

122 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Commonwealth Edison Company	Docket Nos. ER07-583-000
and Commonwealth Edison Company of Indiana, Inc.	ER07-583-001
	ER07-583-002

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 16, 2008)

1. On October 5, 2007, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) filed a settlement agreement, on behalf of the settling parties,¹ which resolves all issues in the above-captioned proceeding. The settlement agreement resolves all issues relating to ComEd's transmission cost of service formula rate for the ComEd pricing zone set for hearing in this proceeding.² On October 24, 2007, initial comments on the settlement agreement were filed by the Illinois Commerce Commission. On October 25, 2007, initial comments were filed by the Commission's Trial Staff. On October 29, 2007, the Settlement Judge certified the settlement agreement to the Commission as uncontested.³

2. The settlement agreement appears to be fair and reasonable and in the public interest and is hereby approved. The tariff sheets contained in the settlement are in compliance with Order No. 614 and are made effective as set forth in the settlement. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, (FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000,

¹ The settling parties are: ComEd, Illinois Municipal Electric Agency, the City of Naperville, Illinois, Northern Illinois Municipal Power Agency, and Illinois Industrial Energy Consumers.

² *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 119 FERC ¶ 61,238 (2007) (June 5 Order).

³ *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 121 FERC ¶ 63,005 (2007).

¶ 31,096 (2000)). The Commission's acceptance of the tariff sheets in this settlement agreement renders the compliance tariff sheets pending in Docket No. ER07-583-002 moot. Refunds shall be made pursuant to the settlement agreement.

3. The Commission's approval of the settlement agreement does not constitute approval, or precedent regarding, any principle or issue in this proceeding. Under the settlement agreement, the standard of review for any modification to the settlement by the Commission shall be the "just and reasonable" standard.⁴ Because the applicable standard of review for the settlement is the just and reasonable standard, the Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA.

4. Requests for rehearing of the June 5 Order in the instant proceeding were filed and are currently pending before the Commission in Docket Nos. EL07-41-001 and ER07-583-003. Consistent with Article 5 of the settlement agreement, the pending rehearing requests in Docket No. ER07-583-003 are deemed to be withdrawn within 30 days of the date upon which the settlement becomes effective, except for that portion of ComEd's rehearing request that seeks inclusion of 50 percent of construction work in progress in rate base for Phase II of the West Loop project. The pending rehearing request in Docket No. EL07-41-001 is not affected by this settlement agreement.

5. This order terminates Docket Nos. ER07-583-000, ER07-583-001, and ER07-583-002.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ See Article VIII of the Settlement Agreement. We note that the explanatory statement (at pp. 13-14) refers to the public interest standard, but section 8.5 of the settlement agreement indicates that the "just and reasonable" standard of review applies. Thus, we believe that the explanatory statement is in error. In any event, the explanatory statement (at p. 1) provides that in the case of potential conflict between the explanatory statement and the settlement agreement, the settlement agreement shall be deemed controlling. Therefore, we find that the applicable standard of review for modifications to the settlement agreement by the Commission is the just and reasonable standard.