





study or empirical data and that it is unrealistic to suggest that customers stop thinking about their usage in non-summer months. ComEd Init. Br. at 22. But if empirical data should serve as the basis for designing enrollment periods, Mr. Eber's recommendation to only allow customers to sign up during particular months is similarly lacking. CUB Cross Ex. 3; Tr. at 189. While it may be true that customers think about their electricity usage during non-summer months, it is reasonable for the Commission to assume that such attention is at its peak when customer electricity usage is at its peak. Notably, ComEd does not deny that the summer months when PTR rebates are offered are the time of the year when electricity demand is at its peak – the Company does not do so since that is precisely why PJM compensates customers to reduce their demand during those periods. Given the PUA's directive to maximize participation, it would be unreasonable to turn customers away from the program during the months when electricity usage is at its peak, regardless of whether or not customers think about their usage during non-peak months.

In addition, ComEd argues that a year-round enrollment process could cause customer confusion since participants must wait a full summer to receive rebates. ComEd Init. Br. at 22. Any confusion caused, however, is not unique to CUB/City's proposal since under ComEd's proposal customers will have to be told that they cannot receive rebates until a future period in time. CUB/City Ex. 1.0 REV. at 14. Moreover, Mr. Eber admits that a disjointed enrollment process where customers are turned away during the months when electricity usage is at its peak may also cause its own confusion and dissatisfaction. Tr. at 195. ComEd also claims that retaining discretion to enroll customers during summer months "facilitates compliance with PJM's requirement to register participants by May of each year." ComEd Init. Br. at 20. While it is true that PJM requires participants to register with PJM by May each year, it is undisputed

that PJM does not require demand response programs to limit or prohibit enrollment during summer months. Tr. at 191-192. Therefore, the Commission should order ComEd to make the following revisions to the language contained in the Prerequisites of Service Section of Rider PTR contained in ComEd Exhibit 3.1, 2nd Revised Sheet Number 352:

~~Such residential retail customer must elect service hereunder by notifying the Company during the period beginning October 1 and extending through the following April 30 for service hereunder beginning with the first subsequent PJM Planning Year for which the Company can register the customer with PJM. Such notification may be made via the electronic enrollment process available on the Company's internet site or by other communication channels, including but not limited to telephone. For residential retail customers that provide notification to the Company during the period beginning May 1 and extending through September 30 to elect service hereunder, the Company may, at its discretion, allow such residential retail customers to commence service hereunder at the start of the first subsequent PJM Planning Year beginning after such September 30.~~

**B. Number of Curtailment Periods**

Staff recommends that the Commission prohibit ComEd from calling "other PTR events" after a total of three events for any reason are called. Staff Init. Br. at 5. ComEd and CUB/City oppose this recommendation. Staff claims that its recommendation relies upon ComEd witness Mr. Eber's testimony that at least 2-3 events are necessary to get customers accustomed to responding to PTR events. *Id.* Staff asserts that it is not advisable to treat customers like Pavlov's dogs and that customers will have to "jump through unnecessary hoops" to receive the funds that PJM has provided ComEd for those customers' curtailments. *Id.* However, Staff's criticism fails to respond to the myriad other benefits identified by CUB/City and ComEd witnesses that result from calling additional curtailment events, including the reduction in overall capacity prices, the increased likelihood of responding to future PJM events beyond a floor of three, and the increased customer participation that ComEd is required to maximize under the Public Utilities Act ("PUA").

Staff criticizes CUB/City witness Ms. Devens' opinion regarding the number of curtailment events because she was "not aware of any studies that determine the optimal number of events necessary to condition customers." *Id.* at 6. That is precisely why there should be no artificial limitation imposed by the Commission on the number of Curtailment Periods that ComEd can call under the PTR program. Experience during the initial phase of ComEd's PTR program may demonstrate such an optimal number, or evidence from other dynamic pricing programs across the country may inform that conclusion. Either way, Staff's proposal to place a hard cap on the number of events would preclude ComEd from using that new information in a way most beneficial to its customers and in line with its obligations under the PUA.

Because the number of PTR customers ComEd is likely to have is small relative to the total size of the PJM market, Staff argues that any benefits achievable from demand response-induced price effects are likely to be negligible. *Id.* However, the record evidence illustrates that capacity prices are reduced when substantial demand response resources are bid into the PJM capacity market. *Tr.* at 75. Lowered capacity prices as a result of aggressive demand response programs have been forecasted to result in significant savings for all ComEd customers. *Id.* at 207. Especially where PJM capacity prices are forecasted to increase ten-fold over the next few years, demand response-induced reductions in those prices can significantly benefit all of ComEd's customers. *Id.* at 59. Instead of hindering the Company's ability to engage customers and maximize program enrollment and participation, the Commission should allow ComEd the flexibility to call events beyond a hard cap of three. Staff's proposal is also inconsistent with PTR programs offered across the country, which feature no caps or much higher ones. *ComEd Init. Br.* at 18. Placing a limit on the number of curtailment periods during the initial phase of the PTR program may confuse repeat customers in the event that more than three Curtailment

Periods are called in the future. CUB/City Ex. 2.0 REV. at 7. To avoid the possible customer confusion induced by a hard cap on Curtailment Periods, and in order to maximize customer participation, the Commission should reject Staff’s proposal.

## **II. ComEd’s Proposal Is Competitively Neutral**

The Commission should find that ComEd’s Rider PTR is designed to provide rebates in a competitively neutral manner and should approve the Company’s proposal. The Illinois Competitive Energy Association (“ICEA”) argues that adoption of ComEd’s PTR proposal will block alternative retail electric suppliers’ (“ARES”) ability to compete in the demand response product market. ICEA Init. Br. at 4. ICEA’s argument misinterprets the law and is not supported by the record evidence.

### **A. Illinois Law Does Not Require ComEd to Demonstrate Operational Competitive Neutrality**

The relevant provision of the PUA provides that:

the participating utility ... shall file a proposed tariff with the Commission that offers an opt-in market-based peak time rebate program to all residential retail customers with smart meters that is designed to provide, in a competitively neutral manner, rebates to those residential retail customers that curtail their use of electricity during specific periods that are identified as peak usage periods. 220 ILCS 5/16-108.6(g).

Incredibly, ICEA claims that “[n]othing in the statute limits the concept of competitive neutrality to rebates.” ICEA Init. Br. at 6. ICEA argues that if the General Assembly had intended on limiting competitive neutrality to rebates, then the above-quoted provision would have read “...designed to provide rebates in a competitively neutral manner.” *Id.* ICEA cites no authority as to why ICEA’s hypothetical construction differs in legal effect from the enacted language. As ComEd explains in its initial brief, that is because the meanings are the same. The dependent clause “in a competitively neutral manner” modifies the independent clause “provide ... rebates.” ComEd Init. Br. at 23. Thus, the General Assembly intended the rebates to be

provided in a competitively neutral manner, which ICEA agrees means to provide to any customer regardless of supplier. Because ComEd's proposal does provide rebates regardless of supplier, the Commission should find that it is sufficiently competitively neutral. Nevertheless, if the Commission agrees with ICEA's interpretation of the competitive neutrality requirement, ComEd's proposal is still sufficiently competitively neutral as described below.

## **B. Operational Competitive Neutrality**

### **1. Bill Presentation**

ICEA claims that ComEd's proposal to include PTR credits as a separate line item for each event in either the "delivery services" or "taxes and others" sections of all ComEd delivery service customers' bills is insufficient to demonstrate competitive neutrality. ICEA Init. Br. at 8. Because additional line items of information on customer bills could require an additional bill page or could increase the cost of processing and sending bills, ICEA claims that ComEd's proposal is not competitively neutral. *Id.* However, ComEd explained that the provision of PTR rebates "will not impact the seven line items and bill messages afforded to RES under Rider PORCB." ComEd Ex. 5.0 REV. at 18. ComEd's explanation appears to alleviate Staff's concerns except for how to incorporate Direct Load Control ("DLC"), which ComEd recommends be resolved in a separate proceeding in the event that the Commission orders the Company to offer DLCs as a part of its PTR program. Staff Init. Br. at 11-12; ComEd Ex 5.0 REV. at 18. Even accepting ICEA's broader interpretation of competitive neutrality, ICEA has not demonstrated how ComEd's proposal to present rebates on bills would put any ARES at any particular competitive disadvantage.

### **2. Enrollment Channels**

ICEA claims that because it is unclear whether an ARES customer who wishes to enroll in PTR enrolls directly with ComEd or through an ARES, ComEd's proposal is not competitively neutral. ICEA Init. Br. at 9. ICEA also claims that ComEd has not demonstrated the procedures and methods for enrollment through internet access or a Voice Response Unit "VRU" system. *Id.* ICEA also claims that ARES or the Commission's Office of Retail Market Development ("ORMD") must review the script used to enroll customers in order to ensure its competitive neutrality. *Id.* Despite ComEd's commitment to use an enrollment process that is agnostic with respect to a customer's supply choice, ICEA argues that specific operational details are required to demonstrate competitive neutrality. *Id.* Staff has no reason to doubt that all customers will be treated identically, but Staff recommends that ComEd be required to seek input regarding the scripts used for enrollment during the workshop process. CUB/City does not object to this proposal, but the Commission should not withhold approval of the Company's PTR program pending such a workshop process. The Company's commitment to offer supply-agnostic enrollment channels is sufficient to demonstrate competitive neutrality, even under ICEA's broad definition of the term.

### **3. Termination of Service**

ICEA claims that because it is unclear whether an ARES customer who wishes to terminate PTR does so through ComEd or through an ARES, ComEd has failed to demonstrate that its proposal is competitively neutral. ICEA Init. Br. at 10. ComEd indicated that the process for termination "is independent of the individual customer's electric supplier." ComEd Ex. 6.0 at 9. Staff is confident that any concerns with the termination process can be addressed outside of any Rider PTR tariff investigation. Staff Init. Br. at 13-14. Thus, ICEA has not demonstrated that ComEd's proposed termination process is fatal to the PTR program's competitive neutrality.

The Company's commitment to offer termination channels that are independent of a customer's electric supply choice is sufficient for the Commission to find that the Company's proposal is competitively neutral in this regard.

#### **4. Curtailment Notifications**

Because the Company has yet to complete its development of specific notification channels, ICEA argues that it is impossible for ComEd to demonstrate that its proposal is competitively neutral. ICEA Init. Br. at 10. ICEA also claims that ARES will need to be notified when ComEd notifies ARES customers of curtailment events since their supply will be curtailed. *Id.* at 11. As ComEd testified in response to Staff's concern in this regard, "[n]otifications sent to participants will be identical and will in no way depend upon the customer's electric supplier." ComEd Ex. 6.0 at 9. This commitment appears to allay any of Staff's concerns, thus CUB/City recommend that the Commission find that the Company's proposal is competitively neutral in this regard.

#### **5. Bill Credit Tracking and Balancing**

ICEA claims that it is unclear what ComEd is proposing with respect to bill tracking and balancing. ICEA Init. Br. at 11. ComEd clarified its bill credit tracking and balancing process did not include "tracking RES or ComEd-supplied customers separately." ComEd Ex. 5.0 REV. at 15. Staff recommends that the Commission not require anything further from ComEd on this issue and CUB/City agree.

#### **6. Marketing Plan**

ICEA argues that ComEd should undergo a process to waive Part 452 of the Commission's Rules, Standards of Conduct and Functional Separation Rules before its PTR program is approved by the Commission. ICEA Init. Br. at 11-12. ComEd stated that Staff's

recommendation to implement a waiver process similar to the one used in implementing the Company's Residential Real-Time Pricing Program ("RRTP") through ORMD was acceptable to the Company. ComEd Ex. 5.0 REV. at 18. CUB/City does not object to this process.

### **C. PTR Program Funding**

ICEA claims that Subsection 16-108.6(g) of the PUA contains two separate provisions related to cost-recovery, the first provision governing rebate costs and the second governing program administration costs. ICEA Init. Br. at 12. ICEA misapprehends the relevant sections of the PUA, which read:

The total amount of rebates shall be the amount of compensation the utility obtains through markets or programs at the applicable regional transmission organization. The utility shall make all reasonable attempts to secure funding for the peak time rebate program through markets or programs at the applicable regional transmission organization. 220 ILCS 5/16-108.6(g).

ICEA claims that the second sentence must apply to program administration costs, otherwise it would have no purpose and violate the interpretive canon making all parts of a statute meaningful. *Id.* at 14. Incredibly, ICEA argues that "there is absolutely nothing in the statute to suggest that all available funds be used for rebates at the expense of funding program costs." *Id.* This interpretation ignores the word "total," which makes it a mathematical impossibility for ComEd to use PJM revenues to fund administration costs since the General Assembly requires the total amount of rebates to equal the amount ComEd obtains from PJM. The second sentence of the provision still retains meaning, as it requires the Company to make all reasonable attempts to secure the funding that will be used to provide the rebates described in the first sentence. Thus, the first sentence describes what shall be done with any funding obtained from the markets and the second sentence obligates the Company to obtain such funding.

Staff points out that while rebate costs are to be secured from the regional transmission organization, the PUA does not specifically address the cost recovery for program administration costs. Staff Init. Br. at 8. Thus, Staff does not object to ComEd's proposal to recover program administration costs from retail customers through delivery service rates for the initial evaluation period. *Id.* Indeed, Staff witness Ms. Allen testified that it was appropriate to assign program administration costs to all residential customers since it would allow a higher customer participation rate, which is required to be maximized under Section 16-108.6(g) of the PUA. Staff Ex. 2.0 at 5.

ICEA argues that socializing program administration costs would force ARES customers to pay twice for demand response and would offer an impermissible cost advantage to ComEd's PTR program. ICEA Init. Br. at 15. In order to mitigate the cost advantage alleged by ICEA, Staff proposes to allow ARES and Curtailment Service Providers ("CSP") to utilize the program administration facilities for which costs are proposed to be socialized. Staff Init. Br. at 9. ICEA is willing to discuss Staff's proposal to allow ARES to use ComEd's program administration facilities for their own demand response products within the context of Commission-sponsored workshops. ICEA Init. Br. at 15. CUB/City supports the proposal to discuss implementation and details of such facility-sharing through a Commission-sponsored workshop process.

### **III. Miscellaneous**

#### **A. Customer Base Load Methodology**

Staff recommends that the methodology for determining customer baselines ("CBL") be included in the tariff so that any changes to the method must be approved by the Commission. Staff Init. Br. at 4. CUB/City witness Ms. Devens agreed with Staff's proposal so long as the Company was given the opportunity to update the CBL methodology with new information or

best practices from other jurisdictions when those become available. CUB/City Ex. 2.0 REV. at 8. ComEd explains that its proposal, to seek Commission approval of a CBL methodology in its February 2014 filing, retains the benefits of Staff's proposal (such as giving parties a chance to comment) while also not committing the Company to a particular CBL methodology at this point in time. ComEd Init. Br. at 31-33. CUB/City thus recommend that the Commission accept the Company's proposal and not require ComEd to include a CBL methodology in the tariff at this time, with the understanding that such a methodology will be included with any petition filed by the Company in this proceeding in February 2014.

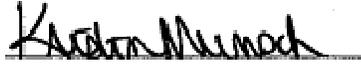
#### **B. Timeline for Approval**

Because PTR rebates will not be offered until 2015, ICEA believes that ComEd's entire proposal is not ripe for a Commission decision by March of 2013. ICEA Init. Br. at 17. ICEA also claims that ComEd may not be able to bid PTR resources into the May 2013 PJM auction since ComEd has yet to finalize a CBL. *Id.* at 18. In support, ICEA simply cites its own witness' doubts regarding ComEd's ability to bid PTR resources into PJM absent an approved CBL, despite the fact that Ms. Frederick has no experience in bidding resources into PJM capacity auctions. *Id.*; ICEA Ex. 1.0 REV. at 2. Moreover, ICEA offers no document or manual from PJM that establishes such a CBL requirement for demand response programs to be bid into capacity markets. In the absence of such a requirement in the record, the Commission should accept the Company's rationale for a March 2013 approval as such a timeline would maximize the revenues that the Company is obligated to make a reasonable effort to secure. *See* CUB/City Init. Br. at 12-13.

#### **IV. Conclusion**

The Commission should approve the Company's proposal for Rider PTR with the modifications recommended by CUB/City herein.

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