

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY

NO.: 10-0467

Proposed general increase in electric rates.

METRA'S POST-HEARING REPLY BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION/STATEMENT OF THE CASE..... 1

II. COMED’S ECOSS PRODUCES INFLATED RATES FOR THE RAILROAD CLASS..... 2

A. It is Inappropriate for A Rate Class to Be Assessed Cost Recovery Responsibility For A Large Group of Readily Identifiable Assets It Does Not Use..... 3

B. The Elimination of 4 kV Costs From The Costs Assigned The Railroad Class Will Not Be Affected By Future Reconfiguration Or Upgrades Of The ComEd Distribution System..... 5

C. Contrary to ComEd’s Veiled Implication, There Is No Evidence That The Railroad Class Uses 4 kV Facilities. 5

III. IF THE COMMISSION IS INCLINED TO UTILIZE COMED’S ECOSS TO SET RATES, THE COMMISSION SHOULD ADOPT COMED’S PROPOSED GRADUAL MOVEMENT TOWARD ECOSS-BASED RATES. 7

IV. THE RAILROAD CLASS IS ENTITLED TO A COST CREDIT OF AT LEAST \$452,069 DUE TO COMED’S USE OF RAILROAD CLASS FACILITIES TO SERVE OTHER CUSTOMERS. 9

V. IF THE COMMISSION IS INCLINED TO DIRECT COMED TO DEVELOP A RECONFIGURATION PLAN, ANY DIRECTIVE TO RECONFIGURE COMED’S SERVICE TO THE RAILROAD CLASS SHOULD PROVIDE THAT THE RECONFIGURATION SHOULD BE ACCOMPLISHED AT NO COST TO THE RAILROADS..... 11

VI. COMED’S PROPOSAL TO REDUCE THE STANDARD OF CARE APPLICABLE TO ITS CONDUCT TO GROSS NEGLIGENCE, AND TO REQUIRE CUSTOMERS TO INDEMNIFY COMED FOR COMED’S OWN NEGLIGENCE, REMAINS A TERRIBLE IDEA THAT IS CONTRARY TO GOOD PUBLIC POLICY..... 13

standard of care down to gross negligence that ComEd must exercise in the carriage of thousands of volts of inherently dangerous electricity for its customers.

VIII. COST OF SERVICE AND ALLOCATION ISSUES

C. Potentially Contested Issues

1. Embedded Cost of Service Study Issues

b. Primary/Secondary

(ii) Other Primary/Secondary Split Issues

(a) 4 kV Facilities Allocation

II. COMED'S ECOSS PRODUCES INFLATED RATES FOR THE RAILROAD CLASS.

As discussed in Metra's initial post-hearing brief, ComEd's ECOSS consistently has produced inflated rates for the Railroad Class. In its 2005 rate case, ComEd claimed that the cost to serve the Railroad Class was just over \$8.5 million. [L. Alongi, 1/19/11 Tr. at 2053:19 to 2059:11; ICC Dkt. 05-0597, ComEd Ex. 10.9]. In the 2007 rate case, ComEd calculated that the cost to serve the Railroad Class was almost \$8.6 million. [L. Alongi, 1/19/11 Tr. at 2056:2-11 and 2056:16 to 2057:1; ICC Dkt. 07-0566, ComEd Ex. 32.2]. In this case, after implementing Commission ordered refinements to ComEd's cost of service, ComEd has alternatively calculated the cost to serve the Railroad Class at just under \$6 million, and at \$6.35 million. [ComEd Ex. 73.2, 73.3 and 73.1]. But even with a 30 percent reduction from the last rate case in the calculated costs in ComEd's ECOSS to serve the Railroad Class, ComEd's ECOSS calculation still produces inflated rates for the Railroad Class because the Railroad Class is being charged for 4 kV distribution lines and facilities that are not used to provide service to the Railroad Class.

In its initial post-trial brief, ComEd makes several brief arguments. First, in response to various parties' arguments concerning requests for refined cost allocations, ComEd repeats many of the same arguments that it made in opposition to being required to do a primary/secondary

split of its facilities. ComEd argues that any further refinement of this primary/secondary split analysis is unwarranted because allocation of individual assets or their costs to individual customers or groups of customers is not useful and would be a costly, complicated and controversial exercise. ComEd Initial Post-Trial Brief at 109. ComEd also argues that its distribution system is a dynamic system that is constantly being reconfigured, and therefore further segmentation of the system would produce results that would be inaccurate almost immediately. Id. With respect specifically to the Railroad Class' arguments concerning allocation of 4 kV distribution costs, ComEd argued that there was some evidence in the record that the Railroad Class uses circuits or facilities that operate at 4 kV. Id. at 111. Each of these arguments is addressed below.

A. **It is Inappropriate for A Rate Class to Be Assessed Cost Recovery Responsibility For A Large Group of Readily Identifiable Assets It Does Not Use.**

With respect to ComEd's argument concerning cost, complexity and controversy, the Railroad Class issues do not involve allocation of single phase or three phase facilities within classes, or individual customer cost allocations. Instead, Metra is simply asking the Commission to direct ComEd to work with Metra and the CTA, and ICC Staff if appropriate, to study and delete from the costs assigned to the Railroad Class the 4 kV facilities not used to serve the Railroad Class.

The assignment of costs and approval of cost recovery based on costs and rates developed by the ratepayer class are the backbone of ComEd's entire cost recovery system and rate design. As ComEd's Rates and Strategies Director, Dr. Ross Hemphill, explained in justifying use of classes of customers as the best division for the implementation of cost based rates:

This is one reason why standard service rates apply to classes of customers, defined by factors like wage and demand, instead of being individualized. It does not distort rate design; if anything, it can actually produce more accurate reflection of cost-causation.

[R. Hemphill Direct, ComEd Ex. 14.0 at 7:147-50].

The same arguments made by ComEd with respect to elimination of 4 kV costs from the costs assigned to the Railroad Class also were made in opposition to the requested delineation of primary and secondary utilities usage and costs. [E.g., A. Heintz, 1/11/11 Tr. at 707:19 to 708:5]. But the Commission went ahead and ordered the primary/secondary split, which was one of the two primary refinements in ComEd's cost of service study that reduced the Railroad Class' calculated costs. [L. Along, 1/19/11 Tr. at 2058:21 to 2059:4].¹

There undoubtedly are a number of factors that account for ComEd's \$2.6 million, 30 percent reduction, in the calculated cost to serve the Railroad Class' costs. There certainly is no reasonable argument, however, that the primary/secondary split and other refinements ordered by the Commission were not significant contributors to the 30 percent reduction in the calculated cost to serve the Railroad Class.

Under the circumstances, it only makes sense to require ComEd to further refine its cost study to eliminate the cost of substantial 4 kV distribution facilities that are not used to serve the Railroad Class. To do otherwise potentially subjects the Railroad Class to inflated rates which would impose unwarranted costs on the Railroad Class and public transportation customers that they serve. That certainly would not advance the public interest considerations that support keeping costs assigned to these public transit carriers low or at appropriate levels.

¹ The other principal change in ComEd's cost of service study relevant to the Railroad Class' calculated costs was to allocate the cost of primary distribution to substations based on coincidental peak rather than noncoincidental peak. [Id.].

B. The Elimination of 4 kV Costs From The Costs Assigned The Railroad Class Will Not Be Affected By Future Reconfiguration Or Upgrades Of The ComEd Distribution System.

ComEd no doubt is constantly reconfiguring and revising its system. However, there is no evidence in this record that any future revisions of ComEd's system will involve provision of 4 kV service to the Railroad Class. In fact, Mr. Alongi testified in a prior case that the Railroad Class cannot be supported by 4 kV lines and facilities. [ICC Dkt. 08-0532, Alongi, 11/3/09 Tr. at 563:3-10]. Accordingly, the elimination of 4 kV facilities from the costs assigned the Railroad Class will not be affected by future ComEd improvements.

C. Contrary to ComEd's Veiled Implication, There Is No Evidence That The Railroad Class Uses 4 kV Facilities.

ComEd argues, based on Mr. Alongi's rebuttal testimony, that there are instances in which the Railroad Class uses circuits or facilities that operate at 4 kV. ComEd Initial Post-Hearing Brief at 111. Curiously, ComEd never mentions the extensive contrary evidence and response in rebuttal testimony filed by James Bachman on behalf of Metra and the CTA. Mr. Bachman testified, based on ComEd discovery and the prior power flow study in which ComEd and the Railroad Class jointly participated, that the Railroad Class does not use 4 kV facilities service and is not billed at Railroad Class rates for 4 kV services. Mr. Alongi never responded to Mr. Bachman's testimony in his surrebuttal. Thus, it is disturbing that ComEd would now rely on Mr. Alongi's non-specific, discredited testimony.

Mr. Bachman's testimony demonstrated conclusively that the Railroad Class is exclusively served utilizing 12 kV facilities, that the Railroad Class does not use 4 kV facilities for its service, and is not billed for 4 kV service. [J. Bachman Rebuttal, CTA/Metra Jt. Ex. 2.0 at 5:101 to 9:186]. Mr. Bachman's testimony was based on the following facts and observations:

- Mr. Bachman was one of the participants in the ComEd/CTA/Metra Power Flow Study Team. The Power Flow Study Team was charged with responsibility for analyzing the characteristics of each Railroad Class substation. The Study Team concluded that the Railroad Class was uniformly served at 12 kV. A 4 kV service anomaly would have been identified, if one existed, and would have been discussed during the power flow study. No such anomaly was identified. [Id. at 5:101 to 6:119].
- Mr. Alongi's testimony was carefully worded to state simply that the Railroad Class "receives service at 4 kV from a transformer that operates at 34.4 kV to 4 kV." In response to discovery propounded by the CTA, ComEd produced two line drawings which ComEd contended reflected 4 kV circuits "serving Metra." When Mr. Bachman reviewed the line drawings and discussed them with Metra engineers, he discovered that one of the line drawings was outdated and the 4 kV circuits eliminated, and service to that Metra substation is provided exclusively at 12 kV. Mr. Bachman's investigation also revealed that the other ComEd line drawing reflected a 4 kV circuit that was not connected to or metered by the ComEd meters measuring the supply of electricity charged at the Railroad Class tariffs. [Id. at 6:120 to 7:139 and 8:158-59].
- In response to Metra's Data Request seeking the identification of meters used to monitor the supply of electricity to the Railroad Class, ComEd did not identify any 4 kV meters or equipment. [Id. at 140-43].

- In response to another Metra Data Request, ComEd identified the five standard distribution facilities installations as all providing service uniformly to 12 kV transformers. No service at 4 kV was identified. [*Id.* at 7:144-55].

Neither ComEd, nor its witness, Mr. Alongi, ever responded to this evidence. The evidence in the record conclusively demonstrates that the Railroad Class is uniformly served at 12 kV, and does not use or rely upon 4 kV service.

IX. RATE DESIGN

C. Potentially Contested Issues

4. Non-Residential

a. Movement Toward Cost-Based Rates

(ii) Railroad Customer Class

III. IF THE COMMISSION IS INCLINED TO UTILIZE COMED'S ECOSS TO SET RATES, THE COMMISSION SHOULD ADOPT COMED'S PROPOSED GRADUAL MOVEMENT TOWARD ECOSS-BASED RATES.

ComEd has proposed moving the Railroad Class' rates 10 percent toward ECOSS based rates. The only party who has objected to that movement is the ICC Staff, who argued that the movement should be an additional 25 percent toward ECOSS based rates.² Initial Brief of the Staff of the Illinois Commerce Commission at 135. Staff's apparent specific proposal is to increase the Railroad Class' rates by "25% of the difference between the Company's exemplar rates presented in ComEd Ex. 43.3 and full embedded costs."³ *Id.* at 137. The philosophical underpinning for Staff's position appears to be that rates set at amounts other than those reflected

² An IIEC witness originally advocated that the Railroad Class be moved 33 percent toward ECOSS based rates, as measured by IIEC's rebuttal ECOSS. However, IIEC did not argue that position in its brief but rather indicated that it would defer to Commission's judgment concerning treatment of the Railroad Class. Initial Brief of the Illinois Industrial Energy Consumers at 68-69, n. 25.

³ The reason that Staff utilizes the exemplary rates proposed in ComEd Ex. 43.3 appears to be that Staff's policy witness on this issue, Mr. Boggs, did not know that ComEd updated its cost of service analysis in its surrebuttal testimony. [C. Boggs, 1/13/11 Tr. at 1268:1 to 1269:8]. Staff's references to the outdated and no longer valid cost of service numbers in ComEd Ex. 43.3 should be disregarded.

in ComEd's ECOSS "undermines the concepts of fairness and equity which require that a consistent, cost-based approach be taken for all classes." Id. at 135. Thus, Staff thinks that the Railroad Class' rates should be raised at a much faster clip than that proposed by ComEd so that the Railroad Class is forced to pay ECOSS based rates earlier than it would under ComEd's proposal.

There are several problems with the analysis of the ICC Staff and its policy witness, Mr. Boggs. First and foremost, their entire analysis is based on the assumption that ComEd's ECOSS produces cost based rates. As previously discussed, ComEd's ECOSS is simply not a good or accurate barometer for cost based rates for the Railroad Class. The cost of service assigned to the Railroad Class in ComEd's refined ECOSS is 30 percent less than the cost calculated in the ComEd ECOSS proposed for use in the last rate case, and the cost of service calculated in the current, refined ECOSS is still inflated because substantial 4 kV facilities' costs to the Railroad Class that are not used in the provision of services to the Railroad Class.

Furthermore, the Commission has repeatedly expressed concern that an increase in the Railroad Class' rates should be moderated to avoid rate shock and promote the use of public transportation and its associated environmental benefits. [ICC Dkt. 09-0263, Final Order at 43 (Oct. 14, 2009); ICC Dkt. 07-0566, Final Order at 223 (Sept. 10, 2008); ICC Dkt. 05-0597, Final Order at 189-90 (July 26, 2006)].

The position advocated by the ICC Staff and its policy witness, Mr. Boggs, to raise the Railroad Class' rates by moving rates an additional 25 percent toward cost based rates, which effectively would result according to Mr. Boggs' calculations in an additional 10 percent increase in the Railroad Class' rates, is based on blind and unchallenging obeisance to ComEd's flawed ECOSS, and should be rejected. To the extent the Commission is inclined to set the

Railroad Class' rates with reference to ComEd's ECOSS, the rates should be set at the more modest and gradual increase recommended by ComEd, which is a movement of 10 percent toward ECOSS-based rates.

IX. RATE DESIGN

C. Potentially Contested Issues

4. Non-Residential

c. Railroad Customers-Utilization of Railroad Customers Facility

IV. THE RAILROAD CLASS IS ENTITLED TO A COST CREDIT OF AT LEAST \$452,069 DUE TO COMED'S USE OF RAILROAD CLASS FACILITIES TO SERVE OTHER CUSTOMERS.

ComEd and the Railroad Class members jointly cooperated in a power flow study that determined that ComEd does use the Railroad Class' facilities to serve other customers, including in some instances providing service when those customers had no other source of service on the ComEd system. [CTA/Metra Jt. Ex. 1.03]. ComEd evaluated the cost to construct facilities to avoid the need to use Railroad Class facilities to serve other customers, and has proposed that the cost to serve the Railroad Class should be reduced by approximately \$452,000. [L. Alongi Direct, ComEd Ex. 16.0 2d Rev. at 13]. That amount was computed by (1) estimating the installed cost of the railroad electric facilities through which power may flow, which is about \$10.721 million, (2) allocating 33% of that installed cost, \$3.57 million, as ComEd's share to reflect ComEd's use to serve other customers as being secondary to the railroads' primary use for traction power, and (3) multiplying by 12.65% to convert the resulting ComEd share amount to an annual revenue requirement. [Id.].

No party has challenged the results of the power flow study, or the entitlement of the Railroad Class to a credit. Metra has argued that the Railroad Class should receive credit of at least 50% and more reasonably 100% of the cost of replacement facilities, rather than 33%,

which means the credit should be \$678,104 or \$1,356,207. [See J. Bachman Direct, CTA/Metra Jt. Ex. 1.0 at 16-19; J. Bachman Rebuttal, CTA/Metra Jt. Ex. 2.0 at 12-13]. The basis for Metra's position is that ComEd has been enjoying the free use of the Railroad Class' facilities for more than 40 years, and that when ComEd anticipates generating a benefit, such as through its Alternative Regulation proposal, ComEd proposes to keep 50% of the benefit. [Id.]

The ICC Staff has suggested in its initial brief that the proposed credit be reduced from \$452,069 down to \$316,437. Staff's proposed reduction is based upon its understanding that ComEd "determined that there was an error in this calculation [\$452,069] and presented a revised cost adjustment of \$316,437 in response to Staff discovery." Initial Brief of the Staff of the Illinois Commerce Commission at 140-41. That is the sole basis for Staff's proposed reduction in the Railroad Class credit.

As explained in Mr. Bachman's rebuttal testimony, Staff has misinterpreted ComEd's discovery response. ComEd's discovery referred to an adjustment in a Dusk to Dawn Lighting calculation, and not the credit to the Railroad Class for use of the Railroad Class' facilities. [J. Bachman Rebuttal, CTA/Metra Jt. Ex. 2.0 at 254-67]. Moreover, in response to a CTA request that was attached to Mr. Bachman's testimony as CTA Joint Ex. 2.05 and has been admitted into evidence, ComEd explained that it was not proposing any adjustment to the credit to the Railroad Class, and that the \$316,437 figure referred to calculation of the cost of facilities in a hypothetical situation. [Id. at 13:268-73; CTA/Metra Jt. Ex. 2.05]. Moreover, ComEd's initial brief reflects that ComEd's position remains unchanged, and that the proposed credit to the Railroad Class should be \$452,069. ComEd's Initial Post-Trial Brief at 128-30. Thus, there is no evidentiary basis to support Staff's proposed reduction of that credit.

Thus, the minimum credit to the Railroad Class to account for ComEd's use of the Railroad Class' facilities is \$452,069. Given that ComEd has been using the facilities for free for the last 40 years, Metra submits that the credit should be equal to 50 or even 100 percent of the value of the facilities used, or in other words \$678,104 or \$1,356,207.

V. IF THE COMMISSION IS INCLINED TO DIRECT COMED TO DEVELOP A RECONFIGURATION PLAN, ANY DIRECTIVE TO RECONFIGURE COMED'S SERVICE TO THE RAILROAD CLASS SHOULD PROVIDE THAT THE RECONFIGURATION SHOULD BE ACCOMPLISHED AT NO COST TO THE RAILROADS.

ICC Staff has taken the position that ComEd should be required to represent a plan to eliminate its use of Railroad Class facilities over time, and that ComEd's plan should initially focus on those railroad traction power substations upon which ComEd is most dependent to supply other customers. Initial Brief of the Staff of the Illinois Commerce Commission at 175. Staff also took the position that ComEd should not charge the Railroad Class for modification of any distribution circuits that supply Railroad traction power substations. *Id.* at 173.

In its initial brief, Metra argued that the evidence did not warrant issuance of any directive regarding reconfiguration of Railroad Class service facilities but that, if the Commission is inclined to issue an order, the order should not adopt a fixed schedule, but should allow the parties to change the operations of the traction power substations as new substations are constructed. Metra's Initial Post-Hearing Brief at 21. Metra's position was based on the fact that there is no operational need or benefit for the proposed reconfiguration, and it would cost millions to accomplish. *Id.* Metra's position is unchanged.

The current configuration has been in place for over 40 years. [*E.g.*, J. Bachman Direct, CTA/Metra Jt. Ex. 1.0 at 18:409-11]. No witness in this proceeding could identify any operational problems associated with the current configuration that have ever occurred. [*E.g.*, G.

Rockrohr, 1/12/11 Tr. at 2830:14-19; M. Born, 1/14/11 at 1721:4-20]. As ComEd's Principal Engineer in the Distribution Capacity Planning Department testified: "there is no significant operational advantage to doing this reconfiguration." [M. Born, 1/14/11 Tr. at 1706:8-10]. Thus, Metra does not believe there is any reason to spend millions to alter the current configuration.

If the Commission determines that ComEd should develop and present a plan in the next rate case for reconfiguration of the distribution system serving the Railroad Class, any such directive should provide that: (1) the reconfiguration should be accomplished at no future or current cost to the Railroad Class, including costs associated with reconfiguration or revision to equipment owned by the Railroad Class; and (2) the reconfiguration must provide the Railroad Class with electrical service of a quality and reliability that is equal to or greater than the quality and reliability of the current system. One would hope, however, that the Commission would at least require a cost-benefit analysis before ordering reconfiguration of any of the facilities serving the Railroad Class. [See M. Born, 1/14/11 Tr. at 1722:5-7 ("unless otherwise directed we would certainly look at the cost benefit before making any kind of decision like that.")].

IX. RATE DESIGN

C. Potentially Contested Issues

8. General Terms and Conditions

b. Limitation of Liability

VI. COMED'S PROPOSAL TO REDUCE THE STANDARD OF CARE APPLICABLE TO ITS CONDUCT TO GROSS NEGLIGENCE, AND TO REQUIRE CUSTOMERS TO INDEMNIFY COMED FOR COMED'S OWN NEGLIGENCE, REMAINS A TERRIBLE IDEA THAT IS CONTRARY TO GOOD PUBLIC POLICY.

ComEd has proposed new limitation of liability language to be included in its General Terms and Conditions Tariff.⁴ The proposed new limitation of liability language would have two significant effects if approved: (1) it would lower the standard of care owed by ComEd to its customers to gross negligence; and (2) it would require ComEd's customers to indemnify ComEd against the consequences of ComEd's own negligence.

In both the direct testimony of Richard A. Capra and its initial brief, Metra has identified a myriad of public policy reasons why ComEd should not be permitted to dramatically alter by tariff its legal relationship with its customers to ComEd's benefit. [R. Capra Direct, Metra Ex. 1.0 at 10:270 to 12:306; Metra's Initial Post-Hearing Brief at 22-25]. ComEd has never provided an effective response to those arguments. Instead, ComEd simply suggested in its initial brief that it should be permitted to enjoy these legal advantages because other Illinois utilities do. ComEd Initial Post-Trial Brief at 153-54.

Metra's Director of Risk Management, Richard Capra, testified that he is concerned that the limitation of liability could be applied to override Metra's contracts with ComEd when it allows ComEd to come onto Metra's property to serve other customers. [R. Capra Direct, Metra Ex. 1.0 at 5:125 to 10:269]. In its initial brief, ComEd blithely asserts without citation or explanation that "the limitations apply only to parties that have some connection between the claimed liability and ComEd's provision of electricity to the party." ComEd's Initial Post-Trial

⁴ The limitation of liability language was included as part of ComEd Ex. 16.22. For convenience, the relevant excerpt from the tariff with the proposed new limitation of liability language was marked as Metra Ex. 1.03.

Brief at 154. The proposed tariff language is bereft of any words or phrases suggesting that the standard for application of ComEd’s limitation of liability language turns on whether there is proof of “some connection between the claimed liability and ComEd’s provision of electricity to the party.” The proposed tariff language provides in relevant part:

LIMITATIONS OF LIABILITY

Without limiting the generality of the provisions in the preceding paragraph, the Company is not liable for any damages, direct or otherwise, which an applicant for electric service, retail customer, RES, or MSP may sustain by reason of any failure or interruption of electric service, reversal of electric service, increase or decrease in electric voltage, change in the electrical characteristics of electric service, or mechanical failure, whether caused by accident, repairs, or other causes except when caused by gross negligence on the Company’s part.

Moreover, the Company is not liable for damages that may be incurred by the use or presence of the Company’s facilities or property on an applicant’s or retail customer’s premises; the Company is not responsible for or liable for damage to an applicant, retail customer’s, RES’s, or MSP’s equipment or property caused by conditions not due to the gross negligence of the Company.

The Company is neither responsible nor liable for electric power and energy from and after the point at which it passes from Company facilities to equipment owned or controlled by a retail customer, RES, or MSP. The retail customer, RES, or MSP, as applicable, must protect and keep the Company harmless from all claims for any injury or damage occurring after such point, except in the event that such injury or damage is shown to have resulted solely from the gross negligence of the Company.

[Metra Ex. 1.03].

In short, there is no language in the tariff to support ComEd's peculiar legal standard that the proposed limitation of liability applies only to situations where there is "some connection between the claimed liability and ComEd's provision of electricity to the party." Moreover, the proposed standard of application is so indefinite that it is incapable of serving as a meaningful application standard.

The other concern expressed by Metra's Director of Risk Management, Rick Capra, is that the proposed tariff language exposes Metra to substantial liability arising out of claims by a third party injured on Metra's property. [R. Capra Direct, Metra Ex. 1.0 at 9:244 to 12:312]. In its initial brief, ComEd tries to blithely sweep aside such concerns, stating that the "provision is inapplicable to non-service liability matters, such as a bystander whose injury and damages were unconnected to the provision of electrical service." Either ComEd does not fully understand the implications of its own language, or it is intent on obfuscating the issue.

Assume, for example, that a ComEd service repairman enters onto Metra property and is repairing an electrical cable providing service to Metra. The cable slips or is released from the ComEd serviceman's control and it strikes a third party. The third party sues ComEd for negligence. Under the terms of the proposed tariff language, Metra is required to indemnify ComEd against the third party's claim for damages. That is because the applicable tariff language provides as follows:

The Company is neither responsible nor liable for electric power and energy from and after the point at which it passes from Company facilities to equipment owned or controlled by a retail customer, RES, or MSP. The retail customer, RES, or MSP, as applicable, must protect and keep the Company harmless from all claims for any injury or damage occurring after such point, except in the event that such injury or damage is shown to have resulted solely from the gross negligence of the Company.

[Metra Ex. 1.03].

Assume a somewhat different situation: A ComEd serviceman drives his service truck onto Metra property to perform electrical repairs on Metra's service lines. A Metra employee helps guide the ComEd service truck as it is backing into position. A third party is struck by the truck and falls to the pavement, resulting in a severe brain injury. Suit is filed on behalf of the injured third party against Metra for negligence. Under ordinary circumstances, Metra likely would have a contribution claim against ComEd. However, Metra will not bring that claim if the proposed tariff language is in place because it would be responsible for damages due to ComEd's negligence, and therefore it would not make sense to bring a contribution claim.

So, contrary to ComEd's statement in its initial brief, the proposed limitation of liability does apply to and impact third party claims. It requires Metra to indemnify ComEd for third party negligence claims where ComEd's alleged negligence occurs on Metra property, and it effectively strips Metra of its ability to bring a contribution action against ComEd for ComEd's negligence occurring on Metra property.

These may seem like somewhat unusual claims from a factual perspective. However, as Mr. Capra testified, "in the Cook County court system, it only takes one jury verdict for damages for a really bad injury case to make this proposed risk transfer an extremely expensive proposition for Metra or any other ratepayer." [R. Capra Direct, Metra Ex. 1.0 at 12:310-12].

Metra submits, for all the reasons set forth above and in its initial brief, there is no good reason to shift risk in the manner proposed by ComEd from the ComEd shareholders to Metra and its public transportation riders. The proposed limitation of liability tariff language should be rejected.

Respectfully Submitted,

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