

This is a critical time for Illinois utility regulation. The Commission is confronting the need to foster infrastructure investment, to promote energy efficiency and demand response, and to modernize the grid to accommodate everything from electric vehicles to smart appliances to micro-generation, and improving reliability—all while ensuring that rates remain just and reasonable.

ComEd's BOE at 1-2. ComEd goes so far as to quote excerpts from a speech given by President Obama at Georgetown to support its position. *Id.* at 2. The President's speech is not part of the record in this proceeding.

3. Similarly, in arguing the importance of establishing a recovery mechanism now for Smart Grid even though the exact Smart Grid projects to be funded are neither known nor identified, ComEd asserted:

Thus, absent the Commission approving a recovery mechanism as part of Rate ACEP or legislation, the benefits to customers, the Northern Illinois economy, and society will be delayed and lost.

Id. at 30-31, citing Hemphill Dir., ComEd Ex. 1.0 Rev., 16:329-330.

4. John W. Rowe, the Chairman and CEO of Exelon Corporation, gave a speech to the American Enterprise Institute in Washington, D.C. on March 8, 2011, which was after the evidence in this case was marked heard and taken and after the opening and reply briefs had been filed in this proceeding. The Exelon Corporation is the parent owner of ComEd. In responding to questions after he gave his prepared remarks, Chairman and CEO Rowe answered a question and made the following statements concerning the Exelon corporate entities' views with respect to Smart Grid:

Buddy Kilpatrick: Buddy Kilpatrick of Econ Policy. Could you speak a little bit about the smart grid and maybe explain why utilities are so reluctant to embrace it without subsidy?

John Rowe: Smart grid we are reluctant to embrace because it costs too much *and we're not sure what good it will do.* We have

looked at most of the elements of smart grid for 20 years and we have never been able to come up with estimates that make it pay.

Now, in Pennsylvania we will have full smart grid, first because it's because it's required by Pennsylvania statute and, second, because as you suggest, we got one of the subsidies under the bill a year and a half ago.

So in Pennsylvania our PECO subsidiary will have full smart grid. We know some of the things that will do that are good. It will help in storm recovery. It will help telling customers how long they will be out of service.

It will allow us to have even less meter readers than we do now and PECO has a primitive smart grid now. We don't know how much effect it will have on demand and energy use, which is the prime driver behind it. In Illinois we're doing pilot projects on smart grid, which I think is a better way to do it.

The real issue is are we doing the customers more good by putting money into more advanced electronics or would we do them more good by putting the same money into replacing more old cable? To me that's an unknown answer. If I had to choose, I'd bet on the cable.

<http://www.eenews.net/tv/transcript/1293> (emphasis added).

5. The full transcript and a corresponding videotape of Chairman and CEO Rowe's speech and subsequent question and answer session are available online at <http://www.eenews.net/tv/transcript/1293>.

6. The Commission's Rules of Practice governing evidence in this proceeding provide in relevant part:

In contested cases, and licensing proceedings, the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs. [5 ILCS 100/10-40].

83 Ill. Adm. Code § 200.610(b).

7. Statements of facts and policy made by Chairman and CEO Rowe represent information of the type normally relied on by reasonable prudent persons in the conduct of their affairs in evaluating the facts concerning possible Smart Grid improvements and the wisdom of implementing Smart Grid projects in Illinois. Consequently, they are admissible under Section 200.610 of the Commission's rules and practices. *See, e.g., Metro Utility v. Illinois Commerce Comm'n*, 193 Ill. App. 3d 178, 549 N.E.2d 1327, 140 Ill. Dec. 455 (2d Dist. 1990) (admitting into evidence letter of USEPA employee on estimating cost of construction of new facility).

8. Furthermore, there is no reasonable argument that Chairman and CEO Rowe's statements constitute unreliable hearsay because in the context of this proceeding they are admissible admissions against interest. *See* Steigmann & Nicholson, Illinois Evidence Manual, Vol. 2, § 11.1 (2006) (out of court statements are admissible as admissions against a party if made by a person "having express or implied authority to speak for the party"); Rules 801(d)(2)(C), (D) and (E) of the Illinois Rules of Evidence (a statement against a party's interest is not hearsay if made by a person who is an agent of the party, has authority to speak for the party, or is in privity or jointly interested with the party). ComEd is the only Exelon subsidiary or affiliate that would be responsible for evaluating, proposing and implementing Smart Grid in Illinois. Thus Exelon Chairman and CEO Rowe clearly was speaking on ComEd's behalf, and he has authority to speak on behalf of Exelon's wholly owned subsidiary.

9. Metra proposes to have Chairman and CEO Rowe's specific statements concerning Smart Grid admitted into evidence in the form of the Proposed Metra Exhibit 1.0 attached hereto. However, if the Commission would prefer, Metra is amenable to having the entire transcript of Chairman and CEO Rowe's remarks admitted as Metra Exhibit 1.0. An alternative Metra Ex. 1.0 also is attached.

WHEREFORE, Metra requests that the Commission enter an order admitting into evidence the March 8, 2011 statements of John W. Rowe made in a speech to the American Enterprise Institute either in the form of the excerpt from that speech attached as Metra Ex. 1.0 or in the form of the transcript of the entire speech attached as proposed Metra Ex. 1.0.

Respectfully Submitted,

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