

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)
Tariff filing to Present the Illinois Commerce)
Commission with an Opportunity to Consider) 13-0387
Revenue Neutral Tariff Changes Related to Rate)
Design Authorized by Subsection 16-108.5(e))
Of the Public Utilities Act.)

METRA'S POST-HEARING REPLY BRIEF

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October 18, 2013

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The Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority, collectively known as Metra (“Metra”), submit this Post-Hearing Reply Brief in accordance with the ALJ’s June 20, 2013 Scheduling Order. The Brief is structured in accordance with the Common Brief Outline.

I. INTRODUCTION/STATEMENT OF THE CASE

Metra’s Initial Post-Hearing Brief anticipated and addressed the vast majority of the issues affecting Metra that were raised by other parties. Accordingly, this brief is less detailed than it otherwise would have been.

II. COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

C. Potentially Contested Issues

3. Cost Allocation of Primary/Secondary Distribution System

a. Studies and Analysis Performed Regarding Changes to Cost Allocations to Primary Service

* * * * *

iii. Cost Allocation of Combination Poles

Commonwealth Edison Company (“ComEd”) was directed in Docket 10-0467 to use “direct observation,” including review of the system in the field, to establish a more accurate and

transparent differentiation of primary and secondary costs. Final Order at 180-81, Dkt. 10-0467 (5/24/11). Notwithstanding the efforts of ComEd and the ICC Staff to obfuscate the issue by referring to the direct observation work of ComEd’s consultant, Christensen Associates Energy Consulting, LLC (“CA”), the plain fact is that CA expressly rejected the notion that direct observation is of any value in allocating the costs of poles carrying both primary and secondary lines. ComEd Ex. 3.07 at 11; Metra Cross Ex. 3 at 11. Instead, as CTA/Metra witness James Bachman pointed out, all CA did was substitute its own judgment for that of ComEd’s engineers. J. Bachman Direct, CTA/Metra Jt. Ex. 1.0 at 9:239 to 12:273.

As ComEd’s rate witness Lawrence Alongi testified in Docket 10-0467, a 50/50 split of costs for combined poles is appropriate “because a pole with both types of facilities is equally important to the delivery of primary voltage and secondary voltage.” Dkt. 10-0467, L. Alongi Rebuttal Testimony (Corrected) at 34:774-76. Nothing has changed in the intervening three years. The fact that a primary voltage system is necessary to serve a secondary voltage system efficiently is not, as ComEd consultant and professional witness O’Sheasy asserts, grounds for allocating all combined pole costs to the primary system, or does it support his conclusion that those poles are primarily there to serve the primary systems. That is a red herring. It is common sense that both systems benefit from the shared poles. Their costs, as ComEd’s longtime rate manager and rate witness previously testified, should be shared equally between the two systems.

b. Studies and Analysis Proposed Regarding Future Changes to Cost Allocations to Primary Service

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iii. [OTHERS]

CTA/Metra witness James Bachman recommended that ComEd be directed to work with the CTA and Metra, and Staff if appropriate, to prepare a study identifying the costs of the

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ComEd system that are within Cook and Will Counties, and the system costs outside Cook and Will Counties. Cook and Will Counties were selected because those are the geographic limits of the locations in which the two members of the Railroad Class take delivery of traction power billed at Railroad Class rates. CTA/Metra Jt. Ex. 1.0 at 14:332 to 16:366.

The Commercial Group argues that the prepared study should not be performed because any customer or group of customers could make the same request, with horrific system impacts if the requests were granted. Com. Gr. Br. at 6. ComEd lumped the proposed Railroad Class study with the studies proposed by REACT and IIEC, and argued generally that segmentation of the costs of the system can be unfair and have untoward impacts on customers whose costs are not segmented. ComEd Br. at 13-16. ICC Staff took essentially the same approach and made the same argument. ICC Staff Br. at 10-13.

What these objectors consciously ignore is that the study is not requested on behalf of a single customer or group of customers. Rather, it is a request made by a rate class who does not operate or receive electricity delivery in the vast majority of ComEd's operating territory, and for whom public interest considerations must be taken into account in setting rates of the two class members. Further, after being led to believe by ComEd witness Bjerning that ComEd does not keep its records in a manner that would enable it to track costs in outlying counties, and that it would be very difficult to perform the requested study, we now know from Mr. Bjerning's cross-examination testimony that ComEd has an electronic Geographic Information System in place in which it has mapped by geographic location all of the facilities in ComEd's entire delivery system, with the exception of a very small component. Cf. B. Bjerning Rebuttal Testimony, ComEd Ex. 7.0 at 22:361 to 23:371 with 9/24/13 Tr. at 268:23 to 269:7 and 275:23 to 276:13.

Metra urges the Commission to direct ComEd to work with Metra and the CTA, and Staff if appropriate, to perform the requested study. If ComEd and the other objectors continue to believe that segmentation of the system is inappropriate, those arguments can be addressed when the true facts are known concerning the geographic facility costs and interrelationship, if any, between the Metra and CTA traction power facilities in Cook and Will Counties and the ComEd facilities in Ogle and other distant counties.

c. Cost Allocation of Facilities that Operate Below 12 kV – Railroad Delivery Class

Staff and ComEd maintain their struthious approach to this issue, arguing that all that was ordered in Docket 10-0467 was a study that eliminated from the costs assigned to the Railroad Class the cost of facilities carrying voltage at less than 12 kV. According to ComEd, it complied with the order by filing “illustrative” cost of service studies which eliminated those costs. ComEd Br. at 16. Staff goes so far as to characterize the Commission’s directive in 10-0467 as “CTA/Metra’s proposal to remove costs associated with 12 kV and below for the Railroad class.” Staff Br. at 19. Staff suggests that “[t]here appears to be some disagreement over whether the Commission ordered the costs associated with 12 kV and below to be removed from the Railroad class going forward” or whether ComEd was just supposed to provide a study. *Id.* at 20-21. Staff concludes that in any event “Staff’s understanding is that the prior Order does not require the Commission to reach a particular conclusion in this case but that the Commission would make a determination in the present case based on the facts in this case.” *Id.* at 20-21.

The Final Order in Docket 10-0467 was not ambiguous. The Commission’s analysis of the issue evaluated the parties’ respective arguments, concluded that the Railroad Class is not served by facilities carrying less than 12 kV, and it specifically rejected ComEd’s argument that

the system costs should not be segmented. Final Order at 190-91, Dkt. 10-0467 (5/24/11). The Final Order provided that:

The Commission therefore directs ComEd to work with Metra and the CTA, and Staff if appropriate, to study, define, and *delete* from the costs assigned to the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class.¹

Id. at 191. The Final Order then directed ComEd to prepare a new embedded cost of service study carrying out that directive, and file it as part of ComEd's initial filing in the next rate case.

Id. The concluding sentence threatened ComEd with sanctions if it failed to carry out the Commission's directive. *Id.*

The only party who has made a substantive argument in this proceeding that the under 12 kV costs should not be excluded from the costs assigned the Railroad Class is Staff. The only argument made by Staff is the same segmentation argument that was made by ComEd, and expressly rejected by the Commission in its Final Order in Docket 10-0467. *Cf.* Final Order at 191, Dkt. 10-0467 (5/24/11) with Staff Br. at 20. Given that there are no new facts or arguments asserted, and the only argument raised was expressly rejected in the Commission's Final Order in the most recent rate design case, the Commission should follow its Final Order in Docket 10-0467 and direct ComEd to implement a rate design at the conclusion of this case that eliminates the costs of under 12 kV costs from the costs assigned the Railroad Class.²

¹ Astonishingly, Staff's Brief does the same thing that Staff witness Johnson did. It selectively quotes the language in the Final Order in Docket 10-0467 that directs ComEd to prepare a study, but it omits the immediately preceding sentence expressly directing ComEd to "delete" the under 12 kV costs from the costs assigned the Railroad Class. *See* Staff Br. at 19-20.

² Staff's brief incorrectly asserts that because the embedded cost of service study in ComEd Exhibit 3.12 removed the 4 kV and under costs from not only the Railroad Class but also the ELL and High Voltage over 10 megawatt classes, "if the Commission were to decide to eliminate 4 kV costs for the Railroad Class, there is not a proposed ECOSS available that identifies those results." Staff Br. at 6. That is simply wrong, if not downright misleading. The Railroad Class has its costs of service separately identified in ComEd Ex. 3.12. Consequently, all of the detail is available in ComEd 3.12 for elimination of 4 kV system costs from the Railroad Class.

3. Other Cost Allocation Issues

a. Railroad Cost Allocation Adjustment (related to ComEd's Use of Railroad Customer Facilities)

No party to this proceeding has argued that the credit against the Railroad Class' costs of \$678,104 based on ComEd's use of Railroad Class facilities to serve other customers should be altered or modified. That is because there has been no change in circumstances since the May 24, 2011 Final Order in Docket 10-0467.

ComEd does suggest if ComEd were ordered to implement Approach 2 of the *Use of Railroad Customers' Electric Traction Power Facilities* to eliminate ComEd's dependence upon the Railroad Class facilities to serve other customers, "then it would appear that the underlying rationale for the credit would no longer." ComEd Br. at 18. This gratuitous, ill-conceived, comment is simply wrong.

ComEd proposed the credit, and the Commission approved the credit, based on ComEd's use of the Railroad Class' facilities to serve other customers, not ComEd's dependence on Railroad Class facilities to serve other customers. Final Order at 266 and 274-75, Dkt. 10-0467 (5/24/11). The amount of the credit is based on a percentage of the cost to construct replacement facilities, and also recognized that compensation is warranted "due to the fact that ComEd has been using those facilities for decades, without compensation." *Id.* at 275. Approach 2 would eliminate the need for power to flow through Railroad Class facilities, but ComEd intends to continue to use the Railroad Class' 12 kV bus to serve other customers. ComEd Ex. 4.03 at 4. Thus, even if ComEd Approach 2 is implemented at some as yet unknown time in the future, the use of Railroad Class facilities to serve other customers, which is what prompted ComEd to propose and the Commission to approve a credit for that usage, would continue unabated.

Otherwise stated, contrary to ComEd's gratuitous comment, the underlying rationale for the credit would continue to exist.

IV. RATE DESIGN

C. Potentially Contested Issues

* * * * *

2. Non-Residential

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b. Movement Toward ECOSS-Based Rates

In the last rate design case in Docket 10-0467, the Commission ordered that the Railroad Class' rates should gradually be moved ten percent toward actual cost of service, as part of a ten step gradual movement toward full cost as recommended by ComEd. Final Order at 257 and 259-60, Dkt. 10-0467 (5/24/11). The only party to this proceeding who has opposed continuation of that ten step process is the Commercial Group. The Commercial Group proposed either moving the Railroad Class to full cost-based rates immediately, or doing so in a three step process. *See, e.g.,* Com. Gr. Br. at 8.

The principal argument made by the Commercial Group to support its position is that the ten step process was put in place largely to avoid rate shock and to address the fact that prior ComEd cost of service studies were flawed. The Commercial Group then asserts that because ComEd's cost of service studies have been improved to the point where the Railroad Class could actually receive a decrease in rates as a result of this proceeding, the gradual ten step process is no longer warranted.

Metra agrees with one of the premises of the Commercial Group's arguments. As documented on page 19 of Metra's Initial Post-Hearing Brief, ComEd's initial calculated cost to

serve the Railroad Class in each of the last four rate cases, including this one, has been grossly inflated. But correction of some of the flaws in ComEd's ECOSS that does not eliminate the Commission's public interest rationale for a gradual movement toward recovery of full costs. The Commission's Final Order in Docket 10-0467 was not based in any respect on the fact that ComEd's cost of service studies consistently produced inaccurate, inflated calculations of the cost to serve the Railroad Class. Nor was it based exclusively on rate shock concerns. Rather, it was based on public interest considerations in keeping the cost of public transportation in the Chicago metropolitan area affordable, and realization of the environmental benefits of public transportation. The actual language of the Final Order was as follows:

The Commission declines to extend the Railroad Class' increase in its cost of service beyond 10%. As the CTA and Metra have noted, there are public interest concerns regarding providing affordable public transportation, and the benefits that mass transit provides to the overall reduction in energy consumption and adverse environmental impacts. At this time, the Commission declines to raise the rate that the CTA and Metra will incur beyond 10%. The Commission notes that any increase in the rate supplied to these two customers could be passed on to consumers. Also, an increase in the costs incurred by the CTA and Metra, beyond the modest one proposed by ComEd, could limit these providers' ability to provide public transportation to millions of people.

Final Order at 259-60, Dkt. 10-0467 (5/24/11).

What every party to this proceeding recognizes, except perhaps the Commercial Group, is that there has been no change in the considerations that led the Commission in the last rate case to order a gradual, ten step movement toward actual costs for the Railroad Class. The same public interest considerations associated with ensuring affordable public transportation and in a related vein maximizing the environmental benefits of Chicago area public transportation still exist. There is no justification to deviate from the Commission's approach adopted in the last rate design case.

The Commercial Group also argues that the ten step process should not continue because the cycle for rate cases was changed as a result of legislation, and now rate cases will only occur every three years. Com. Gr. Br. at 10. Of course, as was amply demonstrated in the cross examination of the Commercial Group's witness from Wal-Mart, Steve Chriss, that argument is devoid of any merit. Prior to the change in the law, ComEd tended to file rate cases every three years but filing a rate case was entirely at the direction of ComEd, who could go ten years without filing a rate case. 9/25/13 Tr. at 318:23 to 319:18, 320:19 to 23 and 321:20 to 322:4. After the change in the law, ComEd is required to file a rate design case every three years, but may file rate design cases more frequently. *Id.* at 320:24 to 321:8.

The only other argument raised by the Commercial Group is to focus on some mathematical anomalies arising from the fact that ComEd's revenue requirement has increased by roughly ten percent at the same time as the calculated cost to serve the Railroad Class has decreased by roughly ten percent. Com. Gr. Br. at 12. Those mathematical anomalies do not alter the fact that the Railroad Class rates will move closer to costs and will end in full cost recovery at the end of the ten step process. There is no good reason to abandon the ten step process ordered by the Commission in Docket 10-0467.

VII. CONCLUSION

For all of the reasons set forth above and in Metra's Initial Post-Hearing Brief, Metra requests that the Commission enter a Final Order in conformity with the positions detailed in Metra's briefs and evidence.

Respectfully submitted,

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