

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
 :
 :
 Proposed general revision of rates, restructuring and : No. 05-0597
 price unbundling service rates, and revision of other :
 terms and conditions of service :

COMMONWEALTH EDISON COMPANY'S
BRIEF ON EXCEPTIONS

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TABLE OF CONTENTS

	<u>Exception Number</u>	<u>Page</u>
SUMMARY OF POSITION		1
ARGUMENT IN SUPPORT OF EXCEPTIONS		7
IV. RATE BASE		7
C. Pension Asset	1	7
H.1. Procurement Case Expenses [Rate Base Effect]; Rate Case Expense [Rate Base Effect]	2	8
J. Approved Rate Base.	3	10
V. OPERATING EXPENSES AND REVENUES		11
B. Pension and Other Post-Retirement Expenses	4	11
C. Administrative and General Expenses		11
2. Overall Amount	5	11
3. Corporate Governance Expenses	6	12
4. Exelon BSC Expenses	7	14
E. Severance Expense	8	15
F. Incentive Compensation	9	17
G. Uncollectibles Expenses	10	33
H. Charitable Contributions	11	34
K. Environmental Expenses		35
X. Approved Operating Expenses and Revenues	12	35
VI. RATE OF RETURN		36
A. Capital Structure	13&14	36
C. Cost of Common Equity	15	45
D. Approved Rate of Return on Rate Base	16	49

VII.	COST OF SERVICE ISSUES		
	E.	Allocation of Distribution Costs	17 49
IX.	RATE DESIGN		50
	A.	Customer Class Delineations	50
		1. Residential	18 50
		2. Non-residential	52
		Railroad Class	19 52
		Very Large Load Customers	20 65
		High Voltage Class Rates	21 68
	D.	Rider ECR	22 69
	J.	Rider NS	23 73
	L.	Rider GCB7	24 76
	P.	Rider ML	25 80
	Q.	Rider RESALE	26 81
	S.	Rate BES-RR	27 81
	T.	General Terms and Conditions	28 81
	V.	Proposed Change in Definition of Maximum kW Delivered	82
	AA.	Real Time Pricing Meters and Energy Smart Pricing	29 82
	CC.	Replacement of Rider 28 with Rider LGC	30 83
	GG.	Miscellaneous Rate Design Issues	31 86
X.	CUSTOMER CHOICE AND RETAIL SUPPLIER ISSUES		86
	B.	General Account Agency	32 86
XIII.	FINDINGS AND ORDERING PARAGRAPHS		33 86
	ARGUMENT IN SUPPORT OF TECHNICAL EXCEPTIONS		87

II.A.2.b and IV.I. (Two Subsections)	34	87
II.A.2.c. Pro Forma Capital Additions and Construction Work in Progress	35	88
II.A.3.a, II.A.3.b, II.A.3.d, II.A.3.e, V.Q, V.R, V.T, and V.U. (Eight Subsections)	36	88
II.A.3.c, IV.C, V.B, and V.S. (Four Subsections)	37	88
II.A.5. Other Issues	38	89
II.B. Issues That Have Been Settled	39	89
V.P. Gross Revenue Conversion Factor	40	90
V.X. Approved Operating Expenses and Revenues	41	90
VI. Rate of Return	42	90
D. Approved Rate of Return on Rate Base	43	91
XI. Staff Reports on ComEd's Performance	44	91
Appendix A	45	91

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COMMONWEALTH EDISON COMPANY'S
BRIEF ON EXCEPTIONS

In accordance with the schedule set forth in the Administrative Law Judges' (the "ALJs") Proposed Order of June 8, 2006 (the "Proposed Order"), and Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the "Commission" or "ICC"), 83 Illinois Administrative ("Ill. Adm.") Code § 200.830, Commonwealth Edison Company ("ComEd") submits this Brief on Exceptions and is separately filing Exceptions to the Proposed Order containing suggested revised and replacement language in black-lined format.

SUMMARY OF POSITION

ComEd filed tariffs revising and restructuring its retail electric service rates for two overarching reasons. First, ComEd's actual costs of service rose markedly during the nearly decade-long mandatory transition period. Second, ComEd's prior rates, largely developed when it was an integrated utility, required significant revision to reflect ComEd's current status as a wires company, to unbundle supply charges from delivery charges, and to align ComEd's rate design with the drivers of its delivery costs.

Revenue Issues

The Proposed Order correctly recognizes ComEd's need to recover its increased costs. While ComEd's pre-transition rates were significantly reduced and frozen, its costs of delivering

electricity escalated. As the Proposed Order notes, ComEd's costs rose with the billions of dollars of new investment it made to successfully meet its commitment to strong, reliable service and to provide the new and expanded capabilities its customers demand. ComEd's costs also increased inexorably as the expense of operating a modern delivery system grew. And, they grew as ComEd acted to meet its growing obligations to its employees, both current and retired, including its pension obligations. The Proposed Order also recognizes the importance of ComEd's recovering its actual and prudent costs. As a "wires only" company, the "delivery" components of ComEd's electric service rates at issue in this proceeding must provide it with full recovery of its delivery costs if ComEd is to continue to be financially sound and operationally capable. Full cost recovery is not only ComEd's right, but very much in the public interest.

On most revenue requirement issues, the Proposed Order, after evaluating the detailed evidence of ComEd's costs and the prudence of the investments and actions that underlie them, concludes that ComEd is entitled to recover its actual costs. With few exceptions, parties opposing ComEd's rates did not and could not take issue with ComEd's actual costs or with their prudence and reasonableness. As a result, the Proposed Order correctly accepted ComEd's evidence of most of its costs with only minor adjustments. The Proposed Order also properly rejected a host of artificial and unrealistic mathematical manipulations designed to obscure ComEd's real costs and to replace them with fictional surrogates resulting in rates that do not recover ComEd's costs of service. In rejecting these contrivances, the Proposed Order is not only correct; it reaches the only conclusions supported by the law and evidence. Accordingly, on most contested revenue requirement issues, ComEd proposes exceptions that either make only minor corrections to the Proposed Order or that supplement its findings with additional language explaining certain evidence in greater detail.

On two revenue requirement-related issues, however, the Proposed Order makes findings that are not consistent with the record. **First**, the final order should recognize ComEd's actual cost of capital. While the Proposed Order correctly rejects unrealistic and extreme capital structures and costs of equity ("COE") proposed by others, it incorrectly rejects ComEd's capital structure and ComEd's actual COE.

Most importantly, the Proposed Order replaces ComEd's proposed capital structure, which is based on its actual equity and debt balances, with an imputed capital structure. While ComEd acknowledges that there is substantial evidence in the record to support the reasonableness of that imputed capital structure, ComEd submits that its actual capital structure should not have been rejected in the first place. ComEd's capital structure – which contains only 54.2% equity – was not shown to be unreasonable. Contrary to the findings of the Proposed Order, the equity balance in ComEd's capital structure does not include goodwill, nor does ComEd seek to earn any return on goodwill. The confusion in this respect appears to result from the Proposed Order's view that ComEd's accounting for the transfer of its nuclear units inflated its equity in a manner that is improper for ratemaking purposes. That is incorrect.

ComEd's accounting for the transfer of its nuclear units and the resulting effect on its equity balance were considered by the Commission first in the proceeding under Section 16-111 of the Public Utilities Act (220 ILCS 5/16-111) in which the Commission reviewed the transfer itself. Then, ComEd's equity balance was considered again in the delivery services rate case immediately following the transfer, where the Commission approved a capital structure – in two different orders – that reflected the same accounting for the transfer of the nuclear plants that ComEd proposes now and that was reviewed in the Section 16-111 proceeding. In neither case was such an artificial reduction in equity proposed or approved. To now retroactively lower the

level of actual equity in ComEd's capital structure by billions of dollars is unsupported, arbitrary and capricious, and contrary to Section 16-111.

Nor does the use of ComEd's actual equity balance result in impermissibly inflating its returns under Section 9-230 of the Act, as the Proposed Order posits. ComEd's affiliation with Exelon Generation Company, LLC ("ExGen"), to which the nuclear units were transferred, has no effect on its capital structure. Neither the identity of the transferee, nor the fact that ExGen still owns the plants, has any effect on ComEd's equity balance, ComEd's capital structure, ComEd's rate base, or the return ComEd seeks to earn. Moreover, even if it did, a restructuring transaction conducted lawfully under Section 16-111 is not subject to a subsequent retroactive disallowance under Article IX of the Act.

However, if the Commission nonetheless elects to adopt the imputed capital structure used by the Proposed Order, then the Final Order should also make clear that this imputed capital structure is at the low end of the range of equity ratios that the record showed to be consistent with comparable utilities' ratios, credit rating benchmarks, and cash flow requirements found reasonable by the order. These findings are not only fair to ComEd, they will greatly aid in explaining the justification for the imputed capital structure.

The Proposed Order also adopts Staff's recommended 10.19% COE. Again, while the record contains substantial evidence supporting that result, it is not the most reasonable result. The evidence shows that the use of longer-term growth forecasts and forward-looking interest rates – the only material differences between ComEd's and Staff's proposals – produces a fairer and more accurate result.

Second, the Proposed Order denies ComEd recovery of its entire incentive compensation expense even though at least fifty percent of that expense is tied to meeting operational goals

which the Commission has regularly found benefit customers. The record proves that this portion of ComEd's incentive compensation program promotes the important operational goals of improving reliability, the costs and efficiency of operations, and customer satisfaction. The record is undisputed that ComEd has in fact shown improvement on each of these goals, and that incentive compensation has aided in achieving that improvement. The Proposed Order's conclusion that programs aimed at promoting operational reliability, efficiency, cost savings, and customer satisfaction solely benefit shareholders is not only contrary to past Commission decisions and the record, but is also bad policy. Driving ComEd to eliminate these types of incentive plan goals will hurt customers. The Commission should instead fairly apply its decisions allowing recovery of incentive compensation expense, at least for that part of the incentive compensation program that is focused on operational goals, as it did in ComEd's last rate case *See Commonwealth Edison Co. ICC Docket 01-0423* (Order, March 28, 2003). Further, because the evidence also shows that ComEd's overall compensation package, including incentive compensation, is both reasonable and prudent and, moreover, that disallowing incentive compensation costs leaves ComEd with rates that recover far less in wage and salary expense than ComEd must spend to attract and retain qualified employees, the Commission should also give strong consideration to approving recovery of ComEd's entire incentive compensation plan expense, including the other fifty percent based, in part, on financial goals.

Rate Design Issues

In addition to the need to recover its increased revenue requirement, ComEd's proposed rates are designed to assign to customers, as best practical, the costs of their service, and to avoid subsidies and distortions. In evaluating these rates, the Proposed Order errs in several respects.

Most important among these is that the Proposed Order improperly requires service to be provided to governmental consolidated billing (“GCB”) customers at a substantial discount necessarily subsidized by other customers. ComEd’s proposed Rider GCB7 allows eligible customers to aggregate their monthly energy usage and demand in order to allow them to better manage their acquisition of energy, just as the Act requires. The Act does not, however, require that these customers’ individual hourly demands be consolidated on a coincident basis for the purpose of calculating distribution facilities charges. The Proposed Order’s requirement that ComEd do so results in a huge and unjustified subsidy. GCB customers use facilities all over ComEd’s system and should not be permitted to simply avoid the resulting costs and, as a result, impose those costs on other customers.

The Proposed Order also improperly requires ComEd’s other customers to subsidize service to railroad customers. ComEd’s proposals for these customers are cost-based and the rates each railroad customer would pay flow directly from the distribution costs that the cost of service study demonstrates those customers impose. The Proposed Order, on the other hand, would first create an unjustified subsidy for railroad customers by perpetuating now-obsolete rates and then amply that subsidy by, ironically, changing the terms of service of that “frozen” rate to significantly increase the facilities that ComEd must provide.

In addition:

- The Proposed Order needlessly rejects a long-standing and successful paradigm for individually calculating and recovering ComEd’s costs of unique, non-standard facilities and services which have costs that cannot be calculated and written into a rate in advance. Rider NS was crafted to preserve that system used successfully for decades under ComEd’s Rider 6. It should have been accepted as proposed. In the alternative, ComEd also proposes a compromise that addresses the concerns raised by the Proposed Order without creating an unworkable rate.

- The Proposed Order errs in directing ComEd to continue to retain multiple rate classes without any cost of service justification. For example, it calls for four separate residential classes that are justified neither by cost of service differences nor the need to mitigate any unjust or unreasonable customer impacts. It also errs by both separating out an “over 10MW” class when the distribution facility costs of such customers are virtually identical to those of customers in the 1-10 MW range, and then by limiting the increase in charges for this class without regard to the results of the cost of service study for those over 10MW customers.
- The Proposed Order errs in finding that Rider LGC will not apply to the City of Chicago under its franchise agreement. This is contrary to law and to the Commission’s past application of Rider 28 (Rider LGC’s predecessor) to the City. Moreover, the Proposed Order’s deletion of language that would clarify the Rider’s applicability to efforts by local governments to require non-standard service as a condition of “use of its property” is both unjustified by the record and threatens the important policy purpose of Rider LGC: to localize the added costs of non-standard service.

Finally, ComEd offers Exceptions that supplement the Proposed Order to recognize additional record evidence supporting several of its conclusions, and that note certain required technical corrections.¹

ARGUMENT IN SUPPORT OF EXCEPTIONS

IV. RATE BASE

C. Pension Asset

Exception 1²

Pension Asset

The Proposed Order reaches the correct conclusion on the issue of the Pension Asset, and in the main does an admirable job in correctly summarizing the positions of the parties. ComEd

¹ Please note that ComEd has attached hereto, as Attachment A, a version of the table of contents of the Proposed Order that has outline numbering and certain minor modifications. ComEd, in this Brief on Exceptions and its Exceptions to Proposed Order, for clarity, has used these outline references.

² As stated earlier, ComEd is separately filing Exceptions to the Proposed Order containing suggested revised and replacement language in black-lined format. The numbering of Exceptions in this Brief on Exceptions matches the numbering in the separately filed Exceptions to the Proposed Order.

suggests that the first three paragraphs of the “Commission Analysis and Conclusion”, on pages 36-37 of the Proposed Order, however, could be strengthened by stating more clearly the Commission’s acceptance of the ComEd arguments that it found persuasive, and that they also state expressly that the \$803 million funded by investors was in fact contributed to the pension fund.

Pension Expense

The Proposed Order correctly rejects the Attorney General’s Office’s (the “AG”) proposal to reduce the pro forma pension expense by \$8,563,000 based on the AG’s argument that ComEd failed to recognize the full annual effect of the return component of the periodic pension cost from the \$803 million pension contribution made by Exelon. Proposed Order at 38. However, although the Proposed Order contains ComEd’s argument on this issue in the “Pension Expense” portion of the Proposed Order (at pp. 31-36), the AG’s argument on this issue currently appears nearly 20 pages later (at pp. 54-55) under “Fair Value Adjustment to Pension Costs.” The AG’s argument should be moved from pp. 54-55 to page 36, at the end of the Proposed Order’s discussion of the AG’s arguments on “Pension Expense.” *See also* Section V.B, below.

H.1. Procurement Case Expenses [Rate Base Effect]; Rate Case Expense [Rate Base Effect]

Exception 2

The Proposed Order, at page 44, correctly identifies the two principal issues concerning procurement case and rate case expenses: “(1) where to recover the Procurement Case expenses (delivery services charges (ComEd) or supply administration charge (“SAC”) (Staff)); and (2) if both the Procurement Case expenses and Rate Case expenses are recovered through delivery services charges, whether there should be a return on the unamortized balances of the Rate Case

and Procurement Case expenses.” Proposed Order at 44. Moreover, the Proposed Order reaches the correct result on each of these issues. However, the organization and presentation of the arguments of the parties on these issues, and the Commission’s conclusions, could be enhanced.

ComEd suggests that: (1) the initial paragraph on page 44 of the Proposed Order should not be labeled as a ComEd position, but rather should serve simply as an introductory paragraph; (2) the Proposed Order should then deal with the issue of the Procurement Case Expenses Recovery Mechanism, which logically should precede discussion of recovery of the unamortized balance of both rate case and procurement case expenses; (3) Staff’s arguments on the unamortized balance of rate case and procurement case expenses should immediately follow (at p. 49) the Proposed Order’s summary of ComEd’s position on these issues (at pp. 48-49); and (4) the CES argument about procurement case legal fees and expenses should be moved to page 47 right before the “Commission Analysis and Conclusion” section.

A third issue is raised in one sentence of the Proposed Order’s summary of Staff’s position on rate case expense, and that is Staff’s proposed adjustment to disallow \$626,000 of rate case expenses as not substantiated, which is referenced in the Proposed Order at page 44. The Proposed Order at page 49 reflects ComEd’s response that Staff’s proposal lacked merit and supporting evidence. The citations referenced make clear this finding relates to Staff’s proposed \$626,000 disallowance. The Proposed Order contains general language approving ComEd’s proposal on the subject of rate case expenses, and does not state that it approves Staff’s proposed adjustment. ComEd pointed out in its letter to the Administrative Law Judges, dated June 15, 2006, that the revenue requirement calculations in the Proposed Order’s Appendix (page 2, column (f)) and reflected in the revenue requirement and operating expense figures in the Proposed Order nonetheless disallow such expense even though the disallowance was not (and

should not be) approved. ComEd believes it would be best to clarify this ruling in the Proposed Order by including an additional sentence in the “Commission Analysis and Conclusion” on page 49: “In addition, the Commission rejects Staff’s proposed disallowance of \$626,000 in rate case expense as being without merit.” The deduction of \$626,000 from operating expenses and the revenue requirement in calculations also should be corrected.

J. Approved Rate Base

Exception 3

The Proposed Order, on page 50, in the text before the table, incorrectly refers to the approved rate base figure as “\$6,159,399”. The text, unlike the table, does not indicate that that figure is “In Thousands”. Thus, on page 50, in the text before the table, the figure of “\$6,159,399” should be changed to “\$6,159,399,000”, *before* corrections and modifications.

That figure then needs to be corrected and modified *further*, however, to reflect ComEd’s Exceptions regarding the components of rate base and the total thereof, which are discussed in the applicable sections of this Brief on Exceptions. Those Exceptions, fully reflected in rate base, together yield a figure of \$6,174,523,000. *E.g.*, Proposed Order, p. 49 (figure of \$8,000 for Staff adjustment to ComEd Schedule B-2.1); ComEd Ex. 45.0, Sched. 1 Rev., Sched. B-1 (figure of \$6,174,531,000 before subtraction of figure of \$8,000 for Staff adjustment to ComEd Schedule B-2.1, which yields figure of \$6,174,523,000).

The table on page 50 similarly should be modified to reflect ComEd’s Exceptions regarding the components of rate base and the total thereof. *E.g.*, Proposed Order, at. 49; ComEd Ex. 45.0, Sched. 1 Rev., Sched. B-1.

V. OPERATING EXPENSES AND REVENUES

B. Pension and Other Post-Retirement Expenses

Exception 4

In its exception relating to pension expense, discussed above, ComEd suggested that one of the paragraphs on page 55 of the Proposed Order should be moved to page 6. What remains under “Pension And Other Post Retirement Expenses” is Staff’s suggested adjustment to update ComEd’s pension expense based upon the most recent Towers Perrin actuarial report, to which ComEd agreed. Certain other language on pages 54-55 is inapplicable to this subject and should be deleted.

C. Administrative and General Expenses

2. Overall Amount

Exception 5

ComEd believes that the Proposed Order’s Commission Analysis and Conclusion section on the subject of the overall amount of ComEd’s Administrative and General (“A&G”) expenses (page 68), while legally sufficient, should be expanded. The Commission Analysis and Conclusion section on page 68 does not expressly cross-reference the findings made on pages 56-57, and it does not expressly discuss the additional reasons that ComEd identified that support the Commission’s approval of ComEd’s proposed overall amount of A&G expenses and the rejection of Staff’s, the Illinois Industrial Energy Consumers’ (“IIEC”), , and the Coalition of Energy Suppliers’ (“CES”) positions on the subject of the overall amount.

The Proposed Order’s recommendation is the only recommendation that is supported by, and consistent with, the evidence in the record and the applicable law. A great body of extremely detailed evidence proves that ComEd’s proposed overall amount of A&G expenses is

based on its actual expenses; that that amount is prudent, reasonable, necessary, and useful in performing the distribution and customer functions; and that Staff's and the IIEC's proposed adjustments to the overall amount, and CES' endorsement of Staff's position, lack support in the evidence, are arbitrary, are contrary to their positions on other issues in this case, and are inconsistent with the law. ComEd Init. Br. at 89-95 (and the numerous citations therein); ComEd Rep. Br. at 57-64 (same).

Accordingly, for the sake of completeness, ComEd believes that the Commission Analysis and Conclusion section should both cross-reference the findings found on pages 56-57 of the Proposed Order and summarize the additional reasons that ComEd identified for approving its proposed overall amount of A&G expenses and for rejecting Staff's, the IIEC's, and CES' positions on the subject of the overall amount.

3. Corporate Governance Expenses

Exception 6

ComEd excepts to the Proposed Order's acceptance of Staff's proposed disallowance of \$663,000 in jurisdictional corporate governance expense paid by ComEd in the 2004 test year. Proposed Order at 73.

In the main, the Proposed Order accurately describes the contrasting positions taken by Staff and ComEd on this issue. Moreover, ComEd understands the surface appeal of Staff's position, which would substitute actual 2004 data for the 2004 estimated data used by ComEd as inputs to the required Modified Massachusetts Formula ("MMF") used to allocate corporate governance expense to ComEd from BSC. The problems with Staff's position, and hence the Proposed Order's conclusion, however, are two.

First, Staff substitutes an amount for corporate governance expense that was not actually paid in the test year, without making any showing that the amount actually paid was unreasonable. ComEd Init. Br. at 97-98; ComEd Rep. Br. at 65. The Proposed Order appears to have been swayed by Staff's argument that "the Commission often approves adjustments to test years to change the amount actually recorded by a utility to a more appropriate amount for ratemaking purposes." Proposed Order at 73. ComEd does not disagree. The problem here is that such a change is justified only when the adjustment is based on a reasonableness evaluation that is directly linked to the adjustment. ComEd Init. Br. at 98; Houtsma, Tr. at 450:12-18. No such link exists here, nor did any Staff witness ever testify, much less show, that the amount of corporate governance expense actually paid in 2004, using projected inputs, was unreasonable. Although Staff claimed that it conducted a reasonableness analysis focused on the ratio of the amount of direct versus indirect corporate governance costs charged to ComEd as opposed to its affiliates in 2004, in fact there is no connection between that analysis and Staff's recommended disallowance, as illustrated by the fact that the proposed disallowance would have an immaterial impact on the ratio developed by Staff's analysis. ComEd Init. Br. at 99-100; ComEd Rep. Br. at 66 n. 47. If Staff believed that corporate governance costs were not being fairly and equitably allocated among the exclusive funding of companies, Staff would not have been justified in recommending, as it did (Hathhorn, Tr. at 1738:15-21; Hathhorn Reb., Staff Ex. 12.0, 6:126-28), that going forward ComEd should not change its procedures for allocating these costs. ComEd Rep. Br. at 65-66. Even Staff acknowledged that the analysis "may" indicate that the corporate governance costs are unreasonable, so if this disallowance is retained, at a minimum the language in the order should be revised to indicate that the ratio of indirect to direct corporate governance charges "may" indicate the corporate governance costs are unreasonable.

Second, the evidence does not support the proposition that the hindsight use of actual data in the MMF for purposes of this rate case will be more accurate in predicting what ComEd will actually pay going forward when the rates are in effect, because the amounts paid in future years, as in 2004, will continue to be based on projected inputs under a methodology Staff does not dispute. ComEd Init. Br. at 98. Staff never rebutted this argument.

For these reasons, the Proposed Order's conclusion should be changed to deny Staff's proposed \$663,000 adjustment. Additional changes necessary to make the Proposed Order's discussion of this issue more accurate and complete are also set forth in ComEd's proposed language and should be adopted.

4. Exelon BSC Expenses

Exception 7

The Proposed Order correctly analyzes, and reaches a conclusion, on the issue of Exelon BSC expenses. Proposed Order at 77-79. To enhance the completeness of the discussion, several minor changes should be made.

First, the discussion of the position of the Citizens Utility Board ("CUB"), the Cook County State's Attorney's Office ("CCSAO"), and the City of Chicago ("City") (together "CCC") on this issue appears in two places. Some of CCC's position is discussed on page 77 of the Proposed Order, and some is discussed at the bottom of page 78. ComEd suggests moving the paragraph at the bottom of page 78 to page 77 as a second paragraph under "CUB-CCSAO-City".

Second, in its conclusion on page 79, the Proposed Order rejects "the adjustments proposed by Staff and CUB-CCSAO-City", and implicitly but not expressly rejects the suggestion of Mr. McGarry, testifying on behalf of CUB-CCSAO-City, that the Commission

conduct an audit, in no specific time frame, of Exelon BSC's charges to ComEd under the General Services Agreement. The Proposed Order should therefore: (1) add the following sentence to the end of the first paragraph at the top of page 79: "In regard to CUB-CCSAO-City's call for some form of evaluation or audit of BSC costs, ComEd argues that the record is devoid of any evidence that the BSC costs are unreasonable and thus there is no basis for an audit" (ComEd Init. Br. at 100-111); and (2) add the following sentence at page 79 to the end of the "Commission Analysis and Conclusion" section: "In addition, the Commission finds no basis on the record for CUB-CCSAO-City's suggestion that the Commission conduct an audit, in an unspecified time frame, of the charges by Exelon BSC to ComEd under the General Services Agreement."

Third, the record supports a finding, which would strengthen the Proposed Order, that "Further, ComEd has demonstrated that the increases in BSC costs attributable to centralization resulted in overall cost savings to ComEd." ComEd Init. Br. at 109-110. This sentence should be added on page 79 to the last paragraph of the "Commission Analysis and Conclusion" on Exelon BSC Expense, just before the existing last sentence of that paragraph.

E. Severance Expense

Exception 8

The Proposed Order identifies that "[t]wo types of severance costs are at issue in this proceeding." Proposed Order at 85. One is severance "costs incurred in the ordinary course of business." *Id.* The other is "severance costs . . . that flow from a defined cost savings initiative, *i.e.*, the Exelon Way program." *Id.* The Proposed Order correctly proposes no disallowance for the severance expense related to Exelon Way. Thus, it is only the Proposed Order's

disallowance of \$577,000 of the first type of severance expense -- recurring severance costs -- to which ComEd takes exception.

As to recurring severance costs, the Proposed Order agrees with Mr. Effron that the annual level of such costs should be determined using a five-year average that encompasses the years 2001-2005 inclusive. ComEd explained that the appropriate level of annual recurring severance expense should be based instead on the years 2000-2004 inclusive. ComEd Init. Br. at 116-117; ComEd Reply Br. at 72-73. ComEd continues to believe that its proposal is reasonable and should be adopted.

What the Proposed Order approves is a five-year normalization adjustment. In the usual case, a normalization adjustment would include years up to and including the test year, not a year beyond the test year, as the AG has done. The exception would be where evidence showed that a major cost shift occurred in the test year that was likely to continue and thus it would be required to include the year after the test year in the normalization adjustment to ensure accuracy in predicting likely costs in the future. The AG did not provide any such reason for including 2005 in its normalization adjustment, nor would the facts support that any such shift occurred as to recurring severance costs.

With respect to including the year 2000 in the normalization adjustment, the AG provided no evidence that severance costs of this magnitude could not occur in 2007 and beyond, when the rates set in this Docket will be in effect. ComEd Init. Br. at 117-118. Instead, the AG simply asserted, correctly, that costs of this magnitude had not occurred as normal recurring severance expenses in 2002-2005. But this is hardly surprising, considering that during 2003 and 2004, ComEd was incurring substantial non-recurring severance costs under the Exelon Way program. *Id.* at 117-118.

Finally, as ComEd showed, the fact that there was recovery in ComEd's ICC Docket 01-0423 rate case of the \$5.8 million of severance costs incurred in 2000 is irrelevant. The purpose of using an average of data from prior years is not to recover specific costs, but to determine the likely amount of costs that will be incurred going forward. ComEd Reply Br. at 117.

F. Incentive Compensation

Exception 9

ComEd excepts to the conclusion that no amount of ComEd's incentive compensation expense should be approved. Proposed Order at 93. The arguments by Staff and the AG, as summarized in the Proposed Order, appear to have obscured that: (1) at least fifty percent (\$14,393,500) of the total amount of incentive compensation expense³ ComEd seeks to recover is based on meeting operational goals which the Commission has consistently found benefit ratepayers, and (2) the evidence presented by ComEd in this case as to how its incentive compensation plan has furthered *those* goals is not only consistent with, but well beyond, the evidence that the Commission found sufficient to warrant recovery by ComEd of \$33 million in incentive compensation expense related to operational goals in ComEd's ICC Docket 01-0423 rate case. *Commonwealth Edison Co.*, ICC Docket 01-0423 (Order, March 28, 2003), at 122.

ComEd has presented more than sufficient evidence for recovery of the entirety of its incentive compensation plan expense of \$28,787,000, including the fifty percent portion based on financial goals. But even if the Proposed Order's conclusion on recovery of that portion of

³ ComEd seeks recovery of a total of \$28,787,000 in incentive compensation expense. Of that amount, \$16,837,000 is for operating expenses, and \$11,950,000 is for rate base. Accordingly, fifty percent of the incentive compensation expense equals \$14,393,500, representing \$8,418,500 in operating expenses, and \$5,975,000 in rate base.

ComEd's incentive compensation expense based on financial goals were correct, that conclusion could not justify the Proposed Order's departure from the Commission's established standard for recovery of incentive compensation expense based on operational goals.

1. Operational Goal Incentive Compensation Expense

The Proposed Order relies on two express reasons for denying ComEd's recovery of any of its incentive compensation expense. One is that "it appears ...that shareholders, not ratepayers, are the real beneficiaries of ComEd's incentive compensation program." Proposed Order at 93. The other is that ComEd allegedly "has failed to provide any documentation substantiating the cost savings or other tangible benefits to ratepayers." *Id.* at 92-93. Neither of these stated reasons can withstand scrutiny as applied to the portion of ComEd's incentive compensation plan based on operational goals.

a. Fully Fifty Percent Of The Funding Of ComEd's Incentive Compensation Plan Is Based On Operational Goals That Have Been Found To Benefit Ratepayers.

ComEd's incentive compensation plan employs four funding measures: "1) SAIFI-System Average Interruption Frequency Index, 2) CAIDI-Customer Average Interruption Duration Index, 3) O&M and Capital Expense, and 4) EPS [earnings per share]." Meischeid Dir., ComEd Ex. 12.0, 12:260-63. Fifty percent of plan funding is based on the SAIFI, CAIDI and O&M measures together, and the other fifty percent is based on EPS. *Id.* at 13:284-87. Overall incentive compensation awards from all measures – SAIFI, CAIDI, O&M costs and EPS – may be increased or decreased based on ComEd's performance on "customer satisfaction" as measured by the American Customer Satisfaction Index Proxy (ACSI Proxy). *Id.* at 13:272-74.

The SAIFI, CAIDI, and O&M cost performance measures are each operational goals that benefit customers. At least fifty percent (\$14,393,500) of the total amount of compensation expense ComEd seeks to recover is based on these operational goals. *Id.* at 13:285-87.

There is no dispute that the twenty-five percent of ComEd's incentive compensation expense that is based on the CAIDI and SAIFI measures of reliability can be shown to benefit customers. Ms. Ebrey acknowledged that "that portion of total incentive compensation costs" that is "based on operational key performance indicators ("KPIs")" can be recovered in base rates "to the extent the Commission believes the Company has adequately provided the support of the ratepayer benefit from the KPIs." Ebrey Reb., Staff Ex. 13.0, 21:430-36. In addition, Ms. Ebrey admitted that the CAIDI and SAIFI reliability measures are such operational KPIs. Ebrey Dir., Staff Ex. 2.0, 16:324-27. Twenty-five percent of ComEd's annual incentive compensation expense is based on these two goals. Ebrey Reb., Staff Ex. 13.0, 21:430-32.

In addition, there cannot be any serious dispute that O&M costs are also an operational goal that benefits customers. The Commission has regularly recognized that incentive compensation programs that reward employees for lowering operating costs benefit customers. *See Commonwealth Edison Co.*, ICC Docket 01-0423 (Order, March 28, 2003), at 121-122; *Consumers Illinois Water Co.*, ICC Docket 03-0403 (Order, April 13, 2004), at 14-15; *Northern Illinois Gas Co.*, ICC Docket 95-0219 (Order, April 3, 1996), at 27. Indeed, in ComEd's most recent delivery services rate case, the Commission expressly found recovery of incentive compensation based on operational goals proper because the plan "reduced operating expenses and created greater efficiencies." *Commonwealth Edison Co.*, ICC Docket 01-0423 (Order, March 28, 2003), at 121 (emphasis added). Reduced operating expenses and greater efficiencies are precisely what the O&M expense performance measure in ComEd's incentive compensation

plan is meant to encourage. Costello Reb., ComEd Ex. 13.0 Corr., 18:421-22. These O&M performance measures account for an additional twenty-five percent of ComEd's annual incentive compensation expense.

Ms. Ebrey testified that the O&M measure is a financial goal.⁴ Ebrey Dir., Staff Ex. 2.0, 15:303-67, 16:312. Not only is this testimony implausible on its face, but it is flatly inconsistent with the position taken by the Commission on O&M costs in the decisions cited above, and with the evidence in this record, which is overwhelmingly to the contrary. Undisputed evidence shows that the level of O&M costs reflects “the efficiency and effectiveness of operations.” Hill Reb., ComEd Ex. 19.0, 49:1083-84. More efficient and effective operations unquestionably benefit customers. Indeed, at hearing Ms. Ebrey answered “yes” when asked if “customers benefit from their utility’s providing service with greater efficiency.” Ebrey Tr. at 1862:8-11. These benefits include freeing up funds for other useful work and, over time, lower rates because, all things being equal, rates set in future rate cases will be lower when O&M costs are lower than they would be if the O&M costs were higher. Costello Reb., ComEd Ex. 13.0 Corr., 18:427-31.

Ms. Ebrey suggested that, if O&M costs fall, this could benefit shareholders. Ebrey Reb., Staff Ex. 13.0, 21:427-30. But this argument misses the point. Although a reduction in O&M costs could correspond with increased earnings, under ComEd’s incentive compensation plan, the O&M costs measure will trigger incentive compensation payments *whenever* the O&M cost target is hit – even if earnings fall. Costello Reb., ComEd Ex. 13.0 Corr., 18:425-26. As such,

⁴ The only support Ms. Ebrey offers for her position that O&M is a financial goal is a cite to a 12-year old Commission Order in ICC Docket. 93-0183. Ebrey Reb., Staff Ex. 13.0, 21:427-30. The Orders cited above post-date Ms. Ebrey’s, and thus better reflect the Commission’s current position. Regardless, the uncontested facts in this case demonstrate that the goal of reducing O&M costs benefits customers, and therefore recovery for that expense is warranted.

the O&M goal is *not* based on earnings, and thus is *not* “financial.” Ms. Ebrey’s additional suggestion that the existence of the so-called “shareholder protection feature” in ComEd’s incentive compensation plan somehow supports her position that ComEd’s incentive compensation plan has an improper shareholder focus (Ebrey Dir., Staff Ex. 2.0, 16:312-23) is incorrect and appears to be based on a misunderstanding of how that feature works. It is true that that feature curtails funding based upon the operational goals (CAIDI, SAIFI and O&M costs) if commensurate financial performance is not achieved, but only to the extent that such payouts are “above.” *Id.* 16:315-18. In other words, that “feature can never be used to lower [operational] payments below the target level.” Costello Reb., ComEd Ex. 13.0 Corr., 18:412-14. The critical point is that in this case, ComEd is seeking recovery only for incentive compensation expense at, not above, the target level. Mr. Costello explained in his rebuttal testimony that because “ComEd is not seeking recovery for payments which exceed the target level . . . , this feature has no impact whatsoever on the incentive compensation expenses sought in this proceeding.” *Id.* at 18:415-17.

In addition to ignoring that the CAIDI, SAIFI, and O&M expense operational goals benefit customers, the Proposed Order ignores that ComEd’s incentive compensation plan has a customer satisfaction overlay that imbues the entire plan with a strong customer focus. As Mr. Costello testified, “the total incentive compensation payout would increase, decrease or remain the same based upon whether ComEd” improved, fell or remained the same compared to peers under the ACSI Proxy. Costello Sur., ComEd Ex. 30.0, 10:202-208. Customer satisfaction has been a component of ComEd’s incentive compensation plan since at least 2001. Thus, improved customer satisfaction constitutes yet another tangible customer benefit directly attributable to ComEd’s incentive compensation plan. Moreover, it bears emphasis that this overlay applies to

the entire plan – both the operational and financial goals – thus establishing customer benefit as an important aspect of ComEd’s overall incentive compensation philosophy and methodology. *Id.* at 10:208-211.

Finally, another factor makes the finding in the Proposed Order that “shareholders, not ratepayers, are the real beneficiaries of ComEd’s incentive compensation program” particularly puzzling and insupportable. In ICC Docket 01-0423, the Commission found that the operational goals of ComEd’s incentive compensation program benefited customers, and it did so notwithstanding that, under the version of the incentive compensation plan then in existence, there was a “financial trigger” such that payments relating to the “operational goals” would not occur unless certain financial goals in the plan were met. In the current plan now before the Commission, however, there is *no* financial trigger, meaning that payments related to the ‘operational’ goals will occur even if the “financial” goals are not met. Meischeid Dir., ComEd Ex. 12.0, 13:281-84. In short, there is no question that the operational goals of the incentive compensation plan benefit customers.

b. The Evidence Establishes That ComEd’s Performance On the Operational Measures Has Improved, And That The Incentive Compensation Plan Has Aided Improvement In These Operational Measures, To the Benefit Of Customers.

The record establishes not only that the operational goals or measures of the incentive compensation plan – CAIDI, SAIFI, and O&M expense, as well as the ACSI overlay – are ones that benefit customers, but also that the incentive compensation plan has contributed to improved performance as to each of these goals. That is, the record establishes *both* that ComEd’s performance under each of these operational performance measures has improved, and that incentive compensation is a factor in achieving that improved performance.

With respect to improved performance under the plan's operational measures, Mr. John Costello, ComEd's Chief Operating Officer, testified that CAIDI – the measure of service outage duration – “improved from 142 minutes in 1999 to 109 minutes in 2005,” while SAIFI – the measure of service outage frequency – improved from 1.42 outages in 1999 to 1.13 outages in 2005.” Costello Reb., ComEd Ex. 13.0 Corr., 21:469-71. Such specific improvements are a direct and tangible benefit to ComEd's customers, as Staff witness Ms. Ebrey expressly acknowledged at hearing. Ebrey, Tr. at 1865:9-18.

Mr. Costello explained that “customer satisfaction has been a component of ComEd's incentive compensation plans dating back to at least 2001. During that period, ComEd's performance on the ACSI Proxy has steadily improved from a 62.8 score in the first quarter of 2001 to a 70.8 score in the first quarter of 2005.” Costello Sur., ComEd Ex. 20.0, 9:197-201. It can hardly be denied that improvement on this customer satisfaction index is a tangible, direct benefit to customers.

Finally, it undisputed that there was a reduction in ComEd's distribution O&M expenses in 2003 and 2004. DeCampli Reb., ComEd Ex. 14.0 Corr., 13:249-64; Houtsma Reb., ComEd Ex. 18.0 Corr., 7:141. The reduced 2004 level reduction is reflected in the revenue requirement, and therefore will directly benefit customers in this proceeding. Achieving and maintaining that reduced level was and is made possible in part through the greater productivity and efficiencies that incentive compensation promotes.

These facts are unchallenged. Taken together, they establish that there has been substantial improvement in each of the operational goals that make up 50% of the funding for incentive compensation, as well as in the customer satisfaction overlay, all to the benefit of customers.

The record is also clear that incentive compensation furthers the achievement of these customer benefit goals. Preliminarily, that incentive compensation contributes to improved performance under each of these measures should be self-evident. It can hardly be denied that, all else equal, ComEd employees, like people generally, are motivated by the opportunity to earn more money. *See* Meischeid Reb., ComEd Ex. 27.0, 6:133-34. Compensation expert Mr. Meischeid described the “line of sight” that incentive compensation creates between employee performance and incentive compensation goals (Meischeid Dir., Ex. 12.0, 15:320-26), and Mr. Costello testified, without challenge, to a specific example of the impact of ComEd’s incentive compensation plan – the CAIDI and SAIFI incentive compensation goals helped to spur initiatives undertaken to improve reliability (Costello Reb., ComEd Ex. 13.0 Corr., 21:489-91). ComEd’s incentive compensation plan provides an opportunity for employees to earn more money by working to shorten the average duration (CAIDI) and system average frequency (SAIFI) of service interruptions for customers, to reduce operating expenses and create greater efficiencies (O&M expense), and to improve customer satisfaction (ACSI), to the benefit of customers.

In any event, ComEd provided additional evidence that established the link between incentive compensation and improved performance on these operational measures. First, all of the operational goals in ComEd’s current incentive compensation plan – CAIDI, SAIFI, and O&M costs – were part of the ComEd incentive compensation plan reviewed by the Commission in ICC Docket 01-0423. There, the Commission found, with respect to the performance objectives in that plan, that “the Company identified more than \$33,211,000 of incentive compensation tied to the achievement of key performance objectives. We find that the achievement of these objectives during the year 2000 benefited ratepayers.” *Commonwealth*

Edison Co., ICC Docket 01-0423 (Order, March 28, 2003) at 122. The very same evidence that was before the Commission in ICC Docket 01-0423 to show the link between the operational goals of the incentive compensation plan and improved performance is in the record now before the Commission, word-for-word:

Incentive plan measures tied to key performance indicators are a powerful means for teaching employees the economics of the business and reinforcing line of sight between what they contribute and the company's success. Well-designed incentive plans using key performance indicators benefit everyone – ratepayers included. Employees come to understand why they are doing what they are doing and how their activities tie into the activities of the unit and the company itself. As a result, productivity rises, more attention is paid to cost control and more focus is given to customer service. They promote greater productivity, more teamwork, quality, cost control, and employee involvement.

Compare Rebuttal Testimony of Richard F. Meischeid II, ComEd Ex. 22.0, ICC Docket 01-0423, 6:102-10, with Meischeid Reb., ComEd Ex. 27.0, 6:135 – 7:143. Staff witness, Mr. Sant, acknowledged in that proceeding that ComEd had identified \$33,211,000 of incentive compensation tied to the performance goals that the Commission found warranted recovery. *Commonwealth Edison Co.*, ICC Docket 01-0423 (Order, March 28, 2003) at 122. The Commission expressly found in ICC Docket 01-0423 “that ComEd has demonstrated through the testimony of Mr. Meischeid that its incentive compensation plan provides certain benefits to delivery services ratepayers and improved efficiencies to its operations.” *Id.* Accordingly, for this reason alone, the finding in the Proposed Order that “it appears to the Commission from the information provided by the Company that shareholders, not ratepayers, are the real beneficiaries of ComEd’s incentive compensation program” cannot stand.

The Commission’s decision in the recent Northern Illinois Gas Company (“Nicor”) case provides no support for a contrary result. *Northern Illinois Gas Co.*, ICC Docket 04-0779 (Order, September 20, 2005). In that case, financial performance triggered most of the incentive compensation payments under Nicor’s incentive compensation plan. *Id.*, at 45. Here, by

contrast, *no* part of the funding for, or payment under, the operational goals in ComEd's incentive compensation plan at the requested target level is based on any financial trigger. Meischeid Dir., ComEd Ex. 12.0, 13:281-84.

Second, to the extent there is any difference between the record in this proceeding and the record in the ICC Docket 01-0423 proceeding as to customer benefit from the operational goals of the incentive compensation plan, the difference is that in this proceeding, there is *additional* evidence of such customer benefit. For example, after discussing how ComEd has achieved improved performance on operational measures such as CAIDI and SAIFI -- reliability measures that benefit customers (Costello Reb., ComEd Ex. 13.0 Corr., 20:466 – 21:473) -- Mr. Costello addressed the role of incentive compensation in helping achieve improved reliability:

Finally, as I explained in more detail below, ComEd has undertaken initiatives aimed at improving reliability, several of which began in 2005. Such initiatives include efforts to identify faulty circuits earlier, thus permitting more corrective action, realignment of the circuit inspection force and the use of global positioning systems to provide specific location coordinates, and ensuring proper levels of oil are maintained in substations. These initiatives serve as excellent examples of the “line-of-sight” between individual employee and company goals that Mr. Meischeid described as a primary benefit of incentive compensation. If ComEd succeeds in improving reliability, customers will benefit from better service and ComEd employees will benefit through additional compensation. The fact that ComEd’s reliability measures in fact improved in 2005 versus 2004 supports the link between the efforts spurred by incentive compensation and ComEd’s improved performance on reliability.

Costello Reb., ComEd Ex. 13.0 Corr., 21:480-491 (emphasis supplied).

No witness testified that the operational measures in ComEd's incentive compensation plan do not benefit ratepayers. Instead, they simply asserted that ComEd had not met its burden to prove such benefit. But because, as shown, ComEd has provided *more* evidence in this proceeding than the Commission found sufficient to prove such benefit in the ICC Docket 01-0423 proceeding, this finding in the Proposed Order cannot stand.

c. There Was No Failure To Provide “Documentation” Of Tangible Benefits.

The second stated rationale for the Proposed Order’s denial of any recovery of incentive compensation expense is ComEd allegedly “has failed to provide any documentation substantiating the cost savings or other tangible benefits to ratepayers.” Proposed Order at 92-93. It is not clear what the Proposed Order has in mind when it refers to a failure to provide “documentation.”

Regardless, the Proposed Order’s conclusion in this respect is plainly incorrect, and a denial of incentive compensation on this basis would be reversible error. As already shown, in this proceeding ComEd has provided vastly more evidence of tangible customer benefits from the operational goals of its incentive compensation plan than in ICC Docket 01-0423, where the Commission found recovery of the operational goal incentive compensation warranted based solely on the testimony of Mr. Meischeid, testimony that was repeated here. Moreover, the Commission’s stated test has never required “documentation.” Instead, it has “required evidence of tangible benefits to ratepayers.” *Northern Illinois Gas Co.*, ICC Docket No. 04-0779 (Order, September 20, 2005), at 46 (emphasis supplied). The testimony provided by ComEd reviewed above is such evidence.

To the extent the Proposed Order is demanding that proof of customer benefits from incentive compensation be made through ComEd documents, as opposed to ComEd witness testimony, the Proposed Order is committing reversible error. Although it expressly acknowledges the testimony of ComEd witnesses who explained that the “[i]ncentive compensation program has in fact led to tangible customer benefits that correspond to plan goals ... includ[ing] measurable improvement in the CAIDI and SAIFI service reliability measures, improved customer satisfaction ratings, and lower Distribution O&M expenses in the 2004 test

year due to improved efficiency and productivity” (Proposed Order, at 89 (*citing* Costello Reb., ComEd Ex. 13.0 Corr., 21:469-71; Costello Sur., ComEd Ex. 30.0, 9:197-201; DeCampli Reb., ComEd Ex. 14.0. Corr., 13:249-64; Houtsma Reb., ComEd Ex. 18.0 Corr., 7:141)), testimony that stands unrebutted, the Proposed Order apparently gives no weight to that testimony. Instead, it finds that ComEd failed to “substantiat[e]” with “documentation” its arguments that incentive compensation provides tangible customer benefits (Proposed Order, at 92-93), a requirement that is flatly inconsistent with the appellate court’s decision in *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 322 Ill. App. 3d 846 (2nd Dist. 2001).

On appeal from ComEd’s 1999 rate case (ICC Docket 99-0117), the Appellate Court overturned the Commission’s Order precisely because the Commission held that ComEd had not met its burden of proof by supporting its case with sworn testimony as opposed to documentary evidence. In that case, ComEd had requested nine *pro forma* adjustments to its rate base on account of “known and measurable” changes since the test year. *Commonwealth Edison*, 322 Ill. App. 3d at 850-51. In rejecting all of the adjustments, the “Commission relied heavily-and in most instances exclusively-upon the fact” that ComEd supported the adjustments through sworn testimony, rather than the “actual expenditures, written contracts, purchase orders, job orders or other similar evidence of reasonable certainty” identified in the Commission’s then Rule DST.160, which governed the issue. *Id.* at 851. The appellate court reversed the Commission, finding that “[t]he Commission’s categorical rejection of ComEd’s sworn testimony was clearly erroneous.” *Id.* at 853. The Court noted that the Commission’s then Rule DST.110 provided that a utility may base its request, and “the Commission may base its decision[,] upon any information or methodology,” even if that evidence did not comply with rule DST.160. *Id.* at 852. In other words, because ComEd could base its request upon “any information,” including

information not listed in the governing rule, the Commission could not reject ComEd's request simply because ComEd based it upon evidence not listed in DST.160.

That same reasoning demonstrates that the Proposed Order commits reversible error by rejecting ComEd's evidence of customer benefit merely because it took the form of sworn testimony, as opposed to "documentation." The Commission's test for recovery of incentive compensation permits ComEd to present *evidence* of tangible customer benefit. Under the rules of evidence used in Illinois courts and applicable to the Commission, sworn testimony undisputedly constitutes proper, admissible evidence. Thus, as in the 1999 rate case, the Commission cannot "categorically reject" ComEd's sworn testimony in support of its request. Indeed, the present circumstances present an even more compelling case for reversal than that found in the 1999 rate case, because there the Commission based its approach on a rule that arguably precluded the use of sworn testimony. Here, by contrast, the Proposed Order does not, and could not, articulate *any* justification for disregarding ComEd's sworn testimony as evidence of customer benefits.

In addition, the Proposed Order is arbitrary and capricious to the extent it attempts to impose a new evidentiary standard for proving that the operational goals of an incentive compensation plan provide customer benefits because: (1) it is inconsistent with the evidentiary basis on which the Commission approved operational goal incentive compensation in ICC Docket 01-0423, and (2) ComEd had no notice that a new requirement would be imposed here, and therefore no opportunity to marshal documentary evidence to meet that requirement. The seminal case in Illinois on arbitrary and capricious actions by an administrative agency is *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462 (1988). There, the Illinois Supreme Court articulated that agency action is arbitrary and capricious if the agency, among

other things, “offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise,” or if the agency action represents a “sudden and unexplained change []” in a prior “policy or practice.” *Greer*, 122 Ill. 2d at 506. Here, the Commission’s decision would be “arbitrary and capricious” for both of these reasons.

The Proposed Order, by requiring “documentation substantiating the cost savings or other tangible benefits to ratepayers”, may also be suggesting that ComEd must somehow prove what portion of any improvement in the operational goals of the incentive compensation plan (CAIDI, SAIFI, O&M expense, and customer satisfaction) is directly attributable to incentive compensation. If so, what the Proposed Order would be requiring is unprecedented and, indeed, impossible. ComEd’s compensation expert, Mr. Meischeid, testified that “specific savings” traceable to incentive compensation cannot be quantified, explaining that “[g]iven the broad array of factors that influence employees performance, including variables that come into play at the individual, company and market levels, there are substantial difficulties in isolating the precise impact a particular incentive compensation program had upon employee performance.” *Meischeid Reb.*, ComEd Ex. 27.0, 6:122-25. There is no testimony or other evidence to the contrary.

Application of common sense shows why Mr. Meischeid’s testimony in this regard is plainly correct. One of the operational measures in ComEd’s incentive compensation plan is CAIDI, or Customer Average Interruption Duration Index. Improvement in CAIDI for any given year could be the result of a number of factors, including weather (e.g., whether there were fewer severe storms than in prior years), use of new technologies for restoration, better managers, and more focused, and efficient, worker effort because of incentive compensation.

Trying to assign specific proportional responsibility for CAIDI improvement to each of these factors simply is not possible. A requirement to prove what cannot be proven to obtain recovery would be arbitrary and capricious, and plain reversible error.

* * *

In short, the Proposed Order will be committing plain reversible error if it fails to approve recovery by ComEd of the fifty percent (\$14,393,500) of its requested incentive compensation expense that is based on operational, not financial goals. The evidence of customer benefits from these operational goals is overwhelming and largely undisputed. Moreover, approval of such recovery would be fully consistent with the Commission's Order in ICC Docket 01-0423, where the Commission denied approximately \$24 million of incentive compensation expense that was based on financial goals, but approved \$33 million of incentive compensation expense based on operational goals which included those discussed herein and which it found benefited customers on far less evidence than submitted in this proceeding. Imposing an after-the-fact requirement that these benefits must be proven through "documentation" would be flatly inconsistent with the Appellate Court's decision in *Commonwealth Edison*, 322 Ill. App. 3d at 852-53, and would be arbitrary and capricious under *Greer*.

Additionally, if the Commission were to find the overwhelming evidence in this record of customer benefit from the operational goals of ComEd's incentive compensation plan to be insufficient, the clear message to ComEd and every other Illinois utility would be that there is no point in including incentive implementation as part of the utility's total employee compensation, because the Commission will not permit its recovery under any realistic evidentiary standard. This would create the perverse incentive for utilities to drop their incentive compensation

programs in favor of paying more in base salary, as to which recovery is reasonably assured, thereby losing the unquestioned benefit of incentive compensation to customer and utility alike.

2. ComEd's Total Incentive Compensation Expense

As ComEd demonstrated in Section 1 of this subsection, *supra*, the Proposed Order's denial of recovery of incentive compensation expense related to the operational goals of ComEd's incentive compensation plan is contrary to prior Commission decisions, inconsistent with the evidence, arbitrary and capricious, and for these and additional reasons, reversible error. In addition, the present record demonstrates that ComEd should recover its total incentive compensation expense, not just that portion based on operational goals, because it is reasonable and prudent. ComEd incorporates by reference its argument on that point found at pages 120-23 and 138-41 of its Initial Post-Hearing Brief, and also provides a brief summary of that argument below.

The testimony of compensation expert Richard Meischeid and ComEd's operations chief John Costello together establish that incentive compensation is a ubiquitous, essential component of modern employee compensation, without which ComEd cannot offer the competitive compensation package necessary to attract and to retain the highly qualified workforce needed to provide safe, efficient and reliable electric service. Meischeid Dir., Ex. 12.0, 4:67-84; 5:107-6:116; 8:164-68; Costello Reb., ComEd Ex. 13.0 Corr., 16:381-85; 23:516-19.. Messrs. Meischeid and Costello also testified that incentive compensation is so widely used because it works – it drives employees to perform better. Meischeid Dir., Ex. 12.0, 5:103-06; Meischeid Reb., Ex. 27.0, 6:132-34; Costello Reb., ComEd Ex. 13.0 Corr., 25:565-67. Mr. Meischeid demonstrated that ComEd's total cash compensation levels – base salary plus incentive compensation – fall “within the competitive range” versus ComEd's utility peers. Meischeid

Dir., ComEd Ex. 12.0, 7:147-8:158; 9:179-87. The above-described testimony stands unrefuted, and establishes that ComEd's total cash compensation expense is reasonable in amount and prudent. Long-standing, fundamental rate-making principles require that a utility should be afforded an opportunity to recover all prudent and reasonable expenses. *See, e.g., Citizens Util. Bd. v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 121 (1995).

G. Uncollectibles Expenses

Exception 10

The Proposed Order, on page 96, errs by approving Staff's proposed uncollectibles rate of 0.72%, rather than ComEd's proposed rate of 0.85%, for purposes of calculating the incremental amount of uncollectibles expenses due to the approved rate increase. ComEd's proposed rate is the only figure that is warranted by the evidence in the record.

ComEd correctly determined that its uncollectibles rate should be 0.85% based on a detailed analysis of 2004 uncollectibles expenses and jurisdictional delivery services revenues by customer class. *E.g.*, Hill Reb., ComEd Ex. 19.0 Corr., 52:1146 - 53:1169; Hill Sur., ComEd Ex. 36.0 Corr., 42:950 - 45:1019 and Sched. 1 Rev., pages 1, 6.

Staff's proposed uncollectibles rate is based on a five-year average of uncollectibles expenses and total revenues, not jurisdictional delivery services revenues. *E.g.*, Ebrey Dir., Staff Ex. 2.0, 25:536-547 and Sched. 2.5. That is a less accurate methodology for three reasons. First, ComEd's calculation is more accurate, because it reflects the uncontradicted fact that each customer class or type of revenue has its own respective uncollectible accounts history. *E.g.*, Hill Sur., ComEd Ex. 36.0 Corr., 44:982-92. ComEd presented similar evidence in its most recent rate case. The Commission accepted ComEd's calculation, which resulted in an uncollectibles rate of 0.91%. *Id at.*, 45:1012-1019. Second, Staff's methodology, because it is

based on total expenses and revenues, rather than the jurisdictional figures, is inconsistent with ComEd's determination of all other components of its jurisdictional cost of service. *E.g.*, Hill Reb., ComEd Ex. 19.0 Corr., 52:1146 – 53:1169; Hill Sur., ComEd Ex. 36.0 Corr., 42:950 – 44:1019. Finally, ComEd's use of test year data more accurately reflects its improved policies and practices for managing uncollectibles expenses, including stricter credit policies, implemented internal risk scoring systems, and other system changes, as illustrated by the fact that the total actual 2004 uncollectibles expenses are lower than the total actual uncollectibles expenses in 2003, 2002, and 2001. ComEd Ex. 5.1, Sched. C-16; Hill Reb., ComEd Ex. 19.0 Corr., 52:1146-58.

The Commission Analysis and Conclusion section of the Proposed Order, on page 96, addresses only the third of the three reasons identified above that ComEd's proposed uncollectibles rate is more accurate than Staff's proposal. Moreover, the Commission Analysis and Conclusion section finds in favor of Staff's proposal based on comparing it to historical figures for ComEd's uncollectibles rate in relation to total revenues, but that is not the correct comparison. The correct comparison is to the uncollectibles rate for jurisdictional delivery services revenues, as the above-cited evidence has proved. That comparison supports ComEd's proposal, not Staff's proposal. The Proposed Order's adoption of Staff's methodology is inconsistent with its recognition elsewhere, and as found in past Commission Orders, that direct assignment, when feasible, is more accurate than general allocation methods.

H. Charitable Contributions

Exception 11

The Proposed Order, on page 97, errs by approving Staff's proposed adjustment to ComEd's charitable contributions expenses. The adjustment is not consistent with the evidence.

Charitable contributions are an appropriate component of the revenue requirement. Section 9-227 of the Public Utilities Act, 220 ILCS 5/9-227, states that: “The Commission shall be prohibited from disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes.”

Staff’s proposed adjustment to disallow ComEd’s contribution of \$50,000 to the Illinois Manufacturers’ Association (the “IMA”) is based on its conclusion regarding the primary purpose of the IMA and the argument that an internal ComEd document (incorrectly referred to in Staff’s briefing as an IMA invoice) indicated that this was a “Legislative Strategies” contribution. Hathorn Reb., Staff Ex. 12.0, 16:337-40; Staff Ex. 12.9. However, ComEd’s contribution was to the IMA’s “Research on Education in Illinois” program, and it is a charitable contribution, (Hill Sur., ComEd Ex. 36.0 Corr., 46:1039-41), and Staff cites no legal basis for disallowing this contribution based on its witness’ opinion regarding the “primary purpose” of the IMA.

K. Environmental Expenses

Please see Section IX.D.

X. Approved Operating Expenses and Revenues

Exception 12

The Proposed Order, on page 109, in the text before the table, incorrectly refers to the approved figure for operating expenses (before income taxes) as “\$1,152,562”. The text, unlike the table, does not indicate that that figure is “In Thousands”. Thus, on page 109, in the text before the table, the figure of “\$1,152,562” should be changed to “\$1,152,562,000”, *before* corrections and modifications.

That figure then needs to be corrected and modified *further*, however, to reflect ComEd's Exceptions regarding the operating expense components of its revenue requirement, which are discussed in the applicable sections of this Brief on Exceptions. Those Exceptions, fully reflected, together yield a figure of \$1,159,407,000. *E.g.*, Proposed Order at 5 (figure of \$5,200,000 for uncontested adjustment to post-retirement health care benefits); ComEd Ex. 45.0, Sched. 1 Rev., Sched. C-1 (figure of \$1,164,651,000 before subtraction of figure of \$5,200,000 for uncontested adjustment to post-retirement health care benefits, and before subtraction of \$44,000 for uncollectibles expenses associated with said adjustment, using ComEd's proposed uncollectibles rate of 0.85%, which yields figure of \$1,159,407,000).

The table on page 109 similarly should be modified to reflect ComEd's Exceptions regarding the operating expense components of its revenue requirement. *E.g.*, Proposed Order at 5; ComEd Ex. 45.0, Sched. 1 Rev., Sched. C-1.

VI. RATE OF RETURN

A. Capital Structure

Exceptions 13 and 14 (Alternative Exception)

The Proposed Order Should Be Revised To Approve ComEd's Actual Capital Structure

The Proposed Order concludes that use of ComEd's actual capital structure with a common equity ratio of 54.2% would violate Section 9-230 of the Act, a section that concerns increased capital costs attributable to unregulated affiliates. Proposed Order at 127-128. Yet apart from adding some contentions regarding affiliated costs, the Proposed Order does not conclude that ComEd's 54.2% common equity ratio is unreasonable or would produce rates that are unjust or unreasonable.

In fact, the Proposed Order makes no finding that ComEd's 54.2% common equity ratio is inconsistent in any way with the financial benchmarks used to assess the reasonableness of utility capital structures. The record shows that ComEd's actual capital structure falls within the Standard and Poor's guidelines providing for a common equity ratio of between 48% and 55% for A-rated electric utilities with the same business profile as ComEd. Mitchell Reb., ComEd Ex. 20, 4:66-67. The Proposed Order also ignores that the sample of electric utilities that even Staff concluded is most like ComEd has average current and forward-looking equity ratios of between 49% and 52%. ComEd Ex. 21.2. Similarly, the electric and gas distribution utilities that Prof. Hadaway concluded were most comparable to ComEd also have current and forward-looking common equity ratios that average between 46% and 54%. ComEd Ex. 21.5. In short, the Proposed Order is contrary to the undisputed record evidence demonstrating that ComEd's actual capital structure with a common equity ratio of 54.2% is reasonable.

The Proposed Order specifically finds that Staff's recommended capital structure with a common equity ratio of 37.2% is not just and reasonable, noting that it is "an outlier compared to utilities generally and to those in Staff's proxy sample." Proposed Order at 130. Elaborating on this finding, the Proposed Order concludes that Staff's 37.2% common equity ratio "is not comparable to previously approved capital structures for ComEd or other financially sound utilities, and may not be sufficient to allow the utility to maintain its financial strength or a reasonable A- credit rating." *Id.*

The Proposed Order correctly rejects Staff's 37.2% recommended common equity ratio as unreasonable based on the evidence in the record. Proposed Order at 130. The absence of a similar finding or evidence on which ComEd's actual 54.2% common equity ratio could be rejected makes the Proposed Order's failure to adopt ComEd's actual capital structure depend

entirely on (a) the supposed application of Section 9-230 and (b) the Proposed Order's related contention that ComEd seeks to recover the costs of an unregulated generating affiliate. Neither of these bases supports the Proposed Order's rejection of ComEd's actual capital structure.

First, Section 9-230 does not support the Proposed Order because it is inapplicable as a matter of law. The portion of ComEd's common equity balance that the Proposed Order concludes violates Section 9-230 was an integral component of a transaction approved by the Commission under Section 16-111(g)(3) of the 1997 restructuring law ("1997 Law"). Houtsma Sur., ComEd Ex. 35.0, 17:324 – 18:391. The accounting entries reflecting that equity were provided to the Commission as required by Section 16-111(g). *Id.* at 17:377-79. In two orders in ComEd's last rate case⁵, the Commission correctly approved ComEd's capital structure including the same portion of its common equity balance that is at issue here. In neither of those orders did the Commission apply Section 9-230 to eliminate any portion of ComEd's common equity balance. Nor did any party suggest that such an adjustment was required. The Commission made no analysis of Section 9-230 in ICC Docket 01-0423 and was prohibited from making such an adjustment because Section 16-111(g) specifically makes Section 9-230 inapplicable, providing that the authorizations in the reorganization provision of the 1997 Law are effective "notwithstanding any other provision of this Act...." 220 ILCS 5/16-111(g).⁶ The Proposed Order's application of Section 9-230 to the equity balance from a reorganization

⁵ Interim (April 1, 2002) and final (March 28, 2003) Orders, ICC Docket 01-0423.

⁶ For the same reason, there was no analysis in Docket 01-0423 to determine whether the 2001 reorganization under Section 16-111(g)(3) could have been structured differently to avoid Section 9-230 arguments by using authority granted under Section 16-111(g)(4). The Proposed Order's contention (at 128-129) that a violation of Section 9-230, an inapplicable section of the Act, can arise if the issue could have been avoided through a different transaction structure is unsupported by any provision of the Act or by any Illinois decision. The 1997 Law makes Section 9-230 inapplicable to transactions implemented lawfully under Section 16-111(g)(3), and there is no obligation for a utility to also "plan around" that inapplicable provision to render it inapplicable for a second reason.

approved under Section 16-111(g)(3) is in direct conflict with the plain language of the 1997 Law.

The second, related contention – that ComEd is seeking to recover the costs of an unregulated generating affiliate – similarly provides no basis for rejecting ComEd’s actual capital structure. Without questioning the justness or reasonableness of a 54.2% common equity ratio for a utility like ComEd when compared to industry standards and benchmarks, the Proposed Order contends that, in this case, ComEd’s proposed capital structure should be rejected because it would allow “recovery of the cost of plant owned by an unregulated generating affiliate,” constitute “a double recovery” and provide “a return on billions of dollars of plant [ComEd] does not own.” Proposed Order at 128, 129.

The evidence in the record establishes that these contentions are without any basis. Fundamentally, ComEd has not included any generation plant or any goodwill in the rate base on which a return will be earned. Hill Sur., ComEd Ex. 36.0 Corr., Sched. 1 Rev., page 4. Indeed, the Proposed Order’s extensive analysis of ComEd’s rate base supports that conclusion, finding no unregulated generating plant or goodwill included in the rate base and recommending no reduction in rate base to eliminate goodwill or plant ComEd “does not own.” A reasonable 54.2% common equity ratio cannot be found unreasonable simply because ComEd has a generation affiliate that happened to acquire plants that could just as easily have been sold to an unaffiliated party – by ComEd or by ExGen after the transfer. Thus, both the Proposed Order’s analysis of Section 9-230 and its unregulated generation costs contentions are premised on a

factual situation that simply is not present here.⁷ As a result, even if Section 16-111(g) did not render Section 9-230 inapplicable, the Proposed Order's reliance on Section 9-230 and alleged affiliate cost recovery contentions would be misplaced for factual reasons as well.

Although the Proposed Order's rejection of ComEd's actual capital structure should be revised for the legal and factual reasons described here, the preliminary discussion of ComEd's capital structure is also in error and should be corrected. The Proposed Order incorrectly asserts that the capital structure dispute centers on "whether to include or exclude for ratemaking purposes a net \$2.634 billion goodwill asset," which the Proposed Order asserts was part of "\$4.791 billion in goodwill generated by the transfer of the nuclear power plants formerly owned by ComEd." Proposed Order at 126. Both of these statements are in error and in conflict with the evidence.

First, the evidence is undisputed that \$4.791 billion of goodwill was not generated by the transfer of the nuclear units. That goodwill arose entirely as a result of the application of purchase accounting at the time of the merger between Unicom and PECO in 2000 – an entirely separate, earlier transaction. Mitchell Dir., ComEd Ex. 7.0, 6:124-33. The transfer of the plants to ExGen took place in 2001 in a reorganization under Section 16-111(g)(3) and reviewed and approved by the Commission. No goodwill was generated by that transfer or by that reorganization.⁸ The accounting entries submitted to the Commission in connection with the

⁷ The Proposed Order's reliance on the statement in *Citizens Utility Board v. ICC*, 276 Ill. App. 3d 730, 741 (1995), that "[c]urrent ratepayers should pay for only that plant which produces current benefits" is misplaced as well. Although the *CUB* decision contains a discussion of Section 9-230, the language on which the Proposed Order relies has nothing to do with that analysis. It appears in a section of the decision headed "Depreciation of Analogue Equipment" and deals entirely with that subject, not with Section 9-230, let alone capital structure or cost of capital.

⁸ The Proposed Order's statement (at 129) that ComEd "could have chosen to structure the transfer differently" so that "the transaction would not have produced ... goodwill" is similarly incorrect. Changing the structure of the transfer transaction would not have had the effect of reducing the total amount of goodwill or the equity balance in ComEd's capital structure. Indeed, alternative structures could well have warranted an increase in the common equity balance for purposes of this proceeding. Houtsma Sur., ComEd Ex. 35.0, 21:463-467.

Section 16-111(g)(3) reorganization and transfer demonstrate that no goodwill was generated. There is no basis in the record for the contrary finding included in the Proposed Order.

Second, the dispute over capital structure does not turn on “whether to include or exclude for ratemaking purposes a net \$2.634 billion goodwill asset.” A utility’s capital structure includes debt and equity. Capital structures do not include or exclude “assets.” The only issue in this proceeding concerning goodwill is whether the debt and equity balances in ComEd’s actual capital structure were affected by the goodwill that was recorded on ComEd’s books through the application of purchase accounting in connection with the Unicom/PECO merger. The evidence was undisputed that the debt and equity balances in ComEd’s actual structure were not the result of or affected by goodwill because ComEd eliminated the entire capital structure impact of purchase accounting. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 12:248-251 . If the effects of goodwill and the other purchase accounting effects on ComEd’s common equity balance had been included, ComEd’s capital structure would have had a common equity ratio of 63%, rather than 54.2%. Mitchell Reb., ComEd Ex. 20.0 lines 37-42.

The Proposed Order rejects ComEd’s actual capital structure for legal and factual reasons that cannot be sustained. It assumes that Section 9-230 can be applied to disallow a significant portion of a reorganization approved by the Commission under Section 16-111(g)(3). Just the opposite is true. Transactions approved under Section 16-111(g)(3) must be respected and are valid “notwithstanding any other provision of this Act...” 220 ILCS 5/16-111(g). In other words, Section 16-111(g)(3) “trumps” Section 9-230, prohibiting its application to affect a Section 16-111(g)(3) transaction. In addition, the Proposed Order asserts that ComEd is seeking to recover a rate of return on plant it does not own, whereas the evidence supports no such finding.

If The Proposed Order Is Not Revised To Approve ComEd's Actual Capital Structure, It Should Reflect That The Proposed Common Equity Ratio For ComEd Is At The Low End Of The Range Supported By The Evidence In The Record

As stated above, ComEd believes its proposed capital structure is reasonable and should be accepted. However, ComEd acknowledges that there is also evidence supporting the reasonability of the imputed capital structure adopted by the Proposed Order because, unlike the 37/63% capital structure the Proposed Order rightly rejects, it at least minimally respects ComEd's need to maintain an equity ratio comparable to its peers, credit metrics supporting sound credit ratings, and required cash flows. To make more clear the basis of the Proposed Order's ruling, it should acknowledge more fully the evidence in the record on those issues.

The Proposed Order adopts a capital structure with a common equity ratio of 46%, stating that it reaches that result “[a]fter weighing all of the considerations discussed above.” Proposed Order at 130. Among those considerations are comparisons to “previously approved capital structures for ComEd or other financially sound utilities,” to capital structures required to maintain “a reasonable A- credit rating,” and to the capital structures of both the “proxy sample[s]” for ComEd and “utilities generally.” Proposed Order at 130. The comparisons, identified in the Proposed Order as bearing on the justness and reasonableness of ComEd's capital structure, are all appropriate. While ComEd's proposed common equity ratio of 54.2% is just and reasonable under each of these standards, the Proposed Order adopts a common equity ratio that is at the low end of each of the applicable standards. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 18:349 - 23:462. The Proposed Order should make clear that the imputed capital structure it adopts is within these ranges, but at their low end.

How the imputed capital structure adopted by the Proposed Order stacks up can be illustrated with respect to several benchmarks. included both gas distribution companies and

electric utilities in his comparable groups. The average current common equity ratio for the gas distribution sample was 52%, and the average forward-looking equity ratio was 54%. Hadaway Reb., ComEd Ex. 21.0, 16:354-61; *see* ComEd 21.5. For the electric utility sample, the average current common equity ratio was 46%, and the average forward-looking equity ratio was 49%. Hadaway Reb., ComEd Ex. 21.0, 16:349-53; *see* ComEd Ex. 21.5. The Proposed Order adopts the average current common equity ratio, 46%, in Dr. Hadaway's electric utility comparable group sample for purposes of establishing ComEd's rates in this proceeding. The 46% common equity ratio, while supported by evidence, is the lowest of four comparable averages that could have been considered. Selection of the lowest of the four averages significantly reduces ComEd's cost of capital, especially when the same evidence would have supported use of ComEd's actual 54.2% common equity ratio. At a minimum, however, the Order should make clear that the imputed capital structure is found reasonable, in part, because it falls within these ranges, albeit at the low end.

Similarly, analysis of the benchmarks used by rating agencies such as Standard and Poor's ("S&P") provides an important standard against which the justness and reasonableness of ComEd's capital structure can be evaluated. The S&P guidelines provide for a common equity ratio of between 48% and 55% for A-rated electric utilities with the same business profile as ComEd. Nonetheless, the Proposed Order adopts a 46% common equity ratio, which was the result of Staff's very conservative alternative analysis of the common equity ratio that would be necessary to achieve cash flows consistent with maintenance of an A- rating under a "TFI-adjusted" rating agency view. As Staff witness Kight explained, using that view "[t]o achieve credit metrics consistent with A-/BBB+ credit ratings, the equity ratio would need to be increased to approximately 45.5%". Kight Reb., Staff Ex. 15.0 2nd Corr., 7:120-121. The

Proposed Order's adoption of the 46% common equity ratio necessary to meet Ms. Kight's minimum cash flow analysis, again, while supported by the evidence, reduces ComEd's cost of capital when the same S&P credit standard evidence would have supported use of ComEd's actual 54.2% common equity ratio. But, regardless, the Order should note that the equity ratio it adopts is the lowest that can satisfy this criterion.

* * *

In summary, ComEd takes exception to the Proposed Order's rejection of ComEd's actual 54.2% common equity ratio because the rejection is based on the application of Section 9-230, which is inapplicable under Section 16-111(g), and on erroneous and unfounded affiliate cost recovery contentions that are in conflict with the record. ComEd also includes exceptions to the Proposed Order's factual statements about the effect of goodwill on ComEd's capital structure. In the alternative, ComEd respectfully requests that, if the Proposed Order is not revised to adopt ComEd's actual capital structure, it should acknowledge specifically that the 46% common equity capital structure being imputed falls at the low end of the comparable utility samples and at the minimum common equity ratio determined by Staff to be necessary to achieve credit metrics consistent with A-/BBB+ credit ratings.

Two alternative forms of replacement language for the Proposed Order's capital structure conclusion are included in the appendix to this Brief on Exceptions. The first alternative contains appropriate exceptions to revise the Proposed Order to approve ComEd's actual capital structure with a common equity ratio of 54.2%. The second alternative contains appropriate exceptions in the event that the Proposed Order is not revised to approve ComEd's actual capital structure and continues to adopt a capital structure with a 46% common equity ratio.

C. Cost of Common Equity

Exception 15

The Proposed Order erroneously rejects ComEd's proposed 11% cost of equity. Proposed Order at 153-155. It does so by wrongly rejecting ComEd's use of GDP growth rates to better estimate long-term company growth. It ignores the fact that ComEd's proposed cost of equity took into account both long-term interest rates. Finally, it fails to adequately acknowledge ROEs awarded to comparable companies, which is especially important given that the Proposed Order also adopts an imputed capital structure at the leveraged end of the group of comparable companies.

The Proposed Order first errs in rejecting ComEd's use of GDP growth rates. ComEd witness Dr. Hadaway used GDP growth rates to gauge long-term growth expectations in preparing his discounted cash flow ("DCF") model. Hadaway Dir., ComEd. Ex. 8.0, 27:582-96. The DCF model calls for long-term growth rates, and such expectations are more closely predicted by broader measures of economic growth – like GDP – than by near-term analysts' estimates. Hadaway Dir., ComEd Ex. 8.0, 28:638 – 29:642; Hadaway Sur., ComEd Ex. 38.0, 17:397 - 18:405. GDP data allowed Dr. Hadaway to look beyond the present low-inflation environment that has driven near-term growth estimates far below where they were just five years ago. Hadaway Reb., ComEd Ex. 21.0, 8:170-77; Hadaway Sur., ComEd Ex. 38.0, 10:216-24; *see* ComEd Init. Br. at 178–79. The Proposed Order's rejection of GDP growth rates ignores the fact that the DCF model – used not only by ComEd, but also by Staff and IIEC – requires the use of long-term rates, not intermediate five-year rates. Because of this failure, the Proposed Order should be rejected on this point.

The Proposed Order rejects the use of long-term growth rates as reflected in GDP data, but fails to explain its rationale. The Proposed Order simply states that it: "does not find merit in

the Company's assertion that a five-year period fails to adequately consider long-term growth expectations." Proposed Order at 154. The Proposed Order should be rejected on this point. As shown by Dr. Hadaway, the five-year periods relied upon by Staff and IIEC reflect only today's historically low rates of inflation and analysts' pessimistic outlooks for the electric utility industry, which together skew DCF estimates. Hadaway Sur., ComEd Ex. 38.0, 10:216-24. Growth rates that rely entirely upon analysts' short-term growth forecasts effectively extrapolate the current low-inflation environment into the distant future. Hadaway Sur., ComEd Ex. 38.0, 10:217-20. Such extrapolation is unfounded and inappropriate in comparison to Dr. Hadaway's use of long-term GDP growth rates. As such, the Proposed Order's reliance only on the analyses relying on those short-term rates is error, and it should be rejected on this point.

The Proposed Order's rejection of ComEd's proposed cost of equity of 11.00% is also unwarranted, as ComEd's proposed cost is the most reliable cost of equity estimate, and it is supported both by DCF model and risk premium models. Dr. Hadaway's comparable company approach follows the Supreme Court's traditional *Hope* and *Bluefield* requirements⁹, and draws on companies tracked by *Value Line Investors Service*. Furthermore, Dr. Hadaway's model considers the fact that snapshot interest rates were at near all-time lows as of the time Staff's data was observed, and uses forward-looking interest rate data that more closely matches the period in which the rates will be in effect. Hadaway Reb. Com Ed Ex. 21.0, 10:214-16, 14:314-19; *see also* Hadaway Dir., ComEd Ex. 8.0, 24:511-23. The overall reasonableness of his results are confirmed by the fact that ComEd's proposed 11.00% COE closely matches the national average of recently-approved rates. Hadaway Reb., ComEd Ex. 21.0, 2:41-45, 3:64 – 4:91. It is

⁹ *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923).

important that ComEd be awarded a return on equity comparable to its peers both because it competes with those companies for capital Bodmer, Tr. 1229:15-22, and because the Proposed Order adopts an imputed capital structure at the leveraged end of the group of comparable companies used to calculate equity costs. It would be especially unreasonable to ComEd if the leverage of its capital structure were increased at the same time as its calculated return was suppressed. Hadaway Sur., ComEd Ex. 38.0, 1:20 – 2:26, 2:34-36. The Proposed Order's adoption of Staff's 10.19% proposal should be rejected because Staff's proposal is deficient in multiple respects. First, the proposed 10.19% return on equity ignores ComEd's proper use of GDP growth rates and long-term growth rates, resulting in underestimation of ComEd's true cost of equity. Second, the 10.19% proposed cost of equity is significantly below the COEs approved in recent years for electric utilities in the United States. While the Proposed Order rejects ComEd's reference to rates approved for other utilities, that rejection is unwarranted. Dr. Hadaway did not use the comparison to develop his analysis of the correct return on equity; instead, the comparison correctly served as a check to ensure that the results of the analysis were reasonable in light of the experience of other utilities, in recent ratemaking proceedings. Hadaway Reb., ComEd Ex. 21.0, 2:33-38. The average COE allowed in the fourth quarter of 2005 was 10.75%, thus, the COEs being proposed by other parties, particularly CCC, constitute a "departure from the trend of rising capital costs," and are "below the mainstream" of COEs in the United States. Hadaway Reb., ComEd Ex. 21.0, 1:21 – 2:30; ComEd Ex. 38.1. The analyses of each expert in this proceeding refers, to some degree, to the experiences of other, similarly-situated utilities; ComEd's reference to the rates of return approved for those utilities is proper and supports the analysis of Dr. Hadaway.

Although the Proposed Order ultimately rejects CCC's investment bank analysis," it improperly gives credence to the theory proposed by CCC witness Mr. Bodmer. The Proposed Order states that Mr. Bodmer "analyzed the valuation conducted by Morgan Stanley and other investment banks for the ongoing merger of Exelon and PSE&G, and used this as a basis for his 7.74% cost of equity recommendation." Proposed Order at 154. Mr. Bodmer's analysis did not use bank valuations as the basis for anything. Instead, Mr. Bodmer attempted to reverse-engineer a cost of equity for ComEd from a comparative valuation of Exelon and PSE&G for purposes of their merger. Hadaway Reb., ComEd Ex. 21.0, 18:406 – 19:424; *see also* ComEd Init. Br. at 179-180 and evidence cited therein.

Any comparison between the Exelon/PSE&G fairness opinions and ComEd's cost of equity suffers from three incurable faults: the valuations serve a different purpose, they apply a different methodology, and they analyze different companies. First, the valuations serve unrelated purposes. As discussed in ComEd's briefs, fairness opinions were intended to provide a relative valuation of the two companies' stocks at a certain point in time, whereas a return in a ratemaking proceeding is to allow the utility a reasonable return on its rate base into the future. Hadaway Reb., ComEd Ex. 21.0, 21:426-32; Hadaway Sur., ComEd Ex. 38.0, 14:314-22; Bodmer, Tr. at 1242:10-19. Second, the valuations apply a different methodology. Mr. Bodmer made numerous assumptions with no idea if the investment bankers used the same assumptions, and he gave no indication whether even those bankers used the same 7.74% cost of equity Mr. Bodmer inferred, or whether such a figure represents the required rate of return on equity appropriate for rate setting. McNally Reb., Staff Ex. 16.0, 16:314-330. Finally, these opinions deal with different companies. Two of those three analyses do not even mention ComEd, and the one that does mention ComEd does so only in the context of an assumed overall cost of capital

applicable to either PECO or ComEd. None of these opinion letters even attempts to state a cost of common equity for ComEd. *See*, CUB/CCSAO Ex. 1.02. The proposed cost of equity that Mr. Bodmer conjures from these opinion letters, therefore, cannot be said to be “derived from” any analysis in them. Investment bank reports of the type used by CUB/CCSAO as the basis of their analysis have never been accepted by this Commission nor any other regulatory commission in the United States as the basis for a cost of common equity valuation, a fact admitted by Mr. Bodmer. Bodmer, Tr. at 1248:17 - 1249:10. Those opinions were not the “basis” of CUB’s cost of equity argument either, and the Proposed Order errs in claiming that they were.

For these reasons, ComEd therefore requests that the language at pages 154-55 of the Proposed Order be revised.

D. Approved Rate of Return on Rate Base

Exception 16

For reasons described in the discussion of Exceptions Sections VI.A and C, above, ComEd respectfully submits that the Proposed Order should approve an overall cost of capital of 8.94%.

E. Allocation of Distribution Costs

Exception 17

The Proposed Order includes the following conclusion with respect to the allocation of distribution costs, which inadvertently implies that allocation of distribution costs in this case will be based on non-coincident peak demand and coincident peak demand based allocation factors adopted in ComEd’s last rate case rather than those provided in this case.

The Commission observes that the record regarding the proper method for allocating distribution costs was better developed in

Dockets 02-0798/03-0008/03-0009 (cons.) than here. Ultimately, however, the Commission rejects the CUB/CCSAO/City suggestion that rate mitigation concerns fully justify using the P&A allocation factor. While it is not entirely clear which allocation factor is superior for allocating electric distribution investment costs, the Commission will continue to use the non-coincident peak demand and coincident peak demand based allocation factors adopted in ComEd's last rate case. The Commission believes the record simply does not justify deviating from this practice.

Proposed Order at 171.

That conclusion should be amended as set forth in the attached exceptions to indicate that the Commission approves the use of the non-coincident peak demand and coincident peak demand based allocation factors as provided in ComEd's ECOSS *in this* rate case.

IX. RATE DESIGN

A. Customer Class Delineations

1. Residential

Exception 18

The Proposed Order errs in its rejection of ComEd's proposal to consolidate its residential customer delivery classes. Proposed Order at 183-184. The conclusions in the Proposed Order on these issues rely on percentage changes in rates rather than uncontroverted cost data. ComEd notes that Staff did not raise any objection to ComEd's proposed residential rate class consolidation.

First, the Proposed Order concludes that the rate impacts on certain customers are too great to justify the class consolidations. Proposed Order at 183. The Proposed Order does not elaborate on its reasoning but generally seems to focus on percentage differentials. ComEd, however, presented testimony explaining why the Commission should not rely on percentages

alone to make its determination. *See e.g.*, Crumrine Reb., ComEd Ex. 23.0, 15:297-313, 16:335 - 17:361. This evidence showed that, for many low-use customers, a high percentage increase still translates into a relatively small dollar increase. *Id.* In other words, a high percentage of a low number is still a low number and, therefore, a low dollar impact.

Second, the Proposed Order correctly rejects the AG's assertions that metering costs are different between the single family and multi-family residential customers. Proposed Order at 184. The Proposed Order also correctly acknowledges that difference between serving these customers is less than \$2.00 per month. *Id.* However, the Proposed Order goes on to conclude that:

While ComEd may not consider approximately \$2 per month significant, the Commission finds that it justifies separate rate classes.

Id. The problem with this statement is that it ignores the evidence demonstrating that the proposed residential monthly Customer Charge is roughly within \$1 per month of the calculated costs of the current single-family and multi-family groups. Crumrine Reb., ComEd Ex. 23.0, 15:308-12. Thus, rather than the \$2 difference cited, the difference actually is less than \$1 per month. ComEd submits that, when viewing the total dollars involved, this difference is not sufficient to justify the complexities of a separate rate class. Crumrine Dir., ComEd Ex. 9.0 Corr., 36:765-75; Crumrine Reb., ComEd Ex. 23.0, 15:308-12.

The Proposed Order further concludes that it is inappropriate to have a single distribution facilities charge for all residential customers. Proposed Order at 184. In particular, the Proposed Order finds that "electric space heat customers on an annual basis typically use more kilowatt hours than non-space heat customers, a separate distribution facilities charge for the two types of customers is warranted." *Id.* That conclusion is flawed because it is based on the utilization of the system rather than the actual costs of providing service. As Mr. Crumrine

testified, the difference in per-kWh costs for these customers is minimal and, therefore, the average cost of providing service on a per kWh basis, no matter when the customer uses the system, is roughly the same. Crumrine Reb., ComEd Ex. 23.0, 20:421-29.

Finally, the Proposed Order errs in its characterization of ComEd's position on these issues. Proposed Order at 183. The Proposed Order states that ComEd suggests that "tariff administration is more important than the dollar or percentage rate increases faced by customers." *Id.* That statement is inaccurate. While desirable, rate simplification is not the primary reason for ComEd's recommendation. Rather, ComEd's residential rate class recommendation is based on the results of ComEd's cost studies and the necessary judgment that is required of the cost analyst in recommending any rate classification proposal. Crumrine Dir., ComEd Ex. 9.0 Corr., 35:757 - 36:780; Crumrine Reb., ComEd Ex. 23.0, 15:297-313, 15:316-19, 18:371-83, 18:387 - 19:400, 19:403 - 20:418, 20:421-29. Moreover, ComEd's concern for, and plans to address, residential rate impacts is, by agreement of the parties, the subject of a separate proceeding. Thus, depictions of ComEd as callous on such matters in the instant proceeding are unfair.

For these reasons, the Proposed Order should be amended .

2. Non-Residential

Railroad Customer Issues

Exception 19

A. Introduction

Although it is not entirely clear, two primary conclusions with respect to ComEd's two railroad traction power customers -- the CTA and METRA -- appear to be reached in the Railroad Class section and the Rate BES-RR section of the Proposed Order. Because these

conclusions and the underlying issues are closely related, ComEd addresses these conclusions together. First, in the Railroad Class section, the Proposed Order concludes that the CTA and METRA should be charged in a manner that is consistent with how they currently are charged under their respective contracts with ComEd, despite the fact that, unless modified in this proceeding, such contracts are based upon bundled service tariffs that no longer will be available after January 1, 2007.¹⁰ Proposed Order at 187-190. Second, in the Rate BES-RR section, the Proposed Order approves Rate BES-RR but requires that the tariff “provide for a single-line standard to each railroad traction power substation,” even though ComEd did not propose the single-line standard in connection with the implementation of Rate BES-RR. Proposed Order at 242. Each of these conclusions is fundamentally flawed.

B. The Proposed Order’s Deference To Existing Contracts Is Inconsistent With The Act And The Commission’s Rules

The Proposed Order correctly acknowledges that “[d]ue to the evolution of the electric market in Illinois, the existing CTA contract for bundled delivery and supply of electricity may not be workable after the end of the mandatory transition period.” Proposed Order at 188. Nonetheless, the Proposed Order criticizes ComEd for failing to base its future rates for the CTA upon that existing contract. Specifically, the Proposed Order states that:

[T]he Commission would have expected ComEd to negotiate a new contract for the delivery of power and energy with the CTA and present it to the Commission for approval. ComEd’s proposal to file contracts with “conforming” changes after the Commission enters an Order in this proceeding is awkward at best, and does not seem fair to the parties to the contract.

¹⁰ These contracts are: (1) Electric Service Agreement Between Commonwealth Edison Company and Northeast Illinois Regional Commuter Railroad Corporation, dated June 1, 1986, as amended, and (2) the Electric Service Agreement Between Commonwealth Edison Company and the CTA, dated August 1, 1958, as amended in 1998 (this amendment is commonly referred to as the “1998 Amendment”).

Id. This statement ignores the realities of the ratemaking process and ignores existing law and regulations.

First, the Proposed Order ignores the fact that ComEd is an Integrated Distribution Company (“IDC”).¹¹ The Commission’s IDC rules, which themselves evolved from ongoing changes in the Commission’s regulation of electric utilities, specifically provide that “[a]n IDC shall not offer or provide any non-tariffed retail electric supply services or any non-tariffed transmission and distribution services” and “shall not renew, extend, or renegotiate any existing contract for any retail electric supply service, unless the IDC is required by tariff to renew or extend or the IDC is contractually bound to renew, extend, or renegotiate at the customer's option and the customer has exercised its option.” 83 Ill. Admin. Code § 452.230(b). The IDC rules explicitly preclude the approach espoused in the Proposed Order, which places the cart before the horse. In addition, the Act also prohibits contracts for delivery services. The Act specifically states that “delivery services shall not be a contract service until such services are declared competitive pursuant to Section 16-113.” 220 ILCS 5/16-102. There simply is no scenario under which ComEd could have renegotiated its contract with the CTA and then presented that agreement for approval as part of a general rate case. The appropriate procedure, which ComEd and the CTA have followed for more than half a century, is to amend their contract, with Commission approval, following a rate case determination. *See Alongi*, Tr. 2141:14 – 2147:13.

¹¹ The IDC rules, contained in Part 452 of the Illinois Administrative Code, 83 Ill. Admin. Code 452, Subpart B, were the product of very extensive proceedings to implement the requirements of Section 16-119A of the Act, 220 ILCS 5/16-119A. These rules are designed to assure that ComEd, as a delivery services provider, does not obtain any unfair competitive advantage over non-affiliated electricity suppliers because of its continued, legally required provision of bundled electric services. Part of this assurance was to require that legacy contracts be open to competition upon their expiration, unless the terms of the contract itself mandated that the contract be renewed or extended.

Second, the Proposed Order ignores the primacy of the Commission's ratemaking authority.¹² The Proposed Order states that it would be "awkward" for the CTA contract to be conformed to a rate case order and that the Commission is "disinclined to mandate changes to the contract terms over the objections of one of the parties who would be adversely affected by the changes." Proposed Order at 188-189. However, the CTA and METRA contracts each contain language that explicitly recognizes the Commission's authority to approve and modify them.¹³ The language in ComEd's proposed Rate BES-RR similarly provides that the tariff constitutes an amendment to both the CTA and METRA contracts. ComEd Ex. 10.1. Moreover, ComEd filed a proposed revision of the charges section of each contract with its initial filing on August 31, 2005 to make it clear that ComEd proposed to replace the charges section of those contracts with

¹² As a creature of statute, the Commission's authority is bound by the confines of the Act. The Act gives only the authority to determine facts and make orders as to the matters specified in the Act, and gives the Commission no authority to delegate its powers to another entity. *See Union Electric Co. v. Illinois Commerce Comm'n.*, 77 Ill.2d 364, 383 (1979).

¹³ The CTA contract provides as follows:

SECTION 26.02. This agreement is entered into on behalf of Edison subject to approval by Illinois Commerce Commission and shall be subject to modification by proceedings before such Commission to the same extent and upon the same grounds as any filed rate of general applicability.

CTA Cross Ex. 2.0.

Similarly, the METRA contract provides as follows:

SECTION 15.02. This agreement is entered into on behalf of METRA and Edison subject to approval by the Illinois Commerce Commission and shall be subject to modification by proceedings before such Commission to the same extent and upon the same grounds as any filed rate of general applicability. Service hereunder shall also be subject to the provisions of Edison Rider 6 (Optional or Non—Standard Facilities) and Rider 7 (Meter Lease), as they may be on file from time to time with the Commission, to the extent such provisions are not inconsistent herewith.

METRA Cross Ex. 1.0.

the unbundled charges provisions of Rate BES-RR. ComEd Ex. 10.2. Furthermore, in Direct Testimony, ComEd clearly explained that:

Proposed Rate BES-RR is applicable to entities that utilize electricity for traction power purposes to operate electric railroads and for which ComEd is providing bundled electric service. As such, Rate BES-RR is available to the nonresidential customers taking service under either the (1) Electric Service Agreement Between Commonwealth Edison Company and Northeast Illinois Regional Commuter Railroad Corporation, dated June 1, 1986, as amended, or (2) Electric Service Agreement Between Commonwealth Edison Company and Chicago Transit Authority, dated August 1, 1958, as amended. **Similar to the other BES tariffs, Rate BES-RR incorporates distribution and other generally applicable charges through references to Rate RDS and other generally applicable tariffs.**

Alongi/McInerney Dir., ComEd Ex. 10.0, 15:354-63 (emphasis provided.)

The apparent concern in the Proposed Order regarding the CTA's rights is misplaced. The CTA (as well as METRA) has participated in this docket. Just like ComEd, the CTA and METRA have had the opportunity to present evidence on the reasonableness of the proposed delivery service customer classifications and related rates. Therefore, the language in the Proposed Order regarding the Commission's deference to the contracts should be deleted.

C. The Proposed Order Is Inconsistent With The Procurement Order And Does Not Provide A Way For ComEd To Continue To Provide Bundled Services For These Customers

The Proposed Order is inconsistent with the Commission's Procurement Order. Specifically, the Proposed Order provides:

In the event the CTA does not find an alternate supplier, ComEd will be allowed to assess appropriate supply charges that result from the procurement auction process approved in Docket 05-0159.

Proposed Order at 189. This conclusion is absolutely correct and entirely consistent with both the ICC's Post-2006 Workshop consensus recommendation to implement unbundled pricing and ComEd's proposed unbundled pricing structure contained in proposed Rate BES-RR. It is,

however, totally inconsistent and diametrically opposite to the Proposed Order conclusion with respect to maintaining the charge structure contained in the existing contracts that is discussed in Subsection IX.A.2.B of this Brief On Exceptions. That is, the Commission's Procurement Case Order did not order ComEd to have CTA-specific charges for supply designed to somehow be compatible with the existing charge structure of the CTA contract if the CTA chooses bundled service. *See Commonwealth Edison Co.* ICC Docket 05-0159 (Order, Jan. 24, 2006). The reality is that the existing charge structure of the CTA contract (and the METRA contract) is simply not compatible with the unbundled pricing structure that the Commission endorses. Thus, there is no way that ComEd can continue to provide a bundled service for these customers with the existing charge structure under their respective contracts as the Proposed Order seems to require in its conclusions that are discussed in Subsection IX.A.2.B of this Brief On Exceptions. As it stands, it is not clear how ComEd would comply with the Proposed Order, if adopted, given these conflicting conclusions. For this reason alone, the Proposed Order should be modified to either: (1) approve Rate BES-RR as amended in rebuttal testimony, or (2) treat each railroad traction power substation as a separate retail customer with each railroad traction power substation individually eligible for bundled service under either Rate BES-NRA or Rate BES-NRB¹⁴ as suggested in ComEd's surrebuttal. *Alongi/McInerney Sur.*, ComEd Ex. 41.0 Corr., 26:596 - 27:634, 32:750 - 33:759. There is no other viable option in the record.

Additionally, the conclusion in the Proposed Order with respect to the CTA that: "...the only reasonable solution is for ComEd to charge the CTA in a manner that is consistent with how

¹⁴ Customers qualify for BES-NRA if their load is under 400 kW. *See generally* Crumrine Dir., ComEd Ex. 9.0 Corr., 30:673-31:685. The CTA traction substations would qualify for either Rate BES-NRA or BES-NRB under ComEd's surrebuttal proposal, depending on the load at the railroad traction power substation. *See also* *Alongi/McInerney, Tr.* at 2131.

it currently charges the CTA...,” also is unworkable. Proposed Order at 189. Similarly, the conclusion in the Proposed Order with respect to METRA that “...in the event Metra chooses to purchase its electric supply, as well as the delivery of that supply, from ComEd, ComEd should assess charges to Metra based upon its contract” is also unworkable. Proposed Order at 190. The rates to which the CTA and METRA contracts refer no longer will be available after 2006. For example, Rate 6L, which is referred to in the 1998 Amendment of the CTA contract, is being eliminated. Moreover, the contracts only provide for bundled service and do not separate charges for supply and delivery. The Proposed Order provides no guidance as to how ComEd would “assess appropriate supply charges that result from the procurement auction process approved in Docket 05-0159” if the CTA or METRA choose bundled service yet presumably maintain the charge structure of the existing contracts (*i.e.*, “charge the CTA in a manner that is consistent with how it currently charges the CTA” and “assess charges to Metra based upon its contract”).

Accordingly, the Proposed Order should be amended to adopt either one of ComEd’s proposals for these customers.

D. The Proposed Order Creates An Inappropriate Subsidy For The CTA and METRA

Each of ComEd’s proposals for the railroad customers is cost-based. *See e.g.*, Heintz Dir. ComEd. Ex. 11.0, 19:410 - 22:487; Heintz Sur., ComEd Ex. 42.0, 6:117-26. In other words, ComEd’s proposals would have each of these customers pay for the distribution costs that they impose on the system, consistent with ComEd’s ECOSS. There is no credible evidence in the record disputing these costs and, indeed, the Proposed Order acknowledges the reasonableness of ComEd’s ECOSS and the Equal Percentage of Embedded Cost (“EPEC”) method of allocating these costs. Proposed Order at 159-160, 175. The Proposed Order, however, ignores these costs

and unilaterally provides a substantial subsidy to these two customers. In doing so, the Proposed Order could, without appropriate guidance, jeopardize ComEd's ability to recover its authorized revenue requirement.

The subsidy stems from a fundamental misunderstanding of billing for demands under the existing bundled contracts. Proposed Order at 188-190. The CTA contract and the METRA contract each allowed aggregation of demand across multiple noncontiguous locations. *See* CTA Cross Ex. 2.0; METRA Cross Ex. 1.0. Aggregating demand in this fashion afforded these customers a substantial supply-related benefit. That is, these customers enjoyed the ability to reduce their responsibility for supply-related capacity costs in a manner that reflected the actual supply-related costs they caused ComEd to incur. However, no similar benefit was provided under the old contracts with respect to distribution facilities.

In contrast, the Proposed Order apparently would reduce the responsibility of these customers for the costs of the distribution facilities actually used to deliver service to them -- albeit without explicitly specifying which other customers should be assigned responsibility for the costs not borne by the two railroads. The Proposed Order would produce this dubious result by its direction that these customers be allowed to aggregate their demands as under the old contracts -- but now with respect to the calculation of their distribution facilities charges and hence for purposes of determining their responsibility for distribution facilities costs. Thus, the Proposed Order would provide these two customers the benefit of each being treated as a single, large contiguous customer, with a load of over 10 MW, even though the CTA and METRA impose distribution costs on the system that are vastly different from those imposed by customers whose loads actually exceed 10 MW at a single contiguous premises. The record shows that the CTA and METRA together take service for traction power at 70 different

locations in ComEd's service territory. Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 31:720-21; Heintz Sur., ComEd Ex. 42.0, 6:117-26; *see, e.g.*, Anosike/Zika Reb., CTA 3.0 Rev., 22:547-49. These locations are noncontiguous. Each of these railroad traction power stations typically has a load between 1 and 5 MW; none exceeds 10 MW individually. Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 31:721-23. Each of those railroad traction power substations is served through two ComEd 12,000 volt lines. Anosike/Zika Reb., CTA 3.0, Rev., 13:326-28, 22:547-49. This cost-structure is very different than other customers with loads of 10 MW at a single premises that are typically served through one or two 34,000 volt ComEd lines or one to five 12,000 volt ComEd lines. Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 31:725-28.

As Messrs. Crumrine and Alongi explained:

[A]lthough CTA claims it should be charged like customers that have load over 10 MW, the massive amount of distribution facilities required to serve CTA's geographically dispersed traction power substations—which in 1998 included 162 miles of underground primary feeder cable in conduit, 18 miles of overhead primary feeders, involving over 20 different ComEd substations and approximately 60 different feeders—is much different than the distribution facilities required to serve any single customer with load over 10 MW. Rather, with the exception of the automatic load transfer capability that CTA requires, the service to CTA's geographically dispersed traction power substations (of which there were 57 in 1997) is more like providing service to a retail chain of grocery stores, each of which is billed as an individual customer.

Crumrine/Alongi Supp. Reb., ComEd Ex. 47.0, 19:405 - 20:415 (fn omitted).

The fundamental principle that rates should be cost-based flows from the statutory obligation to charge delivery services rates that accurately reflect such costs. 220 ILCS 5/1-102(a)(iv); 220 ILCS 5/16-108(c) (“charges for delivery services shall be cost based”). ComEd does not dispute the importance of the public transportation services provided by the CTA and METRA. However, CTA and METRA are not the only large customers of importance to the local economy. The quandary for ComEd is that the subsidy for the CTA and METRA

contained in the Proposed Order is purely arbitrary and the Proposed Order does not clearly specify which other customers must bear the burden of the subsidy that the CTA and METRA would receive. As such, the Proposed Order potentially affects ComEd's ability to recover the revenue requirement granted by the Commission. If the Proposed Order is not modified, ComEd has no guidance as to which customers should bear the costs that the CTA and METRA are avoiding. If CTA and METRA will not pay their own costs, who will?

E. The Proposed Order Errs In Its Imposition of "Single-Line Standard" Service To Each Railroad Traction Power Station Under Rate BES-RR

Charges in ComEd's Rate RDS, which are also applied under the BES rates, are designed to recover the costs of providing standard delivery service. Thus, the provision of standard delivery service and the corresponding delivery service charges should be aligned. However, this is not the case with respect to the conclusion in the Proposed Order. Specifically, there is a major inconsistency between the two main conclusions in the Proposed Order. If the Proposed Order is directing ComEd to charge the CTA in accordance with the CTA's contract as amended in 1998,¹⁵ then that entails a single standard based on the total traction power system load. Moreover, any ComEd additions to serve revisions of either the railroad traction power system would, depending on the resulting total traction power system load, be considered non-standard

¹⁵As the Proposed Order acknowledges, under the 1998 amendment, any ComEd additions to serve revisions of either railroad system would, depending on the resulting total traction power system load, be considered non-standard subject to charges under Rider NS. Alongi/McInerney Reb., ComEd Ex. 24.0, 39:983-89; *see also* Crumrine/Alongi Sup. Rep., ComEd Ex. 47.0, 24:500-17. Specifically, the 1998 Amendment to the CTA contract, as a condition of CTA's desire to take service under Rate 6L – Large General Service ("Rate 6L") and Rider GCB, specifically incorporated Rider 6. Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 24:561-25:570. Thus, the 1998 amendment adopted a single point of service standard for the entire CTA traction power system load consistent with standard service under Rate 6L. *Id.* Since 1998, ComEd has applied and CTA has paid non-standard services and facilities charges for services based on the single electric service station standard consistent with Rate 6L and Rider 6. *Id.*

subject to charges under Rider NS. The Proposed Order acknowledges this in its conclusion that “since 1998, the CTA has paid non-standard services and facilities charges based on the single electric service station standard consistent with Rate 6L and Rider 6.” Proposed Order at 187.¹⁶ However, its conclusion approving Rate BES-RR also allows a single-line standard to each railroad traction power substation. Proposed Order at 242-43. The two conclusions are inconsistent. Thus, the Proposed Order not only allows each of these two customers to receive lower charges by virtue of being treated as if each were a large Over 10 MW customer connected to the system at one location for purposes of applying charges, but it also allows these customers to obtain the benefits of the multiple facilities provided to serve them at 70 different locations for purposes of receiving standard service.¹⁷ The CTA and METRA should not have it both ways.

F. ComEd’s Proposals Are The Only Reasonable Proposals In The Record

The record contains two cost-based proposals for the CTA and METRA. In other words, the proposed charges directly reflected the costs contained in the ECOSS for these customers. Heintz Dir., ComEd Ex. 11.0, 19:410 – 22:487; Heintz Sur., ComEd Ex. 42.0, 6:117-26. Each of these proposals also treats CTA and METRA in a similar fashion. There is no basis in the record to treat these two customers differently as does the conclusion in the Proposed Order.

The first proposal, contained in ComEd’s initial filing in this Docket, provides for the maintenance of a separate class for these two railroad traction power customers. Under this

¹⁶ The CTA has acknowledged that it has paid non-standard services charges under Rider 6. Anosike/Zika Tr. at 1425:14-21.

¹⁷ The Proposed Order also errs in requiring ComEd to “...bill the CTA for point of supply charge in a manner similar to this 1998 contract amendment.” Proposed Order at 189. ComEd is proposing to replace the monthly Point of Supply Charge with a single cost-based fixed monthly Customer Charge and a single cost-based fixed monthly Standard Metering Service Charge. This is discussed extensively in ComEd’s rebuttal testimony. *See* Alongi/McInerney Reb., ComEd Ex. 36:922 - 40:1002.

proposal, the railroad class would take bundled service under Rate BES-RR. Rate BES-RR also specifically stated that the tariff “constitutes an amendment to the NIRCRC Agreement and the CTA Agreement.” *See* ComEd Ex. 10.1. Similar to the 1998 Amendment to the CTA’s agreement, this proposal contains a single standard of service for each railroad traction power system. In addition, aggregation of demand is not an issue under this proposal because the Distribution Facilities Charge (“DFC”) corresponds to the costs assigned for this class in ComEd’s ECOSS. *See generally*, Heintz Dir., ComEd Ex. 11.0; ComEd Ex. 11.1. This proposal was modified slightly in ComEd’s rebuttal testimony in response to the CTA’s request that it be able to access multiple suppliers and that modification did not change the fundamental proposed rate design or charge structure.¹⁸ Staff did not take issue with ComEd’s BES-RR proposal as modified.

The second proposal was made in response to CTA’s rebuttal testimony requesting a one line as standard service to each traction power substation.¹⁹ Anosike/Zika Reb., CTA Ex. 3.0 Rev., 2:34-36, 23:560-64; *see* Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 26:596 - 27:634, 32:750 - 33:759. This proposal provides the CTA and METRA with the one line standard per traction power substation that the CTA requested in rebuttal testimony. This proposal was made in surrebuttal because the CTA did not raise this issue until CTA’s rebuttal testimony. Under this proposal, each railroad traction power station would be treated as a separate retail customer and classified for delivery service purposes based on the load at each railroad traction power

¹⁸ ComEd’s rebuttal testimony proposed to include appropriate revisions to Rate BES-H, Rate BES-RR, and Rate RDS in its compliance filing pursuant to the Commission’s Order in this Docket in order to address the CTA’s concern set forth in the CTA’s direct testimony. Anosike Dir., CTA Ex. 1.0, 11:218-26; Alongi/McInerney Reb., ComEd Ex. 24.0, 41:1023 - 43:1084.

¹⁹ METRA did not file direct or rebuttal testimony in this case, except in response to Commissioners’ March 16, 2006 Questions.

station. Bundled service would be provided under Rate BES-NRA or Rate BES-NRB²⁰ as applicable. Alongi/McInerney Sur., ComEd Ex. 41.0, Corr., 26:596 - 27:634, 32:750 - 33:759. Adoption of this proposal eliminates the need for a separate Railroad Delivery Class and Rate BES-RR. Similar to the modified first proposal, this second proposal also allows the relevant provisions of the existing railroad contracts to continue in effect if these customers were to purchase supply from a Retail Electric Supplier. *Id.* Like ComEd's initial proposal, this proposal is cost-based and consistent with the costs for these customers contained in ComEd's ECOSS. *See* Heintz Sur., ComEd Ex. 42.0, 6:117-26.

This second proposal appropriately addressed the concerns raised by the CTA in its rebuttal testimony with respect to standard service and would result in lower construction costs for new service provided to the CTA and Metra. Anosike Dir., CTA Ex. 1.0, 11:216-26; Alongi/McInerney Reb., ComEd Ex. 24.0, 41:1023 – 43:1084. ComEd supports the adoption of either its initial proposal as modified in its rebuttal testimony or its second proposal as submitted in surrebuttal testimony, which are the only viable and cost-based proposals in the record.

For the foregoing reasons, the conclusions in the Railroad Class and Rate BES-RR sections of the Proposed Order should be modified as set forth in the exceptions language attached to this Brief on Exceptions. In particular, the Proposed Order should be modified to either: (1) adopt Rate BES-RR as amended in ComEd's rebuttal testimony which allows each railroad customer a single standard for its their traction power entire system or (2) adopt ComEd's surrebuttal proposal which allows a single-line standard for each traction power substation.

²⁰ ComEd notes that a relatively small number (*e.g.*, two or three) CTA traction substations may qualify for Rate BES-NRB under ComEd's surrebuttal proposal.

Very Large Load Customers

Exception 20

The Proposed Order errs in its conclusion that the Over 10MW class should be maintained. Proposed Order at 194-96. The conclusion in the Proposed Order on this issue ignores the objective evidence concerning the cost of service for these customers and instead moves the Commission away from its traditional reliance on cost of service to set rates toward a subjective process of “across-the-board” changes that only can be described as arbitrary. *See* Crumrine Sur., ComEd Ex. 40.0 Corr., 30:663-674 for a discussion of the arbitrary nature of this proposal.

First, there should be no dispute over the evidence. ComEd’s ECOSS, which Staff has concluded is appropriate for ratemaking purposes (Lazare Dir., Staff Ex. 6.0 Corr., 36:889-93) was rerun to separate the Over 10 MW customers from the other customers in the proposed Very Large Load Delivery Class. Crumrine Reb., ComEd Ex. 23.0, 25:524-33; Heintz Reb., ComEd Ex. 25.0, 4:82 - 5:87; ComEd Ex. 24.2. This ECOSS indisputably shows, what was clear from evidence in previous cases, that distribution facilities’ costs for the Over 10 MW and the 1-10 MW class are virtually identical. Crumrine Reb., ComEd Ex. 23.0, 25:524-33; ComEd Ex. 24.2. No party provided any credible evidence to dispute this result and the Proposed Order finds that the ECOSS is reasonable. Yet, the Proposed Order largely ignores the results and sets rates for Over 10 MW customers that are demonstrably below cost, and therefore will harm other customers through a subsidy paid to large load non-residential customers by smaller load non-residential customers.

If the Proposed Order stands, the harm caused would be significant, and without appropriate guidance, would jeopardize ComEd’s ability to recover its authorized revenue

requirement. That is, if over 10MW customers will not pay their own costs, who will (*i.e.*, all other customers including residential, only other nonresidential customers, only 1-10 MW nonresidential customers)?). As shown in Mr. Crumrine's surrebuttal, at ComEd's then proposed revenue requirement, this subsidy amounted to over \$20 million. Crumrine Sur., ComEd Ex. 40.0 Corr., 6:663-74. In fact, the Proposed Order exacerbates the problem by using the system average increase to set the new over 10MW customer class rates. Proposed Order at 195. The system average increase includes both residential and non-residential customer classes. This distorts the rates for the over 10MW class even more by averaging the residential and non-residential increases, *i.e.*, while the system average request, based on ComEd's direct case, was 20%, the residential request was 16% and the non-residential request was 25%. Crumrine Dir., ComEd Ex. 9.0 Corr., 44:949-52. A similar discrepancy exists between smaller non-residential customers and the large customers (*i.e.*, smaller customers have a lower increase than larger load non-residential customers). At a minimum, the Proposed Order should be changed to either increase the proposed over 10MW customer class revenues at the same increase as the new 1-10MW customer class or at the same increase as the average of the non-residential classes. Moreover, as noted below, a far better concession to the over 10MW customers, if one is deemed necessary, is that presented by ComEd, that would move this class half the way toward cost of service.

Second, this Commission made it clear that it is the policy of Illinois to allocate revenue to classes based on cost of service. Crumrine Reb., ComEd Ex. 23.0, p. 37, fn. 8 (*citing Commonwealth Edison Co.*, ICC Docket 94-0065 (Order, Jan. 9, 1995) at, . 102). No party has denied that the across the board increase is not cost-based. Nor has any party disputed how the over 10 MW customer class rates were determined Crumrine Sur., ComEd Ex. 40.0 Corr.,

30:663-74. Yet, despite this lack of support, the Proposed Order suggests that the Commission abandon its long standing policy of using costs to set rates. Indeed, the Proposed Order does not even cite the cost standard as a theoretical has done in past orders. *See Commonwealth Edison Co.* ICC Docket 94-0065 (Order, January 9, 1995). This change in Commission policy is dramatic and sends the wrong signal concerning ratemaking.

Third, the conclusion in the Proposed Order regarding the Over 10 MW class “is due, largely, to the adverse rate impacts that would be faced by the largest customers.” Proposed Order at 195. ComEd recognizes that the Commission, in setting rates, may consider rate impacts. However, ComEd notes that the customers in question here are ComEd’s largest most sophisticated consumers who pay, on average, less than 1.25 cents/kWh for delivery, and, therefore, the Proposed Order’s reliance on percentage changes in rates has little relevance for rates that are so low. ComEd Init. Br. at 201; ComEd Ex. 10.9; Crumrine Reb., ComEd Ex. 23.0, 28:596 - 605, Crumrine Sur., ComEd Ex. 40.0 Corr., 34:758- 71. Furthermore, these are the same customers that have benefited from a below cost rate for many years and the Proposed Order proposes to perpetuate this situation. *See Crumrine Sur., ComEd Ex. 40.0 Corr., 28:614 - 30:660.* The Proposed Order avoids setting rates at cost and provides for no movement at all in that direction. ComEd submits that this is the wrong signal to send as the industry continues to evolve toward greater reliance on market forces.

Finally, the Proposed Order interprets ComEd’s alternative proposal too narrowly. The Proposed Order states “[f]urthermore, at this time, the Commission declines to make any conclusions about how the over 10 megawatt rate class will be treated in future rate proceedings. Instead, in any future rate proceeding, consistent with requirements of the Act, the Commission will make decisions based upon the record.” Proposed Order at 196. Presumably this statement

is in response to ComEd's alternative proposal for an over 10MW customer class. ComEd proposes that the DFC for the Over 10 MW customer class be set at \$3.86 per kW, which is one-half of the difference between the current Over 10 MW rate and the resulting rate based on ComEd's ECOSS filed in this case. ComEd Init. Br. at 201; Crumrine Sur., ComEd Ex. 40.0 Corr., 7:146 - 8:157. If the Commission accepts this compromise, it also should require a full movement to cost-based rates for this Over 10 MW class in ComEd's next rate case, whenever that may be filed, by consolidating it into a single Over 1 MW class. ComEd Init. Br. at 202; Crumrine Sur., ComEd Ex. 40.0 Corr., 7:141-44. With this proposal, ComEd is not, as it cannot, requesting that the Commission pre-judge a future rate case issue as the Proposed Order seems to imply. This proposal is merely requesting that the Commission make its intentions clear, as it did in ICC Docket No. 94-0065, that cost of service is the standard by which to judge just and reasonable rates, and to the extent practicable, it will do so in the next rate case. This does not suggest that evidence could not be provided in that case to suggest an alternative approach, but it would make clear the Commission's policy on these issues. Therefore, if the over 10 MW class is maintained, ComEd's compromise of moving the class toward its cost of service is the most logical approach and sends the appropriate signal concerning the Commission's approach to properly pricing delivery services.

Accordingly, the Proposed Order should be modified.

High Voltage Class Rates

Exception 21

The conclusion in the Proposed Order with respect to this issue is reasonable except that it errs in granting the Department of Energy's request that the High-Voltage Delivery Class be separated into two subclasses. This additional subclass is unwarranted and would significantly

complicate and increase the cost of billing unnecessarily. *Crumrine Sur., ComEd Ex. 40.0 Corr., 36:814 - 37:831*. The Proposed Order ignores the record evidence demonstrating that many of the customers that are served at or above 69 kV also have some load that is served below 69 kV, yet they will be placed in the High Voltage Delivery Class under ComEd’s proposal. *Id.* As such, the subsidy that the Proposed Order is trying to eliminate is often on the bill of the same customer. *Id.* The DOE acknowledged this point. DOE Init. Br. at 15. Additionally, the ECOSS, which the Proposed Order approves, is based on the entire customer’s load. Separation into two components would be impractical.

With so few customers affected by this issue, combined with the fact that the proposed High Voltage Delivery Class would pay less than ½ cent per kWh for delivery service, there simply is insufficient basis for creating a new customer class. *Crumrine Sur., ComEd Ex. 40.0 Corr., 36:814 - 37:831*. Accordingly, the Proposed Order should be modified to reject the DOE’s proposal as set forth in the attached exceptions.

D. Rider ECR

Exception 22

ComEd takes exception to the Proposed Order’s conclusions concerning Rider ECR in four respects:

- The denial of recovery through Rider ECR of incremental environmental costs related to non-manufactured gas plant (“MGP”) sites.
- The reliance on a rhetorical statement made by Staff – which is contradicted by the record and inconsistent with applicable law – that ComEd “failed to demonstrate that non-MGP costs are reasonable, prudently incurred, related to delivery costs and are as volatile as MGP costs.”
- The exclusion of “any land acquisition costs” to the extent this conclusion denies ComEd the ability to recover through Rider ECR acquisition costs related to the leasing of land.

- The inclusion of “any benefit that the Company receives from insurance proceeds related to environmental recoveries, no matter when received...in any revisions of ECR adjustments between annual calculations” to the extent it goes beyond the language recommended by Staff.

ComEd first takes exception to the Proposed Order’s conclusion to deny recovery under Rider ECR for incremental environmental costs related to non-MGP sites. This denial is despite the fact that the Proposed Order also, and correctly, concludes that ComEd had demonstrated that all of its “incremental environmental costs are volatile and fluctuating,” and recognizes that “no party has disputed this.” Proposed Order at 211.

As an initial matter, the Proposed Order finds as a basis for denying rider recovery of non-MGP costs that these costs “are not as large or as volatile as the MGP costs.” *Id.* at 212. However, this is not the standard for rider recovery. Rather, as the Proposed Order also acknowledges (*id.* at 211), the Illinois Supreme Court has stated that “a rider mechanism is effective and appropriate for cost recovery when a utility is faced with unexpected, volatile *or* fluctuating expenses.” *Citizens Utility Bd. v. Illinois Commerce Comm’n*, 166 Ill.2d 111, 138 (1995) (citing *City of Chicago v. Ill. Commerce Comm’n*, 13 Ill.2d 607 (1958)) (emphasis added). There is no dollar threshold for rider recovery, and therefore to compare the non-MGP costs to MGP costs misses the point. Based upon the Supreme Court precedent, a utility should be permitted rider recovery for certain types of costs, namely those that are unexpected, volatile *or* fluctuating.” *Id.* (emphasis added). Nothing in the Supreme Court’s opinion limits rider recovery to only the most unexpected, most volatile or most fluctuating expenses, and to do so in this case would be to misapply the Supreme Court precedent.

Throughout this proceeding, ComEd has shown that its non-MGP costs are unexpected, volatile and fluctuating – ranging from a low of \$119,000 to a high of \$1.3 million in the

2001-2004 period,²¹ and that they are prudently and reasonably incurred. ComEd further notes that Messrs. Fernandes and McCauley showed that environmental laws do not differentiate between MGP and non-MGP costs, as ComEd incurs remediation and clean-up costs with both types of sites. ComEd Init. Br. at 213. In sum, the Proposed Order's distinction between MGP and non-MGP costs is arbitrary, lacks any basis in either fact or law, and recovery of non-MGP costs is actually supported, not discouraged, by past decisions that endorse the recovery of like costs. The Proposed Order therefore should be revised to include non-MGP costs within the scope of Rider ECR.

The Proposed Order also incorrectly relies on the rhetorical statement made by Staff that ComEd has “failed to demonstrate that non-MGP costs are reasonable, prudently incurred, related to delivery costs and are as volatile as MGP costs.” Proposed Order at 212. ComEd takes specific exception to this statement, noting that it is contrary to the evidence and, to the extent it references a relationship to delivery costs, contradicts a prior Commission order holding that environmental remediation expenses are “corporate expenses that should not be bypassed by any retail customer.” *Commonwealth Edison Co.*, ICC Docket 01-0423, (Order, March 28, 2003) at 105.. No party has challenged the fact that these costs are prudently incurred. ComEd Rep. Br. at 125. In fact, these costs fall directly within the Supreme Court's finding that costs of environmental compliance are a “necessary expense of utility operations” that “allow[] a utility to remain in business and to continue to provide service to its customers.” *Citizens Utility Bd. v.*

²¹ The statement in the Proposed Order that “the testimony of ComEd's own witness” admits that the non-MGP costs are not volatile is presumably based on Staff's argument in its Initial Brief that ComEd witnesses Messrs. Fernandes and McCauley stated on cross-examination that if the scales of ComEd Exhibit 44.0, Attachment 1 were manipulated, “the graphic representation would show a drastic change.” Tr. at 210:10 - 2106:2; Staff Init. Br. at 101. As noted in ComEd's Reply Brief, this benign statement proves little, and ComEd's witnesses have at all times maintained the volatility of non-MGP costs. ComEd Reply Br. at 126.

Illinois Commerce Comm'n, 166 Ill.2d at 123. Moreover, not only does the evidence itself support the prudence of these costs, but the Proposed Order's conclusion to include non-MGP related costs in ComEd's base rates (Proposed Order at 212) further confirms that ComEd's non-MGP costs are "reasonable, prudently incurred, [and] related to delivery costs."²²

In addition to the above concerns, the Proposed Order's language excluding recovery of "any land acquisition costs" through Rider ECR is vague. Proposed Order at 212. Although ComEd offered, in the interest of narrowing the issues, to strike references in Rider ECR to acquisition costs related to the purchase of land, ComEd maintained at all times that it be permitted to recover acquisition costs related to the leasing of land. *Crumrine Sur.*, ComEd Ex. 40.0 Corr., 70:1594 -1600. Indeed, as ComEd explained during this proceeding, a variety of other utilities' environmental riders permit the recovery of land acquisition costs in general, whether related to purchasing or leasing. *See, e.g.*, Ill.C.C. No. 16 - Gas, 3rd Revised Sheet No. 68 (Nicor Rider 12) and Ill.C.C. No. 31, 2nd Revised Sheet No. 65.1 (Ameren IP Rider EEA). ComEd therefore takes exception to the language of the Proposed Order to the extent it is inconsistent with ComEd's surrebuttal testimony and excludes rider recovery of costs related to the leasing of land.

The Proposed Order is also vague in its language providing "that any benefit that the Company receives from insurance proceeds related to environmental recoveries, no matter when received, should be included in any revisions of ECR adjustments between annual calculations." Proposed Order at 212 (emphasis added). ComEd specifically takes exception to the Proposed Order's language concerning insurance recoveries to the extent it goes beyond the language

²² Furthermore, Rider ECR provides for yearly reconciliation proceedings during which the Commission will review individual non-MGP costs to ensure that they are prudently incurred. ComEd Rep. Br. at 128-29.

proposed by Staff. *See* Ebrey Dir., Staff Ex. 2.0, Attachment K. Indeed, Staff’s proposed language clearly states that inclusion of insurance recoveries in the Rider ECR calculations is limited to those recoveries related to MGP sites and that are received by ComEd on or after January 1, 2007. There is no record support for inclusion of any insurance recoveries received prior to the effective date of Rider ECR, and such inclusion would be otherwise unlawful as well.²³

Finally, ComEd notes that, while it takes exception to the denial of rider recovery for non-MGP costs as noted above, it understands that the issue of rider recovery for non-MGP costs appears to be an issue of first impression for the Commission. Therefore, without conceding that rider recovery for non-MGP costs is not appropriate at this time, ComEd has set forth in its Exceptions two “options” for consideration: (1) corrected language concluding, *inter alia*, that, consistent with the evidence and Supreme Court precedent, rider recovery is appropriate for both MGP and non-MGP costs at this time; or (2) corrected language concluding, *inter alia*, that, at this time, base rate recovery for non-MGP costs is the appropriate result in this proceeding, and that the Commission is willing to consider rider recovery for non-MGP costs in a future proceeding.

J. Rider NS

Exception 23

The Proposed Order correctly concludes that ComEd is entitled to recover its costs to provide nonstandard services under Rider NS. The Proposed Order also properly recognizes that reservation of distribution system capacity is a non-standard service for purposes of this rider.

²³ ComEd has asserted throughout this proceeding that all such insurance recoveries have been exhausted and that this issue is therefore moot.

Proposed Order at 225. Nonetheless, the Proposed Order would remove essential language from Rider NS without which the rider would be ineffective for purposes of recovering ComEd's costs of providing nonstandard service and ComEd would be unable to make up any resulting revenue shortfall. ComEd notes that Staff supports Rider NS. Hanson Dir., Staff Ex. 7.0, 9:192.

Specifically, the Proposed Order includes the following conclusion with respect to proposed Rider NS:

...[T]he Commission is not willing to authorize ComEd to assess charges with essentially no regulatory oversight...

In any event, the Commission directs ComEd in its compliance tariff filing to remove from Rider NS the language that would authorize ComEd to assess its unstated "cost" of providing non-standard services and facilities. If ComEd wishes to assess charges for non-standard services and facilities, it may make a tariff filing with sufficient information that the Commission can evaluate the just and reasonableness of the proposed rates and charges. To the extent Rider 6 allowed ComEd to assess unspecified charges for non-standard services and facilities, the Commission concludes that the time has come to correct the shortcoming in ComEd's tariffs.

Proposed Order at 226.

While ComEd believes this conclusion is in error, in order to conform Rider NS to address the concern described in this conclusion (*i.e.*, authorizing "ComEd to assess charges with essentially no regulatory oversight") and to avoid the need for a separate proceeding, ComEd suggests that Rider NS be modified to include a formula that is very similar to the one approved by the Proposed Order with respect to Rider DE, as shown below.

Determination Of Extension Cost

The cost of furnishing an extension, the EXT COST, is determined in accordance with the following equation:

$$\text{EXT COST} = \text{DL} + \text{DOH} + \text{PA} + \text{GA} + \text{ILC} + \text{M} + \text{MH} + \text{CIC} + \text{CE} + \text{T} + \text{RCS}$$

Where:

- DL = Direct Labor Cost, in \$, which includes costs for direct construction labor
- DOH = Department Overhead, in \$, which includes costs for supervision, clerical support, and transportation
- PA = Paid Absence, in \$, which includes costs for vacation, holiday, and sick time pay
- GA = General and Administrative Overhead, in \$, which includes costs for operations and technical services support
- ILC = Indirect Labor Cost, in \$, which includes, but is not limited to, payroll taxes; employee pensions and benefits costs; office facilities, computer equipment and software costs; and payroll department and human resources department costs
- M = Material Cost, in \$, which includes the purchase price of material used, including State Use Tax if such material is procured from the Company's storeroom
- MH = Material Handling Cost, in \$, which includes stores personnel labor costs and related expenses
- CIC = Common Indirect Cost, in \$, which includes, but is not limited to, accounting, legal, procurement and other administrative and general expenses
- CE = Company Engineering Cost, in \$, which includes the direct engineering labor and engineering department overhead costs
- T = State Use Tax, in \$, for material that is directly purchased for the extension and not procured from the Company's storeroom
- RCS = Related Contractor Services Cost, in \$, which includes any applicable costs incurred by the Company for contracted labor used to perform any construction or engineering tasks associated with the extension, with such costs determined through the application of a contracted labor rate or by competitive bid

With minor modifications, this formula, which ComEd developed in cooperation with the Commission Staff as agreed in Docket 03-0767 for use in determining the cost of furnishing a distribution system extension (*see* ComEd Ex. 10.14, p. 1), could easily be incorporated into Rider NS and included in ComEd’s compliance filing to address the concern as described in the Proposed Order with respect to authorizing “ComEd to assess charges with essentially no regulatory oversight.” Proposed Order at 226. Consequently, the conclusions with respect to ComEd’s proposed Rider NS in the Proposed Order should be modified as set forth in the attached exceptions.

L. Rider GCB7

Exception 24

The Proposed Order correctly determines that the City/CCSAO’s demand that ComEd retain the current Rider GCB is “simply unworkable.” Proposed Order at 234. Rider GCB combines supply-related capacity charges and facilities-based distribution charges in a manner that the Proposed Order recognizes would not be viable in Illinois’ post-transition electric market. *Id.* Thereafter, the Proposed Order errs sharply by requiring ComEd nonetheless to “allow eligible governmental customers to consolidate their demand for purposes of calculating the applicable Distribution Facilities Charges.” *Id.* The apparent purpose of this requirement is to extend a “discount” on the cost of delivery services, to which the City/CCSAO assert they are entitled. The proposed discount, however, is contrary to current law and, for that matter, has no basis in the existing rider. This new, arbitrary subsidy, which would have to be recovered from ComEd’s other customers in some unspecified manner, should not be included in the rates approved here. ComEd notes that Staff did not oppose proposed Rider GCB7.

The recommended subsidy to governmental customers in the Proposed Order arises from an apparent misunderstanding of the application of delivery service charges under the existing Rider GCB and the proposed Rider GCB7. The Proposed Order states that:

Rider GCB ... clearly provides discounted delivery service and supply service to certain governmental customers. Apparently, ComEd would have the Commission believe that the discount for delivery service was not required by [Section 16-125A of] the Act and that in order to make the new Rider cost based the current discount should be discontinued.

Id.

ComEd urges the Commission to reconsider the record which contains no support whatsoever for the erroneous conclusion that Rider GCB provided discounted delivery services to eligible governmental customers.

As the Proposed Order correctly perceives, the demand charges applicable under Rider GCB were associated with bundled supply and delivery service. *Id.* However, the demand charge structure under Rider GCB incorporated a new Coincident Demand Charge and a modified Maximum Demand Charge. The Coincident Demand Charge reflected the capacity supply (*i.e.*, generation) component of bundled service while the modified Maximum Demand Charge reflected the delivery component of bundled service. Energy Charges under the applicable rate reflected the energy supply component of bundled service.²⁴ After the mandatory transition period, however, supply charges for “all customers, taking bundled service, including governmental customers,” will include embedded capacity supply charges. *Id.* (emphasis provided). Thus, the savings that eligible governmental customers previously were able to

²⁴ The explanation related to the Coincident Demand and the modified Maximum Demand structure of Rider GCB was explained in the Supplemental Statement that accompanied Rider CB – Consolidated Billing (filed on July 23, 1996), the rider upon which Rider GCB was based.

achieve under Rider GCB through the coincident demand (*i.e.*, through reducing their capacity supply charges) no longer will flow through Rider GCB7.

The record also demonstrates that, while the effect of coincident demands under Rider GCB will not be reflected under Rider GCB7 for the reasons stated above, eligible governmental customers will have similar opportunities to manage their capacity supply charges in the post-transition era. As Mr. Crumrine explained:

With respect to the Coincident Demand Charge, Rider GCB7 customers can elect one of two options: [T]hey can either (1) elect to take service under the applicable BES tariff and pay Supply Charges, where capacity charges are embedded in the energy rate, rendering the need to determine a coincident demand moot, or (2) they can collectively elect to take service under Rate BES-H, where the capacity supply charge is based upon the premises' capacity obligation, as defined in General Terms and Conditions (ComEd Ex. 10.1, Original Sheet No. 495), which would correspond to the Coincident Demand Charge under the existing Rider GCB.

Crumrine Reb., ComEd Ex. 23.0, 56:1202 - 57:1209.

From this point, however, the Proposed Order errs sharply by requiring ComEd to allow eligible governmental customers to consolidate demand for purposes of calculating their Distribution Facilities Charges under Rider GCB7—*i.e.*, the charges associated with providing distribution service to such customers' individual premises. Proposed Order at 234. Rider GCB never afforded participants any such opportunity, which makes no sense in either the pre- or post-transition eras. As ComEd's Mr. Crumrine testified: "[t]he Distribution Facilities Charge (under Rider GCB7) is applied in the same manner as the Maximum Demand Charge is under existing Rider GCB." Crumrine Reb., ComEd Ex. 23.0, 56:1200-02. In short, eligible governmental customers under Rider GCB paid for the costs they imposed on ComEd's delivery system for service to their various premises; there is no valid reason to create a subsidy for such costs in the post-transition era. As Mr. Crumrine explained:

Because there are distribution facilities in place to serve Midway Airport that are distinct and different from those in place to serve the Daley Center, for example, and those distinct and different distribution facilities are separated by neighborhoods, expressways, and any number of roadways and alleys and cannot be sized to take advantage of any sort of diversity between the loads at the different premises, there is no valid reason to account for a coincidence of demand on the delivery portion of their bills.

Crumrine Reb., ComEd Ex. 23.0, 58:1225-31.

The Proposed Order asserts that “this requirement is necessary to comply with the requirements of Section 16-125A of the Act.” Proposed Order at 235. Yet not even the City/CCSAO assert that Section 16-125A refers to any any delivery service subsidy to be provided to eligible governmental customers. Rather, Section 16-125A states that ComEd’s delivery services tariffs must allow “governmental customers to work cooperatively in the purchase of electric energy to aggregate their monthly kilowatt-hour energy usage and monthly kilowatt billing demand.” 220 ILCS 5/16-125A. Rider GCB7 indisputably provides for such aggregation. Crumrine Reb., ComEd Ex. 23.0, 56:1187-96.

The Proposed Order asserts that “[t]he Commission does not agree with ComEd’s suggestion that Rider GCB provided a discount that was not required by law.” Proposed Order at 234. ComEd has made no such suggestion. Rider GCB at all times was consistent with Section 16-125A. Rider GCB7 also complies fully with Section 16-125A.

While eligible governmental customers are treated fairly under Rider GCB7, the same cannot be said of ComEd’s other customers if Rider GCB7 is not approved as filed. If ComEd were required to provide eligible governmental customers with an arbitrary subsidy on their delivery service charges in the post-transition period, which would not account for costs these customers impose on ComEd’s delivery system, from whom should ComEd recover those costs

and on what basis? The Proposed Order makes no provision to answer this question. In fact, there is no information available in the record upon which to make a provision for such a subsidy. The City/CCSAO assert that if ComEd “is truly concerned” about the inequities of providing them with a subsidy, “it should bear the cost itself.” City/CCSAO Rep. Br. at 8. This suggestion is neither lawful, reasonable nor appropriate. ComEd is entitled to recover its costs for providing delivery service. As written, the Proposed Order would fall short of that objective. For these reasons, the Proposed Order should approve Rider GCB7 as submitted by ComEd consistent with the attached exceptions.

P. Rider ML

Exception 25

The Proposed Order includes the conclusion that Rider ML as proposed by ComEd is reasonable and it is therefore approved by the Commission. Proposed Order at 273. This conclusion inadvertently leaves out the revision to the Monthly Rental Charge listed for one meter-related facilities in Rider ML. The Monthly Rental Charge proposed in Rider ML for the Single Phase Watt-hour Meters with Interval Demand Recording (IDR) Registers, Self-Contained Class 100 or 200 in Rider ML is \$10.96. The revised amount presented in ComEd Ex. 46.3 is \$ 7.28, determined based on the meter price and meter life agreed to by ComEd, CUB, and the City and the travel time for reading residential IDR meters. (Tr. At 2385:18:2387:9) and ComEd Ex. 41.0, Corr., 14: 320-327. As shown in footnote (5) of ComEd Ex. 46.1, this rental amount of \$7.28 is used to determine the \$5.36 per meter per month Meter Lease Charge for the residential real time program accepted in the Proposed Order. Monthly Rental Charge for the residential IDR meter is not applicable to residential customers for IDR meters installed under the residential real time pricing programs. Monthly Rental Charge for the

residential IDR meter may be applicable to residential customers for IDR meters installed that are not part of the residential real time pricing program.

For these reasons, the Proposed Order with respect to Rider ML should be modified as set forth in the language in the attached exceptions.

Q. Rider RESALE

Exception 26

The Proposed Order includes the following conclusion with respect to ComEd's proposed Rider RESALE, which inappropriately suggests that customers can commence resale or redistribution after January 2, 1957:

With regard to proposed Rider RESALE, the Commission finds that this tariff as modified by ComEd is just and reasonable it is hereby approved. We leave for another day the question of whether customers commencing resale after January 2, 1957, must obtain ARES certification.

Proposed Order at 239.

This conclusion should be revised consistent with the attached exceptions to clarify that the only customers eligible for Rider RESALE are those customers engaged in resale or redistribution as a continuing practice since January 2, 1957, under previously applicable tariffs.

S. Rate BES-RR

Exception 27

See Section IX. A.2 discussion of railroad customers.

T. General Terms and Conditions

Exception 28

The Proposed Order includes the following conclusion with respect to General Terms and Conditions, which inadvertently ignores the fact that conforming changes to General Terms and Conditions must be made to implement other provisions of the Proposed Order and also

inadvertently characterizes General Terms and Conditions as a portion of ComEd's delivery service tariffs when in fact General Terms and Conditions is a portion of ComEd's entire Schedule of Rates which applies to all retail tariffed service that ComEd provides (e.g., delivery service, bundled service, retail electric supplier service, etc.):

The Commission has reviewed the record and it appears that no contested issue remains relating to ComEd's proposed General Terms and Conditions. As a result, the General Terms and Conditions portion of ComEd's delivery service tariffs are deemed just and reasonable and are hereby approved.

Proposed Order at 243.

Consequently, the conclusions on page 243 of the Proposed Order with respect to General Terms and Conditions, should be revised to indicate that ComEd should modify the General Terms and Conditions in its compliance filing as needed to conform to the Commission's final Order in this proceeding.

V. Proposed Change in Definition of Maximum kW Delivered

ComEd is not providing exceptions regarding this issue. ComEd's proposal is cost-based and reasonable. ComEd is respectful of the concerns in the Proposed Order and appreciates the recognition that rejection of ComEd's position results in a rate that is not cost-based. Under these circumstances, ComEd respectfully submits that the Commission's determination regarding the MKD definition should be a consideration in its determination of whether to maintain the Over 10 MW rate class.

AA. Real Time Pricing Meters and Energy Smart Pricing Plan

Exception 29

The conclusion in the Proposed Order with regard to this issue contains two errors. First, the Proposed Order concludes that ComEd should be authorized to include an additional

\$6,067,662 in its test year operating expenses to reflect the additional costs associated with the real-time pricing program. Proposed Order at 263. In doing so, the Proposed Order averages the high and low cost estimates while at the same time placing the obligation on ComEd to incur the costs necessary to meet the high estimate of 70,000 customers. The record does not contain any methodology for averaging these costs and no party proosed this. As such, the Proposed Order should be amended as set forth in the attached exceptions, to accept the high estimate of \$6,483,886, which is the revised estimate contained in ComEd Ex. 46.1 (the Proposed Order inadvertently utilizes the outdated estimates contained in ComEd Ex. 23.1. The high and low values in ComEd Exhibit 46.1 are \$6,483,886 and \$3,689,129, respectively).

Second, the Proposed Order provides that “[a]ll residential customers will pay the same Customer Charge, regardless of the tariff under which they take service.” Proposed Order at 262. In light of the rulings requiring different customer charges in the Proposed Order, the word “same” should be replaced with “applicable.” This language change is contained in the attached exceptions and will work regardless of whether or not the Proposed Order is amended to accept ComEd’s residential rate class arguments.

CC. Replacement of Rider 28 with Rider LGC

Exception 30

The Proposed Order correctly determines that Rider LGC should replace existing Rider 28. As recognized in the Proposed Order, Rider LGC, like Rider 28, serves the appropriate purposes of allowing ComEd to recover the incremental costs incurred when “a local government unit requires ComEd to provide a service, or otherwise install, remove, replace, modify or maintain its facilities in a manner that is different from the manner in which ComEd otherwise would be required.” Proposed Order at 264 (emphasis provided). The Proposed Order

errs, however, in striking particular language from Rider LGC at the City's request. ComEd notes that Staff did not oppose Rider LGC.

The disputed phrase, which appears in the overview section of Rider LGC, clarifies that, when a local government unit "requires as a condition of [ComEd's] use of its property" the imposition of costs which otherwise would not be required, such requirements are subject to the provisions of the rider – *i.e.*, the costs will be borne by ComEd's customers within the boundaries of the local government unit. Proposed Order at 265. The Proposed Order finds that ComEd has not adequately explained the purpose of this additional language. However, this finding is contrary to the record. As Messrs. Alongi and McInerney clearly and fully explained, the new language merely clarifies an existing requirement under Rider 28 addressing situations that merit the localized recovery of ComEd's costs, such as a local government unit mandate for "specialized engineering design requirements that involve hiring an engineering consulting firm to prepare Computer Aided Design drawings for permit applications." Alongi/McInerney Reb., ComEd Ex. 24.0, 15:398-402. Staff was fully satisfied with ComEd's clarification of the language of Rider LGC, which makes no substantive changes in the rate.

The Proposed Order appears to base the removal of the disputed phrase upon a concern that the inclusion of this language would adversely affect the franchise agreement between the City and ComEd. In particular, for reasons that are unclear, the Proposed Order finds that the inclusion of the disputed phrase somehow would allow ComEd to recover from City residents alone the cost of early replacement of facilities located in the City, even where the City had determined that the removal of such facilities was necessary for certain valid public purposes. Proposed Order at 266-67. Under the ComEd-City franchise, ComEd has agreed that certain costs related to the removal of its facilities under limited circumstances are not recovered under

the rider. Yet neither the Proposed Order nor the underlying record identifies any actual circumstance whatsoever under which the disputed language would have any such effect on the City-ComEd franchise agreement, whether in connection with Rider LGC's early replacement provision or otherwise. In contrast, Messrs. Alongi and McInerney testified, without opposition, concerning actual circumstances under which the early replacement provision of Rider LGC would apply (*e.g.*, "relocation of poles to the opposite side of the road for esthetic reasons") and would not apply (*e.g.*, "a road-widening public improvement project that requires a 'like-for-like' replacement and relocation of ComEd's existing standard facilities"). Alongi/McInerney Reb., ComEd Ex. 24.0, 15:402 - 16:406, 16:415-22.

Finally, ComEd strongly disagrees with the improper conclusion in the Proposed Order that – with the removal of the disputed phrase from proposed Rider LGC's overview – "the remaining provisions of Rider LDC [sic] ... would not be applicable to the City under its franchise agreement with ComEd." Proposed Order at 267. Such a conclusion incorrectly suggests that the City is exempt from the rider. As a matter of law, Rider LGC, if approved, will apply equally to all ComEd customers consistent with its terms in the same way Rider 28 applies equally to all ComEd customers. To the extent ComEd and the City have agreed to limited circumstances pursuant to the City's franchise agreement with ComEd under which certain costs related to the removal of utility facilities in the City's public way are not recovered through the rider, these two parties' agreement could not affect the validity of Rider LGC or any other filed rate. For these reasons, the conclusions in the Proposed Order regarding Rider LGC should be revised as indicated in the attached exceptions.

GG. Miscellaneous Rate Design Issues

Exception 31

The Proposed Order, for clarity, should be modified to add specific language approving Rates BES-R, BES-NRA, BES-NRB, and BES-H, and Rider VLR7.

X. CUSTOMER CHOICE AND RETAIL SUPPLIER ISSUES

B. General Account Agency

Exception 32

The Proposed Order directs ComEd to allow former General Account Agents (“GAAs”) to access the customer billing information generated when the agency was effective. The CES proposal, and the Proposed Order’s tacit acknowledgement, identified the purpose for permitting such access as facilitating customer inquiries and resolution of billing disputes relating to the time in which the agency was effective. Proposed Order at 271-272, 274. However, the Proposed Order does not provide any limitation on access to customer billing information by former GAAs. In order to adequately safeguard consumers, and consistent with the stated purpose in providing former GAAs access to customer billing information, the Proposed Order at 275-276 should be modified slightly.

XIII. FINDINGS AND ORDERING PARAGRAPHS

Exception 33

For the reasons stated in the applicable sections of this Brief on Exceptions, Findings (5), (6), (7), and (10) on pages 302 and 303 of the Proposed Order should be revised to reflect the correct figures for ComEd’s rate base, rate of return, rate of return on equity, net operating income, revenue requirement, and rate increase.

In addition, Finding (8) should be revised because, as currently worded, read literally (contrary to its intent), it would inappropriately cancel ComEd's entire existing Schedule of Rates prior to the end of the mandatory transition period. To avoid such a result, ComEd proposed revisions of its currently effective Schedule of Rates to limit their effectiveness through the end of the transition period. (See Alongi-McInerney Dir., ComEd Ex. 10.1, 2:45-48; ComEd Ex. 10.2) Finding (9) and the first and second Ordering paragraphs have similar language problems. Findings (8) and (9) and the first and second Ordering paragraphs should be revised accordingly.

Finally, the third Ordering paragraph, as currently worded, read literally (contrary to its intent), does not authorize ComEd to file the tariff sheets that would limit the effectiveness of ComEd's currently effective Schedule of Rates through the end of the mandatory transition period as provided in ComEd Ex. 10.2 and it does not appropriately reflect that the individual tariff sheets should be applicable for service as provided in the language contained in those individual tariff sheets (i.e., beginning with the end of the transition period for the new rates that are identified in ComEd Ex. 10.1 and through the end of the transition period for the existing rates that are identified in ComEd Ex. 10.2). The third Ordering paragraph should be revised accordingly.

ARGUMENT IN SUPPORT OF TECHNICAL EXCEPTIONS

II.A.2.b and IV.I. (Two Subsections)

Exception 34

The Proposed Order addresses ComEd Schedule B-2.1 (ComEd Ex. 5.1 Sched. B-2.1 Errata) in Section II.A.2.b (p. 5), and refers there to Staff's proposed adjustment related to ComEd Schedule B-2.1, but the Proposed Order discusses Staff's proposed adjustment in Section

IV.I (p. 49). ComEd accordingly suggests that appropriate cross-references be added in Sections II.A.2.b and Section IV.I.

II.A.2.c. Pro Forma Capital Additions and Construction Work in Progress

Exception 35

On page 5 of the Proposed Order, the figure of \$41,040,000 should be \$41,047,000. ComEd Ex. 45.0, Sched. 1 Revised, Sched. B-7.

II.A.3.a, II.A.3.b, II.A.3.d, II.A.3.e, V.Q, V.R, V.T, and V.U. (Eight Subsections)

Exception 36

The Proposed Order discusses four uncontested operating expense adjustments both in Sections II.A.3.a, II.A.3.b, II.A.3.d, and II.A.3.e (pp. 5-6) and in Sections V.Q, V.R., V.T, and V.U (pp. 106-107). ComEd accordingly suggests that appropriate cross-references be added in these eight subsections.

II.A.3.c, IV.C, V.B, V.S. (Four Subsections)

Exception 37

The Proposed Order, on page 6, under Uncontested Issues, currently states as follows with respect to post-retirement healthcare benefits:

Through direct and rebuttal testimony ComEd and the AG came to the agreement that a \$5,200,000 adjustment to pension and post retirement expense would be appropriate with fair value adjustments to the capital structure proposed by ComEd. No other party has contested this adjustment.

This same issue is addressed in the Proposed Order in three other places – at pages 33, 55, and 106.

ComEd believes it would strengthen and clarify the Proposed Order if the issue were discussed only once, and recommends that that discussion occur on page 6. ComEd recommends substituting for the language currently on page 6 the language that appears on page 55 of the Proposed Order. In addition, ComEd recommends the addition of language which makes clear, as specified in the surrebuttal testimony of ComEd witness Ms. Houtsma (Houtsma Sur., ComEd Ex. 35.0, 30:665-67), that while ComEd agreed that its actuaries would maintain the data necessary to evaluate the impact of fair value adjustments to pension and post-retirement health care expenses in the future, it did not agree that it would be appropriate to record a regulatory liability.

II.A.5. Other Issues

Exception 38

The Proposed Order indicates here (p. 7) that ComEd is in support of the Interim Order entered April 6, 2006. On June 13, 2006, ComEd filed a motion seeking clarification of the Interim Order, which motion is pending. ComEd accordingly suggests that Section II.A.5 be revised by the addition of a second sentence reflecting the outcome of ComEd's motion.

II.B Issues That Have Been Settled

Exception 39

The Proposed Order, in the heading of Section II.B (p. 8), refers to the issues addressed in the subsections thereof as "Issues That Have Been Settled". These issues correctly were referred to in the common outlines approved by the ALJs as "proposals to which certain parties have agreed". ComEd believes that these issues appropriately have been resolved by the Proposed Order *based on the evidence in the record*. *E.g.*, 220 ILCS 5/10-103, 10-201(e)(iv). ComEd

accordingly suggests that the heading of Section II.B should be changed to “Proposals To Which Certain Parties Have Agreed”.

V.P. Gross Revenue Conversion Factor

Exception 40

The Proposed Order on page 105 states: “(For Staff’s discussion of the uncollectible rate, see Section III.C.7.)” Section III.C.7 clearly is a reference to the section of the Proposed Order that discusses uncollectibles expense, which, using ComEd’s updating of the outline to reflect the Proposed Order, is Section V.G. More importantly, it is not only Staff’s but also ComEd’s and CCC’s positions on the subject of the uncollectibles rate that are discussed in that earlier section, and they, too, should be cross-referenced here.

V.X Approved Operating Expenses and Revenues

Exception 41

In addition to its Exception on the merits to the Proposed Order’s approved total operating expenses and components thereof, discussed above, ComEd also notes that the Proposed Order does not set forth the ComEd position statement that appeared on pages 11-13 in the Total Revenue Requirement and Base Rate Increase section of ComEd’s draft proposed Order. This material should be set forth in the Proposed Order, consistent with page 11 of the Proposed Order and for completeness.

VI. Rate of Return

Exception 42

The Proposed Order does not set forth the ComEd position statement that appeared at the beginning of the Rate of Return section on pages 86-88 of ComEd’s draft proposed Order. This

material should be set forth in the Proposed Order, consistent with page 11 of the Proposed Order and for completeness.

D. Approved Rate of Return on Rate Base

Exception 43

In addition to its Exception on the merits to the Proposed Order's recommended rate of return, discussed above, ComEd also notes that the Proposed Order does not set forth the ComEd position statement that appeared on pages 103-104 in the Overall Cost of Capital section of ComEd's draft proposed Order. This material should be set forth in the Proposed Order, consistent with page 11 of the Proposed Order and for completeness.

XI. Staff Reports on ComEd's Performance

Exception 44

The Proposed Order does not set forth the ComEd position statement that appeared on pages 155-156 in the Overall Staff Report's on ComEd's Performance section of ComEd's draft proposed Order. This material should be set forth in the Proposed Order, consistent with page 11 of the Proposed Order and for completeness.

Appendix A

Exception 45

Appendix A to the Proposed Order should be revised consistent with ComEd's arguments in this Brief on Exceptions and with its separately filed Exceptions to Proposed Order.

In addition, certain mathematical (numerical) errors in Appendix A should be corrected. First, Appendix A, page 1, line 2, incorrectly fails to reflect the new business revenue credit of \$13,751,325 approved by the Proposed Order (p. 5), which should be added to the \$81,398,000 figure for Miscellaneous Revenues, resulting in a total figure for Other Revenues of \$95,149,000

(rounded).²⁵ The credit also should be reflected as an adjustment on Appendix A, pages 2-4. Also, the full financial impacts of this mathematical error and the additional mathematical errors identified below should be reflected in Appendix A and in the Proposed Order totals that reflect figures stated in Appendix A.

Second, Appendix A, page 1, line 11, incorrectly fails to reflect the \$5,200,000 downward adjustment to post-retirement health care benefits approved by the Proposed Order (p. 6). The adjustment also should be reflected as an adjustment on Appendix A, pages 2-4.

Third, Appendix A, page 5, line 1, incorrectly uses the figure of \$2,063,000 for the Staff's adjustment to ComEd's Schedule B-2.1 Errata, which the Proposed Order correctly finds should be only \$8,000 after the elimination of double-counts. Proposed Order, p. 49. The incorrect figure also appears and should be corrected on Appendix A, page 6, line 1.

Fourth, Appendix A, page 5, line 1, and page 6, line 1, incorrectly place the reduction to of ComEd's Construction Work in Progress ("CWIP") addition to rate base approved by the Proposed Order (p. 5). The reduction should be removed here because it belongs on page 5, line 7, and page 6, line 7, as indicated below. Also, the \$11,950,000 figure used on page 5, line 1, and page 6, line 1 for the reduction is incorrect, as indicated below.

Fifth, Appendix A, page 5, line 6, incorrectly implements the Staff's proposed adjustment of \$1,609,000 to ComEd's Materials and Supplies inventory, which the Proposed Order correctly rejects. Proposed Order, p. 43. The incorrect figure also appears and should be eliminated on Appendix A, page 6, line 6.

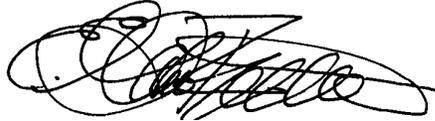
²⁵ All amounts listed here for errors in Appendix A are gross amounts.

Finally, Appendix A, page 5, line 7, and page 6, line 7, fail to reflect the reduction of ComEd's CWIP addition to rate base of \$53,449,000, by \$12,402,000, to \$41,407,000, approved by the Proposed Order (p. 5).

Dated: June 19, 2006

Respectfully submitted,

Commonwealth Edison Company



By: _____

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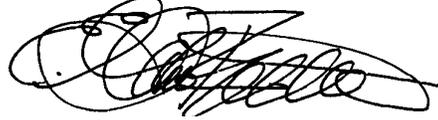
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CERTIFICATE OF SERVICE

I, E. Glenn Rippie, do hereby certify that a copy of the foregoing COMMONWEALTH EDISON COMPANY'S BRIEF ON EXCEPTIONS was served upon all parties on the attached Service List by the method so indicated this 19th day of June, 2006.

A handwritten signature in black ink, appearing to read 'E. Glenn Rippie', written over a horizontal line.

E. Glenn Rippie