

Illinois Commerce Commission on Its Own Motion)
-vs.-)
Commonwealth Edison Company) Doc. No. 08-0532
Investigation of Rate Design Pursuant to)
Section 9-250 of the Public Utilities Act)

REPLY BRIEF OF THE UNITED STATES DEPARTMENT OF ENERGY

The United States Department of Energy ("the Department" or "DOE") respectfully submits this reply brief in accordance with the Administrative Law Judges' briefing schedule.

I. INTRODUCTION AND STATEMENT OF POSITION

The Commercial Group ("CG") asks the Commission to direct Commonwealth Edison ("CE") to file revised tariff sheets to implement whatever rate design changes the Commission adopts. (CG Post-Hearing Brief, p. 5) Although a number of parties do not support CE's new cost study, it is likely that the Commission will adopt very significant changes in CE's longstanding rate design methodology. CG asks the Commission to direct CE to re-set its rates *on the sole basis of those controversial methodological changes*, without examining the dollar impact of the re-set rates or any other factor. DOE respectfully submits that such a direction would be contrary to the Illinois Public Utilities Act (220 ILCS 5/1-101 *et seq.*) and to judicial and Commission precedent.

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II. DISCUSSION

A. Judicial Precedent Requires the Commission to Balance Competing Interests and Examine Impact on Ratepayers Before it Adopts Restructured Rates.

An Illinois Appellate Court has held that the Illinois Public Utilities Act requires the Commission, in adjudging significant proposed changes in rates, to balance stockholder and ratepayer interests. The Court further held that the Commission may not order such changes unless there is "...evidence which would support a finding that the rates as restructured will impose just and reasonable burdens on all ratepayers." *Citizens Utility Board v. Ill. Comm. Comm'n.*, 276 Ill. App. 3d 730,737-738; 658 N.E. 2d 1194, 1200-1201 (1995). In the instant case, the Commission has not balanced those interests or heard any such evidence. It should not order rate changes that are based solely on the new cost of service study.

B. Commission Precedent Requires That It Balance Competing Objectives and Examine Public Policy Considerations Before It Adopts Restructured Rates.

In a recent CE order, the Commission clearly indicated that it will not set rates on the sole basis of cost of service. Rather, it will examine relevant public policy considerations, and deviate from cost-based rates if those considerations warrant doing so. *Re Commonwealth Edison Co.*, ICC Doc. No. 05-0597, Final Order, July 26, 2006, at 189, 218, 252. The Commission has more specifically stated that, in order to attain an acceptable rate design for significantly restructured rates, it is obligated to balance "...the competing objectives of establishing cost based rates, rate continuity, and the avoidance of rate shock." *Re Mt. Carmel Public Utility Co.*, ICC Doc. No. 07-0357, Final Order, March 12, 2008, at 29. The Commission applied this doctrine in a recent proceeding in which the subject utility's new cost study, which no party questioned, indicated that very significant changes in rate levels would be needed to attain cost-based rates. The Commission held that the danger of rate shock was by itself so

significant as to outweigh the theoretical cost considerations. On this basis, it put aside the cost study and ordered across-the-board rate increases. *Re Central Illinois Light Co.*, Doc. No. 07-0585, Final Order, Sept. 24, 2008, at 280. In the most recent CE rate case, the Commission similarly determined, after balancing the aforementioned competing objectives and examining public policy considerations, that a move toward cost-based rates should be effectuated gradually rather than all at once. *Re Commonwealth Edison Co.*, ICC Doc. No. 07-0566, Final Order, September 10, 2008, at 237.

C. The Record is Not Sufficient for the Commission to Order New Rates.

These decisions clearly indicate that the Commission should adopt restructured rates only after it has examined relevant policy considerations, balanced competing interests, and then concluded that the restructured rates will impose just and reasonable burdens on all ratepayers. The Commission has not done those things in this proceeding and it cannot do so now. In order for it to do so, the Commission would need a record which sets out, at the very least:

- (1) the impact on each class of moving 100 percent to the full costs that result from the class revenue changes that are produced by whatever final modified study the Commission adopts;
- (2) the implications of these class revenue changes, in light of the increased economic duress that most customers now face, as compared to the time when the Commission issued its previous rate design order; and
- (3) alternative mitigation plans that various parties would offer to address the adverse impacts that would result from the effectuation of such restructured rates.

There is no such record here.

D. CG's Argument in Support of Adoption of New Rates in This Proceeding is Invalid.

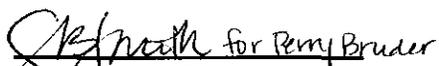
The scope of this proceeding has been limited to investigation of theories which should together form the best methodology for measurement and allocation of CE costs. On the basis of that investigation, the Commission may adopt significant changes in previously-existing measurement and allocation methodologies. But CG would go far beyond that. It would have the Commission order CE to effectuate those significant but purely theoretical changes without examining public policy considerations or balancing the above-described competing interests, especially rate impact. As discussed, that would be unwise and likely impermissible.

CG attempts to meet this glaring and dispositive difficulty by asserting that, because the initiating order herein indicates that the Commission intended in this proceeding to "modify its rate design conclusions," (Initiating Order, p. 3) it must also have intended to order the implementation of rates which are based on those modifications. (CG Post Hearing Brief, pp. 5-6) Here, CG confuses *adoption* of modifications in theoretical rate methodology with *effectuation* of those modifications in the form of significantly-altered rates. The Commission is empowered to *adopt* abstract and hypothetically logical modifications of rate methodology on the basis of the sort of limited record that has been made in this proceeding. But the Commission is not empowered to *effectuate* any such modifications by approving rates which are based upon them, unless it first considers public policy, balances competing interests, examines the resultant rates' impact, and hears evidence that the rates will be just and reasonable. It would be especially inapposite for the Commission to fail to do these things in this proceeding, in light of the new adverse economic conditions which the region faces.

III. CONCLUSION

For the reasons set out above, the Department respectfully requests that the Commission reject CG's request. Whatever cost of service methodology is adopted here should be applied in Commonwealth Edison's next full rate proceeding. This will allow the Commission to receive evidence and arguments on relevant policy considerations.

Respectfully submitted,

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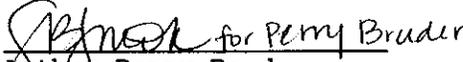
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NOTICE OF FILING

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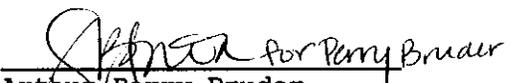
Please take notice that on December 7, 2009, I caused the Reply Brief of the United States Department of Energy in the above-captioned proceeding to be submitted for filing via U.S. Mail in with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

Dated: December 7, 2009


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CERTIFICATE OF SERVICE

I, Arthur Perry Bruder, hereby certify that the foregoing document, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on December 7, 2009. Paper copies will be provided upon request.


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