

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :  
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 :  
Petition for approval of delivery service tariffs and :  
tariff revisions and of residential delivery services : No. 01-0423  
implementation plan, and for approval of certain :  
other amendments and additions to its rates, terms, :  
and conditions. :

ILLINOIS INDUSTRIAL ENERGY CONSUMERS' REPLY BRIEF ON EXCEPTIONS

Eric Robertson  
Edward C. Fitzhenry, Jr.  
Lueders, Robertson, Konzen & Fitzhenry  
1939 Delmar Avenue  
Granite City, IL 62040  
618-876-8500  
618-876-4534 (F)  
[erobertson@lrklaw.com](mailto:erobertson@lrklaw.com)  
[efitzhenry@lrklaw.com](mailto:efitzhenry@lrklaw.com)

DATED: March 4, 2002

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COME NOW the Illinois Industrial Energy Consumers (“IIEC”), by their attorneys, Lueders, Robertson, Konzen & Fitzhenry, and pursuant to 83 Ill.Adm.Code Part 200.830, offer the following reply brief on exceptions in relation to the Administrative Law Judges’ (“ALJ”) Proposed Order (“Proposed Order”) dated February 8, 2002.

IIEC will reply to certain arguments of Commonwealth Edison Company (“ComEd” or “Company”); the ARES Coalition (“Coalition”); and Midwest Generation, L.L.C. (“Midwest”). In addition, IIEC will support certain arguments made by Staff and other parties regarding the necessity to modify the Proposed Order to correctly functionalize and allocate Administrative and General expense (“A&G”) and General and Intangible plant (“G&I”).

Specifically, IIEC will respond to:

- (1) arguments and statements made by ComEd in relation to the impact of ComEd’s filing upon customers;
- (2) certain ComEd statements and arguments regarding the allocation of G&I plant;
- (3) certain ComEd arguments and statements regarding the use of its marginal cost study;

- (4) certain ComEd arguments and statements regarding its embedded cost of service study;
- (5) certain arguments and statements of ComEd regarding its Rider TS;
- (6) certain arguments and statements of Midwest regarding the use of ComEd’s marginal cost study; and
- (7) certain arguments and statements of the Coalition regarding non-residential rate design issues in general, and the proposed high voltage credit in particular.

The captions herein correspond to the Proposed Order’s captions. Page references to the Proposed Order are references to the PDF version of the Proposed Order from Illinois Commerce Commission’s (“Commission”) e-docket.

## II Revenue Requirement Issues

### C. Rate Base

#### 2. General and Intangible Plant - Direct Assignment and Allocation

##### a. Response to ComEd

ComEd supports the Proposed Order’s conclusions with regard to the allocation of G&I plant. It suggests certain modifications to the Proposed Order to increase its “clarity.” (ComEd BOE at 11). ComEd also makes arguments in support of the Proposed Order’s treatment of this issue when it reasons that the Proposed Order properly recognized ComEd was no longer an integrated utility and, therefore, “direct assignment” to the delivery service function is preferable to the use of a labor allocator. (ComEd BOE at 2-3). ComEd also suggests that parties opposing its improper allocation of G&I have a greater interest in reducing the ComEd revenue requirement than “...in getting the price right.” (ComEd BOE at 3).

ComEd recommends, as part of its “clarification”, language be added to the Proposed Order stating that IIEC’s position in this case is inconsistent with the positions taken in another delivery service case involving Illinois Power Company (“IP”). (ComEd BOE at 12). ComEd recommends language be added to the Proposed Order indicating that ComEd is no longer a vertically integrated utility. (ComEd BOE at 12-13). Finally, ComEd recommends that language be added to the Proposed Order to indicate that the Commission did not approve the use of a labor allocator for G&I plant in Docket 99-0117. (ComEd BOE at 13).

Because the Proposed Order incorrectly concluded that ComEd properly allocated G&I plant to the delivery service function, there is no need to “clarify” such an erroneous conclusion. In addition, ComEd’s “clarifications” are actually based upon invalid arguments or statements of fact that are not supported by any evidence in the record in this case.

First, ComEd’s “restructuring” argument is invalid for several reasons. It ignores the fact that Exelon, ComEd’s parent corporation, is a fully integrated electric energy company owning generation, transmission and distribution facilities and that it has developed an integrated corporate strategy (generation, production, transmission and distribution of electricity) on the basis of its ownership of those facilities. The officers and directors of ComEd and Exelon overlap in many instances. Exelon’s subsidiaries, including ComEd, cooperate to the extent permitted by law, in maximizing corporate profits for Exelon. (*See Strobel, Tr. 766-771*). Therefore, ComEd (and Exelon) have an incentive to move costs away from the unregulated generation functions, to the regulated distribution function, because costs assigned to the generation function will only be recovered to the extent the market permits recovery and assignment to the distribution function offers a better opportunity to recover those costs through ComEd’s delivery service

rates. (IIEC Ex. 2 Rev. at 6). Given that ComEd is part of a fully integrated electric energy company, the misallocation of costs previously associated with the generation function, proposed by ComEd and approved by the Proposed Order, should be a matter of great concern to this Commission. Getting the “price right” is not an excuse for ComEd to recover costs previously and properly associated with generation through its delivery service rates.

In Docket 99-0117, the Commission determined the responsibility of each function for A&G and general plant by using the labor allocator. ComEd now wishes to allocate costs previously allocated to the generation function to other functions unrelated to generation. The fact that ComEd restructured itself so that it is now only a part of a fully integrated energy company does not justify ComEd’s allocation methodology in this case. It would be poor public policy to allow the fully integrated energy company to recover generating costs through its distribution affiliate. (*See Strobel, Tr. 773-774*).

Second, ComEd’s proposal to clarify the Proposed Order by adding language regarding allegedly inconsistent positions taken by IIEC in another delivery service rate case should be rejected. This proposed insert is not supported by reference to any exhibit or evidence in the record and, in fact, such a citation could not be given because such evidence does not exist. (*See 83 Ill. Adm. Code Part 200.800(a)*). Because ComEd has elected to go outside the record in this proceeding to add arguments and justifications for its erroneous allocation of G&I plant, IIEC wishes to “clarify” that ComEd’s recommended modification is either based on a gross misunderstanding of IIEC’s position in another case, or a deliberate mischaracterization of same. In the IP case, IP took G&I plant costs and A&G expenses which the Commission had previously allocated to the generation function, in an earlier IP delivery service case (Illinois Power Company, ICC Dkt. No. 99-0120/99-0134 (cons.), Final Order, Aug. 25, 1999) and

allocated those costs among IP's remaining business functions using a labor allocator. IIEC (and Staff) did not object to the use of the labor allocator per se, rather it objected to IP's misapplication of the labor allocator approach to allocate generation costs to its remaining business functions, primarily to the distribution function. (*See Illinois Power Company*, ICC Dkt. No. 01-0423, ALJ Proposed Order, Feb. 2, 2002, discussing positions of Staff and IIEC at 11-12, 14).

ComEd also seeks to clarify the Proposed Order by adding a reference to the fact that the Commission did not use a labor allocator to allocate intangible plant in Docket 99-0117, (ComEd BOE at 13). IIEC witness Chalfant testified that in the last case the total amount of intangible plant functionalized was approximately \$80,000 and in this case the intangible plant is approximately \$180 million. The entire increase in intangible plant is in Account 303, the Miscellaneous Intangible Plant Account. (Given the miscellaneous nature of these expenses, Account 303 is hardly the appropriate subject of direct assignment.) Of the \$180 million, more than \$118 million has been allocated to the distribution customer function under ComEd's methodology. Use of a labor allocator would allocate about \$67 million to those functions. (IIEC Ex. 4 Rev. at 6). Allocation of intangible plant was not fully considered in Docket 99-0117. But it was addressed by Governmental and Consumer Intervenors ("GCI") witness Effron who recommended its use in GCI Ex. 5 at 9-10. It was also consistent with the use of a labor plant in the prior Illinois Power delivery service case. *Illinois Power Company*, ICC Dkt. No. 99-0120/99-0134 (cons.), Final Order Aug. 25, 1999 at 14-16.

ComEd also seeks to "clarify" the Proposed Order by adding language alleging that its witness Alan Heintz refuted IIEC's claims that FERC decisions in prior ComEd bundled rate case decisions support the use of a labor allocator. (ComEd BOE at 12). Mr. Heintz actually stated that IIEC was incorrect in

suggesting that FERC used a labor allocator to functionalize general plant costs and A&G expenses. (ComEd Ex. 33 at 11). IIEC witness Chalfant testified in response that in Opinion 20, Minnesota Power & Light Company, et. al., 5 FERC ¶61 091, FERC specifically adopted the labor allocator as the only method for allocating general plant and A&G expenses. (IIEC Ex. 4 Rev. at 3). Mr. Heintz was able to identify only a “settlement” order as a basis for his opinion.<sup>1</sup> The settlement was supported by a “stipulation and agreement” approved by FERC which provided that none of the parties to the settlement were deemed to have approved, accepted or agreed to or consented to, any fact or calculation or theory or principle with respect to cost allocation or other issues. Mr. Chalfant pointed out that the settlement in question was essentially a black box settlement, which did not amount to an agreement on any particular principle or methodology, which underlay the rates in question. (IIEC Ex. 4 Rev. at 4). Thus, it was actually IIEC which refuted the position of ComEd witness Heintz on this issue.

Therefore, ComEd’s proposed clarifications of the erroneous conclusions reached in the Proposed Order on the allocation of G&I plant (and A&G expense) should be rejected for the reasons stated above and for the reasons stated in IIEC’s prior briefs. (*See* IIEC Initial Br. at 5-10; IIEC Reply Br. at 5-9; IIEC BOE at 4-10).

b. Comment on Staff and Intervenor Arguments

IIEC notes that other parties to this proceeding support the use of a labor allocator as opposed to

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<sup>1</sup>ComEd witness Heintz did identify two additional FERC cases which he claimed supported his position. (*See* ComEd Ex. 57 at 3, citing Commonwealth Edison Company 89 FERC ¶61, 252 and Northern States Power Company 83 FERC ¶61, 098). A review of the language of the FERC orders referenced fails to disclose any reference to the direct assignment of A&G or general plant or any FERC determination that direct assignment of A&G or general plant was appropriate.

ComEd's hybrid direct assignment/allocator methodology. (Staff BOE at 3-8, 10-15; GCI BOE at 16-18; Coalition BOE at 38-41, 44-45). IIEC believes that the Staff has correctly summarized the inconsistencies and contradictions in the evidence relied upon by the Proposed Order for its erroneous conclusion that ComEd's method for allocation of G&I plant should be adopted in this proceeding. The Staff brief correctly explains why ComEd's approach is internally inconsistent with the approach taken by the Commission in Docket 99-0117 and with prior Commission decisions in other delivery service rate cases. IIEC supports Staff's proposed modification of the Proposed Order on this issue.

F. Cost of Service and Rate Design

1. Cost of Service Study Issues

a. Marginal Cost Study

1. Response to ComEd

ComEd argues the Proposed Order's rejection of the Company's marginal cost study for revenue allocation and rate design purposes is improper. (ComEd BOE at 3, 50-54). First, ComEd argues that the Commission's prior approval of embedded cost for rate design and revenue allocation purposes in other cases does not provide a basis for approving such a methodology in this case. ComEd correctly notes the Commission decision was not res judicata. (ComEd BOE at 55). ComEd further argues that the Commission cannot justify a decision to use embedded cost that is in conflict with the evidence in the record. (ComEd BOE at 55).

ComEd's argument is based upon the incorrect assumption that there is no evidence in the record to support the rejection of the marginal cost approach in this proceeding. This is simply not the case. Staff presented extensive evidence in opposition to the use of marginal cost. (Staff Ex. 7.0 at 2-10). IIEC

witness Chalfant also testified in opposition to the use of marginal cost. (IIEC Ex. 2 Rev. at 11-13). In addition, ComEd itself presented an embedded cost study and a witness in support of that study. (See ComEd Ex. 14 CR at 1 et.seq.). Therefore, there is ample evidence in the record to support the Commission's rejection of a marginal cost approach in this proceeding.

Next, ComEd appears to argue that "applicable legal standards" somehow require a change to a marginal cost methodology. It relies upon Section 16-108(c) of the Public Utilities Act (the "Act"). (220 ILCS 5/16-108(c)). Because this Section discusses "cost based" delivery service charges, ComEd reasons it somehow supports or requires the use of a marginal cost approach. ComEd's suggestion that the Act requires or mandates the use of marginal cost has been rejected by Illinois courts. (See Commonwealth Edison Company v. Illinois Comm. Comm'n (2<sup>nd</sup> Dist. 2001), 322 Ill.App.3d 846, 854, 751 N.E.2d 196, 202-203, holding the embedded cost methodology used to determine the SBO credit did not contravene Section 16-108(c) of the Act).

ComEd also argues in a fully competitive market, prices reflect marginal costs, not embedded costs. (ComEd BOE at 52). ComEd ignores the fact that delivery services are not competitive services. There is no "fully competitive market for delivery services" because no other entity other than ComEd can offer those services. Therefore, pricing the services as if they are fully competitive is not appropriate.

ComEd also argues that fundamental economic principles caused the Commission to employ marginal cost based ratemaking over two decades. As IIEC noted in its Initial Brief in this proceeding, the Illinois Public Utilities Act was adopted in 1939, which suggests that for seven decades the Commission has used some other cost methodology other than marginal costs. (IIEC Initial Br. at 9-10). The fact that the Commission used marginal cost for a relatively small portion of its existence does not support its use

here, especially in light of the fact that the Commission has consistently refused to use marginal cost in the context of delivery service rate cases.

ComEd again argues there is a lack of economic rationale for embedded cost ratemaking in this proceeding, citing to cross-examination of IIEC witness Chalfant. (ComEd BOE at 53). ComEd continues to mischaracterize Mr. Chalfant's testimony on this issue. Mr. Chalfant was specifically asked whether his recommendation, that ComEd's marginal cost study not be used for revenue allocation or ratemaking purposes, was based on any current economic literature. Mr. Chalfant did not testify that use of embedded costs is not supported by current economic literature. (*See* Chalfant, Tr. 2540).

ComEd also argues that marginal cost advances economic efficiency. (ComEd BOE at 54). However, the theory underlying the use of marginal cost for revenue allocation and rate design has never been clearly established. (IIEC Ex. 2 Rev. at 11). That theory suggests if all goods are priced at marginal cost, the result would be efficient prices as defined in a very limited economic sense. However, the definition of "efficiency" in economics is different from the common definition of that term. In economics, efficient allocation of resources is one in which there is no change that could be made which would make someone better off without making someone worse off. (IIEC Ex. 2 Rev. at 11). ComEd's proposal is to set its delivery service rates (but not all prices) equal to marginal cost. Therefore, ComEd's proposal does not meet the limited definition of efficiency under economic theory.

Further, marginal cost calculations have generally rested on generation costs, while some form of trending of embedded cost was used to establish transmission and distribution costs in marginal cost analysis. In the case at bar, one is no longer focused on establishing marginal generation costs, but rather the appropriate cost of distribution facilities. (IIEC Ex. 2 Rev. at 11-12). The validity of the use of

marginal cost in such a situation has not been established.

Thus, for the reasons stated above, and for the reasons stated in IIEC's prior briefs, marginal cost should not be adopted in this proceeding. (IIEC Initial Br. at 11-13; IIEC Reply Br. at 9-11).

2. Response to Midwest

Midwest also supports the adoption of the Company's marginal cost approach in this case. Midwest makes basically the same arguments made by ComEd and should be rejected for the same reason.

b. Embedded Cost Study

ComEd states that it supports the Proposed Order's finding that its embedded cost study was properly prepared and that objections raised by IIEC and others should be rejected. (ComEd BOE at 54). ComEd's support is misplaced.

ComEd argues elsewhere in its brief that it is critical to the facilitation and development of an efficient competitive market that costs be allocated to cost causers as accurately as possible. (ComEd BOE at 3). ComEd also argues that the marginal cost methodologies are more accurate than embedded cost methodologies. (ComEd BOE at 3). IIEC notes the ComEd marginal cost study results for the 10,000 kW class decrease by 15%, compared to the system average increase of 25%. (IIEC Ex. 2 Rev. at 15). However, in the Company's embedded cost study, the results for the 10,000 kW class increase by about 74%, compared to the system average increase of 25%. (IIEC Ex. 2 Rev. at 15). Notwithstanding this wide range of results, ComEd still supports the accuracy of its embedded cost study and the Proposed Order's findings regarding that accuracy.

As IIEC witness Chalfant testified, one would expect the results of each study to be roughly similar.

(IIEC Ex. 2 Rev. at 15). The results of these studies are not even close. This fact by itself should call into question the accuracy and, therefore, the reliability of the Company's embedded cost study in this case. In addition, while the marginal cost study differentiates between primary and secondary lines, the embedded cost study does not. Primary and secondary lines make up the "distribution lines" subfunction which is a large subfunction in the embedded cost study. (ComEd Ex. 50 at 6-7; Heintz, Tr. 2970-2971). Thus, in the embedded cost study, the 10,000 kW class was allocated a full share of secondary lines, while the marginal cost study correctly allocated no secondary lines to that class. (Alongi/Kelly, Tr. 1318). Under these circumstances, neither ComEd nor the Proposed Order correctly concludes that the embedded cost study presented by ComEd in this proceeding is accurate. Given the lack of accuracy in the embedded cost study and the inappropriate use of marginal cost, IIEC recommended that the embedded cost study be used for revenue allocation purposes within the residential class only and that revenue requirements for the non-residential class be increased by an equal percentage to maintain the cost relationships established in the Company's last delivery service rate case in Docket 99-0117. IIEC's recommendation should be adopted for the reasons stated above and for the reasons stated in IIEC's prior briefs. (IIEC Initial Br. at 13-18; IIEC Reply Br. at 12-17; IIEC BOE at 10-14).

2. Class Revenue Allocation

IIEC addressed this issue in the discussion above.

G. Rate Design

1. RCDS Rate Design

a. Demand Ratchet

ii Special Ratchet for Standby Customers

The Coalition proposes that the Commission reject the standby demand ratchet for self-generating

customers if it is not adopted for other customers. (Coalition BOE at 55, 57-58). If the Commission elects to address non-residential rate design issues at this stage of the proceeding, IIEC agrees with the Coalition that the standby demand ratchet for self-generating customers should be rejected if it is not adopted for other customers. IIEC opposes the application of a demand ratchet to standby customers for the reasons stated in its prior briefs. (IIEC Initial Br. at 19-23; IIEC Reply Br. at 17-20).

## 2. Rider HVDS

The Coalition, with the support of certain other parties such as TrizecHahn, now propose that non-residential rate design issues be decided by the ALJs at this stage of the proceedings. The position is confusing at best. At least one of the parties now supporting the determination of this issue took exactly the opposite position before the ALJs during the status hearing on January 25, 2002. TrizecHahn took the position that non-residential rate design issues such as Rider HVDS should not be decided until the final revenue requirement was established. (Tr. 3725-3727).

Now TrizecHahn and its allies in the Coalition seek to have the Commission determine non-residential rate issues such as Rate HVDS. If the Commission determines it will address these issues it should, at a minimum, adopt the recommendation of IIEC with regard to application of the high voltage credit to 69kV and 34 kV customers.

ComEd, Staff, DOE, IIEC, and Midwest supported the implementation of a high voltage credit in some form. (ComEd Initial Br. at 116-118; Staff Initial Br. at 99-103; IIEC Initial Br. at 23-27; DOE Initial Br. at 13-16; and Midwest Initial Br. at 25). Their support for the implementation of the credit is based upon valid ratemaking principles, supported by substantial evidence and the undeniable fact that higher voltage customers are less costly to serve than lower voltage customers. It should be noted that at

least one witness for the opposing parties actually testified that he would support the credit if his client was eligible for it. (Haynes, Tr. 1037-1038). Therefore, the objections of the Coalition and its allies to the credit must be viewed as self-serving by the Commission and the ALJs.

IIEC recommended that the credit be phased in out of concerns about customer impact within the non-residential class.<sup>2</sup> While the Commission's decision to implement an audit process in this proceeding has delayed the implementation of non-residential rates to some time later this year or possibly early next year, IIEC still supports the phase in. The first step would be implemented when rates for non-residential customers are adjusted upon completion of the audit process and the second step would take place on the second anniversary of the implementation of the new non-residential rates. IIEC received qualified support from BOMA for such a phase in. (BOMA Initial Br. at 18).

IIEC's recommendation is based upon sound ratemaking principles, which are generally recognized by the parties who support the credit. The primary principle is that higher voltage customers are generally less expensive to serve than lower voltage customers. IIEC witness Chalfant demonstrated that the significant difference in the cost to serve 34 kV as well as 69kV customers in comparison to 12 kV customers. (IIEC Ex. 2 Rev. at 19-20, Sch. 8; IIEC Initial Br. at 23-24). No party, including the Coalition, disputes that fundamental fact.

IIEC's recommendation to apply the credit to 34.5 kV customers at 3 MW and over is based upon data provided by ComEd itself. (Chalfant, Tr. 2560; IIEC Ex. 4 Rev. at 12-13). IIEC argued that because the data in question was furnished by ComEd, and identified the customers who would be eligible

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<sup>2</sup>This issue is an intraclass issue for the non-residential class, not an interclass issue involving the residential class.

for the credit, ComEd's arguments regarding "engineering" are irrelevant. While ComEd raised objections to high voltage credits in the past, it has now found a way to implement such credits in this case. (*See* Crumrine, Tr. 1133). IIEC's proposed credit would be revenue neutral to ComEd. (*See* IIEC Ex. 2 Rev. Schs. 7, 9 and 10).

The Coalition argues that the HVDS credit was not properly calculated. (Coalition Br. at 63). No rate, unless it applies to a single customer, would ever result in bills that exactly match the costs incurred to serve each and every customer. There is always some amount of deviation within a class. However, the critical issue is whether the members of the class share enough common characteristics to distinguish them as a group from all other customers. The information in this case suggests reasonable homogeneity among customers served at 69 kV and 34.5 kV and above and a distinct lack of homogeneity for customers served below those voltage levels. (IIEC Ex. 2 Rev. at 19-20).

The Coalition makes other objections to the adoption of Rate HVDS. (Coalition BOE at 61-66). These objections include a number of erroneous and invalid arguments in opposition to a high voltage credit. They oppose the credit on rate continuity grounds, ignoring the fact that the existing rate structure already contains a high voltage credit. Therefore, the Company proposal is consistent with and a continuation of the current rate structure. The real issues here are eligibility for the credit, the size of the credit and the mechanics of its implementation.

The Coalition argues that the HVDS credit will create rate shock. (Coalition BOE at 61). However, the Coalition ignores the fact that IIEC proposed expansion of the credit to customers with demand of 3 MW or more and served at 34.5 kV and above. (IIEC Ex. 2 Rev. at 17-20). IIEC has also proposed that the credit be phased in. (IIEC Ex. 1 Rev. 6). The Coalition ignores the size of the credit

has been reduced under both ComEd and IIEC's revised proposals. (ComEd Ex. 50CR at 9-10, Attach. C and D; IIEC Ex. 4 Rev., Sch. 9 CR at 2). In addition, the Company's revenue requirement has been adjusted downward and is likely to be further adjusted downward, which will tend to mitigate the impact of the increase in the credit proposed by ComEd. The Coalition also argues there is general consensus that the HVDS credit is a half measure. (Coalition BOE at 62). IIEC respectfully disagrees. However, as noted elsewhere in this brief, ComEd, IIEC, DOE, Midwest and Staff have all supported a high voltage credit in some form or fashion. Therefore, the Coalition is simply wrong when it suggests the existence of a "general consensus" that the credit is a half measure.

The Coalition criticizes the HVDS credit because ComEd has limited the credit to 69 kV or higher customers. (Coalition BOE at 62). As previously noted, IIEC has proposed the credit be expanded to customers served at lower voltages. Therefore, the Coalition's criticism is not applicable to the IIEC proposal. Further, while IIEC strongly urges that the credit be made applicable to the lower voltage customers, the fact that it is not does not make the credit discriminatory. The credit is applicable to current bundled service customers and delivery service service customers served at voltages of 69kV and above. The Coalition does not argue that the current credit is discriminatory. Illinois courts have held that the test for rate discrimination is whether the differential treatment in rates is reasonable and not arbitrary. City of Chicago v. Illinois Comm. Comm'n (1<sup>st</sup> Dist. 1996), 281 Ill.App.3d 617, 623, 666 N.E.2d 1212, 1216; Austin View Civic Association v. City of Palos Heights (1stDist. 1980), 85 Ill.App.3d 89, 99, 405 N.E.2d 1256, 1265. The question of discrimination and differential rate treatment is one of fact based exclusively on the evidence presented and which considers such factors such as differences in cost to serve, purpose for which the product is used and the amount of product used. Id. 85 Ill.App.3d at 99, 405

N.E.2d at 1265.

There is no discriminatory rate treatment here. First, the credit already exists and has existed in ComEd's rate structure for a number of years. Second, there is ample evidence that the credit as proposed by ComEd and the expanded credit as proposed by IIEC, is based upon the difference in the cost to serve high voltage customers versus lower voltage customers. (IIEC Ex. 2 Rev. at 17-19; IIEC Ex. 4 Rev. at 12; ComEd Ex. 13 CR at 45, Attach. N). Therefore, the Coalition is simply wrong when it suggests the credit is discriminatory.

The Coalition argues there is no demonstration that failure to adopt Rider HVDS will have an adverse impact upon customers. However, the evidence, in this case, establishes the substantial differences in cost of serving high voltage customers versus low voltage customers. This evidence is ample demonstration of an adverse impact on those customers who pay rates substantially in excess of the cost to serve them.

The Coalition suggests there needs to be some compatibility between bundled service rates and delivery service rates and this somehow dictates against the increase in the high voltage credit proposed by ComEd. (Coalition BOE at 62). Delivery service is an unbundled service and there does not appear to be any pressing economic need for a correlation between delivery service and bundled service. Besides, as noted above, bundled rates in current delivery service rates already reflect the high voltage credit. Therefore, there is a degree of correlation in the structure of the rates already.

In addition the record shows a substantial subsidy flows from high voltage to lower voltage customers. ( Swan Tr 2755-56; Juracek 3267; IIEC Ex.2 Rev. at 19). Elimination of the subsidy constitutes as substantial improvement to delivery service rates and this improvement should not be

“derailed” because of the cost-recovery inequality that exists in frozen bundled rates has not yet been eliminated.

Finally, while IIEC continues to support the idea of voltage differentiated rates as suggested by the Coalition (Coalition BOE at 10, 64), it does not believe that higher voltage customers should continue to provide subsidies to lower voltage customers while waiting for those rates to be implemented. As Illinois courts have recognized, the simple fact that a restructuring of ComEd’s rates does not “... address every cost-recovery inequality present in Edison’s rate structure should not be used as a basis for derailing modifications believed by the Commission to result in improvement.” City of Chicago v. Illinois Comm. Comm’n (1<sup>st</sup> Dist. 1993) 264 Ill.App.3d 403, 411-412, 636 N.E.2d 704, 710. (*See also* City of Chicago v. Illinois Comm. Comm’n (1<sup>st</sup> Dist. 1996), 281 Ill.App.3d 617, 626, 666 N.E.2d 1212, 1218)). Therefore, if the Commission decides non-residential rate design issues, it should approve the high voltage credit and expand its applicability to 34.5kV customers as proposed by IIEC. This will result in an improvement in ComEd’s rates. They will better reflect the cost of serving high voltage customers. The implementation of the phase-in recommended by IIEC, will mitigate customer impact within the non-residential class.

IIEC Supports Rider HVDS and supports its expansion to apply to both 69kV and 34.5 kV customers for the reasons stated above and for the reasons stated in its prior briefs. (IIEC Initial Br. at 23-27, IIEC Reply Br. at 20-28).

#### 8. Rider TS - Transmission Service

The Proposed Order rejects that portion of Rider TS which would allow ComEd to bill retail customers for transmission delivery services provided by the RTO. (Proposed Order at 137). ComEd

takes issue with this finding. (ComEd BOE at 67-69).

At the outset, ComEd expresses its understanding with respect to the reasons for rejection of this aspect of proposed Rider TS. ComEd argues the “principal basis for rejecting Rider TS” is the Proposed Order’s finding that ComEd can impose sufficient credit security requirements on RESs. (ComEd BOE at 67). However, the Proposed Order also states agreement with the positions of Staff, GCI and IIEC regarding ComEd’s proposal. (Proposed Order at 137). These parties presented credible evidence and argument aside from the entitlement of ComEd to obtain sufficient credit security requirements, as bases for rejecting ComEd’s Rider TS proposal. (*See* Proposed Order at 134-136).

ComEd claims it never argued that it lacked adequate credit security rights or that an RTO would lack adequate credit security rights. Instead, ComEd offers its intent was to provide the RTO with a lower-cost, practical alternative in lieu of “large and expensive bonds or other security from RESs,” claiming its proposal avoids having the RTO to sue customers individually. (ComEd BOE at 67).

Several responses are in order. First, to the extent ComEd believes its OATT imposes “needlessly - high credit security requirements on RESs” (ComEd BOE at 67), then ComEd should take immediate action and make a filing at the FERC to impose reasonable credit security requirements. Second, while ComEd takes on a policy stance in defense of its position, the policy issue that remains is whether this Commission is compelled or bound to allow a FERC regulated entity, the RTO, to use a Commission approved delivery service tariff to collect unpaid transmission charges. IIEC is of the view there has been no adequate justification explained by ComEd for this Commission to encroach upon on either FERC policy making or regulation.

Though ComEd intended to discount the arguments put forth by Staff, GCI and IIEC, ComEd latter

summarizes its opposition to these parties' arguments. ComEd takes issue with IIEC's contention that the Commission should not take positions regarding the recovery of FERC approved transmission charges. ComEd argues, instead, that Rider TS does not add or subtract from the liability of any customer for transmission charges but that it only allows ComEd to collect on behalf of an RTO. (ComEd BOE at 68-69). The fact is, transmission charge liability is a matter between the customer and the transmission provider and the existence of any such liability should not be determined by the Commission. ComEd continues to fail to understand the FERC language upon which it relied for its proposal only referred to matters of "eligibility" and not "liability". (See IIEC Initial Br. at 36-37).

Finally, ComEd intends to defuse the IIEC argument by stating if it were valid, this would mean the Commission does not have jurisdiction to direct single billing of transmission charges. (ComEd BOE at 69). ComEd misunderstands the IIEC argument. It is IIEC's position ComEd's proposal is inconsistent with the language of the OATT. The single billing option, allowed by Illinois statute, permits the RES to bill directly the delivery service charges incurred by the retail end use customer. Therefore, there is no jurisdictional issue present.

IIEC supports the Proposed Order's resolution of this issue for the reasons stated above and for the reasons stated in its prior briefs. (IIEC Initial Br. at 35-38; IIEC Reply Br. at 32-34).

#### Conclusion

- 1) ComEd should be required to allocate General Plant and A&G to its functions using a labor allocator as the Commission ordered in ComEd's prior delivery services case - Docket 99-0117.
- 2) It is inappropriate to use marginal costs as the basis for allocating revenue responsibility among classes.

- 3) ComEd's embedded cost study contains dramatic unexplained changes from the embedded cost study approved by this Commission in Docket 99-0117, and is otherwise inappropriate as a basis for revenue allocation.
- 4) Since neither of the cost studies provide a supportable basis for revenue allocation in this case and since the present revenue allocation was established relatively recently based on an embedded cost study that the Commission found reasonable in Docket 99-0117, all classes should bear an equal percent increase over present rates.
- 5) The concept behind ComEd's proposed high voltage credit for customers that take service at 69 kV and above is correct but a similar credit should also apply to customers taking service at 34.5 kV.
- 6) The Commission should moderate the effect of the change in delivery service charges to reflect high voltage credits by means of the phase-in recommended by IIEC.
- 7) In the event that the ratchet proposal for other delivery service customers is rejected, the Commission should reject ComEd's proposal to place standby customers on a rate design that uses a demand ratchet. In that circumstance, ComEd's proposal would result in disparate treatment between standby customers and all other delivery service customers.
- 8) Rider ISS charges should send appropriate price signals to customers by more accurately reflecting market conditions present at the time the customer is on Rider ISS. ComEd should base its Rider ISS charges on its hourly energy prices under Rate HEP, which provides a better indicator of current market conditions.
- 9) ComEd should not be allowed to charge a percentage adder on top of energy prices under Rider ISS. If ComEd is able to demonstrate a real administrative cost associated with serving Rider ISS customers that is not already covered in the delivery service revenue requirement, then a commensurate fee based on the actual cost of administering the service would be appropriate. ComEd has not demonstrated or quantified such a cost.
- 10) ComEd should not be permitted to, in the context of a Commission approved delivery service tariff, modify or alter transmission charge liability or responsibility.

DATED this 4<sup>th</sup> day of March, 2002.

Respectfully submitted,

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Eric Robertson  
Edward C. Fitzhenry  
Lueders, Robertson, Konzen & Fitzhenry  
1939 Delmar Avenue, P. O. Box 735  
Granite City, IL 62040

35420.1

PROOF OF SERVICE

STATE OF ILLINOIS :

: SS

COUNTY OF MADISON :

I, Eric Robertson, being an attorney admitted to practice in the State of Illinois and one of the attorneys for Illinois Industrial Energy Consumers herewith certify that I did on the 4th day of March, 2002, electronically file with the Illinois Commerce Commission, the Reply Brief on Exceptions on behalf of the Illinois Industrial Energy Consumers, and electronically serve same upon the persons identified on the attached service list.

---

Eric Robertson  
Lueders, Robertson, Konzen & Fitzhenry  
1939 Delmar Avenue  
P. O. Box 735  
Granite City, IL 62040  
(618) 876-8500

SUBSCRIBED AND SWORN to me, a Notary Public, on this 4<sup>th</sup> day of March, 2002.

---

Notary Public

35296

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :  
 :  
Petition for approval of delivery service tariffs and :  
tariff revisions and of residential delivery services : No. 01-0423  
implementation plan, and for approval of certain :  
other amendments and additions to its rates, terms, :  
and conditions. :

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 4th day of March, 2002, we have electronically filed with the Illinois Commerce Commission, 527 East Capitol Ave., Springfield, Illinois, 62794, Reply Brief on Exceptions on behalf of the Illinois Industrial Energy Consumers, along with Proof of Service thereon attached.

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Eric Robertson  
Lueders, Robertson, Konzen & Fitzhenry  
1939 Delmar Avenue  
P. O. Box 735  
Granite City, IL 62040  
(618) 876-8500

35296

**COMMONWEALTH EDISON COMPANY  
DOCKET NO. 01-0423  
SERVICE LIST**

MICHAEL C ARENDT  
PEOPLES ENERGY  
130 E. RANDOLPH DRIVE  
CHICAGO, IL 60601  
[m.arendt@pecorp.com](mailto:m.arendt@pecorp.com)

RICHARD BERNET  
ASSISTANT GENERAL COUNSEL  
EXELON BUSINESS SERVICES GROUP  
EXELON CORPORATION  
LEGAL DEPARTMENT - 35TH FLOOR  
10 S. DEARBORN ST.  
CHICAGO, IL 60603  
[richard.bernet@exeloncorp.com](mailto:richard.bernet@exeloncorp.com)

BETH CARSON  
PEOPLES ENERGY SERVICES  
205 N. MICHIGAN AVE.  
CHICAGO, IL 60601  
[bcarson@peoplesenergy.net](mailto:bcarson@peoplesenergy.net)

LEIJUANA DOSS  
ASSISTANT STATE'S ATTORNEY  
ENVIRONMENT AND ENERGY DIVISION  
COOK COUNTY STATES ATTORNEY'S OFFICE  
69 W. WASHINGTON, STE. 700  
CHICAGO, IL 60602  
[ldoss@cookcountygov.com](mailto:ldoss@cookcountygov.com)

JEAN DRESSLER  
ENRON ENERGY SERVICES, INC.  
12 SALT CREEK LN., STE. 450  
HINSDALE, IL 60521  
[jdressle@enron.com](mailto:jdressle@enron.com)

DARCY A FABRIZIUS  
BLACKHAWK ENERGY SERVICES  
P.O. BOX 2226  
WAUKESHA, WI 53187-2226  
[dfabrizius@kaztex.com](mailto:dfabrizius@kaztex.com)

DAVID I FEIN  
ATTY. FOR INTERVENORS  
PIPER MARBURY RUDNICK & WOLFE  
203 N. LASALLE ST., STE. 1800  
CHICAGO, IL 60601-1293  
[david.fein@piperrudnick.com](mailto:david.fein@piperrudnick.com)

SALVATORE FIORELLA  
PEOPLES ENERGY SERVICES  
130 E. RANDOLPH DR., 23RD FL.  
CHICAGO, IL 60601  
[sfiorella@pecorp.com](mailto:sfiorella@pecorp.com)

GERARD T FOX  
ATTORNEY  
PEOPLES ENERGY SERVICES CORPORATION  
130 E. RANDOLPH DR., 23RD FL.  
CHICAGO, IL 60601  
[gfox@pecorp.com](mailto:gfox@pecorp.com)

LAWRENCE A GOLLOMP  
ASSISTANT GENERAL COUNSEL  
UNITED STATES DEPARTMENT OF ENERGY  
1000 INDEPENDENCE AVE., SW  
WASHINGTON, DC 20585  
[lawrence.gollomp@hq.doe.com](mailto:lawrence.gollomp@hq.doe.com)

PAUL F HANZLIK  
ATTY. FOR COMMONWEALTH EDISON  
COMPANY  
FOLEY & LARDNER  
THREE FIRST NATIONAL PLZ., STE. 4100  
CHICAGO, IL 60602-4205  
[phanzlik@foleylaw.com](mailto:phanzlik@foleylaw.com)

MICHAEL W HASTINGS  
GENERAL COUNSEL  
ASSN. OF ILL. ELEC. COOPS.  
6460 S. 6TH FRONTAGE RD.  
PO BOX 3787  
SPRINGFIELD, IL 62708-3787  
[hastings@aiec.org](mailto:hastings@aiec.org)

JOHN HENDRICKSON  
CASE MANAGER  
ILLINOIS COMMERCE COMMISSION  
527 E. CAPITOL AVE.  
SPRINGFIELD, IL 62701  
[jwhendri@icc.state.il.us](mailto:jwhendri@icc.state.il.us)

JULIE HEXTELL  
NEWENERGY MIDWEST, L.L.C.  
309 W. WASHINGTON, STE. 1100  
CHICAGO, IL 60606  
[jhextell@newenergy.com](mailto:jhextell@newenergy.com)

KAREN M HUIZENGA  
ATTORNEY  
MIDAMERICAN ENERGY COMPANY  
106 E. SECOND ST.  
PO BOX 4350  
DAVENPORT, IA 52808  
[kmhuizenaga@midamerican.com](mailto:kmhuizenaga@midamerican.com)

ROBERT P JARED  
REGULATORY LAW & ANALYSIS  
MIDAMERICAN ENERGY COMPANY  
106 E. SECOND ST.  
PO BOX 4350  
DAVENPORT, IA 52808  
[rpjared@midamerican.com](mailto:rpjared@midamerican.com)

RONALD D JOLLY  
ASSISTANT CORPORATION COUNSEL  
DEPT. OF LAW  
CITY OF CHICAGO  
30 N. LASALLE, STE. 900  
CHICAGO, IL 60602-2580  
[rjolly@ci.chi.il.us](mailto:rjolly@ci.chi.il.us)

MARK G KAMINSKI  
ASSISTANT ATTORNEY GENERAL  
PUBLIC UTILITIES BUREAU  
100 W. RANDOLPH ST., 11TH FL.  
CHICAGO, IL 60601  
[mkaminski@atg.state.il.us](mailto:mkaminski@atg.state.il.us)

ROBERT KELTER  
CITIZENS UTILITY BOARD  
208 S. LASALLE ST., STE. 1760  
CHICAGO, IL 60604  
[rkelter@cuboard.org](mailto:rkelter@cuboard.org)

MARY KLYASHEFF  
ATTORNEY  
PEOPLES ENERGY SERVICES CORPORATION  
130 E. RANDOLPH DR., 23RD FL.  
CHICAGO, IL 60601  
[m.klyasheff@pecorp.com](mailto:m.klyasheff@pecorp.com)

JOSEPH L LAKSHMANAN  
ILLINOIS POWER COMPANY  
500 S. 27TH ST.  
DECATUR, IL 62521-2200

[joseph\\_lakshmanan@illinova.com](mailto:joseph_lakshmanan@illinova.com)

JULIE B LUCAS  
LEGAL COUNSEL  
CITIZENS UTILITY BOARD  
208 SOUTH LASALLE STREET, SUITE 1760  
CHICAGO, IL 60604  
[jucas@citizensutilityboard.org](mailto:jucas@citizensutilityboard.org)

OWEN E MACBRIDE  
ATTY. FOR ILLINOIS POWER COMPANY  
SCHIFF HARDIN & WAITE  
6600 SEARS TOWER  
CHICAGO, IL 60606  
[omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)

JANINE MIGDEN  
SENIOR DIRECTOR  
ENRON CORP.  
400 METRO PLACE NORTH, STE. 310  
DUBLIN, OH 43017-3375

ALAN H NEFF  
ASSISTANT CORPORATION COUNSEL  
DEPT. OF LAW  
CITY OF CHICAGO  
30 N. LASALLE, STE. 900  
CHICAGO, IL 60602-2580  
[aneff@ci.chi.il.us](mailto:aneff@ci.chi.il.us)

ANASTASIA O'BRIEN  
EXELON BUSINESS SERVICES GROUP  
EXELON CORPORATION  
LEGAL DEPARTMENT - 35TH FLOOR  
10 S. DEARBORN ST.  
CHICAGO, IL 60680  
[anastasia.obrien@exeloncorp.com](mailto:anastasia.obrien@exeloncorp.com)

PHILIP R O'CONNOR  
AES NEWENERGY, INC.  
309 W. WASHINGTON ST., STE. 1100

CHICAGO, IL 60606  
[Phil.O'Connor@aesmail.com](mailto:Phil.O'Connor@aesmail.com)

KATIE PAPADIMITRIU  
ILLINOIS COMMERCE COMMISSION  
160 N. LASALLE ST., STE. C-800  
CHICAGO, IL 60601  
[kpapdim@icc.state.il.us](mailto:kpapdim@icc.state.il.us)

JOHN P RATNASWAMY  
ATTY. FOR COMMONWEALTH EDISON  
COMPANY  
FOLEY & LARDNER  
THREE FIRST NATIONAL PLZ., STE. 4100  
CHICAGO, IL 60602-4205  
[jratnaswamy@foleylaw.com](mailto:jratnaswamy@foleylaw.com)

CONRAD REDDICK  
CITY OF CHICAGO  
SUITE 1040  
30 N. LASALLE STREET  
CHICAGO, IL 60602  
[creddick@ci.chi.il.us](mailto:creddick@ci.chi.il.us)

E GLENN RIPPPIE  
ATTY. FOR COMMONWEALTH EDISON  
FOLEY & LARDNER  
THREE FIRST NATIONAL PLAZA, STE. 4100  
CHICAGO, IL 60602  
[grippie@foleylaw.com](mailto:grippie@foleylaw.com)

JOHN L ROGERS III  
ATTY. FOR COMMONWEALTH EDISON  
COMPANY  
FOLEY & LARDNER  
THREE FIRST NATIONAL PLAZA, STE. 4100  
CHICAGO, IL 60602  
[jrogers@foleylaw.com](mailto:jrogers@foleylaw.com)

MICHAEL SEIDEL  
ATTY. FOR CILCO

DEFREES & FISKE  
200 S. MICHIGAN AVE., STE. 1100  
CHICAGO, IL 60604  
[wmseidel@defrees.com](mailto:wmseidel@defrees.com)

NICK T SHEA  
DIRECTOR, RATES & REGULATORY AFFAIRS  
CENTRAL ILLINOIS LIGHT COMPANY  
300 LIBERTY ST.  
PEORIA, IL 61602  
[Nshea@cilco.com](mailto:Nshea@cilco.com)

MARIE SPICUZZA  
ASSISTANT STATE'S ATTORNEY  
ENVIRONMENT AND ENERGY DIVISION  
COOK COUNTY STATES ATTORNEY'S OFFICE  
69 W. WASHINGTON, STE. 700  
CHICAGO, IL 60602  
[saopib@wwa.com](mailto:saopib@wwa.com)

DALE SWAN  
EXETER ASSOCIATES, INC.  
12510 PROSPERITY DR., STE. 350  
SILVER SPRING, MD 20904  
[dswan@exeterassociates.com](mailto:dswan@exeterassociates.com)

CHRISTOPHER J TOWNSEND  
ATTY. FOR INTERVENORS  
PIPER MARBURY RUDNICK & WOLFE  
203 N. LASALLE ST., STE. 1800  
CHICAGO, IL 60601-1293  
[chris.townsend@piperrudnick.com](mailto:chris.townsend@piperrudnick.com)

TIMOTHY P WALSH  
ATTORNEY  
OFFICE OF GENERAL COUNSEL  
PEOPLES ENERGY CORPORATION  
130 E. RANDOLPH DRIVE, 23RD FLOOR  
CHICAGO, IL 60601  
[twalsh@pecorp.com](mailto:twalsh@pecorp.com)

STEVEN WALTER  
CITY OF CHICAGO  
30 N. LASALLE, STE. 2500  
CHICAGO, IL 60602-2580  
[swalter@ci.chi.il.us](mailto:swalter@ci.chi.il.us)

BOBBI WELCH  
PEOPLES ENERGY SERVICES  
205 N. MICHIGAN AVE., STE. 4216  
CHICAGO, IL 60601  
[bwelch@peoplesenergy.net](mailto:bwelch@peoplesenergy.net)

JOHN FEELEY  
STEVE REVETHIS  
ILLINOIS COMMERCE COMMISSION  
160 NORTH LASALLE STREET  
SUITE C-800  
CHICAGO, IL 60601  
[jfeeley@icc.state.il.us](mailto:jfeeley@icc.state.il.us)  
[srevethi@icc.state.il.us](mailto:srevethi@icc.state.il.us)

DANIEL ROSENBLUM, ELPC  
35 E. WACKER DRIVE  
SUITE 1300  
CHICAGO, IL 60601  
312-332-1580 (F)  
[drosenblum@elpc.org](mailto:drosenblum@elpc.org)

MICHAEL GUERRA  
THOMAS A. ANDREOLI  
SONNENSCHN NATH & ROSENTHAL  
233 S. WACKER DRIVE  
CHICAGO, IL 60606  
312-876-8600  
[mguerra@sonnenschein.com](mailto:mguerra@sonnenschein.com)  
[tandreoli@sonnenschein.com](mailto:tandreoli@sonnenschein.com)

MICHAEL A. MUNSON  
LAW OFFICE OF MICHAEL A. MUNSON  
123 NORTH WACKER DRIVE  
SUITE 1800

CHICAGO, IL 60606  
312-474-7879 (F)  
[Michael@Munson.com](mailto:Michael@Munson.com)

WILLIAM L. BARKAS  
DOMINIUN RESOURCES SERVICES, INC.  
625 LIBERTY AVENUE  
PITTSBURGH, PA 15222  
412-316-7078 (P)  
412-316-7500 (F)  
[William L. Barkas@dom.com](mailto:William L. Barkas@dom.com)

ANNE PRAMAGGIORE  
COMMONWEALTH EDISON COMPANY  
P. O. BOX 805398  
CHICAGO, IL 60680-5398  
[anne.pramaggiore@exeloncorp.com](mailto:anne.pramaggiore@exeloncorp.com)

CRAIG GOODMAN  
STACEY RANTALA  
NATIONAL ENERGY MRKTS. ASSN.  
3333 K STREET NW  
SUITE 425  
WASHINGTON, DC 20007  
[cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com)  
[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

PAUL COLGAN  
BOMA/CHICAGO  
120 S. LASALLE STREET  
SUITE 1400  
CHICAGO, IL 60603  
312-236-5237 (P)  
312-236-5766 (F)  
[pcolgan@bomachi.com](mailto:pcolgan@bomachi.com)

PATRICK GIORDANO

GIORDANO & ASSOCIATES  
55 E. MONROE STREET  
SUITE 3040  
CHICAGO, IL 60603  
312-456-4980 (P)  
312-456-4989 (F)  
[patrickgiordano@dereglaw.com](mailto:patrickgiordano@dereglaw.com)

DAVID J. DULICK  
EXELON ENERGY COMPANY  
2600 MONROE BLVD.  
NORRISTOWN, PA 19403  
610-676-7364 (P)  
610-676--7259 (F)  
[david.dulick@exeloncorp.com](mailto:david.dulick@exeloncorp.com)

ADMINISTRATIVE LAW JUDGES  
CASEY & O'CONNELL-DIAZ  
ILLINOIS COMMERCE COMMISSION  
160 NORTH LASALLE STREET  
SUITE C-800  
CHICAGO, IL 60601  
[pcasey@icc.state.il.us](mailto:pcasey@icc.state.il.us)  
[eoconnel@icc.stat.il.us](mailto:eoconnel@icc.stat.il.us)

CARTER BROWN  
ILLINOIS COMMERCE COMMISSION  
160 N. LASALLE STREET - STE. C-800  
CHICAGO, IL 60601-3104  
[cbrown@icc.state.il.us](mailto:cbrown@icc.state.il.us)

PAUL GRACEY  
MIDWEST GENERATION LLC  
ONE FINANCIAL PLACE  
440 S. LASALLE STREET - STE. 3600  
CHICAGO, IL 60605  
[pgracey@mwgen.com](mailto:pgracey@mwgen.com)

REBECCA LAUER  
COMMONWEALTH EDISON COMPANY  
P. O. BOX 805398

CHICAGO, IL 60680-5398  
[rebecca.lauer@exeloncorp.com](mailto:rebecca.lauer@exeloncorp.com)

THOMAS MODAFF  
NICOR ENERGY LLC  
100 WARRENVILLE RD. STE. 500  
LISLE, IL 60532-4306  
[tommodaff@nicorenergy.com](mailto:tommodaff@nicorenergy.com)

35296

March 4, 2002

Ms. Donna Caton  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Re: Commonwealth Edison Company  
Docket No. 01-0423

Dear Ms. Caton:

The Reply Brief on Exceptions on behalf of the Illinois Industrial Energy Consumers has been filed electronically with the Clerk of the Illinois Commerce Commission this date. Electronic copies of the foregoing have been provided to parties on the service list.

The Hearing Examiner has been provided a hard copy by overnight mail.

Sincerely,

Eric Robertson

ER:bab  
cc: Service List  
Enclosure/35296







