

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS PUBLIC SERVICE)
COMPANY and UNION ELECTRIC)
COMPANY)
) Docket No. 02-0656
Petition for approval of tariff sheets implementing)
revised Market Value Index methodology.)

COMMONWEALTH EDISON COMPANY)
) Docket No. 02-0671
Proposed revision of Rider PPO (Power Purchase)
Option – Market Index), Rate CTC (Customer)
Transition Charge) and Rider ISS (Interim Supply)
Services), and to establish Rider CTC – MY)
(Customer Transition Charge – Multi-Year)
Experimental). (Tariffs filed on October 1, 2002))

ILLINOIS POWER COMPANY)
) Docket No. 02-0672
Proposed establishment of Rider MVI II, Market)
Value Index II. (Tariff filed October 1, 2002))

ILLINOIS POWER COMPANY)
) Docket No. 02-0834
Proposed revisions to Rider TC (Transition Charge)
for Customers), Rider PPO (Power Purchase Option)
Service) and Rider MVI (Market Value Index).)

REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

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I. INTRODUCTION

Many of the arguments raised by other parties in their initial briefs have already been addressed by Commonwealth Edison Company (“ComEd”) in its initial brief. Rather than repeating arguments it has already made, ComEd is limiting this reply brief to only those points that require additional comment. Where ComEd is relying on arguments made in its initial brief, a reference to the discussion in that brief has been provided. As the initial brief did, this reply brief follows the outline provided by the Administrative Law Judge.

A. Statutory Provisions

Contrary to the arguments made by several parties, including Staff (Staff Init. Br. at 10) and the RES Coalition (RES Coalition Init. Br. at 7), the Public Utilities Act does define the market value at issue in this proceeding. As is set forth in Section 16-102 of the Act, the market value to be determined is “the market value for the electric power and energy that the electric utility would have used to supply all of [its delivery services] customers’ electric power and energy requirements, as a tariffed service, based on the usage identified in paragraph (1), with such market value determined in accordance with Section 16-112 of this Act.” 220 ILCS 5/16-102. As Dr. Karl McDermott testified, this is the “value of the power and energy freed up from removing customers from the ComEd system.” ComEd Ex. 1 at 5.

The market value at issue in this proceeding is not the utility’s avoided costs, embedded costs, bundled rate “residuals”, or alleged “true costs” of delivering power and energy at retail. *See, e.g.* RES Init. Br. at 2, 4, 20; IEC Init. Br. at 3, 8-9; BOMA Init. Br. at 3. If the General Assembly had wanted to use the utility’s avoided costs, embedded costs, residuals or the retail price of the electric power and energy in calculating transition charges, it would have said so. It

did not. Instead, the General Assembly clearly stated that the “market value” should be used and further stated how that market value should be determined. 220 ILCS 5/16-102, 16-112(a), (k).¹

Under Section 16-112(a), this market value is determined either by:

(i) a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of this Act and that determines the market value for electric power and energy as a function of an exchange traded or other market traded index, options, or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or [(ii) by the neutral fact-finder process.]

220 ILCS 5/16-112(a). The market traded index values used in the MVI methodology are the starting point. When determining the market value to be used for calculating the transition charges (“CTCs”) or for the power purchase option (“PPO”) for various customer classes the electric utility is also required to

apply the market value . . . to the electric power and energy that would have been used to serve the delivery services customers’ electric power and energy requirements, based on the usage specified in Section 16-102 and taking into account the daily, monthly, annual and other relevant characteristics of the customers’ demands on the electric utility’s system.

220 ILCS 5/16-112(k).

The Commission previously approved the MVI methodology as consistent with Section 16-112(a) and (k) of the Act. Order on Reopening, Apr. 11, 2001 (Docket Nos. 00-0259, 00-0395, 00-0461(cons.)) The MVI process does not produce only wholesale values of the electric energy and power as various parties contend. *See, e.g.*, NEMA Init. Br. at 4, 10; IEC Init. Br. at 9; RES Coalition Init Br. at 5-6. Nor does it result in a wholesale price. The wholesale market prices that are used as inputs are adjusted as set forth in Section 16-112(k), to account for “the daily, monthly, annual and other relevant characteristics of the customers’ demands on the

¹ Nor does the Act contain the “geographic” and “product” dimension requirements that the RES Coalition proposes. RES Coalition Init. Br. at 5. As the record shows, there is one broad regional Midwest market for power and energy. ComEd Ex. 4 at 18; Tr. at 54-55, 609, 714-16.

electric utility's system." 220 ILCS 5/16-112(k). This leads to substantial increases in the market values calculated. As the evidence showed, the MVI methodology overall leads to market values that are 7 to 16% higher than the wholesale block prices. ComEd Ex. 4 at 12. The RES Coalition's suggestion that its members require mark-ups of up to 70% over wholesale power in order to compete is inherently incredible. ComEd Ex. 4 at 3.

Although the purpose of this proceeding is to determine the market value of freed-up power and energy, many of the complaints made by Staff and the intervening parties to this proceeding are not about market value at all, but are about rate design. The main complaint made by those parties that seek additional changes is that the RESs cannot in all instances compete with the PPO. IEC Ex. 1 at 5; BOMA Ex. 1 at 12-13; Trizec Init. Br. at 3. These parties seek to create "additional headroom" for the RESs. This Commission should not, however

approve requests to raise the retail electric rates of [the state's] residents simply for the sake of promoting competition . . . [I]t must be emphasized that the creation of competition is beneficial only if it produces savings for ratepayers. The payment of higher prices to create a competitive market, just for the sake of having a competitive market, is economic logic turned upside down.

Re Narragansett Electric Co. 216 P.U.R. 4th 232 (2002). This is particularly true with regard to the PPO, which was designed by the General Assembly to be a competitive rate.

Other rate design issues raised by the parties relate to the calculation of individual CTCs and the proposed offering of a multi-year CTC. USDOE Init. Br. at 7; RES Coalition Init. Br. at 54-55, 63; BOMA Init. Br. 5, 8-9. These issues have also been addressed by the General Assembly. Simply put, ComEd is not required to offer individual CTCs to any customers with loads of less than 3 MW, nor is it required to offer a multi-year CTC. *See* ComEd Init. Br. at 24, 35. Although the Commission has the authority under Section 16-112(m) of the Act to recommend modifications to the MVI methodology, it does not have the authority under that or

any other section to compel ComEd to offer a rate structure different than what the law requires. Accordingly, as ComEd stated in its initial brief, these matters involving rate design would be best left to negotiations between the parties. ComEd has indicated its willingness to continue such negotiations to find an experimental rate design more satisfactory to more of the parties.

B. History of the Market Value Process

As was explained on pages 5-6 of ComEd's Initial Brief, the MVI methodology is superior to the NFF methodology that it replaced and has generally worked well in practice. In the last MVI proceeding, the Commission accepted the basic MVI methodology and concluded that it measured the appropriate market value as well as then possible. Although new data has become available and some refinements can now be made, the evidence confirms that the methodology previously approved is not in need of substantial revision. See ComEd Ex. 1 at 6.

C. Summary of Position

The MVI methodology, with the changes proposed by ComEd, is reasonable and consistent with the Act and with the Commission's prior orders. For the most part, the proposals made by others are not. ComEd requests that the Commission approve the changes it has proposed, together with the modification it accepted in its initial brief, and reject the additional adjustments sought by the RES Coalition and other parties.

II. PROPOSED ADJUSTMENTS OR REVISIONS TO UTILITIES' PROPOSALS

While the RES Coalition, Trizec, IEC and BOMA have each proposed various adders to the MVI methodology, the RES Coalition has proposed over twice as many adjustments as any other party in this proceeding. Out of the 15 proposed adjustments presented just in this section,

the RES Coalition proposed 11. Because these proposals lack substantive support or are wholly inappropriate for this proceeding, the RES Coalition has tried to support its position, in part, “with the *in terrorem* notion that the competitive market in Illinois is poised for disaster if their demands are not met.” ComEd Ex. 6 at 7. In fact, nowhere is such hyperbolic language more readily employed than in the RESs’ Initial Brief:

- “The Commission must act quickly and decisively *in order to avoid the impending crisis that faces the Illinois retail electric market. RES Coalition Init. Br. at 2 (emphasis added).*
- “*Only by issuing an Order in the instant proceeding that provides fundamental revisions to the Utilities’ MVI models can competition continue to survive, much less grow in Illinois. Id. (emphasis added).*
- “[*T*]he Utilities’ MVI models are broken at their core, and unless the Commission steps in immediately to fundamentally fix the process, competition in the Illinois retail electric market is virtually assured to fail. Id. (emphasis added).

This hyperbole is not supported by the record, which shows that the RESs in ComEd’s service area have been competing and have been profitable. ComEd Ex. 4 at 26-30; ComEd Ex. 6 at 14, Tr. at 571, 582, 719.

As in past years, the evidence in this proceeding has simply not matched the RES Coalition’s rhetoric. *See, e.g.*, Staff Init. Br. at 11 (rejecting the energy imbalance adjustment); *id.* at 13 (rejecting inclusion of a “placeholder”); *id.* at 15 (rejecting a customer churn adjustment); *id.* at 17 (rejecting a retail margin adjustment given the lack of a concrete proposal); *id.* at 17-18 (rejecting an avoided administrative (and related) cost adjustment given the lack of a concrete proposal); *id.* at 18-19 (rejecting a retail uplift adjustment given the lack of any concrete proposal); *id.* at 19 (rejecting an avoided PPO cost adjustment as inapplicable); *id.* (finding no basis upon which to recommend a load following adjustment given the lack of any concrete proposal); *id.* at 23 (finding that the testimony and evidence on the proposed illiquidity

adjustment is not conducive to a confident decision for or against the proposal); *id.* at 24 (rejecting the RES Coalition’s “synchronization” proposal because it lacks support and “is not a wholly credible theory”). Nor have the adders proposed by the RES Coalition, or the lesser adders proposed by BOMA, IEC and Trizec, been supported by customers like IIEC and USDOE.

A. Energy Imbalance Adjustment

In rejecting the proposed energy imbalance adjustment, Staff stated that “the Commission has previously ruled that energy imbalance costs are a delivery services cost. Thus, a credit for energy imbalance costs should already be included in the CTC. It should not also be included in the market value credit.” Staff Init. Br. at 11. ComEd agrees. *See also* ComEd Init. Br. at 8-10. The initial brief filed by the RES Coalition continues to ignore the evidence presented in this proceeding of the many ways that RESs can and do manage this risk, and how they shift the risk of incurring charges to the customer. *See* ComEd Ex. 4 at 7-10. This evidence included admissions by their own witnesses. *See e.g.*, Tr. at 355 (usage restrictions in contracts), 356-57 (use of pricing bands), 182, 369 (procurement strategies that minimize risk).

B. Capacity Backed Adjustment

As explained on pages 10-11 of ComEd’s Initial Brief, this adjustment only relates to Ameren and Illinois Power, and does not apply to ComEd.

C. Inclusion of “Placeholder” for Potential RTO-Imposed Costs or Market Changes (e.g. Capacity Adjustment)

As explained on page 11 of ComEd’s Initial Brief, to the extent that this proposal intends only to place a statement in the filing noting that this issue will be further reviewed if the open access transmission rules change due to the implementation of an RTO, ComEd does not object to the proposal. However, to the extent the proposal seeks to use an actual number as a placeholder, the proposal must be rejected.

D. Odd Lot Adjustment

As was explained in ComEd’s Initial Brief at 11-12, there is no evidence that there is an odd lot premium, or that most RESs in fact rely on an odd lot purchasing strategy. The RES Coalition’s proposed adjustment was illustrated with hypothetical charts, the RES witnesses conceded they did not know the purchasing strategies of the other RESs, and the counsel for the RES Coalition objected to questions on specific purchasing strategies on the grounds that such information is highly confidential and proprietary. Tr. at 350, 370-73, 382. *See also*, RES Coalition Ex. 4.0 at 13-15. There is simply no evidence that in general the members of the RES Coalition, now or previously, in fact pursue an “odd lot” purchasing strategy for the retail loads that they serve. ComEd Ex. 4 at 11. Nor is there any evidence that even if they were to do so, that they in fact incur a premium for such odd lots. *Id.*

E. Customer Churn Adjustment

As explained on page 13 of ComEd’s Initial Brief, this proposal should be rejected as such potential costs are wholly unrelated to market value, and the risk of customer churn can be managed by the RESs through their contract terms.

F. Residual Error Term Adjustment

As explained on page 13 of ComEd’s Initial Brief, the proposal for a residual adder should be rejected because (1) there is no support for such an adder, and (2) a static adder does not make sense in a dynamic market.

G. Retail Margin Adjustment

IEC and BOMA have both argued that the MVI methodology should be adjusted to account for “retail margin.” See IEC Ex. 1.01 at 7; BOMA Ex. 1.0 at 14. NEMA and Trizec offer similar arguments in support of adders designed to “promote” or “foster” competition. See NEMA Init. Br. at 6, 11-12; Trizec Init. Br. at 3-6. No RES in this proceeding provided evidence as to its actual costs or margins. Neither BOMA or IEC provided such evidence. Nor would evidence of a RES’s costs or margins equal market value. Even the RES Coalition’s lead witnesses admitted that retail price did not establish market value: “Rather than a reflection of the market value, it’s more a reflection of the costs that are incurred to serve that customer.” Tr. at 665.

In its Brief, NEMA (which introduced no testimony) urged the Commission, at a minimum, “to adopt the 15 mill upward adjustment in order *to effectuate the legislative intent* of the market value calculation provisions of the electric choice law as well as previous Commission Orders deciding that market value calculations should be reflective of the costs of serving retail customers.” NEMA Init. Br. at 8 (emphasis added). However, artificially inflating the MVEC *does not* effectuate the legislative intent. To the contrary, it ignores the legislative intent, which was to promote *efficient* competition. See 220 ILCS 5/16-101A. This proposal also ignores the record.

IEC's claims are equally without merit. By its own admission its members are beneficiaries of non-time-of-use (non-TOU) regulated rates, even though their load is mostly on-peak. IEC Init. Br. at 7. That market rates reflect the actual costs of these customers is not surprising as IEC itself recognizes "it is unrealistic to expect an alternative supplier to apply [sic] electricity at below market prices." IEC Init. Br. at 10. Bundled rates for some customers are below market. ComEd. Init. Br. at 16. This does not, however, mean that market values should be artificially increased in order to engineer additional savings for customers that already benefit from such rates. In the ComEd Service area, however, some IEC members are in fact obtaining savings in the competitive market. Tr. at 123. Like IEC, the arguments put forth by BOMA and Trizec also relate to rate design concerns, not market value. *See* ComEd Init. Br. at 16; ComEd Partial Draft Proposed Order at 23. Staff stated in its initial brief, "[g]iven the lack of any concrete proposal, Staff finds no basis to recommend the adoption of a specific retail margin adjustment." Staff Init. Br. at 17. *See also*, ComEd Init. Br. at 15. The proposed adjustments should be rejected as inconsistent with the Act and unsupported by the record.

H. Avoided Administrative (and related) Cost Adjustment

As explained on page 16 of ComEd's Initial Brief, this adjustment should be rejected because the types of costs that are claimed to be avoided by ComEd under this proposal are not, in fact, avoided. Moreover, avoided costs do not establish market values.

I. Retail Uplift Adjustment

As explained on page 17 of ComEd's Initial Brief, this vague adjustment, which was proposed by BOMA and which is similar to the "retail margin" proposal above, should be

rejected. Illinois law does not allow the Commission to create additional “headroom” simply to benefit the RESs.

J. Avoided PPO Cost Adjustment

As explained on pages 17-18 of ComEd’s Initial Brief, this adjustment, proposed by IEC, should be rejected because there is no avoided strike price, customers on the PPO are charged the same value that they are credited with under the transition charge, IEC has not provided any means of calculating this proposed adjustment, and the costs involved in this adjustment are not related to “market value.” Also, as Staff stated in its initial brief, “the purpose of this proceeding is to determine the value of power and energy sold at retail, and not to determine specific costs avoided by the incumbent utilities when customers switch to delivery services. RESs do not incur avoided PPO costs and, as such, it seems unlikely that they would be embedded in retail rates for power and energy.” Staff Init. Br. at 19.

K. Load Following Adjustments

As explained on page 18 of ComEd’s Initial Brief, this proposed adjustment is essentially the same as the odd lot and imbalance adjustments discussed above and should be rejected for the same reasons.

L. Proper Method for Allocating Sales and Marketing Expenses

As explained on page 18-19 of ComEd’s Initial Brief, the allocation currently being used by ComEd follows a prior Commission order in one of the delivery services dockets.

M. Off-Peak Issues

1. Adjustment of zeros and negative values in the PJM hourly price data

As discussed on page 19 of ComEd's Initial Brief, ComEd believes this adjustment proposed by Staff Witness Zuraski is a reasonable approach and an acceptable alternative to the technical adjustment proposed by ComEd.

N. Basis Adjustment

1. Illiquidity Adjustment

As was explained in ComEd's Initial Brief at 19-21, the Midwest market for power and energy is not illiquid; two of the data sources relied upon by the RES Coalition (Enron Online and Prebon) are highly suspect, and the Into ComEd and Into Cinergy hubs represent delivery points, not separate markets. Thus, the illiquidity adjustment proposed by the RES Coalition should be rejected. Nonetheless, Staff recommended that this adjustment be adopted, although it stated that "the testimony and evidence on this issue is not conducive to a **confident** decision for or against an illiquidity adjustment." Staff Init. Br. at 23. ComEd submits that this is a far lesser standard of proof than it would be required to meet, and a standard that falls far short of the Commission's own prior admonishment that proposed methodologies should provide "reasonably accurate quantifications of adjustments". Order on Reopening, Apr. 11, 2001 (Docket Nos. 00-0259, 00-0395, 00-0461 (Cons.)) at 160. Because the proposed adjustment is unsupported and in fact contrary to the substantial evidence of record, it should be rejected.

O. RES Coalition Proposal to Synchronize Price Shape Data from the PJM Market with Load Shape Data

As was explained in ComEd's Initial Brief at 21, the RES Coalition presented no data supporting its claim that demand and price shapes for the ComEd area were "out of sync," and the real data on electricity prices presented by Mr. McNeil refute their claim. ComEd Ex. 4 at 13-16. Staff concluded that it could not "support the particular remedy sponsored by the RES Coalition. It is not well supported and it implicitly assumes that each customer class in Illinois somehow has its own weather. As presented, this is not a wholly credible theory." Staff Init. Br. at 24. ComEd agrees.

However, in its initial brief, Staff presented a new proposal on synchronization:

Staff recommends that the utilities continue to perform the same price shaping process, but with multiple years worth of hourly price and load data, as proposed by the three utilities. However, instead of averaging the yearly results of the price shaping/load weighting process (as proposed by the utilities), Staff recommends that each utility select the yearly results that maximize the load weighted average market value for each class.

Id. This proposal is not in the record, and has not been fully briefed, evaluated or subjected to cross-examination, and should be rejected for this reason alone. However, it should also be rejected because it creates an artificial, worst case scenario calculation that is not representative of the whole, and that would serve no other purpose but to artificially inflate the MVECs. In particular, the record shows that 1999 was a very volatile year, and with the subsequent addition of new capacity, competitive forces have driven prices down, and volatility has decreased. ComEd Ex. 4 at 15. Inclusion of the 1999 values in the historical average by itself already tends to increase MVECs; there is no justification for giving additional weight to that year, particularly in light of clear evidence that that year was an aberration. See *Id.* at 16.

P. Other

As explained on pages 22-24 of ComEd’s Initial Brief, while the RESs have an incentive to overestimate the MVEC for the purpose of making a larger profit, the utilities do not have an incentive to either over or underestimate the MVEC. In fact, ComEd’s actions have shown its intentions to make sure the market value is set as accurately as possible.

III. FLOATING MVI ADDER PROPOSAL

As is explained in ComEd’s Initial Brief at 24, this proposal applied only to Illinois Power.

IV. MULTI-YEAR OPTION ISSUES

The parties to this proceeding agree that a multi-year CTC option would be a benefit. *See* BOMA Ex. 1.0 at 28; RES Coalition Ex. 1.0 at 35; RES Coalition Ex. 4.0 at 61; IIEC Ex. 1.0 at 4; Trizec Ex. 1.0 at 9; Staff Ex. 1.0 at 30; USDOE Ex. 1.0 at 3. Although the parties raise a number of concerns with the proposed design of ComEd’s proposed experimental Rider CTC-MY, which offers such a option, no one except IIEC disagrees with the fact that ComEd is not—and cannot be—required to offer a longer-term CTC. *See e.g.*, USDOE Init. Br. at 8 (“[T]he Company cannot be required to offer a multi-year CTC nor change the terms of the CTC-MY rider that it is proposing . . .”). As ComEd has explained previously, the proposed CTC-MY is truly an “experiment” because it involves risk and unknown future variables. ComEd is willing to negotiate changes with other parties, but it is not required to offer CTC-MY at all. Thus, the issues raised by other parties are best left to negotiations. If the Commission were to reject the proposed Rider CTC-MY, it should urge the parties to continue discussions and provide for the filing of a revised tariff on an expedited basis if agreement is reached.

The RES Coalition in its initial brief mischaracterized the rebuttal testimony of ComEd witness Paul Crumrine in an attempt to fabricate a contradiction in his testimony and imply that ComEd might accept the changes it proposed. The RES Coalition quoted Mr. Crumrine as stating that “[ComEd] is willing to ‘removing [sic] any limits on the total load allowed under the Rider [CTC-MY].” RES Coalition Init. Br. at 55-56 (quoting ComEd Ex. 6 at 38). What Mr. Crumrine in fact said, when asked if there were other adjustments proposed by other parties in this proceeding that ComEd was willing to consider, was: “*USDOE witness Swan and others have suggested extending Rider CTC-MY through the May 2006 billing period and removing any limits on the total load allowed under the Rider ComEd is not willing to make Rider CTC-MY available for either an unlimited amount of total load or an unlimited amount of time.*” ComEd Ex. 6 at 38-39 (emphasis added). ComEd’s position has remained consistent throughout the entire proceeding: while ComEd is not willing to make Rider CTC-MY available for either an unlimited amount of total load or an unlimited amount of time, it is willing to discuss these issues with other interested parties to determine whether some mutually agreeable adjustments are available. This mischaracterization of Mr. Crumrine’s testimony is indicative of the RES Coalition’s willingness to ignore the actual record evidence in this proceeding.

In its initial brief, the IIEC incorrectly states:

[I]f the utilities do not offer a multi-year market value option, Section 16-112 calls for determination of market value in the out-years using a tariff based on the NFF process Therefore, it is IIEC’s position that if any utility fails to offer the multi-year market value option, or fails to make the multi-year option applicable to all years between now and 2007; [it] must have its market value determined on the basis of a tariff incorporating the NFF process.

IIEC Init. Br. at 27-28. This interpretation is in error and was rejected in the Order of the last MVI proceeding:

IIEC also asserts that the market value tariff proposals fail to conform to the requirements of Section 16-112 of the Act because

they do not establish market values for each year specified by the NFF process. . . . [T]he NFF has never published market values for more than one year. Furthermore, the Commission believes that the statute does not require that a market value index include all possible years for which the NFF could issue values. Accordingly, the IIEC recommendation on this issue will not be adopted.

Order on Reopening, Apr. 11, 2001 (Docket Nos. 00-0259, 00-0395, 00-0461 (Cons.)) at 158-59.

Likewise, the Commission should again reject this proposal in this proceeding.

[A. – G. These subsections were addressed in ComEd’s Initial Brief at 24-29.]

V. TIME PERIOD AND TRANSITION CHARGE ADMINISTRATION ISSUES

A. Frequency of Market Value/Transition Charge Calculations

As explained on page 30 of ComEd’s Initial Brief, the proposal to abandon the Period A/Period B structure previously approved by the Commission should be rejected because not only would it be confusing for customers and prohibitively costly for ComEd, it is unlikely to have a demonstrable effect on switching, and would not result in MVECs being closer to the prevailing market prices at any given time after the snapshot period.

B. Moving Data Collection Period for Applicable Period A to January

As explained on pages 30-32 of ComEd’s Initial Brief, in the event that the enrollment window discussed below is adopted, the snapshot window should be moved up because it would give customers more time to make their supply decisions and it would give suppliers more time to arrange for supply and hedge their risks before the summer period. If the enrollment window is not adopted, the snapshot period should not be moved up.

C. Decision Window for PPO Customers

ComEd has proposed to move up the snapshot window for Applicable Period A to January and allow customers until March 31 to decide whether to enroll in the PPO. ComEd Ex. 3 at 9. Most of ComEd's customer groups have not objected to this proposal. Although ComEd's proposal would give customers almost two months to make their decision, the RES Coalition argues that this proposal would unfairly limit the customers' options. RES Coalition Init. Br. at 61. This argument by the RES Coalition is contradicted by the enrollment windows the RESs themselves use – days to minutes. Tr. at 179. The record evidence also shows that an enrollment window is necessary to limit gaming by RESs that has been occurring and that increases ComEd's costs of providing its tariffed services. Tr. at 610, 613, 726; ComEd Ex. 4 at 32-33.

In their initial briefs, Staff and BOMA also criticize ComEd for limiting enrollment to PPO Period B to customers who are leaving bundled service for the first time. BOMA Init. Br. at 7; Staff Init. Br. at 41-42. In making this claim, Staff and BOMA misunderstand PPO Period B. The law requires that CTC and PPO values match. ComEd Ex. 6 at 40. A customer on Period A must pay a PPO price based on Period A MVECs. *Id.* Period B provides customers on bundled rates with a first-time "on-ramp" to delivery services. *Id.* Applicable Period B only applies to customers who leave bundled rates and elect to take delivery services between the months of September and May. *Id.* While MVECs calculated for Applicable Period A cover a twelve-month period, including four summer months, MVECs calculated for Applicable Period B only cover a nine-month period from September to May. *Id.* Applicable Periods A and B for the PPO have always worked this way.

D. Customer Eligibility for Individual Transition Charge Calculation

Some parties to this proceeding have proposed that ComEd calculate individual CTCs for customers with demands of 400kW or greater. RES Coalition Init. Br. at 63; BOMA Init. Br. at 8-9. Under the Act, ComEd is only required to calculate individual CTCs for customers with demands of 3MW or greater. 220 ILCS 5/16-108(g). In response to requests by other parties to this proceeding, ComEd voluntarily offered to calculate individual CTCs for customers with demands of one MW or more. ComEd Ex. 6 at 43. As explained in the Rebuttal Testimony of ComEd witness Crumrine, it would be a significant administrative burden upon ComEd to calculate individual CTCs for customers below 1 MW. *Id.* Although Staff stated that it would like to see more individual CTCs, it acknowledged that this result cannot be compelled. Staff Ex. 1 at 29. In its initial brief, Staff further pointed out that no party advocating this change had indicated how ComEd would recover the associated costs. Staff Init. Br. at 40.

E. Customer Aggregation for Individual Transition Charge Calculation

It has also been proposed by other parties to this proceeding that ComEd allow customers to aggregate their load to qualify for an individually-calculated CTC. RES Coalition Init. Br. at 63-64. As stated before, the law only requires ComEd to calculate individual CTCs for customers with demands of 3MW or greater. 220 ILCS 5/16-108(g). CTCs are calculated on either an individual customer basis where applicable or by customer class. There is simply no basis for allowing customers to aggregate their load to qualify for an individual CTC. Staff's endorsement of this proposal is at odds with its argument elsewhere that administrative agencies cannot act in ways that are contrary to their governing statutes. See Staff Init. Br. at 26. Further, allowing customers to aggregate their load would result in significant administrative costs to ComEd. ComEd Ex. 6 at 43. ComEd would have to monitor thousands of customers, identify

the sites that are related to them, monitor the ownership of such sites, and finally, determine whether such sites qualify for load aggregation. *Id.* Finally, this proposal would allow customers to choose between a class CTC or an individual CTC depending upon which was more advantageous. *Id.* This type of gaming is unfair to the utility and inappropriate. *Id.* Nor is there any basis in the Act for such aggregation. *See* ComEd Init. Br. at 36.

F. Other: RES Coalition Request for Publication of Individual MVEC Calculations

As explained on page 36 of ComEd’s Initial Brief, this request should be rejected because it is contrary to Section 16-122(a) of the Act.

VI. OTHER ISSUES

A. Multi-Year Price Shaping

As explained on page 37 of ComEd’s Initial Brief, this proposal should be approved because using multiple years of data in determining market values more accurately reflects average volatility of loads and prices (as long as the average of the years is used and not the maximum result from any single year.) *See* discussion under Section II.O above.

B. Price and Data Availability—Monitoring and Reporting Requirements

As explained on page 37 of ComEd’s Initial Brief, ComEd already files a monthly monitoring report with Staff and does not object to continuing such monitoring and reporting obligations.

C. Dr. Ulrich's MVI-Study

As pointed out by a number of witnesses, Dr. Ulrich's MVI Study was flawed in a number of respects. ComEd Ex. 2 at 12; ComEd Ex. 6 at 10-11; Rev. IP Ex. 2.1 at 52-53; ComEd Ex. 4 at 24. Illinois Power witness Peters noted that Dr. Ulrich's analysis most likely included a risk premium in RESs' pricing relating to the provision of a customized non-TOU price as compared to TOU pricing. Rev. IP Ex. 2.1 at 52-53. The inclusion of this premium is inappropriate when determining market value. *Id.* In addition, the parameters used in selecting contracts for the study excluded more than 80% of the RES contracts that were in effect, but included contracts that did not match the Applicable Period A forward prices. ComEd Ex. 6 at 11; Tr. at 411-12. Also, as Mr. McNeil pointed out, the study was not designed to provide useful information on market values. ComEd Ex. 4 at 24. It merely indicated that RESs, at a time when power prices were rapidly declining to an all-time low, locked customers into contracts with prices higher than the lower prices for power that were available in the market, and that were ultimately reflected in the MVECs released on April 1. *Id.* In fact over 75% of the contracts entered into by RESs during this period locked customers into a set power and energy price (higher than the MVEC) while transferring to the customer the full risk associated with an increase in the CTC as a result of declining market values. Tr. at 350-52; *See also*, ComEd Ex. 6 at 11. Having locked their customers into paying higher prices than what was available in the market, they now argue that ComEd's MVECs must be too low since their own prices were much higher. *Id.*; ComEd Ex. 4 at 24-26. This self-serving tactic should not be rewarded.

The RES Coalition attempts to shore up its flawed study by attacking ComEd witness Cheryl Beach who reviewed Dr. Ulrich's workpapers. RES Init. Br. at 70. In fact, Ms. Beach's analysis did reveal flaws in Dr. Ulrich's study and her analysis did not support the RES Coalition's conclusions. During the proceedings, the RES Coalition claimed that its MVI study was one that

"correlates to the most recent Period A MVECs produced by ComEd." RES Coalition Ex. 1 at 8. It also emphasized that the contracts reviewed as a part of that study were "produced during the same timeframe using similar forward market prices". RES Coalition Ex. 4 at 40. These claims proved to be misleading. The MVECs produced by the MVI methodology reflected data from forwards price contracts for delivery during the months of June 2002 to May 2003. These were the dates that defined the "prescribed contract start and end dates" referenced in Ms. Beach's testimony. Tr. at 433. The RES contracts were not in fact limited to these periods. The RES Coalition's counsel represented for the record that the average start date of the RES contracts used in Dr. Ulrich's study was April 30, 2002 and the average end date was June 20, 2003. Tr. at 411-12. The RES Coalition witnesses further testified that a "typical" contract term could run from six to eighteen months and that they did not review the terms in the contracts reported to Dr. Ulrich. Tr. at 347-48, 353-54. Thus, Ms Beach's observation that Dr. Ulrich's study represented a misleading "apples to oranges" comparison was correct. ComEd Ex. 2 at 12. Ms. Beach also pointed out that Dr. Ulrich's workpapers included data that led to inexplicable results when compared to the actual contract data (load factors of 400 to 1200%) and that the non-TOU prices reported to him were inexplicably higher than the on-peak TOU prices. ComEd Ex. 2 at 15-16. She also rejected efforts by counsel for the RES Coalition to have her endorse numbers that simply resulted from a function in Dr. Ulrich's spreadsheet:

If we look at only the numbers that include the time of use rates, not the non-time of use rates, because they just seemed unrealistic to us, there was nothing in our analysis that would support the claim that retail prices are higher than ComEd's market values. We didn't even use the formulas there. His percentages just don't mean anything because it was just a function of the way his spreadsheet worked. . . . We found that the differences between the numbers that we came up with and his numbers and comparing our results with ComEd's market values, there wasn't that much difference, not anywhere near the difference that they were talking about in their analysis.

Tr. at 434-35. It is worth noting that Dr. Ulrich himself did not defend the design of the study he performed for the RES Coalition nor did he endorse the "interpretations" offered by others of its results. *See* ComEd Init. Br. at 37.

For all the reasons stated above and in ComEd's Initial Brief, the results of Dr. Ulrich's MVI-Study should not be given any weight in this proceeding.

D. Dr. Ulrich's NFF-Study

As explained on page 39 of ComEd's Initial Brief, Dr. Ulrich's NFF-Study suffers from the same flaws as his MVI-Study as well as the additional flaw that it did not correspond to the parameters for the actual NFF process that are set forth in Section 16-112. Therefore, it should not be given any weight by the Commission.

E. Mr. Sharfman's RPI Index

As explained on pages 39-41 of ComEd's Initial Brief, Mr. Sharfman's RPI Index should not be given any weight by the Commission because it is flawed and does not provide any information relevant to the determination of the market value. Mr. Sharfman himself stated that he would not recommend that the Commission use the RPI Index to establish MVECs or define adjustments to the MVI methodology. Tr. at 160-61.

F. Reinstitution of the NFF Process

ComEd does not believe that any of the parties to this proceeding truly desires to return to the NFF process. *See e.g.*, Tr. at 346. Rather, the RES Coalition urges the Commission to use the potential for a return to the NFF process as a thinly veiled threat to obtain acceptance of adjustments that are contrary to the Act and to the record evidence. *See* RES Coalition Init. Br.

at 73. The Commission should decline such an invitation.² The MVI methodology has been demonstrably better than the NFF process. *See* ComEd Init. Br. at 41.

VII. CONCLUSION

For all of the reasons in ComEd's Initial Brief and above, ComEd respectfully requests that the Commission approve the proposed technical and structural improvements to the MVI methodology that it filed on October 1, 2002, with the one modification proposed by Staff witness Zuraski relating to zero or negative values in price shaping data, and reject all other proposed modifications.

² *See also* discussion *supra* at 9 (responding to IIEC's erroneous restatement of the law with regard to the NFF process and CTC-MY).

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