

**REBUTTAL TESTIMONY**

**of**

**Dianna Hathhorn  
Accountant**

**Accounting Department  
Financial Analysis Division  
Illinois Commerce Commission**

**Proposed General Increase in Electric Rates**

**Commonwealth Edison Company**

**Docket No. 10-0467**

**December 23, 2010**

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**SCHEDULE**

Schedule 17.01 Rate Case Expense Adjustment

1 **I. Introduction**

2 **A. Witness Identification**

3 Q. Please state your name and business address.

4 A. My name is Dianna Hathhorn. My business address is 527 East Capitol  
5 Avenue, Springfield, Illinois 62701.

6

7 Q. Have you previously testified in this proceeding?

8 A. Yes, my direct testimony is ICC Staff Exhibit 2.0.

9

10 **B. Purpose of Testimony**

11 Q. What is the purpose of your rebuttal testimony in this proceeding?

12 A. The purpose of my testimony is to respond to Commonwealth Edison  
13 Company's ("ComEd" or "Company") objections regarding my proposed  
14 adjustment to the Company's operating statement concerning rate case  
15 expense. I also respond to the People of the State of Illinois ("AG")  
16 witness Smith's rate case expense recommendations, AG witness  
17 Brosch's adjustments for Late Payment Charge Revenues and Illinois  
18 Electric Distribution Taxes, and AG witness Efron's Adjustment to Legal  
19 Expenses/Fees and his Repair Allowance recommendation.

20

21 Q. Are you sponsoring any schedules as part of your rebuttal testimony?

22 A. Yes. I prepared (or supervised the preparation of) the following schedules  
23 for the Company, which show data as of, or for the test year ending  
24 December 31, 2009:

25 Schedule 17.01 Rate Case Expense Adjustment<sup>1</sup>

26

27 **II. Uncontested Issues**

28 Q. Did the Company accept any of your adjustments in your direct testimony,  
29 Staff Ex. 2.0?

30 A. Yes. The Company accepted the following adjustments and included  
31 them in its beginning numbers for its rebuttal revenue requirement;  
32 therefore, no further adjustment is necessary:

- 33 • Schedule 2.01 Amortization of Regulatory Assets Adjustment<sup>2</sup>
- 34 • Schedule 2.02 Other Revenues Correction Adjustment<sup>3</sup>
- 35 • Schedule 2.03 Deferred Taxes Expense Correction Adjustment

36

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<sup>1</sup> Although a similar schedule attached to Staff's direct testimony was marked confidential by Staff such designation is no longer appropriate given the ALJ's ruling denying ComEd's Motion to Preserve the Confidential Designation of Certain Documents. (ALJ Ruling Dated December 10, 2010)

<sup>2</sup> ComEd's acceptance of ICC Staff Ex. 2.0, Schedule 2.01 encompasses and addresses the adjustments presented by AG witness Smith in AG/CUB Ex. 3.1, Schedules C-12.1, 12.2, 12.3, 12.4, and C-22.

<sup>3</sup> ComEd's acceptance of ICC Staff Ex. 2.0, Schedule 2.02 encompasses and addresses the adjustment presented by AG witness Efron in AG/CUB Ex. 2.1, Schedule DJE-2.1b.

37 **III. Contested Issues**

38 **A. Rate Case Expense Adjustment**

39 Q. Please describe ICC Staff Exhibit 17.0, Schedule 17.01, Rate Case  
40 Expense Adjustment.

41 A. Schedule 17.01 reflects a revision to my proposed adjustment in Schedule  
42 2.04 to decrease the Company's proposed amortization expense amount  
43 for the following:

- 44 • Consultant and external legal costs related to the Company's  
45 alternative regulation proposal ("Alt. Reg.");
- 46 • Consultant and related external legal costs for the preparation of  
47 Dr. Hewings' testimony, ComEd Ex. 2.0; and
- 48 • 50% of the consultant and related external legal costs for the  
49 preparation of Dr. Andrade Jr.'s testimony, ComEd Ex. 3.0.

50

51 Q. Does your adjustment still include disallowances for costs of P. Moul &  
52 Associates and unsubstantiated data room estimated costs?

53 A. No. The Company has provided discovery which addressed my concerns;  
54 therefore, I have withdrawn these subparts of my adjustment.

55

56 Q. The Company states that your proposed adjustment for external legal  
57 costs related to the Company's Alt. Reg. proposal is not reasonable since  
58 it was able to negotiate with the R3 law firm (Rooney, Rippie and

59 Ratnaswamy, LLP) a competitive flat rate for the delivery of legal services  
60 for the rate case, and no additional charge would be imposed for its work  
61 associated with the Alt. Reg. docket. (ComEd Ex. 30.0, p, 14, lines 301-  
62 306) Is it reasonable to conclude that the flat rate would be the same  
63 amount if the services were only for the rate case, and not both the rate  
64 case and Alt. Reg?

65 A. No. The conclusion that a firm would provide services at the same price  
66 for two cases as for one alone strains credulity. The services may be  
67 capped at an amount certain, but it is not reasonable to conclude the cap  
68 would be the same amount for the services of one proceeding as for two.

69

70 Q. Have you revised your disallowance related to the Alt. Reg. proceeding?

71 A. Yes. Schedule 17.01, page 2, lines 1 through 9, reflects the calculation of  
72 the disallowance related to the Alt. Reg. proceeding for consultant and  
73 legal expenses. The Company's rebuttal argued that a 50% split between  
74 the rate case and Alt. Reg. legal fees was inappropriate due to the much  
75 larger scope of the rate case compared to Alt. Reg. (ComEd Ex. 30.0, pp.  
76 13-14, lines 277-300) Also, ComEd confirmed in discovery that the flat fee  
77 arrangement for the rate case and Alt. Reg. combined applies only to the  
78 R3 law firm. (Co. Resp. to Staff Data Request DLH-19.05) Therefore, for  
79 the external legal costs of the R3 law firm, I revised my disallowance by  
80 applying the 18.33% estimated percentage of legal time for September

81 and October work on the Alt. Reg. proceeding (Co. Resp. to Staff Data  
82 Request DLH-19.01) to the fixed fee amount provided in the R3  
83 engagement letter (Co. Resp. to AG Data Request AG-3.34 Attachment 2)  
84 (lines 5 through 7 of Schedule 17.01). I also included amounts billed to  
85 date by another law firm which are related to Alt. Reg. (line 8 of page 2 of  
86 Schedule 17.01)

87

88 Q. Did the Company contest your disallowance to remove the consultant and  
89 related external legal costs for the preparation of Dr. Hewings' testimony?

90 A. Yes. The Company argues that the costs of the testimony were incurred  
91 in good faith, and states the disallowance can only be done with the  
92 benefit of hindsight review. (ComEd Ex. 30.0, p. 15, lines 307-314)

93

94 Q. Do you agree that only hindsight review could have led to the conclusion  
95 that Dr. Hewings' testimony and related external legal costs were  
96 unreasonable?

97 A. No. I believe ComEd was aware of what the testimony's subject matter  
98 would be so it was possible for ComEd to realize what any reasonable  
99 person would have realized that the testimony was not relevant or  
100 reasonably related to whether ComEd should receive a rate increase or  
101 rate-related issues. Although not directly germane to, nor supportive of,  
102 its requested rate increase, ComEd chose to submit Dr. Hewings'

103 testimony. Ratepayers should not have to pay for its poor judgment that  
104 unnecessarily results in higher rate case expense.

105

106 Q. Have you revised your adjustment related to Dr. Hewings' testimony?

107 A. Yes. Schedule 17.01, page 2, lines 10 through 13, reflects my revised  
108 proposed adjustment to remove the consultant and related external legal  
109 costs for the preparation of Dr. Hewings' testimony, ComEd Ex. 2.0. I  
110 have revised the estimated external legal fees costs based on the update  
111 provided by the Company in response to Staff Data Request DLH-19.02.

112

113 Q. Did the Company also contest your disallowance to remove half of the  
114 consultant and related external legal costs for the preparation of Dr.  
115 Andrade's testimony?

116 A. Yes. The Company replied to my disallowance concerning Dr. Andrade  
117 with the same response as for my disallowance for Dr. Hewings discussed  
118 above, generally that the costs were incurred in good faith and my  
119 adjustment uses hindsight. (ComEd Ex. 30.0, p. 15, lines 307-314) Since  
120 ComEd's response is the same for both Drs. Hewings and Andrade, my  
121 rebuttal above also applies to this disallowance.

122

123 Q. Have you revised your adjustment related to Dr. Andrade's testimony?

124 A. Yes. Schedule 17.01, page 2, lines 14 through 17, reflects my revised  
125 proposed adjustment to remove half of the consultant and related external  
126 legal costs for the preparation of Dr. Andrade's testimony, ComEd Ex. 3.0.  
127 I have revised the estimated external legal fees costs based on the  
128 update provided by the Company in response to Staff Data Request DLH-  
129 19.03, and corrected my schedule to disallow only 50%, not 100%, of the  
130 proposed external fees.

131

132 Q. Did AG witness Smith also make recommendations concerning rate case  
133 expense?

134 A. Yes. Mr. Smith reserved AG/CUB Exhibit 3.1, Schedule C-12.5 for  
135 presenting an adjustment to ComEd's requested rate case expense.  
136 (AG/CUB Ex. 3.0, p. 49, lines 1076-1077) However, since no adjustment  
137 has yet been presented, I offer no opinion on the reserved Schedule C-  
138 12.5. Witness Smith also recommends the Commission consider  
139 prospectively treating the allowance for rate case expense as a  
140 normalized amount of Operation and Maintenance ("O&M") expense,  
141 rather than amortization. (Id. at 47) The Company did not respond to this  
142 recommendation.

143

144 Q. What would be the effect of implementing Mr. Smith's normalization  
145 approach to rate case expenses in this case?

146 A. It is unclear. Mr. Smith did not propose a normalized amount, although it  
147 appears he believes it is less than the annual amortized amount requested  
148 based upon his criticism of the Company's proposed expenses. (See  
149 AG/CUB Ex. 3.0, p. 45, lines 971-982, p. 50, lines 1079-1095, and p. 52,  
150 lines 1134-1136) He discusses implementing the change prospectively,  
151 but again, no amount is proposed. (Id., lines 1014-1024) If the normalized  
152 amount, however, were computed by comparing the proposed rate case  
153 expense with that allowed in prior cases, the effect would be an increase  
154 to rates, since the current requested amount is approximately 19% lower  
155 than the previous case. Normalizing would presumably average the  
156 current lower cost case with higher cost cases in the past, resulting in an  
157 increase to the revenue requirement.

158

159 Q. What rationale does the AG provide for the suggested change in  
160 methodology for utilities' cost recovery of rate case expense?

161 A. One argument is to eliminate the risk that ratepayers may over-pay for a  
162 utility's rate case expense if the amortization period is set too short. (Id.  
163 pp. 46, lines 993-1016) The other argument is to eliminate the special  
164 treatment of rate case expenses and treat it no differently than other O&M  
165 expenses set in a test year. (Id., pp. 48-49, lines 1042-1057)

166

167 Q. What is your response to the AG's recommendation?

168 A. As stated above, I cannot make a recommendation as to this proposal's  
169 effect on ComEd's revenue requirement since no adjustment exists at this  
170 time. However, as to the topic in general, the Commission should  
171 consider this recommendation in light of the effect such a change would  
172 have on all rate of return utilities under its jurisdiction, not just ComEd.  
173 The AG's arguments apply not only to rate case expense but any  
174 requested regulatory asset. It is unclear why this one type of regulatory  
175 asset is being isolated for different treatment than in the past. If adopted,  
176 the AG's recommendation could lead to the unintended consequence of  
177 denying all future regulatory assets in favor of only normalized expenses.  
178 Moreover, the AG has not sufficiently explained why regulatory assets for  
179 rate case expenses are objectionable while the Commission has approved  
180 regulatory assets in other circumstances without objection from the AG.  
181 For example, the Company proposed to recover various regulatory asset  
182 amortizations in this case, for which both I and the AG proposed  
183 adjustments to prevent over-recovery of costs by ComEd, and ComEd  
184 accepted these adjustments. (ComEd Ex. 30.0, p. 7, lines 131-141) It is  
185 not clear from the AG's proposal why regulatory assets such as these are  
186 acceptable while one for rate case expenses is not. If, however, the  
187 Commission agrees with the AG that a change in methodology is  
188 warranted, it should apply the change prospectively for ComEd's next rate  
189 case.

190

191 **B. Late Payment Charge Revenues Adjustment**

192 Q. Have you reviewed the AG testimony (AG/CUB Ex. 1.0, pp. 40-42 and  
193 AG/CUB Ex. 1.3, Schedule C-14) and ComEd rebuttal (ComEd Ex. 30.0,  
194 pp. 20-21) concerning the AG's Late Payment Charge Revenues  
195 Adjustment?

196 A. Yes. The AG makes an adjustment since it believes there has been no  
197 showing by the Company that justifies removal of certain revenues from  
198 the revenue requirement. It appears, however, that the adjustment would  
199 result in supply revenues being included in the delivery services revenue  
200 requirement, which is inappropriate; therefore, I agree with ComEd that  
201 the adjustment should not be adopted.

202

203 **C. Illinois Electric Distribution Charges Adjustment**

204 Q. Have you reviewed the AG testimony (AG/CUB Ex. 1.0, pp. 51-51 and  
205 AG/CUB Ex. 1.3, Schedule C-19) and ComEd rebuttal (ComEd Ex. 30.0,  
206 pp. 11-12) concerning the AG's Illinois Electric Distribution Tax ("IEDT")  
207 Adjustment?

208 A. Yes. The AG proposes to revise ComEd's normalization of the IEDT pro  
209 forma adjustment for updated 2009 usage and estimated credit  
210 information. However, I agree with ComEd that the AG methodology does  
211 not reflect the reality that the credits lag the taxes paid by several years,

212 that 2009 was an abnormally low kilowatt-hour use year and, therefore, a  
213 normalized credit as ComEd proposed is more appropriate.

214

215 **D. Legal Expenses/Fees Adjustment**

216 Q. Have you reviewed the testimony and adjustment of AG witness Effron  
217 regarding Legal Fees (AG/CUB Ex. 2.0, pp. 21-22 and AG/CUB Ex. 2.1,  
218 Sch. 2.2b)?

219 A. Yes. The AG contends the fees are non-jurisdictional in nature since they  
220 relate to the tax dispute associated with the sale of fossil generating units  
221 in 1999.

222

223 Q. Does ComEd's rebuttal resolve the issue that the fees may not be related  
224 to delivery services?

225 A. No. The Company merely discusses how the fees were recorded to  
226 Account 923, Outside Services Employed, and then allocated in part to  
227 delivery services. They do not dispute the nature of the fees as originating  
228 from the fossil plant tax dispute, but argue that since the fees were  
229 recorded to Account 923, a general allocator should be used. (ComEd Ex.  
230 30.0, pp. 10-11, lines 216-221) While it is reasonable to sometimes  
231 allocate costs to delivery services when the nature of the cost is not 100%  
232 related to the delivery services function, it is never reasonable to include a  
233 cost in the delivery service revenue requirement when it is definitively

234 known that the cost is not related to providing delivery services.  
235 Improperly recording such a cost as if it was a jurisdictional cost does not  
236 cure the problem. The Company has presented no evidence that the fees  
237 were properly recorded as jurisdictional. Therefore, Staff's rebuttal  
238 revenue requirement reflects the inclusion of the AG disallowance in  
239 Schedule DJE-2.2b.

240

241 **E. Repair Allowances Recommendation**

242 Q. Have you reviewed the AG testimony (AG/CUB Ex. 2.0, pp. 28-33) and  
243 ComEd rebuttal (ComEd Ex. 29.0, pp. 38-41) concerning the possible tax  
244 method change allowing expanded tax repair deductions?

245 A. Yes. The AG recommends that if ComEd changes its method for  
246 recording repair allowances for tax purposes prior to the close of this case,  
247 then rate base and accumulated deferred income taxes should be  
248 adjusted. Further, the AG recommends the Commission require ComEd  
249 to maintain the effect of any adjustment related to the repair allowance in  
250 a reserve account and to keep a record of any increases to the repair  
251 allowance deduction from the effective date of the change, with the  
252 cumulative change credited to rate payers in the Company's next rate  
253 case.

254

255 Q. What is your response to the AG's recommendations?

256 A. I agree with ComEd that the recommendations should not be adopted  
257 since the final determination of any tax change has not yet been made by  
258 ComEd and, therefore, it is not known and measurable if a change will  
259 occur at all. And even if such a tax change occurs, since the ICC follows a  
260 normalization approach to income taxes, the benefits of any reduced taxes  
261 will be reflected as a reduction to rate base in future rate cases. I further  
262 agree that no further reporting requirements are necessary in light of the  
263 separate accounting requirements already in place from the Uniform  
264 System of Accounts. (ComEd Ex. 29.0, p. 41, lines 866-872)

265

266 Q. Does this conclude your prepared rebuttal testimony?

267 A. Yes, it does.

Commonwealth Edison Company  
 Rate Case Expense Adjustment  
 For the Test Year Ending December 31, 2009  
 (In Thousands)

Line No.	Description (a)	Amount (b)	Source (c)
1	Total Rate Case Expense Adjustments, per Staff	\$ (790)	Schedule 17.01, sum of lines 4, 13, and 17 Company Schedule C-2.12
2	Amortization Period	<u>3</u>	
3	Staff Proposed Adjustment	<u>\$ (263)</u>	Line 1 / line 2

Commonwealth Edison Company  
 Rate Case Expense Adjustment  
 For the Test Year Ending December 31, 2009  
 (In Thousands)

Line No.	Description	Amount	Source
	(a)	(b)	(c)
1	Alternative Regulation Expenses, per Staff	\$ -	
2	Alternative Regulation Consultants, per Company	250	Company Schedule C-10, Column (D), line 3
3	Alternative Regulation External Legal, estimated per Staff	496	Line 9
4	Staff Proposed Adjustment for Alternative Regulation Expenses	<u>\$ (746)</u>	Line 1 - line 2 - line 3
5	Rooney, Rippie & Ratnaswaymy LLP ("R3") Fixed Fee for Both Cases	\$ 2,425	Company Response to AG 3.34, Attachment 2
6	Estimated Alt. Reg. Fee Percentage based on Sept. & Oct. hours	<u>18.33%</u>	Company Response to DLH-19.01
7	Estimated R3 Alt. Reg. Legal Fees	\$ 445	Line 5 x Line 6
8	Sidney & Austin Alt. Reg. Legal Fees	\$ 51	Company Response to DLH-19.01
9	Alternative Regulation External Legal, estimated per Staff	\$ 496	Line 7 + Line 8
10	Dr. Hewings' Expenses, per Staff	\$ -	
11	Dr. Hewings' Expenses, per Company	15	Company Response to DLH-15.01
12	Dr. Hewings' External Legal, estimated per Staff	10	Company Response to DLH-19.02
13	Staff Proposed Adjustment for Dr. Hewings' Expenses	<u>\$ (25)</u>	Line 10 - line 11 - line 12
14	Dr. Andrade, Jr. Expenses, per Staff	\$ -	
15	Dr. Andrade, Jr. Expenses, per Company	13	Company Response to DLH-15.02 x 50%
16	Dr. Andrade, Jr. External Legal, estimated per Staff	8	Company Response to DLH-19.03 x 50%
17	Staff Proposed Adjustment for Dr. Andrade, Jr. Expenses	<u>\$ (20)</u>	Line 14 - line 15 - line 16