

191 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

Commonwealth Edison Company

Docket Nos. ER25-2129-001

Commonwealth Edison Company

EL25-94-000

(Consolidated)

ORDER ON FORMULA RATE TARIFF REVISIONS, INITIATING A PROCEEDING
PURSUANT TO SECTION 206 OF THE FEDERAL POWER ACT,
CONSOLIDATING PROCEEDINGS, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued June 30, 2025)

1. On May 1, 2025, as amended on May 2, 2025,¹ Commonwealth Edison Company (ComEd), pursuant to section 205 of the Federal Power Act (FPA)² and part 35 of the Commission's regulations,³ submitted revisions to the formula rate schedule included in Attachment H-13A of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) to address ComEd's Asset Retirement Obligations (ARO).⁴ ComEd

¹ The May 2, 2025 amendment corrects an error in the May 1, 2025 eTariff filing date.

² 16 U.S.C. § 824d.

³ 18 C.F.R. pt. 35 (2024).

⁴ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT ATT H-13A, OATT Attachment H-13A - Commonwealth Edison Company (20.1.0), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=357206>. Pursuant to Order No. 714, PJM submitted the filing on behalf of ComEd. *See Elec. Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

requests that the Tariff revisions become effective May 1, 2025, and requests that the Commission waive the 60-day notice requirement.

2. In this order, we grant waiver of the 60-day notice requirement and accept and suspend the tariff records to become effective May 1, 2025, as requested, subject to refund and the outcome of hearing and settlement judge procedures directed below. In addition, we find that ComEd's formula rate may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, and institute a proceeding under section 206 of the FPA⁵ to investigate the treatment of Asset Retirement Costs (ARCs) and AROs in ComEd's formula rate. We also consolidate the hearing procedures established in Docket Nos. ER25-2129-001 with the proceeding established in EL25-94-000, and as directed below, establish a refund effective date.

I. Background

A. Order No. 631

3. In Order No. 631,⁶ the Commission adopted accounting, reporting, and rate requirements for an ARO, which is a liability resulting from a legal obligation associated with the future retirement of a tangible, long-lived asset.⁷ Order No. 631 provides, in relevant part:

[P]ublic utilities, licensees, and natural gas companies with formula rate tariffs must not include any cost components related to asset retirement obligations in their formula rate billing tariffs for automatic recovery in their billing determinations without obtaining Commission approval.⁸

4. To ensure that all rate base amounts related to AROs can be identified and excluded from the rate base calculation in a rate change filing, the Commission adopted a regulation, 18 C.F.R. section 35.18, Asset Retirement Obligations, which provides, in relevant part:

⁵ 16 U.S.C. § 824e.

⁶ *Acct., Fin. Reporting, & Rate Filing Requirements for Asset Ret. Obligations*, Order No. 631, 103 FERC ¶ 61,021, *order on reh'g*, Order No. 631-A, 104 FERC ¶ 61,183 (2003).

⁷ Order No. 631, 103 FERC ¶ 61,021 at PP 2, 9.

⁸ *Id.* P 60.

(a) A public utility that files a rate schedule, tariff, or service agreement under § 35.12 or § 35.13 and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting work papers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as electric plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.⁹

5. Accordingly, public utilities must remove the impact of all ARO-related accounting, including ARC cost components, from rate determinations unless approval is received from the Commission to recover non-rate base costs.¹⁰

B. ComEd's Formula Rate

6. ComEd is a transmission-owning member of PJM and transferred operational control of its transmission-related assets to PJM on May 1, 2004.¹¹ On January 16, 2008, the Commission approved an uncontested settlement establishing ComEd's wholesale transmission formula rate for determining ComEd's annual transmission revenue requirement.¹² ComEd recovers its costs of owning, operating, and maintaining its transmission system using the transmission formula rate approved by the Commission and included in Attachment H-13A of the PJM Tariff.¹³

⁹ 18 C.F.R. § 35.18(a).

¹⁰ *Id.*; see also 18 C.F.R. § 35.18(b) ("A public utility seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 35.12 or § 35.13, a detailed study supporting the amounts proposed to be collected in rates.").

¹¹ May 1 Transmittal at 2.

¹² *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008) (Formula Rate Order).

¹³ PJM, Intra-PJM Tariffs, OATT ATT H-13A, OATT Attachment H-13A - Commonwealth Edison Company (19.0.1).

II. Proposed Tariff Revisions

7. ComEd's filing proposes to add the following footnote to its formula rate: "Plant and depreciation values include ARO amounts and associated depreciation consistent with ComEd Form 1. ComEd has submitted the requisite support for such recovery as provided in 18 C.F.R. § 35.18."¹⁴ ComEd states that, because questions have been raised regarding the validity of ARO cost recovery in the audit of ComEd's rates, ComEd, as part of this filing, includes revisions to its tariff to clarify prospectively that its ARO treatment has been reviewed and is properly part of the ComEd transmission formula.¹⁵ ComEd also states that it is providing a schedule, Exhibit No. COM-0003, that supports its ARO amounts, which ComEd claims is consistent with section 35.18 of the Commission's regulations.¹⁶

8. ComEd explains that the only revision to its formula rate tariff is the inclusion of the new footnote and references to the new footnote at several lines within the formula. ComEd states that, upon acceptance of this filing, the new footnote would expressly acknowledge that the Commission has reviewed and approved the ARO treatment in the formula. ComEd further states that the tariff change makes no substantive change to the ComEd rate or the rate formula, and thus it does not alter in any way the amount of recovery by ComEd, i.e., the rate impact of this filing is zero.¹⁷ ComEd requests waiver of the Commission's 60-day notice requirement and that the proposed tariff sheets be accepted effective May 1, 2025.¹⁸

III. Notice of Filings

9. Notice of ComEd's May 1, 2025 filing was published in the *Federal Register*, 90 Fed. Reg. 19297 (May 7, 2025), with interventions, comments, and protests due on or before May 22, 2025. Notice of ComEd's May 2, 2025 amended filing was published in

¹⁴ PJM, Intra-PJM Tariffs, OATT ATT H-13A, OATT Attachment H-13A - Commonwealth Edison Company (20.1.0).

¹⁵ May 1 Transmittal at 9-10 (citing *Commonwealth Edison Co.*, Docket No. FA21-5-000 (July 27, 2023) (delegated letter order from Janel Burdick to E. Glenn Rippie) (Audit Report at 38-44)).

¹⁶ *Id.* at 10.

¹⁷ *Id.* (citing Ex. COM-0001, Erin White Testimony at 20:8-16 (White Test.)).

¹⁸ *Id.* at 11.

the *Federal Register*, 90 Fed. Reg. 19481 (May 8, 2025), with interventions, comments, and protests due on or before May 23, 2025. None were filed.

IV. Discussion

10. We accept ComEd's proposed Tariff revisions, suspend them for a nominal period, to become effective May 1, 2025, as requested,¹⁹ subject to refund, and establish hearing and settlement judge procedures.

11. A utility records an ARO as a legal liability associated with the retirement of a plant asset, recognized at fair value.²⁰ The utility also records an equal offsetting asset, known as an ARC. While the ARC decreases over time as the associated plant asset provides utility service, the ARO increases through accretion as the liability grows toward settlement.²¹ Consistent with established ratemaking policy, utilities are prohibited from including AROs or associated ARCs in rate base.²² This exclusion is based on the Commission's mandate that only actual, prudently incurred costs may be

¹⁹ Because the proposed tariff revisions are uncontested and do not change rates, we grant ComEd's request for waiver of the 60-day prior notice requirement. *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh'g*, 61 FERC ¶ 61,089 (1992) ("We will generally grant waiver of the 60-day prior notice requirement in the following instances: (1) uncontested filings that do not change rates . . ."); *Prior Notice & Filing Requirements Under Part II of the Fed. Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993).

²⁰ 18 C.F.R. part 101, General Instruction 25 defines an ARO as "a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel."

²¹ The ARO obligation is recorded by debiting the ARC (Account 101) and crediting the ARO liability (Account 230). ARC depreciation is recorded by debiting depreciation expense (Account 403.1) and crediting accumulated reserve for depreciation (Account 108). Accretion is recorded by debiting accretion expense (Account 411.10) and crediting the ARO liability (Account 230). If a utility seeks to recover these costs, it may request approval to include in rates its cumulative depreciation and accretion expenses as a regulatory asset. The amortization of this regulatory asset is incorporated into the utility's cost of service. Upon ARO settlement, the regulatory asset value, as adjusted for gains or losses, should match the actual retirement or decommissioning costs.

²² 18 C.F.R. § 35.18(a).

recovered.²³ Thus, projected ARO-related amounts are excluded due to their speculative or subjective nature, as they may result in unjust and unreasonable rates for ratepayers. Additionally, unlike plant assets, which utilities can include in rate base to earn a return due to their role in providing utility service, an ARC is not considered a revenue-generating investment eligible for such inclusion.

12. However, with Commission approval utilities may include ARC depreciation and ARO accretion expenses in their transmission cost of service.²⁴ While these amounts are initially based on estimates, upon settlement of the ARO liability, they are offset with the actual cash outlay for performing retirement activities, as adjusted with actual gains and losses (i.e., ultimately converting the estimated costs to actual costs and no more or no less than the actual costs). This ensures that rate recovery aligns with the Commission's cost-based ratemaking principles and that ratepayers are safeguarded from bearing excessive costs²⁵

13. Our preliminary analysis indicates that ComEd's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. ComEd proposes to add a new footnote to its formula rate that states that its formula rate plant and depreciation values include ARO amounts and associated depreciation, and that ComEd has submitted the requisite support for such recovery as provided in section 35.18 of the Commission's regulations.²⁶ As noted above, Order No. 631 requires that public utilities with formula rate tariffs must not include cost components related to AROs in their formula rates for automatic recovery without obtaining Commission approval.²⁷ Order No. 631 also

²³ See Order No. 631, 103 FERC ¶ 61,021 at P 62 ("To ensure that all rate base amounts related to asset retirement obligations can be identified and excluded from the rate base calculation in a rate change filing, the Commission adds §§ 35.18 and 154.315 to its rate change filing requirements.").

²⁴ 18 C.F.R. § 35.18. Cost of service includes, among other items, depreciation and accretion expense as they are considered operating in nature and necessary for providing utility service.

²⁵ See Order No. 631, 103 FERC ¶ 61,021 at PP 1,4 (revising regulations to improve the usefulness and transparency of financial information in the accounting, reporting and rate filing requirements by establishing uniform accounting requirements for the recognition of liabilities for legal obligations associated with the retirement of tangible long-lived assets).

²⁶ May 1 Transmittal at 10.

²⁷ Order No. 631, 103 FERC ¶ 61,021 at P 60.

requires a public utility seeking recovery of an ARO in rates to provide a detailed study supporting the amounts proposed to be collected in rates.²⁸ ComEd's filing does not clearly demonstrate that ComEd has received Commission approval for inclusion of ARC costs in its rate base, or accretion and depreciation expenses in its cost of service, or that ComEd has satisfied the requirements of section 35.18 of the Commission's regulations, as ComEd represents in the proposed footnote. Accordingly, we find that ComEd's filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in hearing and settlement judge procedures.

14. We find that the record in this proceeding raises questions about whether ComEd's current formula rate is just and reasonable in its treatment of ARO related components. Specifically, ComEd states in its Transmittal Letter and testimony that it includes ARCs recorded in Electric Plant in Service balances in its wholesale transmission formula rate base,²⁹ for which it earns a rate of return, which is prohibited by section 35.18 of the Commission's regulations.³⁰ The formula rate also may improperly include depreciation and accretion. Therefore, we establish a proceeding pursuant to FPA section 206 in Docket No. EL25-94-000 to investigate the treatment of ARO-related components in ComEd's formula rate, and we consolidate the proceeding addressing the proposed Tariff revisions filed pursuant to FPA section 205 with the FPA section 206 proceeding because they raise common legal and factual issues.

²⁸ *Id.* P 62; *see also* 18 C.F.R. § 35.18(b); *Ky. Utils. Co.*, 157 FERC ¶ 61,251, at PP 7, 32 (2016).

²⁹ May 1 Transmittal at 8; White Test. at 17-18. *See* PJM, Intra-PJM Tariffs, OATT ATT H-13A, OATT Attachment H-13A - Commonwealth Edison Company (19.0.1), Line 6, Electric Plant in Service, and Line 15, Transmission Plant In Service.

³⁰ 18 C.F.R. § 35.18(a) ("However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as electric plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment."). ComEd's protocols also do not include a requirement for including a worksheet in its formula rate updates identifying asset retirement obligations. *Contrast* PJM, Intra-PJM Tariffs, OATT ATT H-1B, OATT Attachment H-1B - Atlantic City Electric Company, 4.0.0 (requiring "a worksheet identifying any asset retirement obligations (ARO) included in the Annual Update, including a citation to the FERC order approving recovery of the ARO; otherwise any such items reported in the FERC Form No. 1 must be deducted from the costs to be recovered in the Annual Update"), *with* OATT ATT H-13-B, OATT Attachment H-13B - Commonwealth Edison Company (2.0.0) (omitting such a reference).

15. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date. In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206, and we do so here as well.³¹ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL25-94-000 in the *Federal Register*.

16. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Because we have established hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by December 29, 2025, we expect that, if the proceeding does not settle, we would be able to render a decision by August 31, 2026.

17. While we are setting these matters for a trial-type evidentiary hearing,³² we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³³ If parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements that determine judges' availability.³⁴ The settlement judge shall report to the Chief Judge and the

³¹ See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

³² Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2024).

³³ 18 C.F.R. § 385.603 (2024).

³⁴ If parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<https://www.ferc.gov/available-settlement-judges>).

Commission within 30 days of the date of the appointment of the settlement judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) ComEd's proposed Tariff revisions are hereby accepted for filing, and suspended for a nominal period, to become effective May 1, 2025, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL25-94-000 concerning the justness and reasonableness of ComEd's ARO recovery in its formula rate, as discussed in the body of this order.

(C) The proceedings in Docket Nos. ER25-2129-001 and EL25-94-000 are hereby consolidated.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of ComEd's proposed tariff revisions, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Judge is hereby directed to appoint a settlement judge in these proceedings within 45 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If parties decide to request a specific judge, they must make their requests to the Chief Judge within five days of the date of this order.

(F) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide participants with additional time to continue their settlement discussions, if appropriate, or assign this

case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Any interested person desiring to be heard in Docket No. EL25-94-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 within 21 days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(I) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL25-94-000.

(J) The refund effective date in Docket No. EL25-94-000 established pursuant to section 206 of the FPA shall be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (I) above.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.