

I. INTRODUCTION

On February 13, 2015, CUB/EDF filed a verified petition requesting that the Commission initiate a proceeding to investigate the adoption of a utility Time of Use (“TOU”) rate. As stated in the Petition, the purpose of the requested proceeding is to review whether or not electric utilities participating in the performance-based formula rate methodology established by the Energy Infrastructure Modernization Act (“EIMA”)—*i.e.* Ameren Illinois Company (“Ameren”) and Commonwealth Edison Company (“ComEd”)—should be ordered by the Commission to offer a TOU rate to their customers.

On April 10, 2015, RESA filed a motion to dismiss this proceeding. Motions to dismiss were also filed by the Commission Staff, Ameren, and ComEd. In addition, the Illinois Competitive Energy Association filed a motion to dismiss or, in the alternative, expand the scope of this proceeding.

On June 25, 2015, the ALJ issued her ALJPO which would dismiss the proceeding as “premature” and disruptive of the process previously adopted by the Commission to develop a competitive market for dynamic pricing products. (ALJPO, p. 8) Because the ALJPO proposes to dismiss the proceeding on those bases, the ALJPO declines to address the many objections to the CUB/EDF’s petition set forth in the motions to dismiss. (*Id.*)

On July 9, 2015, CUB/EDF filed a Brief on Exceptions in this proceeding. No other party filed a Brief on Exceptions. In their Brief on Exceptions, CUB/EDF state that they “will accept the Commission’s conclusion that a request at this time is premature so long as the Commission establishes clear criteria by which the subject can be revisited as timely, and not premature”. (CUB/EDF BOE, p. 2) CUB/EDF go on to set forth such criteria and propose revisions to the

ALJPO which basically state that the Commission will open an investigation on April 1, 2016, which is twelve months from its Order in Docket 14-0701. (*Id.*, p. 7)

The Commission should reject the Exceptions proposed by CUB/EDF. First, there is no record support for their proposed criteria nor their proposal to initiate a new proceeding on April 1, 2016. Second, if the Commission is going to consider CUB/EDF's proposed Exceptions, it should consider the other arguments for dismissal of their Petition that were set forth in the motions to dismiss of RESA and the other parties in this proceeding.

II. THERE IS NO SUPPORT IN THE RECORD FOR CUB/EDF'S PROPOSALS TO MODIFY THE ALJPO.

The fatal flaw of CUB/EDF's proposals to modify the ALJPO is that they have no support in the record of this proceeding. For example, CUB/EDF state as a criterion their "belief" that twelve months should be sufficient for the utilities to put data systems in place for RESs to receive and bill against interval usage data. (CUB/EDF BOE, p. 3) There is no support in the record of this proceeding for this belief. RESA respectfully submits that Commission orders need to be based on evidence and not on mere beliefs, however well intended. Moreover, CUB/EDF propose to start the 12 month clock running from the date the Commission entered its Order in Docket 14-0701, April 1, 2015. (*Id.*) However, as CUB/EDF well know, the order in Docket 14-0701 basically established the language customer authorization. The data framework for actually obtaining such data is the subject of CUB/EDF's petition in Docket 14-0507, which is still pending. In fact, the next status hearing is not scheduled until September 10, 2015.

Accordingly, there is no evidentiary basis for the Commission to enter an order which adopts the proposed language of CUB/EDF's exceptions. In fact, doing so would be a clear violation of the Parties' due process rights and would certainly constitute reversible error on the Commission's part.

III. IF THE COMMISSION IS GOING TO CONSIDER CUB/EDF'S PROPOSED REVISIONS, THEN THE COMMISSION SHOULD CONSIDER THE OTHER BASES FOR DISMISSAL SET FORTH IN THE MOTIONS TO DISMISS.

As stated in the ALJPO, because the Commission would dismiss CUB/EDF's Petition as premature and disruptive of the Commission's process to develop a competitive market for dynamic pricing products, it found it unnecessary to address the other objections to the Petition raised in the motions to dismiss. (ALJPO, p. 8) Because the ALJPO would dismiss the proceeding, RESA did not file a Brief on Exceptions proposing that the proceeding be dismissed for other reasons as well. While arguing that the CUB/EDF Petition was premature (RESA Motion to Dismiss, pp. 3-4), RESA also argued that the Commission does not have the authority to grant the relief requested by the Petition. (*Id.*, pp. 2-3) This and other arguments were also made in the motions to dismiss filed by other parties in this proceeding.

If the Commission is going to take any action, other than simply dismissing the proceeding, as proposed in the ALJPO, the Commission should consider all of the arguments for dismissal raised by RESA and the other parties in this proceeding.

WHEREFORE, for the foregoing reasons, the Retail Energy Supply Association requests that the Commission reject the proposed language revisions offered by CUB/EDF in their Brief on Exceptions and dismiss this proceeding as proposed by the Administrative Law Judge's Proposed Order.

Respectfully submitted,

Retail Energy Supply Association

By: /s/Gerard T. Fox
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NOTICE OF FILING

Please take note that on July 16, 2015 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply of the Retail Energy Supply Association to Brief on Exceptions in this proceeding.

/s/Gerard T. Fox
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Reply of the Retail Energy Supply Association to Brief on Exceptions, upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on July 16, 2015.

/s/ Gerard T. Fox
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