

Opinion filed September 30, 2026

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2026

|                                   |   |                                      |
|-----------------------------------|---|--------------------------------------|
| INTERNATIONAL BROTHERHOOD OF      | ) | Petition for Review of Orders of the |
| ELECTRICAL WORKERS, AFL-CIO,      | ) | Illinois Commerce Commission.        |
| LOCAL UNION 15 and COMMONWEALTH   | ) |                                      |
| EDISON COMPANY,                   | ) |                                      |
|                                   | ) |                                      |
| Petitioners-Appellants,           | ) | Appeal No. 3-24-0021                 |
|                                   | ) | ICC Docket # 22-0486, 23-0055,       |
| v.                                | ) | 24-0181                              |
|                                   | ) |                                      |
| THE ILLINOIS COMMERCE COMMISSION; | ) |                                      |
| CONSTELLATION                     | ) |                                      |
| ENERGY GENERATION, LLC;           | ) |                                      |
| and ENVIRONMENTAL LAW &           | ) |                                      |
| POLICY CENTER,                    | ) |                                      |
|                                   | ) |                                      |
| Respondents-Appellees.            | ) |                                      |
|                                   | ) |                                      |

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PRESIDING JUSTICE HETTEL delivered the judgment of the court, with opinion.  
Justices Brennan and Peterson concurred in the judgment and opinion.

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**OPINION**

¶ 1 In these consolidated proceedings, petitioners, International Brotherhood of Electrical Workers, AFL-CIO, Local Union 15 (IBEW Local 15) and Commonwealth Edison Company (ComEd), appeal from multiple orders issued by the Illinois Commerce Commission (Commission) in ComEd's rate case. In the orders, the Commission set ComEd's return on equity,

denied ComEd a recovery on its pension asset, and imputed a capital structure. For the following reasons, we affirm.

¶ 2

## I. BACKGROUND

¶ 3

### A. General Background

¶ 4

#### 1. *The Parties*

¶ 5

ComEd is a public utility that provides electrical delivery services to more than 4 million customers located in Illinois. As a public utility, ComEd is governed by the Public Utilities Act (220 ILCS 5/1-101 *et seq.* (West 2022)) and regulated by the Commission. See *id.* §§ 3-105, 4-101 (defining the term “public utility” and stating that the Commission has “general supervision” of all public utilities).

¶ 6

IBEW Local 15 is a labor union that represents approximately 5,100 individuals employed by ComEd and other companies. In its capacity, IBEW Local 15 serves as the collective bargaining representative of approximately 3,400 individuals employed by ComEd and its parent company, Exelon Business Services Company (Exelon), and has collective bargaining agreements with ComEd that relate to employee wages and fringe benefits, as well as to the terms and conditions of employment.

¶ 7

#### 2. *General Rate Setting Principles and Statutory Development*

¶ 8

A public utility is entitled to recover certain operating costs through the rates that it charges its customers. *Citizens Utility Board v. Illinois Commerce Comm’n*, 166 Ill. 2d 111, 121 (1995). The Commission is responsible for setting the rates charged by a utility. *United Cities Gas Co. v. Illinois Commerce Comm’n*, 163 Ill. 2d 1, 11 (1994). Generally, a utility seeking a rate increase must file new schedules or supplements with the Commission that indicate the proposed changes to be made in the schedule or schedules already in place, as well as the time when the proposed

changes would take effect. 220 ILCS 5/9-201(a) (West 2022). “When a utility files a request for a rate increase in the form of a new tariff schedule, the Commission has the authority upon complaint or its own initiative to hear evidence, hold hearings and determine the propriety of the requested increase.” *Business & Professional People for the Public Interest v. Illinois Commerce Comm’n*, 146 Ill. 2d 175, 195 (1991).

¶ 9 Starting in 2012, under the formula ratemaking structure, ComEd’s rates were set pursuant to a performance-based formula set forth under section 16-108.5(c) of the Public Utilities Act. 220 ILCS 5/16-108.5(b)(1), (c) (West 2022). However, in September 2021, the General Assembly enacted Public Act 102-662 (eff. Sept. 15, 2021), commonly<sup>1</sup> known as the Climate and Equitable Jobs Act, “to put the state on a path toward 100% clean energy, invest in training a diverse workforce for the jobs of the future, institute key ratepayer and residential customer protections, and prioritize meaningful ethics and transparency reforms.” *People ex rel. Raoul v. Illinois Commerce Comm’n*, 2025 IL App (2d) 230020, ¶ 3. The Climate and Equitable Jobs Act amended the Public Utilities Act to further these goals. *People ex rel. Raoul v. Illinois Commerce Comm’n*, 2025 IL App (4th) 230491, ¶ 9.

¶ 10 In particular, the Climate and Equitable Jobs Act contains two amendments to the Public Utilities Act that are relevant to this appeal. First, the Climate and Equitable Jobs Act requires electric utilities that serve more than 500,000 customers in Illinois to submit a multiyear integrated grid plan (grid plan) that details the utilities’ distribution planning process throughout a five-year period. 220 ILCS 5/16-105.17 (West 2022). Second, the Climate and Equitable Jobs Act terminates the use of the performance-based formula to set rates and allows electric utilities that serve more

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<sup>1</sup>The legislature did not officially name the public act, but agencies including the Environmental Protection Agency have used that name for it. See, e.g., Env’t Prot. Agency, *Climate and Equitable Jobs Act*, <https://epa.illinois.gov/topics/ceja.html> (last visited September 28, 2026) [<https://perma.cc/DDP3-8K3T>].

than 500,000 customers in Illinois to elect to file a general rate case under section 9-201 of the Public Utilities Act or a multiyear rate plan (rate plan) that “establish[es] the base rates the utilit[ies] shall charge for each delivery year of the 4-year period to be covered by the plan.” *Id.* §§ 16-108.5(h), 16-108.18(d)(1), (9)(A). The statute further provides that any rate plan that the Commission approves must do the following, in pertinent part:

“(A) Provide for the recovery of the utility’s forecasted rate base, based on the 4-year investment plan and the utility’s [grid plan]. The forecasted rate base must include the utility’s planned capital investments, with rates based on average annual plant investment, and investment-related costs, including income tax impacts, depreciation, and ratemaking adjustments and costs that are prudently incurred and reasonable in amount consistent with Commission practice and law. The process used to develop the forecasts must be iterative, rigorous, and lead to forecasts that reasonably represent the utility’s investments during the \*\*\* annual investment period and least cost, consistent with the provisions of Articles VIII and IX of this Act.

(B) The cost of equity shall be approved by the Commission consistent with Commission practice and law.

(C) The revenue requirement shall reflect the utility’s actual capital structure for the applicable calendar year. A year-end capital structure that includes a common equity ratio of up to and including 50% of the total capital structure shall be deemed prudent and reasonable. A higher common equity ratio must be specifically approved by the Commission.

(E) Provide for recovery of prudent and reasonable projected operating expenses, giving effect to ratemaking adjustments, consistent with Commission practice and law under Article IX of this Act. \*\*\*.” *Id.* § 16-108.18(d)(3).

¶ 11 *3. Procedural History*

¶ 12 On July 21, 2022, the Commission ordered ComEd to file a grid plan under docket No. 22-0486. On January 17, 2023, ComEd filed its grid plan and, under docket No. 23-0055, also filed a rate plan. The Commission ultimately consolidated the two cases on January 19, 2023.

¶ 13 In its rate plan, ComEd proposed a general increase in rates for electric services billed from January 2024 through December 2027. ComEd and Staff of the Commission (Staff) participated in the consolidated rate proceedings, and the Office of the Illinois Attorney General (Attorney General) filed an appearance. Additionally, petitions to intervene were filed by the Illinois Industrial Energy Consumers, the Citizens Utility Board, the Community Development Corporation of Pembroke and Hopkins Park, and People for Community Recovery (collectively, ICCP); IBEW Local 15; the Illinois Public Interest Group; and Walmart, Inc. (Walmart).

¶ 14 On August 22, 2023, the Commission conducted an evidentiary hearing on the consolidated rate proceedings, during which testimony and exhibits were entered into the record. Following the hearing, on December 14, 2023, the Commission issued its final order in which it rejected ComEd’s grid plan and approved the company’s rate plan with certain modifications (Final Order). ComEd later filed an application for rehearing, which the Commission granted in part and denied in part, and in response to which the Commission also issued an amendatory order in which it clarified aspects of the Final Order (Amendatory Order). IBEW Local 15 also filed an application for rehearing, which the Commission denied.

¶ 15 On January 10, 2024, ComEd filed a petition for administrative review of the Final Order, the Amendatory Order, and the Commission’s partial denial of the company’s application for rehearing. On that same date, IBEW Local 15 filed a separate petition for administrative review of the Final Order and the Commission’s denial of the union’s application for rehearing. The petitions initiated case Nos. 3-24-0022 and 3-24-0021, respectively. This court stayed both cases until the Commission concluded the rehearing sought by ComEd. On April 18, 2024, the Commission issued its final order on the rehearing (Order on Rehearing), and four days later, ComEd filed a petition for administrative review of that order and thereby initiated case No. 3-24-0284. This court subsequently stayed the proceedings in case No. 3-24-0284 after the Commission reopened the consolidated rate proceedings to consider the grid plan that ComEd had refiled.

¶ 16 On December 19, 2024, the Commission issued an order in which it approved ComEd’s refiled grid plan (Order on Refiling). On January 17, 2025, ComEd filed a petition for administrative review of the Order on Refiling, which initiated case No. 3-25-0027. Upon motion by the Commission, this court consolidated case No. 3-25-0027 with case Nos. 3-24-0021, 3-24-0022, and 3-24-0284. The Commission decided the issues involved in this appeal in the Final Order and did not in any way reconsider or modify its decisions on the issues in the Amendatory Order, Order on Rehearing, or Order on Refiling.

¶ 17 B. ComEd’s Proposed Rate Increase

¶ 18 1. *ComEd’s Return on Equity*

¶ 19 To acquire equity capital, a utility must offer an estimated return on equity that is sufficient to attract investors. *Southern California Edison Co. v. Federal Energy Regulatory Comm’n*, 717 F.3d 177, 179 (D.C. Cir. 2013). A utility’s return on equity is the annual amount that its shareholders are permitted to earn from the equity that they have invested in the company. *Ameren*

*Illinois Co.*, Ill. Comm. Comm’n No. 13-0501, at 4 (Order-Interim Nov. 26, 2013). “A utility’s return should be reasonably sufficient to permit confidence in the utility’s financial soundness and, with economical and efficient management, to support the utility’s credit and raise funds necessary to properly discharge the utility’s public duties.” *Citizens Utility Board v. Illinois Commerce Comm’n*, 2018 IL App (1st) 170527, ¶ 45 (citing *Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679, 693 (1923)). “Additionally, ‘the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.’ ” *Id.* (citing *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)).

¶ 20 In setting a utility’s return on equity, the Commission must evaluate expert use of financial models that quantify the likely cost of attracting capital investment during the periods when the rates will be in effect. *People ex rel. Madigan v. Illinois Commerce Comm’n*, 2011 IL App (1st) 100654, ¶ 74. When a utility is not a publicly traded company, experts apply financial models to a proxy group of similar entities that are publicly traded. See *id.* (“Because the [natural gas utilities are] not publicly traded, the financial models were applied to a proxy group of publicly traded natural gas utilities with risk profiles identified to be similar to those of [the utilities].”). ComEd is not publicly traded. Consequently, each of the relevant experts in the consolidated rate proceedings estimated ComEd’s proper return on equity by applying primarily two different financial models to entities similar to ComEd. These financial models were (1) the capital asset pricing model (CAPM) and (2) the discounted cash flow (DCF) model.

¶ 21 i. *General Principles Regarding ComEd's Return on Equity*

¶ 22 a. *The CAPM*

¶ 23 The CAPM is based on the assumption that the cost of equity in a company is proportional to the amount of systemic risk of failure associated with that company. *Zero Zone, Inc. v. United States Department of Energy*, 832 F.3d 654, 679 (7th Cir. 2016). The CAPM is also based on an understanding that different companies have different levels of investment risk and, thus, should produce different returns to their investors. *In re Pullman Construction Industries Inc.*, 107 B.R. 909, 922 (Bankr. N.D. Ill. 1989). Accordingly, experts use the CAPM to measure a company's risk relative to the entire stock market and to, in turn, estimate the company's required rate of return on equity given its level of risk. *Id.* at 921; *In re Doctors Hospital of Hyde Park, Inc.*, 507 B.R. 558, 653 (Bankr. N.D. Ill. 2013). More specifically, experts use the CAPM to measure the risk associated with a specific company relative to the risk of a portfolio of companies and to price or value that company relative to the return on the portfolio. *In re Pullman*, 107 B.R. at 922-23. A company's risk relates to the variability of its stock price. See *id.* at 921 ("Risk is measured as the variability of a stock price relative to a market portfolio.").

¶ 24 Under the CAPM, a company's required rate of return is a function of three parameters: "(1) a risk-free rate of return; (2) the premium that average-risk stocks must pay over the risk-free rate to entice investors; and (3) the riskiness of the utility's equity in comparison to average-risk stocks." *Ameren Illinois Co. v. Illinois Commerce Comm'n*, 2015 IL App (4th) 140173, ¶ 9. Experts relate these three parameters to one another via the CAPM formula, which is as follows:

$$\text{"Cost of equity} = R(f) + (\text{Beta} \times [R(m) - R(f)])$$

Where:  $R(f)$  = risk-free rate of return

Beta = beta coefficient of the [company's] stock, which measures the volatility of the [company's] stock in comparison to the volatility of the market as a whole

$R(m)$  = expected rate of return on a market portfolio comprised of a large number of diversified stocks, *i.e.*, the expected rate of return on average-risk stocks.” *Id.*

Expressed in words, the CAPM formula means that a company's cost of equity (*i.e.*, required rate of return) “is equal to the sum of the risk-free rate of return plus a risk premium (*i.e.*, a return above the risk[-]free rate).”(Internal quotation marks omitted.) *Id.* As this court has previously explained:

“The formula assumes that if investing in the [company] would yield a rate of return no greater than that of treasury securities, which are the prototypical risk-free investment, no sensible person would invest in the [company]. The [company] would be riskier than treasury securities, and any rational investor would want compensation, a premium, for the additional risk. Therefore, to entice investors, the [company] has to offer a risk premium, some amount above the risk-free rate. In the formula above, the symbols to the right of the plus sign determine that risk premium.” *Id.* ¶ 10.

¶ 25

#### b. *The DCF Model*

¶ 26

The DCF model is based on the classical valuation theory that the value of an asset should be determined by its ability to generate future cash flows. *Tennessee Gas Pipeline Co. v. Federal Energy Regulatory Comm'n*, 926 F.2d 1206, 1208 n.2 (D.C. Cir. 1991). Accordingly, under the DCF model, the fundamental value of a given asset “is the discounted sum of all future income flows that will be received by the owner of the asset.” (Internal quotation marks omitted.) *Id.* When applying the DCF model to calculate a company's rate of return, experts examine and relate the following three parameters: (1) the current annual dividend amount, (2) the current market price of the stock, and (3) the growth rate of the stock, which is defined as “the expected increase in the

dividend [amount], expressed in percentage form.” *Public Service Comm’n of the State of New York v. Federal Energy Regulatory Comm’n*, 813 F.2d 448, 463 (D.C. Cir. 1987); *Arkansas Louisiana Gas Co. v. Federal Energy Regulatory Comm’n*, 654 F.2d 435, 439 n.9 (5th Cir. 1981).

¶ 27 *ii. Return on Equity Proposed by ComEd*

¶ 28 ComEd proposed a return on equity of 10.5% in 2024, with an increase of 5 basis points per year starting in 2025. In support of this proposal, Frank Graves, a principal at a consultancy, testified that he had applied multiple financial models, including the CAPM, the empirical CAPM (ECAPM), and the risk premium model (RPM), to estimate ComEd’s return on equity. Graves testified that he had also applied the constant growth DCF model, which, he explained, was a form of the DCF model that “assumes a single long-term growth rate in perpetuity.” Graves explained that, because ComEd was not publicly traded, he had applied each financial model to a proxy group of 17 entities with operating and risk characteristics that were similar to ComEd.

¶ 29 Additionally, Graves testified that his use of the DCF model, the CAPM, the ECAPM, and the RPM had yielded “a wide range of results, within which there [was] a band of overlapping agreement from about [10% to 11% return on equity], which [he] deemed to be the relevant range within which ComEd’s allowed rate should [have fallen].” Based on the range of results that he had obtained, Graves recommended that the Commission set ComEd’s return on equity at “the midpoint range” of 10.5% in 2024, with an increase of 5 basis points per year starting in 2025.

¶ 30 *iii. Return on Equity Proposed by Staff*

¶ 31 Staff proposed a return on equity of 8.91% or, alternatively, 7.05% or 10.05%. Relevant to Staff’s proposals, Michael McNally, a senior financial analyst with the Commission, testified that, in assessing the proper method to use to calculate ComEd’s return on equity, he had made certain observations, which he articulated as follows:

“The [rate plan] shares some characteristics of a rider, most notably, the annual reconciliation will provide more timely and certain cost recovery. In other words, the true-up nearly guarantees that ComEd will recover its costs. Like cost recovery pursuant to a rider, the [rate plan] reconciliation process effectively shifts risk from the [c]ompany to ratepayers and, consequently, reduces risk to investors and lowers the expected returns.”

McNally explained that, based on his observations, he had determined that ComEd’s risk would be lower under its rate plan than under formula ratemaking and that, consequently, “the analyses and comparisons Staff usually employ[ed] to assist in determining [a return on equity did] not provide [a return on equity] applicable to ComEd as it enter[ed] the four-year [rate plan] period.” McNally stated that, nevertheless, it was “clear \*\*\* that the statutorily established [performance-based formula], under which ComEd [had] been operating for over a decade, \*\*\* [was] sufficient to support the [c]ompany’s financial health and minimize the cost of capital.” McNally emphasized that it was also important that the rate plan was an “entirely new” ratemaking structure for ComEd and that the effect of setting ComEd’s rate of return at an amount lower than those approved in the past was unknown. McNally explained that, based on these points, he had concluded that the performance-based formula should be used to calculate ComEd’s return on equity and recommended a return on equity of 8.91%, to be updated annually throughout the rate plan process.

¶ 32 McNally further testified that, in the alternative and “[i]f the Commission were to consider the [rate plan] as essentially a rider \*\*\*[, then] the [weighted average cost of capital] in [ComEd’s] most recent [formula ratemaking] case could be adjusted to reflect the reduced risk under the [rate plan].” Regarding the precise adjustment that the Commission could make to ComEd’s return on equity, McNally stated the following:



DCF model and the CAPM to calculate ComEd's return on equity. Regarding his use of the DCF model, Gorman explained that his "DCF estimates include[d] an elevated DCF return using the constant growth DCF analysis, supplemented by DCF returns in the sustainable growth and multi-stage growth DCF models, which reflect[ed] a reversion to more reasonable estimates of long-term sustainable growth." Gorman stated that the DCF model had yielded a 9.2% return on equity.

¶ 36 As to his use of the CAPM, Gorman further explained that, prior to the COVID-19 pandemic, the beta inputs for the proxy group that he had used had generally ranged between 0.65 and 0.75 but that, after the pandemic, the betas for the group had become "elevated." Additionally, Gorman explained that the current beta for the proxy group was 0.89, which was "abnormally high," and that, conversely, the long-term historical average beta of the proxy group reasonably aligned with that of the entire industry. Gorman stated that, consequently, he endorsed the use of the long-term historical average beta, which was 0.77. Gorman stated that, when he used a beta input of 0.77, the CAPM had yielded a 9.6% return on equity. Gorman further stated that, based on his analyses using the DCF model and the CAPM, he recommended that "ComEd's return on equity be in the range of 9.20% and 9.60%, with a point estimate of 9.40%."

¶ 37 *v. Return on Equity Proposed by Others*

¶ 38 The Illinois Public Interest Research Group proposed a return on equity of 6.5%, which the Attorney General endorsed. Walmart proposed a return on equity of "no higher than 9.14[%]," without an annual increase throughout the rate plan.

¶ 39 *vi. The Commission's Findings and Decision*

¶ 40 In its Final Order, the Commission first noted that it had been "presented with a wide range of proposed [returns on equity] with a low end proposed by [the Illinois Public Interest Research

Group] at 6.5%, which [was] also supported by the [Attorney General], to a high end proposed by [ComEd] at 10.5% with annual increases.” The Commission also noted that, “in the middle,” were

“(1) Staff’s primary proposal at 8.91% (adjusted annually based on a formula rate methodology); (2) Staff’s alternate proposal of 7.05% (the midpoint of Staff’s 8.91% proposal and the 5.18% yield on 30-year high quality corporate bonds); (3) Staff’s 10.05% estimate (based on traditional [return on equity] analyses); (4) Walmart at 9.14%; and (5) ICCP at 9.4%.”

The Commission stated that, in assessing the various proposals and setting ComEd’s proper return on equity, it had considered the principles set forth in *Hope*, 320 U.S. 591, and *Bluefield*, 262 U.S. 679.

¶ 41 Relevant to ComEd’s proposal, the Commission noted that a credit agency had indicated that the Climate and Equitable Jobs Act was favorable to ComEd in that the statute would likely enable ComEd to operate under a rate plan with forward test periods, which would, in turn, enhance rate predictability and reduce regulatory lag. The Commission also noted that, whereas under formula ratemaking, it could only lower ComEd’s return on equity for the company’s failure to achieve certain performance metrics, under the rate plan, it could raise or lower ComEd’s return on equity based on the company’s performance metrics. The Commission found that, accordingly, ComEd’s risk under the rate plan would be lower than under the formula and traditional ratemaking structures and, “[i]ndeed, \*\*\* most closely akin to the risk that ComEd face[d] under its various riders.” Based on this finding, the Commission rejected ComEd’s proposed return on equity and declined to otherwise raise the company’s return on equity to offset any alleged increase in risk.

¶ 42 As to the remaining proposals, the Commission noted that section 16-108.18 of the Public Utilities Act required it to determine a cost of equity that was consistent with “Commission

practice and law.” The Commission further noted that there was “no clear definition of what constitute[d] ‘Commission practice’ ” and that, although it “ha[d] generally adopted the use of sound financial market-based models and market data, the details of its cost of equity determination practice [had] reasonably varied and evolved over time based on relevant factors presented in the record of each case.” Additionally, the Commission articulated that it had “broad discretion to determine just and reasonable rates, and by extension, the methods by which to determine the rate of return reflected in such rates.” The Commission further articulated that, accordingly, it had the discretion to “use or consider, in whole or in part, the cost of equity models and resulting estimates presented in the record \*\*\* and to consider the appropriate inputs to apply to other cost of equity models presented in the record to determine a fair and reasonable rate of return.” The Commission then stated that, in light of the evidence before it, it would rely upon the financial models that it had generally adopted in the past, “albeit with adjustments.”

¶ 43 In applying the standards that it had articulated, the Commission rejected Staff’s proposed use of the performance rate formula to calculate ComEd’s return on equity because the formula differed from the rate plan, which section 16-108.18 of the Public Utilities Act required the Commission to use. The Commission also rejected the Attorney General’s and Walmart’s proposals because they were not based on traditional financial analyses. Additionally, the Commission rejected the Illinois Public Interest Research Group’s proposed return on equity because it was “unreasonably low.”

¶ 44 As to the remaining proposals and the financial models employed therein, the Commission rejected ComEd and ICCP’s reliance on the constant growth DCF model on the basis that the model had included inputs that the Commission had “consistently rejected” in the past, such as outdated historical stock prices. The Commission further noted that ICCP had incorporated

sustainable growth rates into its constant growth DCF model even though the Commission had also “consistently rejected” such rates in the past and ICCP had failed to show how the rates could accurately reflect investors’ growth expectations or how the rates were “superior” to the analyst earning growth rate forecasts upon which the Commission had traditionally relied. Additionally, the Commission found that the growth rate that Staff had used in the constant growth DCF model was unsustainable into perpetuity because the rate was “nearly 40% higher than the forecasted long-term growth of the economy.” The Commission further found that this “measurement error” could “not be sufficiently addressed by averaging Staff’s constant growth DCF estimate with its NCDCF” and that, therefore, as it had similarly done in the past, it declined to rely on the constant growth DCF model. The Commission stated that, instead, it adopted the NCDCF model, as well as the 8.48% return on equity that Staff had proposed based on that model.

¶ 45           Next, the Commission rejected the use of the RPM, as it had similarly done “in many prior rate decisions.” Regarding the CAPM, the Commission noted that it “regularly relie[d] on current, observable market interest rates rather than forecasted interest rates” and, thus, adopted Staff’s use of the then-current United States Treasury bill rate as the risk-free rate input and rejected ComEd and ICCP’s reliance upon forecasted United States Treasury bond yields. As to the beta input, the Commission explained that it had historically relied upon an average of weekly and monthly beta estimates to calculate the beta that it would apply “because the use of multiple beta sources reduces measurement error from any individual estimate.” However, the Commission observed the following regarding the evidence presented during the consolidated proceedings:

“[T]he record shows that the weekly beta estimates [used by ComEd, Staff, and ICCP] are inordinately high compared to the two monthly beta estimates from Zacks and Staff’s regression beta. The Commission further observes that beta is a measure of risk and Staff

demonstrated that the [p]roxy [g]roup has a higher overall risk compared to ComEd. Moreover, as earlier noted in this [o]rder, a review of the evidence and the arguments of the parties show that the [c]ompany's risk under the [rate plan] will be lower than under both the [formula] and traditional ratemaking."

Based on its observations, the Commission found that it was "more reasonable to use the average monthly beta estimates published by Zacks and Staff's regression beta (*i.e.*, 0.705) for determining ComEd's CAPM cost of equity estimate," which, the Commission explained, would "address the increased measurement error that would arise from the use of inordinately high weekly betas and \*\*\* recognize the lower risk of ComEd relative to the [p]roxy [g]roup." Finally, relevant to the risk premium input, the Commission rejected Staff's risk premium estimate because it was based on outlier company growth rates that were "either too high or too low to be sustainable" and instead applied the growth rate criteria of the Federal Energy Regulatory Commission (FERC) to revise Staff's risk premium input to 11.48%. The Commission then applied the CAPM and the relevant inputs that it had adopted to calculate a 9.33% return on equity.

¶ 46 Following its preliminary findings, the Commission averaged "Staff's NCD CF estimate of 8.48% and the revised CAPM estimate of 9.33%" and authorized the resulting 8.905% as ComEd's return on equity for each of the four test years of the rate plan. In making this determination, the Commission affirmed that "[t]he market-based financial models and adjustments underlying [the return on equity were] consistent with Commission practice and law." The Commission then concluded by offering the following justification for its decision:

"The Commission concurs with Staff's observation that [the rate plan] affords ComEd less risk than traditional ratemaking or the [formula ratemaking]. Under [a rate plan], ComEd will have the benefits of multiple future test years that reduce regulatory lag

and annual revenue requirement reconciliations that provide greater certainty of its cash flows, among others. The Commission observes that the last authorized [return on equity] for ComEd under formula rates \*\*\* was 7.85% for the 2023 filing year. Additionally, the authorized [returns on equity] for the filing years 2017 through 2022 under formula rates were 8.64%, 8.40%, 8.69%, 8.91%, 8.38%, and 7.36%, respectively. The Commission further observes that credit rating agencies upgraded ComEd's credit rating multiple times while it was under formula rates. In authorizing a [return on equity] of 8.905%, which lies in the lower range of [return on equity] proposals put forth in this case, the Commission recognizes the lower risk that ComEd bears under a [rate plan] compared to traditional ratemaking in terms of more risk that is transferred from the [c]ompany to its customers."

¶ 47

## *2. ComEd's Alleged Pension Asset*

¶ 48

The evidence that the parties presented to the Commission showed that, under generally accepted accounting principles, a pension asset is the amount by which a company's cumulative pension contributions exceed its cumulative net periodic pension costs. Generally, the cost of a pension is "the expected change in the pension benefit obligation \*\*\* funded status (*i.e.*, the difference between pension plan assets and the [pension benefit obligation]) over the next year." The cost of a pension is also affected by "any existing underfunding over a relatively long period of time."

¶ 49

The funding of a pension is governed by federal and state laws that mandate the minimum contribution that a pension plan sponsor must make to a pension plan. In general, this required minimum contribution represents the amount by which a pension plan's funding liability is expected to increase "in the upcoming year, plus an amount to 'make up' any existing

underfunding over a 7-year period.” Any funds that a pension plan sponsor pays in excess of the minimum contribution constitute a prepaid pension asset.

¶ 50 ComEd first reported a pension asset on its audited financial statement in 2003 and was involved in 2005, 2007, and 2010 rate cases, all while traditional ratemaking was in effect. ComEd was also involved in numerous rate cases throughout the subsequent period of formula ratemaking that occurred from 2012 through 2023, during which time section 16-108.5(c)(4)(D) of the Public Utilities Act mandated that a utility receive a return on its pension asset. 220 ILCS 5/16-108.5(c)(4)(D) (West 2012). ComEd now asserts that, starting in 2005, the Commission allowed the company a return on its recognized pension asset in each of its rate cases that occurred during both the traditional and formula ratemaking periods. Conversely, Staff asserts that the Commission did not, in fact, allow ComEd a return on a recognized pension asset in the company’s 2005, 2007, and 2010 rate cases.

¶ 51 This appeal arises from ComEd’s first rate case that follows the enactment of the Climate and Equitable Jobs Act. As we earlier articulated, the Climate and Equitable Jobs Act required the Commission in these consolidated rate proceedings to revert to applying traditional, rather than formula, ratemaking principles in determining whether to allow ComEd a return on its alleged pension asset. See 220 ILCS 5/16-108.18(d)(3)(E) (West 2022) (requiring a rate plan to “[p]rovide for recovery of prudent and reasonable projected operating expenses, giving effect to ratemaking adjustments, consistent with Commission practice and law under Article IX of this Act”).

¶ 52 i. *ComEd’s Position Regarding Its Alleged Pension Asset*

¶ 53 In its rate plan, ComEd requested a return on the actual balance of its alleged prepaid pension asset for each year of the plan, as an operating expense and pursuant to section 16-108.18(d)(3)(E) of the Public Utilities Act. In the alternative, ComEd instead requested a return

on the balance that it asserted that the Commission had previously found, as of ComEd's 2010 rate case, to constitute a shareholder-funded pension asset, "jurisdictionalized and adjusted for [accumulated deferred income taxes (ADIT)] and additions made during the formula rate period."

¶ 54 In support of ComEd's position, Lisa Graham, senior vice president, chief financial officer, and treasurer with ComEd, testified that the balance of ComEd's pension asset was \$1,219,271,886 as of the end of the third financial quarter of 2022. Graham explained that there had been "a long history of ComEd recovering a return on [its] pension asset" and that the balance of the company's then-current pension asset was the sum of smaller pension asset balances that the Commission had approved prior to formula ratemaking, "plus the effect of the additional shareholder-funded contributions made since that date." According to Graham, the two smaller pension asset balances that the Commission had previously approved were one balance that the Commission had recognized as resulting from an \$803 million contribution that Exelon had made to ComEd's pension plan in 2005 and another balance that the Commission had recognized as resulting from a separate \$104.5 million contribution made in 2009. Graham summarized ComEd's alleged history of receiving returns on its pension asset as follows:

"ComEd was permitted to earn a return related to its [p]ension [a]sset in its 2005, 2007, and 2010 rate cases, and the formula rate statute provided for a debt return on [p]ension [a]sset. Under formula ratemaking, ComEd received a return on its pension asset equal to its long-term debt cost, as provided for by the statute. \*\*\*. Prior to formula ratemaking, the Commission granted ComEd some form of return on its pension asset that amounted to \$25.3 million. In Docket No. 07-0566, the Commission allowed a return on ComEd's pension asset that amounted to \$25.1 million. In Docket No. 10-0467, the Commission allowed a return that amounted to approximately \$25 million \*\*\*. Since the earliest general

rate case after ComEd first reported a pension asset \*\*\* in 2003, the Commission has consistently approved a level of return on ComEd's reported pension asset, both before and after a debt return was specifically provided for in the formula rate statute."

¶ 55 As to the source of the funds in ComEd's alleged pension asset, Graham testified that ComEd's pension contributions were "funded through cash generated through ComEd's internal operations that would otherwise be passed to investors or reinvested in the business." Graham also explained that certain other phenomena had ensured that ComEd's pension asset was funded by shareholders and not by ratepayers. More specifically, Graham explained:

"In the time since the Commission last substantively addressed ComEd's [p]ension [a]sset in [d]ocket No. 10-0467, ComEd's recovery of pension expense was reconciled annually, and this process ensured that ratepayers did not pay any additional funds that would represent an overpayment and contribute to the creation of the [p]ension [a]sset. Likewise, the formula rate structure has ensured that funds from which excess contributions were made do not constitute rate recovery in excess of lawfully approved costs of service that could be considered 'ratepayer funds.' Unlike in the case of utilities whose rate recoveries are not reconciled to their actual prudent and reasonable cost of utility service including costs of capital, these contributions in excess of pension cost were necessarily made from funds that ComEd collected to cover approved costs and that, had the contribution not been made, would have been return on or of investment, *i.e.* shareholder funds."

¶ 56 Additionally, Graham testified that ComEd's pension asset would lower the pension cost throughout the years of the rate plan, which, in turn, would benefit ComEd's customers "in the form of lower pension expense included in the rates," as well as "the stability that results from having a levelized contribution strategy that helps minimize volatility of future period required



the \$803 million contribution would diminish with the passage of time” and denied ComEd’s overarching request to include its alleged pension asset in its rate base. Accordingly, Tolsdorf recommended that the Commission in these consolidated rate proceedings deny ComEd “any” return on its alleged pension asset.

¶ 60 In rebuttal, Joshua Levin, senior vice president, chief financial officer, and treasurer with ComEd, testified that, contrary to Tolsdorf’s assertion, ComEd’s regulatory debt did not diminish over time because the debt did not amortize but, instead, consisted of “ ‘straight coupon’ ” or “ ‘bullet’ ” bonds. Levin explained that ComEd paid the interest on these securities over time and that the principal “remain[ed] outstanding in its entirety until a maturity date, at which point it [was] either paid off or refinanced.” Levin further explained that, even if ComEd were to have paid off the principal of its regulatory debt over time or upon maturity, neither the pension asset nor the regulatory debt would have diminished. He elaborated on this point as follows:

“If a borrower borrows money and pays it back, that debt has diminished. But if a borrower finances something with that money and pays it back, the debt diminishes and the borrower still retains the asset that was financed. After a borrower has completed paying off their mortgage the borrower is not left with nothing—they are left with an asset. And, as importantly, that asset remains funded by the former borrower, and the cost of that asset has not disappeared.”

Levin stated that, “if Exelon [were to] pay off [ComEd’s regulatory debt,] ComEd [would] not lose the \$803 million that was contributed to the pension trust, and customers [would] not lose the continued benefits resulting from that asset.”

¶ 61

### iii. *The Commission’s Findings and Decision*

¶ 62 At the outset of its analysis in its Final Order, the Commission stated that it must review a request for a return on a pension asset pursuant to traditional ratemaking principles, under which “the Commission will not approve a return on pension asset unless the utility can prove the pension asset was funded by shareholder, not ratepayer, funds.” Next, the Commission noted that ComEd had “misconstrue[d]” its findings on similar issues in *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 05-0597, and *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 10-0467. The Commission then clarified the findings by stating that, “[i]n Docket No. 05-0597[, it] allowed a debt return on a one-time contribution based on a hypothetical debt” and that “[t]his was a diminishing debt, not a permanent source of funding, as [it] later affirmed in Docket No. 10-0467.”

¶ 63 Additionally, the Commission emphasized that it did “not sanction the prefunding of a utility pension plan as a mechanism to increase rate bases.” The Commission found that, therefore, ComEd’s projected excess contributions for each of the years of the rate plan were neither prudent nor reasonable. The Commission also noted that, “[p]ursuant to the methodology [that it] approved in Docket No. 10-0467,” Staff had calculated that ComEd’s regulatory debt would fully diminish before rates under ComEd’s rate plan would go into effect, which vitiated the need for a further return. Furthermore, the Commission noted that, although ComEd had made a “broad assertion” that shareholder funds had comprised the contributions made to its alleged pension asset, the company had failed to identify a “specific source” of the funds. Consequently, the Commission concluded that “any further recovery of the one-time contribution from 2005 [was] not reasonable” and denied ComEd a return on its alleged pension asset.

¶ 64 *3. ComEd’s Capital Structure*

¶ 65 A public utility may charge rates that allow it to earn a return on the amount of its invested capital. *Madigan*, 2011 IL App (1st) 100654, ¶ 76 (citing *Citizens Utilities Co. of Illinois v. Illinois*

*Commerce Comm’n*, 124 Ill. 2d 195, 200-01 (1988)). The amount of a utility’s return is dependent on its capital structure. See *Citizens Utility Board v. Illinois Commerce Comm’n*, 276 Ill. App. 3d 730, 743-46 (1995) (explaining the costs associated with different forms of capital and how a utility’s capital structure impacts the amount that it recovers in revenue). A utility’s capital structure typically consists of short-term debt, long-term debt, and equity. See *Ameren Illinois Co. v. Illinois Commerce Comm’n*, 2013 IL App (4th) 121008, ¶ 22. “Generally, equity is a more expensive form of capital than debt.” *Illinois Bell Telephone Co. v. Illinois Commerce Comm’n*, 283 Ill. App. 3d 188, 204 (1996). “Therefore, the more equity in a utility’s capital structure, the higher the [rate of return] must be to cover the cost of capital.” *Id.*

¶ 66

i. *Capital Structure Proposed by ComEd*

¶ 67

ComEd proposed that its capital structure contain 50.58% common equity in 2024, 50.81% in 2025, 51.03% in 2026, and 51.19% in 2027. Relatedly, Graham testified that ComEd’s capital structure was designed to ensure that the company was able “to provide adequate, efficient, and reliable service and \*\*\* to access capital consistently and at a reasonable cost.” Graham explained that, in particular, ComEd had a practice of creating plans and forecasts regarding the company’s projected capital structure that ensured that the structure “maintain[ed] strong, investment-grade credit rating agency target metrics” and “ready and reasonable-cost access to the credit markets, in which [ComEd] compete[d] for capital with other utilities and non-utility corporations.” Graham further explained that, in creating these plans and forecasts, ComEd would also consider how its capital structure was viewed by regulatory entities and reflected in rates. Graham stated that the projected capital structures that ComEd had proposed under the rate plan were “in line” with those of other similarly situated entities and that both ComEd’s proposed capital structures and the



“[Formula ratemaking] has had a positive impact on ComEd’s credit ratings. This is evidenced by the fact that ComEd’s credit ratings from Moody’s Investors Service (“Moody’s”) and Standard & Poor’s (“S&P”) have been upgraded several times since the implementation of formula rates. \*\*\*. In summary, ComEd’s credit rating from Moody’s improved three notches since formula rates began, while ComEd’s S&P rating improved two notches \*\*\*.

\* \* \*

Both Moody’s and S&P view [formula ratemaking] positively, as shown by the credit upgrades that have occurred. \*\*\*\*. In fact, Moody’s stated that ComEd’s rating could be upgraded even farther ‘if [formula ratemaking] is established permanently.’ \*\*\*. Similarly, in upgrading its assessment of ComEd’s business risk profile from strong to excellent \*\*\*, S&P stated, ‘[ComEd] has benefitted from a formulaic approach to rate making that has helped the company to improve the level of earned returns. The use of formula rates to calculate rate adjustments diminishes uncertain[ty] around investment recovery.’

\* \* \*

Both Moody’s and S&P agree that the [rate plan] will further enhance ComEd’s credit quality. Specifically, Moody’s states, ‘The multi-year plan process, similar to the formulaic rate regulation, should still produce transparent and predictable cash flow, but likely with less regulatory lag and improved profitability.’ \*\*\*\*. Similarly, S&P states, ‘We anticipate that ComEd will operate under a multi-year rate plan with forward test periods which would enhance rate predictability and regulatory lag.’ ”

¶ 72 As to the relationship between Exelon and ComEd, McNally testified that S&P had viewed the two companies as having similar and “ ‘[e]xcellent’ ” levels of operating risk. McNally further explained that, “[a]ll else equal, companies with similar operating risk levels can maintain a given credit rating with a similar percentage of equity on their balance sheets” but that, nevertheless, in its rate plan, ComEd was seeking to increase its percentage of equity despite the fact that its “three-year average common equity ratio \*\*\* was already much higher than [Exelon’s].” McNally stated that the relationship between Exelon and ComEd was a “very common” one, on which he elaborated as follows:

“[W]hen a larger corporation owns a utility, the corporation is generally not motivated to establish the optimal, lowest-cost capital structure for the utility, but to instead use a capital structure with a greater percentage of equity than is optimal, thereby allowing the parent company to realize a greater return. In other words, the capital structure of the regulated utility can be manipulated to include excessive equity to inflate the rate of return. \*\*\*. If ComEd’s capital structure carries an excessive amount of equity, it benefits Exelon, its parent and sole shareholder, to the detriment of ComEd ratepayers, who would pay for the excessive amount of equity.”

¶ 73 According to McNally, since 2020, Exelon has provided ComEd with \$2 billion in cash infusions, which has increased ComEd’s common equity balance. McNally stated that, although there was nothing in the governing statute that prohibited the cash infusions, ComEd could only charge rates that reflected a common equity balance that was “reasonable” and there was “no threat to the [c]ompany’s financial condition or credit position to justify ComEd’s increased equity ratios and the corresponding higher costs to ratepayers.”

¶ 74 *iii. The Commission’s Findings and Decision*

¶ 75 In its Final Order, the Commission articulated that, pursuant to section 16-108.18(d)(3)(C) of the Public Utilities Act, a utility’s actual capital structure that is 50% or less is “deemed just and reasonable,” whereas “[a] common equity ratio above 50.00% must be specifically approved by the Commission.” The Commission further articulated that, in the consolidated rate proceedings, the burden was upon ComEd to prove that the common equity ratio that it sought, which exceeded 50%, was reasonable.

¶ 76 Next, the Commission noted from the available evidence that, since 2012, ComEd’s actual common equity ratio had been 46.57%, that the proxy group upon which McNally had relied had a common equity ratio of only 44.17% from 2020 through 2022, and that ComEd’s risk would be less than or remain the same as it was under formula ratemaking. The Commission also credited McNally’s testimony that, based on credit rating agencies’ assessment, a 50% common equity ratio would not lessen ComEd’s financial strength. Further, the Commission found that ComEd’s rate plan would reduce the company’s risk and that ComEd’s affiliation with Exelon had caused the company to have an elevated common equity ratio, to the benefit of Exelon and the detriment of ratepayers. Consequently, the Commission rejected ComEd’s proposed capital structure and imputed a capital structure that contained 50% common equity for the duration of the rate plan.

¶ 77 II. ANALYSIS

¶ 78 A. Standards of Review

¶ 79 Section 9-101 of the Public Utilities Act provides that “[a]ll rates or other charges made, demanded or received \*\*\* shall be just and reasonable.” 220 ILCS 5/9-101 (West 2022). Section 9-201(c) of the Public Utilities Act further provides that, “[i]f the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, \*\*\* [then] the Commission

shall establish the rates or other charges \*\*\* which it shall find to be just and reasonable.” *Id.* § 9-201(c).

¶ 80 “The Commission is not merely an arbitrator between the utility and parties opposing a rate change[;] it is an investigator and regulator of utilities[,], responsible for the setting of just rates for all affected by the rates.” (Internal quotation marks omitted.) *Citizens Utility Board*, 2018 IL App (1st) 170527, ¶ 25. Therefore, the Commission must balance the interests of the utility and the utility’s investors and customers when setting rates. See *Business & Professional People*, 146 Ill. 2d at 208 (“The Commission is charged by the legislature with setting rates which are ‘*just and reasonable*’ not only to the ratepayers but to the utility and its stockholders.” (Emphasis in original.)). More specifically,

“[t]he Commission has the responsibility of balancing the right of the utility’s investors to a fair rate of return against the right of the public that it pay no more than the reasonable value of the utility’s services. While the rates allowed can never be so low as to be confiscatory, within this outer boundary, if the rightful expectations of the investor are not compatible with those of the consuming public, it is the latter which must prevail.” *Camelot Utilities, Inc. v. Illinois Commerce Comm’n*, 51 Ill. App. 3d 5, 10 (1977).

Moreover, the Commission is “not bound to the use of any single formula or combination of formulae” when exercising its power to set rates, which, “of necessity, requires the use of pragmatic adjustments which may be called for by the particular circumstances.” *Iowa-Illinois Gas & Electric Co. v. Illinois Commerce Comm’n*, 19 Ill. 2d 436, 442 (1960); *Hope*, 320 U.S. at 602.

¶ 81 The utility bears the burden of proving that its proposed rates are just and reasonable. 220 ILCS 5/9-201(c) (West 2022). To meet this burden, “the utility must show that its operating costs are reasonable, its rate base is the reasonable value of its property used for serving the public, and

its rate of return on capital is the reasonable cost of the capital needed to provide the services.” *Citizens Utility Board*, 276 Ill. App. 3d at 746.

¶ 82 The Commission “must allow the utility to recover costs prudently and reasonably incurred.” *Citizens Utility Board*, 166 Ill. 2d at 121 (citing 220 ILCS 5/1-102(a)(iv) (West 1992)). “ ‘Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made.’ ” *Illinois Power Co. v. Illinois Commerce Comm’n*, 339 Ill. App. 3d 425, 428 (2003) (quoting *Illinois Power Co. v. Illinois Commerce Comm’n*, 245 Ill. App. 3d 367, 371 (1993)). “[T]he prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being ‘imprudent.’ ” *Id.* at 435. “[T]he Commission should disallow recovery of any cost of capital in excess of that reasonably necessary for the provision of services.” *Citizens Utility Board*, 276 Ill. App. 3d at 746.

¶ 83 Judicial review of final orders issued by the Commission “involves the exercise of special statutory jurisdiction and is constrained by the provisions of the Public Utilities Act.” *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 2019 IL App (2d) 180504, ¶ 51. Section 10-201(d) of the Public Utilities Act provides that the “rules, regulations, orders or decisions of the Commission shall be held to be prima facie reasonable” and that the burden of proof upon all issues raised by an appeal from an order issued by the Commission is upon the party appealing from that order. 220 ILCS 5/10-201(d) (West 2022). A reviewing court is required to give substantial deference to the orders of the Commission because of the Commission’s expertise and experience in the area of setting rates. *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 398 Ill. App. 3d 510, 514 (2009). Consequently, a Commission regulation may be set aside “only

if it is clearly arbitrary, capricious, or unreasonable.” *Central Illinois Public Service Co. v. Illinois Commerce Comm’n*, 268 Ill. App. 3d 471, 476-77 (1994).

¶ 84 When reviewing a Commission order, courts are limited to determining the following four issues: “(1) whether the Commission acted within the scope of its authority, (2) whether the Commission made adequate findings in support of its decision, (3) whether the Commission’s decision was supported by substantial evidence in the record, and (4) whether constitutional rights have been violated.” *Id.* at 476. “Substantial evidence” is “evidence that a reasonable mind might accept as adequate to support a conclusion” and is “more than a scintilla of evidence but \*\*\* less than a preponderance of the evidence.” (Internal quotation marks omitted.) *Save Our Illinois Land v. Illinois Commerce Comm’n*, 2022 IL App (4th) 210008, ¶ 37. If reasonable minds could differ as to where the weight of the evidence lies, then a reviewing court should defer to the Commission’s finding of fact. *Id.* “The substantial-evidence standard is the same as the manifest-weight standard.” *Id.*

¶ 85 “The findings and conclusions of the Commission on questions of fact shall be held prima facie to be true and as found by the Commission,” except when a finding or conclusion is not supported by substantial evidence or, otherwise stated, is against the manifest weight of the evidence. 220 ILCS 5/10-201(d) (West 2022); see *Raoul*, 2025 IL App (4th) 230491, ¶ 54. “[A] finding is against the manifest weight of the evidence if all reasonable persons would agree that the finding is erroneous and that the opposite conclusion is evident.” (Internal quotation marks omitted.) *Raoul*, 2025 IL App (4th) 230491, ¶ 54.

¶ 86 Separately, we decide questions of law, such as the interpretation of statute or a regulation of the Commission, *de novo*. *Save Our Illinois Land*, 2022 IL App (4th) 210008, ¶ 42. “While we are not bound by the Commission’s conclusion on questions of law, we will give substantial weight

and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute.” (Internal quotation marks omitted.) *People ex rel. Madigan v. Illinois Commerce Comm’n*, 2011 IL App (1st) 101776, ¶ 6. The reason for this deference is that “courts appreciate that agencies can make informed judgments upon the issues, based upon their experience and expertise[,] and \*\*\* agencies must have wide latitude to adopt regulations reasonably necessary to effectuate their statutory functions.” (Internal quotation marks omitted.) *Id.*

¶ 87 Additionally, mixed questions of law and fact are reviewed for clear error. *Id.* ¶ 8. A mixed question of law and fact is one that asks the legal effect of a given set of facts or, otherwise stated, “is one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or whether the rule of law as applied to the established facts is or is not violated.” *Id.* An agency decision is clearly erroneous when “the reviewing court, on the entire record, is left with the definite and firm conviction that a mistake has been committed.” (Internal quotation marks omitted.) *Id.* ¶ 9.

88 B. Return on Equity

¶ 89 First, ComEd argues that the Commission erred by setting an 8.905% return on equity for the duration of the rate plan. ComEd contends that this determination was erroneous because, in arriving at it, the Commission did not adopt the return on equity proposed by any of the testifying experts based on their application of the traditional financial models but, rather, customized those financial models, “cherry-picked” their inputs, and then calculated a return on equity that no expert had proposed. Specifically, ComEd points out that the Commission relied solely upon monthly beta inputs when applying the CAPM, despite the fact that “no witness” had testified that it was proper to rely solely upon such inputs and the only expert who had relied upon monthly beta inputs

averaged them with weekly beta inputs. ComEd also points out that the Commission applied only the NCDCF model and “discard[ed]” the constant-growth DCF model, despite the fact that Graves had applied only the constant-growth DCF model, McNally and Gorman had applied both the NCDCF and constant-growth DCF models, and no witness had testified that “it was methodologically sound to discard the constant-growth results entirely.”

¶ 90           Moreover, ComEd argues that, in applying its “*ad hoc* financial analyses,” the Commission failed to weigh the available evidence and, instead, improperly “create[ed] its own evidence” following the close of evidence presentation and thereby deprived the company of the opportunity to timely object to its financial analyses. ComEd also argues that the Commission’s actions constituted a departure from its past practices and led to it approving a return on equity that was “too unmoored from what the record as a whole establish[ed].”

¶ 91           A utility’s return on equity is closely tied to its rates. *Ameren Illinois Co. v. Illinois Commerce Comm’n*, 2025 IL App (5th) 240014, ¶ 105. As we earlier noted, section 9-201(c) of the Public Utilities Act states that, if, as here, “the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, \*\*\* [then] the Commission shall establish the rates or other charges \*\*\* which it shall find to be just and reasonable.” 220 ILCS 5/9-201(c) (West 2022). “To determine whether [a utility’s] rates are just and reasonable, the utility’s revenue requirement must be determined using the sum of the company’s operating costs and the rate of return on its invested capital.” *Ameren*, 2025 IL App (5th) 240014, ¶ 105. Additionally, as this court has explained in a previous decision:

“A utility’s return should be reasonably sufficient to permit confidence in the utility’s financial soundness and, with economical and efficient management, to support the utility’s credit and raise funds necessary to properly discharge the utility’s public duties.

[Citation.] Additionally, ‘the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.’ [Citation.] An investor has a legitimate concern with the utility’s financial integrity, which requires that it have enough revenue for operating expenses and capital costs. [Citation.]” *Citizens Utility Board*, 2018 IL App (1st) 170527, ¶ 45.

¶ 92 ComEd cites *Ohio Bell Telephone Co. v. Public Utilities Comm’n of Ohio*, 301 U.S. 292 (1937), and *People ex rel. Hartigan v. Illinois Commerce Comm’n*, 117 Ill. 2d 120 (1987), to support its argument that the Commission’s determination of its return on equity was erroneous. In *Ohio Bell*, a telephone company instituted a rate case in which the Public Utilities Commission of Ohio (Ohio Commission) was required to “ascertain the value of [subject] property as ‘of a date certain,’ ” which was later determined to be June 30, 1925. *Ohio Bell*, 301 U.S. at 295. During the subsequent proceedings, the Ohio “Commission did not confine itself \*\*\* to a valuation of the property as of the date certain” but, rather, also “undertook \*\*\* to fix a valuation for each of the years 1926 to 1933 inclusive” by “t[aking] judicial notice of price trends during those years[ and] modifying the value which it had found as of the date certain by the percentage of decline or rise applicable to the years thereafter.” *Id.* at 296. After the Ohio Commission issued its valuation, the telephone company filed a petition for rehearing in which it argued that the Ohio Commission had denied the company a fair hearing in violation of “the requirements of the Fourteenth Amendment,” in that the Ohio Commission had accepted data concerning a decline in values that “did not come from any official sources which the [Ohio] Commission had the right to notice judicially” and that had not been entered into evidence. *Id.* at 298. The telephone company also asserted that it had not been given an opportunity to explain or rebut the data relied upon by the Ohio Commission. *Id.*

¶ 93 On appeal following the Ohio Commission’s denial of the petition for rehearing in *Ohio Bell*, the United States Supreme Court noted that the Ohio Commission had given proper notice only of the fact that the value of the subject property would be fixed as of the date certain, that “[e]vidence directed to the value at that time had been laid before the triers of the facts in thousands of printed pages,” and that, “[w]ithout warning or even the hint of warning that the case would be considered or determined upon any other basis than the evidence submitted, the [Ohio] Commission cut down the values for the years after the date certain upon the strength of information secretly collected and never yet disclosed.” *Id.* at 300. The Court further noted that the Ohio Commission had “curt[ly] refus[ed]” the telephone company’s request for “disclosure of the documents indicative of price trends, and an opportunity to examine them, to analyze them, to explain and to rebut them.” *Id.* Based on these observations, the Court concluded that the hearing that the Ohio Commission had conducted was not “the fair hearing essential to due process” and reversed the Ohio Commission’s determination. *Id.* at 300, 307.

¶ 94 Separately, in *Hartigan*, ComEd filed a request with the Commission for a rate increase and, in the request, sought to include the costs of the construction of a nuclear power plant in the company’s rate base. *Hartigan*, 117 Ill. 2d at 127-28. The Commission subsequently hired a company to audit the construction costs in compliance with the provisions of the governing statute, which required the audit to “ ‘be conducted in accordance with generally accepted auditing standards.’ ” *Id.* at 128, 130 (quoting Ill. Rev. Stat., 1985 Supp., ch. 111 $\frac{2}{3}$  ¶ 30.1). During the rate proceedings, numerous intervenors filed motions in which they argued that the audit that had ultimately been conducted was deficient under the governing statute and then requested that the proceedings be suspended to improve the audit. *Id.* at 128. The Commission denied the

intervenors' motions, conducted "trial-type hearings" regarding the audit and ComEd's proposed rate increase, and issued a final order that set ComEd's rates. *Id.* at 128-29.

¶ 95 On appeal, the *Hartigan* court considered whether the Commission had properly interpreted the statutory phrase "generally accepted auditing standards." *Id.* at 136-41. The court noted that the Commission had received "a great deal of evidence" as to what constituted generally accepted auditing standards. *Id.* at 137. The court then found that, nevertheless, the Commission's "interpretation fail[ed] to acknowledge the evidence introduced by the parties," in that it "included only two of the factors identified by the audit witnesses of [ComEd] and the intervenors and ignor[ed] other standards the witnesses identified as applicable." *Id.* at 137, 139. Accordingly, the court remanded the matter for the Commission to correctly determine whether the audit that had been conducted met generally accepted auditing standards. *Id.* at 141.

¶ 96 Unlike the appeal in *Ohio Bell*, the one at present does not raise an issue as to the proper valuation of property as of a date certain or whether the Commission properly assessed the value of said property following the date certain. Nor, unlike the appeal in *Hartigan*, does this appeal concern the proper interpretation of the statutory phrase "generally accepted auditing standards" or arise from the Commission's determination of whether an audit conformed with such standards. Therefore, we find ComEd's reliance on *Ohio Bell* and *Hartigan* to be unpersuasive.

¶ 97 Instead, we find more persuasive the decision in *Ameren*, 2025 IL App (5th) 240014. In *Ameren*, Ameren Illinois Company (AIC) initiated rate proceedings before the Commission in which the company proposed a 10.3% return on equity. *Id.* ¶ 1, 3, 33. AIC's proposal was based on the analysis of its expert, who had applied the DCF model, the RPM, and the CAPM to estimate AIC's proper return on equity. *Id.* ¶ 33. The expert's application of the DCF model yielded a 9.54% return on equity, using both projected and current interest rates; his application of the RPM yielded

an 11.73% return on equity, using projected interest rates, and an 11.63% return on equity, using current interest rates and “based on the ‘fundamental principle that greater risk required greater rewards’ for investors”; and his application of the CAPM yielded an 11.75% return on equity, using projected interest rates, and an 11.69% return on equity, using current interest rates. *Id.* “Once [AIC’s expert] determined the results, he then adjusted the values for size, credit risk, and flotation costs and determined the [return on equity] range of 10.60% to 11.60%[,] using projected interest rates and 10.56% to 11.56%, using current interest rates.” *Id.*

¶ 98 Staff in *Ameren* proposed a 9.89% return on equity. *Id.* ¶ 34. The difference between the returns on equity proposed by Staff versus AIC “stemmed from different inputs in the DCF and CAPM analyses, AIC’s reliance on the bond yield plus risk premium, ECAPM models not traditionally relied on by the Commission, and what were designated as ‘inappropriate adjustments to the [return on equity] for size risk, credit risk, and flotation costs.’ ” *Id.* Staff used a “multi-stage DCF that considered stock price, dividends, and an average of DCF growth (9.40%) and quarterly [NCDDCF] models (8.23%) to reach its DCF rate.” *Id.* In applying the CAPM, Staff used the 4.19% yield on four-week United States Treasury bills to estimate the risk-free return input and analyzed S&P 500 companies to calculate an expected rate of return of 12.65%. *Id.* ¶ 35. As for the beta input, Staff used “Zacks beta estimate and regression beta estimate because they relied on monthly, as opposed to weekly, data.” *Id.* Staff calculated an 8.81% return on equity using the DCF model and a 10.96% return on equity using the CAPM and then averaged the two values to arrive at the 9.89% return on equity that it proposed that the Commission allow AIC to recover. *Id.* ¶ 34.

¶ 99 As to the other participants in the rate case in *Ameren*, a group of entities represented by the acronym “PIO” recommended a return on equity below 10.3%, Walmart recommended “no increase from the previously authorized 9.67%,” and a group of entities that were represented by

the acronym “IFCUP” proposed a 9.5% return on equity. *Id.* ¶¶ 9 n.2, 10, 36, 37. In support of its proposal, IFCUP “presented five separate models” as follows:

“The first model was a constant growth DCF model using consensus analysts’ grown rate projects and revealed average and median returns of 9.52% and 9.42%, respectively. The constant grown DCF model, using sustainable growth rate estimates, revealed average and median DCF results of 9.84% and 9.96%, respectively. This model was based on the FERC method of estimating the expected return on a market by performing a constant growth DCF analysis on each dividend paying company of the S&P 500 index, excluding those with growth rates greater than 20%. After determining the weighted average (8.70%) and adjusting the dividend yield (2.09%), the DCF-derived expected return was determined by adding those two values, *i.e.*, 10.79%. The multi-stage growth DCF model suggested a reasonable [return on equity] of 9.2%. The Risk Premium model used a bond yield plus risk premium model. After addressing all the possible inputs, IFCUP found the reasonable [return on equity] would be 9.80%. Finally, IFCUP also presented a CAPM that resulted in an 11.71% expected return.” *Id.* ¶ 36.

¶ 100 In analyzing AIC’s showing in support of its proposed return on equity, the Commission in *Ameren* noted that it had rejected the relevant size and flotation cost risks in prior orders, that the credit risk adjustment that AIC had used was “unnecessary,” and that “AIC’s [return on equity] relied on weekly beta estimates instead of both weekly and monthly beta estimates.” *Id.* ¶ 40. The Commission also expressed that it preferred five-year betas over two-year betas as inputs for the CAPM and then found that “AIC’s ECAPM analysis was flawed because it used adjusted betas instead of raw betas, which rendered the results meaningless.” *Id.* Accordingly, the Commission rejected AIC’s analyses that involved the use of the CAPM and ECAPM. *Id.* The Commission also

rejected AIC's analysis that involved the DCF model because AIC had used a 60-day average stock price instead of current or spot market prices. *Id.*

¶ 101 Regarding IFCUP's proposal, the Commission noted that the group had used outdated stock prices in its DCF model and both forecasted United States Treasury bond yields and weekly beta estimates in its CAPM, "all of which" the Commission had previously rejected. *Id.* ¶ 41. The Commission also expressed "displeas[ure] with the [NCD CF] models produced by IFCUP and Staff." *Id.*

¶ 102 Next, the Commission found that Staff's DCF model and CAPM were "consistent with its preferred and accepted methods of determining [return on equity]" and adopted the models, with the exception of "Staff's use of its 12.65% forward-looking market risk premium, which was 'significantly higher' than the FERC's method, and the expected market returns published by U.S. financial institutions." *Id.* ¶ 42. The Commission articulated that "substitution of Staff's 12.65% with the 10.79% FERC value resulted in a 'more reasonable market risk premium estimate, which in turn result[ed] in a revised Staff CAPM estimate of 9.47%' " *Id.* "The Commission then averaged Staff's 9.47% CAPM estimate with \*\*\* Staff's constant growth 9.40% DCF estimate" and approved the resulting value of 9.44% as AIC's return on equity. *Id.*

¶ 103 On appeal from the Commission's determination in *Ameren*, AIC argued that the return on equity set by the Commission was " 'improper and unlawful.' " *Id.* ¶ 110. Specifically, AIC argued that the Commission had "disregarded" all the evidence that the company's expert had presented and had "used an 'unprecedented and facially improper methodology' by setting the [return on equity] far below the return that an investor would expect on investments of comparable risk, as constitutionally required." *Id.* AIC further argued that the Commission's reliance on Staff's DCF model and CAPM was improper because, in truth, the Commission had " 'selected [a return on

equity] at a level it desired and then attempted to support it *post hoc* by, in a marked departure from past practice, cherry-picking inputs to achieve the desired results.’ ” *Id.* ¶ 113. Additionally, AIC argued that it was inappropriate for the Commission to have relied upon “any data from the IFCUP CAPM model after rejecting the IFCUP analyses for some of the same reasons it rejected the AIC analysis.” *Id.* ¶ 114.

¶ 104 In addressing AIC’s arguments, the *Ameren* court noted that “[n]umerous” financial models had been presented regarding AIC’s proper return on equity. *Id.* ¶ 111. The court further noted the following:

“The Commission order addressed each model, the factors included in each model, the adjustments, the other parties’ criticisms of the models, as well as the rebuttal testimony related thereto. It then addressed factors that must be considered to determine reliability of the models, the competing interests, and opinions. It found that reliance on nonutility proxy groups, size adjustments, higher credit risks, \*\*\* forecasted United States Treasury bond yield instead of current, observable market interest rates, \*\*\* the bond yield plus risk premium model, \*\*\* adjusted betas in the ECAPM model, and flotation adjustments were unwarranted.

The Commission order also noted its preference for CAPM and ECAPM analysis, based on both weekly and monthly beta estimates, \*\*\* CAPM analyses that used betas over a period of five years, [and] DCF analyses using current or spot market prices (as opposed to a 60-day average of stock prices). \*\*\*

\*\*\* [The Commission] decision focused on each expert’s testimony, the criticisms bestowed thereon, and the expert’s rebuttal to that criticism. After clearly indicating that all of AIC’s models were deficient—some for reasons expressed numerous times in the

past—it had only the models of \*\*\* Staff and IFCUP to determine [a return on equity]. However, the Commission was equally dismissive of most of IFCUP’s analysis, some of which suffered from the same failures as AIC’s expert testimony.” *Id.* ¶¶ 111-13.

As to the Commission’s adoption of IFCUP’s FERC input in the group’s CAPM, the *Ameren* court further noted that the Commission had found that Staff’s 12.65% forward-looking market estimate was too high compared to IFCUP’s FERC input and that AIC had made “no argument as to why \*\*\* Staff’s \*\*\* [forward-looking market return value] was more reliable than one based on the FERC method,” except to say that Staff had not used the FERC input. *Id.* ¶¶ 114, 116. Near the end of its analysis, the court also articulated the following:

“What the Commission concluded was that there were several diverse models that failed to ascribe to Commission preference when determining [return on equity]. The most palatable models were presented by Staff, and those were its DCF (constant growth) and CAPM models. Notably, the Commission was concerned with the inexplicably low DCF (nonconstant growth model) values obtained by Staff and IFCUP and refused to consider them due to the lack of explanation associated with the divergence, as they were ‘well below any [return on equity] the Commission has ever approved for a natural gas utility.’ Staff originally averaged its DCF (9.40%) and NCD CF (8.23[%]) values to reach its DCF average value of 8.81%. However, in reaching the [return on equity] here, the Commission eliminated \*\*\* Staff’s average \*\*\* and simply used the DCF constant growth value (9.40%) after discounting the unexplained divergence associated with the NCD CF.” *Id.* ¶ 115.

Based on its observations, the court concluded that the Commission had sufficiently explained its reasons for substituting the FERC input into Staff’s calculations. *Id.* ¶ 117. The court further

concluded that the Commission's findings were supported by the available evidence and not contrary to the applicable law and, consequently, "affirm[ed] the Commission's substitution of FERC values in the Staff's calculation and the [return on equity] derived therefrom." *Id.*

¶ 105 As was similarly so in *Ameren*, the participants in this case presented numerous financial models that the Commission could potentially use to determine ComEd's return on equity. As was also similarly so in *Ameren*, the Commission in this case expressly recounted each of the financial models that the participants had presented, various factors and inputs relevant to each model, the relevant criticism that participants had to some of the models, the reliability of the models, and the relevant standards and competing interests and opinions that the Commission needed to consider in making its ultimate determination. The Commission also expressly surveyed its past practices and preferences and explained the substitutions that it had made to certain inputs in the financial models that it adopted in this case.

¶ 106 Specifically, in its Final Order, the Commission acknowledged that, in assessing ComEd's return on equity, it was required to weigh the company's interest in accessing capital at a reasonable cost against ratepayers' interest in paying rates that are no higher than those that are both just and reasonable. As to relevant factors, the Commission found, as a preliminary matter, that ComEd's risk under the rate plan would be lower than it was under traditional ratemaking, which eliminated the need for a higher return on equity. Additionally, the Commission recognized that it was required to consider and adhere to its past practice but found that there was "no clear definition of what constitute[d] Commission practice." The Commission explained that, although it had "generally adopted the use of sound financial market-based models and approaches to applying such models, \*\*\* the details of its cost of equity determination practice ha[d] reasonably varied and evolved over time based on relevant factors presented in the record of each case."

¶ 107 With respect to the standards that applied to its consideration of the financial models that the participants had presented, the Commission stated that, “by extension” of its broad discretion to determine just and reasonable rates, it also had the broad discretion to determine “the methods by which to [calculate] the rate of return reflected in such rates.” The Commission explained that, accordingly, it had the discretion “to use or consider, in whole or in part, the cost of equity models and resulting estimates presented in the record” and “to consider the appropriate inputs to apply to other cost of equity models presented in the record to determine a reasonable and fair rate of return.”

¶ 108 Next, after outlining the participants’ financial models, as well as the evidence and criticism relevant thereto, the Commission rejected ComEd and ICCP’s DCF models because they had used inputs that the Commission had “consistently rejected” in the past. The Commission also rejected ComEd’s DCF model, on the additional basis that the model did not appropriately reflect the timing of the quarterly dividends that the entities in the proxy group paid out, and rejected ICCP’s DCF model, on the separate basis that ICCP had failed to demonstrate how its sustainable growth rates could accurately reflect investors’ then-current growth expectations or were superior to the analyst earnings growth rate forecasts upon which the Commission had traditionally relied. Separately, the Commission “concur[red] with Staff that the growth rate it used for its constant growth DCF model [was] unsustainable into perpetuity” and that, consequently, consistent with past decisions, it was proper for the Commission to reject Staff’s constant growth DCF model and to adopt only Staff’s NDCDF model and the 8.48% that it yielded.

¶ 109 As to the CAPM, the Commission noted that, for the risk-free rate input, it had “regularly relie[d] on current, observable market interest rates rather than forecasted interest rates given the difficulty of accurately forecasting interest rates.” Accordingly, the Commission rejected ComEd

and ICCP's risk-free rate inputs because they were based on forecasted interest rates and adopted Staff's risk-free rate input because it was based on "the spot (current) U.S. Treasury bill risk rate." Relevant to the beta input, the Commission acknowledged that it had "historically favored the use of both weekly and monthly beta estimates because the use of multiple beta sources reduce[d] measurement error from any individual estimate." Nevertheless, the Commission articulated the following regarding the record before it:

"[T]he Commission observes that the record shows that the weekly beta estimates \*\*\* used by ICCP[, ]Staff[, and] ComEd[\*\*\*] are inordinately high compared to the two monthly beta estimates from Zacks and Staff's regression beta. The Commission further observes that beta is a measure of risk and Staff demonstrated that the [p]roxy [g]roup has a higher overall risk compared to ComEd. Moreover, as earlier noted in this [o]rder, a review of the evidence and the arguments of the parties show that [ComEd's] risk under the [rate plan] will be lower than under both [formula ratemaking] and traditional ratemaking."

The Commission then concluded that it was more reasonable for it to use only the monthly beta estimates published by Zacks and Staff, which amounted to 0.705, "[t]o address the increased measurement error that would arise from the use of inordinately high weekly betas and to recognize the lower risk of ComEd relative to the [p]roxy [g]roup." After approving Staff's risk premium input of 7.29%, the Commission "adopt[ed] a CAPM using Staff's risk free rate of 4.19%, the average monthly beta of 0.705, and [a risk premium] that [was] 7.29%, which result[ed] in a CAPM [return on equity] estimate of 9.33%."

¶ 110           Near the end of its analysis, the Commission averaged "Staff's NCD CF estimate of 8.48% and the revised CAPM estimate of 9.33%" and adopted the resulting 8.905% as ComEd's return

on equity for the duration of the rate plan. The Commission also stated the following as concluding justification for its determination:

“The Commission concurs with Staff’s observation that [the rate plan] affords ComEd less risk than traditional ratemaking or the [formula ratemaking]. Under [a rate plan], ComEd will have the benefits of multiple future test years that reduce regulatory lag and annual revenue requirement reconciliations that provide greater certainty of its cash flows, among others. The Commission observes that the last authorized [return on equity] for ComEd under formula rates \*\*\* was 7.85% for the 2023 filing year. Additionally, the authorized [returns on equity] for the filing years 2017 through 2022 under formula rates were 8.64%, 8.40%, 8.69%, 8.91%, 8.38%, and 7.36%, respectively. The Commission further observes that credit rating agencies upgraded ComEd’s credit rating multiple times while it was under formula rates. In authorizing a [return on equity] of 8.905%, which lies in the lower range of [return on equity] proposals put forth in this case, the Commission recognizes the lower risk that ComEd bears under a [rate plan] compared to traditional ratemaking in terms of more risk that is transferred from the [c]ompany to its customers.”

¶ 111 Based on our review of the Final Order, we find, like the court in *Ameren*, that the Commission in this case sufficiently explained its reasons for relying solely upon monthly beta inputs when applying the CAPM and for applying only the NCD CF model and rejecting the constant-growth DCF model in calculating ComEd’s return on equity. Also like the court in *Ameren*, we further find that the Commission’s ultimate determination was supported by the evidence in the record and in accordance with the applicable law. Consequently, we uphold the Commission’s decision to set ComEd’s return on equity at 8.905% for each year of the company’s rate plan.

¶ 112

### C. Pension Asset

¶ 113

Next, ComEd and IBEW Local 15 argue that the Commission erred by denying a return on ComEd's pension asset. ComEd asserts that, ever "[s]ince [the company] first recorded a pension asset, the Commission has \*\*\* authorized a return" in "every" one of its rate cases, namely, in its 2005, 2007, and 2010 traditional rate cases governed by article IX of the Public Utilities Act, as well as in every one of its formula rate cases from 2012 to 2023. ComEd further asserts that the Commission's decisions in these past rate cases reflect that the Commission had a "longstanding practice and law, both before and after the formula ratemaking statute, \*\*\* [of] approving returns related to ComEd's pension asset because that asset benefited ratepayers and workers." ComEd and IBEW Local 15 argue that the Commission improperly departed from its past practice and law by stating in the Final Order in these proceedings that it had only allowed "a debt return on a one-time contribution" in 2005 and ultimately denying ComEd any return on its pension asset.

¶ 114

As we earlier recited, section 16-108.18(d)(3)(E) of the Public Utilities Act requires the Commission to permit a utility that files a rate plan to recover "prudent and reasonable projected operating expenses \*\*\* consistent with Commission practice and law under Article IX of this Act." 220 ILCS 5/16-108.18(d)(3)(E) (West 2022). In turn, article IX of the Public Utilities Act requires that "[a]ll rates or other charges made \*\*\* be just and reasonable." *Id.* § 9-101.

¶ 115

In first determining the Commission's governing practice and law, we note that there is a wealth of decisions in traditional article IX rate cases in which the Commission has denied a return on a utility's pension asset because the utility failed to prove that the pension asset was funded by shareholders. See, e.g., *Ameren Illinois Co.*, Ill. Comm. Comm'n No. 20-0308, at 11, 13 (Order-Final Jan. 13, 2021) (declining to add a utility's "Other Post-Employment Benefits" contra-liability balance into the utility's rate base after finding that the Commission's past decisions confirmed

that the Commission had a practice of denying a return on plan investments funded by ratepayers and that the utility had failed to convince the Commission to depart from its practice); *Northern Illinois Gas Co.*, Ill. Comm. Comm’n No. 17-0124, at 29 (Order-Final Jan. 31, 2018) (“[The utility] has not demonstrated sufficient evidence to show that the pension asset is comprised of any shareholder funds. Therefore, the Commission declines to include the [utility’s] pension asset in rate base.”); *MidAmerican Energy Co.*, Ill. Comm. Comm’n No. 14-0066, at 12 (Order-Final Nov. 6, 2014) (explaining that “prior Commission decisions denied inclusion of prepaid pension asset[s] because [the assets] were created by ratepayer supplied funds” and excluding the pension expense before it from the rate base because the utility had failed to prove that its pension had been funded by shareholders). In light of these decisions, we find that the Commission’s governing practice and law is to deny a utility a return on its pension asset whenever the utility fails to prove that shareholders, and not ratepayers, funded the pension asset.

¶ 116 In next evaluating whether the Commission also had a practice and law of awarding returns on pension assets on the basis that the pension assets benefited ratepayers, we turn to examining the Commission’s relevant decisions in ComEd’s 2005, 2007, and 2010 traditional article IX rate cases. Relatedly, throughout our remaining analysis, we decline to also examine the Commission’s decisions in ComEd’s formula rate cases, in light of the fact that section 16-108.18(d)(3)(E) of the Public Utilities Act required the Commission to adhere merely to its practice and law under traditional article IX ratemaking and not also under formula ratemaking. See 220 ILCS 5/16-108.18(d)(3)(E) (West 2022).

¶ 117 In its 2005 rate case, ComEd sought to recover a return on its alleged pension asset of \$853 million, which, the company asserted, “resulted in large part from an \$803 million contribution of equity that Exelon made to ComEd in March 2005 to enable ComEd to ‘fully fund’ its portion of

the Exelon pension plan,” which had previously been underfunded. *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 05-0597, at 28 (Order-Final July 26, 2006). ComEd explained that Exelon had obtained the funds for the \$803 million equity infusion by issuing debt and receiving tax benefits from the contribution. *Id.* ComEd further explained that, if Exelon had not made the equity infusion, then “ComEd would have had to issue additional debt itself, which would likely have resulted in a downgraded credit.” *Id.* ComEd argued that its \$803 million contribution should be “included as an asset in rate base” to enable Exelon to recover its costs in funding the contribution and because the contribution was funded solely by shareholders and benefited ratepayers by causing the pension expense to decrease by approximately \$30 million. *Id.* at 28, 30.

¶ 118           Also in its 2005 rate case, ComEd argued that its “decision to fund” the Exelon pension plan was prudent and reasonable, in that Exelon had the financial strength and resources to make the equity infusion to fund ComEd’s \$803 million contribution. *Id.* at 28-29. ComEd further argued that the decision was prudent and reasonable for the additional reason that the \$803 million contribution had then made it so that the funding level of the Exelon pension plan was “more in line with that of \*\*\* other companies [with large pension plans] and ComEd’s own goals for itself.” *Id.* at 28-29.

¶ 119           As to the other parties that were involved in ComEd’s 2005 rate case, Staff argued at the outset that ComEd did not have an actual pension asset because, “[f]or such asset to exist, the pension fund would [have needed] to contain funds in excess of [the] pension obligations” and yet ComEd had “readily admit[ted] to the pension trust fund being fully funded, not over funded.” *Id.* at 39. Separately, the Attorney General recommended that the Commission remove ComEd’s pension asset from the company’s rate base and instead reflect the reduction in pension expense caused by the \$803 million contribution in a way that was consistent with Commission precedent.

*Id.* at 32. The Attorney General further recommended, in the alternative, that if the Commission were to elect “to allow a return on the pension contribution, [then] ComEd \*\*\* only be allowed to recover the cost of debt financing for the contributions, which \*\*\* [was] \$27 million.” *Id.*

¶ 120 In its final order in ComEd’s 2005 rate case, the Commission found that “no pension asset exist[ed] given that Exelon’s infusion in ComEd’s pension trust fund [did] not result in over funding.” *Id.* at 39. The Commission also noted that “it [was] not clear why ComEd chose to fully-fund its pension obligations when it did” and “[i]t seem[ed] that the timing of the funding [affected] the cost.” *Id.* Relatedly, the Commission explained that it did “not want to establish perverse financial incentives by allowing ComEd’s parent company to profit from its inexpensive debt and tax breaks by tucking the funds away in a regulated utility’s rate base.” *Id.* The Commission then reduced ComEd’s rate base by “\$853.9 million along with the corresponding adjustments to ADIT” and rejected the Attorney General’s alternate recommendation to add \$27 million to ComEd’s operating expenses. *Id.* at 40.

¶ 121 During rehearing in ComEd’s 2005 rate case, ComEd asserted that “the central issue \*\*\* concern[ed] identifying a middle ground position” between its initial position that the entire cost of its \$803 million contribution to the Exelon pension plan be moved into its rate base and Staff’s argument that ComEd receive no recovery at all. *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 05-0597, at 17. ComEd identified three alternative measures by which the company could at least partially recover the cost of its \$803 million contribution, the third of which calculated the amount of ComEd’s proposed recovery “based on ‘what ComEd’s actual cost of long-term debt in June 2005 would have been had ComEd, instead of Exelon, issued long-term debt in June 2005 to finance the \$803 million contribution.’ ” *Id.* In turn, Staff maintained its initial position that no

pension asset actually existed because ComEd had merely fully funded, and not overly funded, its portion of the Exelon pension plan. *Id.* at 28.

¶ 122 After analyzing the parties’ respective positions on rehearing, the Commission in ComEd’s 2005 rate case found that “ComEd [had] incurred a cost and that customers [had] derived some benefit as a result of the pension contribution” and that, accordingly, ComEd was entitled to recover some of the costs for the contribution. *Id.* The Commission then concluded that it was “best and most appropriate” that ComEd recover the approximately \$25 million that it had proposed under its third alternative. *Id.* Subsequently, the Commission limited the implications of its conclusion by stating the following:

“[I]n \*\*\* so [concluding], the Commission does not sanction the prefunding of a utility pension plan as a mechanism to increase base rates. Clearly Exelon chose to prefund ComEd’s pension plan with an equity contribution expending a rate of return. The Commission bases its conclusion on this issue on the specific details of this proceeding, not to be construed as precedent for future proceedings concerning pension plan funding.”  
*Id.*

¶ 123 Later, in its 2007 rate case, ComEd included the \$25 million recovery for Exelon’s \$803 million contribution in ComEd’s operating statement. *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 07-0566, at 5-10 (Order-Final Appendix Sept. 10, 2008). No witness in the proceedings challenged ComEd’s inclusion of the recovery in the company’s operating statement. See generally *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 07-0566, at 5-10 (Order-Final Sept. 10, 2008). Nor did the Commission engage in any substantive discussion regarding said inclusion in the operating statement, which the Commission ultimately approved. See generally

*id.* at 5-10; see also *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 07-0566, at 5-10 (Order-Final Appendix Sept. 10, 2008).

¶ 124 Finally, in its 2010 rate case, ComEd sought to continue to recover the \$25 million that the Commission had previously allowed as the cost of the company’s \$803 million contribution to the Exelon pension plan. *Commonwealth Edison Co.*, Ill. Comm. Comm’n No. 10-0467, at 95. Staff recommended that the Commission reduce ComEd’s amount of recovery “due to the passage of time.” *Id.* at 96. Staff stated that ComEd had been “effectively treat[ing its \$25 million recovery] as a permanent investment that [would] never decline, even though the [c]ompany itself acknowledge[d] that the contribution [did] not exist in perpetuity and [would] decrease over time.” *Id.* Staff further stated that, when the Commission had first awarded ComEd’s \$25 million recovery, it omitted to specify how long the \$25 million was intended to be reflected in ComEd’s utility rates. *Id.* Staff asserted that the original basis for ComEd’s \$25 million recovery “was a series of 5, 10, and 30 year bonds,” that it had calculated estimates of the average outstanding term of these hypothetical underlying bonds, and that its calculations had revealed that “approximately 25% of the average term of debt assumed to finance the 2005 pension contribution would have been recovered” by the effective date of the rates to be established in ComEd’s 2010 rate case. *Id.* at 97-98. Accordingly, Staff recommended that the Commission reduce ComEd’s \$25 million recovery by 25%, or approximately \$6 million. *Id.* at 98.

¶ 125 In response to Staff’s position in the company’s 2010 rate case, ComEd argued that Staff’s presumption that the \$803 million contribution was gradually diminishing in value was incorrect, partly because long-term debt, which ComEd had, did not amortize over time and, instead, ComEd paid “interest periodically and the principal balance remain[ed] outstanding in its entirety until the maturity date.” *Id.* at 96. In its final order, the Commission noted the parties’ respective showings

and clarified that, in ComEd’s 2005 rate case, it had allowed ComEd “to recover the cost associated with the \$803 million contribution, not as a pension asset in rate base \*\*\* but through a lower cost of debt, as deemed by the Commission to be reasonably reflected in [the third alternative measure of recovery proposed by ComEd].” *Id.* at 98. The Commission found that Staff’s adjustment in the proceedings before it “appropriately relie[d] on [ComEd’s third alternative measure], which [was] the only basis for any amount of cost recovery related to the [c]ompany’s discretionary 2005 pension contribution of \$803 million.” *Id.* The Commission further found that ComEd had failed to present “sufficient evidence to show that [the] regulatory debit ha[d] not diminished as the underlying debt mature[d].” *Id.* Accordingly, the Commission “approve[d] Staff’s disallowance of 25% of ComEd’s regulatory debit in the amount of \$6.329 million and reduce[d] ComEd’s \$25.078 million regulatory debit to the Staff proposed balance of \$18.749 million.” *Id.*

¶ 126 In its 2010 rate case, ComEd also sought to recover the \$92.5 million jurisdictional rate base effect of a \$152 million contribution that it made in 2009 to the Exelon pension plan, which, again, had been previously underfunded. *Id.* at 49. Staff recommended that the Commission exclude the \$152 million contribution to ComEd’s rate base and instead allow ComEd to recover the costs associated with the \$152 million contribution, “only to the extent there [was] a corresponding ratepayer benefit.” *Id.* at 50.

¶ 127 In its final order in ComEd’s 2010 rate case, the Commission found that ComEd’s “2009 pension contribution was a prudent response to the decline in the funded status of the pension,” in that, “[b]y making the contribution \*\*\*, ComEd properly avoided the compounding effect of continued underfunding and as a result of earnings on the contribution, reduced the pension expense.” *Id.* at 51. The Commission noted, however, that “allowing ComEd to recover its pension prepayment in its revenue requirement may encourage utilities to divert capital resources from

other utility investments in order to obtain a full return on pension prepayments, rather than making other prudent investments related to provision of utility service.” *Id.* The Commission then rejected the \$92.5 million jurisdictional rate base effect of ComEd’s \$152 million pension contribution and limited the company’s recovery to the costs associated with the amount by which ratepayers benefited from the contribution. *Id.*

¶ 128 Our review of the Commission’s relevant decisions in ComEd’s 2005, 2007, and 2010 rate cases reveals that the Commission never specifically found that ComEd had a pension asset or that ComEd was entitled to a return on its alleged pension asset for traditional article IX ratemaking purposes. Rather, the Commission awarded ComEd returns based on the costs associated with its \$803 million and \$152 million contributions to the Exelon pension plan in recognition of the fact that the contributions benefited ratepayers. Moreover, although we acknowledge that, in ComEd’s 2007 rate case, the Commission approved the company’s operating statement, which happened to reflect a \$25 million recovery for Exelon’s \$803 million contribution, we nevertheless note that the Commission expressly awarded ComEd a return associated with its pension contributions only twice, namely, in ComEd’s 2005 and 2010 rate cases. We further note that, in so awarding ComEd, the Commission cautioned utilities against prefunding their pension plans and limited its determination to permit the recovery for the \$803 million contribution to the facts of the 2005 rate case. Additionally, we note that ComEd and IBEW Local 15 fail to identify any other traditional article IX rate cases involving utilities other than ComEd in which the Commission allowed a return based on costs associated with a pension plan contribution, on the basis that the contribution benefited ratepayers. Consequently, we find that the Commission’s decisions in ComEd’s traditional article IX rate cases did not establish a practice or law that compelled it to award ComEd

a return based on the costs associated with the company's pension plan contributions at issue in these proceedings, regardless of whether the contributions had indeed benefited ratepayers.

¶ 129 Now having determined the Commission's governing practice and law under section 16-108.18(d)(3)(E), we turn to analyzing whether the Commission's decision in the Final Order was consistent with said practice and law. To this end, we note that, in line with its relevant decisions in ComEd's 2005, 2007, and 2010 rate cases, in its Final Order in these proceedings, the Commission denied ComEd a return on its alleged pension asset after finding, in part, that ComEd had failed to sufficiently prove that shareholders, and not ratepayers, had funded the asset. This determination and the underlying rationale comport with the Commission's relevant practice and law of denying a utility a return on its pension asset whenever the utility fails to prove that shareholders, and not ratepayers, funded the pension asset. Therefore, we reject ComEd and IBEW Local 15's argument that the Commission improperly departed from its practice and law in the Final Order.

¶ 130 Next, ComEd argues that the Commission's decision to deny the company a return on the contributions to its pension plan was not supported by the record. More specifically, ComEd argues that the Commission's finding that ComEd had failed to sufficiently prove that the regulatory debt associated with the \$803 million contribution to its portion of the Exelon pension plan had not diminished was flawed for two reasons. ComEd asserts that, first, even if it were true that the debt associated with the contribution had diminished, the pension asset itself would still remain, as paid for by shareholders, who, in turn, could not be denied a return on the asset because the asset benefited ratepayers. ComEd further asserts that, second, the premise that the regulatory debt associated with the \$803 contribution had diminished is " 'false.' "

¶ 131 To start, and as we earlier stated, the Commission never expressly found that ComEd had an actual pension asset for traditional article IX ratemaking purposes, and there was no governing practice or law that compelled the Commission to award ComEd a return on its pension plan contributions on the basis that the contributions benefited ratepayers. Nor are we aware of any authority that required the Commission to award ComEd a return on its alleged pension asset on a similar basis. Therefore, ComEd’s first assertion, that its pension asset would remain even if the debt associated with its \$803 million contribution were to diminish, is unavailing.

¶ 132 As to ComEd’s second assertion, we note that it is essentially a regurgitation of arguments and assertions that ComEd already made before the Commission in the company’s 2010 rate case and these proceedings. Specifically, and as we earlier noted, in its 2010 rate case, ComEd argued for the first time before the Commission that any presumption that the regulatory debt associated with its \$803 million contribution diminished over time was false because the long-term debt that the company had did not “amortize down over time.” *Id.* at 96. ComEd further argued that, instead, the company “pa[id] interest periodically and the principal balance remain[ed] outstanding in its entirety until the maturity date.” *Id.* In response, Staff argued that the regulatory debt associated with ComEd’s \$803 million contribution would, in fact, diminish over time. *Id.* at 96-97. To support its argument, Staff introduced calculations that estimated the average outstanding term of the hypothetical bonds that underlay ComEd’s \$803 million contribution. *Id.* at 97.

¶ 133 Before the Commission in these proceedings, ComEd renewed its argument that the regulatory debt associated with its \$803 million contribution did not diminish over time, as well as its accompanying assertions that the long-term debt that the company had did not diminish over time and that the company paid periodic interest on such debt, the entire principal of which remained outstanding until the maturity date. In finding in its Final Order that no further return on

the \$803 million contribution was warranted, the Commission expressly noted that, “[p]ursuant to the methodology [it had] approved in [ComEd’s 2010 rate case], Staff calculate[d] that the regulatory debt would be fully diminished before rates from this proceeding go into effect as the underlying debt mature[d].” Although ComEd disagrees with Staff’s calculation that the regulatory debt had diminished, the fact remains that the calculation constituted available evidence that was sufficient to support the Commission’s determination to deny the company a continued return related to its \$803 million contribution. Therefore, ComEd’s continued effort to challenge Staff’s calculation is unpersuasive.

¶ 134           Additionally, ComEd argues that the Commission erred by finding that, “other than a broad assertion that the[] contributions [to its portion of the Exelon pension plan] must be shareholder funds, [ComEd did] not provide a specific source of the funds for the contributions.” ComEd asserts that the evidence that it presented showed that the company’s “pension asset [was] derived from shareholder funds contributed prior to the implementation of formula rates, and [that] once formula rates were implemented, [the company’s] pension expense recovered from ratepayers ‘was perfectly reconciled each year and ComEd continued to make regular pension contributions,’ ” which meant that “those contributions could not have come from ratepayer funds.” ComEd further asserts that there was no record evidence that countered its own and that the Commission ignored the company’s “uncontroverted” evidence in finding that the company did not provide a specific source of the funds for its contributions to the Exelon pension plan and in the company’s overall pension asset.

¶ 135           In countering ComEd’s argument, the Commission cites *Northern Illinois Gas Co.*, Ill. Comm. Comm’n No. 21-0098 (Order-Final Nov. 18, 2021). There, Northern Illinois Gas Company (Nicor) asserted that its \$83 million pension asset had been funded by its shareholders and not by

ratepayers. *Id.* at 4. Nicor explained that it had established its pension plan in 1954 and that the three sources of funding for the plan were the company’s shareholders, ratepayers, and market appreciation. *Id.* Nicor also asserted that its “pension asset must have come from shareholders” because “it is a principle of Illinois rate design that customers pay only the pension cost and that market returns do not count toward the calculation of the pension asset”; “as of 1990, the cumulative prepaid pension balance was negative”; “ratepayers received pension credits in each year during the 1990s and large credits in the early 2000s,” during which time “the pension asset grew from a negative figure to over \$150 million”; and, since 1954, ratepayers had paid a net total of only \$9 million, which signified that any incidental ratepayer contribution to Nicor’s pension plan had to have been returned. *Id.* at 5.

¶ 136 The Commission in Nicor’s rate case noted that, in the company’s previous rate cases, the Commission had “analyzed [shareholder] and ratepayer pension contributions since the fund’s inception in 1954 and definitively concluded that ratepayers funded the asset.” *Id.* at 13. The Commission further noted that “[n]o facts [had] changed to warrant a different finding” in those rate proceedings]. *Id.* Thus, the Commission found that the applicable evidence showed that Nicor’s pension plan had been funded by ratepayers rather than shareholders. *Id.*

¶ 137 Here, ComEd’s showing regarding the source of the funds in its alleged pension asset is similarly lacking. ComEd asserts that, in 2005, the balance of its alleged pension asset was \$853.9 million, which included the \$803 million contribution that ComEd had made to fully fund its portion of the Exelon pension plan. ComEd further asserts that the Commission acknowledged that the contribution had been funded by shareholders by awarding ComEd a return related to the contribution in recognition of the fact that “ComEd ha[d] incurred a cost and that customers ha[d] derived some benefit as a result of the pension contribution.” However, regardless of whether the

Commission actually made this acknowledgement, our review of the relevant decisions in ComEd's traditional article IX rate cases shows that the Commission has never expressly determined that the remaining \$50.9 million in ComEd's pension plan by 2005 was also funded solely by shareholders.

¶ 138 Additionally, we acknowledge that Graham testified that ComEd's alleged pension asset could have only been funded by shareholders because ComEd's recovery of pension expense had been reconciled annually since the company's 2010 rate case and the formula rate structure ensured that funds from which excess contributions were made do not constitute rate recovery in excess of lawfully approved costs of service that could be considered. However, we also note that Graham further testified that "ComEd's [p]ension [c]ontributions [were] funded through cash generated from ComEd's internal operations." *Cf. North Shore Gas*, Ill. Comm. Comm'n No. 12-0511, 12-0512 (cons.), at 82 (Order-Final June 18, 2013) ("[T]he amount that the [c]ompanies allege to be a 'pension asset' was not created with funds supplied by shareholders. Instead, they represent amounts from normal operating revenues collected or to be collected from utility rate payers. \*\*\* Since the alleged 'pension asset' is funded by normal operations, rather than provided by discrete shareholder contributions, shareholders should not earn a return on it."). Moreover, we note that, like Nicor, ComEd does not indicate here that it ever offered more specific evidence regarding the funding of its portion of the Exelon pension plan since the date of the plan's inception to support Graham's general assertion in her testimony that all \$1,219,271,886 of ComEd's pension asset had to have been funded by shareholders. *Cf. Ameren Illinois Co. v. Illinois Commerce Comm'n*, 2026 IL App (5th) 240164, ¶ 140 ("The \$100 million payment [into Ameren's other post-employment benefits trust] is not disputed. Ameren needs to realize, however, that the fund contains ratepayer funds as well as that provided by its parent company and that a copy of the treasury note moving

the funds into the \*\*\* trust does not validate Ameren’s claim that shareholders made the payment, especially when its witness confirmed that ratepayer and shareholder funds were included in the trust and the reason for the overfunding stemmed from excellent investment strategy related to the fund.”). Therefore, we uphold the Commission’s finding that ComEd failed to sufficiently prove the source of the funds for its contributions to its alleged pension asset and the funds in the alleged pension asset as a whole. As it follows, we also uphold the Commission’s decision to deny ComEd a return on its alleged pension asset.

¶ 139

#### D. Capital Structure

¶ 140

Lastly, ComEd argues that the Commission erred by rejecting its proposed capital structure, which the company asserted before the Commission was its actual capital structure, and by imputing a capital structure that contained 50% common equity for the duration of the rate plan. In particular, ComEd argues that, in considering whether to adopt its proposed capital structure, the Commission applied the incorrect legal standard by stating that ComEd bore the burden of showing “that a capital structure higher than 50% is ‘*necessary* to support ComEd’s financial strength or to maintain its investment grade rating.’ ” (Emphasis in original.) ComEd asserts that, in using this language, the Commission improperly “shunned the settled standard for assessing a utility’s actual capital structure in favor of a strict ‘necessity’ standard.”

¶ 141

As we earlier noted, section 9-201(c) of the Public Utilities Act provides that, in the event that the Commission conducts a hearing regarding a utility’s proposed rates, the utility bears the burden of proving that the proposed rates are just and reasonable. 220 ILCS 5/9-201(c) (West 2022). When considering justness and reasonableness, the Commission must balance the interests of the utility and its investors against those of the ratepayers. See *Business & Professional People*, 146 Ill. 2d at 208 (“The Commission is charged \*\*\* with setting rates which are ‘*just and*

*reasonable*’ not only to the ratepayers but to the utility and its stockholders.” (Emphasis in original.)). Furthermore, under section 9-320 of the Public Utilities Act, “the Commission shall not include any \*\*\* incremental risk \*\*\* [or] increased cost of capital \*\*\* which is the direct or indirect result of the public utility’s affiliation with unregulated or nonutility companies.” 220 ILCS 5/9-230 (West 2022). Additionally, “the Commission should disallow recovery of any cost of capital in excess of that reasonably necessary for the provision of services.” *Citizens Utility Board*, 276 Ill. App. 3d at 746.

¶ 142 Also pertinent to ComEd’s present argument, section 16-108.18(d)(3)(C) of the Public Utilities Act states that “[t]he revenue requirement shall reflect [a] utility’s actual capital structure for the applicable calendar year.” 220 ILCS 5/16-108.18(d)(3)(C) (West 2022). The section further states that, whereas “[a] year-end capital structure that includes a common equity ratio of up to and including 50% of the total capital structure shall be deemed prudent and reasonable,” the Commission must specifically approve any higher of a common equity ratio. *Id.*

¶ 143 The Commission’s statement in its Final Order in this case that ComEd’s proposed common equity ratio was greater than what was “necessary” corresponds with the requirement recognized in Illinois case law that the Commission disallow a utility from recovering on costs beyond those that are “reasonably necessary” for the provision of its services. See *Citizens Utility Board*, 276 Ill. App. 3d at 746. Moreover, in its analysis, the Commission noted that the Public Utilities Act required it to examine a utility’s actual year-end capital structure when setting the utility’s revenue requirement and that, under the statute, a common equity ratio of 50% or under was prudent and reasonable, whereas ComEd had the burden of showing that the Commission should specifically approve a greater common equity ratio. The Commission further noted that the Public Utilities Act also prohibited a utility’s affiliation with an unregulated parent company from

increasing the cost of capital that the Commission ultimately approved. In applying the governing principles to the facts before it, the Commission expressly weighed the benefits of ComEd's common equity ratio to its sole investor, Exelon, against the detriments to the company's customers. The Commission also examined whether the relationship between ComEd and Exelon increased the cost of ComEd's capital. As these portions of the Final Order demonstrate, the Commission applied the correct legal standard in analyzing ComEd's proposed capital structure.

¶ 144 ComEd also argues that the Commission's findings that culminated in its decision to reject ComEd's proposed capital structure were not supported by substantial evidence. More specifically, ComEd argues that the Commission's finding that ComEd faced no increased risk under the rate plan was "dubious" and contradicted by the "uncontested record evidence \*\*\* that ComEd's anticipated needs in the next four years [would] differ from its needs over the last decade *for other reasons*." (Emphasis in original.) ComEd points out that the evidence that it presented showed, for example, that the company anticipated a continued "heightened inflationary environment" and continued "banking sector turmoil" and political uncertainty related to the "debt ceiling." ComEd asserts that nothing in the record before the Commission suggested that the company's projections were unreasonable.

¶ 145 Additionally, ComEd argues that the Commission's finding that a common equity ratio of 50% would not diminish the company's financial strength "ignore[d] critical evidence" that showed that a utility needs a "stronger" common equity ratio than that which is "strictly 'necessary' " to prevent a credit downgrade and to provide the utility with the flexibility to address unforeseen financial "shocks," such as extreme weather, high inflation, or geopolitical conflicts. Finally, ComEd argues that the Commission's finding that the company's common equity ratio was inflated because of the company's affiliation with Exelon was "wholly unsupported," in that

the evidence showed “only that such a relationship exist[ed], which [was] not in and of itself sufficient to support a finding of causation.”

¶ 146 Counter to ComEd’s showing regarding its risk under the rate plan, McNally testified that Moody’s and S&P had viewed formula ratemaking positively and that S&P had stated that formula ratemaking benefited ComEd by improving the company’s returns and diminishing the uncertainty around investment recovery. McNally further testified that Moody’s and S&P had both upgraded ComEd’s credit rating in light of their positive view of formula ratemaking and that both agencies had agreed that the rate plan would enhance ComEd’s credit quality even further. McNally testified that, in particular, Moody’s had stated that “ ‘[t]he multi-year plan process, similar to the formulaic rate regulation, should still produce transparent and predictable cash flow, but likely with less regulatory lag and improved profitability,’ ” and that S&P had similarly stated that it “ ‘anticipate[d] that ComEd [would] operate under a multi-year rate plan with forward test periods which would enhance rate predictability and regulatory lag.’ ” McNally also testified that S&P had viewed ComEd as having an “ ‘excellent’ ” level of operating risk.

¶ 147 As to ComEd’s showing regarding its financial strength, the company’s specific basis for believing that the Commission ignored certain evidence is unclear. Moreover, counter to ComEd’s position regarding its financial strength, McNally testified that, as was so with ComEd, Moody’s and S&P had also viewed Exelon as having an “ ‘excellent’ ” level of operating risk. McNally explained that, in general, companies with similar levels of operating risk could maintain a given credit rating with a similar percentage of equity. McNally then pointed out that, nevertheless, ComEd sought to increase its percentage of equity in its rate plan despite the fact that its “three-year average common equity ratio \*\*\* was already much higher than [Exelon’s].”

¶ 148 In elaborating on ComEd’s relationship with Exelon, McNally further testified that, “when a larger corporation owns a utility, the corporation is generally not motivated to establish the optimal, lowest-cost capital structure for the utility, but to instead use a capital structure with a greater percentage of equity than is optimal, thereby allowing the parent company to realize a greater return.” McNally explained that, specific to this case, “[i]f ComEd’s capital structure [were to carr[y] an excessive amount of equity, it [would] benefit[\*\*\*] Exelon, its parent and sole shareholder, to the detriment of ComEd ratepayers, who would pay for the excessive amount of equity.” McNally then went on to state that Exelon had provided ComEd with \$2 billion in cash infusions, which had increased ComEd’s common equity balance in a way that was unjustified.

¶ 149 Our review of the record in this case reveals that there was substantial evidence to support the Commission’s findings that ComEd faced no increased risk under the rate plan, that a common equity ratio of 50% would not diminish ComEd’s financial strength, and that ComEd’s common equity ratio was inflated because of the company’s affiliation with Exelon. Therefore, we conclude that the Commission’s decision to reject ComEd’s proposed capital structure and impute a capital structure that contained 50% common equity for the duration of the rate plan was proper.

¶ 150 III. CONCLUSION

¶ 151 For the reasons stated herein, we affirm the Commission’s orders setting ComEd’s return on equity, denying ComEd a return on its pension asset, and imputing a capital structure for the company.

¶ 152 Affirmed.

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***International Brotherhood of Electrical Workers, Local Union 15 v. Illinois Commerce  
Comm’n, 2026 IL App (3d) 240021***

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**Decision Under Review:** Petition for Review of orders of the Illinois Commerce Commission, Nos. 22-0486, 23-0055, 24-0181.

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