

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company)	
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Annual Formula Rate update and revenue requirement reconciliation under Section 16-108.5 of the Public Utilities Act)	13-0318
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REPLY BRIEF ON EXCEPTIONS OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS, CITY OF CHICAGO, AND CITIZENS UTILITY BOARD

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Now come the Illinois Industrial Energy Consumers (“IIEC”), City of Chicago (“City”) and Citizens Utility Board (“CUB”) (collectively, “CCI”), pursuant to Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), 83 Ill. Admin. Code Part 200.830, and pursuant to the briefing schedule established by the Administrative Law Judges (“ALJs”), to hereby file this Reply to the Brief on Exceptions (“BOE”) of Commonwealth Edison Company (“ComEd” or the “Company”) in the above-captioned proceeding.

III. SCOPE OF PROCEEDING

B. The Definition of Rate Year and the Reconciliation Cycle

In its BOE, ComEd asks that the Commission modify the Proposed Order to include “an explicit ruling rejecting CCI’s claim that there is a mismatch between the reconciliation year and the Rate Year.” ComEd BOE at 3. ComEd makes this proposal despite -- once again -- having failed to present any substantive legal or evidentiary argument that supports its position. ComEd also does not offer any reasoning based on the year-by-year cost recovery objective of the Energy Infrastructure Modernization Act, Public Act 97-0616 (as amended by Public Acts 97-0646 and 98-0015) (“EIMA”) that would explain the mismatched “reconciliation” of projected and actual revenue requirements from different years, which ComEd insists is required by the EIMA. As in each of its prior filings, ComEd relies on circular reasoning -- using the

assumptions of its own interpretation of EIMA's Rate Year and cost recovery process, purporting to prove the lawfulness and propriety of its Rate Year designation and the resulting cost recovery cycle.

ComEd's BOE argues that CCI's interpretation of the EIMA's cost recovery cycle "makes no sense because the reconciliation legally must be based on actual costs, and the actual costs of 2013 by definition are not known in a formula rate proceeding filed and to be determined in 2013." ComEd BOE at 4. This is an apparent effort to avoid confronting the fact that in this case ComEd purports to "reconcile" a revenue requirement built from 2010 actual costs and 2011 projected costs with actual costs from 2012. ComEd BOE at 3. ComEd declares that its process "here reconciles 2012 actual costs against the revenue requirements used to set the rates in effect in 2012" -- that is, the revenue requirement comprising 2010 actual and 2011 projected costs. ComEd BOE at 3; ComEd Exceptions at 5.

To enhance its distraction, ComEd mis-states CCI's position. CCI never proposed a "reconciliation" like ComEd describes. Under CCI's interpretation of the EIMA and under the language of the statute itself, in the proceeding filed in 2013, the reconciliation should match the projected revenue requirement "for the prior year" "with the actual revenue requirement for the prior rate year." 220 ILCS 5/16-108.5(d). For a filing in 2013, the reconciliation would be of projected and actual revenue requirements for the prior year, 2012, respecting the statutory structure of cost determination and reconciliation for individual calendar years. In the Commission's only ruling on this issue, this very scenario (for the same years used in ComEd's argument) was examined. The Commission held (as CCI argue) that "reconciliations pursuant to 220 ILCS 5/16-108.5(d)(1) must be from whatever projected figures were used in a given year (e.g., 2012) versus the final historical data for that year (2012)." ICC Docket 11-0721, Order on

Rehearing (Oct. 3, 2012) at 17. ComEd's only response to the Commission's ruling is to describe it as "out of context," while simultaneously claiming that its process is consistent with the ruling. ComEd BOE at 4. ComEd is wrong as a matter of law, and its misinterpretation of the statute ignores the Commission's prior determination.

The Commission further held that "[i]f the reconciliation process did not match or actually "resolve" the projection for that year, there would be no actual "reconciling" of any figures regarding what occurred. What would happen, instead, would be a meaningless mismatch of numbers." ICC Docket 11-0721, Order on Rehearing (Oct. 3, 2012) at 17. ComEd states that "its determinations all are based on use of the 2012 reconciliation year and the 2014 Rate Year." ComEd BOE at 4. ComEd's use of 2011 projections and 2012 actuals confirms the Commission's forecast of a "meaningless mismatch." First, ComEd again avoids defining the revenue requirement with which it "reconciles" the 2012 actual revenue requirement. Second, ComEd's designation of the projected costs required by the statute as its 2014 Rate Year revenue requirement causes a gap in the year-by-year progression of annual cost recovery. That gap is due to ComEd's decision to designate the year after the year for which it projects a revenue requirement as the Rate Year. ComEd skips over the year for which the statute requires projections for determining its revenue requirement, pretending that its 2013 projections are projections for 2014 and delaying reconciliation of the 2013 projections until 2014 actuals are available. (ComEd has presented no evidence that its process yields a reasonable estimate of 2014 costs.) The results are an unreasonable cost estimate for the "year after" (with its extra period of mandated investment), formula rates that are not cost-based or just and reasonable, and persistent "reconciliation" deficiencies on which ComEd will earn interest at the rate of the Company's Weighted Average Cost of Capital ("WACC").

ComEd claims that prior Commission orders accepting its formula rates validate its rate year designation and the resulting mismatched cost recovery process. ComEd BOE at 4. ComEd further argues that the Commission's decisions immunize its statutory interpretation from review or correction, notwithstanding the fact that ComEd ignored the Commission's previous decision defining a proper reconciliation. *Id.* at 1-2.

At the end of the day, after three rounds of testimony and three briefs, the observations CCI made in their BOE (at 5) remain valid.

- ComEd still has not identified any specific language in the EIMA that requires or permits the reconciliation of a projected revenue requirement for one year with the actual revenue requirement from a different year. *See* ComEd BOE at 3-4; *contrast* CCI BOE at 2-9; CCI BOE, Appendix (CCI's analysis of statutory language and law).
- ComEd has presented no evidence that its interpretation, reconciling Year-3 costs with Year-1 actual costs plus Year-2 investment projections, provides a lawful basis for delivery service rates, as required by the standards of Public Utilities Act ("PUA") Article IX (incorporated by EIMA) and the specific requirement for cost-based rates in PUA Section 16-108(c).
- ComEd has provided no reasoned explanation for its mismatch of projected and actual revenue requirement periods, which does not respect the EIMA's focus on the year-by-year determination and reconciliation of projected and actual revenue requirements.

As CCI have argued, ComEd's Rate Year designation and recovery cycle are inconsistent with the statute and, therefore, unlawful and beyond the Commission's authority to approve. Correcting the implementation of the statute to a lawful process consistent with the language and objectives of the EIMA is not only permitted, but required. *See generally* CCI BOE, Appendix A.

VI. RATE BASE
B. Potentially Uncontested Issues
2. Cash Working Capital

ComEd continues to argue against Staff witness Mr. Kahle's method of calculating a second Cash Working Capital ("CWC") amount that recognizes the differences between the Company's projected and actual revenue requirements for a given year. ComEd BOE at 5-7; Staff Ex. 2.0C at 9:150-154. The Company's method of using the same CWC for both years ignores the derivative change in CWC that results from the inclusion of filing year projected plant additions in the revenue requirement, even though the Company recognizes similar derivative adjustments for accumulated depreciation, depreciation expense, accumulated deferred income tax, and federal and state income tax. *See* Staff Ex. 2.0C at 9:156-161. Failing to use a distinct CWC for the reconciliation revenue requirement means that ratepayers will pay rates that do not reflect actual costs, because the projected revenue requirement is bound to differ from the actual revenue requirement used in the reconciliation. Staff's methodology more closely matches ComEd's actual costs than does ComEd's method.

The Commission should consistently determine derivative changes to ComEd's revenue requirement. By using distinct CWC amounts that recognize the differences between the projected and actual revenue requirements used in reconciliation, the Commission would act consistently with its depreciation, ADIT, and other determinations. The Proposed Order appropriately adopts Staff's adjustment in this regard and finds that the inputs into ComEd's formula rate should be adjusted to apply the correct, distinct CWC amount to each of the years used in the reconciliation. Furthermore, the Commission recently decided this issue in consolidated Docket Nos. 13-0501 and 13-0517, in which it adopted the identical Staff

recommendation to CWC. ICC Docket Nos. 13-0501 and 13-0517 (cons.), Interim Order (Nov. 26, 2013) at 38. This conclusion should not, therefore, be disturbed.

V. OPERATING EXPENSES

C. Potentially Contested Issues

2. Incentive Compensation Program Expenses

a. Long-Term Performance Share Awards Program (“LTPSAP”)

ComEd’s main argument in support of its desired inclusion of some portion of its Long-Term Performance Share Awards Program (“LTPSAP”) is that the Commission cannot disallow 100% of this expense if any portion of that expense is recoverable. ComEd BOE at 10-11. ComEd’s argument presumes that it proved that some amount of LTPSAP was exclusively and identifiably related to ComEd’s operational metrics. The Proposed Order properly recognized that the record does not, in fact, demonstrate this. LTPSAP includes goals for operational and financial performance of not just ComEd, but each of the other Exelon subsidiaries as well. Whether customers may coincidentally benefit from some LTPSAP goals is not the issue. Such may also be the case with metrics that are designed exclusively for shareholder benefit. But that coincidental benefit – whether it exists or not – does not meet the standard under EIMA for including incentive compensation costs in rates. Under that statute, allowable utility incentive compensation must be “based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance.” 220 ILCS 5/16-108.5(c)(4)(A).

ComEd has the burden to demonstrate that its proposed recovery (or, in this case, it’s acceptance of Staff’s proposed – reduced – recovery of 13.6%) of its total requested LTPSAP expenses meets the requirements under EIMA for rate recovery. *See* 220 ILCS 5/16-108.5(c); 220 ILCS 5/9-201(c). The record demonstrates that the basis for LTPSAP awards is unknown, since awards are the result of the Board of Directors Compensation Committee’s (“Committee”)

subjective, qualitative assessment of all Exelon subsidiaries' performance in six listed goal areas that support the long-term growth and value of Exelon. CCI Ex. 1.0 at 10:198-205. There are no direct payout percentages assigned to any of the goals or affiliates and, thus, it cannot be determined what portion (if any) of an award is based on ComEd's operational performance and what weights were given to metrics related to earnings per share ("EPS") and the operations of other Exelon subsidiaries. *Id.* Mr. Gorman testified that these metrics are too removed from the specific delivery service related achievements of ComEd for the Commission to determine if the benefits resulting from LTPSAP justify recovering the cost of the program from ratepayers. *Id.* Thus, ComEd has failed its statutory burden of proof, to demonstrate that the requested expenses meet the requirements under EIMA for inclusion in rates.

The Proposed Order's conclusion to disallow 100% of ComEd's LTPSAP should, thus, be adopted by the Commission.

IX. REVENUES

C. Potentially Contested Issues

2. Billing Determinants

The Proposed Order properly adopts the Staff and AG adjustment to ComEd's billing determinants, consistent with the Commission decisions in ComEd's two previous formula rate cases. ComEd argues that the Proposed Order "overlooked" the "new evidence" it presented in this case. ComEd BOE at 17. However, in support of its argument, ComEd largely repeats the arguments of its Initial and Reply Briefs. *Id.* at 17-19. Those arguments were considered and appropriately rejected by the Proposed Order and by the Commission in 2011 and 2012. As for the "new evidence" ComEd claims to have presented, none of the points ComEd raises changes the important fact that the Company proposes to use 2012 billing determinants with the revenue

requirement for a later year with a different billing determinant basis and increased investment based on new business (and higher billing determinants). AG Ex. 2.0 at 8:173-9:186.

ComEd attempts to shift the burden of proof to Staff and intervenors, claiming that they “are required to show that deviation from historical weather-normalized billing determinants is warranted...” and that “under the EIMA, Staff and intervenors had to support their objections.” ComEd BOE at 21. The Commission may easily reject such a claim, as the burden of proof to demonstrate the justness and reasonableness of all expenses still lies with ComEd, even under the EIMA.¹ The EIMA makes clear that the performance-based formula rate tariff filed by a participating utility should be reviewed using the standards of Article IX of the PUA. 220 ILCS 5/16-108.5(c). Article XI provides that, in rate cases, the utility bears the burden of proof to establish the justness and reasonableness of its proposed rates. 220 ILCS 5/9-201(c).

ComEd argues that historical weather-normalized billing determinants are the only billing determinants specified in EIMA. ComEd BOE at 21. As it has in the past, the Commission should reject ComEd’s overly narrow interpretation of the EIMA and follow its duty to order cost-based delivery service rates. *See Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order at 75 (May 29, 2012); *Commonwealth Edison Co.*, ICC Docket No. 12-0321, Final Order at 28 (Dec. 19, 2012); 220 ILCS 5/9-201(c). The use of one set of weather-normalized billing determinants for a year in which the basis for those billing determinants has undeniably changed fails to follow the “actual costs” dictate of EIMA or to comply with the Article IX ratepayer protection provisions of the PUA. The Commission should thus adopt the conclusion of the Proposed Order.

¹ The statutory provision ComEd cites requires only that objections be supported, which the demonstrated difference in revenue requirements satisfies; the same provision anticipates evidence by the utility, with the evidence evaluated under Article IX standards. 220 ILCS 5/16-108.5(c).

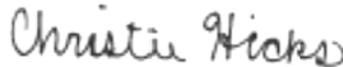
XII. CONCLUSION

WHEREFORE, CCI respectfully request that the Commission adopt the positions and adjustments set forth in CCI's Brief on Exceptions and reject ComEd's Exceptions for the reasons stated herein.

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Respectfully Submitted,

THE CITIZENS UTILITY BOARD



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