

high demand, peak periods to lower demand, off peak periods. The Citizens Utility Board (“CUB”) and the Environmental Defense Fund (“EDF”) filed a petition requesting the Commission investigate whether electric utilities participating in the Energy Infrastructure Modernization Act (“EIMA”) should offer a Time of Use (“TOU”) rate to their customers. (ICC Docket No. 15-0100). In that docket, the Commission’s Order encouraged continued discussion regarding TOU rates. More recently, ComEd has been working with CUB and EDF to develop such a tariff.

3. As a result of these discussions, on November 19, 2018, ComEd filed Rate RTOUPP – Residential Time of Use Pricing Pilot (“TOU Pilot”). The TOU Pilot provides for a three-part supply rate with price differentiation between super peak, peak and off peak hours. The purpose of the TOU Pilot is to encourage customers to shift load from high demand hours when energy prices may be higher and capacity peak load contributions (“PLCs”) are determined to low demand hours in order to research and learn how this could potentially lower supply costs and reduce system demand (i.e. PLCs) for the residential participants and the residential delivery class.

4. The TOU Pilot is also intended to encourage electric vehicle (“EV”) charging during the off peak periods in order to lower supply costs and reduce system demand. In addition to lowering the cost of EV ownership, this may also allow certain utility infrastructure investments related to EV growth to be avoided or delayed. It will also increase EV owners’ satisfaction by offering an additional pricing product in which the customer has the opportunity to lower his or her operating costs if charging is done during periods when energy pricing is the lowest.

5. In addition to consumer and public interest groups, the Illinois General Assembly has also recognized the importance of rates such as TOU that encourage customers to shift their usage. Illinois state law requires ComEd to offer both real-time pricing (220 ILCS 5/16-107) and peak-time rebate (220 ILCS 5/16-108.6(g)) programs to all residential customers.

6. While ComEd has had a real-time pricing program (“RRTP”) with hourly pricing in operation for over ten years, some customers who would otherwise benefit from the program indicate that the lack of price certainty is a barrier to enrollment. The residential TOU Pilot will provide the opportunity to understand if a more price certain supply rate based upon the difference in real-time market-based rates is appealing to residential customers. ComEd’s proposed TOU Pilot provides an easy to understand supply option with similar benefits to the residential real-time pricing program, for customers and creates a middle ground between fixed and real-time pricing.

7. ComEd intends to operate the TOU Pilot program for an initial 4-year period. This will allow for sufficient summer periods to study response and to allow time for customer enrollment to grow. During that period, ComEd intends to study customer behavior on peak days by analyzing their usage profiles and providing questionnaires to customers so that ComEd may identify how the customer responds to, and feels about, the TOU pricing. This pilot will provide significant learnings regarding TOU rate structure that may incent customers to shift their usage away from peak demand periods. ComEd intends to report out on those learnings and share the results with the Commission, stakeholders and market participants. At the conclusion of the pilot, ComEd will continue discussions with stakeholders and the Commission to determine the future of a ComEd TOU supply rate.

8. The success of the TOU Pilot in developing the important learnings that it seeks to obtain is dependent on being able to enroll customers in the program. This will require an information campaign to provide customers with materials about the existence of the program, how the tariff works, how customers can benefit from enrolling, and how the tariff might impact each individual customer.

9. However, ComEd's ability to effectively engage in the type of information campaign that is needed to make the TOU Pilot successful is impacted by the IDC rules. The IDC Rules prohibit IDCs, such as ComEd, from promoting, advertising and marketing any Retail Electric Supply Service, which is defined simply as "the retail sale of electricity, whether bundled or unbundled." (Section 452.200). However, the IDC Rules do permit ComEd to promote permissible IDC services¹ ("Permissible IDC Services") and to engage in legitimate customer education efforts.

10. Therefore, ComEd is proposing to revise its IDC Implementation Plan (as is permitted by Section 452.220(f) of the IDC Rules) for a limited-time to make clear that one of the practices that ComEd will be allowed to engage in are the promotion, advertising and marketing of the TOU Pilot program. The IDC Rules empower the Commission to approve revisions to an IDC Implementation Plan that are consistent with the IDC Rules. As demonstrated below, the TOU Pilot should be considered and treated as a Permissible IDC Service. As such, approving this request is consistent with the IDC Rules.

11. The IDC Rules permit the marketing of Permissible IDC Services (Section 452.200 and Section 452.240), which include load curtailment and interruption programs. The TOU Pilot contains many of the same elements and value-drivers as a load

¹ Permissible IDC services is defined simply as services permitted by the rules (83 Ill. Admin. Code 452.200).

curtailment and interruption program. Fundamentally, both are demand-response programs in which customers may curtail or delay their energy usage in response to economic incentives or price signals. A portion of the value and purpose of TOU rates and curtailment and interruption programs is to reduce peak demand. Thus, the TOU Pilot is conceptually very similar to ComEd's load curtailment and interruption tariffs and should be considered to be a Permissible IDC Service.

12. Similarly, the IDC Rules permit “legitimate consumer education efforts.” (Section 452.240(b)(4)). Consumer education is a key element and value-driver of the TOU Pilot. As described above, an information campaign will be needed to bring awareness of this new program to the attention of customers and allow them to make a decision to enroll. In addition, a major focus of the TOU Pilot program is to educate the customer as to the customer's unique consumption patterns, the usage characteristics of various appliances, the cost of power and energy, and the interplay of supply and demand in the energy markets. As such, the TOU Pilot can assist in laying the foundation for a market in which well-informed customers can learn to more effectively exercise choice and to exert control over their energy consumption. With the deployment of AMI meters, ComEd is now in a position to leverage this technology, providing customers with a greater amount of information regarding how they can better manage their energy costs.

13. Concerns such as these have previously led the Commission to grant waivers from the IDC Rules. In ICC Docket Nos. 08-0411 and 11-0546, ComEd sought a waiver from the IDC rules so that it could market, promote and advertise the RRTP. In both instances, the Commission approved the waiver as reasonable and appropriate

(see, *Commonwealth Edison Co.*, Order (Oct. 8, 2008) and *Illinois Commerce Commission v. Commonwealth Edison Co.*, Order (May 29, 2012).

Similar to requests for waivers in connection to RRTP, in ICC Docket No. 09-0263, ComEd sought a waiver so as to market some novel rate options as a part of its AMI Pilot program. All parties recognized the need for ComEd to be able to market those programs in order for them to enroll customers for a successful pilot. The Commission approved the waiver in its Order of October 14, 2009. *Commonwealth Edison Co.*, ICC Docket No. 09-0263, Order (Oct. 14, 2009) at 44-46. Subsequently, the General Assembly similarly recognized the importance of these types of programs and also authorized ComEd to market the RRTP program (220 ILCS 5/16-119(e)).

14. A similar waiver is needed here in order for the TOU Pilot to successfully market to and enroll customers. ComEd is in a unique position to organize and implement the information and marketing campaign that is needed to get customers to enroll in the program to gain the learning it enables

15. RESs will not be adversely affected by granting this Petition. In fact, the underlying premise of the TOU Pilot program is that it has the potential to provide benefits to retail energy suppliers as well as ComEd. The learnings that this program will generate will help to better understand customers' appetite for a fixed price TOU rate structure. In addition, the findings on the benefits it has to EV owners will also be available to RESs, who may use these learnings in developing their own marketing and own TOU programs. As ComEd currently does with RRTP, ComEd commits that it will make no effort to prevent customers from signing up with or switching to RES service. ComEd also recognizes that this waiver will be limited solely to the marketing of the TOU Pilot program which will primarily target direct marketing materials

to Rate BES – Basic Electric Service customers on ComEd’s fixed price supply rate for the duration of the TOU Pilot.

16. Thus, the Commission should approve ComEd's modification to its Implementation Plan and grant the waiver because the marketing and promotion of the TOU Pilot program is consistent with the IDC Rules and promotes the public interest. To the extent that the TOU Pilot program is extended or becomes permanent, ComEd will, at that time, pursue a continued waiver. To the extent there is any uncertainty as to whether the TOU Pilot program is entirely consistent with the IDC Rules, the Commission has ample authority to grant a waiver from those rules and has previously done so in both the RRTP and AMI Pilot matters. In addition, Section 10-113 of the PUA (220 ILCS 5/10-113) provides that "the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any rule, regulation, order or decision made by it." The Commission has stated that it also has power under Section 10-101 of the PUA (220 ILCS 5110-101) to grant waivers (*see, United American Technology, Inc.*, ICC Docket No. 04-0383, Order (July 21, 2004) at 3. The Commission has exercised its authority under the PUA and has granted waivers even from rules that did not explicitly provide for the granting of waivers (*see, MidAmerican Energy Co.*, ICC Docket No. 02-0600, Order (Jan. 14, 2003); *Iowa-Illinois Gas and Electric Co.*, ICC Docket No. 92-0083, Order (May 13, 1992); *Interstate Power & Light Co.*, ICC Docket No. 02-0467, Order (Dec. 17, 2003); *Illinois Commerce Commission*, ICC Docket No. 92-0335, Order (Sept. 25, 1996).

WHEREFORE, ComEd respectfully requests that the Commission enter an Order approving the revision to ComEd's IDC Implementation Plan as set forth in Attachment A to this Petition.

Dated: November 19, 2018

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: /s/ Michael R. Lee

Verónica Gómez
Senior Vice President & General Counsel
Commonwealth Edison Company
440 South LaSalle Street, Suite 3300
Chicago, Illinois 60605
(312) 394-4997
veronica.gomez@exeloncorp.com

Michael R. Lee
Assistant General Counsel
Exelon Business Services Company
10 South Dearborn Street, Suite 4900
Chicago, Illinois 60603
(312) 394-5831
michael.lee2@exeloncorp.com

Pedro Cervantes
Homer Tristan
Tristan & Cervantes
30 W. Monroe St., Suite 630
Chicago, IL 60603
(312) 345-9200
pcervantes@tristancervantes.com
htristan@tristancervantes.com

Counsel for Commonwealth Edison Company

Attachment A

REVISION NO. 1 TO THE IMPLEMENTATION PLAN OF COMMONWEALTH EDISON COMPANY

Section B of the Implementation Plan of Commonwealth Company, dated May 23, 2002, is revised to read in its entirety as follows:

B. Section 452.240 Advertising, Marketing, and Customer Retention Efforts

Section 452.240 of the IDC rules concerns advertising, marketing, and customer retention efforts by an IDC. Section 452.240(a) provides that “An Independent Distribution Company shall not promote, advertise or market with regard to the offering or provision of any retail electric supply service.” Section 452.240(e) provides that “No IDC employee or agent shall affirmatively act to retain or obtain a customer for any retail electric supply service offered or provided by the IDC.” The remaining provisions of Section 452.240 are variations on these essential requirements, as well as a listing of types of actions that will not be considered forbidden promotion, advertising, and marketing.

Taken together, the provisions of Section 452.240 establish the following rules:

- 1. Impermissible Advertising, Marketing, Promotion, and Customer Retention Efforts.**
 - a. An IDC may not promote, advertise or market the offering or provision of any retail electric supply service, including tariffed bundled service offerings.
 - b. An IDC may not proactively act to retain or obtain a customer for any of the IDC’s retail electric supply services.

- c. An IDC may not state or imply that IDC customers receive better quality delivery of retail electricity than they would if they were customers of an alternative retail electric supplier.
- d. An IDC may not affirmatively prompt customer inquiries about the quality of the IDC's retail electric supply services.
- e. An IDC may not "disparage" the quality of retail electric supply services offered by ARES.

2. Permissible Advertising, Marketing, Promotion and Customer Retention.

- a. An IDC may advertise or market permitted IDC services (e.g., value-added transmission and distribution services) other than retail electric supply services.
- b. An IDC may use the ComEd corporate name and logo in connection with any permissible IDC services.
- c. An IDC may promote the public image and goodwill of the IDC, but only as a provider of transmission and distribution services.
- d. An IDC may educate consumers.
- e. An IDC may notify small commercial retail customers twice per year of their option to take energy supply under the power purchase option ("PPO"), and may engage in any other communications with customers required by law, the Illinois Administrative Code, or ICC rules and regulations.

Some of these rules are clear on their face and self-executing. An example is the rule (Section 452.240(b)) permitting an IDC to use the electric utility company corporate name and logo in connection with the offering of permissible IDC services. Other rules need to be "unpacked" so that employees will be able properly to follow them. Examples would be that an IDC may not affirmatively act to retain or obtain a customer for any of the IDC's retail electric supply services (Section 452.240(e)), on the one hand, but may legitimately act to educate customers (Section 452.240(b)), on the

other hand. Thus, in preparing to implement the IDC option, ComEd has developed guidelines for its employees concerning how to interpret these rules (See Appendix A).

First, as to those persons who might be involved with the development of advertising copy, marketing plans or promotional material, the guidelines specify that no such copy, plans, or material may attempt, directly or indirectly, to discourage customers from switching energy suppliers. Materials may tell customers how to obtain answers to any questions they may have about ComEd energy supply offerings, but in such instances generally there should be a reminder that ComEd supports choice in energy supply.

Second, the rules specify that “[n]o Integrated Distribution Company shall disparage the quality of an alternative retail electric supplier’s services” (Section 452.240(d)), and that “[n]o Integrated Distribution Company employee or agent shall state or imply that access to or quality of service for delivery of electricity is, or will be, better if the customer retains, switches to, or otherwise obtains any retail electric supply service from the Integrated Distribution Company.” (Section 452.240(c)). ComEd decided that these rules are best served by guidelines that are clear and unambiguous. Thus, ComEd’s guidelines for personnel who might interact with customers or who develop advertising or promotional materials are that (1) no ComEd employee is to make any statements or comments about the quality of retail electric supply services offered by ARES, and (2) the only comment permitted about the quality of the delivery of retail electricity a customer will receive, whether from ComEd or any other supplier, is that the quality will be the same no matter which supplier the customer uses.

Third, another guideline specifies that an IDC may not affirmatively prompt customer inquiries about the quality of the IDC’s retail electric supply services.

The words “affirmatively prompt” are not self-defining. An affirmative prompt of a customer inquiry is a prompt which on its face (i.e., based on the words used alone) is an intentional attempt to have the customer ask a question about a service (in this case, about the quality of an IDC’s retail electric supply services) that is not permitted. It is necessary to focus on words which on their face reflect an intent to prompt a forbidden question in order to distinguish an affirmative prompt from statements by a ComEd representative that are not intended to prompt a forbidden customer inquiry, but which nonetheless have that effect. However, to ensure that there are no adverse implications for retail electric supply competition, ComEd has forbidden its employees, in responding to any customer inquiry, from in any way comparing the quality of the IDC’s retail electric supply services and those offered by others, including ComEd.

With respect to permitted advertising, marketing, or promotion efforts, the rules provide that an IDC may promote the public image and goodwill of the IDC as a provider of transmission and distribution services. (Section 452.240(b)). Also clearly permissible are advertisements which educate customers, including providing information about the restructuring and open access processes. Another type of permitted IDC service that ComEd will be allowed to market and promote is real-time pricing (“RTP”). While RTP programs have elements of a retail electric supply service, they are predominantly demand-side resources that provide value to all retail customers, regardless of their supplier. Lastly, another type of IDC service that ComEd will be allowed to engage in the promotion, advertising, and marketing of, is the time of use (“TOU”) pilot program (“TOU Pilot”). While TOU programs have elements of retail electric supply service, the

benefits are related to demand-side resources and provide learnings that will provide value to all retail customers, regardless of their supplier.

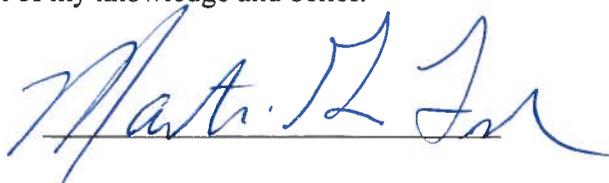
To further ensure that advertising and other customer-related material comply with these guidelines, ComEd has instituted a business/legal review procedure for all such materials prior to their use. Under these procedures, all such materials must be reviewed by the Legal Services Department and by the ComEd executives responsible for interactions with customers. The review document includes a description of the “project” involved; by whom the material was created (e.g., agency or internal); the media to be used; the target audience (e.g., ComEd Residential or ComEd Business); the lawyers and executives who are responsible for review; and the action to be taken (e.g., approved as is, approved with specified changes, not approved). A copy of this review document is attached as Appendix B.

In addition, ComEd recognizes the importance of ensuring that its call center customer service representatives not only have a mastery of the IDC rules’ guidelines on promotion and customer retention, but properly follow them in their day-to-day calls. To that end, ComEd will employ a call monitoring system, already in place for other purposes, to backstop the training in IDC rules compliance received by these employees.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

VERIFICATION

I, Martin G. Fruehe, being first duly sworn, state that I have read the foregoing Verified Petition For Approval Of Revision To Integrated Distribution Company Implementation Plan and that the facts stated therein are true and correct to the best of my knowledge and belief.



Martin G. Fruehe



Subscribed and sworn to before
me this 16th day of November, 2018.



Notary Public