STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
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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	**:**	

INITIAL BRIEF OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

December 10, 2001

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Petition for approval of delivery services tariffs 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	: : : : :	**Docket No. 01-0423**

INITIAL BRIEF OF
THE NATIONAL ENERGY MARKETERS ASSOCIATION

This Brief is submitted by The National Energy Marketers Association ("NEM") in the above-referenced proceeding. The National Energy Marketers Association (NEM) is a national, non-profit trade association representing both wholesale and retail marketers of energy and energy-related products, services, information and technologies throughout the United States. NEM's membership includes: small regional marketers, large traditional international wholesale and retail energy suppliers (as well as wind and solar power), billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, information technology providers as well as suppliers of advanced metering and distributed generation technologies. Our membership has both affiliated and unaffiliated companies.

This regionally diverse, broad-based coalition of energy and technology firms have come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM is committed to working with representatives of state and federal governments, large and small consumer groups and utilities to devise fair and effective ways to implement restructuring of electricity markets.

NEM urges the following modifications with respect to Commonwealth Edison's (ComEd's) proposed delivery services tariff and implementation plan:

I. LEGAL ISSUES AND STANDARDS FOR DECISION

A. SUBSTANTIVE STANDARDS AND POLICIES GOVERNING REQUESTED RATES

This proceeding entails the review of ComEd's proposed implementation plan and tariffs for the provision of delivery services to residential customers as well as modifications to the existing tariffs for the provision of delivery services to nonresidential customers. Section 16-105 of the Electric Service Customer Choice and Rate Relief Law of 1997 requires that, "each electric utility shall submit to the Commission no later than March 1, 1999, a delivery services implementation plan for non-residential customers and no later than August 1, 2001, a delivery services implementation plan for residential customers."[1]

Section 16-108(a) of the Act requires that,

> [a]n electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. In making any such determination the Commission

[1] 220 ILCS 5/16-105. NEM notes that ComEd's provision of delivery services to nonresidential customers was previously examined in Case 99-0117.

> shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois.[2]

Section 16-108(d) provides that, "[t]he Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and shall take into account customer impacts when establishing such charges."[3]

Pursuant to the above-referenced statutes, this Commission previously reviewed implementation of delivery service tariffs for non-residential customers in ComEd's service territory.[4] The Commission approved the use of an embedded cost methodology for development of delivery service rates.[5] Accordingly, this entailed a determination that delivery service rates based on ComEd's embedded costs are just and reasonable. For the reasons set forth herein, NEM urges the Commission to reaffirm these findings as applicable to ComEd's proposed implementation plan and tariffs in the instant case.

C. OTHER POLICY ISSUES

2. Impact on Customers

NEM is particularly concerned about the impact of ComEd's filing on the development of a competitive retail market in Illinois. ComEd proposes to base delivery service rates, single bill option credits, and meter service provider credits on a marginal cost-based methodology despite recent Commission precedent to the contrary. As discussed more fully herein, if the proposal is implemented customers will not see and know the current

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[2] 220 ILCS 5/16-108(a).
[3] 220 ILCS 5/16-108(d).
[4] Case No. 99-0117, Commonwealth Edison Company - Petition for Approval of Delivery Services Tariffs and Delivery Services Implementation Plan and for Approval of Certain Other Amendments and Additions to its Rates, Terms and Conditions, Order issued August 26, 1999.
[5] Id. at page 57.

fully embedded cost-based prices they are paying for competitive products, services, information and technology that are hidden in their bundled service rates. Consequently, they will be unable to comparison shop for these same services that are available at competitive prices from competitive suppliers. Adoption of the proposal will unfairly harm current market participants that formed business plans and made investments in reliance on Commission precedent and will undermine the entry of competitive market participants. As a result, the promised results of competition - lower prices and new and innovative product and service offerings - will not be fully realized by consumers.

II. REVENUE REQUIREMENT ISSUES

F. COST OF SERVICE AND RATE DESIGN

1. Cost of Service Study Issues

a. Marginal Cost Study/b. Embedded Cost Study

ComEd has filed proposed delivery service tariffs with rates based on a marginal cost methodology. In the direct testimony of Mr. Alongi and Ms. Kelly (ComEd Ex 13.0, lines 560-562) they state that the, "results of the marginal cost of delivery services study were appropriately used to assign the Company's revenue requirements to customer classes and design the components of the delivery services tariff." NEM disagrees with this statement and argues that said filing is in contravention of Commission precedent established in the recent examination of ComEd's delivery service rates for nonresidential customers. The Commission found in that proceeding that,

> In theory, marginal cost pricing promotes efficient competition because it sends efficient “price signals” to potential competitors. Edison repeatedly argues this point. The problem with this theory, however, is that in a regulated environment that is in transition, it also unduly protects an incumbent from competition. These “accurate price signals” that marginal cost pricing sends to competitors also promote

> inefficiencies in the incumbent utility. The Commission is of the opinion that while an efficient price signal to a potential competitor is a good thing, there must also be a symmetric price signal to the incumbent. This price signal to the utility is an incentive to provide good service and keep its customers. ***Embedded costs provide the best measure of a utility's ability to compete with alternate providers***. The Commission refuses to accept the argument that price signals travel in only one direction.[6] (emphasis added).

Consumers should be provided with transparent and accurate pricing signals for the full panoply of products, services, information and technologies they are currently purchasing from the utility. Embedded costs are precisely the price that customers currently pay but do not see. Conversely, the use of marginal costs to develop rates will understate and distort the prices customers actually pay, hinder the development of the competitive market and both increase the costs and timing of a transition to a fully competitive market for competitive services.

NEM asserts that proper price to beat for competitive services is the utilities' embedded costs because the rates which customers currently and historically have been charged are based on embedded costs. Utility revenue requirements are currently established based on fully allocated embedded costs that have been determined by the Commission to be just and reasonable. Accordingly, institution of rates based on marginal costs will significantly understate the true prices that consumers actually pay for competitive services provided by utilities and therefore by definition be less than just and less than reasonable thereby undermining the goal of encouraging meaningful price competition for competitive services.

NEM believes that instituting rates based on any measure other than ComEd's fully embedded costs will cause ComEd to incur much higher stranded costs. If ComEd's rates

[6] Case 99-0117 at 57.

reflect and ComEd service territory customers pay less than fully embedded costs for competitive services, customers will be paying an artificially low, subsidized rate for services that are available from competitive sources. Additionally, if ComEd's unbundled rates reflect and ComEd service territory customers pay less than fully embedded costs, customers end up paying twice for these services. In conjunction, these two effects will slow customer migration and ComEd will continue to incur costs for competitive services that may ultimately become stranded. In contrast, utility rates based on fully embedded costs will allow ComEd to both quantify, and if properly mitigated, recover stranded costs within a reasonable time frame. It will also provide customers and competitors with true, accurate price signals that will permit meaningful price competition in the shortest possible time.

Furthermore, ComEd Witness Gordon asserts that, "[o]f course, utilities must also be able to recover their embedded costs, which means that prices are *based on* marginal costs but are not *set at* marginal cost." (emphasis in original) (ComEd Ex. 2.0 at lines 332-333). NEM maintains that an efficient "market price" is one at which marginal revenues equal marginal costs. As long as ComEd collects marginal revenues based on embedded costs (that are presumably just and reasonable) than the most economically efficient, just and reasonable rate to pay a departing customer is embedded costs. The Commission's prior Orders properly implement the most efficient pricing signals because the marginal revenues to the utility of the embedded costs of the competitive portion of bundled rates will equal the marginal cost to the utility of embedded cost-based unbundled rates or shopping credits for the same competitive services. This will be true until ComEd no longer offers such services, and competition to provide these services at or below current utility prices permits a truly competitive price for these services to equalize at the point where marginal revenues paid for these services in fact equal the marginal costs to produce them by competitive non-regulated, non-subsidized vendors.

G. RATE DESIGN

1. RCDS Rate Design

a. Demand Ratchet

ii. Special Ratchet for Standby Customers

ComEd proposes to implement a special demand ratchet for standby customers. According to the testimony of ComEd witnesses Clair and Crumrine, "a standby customer on Rate RCDS will be subject to an alternative demand charge based on a ratcheted demand and pay a relatively fixed amount each month." (ComEd Ex. 31.0, lines 433-435). However, as explained in NEM's "***National Guidelines for Implementing Distributed Generation and Related Services***," standby rates should be implemented that only require investors with distributed generation resources to pay for the actual energy used and only when it is used. Investors in distributed generation who rely on on-site power may only require power from a utility for emergency uses or scheduled maintenance. Investors should not be required to pay standby rates that include uneconomically high demand charges. Moreover, NEM urges that utility tariffs, demand charges, back-up rates as well as interconnection policies and practices should reflect the value of distributed generation to the reliability of the distribution system and incent utilities to consider distributed generation as an alternative to system expansion. Distributed generation can enhance the reliability of service, reduce distribution system losses, defer distribution upgrades, provide voltage support and enhance power quality. Rate designs such as ComEd's proposed standby rate demand ratchet favor large, central power plants and penalize investments in smaller, distributed generation resources that should be an important part of this country's future energy supply. For this reason, NEM urges that the proposal should be rejected.

6. SBO Credit /7.Metering Service Charge Credit

ComEd argues that the single billing option credit and metering service charge credit should be based on marginal costs. ComEd witness Gordon argues that, "[i]f a customer departs the incumbent utility and takes service from a competitive supplier of metering or billing services, the customer should receive a credit that reflects the net costs that the utility avoids when customers switch to a competitive provider." (ComEd Ex. 2.0, lines 492-494). NEM strongly disagrees. Pursuant to this proposal, the single billing option credit will be reduced from $0.55 to $0.03.[7] The meter service provider credit will be reduced even more drastically.[8] However, the Commission has previously examined this issue, and as noted by ComEd witnesses Clair and Crumrine in rebuttal panel testimony (ComEd Ex. 31.0, lines 54-58), the Commission determined that embedded costs should form the basis of these credits. The Commission stated:

> The Commission is of the opinion that use of marginal cost methodology over the long run will inflict the same burdens on the RES that Edison complains it would suffer if an embedded methodology is used. This tariff will be in effect over the long-term and, therefore, the credit must be calculated using long-term embedded costs. Use of embedded costs will ensure that customers pay only for costs that they incur. The Commission also supports Staff's recommendation that the SBO credit should be given to the Delivery Services customer and not the RES. While these costs are fixed in the

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[7] ComEd Ex. 13.0, Attachment C.

[8] ComEd proposes a reduction of the meter service provider credit as follows: customers 0-25 kw reduced from $3.00 to $0.78; customers 26-100kw reduced from $4.25 to $0.78; customers 101-400kw reduced from $6.54 to $0.78; customers 401-800kw reduced from 25.34 to $0.98; customers 801-1,000kw reduced from $29.14 to $0.98; customers 1,001-3,000kw reduced from $57.32 to $0.98; customers 3,001-6,000kw reduced from $118.83 to $0.98; customers 6,001-10,000 reduced from $172.56 to $0.98; and customers over 10,000kw reduced from $205.29 to $1.97. ComEd Ex. 13.0, Attachment P.

> short run, and the Company can do nothing to avoid them, the company can put some of the elements that make up these costs to better use. It is unfair to give the RES a credit for only the incremental short-run savings while ComEd has the opportunity to reallocate those resources to a different use in the short-run and eliminate them in the long-run. The Commission is not persuaded that the only costs the Company will avoid are those associated with the short-term handling costs.[9]

NEM agrees with the Commission and urges that consumers should be given shopping credits on their utility bills equal to ComEd's fully embedded costs of metering and information-related services, billing and customer care services and related technologies and should be permitted to use the credits to shop for a full panoply of energy services, products and technologies. Provision of shopping credits on an embedded cost basis will encourage significant new private investments in such products, services, information and technologies and drive prices down through bona-fide price competition for these services.

Furthermore, market participants have relied on Commission precedent endorsing an embedded cost-based methodology for the single bill option and meter service provider credit to make investments to serve this market and develop business plans and market offerings. It would be inherently unfair and extremely anti-competitive for ComEd to be able to use their historical monopoly franchise protection to undermine competition by computing the credits provided to customers who wish to shop for competitive services based solely on avoided marginal costs (particularly when captive customers pay the fully embedded costs).

11. Other Topics

An important corollary to the proper development of delivery service rates, single bill option credits, and meter service provider credits based on embedded costs, is the

[9] Case No. 99-0117, Order issued August 22, 1999, at page 122.

implementation of fully unbundled rates. ComEd disputes the necessity of unbundling rates during the transition and claims that use of a "price to compare" message is sufficient for consumers to evaluate their options. (ComEd Ex. Ex. 31.0, lines 802-827). NEM disagrees with this conclusion. In fact, NEM believes that in order for consumers to see and respond to accurate price signals, they must be provided with bills that separately identify the fully embedded costs that they are currently paying the utility for competitive products, services, information and technologies bundled in their utility bills. Consumers should be provided with shopping credits based on ComEd's embedded costs so they can comparison shop competitive products, services, information and technology from competitive suppliers. The shopping credits should reflect the full energy supply and commercial costs of serving retail load.[10]

III. TERMS AND CONDITIONS ISSUES

B. ENROLLMENT ISSUES

NEM urges the expansion of approved methods for customer enrollment with competitive suppliers. ComEd's proposed tariffs require "wet signatures" and letters of agency for customer enrollment. NEM argues that customers should also be able to enroll telephonically and through the Internet.

[10] The energy supply costs associated with serving retail Commonwealth Edison customers include: the wholesale price of energy for delivery into Commonwealth Edison's service territory, installed capacity (on kWh basis), transmission and ancillary services, retail load shape factor costs, risk management, scheduling and control area costs, and pool operating costs plus transmission and distribution system line losses. The additional commercial costs associated with serving retail Commonwealth Edison customers include: the costs of load forecasting, the costs of negotiating and managing contracts, the costs associated with regulatory compliance and litigation, taxes, administrative and general costs, customer service, billing, metering, bad debt, collections, environmental disclosure, marketing, and an appropriate return on equity and debt.

NEM asserts that federal and state law permit customer enrollment through means other than "wet signatures." The Illinois Electronic Commerce and Security Act[11] as well as the federal Electronic Signatures in Global and National Commerce Act,[12] both provide that electronic records and signatures satisfy rules of law requiring information to be "written" or "in writing." Furthermore, the requirement set forth in the Consumer Fraud and Deceptive Business Practices Act[13] that a written authorization be utilized for a customer change in electric service provider, is clearly within the ambit of the Illinois and federal electronic signature laws. NEM's recommendation is also consistent with the Commission's Order in the recent Nicor case[14] as well as Chapter IV of the "***Uniform Business Practices for Retail Energy Markets,"***[15] which specifically provides for customer enrollment in writing, by telephone and by Internet.

NEM asserts that the Internet will likely become a significant, perhaps dominant vehicle to aggregate the supply and demand for energy as well as to facilitate the delivery of energy-related products, services and information. The Internet can lower operating costs, facilitate a wide array of value-added products and services, lower barriers to entry and provide an ideal platform for true price competition. By comparison, requiring wet signatures for customer enrollment increases costs for suppliers to acquire customers, resulting in higher costs to consumers and a reduction in competitive options. For these

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[11] 5 ILCS 175/5-115.
[12] 15 U.S.C. § 7001.
[13] 815 ILCS 505/2EE.
[14] Case 00-0620/00-0621, Order, issued July 5, 2001, at 72.
[15] Uniform Business Practices for the Retail Energy Market, November 2000; for information visit www.ubpnet.org sponsored by the Edison Electric Institute ("EEI"), the National Energy Marketers Association ("NEM"), the Coalition for Uniform Business Rules ("CUBR"), and the Electric Power Supply Association ("EPSA")..

reasons, NEM recommends that customer enrollment be allowed through other means such as the Internet and the telephone.

V. CONCLUSION

For the reasons set forth herein, the National Association of Energy Marketers respectfully requests the Commission enter an Order in this docket consistent with the following:

1. Adopt NEM's proposed changes to the delivery services tariffs set forth herein.
2. Enter an Order in conformance with the arguments presented.

Respectfully submitted,

THE NATIONAL ENERGY MARKETERS ASSOCIATION

By______________________________

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