

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

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| COMMONWEALTH EDISON COMPANY   | : |             |
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| Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of Illinois Public Utilities Act, to Construct, Operate and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois | : | No. 13-0657 |

**COMMONWEALTH EDISON COMPANY’S  
RESPONSE TO SKP/URMC MOTION TO STRIKE**

Commonwealth Edison Company (“ComEd”), pursuant to Section 200.190 of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), 83 Ill. Admin. Code § 200.190, and the Administrative Law Judges’ (“ALJs”) September 26, 2014 ruling, responds to the Motion to Strike (“Motion”) portions of ComEd’s Brief on Exceptions (“BOE”) filed by the SKP Parties and Utility Risk Management Corporation (together, “SKP/URMC”). With the exception of two citations included in two footnotes, the Motion should be denied.

**I. INTRODUCTION**

The Motion seeks to strike eight passages and three footnotes from ComEd’s BOE. It asserts that these passages are unsupported, but it does not explain or support that claim. It does not analyze any of the passages, does not analyze or cite the record, and does not discuss or even acknowledge the substantive law – federal and Illinois statutes, agency orders, and filed rates – on which ComEd’s arguments are also based. Its perfunctory assertion of impropriety does not even make clear whether SKP/URMC claim these sentences are defective because they are not individually followed by citations or because SKP/URMC claim that the legal arguments of which they are an integral part are more broadly unsupported.

Either way, the Motion, as a whole, is meritless. As shown in Section II, with the exception of two citations to ComEd's Responses to the Commissioners' August 28, 2014 data requests that appear in ComEd's BOE in footnotes 36 and 45, respectively, which ComEd agrees can be stricken or withdrawn by errata. Each of the passages and footnotes targeted are part of fair and proper argument based on the evidence, the law, and, in some cases based in part on historical data publicly reported by PJM Interconnection, L.L.C. ("PJM"), which ComEd and the Commission can properly rely. Moreover, although ComEd disputes the notion that every sentence in a brief needs its own citation, as shown in Appendix A hereto, every sentence, paragraph or footnote the Motion targets is properly supported by evidence and/or the law, and is systematically presented in the Appendix, in detail. Finally, while ComEd emphasizes that its arguments *are* well supported regardless of the standard, Section III explains how the Motion misstates the law and misapplies the rules concerning briefs.

**II. THE SUBJECT PORTIONS OF COMED'S BOE ARE SUPPORTED BY LAW AND FACTS PROPERLY BEFORE THE COMMISSION**

The Motion identifies eight passages in ComEd's BOE that SKP/URMC allege are unsupported factual assertions. Motion at ¶¶ 3(a)-(h). The cited passages overlap substantially, and the Motion makes no effort to specify which aspects of the quoted language SKP/URMC believe to lack support.<sup>1</sup> Nonetheless, it appears that the Motion objects to ComEd's arguments with respect to four issues:

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<sup>1</sup> ComEd trusts that "clarification" making for the first time particular arguments about particular sentences and particular portions of the record not mentioned in the Motion, will not appear in SKP/URMC's "Reply." That would, of course, be improper as well as unfair to ComEd, who will have no further opportunity to reply.

- (1) the historical purpose of Stage 1A Auction Revenue Rights (“ARRs”) in the first place;<sup>2</sup>
- (2) the fundamental operation of Stage 1A ARR in the markets administered by PJM;<sup>3</sup>
- (3) the tangible benefits that ARR provides customers in the ComEd zone;<sup>4</sup> and
- (4) the lost money to customers that the current infeasibility of Stage 1A ARR inflicts.<sup>5</sup>

ComEd’s arguments concerning the aforementioned issues are amply supported by law and information properly before the Commission. In addition, the Appendix to this Response sets forth a detailed list of citations to the law and record facts supporting each specific passage identified in the Motion. This evidence not only supports ComEd’s argument, but is overwhelming and largely undisputed. But, even were there contrary evidence, it would not justify striking any of ComEd’s Brief. Briefs argue the evidence, and that existence of a dispute is no grounds to strike anything. *See People v. Howard*, 233 Ill. 2d 213, 224 (2009).

**A. The Law and the Evidence Proves that Stage 1A ARR Are Designed to Protect Native Load Customers**

The BOE explains that the Federal Energy Regulatory Commission’s (“FERC”) open access policies have led to increased transmission congestion that inflates the cost of delivering electricity to native load customers. BOE at 32. ComEd also explained that Stage 1A ARR were developed by PJM, with FERC’s approval, to protect those customers from unfairly bearing the financial burden of increased congestion on the system they paid for and have historically held firm rights to use. *Id.* at 31. The passages the Motion designates as paragraphs (3)(f) and

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<sup>2</sup> See Motion at ¶¶ 3(f), (g) (citing ComEd BOE at 31, 32).

<sup>3</sup> See *id.* ¶¶ 3(b), (c) (citing ComEd BOE at 26, 28).

<sup>4</sup> See *id.* ¶¶ 3(a), (d), (h) (citing ComEd BOE at 25, 29 & fn. 44-45, 33).

<sup>5</sup> See *id.* ¶ 3(e) (citing ComEd BOE at 30).

(3)(g) are part of this argument. Those sentences, and the argument as a whole, rest solidly on the evidence.<sup>6</sup>

Prior to the advent of open access transmission in 1996, native load customers paid for the cost of developing the transmission system. *See, e.g.*, Naumann Dir., ComEd Ex. 1.0, 4:76-79, 19:364-67; *see also* Shanker Reb., ComEd Ex. 12.0, 19:377 fn. 22 (explaining that native load customers paid the embedded cost of the transmission system); *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats & Regs. 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006). ComEd witness, the Honorable Nora Brownell, who served as a FERC Commissioner at the relevant time, confirmed without contradiction that the implementation of open access transmission allowed larger amounts of energy to be transferred between utilities and control areas. Brownell Reb., ComEd Ex. 10.0, 3:53-58. “This change in the manner the transmission system was being used resulted in stress on the system[,]” which ultimately led to the price spikes experienced in Illinois in 1998. *Id.* at 3:58-66. It is widely recognized – as the evidence shows – that such congestion increases the cost of delivering electricity to customers. *See, e.g., id.*; McGlynn Dir., ComEd Ex. 3.0, 20:382-87; Naumann Dir., ComEd Ex. 1.0, 4:73-76.

In response, Congress passed portions of the Energy Policy Act of 2005. Congress addressed the particular inequity of native load customers paying for newly caused congestion by amending the Federal Power Act (“FPA”) to require market structures be implemented to insulate native load customers from unfairly bearing the burden of competitive energy markets.

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<sup>6</sup> The Motion suggests that ComEd’s BOE improperly asserted that the majority of load is served by Alternative Retail Electric Suppliers without citing an appropriate source (Motion at ¶ 3(f)); however, in the immediately preceding sentence of the BOE, ComEd cited the Office of Retail Market Development’s 2014 Annual Report. *See* BOE at 31. Former ICC Commissioner Sherman Elliott also testified to this fact. *See* Elliott Reb., ComEd Ex. 11.0, 6:111-13.

Energy Policy Act of 2005, Pub. L. No. 109-58, § 1233(b)(2) (codified at 16 U.S.C. § 824q(b)(2) (2012)). Thus, then-new Section 217 of the FPA formalized the right of load serving entities to “use firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver the output or purchased energy ... to the extent required to meet the service obligation of the load-serving entity.” *See* Shanker Reb., ComEd Ex. 12.0, 21:417 – 22:431. FERC, in turn, implemented Section 217 rights through Order No. 681, referenced above. *See Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶¶ 31,226, *order on reh’g*, Order No. 681-A, 117 FERC ¶¶ 61,201; Brownell Reb., ComEd Ex. 10.0, 8:146 – 10:183.

In addition to the law itself, the undisputed testimony of ComEd witness Dr. Shanker confirms that Stage 1A ARR were developed by PJM in response to that mandate in order to preserve the value of these historical investments and ensure load serving entities’ statutory right to long-term transmission rights. *See* Shanker Reb., ComEd Ex. 12.0, 23:446-57. In particular, Dr. Shanker testified:

The Stage 1A [ARRs] were intended to be long-term rights from historic resources to the zonal load sink. This was in keeping with both the [Energy Policy Act of 2005], FERC Order No. 681, ... and equally important the basic business deal struck when moving to a day-2 market: parties would have assured rights to link their historic generation resources to the zonal load.

In order to meet these ... obligations and honor the “deal” PJM proposed specific provisions to mandate the construction of new transmission should there not be adequate transmission to honor the Stage 1A rights[.]

*Id.* at 23:446-54; *see also* Naumann Dir., ComEd Ex. 1.0, 19:364-67.

The Motion ignores all this evidence, as well as the law, which underlies ComEd’s argument and the specific quoted passages. The request to strike the passages identified in the Motion as paragraphs 3(f) and (3)(g) should be denied.

**B. The Record Supports How Stage 1A ARR Function in PJM**

The Motion also wrongly claims that the BOE’s explanation of how ARRs function in the PJM market is unsupported (Motion ¶¶ 3(b), (c)). Once again, the quoted passages are firmly rooted in the record evidence as described in the Appendix. ComEd and Staff witnesses alike testified that Stage 1A ARRs are allocated to load serving entities. *See* Naumann Dir., ComEd Ex. 1.0, 12:247 – 13:258; Zuraski Dir., Staff Ex. 1.0, 9:217-20. Undisputed evidence further shows that Stage 1A ARRs can either be converted into Financial Transmission Rights (“FTRs”) or retained as a separate source of revenue – both of which offset or mitigate congestion costs. Naumann Dir., ComEd Ex. 1.0, 13:250-51; McGlynn Dir., ComEd Ex. 3.0, 13:268 – 14:269; Shanker Reb., ComEd Ex. 12.0, 20:390-93. While Staff and ComEd may differ as to whether this is true “hedging,” that is an argument from the evidence. Indeed, the sentences in the Motion are exactly the type of argument that is appropriate in an effort to explain the evidence before the Commission. As explained in Section III – and as is evidenced from even a cursory review of SKP/URMC’s BOE – not every sentence in that argument requires its own citation. Thus, the Motion should be denied as to paragraphs 3(b) and (3)(c).

**C. The BOE Highlights Evidence Proving That Stage 1A ARRs Tangibly Benefit Customers**

The Motion also claims that there is no evidence to support the benefits of Stage 1A ARRs to customers in Illinois specifically, even without the Project. The Motion errs. Sentences that are part of this ComEd argument are identified in the Motion as ¶¶ 3(a), (d), (h) (citing ComEd BOE at 25 & fn. 36, 29, 33). The evidence supporting ComEd’s argument that Stage 1A ARRs benefit the competitive electricity market and native load customers includes:

- Stage 1A ARRs are financial instruments allocated by PJM to load serving entities that entitle the holder to receive the revenues generated by PJM’s auction of FTRs. McGlynn Dir. ComEd Ex. 3.0, 13:266 – 14:269; PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Att. K, §§ 7.4.1, 7.4.2(b) (8.0.0); PJM

Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, Sched. 1, § 1.3.1A (18.0.0) (defining “Auction Revenue Rights”); PJM Interconnection, L.L.C., PJM Manual 06: Financial Transmission Rights 12 (Oct. 10, 2013), <http://www.pjm.com/~media/documents/manuals/m06.ashx> (*hereinafter*, “PJM Manual 06”).

- Mr. Naumann testified that Stage 1A ARR are allocated first to “those customers who have paid for the costs of the transmission system, *i.e.*, the historic or native load customers.” Naumann Dir., ComEd Ex. 1.0, 19:364-67. That is confirmed by the PJM tariff<sup>7</sup> itself. PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Att. K, § 7.4.2(b) (8.0.0); PJM Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, Sched. 1, § 7.4.2(b) (8.0.0) (Allocation of Auction Revenues).
- The allocation of Stage 1A ARR is based on load serving entities’ share of the base load in that zone. PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Att. K, §§ 1.3.9 (18.0.0), 7.4.2(b) (8.0.0); PJM Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, Sched. 1, § 7.4.2(b) (8.0.0) (Allocation of Auction Revenues).
- The 9,500 MW quantity of base load that will receive ARR is documented as well. Dr. Richard Tabors, URMC/SKP’s own witness, testified that the base load in the ComEd zone is approximately 9,500 MW (Tabors Reb., URMC Ex. 2.0, 8:165 – 9:171), which is confirmed by PJM’s public records documenting the quantity of Stage 1A ARR allocated in the ComEd Zone. 2012/2013 Zonal Base Load, PJM Interconnection, L.L.C. (Feb. 9, 2012), <http://www.pjm.com/~media/markets-ops/ptr/annual-arr-allocation/2012-2013/2012-2013-zonal-base-load.ashx>; 2013/2014 Zonal Base Load, PJM Interconnection, L.L.C. (Feb. 14, 2013), <http://www.pjm.com/~media/markets-ops/ptr/annual-arr-allocation/2013-2014/2013-2014-zonal-base-load.ashx>.
- ComEd and Staff witnesses analyzed the expected value of ARR before and after the Project is built. If the Project is never constructed, ComEd witness Oppel projected that the value of Stage 1A ARR in the ComEd Zone over a 15-year period would be worth roughly \$859 million (Oppel Reb., ComEd Ex. 13.0, 9:172-76), which is consistent with PJM’s public records confirming that Stage 1A ARR that were worth over \$100 million were allocated in the ComEd zone in 2013. PJM Interconnection, L.L.C., ARR Credit Allocated to Network Service Customers for the 2012/2013 Planning Period, <https://www.pjm.com/~media/markets-ops/ptr/annual-arr-allocation/2012->

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<sup>7</sup> It has long been established that a validly filed tariff carries the force and effect of federal law. *See, e.g., Bryan v. Bellsouth Commc’ns, Inc.*, 377 F.3d 424, 429 (4th Cir. 2004) (“[A] filed tariff carries the force of federal law.”); *MCI Telecommunications Corp. v. Garden State Inv. Corp.*, 981 F.2d 385, 387 (8th Cir. 1992) (“[F]ederal tariffs are the law, not mere contracts.”); *Carter v. Am. Tel. & Tel. Co.*, 365 F.2d 486, 496 (5th Cir. 1966) (federal tariff “is the law”).

2013/2012-2013%20nspl-arr-credits-zonal.ashx (showing value of ARR credits). This aspect of Ms. Oppel’s analysis is virtually unchallenged and, in fact, served as the part of the foundation of the cost-benefit analysis presented by Staff witness Zuraski. Zuraski Reb., Staff Ex. 3.0, 28:616 – 29:651.

- Staff testimony stated: (“[t]hose ARRs entitle ComEd to obtain the revenues from PJM’s auction of FTRs. These revenues are credited to ComEd’s eligible retail customers.” Zuraski Dir., Staff Ex. 1.0, 22:468-69 Staff testimony also stated “[t]o the extent [that] ComEd or other ... LSEs hold ARRs, those LSEs would receive income derived from PJM’s sale of FTRs to other market participants.” Zuraski Reb., Staff Ex. 4.0, 27:606-08; *see also id.* at 30:653-54 (showing the projected change in ARR revenue in Illinois if the Project is constructed).

ComEd’s citation, as noted above, of publicly available PJM documents does not aid the Motion. In each case, the facts supporting ComEd’s argument – including the quantity and value of the Stage 1A ARRs allocated to ComEd zone “load,” i.e., customers – are also established by the record evidence. Moreover, citing to the filed PJM tariff is citing law, which no witness needs to have testified to. *See, e.g., Bryan v. Bellsouth Commc’ns, Inc.*, 377 F.3d 424 at 429; *see also Scheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 28 (“Once the Commission approves a tariff, the tariff ‘is a law, not a contract, and has the force and effect of a statute.’”). But, even if testimony were required regarding the PJM tariff, that tariff is also quoted in the testimony of Staff witness Zuraski. *See* Zuraski Dir., Staff Ex. 1.0, 10:225-42; Shanker Reb., ComEd 12.0, 15:298 fn. 15. Moreover, while the PJM reports are not essential to ComEd’s argument, official public reports of historical facts – not opinions, conclusions, or argument – are exactly the types of facts which the Commission could take notice.<sup>8</sup> In sum, the evidence supports the conclusion that ComEd load has historically been allocated approximately 9,500 MW of Stage 1A ARRs. PJM’s public reports merely confirm this fact and are the type of

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<sup>8</sup> *People v. Mata*, 217 Ill. 2d 535, 539-40 (2006) (“[W]e may take judicial notice of matters that are readily verifiable from sources of indisputable accuracy. The petition is a public document that falls within the category of readily verifiable matters.” (citations omitted)).

information that falls well within the Commission’s discretion to acknowledge and ComEd’s discretion to cite in the BOE.

Similarly, ComEd witnesses established that Stage 1A ARR have value to customers, and proceed to quantify their expected value in the ComEd zone both with and without the Project. As noted above, the value of the ARRs are terms in both Mr. Naumann’s and Mr. Zuraski’s cost-benefit analyses. Again, ComEd’s reference to public PJM records quantifying the value of these ARRs in the 2013 planning year confirms that evidence, and is akin to citing the Dow Jones Industrial Average or other market data. In any light, ComEd’s reference to public and indisputable PJM documents does not warrant the harsh sanction of striking portions of an argument that is also amply supported by evidence. *Howard*, 233 Ill. 2d at 224.

**D. The Record Shows That Customers Lost Money Due to the Infeasibility of Stage 1A ARRs**

Once again, the perfunctory claim in the Motion – this time relating to the argument included in the Motion as paragraph 3(e) – has nothing to do with the record. The record shows how “Illinois retail customers and market efficiency have been harmed by the ARR infeasibilities that the Project remedies.” Motion at ¶ 3(e) (citing BOE at 30). “Specifically, the ComEd zonal ARR inadequacies are equivalent to \$68.9 million.” McGlynn Reb., ComEd Ex. 14.0, 7:140-41.

- ComEd Exhibits 3.04 and 3.05 detail the precise number of megawatts of infeasible Stage 1A ARRs that “sink in” the ComEd Zone and throughout Illinois, i.e., that correspond to flows to Illinois customers’ load. *See* ComEd Ex. 3.04 at 2-4; ComEd Ex. 3.05 at 2-7.
- Virtually all of the infeasible Stage 1A ARRs in the area are allocated for ComEd zone customers’ load. McGlynn Dir., ComEd Ex. 3.0, 23:431-433; *see also id* at 21:412-414.
- Because Stage 1A ARRs are currently infeasible, retail customers in the ComEd zone “are paying higher costs for energy due to the congestion fees they are

unable to obtain sufficient financial hedges against congestion that the PJM tariffs are designed to provide[.]” McGlynn Dir., ComEd Ex. 3.0, 20:382-91.

- Although ComEd customers were insulated from \$100 million in congestion costs as a result of the Stage 1A ARR allocations to ComEd,<sup>9</sup> “the GPG Project significantly reduces unhedged congestion that would cost ComEd Zone customers nearly \$70 million annually[.]” McGlynn Reb., ComEd Ex. 14.0, 7:140 – 8:154.
- The Project, overall, will create hundreds-of-millions in savings for customers, as substantiated by ComEd cost-benefit studies which included in calculations changes in the value of hedges and ARR revenues. *See, e.g.*, Naumann Reb., ComEd Ex. 9.0 CORR, 29:622 – 32:678; Naumann Sur., ComEd Ex. 21.0 CORR, 2:24-28.

There can be no doubt that infeasible Stage 1A ARRs would be held by load (LSEs, or customers themselves) in the ComEd zone and throughout Illinois. *See* ComEd Ex. 3.04; ComEd Ex. 3.05. The evidence also shows that, if the Project had been built, about \$70 in energy costs paid by Illinois customers would have been offset by additional ARR revenues – apart from all of the other energy cost benefits of the line. Thus, the evidence and the tariffs themselves prove “how Illinois retail customers and market efficiency have been harmed by the ARR infeasibilities that the Project remedies.” Motion at ¶ 3(e) (citing BOE at 30).

The BOE, likewise, addresses all of these assertions. There is no merit to SKP/URMC’s claim that ComEd’s BOE attempts to introduce new facts into the record that are not supported by the evidence. To the contrary, the Project’s ability to restore the feasibility of Stage 1A ARRs, and thereby to mitigate the inequitable impact of congestion-driven energy costs on native load customers, is amply proven and properly argued in the ComEd’s BOE. And, once

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<sup>9</sup> The \$100 million value is substantiated by PJM’s historical market report, but the particular amount is not a central premise of ComEd’s argument. PJM Interconnection, L.L.C., ARR Credit Allocated to Network Service Customers for the 2012/2013 Planning Period, <https://www.pjm.com/~media/markets-ops/ft/annual-ft-auction/2012-2013/2012-2013%20nspl-arr-credits-zonal.ashx> (showing value of ARR credits). The testimony and exhibits prove that ComEd zone customers receive ARR revenues and that they lost about \$70 million of those revenues last year due to relevant infeasibilities.

again, while ComEd believes this evidence to be undisputed, the presence of disagreement would not make the argument improper either.

**E. Citation to Responses to the Commissioners' Data Requests**

The BOE inadvertently cites to ComEd's responses to the Commissioners' recent data requests in two isolated footnotes. *See* BOE at 25 fn. 36 (citing ComEd Response to Commissioners' Data Request 1.02, ICC Docket No. 13-0657 (Sept. 11, 2014); *id.* at 28 fn. 45 (ComEd Response to Commissioners' Data Request 1.02, ICC Docket No. 13-0657 (Sept. 11, 2014)). Unless the Commission determines that these data responses should be admitted into the record, ComEd does not object to striking these citations from the BOE. The citations, however, are not the sole support for any argument made by ComEd, even in the footnotes, and nothing other than striking the citations themselves is warranted.

**III. THE MOTION MISCHARACTERIZES THE APPLICABLE LEGAL REQUIREMENTS**

Apart from the Motion's failure to specifically cite, analyze, or discuss the record, the Motion is premised on a misreading and misapplication of Rule 200.830(e). *See* Motion at 2. Rule 200.830(e) provides "that all statements of fact in briefs on exception should be supported by citation to the record." That rule requires that the factual and legal premises on which an argument is made be properly supported; it does not require, nor has it ever been read to require, every sentence of a brief to be followed by a citation. Ironically, the universal interpretation that not every sentence requires its own citation should be apparent by looking at SKP/URMC's own BOE, which liberally argues with scant citation. While argument must be supported by the record and/or the law, BOEs are not simply numbered statements of fact followed by citations. Indeed, the Commission's rules make clear that "Exceptions and replies thereto may contain written arguments[.]" 83 Ill. Admin. Code § 200.830(b).

ComEd's BOE cited the evidence, substantiated by a host of detailed and specific citations to testimonies and exhibits, as well as the relevant statutes, regulations, decisions of the Commission and FERC, filed rates and tariffs. Plucking from ComEd's Brief individual sentences that are not followed by citations – while ignoring the record, the context, and the legal support for the argument being made – does not imply a lack of factual support or that the argument is improper. *See People v. Howard*, 233 Ill. 2d 213 at 224.

SKP/URMC cites no authority – nor could it – for the erroneous proposition that any sentence in a BOE unaccompanied by citation is defective and should be stricken. The sole decisions SKP/URMC cite – *People v. Evans* (125 Ill. 2d 50, 95 (1988)) and *Johnson v. Lynch* (66 Ill. 2d 242, 246 (1977)) – do not even concern briefs, let alone motions to strike them. In *Johnson*, the trial court entered an order without conducting a required evidentiary hearing. *Johnson*, 66 Ill. 2d 242 at 244. On appeal, the Supreme Court of Illinois rejected the notion that “pleadings, argument, and answers to interrogatories constituted evidence in lieu of testimony or documentary support.” *Id.* at 246. The issue was not whether a brief was fair argument based on the evidence, but that there was no evidence. *Evans* concerned “whether [a] defendant was unduly prejudiced by prosecutorial comments made during closing argument[.]” *Evans*, 125 Ill. 2d 50 at 94 (emphasis added). Again, the court recognized that litigants – even in the criminal law setting – are free to argue from the record. The defect alleged in *Evans* was not the product of a hunt for sentences that were not followed by citations, but a claim that there was no basis for a prosecutor's argument at all. Moreover, to the extent that these cases stand for the proposition that “arguments of counsel are not evidence” (Motion at 1), SKP/URMC argue an off-point strawman. ComEd has never said that its argument is evidence. ComEd's argument is, as shown below, based on evidence and on the law.

The Commission's rules provide parties with an opportunity to argue fully their positions to the Commission. That opportunity protects ComEd's due process rights and serves the Commission's interests. Appellate courts presented with similar requests to strike briefs have made clear that "striking a portion of an appellate brief 'is a harsh sanction,' appropriate only if a violation of our procedural rules interferes with or precludes appellate review." *People v. Howard*, 233 Ill. 2d 213 at 224.

#### **IV. CONCLUSION**

The evidence and the law establish that load serving entities in the ComEd zone receive and are paid for ARR, that those revenues are credited back to customers, and that the infeasibilities that the Project will remedy have cost those customers dearly, increasing the price of the electricity delivered to them. Moreover, the evidence and the law show that Stage 1A ARRs were specifically created to help offset congestion costs caused by increased use of open access transmission. Those Stage 1A ARRs are now impaired, a limitation on their ability to protect customers equitably, that the Project will mitigate. ComEd's BOE is replete with the citations to the evidence supporting this arguments and, as detailed above, there is no basis to grant the Motion to strike any portion of that Brief.

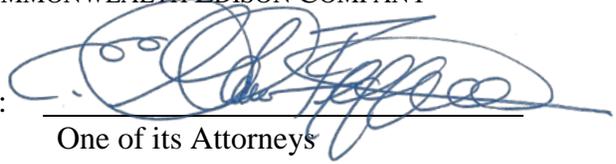
Dated: October 1, 2014

Respectfully submitted,

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