

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
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Petition to Make Housekeeping Revisions and a	:	Docket No. 14-0316
Compliance Change to filed Rate Formula.	:	

**COMMONWEALTH EDISON COMPANY'S REPLY BRIEF ON EXCEPTIONS  
TO THE ALJS' PROPOSED INTERIM ORDER DATED JULY 23, 2014**

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Commonwealth Edison Company (“ComEd”), by its counsel, under Section 10-111 of the Public Utilities Act (the “Act”), 220 ILCS 5/10-111, 83 Ill. Admin. Code § 200.830, and the order of the Administrative Law Judges (“ALJs”), submits this Reply Brief on Exceptions to the ALJs’ Proposed Interim Order dated July 23, 2014 (“Proposed Interim Order” or “PIO”). The Exceptions proposed by the Illinois Attorney General’s office (the “AG”) and the Citizens Utility Board (“CUB”) in their Brief on Exceptions (“BOE”) should be rejected as untimely, inappropriate, and inefficient.

**I. INTRODUCTION**

Under the Energy Infrastructure Modernization Act (“EIMA”)<sup>1</sup>, the Illinois Commerce Commission (“Commission” or “ICC”) was directed to establish a rate formula for ComEd and thereafter, apart from recognizing changes or clarifications in law, to update the inputs to the formula with new data in annual formula rate updates (“FRU”). In all respects, the rate formula was to be stable and predictable. Indeed, EIMA forbade modifying its structure and protocols in FRUs, and limited such changes to separate Article IX dockets. 220 ILCS 5/16-108.5(c) and (d).

The instant Article IX Docket was initiated to make simple and straightforward housekeeping and compliance changes to the rate formula, as discussed below. The Proposed

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<sup>1</sup> “EIMA” refers to the Energy Infrastructure Modernization Act, Public Act (“PA”) 97-0616, as amended by PA 97-0646 and PA 98-0015, and the changes and additions it made to the Act.

Interim Order recommends adding two other significant – and anything but “housekeeping” – issues in a “Phase 2”, to be decided in a final Order issued no later than November 30, 2014.

The AG/CUB Exceptions propose to go far beyond even the PIO’s expanded scope, exacerbating the problems of adding a “Phase 2” to this Docket. Beyond the two additional issues already proposed, AG/CUB’s untimely request seeks to expand this once-focused Docket even further to add still other rate formula issues, including reconciliation balance and income taxes issues on which the Commission already repeatedly rejected their proposals, most recently in an investigation in 2013. Even worse, instead of limiting the addition to that subject, their proposed Exceptions language lacks any limits and would open the door to still other rate formula issues that are not know even known.

The untimely expansion of this Docket, especially to add issues on which the Commission already has ruled the AG/CUB position, and to invite still more issues that are not even identified, is antithetical to the rate formula framework established by EIMA. Open-ended and limitless investigations of the rate formula would strip away the ratemaking transparency, certainty, and efficiency benefits that the General Assembly intended in adopting EIMA. AG/CUB’s Exceptions would result in churning the rate formula and must be rejected.

## **II. BACKGROUND**

This Docket began as a simple and narrow proceeding regarding ComEd’s Petition to: (1) make a housekeeping change to clarify one line of ComEd’s Commission-approved rate formula; and (2) make a single change (through a set of coordinated revisions) to comply with the December 18, 2013, final Order in ComEd’s 2013 FRU, ICC Docket No. 13-0318, which required adding a second cash working capital (“CWC”) calculation to the rate formula, but

which Order also recognized that the CWC change might need to be handled in a separate Article IX Docket. ComEd BOE, pp. 2-3.

Staff, in its motion of May 16, 2014, initially proposed to expand Phase 2 of this Docket to add two defined issue plus unspecified rate formula changes. Subsequently, however, in its June 19, 2014, filing, Staff restricted its proposal to exactly the two defined issues: (1) the application of ComEd's 2014 depreciation study to 2013 plant balances in ComEd's pending 2014 FRU, ICC Docket No. 14-0312; and (2) the legal issue of whether or to what extent portions of the rate formula that are not set forth in ComEd's applicable tariff, Rate DSPP – Delivery Services Pricing and Performance (“Rate DSPP”), can be modified in an FRU. The Proposed Interim Order adopts Staff's revised proposal to limit Phase 2 to those two defined issues.

AG/CUB's BOE (at pp. 2-3) attempts to argue that the Proposed Interim Order unilaterally limited Phase 2 to those two defined issues, but that is clearly not the case. Moreover, the Proposed Interim Order provides for a final Order by November 30, 2014. Staff urged that deadline so as to obtain a final Order that could be applied in ComEd's 2014 FRU, a deadline which would now be put at risk by the addition of other and yet-unknown issues. ComEd's BOE proposes language changes to the Proposed Interim Order, but under ComEd's proposal, Phase 2 would be limited to Staff's two defined issues and would result in a final Order by November 30, 2014.

### **III. AG/CUB'S RECONCILIATION BALANCE AND INCOME TAXES ISSUE SHOULD NOT BE ADDED TO PHASE 2**

AG/CUB's BOE argues that issues regarding reconciliation balances and income taxes should be added to Phase 2 of this Docket. More specifically, they note that in ComEd's 2014 FRU, AG witness David Effron, and CUB/City of Chicago, Illinois Industrial Energy Consumers (“IIEC”) (together “CCI”) witness Michael Gorman, in their respective July 1, 2014, direct

testimony, propose to change the rate formula to prevent ComEd from recovering, or crediting to customers, the full amount of interest applicable to reconciliation balances (which can be positive or negative) determined in FRUs. AG/CUB BOE, pp. 3-4. (Mr. Effron and Mr. Gorman's specific proposals differ materially in their methods.) AG/CUB are correct that it is ComEd's position that the AG/CUB proposal cannot be adopted in the 2014 FRU, because it is an improper change to the rate formula that must be handled in a separate Article IX Docket. *See* AG/BOE, p. 4. That hardly means, however, that it must or should be added to this Docket.

The AG/CUB proposal is prejudicially untimely for at least two reasons. First, the AG first litigated this issue in ComEd's first formula rate case, in which the rate formula initially was established, ICC Docket No. 11-0721, and the AG resumed litigating this same issue in 2013, and the Commission has never ruled in their favor. The Commission rejected their proposal in ICC Docket No. 11-0721 (Order May 29, 2011), pp. 166-167. AG/CUB's BOE (at p. 5) itself states that, in ICC Docket No. 13-0553,<sup>2</sup> the AG made the same proposal that AG/CUB advance here, and that the Commission's November 26, 2013, final Order in that Docket rejected that proposal, although the Order also stated in part that: "In the future, if further arguments from the parties are presented or clarity from the legislature is provided on this topic, the Commission will revisit the issue." AG/CUB's BOE contains no explanation of why they did not propose to add their issue to Phase 2 in the instant Docket until their July 25, 2014, BOE, nor do they in their Exceptions (or in the testimony in the 2014 FRU) identify any new arguments or legislative clarification. There are none. They simply repeat the same failed arguments they've previously made, sometimes multiple times.

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<sup>2</sup> In its June 5, 2013, final Order in an Article IX Docket, ICC Docket No. 13-0386, the Commission approved a filing made by ComEd to effectuate changes in the rate formula pursuant to PA 98-0115. The Commission later initiated an investigation proceeding, ICC Docket No. 13-0553, under Section 10-113(a) of the Act, to investigate whether it should modify its Order in ICC Docket No. 13-0386.

AG/CUB's proposal also is untimely because the Proposed Interim Order is designed to achieve a final Order by November 30, 2014, faster than the 2014 FRU, and AG/CUB make no case that their proposed reconciliation balance and income tax issues can be addressed in a fair and reasonable manner on that schedule. Further, accepting their proposal that this Docket's scope be indefinitely broadened would eliminate any possibility of resolution only 120 days from now. At a minimum, removing all limits on the potential scope of this Docket assures delay not only while additional issues are identified and described by parties, but also risks still further delay if their inclusion in the case is controversial and litigated, which would most assuredly be the case.

AG/CUB boldly claim that not adding these untimely issues here would be unfair (AG/CUB BOE, pp. 5-6), but they ignore the fact that there are timely and proper means to raise such controversies, means which they *chose* not to pursue. Indeed, although the Commission has already (and repeatedly) made rulings contrary to the AG/CUB proposal in the initial ComEd formula rate case, ICC Docket No. 11-0721, in ICC Docket No. 13-0386, and again in ICC Docket No. 13-0553, they chose not to raise it again here until July 25, 2014. The claim of unfairness is also particularly incongruous given their opposition, including with claims of untimeliness, to ComEd's June 18, 2014, motion to propose that Staff's legal issue about the scope of authority (if any) to modify the rate formula in FRUs be handled through a rulemaking either in a new docket or in Phase 2. *See* the AG and CUB July 3, 2014, responses to that motion. Their claim of unfairness also ignores the fact that final resolution of these issues will almost certainly come out of the appellate courts, not this Docket. Indeed, as AG/CUB's BOE (at p. 5) recognizes, these issues are already on appeal by virtue of their appeal from the Commission's decision in ICC Docket No. 13-0553.

AG/CUB's tired claim that the Commission should act because ComEd is "over-recovering" its costs is particularly baseless and improper in its BOE. ComEd is recovering only what it is permitted under the rate formula approved by the Commission, on three separate occasions,<sup>3</sup> and that formula tracks the plain language of EIMA. AG/CUB's claim that their contrary arguments are nonetheless correct contradicts not only those decisions, but the facts. Their position would prevent ComEd from recovering the income taxes associated with the reconciliation balance when it is positive, and would prevent customers from receiving the benefit of the associated income taxes when the balance is negative. Indeed, with Commission approval and without objection from AG/CUB, in ComEd's first FRU, ICC Docket No. 12-0321, ComEd credited customers with the full amount of the income taxes when the reconciliation balance was negative. Now that the balance is positive, AG/CUB want to change the rules. Their proposal is contrary to EIMA and basic ratemaking law and principles regarding cost recovery and income taxes.

#### **IV. AG/CUB'S PROPOSED EXCEPTIONS LANGUAGE MUST BE REJECTED**

AG/CUB's Exceptions language is far out of proportion with their briefing. They have wildly overreached in their requested relief. Instead of suggesting Exceptions language that simply would add their reconciliation balance and income taxes issue to Phase 2, AG/CUB propose language to add "any other issues that may involve changes to formula rate schedules, appendices and workpapers". AG/CUB BOE, pp. 6, 7, 8 (Exceptions language).

AG/CUB's Exceptions language mirrors Staff's original proposal, but after ComEd expressed concerns, Staff apparently then realized that it must limit its Phase 2 proposal to the two defined issues discussed above. The Proposed Interim Order adopts Staff's revised

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<sup>3</sup> *Commonwealth Edison Co.*, ICC Docket Nos. 11-0721, 13-0386, 13-0553.

proposal. The Proposed Interim Order properly does not create a Phase 2 that, instead of being limited to Staff's two defined issues, would be an open-ended free-for-all with insufficient notice to ComEd (and other parties), and with no fair opportunity to be heard. Moreover, requiring more discovery, more testimony, and more briefing almost certainly would jeopardize having a final Order by November 30, 2014.

There is no good or timely reason for adopting an open-ended Phase 2. ComEd already demonstrated that to be the case in its May 23, 2014, response to Staff's original proposal. Moreover, the AG and CUB previously complained that handling Staff's legal issue through a rulemaking, as the Commission has promised and ComEd has requested, would be inefficient, and yet now the AG and CUB want to open up Phase 2 to literally anything that might alter the rate formula. Their proposal for Phase 2 could not be more inefficient.

There is no good reason at this late date for the Commission to open up Phase 2 to additional improper claims that ComEd's rate formula should be modified. Staff and intervenor direct testimony was filed in the 2014 FRU on July 1, 2014. There is no reason for additional rate formula issues to be raised now, well after testimony has been filed in the FRU.

This Docket started as a routine and narrow housekeeping Docket. Now it has been expanded with a Phase 2 for two significant (but defined) issues. The time for adding specific issues has passed, and there will never be a time when it makes sense to open up Phase 2 for unidentified issues. The notion that there should be an open-ended docket where ComEd's rate formula can be modified or restructured is antithetical to EIMA, to good regulatory practice, and to principles of due process. The AG/CUB Exceptions must be rejected.

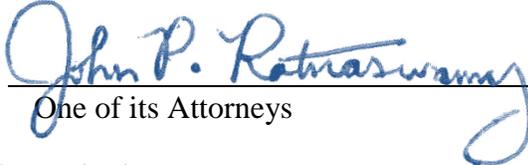
V. CONCLUSION

For the reasons stated above and all reasons appearing of record, including but not limited to the prior briefing of Staff's original and later withdrawn proposal to open up Phase 2 of this Docket to unidentified issues, AG/CUB's Exceptions should and must be rejected.

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Respectfully submitted,

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