

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :  
 :  
Annual formula update and revenue : Docket No. 13-0318  
requirement reconciliation under :  
Section 16-108.5 of the Public :  
Utilities Act. :

**STAFF OF THE ILLINOIS COMMERCE COMMISSION RESPONSE IN SUPPORT OF  
THE PEOPLE OF THE STATE OF ILLINOIS' MOTION TO CONSOLIDATE**

NOW COME the Staff of the Illinois Commerce Commission (“Staff”) and pursuant to Section 200.580 of the Rules of Practice (83 Ill. Adm. Code 200.580) and the Administrative Law Judges’ September 10, 2013 Ruling file this Response to the People of the State of Illinois’ (“AG”) Motion to Consolidate.

**BACKGROUND**

1. On April 29, 2013, Commonwealth Edison Company (“ComEd”) filed with the Illinois Commerce Commission (“Commission”) its second annual update and revenue requirement reconciliation as authorized by Section 16-108.5(d) of the Public Utilities Act (“PUA” or “Act”) (220 ILCS 5/16-108.5(d)). This filing was assigned Docket No. 13-0318. ComEd filed its revised formula rate tariff on May 30, 2013 in compliance with Senate Bill 9 (“SB 9” which was later enacted as Public Act 98-0015).<sup>1</sup> Pursuant to statute, the Commission must enter an Order in this reconciliation update docket by December 25, 2013.

---

<sup>1</sup> P.A. 98-0015 authorized two changes to the revenue requirement for the prior rate year specified in Section 16-108.5(d) and required specific modification to the formula rate tariff approved by the Commission in Docket No. 11-0721. This filing was Docket No. 13-0386. Pursuant to PA 98-0015, the Commission was required to approve the filing.

2. In Direct Testimony, the AG argued that ComEd incorrectly grosses-up the interest rate on the reconciliation asset to account for income taxes in contravention of Section 16-108.5(d)(1) of the PUA. (AG Ex. 1.0, 13-18.)

3. ComEd responds in its Rebuttal Testimony that the issues raised in the AG's Direct Testimony cannot be resolved in an update proceeding as the positions advanced by the AG are contrary to Section 16-108.5, and because the positions advanced by the AG, if adopted by the Commission, would require changes to the established formula rate tariff already approved by the Commission. (ComEd Ex. 13.0, 9.) More specifically, ComEd argues that the interest rate grossed-up for income taxes was reflected in Sch FR-D-1 and FR A-4 approved in Docket No. 13-0386. (Id. at 8.)

4. On September 4, 2013, the AG filed a Verified Complaint to Investigate and Modify the Formula Rate Tariff Established Under Section 16-108.5(c) of the Public Utilities Act ("AG Complaint") under Sections 9-101, 9-250 and 16-108.5 of the Act requesting that the Commission investigate and modify the revised formula rate tariff filed on May 30, 2013 to correct ComEd's calculation of unauthorized interest on its reconciliation balance and two other claimed errors.<sup>2</sup> (AG Complaint at ¶1.) The AG Complaint was assigned Docket No. 13-0511.

5. The AG filed a Motion to Consolidate ("AG Motion") Docket No. 13-0511 with Docket No. 13-0318. The AG argues that its Complaint filing and Docket No. 13-0318 involve identical questions of fact and law. (AG Motion at ¶9.) Both dockets raise as issues for the Commission's consideration whether the unauthorized formula rate tariff

---

<sup>2</sup> The AG also requests the Commission "...(2) correct recent changes to ComEd's calculation of the Section 16-108.5(c)(5) return on equity ("ROE") collar that were not authorized by law, (3) expressly reflect the appropriate tax treatment in calculating interest on the reconciliation balance in the formula rate tariff, and (4) establish just and reasonable rates pursuant to the formula modifications requested herein." (AG Complaint at 1-2.)

changes approved in the SB 9 filing would “unjustly enrich ComEd in the pending and future annual reconciliation proceedings.” Id.

6. Staff filed Rebuttal Testimony in Docket No. 13-0318 on September 13, 2013. In the Rebuttal Testimony of Richard W. Bridal II, Staff Exhibit 7.0, Mr. Bridal states that it is inappropriate to gross-up for taxes the weighted average cost of capital interest rate applied to the reconciliation amount because the reconciliation amount is already the difference between two grossed-up revenue amounts. (Staff Ex. 7.0, 38.) Further, Mr. Bridal states that although he is not an attorney, the plain language of the PUA does not specifically allow for a gross-up of the interest rate applied to reconciliation amounts. Id.

#### APPLICABLE LAW

7. Section 16-108.5(d) forbids any changes to the formula rate tariff to occur in an annual reconciliation docket:

The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate pursuant to subsection (c) of this Section. 220 ILCS 5/16-108.5(d)

8. Section 16-108(c) requires any tariff changes to the formula to be made in an Article IX docket and that Commission has authority:

...under Article IX and other provisions of this Act to initiate an investigation of a participating utility’s performance-based formula rate tariff, provided that any such changes shall be consistent with paragraphs (1) through (6) of...subsection (c)...220 ILCS 16/108.5(c)

9. Any changes to the formula require a 30 day notice to utilities:

Any change ordered by the Commission shall be made at the same time new rates take effect...provided the new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change. 220 ILCS 5/16-108.5(c)(6)

10. SB 9 modified Section 16-108.5(d)(1) to state that the annual reconciliation of revenues with actual costs incurred over the applicable rate year requires, among other things:

Interest on actual revenue requirement for the prior rate year calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year. 220 ILCS 5/16-108.5(d)(1)(the underlined phrase reflects the SB 9 modification to the then existing law).

11. Section 9-250 states:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof. 220 ILCS 5/9-250.

12. The Commission's Rules on Consolidation state:

The Commission or Hearing Examiner may order two or more proceedings involving a similar question of law or fact to be consolidated where rights of the parties or the public interest will not be prejudiced by such procedure. 83 Ill. Adm. Code Part 200.600.

13. The Commissions Rules on Notice provides in part that:

... At least ten days' notice of the time and place of the first hearing shall be given to all parties; at least ten days' notice shall also be given to municipalities

when required by Section 10-108 of the Public Utilities Act. In the discretion of the Commission or the Hearing Examiner, the first hearing may be held with less than ten days' notice if an emergency exists. 83 Ill. Adm. Code Part 200.530.

### ARGUMENT

14. Staff believes that consolidation at least for purposes of hearing is appropriate because all the relevant testimony has already been filed in Docket No. 13-0318. Thus, for reasons of administrative efficiency, the AG Complaint should be consolidated with Docket No. 13-0318. The Commission's broad rules governing consolidation allow for this, as there are similar questions of law and fact, and no party will be prejudiced by the consolidation.

15. By agreeing to consolidation, Staff does not concede that contesting the interest rate issue in Docket No. 13-0318 and using the correct interest rate in tariffs to be effective on January 1, 2014 is unallowable under Section 16-108.5 of the Act. However, Staff recognizes that Section 16-108.5 does require that any changes to the tariff must be in effect 30 days prior to the beginning of the year that rates go into effect. Therefore, if the Commission decides that ComEd is improperly calculating interest in Docket 13-0318 but that correcting such an impropriety involves a change to the formula rate, and does not issue an order prior to November 30, 2013, that modification would not go into effect until January 1, 2015. Therefore, because Staff encourages the Commission to make a determination on this issue of the interest rate gross-up prior to or by November 30, 2013 so that the correct interest rate will be in effect on January 1, 2014, Staff supports the AG's Motion to Consolidate.

16. Given that evidentiary hearings are scheduled in Docket 13-0318 for September 30<sup>th</sup> and October 1<sup>st</sup>, 2013 and a Reply by the AG is not due until September 20<sup>th</sup> an

emergency exists for the Commission to issue notice of the consolidation and holding of hearing in the consolidated matter in less than ten days notice. Furthermore, given that the issues to be addressed in Docket 13-0511 were raised by the AG well in advance of the scheduled hearings in this matter, the interested parties have received sufficient constructive notice of the issues such that the Commission's notice requirements under Part 200.530 have been satisfied.

### RECOMMENDED PROCEDURE

17. Staff recommends that the ALJs grant consolidation of Docket Nos. 13-0318 and 13-0511 for evidentiary hearing purposes then a severance of the two dockets followed by an expedited briefing schedule in Docket No. 13-0511. Under this proposal, Staff recommends that Initial Briefs be due on October 7, Reply Briefs on October 10, an ALJ Proposed Order on October 21, Briefs on Exceptions on October 24, and Replies to Exceptions on October 30. Or, in the alternative Staff recommends that the ALJs grant consolidation of Docket Nos. 13-0318 and 13-0511 with no subsequent severance and that an expedited briefing schedule in the consolidated Docket No. 13-0318 and Docket No. 13-0511 be adopted limited to the issues outlined in the AG's Complaint in order to ensure a Commission interim order prior to November 30, 2013. Therefore, under the alternative of consolidation and no severance, Staff still recommends that Initial Briefs be due on October 7, Reply Briefs on October 10, an ALJ Proposed Order on October 21, Briefs on Exceptions on October 24, and Replies to Exceptions on October 30. These briefs would only be on the limited issues addressed in the AG Complaint. All other contested issues in Docket No. 13-0318 would be briefed according to the

schedule set forth in this docket previously. Staff further recommends that the ALJs order the Company to provide for expedited transcripts of the evidentiary hearings to accommodate the accelerated briefing schedule.

18. Under both alternatives the Commission would have a Commission Meeting on November 13<sup>th</sup> and a Bench Session on November 26<sup>th</sup>, 2013 to consider the issues. Staff is merely offering these dates as a starting point, as Staff can be flexible on the dates provided the Commission can issue an order on these limited issues such that any tariff changes could go into effect by January 1, 2014.

WHEREFORE, Staff respectfully recommends that the AG's Motion to Consolidate be granted.

Respectfully submitted,

---

Staff Counsel  
Illinois Commerce Commission

JESSICA L. CARDONI  
JOHN C. FEELEY  
KELLY A. TURNER  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle St., Suite C-800  
Chicago, IL 60601-3104  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
jcardoni@icc.illinois.gov  
jfeeley@icc.illinois.gov  
kturner@icc.illinois.gov

Counsel for the Staff of the  
Illinois Commerce Commission

September 17, 2013