

**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.)	

PETITION FOR INTERLOCUTORY REVIEW

NOW COMES C3, INC. (doing business as “C3 IoT” and formerly known as “C3 Energy”) (“C3”), by and through its attorneys, QUINN EMANUEL URQUHART & SULLIVAN, LLP. Pursuant to Section 200.520 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”), C3 respectfully submits this Petition for Interlocutory Review of the Administrative Law Judges’ Ruling dated May 11, 2016 (the “Order”), which denied C3’s Verified Petition to Intervene. In support thereof, C3 states as follows:

SUMMARY

Petitioner C3 is a provider of innovative smart grid solutions that allow utility companies to effectively deploy energy services to consumers. The issue before the Commission is whether information possessed by C3 about the prudence and reasonableness of costs incurred by the Commonwealth Edison Company (“ComEd”) warrants its intervention in this matter, so that C3 may assist the Commission in assessing certain ComEd purchase decisions (*e.g.*, related to cloud-computing and data analytic technologies). The ALJs dismissed C3’s Verified Petition to Intervene, in short, because C3 is not a downstream customer of ComEd and would not purportedly be “directly impacted” by changes in ComEd rates. C3 respectfully disagrees and requests that the Commission allow C3 to intervene in this action. At minimum, C3’s involvement

would enable the Commission to fairly assess the costs that ComEd now seeks to recover, to the benefit of both the Commission and ratepayers statewide. In addition, the outcome of this case will affect C3's ability to provide energy efficiency services, under existing contractual obligations.

STATEMENT OF FACTS

1. On April 13, 2016, Commonwealth Edison Company ("ComEd") filed a petition to initiate its annual formula rate update and revenue requirement reconciliation. In response, the Commission established Docket No. 16-0259.

2. On April 14, 2016, C3 filed a Verified Petition to Intervene in this matter – a copy of which is attached hereto as **Exhibit 1** – requesting that C3 be granted intervenor status.

3. For paragraphs 1-3 of the Verified Petition to Intervene, C3 articulated various facts in support of its standing to intervene, including the following:

[C3] enables utilities to: (1) improve efficiency and effectiveness in the service of utility consumers; (2) realize the full benefit of their smart grid and energy system investments; and (3) enable conservation of energy, by providing advanced business intelligence and data analytics platforms and solutions for the smart grid.

[C3] is active, along with other interested parties including the Citizens Utility Board ("CUB"), in initiatives, business, and dialogues involving Commonwealth Edison Company ("ComEd") and its parent company Exelon Corp., concerning the use of innovative smart grid solutions that can provide material benefits to Illinois utility consumers.

Utility consumers will be materially affected by the outcome of this docket. As a provider of innovative smart grid solutions, [C3] has attendant business interests that may be materially affected by the outcome of this proceeding.

4. ComEd filed an objection to C3's Petition to Intervene on April 28, 2016, C3 filed a Reply in Support of its Petition to Intervene on May 5, 2016, and ComEd filed a Reply in Support of its Objection on May 9, 2016. The ALJs heard argument from C3 and ComEd at the first status conference on May 10, 2016.

5. Based on the objection and arguments of ComEd, the ALJs denied C3's petition by order

dated May 11, 2016. The ALJs held that C3 lacked standing to intervene because “C3 is a vendor, who is not a customer of ComEd. It is not directly impacted by changes in ComEd rates at issue in this docket. It has not demonstrated an interest in this proceeding beyond a general business interest in the subject matter of the proceeding: the updating of ComEd’s delivery services rates.” The ALJs also stated that, “[a]lthough C3 argues that the efficacy of the CUB Energy Saver energy efficiency program, and indirectly the interests of ComEd customers, will be adversely impacted as a potential result of this rate case, CUB has not indicated its support for the C3 intervention petition.”

6. The Commission should permit C3 to intervene and reverse the ruling below for at least two independent reasons. *First*, the Order applied an overly narrow standard for intervention by focusing on whether “changes in ComEd’s rates” would “directly impact” C3, as it would a customer of ComEd. Setting such a high bar for intervention would hinder the Commission’s mission to ensure adequate, reliable, safe and least-cost public utility services by closing the proceedings to entities that – while not downstream customers – are uniquely positioned to provide valuable information that will benefit the public and the Commission.

7. *Second*, the Order disregarded and/or discounted C3’s direct interest in performing on its contractual obligations, which require C3 to deliver increasingly accurate energy savings data to Illinois ratepayers under the Citizens Utility Board (“CUB”) Energy Saver energy efficiency program. In support of their ruling, the ALJs noted that CUB had not proactively “indicated its support for [C3’s] intervention,” but ignored the fact that neither CUB – nor any other party – has opposed C3’s intervention in this action.

8. Based on the above reasons, the Commission’s guidelines for the exercise of discretion provide ample reasons to grant C3’s Verified Petition to Intervene. Accordingly, C3 prays that

this Commission issue an order: (a) granting interlocutory review of the ruling of the Administrative Law Judges denying C3's Verified Petition to Intervene; (b) allowing C3's intervention in this matter; and (c) granting such other and further relief as this Commission deems appropriate.

ARGUMENT

I. INTERVENTION IS WARRANTED SO THAT C3 MAY ASSIST THE COMMISSION IN FAIRLY AND ACCURATELY ASSESSING COMED'S COSTS.

9. There is no bright-line test for determining whether to grant a petition to intervene as of right. Instead, Illinois courts consider a variety of factors, including 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. *City of Chicago v. John Hancock Mut. Life Ins. Co.*, 127 Ill.App.3d 140, 143-45 (1st Dist. 1984). In addition, beyond intervention as of right, the Commission has the discretion to approve intervention by any person or corporation: "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) (emphasis added) (citing Ill. Rev. Stat. 1963, chap. 111 2/3, par. 69).

10. Contrary to this liberal approach, the Order denied intervention solely because "C3 is a vendor, who is not a customer of ComEd" and, therefore, purportedly "not directly impacted by changes in ComEd rates." It is settled law, however, that there is no "requirement that the intervenor have a direct interest in the suit." *Mensik v. Smith*, 18 Ill. 2d 572, 590, 166 N.E.2d 265, 275 (1960) (noting changes to the intervention statute that were "designed to liberalize intervention practice" and "relax the requirement that the intervenor have a direct interest in the suit"). Thus, the Order focuses exclusively on a distinction that is not dispositive as a matter of

law, to the exclusion of all other relevant factors.

11. In particular, the Order neglects the public interest in allowing C3 to intervene. As set forth below, C3 is uniquely situated to help the Commission analyze ComEd's investment decisions and assess the propriety of its technology expenditures.

12. This case arises from the Energy Infrastructure Modernization Act, which is section 16-108.5 of the Public Utilities Act (220 ILCS 5/16-108.5 (West 2012)), and was passed to stimulate new investments by utilities in the State's energy infrastructure. The Act provides for the guaranteed payment of utilities' costs and a rate of return for its investments in infrastructure. In particular, "[a] public utility is entitled both to recover in its rates certain operating costs and to earn a return on its rate base (*i.e.*, the amount of its invested capital)." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 322 Ill. App. 3d 846, 849 (2001) (citing *Citizens Utilities Co. of Illinois v. Illinois Commerce Comm'n*, 124 Ill. 2d 195, 200 (1988)). In exchange for this legislative guarantee of payment, the utility must commit to making very substantial investments in updating and improving its facilities, and in hiring new employees. *See* 220 ILCS 5/16-108.5(b) (West 2012).

13. In a rate and reconciliation proceeding, "the utility has the burden of proving that the proposed rates are *just and reasonable*." *Commonwealth Edison*, 405 Ill. App. 3d at 394 (emphasis added); *see also* 220 ILCS 5/9-201(c) (West 2010). As part of this showing, the utility must establish both the reasonableness and prudence of its costs; otherwise they are not recoverable. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 398 Ill. App. 3d 510, 516 (2009) (holding that the Commission must "determine rates 'subject to a determination of prudence and reasonableness consistent with Commission practice and law'" (citing 220 ILCS 5/16-108.5(c)(4) (West 2012); *see also Illinois Commerce Comm'n v. Commonwealth Edison*

Co., 1991 WL 11692374 (Nov. 26, 1991) (finding that “under both the Public Utilities Act and the Public Utilities Regulatory Policy Act of 1978,” the Commission must “examine the reasons that necessitated” a given cost and verify that “the utility had paid a prudent price”). Thus, a key issue to be decided by the Commission is whether ComEd’s costs were reasonable and prudent.

14. In this case, C3 has substantial information that will be helpful to the Commission in assessing ComEd’s prudence in purchasing traditional on-premise IT software (and associated hardware and software integration expenditures) as opposed to modern cloud-based technology. In particular, C3 has experience with ComEd’s parent Exelon Utilities and other Exelon operating utilities that demonstrate the value and cost savings of the cloud computing approach. For instance, through the course of its work, C3 deployed a cloud-based smart grid platform in Maryland on behalf of an Exelon affiliate. C3’s cloud-computing solution “met or exceeded all business performance targets” within six months, and “identified over 8,000 non-technical loss cases with field investigation accuracy rates of 90 percent.” *Initial Comments of People to The State of Illinois In Response to the February 10, 2016 Notice of Inquiry* (Apr. 29, 2016) (**Exhibit 2**) at p. 8. C3’s firsthand knowledge of cloud computing capabilities will help the parties and the Commission to assess ComEd’s decision-making process, and its capabilities to save costs and enhance operations in Illinois through the use of data analytics.

15. This Commission has expressly recognized the importance of cloud-based solutions in the utility setting, as “innovation becomes increasingly necessary for grid modernization.” *Notice of Inquiry* (Feb. 10, 2016) (**Exhibit 3**) at p. 2. For instance, in September 2015, the Commission hosted a policy session on “Business and IT Investments in Cloud Computing Arrangements.” The purpose of the Policy Session was to discuss technology advancements in energy analytics and cloud computing arrangements, including the regulatory accounting

treatment of such arrangements. Thereafter, on February 11, 2016, the Commission issued a *Notice of Inquiry* concerning the existence of “regulatory barriers that hinder the adoption of cloud services” and, more specifically, “comparing cloud services with on-premises IT systems.” (Ex. 3 at p. 2). Toward that end, the Notice sought information related to, among other things, “how costs differ between a traditional on-premises IT system and a cloud-based solution,” “the costs associated with migrating utility data systems to cloud services,” “whether and how cloud-based solutions improve safety and reliability at a utility,” and where “current ratemaking practice discourage[s] Illinois utilities from deploying cloud-based solutions (e.g., data analytics) provided by third party vendors.” (*Id.* at 4-6). In this proceeding, ComEd will need to justify the prudence of its on-premises and cloud computing technology expenditures in view of these concerns. Based on its extensive expertise on these issues, C3 is uniquely situated to contribute valuable information that neither ComEd nor any other party possesses – information that will benefit the public and create a more fulsome record.

16. Further, the Office of the Illinois Attorney General noted that the failure of a utility to take advantage of cloud-computing may raise *prima facie* questions as to its management operations. (**Exhibit 2** at p. 8) (“The significant value that cloud-computing can provide to utilities is being demonstrated, and the question for the Commission may not be whether accounting rules are correct, but whether the utilities are prudently managing their operations if they fail to take advantage of opportunity to save costs and enhance operations.”). This case is no different. ComEd’s decisions in regard to the costs savings and operational efficiencies gained by cloud-computing must be scrutinized, and C3’s intervention will only facilitate that analysis.

17. As one example, ComEd attempts to recover costs for what it calls “voltage

optimization” implementation (otherwise known as conservation voltage regulation or “CVR”). (ComEd Ex. 202 at 139). While there are many alternative technologies for performing this function, ComEd has suggested an extremely expensive (if not the most expensive) implementation. C3 can provide valuable insight into alternative designs available at reasonable costs, that will enable the Commission to fairly assess ComEd’s purchases and proposals.

18. Data requests served by the Office of the Illinois Attorney General in this matter further confirm that C3 possesses information important to this case. The Attorney General specifically sought information related to: (i) ComEd’s knowledge of *C3’s deployment of a cloud-based smart grid data analytics platform* at ComEd’s affiliated utility (BGE) in Maryland; and (ii) to Exelon and ComEd’s decision not to provide the same technology and benefits to consumers in the State of Illinois. Thus, even the Attorney General notes that C3’s technologies (and relationship with ComEd) bear on issues that are presently under investigation in this proceeding.

The relevant data requests are set forth below:

- AG 6.26 (Cloud Computing) Please indicate if the Company is aware of data analytic programs underway or contemplated by its affiliate utilities, Baltimore Gas and Electric (BGE) and PECO. If so, please provide a summary of data analytic activities currently underway and/or planned at the Company’s affiliate utilities. If not, please explain why not.
- AG 6.27 (Cloud Computing) Please indicate if the Company has consulted with its affiliate utilities with regards to matters on data analytics. If so, please provide a copy of all presentations, evaluations, reports, memoranda, worksheets provided to ComEd or produced by ComEd regarding data analytic programs of its affiliate utilities. If not, please explain why not.
- AG 6.28 (Cloud Computing) Please indicate if the Company has consulted with other utilities with regards to matters on data analytics. If so, please provide a copy of all presentations, evaluations, reports, memoranda, worksheets provided to ComEd or produced by ComEd regarding the data analytic programs of other utilities. If not, please explain why not.
- AG 7.06 (Data Analytics) With reference to the direct testimony of Jennifer Montague, ComEd Ex. 4.0, at page 26, lines 544-545.

- a. Please describe and provide supporting documentation regarding the Company's efforts to incorporate the use of data analytic tools and processes with its deployment of smart meters.
- b. Please indicate if the Company applies data analytic tools for its smart meters deployment internally or through the use of vendor(s). If using vendor(s), please identify vendor(s).
- c. Please indicate if the Company commissioned and/or produced an assessment(s) for data analytic requirements for its smart meters deployment. If so, please provide a copy of all such assessments and/or evaluations of the Company's data analytics needs. If not, please explain why not.
- d. Please indicate if the Company issued RFP(s) for data analytics providers associated with its smart meters deployment. If so, please provide a copy of RFP(s). If not, please explain why not.
- e. Please indicate if the Company evaluated on-premise solutions versus cloud-based data analytics solutions for its smart meters deployment. If so, please indicate and explain the Company's process to evaluate and decide upon a data analytics solution. Please provide supporting documentation and supporting analyses for both solution processes.
- f. Please indicate if the Company had a methodology to evaluate potential data analytics vendors. If so, please provide a copy of the evaluation methodology. If not, please explain why not.

19. Thus, C3 comes before the Commission because it has specific and unique information that would assist the Commission in judging the prudence of ComEd's expenditures. For this reason alone, ComEd's argument that permitting C3 to intervene would open the floodgates to other vendors is baseless. Further, the Commission should not be deprived of C3's expertise comparing cloud-based smart grid data analytics with on-premise solutions because of ComEd's abstract and unrealized fears that other vendors may (but have not) sought to intervene.

20. Rather than address the value that C3 would bring to this proceeding, ComEd turns to over-the-top rhetoric and seeks to belittle C3 as a "disgruntled vendor." This is a red herring. Indeed, ComEd's reluctance to address the merits of C3's petition is telling – ComEd plainly

fears an open and honest analysis of its information technology investment decisions.

21. Accordingly, under the proper standard, there is no question that C3's intervention in this case would serve the public interest. In particular, intervention would allow C3 to provide key information to the Commission relating to ComEd's expenditures, and its decisions regarding information technologies for which it now seeks to recover costs.

II. INTERVENTION IS WARRANTED BECAUSE, EVEN UNDER THE ALJS' HIGH BAR, C3 HAS SUFFICIENT DIRECT INTERESTS.

22. In any event, even if the ALJ's "direct impact" test were proper (it is not), C3 still showed a sufficient interest to justify intervention in this matter.

23. A decision approving ComEd's imprudent expenditures would necessarily impair C3's current ability to deliver increasingly accurate energy saving measures to Illinois consumers, as required under its contract with CUB. The efficacy of C3's cloud software service, which delivers the CUB Energy Saver efficiency program to Illinois ratepayers 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's technology purchase 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 resulting decline in available data, by ratification of ComEd's imprudent cost expenditures, will prevent or delay C3 from supplying improved energy saving measures to ComEd residential customers in Illinois for years, if not indefinitely. There is nothing "speculative" about this detrimental impact, nor does it reflect a "general business interest," as ComEd contends. It is simple cause and effect.

24. Further, while the outcome of this case will impact C3's contractual obligations, it also *directly* affects the interests of ComEd's customers. If the Commission approves ComEd's proposed rates as "just and reasonable," it will ratify ComEd's decision to incur certain

information technology costs. This is a key issue that should be evaluated along with information about modern, cloud-based computing platforms. C3 believes that ComEd's IT expenditures could have dire consequences for Illinois ratepayers, and deprive them of savings estimated at more than \$600,000 per day. The Commission should review ComEd's information technology purchases in light of the need to provide key energy savings data to the general public.

25. Based on the foregoing, C3 respectfully requests that its petition for interlocutory review be granted and that the Administrative Law Judges' decision to deny intervention be reversed.

Dated: June 1, 2016

Respectfully submitted,

/s/ Marc L. Kaplan

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NOTICE OF FILING

Please take notice that on June 1, 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: June 1, 2016

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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 June 1, 2016.

Dated: June 1, 2016

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VERIFICATION

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



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Subscribed and sworn before me this 1st day of June, 2016



My commission expires: June 24, 2019

