

ICC Docket No. 14-0312

**Commonwealth Edison Company's Response to
The People of the State of Illinois ("AG") Data Requests
AG 17.01 - 17.04**

Date Received: August 22, 2014

Date Served: August 25, 2014

REQUEST NO. AG 17.01:

Ref: ComEd Ex. 25.0, lines 67-69. At the cited lines, Ms. Brinkman states, "Applying the logic behind the Commission's decision in Docket No. 11-0721 to this case would result in allowing recovery of exactly what ComEd has requested – 124.4% – the amount of AIP paid out after applying the limiter." Please review the Order in Docket No. 11-0721 dated May 29, 2012, available online at: <http://www.icc.illinois.gov/downloads/public/edocket/322042.pdf>. Please explain how the Commission's logic underlying its decision on the incentive compensation issue at pages 159-160 of that order would authorize recovery of all of ComEd's 2013 AIP incentive compensation expense, if that amount was determined after applying the Shareholder Protection Feature limiter.

RESPONSE:

The Commission Order in ICC Docket No. 11-0721 does not address an actual ComEd AIP limiter at pages 159-160 (Order, May 29, 2012). In that portion of the Order, the Commission rejected an IIEC proposal that attempted to limit ComEd's AIP to reliability metrics outside of the AIP plan.

The Commission addressed the actual AIP plan at issue in that Docket at pages 88-90 of the Order. ICC Docket No. 11-0721, (Order, May 29, 2012). At page 89 the Order states that "ComEd's actual AIP performance resulted in a calculated payout of 110.3%" [based on operational and costs control metrics]. It further states that the "initial net income limiter [resulted in a payout] of 102.9%". (Id.) At page 90 of the Order the Commission approves ComEd's inclusion of its 2010 AIP at 102.9% in the revenue requirement. (Id.) ComEd's 2010 AIP was also discussed in Brinkman Dir., ComEd 2.0, 23:429 - 24:494).

OFFICIAL FILE
I.C.C. DOCKET NO. 14-0312
AG Cross Exhibit No. 13
Witness Brinkman
Date 8/27/14 Reporter TO

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REQUEST NO. AG 17.02:

Ref: ComEd Ex. 25.0, lines 74-77. At the cited lines, Ms. Brinkman states that "in Docket No. 05-0597, a similar issue was litigated and the Commission allowed recovery of 50% of ComEd's AIP – the amount that was earned based on operational and costs control factors – even though an Exelon EPS limiter with a minimum threshold EPS performance applied to the entire AIP award." Please review the Order dated July 26, 2006 in Docket No. 05-0597, available online at: <http://www.icc.illinois.gov/downloads/public/edocket/178278.pdf>.

- (a) Please confirm that at page 91, the order describes ComEd's position as showing that 50% of the AIP expense for that year was determined by EPS. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.
- (b) Please also confirm that at pages 96-97 of the order, the Commission decided to disallow only the 50% portion of AIP expense determined by EPS, and to allow recovery of the 50% portion of AIP expense determined by operational goals. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.

RESPONSE:

- (a) No. ComEd does not see the words "determined by EPS" on this page. The Order in ICC Docket No. 05-0597 at page 91 describes ComEd's position as "Fifty percent of plan funding is based on the SAIFI, CAIDI and O&M measures together, and the other fifty percent is *based on* EPS." (Order July 26, 2006) *[emphasis added]* In addition to those funding KPIs, an Exelon EPS limiter with a minimum threshold EPS performance applied to the entire AIP award.
- (b) No. ComEd does not see the words "determined by EPS" or "determined by operational goals" on pages 96-97 of this Order. ICC Dkt. No. 05-0597 (Order July 26, 2006).

The Order in ICC Docket No. 05-0597 at page 96 states "we agree with Staff and the AG that the earnings per share ("*EPS*") *fundng measure*, which constitutes fifty percent of overall plan funding, should not be allowed to be recovered through rates." (Order July 26, 2006). *[emphasis added]*

The Order in ICC Docket No. 05-0597 at page 96 states "Staff acknowledged that the portion of total incentive compensation costs that is *based on* operational key performance indicators can be recovered through rates and we find that there is a direct benefit to ratepayers through increased reliability as measured by SAIFI and CAIDI." (Order July 26, 2006). *[emphasis added]*

The Order in ICC Docket No. 05-0597 at page 96 states “Focusing on the funding measure that rewards employees for reducing O&M and capital expenses, the Commission finds that such funding measure meets the Commission’s standard of reducing expenses and creating greater efficiencies in operations.” (Order July 26, 2006).

The Order in ICC Docket No. 05-0597 at page 97 states “In accordance with our findings above, namely allowing recovery of the three funding measures associated with operational goals and disallowing recovery of the *EPS funding measure...*” (Order July 26, 2006).
[emphasis added]

And as clearly stated in testimony and other data request responses, in addition to those funding KPIs, an Exelon EPS limiter with a minimum threshold EPS performance applied to the entire AIP award.

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REQUEST NO. AG 17.03:

Ref: ComEd Ex. 25.0, lines 77-80. At the cited lines, Ms. Brinkman states that "the AIP plans at issue in Docket Nos. 07-0566 (2006 plan), 11-0721 (2010 plan), 12-0321 (2011 plan), and 13-0318 (2012 plan) all contained either net income or Exelon EPS limiters and no disallowance was made on the basis of those limiters."

- (a) Please review the Order dated September 10, 2008 in Docket No. 07-0566, which can be found online at: <http://www.icc.illinois.gov/downloads/public/edocket/229809.pdf>
- i. Please confirm that the Commission at page 61 disallowed 100% of incentive compensation amounts tied to the financial net income goal. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.
 - ii. Please also confirm that, if ComEd's AIP plan for that year had a net income or Exelon EPS limiter, no party in the proceeding brought it to the Commission's attention. For any disagreement, please provide a pinpoint citation to the referenced order to support your disagreement.
- (b) Please review the Order dated May 29, 2012 in Docket No. 11-0721, which can be found online at: <http://www.icc.illinois.gov/downloads/public/edocket/322042.pdf>. Please confirm that no party brought the Shareholder Protection Feature, or any similar Exelon Corporation EPS-based limiter then applicable to the ComEd AIP, to the Commission's attention in that docket. For any disagreement, please provide a pinpoint citation to the referenced order to support your disagreement.
- (c) Please review the Order dated December 19, 2012 in Docket No. 12-0321, available online at: <http://www.icc.illinois.gov/downloads/public/edocket/337382.pdf>.
- i. Please confirm that no party brought the Shareholder Protection Feature, or any similar Exelon Corporation EPS-based limiter then applicable to the ComEd AIP, to the Commission's attention in that docket. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.
 - ii. Please also confirm that the Commission treated incentive compensation as an uncontested issue in its discussion at pages 31-32. For any disagreement, please provide a pinpoint citation to the referenced order to support your disagreement.

- (d) Please review the Order dated December 18, 2013 in Docket No. 13-0318, available online at: <http://www.icc.illinois.gov/downloads/public/edocket/365294.pdf>.
- i. Please confirm that a disallowance to the Long-Term Performance Share Awards Program ("LTPSAP") was made by the Commission at page 44 based on a finding that the LTPSAP was related to EPS of subsidiaries of Exelon Corporation. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.
 - ii. Please also confirm that no party brought the Shareholder Protection Feature to the Commission's attention in that docket. For any disagreement, please provide a pinpoint citation to the referenced order to support your disagreement.

RESPONSE:

- (a)
- i. No. ComEd does not see the words "tied to" on page 61 of this Order.

The Order in ICC Docket No. 07-0566 at page 55 states "ComEd states that the remaining challenged amounts were not directly ruled upon in ComEd's 2005 rate case, although they include amounts incurred under the AIPs's ComEd net income metric, which ComEd substituted for the former Exelon EPS metric." (Order Sept. 10, 2008).

The Order in Docket No. 07-0566 at page 61 states "Regarding ComEd's AIP's Net Income Metric, the Commission agrees with Staff's proposed adjustment disallowing 100% of AIP costs related to the financial net income goal which primarily benefits shareholders." (Order Sept. 10, 2008).

ComEd reiterates that metrics or funding KPIs are fundamentally different than net income or Exelon EPS limiters.
 - ii. No. ComEd's 2006 AIP plan did contain an Exelon EPS limiter. ComEd provided the plan documents to the parties in the course of discovery. The incentive compensation issue was litigated and the Commission made an informed decision. .
- (b) No. See ComEd's Data Request Response to AG 17.01.
- (c)
- i. No. See ComEd's response to subpart (a) (ii), above. ComEd's 2011 AIP plan, at issue in ICC Docket No. 12-0321 was subject to a ComEd Net Income Limiter. ComEd provided the plan documents to the parties as part of testimony exhibits provided in that case. ComEd notes that this issue was ultimately not contested and the Commission made an informed decision..
 - ii. Confirmed.

(d)

- i. No. The Order in ICC Docket No. 13-0318 states on page 44 “The LTPSAP is based on the operational and financial performance of all subsidiaries of Exelon, ComEd’s parent company. (Order December 18, 2013). These award grants depend on a management committee’s subjective assessment of the performance of all Exelon subsidiaries. There are no direct payout percentages assigned to any of the goals; thus it cannot be determined what portion of an award is related to ComEd’s operational performance and what weights were given to metrics related to EPS and the operations of other Exelon subsidiaries.”

Brinkman Dir., ComEd Ex. 2.0, 26:530 – 27:557), addresses the differences between the 2012 and the 2013 LTPSAP plans.

- ii. No. See ComEd’s response to subpart (a) (ii), above. ComEd’s 2012 AIP plan, included in ICC Docket No. 13-0318 was subject to the Shareholder Protection Feature.

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REQUEST NO. AG 17.04:

Ref: ComEd Ex. 25.0, lines 99-100. At the cited lines, Ms. Brinkman states, referring to cases mentioned in Mr. Bridal's rebuttal testimony in which the Commission disallowed incentive compensation based on financial performance, "there are significant differences between the facts in those cases and the facts in the ComEd cases."

- (a) Please refer to the Commission's Order in Docket No. 07-0507, dated July 30, 2008, which can be found online at: <http://www.icc.illinois.gov/downloads/public/edocket/227276.pdf>.
- i. Please confirm that in this order, the Commission at pages 26-27 denied recovery of 100% of Illinois-American Water Company's test-year incentive compensation expense because it was dependent on the parent company's reaching certain financial performance targets. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.
 - ii. What are the significant factual differences between the way in which Illinois-American Water Company's employee incentive payouts were dependent on the parent company's reaching certain financial performance targets in that case, versus the ComEd AIP Shareholder Protection Feature? Please make pinpoint page references to the order in that proceeding or to any exhibit that was part of the record in that case.
- (b) Please refer to the Commission's Order in Docket Nos. 07-0585 *et al.* (cons.), dated September 24, 2008, which can be found online at: <http://www.icc.illinois.gov/downloads/public/edocket/230646.pdf>.
- i. Please confirm that in this order, the Commission at pages 107-108 allowed recovery of only 50% of the Ameren Illinois Utilities' test-year incentive compensation expense, because only that 50% was *not* dependent on Ameren Corporation's meeting financial targets. For any disagreement, please provide a pinpoint citation to the referenced order to explain your disagreement.
 - ii. What are the significant factual differences between the way in which the Ameren Illinois Utilities' employee incentive payouts were determined by the parent company's reaching certain financial performance targets in that case, versus the ComEd AIP Shareholder Protection Feature? Please make pinpoint page references to the order in that proceeding or to any exhibit that was part of the record in that case.

RESPONSE:

ComEd objects to this request on the grounds it is outside the scope of Ms. Brinkman's testimony and not a proper topic for discovery. Ms. Brinkman has not reviewed the cases referenced and has not opined on the content of the final orders in those dockets. Moreover, the request quotes the language in Brinkman Sur., ComEd Ex. 25.0, out of context, as the sentence begins on Line 96 and states: "Moreover, to the extent the commission did reach a different result, there are two reasons why the Commission could have done that:" ComEd reserves the right to discuss these and other commission decisions in its legal briefs.