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ILLINOIS COMMERCE COMMISSION

FINANCIAL ANALYSIS DIVISION STAFF REPORT ILLINOIS COMMERCE COMMISSION

13-0553

October 2, 2013

2013 OCT - 11 P 12: 19

CHIEF CLERK'S OFFICE

SUBJECT: Investigation into Commonwealth Edison's formula rate tariffs, specifically unauthorized charges.

I. Capsule Summary

Staff recommends that the Commission initiate a proceeding under Section 10-113(a) of the Public Utilities Act to determine whether Commonwealth Edison Company's tariffs filed on May 30, 2013, and approved in Docket No. 13-0386 are in compliance with Public Act 98-15.

II. Background

On May 22, 2013, the General Assembly enacted Public Act 98-15, which, among other things, amended Section 16-108.5 of the Public Utilities Act, addressing issues related to certain pension assets, retroactive recovery of certain delivery service costs, and reconciliation of the revenue requirement in effect the prior rate year for utilities participating in performance-based formula rates. Public Act 98-15 indicates that it is intended to be a restatement and clarification of existing law, give binding effect to specified legislative intent, and supersede specified final orders of the Commission.

On May 30, 2013, Commonwealth Edison Company filed tariff pages and revised revenue requirements responsive to Public Act 98-15. On June 5, 2013, the Commission entered an order in Docket No. 13-0386, finding that Commonwealth Edison Company's proposed tariff changes were in compliance with Public Act 98-15 and approving Commonwealth Edison Company's revenue requirement modifications.

On September 4, 2013, in Docket No. 13-0511, The People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois ("AG") filed a verified complaint alleging the Commonwealth Edison Company's tariffs filed on May 30, 2013, included unauthorized changes and asking the Commission to investigate and modify the revised formula rate tariff filed by Commonwealth Edison Company on May 30, 2013.

III. Issues to be Addressed

In its Docket No. 13-0511 verified complaint, the AG alleges that Commonwealth Edison Company's tariffs filed on May 30, 2013, included unauthorized changes and asked the Commission to investigate and modify the revised formula rate tariff filed by Commonwealth Edison Company on May 30, 2013. The AG's petition alleges that Commonwealth Edison Company's tariffs should be revised to: (1) correct Commonwealth Edison Company's calculation of unauthorized interest on its reconciliation balance, (2) correct recent changes to Commonwealth Edison Company'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.

On September 23, 2013, Commonwealth Edison Company responded to the AG's verified complaint with a Motion to Dismiss. Commonwealth Edison Company argued in its Motion to Dismiss that the AG's verified complaint was not authorized under Section 16-108.5(c), the AG did not timely exercise its right to pursue the issues raised in the verified complaint, and that the AG's verified complaint was an impermissible collateral attack on the Commission's order.

It is apparent to Staff that significant questions have been raised as to whether the tariffs filed by Commonwealth Edison Company on May 30, 2013, and approved by the Commission in Docket No. 13-0386 are actually in compliance with the Public Utilities Act.

Section 10-113(a) of the Public Utilities Act provides in part that:

Anything in this Act to the contrary notwithstanding, the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions.

Given the questions raised concerning Commonwealth Edison Company's tariff filing of May 30, 2013, and the Commission's ability under Section 10-113(a), to rescind, alter or amend its order in Docket No. 13-0386, Staff urges the Commission on its own motion to initiate a proceeding to determine whether Commonwealth Edison Company's tariff changes filed on May 30, 2013, are in compliance with Public Act 98-15. Such a proceeding would address the limited specific issues of whether the tariffs filed on May 30, 2013: (1) correctly calculat-

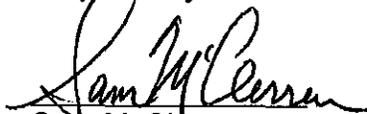
ed interest on Commonwealth Edison Company's reconciliation balance, (2) correctly calculate the Section 16-108.5(c)(5) return on equity ("ROE") collar, and (3) correctly reflect the appropriate tax treatment in calculating interest on the reconciliation balance in the formula rate tariff as authorized by the Public Utilities Act.

Should the Commission decide to initiate such a proceeding, Staff recommends that the Commission enter an order prior to November 30, 2013, so that changes to the approved formula rate, if any, can go into effect by January 1, 2014, pursuant to Section 16-108.5(c) of the Act.

IV. Summary and Conclusion

Staff recommends the Commission initiate a proceeding to determine whether Commonwealth Edison Company's tariffs filed on May 30, 2013, are in compliance with the Public Utilities Act.

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