STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

The Citizens Utility Board	)	
And	)	
The Environmental Defense Fund	)	
	)	Docket No. 15-0100
Petition to Initiate a Proceeding to Investigate	)	
The Adoption of a Utility Time of Use Rate	)	

REPLY IN SUPPORT OF MOTION TO DISMISS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association[1] ("RESA") by and through its attorney, Gerard T. Fox, pursuant to 83 Illinois Admin. Code Section 200.190 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), hereby respectfully submits this Reply in support of its motion that this proceeding be dismissed.

I. INTRODUCTION

On February 13, 2015, the Citizens Utility Board ("CUB") and the Environmental Defense Fund ("EDF") filed a verified petition requesting that the Commission initiate a proceeding to investigate whether 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 Time Of Use ("TOU") rate to their customers. On April 10, 2015, Motions to

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

Dismiss were filed by RESA, Ameren, ComEd, the Illinois Competitive Energy Association ("ICEA") and the Commission Staff. On April 24, 2105, CUB/EDF filed a Verified Response to the Motions to Dismiss.

CUB/EDF's Response does not detract from the showings in the motions to dismiss which demonstrated that this proceeding should be dismissed. Although other parties raised a number of valid bases why the Petition should be dismissed, including some substantially similar to RESA's, RESA will focus on the bases set forth in its motion to dismiss. First, the Commission does not have the authority to grant the relief requested—ordering ComEd and Ameren to create, file, and implement TOU rates and charges that previously did not exist. Second, the Petition is both premature (unripe) and inappropriate.

II. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO GRANT THE REQUESTED RELIEF.

As pointed out in RESA's Motion to Dismiss, under Section 9-201 of the Public Utilities Act, utilities are given the discretion whether to file proposed tariffs. Moreover, the 1997 amendments to the Public Utilities Act (the electric restructuring law) specifically barred the Commission from requiring new tariffed services not required by statute: "The Commission shall not require an electric utility to offer any tariffed service other than services required by this Section". (220 ILCS 5/16-103 (e)) Significantly, TOU rates are not included among those services required to be provided by the utility pursuant to Section 16-103. Thus, under a plain reading of Section 16-103, the Commission has no authority to require ComEd to offer a TOU rate; to do otherwise would give no meaning to this Section.

Initially, CUB/EDF argues that its Petition does not request that the Commission order Ameren and ComEd to file TOU Rates. Rather, CUB/EDF argues that the Commission has the authority to investigate utility TOU Rates and that CUB/EDF has the right to file a petition requesting

such an investigation; if the Commission finds as a result of the investigation that such utility TOU Rates are appropriate, then it can direct Ameren and ComEd to file such rates. (CUB/EDF Response, p. 3). This is a distinction without a difference.

The Commission does not have the authority to order Ameren and ComEd to file TOU Rates. Therefore, there is no reason to conduct an investigation into such rates and the proceeding should be dismissed. By analogy, a party could file a petition requesting that the Commission investigate whether it should require utilities to file tariffs which offer free retail electric service to senior citizens. Because the Commission does not have the authority to order utilities to offer free retail electric service to senior citizens, there would be no reason to conduct such an investigation. Why investigate an activity over which the agency has no authority to compel compliance with its order?

In its arguments, CUB/EDF combine the prohibition contained in Subsection 16-103 (e) against ordering electric utilities to file new tariffs with the prohibition in that same subsection that the Commission shall not require electric utilities to offer any competitive service. (CUB/EDF Response, p. 12) CUB/EDF then proceeds to argue that TOU Rates are not a competitive service. However, no party argued in its motion to dismiss that TOU Rates were a competitive service. No party argued this legal point because this part of the subsection is irrelevant to the question at hand: does the Commission have authority to order ComEd to offer TOU service? CUB/EDF's failure to rebut the prohibition against the Commission ordering electric utilities to file new tariff service not required by statute indicates that it has no valid basis to rebut this prohibition. CUB/EDFs' attempt to bypass a clear prohibition with a specific prohibition against requiring a service that is not contemplated to be offered in this case is novel and creative, but must be rejected as inconsistent with the plain meaning in the law.

III. THE RELIEF SOUGHT BY THE PETITION IS PREMATURE AND INAPPROPRIATE.

A second basis for dismissing this proceeding set forth in RESA's Motion to Dismiss is that the relief sought by the Petition is also premature (unripe) and inappropriate. While rejecting the proposal for TOU tariffs in Docket 12-0298, the Commission directed ComEd to work with the Smart Grid Advisory Council ("SGAC") and other stakeholders. The end result should be the electric utilities' development and implementation of the necessary processes to allow ARES to offer dynamic pricing programs, including TOU Rates. Thus, RESA argued that by requesting that the Commission order the electric utilities to offer TOU Rates, CUB/EDF was circumventing the SGAC process that was put in place by the Commission's order and its guidance.

CUB/EDF argues that it is not seeking to circumvent the guidance issued by the SGAC. (CUB/EDF Response, p. 17) However, this argument is refuted by the description of the SGAC's guidance contained in the Petition itself. The Petition states that SGAC's "guidance recommended that ComEd and Ameren consider the best options for a utility-provided TOU rate if such a rate was found cost-beneficial by the Commission and that **ComEd and Ameren design their electric data exchange processes and meter data management systems to enable ARES to offer TOU rates**". (Petition, p. 3, emphasis added) The Petition goes on to indicate that the SGAC stated its belief that "both ComEd and Ameren have offered to work with the Commission **to make TOU rates available if the retail market [the ARES community] does not develop competitive TOU rate structures within a reasonable time after AMI deployment**". (*Id.*, emphasis added) RESA's interpretation of the SGAC guidance is obviously shared by ComEd, which stated, in its Motion to Dismiss:

> Although ComEd has determined that an optional utility-offered TOU rate would be disruptive to the market, the Commission-sponsored stakeholder meetings have produced demonstrable results with respect to facilitating RES TOU offerings. The 'investigation' now sought by the Petition threatens to prematurely terminate the ongoing and promising collaborative.

(ComEd Motion, p. 6)

Both ComEd and Ameren have investigated TOU rate issues with stakeholders. ComEd currently offers Rider RMUD, which allows ARES to offer their customers a TOU rate and that while Rider RMUD was offered on a pilot basis, ComEd intends to modify or replace it with a permanent tariff once its new meter data management system is in place. (Petition, pp. 4-5) RESA believes that progress has been made by both ComEd and Ameren regarding the appropriate implementation of TOU rates—by ARES--and that CUB's and EDF's attempts to bypass the stakeholder process by seeking an order that electric utilities file TOU tariffs will only interfere with the stakeholder progress that has been made to date and will be made in the future.

WHEREFORE, for the reasons set forth in RESA's Motion to Dismiss and in this Reply in support of that motion, the Retail Energy Supply Association requests that its Motion to Dismiss be granted.

Dated: April 29, 2015

Respectfully submitted,

Retail Energy Supply Association

By: /s/Gerard T. Fox
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VERIFICATION

Gerard T. Fox, being first duly sworn, on oath deposes and says that he is an attorney for the Retail Energy Supply Association, that he has read the foregoing Reply in Support of Motion to Dismiss, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

/s/Gerard T. Fox
Gerard T. Fox

Subscribed and sworn to me
This 29th day of April, 2015

OFFICIAL SEAL
BARBARA A HENDRICKSON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/10/16

NOTICE OF FILING

Please take note that on April 29, 2015 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply in Support of Motion to Dismiss of the Retail Energy Supply Association 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 in Support of Motion to Dismiss 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 April 29, 2015.

/s/ Gerard T. Fox
Gerard T. Fox