STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,	)	
Proposal to establish Rider PORCB	)	Docket No. 10-0138
(Purchase of Receivables with Consolidated	)	
Billing) and to revise other related tariffs.	)	

APPLICATION FOR REHEARING OF
COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("ComEd"), pursuant to Section 10-113 of the Illinois Public Utilities Act (220 ILCS 5/10-113(a)), Section 200.880 of the Commission's Rules of Practice (83 Ill. Adm. Code § 200.880), and other applicable law, submits this Application for Rehearing (the "Application") of the final Order of the Illinois Commerce Commission (the "Commission") dated December 15, 2010 ("Order").

In Section I of this Application, ComEd addresses the Order's analysis and conclusions regarding the proper rate of return on common equity ("ROE"). Departing from decades of decisions by the Commission and State and federal courts, the Order dismisses the relevance to the Commission of the very markets and investors who provide equity capital and ultimately the return required to provide it. Order at 48-49 ("[Ms. Abbott] presented no facts indicating that this Commission should rely upon what investors think or might think, in order to determine the rate of return…."). Regardless of what ROE the Order allows, "what investors think or might think" is the central inquiry in setting an *investor-required* rate of return for an investor-owned utility. In the Commission's own words:

> In determining what the cost of equity is for a utility, ***the Commission must base its decision on sound financial principles that are used by sophisticated investors***. When determining whether or not to invest in the stock of a particular utility, ***the sophisticated investor is, in effect, setting the real cost of capital for that utility***. ***The Commission, in authorizing a rate of return, makes an estimate***

> ***of what the investor is demanding. It is the Commission that reacts to the investor and not vice versa.***

Ill. Bell Tele. Co., ICC Docket No. 92-0448 & 93-0239 (Cons.), 1994 WL 665741, Final Order (Oct. 11, 1994) at 234 (emphasis added). Because the Order expressly ignores what investors think, it does not and cannot set the *investor-required* rate of return. And, because the Order does not articulate the standard pursuant to which it set the ROE, ComEd respectfully submits that its analysis and conclusions are arbitrary and capricious and, if not clarified, would clearly constitute reversible error.

In Section II of this Application, ComEd proposes that the Commission revise the Order to remove the cap on the CB Adjustment because the concerns prompting the imposition of the cap will be alleviated by the Commission's decision in ComEd's pending rate case. Specifically, intervenors have conducted extensive discovery and filed testimony in the rate case related to the 40% increase in the PORCB costs, and it is anticipated that the Commission will make a final determination regarding the appropriate allocation of those costs. In the alternative, if the Commission retains the cap, ComEd proposes that the Commission clarify that ComEd may create a regulatory asset to defer those costs that exceed the cap, which will then be recovered when the Commission permits their recovery. ComEd also proposes that the Commission delete language that inappropriately and inaccurately criticizes ComEd's discovery responses – ComEd responded to every request it received, and no motions to compel were filed.

I. The Order's Analysis Setting the Return on Equity Is Inconsistent with Decades of Commission and Court Decisions and Constitutes Reversible Error.

Although both Staff and ComEd appropriately framed the return on equity issue in terms of the "investor-required rate of return" and Staff stated that "[t]he rate of return investors require varies with risk" (Phipps Dir., Staff Ex. 4.0, 7:123-9:157; Phipps Reb., Staff Ex. 8.0,

12:239-241), the Order criticizes the expert testimony of Susan Abbott[1] precisely because she testified about the rate of return investors require:

> [S]he presented no facts indicating that this Commission should rely upon what investors think or might think, in order to determine the rate of return involved here. ComEd posits no facts indicating that appealing to investors that do not understand what a prudence review is would be something that is within this Commission's purview or even within its statutory jurisdiction.

Order at 49.

As explained below, these statements contradict decades of decisions by the Commission and State and federal courts recognizing that investors, through the equity markets, determine the required return. Moreover, because the Order apparently rejects the long-held view of setting the *investor-required* rate of return, it is unclear what the legal or factual basis is for the ROE set by the Commission, which has the potential to lead to regulatory uncertainty and cause confusion in future proceedings before this Commission. Accordingly, ComEd urges the Commission to revise the Order to delete this clearly erroneous language.

The Order's statements rejecting "what investors think" reflect a fundamental misunderstanding of the process that a regulator must go through to make an ROE determination. The "facts" that Ms. Abbott supposedly failed to present – why the Commission should rely on investor expectations or requirements – are not "facts", but established legal principles that the Commission and State and federal courts uniformly recognize as central to setting a proper ROE. A sampling of the Commission's and courts' statements on this issue follows:

[1] Until the time of her passing on December 16, 2010, Ms. Abbott was the Principal of Susan Abbott Consulting, LLC, and was an independent consultant to companies in the regulated water, gas, and electric sectors, advising them concerning credit ratings, credit worthiness, and rating agency relationships. Ms. Abbott had worked in the financial services industry since 1977, and spent the vast majority of her career at Moody's Investor Services, one of the three principal U.S.-based global rating agencies. Abbott Sur., ComEd Ex. 9.0, 1:1-12.

[A]ccording to financial theory, the required ROR for a given security equals the risk-free ROR plus a risk premium associated with that security... ***[This] risk premium methodology is consistent with the theory that investors are risk-averse....*** *CILCO*, ICC Docket No. 09-0306, 2010 WL 1868345, Final Order (April 29, 2010) at 159 (emphasis added).

Recognizing that the cost of equity measure models necessarily employ proxies for investor expectations, the Commission will apply its reasonable and informed judgment as it evaluates the results of the analyses provided by these witnesses. *North Shore Gas Co.*, ICC Docket. Nos. 09-0166 & 09-0167, 2010 WL 537062, Final Order (Jan. 21, 2010) at 123 (emphasis added).

[A] current, single-day stock price observation is an appropriate measure for estimating the cost of equity for a utility since ***investor expectations will determine the price investors will pay to buy a stock***. *CILCO*, ICC Docket No. 02-0837, 2003 WL 23941402, Final Order (Oct. 17, 2003) at 29 (emphasis added).

The cost of common equity is the market required rate of return demanded by investors. *Interstate Power Co.*, ICC Docket Nos. 01-0528, 01-0628 & 01-0629 (Cons.), Final Order (Mar. 28, 2002) at 13 (emphasis added).

In determining what the cost of equity is for a utility, ***the Commission must base its decision on sound financial principles that are used by sophisticated investors***. When determining whether or not to invest in the stock of a particular utility, ***the sophisticated investor is, in effect, setting the real cost of capital for that utility. The Commission, in authorizing a rate of return, makes an estimate of what the investor is demanding. It is the Commission that reacts to the investor and not vice versa.*** *Ill. Bell Tele. Co.*, ICC Docket No. 92-0448 & 93-0239 (Cons.), 1994 WL 665741, Final Order (Oct. 11, 1994) at 107 (emphasis added).

As evidenced by Mr. Pregozen's testimony, the 13.4% ROE does encompass a risk premium for potential disallowances per *Duquesne*.... Therefore, in compliance with the *Duquesne* case, our determination to use ***a 13.4% ROE gives consideration to the risks associated with used and useful or prudency disallowances***. *Commonwealth Edison Co.*, ICC Docket No. 87-0427, 1993 WL 73575, Final Order (Jan. 6, 1993) at 201-201 (emphasis added).

The Commission notes that the ***investor-required return on common equity*** is a forward-looking concept. *Iowa-Illinois Gas & Elec. Co.*, ICC Docket Nos. 92-0292 & 92-0357, 1993 WL 334064, Final Order (July 21, 1993) at 36 (emphasis added).

The Commission's determination of an appropriate return on equity was based on its perception of the return required by investors at the time of the decision. It

> is absurd to think that market conditions and the return on equity required by Edison investors will not change between the time of the Commission's decision on phase one and the time of its decision on phase two. *Commonwealth Edison Co.*, ICC Docket No. 83-0537, 1984 WL 922089, Am. Order (July 17, 1984) at 18 (emphasis added).
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> The determination of a just and reasonable tariff implicitly requires the commission to ***provide a fair and reasonable overall return to the debt and equity investors of a utility****.... Ill. Power Co.*, ICC Docket No. 79-0071, 33 P.U.R.4th 362, Final Order (Nov. 28, 1979) at 40 (emphasis added).
>
> It is evident that in the exercise of its sound discretion ***the Commission, in the fixing of reasonable rates as required of it by law, must necessarily consider, among other things, the factor of a reasonable return on the capital placed in the utility by the investors.*** *Ill. Bell Tele. Co. v. Ill. Commerce Comm'n*, 414 Ill. 275, 286 (1953) (emphasis added).

The inquiry and analysis in this case does not differ from that undertaken over the past 60 years: determining the *return that investors require* as compensation for the risks associated with utility investments – in this case investments supporting assets related to ComEd's implementation of PORCB. What investors "think" is central to that inquiry.

Moreover, because the Order ignores investors and their concerns and thoughts, it is unclear what methodology the Order uses to determine the return required. Although the Order adopts Staff's proposed ROE, it is inconsistent with Staff's proposed methodology purporting to support that ROE, because Staff witness Ms. Phipps at least aimed to set an "investor-required rate of return" that took into account investor concerns and observed that "[t]he rate of return investors require varies with risk." Phipps Dir., Staff Ex. 4.0, 7:123-9:157; Phipps Reb., Staff Ex. 8.0, 12:239-241. As a result, the Order's conclusion is arbitrary and capricious, and, if not clarified and changed, would constitute reversible error.

Once the correct standard is established – determining the *investor-required* rate of return – the substantial evidence of what investors think that was previously ignored now becomes the most probative evidence in the record for setting the ROE. Indeed, the expert testimony of Ms.

Abbott demonstrated that there is nothing inherent in Rider PORCB that reduces the risk to ComEd's ultimate cost recovery. All the rider does is to better match the timing of cost recovery with the underlying expenditures – it does not remove the risk of unrecovered costs. Specifically, Ms. Abbott analyzed the cost recovery risks inherent in a prudence review and underscored how significant they are *in the eyes of investors*.[2] She explained that the investing community does not view automatic adjustment clause tariffs as eliminating risk, especially where, as here, a prudence review is required:

> While Ms. Phipps and Mr. Thomas argue that there are adjustments that neutralize the risk of the program, it is important to point out that the investing community does not necessarily ascribe an absence of risk, or even a lowering of risk, to assets subject to adjustment clauses. Investors generally perceive that the relationship between these mechanisms and return on equity is a complicated one that requires the evaluation of the specifics of the mechanism in question. Ms. Phipps' general assumption that the adjustment clause associated with the PORCB program neutralizes risk is overreaching and overly simplistic. Ms. Ebrey's challenge to costs that are reasonable and rational before the program even starts further emphasizes my point that regulatory risk is real and present in this situation, and that ComEd should be entitled to its generally allowed return on equity to reflect this real and present risk that is clearly demonstrated by Staff's own recommendations.

Abbott Sur., ComEd Ex. 9.0, 3:55-4:67.

Unfortunately, the facts also show that investors view a prudence review in Illinois as more risky than in other states because ratings agencies generally view regulatory risk in Illinois as fairly high. Investors will be more cautious of investments in Illinois than they would be of utility investments in another jurisdiction with a better ranking. Abbott Sur., ComEd Ex. 9.0, 3:55-63, 4:70-5:90. Taken together, these facts show that investors do not view the PORCB assets as being less risky than rate base assets, and therefore ComEd should be allowed an ROE

[2] The Order's claim that investors "do not understand what a prudence review is" (Order at 49) is unsupported by the record and contradicted by the Commission's past orders holding that "the Commission must base its decision on sound financial principles that are used by *sophisticated* investors." *Ill. Bell Tele. Co.*, ICC Docket No. 92-0448 & 93-0239 (Cons.), 1994 WL 665741, Final Order (Oct. 11, 1994) at 107 (emphasis added).

equal to that approved by the Commission in ComEd's most recent rate case. Indeed, in light of the uncontested fact that ComEd does not obtain capital to finance projects such as PORCB on an individual project basis and instead finances such projects based on its overall cost of capital, there is no basis for approving an ROE of 6.61% when ComEd's allowed overall authorized ROE is 10.3%. ComEd Init. Br. at 34-35; ComEd Rep. Br. at 22-23.[3]

At a minimum, ComEd proposes that the Commission revise the Order on pages 47-48 to remove the erroneous language purporting to reject evidence regarding what investors think and unnecessarily impugning the expert testimony providing such evidence as follows:

> ~~Additionally, Ms. Abbott's testimony is not persuasive. We note for the record that the weight to be assigned to an expert's opinion is within the sole discretion of the trier of fact to determine, in light of that expert's credentials and the factual basis of his or her opinion. (Nolan v. Weil-McLain, 223 Ill. 2d 416, 463, 910 N.E.2d 549 (2009)). In this case, Ms. Abbott's opinions were given very little weight.~~
>
> ~~For example, Ms. Abbott testified, essentially, that when investors see that a prudence review of any cost is involved, they assume that some of those costs are at risk of disallowance. Yet, she presented no facts indicating that this Commission should rely upon what investors think or might think, in order to determine the rate of return involved here. ComEd posits no facts indicating that appealing to investors that do not understand what a prudence review is would be something that is within this Commission's purview or even within its statutory jurisdiction.~~

Finally, even if the Commission affirms its adoption of Staff's ROE, the Order's analysis and conclusions contain several other errors and inconsistencies when compared to the Commission's order setting the ROE for the Ameren Illinois Utilities' ("AIU") PORCB

[3] ComEd also presented substantial evidence demonstrating that Staff's comparison between the PORCB rider and the bond mechanisms by which ComEd recovered transition costs pursuant to the 1997 Restructuring Act is improper. ComEd further showed that because it does not finance projects such as PORCB individually, it is inappropriate to set a radically lower ROE that does not reflect the reality of ComEd's cost of capital. ComEd Init. Br. at 30-35; ComEd Rep. Br. at 19-23.

program. *See* ComEd BOE at 14. ComEd therefore requests that the Commission adopt the changes proposed by ComEd in the Appendix to its Brief on Exceptions as Exception 1, Alternative 2, much of which is drawn from AIU's PORCB order.

II. CB Adjustment Cap

A. Determination of the Appropriate Allocation of PORCB Costs in ComEd's Rate Case Alleviates the Need for a Cap.

In response to concerns regarding a roughly 40% increase in the projected PORCB cost estimates during the course of this proceeding, the Commission adopted in large part Staff's recommendation "to limit ComEd's CB Adjustment rate for the First Application Period to the amount that ComEd originally proposed, which is $12,596,214." Order at 37-38. As explained below, although the parties in this docket did not have sufficient time to determine the extent to which the costs constituting the 40% increase should be recovered through Rider PORCB or base rates, ComEd's pending rate case in ICC Docket No. 10-0467 has provided a timely forum, where this allocation issue is already being explored further and the Commission will be asked to reach a final decision on the issue. Indeed, these costs are included in the rate case, and intervenors in that case have conducted extensive discovery and filed testimony related to the PORCB cost allocation issues with the expectation that the Commission will make a final determination on the issue. Because such a determination will also serve to alleviate the Commission's concerns giving rise to the cap, ComEd requests that the Commission take administrative notice of the fact that the PORCB costs are at issue in the rate case and accordingly remove the cap imposed by the Order.

The core issue with respect to the costs constituting the 40% increase is one of *allocation*; indeed, the cost estimates were not directly correlated to the determination of the fixed, $0.50

charge.[4] As ComEd has explained throughout this proceeding and in its pending rate case, these costs were incurred as part of ComEd's effort to implement PORCB, but were originally allocated to rate base rather than to Rider PORCB. This issue was identified in the course of preparing ComEd's rate case filing, and the reallocation of these costs to PORCB resulted in the 40% increase in the PORCB costs estimates. ComEd Init. Br. at 28; ComEd Rep. Br. at 18; ComEd BOE at 16. ComEd explained this revised allocation in a data request response:

> The change in the cost estimate is the result of a revised allocation of the total costs related to the billing system modifications, and is not an identification of new project costs. This revised allocation properly includes costs related to the development of Information Technology infrastructure to facilitate the orderly switching of customers and the expected increase in RES activity and electronic data interchange transactions. This allocation was identified as appropriate in the context of ComEd's preparation of its recent general rate case filing.

Staff Cross Exs. 5, 6. Admittedly, the appropriate allocation of these costs is, to some extent, a matter of perspective where reasonable people may have reasonable differences of opinion regarding whether certain costs should be recovered through Rider PORCB (*i.e.*, from RESs) or through base rates (*i.e.*, from all retail customers). Indeed, as discussed further in rate case testimony, while the costs in question in this case were solely incurred for the implementation of Rider PORCB, they involve the enhancement of ComEd systems, the costs of which have

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[4] ComEd notes that the Order's conclusion that the fixed $0.50 charge was based on the initial cost estimates is erroneous and not supported by the record. Specifically, the Commission's Order concludes:

> We note that ComEd's $0.50 cost recovery mechanism proposal, and, the percentage proposal that Staff recommended as a cost recovery mechanism, were based upon the original estimate of costs made by ComEd. Since ComEd has not substantiated the veracity of its (approximately) 40% cost increase, it should be limited to recover the amount, *upon which, the parties in this proceeding based their proposals.*

Order at 37 (emphasis added). However, the $0.50 charge, which was adopted by the Commission, was negotiated through settlement discussions with stakeholders and was not based on ComEd's original cost estimates, as the Commission asserts. ComEd explained at great length that the fixed charge was not and could not be based on cost following traditional ratemaking approaches in light of the uncertainty of the usage of PORCB service. Rather, it was the product of settlement discussions with a diverse group of stakeholders and designed to be affordable to encourage use of Rider PORCB. *See generally* ComEd Ex. 1.0.

historically been recovered through base rates. *See* ICC Docket No. 10-0467, Marquez Sur., ComEd Ex.61.0 Rev., 9:203-206; *see also*, ICC Docket No. 10-0467, Fein Reb., ICEA Ex. 2.0, 14-16.

In light of the concerns raised and time constraints, ComEd appropriately proposed that Staff's concerns regarding the allocation of costs continue to be addressed in the rate case where discovery had only recently commenced and an allocation to the PORCB recovery mechanism had been proposed by ComEd in its direct testimony. To do otherwise would create a situation where these costs might become unnecessarily trapped between recovery mechanisms – delivery service rates and the PORCB cost recovery mechanism – and thereby result in an under recovery or no recovery of these costs. ComEd's proposal, however, was mischaracterized in the Commission's conclusions on this issue. [5]

The proper allocation of costs related to implementing PORCB has since become a "live issue" in the rate case. Intervenors such as the Illinois Competitive Energy Association and Dominion Retail agree that the rate case is the appropriate forum to explore these costs, and to that end they have conducted extensive discovery related to the costs and filed testimony

[5] Specifically, the Order's conclusion that ComEd had suggested that discovery from the rate case be used to answer questions raised in this case (*see* Order at 38) is erroneous and a mischaracterization of ComEd's proposal for the resolution of this issue. The Order states:

> ComEd also argues that the parties are free to request documentation of this increase in cost estimates in discovery in its pending rate case, Docket 10-0467. (ComEd Brief on Exceptions at 16-17). However, we see no reason why Commission Staff, or, any other party, should accept discovery in one case as validation regarding what a party did or did not do in another case. This is especially true with a rate case, where the evidence submitted in discovery can be voluminous and in some cases, unverified as to its truth and veracity. Therefore, we reject ComEd's argument. It appears that ComEd should have but did not, adequately respond to Staff's discovery requests.

Order at 38. To the contrary, ComEd witness Martin Fruehe proposed that the costs associated with consolidated billing be reviewed as part of ComEd's current rate case to provide the parties with "ample time to determine which costs should remain in base rates and which should be allocated to Rider PORCB." Fruehe Sur., ComEd Ex. 8.0, 6:113-16. Nowhere does Mr. Fruehe suggest that the rate case discovery should be used to backfill the record in this case.

regarding their appropriate allocation. *See* ICC Docket No. 10-0467, Crist Dir., Dominion Ex. 1.0, 4:28-49; ICC Docket No. 10-0467, Crist Dir., Dominion Ex. 2.0, 2:36-45; ICC Docket No. 10-0467, Fein Dir. ICEA Ex. 1.0, 13:1-18; ICC Docket No. 10-0467, Fein Reb. ICEA Ex. 2.0, 14-16. Indeed, these intervenors and ComEd fully expect that the Commission will resolve the currently pending allocation issues in the rate case. By doing so, the Commission will alleviate its own concerns about the nature of the 40% increase in the cost estimates, as well as provide retail electric suppliers, retail customers, and ComEd with much needed certainty that the costs being flowed through Rider PORCB during the three-year First Application Period are properly allocable to PORCB, which would render the need for a cap on the CB Adjustment moot.[6]

Accordingly, ComEd requests that the Commission revise the Order to (i) remove the cap on the CB Adjustment, (ii) acknowledge that the allocation of the costs between the Rider PORCB recovery mechanisms and delivery rates will be addressed in the rate case, and (iii) delete language erroneously characterizing ComEd's proposal as requiring the use of discovery in the rate case in this proceeding.

B. The Order Should Clarify the CB Adjustment Cost Cap.

In the alternative, if the Commission does not remove the CB Adjustment cap, ComEd requests that the Commission provide clarification regarding how those costs constituting the 40% increase can be recovered. Specifically, the Order provides the following guidance regarding the recovery of such costs:

[6] If the issue is not resolved in the rate case, however, these parties will have to wait for the first reconciliation proceeding to conclude, which does not even begin until 2014. At that time, if certain costs are deemed not sufficiently related to PORCB, the ability to recover those costs through a future rate case is uncertain and risky, and such risk is not reflected in the drastically lower ROE approved by the Commission in this docket. Indeed, ComEd's ROE is based on the AIU's ROE, and the AIU case involved none of this risk.

> .... ComEd should evaluate the CB Adjustment rate that is in effect for the First Application Period when it files the first annual report at the end of the first calendar year. At that time, if ComEd's cost estimates establish that an increase to the CB Adjustment is warranted, ComEd can file for new rates, for which, it shall file the appropriate supporting documentation, as is required by law. ComEd is further encouraged to provide any supporting documentation regarding increased cost estimates to Commission Staff, in advance of the filing of this report, in order to allow adequate time for analysis and evaluation of these estimates.

Order at 38. As explained below, ComEd proposes that the Commission add a sentence clarifying that ComEd is authorized to create a regulatory asset to defer such costs in order to avoid what appears to be an unintended disallowance of a year's return of and on its investment.

ComEd appreciates the Commission's desire to protect ratepayers and the opportunity to file revised tariffs after one year to reflect those costs constituting the 40% increase. ComEd notes, however, that the one year delay may be construed as effectively resulting in a disallowance of costs because it seems to preclude ComEd from a return of and on those investments for one year. *See* ComEd Init. Br. at 28; ComEd Rep. Br. at 17-18; ComEd BOE at 15. Recovery – like justice – delayed is recovery denied. Such a disallowance, however, was not intended by the Order, which does not disallow any costs and, to the contrary, states that it "make[s] no determination as to the merits of any of the costs that were/were not substantiated." Order at 38.[7] ComEd therefore requests that the Commission add the following sentence to the Order on page 38 clarifying that ComEd is permitted to create a regulatory asset for these costs, which costs would be recovered only consistent with the terms of the Order and tariffs:

> We therefore adopt Staff's recommendation to limit ComEd's CB Adjustment rate for the First Application Period to the amount that ComEd originally

[7] *See also id*. at 3-4 ("ComEd is not asking this Commission to approve the costs it will incur in starting up or administering a PORCB program… What ComEd seeks approval of in this docket is only the mechanisms for cost recovery that are in the pertinent tariffs."); *id*. at 25 ("…as long as ComEd's start-up costs for consolidated billing are prudently incurred, they are recoverable."); *id*. at 36, ("…ComEd should be allowed to recover any prudently-incurred cost that it incurs in furtherance of the PORCB program.").

> proposed, which is $12,596,214. ComEd should evaluate the CB Adjustment rate that is in effect for the First Application Period when it files the first annual report at the end of the first calendar year. At that time, if ComEd's cost estimates establish that an increase to the CB Adjustment is warranted, ComEd can file for new rates, for which, it shall file the appropriate supporting documentation, as is required by law. ComEd is further encouraged to provide any supporting documentation regarding increased cost estimates to Commission Staff, in advance of the filing of this report, in order to allow adequate time for analysis and evaluation of these estimates. <u>ComEd is further authorized to create a regulatory asset for those costs that exceed the $12,596,214, which would be recovered only consistent with the terms of this Order and applicable tariffs.</u>

Based on guidance provided elsewhere in the Order directing ComEd to seek Commission approval prior to deferring costs, ComEd believes that the addition of this language will alleviate any concerns about such recovery.

C. The Order's Criticisms of ComEd's Discovery Responses Are Unfounded and Should Be Deleted.

Finally, ComEd notes that the statements in the Order criticizing ComEd's discovery responses on the cost estimate increase issue are unfounded, speculative and unfair. ComEd responded to every single data request it received, and not a single motion to compel was filed in this docket. Indeed, as Staff witness Ms. Ebrey testified in ComEd's currently pending rate case, "[t]he explanation provided by the Company [in the PORCB docket] that the [40%] increase was due to the allocation of costs to PORCB was never fully vetted *due to the time constraints in that case*." ICC Docket No. 10-0467, Ebrey Reb., Staff Ex. 16.0, 31:653-57 (emphasis added). Although ComEd understands and appreciates the Commission's concerns about the substantiation of costs and its desire to protect customers, there is no evidence that ComEd failed to respond to a single data request, and any insinuations to that effect should be deleted from the Order because they are inaccurate. As noted by Ms. Ebrey in the rate case, the crux of the issue is simply that the parties ran out of time in this docket to fully explore the nature of the 40% increase, and the Order should be revised to reflect this reality.

CONCLUSION

The Commission should, for these reasons, grant rehearing and, on rehearing, revise the Order as requested herein.

Dated: January 14, 2011

Respectfully submitted,
COMMONWEALTH EDISON COMPANY

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