

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of an Alternative	:	No. 10-0527
Rate Regulation program pursuant to	:	
Section 9-244 of the Public Utilities Act	:	

**REPLY BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY**

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**REPLY BRIEF ON EXCEPTIONS OF
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Commonwealth Edison Company (“ComEd”) respectfully submits this Reply Brief on Exceptions in accordance with Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”), 83 Ill. Admin. Code § 200.830, and the schedule established by the Administrative Law Judge. Staff, the Illinois Attorney General (“AG”), and the Natural Resources Defense Council (“NRDC”) filed Brief on Exceptions. In this brief, ComEd specifically responds to the AG’s Brief on Exceptions and portions of Staff’s Brief on Exceptions. ComEd does not thereby endorse the remaining arguments of NRDC or Staff. Any additional modifications to the Proposed Order that are required in response to the other parties’ Briefs on Exceptions are noted within the body of this brief.

**I. STAFF’S EXCEPTION REGARDING THE
UFR PROGRAM SHOULD BE REJECTED**

Staff takes no exception to the Proposed Order’s correct conclusion that ComEd should not be required to move forward with the Urban Underground Facility Reinvestment (“UFR”) project without a pre-approved mechanism for recovery of its reasonable costs. Staff BOE at 2; Proposed Order (“PO”) at 75. However, Staff nonetheless seeks to add language to the Order that would “encourage” ComEd to undertake the project on an unfunded basis and seek cost recovery in a subsequent rate case. Staff BOE at 2. This Exception should be rejected.

Based upon the arguments and evidence set forth in its briefs¹, ComEd maintains that the UUFR project should be approved as part of Rate ACEP. However, if the Commission rejects that position, the final order should not press ComEd to undertake a \$45 million project on an unfunded basis.

First, such a statement has no place in an alternative regulation order. As the Proposed Order properly concluded, “[t]his docket only considers whether Rate ACEP is an appropriate alternative regulation proposal” and does not include within its scope Staff’s original proposal to mandate the UUFR project outside of an alternative regulation plan. PO at 75. While the language sought in Staff’s Brief on Exceptions is not mandatory, the issue remains the same. Whether to proceed with work outside of the alternative regulation pilot is beyond the scope of this docket. Moreover, that same issue is being addressed in ComEd’s pending rate case, Docket No. 10-0467, so addressing it here as well risks duplication or inconsistency.

Second, the evidence shows such a statement to be unsupported. The UUFR project has significant public benefits. But, its \$45 million cost is also significant. This docket offers the Commission the opportunity to weigh those costs and benefits. However, in the absence of Rate ACEP, the cost of the UUFR program – if it proceeded – would necessarily be borne by cuts in other projects. ComEd cannot undertake UUFR without displacing funding of other critical projects. Hemphill Reb., ComEd Ex. 6.0, 29:634-30:662; Hemphill Sur., ComEd Ex. 8.0, 4:85-5:90, 14:297-16:340; *see also* McMahan Sur., ComEd Ex. 9.0, 3:54-5:88. The notion that “traditional ratemaking” offers an adequate opportunity to recover these costs – let alone the regulatory certainty required for a capital outlay of this magnitude – is contrary to the evidence. Hemphill Reb., ComEd Ex. 6.0, 20:436-9, 28:607-9; Hemphill Sur., ComEd Ex. 8.0, 16:352-5

¹ See Init. Br. at 12-22; Rep. Br. at 14-17; BOE at 9-20.

That evidence, therefore, does not support “encouraging” ComEd to undertake Uufr in the absence of funding. Moreover, the legal effect of the Commission “encouraging” ComEd to do something is itself vague and suspect and is subject to potentially conflicting interpretations.

Finally, as stated in Docket No. 10-0467², ComEd is not opposed to meeting with Staff to discuss methods of identifying problems with underground feeder cables, but an order directing the parties to meet is not necessary. However, any such directive should acknowledge the competing concerns and priorities and recognize that ComEd’s existing underground cable system already delivers strong service reliability. Hemphill Reb., ComEd Ex. 6.0, 29:639-42; Hemphill Sur., ComEd Ex. 8.0, 4:85-7, 12:261-3.

Accordingly, if ComEd’s exceptions are not accepted by the Commission and the Commission decides to address underground cable issues further, Staff’s Exception to page 77 of the Proposed Order should only be accepted if revised as follows:

Thus, the Commission does not approve Rate ACEP recovery of Uufr costs. However, as set forth above, the Commission recognizes the many potential benefits of the Uufr program and therefore strongly encourages the Company to pursue that type of investment in the future and to seek recovery in future traditional rate proceeding notwithstanding the fact that ComEd’s underground cable system is currently reliable. We call on ComEd to work with Staff to consider and attempt to develop reasonable proactive methods of identifying problems with underground mainline feeder cables that are acceptable to both ComEd and Staff taking into account all the concerns expressed by both Staff and ComEd in this docket. If Staff and ComEd agree on an acceptable course of action, then ComEd shall report to this Commission within nine months from the date of issuance of a final Order in this docket. This report shall include: a) the results of the meetings; and b.) what ComEd is doing to proactively identify underground system problems before they cause service interruptions. If Staff and ComEd cannot agree on mutually acceptable proactive methods of identifying problems with underground mainline feeder cables within three months from the date of issuance of a final Order in this docket, Staff shall submit a report to this Commission regarding the results of the meetings within two months of the conclusion of those meeting.

² See Docket No. 10-0467, ComEd BOE at 102-104.

II. STAFF’S EXCEPTION REGARDING A MONETARY “CALCULATION” IS UNNECESSARY AND UNSUPPORTED, AND SHOULD BE REJECTED

Staff seeks to include “clarifying” language in the Proposed Order that ComEd did not provide “calculations to demonstrate” that the 5% reduction in Operating and Maintenance (“O&M”) expenses for recovery of projects’ O&M expenses as incurred results in customer benefits. Staff BOE at 3. This Exception should be rejected.

Section 9-244(b) requires only one rate comparison: a comparison between rates under the proposed alternative regulation plan and the rates that “otherwise would have been in effect” under traditional regulation to recover the costs of the same “services covered by the program.” 220 ILCS 5/9-244(b)(1). ComEd proved the 5% O&M credit, as capped, will result in a decrease in O&M recovery, and customers can only come out ahead on the capital side (*i.e.*, ComEd only recovers an incentive if it reduces capital costs far more). ComEd BoE at 32. Customers, therefore, come out dollars ahead. Moreover, the customer benefits of this program take many forms, including improved reliability, and there is no requirement in Section 9-244 that a “calculation” be performed to reduce all those benefits to money.

III. THE AG’S PROPOSED EXCEPTIONS LANGUAGE IS UNNECESSARY

The AG proposes to add language to the Findings on pages 100-101 of the Proposed Order regarding modifications. This language is unnecessary. Despite ComEd’s intentions to engage Stakeholders in a meaningful discussion concerning alternative regulation, no party offered any modifications to ComEd’s proposed plan.

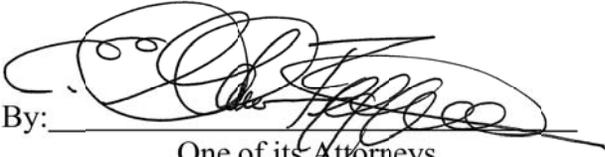
IV. ORAL ARGUMENT

In its Brief on Exceptions, ComEd requested oral argument. After reviewing the Exceptions and Briefs on Exceptions of other parties, ComEd waives that request. In the event

that the Commission believes oral argument would be beneficial to its deliberation and decision, ComEd remains ready to participate.

V. CONCLUSION

WHEREFORE, for the reasons set forth herein, ComEd respectfully requests that the Proposed Order be modified as set forth in ComEd’s Exceptions and, as modified, be adopted by the Commission.

<p>Dated: April 26, 2011</p>	<p>Respectfully submitted, COMMONWEALTH EDISON COMPANY</p>  <p>By: _____ One of its Attorneys</p>
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