

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

<b>COMMONWEALTH EDISON COMPANY</b>	)	
	)	
	)	<b>Docket No. 05-0597</b>
<b>Proposed general increase in rates for delivery service</b>	)	
	)	

---

**REPLY BRIEF ON REHEARING OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

---

JOHN C. FEELEY  
CARMEN L. FOSCO  
CARLA SCARSELLA  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
[jfeeley@icc.illinois.gov](mailto:jfeeley@icc.illinois.gov)  
[cfosco@icc.illinois.gov](mailto:cfosco@icc.illinois.gov)  
[cscarsel@icc.illinois.gov](mailto:cscarsel@icc.illinois.gov)

November 21, 2006

*Counsel for the Staff of the  
Illinois Commerce Commission*

## Table of Contents

	<u>Page</u>
I. INTRODUCTION .....	1
III. CONTESTED ISSUES .....	4
B. Rate Base.....	4
1. General Plant .....	4
2. Intangible Plant .....	7
3. Pension Effects on Rate Base.....	7
C. Operating Expenses .....	14
1. Administrative & General Expenses.....	14
2. Pension Contribution and Pension Expense .....	27
D. Rate of Return .....	27
1. Capital Structure .....	27
2. Cost of Common Equity .....	28
3. Cost of Debt .....	29
E. Rate Design.....	30
1. Rider GCB and GCB7 .....	30
a. Statutory construction .....	30
IV. CONCLUSION.....	35

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

<b>COMMONWEALTH EDISON COMPANY</b>	)	
	)	
	)	<b>Docket No. 05-0597</b>
<b>Proposed general increase in rates for delivery service</b>	)	
	)	

---

**REPLY BRIEF ON REHEARING OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission’s (“Commission”), respectfully submits its Reply Brief on Rehearing in the above-captioned matter.

**I. INTRODUCTION**

The Initial Brief on Rehearing of the Staff of the Illinois Commerce Commission (“Staff IBR” or “Staff’s IB on Rehearing”) was filed on November 14, 2006. Commonwealth Edison Company’s Initial Brief on Rehearing (“ComEd IBR” or “ComEd IB on Rehearing”), Initial Brief on Rehearing of the City of Chicago, the Cook County State’s Attorney’s Office and the Board of Education of the City of Chicago (“City-CCSAO-CBOE IBR” or “City-CCSAO-CBOE IB on Rehearing”), The United States Department of Energy Brief on Rehearing (“DOE IBR” or “DOE IB on Rehearing”), Initial Brief on Rehearing of the People of the State of Illinois (“AG IBR” or “AG IB on Rehearing”), Chicago Transit Authority’s and Metra’s Initial Brief on Rehearing (“CTA-

METRA IBR” or “CTA-METRA IB on Rehearing), Initial Brief on Rehearing of the Citizens Utility Board, the Cook County State’s Attorney’s Office and the City of Chicago (“CUB-CCSAO-City IBR” or “CUB-CCSAO-City IB on Rehearing”), Initial Brief on Rehearing of the Coalition of Energy Suppliers (“CES IBR” or “CES IB on Rehearing”), and IIEC Initial Brief On Rehearing (“IIEC IBR” or “IIEC’s IB on Rehearing”) were also filed on November 14, 2006.

Some of the issues raised in the parties’ initial briefs on rehearing were addressed in Staff’s Initial Brief on Rehearing and, in the interest of efficiency, Staff has not raised or repeated every argument or response previously made in Staff’s Initial Brief on Rehearing. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s Initial Brief because further or additional comment is neither needed nor warranted.

On most issues raised in rehearing, Staff finds itself on the opposite side of the arguments or positions advocated by Commonwealth Edison Company (“ComEd” or the “Company”). Staff explained in its IB on Rehearing why ComEd should not be granted the relief it seeks on those issues. The Commission’s Order entered on July 26, 2006 (“Final Order”, “Order” or “July 26 Order”) correctly rejected ComEd’s request on these issues in the first instance, and neither the evidence presented on rehearing nor ComEd’s IB on Rehearing have presented any new facts or arguments that would justify a different result. While ComEd attempts to portray the July 26 Order as containing harsh and improper results, the reality is that the Commission denied ComEd’s request to recovery certain amounts from ratepayers because those requests suffered from factual and legal deficiencies that have not been remedied on rehearing.

ComEd's IB on Rehearing begins with a digression about the difficult times that it faces. In the Company's view, the blame for these difficulties lies at the feet of the Commission:

Respectfully, the Commission's July 26 Order did not allow ComEd an opportunity to recover its costs or to earn a reasonable return on its property devoted to providing an essential service to the public. That Order allowed ComEd to recover only \$8.3 million of the \$163 million that the Administrative Law Judges found had been substantiated and prudently spent. The impact of the Order was immediate and dramatic. Since the Order was entered, and even before some legislators called for rate freeze legislation that would quickly plunge ComEd into insolvency, ComEd's debt ratings were downgraded. This downgrade was made in view of the unfavorable rate order and the "difficult political and regulatory climate" in which ComEd operates.

(ComEd IBR, p. 1) This is a classic case of blaming others for self-created problems. While the Company may have preferred the initial recommendation by the ALJs, the Commission makes the final decision concerning the costs ComEd may recover from ratepayers. In the first phase of this case, the Commission found that the Company by and large failed to prove its case.

In order to receive the revenue increase it believes it deserves, ComEd has the basic obligation to prove its case. As Staff set forth in Staff's IB on Rehearing, Section 9-201 of the Public Utilities Act ("Act") provides that when determining the propriety of any proposed rate, charge, practice, rule or regulation "the burden of proof to establish the justness and reasonableness of the proposed rate or other charges, classifications, contracts, practices, rule or regulations, in whole and in part, shall be upon the utility." (220 ILCS 5/9-201(c)) (Staff IBR, pp. 3-4) ComEd came up short in the first phase of this docket and, as the evidence on Rehearing shows, the Company has failed again. Given another chance in this stage of the case, the Company failed again to present meaningful evidence in support of its proposed revenue increase.

That the Company would begin its discussion by lashing out at the Commission demonstrates the deficient nature of the its arguments on rehearing. The underlying assumption in the Company's argument is that because it demands a significant increase, the Company is entitled to receive one, regardless of the merits of its case. That is not how the regulatory process is designed to work.

ComEd also trumpets what it calls a "compromise resolution" of issues with the Illinois Industrial Energy Consumers ("IIEC") and the United States Department of Energy ("DOE"). This proposal gives the Company favorable treatment on Administrative and General ("A&G") expenses and its pension contribution while according a significant rate break to over 10 MW high voltage customers. (ComEd IBR, p. 4) While this "compromise" may benefit IIEC, DOE and ComEd shareholders, it will saddle all other ratepayers with unnecessarily high rates. This compromise fails to serve the public interest and should be rejected by the Commission.

### **III. CONTESTED ISSUES**

#### **B. Rate Base**

##### **1. General Plant**

ComEd's arguments on General and Intangible ("G&I") plant fail to address the essential issues that arise with respect to these costs. The Company begins by arguing that the Commission has received no new reason to revisit its decision endorsing ComEd's proposed level of G&I plant. The Company includes a quote from Staff counsel that Staff witness Lazare did not provide any new factual analysis and basically restated its original position in the case. The Company contends that the rehearing

process produced no new information on which “to disturb the Commission’s rejection of Mr. Lazare’s proposal.” (ComEd IBR, p. 14)

However, the Company’s subsequent discussion in its brief on rehearing demonstrates once again so clearly why the Commission should consider Staff’s arguments on this issue. ComEd simply misstates the key issues concerning G&I plant and leaves the Commission with no meaningful basis to accept its proposed level of G&I plant which includes \$304.million that the Commission’s order had removed in Docket No. 01-0423 (Staff IBR, p. 8).

The Company’s begins with its effort to summarize the position of Staff witness Lazare with respect to G&I plant. According to the Company:

Mr. Lazare’s position was based entirely on the Commission’s Order in Docket No. 01-0423 which allocated \$405 million of ComEd’s G&I plant away from the delivery service function. That allocation was in turn based on Mr. Lazare’s use of a “labor allocator” that assumed that 62.8% of ComEd’s G&I plant (or \$775 million of such plant) was used for production. As a result of this allocation, \$405 million of G&I plant was allocated out of the distribution function and another \$179 million away from the transmission function.

(ComEd IBR, p. 14) The Company’s characterization is simply wrong. Staff focused not on the Order in Docket No. 01-0423, but on the Company’s proposed changes to that Order. Staff argued that if the Company chose to reverse the Commission decision in Docket No. 01-0423 with respect to 2000 test year G&I plant, it must demonstrate that its proposed change of course is reasonable. However, the Company made no effort in its filing to explain this proposed change in its filing and only revealed in response to discovery that it had restored plant that the Commission removed in Docket No. 01-0423. (ICC Staff Exhibit 27.0 (Corr.), p. 3) Staff fully agrees that neither ComEd nor the Commission must necessarily adhere in this case to its decision in Docket No.

01-0423. However, the Company must lay an evidentiary foundation to support a change in Commission policy. Instead, ComEd arbitrarily, and without explanation, reallocated G&I plant from production back to the delivery services revenue requirement. (ICC Staff Exhibit 27.0 (Corr.), pp. 4-5) And then the Company demanded that the Commission approve this fait accompli.

Furthermore, when it comes to G&I plant, the Company's strategy can be summed up as "the best defense is a good offense". Thus, the remainder of ComEd's discussion focuses not on the justification for the Company's extraordinary 142% increase in G&I plant, but rather on the alleged problems with Staff's proposed \$304 million adjustment to that increase.

So, ComEd argues that it no longer has any production plant to include in rate base. The Company also states that Staff cannot identify any specific general or intangible plant that fails to support the distribution or customer function. In addition, ComEd says Staff cannot identify any specific assets associated with its proposed \$304 adjustment that have been found to support a production function. (ComEd IBR, p. 15)

These arguments seeking to shift the burden of proof from the Company to Staff have all been thoroughly refuted. The fact that ComEd no longer owns production should not alter the Commission's decision on this issue. The decision to divest production was a business decision on the part of ComEd; and ratepayers should not be asked to absorb higher costs as a result.

ComEd's arguments that Staff cannot identify specific assets that should be explicitly excluded from distribution or customer functions or included with production are part of its strategy to shift the burden of proof onto Staff. Instead of explaining or

justifying its proposed 142% increase in G&I plant, ComEd presents its proposal and argues that Staff and other parties must prove the reasonableness of any adjustment to their proposal. This argument is eminently unreasonable and conflicts with basic legal regulatory principles. (See Staff IBR, pp. 3-8) It is essential that the Commission hold ComEd to a reasonable regulatory standard by accepting Staff's proposed \$304 million adjustment to G&I plant.

## **2. Intangible Plant**

For Staff's discussion of Intangible Plant, see Section III.B.1 of this Reply Brief.

## **3. Pension Effects on Rate Base**

In its July 26 Order, the Commission found that Exelon's pension contribution did not create a net pension asset to be recovered in the Company's rate base "given that Exelon's infusion in ComEd's pension trust fund does not result in over funding". (July 26 Order, p. 39) Now, disregarding the Commission's finding on this issue, ComEd argues that it should receive some amount of cost recovery for the pension contribution as if the contribution had created a net pension asset. (ComEd IBR, pp. 19 and 21) Moreover, the Company completely mischaracterizes a Staff response to a data request to make it sound as if Staff now admits that a net pension asset existed. For the reasons stated below, ComEd's arguments must be rejected and Staff urges the Commission to reaffirm its decision in the July 26 Order; namely, that (1) no net pension asset exists to be included in rate base and (2) ComEd's pension expense should be based on the actual expense reflected in the current actuarial study.

ComEd's arguments on rehearing fail to acknowledge or address the primary basis for the Commission's ruling that ComEd should not be allowed to include a

pension asset in rate base (i.e., that the contribution did not result in an overfunded pension), and are premised on broad statements that are incorrect and contrary to the record. Specifically, ComEd asserts in conclusory fashion that because its pension fund was underfunded “[t]he decision to fully fund the pension plan was therefore reasonable and prudent – a matter no party has disputed.” (ComEd IBR, p. 16) While Staff did not contest the historical or current funding status of ComEd’s pension fund or the contribution amount, it does not follow that those actions are reasonable and prudent and it is a significant mischaracterization of the record to assert that the reasonableness and prudence of those actions are not contested. Indeed, the thrust of Staff’s argument that was accepted by the Commission is that the result of those actions does not result in a net pension asset that would be reasonable and prudent to include in rate base.

Moreover, the Commission itself noted that Staff raised various deficiencies in ComEd’s proof and found that ComEd has not established the reasonableness of its actions for ratemaking purposes:

. . . Staff further argues that ComEd failed to meet its burden to prove that the pension ‘asset’ is used and useful in providing delivery services.

The Commission finds Staff’s arguments persuasive. Accounting principles, as well as common sense, dictate that no pension asset exists given that Exelon’s infusion in ComEd’s pension trust fund does not result in over funding. Further, **even if the Commission were to find that a pension asset exists, this would not excuse ComEd from providing evidence that this particular method of funding the pension trust fund is reasonable before the Commission would allow it to be included in rate base. Simply stating that the contribution came from shareholders does not automatically make it reasonable.** While the Commission is sympathetic to ComEd’s concerns about its credit rating being downgraded if it issues debt to fund its pension obligations, the Commission may have been more sympathetic if ComEd had provided evidence of the cost of that debt and how it would compare to the cost of shareholder supplied funds. Or, perhaps ComEd could have shown how much it would cost ComEd to borrow the funds from Exelon instead of

Exelon providing an equity infusion, given that debt tends to be less expensive than equity. **Simply stating that credit rating concerns exist is not enough. Additionally, it is not clear why ComEd chose to fully-fund its pension obligations when it did.** It seems that the timing of the funding also would affect the cost. The Commission needs to see numerical analyses to be able to perform an effective analysis of a utility's request for rate relief.

(July 26 Order, p. 39 (emphasis added)) The evidence on rehearing serves only to confirm that the Commission was correct when it found that the pension contribution did not create a net pension asset that should be included in ComEd's rate base. (See Staff's IBR, pp. 12-24) The Commission's finding and the evidence that supports that finding should not now be treated as irrelevant.

The Company mischaracterizes a Staff response to a Company data request to give the impression that Staff has now changed its mind and agrees with the Company that the contribution created a net pension asset for ComEd. The Company states:

Nevertheless, in response to the detailed testimony of ComEd witness Holdren, Staff now agrees that for purposes of GAAP and financial reporting to the SEC, the pension asset was correctly reflected and continues to exist on ComEd's balance sheet. Holdren, ComEd Ex. 55.0, 5:104-107. Ms. Ebrey has now made clear in responses to ComEd data requests that she "does not contest" that (1) "ComEd recorded a 'pension asset' on its books in accordance with GAAP based on the accounting decision made by Exelon" or (2) "a 'Prepaid Pension Asset' appears on the coordinated Balance Sheet of Commonwealth Edison Company as of December 31, 2005 in accordance with GAAP as reported in Exelon Corporation's Form 10-K for the fiscal year ended December 31, 2005." ComEd Ex. 63.1. The debate, therefore, is no longer about whether the asset exists, but about whether ComEd should obtain some cost recovery for the contribution.

(ComEd's IBR, pp. 20-21) While it is true that a prepaid pension asset appears on ComEd's books, that fact says nothing about (i) whether a net pension asset exists when one considers the offsetting pension liability or (ii) whether a pension asset should be included in rate base since the so-called "asset" does not represent funds within the

Company's control or disposition and the underlying contribution represented a discretionary action. (See Staff IBR, pp. 12-13)

Just as the Company has chosen to divide the various components of its pension accounting between Exelon and ComEd for presentation purposes to give an appearance of a net pension asset on ComEd's balance sheet, so also the Company has chosen to highlight selected portions of Staff's responses to Company data requests to give the incorrect impression that Staff now admits to the existence of a valid net pension asset for ratemaking purposes. Staff's position, which the Commission adopted in its Order, has **not** changed. Staff witness Ebrey has always recognized that a pension asset was recorded but must be considered in connection with the offsetting pension liability:

On ComEd's books, a pension asset has been recorded, reflecting the contribution, without the offsetting liability. The Company originally stated that "Under the provisions of FAS 87, Exelon was not able to 'push down' the portion of the additional liability to its subsidiaries...". (Original Company response to Staff data request TEE 4.01 (Attachment A)) In a later response, the Company revised this position, stating that Exelon was not required to "push down" the portion of the additional liability to its subsidiaries. (Corrected Company response to Staff data request TEE 4.01 (Attachment B)) Clearly, a conscious decision was made not to reflect the offsetting liability, although the liability certainly could have been reflected on ComEd's books.

(ICC Staff Exhibit 2.0, pp. 7-8) From the beginning, Staff's concern has been that ComEd wants to reflect a pension asset without regard for the offsetting liability. Staff never disputed that (1) Exelon made a contribution to the pension trust on behalf of ComEd and (2) Exelon's contribution was reflected as a prepaid pension asset on ComEd's balance sheet.

The Company in its Initial Brief on Rehearing refers at length to ComEd's cost of the pension contribution. (ComEd IBR, pp. 17 – 22) It is not questioned that additional

funds were contributed to the pension fund or that ComEd has a cost of capital. But these two facts do not establish that ComEd has invested funds in a rate base asset upon which it is entitled to earn its authorized (or other) rate of return. Moreover, when discussing ComEd's "alternatives" the reference to actual costs is even more inappropriate. With respect to the Company's "alternatives", it did not provide evidence of any actual costs incurred by ComEd. In fact during cross examination in the evidentiary hearing held during the Rehearing portion of this proceeding, Company witness Houtsma, referring to the graphic on page 22, lines 460 to 461 of ComEd Exhibit 59.0, stated:

- Q. So the full annual financing cost was not incurred in 2005; is that correct?
- A. The contribution was incurred in 2005, and this reflects the costs that were established in 2005.
- Q. And was it an annual financing cost?
- A. Well, I guess to be clear these are alternatives, the last three columns are alternatives. So none of them really reflect the actual costs that were incurred in 2005.
- Q. Say that again?
- A. The costs shown on the first line are alternatives that we presented, none of them actually reflect the actual costs that ComEd incurred in 2005. So they reflect sort of different scenarios, what we might have incurred in a different scenario.
- Q. Okay. I'm asking you with respect to the line that's titled reduction in expenses due to contribution.
- A. Okay, and my comment has to do with the first line, the cost of the financing contribution. I just wanted to clarify that it's not – it doesn't represent the actual cost that ComEd incurred in 2005, it represents costs associated with hypothetical alternatives that we've presented.

(Rhr. Tr., pp. 238 – 239)

The Company claims that “[v]irtually all parties agree that ComEd has incurred a cost, and benefited customers, by reason of the pension contribution” (ComEd IB, p. 17), but fails to provide any citation to the evidentiary record in support of that claim. The Company further mischaracterizes Ms. Ebrey’s testimony to state that “if the Commission allows **cost recovery**”. (*Id.*, p. 20 (emphasis added)) Ms. Ebrey never discussed “cost recovery” in relation to the pension contribution or the alternatives presented by the Company. Rather in her discussion of which of the Company’s three alternative ratemaking treatments for the pension contribution would be the most acceptable should the Commission choose to pick one, Ms. Ebrey categorized that decision to be based as follows:

If the Commission decides that the Company’s **shareholders should earn some level of return on ComEd’s prefunding of its pension costs to Exelon**, then the Commission should choose ComEd’s third alternative, 4.75% weighted average cost of debt. (ICC Staff Exhibit 25.0, p. 4)

And

However, if the Commission believes that the **shareholders should benefit from Exelon’s decision to make ComEd prefund its pension payments in March 2005**, the impact to the revenue requirement should be based on the weighted average rate of ComEd’ debt issuance as determined from the Barclays Capital May 25, 2005 analysis. (*Id.*, pp. 5-6)

And

If the Commission is persuaded by the Company’s arguments that **some allowance for the Pension Contribution should be included in rates**, the revenue requirement as computed on my Schedule 25.1 sets forth the position that would hold ratepayers harmless for the actions of Exelon. (*Id.*, p. 13)

None of these statements ever reference “cost recovery”. Nor does Staff believe that ComEd incurred costs relating to the pension prefunding for which recovery should

even be considered. Any financing costs that were incurred by Exelon were made at the discretion of Exelon's Board of Directors and do not automatically translate into ComEd costs.

The Company further mischaracterizes Staff's testimony as it discusses insurance recoveries. (ComEd IBR, p. 18) Staff's referenced testimony regarding insurance recoveries related to amounts received as reimbursement for costs for environmental remediation. In that instance only the net actual costs incurred by the Company would be passed on to ratepayers. Staff's referenced testimony does not support the principle of symmetrical treatment of costs and benefits as the Company claims.

The Company continues to cite to prior Commission Orders that allowed recovery of legitimate pension assets (ComEd IBR, footnote 21), dismissing Staff's position that the circumstances in each case must be reviewed in depth before any legitimate comparison can be made. In order for prior Commission decisions to be deemed instructive, the circumstances surrounding the cases must be found to be sufficiently similar to the facts at hand. Such is not the case with the prior orders cited by the Company. (Staff IBR, pp. 18 – 21) As Ms. Ebrey testified, "[n]either of these Orders explains the circumstances surrounding the cash contribution and the resulting funded status of CILCO's pension plan." (ICC Staff Exhibit 25.0, p. 10) ComEd's states that "the differences [Ms. Ebrey] mentions are not important to the result." (ComEd IBR, footnote 21) Staff could not disagree more with that assertion. The Commission's determination in the instant case was based in large part on the funded status of the pension fund resulting from the contribution (specifically, that the contribution caused

the pension to be fully funded rather than overfunded), and knowing whether or not the prior orders relied upon by ComEd presented a different or similar factual situation is not unimportant to the result as ComEd contends. Finally, as Staff explained in its Initial Brief on Rehearing, the orders relied upon by ComEd are neither useful nor instructive here given other factual differences and the fact that the pension asset issue was neither contested nor substantively addressed in the prior orders. (Staff IBR, pp. 18-21)

Finally, Staff continues to maintain its position from the case in chief that since the pension plan was fully-funded rather than over-funded by the Exelon contribution in March 2005, no net pension asset exists to be considered for recovery in rate base. Likewise, Staff's position, which was also confirmed by the Commission's Order, that pension expense should be based on the latest actuarial study, should also be upheld. If the Commission is persuaded by the Company's arguments that some allowance for Exelon's pension contribution should be included in rates, the revenue requirement as computed on ICC Staff Exhibit 25.0, Schedule 25.1 sets forth the position (ComEd Alternative 3) that would hold ratepayers harmless for the actions of Exelon. (ICC Staff Ex. 25.0, p. 13)

## **C. Operating Expenses**

### **1. Administrative & General Expenses**

The discussion of Administrative and General ("A&G") expenses in ComEd's IB on Rehearing fails to provide any reasonable justification for the Company's proposed \$79 million increase. After a full rate case and follow-up rehearing process, ComEd remains at a loss to support any increase in A&G expenses. The only reasonable

alternative is for the Commission to adopt Staff's recommendation that A&G expenses not be increased over the level adopted by the Commission in Docket No. 01-0423.

#### Overall Increase in A&G Expenses Unsupported

The Company begins its discussion of the issue with a diversion, presenting a chart which compares A&G expenses for ComEd and a number of other utilities. The purported reason for the chart is to demonstrate that ComEd's proposed A&G expenses are comparable to other utilities. (ComEd IBR, pp. 23-24) The chart is irrelevant because regardless of where ComEd stands in relation to other utilities, the utility still has to support its proposed level of A&G expenses. If the Company fails to provide the requisite support, regardless of where ComEd stands in relation to other utilities, it would not deserve any increase. Rather than focusing on costs for other utilities, ComEd would have better served the Commission if it had explained and supported the A&G expenses it proposes to recover from ratepayers.

ComEd goes on to make a curious argument against the Commission's decision in its July 26 Order to grant the Company a 9.7% increase in A&G expenses to recognize general inflation since the last delivery services case. ComEd states that the adjustment "is particularly problematic because it is applied selectively to only a small portion of ComEd's overall costs". (ComEd IBR, p. 25) Staff agrees that the 9.7% increase is problematic. In Staff's estimation, the increase was granted because the Company failed to provide any specific evidence to support an increase in A&G expenses and the Commission believed that some increase was warranted. As Staff argued in the first phase of this proceeding and continues to argue in rehearing, ComEd

has failed to justify any increase in A&G expenses for this proceeding including any general inflation factor.

Furthermore, ComEd continues to ignore the fact that its A&G expenses and its overall operating expenses have decreased since its last rate case. Instead, ComEd chooses to cherry-pick specific line items of A&G costs in an attempt to justify recovering a higher level of A&G costs. However, the evidence clearly shows that ComEd's A&G expenses and total operating expenses have declined since its last rate case.

The Company argues that comparing the 2000 costs with 2004 costs is not reasonable since the make-up of the Company has changed since the last DST case. (ComEd IBR, pp. 32-33) Staff anticipated this concern and addressed it by comparing 2001 costs with 2004 costs when testing the reasonableness of the Company's claim that it should recover a higher level of A&G cost. (ICC Staff Exhibit 25.0, pp. 16-17) The Company takes issue with Staff's use of FERC Form 1 data in Staff's analysis. (ComEd IBR, pp. 35-36) The Company argues that FERC Form 1 data is not appropriate to use in the analysis because the FERC Form 1 data does not reflect the ratemaking adjustments ComEd would impose upon that data. (*Id.*) The Company's criticism is flawed for at least two reasons.

First, Staff's analysis is intended to examine ComEd's actual results during the 2001 through 2004 period. (ICC Staff Exhibit 25.0, p. 16) Staff was not attempting to estimate the level of A&G expense ComEd might have proposed if it had filed a rate case in each of these years. The relevant question is, "What actually happened to ComEd's A&G expenses?" This is the question Staff's analysis answers.

Second, for the test year in this proceeding, ComEd's ratemaking adjustments decreased A&G expenses rather than increased them. Company Schedule C-1 and the accompanying workpapers show that ComEd first removed over \$25 million in costs from its FERC Form 1 A&G Expenses and then proposed over \$12 million in further reductions to A&G Expenses in its pro forma adjustments. Thus, one cannot simply assume that the net effect of any ratemaking adjustments ComEd might have proposed in a series of hypothetical rate cases would have increased ComEd's A&G expenses.

The unadjusted facts are these. ComEd's Total A&G Expenses showed a 5% overall increase from \$319,177,378 in 2001 to \$336,611,189 in 2004, but have returned to a downward trend in 2005 with A & G Expense totaling \$280,018,531. (Staff IBR, p. 39) This is a net decrease of 12.3% from 2001 to 2005. Interestingly, the increases in costs that the Company claims have occurred since its last rate case (ComEd Ex. 52.0, pp. 5-6) are all reflected in the A & G expense amounts for both 2004 and 2005. Staff continues to find it incredulous that the Company, basing its costs on a starting balance only slightly higher than in the last rate case and then further adjusting it downward, can continue to argue for a \$79 million increase in A&G costs.

#### ComEd's Arguments With Respect to Certain A&G Expenses Must Be Rejected

In discussing the breakdown of its proposed increase, the Company identifies a number of costing areas where it claims Staff did not object to its proposed increases. These include increases in post-retirement health care costs, pension expense, depreciation of technology assets, and corporate governance allocations and credits for pension and post-retirement health care and MGP expenses and other savings.

(ComEd IBR, pp. 28-31) The Company then contends that Staff objections are limited to salaries and wages, Sarbanes-Oxley compliance costs and health care costs for active employees. (*Id.*, p. 31)

This characterization of the outstanding A&G issues is erroneous. Staff's criticisms focused not just on these costing areas but also on Account 921 Office Supplies and Equipment. Furthermore, Staff has identified a fundamental methodological problem that undermines the legitimacy of the Company's proposal.

The methodological problems are embodied in ComEd's Exhibit 52.1 which Company Counsel represented as "precisely the breakdown that the Commission was interested in receiving on rehearing...a line-by-line, item-by-item reconciliation of the \$79 million increase." (Tr., pp 145 -146 2) Staff witness Lazare has identified a variety of problems with ComEd Exhibit 52.1 that permeated a host of A&G accounts. He noted that alongside the \$79 million in upward adjustments explained in Ms. Houtsma's testimony, ComEd Exhibit 52.1 contains "a magnitude of even larger amounts of adjustments that are not explained between Columns N and P. (Tr., p. 229) Mr. Lazare noted that the Exhibit contains a \$47 million reduction in combined Accounts 920 and 921 "that is not explained in the direct or rebuttal testimony of Ms. Houtsma". Mr. Lazare goes on to state, "So there is no basis on the record to whether that was—that adjustment was reasonable or not." (Tr., p. 229)

Mr. Lazare then discusses other A&G accounts:

And then if you go to, for example, Account 923, the adjustments she does discuss are in Columns J, K, L and M, which come to about \$38 million. But then when you go to Column N to Column P, you have an adjustment, upward adjustment of \$48 million that, again, is not discussed in her direct or rebuttal testimony.

And as you go down that column, you'll see other adjustments that again are not the subject of her adjustments--of her testimony, so the problem is a lot of the process by which she gets to her final proposed A&G level that she's recommending the Commission to accept in this case, there is just a large part of the story that's not being told. And so that's why I don't think the company has lived up to or fulfilled the requirement laid out by the Commission in accepting this proposal for rehearing.

(Tr., p. 230) ComEd counsel responded to these criticisms of ComEd Exhibit 52.1 by suggesting that "all of those adjustments were explained in Ms. Houtsma's testimony in prior versions—in the prior phase of the case". (Tr., p. 233) However, this statement is inconsistent with ComEd counsel's previous claim that ComEd Exhibit 52.1 alone was "precisely the breakdown that the Commission was interested in receiving on rehearing...a line-by-line, item-by-item reconciliation of the \$79 million increase". (Tr., pp. 145 -146) Company counsel now suggests that the Commission must delve into the first phase of the proceeding to find the requisite information to reconcile the \$79 million increase. To make matters more difficult, ComEd's Exhibit 52.1 provides no references indicating where on the record this data may be found as Staff witness Lazare noted. (Tr., p. 233)

ComEd then tries to justify its proposed \$9.1 million adjustment for salary and wage rate increases. The Company's explanation is convoluted indeed:

For the Commission to understand the factors that led to A&G increases and the size of those increases, comparisons need to be on an apples-to-apples basis. ComEd's salaries and wages analysis is just such a comparison, showing that, if ComEd had the same size work force in 2000 that it had in 2004, salaries and wages would have been \$9.1 million lower in 2000 than in 2004. Mr. Lazare recognized that two factors affect salaries and wages: the size of the work force and salary and wage rates. ICC Staff Ex. 27.0, 10:232-33. Removing the effect on salaries and wages due to the smaller work force, as ComEd did, shows that increases in salary and wage *rates* between 2000 and 2004 added \$9.1 million to ComEd's A&G expenses.

(ComEd IBR, p. 33) This argument makes no sense. As the Company itself admits, the change in salary and wage expenses is a function of two factors: the size of the workforce and salary and wage rates. To base a salary and wage adjustment solely on changes in salary and wage rates and ignore the effects of a significant workforce reduction is clearly inappropriate and one-sided. (ICC Staff Exhibit 27.0 (Corr.), p. 10)

Furthermore, as Staff has shown, a more reasonable and balanced approach that factors in both wage rates and the number of employees paints a quite different picture of wages and salaries declining significantly rather than increasing since the last delivery services case. (ICC Staff Exhibit 27.0 (Corr.), pp. 10-11)

Nevertheless, the Company suggests that Staff's more complete approach is flawed based on the following logic:

The costs represented as 2000 salary and wage expense for those persons no longer employees of ComEd did not entirely disappear (as Mr. Lazare appears to assume); in many instances they simply appear now in different accounts or categories of A&G expense. Houtsma Reh. Reb., ComEd Ex. 59, 8:158-168. Yet Mr. Lazare's analysis completely disregards this off-setting increase in outside services resulting from the employee transfer.

(ComEd IBR, p. 34) The Company's discussion of offsetting increases in other accounts is irrelevant to whether ComEd's salaries and wages expense have declined from the previous delivery services case (Docket No. 01-0423). If there are countervailing increases in other accounts, then it is necessary to identify and support those changes as well. But whether other costs may have increased does not change the undisputed fact that salaries and wages expenses have gone down. That is why Staff provides the only meaningful analysis of the issue.

The Company then proceeds to characterize Staff's approach as "faulty". (ComEd IBR, p. 35) According to ComEd:

Implicit in Staff's position is the assumption that a fixed relationship exists between the FERC Form 1 data and the data upon which rates are set so that a change in the FERC data will flow through to rates on a dollar-for-dollar basis. That assumption is demonstrably false as even Mr. Lazare recognizes.

(*Id.*) The Company's argument is simply wrong. Mr. Lazare has never claimed that his argument rests upon an iron-clad, fixed relationship between FERC Form 1 data and utility rates. As Mr. Lazare states, "You'd have to look at each case and look at the arguments that—and decide whether or not it's a feasible basis for rate making." (Tr., p. 155) In this case, the Commission is presented with two alternative ways of looking at salaries and wages expense; the Company narrow focus on the inflationary effect of an increase in salary and wage expense and Staff's broader examination of both wage levels and the number of employees receiving those wages. Clearly, Staff provides a more complete picture of the changes in this cost account.

The Company then presents a largely irrelevant explanation of the role FERC Form 1 data plays in the ratemaking process. The Company tries to argue that only adjusted FERC Form 1 data is used to derive the costs that comprise the revenue requirement. (ComEd IBR, p. 35)

This is incorrect. While adjustments are frequently employed in the ratemaking process, that does not preclude a direct role for FERC Form 1 data in determining individual components of the revenue requirement. In this case, the Company and Staff have presented two different methods for estimating the change in salaries and wages expense. In contrast to the Company's myopic focus on wage levels, the Staff approach captures the overall change in these costs as reflected in FERC Form 1 data.

The Company further complains about Staff's use of "raw and unadjusted" FERC Form 1 data to show that the Company has overstated A&G expenses. According to

the Company, “[t]his methodological flaw by itself is sufficient reason to reject the Staff analysis in its entirety”. (ComEd IBR, p. 36)

ComEd’s complaint is unfounded. It is based on a sweeping generalization about FERC Form 1 data that is neither explained nor justified. Staff has employed FERC Form 1 data to document the decline in salaries and wages expenses since ComEd’s case. The Company for its part has acknowledged the reduction in these costs but provided no alternative estimate. Then, ComEd criticizes the Staff methodology without explaining what specifically is inaccurate in the data being used. The most likely explanation for the Company’s unhappiness is that the FERC Form 1 data documents a significant reduction in salaries and wages expenses as opposed to the Company’s limited and flawed upward adjustment focused solely on increases in wage rates since the last delivery services case.

In short, there are two analyses of salaries and wages expenses before the Commission in rehearing; the Company’s analysis which suggests that wage increases have led to a \$9.1 million increase in salaries and wages expenses or the Staff approach which indicates that these costs have declined by \$36 million. The available evidence supports Staff’s analysis and the Company’s unsubstantiated complaints about the use of raw FERC Form 1 data fail to undermine the validity of Staff’s approach.

When it comes to Sarbanes-Oxley costs, the Company is unable to climb out of the hole dug by ComEd witness Houtsma. The Company begins its discussion by describing the costs expended to comply with Sarbanes-Oxley and then goes on to claim that Staff witness Lazare “has not identified any portion of ComEd’s \$7.8 million

of Sarbanes-Oxley compliance costs that he claims was not in fact incurred, or did not have to be incurred or that is unreasonable in amount”. Furthermore, the Company complains that Mr. Lazare “has no independent knowledge of what it takes for a company like Exelon to comply with Sarbanes-Oxley, or even what is a proper or necessary Sarbanes-Oxley expenditure”. Thus, the Company appears unable to fathom why Staff would recommend that \$6.1 million of ComEd’s proposed Sarbanes-Oxley expense be disallowed. (ComEd IBR, p. 37)

The Company itself takes the first step in solving this mystery when it notes that Staff bases its adjustment on the study of Sarbanes-Oxley costs prepared by Charles River Associates which shows that expenditures for the Companies surveyed average about 0.10% of revenues. Of course, the Company assures that the study did not suggest that costs incurred above the average “are unnecessary or improperly spent”. (ComEd IBR, p. 38)

ComEd’s discussion is more interesting for what it leaves out than what it includes. The fact that ComEd may have spent \$7.8 million on Sarbanes-Oxley compliance does not give the Company carte blanche to recover that expenditure on a dollar-for-dollar basis from ratepayers.

If the Company spent \$78 million or even \$780 million on Sarbanes-Oxley would the Commission be obligated to recover every last dollar from ratepayers? Of course not. The Company must show that the amount spent is reasonable. And therein lies the problem. ComEd’s IB on Rehearing provides no reason why \$7.8 million is a reasonable amount to spend on Sarbanes-Oxley.

It is also curious that the Company also fails to even acknowledge that ComEd witness Houtsma did, in fact, offer a standard for assessing the reasonableness of the Company's Sarbanes-Oxley expenditures in her direct testimony on rehearing, stating:

I have also attached, as ComEd Ex. 52.10, a study done by Charles River Associates that shows that, while Sarbanes-Oxley compliance costs necessarily vary from company to company, ComEd's Sarbanes-Oxley compliance costs are comparable to such costs incurred by other companies similar in size to ComEd.

(ComEd Ex. 52.0 (Corr.), p. 16) The irony for ComEd is that Ms. Houtsma has presented a standard for assessing Sarbanes-Oxley expenditures which the Company cannot meet. The companies in the study averaged \$8.1 billion in revenue and had average compliance costs of \$7.8 million. Thus, compliance costs average approximately 0.10% of revenues for the sample in the study. (ComEd Ex. 52.10, p. 2) However, ComEd proposes a much higher level of Sarbanes-Oxley compliance costs. ComEd's proposed \$7.8 million amounts to 0.46% of the \$1.68 billion delivery services revenue requirement approved by the Commission in Docket No. 05-0597 (July 26 Order, Appendix A, p. 1, line 5, column (I)). The bottom line is that Ms. Houtsma's own standard of reasonableness indicates that ComEd's proposed Sarbanes-Oxley compliance costs are excessive. (ICC Staff Exhibit 27.0 (Corr.), pp. 13-14) It should be further noted that this is the only standard presented by the Company to assess the reasonableness of its Sarbanes-Oxley costs.

Since this is the Company's own measure and there is no other evidence on the record to conclude otherwise, the Company has left the Commission no alternative but to conclude that ComEd's Sarbanes-Oxley expenditures are excessive to the extent determined by Staff in this case.

The Company goes on to argue that its Sarbanes-Oxley expenditures should be considered less excessive if measured against the Company's total bundled and unbundled 2004 revenues of \$5.8 billion. (ComEd IBR, p. 38) This is truly a case of mixing apples and oranges. However, the issue at hand is the determination of A&G expense for the delivery service requirement only and the amount that the Company seeks to recover from delivery services is clearly excessive by ComEd's own standard.

ComEd must also confront a self-created problem in explaining its proposed increase in healthcare costs for active employees. As ComEd acknowledges in its IB on Rehearing, the Company's proposal embodies a rate of increase that far exceed the average (88% vs. 63%) in the Tower-Perrins study that ComEd itself provided as supporting evidence. (ComEd IBR, pp. 39-40)

The Company's first response is to argue that Staff's analysis is flawed because health care costs for active employees should not be considered alone but rather in conjunction with health care costs for retirees. Based on the combination of the two, ComEd argues that its health care costs are not out of line. (ComEd IBR, p. 40)

This argument might have had some merit if the Company itself had presented the two sets of costs together in rehearing. However, ComEd itself separated out health care costs for active employees and contended that this account contributes \$5.9 million to ComEd's proposed increase in A&G expense. (ComEd IBR, p. 39) Not until Staff responded did ComEd suggest that health care costs for active and retired employees should be lumped together. If ComEd found that combining the two accounts produced adverse results, Staff is confident that the Company would be the first to criticize any effort to consider the two accounts together.

The Company relies on the supporting testimony of Mr. Pearson from Tower-Perrins to reassure the Commission that despite the 88% increase over four years ComEd is actively working to control health care costs for active employees:

As salaries in these industries began to rise, many employers, including ComEd, have worked to manage the increase in costs of benefit plans to maintain a proper balance in total compensation. For example, prior to the test year, ComEd increased the prescription drug co-pay for active non-union employees to provide an incentive to use generic drugs and utilize lower cost mail order prescription fulfillment services. ComEd subsequently also implemented, through coinsurance, a transition from 100% payment of out-of-pocket health care costs to 90% payment of out-of-pocket health care costs for its non-union employees.

(ComEd IBR, pp. 40-41) Thus, Mr. Pearson identifies a grand total of two actions by the Company to control what can only be described as soaring health care costs. But even this overstates the efforts in the test year because according to Mr. Pearson the Company did not implement the transition from 100% to 90% payment of out-of-pocket health care costs until 2005. (ComEd Ex. 61.0, (Corr.), p. 10) With health care costs for active employees precipitously rising by 88% from 2000 to 2004, Mr. Pearson could only identify a single step by ComEd, increasing the prescription drug co-pay for non-union employees, to mitigate the increase. Thus, ComEd's own consultant paints the picture of a disinterested utility unconcerned about the upward spiral in health care costs for active employees. Under these circumstances, it would be grossly unfair to simply pass along the full 88% increase in health care costs to ComEd ratepayers. Instead, Staff's conclusion that the Company has overstated these costs is eminently reasonable and should be accepted by the Commission.

## **2. Pension Contribution and Pension Expense**

See Staff's discussion of ComEd's pension contribution and pension expense in Section III.B.3 of this Reply Brief.

### **D. Rate of Return**

The Company and several intervenors addressed the cost of capital in their initial briefs on rehearing. Staff already addressed most of those parties' pertinent arguments in its Initial Brief on Rehearing; thus, Staff will not restate those arguments here. However, Staff will address a few arguments not previously addressed.

#### **1. Capital Structure**

ComEd criticizes the ratio analysis Staff used to support its capital structure, claiming that Staff failed to reflect the negative effect the July 26 Order's disallowance of certain expenses would have on those ratios. (ComEd IBR, p. 48) The Company's argument should be rejected. To adjust ComEd's financial ratios to reflect the fact that certain expenses were found to be inappropriate for recovery through rates, which would produce a higher cost of capital, would undermine the Commission's findings with regard to expenses by offsetting them with higher cost of capital. ComEd witness Mitchell laments that Staff's methodology "assumes that ratings agencies will only reflect the spending that is accounted for in ratemaking." (ComEd Ex. 58.0, p. 14) However, the purpose of Staff's analysis was not to attempt to estimate what ComEd's rating should be, but to assess the financial strength indicated by the proposed returns on rate base. Indeed, any such analysis of the capital structure supporting ComEd's rate base should "only reflect the spending that is accounted for in ratemaking."

Specifically, in performing its ratio analysis, Staff assumes the Commission will not disallow costs the Commission expects a utility will prudently and reasonably incur to provide retail delivery services. The Commission will only disallow those expenses that are either unreasonable, and therefore should not be incurred at all, or should be allocated to, and recovered through, other businesses. Thus, the Company's argument is erroneous and should be rejected.

## **2. Cost of Common Equity**

CUB-CCSAO-City argues that its 7.75% cost of equity estimate "is just and reasonable and should be adopted by the Commission." (CUB-CCSAO-City IBR, pp. 20-22) CUB-CCSAO-City notes that although the July 26 Order rejected CUB-CCSAO-City witness Bodmer's investment bank analysis, it did not consider his discounted cash flow ("DCF") or capital asset pricing model ("CAPM") analyses, which CUB-CCSAO-City claims supports a 7.75% cost of equity estimate. CUB-CCSAO-City's argument should be rejected. The aspects of Mr. Bodmer's DCF and CAPM analyses that CUB-CCSAO-City touts as virtues are, in reality, flaws that produce an understated cost of equity estimate. As Staff explained, contrary to CUB-CCSAO-City's argument, since utility companies pay cash flows (i.e., dividends) over the course of a year and not all at the end of the year, use of a quarterly DCF model is not only *appropriate* for rate setting purposes, it is *necessary* for a utility to recover its true cost of capital. Accordingly, the Commission has explicitly rejected the use of an annual DCF model in previous proceedings. (ICC Staff Exhibit 16.0, p. 19-20) In addition, ex post empirical tests of the CAPM suggest that the linear relationship between risk, as measured by raw beta, and return is flatter than the CAPM predicts. Thus, adjusted betas surpass raw betas

as predictors of future returns and are, therefore, superior forward-looking betas. (ICC Staff Exhibit 16.0, p. 22-24) These flaws render the results of Mr. Bodmer's DCF and CAPM analyses, like those of the investment bank analysis, inappropriate for rate setting purposes.

### **3. Cost of Debt**

ComEd is critical of Staff's recommendation that an adjustment to ComEd's cost of debt is warranted if the Commission adopts a capital structure with a greater percentage of equity than the 37.11% Staff proposes. (ComEd IBR, pp. 50-51) In addition to arguments previously addressed in Staff's Initial Brief on Rehearing, ComEd argues that Staff's proposed adjustment methodology is flawed because it is based on issuer ratings rather than specific issue rating. The Company's argument should be rejected. As Staff explained, Staff's adjustment proposal relies on issuer credit ratings to determine the interest rate adjustment because the financial ratio benchmarks do not take security specific terms into account. (ICC Staff Exhibit 26.0, Schedule 26.5, p. 3) In other words, the financial ratio benchmarks measure overall creditworthiness of a company. The financial ratio benchmarks do not, indeed cannot, measure the specific default risks of different debt issues with differing terms and degrees of security. The Company's argument, alternatively, is based on an inconsistent comparison of corporate credit ratings and issue-specific ratings. ComEd's senior secured credit rating is typically one notch higher than its corporate credit rating. (ICC Staff Exhibit 26.0, Schedules 26.1 and 26.4) Thus, the rating differential upon which Staff's adjustment proposal is based would typically be the same whether using issuer ratings or issue-specific ratings, nullifying the Company's argument.

ComEd further notes that over 75% of ComEd's outstanding issues were issued when ComEd held a corporate credit rating of A-, which would, under Staff's proposal, make an adjustment unnecessary. (ComEd IBR, pp. 50-51) This argument, too, should be rejected. Nearly 25% of ComEd's outstanding debt issues were issued at a rating other than A-. Obviously, if the Commission adjusts the capital structure to reflect an A- corporate credit rating, no adjustment would be required for debt issued when ComEd held a corporate credit of A- rating. However, simply because a majority of ComEd's outstanding debt may not require adjustment is not a valid justification for failing to properly adjust those issues that do. Moreover, as noted in Staff's Initial Brief on Rehearing, the capital structure adopted in the July 26 Order actually reflects an A rating. (Staff IBR, p. 55) Thus, an adjustment would be needed for the A- issues as well, rendering the Company's argument entirely irrelevant.

## **E. Rate Design**

### **1. Rider GCB and GCB7**

#### **a. Statutory construction**

Staff, ComEd and IIEC all agree that the Commission should not order ComEd to retain ComEd's current Rider GCB but rather that the Commission should direct ComEd to replace it with GCB7. (Staff IBR, pp. 58-59; ComEd IBR, pp. 52-55; IIEC IBR, pp. 13-15) All agree that GCB7 is consistent with Section 16-125A of the Public Utilities Act ("Act") (220 ILCS 5/16-125A) and that the Act should not be read to require ComEd to provide a frozen rate to eligible governmental customers for ever into the future. (Staff IBR, p. 59; ComEd IBR, p. 53; IIEC IBR, p. 15) On the other hand, City-CCSAO-CBOE,

and CTA<sup>1</sup> argue that the Commission's July 26 Order properly rejected Rider GCB7 because it did not comply with their reading of Section 16-125A of the Act. (City-CCSAO-CBOE IBR, pp. 1-6; CTA-METRA IBR, pp. 17-23)

Staff argued in its Initial Brief on Rehearing, that in interpreting Section 16-125A of the Act, the City-CCSAO-CBOE and CTA along with the Commission's July 26 Order fail to consider Section 16-111(i) of the Act. (Staff IBR, pp. 58-59) As set forth in Section 16-111(i), the Commission in any rate proceeding to establish rates for tariffed services subsequent to the mandatory transition period, shall only consider the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of those tariffed services. (220 ILCS 5/16-111(i)) Since the Commission's July 26 Order would forever freeze into rates, rates that were in effect on May 1, 1997 (ComEd Ex. 57.0, p. 3), those rates would not be based upon post mandatory transition period current or projected revenues, costs, investments and cost of capital related to the provision of the service to the governmental customers. (Staff IBR, pp. 58-59)

In its Initial Brief on Rehearing, ComEd among other arguments also cited to Section 16-111(i) of the Act and in addition cited to Section 16-108(c) and argued that the Commission's July 26 Order is contradictory to the Act. (ComEd IBR, p. 54) IIEC while not citing to either Sections 16-111(i) or 16-108(c) of the Act, points out that Section 16-125A does not specifically provide for a perpetual rate freeze for eligible governmental customers and the Commission only has those powers granted by the

---

<sup>1</sup> The CTA and METRA filed a joint brief, however on the issue of Rider GCB and GCB7 the arguments set forth in the joint brief are those of the CTA only. (CTA-METRA IBR, p. 1,)

Act. (IIEC IBR, p. 15) Staff continues to maintain that City-CCSAO-CBOE's and CTA's positions that Rider GCB should continue forever into the future should be rejected.

City-CCSAO-CBOE's and CTA's argument which focuses on legislative intent and statutory language (City-CCSAO-BOE IBR, pp. 2-3; CTA-METRA IBR, pp. 18 and 20-21) should be rejected. As the IIEC argued in its Initial Brief on Rehearing, the legislators use of the word "implementing" in Section 16-125A of the Act simply makes clear that the consolidated billing proposal was initially to be carried into effect using certain rates and charges then in effect. The fact that the consolidated billing proposal was to be initially carried into effect on the basis of rates and charges existing as of May 1, 1997, was recognition by the legislature that rates were frozen during the mandatory transition period and the consolidated billing rider should reflect that. As the IIEC points out nothing in Section 16-125A of the Act specifically provides for that consolidated billing to lock in a perpetual rate freeze. (IIEC IBR, pp. 14-15)

The City-CCSAO-CBOE's "second rule of statutory construction" argument that "when there is a conflict between two statutory provisions, the more specific provisions prevails and must be given effect over the more general provision." (City-CCSAO-CBOE IBR, p. 4) should also be rejected since it is based upon a false premise. City-CCSAO-CBOE's argument assumes that the continuation of Rider GCB forever into the future is a specific provision in the Act and that Sections 16-111(i) and 16-108(c) are general provisions. However, the opposite is true. Section 16-111(i) of the Act is not a general provision but rather is a specific provision. It specifically directs the Commission how rates are to be determined immediately following the mandatory transition period. (220 ILCS 6/16-111(i)) On the other hand, the continuation of Rider GCB for ever into the

future is based upon some unidentified general provision of the Act. As discussed above, the IIEC pointed out in its Initial Brief on Rehearing, “Section 16-125A does not specifically provide for a perpetual rate freeze... .” (IIEC IBR, p. 15) Given that Section 16-111(i) of the Act is a specific provision there is no violation of the “second rule of statutory construction” set forth by City-CCSAO-CBOE.

City-CCSAO-CBOE read into the Act a general assumption that the legislature intended for rates set almost ten years ago to forever continue to exist. As Staff set forth in its Initial Brief on Rehearing, such an interpretation of the Act is unreasonable and a statute capable of two interpretations should be given that which is reasonable and which will not produce absurd, unjust, unreasonable or inconvenient results that the legislature could not have intended. (Collins v. Bd. Of Tr. of the Firemen’s Annuity & Benefit Fund of Chicago, 155 Ill.2d 103, 110 (1993), citing Mulligan v. Joliet Regional Port District, 123 Ill. 2d 303 (1988); Harris v. Manor Healthcare Corp., 111 Ill. 2d 350, 363 (1986)).

Finally, the City-CCSAO-CBOE’s argument that “rules of statutory construction require that a statute never be interpreted such that ‘each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous,’ and to avoid an interpretation that would render any portion of the statute meaningless or void.” (City-CCSAO-CBOE IBR, p. 5) is addressed by the IIEC’s Initial Brief on Rehearing addressing the use of the word “implementing”. As set forth above, the legislators use of the word “implementing” in Section 16-125A of the Act simply makes clear that the consolidated billing proposal was initially to be carried into effect using certain rates and charges then in effect. The fact that the consolidated billing proposal was to be initially

carried into effect on the basis of rates and charges existing as of May 1, 1997, was recognition by the legislature that rates were frozen during the mandatory transition period and the consolidated billing rider should reflect that. As the IIEC points out, nothing in Section 16-125A specifically provides for that consolidated billing to lock in a perpetual rate freeze. (IIEC IBR, pp. 14-15) Despite City-CCSAO-CBOE claims to the contrary, neither Staff's, nor ComEd's, nor the IIEC's reading of Section 16-125A of the Act renders any provision in the Act superfluous. ComEd will continue to offer consolidated billing to eligible governmental customers under Rider GCB7 pursuant to Section 16-125A of the Act.

#### IV. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

---

JOHN C. FEELEY  
CARMEN L. FOSCO  
CARLA SCARSELLA  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
[jfeeley@icc.illinois.gov](mailto:jfeeley@icc.illinois.gov)  
[cfosco@icc.illinois.gov](mailto:cfosco@icc.illinois.gov)  
[cscarsel@icc.illinois.gov](mailto:cscarsel@icc.illinois.gov)

November 21, 2006

*Counsel for the Staff of the  
Illinois Commerce Commission*