

ORIGINAL

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

BEFORE THE

**Illinois Commerce Commission**

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DOCKET NO. 00-0230  
00-0244  
Consolidated

IN THE MATTER OF:

COMMONWEALTH EDISON COMPANY

and

ILLINOIS COMMERCE COMMISSION

On its own motion

vs.

COMMONWEALTH EDISON COMPANY

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PLACE: Chicago, Illinois

DATE: April 27, 2000

PAGES: 34-124

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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
)  
COMMONWEALTH EDISON COMPANY )  
) No. 00-0230  
Petition for confidential treatment )  
for portions of the notice of )  
transfer of generating assets and )  
wholesale marketing business and )  
entry into related agreements )  
pursuant to Section 16-111(g) of )  
the Illinois Public Utilities Act. )  
----- )  
ILLINOIS COMMERCE COMMISSION )  
On Its Own Motion )  
)  
vs )  
) No. 00-0244  
COMMONWEALTH EDISON COMPANY )  
)  
Proceeding pursuant to Section )  
16-111(g) of the Public Utilities )  
Act concerning proposed transfer of )  
generating assets and wholesale )  
marketing business and entry into )  
related agreements. )

Chicago, Illinois

April 27, 2000

Met pursuant to notice at 10:00 a.m.

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BEFORE:

MR. BILL SHOWTIS, Administrative Law Judge, and  
MR. SHERWIN ZABAN, Administrative Law Judge.

APPEARANCES:

MR. STEVEN G. REVETHIS and  
MR. JOHN C. FEELEY  
160 North LaSalle Street  
Chicago, Illinois 60601  
appearing for Staff of ICC;

JONES DAY REAVIS & POGUE, by  
MR. CHRISTOPHER W. FLYNN and  
MS. HOLLY D. GORDON  
77 West Wacker Drive, Suite 3500  
Chicago, Illinois 60601  
appearing for ComEd;

THE HONORABLE RICHARD DEVINE  
State's Attorney, by  
MS. LEIJUANA DOSS  
Asst. State's Attorney  
69 West Washington, Suite 700  
Chicago, Illinois  
appearing for the People of Cook County;

THE HONORABLE JAMES RYAN  
Attorney General, by  
MR. R. LAWRENCE WARREN  
Senior Asst. Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601-3175  
appearing for the People of the State  
of Illinois;

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APPEARANCES (CONT'D)

THE HONORABLE BRIAN L. CROWE  
Corporation Counsel, by  
MR. CONRAD REDDICK and MR. ALAN NEFF  
30 North LaSalle Street  
Chicago, Illinois 60603  
    appearing for the City of Chicago;

MR. ROBERT M. IVANAUSKAS  
208 South LaSalle Street, Suite 1760  
Chicago, Illinois 60604  
    appearing for the Citizens  
    Utility Board.

SULLIVAN REPORTING COMPANY, by  
Jennifer Natale, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
ROBERT McDONALD	43	48, 61 66, 73 98, 99			86, 89 102
ROBERT BERDELLE	78	85			81
KAREN A. GOLDBERGER	105	108			110
BRUCE LARSON	111	113			114
PHIL A. HARDAS	116	119			

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
ComEd's No. 1.0	38	81
ComEd's No. 2.0	38	47
ComEd's No. 3.0	38	47
ComEd's No. 3.1	38	47
ComEd's No. 4.0	38	81
ComEd's No. 4.1	38	81
ComEd's No. 4.2	38	81
ComEd's No. 4.3	38	81
ComEd's No. 5.0	38	105
Staff's No. 1	38	108
Staff's No. 2	38	113
Staff's No. 3	38	118

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(Whereupon, ComEd's  
Exhibit Nos. 1.0, 2.0, 3.0,  
3.1, 4.0, 4.1, 4.2, 4.3 and  
5.0 were marked for identificatio  
(Whereupon, Staff's  
Exhibit Nos. 1-3 were  
marked for identification.)

JUDGE SHOWTIS: Pursuant to the authority  
vested in me by the Commission, I now call for  
hearing consolidated Dockets 00-0230 and 00-0244;  
00-230 concerns the petition of Commonwealth  
Edison Company for confidential treatment of  
portions of the notice of transfer of generating  
assets and wholesale marketing business and entry  
into related agreements pursuant to Section  
16-111(g) of the Illinois Public Utilities Act;  
00-0244 is a proceeding by the Commission on its  
own motion versus ComEd pursuant to Section  
16-111(g) of the Public Utility Act concerning the  
proposed transfer of generating assets and  
wholesale marketing business and entry into  
related agreements.

1 Will the parties please enter their  
2 appearances for the record.

3 MR. FLYNN: Christopher W. Flynn and Holly D.  
4 Gordon, Jones, Day, Reavis and Pogue, 77 West  
5 Wacker, Suite 3500, Chicago, Illinois 60601 on  
6 behalf of Commonwealth Edison Company.

7 MR. REVETHIS: Steven G. Revethis and John C.  
8 Feeley, Staff counsel appearing on behalf of the  
9 Illinois Commerce Commission Staff, Mr. Examiner.

10 MR. NEFF: Alan Neff, Assistant Corporation  
11 Counsel for the City of Chicago.

12 MS. DOSS: Leijuana Doss, Cook County State's  
13 Attorney's office, 69 West Washington, Suite 700,  
14 Chicago, Illinois 60602, appearing on behalf of  
15 the People of Cook County.

16 MR. WARREN: R. Lawrence Warren for the  
17 Attorney General's office, 100 West Randolph, 12th  
18 Floor, Chicago, 60601 for the People of the State  
19 of Illinois.

20 MR. LIPSON: Kevin J. Lipson (phonetic) with  
21 the law firm of Hogan and Hartson (phonetic), 555  
22 13th Street Washington DC, representing Midwest

1 Generation.

2 MR. IVANAUSKAS: Robert Ivanauskas, legal  
3 counsel for the Citizens Utility Board, 208 South  
4 LaSalle Street, Suite 1760, Chicago, Illinois  
5 60604. The spelling of my last name is  
6 I-v-a-n-a-u-s-k-a-s.

7 JUDGE SHOWTIS: Just one preliminary matter:  
8 There have been a couple of petitions to intervene  
9 that the examiners have not acted upon. Those  
10 were filed by the Attorney General on behalf of  
11 the People of the State of Illinois and by the  
12 Citizens Utility Board.

13 Is there any objection?

14 MR. FLYNN: There's no objection.

15 JUDGE SHOWTIS: Those petitions to intervene  
16 are granted. We've previously granted petitions  
17 to intervene filed by Cook County State's  
18 Attorney's office on behalf of the People of Cook  
19 County and the Environmental Law and Policy  
20 Center.

21 I believe those are all of the  
22 petitions to intervene that have been filed.

1 MR. FLYNN: I haven't seen any others.

2 Is Midwest Generation going to be  
3 in the case.

4 MR. LIPSON: You know, we have not intervened  
5 at this point, and I don't know that we are going  
6 to intervene; but as new corporate citizens of the  
7 community, we want to become increasingly aware of  
8 what's going on.

9 If an intervention is appropriate  
10 at this time, I would be happy to make one.

11 JUDGE ZABAN: Are you planning on  
12 participating in the hearing, or are you just  
13 observing?

14 MR. LIPSON: We're planning on observing, but  
15 who really knows.

16 JUDGE ZABAN: As long as you're observing,  
17 you don't have to file -- you don't have to  
18 intervene.

19 JUDGE SHOWTIS: If you're going to be asking  
20 questions or participating, you would have to  
21 file.

22 MR. LIPSON: We would not be doing that.

1 JUDGE SHOWTIS: Okay. That's fine.

2 Before I swear the witnesses, and I  
3 think we'll -- we'll be starting with Mr.  
4 McDonald.

5 Are there any other preliminary  
6 matter that need to be taken up?

7 MR. FLYNN: Pursuant to a request by the  
8 hearing examiner, we have circulated to the  
9 parties here today an additional exhibit of  
10 Mr. Berdelle, which consists of two data request  
11 responses that the company had previously given to  
12 its staff containing data underlying the ROE  
13 analyses that were included in the company's  
14 original notice.

15 So when Mr. Berdelle takes the  
16 stand, he'll respond to that exhibit.

17 JUDGE SHOWTIS: Off the record.

18 (Discussion off the record.)

19 JUDGE SHOWTIS: Raise your right hand.

20 (Witnesses sworn.)

21 JUDGE SHOWTIS: You may proceed, Mr. Flynn.

22 MR. FLYNN: Our first witness is

1 Mr. McDonald.

2 ROBERT K. McDONALD,  
3 called as a witness herein, having been first duly  
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. FLYNN:

8 Q Would you please state your name.

9 A Robert K. McDonald.

10 Q Mr. McDonald, by whom are you employed?

11 A I am employed by Unicom Corporation.

12 Q In the course of your duties with Unicom  
13 Corporation, did you cause certain testimony and  
14 exhibits to be prepared for the purpose of this  
15 proceeding?

16 A Yes, I did.

17 Q Mr. McDonald, I'm showing you a document  
18 previously marked as ComEd Exhibit 1.0 bearing the  
19 caption, Notice of Transfer of Assets and  
20 Wholesale Marketing Business, containing also  
21 Appendixes A thru M.

22 Are you familiar with this

1 document?

2 A Yes, I am.

3 Q You previously verified the contents of  
4 the notice; is that correct?

5 A That is correct.

6 Q Is that information still true and  
7 correct to the best of your knowledge?

8 A Yes, it is.

9 Q All right. Were Appendixes A, B, C, D,  
10 E, G, K and L prepared by you or under your  
11 direction and supervision?

12 A Yes.

13 Q And are those Appendixes true and  
14 correct to the best of your knowledge?

15 A Yes.

16 Q Mr. McDonald, did you also prepare  
17 supplemental direct testimony in this case?

18 A Yes, I did.

19 Q I show you a document previously marked  
20 as ComEd Exhibit 2.0 bearing the caption,  
21 Supplemental Direct Testimony of Robert K.  
22 McDonald.

1                   Is that a copy of your supplemental  
2 direct testimony?

3           A       Yes, it is.

4           Q       And is that testimony true and correct  
5 to the best of your knowledge?

6           A       Yes.

7           Q       Mr. McDonald, did you also prepare  
8 rebuttal testimony?

9           A       Yes, I did.

10          Q       I show you a document previously marked  
11 as ComEd Exhibit 3.0 bearing the caption, Rebuttal  
12 Testimony of Robert K. McDonald.

13                   Is that a copy of your rebuttal  
14 testimony?

15          A       Yes, it is.

16          Q       Is that testimony true and correct to  
17 the best of your knowledge?

18          A       Yes.

19          Q       In the course of that testimony, you  
20 identified and sponsor a one-page document which  
21 has been stamped confidential and marked ComEd  
22 Exhibit 3.1.

1                                   Are you familiar with that  
2 document?

3           A       Yes, I am.

4           Q       Was that prepared by you or under your  
5 direction and supervision?

6           A       Yes.

7           Q       Is the information reflected on the  
8 document true and correct to the best of your  
9 knowledge?

10          A       Yes.

11           MR. FLYNN: Mr. Examiner, at this time I  
12 would move for the admission into evidence of  
13 ComEd Exhibits 2.0, 3.0, and 3.1. Mr. Berdelle  
14 will be verifying certain Appendixes to Exhibit  
15 1.0. So we'll move for its admission after  
16 Mr. Berdelle has testified.

17           JUDGE SHOWTIS: Is there any objection to the  
18 admission into evidence of ComEd's Exhibits 2.0,  
19 3.0, and 3.1?

20           MR. NEFF: None, your Honor. I just want to  
21 make sure I know the numbering system here. I  
22 understand that his rebuttal testimony is 3.0, and

1 I notice -- and I presume including his testimony  
2 of 1.0, but I'm sure supplemental direct --

3 MR. FLYNN: That's been marked as 2.0.

4 MR. NEFF: 2.0, thank you.

5 JUDGE SHOWTIS: ComEd Exhibit 3.1 is a  
6 proprietary exhibit?

7 MR. FLYNN: Yes, and it's been provided to  
8 the reporter in an envelope.

9 Mr. McDonald is available for  
10 cross-examination, although I guess I should wait  
11 until you rule.

12 JUDGE SHOWTIS: On what?

13 MR. FLYNN: The admission.

14 JUDGE SHOWTIS: I think I already admitted  
15 them. If I haven't, they're admitted again.

16 (Whereupon, ComEd's  
17 Exhibit Nos. 2.0, 3.0, 3.1 were  
18 admitted into evidence.)

19 MR. NEFF: I have some cross-examination.

20 JUDGE SHOWTIS: Okay. Mr. Neff.

21 MR. NEFF: Thank you, your Honor.

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CROSS-EXAMINATION

BY

MR. NEFF:

Q Good morning, Mr. McDonald.

A Good morning.

Q I'm turning to Appendix E of Exhibit 1.0 which is your verified statement?

A Yes.

Q And I direct your attention to page 8 lines 163 to 166. Please review them and let me know when you're ready for cross-examination.

MR. FLYNN: I'm sorry, what were the line numbers, Mr. Neff?

MR. NEFF: Page 8, lines 163 to 166.

BY MR. NEFF:

Q And just so we have the records simultaneously, could you look at -- I understood you to say that Appendix L was prepared by you under your supervision; is that correct?

A Yes.

Q Could you look at Appendix L at page 14 through the first full paragraph on that page.

1 The paragraph with the words, Following the  
2 proposed merger, coma, and review that too.

3 Having done both of those, let me  
4 know when you're ready for the question.

5 A Okay.

6 Q Now based on these two passages, is it  
7 your understanding that ComEd's existing nuclear  
8 decommissioning trust will be dissolved, correct?

9 A That is my understanding.

10 Q And the funds currently in ComEd's  
11 existing nuclear decommissioning trust will be  
12 transferred to Genco, correct?

13 A That is my understanding.

14 Q And that's Genco, G-e-n-c-o, correct?

15 A Yes.

16 Q And it's also your understanding that  
17 the Genco will establish new decommissioning  
18 trusts, correct?

19 A That is my understanding.

20 Q And it will, upon establishing those new  
21 nuclear decommissioning trusts, deposit the moneys  
22 received from ComEd from the existing nuclear

1 decommissioning trusts with those new  
2 decommissioning costs, correct?

3 A That is my understanding as well.

4 Q Now, am I correct that it's your  
5 understanding of this transaction that after these  
6 transfers of funds take place between existing  
7 nuclear decommissioning trusts and Genco's  
8 seceding nuclear decommissioning trusts ComEd will  
9 retain its obligation to collect unfunded  
10 decommissioning cost charges to rate payers,  
11 correct?

12 MR. FLYNN: I'm going to object to the  
13 question. This has gone on for several questions  
14 now.

15 These questions simply aren't  
16 relevant to the questions before the Commission  
17 here. I'd like to point out that in Section  
18 16-111(g) the Commission's ability --  
19 authorization to hold a hearing and inquire into  
20 the terms of the transaction is extremely,  
21 extremely limited; and it's not of the same scope  
22 of the filing itself.

1 ComEd was required to provide the  
2 Commission with certain information regarding  
3 assets to be transferred and obligations, it has  
4 done so. But the Commission's inquiry is  
5 expressly limited into the utility's ability to  
6 continue to provide their services in a safe and  
7 reliable manner and whether this will have an  
8 adverse impact on the utility's return on equity.

9 These questions go to neither  
10 point. Accordingly, they're beyond the scope of  
11 the proceeding. They're irrelevant, and they're  
12 not germane to any issue that the Commission has  
13 to resolve in this case.

14 MR. NEFF: May I respond, your Honor?

15 JUDGE SHOWTIS: Yes.

16 MR. NEFF: Briefly, first, by including  
17 testimony on this point in Mr. McDonald's prepared  
18 testimony, the company has certainly opened the  
19 door to questions on the subject.

20 Second of all, just for purposes of  
21 forecasting my cross-examination on the subject, I  
22 only have a couple more questions on it.

1                   And, third, it seems entirely  
2 appropriate to extract from this very explicit  
3 testimony on part of the asset transfer that  
4 additional implications of the consequences of  
5 those transfers for rate payers.

6           MR. FLYNN: Mr. Examiner, if I may, again --

7           JUDGE SHOWTIS: First of all, I intended to  
8 ask some questions on this very issue. Whether  
9 it's specifically tied to the criteria that the  
10 Commission can examine under the Act, you know,  
11 I'm not taking a position with regard to that.

12                   But this witness did address and  
13 put in some testimony with regard to  
14 decommissioning trusts and ComEd retaining the  
15 obligation to collect unfunded decommissioning  
16 cost charges from rate payers. When the, I think,  
17 the first briefing before the Commission by the  
18 examiners on this, and it was just kind of a  
19 summary of the schedule; and no, obviously,  
20 substantive issues were discussed, at least one of  
21 the Commissioners brought up the issue of  
22 decommissioning.

1                   And I'm going to -- I'm not going  
2 to allow a lengthy discussion of this, but I  
3 needed a couple of clarifications on this issue  
4 anyway. I think Mr. Neff said he only had a few  
5 more questions concerning this.

6                   So I think since the testimony does  
7 address to a limited extent decommissioning, and  
8 the contribution agreement does deal to a certain  
9 extent with decommissioning, I'll give Mr. Neff  
10 some latitude here.

11                  MR. REVETHIS: That's fine. We were going  
12 to -- Staff was inclined to agree that this is  
13 somewhat relevant in that the responsibilities of  
14 the company after the transfer certainly are  
15 relevant to -- you know, their responsibilities  
16 are relevant to their ability to carry out their  
17 functions.

18                   So in a broad sense, we would say  
19 that it would be relevant.

20                  JUDGE SHOWTIS: Go ahead, Mr. Neff.

21                  MR. NEFF: Thank you, your Honor.  
22

1 BY MR. NEFF:

2 Q Is it also your understanding that as a  
3 result of this transfer ComEd will retain an  
4 obligation to refund excess decommissioning costs  
5 contributions from rate payers to rate payers?

6 A I'm sorry, could you repeat that  
7 question, please?

8 Q Sure. And I'm referring here  
9 specifically to lines 164 to 166, and I'm really  
10 just trying to explore what I think is the other  
11 half of this.

12 You say here that ComEd will retain  
13 the obligation to collect unfunded decommissioning  
14 cost charges from rate payers, correct?

15 A Yes.

16 Q And I'm also asking you now to assume  
17 that the process of decommissioning, the plants to  
18 be transferred to Genco, costs less than  
19 decommissioning funds collected from rate payers;  
20 do you have that?

21 A Mm-hmm.

22 Q You have to speak.

1           A       Yes, sorry.

2           Q       And I'm asking you if ComEd will retain  
3 the obligation to refund to rate payers funds  
4 collected for decommissioning that are in excess  
5 of the amounts needed to decommission the plants?

6           MR. FLYNN: May I ask a clarifying question?

7                       What's the source of the obligation  
8 you're referring to; by statute or contract?

9           MR. NEFF: Well --

10          JUDGE SHOWTIS: I think it's Section  
11 8-508.14c3, tripple i.

12          MR. NEFF: That's correct, your Honor, and  
13 it's also the same section as a whole is  
14 referenced in that first paragraph on page 14 of  
15 Exhibit L where the company contemplates  
16 dissolving the existing nuclear decommissioning  
17 trusts pursuant to 220 ILCS I/8-508.1.

18          MR. FLYNN: Then to the extent that the  
19 question ask the witness what the effects of the  
20 statute is by ComEd in the future, I'm going to  
21 object on the grounds that it calls for a legal  
22 conclusion. The witness isn't being offered to

1 provide testimony on what that section of the Act  
2 means.

3 MR. NEFF: I'm asking not -- if I may  
4 respond, your Honor -- for a legal conclusion, but  
5 for Mr. McDonald to describe what he understands  
6 probably in lay terms to be an end obligation  
7 retained by ComEd.

8 I'm not asking him to opine on  
9 legal obligations of the company, but he seems  
10 familiar with the transactional obligations of the  
11 company. And I'd like his answer with respect to  
12 his understanding of whether ComEd will retain an  
13 obligation to refund decommissioning costs amounts  
14 collected from rate payers in excess of those  
15 amounts needed by the Genco to actually  
16 decommission the plants.

17 JUDGE SHOWTIS: You can answer the question.  
18 I realize it's not a legal opinion.

19 If you have an opinion, I think you  
20 can state it.

21 THE WITNESS: Frankly, I'm not sure how to  
22 not make it a legal issue. I am not aware of

1 exactly what the legal obligations are for ComEd  
2 under the current state law.

3 BY MR. NEFF:

4 Q Well, you use the term obligation here,  
5 to what are you referring when you use that term,  
6 how do you define it?

7 A As defined here we're referring to the  
8 obligation of ComEd to continue collecting  
9 decommissioning funds as currently -- as currently  
10 used.

11 Q That's currently what?

12 A Under the existing law and under the  
13 existing rider mechanism, ComEd has that  
14 obligation.

15 Q Using your definition of the term  
16 obligation here, do you understand -- do you know  
17 whether ComEd will retain an obligation to refund  
18 to rate payers amounts collected from them for  
19 decommissioning the plants in excess of the  
20 amounts needed to decommission the plants?

21 A While I am not a legal expert, it's my  
22 understanding that under the current arrangements

1 if we were not to transfer these plants, ComEd  
2 would have that obligation to refund excess  
3 amounts collected.

4 Q And if you were to transfer the plants,  
5 what would be the status of that obligation at  
6 that point?

7 A I am not sure. The contract that we are  
8 contemplating between Genco and ComEd does not  
9 address that specific issue.

10 Q So your answer is that you do not know  
11 whether ComEd, subsequent to the transfer with  
12 Genco, will retain an obligation to refund to rate  
13 payers amounts collected for decommissioning in  
14 excess of amounts needed to decommission the  
15 plants, correct?

16 A I'm saying I am not personally aware of  
17 the exact legal requirements for ComEd in that  
18 situation.

19 Q And you are --

20 JUDGE ZABAN: Excuse me. I think what  
21 Mr. Neff is asking: You've already told us that  
22 ComEd will continue to collect the funds, okay.

1 Is it the intent of ComEd that if it turns out  
2 after the transfer of this the decommissioning  
3 costs less than the amount of funds that they have  
4 collected, are they going to turn those funds back  
5 to the public, or are they just going to keep  
6 them?

7 THE WITNESS: My struggle is I think there is  
8 a legal requirement to do that; but I'm not aware.

9 JUDGE ZABAN: So what you're telling us is,  
10 that issue has never been addressed to you, nor  
11 are you aware of what ComEd's intentions are; is  
12 that correct.

13 THE WITNESS: I am aware that ComEd intends  
14 to follow whatever the law says in that regard. I  
15 think there is a law that requires ComEd to do  
16 just that.

17 BY MR. NEFF:

18 Q Even in the wake of the transfer?

19 A I believe so, but that's asking my  
20 interpretation of the laws in Illinois.

21 JUDGE SHOWTIS: Maybe to shorten some of  
22 this, it's clear that 8508.1 4C3, triple I

1       pertains to the situation where a public utility  
2       sells or otherwise exposes of its direct ownership  
3       interest or any part thereof in nuclear power  
4       plants; and there is a provision in there for  
5       providing refunds or credits to customers.

6               MR. NEFF:   Just a minute, your Honor.  I want  
7       to see if I have any additional questions.

8       BY MR. NEFF:

9               Q       Briefly, on the same sentence, lines 164  
10       to 166, specifically at line 165 you refer to  
11       unfunded decommissioning cost charges, correct?

12              A       Yes.

13              Q       Is it your understanding of the terms of  
14       the transaction that ComEd will retain the  
15       obligation to collect unfunded decommissioning  
16       cost charges from rate payers up to the limit of  
17       funds needed by the Genco to decommission the  
18       plants to be transferred to it?

19              A       That would be my understanding, yes.

20              MR. NEFF:   Thank you, your Honor.  No further  
21       questions.

22              MR. REVETHIS:  I just have one follow-up to

1 Mr. Neff. He was very thorough on this area.

2 CROSS-EXAMINATION

3 BY

4 MR. REVETHIS:

5 Q Just for purposes of clarification, on  
6 the same subject, sir, is it your understanding  
7 that contractually Commonwealth Edison and Genco  
8 have no contractual arrangement in this regard as  
9 to the refunding of these moneys?

10 A That is correct.

11 Q That the contract that you have between  
12 Commonwealth Edison and Genco does not in any way  
13 speak to that arrangement as to the transfer back  
14 of the moneys or the disbursement to the rate  
15 payers?

16 A That is correct.

17 Q And is it also true that you -- is it  
18 your understanding that any obligation that  
19 Commonwealth -- Commonwealth Edison would have in  
20 that regard would be statutory and not  
21 contractual?

22 A That is my belief.

1           Q     Okay.  And is there -- are you aware of  
2 any policy -- and I think you may have answered  
3 this already.  Are you aware of any policy  
4 decision made at Commonwealth Edison not  
5 considering any statutory obligation as to whether  
6 they would refund these moneys to the rate payers?

7           A     Excuse me, whether Genco or ComEd --

8           Q     No, Commonwealth Edison.

9           A     It is my belief under the current  
10 provisions that ComEd has that obligation, and  
11 that's the path we have to proceed down.

12          Q     Fine, how about Genco?

13          A     As I said, that is not currently in the  
14 contract between Genco and ComEd.

15          Q     Right.  Do you know if there's any  
16 policy decisions been made whether to turn back  
17 any excess funds to rate payers by Genco?

18          A     At this point, I don't think a policy  
19 decision has been made on that issue.

20                JUDGE ZABAN:  If I may interrupt.  I don't  
21 think Genco exists.

22                MR. REVETHIS:  No, I mean -- I'm sorry, yes,