STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
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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**

REBUTTAL TESTIMONY OF CRAIG G. GOODMAN OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

Q. Please state your name and business address.

A. Craig G. Goodman, National Energy Marketers Association, 3333 K Street, NW, Suite 425, Washington, DC 20007.

Q. By whom are you employed and what is your current position.

A. I am the President of the National Energy Marketers Association (NEM).

Q. Did you provide testimony in this proceeding on behalf of NEM?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to the rebuttal testimony of Commonwealth Edison Witnesses Gordon, Clair, Crumrine, Alongi, Kelly, Naumann and Hill on the subjects of marginal and embedded cost methodologies, single bill option and metering credits, unbundling and market value, distributed generation, and electronic signatures.

I. Marginal Cost and Embedded Cost Methodologies

Q. On what basis should delivery services rates be established in the instant proceeding in view of ComEd's arguments that marginal costs should be utilized?

A. The Commission previously determined that the proper basis for determining rates is embedded costs. In Commonwealth Edison's previous delivery services proceeding, the Commission reasoned 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. (Case No. 99-0117, Order issued August 26, 1999, at page 57.)(emphasis added).

NEM agrees that the embedded cost methodology should be used in order to allow consumers to receive shopping credits that reflect accurate price signals and to allow effective price competition and a competitive market to develop.

Q. Should the Commission reverse the methodology adopted for the design of single bill option and metering credits as suggested by ComEd?

A. Mr. Gordon in rebuttal testimony (ComEd Ex. 21.0, lines 165-168) asserts that the, "unbundled credits for metering and billing should be based on the appropriately-specified decremental (marginal) costs that the electric or gas utility such as ComEd, avoids as a result of no longer providing billing services directly to some subset of its customers that switch to other providers." He goes on to state that:

> …when a customer departs the incumbent utility and takes service from a competitive supplier of billing services, the customer should receive a credit that reflects the costs that the utility avoids when customers switch to a competitive provider. When some utility customers no longer receive a bill from the utility, the backout credit should reflect all of – but only – the costs that the utility avoids as a result of those customers no longer taking billing services from the utility. At least in the early years, the costs that the utility is able to avoid will be modest. The utility would be able to avoid some variable costs in the short-run, but the fixed costs of its billing operations will not be avoided in the short run. (ComEd Ex. 21.0, lines 205-213).

NEM maintains that the above passage highlights the inequities inherent in the use of the marginal cost methodology and the disincentives such a method creates for utilities to exit such functions. The failure to provide customers with shopping credits equal to the utility's fully embedded costs of rendering billing and metering services will deprive them of the opportunity to shop for these services based on accurate price signals. It will also encourage the maintenance of the status quo in which the utility retains responsibility for these functions. Accordingly, it will create barriers to entry and delay competitive entrants from attracting new customers and encourage ComEd to continue to incur costs to render these competitive services thereby granting ComEd an unfair competitive advantage in these markets.

As noted by Ms. Clair and Mr. Crumrine in their rebuttal panel testimony (ComEd Ex. 31.0, lines 54-58), the Commission specifically reviewed the manner of setting credits for the metering service charge and the single billing option and determined that embedded costs should form the basis of these credits. Market participants have relied on these decisions to invest resources 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 based solely on avoided marginal costs. Furthermore, as the Commission itself 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 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. (Case No. 99-0117, Order issued August 22, 1999, at page 122.)

Ms. Clair and Mr. Crumrine recognize the large expenses associated with providing the billing function. In rejecting a proposal that RESs be charged no more than 3 cents per bill for ComEd billing services, in parallel with ComEd's proposed SBO credit, Ms. Clair and Mr. Crumrine explain that:

> First, ComEd was required to create a billing system that would accommodate all of the customers in its service territory. Consequently, ComEd's information costs are fixed, or sunk. Regardless of whether a RES places customers on the SBO, ComEd's information systems costs do not change and, in fact, ComEd incurs additional costs in implementing the SBO. Therefore, there is little cost savings for ComEd. In contrast, a RES can choose the number of customers to whom it provides service, and can build a system (or outsource its billing function) for that number of customers. (ComEd Ex. 31.0, lines 1449-1458).

Implicit in the above passage is ComEd's endorsement of the use of the embedded cost methodology for the sake of its own business with disregard for the fact that the very same fixed costs of designing information systems are equally applicable to RESs. Providing consumers shopping credits equal to ComEd's embedded costs will permit accurate price comparisons and the opportunity for true price competition.

II. Metering Credits

Q. Do you wish to respond to the rebuttal testimony of Mr. Alongi and Ms. Kelly (ComEd Ex. 32.0) with respect to NEM's testimony on the proposed metering credits.

A. Mr. Alongi and Ms. Kelly state that ComEd's standard metering service charges vary by customer class qualified on the type of standard meter applicable to the class. (ComEd Ex. 32.0, lines 478-484). NEM points out that ComEd has proposed a <u>single</u> metering credit with respect to <u>multiple</u> customer classes. For instance, ComEd proposes a $0.98 credit for customer classes 401-800 kW, 801-1,000 kW, 1,001-3,000 kW, 3,001-6,000kW, and 6,001-10,000kW. (ComEd Ex. 13.0, Attachment P). It is unclear how the same credit can be cost-justified for diverse customer groups. Indeed, it appears the credit is a marginal cost of a meter reading and not the fully embedded costs of providing each customer with a meter, a meter reading, and all of the historical costs, overhead, debt and expense allocations associated therewith. Mr. Alongi and Ms. Kelly appear to be arguing that the chief source of cost differentiation is the type of standard meter. Such an argument would not encompass the unbundling of the 16 metering processes previously ordered by the Commission. (Case No. 99-0013, Third Interim Order, issued December 22, 1999, at page 10). Furthermore, ComEd proposes a dramatic reduction in the credit. For instance, for customers over 6,000 kW up to and including 10,000kW the current metering credit of $172.56 is reduced to $0.98 - an overwhelming reduction in the credit. (<u>See</u> Commonwealth Edison

Tariff Sheet 117.1 - Rate RCDS - Retail Customer Delivery Service - Nonresidential).

III. Distributed Generation

Q. Please respond to ComEd's arguments concerning the consideration of distributed generation issues.

A. Although Mr. Naumann (ComEd Ex. 35.0, lines 487-556) argues that NEM's recommendations and submission of its "***National Guidelines for Implementing Distributed Generation and Related Services***" are outside of the scope of this proceeding, the subject of distributed generation is clearly and squarely within the ambit of this proceeding. For instance, Ms. Clair and Mr. Crumrine comment extensively (ComEd Ex. 31.0, lines 336-452) on a proposal to impose new fixed demand charges on standby customers under Rate RCDS. Furthermore, NEM's Distributed Generation Guidelines are representative of diverse, industry consensus on the subject and have been introduced in the instant proceeding for their value as such. NEM does not believe that regulated utilities granted the natural monopoly franchise of providing space on electrical wires should compete in the market for distributed generation.

IV. Unbundling and Market Value

Q. Please discuss the propriety and importance of unbundling to the development of competitive markets.

A. Ms. Clair and Mr. Crumrine (ComEd Ex. 31.0, lines 802-827) argued that, “It is unclear whether unbundling rates during the transition period would actually improve customers’ understanding of the costs underlying the services being provided,” and that ComEd’s proposal to offer “price to deliver information” would be sufficient for customers to evaluate their options. Ms. Clair and Mr. Crumrine further argue that consideration of further unbundling is inappropriate in this proceeding.

NEM submits that ComEd's proposal to provide "price to deliver" information is inadequate. In order for consumers to see and respond to accurate price signals unbundled rates must be implemented. ComEd must furnish unbundled embedded cost information that is sufficiently detailed to transparently quantify and provide sufficient information about each product, service, information or technology currently being provided by the utility such that the costs of competitive products and services are capable of being identified and properly priced by the competitive marketplace. ComEd must fully disclose a breakout of each cost center so that the marketplace will have a fully transparent understanding of the total embedded costs that each consumer is currently paying for each competitive product, service, information and technology that is bundled in its regulated rates. The failure to file unbundled rates based on fully embedded costs for each product, service, information and technology will deprive market participants of the information necessary to foster development of competition for each of these products and services as well as a competitive retail market.

Mr. Hill (ComEd Ex. 23.0, lines 30-38) objects to the suggestion that the costs of energy and energy-related products, services, information and technology be separately identified in customer bills and offered as shopping credits and that state franchise monopoly protection only extend to natural monopoly distribution functions. Relatedly, Ms. Clair and Mr. Crumrine (ComEd Ex. 31.0, lines 839-842) state that, "under the Illinois Public Utilities Act, the market value used in the determination of CTCs must be based on the value that the utility can obtain by reselling the power and energy freed up when a customer elects to take delivery services." As Ms. Clair and Mr. Crumrine noted, the issue of market value was examined in ComEd's prior delivery services case, 99-0117. In that proceeding, the Commission rejected ComEd's argument that market value could not be adjusted to account for retail marketing expenses. The Commission also recognized that market value could be adjusted to account for other relevant characteristics of customers' demands. (Docket No. 99-0117, Order issued August 26, 1999, page 88). Accordingly, NEM's suggestion that the embedded costs of competitive energy and related products, services, information and technologies be separately identified in customers bills and offered to its customers as shopping credits so they may procure those services from competitive sources, is entirely appropriate.

V. Electronic Signatures

Q. Please respond to ComEd testimony questioning the propriety of the use of electronic signatures in the customer enrollment process.

A. Ms. Clair and Mr. Crumrine (ComEd Ex. 31.0, lines 1165-1172) state that, "ComEd does not share certain other parties confidence that the ESCA [sic Electronic Commerce and Security Act] and ESGNCA [sic Electronic Signatures in Global and National Commerce Act] satisfies the requirements of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE." NEM does not share ComEd's misgivings. In fact, the Commission itself recognized the validity and appropriateness of electronic signatures and Internet enrollments in its recent Order in the Nicor Customer Select proceeding (Case No. 00-0620/00-0621, Order issued July 5, 2001, page 72.) As previously noted by NEM, the use of electronic signatures for customer enrollment is also specifically endorsed in the UBP. Moreover, the federal Electronic Signatures in Global and National Commerce Act may in fact preempt state law on this subject as it clearly states that,

> Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II of this chapter), with respect to any transaction in or affecting interstate or foreign commerce -
> (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
> (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. 15 U.S.C. § 7001(a).

Q. Does this conclude your rebuttal testimony?

A. Yes.