

The Commission does have the ability to order additional requirements under its continued authority to ensure adequate, efficient, reliable and least-cost public utility services at just and reasonable rates. See, *e.g.*, 220 ILCS 5/1-102, 5/9-101. Illinois consumers should not be deprived of the benefits and protections they could receive from additional performance metrics that would help ensure the most efficient utility spending simply because the time period set forth in the statute does not allow a great deal of time to develop a record on those metrics. See PO at 28.

I. The Commission has the Legal Authority to Order Additional Metrics

The Energy Infrastructure Modernization Act (“EIMA”), which created the performance based-formula rate structure that is the subject of this proceeding, creates an alternative to the way rates for electric utilities have traditionally been set in Illinois. The Act also includes performance metrics to “further ensure that reliability and other indicators and not just maintained but improved over the next decade,” when Commonwealth Edison Company (“ComEd”) will be making \$2.6 billion in investments. 220 ILCS 5/16-108.5(a), 5/16-108.5(a)(1)(A), 5/16-108.5(a)(1)(B). EIMA emphasizes a consistency of interest between the participating utility and its customers: because the utility will significantly increase spending, clear expectations for performance (and consequences for not meeting those expectations) are defined in the Act. 220 ILCS 5/16-108.5(f). A main objective of the new legislation is to “mutually benefit the State’s electric utilities and their customers, regulators and investors” and to “promote prudent, long-term infrastructure investment.” 220 ILCS 5/16-108.5(a). The

General Assembly clearly intended to condition the massive utility investment on providing equally significant benefits to ratepayers. The General Assembly just as clearly stated that these “regulatory reforms” would not limit the existing ICC authority over regulated public utilities.

The ICC is still required to ensure rates are just and reasonable, and that utility investments are prudently made. 220 ILCS 5/16-108.5(c)(6). EIMA makes clear that the performance-based formula rate tariff filed by a participating utility should be consistent with the provisions of Article IX of the Act. 220 ILCS 5/16-108.5(c). All of these references to the Commission’s authority to require prudent investments and to set just and reasonable rates, consistent with the other provisions of Article IX of the Act, indicate the General Assembly’s intent that the Commission continues to have broad authority under the PUA.

The Commission was created by statute with the express duty to exercise general supervision over all Illinois public utilities in accordance with the provisions of the PUA. *Sheffler v. Commonwealth Edison Co.* 399 Ill. App. 3d 51, 60 (1st Dist. 2010), citing 220 ILCS 5/4-101. The Commission’s “broad ratemaking authority” includes Commission discretion to “formulate reasonable methods of achieving stated legislative objectives.” *Abbott Laboratories, Inc. v. Illinois Commerce Comm'n*, 289 Ill. App. 3d 705, 712 (1st Dist. 1997), citing *Lake County Board of Review v. Property Tax Appeal Board*.

The Public Utilities Act specifically provides that the Commission “shall have general supervision of all public utilities” including,

the manner in which their plants, equipment and other property ... are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with this Act and any other law, with the orders of the Commission and with the charter and franchise requirements.

Sheffler, 399 Ill. App. 3d at 60.

The additional performance metrics proposed by CUB/City are entirely consistent with the ICC's grant of authority under the PUA and under the new EIMA performance-based formula rate provisions. The strong emphasis placed on utility performance, on creating new investment opportunities, and on integrating new grid resources, such as distributed generation and net metering, make clear that the ICC has a role to play in making sure that this new structure provides benefits to customers. See, e.g. 220 ILCS 5/8-103A; 220 ILCS 5/16-108.6; 20 ILCS 3855/1-56.

The Commission should place a strong emphasis on utility performance by setting standards that provide maximum customer benefits. Doing so would fulfill the Act's intended purpose of modernizing the State's electric grid while promoting only prudent utility spending that has substantial benefits for both the utility and its ratepayers. 220 ILCS 5/16-108.5(a).

Neither the PUA nor EIMA limits the Commission's authority to place additional performance expectations on an electric utility. What CUB/City propose is an extension of the inherent authority of the ICC—authority the Commission has used in the past to order workshops on topics such as smart grid investments and the development of natural gas choice programs for small retail customers. In 2007, the

ICC used a proposal from ComEd for a large-scale system modernization rider as an opportunity to create not only a pilot of advanced metering infrastructure technology, but an entire statewide collaborative planning process for smart grid investments. The Commission concluded that ComEd's proposal was premature because

[T]he Commission believes that it must first determine how smart grid should be deployed in Illinois, and then determine whether and to what degree it is necessary to approve a particular cost recovery mechanism. Lacking an overall goal for Illinois, Rider SMP simply promotes a project by project approach. Further, although ComEd has agreed to a workshop process, it would still retain sole discretion in determining what projects are ultimately proposed to the Commission.

Similarly, without an overall plan for smart grid deployment and without any specific projects being proposed, the Commission does not know the extent of the costs and benefits involved, with the possible exception of Phase 0. The estimates of costs in the record have varied greatly and the estimates of benefits have been sporadic at best. This lack of cost and benefit information is a problem that is not overcome by the process proposed for Commission pre-approval of specific projects. Our hope is to have a better grasp of costs and benefits once Phase 0 is implemented and analyzed, as discussed below.

ICC Docket No. 07-0566, Final Order at 138 (September 10, 2008).

Though the Commission was convinced that the potential benefits of smart grid investment must be considered, in that case the Commission was not certain what the best process was for doing so. 07-0566 Final Order at 140. Noting that it was obliged by federal legislation to open proceedings to consider smart grid ratemaking standards, the Commission nonetheless concluded that instead "a Statewide Smart Grid Collaborative process" should be instituted to "consider the costs and benefits of smart grid implementation and develop a strategic plan for such implementation for

presentation – upon completion and in a docketed proceeding – to the Commission.”
07-0566 Final Order at 141.

More recently, the ICC opened workshops to examine whether or not it was appropriate for the Ameren Illinois Company to institute a retail gas choice program for its small customers. ICC Docket No. 11-0282, Final Order at 194 (January 10, 2012). The scope of the workshops will be whether there would be any benefit to customers from such a program; whether the costs of implementing such a program would be reasonable; whether there is utility support for the competitive market; will there be full utility cost recovery for the utility; and a properly adjusted price-to-compare. *Id.* The Commission noted it had “used a workshop process in numerous other instances involving both choice issues as well as other more complex issues,” in part because the process “provides flexibility and open access” for stakeholders. *Id.*

Both Docket 07-0566 and Docket 11-0282 were general rate cases brought under section 9-201 of the Act. Section 9-201 does not include language authorizing the Commission to order workshops or to order a statewide investigation regarding the merits of smart grid technologies. Nor does section 9-201 explicitly state that the Commission has authority to initiate workshops to investigate the appropriateness of retail gas programs for low-use customers. Despite the lack of specific authority in section 9-201, the Commission nonetheless ordered these investigations under its general authority to regulate public utilities. No party, including ComEd in Docket 07-0566 or Ameren in Docket 11-0282, challenged the Commission’s decision on this point, as it is clearly understood that the Commission has authority to conduct such

investigations. The same is true here. As discussed below, although EIMA lists certain performance criteria that participating utilities must meet, that does not mean that the Commission is prohibited from establishing additional criteria or ordering workshops to consider additional metrics.

II. Illinois Consumers Should Not Be Deprived of the Benefits of Additional Metrics Simply Because of the Statutory Deadlines in this Case

The PO states “[w]hile CUB/City has some good ideas concerning other potential metrics, the limited time period as set forth in the statute makes it difficult to develop a record to include these additional requirements.” PO at 28. The time frame of this docket should have no bearing on the benefits and protections consumers should have while ComEd invests \$2.6 billion over the next ten years. CUB witness Christopher Thomas offered specific suggestions as to additional metrics that the Commission should order, but also suggested a workshop process to develop metrics. CUB Ex. 1.0 at 6-13. Nothing in the Act, including in the new provisions, states that the Commission cannot initiate a docket on its own to order new metrics. The Commission can initiate a new docket following the conclusion of a workshop process to implement any additional metrics fully developed by stakeholders and ComEd, just as it did in the 2007 ComEd case:

Due to the fact that the exact scope of the Phase 0 project will be defined in the AMI workshops, the Commission is not approving a recovery of specific costs in this Order for Phase 0. In order to recover its costs through Rider SMP, ComEd must file a request for approval of the Phase 0 project after completion of the workshop process. In addition, the request

will also require the Commission's approval of the goals, timelines, evaluation criteria, etc., that were developed in the workshops.

ICC Docket No. 07-0566, Final Order at 140.

The Commission then ordered that its proposed "Statewide Smart Grid Collaborative" be followed by a "Commission docket to adopt specific goals and policy framework related to the deployment of a smart grid in Illinois." ICC Docket No. 07-0566, Final Order at 143.

The Commission should order a process that would: (1) convene stakeholders to discuss and recommend specific metrics based on the objectives he identified; (2) collect data regarding past performance of those metrics; (3) publish a report detailing the Company's methodology and results for measuring past performance and for measuring new activities; (4) hold a workshop to review the report; and (5) propose a plan to measure and improve performance going forward. CUB Ex. 1.0 at 14.

Moreover, if a full record has not been developed on the metrics proposed by Mr. Thomas, it is because ComEd specifically chose not to respond to Mr. Thomas's recommendations. In testimony, ComEd stated "Counsel has advised me that AG/AARP's and CUB's proposals involve legal issues that are more appropriately addressed in briefs. Therefore, I defer to counsel and note that ComEd will respond to AG/AARP's and CUB's proposals in its initial brief." ComEd Ex. 4.0 at 5. In brief, ComEd simply argued that the Commission's authority is limited to considering only the ten metrics listed in the statute. ComEd Init. Br. at 15. By not responding to the metrics proposed by Mr. Thomas, ComEd effectively blocked the development of a

more complete record on those metrics. ComEd should not now benefit from that strategy by not being subject to any additional requirements that could afford customer significant benefits.

Additional metrics can do nothing but further ensure the improvement of the state's electric grid, and customers should not be denied the benefits they could see as a result of those metrics simply because there is a statutory deadline in this case. If the Commission does not order any additional metrics at this time, Mr. Thomas's proposal of a workshop process solves the problem of developing a full record in a short time contemplated by the PO.

III. The Metrics Proposed by Mr. Thomas Offer Important Consumer Benefits

The metrics in question here are necessary to determine whether the utility, the parties, and the Commission have created a logical, ten-year plan that can be used to best serve ComEd's customers and accomplish the broader objectives central to achieving the Act's goals. CUB/City will not repeat here every metric suggested by Mr. Thomas, but incorporates by reference CUB Ex. 1.0 at 6-13, though specific suggestions are noted within the argument presented below.

Performance is defined not just by competently keeping lights on but also by innovation and creativity. *Id.* at 9. Mr. Thomas explained that the Act could potentially result in an overemphasis on the investment dollars as compared to the investment outcomes. CUB Ex. 1.0 at 4. The performance metrics listed in the Act do not, by themselves, deliver a better customer experience. *Id.* By way of example, Mr. Thomas

pointed out that reducing the amount of uncollectible expense and lost energy (CIM and UFE) will benefit customers, perhaps even more directly than improvements in reliability since these improvements have a direct dollar value associated with them. *Id.* at 6. That requirement is not included in the Act, but holds significant potential customer benefits. Customers should have the opportunity to see those benefits whether or not they are contained in the Act.

Mr. Thomas identifies a variety of benefits the Commission should track over time to make sure ComEd customers receive the full value of the \$2.6 billion in investments they will be supporting over the next ten years. These included a variety of operational improvements and metrics tied directly to customers. *Id.* at 7-8. The Commission should establish metrics for determining whether consumers have increased their understanding of (a) ways to lower their bills; (b) ways to consume more efficiently; (c) how bills are computed (so that they understand their responsibility to pay off sunk costs even as they reduce future costs); and (d) ways in which third parties, who are not the utility, can enter the marketplace to provide enhanced services to customers. *Id.* at 9. Customers need to see material benefits from these investments, or the General Assembly's vision of a new, enhanced smart grid system will fall short of its full potential. The easiest way to show customers material benefits are to make sure that customers are being empowered to control their energy usage and increase the potential for viable alternatives to the utility to emerge and compete to provide new services. CUB Ex. 1.0 at 8.

Metrics like those proposed by Mr. Thomas have been considered in evaluating smart grid investments. For example, the California Public Utilities Commission led a planning process that included the discussion of smart grid metrics. *Id.* at 12. The investor-owned utilities in California, along with the Environmental Defense Fund, presented the CPUC with a report outlining ideas for metrics that can guide the first smart grid deployment plans filed by the utilities. *Id.* Mr. Thomas described the metrics adopted by consensus in that process, including areas where the CPUC will measure changes that ways in which the total environmental footprint of the current electric generation and delivery system can be evaluated. *Id.* at 12-13. These are in fact very similar to the metrics proposed and identified by the Commission when it initiated the Statewide Smart Grid Collaborative planning process:

The policies that are to be considered in the Statewide Smart Grid Collaborative include, but would not be limited to: 1) definition of a smart grid and its functionalities; 2) principles Illinois should use to guide smart grid planning and deployment, for example, interoperability, open architecture, and non-discriminatory access; 3) uniform standards; 4) methods of estimating, calculating and assessing benefits and costs, including evaluation of non-quantifiable benefits (and costs); 5) implications of smart grid technology for future policies regarding rate design, consumer protection, and customer choice; 6) effect of statutory renewable resource, demand response and energy efficiency goals on smart grid planning and implementation; 7) consumer education and dissemination of information about smart grid technologies, demand response programs and alternative rate structures; 8) access by electricity market participants to smart grid functionalities; 9) data collection, storage, management, security, and availability to third parties; 10) standards for interconnection of third party equipment; 11) mechanisms to flow through to customers any utility smart grid revenues; 12) adoption of new demand response programs; and 13) open architecture and interoperability standards for technological connectivity to the RTO and/or ISO to which a utility may belong.

ICC Docket No. 07-0566, Final Order at 141.

The General Assembly has directed ComEd to undertake specific investments, and meet specific performance standards based on those investment obligations. The Commission now has an opportunity to come full circle and put into place performance metrics that address the very issues it identified five years ago when the first notion of system modernization was presented. The metrics identified by Mr. Thomas, with workshops conducted to address metric implementation and reporting, should be ordered by the Commission.

Exception #1

The Commission's conclusions on page 28-29 should be amended as follows:

Section 16-108.5(f) unambiguously sets forth ~~the~~ 10 metrics that a participating utility must develop and file with the Commission and specifies penalty provisions related to nine of those metrics. Moreover, after notice and hearing, the Commission must enter an order within 120 days after these metrics are filed. The subject of that order ~~is limited to~~ includes "approving, or approving with modification, a participating utility's tariff or mechanism to satisfy *the metrics set forth in subsection (f) of this Section.*" 220 ILCS 5/16-108.5(f-5). Though the timeframe of this docket is limited, that is not a reason to deprive consumers of the potential benefits they could receive through implementation of additional metrics.

~~While~~ CUB/City has some good ideas concerning other potential metrics, that would help ensure that customers see the fullest benefits possible from the tremendous investment ComEd is about to undertake. ~~the limited time period as set forth in the statute makes it difficult to develop a record to include these additional requirements.~~

~~This Commission derives its authority solely from the Public Utilities Act. (220 ILCS 5/1-101 et. seq.) Because the Commission is purely a statutory creation and possesses no inherent or common law authority, its jurisdiction is limited by the Act. The Commission rejects CUB/City's request to require a workshop to develop additional metrics that were not contemplated under this section of the Act.~~

Under the Public Utilities Act, this Commission has authority to order additional performance metrics and to order a workshop process to develop them. The Commission has broad oversight authority over public utilities, and that authority is unchanged by the new provisions in the Act. In fact, the new provisions make clear that the Commission retains its previous powers in Article IX.

The Commission's authority includes formulating reasonable methods of achieving stated legislative objectives. *Abbott Laboratories, Inc. v. Illinois Commerce Comm'n*, 289 Ill. App. 3d 705, 712 (1 Dist.,1997), citing *Lake County Board of Review v. Property Tax Appeal Board*, 119 Ill. 2d 419, 427 (1988). The Commission has authority to formulate reasonable methods of achieving the EIMA's stated objectives of improving utility performance.

We agree with CUB witness Mr. Thomas that additional performance metrics would benefit customers. At this time, we adopt the specific metrics suggested by Mr. Thomas, and order a workshop process to develop additional requirements. That workshop shall commence no later than sixty days after the issuance of this Order, and shall be completed no later than nine months after the date of its initiation. The workshop shall convene stakeholders to discuss and recommend specific metrics based on the objectives identified in Mr. Thomas's testimony and any other proposals stakeholders put forward. Based on the metrics developed in the workshops, ComEd should collect data regarding past performance of those metrics and publish a report detailing the Company's methodology and results for measuring past performance and for measuring new activities. The workshop stakeholders will then review the report and propose a plan to measure and improve performance going forward. The Commission will then create new requirements based on that plan.

The metrics in Mr. Thomas's testimony that we adopt at this time are:

(1) ComEd shall use AMI technology to reduce the amount of uncollectible expense and lost energy

(2) ComEd shall survey of the best practices in the design of customer rates and a create a schedule for piloting and assessing those practices in Illinois. ComEd shall introduce new pricing rates which will induce efficient consumption.

(3) ComEd shall teach customers about how their energy usage affects their bills and the environment. The Commission will use surveys to measure customer comprehension before and after ComEd undertakes the customer education campaign.

(4) ComEd shall perform a voltage optimization study of their distribution system and implement a voltage optimization plan. Higher power quality will result in money saved from outages, and ComEd's smart grid investments should provide more stable and reliable power.

(5) ComEd should reduce the improper assessment of revenue protection fees by using AMI to better identify actual instances of meter tampering.

(6) ComEd shall have a distributed generation program in place that demonstrates ease of connection and includes net metering.

(7) ComEd shall present to the Commission a plan for how wholesale market access from distributed generation can be maximized.

(8) ComEd shall establish a platform for maximum access by third parties to data such that they can participate competitively in energy markets.

(9) ComEd shall be fully compliant with NIST interoperability standards.

(10) ComEd shall measure and report how long it takes its customers should be able to interconnect a distributed generation system. To do this, ComEd shall put into place a program for the promotion of energy storage, including possible rebates, incentives and/or tariffs. The plan should also address how ComEd will enable integration of intermittent power sources, including energy storage, energy efficiency, distributed generation and utility scale renewable energy.

(11) ComEd shall develop a plan to increase the amount of their total capacity that is fulfilled by demand response, including automated demand response.

(12) ComEd shall make available to all customers access to their energy information through a web portal. All AMI investments should be done with the intent of using Home Area Networks (“HANs”) to manage energy usage.

(13) ComEd shall establish an ongoing energy meter calibration program.

Among the topics to be evaluated in the workshop identified above are:

(1) Ways to capture the environmental benefits associated with changes in utility operations and pricing through avoided greenhouse gas emissions.

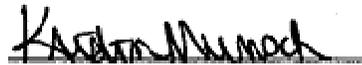
(2) Ways to measure whether customers have increased understanding of (a) ways to lower their bills; (b) ways to consumer more efficiently, (c) how bills are computed.

(3) The metrics adopted by the CPUC.

IV. Conclusion

For the reasons stated Mr. Thomas’s testimony, CUB/City’s Initial Brief, and this brief, the Commission should adopt the performance metrics proposed by Mr. Thomas and should require ComEd to abide by additional performance metrics, based upon the recommendations of stakeholders following a workshop process.

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