

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :  
Annual formula rate update and revenue : No. 12-0321  
requirement reconciliation authorized by :  
Section 16-108.5 of the Public Utilities Act :

Surrebuttal Testimony of

**TODD J. JIROVEC**

Vice President,  
Booz & Company

**OFFICIAL FILE**

I.C.C. DOCKET NO. 12-0321

ComEd Exhibit No. 20.0

Witness Jirovec

Date 9/25/12 Reporter \_\_\_\_\_

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1 **I. INTRODUCTION AND PURPOSE**

2 **A. Identification of Witness**

3 **Q. What is your name and by whom are you employed?**

4 A. My name is Todd J. Jirovec and I am a Vice President in the Energy, Chemicals, and  
5 Utilities practice of Booz & Company. My business address is 901 Main Street, Suite  
6 6500, Dallas, Texas, 75202.

7 **Q. Are you the same Todd J. Jirovec who submitted rebuttal testimony on behalf of**  
8 **Commonwealth Edison Company (“ComEd”)?**

9 A. Yes. My rebuttal testimony is ComEd Exhibit (“Ex.”) 15.0.

10 **B. Purpose of Testimony**

11 **Q. What is the purpose of your surrebuttal testimony?**

12 A. The purpose of my surrebuttal testimony is to respond to Office of Attorney General  
13 (“AG”) witness Mr. Brosch’s and Citizens Utility Board (“CUB”) witness Mr. Smith’s  
14 rebuttal testimonies claiming that the 2011 merger costs allocated to ComEd should not  
15 be included in determining formula rates. First, I respond to Mr. Brosch’s arguments that  
16 these costs do not enable the attainment of merger synergies and should be characterized  
17 as parent company ownership costs. Second, I address Mr. Brosch’s claims that the fact  
18 these costs were incurred prior to merger consummation has a bearing on recovery.  
19 Third, I respond to both Messrs. Brosch and Smith who characterize the synergy savings  
20 as speculative. Finally, I respond to Mr. Smith’s conclusion that only shareholders  
21 should bear these costs.

22 **II. RESPONSE TO MR. BROSCH**

23 **Q. Mr. Brosch asserts that the approximately \$6.8 million of merger costs that he**  
24 **continues to challenge “were not incurred to ‘achieve’ any specific savings within**  
25 **ComEd’s business. Rather, these costs were incurred in connection with the**  
26 **assessment of the merger itself and Exelon’s decision whether to acquire**  
27 **Constellation.” Brosch Reb., AG/AARP Ex. 3.0, 4:81-84. Are these statements**  
28 **correct or helpful to allow the Commission to determine whether to allow recovery**  
29 **of the costs?**

30 **A.** No. Exelon’s decision to merge with Constellation had been approved by the  
31 management and the Boards of Directors of each company well before the \$6.8 million of  
32 merger costs were incurred. Indeed, the merger agreement executed between the  
33 companies was dated April, 2011. Costs incurred in connection with the evaluation of  
34 the merger itself and to secure required approvals were included in the Transaction Costs  
35 category of the overall costs-to-achieve. As I testified in my rebuttal testimony, these  
36 costs were not charged to ComEd. Jirovec Reb., ComEd Ex. 15.0, 10:201-08.  
37 Mr. Brosch’s related assertion that the costs incurred in 2011 had “nothing to do with  
38 specific actions to achieve merger savings for ComEd and are more reasonably  
39 considered transaction planning and support costs rather than costs to achieve merger  
40 savings” (Brosch Reb., AG/AARP Ex. 3.0, 8:169-72) is similarly incorrect. The costs  
41 Mr. Brosch cites were not required to effectuate the merger transaction; rather they are  
42 costs incurred to integrate the two companies, a step necessary to facilitate achievement  
43 of savings. Based on my own personal knowledge, these are costs that were

44 unequivocally incurred to prepare for Day-1 operations as a merged company and to  
45 produce future cost savings that will benefit ComEd customers for years into the future.

46 **Q. Mr. Brosch testifies that because these costs were incurred prior to consummation**  
47 **of the merger they should not be recoverable. Brosch Reb., AG/AARP Ex. 3.0, 11:**  
48 **226-49. Do you agree?**

49 A. No. It goes without saying that until the merger was consummated in March, 2012, no  
50 costs were incurred directly to *implement* the merger. Nonetheless, a clear distinction can  
51 and should be drawn between the costs incurred to evaluate and secure necessary  
52 shareholder and regulatory approvals (*i.e.*, Transaction Costs) and the costs incurred to  
53 plan for and effectuate the merger resulting in merger savings (*i.e.*, Transition Costs).  
54 Importantly, no Transaction Costs were allocated to ComEd (and thus to its customers).  
55 Jirovec Reb., ComEd Ex. 15.0, 10:201-08. Mr. Brosch's position that for the Transition  
56 Costs to be recoverable they should not have been incurred until after the merger was  
57 consummated as "it was far from certain that a merger with Constellation would be  
58 completed throughout the entirety of 2011" (Brosch Reb., AG/AARP Ex. 3.0, 11: 233-34)  
59 defies logic and sound business planning. Delaying planning for the integration and  
60 subsequent realization of the merger synergies until the merger was consummated would  
61 delay the realization of savings and the resultant benefits to ComEd. Ineffective and  
62 inadequate planning for Day-1 and subsequent synergy realization *increases* risk to both  
63 customers and shareholders that savings will be ultimately be realized in the manner and at  
64 the time initially estimated. It is my experience that successful integration planning  
65 processes result from the effective use of the time between merger announcement and merger  
66 consummation to prepare for close and synergy realization. In this case, senior leaders for

67 the combined organization were selected prior to merger close, and this early leadership  
68 selection along with extensive pre-close planning enabled the merged company to launch the  
69 staffing and selection process for the rest of the organization immediately after merger close  
70 and complete that process by the end of June. I am familiar with estimates prepared by  
71 Exelon's Integration Office that delaying this process by one month would have reduced  
72 savings by at least \$3 million and as much as \$5 million. Based on my experience, that  
73 estimate is reasonable and leads me to conclude that incurring these costs before merger close  
74 was prudent. Executing this complex process within three months enabled the merged  
75 company to accelerate realization of labor-related savings and focus the new organization on  
76 operating the company.

77 ComEd has been allocated a small portion of the overall costs-to-achieve to realize  
78 merger benefits. Jirovec Reb., ComEd Ex. 15.0, 8:160-62. Mr. Brosch does not offer any  
79 evidence that these costs were not prudently or reasonably incurred, and the mere timing  
80 of their incurrence before merger close is not a sound basis for disallowance.

81 **Q. Mr. Brosch claims that your description of 2011 merger activities (Brosch Reb.,**  
82 **ComEd Ex. 3.0, 7:142-48) is evidence that the incurrence of these costs do not result**  
83 **in merger savings. Is Mr. Brosch's claim an accurate interpretation of your**  
84 **testimony?**

85 **A.** No. Mr. Brosch has fundamentally mischaracterized the incurrence of these costs. In  
86 order for synergies to be realized, the merging companies must be able to operate as an  
87 integrated entity. Merger synergies primarily result from the avoidance of overlap and  
88 duplication between two organizations and benefits from economies of scale. For these  
89 benefits to be realized, the two organizations must be able to operate in a coordinated and

90 common fashion and do so in a way that allows for overlapping activities to be  
91 eliminated and economies of scale to be realized. Jirovec Reb., ComEd Ex. 15.0, 6:130-  
92 7:132. Costs incurred to effectuate these conditions directly enable synergy realization.  
93 Mr. Brosch attempts to make a distinction between integration planning and synergy  
94 realization where one does not exist.

95 **Q. Similarly, Mr. Brosch asserts that the \$6.8 million of costs in question “were parent**  
96 **ownership costs incurred by Exelon to expand and manage its portfolio of**  
97 **businesses.” Brosch Reb., AG/AARP Ex. 5:102-06. Do you agree with that**  
98 **assessment?**

99 A. No. These costs were incurred to plan for and effectively realize the merger savings  
100 resulting from the transaction. Mr. Brosch’s statement simply overlooks the important  
101 fact that these \$6.8 million of costs were incurred for the particular purpose of planning  
102 for Day-1 and beyond, identifying cost savings opportunities, and putting into place the  
103 structures that will best ensure that those cost savings will be realized and that customers  
104 will benefit.

105 **Q. Mr. Brosch further claims that ComEd has provided only “speculative estimates” of**  
106 **potential future merger savings that may be achievable. Brosch Reb., AG/AARP**  
107 **Ex. 3.0, 5:112. Is that a fair characterization?**

108 A. No, it is not. While it is true that the future merger savings identified are estimates and  
109 no one can guarantee that any specific level of savings will be achieved over time, these  
110 estimates were the result of hundreds of hours of planning and analysis. The savings  
111 initiatives were developed by teams intimately familiar with operations of the utilities

112 involved and have resulted in detailed plans to achieve these savings. Mr. Brosch has not  
113 performed any separate merger synergy analyses suggesting that benefits to ComEd will  
114 not occur. It is my opinion, based on my experience and familiarity with the work done  
115 here, that savings will be achieved that will far outweigh the modest amount of costs that  
116 have been allocated to ComEd thus far for recovery from its customers.

117 **III. RESPONSE TO MR. SMITH**

118 **Q. Mr. Smith also addresses the issue of merger savings when he claims that the**  
119 **Maryland Commission found that the merger savings are “inherently speculative”**  
120 **and were “too intangible to quantify as a benefit under its statutes.” Smith Reb.,**  
121 **CUB Ex. 2.0, 5:103-7:162. Do you agree with these characterizations?**

122 **A.** No. Although Mr. Smith highlights certain aspects of that decision, he fails to provide  
123 the proper context of that proceeding. The issue in that case was whether the  
124 Exelon/Constellation merger should be approved, and not whether recovery of merger  
125 costs should be recoverable. The statute being addressed by the Maryland Commission  
126 required that merger benefits be “direct” and “certain” as opposed to “contingent” or  
127 “intangible” before a merger could be approved. The portion of the decision quoted by  
128 Mr. Smith refers to “foregone requests for rate relief” as a benefit that is too “intangible”  
129 to qualify as a customer benefit under Maryland law. That benefit would be realized only  
130 if the utility filed future requests for rate relief, and the uncertainty about the timing of  
131 any such filings was in large part the reason why the Maryland Commission required the  
132 one-time \$100 bill credit. Here, however, as I understand it, annual update proceedings  
133 will guarantee that cost savings will flow through to customers on a timely basis. Mr.  
134 Smith’s assertion that the Maryland treatment “starkly contrasts” with ComEd’s proposal

135 here fails to account for the fact that the two cases arise in very different contexts.  
136 Perhaps the “starkest” contrast is that ComEd Illinois customers will be assured of  
137 receiving the benefits of merger synergies on an annual basis for at least as long as the  
138 formula rate structure authorized by the Illinois statute remains in effect for ComEd,  
139 while Maryland customers had no such guarantee.

140 **Q. Mr. Smith also asserts that “Exelon and Constellation shareholders who voted for**  
141 **the merger presumably expect shareholder benefits to result. It is therefore**  
142 **reasonable that the Exelon and Constellation shareholders bear all of the**  
143 **Exelon/Constellation merger-related cost that was incurred in 2011 prior to the**  
144 **consummation of the merger.” Smith Reb., CUB Ex. 2.0, 9:210-14. Do you agree**  
145 **with this conclusion?**

146 **A.** No. Mr. Smith’s conclusion is not only inequitable, but it is also illogical and a complete  
147 *non sequitur*. He is asking the Commission to decide that because shareholders may  
148 benefit, they should bear *all* of the costs, including those that were incurred to benefit  
149 customers by reducing costs of operation. As I stated in my rebuttal testimony, *both*  
150 customers *and* shareholders stand to benefit from this merger, but *neither* shareholders  
151 *nor* customers have any guarantee of any particular level of benefits. Jirovec Reb.,  
152 ComEd Ex. 15.0, 11:228-30. I have already expressed, and supported, my opinion that it  
153 is reasonably likely that customers will reap substantial benefits from this transaction.  
154 *Id.*, 11:242-44. Therefore, it is only fair and equitable that a portion of the merger costs  
155 be allocated to customers in order to achieve the customer benefits. Exclusion of  
156 Transaction Costs from, and use of Exelon’s cost causative allocation framework to  
157 effectuate, this allocation amply and properly protects customers. Finally, as I pointed

158 out in my rebuttal testimony, <sup>ComEd customers</sup> ~~shareholders~~ are bearing <sup>a small portion</sup> ~~the vast majority~~ - - about 4% - -  
159 of the merger-related costs incurred in 2011.

160 **IV. CONCLUSION**

161 **Q. Do you have any final observations on the rebuttal testimonies of Messrs. Brosch**  
162 **and Smith on this issue of merger costs?**

163 A. Yes. I think it is notable that although each points out that no guarantee exists that  
164 savings will occur at any particular level, neither Mr. Brosch nor Mr. Smith points to any  
165 evidence or analysis to lead the Commission to doubt that *some* net benefits are  
166 reasonably likely to occur. Neither points to any evidence that savings estimates are  
167 flawed for some operational, structural or quantification reason. The savings analyses  
168 were not academic exercises, but carefully and rigorously prepared studies by  
169 knowledgeable people, in connection with a major transaction in which significant  
170 amounts of shareholder capital have been placed at risk. Exelon has developed a robust  
171 integration structure to manage the realization of these savings. All of the above factors  
172 (1) lead me to conclude that net savings are reasonably likely to occur and (2) provide a  
173 sound basis upon which a cost recovery decision can be made by the Commission in this  
174 case.

175 **Q. Does this conclude your surrebuttal testimony?**

176 A. Yes, it does.