

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
 :
Petition for declaration of service currently :
provided under Rate 6L to 3 MW and greater : No. 02-0479
customers as a competitive service pursuant to :
Section 16-113 of the Public Utilities Act and :
approval of related tariff amendments. :

MOTION TO DISMISS OR TO BIFURCATE FOR HEARING
PROPOSED MODIFICATIONS TO RATE HEP
AND FOR EXPEDITED RELIEF

COME NOW, Abbott Laboratories, Inc., et al., as the Illinois Industrial Energy Consumers (“IIEC”), City of Chicago, People of Cook County, Building Owners and Managers Association of Chicago, and Aux Sable Liquid Products, Inc., et. al. as the Chicago Area Customer Coalition (“CACC”), collectively the Joint Movants, by their undersigned attorneys, and for their Motion to Dismiss or to Bifurcate for Hearing Proposed Modifications to Rate HEP and for Expedited Relief, pursuant to 83 Ill. Adm. Code 200.190, state as follows:

1. Commonwealth Edison Company (ComEd) has petitioned the Illinois Commerce Commission (Commission) for entry of a final order pursuant to Section 16-113 (220 ILCS 5/16-113) of the Illinois Public Utilities Act, to declare “all or a portion of the services that it provides through Rate 6L -- Large General Service (“Rate 6L”) to customers 3 MW or greater a “competitive service.” (Petition at ¶1). ComEd has filed the testimonies of eight (8) witnesses in support of its Petition.

2. ComEd asserts that, for customers choosing not to go to the competitive market, electric power and energy will continue to be available under ComEd’s real time pricing rate, Rate HEP - Hourly Energy Pricing. (See Petition at ¶6). With regard to Rate HEP, ComEd intends to propose amendments

thereto as identified in the direct testimony of Lawrence S. Alongi. Specifically, Mr. Alongi proposes that the “per unit rate determined in the annual computation of the Monthly Access Charge under Rate HEP, may never be lower than the corresponding sum of the Distribution Facilities Charge and Transmission Services and Ancillary Transmission Services Charge that would be applicable to the customer, if it were taking service under Rate RCDS - Retail Customer Delivery Service and Rider ISS - Interim Supply Service.” (Alongi Direct at 4-5). Mr. Alongi also proposes: to delete the provision in Rate HEP that prevents a customer from resuming service under Rate HEP for twelve (12) months following the customer’s election to discontinue service under the rate; to allow a customer to terminate service under Rate HEP by giving ComEd sixty (60) days prior written notice; and, to delete the requirement in the Availability Section of Rate HEP that a customer must sign a Rate HEP contract with the Company in order to take service under the rate. (Alongi Direct at 4-5).

3. According to ComEd, its proposal in the instant proceeding will impact 373 non-residential customers. (Crumrine/Kelter Direct at 6). If approved, these 373 non-residential customers no longer will have the option to take bundled service under Rate 6L. Instead, if such customers do not wish to take one of ComEd’s unbundled service options, Rate HEP would be the only ComEd option for such customers. (Crumrine/Kelter Direct at 8). However, ComEd acknowledges that there are more attractive service options than its proposed revisions to its Rate HEP. In fact, only one customer has taken service under Rate HEP. (Juracek Statement at 35, ICC Electric Policy Committee (7/10/02)). Thus, ComEd’s proposal will have an immediate and direct impact on all of these 373 customers.

4. There are several reasons why ComEd’s proposed modifications to Rate HEP, and any modifications that may be deemed necessary or appropriate by Staff and Intervenors, should be considered in a separate docket:

- A. Section 16-113 does not specifically provide for adoption of a provider of last resort ("POLR") rate as a fall-back for customers who choose not to go to the competitive market. Even ComEd does not make this assertion. The only matter statutorily before the Commission under this expedited proceeding is whether a tariffed service should be declared a competitive service.
- B. As the Commission is aware, the statutory time constraints involving this proceeding have put the parties on an extremely fast track such that hearings are scheduled in October 2002. The Commission must make a determination and issue a final order declaring or refusing to declare the service to be a competitive service within 120 days following the date the Petition was filed, or otherwise the Petition shall be deemed granted by operation of law. As it stands, ComEd has submitted the direct testimony of several witnesses and a yet to be determined number of rebuttal and surrebuttal witnesses. Staff and Intervenors might well submit a comparable number of witnesses. Resolving ComEd's proposed modifications to Rate HEP under the circumstances imposed by Section 16-113 is not only unnecessary, but prejudicial to the parties, frustrating their ability to fairly and completely conduct discovery and to articulate their positions in testimony, and then to proceed to an evidentiary hearing in due course. Not only are parties that are interested in Rate HEP issues adversely affected, but the Commission is done a disservice by not having the requisite time by in which to determine the appropriate modifications to Rate HEP and to determine if Rate HEP is a just and reasonable rate, as the only available tariffed, bundled service for customers 3 MW or greater.
- C. There is no legitimate reason for the Commission to consider modifications to Rate HEP as part of this Section 16-113 proceeding. Under ComEd's scenario -- its proposal would not go into effect until the first billing period in June 2003 -- there is no justifiable basis to require the proposed modifications to Rate HEP be in place by November 2002 as ComEd requests. The Commission could enter its order approving modifications to Rate HEP even in May 2003 and still meet ComEd's timetable.

5. In summary, Section 16-113 does not require the Commission to consider the propriety of a modified Rate HEP as a just and reasonable default rate in conjunction with its decision thereunder. Given the expedited schedule that all parties face, by including these issues, ComEd's filing is deficient and should be dismissed, allowing ComEd to re-file its Petition focusing solely upon the relevant issues under Section 16-113. Narrowing the issues for the Commission's consideration would be administratively

efficient and would eliminate the prejudice to other parties. Moreover, even accepting ComEd's position that modifications to Rate HEP are required in conjunction with its proposal to declare competitive the provision of power and energy to Rate 6L customers 3 MW or greater, there is no good reason why the Commission's decision regarding the proposed modifications to Rate HEP cannot be decided in a separate proceeding at any time before May 1, 2003, consistent with ComEd's desired schedule. Under no circumstances does the Commission need to decide Rate HEP issues in the next three months.

6. Given the above arguments, an expedited ruling on this motion is warranted. It would be beneficial to all parties to know the Administrative Law Judges' ruling before Staff and Intervenor testimony is filed. An expedited ruling would also assist ComEd in its turn around time involving data requests, if the Rate HEP issues are no longer pending. Therefore, Joint Movants respectfully request that responses to the motion be due by no later than 5:00 p.m. August 21, 2002, and replies to the responses be due by no later than 5:00 p.m. August 22, 2002.

WHEREFORE, Joint Movants respectfully move that the Commission dismiss ComEd's Petition or separate the Rate HEP issues from this proceeding. If the Commission decides to separate the Rate HEP issues, the Commission can initiate a new proceeding for the purpose of modifying Rate HEP on a schedule devised to allow for a Commission order on or about May 1, 2003. Joint Movants also seek an expedited schedule for responses to the motion and an expedited ruling pursuant to Paragraph 6, and for such other and further relief as is deemed equitable and just.

Respectfully submitted,

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August 19, 2002

Ms. Donna Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Re: Commonwealth Edison Company
Docket No. 02-0479

Dear Ms. Caton:

The Motion to Bifurcate for Hearing Modifications to Rate HEP and for Expedited Relief on behalf of the Joint Movants filed electronically with the Clerk of the Illinois Commerce Commission this date. Copies of the foregoing have been provided to parties on the service list.

Your cooperation and assistance in filing same is appreciated.

The Administrative Law Judges are being provided a hard copy by overnight mail.

Sincerely,

Edward C. Fitzhenry

ECF/alb

Enclosure/37800

PROOF OF SERVICE

STATE OF ILLINOIS :

: SS

COUNTY OF MADISON :

I, Edward Fitzhenry, being an attorney admitted to practice in the State of Illinois and one of the attorneys for Illinois Industrial Energy Consumers herewith certify that I did on the 19th day of August, 2002, electronically file with the Illinois Commerce Commission the Motion to Bifurcate for Hearing Modifications to Rate HEP and for Expedited Relief, filed on behalf of Joint Movants, and served upon the persons identified on the attached service list, by electronically transmitting same this date.

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SUBSCRIBED AND SWORN to me, a Notary Public, on this 19th day of August, 2002.

Notary Public

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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 19th day of August, 2002, we have electronically filed with the Illinois Commerce Commission, 527 East Capitol Ave., Springfield, Illinois, 62794, the Motion to Bifurcate for Hearing Modifications to Rate HEP and for Expedited Relief, filed on behalf of Joint Movants, along with Proof of Service thereon attached.

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**COMMONWEALTH EDISON COMPANY
ICC DOCKET NO. 02-0479**

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