

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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| Illinois Commerce Commission      | ) |                    |
| On Its Own Motion                 | ) | Docket No. 11-0711 |
|                                   | ) |                    |
| Development and adoption of rules | ) |                    |
| concerning rate case expense.     | ) |                    |

**REPLY BRIEF ON EXCEPTIONS OF  
COMMONWEALTH EDISON COMPANY  
RELATING TO THE ADMINISTRATIVE LAW JUDGE'S  
PROPOSED FIRST NOTICE ORDER**

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RELATING TO THE ADMINISTRATIVE LAW JUDGE’S  
PROPOSED FIRST NOTICE ORDER**

Commonwealth Edison Company (“ComEd”) submits this Reply Brief on Exceptions (“Reply BOE”) relating to the Administrative Law Judge’s Proposed First Notice Order served on April 30, 2013 (the “Proposed Order” or “PO”), the Appendix to the Proposed First Notice Order served the following day, on May 1, 2013 (the “Draft Rule”), and the Briefs on Exceptions (“BOEs”) filed by various parties on June 6, 2013. The Illinois Commerce Commission’s (“ICC” or “Commission”) Final Order in this proceeding should adopt the changes to both the Proposed Order and the Draft Rule suggested in ComEd’s BOE and accompanying appendices as well as the changes suggested in this Reply BOE.

**INTRODUCTION**

For the most part, the BOEs filed by the other participants in this proceeding provide the Commission with helpful and informative suggestions to create a rule that provides “guidance for all parties as to what evidence is needed to establish attorney’s fees and expert witness fees.” *Commonwealth Edison Co.*, ICC Docket No. 10-0467, (Order May 24, 2011) at 71. However, three Exceptions proposed by other parties do not further this goal. First, several parties suggest bringing utility employees and utility affiliate employees within the scope of the Draft Rule. This proposal is beyond the intended scope of this rulemaking and the Commission should reject

those proposed Exceptions. The Proposed Order and Draft Rule correctly clarify that internal utility expenses related to rate cases are not within the scope of 220 ILCS 5/9-229. PO at 4-7. ComEd does, however, understand that the Proposed Order recognizes the recoverability of these expenses – though not subject to the requirements of Section 9-229. To the extent other parties’ BOEs or Exceptions express a contrary understanding, ComEd believes that understanding is incorrect.

Second, the Attorney General (“AG”) suggests using governmental employee salaries as a benchmark for determining the reasonableness of outside counsel fees. This is contrary to well-established law and the Commission should reject this Exception. Third, the AG and the Citizens Utility Board (“CUB” and together “AG/CUB”) suggest removing language in the Draft Rule related to privileged and confidential information. With one small exception discussed below, this suggestion is also contrary to well-established law and the Commission should reject this Exception. In addition, ComEd offers additional clarifying language regarding the definition of “Time sheets” or “Time Entries” and Section .200(c) concerning attorney or expert affidavits. ComEd also suggests a return to the workshop process to make the language of the Draft Rule less cumbersome.

**I. Internal Utility Expenses Related to Rate Cases Should Not be Subject to the Draft Rule**

It is important to keep in mind that this proceeding originated with the entry of an order in ComEd’s last Article IX rate case, Docket No. 10-0467, in which the Commission announced its intent to have a rulemaking in order to “provide guidance for all parties as to what evidence is needed to establish attorney’s fees and expert witness fees.” *Commonwealth Edison Co.*, ICC Docket No. 10-0467, (Order May 24, 2011) at 71. ComEd has never sought recovery of internal utility expenses as rate case expense, and Docket No. 10-0467 was no exception. The

“attorney’s fees and expert witness fees” for which ComEd sought recovery in Docket 10-0467 and that the Commission therefore intended be addressed in this rulemaking were for outside counsel and external experts only. Utility and affiliate employees were not at issue in that docket, they were not contemplated by the Commission when initiating this rulemaking, and they are not within the scope of this rulemaking.

This is not to say that internal utility and affiliate expenses cannot be recovered as operating expenses generally, or specifically as part of a utility’s rate case expense. The Commission’s well-established practice is to allow utilities to recover utility and affiliate employee expenses associated with rate cases as either administrative and general expense or as part of rate case expense, at the utility’s prerogative. Indeed, the category of costs known as rate case expense encompasses items in addition to outside counsel and outside technical expert fees. In short, it is a category of costs broader than the costs covered by Section 9-229.

Regardless of the manner in which a utility chooses to recover utility and affiliate costs incurred in preparation and litigation of a rate case, those costs are not subject to the evidentiary standards set forth in the Draft Rule. This makes sense not only because they are outside the scope of expenses contemplated by the Commission when initiating this docket, but also because these costs are fundamentally different in nature, and are supported by different kinds of evidence. As the PO specifically recognizes, salaries of internal utility employees are not “expenditures” in the sense contemplated by Section 9-229, and these costs “for participation in a rate case are items that the utility would have incurred regardless of whether a rate case existed.” PO at 6. Unlike outside counsel and outside technical experts, “there are no invoices for what a utility employee did to further a rate case litigation.” PO at 6. ComEd employees do not bill time to matters or projects in the level of detail that the proposed Exceptions

contemplate. They do not generally maintain narrative time entries of their daily tasks. Certain affiliate employees do bill their time, but they do not maintain narrative descriptions and would have similar difficulty providing the information specified in the parties' proposed Exceptions. Attempting to shoehorn these costs into a rule designed to ensure proper documentation of external rate case expenses will result in an ill-fitting rule that neither brings certainty to nor streamlines the analysis of rate case expenses.

As explained in ComEd's BOE, before establishing a requirement of this potential magnitude, the Commission should at the very least weigh the costs and benefits associated with it, to ensure the benefits are likely to exceed the costs. There is no record about the costs these proposed Exceptions will cause utilities to incur, and the existing record suggests that any benefits are likely to be *de minimis* at best. The parties cite to no evidence establishing that rate case expense associated with utility and affiliate employees has ever presented any issues. No estimate exists of the extent to which (if at all) rate case expenses may be reduced by, or the extent to which overall utility costs may increase because of, the need to change systems to comply with these requirements. There is also the possibility that utility costs may increase due to lost productive time of utility and affiliate employees that will now be engaging in timekeeping. Fundamental changes to the way utilities conduct their business that are likely to involve great expense should be supported by a showing that the burden involved will be outweighed by the benefits that customers will ultimately receive. The parties have not done this here. Instead, they offer a potentially very costly "solution" where no problem has been

identified, and if enacted will likely end up increasing the administrative burden and overall cost to litigate rate cases.<sup>1</sup>

In the interest of compromise, ComEd suggests that the Draft Rule clarify that while costs associated with utility and affiliate employees are not within the scope of the Draft Rule, nothing in the Draft Rule changes well-established Commission practice allowing their recovery as part of rate case expense if a utility chooses to recover those costs in that manner. ComEd previously offered Exception No. 2 regarding Section .20. ComEd now suggests the addition of the following shaded text:

### **Section \_\_ .20 Scope**

The requirements of this Part shall only apply to the amounts ~~described in paragraph (a) of this Section~~ expended by a Utility to compensate Outside Counsel and Outside Technical Experts to prepare and litigate a rate case filing that are designated by a Utility as rate case expense and sought to be recovered by the Utility through rates, the justness and reasonableness of which is to be considered at the time the work was performed. Amounts associated with utility and affiliate employees are not within the scope of this Part. Nothing in this Part, however, prevents recovery of amounts associated with utility and affiliate employees as rate case expense if a utility chooses to recover those costs in such manner.

~~a) Amounts expended by a Utility to compensate outside Counsel and Outside Technical experts to prepare and litigate a rate case filing.~~

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<sup>1</sup> AG/CUB appear to suggest a requirement that utilities recover costs associated with utility and affiliate employees as rate case expense, even if they normally recover the costs associated with those employees as other operating expenses. See AG/CUB BOE at 4, 7. This is a departure from their previous positions on this issue. AG/CUB's only support for this new position is the possibility that a utility in an Article IX proceeding will choose a test year in which the utility litigated a rate case, and that this may inflate the revenue requirement because such expense will be treated as recurring. *Id.* Because utilities often pick the most recent year as a test year for Article IX cases, and Article IX cases are not typically filed on a yearly basis, it is unlikely that a utility will utilize a test year in which a rate case was filed. ComEd suggests that if that eventuality comes to fruition, AG/CUB request that such amounts be removed from the revenue requirement in that case if they are truly extraordinary non-recurring expenses. There is no need to address this potential eventuality now in the Draft Rule, and there is certainly no need to apply these requirements to formula rate cases.

## **II. The Reasonableness of Attorney and Expert Fees is Determined by Reference to the Market Rate for Such Services, Not by Comparison to Governmental Salaries**

The AG argues that in assessing the reasonableness of outside counsel compensation, the Commission should consider “the salaries of ICC Staff Counsel and the OAG.” AG/CUB BOE at 17. The AG asserts that case law supports its position. On the contrary, as reflected in Section .300 of the Draft Rule, the test is and should be reference to *market rates* for comparable services. Utilities cannot obtain counsel in the market at government rates and governmental salaries are thus irrelevant.

In Illinois, courts determining whether attorneys’ fees are appropriately awarded have consistently held that the reasonableness of such fees should be determined, among other things, by reference to the market rate for such services. *See Rackow v. Illinois Human Rights Comm’n*, 152 Ill. App. 3d 1046, 1062-63 (1987) (naming “customary charge in the community” among factors to be considered in determining the reasonableness of fees); *Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 23 (1st Dist. 2009) (explaining that “reasonable hourly rate is ‘the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation.’”) (citation omitted); *United States v. Big D. Enter., Inc.*, 184 F.3d 924, 936 (8th Cir. 1999) (“Moreover, we have long recognized that the hourly rate of the local legal community may serve as a benchmark for determining the amount of attorney’s fees to be imposed upon a party.”); *Kaiser v. MEPC Am. Props.*, 164 Ill. App. 3d 978, 984 (1st Dist. 1987). *See also* Ill. Sup. Ct. R. 1.5 (explaining that “factors to be considered in determining the reasonableness of a fee” include “the fee customarily charged in the locality for similar services.”).

This is also true for fees awarded to in-house counsel. *See Cent. States, Se. and Sw. Areas Pension Fund v. Cent. Cartage Co.*, 76 F.3d 114, 115-116 (7th Cir. 1996) (prevailing

plaintiff in an ERISA action was entitled to an award of attorneys' fees under that statute, and thus could receive "market value" for the time its in-house counsel spent prosecuting the claim); *AMX Enter., L.L.P. v. Master Realty Corp.*, 283 S.W. 3d 506, 516-20 (Ct. App. Tx. 2009) (plaintiff corporation could recover its in-house counsel's fees under a state statute allowing for such recovery "at the market rate for outside counsel" where in-house counsel actively worked on the litigation).

Indeed, many courts have rejected an argument analogous to the AG's in upholding awards of attorneys' fees to public sector or nonprofit attorneys that are based on market billing rates. In *Blum v. Stenson*, 465 U.S. 886, 895 (1984), the Supreme Court held that attorneys' fees awarded to nonprofit attorneys under the statute allowing for fee recovery in civil rights cases "are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel." Since then, "[c]ourts have applied *Blum* to calculate government attorneys' fees in a variety of contexts beyond civil rights litigation." *NLRB v. Local 3, Int'l Bhd. of Elec. Workers*, 471 F.3d 399, 406-07 (2d Cir. 2006) (noting that "[c]onsistent with this precedent district courts in this Circuit generally employ market rates to calculate awards of government attorneys' fees."). See also *United States v. City of Jackson*, 359 F.3d 727, 732-34 (5th Cir. 2004) (same); *Big D. Enter., Inc.*, 184 F.3d at 936 (same); *Napier v. Thirty or More Unidentified Federal Agents, Employees, or Officers*, 855 F.2d 1080, 1092-93 (3d Cir. 1988) (same); *Pakter v. New York City Dept. of Educ.*, No. 08-CW-7673, 2011 WL 308272, at \*1 (S.D.N.Y. Jan. 31, 2011) ("Market rate is appropriate regardless of whether Defendants' attorneys are private attorneys, non-profit attorneys, or government employees."). It makes no sense to compensate government attorneys at market rates, but private counsel at government rates.

Undaunted by the weight of this authority, and without any evidentiary support of its own, the AG argues that with respect to legal matters before the Commission, the responsibility and workload between attorneys in private practice and governmental/not-for-profit attorneys are similar, and the ethical obligations to meet deadlines are the same. AG/CUB BOE at 18. Whether or not this is true – and there is no evidence in the record either way – it is irrelevant to the determination of the market rate for outside counsel, which is what the law requires the Commission to use as a benchmark. The AG’s observations about lack of ratepayer participation in fee negotiations is similarly irrelevant. Customers do not provide input regarding any procurement negotiations, whether such negotiations involve wood poles, cable, or attorneys. The AG’s argument about opposing parties’ fees is similarly frivolous. Opposing parties never participate in selection of opposing counsel or in negotiation of their rates. It is worth noting that customers also do not participate in selection of AG or ICC counsel, nor do they determine – or voluntarily pay – AG or ICC employee compensation.

The AG also asserts that the PO’s conclusion that “‘no methodology’ was supplied by the AG for incorporating this information [*sic*] into a Commission assessment” is “unfounded” because a “simple mathematical computation” applied to published salary information would supply the relevant hourly rates. AG/CUB BOE at 18. This ignores the fact that “because government attorneys receive a fixed salary and do not bill a client for their services, a proportionate share of attorneys’ salaries does not necessarily correlate to expenses actually incurred in pursuing a given case.” *Local 3*, 471 F.3d at 407. “It is axiomatic that attorney billing rates do not correlate with annual salary because an attorney’s billing rate is designed to cover more than the attorney’s net income expectations.” *Big D Enter.*, 184 F.3d at 936

(rejecting argument that hourly rate chosen for fee award to government was disproportionate because it would scale out to a salary much higher than the government attorney's actual salary).

Thus, whatever information the “simple mathematical computation” would yield, that figure would likely need to be adjusted to include items that private sector attorneys cannot attribute to a particular client or matter and therefore do not separately charge for, including, among other things, rent, utility bills, phone charges, secretarial support, computer equipment, software expenses, health insurance, pensions, retirement plan contributions, and other expenses ordinarily included in office overhead, as well as a net income component. The AG's “simple mathematical computation” also fails to take into account that every minute of a 40-hour work week is not billable, and that non-billable events such as holidays, vacations, medical leave, furloughs, lunch breaks, continuing legal education, seminars, staff meetings, and office management, to name a few, would need to be accounted for. Moreover, the Draft Rule would need to provide for discovery related to all aspects of AG and ICC compensation and operating expenses to ensure an appropriate hourly rate is calculated. The AG and ICC employees at issue would also need to keep time records in the same level of detail as utility counsel to ensure apples to apples comparisons. Neither the AG nor Staff has indicated any willingness to assume this burden. In any event, all of this is likely to increase rate case expense and is unlikely to provide any benefit to utilities or customers.

The AG goes on to misconstrue the Public Utilities Act by extracting “least cost” from Section 8-401 and reading that out of context as a “guiding principle” for determination of the reasonableness of outside counsel and technical expert fees. Section 8-401 requires that service and facilities provided by utilities must be “in all respects adequate, efficient, reliable and environmentally safe and which, consistent with these obligations, constitute the least-cost

means of meeting the utility’s service obligations.” 220 ILCS 5/8-401. The Commission and courts have **never** interpreted this statute as requiring a utility to procure goods and services on a “lowest bidder” basis. Thus, contrary to AG/CUB’s insinuation, there is no mandate that legal services procured by utilities be the cheapest legal services that money can buy.

In addition, Section 8-401, entitled “Duty of public utilities regarding provision of services and facilities,” relates to utility service obligations and conditions. Section 8-401 was not intended to be applied to Article IX or performance-based formula rate cases generally, nor rate case expense specifically. Section 8-401 is implemented through 83 Ill. Admin. Code 411, Electric Reliability. Part 411 relates to the Commission’s policies regarding reliability of facilities and services and does not concern rates. *See* 83 Ill. Admin. Code 411, *et seq.* Commission orders relating to energy planning proceedings reveal that Section 8-401 was part of the statutory and regulatory requirements that governed utility energy plans, investment choices in energy facilities, and related proceedings – not rate cases. *See Proceeding to Adopt An Elec. Energy Plan for MidAmerican Energy Co.*, ICC Dkt. No. 95-0340, 1997 WL 33771775, (Order March 12, 1997); *see also Re Union Elec. Co.*, ICC Dkt. No. 90-0042, 1990 WL 508136, (Order November 20, 1990).

Section 8-401 is clear that service and facilities provided by utilities must be “in all respects adequate, efficient, reliable and environmentally safe and which, *consistent with these obligations*, constitute the least-cost means of meeting the utility’s service obligations.” 220 ILCS 5/8-401 (emphasis added). The Commission has made it clear that “least-cost” service does **not** mean “the most simple, basic, and cheapest” service. *See In re Commonwealth Edison Co.*, ICC Docket No. 07-0566, (Order Sept. 10, 2008) at 137 (“Our least cost requirements, however, do not require that electric service be the most simple, basic, and cheapest form of

electric service available.”). Thus, even if Section 8-401 applies to rate case expenses – and it does not – legal services should be those that will contribute to the utility’s ability to provide adequate, efficient, reliable, and environmentally safe service by, among other things, reasonably ensuring cost recovery through the assistance of skilled and capable counsel. The AG’s selective reading of the statute is counterproductive and the Commission should reject the AG’s invitation to rely upon Section 8-401 in any respect in considering the Draft Rule.

Accordingly, the Commission should reject any consideration of the salary or computed hourly rates of Staff or AG as wholly irrelevant to the determination of the justness and reasonableness of rate case expense.

### **III. The Draft Rule Correctly Reflects Well-Established Law Governing Privileged and Confidential Information**

AG/CUB have taken exception to the entirety of Section .400 in the Draft Rule concerning privileged, confidential and proprietary information. Although AG/CUB seek to strike Section .400 in its entirety, the thrust of their argument applies only to the final phrase of subsection (c). Subsection (c) provides: “When there is dispute regarding a claim of privilege, any party may file a motion seeking an *in camera* inspection of the documents in question by the Administrative Law Judge to resolve that dispute, *provided that the moving party has made a showing of any legal requisites regarding such inspection.*” PO at 29 (emphasis added). ComEd agrees that the emphasized language is confusing, and should be removed from the Draft Rule. Striking the entire section as AG/CUB propose, however, is not warranted because as explained in the Proposed Order, this section simply reflects Illinois law.

First, Subsection (a) states the uncontroversial proposition that privileged information relating to the utilities’ rate case expenses shall be afforded the protections available under Illinois law. AG/CUB’s unexplained assertion that 220 ILCS 5/10-101 somehow negates the

protections reflected in applicable Illinois law is unavailing. Section 10-101 simply provides that proceedings and records of the Commission shall be public. To interpret this section as AG/CUB suggest would void every single protective order entered by the Commission. It would also put the security of ComEd's electric system and the personal privacy of many customers at risk. In short, Section 10-101 has never been interpreted to negate the well-reasoned protections Illinois law affords to privileged, confidential and proprietary information.

Second, Subsection (b) merely incorporates the language of Illinois Supreme Court Rule 201(n). Rule 201(n) is intended to ensure that a claim of privilege is based on more than a "mere assertion" as it requires that a claimed privilege "shall be supported by a description of the nature of the documents, communications or things not produced or disclosed." ILCS S. Ct. Rule 201(n). This essentially requires a privilege log. The purpose of the rule (and the log) is to allow the adjudicator "to evaluate the applicability of the asserted privilege and determine the need for an *in camera* inspection of the documents, and also to minimize any disputes between the parties regarding those matters." *Thomas v. Page*, 361 Ill. App. 3d 484, 497 (2d Dist. 2005).

Third, Subsection (c) reflects the common practice under Illinois law that if the party asserting the privilege has satisfied the requirements of Supreme Court Rule 201(n), the onus then shifts to the party who wishes to oppose privileged treatment to challenge the assertion of privilege. *See, e.g., Mueller Indus. v. Berkman*, 399 Ill. App. 3d 456, 461, (2d Dist. 2010) (involving motion to compel production of documents held back on the grounds of privilege); *Country Mutual Ins. Co. v. Olsak*, 391 Ill. App. 3d 295, 307-308 (1st Dist. 2009) (upholding trial court's decision to deny party's motion to compel production of documents withheld as privileged as untimely where trial court ordered defendants to file motion by a certain date). The first part of Subsection (c) of the Draft Rule accomplishes this by requiring that the opposing

party affirmatively move to challenge the assertion of privilege by filing “a motion seeking an *in camera* inspection of the documents in question by the Administrative Law Judge to resolve that dispute ... .” PO at 29. ComEd agrees, however, that the remainder of subsection (c) is ambiguous and therefore recommends striking the phrase: “provided that the moving party has made a showing of any legal requisites regarding such inspection.”<sup>2</sup> ComEd therefore proposes the following modifications to the Draft Rule, with corresponding changes to the PO, as Exception No. 16:

**Section .400: Compensation Costs Support Disclosure (Privileged, Confidential and Proprietary Information)**

- a) Information disclosed by the Utility in support of Outside Counsel and Support Staff, Outside Technical Experts and Support Staff, and employees of the Utility or any of its affiliates’ compensation costs shall be afforded the same protections for privileged, confidential and proprietary information that exist under the Commission’s Rules of Practice, the Illinois Code of Civil Procedure, the Illinois Rules of Evidence and other applicable Illinois law.
- b) When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.
- c) When there is dispute regarding a claim of privilege, any party may file a motion seeking an *in camera* inspection of the documents in question by the Administrative Law Judge to resolve that dispute ~~provided that the moving party has made a showing of any legal requisites regarding such inspection.~~

**IV. The Definition of Time Sheet or Time Entries Requires Clarification**

Other parties have raised concerns about the definition of “Time entries” (*see e.g.* Ameren Illinois Company (“Ameren”) BOE at 8-9; Northern Illinois Gas Company d/b/a/ Nicor

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<sup>2</sup> This language refers to circumstances where a party claims that an exception applies to an otherwise privileged communication, as opposed to the case where a party is challenging whether the basic elements of privilege have been met. *See Mueller Indus. v. Berkman*, 399 Ill. App. 3d 456, 470, (2d Dist. 2010) (requiring that a party asserting a crime-fraud exception to attorney-client privilege first “make out a *prima facie* case” before court conducts *in camera* inspection of documents). Section .400 addresses the latter situation.

Gas Company BOE at 10; The Peoples Gas Light and Coke Company and North Shore Gas Company BOE at 15) changed to “Time Sheets” and further modified by ComEd’s Exception Nos. 8 and 9. ComEd agrees that this definition should not require an actual document, which may be separate from invoices or time narratives maintained by outside counsel. ComEd’s prior Exceptions addressed this in part by changing the term from “Time sheet” to “Time Entry,” but ComEd suggests the following additional shaded language to clarify further that it is the information that is important, not the actual document:

“Time-sheet Entries” means ~~a contemporaneously-executed document recorded~~ information that states the ~~hours performed~~ time incurred on a ~~particular task~~ daily basis, specifying the ~~tasks performed~~ and the applicable hourly rate in the case of ~~Hourly Rate billing or eContracts with or Not-to-eExceed Contracts. clauses, or~~ the applicable estimated hourly rate, in the case of a Flat fee contract.

#### **V. The Attorney or Expert Witness Affidavit Requirement Requires Clarification**

Other parties have also raised concerns about Section .200(c)(vi), changed to .200(c)(3) in ComEd’s Exception No. 11. *See, e.g.,* Ameren BOE at 11-12; MidAmerican Energy Company BOE at 9-10. ComEd interprets this Section to *allow* for multiple affidavits (or testimony) but to *require* only one affidavit (or testimony). Nonetheless, this Section should be revised to clarify further that only one affidavit or testimonial witness is necessary to opine on the reasonableness of the charges at issue for all outside counsel and outside technical experts. To require otherwise would undoubtedly increase the cost to litigate rate cases, would be unduly burdensome, and is not supported by case law or statute.<sup>3</sup> ComEd previously offered Exception No. 11 regarding Section .200(c). ComEd now suggests the additional shaded changes:

3) ~~vi)~~ One or more Affidavits or testimony from the Outside Counsel or Outside Technical Experts establishing the justness and reasonableness of the charges at issue by setting forth their experience in the legal community or technical field

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<sup>3</sup> To apply this Section to utility and affiliate employees (as Excepted by AG/CUB) without clarifying that there is only one affidavit or piece of testimony required could lead to affidavits from every single utility employee who works on a rate case. This would be a complete waste of resources.

and setting forth the fees that they have charged in similar matters, or providing testimony or an affidavit from an attorney or technical expert practicing or retaining experts in the relevant area setting forth the rates charged in that geographic or technical area of practice ~~or technical area~~.

**VI. Staff Should Reconvene the Workshop Process for Additional Drafting Workshops**

In light of the extensive revisions that the Administrative Law Judge made to Staff's draft rule and the extensive Exceptions offered to the Draft Rule by the parties to this proceeding, the language and organization of the Draft Rule have become cumbersome, duplicative, disorganized, and confusing. ComEd suggests that after the Commission decides the substantive issues raised in the parties' BOEs, the Commission send the parties back to the workshop process for the sole purpose of cleaning and streamlining the language of the Draft Rule.

**CONCLUSION**

ComEd requests that the foregoing be taken into consideration in the preparation of the Draft Rule for publication and that, if deemed necessary, the parties be permitted to offer additional comments or revisions relating to the Draft Rule prior to publication.

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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