STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	
Petition for approval of tariffs	**:**	**12-0484**
implementing ComEd's proposed	**:**	
peak time rebate program	**:**	

INTERIM ORDER

February 21, 2013

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Petition for approval of tariffs implementing ComEd's proposed peak time rebate program	:	**12-0484**

INTERIM ORDER

By the Commission:

This matter concerns a Petition filed on August 21, 2012, by Commonwealth Edison Company ("ComEd" or the "Company") with the Illinois Commerce Commission ("Commission") seeking approval of tariffs implementing ComEd's Peak Time Rebate ("PTR") program, pursuant to Section 16-108.6(g) of the Public Utilities Act ("PUA").

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") at the Commission's offices in Chicago, Illinois, on various dates between September 12, 2012 and December 7, 2012. The following Petitions to Intervene were granted by the ALJ: Illinois Competitive Energy Association ("ICEA"), Citizens Utility Board ("CUB"), and Comverge, Inc. ("Comverge"). Also appearing at the hearings were Staff of the Commission and the City of Chicago.

The evidentiary hearing was held on December 7, 2012. At the evidentiary hearing, the testimony of the following witnesses was admitted into the record on behalf of ComEd: Robert Garcia and James Eber. The testimony of the following Staff witnesses was admitted into the record: Dr. Thomas E. Kennedy, Alicia Allen, and Torsten Clausen. CUB/City jointly offered into evidence the testimony of Rebecca Devens. The testimony of the following witnesses was admitted into the record on behalf of Comverge: Blake Young, Wendell Miyaji, Ph.D. and Frank Lacey. At the conclusion of the evidentiary hearing on December 7, 2012, the record was marked "heard and taken".

On December 20, 2012, the record was reopened and the testimony of ICEA witness Jennifer Frederick was admitted into the record. The record was marked "heard and taken" again on December 20, 2012.

Initial briefs were filed on December 20, 2012 by ICEA, ComEd, CUB/City, Comverge, and Staff. Reply Briefs were filed on January 4, 2013 by ICEA, Staff, Comverge, CUB/City, and ComEd. The ALJ's Proposed Order was served on January 18, 2012.

I. Statutory Authority

Section 5/16-108.6(g) of the PUA details the statutory requirements a participating utility must meet with respect to offering a PTR program. This section, which was enacted as part of the Energy Infrastructure Modernization Act ("EIMA"), provides as follows:

> Within 60 days after the Commission approves a participating utility's AMI Plan pursuant to subsection (c) of this Section, the participating utility, after consultation with the Smart Grid Advisory Council, 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. 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. The rules and procedures for consumers to opt-in to the peak time rebate program shall include electronic sign-up, be designed to maximize participation, and be included on the utility's website. The Commission shall monitor the performance of programs established pursuant to this subsection (g) and shall order the termination or modification of a program if it determines that the program is not, after a reasonable period of time for development of at least 4 years, resulting in net benefits to the residential customers of the participating utility.

220 ILCS 5/16-108.6(g).

II. ComEd's Proposed Rider PTR

ComEd's proposed PTR program is an opt-in, market-based demand response program for customers with smart meters. Under the program, participating residential customers will receive bill credits for the kWh of estimated electricity reduction achieved by such customers during specific periods of time identified as Curtailment Periods. ComEd will request that customers participating in the PTR program temporarily reduce their electric load during a Curtailment Period. A PTR customer that responds to such a call by reducing electricity usage during a Curtailment Period will receive rebate credits, but no penalty will be imposed for customers who do not respond. Electricity usage reductions will be measured by comparing actual usage during a Curtailment Period to estimated usage determined using a customer baseline load ("CBL") methodology. The credits provided to PTR customers will be fully funded through ComEd's bidding of PTR-based demand resources into PJM capacity and energy markets, with the vast majority of compensation coming from PJM's capacity market. The terms and conditions of ComEd's PTR program are reflected in proposed Rider PTR, ComEd Exhibit 3.1.

Consistent with the statute, ComEd met on several occasions with the Smart Grid Advisory Council ("SGAC"). ComEd states that it plans to continue engaging stakeholders and the SGAC in collaborative discussions and workshops after the completion of this docket regarding various tasks and issues such as annual evaluation reports, any changes in the per kilowatt-hour ("kWh") PTR credit, setting and changing the customer baseline load methodology, and other issues regarding implementation of the PTR program.

Proposed Rider PTR provides that no Curtailment Period may occur for any period prior to June 1, 2015. ComEd explains that commencing Curtailment Periods during the 2015/2016 Planning Year more closely aligns PJM revenues with PTR rebates. Because a Base Residual Auction ("Base Auction") in PJM's capacity market occurs three years ahead of the Delivery Year, there is a three year delay in the ability to use Base Auctions to fund PTR credits and available Incremental Auctions are not expected to be sufficient to fund PTR rebates prior to the 2015/2016 Planning year. By postponing the start of Curtailment Periods under Rider PTR from the 2014/15 Planning Year to the 2015/16 Planning Year, the PTR program will rely only on one year's funding from the Incremental Auctions. This should maximize the total revenue received for capacity to fund rebates and Curtailment Periods during the four-year evaluation period. Commencing Curtailment Periods with 2015/16 Planning Year is also consistent with the current deployment schedule under ComEd's AMI Plan, which calls for installation of AMI meters to commence in 2015.

ComEd has agreed to update the Commission and stakeholders on the revenues that ComEd receives from the First Incremental Auction for the 2015/16 Planning Year, scheduled for September 2013, and the number of the Curtailment Periods that ComEd expects to be able to call.

Proposed Rider PTR provides for a peak time rebate of $1.00/kWh for the first two seasons. The total PTR credit, per event, issued to a participating customer is the product of the $1.00 per kWh credit and the estimated amount of kWh reduction achieved by the participant during the event. The $1.00/kWh rebate is based on ComEd's best estimate of a rebate amount that would be large enough to incent customers to participate in the program and respond to events, but not so large that it would limit the number or duration of Curtailment Periods designated.

Proposed Rider PTR provides that the rebate amount is subject to revision after October 1, 2016. At that time, ComEd will be reviewing the rebate level in light of prevailing market prices in order to ensure that the per kWh rebate is set at a level to fund an appropriate number and duration of Curtailment Periods and to pass through the entire amount of PJM revenue received to PTR customers. ComEd will also consider the experience with customer response levels that it will have gained by that time and will determine whether the rebate level is eliciting the appropriate level of response. ComEd also plans to review the new rebate level with stakeholders and the SGAC prior to filing a revised rebate level with the Commission for approval.

A customer is eligible to take service under proposed Rider PTR if that customer: (i) is a residential customer with operational smart meter facilities; (ii) is not a participant in another PJM demand response or energy curtailment program offered by another entity; and (iii) elects service under Rider PTR by notifying ComEd during the period between October 1 and the April 30 immediately preceding the applicable PJM Planning Year. Restrictions also apply to customers enrolled in existing Rider AC - Residential Air Conditioner Load Cycling Program ("Rider AC"), Rider POG - Parallel Operation of Retail Customer Generating Facilities ("Rider POG"), and/or Rider POGNM - Parallel Operation of Retail Customer Generating Facilities Net Metering ("Rider POGNM"). With the exception of a proposal to require a pre-enrollment process discussed below, no party opposes ComEd's proposed eligibility requirements.

ComEd will enable an online channel for enrollment in PTR, as well as enable a phone channel via both live agent and voice response unit system to support customers without internet access. ComEd will also work to analyze and implement additional channels, such as mobile applications and text messages, once such systems become less expensive and if customer research determines that these channels would significantly improve enrollment. ComEd plans to provide a high level of service to customers, especially with respect to the more complex or technical aspects of the program.

To facilitate the Commission's role in monitoring the PTR program, ComEd will provide the Commission with an evaluation report for the prior Planning Year by September 1 of each year beginning in 2016 and ending in 2019. ComEd plans to hold meetings annually with stakeholders to review the evaluation reports. ComEd has agreed to provide copies to the Manager of the Staff's Accounting Department and the director of the Staff's Policy Division. ComEd has also agreed that the report will be verified by an officer of the Company and filed in this Docket. The report that ComEd will provide by September 1, 2019 will be accompanied by a petition to the Commission to initiate a proceeding to determine whether ComEd should continue to offer the PTR program as is, modify the program, or terminate the program.

ComEd proposes to continue the PTR program until May 31, 2023, notwithstanding the pendency of an evaluation proceeding or a decision to terminate PTR. The need to continue the PTR program to 2023 stems from the fact that ComEd needs to make relatively long-term commitments in the PJM markets in order to maximize revenues for PTR resources.

ComEd's Petition proposed limited revisions to Rider AC, Rider POG, Rider POGNM, and Rate RESS - Retail Electric Supplier Service ("Rate RESS"). ComEd proposes revisions to Rider AC, Rider POG, and Rider POGNM in order to clarify that customers are not permitted to simultaneously take service under these riders and Rider PTR (with the exception of customers on Option A or C of Rider POG). The revision to Rate RESS requires a retail electric supplier ("RES") to inform ComEd of any customers participating in a PJM demand response and/or energy curtailment program offered by that RES. ComEd requires this information in order to avoid double counting the same resource in the PJM market by terminating such customer's participation in the PTR program. No party raises any objections to the proposed revisions to Rider AC, Rider POG, Rider POGNM, and Rate RESS.

The Commission finds these uncontested provisions of Rider PTR to appropriately implement 220 ILCS 5/16-108.6(g). A discussion of the contested portions of the Company's PTR program follows. In addition a procedural framework is adopted for addressing unresolved issues but still allowing for tariff approval in time to capture the benefits of the Base Auction in May 2013

III. Contested Issues

A. Enrollment Windows

1. ComEd's Position

The initial enrollment period for the PTR program is proposed to run from October 1, 2014 through April 30, 2015 for service (and bill credits) during the June 1, 2015 through May 31, 2016 Program Year. This pattern would repeat each year and follows the PJM Planning Year which also runs from June 1 through May 31. Enrollment must end by April 30th because timely registration is required to receive credit and payment from PJM. ComEd maintains that customer confusion is also avoided by having an enrollment period that does not overlap the summer months. ComEd states that experience with other demand response programs indicates that if customers are allowed to enroll during the summer months for participation in actual events during the summer of the following Planning Year, they may become confused and disgruntled with the program when they do not receive credits for load curtailment during the summer of their enrollment.

In response to CUB/City's proposal that the Commission should require ComEd to utilize a pre-enrollment process, ComEd notes that the statute does not require pre-enrollment. Further, its proposal to offer a reasonable enrollment window that facilitates compliance with PJM's requirement to register participants by May of each year is consistent with the law and does not contravene the requirement to file a tariff that offers a PTR program to all customers with smart meters. Also, ComEd notes the requirement of the statute that a PTR program be designed to maximize customer participation, but states that the statute does not lay out features that must be used in order to maximize participation. ComEd argues that if the legislature had intended pre-enrollment to be a mandatory element of PTR programs, that requirement would have clearly been stated.

ComEd states that it is not arguing against pre-enrollment and that its proposed Rider PTR allows ComEd the discretion to offer pre-enrollment. ComEd has agreed to conduct customer research to determine the value of offering a pre-enrollment process. This research will be made transparent, and ComEd states that it welcomes interested parties' involvement in the process. If CUB/City is correct that pre-enrollment will be beneficial, then pre-enrollment will be offered under ComEd's proposal because it will be supported by customer research and by actual customer experiences under such an offering.

2. CUB/City's Position

CUB/City assert that ComEd's proposal to limit enrollment to October 1 thru April 30, falls short of the requirement of the PUA to offer PTR to all customers with a smart meter and to maximize PTR program participation. CUB/City witness Devens testified that ComEd's proposal is problematic because customers may not be able to sign up for the PTR program during the time of year when they are most likely thinking about their electric usage. The summer months are when many customers use air conditioning the most and when interest in ways to lower electricity bills is at its peak. CUB/City also assert that because ComEd's proposed window for program enrollment lessens the number of months during which customers can enroll, the Company's proposal does not maximize customer participation and does not allow customers that receive a smart meter in the summer to immediately enroll.

CUB/City witness Devens proposed a mandatory pre-enrollment process whereby eligible customers could sign up for ComEd's PTR program year-round. By allowing customers to enroll in the PTR program at any time of the year, ComEd can maximize customer participation as required by the PUA and increase the benefits to all ComEd customers that flow from a successful PTR program. CUB/City assert that a pre-enrollment process would not cause confusion if a customer was properly informed of when she could begin receiving rebates.

CUB/City note that maximizing participation is important because reducing energy usage at peak times not only reduces electricity costs for individual participants, it also reduces electricity costs for residential customers as an aggregate class by reducing the demand for peak-load generation. Moreover, reductions in peak load generation reduce greenhouse gas emissions, delivering environmental and societal benefits to all of ComEd's customers.

CUB/City also argue that the no-risk rebate proposal designed by the Company could serve as a stepping stone for customers to participate in other demand response programs that have an even greater impact on reducing the price of electricity but may involve more customer financial risk, such as ComEd's Residential Real-Time Pricing program.

CUB/City proposed revisions to the Rider PTR tariff language that would allow customers to enroll year round.

3. Commission Analysis and Conclusion

The Commission agrees with CUB/City's concerns. The level of customer confusion from enrolling customers during summer months may be unknown, but also unknown is whether many customers will still participate if they cannot sign up during summer months – even if the value they receive is not realized until the following year. Because of these unknowns, ComEd's proposal to conduct customer research to determine the value of offering a pre-enrollment process is adopted. The default enrollment window while that research is being conducted, however, should be designed to maximize participation, as the PUA requires. If ComEd can demonstrate the value of a more limited enrollment window in the future through this research, the Company may petition the Commission to modify the Rider. In the meantime, ComEd must enroll customers who seek to participate in Rider PTR all-year round, including May through October.

As the first curtailment will not happen before June 1, 2015, this may afford ComEd time to conduct customer research prior to the first curtailment. In the interim, ComEd should actively consult with and work with the SGAC to develop a customer research plan to address this issue. A progress report should be filed in six months from the date of this Interim Order.

Additionally, the Commission recognizes that enrollment and the ability for ComEd to calculate CBLs and register load reductions with PJM are not one and the same. In circumstances where it is not possible for ComEd to have an enrolled customer fully participate, it is imperative that ComEd fully and clearly communicate that with the customer. ComEd also may wish to take note of that demonstrated customer interest in managing peak energy use and provide additional information about energy efficiency programs and options. The Commission encourages that approach.

To effect the changes described above, ComEd must revise the language contained in the Prerequisites of Service Section of Rider PTR in ComEd Exhibit 3.1, 2nd Revised Sheet Number 352:

> Such residential retail customer must elect service hereunder by notifying the Company for service 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.

B. Limitation on Number of Curtailment Periods

1. ComEd's Position

The number and duration of Curtailment Periods called by ComEd in the initial years of the PTR program will be directly influenced by the $1.00/kWh credit and the revenues received from PJM. As set out in proposed Rider PTR, ComEd's objective is to set the number and duration of Curtailment Periods for each PJM Planning Year such that all PJM revenues for such years are passed through to participating customers. ComEd expects to be able to manage the number and duration of Curtailment Periods so as to achieve a reasonable alignment of total rebates and PJM revenues for a PTR program year. ComEd also proposes a tracking mechanism to ensure that the total amounts paid in PTR credits over time are fully covered by the PJM revenues and that all PJM revenues are fully passed through to PTR program participants.

ComEd does not agree with Staff's proposal to limit the total number of Curtailment Periods so that no additional Curtailment Periods may be called for non-emergency or test events if the total number of PTR Curtailment Periods in a PJM Planning Year is three or more. ComEd states that this is the first voluntary demand response program offered to residential customers in Illinois and much remains to be learned about how the number of events that are called impacts consumers' response to the program and, thus, Staff's proposal is premature. According to ComEd, Staff's proposal is also inconsistent with similar programs being run in other areas of the country that feature no caps or much higher caps. ComEd proposes to study the results of those programs and does not recommend capping the number of Curtailment Periods until those results are considered.

ComEd argues that a cap of three Curtailment Periods per year, as proposed by Staff, would hinder the ability of the program to engage customers and maximize customer participation in the PTR program. While ComEd anticipates the need to call a minimum number of Curtailment Periods, it also recognizes the need for flexibility to call events in order to train customers to appropriately respond to such events.

With respect to any PJM revenues that exceed PTR credits as a result of such a limit, Staff recommends distributing such amount to PTR customers on a savings weighted basis, which ComEd believes would burden the program with unnecessary processes and additional costs. This may have a negative impact on the PTR program's ability to pass the net benefits test. ComEd proposes that any excess funds be carried into the next program year to fund future events.

2. Staff's Position

Staff notes that there are three types of events that may be called: 1) emergency events that are called by PJM when curtailment is necessary to meet system reliability needs, 2) test events to determine and quantify customer response to a curtailment notice, and 3) 'other PTR events' that are called to condition customers to become accustomed to responding to events when they are called and to minimize the accrual of funds left over at the end of any year. Staff is concerned with the calling of events just to use up the available funds for rebates. Accordingly, Staff recommends that 'other PTR events' be prohibited after a total of three events for any reason are called.

In testimony, Staff witness Kennedy recommended that the tariff be modified so that tests or 'other PTR events' may not be called if the total number of PTR events in a Program Year is three or more. Staff Ex. 1.0 at 7.

Staff also recommends that in order to minimize the accrual of money without calling extra 'other PTR events, ComEd should be required to pay customers any remaining monies on a PTR-savings weighted average basis. Staff states that by paying customers at the end of the year, it minimizes the number of hoops that customers are forced to jump through in order to receive monies for which they should be entitled for volunteering to curtail load in times of reliability emergencies.

3. CUB/City Position

In response to Staff's proposal to limit the number of curtailment periods, CUB/City witness Devens testified that the benefits that result from offering additional PTR Curtailment Periods go beyond a simple cost forgone by the Company, instead they include providing customers with more opportunities to participate, preparing customers for years when PJM may call more emergency events and lowering electricity prices for all customers by reducing demand for electricity at peak times. CUB/City assert that because the program is only in its design phase, the Commission should err on the side of providing more opportunities for participation rather than providing fewer opportunities.

With respect to Staff's proposal to refund customers the extra money from PJM, CUB/City state this proposal would inhibit customers from understanding how their usage reductions translated into credits, since those customers would actually receive more than $1.00 per kWh of reduced usage. Uncertainty over the amount of the rebate under Staff's proposal could anger, confuse, or discourage repeat customers from participating if they receive $1.00 per kW in certain years and more money in other years, incorrectly raising customers' expectations of future rebate amounts.

CUB/City also argue that a cap on Curtailment Periods could limit the overall benefits of the PTR program because placing an artificial cap would reduce aggregate peak load reduction and forego the broad economic impact of lowering electricity prices for all of ComEd's customers.

4. Commission Analysis and Conclusion

ComEd's proposed tariff contains the following language: "However, the Company must make all reasonable efforts to designate a number of Curtailment Periods in any given year that serves to minimize the absolute value of such accruals from such year to subsequent years." Because of this language, Staff is concerned that the Company will call events just to ensure that the revenues match up. Staff's proposal is to cap the Curtailment Periods and to pay out any extra revenue to participants.

The Commission does not share Staff's concern. ComEd requires flexibility in calling Curtailment Periods and it is premature at this time set a cap.

Also, Staff's proposal to refund extra PJM revenue to participants is not adopted. It is reasonable to allow the Company to carry this over to the following year. In addition, the Commission shares CUB/City's concern that this proposal could send confusing signals to participants. If significant amounts of revenue are actually going unused, the rebate level could be adjusted and the Commission notes that Rider PTR provides that the rebate amount is subject to revision after October 1, 2016. At that time, ComEd and the Commission will be reviewing the rebate level in light of prevailing market prices in order to ensure that the per kWh rebate is set at a level to fund an appropriate number and duration of Curtailment Periods and to pass through to PTR participants the entire amount of PJM revenue received.

C. Customer Baseline Load ("CBL") Methodology

1. ComEd's Position

The estimated kWhs that would have been provided to a participant during a Curtailment Period are determined through the PTR customer's unique CBL profile. This profile is determined using that customer's usage data for hours similar to the hours of the Curtailment Period. ComEd does not propose a specific CBL methodology for Commission approval in this filing, but instead proposes to file a separate petition seeking approval of the CBL methodology. Proposed Rider PTR establishes a process whereby proposed CBL methodologies are filed via petition no later than February 1 and approved, or approved as modified, by the Commission no later than the April 1 prior to the beginning of the PJM Planning Year during which such methodology is first used. For the first CBL methodology, ComEd proposes to make the filing in February 2014 for Commission approval by April 1, 2015.

ComEd asserts that its process allows for consideration of data and best practices from recently implemented PTR programs to assist in developing an initial CBL methodology for Commission approval. In response to Staff's recommendation that ComEd include its currently proposed CBL methodology in its tariff and later file a revised tariff if a better CBL is identified, ComEd states that it has not yet selected a CBL methodology. Also, ComEd argues that there is no need for a CBL methodology to be identified at this point in time. If ComEd is required to adopt Staff's proposal, ComEd agrees with CUB/City that the Commission should make clear that ComEd is allowed to revisit the CBL methodology in the future as new data becomes available.

In response to ICEA, ComEd states that to bid demand resource capacity into the RPM auctions, PJM only requires that ComEd specify the Demand Resource Application (i.e. method of load reduction) and the product type (limited, extended summer or annual) for each demand resource bid into the capacity market. Further, ComEd states that all that matters is that the total measured load from participating customers during an event was below the specified Firm Service Level.

2. Staff's Position

Staff recommends that the methodology for determining the customer baseline be included in the tariff. The benefit of doing so is that any changes to the methodology must be explicitly approved by the Commission and the Commission will have the opportunity to review any changes and suspend those changes for further investigation if necessary.

In response to ComEd, Staff notes that if ComEd is only required to file its initial CBL methodology, this only preserves the Commission's opportunity to review the initial CBL. Staff states that there is no guarantee that the CBL will not change in the future and unless included in the tariff, there is no guarantee of Commission oversight.

As a compromise, Staff suggests that the initial methodology could be filed in February, 2014 and then it could be required that the tariff be amended to include the approved CBL methodology.

3. CUB/City's Position

CUB/City advises that if the Commission adopts Staff's proposal, it should make clear that the Company is allowed to revisit the CBL methodology in the future as new data comes available.

4. ICEA's Position

In its Initial Brief, ICEA states that "it is unclear to ICEA whether PJM will allow ComEd to bid PTR resources into the May, 2013 auction without an approved CBL." ICEA IB at 18. ICEA asserts that this is part of the overall unreadiness of Rider PTR for approval.

5. Commission Analysis and Conclusion

The Commission agrees with Staff that it is imperative that the both initial and any future CBL methodologies be reviewed and approved by the Commission. Staff witness Kennedy points out that payments to customers are affected by the baseline methodology and by requiring that the CBL methodology be included in the tariff means that any changes to the baseline would have to go through the review procedures in place for tariff changes.

Thus, the Company's Rider PTR is approved, but the tariff must be amended to include the CBL methodology. The Commission is reluctant to approve a tariff that is lacking a key provision, but equally reluctant to approve the CBL methodology prematurely. Requiring that the tariff be amended to include the CBL methodology ensures that any revision will be reviewed by the Commission.

The Company should work with SGAC prior to filing its proposed CBL in this docket. Because the Commission finds that it is imperative that this be included in tariff before it is applied to any ratepayers, this proceeding will remain open until a final CBL can be approved. The Company's proposed timeline is accepted.

The Company shall file a proposed CBL methodology, proposed tariff amendments to include the proposed CBL methodology in Rider PTR, and supporting testimony on or before February 1, 2014.

D. Competitive Neutrality

1. Statutory Interpretation

a) ComEd's Position

ComEd argues that, consistent with the provisions of Section 16-108.6(g), ComEd's PTR program is designed to provide rebates in a competitively neutral manner. The sentence at issue states:

> Within 60 days after the Commission approves a participating utility's AMI Plan pursuant to subsection (c) of this Section, the participating utility, after consultation with the Smart Grid Advisory Council, 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, <u>in a competitively neutral manner</u>, 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) (emphasis added). ComEd argues that the construction of the statute clearly indicates that concerns about competitive neutrality relate specifically to rebates. The clause "in a competitively neutral manner" is a dependent clause, which according to ComEd, modifies the surrounding independent clause "designed to provide ... rebates to those residential retail customers that curtail their usage." ComEd asserts that the basic principles of statutory interpretation require a plain reading of the statute, and it is evident from a plain reading of the statutory language that the competitive neutrality requirement applies to the provision of the rebate.

ComEd's proposed Rider PTR will be offered to all of ComEd's eligible residential delivery service customers at the same rebate amount, regardless of supplier. RES customers will not be at risk of disparate treatment under the PTR program because Rider PTR contains no terms or processes that are designed to discriminate against a RES's customers. To the extent there are processes that have yet to be developed, ComEd is committed to working with stakeholders to address concerns.

With respect to ICEA's competitive neutrality arguments, ComEd states that nothing in the statute requires that the program must be designed in a competitively neutral manner. ICEA six operational standards are also not based on the statute and ComEd asserts that ICEA has failed to show how they impact competition.

b) ICEA's Position

ICEA recommends that the Commission reject ComEd's petition because ComEd has not met its burden to demonstrate that its proposed PTR program is competitively neutral. According to ICEA, the plain language of the statute does not limit competitive neutrality as described by ComEd. Nothing in the statute limits the concept of competitive neutrality to rebates. On the contrary, ICEA asserts that the proper interpretation directs ComEd to design its entire PTR program to be competitively neutral. If the General Assembly had intended to limit competitive neutrality to rebates, then the provision would have been drafted accordingly, ICEA claims.

c) CUB/City's Position

CUB/City agree with ComEd's statutory construction and recommend that the Commission find that ComEd's Rider PTR is designed to provide rebates in a competitively neutral manner and approve the Company's proposal.

d) Commission Analysis and Conclusion

The Commission agrees with ComEd that the phrase "in a competitively neutral manner" seems to only apply to providing rebates. Grammatically, "in a competitively neutral manner" modifies the verb "provide". Also, based on the record, the Commission finds that ComEd's PTR program is designed to provide rebates in a competitively neutral manner. With that said, the Commission is not saying that ComEd is permitted to do anything that would inhibit a market developing for ARES provided peak time rebate programs. The Commission intends for issues that might arise concerning an ARES provided PTR program to be addressed in the workshop process proposed by Staff and discussed below.

2. Operational Issues

a) Bill Presentation

(1) ICEA's Position

ICEA states that ComEd carries a statutory obligation to demonstrate how PTR (both usage reductions and bill credits) will appear on customer bills to ensure the bill presentation does not conflict with the competitive neutrality provision of the statute. This information is critical, ICEA states, because virtually all ARES use Rider PORCB - purchase of receivable consolidated billing - to bill residential customers.

ICEA notes that ComEd argues that demand response programs are not power and energy and has, therefore, stated that RESs cannot bill such programs under Rider PORCB. If ComEd's position is allowed to stand, ICEA states that ARES will have little choice but to either abandon Rider PORCB for another billing option or not allow its customers to subscribe to PTR.

ICEA argues that because demand response products in general, and PTR in particular, are designed to reduce load during critical hours then, by definition, these products are power and energy. Stated differently, PTR customers have the option to reduce their usage when called upon by PJM. Therefore, these products result in a direct and measurable offset to a customer's usage. As a result, ICEA maintains that no credible argument can be made that demand response products are not power or energy. ICEA recommends that the Commission reject ComEd's position and require ComEd to use Rider PORCB to bill demand response programs like PTR. On a practical level, ICEA is concerned with how ComEd intends to present PTR information on a customer's bill, especially if that information requires an additional bill page and/or increases the cost of processing and sending out bills. Also, if Load Control Devices are included in ComEd's PTR program, ComEd must explain in detail how these devices will be billed to ARES customers when Rider PORCB is used. ICEA states that because ComEd has not yet determined how Rider PTR will be billed, there are too many unknowns to demonstrate competitive neutrality of the proposed PTR program and ComEd's filing should therefore be rejected.

(2) ComEd's Position

ComEd notes ICEA's claims regarding billing of Rider PTR and states that it will place rebates on customer bills in either the "delivery services" or "taxes and others" line items as Staff recommends. ComEd states that this approach will not impact the seven line items and bill messages afforded to RESs under Rider PORCB. ComEd has yet to determine if it will group all PTR rebates together or provide a separate line item for each rebate event.

(3) Staff's Position

Staff's Office of Retail Market Development ("ORMD') notes that there are several issues that need to be addressed before a RES can offer demand response and energy efficiency programs through ComEd's Rider PORCB. Staff's ORMD recommends that the Commission direct the ORMD to hold workshops with all interested stakeholders to further discuss how ComEd could enable PTR and other forms of demand response and energy efficiency programs through Rider PORCB. If the Commission adopts this recommendation, the ORMD will provide a summary of the workshops and recommended next steps to the Commission within six months of the entry of an order in this proceeding.

(4) CUB/City's Position

CUB/City state that 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.

(5) Commission Analysis and Conclusion

The Commission finds that ComEd has offered enough information at this point in time. The Commission agrees with ComEd that the rebates should be included in the bill under either delivery services or "taxes and others". The Commission believes that individually listing each event might further participants' understanding, but this need not be determined now and is left to the Company's discretion.

With respect to Rider PORCB, the Commission accepts Staff's proposal to hold workshops regarding the manner in which PORCB could be used to bill a RES's PTR program. Apparently no RES is offering a PTR program at the moment, so Staff's six month proposal for an update is accepted. It should be noted, however, that any issues surrounding Rider PORCB do not need to be completed before this docket is closed and, indeed, a separate proceeding should be initiated by Staff if necessary.

b) Enrollment Channels

(1) ICEA's Position

ICEA states that ComEd has yet to provide sufficient details as to how ARES customers will enroll in the PTR program and has therefore not shown that enrollment will be done in a competitively neutral manner. ICEA argues that ComEd needs to demonstrate that an ARES customer will not be rejected from enrolling in the PTR program when ComEd discovers that the customer is not on ComEd's supply service. Also, ICEA states that because these are not ComEd supply customers, the ARES community, or in the alternative the Commission's ORMD needs to review the script to be used by live agents to enroll ARES customers in order to ensure that live agents treat ARES customers in a competitively neutral manner.

ICEA maintains that because ComEd failed to provide details in either its Petition or testimony, the Commission should reject ComEd's filing for its lack of information.

(2) ComEd's Position

ComEd states that RES customers will have enrollment access in exactly the same manner as customers who receive their electric supply from ComEd, thus making it competitively neutral. The customer enrollment process will be entirely independent of the customer's electric supplier, and it will not require designation of an electric supplier. It will be a process through which all customers will be treated identically, regardless of their electric supplier.

(3) Staff's Position

Staff recommends that ComEd be required to seek input regarding the customer service telephone script(s) it intends to use for purposes of the PTR program. This input can be sought from all interested stakeholders during the workshop proposed by Staff.

(4) CUB/City's Position

CUB/City do not object to Staff's recommendation that ComEd be required to seek input regarding the scripts used for enrollment during the workshop process.

CUB/City recommends, however, that approval not be upheld pending the workshop process.

(5) Commission Analysis and Conclusion

It is clear that all customers need to be treated the same regardless of which company supplies their electricity. There is no harm in having Staff review the script used to enroll customers, but the Commission notes that ComEd is only recovering its costs of running this program so it has no incentive to treat customers differently. Thus, contrary to ICEA's assertion there is no basis here for rejecting ComEd's proposal.

The Commission agrees with Staff that this issue can be addressed in the proposed workshop process. If any issues cannot be resolved, those can be brought to the Commission's attention at a later time. The Commission is confident that any issues can be resolved in the workshop process and no further action from the Commission will be required.

c) Termination of Service

(1) ICEA's Position

With regard to the manner in which a customer will terminate participation in Rider PTR, ICEA does not believe that ComEd has demonstrated sufficiently that it has complied with the competitively neutral provision of the statute because ComEd has made no showing as to how ARES customers will terminate PTR. For example, it is unclear to ICEA whether an ARES customer who wishes to terminate PTR does so through ComEd or through its ARES. Because ComEd has failed to make this showing, ICEA does not believe that ComEd has demonstrated compliance with the statute.

(2) ComEd's Position

In response to ICEA's opinion that ComEd should describe how customers, regardless of supplier, will terminate participation in PTR, ComEd states that the process by which PTR participants may de-enroll from the program will be independent of the individual customer's electric suppler and at no point will supplier information be captured or relevant. Regardless of supplier, ComEd states that the process all customers will use to opt out of the PTR program will remain identical.

(3) Staff's Position

Staff notes that ComEd did not describe how customers will terminate their participation in the PTR program, but that ComEd made it clear that there will be no distinction between bundled service customers and ARES customers. Staff states that it is likely that ComEd has not determined every single operational aspect of this process and Staff is confident that any potential future concerns can be addressed outside of a tariff investigation. For these reasons, Staff recommends that the Commission simply require ComEd to treat all customers the same, regardless of supply choice.

(4) CUB/City's Position

CUB/City state that 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.

(5) Commission Analysis and Conclusion

Similar to ICEA's concerns regarding enrollment, the Commission sees no reason for concern with respect to customers cancelling their enrollment in PTR. Yes, ComEd must treat all customers the same, but ComEd has no incentive to do otherwise. ComEd is directed to treat all customers the same, regardless of supply choice.

d) Curtailment Notifications

(1) ICEA's Position

With respect to curtailment notifications, ICEA does not believe that ComEd has demonstrated sufficiently that it has complied with the competitively neutral provision of the statute. ICEA notes that ComEd has yet to complete its development of specific notification channels or other forms of mass media regarding curtailment notifications. As a result, ICEA states that it is impossible to know if ARES customers will be treated in the same manner as ComEd customers.

Equally important to ICEA is that ARES will need to be notified when ComEd notifies ARES customers of a curtailment event because ARES supply will be curtailed. Like other aspects of ComEd's PTR program, the curtailment notification process is not yet final, making any determination of competitive neutrality impossible. ICEA recommends that the Commission reject ComEd's proposed PTR program filing.

(2) ComEd's Position

ComEd submits that the curtailment notification process will be developed in a competitively neutral manner. All PTR participants will have the opportunity to elect to receive notification of curtailment events via a variety of different channels (e.g. text message or e-mail). A participant's electric supplier will not be captured at any point during the process of selecting notification preferences, and all notifications will be identical, regardless of supplier. ComEd states that both the process of electing notification channels as well as the notifications themselves will not depend upon whether or not a participant takes supply service from a RES.

(3) Staff's Position

Staff recommends that the Commission's Order in this Docket simply require ComEd to treat all customers the same, regardless of supply choice.

(4) CUB/City's Position

Because ComEd has stated that notifications sent to participants will be identical and will in no way depend upon the customer's electric supplier, CUB/City recommend that the Commission find that the Company's proposal is competitively neutral in this regard.

(5) Commission Analysis and Conclusion

ComEd is directed to treat all customers the same, regardless of supply choice. The Commission sees no basis for ICEA's concerns regarding the manner in which RES customers will be notified of curtailments.

ICEA's concerns regarding the impact of curtailments on ARES supply are legitimate and it is not clear that the Company has adequately considered the impact of its PTR proposal on ARES. The record has not been fully developed to make any decision, however, and the Commission directs Staff to also address this issue in the workshops. This appears to be somewhat related to the discussion below regarding Disclosure of Participation to RES's. Both these issues need to be resolved before Rider PTR can be implemented. Staff shall file a report following the workshops indicating whether these issues have been resolved and, if so, describing the resolution reached in the workshops for Commission approval. If these issues were not fully resolved to all workshop participants' satisfaction, Staff's report shall describe the open issues and may contain a proposed schedule to address the open issues. If open issues exist, the ALJ shall adopt a schedule to address those issues.

e) Bill Credit Tracking and Balancing

(1) ICEA's Position

ICEA states that because ComEd has not developed its monthly tracking process, it is impossible for ICEA to determine if that process will operate in a competitively neutral manner relative to ARES customers. In addition, ICEA argues that ComEd has not demonstrated sufficiently how the bill credit tracking and balancing process will work when ARES supply customers that curtail their usage receive bill credits from PJM through ComEd. ICEA states that the lack of detail in ComEd's proposal warrants Commission rejection of the ComEd petition.

(2) ComEd's Position

ComEd states that its process for tracking revenue and credits is simple and adequately described. Each month it will compare the amount received to the amount paid. ComEd has no intention of tracking RES customers any differently than ComEd supplied customers. Moreover, ComEd argues that its process for tracking PJM revenues and PTR credits has no impact on competition.

(3) Staff's Position

Staff states that ComEd's clarification in rebuttal testimony that it has no intention to track RES customers any differently than ComEd supplied customers adequately addressed Staff's concerns. Staff recommends that the Commission not require anything further from ComEd on this issue.

(4) CUB/City's Position

CUB/City agree with Staff that the Commission need not require anything further from ComEd on this issue.

(5) Commission Analysis and Conclusion

The Commission concurs with Staff that nothing further is required from ComEd on this issue. ICEA's concerns seem to be based on a lack of understanding of ComEd's proposal.

f) Marketing Plan

(1) ICEA's Position

ICEA states that while it understands that ComEd's marketing process is still under development, it reiterates that under whatever marketing plan is adopted ARES customers must be treated in the same manner as ComEd customers. ICEA notes Staff's proposal to review marketing material and believes that Staff's review should occur before approval of the PTR program, not after.

(2) ComEd's Position

ComEd notes that Staff recommends that the Commission should require a process similar to the one approved for ComEd's Residential Real-Time Pricing ("RRTP") program when it granted a waiver from Part 452, Standards of Conduct and Functional Separation Rules, Subpart B, Integrated Distribution Company ("IDC") Rules. ComEd's position is that demand response programs like PTR are not "power and energy," and thus ComEd is not required to request a waiver of the Commission's IDC rules. With that said, ComEd does not object to Staff's proposal to submit marketing materials to Staff for review similar to the process adopted for RRTP.

(3) Staff's Position

Staff recommends that the Commission require a process similar to the one the Commission approved when it granted ComEd a waiver from Part 452, Standards of Conduct and Functional Separation Rules, Subpart B, Integrated Distribution Company ("IDC") rules to allow the promotion of ComEd's Residential Real-Time Pricing Program ("RRTP"). Similar to the requirements pursuant to the Order in Docket 08-0411, Staff recommends that ComEd comply with specific requirements regarding Staff review of marketing materials.

(4) CUB/City's Position

CUB/City do not disagree with the process agreed to by Staff and the Company.

(5) Commission Analysis and Conclusion

The Staff proposal, as accepted by ComEd, is adopted. The Commission does not agree that this review needs to occur before approval. Indeed, the Commission finds that Staff review should be on-going as the program evolves.

g) Third Party Vendor

(1) ICEA's Position

ICEA states that it does not object to ComEd using a third party IT vendor, but argues that there are many areas that need to be explored before ICEA is able to make an informed opinion as to whether the IT vendor will handle its PTR responsibilities in a competitively neutral manner. For example, ICEA would like to know who the vendor is; whether the vendor has the necessary methods and procedures to ensure that all PTR customers are treated in a competitively neutral manner; whether the vendor's resources are scalable; whether penalties are in place in the event the vendor fails to perform its duties; whether there are procedures to transition to a new vendor in the event the first vendor is unable to perform the required functions; and understanding how ARES will communicate with the vendor including, but not limited to EDI transactions. As a result, ICEA states that it is not in a position to determine if the recently disclosed third-party vendor will treat ARES customers the same as ComEd customers. Finally, even if a showing could be made by ComEd that its IT vendor satisfies these requirements, ComEd itself has not made a sufficient showing as to its ability to comply with this statutory requirement when it brings the PTR program "in-house," which ComEd asserts will begin in 2016-2017.

(2) ComEd's Position

ComEd plans to rely on a third-party Information Technology ("IT") solution to manage enrollment, rebate calculation, and other aspects of the program. This IT solution will assist ComEd in capturing enrollment information, the calculation of the rebate information, and various other aspects of the program. ComEd will maintain ownership of the program to ensure that all PTR program requirements are upheld, and will confirm that the program complies with all relevant regulations. ComEd states that as the PTR program grows to scale in 2016 and 2017, it will integrate PTR functionality with its internal IT systems.

In response to ICEA's concerns, ComEd clarifies that using a third-party IT solution simply refers to using a computer system developed by a third party to perform various calculation and tracking functions for the PTR as it grows to scale and does not involve use of the vendor as an administrator. ComEd asserts that its decision to purchase software rather than design that software at this time for its own IT systems has no bearing on competitive neutrality or any other issue under law; nor does the identification of the software manufacturer.

(3) Commission Analysis and Conclusion

ComEd has answered ICEA's questions in a manner satisfactory to the Commission. There does not appear to be any competitive concerns with ComEd's use of an IT vendor to develop software.

E. Cost Recovery Issues

1. ComEd's Position

ComEd proposes to recover the costs of implementing the PTR program from all residential customers through their delivery service charges, including start-up costs, administrative costs, and the cost of preparing the evaluation reports to the Commission. As a participating utility under subsection 16-108.5(c) of the PUA, the recovery of PTR program costs through delivery service rates will be effectuated through ComEd's performance-based formula rate mechanism.

ComEd asserts that its proposal is reasonable and will allow recovery of these costs on a non-discriminatory basis. A key factor in ComEd's development of this proposal is the statutory requirement that the PTR program is to be "designed to maximize participation". ComEd points out that, regardless of supplier, all customers are offered the same opportunity to participate in Rider PTR and all customers receive the same benefits under the tariff. ComEd asserts that the PTR program offers no reason for a customer to choose ComEd's default supply service over those offered by RESs. According to ComEd, it obtains no advantage in offering PTR – ComEd seeks only cost recovery for its expenditures and will make no profit from PTR participants.

In response to ICEA's proposal to recover costs from PTR participants only, ComEd argues that this would be in direct conflict with the goal of Section 16-108.6(g) to maximize participation. Requiring only PTR participants to pay the PTR program costs virtually assures that the potential annual refund for PTR participants will not exceed the cost to participate in the program.

According to ComEd, ICEA's position also ignores the fact that all customers will benefit from the PTR program through demand reduction, regardless of whether they participate in the program. ComEd also states that its proposal includes an intention to revisit the cost recovery mechanism during the time the Commission evaluates the PTR program's performance, pursuant to the statutory requirement.

ComEd notes Staff's concern that RES customers may pay twice if a RES decides to implement its own PTR program and ComEd argues that Staff's proposal to address this alleged concern is not ripe. ComEd states that no RES currently operating in Illinois offers its own PTR program and it is unaware of any alternate supplier currently operating in the country which offers such a program. ComEd also argues that Staff's concept is vague and over-simplified and would raise many difficult issues.

In response to ICEA's argument that program costs (not just the rebates) should be recovered from PJM, ComEd argues that ICEA's position is based on faulty statutory construction. ComEd argues that the two sentences at issue in 16-108.6(g) both apply to rebates and need to be considered together. ComEd states that if the Commission agrees with ICEA's legal interpretation, then it suggests that the Commission delay PTR program implementation until such time that the PJM revenues can be expected to cover programmatic costs and pay rebates of $1/kWh.

2. ICEA's Position

According to ICEA, Subsection 16-108.6(g) contains two provisions related to cost recovery: one recovers the cost of the rebates and the other recovers the cost associated with funding the program. For both categories, ICEA argues that the statute provides clear and unambiguous direction for ComEd to seek recovery of all PTR-related costs from the "applicable regional transmission organization." ICEA asserts that ComEd's proposal to recover its PTR costs from all residential customers violates Section 16-108.6(g).

ICEA argues that ComEd's statutory interpretation argument violates the common judicial canon that urges courts to read statutes in ways that make every part of a statute meaningful. ICEA asserts that ComEd's position would make the second sentence regarding cost recovery meaningless. ICEA states that even though the General Assembly directed ComEd to seek recovery for both rebates and program costs from PJM, there is absolutely nothing in the statute to suggest that all available funds be used for rebates at the expense of funding program costs.

Moreover, ICEA maintains that ComEd's cost recovery proposal is bad public policy because ComEd's proposal virtually ensures that ARES will be not able to compete in the demand response market. Assuming that an ARES develops a demand response program, it will be required to recover these costs from those residential customers that purchase this product. As a result, ARES customers will be forced to pay twice for demand response - once for the ARES's product and once for ComEd's PTR.

In response to Staff's proposal regarding ComEd providing PTR services to ARES, ICEA states that it appreciates Staff's attempt to develop a solution to minimize the inherent cost advantage that would result if ComEd's position is adopted. ICEA agrees that this could be a workable alternative and that it is willing to discuss and explore this concept within the context of Commission-sponsored workshops.

3. Staff's Position

Staff does not take issue with ComEd's proposal to recover the costs to implement its PTR program costs including start up, administrative and evaluation costs from all residential customers through its delivery service charges. Staff states that rebate costs under Section 16-108.6(g) are to be secured from the regional transmission organization, but Staff argues that the statute does not specifically address the cost recovery for implementation costs. Staff witness Allen testified that PTR customers are the cost causers of the program, but opined that it is appropriate to assign the implementation costs across all residential customers because cost allocation in that manner would allow for a higher participation rate. However, Staff is only recommending this cost allocation for the initial evaluation period and is recommending that the Commission reconsider the issue in the proceeding initiated to evaluate the PTR program.

Staff agrees with ICEA that allowing ComEd to socialize the administrative costs associated with the PTR program puts any ARES that may wish to compete with ComEd in terms of offering a PTR program at a cost disadvantage. In order to mitigate any concerns with competitive neutrality, Staff recommends that ComEd provide ARES, at no additional cost to the ARES or its customers, with services for their PTR customers associated with the PTR-related costs that ComEd seeks to spread across all residential customers. Staff states that its proposal would include curtailment service providers ("CSPs") as well.

4. CUB/City's Position

CUB/City state that ICEA's proposal would impede the Company's ability to make reasonable attempts to secure rebate funding from market revenues and ignores the statutory directive to spend market revenues entirely on rebate costs.

With respect to non-rebate costs, CUB/City assert that Section 5/16-108.6(g) requires ComEd to spend any compensation received from PJM auctions on rebates, because the "total amount of rebates" is required to be equal to the amount of compensation received from PJM. Therefore, CUB/City conclude, the PUA appears to prohibit ComEd from spending auction revenue on non-rebate costs.

CUB/City note that all ComEd delivery service customers, including those who take supply from an alternative supplier, will benefit from the PTR program. CUB/City witness Devens also points out that a ComEd PTR program could serve as a stepping stone for customers to transition from the PTR program to an ARES administered demand response program because it would provide those customers with experience in a demand response program by reinforcing the behavior change and providing the general education required.

5. Commission Analysis and Conclusion

The Commission agrees with ComEd that the program costs should be recovered from all of ComEd's residential customers. The only party that disagrees is ICEA. ICEA is concerned with the competitive implications of a ComEd program funded by all residential customers. The program is statutorily required to be offered to all residential customers with smart meters and, therefore, the Commission finds it reasonable to recover the costs from all residential customers, who will eventually all have smart meters.

The two sentences that discuss cost recovery in Section 5/16-108.6(g) refer to funding the rebates. Start-up, administrative and evaluation costs are not specifically addressed in the statute. The first sentence clearly requires that the total of all revenue received from PJM is to be distributed to participants through rebates. This sentence is clear and unambiguous and leaves no room for ICEA's position that some of the PJM revenue should be used for non-rebate costs.

The second sentence also discusses rebate costs, albeit not as clearly as the first. It is a direction to the utility to put its best effort into securing funding from PJM for the rebates. The Commission agrees with this requirement because of a reluctance to require other ratepayers to fund rebates to the participants. The rebates are to be set at a level that maximizes participation, but also doesn't require other ratepayers to provide funding.

In addition, if PTR participants are required to fund all PTR costs, then it is likely that an individual's costs would be greater than the refunds received from PJM. Indeed, ComEd recommends that if PJM revenues are required to fund non-rebate costs as well as the rebates, then ComEd recommends delaying the whole program. It appears that any other funding proposal would derail the entire program and the Commission finds it unlikely that is the intent of the statute.

The Commission also does not agree completely with Staff that program participants are the cost causers. Rather, all peak users have caused the need to reduce peak usage, not just those that seek to alleviate the problem through this program. Also, the idea is that everybody benefits from reduced peak usage through reduced energy charges and greenhouse gases.

The Commission finds Section 5/8-103 of the PUA which allows electric utilities to recover the cost of the energy efficiency and demand response measures affirms that this decision is correct. Notably, that provision begins with a statement that the policy of the state is to reduce delivery load. The statutorily required PTR program is designed to reduce peak load and, thus, it is entirely consistent with the PUA to recover the costs of this program from all residential customers. This issue may be revisited during the evaluation proceeding.

With respect to Staff's proposal that ComEd provide ARES with PTR services to alleviate ICEA's competitive concerns, the Commission agrees with ComEd that Staff's proposal has not been fully developed. It may very well have merit and Staff is directed to address this in workshops. This issue does not need to be concluded before ComEd's PTR is offered to customers and if further Commission action is required on this proposal it should be brought in a different docket, not this tariff proceeding.

F. Disclosure of Participation to RES's

1. Staff's Position

In testimony and in its Initial Brief, ComEd asked for guidance on whether the decision of individual customers to participate in ComEd's PTR program constitutes customer-specific billing, usage, or load shape data under Section 16-122 of the PUA that may not be posted on ComEd's PowerPath® website absent express customer authorization.

Staff notes that Section 16-122 became law in 1977 and the intent of Section 16-122 seems to be to foster competition by allowing ARES access to certain information, while limiting that access to protect the confidentiality of customer specific information. Section 16-122 expressly protects an individual customer's billing and usage data, requiring a customer's express authorization prior to divulging customer-specific billing and usage data. Further, neither the PUA nor any Commission rule provides an exception to this requirement nor does either define customer billing, usage or load shape data.

Staff states that this type of information seems to be the same type of information that ComEd currently provides under its Rate GAP to governmental authorities without specific customer authorization. ComEd provides to a Government Authority not only account numbers, names and addresses of its retail customers, which is permitted under the IPA Act, but also information as to whether the customers are taking service under Rate BES (Basic Electric Service), taking service under Rate BESH (Basic Electric Service Hourly Pricing), and whether those customers' delivery class is with or without electric space heat. Staff's position is that there is no difference between that information and whether a customer is taking service under Rider PTR. Staff recommends that the Commission, for consistency purposes, find that whether a customer has elected to participate in ComEd's PTR program is not customer information entitled to protection under Section 16-122 of the PUA.

2. ComEd's Position

In its Reply Brief, ComEd took issue with Staff's analysis and notes that the crux of Staff's position is that similar information is made available to municipal bodies pursuant to Rate GAP – Government Aggregation Protocols. However, ComEd argues, the provisions of Rate GAP implement requirements of Section 1-92 of the Illinois Power Agency ("IPA") Act which provides an explicit exemption to the non-disclosure requirements of Section 16-122 of the PUA. Thus, ComEd asserts that Staff's position is not legally sound because there is no similar exemption for a RES to obtain PTR data as there is for a municipality to receive data for purposes of municipal aggregation.

Also, ComEd opines that if the Commission agrees with Staff, there could be ramifications on other services. For instance, ComEd states that whether a customer participates in the Low Income Home Energy Assistance Program or the Percentage of Income Payment Program would disclose some level of customer confidential information regarding income or financial status. ComEd argues that Staff's recommendation, to treat whether a customer has elected to take a particular service to not be customer information subject to Section 16-122, needs to consider these other scenarios as well. ComEd recommends that, absent a more compelling reason to favor release of this information without express customer authorization, this information should continue to be treated as customer information subject to Section 16-122.

3. Commission Analysis and Conclusion

This issue has not been adequately addressed. Indeed, under the discussion of curtailment notifications, ICEA notes that it needs to know if a curtailment is called because the ARES supplier will need less electricity, but does not directly address this particular issue. Staff has had no opportunity to respond to ComEd's opinion, which was offered for the first time in its Reply Brief. In its Brief on Exceptions, Staff argues that this issue should be decided now and not discussed in workshops. The problem, however, is that the Commission does not have enough information. In order for a RES to adequately manage its load does it need to know which customers are on PTR or just how many of its customers are on PTR? In the event a RES offers a PTR program it would need to know if the customer is already participating in ComEd's program but it is not clear why this can't be discovered with the customer's consent. In other words, without knowing what kind of disclosure is at issue, the Commission is reluctant to say how the law should be applied.

The Commission believes that the issue of what information needs to be supplied to RESs is appropriate for discussion in the workshop proceeding as well. The importance of protecting consumer information leads the Commission to conclude that this issue should be brought before the Commission for final resolution before the PTR program is implemented.

As noted above, Staff shall file a report following the workshops indicating whether this issue has been resolved and, if so, describing the resolution reached in the workshops for Commission approval. If this item was not fully resolved to all workshop participants' satisfaction, Staff's report shall so indicate and may contain a proposed schedule to address them. If open issues exist for this item, the ALJ shall adopt a schedule to address those issues.

G. March 1, 2013 Approval

1. ComEd's Position

ComEd seeks Commission approval of the PTR program filing by March 1, 2013. ComEd plans to offer PTR resources in the Base Auction to obtain the highest possible revenue from PJM Approving ComEd's PTR program by March 1, 2013 permits ComEd to offer PTR resources in the Base Auction scheduled to be held in May 2013 for the 2016/2017 PJM Planning Year.

2. CUB/City's Position

CUB/City recommend that the Commission approve ComEd's PTR program design by March 1, 2013 as ComEd has requested. Such approval would allow the Company to maximize the market revenues available for the 2016/2017 PJM Planning Year by participating in the PJM Base Auction in May of 2013. Delaying approval of the program, as suggested by ICEA, would reduce the amount of market revenues collected to fund the rebate program.

3. ICEA's Position

ICEA objects to ComEd's request for Commission approval of its PTR program by March 1, 2013. ICEA believes that ComEd's Petition is not ripe for a decision because the program will not be implemented until 2015 and there are many PTR business functions that have yet to be developed.

ICEA states that ComEd intends to bid its PTR resources in the PJM auction based on its forecasted amount of load response, yet it is unclear to ICEA whether PJM will allow ComEd to bid PTR resources in the May 2013 auction without an approved CBL. Notwithstanding the lack of a CBL, ICEA asserts that ComEd is free to prepare for PJM auctions irrespective of a Commission order approving its PTR tariffs. ComEd has failed to demonstrate that it needs a Commission order by March 2013 to prepare for the PJM auction given its undisputed history of bidding resources into various PJM demand response programs.

ICEA recommends that the Commission reject the instant Petition and have all components of the tariff approved at one time including both the CBL and all the PTR related tariffs in a future proceeding before the Commission.

4. Commission Analysis and Conclusion

The Commission agrees with ComEd that approval of the tariff in time for it to bid into the May, 2013 PJM Base Auction is appropriate. And with the minimal modifications discussed herein, ComEd's PTR and related tariff modifications are approved; but this is only an interim order. Issues remain that require a Commission decision before the PTR program is implemented. The Commission finds that different issues require different procedural treatment.

The workshops proposed by Staff, to be run by the ORMD, are vital and will discuss several issues as outlined in the Commission's conclusions above. Rider PORCB and PTR services are issues that should be discussed in the workshops, but do not need to be resolved before ComEd's PTR program is implemented. Indeed, if further action on either of these issues is required, separate dockets should be initiated.

Any issue regarding the enrollment script will hopefully be resolved in the ORMD workshops. If resolution is not reached, however, this can be brought to the attention of the ALJ in a timely manner in the Staff report discussed above to be resolved by the Commission before PTR implementation.

With respect to disclosure of PTR participation to ARES as well as curtailment notifications to ARES, the Commission finds these matters to require resolution prior to PTR being implemented in summer of 2015. These matters will be addressed in the ORMD workshop, but a final Commission decision is necessary before PTR implementation. The Staff report process discussed above shall be used to inform the Commission of the resolution of these issues or to conduct further proceedings regarding these issues if they are not resolved through the workshops.

The CBL methodology also needs to be addressed by the Commission and the tariff needs to be amended before PTR implementation. The Company should work in conjunction with SGAC to ensure that stakeholders are involved in the process. The Company proposal to make the filing in February 2014 for Commission approval by April 1, 2015 is accepted. This filing may also be the appropriate time to bring all matters before the Commission for final resolution.

ComEd should provide progress reports regarding customer research into pre-enrollment. The Company indicated at the hearing that it intends to conduct this research towards the end of 2013. The first progress report should be filed in February 2014 and should contain a proposal for addressing this issue as it develops.

As addressed below, the DLC pilot should also be presented to the Commission for consideration in this docket prior to implementation of the PTR program.

IV. Direct Load Control ("DLC") Technology

A. ComEd's Position

In the proceeding to approve ComEd's AMI Plan, the Commission directed ComEd to include an analysis of the costs of implementing DLC technology with its filing in this docket. ComEd attached to its Petition a Cost-Benefit Analysis of Offering Direct Load Control devices to Participants of ComEd's Peak Time Rebate Program ("DLC Cost-Benefit Analysis"). An updated version was attached to Mr. Eber's supplemental direct testimony. ComEd Ex. 4.1. The DLC Cost-Benefit Analysis was based on the cost-benefit analysis of a PTR program presented by ComEd witness Dr. Steven Braithwait in ComEd's AMI Plan proceeding, Docket 12-0298.

The range of net present values ("NPVs") reported in the DLC Cost-Benefit Analysis represent the incremental net benefits of offering DLC technology to PTR program participants (negative $41 million to positive $92 million). In other words, ComEd explains, the NPVs reported in the DLC Cost-Benefit Analysis represent the difference between the NPVs achieved with and without DLC technology under the various scenarios. Of the 16 scenarios ComEd analyzed with respect to offering DLC technology to PTR participants, eight produced positive NPVs and eight produced negative NPVs.

ComEd witness Eber explained that whether adding DLC technology creates positive or negative incremental net benefits depends heavily on the assumed level of average load reduction. Even with the assumption that PTR participants electing to receive DLC technology would achieve double the average load reduction of PTR participants who do not, all scenarios based on a 20% average load reduction with DLC produced negative net incremental benefits from offering DLC technology. Conversely, the scenarios based on a 40% average load reduction with DLC all produced positive net incremental benefits. The results show that higher levels of average load reduction will be required to produce positive incremental net benefits from offering DLC technology. ComEd maintains that the 40% load reduction assumed with DLC technology that is needed to produce positive incremental net benefits may be difficult to achieve in the near-term.

ComEd witness Eber also testified that DLC technology is not required in order to participate in PJM capacity or energy markets. While PJM does offer a Direct Load Control Program, and customers participating in that program are required to have enabling technology, customers participating in PJM's Firm Service Level or Guaranteed Load Drop programs are not required to have such technology. Instead, data collected from participants' meters would enable ComEd to measure and verify demand response during an event, which would then be submitted to PJM as verification of load drop. ComEd states that because it plans to offer demand response resources from its PTR program as a Firm Service Level offering in the PJM market (and only to customers with AMI meters), participants in ComEd's PTR program will not require enabling technology in order to receive compensation for demand response actions. ComEd also notes that there are several utilities that have demand response products accepted into PJM's capacity market without underlying DLC technology.

With respect to load reduction assumptions in its cost-benefit analysis, ComEd believes that its 0.45 kW load is realistic for customers with DLC technology and supported by numerous studies. ComEd disagrees with Comverge's cost-benefit analysis because of the different assumptions for load drops with DLC. According to ComEd, Comverge points to data and reported studies showing load reductions as high as 1.85kW with DLC technology, but those same studies also show that some demand response programs utilizing DLC technology have only produced load reductions in the 20% range.

With respect to the 0.992 kW load reduction achieved under ComEd's Rider AC program, ComEd states that the result is simply consistent with ComEd's high load reduction scenarios and does not discredit use of the low load reduction scenarios. Also, ComEd asserts that Comverge disregards the fact that ComEd's Rider AC program targets and represents load reductions for larger single family homes. According to ComEd, the same results would not be achievable throughout ComEd's service territory which includes a mix of housing including smaller single family homes as well as smaller multi-family units.

ComEd does not believe that it should be required to offer DLC devices to customers at this time. ComEd notes that customers can purchase a device from retailers, an option which ComEd could inform customers of when enrolling. ComEd also states that DLC devices are currently run on paging networks which are not fully interoperable with the AMI network. In the future, ComEd opines, further integration of DLC devices with two-way AMI networks may provide better functionality at a lower cost structure, at which time ComEd would re-examine the inclusion of technology in the PTR program.

B. Comverge's Position

Comverge states that it supports ComEd's PTR program. However, Comverge requests that the Commission approve the PTR program with one modification which the record has shown will create substantial net present value benefits for ComEd customers. Specifically, Comverge requests that the Commission order ComEd to modify the PTR program so that all PTR participants are given the option of ComEd providing them enabling technology designed to directly control their electricity usage during a peak time rebate event. Comverge asserts that this modification to ComEd's PTR program will empower customers to maximize the direct benefit of participation in the program and will provide significant benefits to all customers served by ComEd.

Comverge notes that the cost-benefit analysis presented by ComEd showed net present value benefits from providing direct load control ("DLC") technology to PTR participants if it was assumed that a 20% incremental peak load reduction would be achieved for PTR participants by doing so. ComEd's cost-benefit analysis showed slightly negative net present value benefits if it was assumed that enabling direct load control technology would achieve only a 10% incremental peak load reduction.

Comverge maintains that the determining factor for whether the ComEd cost-benefit analysis showed positive or negative benefits was the assumed level of peak load reductions achieved by providing direct load control technology.

Comverge argues that a 10% incremental peak load reduction assumption is flawed. Comverge witness Lacey testified that a 30% incremental peak load reduction is appropriate and results in net present values from $35 million to $191 million. Comverge points out that a 10% incremental peak load reduction is based on an assumption of average peak load reduction with direct load control of 0.45 kW when ComEd's own direct load air conditioning cycling program (Rider AC) achieved an average peak load reduction more than twice this amount, i.e., 0.992 kW. Comverge's position is that an incremental peak load reduction of 20% is a worst case scenario and that 30% incremental peak load reduction (10% without DLC and 40% with DLC) is the most likely scenario based on the record in this case.

Moreover, Comverge maintains that a PTR program without DLC technology may not be reliable enough to be effectively bid as demand response capacity into the PJM market and thereby provide capacity payments to ComEd, which are supposed to fund the rebates. Comverge asserts that ComEd has not articulated how it plans to estimate peak load reductions without DLC, whereas demand response with DLC has been successfully bid by ComEd and other utilities. Comverge also notes that the PJM Emergency Load Response Program, which provides the vast majority of the compensation for the PTR program, is not a voluntary response program, but ComEd has made it clear that customer response in its proposed program is voluntary. Comverge witness Lacey testified that PJM is moving towards tightening the rules on demand response, not loosening them.

Comverge points out that benefits for non-participants include lowered capacity prices, reduced carbon emissions, and reduced transmission and distribution costs. Comverge urges the Commission to require ComEd to provision DLC at the time a customer's AMI meter is installed.

C. Staff's Position

Staff does not object to ComEd allowing customers to use enabling direct load control technologies as part of the individual customer's PTR experience. However, Staff recommends that the cost of enabling technologies be paid for by either the customer or the customer's CSP rather than have these costs socialized among all customers.

Among the reasons that Staff gives for DLCs to not be socialized are:

1) Any indirect benefits to nonparticipants are likely to be very small since the number of PTR participants and aggregate savings from these customers will be small relative to the overall size of the PJM markets (Tr., December 7, 2012, p. 142-43).

2) Enabling technologies are only of practical use to residential customers with central air conditioning. ComEd estimates that only 70% of customers have central air units. Socializing the costs among all customers would mean that 30% of customers who would be required to pay for these technologies would have no opportunity to directly benefit. If half of all customers with central air enrolled in the program, this would represent only 35% of all ComEd customers, a full 65% of customers would not receive direct benefits. (Staff Ex. 4.0, pp. 5-6)

3) It potentially creates a cost advantage for ComEd over an ARES (Id.) or CSP.

4) It is premature to lock in a technology without analyzing how effective the program may be without technologies (Id.); and

5) If the benefits to PTR with enabling technologies are as great as Comverge alleges, there is nothing preventing Comverge or similar organizations from accepting the risks by offering their own PTR program to ComEd's customers (Id.).

Staff notes that Comverge witness Lacey testified that the likely cost of DLC is around $150 per device, but Staff argues that there are additional costs to administer a DLC program. Dr. Kennedy testified on rebuttal that energy savings to a participant are likely to be about $20 per year. Staff Ex 4.0 at 2-3. Thus, according to Staff, for it to be worthwhile for nonparticipants to pay the cost of DLC, nonparticipant benefits would have to be worth enough to cover the DLC equipment and administrative costs. At $10 per year in incremental benefits to participants, there is a very real likelihood that nonparticipant benefits would be insufficient to cover the gap.

D. ICEA's Position

ICEA doesn't address DLC except to express concern regarding the manner in which DLCs would be billed under PORCB.

E. Commission Analysis and Conclusion

The Commission believes that there are too many unanswered questions at this point to decide whether DLC should be provided to all PTR participants. The Commission sees that ComEd's cost-benefit analysis found that all scenarios based on a 20% average load reduction with DLC produced negative net incremental benefits from offering DLC technology. But, the scenarios based on a 40% average load reduction with DLC all produced positive net incremental benefits. Notable are the results of ComEd's Rider AC with its .992 kW reduction, which is much higher than the 20% load reduction assumption that ComEd believes is reasonable. So the question becomes whether cost-beneficial results can be achieved with a PTR program with DLC in ComEd's service territory. Because of the potential benefits of DLC, the Commission is concerned with ComEd's position that nothing should be done now.

Comverge says, and the Commission agrees, that the question of whether the provision of DLC technology to PTR participants results in net benefits depends entirely on how much incremental peak load reduction is realized by PTR participants utilizing this technology. The answer is unknown. ComEd's estimates seem extra conservative and do not support an outright refusal to require DLC technology. Rather than attempting to answer these questions now, the Commission directs ComEd to design a pilot program where some PTR participants will be provided with DLC technology.

The Commission notes Staff's argument that it is premature to lock into a technology without analyzing how effective the program may be without technology. Staff IB at 10. This argument strengthens the decision in favor of a pilot program, because it underscores the need to explore all the available options now. ComEd should develop a pilot DLC program that would provide information to compare PTR with and without DLC and allow the Commission to make a reasoned decision sooner rather than later.

The Commission is also cognizant of Staff witness Kennedy's statement that "[i]t is entirely possible under either of these scenarios that total benefits to nonparticipants are less than the total costs to them" (Staff Ex. 4 at 6), but notes that not all the indirect benefits have been quantified. The cost benefit analysis states that benefits of reduced demand are in the form of the increased capacity and energy revenues from PJM markets. In other words, other indirect benefits are not included in the cost-benefit analysis. CUB/City point out that reductions in peak load generation reduce greenhouse gas emissions, delivering environmental and societal benefits to all of ComEd's customers. For these reasons, the Commission cannot let several years elapse before enabling technology is even considered.

Consistent with the discussion above regarding cost recovery, the pilot program costs, including the cost of providing DLC, should be recovered from all residential customers. It is worth noting that ComEd's cost benefit analysis was based on participants not paying for DLC technology with the cost being recovered from all residential ratepayers. Requiring DLC recipients to pay for the technology would make the pilot infeasible. Also, if customers were required to pay, then those customers would own the technology, but certainly in the context of a pilot program, the utility needs to have control over the device. Undoubtedly, even if DLCs are eventually required (or offered) to all PTR participants, this would still most likely need to be a cost absorbed by all residential consumers. The Commission is aware of ComEd's concerns regarding cost and will be mindful of this during the review of the pilot proposal.

ComEd informs the Commission that incorporating DLC may be difficult because of the incompatibility of its meters with some DLC technology and points out the need to run a competitive bid. The Commission accepts these concerns and leaves it to ComEd to ensure that whatever technology (or technologies) is chosen for the pilot will be compatible with its system and competitively bid.

ComEd has experience in designing pilots, such as the customer applications pilot for smart meters. In fact, the specifics of the pilot are left to the Company to propose, with an emphasis on providing answers in order to enable the Commission to make an informed decision regarding the adoption of DLC.

The record is lacking in many areas that a pilot could answer, some of which are: how much energy curtailed with or without technology; how much demand response ComEd is able to bid into PJM with or without technology; how much revenue received from PJM with or without technology; customer satisfaction with or without technology; and costs of PTR with or without technology.

ComEd is directed to design a pilot, with input from SGAC. A progress report should be filed in this docket in six months. ComEd shall file testimony by February 1, 2014, describing the design it would propose for a DLC pilot and any other information it deems relevant to proceeding with the pilot. Subject to Commission review and approval, implementation should coincide with PTR in the summer of 2015. Rather than making a decision now regarding DLC, the Commission intends to let the results of the pilot program guide the decision of whether to adopt DLC technology. A report of the results of the first year should be filed by the end of 2015.

V. Findings and Ordering Paragraphs

The Commission, having reviewed the entire record, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale, and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Act;

(2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter herein;

(3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

(4) Rider PTR is approved as modified herein and Commonwealth Edison Company should file a revised Rider PTR, consistent with the conclusion contained herein, such revised Rider PTR should be filed within thirty days after the entry of this Interim Order with an effective date no earlier than ten business days after such filing is made;

(5) the revisions to Rider AC - Residential Air Conditioner Load Cycling Program, Rider POG - Parallel Operation of Retail Customer Generating Facilities, Rider POGNM - Parallel Operation of Retail Customer Generating Facilities Net Metering, and Rate RESS - Retail Electric Supplier Service, as described herein, are approved, and should be filed within thirty days after the entry of this Interim Order with an effective date no earlier than ten business days after such filing is made;

(6) the Commission's Office of Retail Market Development should initiate a workshop process consistent with the conclusions contained herein;

(7) the unresolved issues should be addressed in the procedural manner discussed above;

(8) Rider PTR must be amended to include the Company's CBL methodology and any future changes to CBL must be reviewed by the Commission and incorporated in the tariff;

(9) Commonwealth Edison Company should design a pilot program, with input from SGAC, consistent with the decision herein, to be filed in February 2014 for Commission review and approval.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Commonwealth Edison Company's Peak Time Rebate Program, Rider PTR, as modified herein, complies with the requirements of Section 16-108.6(g) of the Act and is approved.

IT IS FURTHER ORDERED that the Commission's Office of Retail Market Development is directed to initiate a workshop process consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that Commonwealth Edison Company shall file a final copy of Rider PTR and the approved revisions to Rider AC, Rider POG, Rider POGNM, and Rate RESS within thirty days of the entry of this Interim Order.

IT IS FURTHER ORDERED that the tariff sheets for Rider AC, Rider POG, Rider POGNM, and Rate RESS to be revised by this Interim Order are hereby permanently canceled and annulled, effective at such time as the new tariff sheets approved herein become effective by virtue of this Interim Order.

IT IS FURTHER ORDERED the Rider PTR must be amended, prior to implementation, to include Commonwealth Edison Company's CBL methodology.

IT IS FURTHER ORDERED that Commonwealth Edison Company is directed to design a DLC pilot program consistent with conclusions reached herein.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are to matters in this proceeding which remain unresolved are to be disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that this Order is not final and is not subject to the Administrative Review Law.

By Order of the Commission this 21st day of February, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman