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 POST HEARING REPLY BRIEF

The Illinois Commerce Commission ("ICC" or "Commission") found in the last Commonwealth Edison Company ("ComEd") rate case that ComEd's embedded cost of service study ("ECOSS") contained "substantial deficiencies" that "render it problematic for purposes of rate setting." Docket No. 07-0566, Final Order at 213 (Sept. 10, 2008). Among others, the Commission found that ComEd's ECOSS was "deficient in not separating and properly allocating primary and secondary service costs", and noted that doing so would likely decrease the costs for larger rate class users, such as the Railroad Class. *Id*. at 206-07. Accordingly, the Commission initiated this docket in which it directed ComEd "to provide an updated cost of service study that: (1) differentiates between primary and secondary voltage level." Docket No. 08-0532, Initiating Order at 3 (Sept. 10, 2008).

As reflected in the initial post-hearing brief of the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra ("Metra"), and as discussed below, Metra submits that ComEd's revised ECOSS fails to comport with the Commission's initiating order and cannot be relied upon to produce just and reasonable rates. The evidence in this case demonstrates that ComEd's ECOSS would increase the electricity delivery costs to the Railroad Class by 50 percent, or in dollar terms $2.5 million annually.

That increase, if implemented in ComEd's rates in a future rate case, would be unjust and unreasonable because the rates would be based on the fact that the Railroad Class was being assigned cost recovery responsibility for the costs of ComEd's delivery system carrying voltage below 12.5 kV, which the Railroad Class does not use and for which the Railroad Class receives no benefit. Furthermore, the revised ECOSS submitted by ComEd suffers from so many fundamental flaws that it cannot be relied upon to produce just and reasonable rates.

For these reasons, Metra requests that the Commission reject ComEd's proposed revised ECOSS; direct ComEd to prepare an ECOSS that properly assigns to the Railroad Class only the costs for that part of the delivery system delivering voltage at or above 12.5 kV; direct ComEd to explore whether costs of the 34.5 kV distribution facilities should be allocated to the Railroad Class given that they are primarily in rural areas; and direct ComEd to participate in the workshop recommended by ICC to develop as appropriate and reliable ECOSS.

I. THE UNCONTROVERTED EVIDENCE IN THIS CASE IS THAT THE RAILROAD CLASS IS UNIFORMLY SERVED AT 12.5 KV AND DOES NOT USE OR BENEFIT FROM SYSTEM COMPONENTS CARRYING LOWER VOLTAGE

James Bachman testified on behalf of the Railroad Class that the two members of the Railroad Class, the Chicago Transit Authority ("CTA") and Metra, take service uniformly at 12.5 kV. [Bachman Direct, CTA/Metra Jt. Ex. 1.0 at 5:114-15]. That testimony was not controverted or challenged by any other witness in this proceeding. Furthermore, ComEd's Retail Rate Manager, Lawrence Alongi, admitted at the hearing that the 4 kV power distribution system could not back up or support ComEd's 12.5 kV system. [Nov. 3, 2009 Tr. at 565:3-10]. The uncontroverted evidence in this case is that no ComEd distribution facilities carrying voltage less than 12.5 kV serves or is of any benefit to the Railroad Class.

II. COMED HAS OFFERED NO MEANINGFUL EXPLANATION TO JUSTIFY RECOVERY FROM THE RAILROAD CLASS OF DISTRIBUTION FACILITIES COSTS INCURRED SOLELY TO SERVE OTHER CUSTOMERS

ComEd's Director of Rates and Regulatory Strategies, Ross Hemphill, testified that ComEd'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. [Nov. 3, 2009 Tr. at 295:13-19]. When pressed, Mr. Hemphill also agreed that to the maximum extent practicable, ComEd 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 and 297:11-20].

There is no evidence in this record that ComEd ever even considered whether, to the maximum extent practicable, ComEd could avoid assessing the Railroad Class higher rates to recover for costs of ComEd's delivery system carrying voltage less than 12.5 kV. In its opening brief, ComEd argued simply that it should not be required to perform the special studies requested by various intervenors representing large electricity customers, and that the Commission has already concluded that ComEd should not be required to conduct customer-specific cost studies. ComEd Initial Brief at 23-24.

At the hearing in this matter, Mr. Alongi suggested that he would need more staff to perform the requested analysis. [Nov. 3, 2009 Tr. at 608:24 to 609:10]. While a staffing shortage may help explain some of the other shortcomings in ComEd's revised ECOSS, it is not grounds to charge the Railroad Class higher rates to cover costs ComEd incurred in providing services to other customers. Furthermore, there is no evidence of how much time the analysis would require, what manpower or contractual help would be needed, or what the cost would be.

In Docket Nos. 05-0597, 07-0566 and 09-0263, the Commission emphasized that public interest considerations should be taken into account in setting rates for the Railroad Class.

Docket No. 05-0597, Final Order at 189-90 (July 26, 2006); Docket No. 07-0566, Final Order at 223 (Sept. 10, 2008); Docket No. 09-0263, Final Order at 43 (Oct. 14, 2009). ComEd's revised cost of service study is designed to justify a $2.5 million annual increase in rates charged the Railroad Class based on assignment of costs to the Railroad Class for a significant part of ComEd's distribution system that the Railroad Class does not use and from which it derives no benefit. If the public interest directives repeatedly issued by the Commission are to be given any effect, then they surely require at a minimum that the Railroad Class not be charged inflated rates and that ComEd be required to take reasonable steps to avoid assigning cost responsibility to the Railroad Class for distribution costs that are wholly irrelevant to the cost to serve the Railroad Class. ComEd should not be permitted to avoid performing an accurate cost of service study relating to the Railroad Class under the guise of calling the necessary analysis a customer-specific cost study, which it is not, or a "special study" like those requested by other parties.

III. COMED'S REVISED COST OF SERVICE STUDY IS REPLETE WITH OTHER DEFECTS REQUIRING ITS REJECTION

Other parties have identified significant defects that collectively warrant rejection of ComEd's revised cost of service study. For example:

- The ICC Staff is critical of ComEd's revised ECOSS because it is based on numerous engineering judgments that are not fully explained and are not subject to meaningful evaluation. See ICC Staff Initial Brief at 9, 11-15 and 18-19, and testimony cited therein.

- The ICC Staff is critical of assumptions underpinning ComEd's analysis that are difficult to assess because there are no objective facts cited to support the assumptions. *Id*. at 17.

- The ICC Staff and the IIEC group are both critical of ComEd's ECOSS because it allocates millions of dollars of transformer costs to customers, like the Railroad Class, who do not use and receive no benefit from ComEd's transformers. *Id*. at 10-11; IIEC Initial Brief at 8-9, 11, 20, and 27, and testimony cited therein.

- The ICC Staff is somewhat critical of ComEd's selection of 4 kV as the line of demarcation between primary and secondary distribution facilities, given that it was selected based solely on language used in ComEd's general terms and conditions tariff with no explanation or justification as to why 4 kV functionally should serve as the line of demarcation. ICC Staff Initial Brief at 7. There is no explanation in the record as to why, for example, 12 kV was not the selected line of demarcation given Mr. Alongi's testimony that: "Our [distribution] system is predominantly 12 kV." [Nov. 3, 2009 Tr. at 592:17]. The IIEC is critical generally of ComEd's line of demarcation between primary and secondary facilities because ComEd's demarcation ignores the function served by the facility at issue. E.g., IIEC Initial Brief at 7-9.

- IIEC is critical of ComEd's failure to identify primary distribution facilities that are used exclusively to provide secondary voltage services, given that at least 13 other utilities have performed that analysis in their primary/secondary cost analysis. IIEC Initial Brief at 24-26.

- IIEC is critical of ComEd's designation as primary customers those who actually take service at secondary voltage. *Id*. at 11.

- Both the ICC Staff and IIEC are critical of ComEd's failure to review the available primary-secondary analyses performed by other utilities. *Id*. at 28-30; ICC Staff Initial Brief at 17-18.

In addition to the defects identified by others, at the evidentiary hearing Mr. Alongi admitted that ComEd's 34.5 kV distribution facilities are located "primarily in rural areas." [Nov. 3, 2009 Tr. at 591:11-12]. Given this fact, it is difficult to understand why any significant costs of ComEd's 34.5 kV system should be allocated to the Railroad Class serving the urban areas.

Some of these flaws infect ComEd's entire analysis, and they are all significant. Collectively, they mean that ComEd's revised ECOSS cannot be used to develop costs that are just and reasonable.

IV. METRA IS ENTITLED TO OBJECT TO THE POSSIBILITY OF INCREASED RATES BASED ON COMED'S IMPROPER, INFLATED COST ALLOCATIONS

ComEd suggested on page 3 of its opening brief that Metra and the CTA each have sought to "paint ComEd as the villain in this proceeding in order to further its respective

position", and that ComEd is the party to be trusted because this proceeding is revenue neutral to ComEd. The fact that ComEd would stoop to such a characterization simply is a reflection of ComEd's efforts to avoid addressing the merits of the parties' arguments.

There are issues in this proceeding that have enormous consequences to the parties. Those issues can and should be vetted before the Commission acts. There are no villains. The ad hominem attack by ComEd on other parties should be disregarded, and ComEd should be held to its obligation to develop a cost study that properly allocates costs and that can be used to develop just and reasonable rates.

V. COMED'S ECOSS SHOULD BE REJECTED AND COMED SHOULD BE DIRECTED TO PARTICIPATE IN A WORKSHOP TO DEVELOP AN APPROPRIATE ECOSS

The law in Illinois requires that the rates charged utility customers be "just and reasonable." 220 ILCS 5/9-101. Where proposed rates or charges are found to be unjust, unreasonable, discriminatory or otherwise unlawful or insufficient, it normally falls to the Commission to correct the problem through an order correcting the rates, charges or other practices. 220 ILCS 5/9-250.

In this case, ComEd's failure to exclude the costs of the under 12.5 kV distribution system from the costs assessed the Railroad Class in ComEd's ECOSS can easily be corrected by Commission order. However, the other problems in ComEd's revised ECOSS are not susceptible to a ready fix, and Metra therefore believes an order directing ComEd to participate in a workshop to develop a proper ECOSS would be appropriate.

VI. CONCLUSION

For all the reasons set forth above, Metra requests that the Commission enter an order directing ComEd to exclude from the costs assessed the Railroad Class in future cost of service

studies the cost of ComEd's distribution facilities carrying less than 12.5 kV. Metra further requests that the Commission reject ComEd's proposed revised ECOSS, and that ComEd be directed to participate in a workshop with ICC Staff and other interested parties for the purpose of analyzing the changes required in order to enable ComEd to develop an appropriate ECOSS. As part of that workshop, ComEd should be directed to explore to what extent, if any, costs of ComEd's 34.5 kV distribution facilities should be allocated to the Railroad Class given that those facilities are primarily in rural areas.

Respectfully Submitted,

_/s/_Edward R. Gower_
One of the Attorneys for the
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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 POST HEARING REPLY 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 December 7, 2009.

Respectfully Submitted,

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