
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company :

Petition for approval of delivery services tariffs : **Docket No. 01-0423**
and tariff revisions and of residential delivery :
services implementation plan and for approval :
of certain other amendments and additions to :
its rates, terms and conditions :

**BRIEF ON EXCEPTIONS OF
THE NATIONAL ENERGY MARKETERS ASSOCIATION**

February 25, 2002

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This Brief on Exceptions is submitted by The National Energy Marketers Association (“NEM”) on the Administrative Law Judges' Proposed Order (PO) in the above-referenced proceeding.

1. Electronic Signatures

NEM, Staff and other interested parties strongly supported customer enrollments by means of electronic signatures. NEM argued that the use of electronic signatures for customer enrollments is fully consistent with the federal Electronic Signatures in Global and National Commerce Act,¹ Illinois Electronic Commerce and Security Act² as well as the Consumer Fraud and Deceptive Business Practices Act.³ The federal and Illinois electronic signature laws both provide that electronic records and signatures satisfy rules of law requiring information to be "written" or "in writing." Additionally, the

¹ 15 U.S.C. § 7001.
² 5 ILCS 175/5-115.
³ 815 ILCS 505/2EE.

requirement set forth in the Consumer Fraud and Deceptive Business Practices Act⁴ that a written authorization be utilized for a customer change to change its electric service provider, is clearly within the ambit of the Illinois and federal electronic signature laws. Finally, NEM's recommendation is also consistent with the Commission's Order in the Nicor case.⁵

The PO recommends that the issue of electronic signatures should be addressed in a workshop setting but does not expressly recognize that electronic signatures are a valid means for enrolling customers consistent with federal and state statutes and Commission precedent. While recognizing that the examination of electronic signatures in a workshop setting is an important step in the right direction, NEM fears that the time and effort to be devoted to the workshop could be for naught. ComEd has repeatedly argued that it cannot allow enrollments via electronic signatures because it believes such enrollments are not legally permissible. If the PO does not expressly recognize that enrollment via electronic signatures is permissible pursuant to federal and state laws and Commission precedent, then at the conclusion of the workshop ComEd will still be able to argue that it cannot legally accommodate such enrollments.

NEM also believes that a timeframe should be explicitly established for the workshop process to begin and conclude and for the electronic signature capability to be available to ARES. NEM recommends that the workshop should commence within 30 days after the Final Order is issued and that the workshop process should conclude within 90 days after the Final Order is issued. Furthermore, NEM recommends that the electronic

⁴ 815 ILCS 505/2EE.

⁵ Case 00-0620/00-0621, Order, issued July 5, 2001, at 72.

signature enhancement be operational for ARES within 120 days after the Final Order is issued.

For these reasons, NEM recommends that the language set forth in Section III.B.1 should be revised as follows:

The Commission notes that several parties have raised the issue of whether ComEd should permit electronic signatures (as compared to “wet” signatures) to be valid for customers “signing” an LOA. We also have considered the Company’s response to this proposal. ~~Based on those differing opinions,~~ We agree with MidAmerican’s suggestion, that this issue might better be resolved in a workshop process and that such a process be initiated for interested parties. While ComEd has some concerns about the use of electronic signatures (including their legality given the current wording of various applicable statutes), it ~~is~~ does not appear to be opposed to them in the abstract. **Furthermore, we find that the use of electronic signatures is fully consistent with the federal Electronic Signatures in Global and National Commerce Act, the Illinois Electronic Commerce and Security Act, and the Illinois Consumer Fraud and Deceptive Business Practices Act.** We are confident that the Company would be willing to work with Staff and the other parties in workshops to resolve various issues surrounding their use. This would permit the parties a chance to resolve this matter informally. Thus, we direct the parties to begin the workshop process with the understanding that they should arrive at a process to implement electronic signatures. **The workshop process shall commence within 30 days of the issuance of this Order and shall conclude within 90 days of the issuance of this Order. The electronic signature enhancement shall be operational for ARES within 120 days after the issuance of this Order.**

2. 24-Month Minimum Stay Requirement

NEM, Staff and Nicor Energy urged that the 24-month minimum stay requirement for customers that return to bundled service is unnecessarily restrictive and harmful to the nascent competitive market. NEM asserts that the 24-month minimum stay imposes an unnecessary restriction on consumers' ability to exercise choice. Staff points out that although ComEd is permitted to require the 24-month stay by statute, it is not required to do so. The PO should be revised to recognize the onerous nature of minimum stay requirements and encourage ComEd to eliminate or reduce the period, in order to foster

development of the competitive market. For these reasons, NEM recommends that Section II.G.6 of the PO be revised as follows,

Section 16-103(d) of the Act, provides that, for residential and small commercial customers, utilities “shall be entitled to impose the condition that such customers may not elect delivery services for up to 24 months thereafter.” **While recognizing** ~~We agree that a 24-month minimum duration of service for return to bundled service is consistent with the Act and may be imposed by the Company,~~ **the Commission urges ComEd to eliminate or reduce the minimum stay requirement consistent with** ~~The Commission declines Nicor’s, and Staff’s~~ **and NEM’s suggestions in order to foster the development of the competitive market.** ~~to reduce this period because a reduction is neither required by the Act nor permitted to be imposed without ComEd’s consent. We also reject as unnecessary Staff’s proposed amendment to ComEd’s tariff language.~~

3. Conclusion

WHEREFORE, NEM respectfully requests that the PO be revised as set forth herein.

Respectfully submitted,

**THE NATIONAL ENERGY
MARKETERS ASSOCIATION**

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