**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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

**BRIEF ON EXCEPTIONS OF THE COMMERCIAL GROUP**

Now comes the Commercial Group (or "CG") and hereby files its Brief on Exceptions in this proceeding pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the "Commission").

## I. INTRODUCTION

Composed of the Illinois Retail Merchants Association ("IRMA"), Best Buy Co., Inc., J.C. Penney Corporation, Inc., Macy's, Inc., Safeway, Inc., and Wal-Mart Stores, Inc., 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. Unfortunately, they are being burdened with electric rates that greatly exceed costs and the Proposed Order ("P.O.") would add to this heavy subsidy burden. Therefore, the Commercial Group seeks relief from the Commission not only for commercial retailers but for the schools, homeless shelters, churches and smaller industrial customers that comprise the Medium, Large and Very Large Load classes.

## II. EXCEPTIONS

The Commercial Group takes exception to:

1) both parts of Findings of Fact #13 (P.O. p.228), which states: "the Company's ECOSS is rejected as a basis for setting rates in this proceeding; an equal rate increase should be applied to all rate classes"; and

2) the finding at the end of a section on "Regional Delivery Service Rates" directing ComEd in the next rate case to "incorporate usage in the assignment of these [i.e., customer] costs to all rate classes in its next rate case." P.O. p.204.

## III. ARGUMENT

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). The Proposed Order abandons this principle. Instead, the Administrative Law Judges ("ALJs") would add to the enormous subsidy burden that homeless shelters, schools, commercial and small industrial customers have borne for years and do so to benefit customer classes that already are the most subsidized classes on ComEd's system. The ALJs ignore the fact that <u>all class cost studies in evidence in this case show the Medium, Large, and Very Large Load classes providing returns substantially above cost</u>. CG Ex. 2.0 (Baudino rebuttal), p. 6. Further, if the errors that the ALJs find in ComEd's ECOSS were corrected, the subsidy burden of the Large Load and Very Large Load classes would be shown to be even greater. *Id*. Therefore, the Proposed Order's remedy of increasing rates across-the-board for an allegedly faulty class cost study is plainly in error. This error would load even more costs on customers that do not cause the costs to be incurred, contrary to the Commission's fundamental cost principle. Instead, rates for these three classes should be set at the most conservative cost analysis presented in this case for these classes, which happens to be ComEd's ECOSS.

**EXCEPTION 1: The Proposed Order Errs by Rejecting ComEd's ECOSS For Any Cost Purpose**

ComEd's ECOSS is substantially similar to prior cost studies the Commission has adopted in recent ComEd rate cases and reliable enough for setting rates in this rate case.

Defining and allocating costs to classes of customers is not an exact science. That different utility commissions take different approaches to minimal distribution system ("MDS") costs is one example of how there is a range of cost studies that can provide a reasonable basis for setting rates. The ALJs determined that ComEd's ECOSS was correct in large part. For example, the ECOSS was expressly determined to be correct:

- in not using an MDS approach (Proposed Order, p. 201)
- in not using an Average and Peak method (*Id*.); and
- for not conducting audits of individual large customer costs (*Id*. at 202).

In addition, there are a wide range of other assumptions and principles that ComEd used in its ECOSS that were not challenged by any party and not found to be faulty by the ALJs. So also, ComEd performed its ECOSS in this current 07-0566 proceeding in a manner substantially similar to the ECOSS the Commission adopted in ComEd Docket Nos. 99-0117, 01-0423, and 05-0597.[1] Commercial Group witness Mr. Richard Baudino has broad experience in rate cases across the country. He closely examined ComEd's ECOSS, going "through all the pages of it" (Tr. 1657, line 7) and found that although it could be improved, the ECOSS was performed reasonably. Tr. 1629, line 20.

[1] ComEd Ex. 13.0 (Heintz direct), p. 6.

This is similar to the situation in ComEd's recent rate cases where the Commission found that ComEd's ECOSS needed some improvement but the Commission still relied on the ECOSS for setting the majority of class rates. For example, in Docket 99-0117 (8/26/99 Order, p. 57), the Commission held that "ComEd's embedded cost study was properly designed, performed, and revised." In Docket 01-0423 (Final Order, p. 138), the Commission found that ComEd's ECOSS was "property performed." Similarly, in the last ComEd rate case, the Commission set separate rates for the largest load customers out of concern over large rate increases and over whether ECOSS adequately captured the cost of serving those customers. Docket 05-0597 Final Order, p.196. The Commission also rejected the inclusion of standard voltage customers in a voltage discount with 69kV and above customers in the High Voltage class. *Id.* at 199. Notwithstanding these corrections to ComEd's cost methodology, the Commission concluded: "Except to the extent necessary to comply with other findings in this Order, the Commission adopts ComEd's ECOSS for purposes of designing rates in this proceeding." *Id.* at 159. Thus, instead of abandoning its cost principles, the Commission adjusted the rates of the largest load classes for an ECOSS anomaly with which the Commission was concerned but otherwise set rates based on ECOSS. In doing so, the Commission specifically noted that "ComEd's ECOSS appears to have been performed in a manner similar to the study utilized for certain purposes in Docket 01-0423. *Id.*

Therefore, having found the ECOSS generally reliable in the past, it is more reasonable for the Commission to set rates based on the substantially similar ECOSS in this current case (as corrected) than to throw out the entire ECOSS and increase rates (with no cost basis) across-the-board.

**EXCEPTION 2: The ALJs Erred by Applying an Across-the-Board Increase That Ignores the Enormous Cost Burden That Would Be Imposed on Homeless Shelters, Churches, Schools, Commercials and Small Industrials.**

Even if the ECOSS were flawed for the reasons stated in the Proposed Order, the ALJs erred by increasing the rates of the Medium, Large and Very Large Load classes "across-the-board" because correcting the class cost studies for these "flaws" would show that the Large and Very Large Load classes pay rates that are even further above cost, while the Medium Load class remains above cost as well.

With respect to class costs, the key flaw found by the ALJs in ComEd's ECOSS is that it did "not separat[e] and properly allocat[e] primary and secondary service costs."[2] However, as shown by IIEC's primary/secondary voltage study (results reproduced in the table on the following page), correcting this deficiency shows that Large Load and Extra Large Load rates contain even larger subsidies than under ComEd's ECOSS.

[2] The ALJs also determined correctly that ComEd should assign a reasonable percentage of customer care costs to supply only customers. P.O., p. 200. However, this is not a reason to find the ECOSS deficient for allocating distribution costs to classes because the supply vs. distribution issue involves the functionalization step of a cost study where costs are applied to functional categories such as generation, transmission or distribution, well before distribution costs are allocated to classes. *See* ComEd Ex. 13.0 (Heintz direct), p. 5, line 104. This is another plain error in the analysis by the ALJs.

| Comparison of Class Relative Rates of Return<br>Source: CG Ex. 2.0 (Baudino rebuttal), p. 6 Table 1. | ComEd ECOSS | IIEC correct'g Prim/Sec Volt. |
|---|---|---|
| Single Family w/o Space Heating | 0.92 | 0.73 |
| Multi-Family w/o Space Heating | 0.44 | 0.28 |
| Single Family w/ Space heating | 1.13 | 0.88 |
| Multi-Family w/ Space Heating | 0.74 | 0.51 |
| Watt Hour | 1.46 | 1.22 |
| Small Load | 1.29 | 1.04 |
| Medium Load | 1.31 | 1.19 |
| **Large Load** | **1.30** | **1.47** |
| **Very Large Load** | **1.37** | **2.74** |
| Extra Large Load | -0.51 | -0.04 |
| High Voltage Up to 10Mw | -0.82 | 0.15 |
| High Voltage Over 10 Mw | -0.97 | -0.69 |
| Fixture-Included Lighting | 1.54 | 1.51 |
| Dusk to Dawn Lighting | 1.16 | 0.86 |
| General Lighting | 1.17 | 0.93 |
| Railroad | -0.35 | 0.20 |

With 1.0 representing rates equal to costs and relative returns greater than 1.0 signifying rates above cost, this table shows that Medium, Large and Very Large load class rates are all above cost in the ComEd ECOSS. Further, by correcting the primary/secondary deficiency as recommended in the Proposed Order, the Large Load class relative return increases from 1.30 to 1.47, and the Very Large Load class relative return increases from 1.37 to a whopping 2.47. The Very Large Load class rates are by far the most above-cost of any customer class in the corrected study, followed by the Large Load class and Fixture-Included Lighting. Notably, the customer classes that the ALJs found to be harmed by the primary/secondary cost deficiency – the Extra Large, High Voltage and Railroad classes (P.O., pp. 199-200), <u>remain the most subsidized, below-cost classes</u> providing returns of -0.04 (Extra Large), 0.15 and -0.69 (High Voltage) and 0.20 (Railroad), according to the corrected IIEC study.

To make matters worse, the subsidy already embedded in above-cost rates would be increased further under the Proposed Order's "across-the-board" increase. 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.[3]

Under the ComEd ECOSS, a whopping 50% of the rate increase for the Very Large Load class would be a subsidy to other classes under a system average increase.[4] Under a cost study corrected for the Proposed Order's primary/secondary deficiency finding, the subsidy would grow even larger; <u>perhaps 100% of the rate increase for the Very Large Load class would be nothing more than a rate subsidy to other classes</u>!

Even more unreasonable, this huge subsidy burden increase is a "remedy" for the most subsidized customer classes under the corrected study.[5] This result would turn on its head the Commission's principles that rates should follow cost. If the Commission believes the ECOSS is deficient because of the primary/secondary cost issue and that affected rates should increase equally, the more appropriate remedy is to set the Medium, Large and Very Large Load class rates based on the corrected IIEC primary/secondary study, or in the alternative, upon the more

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

[4] 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].

[5] The Proposed Order also adopts an erroneous subjective standard for setting rates based on which "group of customers can best afford the biggest increase" in delivery services costs. P.O., p. 205. It is unclear how a class's relative ability to absorb or afford rate increases could be measured in a fair, meaningful and transparent manner. Perhaps a class's inability to organize and advocate with regards to rate increases would be used as "evidence" of an ability to afford a rate increase. Of course, classes with more ratepayers, each of which individually may have fewer dollars at stake, might not organize as well as customer groups with very high individual load. In any event, ability to afford rate increases (or willingness and ability to organize and advocate) is not a fair, objective way to set rates; cost is the fairest basis for setting rates.

conservative cost measure, ComEd's ECOSS, and increase all other rates across-the-board. This at least would grant relief to the customers bearing the highest subsidy burden. How is it fair and reasonable for a church, homeless shelter, school, small industrial customer or commercial customer to subsidize all other customers and see that subsidy burden grow even larger?

**EXCEPTION 3: The Proposed Order Errs in Directing ComEd to Allocate Customer Costs Based on Usage**

Tucked away at the end of a section on "Regional Delivery Service Rates" is a finding that ComEd in the next rate case should "incorporate usage in the assignment of these costs to all rate classes in its next rate case." P.O. p. 204. The entire basis for this finding is: "Customer costs are about 20% of the total cost of service" and "residential customers currently pay 80% of them." Having rejected the calculation of minimum distribution system costs as being customer costs (contrary to the practice of many utility commissions), the Proposed Order goes the other direction by ordering ComEd to allocate customer costs on the basis of usage, apparently simply because residential classes have a large number of customers. Not only does this have little or nothing to do with "regional delivery service rates," the Commission rejected a similar proposal by Staff in the last rate case, which would have reduced customer costs by 20% simply to "address the environmental impact related to the production of energy." 05-0597 Final Order, p.204. The Commission once again should reject this proposed conclusion, which is not based on reasoned decision-making or cost principles.

## IV. SPECIFIC LANGUAGE FOR ADOPTION

Consistent with the above exceptions, the Commercial Group respectfully requests that:

**Exceptions 1 and 2**

Findings and Ordering Paragraph 13 of the Proposed Order be replaced as follows:

~~(13): the Company's ECOSS is rejected as a basis for setting rates in this proceeding; an equal rate increase should be applied to all rate classes.~~

(13) although the Company's ECOSS can use some improvements (as determined in this Order) the results are reasonable enough and the Commission adopts ComEd's ECOSS as a basis for setting rates in this proceeding.

OR IN THE ALTERNATIVE,

(13) although the Company's ECOSS can use some improvements (as determined in this Order) the results are reasonable enough and the Commission adopts ComEd's ECOSS as a basis for setting rates in this proceeding; the rates of the Medium, Large, and Very Large Load and Fixture-Included Lighting classes should be set based on ComEd's ECOSS with an equal rate increase applied to all other rate classes.

**Exception 3**

The Commission should also replace the following language on p. 204 of the Proposed Order:

> ~~The Commission agrees. Customer costs are about 20% of the total cost of service. Because the allocation of customer costs, installation costs, and customer information costs are assigned on the number of customers, residential customers currently pay 80% of them. These costs should be attributed as far as is practical to the cost causers rather than disproportionately to ComEd's residential customer base. Under proposed rates the residential customer charge alone will be about $10 per month regardless of usage. These costs are in some measure related to usage. The Commission directs ComEd to incorporate usage in the assignment of these costs to all rate classes in its next rate case.~~

with:

> Having reviewed the record in its entirety, the Commission concludes that customer costs should be assigned to classes based on the weighted number of customers in each class. To the extent that ComEd desires to design rates within a class in its next rate case so as to recover some of these costs based on the usage of individual customers, the Company is free to do so.

## V. CONCLUSION

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

Respectfully submitted this 24th day of July, 2008.

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