

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

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
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**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”) October 6, 2014 ruling, responds to the Motion to Strike (“Motion”) portions of ComEd’s Reply Brief on Exceptions (“RBOE”) filed by the SKP Parties and Utility Risk Management Corporation (together, “SKP/URMC”). The Motion should be denied.

**I. INTRODUCTION**

In yet the sixth motion to strike they have filed in this matter, SKP/URMC once again ask the ALJs to strike properly presented facts and argument. Like its recently filed motion to strike portions of ComEd’s Brief on Exceptions (“BOE”), SKP/URMC rely on scant legal authority and almost no meaningful analysis of the record, merely citing to passages it suggests are improper without any specificity. Indeed, the entire Motion turns on the broad and unsupported assertion that “[n]one of ComEd’s arguments which contain facts not in the record may be considered, as arguments of counsel are not evidence[.]” Motion at 1. In this, the Motion is as

ambiguous as it is deficient,<sup>1</sup> again asking ComEd – not to mention the ALJs – to decipher SKP/URMC’s precise objection in this Response, which will predictably lead to SKP/URMC’s attempt to rehabilitate the Motion while simultaneously accusing ComEd of improperly supplementing the RBOE. *See, e.g.*, SKP/URMC Reply (Oct. 3, 2014), at 2. Placing such dubious tactics aside, the Motion’s bald allegations are insufficient to warrant the harsh remedy of striking ComEd’s RBOE.<sup>2</sup>

As discussed further below, the Motion is meritless and falls short in a number of respects. SKP/URMC not only continue to ignore the record evidence and urge the ALJs and the Commission to do the same, but misrepresent the record evidence and ComEd’s RBOE. In several instances, the passages that the Motion seeks to strike are closely followed by the very citation to the record that SKP/URMC asserts is missing. Moreover, the Motion mischaracterizes the law governing legal briefs, applying a hyper-technical interpretation of Section 200.830 of the Commission’s Rules of Practice. The Motion should, therefore, be denied.

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

The Motion identifies six passages in ComEd’s RBOE that SKP/URMC appear to allege are unsupported by factual assertions. Motion at ¶¶ 4(a)-(f). Like the prior pleadings filed by

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<sup>1</sup> Several of SKP/URMC’s briefs in this proceeding have cited only prior SKP/URMC briefs for propositions of law, as if they constitute legal authority or record evidence. *See, e.g.*, SKP/URMC BOE at 5 & fn. 7 (citing SKP/URMC Reply Brief at 8-9 for the proposition that “[i]t is beyond the bounds of [the Commission’s] authority, and is dangerous and bad policy, for this Commission to allow ComEd to ‘rescue’ its Project by attempting to justify to this Commission, but not PJM, on one or more alternative bases”).

<sup>2</sup> As ComEd made clear in its Response to SKP/URMC’s recent motion to strike portions of ComEd’s BOE, the ALJs should be reticent to allow SKP/URMC to supplement its anemic Motion in a reply, as such tactics are both procedurally improper and fundamentally unfair to others in this proceeding. Rather, any reply filed by SKP/URMC must only serve the limited purpose of responding to the substance of any responses that are filed.

SKP/URMC, the cited passages address similar material or topics, and the Motion makes no effort to specify which aspects of the quoted language are alleged to lack support. Nonetheless, it appears that the Motion objects to ComEd's arguments with respect to four issues:

- (1) The RBOE's discussion of the various undisputed ways in which the Project will promote the development of an effectively competitive market;
- (2) The RBOE's discussion of the tariff provisions governing the development of PJM's Regional Transmission Expansion Plan ("RTEP");
- (3) The function of Stage 1A Auction Revenue Rights ("ARRs") in Illinois; and
- (4) The tangible benefits that Stage 1A ARR provide to customers in the ComEd zone.

ComEd's arguments concerning the aforementioned issues are based on record evidence, amply supported by law, and otherwise present proper argument.

**A. The RBOE's Discussion of the Project's Benefits is Grounded in Evidence and Responsive**

The Motion challenges the RBOE's summary of the evidence showing that the Project will promote the development of an effectively competitive market on two grounds: (1) that ComEd neglected to support factual assertions with appropriate citations to the record; and (2) that the RBOE "is not responsive to any argument any party made in a BOE and therefore violates Rule 200.830(d)." Motion at ¶ 4(a). Both assertions lack merit.

First, the record amply supports ComEd's statement that irrefutable and unchallenged evidence supports the conclusion that the Project will promote the development of an effectively competitive market. And, contrary to the claims of SKP/URMC, even a cursory glance at the referenced portion of the RBOE shows that ComEd's argument is replete with citations to the record. The RBOE contains the following bullet points and citations:

- The Project will reduce retail customers' electricity bills by at least \$1.188 billion over the next 15 years.<sup>3</sup> On a net present value basis, that equates to \$265 million, above and beyond all costs of the Project.<sup>4</sup>
- The Project will expand generation transfer capability into PJM by 959 megawatts, drastically increasing customers' ability to access low-cost generation as well as historically available generation.<sup>5</sup>
- That additional transfer capability will also increase the use of renewable and low-emission resources, cutting all greenhouse gas emissions, including roughly 472 thousand tons of carbon dioxide.<sup>6</sup>
- The Project will facilitate more accurate price signals to indicate more efficient generator entry and exit into the energy markets.<sup>7</sup>
- The Project will also reduce transmission losses and the incremental capacity additions that those losses require, both of which increase costs for customers.<sup>8</sup>
- The additional route diversity (by adding a third major west-to-east transmission line) afforded by the Project will enhance grid reliability.<sup>9</sup>
- The Project will additionally allow ComEd to remove numerous operational constraints that limit its ability to more efficiently maintain its existing transmission facilities.<sup>10</sup>

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<sup>3</sup> Zuraski Reb., Staff Ex. 4.0, 30:653-54 (\$1.188 billion in load zone locational marginal price savings); Oppel Dir., ComEd Ex. 4.0, 2:26-28, 5:88-89 (\$1.228 billion in load zone savings). Both calculations are in constant 2012 dollars.

<sup>4</sup> See, e.g., Naumann Reb., ComEd Ex. 9.0 CORR, 31:657 (net load savings of \$537.4 million less \$270.0 million costs equals \$267.4 million net present value at a 3.53% societal discount rate).

<sup>5</sup> Naumann Sur., ComEd Ex. 21.0 CORR, 14:249-52; Solomon Sur., ComEd Ex. 23.0 CORR: 9:184-85.

<sup>6</sup> Oppel Dir., ComEd Ex. 4.0, 6:101-04.

<sup>7</sup> See Shanker Reb. ComEd Ex. 12.0, 16:318-24; Naumann Sur., ComEd Ex. 21.0 CORR, 9:164, 11:195-201; Naumann Reb., ComEd Ex. 9.0 CORR, 13:272-74 (observing that an efficient market, among other things, presents accurate price signals and encourages efficient entry and exit).

<sup>8</sup> Oppel Reb., ComEd Ex. 13.0, 4:75 – 6:105; Naumann Reb., ComEd Ex. 9.0 CORR, 33:679-90; Naumann Sur., ComEd Ex. 21.0 CORR, 9:164; Zuraski Reb., Staff Ex. 4.0, 21:466-74.

<sup>9</sup> Leeming Dir., ComEd Ex. 2.0, 11:226 – 14:297.

<sup>10</sup> Naumann Dir., ComEd Ex. 1.0, 7:136-39; Leeming Dir., ComEd Ex. 2.0, 11:229-32.

ComEd RBOE at 4-5 (footnote citations in original). Thus, it is quite clear that paragraph 4(a) of the Motion demonstrates SKP/URMC's complete disregard for the record evidence and citations supporting the briefing it attacks.

The Motion's claim that the RBOE runs afoul of Rule 200.830(d) fares no better. In its BOE, SKP/URMC asserted that the ALJs' Proposed Order should be modified to deny ComEd a CPCN under Section 8-406.1(f)(1) of the Public Utilities Act ("PUA"). SKP/URMC BOE at 2-6. Specifically, SKP/URMC wrote that "[t]he SKP Group and URMC take exception to the portion of the [ALJs' Proposed Order] which finds that the Project meets a portion of the 'promotes competition' standard under §8-406.1(f)(1) of the [PUA]." *Id.* at 1. The fact that ComEd's RBOE paraphrased SKP/URMC's position as contending that "the Project has not been shown to be pro-competitive" is unavailing, as the fact remains that SKP/URMC opposed the ALJs' proposed finding that ComEd satisfied Section 8-406.1(f)(1) of the PUA.

**B. The Law and Facts Concerning PJM's Approval of the Project Are Properly Before the Commission**

The Motion further errs in asserting that ComEd's arguments concerning PJM's approval of the Project attempt to introduce new evidence into the record. *See* Motion at ¶¶ 4(b)-(d). Each of the identified passages in the RBOE is well grounded in law and record evidence. Moreover, the Motion's disingenuous mischaracterizations of the law and ComEd's RBOE are belied by the arguments that SKP/URMC has raised in their own briefs.

For example, SKP/URMC mischaracterize ComEd's legal arguments concerning the requirements and procedures set forth in the PJM tariff as factual assertions. *See, e.g.,* Motion at ¶¶ 4(b)-(d). In the RBOE, ComEd refuted the assertion in SKP/URMC's BOE that "[i]t is beyond the bounds of [the Commission's] authority, and is dangerous and bad policy, for this Commission to allow ComEd to 'rescue' its Project by attempting to justify it to this

Commission, but not to PJM, on one or more alternative bases.” SKP/URMC BOE at 5.

ComEd’s RBOE responded to this unfounded proposition of law by explaining:

The PJM tariff does not limit the benefits a Project may have to [the tariff’s] specific planning criteria. Nor does the PJM tariff state that once PJM approves a project under one criterion, all future review must ignore its other benefits. Indeed, qualifying under one RTEP criterion does not even imply that the same project could not have also qualified under other PJM criteria. Thus, as Mr. McGlynn confirmed in uncontradicted testimony, the Project’s qualification under the ARR test implies nothing about its other market efficiency benefits, even though PJM’s tariff also includes a “market efficiency” test of its own. McGlynn Reb, ComEd Ex. 14.0, 10:169-71.

RBOE at 7-8. ComEd proceeded to argue:

Moreover, the PJM tariff imposes no obligations or limitations on the Commission. The obligations it creates are on PJM utilities, and in the case of a transmission project like GPG that is included in the RTEP, that obligation is “[s]ubject to the requirements of applicable law ... including, without limitation, requirements to obtain any necessary state or local siting, construction and operating permits[.]” Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6, § 1.7 (1.1.0).

RBOE at 8 (footnote omitted).

The identified passages are in no way improper and certainly cannot be read as an attempt to introduce new evidence, as the Motion suggests. Rather, they are purely legal. It is well established that PJM’s FERC-approved tariff has the force of federal law. *See, e.g., Bryan v. Bellsouth Commc’ns, Inc.*, 377 F.3d 424 at 429; *cf. 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.’”). SKP/URMC does not dispute that fact. *See* SKP/URMC Reply (Oct. 3, 2014), at ¶ 5. The PJM tariff is consequently akin to the Federal Power Act, or the decisions of any court or administrative agency in this respect. ComEd and every party in this proceeding is free to cite, rely on, and apply such authorities irrespective of whether they have been entered into evidence. ComEd was no more obligated to submit the PJM tariff into evidence as it was to enter the U.S. Constitution or any provision of the PUA. These

ubiquitous authorities govern ComEd and the utility industry and, therefore, are appropriately addressed in ComEd's RBOE. Furthermore, the fact that such legally binding authorities may be "subject to interpretation" in no way bars ComEd from addressing those authorities in its brief, as SKP/URMC contend. SKP/URMC Reply (Oct. 3, 2014), at ¶ 5.

Tellingly, not even SKP/URMC adheres to the purported principle of law propounded by the Motion, as their own briefs cite various provisions of the PUA – not to mention decisions by Illinois courts, this Commission, and other administrative agencies – that have not been entered into evidence. *See, e.g.*, SKP/URMC BOE at 5 fn. 6 (citing 220 ILCS 5/16-111.5; ICC Docket No. 13-0546 (Order, Dec. 18, 2013)); *id.* at 8 (citing decisions by the U.S. Department of Transportation's Surface Transportation Board and this Commission); SKP/URMC RBOE at 11 (citing Ill. R. of Evid. 801(c) (2014); *People v. Amstead*, 322 Ill. App. 3d 1 (1st Dist. 2001)). At the very least, ComEd's arguments are on par with the opposing assertions raised in SKP/URMC's BOE. Thus, the Motion strains credulity in suggesting that ComEd's arguments concerning the tariff are improper because the PJM tariff was not entered into evidence.

Furthermore, the only assertions in the identified portions of ComEd's RBOE that are even remotely factual were in fact accompanied by an appropriate citation to record evidence, notwithstanding SKP/URM's disingenuous claim to the contrary. Based on the uncontradicted testimony of ComEd witness Mr. McGlynn, which is cited in the same paragraph as the identified passage, ComEd argued that "qualifying under one RTEP criterion does not even imply that the same project could not have also qualified under another PJM criteria." *Compare* Motion ¶ 4(b) (citing ComEd RBOE at 7-8), *with* ComEd RBOE at 8 (citing McGlynn Reb., ComEd Ex. 14.0, 10:169-71). Likewise, the Motion inexplicably asks the ALJs to strike ComEd's assertion that "PJM approved [the Project], just as the Commission should" – as well

as the following citation to several pages of ComEd's BOE, which itself includes numerous citations to record evidence. The Motion, however, attempts to obscure these facts with its perfunctory analysis, merely citing the brief, rather than quoting it, and failing to accurately portray the subject passages. Therefore, the Motion should be denied with respect to passages cited in paragraphs 4(b), 4(c), and 4(d).

**C. The RBOE Properly Reflects Record Evidence Addressing Illustrating the Operation of Stage 1A ARR in Illinois**

The Motion also appears to suggest that there is no evidence to support ComEd's assertion that the Illinois Power Agency's ("IPA") procurement process does not render Stage 1A ARR irrelevant or immaterial to retail customers. Motion at ¶ 4(e) (citing ComEd RBOE at 10). The Motion errs, as it is SKP/URMC that attempt to twist the story told by the evidence.

The record amply demonstrates that:

- The majority of Illinois load is not served through the IPA auction, but by Alternate Retail Energy Suppliers or by ComEd from the market. *See* Elliott Reb., ComEd Ex. 11.0, 5:106 – 6:113.
- All load serving entities ("LSEs") in Illinois, including ComEd are awarded ARRs. *See, e.g.*, Brownell Reb., ComEd Ex. 10.0, 9:170-73 & fn. 13 (showing that Stage 1A ARRs are allocated to all LSEs); ComEd Ex. 3.04 at 2-4 (listing "the aggregate MW quantities, by source and sinks, of infeasible ARRs in Stage 1A of the 2012/2013 Annual ARR Allocation."); ComEd Ex. 3.05 at 2-7 (listing "the aggregate MW quantities, by source and sinks, of infeasible ARRs in Stage 1A of the 2013/2014 Annual ARR Allocation."); McGlynn Dir., ComEd Ex. 3.0, 23:431-33, 20:82-91.
- ComEd credits the ARR revenues it receives back to customers offsetting at least partially the congestion costs included in bidder's energy prices." Zuraski Dir., Staff Ex. 1.0, 22:468-70 ("Those ARRs entitle ComEd to obtain revenues from PJM's auction of [Financial Transmission Rights]."); Rider PE – Procurement Expense Adjustment, ILL C.C. No. 10, 3<sup>rd</sup> Rev. Sheet No. 318.

In sum, the evidence fully supports ComEd's view that the IPA's procurement auction in no way undermines the significance of Stage 1A ARRs in Illinois. The unchallenged testimony of a former ICC Commissioner shows, first, that only a fraction of Illinois load is served through

the IPA process. Second, undisputed evidence shows that ARR revenues are allocated to LSEs in Illinois. Last, Staff testified that ComEd credits ARR revenues back to customers, which has the effect of reducing retail customers' energy bills.

**D. Cited Evidence Proves That the Project Benefits Retail Customers Tangibly**

The Motion additionally appears to contend that ComEd's summary of the tangible benefits that will result from restoring the feasibility of Stage 1A ARRs is not supported by the record evidence. *See* Motion at ¶ 4(f). SKP/URMC miss the mark on this point as well, as both the facts appropriately before the Commission – including those cited in the referenced passage of the RBOE – demonstrate that Stage 1A ARRs provide significant benefits to Illinois retail customers.

- The 9,500 MW quantity of base load that will receive ARRs is documented as well. Dr. Richard Tabors, SKP/URMC's own witness, testified that the base load in the ComEd zone is approximately 9,500 MW (Tabors Reb., URM Ex. 2.0, 8:165 – 9:171), which is confirmed by PJM's public records documenting the quantity of Stage 1A ARRs 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 ARRs before and after the Project is built. If the Project is never constructed, ComEd witness Oppel projected that the value of Stage 1A ARRs 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 ARRs 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/2012-2013/2012-2013%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. 4.0, 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 ARR, 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).

Furthermore, ComEd’s citation of publicly available PJM documents in no way aids 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. 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>11</sup>

Moreover, the Commission’s Rules of Practice in no way support SKP/URMC’s suggestion that the Commission may only take administrative notice of materials that are subject by a formal request such as a motion. *See* 83 Ill. Admin. Code § 200.640(c). Rather, the Commission’s Rules merely require that the parties and Staff be notified of the materials noticed and be afforded a reasonable opportunity to contest the material at issue. *Id.* Although the cited PJM reports are not necessary to ComEd’s position, and merely confirm PJM’s historical allocation of Stage 1A ARRs in the ComEd zone, the Commission is free to take administrative notice of those materials if it deems it necessary.

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

Finally, with regards the flawed reading and application of Rule 200.830(e) maintained in the Motion, ComEd relies on and incorporates its October 1, 2014 Response to SKP/URMC’s

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<sup>11</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)).

motion to strike portions of ComEd's BOE. In short, Rule 200.830(a) requires that "[s]tatements of fact in ... replies to briefs on exception should *be supported* by citation to the record." 83 Ill. Admin. Code § 200.830(e) (emphasis added). The Rule in no way requires that each and every sentence that addresses a fact be immediately followed by a citation to the record, as the Motion suggests. Rather, "briefs" by definition afford parties an opportunity to present "argument[s] of how the law applies to the facts supporting counsel's position." Black's Law Dictionary 174 (5th Ed. 1979).

#### **IV. CONCLUSION**

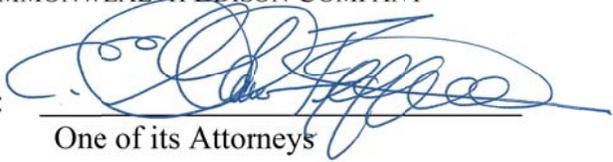
ComEd's RBOE is replete with citations to the facts and law demonstrating that the Project will promote the development of an effectively competitive market, as detailed above. The Motion should therefore be denied.

Dated: October 8, 2014

Respectfully submitted,

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