

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
vs.	:	Docket No. 10-0537
	:	
Commonwealth Edison Company	:	
	:	
Reconciliation of revenues collected under Rider EDA	:	
with actual costs associated with energy efficiency and	:	
demand response programs.	:	

COMMONWEALTH EDISON COMPANY’S MOTION TO STRIKE
THE DIRECT TESTIMONY OF JENNIFER L. HINMAN

Commonwealth Edison Company (“ComEd”), by its attorneys, respectfully files this Motion to Strike the Direct Testimony of Jennifer L. Hinman, filed on behalf of the Staff of the Illinois Commerce Commission (“Staff”) on September 7, 2011 (“Motion”). Specifically, ComEd requests that Ms. Hinman’s testimony regarding her second, third, and fourth recommendations be stricken, as described below, on the grounds that it is not relevant to the “[r]econciliation of revenues collected under Rider EDA with actual costs associated with energy efficiency and demand response programs” during the period June 1, 2009 through May 31, 2010. Importantly, consideration of the irrelevant issues Ms. Hinman raises in this docket would deprive the larger energy efficiency stakeholder community of an opportunity to be heard. Indeed, most of the 15 stakeholders who participated in the approval of ComEd’s 2008 – 2010 Energy Efficiency and Demand Response Plan (“Plan”) are not participating in this docket because they had no notice that a narrowly-focused reconciliation docket would be used as a forum to litigate a host of issues that are unrelated to the reconciliation of revenues with costs.

In support of its Motion, ComEd states as follows:

I. Background

1. In 2007, the General Assembly enacted legislation establishing a comprehensive energy efficiency and demand response framework in Illinois. *See* 220 ILCS 5/8-103 (“Section 8-103”). At its core, Section 8-103 requires electric utilities such as ComEd to file triennial energy efficiency and demand response plans with the Illinois Commerce Commission (“Commission”) that propose a portfolio of cost-effective energy efficiency and demand response measures designed to achieve statutorily-mandated annual energy savings goals within the corresponding annual budgets set by the General Assembly. 220 ILCS 5/8-103(b), (d). Section 8-103 also permits the utility to recover the costs it incurs under the statute through an automatic adjustment clause tariff, and requires that “[e]ach year the Commission shall initiate a review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures.” 220 ILCS 5/8-103(e).

2. On February 6, 2008, the Commission approved ComEd’s Plan, as well as its proposed cost recovery mechanism, Rider EDA – Energy Efficiency and Demand Response Adjustment (“Rider EDA”). *See Commonwealth Edison Co.*, ICC Docket No. 07-0540, Final Order (Feb. 6, 2008) (“*EEDR Order*”).

3. Rider EDA requires that “[e]ach year, on or before August 31, [ComEd] must submit to the ICC an annual report that summarizes the operation of th[e] rider and reconciles the revenues accrued ... with the Incremental Costs incurred in accordance with the provisions of th[e] rider for the previous twelve (12) monthly billing periods ending with the May monthly billing period prior to such filing.” Following each annual report filing, the Commission must “initiate[] a hearing to review such annual report pursuant to Section 8-103(e) of the Act.” Ill. C. C. No. 10, Original Sheet Nos. 248.1 – 248.2.

4. Accordingly, ComEd filed its Annual Report to the Illinois Commerce Commission Concerning the Operation of Rider EDA for the Period Beginning June 1, 2008 and Extending Through May 31, 2009 on August 31, 2009. The Commission initiated Docket No. 09-0378 to reconcile revenues received under Rider EDA with the costs incurred during this initial period, and, after Staff completed its review of the costs incurred, the Commission adopted Staff's recommendation to approve the recovery of all of the costs incurred by ComEd during the first Plan year. *Commonwealth Edison Co.*, ICC Docket No. 09-0378, Final Order (Oct. 6, 2010).

5. On August 31, 2010, ComEd filed its Annual Report to the Illinois Commerce Commission Concerning the Operation of Rider EDA for the Period Beginning June 1, 2009 and Extending Through May 31, 2010 ("Annual Report"). ComEd Ex. 1.0. On September 9, 2010, the Commission opened the present docket to reconcile revenues received under Rider EDA with the costs incurred during the period June 1, 2009 through May 31, 2010 ("Plan Year 2"). *Commonwealth Edison Co.*, ICC Docket No. 10-0537, Initiating Order (Sept. 9, 2010) ("Initiating Order"). The Initiating Order in this docket is no different than the Initiating Order entered in Docket No. 09-0378, and similarly limits the scope of the docket "to present[ing] evidence to show the reconciliation of revenues collected under Rider EDA with costs prudently incurred in connection with proper energy efficiency and demand response activities as defined in the tariffs of the utility." Initiating Order at 3.

6. On September 7, 2011, Staff filed the Direct Testimony of Scott Tolsdorff and Ms. Hinman.

II. Recommendations (2), (3) and (4) of Ms. Hinman’s Direct Testimony Are Not Relevant to this Proceeding.

7. Ms. Hinman makes four recommendations in her direct testimony. Specifically, she recommends that the Commission:

- (i) direct ComEd to include in its next Rider EDA Annual Report a comparison of the EE Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with those articulated in the Company’s EE Plan approved by the Commission;
- (ii) order ComEd to submit Pre- and Post-Plan Year reports;
- (iii) direct ComEd to work with Staff regarding the cost classifications used in cost-effectiveness analyses; and
- (iv) direct ComEd to include non-Rider EDA cost estimates in its cost-effectiveness analysis when it files its next three-year EE Plan.

Hinman Dir., ICC Staff Ex. 2.0, 4:63 – 5:83. With the exception of Ms. Hinman’s first recommendation, which is the only recommendation that addresses the Annual Report at issue in this docket, the rest of her recommendations involve issues that are not before the Commission in this proceeding.

8. The evidentiary standard applicable to this Motion is well established – “[t]he basic principle that animates our law of evidence is that what is relevant is admissible.” *People v. Ward*, 193 Ill. App. 3d 677, 682 (2nd Dist. 1990) (quoting *People ex rel. Noren v. Dempsey*, 10 Ill. 2d 288, 293 (1957)). Evidence is deemed relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” *Id.* (citations omitted); *accord* 83 Ill. Admin. Code § 200.610(a) (“In all proceedings subject to this Part, irrelevant, immaterial or unduly repetitious evidence shall be excluded.”). As shown below, Ms. Hinman’s second, third and fourth recommendations are of no “consequence to the determination of th[is] [reconciliation] action.” *Ward*, 193 Ill. App. 3d at 682.

9. With respect to Ms. Hinman's second recommendation, she requests that the Commission order ComEd to file two additional reports per year, a Pre-Plan Year Report and a Post-Plan Year Report, and to that end she sets forth pages of requirements that each of these reports must address. However, the only report at issue in this docket is ComEd's Annual Report, which prompted the opening of this docket and a lengthy discovery phase that has been underway for well over a year. *See* ComEd Ex. 1.0. The issues of whether there is a need for additional reports outside of a reconciliation docket, whether separate dockets must be opened to consider these reports, and whether the Commission can impose additional reporting requirements under Section 8-103 are not relevant to the reconciliation at issue in this docket.

10. Moreover, because the Annual Report requirement is set forth in Rider EDA, it would seem appropriate that any new reporting requirements be included in Rider EDA to ensure consistency and harmonization across requirements. However, the Commission has previously held that it is inappropriate for Staff to propose changes to a tariff in a reconciliation docket designed to review revenue collected under a rider and where the tariff is not at issue. *See Nicor Gas Co.*, ICC Docket No. 05-0106, Final Order (July 25, 2007) ("*Nicor Gas*"). Accordingly, the following portions of Ms. Hinman's direct testimony regarding additional reporting should be stricken: 4:71-75 and 14:247 – 26:517 (including table).

11. Concerning Ms. Hinman's third recommendation, she requests that the Commission direct ComEd to work with Staff regarding cost classifications for use in cost-effectiveness analyses. Issues regarding whether cost-effectiveness analyses should be modified going forward are not before the Commission in this docket, however. The General Assembly has already decided the proper forum for addressing cost-effectiveness methodology, which is the docket to review a utility's three-year energy efficiency and demand response plan. There,

the utility must “[d]emonstrate that its overall portfolio of energy efficiency and demand-response measures ... are cost-effective using the total resource cost test.” 220 ILCS 5/8-103(f)(5). Therefore, the following portions of Ms. Hinman’s direct testimony addressing cost-effectiveness analysis should be stricken: 5:76-79 and 27:518 – 30:594.

12. Finally, regarding Ms. Hinman’s fourth recommendation, she asks that the Commission require ComEd “to provide estimates of non-Rider EDA employee costs for employees who work on ComEd’s EE portfolio *in its next EE Plan filing* pursuant to 220 ILCS 5/8-103(f) to ensure the Company files an EE Plan that complies with 220 ILCS 5/8-103(f)(5) which requires the utility to demonstrate that its overall portfolio of EEDR measures, excluding low-income programs, are cost-effective using the TRC test.” Hinman Dir., ICC Staff Ex. 2.0, 31:600-05 (emphasis added). Like her third recommendation, Ms. Hinman’s fourth recommendation concerns cost-effectiveness analysis that, as even Ms. Hinman must admit, is the subject of the “next EE Plan filing.” *Id.* As explained above, the General Assembly has directed that cost-effectiveness be addressed in the triennial filings, not in the annual reconciliation dockets. Accordingly, such testimony is not relevant, and the following portions of Ms. Hinman’s direct testimony should be stricken: 5:80-83 and 30:595 – 33:654.

III. Consideration of Recommendations (2), (3) and (4) in This Docket Would Deprive Most Stakeholders of an Opportunity to Be Heard.

13. The design and implementation of ComEd’s Plan benefit from the broad participation of the energy efficiency stakeholder community. Some 15 intervenors participated in the docket to approve ComEd’s Plan, and even more stakeholders attend the regular meetings held by the Stakeholder Advisory Group that was established to review and address design, implementation and evaluation issues. Notably, most of these parties have chosen not to

participate in the more narrowly focused reconciliation dockets, including the present docket. As a result, if the Commission were to consider Ms. Hinman's second, third, and fourth recommendations in this docket, over a dozen stakeholders would be deprived of an opportunity to be heard regarding issues upon which they previously submitted testimony and briefs. *See, e.g., EEDR Order* at 28, 30-35, 45-46. These stakeholders had no notice that a narrowly-focused reconciliation docket would be expanded to entertain issues such as additional reporting requirements and cost-effectiveness methodologies.

14. Because of these very concerns regarding notice and due process, the Commission has previously rejected attempts to expand the scope of reconciliation dockets to consider issues other than those relating to the revenues collected and costs incurred. In *Nicor Gas*, the Commission found it improper for Staff to propose changes to a tariff in a reconciliation docket to review revenue Nicor had collected under Rider 12 and where the tariff was not at issue:

The purpose of this proceeding is to review Nicor's Rider 12 reconciliation statement for 2004. It is not to amend the terms or application of the existing tariff A proceeding must be initiated with proper notice. It cannot lie buried within a matter with a caption that fails to reflect the nature of the controversy.

Nicor Gas at 16. The same can be said here. As the caption of this matter indicates, this docket concerns "[r]econciliation of revenues collected under Rider EDA with actual costs associated with energy efficiency and demand response programs" during Plan Year 2. Neither the caption, Initiating Order, Rider EDA nor Section 8-103 provides any notice that a Rider EDA reconciliation docket would serve as a broad forum to consider issues such as the propriety of imposing additional reporting requirements or ordering changes related to cost-effectiveness analysis. Staff's recommendations would, without providing proper notice to parties, interested stakeholders or municipalities, introduce new matters into this proceeding and change its nature.

The Commission forbade such a result in *Nicor Gas*, and it should reject Staff's invitation to do so here.

WHEREFORE, ComEd respectfully requests that the Administrative Law Judge grant its Motion and strike the portions of the Direct Testimony of Jennifer L. Hinman described herein.

Date: September 28, 2011

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By 

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