ComEd Ex. 3.0

# STATE OF ILLINOIS

# ILLINOIS COMMERCE COMMISSION

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| ILLINOIS COMMERCE COMMISSION<br>On Its own Motion<br>v.<br>COMMONWEALTH EDISON COMPANY<br>Investigation of tariffs approved in<br>Docket No. 13-0386 | :<br>:<br>:<br>:<br>:<br>:<br>:<br>: | No. 13-0553 |

Rebuttal Testimony of


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Director,
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## I. INTRODUCTION AND SUMMARY

Q. **What is your name and prior participation in this Docket?**

A. Christine M. Brinkman. I am the Director, Rates and Revenue Policy of Commonwealth Edison Company ("ComEd"). I previously submitted pre-filed direct testimony in this Docket. My background, professional qualifications, duties, and responsibilities are unchanged from that time.

Q. **What is the purpose of your rebuttal testimony?**

A. I respond to the direct testimonies of Mr. Richard Bridal II for the Staff ("Staff") of the Illinois Commerce Commission ("Commission" or "ICC"), Messrs. Michael Brosch and David Effron for the Illinois Attorney General ("AG"), and Mr. Michael Gorman for CUB, the City of Chicago, and IIEC ("CCI"), jointly.[1] My testimony is limited to issues within the scope of the investigation as stated in the Commission's initiating Order. I do not address those portions of Mr. Gorman's testimony outside that scope.

Q. **What issues did the Commission include in this investigation?**

A. The Initiating Order (at 2) states this proceeding is to:

> ... address the limited specific questions whether the tariffs filed on May 30, 2013, (1) correctly calculated interest on ComEd's reconciliation balance, (2) correctly calculated the Section 16-108.5(c)(5) return on equity ("ROE") collar, and (3) correctly reflected the appropriate tax treatment in calculating interest on the reconciliation balance in the formula rate tariff as authorized by the Public Utilities Act.

Q. **What, in summary, does your rebuttal testimony conclude regarding the Staff and Intervenor Direct testimony on those issues?**

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[1] The capitalized terms I use have the same meaning as in my Direct Testimony (ComEd Ex. 1.0).

A. The direct testimonies of Staff and Intervenors identify no basis for revisiting the Commission's decision in Docket No. 13-0386 and fail to justify any change to the rate formula the Commission approved. My rebuttal testimony analyzes their direct testimonies and points out where and how it is flawed and how, if accepted, it would lead to unreasonable and unjust results. In many cases, the arguments made in those testimonies are already refuted by my direct testimony and that of Mr. Fruehe (ComEd Ex. 1.0 and 2.0, respectively). In those cases, I refer to my prior testimony to avoid repetition. Where they offer variations of arguments or new arguments for changing the Commission's decision and ComEd's rate formula, I point out the flaws in those the arguments and explain why the decision in Docket No. 13-0386 was correct. In sum:

- ***ROE Collar rate base.*** The rate base used to calculate the Return on Equity ("ROE") Collar is correctly measured just like every other rate base in the rate formula, using year-end FERC Form 1 data. The AG's argument to the contrary is mathematically illogical, inconsistent with the inherent link between the Collar and the return on the rate base used to set rates, and inconsistent with the EIMA ratemaking structure especially as clarified after PA 98-0015.
- ***Interest rate on Reconciliation.*** PA 98-0015 rejects the notion that ComEd can separately finance its reconciliation balance at a lower cost than its overall rate base and requires that the reconciliation balance bear interest "calculated at a rate equal to the utility's weighted average cost of capital…" 220 ILCS 5/16-108.5(d)(1), the same rate as the rate of return on rate base. Interest "calculated at a rate equal to" WACC necessarily includes the tax consequences of that interest. Interest is taxed, and the Commission has universally applied WACC to utility

assets in a manner that recognizes this fact. Contrary arguments would wrongly deny ComEd interest calculated to recover WACC.

- ***Reconciliation Balances and ADIT.*** ComEd receives no cash and no cash benefit from its unpaid reconciliation balances, taxes on that revenue are due when the revenue is received. There is no deferred tax "benefit" that can finance the reconciliation or reduce the unpaid amount accruing interest.

Q. **How is your testimony organized?**

A. I address the individual issues identified in the Commission's Initiating Order in Sections II, III, and IV, of my testimony, respectively. In Section V of my testimony I show that the proposed changes also lead to an incorrect ratemaking result. They would leave ComEd unable to recover its costs of service, even after reconciliation, which is directly at odds with the structure and purpose of EIMA ratemaking, especially after PA 98-0015, as I understand them. Finally, in Section VI, I respond to AG witness Effron concerning the implementation of any changes to the rate formula resulting from this proceeding. Legal arguments on all these topics will be made in briefing.

## II. THE FORMULA CORRECTLY CALCUALTES THE ROE <u>COLLAR USING A CONSISTENT YEAR-END RATE BASE</u>

Q. **How does the rate formula measure "rate base" to calculate the initial and reconciliation revenue requirements?**

A. The rate bases used to calculate the initial and reconciliation revenue requirements are measured using year-end data reported in ComEd's Federal Energy Regulatory Commission ("FERC") Form 1. PA 98-0015 superseded prior rulings on this subject and clarified this fact. No other definition of rate base exists in the law or the formula.

**Q. Does any party propose to replace the definition with a divergent one at any point in the formula?**

A. Yes. AG witness Effron proposes (AG Ex. 2.0, 3:67-76) to use in the collar calculation what he calls an "average rate base" that has no other role (even under his proposal) in the formula. He proposes to calculate a mean value of the rate base during a calendar year and use that value instead of the year-end rate base specified in the rate formula. That mean appears nowhere in ComEd's FERC Form 1, is not mentioned in the statute, and does not equate to the year-end rate base for any rate year.

**Q. Does using an "average rate base" for this purpose make sense?**

A. No, for two reasons. First, using an average rate base in the collar drives the ultimate reconciliation rate base on which charges are based away from the year-end value specified in the law towards the average that PA 98-0015 expressly rejected. I discuss this also in my direct testimony, ComEd Ex. 1.0, at 8:151-239.

Second, it makes no sense to base an earnings test like the ROE Collar on a method of measuring rate base at odds with the method used to set the initial revenue requirement, the actual-cost reconciliation revenue requirement, and ultimately the charges applicable to customers. As shown in ComEd Ex. 1.04, the mismatch caused by using an average rate base as Mr. Effron proposes creates an artificially inflated earned ROE by reducing the amount of rate base financed by both debt and equity. This results in both an inflated net income due to a reduction in long-term interest expense, and a boosted ROE, given the higher income (numerator) and the lesser equity (denominator). This result is a false impression that ComEd's earnings were further outside the ROE Collar band than they actually were or are. The inverse is also shown on this exhibit. Either way, using an inconsistent calculation within the ROE Collar will often produce an incongruous result given that the revenue requirements are calculated using year-end rate base and year-end capital structure.

Q. **Are there any other issues Mr. Effron raises regarding this recommendation that require an additional response?**

A. No. I have already fully responded to Mr. Effron's remaining arguments in my direct testimony.

## III. THE FORMULA CORRECTLY AND CONISTENLTY USES <u>THE WACC, RECOGNIZING REAL TAX COSTS</u>

Q. **What is a WACC?**

A. WACC is the return that a company must earn on an existing net asset base after the impact of taxes to fully recover the cost of financing those investments, *i.e.*, to satisfy its creditors and equity investors. WACC is calculated taking into account the relative weights of each component of the capital structure and their respective costs. From the creditor and equity investor perspective, WACC represents the cost of capital those parties would ultimately receive, on a weighted basis, for making, respectively, an investment in or a loan to a company. This cost of capital utilizes the same set of securities in the company's capital structure after accounting for the effect of income taxes.

A company can view WACC from different perspectives. There are three different calculations of WACC on Sch FR D-1 of the formula rate. All three of these values represent the WACC at different stages of the cash flow stream. In order to choose the right WACC value to apply in a particular situation within the formula, it is imperative to know the perspective and purpose of each value.

With regard to the reconciliation, only the 9.71% WACC found in line 25 of Sch FR D-1 will provide ComEd with enough revenue to pay income taxes and ultimately provide the 5.71% after-tax WACC to its investors. There are no other line items on Sch FR A-4 that would adjust for the income tax effects related to both the cost of debt and cost of equity. This is effectively the same calculation of WACC return that is generated on Sch FR A-1 and FR A-1 REC when calculating the return on rate base in the initial and reconciliation revenue requirements.

Q. **What interest rate does PA 98-0015 state applies to the reconciliation balance?**

A. The statute states "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 <u>interest calculated at a rate equal to the utility's weighted average cost of capital</u> approved by the Commission for the prior rate year."[2] Because interest earned by ComEd is taxable, the only way to calculate an interest rate equal to WACC is to recognize the tax effects of the interest and use the 9.71% WACC from Sch FR D-1, line 25. That is what the existing formula does, and what the proposal to change the formula will wrongly undo.

Q. **Do any witnesses suggest an interest calculation be used for the reconciliation that does not result in ComEd earning interest at a rate equal to the WACC?**

[2] 220 ILCS 5/16-108.5(d)(1).

A. Yes. Mr. Bridal (Staff Ex. 1.0, 2:34 – 6:127), Mr. Brosch (AG Ex. 1.0, 4:75 – 9:190), and Mr. Gorman (CCI Ex. 1.1, 4:45 – 5:80 and CCI Ex. 1.2, 5:60-88) advocate using the WACC without income tax impacts. As I explain in my direct testimony, this is a lower interest rate than the formula requires. The revenue that ComEd receives for the interest on the reconciliation balance is subject to income taxes. If the interest calculation in the formula rate did not recognize this fact, ComEd could not recover its actual carrying costs (or refund the excess, if there was an initial over-collection) related to the reconciliation at a WACC rate.

Q. **Mr. Bridal implies there is something novel or unusual about recognizing the tax effects of the interest related to WACC. Is his implication correct?**

A. No. ComEd receives a weighted average cost of capital return on its rate base today. My understanding is that this is also true for other utilities under EIMA as well as other utilities operating under traditional test year regulation. In that return, WACC represents, as it does here, the cost of capital of the utility used to finance assets generally. Traditionally, that weighted average cost of capital is grossed up for taxes, such that the utility *earns* its weighted average cost of capital.

Q. **Mr. Bridal claims that WACC need not be grossed-up to account for the effect of income taxes because, from an accounting standpoint because "the reconciliation balance is already the difference between two revenue requirement amounts already grossed-up for the effect of income taxes." (Staff Ex. 1.0, 2:63-64) Is it correct that the reconciliation process already considers tax costs?**

A. No. As I stated in my direct testimony, the reconciliation amount is the difference between two revenue requirements that have appropriately included a gross up for taxes to provide the proper return on rate base as Mr. Bridal states. However, that difference is recorded as additional revenues (or conversely a reduction of revenue) to ComEd which has separate tax impacts.[3] ComEd does not collect that difference in the that same year however it collects the difference in a later rate year, that is the whole premise of the reconciliation. The interest on that reconciliation balance represents the time value of money that compensates ComEd for this delay in receiving the reconciliation adjustment. That lost time value of money does not already reflect tax costs, and the tax costs in the underlying revenue requirements have nothing to do with that fact.

Q. **Finally, Mr. Bridal compares the reconciliation under the formula rate to the Qualified Infrastructure Plant Surcharge ("QIPS") annual reconciliation related to water utilities. Is this comparable to the retroactive reconciliation under EIMA?**

A. No. I believe the Water / Sewer QIPS reconciliation is similar in some respects to rider reconciliations, but it is not analogous to the EIMA revenue requirement reconciliation. As I discuss in my direct testimony, the EIMA reconciliation is a full retroactive reconciliation of ComEd's complete distribution revenue requirement, not just a component. To my knowledge the closest example here is the adjustment process in ComEd's purchased energy rider, as I discussed in my direct testimony (ComEd Ex. 1.0, 16:331 – 17:354).

[3] *See* ComEd Ex. 1.0 18:377-397.

Q. **Are there any other key difference between the QIPS reconciliation and ComEd's formula rate reconciliation?**

A. Yes. A water utility files its QIPS plan based upon an estimated amount of infrastructure improvement and recovers that amount over the period in which the new plant is installed, typically one year. It then files a reconciliation of the difference between its actual costs it incurred related to the new plant investment and the revenues it received through the surcharge. The reconciliation is only based on that difference (as opposed to the utility's total revenue requirement), it is based on a revenue difference as opposed to a revenue requirement difference, and recovery (or refund) of the reconciliation can be initiated three months after the costs were incurred (as opposed to a full year).

Q. **Is the reconciliation under EIMA comparable to riders under test year ratemaking?**

No. Riders[4] recover, or help recover. a component of a full revenue requirement under test year ratemaking. In contrast, EIMA is a full retroactive reconciliation as I understand it. While not 100% comparable, the closest rider I am aware of is Rider PE, as I discuss in my direct testimony (ComEd Ex. 1.0, 16:331 – 17:354).

Q. **Mr. Bridal also testifies that "such a gross-up was not set forth in ComEd's previous formula rate testimony in Docket Nos. 11-0721 and 12-0321, nor did Ameren Illinois Company apply such a gross-up in its formula rate testimony." How do you respond?**

[4] At least the kind of rider that Mr. Bridal is talking about. Non-tracking riders can have completely different purposes unrelated to cost recovery or reconciliation.

A. Mr. Fruehe addresses the treatment of the interest rate in prior ComEd dockets in his direct testimony (ComEd Ex. 2.0, 2:42 – 4:79). I leave Ameren Illinois Company's formula rate and cost recovery to their experts to argue. I am not aware that EIMA requires ComEd's and Ameren's rate formula to be identical and, although it may often make sense that items are treated consistently, we may have other differences between our formulae other than this issue. ComEd should not be denied the right to recover its costs here simply because Ameren's formula appears not to consider these tax impacts.

Q. **Mr. Brosch claims (AG Ex. 1.0, 7:155-58) that "PA 98-0015 does not require consideration of the Company's incurred actual incremental financing costs or incremental income taxes arising from specific financing decisions" for the reconciliation. Is he correct?**

A. Mr. Brosch is wrong. EIMA's purpose, and especially the purpose of the EIMA reconciliation process, <u>is</u> to reflect actual costs as if they were known when rates charged during each rate year were set. To do this, a participating utility is made whole for unrecovered amounts that were prudently and reasonably incurred and customers are made whole for amounts they overpaid. EIMA does not state that the only way to prudently finance a reconciliation balance is with 100% debt as Mr. Brosch suggests with his statement that "no income tax expense is incurred by ComEd because "interest" is income tax deductible."[5] Interest on debt financing is deductible as Mr. Brosch states, however ComEd has a capital structure made up of both debt and equity financing. EIMA also directs that the rate formula use the WACC approved by the Commission that

5 AG Ex. 1.0 7:152-53.

reflects the utility's actual capital structure. Using divergent financing would contravene that capital structure. Finally, capital is fungible, there is no specific series of debt or component of equity financing that can be directly attributable to financing the reconciliation. PA 98-0015 rejected the notion that the reconciliation is financed at some separate cost, and Mr. Brosch cannot resurrect that argument in this indirect way.

Q. **Mr. Brosch also states "the Company is free to actually finance any changes in the reconciliation balance using any form of capital it desires, including a mix of debt or equity" (AG Ex. 1.0 7:153-155). How do you respond?**

A. Again, ComEd finances the reconciliation balance with its approved capital structure. Mr. Brosch's statement tacitly admits there will be a shortfall in recovery if the reconciliation is not financed specifically and entirely with debt. That is a hypothetical and is not what actually occurs, and contravenes PA 98-0015, as I testified earlier (ComEd Ex. 1.0, 15:297-309), and it underscores why the tax costs must be considered and recovered.

Q. **But, Mr. Brosch repeatedly describes those income tax effects as "alleged" (*e.g.*, AG Ex. 1.0 8:182-183). Please clear this up: Does ComEd incur income tax expenses related to the equity component of the WACC?**

A. Yes. When we collect interest we pay tax. The offsetting deduction, if any, applies only to the debt portion, leaving ComEd with paying the income tax in proportion to equity. This is shown on schedule A-1 as the return on rate base is ultimately grossed up for this income tax impact. This is further shown on Exhibit 1.05 in my direct testimony. It is also the equivalent to how the same type of tax cost is reflected in the Gross Revenue

Conversion Factor. The revenue related to the interest resulting from the reconciliation balance that will be billed to customers in 2014 will most certainly be included in ComEd's 2014 taxable income and be subject to state and federal income tax.

Q. **Does Mr. Gorman make any additional arguments not addressed above?**

A. Mr. Gorman offers no additional argument related to this issue that I have not already responded to here or in my direct testimony.

## IV. <u>ACCUMULATED DEFERRED INCOME TAXES</u>

Q. **Do any witnesses suggest that reconciliation interest rate applies to a balance other than the full amount of the reconciliation?**

A. Yes. Mr. Brosch (AG Ex. 1.0, 9:192 – 17:385), Mr. Effron (AG Ex. 2.0, 7:150 – 11:238) and Mr. Gorman (CCI Ex. 1.1, 15:81-146 and CCI Ex. 1.2, 6:89 – 8:125) all advocate that the ADIT related to the reconciliation balance be netted against the reconciliation balance before calculating the interest amount. Their proposal contravenes the existing formula and would result in a reconciliation balance dramatically different from that specified by the formula's calculations as discussed in my direct testimony (ComEd Ex 1.0, 19:398-573).

Q. **Does ADIT related to a reconciliation under-recovery provide a source of cash to ComEd?**

A. No. As I discuss in my direct testimony, taxes related to the reconciliations are deferred because the revenue is deferred, and that deferral has no cash impact. The deferred tax liability represents an amount ComEd must pay in the future and is an amount that has not yet recovered from customers through rates. However, in this circumstance ComEd does **not** have use of non-investor supplied funds and the income tax expense is **not** lower than it would have been because of a timing difference. ComEd has incurred carrying costs on the full 2012 reconciliation balance, as I testified previously (ComEd Ex. 1.0, 22:445 – 23:474) and there is no tax benefit to fund it.

Q. **Mr. Brosch testifies that "the ICC routinely recognizes ADIT balances as rate base reductions in electric delivery service and other rate proceedings". Do you agree with this statement?**

A. In part. My understanding is that the ICC does routinely recognize ADIT liability balances as rate base reductions when the ADIT liability results in a cash benefit to the utility in lower taxes paid in the current year. This tax benefit then results in cash available to fund rate base investments. As it relates to the ADIT on the reconciliation balance however, the reconciliation balance generated no cash for the utility in 2012 in depreciation or a deduction on the tax return or in any other way, and the utility has no source of non-investor supplied funds to finance the reconciliation balance. There is no cash benefit.

Q. **Mr. Brosch also discusses ComEd's current Net Operating Loss ("NOL") carryforward. What is the NOL?**

Q. The NOL carryforward was generated primarily by the 50% bonus depreciation deduction allowed under the Tax Relief Act of 2010. Among other things, the Tax Relief Act of 2010 allowed companies to accelerate depreciation expense treatment on the tax return – hence the phrase bonus depreciation – which led to lower taxes for those companies in the near term, hoping those companies would then use their tax savings to stimulate the economy. Without 50% bonus depreciation in 2012, ComEd would have reflected taxable income. Because it will reduce taxes in a future period, by applying this net operating loss to future taxable income, the NOL carryforward is a deferred tax asset. Under the GAAP Accounting Standards Codification ("ASC"), specifically ASC 740, ComEd has reflected a deferred tax asset of $25 million (jurisdictional portion) for the NOL on WP 4, line 20 of ComEd's 2013 formula rate template (Docket 13-0318, ComEd Ex. 14.02). The bonus depreciation itself, however, creates a deferred tax liability because there is a temporary difference related to accelerated depreciation, under the bonus depreciation rules, and is included on ComEd Ex. 14.02, WP 4, line 51. For book purposes, ComEd is recording depreciation expense at a slower rate than for tax purposes, thus ComEd is receiving a benefit on its tax return now before reflecting the full expense on its books. The NOL deferred tax asset nets against the bonus depreciation deferred tax liability. Once the NOL is utilized this deferred tax asset is eliminated.

Q. **Mr. Brosch states that the size of ComEd's Net Operating Loss ("NOL") carryforward in the current year is directly impacted by changes in the reconciliation balance regulatory asset. Further, he states that ComEd agreed to this statement in its response in ICC Docket No. 13-0318 to AG 4.03, part (e). Is Mr. Brosch correct?**

A. No. In part (d) of the response to AG 4.03, ComEd explicitly states that the "deferred tax asset related to the Federal NOL does not affect the deferred income tax position related to the regulatory asset for the under-recovery of reconciliation amounts". Further, Mr. Brosch is mischaracterizing the explanation in part (e) of the response to AG 4.03, which

Mr. Brosch attaches as AG Ex. 1.10. Here, ComEd notes that under perhaps a hypothetical scenario where ComEd collects the cash related to the reconciliation in 2012, changing ComEd's taxable income in 2012, the NOL may have been decreased. However that is not reality and not the way the reconciliation works. If ComEd had collected the cash related to the reconciliation, there would be no reconciliation, and no related ADIT to be discussing here.

## V. THE PROPOSED CHANGES TO COMED'S RATE FORMULA WOULD IMPROPERLY DENY COMED COST RECOVERY

Q. **What is the purpose of EIMA reconciliation process?**

A. EIMA, as amended by PA 98-0015, states :

> Notwithstanding anything that may be to the contrary, the intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

From a purely ratemaking perspective, and without relying on or offering any a legal opinion, a rate that meets this provision will ultimately, after reconciliation, recover the actual cost revenue requirement for the applicable year, as if it had then been known, i.e., reflecting the time value of money in the manner in which PA 98-0015 specifies. The result is that a "participating utility [like ComEd] shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process set forth in"[6] the section of the PUA that PA 98-0015 modified.

Q. **What would be the effect on cost recovery if any of the proposed changes were made to ComEd's approved rate formula?**

A. If any of the proposed changes were made to ComEd's approved rate formula, the resulting formula would calculate a post-reconciliation revenue requirement that omits ComEd's costs. In each case, because the arguments are made on a stand-alone basis, they obscure the effect on overall cost recovery. But, in each case, the effect is real.

Most importantly, if the Commission applies an interest rate to the reconciliation balance that does not include the taxes resulting from the collection of interest, ComEd will not recover the costs of the taxes it must pay. It will fail to recover its costs in exactly the same way that a utility denied the right to recover the taxes it pays on its return on rate base will fail to recover its costs. The tax costs will appear nowhere in the formula and ComEd will not recover interest "calculated at rate equal to [its] weighted average cost of capital…" 220 ILCS 5/16-108.5(d)(1).

The same is true of the effort to reduce the reconciliation balance to which interest applies. If a supposed ADIT "tax benefit" is manufactured and deducted from the reconciliation balance accruing interest, ComEd will recover no lost time value of money on that reconciliation balance, let alone interest "calculated at rate equal to [its] weighted average cost of capital…" *Id.* Likewise, if the ROE Collar is calculated using a lowered

[6] 220 ILCS 5/16-108.5(b).

"average" rate base, ComEd will be at risk of being unable to retain revenues sufficient to recover costs calculated under the year-end rate base specified by PA 98-0015.

Q. **How should these facts affect the Commission's interpretation of PA 98-0015?**

A. PA 98-0015 preserves and promotes cost recovery. The fact that each proposed change would impair ComEd's ability to recover its actual reconciled costs of service both underscores why these arguments are invalid interpretations of the law's intent and is an independent reason they must be rejected.

## VI. ANY CHANGES IN THE INTERPRETATION OF PA 98-0015 MUST BE IMPLEMENTED AS CALLED FOR BY PA 98-0015

Q. **Mr. Effron (AG Ex. 2.0, 3:58) testifies that the modifications he proposes should be "incorporated into rates that take effect January 1, 2014 and thereafter." Is Mr. Effron's recommendation consistent with the manner in which PA 98-0015 changed EIMA ratemaking?**

A. No. PA 98-0015 changed EIMA ratemaking not only prospectively, but retrospectively as well. The effect of each of the clarifications and changes required by PA 98-0015 on prior years' revenue requirements and rates were assessed and ComEd both collected from, and refunded to, customers the resulting differences. Customers and utilities not only saw different rates going forward, but were put in the financially equivalent position to where they would have been had the Commission applied EIMA as clarified by PA 98-0015 from the beginning.

This proceeding revisits the Commission's interpretation and application of PA 98-0015. Neither the Initiating Order nor the Staff Report identifies any change that could warrant a change in ratemaking. It is simply a second look at whether the

Commission should change its mind about how to apply PA 98-0015. If the Commission finds that its decision in Docket No. 13-0386 should now be altered – which it should not – it will reflect a changed view on how PA 98-0015 should have been interpreted from the beginning, not because PA 98-0015 meant one thing for six months and something else thereafter.

Because PA 98-0015 changes rates both prospectively and retrospectively, the Commission's interpretation of the law should also be given effect both prospectively and retrospectively. Otherwise, ComEd's net revenue requirement and rates, both in 2014 and in years before, will be based on a revenue requirement calculation that the Commission now disavows and that PA 98-0015 directed the Commission to correct. Therefore, if any change is made to the rate formula, ComEd should calculate, in its compliance filing in response to this docket, the effect on all EIMA rate years and pass through that cumulative adjustment in 2014, in a manner equivalent to how ComEd's passed through in 2013 the adjustment required by PA 98-0015 as it was originally interpreted by the Commission.

Q. **After the Commission's decision in Docket 13-0386, how much were ComEd's rates in effect lowered?**

A. The revenue requirement in effect in 2012, as a result of the Commission's order in Docket 12-0321 was $2,023,286,000. The Commission's decision in Docket 13-0386 lowered that revenue requirement to $2,008,797,000, a difference of $14,489,000. This lower revenue requirement is being reflected on customer bills and will be fully passed on to customers by the end of 2013.

Q. **Is there any other reason that any change in the Commission's interpretation of PA 98-0015 should be applied for prospectively and retrospectively?**

A. Yes. The changes that Staff and Intervenors seek to make to the approved rate formula will reduce ComEd's total revenue requirement in some years and increase it in others. Were the Commission to decide only now that its June 5 Order erred and that its new view of PA 98-0015 should only apply prospectively, the Commission may be directing a change only on the years where that change reduced ComEd's revenues and refusing to recognize its new interpretation of PA 98-0015 in those years when that interpretation may increase ComEd's revenues. That is not just or reasonable.

## VII. <u>CONCLUSION</u>

Q. **What action should the Commission take in response to this investigation?**

A. The Commission ruled in Docket No. 13-0386 that ComEd's rate formula satisfied PA 98-0015 and correctly calculated ComEd's revenue requirements for years 2011 through 2013. There is no basis in this record to overturn that decision. The investigation should be closed.

Q. **Does this complete your rebuttal testimony?**

A. Yes, it does.