

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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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**REPLY 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 Reply Brief on Rehearing regarding the proposed revisions to the delivery services rates of Commonwealth Edison Company (“ComEd” or the “Company”) and responding to the Initial Briefs on Rehearing filed by Commonwealth Edison Company (“ComEd” or the “Company”), Staff of the Commission (“Staff”), the Illinois industrial Energy Consumers (“IIEC”), and jointly, Chicago Board of Education, the City of Chicago, the Cook County State’s Attorney’s Office (collectively “CCB”) in the above-referenced proceeding.¹

¹ The positions set out in the instant Reply Brief on Rehearing represent the positions of the Coalition as a group, but do not necessarily represent the positions of individual Coalition member companies.

I. EXECUTIVE SUMMARY:

“ComEd’s supply-related costs should be recovered from ComEd’s supply customers.” This has been the mantra of the Coalition since this proceeding was initiated over a year ago. The Coalition’s foremost concern in the instant proceeding is not *whether* ComEd should recover certain costs and expenses that it seeks, but rather *how* and *from whom* those costs and expenses should be recovered.

Well-established, non-controversial cost causation principles dictate that ComEd should recover its supply-related costs and expenses from its supply customers, and that delivery services customers who do not take supply from ComEd should not subsidize ComEd’s supply-related costs and expenses. This approach to cost allocation is not new to this case; indeed, the Commission has already endorsed this approach in a portion of its Order that is not contested on Rehearing. (*See* Order at 50.) Yet, ComEd continues to advocate for improper cost allocations that it has not supported with substantial evidence and that, if allowed to go into effect, would yield improper anti-competitive cross-subsidies.

As set forth in its Initial Brief on Rehearing, the Coalition respectfully requests that the Commission direct ComEd to:

- (1) Include in its calculation of its Supply Adjustment Charge (“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.

Additionally, to the extent the Commission finds that Rider GCB should continue, and further finds that continuation of Rider GCB would result in a revenue shortfall, ComEd should be permitted to recover any such revenue shortfall associated with Rider GCB by way of the Company's Accuracy Assurance Factor.

III. CONTESTED ISSUES

B. Rate Base

- 1. General Plant: Functionalization And Amount**
- 2. Intangible Plant: Functionalization And Amount**

ComEd Provides No New Evidence To Support Its Allocation of Supply Costs To Delivery Customers

The fact that ComEd retains the burden to provide adequate proof to support its proposed allocation of G&I Plant is inescapable and should guide the Commission's analysis and conclusions. (*See* 220 ILCS 5/9-201(c).) Staff, the IIEC, and the CCC all correctly highlight that ComEd has failed to meet its burden of proof regarding its proposed reallocation of its G&I Plant costs. (*See* Staff Br. on Rehearing at 2-6; IIEC Br. on Rehearing at 4-5; CCC Br. on Rehearing at 2.) As discussed by the Coalition, Staff, and the IIEC, because ComEd has failed to provide evidentiary support to reallocate its G&I Plant, the Commission should require ComEd to retain the allocation that was approved in ComEd's most recent rate case, ICC Docket No. 01-0423. (*See* CES Br. on Rehearing at 6-7; Staff Br. on Rehearing at 2-6; IIEC Br. on Rehearing at 4-5.)

Rather than point to evidence justifying its proposed allocation, ComEd merely attempts to shift the burden of proof regarding G&I Plant allocation to Staff. (*See* ComEd Br. on Rehearing at 14-16.) ComEd spends considerable effort trying to shift the burden of proof for its

G&I Plant proposal onto Staff witness Lazare. (*See generally* ComEd Br. on Rehearing at 11-16.) For example, ComEd asserts that “Mr. Lazare conceded that no new evidence supports reconsideration of the Commission’s decision.” (ComEd Br. on Rehearing at 14.) Contrary to ComEd’s implication, the controlling and dispositive fact is that *ComEd* has presented no evidence – either in the first phase or on rehearing – to justify its G&I Plant allocation proposal. (*See* 220 ILCS 5/9-201(c); Staff Br. on Rehearing at 7-8.) In fact, on rehearing ComEd failed to make any adjustment to its allocation of G&I Plant cost. (*See* ComEd Ex. 53.0 at lines 213-16; ComEd Ex. 62.0 at lines 569-72.)

Similarly, ComEd criticizes Staff witness Lazare for basing Staff’s position in the instant phase of the case “entirely on the Commission’s order in Docket 01-0423.” (ComEd Br. on Rehearing at 14.) However, ComEd provided no evidence – either in this first phase or on rehearing – to justify abandoning the Commission’s prior decision regarding the functionalization of \$405 million of G&I Plant to supply, and away from delivery services. Instead of providing strong evidentiary support for its restoration of the previously removed G&I Plant, ComEd “arbitrarily has assigned a large majority of G&I Plant to the utility and used direct assignment for the perfunctory purpose of functionalizing between transmission and distribution.” (Staff Br. on Rehearing at 9.)

Unlike CCC and Staff, the Coalition ultimately takes no position with regard to the level of recovery of G&I Plant at issue in the instant proceeding; ComEd should be permitted to recover its prudently-incurred supply-related costs from its supply customers. (*Compare* CCC Br. on Rehearing at 4; Staff Br. on Rehearing at 11 *with* CES Br. on Rehearing at 3.) Contrary to the assertion of CCC, the Commission did not reject ComEd’s proposal to recover these costs; the Commission simply allocated the costs to ComEd’s supply function. (*See* CCC Br. on

Rehearing at 4. *But see* ICC Docket No. 01-0423, March 28, 2003 Order at 41.) There is no issue as to whether ComEd reasonably incurred those costs. Rather, the questions before the Commission are: (1) from whom should those costs be recovered; and (2) what recovery methodology should be used? (*See generally* CES Br. on Rehearing; CES Ex. 13.0 (Revised) at lines 81-83.) The Coalition agrees with the manner in which ComEd described that it could implement recovery of supply-related costs from its supply customers via its Supply Administration Charge (“SAC”). (*See* ComEd Ex. 60.0 at lines 186-91.) That is, the Coalition agrees with the caveat requested by ComEd that the Commission permit ComEd to refresh and update the billing determinants used to calculate the SAC so as to more accurately reflect ComEd’s customer base and the current state of customer switching in the Illinois retail electric market. (*See* CES Br. on Rehearing at 11-12.)

C. Operating Expenses

1. Administrative & General Expenses; Functionalization And Amount

**The Commission Should Maintain ComEd's 01-0423 Rate Case
As The Appropriate Starting Point For Allocating A&G Expenses**

Staff, the IIEC, and the CCC properly conclude that ComEd provided no new evidence to justify altering the Commission's starting point for the proposed A&G Expenses allocation. (*See* Staff Br. on Rehearing at 28; IIEC Br. on Rehearing at 5-6; CCC Br. on Rehearing at 5-8.) As with its rationale in arguing for an increase of G&I Plant, ComEd attempts to rely upon the record in the first phase of this proceeding to justify its A&G Expenses proposal, while again trying to shift the burden of proof to other parties. (*See* ComEd Br. on Rehearing at 22.) In the end, ComEd fails to substantiate its proposal to increase the level A&G Expenses attributed to delivery services beyond that which the Commission approved in Docket No. 01-0423. The

Commission should not retreat from its conclusion that the Company has failed to justify increasing the level of its A&G Expenses. (*See* Order at 67-68.)

ComEd argues that the Commission should revise its Order to approve the A&G Expenses that were previously disallowed. (*See* ComEd Br. on Rehearing at 44.) ComEd further states that there is no basis for shifting recovery of any portion of its A&G Expenses to the SAC, as proposed by the Coalition. (*See id.*, fn 30.) However, as explained by Staff, ComEd is seeking the same \$79 million increase in A&G Expenses that it proposed in the previous phase of this proceeding. (*See* Staff Br. on Rehearing at 28; CES Br. on Rehearing at 7-8.) While ComEd reiterates its request to have these A&G Expenses refunctionalized to delivery services customers, it does so without sufficient evidentiary support. (*See* Staff Br. on Rehearing at 28; CES Br. on Rehearing at 7-8; IIEC Br. on Rehearing at 6.) ComEd has failed to adequately explain why delivery services customers should bear the significant costs it proposes to include in A&G Expenses.

For example, with regard to the specific issue of ComEd's Sarbanes-Oxley costs, ComEd asserts that the evidence on rehearing provides no basis for disallowing any portion of ComEd's \$7.8 million of Sarbanes-Oxley compliance costs. (ComEd Br. on Rehearing at 39.) ComEd accuses Staff of failing to present a "basis for any conclusion that Sarbanes-Oxley compliance efforts or costs can be segregated into or relate only to discrete lines of any companies business." (ComEd Br. on Rehearing at 39.) However, once again, it is ComEd itself that has failed to provide sufficient evidence to support its proposal 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* Staff Br. on Rehearing at 31-34; Staff Ex. 27.0 at lines 294-334; Lazare Tr. at 231.) And once again, ComEd improperly attempts to avoid the fact that it bears the burden of proof in this

regard. (*See* 220 ILCS 5/19-201(c).) As Staff correctly queried, “why should Sarbanes-Oxley costs associated with supply be [allocated to] delivery service customers who don’t receive supply and [receive] delivery services”? (Lazare Tr. at 231.) ComEd has failed to adequately answer Staff’s question, and the Commission should recognize as much in its Final Order.

Although the Coalition ultimately takes no position with regard to the level of recovery of A&G Expenses at issue in the instant proceeding, it is clear that the Commission should require ComEd to recover its supply-related A&G Expenses via the Company’s supply-related charges.

D. Rate of Return

1. Rider GCB and GCB7

b. Means of Recovery of Any Subsidy

**If The Commission Orders ComEd To
Continue Offering Rider GCB And Further Finds That
The Continuance Will Result In A Revenue Shortfall, Then
The Shortfall Should Be Recovered From ComEd’s Supply Customers**

To the extent that the Commission finds that ComEd should continue to offer Rider GCB and that by ComEd continuing to offer Rider GCB there would be a shortfall in ComEd’s supply-related revenue, then it should be recovered from ComEd’s supply customers.

The Coalition takes no position regarding whether the Commission should approve ComEd’s proposed Rider GCB07 (as proposed by Staff and ComEd) or require ComEd to continue to provide service under its existing Rider GCB (as proposed by the CCB). (*See* Staff Br. on Rehearing at 58-61; ComEd Br. on Rehearing at 51-57; CCB Br. on Rehearing at 11-17.) The Coalition likewise has taken no position regarding whether the revenue shortfall that would result if Rider GCB were continued is properly considered to be a shortfall related to ComEd’s supply services, but it observes that the IIEC has made arguments in this regard. (*See* IIEC Br. on Rehearing at 13-17.)

As noted by the IIEC, recovering the costs from supply customers under such circumstances would be consistent with the reasoning in the Commission's Order regarding cost causation. (*See* IIEC Br. on Rehearing at 13-17; Order at 50.) That is, if the Commission concludes that ComEd would experience a supply-related revenue shortfall due to continuing to offer Rider GCB, then it should be recovered from supply customers. Indeed, ComEd has explained in detail the way in which Rider GCB costs could be recovered by ComEd through an adjustment to its Accuracy Assurance Factor ("AAF"). (*See* ComEd Br. on Rehearing at 56-57; ComEd Ex. 57.0 at lines 242-374; ComEd Ex. 62.0 at lines 228-41.)

Contrary to the suggestion of the CCB, a conclusion that the Act requires ComEd to offer Rider GCB does not dictate that any shortfall associated with the subsidy should be recovered from delivery services customers. (*See* CCB Br. on Rehearing at 15-17.) Indeed, in a restructured retail electric market, it would be contrary to cost-causation principles for a supply-related subsidy to be paid for by delivery services customers. Moreover, when the General Assembly has intended to socialize costs to all delivery services customers, it has expressly specified that recovery mechanism. (*See, e.g.*, 305 ILCS 20/13 (Supplemental Low-Income Energy Assistance Fund Charge); 20 ILCS 687/6-5 (Renewable Energy Resources and Coal Technology Development Assistance Charge).) There is no similar mechanism in the Act that specifies how any revenue shortfall or costs associated with ComEd continuing to offer Rider GCB are to be recovered from ComEd's retail customers. (*See* 220 ILCS 5/16-125A.)

If the Commission finds that Rider GCB should continue, and further finds that continuation of Rider GCB would result in a supply-related revenue shortfall to ComEd, then the Commission should authorize ComEd to recover these costs via its AAF, as set forth in ComEd's testimony on rehearing.

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 adjustments associated with General & Intangible Plant and Administrative & General Expenses that may result from the Commission's Final Order on Rehearing through an allocation to ComEd's Supply Administration Charge; and
- (3) To the extent the Commission finds that Rider GCB should continue, and further finds that continuation of Rider GCB would result in a supply-related revenue shortfall, ComEd should be permitted to recover any such revenue shortfall associated with Rider GCB by way of the Company's Accuracy Assurance Factor; and
- (4) Grants such further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

**CONSTELLATION NEWENERGY, INC.
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