ComEd Cross Ex. 19

ICC Docket No. 10-0467

Commonwealth Edison Company's Response to
People of the State of Illinois ("AG") Data Requests
AG 1.01 – 1.45
Dated: July 27, 2010

REQUEST NO. AG 1.43:

Did the Company modify its accounting for the repair allowance deduction pursuant to the proposed regulations issued by the IRS in March 2008, or pursuant to Revenue Procedure 2009-39, regarding the deduction and capitalization of expenditures related to tangible property under Internal Revenue Code Section 263(a)? If the response is affirmative, please provide the effect of such modification on the annual repair allowance deduction and any Section 481(a) ("catch-up") adjustment to taxes payable. If the response is negative, please explain why the Company's accounting for the repair allowance deduction was not modified.

RESPONSE:

ComEd has not requested a change in its tax accounting method with respect to the deduction of repair costs. ComEd has not requested a change in method because there remains significant uncertainty around the definition of "unit of property" for purposes of determining a tax deductible repair expense with respect to transmission and distribution property ("network assets"). Other utilities may have changed their methods. However, to our knowledge, the IRS has not consented to either (a) units of property selected by those companies or (b) the overall dollar amounts claimed. Thus, ComEd believes that the tax law is very unclear such that any position taken with respect to qualifying repair costs would remain materially uncertain and would be heavily scrutinized and challenged by the IRS. ComEd is collaborating with other members of the electric utility industry (through its membership in the Edison Electric Institute) to work with the IRS to provide guidance on the appropriate treatment of repair costs for transmission and distribution assets. The IRS has indicated it hopes to issue guidance later this year, most likely in the form of an Industry Issue Resolution (IIR). A copy of EEI's letter formally requesting that the IRS engage in the IIR process is attached as AG 1.43_Attach 1. With the issuance of further guidance by the IRS, ComEd will then evaluate, if appropriate based on that guidance, a request for a change in its tax accounting method for repair costs.

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I.C.C. DOCKET NO. 10-0467

Admitted ComEd X 19

Witness

Date 1/14/11 Reporter

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April 22, 2010

Via Electronic and USPS Mail

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Edison Electric Institute
Request For Guidance Under Rev. Proc. 2003-36

Dear Ms. Claybough:

The Edison Electric Institute ("EEI") respectfully requests published guidance under Rev. Proc. 2003-36, 2003-1 C.B. 859, pursuant to the Internal Revenue Service ("IRS") Industry Issue Resolution ("IIR") Program, on an issue that is currently disputed and common to taxpayers that own electric transmission and distribution assets. A taxpayer that owns such assets incurs significant costs both to maintain them in ordinary efficient operating condition and for capital improvements. Such costs are deductible as ordinary business expenses under section 162 of the Internal Revenue Code of 1986, as amended ("IRC"), or capitalized under section 263, IRC.

Recently, disputes have arisen between the IRS and taxpayers that own electric transmission and distribution assets regarding which costs are deductible under section 162, IRC and which costs are capitalizable under section 263, IRC. This issue is now appropriate for consideration in the IIR Program because (1) there is uncertainty about the appropriate tax treatment of each factual situation; (2) this uncertainty results in the repetitive examination and controversy throughout the electric industry; (3) the repetitive examination and controversy results in a significant burden to both the IRS and taxpayers; (4) the issue is faced by virtually every member of the industry; and (5) the issues are highly factual. Furthermore, virtually all taxpayers for whom this guidance would be applicable are under the jurisdiction of the Large and Mid-Size Business Division of the IRS ("LMSB") and many have current examinations stalled pending guidance on this issue.

More importantly, most electric transmission and distribution companies have been either granted permission by the Commissioner of the IRS to change their methods of accounting for determining which expenditures are deductible repairs under section 162, or must be capitalized under section 263, or are in the process of obtaining such permission, which the Commissioner now grants automatically. Rev. Proc. 2009-39, 2009-38 IRB 371, Section 2.08. Guidance is needed for field examiners to determine whether the methods of accounting to which taxpayers have received permission to change clearly reflect income. Furthermore, this issue has been designated a Tier 1 issue. LMSB-4-0110-001, January 22, 2010. In this designation, the IRS Issue Management Team indicated that it was seeking to publish guidance in this area under the IIR process, specifically with respect to three industries, one of which is the utility industry. Without such guidance, IRS examiners and IRS industry technical advisors are unable to reach any resolution with taxpayers on this issue.

EEI is the association of U.S. investor-owned electric utilities, their affiliates and associated members worldwide. EEI's U.S. shareholder-owned electric company members serve 95 percent of the ultimate customers in this segment of the industry and represent approximately 70 percent of the U.S. electric power industry. EEI requests, on behalf of its members, published guidance addressing which costs are deductible as ordinary business expenses under section 162, IRC, and which costs are capitalized under section 263, IRC.

The issues that EEI would like addressed involve two distinct segments of the electric industry: transmission and distribution. The U.S. electric transmission systems consists of more than 200,000 miles of high-voltage transmission lines (230 Kilovolts and greater). Transmission lines carry electricity from power plants, which produce the electricity, to areas where electricity is needed. High-voltage electricity is carried by the transmission system to a point where it is stepped down (reduced) to lower voltage by transformers and distributed through the nation's electric distribution systems, which deliver electric power to neighborhoods, businesses, and consumers over millions of miles of lines.

EEI sees that the issues raised with respect to transmission and distribution assets are unique in that electric transmission and distribution assets are interconnected over long distances to form functionally integrated systems. EEI is prepared to submit relevant factual material and a specific proposal with respect to transmission and distribution assets once the IRS selects this issue for the IIR Program.

Section 3.01 of Rev. Proc. 2003-36 sets forth the factors that the IRS will consider in determining whether an issue is appropriate for the IIR Program. EEI believes this issue satisfies each of the criterion in a manner that strongly supports acceptance of this issue into the IRS IIR Program. Conversely, none of the factors under section 3.02 of Rev. Proc. 2003-36, which lists issues not appropriate for the IIR program, is applicable to the guidance the electric industry is seeking.

EEI strongly supports efforts to reach resolution of issues on an industry-wide basis. The issue proposed herein for IIR is especially suitable for inclusion in the program because of its applicability to virtually all taxpayers within the electric industry, its currency, the amounts involved and the desire and commitment of EEI members to work with the IRS for issuance of appropriate guidance that will allow the completion of current audits and end the repetitive cycle of examination and controversy over this issue. Representatives of EEI's Taxation Committee are prepared to meet with the IRS to discuss this matter further and provide information which is necessary for a successful resolution of this key industry issue.

EEI respectfully requests your consideration of this issue for inclusion in the IIR Program, and the dedication of sufficient resources to obtain timely published guidance. By publishing guidance on this issue, the IRS would allow a number of audits to move forward, and significantly shorten the time taken for resolution of this important issue. It would thereby contribute materially to the mutual objectives of the electric industry and the IRS to achieve currency, certainty and consistency in the examination process.

Respectfully submitted,

Alexander Zakupowsky, Jr.
Counsel
Edison Electric Institute
Taxation Committee

cc: K. M. Jones
Edison Electric Institute Taxation Committee