STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	))	
	)	Docket No. 11-0434
Commonwealth Edison Company	)	
Investigation of Rate GAP pursuant to Section 9-250 of the Public Utilities Act	))	

VERIFIED REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to the schedule established by the Administrative Law Judge, the Retail Energy Supply Association ("RESA")[1] hereby files these Verified Reply Comments in this proceeding.

I. INTRODUCTION

On November 28, 2011, Commonwealth Edison Company ("ComEd") submitted its Initial Verified Comments in this proceeding. On December 29, 2011, Verified Initial Comments were filed by RESA and the following other parties: the Attorney General of Illinois ("AG"), Dominion Retail, Inc. ("Dominion"), the Staff of the Illinois Commerce Commission ("Staff"), the Illinois Competitive Energy Association ("ICEA"), the Illinois Energy Professional Association ("ILEPA"), and Rock River Energy Services Company ("Rock River"). RESA's

[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. Many of RESA's members are licensed ARES in Illinois and certified to serve customers in ComEd's service territory. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Reply Comments to the Initial Comments of the other parties are limited to the following four issues.

First, Staff, ICEA and ILEPA agree with ComEd that the term "small commercial retail customer" should be defined, as it is defined in Section 16-102 of the Public Utilities Act, as a non-residential customer who consumes 15,000 kilowatt-hours ("kWh") or less annually. (Staff Initial Comments, pp. 4-6; ICEA Initial Comments, pp. 4-5; ILEPA Initial Comments, pp. 2-4) Only Rock River argues that the term should include a rate classification that includes customers that consume more than 15,000 kWh annually. (Rock River Initial Comments, p. 3) As stated in its Verified Initial Comments, RESA agrees with ComEd on this definition.

Second, Staff, Rock River, and the AG agree with ComEd that the term "retail customers" found in Section 1-92 of the IPA Act should be interpreted to include all of ComEd's eligible delivery service customers, regardless of whether they purchase their supply from ComEd or a Retail Energy Supplier ("RES"). (Staff Initial Comments, pp. 6-9; Rock River Initial Comments, p. 4; AG Initial Comments, pp. 2-3) However, ICEA, ILEPA and Dominion disagree, taking the position that the term "retail customers" should be limited to ComEd's bundled customers, those customers taking both supply and delivery services from ComEd. (ICEA Initial Comments, pp. 6-7; ILEPA Initial Comments, pp. 4-5; Dominion Initial Comments, pp. 1-5) RESA agrees with ICEA, ILEPA and Dominion on this issue.

Third, in the event that the Commission agrees with ComEd that the term "retail customers" should be defined to include those customers purchasing their supply from RESs, ICEA takes the position that the provisions in its Rate GAP for the proper usage and protection of specific customer information passed from ComEd to a government authority must be

improved. (ICEA Initial Comments, pp. 7-10). ILEPA and the AG also agrees that the confidentiality provisions should be improved. (ILEPA Initial Comments, p. 5; AG Initial Comments, pp. 1-2) RESA agrees with ICEA and the AG that the confidentiality provisions in Rate GAP need to be improved if information about customers taking their supply from RESs is going to be provided to municipalities and, ultimately, the winning RES. However, RESA continues to support its language set forth in its Verified Initial Comments.

Fourth, ICEA takes the position that the Commission should initiate a rulemaking proceeding to establish appropriate rules, including those relating to maintaining confidentiality of customer data, provided by an electric utility to a municipality (which ultimately may be provided to a RES) relating to municipal or other governmental aggregation programs. (ICEA Initial Comments, p. 10) However, Staff expresses its concern about the Commission's authority to conduct such a rulemaking and recommends that the Commission not order a rulemaking proceeding for municipal aggregation at this time. (Staff Initial Comments, pp. 11-12) RESA agrees with ICEA that the Commission should initiate a rulemaking proceeding to create rules relating to municipal aggregation.

II. "SMALL COMMERCIAL RETAIL CUSTOMER" SHOULD BE DEFINED AS A CUSTOMER UTILIZING 15,000 kWh OR LESS ANNUALLY.

RESA, Staff, ICEA and ILEPA agree with ComEd that the term "small commercial retail customer" should be defined, as it is defined in Section 16-102 of the Public Utilities Act, as a non-residential customer who consumes 15,000 kilowatt-hours ("kWh") or less annually. (RESA Initial Comments, pp. 1-2; Staff Initial Comments, pp. 4-6; ICEA Initial Comments, pp. 4-5; ILEPA Initial Comments, pp. 2-4) Only Rock River argues that the term should include a rate

classification that includes customers that consume more than 15,000 kWh annually. (Rock River Initial Comments, p. 3) However, Rock River basically takes the position that its expansive definition would be helpful to customers in ComEd's Small Load Delivery Class and that including this class in Rate GAP would have a large economic benefit for customers in this class. (*Id.*) Rock River also notes that several mayors, village presidents or administrators have supported this expansive definition in letters to the Commission's Chairman. (*Id.*)

However, the issue is what is the proper definition of "small commercial retail customer" as used in the Illinois Power Agency Act ("IPA Act"). RESA refers to the excellent statutory analysis of ICEA which demonstrates that the term "small commercial retail customer" should be defined as a non-residential customer with annual usage of 15,000 kWh or less. (ICEA Initial Comments, pp. 4-5) RESA agrees with the analysis of ICEA, as well as those of ComEd, the Staff and ILEPA. Thus, Rate GAP should be revised to limit its applicability to residential customers and those non-residential customers having annual usage of 15,000 kWh or less.

III. "RETAIL CUSTOMER" SHOULD BE DEFINED AS A CUSTOMER RECEIVING BUNDLED SERVICE, BOTH DELIVERY SERVICES AND SUPPLY.

Staff, Rock River, and the AG agree with ComEd that the term "retail customers" found in Section 1-92 of the IPA Act should be interpreted to include all of ComEd's eligible delivery service customers, regardless of whether they purchase their supply from ComEd or a RES. (Staff Initial Comments, pp. 6-9; Rock River Initial Comments, p. 4; AG Initial Comments, pp. 2-3) However, ICEA, ILEPA and Dominion disagree, taking the position that the term "retail customers" should be limited to ComEd's bundled customers, those customers taking both supply and delivery services from ComEd. (ICEA Initial Comments, pp. 6-7; ILEPA Initial

Comments, pp. 4-5; Dominion Initial Comments, pp. 1-5) RESA agrees with ICEA, ILEPA and Dominion on this issue.

Staff acknowledges that Section 1-92 of the IPA Act does not contain a definition of "retail customer". (Staff Initial Comments, p. 7) However, Staff believes that the definition of retail customer contained in the Public Utilities Act ("PUA") should apply and that the only support for use of a definition other than that contained in the PUA is that ComEd's Rate GAP originates from a requirement of the IPA Act, not the PUA. (*Id.*, pp. 7-8) Indeed, this is strong support, but, as demonstrated below, not the only support for utilizing a definition of retail customer that is limited to ComEd's bundled customers. Moreover, while RESA has agreed with the Commission Staff that it is appropriate to use the PUA's definition of "small commercial customer" as the definition of "small commercial retail customer" as used in the IPA Act, there is no reason why the same definition is not appropriate; however, as demonstrated below, defining "retail customer" as used in the IPA Act in the same manner as the term is defined in the PUA would be inconsistent with provisions of the IPA Act.

Another supporter of ComEd's definition is Rock River; however, Rock River only states its belief, without analysis, that the intent of the General Assembly was to include more than ComEd's bundled customers in municipal aggregation programs. (Rock River Initial Comments, p. 4) Similarly, the other supporter of ComEd's definition, the AG, simply states, without analysis, that excluding customers who are already purchasing supply from RESs "would be arbitrary and inconsistent with the notion of choice underlying the IPA Act". (AG Initial Comments, p. 3)

Contrary to the belief of Staff that the only support for a definition of "retail customer" that limits it to a bundled service customer, is that there is no definition of that term in the IPA Act, the Initial Comments of ICEA, ILEPA, and Dominion set forth numerous reasons why the term "retail customer" should be limited to ComEd's bundled service customers. Indeed, as RESA noted in its Initial Comments, it was not taking a position on this issue until it had an opportunity to review the arguments of parties on both sides. (RESA Initial Comments, p. 2) Having done so, RESA agrees with ICEA, ILEPA and Dominion that eligible customers purchasing supply from RESs should be excluded from the definition of "retail customer". There is no need to repeat all of the points made by ICEA, ILEPA and Dominion here, but RESA notes the following important matters in support of their position.

ICEA points out that ComEd's broad interpretation of "retail customer" to include customers purchasing supply from RESs is broader than necessary to implement governmental aggregation and, therefore, is not consistent with the subject matter, purposes or intent of Section 1-92 of the IPA Act. Customers purchasing from RESs have already availed themselves of existing retail choice opportunities and nothing in Section 1-92 of the IPA Act shows that the General Assembly intended to interfere with the existing contracts between those customers and the RESs they have chosen. Thus, ICEA concludes that there is no reason for the government authority to contact those customers with opt-out information. Given that there is no reason for such contact, providing names and addresses of customers already with a RES, there is also no reason to put this confidential and competitively-sensitive information at risk. (ICEA Initial Comments, pp. 6-7)

Similarly, ILEPA disagrees with ComEd's interpretation that the municipality has a legal right to obtain the names and address of residents who have already elected to purchase their

supply from a RES. Customers who have already exercised their right to choose should be able to do so without governmental interference. (ILEPA Initial Comments, p. 4)

Dominion also takes the position that the term "retail customer" should be limited to ComEd's bundled service customers, arguing that ComEd's interpretation is not consistent with Section 1-92 of the IPA Act. Dominion notes that there is no indication in the IPA Act that the General Assembly intended to interfere with existing contracts between customers and RESs. Moreover, Dominion notes that requiring the distribution of proprietary information such as customer lists to competitors that could use that information, results in an unconstitutional impairment of contracts between a RES and its customers, citing the United States Constitution. (Dominion Initial Comments, pp. 2-3) Dominion also notes that the recent amendment (in Public Act 097-0338) to Section 1-92 of the IPA Act supports the argument that the General Assembly did not intend "retail customers" to include customers receiving supply from RESs. That amendment requires account numbers to be provided to the governmental authorities. Because the only possible need for such numbers is to effectuate an enrollment, which cannot be done if a customer is already under contract with a RES, the General Assembly would not have required electric utilities to provide such information for customers for which there would be no use for such information. (*Id.*, p. 3) In addition, Dominion notes that the State of Ohio has governmental aggregation rules which withhold RES customer data from governmental authorities. (*Id.*, pp. 4-5)

In conclusion, the strongest arguments support the positions of ICEA, ILEPA and Dominion. The term "retail customer" should be defined to exclude customers already taking supply service from a RES.

IV. RATE GAP SHOULD BE REVISED TO PROTECT THE CONFIDENTIALITY OF THE CUSTOMER DATA OF RETAIL ELECTRIC SUPPLIERS' CUSTOMERS.

If the Commission accepts the definition of "retail customer" to exclude customers already taking service from a RES, then the confidentiality provisions of Rate GAP are adequate. However, if the Commission determines that the term "retail customer" includes a customer taking service from a RES, then ICEA notes that there needs to be additional protection for the confidentiality of customer information. (ICEA Initial Comments, pp. 7-10) ICEA proposes such additional language on page 10 of its Initial Comments.

The AG also notes its concern regarding protection of the confidential customer information. It proposes additional language to strengthen such protection. (AG Initial Comments, pp. 1-2)

ILEPA also expresses its concern about the use of confidential customer information. ILEPA requests that the Commission require a provision that specifically prohibits using customer information provided by ComEd for any type of marketing or solicitation. (ILEPA Initial Comments, p. 5)

RESA agrees that if ComEd will be providing information to governmental authorities for customers of RESs that the confidentiality provisions of Rate GAP (as well as ComEd's Municipal Aggregation Data Request Form). RESA's proposed language was set forth in its Initial Comments at pages 5-6, but will be repeated herein, for convenience..

RESA proposes that the following language be added to Rate GAP, specifically at the end of the second paragraph on 1st Revised Sheet No. 410 (ComEd Initial Comments, Attachment B, p. 6):

Specifically, the Government Authority will require, by contract, the RES it has selected to procure the aggregated electric power and energy supply service to eligible customers within the boundaries of the Government Authority to maintain the confidentiality of customer-specific information and to use such customer-specific information only to effectuate the provisions of Section 1-92 of the IPA Act. To that end, the municipality/township/county will, and will require the selected RES to, only allow authorized representatives needing access to customer-specific information to effectuate the provisions of Section 1-92 to have access to the customer-specific information described in Items 18 through 23 of the Company Obligations section of Rate GAP. Moreover, the municipality/township/county will, and will require the selected RES to, delete and/or destroy the customer-specific information described in said Items 18 through 23 within 60 days after the Company provides said information.

Similar language should be added to ComEd's Municipal Aggregation Data Request Form:

The undersigned authorized representative for the municipality/township/county acknowledges that it will require, by contract, the RES it has selected to procure the aggregated electric power and energy supply service to eligible customers within the boundaries of the municipality/township/county to maintain the confidentiality of customer-specific information and to use such customer-specific information only to effectuate the provisions of Section 1-92 of the IPA Act. To that end, the municipality/township/county will, and will require the selected RES to, only allow authorized representatives needing access to customer-specific information to effectuate the provisions of Section 1-92 to have access to the customer-specific information described in Items 18 through 23 of the Company Obligations section of Rate GAP. Moreover, the municipality/township/county will, and will require the selected RES to, delete and/or destroy the customer-specific information described in said Items 18 through 23 within 60 days after the Company provides said information.

V. THE COMMISSION SHOULD INITIATE A RULEMAKING PROCEEDING TO ESTABLISH APPROPRIATE RULES FOR MUNICIPAL AGGREGATION PROGRAMS.

In its Initial Comments, ComEd encouraged the Commission to initiate a rulemaking proceeding. (ComEd Initial Comments, pp. 13-14) In its Initial Comments, RESA also took the position that there should be uniform rules applicable to municipal aggregation. RESA's

understanding is that there will be many more municipalities, in both ComEd's and Ameren Illinois Company's ("Ameren") service territories, with opt-out municipal aggregation referenda in the March 2012 elections. A rulemaking is appropriate so that there are uniform rules applying to ComEd and Ameren. In addition, ComEd has expressed concerns regarding its authority to impose restrictions on the use of data by municipalities. Commission rules would provide the electric utilities with the requisite authority to impose appropriate restrictions of the use of data by municipalities.

ICEA also took the position that a rulemaking proceeding would bring structure and clarity to the operation of municipal aggregation programs. (ICEA Initial Comments, p. 11) In contrast, Staff, while agreeing in principle that a rulemaking proceeding would be helpful, stated that the Commission's statutory authority to initiate such a rulemaking is "far from obvious". (Staff Initial Comments, p. 11) While Staff will apparently be exploring the Commission's authority, it recommends that the Commission not order a rulemaking proceeding in this proceeding. Instead Staff proposes to "explore this option further and present its findings to the Commission outside of this Docket". (*Id.*, p. 12)

RESA does not take a position as to whether the rulemaking proceeding should be ordered as an outcome of this docket or outside of this docket; however, the rulemaking proceeding should begin soon. There will be numerous governmental authorities holding referenda in March 2012 regarding aggregation programs. Consequently, it would be beneficial for the rulemaking proceeding to begin and conclude as soon as possible. With respect to the Commission's authority, RESA notes that the Commission has jurisdiction over the electric utilities, as well as over the RESs who will be participating in aggregation programs. It appears clear to RESA that,

at a minimum, the Commission has authority to adopt rules regarding aggregation programs that are applicable to electric utilities and RESs.

VI. CONCLUSION

In conclusion, the Commission should adopt a definition of "small commercial retail customer" to include non-residential customers with annual usage of 15,000 kWh or less. In addition, the Commission should adopt a definition of "retail customer" to include only bundled service customers of ComEd. However, if the Commission adopts a definition of "retail customer" which includes customers taking service from Retail Electric Suppliers, then it should require ComEd to revise its tariffs to provide appropriate protection to confidential customer information, as proposed by RESA in Section IV of these Verified Reply Comments. Finally, the Commission should initiate a rulemaking to adopt appropriate rules for purposes of implementing municipal aggregation programs.

Respectfully submitted,

/s/ GERARD T. FOX
Gerard T. Fox
An Attorney for the Retail Energy Supply Association

Gerard T. Fox
Two Prudential Plaza
180 N. Stetson
Suite 3500
Chicago, IL 60601
gerardtfox@aol.com
(312) 268-5674

STATE OF ILLINOIS)

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COUNTY OF DUPAGE)

VERIFICATION

Roy Boston, being first duly sworn, on oath deposes and says that he is Strategic Planning and Policy Manager—East for Noble Americas Energy Solutions, that he has read the foregoing Verified Reply Comments of the Retail Energy Supply Association, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

/s/ ROY BOSTON

Roy Boston

OFFICIAL SEAL
GINA L BATTAGLIA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 6/15/2013

Subscribed and sworn to me

This 12 day of January 2012

NOTICE OF FILING

Please take note that on January 12, 2011 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Reply Comments of the Retail Energy Supply Association in this proceeding.

Dated: January 12, 2012

/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 Verified Reply Comments of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on January 12, 2012.

/s/ Gerard T. Fox
Gerard T. Fox