STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	)	
vs.	)	
Commonwealth Edison Company	)	**Docket No. 10-0133**
Reconciliation of revenues collected under coal tar riders with prudent costs associated with coal tar cleanup expenditures.	)	

DRAFT PROPOSED ORDER SUBMITTED BY
COMMONWEALTH EDISON COMPANY

Dated: March 3, 2011

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ORDER

By the Commission:

I. Procedural History

On February 24, 2010, the Illinois Commerce Commission ("Commission") entered its Order commencing this reconciliation proceeding. The Order required Commonwealth Edison Company ("ComEd") to reconcile the revenues it collected under its Environmental Cost Recovery Adjustment ("Rider ECR"), from January 1, 2009 through December 31, 2009 ("reconciliation period"), with the costs it prudently incurred with respect to environmental activities, as that term is defined in Rider ECR.

On February 26, 2010, ComEd filed its 2009 Annual Report to the Commission Concerning the Operation of Rider ECR ("Annual Report"). The Annual Report was accompanied by Direct Testimony. ComEd posted notice of the filing of its testimony and exhibits in its offices and in newspapers with general circulation in ComEd's service territory, in the manner prescribed by 83 Ill. Adm. Code Sec. 255, in compliance with the Commission's Order initiating this proceeding.

On November 22, 2010, the Commission's Staff ("Staff") filed Direct Testimony. In response, ComEd filed Rebuttal Testimony on December 15, 2010.

Pursuant to notice given as required by law and by the rules and regulations of the Commission, the hearing in this proceeding convened at the Commission office in Springfield, Illinois on January 26, 2011, before a duly authorized Administrative Law Judge ("ALJ"). Appearances were entered by counsel on behalf of ComEd and Staff. ComEd presented the affidavit and testimony of Peter McCauley, ComEd's Project Manager – Environmental Remediation in ComEd's Environmental Services department, and the affidavit and testimony of Kevin J. Waden, ComEd's Vice President and Controller. Staff presented the affidavit and testimony of Mike Ostrander, an accountant in the Accounting Department of Staff's Financial Analysis Division. At the conclusion of the hearing, the record was marked "Heard and Taken." There were no contested issues at the completion of the hearing, and ComEd was granted leave to file a Proposed Order. On March 3, 2011, ComEd filed a Proposed Order for the ALJ's consideration that had been previously reviewed by Staff, and to which Staff did not object.

II. ComEd's Position

Mr. McCauley testified about (i) ComEd's Manufactured Gas Plant ("MGP") Remediation Program; (ii) the various environmental activities ComEd undertook in 2009 related to its MGP Remediation Program and ComEd's accounting for MGP expenditures, including how ComEd forecasts MGP costs for the upcoming year; (iii) ComEd's processes concerning selection and oversight of contractors to ensure such costs are reasonable; and (iv) the reasonableness and prudence of the 2009 environmental activities and associated costs. (ComEd Ex. 2.0, p. 1.)

Mr. McCauley testified that beginning in the late 1980's and early 1990's, ComEd conducted a process of identifying MGP sites for which it may be a potentially responsible party ("PRP") under state or federal regulatory requirements. He explained that ComEd reviewed historical documents from predecessor companies, including Western United, Public Service Company of Northern Illinois and Illinois Northern Utilities, as well as materials available in libraries and historical societies. In February 1991, ComEd submitted its initial list of 34 potential sites to the Illinois Environmental Protection Agency ("Illinois EPA"), which is the primary regulatory agency with which ComEd's MGP Remediation Program interfaces, and the Illinois EPA in turn identified its expectation that ComEd address remediation of these MGP sites in a systematic and cooperative manner. Site remediation is generally governed by the Illinois EPA Site Remediation Program ("SRP"), 415 ILCS 5/58 *et seq*. (ComEd Ex. 2.0, pp. 3-4.)

Mr. McCauley stated that ComEd subsequently collected additional data during the 1992-1993 period by conducting title searches and field visits to assist it in developing a preliminary prioritization assessment using the Electric Power Research Institute's Site Screening and Prioritization System ("SSPS") Model. He explained that this initial prioritization yielded a number, or "score," for each MGP site, which reflected the relative severity of risk posed by the site to human health and the environment. The scores were calculated by assigning a value to site-specific information that is reflective of a particular characteristic's contribution to risk. Mr. McCauley testified that, to date, ComEd has identified 42 MGP sites that have an operational or ownership connection to ComEd. Of these 42 sites, 11 had received regulatory closure (*i.e.*, an Illinois EPA *No Further Remediation Letter*) as of the date of his testimony. (ComEd Ex. 2.0, p. 4.)

Mr. McCauley explained that ComEd works closely with the Illinois EPA throughout all stages of its MGP Remediation Program, including identifying sites, conducting site investigations, establishing site clean-up and closure objectives according to the Illinois EPA's *Tiered Approach to Corrective Action Objectives*

(“TACO”) (35 Ill. Admin. Code Part 742), establishing remedial actions plans, and obtaining regulatory closure of sites. Mr. McCauley testified that, in addition to TACO, ComEd complies with all aspects of the Illinois SRP and the Illinois Environmental Protection Act (*see generally* 415 ILCS 5/1 *et seq*.), and, at the federal level, ComEd complies with, among other regulatory requirements, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq*.) and the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.). (ComEd Ex. 2.0, pp. 4-5.)

Mr. McCauley testified that, due to a shared historical connection, there were 38 sites for which both ComEd and Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”) shared responsibility for environmental activities. From 1993 through January 2, 2008, this arrangement was governed by the 1993 Interim Cooperative Agreement (“Interim Agreement”) entered into between the parties, which was approved by the Commission in Docket No. 93-0431, and provided for both ComEd and Nicor Gas to jointly manage certain MGP sites. Mr. McCauley stated that since 1993, the Interim Agreement has been amended twice – on June 20, 1996 to add four sites and on March 6, 2000 to add ten sites. Mr. McCauley testified that the Interim Agreement provided that ComEd and Nicor Gas equally share the costs at these sites, with the understanding that a final allocation of costs would be determined in the future. Mr. McCauley stated that on January 3, 2008, ComEd and Nicor Gas executed a Final Allocation Agreement (“FAA”) concerning the allocation of costs for these MGP sites, which was approved by the Commission on June 9, 2009. (*See Order,* Docket No. 08-0418 (June 9, 2009); ComEd Ex. 2.0, p. 5.) He explained that under both the Interim Agreement and the FAA, both utilities were involved in making strategic project decisions, although one utility typically took the lead role in coordinating remediation activities for a given site. This joint management arrangement itself was intended to reduce costs by avoiding duplication of efforts concerning site management, the hiring of consultants and contractors, and site remediation. (ComEd Ex. 2.0, pp. 5-6.)

Mr. McCauley testified that following the Interim Agreement’s execution, initial activities focused on sites where visible impacts to waterways or surface soils had been identified, and included the Streator, DuQuoin, Aurora Hurds Island, Belvidere, Morris and Blue Island sites. He explained that ComEd and Nicor Gas also initiated a review process of sites where investigation or remediation activities had not yet been initiated, the purpose of which was to identify and prioritize candidate sites for “activation” (*i.e.*, initiating the process to bring a site to closure) based on knowledge of site conditions as well as current and expected future usage. Specifically, this ongoing prioritization process involves a periodic review of inactive sites, which includes the collection and review of new site information and a site activation meeting involving the key ComEd and Nicor Gas personnel, including consultants. Mr. McCauley stated that these meetings and the resulting *Site Activation Reports* focus on the protection of human health and the environment, which are the guiding principles for establishing the order in which sites are identified for activation. Any remaining inactive sites are reviewed through semi-annual site reconnaissance field visits, with such findings used to assist with activation decisions. (ComEd Ex. 2.0, p. 6.)

Mr. McCauley then described the remediation process that ComEd undertakes once a site is activated. He testified that the clean-up process following the activation of a site generally parallels the steps set forth by the Illinois EPA SRP, and the Illinois EPA's review and approval of each phase of remediation ensures the prudence and reasonableness of such environmental activities. Mr. McCauley explained that the initial step involves the characterization of site conditions through a site investigation, which includes the collection and analyses of soil and groundwater samples. This initial step is often performed in phases in order to sufficiently characterize the site conditions and fill in any data gaps resulting from the initial investigation work. Mr. McCauley stated that the information collected during the initial step is presented to the Illinois EPA in a *Site Investigation Report*, which data forms the basis for determining if site conditions require remedial activities. He further testified that following the site characterization, site closure objectives are established through an evaluation that is based on the Illinois EPA's TACO guidelines, as well as through consultation with the Illinois EPA, property owners and the community. According to Mr. McCauley, one of the key considerations in establishing clean-up objectives is the current and expected future use of the property. The objectives are then presented to the Illinois EPA in a report entitled *Remedial Objectives Report*. (ComEd Ex. 2.0, pp. 6-7.)

Mr. McCauley testified that the next step involves the development of a remediation plan that will meet the clean-up objectives, which is submitted to the Illinois EPA as the *Remedial Action Plan*. He stated that once the Illinois EPA approves this *Plan*, ComEd then proceeds with selecting a contractor through a competitive bidding process, and the remediation work commences. Upon completion of the remediation, ComEd creates a report documenting the clean-up action entitled *Remedial Action Completion Report*, and submits it to the Illinois EPA. If approved by the Illinois EPA, that agency will issue a *No Further Remediation Letter*, which, when attached to the property deed, effectively closes the project. (ComEd Ex. 2.0, p. 7.)

According to Mr. McCauley, ComEd also believes that it is critical to engage in proactive community outreach efforts throughout the remediation process, and engages local officials and community representatives during this process. In particular, ComEd uses fact sheets, open houses and door-to-door communications to support the overall communication effort. (ComEd Ex. 2.0, pp. 7-8.)

Mr. McCauley then provided an overview of the environmental activities ComEd undertook in 2009, which included activities related to the general operation of the MGP Remediation Program and activities related to the individual MGP sites. He testified that for 2009, environmental activities related to the overall operation of the MGP Remediation Program generally included those associated with (i) providing guidance to consultants and contractors to ensure a common platform for performing project activities safely and effectively, (ii) maintaining and storing previously purchased equipment that is used at various projects, (iii) developing and tracking strategic program-level schedule and cost projections, (iv) monitoring inactive and closed site conditions, and (v) conducting periodic program-level meetings with the consultants and the Illinois EPA. (ComEd Ex. 2.0, p. 8.) For the year 2009, overall operation costs also included the payment ComEd made to Nicor Gas under the FAA. (ComEd Ex. 2.0, p. 8; ComEd Ex. 3.0.)

Mr. McCauley also described the particular environmental activities that ComEd undertook at each MGP site and the associated costs. (*See* ComEd Ex. 2.0, pp. 9-11; ComEd 2.1.)

Mr. McCauley testified that the actual incremental costs ComEd incurred for work performed during the year 2009 related to environmental activities were $8,010,969. Of this amount, $6,940,930 related to site-specific environmental activities, and $1,070,039 related to general MGP program environmental activities. Mr. McCauley stated that the Annual Report (ComEd Ex. 1.0) presents the incremental costs associated with each project. (ComEd Ex. 2.0, p. 11.)

Mr. McCauley also explained how ComEd accounts for expenditures related to MGP remediation. He testified that each project ("site") is assigned a unique project number within ComEd's accounting system, and costs are therefore tracked on a site-by-site basis. Additionally, expenditures incurred for the overall operation of the MGP program are tracked via a separate project number. (*See* ComEd Ex. 1.0.) Mr. McCauley explained that ComEd forecasts the costs for such activities related to remediation of MGP sites on an annual basis. He stated that during the fourth quarter of each year, ComEd develops cost forecasts for the upcoming year, which are based on existing knowledge of site conditions and a projection of site activities for the upcoming year. Mr. McCauley testified that because environmental remediation projects involve inherent uncertainties, ComEd develops its forecasts assuming a reasonable schedule for completion that considers project-specific factors such as site ownership and site complexity. Nicor Gas also provided cost estimates to ComEd, developed in a similar manner, for the projects Nicor Gas is coordinating under the FAA. (ComEd Ex. 2.0, pp. 11-12.)

Mr. McCauley further testified about the difference between the forecasted and actual costs for 2009. According to Mr. McCauley, the initial 2009 forecast of MGP expenditures, as defined by Rider ECR, was $12,936,000 (*see* ComEd Ex. 3.1), which was updated in October 2009 to $7,617,106 (*see* ComEd Ex. 3.3), and the actual expenditures were $8,010,969. He explained that the primary reasons for the difference between the forecast and actual expenditures were (i) an approximate three month delay in initiation of the Blue Island remediation and (ii) the deferral of remedial activities at the Rockford Commercial site due to extended external stakeholder negotiations. (ComEd Ex. 2.0, p. 12.)

Mr. McCauley also described the types of activities for which ComEd retains third-party consultants and contractors, explaining that ComEd hires environmental consultants to assist in coordinating field activities and preparing the reports and related documents required by the Illinois EPA SRP. Additionally, he testified that ComEd uses contractors to perform a variety of services, including drilling, laboratory analyses, surveying, excavation, and the handling, transportation and disposal of waste material. Among those sites for which ComEd and Nicor Gas share responsibility, ComEd hires the consultant or contractor only for the sites at which it has taken the lead role in coordinating environmental activities. (ComEd Ex. 2.0, pp. 12-13.)

Mr. McCauley further testified about how ComEd ensures that the consultant and contractor costs it incurs are reasonable. He explained that the need for the consultant or contractor typically arises in conjunction with ComEd's interaction with the Illinois EPA, which includes hiring consultants to assist with the preparation and submission of reports to the EPA and hiring subcontractors to perform the work specified in an EPA-approved *Remedial Action Plan*. Thus, the hiring of such third-party vendors generally occurs in response to a regulatory compliance need. Mr. McCauley further testified that throughout the hiring process, ComEd also employs various practices designed to ensure costs are reasonable and prudent. For example, as a general practice ComEd selects its environmental vendors through a competitive bidding process that focuses on experience and costs. Mr. McCauley explained that to leverage the greatest savings, the competitive bidding process for consultant activities includes both ComEd and PECO Energy Company, each of which is an energy delivery company that shares the same ultimate parent company, Exelon. Subcontracted work, including excavation, transportation and disposal is competitively bid as the need arises for each project. (ComEd Ex. 2.0, p. 13.)

Mr. McCauley testified that ComEd also has developed and uses standardized approaches that result in higher quality, cost savings, and consistency among the outside consultants it hires to perform such work. For example, ComEd has developed and uses standardized guidance documents and procedures. Mr. McCauley explained that guidance documents, such as those developed for ambient air monitoring, quality assurance and site management, set forth a uniform platform for bringing MGP sites to cost-effective closure. He further stated that ComEd has been able to save costs by buying certain equipment used in site field activities and making such equipment available to its contractors, thus eliminating expensive equipment rental charges. Finally, ComEd also proactively engages stakeholders (*e.g.*, property owners, communities) to identify and resolve concerns and work toward common site closure goals. (ComEd Ex. 2.0, p. 14.)

Mr. McCauley explained that ComEd also has put in place a number of safeguards throughout the remediation process that are designed to keep contractor costs reasonable. He testified that because remediation projects can be difficult to define initially due to their location and contaminants, consultants are only authorized to perform project activities that are definable. Thus, as a project progresses, the consultant must request authorizations for tasks as they are defined. Mr. McCauley stated that ComEd then reviews such a request, and approves only if appropriate. In other words, project activities are authorized on a "phased" approach. To accomplish this, ComEd requires that consultants submit Task Scope Documents ("TSDs") specifying the detailed breakdown of expected costs, personnel, activities, schedule and deliverables for the upcoming project phase. (ComEd Ex. 2.0, p. 14.)

Mr. McCauley further testified that ComEd's project managers review the invoices submitted by the consultants and contractors to ensure the invoices reflect only those charges that relate to work that has been authorized. To assist ComEd's review of expenditures, he stated that ComEd requires that invoices include detailed backup documentation, including subcontractor invoices. Mr. McCauley explained that ComEd also has a tracking mechanism in place to monitor the status of a project, and requires monthly project status reports ("dashboards") from consultants for each project. The dashboard reports provide an up-to-date status of the critical project components, including schedule, milestones, safety and budget (*i.e.*, information set forth in the TSDs). During large remedial activities, ComEd requires frequent (*i.e.,* weekly) status meetings and reports. According to Mr. McCauley, this information is useful to ComEd's internal remediation team in identifying potential problem areas early in the process. ComEd also holds quarterly program meetings with project consultants to allow for program uniformity and sharing of lessons learned. Additionally, Mr. McCauley testified that several key performance indicators, including milestones and budget, are reported to senior management on a monthly basis. According to Mr. McCauley, the consultants and contractors ComEd currently uses in conjunction with its MGP remediation activities include URS, Arcadis, Corporate Environmental Solutions, Stantec, and PSC. (ComEd Ex. 2.0, pp. 14-15.)

Mr. Waden testified about ComEd's reconciliation of revenues collected under Rider ECR with the actual costs prudently incurred by ComEd associated with environmental activities concerning former MGP sites, as recorded on ComEd's books, for work performed during the reconciliation period, and also discussed the impact of the 2009 Automatic Reconciliation Factor ("ARF"), which increased the amount to be recovered from retail customers during 2009. (ComEd Ex. 3.0, p. 1.)

Mr. Waden explained that Rider ECR prescribes the method of computing the charges that reflect the recovery of the incremental costs of environmental activities associated with MGP sites, and testified that the purpose and intent of Rider ECR is to pass through to retail customers the incremental costs incurred by ComEd for the environmental activities associated with MGP sites, without markup or profit. Each November, ComEd files with the Commission an Informational Filing, which includes its projected environmental costs for work to be performed during the next calendar year and the calculations necessary to determine the Rider ECR Adjustment (*i.e.,* charge or credit) for the coming year. Mr. Waden also explained Rider ECR provides that the Rider ECR Adjustment may be revised by ComEd during a given calendar year if ComEd determines that "a revised ECR results in a better match between ECR revenues and Incremental Costs." Mr. Waden further explained that a key component of the Rider ECR calculation is the ARF, which Rider ECR defines as "equal to the cumulative over collection or under collection resulting from the application of then applicable ECRs through the twelve (12) month period ending December 31 prior to such calendar year." Because the 2009 ARF reflected an under collection of 2008 Rider ECR revenues by approximately $.7 million, its application during 2009 increased the amount that would be recovered from retail customers by approximately $.7 million. (ComEd Ex. 3.0, p. 3-4.)

Mr. Waden testified that the costs recoverable through Rider ECR include all incremental costs incurred by ComEd in association with environmental activities concerning MGP sites. He explained that, as stated in the rider in effect at the time, the incremental costs associated with such environmental activities include, but are not limited to: fees, charges, billings, assessments, land costs, including acquisition costs for land purchased solely for Environmental Activities, lease expenses, property taxes, insurance and maintenance, or other liabilities; costs or expenses associated with the pursuit of insurance or other cost recovery; costs or expenses associated with judgments, orders or decisions, including settlements, by a court, a governmental agency or department, or other quasi-adjudicatory body; and legal, litigation, and settlement costs and expenses. These costs do not include: the costs ComEd incurs arising out of personal injury claims from exposure to asbestos; land acquisition purchase costs incurred prior to August 22, 2009; expenses for wages and salaries of ComEd employees; or expenses for work performed by parties affiliated with ComEd that are billed to ComEd. (ComEd Ex. 3.0, pp. 4-5.)

Exhibit Nos. 3.1 through 3.3 to Mr. Waden's Direct Testimony show how ComEd calculated the Rider ECR Adjustment for the reconciliation period. Mr. Waden explained that ComEd filed its initial Rider ECR Adjustment in November 2008 as required by the rider (*see* ComEd Ex. 3.1). ComEd also revised the ECR Adjustment in March of 2009 to reflect the ARF (*see* ComEd Ex. 3.2) and in October of 2009 to reflect revised projected incremental environmental remediation costs (*see* ComEd Ex. 3.3). Mr. Waden stated that, on the page showing the calculations of the Rider ECR Adjustment for 2009 in each filing, the information that was relevant and included for 2009 includes (1) the 2009 Projected Incremental Environmental Remediation Costs, (2) 2009 ARF (under collection of 2008 Rider ECR revenues) applied to 2009 activity, (3) Total Amount to be Recovered through the Rider, (4) the Projected Energy to be Delivered to Retail Customers (in kWh), and (5) the 2009 ECR Adjustment, rounded to the nearest thousandth of a cent. (ComEd Ex. 3.0, pp. 5-7.)

Mr. Waden referred to the Direct Testimony of Peter McCauley (ComEd Ex. 2.0) for the details regarding how ComEd forecasts its projected environmental costs. He stated that ComEd did not acquire any land related to environmental activities during the reconciliation period. (ComEd Ex. 3.0, p. 7.)

Mr. Waden testified that Rider ECR also takes into account any potential offsetting credits to environmental activities costs. He explained that the methodology used to calculate the Rider ECR Adjustment, described in Rider ECR, takes into account the Net Reimbursements of Incremental Costs ("NRIC"), which is equal to reimbursement funds from any source other than the application of the Rider ECR Adjustment to the bills of retail customers, including, for example, funds received from insurance recoveries and proceeds from leases, that are associated with environmental activities and received by ComEd during 2009. If the NRIC is greater than zero, then the amount of the NRIC is subtracted from the projected incremental costs to obtain the total amount to be charged through the rider. (ComEd Ex. 3.0, pp. 7-8.)

Mr. Waden explained that although ComEd did not receive any funds from insurance recoveries in 2009, ComEd did receive proceeds from leases during 2009. Specifically, Mr. Waden testified that ComEd received a lump sum lease payment of

$605 from the City of Geneseo in connection with the Geneseo SuperValu site; although the payment covers several months prior to January 2, 2007, the amount is negligible so ComEd credited the full $605 through the rider. ComEd also received proceeds from other entities for remediation during the reconciliation period. Mr. Waden explained that ComEd's and Nicor Gas's investigation and remediation of 38 commonly-managed MGP sites is currently governed by the FAA and that previously the parties' remediation activities were governed by the Interim Agreement. Under the Interim Agreement, ComEd was reimbursed by Nicor Gas for a portion of the expenses it incurred related to the commonly-managed MGP sites, and likewise, ComEd paid Nicor Gas a portion of its expenses; this same reimbursement process continues under the FAA. (ComEd Ex. 3.0, pp. 8-9.)

With respect to the accounting treatment ComEd applied to the reimbursements it received from Nicor Gas, Mr. Waden explained that when ComEd calculated the estimated incremental costs for environmental activities during 2009, ComEd only included the costs for those environmental activities for which it would be responsible. Throughout 2009, ComEd then billed Nicor Gas separately, as necessary, for Nicor Gas's share of any expenses for environmental activities incurred by ComEd. Mr. Waden testified that the payments that ComEd received from Nicor Gas therefore were not offsetting credits to the estimated incremental costs for 2009 because ComEd had not included the Nicor Gas portion of estimated incremental costs in the 2009 projection. As such, the Nicor Gas payments have no effect on the NRIC. Mr. Waden testified that the value of the NRIC in 2009 was $605. Accordingly, the total amount to be charged through the rider was equal to the projected incremental costs for environmental activities (plus the 2009 ARF) less the NRIC. (ComEd Ex. 3.0, p. 9; ComEd Ex. Nos. 3.1 - 3.3.) Mr. Waden testified that following the Commission's approval of the FAA on June 9, 2009, ComEd and Nicor Gas applied the new allocations for the period January 1, 2007 through June 30, 2009, as provided under the FAA. As a result, ComEd made a payment to Nicor Gas of $671,077. (ComEd Ex. 3.0, p. 9.)

Mr. Waden also explained how ComEd determined the projected energy to be delivered in 2009 to retail customers in the Rider ECR calculations, stating that ComEd obtained a forecast of the projected energy to be delivered to its retail customers in 2009 from its Load Forecasting division, which is part of ComEd's Financial Planning and Analysis department. (ComEd Ex. 3.0, p. 10.)

Mr. Waden testified that the Rider ECR Adjustment was then determined by dividing the projected costs for work to be performed in 2009 (plus the 2009 ARF) by the projected energy to be delivered to retail customers in 2009 and rounding to the nearest thousandth of a cent. He explained that, as shown in ComEd's Informational Filings for Environmental Cost Recovery Adjustment, submitted to the Commission on November 25, 2008, March 13, 2009, and October 14, 2009, the Rider ECR Adjustments appearing on retail customers' bills beginning with the January 2009 monthly billing period and extending through the December 2009 monthly billing period were as follows: (1) January 2009 monthly billing period through March 2009 monthly billing period: 0.015 cents per kWh (*see* ComEd Ex. 3.1); (2) April 2009 monthly billing period through October 2009 monthly billing period: 0.015 cents per kWh (*see* ComEd Ex. 3.2); and (3) November 2009 monthly billing period through December 2009 monthly billing period: (0.010) cents per kWh (*see* ComEd Ex. 3.3). Mr. Waden further stated that the Rider ECR Adjustment was applied to each kWh of electricity delivered to ComEd's retail customers. The total charge or credit applied in accordance with the provisions of Rider ECR is separately stated on each retail customer's monthly bill. (ComEd Ex. 3.0, p. 10.)

Mr. Waden testified that Rider ECR requires ComEd to file with the Commission an annual report summarizing the operation of Rider ECR and comparing actual incremental cost recovery from customers in 2009 with the incremental costs incurred in accordance with the provisions of Rider ECR for 2009. (*See* ComEd Ex. 1.0.) Mr. Waden explained that the first page of the Annual Report provides a summary of the incremental costs incurred and recovered through Rider ECR during 2009, as well as a cumulative figure from Rider ECR's inception on January 2, 2007 through December 31, 2009. The second page shows the amounts recovered through rates by class of retail customers, to whose bills the Rider ECR Adjustment was applied in 2009, as well as cumulative figures from Rider ECR's inception through December 31, 2009. And finally, the third page shows the incremental costs incurred for environmental activities by ComEd during 2009 and cumulative figures from Rider ECR's inception through December 31, 2009 by each of the individual remediation sites. (ComEd Ex. 3.0, p. 11.)

With respect to the calculation of the ARF related to the 2009 activity, Mr. Waden stated that, for the 2009 reconciliation period, the ARF is equal to the amount of the over collection of incremental costs resulting from the application of the Rider ECR Adjustment to retail customers' bills. As stated in the Annual Report, the incremental costs ComEd incurred during the year 2009 related to environmental activities were $8,010,969. Because of an under collection during the year 2008, the 2009 period also included an increase in the amount recovered from retail customers through the application of the 2009 ARF. Mr. Waden testified that as reflected in the Annual Report, the amount recovered through rates in 2009 was $9,880,661, and the ARF (over collection) related to the 2009 activity is $1,213,443. (ComEd Ex. 3.0, pp. 11-12; ComEd Ex. 1.0.)

III. Staff's Position

Mr. Ostrander testified about the results of his review of ComEd's Testimony and accompanying Exhibits, and recommended that the Commission approve the Reconciliation presented on ICC Staff Exhibit 1.0, Schedule 1.01, resulting in a Cumulative Over Recovery of $1,211,367 as of December 31, 2009. This includes amounts for the reconciliation period January 1, 2009 through December 31, 2009 of $9,880,661 in Rider ECR Recoveries and $8,013,045 in remediation costs. (ICC Staff Ex. 1.0, pp. 2, 5.)

Mr. Ostrander sponsored Schedule 1.01 – Reconciliation of Costs and Recoveries. Mr. Ostrander explained that Schedule 1.01 provides a summary including the totals for the reconciliation period per ComEd, Staff proposed adjustments to

ComEd's numbers, and the Cumulative totals per Staff as of December 31, 2009. Mr. Ostrander further explained that column (d) of Schedule 1.01 presents his proposed adjustment to Remediation Costs for the reconciliation period. He testified that in response to Staff data request JMO 1.04, ComEd agreed that, based on final invoice amounts, certain amounts it had included in the total remediation costs should be corrected for the reconciliation period. Mr. Ostrander's proposed increase to remediation costs of $2,076 corrects the total incremental remediation costs as agreed to by ComEd. (ICC Staff Ex. 1.0, pp. 2-3.)

Mr. Ostrander testified that in the Order on Rehearing for Docket No. 90-0127, the Commission adopted four standards to review the prudence of expenditures for environmental activities. (*See* Order on Rehearing, Docket No. 90-0127, Central Illinois Light Company, August 2, 1991, pp. 25 and 26.) The Commission affirmed these same four standards in the Order for Docket Nos. 91-0080 through 91-0095 (Consolidated). (*See* Order, Docket Nos. 91-0080 through 91-0095 (Consolidated), Central Illinois Light Company *et al.,* September 30, 1992, pp. 78 through 81.) Mr. Ostrander testified that he based his evaluation of ComEd's remediation costs for environmental activities on these four standards, expressly stated by the Commission: (1) reasonable and appropriate business standards, (2) the requirements of other relevant state and/or federal authorities, (3) minimization of costs to ratepayers, consistent with safety, reliability and quality assurance, and (4) facts and knowledge the Company knew or reasonably should have known at the time the expenditures were made. (ICC Staff Ex. 1.0, pp. 3-4.)

Mr. Ostrander testified that, as a result of his review, nothing other than the items for which he proposed an adjustment on Schedule 1.01 came to his attention to indicate that there were any remediation costs incurred by ComEd during the reconciliation period ended December 31, 2009 that did not meet the four previously listed standards of prudence. Mr. Ostrander further noted that in response to Staff Data Requests SDR-001 through SDR-022, ComEd provided additional information on prudence. Mr. Ostrander stated that ComEd should enter these responses as evidence in this proceeding. He also recommended that the public notice required by 83 Ill. Adm. Code 255 and the Initiating Order in this docket be provided for the record. (ICC Staff Ex. 1.0, pp. 4-5.)

Mr. Ostrander stated that the final order approving the FAA between ComEd and Nicor Gas in ICC Docket No. 08-0418 was entered by the Commission on June 9, 2009. The FAA provides for the allocation of costs incurred effective January 1, 2007. The FAA further provides for a true-up of costs to be made "promptly to reflect the agreed upon percentage of each Utility's Final Cost Allocation." (FAA, paragraph 2.4.) Mr. Ostrander testified that the FAA allows for a true-up of costs incurred during 2007 as well as the 2008 reconciliation period. He noted that workpapers were provided to Staff recalculating the ComEd and Nicor shares under the FAA for the period First Quarter 2007 through and including Second Quarter 2009. He testified that it is not feasible to restate costs under the FAA reallocation from 2007 for which the reconciliation has already been completed. Accordingly, Mr. Ostrander stated that ComEd was to include the total true-up amount for 2007 and 2008 in its 2009 Rider ECR activity. (ICC Staff Ex. 1.0, pp. 6-7.)

Mr. Ostrander testified that he reviewed the true-up amount included in the 2008 reconciliation (ComEd response to Staff data request TEE 030 in Docket No. 09-0111) and it indicated that ComEd owes to Nicor an additional $671,077 under the FAA allocation for costs incurred during 2007 and 2008 through the second quarter of 2009. He testified that the payment to Nicor of this true-up amount was included in ComEd's Rider ECR reconciliation as an increase to 2009 incremental costs (ComEd Ex. 2.0, p. 8, lines 181-183). (ICC Staff Ex. 1.0, pp. 6-7.)

Mr. Ostrander recommended that the Commission approve the Reconciliation presented on ICC Staff Exhibit 1.0, Schedule 1.01, resulting in a Cumulative Over Recovery of $1,211,367 as of December 31, 2009. This includes amounts for the reconciliation period January 1, 2009 through December 31, 2009 of $9,880,661 in Rider ECR Recoveries, $8,013,045 in remediation costs, and $605 in Net Reimbursements of Incremental Costs. (ICC Staff Ex. 1.0, p. 5.)

IV. ComEd's Rebuttal

Mr. Waden testified that ComEd agrees with Mr. Ostrander's proposed increase of $2,076 to the 2009 incremental costs for environmental activities as reflected in Schedule 1.01. Mr. Waden testified that this would be consistent with ComEd's response to Staff data request JMO 1.04 in which Mr. Ostrander "proposed [an] increase to remediation costs of $2,076 [that] corrects the total incremental remediation costs as agreed to by [ComEd]." (ICC Staff Ex. 1.0, p. 3.) Mr. Waden stated that ComEd therefore recommended that the Commission approve the reconciliation presented on ICC Staff Exhibit 1.0, Schedule 1.01. (ComEd Ex. 4.0, pp. 1-2.)

Mr. Waden further testified that, in response to Mr. Ostrander's request, ComEd would submit its responses to Staff Data Requests SDR-001 through SDR-022 upon the entry of the proposed protective order in this docket, which was filed on December 15, 2010.[1] (ComEd Ex. 4.0, p. 2.)

In addition, Mr. Waden noted that Mr. Ostrander had also recommended that ComEd provide evidence of the public notice published in accordance with the Initiating Order in this docket and 83 Ill. Admin. Code Part 255. He testified that ComEd's certificates of publication of the public notice were made in accordance with the Initiating Order in this docket and 83 Ill. Admin. Code Part 255, and were attached as Exhibit 4.1 to his rebuttal testimony. (ComEd Ex. 4.0, p. 2.)

[1] ComEd's responses to Staff Data Requests SDR-001 through SDR-022 were filed on e-Docket on January 25, 2011 as ComEd Group Exhibit No. 1.

V. Commission Analysis and Conclusions

There are no issues between the parties for the Commission to resolve in this proceeding. Based on ComEd's agreement with and lack of objection to Staff's proposed adjustments, the Commission accepts Staff's proposed adjustments to ComEd's 2009 reconciliation, as reflected in Staff Ex. 1.0, Schedule 1.01, which is attached hereto as Appendix A. Accordingly, based on the record herein and with acknowledgement of the parties' agreed to adjustments, the Commission concludes that ComEd's Rider ECR expenditures covering calendar year 2009 are reasonable, prudent, consistent with the terms of the Rider and should be recovered. Because the operation of Rider ECR resulted in an over recovery of $1,211,367 during 2009, the application of the ARF through Rider ECR during 2010 reduces the amount that otherwise would be collected from retail customers by $1,211,367.

VI. Findings and Orderings Paragraphs

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;

(3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

(4) for the period January 1, 2009 through December 31, 2009, ComEd prudently incurred Rider ECR MGP program expenditures of $8,013,045;

(5) for the period January 1, 2009 through December 31, 2009, ComEd recovered $9,880,661 from ratepayers in accordance with the terms of Rider ECR and received $605 in Net Reimbursements of Incremental Costs, resulting in an over-recovered amount, or ARF, of $1,211,367 after taking into account the cumulative under-recovery from the prior reconciliation periods, as reflected on Appendix A attached hereto.

IT IS THEREFORE ORDERED that the reconciliation submitted by Commonwealth Edison Company of the MGP program costs actually incurred with the revenues received under Rider ECR covering the period beginning January 1, 2009 and ending December 31, 2009, inclusive of the parties' agreed-to adjustments as detailed herein, is hereby approved.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this _____ day of ________________, 2011.

(SIGNED) DOUG SCOTT

Acting Chairman