STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	Docket No. 07-0566
Proposed general increase in electric rates	)	
	)	

POST-HEARING BRIEF OF THE COMMERCIAL GROUP

I. INTRODUCTION / STATEMENT OF THE CASE[1]

Commonwealth Edison Company ("ComEd") seeks to increase its revenue by approximately $355 million per year, plus gain additional revenue through the System Modernization Projects ("SMP") and Storm Expense Adjustment ("SEA") riders. The Commercial Group intervened in this rate proceeding largely because ComEd already recovers more than its fair share of costs from the commercial retail sector.

Composed of Best Buy Co., Inc., J.C. Penney Corporation, Inc., Macy's, Inc., Safeway, Inc., and Wal-Mart Stores, Inc., plus the Illinois Retail Merchants Association ("IRMA"), the Commercial Group represents the interests of 23,000 retail operations or approximately 85 percent of commercial retailers in Illinois. CG Ex. 1.0 (Vite rebuttal), p. 1. Illinois retailers are a vital part of the Illinois economy, employing one of every five working Illinoisans and generating about one-third of the revenues that fund state government. *Id*. at 3. As demonstrated by ComEd's testimony, Illinois commercial retailers have borne a heavy burden subsidizing other classes of ComEd customers. Further revenue increases will hit commercial customers hard, particularly the "across-the-board" rate design proposals, which would add to this subsidy

[1] The Commercial Group follows herein the brief outline adopted by the Administrative Law Judges (Alternative B), although it will not address every outline point. Failure to address an issue should not be construed as endorsement for ComEd's (or any other party's) position.

burden. Therefore, the Commercial Group respectfully requests in this brief that the Administrative Law Judges ("ALJs") recommend and the Illinois Commerce Commission ("Commission") adopt orders that 1) limit the overall revenue increase to only that increase necessary to allow ComEd to provide adequate and effective service, and 2) establish cost-based rates so that all customer classes pay their fair share of ComEd's utility costs.

II. OVERALL REVENUE REQUIREMENT AND REVENUE DEFICIENCY

III. TEST YEAR

IV. RATE BASE

C. Contested Issues

1. Plant

a. *Pro Forma* Capital Additions

i. Propriety of Additions

ii. Impact on Test Year Rate Base

(a) Accumulated Provisions for Depreciation and Amortization

AG/CUB witness Effron and IIEC witness Gorman raise an important issue regarding balanced plant adjustments. To the extent the Commission adjusts test year plant for post-test year plant additions, the Commission also should make the corresponding adjustment to update post-test year accumulated depreciation reserve. As the Commission determined in a 2003 Ameren rate case final order,[2] post-test year capital additions are allowed only to the extent they exceed increases in post-test year accumulated depreciation. Not doing so "would result in a mismatch of costs and revenues that may be expected for the period during which rates are in

[2] October 23, 2003 Order, Docket Nos. 02-0798, et al., pp. 10-11.

place." *Id*. Indeed, the proper match of costs and revenues in a rate year is a bedrock principle of utility law. The Commercial Group, therefore, supports the adjustments of AG/CUB.

(b) Accumulated Deferred Income Taxes (ADIT)

As demonstrated by AG/CUB witness Effron, to the extent post-test year plant investment is added to rate base, the corresponding impact of that additional plant on accumulated deferred income taxes ("ADIT") likewise should be added to rate base. See AG/CUB Ex 5.0 (Effron rebuttal), p. 20. As with accumulated depreciation reserve, a one-sided adjustment for post-test year plant additions without a corresponding ADIT adjustment is imbalanced and unreasonable ratemaking. Therefore, the Commercial Group supports the adjustments of AG/CUB.

b. Underground Cable and Services

c. Capitalized Incentive Compensation Other Than That in Section IV.B.1.b. (See V.C.1)

d. Customer Advances for Construction

e. Depreciable Life of Post-2006 Project

2. Accumulated Provisions for Depreciation and Amortization

See Section IV.C.1.a.ii(a)

3. Accumulated Deferred Income Taxes (ADIT)

See Section IV.C.1.a.ii(b)

V. OPERATING EXPENSES

VI. RATE OF RETURN

A. Capital Structure (Uncontested)

B. Cost of Long-Term Debt (Uncontested)

C. Cost of Common Equity

D. Overall Cost of Capital (Derivative)

E. Effects of Riders SMP and SEA

Unlike for other capital investment made between rate cases, ComEd would recover the carrying cost on capital investment made in SMP facilities between rate cases. Transcript ("Tr.") 418. This significantly shifts risk to ratepayers. The SEA rider likewise would shift risk for all storm expense to ratepayers. AG/CUB Ex. 4.0 (Brosch rebuttal), p. 49. Given that SMP investment could be substantial ($1 billion or more[3]), to the extent the Commission approves the SMP rider or SEA rider, this decreased risk to ComEd should be reflected in a lower allowed return on equity.

VII. NEW RIDERS

A. Overview

Members of the Commercial Group have operations across the United States and have noticed an increase in applications by utilities for rider recovery of various costs. As mentioned above, such rider recovery mechanisms shift risk of recovery of costs between rate cases from the utility to ratepayers. Accordingly, riders should only be approved in extreme situations pursuant to established legal standards. Riders SMP and SEA, as currently formulated, do not meet these standards.

B. Rider SMP

The Commercial Group does not support ComEd's SMP proposal as described in this case. Under the SMP, ComEd would recover $1 billion (or more) outside of the normal rate case process whereby utilities recover only their prudently incurred, used and useful utility costs. These fundamental cost recovery requirements protect ratepayers from excessive costs for facilities that are not necessary for utility service. ComEd admits that its SMP investment may

[3] Witness Clair for ComEd stated that advanced metering costs alone could be $1 billion. ComEd Ex. 23.0, p. 7, line 154.

not be necessary to provide standard electric service. Tr. 230-31. Therefore, if recovery of admittedly discretionary SMP costs is to be allowed, more administrative oversight would be required to ensure that ratepayers do not overpay for utility service. However, AG/CUB and IIEC correctly point out the administrative difficulty of SMP proceedings separate from rate cases. It is expensive and cumbersome enough for intervenors to hire consultants and attorneys for rate cases. Expecting them to do so for additional SMP rider proceedings is not realistic. See IIEC Ex. 5.0 (Stephens rebuttal), p. 23. Thus, intervenor input would effectively be eliminated from a significant portion of capital costs, costs that by their nature require more, not less, oversight.

Not only should the SMP proposal be rejected for the above-stated reasons, ComEd has withdrawn from consideration in this proceeding any specific SMP projects. Without SMP costs, approving the SMP as a cost recovery mechanism is a moot issue. This also requires rejection of the SMP proposal.

For a discussion of SMP rate design, please see Section IX.H (Other Issues) below.

C. Rider SEA

Illinois is not a hurricane prone state like Florida or Louisiana so there is less need for a storm expense rider in Illinois than there may be in other states. The Commercial Group agrees with Mr. Brosch that the SEA mechanism would shift all storm restoration risks to ratepayers. AG/CUB Ex. 4.0 (Brosch rebuttal), p. 49. ComEd has not demonstrated the need for such extraordinary relief from standard cost recovery, and therefore, the Commercial Group does not support approval of the SEA rider.

VIII. COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

The Commission made clear in ComEd's last rate case that it "endorsed a simple, non-controversial principle: that costs and expenses should be allocated to and recovered from those who caused costs to be incurred." *Order on Rehearing*, Docket No. 05-0597 (p. 73). ComEd's updated class cost of service study is reliable enough for setting rates although it could be improved. Whatever the CCOS improvements ordered by the Commission, <u>all CCOS studies in evidence in this case show the Medium, Large, and Very Large Load classes providing returns substantially above cost</u>. Thus, there is no dispute that these classes are subsidizing the rest of the system. There also is no reason for these classes to see their above-cost rates increase by the system average. Instead, the Commission should set rates based on the class cost of service, consistent with its simple, non-controversial principle.

B. Uncontested Issues

1. Under all CCOS studies performed in this case, the Medium Load, Large Load, and Very Large Load classes are allocated substantially more costs than ComEd incurs on their behalf, and hence these classes subsidize other classes.

2. A system average rate increase would increase this subsidy.

3. A rate rider based on a percentage of current revenue would further increase this subsidy.

C. Embedded Cost of Service Study Issues

1. Appropriate Study

Mr. Baudino closely examined ComEd's class cost of service study ("CCOS Study") and found it generally reliable. Finding the CCOS Study to be generally reliable does not mean, however, that the study could not be improved. Two needed improvements are differentiation of primary and secondary cost responsibility and the use of a minimum size distribution system study to better classify and allocate certain distribution system costs.

2. Primary/Secondary Split

Witnesses for IIEC, DOE, Kroger, Staff, and the Commercial Group all concur that primary and secondary voltage level costs should be better differentiated. Witness Stowe performed an analysis of a cost study that better differentiated primary and secondary voltage costs. *See* IIEC Ex. 3.0 (Stow direct), p. 25 (Table 7). That study showed that the Very Large Load class provides nearly a 300% return above cost, that the Large Load class returns about 150% of cost, and that the Small and Medium Load classes are above cost. *Id.*, *see also* CG Ex. 2.0 (Baudino rebuttal), p. 6 (Table 1). Rates should be set based on this improvement to ComEd's cost study.

3. Minimum Distribution System

Although the Commission has not adopted a minimum distribution system ("MDS") analysis in recent years, IIEC provided the Commission with important new data and rationale for the MDS, including the fact that utilities incur a minimum amount of cost to employ facilities that comply with technical and safety standards. Such minimum cost does not fluctuate with demand or energy usage differences and therefore should be captured as a customer cost. The Commission should direct ComEd to include such MDS costs as customer costs in any future class cost study. As IIEC witness Stowe demonstrated in his MDS study, proper allocation of MDS costs to customer count instead of demand (and proper differentiation of primary and secondary costs) show that the Small to Very Large Load classes provide returns between 179 percent and 483 percent of cost. IIEC Ex 3.0, p. 49 (Table 8). Rates should be adjusted accordingly so that all classes pay the true cost of their electric service.

4. Average and Peak Methodology

There is no reason to adopt this methodology as it is appropriate for consideration only in allocating generation costs,[4] and this case concerns distribution costs. *Id*. at p. 9, line 10-15.

D. Rate Impact Analysis

Under ComEd's CCOS study, the Small, Medium, Large, and Very Large Load classes pay more than their fair share of costs, i.e., these classes provide a relative return of 29%, 31%, 30%, and 37% above cost, respectively. CG Ex. 2.0, p. 6 (Table 1). <u>Further, all cost studies in evidence show that the Medium, Large, and Very Large Load Classes substantially overpay for electric distribution service.</u> The Small Load class is also above cost in each CCOS study, although to a lesser extent than the Medium, Large, and Very Large Load classes.

E. Interclass Allocation Issues - the Commission should set delivery rates based on cost.

As stated above, in ComEd's last rate case, the Commission "endorsed a simple, non-controversial principle: that costs and expenses should be allocated to and recovered from those who caused costs to be incurred." *Order on Rehearing*, Docket No. 05-0597 (p. 73). Accordingly, ComEd started in this case by matching class revenue requirements to class cost of service. ComEd Ex. 11.0 (Crumrine direct), p. 4, line 84. A number of parties, while stating agreement with this principle, nevertheless have endorsed subsidized instead of cost-based rates. The Commission should stick with its principle – setting class rates at class cost is the fairest method.

[4] There is strong consensus in the industry on this point, including the NARUC manual. Kroger Ex. 2.0 (Higgins rebuttal), pp. 8-10.

1. Across-the-board increase – ComEd commercial customers have already borne a heavy subsidy burden and a system average increase would unfairly add to this subsidy burden.

According to ComEd's witness Crumrine, ComEd's commercial customers may already have provided about one-third of a billion dollars in subsidies the past seven years simply to customers in the three largest load classes.[5] These commercial customers deserve to pay only the cost to serve them[6]; they instead are being asked to pay even higher subsidies to other customers under Staff's across-the-board rate proposal.

As ComEd witness Crumrine testified

> [U]nder this [across-the-board rate increase] approach, the current interclass subsidies would be exacerbated, and there would be no progress toward cost-based rates. Indeed, as rates increase, the subsidies actually become more pronounced.[7]

ComEd Exhibits 32.1 and 45.1 show that the subsidy could rise to a remarkable $63.6 million per year (even before subsidies inherent in the rate riders are added). The results of those exhibits are provided in table form below.

[5] The three largest load classes receive a $44 million per year subsidy in current rates. ComEd Ex. 30.0 (Crumrine rebuttal) p. 47, line 1045. These subsidies have continued at least since 2001. *Id*. p. 47, line 1045. Assuming the subsidies have lasted only seven years, at $44 million per year, the subsidies would amount to $308 million since 2001.

[6] CG Ex. 1.0 (Vite rebuttal), p. 5, lines 91-92.

[7] ComEd Ex. 43.0 (Crumrine surrebuttal), p. 32, line 696.

Subsidies under across-the-board proposal
(revenue in $million per year)

Class	Cost to Serve Class*	Revenue from System Average Increase**	Subsidy***
Small	$230.9	$248.7	$17.8
Medium	$178.1	$189.8	$11.8
Large	$150.6	$161.0	$10.4
Very Large	$249.0	$272.6	$23.6
Total			$63.6

*ComEd Ex. 32.1, column E
**ComEd Ex. 45.1, column J
***Difference between two columns

Obviously, the subsidy amounts are substantial. For example, the same ComEd exhibits show that a whopping 50% of the $47.1 million rate increase for the Very Large Load class would be a subsidy to other classes under a system average increase.[8] Put another way, the $63.6 million subsidy would constitute nearly 20 percent of the entire $355 million revenue increase requested by ComEd.

Staff witness Lazare claimed that "the most reasonable approach would increase existing rates on an equal percentage, across-the-board-basis" and "[a]ny rate design approach that distributes these increases unequally may create feelings of unfairness among those rate payers who are required to absorb above-average increases." To his credit, Mr. Lazare agreed on the stand, however, that a customer already overpaying for electric service would consider it unfair to pay an even higher subsidy (Tr. 1574, line 21) and that setting rates based on cost is a

[8] Compare difference between ComEd Ex. 45.1, p. 2 column J and column D (shows a total Very Large Load across-the-board revenue increase of $47 million) with the difference between ComEd Ex. 45.1, p. 2, column J (total revenue under system average increase = $272.6 million) and ComEd Ex. 32.1, p. 2, column E (ECOSS revenue = $249 million) [shows across-the-board subsidy for Very Large Load would be $23.6 million above cost]. Further, a corrected CCOS study would reveal that these subsidies are much larger!

reasonable rate design method. Tr. 1576, line 11. Witness Crumrine pointed out (Ex. 30.0, p. 49, line 1110) that those paying the subsidy include small and medium businesses, schools, churches, and homeless shelters. It is hard to see why it is fair or good public policy for retail businesses, schools, churches, and homeless shelters to continue to subsidize other customers, and it is unfair for these entities to bear an even larger subsidy burden just so rates can increase by the system average.

Some parties tried to minimize the subsidy so as to justify a handout to a favored customer group. As shown above, however, the one-quarter of a billion dollars in subsidies the next four years alone[9] can hardly be called minimal. Indeed, under the across-the-board proposal, a full 50 cents of every $1 of the rate increase the Very Large Load class could pay would be nothing but a subsidy to other customer classes. It is time for the Commission to set rates based on cost.

2. Other Rate Moderation/Mitigation Proposals - to the extent there is a deviation from cost to accomplish some societal benefit, such subsidy should be spread as broadly as possible.

Rates should be set on cost, but to the extent the Commission wants to make an exception for public policy reason, the Commission should spread such subsidy responsibility as broadly as possible, particularly to those customers who are paying below cost rates. What is patently unfair about the various rate design subsidy/"mitigation" proposals is that they rely on commercial and public interest customers to pay the subsidy, even though those customers have been doing so for years. <u>Why should a church, homeless shelter, or school be less favored than a train or plane or federal government facility?</u> <u>Why should a small industrial customer or small commercial customer be less favored than a large industrial customer?</u> As Witness Vite pointed

[9] $63.6 million x 4 years = $252 million

out, retail businesses already subsidize public transport in the Chicago area through taxes. Tr. 1673-74. Nevertheless, CTA and Metra ask for more. Fifty percent of revenues to local governments come from sales tax revenue generated by retailers. CG Ex. 1.0 (Vite rebuttal), p. 3. Payments by retailers of Personal Property Tax Replacement Income Tax adds more to local government coffers, and retail establishments pay 25 percent of all property taxes levied in Illinois. *Id*. Nevertheless, intervenor groups ask for more. Perhaps these entities deserve a rate subsidy – but not at the expense of retail establishments, churches, homeless centers, and schools.

Only so much revenue can be squeezed from the commercial sector. As retailers are faced with rapidly escalating transportation costs, continuing and even escalating electric service subsidies will cause meat, poultry, milk, produce, pharmacy, and other consumer good prices to rise, which would only burden Illinois families. *Id*. at 6. Subsidies to achieve public policy goals are best left to the legislature,[10] but if the Commission wants to accomplish societal benefits through electric rate subsidies, the burden of subsidies should be spread as broadly as possible, particularly to customer classes that are below cost. This is the fairest method.

F. Supply vs. Delivery Services Allocation Issues

REACT raised important issues concerning the proper allocation and recovery of supply-related costs. REACT witness Merola pointed out that other utilities have allocated supply/administrative costs two to three times as high as ComEd. REACT Ex. 7.0 (Merola rebuttal), p. 25, line 29 (Table). While ComEd allocated all or nearly all customer information costs to the delivery function, ComEd witness Clair admitted all the types of customer care costs

[10] As Mr. Vite put it: "[W]e are not interested in paying for someone else's use [of] electricity. If people want to have a tax increase, let's put it up there on the board and vote on it, not have hidden taxes on the cost of Corn Flakes." Tr. 1674, lines 14-18.

ComEd currently has would be incurred even if ComEd provide no delivery service. Tr. 282, lines 17-19. Therefore, a significant portion of such costs should be allocated to the supply function. Given that ComEd has the burden of proof to show it has properly allocated costs, in the absence of any allocation of such costs to the supply function, the Commission should adopt witness Merola's recommendation to remove $64.86 million of Customer Care Costs from distribution rates. REACT Ex. 7.0, p. 21, line 452.

IX. RATE DESIGN

F. Recovery of Supply Related Costs

As discussed in Section VIII.F above, supply-related costs should be recovered in supply and not distribution rates.

H. Other Issues

To the extent the Commission approves the SMP rider, the Commission must ensure that SMP rate design is fair. During the course of this proceeding, ComEd responded to the concerns of several customer groups and proposed a change in recovery of allowed SMP costs from an equal per KWH charge to all classes to a charge based on a percentage of a customer's bill. If underlying base rates are set at cost this would be a fair way to set an SMP charge. However, as Mr. Crumrine admitted, to the extent base rates contain an above-cost rate subsidy, the percentage SMP charge would increase that rate subsidy burden. Tr. 1124, line 16 through 1125, line 1. Therefore, the Commission should first set cost-based rates and then set a percentage bill allocation of any SMP costs.

X. REVENUES

XI. OTHER

XII. CONCLUSION

WHEREFORE, the Commercial Group respectfully requests that the Commission order the relief requested herein.

Respectfully submitted this 29th day of May, 2008.

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