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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
COMMONWEALTH EDISON COMPANY,)
)
) No. 10-0467
)
Proposed general increase in)
Electric rates. (Tariffs filed)
June 30, 2010.))

Chicago, Illinois
January 18, 2011

Met pursuant to notice at 9:00 a.m.

BEFORE:

CLAUDIA E. SAINSOT and GLENNON P. DOLAN,
Administrative Law Judges.

1 APPEARANCES:

2 EXELON BUSINESS SERVICES, by
3 MR. RICHARD G. BERNET and
4 MR. EUGENE H. BERNSTEIN and
5 MR. MICHAEL PABIAN
6 10 South Dearborn Street, 49th Floor
7 Chicago, Illinois 60603

8 -and-

9 ROONEY RIPPIE & RATNASWAMY LLP, by
10 MR. E. GLENN RIPPIE and
11 MR. JOHN E. ROONEY
12 350 West Hubbard Street, Suite 430
13 Chicago, Illinois 60654

14 -and-

15 SIDLEY AUSTIN, LLP, by
16 MR. G. DARRYL REED
17 One South Dearborn Street
18 Chicago, Illinois 60610
19 Appearing on behalf of ComEd;

20 MR. JOHN C. FEELEY, MS. JENNIFER L. LIN and
21 MS. MEGAN C. McNEILL
22 160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601
Appearing on behalf of Staff;

MS. JANICE A. DALE and
MS. KAREN L. LUSSON and
MR. MICHAEL BOROVIK
100 West Randolph Drive, 11th Floor
Chicago, Illinois 60601
Appearing on behalf of the People of the
State of Illinois;

MS. KRISTIN C. MUNSCH and
MS. CHRISTIE R. HICKS
309 West Washington Street, Suite 800
Chicago, Illinois 60606
Appearing on behalf of CUB;

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1 APPEARANCES: (CONT'D)

2 DLA PIPER LLP (US), by
3 MR. CHRISTOPHER J. TOWNSEND,
4 MR. CHRISTOPHER N. SKEY and
5 MR. MICHAEL R. STRONG
6 203 North LaSalle Street, Suite 1900
7 Chicago, Illinois 60601
8 Appearing on behalf of REACT;

9 LUEDERS ROBERTSON & KONZEN, LLC, by
10 MR. CONRAD REDDICK
11 1015 Crest Street
12 Wheaton, Illinois 60189
13 -and-
14 MR. ERIC ROBERTSON
15 1939 Delmar Avenue
16 Granite City, Illinois 62040
17 Appearing on behalf of IIEC;

18 MR. ROBERT KELTER
19 35 East Wacker Drive, Suite 1600
20 Chicago, Illinois 60601
21 Appearing on behalf of the Environmental Law
22 and Policy Center.

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20 SULLIVAN REPORTING COMPANY, by

21 Tracy Overocker, CSR
22 Amy Spee, CSR
Alisa Sawka, CSR, RPR

1	<u>I N D E X</u>					
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
3	CARL SELIGSON	1730	1733			
4	SAMUEL HADAWAY	1735	1737			
5			1754			
6	CRISTTOPHER THOMAS	1759	1793			
7	STEVEN FETTER	1797	1799			
8	SUSAN TIERNEY		1811			
9		1816	1818			1821
10			1823			
11			1837			1842
12				1848	1851	
13	DAVID BRIGHTWELL				1852	
14		1855				1864
15	MICHAEL McNALLY					1865
16			1868	1881		
17	TORSTEN CLAUSEN					
18		1887	1889			
19	DIANNA HATHHORN					
20		1902	1904			
21			1973			1974
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E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
COMED		
	#12.0(R), 38.0	1733
	#11.0-11.5, 37.0-37.5	1737
	62.0-62.2	1737
	#20	1784
	#5.0, 5.3, 45.0, 45.1&63	1799
	#13.0-13.9, 39.0-39.9764	1818
	#21	1876
	#22	1878
	#21&22	1886
STAFF		
	#13	1738
	#14	1839
	#8.0&23.0	1858
	#5.0, 5.1-5.10, 20.0&20.1	1867
	#14.0, 25.0, 30.0	1889
CUB		
	#1	1755
AG/CUB		
	#4.0-4.7&10.0-10.1	1762
AG		
	#15	1854
	#16&17	1912
	#18	1920
	#16	1973
IIEC		
	#1.1, 1.1-1.20, 4.0, 4.1	1855
ICC STAFF		
	#2.0, 2.01-2.04, 17.017.01	1904

1 JUDGE SAINCOT: By the authority vested in me
2 by the Illinois Commerce Commission, I now call
3 Docket No. 10-0467. It is the matter of the
4 Commonwealth Edison Company and it concerns the
5 proposed general increase in electric rates.

6 Will the parties present identify
7 themselves for the record, please.

8 MR. BERNET: On behalf of Commonwealth Edison
9 Company, Richard Bernet, Gene Bernstein and Michael
10 Pabian, 10 South Dearborn, Suite 4900, Chicago,
11 Illinois 60603.

12 MR. RIPPPIE: Also on behalf of Commonwealth
13 Edison Company, Glenn Rippie of the law firm of
14 Rooney, Rippie & Ratnaswamy, LLP, 350 West Hubbard,
15 Suite 430, Chicago, Illinois 60604.

16 MR. REED: Also on behalf of Commonwealth
17 Edison, G. Darryl Reed of the law firm Sidley Austin,
18 LLP, One South Dearborn, Chicago, 60603.

19 MR. FEELEY: Representing Staff of the Illinois
20 Commerce Commission, John Feeley, Megan McNeill and
21 Jennifer Lin, Office of General Counsel, 160 North
22 LaSalle Street, Suite C-800, Chicago, Illinois 60601.

1 MR. SKEY: On behalf of the REACT Coalition,
2 Christopher J. Townsend, Christopher N. Skey and
3 Michael R. Strong of the law firm of DLA Piper
4 LLP (US) 203 North LaSalle, Chicago, Illinois 60601.

5 MR. REDDICK: For the Illinois Industrial
6 Energy Consumers, IIEC, Conrad Reddick, 1015 Crest
7 Street, Wheaton, Illinois 60189 and Eric Robertson of
8 the firm Leuders, Robertson & Konzen, 1939 Delmar
9 Avenue, Granite City, Illinois 62040.

10 MR. BOROVIK: Appearing on behalf of the People
11 of the State of Illinois, Michael Borovik, B, like
12 boy, o-r-o-v, like Victor, i-k, Karen Lusson, Sue
13 Satter and Janice Dale, 100 West Randolph, 11th
14 Floor, Chicago, Illinois 60601.

15 MS. HICKS: On behalf of the Citizens Utility
16 Board, Christie Hicks and Kristin Munsch, 309 West
17 Washington, Suite 800, Chicago, Illinois 60606.

18 JUDGE DOLAN: Any other appearances?

19 (No response.)

20 Let the record reflect there are no
21 further appearances.

22 Are we ready to call our first

1 witness?

2 MR. REED: Yes, we are, your Honor. Our first
3 witness is Mr. Carl Seligson.

4 (Witness sworn.)

5 MR. REED: May we proceed, your Honor?

6 JUDGE DOLAN: Yes.

7 CARL SELIGSON,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY

12 MR. REED:

13 Q Good morning, Mr. Seligson. How are you
14 today?

15 A Good morning.

16 Q Would you please state your name for the
17 record, spelling your last name.

18 A My name is Carl, middle initial H,
19 Seligson, that's S-e-l-i-g-s-o-n.

20 Q By whom are you employed, sir?

21 A I'm self-employed.

22 Q And do you have before you two documents,

1 the first entitled The Revised Direct Testimony,
2 ComEd Exhibit 12.0 revised filed on e-Docket on
3 October 19th of 2010? This document consist of a
4 cover sheet, a list of issues and major conclusions
5 and 12 pages of text in question and answer format
6 and a 2-page appendix concerning prior testimony.

7 Does this document constitute your
8 revised direct testimony in this proceeding?

9 A Yes.

10 Q You also have before you another document
11 designated ComEd Exhibit 38.0, consisting of a cover
12 sheet, a list of issues and major conclusions and 6
13 pages of text in question and answer format.

14 Does this document constitute your
15 rebuttal testimony in this proceeding?

16 A Yes, it does.

17 Q And these two documents represent the
18 testimony that you are about to give today; is that
19 correct?

20 A Yes.

21 Q If I were to ask you the same questions
22 contained in these documents today, would your

1 answers be the same as stated therein?

2 A Yes, except for the fact, of course, that
3 they would have to be modified for current conditions
4 where they refer to the conditions at the time that
5 they were given.

6 Q With that exception, are there any changes,
7 additions, or deletions that you'd like to make to
8 these documents?

9 A No, sir.

10 MR. REED: With that being said, we offer for
11 admission into the record ComEd Exhibit 12.0 revised
12 and ComEd Exhibit 38.0 for admittance into the record
13 and tender the witness, Mr. Carl Seligson, for
14 cross-examination.

15 JUDGE DOLAN: Any objections?

16 (No response.)

17 All right. With that, ComEd
18 Exhibit 12.0 revised and ComEd Exhibit 38.0 will be
19 admitted into the record.

20

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1 (Whereupon, ComEd
2 Exhibit No. 12.0 revised and
3 ComEd Exhibit 38.0 was
4 admitted into evidence as
5 of this date.)
6 Proceed, Counsel.

7 CROSS-EXAMINATION

8 BY

9 MS. HICKS:

10 Q Good morning, Mr. Seligson.

11 A Good morning.

12 Q My name is Christie Hicks. I represent the
13 Citizens Utility Board and I have just a few quick
14 questions for you this morning.

15 A All right.

16 Q In preparing your testimony in this case,
17 did you review any prior Illinois Commerce Commission
18 decisions related to risk premium analysis or
19 comparable earning analysis?

20 A No, I did not.

21 Q Do you know of any Illinois Commerce
22 Commission cases where the Commission relied on a

1 comparable earnings or risk premium analysis?

2 A No, unfortunately, I don't.

3 MS. HICKS: All right. Then I have no further
4 questions.

5 JUDGE DOLAN: Thank you. Mr. Reddick -- no,
6 I'm sorry, Mr. Borovik.

7 MR. BOROVIK: We have no questions, your Honor.

8 JUDGE DOLAN: Any redirect?

9 MR. REED: No, your Honor.

10 JUDGE DOLAN: All right. Thank you, sir.
11 You're excused.

12 Off the record.

13 (Recess taken.)

14 MR. RIPPIE: Your Honors, the Company's next
15 witness is Samuel Hadaway.

16 (Witness sworn.)

17 JUDGE DOLAN: Proceed, Counsel.

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SAMUEL C. HADAWAY,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MR. RIPPIE:

Q Would you be so kind as to state and spell your last name for the court reporter.

A My name is Samuel C. Hadaway, H-a-d-a-w-a-y.

Q And, Professor Hadaway, I have placed in front of you a series of documents consisting of Commonwealth Edison Company Exhibits 11 through 11.5 filed on e-Docket on June 30th, 2010, ComEd Exhibits 37.0 through 37.5 filed on e-Docket on November 22nd, 2010, and ComEd Exhibits 62.0 through 62.2 filed on e-Docket on January the 3rd of 2011.

Are those documents intended by you to constitute your testimony for submission to the Illinois Commerce Commission in this proceeding?

A Yes, they are.

Q And if I were to ask you the same questions

1 that appear on those documents today, would you give
2 me the same answers?

3 A Yes.

4 Q Are there any additions or corrections that
5 you need to make to those documents?

6 A None that I'm aware of.

7 MR. RIPPIE: Thank you very much, sir.

8 I would offer into evidence ComEd
9 Exhibits 11.0 through 11.5, 37.0 through 37.5 and
10 62.0 through 62.2.

11 JUDGE DOLAN: Any objections?

12 (No response.)

13 With that, ComEd Exhibit 11.0 through
14 11.5 will be admitted into the record, ComEd
15 Exhibit 37.0 through 37.5 will be admitted into the
16 record and ComEd Exhibit 62.0 through 62.2 will be
17 admitted into the record.

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1 (Whereupon, ComEd
2 Exhibit Nos. 11.0 through 11.5
3 37.0 through 37.5 and
4 62.0 through 62.2 were
5 admitted into evidence as
6 of this date.)

7 MR. RIPPIE: And I tender the witness, your
8 Honors, for cross-examination.

9 JUDGE DOLAN: Counsel, you may proceed.

10 MR. FEELEY: Can we go off the record just for
11 a second?

12 (Discussion off the record.)

13 CROSS-EXAMINATION

14 BY

15 MR. FEELEY:

16 Q Good morning, Dr. Hadaway. My name is John
17 Feeley. I'm one of the attorneys for Staff.

18 A Good morning, Mr. Feeley.

19 MR. FEELEY: Your Honors, I have a group Staff
20 Cross Exhibit. Can I approach the witness?

21 JUDGE DOLAN: Certainly.

22

1 BY MR. FEELEY:

2 Q Dr. Hadaway, I've provided to you and the
3 ALJs what I'll mark for identification as Staff Cross
4 Exhibit 13, it's the Company's response to the
5 following Staff Data Requests MGM 3.04, MGM 3.06,
6 MGM 3.07, MGM 3.08, MGM 3.09 and MGM 3.11. I'll
7 probably be referring to these various data requests
8 here during this cross-examination.

9 (Whereupon, Staff Cross
10 Exhibit No. 13 was
11 marked for identification
12 as of this date.)

13 BY MR. FEELEY:

14 Q If you could find your response to
15 MGM 3.07.

16 A Yes, sir, I have that.

17 Q And these are your responses to the various
18 Staff data requests; correct?

19 A Yes.

20 Q If you could just review 3.07 and let me
21 know when you're ready.

22 A Yes, I have reviewed it.

1 Q That data request and your response talks
2 about a flight to safety. A flight to safety is
3 when -- would you agree that a flight to safety is
4 when investors move capital out of investments
5 perceived as riskier and into investments that they
6 perceive less risky?

7 A I think that's the general definition, yes.

8 Q Okay. Is a flight to safety more likely to
9 occur in a falling market or a recovering market?

10 A I believe probably more likely in a falling
11 market if there's turbulence in -- disturbances in
12 that market.

13 Q So a flight to safety is more likely to see
14 just -- any market experience in turbulence then?

15 A No. I agreed with your question. I
16 believe that it's more likely in the down market if
17 that's being caused --

18 Q Okay. In the midst of a sustained
19 market-wide decline, is it typical to see a
20 noticeable increase in the relative demand for risky
21 investments?

22 A Sometimes at the bottom -- people try to

1 pick the bottom of the market and get into those
2 costs of load, if that's what you mean.

3 Q But in a sustained market-wide decline, is
4 it typical to see a noticeable increase in the
5 relative demand for risky investments?

6 A Oh, no. I think, in general, that's what's
7 causing the market to go down is less demand for
8 risky investment.

9 Q Is the opposite true, that is, in the midst
10 of a sustained market-wide decline, is it typical to
11 see a noticeable increase in the relative demand for
12 less risky investments?

13 A I think I want to say yes. Could you say
14 that question again, please?

15 Q Sure.

16 In the midst of a sustained
17 market-wide decline, is it typical to see a
18 noticeable increase in the relative demand for less
19 risky investments?

20 A I'm not sure that's true in every market,
21 but it certainly has been in the recent very
22 turbulent markets that we've had.

1 Q Okay. Would it make sense for investors
2 experiencing what they believe to be the beginning of
3 a sustained market-wide decline to move out of
4 riskier investments and into less risky investments?

5 A I suppose if they had a crystal ball, they
6 might do that. It's very difficult to say yes or no
7 to that.

8 Q In a period in which the market undergoes a
9 flight to safety, prices of risky investments would
10 tend to fall relative to prices of less risky
11 investments; correct?

12 A Yes.

13 Q Alternatively, would it make sense for
14 investors experiencing what they believe to be the
15 beginning of a sustained market-wide recovery to move
16 out of the less risky investments and back into the
17 riskier investments reversing the flight to safety
18 trend?

19 A All things equal, yes.

20 Q And during a period in which capital moves
21 back into riskier investments, the prices of riskier
22 investments would tend to rise relative to the prices

1 of less risky investments; correct?

2 A In theory, yes.

3 Q Thus, over the course of that market
4 decline and subsequent recovery, the price of riskier
5 investments would tend to experience a shift of
6 greater magnitude than the price of less risky
7 investments; correct?

8 A Yes, that's right.

9 Q And that's consistent with the idea that a
10 less risky stock, by definition, does not experience
11 the price volatility of a riskier stock; correct?

12 A If I may, that's a very general area you
13 are asking about and I'll try to answer yes or no;
14 but there are caveats I think so to all these yes or
15 no. Yes, I think you're right.

16 Q Okay. So in financial -- in financial
17 theory, a company having a beta greater than 1
18 indicates that company has more exposure to market
19 risks than the overall market; correct?

20 A Yes.

21 Q And a company having a beta of less than 1
22 would indicate that the company has less exposure to

1 market risk in the overall market; correct?

2 A Yes.

3 Q So one would expect companies with a beta
4 less than 1 to experience smaller price shifts than
5 their overall market during a market decline and
6 subsequent recovery; correct?

7 A If the theory held up, yes.

8 Q Conversely, one would expect companies with
9 a beta greater than 1 to experience larger price
10 shifts than the overall market during a market
11 decline and subsequent recovery; correct?

12 A Yes.

13 Q If you could go to your direct testimony
14 and look at 11.0 at Lines 15 to 16 at Pages 26 and
15 27.

16 JUDGE DOLAN: What lines?

17 MR. FEELEY: Hold on one second.

18 BY MR. FEELEY:

19 Q Do you recall your testimony on the CAPM
20 pricing model?

21 A Yes, I do.

22 Q Do you recall in your testimony where you

1 explain that due to artificially low yields on U.S.
2 Treasury Securities, you did not rely on the capital
3 assets pricing model to estimate ComEd's cost of
4 common equity as you believe that it would produce an
5 understated ROE, all else equal?

6 A Yes, I do.

7 Q Now, if you could refer to Staff Cross
8 Exhibit 13, the data request and response to
9 MGM 3.04.

10 A Yes, I have that.

11 Q Okay. In your response, you clarify that
12 by "artificial," you mean influenced by government
13 monetary policy and not representative of typical
14 free-market forces; is that correct?

15 A Yes.

16 Q And the pages from your testimony -- that's
17 actually looking at Page 1, I think, correct,
18 Lines 15 to 16?

19 A Yes, I see some discussion to CAP in there.

20 Q Okay. If you could look at your response
21 to MGM 3.08 in Staff Cross Exhibit 13.

22 A I have that.

1 Q In contrast to what you consider to be
2 artificial treasure yields at this time and response
3 to Staff Data Request MGM 3.08, you noted that in
4 your prior experience as a cost of capital witness in
5 utility rate proceedings, you once selected to not
6 rely on the results of a particular model,
7 specifically, the bond yield plus premium due to
8 artificially high yields on U.S. Treasury Securities;
9 correct?

10 A I did not use the word "one case." In
11 fact, in many cases I did not do that.

12 Q I'm sorry?

13 A I believe you said that I referred to one
14 case. I think I was asked if I had ever done that
15 and I did that in many cases.

16 Q Okay. But in your response to MGM 3.08,
17 you only provided one example?

18 A Yes, I just gave that as an example.

19 Q And the example that you provided -- you
20 were a witness for the Texas Public Utility
21 Commission; correct?

22 A Yes, that's right.

1 Q So is it your testimony today that -- well,
2 in your prior experience as a cost of capital witness
3 in utility proceedings, have you ever elected to not
4 rely on a given model because of artificially high
5 yields on U.S. Treasury Securities, which would
6 produce an overstated ROE representing a utility
7 company?

8 A The particular -- oh, while representing a
9 utility company?

10 Q Yeah.

11 A I don't believe that situation has existed
12 since I have worked with utility companies, so the
13 answer is no.

14 Q Why in this case did you calculate the risk
15 premium from and add that risk premium to a triple B
16 rated bond yield?

17 A Most of the debt securities related to
18 Commonwealth Edison are triple B rated. They do have
19 a single A rating from S&P on some first mortgage
20 bonds, but we consider this to be a triple B company,
21 their corporate rating is triple B.

22 Q In your testimony in this proceeding, did

1 you explain that in your testimony, that reasoning
2 anywhere in your testimony here?

3 A I believe I did, yes.

4 Q Where?

5 A Let me look just for a moment, please.

6 Yes. At the bottom of Page 2 carrying
7 on to Page 3, I explained what I just said on
8 Line 46, that ComEd's senior security ratings of
9 A minus and S&P -- from S&P and Baal, which is like
10 triple B plus from Moody's and I explained that the
11 comparable group that I used on the previous page had
12 a single A minus average rating from S&P and an A2 to
13 A3 from Moody's. So I believe that's where I
14 explained that relationship.

15 Q And your use -- your reason for using a
16 corporate bond yield in this case, is that the same
17 basic reason you used a corporate yield rather than
18 the tradition risk-free rate in the prior cases you
19 noted were in response to MGM 3.09?

20 A I'm sorry, let me look at 3.09 and make
21 sure I understand what you're referring to.

22 Q Yes, look at 3.09.

1 A I certainly did refer to Treasury bond
2 rates, but notice also that I said high-grade utility
3 bonds. In fact -- I believe in that testimony in the
4 risk premium analysis, I either use both of those or
5 maybe only utility bond rates as I have here.

6 Q So is it correct that your model attempted
7 to estimate the cost of common equity for a company
8 of a given risk level?

9 A Yes, it did.

10 Q If you could look at your response -- look
11 at what -- I'm going to refer to your response to
12 3.09.

13 A Oh, I'm sorry. I may have been looking at
14 the wrong one. I was looking at 3.08. I
15 misunderstood your question. I apologize. Now I'm
16 on 3.09.

17 Q Okay. But my -- so when I asked you my
18 prior question, you were looking at 3.08?

19 A Yes, I was.

20 Q Okay. Well, look at 3.09. Does that
21 change the answer that you provided -- you just
22 previously provided about the reason for using --

1 about your model that you attempted to estimate the
2 cost of common equity for a company of a given risk
3 level?

4 JUDGE SAINCOT: Mr. Feeley, why don't you ask
5 the question again so it's clear.

6 MR. FEELEY: Sure.

7 BY MR. FEELEY:

8 Q In your model, you attempted to estimate a
9 cost of common equity for a company of a given risk
10 level; is that correct?

11 A Yes.

12 Q Okay. Now, if you could look at response
13 to 3.09.

14 A Okay. I have that now.

15 Q In response to Staff Data Request MGM 3.09,
16 you were asked, If a witness in a utility cost of
17 capital proceeding such as this one, have you ever
18 used a risk premium model in the form
19 $K_e = r_f + (r_m - r_f)$ where r_f is defined as the
20 risk-free rate? Is that what you are asked?

21 A Yes, I see that.

22 Q And you responded by saying that, It

1 depends on the definition of "rf" in the equation
2 shown above?

3 A Yes, I see that.

4 Q Okay. And then you proceeded to note that
5 in prior cases, you had used a similar equation where
6 "rf" was the corporate bond rate, not the traditional
7 risk-free rate, based on U.S. Treasury bonds; is that
8 correct?

9 A Yes.

10 Q So would it be correct to say that if one
11 were to -- if I were to reask you that question posed
12 in 3.09 but with rf factor defined as the traditional
13 risk-free rate based on U.S. Treasury bonds, would it
14 be correct to say that you have never used such a
15 model?

16 A I may have. I have been doing this for a
17 long time. I believe in the last ComEd case that I
18 did present the Ibbotson data and I -- for the market
19 rate of return, but I believe that I used the
20 corporate bond, not the treasury bond rate in that
21 case. But as I sit here, I simply can't say that I
22 have not done that in some other cases. Typically I

1 would use the corporate bond rate if I didn't adjust
2 the beta.

3 Q Okay. But you can't point to me an example
4 where you have used U.S. Treasury bonds rather than a
5 corporate bond rate in that model?

6 A What I have done is I may have used both.
7 Currently and certainly I would endorse using the
8 corporate bond rate in this context because it would
9 reflect the risk; whereas, I understand what you're
10 saying with the risk-free rate, we might adjust with
11 beta. Some people believe that is acquired, some
12 people don't.

13 Q Now, if you could look at again Staff Cross
14 Exhibit 13's response to MGM 3.11.

15 A I have that.

16 Q Just review the question and your response.

17 A Yes, I reviewed it.

18 Q Okay. In Staff Data Request MGM 3.11 you
19 were asked, What was the average credit rating for
20 the companies whose bonds were included in the
21 Moody's average public utility bond yield shown on
22 Pages 1 and 2 of ComEd Exhibit 11.5; correct?

1 A Yes.

2 Q Okay. Referring to your response to that
3 data request, is it fair to say that you don't know
4 the answer to that question?

5 A No, I don't think that's fair.

6 Q Well, where do you provide the answer to
7 that question in your answer there?

8 A I tried to explain initially the average
9 consisted of four Moody's indexes, triple A through
10 triple B and in 2001, the triple A was eliminated, so
11 it was just double A through Baa triple B, which is
12 currently what it is. They simply take each month
13 the average interest rates on a group of double A
14 bonds -- there are a few of those -- but some A and
15 triple B. We get the average of those for that month
16 and then they average those three together, that's
17 the way the average utility bond index is created.

18 Q Okay. But the question asked what was the
19 average for the companies; correct?

20 A Well, it changes over time. Right now, it
21 would be approximately triple B because most of the
22 companies are triple B.

1 Q But specifically -- it was referring to
2 your ComEd Exhibit 11.5, Pages 1 and 2. At that
3 point in time, the question asked what was the
4 average and you didn't provide what the average was,
5 did you?

6 A I provided it for each year, yes. 1980
7 through 2009 in that exhibit. If you're asking me
8 the interest rate level, I'm not sure if I
9 understood.

10 MR. FEELEY: Thank you, Dr. Hadaway. That's
11 all I have.

12 At this time, I'd move to admit into
13 evidence ICC Staff Cross Exhibit 13, which is the
14 Company's responses to the various Staff Data
15 requests MGM 3.4, 6, 7, 8, 9 and 11.

16 MR. RIPPIE: There is no objection.

17 JUDGE SAINSOT: Okay. Hearing no objection,
18 your motion is granted, Counsel, and Staff Cross
19 Exhibit 13 is entered into evidence.

20

21

22

1 (Whereupon, Staff Cross
2 Exhibit No. 13 was
3 admitted into evidence as
4 of this date.)

5 JUDGE DOLAN: Go ahead, Counsel.

6 CROSS-EXAMINATION

7 BY

8 MS. HICKS:

9 Q Good morning, Dr. Hadaway.

10 A Good morning.

11 Q Christie Hicks with the Citizens Utility
12 Board.

13 Now, I want to ask you about the two
14 CAPM analyses that you performed related to this
15 case. I understand you didn't rely on them in your
16 testimony, but that you did perform two; is that
17 correct?

18 A No, not in my affirmative testimony. I
19 redid, I believe, Mr. Gorman's CAPM analysis in my
20 rebuttal testimony.

21 MS. HICKS: Okay. Well, let me show you
22 here -- may I approach?

1 JUDGE SAINCOT: Please speak up a little bit.

2 MS. HICKS: Oh, sorry about that. I'll go
3 ahead and mark this as CUB Cross Exhibit 1.

4 (Whereupon, CUB Cross
5 Exhibit No. 1 was
6 marked for identification
7 as of this date.)

8 BY MS. HICKS:

9 Q All right. I've handed you your response
10 to Staff Data Request MGM 3.01.

11 Did you respond to this request?

12 A Yes, I did.

13 Q And this request asks if you had performed
14 any CAPM analysis, does it not?

15 A Yes, it does.

16 Q And did you perform such an analysis?

17 A Yes, but I did not use it in my testimony.
18 That was the confusion previous.

19 Q Okay. Thank you.

20 Did you conduct the analysis prior to
21 writing your testimony for the case?

22 A Yes, I did.

1 Q All right. And you actually performed two
2 analyses; is that right?

3 A Yes.

4 Q And the first CAPM analysis that you
5 conducted was an update -- a March 2010 update to the
6 long- and short-term analysis that you performed in
7 ComEd's 2007 rate case; is that right?

8 A Yes.

9 Q And the result of the short-term CAPM
10 update was cost of common equity of 5.01 percent; is
11 that right?

12 A Yes.

13 Q And the update to the long-term CAPM
14 analysis was a cost of common equity of 8.21 percent;
15 is that right?

16 A Yes.

17 Q And the midpoint of those you found to be
18 6.61 percent?

19 A Yes.

20 Q And the second CAPM analysis that you
21 performed was an update to the CAPM performed by ICC
22 Staff in ICC Docket 09-0306; is that right?

1 A Yes.

2 Q And the results of that analysis was the
3 cost of common equity of 9.55 percent, wasn't it?

4 A That's right.

5 Q Now, I'd like to turn your attention just
6 briefly to comparable earnings analyses and one of
7 those was used by Mr. Seligson in this case. You
8 chose not to use the comparable earnings approach
9 because most regulatory commissions rely more heavily
10 on the DCF approach; is that right?

11 A That would be one of the reasons, yes.

12 Q And also you believe that a combination of
13 DCF and risk premium models provides the most
14 reliable approach, don't you?

15 A Those are the ones I have typically used,
16 yes.

17 MS. HICKS: All right. I have no further
18 questions and at this time I would move CUB Cross
19 Exhibit 1 into evidence.

20 MR. RIPPIE: No objection.

21 JUDGE DOLAN: All right. Then CUB Cross
22 Exhibit 1 will be admitted into the record.

1 MS. HICKS: Thank you.

2 (Whereupon, CUB Cross
3 Exhibit No. 1 was
4 admitted into evidence as
5 of this date.)

6 JUDGE SAINSOT: Okay. Who's next?

7 JUDGE DOLAN: Mr. Borovik?

8 MR. BOROVIK: I didn't have any questions for
9 this witness, your Honor.

10 MR. RIPPPIE: Your Honors, if we could have just
11 about 2 or 3 minutes with the witness. Thank you.

12 (Recess taken.)

13 MR. RIPPPIE: There is no redirect, your Honors.

14 JUDGE SAINSOT: Okay. You can step down then,
15 Doctor.

16 MR. RIPPPIE: Can we have 2 or 3 minutes to
17 shuffle papers?

18 JUDGE SAINSOT: Sure.

19 (Witness sworn.)

20 CHRISTOPHER C. THOMAS,
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY

3 MS. MUNSCH:

4 Q Good morning, Mr. Thomas.

5 MS. MUNSCH: I believe he's been sworn in?

6 JUDGE SAINSOT: He's been sworn in.

7 MS. MUNSCH: Thank you.

8 BY MS. MUNSCH:

9 Q Would you please state your name and
10 business address for the record.

11 A Yes. My name is Christopher C. Thomas. My
12 business address is 309 West Washington Street,
13 Suite 800, Chicago, Illinois 60606.

14 Q And do you have before you what has been
15 marked as AG/CUB Exhibits 4.0 through 4.6 and then
16 AG/CUB Exhibit 4.7, which is your affidavit?

17 A I do.

18 Q And were these exhibits prepared by you or
19 under your direction and control?

20 A They were.

21 Q And if you were asked these questions
22 today, would you give the same answers?

1 A Yes.

2 Q Do you have any corrections that you need
3 to make at this time?

4 A I do. I have one correction. At Line 768
5 on Page 37, there's a note that was left in the
6 testimony. It says, What is the pink table for?
7 Delete.

8 Q And your correction would be to delete that
9 text?

10 A It would be.

11 JUDGE SAINSOT: How do you want to do that? Do
12 you want us to fix that?

13 MS. MUNSCH: It's marked out on here. And I
14 should note for the record as well that these are
15 revised Exhibits 4.0.

16 BY MS. MUNSCH:

17 Q And do you have in front of you AG/CUB
18 Exhibit 10.0?

19 A I do.

20 Q And AG/CUB Exhibit 10.1, which is your
21 affidavit?

22 A Yes.

1 Q And was this prepared by you or under your
2 direction and control?

3 A It was.

4 Q And if asked these questions today, would
5 you give the same answers?

6 A Yes.

7 Q Do you have any corrections to make to
8 this?

9 A I don't.

10 MS. MUNSCH: Okay. Thank you very much.

11 At this time, we would move for the
12 admission of AG CUB Exhibits 4.0 through 4.7, 4.7,
13 being the affidavit of Mr. Thomas, and 10.0 through
14 10.1, 10.1 being his affidavit.

15 JUDGE SAINSOT: Any objection?

16 MR. RIPPIE: None, your Honors.

17 JUDGE SAINSOT: Okay. Hearing no objection,
18 your motion is granted and AG CUB Exhibits 4.0
19 through -- are these AG CUB?

20 MS. MUNSCH: Yes, AG CUB.

21 JUDGE SAINSOT: Okay. AG CUB 4.0 through 4.7
22 and 10.0 through 10.1 are admitted into evidence.

1 (Whereupon, AG/CUB
2 Exhibit Nos. 4.0 through 4.7 and
3 10.0 through 10.1 were
4 admitted into evidence as
5 of this date.)

6 JUDGE DOLAN: And just for clarification, 4.0
7 is revised?

8 MS. MUNSCH: Yes. Only 4.0. 10.0 is just --

9 JUDGE DOLAN: All right.

10 CROSS-EXAMINATION

11 BY

12 MR. RIPPIE:

13 Q Good morning, Mr. Thomas. My name is Glenn
14 Rippie and I'm one of the counsel for ComEd. I
15 thought I'd begin with the burning question that's
16 been on everybody's mind. Are pink ROEs higher or
17 lower than -- I'm teasing.

18 Let's begin with some general
19 questions on the process that is used to set utility
20 ROEs and then we'll move to some of the details of
21 your testimony.

22 Would you agree with me that ComEd,

1 like every other utility, is entitled to a revenue
2 requirement that reflects its reasonable and prudent
3 costs, including a fair return on its rate base
4 investments?

5 A An opportunity for that, yes, sir.

6 Q Okay. Would you agree -- I was trying to
7 break the question up, but I think you answered them
8 both. So they're entitled to a fair revenue
9 requirement and a reasonable opportunity to earn that
10 revenue requirement?

11 A That's correct.

12 Q Okay. And the revenue requirement includes
13 a just and reasonable cost of equity as one of the
14 capital cost components?

15 A That's right.

16 Q And a utility's return on equity, does it
17 not -- is a cost of doing business?

18 A That's correct.

19 Q Now, please understand that I am not
20 seeking a legal opinion, but I know you've quoted
21 this case before. So would you concur that utilities
22 are entitled to an opportunity to earn a fair return

1 on their prudent and reasonable investment that is
2 commensurate with the returns earned by other firms
3 of comparable risk?

4 A Yes, that's generally the hope and belief
5 of that decision.

6 Q So in layman's terms, ComEd is out there in
7 an equity market and it's competing with other
8 companies and other investment opportunities for
9 capital?

10 A That's correct.

11 Q And the market in which it's competing
12 capital includes not only a national capital market,
13 but also a global capital market?

14 A That's correct.

15 Q And in those markets, equity investors have
16 a choice of a variety other investments as well as
17 non-equity investments competing for the same
18 dollars?

19 A That's right. Depending upon their risk
20 dollars, that's correct.

21 Q And ComEd, in order to perform its
22 function, needs to attract investors in order to

1 maintain access to capital on -- I believe your term
2 was reasonable terms?

3 A That's correct.

4 Q Would you agree with the testimony of
5 Mr. McNally that when public utilities' charges
6 reflect an authorized rate of return below the cost
7 of capital, the financial integrity of the utility
8 suffers making it difficult for the utility to
9 attract capital at reasonable costs?

10 A That's certainly possible.

11 Q Would you agree with Mr. McNally that in
12 such circumstances, the utility's inability -- quote,
13 The utility's inability to raise sufficient capital
14 would impair service quality ultimately?

15 A Perhaps in the short term. I think
16 utilities have -- if I could expand on that. I think
17 utilities have remedies through the Commission
18 process where they can come in and seek a rate
19 increase if that's the situation, so there may be
20 some short-term effects, but I doubt there will be a
21 long-term effect.

22 Q And the reason that you doubt there will be

1 a long-term effect because the utilities have
2 remedies like the case we're sitting here with today,
3 they can come in and request a rate increase?

4 A That's correct.

5 Q Would you agree with Mr. McNally that
6 consumers are best served when the authorized rate of
7 return equals the overall actual cost of capital?

8 A That's correct. That's what these
9 proceedings endeavor to ascertain.

10 Q Now, the actual rate of return that we just
11 talked about is driven by the investors in that
12 global capital marketplace that we discussed; isn't
13 that correct?

14 A That's correct.

15 Q And amongst the factors that will drive the
16 return that they require are the expectations of both
17 ComEd's performance and the expectations of the
18 performance of competing opportunities; right?

19 A That's right, the market as a whole, yes,
20 sir.

21 Q Correct. Okay. I told your Counsel that
22 if you just said "yes" a lot, this would be very

1 easy.

2 So, ultimately, it is investors
3 choosing between those competing opportunities that
4 sets what ComEd's appropriate cost of capital is; is
5 that correct?

6 A That's correct. It's reflected in the
7 price of the stock -- or theoretically in the price
8 of the stock, that's correct.

9 Q As well, I suppose, theoretically, in the
10 price of everything else that it competes with
11 slightly?

12 A That's correct, slightly and it's the
13 evaluation of those differences that sort of
14 stabilize or cause the changes in the those -- the
15 stock price.

16 Q So far we're right in sync.

17 Would you then agree that it is the
18 task of the Commission today to assess, based on
19 models and evidence before it, what that
20 investor-required return is rather than to dictate
21 what the return is?

22 A That's correct.

1 Q Now, ComEd is not a publically traded
2 company; am I correct?

3 A That is correct.

4 Q And with very tiny exceptions, its stock --
5 its common stock is owned by another company?

6 A That's correct.

7 Q So in order to assess what an
8 investor-required ROE is for ComEd, it's necessary to
9 look at indirect models; is that right?

10 A Yeah, to perform analysis on comparable
11 companies or companies with comparative risk
12 profiles, that's correct.

13 Q Now, would you agree that there are --
14 amongst the factors that would affect the underlying
15 investor-required return for a company like ComEd
16 would be the operating risk of the company?

17 A Yes.

18 Q The financial soundness of the company in
19 its capitalization?

20 A Yes.

21 Q It's cash flows?

22 A Yes.

1 Q And it's regulatory climate?

2 A That's correct.

3 Q And would you agree that it is a
4 well-accepted fact that investors will take on
5 additional risks, such as those which we've just
6 discussed, only if they can expect to receive a
7 higher rate of return?

8 A That's correct. And the adverse is also
9 true, they'll accept a lower rate of return if
10 they're taking on less risk.

11 Q Fair enough.

12 A That's symmetrical.

13 Q Now, you are and have been for some time
14 employed by CUB as a senior member of its -- in
15 various positions as a senior member of its policy
16 advisory staff?

17 A Yes.

18 Q You are not an equities analyst?

19 A That's correct.

20 Q You are not a bond analyst?

21 A That's correct.

22 Q And you never have been?

1 A That's right.

2 Q Have you ever acted as an advisor to any
3 investment fund, pension fund, mutual fund, hedge
4 fund, bank, investment company or trust, or any other
5 pool that invests in stocks or bonds?

6 A I have not.

7 Q Now, there are folks, though, that do that;
8 right?

9 A That's right.

10 Q In fact, there's a community of folks that
11 it is their stock and trade to professionally advise
12 investors in the markets?

13 A Yes.

14 Q And that's a big business, would you agree?

15 A Yes.

16 Q They perform their functions sufficiently
17 well that investors -- at least in their opinion of
18 the customers, sufficiently well -- that investors
19 are willing to pay billions of dollars each year for
20 their advice?

21 A Their customers are willing to pay billions
22 of dollars, that's correct.

1 Q Would you also grant me that the reliance
2 on the market on these folks is so great that it is a
3 crime in many circumstances to materially
4 misrepresent facts to these folks?

5 MS. MUNSCH: Just a clarification, by "these
6 folks," you're referring to the group you named
7 earlier?

8 MR. RIPPIE: The securities market. Analysts
9 and advisors in the securities market.

10 THE WITNESS: Yeah, there are requirements on
11 all publically traded companies, what information is
12 disseminated, how it's disseminated and exactly how
13 it's reported to both individual investors as well as
14 the analysts.

15 BY MR. RIPPIE:

16 Q And there's -- and the reason that -- if
17 you have an understanding of the reason -- is why
18 it's so important that that information is truthful
19 is because the market relies on it?

20 A That's correct. That's part of the
21 efficient price setting mechanism that I think the
22 market relies on fundamentally, transparency

1 information.

2 Q Now, would you agree that there are a
3 number of reasons why the value of a stock or a group
4 of stocks of closely related companies may
5 appreciate?

6 A Yes.

7 Q And they would include things like strong
8 earnings?

9 A Yes.

10 Q Or weak earnings with an expectation of
11 stronger earnings in the future?

12 A That's correct.

13 Q Low risk?

14 A Yes.

15 Q Or high risk plus an expectation of
16 lowering risk in the future?

17 A That's correct.

18 Q Favorable tax treatment?

19 A Yes.

20 Q Plus effects on companies that compete with
21 it, for example?

22 A Sure. Sure.

1 Q If the competition is going to get weaker,
2 that might favorably impact the stock price; is that
3 correct?

4 A That's correct.

5 Q The same is also true if there's a believe
6 in the market that there are merger opportunities
7 present, that would affect the stock?

8 A Potentially, yes.

9 Q Changes in the capitalization of the firm
10 changes its stock price?

11 A It could, yes.

12 Q And lastly share repurchase or share
13 issuance would change stock price?

14 A Certainly. The stock price is a function
15 of the value of the company divided by all of its
16 outstanding shares, so reducing the number of shares
17 would increase the value.

18 Q Now, there are also a lot of factors, would
19 you agree, that can affect a company's earnings over
20 time; right?

21 A Oh, yeah. Yes.

22 Q Growth and productivity of labor would be

1 one?

2 A That's right.

3 Q Technological innovation by the Company

4 itself?

5 A That's correct.

6 Q Technological innovation by others in the

7 area that the Company can exploit?

8 A Yes.

9 Q The price and availability of competing

10 goods and services?

11 A Yes.

12 Q And demands for the product due to

13 exogenous factors?

14 A That's correct.

15 Q Some of those factors are related to a

16 company's own investment and some aren't; right?

17 A That's right.

18 Q And simply by looking at a stream of

19 earnings reports, you couldn't tell what those

20 factors were that were driving a change; right?

21 A That's right.

22 Q Now, you propose a DCF calculation as one

1 basis for your recommended return on equity; am I
2 correct?

3 A Yeah, that's correct. That's the primary
4 basis that's checked with my CAPM analysis.

5 Q And just for the sake of clearing up all
6 the abbreviations, DCF is discounted cash flow, CAPM
7 is capital asset pricing model?

8 A That's correct.

9 Q And nobody knows why people call it CAPM
10 model, because that would be model model, but
11 everybody does?

12 A Everybody does, it's redundant; but it's a
13 commonly used phrase.

14 Q So a DCF, or discounted cash flow model,
15 works in broadest of broad brushes by trying to
16 project how future cash flows of a company will grow
17 and then calculating back from the present value of
18 that growing stream of cash flows how much an
19 investor would pay for that stream, is that not a
20 decent -- nonmathematical explanation?

21 A That's right. I would say that it's --
22 you're trying to ascertain what investors already

1 expect to be paying for that stream because it's
2 already embedded in the current stock price.

3 Q And, obviously, an important parameter of
4 that DCF exercise is going to be the growth rate?

5 A Yes. Yes. That's the primary issue of
6 dispute I think in this case.

7 Q And nobody knows the growth rate with
8 certainty, do they?

9 A That's right.

10 Q And that's because there's no such thing as
11 perfect prediction of the market. If there were,
12 we'd all be doing that instead of what we're doing
13 now?

14 A That's right. We'd all just go to the Wall
15 Street Journal and look at the growth rate.

16 Q Now, would you agree that an accepted
17 manner of ascertaining growth rates that is generally
18 accepted in the ratemaking community is to use
19 analysts' forecasts?

20 A I think a lot of Commissions do rely on
21 analysts' forecasts, at least in part, if not in
22 whole.

1 Q Would you agree with me that that technique
2 is generally accepted?

3 MS. MUNSCH: Generally accepted amongst -- you
4 referred to the Commission and you asked about the
5 communities. So --

6 MR. RIPPIE: In the ratemaking community.

7 BY MR. RIPPIE:

8 Q I'm actually -- I'll tip my hand. I'm
9 reading something from an earlier case, but I'm
10 trying to do it carefully so I fairly quote you.

11 Would you agree that it is generally
12 accepted in the regulatory community?

13 A Typically, yes. Yeah, I think that's
14 correct. I think there are exceptions to that, but I
15 would say yes, generally.

16 Q And your DCF analysis does not rely on
17 analyst growth forecasts; is that correct?

18 A I do rely on forecasts, but not on the same
19 types of analysts' earnings forecast that were used
20 by Mr. McNally and Dr. Hadaway.

21 Q Your DCF analysis does not rely on reported
22 forecasts by investment advisors of what they expect

1 growth rates to be as opposed to a calculated
2 internal growth rate that you perform?

3 A That's fair. That's correct.

4 Q And the method that you utilized is often
5 called the B times R method, or the B x R method?

6 A That's right. The internal growth method.

7 Q And that measures the growth, in your
8 opinion, that could be generated by internal
9 reinvestment of capital?

10 A That's right. That theoretically, would be
11 the largest level of growth that could be sustained
12 by the capital reinvested in the company.

13 Q Now, am I correct that there is no decision
14 of the Commission in the last -- now 12 years that
15 does not rely in whole or in part on equity analysts'
16 forecasts as a means to measure investor-expected
17 growth rates?

18 A Would you rephrase that question?

19 Q I'll actually try to say it slower.

20 A Yeah.

21 Q There is no decision of the Commission --
22 well, let me -- I will rephrase it.

1 Every decision of the Commission in
2 the last decades that you're aware of that uses a DCF
3 relies as an input to the growth rate, a measure of
4 analysts' forecasts of equity growth?

5 A I believe that's correct, at least in part,
6 if not in whole.

7 Q In whole or in part?

8 A That's right.

9 Q And there is no decision of the Commission,
10 that you are aware of in the last 12 years, that has
11 set the growth rate based entirely on D x R?

12 A That would be correct. The Commission has
13 always typically looked at analysts' forecasts --

14 Q Now --

15 A -- of earnings.

16 Q Now, you also take issue with Professor
17 Hadaway's calculation of long-term GDP growth. GDP
18 being gross domestic product?

19 A Yes.

20 Q Dr. Hadaway bases his number on the actual
21 40-year average of GDP; right?

22 A I believe that's correct.

1 Q Now, you don't know what GDP is going to be
2 in the next 20 years, do you?

3 A That's right.

4 Q Neither does Professor Hadaway?

5 A That's right.

6 Q Neither does anybody --

7 A That's right.

8 Q -- with certainty?

9 A If we did, we wouldn't be here doing this,
10 that's correct.

11 Q But your estimate uses only half of the
12 40-year data that Professor Hadaway uses?

13 A The most current 20 years of data, that's
14 correct.

15 Q You reject the previous 20 years entirely?

16 A That's right.

17 Q Let's talk a minute about your CAPM
18 analysis.

19 Now, your CAPM analysis used a
20 risk-free rate of 3.72 percent; right?

21 A Yes, that's correct.

22 Q And that is derived from 30-year T-bonds.

1 Can you tell the Judges what a 30-year T-bond is?

2 A Yeah, that's a 30-year Treasury bond issued
3 by the Federal Government.

4 Q So in other words, it's a -- it's a dead
5 instrument where the Federal Government promises to
6 repay money in 30 years at an interest rate that's
7 determined by an auction; is that right?

8 A That's correct.

9 Q And those auction rates change frequently
10 daily?

11 A Yes, they're daily auctions, that's
12 correct.

13 Q The 3.72 percent risk-free rate that you
14 chose was established by the auction that occurred on
15 October the 11th, 2010; is that correct?

16 By the way, you might want to
17 change -- if you look at Page 31 of your direct --
18 I'll save you some trouble -- Line 6- -- it's a chart
19 above Line 629 that it says 2009 on there, but I
20 don't think that's right. I think --

21 A That's correct, it was -- you're correct,
22 Mr. Rippie, it's 2010. And it was -- I took the data

1 on October 11th, but the actual number that I used
2 was the previous Friday.

3 Q Okay. So --

4 JUDGE SAINSOT: Counsel, can we just go over
5 that a little where it is?

6 MR. RIPPIE: Sure.

7 JUDGE SAINSOT: Sorry. I'm slow.

8 MR. RIPPIE: If you -- I was trying to be -- if
9 you look on Page --

10 JUDGE SAINSOT: I got it. Thanks. Judge Dolan
11 is faster than I am. Sorry to interrupt you like
12 that.

13 MR. RIPPIE: No problem at all.

14 BY MR. RIPPIE:

15 Q So the 3.72 looks like it corresponds to
16 the 30-year rate under either the 7th or the week
17 ending the 8th?

18 A That's right. And you can see the prices
19 are relatively volatile during the week, so the 3.72
20 is roughly the average for the week.

21 Q Now, the way CAPM works is you take a
22 risk-free rate and add to it a second term that is

1 calculated by multiplying a measure of variability or
2 risk of beta number times a measure of risk premium;
3 correct?

4 A That's correct.

5 Q So the risk-free rate adds in to the result
6 of the CAPM analysis on a point-for-point basis,
7 100-point increase in the risk-free rate increases
8 the CAPM 100 points?

9 A Yes.

10 Q In lay terms, it falls right to the bottom?

11 A That's fair.

12 Q Would you agree with me that the
13 Commission, in the recent Peoples/North Shore Gas
14 case, cautioned that in setting ROE, we should be
15 aware of the conditions or financial climate, not
16 just on the spot day, but in the surrounding days and
17 times?

18 I'm summarizing, I'm not quoting?

19 A Yeah, that sounds like something the
20 Commission had said before.

21 Q Would you agree with me that the 30-year
22 T-bond rate was above 4 percent for every day from

1 the beginning of 2010 through late June?

2 MS. MUNSCH: Late June of 2010?

3 MR. RIPPIE: Correct. You know what, let's --
4 we'll make this easy. If I may approach the witness.

5 JUDGE SAINSOT: You may.

6 MR. RIPPIE: Showing you a document that I
7 haven't marked it yet -- which I am now marking ComEd
8 Cross Exhibit 20.

9 (Whereupon, ComEd Cross
10 Exhibit No. 20 was
11 marked for identification
12 as of this date.)

13 BY MR. RIPPIE:

14 Q Would you accept, subject to check, that
15 that's a printout from the Federal Reserve site
16 showing the daily auction prices for the 30-year
17 Treasury bonds beginning January 4th of 2010 and
18 continuing through last week?

19 A That's what it appears to be.

20 Q Now, consulting that document as required,
21 would you agree with me that the rate for that
22 instrument did not dip below 4 percent until the 29th

1 of June of 2010?

2 A That's what this shows, yes.

3 Q And throughout that period in the beginning
4 of the year, it reached numbers as high as
5 4.8 percent in April; am I correct?

6 A Yes.

7 Q And then from late June through mid-August
8 it hovered right around 4 percent, sometimes a few
9 points below, sometimes a few points above?

10 A Yes.

11 Q And only after August did it dip down to
12 ranges around 3.7; am I correct?

13 A Well, during the month of August it also
14 dipped into the 3.5 range.

15 Q Okay. 3.5? Yeah, on the 31st?

16 A Yeah. That's right.

17 Q But by October, one month after your
18 sample, it's back up at 4, isn't it?

19 A Yes.

20 Q And it stayed there ever since, hasn't it?

21 A It does appear to have, yes.

22 Q And, in fact, the most recent data, it's

1 back up at 4 and a half?

2 A Yes. The most recent data that's shown on
3 this exhibit.

4 Q So if you had calculated your CAPM using
5 the most recent data, you would have resulted -- you
6 would have achieved, rather, a number eight-tenths of
7 a percentage point higher than taking the date you
8 picked? It's just math?

9 A Just math, but that's assuming that the
10 beta did not change as well, which is another factor
11 that would have to be -- I mean, this was all taken
12 on a certain time frame for a reason and that's
13 because all the data is consistent, so you have to
14 also look at --

15 Q I understand.

16 A -- beta changes.

17 Q Beta doesn't change those in a
18 systematically inverse way to peak L rates; right?

19 A That's correct. That's correct. It does
20 vary depending upon the data set that you're looking
21 at, so it's just another weather issue that's
22 variable.

1 Q I'm just isolating this. The beta could be
2 higher, it could be lower, but this falls right to
3 the bottom of the equation; right?

4 A That's right.

5 (Change of reporters.)

6 Q Now, that other term of the equation is the
7 beta times the expected market risk premium, which
8 people often abbreviate somewhat confusingly to
9 EMRP -- which I always dyslexically write "ERPM" -- I
10 don't know why -- that's the other term of the
11 equation, right?

12 A That's correct.

13 Q Now, it is often a contested issue in these
14 proceedings how do you go about calculating that
15 expected market risk premium, right?

16 A Yes.

17 Q Would you agree that the Commission has
18 traditionally relied on EMRP estimates calculated by
19 individual analysts in individual cases from historic
20 stock market data?

21 And I'll give you a hint, I'm actually
22 quoting your testimony from the last ComEd rate case.

1 A That's right. And I do believe that that
2 testimony may have been slightly inaccurate,
3 Mr. Rippie. I think the Commission does frequently
4 use forecasts in its calculation of expected market
5 risk premium and the way the Staff's analysis works,
6 they usually use forecasts.

7 Q And those are also publicly available
8 analyst forecasts?

9 A The same forecasts they would use for the
10 comparable companies, that's correct.

11 Q Is it correct that you're aware of no
12 Commission decision in the last 12 years that has
13 accepted the opinion of academics writing in the
14 economics literature concerning what ERPM (sic)
15 should be as a substitute for either actual market
16 data or analyst forecasts?

17 A The Commission has been fairly consistent
18 in its ROE determination, that's correct.

19 Q In the way that I just summarized?

20 A In the way that you described, that's
21 correct.

22 MR. RIPPIE: Thank you very much. That's all I

1 have.

2 I would offer ComEd 20 into evidence.

3 JUDGE DOLAN: Any objection to ComEd
4 Exhibit 20?

5 MS. MUNSCH: No, your Honors.

6 JUDGE DOLAN: All right. We'll admit that into
7 the record.

8 JUDGE SAINSBOT: Do you need a few minutes to
9 confer?

10 MS. MUNSCH: Thank you.

11 (Whereupon, a discussion was had
12 off the record.)

13 JUDGE DOLAN: All right. Back on the record.

14 MS. MUNSCH: Thank you, your Honors.

15 We actually just have a couple quick
16 questions on redirect.

17 REDIRECT EXAMINATION

18 BY

19 MS. MUNSCH:

20 Q The first is that Mr. Rippie had asked you
21 about your calculation of your DCF model and, in
22 particular, he asked you and you both identified that

1 one of the primary issues was the growth rate and he
2 discussed with you the reliance on analyst forecasts
3 for the internal growth rate and then asked about
4 your calculation of what he called the B times R
5 method.

6 And I don't know that you got a chance
7 to sort of explain your B times R method at this
8 point as to how that would work. He didn't -- so if
9 you could do that first.

10 A Sure.

11 Looking back at history, the -- and I
12 cite this on Page 23 of my testimony -- there's a lot
13 of academic research that sort of goes through the
14 use of analyst forecasts and how analyst forecasts
15 are often -- have been often shown to be inaccurate
16 going forward.

17 And so that uncertainty, I think,
18 causes a problem for the Commission, especially in
19 times similar to what exists today in the capital
20 markets where, you know, it's hard for anyone to
21 forecast what the future is going to look like going
22 forward because of all the turmoil that's happened in

1 recent memory.

2 So I think it's probably debatable
3 whether you should use historic forecasts or analyst
4 growth rates because both have the same sort of level
5 of uncertainty inhered in them.

6 I chose to look at internal growth
7 because I think that's the most accurate way to
8 ascertain how the companies actually grow, which is
9 by reinvesting money that they've retained in the
10 business. And that's where growth in most firms in
11 the economy actually comes from, from innovation and
12 the things that we talked about -- Mr. Rippie and I
13 talked about before. It's that growth internal of
14 the company that grows earnings for investors going
15 forward.

16 Q And that growth would relate to then their
17 expectations on what a return, if they would make an
18 investment in that company, would look like?

19 A That's right. That's the discount rate
20 that they would use. That growth rate would be --
21 they would use that to factor in their discount rate
22 at the price of the stock today.

1 Q And part of that equation is the discussion
2 on what the overall risk of that investment might be.
3 And I know that Mr. Rippie had used the terms sort of
4 "high risk" and "low risk." And I don't believe that
5 we ever clarified what risk in the context of setting
6 ROE that we were discussing here.

7 When you say "risk" in your testimony,
8 what are you referring to?

9 A Sure.

10 Mr. Rippie and I talked about a
11 variety of different risks; but in actuality, risk is
12 just a relative term. You're just trying to compare
13 two different investments of two different companies
14 to make sure that they -- the risk of recovering
15 their investment in one might be higher than the
16 other. And it's all the factors that we talked
17 about.

18 And so I think that even though all
19 those factors could be defined as risk, when I use
20 that term "risk," I mean just a relative strength of
21 two different investments from an investor's
22 perspective and how -- the likelihood that an

1 investor is going to get their money back.

2 MS. MUNSCH: Thank you.

3 MR. RIPPIE: I only have one -- one question.

4 CROSS-EXAMINATION

5 BY

6 MR. RIPPIE:

7 Q All right. You indicated -- and I hope
8 that I typed it accurately -- that, in your view, you
9 cited information that suggested analyst growth
10 estimates were -- I think I got the quote right --
11 shown to be off going forward.

12 In other words, you mean when looked
13 at retrospectively backwards, it's your view that
14 they've been shown to predict higher numbers than had
15 historically occurred?

16 A That's right, overestimated what actually
17 occurred.

18 MR. RIPPIE: That's all I have.

19 JUDGE DOLAN: Thank you, Mr. Thomas.

20 MS. MUNSCH: No further.

21 Thank you, your Honors.

22 JUDGE SAINSBOT: Okay. You're excused. Thank

1 you.

2 THE WITNESS: Thank you.

3 JUDGE SAINSOT: Okay. The next witness is
4 Mr. Fetter.

5 Actually -- hold on -- we were
6 thinking of rewarding you for having a short schedule
7 and having a little morning recess for 10 minutes.

8 Also, because the next two days are
9 -- are 9 hours scheduled of cross -- it doesn't
10 include redirect -- we were thinking of -- and we
11 don't know whether this is possible or who it's
12 possible with -- maybe taking one of the Wednesday or
13 Thursday witnesses and taking that person on in the
14 afternoon.

15 MR. RIPPPIE: Your Honor, the Wednesday
16 witnesses with the -- I don't know what Staff's
17 timing is on Mr. -- Mr. Clausen. Mr. Alongi and
18 Mr. Garcia are actually out in Oak Brook today and
19 they're studying their testimony. So...

20 JUDGE SAINSOT: I don't think Mr. Clausen's
21 doable today.

22 MR. RIPPPIE: Okay.

1 MS. McNEILL: We're not sure.

2 MR. RIPPPIE: And Mr. Merola is in Minnesota, I
3 believe.

4 JUDGE SAINSOT: Okay.

5 MR. SKEY: He's in Texas, but he's traveling.

6 JUDGE SAINSOT: How about Ms. Hathhorn? Is
7 that possible in the afternoon?

8 You'll have to check with her.

9 MR. FEELEY: We can check. I know ComEd and
10 the AG had cross. So I don't know if they're ready
11 to cross.

12 MR. RIPPPIE: Let me check.

13 JUDGE SAINSOT: How about Mr. Rubin?

14 MR. RIPPPIE: He is the AG witness who is
15 traveling and is -- and I made the mistake of showing
16 him today when he's not in until Thursday.

17 JUDGE SAINSOT: So not Mr. Rubin. Mr. Rubin is
18 just out.

19 And Mr. Jensen's not local either, is
20 he?

21 MR. RIPPPIE: Yeah, he is. We can call and see
22 if he's available, if it's okay with the AG and ELPC,

1 who had the cross.

2 JUDGE SAINSOT: Right. I mean, the ELPC isn't
3 even here.

4 MS. MUNSCH: I'll check on that.

5 MR. BOROVIK: I'll check on that as well.

6 MR. ROSS HEMPHILL: I just exchanged e-mail
7 addresses. He's at a hospital because his brother's
8 having surgery. So I'm not sure --

9 JUDGE SAINSOT: Okay. So he's out. We'll see
10 what we can do then.

11 MR. BERNET: So it's Ms. Hathhorn that we're
12 looking for potentially this afternoon?

13 JUDGE SAINSOT: If everybody's ready. It just
14 makes sense logically.

15 MR. FEELEY: We can ask her. I just don't know
16 if other parties are ready to --

17 MR. RIPPIE: At the break, we'll make
18 inquiries.

19 JUDGE SAINSOT: Okay. All right. So 10
20 minutes.

21 (Off the record.)

22 (Witness sworn.)

1 STEVEN M. FETTER,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. RIPPIE:

7 Q Good morning, Mr. Fetter.

8 Could you please state and spell your
9 full name for the record.

10 A Steven M. Fetter. The last name is F-, as
11 in Frank, -e-, double t-, as in Tom, Tom, -e-r.

12 Q Mr. Fetter, I direct your attention to the
13 documents that have been placed before you. They
14 include Commonwealth Edison Company Exhibit 5.0
15 through Exhibit 5.3 served originally on June 30,
16 2010, ComEd Exhibit 45.0 and 45.1 served on
17 November 22nd, 2010, and ComEd Exhibit 63 served
18 originally on January 3rd of 2011.

19 Do you see those documents?

20 A Yes.

21 Q Now, Mr. Fetter, originally ComEd Exhibits
22 5.0 and 5.3 had been sponsored by the late Susan

1 Abbott.

2 Have you had an opportunity to review
3 those documents in detail and determine whether you
4 could adopt that testimony as your own, of course
5 with the exception of identifying yourself in your
6 background as you rather than as Ms. Abbott?

7 A Yes, I can.

8 Q Is it your intention that the documents
9 marked Exhibit 5.0 through 5.3, 45.0, 45.1 and 63.0
10 constitute your testimony for submission to the
11 Illinois Commerce Commission in this proceeding?

12 A Yes.

13 Q And if I were to ask you the same
14 questions -- again, with the exception of the
15 introductory questions concerning Ms. Abbott, if I
16 were to ask you the same questions as appear in those
17 documents today, would you give me the same answers?

18 A Yes.

19 Q Are there any additions or corrections you
20 need to make to any of those documents?

21 A Not that I know of at this time.

22 MR. RIPPIE: That's all the questions I have

1 for Mr. Fetter.

2 At this time, I would offer into
3 evidence ComEd Exhibits 5.0 through 5.3, 45.1,
4 45.0 -- sorry, out of order -- and 63.0.

5 JUDGE DOLAN: Any objections?

6 Hearing none, then ComEd Exhibit 5.0
7 through 5.3, ComEd 45.0 and 45.1, and ComEd
8 Exhibit 63 will be admitted into evidence. Thank
9 you.

10 (Whereupon, ComEd Exhibit
11 Nos. 5.0, 5.3, 45.0, 45.1 and
12 63 were admitted into
13 evidence.)

14 JUDGE DOLAN: Go ahead.

15 MR. BOROVIK: Thank you, your Honors.

16 CROSS-EXAMINATION

17 BY

18 MR. BOROVIK:

19 Q Good morning, Mr. Fetter.

20 A Good morning.

21 Q It is correct, isn't it, Mr. Fetter, that
22 in your testimony -- particular rebuttal testimony

1 and Ms. Abbott's testimony -- direct testimony, that
2 you talk about rating agencies, particular Moody's
3 and Standard & Poor's, and the effect they have on
4 the utility environment in particular with
5 Commonwealth Edison?

6 A Yes.

7 Q And on Page 10 of your rebuttal
8 testimony -- and this is also on Ms. Abbott's
9 testimony on Page 3 and 5, I believe, that you talk
10 about credit ratings are opinions determined through
11 a process that is more art than science; is that
12 correct?

13 A Yes.

14 Q And on -- Ms. Abbott talks about this and
15 you talk about it in your rebuttal testimony at
16 Page 15...

17 A I'm at 15.

18 Q Okay. Thank you.

19 You talk about -- you know what, I'm
20 sorry. Let me -- hold on one second. Let me make
21 sure I've got this right. Yes.

22 You talk about the Ameren decision?

1 A I mention the Ameren decision.

2 Q And I believe that was the last Ameren
3 decision, and that was 09-0306 consolidated, et al.

4 Are you also aware in that case that
5 there was a rehearing and in that rehearing there
6 were adjustments that were favorable to Ameren in
7 that case?

8 A I am aware that there was a hearing with
9 some changes.

10 Q Okay. On Page 8 of Ms. Abbott's testimony,
11 she talks about credit ratings -- in particular both
12 your testimony and hers is talking about credit
13 ratings at large.

14 And also in Ms. Abbott's testimony,
15 Page 11, she talks about the crisis in the capital
16 markets?

17 A Yes.

18 Q It says, The crisis state of the capital
19 markets.

20 As well, Ms. Abbott talks about on
21 Page 12 --

22 JUDGE SAINCOT: Is that ComEd Exhibit 5.0?

1 MR. BOROVIK: I'm sorry. It is.

2 JUDGE SAINSOT: Just checking.

3 BY MR. BOROVIK:

4 Q She also talks about, Unemployment will
5 continue to persist at high levels and the housing
6 market could easily deteriorate further.

7 Is it your opinion that given the
8 financial turmoil that's talked about at length in
9 your testimony and others, ComEd witnesses, that the
10 Moody, Standard & Poor's, the credit agencies
11 contributed to the credit crisis we're in?

12 A The rating agencies almost completely on
13 the structured finance side, subprime mortgage
14 ratings had difficulties with the ratings they put
15 out. That was not true, in my view, on the corporate
16 or municipal finance side.

17 Q Can you tell me what a CDO or
18 collateralized debt obligation is?

19 A I can tell you in simple terms --

20 Q That's the only way I'll understand it,
21 please.

22 A -- it will be where certain obligations are

1 bundled together and structured into a different
2 instrument and an investment -- investors would
3 invest in that new CDO versus the underlying
4 financial instruments that would affect the ultimate
5 credit worthiness of the CDO.

6 Q And the credit agencies, did they put a
7 rating on these CDOs?

8 A When I mentioned the structured finance
9 side, a CDO would be a structured finance instrument
10 and those were the ratings which proved to be faulty.

11 Q Okay. I had something I wanted to talk to
12 counsel first to make sure they didn't mind, but I
13 wanted you to look at something that was published --
14 I'll bring it over here -- in Bloomberg just to see
15 if you would agree with this.

16 If you could just read what I
17 highlighted.

18 A Could I look at what the document is?

19 Q Absolutely.

20 MR. RIPPIE: It's my understanding that this is
21 just to verify whether the witness agrees with it.
22 It's not being offered for substantive evidence.

1 So...

2 MR. BOROVIK: And it won't be entered -- I
3 won't request it be entered into the record either.

4 THE WITNESS: Okay. And you'd like me to read
5 the yellow highlighted portion just to myself?

6 BY MR. BOROVIK:

7 Q Not to yourself. No -- I'm sorry -- read
8 out loud.

9 A Read out loud?

10 Q Yes.

11 A Okay. The three leading rating companies
12 all based in New York say that policing CDOs isn't
13 their job. They just offered their educated opinion,
14 says Noel Kirnon, senior managing director at
15 Moody's.

16 And then there's a heading that says,
17 Little New Information. And then the next paragraph
18 begins, What we're saying is that many people have
19 the tendency to rely on it and we want to make sure
20 that they don't, says Kirnon, whose firm commands 39
21 percent of the global credit rating market by
22 revenue. S&P, which controls 40 percent, asks

1 investors in its published CDO ratings not to base
2 any investment decision on its analyses.

3 Fitch, which has 16 percent of the
4 worldwide credit rating field, says its analyses are
5 just opinions and investors shouldn't rely on them.
6 The rating companies apply their usual disclaimer
7 about the reliability of their analyses to CDOs.

8 S&P says in small print, Any user of
9 the information contained herein should not rely on
10 any credit rating or other opinion contained herein
11 in making any investment decision.

12 Q Do you agree with that statement or
13 disagree or have no opinion on that?

14 A As I mentioned, I think there were a lot of
15 problems on the structured finance side. I -- having
16 participating as head of the Fitch utilities practice
17 on the corporate side and municipal finance side, we
18 offered opinions for the benefit of anyone who wanted
19 to look at the reports we issued, whether it be
20 investors or you or commissioners or judges.

21 I -- in the activities I was involved
22 with, I think the intent was to put out our educated

1 opinion for anyone to choose how they wanted to use
2 it. You know, I don't know Mr. Kirnon. I don't know
3 who quoted from S&P; but on the structured finance
4 side, certainly all three agencies took major blows
5 to their credibility.

6 As I said, I don't think that applies
7 on the other half of the house. And, as I mentioned
8 in my testimony, investors continue to rely on
9 corporate debt ratings from all three agencies. And,
10 I guess, now there's a fourth agency based in
11 Toronto.

12 Q Do you believe that the disclaimer still --
13 that the -- in particular Moody's and S&P -- the
14 disclaimer language that they all -- that both those
15 rating agencies has still applies, that they still --
16 they still have disclaimers or language that either
17 on their Web sites or in their agreements --

18 MR. RIPPIE: Are we again still talking in the
19 context of collateralized debt obligations?

20 MR. BOROVIK: No, let me -- I have a
21 cross-exhibit. I'm not exactly sure what
22 cross-exhibit we're on.

1 AG/CUB --

2 MS. MUNSCH: No, it's AG.

3 MR. BOROVIK: AG, I thought we might be on 15.
4 I apologize.

5 This is pulled right from the Moody's
6 Web site.

7 JUDGE SAINSOT: This is 15.

8 MR. BOROVIK: Thank you, your Honor.

9 I'll have the third one in a second.

10 MR. RIPPPIE: Counsel, do you happen to have
11 Page 1 of 3 and Page 3 of 3?

12 MR. BOROVIK: I do not, but I will get it.

13 MR. RIPPPIE: Okay.

14 BY MR. BOROVIK:

15 Q I'm testing my eyes here. They have gotten
16 considerably worse since this case started, but I'm
17 going to read this.

18 At the bottom, As set forth, more
19 fully on the copyright credit ratings are and must be
20 construed solely as statements of opinion and not
21 statements of fact or recommendation to purchase,
22 sell or hold any securities. Each rating or other

1 opinion must be weighted solely as one factor in any
2 investment decision made by or on behalf of any user
3 of the information. And each such user must
4 accordingly make its own study and evaluation of each
5 security and of each issuer and guarantor of -- and
6 each provider of credit support for each security
7 that it may consider purchasing, selling or holding.

8 This sounds consistent with what you
9 said and with what you was -- with what you read; is
10 that correct?

11 A Well, compared with the other thing you had
12 me read, this one says it can be one factor in an
13 investment decision.

14 I can say that having worked at Fitch
15 and having been a lawyer deep in my past, the issue
16 of credit ratings being opinions are the underpinning
17 of the rating agency's constitutional argument under
18 the 1st Amendment that they, one, cannot be sued
19 based on those opinions, and that they -- in
20 litigation, they're protected as far as the process
21 that led to that opinion.

22 And so there's an enormous amount of

1 constitutional law that goes into this statement and
2 even at that, this statement says that a credit
3 rating or report can be used as one factor, but it is
4 not a recommendation to buy or sell a security.

5 Q And it's your testimony on Page 3 of your
6 surrebuttal that, I believe it is incumbent upon the
7 Commission to render its decision taking into account
8 all factors that will influence ComEd's credit
9 ratings and investor sentiment with regards to
10 supporting the Company; isn't that correct?

11 It's on the bottom of Page 3 and
12 starting on Page 4.

13 I can read it again, if --

14 A I'm reading to myself.

15 And so the question is, do I stand by
16 my statement?

17 Q Yes.

18 A Yes.

19 MR. BOROVIK: No further questions.

20 At this time, your Honor, I'd like to
21 admit Cross-Exhibit 15.

22 And I -- if Mr. Rippie wants me to

1 provide Pages 1 through 3, I will do that. It looks
2 like this is just Page 2 of 3.

3 JUDGE SAINSOT: Why don't you reserve that
4 motion until we -- you have Pages 1 and 3.

5 MR. RIPPIE: And if it turns out they're
6 immaterial, there will be no objection. I just want
7 to look at them.

8 JUDGE SAINSOT: Okay. And you can do that on
9 the break or something --

10 MR. BOROVIK: Thank you, your Honor.

11 JUDGE SAINSOT: -- or lunchtime.

12 Okay. Who's next?

13 MR. REDDICK: IIEC will have no questions for
14 Mr. Fetter.

15 MS. MUNSCHE: I actually just have one quick
16 question for counsel first.

17 Mr. Fetter -- actually, did Mr. Fetter
18 adopt Ms. Abbott's DR responses as well?

19 MR. RIPPIE: Yes. Again, other than those
20 describing her personal background.

21 MS. MUNSCHE: Thank you.

22 In that case, I will have one quick

1 question for Mr. Fetter based on something that was
2 mentioned earlier.

3 CROSS-EXAMINATION

4 BY

5 MS. MUNSCH:

6 Q And this is -- my name is Kristin Munsch on
7 behalf of the Citizens Utility Board.

8 Do you have with you a copy of a --
9 Data Request Response JF 1.01, which is a Staff data
10 request response?

11 MR. RIPPIE: I don't know if he has it in front
12 of him.

13 BY MS. MUNSCH:

14 Q I have one copy with me, unfortunately; but
15 I can --

16 MR. RIPPIE: We can print some extra if --

17 If your Honors will indulge us just a
18 moment so that we can look at the one copy and within
19 5 minutes we'll have them print more.

20 MS. MUNSCH: We're actually just going to ask
21 the question and answers. So we won't need copies.

22 JUDGE SAINCOT: Okay.

1 BY MS. MUNSCH:

2 Q Let me give you a second to read that.

3 A Thank you.

4 I've read it.

5 Q And I believe this data request asks what
6 the effect -- let me just be careful in getting this
7 correct -- did -- whether or not credit agencies had
8 changed their review of the Ameren companies after
9 the Ameren decision that you referred to in your
10 testimony was given.

11 Is that a fair sort of quick summary
12 of what it asks?

13 A I think -- as opposed to their review,
14 their ratings --

15 Q Correct.

16 A -- rather they changed their ratings and
17 their ratings were the same before and after. If the
18 word would be "review," they did make some negative
19 comments about the decision; but they did not change
20 the ratings.

21 Q Then that actually answers the next
22 question as well, which was going to be, what was the

1 answer.

2 MS. MUNSCH: So thank you.

3 JUDGE DOLAN: Thank you.

4 I don't see anybody from ELPC here.

5 MS. MUNSCH: We've tried to contact them, but
6 haven't...

7 MR. RIPPIE: Okay. And there is no redirect,
8 your Honors.

9 JUDGE DOLAN: Thank you, Mr. Fetter.

10 THE WITNESS: Thank you.

11 JUDGE SAINSOT: Did I hear correctly that
12 Ms. Abbott is the late Ms. Abbott?

13 MS. MUNSCH: Unfortunately, yes.

14 JUDGE DOLAN: Go off the record.

15 (Whereupon, a discussion was had
16 off the record.)

17 JUDGE SAINSOT: So what the next witness?

18 MR. RIPPIE: If people wouldn't mind doing them
19 out of order, we can get Ms. Tierney on an earlier
20 plane if we can -- but, again, that's not the stated
21 order. So...

22 JUDGE SAINSOT: Well, who has questions of

1 Ms. Tierney?

2 AG, CUB, ICEA and Staff.

3 Is anybody here from ICEA?

4 MR. RIPPIE: It's IIEC.

5 JUDGE SAINSOT: Oh, IIEC. Yeah. Sorry. I'm
6 getting a little dyslexic.

7 That may work.

8 JUDGE DOLAN: Are we still looking at the other
9 Staff witnesses for this afternoon?

10 MR. FEELEY: Yeah.

11 JUDGE SAINSOT: So this afternoon we would have
12 Mr. McNally, Mr. Brightwell, Ms. Hathhorn and
13 Mr. Clausen; is that correct?

14 MS. McNEILL: We're still waiting on
15 confirmation from Ms. Hathhorn.

16 JUDGE SAINSOT: Okay. So maybe not.

17 JUDGE DOLAN: But maybe Mr. Clausen.

18 JUDGE SAINSOT: Okay. So is Ms. Tierney
19 doable?

20 MS. SUSAN TIERNEY: Are you asking me?

21 MR. RIPPIE: I know you want to make your
22 plane.

1 MS. MUNSCH: Okay. Counsel for ELPC is on
2 their way.

3 JUDGE SAINSOT: Is on their way?

4 MR. RIPPIE: Well, there's --

5 MS. MUNSCH: However you'd like to handle it.

6 MR. RIPPIE: We can put in her direct and we'd
7 be happy to wait until they --

8 JUDGE SAINSOT: Yeah. Will you hold up on --
9 Mr. Fetter, could you stay a little bit just on the
10 off chance --

11 MR. STEVEN FETTER: Someone is coming to
12 question me?

13 MR. RIPPIE: That may have a question for you.

14 JUDGE SAINSOT: That may.

15 MR. STEVEN FETTER: That's fine with me.

16 MR. RIPPIE: Thank you.

17 JUDGE SAINSOT: In the meantime, we can swear
18 in Ms. Tierney.

19 (Witness sworn.)

20

21

22

1 SUSAN F. TIERNEY,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. RIPPIE:

7 Q Good morning.

8 A Good morning.

9 Q Would you please -- I'll just ask this:
10 Would you please state and spell your full legal name
11 for the court reporter.

12 A Susan Fallows Tierney, S-u-s-a-n
13 F-a-l-l-o-w-s T-i-e-r-n-e-y.

14 Q And, Ms. Tierney, I've placed a variety of
15 documents -- or you have a variety of documents in
16 front of you designated ComEd Exhibit 13.0 through
17 13.9, 39.0 through 39.3 and 64. The 13 series was
18 filed on e-Docket on June 30th, 2010; the 39 series
19 on November 22nd, 2010; and the Exhibit 64 on January
20 the 3rd, 2011.

21 Do you see those documents?

22 A Yes.

1 Q Is it your intention that those documents
2 should constitute your testimony offered for
3 consideration by the Illinois Commerce Commission in
4 this proceeding?

5 A Yes.

6 Q Are there any additions or corrections
7 you'd wish to make to any of those documents?

8 A Yes.

9 Q On which document does that correction
10 appear?

11 A ComEd Exhibit 39.0. And it's a very small
12 one, on Page 10, Line 207, there's a phrase in
13 parentheses that reads, Including ComEd, and that
14 should just be deleted.

15 JUDGE SAINSOT: Okay. How are we going to fix
16 that?

17 MR. RIPPPIE: I'm going to use the mark one pen.

18 BY MR. RIPPPIE:

19 Q What was the line again, please?

20 A Line 207.

21 Q Subject to that correction, if I were to
22 ask you the same questions that appear on the

1 narrative portions of the exhibits previously
2 identified, will you give me the same answers today?

3 A Yes.

4 MR. RIPPIE: That's all the questions I have,
5 your Honors.

6 And I would offer into evidence ComEd
7 Exhibit 13.0 through 13.9, 39.0 through 39.3 and
8 64.0.

9 JUDGE DOLAN: Any objections?

10 Then ComEd Exhibit 13.0 through 13.9,
11 ComEd Exhibit 39.0 through 39.3 and ComEd Exhibit 64
12 will be admitted into the record.

13 (Whereupon, ComEd Exhibit
14 Nos. 13.0 through 13.9, 39.0
15 through 39.9 and 64.0 were
16 admitted into evidence.)

17 JUDGE DOLAN: Counsel.

18 CROSS-EXAMINATION

19 BY

20 MS. MUNSCH:

21 Q Good morning, Ms. Tierney.

22 A Good morning.

1 Q My name is Kristin Munsch and I have just a
2 very couple quick questions for you on behalf of the
3 Citizens Utility Board.

4 And if I can, I'm going to ask some
5 general comments -- I can refer you to specific
6 points in the testimony; but essentially in --
7 throughout your testimony, such as ComEd Exhibit
8 13.0, you discuss some of the possible financial
9 disincentives for utilities with regards to the
10 promotion of energy efficiency initiatives?

11 A Yes.

12 Q And you identify some tools as examples
13 that could be used to overcome any sort of those
14 disincentives?

15 A Yes.

16 Q And you mention among those including
17 program costs and rate base -- is that one?

18 A Yes.

19 Q Approving a rate adjustment mechanism to
20 recover costs.

21 Is that another?

22 A Yes.

1 Q Decoupling or rate design changes as the
2 third example?

3 A Yes.

4 Q And then asset capitalization as amongst
5 some other financial pools?

6 A Yes.

7 Q And then in your surrebuttal testimony,
8 which is ComEd Exhibit 64.0, you discuss how your
9 particular proposal, which is for a 40-basis-point
10 adder -- I guess is what we're calling it -- or
11 adjustment to ComEd's rate of return was developed by
12 you in the context of a specific proposal by ComEd
13 for that adder; is that correct?

14 A Yes.

15 Q When you say that, As such an addressing,
16 you're addressing that specific proposal, not some
17 hypothetical proposal; is that correct?

18 A Yes.

19 Q So your testimony is solely focused on the
20 effect of that adder -- for example, it doesn't
21 address those other tools that you mentioned since
22 that wasn't what was proposed to you?

1 A That's not exactly right.

2 Q Okay.

3 A The question that was posed to me was
4 whether I thought a 40-basis-point adder was
5 appropriate in the context of a filing that would
6 include a strict -- a straight fixed/variable rate
7 design.

8 Q Okay. So it was a combination of those two
9 things?

10 A Yes.

11 Q But -- okay. Actually, that's fine.

12 MS. MUNSCH: Thank you.

13 JUDGE DOLAN: Thank you.

14 MS. MUNSCH: No further questions.

15 THE WITNESS: Thank you.

16 JUDGE SAINSOT: I have a quick question for
17 you, Ms. Tierney.

18 EXAMINATION

19 BY

20 JUDGE SAINSOT:

21 Q It sounded like what you were saying was
22 that somebody asked you whether a 40-basis-point

1 adder was appropriate given the rate structure that
2 ComEd is proposing; is that correct?

3 A Yes. And let me -- may I expand on my
4 answer again?

5 Q Sure.

6 A The question was, does a 40-basis-point
7 adder look reasonable in the context of a rate case
8 in which there are a variety of ratemaking tools or a
9 lack of ratemaking tools related to energy
10 efficiency.

11 Q So you didn't determine that -- whether 40
12 basis points -- if I'm understanding you, you didn't
13 determine whether 40 basis points was the basis
14 points -- was the correct amount of basis points to
15 add, right?

16 A That's correct.

17 Q Okay.

18 JUDGE SAINSOT: Thank you.

19 THE WITNESS: Thank you.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. BOROVIK:

4 Q Good morning, Ms. Tierney,

5 A Good morning.

6 Q I'm Mike Borovik with the -- speaking on
7 behalf of the People of the State of Illinois and I
8 have some questions for you.

9 Isn't it correct that your hourly rate
10 in this case is \$655?

11 A Yes.

12 Q On Page 10 of your direct testimony,
13 Footnote 10, isn't it correct that you state
14 Nevada -- and the only state that you cite to is
15 Nevada as allowing an adjustment to ROE regarding
16 energy efficiency?

17 A That's correct.

18 Q And on Page 11, you talk about -- under
19 8103 of the PUA, you talk about Illinois targets for
20 energy sufficiency savings as being amongst the most
21 aggressive in the country?

22 A Yes.

1 Q Okay. Are you aware of -- in the most
2 recent ComEd energy efficiency case, which is for
3 Program 4, 5 and 6 -- whether or not ComEd intends to
4 meet the statute energy efficiency goals for all
5 three years?

6 A I haven't reviewed that filing.

7 Q Are you aware of under 8103 of the PUA that
8 there are -- there's language in the statute that
9 allows for ComEd not to meet its statutory energy
10 efficiency goals? Are you aware of that or not?

11 A Without remotely trying to sound like I
12 would be rendering a legal opinion, it sounded to
13 me --

14 Q Not a legal opinion, you know, but just
15 your general opinion if there's a caveat or if the --
16 there is an out for ComEd that they would not have to
17 meet their energy efficiency goals.

18 A I would interpret the language in the
19 statute to -- that regards a penalty for failure to
20 perform as what you characterize as an out.

21 Q But besides that, the penalty, the -- which
22 you cite in your testimony a monetary amount, is

1 there a justification where they would not have to
2 pay a penalty that you're aware of and still not meet
3 their statutory goals?

4 A I'm recalling that there is one other
5 element, and I can't remember the specifics.

6 Q Okay. On Page 15 and 16 of your
7 testimony --

8 JUDGE DOLAN: Can you keep your voice up to the
9 court reporter.

10 THE WITNESS: Absolutely.

11 Page 15 and 16?

12 BY MR. BOROVIK:

13 Q Correct.

14 You talk about that per customer
15 electric usage may be going down related to energy
16 efficiency.

17 Are you aware of -- that overall
18 electric load is going down or going up or staying
19 the same?

20 A It's my recollection that there is
21 anticipated growth in overall kilowatt hour sales in
22 spite of the energy use per customer going down. And

1 I think that's because of expectation of additional
2 customers.

3 Q I have a hypothetical for you.

4 A Oh, boy.

5 Q Yes.

6 Let's assume Oprah Winfrey, in
7 appreciation of all the support Chicago has given
8 her, gives everybody a plasma TV in the ComEd service
9 territory and the load growth is going to shoot way
10 up over the next two to five years, would you still
11 be in this hypothetical asking for a 40-basis-point
12 adder?

13 A Without any other information about the
14 hypothetical, I would say "yes."

15 Q Okay. On Page 22 -- I'm sorry.

16 We're still on your direct testimony,
17 which is ComEd Exhibit 13.

18 A Would the counselor allow me to add one
19 more sentence to the --

20 Q Yes.

21 A -- hypothetical answer?

22 When I said the answer was "yes," it

1 was based on an expectation that -- notwithstanding
2 an expectation about additional growth in load, the
3 statute in Illinois still calls for energy savings as
4 a percentage of overall load. So it was with that
5 context in mind that I said "yes."

6 Q Thank you.

7 On Page 20 -- excuse me -- Page 22 of
8 your direct testimony, you talk about ComEd prudence
9 risk --

10 A Yes.

11 Q -- in particular, under Section 8103.

12 Are you aware of any disallowances or
13 prudence under energy efficiency for ComEd?

14 A I'm not aware of any disallowance to date.

15 Q Okay. On Page 25 of your testimony, you
16 talked about other intangible risks.

17 A Yes.

18 Q Is there a study related to other
19 intangible risks that you provided?

20 A No. As I indicated in my testimony, I was
21 talking about things such as the frequency of rate
22 cases and those are observable, but I did not provide

1 a study.

2 Q Okay. That's actually a good lead into my
3 next question.

4 Regarding -- on Page 27 and the
5 frequencies of rate cases. And your -- I think
6 you're alluding to -- and correct me if I'm wrong --
7 that if the Company got this adder -- 40-basis-point
8 adder, that it may reduce the frequency of rate
9 cases.

10 Do you have any idea, would it be six
11 months? A year? Any kind of number you could -- I'm
12 sorry. You have to -- I see you shaking your head,
13 but if you could answer it.

14 A I was waiting for the end of the sentence.

15 Q Oh, okay. You're shaking your head like,
16 When is he going to finish?

17 Could you put a number to that, you
18 know, like six months? A year?

19 A I could not.

20 Q Thanks.

21 Okay. Could we turn to -- this is
22 your -- you probably know it well enough that you

1 don't have to turn there, but this is your resumé
2 under -- particularly under Education.

3 It's my understanding, except for
4 maybe an honorary law degree, you're not an attorney;
5 is that correct?

6 A That's right. Do I have an honorary law
7 degree?

8 Q I think you do. It's actually on the last
9 page of your -- Page 26, it looked like you received
10 an honorary.

11 A I thought it was an honorary degree. I
12 didn't realize it's of law.

13 Q And are any of your degrees in finance?

14 A No.

15 Q Did you take any finance courses during
16 your undergrad or graduate studies?

17 A Yes.

18 Q What were they, if you remember?

19 A I took courses at the Johnson School of
20 Management at Cornell University for graduate school.
21 And to be honest, I don't remember; but I do know
22 there was public finance and other finance.

1 Q Do you have any professional certifications
2 in finance such as a C.F.A.?

3 A No.

4 Q Have you ever been accepted as a cost of
5 capital expert in any regulatory proceeding?

6 A No.

7 Q Would you be able to explain generally how
8 DCF, discounted cash flow model, works?

9 A Yes.

10 Q Would you?

11 A Yes.

12 One stands at one point in time and
13 looks into the future associated with the revenues
14 and expenses associated with a -- with an enterprise.
15 And you take the present value of that stream of
16 payment and determine the value the -- the firm, the
17 enterprise or whatever it is you're looking at.

18 Q Thank you.

19 Can you identify any utility that has
20 been downgraded or put on watch as a result of state
21 energy efficiency goals or targets?

22 A I am not aware of one one way or the other.

1 Q Can you identify any utilities that have
2 been required to restate its earnings as a
3 consequence of state-mandated energy efficiency
4 goals?

5 A I don't know one way or the other.
6 California companies would come to mind in that
7 because they have had a very large amount of program
8 dollars and other dollars at risk, but I don't know
9 specifically whether they have.

10 Q Okay. Do you -- or have you reviewed the
11 Company's most recent 10-K before filing your
12 testimony in this case?

13 A I did read the 10-K before filing this
14 case.

15 Q Okay. Regarding -- you talk in your
16 testimony about ARRA funding?

17 A I didn't hear the question.

18 Q I'm sorry. About -- you talk about ARRA
19 funding?

20 A Yes.

21 JUDGE SAINSOT: Could you -- is it ERA?

22 MR. BOROVNIK: No. It's A- -- American Recovery

1 and Reinvestment Act. I'm sorry. Just sometimes
2 referred to as the Stimulus Bill.

3 THE WITNESS: That's why I also heard it wrong
4 the first time.

5 BY MR. BOROVIK:

6 Q And in your quote -- let me take you to
7 your quote -- you talk about it on Page -- you
8 actually talk about it several times in your direct
9 testimony, but particularly I'm looking at Page 7 --

10 A Yes.

11 Q -- as well as Page 13. I have just a
12 general question.

13 Do you know how many states applied
14 for these energy efficiency stimulus funds?

15 A It would surprise me to learn that any
16 state did not apply for the funds.

17 Q Would you accept, subject to check, that
18 every state has received stimulus money for energy
19 efficiency programs?

20 A How do you use the word "received"?

21 Q That the State through a State agency
22 received funding -- ARRA funding for energy

1 efficiency that was distributed.

2 A The reason I'm having trouble with the
3 question is that there are three categories of ARRA
4 funding for energy efficiency and there are
5 differences in accounting treatment that affect
6 whether one can read that they have been received by
7 a state yet.

8 So I actually think there's
9 interpretation in your question that would make it
10 hard to do it subject to check, but I could do it if
11 you needed me to do it.

12 Q Maybe it will be easier, can you identify
13 those that maybe haven't received energy efficiency
14 funding?

15 A I don't recall sitting here right now.

16 Q Okay.

17 A I believe it's publicly available on the
18 Web site of the Department of Energy.

19 Q Are you familiar with the term "spillover"
20 or "free rider," either one, in terms of energy
21 efficiency?

22 A "Free rider," yes. And "spillover," in

1 what context?

2 Q Actually, I'll just stick to the -- scratch
3 the one you had a question about.

4 And just if you could just define then
5 the one you stated, which I'm now forgetting.

6 Was it spillover or free rider that
7 you said?

8 JUDGE SAINSOT: Free rider.

9 THE WITNESS: Free rider.

10 BY MR. BOROVIK:

11 Q Free rider.

12 Could you define free rider, please.

13 A Yes. As I recall, it's common usage with
14 regard to energy efficiency. It's in the context of
15 an energy efficiency program that is implemented or
16 offered by some entity and a customer chooses to
17 participate in that energy efficiency program and
18 that customer would have done it anyway and would,
19 therefore, be considered to be free-riding.

20 Q Okay. In your determination of a
21 40-basis-point adder, did you take into account any
22 benefits -- not the benefits that the customers

1 received, which you've talked about in your
2 testimony -- but benefits that the Company may have
3 received, such as advising, branding, marketing,
4 benefits that might have reduced that 40-basis-point
5 adder?

6 A Could I just quibble for the moment with
7 the way that you characterized the question?

8 Q Sure.

9 A Because you asked about my determination of
10 40 basis points. And, as I have previously
11 indicated, I asked whether 40 basis points was
12 reasonable.

13 So is that what you mean when you say
14 my determination?

15 Q Yes. And thank you for that.

16 And you can -- and let me rephrase it
17 then with that in mind.

18 Is it 40 -- should a 40-basis-point
19 adder that you're recommending also consider benefits
20 the Company may receive, such as advising, branding,
21 marketing?

22 MR. RIPPIE: I object to the form of the

1 question because it presumes that there are
2 advertising, marketing, et cetera, benefits and the
3 witness has not agreed with that statement in her
4 testimony.

5 MR. BOROVIK: I could rephrase it a third time.

6 MR. RIPPIE: Sure.

7 BY MR. BOROVIK:

8 Q Assuming there are benefits, such as
9 branding, advertising, marketing, that the Company
10 maintains in their energy efficiency or receives
11 through their energy efficiency programs, would it be
12 appropriate for a -- in the determination of an adder
13 to account for that?

14 A Yes. I can understand -- I can imagine
15 some circumstances in which such assumed benefits
16 would be intangible benefits that could be taken into
17 account if one could enumerate them and analyze them.

18 MR. BOROVIK: I have no further questions.

19 JUDGE DOLAN: Thank you.

20 JUDGE SAINSBOT: Okay. Can we just --

21 Mr. Kelter, can we just determine if you have any
22 questions for Mr. Fetter before we proceed.

1 MR. KELTER: I do not.

2 JUDGE SAINSBOT: Okay. Then let's not hold
3 Mr. Fetter up.

4 JUDGE DOLAN: Okay. How about for this
5 witness?

6 MR. KELTER: Yes.

7 JUDGE DOLAN: Okay. Are you ready to proceed?
8 Because -- Staff, do you want to go or do you want to
9 wait till after --

10 MR. FEELEY: It doesn't matter, whenever you
11 want to do it.

12 JUDGE DOLAN: Why don't you go ahead and do it.

13 CROSS-EXAMINATION

14 BY

15 MR. FEELEY:

16 Q Good morning, Dr. Tierney.

17 My name is John Feeley and I'm one of
18 the Staff.

19 A Good morning.

20 Q With respect to the energy efficiency
21 measures underlying the 40-basis-point ROE adder that
22 you testified to with regard to ComEd, do those

1 measures represent the first energy efficiency
2 measures ever undertaken by governments, consumers or
3 manufacturers of appliances and other electrically
4 operated devices or machinery in ComEd's service
5 territory?

6 A I would doubt it.

7 Q Okay. If I could direct your attention to
8 your direct testimony, Page 20, Lines 378 to 381.

9 A Yes, I see it.

10 Q Okay. You discuss a performance risk
11 penalty and loss revenue, is that correct, at those
12 lines?

13 A Yes.

14 Q Okay. And on Page 26 of your direct in a
15 footnote, you testify that the penalty that you are
16 discussing would be at most \$665,000 per year for two
17 years; is that correct?

18 A Yes.

19 MR. FEELEY: Can I approach the witness?

20 I have a Staff cross-exhibit.

21 THE WITNESS: Thank you.

22

1 (Whereupon, Staff Cross-Exhibit
2 No. 14 was marked for
3 identification, as of this
4 date.)

5 BY MR. FEELEY:

6 Q Dr. Tierney, I've handed to you what I'll
7 have the court reporter mark for identification as
8 Staff Cross-Exhibit No. 14. It's a cover page and
9 Pages 63 and 376 from ComEd's 200910-K.

10 Do you have that in front of you?

11 A Yes.

12 Q If I could direct your attention to that
13 Page 63 of that from ComEd's 200910-K.

14 A Yes.

15 Q Do you see the section "executive
16 overview"?

17 A Yes, I do.

18 Q And that's a management discussion analysis
19 of financial conditions and results of operations for
20 ComEd, correct?

21 A Yes. Or an excerpt from it.

22 Q And Page 376 is a chart of compensation of

1 several of ComEd's officers, correct?

2 A Could you help me. The page that's split
3 between two physical pages, is that one single page
4 in the document?

5 Q Correct.

6 A Then, yes, I agree.

7 Q Okay. Okay. If you look at that Page 376
8 from the 10-K, is it correct that the total annual
9 compensation in 2009 for at least seven individuals
10 was more than \$665,000 in 2009?

11 A Yes.

12 Q And would you agree that for at least seven
13 individuals -- or -- I'm sorry -- for some of those
14 individuals, they received more than four times that
15 amount, that amount being the \$665,000 penalty
16 amount?

17 A You're asking me to do some calculations on
18 a lot of small numbers. I would take it, subject to
19 check.

20 The answer is "yes," but I can't tell
21 that right now.

22 Q If you go to Page 63 from ComEd's 200910-K,

1 Staff Cross-Exhibit 14 -- and that "executive
2 overview" section, is it correct that in 2009
3 economic conditions reduced ComEd's revenues by
4 40 million?

5 Do you need help finding that in the
6 paragraph?

7 A Yes. I read that current economic
8 conditions reduced ComEd's load resulting in lower
9 revenue net of purchase power expense of 40 million.

10 MR. FEELEY: Thank you, Dr. Tierney. That's
11 all I have.

12 At this time, I'd move to admit into
13 evidence ICC Staff Cross-Exhibit 14, which are the
14 cover page and Page 63 and 376 from ComEd's 200910-K.

15 MR. RIPPIE: Just for the record, your Honor,
16 they're pages from the ComEd sections of the Exelon
17 10-K; but with that caveat, there's no objection.

18 JUDGE DOLAN: Then Staff Cross-Exhibit 14 will
19 be admitted into the record.

20 (Whereupon, Staff Cross-Exhibit
21 No. 14 was admitted into
22 evidence.)

1 EXAMINATION

2 BY

3 MR. KELTER:

4 Q Good morning, Dr. Tierney. I'm Rob Kelter
5 from the Environmental Law & Policy Center.

6 A Pardon me?

7 Q I've just got a few questions for you.

8 JUDGE DOLAN: Mr. Kelter -- I'm sorry -- just
9 for the record, you probably need to enter your
10 appearance into the record since you weren't here.

11 MR. KELTER: On behalf of the -- Robert Kelter
12 on behalf of the Environmental Law & Policy Center,
13 35 East Wacker, Suite 1600, Chicago 60601.

14 JUDGE DOLAN: All right. Thank you.

15 BY MR. KELTER:

16 Q Dr. Tierney, could you please turn to
17 Page 8 of your direct testimony at Line 171.

18 Here you state, Implementation of
19 utility programs may create financial risks for the
20 Utility such as the risk the program costs are not
21 fully recovered or that programs do not produce the
22 anticipated savings or that there is greater

1 uncertainty about future loads, collect?

2 A Yes.

3 Q Is it also fair to say that when rates go
4 up, that usage may go down?

5 A Yes. Based on my general understanding of
6 the price elasticity of demand, to a certain agree
7 that is true.

8 Q Would you also assert that ComEd should get
9 an increase to its return on equity to compensate for
10 the risk that usage may go down from a rate increase?

11 A No.

12 Q Would you agree that a bad economy may mean
13 less usage by ComEd customers?

14 A Yes, just as I would assume that a good
15 economy might be more use.

16 Q Would you assert that ComEd should be
17 compensated for the risk that the economy may go bad?

18 A No. As I say, that is a symmetrical risk
19 and I'm not advocating compensation for that risk.

20 Q Turning to Page 12 at Line 237 of your
21 testimony --

22 A Yes.

1 Q -- you discuss the effect of new appliance
2 efficiency standards under the Energy Independence
3 and Security Act of 2007, correct?

4 A Yes.

5 Q As these standards go into effect, they're
6 likely to lower the energy usage in ComEd's service
7 territory, correct?

8 A Yes.

9 Q Do you believe that ComEd should be
10 compensated for the risk related to the change in
11 revenue from consumers using more efficient
12 appliances?

13 A Yes, because that is part of my testimony,
14 that there's load-related risk associated with energy
15 efficiency programs that go above and beyond the
16 specific ones that are being implemented by ComEd.
17 And I discuss those in my testimony.

18 Q And consumers -- some consumers would be
19 likely to just purchase more energy efficient
20 appliances without the EISA standards; is that
21 correct?

22 A I apologize. I didn't hear the end of your

1 sentence. It was muffled.

2 Q I think what I asked was -- and some
3 consumers would purchase energy efficiency -- more
4 energy efficient products even without EISA
5 standards; is that correct?

6 A Yes. And those kinds of trends have been
7 taking place in service territories of electric
8 companies generally.

9 (Whereupon, there was a change
10 of reporters.)

11 Q So do you believe that the utilities should
12 be compensated for that risk that consumers just
13 generally buy more energy efficient appliances over
14 time?

15 A It's hard for me to answer "yes" or "no" to
16 that question because I think that there is greater
17 uncertainty about load-related risk from a number of
18 reasons that are not symmetrical and they are
19 consistent with the intentions of the Illinois
20 statute to ensure that there is much greater energy
21 efficiency in the future.

22 So, generally, that is part of the

1 risk that I'm describing as load-related risk, which
2 is one of the planks on which I'm suggesting that
3 there be compensation for.

4 Q Could you please turn to Page 27 of your
5 direct testimony.

6 A Yes.

7 Q Looking at Line 513 you state that assuming
8 a \$7.7 billion rate base, a 40-basis-point ROE
9 adjustment would be equivalent to a \$30.8 million
10 expense item; correct?

11 A Yes.

12 Q Now, just to clarify that, is it correct
13 that to generate revenue to give ComEd a
14 40-basis-point ROE adjustment would mean generating
15 30.8 million for the Company after taxes?

16 A I was just doing a simple calculation here.
17 I wasn't attempting to indicate that this would be
18 earnings after tax, before tax. I just was doing a
19 straight calculation as an example.

20 JUDGE SAINOT: So that means before taxes?

21 THE WITNESS: Yes.

22

1 BY MR. KELTER:

2 Q Have you done the math to determine how
3 much customers would pay per kilowatt hour to cover
4 the revenue for a 40-basis-point adjustment?

5 A I have not done that calculation.

6 Q Turning to your rebuttal testimony for a
7 minute to Page 4, specifically Line 75 to 77.

8 A Yes.

9 Q So in your testimony here I believe you
10 state that -- or you note that Val Jensen testifies
11 that ratepayers would pay 155 million over the course
12 of the 2008 to 2010 plan; correct?

13 A Actually, what I think I said is that the
14 net benefit from a lifetime point of view of these
15 programs is 155 million and the overall electricity
16 costs are lower than they would be by that amount.

17 Q Okay. So the net benefit is 155 million?

18 A Yes.

19 Q So under your proposal wouldn't it be fair
20 to say that 3 years at 30 million per year, you're
21 talking about consumers paying 90 million for this
22 ROE increase?

1 A Well, the specific numbers will be whatever
2 they are that come out of the rate case; but based on
3 the 3 years times that rough estimate that I gave of
4 30.8, yes, that would be around 90 million.

5 MR. KELTER: Okay. And that's all the
6 questions I have.

7 JUDGE DOLAN: All right. Thank you.

8 JUDGE SAINSOT: CUB, does CUB have questions?

9 JUDGE DOLAN: No.

10 MR. RIPPIE: IIEC?

11 MR. REDDICK: We have no questions, your Honor.

12 JUDGE SAINSOT: Okay. Redirect then.

13 MR. RIPPIE: Could we have 2 minutes reward for
14 being so quick?

15 (Whereupon, a discussion was had
16 off the record.)

17 MR. RIPPIE: I just have very brief redirect.

18 REDIRECT EXAMINATION

19 BY

20 MR. RIPPIE:

21 Q If you could please turn to Page 10 of your
22 direct testimony, Exhibit 13, please. If you recall

1 you were asked a question by Mr. Borovik about the
2 footnote appearing at the bottom of Page 10.

3 Is Nevada the only state that allows
4 an adjustment to either return on equity or revenues
5 on account of the effect -- let me try that again.

6 Is Nevada the only state that allows
7 an adjustment to revenues or has adopted a rate
8 design to mitigate the impact on revenues of energy
9 efficiency programs?

10 A No.

11 Q Would you elaborate.

12 A Yes, there are many states that are
13 enumerated in my exhibits that have shareholder
14 incentives whether or not they are a rate base
15 adjustment of a return on equity. My ComEd
16 Exhibit 13.5 describes the states with a shareholder
17 incentive, and Footnote 10 that referenced Nevada was
18 only talking about states -- certain states with that
19 particular mandated energy savings target. And there
20 are a variety of other tools that are used that
21 essentially are providing a shareholder carrot,
22 compensation, incentive or something like that.

1 Q Carrot -- the word was "carrot" as in the
2 carrot and stick?

3 A The orange thing.

4 Q The long orange thing.

5 If you recall -- finally Mr. Kelter's
6 last series of questions and answers.

7 Is taking your illustrative 30.8
8 million number and subtracting it from Mr. Jensen's
9 benefit estimate a valid way of calculating the rate
10 impact of the proposal to have a 40-basis-point
11 adder?

12 A No.

13 Q Why not?

14 A We're looking at on the one hand life cycle
15 savings associated with energy efficiency program
16 expenditures and there are a variety of benefits and
17 costs that are taken into consideration there. It is
18 not a rate impact analysis. It is a net present
19 value of the value of those expenditures that ComEd
20 is recovering for through its program for energy
21 efficiency.

22 The lost revenue calculation was a

1 very rough calculation of the lost revenues that I
2 said would be attributable to a certain amount of
3 program megawatt hour savings times the -- excuse
4 me -- the basis point adder associated with the
5 return on rate base, and it came out to be 13.8.
6 Those are apples and oranges and it doesn't describe
7 the rate impact, either one.

8 MR. RIPPPIE: Thank you. That's all I have.

9 JUDGE SAINSOT: Thank you.

10 MR. KELTER: I have one quick follow-up.

11 RE CROSS-EXAMINATION

12 BY

13 MR. KELTER:

14 Q But in following up on Mr. Rippie's last
15 question, the ratepayers ultimately pay the 30.8
16 million per year increase in the return on equity;
17 correct?

18 A I would say that what I'm addressing in my
19 testimony is the introduction into a revenue
20 requirement on which rates would be set of a
21 40-basis-point adder. Rates would be set on that
22 based on the Commission's order and a variety of

1 other things and ratepayers will pay a rate that
2 reflects it, and it may or it may not equal \$30.8
3 million.

4 Q Well, the ratepayers will ultimately pay
5 funds to fund the 40-basis-point increase in the
6 return on equity; correct?

7 A The revenue requirement that will be set in
8 this case would, if the Commission were to adopt
9 this, reflect 40 basis points on the return on
10 equity. And so, yes, rates would be set to reflect
11 that and ratepayers will pay whatever their usage is
12 associated with their usage.

13 MR. KELTER: Thank you.

14 MR. BOROVIK: I have one follow-up.

15 RECROSS-EXAMINATION

16 BY

17 MR. BOROVIK:

18 Q In response to Mr. Rippie's question, you
19 had talked about other states and carrots -- I think
20 you used the term "carrots" that they provide.

21 Is it your testimony or your
22 contention that ComEd in order to support energy

1 efficiency needs a carrot to fully support it?

2 A No. My testimony is that -- in the absence
3 of this adder, the Company will assuredly be exposed
4 to a much more difficult ability to earn it's allowed
5 return on equity.

6 Q But it's not related to its support of
7 these statutory mandated programs? It's more in
8 terms of their financial?

9 A That's correct. There are other states
10 that specifically call their shareholder incentive an
11 incentive, and that's not the specific proposal here.

12 MR. BOROVIK: Thank you.

13 JUDGE DOLAN: All right. Thank you.

14 JUDGE SAINSOT: All right. How about lunch?

15 (Whereupon, a recess was taken.)

16 JUDGE SAINSOT: We're going back on the record
17 now.

18 MR. BOROVIK: Thank you, your Honor.

19 The AG moves to admit Cross-Exhibit 15
20 into the record.

21 MR. RIPPPIE: There is no objection.

22 MR. BOROVIK: I have three copies for your

1 Honor.

2 JUDGE SAINSOT: Okay. Hearing no objection,
3 your motion is granted, Counsel, and AG
4 Cross-Exhibit 15 is entered into evidence.

5 (Whereupon, AG Cross-Exhibit
6 No. 15 was admitted into
7 evidence.)

8 JUDGE SAINSOT: Okay. Oh, it's just 2 of 3
9 you're doing?

10 MR. BOROVIK: The other two pages were blank,
11 your Honor, first and last -- essentially blank.

12 (Witness sworn.)

13 MR. REDDICK: Your Honor, there was no
14 cross-examination for Michael P. Gorman, an expert
15 witness for the Illinois Industrial Energy Consumers.
16 And I'd like to move his testimony into the record.

17 The testimony is marked as his direct
18 IIEC Exhibit 1.0 and there are 20 associated
19 exhibits, IIEC 1.1 through 1.20. And his rebuttal
20 testimony is designated IIEC Exhibit 4.0 with a
21 single Exhibit IIEC 4.1. And I have separate
22 verifications for each of the pieces of testimony and

1 I have an original and three copies for the judges
2 and the reporter.

3 JUDGE DOLAN: Any objection?

4 MR. RIPPIE: None, your Honor.

5 JUDGE DOLAN: All right. Then IIEC Exhibit 1.0
6 along with the Attachment IIEC 1.1 through 1.20 along
7 with IIEC 4.0 and 4.1 will be admitted into the
8 record.

9 (Whereupon, IIEC Exhibit Nos.
10 1.0, 1.1 through 1.20, 4.0 and
11 4.1 were admitted into
12 evidence.)

13 JUDGE SAINCOT: Okay. Staff, would you like to
14 proceed with Mr. Brightwell, please.

15 DAVID BRIGHTWELL,
16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MR. FEELEY:

21 Q Could you please state your name for the
22 record.

1 A David Brightwell, B-r-i-g-h-t-w-e-l-l.

2 Q Dr. Brightwell, do you have in front of you
3 what's been marked for identification as ICC Staff
4 Exhibit 8.0, the direct testimony of David Brightwell
5 which consists of narrative text?

6 A Yes, I do.

7 Q Do you have any changes to make to ICC
8 Staff Exhibit 8.0, your direct testimony?

9 A No, I don't.

10 Q Dr. Brightwell, do you have in front of you
11 what's been marked for identification as ICC Staff
12 Exhibit 23.0, the rebuttal testimony of David
13 Brightwell, which consists of narrative text?

14 A Yes, I do.

15 Q Do you have any corrections to make to ICC
16 Staff Exhibit 23.0?

17 A I have one correction.

18 Q What is that?

19 A On Page 8 there's a sentence that begins on
20 Line 161 and continues through Line 163. As written
21 it states, The reason is that the revenues lost to
22 energy efficiency may be less than the penalties the

1 Company would incur for noncompliance. The sentence
2 should read, The reason is that the revenues lost to
3 energy efficiency may be greater than the penalties
4 the Company would incur for noncompliance.

5 JUDGE SAINSOT: Okay. What -- and this is --
6 what exhibit are you referring to?

7 JUDGE DOLAN: 23.0.

8 MR. FEELEY: It's ICC Staff Exhibit 23.0,
9 Page 8, Line 162.

10 BY MR. FEELEY:

11 Q And Dr. Brightwell you're striking "less"
12 and inserting "greater"; is that correct?

13 A That's correct.

14 MR. FEELEY: And that is not reflected on the
15 documents that we provided you.

16 JUDGE SAINSOT: Okay.

17 BY MR. FEELEY:

18 Q Dr. Brightwell, do you intend ICC Staff
19 Exhibit 8.0 and 23.0 to be your direct and rebuttal
20 testimony in this docket?

21 A I'm sorry. Can you repeat the question.

22 Q Do you intend ICC Staff Exhibit 8.0, your

1 direct testimony, and 23.0 your rebuttal testimony to
2 be your testimony in this docket?

3 A Yes.

4 MR. FEELEY: Dr. Brightwell's available for
5 cross-examination.

6 And I move to admit into evidence ICC
7 Staff Exhibit 8.0, direct testimony of David
8 Brightwell, and 23.0, the rebuttal testimony of
9 Dr. Brightwell.

10 JUDGE DOLAN: Any objection?

11 MR. RIPPIE: None.

12 JUDGE DOLAN: All right. Then with that, Staff
13 Exhibit 8.0 and Staff Exhibit 23.0 will be admitted
14 into the record.

15 (Whereupon, Staff Exhibit
16 Nos. 8.0 and 23.0 were admitted
17 into evidence.)

18 CROSS-EXAMINATION

19 BY

20 MR. RIPPIE:

21 Q Good afternoon, Dr. Brightwell.

22 A Good afternoon.

1 Q We've met before, but for the sake of the
2 record I'm Glenn Rippie. I'm here this afternoon
3 representing Commonwealth Edison and I have one page
4 of questions for you.

5 If I could ask you first to please
6 turn to Page 3, the question and answer between Lines
7 51 and 62 of your direct testimony, Staff Exhibit 8.
8 And let me know when you're there, please.

9 A Okay. I'm at that question.

10 Q Okay. And you talk in the answer to that
11 question about a conflict.

12 Is it also true that there can be a
13 conflict between the goal of energy efficiency to
14 reduce use of electric energy and ComEd recovering
15 its revenue requirement?

16 A Can I have a second to read my...

17 Okay. Can you repeat the question?

18 Q Sure.

19 Is it also true that there is a
20 conflict -- a potential conflict between the goals of
21 energy efficiency to reduce the use of electric
22 energy and ComEd recovering its revenue requirement?

1 A Yes, that's true.

2 Q And the reason for that would be, as I
3 understand it, that if energy efficiency reduces the
4 volumes, it reduces the revenue that the Company will
5 recover; is that right?

6 A That's correct.

7 Q Now, would you agree that that would not be
8 a problem if the reduction in volume use also reduced
9 ComEd's costs to match?

10 A It wouldn't affect the profit, but in this
11 situation that you -- that you presented; but if you
12 have a volumetric component, it would still reduce
13 the revenue.

14 Q Or put another way, ComEd could still
15 recover all of its costs, including the allowed cost
16 of capital, if costs reduced along with the revenues?

17 A That's correct.

18 Q However, as I understand it, you say that
19 that is not the case because -- and I'm going to
20 quote, I think, from Line 59 or around there -- Most
21 of the distribution costs are non-volume sensitive so
22 that there is very little, if any, reduction in costs

1 to the Company for eliminating the sale of that
2 kilowatt hour.

3 Did I read that correctly?

4 A Yes, you did.

5 Q Is a major reason for that because the
6 distribution facilities that ComEd operates are
7 installed based on peak loads rather than on kWh
8 throughput?

9 A I believe that's correct.

10 When I was stating this, I was
11 thinking more along the lines of most of the costs
12 are fixed in nature so that once it's established
13 that it doesn't really matter -- to some extent it
14 matters, but largely the amount of kilowatt hours we
15 go through doesn't really affect the cost too much.

16 Q So that if a transformer, by way of
17 example, were sitting on a pole, it's not going to
18 affect its costs as long as that transformer isn't
19 overloaded, its not going to change the cost
20 depending upon how many kilowatt hours flow through
21 it?

22 A I believe that's correct.

1 JUDGE SAINCOT: And when you say "change the
2 cost," you're talking about the cost of the
3 transformer; is that correct?

4 BY MR. RIPPKE:

5 Q Or operating or maintaining it; is that
6 correct?

7 A I'm sorry. I didn't hear what you just
8 said.

9 Q Sure.

10 It won't change the cost of buying the
11 transformer, of operating the transformer or
12 maintaining it?

13 A I believe that's correct.

14 Q Now, you claim in your testimony -- and I'm
15 sorry I don't have a specific line reference because
16 it's sort of a point you try to make throughout it
17 that Dr. Tierney's 40 -- proposed 40-basis-point
18 adjustment makes the incentive for ComEd to not
19 engage in energy efficiency stronger because it
20 drives up the volumetric component of ComEd's rates;
21 is that correct?

22 A That's correct.

1 Q Now, that feature isn't something unique to
2 either 40 basis points or to an ROE adder, is it?

3 A You mean to an adder of any type on ROE
4 or...?

5 Q Let me try the question a different way.

6 The same effect the -- same
7 disincentive effect would occur, in your view,
8 regardless of the reason why as -- the volumetric
9 component was driven up, as long as the volumetric
10 component was driven up?

11 Let me try that all over again.

12 A I would say that -- okay.

13 Q We'll get there.

14 A Okay.

15 Q Anything that increases the volumetric
16 component of ComEd's rates, will enhance that
17 disincentive in your view; is that correct?

18 A Yes, I believe that's correct.

19 Q And that's the end of my page,
20 Dr. Brightwell. Thank you very much.

21 A Thank you.

22 JUDGE DOLAN: Any redirect?

1 JUDGE SAINSOT: I just have a quick question
2 for Dr. Brightwell.

3 EXAMINATION

4 BY

5 JUDGE SAINSOT:

6 Q Dr. Brightwell, I believe you testified in
7 ComEd's -- the original energy efficiency plan?

8 A Yes, I did.

9 Q Could you just state for the record how
10 long ComEd has had an energy efficiency plan,
11 roughly.

12 A It started before I was with the
13 Commission. My understanding is that original plan
14 was filed in 2007 and began at some point in the
15 middle of 2008. I don't know the exact dates. So
16 sometime towards May or June of 2008 was when the
17 plan went into effect by this law -- by Section 8-103
18 of the Public Utilities Act came into effect.

19 JUDGE SAINSOT: Thank you.

20 MR. FEELEY: Could I have a minute just to talk
21 to Dr. Brightwell?

22

1 (Whereupon, a discussion was had
2 off the record.)

3 JUDGE DOLAN: Back on the record.

4 MR. FEELEY: Staff has no redirect of
5 Dr. Brightwell.

6 JUDGE DOLAN: Okay. Thank you, Dr. Brightwell.

7 MR. FEELEY: At this time we call our next
8 witness, Michael McNally.

9 (Witness sworn.)

10 MICHAEL McNALLY,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 EXAMINATION

14 BY

15 MR. FEELEY:

16 Q Could you please state your name for the
17 record.

18 A Michael McNally.

19 Q Mr. McNally, do you have in front of what's
20 been marked for identification as ICC Staff
21 Exhibit 5.0, the direct testimony of Michael McNally,
22 which consists of narrative text and attached

1 Schedules 5.1 through 5.10?

2 A Yes.

3 Q Do you have any additions, corrections or
4 modifications to make to ICC Staff Exhibit 5.0?

5 A No.

6 Q Mr. McNally, do you have in front of you
7 what's been marked for identification as ICC Staff
8 Exhibit 20.0, the rebuttal testimony of Michael
9 McNally, which consists of narrative text and
10 Attachment 20.1?

11 A Yes.

12 Q And were both those pieces of testimony
13 prepared by you or under your direct supervision and
14 control?

15 A Yes.

16 Q Do you have any changes to make to ICC
17 Staff Exhibit 20.0?

18 A No.

19 Q Mr. McNally, do you intend for ICC Staff
20 Exhibit 5.0 and 20.0 to be your testimony in this
21 proceeding?

22 A Yes.

1 CROSS-EXAMINATION

2 BY

3 MR. RIPPIE:

4 Q Mr. McNally, is Mr. Allen nearby? I may
5 have a couple cross-examination exhibits to show you
6 briefly.

7 MR. ALLEN: Yes, I am here.

8 MR. RIPPIE: Thank you very much.

9 BY MR. RIPPIE:

10 Q Mr. McNally, is it fair to say that because
11 Commonwealth Edison is not publically traded and in
12 order to attempt to reduce sampling error, you
13 attempted to measure ComEd's investor-required return
14 on common equity by using a sample group?

15 A Yes.

16 Q And is it also correct that selecting a
17 comparable sample is important in order to pick or
18 arrive at a correct measured ROE?

19 A Yes.

20 Q And to the extent a sample is not
21 comparable, would you agree that its validity is
22 impaired as a basis for estimating ROE?

1 A Well, to the extent that it differs in
2 risk, an adjustment can be made -- or should be made
3 to bring the cost of equity up to or down to,
4 whichever may be the case, to represent the risk
5 level of the entire Company.

6 Q Fair enough.

7 If a sample was not comparable in a
8 manner that couldn't be adjusted for in a reliable or
9 quantified way, than its validity would be impaired,
10 do you agree?

11 A Yes.

12 Q And even if you could quantify it or
13 measure it, all other things being equal, you prefer
14 a more comparable sample to a less comparable sample?

15 A Yes.

16 Q Now, your particular sample comprised 12
17 companies; is that correct?

18 A Yes.

19 Q And you arrived at those 12 companies
20 coincidentally by applying a screen of 12 criteria;
21 is that correct?

22 A I'm not sure about the number, but that

1 sounds about right.

2 Q This is described around Question 21 or 22
3 on -- around Line 200 of your direct testimony.

4 A Well, there are 12 financial and operating
5 ratios that I used. There are also other basic
6 criteria -- criteria including -- you know, they had
7 to have the available data that I needed, et cetera,
8 and they had to have regular dividends.

9 Q So once you determined that there was data
10 available to test those 12 financial -- I'll call
11 them financial criteria -- against, you ran a group
12 of utility companies against those 12 criteria and
13 that's what resulted in your sample of 12 companies.
14 Fair summary?

15 A Maybe not quite in that order; but,
16 essentially, yes.

17 Q Okay. I want to make sure that I fairly
18 understand it.

19 You took a universe of utility
20 companies, gas and electric; you excluded companies
21 that -- where there -- as you say, there wasn't a
22 history of dividends or there wasn't adequate data

1 available; and then you, in essence, compared those
2 12 financial metrics as they were reported for each
3 of those companies in that universe and picked 12
4 that, in your view, closely matched ComEd on those 12
5 metrics?

6 A Yes.

7 Q Now, would you agree that there are factors
8 besides those 12 financial metrics that affect a
9 company's comparability to ComEd? And just by way of
10 example, let me give you an extreme one. I could
11 find a company hypothetically that matched well on
12 those 12 metrics in the industry of manufacturing
13 diapers. And you wouldn't call that comparable to
14 ComEd, would you?

15 A To the extent that those financial ratios
16 capture the risk, it would be comparable in terms of
17 risk.

18 Q Well, I guess what I'm asking is, are there
19 factors and risk that aren't captured by those 12
20 ratios?

21 A Well, of course, those ratios can't capture
22 all the factors.

1 Q And, in fact, is that why you limited your
2 universe of companies to electric and gas utilities?
3 You didn't test those 12 metrics against manufactures
4 of steel, manufacturers of diapers and providers of
5 television?

6 A That's true.

7 Q Is it, therefore, a fair inference that all
8 other things being equal, you not only want companies
9 that match ComEd's characteristics on those 12
10 financial features, but also that mirror its
11 business?

12 A That is preferred.

13 Q Now, if I can ask you a few questions about
14 your DCF and then a just a few questions about your
15 CAPM analysis.

16 Am I correct that Schedule 5.9 shows
17 that an average constant growth DCF value for your
18 sample companies is 9.91 percent per year?

19 A Yes.

20 Q And am I also correct that if you simply
21 remove New Jersey Resources from that sample, the
22 constant gross DCF increases to 10.1 percent?

1 Would you accept that, subject to
2 check?

3 A Subject to check, yes.

4 Q Would you accept, subject to check, that if
5 New Jersey Resources and Southern New Jersey are
6 removed from the sample, that raises the constant
7 growth DCF by 25 basis points and the nonconstant
8 growth DCF by 40 basis points?

9 A I'm sorry. If New Jersey Resources and
10 South Jersey Industries were both removed?

11 Q I'm sorry. Yeah, I misread my own
12 abbreviation.

13 Yes. Correct. South Jersey
14 Industries.

15 A And what -- are you asking?

16 Q Would increase the constant growth DCF by
17 25 basis points and the nonconstant by 40?

18 A To the extent your math is correct, yes.

19 Q Would you agree that both of those two
20 companies have a contribution from unregulated income
21 in excess of 50 percent?

22 A Can you repeat that, please.

1 Q Sure.

2 The whole holding, the companies that
3 issue equities, both of -- do both of those companies
4 have a contribution to their income for nonregulated
5 activities of greater than 50 percent?

6 A I can't remember what the -- I can't
7 remember the exact numbers.

8 Q Do you recall whether they're the largest
9 two for unregulated contribution?

10 A I believe that's true.

11 Q Let me ask you very few questions about
12 your CAPM then.

13 Your CAPM, as I recall, results in a
14 10.32 percent ROE; right?

15 A Yes.

16 Q And, again, I asked this of Mr. Thomas; but
17 just for the sake of a complete record, CAPM works by
18 taking a risk-free rate and then adding to it the
19 product of a measure of variability, in this case a
20 beta, and a return that varies as a function of the
21 beta; right?

22 A I'm not sure I followed that quite, but --

1 Q I was probably over simplifying.

2 A -- there's a risk-free rate and added to it
3 is a beta times a risk premium --

4 Q Fair enough.

5 A -- a market risk premium.

6 Q You said it better than I did.

7 Now, the two factors in that equation
8 are independent; right? The risk-free rate doesn't
9 vary with the beta and the risk premium doesn't vary
10 with the beta? You simply take the risk-free rate
11 and you add to it the product of the beta times the
12 risk premium?

13 A Yes.

14 Q Now, your risk-free rate was measured on
15 September the 22nd; am I correct?

16 A That's correct.

17 MR. RIPPPIE: Okay. Mr. Allen, if you could
18 please show the witness the document that was labeled
19 CAPM 100922. And I'm going to distribute copies
20 which will be marked ComEd Exhibit 21.

21 JUDGE SAINOT: Cross-Exhibit?

22 MR. RIPPPIE: Cross-Exhibit.

1 (Whereupon, ComEd Cross-Exhibit
2 No. 21 was marked for
3 identification.)

4 BY MR. RIPPIE:

5 Q Mr. McNally, that should be very close to a
6 document that is out of an attachment to your
7 testimony.

8 Does this document, ComEd
9 Cross-Exhibit 21, accurately depict how you converted
10 the measured 3.74 percent bond yield to a 3.77 annual
11 effective yield and then multiplied it through by the
12 beta and risk premium to result in your 10.32 percent
13 recommended common equity?

14 A Yes.

15 Q And just so the record's clear, the 3.74 to
16 3.77, that's just a calculation kind of like when
17 banks tell you the annual percentage yield on your
18 savings account. It's a way of generating an
19 annualized yield from the reported 30-year T-bond
20 yield?

21 A Yes.

22 Q Now, is there anything special economically

1 about September 22nd, 2010? What I mean by that is,
2 it's not the end of a quarter? It's not the end of a
3 tax period? It's just a day like any other; right?

4 A Yes. It's a normal day as far as I can
5 tell.

6 Q Do you know what your cost of common equity
7 calculated under the CAPM methodology would have been
8 if it had been calculated using the risk-free rate on
9 the last day of 2010 instead of September 22nd of
10 2010?

11 A No. I do, however, know what it would be
12 as of 12/17.

13 Q Okay. Well, I'm asking what it would be as
14 of 12/29. So if you've got the H15 there, I did send
15 that document down with Mr. Allen as well. It's been
16 previously marked as ComEd Cross-Exhibit 20 and
17 you're welcome to consult it.

18 MR. RIPPPIE: You know what, let's save some
19 time. Can you please show him the document labeled,
20 CAPM 101229.

21 JUDGE SAINOT: Okay. Are you calling this
22 Cross-Exhibit 22?

1 MR. RIPPIE: 22, yes.

2 (Whereupon, ComEd Cross-Exhibit
3 No. 22 was marked for
4 identification.)

5 BY MR. RIPPIE:

6 Q Now, to be clear, Mr. McNally, I'm not
7 asking you -- I'm using this to illustrate the change
8 in a single variable in this equation. I'm not
9 representing to that this is a complete CAPM.

10 But does this document accurately
11 illustrate what the CAPM would have been had you
12 simply substituted the risk-free rate as of
13 December 29th of 2010 in place of the rate as of
14 September 22nd, 2010?

15 A Well, you can't do that. You can't mix and
16 match the components because it's just not the time.

17 Q Sure.

18 I understand that it's your testimony
19 that if you were going to pick a different time,
20 you'd run a different -- you'd run the beta again and
21 you'd run risk premium again. But I'm -- and I'm not
22 asking you that this is a -- whether this a complete

1 CAPM. I'm asking -- I'm trying to illustrate the
2 sensitivity of the choice of a particular date.

3 And I'm simply asking that had the
4 risk-free rate been on September 22nd, what it turned
5 out to be just three-month later, all other things
6 being equal, it would have resulted in a 10.5 percent
7 ROE?

8 A I can put it in a slightly different way, I
9 guess, in that -- had, as of September 17th, the
10 risk-free rate been 4.46 and all the other ones as I
11 calculated them, yes, that's correct.

12 But, again, I can't say that as of the
13 end of December those other factors wouldn't have
14 changed.

15 Q I agree, and I am not asking you about a
16 complete CAPM analysis done on any other date. I am,
17 in fact, very deliberately not asking you that
18 question because I know that you haven't introduced
19 any other CAPM; right?

20 A Not into the record at this point, no.

21 Q And I'm not asking you to.

22 Would you agree, subject to check,

1 that the months of September and October are
2 essentially the low point in the risk-free 30-year
3 T-bond rate of the entire 2010 year?

4 A That September and October -- that the
5 risk-free -- I'm sorry. Let me start over.

6 That the Treasury bond yield in
7 September and October were at the low end during the
8 year?

9 Q That that was the local minimum of the
10 entire year.

11 A I don't know for a fact.

12 Q Would it help you to look at the H15 data
13 series for the year?

14 A Yes.

15 MR. RIPPIE: Mr. Allen, there's a document
16 marked, I believe, Interest Rates which has been
17 previously identified as ComEd Exhibit 20 --
18 Cross-Exhibit 20.

19 THE WITNESS: They are among the lowest, if not
20 the lowest.

21 MR. RIPPIE: Thank you very much. That's all I
22 have.

1 JUDGE DOLAN: Thank you.

2 JUDGE SAINSON: Any redirect?

3 MR. FEELEY: Could I have a few minutes to call
4 Mr. McNally?

5 JUDGE SAINSON: Sure.

6 (Whereupon, a discussion was had
7 off the record.)

8 MR. FEELEY: We just have a few questions on
9 redirect.

10 REDIRECT EXAMINATION

11 BY

12 MR. FEELEY:

13 Q Mr. McNally, do you recall when Mr. Rippie
14 asked you to accept some numbers, subject to check,
15 regarding the Schedule 5.9?

16 A Yes.

17 Q And have you had a chance to do those
18 calculations?

19 A Yes.

20 Q And what did your calculations show?

21 A My calculation's consistent with what
22 Dr. Hadaway presented on Page 14 of his -- is it

1 rebuttal -- rebuttal testimony, Exhibit 37.0. And
2 indicates that the DCF through those two companies
3 would increase by 24 basis points and that the
4 nonconstant DCF would increase by 20 basis points.

5 Q And, Mr. McNally, do you recall during your
6 cross-examination you mentioned that you knew the
7 CAPM as of 12/17/2010?

8 Do you recall that?

9 A Yes.

10 Q What are the components of the CAPM?

11 MR. RIPPIE: I object. This is beyond the
12 scope. I was very careful to ask this witness only
13 about the sensitivity of the CAPM study that he
14 introduced in his testimony. I did nothing to invite
15 the submission of an entirely new dated CAPM study
16 that wasn't submitted in direct or rebuttal. And, in
17 fact, I went out of my way to make clear that I was
18 not asking for that.

19 MR. FEELEY: And I'm just -- Mr. McNally
20 indicated in his response that you knew what the CAPM
21 was on 12/17/2010. And I'm asking this witness to
22 make this a complete record, what are the components

1 of the CAPM on that date.

2 MR. RIPPPIE: It's not making a complete record.
3 It's sur-surrebuttal. We have not had an opportunity
4 to respond to that. It was not put in direct or
5 rebuttal, and I deliberately did not ask him about
6 that. I asked him only to test the sensitivity of
7 the CAPM that he did put in his testimony.

8 He could have put this in his rebuttal
9 and then we would have had a chance to look at it,
10 but he didn't. And I didn't ask him about it.

11 MR. FEELEY: But Mr. Rippie picked a date on
12 December and said, Well, what does this do to your
13 thing, and Mr. McNally responded, Well, he knew what
14 it was on 12/17/2010.

15 MR. RIPPPIE: He didn't. I asked about a change
16 in his existing CAPM. He volunteered that he had
17 done a whole nother CAPM study.

18 JUDGE SAINSOT: The judges are over here.

19 MR. RIPPPIE: Sorry.

20 JUDGE SAINSOT: The objection's sustained.
21 It's beyond the scope. Move on, please.

22 MR. FEELEY: I have nothing else.

1 MR. RIPPIE: I apologize for doing the math
2 wrong. I did that last night on my Excel spreadsheet
3 at home, and thank you for checking it.

4 I have nothing.

5 THE WITNESS: You're welcome.

6 JUDGE DOLAN: All right. Thank you, sir.

7 You can go ahead and step down.

8 Are we ready for Mr. Clausen?

9 MR. RIPPIE: Your Honors, Mr. Bernstein was
10 scheduled to do that cross. We're trying to -- he is
11 in Oak Brook, but we're going to try to do it by
12 phone with your Honors' permission. So -- again, so
13 we can get Mr. Clausen on and off today. We've been
14 unable to set that up.

15 MR. BERNET: I've talked with -- I've
16 communicated with Mr. Bernstein. He's available. He
17 can do it. I thought we were going to do this after
18 3:30.

19 MR. RIPPIE: Right. Is it possible to do both
20 of the Staff witnesses beginning at 3:30 and then we
21 can -- they'll easily fit.

22 JUDGE SAINSBOT: There's no way that

1 Mr. Bernstein could get here?

2 MR. BERNET: No, we could probably -- no, he
3 can't. He's in Oak Brook. He wouldn't be able to
4 get here, but he can do it over the phone. He can do
5 it over the phone. If we could hook him up by phone,
6 we could probably do it now. I just have to talk to
7 him about that. But if we can give him a phone
8 hookup...

9 MS. McNEILL: Mr. Clausen needs to leave by
10 4:15.

11 MR. RIPPPIE: Well, that's -- why don't we take
12 5 minutes and see if we can do the phone.

13 MR. BERNET: Is there a number that he can call
14 into to get onto this line, do you guys know?

15 JUDGE DOLAN: Go ahead and go off the record.
16 Okay.

17 (Whereupon, a discussion was had
18 off the record.)

19
20 (Whereupon, there was a change
21 of reporters.)
22

1 MR. RIPPPIE: Your Honor, while we're waiting
2 for Springfield, can we put those two exhibits into
3 evidence?

4 JUDGE SAINSOT: Right. I think --

5 MR. RIPPPIE: At least a couple pieces of
6 testimony that there's no cross on, too.

7 JUDGE SAINSOT: Sure.

8 MR. RIPPPIE: Your Honor, at this time, ComEd
9 would offer into evidence Cross Exhibits -- ComEd
10 Cross Exhibits 21 and 22.

11 JUDGE SAINSOT: Any objection from Staff?

12 MS. McNEILL: None from Staff.

13 JUDGE SAINSOT: Anybody else?

14 (No response.)

15 Okay. Hearing no objection, your
16 motion is granted, Mr. Rippie, and ComEd Cross
17 Exhibits 21 and 22 are entered into evidence.

18 (Whereupon, ComEd Cross
19 Exhibit Nos. 21 and 22 were
20 admitted into evidence as
21 of this date.)

22 MR. RIPPPIE: Thank you.

1 JUDGE DOLAN: And, Mr. Townsend, you are
2 probably going to be going first with questioning.

3 MR. TOWNSEND: Okay.

4 JUDGE DOLAN: We'll go off the record.

5 (Recess taken.)

6 You want to raise your right hand.

7 (Witness sworn.)

8 Please make sure you talk into the
9 microphone.

10 TORSTEN CLAUSEN,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY

15 MS. McNEILL:

16 Q Mr. Clausen, could you please state your
17 name and spell your last name for the court reporter.

18 A Yes. My name is Torsten Clausen. I might
19 as well spell both names. It's T-o-r-s-t-e-n
20 C-l-a-u-s-e-n.

21 Q Do you have before you a document which has
22 been marked for identification as ICC Staff

1 Exhibit 14.0, which is titled The Direct Testimony of
2 Torsten Clausen?

3 A I do.

4 Q Do you also have ICC Staff Exhibit 25.0,
5 which is the rebuttal testimony of Torsten Clausen?

6 A I do.

7 Q And in addition, do you have ICC Staff
8 Exhibit 30.0, which is the rebuttal testimony of
9 Torsten Clausen, which also includes Attachment A?

10 A I do.

11 Q Do you have any corrections to make to ICC
12 Staff Exhibits 14.0, 25.0 or 30.0?

13 A I do not.

14 Q Is the information contained in these
15 exhibits true and correct to the best of your
16 knowledge?

17 A Yes, it is.

18 Q If I were to ask you the same questions
19 today as set forth in these exhibits, would your
20 responses be the same?

21 A They would be.

22 MS. McNEILL: At this time, I move for

1 admission into evidence ICC Staff Exhibits 14.0,
2 25.0, 30.0 and Attachment A.

3 JUDGE DOLAN: Any objections?

4 (No response.)

5 All right. Then Staff Exhibit 14.0,
6 25.0, 30.0, along with Attachment A will be admitted
7 into the record.

8 (Whereupon, Staff
9 Exhibit Nos. 14.0, 25.0, 30.0 and
10 Attachment A was
11 admitted into evidence as
12 of this date.)

13 MS. McNEILL: And Mr. Clausen is available for
14 cross-examination.

15 JUDGE DOLAN: Proceed, Counsel.

16 CROSS-EXAMINATION

17 BY

18 MR. TOWNSEND:

19 Q Good afternoon, Mr. Clausen.

20 A Good afternoon.

21 Q Chris Townsend appearing on behalf of
22 REACT, the Coalition to Request Equitable Allocation

1 of Costs Together.

2 You are familiar with REACT?

3 A Yes, I think I am.

4 Q You know that REACT is made up of some of
5 the largest commercial, industrial and municipal
6 entities in Northern Illinois, along with retail
7 electric suppliers, or RESs, that are interested in
8 potentially serving residential customers?

9 A I believe that's correct.

10 JUDGE SAINSOT: Mr. Townsend, before you
11 continue, I just want to make sure that that little
12 ping that we just heard doesn't mean --
13 Mr. Bernstein, are you still there?

14 MR. BERNSTEIN: I am and I can hear you
15 clearly.

16 JUDGE SAINSOT: Okay. Good.

17 Staff, are you still there?

18 MS. ELIZABETH ROLANDO: Yes, we're still here
19 in Springfield.

20 JUDGE SAINSOT: Okay. Just checking.

21 MS. ELIZABETH ROLANDO: Thank you.

22

1 BY MR. TOWNSEND:

2 Q And you are the director of the Illinois
3 Commerce Commission's Office of Retail Market
4 Development; correct?

5 A That is correct.

6 Q And in your testimony in this case, you
7 point out that the design of retail supply charges is
8 becoming more and more important; correct?

9 A Do you have a specific --

10 Q It's Page 6, Lines 111 through 114. Let me
11 know once you've had a chance to review that.

12 A That's in my direct testimony?

13 Q Your direct testimony. ICC Staff Exhibit
14 14.0.

15 A Sorry, again, what is --

16 Q Page 6, Lines 111 through 114.

17 A Yes, I see that.

18 Q And there, you point out that the design of
19 retail supply charges is becoming more important as
20 competition from RESs has reached the smallest
21 commercial customers and residential customers;
22 correct?

1 A Correct.

2 Q And you also state that a competitive
3 retail electric market is fully effective only when
4 cost-based rates allow for the existence of correct
5 price signals; correct?

6 A Correct.

7 Q And you agree that the Public Utility
8 Act -- Public Utilities Act specifically requires
9 that delivery services rates be cost-based rates;
10 correct?

11 A Correct.

12 Q And you state in your testimony that
13 regulated utility rates do not send correct price
14 signals if they are above or below levels that would
15 exist in a competitive market; right?

16 A I state that, correct.

17 Q And that testimony arose in connection with
18 your discussion of non-space-heating customers;
19 right?

20 A Technically in the discussion of
21 space-heating customers.

22 Q Space heating versus --

1 A Non- --

2 Q -- space heating, correct.

3 JUDGE SAINSOT: Mr. Clausen, I think you should
4 probably speak up a little bit given the fact that
5 there's so much going on over the phone waves.

6 THE WITNESS: Okay.

7 BY MR. TOWNSEND:

8 Q And you would agree that those principles
9 regarding cost-based rates should apply generally to
10 all rates that ComEd charges; correct?

11 A That is correct.

12 Q So you would agree that in order to
13 encourage a competitive market, as required by the
14 Public Utilities Act, there should not be cross
15 subsidization among or between different customer
16 classes?

17 A On a general level I think I would agree
18 with that, yes.

19 Q Likewise, you would agree that in order to
20 promote the development of a competitive market, as
21 required by the Public Utilities Act, the Commission
22 should ensure that there's not cross subsidization

1 between ComEd's supply function and its delivering
2 services function; right?

3 A Correct. However, I would like to add that
4 it's obviously a lot easier to talk about these terms
5 in a general nature than in a specific nature because
6 I think not everybody agrees what is a cross subsidy
7 at this point in time regarding this time getting the
8 message. In fact, these rate cases would be a lot
9 shorter if everybody would agree when cross
10 subsidization occurs and when it doesn't.

11 Q Instead of having cross subsidization, you
12 believe that the rates should be cost-based, though;
13 right?

14 A That is correct. And, again, I'm just
15 adding that it's usually not as easy to define what
16 is cost-based and what is not. Again, it will
17 probably end up being a decision that the Commission
18 essentially has to make on a lot of the issues when
19 there are different interpretations of what is a
20 cost-based rate; but generally I would agree with
21 that statement.

22 Q And you would agree that a component of

1 cost-based rates and correct pricing is that there
2 must be an accurate allocation of the various cost
3 components that come to --

4 MS. McNEILL: Objection. I think this is
5 beyond the scope of Mr. Clausen's testimony.

6 MR. TOWNSEND: Actually --

7 MS. McNEILL: He testified --

8 MR. TOWNSEND: -- these are the principles that
9 he's testifying about with regards to the
10 space-heating customers, as the question of whether
11 the components of the rates need to be accurately
12 allocated.

13 MS. McNEILL: He didn't testify to allocation.

14 JUDGE SAINSOT: I have to say his testimony is
15 very general on that point.

16 MR. TOWNSEND: And, indeed, that was a general
17 question, your Honor.

18 JUDGE SAINSOT: All right. Your objection is
19 overruled.

20 You can answer, Mr. Clausen.

21 THE WITNESS: I don't know if there is still a
22 question outstanding.

1 BY MR. TOWNSEND:

2 Q The question is, would you agree that a
3 component of cost-based rates and correct price
4 signals is that there must be an accurate allocation
5 of the various cost components that go into the rates
6 that are charged?

7 A That is correct and I would like to add
8 that it is a lot harder to figure out what an
9 accurate allocation is; but I agree with your
10 statement, generally.

11 Q For example, if the components that go into
12 delivery rates that ComEd charges include cost
13 components that instead should be included in the
14 supply charges that ComEd charges, that would be
15 inaccurate allocation; right?

16 MS. McNEILL: I object again. This is also
17 beyond the scope. As the Judge has noted,
18 Mr. Clausen's testimony was making some very general
19 statements and this -- these questions would go
20 toward, I think, another Staff witness's testimony.

21 MR. TOWNSEND: If you, again --

22 JUDGE SAINCOT: The objection is sustained.

1 Move on, Mr. Townsend.

2 BY MR. TOWNSEND:

3 Q Would you agree that a competitive retail
4 electric market is only fully effective if the
5 cost-based rates allow for the extension of correct
6 price signals?

7 MS. McNEILL: I think that question has been
8 asked and answered.

9 JUDGE SAINSBOT: Can you repeat the question,
10 Mr. Townsend.

11 MS. McNEILL: You are reading from his
12 testimony; correct?

13 MR. TOWNSEND: That's based off of his
14 testimony, but I'm not reading his testimony.

15 MS. McNEILL: I think he already answered that
16 question.

17 JUDGE DOLAN: But you did previously ask him
18 that question.

19 MR. TOWNSEND: I asked him if that was -- if
20 that was part of his testimony previously. I think
21 that that's a different question.

22 MS. McNEILL: You are asking him if he agrees

1 with that statement?

2 MR. TOWNSEND: I'm asking if he agrees with
3 that as a principle.

4 MS. McNEILL: But you're --

5 JUDGE SAINSOT: Well, he swore under oath that
6 it was. What more do you need?

7 MR. TOWNSEND: Because it was a slight
8 variation in the testimony that he presented.

9 BY MR. TOWNSEND:

10 Q So the question is, do you have to have
11 cost-based rates in order to be able to have a fully
12 effective competitive retail electric market?

13 JUDGE SAINSOT: And how is that different from
14 the testimony he swore under oath about?

15 MR. TOWNSEND: It's a slight variation of the
16 testimony that he has. So, again, if I go much
17 beyond it, apparently I'm subject to an objection
18 from Staff that it's beyond the scope.

19 JUDGE SAINSOT: Slight variation, what
20 variation?

21 MR. TOWNSEND: His testimony is that -- again,
22 is that a competitive retail market -- retail

1 electric market is only -- is fully effective only
2 when cost-based rates allow for the existence of
3 correct price signals.

4 BY MR. TOWNSEND:

5 Q And so my question is, isolating the
6 question of cost-based rates, can you only have an
7 effective competitive retail electric market when you
8 have cost-based rates?

9 JUDGE SAINSOT: That is asked and answered.

10 Move on.

11 BY MR. TOWNSEND:

12 Q You would agree that inaccurate allocation
13 of costs might result in inaccurate pricings;
14 correct?

15 A Again, I would agree with that generally
16 and I would like to add that it's not generally
17 accepted what is accurate and what's inaccurate
18 allocation; but I agree with your general statement.

19 MR. TOWNSEND: No further questions.

20 JUDGE DOLAN: All right. Thank you.

21 JUDGE SAINSOT: Anybody besides Mr. Bernstein
22 or is it Mr. Bernstein?

1 MR. BERNSTEIN: I'm sorry, your Honor. Did you
2 say something to me?

3 JUDGE SAINSOT: We were just --

4 JUDGE DOLAN: Making sure there were no other
5 witnesses needed --

6 JUDGE SAINSOT: No other parties. No CUB
7 cross?

8 JUDGE DOLAN: She waived it.

9 JUDGE SAINSOT: Okay. Then it's you,
10 Mr. Bernstein.

11 MR. BERNSTEIN: I'm sorry, I didn't understand
12 that. Is Mr. Townsend done with his examination?

13 JUDGE SAINSOT: Right.

14 JUDGE DOLAN: Yes.

15 MR. BERNSTEIN: I'm sorry. I didn't understand
16 that. No, I have no questions. Thank you.

17 JUDGE SAINSOT: Okay. Any redirect?

18 MS. McNEILL: One minute.

19 JUDGE DOLAN: Let's go off the record.

20 (Recess taken.)

21 MS. McNEILL: Staff has no redirect.

22 JUDGE DOLAN: All right. Thank you,

1 Mr. Clausen.

2 JUDGE SAINSOT: Okay. Thank you, Mr. Clausen.

3 THE WITNESS: Thank you.

4 JUDGE DOLAN: All right. Then I guess at this
5 point, we'll be taking a recess until Miss Satter is
6 available.

7 (Recess taken.)

8 MS. LIN: Staff calls Dianna Hathhorn.

9 JUDGE DOLAN: Miss Hathhorn, you want to please
10 raise your right hand.

11 (Witness sworn.)

12 JUDGE DOLAN: Proceed, Counsel.

13 MS. LIN: Dianna, I'll ask questions from my
14 chair, but I think you'll see Sue in your line of
15 sight. Right?

16 THE WITNESS: Right.

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DIANNA HATHHORN,

called as a witness herein, having been first duly sworn, was examined and testified via teleconference as follows:

DIRECT EXAMINATION

BY

MS. LIN:

Q Miss Hathhorn, can you please state your name for the record, spelling your first and last name for the court reporter.

A Dianna Hathhorn, D-i-a-n-n-a H-a-t-h-h-o-r-n.

Q Miss Hathhorn, I'm going to direct your attention to documents that you have before you, namely, ICC Staff Exhibit 2.0, which has Schedules 2.01 through Schedules 2.04, in addition to Attachment A.

Is that your direct testimony that you prepared for this proceeding?

A Yes, it is.

Q And also I'm going to direct your attention to ICC Staff Exhibit 17.0. This has attached

1 Schedule 17.01 and no attachments.

2 Is that your rebuttal testimony that
3 you prepared in this proceeding?

4 A Yes, it is.

5 Q Do you have any changes to either one of
6 those pieces of testimony?

7 A No, I do not.

8 Q Is everything in both of those pieces of
9 testimony true and accurate to the best of your
10 knowledge and belief?

11 A Yes.

12 Q If I asked you the questions that are in
13 the rebuttal and direct testimonies, are your answers
14 going to be the same?

15 A Yes, they would.

16 MS. LIN: Thank you. I'm going to move for the
17 admission of ICC Staff Exhibits 2.0 with attached
18 Schedules 2.01 through 2.04 and Attachment A as well
19 as ICC Staff Exhibit 17.0 with Schedule 17.01 into
20 the record and tender Miss Hathhorn for
21 cross-examination.

22 JUDGE SAINSOT: Any objection?

1 (No response.)

2 Okay. Hearing none, your motion is
3 granted and ICC Staff Exhibit 2.0 and Attachments
4 2.01 through 2.04 as well as Attachment A and ICC
5 Staff Exhibit 17.0 and its Attachment 17.01 are
6 entered into evidence.

7 (Whereupon, ICC Staff
8 Exhibit Nos. 2.0 and
9 Attachments 2.01 through 2.04 and
10 Attachment A and ICC Staff Exhibit
11 No. 17.0 and Attachment 17.01 were
12 admitted into evidence as
13 of this date.)

14 MS. SATTER: The People of the State of
15 Illinois have questions, so I suppose we'll start.

16 CROSS-EXAMINATION

17 BY

18 MS. SATTER:

19 Q Good afternoon, Miss Hathhorn.

20 A Good afternoon.

21 Q So you'll be looking at a screen and I'll
22 be looking at you.

1 JUDGE DOLAN: Yes.

2 BY MS. SATTER:

3 Q Let me start by asking you to turn to
4 Page 12 of your rebuttal testimony, which is where
5 you would address the repair allowance deduction and
6 you note in your testimony that ComEd has not yet
7 implemented the change for that deduction; is that
8 right?

9 A That's correct.

10 Q Are you aware that many other utilities
11 have already implemented this tax accounting change?

12 A I read that in the Attorney General's
13 testimony, yes.

14 Q Did you look at the response to AG Data
15 Request 1.43?

16 A A long time ago.

17 Q Do you recall looking at that document?

18 A I recall looking at DRs on this subject,
19 but I don't remember specifically what that one was
20 about.

21 Q Okay. Do you agree with me that it was
22 ComEd's choice not to implement this accounting

1 change before it filed its rate case?

2 A I would agree with that.

3 Q And it was its choice not to implement the
4 change while this case was pending as well; correct?

5 A Yes.

6 Q So any increase to the accumulated deferred
7 income taxes that would result from the repair
8 allowance deduction change is not reflected in the
9 determination of rate base in this case; is that
10 right?

11 A It's not in there because they haven't made
12 the change yet. If they do make the change, it's not
13 clear.

14 Q Okay. Hypothetically, do you agree that
15 the Company could decide to implement the tax change
16 the day after the Commission issues its order in this
17 case?

18 MS. LIN: Objection.

19 MS. SATTER: It's a hypothetical. I'm asking
20 if it's possible that that could happen.

21 JUDGE SAINOT: What's the basis for the
22 objection?

1 MS. LIN: Speculation, irrelevant.

2 MS. SATTER: It is certainly not irrelevant. I
3 mean, the question of timing is a key question to
4 whether this adjustment is appropriate. So when that
5 tax change would take place is highly relevant.

6 JUDGE SAINSOT: Overruled.

7 BY MS. SATTER:

8 Q So do you agree that hypothetically the
9 Company could decide to implement this tax accounting
10 change the day after the Commission issues its order
11 in this case?

12 A Yes.

13 Q And do you agree that in the absence of a
14 reserve account for the effect of this tax change,
15 the Company would retain the benefit of the change
16 until the next rate case?

17 MR. RATNASWAMY: Your Honors, I object because
18 the question assumes a fact not in evidence as was
19 demonstrated during the cross-exam of Mr. Effron
20 whether, in fact, it will turn out upon audit that
21 there is any benefit is unknown.

22 JUDGE SAINSOT: Why don't you just rephrase.

1 BY MS. SATTER:

2 Q In the event there is a benefit to the
3 Company resulting from the repair allowance deduction
4 tax change, is it correct that the Company would
5 retain that benefit until the next rate case?

6 A That's correct, but it's no different than
7 any other change that occurs after the end of a rate
8 case. There's always in-between changes that are not
9 reflected in the last rate case.

10 Q But if there were reserve accounts, then
11 that would capture the change in the event that there
12 was a benefit; is that correct?

13 A If there's a benefit, the effect of that is
14 going to be captured through the Company's
15 accumulated deferred income taxes into the future.

16 Q Even during the gap time between the end of
17 this rate case and the next rate case?

18 A Not during the gap, no.

19 Q Okay. Now, I'm going to have some
20 questions to you about the rate case expense. On
21 Page 3 of your rebuttal testimony you withdraw at
22 least two of the adjustments you made in your direct,

1 particularly the disallowance for the cost of P. Nome
2 & Associates (phonetic) and what you call
3 unsubstantiated data room costs; right?

4 A It's at Line 53.

5 MS. SATTER: Now, I understand that you have
6 some cross-exhibits that were sent previously and
7 maybe we can talk about how that's going to be done
8 there. So AG Cross Exhibit 13, which I believe --
9 it's marked confidential, but I believe that as a
10 result of the ALJs' ruling it not confidential, this
11 is Schedule -- the ComEd Schedule C10.

12 BY MS. SATTER:

13 Q Do you have those available to you,
14 Miss Hathhorn?

15 A Yes, I have it.

16 Q Do you recognize that document as the
17 Schedule C10 filed by the Company in this rate case?

18 A Yes, I do.

19 Q And does this schedule include an
20 itemization of estimated rate case costs?

21 A Yes, it does.

22 MS. SATTER: And for the record -- although it

1 says "confidential version" on the document, the ALJs
2 have previously found that the confidentiality was
3 not defended, so it is not to be treated as
4 confidential.

5 BY MS. SATTER:

6 Q Now, does this document show the cost to
7 prepare the -- a data room?

8 A That's estimated at Line 9.

9 Q And that was \$250,000 as shown on this
10 exhibit, correct, on Line 9?

11 A Yes.

12 Q And so in your direct testimony when you
13 made the adjustment for the data room, was that a
14 \$250,000 adjustment?

15 A Yes, it was.

16 Q Okay. Now, do you agree that it is
17 unreasonable to ask ratepayers to pay for expenses
18 that the Company did not incur?

19 A Yes.

20 Q Did you specifically assess whether ComEd
21 was billed less than it claimed to prepare the data
22 room?

1 A Well, I've been monitoring the monthly
2 invoices and at the time of direct, I didn't have
3 enough information, which is why I made the
4 adjustment in direct; but since that time, I've been
5 receiving more invoices and I can't remember what the
6 latest invoiced amount was, but it seemed that it was
7 validating the Company's estimate that it was going
8 to incur approximately \$250,000 of expenses; but
9 since the case isn't over, there's no way that number
10 could be completely invoiced at this time.

11 Q Now, in AG Cross Exhibit 13, the estimate
12 has the data room costs in 2010, correct, and nothing
13 in 2011?

14 A That's correct.

15 Q Now, in your testimony, you say the Company
16 has provided discovery which addressed my concerns.
17 In connection with the data room, do you recall
18 whether that was the response to DLH-18.01?

19 A It was that response plus additional
20 supplements to DLH-1.04, which are the continuous
21 invoices.

22 Q Okay. Can you take a look at what's been

1 provided previously as AG Cross Exhibit 14?

2 MS. McNEILL: The previous one I think should
3 be 16 and --

4 MS. SATTER: I'm sorry, I was still operating
5 from last week.

6 JUDGE SAINCOT: We're checking to see,
7 Miss Hathhorn. We're checking to see what this
8 exhibit should be correctly marked.

9 JUDGE DOLAN: Your first one I believe should
10 be 16.

11 MS. SATTER: Okay. So that means 13 becomes
12 16?

13 JUDGE DOLAN: Yes.

14 MS. SATTER: And 14 will become 17?

15 JUDGE DOLAN: Yes.

16 MS. SATTER: That's what I get for preparing in
17 advance.

18 (Whereupon, AG Cross
19 Exhibit Nos. 16 and 17 were
20 marked for identification
21 as of this date.)

22 JUDGE SAINCOT: That's why evidence stickers

1 are wonderful things.

2 BY MS. SATTER:

3 Q Do you have a copy of what is now being
4 called AG Cross Exhibit 17 being the Company's
5 response to Request No. DLH-18.01?

6 A Yes, I do.

7 Q And that document is several pages, it's
8 got attachments; is that correct?

9 A Yes.

10 Q And in the response, the Company identifies
11 three invoices; right?

12 A Yes.

13 Q And can you verify that those invoices are
14 attached to the exhibit?

15 JUDGE SAINCOT: This is all regarding the data
16 room supply, I take it?

17 MS. SATTER: That's right.

18 JUDGE SAINCOT: Excuse me, support.

19 THE WITNESS: Well, there's three cover pages
20 to invoices for April, May and June and two detailed
21 spreadsheets which I'm not -- it looks like the first
22 detailed sheet relates to the April billing and then

1 the last one looks like it relates to June, but there
2 might be a detailed sheet for May that we don't have.

3 BY MS. SATTER:

4 Q Is the -- does the cover page refer to a
5 May invoice for \$23,100?

6 A Yes.

7 Q Okay. Are these documents that you felt
8 justified the data room expense of \$250,000?

9 A These are the invoices for April, May and
10 June which substantiated that costs are being
11 incurred. At the time of my direct testimony, I had
12 none of this information and, again, since the
13 invoices are only through June, it would be
14 reasonable that the \$250,000 threshold hadn't been
15 reached.

16 Q What was the -- does the document indicate
17 when the response was served on Staff?

18 A November 19th.

19 Q Okay. And was it your expectation that
20 there might be something between June and November
21 that you had not seen?

22 A Yes.

1 Q Have you seen anything after June since you
2 received this response? Any --

3 A I get monthly updates and I'm not sure when
4 I got the last one. It was probably the beginning of
5 December, so it might have had one more invoice after
6 June, I'm not certain.

7 Q Do you know how much money ComEd has been
8 billed to date that you have seen for the data room?

9 A Let me check.

10 The last update I had shows \$122,200.

11 Q And you would agree with me that that's
12 let's than half the 250,000 that's claimed; correct?

13 A Well, the invoice information I have says
14 the invoice is paid through 10/31/2010, which is not
15 the duration of the rate case, so I wouldn't expect
16 it to be the full 250.

17 Q Did it -- did you consider, in assessing
18 this cost, that the Company had expected to pay the
19 full amount in 2010 and nothing in 2011 as shown on
20 AG Cross Exhibit 16?

21 MR. RATNASWAMY: I object. I think it assumes
22 a fact not in evidence. C10 indicates an amount for

1 2010, which could be an accrual instead of a payment
2 expectation.

3 MS. SATTER: I don't think it's appropriate for
4 the attorney to suggest factually how something
5 should be read. That's why I'm asking the witness.

6 JUDGE SAINSOT: Well, where are you looking
7 with this?

8 MS. SATTER: AG Cross Exhibit 16, Line 9 has
9 prepared data room 2010, 2011 total. We talked about
10 that earlier in the cross.

11 JUDGE SAINSOT: Why don't you just rephrase.

12 MS. SATTER: All right.

13 BY MS. SATTER:

14 Q You said the last set of documents you
15 looked over were invoices as of October 31st, 2010;
16 is that right?

17 A Yes.

18 Q And the total amount for the data room was
19 \$122,200; right?

20 A Correct.

21 Q And the last bill for that was June 2010;
22 correct?

1 A I don't think I said that because I hadn't
2 went back and looked at that. That was the last bill
3 for the DLH-18.01. It's pretty close. DLH-18.01 I
4 show is totaling 121,200 and the latest update is
5 122,200. So...

6 Q So you're just assuming that this number
7 will double between the last invoice that you
8 received and the end of the rate case? Is that why
9 you approved the full amount?

10 A Well, I didn't approve. I recommended. I
11 withdrew my adjustment, but the last invoice was only
12 through October 31st, 2010.

13 Q And do you recall that ComEd also provided
14 a Supplement 5 on December 30th, 2010, which I know
15 was before your -- which I know was after your
16 testimony was prepared?

17 A The last supplement I show, 5 as of --
18 well, it was served December 30th, but that's not the
19 date for every invoice.

20 Q So the only thing that you have actual
21 costs for is this 121, \$122,000 figure; is that
22 right?

1 A Right.

2 Q And that's the extent of the information
3 that you had and that you relied upon to withdraw
4 your adjustment from your direct; correct? Is that
5 correct?

6 A I'm still thinking.

7 Q Okay. I'm sorry.

8 A I weighed the fact that I had the
9 documentation with how the costs generally compared
10 to prior cases and thought it was reasonable.

11 Q Now, you had also made some adjustments to
12 remove the cost of the testimony of ComEd Witnesses
13 Hewings and Andrade; correct?

14 A Yes.

15 Q And in your direct testimony at Pages 11
16 and 12, you refer to the ALJs' ruling striking the
17 testimony about the economic ripple effect and
18 concluded that it was not reasonable to include these
19 expenses in the rate case; right?

20 A Could you refer me to a line in my
21 testimony, please.

22 Q It's at Page 11 and 12 of your direct.

1 A Could you repeat the question.

2 Q All right. It's on Page 11, Lines 221 to
3 224 and that's where you provided your justifications
4 for removing the costs for Mr. Andrade and
5 Mr. Hewings; correct?

6 A Well, 221 to 224 is specific to Dr. Hewings
7 and then Dr. Andrade is later on.

8 Q Okay. So let's just talk about Dr. Hewings
9 then.

10 You removed \$15,000 to represent the
11 cost of Dr. Hewings' testimony; is that correct?

12 A That was the estimate for the consultant
13 costs and then there's additional recommended
14 disallowance for the external legal fees and then
15 that total would be divided by 3 to represent the
16 annual amortization.

17 Q Okay. Now, can I direct your attention to
18 AG Cross Exhibit 16 again. That's the Schedule C10.

19 A Okay.

20 Q Specifically, Line 15, would you agree with
21 me that that line shows economic development, slash,
22 jobs creation and retention expert witnesses, direct

1 case \$225,000?

2 A That's what it says.

3 Q So did you review the information provided
4 by the Company to see what invoices were associated
5 with that \$225,000?

6 A Yes.

7 Q And did you review Dr. Hewings' invoices?

8 A Yes.

9 Q And did you -- what other vendors' invoices
10 did you review? Do you recall?

11 A No, but I can check.

12 MS. SATTER: I can probably help you by asking
13 that you look at the next AG cross exhibit, which
14 will be marked as 18 -- AG Cross Exhibit 18.

15 (Whereupon, AG Cross
16 Exhibit No. 18 was
17 marked for identification
18 as of this date.)

19 A VOICE: Was that originally 15?

20 MS. SATTER: That was originally 15. Thank
21 you.

22 BY MS. SATTER:

1 Q Does this include invoices from an
2 organization called Chicago Partners?

3 A Yes.

4 Q And it's correct, isn't it, that Chicago
5 Partners were identified as providing services
6 related to economic development/jobs creation and
7 retention?

8 MR. RATNASWAMY: I'm going to object. I
9 believe this is beyond the scope of her testimony. I
10 don't believe she ever proposed, whether she withdrew
11 it or not, any adjustment related to Chicago
12 Partners.

13 MS. SATTER: I have two comments. First,
14 Miss Hathhorn is not a ComEd witness, so it seems to
15 me that it's up to her attorneys to object, number
16 one. I mean, it's up to them to decide what's
17 objectionable or not.

18 Number two, this is obviously relevant
19 to rate case expenses, the economic development
20 disallowance that she made.

21 THE WITNESS: Are you ready for me?

22 JUDGE SAINSOT: Overruled.

1 MS. LIN: Now we are.

2 THE WITNESS: Okay. My adjustment to
3 Dr. Andrade is a subset of Line 15 on Schedule C10,
4 which is AG Cross Exhibit 16. Schedule C10 economic
5 development/jobs creation and retention contains
6 three different groups of costs and my adjustment
7 only relates to one of them. It does not relate to
8 Chicago Partners.

9 BY MS. SATTER:

10 Q Did you assess what contribution Chicago
11 Partners made to the rate case?

12 A I reviewed the invoices I was provided.

13 Q But did you assess what they provided in
14 terms of assessing whether the rate should be at a
15 certain level -- whether the revenue requirement
16 should be at a certain level?

17 MS. LIN: I'm a little confused by that
18 question.

19 MS. SATTER: Okay. Let me rephrase that. That
20 question got a little out of hand.

21 BY MS. SATTER:

22 Q Did you review or consider what Chicago

1 Partners contributed to the rate case analysis?

2 A No.

3 Q Did you assume that Chicago Partners
4 provided information to the Company connected to
5 economic development and jobs creation and retention?

6 A Well, I reviewed the invoices to make sure
7 they were valid with respect to the estimate that was
8 included in Schedule C10 and I went on the Web site
9 after AG filed testimony objecting to Chicago
10 Partners' costs to check it out, but that's the
11 extent of my review.

12 Q Did you add -- add up the charges of
13 Chicago Partners?

14 MS. LIN: I think it's been asked and answered
15 that she didn't review Chicago Partners' invoices
16 with regard to rate case expense. I believe she did
17 that, so if she didn't do that, I'm not sure she
18 would have totaled them up either.

19 MS. SATTER: She did say she looked at them
20 after -- she did say she looked at them.

21 JUDGE SAINOT: All right. We'll allow it.

22 BY MS. SATTER:

1 Q Would you accept, subject to check, that
2 the amount billed, according to AG Cross Exhibit 18
3 by Chicago Partners, was \$101,030?

4 A Subject to check, yes.

5 Q Okay. And the amount of economic
6 development/jobs creation costs that are included in
7 the rate case expense are \$225,000; correct?

8 A Yes, but that's for more than just Chicago
9 Partners, that's for three different lines on the
10 supporting schedule.

11 Q Now, you removed 28,000 from Mr. Hewings
12 and Mr. Andrade; correct? 15,000 for Mr. Hewings and
13 13,000 for Mr. Andrade?

14 A Right.

15 Q Okay. So that still leaves 197,000 that
16 the Company is expecting ratepayers to pay for
17 economic development/jobs creation and retention
18 witnesses; correct?

19 A Right.

20 Q Okay. And Chicago Partners have only
21 billed 101 -- approximately 101,000?

22 MR. RATNASWAMY: Your Honors, I object again.

1 Essentially what we're seeing here is that AG/CUB,
2 through cross-examination, is trying to get a Staff
3 witness to propose or support a new adjustment she
4 never made in her direct or her rebuttal. That is
5 not proper.

6 MS. SATTER: Should I respond?

7 JUDGE SAINSOT: Overruled.

8 BY MS. SATTER:

9 Q Do you have an answer?

10 A I need the question repeated, please.

11 Q Okay. So you started with 225- -- \$225,000
12 for economic development; correct?

13 A That's the Company's estimate.

14 Q That was the Company's estimate and you
15 removed 28,000 for two witnesses; correct?

16 A Yes.

17 Q And then we have invoices from Chicago
18 Partners equaling \$101,000; correct?

19 A Correct.

20 Q So that still leaves a substantial amount
21 of money that the Company is requesting for economic
22 development in jobs creation and retention; correct?

1 A I don't know what you mean by
2 "substantial." I mean, 250,000 in total is not
3 substantial to ComEd.

4 Q Okay. Let's put it this way: When
5 you've -- once you've removed Mr. Hewings and
6 Andrade, there's \$197,000 left for economic
7 development and jobs creation; correct?

8 A Yes.

9 Q And there are invoices for 101 of that
10 197,000; correct?

11 A There's also invoices for the University of
12 Illinois economic witness, that's part of that
13 line -- that economic development/jobs creation and
14 retention.

15 Q And who was that?

16 A I don't have the name of the witness in
17 front of me; but in the DLH-1.04 supplement, there's
18 a spreadsheet provided every month, it's Line 26.

19 Q Do you know who the U of I witness was?

20 A I would have to look it up.

21 Q Do you think it might have been
22 Dr. Hewings?

1 A I don't know.

2 Q Okay. Okay. So essentially, though,
3 there's about \$90,000 left unaccounted for for
4 economic development and jobs creation, would you
5 agree with that?

6 A I wouldn't say that it's unaccounted for.
7 Again, the last update I have is invoices paid
8 through 10/31 and accrual through November. So, I
9 wouldn't expect it to total to the full estimate.

10 Q You would or would not?

11 A Would not.

12 Q Okay. And you based your testimony on
13 discovery that you had received prior to the date of
14 your rebuttal testimony's filing date; right?

15 A Yes.

16 Q Now, you agree that economic development
17 and jobs retention are not relevant to a rate case
18 presentation; correct?

19 MR. RATNASWAMY: I'll object on two different
20 grounds. Now she is being asked, apparently, for a
21 legal opinion and, second, it is on the subject on
22 which she did not testify.

1 MS. SATTER: I'll withdraw the question. I'll
2 withdraw the question.

3 BY MS. SATTER:

4 Q Now, some other questions about Chicago
5 Partners.

6 Did you consider the hourly rate that
7 consumers are being asked to pay for this consultant?

8 MS. LIN: Objection. She's being asked to talk
9 about what another vendor is charging ComEd.

10 MS. SATTER: That's exactly right because the
11 statute requires that the costs of rate case vendors
12 be specifically assessed, and so I'm asking her if
13 she looked at the hourly rate.

14 JUDGE SAINSOT: Overruled.

15 BY MS. SATTER:

16 Q Did you have a chance to look at it?

17 A I looked at it. A lot of people get paid
18 an hourly wage on these cases.

19 Q Say that again.

20 A A lot of people get paid high hourly wages
21 on these cases.

22 Q Would you consider -- well, let's do this:

1 Can you look at Page -- it's marked Page 5,
2 CRC-0035555 of AG Cross Exhibit 18, and does that
3 page under Rate show the hourly rates for the various
4 people were billed on this invoice?

5 A Yes, it does.

6 Q And did you notice in your assessment of
7 this cost that there were consultants that were paid
8 \$980 an hour?

9 A I see that for one person it was for one
10 hour and the other person it was for three hours.

11 Q Did you look -- you didn't have a chance to
12 look at that when you were assessing the economic
13 development charge; is that right?

14 A I testified that I reviewed this invoice
15 for the reasonableness of the cost as it compared
16 with ComEd's estimate and the timing of when I
17 received the information at the time I did my direct
18 and rebuttal testimony. I didn't review a study
19 beyond what these people prepared and I considered it
20 with respect to the overall estimate of the case.
21 This case and the prior cases.

22 Q So you didn't consider the fact that they

1 were two additional consultants that were charging
2 \$560 an hour for this economic development work; is
3 that right?

4 MS. LIN: Judge, I think Miss Hathhorn has
5 answered the question.

6 MS. SATTER: She answered it in regard to the
7 \$980 an hour charge.

8 JUDGE SAINCOT: Just for clarity, we'll allow
9 it.

10 THE WITNESS: My answer applied to this entire
11 questioning about Chicago Partners.

12 BY MS. SATTER:

13 Q So you made no independent assessment of
14 the hourly rates in deciding whether or not the
15 charge was reasonable?

16 MS. LIN: That's been asked and answered a few
17 times now.

18 MS. SATTER: I assume then it's been answered
19 "yes".

20 THE WITNESS: I would refer to my previous
21 answers. It's not yes or no. I did an assessment of
22 this cost the way I just described compared to the

1 totals, this case, the previous where the invoicing
2 was at, it's not just I looked at an hourly rate on
3 an invoice.

4 BY MS. SATTER:

5 Q Okay. But more generally then, you say you
6 looked at the overall costs that the Company
7 identified; is that right then?

8 A Yes.

9 Q Okay. The next exhibit was previously
10 marked AG Cross Exhibit 16, I believe, and now it's
11 AG Cross Exhibit 19 and this is the fourth
12 supplement- -- supplemental response to DLH-1.04
13 served December 7th, 2010, and it's two attachments,
14 Attachment 1 and Attachment 2.

15 Now, you reviewed the response to
16 DLH-1.04; right?

17 A Yes, I did.

18 MS. SATTER: And, again, for the record, it
19 says on the cover sheet that Attachment 1 and 2 are
20 confidential but on the actual document, the
21 confidential designation has been removed, so they
22 would go into the record. I just want that clear.

1 BY MS. SATTER:

2 Q Now, Attachment 1 and Attachment 2 includes
3 some detail to date, that is, as of October 31st,
4 2010, of the rate case expense; is that right?

5 A Well, that's the title of the spreadsheet,
6 but the columns have invoices paid through 9/30 and
7 then accruals for charges incurred but not paid for
8 October and then totals to invoices paid incurred
9 through 10/31/2010.

10 Q Okay. Are you looking at Attachment 1 or
11 Attachment 2?

12 A 1.

13 Q And this was the last supplement to
14 DLH-1.04 that you were able to review before your
15 rebuttal testimony; is that right?

16 A Yes.

17 Q Now, looking at Attachment 1 to AG Cross
18 Exhibit 19 at Line 26, do you see that? And that
19 says that there was \$840,000 estimated for ComEd's
20 direct case and of that -- as of October 31st, 2010,
21 \$568,859 was spent; is that right.

22 A That's what it says.

1 Q And for post-direct testimony, that
2 would -- there's nothing allocated; correct?

3 A There's 890 in the first column and zeros
4 in every column after that.

5 Q Do you read that to mean that nothing has
6 been invoiced for those -- for the post-direct
7 expense?

8 A Yes.

9 Q Do you know when the direct testimony was
10 filed in this case?

11 A By who?

12 Q Commonwealth Edison. I'm sorry.

13 A I think it was June 30th.

14 Q Do you know when the rebuttal was filed?
15 Was it before October 31st?

16 A I don't --

17 Q That's okay. If you don't know -- I
18 thought you might know.

19 Did you try to allocate invoices
20 between direct and post-direct services?

21 A I didn't allocate any invoices.

22 Q So when you reviewed the invoices, you

1 didn't categorize them as relevant -- as related to
2 ComEd's direct case experts and its rebuttal and
3 surrebuttal testimony?

4 A No.

5 Q So would you agree with me that looking at
6 the -- AG Cross Exhibit 19, ComEd has spent less than
7 half of the total of direct and post direct witness
8 expense as of October 31st, 2010?

9 A You are going to have to walk me through
10 that calculation. I'm not with you --

11 Q Okay.

12 A -- because the consultant -- I see \$1.281
13 million spent of 1.770 estimated and then expert
14 witnesses 568,000 and change then -- out of 840 and
15 then the post-direct testimony is not yet invoiced.

16 Q So as far as you know, as of -- when you
17 filed your rebuttal testimony, the expert witness
18 charge in the rate case expense was the sum of
19 840,000 and 890,000; is that right?

20 A Well, no, because I would assume some of
21 that 890,000 relates to ComEd's surrebuttal which
22 would not have been prepared at the time of my

1 rebuttal.

2 Q So as far as you know, there was nothing
3 allocated to these amounts, though?

4 A I said before I didn't make any
5 allocations, but I didn't have any invoices for them.

6 Q Okay. Looking at the individual vendors
7 listed on the exhibit here, would you agree that some
8 were below the estimate and some were above the
9 estimate?

10 JUDGE SAINSOT: Are you looking at the first
11 page or -- of the attachment Page 1 or where?

12 MS. SATTER: Page 1.

13 THE WITNESS: Yes. Some are below and some are
14 above that.

15 BY MS. SATTER:

16 Q So would you agree with me that Lines 1 --
17 I'm sorry, we're on Attachment 1. Would you agree
18 with me that Lines 1 -- that the following lines were
19 all below the estimate, okay, Lines 1, 2?

20 A Wait. Wait. Wait.

21 Q Oh.

22 A I didn't bring a ruler. I mean, it's many

1 columns here.

2 Q Right.

3 A If we could go one at a time if you are
4 going to go through the whole spreadsheet. Line 1 is
5 below -- actually, that's Line 2 on this because
6 Line 1 just says, Consultants.

7 Q Okay. So then Line 2, Administrative and
8 Support Functions, the amount requested was 270,000,
9 but the invoices paid were 150,559; right?

10 (Change of reporters.)

11 A Yes, that's what it says.

12 Q Okay. And the discovery contractor was
13 estimated at 50,000, but the invoices through October
14 31st were only 18,637, right?

15 A Yes.

16 Q And the alternative regulation amount is
17 250,000.

18 Did you remove that from the rate case
19 expense in this case?

20 A I have an adjustment for all rates. And,
21 yes, the whole 250 I recommended be removed.

22 Q Okay. Then on Line 9, Capital Project

1 Review, the Company asked for 425,000; but, again,
2 the amount was less, 343,521, right?

3 A Yes.

4 Q And that amount hasn't changed since
5 October 30th, 2010, right?

6 A Which one are we on?

7 Q 10 -- excuse me -- 9.

8 A It's the same.

9 Q It's the same exact one?

10 A There's one more update after this exhibit
11 you're using.

12 Q Okay. And what would that be?

13 Would that be in response -- an
14 attachment to Mr. Fruehe's testimony?

15 A Oh, no, I was talking about their
16 Supplement 5, DLH 104; but Mr. Fruehe also has the
17 same document as an exhibit. So it might be
18 different, I don't know.

19 Q But this was the document that you had
20 before you when you created your rebuttal testimony,
21 right?

22 A Right.

1 Q Okay. And we already talked about the --
2 Line 10, the data room, only 122,200 billed for a
3 \$250,000 estimate; is that right?

4 A Yes, we talked about it.

5 Q And you can see, again, they don't indicate
6 anything paid beyond October -- excuse me -- beyond
7 September 30th, 2010 -- or nothing billed?

8 A Correct.

9 Q And Line 11, the distribution of plant
10 field study, again, the estimate is 250,000, but the
11 amount paid is only 93,511, correct?

12 A Yes.

13 Q So that's less than half the amount they're
14 requesting, right?

15 A Yes.

16 Q And, finally, at Line 15, the graphic
17 design, do you see that they estimated \$100,000 for
18 graphic design for the rate case?

19 A I see that.

20 Q Did you consider what graphic design
21 services were used in a rate case?

22 A I believe that it was the --

1 MS. LIN: Hold on one second.

2 I think graphic design is completely
3 outside of Ms. Hathhorn's expertise on what it
4 consists of.

5 JUDGE SAINCOT: I think she can test to see if
6 she knows what -- whether she knows it's reasonable
7 or not.

8 THE WITNESS: I think in the Company's direct
9 case, it had some graphic of its costs and different
10 pie -- and charts and things and I assume that's what
11 it's for.

12 BY MS. SATTER:

13 Q But the invoices were less than 50 percent
14 of that, only 41,345, right?

15 A Right.

16 Q Okay. Now, some bills were higher than
17 requested, right?

18 A Correct.

19 Q Specifically, Line 19, EE Recovery of Lost
20 Sales Analysis Group.

21 Do you see the amount estimated for
22 that witness?

1 A Yes, I see it.

2 Q A hundred thousand dollars, right?

3 A Yes.

4 Q But through October 31st she billed

5 \$152,608, right?

6 A Yes.

7 Q And that was even before surrebuttal,

8 right?

9 A Yes.

10 Q That was even before she appeared for

11 testimony, right?

12 A Yeah.

13 Q Do you know what her hourly --

14 JUDGE SAINSOT: Identify who --

15 BY MS. SATTER:

16 Q -- rate is?

17 JUDGE SAINSOT: -- "she" is.

18 MS. SATTER: I'm sorry.

19 BY MS. SATTER:

20 Q Do you know which witness -- is it correct

21 that the witness that this refers to is Susan

22 Tierney?

1 A I believe so.

2 Q Yeah. Okay.

3 And do you recall that her hourly rate
4 was \$655 an hour?

5 A I'd have to check it.

6 Q Okay. And so the exhibit shows that some
7 witnesses were below and some witnesses were above,
8 right?

9 A Yes.

10 Q But you accepted the estimates, except for
11 those that you identified in your rebuttal testimony,
12 as appropriate for inclusion in the rate case
13 expense, right?

14 A Could you repeat the question, please.

15 Q Some -- this -- the information that you
16 had available to you when you provided your rebuttal
17 testimony showed that some functions were being
18 billed at a lower amount than estimated and you still
19 included the full amount of the estimate except where
20 specifically indicated in your rebuttal testimony?

21 A I didn't feel that it would have been
22 appropriate to adjust those underestimates down at

1 the time of this update, otherwise I would have been
2 placed in a position to account for the overspending
3 amounts and I didn't want to get into keeping track
4 of all the overs and unders and knowing that this is
5 an estimate.

6 So that's part of the reason why I
7 didn't adjust those estimates down.

8 Q Okay. So you went with the estimate?

9 A Right.

10 Q Did you -- so you did not specifically
11 assess whether ratepayers should pay more than the
12 amount estimated for a particular witness or service,
13 correct?

14 A My analysis for rate case expense is for
15 the expense in total overall. And I reviewed all
16 these supporting witnesses and estimates and invoices
17 as subsets of that; but the bottom line is the
18 8-and-a-half million, even not counting my own
19 adjustments, is lower than any of the Company's rate
20 case expenses back at least to -- prior to their '01
21 docket. So that has to be considered in the overall
22 analysis of rate case expense. It's not a

1 line-by-line of 26 witnesses and...

2 Q So you did not specifically assess the
3 justness and reasonableness of the amounts expended
4 by ComEd for its experts?

5 A That's not what I said. I did specifically
6 assess the justness and reasonableness of rate case
7 expense in total with all the supporting
8 documentation and how it compared to the prior cases.

9 Q But you did not specifically assess the
10 specific individual witness' expenses?

11 A I did assess them. I'm not sure where
12 you're getting that.

13 Q I'm asking you whether you --

14 A I didn't make an adjustment for every
15 single one. I have the two I made plus alt reg.
16 Just because I didn't make an adjustment doesn't mean
17 I didn't review it.

18 Q Okay. Okay. So your review was -- this
19 was lower than the last rate case and it seemed
20 reasonable; is that a fair --

21 A No.

22 Q -- description?

1 A No. That was part of it, otherwise I
2 wouldn't have asked for invoices for the past six
3 months if that was all there was to it. I looked at
4 the total compared to the last cases. I asked for
5 the detail. I asked for the RPs and the engagement
6 letters. I received invoices, updates every month.
7 I made adjustments in direct. I refined them in
8 rebuttal.

9 Q Okay. Are you finished?

10 It looks like you might want to add
11 something.

12 A I'm finished.

13 Q Did you look specifically at the services
14 provided by any individual witness relative to the
15 cost?

16 A I think I've explained what I did.

17 Q But I'm asking you specifically, did you
18 look at the services provided by any specific witness
19 relative to the cost?

20 If you didn't, you didn't. If you
21 did, you did; but it's a different question than I
22 asked before.

1 JUDGE SAINSOT: Are you trying to say -- are
2 you -- I'm not quite sure why you're asking and
3 that's -- what your asking and that's why I'm asking
4 you.

5 Are you trying to say that -- did she
6 analyze the reasonableness of the hourly charge for
7 the charge as opposed to -- I mean, typically, a
8 senior partner at a law firm makes more money than a
9 junior associate, for example. So you would expect a
10 senior partner to make more money so you would do an
11 analysis on that kind of level.

12 MS. SATTER: I mean, I'm not making that
13 assumption.

14 JUDGE SAINSOT: Is that what you're asking her?

15 MS. SATTER: Well, generally. I mean, the
16 question is whether she looked at any particular
17 expert's expense or was it just a more general
18 expense.

19 BY MS. SATTER:

20 Q And I think you testified you looked at the
21 more general expense?

22 A Well, I looked at both. I mean, I looked

1 at the -- I looked at all of the invoices; but, for
2 example, at the law firm, I looked at the hourly
3 rates and they seemed comparable to what I've seen on
4 other cases. And I don't know if that's the specific
5 assessment, but...

6 Q That's what you did?

7 A That's what I did.

8 Q Okay. In your rebuttal, you reversed your
9 adjustment to remove the expenses for
10 P. Moul & Associates and said the Company has
11 provided discovery which addressed my concerns.

12 Can you describe what the Company
13 provided that addressed your concerns?

14 JUDGE SAINSOT: Ms. Satter, do you have much
15 more?

16 MS. SATTER: Not terribly.

17 JUDGE SAINSOT: Okay.

18 THE WITNESS: I received a response to Data
19 Request DLH 1419, which provided additional
20 information on what the services rendered for those
21 costs were.

22 BY MS. SATTER:

1 Q And were the services related to the cost
2 of capital?

3 A Yes.

4 Q Did you know that when you did your direct?

5 A I'm not sure I did. I think that was the
6 problem, was I didn't know what it was for.

7 Q Because the invoice simply said his name
8 and an amount?

9 A Right.

10 Q Now, how many cost of capital witnesses did
11 ComEd offer in this case? Do you know?

12 A I don't know for sure.

13 Q I also wanted to ask you a couple of
14 questions about legal fees.

15 Now, it's correct that the rate case
16 expense includes \$5 million in legal fees; is that
17 right?

18 A Yes.

19 Q Do you know if this \$5 million fee includes
20 the cost of Exelon Business Services' attorneys?

21 A It's my understanding that it's all
22 external. So, no, it does not include the SC.

1 Q So would your answer be the same for ComEd
2 direct employed attorneys?

3 A Correct.

4 Q In other words, they are not included in
5 the \$5 million figure?

6 A Right, they are not included.

7 Q Did you note how many outside law firms
8 ComEd was using in its case?

9 A I think six.

10 Q Did you note whether they were being paid
11 hourly or a flat rate?

12 A Some of both.

13 Q Do you know what the hourly rates were?

14 A I don't know them by heart. I have the
15 invoices.

16 Q Let me show you what will be marked as AG
17 Cross-Exhibit -- I believe it's 20. It had been 18.

18 Do you have that?

19 A Not yet.

20 Q Okay. That's the Request No. AG 1105.

21 A Okay.

22 Q Does that state the hourly rate for those

1 attorneys who were being paid hourly rates?

2 A It has hourly rates for Foley & Lardner and
3 Sidley Austin.

4 Q Are you aware of any other hourly rates?

5 A There's other firms in the case, yes.

6 Q Do you know what their rates were?

7 A I think I just said, I don't know them by
8 heart; but I have the invoices.

9 Q Do you know what other firms were being
10 paid on an hourly basis?

11 A Well, I have -- in the last supplement
12 there was invoices from Jenner & Block that had
13 hourly charges and the Chico -- I don't know --
14 Nunes.

15 Q Nunes, yeah.

16 A I would have to double-check the invoice.
17 I don't remember. And it's in 3 inches full of
18 paper. I'm not going to be able to find it easily.

19 Q Okay. Did you assess what function the
20 various attorneys provided in the firm -- in the
21 case?

22 A No.

1 Q Let me just get to that page.

2 On Page 4 of your rebuttal testimony,
3 Lines 66 to 67, you say, Services may be capped at an
4 amount certain.

5 Would you agree that ComEd paid two
6 law firms a fixed fee for the rate case?

7 A I'd probably have to double-check. The
8 second one, I know that Rooney, Rippie & Ratnaswamy
9 was the fixed fee. I would have to accept the other,
10 subject to check.

11 Q Eimer Stahl?

12 A I'd accept that, subject to check.

13 Q And the amounts that were paid to these
14 firms were paid without reference to the amount of
15 work that they did in any particular month; isn't
16 that right?

17 A They were paid according to a fee schedule.

18 I don't know if I follow your
19 question.

20 Q Do you know if they had to account for
21 their time each month?

22 A I don't believe they did.

1 Q So you don't know how much time was
2 actually spent by those two particular firms in
3 connection with the case?

4 A I think there might have been some rebuttal
5 testimony comparing the charges from the rate case to
6 alt reg; but on that subject -- but I'm not -- I
7 think the flat-fee arrangement allowed ComEd not to
8 have to submit its billing by hour.

9 JUDGE SAINSOT: You mean the law firms, Miss --

10 THE WITNESS: Right, the law firms.

11 JUDGE SAINSOT: And Rooney, Rippie &
12 Ratnaswamy, but what was the other one?

13 JUDGE DOLAN: Eimer Stahl.

14 MS. SATTER: Eimer Stahl.

15 JUDGE SAINSOT: Okay.

16 BY MS. SATTER:

17 Q I also wanted to ask you, do you know what
18 Sullivan & Associates did for the rate case?

19 A I know I saw some discovery on that. I
20 can't tell you off the top of my head.

21 Q Okay. And would you agree that on AG
22 Cross-Exhibit 19, Line 14, they're shown as having

1 invoices paid of \$140,850?

2 A Yes.

3 Q What kind of detail would you have
4 expected -- or do you expect in invoices from a
5 company like Sullivan & Associates?

6 A I expect to see the date followed by the
7 time period of the contract upon reviewing some kind
8 of description to let me know that it's for the right
9 rate case, course of dollars that I'm tracking.

10 Q Okay. Let me show you what was marked as
11 AG Cross-Exhibit 21 and it is still AG
12 Cross-Exhibit 21.

13 Do you recognize this as the invoices
14 from Sullivan & Associates?

15 A I don't recognize it. I mean, I received
16 hundreds of invoices during this case, but it says
17 "Sullivan & Associates." So I assume that's what it
18 is.

19 Q And do you see on the bottom CRC numbers?

20 A Yes.

21 Q Okay. So can you accept, subject to check,
22 that these were provided in response to discovery?

1 A Yes.

2 Q And can you look at these invoices for a
3 minute.

4 MR. RATNASWAMY: Ms. Satter, do you have a
5 reference to the data request?

6 MS. SATTER: It's DLH 1.04. And, I believe,
7 it's Attachment 3 supplemented over the course of a
8 few, you know, months. So you have Attachment 1 --
9 or Supplement 1, 2, 3, 4 -- I don't recall if it goes
10 to 5. It goes through November 1st, 2010.

11 BY MS. SATTER:

12 Q So my question is, do these invoices
13 describe the services provided by Sullivan &
14 Associates?

15 A Yes.

16 Q Can you describe for me what they --

17 A Billing for consulting services on ComEd's
18 2010 distribution rate filing under Contract
19 No. 00127919.

20 Q Is there anything else?

21 A Date: 2010. Then it has a February date
22 and the hours, March, April, May, June, July, August,

1 September, October.

2 Q He billed monthly, right?

3 A Right.

4 Q Okay. And this was the invoice that you
5 looked at in assessing -- in allowing this expense to
6 go through, right?

7 A I believe so.

8 Q Okay. Now, I have some other questions for
9 you.

10 In your rebuttal testimony, Line 198,
11 about late payment charge revenues.

12 Now, in your rebuttal testimony, you
13 comment on an adjustment proposed by AG Wit- --
14 AG/CUB Witness Brosch concerning late payment charge
15 revenues, right?

16 A Yes.

17 Q And Staff did not object to ComEd's
18 allocation of the late payment revenues between its
19 delivery, transmission and supply functions, right?

20 A That's correct.

21 Q Okay. Aside from your comment that there's
22 been no showing -- hold on just a minute.

1 You state at Line 198, It appears,
2 however, that the investment would -- that the
3 adjustment -- excuse me -- It appears, however, that
4 the adjustment would result in supply revenues being
5 included in the delivery services revenue
6 requirement, which is inappropriate.

7 Is it -- is that your impression?

8 A That's my testimony, yes.

9 Q Okay. But it appears that it would be
10 inappropriate; is that right?

11 Did you provide any analysis or
12 calculation --

13 MR. RATNASWAMY: I object.

14 BY MS. SATTER:

15 Q -- to your testimony?

16 MR. RATNASWAMY: The witness was asked a
17 question and not given the opportunity to answer.
18 And I think, frankly, the question mischaracterized
19 what she said on Lines 198 to 201.

20 MS. SATTER: I'm sorry. I thought she did
21 answer it.

22 JUDGE SAINCOT: All right. Rephrase.

1 BY MS. SATTER:

2 Q And my question is, did you provide any
3 analysis or calculations in your testimony to support
4 your conclusion that some of ComEd's late payment
5 charge revenues should be designated as supply
6 revenues?

7 MR. RATNASWAMY: Your Honor, maybe I just
8 didn't hear it, but the question was thrown out
9 characterizing Lines 198 to 201 as having said, It
10 appears to be inappropriate, which is not what it
11 says. And I, at least, didn't hear an answer. I
12 heard an immediate second question.

13 MS. SATTER: You know, he can do his own
14 cross-examination.

15 I withdraw the question.

16 JUDGE SAINOT: Okay.

17 BY MS. SATTER:

18 Q Do you know where we are, Ms. Hathhorn?

19 A No.

20 Q Okay. The question I have for you was,
21 whether you provided any analysis or calculations in
22 your testimony to support your conclusion that some

1 of ComEd's late payment charge revenues should be
2 designated as supply revenues.

3 A I relied on ComEd Exhibit 30.0, Page 21,
4 where Mr. Fruehe states that ComEd's 2010
5 transmission formula rate includes 2 million of
6 jurisdictional late payment charges.

7 I didn't do any additional analysis.

8 Q Did you review the tariff for which ComEd
9 is able to charge and collect late payment fees?

10 A No.

11 Q You did not.

12 So you don't know whether the tariff
13 makes a distinction between late payment charges
14 related to supply or related to distribution; is that
15 correct?

16 A I didn't review the tariff.

17 Q So you don't know?

18 A No.

19 Q Okay. Do you know if ComEd is able to pass
20 through its actual costs in providing supply services
21 through its Rider PE?

22 MS. LIN: I think this is outside the scope of

1 Ms. Hathhorn's direct and rebuttal testimony.

2 JUDGE SAINSOT: What is Rider PE?

3 MS. SATTER: It's the rider for supply costs.

4 JUDGE SAINSOT: You mean like office expense
5 kind of supplies or...?

6 MS. SATTER: No. No. No. Supply as in
7 electricity supply.

8 JUDGE SAINSOT: Oh, that's --

9 MS. SATTER: I'm sorry.

10 JUDGE SAINSOT: -- a little different.

11 MS. SATTER: I'm sorry. This whole discussion
12 is about whether late payment revenue should go to
13 electricity supply or electricity distribution or
14 delivery.

15 MS. LIN: Again, Ms. Hathhorn didn't testify
16 about this particular rider.

17 MS. SATTER: She did not. And my question is
18 whether she's aware of it because it reflects the
19 costs associated with electricity supply.

20 JUDGE SAINSOT: Okay. We're going to allow it;
21 but Ms. Satter is allowed to testify -- or test --
22 you can tell it's been a long day -- her knowledge.

1 But, Ms. Satter, you're going to wrap
2 this up, aren't you?

3 MS. SATTER: I'm hoping by 5:00 o'clock.

4 JUDGE DOLAN: Well, you asked for a half an
5 hour and you've been at it for an hour and a half.
6 So...

7 MS. SATTER: Well, thank you for indulging me.

8 THE WITNESS: I'm aware of Rider PE. That's
9 the supply -- the passive supply of energy for ComEd
10 customers.

11 BY MS. SATTER:

12 Q To your knowledge, in the calculations for
13 Rider PE, is ComEd required to account for any late
14 payment revenues that are designated as supply?

15 A I don't know.

16 Q In your testimony, do you identify or
17 quantify any costs that ComEd incurs in connection
18 with providing energy supply that is related to the
19 amount of late payment charge revenues that should be
20 allocated to such costs?

21 A No.

22 Q In thinking about what costs ComEd might

1 bear in connection with recovering supply charges --
2 electricity supply charges, would the most obvious
3 form of cost recovery be the financing of cash
4 working capital associated with supply?

5 A Could you please point me to a line in my
6 testimony.

7 Q This is about the late payment charge
8 revenue adjustment.

9 My question to you is whether you're
10 aware of cash working capital being used as a way to
11 collect -- to account for the lag in payments for
12 supply.

13 A I don't know.

14 Q Okay. Have you or any Staff witness that
15 you're aware of prepared a lead/lag study of ComEd's
16 electricity supply functions to see if any cash
17 working capital investment exists?

18 MS. LIN: Objection.

19 JUDGE SAINSOT: Sustained.

20 BY MS. SATTER:

21 Q Are you aware that Commonwealth Edison
22 filed a petition in Docket 10, dash, 0336 where it

1 sought approval for changes to the Company's
2 Rider PE, specifically to add detail about the
3 methodology for determining supply-related cash
4 working capital costs?

5 MS. LIN: This is really outside the scope of
6 Ms. Hathhorn's testimony now.

7 MS. SATTER: The question is to what extent
8 she'd think about this adjustment that she criticizes
9 Mr. Brosch for making.

10 JUDGE SAINSOT: Well, here's the thing: Just
11 because ComEd filed a petition doesn't mean there's
12 been a material change in the PE situation.

13 MS. SATTER: I am not testifying. I'm asking
14 the witness if she is aware of it.

15 JUDGE SAINSOT: You have to ask her relevant
16 questions, though. So...

17 JUDGE DOLAN: Sustained.

18 JUDGE SAINSOT: Right. I mean, you can
19 rephrase it and tie it up, but only if there's -- if
20 that case resulted in a material change in the PE
21 allocation.

22 BY MS. SATTER:

1 Q Do you know if the -- Rider PE includes a
2 cash working capital component?

3 A I don't know.

4 Q And you don't know if that has -- if
5 there's been any proposals to address cash working
6 capital in connection with supply charges; is that
7 correct?

8 MS. LIN: Objection.

9 MS. SATTER: I'm entitled to probe what she
10 knows.

11 JUDGE SAINSOT: Who objected?

12 MS. LIN: I did.

13 MS. SATTER: Ms. Lin.

14 MS. LIN: I mean, she's asking for proposals by
15 whom? In the docket? In -- it's just unclear what
16 Ms. Satter's asking for.

17 MS. SATTER: I think if the witness doesn't
18 understand, she can say she doesn't understand.

19 JUDGE SAINSOT: Well, that's kind of a lawyer's
20 job, too, to make sure the witness is not confused
21 unnecessarily, I think.

22 JUDGE DOLAN: I was confused.

1 JUDGE SAINCOT: Right. It was a very confusing
2 question. So why don't you try rephrasing it and
3 wrapping up.

4 BY MS. SATTTER:

5 Q Can we assume a hypothetical, that
6 Commonwealth Edison filed a petition asking to
7 include a methodology for determining supply-related
8 cash working capital for Rider PE. Okay.

9 Would you agree that if that were the
10 case, it would be inappropriate to allocate late
11 payment fees away from the distribution company?

12 A I don't know. I've never worked that
13 closely with Rider PE or cash working capital or
14 those together.

15 Q Okay. I only have one more set of
16 questions for you, and this is about the IEDT tax.

17 Now, you reference a CUB/AG adjustment
18 to revise the Illinois Electric Distribution or IEDT
19 tax and you state that you agree with ComEd's
20 calculation, right?

21 A That's correct.

22 Q And is there any supporting analysis in

1 your testimony on that issue?

2 A I don't have any schedules. The work paper
3 is my narrative.

4 Q Are you familiar with ComEd's response to
5 AG Data Request 9.02, which was attached to
6 Mr. Brosch's testimony?

7 A Sitting here right now, I don't know what
8 you're talking about.

9 Q Okay. Are you aware that there's a
10 statutory cap that serves to limit how much IEDT can
11 be collected from Illinois utilities?

12 A Yes.

13 Q I'm sorry?

14 A Yes.

15 Q Okay. Did you address in your rebuttal any
16 specific facts of the ID- -- of the Illinois
17 Distribution Tax Refund Reconciliation that ComEd
18 provided as an attachment to AG Data Request 9.02?

19 JUDGE SAINSOT: I didn't understand that
20 question.

21 MS. SATTER: Okay. Let me rephrase it.

22 BY MS. SATTER:

1 Q In your rebuttal, did you address any
2 specific facts or provide any analysis related to the
3 Illinois Distribution Tax Refund Reconciliation that
4 ComEd provided as an attachment to AG Data Request
5 9.02?

6 A No.

7 Q Have you independently calculated the IEDT
8 cap for the test year based on changes in the CPI and
9 energy deliveries of other Illinois utilities?

10 A No.

11 Q Okay.

12 MS. SATTER: I don't have any further
13 questions.

14 It's 5:00 o'clock, we made it. Thank
15 you.

16 JUDGE DOLAN: Thank you.

17 JUDGE SAINSOT: Redirect.

18 Do you have a lot, Mr. Ratnaswamy?

19 MR. RATNASWAMY: No. And even if I did, I
20 wouldn't do it.

21 MS. SATTER: Because you're such a good guy.

22 MR. RATNASWAMY: No, because I want to go home.

1 JUDGE SAINSOT: And you're not moving for entry
2 of these things into evidence, Ms. Satter?

3 MS. SATTER: I will, yes. I can do that now.

4 JUDGE SAINSOT: Why don't we do that really
5 quickly before we forget. It is 5:00.

6 AG Cross-Exhibit 16, 17 -- where's 18?
7 18 is this thing here. Right. Okay -- through 20?
8 21? -- through 21.

9 MS. SATTER: I would move for the admission of
10 those AG Cross-Exhibits.

11 JUDGE SAINSOT: Any objection?

12 MR. RATNASWAMY: Yes, your Honor. I believe
13 Exhibit 16 is simply a page of something that's
14 already in evidence as part of ComEd Exhibit 6.1 or
15 6.2.

16 Second, I object to Exhibit No. 18
17 unless it is being offered purely for the purposes of
18 impeachment and not as substantive evidence.

19 JUDGE SAINSOT: Which one's 18?

20 MR. RATNASWAMY: The Chicago Partner's
21 document.

22 MS. SATTER: In connection with AG

1 Cross-Exhibit 16, that's Schedule C10, I believe the
2 rules say that schedules are not considered part of
3 the record.

4 JUDGE SAINSOT: What? I never heard of that.

5 Why do you think we're admitting all
6 of this stuff into evidence for?

7 MS. SATTER: If it is already in the record,
8 then I obviously don't need to offer it; however, I
9 believe the rule says that it is not --

10 JUDGE DOLAN: Is your microphone on?

11 MS. SATTER: -- automatically.

12 What?

13 JUDGE DOLAN: Is your microphone on?

14 MS. SATTER: I'm sorry. It was not on.

15 JUDGE SAINSOT: What do you mean, not
16 automatically in the record?

17 MS. SATTER: I believe Part 285 says that the
18 schedules are not considered part of the evidentiary
19 record.

20 Now, I don't need to offer -- I don't
21 need to label this as an AG Cross-Exhibit if, in
22 fact, I can refer to it and it is considered part of

1 the record of --

2 JUDGE SAINSOT: But the schedules that are
3 attached to testimonies are part of the record.

4 MS. SATTER: Right.

5 MR. RATNASWAMY: That's my point. I believe
6 they were attached to Ms. Houtsma's direct. That why
7 I said I believe it's part of ComEd Exhibit 6.1 or
8 6.2.

9 If I'm wrong, you know, we can revisit
10 it; but I believe it's attached.

11 MS. SATTER: So long as I understand then, all
12 of these schedules that are attached, are those the
13 A, B, C --

14 MR. RATNASWAMY: Not every schedule was
15 attached, but I think this one was.

16 MS. SATTER: Was it?

17 MR. RATNASWAMY: I think so. I don't have them
18 in front of me.

19 JUDGE SAINSOT: If you're not sure, then let's
20 just admit it and go on.

21 MR. RATNASWAMY: Okay.

22 JUDGE SAINSOT: It's 5:00 p.m.

1 MR. RATNASWAMY: Okay.

2 JUDGE SAINOT: You know, there's worse things
3 than having a redundancy here. I'm sure this won't
4 be the only redundancy.

5 That solves that problem.

6 MS. SATTER: Thank you.

7 JUDGE SAINOT: Okay. Any other objections?

8 MR. RATNASWAMY: Again, on the Chicago
9 Partner's document, if, perhaps, it comes in as
10 impeachment, but I don't think it should come in as
11 substantive evidence.

12 JUDGE SAINOT: It's impeaching.

13 MR. RATNASWAMY: Pardon?

14 JUDGE SAINOT: It's impeaching.

15 MS. SATTER: Well, just so I understand what
16 that means, though, there are -- I believe that the
17 Commission should be able to look at this document
18 and assess it.

19 JUDGE SAINOT: It's impeaching. He loses.

20 MS. SATTER: Okay.

21 MR. RATNASWAMY: Your Honor, just to be
22 clear --

1 MS. SATTER: Thank you.

2 MR. RATNASWAMY: -- the Illinois Rules of
3 Evidence distinguish between something coming in as
4 impeachment versus something coming in as substantive
5 evidence.

6 JUDGE SAINSOT: Right. Right. And there
7 was -- she elicited impeachment information from
8 Ms. Hathhorn.

9 MR. RATNASWAMY: Right. So the point isn't
10 that it -- from my perspective isn't that it doesn't
11 come in, the point is that it comes in for a limited
12 purpose, which is impeachment, not as substantive
13 evidence.

14 JUDGE SAINSOT: Okay. It's 5:00 p.m.

15 You're right.

16 MS. SATTER: So does that mean that it's in the
17 record and it can be referred to?

18 JUDGE SAINSOT: Yes. He's just pointing out
19 that it's not part of anybody's case in chief. It's
20 impeachment.

21 All right. Any other problems?

22 MR. RATNASWAMY: I believe the same objection

1 applies to Exhibit 21 on Sullivan, which is -- it can
2 come in, but only as impeachment, not as substantive
3 evidence.

4 JUDGE SAINSOT: Right. So noted.

5 MS. SATTER: So that means that it can't be
6 used to assess the rate case expense?

7 JUDGE SAINSOT: No, it's impeachment.

8 Okay. So...

9 MS. SATTER: Okay.

10 MR. RIPPPIE: By the way, if anybody cares, 6.1
11 did include that document; but...

12 JUDGE SAINSOT: Okay. Whatever.

13 JUDGE DOLAN: Ms. Lin, did you have --

14 MS. LIN: Are you done? I don't think we even
15 started. I don't think Mr. Ratnaswamy --

16 JUDGE DOLAN: I mean, you sounded like you were
17 going to have an objection.

18 MS. LIN: Oh, no. No. No objections --

19 JUDGE DOLAN: Okay.

20 MS. LIN: -- from Staff.

21 JUDGE SAINSOT: Are you done, Mr. Ratnaswamy?

22 I mean, I'm just asking.

1 MR. RATNASWAMY: Right now I think I only have
2 one question. I'm just trying to go through my
3 notes.

4 JUDGE DOLAN: So we're talking about the
5 exhibits as opposed to --

6 JUDGE SAINSOT: Right.

7 JUDGE DOLAN: -- your cross-examination?

8 JUDGE SAINSOT: Okay. But -- hold on. You're
9 done objecting to the -- or talking about the AG
10 evidence?

11 MR. RATNASWAMY: Yes.

12 JUDGE SAINSOT: So no other objections to the
13 AG admission of AG Cross-Exhibit 16 through 21?

14 Okay. Hearing none, your motion is
15 granted, Counsel.

16 And I will note for the record that AG
17 Cross-Exhibit 16 is duplicative of an attachment to
18 ComEd's Exhibit 6.0.

19 MR. RIPPIE: 6.1.

20 JUDGE SAINSOT: 6-point -- it's 6.1. Okay.

21

22

1 (Whereupon, AG Cross-Exhibit
2 No. 16 was admitted into
3 evidence.)

4 JUDGE SAINSOT: Okay. Mr. Ratnaswamy, it's
5 yours.

6 CROSS-EXAMINATION

7 BY

8 MR. RATNASWAMY:

9 Q All right. Ms. Hathhorn, good evening.

10 A Good evening.

11 Q Do you remember being asked some questions
12 about research -- the possibility of a reserve
13 related to the repair allowance issue?

14 A Yes.

15 Q Okay. Is it also possible to create a
16 reserve for an expense item, for example, variable
17 storm expenses?

18 A I don't think I understand.

19 Q Well, you were asked about the possibility
20 of a reserve related to a change in ADIT; is that
21 right?

22 A Yes.

1 Q Okay. Is it also possible to create
2 reserves for other items, whether they're revenues or
3 expenses?

4 A I suppose, yes.

5 Q Okay.

6 MR. RATNASWAMY: Thank you.

7 JUDGE DOLAN: Thank you.

8 JUDGE SAINSOT: I just have a couple questions.
9 Very quickly, don't worry.

10 EXAMINATION

11 BY

12 JUDGE SAINSOT:

13 Q This AG Cross-Exhibit 21, this Sullivan &
14 Associates, what do these people do, if you know?

15 A It says "financial consulting." I don't
16 know exactly what they do.

17 Q Okay. And Chicago Partners, what do they
18 do?

19 A I looked up their Web site. I mean, it
20 looked like a bunch of policy-thinker-type people,
21 but I don't know exactly what they do.

22 Q Would it be helpful to you if that

1 information in the future would be provided to you?

2 A I'm not saying I don't have that
3 information. I have --

4 Q Okay.

5 A -- you know, 3 inches of information on
6 rate case expense and that may be in there. I just
7 don't know.

8 Q You just can't remember because it's a lot
9 of stuff?

10 A Yeah.

11 Q I understand.

12 And one more thing that I couldn't
13 help but notice with the AG Cross-Exhibit -- well,
14 both of them, 21 and 18, none of these -- none of the
15 bills really say what was done or why something was
16 done. I mean, Chicago Partners -- let me rephrase.

17 Sullivan & Associates doesn't say at
18 all what was done; is that correct?

19 A Well, not on that bill; but I know that we
20 have their engagement letter and contract somewhere
21 in discovery that I would have reviewed at another
22 time. I just don't remember all the details.

1 JUDGE SAINSON: Okay. Those are all the
2 questions I have.

3 Any redirect?

4 MS. LIN: I'm going to call her real quickly.

5 JUDGE SAINSON: Okay.

6 JUDGE DOLAN: Okay. Off the record.

7 (Whereupon, a discussion was had
8 off the record.)

9 MS. LIN: We's got nothing.

10 JUDGE SAINSON: Is that the official spelling?

11 MS. LIN: Official.

12 JUDGE SAINSON: Okay. Anything else we need to
13 discuss real quick?

14 JUDGE DOLAN: Ms. Hathhorn, you're --

15 JUDGE SAINSON: You're excused.

16 MS. SATTER: One quick question, though, before
17 Ms. Hathhorn's excused, Judge Sainsot, you asked
18 about whether there was -- what the witness reviewed
19 in connection with Sullivan, whether she reviewed the
20 contract that Mr. Sullivan had.

21 JUDGE SAINSON: No, I didn't ask her that.

22 MS. SATTER: Well, she responded about that.

1 JUDGE SAINSOT: Right.

2 MS. SATTER: So I would like to show her an
3 exhibit on that.

4 JUDGE SAINSOT: Well, that's beyond the scope.

5 MS. SATTER: All right.

6 JUDGE SAINSOT: Okay. Anything else?

7 JUDGE DOLAN: Just for everyone's information,
8 we've been told that we will have to stop during the
9 bench session. And we won't be allowed -- before
10 they told us that we just couldn't use the Internet,
11 but then we were told on Friday that we will not be
12 able to have our hearing, that they have to give up
13 the hearing room during bench session.

14 So everybody be aware of that on
15 Thursday, the 20th.

16 JUDGE SAINSOT: And we won't have to go to the
17 bench session ourselves.

18 MS. LIN: Thursday, right?

19 MR. BERNET: What time is it?

20 JUDGE DOLAN: 10:30.

21 MR. BERNET: 10:30?

22 JUDGE DOLAN: Mm-hmm.

1 MR. BERNET: And how long will it last?

2 JUDGE SAINCOT: Usually about an hour, but this
3 one looks a little shorter.

4 JUDGE DOLAN: Hopefully it won't be that long.

5 If there's nothing else then, we will
6 be entered and continued to tomorrow at 9:00 a.m.

7 (Whereupon, the above-entitled
8 matter was continued to January
9 19th, 2011, at 9:00 a.m.)

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