Docket No. 14-0312
CCC Ex. 1.0

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	No. 14-0312
Annual formula rate update and revenue	:	
requirement reconciliation under	:	
Section 16-108.5 of the Public Utilities Act	:	

Rebuttal Testimony of

JOHN CARPENTER

Senior Vice President, External Affairs

Chicagoland Chamber of Commerce

August 13, 2014

ILLINOIS COMMERCE COMMISSION
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1 **I. INTRODUCTION**

2 **A. Witness Identification**

3 **Q. Please state your name and address.**

4 A. My name is John Carpenter. My business address is 410 North Michigan Avenue, Suite
5 900, Chicago, Illinois 60611.

6 **Q. What is your occupation and by whom are you employed?**

7 A. I am the Senior Vice President, External Affairs of Chicagoland Chamber of Commerce
8 ("the Chamber").

9 **Q. What is the Chamber?**

10 A. The primary role of the Chamber is to make Chicagoland the most business-friendly
11 region in America by enhancing our members' success through programs in advocacy,
12 member benefits and services, and actionable information. Serving as "The Voice of
13 Business" since 1904, the Chamber leads public policy and business growth initiatives
14 and creates meaningful events and programs to inform, engage, and connect our members
15 to each other and the community.

16 **B. Summary of Rebuttal Testimony**

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

18 A. The Chamber supported the passage of the Energy Infrastructure Modernization Act
19 ("EIMA") in 2011 because of its transformative effects on three key areas of electric
20 utility regulation – EIMA (i) authorizes billions of dollars in infrastructure investment to
21 modernize the aging electric grid, (ii) transitions from traditional to performance-based
22 formula ratemaking to provide for timely and transparent cost recovery of these

23 investments, and (iii) imposes performance metrics on utilities to ensure the investments
24 deliver the promised benefits to customers. Yet, the Chamber has grown increasingly
25 frustrated by efforts to erode EIMA's simplicity and clarity, which, most recently, are
26 embodied in the proposal of the Illinois Attorney General's Office ("AG") to disallow
27 substantial portions of Commonwealth Edison Company's ("ComEd") annual incentive
28 compensation costs. The purpose of my testimony, then, is to indicate the Chamber's
29 support of ComEd's request to fully recover these costs – as expressly provided for in
30 EIMA – and show why the AG's proposal should be rejected under EIMA.

31 As I will explain in more detail below, the Illinois Commerce Commission
32 ("ICC" or "Commission") has approved ComEd's annual incentive compensation costs
33 during the last several rate cases, and it should again do so here. Far from departing from
34 this Commission practice, EIMA brought clarity and stability to the issue of incentive
35 compensation cost recovery by specifying that recovery of this expense is a standard
36 protocol of the performance-based formula rate. Because ComEd's annual incentive
37 compensation cost is "based on the achievement of operational metrics" as required by
38 EIMA (220 ILCS 5/16-108.5(c)(4)(A)), it is recoverable under EIMA. The Chamber did
39 not file direct testimony on the issue because it does not dispute recovery of these costs.
40 Because the AG filed direct testimony opposing recovery of ComEd's AIP costs,
41 however, the Chamber has elected to file rebuttal testimony opposing these
42 disallowances, which are inconsistent with the EIMA framework and would ultimately
43 increase costs to members of the Chamber.

44 C. **Qualifications and Professional Background**

45 Q. **What are your responsibilities as the Senior Vice President, External Affairs of the**
46 **Chicagoland Chamber of Commerce?**

47 I oversee the day-to-day operation of the Chamber ensuring the implementation of the
48 strategic vision of the Chamber's Board of Directors.

49 Q. **Would you describe your prior work experience and responsibilities?**

50 A. Prior to joining the Chicagoland Chamber of Commerce in 2011 as the Senior Vice
51 President of Public Policy, I was employed as an executive with American Airlines for 20
52 years.

53 Q. **Have you testified in prior proceedings before the Illinois Commerce Commission?**

54 A. I have not.

55 II. **INTERVENORS' EFFORTS TO IMPEDE EIMA'S DELIVERY OF BENEFITS**
56 **AND COST SAVINGS TO CUSTOMERS SHOULD BE REJECTED.**

57 Q. **Previously, you testified that "the Chamber has grown increasingly frustrated by**
58 **efforts to erode EIMA's simplicity and clarity." Why is the Chamber concerned**
59 **about EIMA's implementation?**

60 A. As one of the most influential business associations in the nation and the region's most
61 powerful network of businesses, the Chamber supported the EIMA legislation introduced
62 in 2011 because of three key features: EIMA (i) expressly authorizes billions of dollars
63 in investment to modernize the state's electric infrastructure, (ii) switches from traditional
64 ratemaking to more efficient and transparent performance-based formula ratemaking, and
65 (iii) imposes performance metrics on utilities to ensure the investments deliver the

66 promised benefits to customers. Based on this framework, the Chamber believed, and
67 continues to believe, that EIMA provides a much needed source of economic stimulus for
68 the State's businesses while also improving their electric service. Indeed, the thousands
69 of jobs created under EIMA to date reflect the success of EIMA as an economic engine.

70 Yet, the Chamber understands that the implementation of EIMA has been
71 contentious from the beginning, starting with the very first dockets to approve the
72 utilities' formula rates. Indeed, with respect to certain issues, the General Assembly
73 subsequently enacted additional legislation to correct misinterpretations of EIMA that
74 were reflected in the Commission first two formula rate case orders under EIMA. *See*
75 House Resolution 1157 (97th General Assembly); Senate Resolution 821 (97th General
76 Assembly; Public Act 98-0015 (98th General Assembly). The Chamber is therefore
77 concerned about the AG's targeting in this docket of another core feature of EIMA that
78 was previously undisputed – incentive compensation. In the Chamber's view, this
79 reflects only the latest effort to undo the predictability and stability built into EIMA's
80 performance-based formula ratemaking, which is surprising given that we are now four
81 years into the formula ratemaking process. EIMA is the law and it should be
82 implemented to the fullest extent. The AG's proposal to disallow annual incentive
83 compensation costs is just the latest effort in a series of proposed disallowances since
84 EIMA's enactment that would, if adopted, effectively dismantle EIMA case-by-case,
85 piece-by-piece.

86 **Q. According to your earlier testimony, the AG's proposal to disallow all of ComEd's**
87 **annual incentive compensation expense undermines the successful implementation**
88 **of EIMA. Can you explain your concerns in more detail?**

89 A. Yes. EIMA specifically sets forth certain cost recovery protocols to be included in a
90 participating utility's formula rate. The first of those protocols provides for the "recovery
91 of incentive compensation expense that is based on the achievement of operational
92 metrics, including metrics related to budget controls, outage duration and frequency,
93 safety, customer service, efficiency and productivity, and environmental compliance."
94 220 ILCS 5/16-108.5(c)(4)(A). Importantly, incentive compensation expense cannot be
95 based on "net income or an affiliate's earnings per share." *Id.*

96 The Chamber believes that this feature of EIMA is good policy. As an
97 organization comprised of a variety of businesses having experience with employee
98 compensation, we understand the value of "pay-at-risk" compensation plans and support
99 them. Instead of fixing an employee's entire annual compensation up front, these plans
100 place a portion of the employee's total market compensation "at risk" each year by tying
101 that portion to the achievement of certain performance metrics. The metrics incent
102 improved performance while guaranteeing the employees only receive their full
103 compensation if they have achieved the metrics.

104 In the Chamber's opinion, the AG's attempt to disallow the recovery of all of
105 ComEd's annual incentive compensation expense is tantamount to erasing this protocol
106 from EIMA and ComEd's formula rate. While the Chamber does not believe that the AG
107 can rewrite EIMA in this way, it is worth noting that the AG's proposal, if adopted,

108 would harm the Chamber's members and ComEd customers. If a portion of employees'
109 pay is no longer at risk based on performance (and instead paid as a fixed guarantee),
110 then customer will no longer benefit in the form of reduced compensation costs when
111 performance does not meet the metrics. Also gone are the metrics themselves and their
112 benefits of lower costs and better service.

113 **Q. Is there any merit to the AG's claim that ComEd's annual incentive compensation**
114 **expense is based on Exelon's earnings per share and therefore barred from recovery**
115 **under EIMA?**

116 A. No. It appears that AG witness Mr. Brosch has mixed and matched features of different
117 AIPs to arrive at the result he desires.

118 As an initial matter, there can be no dispute that the metrics set forth in ComEd's
119 AIP are based solely on operational metrics tied to "budget controls, outage duration and
120 frequency, safety, customer service, efficiency and productivity, and environmental
121 compliance." 220 ILCS 5/16-108.5(c)(4)(A). And, it is not disputed that incentive
122 compensation expense based on these metrics is recoverable under EIMA. In fact, one of
123 the AIP's metrics is tied to how ComEd performs under the EIMA statutorily-set metrics.
124 It is these operational metrics that calculate the award of annual incentive compensation
125 for all of ComEd's employees. Nothing in ComEd's AIP is tied to the prohibited net
126 income or earnings per share metrics; indeed, no measure exists under ComEd's AIP to
127 quantify ComEd employees' performance as it relates to net income or an affiliate's
128 earnings per share.

129 Mr. Brosch's confusion appears to stem from his review of Exelon's separate
130 AIP. While the amount of annual incentive compensation to be awarded to ComEd
131 employees is first calculated under ComEd's AIP using the operational metrics, it is my
132 understanding that Exelon's AIP separately applies a Shareholder Protection Feature
133 ("SPF") that places an overall limitation on the payouts that can be awarded by all Exelon
134 operating companies, including ComEd. Put another way, the amounts of annual
135 incentive compensation calculated under ComEd's AIP – based solely on operation
136 metrics – may later be reduced by this "limiter" in Exelon's AIP. What Mr. Brosch fails
137 to recognize, however, is that neither the SPF nor any other feature in Exelon's AIP can
138 effect an increase in the amount of annual incentive compensation awarded under
139 ComEd's AIP. As a result, the annual incentive compensation expense incurred by
140 ComEd under its AIP is not "based on net income or an affiliate's earnings per share."
141 Indeed, the limiter is not an "expense" at all but rather a screen that can only effect a
142 reduction to otherwise allowable incentive compensation expense. This limiter, by
143 definition, cannot form the basis of additional funding or an increase in incentive
144 compensation expense.

145 **Q. Have you identified any harm to your members or customers that would result from**
146 **adoption of the AG's proposed disallowance of ComEd's annual incentive**
147 **compensation expense?**

148 A. Yes. As I explained earlier, EIMA is designed to incent substantial and unprecedented
149 infrastructure investment, provide for the timely recovery of those costs, and ensure that
150 the benefits of this investment are realized by customers through achievement of EIMA

151 performance metrics. As a result, it is not surprising that EIMA provides for the recovery
152 of pay-at-risk compensation so long as it is tied to the achievement of operational
153 metrics. This is entirely consistent with and complementary to the "performance-based"
154 nature of EIMA and the formula rate. Yet, the AG's efforts to effectively eliminate the
155 EIMA protocol providing for cost recovery of incentive compensation (if this were even
156 possible) would likely undo pay-at-risk compensation altogether, and thus would divorce
157 compensation from performance, to the ultimate harm of customers. This harms the
158 Chamber's members and ComEd customers in two ways.

159 First, it is important to note that the current SPF limiter has been in place since
160 2012, and its operation has resulted in a decrease in costs to ComEd customers of $25.5
161 million. Prescott Reb., ComEd Ex. 18.0, 12:228-232. Mr. Brosch's proposal would have
162 the odd result of deleting the limiter and thus passing along to customers the full amount
163 of annual incentive compensation calculated under ComEd's AIP.

164 Second, this effort by Mr. Brosch to essentially undo an EIMA cost recovery
165 protocol and, ultimately, incentive compensation itself, must be rejected as contrary to
166 EIMA and customers' interests. The reason is clear – the loss of pay-at-risk
167 compensation would increase costs to customers. Because an employee's pay would no
168 longer be tied to performance, customer would not benefit from the reductions to pay
169 when employees fail to achieve the metrics. Moreover, even when the employees do
170 achieve the metrics and receive their full, presumably market-based compensation,
171 customers benefit through improved performance in budgeting, cost controls, efficiencies
172 and reliability, all of which is passed along to customers through lower costs (than they

otherwise would be) and better electric service. Yet, the absence of an incentive compensation program would mean that employees are no longer being incented to achieve these metrics by tying their achievement to the employees' compensation.

III. CONCLUSION

Q. Does this conclude your rebuttal testimony?

A. Yes.

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NOTICE OF FILING

TO : Elizabeth Rolando
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Springfield, Illinois 62701

All parties on the Service List in the above-listed docket

PLEASE TAKE NOTICE that on August 13, 2014, we caused to be filed with the Clerk of the Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, Illinois 62701, **CHICAGOLAND CHAMBER OF COMMERCE REBUTTAL TESTIMONY,** a copy of which is hereby served upon you.

Respectfully submitted,

CHICAGOLAND CHAMBER OF COMMERCE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Notice, together with a copy of the document referred to therein, have been served upon all parties on the attached service list in the above-listed docket by U.S. mail on this 13th day of August, 2014.

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