

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| COMMONWEALTH EDISON COMPANY |) | |
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| Proposal general increase in electric rates, |) | |
| general restructuring of rates, price |) | No. 05-0597 |
| unbundling of bundled service rates, and |) | (Rehearing) |
| revision of other terms and conditions of |) | |
| service. |) | |
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**INITIAL BRIEF ON REHEARING OF
THE COALITION OF ENERGY SUPPLIERS**

**COMPRISED OF:
CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION
U.S. ENERGY SAVINGS CORP.**

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Constellation NewEnergy, Inc., Direct Energy Services, LLC, MidAmerican Energy Company, Peoples Energy Services Corporation, and U.S. Energy Savings Corp. (collectively, the “Coalition of Energy Suppliers,” the “Coalition,” or “CES”), by their attorneys DLA Piper US LLP, pursuant to Section 10-113 of the Public Utilities Act (the “Act”) and Section 200.880 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submit the Coalition’s Initial Brief on Rehearing in the above-referenced matter regarding the proposed revisions to the delivery services rates of Commonwealth Edison Company (“ComEd” or the “Company”). Consistent with the Administrative Law Judges’ Ruling of September 27, 2006, attached hereto and made a part hereof as Appendix A is a Partial Draft Order, addressing the Coalition’s issues on rehearing. As set forth in the Partial Draft Order, the Coalition’s arguments address the Functionalization issues, located in Sections III(B)(1)(a)(General Plant), III(B)(2)(a)(Intangible Plant), and III(C)(1)(a)(Administrative & General Expenses) of the Outline adopted by the Administrative Law Judges.

I. EXECUTIVE SUMMARY:

**THE COMMISSION SHOULD
DIRECT COMED TO MODIFY ITS
SUPPLY ADMINISTRATION CHARGE TO RECOVER
SUPPLY-RELATED COSTS FROM ITS SUPPLY CUSTOMERS**

The purpose of the instant proceeding is to establish the rates for ComEd’s delivery services customers and its supply customers. While all customers are **delivery services customers** of ComEd, not all customers are **supply customers** of ComEd. ComEd’s supply customers are those customers who do not contract with retail electric suppliers (“RESs”) for service and instead purchase electricity from ComEd. That is, even though ComEd no longer owns generation assets, and regardless of the fact that ComEd will pass-through, without markup, the cost of electricity as determined in the Illinois Auction, ComEd still incurs costs and expenses related to the procurement of electricity for its supply customers. Unlike rate cases prior to the mandatory transition period, a central component of setting rates in the restructured retail electric market is allocating costs between delivery services customers and supply customers. Without an appropriate allocation methodology, improper cross-subsidization will occur.

If ComEd desires to increase rates to its *delivery services* customers, ComEd must demonstrate that the Company incurred the costs and expenses in order to provide *delivery services*. That is, not only must ComEd justify the total amount of expenses the Company seeks to recover, but the Company also must justify from which customers ComEd will recover those expenses. ComEd failed to do so.

Both in the Final Order (“Order”) in the initial phase of the instant proceeding, and in granting rehearing of the Coalition’s Application for Rehearing, the Commission endorsed a simple, non-controversial principle: that costs and expenses should be allocated to and recovered

from those who caused the costs to be incurred. Although the Commission had indicated that ComEd's allocation methodology was flawed (*see* Order at 50), on rehearing ComEd presented no additional evidence to suggest that its costs had been properly allocated based upon cost-causation principles. Instead, ComEd repeatedly asserted that its original functionalization was proper. (*See* ComEd Ex. 53.0 at lines 213-16; ComEd Ex. 62.0 at lines 569-72.) Only upon cross-examination did ComEd admit that its original allocation was rejected by the Commission. (*See* Hill Tr. at 255; Crumrine Tr. at 344.) Although ComEd bears the burden of proof to demonstrate that its proposed allocation is proper, Staff of the Commission ("Staff") and the Coalition presented evidence demonstrating ComEd's misallocation of supply-related G&I Plant and supply-related A&G Expenses. (*See* CES Ex. 13.0 (Revised)¹ at lines 23-186; Staff Ex. 27.0 at lines 20-418. *See also* Staff Reply Br. at 11; CES Reply Br. at 5.)

While the Commission should require ComEd to properly allocate its costs, the Commission also should allow ComEd a reasonable opportunity to recover its supply-related costs – provided that supply costs are allocated properly. Although ComEd asserted in its Rebuttal Testimony on Rehearing that its original cost allocation was proper, ComEd recognized the possibility that the Commission would order ComEd to recover additional supply-related costs via its Supply Administration Charge ("SAC"). ComEd indicated that if the Commission were to do so, ComEd should be permitted to refresh the billing determinants used by ComEd to calculate the SAC. (*See* ComEd Ex. 60.0 at lines 186-91.)

The Coalition supports ComEd's proposal to update the billing determinants used to compute its SAC recovery methodology when ComEd makes its compliance filing. Therefore, the Commission should enter an Order on Rehearing that directs ComEd to recover its supply-

¹ All references herein to CES Ex. 13.0 are to the revised version of that testimony, filed on eDocket November 3, 2006.

related costs using the methodology set forth in ComEd's Rebuttal Testimony on Rehearing, so that ComEd's supply-related costs are recovered from the Company's supply customers.

Specifically, the Coalition respectfully requests that the Commission direct ComEd to:

- (1) Include in its calculation of its SAC an upward adjustment to reflect that \$304 million in G&I Plant costs are supply-related;
- (2) Include in its calculation of its SAC an upward adjustment to reflect that \$79 million in A&G Expenses are supply-related;
- (3) Include in its calculation of its SAC an upward adjustment of \$0.026/kWh to reflect that ComEd continues to incur Sales and Marketing expenses associated with serving its supply customers; and
- (4) File a compliance report to reflect the recalculation of the SAC that is consistent with methodology set forth in ComEd's Rebuttal Testimony on Rehearing.

By ordering these adjustments, the Commission will ensure that ComEd's supply-related costs are recovered properly from the Company's supply customers.

II.

THE RECORD DEMONSTRATES THAT COMED HAS NOT PROPERLY ALLOCATED ITS SUPPLY COSTS TO ITS SUPPLY CUSTOMERS

As mentioned above, in the Order in the initial phase of the instant proceeding, the Commission endorsed a non-controversial principle: delivery services customers should be charged rates to recover delivery services costs and expenses; supply-related costs and expenses should be recovered from supply customers through a separate recovery mechanism, such as ComEd's proposed SAC. (*See* Order at 50.) In so doing, the Commission rejected ComEd's attempt to allocate supply-related costs to delivery services customers based upon their eligibility to take supply service from ComEd. (*See* Lazare Tr. at 111-16.) The Commission concluded

that ComEd incurred costs related to the Company's Post-2006 Procurement proceeding (ICC Docket No. 05-0159) on behalf of ComEd's supply customers. (Order at 50.) Therefore, based upon cost-causation principles, the Commission ordered ComEd to recover these expenses from its supply customers via the SAC. (*See id.*)

However, as explained by Staff and the Coalition, although this adjustment was proper, it did not eliminate all of the costs and expenses that were being improperly allocated to delivery services customers. (*See Lazare Tr.* at 111-16; CES Ex. 13.0 at lines 36-50.) Nevertheless, despite the clear language in the Order and the evidence presented by Staff and the Coalition, ComEd continued to assert that its original allocation methodology was proper. (*See ComEd Ex.* 53.0 at lines 213-16; ComEd 62.0 at lines 569-72.)

The proper functionalization of costs and expenses between delivery services and supply customers is central to notions of proper ratemaking and the development of the competitive market. (*See CES Ex.* 13.0 at lines 77-87; *Lazare Tr.* at 111-12.) ComEd's Chairman and Chief Executive Officer has acknowledged the importance of proper cost allocation to the competitive market. (*See March 21, 2006 Clark Tr.* at 200.) If delivery services charges improperly include supply costs, then customers that elect RES supply service -- those customers in the competitive market -- improperly will cross-subsidize those customers who continue to take supply service from ComEd. (*See CES Ex.* 13.0 at lines 70-87; CES Ex. 5.0 at lines 170-76.) Absent an appropriate allocation methodology, improper cross-subsidization will occur.

The Coalition respectfully requests that the Commission take action to eliminate such cross-subsidies and direct ComEd to file compliance tariffs that reflect the recalculation of the SAC that is consistent with the methodology set forth in ComEd's Rebuttal Testimony on Rehearing.

**A. COMED BEARS THE BURDEN OF PROOF
REGARDING PROPER ALLOCATION OF ITS COSTS**

ComEd alone bears the burden of proof to demonstrate the appropriateness of its proposed cost allocation between transmission and distribution and supply is appropriate. (*See* 220 ILCS 5/9-201(c).) In order to recover its costs in its delivery services rates, ComEd must demonstrate to the Commission’s satisfaction that these costs were reasonably and prudently incurred on behalf of ComEd’s delivery services customers. (*See* Staff Ex. 27.0 at lines 148-53.) The Commission properly noted in its Order that ComEd is not merely a “delivery services” company:

ComEd emphasizes that it is now a delivery services company and suggests that generation or supply issues are no longer a concern for ComEd. However, the Commission believes ComEd oversimplifies the matter. In fact, it was ComEd that filed a petition in Docket 05-0159 that established the auction process under which electric generation or supply will be acquired for bundled electric customers. ComEd will acquire supply through the auction process approved in Docket 05-0159 and is not quite as removed from supply issues as it seems to suggest.

(Order at 252.)

Indeed, as an “integrated distribution company,” ComEd functions as both a distribution company as well as procuring electricity for its supply customers. (*See generally* 83 Ill. Admin. Code 452.200, *et seq.*) ComEd failed to meet its burden of proof in the first phase of this proceeding. On rehearing, ComEd again failed to meet its burden.

**B. COMED FAILED TO PROVE THAT ITS DELIVERY SERVICES
CUSTOMERS WILL NOT SUBSIDIZE ITS SUPPLY CUSTOMERS**

ComEd failed to demonstrate that its proposed cost increases were related to the Company’s provision of delivery services. To the contrary, the instant record on rehearing includes substantial evidence illustrating that ComEd’s proposed delivery services rates are artificially high because they include supply-related costs, thereby creating an improper cross-

subsidy from ComEd's delivery services customers to its supply customers. Specifically, ComEd improperly proposed to increase delivery services rates by including \$79 million in supply-related A&G Expenses and \$304 million in supply-related G&I Plant costs. (*See* Staff Ex. 27.0 at lines 45-57, 185-97; ComEd Ex. 52.0 at lines 16-17, 210-13.) The Commission should enter an Order on Rehearing that rejects ComEd's attempts to recover supply-related costs via its delivery services rates. Quite simply, any and all supply-related costs should be allocated to ComEd's SAC so that collection for that portion of A&G Expenses and G&I Plant comes only from ComEd's supply customers.

**1. Staff Properly Questioned
The Starting Point For ComEd's Allocation of Costs**

The appropriate starting point for determining the appropriate level of both ComEd's A&G Expenses and its G&I Plant associated with ComEd's provision of delivery services is ICC Docket No. 01-0423 – ComEd's last delivery services rate case.

**a. The Commission Properly Concluded
That ComEd's Most Recent Rate Case Was
An Appropriate Starting Point For Calculating A&G Expenses**

In the Order, the Commission agreed with Staff that ComEd failed to justify the Company's restoration of \$79 million in A&G Expenses. (*See* Order at 67-68.) Staff correctly noted that in the Company's last delivery services proceeding, ICC Docket No. 01-0423, the Commission functionalized the A&G Expenses in question previously as supply costs. (*See* Staff Br. on Exceptions at 37-42.) The Commission agreed with Staff's position in the first phase of the instant proceeding, concluding that the Company sought to re-functionalize the A&G Expenses to delivery services customers without sufficient explanation. (*See* Order at 67-68.) The Commission designated the amount approved by the Commission in Docket No. 01-

0423 as “a more appropriate starting point” for determining the proposed overall A&G Expense amount. (*See id.*)

As noted in the Coalition’s Application for Rehearing, the Commission’s Order appears to contain a typographical error, insofar as the Commission failed to reflect the Commission’s conclusion in the “Functionalization” discussion related to A&G Expenses. (*See CES Application for Rehearing at 5-8.*) The Commission recognized that it is improper to include supply-related costs or expenses in delivery services charges since these costs or expenses do not directly relate to ComEd’s provision of delivery services. (*See Order at 50.*) However, the Commission’s Order failed to ensure that ComEd’s delivery services customers did not pay for costs associated with ComEd’s procurement of supply. Specifically, the Commission adopted Staff’s proposal in the “Overall Amount” section of the Order discussing A&G Expenses (§ IV(3)(a)) but failed to reflect this conclusion in the Order’s section that dealt with the functionalization of these A&G Expenses (§ IV(3)(b)). (*Compare Order at 68 with Order at 72.*)

Since the Commission provided no rationale for not revising the Order’s Functionalization section to mirror the Overall Amount section, it appears that this was a simple oversight. These two conclusions conflict with one another and create an internally contradictory Order. If left unchanged on Rehearing, delivery services customers will bear expenses that are not associated with ComEd’s provision of delivery services and maintenance of its distribution infrastructure. Accordingly, the Coalition respectfully requests that the Commission enter an Order on Rehearing that clarifies that it intended to incorporate the conclusions in the Overall Amount section into the Functionalization section of the Order.

**b. Staff Properly Concluded
That ComEd's Most Recent Rate Case Was
An Appropriate Starting Point For Allocating G&I Plant**

Upon rehearing, ComEd offered no additional evidence to justify the refunctionalization of G&I Plant costs that the Commission previously allocated to supply services (and therefore related to supply functions) to delivery services. Rather than meeting its burden of proof, ComEd simply asserted that a behind-the-scenes accounting entry that ComEd made in conjunction with the Company's sale of generating assets – an accounting entry that appears to be in conflict with the Commission's Order in Docket No. 01-0423 – should control the amount of G&I Plant included in the rate base that ComEd now may charge its delivery services customers. (*See* ComEd Ex. 60.0 at lines 93-178; Hill Tr. at 274-77.) For several reasons, ComEd's assertion is baseless and erroneous.

First, contrary to ComEd's assertions, the Commission never addressed, much less endorsed ComEd's accounting treatment. (*See generally* ICC Docket Nos. 00-0369, 00-0394. (Cons.). *See also* Lazare Tr. at 216-17.) To this point, Staff appropriately contrasted this to the way in which the functionalization issue was hotly contested by the parties, and discussed at length by the Commission, in Docket 01-0423. (*See* Staff Ex. 27.0 at lines 52-65, 92-98; Lazare Tr. at 216.)

Second, the nature of the Commission proceeding in which ComEd's sale of its nuclear plants was approved did not allow for a full investigation of matters such as functionalization. ComEd's sale of its nuclear plants was conducted under the confines of Section 16-111(g) of the Act, which limits the scope of the Commission's expedited inquiry and the types of parties allowed to intervene. (*See* 220 ILCS 5/16-111(g).)

Finally, as ComEd admitted, the Commission did not set rates in the plant transfer proceedings. (*See Hill Tr. at 276.*) Thus, to the extent ComEd now seeks to increase its delivery services rates, ComEd must justify that increase in the instant proceeding. (*See Lazare Tr. at 216.*)

ComEd simply began the instant proceeding with the exact position that the Commission rejected in ICC Docket No. 01-0423. (*See Staff Ex. 27.0 at lines 52-65.*) ComEd presented no evidence in the instant proceeding to justify its proposed reallocation of its G&I Plant costs.

2. The Evidence In The Record Demonstrates That ComEd Has Improperly Allocated Its Costs And Expenses

On rehearing, ComEd again failed to justify the inclusion of the additional \$79 million in A&G Expenses or \$304 million in G&I Plant costs in the Company's post-2006 delivery services rate base. (*See Staff Ex. 27.0 at lines 185-97, 22-65.*) Beyond the pre-filed testimony on rehearing of Staff (Staff Exs. 25.0, 27.0) and the Coalition (CES Ex. 13.0), additional evidence on rehearing further demonstrated that ComEd failed to justify increasing its delivery services rates. For example:

- ComEd failed to allocate to its supply customers any G&I Plant or A&G Expenses associated with the procurement proceeding. That is, although ComEd eventually admitted that it made an adjustment to reflect the actual out-of-pocket expenses associated with the procurement proceeding (*see Hill Tr. at 255; Crumrine Tr. at 344-45*), it appears that ComEd did not reallocate its general plant costs or other expenses to reflect the fact that ComEd's assets (e.g., computers, real estate, communications and office equipment) were used to support the employees who did work related to that proceeding. (*See Hill Tr. at 269-72.*)
- ComEd admitted that the Company predicated its original allocation proposal based upon eligibility (*see Crumrine Tr. at 344*), yet when the Commission rejected that

assumption, ComEd failed to reallocate its costs and expenses. (*See* Staff Ex. 27.0 at lines 52-65; ComEd Ex. 53.0 at lines 213-16; ComEd Ex. 62.0 at lines 569-72.)

- ComEd admitted that it continues to incur additional sales and marketing expenses related to its supply function, but ComEd eliminated the 0.026 cents per kWh sales and marketing adjustment included in ComEd’s current Power Purchase Option rate. (*See* Crumrine Tr. at 361-65; Alongi Tr. at 365.) Regardless of whether ComEd records these costs under the FERC Account for Sales & Marketing, ComEd still performs these functions. (*See* CES Ex. 13.0 (Revised) at lines 153-61; Crumrine Tr. at 361-65.) As a result, the Commission should instruct ComEd to retain this adjustment in ComEd’s post-transition supply rate by including the adjustment in the Company’s SAC.
- ComEd proposed to recover all of its \$7.8 million in Sarbanes-Oxley expenses as part of the A&G Expenses allocated to delivery services customers. (*See* ComEd Ex. 59.0 at line 217.) Staff witness Lazare explained that \$6.1 million of those expenses is properly considered supply-related. (*See* Lazare Tr. at 172.) (“And then the question would be, why should Sarbanes-Oxley costs associated with supply be [allocated to] delivery service customers who don't receive supply and only [receive] delivery services.” Lazare Tr. at 231.)

The Commission should require ComEd to recover its supply-related costs and expenses costs via the Company's supply-related charges.

III.

THE COMMISSION SHOULD ADOPT COMED'S PROPOSAL TO REFRESH THE DATA USED TO CALCULATE ITS SAC

In response to the testimony on rehearing of Staff and the Coalition, ComEd proposed that it would be appropriate for the Commission to refresh and update the billing determinants used to calculate the SAC, to allow ComEd to recover supply-related costs and expenses from the Company’s supply customers. (*See* ComEd Ex. 60.0 at lines 186-91.) Although the

Coalition takes no position regarding the accuracy of ComEd's alleged potential revenue shortfall, the Coalition supports ComEd's request to recalculate the SAC so as to more accurately reflect its customer base and the current state of customer switching in the Illinois retail electric market. The Commission should help ensure the proper allocation of ComEd's G&I Plant and A&G Expenses between ComEd's supply service customers and its delivery services customers by accepting the functionalization proposed by the Coalition and ComEd's proposal to update the data used in its compliance filing to calculate the SAC. The Commission should accept ComEd's proposal to update the billing determinants used to calculate the SAC.

WHEREFORE, the Coalition respectfully requests that the Commission enter an Order on Rehearing in the instant proceeding that:

- (1) Requires ComEd to allocate the costs associated with General & Intangible Plant and Administrative & General Expenses in a manner that ensures that customers who do not receive their electric supply from ComEd do not pay electric supply-related costs to ComEd;
- (2) Adopts the proposal presented by ComEd on rehearing that would permit the Company to recover any supply cost adjustment that may result from the Commission's Final Order on Rehearing by way of the Supply Administration Charge; and
- (3) Grants such further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

**CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION
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