



stricken testimony of Mr. Hempling by claiming that Box's testimony "addresses the ... issue of good ratemaking policy and whether that comports with ComEd's view of Section 16-108.5(c)(4)(D)" rather than testifying about "disagreements with the law, about proceedings and requirements contrary to the law, and about his own views of what the words of the law meant." Response at 7. The conclusion that testimony which explains how a party's view of the law comports with "good ratemaking policy" is different than testimony "about [a witness'] views of what the words of the law meant" makes a distinction unrecognized by the law.

If, as ComEd suggests, Mr. Box's testimony is meant to address the "regulatory context in which the law was passed," this issue has already been considered and the Administrative Law Judges have ruled that lawyers cannot offer testimony regarding the law. Notice of ALJ's Ruling of January 31, 2012. ComEd does not contest this ruling or CUB's interpretation of it, and ComEd should be held to the same standard articulated by the ALJs in this matter. ComEd characterizes the rulings of the ALJs to bar testimony as to "what the words of the law meant," the law in this case being Section 16-108.5(c)(4)(d) of the Public Utilities Act. Response at 7, FN 6. According to ComEd, Mr. Box's testimony is meant to "illuminate the meaning to be given to the term 'pension assets' in the statute." Response at 8. In Illinois, the "cardinal rule" of statutory interpretation is to ascertain and give effect to the words enacted by the General Assembly. *See Paszkowski v. Metro. Water Reclamation Dist.*, 789 N.E.2d 342, 344 (Ill. App. Ct. 2003).

ComEd admits that the disagreement which led to the Company's decision to sponsor the surrebuttal testimony of Mr. Box is over ComEd's and Staff's construction of Section 16-108.5(c)(4)(D) of the Act. Response at 7. Mr. Box's testimony, in ComEd's own words, is meant to aid the Commission's interpretation of "an ambiguous statutory term" by

“[understanding] the regulatory context in which the law was passed.” Response at 7. Mr. Box offers his opinion that Ms. Ebrey’s disallowance is contrary to the Public Utilities Act (“Act”) by testifying as to the Act’s intent. ComEd Ex. 24.0 at 5:91-98. Mr. Box’s conclusions are simply Mr. Box’s opinions on the state of the law, the application of that law, and the appropriate legal course for the ICC to take. Motion at 1. Yet somehow ComEd feels that Mr. Box.’s testimony is not addressing “what the statute means,” testimony ComEd maintains is in fact impermissible legal opinion. Response at 7, FN 6.

A witness may not give testimony regarding statutory interpretation, even if the witness is a lawyer, nor may a witness give testimony regarding legal conclusions. Motion at 1-2 (citing *Northern Moraine Wastewater Reclamation Dist. v. Ill. Commerce Comm’n*, 392 Ill. App. 3d 542, 573 (2nd Dist. 2009)). Mr. Box’s testimony applies facts already known by the trier of fact to the law, which is not admissible under Illinois law. Motion at 3 (citing *Mache v. Mache*, 218 Ill. App. 3d 1069, 1077 (1<sup>st</sup> Dist. 1991)). ComEd does not offer competing interpretations of these cases, but instead asks for an exception based on Mr. Box’s “unique” position to supposedly provide context where the Commission is asked to interpret an ambiguous statutory term. Response at 7. ComEd argues it is inconceivable that the General Assembly would enact a statute intended to overturn three previous Commission rulings, three of which were decided when Mr. Box presided as Chairman of the Commission. Response at 8. What the General Assembly meant – or did not mean – is of course a matter of statutory interpretation and legal opinion.

ComEd does not specifically address CUB’s argument that lines 74-90 of Mr. Box’s testimony (the question and answer to “How is Ms. Ebrey’s position a departure from past Commission Orders?”) is legal opinion. Instead, ComEd apparently believes this to be the

“context” discussed above that will assist in the Commission’s interpretation of the statutory language. Response at 7. Nowhere in Mr. Box’s testimony does he describe the Commission Orders he cites as context for the statute. To the contrary, he cites them for the specific premise that this issue “has already been resolved.” ComEd Ex. 24.0 at 5. The triers of fact in this case can make that determination, and Mr. Box’s application of the previous Commission decisions is legal opinion testimony lacking any information beyond the Commission’s knowledge and comprehension. ComEd can make any of the arguments made by Mr. Box in its legal briefs.

CUB supports the arguments made in the Motions to Strike of the Commission Staff and the People of the State of Illinois, and requests that the Administrative Law Judges, at a minimum, grant the relief sought in CUB’s original motion.

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Respectfully submitted,



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