

**STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION,	§	
On its own motion	§	
	§	Docket No. 08-0532
v.	§	
	§	
COMMONWEALTH EDISION COMPANY,	§	
Investigation of rate design pursuant	§	
To Section 9-250 of the Public Utilities Act	§	

**CHICAGO TRANSIT AUTHORITY'S
INITIAL HEARINGS BRIEF**

- I. ComEd's filing fails to remedy the substantial deficiencies in its revised cost of service study presented in this Docket.**
 - A. ComEd's ECOSS, if implemented, would increase the Railroad Class's rates by 50 per cent.**

The Illinois Commerce Commission (ICC or Commission) initiated this Docket as a result of the finding in Docket No. 07-0566 that Commonwealth Edison Company's (ComEd) cost of service study contained "substantial deficiencies" that rendered "it problematic for purposes of rate setting." Final Order in Docket No. 07-0566 at 213. The record in this Docket demonstrates that ComEd again has presented a study with substantial deficiencies that must be rejected by this Commission.

In Docket No. 07-0566, ComEd's last general rate case, the Chicago Transit Authority (CTA) objected to ComEd's embedded cost of service study (ECOSS) because, among other deficiencies, the ECOSS failed to differentiate between primary and secondary voltage levels. The Commission agreed with the CTA and others regarding the primary/secondary split, stating that the ECOSS was "deficient in not separating and properly allocating primary and secondary service costs." Final Order in Docket No. 07-0566 at 207. In an attempt to rectify the

deficiency, the Commission opened this investigative docket and ordered ComEd to “provide an updated cost of service study that (1) differentiates between primary and secondary voltage levels.” Initiating Order, Docket No. 08-0532 at 2.

The updated study filed by ComEd in this Docket continues to be materially deficient. If the study is adopted and applied to ComEd’s current revenue requirements, the charges to the Railroad Class will increase annually by over 50 per cent, or some \$2.5 million. Such an increase is contrary to both accepted rate setting principles and established Commission public policy regarding how costs are allocated to public mass transit agencies.

ComEd’s study is generally deficient because ComEd uses “engineering judgments” in place of actual data and arbitrarily picks 4 kV as the demarcation between primary and secondary voltages. ICC Staff witness Peter Lazare found that ComEd should refine its data before the next ComEd rate case “through the use of direct observations to test the engineering judgments.” ICC Staff Ex. 2.0 at 9/197-198. Mr. Lazare also found that it was difficult to evaluate the size of the secondary system “given the lack of information available” from ComEd. ICC Staff Ex. 2.0 at 8/169.

B. ComEd’s ECOSS fails to address the Commission’s policy statements regarding how the Railroad Class rates are set.

In addition to the general deficiencies found in ComEd’s ECOSS, the study is also deficient as applied to the Railroad Class. The ECOSS fails to take into account the Commission’s frequently articulated public policy directives relating to the Railroad Class. In addition, ComEd’s ECOSS erroneously allocates costs for delivery facilities below 12.5 kV, the voltage level at which the Railroad Class takes delivery, and possibly for some delivery facilities at 34.5kV, which have been built primarily for the rural parts of the ComEd service territory.

Since ComEd has admitted that voltages below 12.5 kV cannot support the CTA load, the CTA should not be required to pay for these facilities in rates.

For these reasons, the Commission should reject ComEd proposed ECOSS.

II. The Railroad Class has unique public policy issues that the ComEd proposal does not address.

The CTA and the Northeast Illinois Regional Commuter Railroad Corp. d/b/a Metra, are the only members of ComEd's Railroad Delivery Service Class. They take power in the same manner and provide public benefits through mass transit. The CTA provides mass transit in the City of Chicago and 40 surrounding suburbs. It is the second largest public transportation system in North America. CTA/Metra Joint Ex. 1.0 at 4/80-81.

A. The ICC has articulated several times its concern that public policy issues must be addressed before changes are made to the Railroad Class's rates.

In the two most recent ComEd general rate cases, and most recently in ComEd's Advanced Metering Infrastructure docket, this Commission found there are public policy considerations that must be addressed by ComEd when setting rates for the Railroad Class. In Docket No. 05-0597, ComEd's general rate case, the Commission stated,

[The Commission] must consider the public policy implications of establishing delivery rates that encourage energy conservation and encourage electric usage during off peak periods. While the Commission is not prepared to disregard cost of service, the Commission believes that important public policy considerations cannot be ignored.

In addition, the Commission must consider the potential adverse impact of utility rate increases on entities that provide public transportation. The Commission desires to encourage the efficient use of energy and conservation of scarce resources. The conclusions reached in this portion of the Order are, in the Commission's view, important policy issues and are in the public's best interest.

Docket No. 05-0597, Final Order at 189-190.

In ComEd's next general rate case, the Commission affirmed its public policy:

Our commitment to a policy of encouraging conservation, efficient energy use and environmental benefits of affordable public transportation has not lessened since the July 26, 2006 Final Order in Docket 05-0597. We find that the modified rate proposal [of ComEd] fails to comport with our explicit direction in the last rate case to avoid rate shock to the railroad class. Docket No. 05-0597, Order at 190. We direct ComEd to take this policy directive into account in preparing for the next rate case.

Docket No. 07-0566, Final Order at 223.

Most recently in Docket No. 09-0263, the Commission reinforced this policy directive concerning whether the Railroad Class should pay for AMI deployment:

With regard to imposing the cost of this pilot program upon the Railroad Class, (the CTA/Metra) this Commission has previously rejected imposition of those costs in rate cases upon the Railroad Class. . . Additionally, imposing more costs upon these two entities runs counter to this Commission's policy of encouraging the use of public transportation for environmental reasons. Therefore, the Railroad Class shall not be included in any Rider recovery for the cost of the project that is the subject of this docket.

We are not basing this conclusion solely upon what was done in previous ComEd rate cases. Rather, we are recognizing this Commission's general policy of encouraging public transportation for environmental reasons, and myriad other obvious public policy reasons, such as, the fact that imposing costs on public transportation providers can limit these providers' ability to provide this transportation.

Docket No. 09-0263, Final Order at 43.

The proposed ECOSS ignores these Commission mandates.

B. The Railroad Class members receive service in a uniform manner.

In addition to being vested with a public purpose, the two members of the Railroad Class are also unique in the fact that they take service at uniform voltage levels and in a similar

manner.¹ The power delivered is for traction power, that is, the electricity used to power the CTA's rapid transit rail cars and Metra's electric train service district. CTA/Metra Joint Ex. 1.0 at 2/45-3/49. The traction power for the CTA is delivered by ComEd at 12.5 kV AC using two separate lines to the CTA's points of supply located at the 61 CTA traction power substations, where the power is remotely metered. At the CTA traction power substations, the power is transformed from AC to DC and then sent out on the CTA's third rail to power its rapid transit cars. CTA/Metra Joint Ex. 1.0 at 3. All of the facilities from the ComEd point of delivery are owned and operated by the CTA. As a train moves on the line, power shifts from one traction power substation to another. The CTA monitors the power and energy using its own SCADA system. Metra/CTA Joint Ex. 2.0 at 2/32-33.

In Docket No. 07-0566, ComEd was ordered to conduct specific load flow studies to determine how ComEd uses the traction power substations of the CTA and Metra. ("The Commission directs ComEd to consult with the CTA and Metra to conduct an appropriate study to determine whether and (if so), how much ComEd uses or needs Railroad Class facilities to service other customers. The results and conclusions of this study should be presented to the Commission in ComEd's next rate case." Final Order Docket No. 07-0566 at 220.) This study is ongoing. Metra/CTA Joint Ex. 2.0 at 2/38-41.

Thus, not only are there public policy considerations for the Railroad Class, but also the operating characteristics of the class's two members must be taken into account in determining the cost of service for the class.

¹ In this Docket, the CTA offered testimony only for traction power service, not the other electric needs of the CTA. Metra/CTA Joint Ex. 2.0 at 2/26-29.

III. ComEd's revised ECOSS artificially shifts secondary costs to primary customers.

ComEd's revised ECOSS in this Docket purports to distinguish between primary and secondary delivery but fails in that attempt. The Illinois Industrial Energy Consumers (IIEC) witnesses testified as to several material deficiencies in ComEd's ECOSS. These deficiencies caused more costs to be artificially, and inappropriately, shifted to the primary voltage levels. In addition, CTA/Metra witness Mr. Bachman noted the following flaws:

- ComEd did not review other utilities' cost of service results for comparison purposes.
- ComEd did not perform a physical review of a statistically drawn sample of its overhead and underground circuits in order to establish the veracity of its engineering assumptions within the revised ECOSS.
- ComEd did not justify the drawing of the line between primary and secondary voltage levels at the level it chose. There are indications that the 4 kV system could be the backbone of the secondary voltage system, at least for the overhead system, and thus should not have been included in the primary system.
- It may be appropriate for an additional category of secondary system cost, that being primary voltage level performing secondary voltage level functions.

CTA/Metra Joint Ex. 1.0 at 5/98-111.

These flaws were not addressed by ComEd.

IV. Including 4 kV and, possibly, 34.5 kV costs in the Railroad Class means that the public transportation agencies will pay for facilities not used or useful for service to them.

The problems with the ECOSS are magnified for the Railroad Class since ComEd includes facilities below 12.5 kV in its proposed charges to the Railroad Class. This is a fundamental and fatal flaw in determining the cost of service for the Railroad Class using the ComEd proposed ECOSS. A proper ECOSS for the Railroad Class would include only costs associated with 12.5 kV and above. By properly excluding costs below 12.5 kV “in the allocation to the Railroad Class, most, if not all, of the flaws in the ECOSS in regard to the Railroad Class are eliminated.” CTA/Metra Joint Ex. 1.0 at 5/113-114.

In addition, ComEd witness Mr. Alongi raised the issue as to whether it is proper to include the 34.5 kV system in costs allocated to the Railroad Class. He testified that the 34.5 kV system is “used to distribute electricity longer distances than—and more power over those lines than the 12 kV or the 4 kV. . . And if I could add, primarily in rural areas.” Tr. at 591/6-12. The Railroad Class traction substation loads are not located in the primarily rural areas of the ComEd service territory to which Mr. Alongi refers, so it may not be appropriate to include these lines when determining costs to serve the Railroad Class.

ComEd attempts to argue that it is too much trouble to determine the proper costs for the Railroad Class and it would not be “equitable to eliminate all such costs associated with voltages under 12 kV from the costs allocated to the Railroad Class.” ComEd Ex. 6.0 at 63/1474-75. What ComEd’s Mr. Alongi tries to ignore is the fact that ComEd’s 4 kV primary distribution system “cannot support or back up” the 12.5 kV system from which the CTA takes service. CTA/Metra Joint Ex. 1.1, Page 1 of 3, ComEd Response to CTA Data Request 2.02(c) and his own answers during cross examination:

Q. Now, am I correct that the 4 kV power distribution systems cannot support or back up the 12.5 kV system of ComEd?

A. I believe there was a data request that answered that question, and as I recall, the answer was no.

Q. No, it could not back it up?

A. Correct.

Q. Currently, to your knowledge, are there any 4 kV facilities that provide power for traction power to the CTA?

A. Not to my knowledge.

Tr. at 565/3-14.

The real inequity is ComEd's failure to eliminate the 4 kV costs from the Railroad Class's rates. Leaving in such costs is neither equitable nor proper.

As noted above, as a result of the last ComEd rate case, the ICC ordered ComEd to perform a study to determine how ComEd uses the CTA's traction power substations. Mr. Alongi has reviewed the load flows that are part of the ongoing study. As part of the ongoing study, ComEd has identified the particular circuits and facilities used to feed the CTA traction power substations. Tr. at 570/15-19. As a result, the specific facilities used have been identified and can be used to determine the cost of service to the CTA traction power substations. In addition, Mr. Alongi's review of the load flows found no load flow where a 4 kV circuit was used to serve a CTA traction power substation. Tr. at 571/19-572/7. This confirms CTA/Metra witness Mr. Bachman's view that since the 4 kV facilities are not used to serve the CTA load, the 4kV facilities must be eliminated from any cost of service allocation to the Railroad Class.

Moreover, ComEd's tariffs themselves provide for specifically identifying the costs to serve the Railroad Class. Rider NS specifically calls out the Railroad Class as falling under the Rider. It provides a formula for determining the cost for "nonstandard services and facilities;"

that is, the very lines and facilities to the CTA traction power substation that Mr. Alongi and ComEd claim they cannot identify. If the costs can be determined for purposes of charging the CTA under Rider NS, then the facilities certainly can be identified for purposes of conducting a proper cost allocation to the Railroad Class.

Mr. Bachman testified that the uniform characteristics of the Railroad Class members make it possible for ComEd “to refine the ECOSS to assure that there is full cost recognition that no 4kV distribution system costs are allocated to the Railroad Delivery Class of Service.” Metra/CTA Joint Ex. 2.0 at 5/93-94.

In addition, based on Mr. Alongi’s admission, stated above, the 34.5 kV system should be examined for exclusion from the costs allocated to the Railroad Class.

V. The Commission should not give ComEd a free ride to ignore the articulated public policy mandates relating to the Railroad Class.

ComEd not only ignored cost allocation principles in assigning inappropriate costs to the Railroad Class, but also ComEd ignored the repeated mandate of this Commission concerning public policy considerations in preparing the cost of service for the Railroad Class. This Commission has stated that there are valid public policy considerations that must be followed by ComEd in determining the Railroad Class’s rates. ComEd has ignored those Commission statements once again. ComEd witness Mr. Hemphill admitted that he was aware of the Commission’s mandate and that he had “conversations” with his staff “regarding rail. Yet, due to a lot of other things that get on our schedules, we haven’t done that yet. So we never really sat down and talked about—explicitly talked about addressing that part of that order.” Tr. at 304/17-22. Mr. Hemphill said “other things . . . get in our way in a normal week, normal

months” to prevent ComEd from complying with the Commission’s order regarding public policy considerations for the Railroad Class. Tr. at 305/1-4.

If the Commission were to accept the ECOSS and apply it to the current revenue requirement, it would be permitting ComEd’s charges to the Railroad Class to increase by 50 per cent, to \$7.5 million from \$4.9 million, simply because ComEd finds that other things get in the way of compliance with the ICC’s orders regarding the Railroad.

VI. ComEd’s ECOSS must be rejected.

The CTA believes the Commission should reject ComEd’s revised ECOSS filed in this Docket. The Commission should order that ComEd prepare an ECOSS that excludes all 4 kV facilities when allocating costs to the Railroad Class. Further, in light of Mr. Alongi’s statements concerning the nature of the 34.5 kV system, ComEd should be ordered to provide adequate documentation and justification as to why any of the primarily rural 34.5 kV system should be allocated to the Railroad Class.

In the alternative, if the Commission accepts ICC Staff witness Mr. Lazare’s proposal to conduct yet another workshop on the ECOSS, the scope of the workshop should include eliminating all costs associated with ComEd’s 4 kV facilities and, possibly, ComEd’s 34.5 kV facilities from any costs allocated to the Railroad Class.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Chicago Transit Authority's Initial Hearings Brief has been sent via electronic means to the service list in this docket on this 20th day of November 2009.

_____/rcb/_____
Richard C. Balough