

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)	
)	
Annual formula rate update and revenue)	Docket No. 16-0259
requirement reconciliation authorized by Section)	
16-108.5 of the Public Utilities Act.)	

C3 IOT’S VERIFIED REPLY IN SUPPORT OF ITS PETITION TO INTERVENE

Pursuant to Illinois Administrative Codes § 200.190, C3, Inc. (doing business as “C3 IoT” and formerly “C3 Energy”) (“C3 IoT”), hereby replies to the objection of Commonwealth Edison Company (“ComEd”) to its Petition to Intervene.

Contrary to ComEd’s objection, C3 IoT’s petition meets the standard for intervention in Commission proceedings. In determining whether to grant a petition to intervene as of right, Illinois courts consider whether: (1) the intervention petition is timely; (2) whether the petitioner’s interest is sufficient; and (3) whether that interest is being adequately represented by someone else in the lawsuit. *Soyland Power Cooperative v. Illinois Power Co.*, 213 Ill. App. 3d 916, 918, 572 N.E.2d 462, 464 (4th Dist. 1991).

First, C3 IoT’s petition is timely. Section 200.200(e) anticipates that parties may intervene while a case is in progress. Here, C3 IoT filed its petition the day after ComEd filed its petition initiating this case.

Second, C3 IoT has a direct interest, including recognizable and enforceable rights at stake, in the instant proceeding. As stated in its Petition, C3 IoT is currently engaged in business, initiatives and dialogues within the Illinois energy community in connection with its

provision of innovative technologies that enable Illinois businesses and residential consumers to conserve energy.

Notably, the Illinois Commerce Commission (“ICC”) previously granted a petition to intervene by C3 IoT (then C3 Energy) in Docket No. 12-0544 (a case involving a procurement plan of the Illinois Power Agency). There, as here, C3 IoT’s petition cited to its business interest in Illinois and its ratepayers. C3 IoT noted its role in “administer[ing] the CUB Energy Saver energy efficiency program to Illinois ratepayers.” In fact, C3 IoT continues to administer that program today.

Furthermore, as expressed in C3 IoT’s petition, C3 IoT has business relationships with Exelon Corp. and its utilities (BG&E, PECO and ComEd) appurtenant to this proceeding. Specifically, C3 IoT has invested significant resources to develop innovative cloud-based smart grid solutions designed to deliver material benefits to ComEd and Illinois ratepayers. Directly relevant to these proceedings is the economic soundness of ComEd’s decision to incur costs for legacy on-premise solutions and not to proceed with the proven, existing cloud-based smart grid platform designed by C3 IoT for and at the request and urging of Exelon and ComEd.¹

A decision approving ComEd’s requested rate increase in this formula rate setting case, which C3 IoT understands is intended to provide for the recovery of prudently and reasonably incurred utility costs, could incentivize just the opposite effect (*viz.*, incentivizing uneconomic and imprudent cost expenditures to expand the utility’s rate base) to the material detriment of

¹ In May of 2013, Exelon Utilities issued to the market an RFP entitled Advanced Meter Infrastructure Business Intelligence/Data Analytics (BI/DA). The BI/DA RFP detailed a requirement for five smart grid analytics applications to be deployed across up to ten million meters at BGE, ComEd, and PECO. ComEd executives were involved in the process, including Grace Brigando, Director of Revenue Management and Craig Creamean, Director of AMI Deployment. After an extensive three-month BI/DA RFP product evaluation and price negotiation process, C3 IoT was awarded the Exelon Utilities Smart Grid Analytics RFP (BI/DA).

Illinois ratepayers and C3 IoT's business. As just one example, ComEd appears to be capitalizing \$318 million in software costs. C3 IoT believes that its participation in this proceeding will be helpful to determine the extent to which such costs were prudently incurred, for example, or instead whether they were imprudent and consist primarily of costs to integrate numerous on-premise point solutions rather than using much less costly cloud-based software.

And, as noted above, these are not merely "alleged general business interest[s]," as ComEd argues. Rather, a decision approving ComEd's imprudent expenditures would necessarily impair C3 IoT's current ability to deliver on its existing contractual obligations to deliver increasingly accurate energy saving measures to Illinois consumers, and would incentivize ComEd to divert resources from prudent cloud-based investments in C3 IoT's software and other similar technologies.² Importantly, the efficacy of C3 IoT's cloud software service, which delivers the CUB Energy Saver energy efficiency program to Illinois consumers using data supplied by ComEd will be immediately and adversely impacted as a potential result of this rate case. As a direct consequence of ComEd technology spending decisions for which it seeks to recover costs in this case, ComEd will supply less energy usage data than originally planned to the CUB Energy Saver program. The absence of such data will prevent or delay C3 IoT from supplying increasingly accurate energy saving measures to ComEd residential customers in Illinois for years, perhaps indefinitely. C3 IoT estimates that the decision that ComEd proposes to ratify in this rate case to forego a modern cloud-based smart grid analytics platform in favor of a traditional bespoke on-premise computer software solution deprives Illinois consumers of benefits in excess of \$600,000 per day and results in lost revenue to C3 IoT.

² Thus, unlike the facts in *Egyptian Elec. Coop. Ass'n v. Illinois Commerce Comm'n*, 33 Ill. 2d 339 (1965), where the utility and coop were competing for a prospective customer, C3 IoT's interest is neither speculative nor hypothetical.

Third, as a result of its unique position as a provider of application specific cloud-based smart grid technologies and its business dealings with Exelon and ComEd, C3 IoT brings a unique business perspective and valuable information to this proceeding. In particular, C3 IoT possesses information directly relevant to the justness and reasonableness of ComEd's formula rate petition from its business interactions with Exelon and ComEd and its extensive analysis and expertise regarding software technology benefits to Illinois consumers.

In addition to the legal standard for intervention "as a right," it is important to remember that the Commission has discretion to approve any intervention. "The Public Utilities Act grants to the Commission the power, in its discretion, to allow any person or corporation to intervene." *Egyptian Elec. Coop. Ass'n v. Illinois Commerce Comm'n*, 33 Ill. 2d 339, 342 (1965). The Commission should exercise its discretion and grant intervention in order to compile a complete record. The Commission would benefit from hearing from C3 IoT regarding ComEd's economically imprudent decision to incur capital expenditures on legacy on-premise solutions over cloud-based solutions designed for, and at the urging of, Exelon and its utilities.

Moreover, at this early stage, the record should not be prematurely closed on the extent to which a rate increase would be demonstrably unjust and unreasonable. As just one data point, based on a study commissioned by C3 IoT, ComEd's decision not to deploy a proven cloud-based smart grid solution is costing Illinois utility consumers over \$600,000 per day, which strongly suggests the imprudence of the costs incurred.

More fundamentally, the interpretation of the regulatory rules and the Commission's treatment of the costs of smart grid technologies (including on-premise legacy software and cloud-based software in general) are of vital importance to C3 IoT and will materially impact

Illinois consumers and C3 IoT's business.³

Accordingly, and for all of the forgoing reasons, C3 IoT respectfully requests that the Commission grant its petition for leave to intervene.

Dated: May 5, 2016

Respectfully submitted,

/s/ Stephen Swedlow

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³ C3 IoT recently filed its initial comments in response to the ICC's Notice of Inquiry exploring the economic and technical issues associated with cloud computing solutions. As set forth therein, the regulatory treatment of software costs is a material factor influencing ComEd spending decisions, and the application of the rate formula in this case will potentially have an adverse impact on C3 IoT and other providers of cloud-based software.

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NOTICE OF FILING

Please take notice that on May 5, 2016, the undersigned, an attorney, caused the foregoing document(s) to be filed via e-Docket with the Chief Clerk of the Illinois Commerce Commission in the above-captioned proceeding.

Dated: May 5, 2016

/s/ Marc L. Kaplan
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CERTIFICATE OF SERVICE

I, Marc L. Kaplan, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on e-Docket via electronic delivery from 500 W. Madison St, Suite 2450, Chicago IL 60661 on April 28, 2016.

Dated: May 5, 2016

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VERIFICATION

I, Stephen Swedlow, being first duly sworn upon oath, state that I am one of the attorneys for C3 IoT in this matter; that I am authorized to make this affidavit; that I have read the foregoing C3's Reply in Support of its Petition to Intervene; and that I am familiar (including through inquiry concerning the business records of C3 IoT) with the facts stated in the Reply, and that the facts stated therein are true and correct to the best of my information and belief.



Stephen Swedlow

Subscribed and sworn before me this 5th day of May, 2016



My commission expires: June 24, 2019

