

decision outside the adversarial issues presented to the court by the parties, making an error not of reasoning but of apprehension. *Calderon v. Reno*, 56 F. Supp. 2d 997, 999 (N.D. Ill. 1999). Such was the case here. Of the “very specific portions of the Hempling testimony” that ComEd moved to strike (*see* Response at 3), ComEd identified only a few of those portions as legal opinion. The Ruling addressed only the issue of legal opinion testimony. The Company has never argued that all the testimony stricken by the Ruling was legal opinion testimony. *See* CUB Motion at 3-4 for specific examples. Based on the Ruling’s intent to strike legal opinion testimony, logically, the Ruling does not apply to sections that ComEd argued should be stricken on other grounds. The Ruling was, therefore, outside the adversarial issues presented by the parties. Whether Mr. Hempling’s policy recommendations have merit is an issue that ComEd can rebut in testimony or address in brief, but his expert policy analysis should not be stricken as legal opinion.

ComEd continues to argue that this proceeding should be limited to either the tariff it filed or specific costs included in that tariff. ComEd Response at 5. To allow ComEd to so narrowly define the scope of this docket would severely and improperly restrict the Commission’s authority in this and future formula rate proceedings. CUB urges the ALJs to reconsider their Ruling and to consider whether their intent can be satisfied with the revisions offered in CUB Motion Appendix A.

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Respectfully submitted,



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