BEFORE THE
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
	)	
Proposal to establish Rider PORCB,	)	Docket No. 10-0138
Purchase of Receivables with	)	Rehearing
Consolidated Billing,	)	
And to revise other related tariffs	)	

REPLY BRIEF OF DOMINION RETAIL INC.

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ATTORNEYS FOR Dominion Retail, Inc.

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Dominion Retail Inc. ("Dominion") files this Reply Brief on the Rehearing of this proceeding for approval of Commonwealth Edison Company's ("ComEd") proposed Purchase of Receivables and Consolidated Billing ("PORCB") tariff.

I. INTRODUCTION

There is no disagreement among the parties as to the nature of the issue before the Commission in this rehearing: whether ComEd's PORCB tariff that is currently in effect, using the blended discount rate approved by the Commission in its February 23, 2011 Order Upon Emergency Motion for Clarification, should be modified to create separate discount rates for residential and nonresidential customers. As the Commission can see from the parties' initial briefs, Dominion and the National Energy Marketers Association ("NEM") recommend that the Commission make no change to the existing blended rate, while ComEd, the Retail Energy Supply Association ("RESA") and the Illinois Competitive Energy Association ("ICEA") recommend that the Commission reverse its decision and direct ComEd to charge separate residential and nonresidential discount rates. The Commission Staff takes a neutral position, pointing out what it believes are strengths and weaknesses of each party's arguments.

Dominion argued in its initial brief that the Commission should maintain the current blended rate because:

- it better reflects costs,
- it moderates the already disparate impact of the $0.50 per bill charge on the effective discount rate of residential and nonresidential customers,
- it will allow residential customers to take advantage of the same competitive alternatives currently in wide use by nonresidential customers,
- it has not discouraged nonresidential customers from using PORCB, and
- the Public Utilities Act calls for a single discount rate.

Nothing in the other parties' briefs invalidates those arguments. Dominion will address each party's brief below.

II. NATIONAL ENERGY MARKETERS ASSOCIATION

NEM succinctly summarizes why the Commission should maintain the current blended rate. It states that the "Commission must consider the entire unique scheme of the specific ComEd POR program," noting that this unique scheme includes such residential unfriendly aspects as a fixed $0.50 per bill charge, an all-in-all-out requirement applicable only to residential consumers and ComEd's insistence that it purchase the receivables of any marketer wishing to use consolidated billing. [NEM Brief, p. 2.] Given these unique aspects of ComEd's POR program, NEM recommends that the Commission maintain the blended rate.

NEM, which consists of a broad base of energy suppliers and consumers, provides valid arguments why the Commission should not add to the roadblocks facing residential customers wishing to take advantage of competitive alternatives. NEM's support for the existing blended rate also shows the inaccuracy of the arguments of ComEd, RESA and IECA that every interested party but Dominion supports separate discount rates. [ComEd Brief, p. 2; RESA Brief, p. 2; ICEA Brief, p. 3-4.] This is not a situation in which Dominion is the sole supporter of the existing blended rate. ComEd, RESA and ICEA understandably continue to defend the agreement they reached with each other, but NEM has no such restrictions. NEM's brief demonstrates why the Commission should find that maintaining a blended discount rate best furthers the goal of the General Assembly to promote competition in this State.

III. COMMONWEALTH EDISON COMPANY

ComEd argues that it is necessary to maintain identical uncollectible cost factors reflected in ComEd's supply charges and the Rider PORCB discount rate in order to maintain a level playing field between RES supply offerings via Rider PORCB and ComEd's default supply offerings. The example it provides is as follows:

> [I]f the factor used to gross up ComEd's supply charges for bad debt is lower than the one applied through the discount rate to RESs using Rider PORCB, the RESs using Rider PORCB would be at a disadvantage in their efforts to compete against the default supply rate.

ComEd Brief, p. 6.

It should be noted that ComEd is referring to nonresidential customers in this argument. Given the fact that ComEd has no all-in-all-out requirement for nonresidential customers, however, RESs can choose which customers to place on PORCB. Thus, the average uncollectible rate of nonresidential customers on PORCB will be above the level of ComEd uses in its supply charges. Using the separate nonresidential discount rate for these customers would understate their cost of service and result in an imbalanced playing field that is opposite of the one envisioned by ComEd. Until ComEd gains experience with nonresidential uncollectibles, it is not possible to say if a blended rate perfectly reflects their uncollectible factors. It is possible to say, however, that the separate nonresidential rate that ComEd uses for its own customers will be too low. This is because unlike RESs, ComEd cannot chose which customers it will accept as credit risks.

ComEd also argues that a blended rate does not reflect cost of service of each customer segment. [ComEd Brief, p. 6-8]. Dominion has already addressed this argument in its initial brief, showing that ComEd routinely blends discount rates, including the rate classes that make up the nonresidential rate that is the subject of this proceeding. These differences are huge, with the under 100kW class having uncollectible factors that are approximately three times the size of 100kW to 400kW customers uncollectible factors. [Dominion Initial Brief, p. 3; Dominion Ex. 2.2R.] Thus, if any group is already being subsidized, it is the under 100kW customers. There is no justification for an additional subsidy of separate discount rates. Furthermore, due to the lack of an all-in-all-out requirement for nonresidential PORCB customers, their uncollectible rates will exceed ComEd's nonresidential customers' uncollectible rates. Finally, due to the fact that providers of gas service to residential customers must credit screen their customers due to the lack of PORCB for gas service, the residential uncollectible rate of PORCB residential customers should be below ComEd's residential uncollectible rate. [Dominion Initial Brief, p. 2-7].

One argument of ComEd deserves special attention. ComEd claims that "this single charge would also impede the recovery of start-up and administrative costs from RESs because of lower participation." [ComEd Brief, p. 7.] This argument is based on ComEd's assumption that nonresidential customers will not use PORCB if the discount rate is blended. There are several reasons why this argument is incorrect. First, nonresidential customers *are* using PORCB. In fact, as of the end of April 2011, under 100kW demand nonresidential customers were approximately 50% more likely to take service using PORCB than residential customers (0.2117% of total under 100kW customers vs. 0.1315% of total residential customers). [Dominion Ex. 2.0R, p. 10; Dominion Ex. 2.6]. Second, given that the Commission chose to allow the recovery of startup costs with a per bill charge, the best chance that ComEd has to recover those costs is if the maximum number of customers, regardless of their class or usage level, are placed on PORCB. At the end of April, 2011, ComEd and ARES combined to provide electric supply to 3,431,631 residential customers and 356,350 nonresidential customers – a ration of approximately 10 to 1. [Dominion Ex. 2.6]. The Commission Staff notes that if every single nonresidential customer were taking PORCB service and paying the $0.50 per bill charge that would only generate the same revenue as less than 9% of residential customers taking PORCB. [Staff Brief, p. 12-13.] If the concern is the recovery of startup costs, then this Commission should be doing all it can to encourage RESs to provide PORCB service to residential customers.

IV. RETAIL ENERGY SUPPLY ASSOCIATION

RESA argues that use of a blended rate would violate cost causation principles and result in a subsidy, would discourage RESs from enrolling non-residential customers in Rider PORCB, would prevent ComEd from recovering its uncollectible costs, is not a good policy decision, frustrates the intent of the Illinois General Assembly that PORCB be available to RESs providing service to non-residential customers and is not required by consistency with the single, blended uncollectible rate for the Ameren Illinois Utilities. RESA Brief, p. 4-5.

Dominion has addressed most of these arguments in its initial brief and above. Two arguments deserve additional comment. First, RESA argues that "while a single, blended rate might encourage more activity in the residential market that does not make it a good policy decision for the Commission. There are many ways to encourage shopping in the residential market." [RESA Brief, p. 8] RESA does not provide any suggestions about how the Commission might encourage shopping in the residential market. This lack of suggestions is not surprising because competition for residential customers in Illinois is primarily driven by price, and virtually all pricing decisions in the development and implementation of CB and POR have already been made against residential customers. These decisions include the decision to allow ComEd to recover all Information Technology costs for a host of system improvements that would be necessary or useful in absence of POR from PORCB customers, the decision to recover those costs through the $0.50 per bill charge, the decision to have all-in-all-out for only residential customers and the decision to force RESs to sell their receivables to ComEd if they wish to use consolidated billing.

Second, RESA argues that the General Assembly intended to make PORCB available to nonresidential customers and using a blended rate "renders this legislative demarcation point irrelevant and rendering this RES option illusory." RESA misstates the intention of the General Assembly. The underlying intention of the General Assembly was not to promote PORCB. Rather, the General Assembly created the PORCB requirement as a tool to promote competition. The preamble to the section of the Act creating the PORCB obligation makes this intent clear:

> It is in the best interest of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anticompetitive practices in the provision of electric power and energy.
>
> 220 ILCS 5/118(a)

Thus, the Commission should set PORCB rules that promote competition, not PORCB itself. Competition is already flourishing for nonresidential customers, with 18.8% of nonresidential 0-100kW customers and 65.7% of nonresidential 100-400 kW customers taking service from RESs by the end of April 2011. On the other hand, by the same date, only 0.18% of residential customers were taking service from RESs. Moreover, because RESs have been enrolling nonresidential customers in PORCB *after* ComEd switched to a blended discount rate, RESA is wrong when it argues that a blended discount renders "this RES option illusory." [Dominion Ex. 1.0R, p. 16; Dominion Ex. 2.0R, p. 10; Dominion Ex. 2.6R; Dominion Ex. 2.8R.]

V. ILLINOIS COMPETITIVE ENERGY ASSOCIATION

ICEA argues that the Commission should direct ComEd to use separate discount rates because

- It better aligns the recovery of uncollectible costs with the class of customers that causes such costs;
- Consistency with the Memorandum of Understanding;
- In the best interest of *all* Illinois consumers in ComEd's service territory;
- Facilitates an apples-to-apples comparison with ComEd's default service rate; and
- Best comports with the statutory language and underlying policy establishing POR and UCB.

ICEA Brief, p. 2.

Dominion already addressed the first argument on cost of service and the final argument on statutory intent. Regarding the Memorandum of Understanding, the Commission cannot delegate its duty to parties that enter into an agreement among themselves, especially when only some of the parties in a proceeding have agreed to that settlement. "The Commission had no authority to impose a settlement not agreed to by all of the parties and the intervenors." *Business & Professional People v. Illinois Commerce Commission,* 136 Ill. 2d 192, 218 (1989).

ICEA spends considerable space touting the concern of its members for their residential customers. Dominion has no reason to doubt that ICEA and RESA have members interested in serving residential customers. Their voices were apparently not heard, however, because the Memorandum of Understanding reflects agreements that consistently side with nonresidential customers against residential customers. As noted in the brief of NEM, ComEd's PORCB program includes:

> a fixed $0.50 per bill charge to recover IT program costs and has an "all in, all out" requirement applicable only to residential consumer participation in POR. Moreover, ComEd requires that a marketer using its consolidated billing system must also participate in POR.
>
> NEM Brief, p. 2.

Adoption of a separate discount rate would add one more item to that list, which leads to ICEA's next point – that using separate discount rates would be in the best interest of all customers because a blended rate would result in "picking winners and losers." ICEA Brief, p. 4. Dominion need not elaborate on its position that the Memorandum of Understanding already picks winners and losers quite effectively - and does so by siding with nonresidential customers.

ICEA's argument that a blended discount rate will make it impossible for customers to compare apples to apples when comparing competitive offerings to ComEd supply service [ICEA Brief, p. 5] is puzzling. Prospective customers comparing RES service to ComEd supply service will be comparing charges that represent total costs per kWh being offered by RESs and ComEd, not a host of charges that include different discount rates. The Staff is similarly puzzled by this argument, noting that neither ComEd nor RESs provide discount rate information on their bills and the Commission's "Price to Compare" in PlugInIllinois.og does not offer such information. [Staff Brief, p. 15.]

VI. COMMISSION STAFF

The Commission Staff supports Dominion's argument that the Commission should consider the effective discount rate paid by customers, which is greater for low use customers than high use customers due to the $0.50 per bill charge. Because residential customers have lower use than nonresidential customers, changing to separate discount rates would increase that differential. While the Staff takes no position on whether the Commission should choose a blended discount rate or separate discount rates, the Staff concludes that preventing "further increasing the effective PORCB discount rate for residential receivables as valid support for [the decision to maintain a blended discount rate]." [Staff Brief, p. 5-6.]

While the Staff does not completely endorse Dominion's other arguments supporting a blended rate, it does not outright dismiss them. Regarding the figures showing that nonresidential customers have indeed been taking PORCB service under a blended rate, the Staff states: "While it is certainly useful to look at the data from the first few months of PORCB availability, it would be unwise to exclusively rely on these numbers to support the notion that certain charges have or have not deterred suppliers from using PORCB for one or more customer classes." [Staff Brief, p. 6.] Dominion agrees with this statement – this data is useful but should not be the sole basis for a decision. It need not be the sole basis for a decision, however, as the other arguments provided by Dominion also support such a finding. In any event, it is clear from this data that RESs *are* using PORCB for some of their nonresidential customers. Thus, it is contrary to the only evidence in the record to argue that a blended rate has blocked RESs from using PORCB to serve their nonresidential customers.

Staff agrees that there may be some "cherry picking" by RESs that take advantage of the lack of an all-in-all-out rule for nonresidential customers, but limits that group to "situations where the availability of PORCB will widen the targeted customer segment for a RES who had previously limited itself to a narrower customer segment." Staff Brief, p. 7. The Staff concludes:

> In sum, while Staff agrees that there could be additional cherry-picking by RESs that are SBO capable, it is unclear whether this additional cherry-picking would be sufficient justification for the Commission to conclude that "the uncollectible factor reflected in a blended rate would be more accurate.

Staff Brief, p. 7-8.

It is important to note that the Staff believes that there could be cherry picking by RESs, which will invariably result in uncollectible factors of PORCB nonresidential customers exceeding that of ComEd's nonresidential customers. Thus, while a blended rate may or may not be a perfect reflection of the nonresidential PORCB customer uncollectible factor, it is certain that the separate rate used by ComEd for its own customers will understate the cost of purchasing their receivables because there will be some cherry picking. The lack of an all-in-all-out requirement for nonresidential customers guarantees it. ComEd admits that it wanted the all-in-all-out requirement for residential customers in order to prevent RESs from placing high risk residential customers on PORCB. [ComEd Ex. 13.0, p. 16]. There is no reason to believe that RESs serving nonresidential customers would behave differently if given the chance.

The Staff takes a measured position on the weight that should be given fact that RESA and IECA members support the Memorandum of Understanding and Dominion opposes it.

> In Staff's opinion, just as the Commission should not dismiss Dominion's arguments simply because Dominion is the lone supplier in this proceeding to argue for a combined uncollectibles rate, the Commission would be ill-advised to discount the arguments made by ICEA/RESA because some of ICEA/RESA's members might focus exclusively on larger commercial customers.

[Staff Brief, p. 8-9.]

Dominion supports the Staff's recommendation. The positions set out in the Memorandum of Understanding should stand or fall on their own, just as the positions set forth by Dominion should stand or fall on their own.

Regarding Dominion's argument that it has a base of credit screened natural gas customers that it will first target for electric service, the Staff states:

> While it is certainly possible that the receivables sold by Dominion would have a lower uncollectibles portion than ComEd's overall historic residential uncollectibles percentage, it is unlikely that this is the case for the majority of suppliers using PORCB (currently or in the future), let alone for all of the suppliers.

Staff Brief, p. 9.

It is not necessary for all or even a majority of PORCB suppliers of residential service to have the same uncollectible rate as Dominion in order for the separate discount rates to be inaccurate. Dominion's point is that given the lack of PORCB in the gas market in Illinois, combination suppliers such as Dominion will need to protect themselves with credit screening, thus lowering the average uncollectible rate of ComEd PORCB residential customers below the rate of ComEd's own customers. Thus, the important fact is not that ComEd's residential uncollectible factor would be higher than Dominion's but that would be higher than PORCB residential customers on average.

VII. CONCLUSION

For the reasons stated above and in Dominion's Initial Brief, the Commission should find that ComEd should continue to use a single, blended discount rate for residential and nonresidential customers.

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Dominion Retail, Inc.'s Reply Brief been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 27th day of June, 2011, by electronic mail.

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