STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

COMMONWEALTH EDISON COMPANY'S BRIEF ON EXCEPTIONS
TO THE ALJS' PROPOSED ORDER OF OCTOBER 23, 2014

ORAL ARGUMENT REQUESTED

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Commonwealth Edison Company ("ComEd") 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 Brief on Exceptions ("BOE") to the ALJs' Proposed Order dated October 23, 2014 ("Proposed Order" or "PO"). ComEd's Exceptions are set forth in a separate simultaneously-filed document.

I. INTRODUCTION

EIMA[1] bars the Commission from considering or ordering changes to the "structure or protocols" of a participating utility's formula rate in a formula rate update ("FRU") proceeding. The Proposed Order, however, finds that for ComEd this provision relates only to summary Schedules Sch FR A-1 and Sch FR A-1 REC and does not include the other supporting (substantive) schedules and appendices for those summary schedules. The Proposed Order's determination that these documents do not also define formula rate structure is based on mistaken or incorrect facts, is contrary to law, and should not be adopted by the Commission.

While the Proposed Order's determination has other deficiencies, the most fundamental reason for rejecting its narrow view of the formula rate structure is that it simply does not make sense under EIMA. EIMA establishes a formula rate process intended to provide greater

[1] "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 Public Utilities Act, 220 ILCS Act 5.

certainty for utilities committing to make substantial added investments. While fully preserving the Commission's authority to review the prudence and reasonableness of utilities' costs, EIMA requires that charges be calculated based on specific costs in a standardized and transparent manner. EIMA requires the Commission to establish rate formulae for utilities in an initial EIMA docket and establishes that subsequent annual updates are to review and address changed costs. Reconsideration of the structure and protocols of the formula rate is prohibited in FRU proceedings. In contrast, the Act provides different means to reconsider the formula rate structure and protocols if and when needed: through the Article IX process, as EIMA requires. The Legislature thereby intended to shift the focus of the FRU proceedings to the reasonableness of the cost inputs to the formula, and to prohibit annual relitigation of the formula in those dockets. That was the bargain struck among all stakeholders when EIMA was drafted and enacted.

The Proposed Order undermines EIMA by finding that the structure of the formula rate is found only in ComEd's summary schedules, when those summary schedules contain only a fraction of the actual structure and substance of the rate formulae and lack numerous foundational calculations necessary to establish EIMA rates. Indeed, by treating EIMA's restriction as applying only to the summary schedules, the restriction against formula changes in annual updates becomes nearly meaningless. The Proposed Order should be modified to correctly recognize that the structure of the rate formula is not – and cannot be – found only in the summary schedules and that those structural components of the rate formula cannot be modified in an annual FRU docket. No other conclusion is consistent with the law and the actual operation of ComEd's rate formula.

Furthermore, the Proposed Order errs in assuming that addressing a formula issue in a separate Article IX docket somehow inherently delays formula changes. An Article IX docket can be filed at any time. Moreover, this very docket proves the opposite is true with respect to how quickly an issue may be decided. The depreciation formula issue is being decided here on an expedited basis. ComEd disagrees with the Proposed Order's outcome on the depreciation formula issue, but that does not alter the rapidity with which the issue is being determined.

II. THE PROPOSED ORDER ERRS IN ITS DETERMINATION REGARDING THE DEFINITION OF FORMULA RATE STRUCTURE – EXCEPTION 1

The Proposed Order errs in concluding that only changes to ComEd's summary rate Schedules Sch FR A-1 and Sch FR A-1 REC are changes to the structure of ComEd's performance-based formula rate.[2] As shown below, the Commission did review and approve other schedules as part of ComEd's rate formula. And, the Commission did so for good reasons, because absent those schedules ComEd's rate formula would lack essential structure, and would be unable to transparently calculate rates as EIMA requires.

A. The Commission Did Review and Approve ComEd's Supporting (Substantive) Schedules and Appendices

The first finding erroneously relied on in the Proposed Order is that the substantive schedules and appendices (and the underlying workpapers) supporting Sch FR A-1 and Sch FR A-1 REC have not been the subject of Commission review and approval. The Proposed Order states:

> First, as noted by Staff witness Ebrey, the Commission has not specified how information should appear on the supporting schedules, appendices, and workpapers that are merely listed in ComEd's Commission-approved tariff. In contrast, the Commission has approved the information and formatting that is to

[2] There also was a potential issue in this Docket about what the word "protocols" means in connection with the limits on changing the formula in an FRU, but that issue is not contested and ComEd is not submitting an Exception on that subject.

> appear on Schedules FR A-1 and FR A-1 REC. The Commission cannot declare the supporting schedules, etc. to be part of the formula rate structure without having specifically approved them.

PO at 17. But, the supporting schedules and appendices were in fact submitted for approval (along with workpapers), were explained in detail, were reviewed by the Commission, and ultimately were revised by the Commission's Order in resolving contested issues – all in ICC Docket No. 11-0721. E.g., Brinkman Reb., ComEd Ex. 2.0, 7:130-134; ComEd CX Ex. 1, pp. 12-14, 17-52; *see also* ICC Docket No. 11-0721: Houtsma Dir., ComEd Exs. 2.0, 2.1; Houstma Reb., ComEd Exs. 12.0, 3:45-8, 12.8; Houtsma Sur., ComEd Exs. 21.0, 1:20 – 2:23, 21.1.[3]

The Commission's May 29, 2012 Order in ICC Docket No. 11-0721 ("11-0721 May 29 Order") also directly addressed and resolved a number of issues regarding the substance of those supporting schedules and appendices and the rate formulae they define, as the following references in that Order demonstrate:

- "AG/AARP and CUB propose that, because ComEd's Supplemental Executive Retirement Plan ("SERP") is included in the calculation of the return on its Pension Asset, the accumulated deferred income taxes ("ADIT") associated with the SERP should be incorporated in that calculation, rather than in the rate base calculation. ComEd accepts this proposal. (ComEd Initial Brief at 12). **This matter, therefore, is no longer at issue.** (ComEd Ex. 22.1 Sch. FR B-1, line 38; Sch. FR C 1, line 21; Sch. FR C-3, line 2, and App. 4). The final adjustment in this regard is to remove from ADIT the SERP-associated debit balance of $5,067,000. (ComEd. Ex. 13.2 at 2, Column (G) 1.43). ComEd states this in its Initial Brief. **This adjustment is reasonable and it is approved.**" 11-0721 May 20 Order at 5.

- "AG/AARP proposed that the ADIT balance that is associated with ComEd's 401(k) matching should be included in rate base. The final adjustment is $1,847,000. ComEd accepts this proposal. (ComEd Initial Brief at 12; ComEd Ex. 22.1, Sch. FR B-1, lines 38, 42). **It is therefore no longer at issue.** ComEd is again reminded to supply all relevant information in its briefs, which includes the dollar amount of this adjustment. **This adjustment is reasonable and it is approved.**" 11-0721 May 20 Order at 5.

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[3] These documents, cited to show the issues before the Commission, can be found on eDocket, at http://www.icc.illinois.gov/downloads/public/edocket/306158.pdf, http://www.icc.illinois.gov/downloads/public/-edocket/306159.pdf, http://www.icc.illinois.gov/downloads/public/edocket/311924.pdf, http://www.icc.illinois.gov/-downloads/public/edocket/311932.pdf, http://www.icc.illinois.gov/downloads/public/edocket/314228.pdf, http://-www.icc.illinois.gov/downloads/public/edocket/314229.pdf.

- "To implement these recommendations, Staff recommends requiring ComEd to incorporate a new work paper into its formula that calculates the average rate base to be used in the determination of the reconciliation revenue. Sch. FR A-1-REC, Line 12 of ComEd's formula would thus be changed to both refer to the new work paper ("WP X: Average Rate Base – Reconciliation") and to adopt the average rate base amount determined in the new work paper. (Staff Ex. 16.0 at 37)." 11-0721 May 20 Order at 10. *** "The Commission concludes that an average rate base should be used going forward in reconciliations in the manner set forth by the IIEC, the AG, CUB, the City of Chicago, the AARP and Staff." *Id*. at 18.

- "Staff contends that the Commission is tasked with the responsibility of setting rates to allow ComEd to recover its reasonable and prudent delivery services costs, not all of its costs. Staff points out that it was ComEd itself that determined that only 34.87% of bad debt expense was "appropriate" for recovery via delivery services charges, citing ComEd Ex. 22.1, App 7, Ln 26. (Staff Initial Brief at 34-37)." 11-0721 May 20 Order at 61. *** "The adjustment for ADIT on bad debt expense proposed by AG/AARP, CUB/City, and Staff is reasonable and it is approved …. ComEd presents no facts establishing that 100% of ADIT that is related to bad debt expense should be allocated to distribution services." *Id*. at 62.

- "CUB witness Smith and AG/AARP witness Effron recommend that the ADIT associated with ComEd's Supplemental Employee Retirement Plan ("SERP") should be included in the calculation of the return on the pension asset, rather than in rate base. The related adjustment to that expense is an increase of $323,000. ComEd agreed with this recommendation, and has reflected this change in ComEd 13.1, Sch. FR C-3 and App. 4. (ComEd Initial Brief at 56-57). This adjustment is reasonable and it is approved." 11-0721 May 20 Order at 79.

- "Finally, Staff recommends calculating the average common equity balance, including adjustments to remove non-utility and unregulated affiliates, using 'Sch. FR D 1 WP 15,' which would be substantially similar to ICC Staff Schedule 7.05." 11-0721 May 20 Order at 121. "The Commission … agrees with Staff that an average capital structure for setting formula rates more accurately measures a company's earned rate of return on common equity for a calendar year and is less sensitive to manipulation than end of year measurement dates. The Commission therefore approves Staff's proposed capital structure." *Id*. at 123.

- "AG/AARP witness Brosch explained how to modify the ComEd formula tariff found in ComEd Ex. 22.1, Sch. FR A-4 to implement this approach as follows …. In the alternative, AG/AARP did not oppose the recommendation of Staff that the interest for the reconciliation amount be set at the rate for customer deposits." 11-0721 May 20 Order at 164. "The Commission finds that the customer deposit rate is designed to reflect a short term cost of money for customers, and not reflective of a utility's cost of capital nor the cost of financing these longer term utility investments …. In order to capture the unique aspects of the relevant period we find that a hybrid approach should be utilized to determine the appropriate interest rate." *Id*. at 166.

- "AG/AARP witness Brosch recommends that the short-term interest rate be applied to the net of income tax balance associated with the reconciliation balance." 11-0721 May 20 Order at 166. *** "The Commission declines to adopt this recommendation. ComEd contends that this recommendation does not provide ComEd with cash. AG/AARP provide little information establishing that this procedure is within generally accepted accounting procedures, or that it would be of benefit to ComEd or to ratepayers." *Id*. at 167.

As is common of most Commission orders, the recitals of fact and conclusions of law reached in the prefatory portion of the 11-0721 May 29 Order were "adopted as findings of fact and conclusions of law." 11-0721 May 29 Order at 177.

Not only did the Commission address and resolve issues regarding the substance of the supporting schedules and appendices, it specifically directed ComEd to change them consistent with the Commission's rulings:

> IT IS FURTHER ORDERED that Commonwealth Edison Company shall change the formula template in accordance with this Order.

11-0721 May 29 Order at 179. In response, ComEd had to change much more than its summary schedules; ComEd also made essential changes to supporting schedules, appendices, and workpapers in accordance with the Commission's Order. ComEd then filed – and the Commission accepted for filing – the revised schedules as part of ComEd's compliance filing. ICC Docket No. 11-0721, ComEd Additional Compliance Filing (Aug. 10, 2012).[4]

In short, the Proposed Order's findings that "the Commission has not specified how information should appear on the supporting schedules, appendices, and workpapers" and that "[t]he Commission cannot declare the supporting schedules, etc. to be part of the formula rate structure without having specifically approved them" rest on a mistaken view of the facts that is inconsistent with the Commission's Order, findings, and conclusions in Docket No. 11-0721.

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[4] http://www.icc.illinois.gov/downloads/public/edocket/327208.pdf; http://www.icc.illinois.gov/-downloads/public/edocket/327209.pdf; and http://www.icc.illinois.gov/downloads/public/edocket/327210.pdf.

B. **The Proposed Order Misunderstands and Misapplies ComEd's Argument that Staff's Position is Contrary to the Requirement that Formula Rates Operate in a Manner that Achieves Specificity, Standardization, and Transparency**

ComEd also pointed out that essential aspects of the formula rate's structure is embodied in calculations made only on non-summary schedules and appendices, and that if these documents were excluded from the rate's structure, it could not meet EIMA's requirements of a standard, transparent formula. The Proposed Order rejects this conclusion, but without directly addressing it, instead concluding:

> If an intervenor or Staff wants to challenge any part of Sch FR A-1 and Sch FR A-1 REC or the supporting Schedules and Appendices then the Commission must hear and decide that issue. Although ComEd's proposal may lessen the number of issues in the FRU, it will not lessen the number of issues that must be decided by the Commission. ComEd's proposal results in formula rate issues being decided in two dockets instead of one. This lends further support to Staff's position.

PO at 17. In so doing, the Proposed Order fails to address ComEd's argument.[5] ComEd's point is that the supporting schedules and appendices – and the components of the rate formula included only in those documents, not in the summary schedules – are necessary for ComEd's

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[5] While not addressed fully in the findings, ComEd's argument is described in the PO (at 7):

> ComEd contends there is no basis for concluding that its rate formula structure is anything other than all of the Schedules and Appendices incorporated in Rate DSPP, which collectively provide the certainty, standardization, and transparency required by EIMA. Sch FR A-1 and Sch FR A-1 REC present the applicable revenue requirements at a summary level. They do not provide the certainty, standardization, and transparency required by EIMA and provided by the other Schedules and Appendices in the rate formula spreadsheet. *See* Rate DSPP, 1st Revised Sheet Nos. 423-425 (in ComEd Ex. 1.01); ComEd Ex. 1.0 at 13-14. ComEd submits it is highly unlikely that someone could determine how the revenue requirements are calculated (or discern many of the rulings made by the Commission regarding the rate formula) if they simply had the tariff in one hand and the FERC Form 1 in the other hand. ComEd Ex. 1.0, at 12-13. Sch FR A-1 and Sch FR A 1 REC do not directly refer to any specific data in the FERC Form 1. To discern how the FERC Form 1 data feeds into the overall revenue requirement, one would have to review the other Schedules and Appendices, which drive Sch FR A-1 and Sch FR A-1 REC, and which also are listed in Rate DSPP (1st Revised Sheet No. 426). The Schedules and Appendices also incorporate data in work papers listed in Rate DSPP (2nd Revised Sheet No. 427). Looking solely at the tariff and Sch FR A-1 and Sch FR A-1 REC, as Staff proposes for the purpose of determining how much of the formula rate is in play in an FRU, does not set forth the entirety of ComEd's rate formula structure and certainly does not provide the certainty, standardization, and transparency that EIMA requires.

formula rate as a whole to comply with EIMA's requirement that it specify cost components and operate in a standardized and transparent manner.

Section 16-108.5(c) of the Act states, in part:

> A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall <u>specify the cost components that form the basis of the rate</u> charged to customers with <u>sufficient specificity to operate in a standardized manner</u> and be <u>updated annually with transparent information</u> that reflects the utility's actual costs to be recovered during the applicable rate year ….

220 ILCS 5/16-108.5(c) (emphasis added). EIMA explicitly requires the formula rate to specify cost components used to develop rates and establish how those cost components will be used to establish rates in a standardized and transparent manner. EIMA does not state that summary schedules, like ComEd's Sch FR A-1 and Sch FR A-1 REC, are an acceptable proxy for a utility's complete formula that could be used to establish its rates.

Instead of addressing this argument, the Proposed Order focuses on whether recognizing the importance of the schedule and appendices as a whole will lessen the issues the Commission will ultimately need to consider. That is, however, not the point. Acknowledging that ComEd's formula rate necessarily includes the schedules and appendices in addition to Schedules Sch FR A-1 and Sch FR A-1 REC does not lessen in any way the Commission's ability to consider the rate structure; it simply makes clear that those issues must be considered in an Article IX proceeding rather than a FRU proceeding, as expressly specified in EIMA.[6]

The Proposed Order then concludes that the requirement to use Article IX to change the formula structure will extend and complicate the process. PO at 17. But clearly that is not the

[6] 220 ILCS 5/16-108.5(c) ("Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act"); 220 ILCS 5/16-108.5(d)(3) ("The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section.").

case. The FRU is a statutory proceeding, with a statutory timetable. In contrast, the Commission controls the schedule in an Article IX proceeding subject only to a maximum length. There is no prohibition in Article IX on schedules shorter than 11 months or, indeed, even shorter than the FRU schedule. This very docket proves that Article IX issues can be conducted with a schedule that is the same or even shorter than the schedule in an FRU proceeding. Indeed, if formula structure issues are identified by Staff or a party, initiating an Article IX proceeding does not even need to await the commencement of an annual FRU proceeding.

In sum, Section 16-108.5(d)(3) of the Act establishes the restriction on the Commission's ability to "consider or order any changes to the structure or protocols of the performance-based formula rate" in an FRU proceeding. 220 ILCS 5/16-108.5(d)(3). This is not ComEd's proposed restriction, nor does ComEd have an interest or incentive to delay Commission proceedings by adhering to that legal requirement. Rejecting that limitation will not promote efficient Commission proceedings.

C. <u>The Proposed Order's Conclusion Is Contrary to EIMA</u>

The Proposed Order's analysis and reasoning in support of its determination that the structure of ComEd's formula rate is limited to summary Schedules Sch FR A-1 and Sch FR A-1 REC is limited to the arguments addressed in Sections II.A and II.B, above. The Proposed Order therefore overlooks key reasons why ComEd's position should be adopted.

In particular, the Proposed Order neither analyzes nor explains how the schedules and appendices containing specific inputs to Schedules Sch FR A-1 and Sch FR A-2 can be excluded from the rate structure when those documents were necessary for the Commission to have found that ComEd's formula rate complies with EIMA in the first place. What was found to be part and parcel of ComEd's formula structure in 2011 has somehow been written out of ComEd's formula structure in 2014. Schedules Sch FR A-1 and Sch FR A-1 REC, by their nature as

"summary" schedules only, contain no references to the FERC Form 1 costs that are statutorily required to "populate the performance-based formula rate and set the initial [and subsequent] delivery services rates under the formula." 220 ILCS 5/16-108.5(c) and (d). Those references appear only in the supporting schedules and appendices, which the Proposed Order today concludes are not part of ComEd's formula structure. Similarly, Sch FR A-1 and Sch FR A-1 REC contain insufficient information and detail to "specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year …." 220 ILCS 5/16-108.5(c). Again, that required level of specificity is only provided when the information and formulas in the supporting schedules and appendices are considered.

As explained in ComEd's briefs, finding the formula rate to be limited to summary Schedules Sch FR A-1 and Sch FR A-1 REC is akin to asserting that blue prints for a house are limited to the cover page elevation drawing. The detailed drawings for constructing each room and floor of a house obviously constitute a critical part of the blue prints for building that house, just as the supporting schedules and appendices for arriving at ComEd's formula rates constitute a critical part of ComEd's formula rate. The two summary schedules, without looking to the supporting schedules and appendices, as a practical matter have almost no meaning on their face. The Act prohibits changes to the structure (or protocols) of the formula rate,[7] not just the tariff; and there is no basis to exempt or exclude changes to the structure of ComEd's formula rate as

[7] The Act's definition of "rate" is not limited to the utility's tariff. "'Rate' includes every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility or any two or more such individual or joint rates, fares, tolls, charges, rental or other compensation of any public utility or any **schedule or tariff** thereof, and any rule, regulation, charge, practice or contract relating thereto." 220 ILCS 5/3-116 (emph. added).

reflected in the supporting schedules and appendices from the Act's prohibition on considering such changes in an FRU proceeding.

D. **<u>If the Commission Remains Concerned About the Structure of ComEd's Formula Rate, it Should Defer Ruling until there is an Actual Controversy</u>**

As explained above, none of the reasons offered in the Proposed Order to support its conclusion survive scrutiny. In short, the Proposed Order is based on flawed assumptions. ComEd submits that the statutory language and record support a finding that the supporting schedules and appendices to Sch FR A-1 and Sch FR A-1 REC constitute part of ComEd's formula rate, and that the prohibition in the Act against considering or ordering changes to the structure of the formula rate applies to changes to the structure of the formula rate reflected in the supporting schedules and appendices.

In the alternative, however, ComEd submits that if the Commission has concerns with this issue and chooses to revisit the conclusions it reached in 2011, then the Commission should decline to make broad-based pronouncements on the structure-change issue in this Docket. This is an Article IX docket, so the depreciation issue may be decided here regardless of the outcome of the dispute regarding what is the formula rate's "structure". Putting aside the merits of the depreciation issue, all parties acknowledge that the resolution of this formula structure issue will not impact the determination of the reconciliation revenue requirement. Because there is no long term cost impact with respect to the depreciation issue, it is not necessary to determine the formula structure issue here. The Commission would benefit by considering this issue in a future docket where there is an actual controversy that provides the proper forum for analyzing the underlying formula rate structure issue for ComEd.

As a second alternative, the Commission could follow its original ruling to develop more detailed guidance in a rulemaking proceeding. A rulemaking proceeding is the appropriate type

of proceeding to consider and decide such issues. It is also the type of proceeding the Commission advised ComEd and all parties would be implemented to consider such issues. As explained above, under the facts and the law it is clear that ComEd's formula rate structure is not and cannot be limited to summary Schedules FR A-1 and FR A-1 REC, but must instead include their supporting (substantive) schedules and appendices. If the Commission is of the view that a more granular or nuanced approach is needed, then it would be appropriate to reaffirm the initial determination and initiate such a rulemaking.

Thus, for all the foregoing reasons, ComEd's Exception No. 1 should be adopted.

III. THE PROPOSED ORDER ERRS IN ADOPTING STAFF'S DEPRECIATION RATE PROPOSAL – EXCEPTION 2

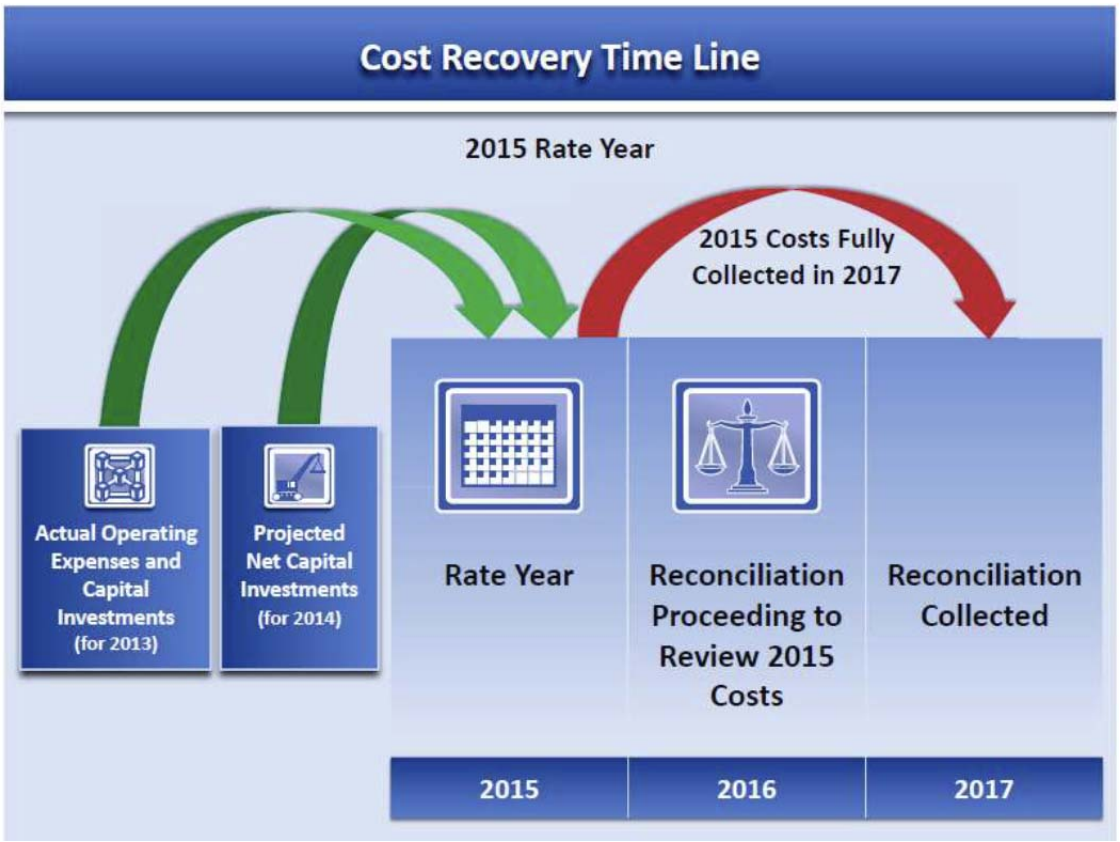
The Proposed Order finds that "Staff's adjustment provides the best projection of the depreciation expense for the filing year" and that "the 2014 depreciation rates from ComEd's updated depreciation rate study should be used in Docket No. 14-0312 to calculate depreciation expense as well as ADIT for the filing year," agreeing with Staff that this change will limit the reconciliation adjustment for the revenue requirement established in the 2014 formula rate proceeding. PO at 26. The Proposed Order also finds this depreciation issue to be distinguishable from the depreciation issues addressed by ComEd and Staff in ICC Docket No. 11-0721. *Id*. Finally, the Proposed Order concludes "that it would not violate EIMA to make Staff's proposed depreciation adjustment outside of an Article IX proceeding." *Id*. These findings and determinations are contrary to the facts and the law, and should not be adopted by the Commission.

Under EIMA, the most recently available actual annual cost data (which is also data for the reconciliation year) plus projected plant additions and related depreciation expense and

accumulated depreciation for the filing year[8] is used to develop an overall revenue requirement for the rate year (the year rates are in effect, here 2015).[9] The derivation of that revenue requirement – is depicted on Chart 1 below (appearing in the record at Brinkman Dir., ComEd Ex. 1.0, 6:101). If ComEd updates depreciation rates based on an updated periodic depreciation study filed after the reconciliation year (here, 2013) and thus is not reflected in the reconciliation year FERC Form 1 data, ComEd applies those new rates to the projected filing year (2014) plant additions, as provided in the methodology agreed to by ComEd and Staff in Docket No. 11-0721. While both ComEd and Staff apply the updated depreciation rates to the filing year projected plant additions, Staff would apply the new depreciation rates to the gross 2014 projected plant additions rather than the weighted average 2014 plant additions that was agreed to and used in ICC Docket 11-0721. Staff would also apply the updated depreciation rates to the December 31, 2013 plant in service (i.e., adjusting the actual costs booked for 2013) in the FERC Form 1 in calculating the Initial Rate Year revenue requirement. Ebrey Dir., ICC Staff Ex. 1.0, 9:215 – 10:221. This background will assist in understanding the deficiencies with the reasoning set forth in the Proposed Order.

[8] By Commission Order, the corresponding projected deferred taxes also are considered.

[9] Staff sometimes refers to this revenue requirement as the Filing Year revenue requirement in as much as it is based on the Reconciliation Year revenue requirement plus the Filing Year adjustments, and the Proposed Order appears to use this same reference.



First, the adjustment the Proposed Order adopts is contrary to EIMA. EIMA requires that "inputs to the performance-based formula rate for the applicable rate year [(here 2015)] shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 [(here 2013)] plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed [(here 2014)]." 220 ILCS 5/16-108.5(d)(1). This is exactly what ComEd has done and what was agreed to and established in Docket No. 11-0721. However, the Proposed Order would adjust the amounts reflected in the final historical data from ComEd's 2013 FERC Form 1 data, contrary to the specific directives in EIMA which only allow adjustments for depreciation expense and reserve that *corresponds* to projected plant additions for the filing year. *Id.*

The Proposed Order also errs in concluding that Staff's proposed depreciation adjustment is the type of change that can be considered and made "outside of an Article IX proceeding." PO

at 26. To the extent this finding rests on the conclusion that the structure for ComEd's formula rate is limited to Schedules Sch FR A-1 and Sch FR A-1 REC, that conclusion is erroneous as explained in Section II, above. In addition, the claim that "this adjustment … can be reflected through changes to workpapers that can flow through to Schedule FR A-1 without making any revisions to the format of Schedule FR A-1" is incorrect. Even if a workpaper change outside of an Article IX proceeding was allowable, the fact remains that a change to the structure of Schedule FR A-1 or Schedule FR A-1 REC would be required if the change were to impact the Initial Rate Year revenue requirement but not the Reconciliation Year revenue requirement. Because Sch FR A-1 and Sch FR A-1 REC refer to the exact same appendix and depreciation amount (ComEd Ex. 1.01, 1st Revised Sheet No. 423, Line 5; 3rd Revised Sheet No. 425, Line 5), no change to the workpapers can result in different depreciation expense amounts being used. Staff agrees that no change should be made to the reconciliation year (Staff BOE in Docket 14-0312 at 11) ("Staff does not take issue with the 2013 reconciliation year depreciation and amortization expense"), however a change to the reconciliation year is exactly what will happen without a change to Sch FR A-1. If the Commission Order adopts Staff's adjustment, it requires a change to Schedule FR A-1 or FR A-1 REC – which the Proposed Order and Staff all acknowledge would be a structure changes requiring an Article IX proceeding.

The Proposed Order also incorrectly finds that applying updated depreciation expense to December 31, 2013 plant in service will necessarily reduce the reconciliation required for the 2015 rate year. PO at 26. This conclusion ignores that depreciation rates are just one component of the initial and reconciliation revenue requirements and the resulting reconciliation adjustment. Other factors, such as the fact that EIMA does not include projected plant additions for the rate year (here 2015) in the initial revenue requirement determination, could easily more than offset

any impact to the future reconciliation amount from applying updated depreciation rates to 2013 plant in service in determining the Initial Rate Year revenue requirement. *See* ComEd CX Ex. 1, p. 10.

The Proposed Order similarly errs in finding that the depreciation issue addressed in ICC Docket No. 11-0721 is "materially different from the facts in this proceeding." PO at 26. First, as explained by ComEd witness Ms. Brinkman, the depreciation issue addressed in ICC Docket No. 11-0721 specifically included how to apply updated depreciation rates:

> ComEd further agreed with Staff to adjust the proposed method of calculating depreciation on the projected plant additions as originally presented in ComEd Ex. 12.5 to include a footnote to indicate that if FERC Form 1 depreciation rates are different from the most recent deprecation study, then the rates from the most recent depreciation study will be applied to the projected plant additions. See ComEd Ex. 13.01, App 8 in the current FRU proceeding, ICC Docket No. 14-0312, for this footnote. Staff's Initial Brief in ICC Docket No. 11-0721 also acknowledged the acceptance of the updated ComEd Ex. 12.5 and included the formula with footnote.

Brinkman Dir., ComEd Ex. 1.0, 15:296-303; *see also* Brinkman Reb., ComEd Ex. 2.0, at 17:371-83. The Proposed Order does not and cannot explain how an agreed Appendix modification specifically designed to address the application of updated depreciation rates in setting the Initial Rate Year revenue requirement is not applicable to this docket where updated depreciation rates are being applied to determine the Initial Rate Year revenue requirement. The fact that there are actually updated depreciation rates in this docket does nothing to diminish the applicability of the prior agreement and determination.

Thus, for all the foregoing reasons, ComEd's Exception No. 2 should be adopted.

WHEREFORE, ComEd respectfully requests that the Commission enter an order consistent with this Brief on Exceptions and ComEd's simultaneously filed Exceptions. ComEd also notes that its request for oral argument noted on the cover page to this Brief on Exceptions is

limited to the definition of "formula rate structure" as it is used in Section 16-108.5 and applies to ComEd.

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