STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On its Own Motion	)	
	)	
Commonwealth Edison Company,	)	
	)	Docket No. 11-0434
Investigation of Rate GAP pursuant to	)	
Section 9-250 of the Public Utilities Act	)	

VERIFIED INITIAL COMMENTS OF DOMINION RETAIL, INC.

Dominion Retail, Inc., ("Dominion Retail"), by its attorneys, Rowland & Moore LLP, and pursuant to the schedule established in this proceeding, provide the following initial comments on Commonwealth Edison Company's ("ComEd's") Rate GAP. These comments address two issues. First, ComEd's proposal to provide customer data of both its own customers and those of Retail Energy Suppliers ("RESs") to the governmental bodies is contrary to the provisions in the Public Utilities Act creating the governmental aggregation program. Second, the data supporting ComEd's charges shows that those charges should be reduced.

II. ComEd's Proposal to Provide RES Customer Data to Governmental Bodies is Contrary to Law.

ComEd argues that under Section 1-92 of the Illinois Power agency Act (20 ILCS 3855/1-1, "the Act"), the company must make data of both its own customers and the customers of RESs available to the governmental body. Dominion disagrees with ComEd's interpretation of the Act. A proper reading of the Act shows that data regarding RES customers should not be provided under any circumstances. The relevant provision in the Act provides as follows:

> Notwithstanding Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, an electric utility that provides residential and small commercial retail electric service in the aggregate

> area must, upon request of the corporate authorities or the county board in the aggregate area, submit to the requesting party, in an electronic format, those account numbers, names, and addresses of residential and small commercial **retail customers** in the aggregate area that are reflected in the electric utility's records at the time of the request.
> 20 ILCS 3855/1-92(c)(2) (emphasis added)

The term "retail customers" should be interpreted to mean customers of ComEd commodity service rather than ComEd's interpretation that it also includes customers receiving commodity service from a RES and delivery services from ComEd. This latter definition is not consistent with the rest of Section 1-92. There is no indication in the Act that the General Assembly intended to interfere with existing contracts between customers and RESs. In fact, requiring the distribution of proprietary information such as customer lists to competitors that could use that data, results in an unconstitutional impairment of contracts between a RES and its customers. *See* U.S. Const., art. I, § 10; *Ill. Const. 1970, art. I, § 16*.

Courts use a three part test to determine if state action results in an unconstitutional impairment of contract: (1) whether governmental action has impaired that obligation; (2) whether the impairment of the contract is substantial; and (3) whether the government action serves an important public purpose. *Commonwealth Edison Co. v. Illinois Commerce Commission*, 398 Ill. App. 3d 510 529; 924 N.E.2d 1065, 1086 (2nd Dist. 2009). These three tests would be met if the Commission requires ComEd to provide customer information to governmental bodies and, ultimately, the RES that would be providing service through Rate GAP. RESs have a proprietary interest in their customer's identity. They have invested substantial sums in acquiring customers and have contracts with those customers. Providing that information to the governmental bodies allows the interference with that relationship. That

impairment would be substantial because the customer may be persuaded to switch their service to a RES that obtains that list from a governmental body, thus completely breaking that contractual relationship. Finally, providing that information to the governmental bodies does not serve an important public purpose. The customer information is to be used to allow customers to opt-in or opt-out of Rate GAP service. There is no purpose served by notifying existing customers of RESs of that right when they are already have a contract with another RES. In fact, such notification would generate confusion among those customers, thus imposing costs on their existing RES which will need to respond to such inquiries. Moreover, it could result in slamming – either inadvertent or intentional – by the RES that obtain this information from the governmental bodies. Thus, providing information on RES customers to the governmental bodies not only serves no public purpose, but it actually is against the public purpose.

The recent amendment to Section 1-92 reinforces the notion that the General Assembly did not intend "retail customers" to include customers receiving RES service. HB 3182 (now Public Act 097-0338), added account numbers to the list of information that must be provided to the governmental bodies. The only possible use of those numbers is to effectuate an enrollment, which cannot be done if a customer is already receiving service from a RES because to do so would require breaking the contract with their RES. The General Assembly would not have required electric utilities to provide information that it knew could not be used by the governmental bodies. A court may not interpret a statute in such a manner as to render any part of it meaningless. *Commonwealth Edison Co. v. Illinois Commerce Commission, Id*. 398 Ill. App. 3d at 523.

ComEd obviously recognizes the danger of providing governmental bodies with account numbers because it withholds those numbers, stating:

> [T]he list of account numbers provided to the Governmental Authority is limited to those customers that have not opted-out and are not taking service from a RES in order to help avoid disrupting existing supply arrangements and avoid unnecessary release of these account numbers.
>
> ComEd Comments p. 5.

ComEd fails to explain how it can impose that limitation without violating the amendment that requires it to provide account numbers to governmental bodies. ComEd's process, with its questionable legality, is not necessary if the term "retail customer" is interpreted as recommended by Dominion to include only ComEd commodity customers. Interpreting that phrase as ComEd does, to include customers receiving delivery services alone, creates the danger that the governmental body could rely upon the amendment to demand that ComEd provide the account numbers of RES customers. ComEd agrees with Dominion that Section 1-99 lacks the appropriate restrictions on the use of data acquired from electric utilities and it admits that it has no ability to monitor or enforce restrictions upon governmental bodies or the RESs that serve their programs. ComEd Comments p. 10. Thus, once the account numbers of RES customers are in the hands of the governmental bodies, there is no effective mechanism that could prevent that information from falling into the wrong hands. The General Assembly could not have intended to create such a danger of slamming, customer confusion and anticompetitive conduct.

Finally, Dominion notes that it is not unusual for a governmental aggregation process to be designed to withhold RES customer data from governmental bodies. The governmental aggregation program rules in the State of Ohio define the customers that are included in the

program in a manner that excludes the customers of RESs. A copy of the relevant provision of those rules is attached to these Comments as Attachment A.[1]

In summary, given the fact that this section of the Act relates to commodity service alone, the term "retail customers" can only mean residential and small commercial customers receiving commodity service from the electric utility. Thus, ComEd is not required, expected or even allowed, to provide data regarding customers receiving commodity service from a RES. Dominion therefore believes that the tariff should provide that ComEd will only provide customer data of those residential and small commercial customers that are receiving commodity service from ComEd.

II. ComEd's Charges For Rate GAP Should Be Reduced.

First, it appears that ComEd is including in its costs of governmental aggregation certain fixed overhead costs that should not be recovered in its charges. As support for the charges that ComEd will be imposing in order to implement its Rate GAP, the company provided the four pages in Attachment A to its Initial Comments entitled "Determination of the Muni Ag Fee." Page four of that document contains the "Fully Loaded Labor Rate Calculation." That document indicates that the Affiliated Interest Agreement Common and Non-Common Back Office Rate costs represent nearly 25 % of the total. These are fixed overhead costs that would be incurred

[1] Rule 4901:1-28-01(C), Ohio Administrative Code, defines an "eligible customer" as not including three specific categories of customers, one of which (Rule 4901:1-28-01(C)(2)), is "A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation."

regardless of whether a RES requests a customer list for governmental aggregation. Therefore, these costs should be excluded as not being an "incremental" cost to this program.

Second, it appears that the cost of obtaining a customer list is far above the charges imposed by other utilities for comparable governmental aggregation programs. Page 13 of ComEd's comments provides the three cost components of the customer lists. Initially, Dominion notes that it is not clear why these are broken down into three categories. They should be combined into one for administrative ease. More importantly, the total cost of obtaining a complete customer list with all three categories is $852. Assuming that a typical municipal aggregation is about 5,000-10,000 residents, the per capita chare would range between 17 cents to 8.52 cents per customer. In contrast, the costs for governmental aggregation customer lists in Ohio are considerably lower. Columbia Gas of Ohio charges 7 cents per customer (currently being contested by suppliers); Duke Energy-Ohio has zero charge; and Dominion East Ohio charges 5 cents per customer.

CONCLUSION

For the reasons stated above, ComEd's tariff should be modified to prevent the release of sensitive RES customer data from being released to the governmental bodies and ComEd's charges should be reduced.

Dated: December 29, 2011

Respectfully submitted,
Dominion Retail, Inc.

/s/ *Stephen J. Moore*
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ATTORNEYS FOR Dominion Retail, Inc.

Attachment A

Ohio Administrative Code

Chapter 4901:1-28 Aggregation with Prior Consent

4901:1-28-01 Definitions.

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

(B) "Customer" means any person who has an agreement, by contract and/or tariff, with a gas or natural gas company to receive service or any person who requests or makes application for retail natural gas service.

(C) "Eligible customer" means a person that is eligible to participate in a governmental aggregation in accordance with sections 4929.26 and 4929.27 of the Revised Code and does not include any of the following:

(1) A person that is a both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer.

(2) A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation.

(3) A person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905. or 4929. of the Revised Code.

(4) A person that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the incumbent natural gas company.

(D) Existing customer means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.

(E) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

(F) “Mercantile customer” has the meaning set forth in division (L) of section 4929.01 of the Revised Code.

(G) “Natural gas company” has the meaning set forth in division (G) of section 4929.01 of the Revised Code.

(H) “Operations and governance plan” means a plan adopted by a governmental aggregator pursuant to division (C) of section 4929.26 of the Revised Code.

(I) “Opt off” means an action by a person to remove their name and associated account information from a natural gas company’s pre-enrollment list.

(J) “Opt-out notice” means a notice provided to the public pursuant to section 4929.26 of the Revised Code.

(K) “Pre-enrollment list” means a list of customers and associated customer information compiled by a natural gas company pursuant to division (F) of section 4929.22 of the Revised Code and as directed by the commission.

(L) “Retail natural gas service” has the meaning set forth in division (M) of section 4929.01 of the Revised Code.

(M) “Retail natural gas supplier” has the meaning set forth in division (N) of section 4929.01 of the Revised Code.

Effective: 04/13/2007

STATE OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

Verification

I, William L. Barkas, being first duly sworn, depose and state that I am Manager, State Government Relations with Dominion Retail, Inc., and that I have read the foregoing Initial Verified Comments and know the contents thereof and the statements therein contained are true, to the best of my knowledge, information and belief.

William L. Barkas

Subscribed and Sworn
to before me this 28 day
of December 2011

Karen Schnarrenberger
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Karen Schnarrenberger, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires July 30, 2014
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Dominion Retail, Inc.'s Initial Verified Comments have been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 29th day of December, 2011, by electronic mail.

/s/ *Stephen J. Moore*

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