

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	No. 10-0467
Proposed general increase in electric rates	:	

VERIFIED APPLICATION FOR REHEARING OF
COMMONWEALTH EDISON COMPANY

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Pursuant to Section 10-113 of the Illinois Public Utilities Act (220 ILCS 5/10-113(a)), Section 200.880 of the Illinois Commerce Commission’s (the “Commission”) Rules of Practice (83 Ill. Adm. Code § 200.880), and other applicable law, Commonwealth Edison Company (“ComEd”) applies for Rehearing of the May 24, 2011, final Order (the “Order”) in this Docket.

Section I of this Verified Application for Rehearing (“Application”) proposes a handful of corrections to the Order. They call for no fundamental revisions to the Order, nor for consideration of any new evidence. They address only apparent mistakes or oversights.

Section II addresses requirements the Order imposes on ComEd. ComEd does not question the Commission’s authority, exercised lawfully, to require ComEd to collect data, perform studies, and revise its tariffs and business processes. ComEd will comply with those directives fully and expeditiously. However, ComEd submits the Commission would commit grave legal error if the Order tried to bar ComEd from filing new rates until all of that work was complete. ComEd will likely need to file new rates in a matter of months and, as the Order itself recognizes, some tasks will simply take longer than that to complete. ComEd’s statutory right to file new rates must not be taken away in the meantime. The Order should instead require compliance within specific time periods, avoiding this issue.

Section III of this Application explains why the Commission should rehear certain conclusions that ComEd respectfully submits are unlawful and/or contrary to the manifest weight

of the evidence or not supported by substantial evidence. In several cases, especially with respect to the exclusion from rate base of the vast majority of ComEd's more than \$300 million of distribution investments placed into service between January 1 and June 30, 2011, new evidence available on rehearing will also require revision of the Order. This Section also incorporates by reference other arguments for revision of the Order, in accordance with 83 Ill. Admin. Code § 200.880(b).

I. THE COMMISSION SHOULD CORRECT ADJUSTMENTS THAT ARE MISCALCULATED

A. 2010 Wages and Salaries Adjustment

The Order (at 100 and in Appendix A, p. 3, col. (n)) makes a \$3,691,000 mistake on the subject of the 2010 wages and salaries *pro forma* adjustment. The Order calculated its adjustment as:

- ComEd's proposed 2010 wages and salaries *pro forma* adjustment;
- *Minus* \$6,204,000, derived from Staff's calculation of reductions in payroll costs and other factors in 2010.

This calculation does not account for the fact that \$3,691,000 of that \$6,204,000 deduction was already removed from ComEd's figure. Therefore, the calculation should be:

- ComEd's proposed 2010 wages and salaries *pro forma* adjustment;
- *Minus* \$6,204,000, derived from Staff's calculation of reductions in employees and other factors;
- *Plus* \$3,691,000 of that \$6,204,000 that ComEd already had removed from its revenue requirement that otherwise would be deducted twice.

This double subtraction occurred because the Order (at 100) "did not consider" Mr. Fruehe's testimony that ComEd's overall revenue requirement already excludes certain sustainable savings resulting from the reductions, stating that his testimony was "devoid of any evidentiary factual foundation." In fact, the double-counted amount of \$3,691,000 that already

was removed from the revenue requirement was substantiated. Mr. Fruehe testified that certain savings Staff deducted, including for employee reductions, were already removed from ComEd's figures. Fruehe Surrebuttal ("Sur."), ComEd Ex. 56.0 3rd Rev., 5:87-6:108. Moreover, he also cited Schedule C-2.4, included in ComEd Ex. 6.1 Rev., to substantiate that. Fruehe Sur., ComEd Ex. 56.0 3rd Rev., 5:87-90, 104-105. Schedule C-2.4 clearly reflects an overall \$11,013,000 reduction to O&M already made in ComEd's revenue requirement. That \$11,013,000 includes the double-counted \$3,691,000 reduction, as shown by work paper WPC-2.4 (included in ComEd Ex. 6.2 Rev.), which includes (on page 2) the \$3,691,000 figure and its components. *See* Houtsma Direct ("Dir."), ComEd Ex. 6.0 Rev., 48:963-981; ComEd Ex. 6.1 Rev., Scheds. C-1, C-2, p. 1, col. (E); ComEd Ex. 6.2 Rev., work paper WPC-2.4.

Moreover, although substantiation was provided, proof via sworn testimony is sufficient. Disregarding Mr. Fruehe's sworn testimony, even if it had lacked added substantiation, is unlawful. An Order "must still be based on the evidence and the agency as fact finder simply cannot disregard the testimony of an unimpeached witness where the testimony is uncontradicted and is not inherently improbable." *Thigpen v. Retirement Bd. of Fireman's Annuity and Benefit Fund of Chicago*, 317 Ill. App. 3d 1010, 1021, 741 N.E.2d 276, 284-85 (1st Dist. 2000) (*citing Trahraeg Holding Corp. v. Property Tax Appeal Bd.*, 204 Ill. App. 3d 41, 44, 561 N.E.2d 1298, 1300 (2d Dist. 1990)). Indeed, the Commission has been reversed as committing clear error for rejecting rate base items because they were supported only by sworn testimony. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 322 Ill. App. 3d 846, 849 (2d Dist. 2001).

For these reasons, the Commission should correct the Order's calculation of this adjustment to subtract only once the adjustment for the factors identified by Staff.

B. Intangible Plant Amortization Expense

The Order (at 115 and in Appendix A, p. 2, col. (d)) made a \$9.5 million error in calculating Intangible Plant amortization expense because it included a decrease in one part of 2010 expense but did not include an increase in 2010.¹ The Order calculated its adjustment as:

- 2009 Intangible Plant amortization expense level;
- *Minus* a \$4,110,000 decrease in 2010 expense due to certain Intangible Plant items becoming fully amortized by December 31, 2010

This calculation fails to account for the demonstrated increase in Intangible Plant amortization expense in 2010, due to the \$42.1 million of new Intangible Plant that went into service in November and December 2009 (and, hence, was only amortized for two months in 2009). Therefore, the calculation should be:

- 2009 Intangible Plant amortization expense level;
- *Minus* a \$4,110,000 decrease in 2010 expense due to certain Intangible Plant items becoming fully amortized by December 31, 2010
- *Plus* \$9.5 million for increased Intangible Plant amortization expense in 2010 for an additional 10 months of amortization-related plant added in late 2009.

The foundation of this adjustment is the proposal of AG witness Effron that the level of Intangible Plant amortization expense in ComEd's revenue requirement should be updated as of the end of the period as to which the Commission approved *pro forma* plant additions. Order at 115. Mr. Effron proposed a reduction as of March 31, 2011, the end of the *pro forma* period he proposed. Effron Rebuttal ("Reb."), AG/CUB Exhibit ("Ex.") 8.0, 19:412-430. He arrived at that figure by starting with ComEd's proposed amount, which was based on the 2009 level, and then reducing for his projection that certain Intangible Plant assets would be fully amortized by

¹ ComEd contended that no adjustment was required. That position is not reargued here. This point relates solely to the accuracy of the calculation. Also, the Order incorrectly refers to this as a depreciation expense item, but the terminology makes no difference to this issue.

March 31, 2011. *Id.*; *see also* Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 34:734 – 35:757. The Order reduced Mr. Effron’s adjustment to \$4,111,000 in view of its approval (with limited exceptions) of *pro forma* plant adjustments only through December 31, 2010. Order at 115 and Appendix A, p. 2, col. (d).

Assuming any adjustment should be made, the Order’s math subtracts a 2010 adjustment for plant that becomes fully amortized, but ignores the fact that new plant is also added. There is no factual dispute here. The evidence that \$42.1 million of new Intangible Plant went into service in November and December 2009, increasing annual Intangible Plant amortization expense by \$10.1 million, is uncontradicted. However, because the new projects were only in service for a small portion of 2009, the 2009 level on which ComEd based its calculations captured only \$618,000 of that \$10.1 million increase. Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 34:734 – 35:757; *see also* Houtsma Reb., ComEd Ex. 29.0, 47:1012 – 48:1025. The Order (at 116) indicates that its adjustment is intended to reflect the level in 2010, consistent with the *pro forma* additions cut-off date, but that means the Order should have recognized both changes that occurred in 2010, not recognize the change that went down while failing to recognize the change that went up. If Intangible Plant is rolled forward to December 31, 2010, the remaining \$9.5 million of that increase must be reflected in the math.²

² ComEd notes that the Order contains no basis for ignoring that increase. The Order (at 116) indicates that ComEd’s bookkeeping should not fail to timely record when assets become fully amortized, but no one, not even Mr. Effron, contended that at any point in time ComEd’s bookkeeping was incorrect. Mr. Effron’s rebuttal on this subject literally ignored the evidence of a 2010 increase. *See* Effron Reb., AG/CUB Ex. 8.0, 19:412-430. No other witness addressed it. None of Staff’s four briefs discussed it, even Staff’s Reply Brief on Exceptions after ComEd submitted its Exception on this issue. ComEd’s 2009 Intangible Plant amortization expense was correct and did not, and should not have, reflected changes that occurred in 2010.

C. Appendix A Informational Data

Appendix A, page 9, lists the revenue effects of adjustments, but in several cases the list does not match the Order. For example, line 17 shows an underground cable adjustment, but the Order (at 33) correctly rejects that adjustment. The errors on page 9 do not affect ComEd's compliance tariffs or any customer charges because page 9 is only informational and the compliance tariffs are based on the Commission's actual rulings and the operative pages of Appendix A, particularly page 1. Nonetheless, to avoid any potential for confusion, ComEd suggests that Appendix A, page 9, be corrected.

II. THE COMMISSION'S DIRECTIONS TO COMED SHOULD BE CLARIFIED

The Order directs ComEd to collect data and conduct a variety of studies on matters unrelated to the development of a revenue requirement and to include the results of such studies as part of the initial filing in its next rate case.³ ComEd does not question the Commission's authority, exercised lawfully, to require ComEd to collect data, perform studies, and revise its tariffs and business processes. ComEd will comply with those directives, fully and expeditiously. However, ComEd submits the Commission would commit grave legal error if the Order tried to bar ComEd from filing new rates until all of that work was complete.

Tying the completion of these activities to the filing of ComEd next rate case appears based, in large part, on the assumption that ComEd will not be filing another rate case for more than a year. *See i.e.*, Order at 274 (ComEd has up to one year to file a report on its use of railroad facilities and then file an *updated* copy of the report “[a]t time of its next rate case filing.”).

³ For example, the Order directs ComEd to, *inter alia*, “develop a scientifically-significant representative of its direct observations,” “develop a scientifically acceptable sample of [its] circuits,” and further analyze what other utilities do with respect to primary/secondary split. Order at 181, 182, 185. It also directs ComEd to conduct a study of its use of railroad facilities. *Id.* at 274. Additionally, the Order proposes addressing certain distribution-related cost of service issues in a Section 9-250 proceeding otherwise concerned with supply rates that is not to exceed 18 months in duration. Order at 249-50. Presumably, the Order anticipates that a ruling in that matter would be required for the preparation and filing of a cost of service study.

However, ComEd will have to file new tariffs within a matter of months in order to recover its prudent and reasonable costs.

Illinois law recognizes the right of a utility to propose new tariffs at any time. That right, reflected in Article IX of the Act, also satisfies the constitutional assurance that a utility can seek redress any time that its existing rates are not cost compensatory. *See, e.g., Duquesne Light Co. v. Barash*, 488 U.S. 299, 309, 314-15 (1989) (recognizing that utilities must receive “just compensation” for serving the public); *Citizens Util. Bd. v. Illinois Commerce Comm’n*, 166 Ill. 2d 111, 121 (1995) (“In setting rates, the Commission *must* determine that the rates accurately reflect the cost of service delivery and *must* allow the utility to recover costs prudently and reasonably incurred.”) (emphasis added); 220 ILCS 5/9-201(c). The Illinois Supreme Court has therefore made clear that “[t]he Act does not restrict when or how often a utility may file for a rate increase.” *Bus. & Prof’l People for the Publ. Interest v. Illinois Commerce Comm’n*, 136 Ill. 2d 192, 230 (1989) (“*BPI I*”). The Court also made clear that even a temporary bar would be unlawful, holding that “the Commission cannot impose a rate moratorium upon a utility during [a] period without the agreement of the utility.” *Id.* at 225.

In contrast, the Commission’s filing requirements, principally embodied in Part 285 of its rules, raise no such concern. Unlike the Order’s requirements, they call for the submission of information the utility already has. Moreover, they are regulations of general activity that were established with legislative concurrence (*e.g.*, by JCAR) only after a lengthy notice and comment process. No utility is, as a practical matter, closed out of filing by virtue of those rules.

ComEd recognizes the Commission’s authority and has already begun working to comply with each of the Order’s directives in a complete and timely fashion. Nevertheless, meeting those directives will take time – a fact that the Order recognizes as well. *Id.* Given the breadth,

depth, and number of those directives, it is unlikely that all of the required work can be completed rapidly enough to precede ComEd's next rate filing, no matter the commitment or effort. Given that fact, linking that work to ComEd's next tariffs filing could be read to impose a barrier to ComEd filing new rates. The law does not allow such a barrier to be created.

ComEd, therefore, urges the Commission to grant rehearing and modify the Order to separate ComEd's obligation to complete the Commission's directives from the filing of new tariffs. To ensure ComEd's timely compliance with the Order's directives, the Commission could easily insert language that all directives to collect data and conduct specified studies must be completed within one year from the date of the Order or by any other reasonable date. The Commission can thereby preserve and, if necessary, enforce its directives lawfully without appearing to illegally impair the absolute right of a utility to propose new tariffs at any time.

III. CERTAIN DECISIONS SHOULD BE REVISED ON REHEARING

A. 2011 *Pro Forma* Plant Additions

The Order excludes from rate base approximately \$307.1 million of distribution capital investments placed in service between January 1, 2011 and June 30, 2011. *See* Appendix A, p. 7, item 1(b). No claim was made that any of these investments were imprudent or unreasonable in cost. Rather, they were excluded on the premise that, as of the close of evidence, they were not "known and measurable." Order at 14-17. Rehearing should be granted on this issue for either of two independent reasons.

1. Newly Available Evidence Removes All Doubt.

Even if the Commission were to revise its conclusions concerning those investments in view of the evidence available at the hearing, the passage of time has wrought a sea change in the evidence available. Those assets are no longer based on predictions or unknown by *any*

standard. By the time the Commission acts on this Application, the actual amount in service and actually serving customers will be available. As noted above, nothing in the Order calls into question the prudence or reasonability of the investments included in the *pro forma* plant adjustment and nothing in the Order calls into question whether work that is already complete is known, measurable, or reasonably certain to occur.

If the Commission grants rehearing on this issue, ComEd proposes to submit specific evidence of the assets included in the proposed *pro forma* plant adjustment that actually were placed into service between January 1 and June 30, 2011. This evidence will demonstrate beyond doubt a set of known and measurable plant additions. It could not have been previously submitted to the Commission at hearing because as of January 2011, those plant additions remained in progress.

The law expressly contemplates the submission and consideration of new evidence on rehearing. *See* 220 ILCS 5/10-113(a) (rehearing includes “consideration of all the facts, including those arising since the making of the ... order or decision ...”); 83 Ill. Admin. Code § 200.880(a) (the Commission may consider additional evidence identified in a “brief statement” in the rehearing application along with “an explanation why such evidence was not previously adduced.”). Because this Application proposes new evidence, it is also verified as required by 83 Ill. Admin. Code § 200.880(c). Only by considering this new evidence can the Commission take into account “changes which take place within twelve months of the time that new rates are filed” and consider an “adjustment to plant-in-service [that] is necessary to reflect items of plant which will be in-service when the rates established in this docket take effect.” *Inter-State Water Co.*, Docket No. 94-0270, 1995 Ill. PUC LEXIS 283, at 13-14 (Order April 19, 1995).

2. The Order Applied an Incorrect Standard to Begin With.

ComEd preserves, in the alternative, its argument that the Order applied an incorrect legal standard to even the evidence as of the time of the hearing. The Order disallowed 2011 distribution investments based on Staff's claim that plant additions after December 31, 2010 were not known and measurable. Order at 6-9, 14-17. While the Order characterized ComEd's evidence as deficient, the Analysis and Conclusions identify no specific deficiency. *Id.* at 14-17. ComEd actually submitted factually uncontradicted evidence that:⁴

- Defined each individual project and blanket program, explained the work required completed, when it would be completed, and what it would cost. *E.g.*, Donnelly Dir., ComEd Ex. 8.0, ComEd Ex. 8.2; Houtsma Dir., ComEd Ex. 6.0 Rev., ComEd Ex. 6.2 Rev., WPB-2.1a.
- Explained the process of identifying and determining those investments from engineering and financial perspectives and documented the planning, design, review, execution, and costs of each project. More than 41,000 pages of documentation were admitted into evidence; still more was assembled and made available for review in the data rooms without the need for discovery. Donnelly Dir., ComEd Ex. 8.0, 50:1054-54:1138.
- Proved that many projects disallowed as "not reasonably certain" were already substantially underway. Indeed, some disallowed work were marquee projects that

⁴ See Donnelly Dir., ComEd Ex. 8.0, 50:1040-54:1138, ComEd Ex. 8.2; Donnelly Reb., ComEd Ex. 32.0 Rev, 1:16-6:103, 9:164-69:1378; Donnelly Sur., ComEd Ex. 58.0 Rev., 1:11-6:116, 7:145-70:1459; Donohue Reb., ComEd Ex. 35.0 Rev., 7:134-44:906; Donohue Sur., ComEd Ex. 59.0, 2:29-13:263.

no one can seriously question, such as Midway Airport improvements, the Wacker Drive reconstruction, and 2011 “summer critical” work.⁵

- The fact that individual work items evolve over time does not undermine the evidence that the *pro forma* projects are known, measurable, and reasonably certain to occur. ComEd proved empirically that its plant investment data, at the level of the individual adjustment not the individual work item, is highly accurate. Donohue Reb., ComEd Ex. 35.0 Rev., 10:209-13, 21:461-22:466.

The *pro forma* adjustment rule is intended to result in rates that reflect as closely as possible the actual level of plant investment used to serve customers during the period when the rates will be in effect. The purpose of the “reasonably certain” and “known and measurable” standards is to ensure that it is realistic to project that that level of plant investment will be in place to serve customers during this period, not to use a standard of absolute certainty to provide a technical excuse to exclude assets from rate base. In *Inter-State Water Company*, ICC Docket No. 85-0166, 1986 Ill. PUC LEXIS 27, *4-7 (Order February 26, 1986), Staff had argued that “probabilities” were irrelevant in assessing *pro forma* adjustments and that an adjustment must be “certain to occur” and its amount “verifiable” in order to be allowed under the *pro forma* rule. *Id.* at *4. The Commission rejected these arguments and concluded that neither its *pro forma* rule nor prior rulings “indicate that pro forma adjustments should be disallowed merely because they are based upon something less than absolute certainty or that such adjustments would only be proper if the filing requirements of a current or future test year are met. Rather, adjustments

⁵ See, e.g., ComEd Ex. 32.2, ITN Folders CE 23622 (Capacity Expansion), CE 45276 (Capacity Expansion), FR 5363 (Facility Relocation), FR 42696 (Facility Relocation), FR 45111 (Facility Relocation), SP 45167 (System Performance), SP 45181 (System Performance).

should be allowed where they reflect significant changes reasonably anticipated to occur.” *Id.* at *6.

The law does not require that every work item – every pole, transformer, wire, or switch – in the \$300+ millions of investment be separately “identified and supported” as certain to occur. Such a standard would be impossible to meet. The *pro forma* rule on its face requires individual support for each adjustment, not for each work item.⁶ 83 Ill. Admin. Code § 287.40 (“Any proposed known and measurable adjustment to the test year shall be individually identified and supported in the direct testimony of the utility.”). Moreover, both the law of evidence and of ratemaking recognize and allow the use of summary data and compilations in this circumstance. *E.g.*, Ill. R. Evid. 1006. Likewise, the Commission’s *pro forma* rule itself specifies that “[e]ach adjustment shall be submitted according to the standard information requirement schedules prescribed in 83 Ill. Adm. Code 285.” 83 Ill. Adm. Code § 287.40. *See* 83 Ill. Adm. Code § 285.6100(a). Part 285 does not require individual details on every work item. Summary data is routinely accepted and much of ComEd’s overall rate base as approved by the Order was supported with just such information.

B. Costs of the 2005 Pension Contribution

The Order improperly approves Staff’s proposed disallowance of 25%, or \$6.329 million, of ComEd’s \$25.078 million recovery related to its \$803 million 2005 pension contribution. Order at 98. The Order states that this adjustment is a proper reflection and application of “hypothetical Alternative 3 identified in Docket No. 05-0597 (Order on Rehearing),” and that “ComEd has not presented sufficient evidence to show that this regulatory debit has not

⁶ Of course, as noted above, ComEd did in fact provide very detailed data, which the parties universally failed to address in testimony or, in most cases, even review. But, there is no doubt that no utility could provide detail for every work item. Realistically, it is impossible.

diminished as the underlying debt matures.” *Id.* This disallowance should be eliminated on rehearing because it is based on assumptions that have no evidentiary support in the record and are in fact contrary to reality. Further, the adjustment is inconsistent with prior Commission decisions on this subject and is otherwise unlawful.

1. **The Regulatory Debit Has Not Diminished Over Time Because ComEd’s Capital Needs Have Not Disappeared.**

The basis for the Order’s conclusion is the *assumption* that ComEd’s capital needs with regard to a portion of this hypothetical long-term debt will disappear by the end of 2011. *See* Pearce Reb., Staff Ex. 18.0, 9:211-20. The Order adopts Staff’s theory (presented for the first time in rebuttal testimony) that “Alternative 3,” under which recovery of this pension contribution was allowed in the Commission’s Rehearing Order in Docket 05-0597, was based on the issuance of 5-, 10-, and 30-year bonds, and that “the 5 year bond series reflected in Alternative 3 could be *assumed* to be paid off around the end of 2011,” and therefore “it appears improper to reflect the entire cost of these 5 year bonds in the 2009 test year.” Staff Init. Br. at 47 (emphasis added).

This takes the Commission’s Order in 05-0597 far beyond anything the Commission did or said in that order. The entirety of Alternative 3 is outlined in Docket 05-0597, Houtsma Dir. on Rehearing, ComEd Ex. 52.0 Corr., 29:590-30:604. There is not a word in that description or in the Commission’s Order on Rehearing that would imply that cost recovery or ComEd’s capital requirements would decrease solely due to the passage of time or that the imaginary bond portfolio should be tracked over time. Moreover, the *evidence* shows that this presumption that the capital needs associated with the 5-year bond would disappear by the end of 2011 is not just unsupported, it is also unrealistic. For virtually all of ComEd’s debt securities, ComEd pays interest periodically and the principal balance remains outstanding in its entirety until the

maturity date. Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 13:258-76. Typically, once a debt issue matures, ComEd re-finances the maturing bonds with new debt securities. *Id.*

Indeed, it is factually impossible that ComEd could have simply extinguished these hypothetical bonds upon maturity. In accordance with 99.3% of ComEd's actual debt portfolio, the \$25.078 million revenue requirement associated with the 2005 pension contribution represents only interest payments on the \$803 million of hypothetical debt, with no amount to pay down the \$189 million of principal that Staff hypothesizes would have been retired. *See* Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 14:295-99. The evidence also shows that ComEd *added* debt to its capital structure from 2009 to 2010. ILCC Form 21, filed pursuant to Part 285.310(a), p. 4. ComEd thus had more debt outstanding in 2010 than in 2009 (and on rehearing ComEd can show that it has more debt outstanding in 2011 than in 2010), which invalidates the premise of Staff's claim and the Order's conclusion: that ComEd had sufficient cash flow to retire the fictitious 5-year bonds upon maturity without replacing them with some other form of capital.

Because this funding scenario is only hypothetical, it would be impossible for ComEd to provide actual evidence that it re-financed the hypothetically maturing portion of the hypothetical debt with new hypothetical securities. *Compare* Order at 98. And likewise, of course, no party presented any evidence that ComEd actually paid off the hypothetically maturing portion of the hypothetical debt. Contrary to the Commission's conclusion, however, ComEd has presented sufficient evidence that this hypothetical debt should not be presumed to disappear at the end of 2011; it should instead be treated like the vast majority of ComEd's real debt: as refinanced upon maturity. Nonetheless, on rehearing, ComEd can provide additional evidence that ComEd would have had to refinance the debt upon maturity.

This does not mean that ComEd's pension assets will remain constant forever. As outlined by GAAP, the *overall* pension asset will decrease over time by an amount equal to each year's pension accruals (and increase as a result of any contributions to the pension funds). Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 14:277-15:307; ComEd Ex. 55.4. Since ComEd's last rate case, ComEd recovered \$52.5 million in pension expense accruals through rates. ComEd Ex. 29.7. ComEd has used these pension accruals to diminish the pension asset *not* accounted for by the 2005 pension contribution because that portion of the asset earns the weighted average cost of capital as opposed to the lower hypothetical debt return on the 2005 contribution. Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 14:295-99. This approach benefits customers. However, *even if* ComEd applied the entirety of those funds to pay down the \$189 million principal of the 5-year debt, it would still have \$136.5 million in unrecovered principal on this hypothetical debt. *See* Docket No. 05-0597, ComEd Ex. 52.15, p. 1. The Order's conclusion is in conflict with this evidence.

2. The Commission's Conclusion is Inconsistent with Prior Orders and is Arbitrary and Unlawful.

In the Order on Rehearing in Docket No. 05-0597, the Commission allowed ComEd recovery of a limited return, based on ComEd's then cost of long-term debt, on the pension contribution it made in that test year. *Commonwealth Edison Co.*, ICC Docket No. 05-0597, Corr. Order on Rehearing (Dec. 20, 2006) at 26-28. Again in Docket No. 07-0566, the Commission affirmed this treatment. The Commission did not, however, order ComEd or others to pretend that such hypothetical debt was really issued, and more importantly the Commission did not intimate that in future cases it would pretend further that ComEd "retired" these hypothetical "bonds." The fact that the Commission did not so state makes perfect sense; doing so would have denied ComEd even debt-rate cost recovery based on a make-believe scenario that

is foreign to ComEd's actual financial situation. Yet that is precisely what the Commission inexplicably concludes in this case. This pretense would deny ComEd cost recovery on pension assets that still exist and that still carry a cost. It arbitrarily departs from the Commission's previous decisions and is therefore unlawful.

Moreover, the disallowance also relies on events that will hypothetically happen outside of the allowed pro forma adjustment period. As discussed above, the basis for the adjustment is that "the 5 year bond series reflected in Alternative 3 could be assumed to be paid off around the end of 2011," and therefore "it appears improper to reflect the entire cost of these 5 year bonds in the 2009 test year." Staff Init. Br. at 47 (emphasis added). *See also* Staff Init. Br. at 49, Rep. Br. at 37 ("Given that five years have passed since the Commission approved recovery of 2005 pension contribution costs, it is necessary to address the application of Alternative 3 to the 2009 test year."); Pearce Reb., Staff Ex. 18.0, Sched. 18.02 (calculating recovery beginning January 2007). Events transpiring at the end of 2011 cannot properly be considered by the Commission in setting rates in this proceeding, however, as they are outside the selected 2009 test year and beyond the 12 months subsequent to the June 30, 2010 filing date of the tariffs in this Docket as permitted by the Commission's rule related to consideration of post-test year known and measureable changes. *See* 83 Ill. Admin. Code § 287.40.

3. The 25% Retirement Assumed by the Order is Incorrect and Contrary to the Evidence.

In the alternative, if the Commission continues to assume that ComEd's capital needs disappeared – despite the law and the record evidence to the contrary – the Commission should at the very least use the mathematically correct retirement amount. The \$6.329 million disallowance that the Order adopts uses 25% as the hypothetical bond retirement amount, when that hypothetical amount representing the portion of the hypothetical debt attributable to 5-year

bonds should actually be 23.5%. *Compare* Docket No. 05-0597, Houtsma Dir. on Rehearing, ComEd Ex. 52.0 Corr., 29:589-30:604; and ComEd Ex. 52.15 *with* Docket No. 10-0467, Pearce, Tr. 2560:5 – 2562:5; Pearce Reb., Staff Ex. 18.0, Sched. 18.02; ComEd Cross Ex. 23; and Pearce, Tr. 2563:14 – 2564:9 (describing calculations on cross exhibit). This would reduce the disallowance by \$376,000.

* * * * *

The \$6.329 million 2005 pension disallowance is not supported by substantial evidence, is against the manifest weight of the evidence, and unlawfully denies ComEd recovery of reasonable and prudently incurred costs of utility service. ComEd Init. Br. at 68-69; ComEd Rep. Br. at 83-85; ComEd RBoE at 74-77. The Commission should therefore grant rehearing.

C. Cost of the 2009 Pension Trust Contribution

The Order limits the recoverable costs of the \$92.5 million jurisdictional rate base effect of ComEd’s \$152 million 2009 pension contribution to a narrow measure of “ratepayer benefit” quantified as the amount by which current pension expense is immediately lowered. Order at 51. This results in a \$1.4 million reduction in the revenue requirement. *See* Ebrey Reb., Staff Ex. 16.0, Sched. 16.05. In applying this limit to the pension contribution costs, the Order states that “the additional cost of a discretionary prepayment should be subject to a more stringent test of rate recovery.” Order at 50-51. The Order also concludes that to allow ComEd to include the entire pension contribution in its revenue requirement “may encourage utilities to divert capital resources from other utility investments in order to obtain full return on pension prepayments, rather than making other prudent investments related to provision of utility service.” *Id.* at 51. These conclusions are incorrect and constitute reversible error for three main reasons.

1. A Cap on Pension Contributions is Bad Policy.

First, the Order's cap on pension contributions is simply bad policy. The Commission agrees that ComEd's decision to address the increase in the unfunded status of its pension plan with the contribution at issue was reasonable and prudent. *See* Order at 51; Houtsma Reb., ComEd Ex. 29.0, 17:340-54; Tierney Reb., ComEd Ex. 39.0, 19:412-21:440; Apple Reb., ComEd Ex. 27.0, 3:53-4:82. Yet the Commission caps cost recovery at the level of customer benefit – which, as discussed below, the Commission incorrectly concludes is limited to the amount of the reduced test year pension expense.

This unprecedented extension of the customer benefits test beyond incentive compensation is inconsistent with general ratemaking principles. As the evidence shows, it would be difficult (if not impossible) generally to identify and quantify benefits resulting from particular expenditures. Tierney Reb., ComEd Ex. 39.0, 22:448-29:603, 19:405-11. The proper test for recoverability of an expense is whether the expense is prudently incurred at a reasonable cost to support the provision of delivery service. It is true that the customer benefits test has been applied by the Commission in the limited area of incentive compensation as a means to ensure that customers do not pay costs incurred by the utility that benefit shareholders. That “shareholder benefit” issue does not exist here; no one has argued or provided evidence in support of the idea that funding ComEd's pension plans somehow benefits shareholders as opposed to customers. The customer benefits test is thus inapplicable to pension funding expenses. This capped amount bears no relationship to the economic cost incurred by ComEd in making the contribution and would deny ComEd its constitutional and statutory rights to full recovery of such costs.

In addition, the Order's conclusion that to allow recovery may improperly incent utility investment in pensions is exactly contrary to the more likely outcome of the Order. If anything,

the Order's disallowance of pension funding costs creates a disincentive to fund pensions and could encourage the utility to divert its finite capital resources to *other* investments that *would* produce a full return. *See* Houtsma Sur., ComEd Ex. 55.0 2nd Rev., 17:344-55. The Order's conclusion on this matter is also without any evidentiary basis – no party offered any evidence or argument that ComEd has diverted resources from other utility investment in order to obtain a full return on its pension contribution. If this problem arises in the future, and the Commission finds that utilities are improperly funding pension plans at the expense of other investments, the Commission can clearly disallow those specific investments at that time. To disallow prudent and reasonable costs now, however, as a deterrent for potential future improprieties, is reversible error.

The Order also undermines the goal of adequate pension funding, a goal Staff conceded is appropriate and that is established in federal law as a result of the Pension Protection Act of 2006. Indeed, the Order uses these minimum federal legal requirements against ComEd, characterizing ComEd's contribution as a "prepayment" or a "discretionary" contribution. *See* Order at 50-51. Recovery of the cost of pension contributions should not be diminished because these contributions are governed by rules and specific accounting guidelines. Those rules do not affect in any way the fact that when ComEd makes a contribution like the one at issue here, it incurs an economic cost equal to its weighted average cost of capital. Nor do those rules make the timing of recovery of this economic cost any less important than other costs. Quite simply, the minimum federal legal requirements are not the basis for measuring the recoverability of pension contributions. Any contributions above and beyond those minimum requirements should be fully recoverable as long as they are reasonable and prudent. No party contends that the 2009 contribution was imprudent or unreasonable. Thus, calling ComEd's effort to put its

pension funds back on solid footing “discretionary” and not recoverable in full is simply at odds with the Order’s conclusion that funding the pension plan was prudent.

Further, the extension of the “customer benefits” test to so-called “discretionary” expenses is not only unprecedented but unworkable. If consistently applied, it would require the Commission to identify and determine which of hundreds or thousands of test year expenses are “discretionary,” *i.e.*, above the minimum required by law. In the context of a case in which the Commission has expressed concern over the level of rate case expenses, such a suggestion is especially ill-timed, as this test would surely multiply the costs of litigating rate cases. Added to that would be the requirement that the Commission then identify and limit recovery of the costs of such “discretionary” expenditures to the extent of any ensuing customer “benefit,” another contentious and complicated issue. The lawful test is a bright line – either the expense is prudent and reasonable or it is not. If it is the former, the opportunity for full recovery must be allowed.

Finally, because this type of “cap” is one-sided, it will ensure that the utility cannot have an opportunity to recover its full costs of service. The treatment of Exelon Way severance costs is instructive. There, ComEd is allowed to recover \$18.8 million per year for investments that produce \$70 million in annual customer benefits. *See* ComEd RBoE at 71. If the customer benefits test were to be applied symmetrically, ComEd would be allowed to recover the full \$70 million. That too would be a violation of the cost recovery principle, but no more so than the asymmetrical cap approach adopted by the Commission with respect to the 2009 pension contribution. *See also* Docket No. 05-0597, Corr. Order on Rehearing at 28 (acknowledging ComEd’s 2005 pension contribution saved customers \$30.2 million but allowing only \$25.3 million in cost recovery).

2. **Reduced Annual Pension Expense is an Incomplete Measure of the “Customer Benefit” of Pension Contributions.**

Second, the Order’s measure of “customer benefit” is incomplete and inaccurate. The reduced annual pension expense in the test year resulting from the 2009 pension contribution is certainly a benefit to customers, but it is not the only customer benefit of the pension contribution. At a minimum, the pension contribution can be expected to provide on-going cost savings, and also results in the attraction and retention of a skilled workforce, thereby increasing the safety and reliability of ComEd’s delivery service, which is undoubtedly a customer benefit. *See i.e.* Tierney Reb., ComEd Ex. 39.0, 22:448-29:603. Indeed, all of ComEd’s costs of doing business benefit customers by contributing to the provision of safe, efficient, and reliable delivery service, and not every expense requires an additional and quantifiable “customer benefit” to justify its recovery. *Id.*

3. **Allowing Recovery of Both Pension Expense and the Cost of the Contribution Does Not Double-Count.**

Finally, to the extent the Order suggests that allowing a return on the contribution in addition to the pension expense itself is some kind of “double recovery,” the Order is incorrect. *See* Order at 50 (“ratepayers already bear the annual pension cost as determined in accordance with accounting rules that rely on actuarial valuation.”). Annual pension accruals collected through rates represent the annual expense of providing pension benefits to employees. Houtsma Reb., ComEd Ex. 29.0, 21:429-31. The requested return on the pension asset reflects contributions made by ComEd from sources other than annual pension expenses collected through rates. *Id.* These costs are related but separate, and the former should not be used as a basis to reduce ComEd’s recovery on the later when it is a prudently and reasonably incurred cost. No witness in the case disputes this logic. This is no more double-counting than the

recovery of depreciation expense on a capital asset in addition to a return on the undepreciated balance of the asset – a fundamental principle of utility ratemaking. *Id.*, 21:432-34.

* * * * *

No matter how it is couched or phrased, the Order bars ComEd from recovering the capital costs of its contribution even after the Commission determines the costs to be just and reasonable. This punishes ComEd for acting responsibly to protect its employees and retirees by addressing its severely underfunded pension plan, and it would render rates unreasonable because they do not reflect the costs to serve customers. The \$1.4 million 2009 pension disallowance is not supported by substantial evidence, is against the manifest weight of the evidence, and unlawfully denies ComEd recovery of reasonable and prudently incurred costs of utility service. ComEd Init. Br. at 46-49; ComEd Rep. Br. at 65-68; ComEd RBoE at 50-55. The Commission should therefore grant rehearing on this issue.

D. Rulemaking re Rate Case Attorneys’ and Consultants’ Fees

The Order finds that a rulemaking should be opened for “determining what must be included in rate case expense, the level of specificity involved in that inclusion, and the documentation involved.” Order at 82. That finding is premised on the inference that Section 9-229 changes the substantive law of expenses as well as requiring explicit consideration of the issue. The statute, however, is clear. It states:

Consideration of attorney and expert compensation as an expense. The Commission shall specifically assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing. This issue shall be expressly addressed in the Commission’s final order.

220 ILCS 5/9-229. Section 9-229 does not impose a substantive standard any different from the standard the Commission has employed for decades to assess whether rate case expenses should be allowed as an operating expense. It simply requires that an express finding be made.

Moreover, nothing in Section 9-229 disturbs the established rule that just and reasonable rate case expense “is ordinarily properly and fairly allowed as an operating expense.” *Du Page Utility Co. v. Illinois Commerce Comm’n*, 47 Ill. 2d 550, 561 (1971). Section 9-229 does nothing to disturb that rule.

In sum, there is no new rule or evidentiary requirement relating to rate case fees and expenses that warrants a rulemaking. Because such a rulemaking is simply unnecessary, ComEd respectfully requests rehearing on this issue.

E. Certain Consultant Fee Disallowances

The Order reduces rate case expenses by \$150,000 by eliminating any compensation for the work of Mr. Sullivan, stating repeatedly that ComEd offered no evidence of what he did. *See* Order at 77-78. That simply is a mistake. Mr. Fruehe testified:

Q. Mr. Smith proposes another rate case expense reduction related to the work performed by Sullivan and Associates. He characterizes Mr. Sullivan as an “unknown consultant” performing “unknown services”. Is this characterization accurate?

A. No. Mr. Sullivan is an accounting and financial contractor who provides a necessary and cost effective augment to ComEd’s regulatory staff during rate case preparation. The heavy work load associated with rate cases is intermittent and thus ComEd does not staff for the peak work load. Mr. Sullivan assists in the preparation of the voluminous Part 285 filing requirement schedules and in responding to discovery. ComEd has received over 1,550 individual data requests to date, not to mention the numerous subparts included in many of the requests, all of which must be responded to in specified time frames. Mr. Sullivan provides an enormous amount of value by assisting in getting the responses out to Staff and intervening parties in a timely manner.

Q. Have the costs associated with Sullivan and Associates been included in previous rate cases?

A. Yes. The costs associated with Sullivan and Associates were included in the approved rate case expenses in ICC Docket Nos. 05-0597 and 07-0566.

Fruehe Sur., ComEd Ex. 56.0 3rd Rev., 16:333-17:349.

The Order (at 77) also notes a purported reference in ComEd's Initial Brief (at 62) to Mr. Sullivan's work being "instrumental in allowing it to meet the stringent time deadlines" for discovery in this Docket, inferring that those deadlines were related to the Rate Design Investigation Order. That is also simply mistaken. ComEd's Initial Brief made no such statement, and its Brief on Exceptions (at 51-52) made clear that ComEd was talking about the abbreviated discovery time lines in every rate case, which is why Mr. Sullivan also worked on the last two ComEd rate cases.

Finally, the Order (at 77) asserts that lawyers prepare whatever is necessary to initiate legal proceedings, but, even were this completely true, there is no basis in the record for the hypothesis that lawyers do all the work on complying with Part 285 requirements. No party claimed that, and the evidentiary record is exactly the opposite. Indeed, had lawyers done all the work, the costs would have been greater.

The cost of Mr. Sullivan's work should be restored.

F. ADIT Roll Forward

The Order "rolled forward" Accumulated Deferred Income Taxes ("ADIT"), removing \$117,366,000 from rate base on this basis. Order, Appendix A, p. 7, col. (b). The Order (at 24) states in part: "The Commission also notes that it is not controverted that, if accumulated depreciation must match *pro forma* plant additions, ADIT [Accumulated Deferred Income Taxes] must also correspond in this manner." That is incorrect. The Order itself (at 26) recognizes that ComEd has contended that accumulated depreciation and ADIT should be treated individually as they are different items with different characteristics. The Order (*id.*) agrees that they are different but states ComEd has proffered "no legal reason" for different treatment. The latter also is incorrect.

ComEd's Brief on Exceptions (at 23-26) pointed out that the Second District decision in *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389 (2d Dist. 2010), did not even mention, much less discuss, ADIT; and then presented over two pages of detailed legal arguments on why the decision, and the statutory provision underlying the decision, 220 ILCS 5/9-211, as well as the relevant Commission rule, 83 Ill. Adm. Code § 287.40, do not support rolling forward ADIT. In brief, unlike accumulated depreciation, ADIT is not part of the definition of (the accounting for the costs of) net plant (as illustrated, for example, by page 6 of Appendix A of the Order), and thus the Second District decision, and Section 9-210, which refer to the value of investment, do not apply to ADIT. Copies of pages 23-28 of ComEd's Brief on Exceptions are attached hereto as Attachment 1. (Pages 26-28 as to accumulated depreciation further discuss the Second District decision and 220 ILCS 5/9-210, 9-211.) In addition, the evidence does not support rolling forward ADIT because it is not needed to avoid over-recovery of capital investments or the revenue requirement, which ComEd has been under-recovering. *E.g.*, ComEd Brief on Exceptions at 28 (citations gathered). The Order should reverse its conclusion on the roll forward of ADIT.

G. Other Issues

ComEd preserves all other disputed issues listed below and hereby incorporates its arguments from prior briefing on these issues as if set forth fully herein. For the reasons articulated in ComEd's briefs in this proceeding and briefly summarized below, the Commission should grant rehearing on these issues.

- III.C.3.d. Rate Base—Contested Issues —Specific Plant Investments—Whether to Include PORCB Costs Here: The Order (at 37-40) errs in removing from rate base all of the costs that ComEd attributed to its PORCB program while postponing until 2014 a ruling on whether the costs are properly recoverable through the related rider. The Commission has more than ample evidence before it to make an allocation decision in this Docket. Further, there is no legal basis for removing these costs from rate base unless the Commission finds in this Docket that the costs are properly

- recovered in a PORCB reconciliation proceeding. While the Order references the recovery of these costs in a future proceeding, it leaves open the possibility that in 2014 such costs could be found to not meet the requirements for recovery in that proceeding, meaning they should have been included in rate base in the instant Docket. This subjects ComEd to uncertainty and regulatory risk and could result in inappropriate and unfair denial of recovery of prudent and reasonable costs that no one denies should be recovered one way or the other. ComEd Init. Br. at 37-40; ComEd Rep. Br. at 43-49; ComEd BoE at 28-32; ComEd RBoE at 38-42.
- III.C.3.e. Rate Base—Contested Issues—Specific Plant Investments—Allocation of G & I Plant: The Order (at 41-42) errs in reducing ComEd’s General and Intangible (G&I) Plant by \$15,693,000 (gross plant amount), which is an incorrect result based on the evidence submitted by ComEd. ComEd Init. Br. at 40-43; ComEd Rep. Br. at 49-52; ComEd BoE at 32-37.
 - III.C.7. Rate Base—Contested Issues—Customer Deposits: The Order (at 54-55) correctly rejected AG/CUB’s and Staff’s proposal to use a 2009 year-end balance instead of an average 2009 balance to calculate customer deposits, but incorrectly accepted AG/CUBs proposal to add non-jurisdictional (non-delivery services) customer deposits to the jurisdictional (delivery services) customer deposits that ComEd already had deducted from rate base. ComEd Init. Br. at 49-52; ComEd Rep. Br. at 68-72; ComEd BoE at 41-44; ComEd RBoE at 55-58.
 - III.C.8. Rate Base—Contested Issues—Material and Supplies Inventories: The Order (at 57-58) reduces the amount of ComEd’s materials and supplies inventories included in rate base by deducting \$477,000 from the inventory level related accounts payable. This deduction should be eliminated as it is improper, and results in double-counting a single offset to rate base. ComEd Init. Br. at 52-53; ComEd Rep. Br. at 72-73; ComEd BoE at 44-45; ComEd RBoE at 58-59.
 - IV.C.1. Operating Expenses—Contested Issues—Incentive Compensation Cost and Expenses: The Order (at 65) incorrectly disallows 100% of the costs of the Exelon 2009 Key Manager Restricted Stock Award Program, resulting in an adjustment to operating expenses of \$2,150,000 (and a reduction to gross plant of \$896,000). Providing compensation in the form of restricted stock encourages managers to remain focused on the long-term health of the business, including taking actions that improve the performance of the business for both customers and the utility. ComEd Init. Br. at 54-58; ComEd Rep. Br. at 75-78; ComEd BoE at 46.
 - IV.C.3.g. Operating Expenses—Contested Issues—Administrative and General Expenses—Perquisites and Awards: The Order (at 103) incorrectly disallows portions of ComEd’s perquisites and awards expenses. Recovery of the entire \$3.495 million in perquisites and awards in ComEd’s operating expenses should be approved because improvements in job performance directly benefit customers. ComEd Init. Br. at 72-73; ComEd Rep. Br. at 86; ComEd BoE at 56-57; ComEd RBoE at 79.

- IV.C.3.i. Operating Expenses—Contested Issues—Administrative and General Expenses—Charitable Contributions: The Order (at 108) errs in disallowing \$214,000 in contributions to organizations outside of ComEd’s service territory, which is contrary to the clear requirements of Section 9-227 of the Act, 220 ILCS 5/9-227. The entirety of ComEd’s \$6.3 million of charitable contributions meet the tests set forth in the Act and should therefore be approved in total. ComEd Init. Br. at 76-78; ComEd Rep. Br. at 87; ComEd BoE at 57-58; ComEd RBoE at 83-86.
- IV.C.3.j. Operating Expenses—Contested Issues—Administrative and General Expenses—Legal Fees—IRS Dispute: The Order (at 110) errs in disallowing the entire \$2.187 million in legal fees related to an IRS dispute associated with the gain on the sale of fossil generating units, on the basis that such fees are not jurisdictional. The Order approves the cherry picking of one charge out of thousands in Account 923 to remove from ComEd’s operating expenses, which upsets the balance of Account 923 charges that are, for practical reasons, allocated using a general labor allocator, resulting in an overall reasonable estimation of jurisdictional cost. ComEd Init. Br. at 78-79; ComEd Rep. Br. at 87; ComEd BoE at 58-59; ComEd RBoE at 86.
- IV.C.3.k. Operating Expenses—Contested Issues—Administrative and General Expenses—Professional Sporting Activity Expenses: The Order (at 111) errs in disallowing the entire amount (\$8,000 in rate base and \$64,000 in operating expenses) associated with professional sporting activities. ComEd offered evidence demonstrating that these costs are related to the provision of delivery services, are reasonably incurred in the normal course of business activity, and can help the company function more efficiently. ComEd Init. Br. at 79-80; ComEd Rep. Br. at 87-88; ComEd BoE at 59-60.
- VI.C.1.a.i. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Primary/Secondary Split—Appropriate Methodology/Compliance with Docket No. 08-0532: The Order (at 170-71) errs in concluding that ComEd’s primary/secondary cost analysis did not comply with the RDI Order. The record contains substantial evidence that ComEd complied with the RDI Order in (1) performing direct observation of its facilities, (2) conducting adequate sampling, and (3) reviewing accessible information about the manner in which other utilities treat the primary/secondary issue. ComEd Init. Br. at 107-10; ComEd Rep. Br. at 113-15; ComEd BoE at 78.
- VI.C.1.a.iii. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Primary/Secondary Split—Direct Observation of ComEd Facilities: The Order (at 180-81) errs in finding that no field inspections occurred as part of ComEd’s primary/secondary analysis, because the evidence shows that ComEd’s investigation included field reviews. ComEd Init. Br. at 111-13; ComEd Rep. Br. at 117-18.
- VI.C.1.a.iv. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Primary/Secondary Split—Sampling: The Order (at 182) errs in concluding that ComEd did not examine a sufficiently large or

representative sample as part of its primary/secondary analysis, because ComEd provided data for all of the nearly 6,400 circuits at issue. ComEd Init. Br. at 113-14; ComEd Rep. Br. at 118.

- VI.C.1.a.v. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Primary/Secondary Split—Review of Other Utilities Treatment of Primary/Secondary Issues: The Order (at 184-85) errs in concluding that ComEd’s examination of the tariffs of other utilities did not satisfy the requirements of the RDI Order to review other utilities’ methods in differentiating primary and secondary systems and costs and that ComEd somehow did not factor its examination of other utilities into its primary/secondary analysis. ComEd Init. Br. at 114-15; ComEd Rep. Br. at 119-20.
- VI.C.1.b. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Other Primary/Secondary Split issues—4kv asset allocation: ComEd seeks rehearing on the Order’s conclusion that it conduct this customer-specific cost study (at 190-91) only insofar as it requires such study to be part of ComEd’s initial rate case filing. ComEd Init. Br. at 116; ComEd Rep. Br. at 120.
- VI.C.1.c. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Investigation of Assets Used To Serve Extra Large Load Customer Class: ComEd seeks rehearing on the Order’s conclusion that it conduct this customer-specific cost study (at 191, 195-96) only insofar as it requires such study to be part of ComEd’s initial rate case filing. ComEd Init. Br. at 116; ComEd Rep. Br. at 120.
- VI.C.1.i. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Indirect Uncollectible Costs and Uncollectible Costs: ComEd seeks rehearing on the Order’s conclusion that it should somehow segregate indirect costs associated with uncollectible costs (at 204) only insofar as it requires the study of these costs to be part of ComEd’s initial rate case filing. ComEd Init. Br. at 121-22; ComEd Rep. Br. at 126.
- VI.C.1.j.ii. Cost of Service and Allocation Issues—Contested Issues—Embedded Cost of Service Study Issues—Customer Care Cost Allocation—Direct Operation and Maintenance Costs vs. Total Costs: The Order (at 213) errs in concluding that ComEd ignored the mandate in the RDI Order with respect to the pool of costs for ComEd to analyze. As Staff pointed out, the RDI Order was unclear regarding the proper pool of costs for ComEd to analyze: “the Commission did not provide sufficient direction to determine what costs should be included in the analysis of customer care costs. Consequently, ComEd interpreted the term ‘these costs’ in the Final Order to mean direct O&M costs.” ComEd Init. Br. at 126; ComEd Rep. Br. at 128-29; ComEd BoE at 88-89.
- VII.C.1. Rate Design—Contested Issues—SFV: The Order (at 231-32) errs in concluding that SFV should only apply to 50% of fixed delivery costs, because the

Order's analysis clearly supports ComEd's original proposal to recover in fixed charges 60% of total Commission-approved delivery costs in the first year, 70% in the second year, and 80% thereafter. ComEd Init. Br. at 137-40; ComEd Rep. Br. at 133-41; ComEd BoE at 90-93; ComEd RBoE at 121-27.

- VII.C.3.a. Rate Design—Contested Issues—Class Definitions—Residential Rate Design—Consolidation of Classes: The Order (at 249-50) errs in declining to adopt ComEd's proposal to consolidate the residential rate classes. The evidence presented by ComEd and Staff supported ComEd's proposal to reduce the number of residential delivery classes from four to two and thereby eliminate the distinction in distribution rates between electric space heating customers and non-electric space heating customers. ComEd Init. Br. at 140-41; ComEd Rep. Br. at 141-43; ComEd BoE at 93-95; ComEd RBoE at 128.
- VII.C.3.b. Rate Design—Contested Issues—Class Definitions—New Primary Voltage Delivery Class vs. Primary Subclass Charges: The Order (at 255-56) incorrectly states that ComEd proposed to consolidate all of the customers in the Small Load, Medium Load, Large Load, Very Large Load and Extra Large Load Delivery Classes. ComEd presented a new Primary Voltage (PV) Delivery class for the Commission's consideration, which would consist of a subset of customers from the Small Load, Medium Load, Large Load, Very Large Load and Extra Large Load delivery classes that take service at a primary voltage (*i.e.*, 4kV, 12kV, or 34kV) because those customers receive similar on-property distribution facilities. ComEd Init. Br. at 142-44; ComEd Rep. Br. at 143-46; ComEd BoE at 95-97; ComEd RBoE at 128-29.
- VII.C.4.c. Rate Design—Contested Issues—Non-Residential—Railroad customers—Utilization of Railroad Customers' Facilities: ComEd seeks rehearing on the Order's requirement that ComEd submit a report regarding its use of these facilities (at 273-75) for clarification as to the nature and components of the required report. For example, the Order states that ComEd's report on Railroad facilities should "include a description of any modification to Railroad Customer equipment, the solution required, and an estimate of the cost that each Railroad Customer would likely bear for the required modification, if the solution were implemented." Order at 273. ComEd requests that the Order be clarified to refer to the "cost that each Railroad Customer would likely bear for the required modifications to ComEd's facilities." ComEd has no way of predicting how the Railroads would manage the modifications of their own facilities or how much cost they would incur. ComEd Init. Br. at 146; ComEd Rep. Br. at 148.
- VII.C.4.d. Rate Design—Contested Issues—Non-Residential—Dusk to Dawn Street Lighting: ComEd seeks rehearing on the Order's adoption of the Chicago Method (at 279-80) for clarification that the current adoption is not to be construed as a precedent mandating the use of the Chicago Method for future cost allocation. ComEd Init. Br. at 146; ComEd Rep. Br. at 148; ComEd BoE at 97-98; ComEd RBoE at 129.

- VII.C.7.b. Rate Design—Contested Issues—General Terms and Conditions—Limitation of Liability Language: The Order (at 299-301) errs in rejecting ComEd’s proposal to add specific Limitation of Liability language to the Nature of Service portion of the General Terms and Conditions. ComEd’s proposed modification, which was supported by Staff, ensures uniformity with the other Illinois utilities. ComEd Init. Br. at 153-54; ComEd Rep. Br. at 152-53; ComEd BoE at 99.
- VIII.D. Revenues—Late Payment Charge Revenues: The Order (at 305-06) rejects Staff’s and ComEd’s testimony and arguments that only the \$11.1 million of jurisdictional (delivery services) late payment charges revenues should be included in calculating ComEd’s revenue requirement, and instead recommends that, in addition, the \$13.986 million of non-jurisdictional late payment charges revenues also should be included. The Order errs in approving addition of the non-jurisdictional portion. ComEd Init. Br. at 158-59; ComEd Rep. Br. at 155-56; ComEd BoE at 99-102; ComEd RBoE at 134.

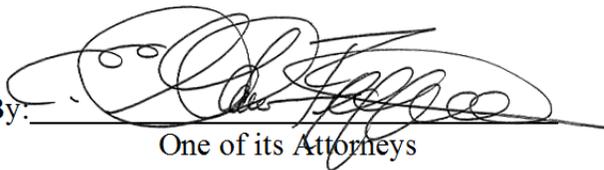
IV. CONCLUSION

The Commission should, for these reasons, grant rehearing and revise the Order as requested herein.

Dated: June 23, 2011

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Ross Hemphill, being first duly sworn upon oath, state: that I am a Vice President of Commonwealth Edison Company, an Illinois corporation; that I have read the foregoing Application for Rehearing; that I am familiar with the facts and matters set forth therein; and that based on my personal knowledge and the business records of Commonwealth Edison Company, the statements of fact made therein are true and correct to the best of my information and belief.

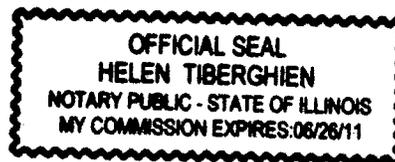


Ross Hemphill

Subscribed and Sworn to
before me this 23rd day
of June, 2011.



Notary Public



My Commission Expires: 6-26-11

CERTIFICATE OF SERVICE

I, E. Glenn Rippie, do hereby certify that a copy of the foregoing VERIFIED APPLICATION FOR REHEARING OF COMMONWEALTH EDISON COMPANY was served upon all parties on the attached Service List by the method so indicated this 23rd day of June, 2011.



A handwritten signature in black ink, appearing to read "E. Glenn Rippie", is written over a horizontal line. The signature is highly stylized and cursive.