

TATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,)	
Proposal to establish Rider PORCB)	
(Purchase of Receivables with Consolidated Billing) and)	Docket No. 10-0138
to revise other related tariffs.)	On Rehearing

**BRIEF ON EXCEPTIONS ON REHEARING OF
COMMONWEALTH EDISON COMPANY**

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SUMMARY

Commonwealth Edison Company (“ComEd”) submits this Brief on Exceptions on Rehearing to the Proposed Order on Rehearing (the “Proposed Order”) issued by the Administrative Law Judge (“ALJ”) on July 19, 2011. ComEd respectfully submits that the Proposed Order is contrary to the Public Utilities Act and unsupported by the evidence. Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code § 200.830, suggested replacement language is included in the attached Appendix.

Based on a fundamental misunderstanding of Section 16-118 of the Public Utilities Act (the “Act”), the Proposed Order claims that the Commission has broad authority to craft a purchase of receivables program that requires the small commercial segment to subsidize the residential segment. The General Assembly, however, already decided which customer segments would benefit from the purchase of receivables program (“residential retail customers and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts”), and did not grant the Commission discretion under subsection (c) of Section 16-118 to favor one of these segments at the expense of the other. Although the Proposed Order claims that subsection (a) of Section 16-118 gives the Commission authority to do so, the Proposed Order fails to note that subsection (a) was enacted 10 years prior to subsection (c) and for an entirely different purpose – to establish the initial tariffs and interconnection obligations under the Electric Service Customer Choice and Rate Relief Law of 1997.

Further, Section 16-118(c) does not prohibit the use of separate bad debt factors in the discount rate. While the use of these factors will result in slightly different discount rates for the residential and small commercial segments, Section 16-118(c)’s reference to “a discount rate”

does not mean that the Commission may only approve one discount rate. To the contrary, it is well established in Illinois statutes and case law that “[w]ords importing the singular number may extend and be applied to several persons or things....” 5 ILCS 70/1.03. Moreover, incorporating the Commission-approved bad debt factors established under ComEd’s Rider UF – Uncollectible Factors (“Rider UF”) is wholly consistent with Section 16-118(c), which requires that the discount rate be “based on the electric utility’s historical bad debt.” 220 ILCS 5/16-118(c).

Even if the Act granted the Commission discretion to favor one customer segment over the other (and it does not), the evidentiary record is bereft of a single fact in support of such a policy decision. Because the Amendatory Order’s unexpected adoption of a blended uncollectible charge “was not the subject of the evidence presented” in the initial case, the ALJ recommended that rehearing be granted so that “evidence [c]ould be proffered on this issue before a final decision is made.” *Commonwealth Edison Co.*, ICC Docket No. 10-0138, ALJ Memorandum (March 13, 2011). As the Proposed Order observes, however, the rehearing phase failed to uncover a single fact that supports the blended bad debt charge: “at this point in time, the use of statistics is not valuable. This is because the program here is just too new.... Therefore, we decline to consider the statistics that were proffered by Dominion and RESA.” PO at 11. In sum, the Proposed Order cannot point to any evidence in support of its policy decision that “it is in the best interests of Illinoisans” to impose a lower bad debt charge on residential customers’ receivables by imposing a higher bad debt charge on nonresidential customers’ receivables than would otherwise be applied under ComEd’s Rider.

I. The Proposed Order Fundamentally Misunderstands Section 16-118 of the Act.

A. The General Assembly Has Already Decided Which Customer Segments Should Benefit from the Purchase of Receivables Program.

The Proposed Order's conclusions are based on a fundamental misreading of Section 16-118 of the Act. After explaining that Public Act 95-0700 amended Section 16-118 of the Act to add a new subsection (c) requiring a purchase of receivables ("POR") program, the Proposed Order incorrectly states that "[t]he purpose of this new law is" found in subsection (a): "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." PO at 1 (quoting 220 ILCS 5/16-118(a)). Based on this quote, the Proposed Order claims that the Commission has broad authority to craft policy under the POR program to promote competition for the residential segment at the expense of the small commercial customer segment. This is wrong for three reasons.

First, the Proposed Order omits the fact that subsection (a) was enacted 10 years prior to subsection (c) and for an entirely different purpose. Subsection (a) of Section 16-118 of the Act took effect on December 16, 1997 as part of the Electric Service Customer Choice and Rate Relief Law of 1997 (Public Act 90-0561 ("PA 90-0561")), which laid the groundwork for the introduction of deregulation and competition in the Illinois electric services market. PA 90-0561 included only subsections (a) and (b) of Section 16-118. Specifically, subsection (a) provides as follows:

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.
Therefore, to the extent an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and are

not competitive services, they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. Each electric utility shall permit alternative retail electric suppliers to interconnect facilities to those owned by the utility provided they meet established standards for such interconnection, and may provide standby or other services to alternative retail electric suppliers. The alternative retail electric supplier shall sign a contract setting forth the prices, terms and conditions for interconnection with the electric utility and the prices, terms and conditions for services provided by the electric utility to the alternative retail electric supplier in connection with the delivery by the electric utility of electric power and energy supplied by the alternative retail electric supplier.

220 ILCS 5/16-118(a) (emphasis added). The first sentence, which is quoted by the Proposed Order, is specific and unique to the purpose of subsection (a). This is indicated by the word “Therefore” at the beginning of the second sentence. According to Black’s Law Dictionary, “therefore” means “for that reason” or “on that ground or those grounds.” Black’s Law Dictionary 1616 (9th ed, 2009). Put another way, the first sentence provides the reasons or grounds for the second sentence and remainder of subsection (a), which requires electric utilities to file certain tariffs and permit interconnection. Subsection (a) is not a broad “findings” paragraph, and does not grant the Commission broad authority to craft policy under either subsection (a) or subsection (c). And, in any event, subsection (a) could not state the purpose of subsection (c) because subsection (c) did not come into existence until a decade later.

Second, when the General Assembly added subsection (c) to Section 16-118 in 2007, it clearly set forth the structure and components of a new purchase of receivables program, and already decided the issue of which specific customer segments the program was designed to benefit. These include “residential retail customers and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts.” 220 ILCS 5/16-118(c).¹ As a result,

¹ This is also consistent with the much more recent and relevant findings of the General Assembly set forth in Section 20-102 of the Act. In 2006, the General Assembly found that “[a] competitive retail electric market does not yet exist for residential and small commercial consumers. As a result, millions of residential and small commercial

even if subsection (a) applied to subsection (c), subsection (c)'s specific language would control. *Unifund CCR Partners v. Shah*, 407 Ill. App. 3d 737, 741 (Ill. App. 1st Dist. 2011) (“It is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied.” (quoting, *Knolls Condo. Ass'n v. Harms*, 202 Ill.2d 450, 459 (2002))).

Third, the Final and Amendatory Orders in this docket have already held that neither subsection (a) nor the legislative debates regarding PA 95-0700 “intended any class of consumer to be the primary beneficiary of this Act.” *Commonwealth Edison Co.*, ICC Docket No. 10-0138 Final Order (Dec. 15, 2010) at 24; *Commonwealth Edison Co.*, ICC Docket No. 10-0138 Amendatory Order (Feb. 9, 2011) at 24. As a result, the Proposed Order, if adopted, would contradict the Final and Amendatory Orders.

B. Section 16-118(c) Does Not Preclude the Use of Separate Bad Debt Factors in the Discount Rate.

Section 16-118(c) requires that “[r]eceivables for power and energy service of alternative retail electric suppliers ... shall be purchased by the electric utility at a just and reasonable discount rate”, and that the discount rate “be based on the electric utility’s historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility’s purchase of receivables.” 220 ILCS 5/16-118(c) (emphasis added). Accordingly, based on the plain language of the statute, ComEd proposed a discount rate that incorporates the separate bad debt factors established and approved by the Commission in ComEd’s Rider UF. Although this proposal was uncontested throughout the docket until the Amendatory Order, the Proposed Order

consumers in Illinois are faced with escalating heating and power bills and are unable to shop for alternatives....” 220 ILCS 5/20-102(c).

now claims that the use of these separate factors will effectively result in two discount rates (one for residential receivables and one for small commercial receivables), and that the statute prohibits the existence of more than one discount rate because it refers to “a” discount rate.

However, the Illinois Statute on Statutes provides that “[w]ords importing the singular number may extend and be applied to several persons or things, and words importing the plural may include the singular.” 5 ILCS 70/1.03. Moreover, the Illinois Supreme Court has held that “[t]he article ‘a’ is generally not used in a singular sense unless such an intention is clear from the language of the statute.” *Lindley v Murphy*, 387 Ill. 506, 517 (1944). *See also Rippinger v. Niederst*, 317 Ill. 264, 269 (1925) (“It is settled in this state, both by statute and the decisions of this court, that words importing the singular may be extended and applied to several persons or things...”).

Accordingly, the fact that Section 16-118(c) refers to “a” discount rate does not prohibit the Commission from approving a just and reasonable discount rate that incorporates separate uncollectible factors applicable to the residential and nonresidential customer segments. In fact, based on a plain language reading of Section 16-118(c), such a result is required. Because ComEd’s “historical bad debt” is reflected in Commission-approved separate bad debt factors that correspond to the unique experience of the residential and nonresidential segments, use of these factors is wholly consistent with, if not compelled by, Section 16-118(c). *See Kozak v. Retirement Bd. of Firemen’s Annuity Benefit Fund of Chicago*, 95 Ill.2d 211, 215 (1983) (“The words used in a statute are to be given their ordinary and popularly understood meaning.” (citation omitted)); *People v. Dinger*, 136 Ill.2d 248, 257 (1990) (“To determine legislative intent, we first look to the plain meaning of the statute, and construe the terms of the statute in the context in which they appear.” (citations omitted)).

Proposed Alternative Language:

ComEd's proposed alternative language appears in Section I of the Appendix.

II. The Proposed Order Does Not Cite Any Evidence in Support of the Conclusion That a Blended Bad Debt Charge “Is in the Best Interests of Illinoisans.”

Even if the Act had granted the Commission discretion to favor residential customers at the expense of the small commercial customers that Section 16-118(c) was designed to target (and it did not), the evidentiary record does not contain a single fact in support of this policy decision. Because the Amendatory Order's unexpected adoption of a blended uncollectible charge “was not the subject of the evidence presented” in the initial case, the ALJ recommended that rehearing be granted so that “evidence [c]ould be proffered on this issue before a final decision is made.” *Commonwealth Edison Co.*, ICC Docket No. 10-0138, ALJ Memorandum (March 13, 2011). However, even the Proposed Order admits that it cannot rely on the data produced during rehearing: “at this point in time, the use of statistics is not valuable. This is because the program here is just too new.... Therefore, we decline to consider the statistics that were proffered by Dominion and RESA.” PO at 11. As a result, the Proposed Order is unable to point to any evidence in support of its policy decision that “it is in the best interest of Illinoisans” to impose a lower bad debt charge on residential customers' receivables by imposing a higher bad debt charge on nonresidential customers' receivables than would otherwise apply.²

² The Proposed Order's claim that parties have failed to show how the blended bad debt charge harms customers misses the point. Putting aside the fact that the parties have made this showing (*see, e.g.*, ComEd Init. Br. on Rehearing at 6-8), Illinois law is clear that Commission orders must be supported by substantial evidence. *See Citizens Util. Bd. v. Ill. Comm. Comm'n*, 166 Ill.2d 111 (1995) (The Commission's findings will be reversed only if they “are not supported by substantial evidence based on the record; the Commission acted outside the scope of its statutory authority; the Commission issued findings in violation of the State or Federal Constitution or law; or the proceedings or the manner in which the Commission reached its findings violates the State or Federal Constitution or laws, to the prejudice of the appellant.” (citing 220 ILCS 5/10-201(e)(iv)(A) through (e)(iv)(D))). Claiming that

Absent evidentiary support, the Proposed Order appears to justify its policy decision by suggesting that the Commission-approved Rider PORCB is not a just and reasonable rate, and therefore requires further adjustment. This has the odd effect of cannibalizing and collaterally attacking the Commission's own Amendatory Order in this docket. First, the Proposed Order observes: "While some parties have claimed that the retail electric suppliers will be under-recovering from residential customers if there is a blended uncollectible charge, the \$0.50 charge should make up the difference in relation to customers who do not use much electricity, which would be most residential customers." PO at 11.

However, there is no need to "make up the difference." The fixed, \$0.50 per bill charge is a just and reasonable rate that was approved by the Commission after considering a robust evidentiary record:

Accordingly, we adopt the fixed charge approach, which properly accounts for the fixed nature of the start-up and implementation costs being recovered by that charge. The fact that start-up and implementation costs do not vary with the amount of receivables purchased is an unrefuted fact. (ComEd Brief on Exceptions at 21 citing Staff Initial Brief at 11.) Under the fixed charge approach, RESs are billed a fixed charge for what are fixed start-up and implementation costs that do not change with usage. In this way, all RESs are treated fairly and RESs serving high-use customers are not forced to subsidize RESs serving low-use customers. Record evidence supports a finding that adopting a percentage charge would impose higher charges on RESs for high-use customers despite the fact that the start-up and implementation costs are fixed and that these customers impose no higher costs on ComEd than low-use customers' bills.

Amendatory Order at 24. This Commission-approved charge is not at issue on rehearing, and it is therefore inappropriate for the Proposed Order to imply that this charge needs to be mitigated, offset or subsidized for the residential receivables purchased under Rider PORCB by artificially

the parties have not demonstrated the harm of the blended bad debt charge does not relieve the Commission of its obligation to support its adoption of the blended bad debt charge with substantial evidence.

reducing the residential customers' bad debt rate. There is nothing defective about this charge, nor is there a shortfall created by this charge requiring that the Commission now "make up the difference."

Second, to justify the blended bad debt rate, the Proposed Order incorrectly claims that "no party has contested the veracity of Dominion's assertions indicating that ComEd's POR program is already skewed in a manner that disfavors competition in the residential market." PO at 17. Not only is this statement incorrect, but it appears to agree with Dominion Retail Inc. ("Dominion") that the Commission approved an unjust and unreasonable rate that "disfavors competition in the residential market." If the Proposed Order were adopted, it is unclear how this statement, which seems to criticize and attack Rider PORCB as approved by the Commission in the Amendatory Order, could be reconciled with that Order.

Moreover, the Proposed Order incorrectly claims that no party rebutted Dominion's assertions. For example, one of Dominion's assertions related to the fixed \$0.50 charge, which is addressed above and in the parties' briefs. *See, e.g.,* ComEd Reply Br. on Rehearing, at 5-6. Although Dominion's complaints regarding the Commission's approval of the "all-in", "all-out" provision are not at issue on rehearing, ComEd nevertheless addressed this issue in briefing. *See id.* at 3-4. Similarly, Dominion's assertions regarding the Commission's approval of the recovery of start-up and implementation costs are not at issue on rehearing, and are instead the subject of Dominion's appeal. To the extent the Proposed Order suggests Dominion is correct in concluding that these provisions "disfavor[] competition in the residential market", the Proposed Order, if adopted, would cannibalize, contradict and serve as a collateral attack on the Commission's Amendatory Order in this docket. It is unclear how these orders would be reconciled.

Proposed Alternative Language:

ComEd's proposed alternative language appears in Section II of the Appendix.

III. The Proposed Order Should Be Revised to Accurately and Fully Reflect the Parties' Positions and the Procedural History That Led to Rehearing.

The Proposed Order should be revised to correctly reflect the parties' positions and the complete procedural history that preceded the Commission's grant of The Illinois Competitive Energy Association's and The Retail Electric Supply Association's Applications for Rehearing, which included the Commission's Final Order, Amendatory Order and Order on Emergency Motion for Clarification.

Proposed Alternative Language:

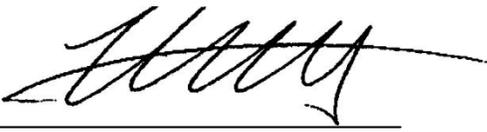
ComEd's proposed alternative language appears in Section III of the Appendix.

WHEREFORE, ComEd respectfully requests that the Proposed Order be revised as set forth herein and in the attached Appendix.

July 26, 2011

Respectfully submitted,

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