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COMMONWEALTH EDISON COMPANY

No. 00-0361

Petition for Approval of a Revision to
Decommissioning Expense Adjustment Rider to
Take Effect on Transfer of ComEd's Generating
Stations

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COMMONWEALTH EDISON COMPANY'S EXCEPTIONS

SUGGESTED REPLACEMENT STATEMENTS AND FINDINGS

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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By the Commission:

I. PROCEDURAL HISTORY

On May 17, 2000, Commonwealth Edison Company ("ComEd" or the "Company") filed a petition ("Petition") with the Commission for approval of a revised decommissioning expense adjustment rider (the "Revised Rider 31"), which will limit ComEd's recovery of decommissioning costs for customers to a fixed amount over a six year period. At the end of six years, ComEd customers would have no further responsibility for decommissioning costs. The Revised Rider 31 would take effect following the transfer of ComEd's Nuclear Generating Stations (the "Nuclear Stations") to an affiliate generating company (the "Genco"), a wholly-owned subsidiary of Exelon, formed in connection with the merger of Unicom Corporation ("Unicom") and PECO Energy Company ("PECO"). This six-year period tracks a power purchase agreement (the "PPA") under which the Nuclear Stations will continue to provide electricity to Illinois jurisdictional customers of ComEd.

Petitions to intervene were filed by the People of Cook County ("Cook County"), the Illinois Attorney General's Office on behalf of the People of Illinois (the "Attorney General"), the City of Chicago ("City"), Citizens Utility Board ("CUB"), the Environmental Law and Policy Center ("ELP"), NewEnergy Midwest LLC ("NewEnergy"), Enron Energy Services ("Enron"), the Illinois Industrial Energy Consumers ("IIEC"), and Citgo Petroleum, the Metropolitan Chicago Healthcare Council, R.R. Donnelley & Sons Company, and General Mills, Inc. (collectively the "Chicago Area Industrial & Healthcare Customers Coalition" or "Coalition"). These petitions to intervene were granted by the Hearing Examiners.

On May 30, 2000, ComEd filed the direct testimony of Thomas LaGuardia ("LaGuardia"), President of TLG Services, Inc., Robert E. Berdelle ("Berdelle"), Vice-President and Comptroller of ComEd, Robert K. McDonald ("McDonald"), Vice-President of Unicom, Randall L. Speck ("Speck"), a partner in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP in Washington D.C., and Calvin Manshio ("Manshio"), a partner in the law firm of Manshio and Wallace.

On June 1, 2000, Cook County moved to dismiss and/or consolidate this docket with ICC Dockets 99-0115 and 00-0191. ComEd, CUB, the Attorney General, and the Coalition filed responses to Cook County's motion. ComEd filed a reply to the responses of the Coalition, Attorney General and CUB. Cook County, in turn, filed its reply. On June 28, 2000, the Hearing Examiners denied Cook County's motion, and also ruled that administrative notice would be taken of the record in ICC Docket No. 99-0115, a prior ComEd Rider 31 proceeding for which the record was marked "heard and taken" and for which no order has been issued. On July 19, 2000, Cook County filed a petition for interlocutory review of this ruling. ComEd filed a response to this petition on July 26, 2000. The Commission issued its order denying Cook County's petition for interlocutory review on August 11, 2000.

On June 2, 2000, the Hearing Examiners conducted a hearing on scheduling matters. On June 5, 2000, ComEd filed a petition for interlocutory review of the Hearing Examiners' ruling regarding scheduling. Responses to ComEd's petition for interlocutory review were filed by Staff, the Coalition, the City, IIEC, and Cook County. On June 20, 2000, the Hearing

Examiners' issued a memorandum and notice of the Commission's action denying ComEd's petition for interlocutory review.

On July 11, 2000, ComEd filed the Supplemental Direct Testimony of Messrs. Berdelle and Speck.

On July 31, 2000, Staff prefiled the direct testimony of Theresa Ebrey ("Ebrey"), an accountant in the Accounting Department of the Financial Analysis Division of the Commission, and William Riley ("Riley"), Chief of the Electric Section in the Engineering Department of the Energy Division of the Commission. The following intervenors prefiled direct testimony: David J. Effron ("Effron"), a consultant specializing in utility regulation, on behalf of the Attorney General; Robert Stephens ("Stephens"), a consultant with the firm of Brubaker & Associates, Inc., on behalf of IIEC; Edward C. Bodmer ("Bodmer"), a consultant in the electric utility industry, on behalf of the Coalition; Bruce Biewald ("Biewald"), President of Synapse Energy Economics, Inc., and David Schlissel ("Schlissel"), President of Schlissel Technical Consulting, Inc., on behalf of CUB and the City, and Dr. Phillip O'Connor ("O'Connor") on behalf of NewEnergy.

On August 14, 2000, ComEd filed the rebuttal testimony of Messrs. Berdelle, Speck, LaGuardia and Manshio. ComEd filed additional rebuttal testimony by L. Joseph Callan ("Callan"), a consultant and the former Executive Director for Operations for the United States Nuclear Regulatory Commission ("NRC"), and Jay K. Thayer ("Thayer"), Vice-President, Decommissioning for Duke Engineering & Services, Inc. On that same date, the rebuttal testimony of Staff witness Riley and intervenor witnesses Effron and Bodmer was also filed.

On August 16, 2000, the Attorney General filed the amended rebuttal testimony of Effron.

On August 18, 2000, CUB and the City jointly moved to compel ComEd to respond to CUB's fifth and sixth data requests and for an extension of time. They filed a revised motion on August 22, 2000.

On August 21, 2000, pre-hearing memoranda were filed by Staff, Coalition, IIEC, City and CUB, Cook County, and the Attorney General. On August 23, 2000, ComEd filed its pre-trial memorandum.

From August 24, to August 29, 2000, an evidentiary hearing was held with respect to ComEd's Petition. ComEd, Staff, Attorney General, Cook County, City, CUB, ELP, Coalition, IIEC, and NewEnergy appeared. On August 24, 2000, CUB's and the City's joint motion to compel and for an extension of time was denied. ComEd then presented the testimony of seven witnesses: McDonald, Speck, Manshio, LaGuardia, Thayer, Callan, and Berdelle. Staff presented the testimony of Riley and Ebrey. CUB and the City presented the testimony of Schlissel and Biewald. IIEC presented the testimony of Stephens. NewEnergy presented the testimony of O'Connor. Coalition presented the testimony of Bodmer. The Attorney General presented the testimony of Effron. At the conclusion of the hearing on August 29, 2000, the record was marked "heard and taken."

During the hearings, on August 24, 2000, the Hearing Examiners granted in part and denied in part intervenors' oral motions to strike portions of Speck's testimony. On August 28, 2000, the Coalition moved to strike portions of the rebuttal testimony of Thayer, which was denied. On August 28, 2000, the City and CUB moved to strike portions of the direct and rebuttal testimony of Manshio, which motion was denied on August 29, 2000.

ComEd filed a draft order. Initial and reply briefs were filed by ComEd, Staff, the City, the Attorney General, Cook County, IIEC, ELP, and Coalition.

The Hearing Examiners' proposed order was served on the parties.

The record contains detailed and comprehensive evidence supporting the decommissioning expense adjustment sought by ComEd in the petition. The record also contains substantial evidence concerning the proposed revisions to Rider 31 sought by ComEd.

II. DESCRIPTION OF THE PROPOSED REVISED RIDER 31

In its Petition, ComEd proposed to collect \$120.933 million per year through the Revised Rider 31 for a six year period, as described below, and thereafter to recover no additional money for decommissioning costs from its customers.

ComEd's proposal is made in connection with its plan, pursuant to the pending Unicom Corporation merger with PECO Energy Company, to contribute its Nuclear Stations and form the Exelon Genco. In connection with the transfer of the Nuclear Stations, ComEd intends to enter into certain agreements with the Genco, including a Power Purchase Agreement, which provides for ComEd's purchase of power from the Genco, a Contribution Agreement, and an Interconnection Agreement pertaining to the Nuclear Stations.

Under the PPA, ComEd would obtain all of its power supply from the Genco through 2004. In 2005 and 2006, ComEd would obtain all of its power supply from the Genco, up to the available capacity of the Nuclear Stations. ComEd would obtain any additional supply required from market sources in 2005 and 2006, and, subsequent to 2006, would obtain all of its supply from market sources, which is likely to include power purchased from the Genco and the Nuclear Stations since the Stations will be generating electricity in northern Illinois.

Under the PPA, the price of energy provided to ComEd through 2004 is intended to approximate the cost to ComEd of energy produced by the Nuclear Stations were there to be no transfer of assets to the Genco, assuming an aggregate nuclear capacity factor of 85%. Energy prices will be fixed for the first four years and are stated in a schedule to the PPA. The schedule of energy prices in the PPA protects ComEd from any increases in energy prices attributable to increases in nuclear station operating costs, additional investments in station improvements, increases in market prices of energy, and deterioration in nuclear plant performance. Energy prices for the years 2005 and 2006 will be set at then prevailing market prices, which will be subject to FERC approval.

Under the Contribution Agreement, the assets in the decommissioning trusts will be transferred to the Genco, and the Genco will be responsible for decommissioning the Nuclear Stations and will bear the risk for increases in decommissioning costs and any shortfalls in the decommissioning trusts at the time of decommissioning. ComEd will be responsible, as a matter of contract, for decommissioning costs and is obligated to collect these costs from retail customers and convey these funds to the Genco for inclusion in the decommissioning trusts to pay for decommissioning of the Nuclear Stations. Under the Public Utilities Act (the "Act"), collection of decommissioning charges from customers is authorized when ComEd has "responsibility as a matter of contract or statute for decommissioning costs..." 220 ILCS 5/16-114.

During the proceeding in response to four issues that were raised by Staff, ComEd clarified and modified its proposal in the following ways:

- First, ComEd agreed to make the proposal asymmetrical, obligating Genco to bear all of the risk of higher costs, but committing it to refund to ratepayers any funds that remain in the decommissioning trusts in the unlikely event that there is a surplus after all of the stations are decommissioned.
- Second, ComEd has agreed to the inclusion of a requirement in the trust agreements governing Genco's use of decommissioning funds that, to the extent money is available after radiological decommissioning is completed, non-radiological decommissioning will be performed.
- Third, ComEd has agreed to a condition making collection of Revised Rider 31 monies from ratepayers in 2005 and 2006 dependent upon ComEd and Genco reaching agreement on a market price and purchasing ComEd's requirements up to the available capacity of the nuclear stations in those years.
- Fourth, ComEd has agreed to forever waive any right to seek additional decommissioning collections after the expiration of the six-year decommissioning collection period and to accept this condition in writing.

ComEd had moved to stay its 1999 and 2000 decommissioning cases (Docket Nos. 99-0115 and 00-0191, respectively) pending the resolution of this docket. Once the merger and transfer of assets to the Genco take place, ComEd has committed that it will move to withdraw its petitions filed in both the 1999 and 2000 decommissioning cases.

III. OVERVIEW OF PARTIES' POSITIONS

A. ComEd's Position

ComEd explained that it has made a comprehensive proposal under which ratepayers will contribute for six years toward the costs of decommissioning the company's nuclear stations, and, after those payments are made, customers will have no further responsibility for

decommissioning costs. ComEd stated that approval of ComEd's proposal will provide certainty for ratepayers, reduce by \$1 billion the amount customers contribute for decommissioning costs, eliminate the obligation of customers to make decommissioning payments that are scheduled to continue from 2007 through 2027, and eliminate the significant risk that customers will be required to pay substantially increased costs in the future. Those increased costs could result from uncertainty over such critical matters as the availability and escalating cost of low level radioactive waste disposal, unreimbursed spent fuel storage costs, expanded decommissioning work scope, more rapid rates of general inflation and poorer-than-expected investment performance.

ComEd further stressed that its proposal also provides the level of decommissioning funding necessary to enable a new generating company to accept the transfer of ComEd's nuclear stations and assume the liability to decommission the stations. Absent approval of the proposal, Genco will be unable to complete the transfer and customers will not enjoy the benefits that arise from separating ComEd's nuclear generation assets from the company's transmission and distribution business, insulating ratepayers from many of the risks of the generation business and fostering the development of a competitive generation marketplace in ComEd's service territory.

ComEd submitted unchallenged cost estimates prepared by the leading experts in the field, TLG Services, Inc. which establish that the cost to decommission ComEd's nuclear stations in 2000 dollars total \$5.6 billion – approximately \$3.1 billion more than the amounts now held in the decommissioning trusts. ComEd Ex. 1 (LaGuardia Direct) at 7-8, Schedule TSL-1; ComEd Ex. 2 (Berdelle Direct) at 3. Therefore, ComEd explained, under any reasonable assumptions, decommissioning payments from the Genco in addition to those requested under ComEd's proposal will be necessary to fund that shortfall. See ComEd Ex. 8 (Berdelle Rebuttal) at 3-6. No decommissioning cost estimates were prepared by any of the witnesses who testified in favor of Intervenor or Staff.

ComEd Vice-President and Comptroller Robert Berdelle described the detailed financial analysis supporting ComEd's proposal, demonstrating that the interests of ratepayers would be well served by a cutoff of decommissioning payments after six years of contributions at the \$120.9333 million level. Use of the actual 7.81% decommissioning cost escalation rate called for by the formula approved by the Commission would result in much higher payments. ComEd Ex. 8 (Berdelle Rebuttal) at 6-7; Berdelle, Tr. 1139. Even use of a 4.73% rate, on which ComEd based its proposal for a \$120.9333 million contribution level for 2001 through 2006, would mean higher payments because it requires substantial contributions from 2007 through 2027, which, under ComEd's proposal, ratepayers will not be required to fund. ComEd Ex. 6 (Berdelle Supp. Direct) at 9.

ComEd explained that its proposal offers customers substantial benefits including:

- A reduction in decommissioning rate collections, producing savings to customers of more than \$1.0 billion;
- Certainty of electric rates for decommissioning;

- An end to annual Rider 31 rate litigation;
- Assumption by the Genco of the risks of decommissioning fund undercollection; and
- Assumption by the Genco of responsibility for interim high level radioactive waste management.

The advantages of the resolution and its fairness to ratepayers have been recognized by former members of the Commission who are well-acquainted with the risks posed by ComEd's continued ownership of the nuclear stations and exposure to decommissioning cost increases. Former Commissioner Calvin Manshio endorsed the proposal, stressing the "opportunity to shift the risk of future rate increases in decommissioning costs from ratepayers and to stimulate generation competition...." ComEd Ex. 11 (Manshio Rebuttal) at 2. Former Chairman Dr. Phillip O'Connor, who is now the Chairman of NewEnergy, a leading participant in the Illinois restructured electricity market, emphasized "the goals of enhancing the environment for customer choice and market competition." NewEnergy Ex. 1 (O'Connor Direct) at 2.

B. Staff's Position

Staff recommended a reduction in the amount ComEd could collect through Rider 31 from ComEd's requested amount of \$120.933 million to \$78.9 million. First, Staff argued it was inappropriate to include the cost of site restoration of approximately \$515 million for ComEd's nuclear stations because Staff contended there would be no assurance that Genco would undertake this expense. ICC Staff Ex. 2 at 6-7. Staff argued that removing site restoration expenses would reduce the annual cost of service by approximately \$20.9 million. Staff additionally argued that ComEd's proposal should be reduced by approximately \$1.9 million per year to reflect the removal of spent fuel storage costs at the Zion station that were the result of the United States Department of Energy's ("DOE") delay in accepting spent fuel. Staff further proposed a reduction of an additional \$20 million per year to account for the impact of decommissioning costs due to presumed license renewal at one or more of ComEd's nuclear units. ICC Staff Ex. 2 (Riley Direct) at 7-8. Staff also advocated reducing the period during which decommissioning charges would be recovered.

In response to Staff's concerns, Mr. Berdelle presented the four clarifications and modifications to ComEd's original proposal discussed earlier in this order to provide assurances and eliminate any cause for concern about the merit of ComEd's proposal. ComEd Ex. 8 (Berdelle Rebuttal) at 15-18.

C. Intervenors' Positions

Coalition witness Bodmer objected to ComEd's proposal arguing that "if something is good for Edison, [then] it is bad for ratepayers." Coalition Ex. 1 (Bodmer Direct) at 4. He and other intervenor witnesses claimed that ComEd and the Genco would reap the benefits of any increased efficiencies that result from the Unicom-PECO merger or from any developments of new decommissioning technology and would receive a "windfall" because of the inclusion of a

contingency factor in the estimates relied on by ComEd. *Id.* at 8, 14, 19-20; Attorney General Ex. 1 (Effron Direct) at 9-13; CUB DT Ex. 1.1 (Biewald Direct) at 3-4, 11-12. Intervenors assumed that decommissioning costs would be reduced if ComEd received license extensions for its plants for an additional twenty years or delayed dismantlement of the plants. They assumed that investment earnings on the decommissioning trust fund would exceed the escalation rate of increases in decommissioning costs throughout this period and, on this basis, argued no additional funds should be collected from ratepayers. IIEC Ex. 1 (Stephens Direct) at 9-11; CUB DT Ex. 1.2 (Schlissel Direct) at 20-22. Intervenors also claimed that any unexpected increases in the cost of decommissioning would be accounted for by the contingency factor in TLG's decommissioning estimate. CUB DT Ex. 1.1 (Biewald Direct) at 3-4; Coalition Ex. 1 (Bodmer Direct) at 14.

In response, ComEd witnesses explained why no new decommissioning economies of scale or decommissioning cost efficiencies could be expected from the merger, as the merger would not affect decommissioning labor rates and ComEd's estimates already assumed maximum efficiency. They also explained why license extensions could not be assumed and that, indeed, plants might not be able to operate even for their full license lives for a variety of factors. Similarly, ComEd's witness Thomas LaGuardia explained why delays in decommissioning could lead to shortfalls and were not in ratepayers' interests. Moreover, ComEd witnesses showed how the argument that extending the time for decommissioning would lead to greater revenue presumed a continued favorable spread between the amount returned on the investment of the decommissioning trust fund and the escalation rate for the costs of decommissioning. History showed the opposite to be true, meaning that extensions would probably result in shortfalls rather than surpluses. Indeed, Mr. Biewald admitted, in Docket 99-0115 that "decommissioning could easily end up costing far more than ComEd's current estimates." CUB DT Ex. 1.1 (Biewald Direct) at 6. The six year timetable proposed by ComEd's proposal eliminates this risk to customers. ComEd witnesses also showed that the decommissioning contingency factor did not take into account any of the financial risks associated with decommissioning but only addressed increased costs resulting from conditions on the project site which would inevitably occur.

Finally ComEd responded to the argument that its proposal would result in a "windfall" to the Genco. ComEd explained that its agreement to obligate Genco to bear all the risks of higher costs, but committing to refund to ratepayers any funds that remain in the decommissioning trusts in the unlikely event that there is a surplus after all of the stations are decommissioned, removes any possibility that Genco will somehow benefit unfairly at the expense of ratepayers.

Instead of ComEd's proposal, the Coalition recommended that the Commission either order ComEd to hold a bid auction for its decommissioning liability and its decommissioning funds or develop an allocation methodology that attributes a share of the decommissioning costs to Genco and provides for a "true-up" of ratepayer contributions for decommissioning costs and refunds as new information arises. Coalition Ex. 1 (Bodmer Direct) at 10-12.

ComEd showed why these alternatives should be rejected. ComEd witness Thomas LaGuardia, a highly experienced expert on decommissioning costs and business practices,

explained that: (i) no regulatory body has ever adopted Mr. Bodmer's claimed approach, so the proposal has no track record of success; (ii) because decommissioning requires work to be performed over a period of many decades, it is difficult to imagine that any bidder could be found who would commit to perform work now scheduled to extend through 2030; and (iii) if Mr. Bodmer's "bid auction" approach were followed and a new party were brought in to perform decommissioning, the benefits associated with the experience of existing station staff would be lost. ComEd Ex. 10 (LaGuardia Rebuttal) at 11.

In addition to these factors making the bid auction proposal unrealistic, Mr. Bodmer himself admitted that he had not considered adverse tax consequences that would result if the decommissioning trust funds were transferred to a bidder who did not have an interest in the nuclear power plants. Bodmer, Tr. 1461-1464. Nor had he reviewed applicable NRC regulations, which would prohibit Mr. Bodmer's bid auction proposal, because a licensee may not transfer its obligation to decommissioning nuclear plants to a third party. Bodmer, Tr. 1474-75; see also 10 CFR § 50.75.

ComEd witnesses also responded that Mr. Bodmer's decommissioning allocation schemes were ill-considered because he failed to take into account the substantial and unlimited risk that Genco bears to fund all increases in decommissioning costs in the future, costs which ComEd witnesses showed could be enormous as a result of escalation in the costs of storage costs, expanded scope of decommissioning work, and other matters. ComEd Ex. 4 (Speck Direct) at 8-18; ComEd Ex. 12 (Speck Rebuttal) at 18-36.

IV. APPLICABLE LEGAL STANDARD

A. The Act Authorizes Decommissioning Recoveries When A Utility Has Responsibility As A Matter Of Contract For Decommissioning Costs

A number of intervenors questioned whether the Commission had statutory authority to approve the Revised Rider 31 based on their argument that, once ComEd transfers its Nuclear Stations to the Genco, the Nuclear Stations are no longer subject to the Commission's jurisdiction or dedicated to public service. Therefore, they argued that ComEd's proposal must be rejected because it seeks to charge ratepayers for decommissioning of plants which are not owned by a utility. See, e.g., Prehearing Memorandum of City and CUB at 4-5; Pre-Trial Memorandum of Cook County at 1-2; IIEC Response to Hearing Examiner Ruling of July 31, 2000 at 2.

The Commission has considered these arguments, and concludes that approval of ComEd's proposal is authorized by the Public Utilities Act, including sections 9-201.5 and 16-114. Section 9-201.5 states that the Commission "may ... authorize the institution of rate provisions or tariffs" for the costs of decommissioning nuclear power plants. 220 ILCS 5/9-201.5(a). The rate provisions or tariffs may "increase or decrease charges to customers...." *Id.* The Commission may act to authorize such charges "to reflect changes in, or additional or reduced costs of, decommissioning nuclear power plants, including accruals for estimates of

those costs....” Id. The extremely broad language of Section 9-201.5 places no limitations on the Commission’s authority to approve new decommissioning rates and tariffs.

Despite the unrestricted language of Section 9-201.5, Intervenor’s argue that it prohibits decommissioning collections from customers after the nuclear stations are transferred to Genco. In support of this position, they cite decisions holding that the Commission “is a creature of the legislature” and “derives its power and authority solely from the statute creating it” City of Chicago v. Illinois Commerce Comm’n, 79 Ill. 2d 213, 217-18, 402 N.E.2d 595, 597-98 (1980). But those decisions support ComEd’s position, not Intervenor’s’. The sweeping authority granted to the Commission by Section 9-201.5 provides the statutory power and authority to approve ComEd’s Petition.

In addition to the broad, express language of Section 9-201.5, the Commission also has whatever authority arises “by fair implication and intentment from the express provisions of the statute....” Peoples Gas Light and Coke Co. v. Illinois Commerce Comm’n, 165 Ill. App. 3d 235, 246, 520 N.E.2d 46, 54 (1st Dist. 1988). Even if there were some question about the Commission’s authority based on the express language of Section 9-201.5, the implications from the Act’s broad language would supply whatever additional support is necessary to enable the Commission to approve ComEd’s petition.

A specific feature of Section 9-201.5 buttressing the conclusion that the Commission has such authority is the express provision of two alternative uses to which decommissioning recoveries may be applied. Section 9-201.5 provides that revenues collected under decommissioning rates or tariffs will be used either (1) “to recover costs associated with contributions to appropriate decommissioning trust funds...” or (2) “to reduce the amounts to be charged under such rates or tariffs in the future.” 220 ILCS 5/9-201.5(a).

The first use of decommissioning funds specified in Section 9-201.5 relates to recoveries in the ordinary course of a utility’s ownership of a nuclear station. When a utility “owns or operates, in whole or in part, a nuclear power plant...,” Section 8-508.1(b) and (c) provide that decommissioning recoveries will be deposited into the utility’s tax qualified and non-tax qualified decommissioning trust funds. Intervenor’s contend that this is the only circumstance in which the Commission may approve decommissioning recoveries from customers. But that interpretation of Section 9-201.5 would ignore the second specified use of decommissioning funds authorized by Section 9-201.5.

The second authorized use of decommissioning funds is phrased as an alternative to “contributions to appropriate decommissioning trust funds...” 220 ILCS 5/9-201.5(a). It encompasses situations in which decommissioning recoveries will be applied “to reduce the amounts to be charged under such rates or tariffs in the future....” Id. Since all decommissioning recoveries collected by a utility that owns or operates a nuclear plant are contributed to the utility’s decommissioning trust funds under Section 8-508.1, this second authorized use of decommissioning funds permits decommissioning collections by utilities that no longer own or operate nuclear plants. As in this case, such utilities may enter into agreements that reduce the amounts that would otherwise be charged to customers for decommissioning if

the utility continued to own a nuclear power plant. The costs of decommissioning to be paid under those agreements may then be collected from customers with approval of the Commission under Section 9-201.5.¹ Section 9-201.5's specific authorization of decommissioning recoveries to reduce amounts that would otherwise be charged to customers and deposited into the utility's decommissioning trust funds grants the Commission the power to approve ComEd's petition.

Intervenors' effort to restrict the meaning of Section 9-201.5 and to limit the Commission's authority to approve decommissioning recoveries to only one of the circumstances authorized by the statute would violate a fundamental rule of statutory construction. As the Illinois Supreme Court stated in A.P. Properties, Inc. v. Goshinshy, 186 Ill. 2d 524, 532, 714 N.E.2d 519, 523 (1999) (internal citations omitted):

When interpreting a statute, our goal is to ascertain and give effect to the intention of the legislature. We determine this intent by reading the statute as a whole and considering all relevant parts. We will presume that the legislature did not intend an absurdity. Further, we must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous

Applying these well-recognized principles of statutory construction, Section 9-201.5 must be interpreted to authorize the decommissioning recoveries requested in ComEd's Petition.

Further evidence that the Commission may authorize decommissioning recoveries from customers after ComEd's nuclear stations are transferred to Genco is provided by Section 16-114 of the Act. 220 ILCS 5/16-114. Section 16-114 is entitled "Recovery of decommissioning charges" and was adopted as part of the 1997 Customer Choice law. Intervenors argue that the only significance of Section 16-114 is that it provided for utilities to file new decommissioning

¹ One Intervenor argues that the Commission lacks statutory authority to approve decommissioning collections by ComEd after the transfer of the nuclear stations to Genco because paragraph 8 of Attachment B to the Petition characterizes ComEd's role as the performance of a collection agency function. Attorney General Initial Brief at 26-31. As explained in the Petition, the assumptions and characterizations contained in Attachment B are made for federal income tax purposes. Petition ¶ 13. Those assumptions and characterizations do not determine the Commission's authority under the Public Utilities Act. The only relevant issue under the Act is whether ComEd has responsibility as a matter of contract for "decommissioning costs". 220 ILCS 5/16-114. The Act does not require that ComEd retain responsibility for performance of decommissioning activities, as the Attorney General suggests that "[i]t cannot be overemphasized that the Contribution Agreement does not create any liability in ComEd for the actual decommissioning of the nuclear units." Attorney General Initial Brief at 30. The Contribution Agreement does impose responsibility on ComEd as a matter of contract for decommissioning costs. That is all that is necessary for purposes of the Public Utilities Act. How the arrangement is classified under separate federal statutory and regulatory rules for federal income tax purposes does not determine the Commission's authority under the Act.

tariffs by April 1, 1999, which would apply decommissioning charges to all customers, including bundled service and delivery service customers, and which would remove decommissioning charges from base rates. While Section 16-114 accomplishes both of these objectives, the language of the section has much greater significance than Intervenor's acknowledge.

Section 16-114 plainly recognizes that customers may be required to pay decommissioning charges to "an electric utility owning an interest in ... one or more nuclear power plants..." 220 ILCS 5/16-114. According to Intervenor's, that is the only circumstance under Section 9-201.5 in which the Commission may authorize decommissioning charges.

The problem with Intervenor's argument is that Section 16-114 also recognizes that customers may be required to pay decommissioning charges when a utility does not own an interest in a nuclear power plant. That conclusion is clear from the language of Section 16-114, which discusses decommissioning charges for (1) "an electric utility owning an interest in ... one or more nuclear power plants..." "or" (2) an electric utility "having responsibility as a matter of contract ... for decommissioning costs..." By providing separately and in the alternative for decommissioning charges for utilities (1) that own interests in nuclear power plants and (2) utilities that do not, but have responsibility as a matter of contract for decommissioning costs, the statute must be read to contemplate decommissioning recoveries after a utility has ceased to own a nuclear station, but continues to have contractual responsibility for decommissioning costs. Any other conclusion would render the alternative, "responsibility as a matter of contract" language of Section 16-114 "superfluous" and meaningless in violation of recognized principles of statutory construction. A.P. Properties, Inc. v. Goshinsky, 186 Ill. 2d at 532, 714 N.E.2d at 523. Therefore, use of an agreement between ComEd and Genco, such as the Contribution Agreement under which Genco accepts the responsibility for decommissioning the stations, is authorized by the Act.

Intervenor's seek to avoid this result by arguing that Section 16-114 only authorizes decommissioning recoveries "as to pre-1999 agreements..." City/CUB Initial Brief at 6. In other words, they contend that, before the enactment of Section 16-114, utilities that did not own nuclear plants or that had sold their plants could be liable as a matter of contract for decommissioning costs and those pre-1999 contractual decommissioning costs could be recovered from ratepayers. But even if Intervenor's were correct, their position would support the conclusion that the Commission has authority to approve decommissioning recoveries in this case. If the reference in Section 16-114 related to pre-1999 agreements under which decommissioning charges could be collected from customers even though a utility no longer owned an interest in a nuclear plant, then such agreements and such recoveries had to have been authorized under Section 9-201.5 because that was the only relevant section that existed prior to enactment of Section 16-114. Yet, if Section 9-201.5 is the provision that authorized decommissioning recoveries when utilities were responsible as a matter of contract for decommissioning costs prior to 1999, then Section 9-201.5 continues to authorize such recoveries now. Nothing in the 1997 Customer Choice law repealed Section 9-201.5 or

narrowed its scope.² The section continues to apply and continues to provide broad authority for the Commission to approve decommissioning recoveries when utilities own nuclear power plants and when they do not.

In summary, the Commission has the authority under Sections 9-201.5 and 16-114 to approve decommissioning recoveries from ratepayers when a utility sells a nuclear power plant and is responsible as a matter of contract for decommissioning costs. Any other conclusion would violate ComEd's constitutional and statutory right to full cost recovery, which has repeatedly been emphasized by the courts in analogous circumstances. The evidence establishes that the need to decommission the stations and the liability of customers for decommissioning expenses arose when the plants first became operational. A transfer of the stations does not eliminate ComEd's entitlement to cost recovery. For example, in Citizens Utility Board v. Illinois Commerce Commission, 166 Ill. 2d 111, 124, 651 N.E.2d 1089 (1995), the Illinois Supreme Court held that a utility could recover environmental costs incurred to clean up manufactured gas plants that had operated in the late 1800s and early 1900s, even though the costs were "not directly related to providing current service." The Court specifically rejected arguments of the same type that underlie the HEPO's erroneous legal conclusion, stating:

we reject CUB's claim that [the environmental] costs are not recoverable because they are not directly related to providing current service.

² Similarly, nothing in Section 16-114.1, on which certain Intervenors rely, limited the Commission's authority under Section 9-201.5. Section 16-114.1 does not apply to ComEd and does not purport to repeal any other provision of the Public Utilities Act dealing with recovery of decommissioning charges. Section 16-114.1 applies only to Illinois Power, which sought statutory authority for transactions that are not permitted under other provisions of the Act, such as the use of the proceeds of transitional funding instruments ("TFI") to pay decommissioning expenses, the purchase of insurance instruments to provide for payment of decommissioning costs, the maintenance of decommissioning trusts after sale of a nuclear plant and transfer of decommissioning trusts, rather than assets in the trusts, to a buyer of a nuclear plant. Other portions of Section 16-114.1 mirror general authority available under Sections 9-201.5, 8-508.1 and 16-114 to transfer trust fund assets, as opposed to the trusts themselves, and to permit recovery of decommissioning expenses necessary to arrange for an acquirer of a nuclear station to assume the seller's decommissioning liabilities. The presence of a statute granting specific authority for TFI, insurance transactions, trusts fund maintenance and trust fund transfer does not affect the Commission's powers under the remaining provisions of the Act. Intervenors' reliance on cases applying the *expressio unius* canon of statutory construction is misplaced because the relevant provisions of the statute -- sections 9-201.5 and 16-114 -- apply to ComEd, authorize the Commission to grant ComEd's petition (which does not require any of the special authority requested by Illinois Power in Section 16-114.1), and contain no "omissions [that] should be understood as exclusions...." City of Chicago v. Illinois Commerce Comm'n, 294 Ill. App. 3d 129, 689 N.E.2d 241 (1st Dist 1997).

we do not believe that lack of a direct connection to current service bars a utility from recovering a mandatory, prudently incurred operating expense from ratepayers.

166 Ill. 2d at 124, 126. Nuclear plant decommissioning costs, like coal-tar cleanup expenses, are “a legally mandated cost of business” and utilities are, therefore, entitled to recover them fully from ratepayers. *Id.* at 122. A transfer of the stations to Genco does not extinguish that right. In fact, in Commonwealth Edison Co., 1991 Ill. PUC LEXIS 145, Docket No. 87-0427 at *456 (March 8, 1991), the Commission found that “funding for decommissioning costs should be in place whether or not a unit is in rate base,” concluding that:

[t]he Commission agrees that the Act clearly contemplates that all decommissioning expenses contributed to the trusts will be recovered from ratepayers. We concur with Edison that serious constitutional questions would be raised if the Commission did not permit the Company an opportunity to recover costs it was required by law to incur.

Id. at *458-*459.

B. The Act Authorizes Use Of ComEd's Decommissioning Trust Fund Assets To Satisfy Decommissioning Liabilities And No Refunds To Customers Are Required

In addition to questioning the Commission's authority to permit decommissioning recoveries in the future, certain Intervenors question ComEd's use of assets in the decommissioning trusts to satisfy, in part, the Company's liability for the costs of decommissioning. Those Intervenors contend that ComEd has an obligation to make refunds to customers from the assets in the trusts at the time that the nuclear stations are transferred to Genco. City/CUB Initial Brief at 10-14; Cook County Initial Brief at 6-8; *see* IIEC Initial Brief at 31-32. The provisions of the Act simply do not support this contention.

Section 8-508.1(c)(3)(i) of the Act authorizes ComEd to use the assets in the decommissioning trust funds to satisfy decommissioning liabilities. It provides that distributions may be made from the trusts:

to satisfy the liabilities of the public utility for nuclear decommissioning costs....

220 ILCS 5/8-508.1(c)(3)(i). Under the Contribution Agreement, the assets in ComEd's decommissioning trust funds will be transferred to Genco to satisfy, in part, ComEd's liability for decommissioning costs. This use of trust fund assets is therefore authorized by Section 8-508.1(c)(3)(i).

Rather than addressing Section 8-508.1(c)(3)(i), which authorizes the use of trust fund assets to satisfy decommissioning liabilities, Intervenors focus exclusively on Section 8-508.1(c)(3)(iii), and its provision for refunds to customers in a very narrow situation not present in this case. Intervenors argue that, under Section 8-508.1(c)(3)(iii), ComEd must make refunds to customers at the time that the nuclear stations are transferred to Genco. Section 8-508.1(c)(3)(iii) imposes no such obligation.

Section 8-508.1(c)(3)(iii) follows Section 8-508.1(c)(3)(i) and is consistent with it. Under Section 8-508.1(c)(3)(i), a utility may use assets in decommissioning trusts to satisfy the company's liability for decommissioning costs. However, if the assets in the trusts exceed the amount necessary to satisfy the liability for decommissioning costs, Section 8-508.1(c)(3)(i) does not authorize the use of those excess assets for any purpose. In the event of a sale of a nuclear power plant, the disposition of those excess assets is addressed in Section 8-508.1(c)(3)(iii), which provides that excess amounts in the trusts will be distributed to the utility for refund to customers.

Intervenors attempt to distort this straightforward, sensible application of Sections 8-508.1(c)(3)(i) and (iii). Their first effort, which they continue to defend here, was rejected by the Commission in Docket 00-0394. City/CUB Initial Brief at 12-13. There, Intervenors argued that, under Section 8-508.1(c)(3)(iii), ComEd is obligated to make refunds to customers in the amount of the reduction in ComEd's liability for future decommissioning costs resulting from the transfer to Genco. Since the costs of decommissioning total \$5.6 billion and only \$2.5 billion is held in the trusts, Intervenors argued that ComEd's liability for future decommissioning costs will be reduced by \$3.1 billion when Genco assumes the responsibility to decommission the nuclear stations. As a result, they contend, ComEd has an obligation to refund \$3.1 billion to customers – more than the total assets held in the decommissioning trusts. In rejecting this position, the Commission's Order, Docket Nos. 00-0369 & 00-0394(Consolidated)(August 17, 2000), explained:

The Commission rejects the City's position, which is based on a misinterpretation of Section 8-508.1(c)(3)(iii) of the Act.... This position is unreasonable and contrary to the plain language of Section 8-508.1(c)(3)(iii). The City's interpretation of that Section fails to take into account the liabilities for decommissioning that will be assumed by Exelon Genco.

Id. at 17.

Having failed with their first effort to distort the meaning of Section 8-508.1(c)(3)(iii), Intervenors now contend that the section imposes a system of "proportional responsibility", City/CUB Initial Brief at 10, which they argue requires refunds to customers based on Genco's "percentage of total life" of the nuclear plants after the transfer. Cook County Initial Brief at 8. These contentions find no support in the language of the statute. Section 8-508.1(c)(3)(iii) says nothing about "proportional responsibility" or "percentage of total life." It imposes no such numerical tests and requires no refunds based on the factors that Intervenors advocate.

Section 8-508.1(c)(3)(iii), like Section 8-508.1(c)(3)(i), turns on the realities of a transaction in which ownership of a nuclear power plant is transferred. It recognizes that, when a public utility "sells or otherwise disposes of its direct ownership interest ... in a nuclear power plant," the disposition of decommissioning trust funds must be based on the best estimate of the utility's "liability for future decommissioning..." 220 ILCS 5/8-508.1(c)(3)(iii). In this case, ComEd's "liability for future decommissioning" includes the \$5.6 billion of estimated costs of decommissioning and ComEd's exposure to increased costs posed by financial risks surrounding such matters as the availability and escalating cost of low level radioactive waste disposal, unreimbursed spent fuel storage costs, expanded decommissioning work scope, more rapid rates of general inflation and poorer-than-expected investment performance.

Section 5/8-508.1(c)(3)(iii) requires a refund to ratepayers of decommissioning payments only when the amounts in the decommissioning trust at the time of a sale exceed the public utility's "liability for future decommissioning" determined by comparing "the assets of the fund" to the public utility's "liability for future decommissioning" "taking into account" the need for liabilities to be "assumed by another entity" as a part of the transaction. If the assets in the fund are in excess of the amount necessary to arrange for "another entity" to assume the public utility's "liability for future decommissioning," ratepayers are entitled to a refund of the excess amount. However, when, as here, the assets in the decommissioning trust funds for ComEd's nuclear stations are far short of the amount necessary to satisfy ComEd's "liability for future decommissioning" and additional collections are necessary to provide for an assumption of the decommissioning liability, no refunds are possible or required. Accordingly, Staff does not argue for any refund in this case. Intervenor's position that assets from the trusts should be refunded to ratepayers "fails to take into account the liabilities for decommissioning that will be assumed by Exelon Genco," Order, Docket Nos. 00-0369 & 00-0394(Consolidated)(August 17, 2000) at 17, and the cost of providing for Genco to assume those liabilities.³

Intervenor's contention that this conclusion results in ratepayers bearing "100% of estimated decommissioning costs", City/CUB Initial Brief at 12, is demonstrably incorrect. The evidence in the record establishes that ComEd's proposal will relieve ratepayers of the entire amount of decommissioning collections that will be required in years 2007 through 2027 based on the well-documented \$5.6 billion decommissioning cost estimate, and will also relieve ratepayers of the obligation to make additional payments resulting from increased costs attributable to financial risks not reflected in the \$5.6 billion estimate. Far from imposing 100% of the costs of decommissioning on ratepayers, ComEd's proposal frees them from the greatest risk posed by the obligation to decommission the nuclear stations. As former Commissioner Calvin Manshio

³ Certain Intervenor's contend that ComEd's proposal would result in overfunding the decommissioning trusts for Byron Unit 1, Braidwood Unit 1 and LaSalle Unit 1. Attorney General Initial Brief at 5. The evidence does not support their contention. Mr. Berdelle explained that, whether the Commission measures the sufficiency of funding by the actual overall escalation rate of 7.81% or the much lower 4.738% rate used in Docket 99-0115, "Byron, LaSalle, and Braidwood would not have overfunded trusts..." Berdelle, Tr. 1137.

commented, one of the most important benefits from the proposed resolution is the "opportunity to shift the risk of future [rate] increases in decommissioning costs from ratepayers...." ComEd Ex. 11 (Mansio Rebuttal) at 2.

In summary, nothing in the Act or Section 8-508.1(c)(3)(iii) prohibits the Commission from making the benefits of the Genco transaction available to ratepayers. Intervenors' contention that a transfer of the stations triggers an obligation to make refunds to customers is inconsistent with the language of the Act and the facts in the record. Acceptance of the position advocated by Intervenors would simply make a transfer of the stations to Genco, or to anyone else, impossible. As a result, ratepayers would be saddled for all time with 100% of the operational and decommissioning risks presented by ComEd's ownership of the nuclear stations. Moreover, the opportunity to stimulate a competitive generation market in ComEd's service territory through the Genco transaction would be lost as well.

C. The Just And Reasonable Standard Does Not Require ComEd To Foretell The Future With Certainty Or Prove The Impact Of Its Proposal On Other Rates

In this case, the Commission's duty is to determine whether ComEd's proposal is "just and reasonable." A just and reasonable rate:

'is . . . a question of sound business judgment rather than one of legal formula' The determination of what is a just and reasonable rate 'is a question of fact to be settled by the good sense of the tribunal it may come before.'"

Governor's Office of Consumer Servs. v. Illinois Commerce Comm'n, 220 Ill. App. 3d 68, 76, 580 N.E.2d 920, 924 (3d Dist. 1991) (quoting Produce Terminal Corp. v. Illinois Commerce Comm'n, 414 Ill. 582, 590, 112 N.E.2d 141, 144 (1953)).

Questions of fact are determined based upon a preponderance of the evidence. Despite this standard, the City and CUB ask that certain questions of fact be resolved against ComEd due to its purported inability to predict with 100% certainty future and contingent events. City/CUB Initial Brief at 24-25. The City and CUB set up the wrong evidentiary standard. ComEd's proposed decommissioning resolution is supported by overwhelming record evidence. That is all that is required to meet the "just and reasonable" standard under Illinois law. The Commission rejects the City/CUB argument that it is necessary for ComEd to predict future events with certainty.

Moreover, this is not a base rate proceeding for consideration of other charges to customers, and indeed ComEd's base rates are frozen at the present time and will be unaffected by the Commission's order in the present proceeding. Accordingly, the Commission rejects the Coalition's claim that the Petition should be denied for not "demonstrat[ing] the impact that its proposal would have upon its other tariffed rates." Coalition Initial Brief at 25.

The Coalition further claims that ComEd was required to provide evidence concerning the effect of its proposal on ComEd's Rider PPO - Power Purchase Option (Market Index) ("Rider PPO-MI"). Coalition Initial Brief at 25. As is the case with ComEd's other rates, Rider PPO-MI is not the subject of ComEd's proposal in the present proceeding, and has already been found by the Commission to be just and reasonable. Moreover, review of the Commission's Interim Order in the Rider PPO-MI proceeding, and of Rider PPO-MI itself, shows that ComEd's proposal will have no effect on the computation of charges for Rider PPO-MI, in any event.

As stated in the Commission's Interim Order in Docket 00-0259 and Rider PPO-MI, the prices stated in Rider PPO-MI are computed with reference to bid/ask prices from transactions reported on the Altrade™ and Bloomberg PowerMatch reporting services which post Into ComEd forward market prices. Commonwealth Edison Company, ICC Docket 00-0259 (Interim Order, April 27, 2000) at 3; Rider PPO-MI, Ill. C.C. No. 4, Original Sheet No.151.3. Because power under ComEd's PPA will be provided to ComEd by the Genco under the PPA itself, and is therefore not within the class of transactions reported as Into ComEd within the meaning of Rider PPO-MI, approving ComEd's proposal has no effect on computation of charges under the Interim Order.

Finally, the Coalition claims that ComEd's proposal should be denied because ComEd is permitted by the Illinois Public Utilities Act to petition for reinstatement of a fuel adjustment clause after January 1, 2005. Coalition Initial Brief at 4. The Coalition's claim is speculative and irrelevant to any issue in this case, and the Commission rejects it for two reasons. First, Mr. Berdelle testified that ComEd has no plan to petition to reinstate a fuel clause. Berdelle, Tr. 978-80. Second, the Act's grant of a right to petition for reinstatement of a fuel clause is no more than that – a right to petition and not a guarantee of Commission action. Any future Commission action would be determined based upon the facts at the time of such a petition, and the evidence presented in such a proceeding. Accordingly, the fact that the Public Utilities Act permits ComEd to file a petition in the future is not a legal basis for denying ComEd's present Petition with respect to resolution of decommissioning costs.

V. COSTS OF DECOMMISSIONING, OVERALL AND PLANT SPECIFIC

ComEd noted that its decommissioning cost estimates for its 13 nuclear units were prepared by the national expert, TLG Services, Inc. TLG is highly qualified to provide such estimates and has prepared site-specific decommissioning cost-studies for more than 85% of the nuclear plants in the United States, all of the operating commercial nuclear units in Canada, and one unit in Japan. ComEd Ex. 1 (LaGuardia Direct) at 6. TLG has also been extensively involved in actual decommissioning activities on many different nuclear decommissioning projects. Id. at 5. TLG's president, Thomas LaGuardia, who was responsible for preparing and presenting the estimates, is a foremost expert in his field. Decommissioning cost estimates prepared by Mr. LaGuardia and TLG have been reviewed and accepted by the NRC, the Federal Energy Regulatory Commission and public utility commissions throughout the country, including this Commission. Id. at 7. CUB's witnesses confirmed Mr. LaGuardia's expertise. Biewald, Tr. 148, 195-96, Docket 99-0115; Schlissel, Tr. 322, Docket 99-0115. No party

presented any evidence that TLG's cost estimates for radiological and nonradiological decommissioning are inaccurate or unreasonable in any way.

A. Radiological Decommissioning Cost Estimates

ComEd explained why site-specific radiological decommissioning cost estimates of \$4.682 billion are reasonable. TLG reviewed the estimates previously approved by the Commission in Docket 97-0110 and updated for presentation in Docket 99-0115, and found that the estimates are reasonable. ComEd Ex. 1 (LaGuardia Direct) at 8. In particular, the estimates for ten of ComEd's nuclear units – Dresden Units 2 and 3, Quad Cities Units 1 and 2, LaSalle Units 1 and 2, Byron Units 1 and 2 and Braidwood Units 1 and 2 – are reasonable and unchanged from their last approval by the Commission in Docket 97-0110. *Id.* at 8; ComEd Ex. 1 (LaGuardia Direct) at 9, Docket 99-0115. The cost estimates for these ten nuclear units account for approximately \$3.595 billion of the \$4.682 billion of ComEd's total estimated radiological decommissioning costs, expressed in 1996 dollars. ComEd Ex. 1 (LaGuardia Direct), Sch. TSL-1.

ComEd's estimates submitted for Dresden Unit 1 and Zion Units 1 and 2 were updated in 1999 to reflect changed circumstances. ComEd Ex. 1 (LaGuardia Direct) at 9, 18, Docket 99-0115. With respect to Dresden Unit 1, the cost estimates reflect changes since the estimate was approved in Docket 97-0110. The net effect of these changes is to reduce the estimated Dresden Unit 1 radiological decommissioning costs by approximately \$35 million, for a total of \$362.8 million.

With respect to Zion Units 1 and 2, the cost estimates reflect increased certainty in the nature and scope of required radiological decommissioning made possible after the permanent cessation of nuclear generation operations at that station. Based upon detailed system inspections conducted after the shutdown, including assessment of secondary-side steam generator equipment, TLG concluded that the costs of decommissioning Zion Unit 1 would be \$406.6 million in 1996 dollars and that the cost of decommissioning Zion Unit 2 would be \$497.7 million. ComEd Ex. 1 (LaGuardia Direct) at 11, 14-15, Sch. TSL-1, Docket 99-0115; ComEd Ex. 1 (LaGuardia Direct) at 8, Sch. TSL-1.

No party presented any evidence in this proceeding or in Docket 99-0115, that the costs of decommissioning Zion or any other station, would be lower than estimated by TLG. On the contrary, CUB witness Biewald testified that "I don't have a reason to dispute the Company's estimate..." for Zion decommissioning costs. Biewald, Tr. 243-244, Docket 99-0115.

CUB witnesses argued that decommissioning will cost less than TLG estimates because of "economies of scale" which will occur as a result of the Unicom-PECO merger. CUB DT Ex. 1.1 (Biewald Direct) at 11-12; CUB DT Ex. 1.2 (Schlissel Direct) at 30-32. These witnesses noted that, in a proceeding before the Vermont Department of Public Service, AmerGen, a company that will be a ComEd affiliate when the Unicom-PECO merger is complete, indicated that decommissioning costs there would be approximately 23% lower than TLG estimated due to such economies. On this basis, they argued, the Commission should assume a 20% reduction in disbursements caused by economies of scale which, they argued, would result in a \$680 million

surplus for the 13 nuclear units in question. CUB DT Ex. 1.1 (Biewald Direct) at 12. From this premise, these CUB witnesses argued that ComEd may already have collected adequate funds from ratepayers for decommissioning these units. CUB DT Ex. 1.2 (Schlissel Direct) at 32.

In response, ComEd explained why the pending Unicom-PECO merger will not provide any significant decommissioning "economies of scale" or "synergies and efficiencies" that would substantially reduce decommissioning costs. Mr. LaGuardia noted the cost estimates here already are based on ComEd's ownership of thirteen nuclear plants and maximum efficiency in the decommissioning process. ComEd Ex. 10 (LaGuardia Rebuttal) at 8. He specifically considered whether the Unicom-PECO merger would reduce costs of decommissioning, and explained that because decommissioning activities are so labor intensive, the merger would not be expected to produce cost reductions for decommissioning. LaGuardia, Tr. 469.

B. Non-Radiological Decommissioning Cost Estimates

ComEd presented a thorough study prepared by TLG of the costs of non-radiological decommissioning of ComEd's thirteen nuclear units. TSL-9. Non-radiological decommissioning involves "demolition" of station structures that are not designated for future use after the highly destructive radiological decommissioning process is completed. TSL-9 at v; ComEd Ex. 13 (Thayer Rebuttal) at 4, 8; ComEd Ex. 10 (LaGuardia Rebuttal) at 10. Because radiological decommissioning does not result in the complete dismantlement of "[s]ubstantial portions" of the nuclear stations that are not contaminated, many station facilities remain for disposal during the non-radiological decommissioning process.

As explained by TLG, during the non-radiological phase of decommissioning:

Site structures will be removed to a nominal depth of three feet below the local grade level whenever possible. Foundation grade slabs greater than three feet in thickness will be abandoned in place and covered over with a three-foot layer of backfill. The site will then be graded and stabilized. This study therefore includes removal costs for all outlying structures not deemed suitable for follow-on use by ComEd or others.

TSL-9 at v.

ComEd argued the record overwhelmingly supports the conclusion that TLG's estimate of the cost of non-radiological decommissioning is reasonable. The analysis was conducted using very conservative assumptions designed to assure that the estimate included no expenses for removal of structures that could be re-used. If there was any possibility that a building or facility might possibly be re-useable, the cost of removing it was excluded from the estimate. Berdelle, Tr. 1104, 1106, Docket No. 99-0115; LaGuardia, Tr. 728-29, 735-36, Docket No. 99-0115. No party presented any evidence in the present proceeding, or in Docket 99-0115, that the cost of the non-radiological decommissioning activities described in the TLG study would be lower than estimated by TLG.

The Attorney General's witness, Mr. Effron, argued that non-radiological decommissioning costs should not be considered based on his understanding that this goes beyond NRC requirements and the requirements of Illinois law and may never actually be incurred depending on the use of the sites after decommissioning is completed. Attorney General Ex. 1 (Effron Direct) at 11. Likewise, IIEC witness Stephens argued that it is not reasonable to assume the Genco will perform any activities over and above NRC requirements that may have been required or recognized in Rider 31 levels. IIEC Ex. 1 (Stephens Direct) at 9.

Similarly, Staff's witness Mr. Riley argued that non-radiological decommissioning costs should not be considered by the Commission because of a need for greater assurance that site restoration work would actually be performed by the Genco. ICC Staff Ex. 2 (Riley Direct) at 6. However upon cross-examination, Mr. Riley testified that he reviewed the need for non-radiological decommissioning in Docket 99-0115, and in that proceeding described ComEd's evidence as to that need as "convincing". Riley, Tr. 519-20. In Docket No. 99-0115 Mr. Riley recommended that site restoration costs be included in the cost of decommissioning ComEd's nuclear stations. *Id.*; Staff Ex. 3 (Riley Direct) at 13, Docket No. 99-0115. In addition, here, Mr. Riley agreed that receiving an assurance that the Genco would perform non-radiological decommissioning after cessation of radiological decommissioning activities would somewhat allay Staff's concerns about considering these costs. Riley, Tr. 522-23.

After Mr. Riley, Mr. Effron and Mr. Stephens had filed their testimony, ComEd committed that if ComEd's proposal is approved, the funds in the decommissioning trust will be used for both radiological and, to the extent available, non-radiological decommissioning. ComEd Ex. 8 (Berdelle Rebuttal) at 2. Moreover, ComEd addressed Staff's specific concern that there be a legal obligation to expend trust fund money for non-radiological decommissioning. Mr. Berdelle explained that the legal trust agreements governing the use of decommissioning funds will provide, to the extent that funds are available after completion of radiological decommissioning, that such trust funds will be used for non-radiological decommissioning. ComEd Ex. 8 (Berdelle Rebuttal) at 16-17; Berdelle, Tr. 968-69.

C. Commission's Conclusion

The record shows that ComEd's proposal in this proceeding is based upon fundamentally sound, conservative and reasonable estimates of the costs to decommission the Stations. The decommissioning cost studies underlying ComEd's proposal were prepared by TLG, an industry leader in making such estimates. No other party challenged the recovery of these estimates or presented any alternative estimates. ComEd's estimates of radiological decommissioning costs in the present proceeding are based upon the estimates previously approved by the Commission in Docket 97-0110 and updated by TLG in Docket 99-0115.

Moreover, the evidence supports considering the need for funding non-radiological decommissioning in assessing the overall costs of decommissioning. This is particularly true since ComEd has provided a detailed assurance in the record that funds in the decommissioning trust will be used for non-radiological decommissioning to the extent available.

ComEd's studies show that the cost to decommission the Stations is \$5.6 billion in 2000 dollars. As of December 1999, assets in the decommissioning trusts for the Stations totaled \$2.5 billion, leaving a \$3.1 billion shortfall in the decommissioning trust funds. Absent the order in this docket, ComEd would have the right to look to customer payments under Rider 31 and trust fund earnings to make up the total amount of this shortfall. However, ComEd is seeking to recover substantially less than this and an amount the Commission finds to be just and reasonable.

VI. ESCALATION FACTORS

A. Rate Components Generally

Under ComEd's Rider 31, the components used to determine the decommissioning cost escalation rate and the weights to be given to each component were established by the Commission in Docket 97-0110. The escalation rate for "wages" is based on an employment cost projection by RFA, a nationally recognized firm, and receives a weighting of 37%. The escalation rate for "other decommissioning costs" is based on an estimate of the Consumer Price Index by RFA, and receives a weighting of 33%. Finally, the escalation rate for waste burial costs is based on costs reported on the tables in Appendix B of the Nuclear Regulatory Commission's NUREG 1307 (excluding the South Carolina Low Level Waste Disposal Tax) for the Barnwell facility, and receives a weight of 30%.

B. Low Level Waste Escalation Rate

The low level waste burial escalation rate, calculated using the methodology approved by the Commission in Docket 97-0110, which is based on the average annual rate of escalation for the most recent three years at the Barnwell facility, is 22.44%. ComEd Ex. 8 (Berdelle Rebuttal) at 7. ComEd witnesses explained that, although the Commission's formula focuses on a three-year period, the escalation in low level waste burial costs at the Barnwell facility over longer periods of time confirms that low level waste burial cost increases will far outpace the general rate of inflation and will continue to drive the costs of decommissioning to higher and higher levels. Over the past 20 years, the annual escalation in burial costs at the Barnwell facility has been approximately 21%. ComEd Ex. 4 (Speck Direct) at 11.

Staff witness Riley testified that there is no strong indication that the more than 10 percent per year inflation rate for low level waste burial will continue. ICC Staff Ex. 2 (Riley Direct) at 9. However, he calculated that the 5 and 7-year compound average escalation rates were about 17%. Staff Ex. 2 (Riley Direct) at 9, Table 2.2.

C. Overall Escalation Rate

ComEd's proposal of \$120.9333 million annual decommissioning cost of service for 2001 through 2006 is based on an overall escalation rate of 4.73% calculated using the weightings proposed by ComEd and Staff in Docket 99-0115 and imposing a 10% cap on the waste burial escalation rate suggested by Staff here.

However, at the hearing, ComEd's witnesses repeatedly testified that the 7.81% overall escalation rate determined based on the formula used in Docket 99-0115 and the actual, uncapped burial escalation rate and not the 4.73% capped rate is most appropriate. Berdelle, Tr. 1124-1125; Speck, Tr. 369. They explained that use of the 7.81% rate is appropriate because the reason for inquiring here about the rate of increase in future decommissioning costs is to assess the advantages of ComEd's proposal for ratepayers. Use of a 7.81% rate does not increase the amount that customers will be required to pay for six years. ComEd has already fixed that rate in arriving at its proposal.

Only one intervenor witness, Attorney General witness Effron, attempted to calculate an overall cost escalation rate. He calculated a 3.70% average escalation rate based on experiences in 1993-98 for pressurized water reactors. Attorney General Exhibit 2.0 (Effron Rebuttal) at Schedule DJE-2A. But he admitted that, in making his calculation, he did not comply with the Commission's orders. He (1) used the wrong cost escalation formula, and (2) miscalculated the rate of increase in waste burial costs, including South Carolina taxes, both in violation of the Commission's rulings in Docket 97-0110. Effron, Tr. 928-937. He then expressed a preference for use of the 4.11% rate. Effron, Tr. 941-42. CUB's witness Biewald, likewise assumed a 4.11% rate. Biewald, Tr. 1422-23. Other witnesses expressed a preference for use of the "capped" 4.73% overall rate, including Staff witness Riley, Tr. 564-65, and CUB witness Schlissel. Schlissel, Tr. 649.

ComEd responded that the 4.11% overall escalation rate is simply a "plug" number for accounting purposes that does not result from a calculation based on actual escalation rates for the components used in the escalation formula. ComEd explained that it is not a rate that ComEd believes will be experienced or can be supported by any evidence in this proceeding. ComEd Ex. 8 (Berdelle Rebuttal) at 6-7. Rather, working backwards from the \$120.9333 million amount, ComEd simply determined the cost escalation rate that would have to be achieved in order for six years of collections at that rate to fund TLG's estimate of the costs of decommissioning. ComEd Ex. 8 (Berdelle Rebuttal) at 6-7; Berdelle, Tr. 1075-1077.

D. Commission's Conclusion

The Commission finds that the use of a 7.81% cost escalation rate is appropriate for considering whether ComEd's proposal is fair and reasonable. This rate evidences the rate at which wages, burial costs and other expenses of decommissioning actually escalated and this provides the most accurate measure for determining whether ratepayers are benefitted by ComEd's proposal. The 4.11% rate urged by certain intervenors is merely a plug number that was derived from the six year \$120.9333 million contribution amount, and provides no basis for assessing the reasonableness of ComEd's proposal. In addition, use of the 7.81% rate will not cause any customer to pay more under ComEd's proposal, as ComEd used the capped escalation rate of 4.73% for calculating the amount requested in its proposal.