STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	**18-1725**
Verified Petition for Approval of a Revision to Integrated Distribution Company Implementation Plan.	**:**	
	:	
Commonwealth Edison Company	**:**	**18-1824**
	:	
Creation of Rate Residential Time of Use Pricing Pilot ("Rate RTOUPP"). (tariffs filed November 19, 2018)	**:**	**(Consol.)**

ORDER

October 2, 2019

Table of Contents

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By the Commission:

I. PROCEDURAL HISTORY

On November 19, 2018, Commonwealth Edison Company ("ComEd" or "Company") submitted to the Illinois Commerce Commission ("Commission" or "ICC") tariffs for its proposed Rate Residential Time of Use Pricing Pilot ("Rate RTOUPP"), a pilot time-of-use ("TOU") rate designed to incentivize residential customers to shift their energy use away from peak periods to times when the cost of energy and capacity are lower. As part of the pilot, ComEd will evaluate and report on the behavior of residential customers who elect to take service under Rate RTOUPP during a four-year pilot period. ComEd's tariff was suspended by order of the Commission on December 19, 2018, and Docket No. 18-1824 was initiated.

Also, on November 19, 2018, ComEd filed a petition with the Commission seeking approval of temporary revisions to its Integrated Distribution Company ("IDC") Implementation Plan that will enable ComEd to market Rate RTOUPP to customers, inform them of the benefits, and raise overall awareness for the pilot (the "Petition"). This Petition initiated Docket No. 18-1725. These matters were consolidated by the Administrative Law Judge ("ALJ") at a status hearing on January 22, 2019.

The following Petitions to Intervene were granted by the ALJ: Environmental law & Policy Center ("ELPC"), Illinois Competitive Energy Association ("ICEA"), and the Citizens Utility Board ("CUB") and Environmental Defense Fund ("EDF") (together, "EDF/CUB"). The Attorney General of Illinois ("AG") and Staff of the Commission ("Staff") participated in this proceeding as well.

Martin Fruehe, John Leick, and James Eber testified on behalf of ComEd. Samuel Gafford and Kevin Wright testified on behalf of ICEA. Tomas Rodriguez and

Shea Felde testified on behalf of the Staff. Scott Rubin testified on behalf of the AG. Andrew Barbeau testified on behalf of EDF/CUB.

An evidentiary hearing was convened in these consolidated dockets at the Commission's Chicago office before the ALJ on June 25, 2019. At the conclusion of the hearing, the record was marked "Heard and Taken." ComEd, Staff, the AG, EDF/CUB, and ICEA each filed Initial Briefs ("IB") on July 10, 2019. Reply Briefs ("RB") were filed on July 17, 2019.

The ALJ issued a Proposed Order on August 15, 2019. On August 27, 2019, ComEd, Staff, the AG, ICEA, and EDF/CUB filed Briefs on Exceptions. ICEA requested oral argument in its Brief on Exceptions. Reply Briefs on Exceptions were filed on September 4, 2019 by EDF/CUB, ICEA, ComEd, the AG and Staff.

II. RATE RTOUPP

A. Introduction

1. ComEd's Position

ComEd explains that Rate RTOUPP is a four-year pilot program designed and intended to gain learnings regarding ComEd residential customers' interest in, and responsiveness to, an elective time-of-use supply rate option. ComEd states it will investigate the extent to which Rate RTOUPP encourages residential customers to use less electricity during periods when the price of electricity in the wholesale real-time market is higher, and the extent to which customers are able to respond to price signals to lower their bills. Learnings about how owners of electric vehicles respond to Rate RTOUPP are of particular interest.

ComEd states Rate RTOUPP is an energy-only supply rate that reflects the market price of electricity supply more closely than traditional fixed rates. ComEd explains that Rate RTOUPP calculates customers' supply charges separately during three daily windows, each with their own supply price developed using hourly energy prices. The three-period pricing is intended to encourage customers to shift consumption away from times of higher energy costs and the periods that influence their Capacity Charges. By reducing or shifting their consumption out of these periods, ComEd states, individual customers can benefit from lower supply costs and lower capacity costs. ComEd explains that the fixed pricing in each of the three periods mitigates the immediate impact on customers of any changes in the real-time energy market. ComEd asserts the difference in price between the three daily periods will provide a meaningful incentive for customers to shift consumption from higher- to lower-priced periods.

Thus, ComEd explains, Rate RTOUPP provides an opportunity for customers who are interested in time-sensitive energy prices but may not be comfortable with hourly variability in prices, to save on their supply charges by shifting load to off-peak periods when prices are lower. ComEd expects that Rate RTOUPP will be appealing to customers who can shift their consumption patterns and will lower energy costs for those customers. ComEd states that, in similar programs, customers have saved on energy supply relative to ComEd's fixed price rates and contributed to reduced carbon dioxide emissions through changes in usage.

ComEd asserts that this is a good time to pilot a time-of-use supply rate, for several reasons. First, ComEd has completed installing Advanced Metering Infrastructure ("AMI") for its customers. AMI allows ComEd to collect interval data, which is necessary for time-sensitive rate designs like Rate RTOUPP. Second, ComEd states, the electrification of the transportation sector is expected to grow significantly over the next decade. ComEd explains that Rate RTOUPP will provide owners of electric vehicles an option to save on their energy costs by shifting their charging load to off-peak hours. Third, ComEd is interested in learning how customers leverage new technologies with Rate RTOUPP to save on their supply costs. ComEd states that evaluating customers with electric vehicles now will provide useful learnings, which could assist with building more robust offerings in the future.

ComEd notes that, although the AG does not oppose Rate RTOUPP, the AG argues that ComEd's proposal should be modified because the "value proposition of the program being piloted must go beyond the edification of the utility," and to "ensure that Rate RTOUPP is not redundant to existing rate offerings." AG IB at 4. ComEd asserts that the legal standard is clear: new and modified rates are evaluated according to whether they are "just and reasonable," 220 ILCS 5/9-201(c), and that the Commission should apply that standard. ComEd states there is no additional or different standard that is applicable to a pilot rate, and proposed rates are not subject to additional scrutiny or evidentiary burden simply by virtue of the fact that they implement a pilot program.

ComEd argues that the record is clear that Rate RTOUPP is just and reasonable. While Rate RTOUPP is a time-sensitive energy pricing program, the price for energy in each of the three periods is fixed; thus, ComEd explains, Rate RTOUPP differs from ComEd's existing real-time rate, Rate BESH – Basic Electric Service Hourly Pricing ("Rate BESH") because it is less complex and, potentially, less risky. ComEd states Rate RTOUPP is not redundant of any other rate ComEd offers and will generate learnings that are not otherwise available.

ICEA contends that Rate RTOUPP should not be approved because the learnings ComEd identified will not benefit Alternative Retail Electric Suppliers ("ARES") in development of TOU products, ComEd contends, however, it is not clear why it should design a program offered to ComEd customers to benefit ARES. ComEd asserts that the benefits of Rate RTOUPP to customers, and the learnings from the pilot, are sufficient to justify approval. Specifically, ComEd states that Rate RTOUPP will generate learnings about customers' interest in time-of-use pricing, how customers react to time-variant price signals, whether they will reduce their consumption at the time of system peaks, and whether they will ultimately save money under a time-of-use rate structure. ComEd explains that the reporting to which it has committed will ensure that learnings on these subjects are shared with the Commission and other interested parties, including ARES.

ComEd also notes that ICEA argues Rate RTOUPP should not be approved because ComEd did not offer evidence of customer demand for the rate. ComEd states the record supports an expectation that customers will be interested in Rate RTOUPP. ComEd explains that one of the purposes of Rate RTOUPP is to gauge customer interest in time-of-use rates. ComEd states it cannot gauge interest in a time-of-use rate before it is offered. ComEd states that there are currently approximately 30,000 residential customers that take service under Rate BESH and that it is reasonable to assume that Rate RTOUPP will appeal to customers like those enrolled in Rate BESH, because the fixed pricing in each of the three periods may mitigate any customer concern associated with variability in the hourly energy market. Moreover, ComEd anticipates growth in customer adoption of smart appliances and/or electric vehicles during the pilot period and expects a parallel increase in interest in time-variant rates.

2. EDF/CUB's Position

EDF/CUB explain that the default rate (that is, the rate customers who take supply from ComEd and have not opted into the residential real-time pricing program) is governed by Rate BES – Rate Basic Electric Service ("Rate BES"). There is no time variance in Rate BES. Customers taking this default service pay one rate for every kilowatt-hour ("kWh") consumed at any time of day. Conversely, note EDF/CUB, a TOU rate recognizes that the financial and societal costs of producing electricity are not constant. Electricity is more expensive at times of peak demand, and marginal fuel data has shown that daily peak demand and annual peak demand is typically met with more polluting fuel sources. EDF/CUB Ex. 1.0 at 3-4. EDF/CUB witness Barbeau testified that generating more dirty energy at those hours to meet peak demand creates more pollution and impacts customers' health and environmental welfare. *Id*. at 4.

EDF/CUB note that, under a TOU rate, customers have both a means to reduce their electricity bills and an incentive to shift their usage away from high-demand times. *Id*. Even using the exact same number of kWhs, customers can lower their electric bill by shifting a portion of their electricity to off-peak times. *Id*. As ComEd nears completion of its deployment of AMI, EDF/CUB find there are ever-growing ways customers can shift their usage. EDF/CUB point out that the value proposition of smart devices is significantly enhanced when coupled with a time-variant rate option, as they open the door to even more savings not only through decreased overall usage but due to shifting usage to off-peak times. *Id*. Delay cycles on energy-intensive appliances like dishwashers and washing machines are another convenient way for customers to shift their usage. *Id*.

EDF/CUB also explain that under ComEd's residential real-time pricing program, Rate BESH, supply charges are based on real-time energy prices. EDF/CUB Ex. 1.0 at 6. This means that prices change hourly, in line with market prices. *Id*. Most customers can save money on Rate BESH, even without any changes in behavior. *Id*. In CUB's 2018 study of customer bill impacts from real-time pricing, they estimated that 97% of residential ComEd customers would have saved an average of $86 in 2016 under Rate BESH, as compared to their bills with the flat BES price to compare. *Id*. This study used ComEd's anonymous smart-meter data and historical locational marginal price data to simulate monthly bills for 344,000 customers under both rate designs and found that even with no amount of load-shifting, the difference between flat-rate pricing and lower wholesale prices was large enough that year that these customers would have likely saved a total of nearly $30 million. *Id*. at 6-7.

Despite the savings opportunities, EDF/CUB note that customer participation in ComEd's real-time pricing program has been low. *Id*. A TOU rate, which offers predictable, set prices for set hours, may appeal to a broader range of customers if they were hesitant to participate in hourly pricing because the prices were not as predictable, aver EDF/CUB. *Id*. Market rates vary, but typically do so in predictable patterns. *Id*. Therefore, EDF/CUB state, a TOU rate can be designed to send similar price signals to a real-time rate but do so in more general ways that some customers may find preferable. *Id*. at 6-7.

EDF/CUB also contend that a TOU rate has significant potential benefits to the grid as a whole which then accrue to all customers. EDF/CUB Ex. 1.0 at 5. They maintain that, by creating price signals that reflect higher costs of time periods on the grid as a whole, customers will be incentivized to shift energy use off those high-cost, high-demand hours, lowering daily and annual system peaks. *Id*. On the distribution system level, EDF/CUB testify that lower system peaks and a flattened load curve reduce the need for new distribution system investments – which are ultimately passed on to all customers – that are needed specifically to meet coincident system-wide peak. *Id*. Additionally, on the wholesale level, EDF/CUB explain that a flatter load curve means that energy purchasers can buy less high-priced peak energy, the costs of which are socialized and baked-in to a flat rate. *Id*. EDF/CUB maintain that reducing peak demand by just 3% in five Mid-Atlantic states could lead to price reductions of 5% to 8% and potential customer savings of $73 million per year. *Id*.

EDF/CUB conclude that reducing system peak means less high-polluting peaker plants are needed. Peaker plants are the last called on (thus only used during the highest-demand times) and have shown to be polluting fossil-fuel-burning plants. *Id*. at 6. Additionally, because a flattened load increases system efficiency, the grid can support larger quantities of distributed generation. *Id*. EDF/CUB argue that all customers also benefit from those environmental improvements. *Id*.

3. ICEA's Position

ICEA argues that ComEd has not provided sufficient justification for Rate RTOUPP. ICEA concludes that ComEd's failure to provide a persuasive justification for a new rate with anti-competitive features is fatal to ComEd's proposal. ICEA highlights that ComEd conceded that it has no evidence of any customer demand for a rate similar to Rate RTOUPP. Specifically, ICEA witness Gafford testified that although ComEd argues that Rate RTOUPP is directed at customers who are sensitive to exposure to hourly changes but can shift load, ComEd did not establish how many (if any) such customers exist. ICEA Ex. 1.0 at 3-4.

ICEA further argues that the Commission should reject ComEd's proposal to offer a completely voluntary rate designed primarily to determine whether customers are interested in the rate. ICEA notes that nothing in the Public Utilities Act ("PUA" or "Act") requires ComEd to offer Rate RTOUPP. ICEA witness Gafford also testified that any learnings from Rate RTOUPP are highly unlikely to benefit ARES that already know how to design and market time variant products in other states. *See* ICEA Ex. 3.0 at 4. ICEA contends that allowing ComEd to offer Rate RTOUPP without even a minimal demonstration of customer demand gives the appearance of a ratepayer-funded live focus group and one whose costs may be recovered from all Rate BESH customers. ICEA urges the Commission to not allow ComEd to offer Rate RTOUPP without sufficient evidence of customer demand, especially one that may be underwritten by all Rate BESH customers if demand does not materialize.

Also, ICEA highlights the testimony of Mr. Gafford which explains that there are several reasons ComEd's Rate RTOUPP should be rejected due to its negative impact on ARES' TOU product development:

> First, approving Rate RTOUPP does not address the fundamental barrier to ARES offering TOU products. Second, even if the Commission does address barriers to ARES offering TOU products, further utility entry into the TOU supply field creates challenges to ARES developing their own products. Further utility entry into the TOU space harms ARES TOU product development because ARES will be competing with administratively-set time of use rate levels that may be artificially low. The difference will be made up through the PEA, a charge that varies month by month due to factors independent of a particular customer's load-shifting behavior.

ICEA Ex. 1.0 at 4-5.

Moreover, ICEA notes that EDF/CUB allege that "97% of [residential] customers would have saved an average of $86" on Rate BESH compared to Rate BES. *See* EDF/CUB IB at 4-5. In response, ICEA contends, CUB's study suggests that Rate BESH simply needs better marketing to attract 97% of all ComEd residential customers who would save relative to Rate BES. ICEA argues further that EDF/CUB's solution for the apparent marketing failure of Rate BESH is to create a new rate without any evidence suggesting that the new rate would be more effective. ICEA highlights that, similar to ComEd, EDF/CUB cite no evidence that any actual customers prefer a TOU rate—especially one with capacity and transmission broken out separately and a purchased energy adjustment ("PEA") mechanism—to a real-time rate such as Rate BESH or Rate BES.

Finally, ICEA notes that ComEd argues that no party disputes the benefits that Rate RTOUPP will make available to customers. ICEA disagrees and argues that the PEA mechanism is likely to be confusing to customers and may lead to inconsistent price signals. ICEA urges the Commission to find that ComEd failed to sufficiently justify the purpose for and benefits of Rate RTOUPP and thus failed to meet its burden for Commission approval.

4. AG's Position

The AG contends that because this pilot would be paid for by ComEd ratepayers, the value proposition of the program being piloted must go beyond the edification of the utility. To warrant the expenditure of ratepayer funds, the AG maintains, the pilot must offer benefits to ComEd customers that the utility's existing programs and investments do not. The AG asserts that the Company's proposed TOU rate design is too similar to ComEd's existing time-variant pricing option, Rate BESH, and would expose participants to much of the same uncertainty and downside risk that has made Rate

BESH a less attractive option for customers. To justify the expenditure of ratepayer funds on a four-year pilot program testing a new time-variant rate, the AG requests that the TOU pilot be revised to introduce a truly different offering—a rate that provides price signals incentivizing consumption shifts resulting in system savings without sacrificing price certainty for ratepayers.

The AG explains that both TOU and real-time pricing rates are time-variant rates designed to provide customers an incentive to shift their usage to the times of day that minimize total system costs, thereby benefitting all customers. TOU rates are similar to real-time rates like Rate BESH in that TOU prices vary based on time of day to reflect the differing wholesale prices the utility pays for electricity at those times. The primary distinction is that TOU volumetric rates are calculated based on historical trends in real-time costs and therefore are consistent over time and known in advance whereas real-time pricing rates are volatile and not known in advance. ComEd Ex. 2.0 at 7-8.

The AG states that this difference in design reflects a difference in purpose. Real-time rates like Rate BESH serve to precisely track hourly real-time supply costs to provide as granular a price signal as possible to customers. Thus, Rate BESH customers' bills reflect even the slightest fluctuations in real-time costs. A Rate BESH customer can, by predicting hourly rates and shifting usage accordingly, reduce system costs and their own bills. In comparison, the purpose of a TOU rate is to eliminate this guesswork and provide customers the assurance that if they reduce or shift usage at certain times, their bills will reflect the lower costs. By eliminating the need to forecast real-time prices and to shift usage on a moment's notice accordingly, the AG argues that a well-designed TOU rate offers an easily understood rate structure that combines the incentive to shift usage of a time-variant rate with the predictability of a fixed rate.

The AG contends that, as proposed by the Company, the TOU rate pilot would not achieve the goal of simplifying hourly pricing and providing sufficient incentives to achieve savings. While the pilot is intended to incentivize load-shifting to reduce system costs, the Company's proposed rate design—particularly the monthly Capacity Charge—imposes on its customers rate volatility and uncertainty in calculating the bill impact of their usage, an uncertainty that the AG argues risks obviating the purpose of a nominally "fixed" time-variant rate.

The AG offers that, if designed properly, a TOU rate has the potential to provide customers not only an incentive to shift usage to lower-cost time periods but also more certainty and lower risk than ComEd's existing time-variant offering, Rate BESH. Otherwise, the AG posits, ComEd risks investing four years in confirming the obvious—that a rate that offers little to customers to distinguish itself from an existing rate offering provides little, if any, additional benefit to ratepayers.

5. Staff's Position

Staff does not object to ComEd's proposal with Staff's proposed modifications, as discussed below in the discussion regarding eligibility and size of the pilot.

6. Commission Analysis and Conclusion

The Commission finds that the record in this proceeding demonstrates that Rate RTOUPP, as modified herein, is just and reasonable. As discussed below regarding eligibility for the pilot, the AG seems most concerned that exposing low-income ratepayers to the proposed pilot is not just and reasonable. However, there is no evidence that offering a time of use product to low-income ratepayers will result in harm. The Commission has considered all positions with respect to bill protection and finds that bill protection for low-income consumers is unnecessary in this instance. The PUA does not require bill protection or subsidizing low-income customers when piloting new rates. Indeed, the PUA specifically requires the "the provision of adequate, efficient, reliable, environmentally safe and least-cost public utility services . . . which are equitable to all citizens." 220 ILCS 5/1-102. The Commission further finds that Rate RTOUPP will make the benefits of time-variant rates available to residential customers in a manner that involves less price risk than hourly or real-time pricing. The time-sensitive rates will be based on historic prices which will be designed to encourage users to shift their load. Load-shifting has the potential to lower individuals' bills, benefit the grid by promoting grid resilience, benefit the environment through GHG reduction, positively impact distribution system investments, and provide for flexible rate design while promoting value, choice and competition. Further, TOU as a potential variant rate promotes a flatter load curve while providing cost savings through changed behavior.

In addition, the Commission finds that the Rate RTOUPP pilot will result in learnings that will be valuable to ComEd and other interested stakeholders, including information regarding customers' interest in time-of-use rates, the interest of various segments of customers, the timing of pricing periods, the effectiveness with which customers use time-of-use rates to manage their utility bills, and other information such as the impact on competition.

B. Rate Structure

1. Eligibility and Size of Pilot

a. ComEd's Position

ComEd proposes to make Rate RTOUPP available to any residential retail customer who is taking electric service from ComEd, has an AMI meter capable of providing interval usage data, does not have parallel generation facilities, and elects to participate. ComEd states no party disputes the reasonableness of these eligibility criteria, and they should be approved.

ComEd states that it intends to solicit a randomly selected representative sample of eligible customers to participate in Rate RTOUPP while also targeting electric vehicle owners. ComEd explains that it is not yet known what residential customer segments will be interested in Rate RTOUPP, or in what proportions. Therefore, ComEd states, if a representative cross-section of customers does not enroll, ComEd will have learned about customer preferences and will have information that will be useful in designing and implementing time-of-use rates in the future.

ComEd notes that the AG recommends that low-income customers should not be permitted to participate in Rate RTOUPP, given the uncertain nature of the effect of the rate on customers' bills. ComEd notes that, while EDF/CUB suggest that low-income customers should be permitted to participate in Rate RTOUPP, but should be offered bill protection, the AG counters that low-income customers should be excluded from

Rate RTOUPP even if bill protection is offered, on the basis that only exclusion can insulate low-income customers from the risk of rate volatility. ComEd asserts the AG's recommendation ignores the fact that enrollment in Rate RTOUPP is entirely voluntary.

First, ComEd asserts the AG's recommendation should be rejected because it is important to understand how low-income customers use and react to time-of-use rates, and that information cannot be gained if those customers are excluded from the Rate RTOUPP pilot. ComEd notes that Rate RTOUPP is voluntary, and customers can switch to another rate at any point. Therefore, ComEd states, low-income customers will not be required to enroll in Rate RTOUPP, and if they do enroll and later determine they prefer a different option, they are free to switch to such option. Thus, ComEd expects that customers who believe that they will benefit will enroll, and customers who experience benefits will remain enrolled. ComEd states that, if low-income customers do not enroll, or are enrolled for only a short period of time, ComEd and stakeholders will have gained important information about customer experiences that will be useful in designing and implementing time-of-use rates in the future. Moreover, ComEd explains, there is simply no means of gathering information specific to the experience of low-income customers if such customers are excluded from the pilot.

Second, ComEd states that customers may be able to reduce their monthly utility bills by enrolling in Rate RTOUPP and denying low-income customers an opportunity to save is not reasonable. ComEd explains that, although the AG appears to agree that Rate RTOUPP may allow customers to reduce their energy supply costs, the AG focuses on the risk of significantly higher monthly bills under Rate RTOUPP as the basis for its recommendation to exclude low-income customers. However, ComEd contends that the record contains no evidence demonstrating that Rate RTOUPP will result in significantly higher monthly bills than fixed supply rates; the AG supports its statement only by citing to a study of TOU rates offered by three utilities in California. ComEd states that this study is unpersuasive because there is no evidence comparing the design of those California rates to Rate RTOUPP and, as the variety of recommendations proffered by the parties in this proceeding demonstrates, there are innumerable ways to design a time-of-use rate. ComEd further notes that the AG does not attempt to compare the default or fixed rate alternatives in California (against which the TOU rates were compared to determine the impact on low-income customers) to those available from ComEd. In the absence of that information, ComEd asserts, there is no reason to presume that Rate RTOUPP will have an impact on customer bills that is in any way similar to the impacts California customers experienced. ComEd concludes that the Commission should not rely on the California study, or presume that its conclusions are relevant to Illinois.

In any case, ComEd states, after a review of the study from California of the nine variations of time-of-use rates studied, most rates produced overall reductions in electricity use, including among low-income customers. Although summer monthly bills were higher for all the time-of-use rates studied, ComEd states the study showed average winter bills were lower by $1 to $12, and that total annual bill impacts ranged from 0% to 2%. In sum, ComEd explains, the annual impact of time-of-use rates on low-income customers in California was not substantial.

ComEd notes that the AG goes on to argue that low-income customers should be prevented from participating in Rate RTOUPP to protect them from month-to-month "volatility" in their utility bills. However, ComEd states that the record evidence the AG offered appears to undermine its argument on this point: the study of time-of-use rates in California concluded that economic hardship was not materially increased by TOU rates.

ComEd notes that Staff proposed the Commission direct ComEd to limit participation in Rate RTOUPP to the number of participants necessary to conduct statistically significant analysis of the pilot – approximately 1,900 customers. ComEd explains that a cap on participation could deny the potential benefits of Rate RTOUPP to customers who want to participate. In addition, ComEd will conduct programming and other support to enable Rate RTOUPP; allowing all customers who wish to participate in Rate RTOUPP the opportunity to do so would maximize the value of those efforts. ComEd states that, to the extent Staff's proposal reflects concern about the competitive impact of Rate RTOUPP, the pilot will not negatively impact ARES' efforts to offer time-of-use products. As a result, ComEd concludes, it is not necessary to cap participation in Rate RTOUPP.

b. EDF/CUB's Position

EDF/CUB agree with ComEd that, given the potential benefits of participating in the program – both to individual participants and to all customers, it is unfair to all customers to artificially limit the size of the program.

The AG seeks to exclude low-income customers from participation in the pilot because of a claimed risk of significantly higher monthly bills. EDF/CUB argue that this argument does not stand in the face of research presented by EDF/CUB which showed that 97% of residential ComEd customers would have saved an average of $86 in 2016 on ComEd's hourly pricing Rate BESH as compared with the flat BES price to compare. EDF/CUB Ex. 1.0 at 6. While that finding is based on 2016 usage and prices, EDF/CUB contend it is compelling data that should be considered here. EDF/CUB point out that in the study cited by AG witness Fruehe, participants, on average, saw lower total annual bills than they would have under the default rate. ComEd Ex. 4.0 at 10. EDF/CUB maintain that a total annual bill is equally if not more important than monthly fluctuations.

In response to the AG's concerns, EDF/CUB recommend that the Commission consider requiring a refund to low-income customers who ultimately pay more on the pilot program than they would have on the default rate. Noting ComEd's concerns regarding cost recovery of those refunds and potential cross-subsidization of other participants, EDF/CUB alternatively support the AG's proposal to show customers what their bill would be under Rate BES to provide the best information possible to participants who may benefit from returning to the default rate.

c. AG's Position

Considering the experimental nature of the pilot and the potential financial risk of participation, the AG requests that the Commission order the Company to exclude certified low-income customers from the TOU rate pilot as well. The AG contends that the Company's proposed TOU rate pilot imposes a substantial, and often unforeseeable, risk of significantly higher monthly bills than they would experience taking service under the default fixed rate. The AG points to both the time-variant volumetric rates and the Company's proposed Capacity Charge as sources of this bill volatility. AG Ex. 1.0 at 4-7.

The AG contends that the uncertain effect of the experimental rate structure that ComEd proposes makes the TOU pilot inappropriate for low-income customers. The AG cites recent research on TOU pilot programs in California finding that low-income residential customers experienced higher summer bills and less savings. Low-income customers are less able to absorb unexpectedly high electric bills, making the increased risk for low-income customers especially problematic. *Id*. at 11-12. The AG further notes that electric bill volatility in the summer months also poses a potential health risk if low-income customers forego cooling their homes during dangerous heat waves for fear of an unaffordable bill.

First, in response to ComEd, the AG asserts that including low-income customers is not necessary for the Company to gain information about how low-income customers respond to TOU rates. Such information already is in the record in this proceeding in the form of the study attached to Mr. Rubin's testimony as AG Ex. 1.2, and the AG contends that it illustrates that TOU rate pilot participation imposes unacceptable risks on low-income customers. Moreover, the AG argues that expanding the utility's knowledge about low-income customers' response to TOU pricing is not as important as limiting low-income customers' exposure to the risk of excessive monthly bills and preserving their access to affordable service.

Second, the AG objects to the Company and EDF/CUB's position that low-income customers' opportunity to save through TOU pilot participation warrants the risk of losses. The AG does not deny that customers, including low-income customers, have the potential for savings from switching to a TOU rate. However, for low-income customers in particular, the AG argues that the risk of higher and more volatile bills outweighs the minimal potential savings. The study presented by Mr. Rubin found that "[t]otal annual bill impacts were very small at all three utilities, with average monthly impact ranging between 0% (no change) and savings of up to 2%." The study authors further noted that "bill impact varied significantly" between low-income and other customers. For example, in the Southern California Edison service territory, low-income customers "faced greater bill increases" than other customers on a percentage basis. AG Ex. 1.2 at 55.

Third, the AG rejects the Company's assertion that the ability to opt out of the TOU rate pilot sufficiently limits low-income participants' financial exposure. The AG asserts that allowing customers to opt out of the program does nothing to protect low-income customers from the risk of an excessive monthly bill. It takes one monthly bill a customer cannot afford for the customer to go into arrears, triggering late payment fees and the potential for service disconnection. The AG also posits that the resetting of the Capacity Charge each June, which is expected to constitute roughly 40% of the customer's total bill, means the customer might not discover that continued pilot participation is unaffordable until the summer, when electric bills tend to be highest. A low-income customer who falls behind on payments as a result of an excessive June bill can switch back to Rate BES, but their July and August bills still would be expected to be higher than most months of the year. Low-income customers also are especially susceptible to an unexpected jump in the Capacity Charge. The study found that low-income customers "had much lower understanding of the timing of the peak period" than other customers did, which would determine their Capacity Charge under ComEd's proposal. AG Ex. 1.2 at 55.

Fourth, the AG maintains that the Company has not asserted any grounds to disregard the findings of a study of TOU pilot participants in California. The burden to prove that its proposed rates are just and reasonable is on the Company, which has not presented any reason to suspect that customers in California respond to TOU rates fundamentally differently than customers in Illinois would. There is no prior experience with residential TOU rates in Illinois to draw upon, and the results of a recent TOU rate pilot in another state provide invaluable insight into what to expect from the Illinois pilot.

In light of the risks associated with participation, the AG requests that the Commission order the Company to exclude certified low-income customers from the TOU rate pilot.

d. Staff's Position

As Staff witness Felde observes, ComEd witness Fruehe states that approximately 1,900 participants is the smallest program size that will yield useful results. Staff Ex. 4.0 at 3. Ms. Felde recommends that the program be limited to this size. *Id*. Ms. Felde based this recommendation upon the potential adverse effect on competition that might result from widespread offering of Rate RTOUPP. Staff Ex. 2.0 at 3-4. More specifically. Ms. Felde notes that ComEd has complete access to the AMI interval usage data necessary to market and offer a rate such as Rate RTOUPP, while ARES have no similar access to information. *Id*. Ms. Felde's view that asymmetrical data access is a problem is shared by ICEA, which states that "greater access to interval data would remove one of the primary barriers to new ARES time-variant products." ICEA IB at 20.

In other words, ComEd proposes to offer a rate that it is able to offer entirely because it is a distribution company with access to necessary data not enjoyed by ARES. Moreover, ComEd has provided virtually no information regarding how it proposes to market Rate RTOUPP, ComEd Ex. 6.0 at 2-4, despite Ms. Felde's request that it do so. Staff Ex. 2.0 at 4-5. Thus, the effect of ComEd's offering of RTOUPP on the competitive market cannot readily be evaluated. Accordingly, Ms. Felde's recommendation allows ComEd to obtain the learnings that are its ostensible basis for pursuing the pilot, *see, e.g*., Petition, ¶¶7, 8; ComEd 3.0 at 5, *et seq*., while minimizing any competitive harms that may result.

Staff opines that ComEd's response is not detailed and its argument does not avail ComEd. Accepting that ComEd offers Rate RTOUPP as a pilot, the definition of a "pilot project" is "[a] small-scale advance study conducted to gauge the advisability of conducting a full-scale research project by first evaluating its design, time commitment, costs, and feasibility, plus the effects of potential adverse events." 1905 B. Garner (ed.), Black's Law Dictionary (11th Ed. 2019). From this – and from ComEd's Petition and evidentiary presentation generally, which states that the purpose of this self-described pilot is to obtain “learnings” regarding how time-of-use rates affect customer behavior – it is clear that a large-scale or widespread offering is not fitting under the circumstances.

The notion that Ms. Felde’s proposal might “deny customers potential benefits” must be considered in the light of the fact that the point of the pilot is, or should be, to determine whether any such benefits exist in the first place. It may well prove to be the case that there are few or no benefits associated with TOU rates like Rate RTOUPP. Likewise, the argument that, since ComEd will support the project, it should be larger is defective for the same reason. Finally, ComEd’s assertion that the pilot will not detrimentally affect ARES’ attempts to market TOU products must be viewed skeptically in light of ICEA’s vigorous opposition to the proposal, and its assertions that the pilot will indeed be competitively harmful.

Again, Ms. Felde does not recommend that the pilot be rejected. Instead, she recommends that its size be limited to the smallest size that will yield the desired learnings. Staff opines that her proposal is rational, well-supported, consistent with the concept of what constitutes a “pilot program,” and should be adopted.

e. Commission Analysis and Conclusion

The Commission approves ComEd’s proposal to make Rate RTOUPP available to any residential retail customer who is taking electric service from ComEd, has an AMI meter capable of providing interval usage data, does not have parallel generation facilities, and elects to participate. The Commission does not adopt the AG’s proposal to exclude low-income customers from the pilot due to the possibility of savings under Rate RTOUPP and for the reasons set forth previously. Also, the Commission agrees with ComEd and EDF/CUB that it is important to learn about how all segments of customers use time-of-use rates, and that it is impossible to learn about low-income customers if such customers are excluded.

The Commission rejects the AG’s assumptions that Rate RTOUPP will likely increase low-income ratepayers’ bills. The AG has offered no evidence for this assertion and, without the pilot program, such conclusions simply cannot be known at this time. Similarly, there is no evidence to support the conclusion that low-income customers will not have as much control over their bills if the Pilot is conducted as set forth in this Order. Finally, the record is devoid of any information regarding who will *ultimately* pay for the costs associated with bill protection for only low-income participants.

The Commission finds that a more equitable solution to the AG’s concerns is to ensure that ComEd invests in thorough marketing, education and outreach to all potential TOU customers. For these reasons, the Commission likewise rejects EDF/CUB’s alternate proposal that low-income customers that end up paying more under Rate RTOUPP be refunded the difference between Rate RTOUPP and the default rate. The Commission does not think it is appropriate that bill subsidies be offered to only one type of customer. Implementation issues are addressed in Part B.5 below. Therefore, and to address these concerns, the Commission directs ComEd to invest in and develop a marketing, education and outreach strategy regarding how enrollees can best manage their electricity bills and how charges are calculated under RTOUPP, while ComEd continues to assess program enrollment and behavior. In addition, ComEd shall provide information regarding these efforts in its semi-annual filing, as more fully set forth below in Section II(C).

With respect to whether Rate RTOUPP should be limited in size, as proposed by Staff, the Commission adopts Staff's proposal that this pilot be limited to no more than 1900 enrolled residential customers. The Commission agrees that because it is being presented as a pilot, it should be limited in size to that which is necessary to study it. In addition, there is no evidence of whether or not ComEd's ability to offer Rate RTOUPP will harm competition, which is further justification for limiting the size of the pilot. However, the Commission also recognizes the need to remain flexible while studying time of use rate design and offerings. Therefore, the Commission directs ComEd to return before the Commission should enrollment or other factors arise that could negatively impact the statistical significance of the study.

2. Pricing Periods

a. ComEd's Position

Under Rate RTOUPP, ComEd states, participating customers' electricity supply charges are determined according to each customer's kWh usage during three daily pricing periods. ComEd explains that these periods correspond to pricing differences in the PJM Interconnection, LLC ("PJM") hourly real-time pricing market, as well as the hours that generally determine customers' Capacity Charges, and the hours in which it may be most economically efficient to charge an electric vehicle.

In response to testimony by AG witness Rubin, ComEd adjusted the hours incorporated in each of the three pricing periods. Neither the AG nor any other party objected to the adjusted periods. With the agreed-upon adjustment to the hours included in each period, the Super Peak Period, the highest price period, will be between 2 p.m. and 7 p.m. every day. The Off Peak Period, the lowest price period, will be between 10 p.m. and 6 a.m. every day. All other hours (6 a.m. to 2 p.m. and 7 p.m. to 10 p.m.) will be the Peak Period, and electricity supply charges in this period will fall between the rates applicable during the Super Peak and Off Peak Periods. ComEd asserts that the adjusted periods are reasonable, uncontested, and should be approved.

ComEd states that, under Rate RTOUPP, the price for electricity supply in each of the three pricing periods is a fixed per-kWh rate. ComEd explains that the fixed electricity supply charges are developed using historical real-time hourly prices from the PJM-administered markets, with adjustments intended to create incentives for customers to shift discretionary energy usage to periods when prices are lower and there is less demand on the grid. ComEd states that any over- or under-collection will be reconciled and credited or charged to participating customers. ComEd will procure Rate RTOUPP participants' energy in the real-time hourly market, in essentially the same manner as it does for participants in the residential real-time pricing program. ComEd notes that no party disputed the manner in which the fixed price for electricity supply in each pricing period will be developed and recommends that it be approved.

b. EDF/CUB's Position

EDF/CUB support ComEd's revised pricing periods. However, EDF/CUB witness Barbeau noted that evaluation of the factors that influence load and electric system costs (and charges) would be helpful to determine whether and how the time periods ComEd has proposed should be adjusted in the future.

c. AG's Position

The AG does not object to these revised time intervals and accordingly request that the Commission adopt these pricing periods. The AG also urges the Commission, ComEd, and interested parties to continue reviewing the use of these time periods over the course of the pilot and seek adjustments as necessary to enable customers to take full advantage of the program. AG Ex. 2.0 at 6-7.

d. Commission Analysis and Conclusion

The Commission finds that the timing of the three pricing periods under Rate RTOUPP, which is undisputed among the parties, is reasonable and should be approved.

The Commission finds that the proposal to charge customers for energy supply at fixed per-kWh rates, based on historical real-time hourly prices in the PJM market, is reasonable. Although there is some disagreement among the parties – discussed below – regarding proposals to shift revenue between the pricing periods, the Commission notes that there is no disagreement as to how the baseline price in each period should be calculated. That undisputed methodology is reasonable and is approved.

3. True-Up through Purchased Energy Adjustment ("PEA")

a. ComEd's Position

ComEd states that it will not experience any profit or loss related to procuring and providing supply services to customers taking service under Rate RTOUPP. ComEd explains that a PEA factor will be determined for Rate RTOUPP participants, which will allow ComEd to recover its actual costs of supply for Rate RTOUPP customers and to share unexpected fixed costs that could create a spike in charges if there are few customers enrolled in Rate RTOUPP. ComEd explains that, while Rate RTOUPP is designed to keep the PEA as close as possible to zero, customers will never use exactly the same quantity of electricity year-over-year, nor will electricity supply prices be exactly the same. The PEA therefore adjusts Rate RTOUPP charges to account for that variability.

ComEd states the Rate RTOUPP PEA will include a ±0.5 cents/kWh cap, and once annually ComEd will have the opportunity to transfer the Rate RTOUPP PEA deferral amount into the Rate RTOUPP electricity supply charges if the Rate RTOUPP PEA is consistently at the cap amount. ComEd further explains that if the cost of supply in the hourly market or Rate RTOUPP customers' usage are no longer aligned with the historical data used to set the charges, ComEd can reset the charges using the most recent data.

ComEd also notes that ICEA argued the PEA may cause customer confusion, which ICEA alleged would have an anti-competitive effect on ARES' time-variant product development because it will be challenging for the customer to compare pricing. ComEd contends that the ±0.5 cents/kWh cap on the PEA, ensures that the PEA does not result in significant variations from the RTOUPP charges. Thus, to the extent the PEA alters the per-kWh charge paid by Rate RTOUPP customers, ComEd states the alteration will be minor, and is unlikely to result in customers being unable to effectively compare Rate RTOUPP to an ARES' supply rate, as ICEA contends. ComEd asserts the PEA will not result in customer confusion, or any anti-competitive effects.

ComEd concludes that the PEA is a critical component of Rate RTOUPP and should be approved.

b. ICEA's Position

According to ICEA, ComEd's plan to use a PEA as part of rate design shows the inherent flaws of ComEd offering a TOU rate. ICEA does not dispute the legality of the PEA or even whether, from a cost recovery perspective, there is some justification for using the PEA mechanism. ICEA argues that the way ComEd is proposing to implement the PEA in Rate RTOUPP could cause a customer to be confused about the actual rate the customer is paying. ICEA posits that customer confusion, in turn, would have an anti-competitive effect on ARES' time-variant product development because it will be challenging for the customer to compare pricing.

ICEA argues that the PEA will have the negative effect of confusing customers, because the advertised Rate RTOUPP rate is—except in months where the PEA is zero—never an accurate representation of what the customer actually pays. *See* ICEA Ex. 1.0 at 6. ICEA witness Gafford testified that the PEA sends confusing price signals because "it distorts the price signal of a customer's total bill by imposing a per kWh charge that is independent of that customer's (or even all customers') ability to shift or even reduce usage." ICEA Ex. 1.0 at 7. In other words: if customers across the board succeed in the exact type of load shift that a TOU rate encourages, they may be rewarded with higher prices through the PEA.

According to ICEA, this confusion will have a negative effect on competition with ARES' TOU products. Mr. Gafford testified to the competitive challenges of the PEA:

> What is billed as a TOU rate now has a potentially substantial additional charge or credit—as much as half a cent per kWh—that is added onto each of the three time period rates. The advertised rate, then, is not an accurate representation of what the customer will pay. Both the charge and the credit raise concerns. If the PEA is consistently a charge, the advertised "rates" will appear more competitive vis-à-vis an ARES product than they are. If the PEA is a credit, it becomes more challenging for an ARES TOU product to demonstrate savings—especially in off-peak hours, where half a cent is almost 30% of the proposed summer off-peak price post revenue shift.

ICEA Ex. 1.0 at 6. ICEA does not dispute ComEd's observation that there are relatively few ARES' TOU products available today. While ICEA argues that this is due to barriers to ARES adoption, ICEA strongly urges the Commission to reject Rate RTOUPP because it would add additional barriers to ARES TOU products.

c. Commission Analysis and Conclusion

The Commission approves ComEd's proposed design of the Rate RTOUPP PEA factor. The PEA is a reasonable method of reconciling actual costs of energy supply with the revenues generated by Rate RTOUPP customers. ComEd's proposed ±0.5 cents/kWh cap is appropriate to ensure that the PEA does not result in unreasonable variation in customers' charges. The PEA ensures that ComEd will not experience any profit or loss on Rate RTOUPP and for that reason the Commission agrees that it is appropriate. The Commission directs ComEd to undertake marketing efforts in its billing designed to clearly designate the differences between Rate RTOUPP and Rate BES both with and without the PEA, to the extent that information and data is known and available. ComEd shall report those marketing efforts in its semi-annual filing as detailed below in Section II(C) and ComEd shall further report, through its third-party evaluator annual filing, the impact of those marketing efforts on behavior change.

The Commission agrees with ICEA, however, that the PEA will make it difficult to compare Rate RTOUPP to both ARES' rates and ComEd's Rate BES. As proposed by ComEd, under the supply charges listed on a customer's bill, customer will have the following charges: 1) Capacity Charge; 2) TOU electricity charges – Super Peak, Peak, and Off Peak; 3) TOU PJM Services Charge; 4) TOU Miscellaneous Procurement Components Charge; and 5) TOU PEA charge. ComEd Ex. 2.0 at 12. All these components make up a supply charge that would need to be compared to an ARES' quoted kWh price. To further cause customer confusion, ComEd's price to compare, as currently included on customer bills does not include the PEA. This leads the Commission to be more confident that the decision to limit enrollment is appropriate.

4. Revenue Shift/Capacity Costs

a. ComEd's Position

ComEd notes that the parties outline five competing proposals with respect to the recovery of revenues among the various pricing periods and charges. ComEd summarizes the five alternatives presented by the parties as follows: (i) Staff's position that no revenue shift should be applied; (ii) ComEd's proposal to shift 10% of the revenue associated with the Off Peak and Peak Periods to the Super Peak Period revenue; (iii) ComEd's alternative proposal to add approximately 1 cent/kWh of capacity costs to the Super Peak Period charges, in lieu of the 10% revenue shift; (iv) EDF/CUB's proposal to recover 25% of capacity costs via summer Super Peak Period rates; and (v) the AG's proposal to recover capacity costs primarily via Super Peak Period rates.

ComEd explains that Rate RTOUPP incorporates a line-item on participants' bills for a Capacity Charge, and that each customer's Capacity Charge will be calculated on a customer-specific basis and billed as a per-kW charge, using the customer's individual capacity obligation. ComEd states its proposed customer-specific Capacity Charge provides an opportunity for customers to lower their capacity costs by using less energy during the hours in which their capacity obligations are set (the time of the five PJM system peaks and five ComEd system peaks during the prior June through September period). ComEd explains that these system peaks generally occur during the hours designated Super Peak Period under Rate RTOUPP. Therefore, to the extent a Rate

RTOUPP participant lowers their kW demand at the time of these peaks, ComEd states that the participant will have a lower Capacity Charge for the following June through May monthly billing periods.

Of the various alternatives presented, ComEd argues that its proposed 10% revenue shift is reasonable, best suited to the goals of Rate RTOUPP, and should be adopted. ComEd states it proposed to shift a portion of the total Rate RTOUPP revenue between the pricing periods in order to create a more significant difference between the Super Peak Period electricity charge, on the one hand, and the Peak and Off Peak Period electricity charges, on the other, and thereby encourage customers to shift usage out of the Super Peak Period. ComEd further explains that, under its proposal, the total estimated revenue for each pricing period will be adjusted so that the revenue associated with charges during the Off Peak and Peak Periods is reduced by 10%; that revenue will be added to the Super Peak Period estimated revenue. ComEd states that its proposal reasonably balances the goal of incentivizing behavior change with other appropriate goals, including mitigating customers' concern about very-high prices in the Super Peak Period. ComEd anticipates that this balanced approach will support enrollment in Rate RTOUPP, which in turn will support the learnings the pilot is expected to generate. ComEd states its proposal also supports the goal of designing rates to reflect cost causation because it ensures that costs incurred on a per-kWh basis are recovered via per-kWh charges, while costs incurred on a per-kW basis are recovered via per-kW charges. ComEd concludes its proposal should be approved.

Although Staff believes that Rate RTOUPP contains sufficient incentives for decreasing consumption during the Super Peak Period without the revenue shift, ComEd states the evidence demonstrates that the revenue shift is reasonable because the higher prices in the Super Peak Period are more likely to encourage customers to shift discretionary usage to the lower-priced periods, or even reduce total usage. ComEd explains that, in the absence of the revenue shift, charges during the summer in the Super Peak Period differ from charges in the Peak Period by only 1.076 cents/kWh, and in non-summer months, charges in the Super Peak Period differ from charges in the Peak Period by only 0.223 cents/kWh. Thus, ComEd states, without the 10% shift, the difference in price between the pricing periods may not incentivize customers to devote additional attention to their usage during the Super Peak Period. Although a variance larger than 10% would provide a stronger incentive, ComEd states customers may be reluctant to enroll in Rate RTOUPP if they perceive a significant cost risk.

ComEd contends it is appropriate to incentivize customers to focus on decreasing their load during the Super Peak Period because the majority of system peaks, which determine customers' Capacity Charges, occur during the Super Peak Period. In addition, while industry research analyzing TOU rates in other jurisdictions found that a very large difference in price between time-of-use periods resulted in a large shift in load, ComEd states that customers may be reluctant to enroll in Rate RTOUPP if the Super Peak Period electricity charge is too high. ComEd concludes a reasonable balance of these factors supports ComEd's proposal to shift 10% of revenues.

ComEd notes Staff hypothesized that demand in the Super Peak Period will decrease as customers respond to Rate RTOUPP price signals, and the revenues (including shifted revenues) that would have been recovered via Super Peak Period charges will instead flow through the PEA. However, ComEd explains that updated Rate RTOUPP charges will be calculated annually using participants' actual billing determinants, so the updated charges will reflect the most recent usage profiles, and that these updates will significantly reduce the likelihood of material mismatches between revenues and recoveries over the longer term.

As an alternative to the 10% revenue shift between the Rate RTOUPP pricing periods, ComEd suggests that a small portion of capacity-related costs – an amount equivalent to approximately 1 cent per kWh – could be recovered via Super Peak Period charges. Under this alternative, ComEd explains that all remaining capacity-related costs would be recovered via a separate line item on customers' bills, according to each customer's individual capacity obligations as defined in Section II.B.4.a. ComEd states this methodology would accomplish ComEd's goal of creating a more significant distinction between the per-kWh prices applicable to each of the Rate RTOUPP pricing periods, while addressing the concerns of AG and EDF/CUB. In addition, ComEd explains, this methodology would retain a price signal for customers that is directly tied to the manner in which capacity-related costs are incurred. Although ComEd believes it is most appropriate to recover 100% of capacity costs via Capacity Charges in order to reflect cost causation, ComEd asserts that shifting a small portion of capacity costs to the per-kWh rates to create a greater variance among the pricing periods is a reasonable alternative.

ComEd notes that EDF/CUB propose to include 25% of capacity costs in the per-kWh charges for energy during the summer Super Peak Period. ComEd states that EDF/CUB's proposal would cause a mismatch between PJM billings and ComEd collections, resulting in an over-collection of revenues during the summer, and an under-collection in non-summer months. ComEd explains that if it recovers 25% of annual capacity costs via per-kWh charges in the summer Super Peak Period, as EDF/CUB proposes, and the remaining 75% of capacity costs are included in Capacity Charges during all 12 months, ComEd would collect 50% of the total annual capacity costs in the four summer months.

While EDF/CUB argue that it is reasonable to recover a significant portion of capacity costs in summer months because capacity costs are largely incurred during summer Super Peak times, ComEd asserts that, EDF/CUB's proposal is likely to result in recovery of more than 100% of ComEd's capacity costs during summer months being recovered in those months. Because the Rate RTOUPP PEA calculates and recovers over- or under-collections on a monthly basis, rather than an annual basis, ComEd explains, the over-recovery of capacity costs in each summer month would flow through the Rate RTOUPP PEA in the following months. Likewise, in winter months, the under-recovery of the capacity costs would flow through the PEA. ComEd states that recovery of costs via the PEA is not a desired outcome. Therefore, ComEd concludes, EDF/CUB's proposal should be rejected.

With respect to the AG's proposal to recover capacity costs primarily as a component of Super Peak Period kWh rates, rather than as a separate kW-based line item on customers' bills, ComEd recommends that it be rejected. While the AG contends that customers may not be able to predict the days on which system peaks will occur, and Capacity Charges determined, and will therefore be subject to significant bill volatility, ComEd states the record demonstrates that the AG's proposal does not reflect the manner in which capacity costs are incurred, and therefore would not provide appropriate price signals to customers. In addition, ComEd states, the AG's proposal may exacerbate the very problem it is attempting to resolve.

ComEd explains that capacity-related costs are incurred on a per-kW basis, and ComEd's proposed Rate RTOUPP would recover capacity-related costs on a per-kW basis, in the same manner as they are incurred. ComEd states that the AG proposes to recover capacity costs via per-kWh charges, which would not be as effective in educating customers about how capacity costs are incurred or aligning price signals with the underlying cost drivers.

In addition, ComEd points out that the AG acknowledged that Capacity Charges are expected to represent a significant portion of Rate RTOUPP customers' monthly bills. ComEd explains that including all, or most of, the capacity-related costs in Super Peak Period charges, as the AG proposes, could result in a very high per-kWh charge in the Super Peak Period. Specifically, ComEd states the AG's proposal would result in a per-kWh rate during the Super Peak Period of $0.155/kWh, which would be added to a charge of almost $0.05/kWh for energy, creating a per-kWh Super Peak Period charge over $0.20/kWh. In comparison, ComEd's proposed Super Peak Period charge for energy is $0.0565/kWh. ComEd concludes that such charges may deter customers from enrolling in Rate RTOUPP, and thereby undermine the learnings available from the pilot.

Moreover, ComEd explains that, because capacity costs are expected to represent a significant portion of customers' supply bills, recovering capacity costs via very-high Super Peak Period charges may exacerbate the "bill volatility" the AG is attempting to avoid. ComEd states that, if the rate applicable to the Super Peak Period is significantly higher than rates applicable in other periods, customers' bills will vary significantly in relation to their usage during the Super Peak Period. In contrast, ComEd explains, if capacity costs are recovered via a separate line item, that portion of customers' bills will remain steady on a month-to-month basis, and a smaller portion of the customers' total bills will fluctuate according to their usage during the Super Peak Period.

In response to the AG's argument that customers cannot respond to the price signals offered by a separate Capacity Charge because they cannot anticipate the particular hours in which their Capacity Charges will be determined, ComEd asserts that Rate RTOUPP has been designed to minimize the need for customers to make that kind of prediction, and to reward customers for shifting load away from the general time of day at which a peak is likely to occur. ComEd explains that the Rate RTOUPP Super Peak Period (2 p.m. – 7 p.m.) includes the hours when the majority of system peaks occur. Consequently, ComEd states, customers who shift load out of the Super Peak Period will be rewarded for their response to the Rate RTOUPP price signals by paying lower rates during the course of the year and will significantly reduce the likelihood that their usage will contribute to a system peak that could impact their Capacity Charge in the following year.

In addition, ComEd states that the marketing and educational materials for Rate RTOUPP will encourage customers to use less during the Super Peak Period hours on all days and recommend making an extra effort to use less on the hottest days when customer demands are used to determine capacity obligations. ComEd also committed to offer an elective program to alert Rate RTOUPP participants of possible upcoming PJM and ComEd system peak days, in a manner similar alerts currently issued for real-time pricing customers, which notify customers that the next day may potentially be a system peak day and recommend using less energy during a certain time-period. ComEd also intends to continue to improve the data analytics it uses to predict system peaks. Thus, ComEd asserts that customers will have information in addition to price signals that will encourage them to use less and enable them to lower their capacity costs.

For all these reasons, ComEd maintains the AG's proposal to shift capacity costs into Super Peak Period rates should be rejected. ComEd's proposal to shift 10% of the revenue from the Peak and Off Peak Periods into the Super Peak Period rates should be approved.

b. EDF/CUB's Position

In order to incentivize behavior change and maximize the potential benefits of the pilot, EDF/CUB support ComEd's desire to create additional price differentiation. They note that reducing peaks and flattening demand has consumer, grid, and environmental benefits. EDF/CUB Ex. 1.0 at 4, 5. Therefore, EDF/CUB argue that a primary goal of the pilot should be to cause participants to shift their usage away from times of overall high demand on the system. EDF/CUB Ex. 2.0 at 5. EDF/CUB witness Barbeau testified that the prices noted by Mr. Leick in his rebuttal testimony, without any revenue shifting, would not likely be adequate to incentivize behavior change that would produce the meaningful benefits the pilot promises. *Id*. Additionally, he testified that those wholesale energy prices do not capture the full costs of the system in different hours, such as capacity costs, ancillary services and environmental values. *See* ComEd Ex.5.0 at 5-6. Mr. Barbeau explained that Staff witness Rodriguez's proposal to consider only energy costs actually reflects less of the costs electricity users incur on the system due to failing to account for peak usage. EDF/CUB Ex. 2.0 at 6. EDF/CUB therefore maintain that Mr. Rodriguez's proposal fails to capture any value from shifting usage off of peaks. *Id*.

EDF/CUB note that ComEd's position is that Rate RTOUPP should not include capacity costs in the per-kWh TOU supply charges. ComEd Ex. 5.0 at 14-15. In order to more closely match the pilot rates with actual costs, and to better incentivize pilot participants to change their behaviors, Mr. Barbeau recommended a middle ground that would have 25% of capacity costs be recovered during the summer Super Peak Period, when capacity costs are generally calculated. EDF/CUB Ex. 2.0 at 6. EDF/CUB contend this portion would create a Super Peak price that is close to that proposed by ComEd in the Super Peak Period in the summer, while also providing customers with some opportunity to reduce their peak load contribution charge by reducing their demand even further during the assessment hour. *Id*. Further, state EDF/CUB, this could reduce the amount of costs included in the proposed revenue shift and PEA, and thus also the associated risk of over-billing warned of by some witnesses. *Id*.

EDF/CUB say that, despite their acknowledgement in the context of tracking and reporting that customers' capacity obligations are in fact calculated based on summer months (ComEd Ex. 7.0 at 3), ComEd puzzlingly argued that recovering 25% of capacity costs during summer Super Peak would create an over-collection of revenues during that time. While EDF/CUB agree that ComEd will recover capacity costs across all twelve months (ComEd Ex. 8.0 at 6, ComEd Ex. 2.01 at 12-13), ComEd's own arguments acknowledge that such costs are largely incurred during summer Super Peak times. ComEd Ex. 7.0 at 3. EDF/CUB contend that it is therefore eminently reasonable to recover a larger portion of those costs during the time when they are incurred, i.e. during summer peak periods. Doing so also achieves the objective of creating greater price differentiation to encourage behavior changes. Mr. Barbeau's recommendation is therefore the most appropriate means of assigning prices for the various pricing periods, according to EDF/CUB.

c. AG's Position

The AG agrees with the Company that a significant difference between the Peak and Super Peak rates is necessary to encourage customers to shift load away from the Super Peak Period. However, the AG prefers to achieve this rate differential by including capacity costs in the Super Peak rate rather than artificially inflating the Super Peak rate with the Company's proposed revenue shift. Should the Commission adopt the AG's recommendation to replace the Company's proposed Capacity Charge with a higher Super Peak rate, the AG contends that the resulting increase in Super Peak rates relative to Peak and Off Peak rates would obviate the need for ComEd's proposed revenue shift. The AG would not oppose eliminating the 10% revenue shift in the event that the Commission approves the AG's capacity cost recovery proposal, or EDF/CUB's alternative capacity cost recovery proposal, which also would increase Super Peak prices.

The AG opposes ComEd's proposal to bill TOU pilot customers a Capacity Charge to recover costs associated with procuring capacity via PJM's electric wholesale market. The charge is based on the customer's usage during the hours corresponding to the previous year's five highest hours for total customer electric usage across the ComEd service territory and the five highest hours for total customer electric usage across the PJM territory. Company witness Leick admitted that ComEd "cannot precisely predict which days will be the system peak demand days." ComEd Ex. 5.0 at 13. AG witness Rubin further testified that customers have no way of knowing in advance which five to ten of the 8,760 hours of the year will matter in determining the amount of this charge because system peak hours are determined after the fact. Further capacity revenues are expected to represent 40% of the customer's supply bill, making it a large, fixed portion of the charge. AG Ex. 1.0 at 4-5, 6-7. The AG maintains that the Company's proposed Capacity Charge introduces significant bill volatility that may not have been preventable and that the customer would not be aware of in advance.

Further, the AG cites Mr. Rubin's testimony that customers' usage during these hours can be the product of "sheer chance" and even be "completely random." Mr. Rubin cited the example of a refrigerator compressor or defroster, which periodically cycles on and off without any input from the customer. Based on the findings of a 2014 study from the American Council on Energy-Efficient Economy, Mr. Rubin calculated that a refrigerator's defroster turning on automatically for the duration of a system peak hour would increase a customer's Capacity Charge by $5.23 per month for twelve months, costing the customer over $60 for the year. *Id*. at 5-6.

ComEd's proposal to charge TOU pilot participants a fixed Capacity Charge thus exposes customers to the risk of substantial bill increases for twelve consecutive months because of usage that occurred during even just one of five to ten specific hours per year. Further, if this usage happens to occur during an hour that is among the five highest peaks for both ComEd and PJM for the year, it has double the impact on the customer's Capacity Charge. For example, three of ComEd and PJM's five peak hours overlapped in 2012. No one knows in advance when ComEd or PJM system peak hours will occur, let alone when these system peaks will overlap, making the relationship between customer usage and the Capacity Charge unpredictable for customers seeking to control their energy bills. AG Ex. 2.0 at 2-3.

The AG asserts that this uncertainty is illustrated by ComEd's demonstrated inability to predict system peak hours that determine Capacity Charges for Rate BESH customers. Mr. Rubin's testimony showed that even with its sophisticated data analysis capacity, ComEd has struggled to predict these peak hours for Rate BESH even a day in advance in recent years. For example, in 2018, ComEd sent Rate BESH customers nine "capacity guard" alerts, and only six of the ten peak hours actually occurred on days subject to capacity guard alerts. A customer relying on capacity guard alerts would have adjusted their usage nine times, including responding to three false alarms, and still missed four of ten peak hours. *Id*. at 3-5.

ComEd defended the Capacity Charge as workable under the assumption that customers are fully aware of the risk. The AG maintains that customers are not fully aware of the risk, and even ComEd's best efforts to make customers aware have fallen short because of the inherent uncertainty in attempting to predict peak usage hours in advance. Moreover, the per-kW charge is not known in advance and has fluctuated drastically in recent years. For example, the per-kW Capacity Charge rate in June 2018 ($6.50896) was more than double the rate in January 2017 ($3.10925). *Id*. at 3-5.

The AG asserts that rather than ask customers to respond in real time to hidden price signals that are not known until months after the fact, the Company should recover capacity costs from TOU pilot customers through the volumetric rate during the Super Peak Period. Over 98% of the PJM and ComEd system peak hours from 2012 through 2018 fell within the Company's proposed 2 p.m. to 7 p.m. Super Peak Period. ComEd Ex. 5.0 at 7-10; ComEd Ex. 2.05. Thus, the AG asserts that recovery of capacity costs through the Super Peak rate would adhere to cost causation principles, provide an incentive for TOU pilot customers to shift usage away from the hours that could reasonably be expected to contribute to capacity costs, and create a more direct link between usage and charges or savings.

Recovery of capacity costs through a fixed volumetric rate also would have the benefit of providing customers certainty as to how much they will pay for usage during what hours. The AG contends that this change is necessary in order to make a TOU pilot a fixed time-variant supply rate that offers benefits not already provided by

ComEd's existing rate offerings. The Company's existing Rate BESH adheres closely to cost causation but, because of the Capacity Charge, does not provide customers ex ante certainty as to how their usage will affect their bills. The volatility and complexity of ComEd's real-time Rate BESH diminishes customer bill stability and savings expectations, which the AG asserts underscores the need for a fixed time-variant TOU supply rate option for customers.

ComEd opposes the AG's proposal to include capacity costs in the Super Peak volumetric supply rate and proposes instead to recover capacity costs through a fixed monthly Capacity Charge calculated by the same methodology used under Rate BESH. The Company asserts multiple grounds for its position, none of which the AG finds compelling.

First, the Company posits that recovery of Capacity Charges through the Super Peak volumetric rate is inappropriate because capacity costs are determined by usage during five to ten system peak hours per year, not total usage during Super Peak hours. *Id*. at 13-14. The AG contends that this argument from the Company contradicts a core premise of TOU rate design—that the volumetric rate for each time period corresponds to the expected costs of supplying power incurred during those hours. The AG cites that ComEd's proposed TOU rates do not exactly reflect the way energy costs are incurred either. Costs to provide energy vary based on the real-time energy market price, yet the Company proposes simplified, standardized fixed volumetric TOU rates based on historical average energy market costs across each time period. Similarly, the AG proposes to include capacity costs in the Super Peak rate because these costs historically have been incurred based on usage during the Super Peak Period.

Second, ComEd argues that a separate Capacity Charge is necessary to educate customers on how capacity costs are incurred. The AG contends that customer education is valuable only insofar as it affects consumption and promotes customer savings. Adopting a Super Peak that includes Capacity Charges would educate consumers that usage during the time period is more costly, and avoids the substantial uncertainty associated with the fact that neither the hours that determine the charge nor the rate applied to usage during those hours are known in advance. The information customers would need to prevent a high Capacity Charge under the Company's proposed mechanism is not always available and even when available often cannot be acted upon to control the charge. Because of these factors, the AG maintains that the Company's more complex Capacity Charge proposal does not offer customers much, if any, additional information that can be expected to lead to savings.

Third, the Company takes issue with the AG's proposal because it could result in high Super Peak rates that may dissuade customers from enrolling in the TOU rate. The AG contends that the Company overlooks an important criterion in designing an opt-in supply rate—ease of comparison to the default supply rate. The vast majority of ComEd residential customers take service under Rate BES, the default fixed supply rate, or another volumetric rate that includes capacity costs. The AG maintains that the relevant volumetric TOU pilot rate (Super Peak) has to incorporate capacity costs for fixed volumetric rate customers to make an apples-to-apples comparison of what they would pay under either rate and determine whether they should switch. Otherwise, customers trying to determine whether to enroll in the TOU rate pilot would see in volumetric rates only roughly 60% of their total cost and be forced to guess the amount of the Capacity Charge accounting for the other 40%.

Fourth, the Company supposes that its proposed Super Peak rates would be high enough to send a price signal to customers to shift usage away from the system peak hours that determine Capacity Charges anyway. *Id.* at 14-15. The AG agrees that the Super Peak rate ought to provide a price signal to customers to shift usage away from the hours that determine capacity costs, which is why the AG proposes to make the Super Peak rate reflect Capacity Charges. To incentivize usage shifts in response to the higher costs during these hours, the AG posits that the Super Peak rate must fully reflect these costs. The AG assert that hiding roughly 40% of customers' total supply charge from volumetric rates would dampen this price signal.

EDF/CUB propose an alternative approach they refer to as a middle ground. Under this alternative proposal, 25% of capacity costs would be recovered during the summer Super Peak Period and the remaining 75% of capacity costs would be recovered through the Capacity Charge proposed by the Company. The AG shares ComEd's concern that collecting 50% of total annual capacity costs in the four summer months would result in an over-collection of revenues during the summer. Summer electric bills are already typically the highest of the year, and EDF/CUB's proposal would stand to make the discrepancy between summer and non-summer electric bills even more extreme. In the interest of limiting bill volatility and promoting the affordability of customers' summer month electric bills, the AG opposes the EDF/CUB proposal.

Rate RTOUPP is an opportunity for ComEd to offer its customers a new rate product with a unique value proposition. Accordingly, the AG requests that the TOU rate pilot not include a separate, fixed Capacity Charge in addition to volumetric rates and that the Company instead recover capacity costs by charging a higher volumetric rate during the Super Peak Period.

d. Staff's Position

Staff witness Rodriguez states that the revenue shift proposed by ComEd (1) does not appear to be necessary to further incentivize customers to shift their usage; and (2) moves retail charges away from their expected underlying costs. Staff Ex. 1.0 at 4. Mr. Rodriguez observes that ComEd does not explain how, or why, it determined 10% to be an optimal amount by which to shift estimated revenue. Staff Ex. 1.0 at 5.

Mr. Rodriguez further observes that ComEd's use of historical PJM prices for participants' aggregate illustrative profile is a method to predict real-time wholesale energy supply prices applicable to the Peak, Off Peak and Super Peak Periods. However, in Mr. Rodriguez' opinion, the proposed 10% revenue shift distorts those price predictions. Staff Ex. 1.0 at 5. On its face, and without considering ComEd's stated goal of incentivizing customers to shift usage away from the Super Peak Period, the 10% shift in "estimated revenue" proposed by ComEd suggests that ComEd anticipates that: (1) real-time prices during the Super Peak Period will increase substantially from historical prices during the same times, (2) real-time prices during the Off and Peak Periods will decrease substantially from historical prices during the same times, and (3) such expected changes in real-time prices require ComEd to skew estimated revenue it will require to cover electricity supply costs for its RTOUPP participants. Staff Ex. 1.0 at 5-6. However, Mr. Rodriguez is of the opinion ComEd has not adequately supported expectations (1) and (2) above. *Id*. at 6. The resulting amounts charged for each period after the revenue shift would likely increase the magnitude of a mismatch between overall revenues collected and costs incurred by ComEd under the proposed RTOUPP tariff every month. If the substantial swings in real-time prices that would necessitate a shifting of estimated revenues do not, in fact occur, the proposed 10% revenue shift will likely apply greater stress to the PEA mechanism included in the tariff language for purposes of keeping the RTOUPP revenue neutral. ComEd Ex. 2.01 at 12-13. If added stress causes the PEA to reach its ±0.5 cents/kWh cap with regularity, the aggregate and ongoing PEA costs may never be fully recovered (or credited back to customers) through the PEA charges. Staff Ex. 3.0 at 3. Under such circumstances, and assuming the 10% revenue shift is not adjusted, Mr. Rodriguez considers it likely that there will be unrecovered or uncredited PEA costs at the end of the four-year pilot. *Id*.

Mr. Rodriguez understands that peak load contributions and the resulting capacity expenses that ComEd incurs are typically determined based on the system demand during summer months. Staff Ex. 3.0 at 3-4. While Mr. Leick asserts that "Rate RTOUPP was designed to incentivize customers to decrease their electricity usage during the Super Peak Period, and thereby lower their capacity-related costs[,]" ComEd Ex. 5.0 at 5, Mr. Rodriguez opines that large price differences between periods during non-summer months do not appear either necessary or useful to accomplish ComEd's stated goal of lowering capacity-related costs for RTOUPP participants. Staff Ex. 3.0 at 4. Mr. Rodriguez opines that there is insufficient available information to support a 10% revenue shift. *Id*. Specifically, Mr. Rodriguez observes that the smaller difference between Peak and Super Peak Period prices during non-summer months, on its own, may or may not be substantial enough to incentivize lower consumption during the Super Peak Period. *Id*.

ComEd's response to this is that it has taken steps that will significantly reduce the likelihood of material mismatches between revenues and recoveries over the longer term. Staff argues, however, that ComEd has not considered why all of this is necessary in the first place. Staff stresses that Rate RTOUPP is a pilot program. Staff further states that the purpose of the program should be to determine how customers actually respond to actual cost-based TOU rates. In contrast, ComEd has designed Rider RTOUPP in a manner that apparently is intended to incentivize shifting of electric use by charging non-cost-based rates. Staff argues that it appears that ComEd has not considered other possible levels of cost-shifting – or not shifting costs at all. *Cf.* 220 ILCS 5/1-101(d)(iii) (State policy is that "the cost of supplying public utility services [should be] allocated to those who cause the costs to be incurred.")

Mr. Rodriguez observes that ComEd's proposed tariff allows the Company to unilaterally revise the charges, "if the Company determines such revision results in a better match between the Company's applicable expected costs and its recovery of those costs." ComEd Ex. 2.01 at 7. This however, in Staff's opinion, is insufficient to address the concerns of Mr. Rodriguez, and he does not support the inclusion of a 10% revenue shift.

e. Commission Analysis and Conclusion

Staff opines that the purpose of the proposed tariff is to determine how customers respond to actual cost-based TOU rates. The Commission finds the AG's proposal to come closest to accomplishing this goal. The record is clear that capacity costs are incurred during the summer Super Peak Period. Thus, the AG proposes to have all capacity costs recovered during the Super Peak Period, but in both the summer and nonsummer periods. The Commission finds that the AG's proposal accomplishes an additional goal of Rate RTOUPP – to encourage customers to use energy during off peak hours. In other words, spreading the recovery of capacity costs throughout the year encourages off peak use year round. The Commission modifies the AG's proposal slightly based on a review of ComEd Ex. 2.05. It appears that when considering all the peaks - beginning with 2012 peaks (used for calculation of 2013 Capacity Charges) through the 2018 peaks (used for calculation of 2019 Capacity Charges) - that 8.5% of PJM and ComEd peaks are out of the agreed-to Super Peak Period (from 2 p.m. to 7 p.m.) and fall in the Peak Period instead. ComEd's capacity costs should similarly be recovered from customers in these proportions.

The Commission does not find the proposals of Staff or ComEd to adequately address the goals of the pilot. Staff's proposal, to only consider energy costs, fails to capture the full costs to the system of peak usage. And, ComEd's proposed revenue shift artificially inflates the Super Peak rate.

The Commission notes that AG witness Rubin explained that Capacity Charges, under ComEd's proposal, are expected to represent 40% of a customer's bill. AG Ex. 1.0 at 6. The Commission finds that a separate fixed Capacity Charge that represents 40% of customer's supply cost distorts the true cost to the ratepayer of their usage during the Super Peak Period. The AG points out that Rate BES is a volumetric rate that includes capacity costs and not as a separate line item. In order for customers to make a valid comparison to Rate BES, Rate RTOUPP should include capacity costs as well.

The Commission notes that ComEd focuses on how high the Super Peak price will be under the AG's proposal. On the other hand, ComEd ignores that the Off Peak and Peak prices will now not require the customer to also consider the additional fixed Capacity Charge in addition to those prices. The separate fixed Capacity Charge distorts the true cost to the ratepayer of their usage.

ComEd committed to implementing a warning system so that customers would know that there is likely to be an upcoming period where the customer's electric usage could determine the next year's Capacity Charge. By including capacity costs in the Super Peak Period, these warnings would not be necessary as customers would always know that usage during those times is expensive and, importantly, the customer would be charged immediately for their capacity costs as opposed to wondering if their reduced usage might lower their bills the next year.

ComEd argues that the AG's proposal to recover capacity costs via per-kWh charges would not be as effective in educating customers about how capacity costs are incurred or aligning price signals with the underlying cost drivers, as ComEd's separate Customer Charge. The Commission disagrees and finds it just as reasonable to assume that customers will never make the connection between a fixed Capacity Charge on their current bill to their usage during a few peak hours the summer before. The AG's proposal, however, provides a direct link on the current bill between the customer's usage during peak hours and ComEd's costs to supply that power. Also, for the first year of a customer joining Rate RTOUPP, the Capacity Charge is based on the prior year's usage when a customer would have presumably been on a flat rate and had no incentive to reduce usage during peak hours.

It is also clear from the record that for the most part the peak hours occur during ComEd's proposed Super Peak hours. The Commission agrees with the AG that the multiple lines are confusing, and the variability makes the customer's bills unpredictable. The differentiating factor from Rate BESH is that the rate is supposed to be predictable. The AG's proposal, as modified herein, is adopted.

5. Bill Protection

a. ComEd's Position

ComEd disagrees with the AG's proposal that customers receive a refund of 90% of any additional amount they paid as a result of enrollment in Rate RTOUPP, above what they would have paid had they been enrolled in Rate BES. While the AG argues that bill protection is necessary because the risk of participation in Rate RTOUPP cannot be fully mitigated by consumer education, ComEd states its marketing and educational materials will explain how charges under Rate RTOUPP are calculated, encourage customers to use less during the Super Peak Period hours on all days, and recommend making extra effort to use less on the hottest days, when customer demands are used to determine Capacity Obligations. ComEd states it also committed to offer an elective program to alert Rate RTOUPP participants of possible upcoming PJM and ComEd system peak days and committed to include the price to compare on participating customers' bills.

Therefore, ComEd presumes the AG's concern is rooted not in the availability of information about risks, but in the fact that Rate RTOUPP exposes customers to price risk in the first place. However, ComEd asserts that the purpose of a TOU rate is to more accurately reflect the price signals in the energy supply market, and thereby encourage customers to use energy in a more efficient way. ComEd maintains that a bill guarantee that mitigates 90% of the price risk inherent in Rate RTOUPP will undermine the effectiveness of the information provided to customers via the Rate RTOUPP charges. In contrast, ComEd states that its commitments to educate and inform customers will empower them to understand and respond to the price signals inherent in Rate RTOUPP and use the rate to their advantage.

In addition, ComEd explains, a bill protection element could undermine one of the primary learnings ComEd hopes to gain during the course of the Rate RTOUPP pilot, namely, how customers react to TOU price signals. ComEd states that various segments of customers may respond differently to price signals, but any differences may be difficult to evaluate if the signals vary among customer segments. ComEd maintains that providing bill protection only to low-income customers, as EDF/CUB suggests, would also stunt the learnings available from this pilot because any difference in low-income customers' response to Rate RTOUPP will be difficult to evaluate if the price signals provided to low-income customers differ from those provided to other customer segments. Of course, ComEd acknowledges that when a customer transitions from a flat rate to a time-variant rate, there is an element of risk that the customer may pay more, but ComEd states that one of the goals of Rate RTOUPP is to influence behavior. ComEd expects that customers who voluntarily enroll in Rate RTOUPP will do so because they believe Rate RTOUPP could potentially benefit them, being fully aware of the risk, and ComEd notes that customers can switch at any time to another ComEd rate, or to ARES-supplied service.

Finally, ComEd states that two crucial components of the AG and EDF/CUB proposals are not supported by the record. First, ComEd notes that neither party explains why the 90% figure is a more appropriate level of bill protection than any other proportion. Second, ComEd points out that neither the AG nor EDF/CUB explained how the costs associated with the bill protection should be recovered. ComEd states that, if the bill protection costs are recovered in the Rate RTOUPP PEA, other customers enrolled in Rate RTOUPP will subsidize the refunds. ComEd asserts that is not a just or reasonable outcome.

b. EDF/CUB's Position

EDF/CUB note that AG witness Rubin proposed that customers who pay more by participating in the pilot than they would have on the default rate should be refunded 90% of any amount over what they would have paid on the default rate. AG Ex. 1.0 at 11. However, EDF/CUB witness Barbeau explained that removing the majority of the risk may disincentive customers from changing their behavior, thus reducing the potential benefits of the pilot. EDF/CUB Ex. 2.0 at 7. The proposal also confuses the purpose of the pilot. Based on research of ComEd's hourly pricing program, Mr. Barbeau explained that many customers will save money on a TOU rate. *Id*. However, the purpose of the pilot is not simply to save customers money. It is to change customer behavior and load shape, which should ultimately result in cost savings for all customers.

However, noting Mr. Rubin's desire to protect customers who can least afford any increase in rates, and recognizing that this is a pilot program, EDF/CUB find that it may be appropriate to offer different terms than would be present in a permanent offering. Therefore, Mr. Barbeau suggested that ComEd should explore offering a refund to low-income participants, to ensure that the customers who can least afford bill fluctuations are not at risk. EDF/CUB Ex. 2.0 at 8.

ComEd witness Fruehe responded that he understands Mr. Barbeau's concern for low-income customers, but still opposes a bill protection element because such is "at odds" with the purpose of the program. ComEd Ex. 7.0 at 5. While EDF/CUB agree that customers must experience some risk in order to best incentivize behavior change, the reality of low-income customers outweighs that incentive. As this is a pilot, EDF/CUB maintain that it is important to understand how all customers, including low-income customers who most need the bill savings, behave on a TOU rate. But, until that is better understood, it may be appropriate to offer protections to those customers.

c. ICEA's Position

ICEA opposes the AG's bill subsidy proposal. ICEA witness Gafford testified that the "essence of customer choice is that the customer can make the decision right for them based on fair disclosure of material information." ICEA Ex. 3.0 at 11-12. ICEA argues that not every utility rate or ARES' product is right for every customer. Instead of the AG's proposed solution of a bill subsidy, ICEA has and continues to recommend full and accurate disclosure so the customer can make an informed decision. According to ICEA, full and accurate disclosure will do far more for customer satisfaction than bill subsidies.

ICEA notes that the AG argues that "customers, in fact, would not be 'fully aware' of the risks of pilot participation and the once-a-year possibility of a partial refund does not remove customers' incentive to shift usage to reduce costs." AG IB at 19. ICEA notes that ComEd's failure to provide marketing materials to directly rebut the AG's argument is a self-inflicted problem. However, ICEA disagrees with the AG's solution to ComEd's lack of upfront disclosure.

According to ICEA, a significant part of a customer's decision to enroll on Rate RTOUPP will be the marketing materials used by ComEd or its third-party administrator to attract customers. However, according to ICEA, because ComEd has not presented its marketing materials it is impossible for stakeholders to evaluate ComEd's customer marketing information. *See* ICEA Ex. 3.0 at 12. ICEA argues that to the extent that a customer believes that the marketing materials designed by ComEd or its program administrator were deceptive or misleading, ICEA understands that such a customer could pursue recourse at the Commission or in court. ICEA concludes customers should be sufficiently informed by ComEd's marketing—and if they are not, ComEd would likely be subject to discipline or liability.

d. AG's Position

In his testimony, AG witness Rubin recommends that at the end of each twelve-month period, every TOU pilot participant who has paid more for service over the course of those twelve months than they would have under default Rate BES receive a refund of 90% of the difference. This partial refund would limit the risk of participating in an experimental pilot, thereby encouraging participation levels sufficient to provide meaningful data and insights and limiting the potential financial hardship borne by ComEd customers. AG Ex. 1.0 at 10-11.

The AG contends that this bill protection guarantee is appropriate because customers would not, as the Company claims, be "fully aware" of the risks of pilot participation and the once-a-year possibility of a partial refund does not remove customers' incentive to shift usage to reduce costs. It is difficult to assess how aware ComEd customers would be of the risks of participating in the TOU rate pilot because the Company has not detailed how it will advertise, promote, and explain the program to its customers. AG Ex. 2.0 at 1-2. The bill volatility risk of participation in this experimental pilot cannot be fully mitigated by consumer education, making Mr. Rubin's recommended partial refund an appropriate and necessary measure to protect consumers participating in the TOU pilot.

Furthermore, the AG argues that the Company's claim that the potential for a partial refund would undermine customers' incentive to manage their electric usage to reduce costs is unfounded. Customers would not know whether they are eligible for a refund, would not know the amount of the refund, and would not receive the refund until the end of the twelve-month period. During each twelve-month period, the customer's monthly bills would be unaffected. Each month, they would pay the same amount as if there were no possibility of a refund, and they would have no way of anticipating whether they would be due a refund in the future, let alone the amount. The AG opines that the theoretical possibility of a partial refund in the future would not alter the customer's incentive to reduce their costs each month.

The AG notes that ComEd attempts to argue that 90% is an arbitrary figure, however, no party has proposed an alternative percentage. The burden is on the Company to demonstrate that the pilot it files will result in just and reasonable rates. Without an alternative to evaluate the 90% proposal against, the AG reaffirms that a 90% refund of losses provides assurances against excessive annual costs for pilot participants while preserving the incentive for customers to save each month.

ComEd objects on the grounds that the partial refunds would flow from other customers through the purchased energy adjustment. The AG responds that transfer of revenues from one group of customers to another is unavoidable in rate design. For example, the Company's proposed 10% revenue shift from the Off Peak and Peak Pricing Periods to the Super Peak Pricing Period would raise rates for some customers and lower rates for other customers in furtherance of a policy objective—sending a stronger price signal. *Id.* at 10-12. Similarly, the AG seeks to shift revenues in furtherance of a policy objective—protecting participants in an experimental pilot from excessive annual costs.

EDF/CUB object to the AG's proposal, echoing the misguided arguments about incentives raised by ComEd, but goes on to concede that the proposed 90% refund of losses relative to Rate BES may be appropriate for low-income customers. EDF/CUB IB at 10-11. The AG agrees with EDF/CUB that bill protection for low-income customers is better than bill protection for no one. Moreover, low-income customers are the least able to absorb the costs of higher bills. The proposed protection is most important for low-income customers and may encourage participation for customers who otherwise are interested in the opportunity to save but are unsure whether they can. However, the AG maintains that bill protection is necessary for *all* participants in the TOU rate pilot, which is the first of its kind in Illinois and poses substantial risk that is difficult for any customer to estimate in advance.

In response to ICEA, the AG contends that no amount of disclosure or customer education can enable most customers to make the predictions of system peaks and corresponding load shifts necessary to assure they will not be subject to an excessive Capacity Charge. Even if the Company goes beyond what it has committed to in this proceeding and provides robust disclosure and education to TOU rate pilot participants, a new time-variant rate offering will expose even the most informed customers to unpredictable bill volatility. The AG asserts that customers cannot be expected to predict with absolute accuracy whether participation in the pilot is right for them because factors like the Company's proposed Capacity Charge result in bills based on information that is not known in advance.

e. Commission Analysis and Conclusion

The Commission rejects the AG proposal to provide bill protection to all Rate RTOUPP customers. With respect to EDF/CUB's proposal to provide bill protection only to low-income customers, as stated above, the Commission also rejects this proposal. Any risks associated with voluntary participation should equitably and fairly be borne by all. Until the risks or rewards are known, there is no evidence in the record that low-income participants require protection. If savings are possible with load shifting under Rate RTOUPP, then presumably low-income ratepayers along with everyone else would be prime candidates for Rate RTOUPP.

Section 5/1-102 of the PUA provides that the one of the goals and objectives of our regulation is ensuring that cost of supplying public utility services be allocated to those who cause the costs to be incurred. 220 ILCS 5/1-102(d)(iii). In balancing the objectives of the pilot program with the mandates set forth in the PUA, the Commission finds that costs incurred by rate payers enrolled in RTOUPP should be indeed borne by those who incurred such costs. Enrollment and participation in RTOUPP is voluntary and existing options for those whose bills are perceived to be high include the Low Income Home Energy Assistance Program (LIHEAP) and the option to withdraw from the program and return to Rate BES.

Therefore, and in an effort to address such concerns, the Commission directs ComEd to invest in and develop a marketing, education and outreach strategy regarding how enrollees can best manage their electricity bills and how charges are calculated under RTOUPP, while ComEd continues to assess program enrollment and behavior. ComEd shall provide information regarding these efforts in its semi-annual filing, as more fully set forth below in Section II(C).

Further, to the extent possible, ComEd should provide detailed information in its reports to the Commission about the customers enrolled in the pilot and identified by its Customer Information and Marketing System ("CIMS") as eligible for assistance under the Low Income Home Energy Assistance Program ("LIHEAP"), State of Illinois Percentage of Income Payment Plan ("PIPP"), or ComEd-funded CARE programs. The monthly bills paid by each customer enrolled in Rate RTOUPP should be evaluated at the end of the first 12 months of enrollment (or a shorter period if a customer leaves Rate RTOUPP), to determine whether they saved money over the course of the 12-month period, in comparison to Rate BES. If the customer paid more for electric service as a result of enrollment in Rate RTOUPP over the 12-month period, ComEd will disclose that to the customer and offer education around behavior and other enrollment options.

The Commission finds that the aforementioned educational and marketing requirements coupled with the fact that Rate RTOUPP is voluntary are sufficient protections for customers. Moreover, as ComEd explained, one of the purposes of Rate RTOUPP is to gauge customers' responsiveness to TOU pricing; the effectiveness of Rate RTOUPP in achieving that goal may be diminished if customers are almost entirely insulated from the effects of TOU pricing.

C. Pilot Evaluation and Reporting

1. ComEd's Position

ComEd states that a significant component of Rate RTOUPP is a performance evaluation of the results, focusing on evaluating changes in customers' behaviors and their overall satisfaction with the pilot. Thus, ComEd's proposed Rate RTOUPP includes an annual report and audit, which will assist in the development of learnings concerning Rate RTOUPP, including: (a) the effectiveness of marketing initiatives for Rate RTOUPP, as indicated by enrollment numbers, by residential delivery classes; (b) whether participants' supply costs were less under Rate RTOUPP in comparison to Rate BES; (c) whether customers decreased, or shifted, their energy use during the Super Peak Period, based upon analyses performed with AMI interval data and questionnaires; (d) whether customers' individual demand at the time of the five highest peaks in the PJM and ComEd zones decreased; and (e) whether owners of electric vehicles were incentivized to charge their vehicles in the Off Peak Period.

ComEd states that no party disputed the propriety of its proposed reporting. EDF/CUB supported ComEd's evaluation objectives, and recommended additional reporting, while the AG and ICEA recommended modifications to the substance of the reports.

First, ComEd notes that EDF/CUB recommend that the Commission should direct ComEd to establish a standard process for the sharing of data, including interval data and geographic data. ComEd did not object to the sharing of interval and geographic data as long as such data is provided solely on an anonymous basis using Commission-approved anonymous protocols, or future approved Commission protocols, and ComEd states this issue is undisputed.

Second, ComEd states that EDF/CUB recommend that ComEd calculate the reduction in Greenhouse Gas ("GHG") emissions that result from changes in the behavior of customers participating in Rate RTOUPP, using the same methodology ComEd uses to report on changes in GHG emissions as a result of its investments in AMI. ComEd agreed to this recommendation and will include this GHG impact data in Metric 9 of its Annual Investment Progress Report ("AIPR"), and after the AIPR is no longer submitted, ComEd committed to provide data regarding the impact on GHG emissions resulting from Rate RTOUPP to the Commission through a separate report. Although ICEA initially recommended that ComEd should account for which facilities have sold their environmental attributes to a third party, ComEd explained it simply is not possible to implement this recommendation, and ICEA did not dispute that explanation. ComEd states this issue is undisputed.

Third, ComEd states that EDF/CUB recommend that the Commission direct ComEd to draw up a study designed to measure the impacts of Rate RTOUPP on the distribution system and submit the study as a compliance filing in this docket, so that it could be applied if sufficient customers enroll. ComEd explains that it is not possible to design such a study in advance of obtaining data from the pilot. For example, until ComEd has data regarding the amount by which Rate RTOUPP customers decrease their demand, and the timing of such changes in demand, ComEd states it cannot predict how many Rate RTOUPP customers are required to affect distribution operations or investments, and therefore cannot predict the number of customers needed to conduct a statistically significant study. Furthermore, in order to create an impact on distribution system capacity planning, ComEd states that a significant number of Rate RTOUPP participants would need to be clustered on a circuit or a transformer that is already near maximum capacity. ComEd maintains the likelihood of this happening is low – particularly if enrollment in the pilot is limited as Staff witness Felde proposed – and even if several customers on a single transformer do enroll, they must have had an opportunity to respond to Rate RTOUPP price signals before ComEd can design an appropriate study. ComEd asserts that it is not reasonable to require ComEd to expend resources to design a study when the likelihood that it can be implemented is so attenuated. ComEd concludes it should not be directed to design a study of the impact of Rate RTOUPP on its distribution system before it has an opportunity to implement and evaluate this pilot program.

Fourth, ComEd states the AG recommends that ComEd match customers participating in the pilot program with similar customers who remain on Rate BES service for comparison purposes. ComEd explains that it intends to conduct statistically significant analysis of the pilot via a professional, highly-skilled, third-party evaluator, as is done in other programs. While ComEd has used an evaluation method similar to the one the AG suggests in the past and is open to such an evaluation if the third-party evaluator identifies it as the best method to evaluate Rate RTOUPP, ComEd maintains that it is premature to commit to any particular evaluation methodology at this time. ComEd states the Commission need not prescribe the particular evaluation methodology in advance.

Finally, ComEd states the AG also recommends that the Commission require ComEd to make a compliance filing within six months of the Order in this case, specifying the evaluator and the methodology that ComEd will use to generate learnings from Rate RTOUPP. ComEd agreed to make such a compliance filing. However, ComEd notes that the evaluation methodology may evolve over the course of the pilot, in light of new information. As a result, ComEd explains that later reports concerning Rate RTOUPP may apply additional or different methodologies than those outlined in the compliance filing.

ComEd’s proposed tariff requires it to submit its first report on its findings no later than January 31, 2022, with additional reports in each subsequent year. ComEd states that timeframe is reasonable to report on the data gathered and associated findings and should be approved. ComEd notes that EDF/CUB suggest that, if significant data can be gleaned earlier than 2022, ComEd should submit the report to the Commission. ComEd states that it will report on its findings as soon as possible, but it is important that the report capture sufficient time periods and enrollment populations to provide useful information. ComEd explains that, if the Commission approves Rate RTOUPP in October 2019, ComEd will likely begin enrolling customers in Rate RTOUPP in June 2020 – too late in the year to capture summer usage data in 2020. Therefore, ComEd plans to file the first report in January 2022, so that data from the summer period of 2021 can be analyzed and included. ComEd maintains that timing is appropriate and reasonable because some of the measurable parameters are dependent on time, rather than the amount of participation. For example, ComEd states that a key measurable will be the extent to which participating customers lower their capacity obligations based upon their responsiveness to Rate RTOUPP pricing and their understanding of how capacity costs are incurred, but customers' responsiveness to Rate RTOUPP pricing and education programs will not be measurable until after the summer of 2021 (which will be compared to summer 2020 Capacity Obligations).

ComEd also notes that EDF/CUB suggest that the Commission should require ComEd to make "semi-annual compliance filings" concerning enrollment in Rate RTOUPP so that the Commission can approve corrective action if necessary within the four-year pilot period. ComEd appreciates EDF/CUB's interest in learning from Rate RTOUPP. But ComEd asserts that enrollment is one of the factors that ComEd has committed to include in its annual reports concerning RTOUPP, beginning in 2022. ComEd states that EDF/CUB have not sufficiently explained what the Commission or stakeholders would gain from semi-annual enrollment reporting prior to that date. For example, ComEd notes there is no evidence in this case concerning the anticipated level of total enrollment, or the speed at which customers will enroll, because the purpose of the pilot is to evaluate those factors, among others. ComEd states that, since there is no benchmark or expectation against which enrollment numbers can be compared, it is not clear what could be gained through semi-annual reporting on enrollment. Similarly, ComEd notes that EDF/CUB have not explained what "corrective action" would be appropriate within the scope of this pilot, in which enrollment is intended to be voluntary. Accordingly, ComEd recommends that the Commission not adopt EDF/CUB's suggestion regarding semi-annual compliance filings reporting enrollment.

2. EDF/CUB's Position

EDF/CUB support the learnings ComEd has described in the Pilot Reporting section of Rate RTOUPP. This important information should demonstrate the benefits that broad adoption of TOU can offer. EDF/CUB agree that four years of data should provide ample opportunity to review these; however, if enrollment exceeds expectations and significant data can be gleaned earlier than four years, EDF/CUB argue that it may be appropriate for the Commission to consider the information sooner. EDF/CUB Ex. 1.0 at 7.

EDF/CUB note that ComEd witness Fruehe agreed that ComEd should begin reporting on its findings as soon as practicable. ComEd Ex. 4.0 at 11. He stated that, if enrollments begin in June 2020, ComEd's first report would be due no later than January 21, 2022, and that it is important that ComEd's reports capture sufficient time-periods and enrollment populations to provide useful information. *Id*. Mr. Barbeau agreed, but noted sufficient time-periods and enrollment populations may be available prior to January 21, 2022. EDF/CUB Ex. 2.0 at 2. In that case, it would be appropriate for ComEd to begin reporting on information earlier than January 21, 2022. *Id*. Conversely, if enrollment lags significantly behind ComEd's expectations, EDF/CUB argue that it may be appropriate for the Commission to have access to this data so that it may decide to revisit the terms of the pilot to determine whether changes are needed. *Id*.

ComEd's primary objection to Mr. Barbeau's suggestion was that reporting is not useful without a full summer of data because of the impact of customers' capacity obligations and the fact that those are calculated based on summer months. ComEd Ex. 7.0 at 3. Despite supporting Mr. Barbeau's contention that a portion of capacity costs should be recovered during the summer since that is when they are incurred, EDF/CUB find ComEd's concern is somewhat misplaced in the context of reporting. EDF/CUB agree there may be certain learnings that are dependent upon summer behavior but aver that metrics such as enrollment could be reported on a rolling basis. Since ComEd does not plan to submit its first report until after the summer of 2021, that would be at least one and a half years after the program begins and almost halfway through the pilot. EDF/CUB point out that a Commission order requiring changes at that point would likely not be made until after the pilot is halfway through. For a metric like enrollment for which specific time periods are not relevant, reporting should be done much earlier. EDF/CUB suggest semi-annual compliance filings with that information so that the Commission can approve corrective action if necessary before it is too late for such changes to be impactful.

Mr. Barbeau noted that it is important for ComEd and the Commission to understand how shifting customers' load away from peak times through the TOU rate impacts delivery system conditions. EDF/CUB Ex. 1.0 at 8. He therefore recommended that the Commission direct ComEd to evaluate how peak shifting affects existing system capacity, integration of distributed energy resources, and other expenses and technological needs on the distribution system. *Id*. Mr. Fruehe acknowledged that time-variant rates may impact those factors "over the long term," but stated that ComEd does not anticipate that pilot enrollment will be large enough to gain a full understanding of how time-variant rates affect that distribution system. ComEd Ex. 4.0 at 12. Therefore, ComEd suggested that such an evaluation should not be undertaken unless and until the pilot develops into a permanent offer with enrollment numbers "large enough to impact distribution operations." *Id*. Mr. Fruehe appears to not disagree with the idea of studying these issues but is more concerned with whether or not a meaningful enough sample size of participants will be gathered to conduct such an analysis. Mr. Barbeau agreed with the need for a robust data set to use in this study, but encouraged ComEd to draw up a study, including identifying the sample size it would need in this pilot, to at least be ready to make use of the data gathered from the pilot. EDF/CUB Ex. 2.0 at 4. The study design could be submitted to the Commission as a compliance filing made in this docket, assuming the pilot is approved. *Id*. If and when a critical mass of customers is enrolled in the pilot, ComEd would then be ready to report on the potential impacts. *Id*.

Finally, in terms of program design, Mr. Barbeau recommended that the Commission direct ComEd to evaluate its program hours after a period of time to determine if they continue to represent time periods that achieve the goals of the program, drive behavior change, create environmental benefit, and create consumer savings. EDF/CUB Ex. 1.0 at 8-9. Mr. Fruehe agreed that ComEd will monitor the impacts of the pilot as it develops and that these learnings will assist the Company in determining whether and how the TOU time periods ComEd has proposed should be adjusted in the future. ComEd Ex. 4.0 at 13.

3. AG's Position

The AG requests that the Commission adopt the recommendations of AG witness Rubin to assure the statistical robustness of any evaluation of this pilot. The purpose of Mr. Rubin's recommendations is to ensure that the pilot program can provide reliable guidance for future changes in TOU program design and to determine whether such a rate would produce benefits for participating customers and for the ComEd system as a whole. AG Ex. 2.0 at 7.

First, Mr. Rubin recommended in his testimony that ComEd's program design feature a cross-section of customers based upon housing type and electricity consumption parameters. *Id*. at 15. By targeting different groups of customers with similar electricity consumption patterns but who may differ in other regards such as family size, income, and other factors, Mr. Rubin's approach to customer solicitation would capture additional relevant attributes affecting individual customers' electricity consumption beyond housing type and heating energy source.

The AG clarifies that Mr. Rubin is not recommending that ComEd ensure that it ultimately enrolls a diverse sample of customers but is instead focused on program solicitation across a wide range of customers with differing characteristics relevant to the pilot's learnings goals. AG Ex. 2.0 at 8. ComEd can still gather information about the enrollment rate across various customer segments by keeping track of the number of customers from a given segment, however it is defined. Furthermore, Mr. Rubin's suggested diversification and supplementation of factors considered in customer solicitation would allow ComEd to gather information on the efficacy of solicitation efforts and the attractiveness of the program as designed for different types of customers, among other insights. *Id*. at 8.

Also, as ComEd notes, "ComEd typically works with evaluation companies to determine the best data analysis methods to develop the relevant learnings." ComEd Ex. 6.0 at 5. The AG agrees that, if approved, ComEd's pilot should be evaluated in this manner. AG Ex. 2.0 at 7. However, Mr. Rubin recommends an improvement to the evaluation of the pilot would be to "match" customers enrolled in the TOU pilot with customers that remain on Rate BES for comparison purposes. Mr. Rubin offers, as an example, an approach used in California to randomly assign participating customers to groups and then match them with non-participating customers serving as a control group. AG Ex. 1.0 at 14 (*citing* AG Ex. 1.2). Another approach Mr. Rubin offered is to match participants with non-participants based on specified characteristics such as residing in the same neighborhood and having similar monthly energy consumption patterns. This comparison to TOU pilot participants could be done with both Rate BES customers and Rate BESH customers and provide useful information on customer behavior changes attributable to participation in the TOU pilot. *Id*. at 14-15.

The AG notes that ComEd indicates an openness to matching participants in the pilot with non-participants for purposes of evaluating the pilot's results. The AG supports ComEd's plans to "conduct statistically significant analysis of the pilot via a professional, highly-skilled, third-party evaluation, as is done in other programs" and obtain as much useful information from the pilot as possible, including by matching participants with non-participants for purposes of evaluation.

4. Commission Analysis and Conclusion

The Commission approves ComEd's uncontested proposal to provide an annual report and audit of Rate RTOUPP that includes the following topics: (a) the effectiveness of marketing initiatives for Rate RTOUPP, as indicated by enrollment numbers, by residential delivery classes; (b) whether participants' supply costs were less under Rate RTOUPP in comparison to Rate BES; (c) whether customers decreased, or shifted, their energy use during the Super Peak Period, based upon analyses performed with AMI interval data and questionnaires; (d) whether customers' individual demand at the time of the five highest peaks in the PJM and ComEd zones decreased; and (e) whether owners of electric vehicles were incentivized to charge their vehicles in the Off Peak Period.

The Commission approves EDF/CUB's proposal that ComEd share interval and geographic data, on the condition that any shared data is provided solely on an anonymous basis using Commission-approved anonymous protocols, or future approved Commission protocols.

The Commission approves EDF/CUB's recommendation that ComEd calculate the reduction in GHG emissions that result from changes in the behavior of customers participating in Rate RTOUPP, using the same methodology ComEd uses to report on changes in GHG emissions as a result of its investments in AMI, and include this GHG impact data in Metric 9 of its AIPR. The Commission notes that ComEd committed to provide this data via a separate report after the AIPR is no longer submitted.

The Commission approves the AG's recommendation that ComEd make a compliance filing within six months of the Order in this case, specifying the evaluator and the methodology that ComEd will use to generate learnings from Rate RTOUPP. Specifically, ComEd shall disclose in its filing the name of the third party evaluator contracted to study RTOUPP, how that evaluator was selected, whether and how other evaluators were assessed, a comparison of proposed costs from selected comparable evaluators, whether the third party evaluator is a diverse supplier, the cost to employ such third party evaluator, when and how such payments are made or will be made to such evaluator, and to what account such costs will be allocated and copies of such third party evaluator contract, including the disclosed cost and length of such contract.

However, the Commission anticipates that the evaluation methodology may evolve over the course of the pilot, in light of new information, and that later reports concerning Rate RTOUPP may apply additional or different methodologies than those outlined in the compliance filing.

The Commission rejects EDF/CUB's proposal to require ComEd to design a study on the impact of Rate RTOUPP on the distribution system. The record supports ComEd's explanation that it is not possible to design such a study in advance of obtaining data from the pilot, because ComEd cannot predict the number of customers needed to conduct a statistically significant study. The Commission finds that such a study may be appropriate in the future, depending on the results of this pilot.

Finally, the Commission rejects as premature the AG's recommendation that ComEd match customers participating in the pilot program with similar customers who remain on Rate BES service for comparison purposes. The Commission is satisfied that the third-party evaluator that will study Rate RTOUPP will identify and implement appropriate evaluation methodologies.

In light of ComEd's plan to begin enrollments in Rate RTOUPP in June 2020, the Commission finds it reasonable that ComEd should submit and file its first report to the Commission on its findings no later than January 31, 2022, with additional reports in each subsequent year. The record demonstrates that this timeframe is reasonable to allow ComEd to compare data gathered over the course of the first two summers in which Rate RTOUPP customers will be able to adjust their usage in response to price signals. The Commission finds that such annual reports shall be completed by an independent third party evaluator. Such report shall contain and disclose, to the extent feasible, such information, including but not limited to:

1) the effectiveness of marketing initiatives for Rate RTOUPP, as indicated by enrollment numbers, by residential delivery classes;
2) whether participants' supply costs were less under Rate RTOUPP in comparison to Rate BES;
3) whether customers decreased, or shifted, their energy use during the Super Peak Period, based upon analyses performed with AMI interval data and questionnaires;
4) whether customers' individual demand at the time of the five highest peaks in the PJM and ComEd zones decreased;
5) whether owners of electric vehicles were incentivized to charge their vehicles in the Off Peak Period;
6) program costs, including a breakdown of administrator costs, variable administrator costs, enrollment costs, ComEd costs;
7) the number of participants, including percentage growth or decline, the number of new enrollees, the number of enrollees that left RTOUPP, why such customers left and include numbers by month;
8) participant characteristics, such as whether they are considered single family, multi-family, etc.;
9) the standardized process for the sharing of data, including interval data and geographic data and whether that sharing was performed on an anonymous basis in whole and/or in part, to whom such information was disclosed;
10) whether the third party evaluator identifies the enrolled number of consumers as statistically significant;
11) whether such enrollment size is able to produce any insights, information or data related to matching;
12) the effects of various marketing, education and outreach efforts on enrollment and behavior;

13) efforts undertaken to ensure data is not used to acquire new customers and to market RTOUPP in the future;

14) the long-term and short-term savings to ratepayers enrolled in RTOUPP; and

15) a comparison of RTOUPP to other time of use pilot program costs and features in other jurisdictions.

Recognizing the importance of studying TOU as a potential competitive rate for consumers, we also recognize the need to balance this against our duty to ensure that such a study is done in a thoughtful and prudent manner. Thus, the Commission further adopts EDF/CUB's proposal to require ComEd to submit and file semi-annual compliance filings with the Commission concerning enrollment and other factors in Rate RTOUPP, beginning six months after approval of this pilot, on or before APRIL 11, 2020 and continuing every six months thereafter. This additional compliance filing allows for flexibility but also provides oversight and guidance where appropriate. This is not a burdensome request since it requires ComEd to produce information that it should have readily in hand. Therefore, on a semi-annual basis, ComEd's compliance filing shall disclose, to the extent such information is known:

i. the marketing, education and outreach efforts, techniques and methods employed to secure enrollment before, during and after the start of the pilot, including but not limited to detailed information regarding pricing options and links to online rate comparison tools, informational videos, bill inserts, Bill Ready Notification Emails, social media, direct mail and email campaigns, outbound calling, radio and television, digital advertising, and printed materials, CSR scripts considered, employed and used, the costs associated for each method employed and to what account(s) such costs will be allocated to; whether additional vendors were employed in such marketing efforts, those costs and whether such additional vendors are diverse suppliers;

ii. the marketing, education and outreach efforts, techniques and methods employed to educate already enrolled ratepayers on time of use, usage, behavior, understanding their TOU bill, comparing rate program options, understanding if and when continuation in the pilot program is recommended; a breakdown of education and outreach efforts employed before, during and after enrollment; ComEd shall include whether such efforts employed commercials, social media, bill inserts, CSR scripting and training and the costs associated for each method employed and to what account(s) such costs will be allocated to; whether additional vendors were employed in such education and outreach efforts, those costs and whether such additional vendors are diverse suppliers;

iii. copies of any and all marketing, education and outreach efforts;

iv. any factors giving rise to impediments to pilot program enrollment and/or any aspect of the pilot program itself;

v. which customers enrolled in RTOUPP are identified in its Customer Information and Marketing System ("CIMS") as eligible for assistance under the Low Income Home Energy Assistance Program ("LIHEAP"), State of Illinois Percentage of Income Payment Plan ("PIPP"), or ComEd-funded CARE programs;

vi. What specific marketing, education and outreach efforts were used in enrolling RTOUPP customers that are defined as low income, including what guidance and assistance were provided in determining whether enrollment in RTOUPP would be beneficial, why and how to unenroll in RTOUPP, understanding their bill, usage, consumption and behavior modification; whether through the established process for the sharing of interval data, any data was provided in whole or in part on an anonymous basis using Commission-approved anonymous protocols and to whom such data was disclosed or shared, whether such information was obtained by payment and if so, for what sum and paid to whom, whether the disclosure and sharing of such data was disclosed to the ratepayer whose information was disclosed, whether consent was obtained by the enrolled ratepayer and if so, how that consent was obtained;

vii. Any additional information and findings concerning Rate RTOUPP and any additional associated pilot costs or different methodologies used other than those outlined in the compliance filing submitted through ComEd's third party evaluator;

viii. the process for addressing informal complaints to ComEd by consumers enrolled in RTOUPP, including but not limited to the types and number of complaints, the procedures followed when a complaint is received, any and all outcomes of such complaints and whether ComEd utilized a dedicated phone line, department or website for such complaints; and

ix. The process and procedure for non-payment while enrolled in RTOUPP and whether such customers are disconnected and/or re-enrolled into Rate BES.

Where such information is not known and/or unable to be disclosed, ComEd shall indicate so and shall detail whether such information will become known and/or able to be disclosed, including any barriers to the disclosure of such information. Upon its own motion, the Commission reserves the right to re-open this docket to review and inquire as to such semi-annual filings and modify any portions of the pilot as necessary.

D. Information for Participants

1. ComEd's Position

ComEd notes that the AG recommends that ComEd provide customers enrolled in Rate RTOUPP regular information showing how their bills compare to the bills they would have received under Rate BES service. ComEd agrees that this information is important and commits to considering the appropriate method and timing to provide this information to participants in Rate RTOUPP. ComEd believes this issue is uncontested.

ComEd also notes that the AG recommends the Commission condition its approval of Rate RTOUPP on ComEd's guarantee to implement an alert system that provides as many alerts for potential peak times as ComEd can reasonably predict. ComEd states it commits to offering an elective program to alert Rate RTOUPP participants of upcoming PJM and ComEd system peak days, and to continuing to improve the data analytics it uses to predict system peaks. ComEd maintains that, if the Commission adopts the AG's recommendation, it should make clear that Rate RTOUPP participants may elect to receive these alerts but are not required to receive alerts as a condition of enrollment in Rate RTOUPP.

ComEd states that ICEA recommends ComEd include the price to compare on the bills it issues under Rate RTOUPP. ComEd agreed that presenting the price to compare on Rate RTOUPP customers' bills is reasonable and follows the practice of including it on all residential bills. ComEd also commits to including in any surveys it sends to participating customers questions regarding the presence of price to compare on customer bills. ComEd believes this issue is uncontested.

ComEd notes ICEA also recommends that ComEd be required to comply with Sections 412.165(f) and (g) of the Commission's rules, even though ICEA acknowledges that these rules do not actually apply to ComEd. ComEd contends that ICEA's recommendation should be rejected because it will not provide any incremental benefit to customers.

ComEd explains that Sections 412.165(f) and (g) require ARES to post on their website information about actual historical prices charged under variable rates, and mail customers notice of changes in rate design that are likely to lead to an increase of 20% or more in their supply bills. 83 Ill. Adm. Code 412.165(f), (g). ComEd states that these rules are intended to protect ARES' customers by ensuring that they understand the ARES' rate on which they are enrolled and are provided advance notice of changes in their ARES' rates. *See Ill. Commerce Comm'n on its own Mtn*., Docket No. 15-0512, Second Notice Order at 84 (June 1, 2017). ComEd states that all of its rates – including Rate RTOUPP, if approved – are available on the ComEd.com web page, and annual rate information statements are provided to customers with their bills, in compliance with other Commission rules. In addition, ComEd notes that the Commission determines that ComEd's rates are just and reasonable before they become effective, while ARES' rates go into effect without such a review. *See* 220 ILCS 5/9-201. Further, ComEd states that customers enrolled in Rate RTOUPP will receive price to compare information on their monthly bills. Thus, ComEd states, the existing Commission rules and ComEd's commitments in this docket ensure that customers enrolled in Rate RTOUPP will obtain the same types of information that Sections 412.165(f) and (g) of the Commission's rules require ARES to provide to their customers. ComEd maintains that ICEA's recommendation would result in an additional layer of customer correspondence, with no resulting benefit to customers.

With that background, and in light of ICEA's references to challenges ARES face in offering time-of-use rates under existing rules, ComEd asserts that it appears that ICEA is asking the Commission to require ComEd to gather information that ICEA believes will assist it in proposing modifications to Section 412.165. ComEd contends that this is inappropriate and states the Commission should reject ICEA's recommendation.

2. ICEA's Position

ICEA continues to recommend that the Commission reject Rate RTOUPP. In the alternative, ICEA recommends that if the Commission does approve Rate RTOUPP, the Commission should require ComEd to share information about its experience operating under the same requirements as Sections 412.165(f) and (g) of the Commission's rules. ICEA contends that if ComEd is correct that very few ARES time variant products are on the market today, the Commission would benefit from understanding and validating the many challenges ARES face in offering a TOU rate under existing rules. ICEA posits that if the Commission generally investigated barriers to ARES offering time-variant products and services today, barriers presented by Sections 412.165(f) and (g) are unlikely to be identified because, as ComEd testified, so few ARES products currently appear to be available. ICEA concludes that with relatively few ARES time-variant products currently available in Illinois, there are fewer experiences with Illinois-specific implementation challenges.

Section 412.165(f) states in full that:

> An RES that currently enrolls residential customers on a variable or time-of-use rate for three consecutive months in any electric utility's service territory must, for a variable or time-of-use rate product, disclose on the RES' website and through a toll-free number the one-year price history, or history for the life of the product if it has been offered less than one year. An RES shall not rename a product in order to avoid disclosure of price history.

83 Ill. Adm. Code 412.165(f). Section 412.165(g) states in full that:

> If the contract includes a rate that changes, or has the potential to change, more than once a month (i.e., time-of-use rate) and if the specific prices per kWh for the duration of the contract are not specified in the contract, subsections (a) through (f) apply, but:
>
> 1) The written notice in subsection (c) is required if a change in the time-of-use rate structure leads to a 20% or greater increase in an estimated bill for the customer's next billing cycle based on a reasonable proxy of that customer's usage pattern for the upcoming billing cycle without any modifications to the customer's consumption patterns.

> 2) The subsection (f) disclosures shall include an example of monthly bills paid by a reasonable proxy of the customer's usage pattern.

83 Ill. Adm. Code 412.165(g). ICEA points out that Mr. Gafford specifically recommends that, for the purposes of Section 412.165(g), the Commission treat Rate RTOUPP as not having provided rates in advance due to the impact of the PEA. *See* ICEA Ex. 1.0 at 10; *cf.* 83 Ill. Adm. Code 412.165(h). ICEA concedes that as a legal matter the aforementioned sections of the Commission's rules apply to ARES. Nevertheless, ICEA recommends that the Commission direct ComEd to comply with the requirements as if they applied to ComEd. *See* ICEA Ex. 1.0 at 11. Mr. Gafford testified that, unlike the "learnings" ComEd alleges the program would generate, experience operating under the same requirements as Sections 412.165(f) and (g) would provide useful information to the ARES community. *See id*.; ICEA Ex. 3.0 at 3.

According to ICEA, the core of ComEd's response from Mr. Fruehe is that "ComEd is not an ARES, and my understanding from counsel is that these sections of the Commission's Rules do not apply to regulated utilities." ComEd Ex. 4.0 at 7. ICEA notes that Mr. Fruehe also raises that the Commission deems ComEd rates to be just and reasonable when effective, obviating the need for disclosures similar to those in Sections 412.165(f) and (g). *See id*. at 7. ICEA argues it is irrelevant to ICEA's argument that Rate RTOUPP is not regulated by Part 412. ICEA justified ComEd following Sections 412.165(f) and (g) based on the learnings they would provide and requested that the Commission impose those requirements on ComEd without regard to whether they are otherwise required.

According to ICEA, ComEd also argues that its rates already are available on the ComEd.com web page and annual rate information statements are provided with bills, in compliance with other Commission rules. While ComEd does not explicitly cite to a section of Part 412, ICEA believes ComEd is attempting to argue that ComEd already substantially complies with the requirements that would be imposed under 412.165(f) if they applied to ComEd. According to ICEA, ComEd's presentation of this information—which for Rate RTOUPP is not just the three time periods but also the actual PEA and the line items for capacity and transmission—will provide great information for ARES (who are obligated to comply with Part 412) to think about how to present a similar product under 412.165(f).

3. AG's Position

The AG maintains that the Company's proposed TOU pilot features significant risks for customers. In particular, ComEd's insistence on using a monthly capacity charge presents potential enrollees with a cost that they can neither easily understand nor reliably predict and manage. In light of this opaque but potentially significant charge, AG witness Rubin testified that ComEd should ensure that customers enrolled in this pilot be given as much useable information as possible and be apprised of the potential risks and rewards of continued participation as clearly as possible. To this end, Mr. Rubin offers two recommendations: clear and useful alerts regarding system peak times and a comparison of each participant's monthly supply charges under the

TOU pilot and what the supply charges would have been for that customer under Rate BES.

ComEd generally agrees that notices to customers regarding potential peak days will be a feature of TOU pilot but declines to specify the nature of the notices beyond a reference to the "Capacity Alert" system in place for ComEd customers taking service on Rate BESH. ComEd Ex. 5.0 at 13. The AG is supportive of ComEd's plan to include alerts, but due to the difficulty in predicting peak times for purposes of calculating the monthly Capacity Charge (which can account for 40% or more of a total bill) and the ex post determination of peak times, the AG requests that the Commission condition approval of the TOU pilot on ComEd providing notices or alerts to participants in as complete a manner as possible. Essentially, the AG asks the Company to send notices or alerts to customers for as many potential peak times as ComEd can reasonably predict.

For customers to be able to assess whether it is in their best interest to remain on RTOUPP, Mr. Rubin recommends that ComEd provide a comparison between a participant's monthly bill under Rate RTOUPP with the amount they would have paid under Rate BES. AG Ex. 1.0 at 10-11. As Mr. Rubin observed, ComEd already does this for Rate BESH. The AG contends that this recommendation would provide important feedback about the success or failure of using a TOU rate for individual customers and would not be an unfamiliar or particularly challenging task for ComEd. Accordingly, the AG asks that the Commission condition approval of the pilot on ComEd providing a comparison of each participant's monthly supply charges under the TOU pilot and what the supply charges would have been for that customer under Rate BES.

4. Commission Analysis and Conclusion

The Commission approves the undisputed recommendations that ComEd provide to customers enrolled in Rate RTOUPP regular information showing how their bills compare to the bills they would have received under Rate BES service and to include on customer bills the price to compare.

In addition, the Commission finds that a TOU rate should be simpler for customers to follow than real-time pricing, but the Commission recognizes that large individual monthly bills may occur during the same summer months as system peaks occur. While recovering capacity costs through Super Peak and Peak Periods will encourage customers to reduce usage during those times that might cause ComEd to incur capacity costs, customers should have the option to be alerted of potential time periods where they will likely use a large quantity of electricity and incur large individual monthly bills. Thus, the Commission directs ComEd to give customers the option to receive alerts when conditions may cause high usage in order to further customer education and enable customers to better control their costs.

The Commission rejects ICEA's recommendation to require ComEd to comply with Sections 412.165(f) and (g) of the Commission's rules. ICEA itself acknowledged that these rules do not apply to ComEd, and the Commission is not persuaded that compliance with these rules would provide any incremental benefit to customers. To the extent that ICEA believes these rules are unreasonably burdensome on ARES, this is not the proper proceeding to address amendments to the Commission's ARES rules.

E. Marketing to Customers

1. ComEd's Position

ComEd states that it intends to market Rate RTOUPP to a randomly selected representative sample of eligible customers taking service under Rate BES but will target-market the program to eligible customers it identifies as owners of electric vehicles in order to enroll a sufficient number of those customers to conduct an analysis of whether Rate RTOUPP incentivizes electric vehicle owners to charge their vehicles in the Off Peak Period. ComEd explains that it has not finalized any marketing plan for Rate RTOUPP, in advance of a Commission order authorizing it, but anticipates that the marketing and advertising of Rate RTOUPP would be similar to the marketing and advertising of similar programs that ComEd currently offers. ComEd states that, typically, ComEd personnel from the Demand Response and Dynamic Pricing business unit and the Marketing Department manage marketing and advertising of similar programs, while third-party contractors execute marketing strategies (e.g., material development, printing, mailing, etc.). ComEd states it often uses the following methods to advertise, market, and promote similar programs: (1) email; (2) social media; (3) direct mail; (4) the ComEd website; (5) customer service representative scripts; (6) digital campaigns; and (7) bill inserts. ComEd commits to including in the marketing plan for Rate RTOUPP materials and/or programs designed to educate customers about the risks and rewards associated with enrolling.

ComEd notes that, as an alternative to its suggestion that low-income customers should be excluded from participation in Rate RTOUPP, the AG suggests that ComEd should be prohibited from marketing Rate RTOUPP to low-income customers. ComEd asserts that this recommendation should be rejected. First, ComEd contends that it is unreasonable to restrict or minimize low-income customers' ability to participate in Rate RTOUPP. Second, ComEd points out that the AG did not include this recommendation in its testimony, so there is no record evidence to support it, nor did ComEd have an opportunity to present evidence demonstrating why the proposal is inappropriate. Third, ComEd maintains that implementing this recommendation may be impracticable because the methodologies ComEd typically uses to market programs – such as the ComEd website, digital campaigns, and customer service representative scripts to advertise, market, and promote similar programs – cannot reasonably be restricted to exclude low-income customers. ComEd states that an order preventing ComEd from using these methods at all could significantly hamper Rate RTOUPP enrollment generally, and in turn significantly reduce the learning potential.

In response to ICEA's concern about the possibility that ComEd would use customers' interval data "without customers' authorization" to target and market specific customer segments, ComEd explains it does not plan to directly market Rate RTOUPP to any subset of customers that ComEd pre-identified as having a particular load profile. Because interval data will be important in developing learnings related to Rate RTOUPP, ComEd asserts that, to the extent the Commission's order incorporates any discussion of ComEd's use of AMI interval data in connection with Rate RTOUPP, it must preserve ComEd's ability to use AMI interval data to study how customers react to the TOU price signals.

2. ICEA's Position

ICEA recommends that the Commission prohibit ComEd from using interval data for the purposes of marketing Rate RTOUPP. ICEA notes ComEd witness Fruehe's commitment to not use interval data to acquire customers. ICEA argues that the Commission should memorialize ComEd's commitment in its Final Order.

3. EDF/CUB's Position

In response to the AG's recommended prohibition on marketing to low-income customers, EDF/CUB states that this is equally problematic, as it denies those customers – who most need lower bills – the opportunity to participate in a program that might provide them just that. It would also significantly hinder important learnings from the pilot. EDF/CUB aver that it is not possible to understand whether and how low-income customers can benefit from a TOU rate if they are not participating.

4. AG's Position

For purposes of obtaining enrollees in this pilot, ComEd proposes to "solicit a randomly selected representative sample of eligible customers to participate in Rate RTOUPP." ComEd Ex. 6.0 at 5. If the Commission does allow ComEd to enroll low-income customers, the AG urges the Commission to order ComEd to refrain from marketing to low-income customers.

AG witness Rubin cited recent academic literature summarizing the outcomes and results of TOU pilot programs offered to customers in California. AG Ex. 1.0 at 12. The paper's authors found that low-income customers in two service territories had higher bills in the summer than they would have under standard, fixed residential rates and one group of low-income customers in a cooler-climate service territory experienced a small increase during the winter months. *Id*. While the report found that customers in California participating in TOU pilots generally reduced electricity usage compared to standard service, notwithstanding general savings an unexpected increase in charges in the summer or winter could be drastic. *See* AG Ex. 1.2 at 54. The same study also found that low-income customers in general were unable to reduce their load during high-cost time periods to the same extent as other customers, limiting their ability to take advantage of off-peak price reductions. AG Ex. 1.0 at 12 (*citing* AG Ex. 1.2).

In addition to the reduced ability of low-income customers to reap the benefits of a TOU rate documented in the study, the AG points to the fact that low-income customers are often very sensitive to even small increases in the cost of essential electric utility service. AG Ex. 1.0 at 12. The result of a monthly increase for a low-income customer may be an inability to pay for other essential needs such as housing, medication, food expenses, education, and childcare. *Id*. Destabilization of a low-income customer's fragile financial condition due to increased costs for essential electric utility service could easily send such a struggling individual or family into a debt spiral or force upon them lose-lose choices.

For the reasons stated above and because the Commission would not unnecessarily impede ComEd's quest for learnings by requiring ComEd to exclude low-income customers from the TOU pilot marketing, the AG requests that the Commission condition any approval of the pilot on exclusion of those customers from ComEd's efforts to solicit participants.

5. Commission Analysis and Conclusion

It appears that the only customers that will be targeted by ComEd are those with electric vehicles. No other ratepayer group will be targeted nor will ComEd use AMI data to target certain customers that from their usage appear to be likely to save on Rate RTOUPP. Therefore, with respect to ICEA's concern about the use of AMI interval data in marketing Rate RTOUPP, the Commission finds that ComEd has explained it does not plan to market Rate RTOUPP using AMI interval data to identify customers with any particular usage profile. The Commission adopts ComEd witness Fruehe's proposal in surrebuttal that ComEd will not use AMI interval data to directly market to customers with advantageous load profiles. ComEd Ex. 7.0 at 6.

The Commission approves ComEd's proposal for marketing Rate RTOUPP and rejects the AG's recommendation that ComEd should be prohibited from marketing Rate RTOUPP to low-income customers. The Commission agrees that for the pilot to truly be able to provide the hoped-for learnings, a cross-section of ComEd customers must participate. As discussed above, low-income customers should not be excluded from the pilot nor from the marketing of the pilot. As suggested by ComEd, one of the learning sought is whether low-income customers will enroll. Moreover, as ComEd explained, it is likely impracticable to restrict marketing efforts to exclude low-income customers. ComEd shall report its marketing efforts consistent with Section II(C) above.

F. Impact on Competition

1. ComEd's Position

ComEd opines that there is no evidence in this case demonstrating that Rate RTOUPP will have any impact on the competitive market for energy supply, and that neither Rate RTOUPP, nor ComEd's use of interval data to develop products offered to non-ARES customers and to study customers' reactions to those products, will create a barrier to competition. ComEd maintains that ICEA's argument that Rate RTOUPP would compete with ARES products finds no basis in the record, and ICEA's arguments concerning "barriers" that ARES face in offering TOU products do not justify rejecting Rate RTOUPP.

ComEd explains that ARES currently have the ability to access customer interval data through Commission-approved methods and RTOUPP will not change that ability. For example, with customer authorization, ARES can access up to 24 months of customer data through ComEd's Rate DART – Data Access and Retrieval Tenets. Additionally, ComEd states that, upon enrolling a customer in a TOU (or demand response) service, an ARES can receive access to: 1) bill-quality interval data at the end of each billing period, and 2) the option to obtain best available data for each customer on a next-day basis under Rider RMUD – Residential Meter Usage Data. ComEd notes that ARES are also free to offer unique products and services, in addition to flat-rate pricing, and may utilize ComEd's Rider Purchase of Receivables Consolidated Billing tariff ("Rider PORCB") to provide their customers with information related to time-variant services.

ComEd notes that ICEA attempted to explain that ARES do not offer TOU rates in Illinois because they face "barriers" in offering TOU products to customers, but ComEd asserts the barriers ICEA identifies are largely unrelated to Rate RTOUPP, and do not justify rejecting the pilot. Indeed, ComEd states that the primary barrier ICEA identified is challenges in accessing interval data through Commission-approved channels. ComEd explains that those channels were established in a series of Commission orders that govern the manner in which ARES may obtain customer data and are intended to enable customers to maintain control of their interval data. ComEd states that in the first of those orders, in 2014, the Commission considered the question of ARES' access to historical interval data derived from AMI meters for non-billing purposes. *Investigation of Applicability of Sections 16-122 and 16-108.6 of the PUA*, Docket No. 13-0506, Order (Jan. 28, 2014). The Commission determined that interval data is highly sensitive, and that an ARES must have more than a customer's account number to obtain access to customer-specific interval data. *Id*. at 26-27. ComEd further states that, in 2015, the Commission issued an order that specifically prescribed the language and manner in which ARES may obtain customer authorization to access their interval usage data. *Investigation of Std. Terms for Customer Authorization of Access to Interval Usage Data for Non-billing Purposes*, Docket No. 14-0701, Order, Appendix (Apr. 1, 2015) ("ARES Data Access Order"). ComEd states these orders remain in force, have not been substantially modified since they were issued, and directly address the "primary barrier[]" identified by ICEA to ARES TOU products. ComEd notes ICEA does not allege any change in fact or law that would support deviating from those orders.

While ICEA argues that Rate RTOUPP should be tabled until the Commission has completed a formal investigation of the alleged barriers ARES face in offering TOU products, ComEd notes that ICEA describes several informal investigations of that issue that have been inconclusive, and discussions regarding this issue have been underway since 2012. Nevertheless, ComEd asserts ICEA failed to offer any evidence demonstrating the existence of a barrier, aside from its own self-serving statements that barriers exist. ComEd states it agrees with EDF/CUB that nothing prevents an ARES from offering a time-variant rate, and any questions about the process by which ARES do so are entirely separate from the question of whether ComEd's proposed Rate RTOUPP is just and reasonable.

ComEd notes that ICEA pointed to Docket No. 15-0100, where the Commission found that, "before requiring utilities to offer a TOU rate," the "competitive barriers that RESs face in offering a TOU rate" should be investigated. *Citizens Util. Bd.*, Docket No. 15-0100, Order at 9 (Sept. 16, 2015). However, ComEd maintains the Commission's Order in Docket No. 15-0100 is not relevant to Rate RTOUPP, because ComEd voluntarily proposed Rate RTOUPP, while Docket No. 15-0100 expressly referred to a Commission requirement that utilities offer a TOU rate. *See id*. ComEd does not object to the Office of Retail Market Development ("ORMD") opening a dialogue on this matter. In the meantime, however, ComEd states that Rate RTOUPP should be implemented because customers are likely to benefit, and because the learnings ComEd develops as a result of implementing Rate RTOUPP will be valuable.

Finally, ComEd notes that ICEA argues it would be inappropriate for ComEd to continue to offer a TOU rate if ARES' TOU products flourish. In response, ComEd states it has requested a period of four years to study how customers react to Rate RTOUPP and maintains it is reasonable to permit ComEd to finish the pilot, whether ARES begin to offer TOU rates or not.

2. EDF/CUB's Position

EDF/CUB explain that ICEA witness Gafford suggested that, rather than allowing ComEd to undertake the TOU pilot, customers would be "better served by TOU products supplied by a robust competitive market facilitated by reasonable data-sharing rules rather than by the regulated utility by itself." ICEA Ex. 1.0 at 4. Mr. Barbeau opined that it is unlikely that ARES are interested in offering a TOU. EDF/CUB Ex. 2.0 at 9. EDF/CUB point out that AMI has been deployed in ComEd since the approval of a small pilot in 2009, and a significant percentage of the ComEd service territory has had AMI for years, with full deployment of AMI expected this year. *Id*. EDF/CUB also note that data sharing is already in place for alternative suppliers, as discussed in a number of Commission dockets.

EDF/CUB point out that Mr. Gafford offered no explanation of why Rider RMUD and the current AMI data sharing protocols are inadequate to facilitate alternative suppliers' ability to offer TOU rates now. He suggested the interval data provided through Rider RMUD, where customer consent is required, is inadequate. ICEA Ex. 1.0 at 4-5. He also suggested that ARES lack access to AMI data for billing and settlement but did not elaborate. *Id*. at 6. In fact, state EDF/CUB, nothing prevents an ARES from offering a time-variant rate of its own, whether a TOU or some other variation, and whether an ARES needs some special procedure to offer a TOU is a separate question from whether ComEd customers should be allowed the chance to participate in a TOU pilot.

EDF/CUB contend that the purpose of a pilot is to gather information. In this case, it will be how customers respond to a TOU rate, how customers benefit from a TOU, and what those responses and benefits mean for ComEd's system. In fact, suggest EDF/CUB, it could well be that ARES themselves will gain the greatest learnings from the pilot, and choose to begin offering TOU rates to ComEd customers that want to take advantage of their benefits. EDF/CUB Ex. 2.0 at 10. Given the potential customer savings, grid benefits, and environmental benefits made possible by a TOU rate, EDF/CUB argue that it would be a mistake to delay implementation of a TOU rate.

3. ICEA's Position

ICEA argues that it has presented sufficient evidence in the present docket that ARES face significant barriers to offering TOU products to residential customers. ICEA notes that one of the primary barriers is the challenges in accessing interval data through Commission-approved channels. Rather than endorsing ComEd's Rate RTOUPP, ICEA urges the Commission to first investigate the competitive market barriers that exist. ICEA further recommends that the Commission should also investigate the modifications that need to be made to ComEd's tariffs to use AMI interval data for billing and settlement purposes that could foster the competitive retail market's development of TOU products consistent with the Commission's approach and conclusions in three previous utility TOU related dockets.

According to ICEA, the Commission has long expressed its interest in the development of a competitive retail market for time-variant products and identifying any barriers to its development. ICEA argues that in Docket No. 12-0298, the Commission rejected utility TOU rate offerings and encouraged the fostering of the competitive retail markets. In that docket, the Commission required that:

> If, after discussion, the Company and stakeholders agree that ComEd should offer a new TOU rate, then the proposal should at minimum fully explain how this TOU rate intersects with the existing competitive retail marketplace.

Docket No. 12-0298, Final Order at 44 (Jun. 22, 2012). ICEA contends that the Commission made clear to ComEd that consideration—even protection—of the competitive retail market was an important part of even considering a utility TOU rate.

Later, ICEA notes, in Docket No. 15-0100, CUB and EDF petitioned the Commission to require ComEd to offer a TOU rate. According to ICEA, the Commission dismissed the proceeding on several grounds that are not relevant to the present docket; however, the Commission further held that:

> The Commission agrees with ICEA that before requiring utilities to offer a TOU rate, it would be more appropriate to investigate competitive barriers that RESs face in offering a TOU rate.

Docket No. 15-0100, Order at 9-10 (Sept. 16, 2015). Once again, posits ICEA, the Commission made clear that a utility TOU supply rate would be premature before a full investigation of the barriers to ARES' development of TOU products.

ICEA argues that, to date, no such investigation into barriers to ARES offering TOU products has been conducted. ICEA witness Wright testified that while ICEA has informally reached out to some stakeholders, Mr. Wright is unaware of any formal Commission proceeding or even a Staff-led workshop to address barriers to ARES TOU products. *See* ICEA Ex. 2.0 at 4. Mr. Wright testified that whether ComEd (as in this docket) or a third party (as in Docket Nos. 12-0298 and 15-0100) recommended the utility supply TOU rate, the competitive issues recognized by the Commission above remain the same. *See id*. at 4.

As a result, consistent with directives from as far back as 2012, ICEA argues that the Commission should maintain that a prerequisite for a utility supply TOU rate is a full investigation into the barriers ARES face in offering TOU products. Because no such investigation has been conducted, ICEA recommends that the Commission hold that ComEd's proposed new Rate RTOUPP is premature.

ICEA notes that both ComEd and EDF/CUB argue that existing data access is sufficient, and that data access is thus not a barrier. ICEA notes that Mr. Gafford explained that ARES need interval data to offer TOU products because ARES are not guaranteed cost recovery by the regulatory scheme. Further, ARES must either price customers based on historic usage patterns or only serve customers whose expected cost to serve (including overhead and margin) is less than anticipated revenue. Whereas ComEd has the PEA built into the rate that recovers or refunds the difference between ComEd's costs to serve and revenue. ICEA Ex. 3.0 at 6-7. ICEA witness Gafford also explained why it is at minimum not practical for ARES to use the same PEA mechanism as ComEd to make up the difference between revenues and cost to serve. *See* ICEA Ex. 3.0 at 7. ICEA concludes that interval data access is critical to ARES offering time-variant products and services.

ICEA argues that several aspects of Rate RTOUPP have anti-competitive effects on current and future ARES TOU products. ICEA argues that ComEd's proposed PEA mechanism to reconcile costs to serve customers with collections masks actual rates and negatively impacts the competitive retail market whether the PEA is consistently a charge or credit. *See* ICEA Ex. 1.0 at 6.

ICEA further contends that ComEd proposes that it should recover costs of the program through Rate BESH in the event it failed to generate sufficient participants to support its costs. ICEA witness Gafford testified that ComEd is pushing the risk of failure of a voluntary rate onto a larger subset of non-participating ratepayers. *See* ICEA Ex. 1.0 at 8. According to ICEA, ComEd witness Eber noted in a separate context: "to develop a firm marketing plan, including materials, to solicit enrollments in a pilot will require ComEd to make a significant investment." ComEd Ex. 6.0 at 3. Without the option to shift costs to Rate BESH customers, Mr. Gafford testified that ComEd would face unappealing options of absorbing costs or increasing charges for remaining participants—both of which Mr. Gafford believed would be unappealing for ComEd. *See* ICEA Ex. 3.0 at 10. ICEA witness Gafford further testified that moving program costs not recovered by participants onto Rate BESH customers would artificially lower the PEA, which is designed to reconcile ComEd's costs with revenues. *See Id*.

ICEA concludes that the total effect is that if ComEd is allowed to recover costs related to Rate RTOUPP through Rate BESH under some scenarios, ComEd faces no downside for a program that ComEd is offering completely on its own volition. In contrast, ICEA argues, an ARES creating a new TOU product or service must correctly price that product to balance attracting customers and covering revenue targets.

ICEA argues that the imbalance between ComEd's risk-free—for itself, not its ratepayers—voluntary choice to offer a new rate and ARES' risk to offer a new TOU product or service is a competitive advantage for ComEd's rate.

4. Commission Analysis and Conclusion

As noted above, there is no evidence yet regarding the impact Rate RTOUPP will have on competition, but the Commission shares ICEA's disappointment regarding the lack of ARES TOU products. However, because Rate RTOUPP does not alter the manner in which ARES access customer data, the Commission finds that ICEA's arguments concerning data access barriers to ARES TOU products are outside the scope of this proceeding. For these reasons, the Commission rejects ICEA's recommendation that Rate RTOUPP should not be put into effect until after the Commission has concluded an investigation concerning the barriers to ARES TOU products. The fact that Rate RTOUPP is a pilot designed to develop information about

TOU rates that would benefit stakeholders, the Commission finds that it would be unreasonable to prevent Rate RTOUPP from taking effect pending further investigation.

The Commission recognizes that it has a statutory obligation to promote the competitive retail market. Although the Commission has already ruled on ARES access to interval data, the Commission strongly urges ICEA and other interested stakeholders to provide information to Staff regarding other competitive barriers to ARES offering TOU products. The Commission directs Staff to prepare a report that will inform future Commission actions.

III. INTEGRATED DISTRIBUTION COMPANY IMPLEMENTATION PLAN

A. ComEd's Position

ComEd explains that it seeks approval of temporary revisions to its IDC Implementation Plan that will enable ComEd to market Rate RTOUPP to customers, inform them of the benefits, and raise overall awareness for the pilot. ComEd explains this marketing is necessary to support a successful Rate RTOUPP pilot, and the proposed revisions to ComEd's IDC Implementation Plan are just, reasonable, and in alignment with waivers granted by the Commission in past cases to support new and innovative rate structures.

To obtain learnings that will be valuable in the future, ComEd states it needs to enroll enough participants in Rate RTOUPP that it can conduct statistically significant analyses. To gain sufficient participation in the pilot, and a variety of customers to analyze, ComEd will need to market Rate RTOUPP. ComEd plans to primarily provide direct marketing materials to Rate BES customers and will not market to customers that have to take elected service under Rate BESH or with an ARES. ComEd notes that it obtained a similar waiver when it implemented its real-time pricing rate. *See Commonwealth Edison Co*., Docket No. 08-0411, Order (Oct. 8, 2008); *Ill. Commerce Comm'n on its own Mtn*., Docket No. 11-0546, Order (May 29, 2012). ComEd asserts its proposed revisions to the IDC Implementation Plan should be approved.

ComEd maintains that the Commission should reject ICEA's recommendation that ComEd should be prohibited from using interval data for the purposes of marketing Rate RTOUPP in the future. ComEd explains there is no basis for ICEA's recommendation in the record – ICEA did not even offer it until briefing. If in the future, evidence is presented indicating that it is necessary or useful to use interval data to market Rate RTOUPP, ComEd states the Commission will remain free to do so.

ComEd notes that ICEA also argues that ComEd's requested waiver of its IDC Implementation Plan cannot be granted because ComEd did not provide the marketing materials that will be used to promote Rate RTOUPP. ComEd notes that Staff was satisfied by the information ComEd provided in rebuttal testimony and does not support ICEA's position that the requested waiver should be denied. ComEd states the record evidence in this proceeding supports ComEd's request for a temporary waiver of the requirements of its IDC Implementation Plan for the purpose of marketing Rate RTOUPP.

B. EDF/CUB's Position

Given the benefits to customers and the grid, of time-variant pricing and the flattened load that it incentivizes, EDF/CUB would like to see TOU offered as broadly as possible. EDF/CUB Ex. 1.0 at 7. In addition to the benefits TOU holds on its own, EDF/CUB state TOU can also facilitate widespread adoption of more granular time-variant rates like hourly pricing programs. *Id*. Indeed, some of the potential benefits of TOU are directly correlated to the number of customers participating. *Id*. It is therefore important to maximize the potential of the TOU with a pricing structure that incentivizes behavior change and with reporting and evaluation that takes advantage of learnings as they are available.

EDF/CUB argue that it is therefore beneficial for all customers for ComEd to receive an IDC waiver so that it may effectively promote the program and enroll enough customers to see significant benefits from the program. *Id*. at 7-8. In the event that enrollment is particularly low, EDF/CUB contend it may be appropriate for the Commission to direct changes to the program at an interim point to consider means of bolstering enrollment. *Id*. at 8.

C. ICEA's Position

ICEA argues that if the Commission rejects Rate RTOUPP, the Commission should not address ComEd's proposed modifications to its IDC Implementation Plan. However, ICEA argues that to the extent that the Commission does not reject Rate RTOUPP, the Commission should prohibit ComEd from using interval data for the purposes of marketing Rate RTOUPP in the future.

ICEA alleges that is unable to take a substantive position on ComEd's IDC waiver because it is not clear what ComEd plans to do to market Rate RTOUPP. According to ICEA, ComEd refused to provide much of this information beyond suggesting there will be similarities to other marketing efforts: "ComEd does not plan to develop marketing materials specifically for Rate RTOUPP in advance of Commission approval of the rate." ComEd Ex. 6.0 at 4.

Because ComEd did not disclose its marketing material, ICEA argues that the Commission lacks sufficient facts in the record to grant a waiver of Section 452.240 of the Commission's rules. Without a clearer understanding of how ComEd plans to market, the Commission has no basis to determine whether ComEd's plan is reasonable or consistent with other IDC rules for which ComEd is not requesting a waiver.

D. Commission Analysis and Conclusion

The Commission approves ComEd's requested temporary revisions to its IDC Implementation Plan. These revisions will enable ComEd to market Rate RTOUPP to customers, inform them of the benefits, and are necessary to support a successful Rate RTOUPP pilot. In addition, the revisions align with waivers granted by the Commission in past cases to support new and innovative rate structures. The Commission rejects ICEA's contention that the revisions to the IDC Implementation Plan cannot be approved without review of the final marketing materials.

As noted above, ComEd has indicated that it will not use AMI interval data to market Rate RTOUPP during the pilot proceeding. Whether this commitment must be maintained in any possible permanent approval of Rate RTOUPP can be determined at a that time.

IV. ICEA'S ALTERNATIVE PROPOSAL

A. ComEd's Position

ComEd asserts the Commission should reject ICEA's recommendation to open an investigation into making AMI data the standard for ARES billing and settlement, rather than approve Rate RTOUPP.

ComEd explains that AMI data is the standard for all of ComEd's billing and settlement processes. To the extent ICEA is asking that AMI interval data be made standard for billing and settlement, the Commission already has ruled on this question in Docket No. 13-0506, where the Commission found that ARES must acquire customer authorization to obtain access to interval data, and that automatic access is not allowed. *See In re Investigation of Applicability of Sections 16-122 and 16-108.6 of the PUA*, Docket No. 13-0506, Order (Jan, 28, 2014); *see also* ARES Data Access Order, Appendix A. ComEd states that Order remains in force, has not been substantially modified since it was issued, and directly addresses the issue that ICEA argues should be addressed in a new docket, namely, the manner in which ARES may obtain customers' interval data. ComEd maintains that ICEA offered no basis to conclude that a different result would be reached in the proceeding it asks the Commission to open.

ComEd states ICEA also offered no basis for its request that Rate RTOUPP be delayed pending the outcome of the separate docket. ComEd agrees with EDF/CUB that whether an ARES needs some special procedure to offer a TOU rate is a separate question from whether ComEd customers should be allowed the chance to participate in a TOU pilot. While ComEd would be open to further discussions outside of this docket, Rate RTOUPP should not be delayed during those discussions. ComEd maintains that the learnings Rate RTOUPP will develop will be useful in considering future TOU and/or time-variant rates, and there is no reason to delay providing customers and the Illinois market a greater insight into the learnings this pilot will provide.

B. ICEA's Position

ICEA argues that the Commission should direct ComEd to use AMI interval data for the purposes of billing and settlement. ICEA alleges that the Commission has repeatedly raised its desire for an investigation into barriers to ARES offering time-variant products. According to ICEA, ComEd's proposal in this docket does nothing to remove those barriers, and will in fact raise new, and exacerbate existing, barriers. ICEA argues that it is offering a limited, but practical, solution to what ICEA witness Gafford termed the most substantial barrier to ARES offering time-variant products and services: ComEd's use of AMI interval data for the purposes of billing and settlement.

According to ICEA, ComEd provided evidence—which ICEA did not dispute—that there are few time-variant products offered by ARES in the market today. *See* ICEA Ex. 1.0 at 3-4. ICEA argues that this is not the result of ARES lacking interest in time-variant products and services, but that ARES need interval data to effectively offer time-variant products and services. ICEA contends that data access impacts ARES independent from ComEd's actions but also as a competitive matter.

With regard to the independent impact of the Commission's data access policies on ARES ability to offer time variant pricing, ICEA witness Gafford testified that ARES must either price customers based on historic usage patterns or only serve customers whose expected cost to serve (including overhead and margin) is less than anticipated revenue. *See* ICEA Ex. 3.0 at 7. According to ICEA, this is because ARES are not administratively guaranteed cost recovery, and it is impractical for ARES to attempt to use a similar PEA-like mechanism to ComEd. *See* ICEA Ex. 3.0 at 7. As a result, Mr. Gafford testified that ARES face a very high customer acquisition cost. *Id*. at 6.

While high customer acquisition costs are problematic even by themselves, ICEA argues that they are even more of an issue when ComEd offers a competing rate. ICEA argues that whether with Rate RTOUPP or even Rate BES, ARES pricing does not compete in a vacuum or even just with other ARES. ICEA argues that the higher the customer acquisition costs, the more challenging it is to offer savings to any ComEd-offered rates.

ICEA argues that it proposed a limited, but practical, solution to the barrier of data access: the Commission should require ComEd to use AMI interval data for billing and settlement purposes of ARES customers. While Mr. Gafford testified that he has not identified data access as the exclusive barrier, he does believe it is the primary barrier. *See* ICEA Ex. 1.0 at 5.

According to ICEA, ComEd currently only allows an ARES to receive a customer's interval data for billing purposes if the customer is on a time-variant product. ICEA further notes that ComEd also requires the ARES to warrant that each customer has provided affirmative consent to access to interval data. *See* IL C.C. No. 10, 2d Revised Sheet No. 449. ICEA strongly believes greater access to interval data would remove one of the primary barriers to new ARES time-variant products. However, ICEA concedes that the Commission may conclude that a formal investigation would be required to revisit ComEd's tariffs and the Commission's previous data access orders. ICEA contends that by initiating an investigation with the goal of better access to interval data by ARES within the existing regulatory and data privacy scheme, the Commission would be following the course of action plotted across the dockets cited above.

ICEA recommends that the Commission direct in its Final Order that a new investigation be opened within 30 days of the Final Order to address ICEA's interval data proposal. According to ICEA, quickly opening a new docket and directing a schedule that would allow a full but time-limited investigation would ensure that such barriers were addressed in a timely fashion. ICEA argues that this step—ordering a new investigation and rejecting Rate RTOUPP—will address the more important and fundamental issue of eliminating barriers to competitive retail market TOU products and services.

C. Staff

Staff opines that it seems likely that the Commission shares certain of ICEA's concerns. However, ICEA is clear that its proposal would afford ARES access to interval data for non-billing purposes – specifically, to design and offer TOU products to existing customers. Staff notes that the Commission has already addressed precisely this issue and has determined the terms upon which ARES may have access to such data. *See* ARES Data Access Order. In its ARES Data Access Order, the Commission recognized that Section 16-108.6(d) of the PUA "prohibits the disclosure of [TOU data] by utilities for commercial purposes, except where authorized." *Id*. at 3; *see also* 220 ILCS 5/16-108.6(d). The Commission further recognized that any disclosure of an individual customer's usage data is governed by Section 16-122(a). *Id*. Section 16-122(a) provides that:

> Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.

220 ILCS 5/16-122(a). In its ARES Data Access Order, the Commission determined the specific form which the "verifiable authorization" described in Section 16-122(a) should take, and in fact developed and approved such a form. *See* ARES Data Access Order, Appendix A.

In other words, Staff avers that ICEA's proposal cannot be considered. The impediments to TOU offerings by ARES that ICEA identifies – and which, indeed, may be very real impediments to ARES making such offerings – are the result of statutory requirements out of the Commission's control. By statute, and specifically pursuant to Section 16-108.6(d) and Section 16-122(a), ARES are entitled to individual customers' TOU data to precisely the extent such individual customers authorize ARES to obtain such data from ComEd.

Nor is it likely that the Commission would reach a different conclusion today than it did in 2015. Section 16-108.6 was last amended in 2011. *See* Public Act 97-646. Section 16-122 was last amended in 2002. *See* Public Act 92-585. In Staff's opinion, it is likely or certain that any investigation the Commission might conduct into why ARES lack robust access to TOU information would conclude – as the Commission has in fact already concluded – that ARES have the access to such data to which state statutes entitle them. If ARES are aggrieved by this, their recourse is to the General Assembly, not the Commission. No further investigation is warranted.

D. Commission Analysis and Conclusion

The Commission rejects ICEA's recommendation to open an investigation into making AMI interval data the standard for ARES billing and settlement. Existing Commission orders govern the scope and manner of ARES access to customers' interval data, and ICEA presented no evidence or argument in this proceeding that would support a conclusion different from that in Docket Nos. 13-0506 and the ARES Data Access Order. Rate RTOUPP has no impact on ARES' ability to access customer data.

As noted above, because the impact of Rate RTOUPP on competition is unknown, the Commission adopts Staff's proposal to limit the size of the pilot. Also, the

Commission agrees with Staff that if greater access to AMI interval data is desired, the proper recourse is to the General Assembly. Whether ARES suffer other barriers to entry, however, can be brought to the attention of Staff, as noted above.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over the parties and the subject matter herein;

(3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law;

(4) the proposed Rate RTOUPP, as modified herein, is just and reasonable and should be approved;

(5) the proposed revisions to Commonwealth Edison Company's Integrated Distribution Company Implementation Plan are appropriate, necessary to implement Rate RTOUPP, and should be approved;

(6) Commonwealth Edison Company should be directed to file Rate RTOUPP, consistent with the conclusions in this Order, within seven (7) business days after the entry of this Order with an effective date no earlier than two (2) business days after such filing is made; and

(7) Staff should file a report regarding the competitive barriers to Alternative Retail Electric Suppliers offering time variant products.

IT IS THEREFORE ORDERED that Commonwealth Edison Company's Rate RTOUPP, as modified herein, is approved.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file new tariff sheets in accordance with Finding (6) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to incorporate within its Integrated Distribution Company Implementation Plan the revisions discussed herein.

IT IS FURTHER ORDERED that Staff is directed to file a report regarding the competitive barriers to Alternative Retail Electric Suppliers offering time-variant products.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding that remain outstanding are hereby disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 2nd day of October, 2019.

(SIGNED) CARRIE ZALEWSKI

Chairman

Chairman Zalewski concurs.