INTERLOCUTORY REVIEW OF THE
COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

The Coalition to Request Equitable Allocation of Costs Together (“REACT”), by its attorneys DLA Piper LLP (US) and pursuant to Section 200.520 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), respectfully seeks interlocutory review of a portion of the December 10, 2010 Ruling (“December 10 Ruling”) of the Administrative Law Judges (“ALJs”) in the instant proceeding regarding REACT’s Verified Motion to Compel Commonwealth Edison Company’s Response to Certain of REACT’s Second, Third, Fourth, and Fifth Set of Data Requests (“Motion to Compel”).¹ Specifically, REACT requests that the Commission compel Commonwealth Edison Company (“ComEd”) to fully respond to REACT Data Requests 2.11-2.17 to provide cost causation information necessary for the Commission to evaluate whether ComEd’s proposed rates are “cost based” such that the costs charged to customers reflect use of the “facilities and services associated with such costs,” as required by the Public Utilities Act (“Act”). (See 220 ILCS 5/16-108(c).)

¹ The customer members of REACT currently are: A. Finkl & Sons Company; Aux Sable Liquid Products, LP; the City of Chicago; Flint Hills Resources, LP; FutureMark Paper Company (formerly known as the Alsip Paper Condominium Association); the Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining LLC; United Airlines, Inc.; and Wells Manufacturing Company. All of these REACT customer members participated in the 2007 ComEd Rate Case and the 2008 ComEd Special Investigation Proceeding as members of REACT. REACT’s supplier members currently are Commerce Energy, Inc.; Integrys Energy Services, Inc.; and Interstate Gas Supply of Illinois, Inc. The positions stated herein do not necessarily represent the positions of any individual member of REACT. The City of Chicago does not join in this Petition.

REACT has asked multiple ways for the basic information to determine if ComEd's proposed rates for its over-10 MW classes are cost based. ComEd has repeatedly made evasive and conflicting arguments as to why that information is not available. ComEd resisted REACT's initial attempts on the premise that REACT sought customer-specific information, even though as far as REACT could tell that information was essential to determine the over-10 MW classes' allocation of costs. The December 10 Ruling stated that provision of customer-specific information would be unduly burdensome.

REACT tried a separate approach consistent with the December 10 Ruling, and explicitly requested aggregated class-wide information for the assets used to serve the over-10 MW customer classes. Again, ComEd refused to provide cost causation information. In an ironic twist, ComEd essentially argued that each over-10 MW customer uses unique, ungeneralizeable assets. The assets ComEd could not name, however, included assets for which ComEd billed over-10 MW class customers *individually* under Rider NS. Thus, ComEd has stated that it is unwilling to provide customer-specific information; but, when asked for aggregated class-wide information, ComEd declines again under the theory that it cannot provide class-wide information because the necessary information is really customer-specific.

Cost-causation is the ultimate question to be considered by the Commission when approving ComEd's rates. REACT seeks information necessary and appropriate to test whether ComEd's rates for the over-10 MW customer classes are cost based. One way or another, ComEd should be required to provide that information. Accordingly, REACT respectfully requests that the Commission compel ComEd to provide the assets used to serve the over-10 MW customer classes' membership in response to REACT Data Requests 2.11-2.17.

I.

HISTORY AND CONTEXT OF REACT'S SEARCH FOR THE COST-CAUSATION INFORMATION REQUESTED IN REACT 2.11-2.17

Since the 2007 ComEd Rate Case (ICC Docket No. 07-0566), REACT has consistently requested information from ComEd to determine whether its rates for the over-10 MW customer classes comply with the “cost based” requirement of the Act, which states:

Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its **charges to its delivery service customers that use the facilities and services associated with such costs**

(220 ILCS 5/16-108(c) (emphasis added).) ComEd failed to provide REACT or the Commission with cost causation information in either the 2007 ComEd Rate Case or the subsequent 2008 Special Investigation Proceeding (ICC Docket No. 08-0532). In spite of ComEd's continued failure to provide cost causation information necessary for evaluating ComEd's rates under the Act, ComEd continues in the present case to seek increased rates based on its flawed Embedded Cost of Service Study (“ECOSS”), which REACT believes does not reflect the actual costs associated with serving (collectively) the over-10 MW customer classes. (*See, e.g.*, REACT Ex. 3.0C at 18:443-23:558; REACT 6.0 at 4:86-32:759; *see also* REACT Ex. 1.0C at 21:526-25:611.)

In order to obtain this critical but absent information, REACT propounded as part of its Second Set of Data Requests to ComEd seven data requests, REACT Data Requests 2.11-2.17, that sought information on the assets used to serve the over-10 MW customer classes. Based on REACT's theory that the optimal way for ComEd to determine the assets used to serve the over-10 MW customer classes would be compilation of the assets used to serve each class member, REACT phrased REACT Data Requests 2.11-2.17 to request information on assets used to serve each over-10 MW customer. REACT requested this information so it could evaluate whether

and to what extent ComEd's ECOSS-based over-10 MW customer class rates reflect the realities of the costs caused by the over-10 MW customer classes. In other words, consistent with the Act's requirements, REACT seeks to compare the class-wide cost causation with the class-wide rates charged.

ComEd refused to provide responsive answers to REACT 2.11-2.17, raising inapposite objections and refusing to conduct the necessary analysis. (*See* Attachment A, ComEd Responses to REACT Data Requests 2.11-2.17.) As a result, and after a reasonable but unsuccessful attempt to reconcile its dispute with ComEd, REACT filed the Motion to Compel on November 24, 2010.²

On December 10, 2010, the ALJs issued a Ruling on several matters, including REACT's Motion to Compel. The December 10 Ruling stated:

We have reviewed the pertinent "data request" responses and find many of them adequately answered, or, asked in such a manner that appears to request customer-specific information. Customer-specific information is unduly burdensome.

However, REACT is not precluded from requesting information in discovery that is not customer-specific regarding the assets used to serve the extra-large load class of ComEd customers.

(December 10 Ruling.) Although, for reasons further set forth below, REACT disagrees with the December 10 Ruling denying the Motion to Compel, REACT nonetheless immediately propounded additional data requests to ComEd (REACT's Sixth Set of Data Requests) explicitly requesting the class-wide information, precisely consistent with the December 10 Ruling's indication. (*See id.*) ComEd has now failed to provide responsive answers to those Data Requests, and REACT filed a Motion to Compel those answers on December 29, 2010, which is pending before the ALJs. (*See* REACT's December 29, 2010 Verified Combined Motion for

² ComEd filed a Verified Response on December 3, 2010, and REACT filed a Verified Reply on December 7, 2010.

Reconsideration, Motion for Stay of Time to File a Petition for Interlocutory Review, and Motion to Compel Responses to REACT’s 6th Set of Data Requests.)

However, regardless of the outcome of the motion practice regarding REACT’s Sixth Set of Data Requests, based on the positions ComEd has taken, it is now even clearer that REACT is entitled to the information requested in REACT Data Requests 2.11-2.17 to allow it to evaluate whether ComEd’s ECOSS rates meet the Act’s cost causation standard. As a result, REACT respectfully requests that the Commission reverse the December 10 Ruling, as it relates to the denial of REACT’s Motion to Compel concerning REACT Data Requests 2.11-2.17.

II.

THE COMMISSION SHOULD COMPEL COMED TO PROVIDE THE COST CAUSATION INFORMATION REQUIRED TO EVALUATE COMPLIANCE WITH THE ACT

As noted above, the Act requires that “[c]harges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs.” (220 ILCS 5/16-108(c) (emphasis added).) The Act continues: “In establishing charges, terms and conditions for delivery services, the Commission shall take into account voltage level differences.” (220 ILCS 5/16-108(d).) Thus, the Act’s plain language articulates a clear requirement not only that delivery services rates be “cost based” but also that different voltage services to the various customer classes must be taken into consideration in that evaluation. In the present context, the customer voltages becomes a subquestion to cost causation, because delivery voltage determines whether certain assets are highly unlikely to have sufficient capacity to serve a customer at that voltage. (*See, e.g.*, REACT Ex. 3.0C at 9:182-18:438; REACT Ex. 6.0 at 4:86-20:450.)

In order to provide sufficient class-wide cost causation information, ComEd must investigate the services provided to its customers. However, ComEd has now admitted -- in response to the REACT Data Requests issued in reaction to the December 10 Ruling -- that it has neither an accurate record of the assets for which it imposes delivery services charges under Rider NS nor an accurate record of the voltage levels of delivery service provided to members of the over-10 MW customer classes.. (See, e.g., Attachment B, ComEd Responses to REACT 6.33, 6.40, and 7.07.) Furthermore, ComEd refused to identify the assets used to serve the over-10 MW customer classes. (See, e.g. Attachment B, ComEd Response to REACT 6.29.) ComEd has also taken the position that each over-10 MW class customer has unique delivery requirements and unique, ungeneralizable collections of assets-used-to-serve. (See Attachment B, ComEd Responses to REACT 6.06, 6.07, 6.09, 6.29, 6.35, and 6.38.) Thus, it is now even clearer than before the December 10 Ruling that ComEd has not provided the information necessary to evaluate whether its proposed rates are cost based.

REACT has sought the required information in many different ways; ComEd has refused each opportunity to respond. The Commission should end this process by directing ComEd to provide the necessary information. Although REACT seeks to use the information to evaluate ComEd's proposed class-wide rates for the over-10 MW classes, ComEd itself -- through its latest Data Request Responses -- is effectively saying that the only way to evaluate the assets used to serve the over 10-MW customer classes is to look to some degree at the individual customers within the class.³ The Commission should order ComEd to provide that information.

³ As REACT witness Mr. Terhune states, REACT understands that reasonable methods of sampling and a certain level of generalization is required to conduct such an evaluation. (See, e.g., REACT Ex. 6.0 at 33:764-34:799, see also *id.* at 39:914-918.) REACT is open to making Mr. Terhune available to ComEd to discuss reasonable assumptions, either himself or as part of a larger stakeholder process.

The cost-causation information REACT seeks is necessary in order to evaluate whether ComEd should be entitled, under the Act, to raise the rates of the over-10 MW customer classes. REACT respectfully submits that in order for ComEd to justify the massive “move to ECOSS” in light of the well-documented Commission and intervenor criticism, it must first provide the cost causation information sought by REACT to evaluate the class-wide rates against the class-wide costs. With full responses to REACT 2.11-2.17, the Commission and the parties will be able to properly evaluate ComEd’s proposed rates for the over-10 MW customer classes against the costs that the rates must represent under the Act. However, unless and until ComEd provides the information requested, the Commission should refuse to permit ComEd to increase rates for over-10 MW customers for a lack of cost basis. (*See, e.g.*, REACT Ex. 3.0C at 8:174-178.)

III.

CONCLUSION

For the reasons stated herein, REACT respectfully requests that the Commission reverse the December 10, 2010 Ruling relating to ComEd’s responses to REACT 2.11-2.17, and grant all other relief that the Commission deems necessary.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE
ALLOCATION OF COSTS TOGETHER**

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