

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

**COMMONWEALTH EDISON COMPANY’S MOTION
TO TAKE ADMINISTRATIVE NOTICE OF ORDER
OF THE FEDERAL COMMUNICATIONS COMMISSION**

Commonwealth Edison Company (“ComEd”), under Sections 190 and 640 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code §§ 200.190 and 200.640, respectfully requests that the Commission take administrative notice of the Declaratory Ruling of the Federal Communication Commission (“FCC”) appended hereto. In support thereof, ComEd states:

1. The authority of the Commission to take administrative notice of specific facts and actions is established in Section 200.640 of the Rules of Practice. Subsection 200.640(a)(1) provides that administrative notice may be taken of “[r]ules, regulations, administrative rulings and orders, and written policies of governmental bodies other than the Commission.” 83 Ill. Admin. Code §200.640(a)(1).

2. In this proceeding, a witness for the Illinois Attorney General’s office (“AG”) has attempted to contest whether ComEd’s allegedly “unexplained decision to switch the [Outage Alert P]rogram from an opt-in basis to an opt-out basis imprudently risked ratepayer and shareholder exposure under the TCPA” (Telephone Consumer Protection Act). Brosch Dir., AG Ex. 1.0, 5:93-95. Witness Brosch contends that ComEd’s program should have been “designed” to avoid what, in his view, was “potential litigation and liability under the TCPA.” *Id.* at 5:88-

89. While ComEd believes that the issue in this case is the reasonableness and prudence of its 2015 decision to settle TCPA litigation on favorable terms after consulting with counsel, the claims of AG witness Brosch are broader, and encompass the meaning of the TCPA with respect to utility notification programs such as ComEd's Outage Alert Program.

3. On August 4, 2016, the United States Federal Communications Commission released a decision in CG Docket No. 02-0278, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (the "*FCC Order*"). That ruling is attached as Appendix A. The *FCC Order* recites the existing law and decisions, and concludes by "clarify[ing] that utility companies may make autodialed calls and send automated texts to their customers concerning matters closely related to the utility service, such as a service outage or warning about potential service interruptions due to severe weather conditions, because their customers provided consent to receive these calls and texts when they gave their phone numbers to the utility company." *Id.* at ¶ 17.

4. The FCC is the federal agency charged with administrative oversight and interpretation of the TCPA, and the FCC is authorized to make rules and to render decisions, such as the *FCC Order*, interpreting and applying the TCPA. The *FCC Order* is an "administrative ruling[] of a governmental bod[y] other than the Commission" on a matter within its jurisdiction. 83 Ill. Admin. Code §200.640(a)(1). Administrative notice of such a ruling is appropriate.¹

¹ Because the *FCC Order* is, in fact, a reported decision of a federal administrative body on a matter of law, it is not clear that it is necessary to take administrative notice of the Order for it to be cited. However, taking such notice is doubtless proper and also affords the Commission and all parties actual notice of its existence.

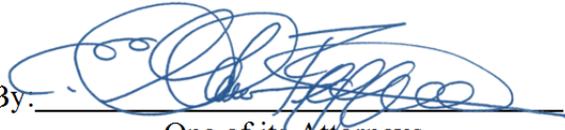
5. ComEd does not waive any objections it may have to any portion of Mr. Brosch's testimony (including to its relevance) or to his characterization of the applicable legal and ratemaking standards.

WHEREFORE, ComEd respectfully requests that the Commission take notice of the August 4, 2016 ruling of the FCC in CG Docket No. 02-0278 attached hereto.

Dated: August 5, 2016

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 
One of its Attorneys

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