

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company)	
)	Docket No. 18-1725
Verified Petition for Approval of a Revision to)	
Integrated Distribution Company Implementation)	
Plan)	
)	
Commonwealth Edison Company)	
)	Docket No. 18-1824 (cons.)
Creation of Rate Residential Time of Use)	
Pricing Pilot ("Rate RTOUPP"))	

**VERIFIED INITIAL BRIEF ON BEHALF OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice (83 Ill. Admin. Code § 200.800), respectfully submits this Verified Initial Brief in the above-captioned Docket. The Commission should reject ComEd’s proposed Rate RTOUPP, reject ComEd’s proposed Integrated Distribution Company (“IDC”) rule waiver, and adopt ICEA’s proposed data access approach.

I.

INTRODUCTION

While ARES face multiple barriers to offering time variant supply products and services, no barrier is more important than inadequate access to interval data for pricing customers. Whether because of that or other barriers, the record in this docket reflects that the competitive retail market for time-variant products and services has not developed the way any stakeholder would have liked.

The best solution to this problem is to identify and eliminate barriers to ARES offering time-variant products and services. The Commission has repeatedly stated its desire for an investigation into barriers if the competitive retail market does not develop as hoped. ICEA has

already identified a significant barrier: challenges to ARES accessing interval data in an efficient or cost-effective manner. ICEA proposes a limited, but practical, solution to that barrier in the present docket: require ComEd to use AMI interval data as the standard for billing and settlement data.

The genesis of this docket is ComEd's voluntary tariff filing. In its role as a regulated distribution utility, ComEd seeks to compete with the competitive retail market by offering time-variant products and services through its proposed Rate RTOUUP. ComEd is not required by statute to offer Rate RTOUUP. ComEd cannot justify Rate RTOUUP—or even demonstrate a minimal level of customer demand for this particular rate. However, Rate RTOUUP would, if adopted, have anti-competitive effects that will upend the playing field between the utility and the competitive retail market as it exists at present and it would provide yet another barrier to the competitive retail market offering time-variant products that will stifle ARES time-variant product development.

For these reasons, as described and supported in detail below, the Commission should adopt ICEA's proposal to open an investigation into ComEd using AMI interval data for billing and settlement purposes and reject Rate RTOUUP. In doing so, the Commission will solve the underlying problem and avoid a stopgap solution that ComEd need not undertake, cannot justify, and that (without regard to ComEd's intentions) has an anti-competitive impact on ARES.

II.

RATE RTOUPP

A. Purpose and Benefits

ComEd has not provided sufficient justification for Rate RTOUPP. ComEd's failure to provide a persuasive justification for a new rate with anti-competitive features described in greater detail *infra* is fatal to ComEd's proposal.

As an initial matter, ComEd conceded that it has no evidence of any customer demand for a rate similar to Rate RTOUPP. ICEA witness Mr. Gafford noted in pre-filed direct that ComEd did not provide any evidence of customer demand for Rate RTOUPP. Specifically, Mr. Gafford testified that ComEd argued Rate RTOUPP is directed at customers who are sensitive to exposure to hourly changes but can shift load; however, ComEd did not establish how many (if any) such customers exist. (ICEA Ex. 1.0 at 3:57-4:65.) In pre-filed rebuttal, ComEd witness Mr. Fruehe argued that the level of customer demand is one of the "learnings" ComEd hopes to glean from Rate RTOUPP. (*See* ComEd Ex. 4.0 at 6:131-133.) In response, Mr. Gafford noted in pre-filed rebuttal that "My interpretation of Mr. Fruehe's response is that ComEd has no evidence or data to suggest customer demand for Rate RTOUPP." (ICEA Ex. 3.0 at 4:62-63.) Moreover, ComEd witness Mr. Fruehe did not appear to present any such evidence in pre-filed surrebuttal; Mr. Fruehe simply repeats that ComEd seeks to gauge customer interest in response to Mr. Gafford's pre-filed rebuttal. (*See* ComEd Ex. 7.0 at 6:122-125.)

The Commission should reject ComEd offering a completely voluntary rate whose justification is to determine whether customers are interested in the rate. Nothing in the Public Utilities Act requires ComEd to offer Rate RTOUPP. Mr. Gafford also testified that any "learnings" from Rate RTOUPP are highly unlikely to benefit ARES that already know how to

design and market time variant products in other states. (*See* ICEA Ex. 3.0 at 4:67-74.) Allowing ComEd to offer Rate RTOUPP without even minimal demonstration of customer demand gives the appearance of a ratepayer-funded live focus group and one whose costs may be recovered from all Rate BESH customers, as explained *infra* in Section II.F. ComEd should not be allowed to offer Rate RTOUPP without sufficient evidence of customer demand and one that may be underwritten by all Rate BESH customers if demand does not materialize.

Furthermore, the flaws of ComEd's insufficient justification do not end at conceding that there is no evidence of customer demand. ICEA witness Mr. Gafford identified and explained the inadequacy of ComEd's other initial justifications:

I have no basis to dispute Mr. Fruehe's statements about ComEd's AMI rollout and I do not take a position on Mr. Fruehe's statements about electrification of the transportation sector. However, even if we accept both as true and accurate, neither provides a basis for utility intrusion into the competitive retail market. The benefits of the AMI infrastructure and the electrification of the transportation sector can be realized through the activities of the ARES, provided that they have appropriate access to the data.

(ICEA Ex. 1.0 at 3:53-58.) In contrast, Mr. Gafford testified that there are several reasons ComEd's Rate RTOUPP should be rejected for its negative impact on ARES TOU product development:

I believe several other facts justify the Commission rejecting Rate RTOUPP. First, approving Rate RTOUPP does not address the fundamental barrier to ARES offering TOU products. Second, even if the Commission does address barriers to ARES offering TOU products, further utility entry into the TOU supply field creates challenges to ARES developing their own products. Further utility entry into the TOU space harms ARES TOU product development because ARES will be competing with administratively-set time of use rate levels that may be artificially low. The difference will be made up through the PEA, a charge that varies month by month due to factors independent of a particular customer's load-shifting behavior.

(ICEA Ex. 1.0 at 4:80-5:88.)

For these reasons, the Commission should find that ComEd failed to sufficiently justify the purpose for and benefits of Rate RTOUPP and thus failed to meet its burden for Commission approval.

B. Rate Structure

ICEA continues to be opposed to Rate RTOUPP without regard to how ComEd addresses rate structure issues such as interval start times or the 10% reallocation of costs between interval periods. However, ICEA specifically objects to ComEd's proposed purchased electricity adjustment ("PEA") mechanism and the AG's proposal for ComEd to provide a bill subsidy. In the case of the PEA, ICEA does not dispute the value of the PEA from a ratemaking perspective, but demonstrates the negative impacts on the competitive retail market and customers of ComEd's proposed approach. In the case of the AG's proposal for a bill subsidy, ComEd and ICEA both conclude (but on different grounds) that a bill subsidy would have negative consequences.

While not changing his underlying recommendations against approval of Rate RTOUPP, ICEA witness Mr. Gafford agreed with ComEd witness Mr. Fruehe's proposal for ComEd to procure supply for Rate RTOUPP the same way ComEd procures energy for residential real-time pricing customers. (*See* ICEA Ex. 1.0 at 6:108-113 (citing ComEd Ex. 1.0 at 5:102-103).) Mr. Gafford testified that: "While it does not change my recommendation that the Commission reject Rate RTOUPP, if Rate RTOUPP is approved I agree that ComEd should only procure supply in the hourly markets." (*Id.* at 6:110-113.) To the extent that the Commission does approve Rate RTOUPP, the Commission should memorialize the procurement strategy set out by ComEd witness Mr. Fruehe in his direct testimony to "procure participants' energy in the real-time hourly market, in essentially the same manner as it does for participants in the Residential Real-Time Pricing program." (ComEd Ex. 1.0 at 5:102-103.)

1. Eligibility and Size of Pilot
2. Pricing Periods
3. Revenue Shift
4. Capacity Costs
5. True-Up through Purchased Energy Adjustment

ComEd's plan to use a Purchased Electricity Adjustment ("PEA") as part of rate design shows the inherent flaws of ComEd offering a TOU rate. To be clear, ICEA does not dispute the legality of the PEA or even whether, from a cost recovery perspective, there is some justification for using the PEA mechanism. However, the way ComEd is proposing to implement the PEA in Rate RTOUPP, customers will be confused about the actual rate the customer is paying. That confusion, in turn, would have an anti-competitive effect on ARES time-variant product development because it will be challenging for the customer to compare pricing.

ICEA witness Mr. Gafford understands the PEA to be a per kWh charge that is meant to reconcile the difference between ComEd's cost of supply acquisition and the actual revenues collected from Rate RTOUPP customers. (*See* ICEA Ex. 1.0 at 6:116-120.) Understood that way, a Rate RTOUPP customer's theoretic bill should include four lines for the energy component:¹

- Off-peak usage (kWh) multiplied by off-peak rate (cents/kWh)
- On-peak usage (kWh) multiplied by on-peak rate (cents/kWh)
- Super peak usage (kWh) multiplied by super peak rate (cents/kWh)
- All usage (kWh), multiplied by monthly PEA rate (cents/kWh)

Looked at another way—whether or not ComEd presents its bill in this fashion—the effect on pricing from the above four lines can be expressed as follows:

- Off-peak usage (kW) multiplied by the sum of the off-peak rate and PEA rate (cents/kWh)
- On-peak usage (kW) multiplied by the sum of the on-peak rate and PEA rate (cents/kWh)

¹ Of course, the supply bill may include additional items, such as capacity, transmission, or other charges.

- Super peak usage (kW) multiplied by the sum of the super peak rate and PEA rate (cents/kWh)

(See ICEA Ex. 1.0 at 6:122-125.)

ComEd's approach has two negative effects. The first negative effect is that it is confusing to customers, because the advertised Rate RTOUPP rate is—except in months where the PEA is zero—never an accurate representation of what the customer actually pays. (See ICEA Ex. 1.0 at 6:122-125.) Mr. Gafford testified that ComEd could never provide customers with the PEA values in advance for a full year term of Rate RTOUPP due to its structure as a reconciliation mechanism. (See ICEA Ex. 1.0 at 10:217-220.)

Mr. Gafford also testified that the PEA sends confusing price signals because “it distorts the price signal of a customer's total bill by imposing a per kWh charge that is independent of that customer's (or even all customers') ability to shift or even reduce usage.” (ICEA Ex. 1.0 at 7:134-136.) For example, according to Mr. Gafford: “if customers shift load from 3-5 p.m. to noon-3 p.m., LMPs may in many cases exceed the applicable on-peak price. In turn, that would inflate the PEA.” (*Id.* at 7:138-140.) In other words: if customers across the board succeed in the exact type of load shift that a TOU encourages, they may be “rewarded” by higher prices through the PEA.

The second negative effect is the negative impact on competition with ARES TOU products. In addition to the other barriers identified in Section II.F *infra*, Mr. Gafford testified to the competitive challenges of the PEA:

What is billed as a TOU rate now has a potentially substantial additional charge or credit—as much as half a cent per kWh—that is added onto each of the three time period rates. The advertised rate, then, is not an accurate representation of what the customer will pay. Both the charge and the credit raise concerns. If the PEA is consistently a charge, the advertised “rates” will appear more competitive vis-à-vis an ARES product than they are. If the PEA is a credit, it becomes more challenging for an ARES TOU product to demonstrate savings—especially in off-peak hours,

where half a cent is almost 30% of the proposed summer off-peak price post revenue shift.

(ICEA Ex. 1.0 at 6:122-129.)² ICEA does not dispute ComEd’s observation that there are relatively few ARES TOU products available today. While ICEA demonstrates in testimony and in Section IV *infra* that these are due to barriers to ARES adoption, ICEA strongly urges the Commission to reject Rate RTOUPP because it would add additional barriers to ARES TOU products such as a utility TOU rate with anti-competitive rate presentation.

ICEA further notes that the issues with the PEA are structural. In defense of the PEA structure, ComEd witness Mr. Lieck argued that the PEA “will not be used to artificially lower the Rate RTOUPP PEA to make the rate more attractive.” (ComEd Ex. 8.0 at 3:56-58.) ICEA has no reason to believe—and did not allege—that ComEd would somehow game or distort the PEA as a way to compete with ARES. To the contrary: the anti-competitive effects testified to by Mr. Gafford would still happen *despite* ComEd’s best efforts for competitive neutrality. For this reason, the Commission should find that the PEA structure inherently has the anti-competitive effects pointed out by Mr. Gafford and that ComEd cannot mitigate those effects even upon its best efforts.

6. Bill Protection

The AG recommends that ComEd subsidize the bills of customers whose supply charges on Rate RTOUPP exceed what they would have been on Rate BES. (*See* AG Ex. 1.0 at 11:212-219.) Specifically, the AG recommends that the customer receive a subsidy of 90% of the difference between the annual payment under Rate RTOUPP and what the customer would have paid on Rate BES. (*See id.*) The AG justifies its approach by alleging a disconnect between a

² In Rebuttal Testimony in response to criticism from AG witness Mr. Scott Rubin, ComEd agreed to move the start of super peak to 2 p.m. from 3 p.m. Mr. Gafford’s criticism is equally applicable if the timeframes are adjusted to address different start times for super peak.

customer's usage and certain price impacts, such as capacity charges. (*See, e.g.*, AG Ex. 2.0 at 6:93-98.)

ComEd and ICEA both opposed the AG's bill subsidy proposal. (*See, e.g.*, ComEd Ex. 4.0 at 8:181; ICEA Ex. 3.0 at 11:234-12:238.) As ComEd witness Mr. Fruehe noted:

If the customer does not believe there is a risk and reward, they may not be incentivized to respond to the price signal. As this pilot is voluntary, we expect that the customers who enroll will be those who believe Rate RTOUPP could potentially benefit them, being fully aware of the risk.

(ComEd Ex. 4.0 at 8:184-9:187.) As a longtime proponent of a customer's ability to choose from a wide variety of rates based on the customer's own personal needs, values, and constraints, ICEA agrees. ICEA witness Mr. Gafford thus agreed with Mr. Fruehe:

The essence of customer choice is that the customer can make the decision right for them based on fair disclosure of material information. If a customer is unprepared to take the steps to maximize value—or, in some cases, avoid substantial bill increases—from a time-of-use rate, it is likely the wrong rate for the customer.

(ICEA Ex. 3.0 at 11:235-12:238.)

Looked at another way, not every utility rate or ARES product is right for every customer. Instead of the AG's proposed solution of a bill subsidy, ICEA has and continues to recommend full and accurate disclosure so the customer can make an informed decision. Full and accurate disclosure will do far more for customer satisfaction than bill subsidies.

To that end, ICEA witness Mr. Gafford proposed three additional protections to Rate RTOUPP geared toward up-front and ongoing disclosure so consumers can make an informed decision. ComEd agreed to the first recommendation, which would require ComEd to put the Rate BES "price to compare" on the bill. (*See* ICEA Ex. 1.0 at 10:205-208 (ICEA recommendation); ComEd Ex. 7:139-140.) ComEd rejected the other two, which are described Section II.D *infra*.

A significant part of a customer's decision to enroll on Rate RTOUPP will be the marketing materials used by ComEd or its third-party administrator to attract customers. However, as pointed

out by Staff witness Ms. Felde, because ComEd has not presented its marketing materials it was impossible for stakeholders to evaluate ComEd's customer marketing information. (See ICEA Ex. 3.0 at 12:239-242.) To the extent that a customer believes that the marketing materials designed by ComEd or its program administrator were deceptive or misleading, ICEA understands that such a customer could pursue recourse at the Commission or in court. In other words, customers should be sufficiently informed by ComEd's marketing—and if they are not, ComEd would likely be subject to discipline or liability.

C. Pilot Evaluation and Reporting

D. Information for Participants

ICEA witness Mr. Gafford recommended that the Commission direct ComEd to follow Section 412.165(f) and (g) of the Commission's Rules regarding specific customer disclosures as if ComEd was an ARES in order to be consistent with the Commission's customer disclosure and rate transparency directives to facilitate an informed customer decision. Section 412.165(f) states in full that:

An RES that currently enrolls residential customers on a variable or time-of-use rate for three consecutive months in any electric utility's service territory must, for a variable or time-of-use rate product, disclose on the RES' website and through a toll-free number the one-year price history, or history for the life of the product if it has been offered less than one year. An RES shall not rename a product in order to avoid disclosure of price history.

(83 Ill. Admin. Code 412.165(f).) Section 412.165(g) states in full that:

If the contract includes a rate that changes, or has the potential to change, more than once a month (i.e., time-of-use rate) and if the specific prices per kWh for the duration of the contract are not specified in the contract, subsections (a) through (f) apply, but:

- 1) The written notice in subsection (c) is required if a change in the time-of-use rate structure leads to a 20% or greater increase in an estimated bill for the customer's next billing cycle based on a reasonable proxy of that customer's usage pattern for the upcoming billing cycle without any modifications to the customer's consumption patterns.

2) The subsection (f) disclosures shall include an example of monthly bills paid by a reasonable proxy of the customer's usage pattern.

(83 Ill. Admin. Code 412.165(g).) Mr. Gafford specifically recommended that, for the purposes of Section 412.165(g) that the Commission treat Rate RTOUPP as not having provided rates in advance due to the impact of the PEA. (*See* ICEA Ex. 1.0 at 10:217-223; *cf.* 83 Ill. Admin. Code 412.165(h).) Of course, Mr. Gafford conceded that his understanding is these sections only apply to ARESs. Nevertheless, Mr. Gafford recommended that the Commission direct ComEd to comply with the requirements as if they applied to ComEd. (*See* ICEA Ex. 1.0 at 11:229-232.) Mr. Gafford testified that, unlike the “learnings” ComEd alleges the program would generate, experience operating under the same requirements as Sections 412.165(f) and (g) would provide useful information to the ARES community. (*See id.*; ICEA Ex. 3.0 at 3:41-51.)

ICEA continues to recommend that the Commission reject Rate RTOUPP. However, if the Commission does approve Rate RTOUPP (with its attendant negative impact on the competitive retail market) the Commission, at minimum, should require ComEd to share information about its experience operating under the same requirements as Sections 412.165(f) and (g). If, as noted in Section II.F.1 *infra*, ComEd is correct that very few ARES time variant products are on the market today, the Commission would benefit from understanding and validating the many challenges ARES face in offering a TOU rate under existing rules. If the Commission generally investigated barriers to ARES offering time-variant products and services today, barriers presented by Sections 412.165(f) and (g) are unlikely to be identified because, as ComEd testified, so few ARES products currently appear to be available. With relatively fewer ARES time-variant products currently available in Illinois, there are fewer experiences with Illinois-specific implementation challenges.

ComEd does not appear to dispute the usefulness to ARES of ComEd operating Rate RTOU PP in compliance with the same requirements imposed on ARES in Sections 412.165(f) and (g) of the Commission’s Rules. Instead, the core of ComEd’s response from Mr. Fruehe is that “ComEd is not an ARES, and my understanding from counsel is that these sections of the Commission’s Rules do not apply to regulated utilities.” (ComEd Ex. 4.0 at 7:149-151.) Mr. Fruehe also raises that the Commission deems ComEd rates to be just and reasonable when effective, obviating the need for disclosures similar to those in Sections 412.165(f) and (g). (*See id.* at 7:151-152.) As noted above, it is irrelevant to ICEA’s argument that Rate RTOU PP is not regulated by Part 412. ICEA justified ComEd following Sections 412.165(f) and (g) based on the learnings they would provide and requested that the Commission impose those requirements on ComEd without regard to whether they are otherwise required. In the event the Commission adopts Rate RTOU PP, it should modify Rate RTOU PP to require ComEd to comply with the same requirements imposed on ARES in Sections 412.165(f) and (g) of the Commission’s Rules.

E. Marketing to Customers

As noted in Section II.B.6 *supra*, ComEd has not provided any marketing materials in this docket for stakeholder review.

F. Impact on Competition

1. Rate RTOU PP Is Premature Because the Commission Has Not Yet Evaluated Barriers to ARES TOU Products

ICEA has presented sufficient evidence in the present docket that ARES face significant barriers to offering TOU products to residential customers. As described in Subsection IV *infra*, one of the primary barriers is the challenges in accessing interval data through Commission-approved channels. Rather than endorsing ComEd’s flawed and anti-competitive TOU “learnings” experiment, the Commission should first investigate the competitive market barriers that exist.

The Commission should also investigate the modifications that need to be made to ComEd's tariffs to use AMI interval data for billing and settlement purposes that could foster the competitive retail market's development of TOU products consistent with the Commission's approach and conclusions in three previous utility TOU related dockets.

The Commission has long expressed its interest in the development of a competitive retail market for time-variant products and identifying any barriers to its development. In ICC Docket No. 12-0298, the Commission rejected utility TOU rate offerings and encouraged fostering the competitive retail markets.

In that docket, the Commission rejected an attempt to impose a TOU rate on ComEd. In accepting ComEd's proposal to instead discuss a utility TOU rate at the Smart Grid Advisory Council, the Commission further required that:

If, after discussion, the Company and stakeholders agree that ComEd should offer a new TOU rate, then the proposal should at minimum fully explain how this TOU rate intersects with the existing competitive retail marketplace.

(ICC Docket No. 12-0298, Final Order dated June 22, 2012 at 44.) The Commission further held that ComEd "should also consider the extent to which the goals expressed in the Intervenor's [TOU rate proposal] proposal can be better met through other means—including rates offered by alternative suppliers" (*Id.*) The Commission made clear to ComEd that consideration—even protection—of the competitive retail market was an important part of even considering a utility TOU rate.

Later, in ICC Docket No. 15-0100, CUB and EDF petitioned the Commission to require ComEd to offer a TOU rate. The Commission dismissed the proceeding on several grounds that are not relevant to the present docket; however, the Commission further held that:

The Commission agrees with ICEA that **before requiring utilities to offer a TOU rate, it would be more appropriate to investigate competitive barriers that RESs face in offering a TOU rate.** This proposal, however, is also premature. Still

pending and recently completed dockets are addressing these pertinent questions. Dockets 13-0057 [sic] & 14-0701 (Order entered April 1, 2015) address the manner in which to allow a RES to request interval data for non-billing purposes, which will facilitate the ability to price individual customers and develop products. **If barriers to the development of a competitive market become apparent, the Commission encourages and expects that this will be brought to our attention.**

(ICC Docket No. 15-0100, Final Order dated September 16, 2015 at 9-10 (emphasis added).)

Further: “The Commission affirms its conclusion from Docket 13-0285 that, the wiser course of action would be to allow those workshops to continue so that a [TOU] methodology can develop that does not disrupt the competitive market.” (*Id.* at 10 (internal quotations omitted).) Once again, the Commission made clear that a utility TOU supply rate would be premature before a full investigation of the barriers to ARES development of TOU products.

To date, no such investigation into barriers to ARES offering TOU products has been conducted. ICEA witness Mr. Wright testified that while ICEA has informally reached out to some stakeholders, Mr. Wright is unaware of any formal Commission proceeding or even a Staff-led workshop to address barriers to ARES TOU products. (*See* ICEA Ex. 2.0 at 4:68-76.) Mr. Wright testified that whether ComEd (as in this docket) or a third party (as in ICC Docket Nos. 12-0298 and 15-0100) recommended the utility supply TOU rate, the competitive issues recognized by the Commission above remain the same. (*See id.* at 4:80-81.)

As a result, consistent with directives from as far back as 2012, the Commission should maintain that a prerequisite for a utility supply TOU rate is a full investigation into the barriers ARES face in offering TOU products. Because no such investigation has been conducted, the Commission should hold ComEd’s proposed new Rate RTOUPP is premature.

2. Even if the Commission Finds that Rate RTOUPP Is Not Premature, The Commission Should Reject Rate RTOUPP Due to Anti-Competitive Effects

Several aspects of Rate RTOUPP have anti-competitive effects on current and future ARES TOU products. As described at great length in Section II.B.5 *supra*, ComEd's proposed PEA mechanism to reconcile costs to serve customers with collections masks actual rates and negatively impacts the competitive retail market whether the PEA is consistently a charge or credit:

It is confusing for the customer and makes it more difficult for ARES to compete on a level field. What is billed as a TOU rate now has a potentially substantial additional charge or credit—as much as half a cent per kWh—that is added onto each of the three time period rates. The advertised rate, then, is not an accurate representation of what the customer will pay. Both the charge and the credit raise concerns. If the PEA is consistently a charge, the advertised “rates” will appear more competitive vis-à-vis an ARES product than they are. If the PEA is a credit, it becomes more challenging for an ARES TOU product to demonstrate savings—especially in off-peak hours, where half a cent is almost 30% of the proposed summer off-peak price post revenue shift.

(ICEA Ex. 1.0 at 6:121-129.) As noted in Section II.B.5 *supra*, ICEA does not believe that ComEd will intentionally manipulate any component of Rate RTOUPP to negatively impact the competitive retail market—instead, the negative impact is an inherent feature outside of ComEd's direct control.

In addition, ComEd proposed that it should recover costs of the program through Rate BESH in the event it failed to generate sufficient participants to support its costs. ICEA witness Mr. Gafford testified that ComEd is pushing the risk of failure of a voluntary rate onto a larger subset of non-participating ratepayers. (*See* ICEA Ex. 1.0 at 8:170-176.) As ComEd witness Mr. Jim Eber noted in a separate context: “to develop a firm marketing plan, including materials, to solicit enrollments in a pilot will require ComEd to make a significant investment.” (ComEd Ex. 6.0 at 3:44-45.) Without the option to shift costs to Rate BESH customers, Mr. Gafford testified that ComEd would face unappealing options of absorbing costs or increasing charges for remaining

participants—both of which Mr. Gafford believed would be unappealing for ComEd. (*See* ICEA Ex. 3.0 at 10:191-195.) ICEA witness Mr. Gafford further testified that moving program costs not recovered by participants onto Rate BESH customers would artificially lower the PEA, which is designed to reconcile ComEd’s costs with revenues. (*See* ICEA Ex. 3.0 at 10:195-197.)

The total effect is that if ComEd is allowed to recover costs related to Rate RTOUPP through Rate BESH under some scenarios, ComEd faces no downside for a program that ComEd is offering completely on its own volition. In contrast, an ARES creating a new TOU product or service must correctly price that product to balance attracting customers and covering revenue targets. As ICEA witness Mr. Gafford testified:

Because ARES are not guaranteed cost recovery by the regulatory scheme, ARES must either price customers based on historic usage patterns or only serve customers whose expected cost to serve (including overhead and margin) is less than anticipated revenue.

(ICEA Ex. 3.0 at 7:127-129.) Mr. Gafford testified that an ARES would not be able to recreate the PEA mechanism and shift costs to other ratepayers—or even its own customers—as a regulatory or practical matter. (*See* ICEA Ex. 3.0 at 7:134-146.) The imbalance between ComEd’s risk-free—for itself, not its ratepayers—voluntary choice to offer a new rate and ARES’s risk to offer a new TOU product or service is a competitive advantage for ComEd’s rate to the detriment of the competitive retail market’s development of TOU products.

III.

INTEGRATED DISTRIBUTION COMPANY PLAN

If the Commission adopts any of the bases raised by ICEA or any other party to reject proposed Rate RTOUPP, the Commission should not address ComEd’s proposed modifications to its Integrated Distribution Plan (“IDC Plan”). However, to the extent that the Commission does

not reject Rate RTOUPP, the Commission should prohibit ComEd from using interval data for the purposes of marketing Rate RTOUPP in the future.

As an initial matter, ComEd witness Mr. Fruehe testified on rebuttal that: “The use of AMI data is a concern of both Staff and ICEA in terms of providing ComEd with a competitive advantage, but ComEd will not use AMI interval data to directly target customers who have advantageous load profiles.” (ComEd Ex. 4.0 at 13:282-284.) ICEA witness Mr. Gafford testified he “applauds” that commitment and stated that while he continued to recommend rejection of Rate RTOUPP, if the Commission did approve Rate RTOUPP then Mr. Fruehe’s commitment should be memorialized in the Commission’s Final Order. (*See* ICEA Ex. 3.0 at 5:97-6:110.) ComEd witness Mr. Fruehe clarified in surrebuttal that: “To the extent this commitment is memorialized in the Commission’s Order, I recommend that the Order clearly state that ComEd has committed to not use AMI interval data to directly target customers with advantageous load profiles.” (ComEd Ex. 7.0 at 7:137-140.)

ICEA is unable to take a substantive position on ComEd’s IDC waiver because it is not clear what ComEd plans to do to market Rate RTOUPP. Staff witness Ms. Felde recommended that:

The Company should identify whether marketing and advertising will be managed internally or through an externally-contracted party, the ComEd business units or contracted party that will conduct the marketing and advertising of Rate RTOUPP, and a description of the methods through which it intends to advertise, market, and promote this program, in its rebuttal testimony. The Company should also provide in its rebuttal testimony true and correct copies of any marketing or solicitation materials, bill messages or inserts, CRS scripts or other solicitations that ComEd plans to use for this purpose.

(Staff Ex. 2.0 at 5:86-94.) ComEd refused to provide much of this information beyond suggesting there will be similarities to other marketing efforts: “ComEd does not plan to develop marketing

materials specifically for Rate RTOUPP in advance of Commission approval of the rate.” (*E.g.*, ComEd Ex. 6.0 at 4:68-69.)

Because ComEd did not disclose its marketing material, the Commission lacks sufficient facts in the record to grant a waiver of Section 452.240 of the Commission’s Rules. Without a clearer understanding of how ComEd plans to market, the Commission has no basis to determine whether ComEd’s plan is reasonable or consistent with other IDC rules for which ComEd is not requesting a waiver.

IV.

ICEA’S ALTERNATIVE PROPOSAL

The Commission should direct ComEd to use AMI interval data for the purposes of billing and settlement. The Commission has repeatedly—as catalogued in Section II.F.1 *supra*—raised its desire for an investigation into barriers to ARES offering time-variant products. ComEd’s proposal in this docket does nothing to remove those barriers, and will in fact raise new and exacerbate existing barriers. ICEA is offering a limited, but practical, solution to what ICEA witness Mr. Gafford termed the most substantial barrier to ARES offering time-variant products and services: ComEd’s use of AMI interval data for the purposes of billing and settlement.

A. ICEA Demonstrated That Better Access To Interval Data Is Necessary For ARES To Offer Time Variant Products

ComEd provided evidence—which ICEA did not dispute—that there are few time-variant products offered by ARES in the market today. (*See* ICEA Ex. 1.0 at 3:60-4.69.) This is not the result of ARES lacking interest in time-variant products and services—as Mr. Gafford testified: “Based on products and services offered in other markets, I am convinced that ARES are fully aware of customer demand for time-of-use products and how those products should be designed.” (ICEA Ex. 3.0 at 4:67-69.)

As an initial matter, ICEA witness Mr. Gafford explained why ARES need interval data to effectively offer time-variant products and services. “As I noted in my pre-filed direct testimony in ICC Docket No. 18-1772, access to customers’ interval data is a substantial challenge to ARES developing TOU products.” (ICEA Ex. 1.0 at 5:91-92.) Data access impacts ARES independent from ComEd’s actions but also as a competitive matter.

With regard to the independent impact of the Commission’s data access policies on ARES ability to offer time variant pricing, Mr. Gafford testified that ARES must either price customers based on historic usage patterns or only serve customers whose expected cost to serve (including overhead and margin) is less than anticipated revenue. (See ICEA Ex. 3.0 at 7:127-129.) This is because ARES are not administratively guaranteed cost recovery, and it is impractical for ARES to attempt to use a similar PEA-like mechanism to ComEd. (See ICEA Ex. 3.0 at 7:127-129, 139-146.) As a result, Mr. Gafford testified that ARES face a very high customer acquisition cost:

Without regard to what ComEd does or does not do, ARES face high costs of customer acquisition if ARES must make customer contact, obtain permission to obtain customer data, and only then discover how to price the customer (or whether the customer is even a good candidate for time-of-use products). These high costs of customer acquisition negatively impact ARES’s ability to offer competitive pricing.

(ICEA Ex. 3.0 at 6:118-122.)

While high customer acquisition costs are problematic even by themselves, they are even more of an issue when ComEd offers a competing rate. Whether Rate RTOUPP or even Rate BES, ARES pricing does not compete in a vacuum or even just with other ARES. The higher the customer acquisition costs, the more challenging it is to offer savings to any ComEd-offered rates. For the reasons explained in Sections II.B.5 and II.F.2 *supra*, the impact of the PEA will make Rate RTOUPP (if approved) artificially more difficult for ARES to compete against.

B. ICEA’s Proposal For ComEd To Use AMI Interval Data For Billing And Settlement Purposes Would Greatly Reduce The Biggest Barrier.

ICEA proposed a limited, but practical, solution to the barrier of data access: the Commission should require ComEd to use AMI interval data for billing and settlement purposes of ARES customers. ICEA witness Mr. Gafford testified that:

[T]o the extent that one of ComEd’s justifications for Rate RTOUPP is a still-developing ARES time-of-use product market, using AMI interval data for billing and settlement purposes would be a workable solution to the market-inhibiting problem of data access.

(ICEA Ex. 3.0 at 8:149-152.) While Mr. Gafford testified that he has not identified data access as the exclusive barrier, he does believe it is the primary barrier. (See ICEA Ex. 1.0 at 5:99-101.)

ComEd currently only allows an ARES to receive a customer’s interval data for billing purposes if the customer is on a time-variant product. (See IL C.C. No. 10, 2d Revised Sheet No. 448 (“This rider is available to Retail Electric Suppliers (RESs) . . . and (b) providing electric power and energy supply service to residential retail customers with either (i) time of use (TOU) pricing or (ii) demand response (DR) products”).) Rate RMUD also requires the ARES to warrant that each customer has provided affirmative consent to access to interval data. (See IL C.C. No. 10, 2d Revised Sheet No. 449.)

In an ideal world, ICEA would prefer to see ComEd ordered to modify Rate RMUD to apply to all of an ARES’s current customers—i.e. the customers for whom the ARES receives data for billing purposes. This is because ICEA strongly believes greater access to interval data would remove one of the primary barriers to new ARES time-variant products. However, the Commission may conclude that a formal investigation would be required to revisit Rate RMUD and the Commission’s previous data access orders. By initiating an investigation with the goal of better access to interval data by ARES within the existing regulatory and data privacy scheme, the Commission would be following the course of action plotted across the dockets cited above.

ICEA recommends that the Commission direct in its Final Order that a new investigation be opened within 30 days of the Final Order to address ICEA’s interval data proposal. Quickly opening a new docket and directing a schedule that would allow a full but time-limited investigation would ensure that such barriers were addressed in a timely fashion. This step—ordering a new investigation and rejecting Rate RTOUPP—will address the more important and fundamental issue of eliminating barriers to competitive retail market TOU products and services.

C. The Lack Of ARES Time Variant Products And Services Is A Testament To Existing Barriers—Not The Need For RTOUPP Or Lack Of ARES Interest

ICEA notes that ComEd witness Mr. Fruehe testified that the lack of ARES time-variant products is a justification for Rate RTOUPP, while CUB/EDF witness Mr. Barbeau speculates that ARES have no interest in time-variant rates. Both of these conclusions are incorrect. With regard to Mr. Fruehe’s testimony regarding the lack of customers on ARES-offered time variant products, Mr. Gafford testified that: “If accurate, the low enrollment on Rider RMUD and the paucity of ARES TOU products provides strong evidence that there are significant barriers to ARES offering TOU products.” (ICEA Ex. 1.0 at 4:67-69.)

As for CUB/EDF witness Mr. Barbeau’s contention that “[i]t seems to me unlikely that ARES are interested in offering a TOU,” experience in other states and within Illinois demonstrates the flaws in Mr. Barbeau’s logic. Mr. Barbeau does not—because he cannot—testify that ARES are not interested in offering time-variant products in other states. Mr. Barbeau appears to confuse the existence of barriers with a lack of interest (not dissimilar to reports in verified comments in ICC Docket No. 17-0123 of few or no non-RES third parties having registered with the utility Green Button Connect). ICEA recommends that Mr. Barbeau refer to Mr. Gafford’s direct testimony in ICC Docket No. 18-1772—in which CUB/EDF is an intervenor—which detailed penetration of REP (the Texas equivalent of ARES) time-of-use products in Texas. But moreover,

to the extent that CUB/EDF witness Mr. Barbeau believes that data access is not a barrier, it is unclear why CUB/EDF is currently pursuing ICC Docket No. 17-0123 when utilities have offered Green Button Connect for non-ARES since 2016.

V.

CONCLUSION

On one hand, ComEd has presented a completely voluntary TOU rate that ComEd cannot justify sufficiently for Commission approval and that has anti-competitive impacts on the competitive retail market. ComEd cannot even demonstrate that there is any customer demand, nor has ComEd made even minimal effort to justify its waiver of IDC rules by providing actual draft marketing materials. Moreover, ComEd is asking the Commission for approval to shift costs to Rate BESH customers in the event that Rate RTOUPP fails to attract and keep a sufficient number of customers.

On the other hand, ICEA has provided a concrete and limited proposal to remove the biggest barrier (as identified by ICEA) to the competitive retail market offering time-variant pricing. Instead of a single utility rate that is expected to vary unpredictably every month, ICEA believes its solution will lead to substantial development of ARES-offered time variant products and services, allowing a far broader range of choices for consumers. ICEA's limited, but practical, proposal is for the Commission to order ComEd to use AMI interval data to provide billing and settlement services to ARES customers as a result of a Commission investigation proceeding. The Commission can direct a new docket with a time-limited schedule be opened for full but timely consideration of the relevant issues.

Given these two choices, the Commission should reject ComEd's proposed Rate RTOUPP and instead adopt ICEA's proposal to open a new docket to investigate modifications to ComEd's standard billing and settlement data.

WHEREFORE ICEA respectfully requests that the Commission reject Rate RTOUPP and in its Final Order and instead order a new, time-limited proceeding to investigate changes to ComEd's standard billing and settlement data to require use of AMI interval data.

July 10, 2019

Illinois Competitive Energy Association

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One of its Attorneys

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STATE OF ILLINOIS)
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VERIFICATION

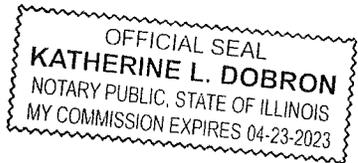
Kevin Wright, being first duly sworn, on oath deposes that he is President of the Illinois Competitive Energy Association, that the above Verified Initial Brief on behalf of the Illinois Competitive Energy Association was prepared by him or under his direction, he knows the contents thereof, and that the same is true and correct to the best of his knowledge, information, and belief.

Kevin K. Wright

Kevin K. Wright

Subscribed and sworn to me
This 10th day of July, 2019

Katherine L. Dobron



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company)	
)	Docket No. 18-1725
Verified Petition for Approval of a Revision to)	
Integrated Distribution Company Implementation)	
Plan)	
)	
Commonwealth Edison Company)	
)	Docket No. 18-1824 (cons.)
Creation of Rate Residential Time of Use)	
Pricing Pilot ("Rate RTOUPP"))	

NOTICE OF FILING

Please take notice that on July 10, 2019, the undersigned, an attorney, caused the Verified Initial Brief on Behalf of the Illinois Competitive Energy Association to be filed via eDocket with the Chief Clerk of the Illinois Commerce Commission in the above-captioned proceeding:

July 10, 2019

/s/ Michael R. Strong
Michael R. Strong

CERTIFICATE OF SERVICE

I, Michael R. Strong, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 55 W. Monroe Street, Suite 2300, Chicago, IL 60603 on July 10, 2019.

/s/ Michael R. Strong
Michael R. Strong