

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION,)	
On Its Own Motion)	
)	Docket 08-0532
COMMONWEALTH EDISON COMPANY)	
Investigation of Rate Design Pursuant to Section)	
9-250 of the Public Utilities Act.)	

METRA’S INITIAL POST HEARING BRIEF

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra (“Metra”), submits this brief as its initial post-hearing brief.

EXECUTIVE SUMMARY

If Commonwealth Edison Company’s (“ComEd”) proposed cost of service study was approved and the Railroad Class’ rates were set based on that study, the Railroad Class’ rates would increase by 50 percent. Furthermore, the cost of electricity delivery services to the Railroad Class would increase by \$2.5 million annually, jumping from a current annual cost of approximately \$5 million to approximately \$7.5 million.

ComEd’s proposed cost of service study contains a known defect. The Railroad Class takes service uniformly and exclusively at 12.5 kV. ComEd’s cost of service study assigns the Railroad Class a share of the costs for that part of ComEd’s distribution facilities carrying voltages of less than 12.5 kV, even though the cost of those facilities is not incurred in providing services to the Railroad Class.

Before ComEd is permitted to pursue an additional \$2.5 million annually in rate revenue from the Railroad Class, both traditional cost causation ratemaking principles and public policy considerations require that ComEd correct the known defect in its cost of service study. Furthermore, the proposed cost of service study is so flawed it should be rejected; ComEd should

be required to participate in a workshop with other parties to identify improvements to the study; and ComEd should be directed to produce a refined cost of service study that corrects known defects for future consideration by the Commission.

I. COMMONWEALTH EDISON COMPANY ONCE AGAIN HAS FAILED TO CONSIDER THE PUBLIC INTEREST CONSIDERATIONS RELATING TO THE RAILROAD CLASS

Metra and the Chicago Transit Authority (“CTA”) are large customers of “ComEd” and are the only two members of the Railroad Class of Service (“Railroad Class”). [Direct Testimony of James G. Bachman, CTA/Metra Joint Ex. 1.0 at 4:85-86.] Metra provides inter-city passenger service in the Chicago metropolitan area and operates the second largest commuter rail system in the country. [*Id.* at 4:81-83.] The CTA provides public transit services, and has been described as the second largest public transit system in the United States. [See *id.* at 4:80-81.]

Only the delivery of electricity used to power the CTA’s electric trains and Metra’s electric train district, commonly referred to as traction power, is billed under the Railroad Class rates. [*Id.* at 3:47-49.] Electricity supplied to the CTA for other purposes or to Metra for that part of its system operated using diesel locomotives is billed at other generally applicable ComEd rates.

In the recent ComEd cases involving the establishment of ComEd rates and charges to the Railroad Class, the Commission has consistently emphasized that there are public interest considerations that must be taken into account in setting the Railroad Class’ rates and charges and has taken ComEd to task for failing to take those public interest considerations into account. For example, in the July 26, 2006 Final Order entered in ComEd’s first general delivery services rate case in Docket 05-0597, the Commission identified a number of public policy considerations

that must be taken into account in setting rates for the Railroad Class, including provision of public transportation for millions of riders, efficient use of energy, and conservation of scarce resources.¹ In the next ComEd rate case, Docket 07-0566, the Commission's Final Order criticized ComEd for failing to adhere to the policy directives required for the Railroad Class in the prior rate case.²

More recently, in Docket 09-0263, involving ComEd's request for approval of the Advanced Metering Infrastructure Pilot Program and related tariffs, ComEd had sought to impose on the Railroad Class part of the costs for smart meters and a related study. The

¹ The Commission emphasized:

The Commission is very concerned that any changes to the provisions of service providers of mass transit will not unduly burden the millions of passengers who depend on public transportation. The Commission also believes that it 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. Accordingly, the Commission finds that minimizing the change to existing contractual terms as necessitated by the post-2006 market changes, as well as avoiding rate shock to the railroad customers, is in the public's best interest.

July 26, 2006 Final Order in Dkt. 05-0597 at 189-90.

² The Commission stated:

Our commitment to a policy of encouraging conservation, efficient energy use and the 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 fails to comport with our explicit direction in the last rate case to avoid rate shock to the railroad class. Docket 05-0597, Order at 190. We direct ComEd to take this policy directive into account in preparing for the next rate case.

September 10, 2008 Final Order in Dkt. 07-0566 at 223.

Commission concluded that imposing any part of such costs on the Railroad Class violated both cost causation principles and public interest considerations:

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. As the CTA and Metra note, the railroads already have systems in place that equate to, or, are indeed superior to, the ones that will be included in the pilot program here. And, this pilot program concerns, primarily, residential customers, with some small businesses also being tested. Imposing the cost of this pilot program upon the CTA and Metra, when they are not the cost-causers, is unfair. 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.

Oct. 14, 2009 Final Order in Dkt. 09-0263 at 43.

As discussed more fully below, the Railroad Class introduced uncontroverted evidence in this case that the two Railroad Class members take service from ComEd exclusively at 12.5 kV. The proposed new ComEd cost of service study draws the line of demarcation between primary and secondary facilities at 4 kV, with anything at 4 kV and over assigned to primary voltage costs and anything under 4 kV assigned to secondary voltage costs. [L. Alongi, Nov. 3, 2009 Tr. at 588:13-21.] That results in assessment of costs to the Railroad Class in the form of higher rates to pay for the cost of facilities carrying voltages under 12.5 kV that the Railroad Class does not use and never will use. For this reason, James Bachman testified on behalf of the Railroad

Class urging that the Commission should not include any costs of the system below 12.5 kV in the Railroad Class cost allocation. [See, e.g., Direct Testimony of James G. Bachman, CTA/Metra Joint Ex. 1.0 at 5:114 to 6:118.]

Ross Hemphill is the Director of Rates and Regulatory Strategy for ComEd. [R. Hemphill, Nov. 2, 2009 Tr. at 298:6.13.] As ComEd's Director of Rates and Regulatory Strategy, his duties and responsibilities include ensuring that ComEd follows the policy directives issued by the Commission. [*Id.* at 298:21 to 299:3.] Furthermore, about a month ago, Mr. Hemphill became responsible for ComEd's cost of service study. [L. Alongi, Nov. 3, 2009 Tr. at 619:3-13.]

Given Mr. Bachman's testimony, and particularly in light of the Commission's consistent policy directive in three prior cases concerning the Railroad Class, ComEd's Director of Rates and Regulatory Strategies should have investigated whether Mr. Bachman's testimony was accurate and whether it was practicable to eliminate the costs of ComEd's under 12.5 kV facilities from the costs assigned to the Railroad Class for ratemaking purposes. Instead, Mr. Hemphill admitted he never discussed Mr. Bachman's testimony with ComEd's Manager of Retail Rates, Lawrence Alongi, who was responsible for developing ComEd's cost of service study. [R. Hemphill, Nov. 2, 2009 Tr. at 297:22 to 298:2.] When Mr. Hemphill was asked why he did not pursue the issue with Mr. Alongi, he testified in effect that time just seemed to slip away from ComEd:

Q. So after you read Mr. Bachman's testimony, given the guidance that you received from the Commission and given your position as the director of rates and regulatory services, why didn't you tell Mr. Alongi to investigate whether or not Mr. Bachman's testimony was correct, and whether there was any means of eliminating from the railroad's costs, assigned costs, the cost of the system under 12.5 kV?

* * * * *

A. . . . [W]e have had conversations regarding rail and the fact that we need to do something in particular to deal with the Commission order 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. The answer why, it probably just the fact that all other things that get in our way in a normal week, normal months in terms of priorities, and we haven't done that yet.

[R. Hemphill, Nov. 2, 2009 Tr. at 303:16 to 304:2 and 304:14 to 305:4.] In fact, Mr. Hemphill admitted: “But in particular, for this docket, I didn’t look at the railroad costs.” [*Id.* at 293:18-19 (emphasis added).]

The hearing testimony clearly demonstrates that the ComEd official charged with implementing Commission policy directives paid no attention whatsoever in this proceeding to the Commission’s policy directives concerning the Railroad Class. There is no evidence in the record that any other ComEd official or employee gave any consideration to those policy directives either.

II. COMED SHOULD BE DIRECTED TO REFINE ITS COST OF SERVICE STUDY TO ENSURE THAT NO COSTS OF ITS SYSTEM BELOW 12.5 KV ARE INCLUDED IN THE RAILROAD CLASS COST ALLOCATION

A. The Unrebutted And Uncontroverted Testimony Is That The Railroad Class Only Takes Service At 12.5 kV

The unrebutted and uncontroverted testimony of James Bachman on behalf of the Railroad Class is that the Railroad Class takes services uniformly from ComEd at 12.5 kV. [See, e.g., J. Bachman Direct Testimony, CTA/Metra Joint Ex. 1.0 at 6:122-25; J. Bachman Rebuttal Testimony, Metra/CTA Joint Ex. 2.0 at 2:29-35; 2:43-45; 3:54-58.] Mr. Bachman’s testimony is based on his own knowledge developed as a result of his participation in the ongoing load flow study that the Commission ordered to be performed in the last ComEd delivery services rate

case, in Docket 07-0566. [See, J. Bachman Rebuttal, Metra/CTA Joint Ex. 2.0 at 2:38-42.] It is also based on ComEd's answers to a data request, CTA/Metra Joint Ex. 1.1, in which ComEd admitted that the 4160 V ComEd distribution system performs no useful function or support for the Railroad Class, which is only served at 12.5 kV. [J. Bachman Direct, CTA/Metra Joint Ex. 1.0 at 6:131-140.]

ComEd's Manager of Retail Rates, Lawrence Alongi, confirmed at the hearing that the 4 kV distribution facilities are irrelevant to the delivery services provided to the Railroad Class:

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

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.

[L. Alongi, Nov. 3, 2009 Tr. at 565:3-10.] In response to Mr. Alongi's prefiled rebuttal testimony in this case, Mr. Bachman emphasized:

This is not theoretical, the Railroad Delivery Class of Service is uniformly connected to the ComEd distribution system at the 12.5 kV voltage level. As a result, any allocation of costs associated with the ComEd 4 kV system to the separate Railroad Delivery Class of Service would be a misallocation of those costs. The Railroad Class of service does not use the ComEd 4 kV system any more then (sic) the Class uses the ComEd Secondary system.

[J. Bachman Rebuttal, CTA/Metra Joint Ex. 2.0 at 3:54-59.]

B. Fundamental Cost Causation Rate Making Principles Require ComEd To Eliminate Facilities Costs Below 12.5 kV From The Railroad Class Cost Based Rates

ComEd's cost of service study policy witness, Mr. Hemphill, testified that "rate design should to the maximum extent possible reflect costs and cost incurrence for all customers in the

class that it serves.” [R. Hemphill Surrebuttal, ComEd Ex. 8.0 at 6:131-32; R. Hemphill, Nov. 2, 2009 Tr. at 294:15-22.] Mr. Hemphill also testified to the converse proposition:

Q. Conversely, you would agree that Commonwealth Edison Company's rate design should to the maximum extent practicable avoid assigning costs to a rate class where those costs were not incurred in providing service to that rate class; is that correct?

A. That's correct.

[R. Hemphill, Nov. 2, 2009 Tr. at 295:13-19.] In a follow up question, Mr. Hemphill was then asked to assume that Mr. Bachman's unrebutted testimony is correct, and that the Railroad Class does not use any part of ComEd's distribution system that is less than 12.5 kV, which he agreed to do. [*Id.* at 296:8-13.]. Mr. Hemphill was asked the following question:

Q. Are you telling me that you disagree with the statement that to the maximum extent practicable, Commonwealth Edison should not charge the railroad class for the cost of any part of the system that is less than 12.5 kV?

[*Id.* at 296:17-21.] After a speaking objection by his counsel, Mr. Hemphill responded:

A. I can easily find my way into a tautology here where if, if it can be definitely proven that there's no cost incurrence or any responsibility, then should those costs be reflected in the rates of that subject customer.

And I guess in that narrow line of question, I would say yes, if, if without a question there is no cost incurrence, nor any responsibility in any way, then to the maximum extent practicable, you should not reflect those costs in the prices.

[*Id.* at 297:11-20.]

In effect, notwithstanding the efforts at obfuscation, Mr. Hemphill acknowledged that if there is indisputable proof that Metra does not benefit from any voltage facilities below 12.5 kV, to the maximum extent practicable the Railroad Class rates should not reflect the costs of ComEd's system involving voltage below 12.5 kV.

ICC Staff witness, Peter Lazare, also testified that under traditional cost causation principles, to the extent practicable a customer class should not be assigned costs that were not incurred in providing service to that class. [Nov. 3, 2009 Tr. at 499:13-17.] In Metra's examination of Mr. Lazare, Mr. Lazare could not remember whether the Railroad Class takes service at 12.5 kV. He was therefore asked to assume that Mr. Bachman's testimony was that both CTA and Metra take service at 12.5 kV, and no other witness has testified to the contrary. [Id. at 498:6-15.] With that assumption, Mr. Lazare then agreed with the same application of cost causation principles to which ComEd's Mr. Hemphill had reluctantly agreed:

Q. And I would assume then that you would also agree that ComEd should not assign to the railroad class the costs of its distribution system carrying voltages less than 12.5 kV to the extent that it's reasonably practicable for ComEd to identify those costs; is that correct?

A. That would be fair.

[Id. at 499:17-24.]

The indisputable evidence is that the Railroad Class does not use or benefit from ComEd's facilities carrying voltages below 12.5 kV. There is no testimony in this record that ComEd cannot, to the maximum extent practicable, differentiate between the costs for voltage facilities below 12.5 kV and those carrying 12.5 kV and up.

Although Mr. Alongi makes a series of subsidiary arguments, he never really addresses the question of whether ComEd can, to the maximum extent practicable, develop more accurate costs for the Railroad Class by eliminating costs assigned for ComEd's under 12.5 kV facilities. First, he suggests that the Railroad Class already is receiving special consideration through consolidated demand, and therefore the Railroad Class is not entitled to any other consideration. [L. Alongi Rebuttal, ComEd Ex. 6.0 at 56:1299-1317.] Consolidated demand for the Railroad

Class, of course, was ordered by the Commission in its Final Order in Docket 05-0597 over ComEd's objection. July 26, 2006 Final Order in Dkt. 05-0597 at 190. That Commission order was based, at least in part, on the fact that consolidated demand was required in the contracts that both Metra and the CTA have with ComEd. *Id.*

Mr. Alongi then suggests that the Railroad Class also enjoys special treatment because they have two line feeds to their substations. [L. Alongi Rebuttal, ComEd Ex. 6.0 at 56:1318 to 57:1337.] That historical structure is mandated by ComEd's contractual agreements with the Railroad Class. It is wholly irrelevant to any of the issues in this proceeding.

Consolidated demand and the structure of the line feeds to the Railroad Class substations were established facts when the Commission issued its orders in Dockets 05-0597, 07-0566 and 09-0263, directing ComEd to take public interest considerations into account in setting the Railroad Class' rates. The fact that ComEd would raise those issues in an effort to suggest that it is not obligated to take public interest considerations into account in this proceeding simply illustrates the depth of ComEd's continued resistance to, and defiance of, the Commission's prior orders.

Mr. Alongi then suggests that it would be inequitable to perform the analysis requested by the Railroad Class:

Moreover, it is not equitable to eliminate all costs associated with voltages under 12 kV from the costs allocated to the Railroad Class. While Mr. Bachman was quick to propose that no costs related to 4 kV facilities in the primary distribution system should be allocated to customers in the Railroad Delivery Class, he refrained from conversely proposing that no costs related to 12 kV facilities in the primary distribution system should be allocated to customers taking service solely from 4 kV facilities or customers served solely from 34 kV facilities.

[L. Alongi Rebuttal, ComEd Ex. 6.0 at 63:1474-1481.] This is just another red herring. There is no evidence that there is any ComEd rate class that takes service exclusively at 4 kV or 34 kV. Moreover, it seems inconceivable there could ever be a rate class taking service exclusively at 4 kV. If there were a rate class taking service exclusively at 34 kV, which is purely hypothetical, then the Railroad Class would agree that rate class should not be assessed costs for the distribution facilities it does not use.

Mr. Alongi also suggests that what the Railroad Class is requesting is a specific cost study. [L. Alongi Corrected Surrebuttal, ComEd Ex. 10.0 C at 14:307-16.] However, at the hearing, Mr. Alongi acknowledged that it was not necessary to perform a specific cost study in order to differentiate between ComEd's distribution facilities providing services below 12.5 kV and those associated with distribution at 12.5 kV and up. [Nov. 3, 2009 Tr. at 589:3-16.]

Finally, Mr. Alongi claims that segregating costs would involve a study within a study, which he testified would be "no small undertaking and would require additional engineering judgments." [L. Alongi Corrected Surrebuttal, ComEd Ex. 10.0 C at 14:301-02.] There is, however, no testimony that such a study cannot be done or how much it would cost.

At bottom, the evidence in the record is that the Railroad Class does not use any of ComEd's distribution facilities below 12.5 kV; it would take some effort to segregate the costs of ComEd's distribution facilities involving voltages below 12.5 kV; and ComEd does not want to do the study. If, as both ComEd's Ross Hemphill and the ICC Staff's Peter Lazare agree, ComEd should not assign to the Railroad Class costs of ComEd's distribution facilities carrying voltages below 12.5 kV to the maximum extent that it is reasonably practicable for ComEd to identify those costs, refusing to do the necessary analysis because it would entail some work that ComEd does not want to do, simply does not satisfy the cost causation principles and standards

supported by both ComEd and ICC Staff witnesses. Moreover, imposing costs on the Railroad Class for facilities it does not use is squarely at odds with the Commission's decision one month ago in Docket 09-0263.

III. PUBLIC INTEREST CONSIDERATIONS ALSO SUPPORT REQUIRING COMED TO ELIMINATE FROM THE COSTS ASSIGNED THE RAILROAD CLASS THE COSTS OF THE DISTRIBUTION SYSTEM BELOW 12.5 kV

If ComEd's proposed cost of service study is approved and ComEd is authorized to set rates for the Railroad Class based on that cost of service study, the immediate effect on the Railroad Class is that its rates will increase by 50 percent and its cost for electricity delivery services will increase by \$2.5 million annually, from a current annual cost of approximately \$5 million to \$7.5 million. [L. Alongi, Nov. 3, 2009 Tr. at 585:22 to 587:9.] If the Commission's prior directives requiring that public interest be considered in setting the Railroad Class' rates are followed, then before ComEd seeks to raise the Railroad Class' rate by 50 percent, or \$2.5 million annually, ComEd should be required to complete the analysis to eliminate from the Railroad Class' revenue requirements cost recovery for costs admittedly not incurred in serving the Railroad Class.

IV. COMED'S PROPOSED COST OF SERVICE STUDY IS INADEQUATE AND SHOULD NOT BE APPROVED

In addition to the defects in ComEd's cost of service study that are unique to the Railroad Class, additional fatal flaws in ComEd's study were the subject of extensive testimony and criticism by IIEC and REACT witnesses, as well as ICC Staff witness, Peter Lazare. As those parties no doubt will discuss that testimony in their briefs, it will not be discussed at length by Metra.

Metra does note that James Bachman, on behalf of the Railroad Class, identified many of the same defects identified by other parties' witnesses. In particular, Mr. Bachman identified the following fundamental defects in ComEd's analysis:

ComEd did not review other utilities' cost of service results for comparison purposes. This is critical since this ECOSS was ComEd's first attempt at a Primary/Secondary cost split. It would have been advisable to check the results against studies done by other utilities.

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.

* * * * *

It may be appropriate for an additional category of secondary system cost, that being primary voltage level performing secondary voltage level functions.

[J. Bachman Direct, CTA/Metra Joint Ex. 1.0 at 5:98-103 and 108-09.] The degree to which ComEd relied upon engineering judgment in its analysis, without the benefit of meaningful statistically valid sampling and analysis, was amply demonstrated in Mr. Alongi's hearing testimony. [See, e.g., L. Alongi, Nov. 3, 2009 Tr. at 596:2 to 608:23.] Moreover, given Mr. Alongi's testimony that ComEd's distribution system is predominantly 12 kV, and that the 34.5 kV lines are used to provide service primarily in rural areas, it is critical from the Railroad Class' perspective that any approved cost of service study must identify the primary voltage distribution facilities that are used exclusively to provide secondary voltage delivery services. [See, L. Alongi, Nov. 3, 2009 Tr. at 591:11-12 and 592:17.]

No cost of service study that is as flimsily supported by actual data and contains as many flaws as ComEd's proposed study should be approved by the Commission. Rather, ComEd should be directed to participate with ICC Staff and intervenors in a workshop to identify the

required improvements to its study, and ComEd should be directed to develop and submit for the Commission's consideration a refined study that incorporates the improvements developed in the workshop process.

CONCLUSION

For all the reasons set forth above, Metra requests that the Commission enter an order directing ComEd to eliminate all costs related to voltages below 12.5 kV from the Railroad Class cost of service in any future cost of service study and in any future rates developed for the Railroad Class. Metra further requests that ComEd's proposed cost of service study be rejected, and that ComEd be directed to participate in a workshop with ICC Staff and intervenors for the purpose of discussing and developing improvements to ComEd's future cost of service studies. Metra further requests that the Commission's order provide that ComEd is directed to develop a revised cost of service study within six months after conclusion of the workshop and to submit that revised cost of service study for review in this docket.

Respectfully Submitted,

/s/ Edward R. Gower

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CERTIFICATE OF SERVICE

I, Edward R. Gower, an attorney for the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra, certify that I caused to be served copies of the foregoing METRA'S INITIAL POST HEARING BRIEF via electronic delivery from the law office of Hinshaw & Culbertson LLP, 400 South Ninth Street, Suite 200, Springfield, Illinois, 62701, to the persons named on the Illinois Commerce Commission's service list for ICC Docket No. 09-0263, on November 20, 2009.

Respectfully Submitted,

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