

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

COMMONWEALTH EDISON COMPANY	:	
	:	
Reconciliation of revenues collected under	:	
power procurement riders with actual costs	:	No. 13-0528
associated with power procurement	:	
expenditures.	:	

**INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY**

January 21, 2015

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Commonwealth Edison Company “ComEd”), by its counsel, submits this Initial Brief in accordance with the Administrative Law Judge’s Notice dated December 11, 2014.

**I. INTRODUCTION AND SUMMARY**

This is a reconciliation Docket. The reconciliation includes, among other subjects, a review of ComEd’s calculations of Purchased Energy Adjustments (“PEAs”) and Hourly Purchased Energy Adjustments (“HPEAs”) for the reconciliation period of June 1, 2011, through May 31, 2012. The reconciliation’s calculations and inputs have been reviewed and found to be accurate, and not to involve any double recovery, by an internal audit and are supported by ComEd’s and Staff’s testimony and attachments.

The Administrative Law Judge’s Notice dated December 11, 2014, directs the parties to submit “Initial Briefs on the issue of the [Illinois Commerce] Commission’s [“Commission” or “ICC”] authority to include matters outside the reconciliation year in a reconciliation proceeding.” ComEd understands the Notice to be addressed to certain costs incurred in January through May 2011 that were applied in ComEd’s calculations of PEAs and HPEAs for the reconciliation period, as discussed below.

The Commission may and should approve ComEd's application of the costs that are the subject of this Initial Brief. ComEd's treatment of those costs was consistent with the Public Utilities Act, 220 ILCS Act 5 (the "Act"), the applicable tariffs, and rulings of the Commission. The treatment of the costs is supported by ComEd's and Staff's evidence. The Act provides for the tariffs involved here and for accurate recovery (neither over- nor under-recovery) of applicable costs. Factor "A" in each of the tariffs expressly provides for adjustments based on data relating to periods prior to the current reconciliation period.

## **II. BACKGROUND AND STATEMENT OF FACTS**

### **A. The Act**

The tariffs involved in this reconciliation are statutory tariffs. In brief, Section 16-111.5 of the Act, 220 ILCS 5/16-111.5, provides for, among other things, utility tariffs to recover costs of the procurement of electric power and energy and related supply costs. In particular, Section 16-111.5(1) provides:

An electric utility shall recover its costs incurred under this Section, including, but not limited to, the costs of procuring power and energy demand-response resources under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (1), will be recovered. The tariffs shall include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return on the price paid by the utility for that supply, plus any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy. The formula rate or charge shall also contain provisions that ensure that its application does not result in over or under recovery due to changes in customer usage and demand patterns, and that provide for the correction, on at least an annual basis, of any accounting errors that may occur. A utility shall recover through the tariff all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into

effect pursuant to Section 1-75 of the Illinois Power Agency Act and this Section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs. The electric utility shall also recover its full costs of procuring electric supply for which it contracted before the effective date of this Section in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006. All such costs shall be deemed to have been prudently incurred. The pass-through tariffs that are filed and approved pursuant to this Section shall not be subject to review under, or in any way limited by, Section 16-111(i) of this Act.

220 ILCS 5/16-111.5(l).

Thus, Section 16-111.5(1) speaks for itself, but, in brief, the statute provides for the accurate and complete recovery (neither over- nor under-recovery) of applicable costs.

**B. The Tariffs**

**1. The Establishment of the Tariffs**

ComEd charges PEAs under its “Rider PE – Purchased Electricity” (“Rider PE”), ILL. C. C. No. 10, Original Sheet No. 311, *et seq.* Rider PE originally was issued pursuant to the Commission’s Orders in ComEd’s 2005 rate case, ICC Docket No. 05-0597 (Order July 26, 2006), and ICC Docket No. 07-0432 (Order Aug. 15, 2007).

ComEd charges its HPEAs under its “Rate BESH – Basic Electric Service Hourly Pricing (“Rate BESH”), ILL. C. C. No. 10, 2<sup>nd</sup> Revised Sheet No. 29, *et seq.* Rate BESH under that name was issued pursuant to the Commission’s Order in ComEd’s 2010 rate case, ICC Docket No. 10-0467 (Order May 24, 2011). Rate BESH, however, was a successor tariff. Rate BESH replaced “Rate BES-H – Basic Electric Service-Hourly Energy Pricing” (“Rate BES-H”). Rate BES-H originally was issued pursuant to the Commission’s Order in ICC Docket No. 05-0597 (Order July 26, 2006).

There are two different tariffs here to cover the relevant aspects of two types of supply service pricing. In brief, Rider PE applies to bundled service without hourly pricing, while Rate BESH applies to bundled service with hourly pricing. The tariffs are much more specific.

## **2. The Prior Reconciliations**

In four prior Dockets, the Commission has approved ComEd's reconciliations of PEAs and HPEAs and their predecessor adjustment factors:

- ICC Docket No. 09-0080 (Order Dec. 3, 2010) (reconciliation periods January 2, 2007, to May 31, 2008, and November 1, 2007, to May 31, 2008) (two different period applied to two different sets of adjustment factors);
- ICC Docket No. 10-0275 (Order Dec. 22, 2011) (reconciliation period June 1, 2008, to May 31, 2009);
- ICC Docket No. 11-0357 (Order March 21, 2013) (reconciliation period June 1, 2009, to May 31, 2010); and
- ICC Docket No. 12-0549 (Order April 16, 2014) (reconciliation period June 1, 2010, to May 31, 2011).

The history of the tariffs and the adjustment factors, including their predecessors, is discussed in the Orders in those Dockets.

## **3. The Timeline for Determination and Application of PEAs and HPEAs Under the Tariffs**

Under each of Rider PE and Rate BESH, adjustments for the PEAs and HPEAs for any given month (a "determination period") are calculated and applied on a lagged basis. The data requirements and process under the tariffs result in a filing by ComEd with the Commission three months after the determination period that states the PEAs and HPEAs to be applied in the

next monthly billing period, and the adjustments then are applied in that next monthly billing period, *i.e.*, they are applied four months after the determination period.

That timeline follows from the language of the tariffs, which requires data not only from ComEd but also incorporates the time period within which PJM Interconnection, LLC (“PJM”), conducts settlements<sup>1</sup> for any given determination period because of the need for certain data from PJM.

More specifically, Rider PE, at Original Sheet No. 328, states in part:

For the purposes of the computation of a PEA, a determination period means the calendar month for which the PEA is determined for retail customers taking service under Rate BES for which the Company procures electric power and energy.

For the purposes of the application of a PEA, an effective period means the monthly billing period during which a PEA is applied to kWhs provided to retail customers taking service under Rate BES. The effective period is the first monthly billing period beginning no earlier than fifteen (15) calendar days after the final reconciliation of the PJM-conducted settlement process for electric supply for the determination period(s).

With a postmark dated no later than the twentieth day of the month prior to the start of each effective period, the Company must file with the ICC for informational purposes the PEA Factor, determined in accordance with this Purchased Electricity Adjustment Factor section, applicable during such effective period. Any submission of a PEA Factor postmarked after the twentieth day of a month but prior to the start of the applicable effective period is acceptable only if such submission corrects an error or errors from a timely submitted PEA Factor for such effective period. Any other such submission postmarked after such twentieth day is acceptable only if such submission is made in accordance with the special permission request provisions of Section 9-201(a) of the Act.

Similarly, Rate BESH at Original Sheet No. 39 states in part:

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<sup>1</sup> Settlement is a term of art in this context. Settlements are final calculations of rights as to a particular period, and use of that term does not mean there was a dispute.

For the purpose of determining the HPEA, (a) a determination period means the calendar month for which an HPEA is determined for retail customers receiving electric service with hourly pricing, and (b) an effective period means the monthly billing period during which such HPEA is applied to kWhs provided to such retail customers. The effective period is the first monthly billing period beginning no earlier than fifteen (15) calendar days after the final reconciliation of the PJM-conducted settlement process for electric supply for the determination period(s).

With a postmark dated no later than the twentieth day of the month prior to the start of each effective period, the Company must file with the ICC for informational purposes the HPEA applicable during such effective period. Any submission of an HPEA postmarked after the twentieth day of a month but prior to the start of the applicable effective period is acceptable only if such submission corrects an error or errors from a timely submitted HPEA for such effective period. Any other such submission postmarked after such twentieth day is acceptable only if such submission is made in accordance with the special permission request provisions of Section 9-201(a) of the Act.

So, for example, as to the month (determination period) of May 2012, the filing by ComEd with the Commission of the PEAs and HPEAs to be applied in the next monthly billing period was in August 2012 (on August 17, 2012), and the adjustments were applied to the September 2012 monthly billing period.

#### **4. The PEAs and HPEAs Include Adjustments of Errors Associated With the Determination of Prior PEAs and HPEAs**

The tariffs contain detailed formulae for calculation of the PEAs and HPEAs, including (1) the incorporation of data for the month (determination period) as such plus (2) data for adjustments of errors associated with the determination of prior PEAs and HPEAs and predecessor adjustment factors.<sup>2</sup>

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<sup>2</sup> The tariff sheets on which the formulae are stated have been amended from time to time but not in any way that changes the discussion here of the formulae.

In Rider PE, with respect to prior PEAs and predecessor adjustment factors, the formula includes a Factor “A”. The definition of Factor A states:

A = Adjustment, in \$, equal to an amount (a) ordered by the ICC, or (b) determined by the Company, that is to be refunded to or collected from retail customers to correct for errors associated with the computation of previously applied PEA Factors or applicable Accuracy Assurance Factors (AAFs) computed in accordance with the previously effective Rider CPP - Competitive Procurement Process (Rider CPP) or Rider AAF - Accuracy Assurance Factors (Rider AAF). Such amount includes interest at the rate established by the ICC in accordance with 83 Illinois Administrative Code Section 280.70(e)(1). Such interest is calculated for the period of time beginning on the first day of the effective period during which such PEA or AAF was applied and extending through the day prior to the start of the effective period in which the A is applied. Such amount may be amortized over multiple effective periods with interest.

Rider PE, 1<sup>st</sup> Revised Sheet No. 327.<sup>3</sup> Other language in the formula provides that if amortization is not necessary, then there is no amortization period. *Id.*

Similarly, in Rate BESH, with respect to prior HPEAs and predecessor adjustment factors, the formula includes a Factor “A”. The definition of Factor A states:

A = Adjustment, in \$, equal to an amount (a) ordered by the ICC, or (b) determined by the Company, that is to be refunded to or collected from retail customers receiving electric service with hourly pricing to correct for errors associated with the computation of a previously applied HPEA in accordance with this tariff or a previously applied Competitive Procurement Process-Hourly Accuracy Assurance Factor (CPP-H AAF) in accordance with the then effective Rider CPP - Competitive Procurement Process (Rider CPP). Such amount includes interest at the rate established by the ICC in accordance with 83 Illinois Administrative Code Section 280.70(e)(1). Such interest is calculated for the period of time beginning on the first day of the effective period during which such HPEA or CPP-H AAF was applied and extending through the day prior to the start of the effective period in which the A is applied. Such amount may be amortized over multiple effective periods with interest.

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<sup>3</sup> This language now is found on Rider PE, 2<sup>nd</sup> Revised Sheet No. 327. This language has not changed.

Rate BESH, 3<sup>rd</sup> Revised Sheet No. 38. Here, again, other language in the formula provides that if amortization is not necessary, then there is no amortization period. *Id.*

As discussed in the prior reconciliation Orders, the “AAFs” referenced in the tariffs last were billed as to the May 2008 monthly billing period. They were replaced by PEAs and HPEAs in the June 2008 monthly billing period. *E.g.*, ICC Docket No. 12-0549 Order at 1-2.

**C. The Decision in ICC Docket No. 11-0721**

Section 16-108.5 of the Act, 220 ILCS 5/16-108.5, provides for establishment of a participating utility’s formula rate. ComEd’s original formula rate case, ICC Docket No. 11-0721, resulted in a final Order dated May 29, 2012, and issued on May 30, 2012.

The original formula rate case established ComEd’s formula rate tariff, which was to be used in setting distribution service charges in that case and also to set distribution service charges and to conduct reconciliations of actual costs in subsequent formula rate update cases. The original formula rate case involved the setting of charges based on 2010 actual costs, with adjustments for 2011 projected plant additions and certain associated items.

The Order expressly recognized that the tariff also would be used in the future reconciliations of actual costs, including the first reconciliation, which was of 2011 actual costs, and which already was pending at that time (ComEd filed the case on April 30, 2012), ICC Docket No. 12-0321 (Order Dec. 19, 2012).<sup>4</sup> *See, e.g.*, ICC Docket No. 11-0721 Order at 4.

In the original formula rate case, one of the contested issues was the functionalization – *i.e.*, the split between distribution service costs and “supply” costs – of certain general costs. No party challenged the prudence or reasonableness of these costs. The ICC Docket No. 11-0721 Order (at 28-29) approved Staff’s proposal regarding how those costs should be functionalized,

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<sup>4</sup> The application was to be subject, of course, to applicable changes in law or court decisions, if any, and to subsequent Commission decisions. However, there was no such change that affected the relevant portion of the formula rate update case reconciliation of 2011 actual costs, as is reflected in the Order in ICC Docket No. 12-0321.

which meant that a portion of the costs at issue would be treated as supply costs, as Staff had proposed, rather than as distribution service costs, as ComEd had proposed. That ruling, as indicated above, applied to the charges being set and also to the then-pending reconciliation of 2011 actual costs. The Order declined to rule on whether the costs allocated to the supply function were recoverable under Rider PE. *Id.* at 29.

**D. ComEd's Application of the Decision in ICC Docket No. 11-0721.**

The net effect of the above ruling in ICC Docket No. 11-0721, as applied to costs incurred in the period from January 2011 through May 2012, was to classify as supply-related costs an additional \$2,596,750 that ComEd had proposed to treat as distribution costs, and thus which ComEd had not recovered through PEAs or HPEAs (nor through any other method, as discussed further below) in any period. *See, e.g., Vogt Direct* (“Dir.”), ComEd Ex. 2.0, 12:253-258; ComEd Ex. 2.1.

Of that \$2,596,750, approximately \$763,750 were incurred in the period of January 2011 through May 2011, while the remaining approximately \$1,833,000 were incurred in the period of June 2011 through May 2012. *See Vogt Rebuttal* (“Reb.”), ComEd Ex. 4.0, 3:60 - 4:72.

ComEd applied that \$2,596,750 in the course of calculating the final PEAs and HPEAs for the May 2012 determination period, and thus these costs were incorporated in the August 2012 filing and applied in the September 2012 monthly billing period, in accordance with the PEA and HPEA formula and the timelines under the tariffs discussed above.

The internal audit required by the tariffs agreed with ComEd's reconciliation. *Kozel Dir.*, ComEd Ex. 1.0, 3:58-62, 4:70-75, 6:128-132, 7:151 – 8:158; ComEd Ex. 1.1. ComEd did not recover the costs in question through any other means, as was confirmed by the internal audit. *Kozel Dir.*, ComEd Ex. 1.0, 8:155-158; ComEd Ex. 1.1.

Staff's testimony as well as ComEd's testimony supports ComEd's inclusion in the PEAs and HPEAs of the costs that are the subject of this Initial Brief. Pearce Dir., Staff Ex. 1.0, 2:27-32, 4:75 – 6:104 and Attachments A, B, and C; Vogt Reb., ComEd Ex. 4.0 (entire); ComEd Exs. 4.1, 4.2, 4.3, 4.4.

In addition, because the costs were not recovered through any other means, rejection of recovery here would strand the costs. *See, e.g.*, Pearce Reb., Staff Ex. 1.0, Attachment A.

Because approximately \$1,833,000 of the costs referenced above were incurred during the period of June 2011 through and including May 2012, *i.e.*, during the reconciliation year, ComEd does not understand the Administrative Law Judge's Notice to require briefing as to those costs. The Commission, in approving the reconciliation as to its inclusion of those costs, would not be including any costs incurred outside of the reconciliation period.

Accordingly, in the remainder of this Initial Brief, ComEd understands the focus to be the approximately \$763,750 incurred in the period of January 2011 through May 2011 that was included in the determination of PEAs and HPEAs for the May 2012 determination period. The discussion, however, supports the treatment of all of the \$2,596,750.

### **III. DISCUSSION**

The Commission may and should approve the reconciliation, both as a whole and, more specifically, as to the costs that are the subject of this Initial Brief. ComEd's application of the costs at issue was consistent with the Act, the applicable tariffs, and rulings of the Commission, and is supported by Staff's and ComEd's evidence.

There is no issue with regard to the recoverability under the Act of the costs that are the subject of this Initial Brief. As noted earlier, Section 16-111.5(l) provides for the accurate and complete recovery (neither over- nor under-recovery) of applicable costs. The Commission's

decision in ICC Docket No. 11-0721 that the costs in question are supply-related means that, under Section 16-111.5(l), these costs are to be accurately and completely recovered.<sup>5</sup> That conclusion also would follow from general ratemaking principles regarding a utility's right to the opportunity to recover fully its costs of service.

Nor is there any issue that, under the tariffs, the costs at issue properly were applied by ComEd to the May 2012 determination period. As discussed earlier, Factor "A" in each of the formulae for calculating PEAs and HPEAs expressly provides for the adjustment of errors associated with the determination of prior PEAs and HPEAs and predecessor adjustment factors. The incorporation of the costs in question falls within that tariff language. In ICC Docket No. 11-0721, the Commission found that ComEd had erred in how it functionalized these costs. The ruling that these costs are supply-related means that they were not to be recovered through distribution service charges and instead should be recovered through the applicable charges for supply-related costs. The applicable charges are the PEAs and the HPEAs. Also, as noted earlier, the costs were not recovered through any other means, *i.e.*, there is no double recovery issue, and a failure to approve recovery here would strand the costs.

The Commission in the ICC Docket No. 11-0721 Order (at 28-29) did decline to rule on whether the costs were to be recovered under Rider PE, as noted earlier, but the determination there that the question was not within the scope of that Docket in no way precludes or militates against the approval of the reconciliation here. Also, the Order there indicated that it had not been shown that the costs otherwise would be stranded, but that fact has been shown here.

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<sup>5</sup> There is no factual question regarding the recoverability of the costs nor as to the fact that they were not recovered through any other means. ComEd submitted unrefuted evidence supporting the costs both in ICC Docket No. 11-0721 and in the instant Docket. ComEd also submitted unrefuted evidence here that the costs in question were not recovered in any other way, *i.e.*, there is no double recovery issue. Staff's testimony in this Docket confirmed that there is no contested issue.

The incorporation in the calculation of PEAs and HPEAs for the May 2012 monthly determination period not only of the costs incurred during the reconciliation year, but also of the costs incurred during the period of January 2011 through May 2011, is consistent with the Act and the statute. Again, Section 16-111.5(l) provides for the complete recovery of such costs, and, the statute, in providing for the tariffs through which they are to be recovered, does not contain any language that restricts the application of a tariff provision like Factor A. Furthermore, the Factor A language contains no limit that restricts adjustments to matters within a reconciliation year. In fact, just the opposite is true. The Factor A language expressly provides for adjustments not only as to prior PEAs and HPEAs as such, but even going back as far as the AAFs, which last were billed in the May 2008 monthly billing period, as noted earlier. The instant case involves going back only five months prior to the start of the reconciliation period.

Thus, the Commission may and should approve the reconciliation, including as to the costs that are the subject of this Initial Brief. The Act authorizes the tariffs. The tariffs, which the Commission established, expressly provide for adjustments to PEAs and HPEAs based on data regarding prior periods. That is what was done here. ComEd knows of no principle or provision in law or in the tariffs, or in any Commission Order, that would limit the Commission's authority to approve the reconciliation here.<sup>6</sup>

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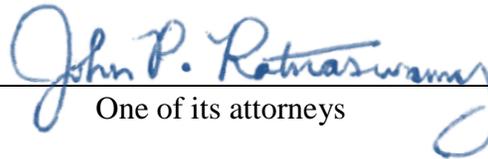
<sup>6</sup> If any authority is identified that ComEd has not addressed herein and that raises, or potentially raises, such a concern, then ComEd requests the opportunity to address such authority.

THEREFORE, Commonwealth Edison Company respectfully requests that the Commission approve the reconciliation, including as to the costs discussed above.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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