

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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|--|---|---------------------------|
| <b>COMMONWEALTH EDISON COMPANY</b>             | ) |                           |
|  | ) |                           |
| <b>Petition to Make Housekeeping Revisions</b> | ) | <b>Docket No. 14-0316</b> |
| <b>And a Compliance Change to Filed Rate</b>   | ) |                           |
| <b>Formula</b>                                 | ) |                           |

**REPLY BRIEF ON EXCEPTIONS OF THE CITIZENS UTILITY BOARD**

Now comes the Citizens Utility Board (“CUB”), pursuant to Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), 83 Ill. Admin. Code Part 200.830, and pursuant to the briefing schedule established by the Administrative Law Judges (“ALJs”), to herby file this Reply Brief on Exceptions in the above-captioned proceeding.

**I. INTRODUCTION**

Commonwealth Edison Company (“ComEd” or “the Company”) predictably took exception to the Proposed Order’s findings regarding the parameters of the term formula rate “structure” as it is used in Section 16-108.5(d) of the Energy Infrastructure Modernization Act, or “EIMA.” 220 ILCS 5/16-108.5(d). The Proposed Order (“PO”) correctly found that only schedules FR A-1 and FR A-1 REC – the schedules that the Commission specifically approved in the initial formula rate docket, Docket No. 11-0721 – constitute the formula rate “structure.” PO at 17. There can be no doubt that ComEd’s overly constrained view of EIMA would have the (possibly intended) effect of hampering the Commission’s ability to adopt reasonable and necessary adjustments in the context of an annual formula rate update proceeding. ComEd’s insistence that a separate Title IX proceeding is required for proposed adjustments that would be effectuated through any supporting schedule except for workpapers would necessarily impose additional burdens on the Commission, its Staff and all interested intervening parties, to no

cognizable end. EIMA specifically ensures the Commission retains its authority to approve only just and reasonable rates; participating utilities may only recover “costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.” 220 ILCS 5/16-108.5(c)(1). The narrow limitation to forbid the Commission from changing the approved “structure” cannot be read to eviscerate this overarching obligation, which is exactly what ComEd’s position would do.

## **II. ARGUMENT**

### **a. ComEd Is Wrong that the Commission Approved All Supporting Schedules As the Formula Rate**

ComEd initially argues that the Proposed Order was wrong to conclude that the Commission did not specifically approve supporting schedules in the initial formula-setting docket for ComEd. ComEd BOE at 3-6. ComEd lists a number of different issues that the Commission considered in ComEd’s initial formula-setting proceeding, Docket No. 11-0721, that it claims the Commission addressed and resolved “regarding the substance of the supporting schedules and appendices.” *Id.* at 6. Each of ComEd’s cited examples, however, reveals that the Commission did not approve the “structure” of those scheduled or appendices, but rather evaluated the accounting or finance methodology for specific adjustments based on the facts specific to that record. Those facts may change and the Commission must have the flexibility to exercise its discretion to ensure that necessary accounting adjustments can be made. If the adjustments can be made to supporting schedules and appendices without disturbing the formula rate “structure” encapsulated in Schedules FR A-1 and FR A-1 REC, then those adjustments can be reviewed, considered, and adopted in an FRU.

While the EIMA is clear that, in a FRU, the Commission shall not make changes to the “structure or protocols” of an EIMA formula rate, (220 ILCS 5/16-108.5(d)(3)), the Commission

also reasonably found that formula rate “workpapers and schedules, etc. may be part of a filing, but they are not to be part of the tariffs.” Docket No. 11-0721, May 29, 2012 Order at 153. Similarly, in Docket No. 12-0321, ComEd’s first formula rate update, the Commission stated that “[a] template is merely a guideline,” and not an “approved” document for formula rate update cases. Docket No. 12-0321, December 19, 2013 Order at 105. The Commission also only approved Schedules FR A-1 and FR A-1 REC, in its approval of the initial formula rate. Staff Ex. 1.0 at 4:70-83. These findings are consistent with the overall context of the EIMA, which contains multiple references to the authority retained by the Commission to ensure the prudence and reasonableness of rates. *See* 220 ILCS 5/16-108.5(c), (d)(3). Importantly, these findings do not contemplate separate Section 9-201 proceedings as required for the Commission to effectuate this obligation.

**b. ComEd’s Position Does Not Improve the Specificity, Standardization or Transparency of the Formula Rate Process**

The intent of ComEd’s insistence on including all supporting schedules and appendices in the definition of “structure” – so that the formula rate is supposedly kept “as a whole” (ComEd BOE at 8) – can only reasonably be interpreted as an attempt to create additional hurdles to adopting Staff and intervenor adjustments within a FRU proceeding. The Proposed Order is exactly correct when it explains that separating the issues under challenge into two separate dockets (one under EIMA and one under Section 9-201 of the Public Utilities Act) would not lessen the number of issues that must be decided by the Commission. PO at 17. But such an unnecessary and uncalled-for process will necessarily absorb more resources for all entities involved for no legitimate purpose.

While the Commission could accelerate the Section 9-201 review of an accounting adjustment to the formula rate, that would be dependent on the particular circumstances – and

parties – involved in that docket. Regardless, there can be no question that the resources necessary to litigate issues in two separate dockets instead of one is significantly more for all entities involved, including the Commission. It is difficult to imagine how litigating accounting adjustments in a separate Section 9-201 proceeding that could otherwise be determined within an FRU, in the context of a full and complete record examining the totality of ComEd’s costs, would improve standardization, transparency of the FRU process or specificity. To the contrary, such an unnecessary process would only serve to muddle and over-complicate the annual determination of ComEd’s rates. Furthermore, any lack of synchronicity between the EIMA process and an associated Section 9-201 proceeding could cause a significant delay in the incorporation of accounting adjustments into the formula rate: it could take almost two years from the time issues are discovered until they are actually reflected in rates, even if those accounting issues do not require a fundamental change in the formula rate initially set by the Commission. ComEd’s proposal could allow it to collect unreasonable rates for over a year. There is nothing standardized or transparent about such a process.

The EIMA requires the Commission to evaluate ComEd’s costs, as set out in the formula and supporting schedules, “in a manner consistent with the provisions of this subsection (c) and the provisions of Article IX to the extent they do not conflict with this subsection (c).” 220 ILCS 5/16-108.5(c). The statute further lays out that the Commission’s review of a formula rate “shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act.” 220 ILCS 5/16-108.5(c)(6). The Proposed Order’s definition of “formula rate structure” is consistent with that broad authority. ComEd’s is not.

**c. The Commission Should Enter the Proposed Order As it Stands Without Delay**

ComEd itself even seems to admit that there are no specific issues, other than the depreciation issue being litigated in this docket, for which ComEd is currently arguing should be addressed in a separate Section 9-201 proceeding. ComEd BOE at 11 (“all parties acknowledge that the resolution of this formula structure issue will not impact the determination of the reconciliation revenue requirement”). ComEd then argues that this reasoning supports the Commission putting this issue on pause for consideration in a further docket when there is an actual controversy, or, alternatively, reinitiating a rulemaking proceeding on the issue. *Id.* ComEd’s suggestions are irrational for two reasons: 1) delaying a decision in this docket would abandon months of litigation surrounding this issue, thereby wasting precious Commission and intervenor resources on an important and time-sensitive issue (once again, something that does not appear to concern ComEd); and 2) it would further compromise the Commission’s ability to expeditiously consider all relevant and reasonable adjustments within an FRU, because the parties would be required to re-litigate this very issue in yet another future proceeding (which would likely not be resolved in time to be included in the annual determination of rates). To suggest such a delay at this stage of the proceeding – after the Commission declined to initiate a rulemaking and already made a determination on identical issues for the other participating utility under EIMA (Ameren, Docket Nos. 13-0501/13-0517) – reveals the blatancy of ComEd’s motivations to disadvantage intervenors, and thereby advantage itself, in formula rate litigation.

**V. CONCLUSION**

WHEREFORE, for the reasons discussed herein and in CUB’s Initial and Reply Briefs, CUB supports the Proposed Order and recommends it be adopted by the Commission subject only to the modifications discussed in Staff’s Brief on Exceptions.

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Respectfully Submitted,

THE CITIZENS UTILITY BOARD

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