ICC Docket No. 01-0423
Response of Commonwealth Edison Company
To Staff's Data Requests CLB - 1.01 through CLB - 1.15
To Commonwealth Edison Company
Dated July 9, 2001

CLB-1.13 Per schedule WPC-1.2b, provide a schedule of legal fees incurred during the test year, showing the following on the schedule:

1. Reason fee was incurred
2. Fee associated with each activity
3. If it was litigation, description of the case and outcome
4. Settlement or fine if any

RESPONSE: Pursuant to a discussion between Staff and ComEd, this Data Request is limited to legal fees and costs relating to actions or claims that are either (a) "material," as defined by ComEd's accountants; or (b) made by shareholders as shareholders (e.g., derivative claims). For purposes of this response, "material" means having an effect in excess of $5 million on ComEd's business or financial position. This response is limited to claims known or pending as of December 31, 2000. Unless otherwise identified, the following information reflects the status of the matters listed through May 14, 2001. The limitations identified above will not affect Staff's ability to ask for further detail in an additional data request, or ComEd's right to make an appropriate objection, if any.

The legal fees and expenses identified below are those that were paid in 2000, but all such fees and costs are not jurisdictional. For example, the legal fees and costs incurred to implement the Exelon merger are not included in the jurisdictional revenue requirement.

The legal fees and costs were functionalized to jurisdictional customers based upon the anticipated needs of the restructured business entities. For a description of the basis for the functionalization, see ComEd's response to Data Request No. GEG 1.11. Generally, the legal fees and costs are identified in WPC – 1.2b as funding center no. 0060. Jurisdictional legal fees and costs are those paid for in-house and outside counsel and include legal work covering the following subject matter areas: state and federal regulatory, litigation, labor and employment, corporate, real estate, environmental, tax, benefits. See, for example, pages 2, 36, 38 and 44 of WPC – 1.2b. In addition to the legal fees and costs identified below, ComEd paid fees and costs associated with a substantial number of other matters that were either routine or did not otherwise meet the definition of materiality described above.

OFFICIAL FILE [redacted]
I.C.C. DOCKET NO. 01-0143
STAFF CROSS Exhibit No. 75
Witness
Date 11/15/01 Reporter CB

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ICC STAFF CROSS EX 75

FERC Municipal Request for Refund. Three of ComEd's wholesale municipal customers filed a complaint and request for refund with FERC alleging that ComEd failed to properly adjust their rates, as provided for under the terms of their electric service contracts, and to track certain refunds made to ComEd's retail customers in the years 1992 through 1994. In the third quarter of 1998, the FERC granted the complaint and directed that refunds be made, with interest. ComEd filed a request for rehearing. On January 11, 2001, FERC issued its Order on Rehearing Requesting Submissions of Additional Information. On April 30, 2001, the FERC issued an order in which it determined that its 1998 order on the complaint had been erroneous and that no refunds were due from ComEd to the municipal customers. The FERC order is subject to appeal. Any outside legal fees paid by ComEd in 2000 relating to this matter were deminimis.

Service Interruptions. In August 1999, three class action lawsuits were filed, and subsequently consolidated, in the Circuit Court of Cook County, Illinois, seeking damages for personal injuries, property damage and economic losses from ComEd related to a series of service interruptions that occurred in the summer 1999. The combined effect of these interruptions resulted in over 168,000 customers losing service for more than 4 hours. ComEd paid $297,421 in outside legal fees and costs regarding these matters in 2000.

Reliability Investigation. In 1999, the ICC opened an investigation regarding the design and reliability of ComEd's transmission and distribution system, which was expanded during 2000 to include a circuit breaker fire that occurred in October 2000 at a ComEd substation. The ICC has issued several reports in connection with the investigation, which include recommendations and an implementation timetable. The recommendations are not legally binding on ComEd; however, the ICC may seek to enforce them through litigation. ComEd paid $136,416 in outside legal fees and costs regarding this matter in 2000.

Retail Rate Law. In 1996, several developers of non-utility generating facilities filed litigation against various Illinois officials claiming that the enforcement against those facilities of an amendment to Illinois law removing the entitlement of those facilities to state-subsidized payments for electricity sold to ComEd after March 15, 1996 violated their rights under the Federal and state constitutions, and against ComEd for a declaratory order that their rights under their contracts with ComEd were not affected by the amendment. On August 4, 1999, the Illinois Appellate Court held that the developers' claims against the State were premature, and the Illinois Supreme Court denied leave to appeal that ruling. Developers of both facilities have since filed amended complaints repeating their allegations that ComEd breached the contracts in question, and requesting damages for such breach, in the amount of the difference between state-subsidized rate and the amount ComEd was willing to pay for the electricity. ComEd paid outside legal fees and costs of $46,649 regarding this matter in 2000.

Tax Issues. On June 13, 1997, the Illinois Department of Revenue (the "Department") issued Notices of Tax Liability to ComEd alleging deficiencies in Illinois invested capital tax for the years 1988 through 1994. As subsequently adjusted by the Department, the aggregate asserted liability for tax is $31,861,557 ($21,636,518 after further adjustment pursuant to a Department letter dated July 7, 1997), plus penalties of $3,470,476 and interest calculated through June 13, 1997 of $15,379,733. The Notices have been protested, and the matter is currently pending before the Department's Office of Administrative Hearings as docket number 97-ST-0099. On January 2, 1998, the Department issued Notices of Tax Liability to ComEd alleging deficiencies in invested capital tax for the years 1995 and 1996 in aggregate amount of $6,613,611, plus interested at calculated through January 2, 1998 of $767,565. On October 22, 1999 the Department issued a Notice of Tax Liability to ComEd alleging deficiencies in invested capital tax for 1997 in the amount of $3,649,805, plus interest calculated through October 22, 1999 of $461,366. The issue presented for each of the years in question is whether, for Illinois invested capital tax purposes, ComEd's liability under capital leases is to be included in long-term debt and thus form a part of ComEd's invested capital subject to the tax. After December 31, 1997, the invested capital tax no longer applies as the result of legislation enacted in Illinois. ComEd paid $10,355 in outside legal fees and costs regarding this matter in 2000.

MGP Sites. ComEd has identified a number of sites, including 44 Manufactured Gas Plant ("MGP") sites, and certain other sites, including the former Griess-Pfleger Tannery property, for which ComEd may be liable for remediation. Certain of these sites could entail remediation and investigation costs in excess of $5,000,000. ComEd paid outside legal fees and costs of $ 65,047 regarding these matters in 2000.

Toxic Torts. On April 12, 1999, attorneys for Sheila Roberson notified ComEd and others that they would be filing a toxic tort suit on behalf of their client relating to a former MGP site in Oak Park, Illinois, and on April 20, 1999, suit was filed in Cook County Circuit Court against

ComEd and three other parties. After the death of Ms. Roberson, her estate was substituted as plaintiff. No specific dollar amount of damages was requested. ComEd paid outside legal fees and costs of $156,511 regarding this matter in 2000.

In October 2000, ComEd and Nicor Gas, as well as the Village of Oak Park and the Oak Park Park District were named as defendants in a second toxic tort lawsuit brought by Cherilyn and Scott Rutledge arising out of the former MGP site in Oak Park, Illinois. ComEd paid outside legal fees and costs of $3,300 regarding this matter in 2000.

CERCLA Matters. From time to time, the Company is identified as a "potentially responsible party" ("PRP") in connection with the cost of cleaning up a waste site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or similar legislation. Because each responsible party can theoretically be held liable for the entire cost of cleaning up a site and other related costs, such identification may theoretically constitute a material claim even though the likelihood of any one party actually being held liable for all of such costs is remote. ComEd paid $693,349 in outside legal fees and costs regarding these matters in 2000.

Cotter Matters. During 1989 and 1991, actions were brought in federal and state courts in Colorado against the ComEd and its subsidiary, Cotter Corporation ("Cotter"), seeking unspecified damages and injunctive relief based on allegations that Cotter has permitted radioactive and other hazardous material to be released from its mill into areas owned or occupied by the plaintiffs resulting in property damage and potential adverse health effects. In 1994, a federal jury returned nominal dollar verdicts against Cotter on eight plaintiffs' claims in the 1989 cases, which verdicts were upheld on appeal. The remaining claims in the 1989 actions have been settled and dismissed. On July 15, 1998, a jury verdict was rendered in *Dodge vs. Cotter* (United States District Court for the District of Colorado, Civil Action No. 91-Z-1861), a case relating to 14 of the plaintiffs in the 1991 cases. The verdict against Cotter and in favor of the plaintiffs, after an amended judgment was issued March 11, 1999, totaled approximately $6 million, including compensatory and punitive damages, interest and medical monitoring. Cotter appealed. On February 11, 2000, the Tenth Circuit Court of Appeals agreed with Cotter, found that the trial judge had erred in critical rulings and reversed the jury verdict, remanding the case for new trial.

In November of 2000 another trial involving a separate sub-group of thirteen plaintiffs was completed in federal district court in Denver. The jury awarded nominal damages in this toxic tort case to plaintiffs who claimed injuries and other damages from alleged contamination. Trespass damages totaling $42,500 were awarded to 11 of 13 plaintiffs. No damages were awarded for any personal injury or health claims, other than requiring Cotter to perform periodic medical monitoring at minimal cost.

In May of 2001, the judge combined the claims of the 14 parties identified above along with those of another group of plaintiffs for purposes of a single trial. In June 2001, the jury returned verdicts of various sizes, which total approximately $16.3 million. ComEd paid outside legal fees and costs of $512,140 regarding these matters in 2000.

On February 18, 2000, the Company sold Cotter to an unaffiliated third party. As part of such sale, the Company agreed to indemnify Cotter for any liability incurred by Cotter as a result of these actions, as well as any liability arising in connection with the West Lake Landfill discussed below.

<u>West Lake Landfill</u>. The United States EPA has advised Cotter that it is potentially liable in connection with radiological contamination at a site known as the West Lake Landfill in Missouri. Cotter is alleged to have disposed of approximately 39,000 tons of soils mixed with 8,700 tons of leached barium sulfate at the site. Cotter and three other companies identified by EPA have agreed to share equally the costs of a remedial study of the site; those costs in total could exceed two million dollars. Future costs related to site remediation are not presently known. ComEd paid outside legal fees and costs of $19,680 regarding this matter in 2000.

<u>MISO Matter</u>. ComEd is a Transmission Owner member of the Midwest System Operator ("MISO") and a signatory of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator ("MISO Agreement"), which received conditional approval from the FERC on September 16, 1998. The MISO Agreement contemplates that Transmission Owner members will transfer operational control of their transmission facilities to the MISO, but that has not yet occurred. The MISO Agreement also provides that in the event of a merger, consolidation, reorganization, sale, spin-off, or foreclosure, as a result of which substantially all of the Transmission Owner member's transmission facilities are acquired by another entity, that entity shall have the right to withdraw its facilities from the MISO upon providing one year's notice to the MISO, such withdrawal not to become effective before FERC approves same.

On October 20, 2000 Exelon Corporation acquired by merger Unicom Corporation and its operating assets, chief among which were ComEd and its transmission, generation and distribution assets. On October 31, 2000, pursuant to the provision of the MISO Agreement described above, Exelon gave the MISO notice that it was withdrawing ComEd's transmission assets from the MISO. Exelon stated that per the MISO Agreement, the withdrawal was effective October 31, 2001, but that it would ask FERC to allow the withdrawal to become effective at an earlier date. In response, the MISO stated that ComEd is not entitled to withdraw from MISO until December 31, 2002. On December 22, 2000, ComEd notified FERC of its withdrawal from the MISO and requested FERC's approval for that step. The MISO asserted that ComEd is liable for a substantial share of the costs incurred or accrued by the MISO through the date of ComEd's withdrawal by reason of certain provisions of the MISO Agreement. On May 8, 2001, the FERC issued an order approving the MISO Agreement. As part of the settlement, ComEd has agreed to pay $35.5 million. The FERC order is subject to appeal. Any legal fees and expenses paid by ComEd regarding this matter in 2000 were deminimis.

Employment Related Claims. In May 1999, an African-American electrician at Quad Cities nuclear station filed a charge of discrimination with the EEOC alleging race discrimination and hostile work environment under Title VII. Two additional African-American Quad Cities station employees filed similar charges in late 1999 and late 2000, respectively. In February 2001, the EEOC issued a finding of probable cause on a class-wide basis, covering all current and many former African-American employees at the Quad Cities station.

Five of the Quad Cities employees who are members of the class filed suit in the Federal District Court for the Northern District of Illinois in December 2000, making many of the same allegations and claiming relief for race discrimination and hostile work environment harassment under Title VII, constructive discharge, Section 1981 civil rights violations, and retaliation. ComEd paid $120,735 in outside legal fees and costs regarding this matter in 2000.

Derivative Lawsuits. In November and December of 1997, Unicom and its directors were served with seven shareholder derivative lawsuits, four in state court, and three in federal court. All of the suits asserted identical claims that the directors breached fiduciary duties to the shareholders by allegedly failing to properly supervise ComEd's nuclear program. Each plaintiff alleged that this caused Unicom to violate NRC rules, which was alleged to have cost the company millions of dollars. Plaintiffs sought to have the directors reimburse the Unicom for these costs. The originally filed suits were dismissed because no demand was made upon Unicom's board to pursue a derivative action on behalf of Unicom, and demand was not excused. In September 1998 the plaintiffs made such a demand on the Unicom's board. On October 22, 1998 the board appointed a special committee to review the merits of the demand. On May 19, 1999, the plaintiffs refiled a derivative action alleging that because the board of directors had not responded to the plaintiffs, in effect the board had refused the demand. The special committee, assisted by separate counsel, conducted a review of the claims asserted in the plaintiff's demand letter. On October 27, 1999, the special committee reported its findings to the full board and recommended that the demand be rejected, and the board decided that no legal action should be brought by Unicom or ComEd with respect to the claims asserted in the plaintiff's demand letter. The derivative suit was dismissed on February 9, 2000. ComEd paid outside legal fees and costs of $7,635 regarding these matters in 2000.

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FIRST SUPPLEMENTAL RESPONSE:

ComEd objects to this request on the grounds that it seeks information or documents protected by the attorney-client privilege. ComEd further objects on the grounds that the request is overly broad and unduly burdensome. Without waiving these objections, ComEd states as follows:

The attached document, CLB 1.13 attachment.xls, identifies the ComEd legal department charges made to A&G account nos. 920 through 935 during the test year. These costs were functionalized as described in response to Staff data request GEG 1.11 and as shown on WPC-1.2b. The legal costs charged to Account 928 were directly assigned as described in ComEd Ex. 4.0, Appendix B, page six. The support for the direct assignment is also attached.

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