STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY **d/b/a Ameren UE** **Petition for approval of tariff sheets Implementing revised Market Value Index Methodology**	:	**No. 02-0656**
COMMONWEALTH EDISON COMPANY **Proposed revision of Rider PPO (Power Purchase Option – Market Index), Rate CTC (Customer Transition Charge) and Rider ISS (Interim Supply Service), and to Establish Rider CTC – MY (Customer Transition Charge – Multi-Year Experimental).**	:	**No. 02-0671**
ILLINOIS POWER COMPANY **Proposed establishment of Rider MVI II, Market Value Index II.**	:	**No. 02-0672**

INITIAL BRIEF

OF

THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

January 29, 2003

ICC Docket Nos. 02-0656/0671/0672

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I. INTRODUCTION

The Building Owners and Managers Association of Chicago ("BOMA") is a trade association organized and existing under the laws of the State of Illinois and is engaged in serving the interests of the commercial office building industry. Members of BOMA own and/or manage more than 250 office buildings in Commonwealth Edison Company's ("ComEd" "Edison" or "the Company") service territory, many of which are directly impacted by ComEd's proposed revisions of the market value index and revisions to its Rider PPO (Power Purchase Option – Market Index), Rate CTC (Customer Transition Charge), Rider ISS (Interim Supply Service), and Rider CTC – MY (Customer Transition Charge – Multi-Year Experimental) tariffs.

BOMA urges the Illinois Commerce Commission ("ICC" or "Commission") consider the customer impacts of ComEd's proposal and the proposed revisions in determining whether customers are provided with reasonable access to a competitive market. In so doing, BOMA suggests that the Commission modify ComEd's proposal to reflect the actual costs in serving retail customers, continue to allow for unlimited PPO enrollment periods, provide custom CTCs for customers who are required to install interval meters, and allow for unlimited load requirements for customers choosing multiyear CTCs under Rider CTC - MY.

C. Summary of Position and Recommendations

All else being equal, ComEd's market value energy charge ("MVEC") calculation contained in Rider PPO is the price that alternative suppliers must compete against to offer value to customers. (BOMA Ex. 1.0 at 13) It is therefore imperative that the MVEC reflect the actual market price to serve retail customers in ComEd's service territory. However, as demonstrated by evidence presented by witnesses for BOMA, the RES Coalition and other customer groups, the MVEC, either in its present form or with ComEd's proposed alterations, does not represent an accurate market value for retail customers. Without a proper MVEC calculation mechanism, customers will not be able to benefit from electric competition. In addition, an MVEC that is set below the price to serve retail customers results in an inflated Customer Transition Charge ("CTC"), which allows ComEd to capture additional revenues at the expense of consumers.

Finally, placing limits on PPO enrollment periods, custom CTC eligibility, and load requirements for multiyear CTCs greatly hinders the ability of customers to take advantage of the mitigation factor afforded them by the *Electric Service Customer Choice and Rate Relief Law of 1997* (220 ILCS 5/16-101 et. seq.) ("the Act"), as well as impedes customers' ability to mitigate market risk. (*See* BOMA Ex. 1.0 at 4.) Enrollment in PPO should not be limited to select customers, or for minimal time periods throughout the year. (*Id.*) In addition, all customers with interval meters should be eligible for custom CTC calculations since an interval meter provides ComEd with the proper data to easily calculate a custom charge. Finally, there should be no limitations on the amount of electric load that can take advantage of a multiyear TC.

Therefore, BOMA recommends the Commission adopt policies that accomplish the following:

1. Require the MVEC to reflect the market price to serve retail customers.

   As evidenced in this proceeding, the MVEC is currently structured to produce prices well below the actual costs to serve retail customers. It should be noted that ComEd benefits from increased CTC revenues at the expense of customers as a result of a low MVEC calculation. BOMA provides evidence of this phenomenon under its discussion of Mr. Sharfman's RPI Index;

2. Reject ComEd's proposals regarding changes to current PPO enrollment periods

and PPO eligibility. BOMA submits that as long as the Company has the ability to collect CTCs from customers, the Commission should not allow the Company to limit customer enrollment in the PPO option;

3. Require ComEd to provide custom CTC calculations for all customers who have installed an interval meter at their facilities. Providing custom calculated CTCs allows customers the ability to achieve the mitigation factor contained in Section 16-102 of the Act, and;

4. Reject the load limitations provided in ComEd's proposed CTC – MY tariff. Given that certain customer classes have been declared competitive by the Commission in ICC Docket No. 02-0479, BOMA submits that there should be no limitations on load requirements for the proposed CTC MY tariff. At a minimum, the load limitations should not apply to the classes of customers deemed competitive by the Commission.

BOMA's initial brief follows the adopted outline and discusses those issues that are important for a competitive market to continue to develop throughout the remainder of the transition period in Commonwealth Edison's service territory. This brief does not address other utility proposals. To the extent an issue is not addressed in this initial brief, BOMA reserves the right to comment on other issues in subsequent briefs.

IV. Multi-year option issues

E. Limitation on load eligible for multi year TC contracts

BOMA submits that ComEd is moving in the right direction in proposing a multi-year CTC option for customers; however, the 500 MW limitation is unreasonable. (BOMA Ex. 1.0 at 28.) Given the recent Commission decision regarding the ability of ComEd to declare customers

3 MW and greater competitive in ICC Docket No. 02-0479, the majority of these customers would not have the ability to lock-in multi-year CTCs with a 500 MW limitation. (*Id.*) From a customer perspective, consumers should be able to have certainty with regard to charges throughout the remainder of the transition period. Since these particular customers now have severe limitations on the types of services available, at a minimum, any limitation on CTC-MY should not include those customers whose ability to take bundled service is restricted. (*Id.*)

V. Time Period and TC Administration Issues

C. Decision Window for PPO Customers

Several structural revisions to Rider PPO proposed by ComEd during this proceeding include limiting PPO enrollment to certain periods and certain customers. More specifically, ComEd proposes to limit the time for customer enrollment for PPO Period A, such that a customer will only have the opportunity to elect PPO from February 1 to March 31, as well as to limit Rider PPO Period B enrollment solely to customers entering the competitive market by leaving bundled service during the billing periods extending September through May (BOMA Ex. 1.0 at 25.) From a policy standpoint, there should be no limitations on taking PPO service while ComEd retains the ability to collect CTCs from customers. (*See* BOMA Ex. 1.0 at 4.) By limiting the availability of PPO to customers, ComEd effectively limits competitive choice as well as customers' ability to take advantage of the mitigation factor found in Section 16-102 of the Act (220 ILCS 5/16-102.)

As discussed by BOMA witness Sharfman, ComEd's PPO product currently presents a significant option for retail customers. (BOMA Ex. 1.0 at 26.) Retail suppliers can only offer supply prices to end users that are lower than the PPO MVEC if market prices drop following the

PPO snapshot period. By limiting the PPO enrollment period to end in March 31, customers will choose to take PPO rather than give the market an opportunity to move in their favor. (*Id.*) As a result, the development of the competitive market may be hindered. Also, certain customers can gain additional savings above the mitigation factor by choosing to take service under PPO Period A during the months of June or July, as is currently allowed. Taking away a customer's ability to choose PPO during these months will take this benefit away from consumers. As noted by BOMA witness Sharfman, limiting the PPO Period A enrollment period will result in less advantages consumers will gain from the competitive market (BOMA Ex. 1.0 at 27.)

BOMA witness Sharfman also notes that PPO Period B represents a competitive choice for consumers (BOMA Ex. 1.0 at 27.) Limiting enrollment to PPO Period B solely to customers who first take competitive service by leaving the bundled rate will limit choice to other customers who may want to choose to take this service. Allowing other customers eligible to take service under PPO Period A to choose to take service under PPO Period B does not appear to disparage ComEd, since ComEd continues to collect CTCs, yet limiting this choice will hurt consumers by limiting the choices available to customers.

D. Customer Eligibility for individual TC calculation

Customer calculated CTCs help ensure that all customers will share equitably in the benefits of the transition into a competitive market. (*See* BOMA Ex. 1.0 at 27.) Generally speaking, given the nature of the CTC calculations on a class basis, each class has "winners" and "losers" depending on their respective load factor. Customers with load factors higher then the average generally are unable to receive even the mitigation adjustment while the inverse is true of customers with load factors lower then the average. This is an allocation issue between customers as opposed to a revenue issue to the utility.

The Company has proposed to expand the practice of providing customer calculated CTCs to customers over 1,000 KW. (ComEd Supplemental Statement at 6.) Currently, ComEd's Rate CTC allows for customers over 3,000 kW should receive this treatment. (ComEd Rate CTC.) ComEd witness Crumine provided the rationale for expanding the availability of custom CTCs in his testimony:

> One [ComEd proposed structural revision] is expanding the application of customer-specific CTCs to include customers having lower peak demands. Currently, ComEd calculates customer-specific CTCs – that is, CTCs that reflect the individual customer's own usage patterns – for customers with more than three megawatts of peak demand. Under its proposal, ComEd will expand that calculation to include customers with more than one megawatt of peak demand. Although the Act only requires ComEd to individually calculate CTCs for customers that have loads of 3MW or more, ComEd has offered this change in response to requests made by various customer groups…This expansion [to the 1 – 3 MW class] provides greater assurance to a significant group of customers that they will individually receive the statutory mitigation factor, while retaining a demand floor that permits the calculation process to remain workable. (Crumrine Direct at 14-15.)

BOMA supports the Company's proposal but feels that it does not go far enough. In fact, ComEd witness Crumrine admitted that the rationale for expanding the availability of custom CTCs would also apply to lower rate classes than ComEd proposes to be eligible. (Crumrine TR at 693.)

In response to the Company's testimony, BOMA witness Sharfman stated that custom CTC calculations should be expanded to all customers with interval metering capability: "Interval meters provide the proper data for ComEd to be able to calculate custom CTCs without added risk or considerable added costs." (BOMA Ex. 1.0 at 27.) According to ComEd's Rate RCDS, the Company requires interval meters to be installed when a customer's demand exceeds 400 kW. (Rate RCDS – 2nd Revised Sheet No. 123.)

Allowing customers with demands of 400 kW and greater custom CTCs is consistent with ComEd's stated purpose of accurately measuring the market value (*see, inter alia*, Crumrine Direct at 9), which in turn, directly impacts the CTCs charged to customers. Attaining the goal of an "accurate" market value is quickly negated if the application of that market value corresponds to inaccurate transition charges charged to customers. BOMA submits that providing custom calculated CTCs furthers the Act's goals of developing a competitive marketplace for retail electric customers.

VI. Other Issues

E. Mr. Sharfman's RPI Index

As shown by various parties, ComEd's methodology to calculate MVECs currently results in MVECs that are priced below the actual supply cost to serve retail customers in ComEd's service territory. (*See* BOMA Ex. 1.0 at 13.) If this statement is correct, customers are harmed in at least two ways. First, low MVECs make it extremely difficult, if not impossible, for alternative suppliers to offer value propositions to consumers, thereby greatly hindering the development of retail competition. Second, low MVECs result in high CTCs that create excessive revenues for ComEd at the expense of consumers. (*Id*. at 12-13.)

BOMA witness Sharfman explains that the MVEC is the retail supply component of ComEd's PPO service and is therefore the price that retail suppliers must compete with in order to provide value propositions for retail customers. (*Id.* at 13.) Since the Company retains a monopoly on distribution and transmission services, and since the Company is entitled to collect CTCs whether customers are served under the PPO or by alternative supply, the MVEC is the only component in PPO service that RESs may actually compete. (*Id.*) Stated another way, the

MVEC can be interpreted as the “price to beat” in ComEd’s service territory. This term is used in many regions where electric choice has been introduced to illustrate the regulated utility energy price that alternative suppliers must beat in order to offer savings to retail customers. (*Id.* at 6.) Thus, it becomes vital that the MVECs be set at levels that reflect the actual cost to supply retail customers in ComEd’s service territory. If the MVEC is set below the actual market supply price necessary to serve retail load, alternative suppliers will not be able to compete with PPO, and consumers will not be able to take advantage of competitive alternatives. (*Id.* at 13.)

In addition, there is an inverse relationship between the MVEC and the CTC (Crumrine Direct at 6.) Thus, when the MVEC is priced below the actual cost to serve retail customers, customers must pay corresponding high CTC charges to ComEd. Since the CTC is a revenue stream that does not recover any specified costs (Crumrine TR. At 697-698), an inflated CTC, as a result of understated MVECs, allows ComEd to reap excessive revenues at the ultimate expense of retail customers.

Throughout this case much evidence has been presented that suggests that the current MVEC calculation does, in fact, result in MVECs that are priced below the actual cost to serve retail customers, thereby creating the problems discussed above. Testimony provided by BOMA witness Sharfman regarding the Retail Power Index (“RPI”) illustrates that the differences between wholesale and retail prices in the ComEd region are insufficient for retail suppliers to be able to offer value propositions to consumers. In addition, testimony provided by RES Coalition witness panels Gale and O’Connor, and Bollinger, Goerss and Spilky support the claim that the MVECs are priced well below a retail supplier’s costs to serve retail customers in the ComEd region.

To summarize the applicability of Mr. Sharfman’s Retail Power Index, the RPI reports regional regulated and competitive electric price offerings for "typical" small business customers entering into a one-year fixed-price retail contracts in ten different cities across the country including Boston, Chicago, Cincinnati, Dallas, Detroit, Houston, New York, Philadelphia, Pittsburgh, and Washington D.C. (*Id.* at 5.) The RPI also provides a comparison of these retail price offerings to wholesale market prices to further gauge the vitality of retail competition. (*Id.*) In essence, the RPI provides an independent snapshot of how retail competitive markets are performing by comparing wholesale and retail market prices in a given region, as well as tracking changes to retail prices over time. (*Id.*) Platts currently publishes the RPI in both *Megawatt Daily* and *Power Markets Week* on a monthly basis, and the RPI is the only index of retail power prices that is currently being published in a major industry publication. (*Id.*) The RPI is relevant to the instant proceeding because it provides an unbiased, as well as a visible and verifiable assessment of the difference between the regulated price to beat (the MVEC) and wholesale prices in the ComEd region. (*Id.*)

According to BOMA witness Sharfman, the RPI illustrates that the price to beat for the ComEd region is by far the lowest out of the ten regions represented in the RPI and that the difference between the price to beat and wholesale power prices in the ComEd region is also the lowest out of the ten regions represented in the RPI. (*Id.* at 7.) According to the RPI, the difference between the price to beat and wholesale prices in the ComEd region for a customer in the 0 to 25 kW customer class is only 98 cents, which is insufficient to cover the added costs of serving a retail customer above and beyond the costs associated with purchasing wholesale power, distribution, transmission and ancillary services as well as CTCs and administrative charges (*Id.* at 9.) In addition, ComEd witness Beach further illustrates this point in her cross examination by acknowledging that the differences between the price to beat for the remaining

ComEd customer classes and wholesale prices in the ComEd region are also the lowest on the RPI chart. (*See* Beach TR at 428.) These results suggest that the ComEd market is one where it would be difficult for a retail supplier to offer savings to a retail customer and still be able to recover the costs of serving that customer. (*Id.* at 6.) BOMA submits that the reason the price to beat in ComEd's service territory is too low for suppliers to compete with is due to the presence of an inflated CTC that results from an improper MVEC calculation that understates values. (*Id.* at 10.)

To supplement the above conclusion, RES Coalition panel Gale and O'Connor demonstrate that historically the MVEC calculation has never been able to produce a market value for energy that was anything other than well under the actual market value of energy to serve retail customers in any twelve month period to which the MVECs applied (RES Coalition Ex. 1.0 at 20.) In addition, RES Coalition panel Bollinger, Goerss and Spilky discuss that numerical evidence exists that shows that the MVEC does properly account for the risk of incurring energy imbalance charges and odd lot premiums, does not properly capture high energy prices during times of high demand, does not reflect the value of sales and marketing resources, and does not properly adjust for 0 or negative values inherent in PJM price shapes (RES Coalition Ex. 4.0 at 6-7.) Finally, Messer's Bollinger, Goerss and Spilky also provide empirical evidence that the MVEC is priced below the market cost to serve retail customers. The panel point to a study conducted by Dr. Ulrich (*See* RES Coalition 2.0) which indicates that the ComEd MVECs are significantly lower than the contract prices of RESes to serve retail customers (RES Coalition Ex. 4.0 at 40.)

The conclusions that can be derived from the results of the RPI, as well as the testimony from the RES Coalition and other parties, is that the current methodology, even with the technical changes provided by ComEd, fails to capture the costs inherent in serving retail customers, and increases costs to customers through the imposition of the CTC.

CONCLUSION

For the reasons set forth herein, BOMA respectfully requests the Commission enter an Order in this docket consistent with the following:

1. Modify Commonwealth Edison Company's proposed revisions of the market value index and revisions to its Rider PPO (Power Purchase Option – Market Index), Rate CTC (Customer Transition Charge) and Rider ISS (Interim Supply Service), and Rider CTC – MY (Customer Transition Charge – Multi-Year Experimental) consistent with the arguments presented herein.

Respectfully submitted,

THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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