

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY :  
 : No. 10-0467  
Proposed general increase in electric rates :

**COMMONWEALTH EDISON’S RESPONSE TO IIEC’S MOTION TO STRIKE**

The Illinois Industrial Energy Consumers (“IIEC”) move to strike lines 192 through 226 of the Surrebuttal testimony of ComEd Witness Dr. Samuel Hadaway, contending that, in that portion of his testimony, Dr. Hadaway is responding to the direct testimony of IIEC witness Michael Gorman, rather than to Mr. Gorman’s rebuttal testimony. IIEC’s motion should be denied. Lines 192 through 226 are proper surrebuttal testimony responding to arguments advanced in Mr. Gorman’s rebuttal testimony. The fact that Mr. Gorman also made similar arguments in direct testimony does not insulate his rebuttal testimony from response or bar Dr. Hadaway from identifying the flaws in the risk premium analysis presented by Mr. Gorman in his rebuttal testimony.

IIEC’s contention that Dr. Hadaway “is responding to arguments made and statements contained in Mr. Gorman’s Direct testimony” is demonstrably incorrect. The question to which all of the testimony on lines 192 through 226 is directed is a question about Mr. Gorman’s rebuttal testimony, not his direct testimony. The question reads:

On pages 9-10 of his Rebuttal Testimony, Mr. Gorman recalculates your risk premium analysis and claims a lower result that he says supports his ROE recommendation. What is your response?

Mr. Gorman’s rebuttal testimony states that he “updated” Dr. Hadaway’s risk premium studies, contending that, by substituting the midpoint of “risk premiums over the last five years,” for the equity risk premiums used by Dr. Hadaway, a lower return on equity range results.

In surrebuttal testimony, Dr. Hadaway is entitled to challenge Mr. Gorman's contention in his rebuttal testimony that it is appropriate to use the lower equity risk premium range Mr. Gorman advocates. His surrebuttal testimony does just that, pointing out that "risk premiums have been much larger" during the recent low interest rate period and that, by substituting low equity risk premiums in his rebuttal testimony "update" for Dr. Hadaway's more reasonable risk premiums, Mr. Gorman refuses "to accept the well documented inverse relationship between equity risk premiums and interest rate levels."

Dr. Hadaway does not present the data that IIEC seeks to strike in response to Mr. Gorman's direct testimony. That is clear from Dr. Hadaway's testimony, which states that Mr. Gorman's reliance on low equity risk premiums "is further refuted by these data" and by the conclusion of the testimony section IIEC seeks to strike, which states that "Mr. Gorman's 'adjusted' results from my risk premium data should be disregarded." Dr. Hadaway is specifically addressing the adjusted results presented in Mr. Gorman's rebuttal testimony, showing that they are based on inappropriate risk premiums.

IIEC's motion seeks to strike important factual support for Dr. Hadaway's conclusion that Mr. Gorman's rebuttal testimony "update" of Dr. Hadaway's risk premium analysis is flawed. Dr. Hadaway was entitled to present the factual data he included in lines 192 through 226. There is no basis for striking it.

Finally, the fact that Dr. Hadaway mentions Mr. Gorman's direct testimony in his surrebuttal testimony is of no consequence. Witnesses in rate cases routinely refer to prior testimony of opposing witnesses when responding to current arguments. There is nothing inappropriate about pointing out that a witness in his current rebuttal testimony is repeating a mistake he made in his direct testimony. Even if there were something improper about making

such an observation, it would not support striking the witnesses' response and the factual basis for his opposition to results presented in the testimony to which a response is being made.

For all of these reasons, Commonwealth Edison Company respectfully requests that the Commission deny IIEC's motion to strike.

Dated: January 6, 2010

Respectfully submitted,

COMMONWEALTH EDISON COMPANY



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