

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION	:	
On its Own Motion	:	
v.	:	No. 13-0285
COMMONWEALTH EDISON COMPANY	:	
Investigation regarding progress in implementing the	:	
Advanced Metering Infrastructure Deployment Plan	:	

**STATEMENT OF POSITION OF  
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”), pursuant to an order of the Administrative Law Judges, submits this Statement of Position concerning this investigation into progress in implementing its Advanced Metering Infrastructure (“AMI”) Deployment Plan (“AMI Plan”) and its 2013 Advanced Metering Annual Implementation Progress Report (“AIPR”).

**Background and Procedural History**

1. Under Section 16-108.6(c) of the Illinois Public Utilities Act (the “PUA”), 220 ILCS 5/16-108.6(c), ComEd submitted its proposed AMI Plan to the Illinois Commerce Commission (“Commission” or “ICC”) on April 1, 2012. That Plan was approved with modifications by the Commission on June 22, 2012. *See Commonwealth Edison Co.*, ICC Docket No. 12-0298, Final Order (June 22, 2012) at 64 (¶¶ 4, 5). The meter deployment schedule was subsequently “modified consistent with the recommendations of Staff of the Commission” on December 5, 2012. *Id.*, Order on Rehearing (Dec. 5, 2012) at 33.

2. Section 16-108.6(e) of the PUA, 220 ILCS 5/16-108.6(e), requires ComEd, as a participating utility with an approved AMI Plan, to file with the Commission each April 1 an AIPR that “(1) describe[s] the AMI investments made during the prior 12 months and the AMI

investments planned to be made in the following 12 months; (2) provide[s] sufficient detail to determine the utility's progress in meeting the metrics and milestones identified by the utility in its AMI Plan; and (3) identif[ies] any updates to the AMI Plan.” The Commission's Order on Rehearing in Docket No. 12-0298 (at 32-33) also calls on ComEd to address potential implementation acceleration and to report on “acceleration efforts that were considered and rejected by ComEd.” ComEd timely submitted its 2013 AIPR, including three Attachments and two Appendices, addressing all these issues.

3. Because of the Commission's specific direction concerning ComEd consideration of potential acceleration options and the short time allotted to any investigation proceeding under Section 16-108.6(e), ComEd also submitted on April 1, together with its AIPR, four proposed direct testimonies addressing ComEd's progress in deploying AMI Meters under the currently approved AMI Plan and ComEd's analysis of potential acceleration alternatives.

#### **ComEd's AIPR Meets All Legal Requirements**

4. ComEd has satisfied the requirements of the PUA and the Commission's Order in Docket No. 12-0298. ComEd's 2013 AIPR describes the AMI investments ComEd made during the prior annual 12-month period and plans to make, under the approved AMI Plan, in the following 12 months. AIPR at 3-18. In response to Staff Data Request EPS 1.01, ComEd also condensed its description of these investments into a summary that Staff cited in its Verified Comments. That summary is attached to Staff's Verified Comments as Attachment A and is also attached hereto as Appendix A. In addition, the AIPR, especially Appendix B thereof, addresses the acceleration of meter deployment and includes both an analysis of the potential acceleration alternatives and a candid and detailed discussion of what acceleration alternatives were financially and operationally practical and superior. *Id.* at 1, Appendix B.

### **ComEd Has Implemented the Approved AMI Plan**

5. On April 9, 2013, the Commission commenced this statutory investigation proceeding. Section 16-108.6(e) of the PUA authorizes the Commission to “enter upon an investigation regarding the utility’s progress in implementing the AMI Plan as described in” the AIPR, and the Initiating Order specifically found that “[t]he Commission has the authority under Section 16-108.6(e) of the Act to investigate the Company’s progress in implementing the AMI Plan approved in Docket No. 12-0298. The Commission will exercise this authority in this proceeding.” Initiating Order at 1. The Initiating Order made no finding that ComEd’s progress was deficient. Nor did it require additional filings by ComEd. Rather, it expressly directed that “the report filed by Commonwealth Edison Company on April 1, 2013 in compliance with Section 16-108.6(e) of the Act is made part of the record of this proceeding.” *Id.*

6. At the initial status hearing in this proceeding, the parties discussed the issues on which Staff and Intervenors might comment. An agreed schedule was adopted that allowed for submission of both verified comments responsive to the AIPR and reply comments on legal and policy issues that did not present genuine issues of fact and, thus, did not require the submission of testimony and an evidentiary hearing. The schedule also allowed for Staff and Intervenors to submit direct testimony if they wished to dispute issues of fact, and allowed ComEd to file rebuttal testimony if they did so.

7. This process complies with the Commission’s rules, the Illinois Administrative Procedure Act, and respects due process rights. Whether an evidentiary hearing is necessary at the Commission is determined by applying the same standard traditionally required of Illinois courts and other agencies: unless specifically required by law, a hearing or trial is needed if, and only if, there is a genuine issue of material fact presented. *See* 735 ILCS 5/2-1005(c). The

“genuine issue of material fact” standard satisfies the constitutional due process requirements required in a formal administrative proceeding wherein property rights are affected.<sup>1</sup> See *Yiannopoulos v. Robinson*, 247 F.2d 655, 657 (7<sup>th</sup> Cir. 1957); *Balmoral Racing Club v. Illinois Racing Bd.*, 151 Ill. 2d 367, 408 (1992); *Brown v. Air Pollution Control Bd.*, 37 Ill. 2d, 450, 454 (1967). Likewise, under the Illinois Administrative Procedure Act (“IAPA”), the Commission is required to consider testimony and provide an evidentiary hearing if there exists a dispute concerning a material fact in a contested case.<sup>2</sup> *People ex. rel. Illinois Commerce Comm’n v. Operator Communication, Inc.*, 281 Ill. App. 3d 297, 301 (1<sup>st</sup> Dist. 1996). However, unlike issues of fact, legal and pure policy issues do not require an evidentiary hearing to resolve. Judges and agencies traditionally resolve such issues based on briefs and other written submissions (assuming notice requirements are respected) without an evidentiary hearing.

8. Staff, the City of Chicago, and (jointly) CUB and the Environmental Law and Policy Center submitted Verified Comments. Many of these Comments discuss policy issues and suggestions for continued collaboration during the upcoming year of implementation. None claim that ComEd was failing to implement the AMI Plan as approved in Docket No. 12-0298. And, while Staff relies on ComEd’s response to Staff Data Request EPS 1.01 attached hereto, as well as to the AIPR itself, no party claims that ComEd has failed to meet its legal obligations.

9. No other party filed direct testimony as required to properly raise a genuine issue of fact. As a result, ComEd did not file rebuttal testimony and no evidentiary hearing was

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<sup>1</sup> Since this process affords due process, it need not be decided whether any participant here other than ComEd has constitutionally-protected property rights at stake.

<sup>2</sup> With exceptions not relevant here, a contested case under the IAPA is “an adjudicatory proceeding ... in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.” 5 ILCS 100/1-30. In addition, Section 10-101 of the PUA specifically states that all “investigative proceedings ... shall be considered ‘contested cases’ as defined in Section 1-30 of the [IAPA], any contrary provision therein notwithstanding.” 220 ILCS 5/10-101.

required. Pursuant to the May 21 Order of the Administrative Law Judges, ComEd has filed Affidavits from the four ComEd witnesses who proffered written testimony attesting to the truth of their statements and to the facts stated in the portions of the AIPR they oversaw. ComEd asks that their testimony be admitted.

10. ComEd will respond in its Verified Reply Comments to the policy recommendations and suggestions for continued collaboration during the upcoming year of implementation made in the Verified Comments of Staff and others. However, portions of the Verified Comment of some Intervenors appear to ask the Commission to either modify the approved AMI Plan or require ComEd to take some action beyond – or even in conflict with – the AMI Plan. Any such request is outside the statutory scope of this Docket, contrary to the Initiating Order, and beyond the scope of relief that can be sought consistent with statutory and constitutional procedural rights without submitting supporting testimony, which no commenting party did. ComEd will also address those Comments, as legal matters, in its Reply Comments.

### **Effectiveness of Senate Bill 9**

11. Early this afternoon, the Illinois General Assembly overrode the Governor’s veto of Senate Bill 9. Its provisions are effective immediately. New Section 16-108.5(L)(1)(A) of the PUA requires the Commission, after notice and hearing, to enter an Order in this proceeding to “accelerate the commencement of the meter deployment schedule approved in the final Commission order on rehearing entered in Docket No. 12-0298.” In accordance with the evidence ComEd has already submitted in this proceeding and with the prior recommendations of witnesses for ComEd and Staff on which that proposal was based, ComEd requests that the Commission approve the “Staff Alternative – Adjusted” accelerated meter deployment schedule. ComEd will file tomorrow before noon a motion proposing a schedule that will allow the

Commission to resolve this issue as provided by Section 16-108.5(L)(1)(A) of the PUA along with the remaining issues in this proceeding that are being addressed through Comments.

WHEREFORE, ComEd asks that, after considering the record, including its AIPR and the supporting testimony, and the legal and policy positions presented in the Verified Comments and Reply Comments, the Commission enter an Order (1) closing the investigation into ComEd's implementation of the existing AMI Plan; (2) making no finding that ComEd's "progress in implementing the AMI Plan approved in Docket No. 12-0298" is "materially deficient" in any year; and (3) approving the Staff Alternative – Adjusted as the accelerated meter deployment schedule required by Section 16-108.5(L)(1)(A) of the PUA.

Dated: May 22, 2013

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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One of its attorneys

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