

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)	
)	Docket No. 11-0721
)	
Proposed general increase in electric rates filed)	
pursuant to Public Act 97-0616 (tariffs filed)	
Nov. 8, 2011))	

FACTS AND CLAIMS ON REHEARING OF THE CITIZENS UTILITY BOARD

NOW COMES the Citizens Utility Board (“CUB”), by and through its attorneys pursuant to the schedule set forth by the Administrative Law Judges (“ALJs”) on June 28, 2012, and files this pleading stating facts and claims on Rehearing in the above-captioned matter.

I. Procedural Background

1. On November 8, 2011, Commonwealth Edison Company (“ComEd” or “the Company”) filed tariffs pursuant to Section 16-108.5 of the Public Utilities Act (“PUA” or “the Act”) to establish initial new electric delivery service rates, to be set by a performance-based formula rate.

2. More than ten parties intervened in the proceeding, including CUB, and eight parties, including CUB and Illinois Commerce Commission (“ICC” or “Commission”) Staff introduced testimony during the course of the 270-day proceeding.

3. On May 29, 2012, the Commission entered an Order to (1) establish the formula for recovery of ComEd’s delivery services costs, and (2) determine the initial delivery services rates thereunder. Final Order at 2.

4. June 5, 2012, ComEd filed an Application for Rehearing, requesting Rehearing on numerous issues including the pension asset funding issue, the appropriate rate base to be used in future reconciliation cases pursuant to Section 16-108.5(d) of the PUA, and the appropriate interest rate to be used in future reconciliation cases pursuant to Section 16-108.5(d)(1) of the PUA.

5. On June 22, 2012, the Commission granted in part and denied in part ComEd's Application for Rehearing. Rehearing was granted on the issues of pension asset, the appropriate rate base to be used in future reconciliation cases, and the methodology regarding calculation on interest of reconciliation adjustments. Rehearing was denied on all other issues. Notice of Commission Action, June 22, 2012.

II. Legal Authority

6. The Commission may rescind, alter or amend a prior order or decision at any time, upon notice to the public utility affected. 220 ILCS 5/10-113(a). Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as provided for in the original order or decision. *Id.*

7. When, within 30 days after service of an order on the merits by the Commission, a party files an application for rehearing, the Commission shall grant or deny the application in whole or in part within 20 days from the date of receipt of the application. 83 Ill. Admin. Code §200.880(a) and (d); 220 ILCS 5/10-113(a).

8. Applications for rehearing must state with specificity the issues for which rehearing is sought. 83 Ill. Admin. Code §200.880(b). If an application for rehearing alleges new facts, the application must be filed with a verification. 83 Ill. Admin. Code §200.880(c).

The application must include a brief statement of the proposed new evidence and include an explanation why such evidence was not previously adduced. 83 Ill. Admin. Code §200.880(a)

9. If, after rehearing and consideration of all the facts, including those arising since the making of the order or decision, the Commission determines that the original order or decision (or any portion thereof) is unjust or unwarranted, or should be changed, the Commission may rescind, alter or amend the original order or decision. 220 ILCS 5/10-113(a).

10. Neither the Commission's rules nor the PUA include a prohibition on the introduction of new evidence by parties during rehearing. The ALJs therefore have discretion to allow parties to present new evidence during rehearing.

III. Claims on Rehearing

11. In this Rehearing proceeding, CUB intends to introduce testimony on the issues of the appropriate rate base to be used in future reconciliation cases, and the methodology regarding calculation on interest of reconciliation adjustments.

A. Average vs. End-of-Year Rate Base

12. The Commission correctly concluded that average year rate base is the most appropriate for use in reconciliation proceedings pursuant to Sections 16-108.5(c)(6) and 16-108.5(d) of the PUA. CUB continues to support this conclusion, which was also supported by the City of Chicago, the People of the State of Illinois, AARP, Illinois Industrial Energy Consumers, and Staff in the underlying proceeding. *See* Final Order at 19.

13. In its Application for Rehearing, ComEd claims the Commission erred in concluding that an average, rather than an end-of-year, rate base should be used in determining ComEd's reconciliation revenue requirement under the Act. ComEd Application for Rehearing

at 13. ComEd claimed that using average year rate base was not consistent with the Energy Infrastructure and Modernization Act (“EIMA”) because it will result in greater regulatory lag than use of end-of-year rate base, denying the Company full cost recovery. *Id.* at 14-15.

14. The Act references “what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date,” (220 ILCS 5/16-108.5(c)(6)) suggesting the use of an average rate base methodology for measuring ComEd’s actual results under the reconciliation.

15. Section 16-108.5(c)(6) specifically employs the term “applicable calendar year.” A calendar year is a 12-month period starting on January 1 and ending on December 31. It is CUB’s position, therefore, that for rate base, the calendar year should reflect actual additions and retirements that have occurred during the year. If the legislature had intended a year-end rate base, presumably the specification would have been for a “calendar year-end” and not for the “applicable calendar year.”

16. In its Final Order of May 29, 2012, the Commission adopted an average rate base for future reconciliations. Final Order at 19. The Commission correctly concluded that actual cost information for the year will inevitably include both additions and subtractions throughout the year, but using only end-of-year rate base would assume that every rate base investment was made on January 1 of that year. Final Order at 20. The Commission further opined that viewing Section 16-108.5 as a whole leads to the conclusion that the General Assembly intended some regulatory lag in investment recovery, and using average year rate base in reconciliations best achieves the General Assembly’s intent. Final Order at 21. CUB agrees and supports the Commission’s ruling in this regard.

B. Methodology regarding Calculation of Interest on Reconciliation Adjustments

17. The Commission concluded that the reconciliation period “is both short and long term in nature,” and attempted to set an interest rate “based upon debt that is relevant to the Company for the time duration of the reconciliation.” Final Order at 168. The Commission therefore adopted a “hybrid approach” to capture the “unique aspects” of the relevant period. *Id.* The Commission’s “hybrid” calculation combined the weighted costs of short- and long-term debt and excluded the weighted cost of common equity, resulting in an interest rate of 3.42%.

18. In its Application for Rehearing, ComEd claimed the Commission erred in adopting the hybrid 3.42% interest rate, arguing that rate does not compensate ComEd for its actual costs of accessing capital in the markets as required by the EIMA. ComEd Application for Rehearing at 17-18. ComEd further asserted that such an approach essentially mandates ComEd to alter its capital structure. ComEd Application for Rehearing at 18.

19. The Act states that, “Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest, the charges for the applicable rate year.” 220 ILCS 5/9-16-108.5(d)(1). Thus, the Act provides for interest to be applied, but does not specify how the interest rate should be determined or whether a different interest rate should be applied to over- and under-collections.

17. In the underlying proceeding, CUB argued that using one interest rate for over-collected balances and another for under-collected balances is the most equitable for both ratepayers and shareholders. CUB-City Initial Brief at 43-45. If ComEd over-collects from consumers, it earns its weighted average cost of capital (“WACC”) on that amount. Thus, the reconciliation adjustment should return ratepayers’ money using that same interest rate. If

ComEd under-collects from ratepayers, it will finance that shortfall either using shareholder funds or by obtaining short-term financing. Thus, to make ComEd whole, the reconciliation adjustment should include interest at a rate similar to what ComEd would use for short-term debt financing.

18. CUB continues to support its position that two different interest rates should be used for reconciliation adjustments – one for over-collected balances, and another for under-collected balances.

19. Because ComEd will be responsible for developing the amount of its projected plant additions for each year, it could thus produce over-collections simply by over-projecting such plant additions. CUB Ex. 1.0 at 64. Requiring a higher interest rate for over-collections will thus appropriately compensate customers for having paid the WACC on those projected plant additions that were not, in fact, put in service—and also provide a deterrent to ComEd that will discourage the Company from making intentional over-projections of plant additions. *Id.* A lower interest rate, more closely aligned to ComEd’s short-term debt cost rate, will also encourage the Company to make accurate projections of plant additions, because its earnings on under-collected balances resulting from mis-projecting plant additions would be at a lower rate. *Id.*

20. The Commission’s conclusion on this issue, in its Final Order of May 29, 2012, does not consider the fact that the Company earns on over-collections at a different rate than it pays to finance under-collections. The “hybrid calculation” used in the Final Order (*see* final order at 168) is not equitable, particularly to ratepayers, who will essentially reimburse ComEd at a rate higher than ComEd paid out, and who will be credited back over-payments at a lower

interest rate than ComEd earned while it had access to the funds. CUB intends to more fully develop this issue through testimony in the rehearing.

IV. Conclusion

21. CUB continues to support the positions it took in the underlying proceeding on the issues of the rate base to be used in reconciliations, and the carrying costs to be applied to reconciliation adjustments.

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CITIZENS UTILITY BOARD



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