

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,)	
Proposal to establish Rider PORCB)	
(Purchase of Receivables with Consolidated Billing))	No. 10-0138
and to revise other related tariffs.)	
)	

Verified Application for Rehearing of the Illinois Competitive Energy Association

The Illinois Competitive Energy Association (“ICEA”), pursuant to Section 10-113 of the Illinois Public Utilities Act (“PUA”), 220 ILCS 5/10-113(a), Section 200.880 of the Commission’s Rules of Practice, 83 Ill. Adm. Code § 200.880 and other applicable law, submits this Application for Rehearing (“Application”) of the February 9, 2011 Amendatory Order (“Amendatory Order”) of the Illinois Commerce Commission (“Commission”) and clarified in an Order Upon Emergency Motion for Clarification (“Clarification Order”) dated February 23, 2011.

ICEA submits this Application in order to reverse the Commission statements made in the Amendatory Order and Clarification Order that have the effect of establishing a single uncollectibles charge for residential customers and commercial customers and to restore separate uncollectibles charges for residential and commercial customers as determined in the Commission’s Final Order (“Final Order”) dated December 15, 2010.

Procedural Background

On January 19, 2010, Commonwealth Edison Company (“ComEd”) filed tariffs implementing Utility Consolidated Billing (“UCB”) and Purchase of Receivables (“POR”) services. On February 24, 2010, the Commission suspended the tariffs and re-suspended the tariffs on July 2, 2010 pursuant to Section 9-201(a) and (b) of the Public Utilities Act. (220 ILCS 5/9-201(a) and (b).) The record was marked heard and taken *sine die* on August 19, 2010. Initial Briefs were filed on September 2, 2010 and Reply Briefs were filed on September 14, 2010. The Administrative Law Judge’s (“ALJ”) Proposed

Order was issued on October 7, 2010. Briefs on Exceptions were filed on October 22, 2010. The parties waived their right to file Reply Briefs on Exception. On October 26, 2010, the ALJ requested a post-record data request from ComEd. On October 28, 2010, ComEd filed a verified response to the ALJ's request. Various parties responded to ComEd's response to the ALJ's post-record data request including Staff, Dominion Retail, Inc. ("Dominion"), ICEA, and the Retail Energy Supply Association ("RESA"). ComEd also filed a reply to the various parties' responses. The ALJ submitted a Memorandum to the Commission on November 10, 2010, recommending entry of the Post Exceptions Proposed Order ("PEPO") as well as a change that was characterized as a "minor exception" and not "substantive".¹ Oral Argument was held on December 2, 2010. On December 15, 2010, the Commission issued its Final Order. Applications for Rehearing were filed on January 14, 2011 by ComEd and on January 18, 2010 by Dominion. The ALJ submitted a Memorandum to the Commission on January 22, 2011, recommending denial of ComEd and Dominion's Application for Rehearing. On February 9, 2010, Applications for Rehearing were denied and the Commission entered its Amendatory Order. Comments responding to the Amendatory Order were filed by ComEd, Dominion, and RESA. RESA's Response was filed on February 18, 2011. On February 22, 2011, ICEA filed a Motion for Rescission of the Amendatory Order. The ALJ submitted a Memorandum to the Commission on February 17, 2010, recommending entry of the Clarification Order². On February 23, 2011, the Commission issued its Clarification Order.

¹ The specified change the ALJ presented to the Commission was the introduction of a new rate and rate structure for a single uncollectibles charge, which the ALJ described as a "mathematical computation of the combined uncollectible figure in the analysis regarding the cost recovery mechanism." The ALJ created the new rate structure based on figures submitted by ComEd in a Post Exceptions Data Request and unspecified opinions voiced by the parties on exceptions. See Administrative Law Judge Memorandum to the Commission dated November 10, 2010.

² It would appear that the ALJ did not consider ICEA's Motion for Rescission or the RESA Response since they were filed after the ALJ's Memorandum was submitted to the Commission. ICEA's Motion is attached hereto as Attachment A.

Argument

The Commission's Amending Order and Clarification Order are legally unsustainable and should be reversed for several reasons. First, the basis upon which the Amending Order was issued is legally flawed. In addition, the introduction of the subject matter of a single uncollectibles charge after the record was marked heard and taken was inappropriate and the facts upon which the issue was decided are legally flawed. Finally, the Final Order, which preceded the Amending Order and the Clarification Order, correctly decided the issue on the merits and based upon the evidence of record.

I. The basis upon which the Amending Order was amended is legally flawed.

In the Final Order, the Commission approved the use of separate uncollectibles charges for residential and commercial customers, as initially proposed by ComEd, as formally agreed to by ICEA, RESA, and ComEd in a Memorandum of Understanding ("MOU"), ComEd Exhibit 1.3, and supported by the Citizens Utility Board ("CUB"), which resulted in the filed tariff sheets. In Section IV.G. of the Final Order, the Commission identifies the uncollectibles charges issue as uncontested, Final Order at 5, and did not order a revision to the tariff sheets filed by ComEd, which set forth separate residential and commercial uncollectibles charges. Such a result was logical and proper because absolutely no evidence had been introduced into the record taking issue with the separate uncollectibles charges. That is not surprising, given that the use of separate uncollectibles rates for residential and non-residential customers is consistent with the Base Uncollectible Cost factors approved by the Commission and which are included in Rider UF - Uncollectible Factors.

In the Amending Order, the uncollectibles charges issue was again listed as an uncontested issue in Section IV.G. Amending Order at 5. Nevertheless, without explanation, the following sentence was added to the Amending Order, which created internal inconsistency within the Amending Order.

Also, it is in the best interests of Illinoisans in ComEd's service territory if there were one single charge for uncollectibles, as opposed to one uncollectible charge for residential customers and a different uncollectible charge for commercial customers.

ComEd shall amend its tariffs to reflect this charge, which is 1.843%. (footnote omitted). Amendatory Order at 25.

The foregoing language was inserted without reference to any discussion in the record as to why a combined uncollectible charge is in the “best interests of Illinoisans.” In ComEd’s testimony, Mr. Garcia emphasized the importance of “setting the appropriate link between the uncollectible cost factors reflected in ComEd’s supply charges and the PORCB discount rate will help avoid creating any artificial barriers to customers switching to RES supply via PORCB and over or undercharging RESs for uncollectibles that might otherwise occur, if such a linkage is not set.” ComEd Ex. 1.0, 15:354-357. ICEA avers that setting the appropriate rate is in the best interest of the ratepayers, which is not achieved simply by creating a single uncollectibles charge. Moreover, the uncollectibles rate structure was settled as an uncontested issue early on in the evidentiary phase of the proceeding.

Indeed, the Amendatory Order’s only support for the combined uncollectible charge is a reference to a footnote that the 1.843% “is taken from a filing made by ComEd on November 8, 2010, in which, pursuant to the ALJ’s Post-Record Data Request, ComEd calculated the weighted average of its residential uncollectibles and the uncollectibles for its small commercial customers.” Amendatory Order, fn. 10 at 25. Aside from the post-record nature of the single uncollectibles charge data, the data was not tested by the introduction of evidence that might contest it. ComEd only provided the data with the understanding that if it were used for something other than informational purposes, it would be considered by ComEd as an objectionable use of the data. *See* ComEd’s November 4, 2010 Verified Response to the ALJ’s October 26, 2010 Post-Record Data Request. Moreover, doubt as to its propriety as a proxy for a single uncollectibles charge was cast on the 1.843% by Staff, ComEd, Dominion, RESA, and ICEA in post-record pleadings. Staff, Dominion, RESA, and ICEA as well as ComEd filed comments in response to the ALJ’s post record request challenging the appropriateness of establishing the 1.843% as the uncollectibles charge.

In its response to ComEd’s verified response, Staff stated that it does not object to a calculation it has developed using the non-residential factor found in Rider UF, or if the Commission agrees that a

combined uncollectible factor as developed by ComEd using the system average supply uncollectible value of 1.52%. Staff's Response to the Administrative Law Judge's October 26, 2010 Post-Record Data Request at 1 and 2. Dominion maintained that there appears to be a mathematical error in the final figure determined by ComEd and that the Commission should use the blended system average supply uncollectible value of 1.06%. Dominion's Response to the Administrative Law Judge's October 26, 2010 Post-Record Data Request at 1 and 2. RESA urged that the appropriate rate is a fixed 50 cents per bill and the appropriate uncollectible rates for residential and non-residential customers, respectively, 2.239% and 0.774%. RESA's Response to the Administrative Law Judge's October 26, 2010 Post-Record Data Request at 1. ICEA reiterated its support of the discount rate methodology produced by the MOU among ComEd, ICEA, and RESA. ICEA's Response to the Administrative Law Judge's October 26, 2010 Post-Record Data Request at 1. Hence, it is clear the ALJ's reliance on the uncollectibles rate of 1.843% is not supported by any party and is not based on the record evidence.

The inappropriate adoption of the arbitrary conclusion that consumers were better served by a single uncollectibles rate and adoption of the questionable 1.843% factor simply confused the record and created additional ambiguities and uncertainties, prompting an Emergency Motion for Clarification by Staff and similar pleadings by ComEd, Dominion, and RESA, as well as a Motion for Rescission of the Amendatory/Clarification Order by ICEA. *See* Staff's Emergency Motion for Clarification of February 9, 2011 Amendatory Order; ComEd's Verified Comments in Support of Staff's Emergency Motion for Clarification of February 9, 2011 Amendatory Order; Dominion's Response to Staff Emergency Motion for Clarification; RESA's Response to Commission Staff's Emergency Motion for Clarification; ICEA's Motion for Rescission or, in the alternative, Further Clarification of the Commission's February 9, 2011 Amendatory Order. The Clarification Order, however, compounded the ambiguity and failed to remedy the failings of the Amendatory Order in declaring that:

However, use of Rider UF is only a starting point regarding the correct amount of uncollectible costs; the actual amount of uncollectible costs to be recovered by ComEd shall be in accordance with the language on page 25 of the Amendatory Order of February 9, 2011, where this issue is discussed. Clarification Order at 1.

The notion that use of Rider UF “is only a starting point” appears for the first time in the Clarification Order and appears to have been announced for the sole purpose of justifying a departure from the record, which was based on separate uncollectibles charges for residential and commercial customers.

The ALJ’s February 17, 2011 Memorandum recommending adoption of the Clarification Order dismisses Paragraph IV.G., which unambiguously establishes that the uncollectibles issue is settled and uncontested, as “merely background information; it does not concern substantive issues or contested matters.” ALJ’s Memorandum to the Commission dated February 17, 2011 at 2. The fact of the matter is that rejecting separate residential and commercial uncollectibles charges and constructing a new single uncollectibles charge is significant and substantive and can not be done based on the evidence of record. Further, the very fact that ComEd has had to make additional tariff compliance filings to comply with the Order belie any notion that the changes at issue are merely background information. Such a flawed process and unsupported decision simply cannot stand.

II. The introduction and subsequent post-record adoption of a single uncollectibles charge is unsupported.

On October 26, 2010, the ALJ made a post-record data request to ComEd to provide a calculation for a blended rate pursuant to Section 200.875 of the Commission’s Rules of Practice. 83 Ill. Adm. Code § 200.875. Such a request was made in error. Section 200.875 provides, in pertinent part, that:

[T]he Hearing Examiner may, on his or her own motion, or when directed by the Commission, direct any or all parties to a case to provide, by a deadline to be set by the Examiner, calculations and other numerical analyses of data that are related to evidence already in the record. 83 Ill. Adm. Code § 200.875.

The issue of the uncollectibles rates was not an issue of controversy, as evidenced by its inclusion in the uncontested issues section of the Final Order. The only evidence already in the record was evidence establishing separate residential and commercial uncollectibles charges. The ALJ’s request for data supporting a blended rate required ComEd to develop information that was not related to evidence already in the record. Thus, the use of Section 200.875 was inappropriate.

This untested new evidence the ALJ required ComEd to develop was not endorsed by ComEd, or any other party. ComEd specifically denounced any attempt to use the information as the basis for a single uncollectibles charge. *See* ComEd's November 4, 2010 Verified Response to the ALJ's October 26, 2010 Post-Record Data Request. The overwhelming reaction to ComEd's response to the ALJ's post-record data request demonstrated that, should a single blended rate be used, the appropriate mathematical calculation would be a highly contested issue. Even Dominion, which is the party that supports adoption of a single charge, contests the 1.843% factor. *See* Dominion's Response to the Administrative Law Judge's October 26, 2010 Post-Record Data Request. The criticism of the data contained in ComEd's response to the ALJ's post-record as the basis for a single uncollectibles charge underscores the impropriety of using the Section 200.875 procedure in a misplaced attempt to create a record on an issue for which there was no evidence and, in fact, was not even a stated issue in the underlying proceeding. Therefore, the Commission should disregard the information requested of ComEd and restore its original and correct decision that the ComEd proposal to employ separate residential and commercial uncollectibles charges is the only decision supported by the evidence of record.

The November 10, 2010 Memorandum accompanying the PEPO is misleading regarding the magnitude and the impact that would result from adoption of a single uncollectibles charge. The ALJ's characterization of the change is that "no substantive change[s]" were made. ALJ's Memorandum to the Commission dated November 10, 2010 at 2. In fact, substituting an entirely new uncollectibles charge for the two uncollectibles charges proposed by ComEd and supported by the majority of the active parties to the case is neither minor nor nonsubstantive. It amounts to a wholesale overhaul of the methodology, which is supported by the record and was correctly approved by the Commission in the Final Order. Use of Section 200.875, which merely allows the ALJ to request arithmetic data, to supplement and contest the evidence of record is highly questionable and should not be countenanced by the Commission.

The Amendatory Order and the Clarification Order have engendered uncertainty in the instant proceeding and the market as a whole. As a result, ComEd had to submit another round of tariff filings,

so that it would be in compliance with the Amendatory Order and the Clarification Order. ComEd will likely incur costs to undertake the system change necessary to comply with the Amendatory Order. More importantly, RESs have to manage the uncertainty that changes to the discount rate, at this point in time creates for their respective business plans, which have been based on what was considered to be a settled methodology. *See* ComEd's Verified Comment in support of Staff's Emergency Motion for Clarification of February 9, 2011 Amendatory Order. The fact that the Amendatory Order and the Clarification Order undermine a binding agreement between ICEA, RESA, and ComEd is further evidence that the changes made in the Amendatory Order were indeed substantive, with real life consequences to the parties involved.

III. The Commission's Final Order issued on December 15, 2010 was unambiguous and supported by the record.

In Section IV.G of the Uncontested Issues in its Final Order, the Commission established that the use of Rider UF to determine percentage reductions for the recovery of uncollectible costs was not an issue in controversy. Rider UF would be implemented as understood by ComEd.

No party contested ComEd's proposal that to determine the percentage reduction for the recovery of uncollectible costs that are associated with the purchase of receivables. ComEd will apply the same supply-related uncollectible cost set forth in its Rider UF-Uncollectible Factors ("Rider UF") that it applies to its own supply charges under Rate BES, ComEd's fixed-price bundled electric service tariff. Final Order at 5.

The Commission's intention and decision in the Final Order was clear and supported by the evidentiary record.

In Robert Garcia's direct testimony, ComEd's Rider UF is described as:

[E]stablish[ing] two separate supply-related uncollectible cost factors, the base uncollectible cost factor and the incremental uncollectible cost factor, for each of three distinct customer groupings, residential customers; nonresidential customers to which the Watt-Hour Delivery Class, Small Load Delivery Class, Medium Load Delivery Class, or Large Load Delivery Class is applicable; and all other customers (e.g. ,nonresidential customers with demands in excess of 1,000 kW or served from high voltage lines and lighting customers). The applicable supply-related uncollectible cost factors will be applied to develop the discount rate in Rider

PORCB based on the delivery class of the customer whose receivables are purchased by ComEd. ComEd Ex. 1.0, 14:336-346.

In addition, the MOU, evidencing the support of ICEA, RESA, and ComEd for the two uncollectibles charges, was submitted for the record by ComEd. *See* ComEd Ex. 1.3. ComEd's initial brief further establishes that its use of Rider UF is not an issue in controversy. ComEd Initial Brief at 8.

Section IV.G of the Final Order adopts verbatim the language from ComEd's initial brief detailing the manner in which Rider UF will be used. ComEd Brief at 8 and 9. Thus, a clear and unambiguous evidentiary record was established by the parties and the uncollectibles charge was a settled matter.

Confusion and uncertainty regarding the uncollectibles issue only arose after the record was closed and with complete disregard of the established record. Since 2008, ICEA, RESA, CUB, Staff, and ComEd have worked diligently in workshops led by the Office of Retail Market Development ("ORMD") to collaborate on matters relating to programs and processes designed to bring the benefits of retail competition more broadly to residential and small commercial customers. Separate uncollectibles rates were one such issue. The MOU, a formal settlement agreement between ICEA, RESA, and ComEd agreeing to the tariffs that would be filed with the Commission, is evidence that this was a settled matter for the vast majority of those parties that would be most affected – the utility and the RESs that would serve these customers. As a result of these efforts, the Commission's Final Order was applauded by nearly all members of the ARES community as an important key to jump starting residential and small commercial customer retail competition. Such efforts should not be nullified by the Commission. Indeed, in its deliberations on rehearing, the Commission indicated that it was mindful of the importance of such agreed-upon by principles and indicated that it would not disturb the \$0.50 cost recovery charge, in order to preserve the agreement entered into by various parties. No less consideration should be given to the separate residential and commercial uncollectibles charge, which was agreed upon by those same parties. The Commission should not be misled by the characterization of the change to a single charge as not substantive and merely a mathematical calculation. Adoption of a single uncollectibles charge would

be a major departure from the ComEd proposal and the agreement memorialized by a number of parties, not to mention an inappropriate disregard of the clear and unambiguous evidence of record.

Therefore, ICEA requests that the Commission reverse the Amendatory Order and the Clarification Order regarding the adoption of a single uncollectibles charge, restoring its original finding in the Final Order that the uncollectibles issue is uncontested and retaining the separate uncollectibles charges proposed by ComEd. In the alternative, ICEA urges that the issue of the propriety of a single uncollectibles charge be developed on a record in which all interested parties are able to introduce evidence and contest any evidence proffered by others. Therefore, should the Commission fail to restore its original finding in the Final Order, the Commission should order the record to be reopened for the purpose of developing a record as to the appropriate uncollectibles charge—combined or separate. ICEA is agreeable to a paper hearing to establish the record.

CONCLUSION

WHEREFORE, the Commission should, for the foregoing discussed reasons, grant rehearing and, on rehearing, revise the Final Order as requested herein.

Dated: March 9, 2011

Respectfully submitted,

ILLINOIS COMPETITIVE ENERGY ASSOCIATION



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VERIFICATION

I, Kevin Wright, President of ILLINOIS COMPETITIVE ENERGY ASSOCIATION, being sworn under oath, hereby state that the facts stated in the foregoing Application for Rehearing is true and accurate to the best of my knowledge, information and behalf.

ILLINOIS COMPETITIVE ENERGY ASSOCIATION

By: Kevin Wright
Kevin Wright, President

Subscribed and sworn to
Before me this 9th day of
March, 2010.

My commission expires: 10-12-2012

Debra R. Brown
Notary Public

