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April 12, 1994

VIA FAX AND
FEDERAL EXPRESS

Joseph Rutberg, Esq.
Eugene Holler, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Dresden Nuclear Power Station, Units 1, 2 and 3
(Docket Nos. 50-010; 50-237; 50-249)
Quad Cities Nuclear Power Station Units 1 and 2
(Docket Nos. 50-254; 50-265)
Zion Nuclear Power Station Unites 1 and 2
(Docket Nos. 50-295; 50-304)
LaSalle County Nuclear Power Station Units 1 and 2
(Docket Nos. 50-373; 50-344)
Byron Nuclear Power Station Units 1 and 2
(Docket Nos. 50-454; 50-455)
Braidwood Nuclear Power Station Units 1 and 2
(Docket Nos. 50-456; 50-457)

Dear Joe and Gene:

As you know, we are counsel to Commonwealth Edison Company ("CECo") in connection with the proposed corporate restructuring described in our letter to you of January 31, 1994. In brief, the restructuring would make CECo a subsidiary of a new holding company currently named CECo Holding Company. The restructuring, however, will not affect CECo's ownership of its nuclear power stations, or the Facility Operating Licenses for those nuclear power stations.

In connection with Nuclear Regulatory Commission ("Commission") consent to the proposed restructuring, it has been suggested that CECo commit to inform the Director of the Office of Nuclear Reactor Regulation sixty days prior to any "transfer of assets from CECo to CECo Holding Company, its renamed

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successor, or any other entity of facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding one percent (1%) of CECo's consolidated net utility plant, as recorded on CECo's books of account." (Attachment A).[1] There seems to be a concern that, without the proposed commitment, CECo's financial health might be endangered by the transfer of significant assets from CECo, either directly or through payment of dividends to CECo Holding Company and thereby cause CECo potentially to have inadequate funds to operate, maintain or decommission its licensed units. However, as we discussed on the telephone last Friday, (i) Illinois law provides adequate oversight and review of dealings between public utilities and their holding companies, and (ii) CECo has measures in place that will ensure adequate funding for decommissioning. Therefore, the suggested CECo commitment is neither necessary or advisable, and we request that the Commission consent to the CECo restructuring without any such commitment.

1. State Oversight of Transfers of Assets

Any transfer of utility property from CECo to CECo Holding Company will require the prior approval of the Illinois Commerce Commission because CECo Holding Company will be an "affiliated interest" of CECo under the Illinois Public Utilities Act, 220 ILCS 5/7-101(2).[2] The Illinois Commerce Commission has jurisdiction over public utility affiliated interest transactions, other than ownership of stock and receipt of dividends thereon. This jurisdiction includes access to the accounts and records of the affiliated interest relating to such transactions, along with the power to require submission of reports regarding such affiliate interest transactions. Id. Moreover, "[n]o management, construction, engineering, supply, financial or similar contract and no contract for the exchange of

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[1] This suggested CECo commitment is apparently based on a license condition imposed in the Commission approval of the business combination of Entergy Corporation and Gulf States Utilities Company. See Amendment to Facility Operating License, NRC Docket No. 50-458 (Dec. 16, 1993) (included in Attachment A). In that business combination, the consolidated financial condition of the resulting entity would change materially whereas in the CECo restructuring, CECo's financial condition will not change at all. Furthermore, the words "of assets" in the suggested CECo commitment creates an ambiguity which should, in any event, be deleted.

[2] The statutes cited in this letter are included in Attachment B.

any property or for the furnishing of any service, property or thing" between CECo and CECo Holding Company could become effective until it had been "filed with and consented to by the [Illinois Commerce] Commission." 220 ILCS 5/7-101(3). In addition to these restrictions, prior consent by the Illinois Commerce Commission is also required before a public utility may transfer any part of its "franchises, licenses, permits, plant, equipment, business, or other property" to any person or entity. 220 ILCS 5/7-102(c).

Thus, under this statutory scheme almost every transaction between CECo and CECo Holding Company (other than the payment of dividends by CECo to CECo Holding Company) will be reviewed by the Illinois Commerce Commission, so there is no need for the NRC to monitor these same transactions. For transfers of the nuclear power plants themselves, specific NRC approval would be required.

2. Restrictions on Payment of Dividends

Section 7-103(2)(a) of the Illinois Public Utilities Act provides that "[N]o utility shall pay any dividend upon its common stock and preferred shares unless...[t]he utility's earnings and earned surplus are sufficient to declare and pay same after provision is made for reasonable and proper reserves." At December 31, 1993, CECo had retained earnings (earned surplus) of $549 million. In 1993, CECo earned $46 million on its common stock and paid cash dividends on common stock of $340 million. In its current rate case CECo projects earnings at present rates of about $350 million; about $600 million if the full increase is authorized. Thus, the maximum dividend CECo could pay to CECo Holding Company under Illinois law is small when compared to CECo's total assets, which at December 31, 1993, were $23.9 billion, and annual revenues in 1993, which were $5.2 billion.[3] Furthermore, Section 7-103(1) of the Illinois Public Utilities Act states: "[Whenever the [Illinois Commerce] Commission finds that the capital of...[such]...public utility has become impaired, or will be impaired by the payment of a dividend, the Commission shall have the...power to order...[a]...public utility to cease and desist the declaration and payment of any dividend upon its common and preferred stock...."

Finally, CECo's annual depreciation which represents a non-cash expense in 1993 was $700 million (exclusive of decommissioning expense). The cash generated by this depreciation charge is available for operating and maintenance

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[3] For ratemaking purposes, CECo's rate base is set at $12.75 billion.

expenses. Therefore, there is no need for Commission oversight of dividend payments from CECo to CECo Holding Company.

3. Provision for Decommissioning Costs

The suggested commitment is not necessary to ensure that sufficient funds are set aside for the decommissioning costs of CECo's nuclear units. As described by John C. Bukovski, CECo's Vice President and Chief Financial Officer, in his testimony in the current rate case, CECo is presently using a method approved by the Illinois Commerce Commission to provide for decommissioning costs. Ill. C.C. Docket No. 94-0065, Testimony of John C. Bukovski, CECo Ex. 1, at 32 (Attachment C). Pursuant to Illinois law, 220 ILCS 5/8-508.1(b), CECo has established two external master trust funds -- a tax-qualified and a nontax-qualified fund -- to hold decommissioning funds for each of the 12 nuclear units now in service and for Dresden 1, which was retired from service in 1985. Amounts held in these trust funds may not be used for any purpose other than decommissioning. This method of funding was endorsed by the Commission in its Decommissioning Rule, 53 Fed. Reg. 24,018, and was approved by the Illinois Commerce Commission in its Order in Docket No. 88-0298. Bukovski Testimony at 32. Moreover, CECo is seeking additional funds for decommissioning in its current rate case. This request is based on updated cost estimates that CECo uses to predict decommissioning costs more accurately than the methods used in earlier proceedings. See Bukovski Testimony at 36-41; Testimony of Barry C. Mingst, CECo Ex. 18, at 26-29 (Attachment F).

Given CECo's clear commitment to providing for decommissioning costs, and the Illinois statute's mandate to do so, we do not believe that the proposed commitment will provide any more assurance to the Commission than it already has that CECo will be able to pay for the decommissioning of its nuclear power stations.

4. Conclusion

Based on the pervasive regulation of transactions between public utilities and their affiliated entities and limitations on payment of public utility dividends under Illinois law, and the establishment and maintenance of decommissioning trusts, we believe that the suggested commitment is unnecessary and should not be a prerequisite to Commission consent to the proposed restructuring. This is especially so where, as noted in our letter of January 31, 1994, the proposed restructuring is entirely consistent with applicable provisions of law and the Commission's regulations and orders.

Accordingly, we respectfully request that the suggested commitment not be made a prerequisite to Commission consent to the proposed restructuring, and that the Commission consent the restructuring as soon as practicable. If you need any further information, please call me at (312) 853-2666. We are available to discuss this matter with you on the telephone or in person.

Yours truly,

Michael I. Miller

Enclosures

~~Enclosure~~

~~PROPOSED LICENSE CONDITION~~

CECO shall inform the Director, NRR, of assets

a. Sixty days prior to a transfer (excluding grants of security interests or liens) from CECO to CECO Holding Company, its renamed successor, or any other entity of facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding one percent (1%) of CECO's consolidated net utility plant, as recorded on CECO's books of account.

ATTACHMENT A

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

GULF STATES UTILITIES COMPANY

CAJUN ELECTRIC POWER COOPERATIVE

DOCKET NO. 50-458

RIVER BEND STATION, UNIT 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 69
License No. NPF-47

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for amendment by Gulf States Utilities* (GSU) dated January 13, 1993, as supplemented by letter dated October 18, 1993, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;

   B. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;

   C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;

   D. The issuance of this license amendment will not be inimical to the common defense and security or to the health and safety of the public; and

   E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. NPF-47 is hereby amended to read as follows:**

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* Gulf States Utilities Company is authorized to act as agent for Cajun Electric Power Cooperative and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

**Pages 1, 6, and 7 are attached, for convenience, for the composite license to reflect these changes. Please remove pages 1 and 6 of the existing license and replace with the attached pages and add page 7.

(a) Add footnote ** on page 1 of the license to read:

"Gulf States Utilities Company, which owns a 70 percent undivided interest in River Bend, has merged with a wholly owned subsidiary of Entergy Corporation. Gulf States Utilities Company was the surviving company in the merger."

(b) Paragraph 2.C.(16) shall be added as a new condition.

(16) Merger Related Reports

GSU shall inform the Director, NRR:

(a) Sixty days prior to a transfer (excluding grants of security interests or liens) from GSU to Entergy or any other entity of facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding one percent (1%) of GSU's consolidated net utility plant, as recorded on GSU's books of account.

(b) Of an award of damages in litigation initiated against GSU by Cajun Electric Power Cooperative regarding River Bend within 30 days of the award.

(c) The last page of the license shall be marked "Revised: December 16, 1993."

3. This license amendment is effective as of its date of issuance, and shall be implemented within 180 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Suzanne C. Black

Suzanne C. Black, Director
Project Directorate IV-2
Division of Reactor Projects III/IV/V
Office of Nuclear Reactor Regulation

Attachment:
Pages 1, 6, and 7 of Facility Operating
License No. NPF-47

Date of Issuance: December 16, 1993

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

5/7-101. Jurisdiction over stockholders, affiliated interests—Approval of certain contracts

§ 7-101. (1) The Commission shall have jurisdiction over holders of the voting capital stock of all public utilities under the jurisdiction of the Commission to such extent as may be necessary to enable the Commission to require the disclosure of the identity in respective interests of every owner of any substantial interest in such voting capital stocks. One per centum or more is a substantial interest, within the meaning of this subdivision.

(2) The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the Commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the Commission may prescribe. For the purpose of this Section, the phrase "affiliated interests" means:

(a) Every corporation and person owning or holding, directly or indirectly, 10% or more of the voting capital stock of such public utility;

(b) Every corporation and person in any chain of successive ownership of 10% or more of voting capital stock;

(c) Every corporation, 10% or more of whose voting capital stock is owned by any person or corporation owning 10% or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of 10% or more of voting capital stock;

(d) Every corporation, 10% or more of whose voting securities is owned, directly or indirectly by such public utility;

(e) Every person who is an elective officer or director of such public utility or of any corporation in any chain of successive ownership of 10% or more of voting capital stock;

(f) Every corporation which has one or more elective officers or one or more directors in common with such public utility;

(g) Every corporation or person which the Commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public utility even though such influence is not based upon stock holding, stockholders, directors or officers to the extent specified in this Section;

(h) Every person or corporation who or which the Commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in

ATTACHMENT B

concert that together they are affiliated with such public utility within the meaning of this Section even though no one of them alone is so affiliated.

No such person or corporation is affiliated within the meaning of this Section, however, if such person or corporation is otherwise subject to the jurisdiction of the Commission or such person or corporation has not had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such public utility during the 2 year period next preceding.

(3) No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission. The Commission may condition such approval in such manner as it may deem necessary to safeguard the public interest. If it be found by the Commission, after investigation and a hearing, that any such contract is not in the public interest, the Commission may disapprove such contract. Every contract or arrangement not consented to or excepted by the Commission as provided for in this Section is void.

The consent to any contract or arrangement as required above, does not constitute approval of payments thereunder for the purpose of computing expense of operation in any rate proceeding. However, the Commission shall not require a public utility to make purchases at prices exceeding the prices offered by an affiliated interest, and the Commission shall not be required to disapprove or disallow, solely on the ground that such payments yield the affiliated interest a return or rate of return in excess of that allowed the public utility, any portion of payments for purchases from an affiliated interest.

(4) The Commission may by general rules applicable alike to all public utilities affected thereby waive the filing and necessity for approval of contracts and arrangements described in subparagraph (3) of this Section in cases of (a) contracts or arrangements made in the ordinary course of business for the employment of officers or employees; (b) contracts or arrangements made in the ordinary course of business for the purchase of services, supplies, or other personal property at prices not exceeding the standard or prevailing market prices, or at prices or rates fixed pursuant to law; (c) contracts or arrangements where the total obligation to be incurred thereunder does not exceed $500; (d) the temporary leasing, lending or interchanging of equipment in the ordinary course of business or in case of an emergency; and (e) contracts made by a public utility with a person or corporation whose bid is the most favorable to the public utility, as ascertained by competitive bidding under such rules as may be prescribed by the Commission. If the Commission, after a hearing, finds that any public utility is abusing or has abused such general rule and thereby is evading compliance with the standard established herein, the Commission may require such public utility to thereafter file and receive the Commission's approval upon all

such transactions, but that general rule shall remain in full force and effect as to all other public utilities.

Laws 1921, p. 702, § 7-101, added by P.A. 84-617, § 1, eff. Jan. 1, 1986.
Formerly Ill.Rev.Stat.1991, ch. 111 2/3, ¶ 7-101.

Historical and Statutory Notes

Prior Laws:

Laws 1921, p. 702, art. I, § 8a, added by Laws 1933, p. 841, § 1.
Laws 1935, p. 1093, § 1.
Laws 1955, p. 458, § 1.
Laws 1967, p. 3382, § 1.
P.A. 78-1278, § 1.
Ill.Rev.Stat.1983, ch. 111⅔, ¶ 8a.

Administrative Code References

Rules implementing this section, see 83 IL.Adm.Code 240.10 et seq., 310.10 et seq.

Law Review Commentaries

Intermodal competition and the minimum rate power. 58 N.W.L.Rev. 583 (1963); 59 N.W.L.Rev. 1 (1964).

Library References

Words and Phrases (Perm. Ed.).

Notes of Decisions

1. Validity

Provisions contained in this paragraph giving state Commerce Commission right to require information from "affiliated interests" of public utilities, and providing that where ownership is common as to 10 per cent. of stock of utility and corporation, corporation shall be an "affiliated interest," was not unconstitutional under U.S.C.A. Const. Art. 1, § 8, cl. 3, and Amend. 14, as burdening interstate commerce, as respect foreign corporation so affiliated with domestic utility, to which it sold gas for resale to local distributors. Natural Gas Pipeline Co. of America v. Slattery, 1937, 58 S.Ct. 199, 302 U.S. 301, 82 L.Ed. 276.

Language contained in this paragraph proscribing entry by public utility into contract or arrangement with affiliated interest without consent of Commerce Commission conveyed sufficiently definite warning as to proscribed conduct when measured by common understanding and practices, and thus such provision was not unconstitutionally vague. People v. Phelps, 1978, 24 Ill.Dec. 597, 67 Ill.App.3d 976, 385 N.E.2d 738.

2. Conflicts of law

Provision contained in this paragraph requiring commission's consent to management, construction, engineering supply, financial or similar contracts, could be enforced against warehousemen operating under licenses issued pursuant to the federal Warehouse Act, 7 U.S.C.A. § 241 et seq., in absence of provision in the federal act relating to the matter or any attempt by the Secretary of Agriculture to exercise jurisdiction with respect thereto. Rice v. Santa Fe Elevator Corp., 1947, 67 S.Ct. 1146, 331 U.S. 218, 91 L.Ed. 1447.

3. Affiliated interests

Holding company, which owned 100% of stock of two operating utilities, was not an "affiliated interest" in regard to its proposed reorganization, and thus, the Public Utilities Commission lacked jurisdiction over imposed reorganization, because holding company was not a public utility and only other company involved in proposed reorganization was not a public utility. Peoples Energy Corp. v. Illinois Commerce Com'n, App. 1 Dist.1986, 97 Ill.Dec. 115, 142 Ill.App.3d 917, 492 N.E.2d 551.

4. Financial contracts

Arrangement between water utility and its parent holding company, whereby funds from short-term note loans exceeding $1,000,000 were transferred from the utility to the holding company, was proscribed by provisions contained in this paragraph requiring that no contract or arrangement shall be entered into with affiliated interest without consent of Commerce Commission, and chief executive of both companies failed to comply with such statute in arranging the transactions without the Commission's consent. People v. Phelps,

Note 4

1978, 24 Ill.Dec. 597, 67 Ill.App.3d 976, 385 N.E.2d 738.

Proof that chief executive of water utility and parent holding company knowingly arranged transfer of funds received by the utility on short-term notes to the holding company was sufficient to establish violation of provisions contained in this paragraph and ¶¶ 6-101, 6-102, 6-105 and 6-106 of former chapter 111⅓ proscribing entry into contract with affiliated party without approval of Commerce Commission, issuance of short-term notes by utility for other than proper purposes, and diversion of utility resources. People v. Phelps, 1978, 24 Ill.Dec. 597, 67 Ill.App.3d 976, 385 N.E.2d 738.

5. Foreign corporations

In proceeding before Commerce Commission to fix rates for gas sold by domestic utility, commission could make no order binding on foreign corporation, which sold gas to domestic utility, with respect to rates of foreign corporation, or its contract with domestic utility. Natural Gas Pipeline Co. of America v. Slattery, 1937, 58 S.Ct. 199, 302 U.S. 300, 82 L.Ed. 276.

The enforcement of order of Commerce Commission requiring foreign corporation affiliated with domestic utility to furnish information as to sale of gas to domestic utility would not be enjoined on ground that order was first step in direction of unconstitutional action, since it could not be assumed that commission would use information arbitrarily. Natural Gas Pipeline Co. of America v. Slattery, 1937, 58 S.Ct. 199, 302 U.S. 300, 82 L.Ed. 276.

5/7-102. Intercorporate transactions—Approval by Commission—Procedure—Waiver

§ 7-102. Unless the consent and approval of the Commission is first obtained or unless such approval is waived by the Commission in accordance with the provisions of this Section:

(a) No two or more public utilities may enter into contracts with each other that will enable such public utilities to operate their lines or plants in connection with each other;

(b) No public utility may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business or other property of any other public utility;

(c) No public utility may assign, transfer, lease, mortgage, sell (by option or otherwise), or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property, but the consent and approval of the Commission shall not be required for the sale, lease, assignment or transfer (1) by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public, or (2) by any railroad of any real or tangible personal property;

(d) No public utility may by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility;

(e) No public utility may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidences of indebtedness of any other public utility;

(f) No public utility may in any manner, directly or indirectly, guarantee the performance of any contract or other obligation of any other person, firm or corporation whatsoever;

(g) No public utility may use, appropriate, or divert any of its moneys, property or other resources in or to any business or enterprise which is not, prior to such use, appropriation or diversion essentially and directly connect-

ed with or a proper and necessary department or division of the business of such public utility; provided that this subsection shall not be construed as modifying subsections (a) through (e) of this Section;

(h) No public utility may, directly or indirectly, invest, loan or advance, or permit to be invested, loaned or advanced any of its moneys, property or other resources in, for, in behalf of or to any other person, firm, trust, group, association, company or corporation whatsoever, except that no consent or approval by the Commission is necessary for the purchase of stock in development credit corporations organized under the Illinois Development Credit Corporation Act, approved May 19, 1965, as now or hereafter amended,[1] providing that no such purchase may be made hereunder if, as a result of such purchase, the cumulative purchase price of all such shares owned by the utility would exceed one-fiftieth of one per cent of the utility's gross operating revenue for the preceding calendar year.

(i) Any public utility may present to the Commission for approval options or contracts to sell or lease real property, notwithstanding that the value of the property under option may have changed between the date of the option and the subsequent date of sale or lease. If the options or contracts are approved by the Commission, subsequent sales or leases in conformance with those options or contracts may be made by the public utility without any further action by the Commission. If approval of the options or contracts is denied by the Commission, the options or contracts are void and any consideration theretofore paid to the public utility must be refunded within 30 days following disapproval of the application.

The proceedings for obtaining the approval of the Commission provided for it in this Section shall be as follows: There shall be filed with the Commission a petition, joint or otherwise, as the case may be, signed and verified by the president, any vice president, secretary, treasurer, comptroller, general manager, or chief engineer of the respective companies, or by the person or company, as the case may be, clearly setting forth the object and purposes desired, and setting forth the full and complete terms of the proposed assignment, transfer, lease, mortgage, purchase, sale, merger, consolidation, contract or other transaction, as the case may be. Upon the filing of such petition, the Commission shall, if it deems necessary, fix a time and place for the hearing thereon. After such hearing, or in case no hearing is required, if the Commission is satisfied that such petition should reasonably be granted, and that the public will be convenienced thereby, the Commission shall make such order in the premises as it may deem proper and as the circumstances may require, attaching such conditions as it may deem proper, and thereupon it shall be lawful to do the things provided for in such order. The Commission shall impose such conditions as will protect the interest of minority and preferred stockholders.

The Commission shall have power by general rules applicable alike to all public utilities affected thereby to waive the filing and necessity for approval of the following: (a) sales of property involving a consideration of not more than $100,000; (b) leases, easements and licenses involving a consideration or rental of not more than $10,000 per year; (c) leases of office building space not required by the public utility in rendering service to the public; (d) the

temporary leasing, lending or interchanging of equipment in the ordinary course of business or in case of an emergency; and (e) purchase-money mortgages given by a public utility in connection with the purchase of tangible personal property where the total obligation to be secured shall be payable within a period not exceeding one year. However, if the Commission, after a hearing, finds that any public utility is abusing or has abused such general rule and thereby is evading compliance with the standard established herein, the Commission shall have power to require such public utility to thereafter file and receive the Commission's approval upon all such transactions as described in this Section, but such general rule shall remain in full force and effect as to all other public utilities.

Every assignment, transfer, lease, mortgage, sale or other disposition or encumbrance of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof, and every contract, purchase of stock, or other transaction referred to in this Section, made otherwise than in accordance with an order of the Commission authorizing the same, except as provided in this Section, shall be void. The provisions of this Section shall not apply to any transactions by or with a political subdivision or municipal corporation of this State.

Laws 1921, p. 702, § 7-102, added by P.A. 84-617, § 1, eff. Jan. 1, 1986.

Formerly Ill.Rev.Stat.1991, ch. 111 ⅔, ¶ 7-102.

[1] 805 ILCS 35/1 et seq.

Historical and Statutory Notes

Prior Laws:

Laws 1913, p. 474, § 27.
Laws 1921, p. 702, art. III, § 27.
Laws 1933, p. 841, § 1.
Laws 1933, p. 852, § 1.
Laws 1945, p. 1198, § 1.
Laws 1951, p. 1969, § 1.
Laws 1955, p. 298, § 1.
Laws 1955, p. 458, § 1.
Laws 1957, p. 1589, § 1.
Laws 1967, p. 1974, § 1.
Laws 1967, p. 2633, § 1.
Laws 1968, p. 368, § 1.
P.A. 76-753, § 1.
P.A. 76-933, § 1.
P.A. 76-2245, § 1.
P.A. 80-698, § 1.
P.A. 82-583, § 1.
Ill.Rev.Stat.1983, ch. 111⅔, ¶ 27.

Administrative Code References

Approval of certain sales, leases and mortgages, waiver of filing, see 83 IL.Adm.Code 105.10 et seq.

Law Review Commentaries

Warehouse regulations, J. R. Blomquist, 1951, 29 Chicago-Kent L.Rev. 120.

Notes of Decisions

11. Waiver

Requirement for Commerce Commission approval of railroad's sale of abandoned right-of-way to representatives of landowners adjoining it, for total price of $121,625, could not be avoided on theory that Commission had, by general rule, waived necessity of securing its approval for sale of property involving consideration of not more than $50,000, and that sale in question was actually multiple sales of 92 parcels of land for sums not exceeding $7,000 each, where both railroad and purchasers were initially aware that contemplated transaction required Commission approval, and where evidence disclosed that persons other than those described as adjoining landowners had acquired parcels of disputed land as result of transaction in question. Klopf v. Illinois Commerce Commission, 1977, 12 Ill.Dec. 199, 54 Ill.App.3d 491, 369 N.E.2d 906.

Public Utilities Act did not require prior approval of contract between light company and Division of Highways of Department of Public Works and Buildings which provided for furnishing by light company of electricity for all state-owned street lighting units within certain highway districts, and for patrol and maintenance of the units for a fixed annual charge per unit, where evidence supported finding that street lighting maintenance services were a part of one of the oldest services rendered by lighting company as an electric public utility. Peoria Chapter, Nat. Elec. Contractors Ass'n v. Central Illinois Light Co., 1967, 37 Ill.2d 55, 225 N.E.2d 625.

12. Petition

Commerce Commission did not have jurisdiction of telephone company's petition to mortgage its property where petition was not verified. Lambdin v. Illinois Commerce Commission, 1933, 352 Ill. 104, 185 N.E. 221.

Telephone company stockholders could not confer on Commerce Commission jurisdiction of company's unverified petition to mortgage its property, by appearing and protesting against order sought. Lambdin v. Illinois Commerce Commission, 1933, 352 Ill. 104, 185 N.E. 221.

5/7-103. Payment of dividends

§ 7-103. (1) Whenever the Commission finds that the capital of any public utility has become impaired, or will be impaired by the payment of a dividend, the Commission shall have power to order said public utility to cease and desist the declaration and payment of any dividend upon its common and preferred stock, and no such public utility shall pay any dividend upon its common and preferred stock until such impairment shall have been made good.

(2) No utility shall pay any dividend upon its common stock and preferred stock unless:

(a) The utility's earnings and earned surplus are sufficient to declare and pay same after provision is made for reasonable and proper reserves.

(b) The dividend proposed to be paid upon such common stock can reasonably be declared and paid without impairment of the ability of the utility to perform its duty to render reasonable and adequate service at reasonable rates.

(c) It shall have set aside the depreciation annuity prescribed by the Commission or a reasonable depreciation annuity if none has been prescribed.

If any dividends on common stock are proposed to be declared and paid other than as above provided, the utility shall give the Commission at least thirty days' notice in writing of its intention to so declare and pay such dividends and the Commission shall authorize the payment of such dividends only if it finds that the public interest requires such payment. Provided, however, that the Commission may grant such authority upon such conditions as it may deem necessary to safeguard the public interest.

Laws 1921, p. 702, § 7-103, added by P.A. 84-617, § 1, eff. Jan. 1, 1986.
Formerly Ill.Rev.Stat.1991, ch. 111 ⅔, ¶ 7-103.

Chicago, B. & Q.R. Co. v. Illinois Commerce Commission, D.C.1949, 82 F.Supp. 368.

Illinois Commerce Commission's custom of substituting a sham for a fair hearing on railroad's application for discontinuance of passenger trains operated at a loss, by granting repeated continuances for frivolous reasons, with result that an average of 18 months was required to hear and decide a train-discontinuance case that should have been heard in three days and decided within 30 days thereafter, involved an illegal dissipation of railroad's public utility assets in violation of its rights under the 14th Amendment and in disregard of the Commission's obligations under the Illinois Public Utilities Act and in disregard of the policy of economical railroad operation enjoined by the Transportation Act. Chicago, B. & Q.R. Co. v. Illinois Commerce Commission, D.C.1949, 82 F.Supp. 368.

8. **Burden of proof**

In action to secure approval for removal of spur track providing railway service to company in order to facilitate construction of street, burden of proof was on railroad company and Department of Transportation, which sought removal of spur track, to show that public convenience and necessity warranted removal of spur and concomitant termination of rail service. I. Erlichman Co., Inc. v. Illinois Commerce Commission, 1981, 48 Ill.Dec. 448, 92 Ill.App.3d 1091, 416 N.E.2d 721.

Railroad seeking to discontinue passenger service had to allege and prove under its petition by competent evidence sufficient facts which would have justified abandonment thereof in light of public convenience and necessity. Gardner v. Commerce Commission, 1948, 400 Ill. 123, 79 N.E.2d 71.

The burden of proof was upon railroad which sought to establish an absence of convenience and necessity so as to warrant the discontinuance of passenger service. Gardner v. Commerce Commission, 1948, 400 Ill. 123, 79 N.E.2d 71.

5/8–508.1. Decommissioning trusts

§ 8–508.1. (a) As used in this Section:

(1) "Decommissioning" means the series of activities undertaken at the time a nuclear power plant is permanently retired from service to ensure that the final entombment, decontamination, dismantlement, removal and disposal of the plant, including the plant site, and of any radioactive components and materials associated with the plant, is accomplished in compliance with all applicable Illinois and federal laws, and to ensure that such final disposition does not pose any threat to the public health and safety.

(2) "Decommissioning costs" means all reasonable costs and expenses incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant at the time of decommissioning, including all expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and to be incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses, less proceeds of insurance, salvage or resale of machinery, construction equipment or apparatus the cost of which was charged as a decommissioning expense.

(3) "Decommissioning trust" or "trust" means a fiduciary account in a bank or other financial institution established to hold the decommissioning funds provided pursuant to subsection (b)(2) of this Section for the eventual purpose of paying decommissioning costs, which shall be separate from all other accounts and assets of the public utility establishing the trust.

(4) "Nuclear power plant" or "plant" means a nuclear fission thermal power plant. Each unit of a multi-unit site shall be considered a separate plant.

(b) By 90 days after the effective date of this amendatory Act of 1988, or by the date that the unit satisfies the criteria used by the Internal Revenue Service for determining when depreciation commences for federal income tax

purposes on a new generating unit, whichever is later, every public utility that owns or operates, in whole or in part, a nuclear power plant shall:

(1) establish 2 decommissioning trusts, which shall be a "tax qualified" decommissioning trust and a "non-tax qualified" decommissioning trust and shall hold the decommissioning funds established by the public utility for all nuclear power plants pursuant to subsection (b)(2) of this Section;

(2) establish 2 decommissioning funds for each such plant, each of which shall be held for a plant as a separate account in a decommissioning trust; and

(3) designate an independent trustee, subject to the approval of the Commission, to administer each of the decommissioning trusts.

(c) The 2 decommissioning trusts shall be known as the "tax qualified" decommissioning trust and the "non-tax qualified" decommissioning trust respectively. Each trust shall be established and maintained as follows:

(1) The "tax qualified" trust shall be established and maintained in accordance with Section 468A of the Internal Revenue Code of 1986[1] or any successor thereto and shall be funded by the public utility for each such power plant through annual payments by the public utility that shall not exceed the maximum amount allowable as a deduction for federal income tax purposes for the year for which the payments were made, in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(2) The "non-tax qualified" decommissioning trust shall be funded by the public utility for each such power plant through annual payments by the public utility that shall consist of the difference between the total amounts of decommissioning expenses collected after the effective date of this amendatory Act of 1988 through rates and charges from the public utility's customers as provided by the Commission minus the amounts contributed to the "tax qualified" trust as provided by subsection (c)(1) of this Section and deductible for federal income tax purposes in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(3) The following restrictions shall apply in regard to administration of each decommissioning trust:

(i) Distributions may be made from a nuclear decommissioning trust only to satisfy the liabilities of the public utility for nuclear decommissioning costs relating to the nuclear power plant for which the decommissioning fund was established and to pay administrative costs, income taxes and other incidental expenses of the trust.

(ii) Any assets in a nuclear decommissioning trust that exceed the amount necessary to pay the nuclear decommissioning costs of the nuclear power plant for which the decommissioning fund was established shall be refunded to the public utility that established the fund for the purpose of refunds or credits, as soon as practicable, to the utility's customers.

(iii) In the event a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the

reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning.

(iv) The trustee shall invest the "tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested, subject to the limitations specified in Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(v) The trustee shall invest the "non-tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested. However the trustee shall not invest any portion of the "non-tax qualified" trust's funds in the securities or assets of any operator of a nuclear power plant.

(vi) The "non-tax qualified" trust shall be subject to the prohibitions against self-dealing applicable to the "tax qualified" trust as specified in Section 468A of the Internal Revenue Code of 1986, or any successor thereto.

(vii) All income earned by the trust's funds shall become a part of the trust's funds and subject to the provisions of this Section.

(viii) The Commission may adopt by rule or regulation such further restrictions as it deems necessary for the sound management of the trust's funds, consistent with the purposes of this Section.

(d) By 90 days after the effective date of this amendatory Act of 1988, the Commission shall determine an appropriate method to segregate, either internally or externally, all decommissioning funds collected prior to the effective date of this amendatory Act of 1988 by the utility from its customers, and shall order any change in past decommissioning funding methods that the Commission finds necessary. In making its determination of the appropriate funding method, the Commission shall give consideration to, but not be limited by, all applicable federal regulations. The change in funding method shall be phased-in over an appropriate period of time.

(e) The trustee of a trust shall report annually to the Commission, or more frequently if ordered by the Commission. The report shall include:

(1) the trust's State and federal tax returns;

(2) a report on the trust's portfolio of investments and the return thereon;

(3) the date and amount of payments received by the trust from the public utility;

(4) a copy of all correspondence between the trust and the Internal Revenue Service; and

(5) any other information the Commission orders the trust to provide.

(f) A nuclear decommissioning trust established pursuant to this Section shall be exempt from taxation in Illinois.

Laws 1921, p. 702, § 8-508.1, added by P.A. 85-1400, § 2, eff. Sept. 12, 1988.
Formerly Ill.Rev.Stat.1991, ch. 111 ⅔, ¶ 8-508.1.

[1] 26 U.S.C.A. § 468A.

Library References

Words and Phrases (Perm. Ed.)

5/8-509. Eminent domain

§ 8-509. When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

This Section applies to the exercise of eminent domain powers by telephone companies or telecommunications carriers only when the facilities to be constructed are intended to be used in whole or in part for providing one or more intrastate telecommunications services classified as "noncompetitive" under Section 13-502 in a tariff filed by the condemnor. The exercise of eminent domain powers by telephone companies or telecommunications carriers in all other cases shall be governed solely by "An Act relating to the powers, duties and property of telephone companies", approved May 16, 1903, as now or hereafter amended.[1]

Laws 1921, p. 702, § 8-509, added by P.A. 84-617, § 1, eff. Jan. 1, 1986. Amended by P.A. 86-221, § 2, eff. Dec. 13, 1989.
Formerly Ill.Rev.Stat.1991, ch. 111 ⅔, ¶ 8-509.

[1] 220 ILCS 65/1 et seq.

Historical and Statutory Notes

Prior Laws:
Laws 1913, p. 490, § 59.
Laws 1921, p. 702, art. IV, § 59.
Ill.Rev.Stat.1983, ch. 111⅔, ¶ 63.

Constitutional Provisions

Const. Art. 1, § 15, provides that private property shall not be taken or damaged for public use without just compensation as provided by law, and that such compensation shall be determined by a jury as provided by law.

Cross References

Eminent domain, see 735 ILCS 5/7-101 et seq.
Relocation of utilities, necessitation by new state highways, see 605 ILCS 5/4-505.

Law Review Commentaries

Electric cooperative denied intervention and standing to obtain judicial review of eminent domain order of Commerce Commission. 1966, Law Forum 204.

Exercise of eminent domain by private bodies for public purposes. 1966 Law Forum 131.

Representing the farm owner; utility right of way acquisitions. D. L. Uchtmann and M. A. Shreck, 1978, So.Ill.L.J. 365.

Notes of Decisions

Approval 4
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Edison Ex. 3

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)	
	)	No. 94-_____
Proposed General Increase in	)	
Electric Rates.	)	

TESTIMONY OF ROBERT J. HANLEY
MANAGER OF REGULATORY ACCOUNTING
COMMONWEALTH EDISON COMPANY

ATTACHMENT C

COMMONWEALTH EDISON COMPANY

Jurisdictional Rate Base Summary
Based on Forecasted Average Balances for
Present and Proposed Rates for 1994
(In Thousands)

Witness: R. J. Hanley

Line No	Rate Base Component (A)	Reference To Supporting Schedule or Work Paper (B)	Present Rates (C)	Proposed Rates (D)
1	Gross Utility Plant In Service			
2	(Original Cost)	B-2, pg. 1	$24,556,401	$24,556,401
3	Less – Accumulated Provisions			
4	for Depreciation	B-3, pg. 1	8,114,335	8,114,335
5	Net Utility Plant in Service		$16,442,066	$16,442,066
6	Plus:			
7	Deferred Carrying Charges Related			
8	to Byron 2 & Braidwood 1 & 2	WP B-1a, pg. 1	429,488	429,488
9	Working Capital Allowance	B-5, pg. 1	412,138	412,138
10	Property Held for Future Use	B-2.5, pg. 2	17,880	17,880
11	Construction Work in Progress in			
12	Rate Base	WP B-1b, pg. 1	57,853	57,853
13	Nuclear Fuel Stock and Unamortized			
14	Cost of Nuclear Fuel in Reactors	WP B-1c, pg. 13	242,637	242,637
15	Unamortized Reclamation Costs	WP B-1d, pg. 1	24,933	24,933
16	Unamortized Construction Audit			
17	Consultant Costs	WP B-1e, pg. 1	36,456	36,456
18	Unamortized Sign. Additions Audit Costs	WP B-1f, pg. 1	0	869
19			$17,663,451	$17,664,320
20	Deduct:			
21	Accumulated Deferred Income Taxes	WP B-1g, pg. 6, 8	$3,129,157	$3,197,719
22	Customer Advances for Construction	WP B-1h, pg. 1	350	350
23	Operating Reserves	WP B-1i, pg. 3,5	883,925	903,346
24	Other Deferred Credits – Deferred			
25	Benefits from November, 1981			
26	Sale/Leaseback Applicable to			
27	ACRS Deductions Sold	WP B-1j, pg. 1	9,943	9,943
28	Accumulated Recoveries of Spent			
29	Nuclear Fuel Disposal Costs	WP B-1k, pg. 2	575,559	575,559
30	Accumulated Pre-1971 Investment			
31	Tax Credits	WP B-1l, pg. 1	5,680	5,680
32	Total Deductions		$4,604,614	$4,692,597
33	Net Electric Utility Plant and Working			
34	Capital		$13,058,837	$12,971,723
35	Less – Allocation to Reselling			
36	Municipalities (1.7% of Line 34)		222,000	220,519
37	Jurisdictional Rate Base (Original Cost)		$12,836,837	$12,751,204

COMMONWEALTH EDISON COMPANY

Jurisdictional Rate Base Summary
Based on Average Balances for the Years
(In Thousands)

Witness: R. J. Hanley

Line No	Rate Base Component	Reference To Supporting Schedule or Workpaper	Present Rates – Average Balances for the Year 1993	1992
	(A)	(B)	(C)	(D)
1	Gross Utility Plant In Service			
2	(Original Cost)	B – 2, pg. 1	$23,833,262	$23,075,848
3	Less – Accumulated Provisions			
4	for Depreciation	B – 3, pg. 1	7,524,495	6,978,414
5	Net Utility Plant in Service		$16,308,767	$16,097,434
6	Plus:			
7	Deferred Carrying Charges Related			
8	to Byron 2 & Braidwood 1 & 2	WP B – 1a, pg. 1	442,531	455,575
9	Working Capital Allowance	B – 5, pg. 1	442,295	422,751
10	Property Held for Future Use	B – 2.5, pg. 2	17,662	15,485
11	Construction Work in Progress in			
12	Rate Base	WP B – 1b, pg. 1	57,950	63,074
13	Nuclear Fuel Stock and Unamortized			
14	Cost of Nuclear Fuel in Reactors	WP B – 1c, pg. 1,7	300,146	89,840
15	Unamortized Reclamation Costs	WP B – 1d, pg. 1	26,744	28,401
16	Unamortized Construction Audit			
17	Consultant Costs	WP B – 1e, pg. 1	37,588	38,719
18			$17,633,683	$17,211,279
19	Deduct:			
20	Accumulated Deferred Income Taxes	WP B – 1g, pg. 2, 4	$3,095,594	$3,066,976
21	Customer Advances for Construction	WP B – 1h, pg. 1	368	465
22	Operating Reserves	WP B – 1i, pg. 1,2	844,928	560,082
23	Other Deferred Credits – Deferred			
24	Benefits from November, 1981			
25	Sale/Leaseback Applicable to			
26	ACRS Deductions Sold	WP B – 1j, pg. 1	8,713	7,883
27	Accumulated Recoveries of Spent			
28	Nuclear Fuel Disposal Costs	WP B – 1k, pg. 1,2	557,858	540,142
29	Accumulated Pre – 1971 Investment			
30	Tax Credits	WP B – 1l, pg. 1	6,746	7,817
31	Total Deductions		$4,514,207	$4,183,365
32	Net Electric Utility Plant and Working			
33	Capital		$13,119,476	$13,027,914
34	Less – Allocation to Reselling			
35	Municipalities (1.7% of Line 33)		223,031	221,475
36	Jurisdictional Rate Base (Original Cost)		$12,896,445	$12,806,439

COMMONWEALTH EDISON COMPANY

Jurisdictional Rate Base Summary
Based on Balances at December 31, 1992, 1993 and 1994
(In Thousands)

Witness: R. J. Hanley

Line No	Rate Base Component (A)	Reference To Supporting Schedule or Work Paper (B)	Present Rates – Balances at December 31, 1994 (C)	1993 (D)	1992 (E)
1	Gross Utility Plant In Service				
2	(Original Cost)	B-2, pg. 2	$24,902,015	$24,210,784	$23,455,738
3	Less – Accumulated Provisions				
4	for Depreciation	B-3, pg. 2	8,428,639	7,800,032	7,248,958
5	Net Utility Plant In Service		$16,473,376	$16,410,752	$16,206,780
6	Plus:				
7	Deferred Carrying Charges Related				
8	to Byron 2 & Braidwood 1 & 2	WP B-1a, pg. 1	422,966	436,010	449,053
9	Working Capital Allowance	B-5, pg. 2	408,076	405,292	430,540
10	Property Held for Future Use	B-2.5, pg. 2	17,151	18,609	16,716
11	Construction Work in Progress in				
12	Rate Base	WP B-1b, pg. 1	57,853	57,853	58,048
13	Nuclear Fuel Stock and Unamortized				
14	Cost of Nuclear Fuel in Reactors	WP B-1c, pg. 1,7,13	223,355	262,652	310,869
15	Unamortized Reclamation Costs	WP B-1d, pg. 1	24,062	25,837	27,670
16	Unamortized Construction Audit				
17	Consultant Costs	WP B-1e, pg. 1	35,890	37,022	38,153
18			$17,662,729	$17,654,027	$17,537,829
19	Deduct:				
20	Accumulated Deferred Income Taxes	WP B-1g, pg. 2,4,6	$3,231,545	$3,080,809	$3,118,353
21	Customer Advances for Construction	WP B-1h, pg. 1	350	350	386
22	Operating Reserves	WP B-1i, pg. 1,2,3	887,678	825,238	789,697
23	Other Deferred Credits – Deferred				
24	Benefits from November, 1981				
25	Sale/Leaseback Applicable to				
26	ACRS Deductions Sold	WP B-1j, pg.1	10,663	9,223	8,203
27	Accumulated Recoveries of Spent				
28	Nuclear Fuel Disposal Costs	WP B-1k, pg.1,2	584,691	566,518	549,422
29	Accumulated Pre-1971 Investment				
30	Tax Credits	WP B-1l, pg. 1	5,150	6,210	7,282
31	Total Deductions		$4,720,077	$4,488,348	$4,473,343
32	Net Electric Utility Plant and Working				
33	Capital		$12,942,652	$13,165,679	$13,064,486
34	Less – Allocation to Reselling				
35	Municipalities (1.7% of Line 33)		220,025	223,817	222,096
36	Jurisdictional Rate Base (Original Cost)		$12,722,627	$12,941,862	$12,842,390

Edison Ex. 4

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)	
	)	No. 94-_____
Proposed General Increase in Electric Rates.	)	
	)	

TESTIMONY OF ROGER F. KOVACK
COMPTROLLER
COMMONWEALTH EDISON COMPANY

ATTACHMENT D

Commonwealth Edison Company

Jurisdictional Operating Income Statement
Year Ended December 31, 1994 (1)
Present and Proposed Rates
(in Millions)

Witness: R. F. Kovack

Line No.	Description	Year 1994 Present Rates	Effect of Proposed Rates (2)	Year 1994 Proposed Rates(3)
	(A)	(B)	(C)	(D)
1	Electric Operating Revenue (4)	$5,794.0	$460.3	$6,254.3
2	Electric Operating Expenses:			
3	Operation and Maintenance			
4	Fuel	$953.8	$1.1	$954.9
5	Purchased Power	107.2		107.2
6	Deferred (Under)/Overrecovered Energy Costs	0.0		0.0
7	Other Operation and Maintenance	2,200.3	39.9	2,240.2
8	Depreciation	749.8		749.8
9	Recovery/(Deferral) of Regulatory Assets	14.4	0.2	14.5
10	Taxes Other than Income Taxes (4)	434.0	7.2	441.1
11	Income Taxes - Federal	159.7	80.9	240.6
12	Income Taxes - State	3.9	28.9	32.8
13	Investment Tax Credits - Deferred	0.4		0.4
14	Amortization of Investment Tax Credits - Credit	(28.7)		(28.7)
15	Provision for Deferred Income Taxes	(8.9)	49.8	40.9
16	Income Taxes Deferred in Prior Years - Credit	174.5	15.7	190.2
17	Total Electric Operating Expenses (3)	$4,760.2	$223.6	$4,983.8
18	Electric Operating Income - Total	$1,033.8	$236.7	$1,270.5
19	Allocation to Reselling Municipalities	3.1	(0.1)	3.0
20	Electric Operating Income -- Ultimate Consumers	$1,030.7	$236.8	$1,267.5
21	Net Electric Utility Plant and Working Capital			
22	(from Edison Exhibit 3, Schedule B-1)	$12,836.8	($85.6)	$12,751.2
23	Rate of Return on Net Electric Utility Plant			
24	and Working Capital	8.03%		9.94%

Notes:
(1) Includes appropriate reclassifications of income and expense items for rate case purposes.
(2) Includes the effects of the Company's proposed rate increase, adjustments related to additional decommissioning costs, and other proposed adjustments included in Edison Exhibit 3, Schedule A-3.
(3) May not add due to rounding.
(4) Excludes add-on revenue taxes.

Commonwealth Edison Company

Jurisdictional Operating Income Statement
Year Ended December 31 (1)
Present Rates
(in Millions)

Witness: R. F. Kovack

Line No.	Description	Actual 1992	Forecast 1993
	(A)	(B)	(C)
1	Electric Operating Revenue (2)	$5,692.2	$4,935.6
2	Electric Operating Expenses:		
3	Operation and Maintenance		
4	Fuel	$820.8	$1,100.2
5	Purchased Power	115.1	100.0
6	Deferred (Under)/Overrecovered Energy Costs	(30.3)	3.1
7	Other Operation and Maintenance	2,220.3	2,149.5
8	Depreciation	702.1	726.8
9	Recovery/(Deferral) of Regulatory Assets	15.0	15.0
10	Taxes Other than Income Taxes (2)	404.0	391.7
11	Income Taxes - Federal	151.0	(12.8)
12	Income Taxes - State	26.0	(1.0)
13	Investment Tax Credits - Deferred	(5.6)	0.3
14	Amortization of Investment Tax Credits - Credit	(26.5)	(29.1)
15	Provision for Deferred Income Taxes	118.1	(372.2)
16	Income Taxes Deferred in Prior Years - Credit	9.7	341.9
17	Total Electric Operating Expenses (3)	$4,519.7	$4,413.3
18	Electric Operating Income - Total (3)	$1,172.4	$522.2
19	Allocation to Reselling Municipalities	3.5	1.5
20	Electric Operating Income - Ultimate Consumers	$1,168.9	$520.7
21	Net Electric Utility Plant and Working Capital		
22	(from Edison Exhibit 3, Schedule B-1)	$12,806.4	$12,896.4
23	Rate of Return on Net Electric Utility Plant		
24	and Working Capital	9.13%	4.04%

Notes:
(1) Includes appropriate reclassifications of income and expense items for rate case purposes.
(2) Excludes add-on revenue taxes.
(3) May not add due to rounding.

Commonwealth Edison Company

Jurisdictional Operating Income Statement
Year Ended December 31, 1992 (1)
Present and Proposed Rates
(in Millions)

Witness: R. F. Kovack

Line No.	Description	Actual 1992	Effect of Proposed Rates (2)	Year 1992 Proposed Rates
	(A)	(B)	(C)	(D)
1	Electric Operating Revenue (3)	$5,692.2	$460.3	$6,152.5
2	Electric Operating Expenses:			
3	Operation and Maintenance			
4	Fuel	$820.8	$	$820.8
5	Purchased Power	115.1		115.1
6	Deferred (Under)/Overrecovered Energy Costs	(30.3)		(30.3)
7	Other Operation and Maintenance	2,220.3		2,220.3
8	Depreciation	702.1		702.1
9	Recovery/(Deferral) of Regulatory Assets	15.0		15.0
10	Taxes Other than Income Taxes (3)	404.0	5.8	409.8
11	Income Taxes – Federal	151.0	143.4	294.4
12	Income Taxes – State	26.0	32.8	58.8
13	Investment Tax Credits – Deferred	(5.6)		(5.6)
14	Amortization of Investment Tax Credits – Credit	(26.5)		(26.5)
15	Provision for Deferred Income Taxes	118.1		118.1
16	Income Taxes Deferred in Prior Years – Credit	9.7		9.7
17	Total Electric Operating Expenses (4)	$4,519.7	$182.0	$4,701.7
18	Electric Operating Income – Total (4)	$1,172.4	$278.3	$1,450.8
19	Allocation to Reselling Municipalities	3.5	0.0	3.5
20	Electric Operating Income – Ultimate Consumers	$1,168.9	$278.3	$1,447.3
21	Net Electric Utility Plant and Working Capital			
22	(from Edison Exhibit 3, Schedule B-1)	$12,806.4		$12,806.4
23	Rate of Return on Net Electric Utility Plant			
24	and Working Capital	9.13%		11.30%

Notes:
(1) Includes appropriate reclassifications of income and expense items for rate case purposes.
(2) The Effect of Proposed Rates is the revenue from the Effect of Proposed Rates Schedule C-1, page 1, column C and the related tax effects of those revenues.
(3) Excludes add-on revenue taxes.
(4) May not add due to rounding.

Edison Ex. 1

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)	
	)	No. 94-_____
Proposed General Increase in Electric Rates.	)	
	)	

TESTIMONY OF JOHN C. BUKOVSKI
VICE PRESIDENT AND CHIEF FINANCIAL OFFICER
COMMONWEALTH EDISON COMPANY

ATTACHMENT E

Finally, DECON is the method used by the other nuclear utilities under the authority of and approved by the Commission for external funding and ratemaking purposes.

39. Q. Is the funding method chosen by the Company acceptable to the NRC for providing reasonable assurance of the availability of funds for decommissioning nuclear reactors?

A. Yes. The NRC's Decommissioning Rule describes three methods acceptable to the NRC for providing reasonable assurance of the availability of funds for decommissioning nuclear reactors. One of these methods, an external sinking fund, is a fund into which periodic payments are made and the investment earnings of which, together with the deposits, will be sufficient to pay for decommissioning at the time termination of operation is expected. Pursuant to State of Illinois Public Act 85-1400 effective September 12, 1988, the Company established two external master trust funds -- a tax-qualified and a nontax-qualified fund -- to hold decommissioning funds for each of its 12 nuclear units now in service and also for Dresden Unit 1, which was retired from service in 1985. This method of funding is consistent with the external sinking fund method prescribed by the NRC in the Decommissioning Rule and was also approved by the Illinois Commerce Commission in its order in Docket No. 88-0298.

40. Q. Are there any other related regulations with respect to the treatment for funding of nuclear decommissioning costs?

43. Q. What is Edison's 1994 test year proposed decommissioning cost-of-service?

A. As shown on Schedule 1.7, page 1 of 4, the estimated decommissioning cost included in the Company's 1994 test year cost of service at proposed rates is $170.3 million. This amount was calculated (a) based on the total decommissioning cost estimates prepared by Mr. Mingst, Edison Exhibit 18, and Mr. McFarland, Edison Exhibit 16 and (b) using the same methodology approved by the Commission in Docket No. 90-0169. In particular, this amount reflects the annual levelized cost of service amount based on equal annual installments deposited into the funds ratably over the remaining life of each nuclear unit of the Company, except for Dresden 1, for which the remaining life of Dresden 3 is used.

44. Q. What assumptions are integral to the development of the estimated decommissioning costs included in the 1994 test year cost of service?

A. The assumptions utilized in developing the 1994 cost of service amounts are shown beginning on page 2 of Schedule 1.7.

45. Q. Please explain why the nuclear decommissioning cost of service in this proceeding is higher than the cost of service identified in the final order in ICC Docket No. 90-0169.

A. The cost of service of approximately $127 million allowed by the Commission in Docket No. 90-0169 was calculated based simply on the minimum funding

formula required by the Decommissioning Rule at costs estimated in 1991 dollars of $2,070.8 million.

The amounts set forth in the Decommissioning Rule, however, do not provide a site-specific estimate of the costs of decommissioning a plant. As explained in the testimony of Mr. Mingst, the Decommissioning Rule only provides for a generic adjustment to these amounts based on a given plant's power level. The resource requirements for a given decommissioning task at a specific plant may vary significantly from the NRC's power adjustment formula. Moreover, the studies on which the NRC's formula is based are merely estimates of representative national costs which may vary widely from a specific plant's actual unit costs. In addition, the Decommissioning Rule only addresses the cost of decommissioning activities within the NRC's jurisdiction. Accordingly, the Decommissioning Rule does not include the cost of removal and disposal of non-radioactive structures and materials.

The cost of service of $170.3 million proposed in this proceeding is based on estimated decommissioning costs for both the radioactive and nonradioactive components of all units expressed in 1993 dollars of $4,060.7 million shown individually for each unit on Schedule 1.7, page 2 of 4. Mr. Mingst explains the decommissioning cost estimates used in this proceeding.

The Company proposes to use a decommissioning cost annual escalation rate of 5.3% to project current decommissioning costs to the applicable year of decommissioning. Funding is over the remaining NRC license life for each

nuclear unit except for Dresden Unit 1 which is over the life of Dresden Unit 3.

46. Q. How was the proposed decommissioning cost annual escalation rate of 5.3% determined?

A. The annual escalation rate is used to project decommissioning cost estimates in current dollars ($1993) to the decommissioning year (2012 and beyond) in order to determine the amount of contributions necessary to adequately fund the liability which is paid at the end of a nuclear plant's operating life. In its order in Docket No. 90-0169, the Commission determined that the long-term escalation rate for Edison's decommissioning costs should be based on the components of escalation, as defined by the NRC in its Decommissioning Rule. Those NRC escalation components (NRCe) include forecasted costs of labor (*l*), energy (e) and waste burial (b) as shown in the following formula:

$$NRCe = 0.65l + 0.13e + 0.22b$$

The Company proposes an escalation rate of 4% for labor (*l*) and energy (e) costs which is based on ten year projections of the costs of employment and fuel and power, respectively, and also is consistent with projections of the Company's other utility costs. The Company's proposed escalation rate for waste burial costs is 10%. This figure is based on historical increases (excluding surcharges) in the disposal cost of low-level nuclear waste at the Barnwell facility in South Carolina. Solving for "NRCe" results in a long-term escalation rate of 5.3%.

47. Q. How will Edison invest its 1994 collections?

A. The Company expects about 74% of the 1994 collections to be deposited into the tax-qualified funds and about 26% into the nontax-qualified funds. Prior to 1993, Section 468A(e)(4)(C) of the Internal Revenue Code allowed tax-qualified decommissioning trusts to invest only in "Black Lung" investments (i.e. government debt securities or bank, savings and loan or insured credit union demand or time deposits). Effective after December 31, 1992, however, this Section was amended and the black lung investment restriction was repealed. Accordingly, Edison petitioned the ICC in Docket No. 93-0143 to amend its master trust agreement to allow the purchase of equities and other non-black lung investments in its tax-qualified trusts. Because that petition was granted by the Commission, and given the Company's recent experience with its pension and postretirement health care funds, the Company estimates the after-tax returns in the tax-qualified funds (after deducting trustee and manager fees) to be 6.10% and 6.54% in 1994 and 1995, respectively, and 7.30% beginning in 1996 when the tax rate declines to 20%. The investment return (after taxes and fees) in the nontax-qualified funds is estimated to be 6.26% beginning in 1994.

48. Q. Is the Company proposing any changes in the method of collecting its decommissioning cost of service from ratepayers?

A. Yes. In this proceeding Edison proposes to collect its proposed nuclear decommissioning cost of service of $170.3 million in base rates. However,

Edison proposes the establishment of a decommissioning rider to reflect future increases or decreases in its cost of service related to changes in decommissioning costs. Other nuclear utilities under the Commission's jurisdiction collect decommissioning costs through riders. Also, during workshops in Docket 89-NOI-1 covering nuclear decommissioning, the Illinois Commerce Commission Staff recommended that utilities propose, in their next rate proceeding, a rider to recover nuclear decommissioning costs. Ms. Juracek (Edison Exhibit 10) provides the proposed decommissioning rider, Rider 31.

49. Q. Why does Edison believe it would be better to establish and recover future changes in its nuclear decommissioning cost of service through a separate rider?

A. As discussed by Mr. Mingst, decommissioning cost estimates are subject to a high degree of uncertainty and volatility. A cost recovery rider for nuclear decommissioning costs would better enable Edison to recover changes in estimated nuclear decommissioning costs from the customers who receive the benefits of the electricity generated by Edison's nuclear facilities.

50. Q. Why are the final decommissioning costs uncertain?

A. Decommissioning cost estimates are generally based on studies for specific sites and the most current information and technology available. However, because no large nuclear power plant has been decommissioned to date, the

uncertainty in estimating decommissioning costs twenty to thirty years from now is magnified. Moreover, the burial costs of low level waste have been escalating recently for utilities such as Edison which dispose of their waste at the Barnwell facility in South Carolina. A surcharge is assessed at Barnwell for waste that is shipped from states that are not part of the Southeast compact and are not making significant progress toward building their own waste disposal sites. It is uncertain when a disposal site in Illinois will be constructed to begin accepting low level waste from the Company's sites.

51. Q. What should happen when a significant change in cost estimates occurs?

A. When the final costs become more defined based on improved information, rates should be adjusted accordingly. The most efficient method to adjust rates is the establishment of a cost rider that is updated periodically. Such updates would avoid significant fluctuations in the collections of funds from customers and would provide a basis for prompt adjustments to those collections based on changed circumstances. In the absence of such a rider, these benefits would not be available to the utility and its customers unless the Company were frequently to file for changes in its tariffs.

52. Q. What other benefits would result from collecting decommissioning costs through a cost recovery rider?

A. A rider enables annual adjustments to the cost of service which, in a period of rising decommissioning cost estimates, provides the greatest opportunity to

maximize the contribution to the tax-qualified fund. This benefits the Company and its customers in two ways. First, all contributions to the tax-qualified fund are tax deductible, and therefore improve current cash flows and reduce financing requirements. Second, earnings in the tax-qualified funds are taxed at a lower rate, thereby raising after-tax earnings which reduces the amount needed to be collected from customers.

53. Q. Does this conclude your testimony?

A. Yes.

Edison Ex. 18

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)	
	)	No. 94-_____
Proposed General Increase in	)	
Electric Rates.	)	

TESTIMONY OF BARRY C. MINGST
FOUNDER
META

ATTACHMENT F

spent fuel pool and shipped to the Department of Energy 120 days after plant shutdown. This was the assumption used in the Battelle studies at the time it performed its original studies. In the draft PWR NUREG published in October 1993, however, it was recognized that it is not realistic to plan for the DOE to accept spent fuel within 120 days of plant shutdown given the delay in building a high-level waste repository. Accordingly, I analyzed the additional cost of a five-year delay, which is a similar period to that used in the draft NUREG, in the removal of spent fuel for each unit except Dresden 1. (As discussed below, Dresden 1 was retired in 1985, and its spent fuel has therefore already cooled for more than five years). The supplemental reports analyzing the additional costs due to delay of spent fuel removal are listed in Schedule 18.2. The additional costs due to delay in spent fuel removal are set forth in a separate line item of Schedule 18.3.

23. Q. Are you familiar with the decommissioning cost estimates Edison used to calculate its annual revenue requirements in its previous rate case in I.C.C. Docket 90-0169?

A. Yes. I have reviewed the testimony of John Bukovski in Docket 90-0169 (Ed. Ex. 15.0). It states that Edison calculated its cost estimates in that case using the formulae set forth in the Decommissioning Rule. As noted above, these formulae are based on the cost estimates of the Battelle studies subject to a single adjustment based only on the nuclear unit's power level. Cost estimates calculated based on these formula are intended only to satisfy the NRC's minimum funding requirements. These cost estimates are set forth in Exhibit 15.2 to Mr. Bukovski's testimony in Docket 90-0169. The Decommissioning Rule assumes the use of DECON.

24. Q. What explains the increase in decommissioning costs in your cost studies as compared to the cost estimates set forth in Docket 90-0169?

A. There are a number of factors. First, as explained above, the NRC's formulae Edison used in Docket 90-0169 provide only a minimum funding amount for NRC review. In addition, they do not include the costs of demolishing non-radioactive structures, although these are normal decommissioning costs. Thus, the decommissioning costs Edison used in Docket 90-0169 do not reflect Edison's full decommissioning costs.

Second, the Docket 90-0169 amounts are not site-specific. My detailed cost studies provide a more accurate estimate of the resource requirements that will actually apply to each of Edison's units. The use of site-specific studies is a superior approach and is accordingly becoming increasingly common in the industry.

Third, the Docket 90-0169 costs were stated in 1988 dollars and used an NRC regional cost inflation factor for generic unit costs. (Ed. Ex. 15.2, I.C.C. Dkt. 90-0169). The cost estimates attached to my testimony are shown in 1993 dollars and reflect the site-specific differences in unit costs.

Fourth, as noted above, Edison's waste burial costs have increased sharply due to the $220 per cubic foot surcharge imposed by the Barnwell waste disposal site.

Fifth, Edison's amounts in Docket 90-0169 and the NRC values do not take into account the NRC's reduction of the annual radiation dose limit (from 5 REM/yr to approximately 4 REM/yr), or the necessity of having an administrative dose limit (currently 3.5 REM/yr at Edison) set below the NRC legal limits.

C. The Cost Estimates for Dresden 1

25. Q. Earlier you indicated that Dresden 1 is a special case. Please explain.

A. Unlike Edison's twelve other nuclear units, Dresden 1 was retired in 1985. Accordingly, Commonwealth Edison has already submitted a decommissioning plan for Dresden 1, and the NRC has reviewed and approved that plan. Under this plan, Dresden 1 will be placed in a "modified SAFSTOR" mode until 2012, when Dresden 3 is planned to be decommissioned. "Modified SAFSTOR" is different than the standard SAFSTOR mode because Dresden 1's spent fuel still remains on site in the spent fuel pool. This means that, in addition to the four standard cost components, the decommissioning fund for Dresden 1 will also have to pay for the ongoing annual maintenance at Dresden 1 until 2012. I have therefore added a fifth cost component to my decommissioning cost estimate for Dresden 1 that provides for these annual layup costs. These annual layup costs are based on Edison's project budgets for Dresden 1. In addition, the NRC's approval of Edison's Decommissioning Plan was conditioned on certain modifications. Edison estimates these modifications will cost $7.3 million, and I have included this amount