

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	:	
	:	
Petition for Approval of Beneficial Electrification Plan under the Electric Vehicle Act, 20 ILCS 627/45, and New EV Charging Delivery Classes under the Public Utilities Act, Article IX.	:	Docket No. 22-0432
	:	
	:	(cons.)
	:	
Illinois Commerce Commission On Its Own Motion	:	
-vs-	:	
Commonwealth Edison Company	:	Docket No. 22-0442
	:	
Investigation into Commonwealth Edison Company Beneficial Electrification Plan Filing pursuant to 20 ILCS 627/45.	:	

**REPLY BRIEF ON EXCEPTIONS
OF
NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENTAL DEFENSE FUND,
SIERRA CLUB, RESPIRATORY HEALTH ASSOCIATION, AND LITTLE VILLAGE
ENVIRONMENTAL JUSTICE ORGANIZATION**

March 9, 2023

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I. INTRODUCTION

Natural Resources Defense Council (“NRDC”), Environmental Defense Fund (“EDF”), Sierra Club, Respiratory Health Association (“RHA”) and Little Village Environmental Justice Organization (“LVEJO”) (collectively, “Clean Jobs Coalition Parties” or “CJCP”), pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), 83 Ill. Admin. Code Part 200.830, and the briefing schedule established by the Administrative Law Judge (“ALJ”), hereby file their Reply Brief on Exceptions in the above-captioned consolidated proceeding.

II. REPLY TO EXCEPTIONS NO. 1: RETAIL RATE CAP

Commission Staff and the AG's Office continue to argue that all of ComEd's BE Plan programs should be subject to the retail rate cap. Staff BOE at 6-7; AG BOE at 10. As the Proposed Order ("PO") stated, "The Commission considered and rejected Staff and the AG's arguments regarding the retail rate cap in the Interim Order and will not reverse that decision here." PO at 142. The issue of whether applicability of the retail rate cap should be expanded beyond the development of EV infrastructure was thoroughly briefed. The Commission explicitly analyzed the issue and concluded, "The plain language of the statute clearly states that the retail rate cap applies to development of EV infrastructure." Interim Order at 38. Following the Commission's denial of the AG's application for rehearing, the AG filed its petition for review with the Second District Appellate Court on January 18, 2023 (Case No. 2-23-0020). The issue of what programs in ComEd's BE Plan should be subject to the rate cap is a subject of the appeal.

The PO is correct in concluding that it should not and will not reverse its conclusion in the Interim Order. As the Interim Order states in the Findings and Ordering Paragraphs, "[T]he matters resolved herein shall be considered final." Interim Order at 38. It would be illogical and unfair for the Commission to reconsider an express finding and conclusion it just recently made in a final order; to do so would be to provide the AG what amounts to a re-application for rehearing or reconsideration (and in effect to grant that re-application). Moreover, it appears that the Commission is without authority to reconsider the Interim Order. When a party files a petition for review and notice of appeal, Section 10-201(b) of the Public Utilities Act ("PUA") provides that, "thereupon the appellate court shall have jurisdiction over the appeal." 220 ILCS 5/10-201(b). The Illinois Supreme Court has left no doubt that an appellate court's assumption of jurisdiction over a matter thereupon deprives the lower tribunal of the jurisdiction it had prior to the appeal. "A

notice of appeal ... divests the trial court of jurisdiction and confers jurisdiction upon the appellate court.” *Harrisburg-Raleigh Airport Auth. v. Dept. of Revenue*, 126 Ill.2d 326, 533 N.E.2d 1072, 1078 (1989). All matters included in the AG’s appeal are now within the exclusive jurisdiction of the appellate court. Notwithstanding the procedural deficiencies of the AG Office’s continued adherence to these arguments, their interpretation is incorrect, as has been extensively discussed by CJCP. *See, e.g.*, CJCP Reply Brief at 28. The argument of the AG and Staff should be rejected.

III. REPLY TO EXCEPTIONS NO. 2: REBATE LEVELS

The AG’s Office pushes back on the PO’s retention of ComEd’s rebate levels in the Residential EV Charging Infrastructure sub-program. They oppose the rationale for the PO’s decision, stating that “the Proposed Order rejected the People’s proposal based upon a mistaken belief that they had not specified an alternative dollar amount for the rebate...[but] the People’s witnesses described several utilities with similar programs that offer charging rebates between \$300 and \$500 for non-low-income customers.” AG BOE at 7. They further state that “a reduction in the value of the rebate is appropriate because the Company has not established that residential customers require Level 2 chargers.” AG BOE at 8.

Closer examination reveals that the rebates for the examples provided by the AG’s Office are for the chargers themselves, while ComEd contemplates also providing funds for charger installation, which represents a substantial cost and barrier to adoption. Moreover, as ComEd states, the amount of the rebate will be based on the actual cost of the charger and installation – “the amount of the rebate provided to a customer under the Residential EV Charging Infrastructure Sub-program is capped at the cost of the charger and installation, which in many cases could be substantially lower than the maximum amount generally allowed under the sub-program.” ComEd

Ex. 7.0 at 23:458-461. Put another way, the rebate amount provided for by ComEd is a ceiling, not a floor.

In addition, CJCP disagree that funds should be shifted to Level 1 chargers. Level 1 chargers, aside from being extraneous because EV drivers can just use a wall outlet – thereby foregoing additional expense – are not networked in the way that Level 2 chargers are. This makes it harder for customers to receive price signals or participate in demand response programs: as ComEd aptly states, “the requirement [in the Residential EV Charging Infrastructure Sub-program] for the charger to be wi-fi enabled ensures capability for potential future participation in load optimization options.” ComEd Ex. 7.0 at 24:477-478.

For these reasons, the PO correctly rejected the AG’s Office arguments on rebate levels and emphasis on Level 1 charging.

IV. REPLY TO EXCEPTIONS NO. 3: NON-TRANSPORTATION PROGRAMS

Just as it argued that all of ComEd’s BE Plan programs should be subject to the retail rate cap, the AG continues to argue that the Commission find ComEd to be legally prohibited from offering non-transportation electrification programs. This issue is also a subject of the AG’s appeal, and the Commission should reject the AG’s argument for the same reasons applicable to the retail rate cap issue described in Reply to Exceptions No. 1.

ComEd declined to take exception to the PO’s exclusion of non-transportation electrification programs based on ComEd’s understanding that the exclusion is “limited to determinations impacting only this first BE Plan,” and not as a determination that such programs are never appropriate. ComEd BOE at 23. ComEd’s concession should not be accepted. As stated in CJCP’s BOE, the PO’s findings that the non-transportation programs “could frustrate the goals of ComEd’s EE Plan,” (which goals the PO failed to list) and “could undermine the Commission-

approved EE savings goals” (which the PO failed to explain how) lack a factual basis in the record. CJCP BOE at 7. ComEd witness Erica Borggren pointed out that providing support for non-transportation electrification, thereby speeding its adoption, is especially important to EJ and R3 communities, where ComEd expects many non-transportation beneficial electrification measures to be deployed. ComEd Ex. 7.0 at 3:47-51. The Commission should not reject ComEd’s non-transportation electrification programs out of hand.

V. REPLY TO EXCEPTIONS NO. 4: TOU RATES

The Commission should reject the AG’s argument that low-income customers be exempted from the requirement that, in order to receive a residential charging infrastructure rebate, the customer must take supply service under an available time-of-use rate. AG BOE at 26-29. The AG first adopted this position in its initial brief; such a contention was not included in any witness testimony. AG Initial Brief at 65-68. To support its argument, the AG’s Office points to ComEd’s time-of-use pilot - Rate RTOUPP. The evidence it provides is a snapshot of pricing in the summer of 2022, showing that many of the 102 low-income pilot participants paid more for their electricity supply compared to ComEd’s default rate. The AG’s Office cites a ComEd compliance filing for that pilot and, in a footnote, asks that the Commission take administrative notice of the compliance filing. AG BOE at 27, fn 7. Given the subject of the notice and the purpose for which the AG’s Office cites it, it should be subject to normal evidentiary procedures, including witness testimony, discovery and cross-examination. Reference to the document by a witness in testimony would have permitted appropriate scrutiny by other parties. The AG’s footnote suggestion that parties be allowed to contest the material in reply briefs on exception does not cure the impropriety of the AG’s tactic. Even leaving inappropriate procedural steps aside, the “evidence” provided by the AG’s Office, referenced in one compliance filing report cherry-picked from several such reports,

is insufficient – the broad conclusion is based on a single pilot, over a short time period, with a relatively small sample size. This is an inadequate basis for a sweeping conclusion. The PO was correct in finding that insufficient information exists about the potential impacts of time-of-use rates on low-income customers. PO at 252.

VI. REPLY TO EXCEPTIONS NO. 5: NEVI STANDARDS

Electrify America disputes the appropriateness of using certain NEVI standards more broadly – namely, the use of uptime requirements. They state that “uptime reporting requirements in the NEVI standards are only applicable to projects funded in Alternative Fuel Corridors (“AFCs”) under the NEVI Formula Program...[and that] blanket application of NEVI uptime requirements is not appropriate or necessary for all EV charging stations.” Electrify America BOE at 4-5. CJCP fail to understand the rationale for Electrify America’s conclusion – which seems largely to rest on the fact that “compliance with the NEVI standards will require large investments in Information Technology (IT) systems and infrastructure.” Electrify America BOE at 5. Simply put, this cost is not a compelling reason for the PO to reverse its conclusion. EV customers that rely on public charging for a variety of reasons will need to be assured that any charger will need to be online and useable – whether or not it is located on an AFC. As such, having clear, consistent standards for uptime is practical and will provide much needed assurance to customers that they will not be stranded. Moreover, having variable standards for uptime creates exactly the kind of situation that Electrify America itself cautions against: “establishing inconsistent or ‘patchwork’ requirements for EVSPs will increase the economic and administrative burdens of investing in EV infrastructure, present a challenge to the rapid deployment of EV charging infrastructure, and potentially disincentivize investment in charging equipment and networks.” Electrify America BOE at 4.

The PO came to the correct conclusion regarding uptime requirements and should be upheld.

VII. REPLY TO EXCEPTIONS NO. 7: EQUITY CONSIDERATIONS

In its initial BOE, ChargePoint raised three points related to equity to which CJCP respond. First, ChargePoint states that it “strongly supports efforts to ensure that the customers and communities that need it most can access dedicated funding for make-ready infrastructure, but we are concerned that carving out a full 70 percent of the subprogram budget [for EJ/R3/low-income communities] would result in a significant amount of the reserved budget remaining unspent.” ChargePoint BOE at 11. ChargePoint goes on to suggest that “a more balanced approach would be to allocate 50 percent of the C&I and Public Sector EJ/R3 EV Charging Infrastructure Subprogram budget to EJ/R3/low-income communities and 50 percent to all other customers.” ChargePoint BOE at 11-12. Such a significant funding cut goes against the intent of this subprogram, aptly entitled the “C&I and Public Sector EJ/R3 EV Charging Infrastructure Subprogram,” and ignores the broader focus on EJ and R3 communities in the EV Act.

And, ChargePoint’s argument that the higher allotment is too high relative to what is in the EV Act (ChargePoint BOE at 11) is misplaced, as is ComEd’s contention that “a target of supporting 40% of investments to facilitate deployment in or serving EJ/R3/LI communities aligns with the statutory language and policy directives of the EVA” (ComEd BOE at 17). The 40% target described in the EV Act is a floor, and does not preclude a higher percentage of funds being dedicated to underserved and disadvantaged communities. As such, the PO’s conclusion to dedicate a higher percentage than the floor in the EV Act is within its discretion, and appropriate, given the emphasis to ensure benefit in these communities that is clear in statutory language. *See, e.g., ILCS 627/45(a)(7).*

Finally, ChargePoint states that “while community input is invaluable in certain contexts, ChargePoint is concerned that requiring customers to engage in outreach prior to requesting make-ready rebates from ComEd will at best delay charger deployments and at worst discourage many site hosts from participating in the program and deploying chargers at all...ComEd’s BE Plan should *encourage* any site host willing to host EV chargers to do so and should avoid imposing unnecessary obstacles such as LVEJO’s proposed community outreach requirement.” ChargePoint BOE at 14 (emphasis retained from original). This argument fails to support its assertion that outreach to communities would be either unnecessary or a barrier – and is therefore misplaced. Any challenges with community outreach stem not from the communities themselves acting as an “obstacle,” but a fundamental failure on the part of the utility (which is the relevant entity, rather than the customer) to conduct *meaningful, targeted* outreach. The participation of community-based organization in this docket, and their interest in engaging with the issue of charger deployment, indicates, if anything, an interest in productive engagement to maximize the benefits of chargers in their communities, rather than any intent to be an “obstacle.” CJCP understand that ComEd seeks to remedy that, so we are cautiously optimistic that that challenge will be mitigated in the future. And, the example that ChargePoint relies on – that communities will be able to dictate where in a supermarket parking lot chargers go – mischaracterizes the nature of the outreach for which LVEJO and the other CJCP members are advocating. CJCP agree that supermarkets should be able to site their chargers within their parking lots where it makes sense – that is logical. However, whether or not the supermarket is a site that should be prioritized from the perspective of the surrounding community is the salient question – and effective community outreach that solicits and integrates feedback as to this point is the opposite of unnecessary.

VIII. REPLY TO EXCEPTIONS NO. 8: COST-BENEFIT ANALYSIS

The AG's Office states that "the costs of ComEd's BE Plan far outstrip the net revenues likely to be generated by the BE Plan" and argue therefore that the BE Plan has an unfavorable cost-benefit analysis. To support this assertion, the AG utilizes evidence provided in its witness's revised direct testimony, stating that

analysis of the BE Plan alone shows non-participants will not benefit financially from ComEd's proposal as the costs far outweigh potential benefits on a cumulative and annual basis...incorporating the benefits of all EV charging in the service territory associated with the BE Plan rebates and other programs, the present value cost of the BE Plan through 2038 (representing the life of the vehicles) is slightly less than the present value of net revenues from all cumulative EVs adopted from 2023-2025.

AG Ex. 1.0R at 41:754-760.

Monetary benefits, while relevant, are far from the only measure by which benefits should be evaluated. As CJCP has enumerated multiple times throughout this proceeding (*see, e.g.*, CJCP Reply Brief at 28-29), the societal benefits of more widespread transportation electrification have the potential to be vast and should not be ignored. Looking at monetized avoided health impacts, missed work and school days, and hospital visits will lead to a more holistic cost-benefit analysis and should be incorporated to create an accurate picture.

IX. REPLY TO EXCEPTIONS NO. 9: BUDGET

Both Staff and the AG's Office advocate for a much lower budget. The AG's Office states that "the People take exception to the Proposed Order's findings on the BE Plan budget for two reasons...the Proposed Order errs by not correcting the Interim Order's expansive interpretation of the retail rate cap...[and] the Proposed Order fails to address the People's arguments that the budget is excessive based on the record in this case." AG BOE at 4. Using that logic, the AG's Office strives to get the Commission to reduce the Company's budget to \$28 million. AG BOE 3. Similarly, Staff advocates for a budget of \$44.4 million, reasoning that an \$84 million budget is

“far too high, especially for the first year of the program,” “spending should be at a level that will provide some assurance that ratepayer will not be required to pay for ineffective programs,” and “Staff calculated the Retail Rate Impact Cap at \$44.4 million and believes ComEd’s budget should be more in line with that calculation.” Staff BOE at 4.

CJCP address arguments related to the retail rate cap in Section II. The argument requesting the Commission to revisit and reconsider the interpretation of the retail rate cap made in the Interim Order is invalid for the reasons described in Section II. That aside, the respective budgets proposed by Staff and the AG’s Office will render ComEd’s program minimally effective – or even ineffective – because they are not at a level that allows for key insights that will sufficiently promote “widespread adoption of electric vehicle” per the intent expressed in the statute establishing this process. *See* 20 ILCS 627/45(a). Put another way, artificially hamstringing ComEd’s budget, far from protecting ratepayers, will result in programs that fail to contribute to cleaning up Illinois’ most polluting sector. And, as CJCP has stated before, “artificially constraining ComEd’s ability to do that by utilizing selective and strained interpretations of what the statute [the EV Act] includes, will do little to accomplish the goals of the EV Act.” CJCP Reply Brief at 30. Moreover, it will not facilitate the widespread electrification that the EV Act strives to accomplish, leaving much-needed emissions reductions on the table. The Proposed Order should not be modified to accommodate arguments from the AG’s Office and Staff.

X. CONCLUSION

Clean Jobs Coalition Parties request that the Commission modify the Proposed Order and enter a Final Order consistent with the Exceptions set forth in their Brief on Exceptions and arguments in this Reply Brief on Exceptions.

Dated: March 9, 2023

Respectfully submitted,

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