

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)
)
Proposed general increase in electric rates,) Docket No. 05-0597
general restructuring of rates, price unbundling)
of bundled service rates, and revision of other)
terms and conditions of service)

RESPONSE TO STAFF’S MOTION REGARDING COMMONWEALTH EDISON COMPANY’S COMPLIANCE TARIFF FILING FOR RIDER GCB

Pursuant to Section 200.190 of the Rules of Practice of Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code § 200.190, Commonwealth Edison Company (“ComEd”) hereby respectfully submits its Response to Staff’s Motion Regarding Commonwealth Edison Company’s Compliance Tariff Filing For Rider GCB (“Motion”).

**I.
Introduction**

Staff’s Motion calls for a compliance filing that does not allow ComEd to realize the revenue requirement approved in the Commission’s July 26, 2006 Order in this docket (“Order”), effectively requiring that ComEd absorb the revenue shortfall that will result from recovering less than full cost of serving GCB customers -- even though the Commission expressly stated that it was “inappropriate” for ComEd to bear this cost. Order at 236. A rate case compliance filing must reflect the entirety of the Commission’s Order, not a few select sentences. ComEd notes that on August 30th the Commission granted rehearing on this issue and may provide further direction regarding the compliance filing. In the interim, ComEd’s tariffs appropriately allow it to recover the revenue requirement contained in the Commission’s Order. Particularly in light of ComEd’s weakened financial position, it is critical that the

Commission's Order not be misconstrued to suggest that ComEd is not entitled to recover an additional \$36 to \$62 million annually. For the reasons discussed below, Staff's position is unreasonable and its Motion should be denied.

II. **Background**

The Commission's Order requires that ComEd maintain existing Rider GCB "with the specific rates or formulas contained in the eliminated rates." Order at 2-3. As set forth in ComEd's Petition for Rehearing, the Commission's Order creates a bundled rate freeze for the City of Chicago ("City") and certain governmental entities that results in providing a massive subsidy to the City of Chicago and other Rider GCB customers, which ranges between \$36 million and \$62 million annually.¹ See ComEd Pet. for Reh'g at 22-26.²

The Order provides no guidance as to how the subsidy should be recovered other than expressly providing that it "is neither reasonable nor appropriate" for ComEd to "bear the cost itself." Order at 236. Additionally, the Commission's Order and the attached appendices provide ComEd with a specific revenue requirement with no deduction for a Rider GCB subsidy or revenue shortfall.

ComEd made its compliance tariff filing on August 11, 2006. Rider GCB, as filed, contains language that announces that the ensuing subsidy would be recoverable through the Accuracy Assurance Factor ("AAF") in Rider CPP. This means that the subsidy would be

¹ ComEd's calculations of the subsidy are not intended to and do not estimate the results of the auction. Instead, they merely show what the impact would be *if* the results of the auction are within the stated range. If the auctions result in a price higher or lower than the range (which will be known by mid-September if the auction proceeds as contemplated by the Commission), the amount of the subsidy would increase or decrease accordingly.

² Rather than repeating the arguments and including calculations regarding Rider GCB and the subsidy created in the Commission's Order, ComEd incorporates by reference its Petition for Rehearing and the attached affidavit which were filed in the instant docket.

recoverable from all supply customers in ComEd's service territory. ComEd adopted this approach in order to assure compliance with the Order pending further guidance on this issue from the Commission. In its Petition for Rehearing, ComEd argues for elimination of the subsidy and alternatively proposes methods of recovering this subsidy that may be preferable to the default AAF mechanism. *See* ComEd Pet. for Reh'g at 25-26. Pending further guidance from the Commission, use of the AAF is reasonable because the allocation of the subsidy occurs in the normal operation of the AAF mechanism, which equalizes the expenses that ComEd incurs for full requirements electric supply (*i.e.*, payments to suppliers) and retail revenue for such supply.

Alternatively, both Staff and ComEd agree that the subsidy contained in the Order is not lawful. *See* Staff Resp. to ComEd's Pet. for Reh'g at 3. The Commission could appropriately issue an order now that corrects that error and eliminates the subsidy.

III. **Argument**

A. Staff's Motion Does Not Consider The Commission's Order In Its Entirety

Staff's Motion is flawed because it does not view the Commission's Order in its entirety. Specifically, Staff ignores the following key items in the Commission's Order:

- the Commission's Order and appendices expressly granted ComEd a revenue requirement with no deduction for the Rider GCB subsidy (Order at 109; App. A, p. 1);
- the Commission expressly stated it is "neither reasonable nor appropriate" for ComEd to bear the cost of the Rider GCB subsidy itself (Order at 236); and
- The Commission did not state that rehearing would be granted on the Rider GCB issue -- the Commission only encouraged that this issue be addressed. Order at 235-36.

Viewed as a whole, ComEd's existing compliance filing best conforms with the Commission's directives. Staff's Motion ignores these other parts of the Order and essentially

relies on one statement in the Order in isolation: that the Commission encourages parties to address the subsidy issue on rehearing. Staff Motion at 2. However, recognition of the availability of a default mechanism for recovery of the potential GCB subsidy is not inconsistent with addressing this issue on rehearing. Stated otherwise, inclusion of the AAF mechanism as a default does not violate the language of the Commission's Order that Staff invokes.

It is well-established that a document or statute must be viewed in its entirety rather than focusing on a portion in isolation. *See e.g., Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). A Commission Order should be treated in a similar fashion. Here, ComEd's filing better complies with the Order than Staff's proposal because (1) it appropriately recovers the revenue requirement ordered by the Commission and, thus, which ComEd is constitutionally entitled to collect, and (2) it reflects the Commission's belief that ComEd should not absorb the Rider GCB subsidy.

B. The AAF Is A Reasonable Default Mechanism Absent Any Other Commission Guidance

Even if the Commission does not reverse its decision regarding Rider GCB, the AAF method is a reasonable default allocation mechanism absent any other Commission guidance. ComEd's proposed method is reasonable because in the Procurement Case, the Commission approved recovery of ComEd's supply costs and transmission costs, no more and no less, via a pass through to retail customers (*i.e.*, Rider CPP and Rider TS CPP), with accuracy assurance adjustments to assure accurate recovery of supply costs. *Commonwealth Edison Company*, ICC Docket No. 05-0159, Order at 205-8 (Jan. 24, 2006) ("Procurement Order"). In other words, this mechanism (*i.e.*, the AAF) ensures that ComEd will not under or over recover supply and Rider TS-CPP is designed to ensure that ComEd will not under or over recover transmission costs.

The Commission's Order approves the recovery of a specific revenue requirement for distribution services in the instant case. The Order further acknowledged that Section 16-125A of the Public Utilities Act does not allow discounted delivery services. Order at 236. Therefore, it is reasonable that any difference in revenues recovered under the GCB bundled service rate and what ComEd would have recovered under an unbundled pricing structure, must be considered supply-related and should flow through the AAF. Absent any Commission guidance, this subsidy naturally flows through the AAF mechanism, which equalizes the expenses that ComEd incurs for full requirements electric supply (*i.e.*, payments to suppliers) and retail revenue for such supply. *See* Procurement Order at 198-208.

Staff's Motion does not provide any specific reason for opposing the allocation of this subsidy through the AAF. Moreover, Staff provides no alternative allocation mechanism. Evidently, Staff believes that ComEd must make a compliance filing that recovers substantially less than the revenue requirement ordered by the Commission. As stated above, in this respect, it is Staff's Motion that is inconsistent with the Commission's Order.

C. The Commission Should Enter An Amendatory Order To Correct Its Rider GCB Ruling

The Order should be amended to correct the legal error in its Rider GCB reasoning prior to rehearing. ComEd notes that Staff has filed a pleading indicating that a rate freeze for Rider GCB customers is "not consistent with Section 5/16-111(i) since said rates would not be based upon the current or projected revenues, costs, investments and cost of capital related to the provision of the service." Staff Resp. to ComEd's Pet. for Reh'g at 3. Thus, an appropriate solution to the issues raised by Staff and ComEd in these pleading is for the Commission to enter an amendatory Order resolving this issue outside of the rehearing process. In addition, a timely decision is necessary because some Rider GCB eligible customers must make their election

regarding service during a 30-day enrollment window pursuant to the tariffs approved in the instant case and the Procurement Case. This enrollment window likely will be closed by the time the Commission issues an Order on Rehearing. Thus, ComEd respectfully urges the Commission to issue an amendatory Order as soon as possible approving Rider GCB7 as ComEd originally proposed.

IV.
Conclusion

For these reasons, ComEd respectfully requests that the Commission deny Staff's Motion Regarding Commonwealth Edison Company's Compliance Tariff Filing For Rider GCB.

Dated: September 1, 2006

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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CERTIFICATE OF SERVICE

I, Michael Guerra, hereby certify that I caused a copy of the Response of Commonwealth Edison Company to Staff's Motion Regarding Commonwealth Edison Company's Compliance Tariff Filing For Rider GCB to be served upon the service list in Docket No. 05-0597 by email on September 1, 2006.

Michael Guerra