

1 STATE OF ILLINOIS  
2 ILLINOIS COMMERCE COMMISSION

3 IN THE MATTER OF: )  
4 THE PEOPLE IN THE STATE OF )  
5 ILLINOIS, )  
6 Plaintiff, )  
7 vs. ) No. 13-0511  
8 COMMONWEALTH EDISON COMPANY, )  
9 Defendant. )

9 Chicago, Illinois  
10 September 30, 2013

11 Met, pursuant to notice at 11:00 a.m.

12 BEFORE:

13 MR. GLENNON DOLAN, Administrative Law Judge  
14 MR. DOUGLAS KIMBREL, Administrative Law Judge

15 APPEARANCES:

16 STATE OF ILLINOIS COMMERCE COMMISSION, by  
17 MR. JOHN FEELEY  
18 MS. JESSICA CARDONI  
19 MS. KELLY TURNER  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
Phone: (312) 793-8185

20 On behalf of Staff;

21 COMMONWEALTH EDISON COMPANY, by  
22 MR. RICHARD BERNET  
10 South Dearborn Street  
Suite 4900  
Chicago, Illinois 60603  
23 Phone: (312) 394-3623

24 On behalf of Commonwealth Edison Company;

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1 APPEARANCES: (continued)

2 ROONEY, RIPPPIE & RATNASWAMY, LLP, by  
3 MR. JOHN ROONEY  
4 MR. E. GLENN RIPPPIE  
5 350 West Hubbard Street  
6 Suite 600  
7 Chicago, Illinois 60654  
8 Phone: (312) 447-2800

9 On behalf of Commonwealth Edison Company;

10 ILLINOIS ATTORNEY GENERAL'S OFFICE, by  
11 MS. KAREN LUSSON  
12 MR. TIMOTHY O'BRIEN  
13 100 West Randolph Street  
14 11th Floor  
15 Chicago, Illinois 60601  
16 Phone: (312) 814-1136

17 On behalf of the People of the State of  
18 Illinois;

19 CITIZENS UTILITY BOARD, by  
20 MS. CHRISTIE HICKS  
21 MS. JULIE SODERNA  
22 309 West Washington Street  
23 Suite 800  
24 Chicago, Illinois 60606  
25 Phone: (312) 263-4282

On behalf of Citizens Utility Board.

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1           JUDGE KIMBREL: Pursuant to the authority of the  
2 Illinois Commerce Commission, I now call Docket 13-0511,  
3 the People in the State of Illinois versus Commonwealth  
4 Edison Company. This is a complaint to investigate and  
5 modify the formula rate tariffs established under  
6 Section 16-108.5(C) of the Public Utilities Act.

7           Will the parties please identify themselves  
8 for the record including their address and telephone  
9 number?

10          MS. LUSSON: On behalf of the people in the state  
11 of Illinois, Karen Lussion, L U S S O N, and Timothy  
12 O'Brien, 100 West Randolph Street, 11th Floor, Chicago,  
13 Illinois 60601.

14          MR. BERNET: On behalf of defendant Commonwealth  
15 Edison Company, Richard Bernet, 10 South Dearborn,  
16 Suite 4900, Chicago, Illinois 60603, (312) 394-3623.

17          MR. ROONEY: Also on behalf of Commonwealth Edison  
18 Company, John Rooney and E. Glenn Rippie of the firm  
19 Rooney, Rippie & Ratnaswamy, LLP, 350 West Hubbard  
20 Street, Suite 600, Chicago, Illinois 60654.

21          MS. CARDONI: On behalf of Staff witnesses for the  
22 Illinois Commerce Commission, Jessica Cardoni, John  
23 Feeley, Kelly Turner, 160 North LaSalle, Suite C-800,  
24 Chicago, Illinois 60601.

25          MS. HICKS: On behalf of the Citizens Utility

1 Board, Christie Hicks and Julie Soderna, 309 West  
2 Washington, Suite 800, Chicago, Illinois 60606.

3 JUDGE DOLAN: All right. Let the record reflect  
4 that there are no additional appearances.

5 One of the things that we were trying to  
6 determine is if the Commission does reopen 13-0386,  
7 which we don't know, again, until the bench session  
8 happens, but until the order has been served by the  
9 clerk's office and an assignment to be made, we can't  
10 really act on that docket, so probably the afternoon of  
11 the 2nd would probably not work. How would October 7th  
12 work for everybody on that Monday morning?

13 MS. LUSSON: That's fine with me, your Honor.

14 JUDGE DOLAN: Because I would say that what we  
15 would suggest is that if they do reopen 386 or if they  
16 don't, I guess either way, we would encourage the  
17 parties to get together and try to work out a schedule  
18 to work on this for an expedited basis and then when we  
19 come in on October 7th, we could be prepared to, you  
20 know, put a schedule into place and try to move this  
21 along either way, if it's 386 or if it's 511.

22 MR. BERNET: That date works for ComEd, too, your  
23 Honor.

24 JUDGE DOLAN: Okay. I'm mean, we're willing to do  
25 it as early as 9:00 o'clock, if you want to do it at

1 9:30, 10:00 o'clock, whichever works best for everybody.  
2 I mean, I don't think we have to get here at the crack  
3 of dawn, but if everybody wants to, you know --

4 MR. BERNET: 9:30?

5 JUDGE DOLAN: Does 9:30 for work for everybody --

6 MS. LUSSON: Yes.

7 JUDGE DOLAN: -- on Monday morning?

8 MS. CARDONI: Yes.

9 JUDGE DOLAN: Okay. Karen, do you still want to  
10 read your schedule into the record or --

11 MS. LUSSON: Well, I guess I would have to revise  
12 the schedule considering I had --

13 JUDGE DOLAN: The hearings.

14 MS. LUSSON: -- let's see -- Yes.

15 All right. We would propose as a schedule  
16 that, first of all, that we would file our direct  
17 testimony in support of our complaint today. We would  
18 have ComEd file its responsive testimony or anyone --  
19 any other party's responsive to testimony on  
20 October 3rd, and rebuttal testimony on October 8th,  
21 hearing on October 10th, initial briefs October 17th,  
22 reply briefs October 24, but obviously we're flexible on  
23 the brief dates if it -- the parties think it would be  
24 proper to have a shorter time period.

25 MR. BERNET: And for the record, ComEd would object

1 to that schedule. That schedule doesn't provide enough  
2 opportunity for ComEd to mount a defense. It also  
3 doesn't provide for any briefing on a proposed order and  
4 it seems odd in light of the fact that you just set a  
5 status for the 7th. So we wouldn't be filing testimony  
6 before the status.

7           And I also would say, you know, this is the  
8 first we've heard about this schedule. We are willing  
9 to work with the AG to the extent that a schedule needs  
10 to be established after the Commission makes a  
11 determination on the 2nd. And the other thing I would  
12 say is, to the extent that the -- that the plaintiff  
13 thinks this is an emergency, for the record, ComEd  
14 believes the emergency is of their own making. They  
15 knew about the filing four months ago. So why ComEd  
16 would be forced to accommodate some expedited schedule  
17 seems inappropriate.

18           MS. LUSSON: Well, your Honor, very briefly, in  
19 response to the latter remarks, this complaint, we  
20 believe, is the making of ComEd. SB-9 authorized very  
21 specific changes in the formula rate template. ComEd  
22 made a filing on May 30th. The Commission, which was, I  
23 believe, a Thursday was served on the AG at 5:15, I  
24 believe, on the -- either the 30th or the 31st. The  
25 Commission entered an order on June 5th, which was

1 Wednesday, and as we indicated in our complaint, we --  
2 ComEd hasn't noticed -- has had notice of the issues  
3 raised in our complaint since we filed testimony on  
4 July 19th when direct testimony was due in  
5 Docket 13-0318, which obviously is directly related and  
6 specifically tied to the allegations in our complaint.

7 ComEd then indicated in rebuttal testimony  
8 filed on August 16th, they believed the changes that we  
9 were proposing in our direct testimony could not be  
10 permitted under Section 16-108.5. On September 3rd, we  
11 filed our complaint; so we believe we acted timely  
12 without waiving our -- any sort of disagreement with  
13 that legal viewpoint. ComEd then had the opportunity to  
14 file rebuttal testimony on these identical issues and it  
15 did file rebuttal testimony, which included not only a  
16 statement that they believed our proposed changes were  
17 unlawful but included substantive accounting testimony  
18 as to why they believed the adjustments that we raised  
19 in our complaint were appropriate.

20 We filed rebuttal testimony. Discovery was  
21 conducted throughout that period; and then, again, the  
22 Company, on September 23rd, filed its surrebuttal  
23 testimony. So the notion that the Company has not had  
24 notice of these issues is simply wrong.

25 And, again, as we clearly state in our

1 complaint, this -- this is about establishing just and  
2 reasonable rates as of January 1st, and making sure that  
3 the rates that are in place reflect exactly what was  
4 approved by the general assembly in Public Act 98-0015.  
5 It's clear. It's become clear since June 5th that what  
6 was filed by ComEd in no way, shape, or form complied  
7 with SB-9. That's the subject of our complaint.  
8 ComEd's had notice of it. So, again, this is not the  
9 object of our own doing.

10           And so that then as -- And we also point out  
11 in our complaint the emergency hear is the fact that  
12 here is very specific language in 16-108.5(C) which  
13 says, "with respect to changes in the formula rate  
14 protocol, any change ordered by the Commission shall be  
15 made at the same time new rates take effect following  
16 the Commission's next order pursuant to subsection D of  
17 this section, provided that the new rates take effect no  
18 less than 30 days after the date on which the Commission  
19 issues an order adopting the change with respect to  
20 changes in the protocols." So that's the emergency. We  
21 believe it's important that rates -- just and reasonable  
22 rates be set as of January 1st, 2014.

23           MR. BERNET: Well, I guess, first of all, your  
24 Honor has already ruled that the cases are not  
25 consolidated so I don't know why we're even discussing

1 evidence in another docket. There is no evidence in  
2 this case; and so that the complaint --

3 A complaint case is a much different case than  
4 a formula rate update. We have consistently taken the  
5 position in the formula rate update that changes to the  
6 formula are legally and proper, and so that's why the AG  
7 filed this complaint. They were clearly on notice that  
8 we filed the tariff the day we did it. If they -- If  
9 they -- They could have objected in that docket. That  
10 he could have filed a petition for rehearing in that  
11 docket, and this could have been litigated in that  
12 docket starting four months ago. So that's our view.

13 MS. LUSSON: Let me just add in response to that,  
14 that in terms of responding to the filing that was made  
15 by ComEd in May 30th relative to SB-9 Public Act  
16 98-0015, first of all, the Act, Section 16-108.5(K)(1),  
17 which authorized and required ComEd to make that filing,  
18 also stated, unlike any other provision of the Public  
19 Utilities Act, that the Commission shall approve those  
20 rates within 21 days. It didn't say the Commission can  
21 investigate like it does in 9201. The Commission shall  
22 enter an order approving rates relative to that filing  
23 21 days later. It said, "The Commission shall approve  
24 the rates filed by ComEd relative to SB-9." The  
25 Commission -- In our view, the Commission's Staff hands

1 were tied, the Commission's hands were tied,  
2 intervener's hands were tied; so clearly the general  
3 assembly in that provision envisioned an expedited  
4 treatment assuming that ComEd would file the changes  
5 that were specifically reflected in SB-9. It's clear  
6 that un- -- that no party realized what happened as of  
7 that May 30th filing until parties were given the  
8 opportunity in this formula rate proceeding to  
9 investigate those -- the actual tariff protocols and the  
10 changes ComEd made.

11 In addition, the -- I wanted to make one other  
12 point, and that is that, again, even if we had filed an  
13 application for rehearing in 13-0386, it's not clear  
14 that that would have been possible given that very  
15 different statutory language that's found  
16 16-108.5(K)(1); but regardless of the fact, parties  
17 always have the ability under Section 9-250 to challenge  
18 an existing rate if they believe it's unlawful or  
19 discriminatory or not just and reasonable, just as the  
20 Commission, at any time, has the ability to investigate  
21 the Company's rates. So --

22 And the other point I wanted to add is that  
23 for ComEd to say that this complaint is unrelated and  
24 that the evidence is different, is specifically  
25 contradicted by their own filing in Docket 13-0318,

1 which was filed on May 31st, I believe, which was the  
2 exact amended formula rate filing that ComEd informed  
3 your Honors and the Commission of in this docket.  
4 Revised testimony was filed by all of the ComEd  
5 witnesses relative to that May 30th filing. So to  
6 engage in this legal fiction and pretend that these are  
7 somehow unrelated is just not credible.

8 JUDGE DOLAN: All right. So noted.

9 I think at this point, since we've already  
10 determined that we're going to have a status on  
11 October 7th, we are not going to enter your schedule  
12 into the record. We do, however, need to set that  
13 motion to dismiss schedule.

14 And do you want to stand on, that you'll file  
15 your response today or do you want to take more time for  
16 it?

17 MS. LUSSON: I'm prepared to file the response  
18 today, your Honor.

19 JUDGE DOLAN: Okay. And then ComEd will get their  
20 reply on by October 3rd?

21 MR. BERNET: Yes, your Honor.

22 JUDGE DOLAN: Okay. And subject to that, is there  
23 anything else to be brought before the Commission today?

24 MS. HICKS: Your Honor, I'm not sure that the  
25 Citizens Utility Board's petition to intervene has yet

1    been granted.

2           JUDGE DOLAN:  Oh, okay.  Is there any objections  
3    then to CUB's petition to intervene?

4           MR. BERNET:  No objection.

5           JUDGE DOLAN:  All right.  Hearing none, CUB's  
6    petition to intervene will be granted.

7           MS. HICKS:  Thank you.

8           JUDGE DOLAN:  Subject to that, we'll be entered and  
9    continued October 7th at 9:30 a.m.

10          MR. BERNET:  Thank you.

11          MS. LUSSON:  Thank you, your Honors.

12          JUDGE DOLAN:  Thank you.

13                                (Which were all the proceedings  
14                                had at this time in the  
15                                above-entitled cause.)

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1 STATE OF ILLINOIS )  
2 COUNTY OF COOK ) SS.

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4 Kim A. Kocimski, being first duly sworn, on  
5 oath says that she is a Certified Shorthand Reporter  
6 doing business in the City of Chicago, County of Cook  
7 and the State of Illinois;

8 That she reported in shorthand the proceedings  
9 had at the foregoing hearing;

10 And that the foregoing is a true and correct  
11 transcript of her shorthand notes so taken as aforesaid  
12 and contains all the proceedings had at the said  
13 hearing.

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\_\_\_\_\_  
KIM A. KOCIMSKI, CSR

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CSR No. 084-004610

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19 SUBSCRIBED AND SWORN TO  
20 before me this 10th day of  
October, A.D., 2013.

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NOTARY PUBLIC

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