

As Cook County and other parties have shown in their initial briefs, no provision of the PUA permits ComEd to continue collecting decommissioning costs after the nuclear plants are transferred to an affiliate. Cook County Initial Brief at 5-8; City/CUB Initial Brief at 3-13; People Initial Brief at 2-3; IIEC Initial Brief at 6-14; Coalition Initial Brief at 17-20; ELPC Initial Brief at 1-4.¹ ComEd's proposal cannot withstand legal scrutiny. Cook County Brief at 5-10. Accordingly, the Commission has no authority to approve this proposal. The Commission's powers are limited to those expressly provided by the General Assembly. *Business and Professional People for the Public Interest v. Illinois Commerce Commission Commerce*, 136 Ill.2d192, 243-44 (1989). Cook County Initial Brief at 6.

B. The Commission Should Decide ICC Docket No. 99-0115

If the Commission finds that it has legal authority to approve ComEd's proposal, then the Commission should determine the appropriate level of decommissioning funding based upon the record of this docket and ICC Docket No. 99-0115. ComEd uses the cost studies in the 1999 Rider 31 as reasonable in this proceeding. ComEd Ex. 1.0 at 8. Yet, ComEd moved this Commission to stay ICC Docket No. 99-0115. ComEd Petition at 5. Therefore, ComEd should not be allowed to deviate from the 1999 Rider 31 merely because the Commission has not decided ICC Docket No. 99-0115. The record of ICC Docket No. 99-0115, including its assumptions and arguments against those assumptions, should be determined in this docket.

Accordingly, when addressing the applicable escalation factors, the escalation rates supported by the evidence in this docket and ICC Docket No. 99-0115 are appropriate. Cook County Initial Brief at 10-19. Even Staff agrees that the escalation rates supported in ICC

¹ Citations to the record in this proceeding will not include the docket number unless for purposes of clarification. All citations to record evidence of other Commission dockets will include the appropriate docket number.

Docket No. 99-0115 are appropriate in this proceeding. Staff Initial Brief at 5-7. Unfortunately, Staff incorrectly calculates the escalation rate in ICC Docket No. 99-0115. Cook County Initial Brief at 12-19.

As a result, the evidence shows the correct escalation rates that should be approved by this Commission are as follows: the overall escalation rate should be 4.11%; the low-level waste escalation rate should be 9.19%. Cook County Initial Brief at 10-12; ICC Docket No. 99-0115, Cook County Cross Ex. 35.

The 4.11% escalation rate is the overall escalation rate proposed by ComEd. ComEd Ex. 2, Attachment B at 2. The 4.11% overall escalation rate is supported by the record evidence. CUB/City witness Biewald, a decommissioning expert, made clear that an overall escalation rate of 4.11% is just and reasonable. Cook County Initial Brief at 10-11; CUB/City Ex. 1.1 at 9, Tr. 1423. The 4.11% escalation rate is **not** a “plug” number or “pull out number”. ComEd Initial Brief at 18. The 4.11% overall escalation rate is **not** some number derived from the six-year \$120.9333 million contribution amount rate. ComEd Initial Brief at 19. ComEd’s accountant, Mr. Berdelle, incorrectly determined that a 4.11% overall escalation is only a result based upon the Commission limiting future decommissioning collections to \$120.9333 million for six years. Cook County Initial Brief at 10-11. Decommissioning expert, Bruce Biewald determined that the 4.11% overall escalation rate is consistent with the escalation rate many utilities have used within the past years and reasonable for this Commission to adopt. Cook County Initial Brief at 10-11; CUB/City Ex. 1.1 at 9, Tr. 1423. However, if the Commission chooses not to adopt the overall escalation rate as supported by witness Biewald, the Commission may rely on

the 1999 Rider 31 to calculate the overall escalation rate. According to the 1999 Rider 31, the overall escalation rate should be 4.63%. Cook County Initial Brief at 12-19.

Lastly, the escalation rate for low-level waste in this docket should be 9.19% as supported by the evidence in ICC Docket No. 99-0115. ICC Docket No. 99-0115, Cook County Initial Brief at 18, Cook County Cross Ex. 35. Under the PUA, ComEd is only entitled to recover “all reasonable costs and expenses” that are estimated to be necessary to pay the costs of decommissioning ComEd’s nuclear plants at the time of decommissioning. 220 ILCS 5/8-508.1(a)(2), 5/9-201.5. Accordingly, the Commission should use the 1999 Rider 31 that requires the use of NUREG 1307 to calculate the low-level escalation rate. NUREG 1307 is the objective index that is used as a reasonable methodology² to determine low-level waste escalation in this docket. Cook County Initial Brief at 12-19. Staff witness Riley’s “bandwidth” or “cap” approach is arbitrary. CUB/City witness Biewald’s opinion on low-level waste escalation is arbitrary. The 1999 Rider 31 requires low-level waste escalation to be objectively determined or a mere calculation. “B = Burial escalation rate, based on the average annual rate of escalation (excluding surcharges) for the most recent three years for waste burial at the Barnwell facility contained in the latest revision to NUREG – 1307.” Cook County Initial Brief at 18-19.

Therefore, ComEd is incorrect to calculate the low-level escalation rate by excluding South Carolina’s waste disposal tax. The low-level escalation rate is **not** 22.44%³ but 9.19%. Cook County Initial Brief at 19, ICC Docket No. 99-0115, Cook County Cross Ex. 35.

² The Commission approved this methodology in ICC Docket No. 99-0110. Cook County and ComEd still support use of this methodology in this docket. Cook County Initial Brief at 12-19; ComEd Initial Brief at 6.

³ If a 22.44% low-level escalation rate were assumed, the cost of disposing low-level waste would be a ridiculous \$34,000 per cubic foot. Peoples Initial Brief at 10.

C. The Commission Should Reject ComEd's Proposed Refunds of Surplus Decommissioning Funds

As Cook County argued in its initial brief, ComEd cannot ensure ratepayers refunds of surplus decommissioning funds. Cook County Initial Brief at 9-10. Moreover, ComEd's proposed language governing the use of decommissioning funds still does not guarantee ratepayers refunds, if any. ComEd Initial Brief at 38. The Commission has no way of scrutinizing Genco's use of the decommissioning funds. Consequently, the Commission cannot make any determination as to whether Exelon Genco *has or should have* excess funds to return. The Commission cannot, effectively even determine what amounts of funds remain in the trusts after the 13th unit is decommissioned. ComEd's refund proposal only requires Genco, an unregulated utility, to tell ComEd if any surplus funds exist, then ComEd to tell the Commission that a surplus exists. Yet, the Commission cannot effectively question ComEd regarding this surplus because the unregulated affiliate Genco determined the surplus. So both Genco and ComEd are shielded from any regulatory scrutiny with respect to decommissioning refunds. Such a proposal clearly violates the PUA. Cook County Initial Brief at 9-10.

For these reasons, it is of utmost importance that the Commission adheres to the PUA that prevents ComEd from transferring any excess decommissioning funds. 220 ILCS 5/8-508.1(c) (3)(iii). The evidence shows that ComEd will have a reduction in its liability and excess decommissioning funds, approximately 30%. Cook County Initial Brief at 6-8. Since the evidence shows that ratepayers have fully funded the decommissioning trusts, then ratepayers are entitled to a refund **of at least 30%** of the current decommissioning trust funds. Cook County Initial Brief at 6-8.

D. ComEd's Projection For The Earnings Rate On Decommissioning Funds Is Unduly Conservative

ComEd is proposing an after-tax earnings rate of 7.36% that the Commission has adopted for decommissioning trust funds. While the Commission has authorized an increase in the equity investment limitation to 65%, the Genco may increase the percentage equity investment (thereby increasing the potential return) because the Commission will no longer have oversight authority. CUB witness Bruce Biewald has calculated a more reasonable after-tax return of 8.11% using ComEd's allocation of securities. CUB Ex. 1.1 at 11.

E. ComEd Has Failed To Refute The Possibility Of Nuclear Plant License Renewal And Life Extension

Any extension of ComEd's nuclear plant operation beyond current estimates will have a substantial effect on funds available for decommissioning to the Genco, and would reduce decommissioning funds paid by ratepayers. ComEd witnesses Callan and Speck testified as to the risks and uncertainties in considering where the company would go forward with license renewal and life extension, but nowhere in the record does ComEd contend that it will not seek to extend the life of its plants. ComEd witness Callan conceded that the NRC has already approved license extensions. Other license extension applications are in the NRC pipeline. Tr. 792. Callan characterized license extension as a "reality in the (nuclear) industry". *Id.*

The record supports the possibility that ComEd will seek license renewal and life extension for its nuclear units. ComEd is analyzing whether to extend the life of its Dresden and Quad Cities plants. CUB Ex. 1.2 at 6. ComEd is increasing the utilization rate of its plants. Tr. at 150. This is conduct which implies life extensions rather than plant shutdowns. The

Commission has a responsibility to consider the impact of license renewal and life extension, given the potential revenues available for the decommissioning trust funds from life extension, and the resulting savings to ratepayers.

F. ComEd Fails To Acknowledge The Substantial Financial Incentives To Delay Decommissioning

The Genco has many financial incentives to delay decommissioning. Funds that could be used to decommission nuclear plants accumulate interest in the trust funds through investment. Delayed decommissioning reduces decommissioning costs where the SAFSTOR option is less expensive than immediate decommissioning. Tr. 465-466. ComEd witness LaGuardia testified as to the risks in increased waste disposal and plant maintenance costs. ComEd has recognized SAFTSTOR as an option, however, and is currently employing this option at Zion units 1 and 2. Tr. 437.

G. ComEd's Use Of Contingency Factors Unfairly Shifts Decommissioning Risks To Ratepayers

A central tenet for the creation of Exelon Genco is to shift risks of operating, including decommissioning, to Genco shareholders. ComEd's supposed benefits to ratepayers include "assumption by the Genco of risks of decommissioning fund under collection". Petition at 5. ComEd witnesses testified as to the exposure of the Genco to decommissioning cost increases. ComEd Initial Brief at 4. Contingency factors are used to account for costs that cannot be presently quantified. Tr. at 909. The use of contingency factors will shift the cost of risks that Genco shareholders are taking to ratepayers. Cook County Initial Brief at 27.

H. ComEd Has Failed To Provide A Legal Basis To Include Non-Radiological Decommissioning Costs

ComEd has failed to show that costs for nonradiological decommissioning are just and reasonable, as required by the Public Utilities Act. The Commission in Docket 94-0065 denied the inclusion of these costs offered ComEd the opportunity to show a potential for re-use on structures such as administration buildings, visitors centers, and warehouses. ComEd did not do so in Docket 99-0115, and does not do so in the current proceedings. Witness Thayer essentially repeats his testimony from Docket 99-0115, wherein he provides no rationale for alternative uses of non-radiological structures, ComEd Ex. 13 (Thayer Rebuttal).

Thayer describes non-radiological decommissioning as destructive because hazardous materials need to be removed. ComEd Ex. 13 at 4. Tr. at 777. Thayer again did not address each non-radiological structure individually in ComEd's decommissioning estimates to determine if these structures needed to be destroyed or could be re-used. ComEd has not met the burden set by the Commission and the PUA for the inclusion of nonradiological costs.

I. ComEd's Six-Year Collection Period Is Based Upon An Illusory Association With The PPA

ComEd proposes a six-year collection period for the decommissioning trust fund because the PPA has a six-year term and "ComEd's customers would be receiving the benefit of power from the (ComEd) Stations for six years". ComEd Initial Brief at 34. The connection of the collection period with the term of the PPA is an illusion. Ratepayers will pay a regulated price set by the Commission in years 2001-2004 whether there is a PPA or not. In fact, ComEd concedes that "during the initial period the PPA will have no rate impact on ComEd customers".

ComEd Initial Brief at 33. During the final two years of the PPA, in years 2005 and 2006, ComEd could purchase electricity from any source at the market price. ComEd has an incentive, however, to purchase electricity from the Genco. Since “ComEd’s collection of decommissioning funds... would be expressly conditioned upon ComEd actually taking ... power from the Genco during 2005 and 2006”, ComEd would lose \$121 million for those years where ComEd and the Genco could not agree on a price, as recognized by Staff witness Riley, CUB witness Schlissel and Hearing Examiner Hilliard. ComEd Initial Brief at 33. Tr. at 517, 652, 1129. Finally, any money paid to the Genco ultimately benefits ComEd shareholders. Tr. at 1486.

J. ComEd’s Request For Spent Fuel Storage Costs Continues To Be Premature

ComEd contracted with the Department of Energy (“DOE”) to begin taking spent fuel. The DOE has not to date accepted spent fuel from ComEd and other utilities. DOE and the utilities are currently litigating the issue of whether ComEd breached their contract. The Commission determined in Docket 97-0110 that a decision on spent fuel costs should be deferred until this litigation had been resolved. The litigation had not been resolved in the U.S. Court of Appeals in Docket 99-0115 and is not resolved in the current proceedings. The utilities have won the right since the 1999 docket to litigate the contract dispute in the Federal Court of Claims. ComEd Initial Brief at 36. Ratepayers have no obligation to pay for spent fuel costs unless and until the courts have ultimately determined that the utilities responsible for these costs. If a court finds that the DOE is responsible, then any damages can be paid to the GENCO.

K. There Are Currently Adequate Funds In The Trusts To Decommission ComEd's Nuclear Units

ComEd's proposal presumes assumptions that are not supported in the record. The decommissioning cost estimates presume non-radiological costs for which there is no legal basis for reimbursement. ComEd contends that neither life extensions of the nuclear units nor the profitability of the Genco should be considered when both would have an impact on the funds available to the Genco and funds that could be saved by ratepayers. The decommissioning trust is in effect a zero-sum account in that no money should be remaining in the account after decommissioning is complete, and money that is gained by the Genco in the future could be saved by ratepayers now. A promise of a refund of the surplus to ratepayers in the future is hollow where the Commission has no authority to enforce a refund by the Genco. If ComEd's proposal is rejected and no future contributions made, there would still be in excess of a \$1 million surplus in the trust, assuming a 4.11% escalation rate and no license extensions, and no reimbursement of site restoration costs. Peoples Ex. 2.1 at 5 (Schedule DJE-1B) (Effron Amended Rebuttal).

II. CONCLUSION

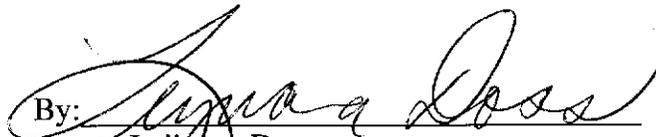
For the above stated reasons and those stated in our Initial Brief, Cook County requests that the Commission deny ComEd's Petition for additional decommissioning funds.

Respectfully submitted,

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Dated: October 6, 2000

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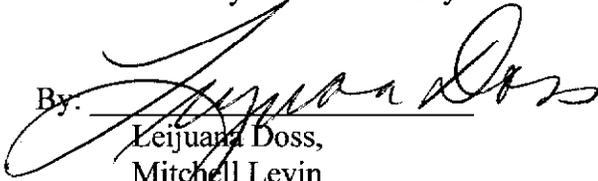
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	
)	
-vs-)	
)	Docket No. 00-0361
)	
Commonwealth Edison Company)	
)	
Petition for approval of a revision to decommissioning)	
Expense adjustment Rider to take effect on transfer of)	
ComEd's generating stations.)	

NOTICE OF FILING

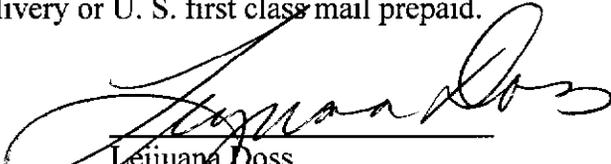
PLEASE TAKE NOTICE that on this date, October 6, 2000, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Reply Brief of the People of Cook County in the above-captioned docket.

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CERTIFICATE OF SERVICE

I, LEIJUANA DOSS, hereby certify that a copy of the enclosed Reply Brief of the People of Cook County was served on all parties on the attached list on the 6th day of October 2000, by hand delivery or U. S. first class mail prepaid.


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