

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
REPLY BRIEF ON EXCEPTIONS

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COMMONWEALTH EDISON COMPANY'S
REPLY 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 Ill. Admin. Code § 200.830, Commonwealth Edison Company ("ComEd") submits this Reply Brief on Exceptions ("RBOE"). In accordance with such rule, Reply Exceptions are included herein.

INTRODUCTION AND SUMMARY

The Proposed Order finds, based on the evidence in the record, that ComEd is entitled to an increase in its revenue requirement to reflect its increased costs of providing distribution and customer service. The evidence shows that, after nearly ten years of reduced and frozen bundled rates, ComEd's costs have risen. They have risen in large part because of the billions of dollars in prudent new investments that none can deny are used and useful; because ComEd now serves more customers and significantly increased demand; because of ComEd's successful recommitment to excellence in reliability; because ComEd has, unlike some companies, lived up to its moral obligations to its current and retired employees and fully funded its pension; and simply because of ten years of inflation.

Although it awards ComEd less than ComEd has shown to be reasonable and appropriate, the vast majority of the Proposed Order’s findings concerning ComEd’s revenue requirement – including some with which ComEd disagrees¹ – are supported by substantial evidence, much of which the Proposed Order discusses. The Proposed Order’s findings concerning ComEd’s costs are unchallenged by many intervenors, including BOMA, CES, CTA, DOE, and METRA.²

CCC, IIEC, Staff, and the AG each attack some of the Proposed Order’s findings concerning ComEd’s costs. A few arithmetic corrections (*e.g.*, AG BOE at 2-3) aside, their claims are incorrect and unsupported. Indeed, except for a few new arguments that have little or no relationship to, or support in, the record, they largely repeat arguments already analyzed and correctly rejected by the Proposed Order based on the evidence. They persist in arguing for replacing ComEd’s actual, prudently incurred costs with contrived “adjustments” that lead to wholly implausible results. The apparent effect³ is that CCC would “adjust” ComEd’s revenue requirement to about \$217 million less than ComEd’s actual costs. Staff’s proposals would “adjust” ComEd’s annual cost of service to \$340 million less than its real costs, and only \$10 million more than the comparable amount approved by the Commission in ComEd’s last rate case, Docket 01-0423 – a case that involved a 2000 test year, service to fewer customers with lesser demand, and a rate base without over \$3 billion of new investment.

¹ For example, as noted in ComEd’s Brief on Exceptions (“BOE”), ComEd disagrees with the need to replace its capital structure with an imputed capital structure, but acknowledges that the Proposed Order’s imputed capital structure is supported by substantial evidence in the record. Staff’s 10.19% COE is also supported by evidence, although ComEd’s 11.00% COE is more reasonable.

² As in prior filings, “BOMA” refers to the Building Owners and Managers Association of Greater Chicago, “CES” to the Coalition of Electric Suppliers, “CTA” to the Chicago Transit Authority, “DOE” to the United States Department of Energy, and “METRA” to the Northeast Illinois Regional Commuter Railroad Corporation. Also, “AG” refers to the office of the Illinois Attorney General, “IIEC” refers to the Illinois Industrial Energy Consumers, and “CCC” to the joint filings of the Citizens Utility Board (“CUB”), Cook County State’s Attorney’s Office (“CCSAO”), and the City of Chicago (“City”).

³ Neither CCC nor Staff submitted new revenue requirement Schedules with their BOEs.

Such “adjustments” to ComEd’s costs are neither realistic, nor just and reasonable. In fact, while ComEd presented testimony on its total actual costs of providing safe, adequate, and reliable service, no Staff or intervenor witness presented any evidence that their proposed revenue requirements were sufficient for ComEd to meet its service obligations. Staff’s revenue requirement witness, Ms. Hathhorn, acknowledged that she presented no such evidence. Tr. at 1717:11-18. That omission is telling – and critical.

Moreover, many of the attacks on the Proposed Order are not only erroneous, but also inconsistent and transparently result-oriented. Thus, Staff’s BOE argues that the Commission’s adjustment of ComEd’s 2000 test-year General Plant and Intangible Plant balances is dispositive of its 2004 balances at issue in the current case (Staff Init. Br. at 14-16), even though the facts in that case differed. Aside from being a legally incorrect view of the effect of prior Commission decisions (*see* Section IV.B, *infra*), Staff applies this view inconsistently and selectively, when it would lower ComEd’s rates. Staff does not argue that prior Commission decisions favorable to ComEd are dispositive. For example:

- The effect on ComEd’s equity of the nuclear unit transfer was previously decided. Although this effect is the only basis for rejecting ComEd’s 54%-equity capital structure, Staff disregards that both the transfer and its effect on equity were reviewed and accepted by the Commission under Section 16-111(g) of the Public Utilities Act (the “Act”) in *Commonwealth Edison Co.*, ICC Dockets 00-0369 and 00-0394 (Cons.) (Order, August 17, 2000), a decision than cannot lawfully be revisited.
- Staff also disregards that ComEd’s equity balance, without any “adjustment” for the transfer of the nuclear plants or goodwill, was approved by the Commission for ratemaking purposes in both the Interim and Final Orders in ComEd’s subsequent rate case, Docket 01-0423. The Commission’s acceptance of ComEd’s post-transfer equity balance cannot be reconciled with Staff’s current position.
- Staff’s discussion of General Plant and Intangible Plant disregards the general labor allocator that was advocated by Staff, and approved by the Commission, in Docket 01-0423. Using this allocator would actually increase ComEd’s General Plant and Intangible Plant in rate base in this case by \$137,834,000. Hill Sur., ComEd Ex. 36.0 Corr., at 16:351-359 and Sched. 6.

- Staff also disregards the Commission’s decisions on the appropriateness of ComEd’s recovery of operational incentive compensation costs, the adjustment of rate base for budget payment plan balances, and the calculation of the uncollectibles component of the Gross Revenue Conversion Factor in Docket 01-0423.

Staff’s BOE also is inconsistent about the need for arguments to be supported by the record. It unfairly and erroneously criticizes ComEd for relying on only certain types of evidence, while itself having no evidence to support several key arguments. For example:

- Staff’s BOE argues for the first time to reduce its own witness’ recommended cost of equity (“COE”). This argument is inconsistent in two ways. It finds no support in Staff’s testimony or exhibits, although Staff elsewhere claims such support is essential. Moreover, it is substantively inconsistent. Staff would reduce ComEd’s COE based upon the (erroneous) claim that ComEd’s capital structure is less leveraged than that of sample companies, but Staff objected to increasing ComEd’s COE where sample companies’ capital structure were less leveraged. *Compare* Staff BOE at 56-57 *with* Kight Reb., Staff Ex 15.0 2nd Corr., 10:167-172.
- Staff’s BOE includes new “funds from operations” (“FFO”) calculations (at 51) that are completely unsupported by Staff’s testimony or any other evidence in the record. The claim that a 46%-equity capital structure could satisfy the Standard & Poor’s (“S&P”) benchmarks for a A/A+ utility is also wholly unsupported and, indeed, contradicted by the evidence that such a structure would violate S&P’s debt-to-capital benchmark for an A- utility. *See* Section VI.A, *infra*.
- Staff criticizes the Proposed Order’s correction of its proposed adjustment to ComEd Schedule B-2.1 (ComEd Ex. 5.1, Sched. B-2.1 Errata) because that adjustment is based on Schedules and work papers in evidence (including Staff’s own Schedule) rather than on narrative testimony. *See* ComEd Rep. Br. at 12 and fn. 3, and App. 1, Tab 2 (supporting citations and calculations); Staff BOE at 35-36 (criticism). Yet, where it hurts ComEd, Staff argues that narrative testimony is insufficient and that non-testimonial documentation is required. *E.g.*, Staff BOE at 6-7 (other documents must “verify” and “corroborate” testimony concerning BSC costs); Staff Init. Br. at 54-55; Staff Rep. Br. at 34-35, 37 (testimony re customer benefits of incentive compensation not supported by other documentation is insufficient).

These are not just rhetorical points. Key arguments in Staff’s BOE, particularly with regards to General Plant and Intangible Plant, Administrative and General expenses, and cost of capital, rely on inconsistent and erroneous use of prior Commission decisions and arguments made without support in the record. When analyzed fairly, on the record, the Proposed Order

should be sustained on each of the key revenue requirement issues challenged by Staff or intervenors. Those key issues are:

Capital Structure. Staff and others claim that the imputed capital structure adopted by the Proposed Order is arbitrary or unsupported by the record. They are wrong. That capital structure is supported by and follows directly from the evidence concerning the capital structures of the comparable utilities.⁴ The record also shows that the 46% equity ratio approved by the Proposed Order is consistent with rating agency benchmarks for an investment grade utility.⁵ The artificial 37%-equity capital structure that they advocate is neither consistent with comparable companies nor with a financially sound ComEd. Adopting that capital structure would have critical consequences for ComEd and its customers, and the arguments for doing so are seriously flawed.

First and foremost, Staff's BOE makes a new argument that a 37%-equity capital structure cannot be unreasonable since "ComEd's approved common equity component was 38.97%, 39.40%, and 42.86% respectively in its last three rate cases" (Staff BOE at 48), and it would be inconsistent with those orders to approve a higher 46% common equity ratio in this proceeding. This argument is sophistic, without support in the record, and wrong.

The Commission's prior rate case orders approved capital structures based on ComEd's actual balances of equity and debt. The evidence showed that, applying the same methodology used in those cases to this case, would result in a capital structure with a 63% common equity

⁴ *E.g.*, Hadaway Reb., ComEd Ex. 21.0, 16:354-61; Mitchell Sur., ComEd Ex. 37.0 2nd Corr, 20:396 (graph of leverage ratios for Staff and ComEd comparable samples); ComEd Ex. 21.5 (chart of leverage ratios for the samples); Kight Reb., Staff Ex. 15.0, 2nd Corr., 7:120-121; IIEC Rep. Br. at 38-39 (accepting sample)). This evidence is discussed in more detail in Section VI.A.1, *infra*.

⁵ Mitchell Sur., ComEd Ex. 37.0 2nd Corr, 3:47-65; Mitchell Reb., ComEd Ex. 20, 4:65-70; Janous Dir., IIEC Ex. 4.0, 8:112-113; Kight Reb., Staff Ex. 15.0 2nd Corr., 7:120-121; ComEd Ex. 21.2; ComEd Ex. 21.5. This evidence is discussed in more detail in Section VI.A.1, *infra*.

ratio. Consistency with the methodology of past rate cases would raise, not lower ComEd's common equity ratio. Similarly, the evidence showed that the balance of common equity in ComEd's proposed capital structure and the equity balance approved in ComEd's last rate case were virtually identical – again demonstrating consistency, not inconsistency between the cases. While the Proposed Order reduces the equity balance in ComEd's capital structure, it is far more consistent with the prior rate case than is Staff's proposal, which would cut the previously-approved \$5.2 billion balance of equity in half.

Moreover, both the Commission's decision in ComEd's last rate case and the Proposed Order are consistent in adopting a balance of long term debt for the capital structure equal to ComEd's actual debt balance. In the last rate case, ComEd's debt totaled \$7 billion; in this case it totaled \$4.4 billion. Consistency of approach, and the Act's requirement that cases be decided on the record, requires that the Commission approve a capital structure in this case based on ComEd's current balance of long term debt, not the \$7 billion of debt it had in 2000 when both transitional funding debt and total debt were at their peaks. The evidence demonstrated that, as ComEd restructured, transitional funding debt fell and the higher leverage ratios of the 1990s became undesirable. ComEd undertook a prudent and successful program to significantly reduce its debt, which benefited customers as well as ComEd. Mitchell Dir., ComEd Ex. 7.0, 7:144 - 8:156. Staff would simply ignore those facts.

Staff's argument that ComEd's common equity ratio should be frozen at the 42.86% level approved in ICC Docket 01-0423 also ignores Staff's own evidence that common equity ratios for utilities with the same business profile as ComEd increased more than four percentage points between 2001 when ICC Docket 01-0423 was filed and the 2004 test year in this proceeding. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 4:81-88. Staff's argument that ComEd's capital

structure should be consistent with the common equity ratio established in ICC Docket 01-0423 would call for a common equity ratio of 47.46% in this case to take into account the evidence that common equity ratios have increased. Staff also ignores the fact that the more leveraged capital structures approved in prior cases were accompanied by higher costs of equity than Staff supports or that the Proposed Order adopts.⁶

Finally, it would be damaging for customers and ComEd if a highly leveraged artificial capital structure were to be imposed on ComEd. An imputed capital structure out of line with those of comparable companies would risk compromising ComEd's financial health, and prevent ComEd from maintaining the cash flows needed to sustain its credit rating. It would also leave ComEd far out of synch with the equity ratios of the sample companies used to set its COE.

Also without merit is IIEC's claim that ComEd's rate base should "match" its capital structure and that, in effect, ComEd is earning a return on goodwill arising from the 2000 PECO-Unicom merger and/or the 2001 nuclear unit transfer. IIEC is wrong. There is no reason that rate base and capital structure should match, and the law does not require them to. Nor is there any reason to believe that any difference is attributable to "inflated" equity. The evidence proved that ComEd's capital supports its delivery business, and nothing else.

In sum, as ComEd stated in its BOE, the Commission should base its order on ComEd's actual debt and equity balances, subject to ComEd's voluntary adjustment to remove fully the effects of the Unicom-PECO merger accounting. That result is consistent with past Commission decisions, including those that addressed ComEd's equity balance after the nuclear unit transfers

⁶ The COEs were 11.72%, 10.80%, and 12.28% in the 2001, 1999, and 1994 cases, respectively. *In re Commonwealth Edison Co.*, ICC Docket No. 94-0065, 1995 Ill. PUC Lexis 25 at 200 (Order January 9, 1995), *aff'd in part and remanded in part on other grounds*, 291 Ill. App. 3d 300 (1st Dist. 1997); *Commonwealth Edison Co.*, ICC Docket No. 99-0117 (Order, April 26, 1999) at 46; *Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Interim Order, April 1, 2002) at 115.

at issue here. Disregarding ComEd's equity balance would be unlawful under Section 16-111(g) of the Act, and confiscatory. However, if the Commission should conclude, as the Proposed Order did, that a capital structure should be imputed, it should be a reasonable capital structure currently used by comparable companies. Only the 46%-equity capital structure approved by the Proposed Order meets that test.

Cost of Equity. IIEC continues to argue for a 9.90% COE based on methodologies and data that were rejected by both Staff and ComEd witnesses and that the record shows to be less accurate than those accepted by the Proposed Order. Remarkably, in its BOE, Staff now supports this result, not because Staff changed its mind about its validity, but as a result-oriented means of reducing ComEd's COE in response to an erroneous claim that the Proposed Order approves more equity in ComEd's capital structure than in the sample on which Staff's own 10.19% COE was based. This is untrue.

Indeed, Staff has it backwards with its "reduced leverage, therefore reduced cost of equity" argument. The 10.19% COE supported by Staff witness McNally was based on a sample of comparable electric utilities with a current common equity ratio of 48.8% and a forward looking ratio of 52%. *See* Section VI.C, *infra*. When the Proposed Order adopted a 46% common equity ratio, it increased ComEd's leverage and financial risk compared to that sample, which would call for an increase in the allowed COE, not a decrease.

CCC, on the other hand, continues to argue for a 7.75% COE hundreds of basis points lower than the COE allowed for any utility – comparable or otherwise – in years, based on a methodology never before accepted by this or any other known Commission, and which the record shows is both flawed and unreliable. CCC argues that the Proposed Order errs by relying on universally accepted methodologies supported by all but its witness, Mr. Bodmer, and that it

should instead have accepted Mr. Bodmer’s speculative attempt to “reverse engineer” a COE from investment bank opinions about the comparability of value of Exelon (not ComEd) and PSEG, and even that at a different time, under different circumstances, and not based on market data upon which investors rely. CCC seriously errs.

Pension Contribution. ComEd’s shareholders contributed \$803 million that ComEd used to fully fund the portion of the pension plan covering ComEd employees. Efforts to mischaracterize that contribution as “not a real asset” or an accounting manipulation are transparently contrived and incorrect. The contribution was made with actual cash; it resulted in tens of millions of dollars of real pension trust earnings and, thus, reduced test year pension expense. The contribution enabled ComEd to honor its commitment to tens of thousands of workers to provide for their retirements. Moreover, it is undisputed that no portion of the pension contribution came from customers or has ever been reflected in rates, in marked distinction from the cases where the Commission has disallowed such assets. The Proposed Order’s decision to recognize that asset in rate base is not only consistent with the law and fair to ComEd and its employees, it is the only lawful decision supported by the evidence.

General Plant and Intangible Plant. ComEd proved that its General Plant and Intangible Plant assets in rate base – such as communications equipment, buildings, repair and meter-reading vehicles, tools, and software systems – are prudently acquired, reasonable in amount, and used and useful in providing distribution and customer services. By contrast, after literally months of discovery and production of a mountain of data, no party could point to a single General Plant or Intangible Plant asset in rate base that is unused, imprudent, or related to production activities that are no longer ComEd’s responsibility. The Proposed Order correctly

rejected the claim that hundreds of millions of dollars of these assets should nonetheless be arbitrarily excluded from rate base.

ComEd also noted that this attack on the Proposed Order is largely based on an erroneous view of the General Plant and Intangible Plant balances approved by the Commission for the 2000 test year at issue in ComEd's last rate case – in essence, that the 2000 balances limit the Commission now. The Commission's decision then was based on a very different record, and applied to a very different ComEd. It is unfortunate that Staff only acknowledges the major differences between ComEd in 2000 and 2004 when those differences support their arguments, and ignores them when they do not. Yet, those differences are undeniable. *See* Staff BOE at 40 (“Mr. Hill’s argument [concerning A&G expense in 2000] is irrelevant, because in 2000 ComEd owned generation and in the 2004 test year it does not.”). As Staff stated in its Reply Brief (at 39), “each case should be judged on its own merits; the evidence in this case” The Proposed Order correctly found that the evidence in this case, without contradiction, supports ComEd’s General Plant and Intangible Plant assets included in rate base.

Administrative and General (“A&G”) Expenses. As the Proposed Order recognizes, ComEd presented extensive and detailed evidence of its actual test-year A&G expenses – which include necessary costs such as employee pensions and benefits, and health care. No party denies that ComEd accurately quantified and functionalized its A&G expenses. Nor does any party deny that those expenses are essential to ComEd’s distribution and customer services, or claim that any specific A&G expense was excessive or imprudent.

Nonetheless, IIEC and Staff suggest disallowing millions in actual A&G expense that benefited customers on the basis of artificial “adjustments” designed to divert attention from the actual and prudent costs and replace them with mock values that the record shows are not

ComEd's real costs. These parties had every chance to show that ComEd's expenses were imprudent or excessive, but the evidence, as the Proposed Order notes, affirms their prudence and reasonability. There is simply no valid reason to replace ComEd's established actual and prudent costs with fictional numbers.

ARGUMENT IN REPLY TO EXCEPTIONS

I. PROCEDURAL HISTORY

Reply Exception 1

Staff proposes an Exception to add language to the end of the Procedural History section on page 4 of the Proposed Order regarding the April 5, 2006, Interim Order in this Docket. Staff BOE at 2. ComEd agrees. ComEd notes that Section II.A.5.a on page 7 of the Proposed Order addresses the Interim Order. ComEd believes that, in light of Staff's proposed addition to page 4, Section II.A.5.a.⁷ is superfluous and should be deleted, and, accordingly, Section II.A.5.b on page 7 should be re-numbered as Section II.A.5.

METRA proposes an Exception to add the name of its witness, James Mitchell, to the list of witnesses in the Proposed Order (at 4). METRA BOE at 1. ComEd agrees.

⁷ ComEd proposed an Exception to Section II.A.5.a on page 7 of the Proposed Order to add language regarding its pending motion for clarification of the Interim Order (ComEd BOE at 89; ComEd Exceptions at 60), but, today, ComEd is withdrawing said motion and, therefore, ComEd now withdraws said Exception.

II. UNCONTESTED ISSUES

A. Issues That No Party Contested

2. Elements of Rate Base

b) Staff Adjustment Related to ComEd Schedule B-2.1

The Proposed Order correctly approves: (1) ComEd’s detailed adjustments to rate base set forth in ComEd Schedule (“Sched.”) B-2.1 Errata (ComEd Exhibit (“Ex.”) 5.1, Sched. B-2.1 Errata); and (2) in a corrected amount, Staff’s proposed adjustment to ComEd Sched. B-2.1 Errata, reducing Staff’s incorrect proposed adjustment figure of \$2,063,000⁸ to the correct figure of \$8,000 to eliminate double-counts. Proposed Order at 5, 49; ComEd Reply Brief (“Rep. Br.”) at 12 and n. 3-4 and Appendix 1, Tab 1.

Staff’s Brief on Exceptions nonetheless requests approval of the \$2,063,000 figure, based on Staff’s assertion that the evidence proving that that figure needs to be reduced to \$8,000 to eliminate double-counts is not in the record. Staff BOE at 2, 34-37. Indeed, Staff goes so far as to assert that: “The only evidence in the record on [Staff witness] Mr. Griffin’s Schedule B-2.1 Errata adjustment is Staff witness Mr. Griffin’s testimony....” Staff BOE at 35.

Staff’s Exception should be rejected because its assertions are false. The evidence proving that the \$2,063,000 figure should be \$8,000 is in the record. Staff quotes part of the full paragraph on page 12 of ComEd’s Reply Brief (Staff BOE at 35), but Staff inexplicably fails to mention that footnote 3 to that paragraph expressly incorporates Appendix 1, Tab 1, to ComEd’s Reply Brief, which sets forth a step-by-step calculation that proves the double-counts relying expressly and exclusively on three documents admitted into evidence: (1) ComEd Sched. B-2.1

⁸ Please note that all references in this Reply Brief on Exceptions to the amounts of adjustments are to gross amounts unless stated otherwise.

Errata itself; (2) a supporting work paper, ComEd Ex. 5.2, Work Paper WPB-2.1b; and (3) Staff's witness' own Schedule, Griffin Direct ("Dir."), Staff Ex. 3.0, Sched. 3.4. A copy of Appendix 1, Tab 1, to ComEd's Reply Brief is attached hereto. In fact, Staff's witness and its Brief on Exceptions, when advocating Staff's proposed adjustment to ComEd Schedule B-2.1 Errata, expressly rely on the same three documents. Griffin Dir., Staff Ex. 3.0, 5:92-98 and Sched. 3.4; Griffin Rebuttal ("Reb."), Staff Ex. 14.0, 13:252-56 and Sched. 14.2 (noting that Staff Sched. 14.2 duplicates Staff Sched. 3.4); Staff BOE at 34-37.

Staff's assertions imply the erroneous proposition that only testimony, not documents admitted into evidence, should be considered by the Commission. Staff's implication is contrary to the legal principle that the Commission must decide the case based on the evidence in the record. *E.g.*, 220 ILCS 5/10-113, 10-201(e)(iv). Staff's implication also is inconsistent with Staff's arguments on the subject of incentive compensation. *See* ComEd BOE at 27-31. Moreover, Staff ignores that footnote 3 to the paragraph on page 12 of ComEd's Reply Brief also cites testimony regarding a very similar error by CCC as support for correcting the amount of Staff's proposed adjustment to ComEd Sched. B-2.1 Errata, *i.e.*, Hill Reb., ComEd Ex. 19.0 Corr., 13:263 - 14:278; McGarry Reb., CCC Ex. 5.0 Corr., 17:336 - 18:351. Finally, and tellingly, Staff's Brief on Exceptions never claims that the calculation that reduces its proposed adjustment figure from \$2,063,000 to \$8,000 is incorrect. Staff cannot do so. Staff is asking the Commission to commit reversible error by ignoring arithmetical errors even though the evidence proves those errors. Staff's Exception should be rejected.

c) **Pro Forma Capital Additions and Construction Work in Progress**

Staff, the AG, and ComEd agree that: (1) Appendix A to the Proposed Order reflects an incorrect figure of \$11,950,000, rather than the correct figure of \$12,402,000, for the adjustment

to ComEd's Construction Work in Progress ("CWIP") addition to rate base, except that the AG misstates the correction as \$12,409,000; and (2) the adjustment incorrectly appears in Appendix A on the Gross Utility Plant line (line 1 of pages 5 and 6) rather than the CWIP line (line 7 of pages 5 and 6). Staff BOE at 3; AG BOE at 2; ComEd BOE at 92, 93; Hill Surrebuttal ("Sur."), ComEd Ex. 36.0 Sched. 1 Rev. at Sched. B-7 (figure is \$12,402,000.⁹ ComEd already has proposed appropriate changes to both the Proposed Order (to reflect the \$12,402,000 figure) and Appendix A. ComEd BOE at 88, 92, 93; ComEd Exceptions at 57, 69.

3. Elements of Operating Expenses

c) Post-Retirement Health Care Benefits

The AG and ComEd agree that, while the Proposed Order correctly approves the \$5,200,000 downward adjustment to post-retirement health care benefits, Appendix A to the Proposed Order fails to reflect that adjustment. AG BOE at 3; ComEd BOE at 92. ComEd already has proposed appropriate changes to Appendix A. ComEd BOE at 92; ComEd Exceptions at 69.

5. Other Issues

b) Exelon GSA-Reporting Requirements

At page 3 of its BOE, Staff recommends changes to page 303 of the Proposed Order to correctly reflect the agreements between Staff and ComEd regarding various reporting requirements. ComEd takes no exception to Staff's proposed changes (new paragraphs (13), (14) and (15) to page 303 of the Proposed Order) to reflect the agreements between Staff and ComEd.

⁹ Staff's Brief on Exceptions did not address this point, but its Initial Brief, Appendix A, Schedules 3 and 4, agrees with the AG and ComEd regarding the correct line of the schedules.

IV. RATE BASE

A. Depreciation and Amortization Reserve

The Proposed Order is correct in rejecting the AG's proposed net adjustment to ComEd's depreciation and amortization reserve of \$264,000,000. AG Init. Br. at 5. Despite the complexity of the parties' discussions of the depreciation and amortization matter, the basic facts, and hence the central issue, are straightforward.

When ComEd invests in a capital asset, it incurs a one-time, historical cost for that asset. In addition, for each year of the expected useful life of that asset, ComEd records depreciation expense for that asset. Thus, each year of the useful life of the asset, the capital cost recorded for the asset in rate base is reduced by the yearly depreciation expense.

At any given time, the total historic costs of all such capital investments are known and recorded in ComEd's books and records. Similarly, the accumulated total of the depreciation expense for each of those capital investments is known and recorded.

In this rate case, because 2004 is the test year, ComEd took the total historic costs of the capital assets and deducted the associated accumulated depreciation through December 2004. In addition, for each of the limited number of assets placed in service in 2005 and included in rate base as pro forma adjustments to rate base under Section 287.40, of Part 287 of the Commission's Rules, 83 Ill. Admin. Code § 287.40, ComEd deducted the associated 2005 depreciation

ComEd responds below to each of the specific arguments made by the AG in its BOE. But the AG's position, reduced to its essence, is that if ComEd adds even one 2005 capital investment, with its associated 2005 depreciation, as a pro forma adjustment to the 2004 rate base, it must deduct an additional year of depreciation expense – i.e., 2005 depreciation

expense – from the capital cost of all of the other capital assets that were presented at their 2004 test year values. In other words, solely because some 2005 pro forma plant additions were included in rate base, the AG wants the Commission to add another year of depreciation expense (i.e., 2005) to the depreciation reserve for distribution plant, effectively making the test year accumulated reserve for depreciation not the 2004 historical test year value, but for this component of rate base only, a 2005 value. *See, e.g., Hill Reb., ComEd Ex. 19.0 Corr., 11:245-51.* This is what ComEd showed, and the Proposed Order agrees, violates the test year rules. As the Proposed Order correctly finds, “the AG’s proposal merely takes one part of the rate base and moves it one additional year into the future.” Proposed Order at 14.

The AG tries to confuse the issue by now arguing that “ComEd’s proposal merely takes one part of the rate base – plant in service – and moves it one additional year into the future. Accordingly, the AG’s adjustment takes another part of rate base – the accumulated reserve for depreciation – and also moves that one year into the future.” AG BOE at 3-4. This argument was never made by the AG’s witness, Mr. Effron, because it is patently untrue.

In ComEd’s rate request, all of the plant that was in service by the end of the 2004 test year remains at its 2004 value, and all of the associated accumulated reserve for depreciation for that plant-in-service, and depreciation expense also remains at the 2004 test year value. None of this plant-in-service and associated accumulated reserve for depreciation is moved so much as one day into the future, much less one year into the future, as the AG now asserts. AG BOE at 3. That is precisely ComEd’s point. The only plant-in-service under ComEd’s rate request that has a 2005 value is the additional plant that is reasonably expected to be placed in service (and in fact was in service) in 2005, and thus comes within the Commission’s pro forma additions rule – Section 287.40. As to these 2005 pro forma plant additions, and only as to these 2005 plant

additions, ComEd has included the full, 2005 annual rate base impact of the associated reserve for depreciation, as well as the Accumulated Deferred Income Taxes (both of which are reductions to rate base), even though these plant additions were not in service for the full year 2005. Hill Sur., ComEd Ex. 36.0 Corr., 12:257-61; Effron, Tr. at 1611:11-18.

ComEd's treatment of 2004 plant-in-service and associated deferred depreciation, and its treatment of 2005 pro forma additions to plant-in-service and associated 2005 deferred depreciation are fully consistent with the Commission's test year rule and the Commission's rule governing *pro forma* plant additions.¹⁰ The AG's proposal, by contrast, is not consistent with either. Rather, what Mr. Effron has done is convert a finite number of *pro forma* plant additions into an excuse to restate the depreciation reserve for all plant in service in the test year. As to this other plant, *i.e.*, the plant other than the pro forma additions, ComEd pointed out that all that has occurred to justify updating the depreciation reserve from 2004 to 2005 is the passage of time. This is the "attrition" Part 287.40 expressly prohibits: "Attrition or inflation factors shall not be substituted for a specific study of individual capital, revenue, and expense components." No such specific study was performed by Mr. Effron. By contrast, it is undisputed on this record, even by Mr. Effron, that ComEd made all of the appropriate accounting entries, including depreciation reserve, for each of the specific pro forma plant additions in 2005. Effron, Tr. at 1611:11-18. Thus, ComEd's request is consistent with the rules; Mr. Effron's is not.

The AG also persists in wrongly claiming that its position finds support in prior Commission Orders. The Orders cited by the AG in its Brief on Exceptions – which are the same orders discussed in the parties' post-hearing briefs – make clear that adjusting *pro forma*

¹⁰ A detailed discussion of the test year rule and its purpose is contained in ComEd's Reply Brief at pages 22-23, and will not be repeated here. The AG does not dispute that these rules are designed to require revenues and costs to be stated as of a particular test year, subject to allowed *pro forma* adjustments.

additions based upon an increase in post-test year taxes and depreciation reserve on the entirety of plant in service (as opposed to that attributable to the specific capital additions) should be considered only if the utility's net plant in service was either declining or static. *In re Central Illinois Light Co.*, ICC Docket No. 02-0837 (Order, Oct. 17, 2003) (“*CILCO*”); *In re Central Illinois Pub. Serv. Co. (Ameren CIPS) and Union Elec. Co. (AmerenUE)*, ICC Docket No. 02-0798, 03-0008, 03-0009 [Cons.] (Order, Oct. 22, 2003) (“*AmerenCIPS/UE*”).¹¹

ComEd has established that its net plant in service increased by more than \$136 million between 2003 and the 2004 test year. ComEd Initial Brief (“Init. Br.”) at 41-42, n.13. Thus, because ComEd’s net plant neither decreased nor remained static, the Orders cited by the AG do not justify any further analysis or adjustment based upon post-test year increases in ComEd’s aggregate accumulated depreciation reserve. Indeed, the Commission rejected precisely the same requested adjustment to ComEd’s requested *pro forma* additions for capital in its last rate case. *Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Order, March 28, 2003) at 43-45. Notably, the AG fails even to mention the this Order in.

Unable to deny that ComEd’s net plant has increased rather than decreased or remained static, the AG argues for the first time in its Brief on Exceptions that “plant in service was growing” for the utilities in the cited cases, and therefore “[t]here is no factual distinction between the circumstances” in those cases and the circumstances in this case. AG BOE at 4. The plain language of those Orders directly contradicts the AG’s new-found characterization. In

¹¹ The AG also cites to *In re Illinois Power Co.*, ICC Docket No. 01-0432 (Order, Mar. 28, 2002). That Order, however, contains no discussion of the issue of whether net plant in service was rising or falling because the utility agreed to the adjustments sought by Staff. *Id.* at 18-19. Thus, it cannot serve as support for the AG’s position. Notably, the Commission expressly rejected, consistent with the principles discussed above, the AG’s effort to “overstate” the adjustment based upon accumulated depreciation by extending it beyond the period during which the utility had requested that *pro forma* adjustments be made. *Id.* at 21.

AmerenCIPS/UE, the Commission clearly stated that “where historical net plant in service is either declining or relatively static, as in these cases, post-test year pro forma increases to plant in service require further analysis.” *AmerenCIPS*, ICC Docket No. 02-0798, 03-0008, 03-0009 [Cons.] (Order, Oct. 22, 2003) at 10 (emphasis added). That language plainly refutes the AG’s assertion that “the Commission clearly acknowledged that the *AmerenUE* net plant balance was increasing.” AG BOE at 4. Indeed, the summary of the AG’s own position in *AmerenCIPS/UE* (in which Mr. Effron testified for the AG) begins by stating that “[t]he AG argues that, because net plant in service has decreased slightly over the past five years for UE and has remained almost level for CIPS,” the post-test year additions should be adjusted. *AmerenCIPS/UE*, ICC Docket No. 02-0798, 03-0008, 03-0009 [Cons.] (Order, Oct. 22, 2003) at 8 (emphasis added). The AG’s own words in the *AmerenCIPS/UE* case thus expose the stark mischaracterization of that Order in the AG’s Brief on Exceptions.

Likewise, in *CILCO*, the Commission held that “under the circumstances of this case, where net plant in service shows a consistent declining trend, it is unwise to adopt a post-test year change that fails to account for accumulated depreciation.” *CILCO*, ICC Docket No. 02-0837 (Order, Oct. 17, 2003) at 8 (emphasis added). Again, it could not be clearer that *CILCO*’s net plant was decreasing, not increasing. These Orders simply cannot be squared with the AG’s position that the utilities’ net plant in service was increasing like ComEd’s here. AG BOE at 4. Accordingly, a clear, fundamental “factual distinction” exists between those cases and the one presently before the Commission – one that precludes the AG from citing those Orders for support. The Proposed Order properly dismissed “the cases presented by the AG [as] inapplicable and without merit in this case.” Proposed Order at 14.

Also, to the extent that the AG contends that the “increase” in net plant to which it refers consists of the proposed *pro forma* “addition” to plant themselves, such a contention is circular reasoning. Post-test year capital “additions” do serve to “increase” the test year net plant, but that result is inherent in any requested *pro forma* addition to plant, and therefore cannot be a basis on which to claim the cases are “factually indistinguishable.” AG BOE at 4. In any event, the increase in plant created by the capital additions themselves is irrelevant to the issue at hand. The Commission’s Orders make clear that the pertinent increase or decrease occurs in historical net plant. *AmerenCIPS*, ICC Docket No. 02-0798, 03-0008, 03-0009 [Cons.] (Order, Oct. 22, 2003) at 10 (finding further analysis warranted “where historical net plant in service is either declining or relatively static” (emphasis added)); *id.* at 8 (noting that the AG based its argument on the fact that “net plant in service has decreased slightly over the past five years” (emphasis added)); *CILCO*, ICC Docket No. 02-0837 (Order, Oct. 17, 2003) at 8 (finding that where net plant reveals “a consistent declining trend, it is unwise to adopt a post-test year change that fails to account for accumulated depreciation” (emphasis added)). Thus, because the utilities in the Orders cited by the AG had decreasing or static historical net plant in service levels, the Commission deemed it proper to consider additional adjustments to the *pro forma* capital additions based on the total increase in taxes and depreciation reserve for net plant. ComEd has demonstrated that its net plant has increased year over year. Therefore, those Orders cannot justify the adjustments sought by the AG. Indeed, they foreclose the AG’s arguments in support of those adjustments.

Finally, in yet another misleading argument, the AG suggests that the test year rule and the *pro forma* additions rule (Section 287.40) should be disregarded because “[w]hen growth in the balance of the accumulated reserve for depreciation is taken into account, the affect of

growth in rate base due to plant additions is mitigated significantly.” AG BOE at 5. In other words, it is apparently the AG’s view that the Commission should adjust the value of all of the 2004 plant-in-service and associated accumulated reserve for depreciation to a 2005 rate base figure, not simply add the 2005 pro forma additions and associated depreciation reserve to the 2004 rate base figure, because the AG believes this will lead to a still lower net rate base number. Even if this were true, it would not justify the AG’s proposed adjustment which, as shown, violates the test year and pro forma additions rules. In addition, application of this incorrect interpretation of these rules would be unfair. As ComEd witness Mr. Hill made clear, under the pro forma rule ComEd could have included as pro forma additions new plant expected to go into service as late as August 2006. Hill Sur., ComEd Ex. 36.0 Corr., 12:254-61, 13:286-89. If it had done so, even under the AG’s proposal, rate base would have been increased by significantly more than the result of the AG’s proposed adjustment. Instead, ComEd relied upon what it has always understood to be the proper interpretation of the requirement of the test year and pro forma rules, and was very conservative in the pro forma additions it sought to include in rate base. The AG’s proposal would punish ComEd for that choice, which is unfair.

Although the Commission Analysis and Conclusion in the Proposed Order, as shown, has reached the right result, in light of the fairly extensive, albeit incorrect, discussion by the AG of cases which it argues support its position, as well as its continued attempt to obscure how its proposal would violate the test year rules, ComEd suggests that the Proposed Order would be strengthened by revising the Commission Analysis and Conclusion:

Commission Analysis and Conclusion

At issue here is the AG’s proposed adjustment to the accumulated reserve for depreciation in order to make the pro forma balance consistent with the pro forma plant in service included in rate base. ComEd contends that the proposal presented by the AG violates Section 287.40 and test year rate making principles.

The AG's proposed adjustment does not correlate to any pro forma 2005 capital additions or any plant adjustment proposed by any of the parties. Instead, the AG's proposal merely takes one part of the rate base and moves it one additional year into the future. ComEd argues that the Commission rules and test year ratemaking principles prohibit such an adjustment. The Commission concurs with ComEd as to this issue. Further, the Commission finds the cases presented by the AG to be inapplicable and without merit in this case. Those cases make clear that the only circumstances in which an adjustment of this type proposed by the AG should even be considered is where the utility's net plant in service is either declining or static. That is not the fact situation here, because ComEd has established that its net plant in service increased by more than \$136 million between 2003 and the 2004 test year.

The Commission further agrees with ComEd's assertion that the effect of the AG's proposed adjustment would be to inappropriately bring the test year into the future for accumulated depreciation. What the AG seeks to do is convert a finite number of pro forma plant additions into a reason to restate the depreciation reserve for all plant in service in the test year. As to this other plant, i.e., the plant other than the pro forma additions, all that has occurred to justify updating the depreciation reserve from the 2004 test year to 2005 is the passage of time. This is the "attrition" Section 287.40 expressly prohibits: "Attrition or inflation factors shall not be substituted for a specific study of individual capital, revenue, and expense components." No such specific study was performed by the AG, whereas it is undisputed that ComEd made all of the appropriate accounting entries, including depreciation reserve, for each of the specific pro forma plant additions in 2005. Accordingly, the Depreciation and Amortization figure that corresponds to rate base approved herein is reflected in the Appendix attached to this Order.

**B. General Plant: Functionalization and Amount;
Intangible Plant: Functionalization and Amount**

The Proposed Order correctly approves the functionalization and amounts of ComEd's General Plant costs and Intangible Plant costs included in rate base, expressly finding that ComEd presented "convincing evidence" on these subjects; that direct assignment of these costs, when possible, is the preferred method of functionalization; that the \$405,161,000 adjustment to General Plant and Intangible Plant costs approved based on the general labor allocator functionalization methodology in ComEd's last rate case is not a proper basis for Staff's and IIEC's proposed adjustments; that Staff and IIEC's evidence did not support their proposed adjustments; that IIEC had presented no sufficient or cogent basis for its proposal to tie these

costs to changes in Distribution Plant costs; and that CES' proposal to allocate some of these costs to the production function is not supported by the evidence. Proposed Order at 24-25. (CES filed no Exception here.)

ComEd proved, with extensive, detailed, uncontradicted evidence, that its General Plant and Intangible Plant assets included in rate base were prudently acquired, that they were acquired at reasonable cost, and that they are used and useful exclusively to provide distribution and customer service, as discussed below.¹² ComEd thereby proved its case. Staff's and the IIEC's Exceptions, which seek to disallow \$303,925,000 or at least \$441,000,000 of those costs (Staff BOE at 4-13; IIEC BOE at 3-5 and Appendix, Part 1, at 1-5), respectively, lack any valid basis in fact and law and they are wrong, as discussed below. Approving them would be reversible error. Staff presents a distorted and incomplete discussion of the Proposed Order and the evidence, relies on inapplicable factual findings made in other Dockets, and misstates and disregards the law. Staff's "evidence" on this subject amounts to misguided discussion of past Commission Orders and fails to present facts about ComEd's General Plant and Intangible Plant assets in rate base in this case. IIEC relies on the arbitrary and unsupported claims that its witness made in direct testimony but did not defend in his rebuttal testimony after ComEd refuted those claims, relies on inapplicable factual findings made in past Dockets, and otherwise relies on mischaracterizations of snippets of evidence and tortured logic. IIEC's "evidence" also is devoid of facts about the assets in rate base in this case.

Staff and IIEC do not even claim to have identified even one General Plant or Intangible Asset in rate base that was not prudently acquired, was not acquired at a reasonable cost, or is not

¹² The Commission must follow the law regarding uncontradicted evidence, under which, when competent testimony is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded. ComEd Init. Br. at 32, n. 8.

used and useful exclusively to provide distribution and customer service. Their Exceptions instead are based wholly on erroneous and fictional theories and allocations.

If Staff and IIEC believed their own positions and applied them consistently, then they would propose not that ComEd be denied recovery of the costs that they seek to disallow, but rather, that these costs be allocated to the production function and recovered by ComEd through the Supply Administration Charge (“SAC”). *E.g.*, ComEd Init. Br. at 50, n. 25; ComEd Rep. Br. at 28. They do not do so. Their proposing to disallow recovery through any rate is another illustration of the specious and one-sided nature of their positions.

1. ComEd’s Position Is Grounded in the Facts, While Staff’s and IIEC’s Exceptions Are Divorced from Reality

ComEd is entitled, as a matter of law, to include in rate base plant that is prudently acquired, reasonable in cost, and used and useful. *E.g.*, 220 ILCS 5/9-211; *In re Commonwealth Edison Co.*, ICC Docket No. 94-0065, 1995 Ill. PUC Lexis 25 at * 5 (Order, January 9, 1995), *aff’d in part and remanded in part on other grounds*, 291 Ill. App. 3d 300 (1st Dist. 1997).¹³

The following six points, all based on uncontradicted evidence, prove that ComEd’s General Plant and Intangible Plant costs in rate base meet the legal standard for including plant in rate base, and that Staff’s and the IIEC’s Exceptions lack any basis in reality, do not address the legal standard, and must be rejected as a matter of law. .

First, ComEd provided extensive, detailed, uncontradicted evidence that its General Plant and Intangible Plant assets in rate base were prudently acquired, that their costs are reasonable, and that they are used and useful exclusively in providing distribution and customer service.

¹³ ComEd’s right to include such plant in rate base also follows from the fundamental constitutional principle that a utility is entitled, as a matter of law, to a reasonable return of and on its investments made to provide tariffed services, which means that confiscatory rates that do not allow such cost recovery are unlawful, and from Sections 9-201(c) and 16-108(c) of the Act. ComEd Init. Br. at 17-18 and 31, n. 6.

The evidence of these costs was compelling. John Costello, ComEd's Senior Vice President, Operations, explained the distribution and customer service functions that could not be performed without General Plant and Intangible Plant assets. Costello Dir., ComEd Ex. 3.0 Corr., 19:395 - 21:443. David DeCampli, ComEd's Vice President, Asset Investment Strategy and Development, showed that, out of the 21 largest capital additions included in rate base since ComEd's 2001 delivery services rate case, six are General Plant assets and five are Intangible Plant assets used to provide distribution and customer service. DeCampli Dir., ComEd Ex. 4.0 Corr., 1:10 - 3:48, 16:341 - 20:413, 37:770 - 56:1168; ComEd Ex. 4.3 Corr. Mr. Costello and Mr. DeCampli supported the prudence, reasonableness, and the use and usefulness of the general and intangible plant assets in rate base. Jerome Hill discussed the "direct assignment" method ComEd followed to establish the general and intangible plant assets being used for the distribution and customer service "functions." Mr. Hill's explanation of this "functionalization" process addressed each individual General Plant Account and the software systems that comprise Intangible Plant. Hill Dir., ComEd Ex. 5.0 Corr., 9:179-80, 9:183-88, 10:211-14, 11:221-26, 11:231 - 13:282, 18:372 - 22:471; ComEd Ex. 5.1, Sched. B-1, B-2.1, B-4, B-5, and C-12; ComEd Ex. 5.2 at work papers WPA-5, WPB-1, WPB-2.1b, WPB-5, and WPC-12. See specially his direct at pages 18-22 and work paper WPB-1. An independent expert, Alan Heintz, provided further support for the direct assignment method described by Mr. Hill, showing that it is the correct approach to functionalize General Plant and Intangible Plant. Heintz Dir., ComEd Ex. 11.0, 9:181-92, 11:238-40, 13:266-69, 14:289 - 17:361.²⁰

²⁰ After Staff and IIEC questioned the level of General Plant and Intangible Plant costs included in ComEd's rate base, ComEd provided additional evidence substantiating its costs and the methodology used to determine them. ComEd also responded to the fictional allocation arguments advanced by Staff and IIEC in support of their positions. *E.g.*, Costello Reb., ComEd Ex. 13.0 Corr., 3:54-63, 9:173-87, 26:586 - 31:694; Hill Reb., ComEd Ex. 19.0 Corr., 14:280 - 27:554 and Schedules 3, 4, 5, 6, 7, 8, and 9; Heintz Reb., ComEd Ex. 25.0, 5:88-97; Costello Sur., ComEd Ex. 30.0, 1:21-25, 2:38 - 4:81, 12:248 - 14:289, 22:442 - 23:452; Hill Sur., ComEd Ex. 36.0 Corr., 14:291 - 23:523 and Schedules 5, 6, and 7.

ComEd Init. Br. at 45-46.

Second, ComEd provided copious, detailed, uncontradicted evidence regarding each individual General Plant Account and the software systems that comprise Intangible Plant. *E.g.*, Hill Dir., ComEd Ex. 5.0 Corr., 9:179-80, 9:183-88, 10:211-14, 11:221-26, 11:231 - 13:282, 18:372 - 22:471; ComEd Ex. 5.1, Sched. B-1 Errata, B-2.1 Errata, B-4, B-5, and C-12; ComEd Ex. 5.2 at work papers WPA-5, WPB-1, WPB-2.1b, WPB-5, and WPC-12; Hill Sur., ComEd Ex. 36.0 Corr., 22:496 - 23:519 and Sched. 7. The evidence is uncontradicted that ComEd's General

Plant and Intangible Plant assets in rate base are everyday, recognizable, and discrete assets that ComEd uses to keep the lights on and provide customer service. ComEd's General Plant assets in rate base include, for example, office buildings, automated communications equipment ("SCADA") that provides data used to reduce the frequency and duration of outages, and items like the vehicles used by employees who visit service locations to read meters, while its Intangible Plant assets in rate base consist of software systems, such as the software systems used to manage work on its distribution system, provide customer information, and handle billing. *E.g.*, Hill Dir., ComEd Ex. 5.0 Corr., 19:394-402, 19:409 - 20:417, 22:459-71; ComEd Ex. 5.2 at work paper WPB-1, pp. 2-12; DeCampli Dir., ComEd Ex. 4.0 Corr., 39:807-13; Hill Sur., ComEd 36.0 Corr., 23:511-19 and Sched. 7.

Third, the evidence is uncontradicted, including from Staff's witness, that ComEd is and for over five years has been a "wires" utility with no production function. *E.g.*, Costello Reb., ComEd Ex. 13.0 Corr., 9:173-87; Clark Dir., ComEd Ex. 1.0, 6:133-34; Lazare Reb., Staff Ex. 17.0 Corr., 16:379-81 ("ComEd was a different utility in 2000 because it still owned generation. ComEd today is solely a transmission and distribution utility."); Lazare, Tr. at 632:11-17 (the last time that ComEd had significant production capital costs or production operating expenses, not including purchased power expenses, was 2001); *id.* at 643:7-13 (ComEd is "just a T&D utility" now).

Fourth, the evidence is uncontradicted that, more than five years ago, ComEd transferred all of its remaining General Plant and Intangible Plant assets that had supported the production function. As part of ComEd's transfer of its nuclear units on January 1, 2001, and its contemporaneous reorganization, ComEd transferred \$163,433,000 of General Plant and Intangible Plant assets to Exelon Generation and Exelon Business Services Company --

including the only ComEd General Plant and Intangible Plant assets that actually supported the production function -- and all that remained was General Plant and Intangible Plant that support delivery services.¹⁴ Hill Reb., ComEd Ex. 19.0 Corr., 20:413-21, 23:463 - 24:493 and Schedules 4 and 7; Hill Sur., ComEd Ex. 36.0 Corr., 14:308 - 15:324 and Sched. 5; Hill, Tr. at 921:7 - 927:2; ComEd Redirect Ex. 3.

Fifth, Staff's and IIEC's witnesses admitted that they did not review any of ComEd's individual General Plant or Intangible Plant accounts or assets in rate base. Lazare, Tr. at 633:17 - 634:7, 643:14 - 644:12, 644:18 - 646:3, 647:3-20, 650:16 - 653:7; Chalfant, Tr. at 1663:1-11, 1663:16 - 1664:3, 1665:3-14, 1666:3 - 1686:22, 1687:16 - 1688:1, 1688:8-17; ComEd Cross Exs. 10, 11, and 12. In fact, Staff's witness admitted that, while he disagreed with ComEd's "general approach", he had identified no errors in ComEd's Schedules and work papers showing and supporting its direct assignments of General Plant and Intangible Plant assets. Lazare, Tr. at 633:17 - 634:7.¹⁵ IIEC's witness also did not claim there were any errors.

Finally, Staff and IIEC's proposed adjustment figures, even setting aside the utter lack of basis and incorrectness of their adjustments on the merits, have been proven to make no sense in reality, further demonstrating the disingenuous nature of their claims. While Staff continues to emphasize the \$405,161,000 adjustment in ComEd's last rate case, it admits in a footnote, as it must given its own witness' testimony, that only \$303,925,000 of that amount, at most, was included by ComEd in its rate base. Staff BOE at 5 and n. 3; Lazare Reb., Staff Ex. 17.0,

¹⁴ ComEd has General Plant and Intangible Plant assets that support the transmission function, but the evidence is uncontradicted, and it is undisputed, that ComEd did not include the costs of those assets in rate base. *E.g.*, ComEd Init. Br. at 44, n. 18, 85-86, 93.

¹⁵ Staff's Brief on Exceptions now offers a jumbled argument that ComEd's direct assignments are "arbitrary" and "without explanation" (Staff BOE at 8-9), but ComEd's evidence is thorough, detailed, and uncontradicted, and for Staff to argue that it is insufficient when its own witness acknowledged that he did not even review it is dangerous nonsense, inviting the Commission to commit reversible error.

Sched. 17.1 Corr. Moreover, Staff fails to subtract the \$163,433,000 of General Plant and Intangible Plant transferred out of ComEd after the 2000 test year used in the last rate case, noted above. In addition, Staff fails to factor in that, if ComEd in this case had used the general labor allocator methodology approved in its last rate case, instead of direct assignment, its General Plant and Intangible Plant in rate base would increase by \$137,834,000. Hill Sur., ComEd Ex. 36.0 Corr., 16:351 - 17:359 and Sched. 6. When the net effect of those Staff computational errors is calculated, the result is to reduce Staff's proposed adjustment to \$77,799,750, and that is before correcting it for Staff's substantive errors and omissions, discussed above and below, which would reduce it below zero. ComEd Rep. Br. at 29 and n. 17, and Appendix 1, Tab 4.¹⁶ Similarly, IIEC's even larger proposed adjustment of at least \$441 million makes no sense in reality given those facts. Staff's and IIEC's proposals are not reasoned proposals, they are contrived efforts to deny cost recovery.

Thus, ComEd proved that its General Plant and Intangible plant costs in rate base belong there. Staff and the IIEC submitted no evidence that actually shows that even one dollar of those costs should be disallowed. Their Exceptions must be rejected.

2. Staff's Exception Is Baseless and Wrong

Staff's arguments in support of its Exception (Staff BOE at 4-9) present a gravely distorted and incomplete discussion of the Proposed Order and the evidence and variously misstates and disregards the law. Staff's fundamental claim that the Proposed Order "failed to properly consider Staff's evidence on the issue and came to an improper conclusion in support of

¹⁶ Moreover, even setting aside the merits, the \$405,161,000 adjustment in the last rate case was overstated by \$197,175,032 in the first place, because it failed to reflect that ComEd already had functionalized that amount of its General Plant and Intangible Plant to the production function before the adjustment was calculated. Hill Reb., ComEd Ex. 19.0 Corr., Sched. 4.

ComEd's position on these costs" (Staff BOE at 4) is false. The Proposed Order correctly assesses all of the evidence and reaches the only conclusion that the evidence and the law permit.

Staff does not accurately and completely summarize the Proposed Order. Staff begins by quoting only an excerpt of the Commission Analysis and Conclusion section as "[t]he PO's rationale for its decision..." Staff BOE at 4-5. Staff leaves out the first three sentences of that section, quotes the next three sentences, and then omits the remainder of the section. So, Staff omits, for example, that the seventh sentence, which states: "The record established here by ComEd is supported by convincing evidence that the costs associated with general and intangible plant assets are reasonable." Proposed Order at 24-25.

Staff mischaracterizes the Proposed Order, suggesting it found that Staff presented no evidence at all. Staff BOE at 5. The Proposed Order actually states that "the Commission was not provided with any evidence by Staff nor the IIEC to support their proposed adjustments." Proposed Order at 24 (emphasis added). The Proposed Order goes on to state why Staff's and IIEC's evidence does not support their proposals. *Id.* at 24-25. The point is not that they submitted no evidence, the point is that it did not justify their proposed adjustments.

Staff also does not consistently approach past Commission Orders. Staff, invoking the \$405,161,000 adjustment to General Plant and Intangible Plant costs approved based on the general labor allocator functionalization methodology in ComEd's last rate case, next claims that the Commission should not "turn a blind eye" to previous Commission decisions. Staff BOE at 5. Staff claims that ComEd has not explained "why the \$405 million should be moved from production to transmission and distribution...", why direct assignment should be used to functionalize General Plant and Intangible Plant in this case, and why General Plant and Intangible Plant costs in rate base have increased from the level approved in the last rate case.

Staff BOE at 5-9. Staff even goes so far as to claim that the increase “is caused by ComEd refunctionalizing significant levels of G&I plant from the unregulated production subsidiary back to the regulated utility....” Staff BOE at 9. None of Staff’s arguments is right.

The irreconcilable inconsistency of Staff’s position on the significance of past Commission Orders is glaring. Staff rejects the significance of, for example, the three prior Commission Orders, including the Order in ComEd’s last rate case, approving the treatment of the transfer of ComEd’s nuclear units in ComEd’s capital structure, plus that Order’s rejection of Staff’s proposed budget payment plan balances adjustment, its approval of operational-based incentive compensation program expenses, and its approval of ComEd’s methodology for calculating the uncollectibles rate in the Gross Revenue Conversion Factor, discussed elsewhere in this Reply Brief on Exceptions.

In any event, Staff’s reliance on the \$405,161,000 adjustment approved based on the general labor allocator functionalization methodology in ComEd’s last rate case, and its assertions that ComEd has not explained the above questions, not only are inconsistent with other Staff positions, they also are misleading and wrong, factually and legally, for at least eight reasons.

First, as shown above, ComEd presented extensive, detailed, uncontradicted evidence regarding its General Plant and Intangible Plant assets included in rate base, including evidence regarding each General Plant Account and the software systems that comprise Intangible Plant. As noted above, Staff and IIEC did not even review, much less seek to refute that evidence, nor claim that it contained any errors. Staff’s deficient response to the overwhelming evidence submitted by ComEd, -- evidence that answers all of Staff’s supposed questions -- amounts to pretending that that evidence does not exist and that all that matters are factual findings in other

Dockets. ComEd's overwhelming and unrefuted evidence exists and, unlike that offered by Staff, it addresses the relevant facts, not artificial and fictional theories based on past Commission Orders that had different evidentiary records.¹⁷

Second, the Order in ICC Docket 01-0423 itself rejects the position the Staff is taking.

The Order stressed that its conclusion on the subject of General Plant and Intangible Plant was:

for purposes of this proceeding only, and without prejudging any issues that may arise in future cases concerning the allocation of general and intangible plant using other test years

Commonwealth Edison Co., ICC Docket No. 01-0423 (Order, March 28, 2003), at 41 (emphasis added). Staff attempts but cannot rationalize away that express limitation (Staff BOE at 11), as even its witness' testimony shows. *See* Lazare, Tr. at 634:15 - 635:13; ComEd Cross Ex. 3. Staff's assertion that the limitation is irrelevant here, on the grounds that it only relates to functionalization methodology (Staff BOE at 11), is absurd, particularly when Staff's proposed adjustment is based entirely on the adjustment made based on functionalization in the last rate case, and when Staff's claim is that ComEd has not justified "refunctionalizing" assets.

Third, as noted above, if ComEd had used in this case the general labor allocator methodology that was advocated by Staff and approved by the Commission in the last rate case, that would increase General Plant and Intangible Plant in rate base by \$137,834,000. Staff offers no coherent ground for not using that methodology again. Staff's assertion that the proper method of functionalization "no longer matters greatly", not surprisingly, is supported by no citation. *See* Staff BOE at 9.

¹⁷ Staff (and the IIEC) vastly overstate the real increase in General Plant and Intangible Plant from 2000 to 2004. ComEd's General Plant has increased at approximately the 25% level that even IIEC's witness posits would be expected, and given when and how large software systems are replaced, the comparison as to Intangible Plant is inappropriate. Hill Reb., ComEd Ex. 19.0 Corr., 24:494-25:505, 25:511 – 24:518, and Sched 8.

Fourth, the Order (at 79) in ComEd’s last rate case expressly found that direct assignment, when feasible, is the most accurate functionalization methodology (when discussing A&G expenses, which had been functionalized using the general labor allocator in the previous ComEd rate case), quoting *Illinois Commerce Comm’n v. Central Illinois Light Co., et al.*, ICC Docket No. 99-0013 (Order, October 4, 2000), at 44. Staff did not and, obviously, could not claim that direct assignment of General Plant and Intangible Plant was not feasible in this case. Staff quotes what it states is language rejecting direct assignment of General Plant and Intangible Plant in the Docket 99-0013 Order (Staff BOE at 12), but there is no such language in that Order. This also illustrates Staff’s “pick and choose” approach to past Commission Orders. In any event, the evidence supporting direct assignment in this case is overwhelming and unrefuted.

Fifth, ComEd has shown, in detail, that its transfer of its nuclear units and reorganization did not increase the General Plant and Intangible Plant assets functionalized to the distribution and customer functions, and, instead, it was the Order in ICC Docket 01-0423 that incorrectly functionalized those assets, resulting in a huge, incorrect reduction in ComEd’s rate base in light of the divestiture. ComEd Init. Br. at 47, n. 23; ComEd Rep. Br. at 26-27. Staff alludes to aspects of that demonstration, but does not and cannot refute it. Staff’s assertion that ComEd is “refunctionalizing significant levels of G&I Plant from the unregulated production subsidiary back to the regulated utility” (Staff BOE at 9) is reckless, baseless, and wrong. There is not one penny of General Plant or Intangible Plant included in rate base that is not ComEd plant, as shown by ComEd’s evidence, and there is not one shred of evidence to the contrary. Staff once again not only ignores all of ComEd’s evidence supporting the General Plant and Intangible Plant in rate base, but also the computational error in the last rate case and the computational errors in Staff’s proposed figure in this case, discussed above. Those errors, when corrected,

reduce Staff's proposed figure below zero, nullifying any claim that the increase in General Plant and Intangible Plant in rate base over the level approved in the last rate case is attributable to any such "refunctionalizing".

Sixth, the Commission is legally required to base its ruling on the evidence in the record in this case, to do otherwise, such as basing its factual findings in this case on factual findings in other Dockets based on different evidentiary records, would be reversible error. *E.g.*, 220 ILCS 5/10-103, 10-201(e)(iv).¹⁸ Staff previously argued that ComEd was making an impermissible collateral attack on the Order in the last rate case, but ComEd showed that, for a host reasons, that argument is flatly contrary to the law. ComEd Rep. Br. at 27-28. Even Staff's witness' agreed that, if the evidence in this case warrants a different decision than was made in a past case, the Commission should make that decision. Lazare, Tr. at 655:16-19.

Seventh, Staff's position is founded on a false and illogical principle, contrary to law, that ComEd not only must prove that its General Plant and Intangible Plant in rate base was prudently acquired, acquired at reasonable cost, and used and useful, but that ComEd also has to prove the reasons for the incremental increase over the level approved in its last rate case. ComEd has no

¹⁸ Past Commission Orders are not legal precedents, nor are they *res judicata*. *E.g.*, *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23 (1994), *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953).

such burden under Section 9-211 or any other legal standard.¹⁹ Furthermore, Staff and the IIEC) have overstated the real increase in General Plant and Intangible Plant from 2000 to 2004, as noted above. Moreover, in any event, when ComEd proved with comprehensive, detailed, uncontradicted evidence that its General Plant and Intangible Plant was prudently acquired, acquired at reasonable cost, and used and useful, it necessarily justified the incremental increase over the amount approved in the last rate case.

Finally, Staff's position is inconsistent with Section 16-111(g) of the Act, 220 ILCS 5/16-111(g), and the Commission's Order in *Commonwealth Edison Co.*, ICC Dockets 00-0369 and 00-0394 [Cons.] (Order, August 17, 2000). The Commission reviewed and gave advance approval for ComEd's January 1, 2001, transfer of its nuclear plant assets to Exelon Generation under Section 16-111(g), and part of ComEd's compliance with the Order was its filing of the journal entries showing the assets to be transferred, including general and intangible plant assets. Hill Sur., ComEd Ex. 36.0 Corr., 15:314-19; *In re Commonwealth Edison Co.*, ICC Dockets 00-0369 and 00-0394 [Cons.], (Order, August 17, 2000), at 27. Staff is now arguing that the asset transfer may be reviewed and revised in this proceeding. Staff BOE at 6, n. 5.

¹⁹ Staff claims that "in previous cases" the Commission has required the utility to justify a large increase in General Plant and Intangible Plant. Staff BOE at 6. Staff cites only one case, *Illinois Power Co.*, ICC Docket No. 01-0432 (Order March 28, 2002) at 17, where the Commission found that Illinois Power had failed to prove that its remaining operations, after divestiture of its generating assets, required a large increase in General Plant and Intangible Plant in rate base over the level approved in its last rate case. Staff BOE at 6 (Staff cites the Lexis pagination, which is page *31). Staff fails to mention that in ICC Docket 01-0423, Illinois Power used the general labor allocator, not direct assignment, to functionalize those assets. *In re Illinois Power Co.*, ICC Docket No. 01-0432 (Order, Mar. 28, 2002) at 10. ComEd used direct assignments and presented overwhelming, detailed, uncontradicted evidence supporting those direct assignments. Even more importantly, the ICC Docket 01-0432 Order does not state that Illinois Power had a legal duty to prove the reasons for the incremental increase over the level approved in its last rate case, rather, that Order's finding is based on the evidence in the record in that Docket. As noted above, the Commission must base its decision in this case on the evidence in the record in this case. *E.g.*, 220 ILCS 5/10-113, 10-201(e)(iv). The fact that the Commission found that Illinois Power did not present sufficient evidence says nothing, factually or legally, about ComEd's evidence and what factual findings should be made in this case. Finally, in any event, ComEd proved the reasons for the increase as shown above and below, so Staff's argument based on the ICC Docket 01-0432 Order is nothing more than posturing while ignoring the actual evidence in this case.

Section 16-111(g) prohibits any such action, providing that: “The Commission shall not in any subsequent proceeding or otherwise, review such a reorganization or other transaction authorized by this Section, but shall retain the authority to allocate costs as stated in Section 16-111(i).” 220 ILCS 5/16-111(g), (220 ILCS 5/16-111(i) does not authorize Staff’s position). Staff argues that the ICC Docket 01-0432 Order finds that Section 16-111(g) allows such review (Staff BOE at 6, n. 5), but Staff does not demonstrate that the facts regarding the Section 16-111(g) proceedings regarding Illinois Power are comparable to the facts here. In any event, Section 16-111(g) applies here, and the exception under Section 16-111(i) does not.

Staff also proposes an Exception to add language to the Proposed Order regarding arguments made in its Reply Brief. Staff did not include the now-requested language in its draft position statements. Even more importantly, Staff’s proposed additional position statement language does not warrant inclusion. The proposed additional language: (1) redundantly reiterates the false claim that ComEd did not submit evidence justifying the increased level of General Plant and Intangible Plant in rate base over the level approved in the last rate case, (2) makes the erroneous legal argument that the “without prejudging” language of the Order in the last rate case is not relevant here, (3) misquotes the Docket 99-0013 Order, and (4) seeks to add erroneous discussion of the ICC Docket 01-0432 Order and Section 16-111(g).

Reply Exception 2

If the existing language of the Proposed Order is not sufficiently clear that, while Staff and the IIEC did submit evidence, that evidence did not actually justify their proposed adjustments, then the fourth sentence of the Commission Analysis and Conclusion section on page 24 should be revised as follows: “The Commission however, was not provided with any evidence by Staff nor the IIEC to support their proposed adjustments that actually justifies their

proposals”, and the paragraph on pages 24-25 should have an additional sentence at the end: “Staff and IIEC did not refute ComEd’s evidence, show it to be insufficient, or otherwise provide convincing evidence that warrants their proposed adjustments.

Alternative Reply Exception 3

Alternatively, if the Proposed Order were to be revised to approve any part of Staff’s (or the IIEC’s) proposed adjustments, then, for reasons previously noted, the Proposed Order should also include the following language: “The costs that are the subject of the approved adjustment to General Plant and Intangible Plant nonetheless are prudently incurred, reasonable in amount, and used and useful in providing tariffed services, and, therefore, ComEd is directed to include such costs, with appropriate carrying costs, in preparing a revised Supply Administration Charge to be incorporated in the applicable tariffs approved by this Order.”

3. IIEC’s Exception Is Baseless and Wrong

IIEC’s Exception also is unsupported and incorrect. IIEC first claims that its proposal “did not address the appropriate functionalization of G&I Plant.” IIEC BOE at 3. That is not correct. IIEC’s witness did not propose a functionalization methodology as such. However, IIEC’s witness, and IIEC’s Exception, expressly are based on the functionalization determinations made in ICC Docket 01-0423 and the proposition that increases in General Plant and Intangible Plant should be limited proportionally by increases in Distribution plant. *See* IIEC BOE at 4-5. ComEd has proved that it correctly functionalized its General Plant and Intangible Plant in this case, and that the functionalization determination in the last rate case warrants no adjustment in this case.

IIEC’s Exception is based on the claim that its proposed adjustment is warranted because of the factual finding of a relationship between General Plant and Intangible Plant levels and the

Distribution plant level in ICC Docket 01-0432, which IIEC asserts also is supported by evidence in this case. IIEC BOE at 5. IIEC's claim is unsupported and incorrect. First, IIEC's simplistic calculations of the increase in General Plant and Intangible Plant costs far overstate the real increase from the 2000 test year to the 2004 test year, as noted above. Second, in any event, ComEd proved that its General Plant and Intangible Plant costs included in rate base are prudent, reasonable, and used and useful in providing distribution and customer service, and it presented evidence thoroughly refuting IIEC's witness' claims, as noted earlier. IIEC's witness did not even offer any rebuttal testimony on this subject. There is no basis for the IIEC's witness claim that ComEd's evidence is insufficient. Third, cross-examination of the IIEC's witness revealed that his analysis and proposal are superficial and are not based on any facts about ComEd's General Plant and Intangible Plant assets. IIEC's witness did not review substantial portions of ComEd's evidence on this subject, did not review the documents that ComEd made available in discovery on this subject, and performed only a superficial and incomplete review, which included no analysis of any individual General Plant and Intangible Plant Accounts and assets. *E.g.*, Chalfant, Tr. at 1663:1-11, 1663:16 - 1664:3, 1665:3-14, 1666:3 - 1686:22, 1687:16 - 1688:1, 1688:8-17; ComEd Cross Exs. 10, 11, and 12. Finally, ComEd demonstrated that that proposed limitation is not supported by the facts, there is no valid basis for making such a linkage, and that, properly calculated, the increase in General Plant was not out of line with the IIEC's witness' novel theory, in any event. Hill Reb., ComEd Ex. 19.0 Corr., 25:506 - 26:526 and Sched. 8; *see also* Heintz Reb., ComEd Ex. 25.0, 5:88-97. IIEC's Exception is not supported by, and instead is contrary to, the evidence. It should be rejected.

ComEd notes that IIEC's Exception includes certain proposed edits of ComEd's position statement. IIEC BOE Appendix, Part 1, at 1 - 4. IIEC's proposed edits should be rejected. They

are inappropriate, unsupported, and incorrect. ComEd's position statement is accurate and is supported with complete citations.

C. Pension Asset

Staff

In its BOE, Staff reiterates its position that the evidence in this case does not support the recognition of a pension asset, and urges the ALJs to once again consider its arguments. Staff BOE at 13. However, Staff provides no new arguments, nor cites to any new evidence, that should lead the ALJs to a different result than that articulated in the Proposed Order. Indeed, what is extraordinary about Staff's BOE on this issue is that instead, it devotes seven pages arguing against "dangerous criteria" in the Proposed Order which Staff represents "parties may attempt to apply in future cases to support inclusion of an asset in rate base." Staff BOE at 13-14. Although at first blush it appears that Staff is not so much providing arguments to support a different conclusion by the Proposed Order as it is trying to have certain statements in the Proposed Order changed that it asserts will have undesirable consequences in the future, a closer examination reveals that it has mixed and matched arguments about the Proposed Order's conclusions with arguments against allegedly dangerous "criteria." Staff BOE at 13-19. Regardless, these arguments are incorrect and without merit. In addition, Staff asks that the ALJs correct certain alleged mischaracterizations of Staff's position in the Proposed Order. Staff BOE at 18-19. As demonstrated below, even these limited requests by Staff should be rejected.

Used and Useful and Acquired At a Reasonable and Prudent Cost

Staff's argument here is nothing short of extraordinary. Apart from Staff's aside about whether the pension asset is truly an asset to all – an issue correctly resolved in the affirmative by the Proposed Order – Staff is arguing that there are two errors in the Proposed Order's

statement that “. . . as long as the asset is used and useful and acquired at a reasonable and prudent cost, that asset should go into rate base.” Proposed Order at 37. First, Staff says this statement ignores “the concept of interperiod equity”, and second, Staffs says the term “used and useful” “cannot be applied in the traditional sense to an accounting based pension asset.” Staff BOE at 14. Staff is wrong on both counts.

Staff’s argument is extraordinary in that it is totally divorced from the words of the Act itself. The ALJs did not make up these tests – they are enshrined in the Act. Section 9-211 of the Act provides that “The Commission, in any determination of rates or charges, shall include in a utility’s rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.” Section 9-213, 220 ILCS 5/9-213, states that the “cost of new electric utility generating plants and significant additions to electric utility generating plants shall not be included in the rate base of any utility unless such cost is reasonable.” The point is not that each of these provisions is directly applicable here; the point is the Act establishes, and it has long been understood, that the general standard for inclusion of an asset in rate base – whether a generating plant, a distribution facility, or some other type of asset – is that the asset be reasonable in cost, prudent, and used and useful. *See* Ebrey, Tr. at 1891:18-22. The fact that ComEd is entitled, as a matter of law, to recover costs that are prudent, reasonable, and used and useful has also been established in prior Commission orders. *See, e.g.*, 220 ILCS 5/9-211; *Commonwealth Edison Co.*, ICC Docket No. 94-0065, 1995 Ill. PUC LEXIS

25 at *5 (Order, January 1995), *aff'd in part and remanded in part on other grounds*, 291 Ill. App. 3d 200 (1st Dist. 1997).²⁰

Staff suggests that an additional requirement is that “the asset is required to provide utility service to current customers.” Staff BOE at 15 (emphasis added). But Staff cites no authority in the Act or case law for this gloss on the standard for including an asset in rate base, and there is none. Moreover, it simply is not true that only investments by a utility that are required to serve current customers have been included in rate base. Utilities have long been required to plan ahead and to build and size their transmission and distribution plant to serve not only electricity usage by current customers, but also usage by new customers. Indeed, in this very rate case, ComEd witness Mr. DeCampli testified about such projects that were included in rate base (Costello Dir., ComEd Ex. 3.0 Corr., 19:387-91; Effron Dir. AG Ex. 1.0, 7:14-16), and Staff witness Linkenback agreed they were proper. Linkenback Dir., Staff Ex. 8.0, 2:26-40.) As another example, a utility has long been able to include in rate base investments in real property needed to meet future needs. *See* 83 Ill. Adm. Code §285.2100 Schedule B-11; *id.* at §285.2105 Schedule B-12.

In any event, Staff is wrong that current customers do not benefit from the pension contribution. No party has challenged that prior to the contribution, ComEd’s 72% funding level was well below the level of other employers with large pension plans, and that after the contribution, its funding was at the average level of these companies. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 16:528 - 28:540. Continued funding at the 72% level was risky both for current

²⁰ ComEd’s right to include such plant in rate base also follows from the fundamental constitutional principle that a utility is entitled, as a matter of law, to a reasonable return of and on its investments made to provide tariffed services, which means that confiscatory rates that do not allow such cost recovery are unlawful, and from Sections 9-201(c) and 16-108(c) of the Act. ComEd Init. Br. at 17-18 and 31, n. 6.

customers and current workers, as explained by ComEd witness Susan Tierney Reb., herself a former Commissioner of the Massachusetts Department of Public Utilities. Tierney Reb., ComEd Ex. 22.0, 2:21-25. Thus, the lessening of this risk was a benefit to current as well as future ratepayers. Staff also ignores the fact that customers have benefited for years while the pension plan was underfunded and the resulting liability was deducted from rate base, thereby reducing costs to customers. Houtsma Sur., ComEd Ex. 35.0, 25:557 – 26:558.

Staff's second point is that "nothing in the record supports how the pension funding is used and useful in the provision of utility service to customers." Staff BOE at 15. This is equally untrue. ComEd witness Susan Tierney explained that the fundamental and well-known economic principle underlying cost-of-service ratemaking is that rates for utility services should reflect the cost of providing those services. Among these costs are labor-related costs. These include both the direct and indirect costs to compensate the utility's workforce, including salary expenses and any deferred compensation in the form of a pension. Without a pension plan, workers would be expected to demand higher compensation in the form of wages, salaries and/or other benefits. Dr. Tierney testified that consumers should support rates that reflect these direct and indirect costs, both to see properly-priced utility services and to align the incentives of the utility with consumers' need for reliable and efficient electric distribution service. Dr. Tierney further testified that pensions or deferred wages can be and often are used to induce employees to stay with the company, thus reducing training and recruiting costs and providing the benefit of retention of job-specific skills. In addition, Dr. Tierney testified that utility commissions typically recognize this through decisions to allow recovery of reasonable pension-related costs as just and reasonable. Finally, Dr. Tierney testified that cost-recovery policies should create incentives for efficient management of assets related to such labor-related obligations. These

include encouraging the utility to “do the right thing” regarding pension costs – that is, making sure that the workforce does not experience undue risk associated with an inadequately funded pension plan, held in trust for them by the utility. Doing the right thing means that the employees’ pension fund is supported financially and managed efficiently in order to provide value to the workforce who, in turn, provide value to customers. Tierney Reb., ComEd Ex. 22.0, 6:127 - 8:169.

This testimony by former utility commissioner Dr. Tierney shows how pension funding is used and useful in the provision of utility service to customers. It stands unrebutted.

In addition, the Commission has long approved recovery of pension expense from ratepayers where the purpose of that expense was not to provide an immediate benefit to current ratepayers, but to enable ComEd to have sufficient pension funds to meet future obligations to workers as they become due. *Cf. In re Fox Lake Util. Co.*, 1983 Ill. PUC LEXIS 4, *21 (Order, Dec. 6, 1983). Staff’s argument would suggest that Commission approval of recovery of such pension expenses from ratepayers is also wrong, because it is not used to provide utility service to current customers. Thus, Staff’s argument is plainly incorrect.

An asset in rate base is not required to be the result of a non-discretionary creation

Staff’s next complaint is that allegedly, “[t]he Proposed Order provides that for an asset to be in rate base, it can be the result of a discretionary action.” Staff BOE at 16. Staff seems to be arguing that an asset can only go into rate base if its creation was mandated. In making this argument, Staff is forced to ignore the testimony of its own witness, Ms. Ebrey, who was asked the following questions and gave the following answers:

- Q. Now, is it your understanding that in general it is a criteria – a criterion that must be met before an asset can be included in rate base that its creation was not discretion any?
- A. No.

- Q. In fact, the rate base in this case is filled with assets , the creation of which was discretionary, right?
- A. Right.
- Q. And as long as those assets are used and useful and acquired at a reasonable and prudent cost, again with your understanding of those terms, they go into rate base, right?
- A. Right.

Ebrey, Tr. at 1891:9-22. Ms. Ebrey’s testimony accurately portrays the correct rule, which is that whether an asset goes into rate base does not turn on whether the creation of the asset was discretionary or required.

Staff next proceeds to suggest that what it means by “discretionary” here is that allegedly “[t]he Proposed Order establishes criteria that an asset can be included in rate base even if it does not exist but is the product of the manipulation of various accounting entries.” Staff BOE at 16. This statement, and the sentences which follow, are simply a repetition of Staff’s arguments, properly rejected by the Proposed Order, that there is no pension asset as an accounting matter under FAS 87. It is not necessary to respect all of the reasons why Staff is wrong, and the Proposed Order is right, on this issue, but a few brief points are worth repeating.

ComEd’s financial statements have been prepared in accordance with GAAP, including FAS 87, have been audited by PricewaterhouseCoopers, and have been filed with the SEC. If Staff’s position about FAS 87 were correct, ComEd’s financial statements would reflect no pension asset, but, in fact the audited statements show there is a pension asset. Houtsma Reb., ComEd Ex. 18.0 Corr., 16:358 - 17:363; Houtsma, Tr. at 470:8-20; *see also* Tr. at 382:11-18; 388:19 - 389:3; 390:8-22; 505:14-21.

Second, the record is clear that a pension asset can arise for accounting purposes either (1) because of overfunding as a result of contributions that exceed the liability; or (2) as a result of overfunding because of better than expected returns on ratepayer supplied trust fund assets, as

was the case with Nicor in *Illinois Gas Company d/b/a Nicor Gas Co.* ICC Docket No. 04-0779 (Order, Sept. 20, 2005) (“Nicor Gas”)); or (3) because of contributions relating to obligations that have not yet been recognized in financial statements. Houstma, Tr. at 468:13-17; 471:4-11. A pension asset exists here for accounting purposes because of the third reason, that is ComEd has funded the liabilities in advance of their recognition on ComEd’s financial statements.²¹

Third, Staff’s misunderstanding of why a pension asset exists for accounting purposes obscures the real issue, which is why a pension asset exists for ratemaking purposes. Although ComEd’s accounting for the pension asset is correct and in accordance with GAAP, that accounting is not determinative as to the appropriate rate base treatment. Staff apparently believes that accounting for the liability could have been different, but neither disputes that the liability that was funded related to ComEd employees nor that customers did not provide the funds used to fund the liability. These are the determinative facts for ratemaking purposes; inclusion of the pension asset allows investors who financed the case contribution used to meet ComEd’s employees obligation to recover their costs. Houstma, Tr. at 521:13-19.

**“A legal obligation to fund pension obligations is justification
for pension prepayments to be included in rate base”**

Staff’s next argument is that “[t]his criteria established by the P O encourages a ‘perverse financial incentive’ for utilities to borrow money to fund future obligations and earn a return on these funds through rates that is higher than the cost to borrow.” Staff BOE, at 17. The Proposed Order creates no such perverse incentive.

²¹ The unrecognized liabilities relate to poor performance in the stock markets from 2000-2002 that have been identified by the actuaries and recorded on Exelon’s financial statements. These liabilities, presently on the books of Exelon, will be reflected in ComEd’s financial statements in future periods. Mitchell Dir., ComEd Ex. 7.0, 10:195-201; Houstma, Tr. at 377:16-21; 383:9-14; 384:16 - 385:22; 472:9-18.

First, immediately before the contribution, the funding level of ComEd's portion of the Exelon pension plan was a legitimate cause for concern. ComEd's funding of its pension obligations, measured on a Pension Benefit Obligation ("PBO") basis, was at 72%, compared to an average of 92% for other employers with large pension plans. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 26:520 - 28:535. After the contribution, measured on the same basis, ComEd's funding of its pension obligation stood at 92%, the average level of funding of the same peer group of companies. *Id.* No party – including Staff – has suggested that ComEd's decision to fully fund its pension under these circumstances was imprudent or unreasonable.

Second, no party has suggested how else ComEd might have reached that average funding level in the near future without investor financing of the contribution. On the one hand, to obtain the same result using rate payer supplied funds would have required increased annual amounts of pension expense in rates and taken many more years to achieve, with attendant greater risk of a shortfall in available pension funds. On the other hand, if the pension obligation had been funded by ComEd with debt, its financial ratios would not have been within the S&P ranges for an A credit rating, and it is likely ComEd's credit would have been downgraded, effectively undoing most of what was accomplished through ComEd's debt reduction program. Mitchell Reb., ComEd Ex. 20.0, 17:347-57. Mr. Mitchell's express testimony on the danger to ComEd's credit rating if it had issued the debt instead gives the lie to Staff's bald, and false assertion, that "[n]o evidence in the record supports this [ComEd] claim" that "without equity infusion from Exelon ComEd would have had to issue additional debt itself resulting in a downgraded credit rating." Staff BOE at 17.

These factors create no "perverse financial incentives." Indeed, just the opposite is true. As testified by Ms. Susan Tierney, a former utility commissioner in Massachusetts, in the face of

such facts, the denial of a pension asset would signal Commission unwillingness to support efforts to fully fund pension obligations. Utilities would be encouraged to establish pension expense for recovery in rates at the minimum level of legally required pension funding, and to cross their fingers that no pension funding problem surfaces as has happened to so many other corporations. Tierney Reb., ComEd Ex. 22.0, 12:247-63.

“Staff’s proposal does not allow recovery of pension costs”

Staff argues that “[u]nder Staff’s proposal, the Company will recover its costs associated with its pension plan to enable it to meet its legal obligation; namely, it will recover periodic costs of the pension plan as determined by its actuary through base rates.” Staff BOE at 18. This argument is disingenuous. At the level of annual pension expense now being collected in rates, ComEd’s funding had sunk to 72%, compared to an average of 92% for other employees with larger pension plans. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 26:520 - 28:534. Staff’s pension expense proposal of \$11.9 million would clearly be inadequate to provide the \$803 million necessary to fund the deficit that would have existed had the contribution not be made. In addition, Staff proposes no recovery at all for investors who funded the \$803 million contributions; Staff’s claim that recovery of \$11.9 million through pension expense annually is adequate recovery for the \$803 million is nonsensical on its fact. . To suggest, in the face of these facts, that Staff is allowing recovery of pension costs is to misrepresent reality.

“Staff position is *not* based on the cost increases to the revenue requirement”

Staff complains that “[t]he PO insinuates that Staff’s position is based on the cost increases to the revenue requirement and therefore the ‘pension asset’ should not be allowed for recovery.” Staff BOE at 18. But this is not a matter of “insinuation”; it is what Staff argued. Staff concedes that it “never explicitly claimed that the contribution to the pension fund was not

prudent.” Staff BOE at 18. Moreover, Ms. Ebrey testified that “the Company’s proposed treatment of its discretionary contribution to the pension trust fund is detrimental to its rate payers through its \$27.9 million net increase to the overall revenue requirement.” Ebrey Reb., Staff Ex. 13.0, 10:189-91. Taken together, these facts provide a solid basis for the Proposed Order to conclude that Staff’s biggest complaint was that as a result of the pension asset, the revenue requirement would increase about \$27.9 million on a net basis as compared to Staff’s unfair, and unjustified, alternative. Staff BOE at 9.

“Proposed Order Mischaracterizes Staff’s citations to the NICOR and GTE Orders”

Staff’s last argument is that the Proposed Order allegedly “mischaracterizes Staff’s citations to the NICOR and GTE orders (PO at 37); the citations were to illustrate the separate ratemaking treatment of pension expense and pension assets (Staff Ex. 2.0, pp. 13-14, Staff 1B, p. 35)), **not** as evidence that pension assets are to be disallowed from rate base.” Staff BOE at 19 (emphasis original). But the Proposed Order does not in fact characterize, much less mischaracterize, Staff’s position on these cases at all at page 37; instead, it makes clear that in the ALJ’s view, the cases are inapposite because in each of them the pension asset was denied because it was created with customer funds, not, as here, investor funds, and for that reason, the treatment of pension expense in those cases has no bearing on pension expense in this case.

AG

The AG has changed positions yet again. The AG’s initial position, as expressed in the testimony of its witness, Mr. Effron, did not request disallowance of the pension asset, but instead recommended that ComEd recover only what Mr. Effron argued was the “actual cost” of funding the pension contribution that credited that asset -- Exelon’s debt cost of approximately \$27 million. Effron Dir., AG Ex. 1.0, 13:14-19; 14:1-10. Then, in its Initial Brief, the AG

tacked 180 degrees and expressly supported Staff's position that the pension asset should be disallowed, notwithstanding that ComEd had reduced its request for annual pension expense because of the contribution: "Where consistent with well-founded precedent, the Commission should disallow the Company's costs of funding the pension asset." AG Init. Br. at 6. Now that the Proposed Order has correctly rejected Staff's proposal to disallow the pension asset, in its BOE, the AG says nothing about support for that position, and instead reverts back to its original position that ComEd should recover only Exelon's debt cost for the contribution. AG BOE at 6-8.

The AG's argument that ComEd should recover what it calls the "actual cost of the debt issued to finance" the contribution (AG BOE at 6), is self-contradictory and incorrect. Indeed, at bottom its argument rests on an alternative reality that never existed.

The AG first states that "[t]he record clearly established that the pension contribution was financed by debt at the Exelon level and that the actual cost of the debt issued to finance the pension contribution was 5.01%." AG BOE at 6 (emphasis added). The AG then asserts that "[w]hen Exelon assigned a portion of the pension contribution to ComEd, it treated the contribution as being financed by equity" (AG BOE at 6), and that "[t]he book accounting by Exelon and ComEd does not change the fact that the actual contribution to ComEd's pension asset was financed by debt" (AG BOE at 7).

The only accurate statement above is that Exelon, not ComEd, issued. ComEd Init. Br. at 51. Exelon did not "assign" \$803 million of that debt to ComEd; it provided \$803 million in cash to ComEd to enable ComEd to make a contribution of that amount to the pension fund. The proper accounting for the \$803 million provided to ComEd is as an equity contribution. It is not debt, because ComEd never issued any debt in connection with this transaction. Indeed, the

record is clear that ComEd likely could not have issued debt to finance the contribution without jeopardizing its credit rating. Mitchell Dir., ComEd Ex. 7.0, 8:170 - 9:173.

Thus, this is not a matter of “book accounting” between Exelon and ComEd; it is a real-world transaction which was as a factual matter an equity contribution from Exelon to ComEd. As the record shows, ComEd’s financial statements, which reflect this equity contribution, have been prepared in accordance with GAAP, have been audited by PricewaterhouseCoopers, and have been filed with the SEC. Houtsma, Tr. at 470:15-20.

The AG’s denial that its proposal would violate Sections 9-230 and 16-111(i) of the Act is self-contradictory and incorrect. The AG correctly states that “[t]he record clearly established that the pension contribution was financed by debt at the Exelon level.” AG BOE at 6 (emphasis added). The record just as clearly establishes that ComEd did not issue debt to finance the contribution, and a principal reason why is that to have issued debt in this amount would likely have jeopardized its credit rating. ComEd Init. Br. at 51. The record is also devoid of any evidence as to what rate would have applied if ComEd had issued debt for the \$803 million. These facts establish that the AG’s proposal violates both Section 16-111(i) and Section 9-230 of the Act. The AG tries to conceal the problem by selectively quoting from 16-111(i). But in full relevant part, that provision states that in a proceeding to establish “rates or charges for tariffed services offered by an electric utility,” the Commission “shall consider only (1) the then current or projected revenues, costs, investments, and cost of capital directly or indirectly associated with the provision of such tariffed services . . . and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services.” 220 ILCS 5/16-111(i) (emphasis added). The AG’s proposal would do precisely what Section 16-111(i) forbids – impute

Exelon's cost of debt to ComEd, which issued no debt. Likewise, Section 9-230 prohibits the Commission from considering any cost of capital resulting from a public utility's affiliation with an unregulated or nonutility company, such as Exelon. Section 9-230, contrary to the AG's implication, says nothing about being limited to situations where there are increased risks undertaken by utility affiliates. 220 ILCS 5/9-230; AG BOE at 7.²²

E. Customer Deposits

The Proposed Order correctly rejects Staff's proposed "customer deposits" adjustment to reduce ComEd's rate base as inconsistent and arbitrary. Proposed Order at 39-41.

Staff takes Exception, arguing that Staff's proposal is "completely consistent with the Commission's practice to treat customer deposits and cash working capital as separate components of rate base", citing the Appendices to (but not any discussion in) a number of past Commission Orders. Staff BOE at 24, 25. Staff also objects to the criticism that Staff was remiss not to propose similar adjustments to components of cash working capital that would increase rate base. Staff BOE at 24-25. Staff's contentions lack merit.

Customer deposits are a short-term liability on ComEd's books, and so customer deposits are just one of the many components that comprise ComEd's cash working capital requirements. Hill Reb., ComEd Ex. 19.0 Corr., 27:560-62. ComEd has not included, however, cash working capital requirements in its proposed rate base in this case. *E.g.*, ComEd Ex. 5.1. Thus, Staff has selectively picked just two components of cash working capital, customer deposits and the

²² The AG's further claim that the Proposed Order improperly provides a \$70 million windfall to Exelon (AG BOE at 7-8) is equally incorrect. The \$70 million figure the AG uses is pretax, and thus vastly overstated. Moreover, it is not a "windfall" to Exelon that the Proposed Order's decision is based on the reality of the funding of the contribution and complies with the law, neither of which can be said about the AG's position.

budget payment plan balances, discussed in the next subsection of this Reply Brief on Exceptions, to incorporate in ComEd's rate base.

Significantly, both cash working capital components that Staff has chosen would reduce rate base, ignoring all the other cash working components, many of which would increase ComEd's rate base. *See Hill Reb., ComEd Ex. 19.0 Corr., 27:562 - 28:564.* That is clearly inappropriate and unfair. In *Commonwealth Edison Co.*, ICC Docket 01-0423 (Order, March 28, 2003), at 46, the Commission rejected Staff's proposed adjustment to rate base founded on budget payment plan balances for those reasons, stating:

The Commission finds that ComEd's position on this issue is persuasive. While Staff makes a salient point relative to the Company's exclusion of working capital from this proceeding while in the previous DST proceeding it chose to include working capital, to simply pick out particular working capital items that would result in a downward adjustment to the Company's revenue requirement would be inappropriate. The downward adjustment sought by Staff, therefore, is not accepted.

The same reasons that supported that ruling have been proved in this case.

The fact that Staff proposed to increase approved operating expenses to reflect new costs due to a new real-time metering program and corrected the amount of its proposed customer deposits adjustment (Staff BOE at 24-25) in no way alters that Staff failed to make adjustments for other cash working capital components that would have increased rate base.

Staff's suggestion that a particular source of funds must be included in a lead/lag study in order to be considered cash working capital (Staff BOE at 24) is unsupported and incorrect. Cash working capital can be computed in a number of different ways. For example, FERC computes cash working capital as one-eighth of the utility's operation and maintenance expense, which does not allow customer deposits to be a separate rate base component. *Hill Sur., ComEd Ex. 36.0 Corr., 23:528 - 24:536.* Cash working capital also can be computed using a balance sheet approach, in which current assets are divided by current liabilities. *Id.* at 24:536-538. In

any event, given that customer deposits are assigned to current liabilities in the Uniform System of Accounts, they properly represent a component of cash working capital. *Id.* at 24:538-40.

Staff's argument about treatment in the Appendices to past Commission Orders (Staff BOE at 24) exalts form over substance. For example, Staff first cites ComEd's last rate case. The Commission in that Docket did approve customer deposits as a subtraction from rate base (*Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Order, March 28, 2003) at 115), but the issue raised in the instant case was never raised there. Staff makes no effort to show in which of the past Orders it cites the utility sought to include a cash working capital component in rate base and whether, where the utility did not do so, there was a challenge to the appropriateness of the customer deposits adjustment. In any event, the fact that the Commission put customer deposits on a separate line in the Appendix to the Order proves nothing on this subject. Staff's Exception lacks merit and should be rejected.

F. Budget Payment Plan

The Proposed Order correctly rejects Staff's proposed "budget payment balances" adjustment to reduce ComEd's rate base as inconsistent and arbitrary. Proposed Order at 41-42.

Staff takes Exception, on the ground that Appendices to past Commission Orders show budget payment plan balances as a separate calculation. Staff BOE at 26-27. Staff could not more clearly be exalting form over substance. The facts have not changed from ComEd's last rate case, where the Commission rejected Staff's proposed budget payment plan balances adjustment on the very same grounds ComEd has raised and the Proposed Order has found here, i.e., inconsistent and one-sided selection of working capital items as bases for adjustments, as shown in the preceding section of this Reply Brief on Exceptions. Staff also is highly inconsistent here in its treatment of the significance of the Order in ComEd's last rate case where

Staff perceives that that Order favors its position, such as on the subject of General Plant and Intangible Plant. Staff's Exception lacks merit and should be rejected.

G. Materials and Supplies Inventory

The Proposed Order correctly approves ComEd's materials and supplies inventory balance, finding that the measurement as of the end of the test year is the more appropriate and reasonable methodology. Proposed Order at 43.

Staff takes Exception, but Staff's discussion only addresses one aspect of the Proposed Order's secondary point that Staff's position is inconsistent in more than one respect. Staff BOE at 27. Staff does not address the fundamental issue, i.e., which methodology should be used.

ComEd's methodology is more appropriate and reasonable. ComEd included in rate base its inventory of materials and supplies as of December 31, 2004, the last day of the test year. *E.g.*, Hill Dir., ComEd Ex. 5.0 Corr., 16:330-40; ComEd Ex. 5.1. Staff proposes that the 13-month average of ComEd's materials and supplies inventory should be used instead, less a figure for accounts payable associated with the materials and supplies inventory, resulting in a net deduction from rate base of \$1,609,000 (as revised in rebuttal). Ebrey Dir., Staff Ex. 2.0, 28:602 - 29:625 and Sched. 2.8; Ebrey Reb., Staff Ex. 13.0, 28:568 - 29:594 and Sched. 13.7. ComEd demonstrated in the rebuttal and surrebuttal testimony of Mr. Hill that Staff's proposed adjustment is incorrect and inappropriate. ComEd showed that: (1) the 2004 year-end figure is more representative of the current inventory management policies and practices; (2) the 2004 year-end figure is within 3.4% of Staff's 13-month average, negating any notion that the year-end figure is unrepresentative; (3) Staff used a four-year average to calculate the accounts payable offset part of her proposed adjustment, not the comparable 13-month period it used to calculate the materials and supplies inventory, which is inconsistent and inappropriate; (4) had

Staff used the four-year average methodology for both parts of its proposed adjustment, then the result would be a \$5,268,000 increase in the inventory (before functionalization and the accounts payable offset); (5) Staff disregarded ComEd's direct assignment of the inventory for functionalization purposes, without explanation, and substituted an arbitrary allocator, one that is based on the same point in time, year-end 2004, that Staff rejects when used to calculate the inventory in the first place; and (6) had Staff used the average of the 13-month averages over the last four years then the result would be a \$6,681,000 increase in the inventory (before functionalization and the offset). Hill Reb., ComEd Ex. 19.0 Corr., 29:604 - 31:649 and Sched. 10; Hill Sur., ComEd Ex. 36.0 Corr., 25:566 - 26:585.

Staff's Brief on Exceptions does not address most of those points, including the key point: which methodology is superior. Staff's Exception should be rejected.

H1. Procurement Case Expenses
[Rate Base Effect]; Rate Case Expense [Rate Base Effect]

In its Exceptions To The Proposed Order, ComEd recommended that under the above heading, the Proposed Order should identify the principal issues as they now appear at the top of page 44 but without the "ComEd" subheading, and that the Proposed Order should then deal with the principal issues – the procurement case expenses recovery mechanism, and the recovery of unamortized balances of rate and procurement case expenses -- under their respective headings, which appear at pages 46 and 48 of the Proposed Order, respectively. ComEd Exceptions at 3. ComEd also suggested that the Proposed Order's apparent, and correct, rejection of Staff's recommended disallowance of \$626,000 in rate case expenses [and \$566,667 in procurement expenses] be dealt with at the end of the section of the Proposed Order dealing with the recovery of unamortized balances of rate and procurement case expenses. Accordingly, ComEd will respond to the arguments made in Staff's BOE and CCC's BOE on these issues under Sections

H2 (Procurement Case Expenses Recovery Mechanism) and H3 (Recovery of Unamortized Balances of Rate Case and Procurement Case Expense), respectively.

H2. Procurement Case Expenses Recovery Mechanism

The Proposed Order accurately identifies that the issue with respect to the recovery mechanism for procurement case expenses is whether those expenses should be recovered through delivery services rates or, as Staff argued, through the Supply Administrative Charge (SAC). In addition, the Proposed Order correctly finds that (1) because Section 16-103(c) of the Act mandates that ComEd be a provider of last resort for supply service to most customers, all customers derive a benefit from the procurement case; (2) under Staff's proposal, residential customers would end up bearing the brunt of the procurement case expenses; and (3) large industrial customers with other competitive options could choose alternative suppliers while reserving the right to return in the future but avoid this expense. Proposed Order at 47.

None of the arguments made by Staff or CCC present any reason to change the Proposed Order's conclusion. Indeed, Staff has effectively thrown in the towel on this issue, stating only that "[w]hile Staff still supports its position and therefore does not agree with the PO on this issue, Staff is not offering alternative language for the Commission to consider." Staff BOE at 33.

CCC basically says nothing more than that it agrees with the Staff's position on this issue, which was rejected in the Proposed Order. CCC BOE at 9. CCC does add that "Mr. McGarry opined that 'it is important to associate prudently incurred costs of the utility, or in this case, costs that are specifically associated with a service with those customers who use the service.'" *Id.* But Mr. McGarry misses the point. The costs of the procurement case are associated, not only with those customers who at any given time may be taking supply service as

well as delivery service from the utility (*e.g.*, residential customers), but also with those customers who have the legal right to return to that service and require the utility, as the provider of last resort, to be capable of meeting their supply needs.

H3. Recovery of Unamortized Balances of Rate and Procurement Case Expenses Recovery of Unamortized Balance

The Proposed Order finds, correctly, that the issue here is “concern over ratepayers being overcharged as a result of unamortized balances being included in rate base. The Commission finds ComEd’s position on this issue persuasive. The amortization period as proposed by ComEd appears to be reasonable given the estimated life of these rates.” Proposed Order at 49. Staff continues to oppose this conclusion.

Staff first argues that “[t]he PO reached an incorrect conclusion by focusing only on one aspect of the issue, that being the ‘concern over ratepayers being overcharged.’” Staff BOE at 33. But there is no question that Staff’s major concern, as expressed in testimony, was that inclusion of the unamortized balances would reimburse shareholders, but could lead to ratepayers being overcharged for those expenses because the amortization period may expire before ComEd has a new rate case. Hathhorn, Tr. at 1729:6-20. ComEd showed with facts that this scenario is highly unlikely, and the Proposed Order agrees.

Significantly, in its BOE, Staff does not challenge the Proposed Order’s finding that ratepayers will not be overcharged. Instead, it argues that “there is more to Staff’s proposal that was not considered in the formulation of the conclusion.” Staff BOE at 33. Putting aside that Staff cannot fairly say what arguments were considered or not considered in formulating the Proposed Order’s conclusion, the other reason offered by Staff to support its proposal cannot withstand scrutiny. Staff argues that its “proposed treatment of rate case expense requires shareholders to share some of the cost of the rate case” because, Staff asserts, “[i]f the costs are

not shared, there is little to no incentive for the Company to keep its rate case expenses to a minimum.” Staff BOE at 33. But as ComEd pointed out in its Reply Brief (at 50), Staff articulates no link between the receipt of a return on unamortized rate case costs and an incentive to keep costs low, and there is none. Only reasonable rate case expenses may be recovered, and that incentive to keep costs low will remain. Also, the Commission approved ComEd’s proposed treatment of an unamortized balance on rate case expenses in ICC Docket 99-0117, and Staff has made no showing that there were disproportionate legal fees and expenses in that case. ComEd Rep. Br. at 50.

Staff also suggests that “ComEd’s assertion that shareholders do not benefit from – and therefore should not help pay for – rate cases is transparent and self-serving.” Staff BOE at 33. This argument distorts ComEd’s position. This argument appears to be a variation on Staff’s position that shareholders should bear a certain amount of risk in their investment in ComEd. Staff Init. Br. at 33. But as ComEd pointed out in its Reply Brief (at 50), shareholders are entitled by law to a return of and on their investment. As the Commission expressly recognized in Docket 99-0117, there “is a cost associated with the time-value of money on the uncollected [rate case] balance.” *Commonwealth Edison Co.*, ICC Docket No. 99-0117 (Order August 25, 1999) at 48. There is no principle of law which holds, as Staff seems to suggest, that the Commission can require shareholders to forego any return on some part of their investment (here, the unamortized rate case and procurement case expenses) as a condition of obtaining their lawful return on the rest of their investment in ComEd.

The other implication of Staff’s argument is that ratepayers and shareholders should bear equally the benefits and risks of the rate case. Staff Init. Br. at 33-34. Indeed, in its BOE, Staff argues that “[t]he PO’s conclusion fails to consider the evidence that the amortization period

alone does not insure a fair and equitable allocation of rate case costs between ratepayers and shareholders.” Staff BOE at 34. But the risks and benefits to shareholders and ratepayers are already equivalent without Staff’s attempt artificially to weight the scale. The risk to shareholders is that the new rates will be set too low; the risk to ratepayers is that the new rates will be set too high. The benefits to both are that if the rates are set correctly, ratepayers pay just and reasonable rates for reliable service, and shareholders get a fair return on their investment.

Finally, Staff points to two other cases where the Commission did not approve recovery by shareholders of the unamortized balance of rate case costs. This argument is hardly compelling. First, in a recent ComEd rate case, Docket 99-0117, the Commission did support such recovery. *Commonwealth Edison Co.*, ICC Docket No. 99-0117 (Order August 25, 1999) at 48. Second, by this time there has developed a solid body of evidence that the amortization period ComEd suggests here, and to which Staff does not object, will not be so long as to raise any risk that shareholders might overcollect, as the Proposed Order finds: “The amortization period as proposed by ComEd appears reasonable given the estimated life of these rates.” Proposed Order at 49. Thus, as a factual matter the situation present in this case is different than in the cases on which Staff relies.

With respect to how to recover procurement case expenses, CCC argues that “ComEd failed to demonstrate that the inclusion to [sic] the procurement case expenses benefited all of the Company’s customers.” CCC BOE at 9. ComEd has just discussed why, in fact, the Proposed Order reaches the correct conclusion with respect to the benefit to both bundled and delivery services only customers of the costs of the procurement case. CCC’s limited arguments add nothing new.

Amount of Procurement and Rate Case Expenses

As a related but separate issue, both Staff and CCC raise issues concerning the amount of procurement case and rate case expenses to be recovered. CCC complains that the Proposed Order rejected its recommendation to reduce ComEd's rate case expenses by \$1.296 million, and argues that the "Proposed Order's conclusion fails to consider . . . [CCC'S] arguments that ComEd's projected rate case expenses do not meet the known and measurable standard." CCC BOE at 10. The Proposed Order's conclusion in rejecting this argument is plainly correct.

There is no evidence that the Proposed Order "failed to consider" this argument, as argued by CCC. The Proposed Order accurately summarizes CCC's argument at length at pages 99-100 of the Proposed Order. The Proposed Order also accurately summarized ComEd's refutation of CCC witness Mr. McGarry's arguments in this regard. Proposed Order at 49. CCC's BOE adds nothing new.

Staff provides no new arguments or evidence to back up its argument that \$626,000 of ComEd's rate case expense should be disallowed as not just and reasonable, or that the Proposed Order in fact disallowed that expense. Staff BOE at 29. The Proposed Order stated: "ComEd showed that Staff's proposal to disallow certain rate case expenses was without merit. Hill Reb., ComEd Ex. 19.0 Corr., 33:683 - 34:715; Hill Sur., ComEd Ex. 36.0 Corr., 28:642 - 648; ComEd Ex. 48.0." Proposed Order at 49. This was plainly the correct result. ComEd witness Hill explained at some length why Ms. Hathhorn's projection of rate case costs incurred in 2005 for two expert witnesses and a third vendor likely would be too low, given the services these witnesses and the vendor were expected to provide in 2006, based on the schedule for the rate case proceeding. Hill Reb., ComEd Ex. 19.0 Corr., 33:683 - 34:715. In addition, ComEd subsequently placed into evidence ComEd Exhibit 48.0, which contains data concerning

ComEd's *actual* rate case expenditures in 2006. These data confirm that Ms. Hathhorn's disallowance, based on projections from 2005, is unwarranted.

The issue is fundamentally the same with respect to Staff's proposed disallowance of \$566,667 of procurement case expenses. Staff BOE at 29. Staff witness Ms. Hathhorn calculated this disallowance in the same manner as she did her disallowance of \$626,000 of rate case expenses. That is, for two vendors she estimated the December 2005 charges to be equal to those in November 2005, and estimated ComEd's 2006 costs to be equal to its 2005 costs. Hathhorn, Staff Ex. 1.0, 21:436 - 22:448. But here again, in ComEd Ex. 48.0, ComEd presented its actual total procurement case costs paid or accrued through March 2006 plus estimated remaining costs of only \$15,000. These actual cost figures show that Ms. Hathhorn's proposed disallowance is unwarranted.

Reply Exception 4

In its Exceptions to the Proposed Order (at 3), ComEd suggested that the following sentence be added to the end of the Commission Analysis and Conclusion: *"In addition, the Commission rejects Staff's proposed disallowance of \$626,000 in rate case expense as being without merit."* In light of Staff's additional argument, made in its BOE, that \$566,667 of procurement case expenses should also be disallowed based on cost projections now shown by actual data to be incorrect, ComEd suggests that that additional sentence read as follows: *"The Commission rejects Staff's proposed disallowance of \$566,667 of procurement case expenses and \$626,000 of rate cases expenses."* To help clarify the issues, particularly in light of Staff's additional argument, ComEd suggests that the following additional language also be added to the Commission Analysis and Conclusion:

Commission Analysis and Conclusion

At issue is the concern over ratepayers being overcharged as a result of unamortized balances being included in rate base. The Commission finds ComEd's position on this issue persuasive. The amortization period as proposed by ComEd appears reasonable given the estimated life of these rates. The Commission rejects Staff's argument that ComEd must forego a return on the unamortized balances in order for investors and ratepayers to share equally in the benefits and risks the rate case. Therefore, the Commission accepts ComEd's proposal.

An additional issue is whether certain rate case and procurement case expenses should be disallowed as unsubstantiated, as proposed by Staff. ComEd showed that Staff's proposal disallow \$626,000 of rate case and \$566,667 of procurement case expenses was without merit. Hill Reb., ComEd 19.0 Corr., 33:683 - 34:715; Hill Sur., ComEd Ex. 36.0 Corr., 28:642-48; Hill Affidavit, ComEd Ex. 48.0. Therefore, the Commission rejects Staff's proposed disallowance of \$566,667 of procurement expenses and \$626,000 of rate case expenses.

I. Staff Adjustment Related to ComEd Schedule B-2.1

Please see Section II.A.2.b above.

J. Approved Rate Base

ComEd, in its Brief on Exceptions and its Exceptions to Proposed Order, has shown the revisions that should be made to the Approved Rate Base section on page 50 of the Proposed Order. ComEd BOE at 10; ComEd Exceptions at 4.

The AG proposes to replace most of the figures in that section of the Proposed Order, but, as the AG acknowledges, those proposed changes are entirely derivative of its Exceptions to the Proposed Order's substantive rulings on proposed rate base adjustments. AG BOE at 9. The AG's Exceptions on those adjustments, except for the correction to the figure for the CWIP addition to rate base, are without merit, as shown above. Therefore, the AG's proposed changes, except for that correction, should be rejected. (Similarly, other parties' rate base Exceptions that should not be approved should not have their impacts reflected here.)

V. OPERATING EXPENSES AND REVENUES

A. Distribution O & M

The Proposed Order correctly rejects CCC's proposal for a reduction of \$13,347,000 in ComEd's Distribution Operation and Maintenance ("O&M") based on CCC's theory that those expenses are likely to decline in the future by 4.75% as a result of ComEd's significant investments in distribution capital projects. Proposed Order at 50-53.

CCC's Exception (CCC BOE at 1-6) is without merit. CCC's proposed adjustment is based on nothing more than what one witness "suspect[ed]" was a relationship between significant capital investments in the past and declines in Distribution O&M expenses over three years (from 2001 to 2004). McGarry Dir., CCC Ex. 2.0 2nd Corr., 15:330 - 16:351. The evidence showed that CCC's suspicions were baseless. ComEd's reductions in Distribution O&M expenses in 2003 and 2004 were the result of broad steps to improve efficiency and productivity. The cost reductions that have already been achieved are expected to be sustainable, but there is no evidence that further reductions, let alone declines of the magnitude CCC assumes, will be achieved. *E.g.*, DeCampli Reb., ComEd Ex. 14.0 Corr., 13:249-64.

The direct testimony of Mr. Costello and Mr. Hill supported ComEd's \$274,184,000 of Distribution O&M expenses.²³ Mr. Costello discussed the nature of these expenses and their importance to the maintenance of safe, adequate, and reliable distribution service. He explained how ComEd controls expense; levels and assures that only necessary, prudent, and reasonable costs are incurred. Costello Dir., ComEd Ex. 3.0 Corr., 27:567 - 29:617. Mr. Hill confirmed the

²³ This represents a decrease of \$3,304,000 from ComEd's original figure of \$277,488,000. *E.g.*, Hill Dir., ComEd Ex. 5.1, Sched. C-1 Errata; Hill Sur., ComEd Ex. 36.0 Corr., 4:72-89, 5:100-02 and Sched. 1 Rev., p. 1.

The Proposed Order makes an upward adjustment to these expenses based on a rate design ruling relating to real-time metering costs. If that ruling is sustained, then there should be an upward adjustment, in the correct amount, to these expenses.

amount of these expenses and explained the adjustments that were made to them. Hill Dir., ComEd Ex. 5.0 Corr., 23:500 - 24:513.

CCC presented no evidence that contradicted ComEd's proof of its reasonable Distribution O&M expenses. Instead, CCC merely proposed to slash ComEd's actual expenses by 4.75% based on an average of the percentage declines in Distribution O&M expenses over three years (from 2001 to 2004), adjusted for an inflation rate of 3.45%. CCC BOE at 4-5; McGarry Reb., CCC Ex. 5.0 Corr., 11:218 - 12:223.²⁴

The proposal is based entirely on guesswork, which was shown to be wrong. CCC's witness noted what he referred to as a "steady decline" in Distribution O&M expenses from 2001 to 2004, which he "suspect[ed]" was due in part to significant capital investments and ultimately attributed to productivity increases. McGarry Dir., CCC Ex. 2.0 2nd Corr., 15:330 - 16:351. He acknowledged that: "It is important to understand that no one would expect the Company's expenses to continually decline." *Id.* at 16:354-55. However, he then developed and proposed that ComEd's Distribution O&M expenses be reduced by a 4.78% "productivity factor." *Id.* 16:355 - 17:370; CCC Ex. 2.02.

ComEd witness Mr. DeCampli, who has knowledge of the actual drivers of ComEd's Distribution O&M expenses, demonstrated that Mr. McGarry's suspicions were simply misinformed. ComEd's reductions in Distribution O&M expenses in 2003 and 2004 instead

²⁴ CCC's Brief on Exceptions again misstates its proposed adjustment as \$13,347,000. CCC BOE at 1-2. That is the product of multiplying 4.75% times ComEd's rebuttal figure of \$277,488,000 for Distribution O&M expenses. CCC Ex. 5.01 2nd Corr., Scheds. MJM-0 and MJM-7.

While CCC's entire approach here lacks any merit, as discussed below, ComEd notes that CCC's witness' calculations show that, if he had based his proposal only on the change from 2003 to 2004, then his most recent data point, his proposed adjustment figure would have been 4.7% minus 3.45%, i.e., 1.25%, not 4.75%. CCC Ex. 2.02.

Finally, ComEd also notes that because CCC's proposal is based on the total level of Distribution O&M expenses, it inherently double-counts with any other adjustments that reduce the level of these expenses.

were the result of broad steps to improve efficiency and productivity, and, while the cost reductions that were achieved are expected to be sustainable, further such reductions cannot be expected to continue. DeCampli Reb., ComEd Ex. 14.0 Corr., 13:249-64.

For example, Mr. Costello showed, that a further decline in the salaries and wages expenses that are the largest component of Distribution O&M expenses²⁵ should not be expected to occur. He explained that while ComEd experienced a substantial decline in the number of its employees in 2004, another such decline did not occur in 2005 and that there is no reason to believe that further declines will take place.²⁶ Costello Reb., ComEd Ex. 13.0 Corr., 34:765 - 35:796.

Similarly, Ms. Houtsma, in her rebuttal testimony, pointed out that the Exelon Way program, which reduced ComEd's total (all categories) 2004 O & M expenses by \$66 million and reduced its total jurisdictional O&M expenses (all categories) by \$59 million, was completed in 2004 and included, among other things, the transfer of 436 employees out of ComEd on January 1, 2004. Houtsma Reb., ComEd Ex. 18.0 Corr., 3:46-50, 12:254-56; *see also* Houtsma Sur., ComEd Ex. 35.0, 7:139 - 9:190. There was no evidence that changes and reductions of that type would or could continue in the future, as CCC's theory assumes they will.

Unable to provide any valid basis for his proposed adjustment, CCC's witness, in his rebuttal, merely claimed that "it stands to reason" McGarry Reb., CCC Ex. 5.0 Corr., 10:191-94.

²⁵ *E.G.*, ComEd Ex. 5.2 at work paper WPC-2.1, page 1 (base payroll comprises \$98,991,910 of ComEd's 2004 Distribution O&M expenses).

²⁶ The subject of salary and wages expenses is discussed further in Section V.D of this Reply Brief on Exceptions.

The evidence showed that the premise of CCC's argument is just wrong. Costello Sur., ComEd Ex. 30.0, 21:409-22:434.²⁷ CCC is asking the Commission to approve a significant reduction in ComEd's Distribution O&M expenses when the "known and measurable changes" and the "determinable" amount criteria for a *pro forma* adjustment are completely unsatisfied. 83 Ill. Adm. Code § 287.40.²⁸

Finally, it is important to note the one-sided nature of CCC's proposed adjustment. ComEd's proposed rate base does not include any of the capital investments that it has already made or will make in 2006. Hill Sur., ComEd Ex. 36.0 Corr., 13:283-89; McGarry, Tr. at 310:11-16. Yet, CCC would reduce ComEd's Distribution O&M expenses on the theory that these 2006 capital expenditures will somehow lower operating costs. Even if CCC's speculative theory were correct, which it is not, it would make no sense to slash expenses without including the increased capital costs that CCC contends would make the savings possible.

In summary, the evidence shows that CCC's proposed adjustment is ultimately based on nothing more than incorrect conjecture. ComEd has proven that its Distribution O&M expenses are just and reasonable and should be approved. CCC's Exception should be rejected.

²⁷ Mr. Hill pointed out that CCC's witness' use of historical graphs to support speculation about future reductions in uncollectibles expenses without supporting information regarding the drivers of that data is an insufficient basis for an adjustment. Hill Sur., ComEd Ex. 36.0 Corr., 46:1027 – 47:1033. The same is true here.

²⁸ *Ameropan Oil Corp. v. ICC*, 298 Ill. App. 3d 341, 348 (1st Dist. 1998) ("speculation has no place in the ICC's decision or in our review of it."); *Allied Delivery System, Inc. v. Illinois Commerce Comm'n*, 93 Ill. App. 3d 656, 667 (1st Dist. 1981) ("The speculation indulged in by the Commission is clearly an unsatisfactory and unacceptable basis for its decision."); *Commonwealth Edison Co.*, ICC Docket. 99-0117, (Order, August 25, 1999), at 105 ("we will not make an adjustment that is speculative....").

C. Administrative & General Expenses

The Proposed Order correctly approved ComEd's final revised figure of \$260,909,000 minus \$5,200,000, or \$255,709,000,²⁹ for its prudent and reasonable Administrative & General expenses, except that the Proposed Order erred in approving Staff's proposed adjustment to ComEd's corporate governance expenses and certain other adjustments discussed elsewhere in ComEd's Brief on Exceptions, that reduce the approved amount to \$258,788,000 minus \$5,200,000, or \$253,588,000.³⁰ Proposed Order at 56-79 and Appendix A; *e.g.*, ComEd BOE at 11-15. Staff's, IIEC's, and CCC's Exceptions discussed in this Section V.C lack merit and should not be approved. They are not supported by the evidence, they are contrary to it.

2. Overall Amount

Staff and IIEC submit Exceptions to the Proposed Order's ruling on the total amount of A&G expenses to be included in the revenue requirement. Staff and IIEC summarize their prior arguments on the subject of the total amount of ComEd's A&G expenses included in its revenue requirement, saying nothing on the merits that is new, and nothing that supports, much less requires, any change in the Proposed Order's ruling. *See* Staff BOE at 37-43; IIEC BOE at 5-9.³¹ Staff's and IIEC's Exceptions should not be approved, for several reasons.

²⁹ ComEd's final figure of \$260,909,000 did not include the adjustment of \$5,200,000 for the uncontested adjustment to post-retirement health care benefits. *See* ComEd BOE at 36, 88, 92. ComEd's final figure, with that factored in, is \$255,709,000.

³⁰ Appendix A to the Proposed Order, in setting for the approved total amount of A&G expenses, also did not include the adjustment of \$5,200,000. *See* ComEd BOE at 36, 88, 92.

³¹ ComEd notes that it does share with Staff and apparently IIEC the view that the Commission Conclusion and Analysis section on page 68 should be expanded. ComEd has submitted appropriate language. ComEd BOE at 11-12; ComEd Exceptions at 7-8.

Staff and IIEC continue to purport to challenge the total amount of ComEd's A&G expenses in its revenue requirement on three grounds, each of which is based on asserted concerns about changes in expense levels from those approved in ICC Docket 01-0423:

- First, Staff claims that the increase from the level of A&G expenses approved in ICC Docket 01-0423 (which involved a 2000 test year), \$176,684,000, to the level included in ComEd's proposed revenue requirement in the instant case, has not been justified and that, therefore, ComEd's A&G expenses should be capped at the level of \$176,684,000. Staff BOE at 37-43.³²
- Second, Staff also professes concern about the relative changes in ComEd's A&G expenses versus its distribution O&M, customer accounts, and customer service and information expenses, because these expenses are "moving in opposite directions". Staff BOE at 39.
- Finally, IIEC submitted direct testimony questions the increase from the level of A&G expenses approved in ICC Docket 01-0423 to the level included in ComEd's proposed revenue requirement in this case, and arbitrarily proposes that the level be decreased by \$119 million (from the then figure) solely because A&G expense in this case should only be allowed if it was incurred in the exact same proportion to non-A&G O&M expense as was approved in the last case, or 35.8%. IIEC BOE at 5-9 and Appendix, Part 1, Exception 2. (Tellingly, after ComEd refuted IIEC's direct testimony here, IIEC did not even offer any rebuttal testimony on this subject nor cross-examine any ComEd witness on this subject.)

³² Remarkably, Staff does not adjust its proposal for inflation. Even CCC, in its proposed adjustment to ComEd's distribution O&M expenses, used a 3.45% annual inflation factor. ComEd Init. Br at 80, 90, n. 35.

None of those three claims by Staff and the IIEC has merit, for a host of reasons. First, ComEd's actual total 2004 A&G expenses, before functionalization, were \$347,636,000. *E.g.*, ComEd Ex. 5.2 at work paper WPC-1a, page 1. ComEd's final revised revenue requirement included \$260,909,000³³ of A&G expenses for distribution and customer services, a decrease of \$8,920,000 from its original proposed figure of \$269,829,000 due to adjustments made in its rebuttal and surrebuttal testimony. *E.g.*, ComEd Ex. 5.2, Sched. C-1 Errata; Hill Sur., ComEd Ex. 36.0 Corr., Sched. 1 Revised, page 1.

Second, ComEd presented extensive, detailed evidence that proves that that \$260,909,000 of A&G expenses are prudent, reasonable, necessary, and useful in performing the distribution and customer functions. *E.g.*, Costello Dir., ComEd Ex. 3.0 Corr., 30:647 - 31:675; Hill Dir., ComEd Ex. 5.0 Corr., 25:547 - 28:594; ComEd Ex. 5.1 at Sched. C-1 Errata, C-2.1 Errata, C-2.2., C-2.3, C-2.4 Errata, C-2.8, C-2.11 Errata; ComEd Ex. 5.2 at work papers WPC-1a, WPC-1b, WPC-2.1 Errata, WPC-2.2, WPC-2.5, WPC-2.8, WPC-2.11 Errata; Costello Reb., ComEd Ex. 13.0 Corr., 4:64-71, 31:696 - 34:763; Houtsma Reb., ComEd Ex. 18.0 Corr., 3:46-50, 5:90 - 7:142, 10:217 - 15:333; Hill. Reb., ComEd Ex. 19.0 Corr., 40:831 - 44:929 and Sched. 1, 12, 13, 14, and 15; Costello Sur., ComEd Ex. 30.0, 1:21-25, 14:290 - 19:373; Houtsma Sur., ComEd Ex. 35.0, 2:25-42, 3:64 - 14:307; Hill. Sur., ComEd Ex. 36.0 Corr., 34:772 - 38:855 and Sched. 1 Rev., pp. 1-3; Sched. 4 and 9.³⁴

Staff's and the IIEC's claims to the effect that ComEd has not met its burden of proof are incorrect in the face of that evidence. Nor have Staff and the IIEC refuted that evidence. Their

³³ As noted earlier, ComEd has since reduced its figure by another \$5,200,000.

³⁴ Please note that this list of ComEd testimony and attachments generally does not include ComEd testimony and attachments that respond only to Staff's and intervenors' proposed adjustments to ComEd's A&G expenses that are discussed in other Sections of this Reply Brief on Exceptions.

Briefs on Exceptions do not and cannot cite any evidence that actually is to the contrary. Staff elsewhere has challenged certain of those expenses, but those challenges lack any merit. Moreover, even if any of Staff's specific proposed adjustments to any particular A&G expenses had any merit, which is not the case, that would not warrant capping all A&G expenses. IIEC has not challenged any specific A&G expenses.

Third, ComEd correctly functionalized its A&G expenses, and no party has submitted an Exception claiming otherwise. ComEd Init. Br. at 85-89.

Fourth, Staff's and IIEC's comparisons of total A&G levels in ICC Docket 01-0423, which involved a 2000 test year, and this Docket, which involves a 2004 test year, are inappropriate, misguided, and incomplete, if not misleading. Mr. Hill, in his rebuttal testimony, provided an extremely detailed refutation of those comparisons, showing among other things, that: (1) ComEd's actual total 2004 A&G expenses are \$123 million lower or 26% less than its actual total 2000 A&G expenses; (2) in 2000, ComEd still was a vertically integrated utility that owned generation assets, and if one removes the A&G expenses that were functionalized to the production function in ICC Docket 01-0423, then ComEd's non-production A&G expenses have increased by only 9.4% from 2000 to 2004 (less than the general inflation rate, as noted below); (3) that 9.4% figure compares favorably to the 31% average increase and the 11.3% weighted average increase of the 178 electric utilities that filed FERC Form 1's for those years; (4) ComEd's A&G expenses functionalized to the distribution and customer functions have increased only 14.2% from the level determined by ComEd's direct assignment study that was approved in ICC Docket 01-0423; (5) the remainder of the difference from the prior Docket to this Docket is attributable to fact-based adjustments made in the prior Docket, which makes that much of the difference a reconciling factor, not a reason to challenge the level in this Docket;

(6) Staff and the IIEC ignore general inflation, which was 9.7% from 2000 to 2004; (7) Staff and the IIEC ignore salary and wage increases, in particular, which have averaged approximately 3% per year; and (8) there are A&G expenses that existed in 2004 that did not exist in 2000, including post-September 11th security expenses and Sarbanes-Oxley Act compliance expenses. Hill Reb., ComEd Ex. 19.0 Corr., 40:831 - 43:900 and Sched. 12, 13, 14, and 15. Staff's witness responded to only the fourth, fifth, seventh, and eighth of those eight points, and his responses lack merit. See Lazare Reb., Staff Ex. 17.0 Corr., 15:363 - 18:449; Hill Sur., ComEd Ex. 36.0 Corr., 34:772 - 35:782, 35:786 - 36:804 and Sched. 9. Staff's Brief on Exceptions simply reiterates some of Staff's witness' incomplete and unsuccessful responses, without addressing ComEd's other points or ComEd's proof that Staff's selective responses lack merit. See Staff BOE at 39-40, 42; ComEd Rep. Br. at 58-61.

Fifth, ComEd proved that Staff's and IIEC's proposals to limit ComEd's A&G expenses based on levels approved in ICC Docket 01-0423 are arbitrary and incorrect and should be rejected. *E.g.*, Costello Reb., ComEd Ex. 13.0 Corr., 4:64-67, 31:696 - 32:715, 32:725 - 33:740, 33:753 - 34:763; Costello Sur., ComEd Ex. 30.0, 1:21-25, 14:290-305; Hill Sur., ComEd Ex. 36.0 Corr., 36:805-21. As Mr. Costello stated:

[Staff's proposal] should not be adopted. The A&G expenses proposed by ComEd are its actual costs. It was money well spent. Mr. Lazare does not suggest, nor could he, that ComEd's costs of doing business have not increased over the past five years. Yet his proposal would freeze spending levels at an arbitrary point in the past that bears no relation to the costs necessary for running an efficient electric company today. This proposed adjustment would result in ComEd's recovering less than it needs to continue to provide safe, efficient, and reliable service. It would hurt our customers and our employees.

Costello Reb., ComEd Ex. 13.0 Corr., 33:756 - 34:763; *see also* Costello Sur., ComEd Ex. 30.0, 14:290-305. As Mr. Hill stated:

In short, the costs that make up the A&G expense[s] are the actual, real costs that ComEd incurred to provide service to its customers. Neither Mr. Lazare nor any

other witness has shown that any of the ComEd's 2004 test year costs that make up the total A&G expense were unreasonable in amount.

Hill Sur., ComEd Ex. 36.0 Corr., 36:818-21.

Sixth, Staff and IIEC place no weight on the fact that in ICC Docket 01-0423 itself, the Commission approved an increase of these expenses of \$48,807,000 or 38.2% from the level approved by the Order on Rehearing in ComEd's first delivery services rate case, ICC Docket 99-0117 (which used a 1997 test year). More recently, in Northern Illinois Gas Company, ICC Docket 04-0779 (Order September 20, 1995), the Commission approved a forecasted 2005 test year level of A&G expenses that was 97% higher than the 2001 actual level. Hill Reb., ComEd Ex. 19.0 Corr., 41:866-69.

Seventh, Staff's and the IIEC's claims are unreasonable, on their faces, given ComEd's actual 2004 A&G expenses, the adjustments already made by ComEd, and the amount already functionalized to the transmission function. As noted earlier: (1) ComEd's actual 2004 A&G expenses were \$347,636,000, before adjustments and functionalization; (2) ComEd made adjustments that removed \$25,727,000 of its actual 2004 A&G expenses, including \$17,658,000 of executive compensation expenses from BSC, from its calculations, yielding a figure of \$321,909,000 to be functionalized; (3) ComEd functionalized \$287,142,000 to the distribution and customer functions and functionalized the remaining \$34,767,000 to the transmission function; and (4) ComEd made further adjustments that reduced the final revised figure for A&G expenses in its final revised revenue requirement to \$260,909,000. Staff and the IIEC suggest that only \$176,684,000 (Staff) or \$155,300,000 (IIEC) of that \$260,909,000 of actual A&G expenses should be included in the revenue requirement. That disallows \$84,225,000 (Staff) or \$105,609,000 (IIEC) of those actual expenses. Thus, Staff's and the IIEC's proposals necessarily suggest that, on top of the \$34,767,000 already functionalized to the transmission

function, there is another \$84,225,000 (Staff) or \$105,609,000 (IIEC) that: (1) supports the transmission function; (2) supports a non-existent production function; or (3) supports no function. That, however, is absurd. Staff and IIEC have not identified any particular A&G expenses that fall in either of those three categories. Moreover, even if they had done so as to any particular A&G expenses, which is not the case, that would only support disallowing those particular expenses, not capping all A&G expenses.

Eighth, Staff and IIEC have identified no facts that support their claim or supposition that A&G expenses should be more directly correlated to distribution O&M, customer accounts, and customer service and, in fact, they are independent and it is incorrect to expect such a correlation. *E.g.*, Costello Reb., ComEd Ex. 13.0 Corr., 4:68-69, 32:716 - 33:740; Hill Reb., ComEd Ex. 19.0 Corr., 43:901-09; Costello Sur., ComEd Ex. 30.0, 15:306-18. As to the superficiality and lack of merit of the IIEC's witness' analysis and proposal, see also Chalfant, Tr. at 1663:16 - 1664:3, 1664:16 - 1665:6, 1665:11-14, 1688:2 - 1690:13, 1691:6 - 1695:19, 1702:3-11; ComEd Cross Exs. 10, 13.

Ninth, while Staff's witness claimed that ComEd's A&G expenses were "extraordinarily high" relative to its distribution O&M, customer accounts, and customer service information expenses (Lazare Dir., Staff Ex. 6.0 Corr., 32:796-98), he provided no data regarding any other utility's ratio, and the opposite is true. ComEd's ratio of A&G expenses to those other expenses is below average compared to peer utilities. Costello Sur., ComEd Ex. 30.0, 15:319 - 17:331.

Tenth, ComEd's costs for corporate governance and other services provided by Exelon BSC, in particular, which make up 47% of ComEd's actual total 2004 A&G expenses, as noted earlier, are prudent, reasonable, necessary, and useful in performing the distribution and

customer functions, and the increase in these expenses from BSC's creation to 2004 is fully explained and justified, as shown in Sections V.C.4, below.

Eleventh, Staff's witness notes that he is recommending a level of A&G expenses higher than that set using the general labor allocator in the Commission's Interim Order in ICC Docket 01-0423. Lazare Reb., Staff Ex. 17.0 Corr., 19:476 - 20:482. That is irrelevant and inconsistent with his testimony on the subject of General Plant and Intangible Plant, where he refuses to accept the use of the general labor allocator for functionalization purposes, approved in the Interim and final Orders in ICC Docket 01-0423, and which would result in substantially increasing ComEd's General Plant and Intangible Plant over the level in its proposed rate base, as discussed earlier. Hill Sur., ComEd Ex. 36.0 Corr., 36:822 - 37:831.

Finally, the Commission's reducing ComEd's A&G expenses based on the Order in ICC Docket 01-0423 would be unlawful, reversible error, for the reasons discussed in Section IV.B, *supra*. E.g., 220 ILCS 5/10-113, 10-201(e)(iv). Staff's and the IIEC's Exceptions should be rejected as not supported by, and contrary to, the evidence in the record, as well as unlawful.³⁵

4. Exelon BSC Expenses

Staff originally had proposed a \$24 million disallowance of Exelon BSC expenses, which had been reduced to \$10 million by the time of hearings. The Proposed Order properly rejected

³⁵ ComEd notes that, even setting aside their lack of merit, Staff's and IIEC's adjustments are miscalculated, resulting in them being significantly overstated. ComEd Rep. Br. at 58 and n. 41 and Appendix 1, Tab 5.

ComEd further notes that Staff also submits an Exception to add additional text to Staff's position statement on this subject. Staff BOE at 42-43. That Exception also should be rejected. Staff's additional language is redundant, providing no additional grounds and no supporting evidence citations on the merits. Staff's one new point is its unsupported argument that it is irrelevant that, in ICC Docket 04-0779, the Commission recently approved an A&G expenses level for Nicor Gas based on a 2005 future test year that is 97% higher than Nicor Gas' 2001 level. ComEd cited that Commission Order in its rebuttal. Hill Reb., ComEd Ex. 19.0 Rev., 41:866-869. Staff's witness ignored that Order in his rebuttal. This also is another example of Staff's arbitrarily and selectively disregarding past Orders when they do not support Staff's positions.

that proposed disallowance as well, finding that “there is no indication that the four year average as proposed by Staff will accurately reflect the costs allocated to Exelon BSC.” Proposed Order at 79. Staff has not included any challenge to the Proposed Order’s decision in Staff’s BOE.

The only challenge left to Exelon BSC expenses is that raised by Mr. McGarry, witness for CCC. CCC continues to argue that the Proposed Order should accept its two recommendations on this issue: (1) to disallow that portion of the Exelon BSC corporate governance expenses which increased as a result of the sale by Exelon of the Enterprise Businesses; and (2) to order that an audit be conducted of BSC charges in some indefinite time period but outside of this rate case. CCC BOE at 6-7. Both of these arguments should be rejected by the Commission.

CCC complains that the sale of the Enterprise Businesses caused an increase in test year costs. The reason this occurred is that the sale resulted in ComEd comprising a greater percentage of Exelon in 2004, which causes ComEd, under the SEC-required Modified Massachusetts Formula (“MMF”), to receive a higher allocation of corporate governance costs in 2004. ComEd Init. Br. at 102.

CCC contends that to recover the incremental increase in MMF-determined corporate governance costs as a result of the sale, ComEd should be required “to prove that the cost associated with Exelon’s sale of the Enterprise Business provided any benefit to ComEd’s customers.” CCC BOE at 7. This suggestion is not only one-sided, but contrary to the core reason for requiring use of a neutral formula – the MMF – to determine corporate governance costs in the first place.

CCC’s position is one-sided, because it is transparently results driven. If, instead of selling the Enterprise Businesses, Exelon had purchased them, all else equal, the costs allocated

to ComEd under the MMF would have decreased. It is hard to believe that if that had been the case, CCC and Mr. McGarry would be demanding that ComEd prove direct customer benefit due to the resulting change in corporate governance expenses under the MMF. It would not be any more appropriate to exclude from rates the increase in corporate governance cost allocations that occurs when an affiliate is divested than it would be for ComEd to suggest that a reduction in corporate governance costs allocations to ComEd that could occur if an affiliate was added to Exelon should be treated similarly and excluded from rates. *Houstma Sur.*, ComEd Ex. 35.0, 11:234 - 12:249. Before the hearings, Staff witness Ms. Hathhorn modified her then recommended adjustment to remove the disallowance of costs resulting from the sale of the Enterprise Businesses. Thus, the Proposed Order is correct in rejecting CCC's continued insistence on this adjustment.

In addition, CCC misapprehends the central purpose of the MMF. The SEC required use of the MMF so that there would be a fair, objective, neutral, and non-results oriented formula used to allocate corporate governance costs among the various entities in a utility holding company. CCC's suggested disallowance is in effect an attack on the use of this formula, since it is solely through the working of that formula that ComEd's share of corporate governance costs went up as a result of the sale of the Enterprise Businesses. CCC's suggested disallowance should be rejected for this reason as well.

CCC's other exception is that the Proposed Order errs in rejecting Mr. McGarry's call for review to ensure that the rates for services included in ComEd's costs under the GSA are reasonable and prudent. CCC BOE at 8. The ostensible reason for this review or audit is an alleged failure by ComEd "to present any evidence that the rates for BSC services charged to ComEd are reasonable and prudent." *Id.*

As noted in ComEd's Initial Brief, an audit of pricing terms is not necessary to explain the increase in BSC costs since 2001. ComEd. Init. Br. at 109-11. ComEd Exhibit 35.2 to Ms. Houtsma's testimony sets forth WPC-13A, which provides a history of ComEd's total billings from BSC, broken down into three categories – corporate charges, transactions costs, and Energy Delivery Shared Services. The 119.7 million combined increase in the corporate governance charges and EDSS areas have already been explained in connection with Ms. Hathhorn's proposed disallowance – the Exelon Way centralization (\$98 million increase in total BSC costs), the sale of Enterprises (\$13 million), and the adoption of the MMF (\$12 million). The transactional costs, which are the services that are billed on a rate times volume pricing basis, have actually decreased from \$85.4 million in 2001 to \$84.3 million in 2004. Houtsma Sur., ComEd Ex. 35.0, 12:258-66. Therefore, there is no basis to conclude that the rates per unit of measure are unreasonable and have led to dramatic increases in costs as suggested by Mr. McGarry. Finally, it is unreasonable to narrowly focus on just one aspect of the cost structure that was impacted by Exelon Way. Although the portion of ComEd's costs that are attributable to BSC increased in 2004, this increase was offset by savings throughout other ComEd departments and, overall, the effect of the Exelon Way was to reduce ComEd's O&M expense by \$66 million in 2004, thereby reducing the costs of service in this proceeding. Houtsma Sur., ComEd Ex. 35.0, 12:268 - 13:273.

In addition, it is obvious from Staff's originally proposed disallowances that Staff examined the BSC costs and focused on areas where it sought further justification for the cost levels. ComEd has supplied that justification, and the Proposed Order correctly finds that no disallowances are appropriate. There is therefore no basis in this record whatever for questioning the level of BSC costs, as would be necessary to justify an audit. Finally, it is telling

that Staff has not supported such an audit, even though it separately insisted on an audit of the original cost of ComEd's plant-in-service, which the Commission in fact ordered.

D. Salary and Wage Expense

The Proposed Order correctly rejected Mr. Efron's result-oriented proposal, based on a transparently contrived, carefully selected 6-month period in 2005, to adjust ComEd's salary and wage expense downward by \$1,174,000. As the Proposed Order properly held:

The Commission finds that reliance upon a short-term average rather than the test year likely will fail to reasonably account for normal variances in employment and is subject to misleading manipulation. Mr. Efron's selection of a short time period and his failure to articulate reasons for excluding available data leads the Commission to reject the AG's proposed further adjustment and approves ComEd's proposed Salary and Wage Expense.

Proposed Order, at 81.

The AG makes two arguments in its BOE. Both are wrong. First, it argues that Mr. Efron's careful selection of a 6-month period in 2005 to determine an average number of employees is justified because the number of employees was decreasing. AG BOE at 11. But the fact that the number of employees was decreasing for some months in 2005 is no justification for Mr. Efron's result-oriented data manipulation. As became obvious at the hearings, the amount of Mr. Efron's proposed adjustment would vary considerably depending upon which months in 2005, and what number of months in 2005, he choose to average. Efron, Tr. 1626:17; 1628:5; 1633:9; 1634:19. Indeed, this is made even more obvious by the AG's new fallback proposal to average the number of employees for all 12 months in 2005, which decreases the adjustment by nearly \$500,000.

In any event, the most important point is that Mr. Efron's mathematical manipulations simply obscure what is at stake. First, as ComEd witness Mr. Hill testified, ComEd already has made a pro forma downward adjustment to salary and wage expense to reflect the impact of a

decrease in permanent employee positions brought about by the Exelon Way program. Hill Dir., ComEd Ex. 5.1 Corr., Sched. C-2.13. Mr. Hill further made clear that ComEd's wage and salary expense for 2004 does not include any funds for employee positions that were vacant. Hill, Tr. at 932:8 - 933:5. Thus, Mr. Effron's mathematical manipulations of employee position vacancy data from 2005 are simply irrelevant.

Second, the central issue here is what is the appropriate level of salary and wage expense not only for the test year, but for the years when the rates determined in this proceeding will be in effect (*i.e.*, starting January 1, 2007). Mr. Effron is not competent to conduct, and did not in fact conduct, any analysis of ComEd's employment needs in 2007 and beyond. Thus, he has no basis with which to dispute the testimony of Mr. Costello, ComEd's Chief of Operations, that the 2005 vacancies are temporary and ComEd is starting to fill, and will in fact fill, those vacancies. Costello Reb., ComEd Ex. 13.0 Corr., 34:772; 35:782.

As ComEd pointed out in its Reply Brief, application of common sense also demands rejection of the AG's proposal, and supports Mr. Costello's testimony. ComEd Rep. Br. at 71. The rates set in this proceeding will go into effect in 2007 and apply prospectively. It is simply not realistic to expect that by 2007, the number of employees, and salary and wage expense, will have decreased from the 2004 level, assuming the normal growth in population and demand for electricity occurs. Also, it is not surprising that, after the Exelon Way program had run its course, ComEd would have some vacancies and it would take some time to get up to the staffing levels required going forward. The AG's proposed adjustment simply ignores these realities.

Further, as the Proposed Order plainly recognized, any short-term averaging of number of employees necessarily will fail to account for normal variances in employee levels. For that reason, when in the past the Commission Staff challenged employee counts as excessive, they

conducted an intensive study spanning 26 months. *See, e.g., Governor's Office of Consumer Servs. v. ICC*, 242 Ill. App. 3d 172, 189-90 (1st Dist. 1992). Mr. Effron conducted no such study, and Staff, consistent with its past recognition of the need to study employment levels over a much longer time period to account for normal variances in employee levels, has not supported any disallowance here. The AG's recommended additional adjustment should be rejected.

The extent to which the AG is simply playing mathematical games is well-illustrated by its new disallowance proposal. In recognition of the infirmities of its original proposal, the AG now proposes to determine the appropriate level of salaries and wage expense by using the average employee level for calendar year 2005. AG BOE at 12. This new proposal, like the original proposal, still ignores that ComEd's wage and salary expense for 2004 does not include any funds for employee positions that were vacant, and the proposed disallowance is still calculated based on too short a time period to account for normal variances in employee levels, particularly immediately following the Exelon Way program. As previously pointed out, in the past Staff has used a period of over two years of employee data to make such an adjustment, and other "normalization" adjustments proposed in this rate case have been based on a four- (Staff's proposed BSC expenses adjustment) or five (the AG's recurring severance cost adjustment) year period.

Reply Exception 5

In light of the AG's further arguments about vacancies and its continued insistence on establishing test year salary and wage expense using mathematical manipulations, ComEd suggests that the following additional language be added to the third and fourth paragraphs of the Commission Analysis and Conclusion:

ComEd contends that, in choosing his six-month sample, Mr. Effron failed to use available data and obtained a result that is extreme and unrepresentative. ComEd

stresses that relying on short-term averages in this fashion fails reasonably to account for normal variances in employment. ComEd also avers that its reduction in expenses accounts for a permanent reduction in employees due to the Exelon Way program, and that ComEd's wage and salary expense for 2004 does not include any funds for employee positions that were vacant, rendering Mr. Effron's short-term averages of vacancies in 2005 irrelevant.

The Commission finds that the AG has failed to account for the fact that ComEd's salary and wage expense for 2004 does not include any funds for positions that were vacant, and further finds that reliance upon a short-term average rather than the test year likely will fail to reasonably account for normal variances in employment and is subject to misleading manipulation. Mr. Effron's selection of a short time period and his failure to articulate reasons for excluding available data leads the Commission to reject the AG's proposed further adjustment and approve ComEd's proposed Salary and Wage Expense.

E. Severance Expense

In its BOE, the AG continues to rely on distorted and non-meritorious arguments against recovery by ComEd of event-related severance expense related to ComEd's Exelon Way program. In particular, the AG continues to ignore that Section 285.3215 of the Commission's rules is specifically designed to allow recovery by a utility of the costs of a non-recurring, event-related savings program (83 Ill. Admin. Code § 285.3215), that the Exelon Way severance costs, and associated savings, meet all of the requirements of Section 285.3215, and that this rule exists so as not to provide a disincentive for utilities to implement such non-recurring, cost-saving programs. Hill Reb., ComEd Ex. 19.0 Corr., Sched. 16, p.2; Hill Sur., ComEd Ex. 36.0 Corr., 40:907-09; Hill, Tr. at 870:12 - 871: 6; Houtsma Reb., ComEd Ex. 18.0 Corr., 3:46-50. The Proposed Order properly permitted such recovery for a program which the record showed, and the Proposed Order found, will save at least \$70 million a year well into the future. Proposed Order at 86.

A good example of distortions by the AG concerning the Proposed Order is its assertion that the Proposed Order rejected “Mr. Effron’s argument that the severance costs from the Exelon Way program are non-recurring as ‘without merit’” even though “there was no dispute that the severance costs from the Exelon Way initiative are non-recurring.” AG BOE, at 13. But that is not what the Proposed Order says at all. At pages 85-86, the Proposed Order states: “The AG also recommended disallowing the severance costs from the Exelon Way initiative entirely because they are not recurring costs and the savings allegedly will not be reflected in rates. However, these arguments are without merit.” Proposed Order at 85-86. It could not be more clear that in context, the Proposed Order is not disagreeing that the Exelon Way costs are non-recurring, but only that the fact that they are non-recurring does not mean, as Mr. Effron was arguing, that they are non-recoverable.

Similarly, the AG asserts that contrary to the Proposed Order, “Mr. Effron never made the argument that ‘the savings (of the severance program) allegedly will not be reflected in rates.’” AG BOE at 14. But this assertion is equally wide of the mark. Again, in context, the Proposed Order was simply rejecting Mr. Effron’s argument that recovery of the event-related severance cost should be denied because the savings will not be reflected in rates until January 1, 2007, and thus until that time any “savings from the severance program will be retained by shareholders.” AG BOE at 14. There is nothing in Section 285.3215 which indicates that recovery of otherwise legitimate event-related severance costs is to be denied if, because of a regulatory time lag between the savings initiative event and the effectiveness of new rates reflecting those savings, shareholders also obtain some benefit.

Finally, the AG argues, incorrectly, with the Proposed Order’s conclusion that Mr. Effron’s adjustment to ComEd’s event-related severance expense “would deny ComEd any

recovery of the cost, which removes the incentive created by Section 285.3215 to initiate such programs.” AG BOE at 14, (quoting Proposed Order at 86.) The AG suggests that Section 285.3215 was added by the Commission to its rules merely to “describe the information that must be presented by the Company when it is seeking recovery of the expenses of cost savings programs”, and was not meant in any way to suggest that a utility actually might recover the initial costs of event-related cost savings initiatives without regard to whether the costs are recurring or, indeed, “to allow recovery of such costs at all.” *Id.* at 15. This argument is plainly mistaken. There would have been no need for the Commission to add Section 285.3215 if it did not mean to encourage such event-related costs savings initiatives by allowing recovery of the costs if the specific criteria laid out in Section 285.3215 are met.

The AG argues that “[t]he decision to allow or disallow recovery of costs rests with the Commission upon a determination of those costs as just and reasonable.” AG BOE, at 15. The Proposed Order never suggests otherwise. What the AG really means is that in its view, the ALJs should ignore that Section 285.3215 establishes criteria for finding the initial costs of an event-related cost savings initiative to be just and reasonable —criteria which even the AG does not deny are met by ComEd’s Exelon Way program. What the AG also means is that in its view, the Proposed Order should, in addition, impose additional criteria or tests for recovery of the initial costs of event-related cost savings initiatives, such as no recovery if by the time the rates reflecting the annual costs savings from the initiative go into effect, the initial costs of the initiative have already been offset by several years of savings under the old rates. If the Commission had wanted such a standard to apply (even assuming it would have been lawful), it could easily have so specified in Section 285.3125; it did not. Moreover, such a test would unquestionably work to discourage a utility from undertaking such cost savings initiatives

because, before undertaking the initiative, the utility would have to try to determine whether recovery of the costs would be likely based on factors such as the amount of up-front costs for the savings initiative relative to the expected ramp-up of savings from the initiative, matched against the test year to be employed and the time expected to elapse between that test year and the effective date of the new rates.

Reply Exception 6

The Proposed Order clearly rejects the AG's suggested disallowance of ComEd's event-related severance costs not because it found that such costs were recurring – ComEd does not dispute that they are non-recurring – but rather under the standards for recovery of severance costs incurred as part of a cost reduction plan under Section 285.3125. However, in light of the AG's argument on that issue in its BOE, ComEd suggests that the following language be added to the second paragraph of the Commission Analysis and Conclusion on pages 85 and 86 of the Proposed Order:

The second type of severance costs at issue concerns those that flow from a defined cost savings initiative, i.e., the Exelon Way program. The AG also recommended disallowing the severance costs from the Exelon Way initiative entirely because they are not recurring costs and the savings allegedly will not be reflected in rates. However, these arguments are without merit. Section 285.3215 permits recovery of severance costs related to a cost-savings initiative, under the criteria specified therein, even if those costs are non-recurring. The record is clear that there are already savings from the Exelon Way program that will be reflected in the rates in this proceeding. In addition, no party has disputed that, as a result of Exelon Way, at least 70 million dollars a year in savings are expected. These facts establish a clear basis for recovery consistent under Section 285.3215. Accordingly, the record establishes that ComEd properly seeks recovery of its initial severance costs for a program expected to produce hundreds of millions of dollars in savings over the life of these rates. Mr. Effron's proposed adjustment would deny ComEd any recovery of that cost, which removes the incentive created by Section 285.2315 to initiate such programs. ComEd's proposed severance expenses related to the Exelon Way program are just and reasonable and therefore are approved.

K. Environmental Expenses

Please see Section IX.D, *infra*, for ComEd's reply to Staff's BOE.

N. Payroll Taxes

Staff proposes to correct a wording error in the Proposed Order (at 104). ComEd agrees.

S. Post-Retirement Healthcare Benefits

The AG points out that the Proposed Order erroneously failed to reflect the agreed-upon \$5,200,000 adjustment to pension and post retirement expense in Appendix A. ComEd agrees. ComEd BOE at 92.

X. Approved Operating Expenses and Revenues

ComEd, in its Brief on Exceptions and its Exceptions to Proposed Order, has shown the revisions that should be made to the Approved Operating Expenses and Revenues section on page 109 of the Proposed Order. ComEd BOE at 35-36; ComEd Exceptions at 17.

The AG proposes to replace many of the figures in that section of the Proposed Order, but, as the AG acknowledges, those proposed changes are entirely derivative of its Exceptions to the Proposed Order's substantive rulings on proposed operating expenses adjustments. AG BOE at 17. The AG Exceptions on those adjustments, except for the correction relating to reflection of the \$5,200,000 adjustment regarding post-retirement health care benefits, are without merit, as shown above. Therefore, the AG's proposed changes, except for that correction, should be rejected. (Similarly, other parties' operating expenses Exceptions that should not be approved should not have their impacts reflected here.)

VI. RATE OF RETURN

A. Capital Structure

1. Reply to Exceptions to the Proposed Order's 46% Common Equity Imputed Capital Structure

IIEC and CCC take exception to the Proposed Order's approval of a capital structure with a common equity ratio of 46%, contending that it is not supported by the record. IIEC Exception #3; CCC Exception #5. CCC asserts that the Proposed Order's imputed capital structure "was pulled from thin air" and that "[t]here is absolutely no record support" for it. CCC BOE at 15. IIEC repeats CCC's charge, contending that "there is absolutely no support in the record" for the 46% common equity ratio. IIEC BOE at 18. These exceptions are without any basis whatsoever.

The 46% common equity ratio approved by the Proposed Order is supported by substantial evidence. The Proposed Order adopted the 46% common equity ratio based on appropriate considerations, including comparisons to the capital structures of both the "proxy sample[s]" for ComEd and "utilities generally", to "previously approved capital structures for ComEd or other financially sound utilities," and to capital structures required to maintain "a reasonable A- credit rating." Proposed Order at 130.

a) Proxy Samples of Comparable Utilities

The 46% common equity ratio approved in the Proposed Order is the average current common equity ratio for the twelve electric utilities included in Dr. Hadaway's comparable group sample. Hadaway Reb., ComEd Ex. 21.0, 16:349-53; *see* ComEd Ex. 21.5. The 46% common equity ratio, while supported by evidence, is the lowest of four comparable group averages that could have been considered. The forward-looking common equity ratio for Dr. Hadaway's electric sample was 49%, whereas the average current and forward-looking common

equity ratios for the gas distribution sample were 52% and 54%. Hadaway Reb., ComEd Ex. 21.0, 16:354-61; *see* ComEd Ex. 21.5.

Staff does not argue that there is an absence of record support for the Proposed Order's 46% common equity ratio. In fact, Staff suggests just the contrary when it states that "[t]he only proxy sample used by Staff that has any effect on Staff's capital structure ... is the proxy sample used by Mr. McNally...." Staff BOE at 52. Mr. McNally's sample of eight electric utilities comparable to ComEd has an average current common equity ratio of 48.8% and a forward looking equity ratio of 52% – both considerably in excess of the 46% common equity ratio approved by the Proposed Order. ComEd Ex. 21.2.

All of this evidence provides strong support for the Proposed Order to impute a capital structure with at least a 46% common equity ratio. IIEC's contention that the Commission may not consider "a comparison analysis" of the capital structures of comparable utilities when imputing a capital structure (IIEC BOE at 16) is plainly wrong. Analysis of the common equity ratios of comparable utilities has been the most significant factor in nearly every decision by the Commission to adopt an imputed capital structure. *Sundale Utilities, Inc.*, ICC Docket No. 04-0637 (Order, August 9, 2005) (Approving an imputed capital structure after noting that Staff had compared the proposed capital structure to the average capital structure ratios of other companies, finding it to be "very close" and therefore "reasonable" for ratemaking purposes); *Consumers Gas Company*, ICC Docket No. 92-0283 (Order, April 21, 1993) (Approving an imputed capital structure based on Staff's analysis of the common equity ratios for the industry using Value Line and Standard & Poor's ("S&P") data); *Illinois Commerce Commission v. Eldorado Water Company*, ICC Docket Nos. 93-0219, 93-0334 [Cons.], (Order, July 07, 1994) (Approving Staff's imputed capital structure consisting of 60% common equity and 40% long-

term debt, concluding that it was closer to the “industry's average capital structure.”) *GTE North Incorporated*, ICC Docket No. 93-0301, 94-0041 [Cons.], (Order, October 11, 1994) (Approving a utility’s capital structure, noting that Staff had compared the common equity ratio with both the current and forecasted values in the industry, finding the proposed ratio to be “reasonably close to the average.”); *Central Illinois Public Service Company AmerenCIPS*, *Additional petitioner: Union Electric Company (AmerenUE)*, ICC Docket No. 00-0802 (Order December 11, 2001) (Approving a compromise proposal for a utility’s weighted average cost of capital after noting that both Staff and IIEC supported an imputed capital structure with a level of common equity “that Staff believed to be consistent with comparable companies.”).

b) Comparisons To Utilities Generally

The 46% common equity ratio was also supported by broader comparisons to the capital structures of utilities generally. The evidence established that the 25 electric utilities included in a large study conducted by AUS Consultants Company had an average common equity ratio of 48%. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 10:201 - 11:210. Other samples of utilities generally support the same conclusion. Staff quarrels with the Proposed Order’s reference to a group of utilities in which Ms. Kight improperly included Old Dominion, contending that it did not constitute a “proxy sample.” Staff BOE at 52. But whether the group is characterized as a proxy sample or a group of utilities generally, the significant point is that it had an average common equity ratio of 49.1% when Old Dominion was excluded. The same group of A rated utilities with business profiles of “4” (that is, equal to ComEd’s business profile) and including Old Dominion had a common equity ratio of 45.5%. Rounding the average common equity ratio of the group Ms. Kight chose to highlight in her testimony results in an equity ratio of 46% -- exactly the ratio adopted by the Proposed Order. The remaining comparison group mentioned by

Ms. Kight in her testimony – 6 utilities with A- ratings and business profiles of “4” had an average common equity ratio of 48.78% in 2004. Mitchell Sur., ComEd Ex 37.0 2nd Corr., 4:78-79. Ms. Kight, herself, pointed out that “[t]he mean common equity ratio for the six companies for the years 2002 through 2004 was 46.1%.” Kight Reb., Staff Ex. 15.0 2nd Corr., 2:26-27.

The substantial evidence of capital structures of “utilities generally” considered by the Proposed Order provides further support for the imputed capital structure with a 46% common equity ratio.

c) **Previously Approved Capital Structures For ComEd**

Both IIEC and Staff argue that the capital structure approved by the Proposed Order is inappropriate when compared to previously approved capital structures for ComEd. IIEC BOE at 14-15; Staff BOE at 48-49. Staff argues that “in no event should the Commission impute a capital structure that contains more equity than the capital structure the Commission determined was sufficient” in ComEd’s last rate case, noting that, at that time, the Commission approved a common equity ratio of 42.86%. *Id.* at 48-49. The contention that the approved capital structure in this case should be based on the evidence in ICC Docket 01-0423 is nonsense. It conflicts with clear Illinois law that the Commission’s decision here must be based exclusively on the evidence in the record of this case. *E.g.*, ComEd Init. Br. at 16; 220 ILCS 5/10-103, 10-201(e)(iv). It ignores the evidence that, at the time of its last rate case, ComEd had nearly \$7 billion in total debt, far more than the \$4.4 billion at the time of this case. Mitchell Reb., ComEd Ex. 20.0, 7:149-50; Mitchell Dir., ComEd Ex. 7.0, Sched. D-1. Staff’s suggestion that the Proposed Order should cap ComEd’s common equity ratio at the ICC Docket 01-0423 level would be reversible error, plain and simple.

Although the Commission may not decide this proceeding based on the evidence in a prior rate case, it is perfectly appropriate to consider the methodology used by Staff and the Commission in arriving at the approved capital structure in ICC Docket 01-0423. In ICC Docket 01-0423, Staff recommended that the common equity balance for ComEd's capital structure be determined using actual equity balances from securities filings. Ms. Freetly explained that she "began with the total shareholders equity balance listed in the 10Q quarterly report" and deducted preferred stock of subsidiaries. Freetly Dir., Staff Ex. 5.0, 9:143-146, ICC Docket 01-0423. Following the same approach using the evidence in this proceeding would result in a capital structure with a common equity ratio of 63%. Houtsma Sur., ComEd Ex. 35.0, 17:361-63. In other words, the capital structure approved in the Proposed Order has a common equity ratio that is 15 percentage points lower (46% versus 63%) than would be the case if Staff's methodology approved by the Commission in ICC Docket 01-0423 were followed here.

A comparison of the balances of common equity approved in ICC Docket 01-0423 with the balance supported by the evidence in this proceeding also establishes that there is no inconsistency between the two. The capital structure approved by the Commission in ICC Docket 01-0423 included \$5.224 billion of equity. Mitchell Reb., ComEd Ex. 20.0, 7:149-50. After making an adjustment to eliminate the effects on equity of purchase accounting from the 2000 merger with PECO, the actual capital structure proposed by ComEd in this proceeding included about \$5.2 billion of equity. ComEd Ex 7.1, Sched. D-1. In short, the common equity balance approved in ICC Docket 01-0423 and ComEd's actual, adjusted common equity balance based on the evidence in this proceeding are the same. There is no inconsistency whatsoever. Although the Proposed Order's imputed capital structure with a common equity ratio of 46% involves a reduction in ComEd's actual common equity, it is still far more compatible with

previously approved capital structures than is Staff's proposal. Staff's proposal would reduce ComEd's common equity balance to only \$2.561 billion – about one-half of the equity approved by the Commission in ICC Docket 01-0423. Kight Dir., Staff Ex. 4.0 Corr., Sched. 4.1.

The “inconsistency with previously approved capital structures” argument made by Staff and IIEC is not based on any inconsistency in methodology nor on any difference in the treatment of or conclusions concerning ComEd's balance of common equity. The only difference on which IIEC and Staff can rely is the fact that ComEd's debt has decreased since ICC Docket 01-0423 was decided. But, this is not an “inconsistency.” Both the Proposed Order and the Commission's order in ICC Docket 01-0423 adopt the same methodology. They each approve ComEd's actual balance of debt, just as should the Commission here.

The difference, then, is based entirely on a difference in the evidence in the record before the Commission in ICC Docket 01-0423 and the evidence before the Commission in this proceeding. In ICC Docket 01-0423, ComEd had total debt of nearly \$7 billion. Mitchell Reb., ComEd Ex. 20.0, 7:149-50. In this proceeding, ComEd's debt totals about \$4.4 billion. Mitchell Dir., ComEd Ex. 7.0, Sched. D-1. The Commission may not make its decision in this proceeding based on ComEd's balance of debt in a prior proceeding. There is no basis in the record here to approve a capital structure with a \$7 billion balance of long term debt. Yet that is what IIEC and Staff ask the Commission to do in the name of consistency with previously approved capital structures.

The reasons for the much lower balance of long term debt in this case was explained at length in the record. The reduction was the result of a well-designed liability management program described by Mr. Mitchell in his testimony. Mitchell Dir., ComEd Ex. 7.0, 7:144 - 8:156. Under the program, ComEd retired or redeemed more than \$1 billion of debt in addition

to the scheduled pay-down of transitional funding instruments. The goal of the debt reduction program was to maintain ComEd's ratings and avoid the higher capital costs and other adverse consequences that can result from a rating downgrade.

Not only is there no inconsistency between the Proposed Order and any prior proceeding, but the record in ICC Docket 01-0423 shows that ComEd's debt balance was at an unusually high level, which was expected to decline in the future, resulting in a rising common equity ratio. The debt balance was high because the 2000 test year fell during an early stage of the transitional funding instrument ("TFI") program. The evidence demonstrated that scheduled maturities of TFIs in 2001 and 2002 would increase ComEd's common equity ratio to 46.01% by the end of 2002. Freetly Dir., Staff Ex. 5.0, 4:64 - 5:77, ICC Docket 01-0423. Staff did not disagree that ComEd's common equity ratio would increase. However, it concluded that "without forecasted financial statements," it could not verify the increase. Freetly Dir., Staff Ex. 5.0, 6:90-91, ICC Docket 01-0423. In order to resolve the disagreement about the size the increase in common equity ratio that would result, ComEd agreed to accept Staff's compromise common equity ratio of 42.86%. *Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Order, March 28, 2003) at 130.

Thus, in seeking to cap ComEd's common equity ratio at the 42.86% level approved in ICC Docket 01-0423, Staff and IIEC are attempting to persuade the Commission to approve now a balance of long term debt for ComEd that the evidence in ICC Docket 01-0423 demonstrated was an aberrational peak. The evidence in ICC Docket 01-0423 turned out to be correct. ComEd's TFI debt balance declined as a result of scheduled repayments, just as anticipated by the testimony and amortization schedule introduced into evidence in ICC Docket 01-0423. Together with ComEd's accelerated liability management program, debt was reduced by \$2.6

billion. Mitchell Reb., ComEd Ex. 20.0, 7:149-50 (\$7 billion of debt in ICC Docket 01-0423); Mitchell Dir., ComEd Ex. 7.0, Sched. D-1 (\$4.4 billion of debt in this proceeding). Unlike in Docket 01-0423, there is no need in this case for forecasted financial statements in order to determine ComEd's balance of long term debt. The answer is known and is in the record in this proceeding. The Commission must apply that evidence of the actual debt balance, just as it applied the evidence of the actual debt balance in the 2000 test year at issue in Docket 01-0423.

Finally, the contention that ComEd's common equity ratio should be frozen at the 42.86% level approved in ICC Docket 01-0423 is inconsistent with Staff's own evidence in this proceeding, which indicated that common equity ratios of electric utilities comparable to ComEd have risen significantly since 2001. Staff relied on evidence of the mean common equity ratios of six utilities with the same business profile as ComEd, pointing to S&P Utility Compustat data covering the period from 2001 through 2004. Kight Reb., Staff Ex. 15.0 2nd Corr., 2:23-27. That evidence showed that the mean common equity ratio for the group in 2001 was 44.18%, but by 2004, it had climbed to 48.78%. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 4:81-88. In other words, the common equity ratios for utilities with the same business profile as ComEd rose 4.6 percentage points between the time of the 2001 rate case in ICC Docket 01-0423 and the end of the test year in this proceeding. Even if there were any basis for the "consistency" argument raised by IIEC and Staff, it would have to take into account the change in comparable utility common equity ratios between 2001 and 2004. Adding 4.6 percentage points to the 42.86% common equity ratio approved in ICC Docket 01-0423 results in a common equity ratio of 47.46% -- 1.46 percentage points higher than the 46% common equity ratio approved by the Proposed Order.

In summary, the “inconsistency with previously approved capital structures” argument raised by Staff and IIEC is without any basis. It conflicts with the evidence in this proceeding on which the Commission must base its decision. It ignores the methodology followed in ICC Docket 01-0423 which, if applied here, would result in a capital structure with a common equity ratio of 63%. It ignores the fact that the balance of common equity approved in ComEd’s last rate case, ICC Docket 01-0423, and the balance supported by the evidence in this case are not only consistent, but are essentially identical. It seeks to have the Commission approve a balance of long term debt that was at an aberrational highpoint in ICC Docket 01-0423 and that the evidence in that proceeding demonstrated would be declining, resulting in a common equity ratio of slightly over 46% by the end of 2002. It seeks to have the 2000 “highpoint” debt balance applied here, even though the undisputed evidence in this proceeding demonstrates that the debt balance did decline by even more than had been anticipated in ICC Docket 01-0423 as a result of ComEd’s accelerated liability management plan. And it seeks to have ComEd’s common equity ratio frozen at its ICC Docket 01-0423 level of 42.86%, even though Staff’s evidence shows that the common equity ratios of utilities with the same business profile as ComEd rose by 4.6 percentage points between 2001 and 2004.

There is simply no question that reducing the Proposed Order’s imputed 46% common equity ratio in response to the “consistency with previously approved capital structure” exceptions by IIEC and Staff would be reversible error. The ALJs arrived at a result that significantly reduces ComEd’s actual common equity ratio. While that outcome is at the low end of the range that could be considered, it is supported by substantial evidence in this record. Acceding to the position of IIEC and Staff would result in a capital structure that is supported by

no evidence and that, on its face, is premised on a direct violation of the legal obligation to decide this case based on the record in this proceeding. 220 ILCS 5/10-103, 10-201(e)(iv).

d) Maintaining A- Credit Ratings

Staff suggests that there is no “evidence to support why it is necessary for ComEd to have an A- credit rating to maintain a reasonable level of financial strength.” Staff BOE at 51. The record contains substantial evidence explaining why an A- credit rating is important and why the BBB rating to which Staff would relegate ComEd is simply inadequate. As Mr. Mitchell explained:

...consumers benefit when ComEd has strong credit ratings because the ratings support ComEd’s access to the capital markets at reasonable costs. This is extremely important given ComEd’s ongoing investment in its infrastructure. ComEd has invested over \$3 billion since 2001 to maintain, upgrade and expand our delivery system infrastructure and has been able to do so because of its strong financial position. Although we expect to finance the majority of ComEd’s capital expenditures with internally generated cash, it is important to maintain a strong balance sheet and credit rating to ensure access to the capital markets if unforeseen developments should occur and for refinancings of maturing debt. In addition, strong credit ratings are important in obtaining a reasonable price for power as ComEd enters into power contracts with outside suppliers through the auction process approved by the Commission on January 24, 2006, because suppliers will look more favorably upon companies with solid credit ratings.

The BBB credit rating proposed for ComEd by Ms. Kight pushes ComEd much closer to non-investment grade ratings and puts ComEd on a slippery slope for future downgrades where even minimal changes from forecast can impact ComEd’s investment grade status. That is not an appropriate credit rating for a utility on which electric service for more than 3 million customers in Northern Illinois depends. It would place at risk ComEd’s access to the capital it needs to continue to provide reliable service for customers. Even if the necessary capital could be obtained, it would come at a higher cost. It would also jeopardize ComEd’s ability to enter into commercially reasonable agreements with suppliers from whom ComEd must procure power and energy to meet the needs of customers beginning in January 2007.

Mitchell Reb., ComEd Ex. 20.0, 5:100 - 6:122.

The Proposed Order appropriately adopted a capital structure with a common equity ratio in excess of the 37% proposed by Staff after considering the effect that the more leveraged capital structure would have on ComEd's ability to maintain an acceptable credit rating. Staff seeks to leave the impression that S&P credit rating standards and benchmarks somehow support adoption of a 37% common equity ratio for ComEd, but they clearly do not. To begin with, Staff (BOE at 50) lowers the bar for its credit rating standards argument, seeking to persuade the Commission that it would be sufficient for ComEd to have a BBB credit rating when the evidence shows it would not be. Mitchell Reb., ComEd Ex. 20.0, 5:98 – 6:122; Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 9:186-92. When the appropriate A- credit rating standard is applied, the evidence shows that Staff's proposal would cause ComEd to fail two of the three critical financial measures established by S&P. Staff admits that it ignored one of the measures – the debt to capital ratio – because it requires a common equity ratio of between 48% and 55%, and Staff's proposal would not provide anything close to that level of financial strength. Mitchell Reb., ComEd Ex. 20.0, 5:94-97. Staff's proposed 37% common equity ratio violates the S&P funds from operations to debt coverage measure as well. The very chart on which Staff relies shows that Staff's capital structure would result in a funds from operations to debt ratio of only 18.04%, a full 25% below the mid point of the guideline for "A" rated utilities. Staff BOE at 51.

Recognizing that the 37% common equity ratio proposed by Staff does not satisfy the standards for maintenance of a reasonable A- credit rating, Staff criticizes the Proposed Order for approving a capital structure that, while falling far short of the 54.2% proposed by ComEd, at least provides an increased measure of financial strength over Staff's proposal. In support of its criticism, Staff relies upon a purported analysis of the extent to which the Proposed Order's capital structure with a 46% common equity ratio would satisfy two of the S&P rating standards.

Staff BOE at 51. The Commission should give no weight to the “Proposed Order” row of Table 1 in Staff’s brief because it is not in evidence, has never been supported by any witness, has never been the subject of discovery or cross examination, and is inconsistent with the evidence in the record. The only evidence in the record concerning the extent to which the 46% common equity ratio satisfies the S&P guidelines is in direct conflict with the position Staff takes in its brief on exceptions. *See, e.g.,* Mitchell Sur., ComEd Ex. 37.0 2nd Corr, 3:47-65; Mitchell Reb., ComEd Ex. 20, 4:65-70; Janous Dir., IIEC Ex. 4.0, 8:112-113; Kight Reb., Staff Ex. 15.0 2nd Corr., 7:120-121; ComEd Ex. 21.2; ComEd Ex. 21.5. There is no dispute that the S&P guidelines call for a common equity ratio of between 48% and 55%. The Proposed Order’s 46% ratio, while more compatible with the standard than Staff’s proposal, still falls short by 2%. Staff’s contention that the Proposed Order’s imputed capital structure is “commensurate with a ‘A/A+’ credit rating” is unsupported by the evidence in the record and cannot be relied upon by the Commission in reaching its decision.

Far more important than any of the evidence Staff mentions in its brief is Staff’s own testimony establishing yet another basis for the Proposed Order’s imputed capital structure. During the hearing, Staff introduced a 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. Staff witness Kight testified that “[i]f the Commission concluded it were appropriate to impute a capital structure that would 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 (emphasis added). This alternative minimum cash flow credit rating analysis is in the record. It supports the conclusion that, viewing ComEd in the way that credit rating agencies are likely to conduct

their analysis, a capital structure with a common equity ratio of at least 46% will be necessary in order for ComEd's cash flows to give it a reasonable chance of maintaining an A- credit rating. Staff states that, if the Commission were to adopt an imputed capital structure for ComEd, this analysis supports the conclusion that the equity ratio "would need to be approximately 45.5%." In other words, Staff's own testimony demonstrates that the standards applied by rating agencies provide substantial evidence in support of the 46% imputed common equity ratio Staff now seeks to undercut.

All of the evidence supporting the importance of S&P benchmarks and the maintenance of reasonable credit ratings is appropriately considered by the Commission when adopting an imputed capital structure. Staff's testimony in this proceeding states that it is properly considered when imputing a capital structure. Kight Reb., Staff Ex. 15.0 2nd Corr., 7:120-121. The Commission has considered such evidence in the past. *Central Illinois Public Service Company*, ICC Docket No. 02-0798 (Cons.) 03-0008, 03-0009, (Order, October 22, 2003) (Approving Staff's imputed capital structure with a common equity ratio of 52.7%, noting that it was "based upon the midpoint of S&P's total debt ratio benchmark."). Reliance on that evidence, along with all of the other facts discussed here, provides substantial evidence in support of the Proposed Order's imputed capital structure. The arguments of IIEC, CCC and Staff to the contrary are simply without any basis.

e) **IIEC's Capitalization/Rate Base Equivalence Test**

IIEC raises a final argument that neither CCC nor Staff supports, for good reason. IIEC argues that the Proposed Order should adopt an additional basis for declining to approve ComEd's actual capital structure with a 54.2% common equity ratio. The additional reason,

according to IIEC, is that, when the Commission approves a capital structure, “total capitalization” must be reasonably equal to “total rate base.” IIEC’s BOE at 11.

IIEC’s position is without any support at all. There is no reason whatsoever that rate base and capital structure should match, or even be close in value. For example, in ICC Docket 01-0423, the Commission approved a \$12.189 billion capital structure and a net rate base of \$3.579 billion – less than 29.4% of the capital structure. *Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Interim Order, April 1, 2002) at 112; *Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Amendatory Interim Order, April 10, 2002), at 2, Finding (5).

Numerous factors cause capital structure and rate base to diverge over the years, and total capitalization may properly be more than, equal to, or even less than rate base. Capital structure is a current, largely market-based construct, that is altered by the cumulative retained earnings, dividends, capital contributions, debt retirements, and refinancings that occur over the years and decades. None of these factors has any effect on rate base, which is largely historical, and derived from depreciated original cost.³⁶ That depreciation occurs regardless of the requirements of the capital markets and regardless of the capitalization. It is senseless to speak as if the total value of the capital structure needed to tie to the value of rate base or to suggest that utility capital is not supporting utility activities if it does not.

Baseless as IIEC’s capital structure / rate base equivalence standard is, it would have no impact on the Proposed Order’s imputed capital structure with a common equity ratio of 46%. Given ComEd’s actual debt balance of about \$4.4 billion, the 46%/54% capital structure approved by the Proposed Order would have total capitalization of \$8.1 billion. Even IIEC

³⁶ Rate bases may also be set based on fair value of assets, and the law requires that rates not be confiscatory as compared to fair value. Fair value rate bases are not at issue here, however.

would have to acknowledge that the \$6.2 billion rate base approved by the Proposed Order, equaling about 77% of the capital structure, is “close enough” to satisfy whatever test IIEC seeks to create. In short, IIEC’s equivalence argument, although wrong, is irrelevant to the Proposed Order’s imputed capital structure with a common equity ratio of 46%.

2. Exceptions Seeking Approval Of Staff’s 37% Common Equity Ratio Must Be Rejected

CCC, IIEC, and Staff all raise exceptions to the Proposed Order’s failure to approve a capital structure with a common equity ratio of 37%. IIEC BOE at 9-10; CCC BOE at 14; Staff BOE at 48. The Proposed Order’s rejection of the 37% common equity capital structure was unmistakably correct. A 37% common equity ratio was shown to be inconsistent with every comparison and standard used to measure capital structures. The Proposed Order accurately described the 37% common equity proposal as “an outlier,” because it is. Proposed Order at 130.

Both ComEd and IIEC presented evidence of “proxy samples” of utilities comparable to ComEd. ComEd’s proxy samples included 19 utilities. ComEd Ex. 21.5. Staff’s proxy sample included 8 utilities. ComEd Ex. 21.2. The common equity ratios of the proxy samples were analyzed in a variety of ways. Electric utilities were considered separately from gas distribution utilities. Both current common equity ratios and forward looking ratios were evaluated. No matter how the evidence was considered, the same conclusion resulted. The lowest average common equity ratio of any group of utilities in the proxy samples was 45.7%. ComEd Ex. 21.2. Nothing in the extensive analyses in the record of comparable utility capital structures supports approval of a common equity ratio remotely close to 37%.

Extensive evidence of the common equity ratios of “utilities generally” was also presented. The AUS Consulting Company study encompassed a broad cross section of 25

electric utilities. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 10:201 - 11:210. Staff presented comparisons based on S&P Utility Compustat data for all utilities with business profiles of “4” – the same as ComEd’s business profile. Kight Reb., Staff Ex. 15.0 2nd Corr., 2:23-34. These broader comparisons reached the same conclusion. The lowest average common equity ratio of any of these broader groupings was about 46%³⁷ -- well in excess of the 37% common equity ratio proposed by IIEC, CCC and Staff.

The S&P benchmarks used to establish utility credit ratings are also completely inconsistent with approval of a 37% common equity ratio for ComEd. S&P guidelines call for utilities with a business profile of “4” to have a common equity ratio of between 48% and 55%. Mitchell Reb., ComEd Ex. 20, 4:65-70. S&P explains the importance of the common equity ratio approved by public utility commissions, stating that it reviews the “capital structure employed to arrive at the rate of return” in rate cases, and that regulation (which includes the critical capital structure used to determine a utilities rate or return) is “the most important factor affecting T&D companies’ credit quality because it provides the means by which a utility can realize predictable and stable financial results.” Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 8:169-71; *see also id.* at 8:163-69. A 37% common equity ratio is clearly unreasonable when compared to S&P benchmarks. It falls far below the common equity range for A-rated utilities. It even falls below the lowest point in the range of BBB-rated utilities. Janous Dir., IIEC Ex. 4.0, 8:112-113. It would place ComEd in below-investment-grade “junk” status under the S&P total debt to total capital benchmark.

³⁷ Kight Reb., Staff Ex. 15.0 2nd Corr., 2:26-27; Mitchell Sur., ComEd Ex 37.0, 2nd Corr., 4:78-79, 10:201-11:210.

All of this evidence underscores the correctness of the Proposed Order's rejection of a capital structure with a common equity ratio of 37%. The exceptions of IIEC, CCC and Staff seeking to have the Commission approve a capital structure for which the evidence provides no support whatsoever should be rejected.

3. Exception to Statement that a Portion of Goodwill Should Be Included in the Capital Structure

IIEC suggests deletion of the reference on page 155 of the Proposed Order to "our determination, *supra*, that a portion [of goodwill] should be included in the capital structure." IIEC Exception # 4. ComEd agrees that, if the Commission adopts the Proposed Order's imputed capital structure, then the reference should be deleted to avoid confusion or misunderstanding about the an imputed capital structure with a common equity ratio of 46%.

The adoption of an imputed capital structure is clearly within the Commission's power, and the record provides substantial evidence in support of the approval of an imputed capital structure with a common equity ratio of 46%. Adoption of such an imputed capital structure does not require the Commission to determine that a portion of goodwill should be included in the capital structure. The section of the Proposed Order approving an imputed capital structure does not state that, in doing so, the Commission is including goodwill in the capital structure. As ComEd stated in its brief on exceptions, capital structures include debt and equity. They do not include assets, such as goodwill. In order to approve an imputed capital structure, the Commission need only specify the common equity ratio it finds to be just and reasonable based on the evidence, and is done in the Proposed Order.

As is apparent from IIEC's brief on exceptions, the comment in the Proposed Order's cost of equity discussion about including goodwill in the capital structure can be misconstrued to suggest that there is an inconsistency between the Proposed Order's decision to reject ComEd's

actual capital structure and its decision to impute a capital structure with a common equity ratio of 46%. There is no inconsistency, and the above-quoted language IIEC seeks to eliminate should be deleted to avoid any suggestion that such an inconsistency is present.

For the same reason, ComEd agrees with a portion of CCC's exception suggesting deletion of language on page 130 of the Proposed Order. CCC Exception # 5. CCC suggests deleting, in its entirety, the fourth paragraph on page 130 of the Proposed Order, which begins with the sentence: "Weighing all of the considerations discussed above, the Commission finds that Staff's methodology should be adopted to the extent that the net adjustments produce a capital structure consisting of 46% equity and 54% debt." Proposed Order at 130. ComEd opposes CCC's proposal to delete this entire paragraph for the reasons discussed in this reply brief on exceptions and in ComEd's brief on exceptions. However, ComEd believes that the potential for confusion and mischaracterization of the Commission's order would be reduced if the sentence were revised to read: "Weighing all of the considerations discussed above, the Commission ~~finds that Staff's methodology should be adopted to the extent that the net adjustments produce a~~ approves an imputed capital structure consisting of 46% equity and 54% debt."

B. Cost of Long-Term Debt

The Proposed Order correctly finds that ComEd's use of its actual debt cost is consistent with the filing requirements of 83 Ill. Admin. Code §§ 285.4000 – 4030, which permit utilities to use an historic measurement period, and that the correct ending balances and amortization amounts support ComEd's actual debt cost of 6.50%. Proposed Order at 134. In doing so, the Proposed Order rejects Staff's proposed 6.48% cost of debt because it was "not based on such [ending] balances and [amortization] amounts." *Id.* The Proposed Order also rejects CCC's

proposed 6.23% cost of debt for a number of reasons, including its improper use of another company's debt cost, its inclusion of short-term debt, and its use of historically low rates. *Id.*

Both Staff and CCC argue ineffectively against the Proposed Order's adoption of ComEd's actual 6.50% cost of debt. CCC makes no attempt to address the findings in the Proposed Order, and instead merely rehashes the arguments made in its earlier briefs. The Commission rejected CCC's proposed cost of debt, finding "no merit" in it, for several concrete reasons – that the record shows "such cost is based on a different corporation's debt," that it "improperly includes \$300 million of short-term debt," and that it "is based on debt issued in mid-2005, when interest rates were at an historically low level." Proposed Order at 134. CCC does not question ComEd's use of June 30, 2005 for an historic measurement period date or its computation of its cost of long-term debt, nor suggest that such cost was imprudent or unreasonable. Proposed Order at 134. The only argument made by CCC against the cost of debt in the Proposed Order is that "it is based in part on debt issues that will not be in effect when the rates set in this case are in effect." CCC BOE at 16. CCC then argues, again, that the Commission should use Exelon-issued debt from 2005. CCC BOE at 17. It makes no reference to the Proposed Order's rejection of CCC's proposed use of Exelon-issued 2005 debt as a proxy for ComEd-issued debt, much less an argument against it. CCC's arguments in favor of a 6.23% cost of equity are unpersuasive and fail to address the Proposed Order's criticism of them; as such it should be rejected again.

Staff unpersuasively argues against the Proposed Order's finding in favor of ComEd's evidence on cost of debt. Staff argues – for the first time – that the Proposed Order's decision "is based on books that are in violation of Commission rules regarding amortization of Unamortized Loss on Recquired Debt." Staff BOE at 54. Staff's prior position was not that ComEd's

proposed balances and amortizations were in “violation of Commission rules regarding amortization of Unamortized Loss on Reacquired Debt”; instead, Staff argued only that its own proposed balances and amortizations were consistent with those rules and that ComEd’s contrary evidence was “conclusory.” *Compare* Staff Init. Br. at 76 - 77 *with* Staff BOE at 54-55; *see* ComEd Rep. Br. at 101.

Staff’s argument distorts the Proposed Order’s finding and should be rejected. The Proposed Order does address, and reject, Staff’s argument regarding ComEd’s actual amortization amounts. The Proposed Order states: “the correct ending balances and amortization amounts support ComEd’s actual debt cost of 6.50%, and thus rejects Staff’s suggestion of 6.48%, which is not based on such balances and amounts.” Proposed Order at 134. This language adopts ComEd’s argument; ComEd presented evidence that the balances and amortization amounts supporting its 6.50% cost of long-term debt are accurate and in accordance with applicable accounting and amortization principles, and that those actual balances and amounts – not Staff’s modified ones – should be used in computing ComEd’s cost of long-term debt. Mitchell Sur., ComEd Ex. 37.0 2nd Corr., 24:478-87. Those actual balances and amortization amounts lead to a cost of long-term debt of 6.50%. *See id*; *see* ComEd Init. Br. at 173. As such, the Proposed Order was correct to adopt such actual balances and amortization amounts and ComEd’s resulting long-term debt of 6.50%.

C. Cost of Common Equity

The Proposed Order rejected ComEd’s proposed 11.00% cost of equity, instead adopting a fallback position that Staff’s 10.19% proposal was more reasonable. In their Briefs on Exceptions, Staff, IIEC and CCC argue for a further reduction in the Proposed Order’s approved 10.19% cost of equity. Both IIEC and CCC argue for their originally-proposed costs of equity,

while Staff reverses its own recommendation and now suggests that IIEC's 9.90% cost of equity is superior. None of these arguments holds merit, and they should be rejected. As discussed in ComEd's Brief on Exceptions, the Commission should adopt ComEd's 11.00% cost of common equity.

Staff

Staff's Brief on Exceptions includes a surprising about-face regarding ComEd's cost of equity. While Staff originally claimed a 10.19% return on equity was appropriate, Staff, having prevailed, now reverses itself and takes the position that IIEC's lower 9.90% return on equity is appropriate unless the Commission reverses the Proposed Order and imposes a 37.11% equity ratio. Staff claims that "If the Commission's final order continues to impute a capital structure with more than 37.11% equity, then Staff recommends that the Commission adopt IIEC's 9.90% cost of equity, as a downward adjustment to at least 9.90% would be required to reflect the reduced risk from having a capital structure with more than 37.11% equity." Staff BOE at 56. Staff's reversal is unsupported by the evidence and is contrary to its own evidence, which bases the 10.19% cost of equity on a sample of comparable electric utilities with an average current common equity ratio of 48.8% and a forward looking common equity ratio of 52%. ComEd Ex. 21.2. The Proposed Order's adoption of a capital structure with a common equity ratio of 46% results in more not less leverage than the comparable utility group on which the 10.19% cost of equity was based. Adoption of the 46% common equity ratio capital structure therefore calls for an increase from the 10.19% cost of equity to account for the additional financial risk.

In other words, Staff has it backwards. There is no basis whatsoever for arguing that Staff's 10.19% cost of equity should be reduced as a result of the Proposed Order's capital structure with a 46% common equity ratio.

Staff had ample opportunity to present evidence that ComEd's cost of equity should be adjusted downward if the Commission approved a different capital structure than the 37% common equity ratio proposed by Ms. Kight. Staff knew, or reasonably should have known, that ComEd's capital structure would be a contested issue before it ever filed its testimony. A simple glance at the ComEd's proposed 54% common equity ratio and Staff witness Kight's proposed 37% common equity ratio shows that the 17% difference between those equity ratios would be a contested issue in the case. Staff chose not to develop any evidence regarding the returns appropriate to different equity ratios, despite two rounds of testimony and two separate experts who would have been competent to develop such evidence. Despite this, neither Ms. Kight nor Mr. McNally presented any evidence to suggest that ComEd's return on equity should be reduced in the event that Ms. Kight's proposed capital structure was rejected. Staff cannot revisit that decision now. Furthermore, Staff's own evidence suggests that its proposed 10.19% cost of equity was a floor, not a ceiling. Staff's own expert, Mr. McNally, testified that "in my opinion, anything below 10.19% would be too low." McNally, Tr. at 1790:15-16 (emphasis added). Conversely, Mr. McNally never suggests any downward adjustment would be appropriate in his written direct or rebuttal testimony, nor at hearing.

Staff also argues that the Proposed Order's rejection of Staff's proposed capital structure makes it "illogical to choose the higher of Staff's and IIEC's cost of equity estimates." Staff BOE at 57. The basis for this argument is the statement that "[i]ncreasing the amount of equity in the capital structure reduces risk." Staff BOE at 57. As above, however, none of these statements are supported by citation to the record. Staff never presented any evidence to suggest that it would be "illogical" to choose the higher of the two costs of equity. To the contrary, its evidence shows that IIEC's 9.90% estimate was too low. Further, Staff presented no evidence to

support its conclusion that increasing the amount of equity reduces risk. Again, Staff had ample time and opportunity to develop such evidence, but chose not to. Staff presented no evidence to support these arguments. They should be disregarded.

Staff's claim that the "ratios indicate the capital structure proposed by the ALJ's is indicative of a A/A+ credit rating" is not supported by any evidence, is contradicted by Staff's own evidence, and fails to support its argument for a reduced cost of common equity. As discussed in more detail above, Staff's proposed 37% common equity ratio fails two tests of financial strength needed to support an "A" credit rating. *See* Section VI.A.2 *supra*. Standard & Poor's requires a common equity ratio of between 48% and 55% for an A- credit rating, which Staff's proposal would not provide. Mitchell Reb., ComEd Ex. 20.0, 5:94-97. Additionally, the funds from operation to debt ratio that would result from Staff's proposed 37% common equity ratio – 18.04%, would fall 25% below the midpoint of the "A" range for utilities. Staff BOE at 51. Furthermore, Staff witness Kight testified that "[i]f the Commission concluded it were appropriate to impute a capital structure that would 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., 7:120-21 (emphasis added). All of this evidence supports the conclusion that a capital structure with a common equity ratio of at least 46% will be necessary in order for ComEd's cash flows to give it a reasonable chance of maintaining an A- credit rating. Staff's proposed common equity ratio would leave ComEd far below the "A/A+" credit rating Staff supposes as the basis of its new argument.

Staff's argument here actually supports ComEd's converse argument – that the Proposed Order's lower cost of equity requires an increase in the equity component of ComEd's capital structure. ComEd provided ample evidence to support its proposed 11.00% cost of common

equity, *see* ComEd Init. Br. at 175-77; accepting Staff's argument, ComEd's equity should be increased to account for the lower return on that equity.

ComEd's proposed 11.00% cost of equity is reasonable and in line with other approved costs of common equity in recent utility rate cases, whereas the significantly lower rates proposed by Staff, IIEC and CCC do not account for the added risk inherent in their proposed 37% equity ratio. As ComEd has repeatedly noted, Staff, IIEC, and CCC have failed to consider what the cost of equity of such a hypothetical highly leveraged company would be. *Kight Reb.*, Staff Ex. 15.0 2nd Corr., 8:127; *Gorman Reb.*, IIEC Ex. 7.0, 11:236-45; *Bodmer Reb.*, CCC Ex. 4.0 Corr., at 2:50-51, 18:543 - 19:551; *Hadaway Reb.*, ComEd Ex. 21.0, 6:131 - 7:144; *Hadaway Sur.*, ComEd Ex. 38.0, 7:162 - 8:165; *see* ComEd Init. Br. at 178. As a result, these parties' proposed costs of common equity are mismatched with the comparable company groups proposed by Staff and IIEC, each of which involved companies with less leveraged capital structures. *Hadaway Sur.*, ComEd Ex. 38.0, at 2:30-33. In order to account for and offset the higher risks inherent in these parties' lower costs of common equity, a corresponding increase in equity component of ComEd's capital structure would have to be approved. Therefore, if the Commission were to adopt Staff's new argument, it would need to approve an equity structure for ComEd that accounts for the higher risk with an offsetting increase in the equity component of that structure.³⁸

³⁸ Staff also claims that the proposed order should be revised to "remove the reference to adding back in of goodwill." Staff BOE at 57. As discussed above, ComEd agrees that a reference to "adding back in of goodwill" is inappropriate. *See* Section VI.A.3 *supra*. It is also unnecessary, since the adoption of an imputed capital structure is within the Commission's power, and the record evidence amply supports a capital structure with a common equity ratio of 46%. *See* Section VI.A.1 *supra*. The Proposed Order does not need to "add back goodwill" into ComEd's capital structure to support the 46% common equity ratio. The section of the Proposed Order approving an imputed capital structure does not state that, in doing so, the Commission is including goodwill in the capital structure. As ComEd stated in its Brief on Exceptions, capital structures include debt and equity. They do not include assets, such as goodwill. In order to approve an imputed capital structure, the Commission need only specify the common equity ratio it finds to be just and reasonable based on the evidence, and it has done so in the Proposed Order.

Staff's last-minute reversal of position on ComEd's cost of common equity is unsupported by the record, and should be rejected. Alternatively, Staff's cost of equity argument shows that its proposed 37.11% common equity capital structure should be rejected in favor of Proposed Order's 46% equity capital structure.

IIEC

IIEC claims that the Proposed Order's use of Staff's proposed 10.19% cost of equity is "unjustified by the record and unlawful" due to the capital structure approved in the Proposed Order. IIEC BOE at 20. IIEC claims that the complete exclusion of goodwill from ComEd's capital structure is not only supported by the evidence, but required by law. *Id.* As discussed above, however, goodwill is not part of a capital structure, and IIEC's position is otherwise untenable. Finally, IIEC argues that, because of the increased equity in ComEd's capital structure, CCC's "investment bank analysis" warrants adoption of "a return level at the lower end of the range found reasonable in the Proposed Order." *Id.*

IIEC's argument continues the inconsistency it has exhibited throughout this case, and should be soundly rejected. For example, IIEC now argues, in essence, that the Proposed Order's higher equity ratio warrants a lower return. But when IIEC itself lowered the amount of equity in its suggested capital structure, from 50% to 37%, it suggested no corresponding increase in ComEd's return on equity. *Compare* Gorman Dir., IIEC Ex. 3.0, 2:19-25, *with* Gorman Reb., IIEC Ex. 7.0, 2:15-20. Further, IIEC's own expert acknowledges that there is no such thing as a "single reasonable capital structure" (Gorman, Tr. at 1999:18-20), yet now IIEC treats the rejection of their newly-adopted capital structure as "unlawful." IIEC BOE at 20. Similar to Staff, IIEC has presented no evidence to support a downward adjustment in the cost of equity to account for a 46% equity structure. It cannot do so now.

Further, IIEC now argues in favor of Mr. Bodmer's investment bank analysis, claiming that the "observed equity requirements of ComEd's investment banks argue for" a lower return. IIEC BOE at 21. IIEC never discussed the investment bank fairness opinions, their usefulness in this proceeding, or the rate of return Mr. Bodmer inferred from them, either in testimony, or in its briefs.

IIEC's argument contains no facts nor any logical argument for the adoption of its 9.90% cost of equity, much less Mr. Bodmer's over the Proposed Order's adoption of a 10.19% rate of return or ComEd's proposed 11.00% rate of return. It should be rejected.

CCC

CCC argues that the Proposed Order's rejection of Mr. Bodmer's "investment bank analysis" is based upon a "fundamental misunderstanding of Mr. Bodmer's testimony," and argues that the Proposed Order's only basis for rejecting Mr. Bodmer's analysis was a flawed assumption that the Morgan Stanley fairness opinion "developed a cost of capital for Exelon." CCC BOE at 19. This is not so.

The Proposed Order lists four of the many reasons for rejecting Mr. Bodmer's analysis: (1) problems inherent with the use of the fairness opinions outweigh their contribution to the entire body of evidence; (2) in order to adopt the position advanced by CCC, the Commission would have to accept that ComEd and Exelon have the same cost of equity; (3) because ComEd is not publicly traded, its cost of equity is not readily observable and must be modeled precisely; and (4) the evidence does not support a conclusion that ComEd and Exelon share identical risk factors that would give rise to equal investor-required rates of return. Proposed Order at 154. ComEd identifies several more reasons in its Brief on Exceptions. See ComEd BOE at 48-49 (discussing, *inter alia*, three incurable faults inherent in any comparison between the

Exelon/PSE&G fairness opinions and ComEd's cost of equity suffers: the valuations serve a different purpose, they apply a different methodology, and they analyze different companies).

As discussed in ComEd's earlier briefs and in the briefs of Staff, Mr. Bodmer's argument and the resulting cost of equity are aberrational and unfounded. Mr. Bodmer stands alone in declaring that the proposals and methodologies of every other witness are unreasonable, and his rate is the result of speculating about the conclusions of three banks in connection with a comparative evaluation of Exelon and PSE&G. ComEd Init. Br. at 179. Staff agrees with ComEd's position, noting that uncertainties in Mr. Bodmer's analysis render his cost of equity estimate inappropriate for rate setting purposes. Staff Init. Br. at 87. Staff recognized that Mr. Bodmer had to make numerous assumptions, with no idea if the investment bankers used the same assumptions, and that it could not determine whether the bankers used the same 7.75% cost of equity Bodmer inferred, or whether such a figure represents the required rate of return on equity appropriate for rate setting. *Id.* Furthermore, no proposed or assumed cost of equity is found in these opinion letters; Mr. Bodmer's analysis tries to reverse-engineer a cost of equity for ComEd from the comparative valuations of Exelon and PSE&G in those letters for purposes of their merger. Hadaway Reb., ComEd Ex. 21.0, 18:406 - 19:424; *see also* ComEd Init. Br. at 179-180, ComEd BOE at 48. Even Mr. Bodmer admits that investment bank reports of the type used by CCC 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. Bodmer, Tr. at 1248:17 - 1249:10; *See* ComEd BOE at 48.

As discussed by Lehman Brothers in its March 13, 2006 letter, returns on equity are typically 300 or more basis points above the discount rates used in investment bank fairness opinions. CCC Init. Br. at 29. Although CCC claimed that this fact "confirms the

reasonableness of Mr. Bodmer's assumptions" (*id.*), in reality it shows only that CCC's proposed cost of equity is at least 300 basis points too low.

Similarly unavailing is CCC's argument in favor of its market-to-book ratio analysis. CCC argues that this analysis was used "as a means to confirm [Mr. Bodmer's] investment bank analysis," and that the market-to-book ratio analysis "confirmed Mr. Bodmer's earlier testimony that utilities are earning more than their estimated cost of capital." CCC BOE at 20. This explanation adds nothing to the arguments rejected by the Proposed Order. As the Proposed Order explains, use of a market-to-book ratio is too inflexible and does not adequately reflect a utility's cost of equity. *See* Proposed Order at 155.

The proposed order rightly rejects Mr. Bodmer's market-to-book ratio analysis. Mr. Bodmer stands alone making the assertion that a utility's market value to book value ratio should equal 1:1, as not only ComEd, but also Staff reject this analysis. Staff agrees with ComEd that CCC's cross-sectional analysis "is useless for establishing ComEd's cost of common equity." *See* Staff Init. Br. at 88. Even CCC's own evidence shows that Mr. Bodmer's theory is aberrational; Bodmer's own analysis shows that on average, the 71 utilities he observed have a market to book ratio of 1.75. CCC Init. Br. at 36. As discussed in ComEd's earlier briefs, Mr. Bodmer's implication – now stated more obviously by CCC – is that every regulatory commission across the country consistently is wrong about the cost of equity. *See* ComEd Rep. Br. at 108; CCC BOE at 20.³⁹

CCC has presented no argument that comes close to justifying Mr. Bodmer's unusual analysis which rejects all traditional means of determining a utility's cost of common equity, and

³⁹ The remainder of CCC's argument is simply a repetition of the arguments from CCC's Initial Brief. *Compare* CCC Init. Br. at 25-33, *with* CCC BOE at 20-24. As such, ComEd incorporates by reference the corresponding arguments from its Reply Brief. *See* ComEd Rep. Br. at 102-09.

CCC's Brief on Exceptions does not show any new reasons why the Commission should adopt his analysis. As such, CCC's proposed exceptions should be rejected in their entirety.

Overall

Staff, IIEC and CCC fail to show that the imputed capital structure adopted in the Proposed Order is arbitrary or unsupported by the record. To the extent that ComEd's proposed capital structure is not adopted, the Proposed Order is at least consistent with the minimum rating-agency benchmarks for an investment-grade utility. Staff's arguments that the approved common equity ratio should be "capped" at levels approved in past rate proceedings is supportable, as is IIEC's claim that ComEd's rate base should "match" its capital structure. As discussed above, the exceptions proposed by Staff, IIEC and CCC should be rejected.

None of Staff, IIEC or CCC has presented any logical nor evidentiary basis for the Commission to lower the Proposed Order's cost of common equity of 10.19%. As discussed above, each of their analyses are fundamentally flawed and should be rejected. ComEd, on the other hand, has provided ample evidence to support its proposed exception increasing the cost of common equity to 11.00%. For this reason, the Commission should reject the arguments of Staff, IIEC, and CCC, adopt ComEd's Exception 15 from its Brief on Exceptions, ComEd BOE, at 45-49, and approve ComEd's 11.00% cost of equity for the reasons discussed therein.

VII. COST OF SERVICE ISSUES

A. Embedded Cost of Service Study

See Section VII.E, *infra*.

B. Minimum Distribution System

BOMA's Exception # 2 (and the corresponding language in Exceptions # 3) and IIEC's Exception # 6 repeat these parties' arguments to require ComEd to provide a cost of service

study (“COSS”) using the Minimum Distribution System approach in ComEd’s next delivery service rate case. BOMA BOE at 10-12; IIEC BOE at 22-23; IIEC Appendix Part 2 at 28-29. ComEd responded to these same arguments in its Initial and Reply Briefs and will not repeat those responses here. ComEd Init. Br. at 184-85; ComEd Rep. Br. at 111. These arguments have been properly rejected and do not warrant any amendment to the Proposed Order. The Proposed Order correctly concludes that: “In the Commission’s view, it would be unreasonable to require ComEd to perform a COSS that incorporates a method the Company does not endorse and that the Commission has repeatedly rejected.” Proposed Order at 165.

E. Allocation of Distribution Costs

The Proposed Order properly rejects CCC’s proposal to depart from the Commission’s long-standing cost allocation methodology in favor of an allocation methodology that gives significant weight to the kWh consumption by class. Proposed Order at 171. The conclusion in the Proposed Order is clear: “[t]he Commission believes the record simply does not justify deviating from this practice.” *Id.* CCC now resorts to the argument that ComEd has not met its burden of proof. CCC BOE at 27-28. CCC is wrong. ComEd presented a *prima facie case* supporting its allocation methodology. Heintz Dir., ComEd Ex. 11.0, 19:410 - 22:487. ComEd also demonstrated that CCC’s peak and average method is arbitrary and results driven. Heintz Reb., ComEd Ex. 25.0, 6:111-24, 7:136-42. ComEd further demonstrated that CCC’s desired result was simply to shift costs away from the residential class and on to non-residential customers without any cost basis for doing so. *Id.* at 6:119-24, 7:138-42. ComEd also showed that its allocation methodology is consistent with the Commission’s practice in previous rate cases. Heintz Reb., ComEd Ex. 25.0, 5:106-7, 7:140-41; *See, e.g., Commonwealth Edison Co.*, ICC Docket No. 01-0423 (Order, Mar. 23, 2003).

It is established law that once a utility establishes a *prima facie* case, the burden shifts to others to show that the utility's proposal is unreasonable. *City of Chicago, et al. v. People of Cook County, et al.* 133 Ill. App. 3d 435 (1st Dist. 1985). CCC has not presented compelling evidence for its proposal and, therefore, the Proposed Order properly rejected it.

VIII. REVENUE ALLOCATION

A. Class Risk Differentials/Equal Rates of Return

CCC's Exception # 10 repeats its arguments to set the residential class index rate of return at 97.5 percent of the system average. CCC BOE at 33-35. ComEd responded to these same arguments in its Initial and Reply Briefs and will not repeat those responses here. ComEd Init. Br. at 187-88; ComEd Rep. Br. at 112-14. The Proposed Order properly rejected CCC's arguments and, as such, amendments to the Proposed Order are not warranted. The Proposed Order correctly concludes that:

There is no empirical evidence supporting CUB/CCSAO's 97.5 percent factor. In fact, it is not entirely clear to the Commission that if a class risk differential were applied to the residential class, such a factor would be less than 100 percent, as CUB/CCSAO allege. As a result, the Commission finds it is appropriate to set the distribution interclass revenue requirement based upon equal class rates of return.

Proposed Order at 175.

IX. RATE DESIGN

A. Customer Class Delineations

1. Residential

ComEd does not agree with the Proposed Order's conclusion rejecting ComEd's proposed consolidation of the residential rate classes. This issue was addressed in ComEd's Initial Brief on Exceptions. ComEd BOE at 50-52. However, the Proposed Order properly rejected the AG's request for separate metering rates for single- and multi-family residences

stating that “the Commission does not find that the record supports AG’s assertion that meter related costs are significantly different for single versus multi-family residential customers.” Proposed Order at 184. The AG is mistaken in its assertion that the Proposed Order “inappropriately shifts the burden to the People to establish that separate meter rates are warranted....” AG BOE at 18. The Proposed Order does no such thing. It simply finds that there is no evidence in the record to justify a separate rate. Proposed Order at 184. It is well established that once a utility presents a *prima facie* case, the burden shifts to others to show that the utility’s proposal is unreasonable. *City of Chicago, et al v. People of Cook County, et al.*, 133 Ill. App. 3d 435 (1st Dist. 1985). The AG has not provided the Commission with any credible basis for granting its request for separate metering rates for single- and multi-family residences. Accordingly, the AG’s claim on this point should be rejected.

2. Non-residential

As explained in ComEd’s Initial Brief on Exceptions, ComEd takes exception to the Proposed Order’s conclusions to maintain an Over 10 MW Class. ComEd BOE at 65-68. 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 Class 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. 25.1; ComEd Ex. 24.2. This ECOSS indisputably shows that distribution facilities costs for the Over 10 MW and the 1-10 MW Class are virtually identical. Crumrine Reb., ComEd Ex. 23.0, 25:527-29; ComEd Ex. 24.2. There is no credible evidence in the record to dispute this result. Thus, while the Proposed Order finds the ECOSS to be reasonable, it sets rates for the Over 10 MW Class that are demonstrably below cost. The resulting subsidy of approximately \$20 million to be given to these large load

non-residential customers, which will be paid for by smaller load non-residential customers, is unfair and unreasonable. Crumrine Sur., ComEd Ex. 40.0 Corr., 6:116 (Table 1).

This problem is aggravated by the Proposed Order's use of the system average increase to set the new over 10 MW customer class rates. Proposed Order at 195. The system average increase includes both residential and non-residential customer classes. In other words, the subsidy is even greater because the Proposed Order caps rates for this class at the system average increase, which is lower than either the average increase for the new 1-10 MW customer class or the average of the non-residential classes. A far better concession to the Over 10 MW customers, if one is deemed necessary, would be to move this class half the way toward cost of service. ComEd BOE at 66.

In their respective exceptions, the IIEC and DOE seek to leverage the Proposed Order's conclusion regarding a capped rate to the Over 10 MW Class in order to create an additional benefit to certain customers within the proposed High Voltage Delivery Class. IIEC BOE at 25; DOE BOE at 3-4. In other words, in order to apply this cap, they are seeking a different split of the proposed High Voltage Delivery Class into different subclasses than the Proposed Order concludes is reasonable. This is problematic for four reasons.

First, their proposal is not clear. IIEC even includes the footnote: "To the extent this was not previously made clear by IIEC and other parties, IIEC wishes to make it clear now." IIEC BOE at 23. As ComEd understands the IIEC and DOE proposal, it is to abandon the conclusion in the Proposed Order which directs ComEd to determine separate charges for the portion of customers' service provided at standard voltage versus high voltage within the High Voltage Delivery Class and instead determine separate charges for customers in the High Voltage Delivery Class based on whether or not the customers' load is Over 10 MW. For customers in

the High Voltage Delivery Class with loads Over 10 MW, IIEC and DOE ask the Commission to establish a distribution facilities charge based on current rates (taking effect June 2006) and increased or decreased in proportion to the overall revenue increase or decrease that results from the Commission's determination in this case – even though ComEd's current rates do not include a High Voltage Delivery Class. In essence, IIEC and DOE suggest that the current net distribution charge for such customers, which includes a high voltage delivery credit, be increased or decreased in proportion to the overall revenue increase or decrease that results from the Commission's determination in this case in order to establish the new charge.

Second, their new proposal creates even more subsidies. Specifically, it is not enough for them that the Over 10 MW Class is being maintained with rates substantially below cost and that the increase for that class is capped at the system average—they also want to extend this cap and attendant subsidy to certain customers in the proposed High Voltage Delivery Class. IIEC BOE at 25; DOE BOE at 3-4. This is unreasonable.

Third, IIEC's and DOE's proposal results in unnecessary complexity for the sole purpose of extending an inappropriate subsidy. As a practical matter, IIEC's and DOE's request would require ComEd to subdivide the High Voltage Delivery Class to differentiate charges for those customers with load over 10 MW from those with load under 10 MW. IIEC and DOE propose this additional complexity for the sole purpose of extending an inappropriate subsidy. This is unnecessary and unreasonable.

Fourth, as ComEd has stated repeatedly in this proceeding, there are very few customers affected by this High Voltage rate design. When considered in conjunction with the fact that the proposed High Voltage Delivery Class would pay an appropriately low rate (less than ½ cent per

kWh) for delivery service, there simply is insufficient basis for splitting of this customer class in the way that IIEC and DOE propose. Crumrine Sur., ComEd Ex. 40.0 Corr., 36:814 - 37:831.

Accordingly, the Proposed Order should be modified to reject the IIEC and DOE proposal and approve ComEd's High Voltage Delivery Class. ComEd BOE at 68-69.

B. Relative Class Annual Utilization of Distribution Facilities

CCC's Exception # 11 repeats its arguments of including an annual usage, in addition to demand, to allocate revenue requirements among customer classes. CCC BOE at 37-43. ComEd responded to these same arguments in its Initial and Reply Briefs and will not repeat those responses here. ComEd Init. Br. at 205-06; ComEd Rep. Br. at 122. The Proposed Order properly rejected these arguments. The Proposed Order correctly concludes, in the Allocation of Distribution Costs section, that: "... the Commission rejects the CUB/CCSAO/City suggestion that rate mitigation concerns fully justify using the P&A allocation factor." Proposed Order at 171.

C. Environmental Cost Rate Redesign

The Proposed Order properly rejects Staff's Global Warming Adjustment stating that "a twenty percent shift of revenue from facilities charges is not warranted." Proposed Order at 203-04. The Proposed Order goes on to state that "[e]lsewhere in this Order and in other docketed proceedings, the Commission is taking affirmative steps to encourage conservation and off-peak usage of electricity." *Id.* at 204. In addition, the Proposed Order finds that Staff's proposed twenty percent adjustment should be rejected "because it would result in distribution facilities charges deviating too far from costs." *Id.* These conclusions are sound and Staff's exceptions do not provide any arguments that warrant a modification of the Proposed Order.

Staff makes two arguments, neither of which has merit. First, Staff takes issue with the Proposed Order's reference to the affirmative steps that the Commission is taking in this and other dockets to encourage conservation. Staff BOE at 61, 62 *citing* Proposed Order at 204. According to Staff, "[t]he facts underpinning the first point are absent from the record." *Id.* Staff, however, ignores the Proposed Order's conclusion regarding the definition of Maximum Kilowatts Delivered ("MKD") which provides that "the Commission believes that there are environmental benefits associated with shifting electric demand from periods of peak to off-peak." Proposed Order at 250-51. Clearly, based upon the Proposed Order, the Commission has taken affirmative steps in this Docket to encourage conservation. Similarly, the Proposed Order approves of ComEd's demand response riders (Riders AC7, VLR7 and CLR7) which the uncontroverted evidentiary record shows constitute "one of the largest portfolios in the nation at the moment for demand response." *See* Proposed Order at 212-14; Crumrine/Alongi, Tr. at 2539:13-14; Alongi/Crumrine, Sup. Rep., ComEd Ex. 46.0, 4:72 - 6:105.

Additionally, Staff ignores that in the Procurement Order, the Commission recognized that implementation of the Governor's Sustainable Energy Plan raises issues of statewide significance and called for the initiation of three rulemakings to address energy efficiency, demand response and renewable energy. *See Commonwealth Edison Co.*, ICC Docket No. 05-0159 (Order, Jan. 24, 2006) at 246. Certainly the Commission is entitled to refer to, and rely on, its efforts in this area.

Second, Staff's statements regarding the environmental impact of its proposal and that "the reduction of facilities charges would be recovered by an equal increase of usage charges..." should be given no weight." Staff BOE at 62. On cross examination, Staff witness Mr. Lazare admitted that he had performed no analysis whatsoever regarding the extent to which his

proposed rate design adjustment would lead to any changes in customer demand or usages or changes in greenhouse gas emissions. Lazare, Tr. at 595:15 - 596:14. Indeed, Staff's Initial Brief admits that its proposed 20% shift "was developed on the basis of judgment" – not study or research. Staff Init. Br. at 94; Lazare Dir., Staff Ex. 6.0 Corr., 43:1058. Accordingly, without any underlying study or analysis, Staff's statements regarding the environmental impact and corresponding impact on revenues of its proposal also should be given no weight. Accordingly, Staff's exceptions on this point should be rejected.

D. Rider ECR

Only three parties and Staff have addressed Rider ECR in their testimony and briefs during this proceeding. Of these four, IIEC, City of Chicago and CCSAO raised no exception to the Proposed Order's core findings that ComEd be permitted (i) rider recovery for its incremental environmental costs related to manufactured gas plants ("MGP") and (ii) recovery in base rates of \$1,466,667 for its non-MGP incremental environmental costs. Indeed, IIEC did not address Rider ECR in its BOE, and the City of Chicago's and CCSAO's Joint BOE made no argument concerning Rider ECR that was not already fully addressed in ComEd's prior testimony and briefs. Thus, ComEd provides no further response to either IIEC or City of Chicago/CCSAO.

Although Staff also did not object to rider recovery for MGP incremental environmental costs or base rate recovery of non-MGP incremental environmental costs,⁴⁰ Staff took exception to certain technical aspects of the Proposed Order's findings. ComEd objects to Staff's exceptions in three respects:

⁴⁰ Although Staff stated that it "continues to take issue with the recovery of any of the non-MGP costs through the delivery services revenue requirement," Staff nevertheless provided for base rate recovery (though, as discussed below, in an inadequate amount). *See* Staff BOE at 45-47.

- Although ComEd would not object to Staff's proposal to add \$338,000 to the revenue requirement, ComEd does not believe that this amount was ever removed from the revenue requirement in the first instance and thus need not be added back in. *See Hill Reb., ComEd Ex. 19.0, at 59:1305 - 60:1321.*
- Despite the fact that Staff admits that ComEd removed \$3.3 million of actual non-MGP incremental environmental costs from the 2004 test year expenses, Staff disingenuously attempts to argue that ComEd's proposed test year amount of \$1,466,667, which was calculated using a Commission-approved methodology, should be denied, and only \$155,433 should be added back into base rates. This is wrong and is discussed further below.
- Staff argues that the Proposed Order should be modified to direct that specific language proposed in a Staff exhibit be used while ignoring ComEd's rebuttal and surrebuttal testimony, which demonstrate the need for additional refinement to the tariff language proposed by Staff. ComEd's objections to Staff's tariff language are discussed more fully below.

Test Year Expense

There is no dispute that ComEd proposed to remove \$3.3 million in actual non-MGP incremental environmental costs from the 2004 test year expenses. Hill Sur., ComEd Ex. 36.0, 4:81-89; Staff BOE at 45. Indeed, one of Staff's exceptions seeks to ensure that this \$3.3 million has in fact been removed from the revenue requirement. Staff BOE at 45. As explained in its surrebuttal testimony, ComEd proposed using the methodology approved by the Commission in ICC Docket 01-0423 to calculate the amount of non-MGP incremental environmental expenses to be added back into the test year if rider recovery were denied. This would result in adding back \$1,466,667 into base rates – the amount approved in the Proposed Order – or less than half the amount ComEd removed from the test year. Hill Sur., ComEd Ex. 36.0, 47:1062 - 48:1080. Staff did not object to this methodology and its application during the hearing or in its Initial or Reply Briefs, but now attempts to claim that only \$155,433 in test year expenses be added in, a number unsupported by the record. Staff's attempt at the eleventh hour to depart from a Commission-approved methodology should be rejected. To the extent Staff wants to use actual

2004 costs for the test year amount rather than the amount calculated using the Commission-approved methodology, \$3.3 million should be added back to base rates rather than \$1.4 million.

Tariff Language

Staff also proposes to revise the Proposed Order's conclusion to state, "Rider ECR tariff language that is filed pursuant to this order should be consistent with the foregoing conclusions and as set forth in Staff Exhibit 13.0, Attachment C." Staff BOE at 63. This request to reference the Staff exhibit should be denied. As ComEd explained in its rebuttal and surrebuttal testimony, Staff's proposed tariff language suffers from several defects. *See, e.g.,* Crumrine Sur., ComEd Ex. 40.0, 70:1583-1600, 71:1611-19. In particular, ComEd explained in its rebuttal testimony "that for insurance and other recoveries to flow through the rider they must (1) be related to incremental expenses incurred on or after the effective date of the rider (January 2, 2007), and (2) received on or after January 2, 2007." Crumrine Reb., ComEd Ex. 23.0, 69:1481-84. Although ComEd and Staff both agreed that the effective date of Rider ECR is January 2, 2007 (*Id.*, Ebrey Reb., Staff Ex. 13.0, 36:749-51),⁴¹ Staff's proposed reference would remove this language, create unnecessary ambiguity, and ignore the principle of symmetry that is inherent in ratemaking and which translates into the parallel treatment of costs and revenues in the prospective application of rates. Implementation of Staff's language would also raise questions regarding the unlawful retroactive application of rates. As ComEd noted in its rebuttal testimony, the prohibition on retroactive ratemaking in particular bars any consideration of insurance recoveries received prior to the effective date of Rider ECR. Crumrine Reb., ComEd Ex. 23.0, 69:1486-91. Tariffs that conform to the final order of the Commission should simply

⁴¹ ComEd agrees that references in its BOE to a January 1, 2007 effective date for Rider ECR should be changed to reflect the January 2, 2007 date.

be prepared by ComEd and reviewed by Staff following the standard procedures for implementing Commission rate orders. If the Commission does decide to reference specific language it should reference the proposed tariff language attached to ComEd witness Mr. Crumrine's surrebuttal testimony. *See* ComEd Ex. 40.2.

H. Elimination of Rider 25

The Proposed Order correctly concludes that Rider 25 non-residential space heat customers historically have enjoyed a savings in both the generation and delivery components of their demand charges. The Proposed Order further correctly observes that:

[w]hile the discount on generation demand charge was probably justified, the discount on the delivery component was not. Nevertheless, it made little difference until 1997 when restructuring of the Illinois electric markets began.

Proposed Order at 217. Based on this correct understanding of Rider 25, the Proposed Order concludes "...that purely on the basis of cost; a discount in the distribution facilities charge to nonresidential space heat customers is not justified." *Id.* This core ruling is fully supported in the record and cannot credibly be disputed.

BOMA avoids a direct discussion of the Proposed Order's conclusion. Instead, BOMA resorts to the exact same arguments already rejected in the Proposed Order. BOMA BOE at 4-8. First, BOMA asserts that ComEd did not provide a separate cost analysis for non-residential space heating classes. *Id.* at 5. This issue is a red herring and was fully briefed. *See* ComEd Rep. Br. at 132-33. Suffice to say, BOMA presented no evidence whatsoever to indicate that the costs of providing distribution service are in any way different for non-residential space heat customers. BOMA cannot dispute the key fact in the record that non-residential space heating customers commonly have demands in the non-summer months that are at a similar level to their demands in the summer months. Crumrine Sur., ComEd Ex. 40.0 Corr., 39:879-81. Thus,

whether or not these customers use electric space heat does not affect their distribution costs. *Id.* Indeed, BOMA did not present any cost study, or even a theory, as to why it allegedly costs less to serve space heat customers. It did not because it could not. BOMA's argument is unsupported.

Second, BOMA is mistaken in its statement that a subsidy does not exist. BOMA BOE at 6. BOMA is requesting free delivery service for two-thirds of the year for these customers. It cannot be disputed that ComEd incurs costs to provide delivery service to BOMA customers throughout the year. *Crumrine Sur., ComEd Ex. 40.0 Corr., 40:906-12.* Plainly, a subsidy would exist if BOMA's proposal were adopted.

Finally, BOMA's policy reasons for maintaining the subsidy were properly rejected. Specifically, BOMA implies that these non-residential customers are somehow owed this discount because of their building configurations. *Id.* at 6-7; BOMA Init. Br. at 14. The record demonstrates, however, that nothing precludes BOMA's members from exploiting their load profile to secure a market-based price from firms competing to supply their energy. *See Crumrine Reb., ComEd Ex. 23.0, 32:693 - 33:710.* Additionally, BOMA cites no authority, and there is none, for its suggestion that Rider 25 was intended to be in the nature of a permanent subsidy.

BOMA's Brief on Exceptions simply repeats the same arguments that were properly rejected. As such, its arguments do not warrant any amendment to the Proposed Order.

J. Rider NS

The Proposed Order correctly concludes that ComEd can recover its costs associated with providing non-standard services and facilities through Rider NS, which replaces current Rider 6. Proposed Order at 224-26. In doing so, the Proposed Order correctly finds that ComEd may

recover its costs associated with reserving distribution system capacity under this rider. Proposed Order at 225. Importantly, Staff does not object to proposed Rider NS, as it was modified to satisfy Staff concerns. *See* Hanson Reb., Staff Ex. 18.0, 2:20-27. It also is notable that reserved distribution system capacity is just one example of a variety of possible non-standard services and facilities and “such enhanced service requests involving reserved feeder capacity are relatively few in number....” Alongi/McInerney Reb., ComEd Ex. 24.0, 20:516-18.

In its Brief on Exceptions, ComEd proposed that the Commission adopt the mechanism for calculating charges consistent with Rider DE, a rider that the Proposed Order concludes is reasonable and should be approved. Proposed Order at 218. ComEd developed this mechanism in cooperation with the Commission Staff in Docket 03-0767 for use in determining the cost of furnishing a distribution system extension. *See* ComEd Ex. 10.14, p. 1. Such a mechanism is a reasonable approach to determine charges for the limited number of requests involving reserved distribution system capacity and for non-standard services and facilities in general because, as ComEd testified:

[s]uch enhanced service requests involving reserved feeder capacity are relatively few in number and very project-specific based on the feeders in the specific geographic area in which the customer is located. Consequently, the determination of costs and corresponding charges for such requests is appropriately computed to reflect the individual circumstances of each customer’s situation and the specific feeders involved. Indeed, the determination of costs and corresponding charges for non-standard services and facilities in general must be computed to reflect the individual request and circumstances of each customer’s situation.

Alongi/McInerney Reb., ComEd Ex. 24.0, 20:516-23. Moreover, upon cross-examination regarding the reserved distribution system capacity charge, Mr. Alongi emphasized that calculating such a charge is unique to the facts of each situation. Specifically, it “depends on the particular circumstances, how much load is being automatically transferred to what feeders, how long the feeders are, are they underground, are they overhead.” Tr. at 1381:18 -

1382:1. This approach is just and reasonable for determining charges for such unique circumstances and should be adopted in the Commission's Final Order.

Furthermore, revenues in the test year received from nonstandard services and facilities charges have been factored into Other Revenues in the determination of jurisdictional revenue requirements. *See* ComEd Ex. 5.2; WPC-23, 4:6, 4:15-17, 1:3, and 1:5; ComEd Ex. 5.1, Sch. C-1 Errata, 1:2. As discussed in ComEd's Brief on Exceptions, removing essential language from Rider NS could result in ComEd unable to make up any resulting revenue shortfall. ComEd BOE at 74.

The CTA states that it agrees with the Proposed Order's conclusions on Rider NS, but nonetheless asserts that reservation of distribution capacity charges should not apply to the CTA. CTA BOE at 7-8. Specifically, the CTA asserts that reservation of capacity is not explicitly stated in its contract with ComEd and, thus, it should not pay this charge. *Id.* This argument is unreasonable. The Proposed Order made no provision to exempt the railroad customers from these charges. The CTA provides no reason to support its position, other than its convoluted argument that the contract terms should control.

There are two flaws with the CTA's logic. First, the contracts do not control. As discussed in Section IX.S *infra* of this brief, rate design is properly addressed in a rate case setting, not a contract negotiation. The CTA essentially concedes this point by seeking the Commission's protection on numerous rate design issues, including this one. Again, the CTA wants it both ways: it argues the sanctity of their existing contract while at the same time seeking to shield certain outdated and favorable provisions of the contract from negotiation.

Second, the CTA is attempting to rewrite history. The 1998 Amendment to its contract specifically incorporates Rider 6. *See* Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 24:561 -

25:570. Reservation of capacity is not a new service. It is a nonstandard service that ComEd currently provides under Rider 6. Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 23:527-30. Thus, the CTA's assertion that reservation of capacity is not a part of its current arrangement is not true.

In addition, the CTA's argument that "...Rider NS does not contain a rate as required by law for imposing either a reserved capacity distribution charge or construction charges ..." is meritless. CTA BOE at 7. On the contrary, a rate does not need a specific charge as the CTA suggests. Indeed, there are numerous tariffs in place that do not contain a specific rate due to the nature of the charge. Examples of this type of tariff include Rider CPP as recently approved in the Commission's Order in ICC Docket 05-0159 and the current Rider 28, which has been upheld by the courts. *See Commonwealth Edison Co.*, ICC Docket No. 05-0159 (Order, Jan. 24, 2006); *City of Chicago v. ICC*, 264 Ill. App. 3d 403 (1st Dist. 1993). Other tariffs that incorporate formula rates (*i.e.*, charges that are not stated amounts in dollars and cents) include: Rate CTC, Rate RHEP, Rate HEP, Rate IPP, Rider PPO-MI, Rider 2, Rider ISS, Rider MEP, Rider TS, and Rider CTC-MY.

For all the foregoing reasons, ComEd urges the Commission to adopt the mechanism for calculating charges consistent with Rider DE which ComEd proposed in its Brief on Exceptions for Rider NS in order to address the concerns described in the Proposed Order.

d) Rider NS and Elimination of Rider 8

Regarding Rider 8, Staff's brief contains three exceptions to the Proposed Order. Following is a discussion of each exception.

Staff's First Exception

Staff took exception to ComEd's position as described in the Proposed Order claiming that "the description of ComEd's alternative proposal is incorrect." *Id.* ComEd appreciates Staff's effort to correct the description of ComEd's position in the Proposed Order and agrees that the Proposed Order could be made more clear by the addition that Staff proposes on page 67 of its Brief on Exceptions, but only if some modifications are made to Staff's addition and the two preceding paragraphs of the Proposed Order. ComEd's recommended language to fully and accurately clarify ComEd's position is shown below in the "Recommended Language" subsection of this discussion.

Although Staff's intentions to clarify ComEd's position appear to be made in good faith, in describing the "evolution of ComEd's proposals," Staff inadvertently misquotes ComEd's testimony and thus confuses, rather than clarifies, the "evolution" of ComEd's position. Specifically, Staff inadvertently omitted a critical portion of the quote from Mr. Alongi and McInerney's Rebuttal Testimony – the complete quotation is shown below, with the text that Staff inadvertently omitted highlighted :

ComEd does not believe a one-time payment for loss of future Rider 8 credits is necessary to discontinue Rider 8 because ComEd's proposal includes the replacement of the Rider 8 credit with an appropriate Rider NS standard transformer allowance. Nevertheless, in order to discontinue Rider 8, ComEd is agreeable to provide a one-time transition payment to each Rider 8 customer in an amount that is equivalent to one year of Rider 8 credits based on the customer's average Rider 8 credits received over the most recent three-year period.

Staff BOE at 65 *citing* Alongi/McInerney Reb., ComEd Ex. 24.0, 26:664-70.

Furthermore, after attempting to clarify the "evolution" of ComEd's position, Staff then further confuses that "evolution" by inaccurately describing ComEd's "alternative proposal" in the first paragraph of its "Recommended Language" for both Staff Exception # 2 (Staff BOE at 70) and Staff Exception # 3 (Staff BOE at 73-74).

To be clear, ComEd made the following three distinct proposals, listed in the order of ComEd's preference, which is the same as the order in which they were presented:

1. Discontinue Rider 8 and replace it with an appropriate Rider NS standard allowance. (**“ComEd's Original Proposal”**)
2. Discontinue Rider 8 and replace it with an appropriate Rider NS standard allowance; and pay each Rider 8 customer a one-time transition payment in an amount that is equivalent to one year of Rider 8 credits based on the customer's average Rider 8 credits received over the most recent three-year period. (**“ComEd's 1st Alternative Proposal”**)
3. Limit the availability of Rider 8 to only those customers served under the rider that own all of the transformers at their premises as of the date the Commission enters into its Order in this proceeding with continued availability of Rider 8 to such customers conditioned on the customer continuing to own all transformers at its premises; and direct ComEd to include an appropriate rider in its compliance filing that provides for such credits at the rate currently effective in Rider 8 and also adjust ComEd's rate design spreadsheet to provide an offset for such continued credits in order for ComEd to recover its revenue requirement. (**“ComEd's 2nd Alternative Proposal”**)

Thus, to fully and accurately clarify ComEd's position and the conclusion in the Proposed Order, ComEd recommends the following changes shown in legislative style:

Recommended Language

The description of ComEd's Position on page 222 of the Proposed Order should be modified as follows:

ComEd

ComEd proposed that current Rider 8 should be eliminated. As described by ComEd, this seldom-used rider provides a small credit (20.533¢/kW) to approximately 225 current customers (less than 35 have installed their own transformer and utilized Rider 8 over the past 10 years) who have installed their own transformers. ComEd proposed to provide a standard transformer allowance under Rider NS to replace the Rider 8 credit, which ComEd indicated would likely result in lower Rider NS monthly rental charges for many of the current Rider 8 customers. (**“ComEd's Original Proposal”**).

In response to Staff's recommendation, ComEd stated that in order to discontinue Rider 8, it is agreeable to provide a one-time transition

payment to each Rider 8 customer in an amount that is equivalent to one year of Rider 8 credits, based on the customer's average Rider 8 credits received over the most recent three year period. **("ComEd's 1st Alternative Proposal")**.

In the event that ComEd's Original Proposal and ComEd's 1st Alternative Proposal are not approved by the Commission, ComEd requests that the Commission approve limiting the availability of Rider 8 to only those customers served under the rider that own all of the transformers at their premises as of the date the Commission enters its Order in this proceeding and that continued availability of Rider 8 to such customers be conditioned on the customer continuing to own all transformers at its premises. ComEd will include an appropriate rider in its compliance filing that provides for such credits at the rate currently effective in Rider 8 and also adjust ComEd's rate design spreadsheet to provide an offset for such continued credits in order for ComEd to recover its revenue requirement. ("ComEd's 2nd Alternative Proposal").

Additionally, ComEd offers the following suggestions to further clarify the last two paragraphs of the Commission Analysis and Conclusion on pages 226 and 227 of the Proposed

Order:

ComEd proposes to eliminate Rider 8 and provide a standard transformer allowance under Rider NS to replace the Rider 8 credit. Staff expressed concern that this proposal would raise the cost to some Rider 8 customers and opposes the elimination of Rider 8. In response, ComEd suggests that in conjunction with eliminating Rider 8 it would provide a one-time transition payment to each Rider 8 customer in an amount equivalent to one year of Rider 8 credits. This would be based on the customer's average Rider 8 credits received over the most recent three-year period. Staff argues that any one-time credit should be negotiated between ComEd and each Rider 8 customer. In the event the one-time credit is not negotiated, Staff recommends that Rider 8 be retained. ComEd objects to negotiating a one-time credit with customers and instead would prefer, if the Commission decides that the rider should be retained, to allow limit the availability of the rider to existing customers that own all of the transformers at their premises as of the date the Commission enters its Order in this proceeding and that continued availability of Rider 8 to such customers be conditioned on the customer continuing to own all transformers at its premises. to be grandfathered under Rider 8 and ~~If the rider is retained, ComEd also requests that the Commission~~ allow ComEd to make a corresponding adjustment to its rate design to provide an offset for such continued credits to allow ComEd to recover its revenue requirement.

Having reviewed the record as well as the arguments on this issue, the Commission concludes that it would be best to allow ComEd to eliminate Rider 8. As discussed elsewhere in this order, determining how many rate classes should exist involves balancing competing interests. Staff's concern that certain customers may pay more as a result of transitioning from Rider 8 to Rider NS, while legitimate, is an inevitable result of administrative rate making. In the Commission's view, it is undesirable to create a new "grandfathered" customer class on Rider 8. The Commission believes that ComEd's proposal to provide a one-time transition payment based on the customer's average Rider 8 credits over the most recent three-year period is a reasonable compromise. ComEd's 1st Alternative Proposal is therefore adopted.

Staff's Second Exception

Contrary to Staff's second exception, the record contains ample evidence to support discontinuation of Rider 8. Alongi/McInerney Reb., ComEd Ex. 24.0, 25:636 - 26:657.

ComEd testified that its "Original Proposal" included the replacement of the Rider 8 credit with an appropriate Rider NS standard transformer allowance. The crux of Staff's argument is that certain "customers that purchased and installed their own transformers did so, in part, based on the anticipation of receiving a monthly credit (Rider 8) for that effort." See Linkenback Dir., Staff Ex. 8.0, 13:294-96. Yet, not one other party to this proceeding (which includes several customers and customer groups) corroborated Staff's contention. Moreover, ComEd testimony rebutted that position:

Considering the relatively small credit available under Rider 8, which is currently 20.533¢/kW, customers that elected to install their own transformers and receive credits under Rider 8 in lieu of accepting ComEd's standard transformer installation allowance likely did so for operational or other reasons. The fact that there are so few customers served under Rider 8, and less than 35 customers have opted to install their own transformers in the past ten years, strongly suggests that the Rider 8 credit is not a deciding factor. Furthermore, ComEd's proposal to provide a standard transformer allowance under Rider NS to replace the Rider 8 credit, would likely result in lower Rider NS monthly rental charges for those Rider 8 customers that own some of the transformers at their premises and rent others from ComEd. As ComEd noted in its response to a Staff data request (Staff RDL 5.03), there are 83 Rider 8 customers that own some of the transformers at their premises and rent others from ComEd. For many, if not all of those

customers, the reduction in Rider NS rental charges would exceed the Rider 8 credit that they currently receive resulting in savings, all other things being equal. Under ComEd's proposal, billing would be simplified and all customers would receive an appropriate standard transformer allowance under Rider NS based on their expected billing demand.

Alongi/McInerney Reb., ComEd Ex. 24.0, 25:641- 26:657.

As the Proposed Order properly concludes, "Staff's concern that certain customers may pay more as a result of transitioning from Rider 8 to Rider NS, while legitimate, is an inevitable result of administrative rate making." Proposed Order at 227.

With respect to Staff's inaccurate description of ComEd's "alternative proposal" in its "Recommended Language" for Staff's Exception (2) (Staff BOE at 70), Staff suggests changes to the description of ComEd's position in the conclusion section of the Proposed Order that would incorporate Staff's proposal (*i.e.*, to allow an existing Rider 8 customer and ComEd to negotiate a mutually agreeable transition payment to terminate such eligibility) as if it were an alternative proposal offered by ComEd. This suggested change inaccurately states ComEd's position because it fundamentally alters ComEd's 1st Alternative Proposal and thus, Staff's suggested change should be rejected.

Staff's Third Exception

Staff took exception to the clarity of the final paragraph of the Commission Analysis and Conclusion section because it expressly accepted ComEd's alternative proposal, which Staff reiterated was not clearly described in the Proposed Order's summary of ComEd's position. Staff BOE at 73-74. Then, under the guise of clarifying ComEd's alternative proposal, Staff recommended edits "if the Commission adopts ComEd's alternative proposal." Staff BOE at 64. However, instead of proposing edits to clarify which of ComEd's three proposals was being

approved, Staff then proposed changes that inaccurately stated ComEd's position for both ComEd's 1st Alternative Proposal and ComEd's 2nd Alternative Proposal.

Staff's proposed edits shown in its "Recommended Language" for Staff Exception # 3 (Staff BOE at 73) would incorporate Staff's proposal (*i.e.*, to allow an existing Rider 8 customer and ComEd to negotiate a mutually agreeable transition payment to terminate such eligibility) as if it were an alternative proposal offered by ComEd. This suggested change inaccurately states ComEd's position because it fundamentally alters ComEd's 1st Alternative Proposal.

Furthermore, Staff's proposed edits shown in its "Recommended Language" for Staff Exception # 3 (Staff BOE at 74) would continue Rider 8 for all existing Rider 8 customers and close it only to new customers. ComEd's 2nd Alternative Proposal would limit the availability of Rider 8 to only those customers served under the rider that own all of the transformers at their premises as of the date the Commission enters its Order in this proceeding with continued availability of Rider 8 to such customers conditioned on the customer continuing to own all transformers at its premises. The customers that currently receive a Rider 8 credit but do not own all of the transformers at their premises would not continue to receive a Rider 8 credit but would receive a credit for the customer's standard transformation allowance under Rider NS. Thus, Staff's suggested change inaccurately states ComEd's 2nd Alternative Proposal.

Accordingly, Staff's proposed changes to the Proposed Order related to its Exception # 3, which inaccurately states ComEd's 1st Alternative Proposal and ComEd's 2nd Alternative Proposal, should be rejected.

K. Rider POG

ComEd has proposed to replace Rider 4 - Parallel Operation of Customer's Generating Facilities with Rider POG - Parallel Operation of Retail Customer Generating Facilities. Rider

POG differs from Rider 4 in that it utilizes hourly spot prices from PJM to determine ComEd's avoided energy costs payable to Qualified Facilities ("QFs"). No QF has objected to this proposal. Additionally, this proposal is consistent with Illinois' move to market-based wholesale procurement of electricity. Per the Commission's Order in ComEd's Procurement Case, QFs will displace energy that ComEd otherwise would purchase at spot market prices. *Crumrine Sur., ComEd Ex. 40.0 Corr., 76:1724-28.* Thus, the Commission already has determined that ComEd's avoided energy costs will be spot market prices. *Id.* at 77:1733-34. In adopting Rider POG as just and reasonable, the Proposed Order correctly finds that "the electric service market in Illinois has, and is, changed, and it is necessary to adapt with the changing market." Proposed Order at 232.

Nonetheless, Staff continues to object to transitioning QFs into a market-based structure. Staff BOE at 74-75. Staff does not raise any new arguments in its Brief on Exceptions. Instead, it still maintains, incorrectly, that market prices somehow would send inadequate price signals and that only an annual fixed rate, predetermined in advance, would provide QFs with sufficient information to participate in the market. *Id.* at 75. This argument is unsupported and should be rejected.

Contrary to Staff's claim, it would be impossible for ComEd to pre-set a non-arbitrary avoided cost rate. *Crumrine Sur., ComEd Ex. 40.0 Corr., 76:1712 - 78:1753.* Any pre-set rate could be nothing more than a guess because spot market prices are not known in advance. As such, the use of a fixed rate would not add certainty to the market, as Staff suggests, but rather would send wrong price signals to QFs. *Id.* at 78:1754-74. Staff's solution would create the very problem that Staff is seeking to avoid.

Moreover, spot market prices not only are accurate and workable, but they will send the correct price signals to QFs. In a market environment, the price signal should encourage generation when supply is low and discourage it when supply is high. *Id.* at 78:1756-59. Spot market prices do so because they go up when supply is low and down when supply is high. *Id.* at 78:1756-58, 1762-64. Accordingly, spot market prices send the right signals and create a clear incentive for QFs to manage their planned outage schedule and to produce at times when there is a scarcity of supply. *Id.*

The Commission already has determined that the appropriate price for ComEd to offer to retail customers that self-generate is an hourly price based on the PJM spot market. *Id.* at 78:1764-67. There is no reason why QFs should not receive the same price signals as self-generating customers. Finally, the inevitable difference between a fixed rate and the actual hourly avoided costs leads to an over- or under-collection of ComEd's costs that Staff's proposal never addresses. The Commission should adopt the Proposed Order's proper approval of Rider POG.

L. Rider GCB7

The City/CCSAO's proposed exception to Rider GCB7 reveals the unreasonable nature of these parties' position on this rider. Disregarding entirely that in the post-transition era ComEd will be a wires-only company, the City/CCSAO demand that Rider GCB7, as contemplated in the Proposed Order, be further modified to require ComEd to provide eligible governmental customers a "discount ... on the supply as well as the delivery service portions of their bills." City/CCSAO BOE at 4. The Commission should reject this overreaching position.

As to City/CCSAO's requested supply-related discount, the Proposed Order correctly recognizes that, "all customers taking bundled service, including governmental customers, will

pay supply charges that result from the action process authorized in Docket No. 05-0159.” Proposed Order at 234 (emphasis provided). Governmental customers will have the opportunity to manage their supply capacity costs under the new BES rates. *Crumrine Reb.*, ComEd Ex. 23.0, 56:1202 - 57:1209. The City/CCSAO’s proposal for a supply-related discount through ComEd’s delivery service tariffs, if adopted, would arbitrarily provide a benefit for certain governmental customers that bears no relationship to costs at the expense of other less-favored customers.

While rejecting a supply-related discount, the Proposed Order would require ComEd to “allow eligible governmental customers to consolidate their demand for purposes of calculating the applicable Distribution Facilities Charge” – apparently to ensure that such customers continued to receive a discount on delivery services under Rider GCB7. Proposed Order at 234. The critical issue for the Commission at this juncture is the apparent misunderstanding reflected in the Proposed Order of the source of the cost-savings governmental customers were able to obtain under the existing Rider GCB. As shown in the record, and discussed in ComEd’s Brief on Exceptions, Rider GCB never provided discounted delivery service rates to eligible governmental customers, and such a discount would make no sense in either the pre- or post-transition era. ComEd BOE at 77-79. Rather, under Rider GCB, eligible governmental customers paid for the costs that 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.

Accordingly, the Commission should reject the City/CCSAO’s proposed exceptions and approve Rider GCB7 as proposed by ComEd.

S. Rate BES-RR

1. Introduction

The CTA and METRA, as demonstrated in their respective Briefs on Exceptions, offer the Commission no viable or even consistent basis upon which to set rates for railroad customers in the post-transition era. On the one hand, the CTA and METRA insist that the Commission must require ComEd to renegotiate their respective service contracts for incorporation into ComEd's tariffs—despite the fact that the Commission's Integrated Distribution Company ("IDC") rules expressly prohibit an IDC, such as ComEd, from using such an approach to the ratemaking process. 83 Ill. Admin. Code § 452.230(b). Indeed, the sheer number of exceptions and proposed contract changes included in these parties' briefs demonstrates that their current contracts cannot serve as the basis for a railroad customer rate design. On the other hand, the CTA and METRA insist that the Commission limit the scope of any renegotiation of their service contracts to preserve outdated elements of these agreements, which are not cost-based and have no place in ComEd's post-transition rates. Critically, the CTA's and METRA's proposed exceptions rely almost exclusively upon policy arguments without reference to the evidentiary record. Based upon the record, ComEd's railroad customer proposals are the only viable ratemaking options. Staff supported ComEd's proposals, which are cost-based and supported by an extensive record. The Commission should reject the CTA's and METRA's unsupported exceptions and approve ComEd's railroad customer rates.

2. CTA and METRA Ignore the Commission's IDC Rules and the Act

As demonstrated in ComEd's Brief on Exceptions, the Proposed Order's request that ComEd "negotiate a new contract for the delivery of power and energy ... and present it to the Commission for approval" is inconsistent with the Commission's IDC Rules and the underlying

provisions of the Act. ComEd BOE at 53-56; 83 Ill. Admin. Code § 452.230(b); 220 ILCS 5/16-102.

In its Brief on Exceptions, METRA asserts that Section 16-129 of the Act provides authority for such an approach. METRA is wrong. The plain language of Section 16-129 indicates that its purpose was to allow contracts already in effect to continue in operation after the enactment of the Electric Service Customer Choice and Rate Relief Law of 1997. 220 ILCS 5/16-129. Section 16-129 has no application to the CTA's and METRA's position in this case. Indeed, the CTA and METRA seek much more than the continuation of their contracts in this proceeding. Each is requesting that its contract with ComEd be modified to provide for treatment otherwise unavailable under ComEd's proposed rates including , among other things, the ability to procure supply under the CPP-A provisions of Rider CPP. *See* METRA BOE at 3; CTA BOE at 3, 8; CTA Proposed Sub. Lang. at 5. Section 16-129 was not established for any such purposes. Accordingly, the Proposed Order should be modified consistent with the proposed language provided in ComEd's Brief on Exceptions.

3. METRA And CTA Offer No Viable Alternative to ComEd's Proposal

Neither the CTA nor METRA presents any viable alternative to ComEd's proposed rates in their respective briefs. Indeed, they offer diametrically opposed proposals on the two most important issues for the railroad customers. Specifically, the CTA asserts that Rate BES-RR should be maintained, while METRA asserts the Commission should "...decline[] to approve a Railroad Class tariff at this time." CTA BOE at 2-4; METRA BOE at 7. Similarly, the CTA asserts that the Railroad class must be maintained, but METRA asserts that the Commission should eliminate it. *Id.* The CTA and METRA are able to reach opposing conclusions, despite being similarly situated, because their proposals have no basis in the evidentiary record. Their

collective briefs on exceptions do not contain one record cite to a viable proposal. As such, they have provided no basis in the evidentiary record for a Commission ruling in their favor.

The only reasonable proposals in the record are those made by ComEd. Staff did not object to any of ComEd's railroad proposals. Hanson Reb., Staff Ex. 7.0, 11:242 - 12:262. The CTA's and METRA's proposed approaches are unsupported and should be rejected as set forth in ComEd's Initial Brief on Exceptions.

4. The Number of CTA and METRA Exceptions Demonstrate That The Current Contracts Are Not Workable in the Post-2006 Period

The Proposed Order correctly acknowledged that the CTA and METRA contract are not workable in the post-2006 period. Proposed Order at 188 ("Due 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"). ComEd agrees. These contracts are inconsistent with the Commission's Order in the Procurement Case which allows ComEd to pass through the cost of full requirements electric supply, neither more nor less. These contracts are also inconsistent with the Post-2006 Workshop Rate Working Group consensus recommendation to implement unbundled pricing, which the Commission endorses. The numerous exceptions provided by the CTA and METRA confirm that the contracts cannot work in this new environment.

For example, perhaps realizing that their respective contracts contain no provision for providing bundled service in the post-transition period, the CTA and METRA now attempt to inject the CPP-A provisions of Rider CPP into their contracts. METRA BOE at 3; CTA BOE at 3. The CTA goes on to include an extensive list of items that the Commission should include in unspecified "Railroad Class tariffs." CTA BOE at 3. The CTA's list seeks to cobble together items from its existing contract and other tariffs. This approach is unacceptable because it has no

basis in the record. This approach also ignores the interplay between ComEd's various proposed rates and riders. It also ignores the fact that ComEd's proposed Rate BES-RR properly addresses such interplay between ComEd's various proposed rates and riders. ComEd Ex. 10.1.

In addition, nowhere in these parties' respective briefs is there any discussion or even a mention of costs. ComEd appreciates the CTA and METRA role as providers of public transportation, but their self-interested approach to ratemaking is unreasonable and unfair to other customers throughout ComEd's service territory who must pick up the tab for the subsidies that the CTA and METRA seek.

5. The CTA and METRA Arguments are Disingenuous

The CTA's and METRA's cornerstone argument is that their contracts should control and ComEd's rates must conform to these agreements. *See, e.g.*, CTA Init. Br. at 28; CTA Rep. Br. at 5-8, 21-22; METRA Rep. Br. at 4; CTA BOE at 1-2, 4-6; METRA BOE at 3-4. In their respective Briefs on Exceptions, however, these parties make a complete 180-degree turn and argue that the Commission should set the parameters for any renegotiation of such contracts or remove the major rate design issues from the table. CTA BOE at 4; METRA BOE at 3-4. Thus, while ostensibly arguing the sanctity of their contracts, they actually are seeking to shield the outdated provisions of their respective contracts that have no place in the post-transition era. By seeking the Commission's protection on rate design issues, they essentially concede that the Commission should decide rate design—not the parties.⁴² In other words, they have conceded that ComEd's position in this case from the beginning, which Staff agrees with, is correct.

⁴² This is especially true with respect to METRA's realization that the contracts can be terminated by either party. METRA BOE at 7.

Z. Supply Administration Charge

The Proposed Order correctly concludes that the costs ComEd will incur to administer the supply function for bundled electric service customers, including associated administration and general costs, should be recovered through a fixed Supply Administration Charge (“SAC”). Proposed Order at 254-25. In its exceptions, Staff raises the same arguments that were considered and rejected. Staff BOE at 77-79.

Staff continues to claim incorrectly that these administration costs are not fixed. Staff never provided any basis for this claim. Indeed, the only semblance of support is Staff’s speculation that if ComEd provides drastically less bundled supply, it would result in lower costs. *Id.* Staff presented no evidence whatsoever to support this assumption. In contrast, the record demonstrates that the costs reflected in the SAC are relatively fixed and do not vary with the volume sold or the number of customers served. *See, e.g.,* Crumrine Reb., ComEd Ex. 23.0, 49:1044-46. Staff’s argument is unsupported and was properly rejected.

AA. Real Time Pricing Meters and Energy Smart Pricing Plan

Staff asserts that “...before the Commission determines that the CUB proposal is in the public interest and should be adopted, the Commission should consider whether the proposal meets the requirements of 83 Illinois Administrative Code Part 452, which generally prohibits utilities from promoting its service offerings.” Staff BOE at 81. ComEd disagrees with Staff for two reasons. First, while Section 452.40(a) prohibits an IDC from promoting retail electric supply service, Section 452.240(b)(4) explicitly exempts “legitimate consumer education efforts.” With Commission approval of CUB’s proposal, efforts to educate residential customers on the potential benefits of real time pricing through a third-party program administrator would constitute such an education effort. Second, ComEd notes that under this program, it would

install (and remove) and provide these meters at no additional costs to both Rate BES-H and RES customers on RTP programs. This demonstrates the legitimacy of such education efforts along with the fact that ComEd would not be seeking to “retain or obtain” a customer for a retail electric supply service, which is the central mandate of the IDC Rules, in violation of Section 452.240(e). Indeed, as ComEd witness Crumrine noted, “...to be clear, such education efforts must fairly present both the potential advantages and disadvantages associated with RTP programs. Indeed, RTP may not be the right choice of rate for all residential customers, as [CCC witness] Mr. Thomas recognizes.” Crumrine Sur., ComEd Ex. 40.0, 56:1273-77. Thus, Staff’s suggestion is incorrect.

CCC argues that the meter lease charges in ComEd Exhibit 46.1 are based upon ComEd’s cost of capital and have to be adjusted. CCC at 43. This request should be denied. The overall cost of capital under discussion in the Proposed Order is for the purpose of determining ComEd’s authorized rate of return on rate base in this proceeding, not for the purpose of determining meter lease charges. Proposed Order at 155. Expected revenues received from meter lease charges determined based on ComEd’s cost of capital have been factored into Other Revenues in the determination of jurisdictional revenue requirements. *See* ComEd Ex. 5.2, WPC- 2.12, 2:14 and 2.17; ComEd Ex. 5.1, Sch. C-2.12, 1:3-4, ComEd Ex. 5.1, Sch. C-1 Errata, 1:2. A different cost of capital used to determine meter lease charges that results in a lower amount of Other Revenues would increase the jurisdictional revenue requirements by the same amount. No party proposed to make this adjustment and no party, other than CCC, argued that ComEd’s should use a different cost of capital to determine meter lease charges.

Therefore, the Commission should reject the CCC Exception 12. CCC BOE at 43-44. ComEd’s Exception # 29 is appropriate and should be accepted. ComEd BOE at 82-83.

CC. Replacement of Rider 28 with Rider LGC

The City/CCSAO's exception addressing Rider LGC asks the Commission to remove the "early replacement" provision of the proposed rider based solely upon the theory that Rider LGC, as adopted in the Proposed Order, somehow could conflict with the City-ComEd franchise agreement. There is no basis in the record for this theory, which ignores unopposed testimony concerning the limited actual circumstances under which the early replacement provision would apply. Alongi/McInerney Reb., ComEd Ex. 24.0, 15:402 - 16:406, 16:415-22. Staff did not oppose Rider LGC which ComEd demonstrated contained no substantive changes from the former Rider 28. The City/CCSAO are correct, however, that the Proposed Order's conclusion that the early replacement provision of Rider LGC somehow would not apply to the City must be clarified. City/CCSAO BOE at 6. As discussed on ComEd's Brief on Exceptions, Rider LGC, if approved, will apply equally to all ComEd customers, consistent with its terms, in the same manner Rider 28 applies equally to all such customers. To the extent ComEd and City have agreed between themselves to limited circumstances under which certain costs related to the removal of utility facilities in the City's public way would not be recovered through the rider, these two parties' agreement could not affect the general applicability of Rider LGC or any other filed rate. Accordingly, the City/CCSAO's proposed exception should be rejected, and Rider LGC should be adopted as proposed by ComEd.

FF. Tariff Implementation Issues

Staff took one exception to the discussion and conclusions in the Proposed Order regarding tariff implementation issues. In particular, Staff took exception to the conclusion granting ComEd's request for a variance to the tariff sheet numbering requirements contained in 83 Ill. Admin. Code 255.30(c) authorizing ComEd to file its new post-2006 Schedule of Rates

(i.e., Schedule ILL. C.C. No. “XX”) using the proposed tariff sheet numbering structure shown in ComEd Ex. 10.5. Staff BOE at 85-87.

Staff explained that the Chief Clerk’s Office receives hundreds of tariff filings from utilities providing electric, gas, water, sewer, telecommunication and pipeline services. In the process of accepting or rejecting thousands of tariff sheets, the Chief Clerk’s Office relies on the consistency of the tariff sheet numbering rules in Part 255 of 83 Ill. Admin. Code. By allowing ComEd’s request for a variance to Part 255, Staff fears the request would set a precedent for other utilities to address their individual concerns and possibly create overall numbering problems that may be difficult to resolve in the future. Staff Rep. Br. at 97.

Staff also explained that the ICC has an on-going development project for an electronic tariff filing system for use by the regulated utilities. The development of this system is based on the tariff numbering rules set forth in Part 255 and Staff is concerned that a variance to the tariff numbering rules could jeopardize the development of this system by making the system unable to operate effectively. *Id.*

Staff concluded that while Staff recognizes ComEd’s desire to make its tariff book more “user friendly” and supports ComEd’s effort to do so, there are other ways to accommodate that need and, therefore, Staff is willing to work with ComEd to make its new tariff book as user-friendly as possible while incorporating and maintaining existing rules and the Commission’s Chief Clerk’s Office needs. *Id.*

While ComEd is disappointed that Staff provided no testimony on this matter during the course of the proceedings, ComEd understands and appreciates Staff’s concern and is willing to work cooperatively with the Staff and the Chief Clerk’s Office to make ComEd’s new Schedule of Rates as user-friendly as possible while adhering to existing rules and the Commission’s Chief

Clerk's Office needs. ComEd encourages innovation and believes that its tariff sheet numbering proposal offers desirable flexibility that could be considered in a future rulemaking to modify Part 255. In the meantime, ComEd is optimistic that its goal of making its Schedule of Rates as user-friendly as possible can be achieved through a cooperative effort with the Staff and the Chief Clerk's Office.

Consequently, ComEd offers the following changes to the Proposed Order on this subject:

TARIFF IMPLEMENTATION ISSUES

ComEd

In light of the magnitude of changes being proposed by various parties in this proceeding, as well as the fact that the final Commission Order is scheduled to be entered several months in advance of the beginning date on which charges under the proposed tariffs would apply (*i.e.*, January 2, 2007), ComEd requested 30 days from the time the final order is entered in which to file its compliance tariffs. Alongi/McInerney Sur., ComEd Ex. 41.0 Corr., 39:901 - 40:925.

ComEd made two additional housekeeping proposals regarding its proposed rates. *See id.*; Alongi/McInerney Dir., ComEd Ex. 10.0, 9:216-31. First, ComEd proposed that the Commission, in its order in this proceeding, direct ComEd to file a new Schedule of Rates with a new schedule number (*e.g.*, Schedule ILL. C.C. No. "XX") within a reasonably short period of time after the mandatory transition period ends (*e.g.*, within eight months). ComEd indicated that this is necessary because ComEd's current set of rates will remain in ComEd's Schedule of Rates, but will no longer be operational at the end of the mandatory transition period. *Id.*

Second, to facilitate a customer's ability to locate information in the new Schedule of Rates, ComEd requested that the Commission's order in this proceeding provide a variance to the tariff sheet numbering requirements contained in 83 Ill. Admin. Code 255.30(c), and instead allow ComEd to file its new post-2006 Schedule of Rates (*i.e.*, Schedule ILL. C.C. No. "XX") using the proposed tariff sheet numbering structure shown in ComEd Ex. 10.5.

In response to Staff's Brief on Exceptions, ComEd expressed disappointment that Staff provided no testimony on this matter during the course of the proceedings, however, ComEd understands and appreciates

Staff's concern and is willing to work cooperatively with the Staff and the Chief Clerk's Office to make ComEd's new Schedule of Rates as user-friendly as possible while adhering to existing rules and the Commission's Chief Clerk's Office needs. ComEd encourages innovation and believes that its tariff sheet numbering proposal offers desirable flexibility that could be considered in a future rulemaking to modify Part 255. In the meantime, ComEd is optimistic that its goal of making its Schedule of Rates as user-friendly as possible can be achieved through a cooperative effort with the Staff and the Chief Clerk's Office.

Staff

Staff expressed concern in its Reply Brief and its Brief on Exceptions with ComEd's proposal because of the voluminous tariff filings the Chief Clerk's Office receives and the fact that the Chief Clerk relies on the consistency of the tariff sheet numbering rules contained in part 255 to determine whether to accept or reject tariff sheets for filing. Staff explained that by allowing a variance it may create overall numbering problems that may be difficult to resolve in the future. Staff also noted that the ICC's on-going development project for an electronic tariff filing system is based on the tariff numbering rules set forth in Part 255. Granting a variance to ComEd is a cause of great concern for Staff because it may jeopardize the development of an effective electronic tariff filing system. If other utilities are granted variances like ComEd's request, significant programming and development changes would be required.

Commission Analysis and Conclusion

The Commission finds that ComEd should be directed to file its compliance tariffs within 30 days from the time the final order is entered in this case. ComEd is hereby directed to file a new Schedule of Rates with a new schedule number (e.g., Schedule ILL. C.C. No. "XX") within eight months after the mandatory transition period ends. With respect to ComEd's request for a variance to the tariff sheet numbering requirements contained in 83 Ill. Admin. Code 255.30(c) for its post-2006 Schedule of Rates, the Commission encourages innovation that benefits customers while at the same time being cognizant of the current administrative rules and development of an electronic filing system for processing tariff revisions of all Illinois utilities. Staff and ComEd are agreeable to work cooperatively with the goal of making the numbering of tariff sheets for ComEd's post-2006 Schedule of Rates as user-friendly as possible. Given the Staff's concerns and ComEd's agreement to work cooperatively, the Commission believes that a waiver of the administrative code is not necessary and that ComEd's tariff sheet numbering proposal offers desirable flexibility that could be considered in a future rulemaking to modify Part 255. Thus, the Commission also ~~grants~~ denies ComEd's request for a variance to the tariff sheet numbering requirements contained

in 83 Ill. Admin. Code 255.30(c), and ~~is authorized to file its~~ directs ComEd and Staff to work cooperatively with the goal of making the numbering of tariff sheets for ComEd's new post-2006 Schedule of Rates (i.e., Schedule ILL. C.C. No. "XX") as user-friendly as possible. The Commission will leave for another day the question of whether using the proposed tariff sheet numbering structure shown in ComEd Ex. 10.5 or other innovative proposals should be the subject of a rulemaking to revise Part 255.

X. CUSTOMER CHOICE AND RETAIL SUPPLIER ISSUES

B. General Account Agency

The Proposed Order correctly concludes that the workshop process is a more appropriate forum than the instant rate case in which to discuss issues involving the role and responsibilities of General Account Agents ("GAA") and ComEd's related business processes and Information Technology ("IT") applications. Proposed Order at 276. CES takes exceptions to the Proposed Order claiming that ComEd should be required to permit GAAs and customers to choose a future effective date for the beginning of the agency relationship, and should be required to allow multiple agents for a single customer. CES BOE at 6 - 12; CES Exceptions at 1-2.

CES does not dispute the fact that the issues raised are complex questions of the roles and responsibilities of agents, involving myriad business processes and IT applications, which carry statewide implications. Crumrine Reb., ComEd Ex. 23.0, 80:1721-32; Crumrine Sur., ComEd Ex. 40.0, 83:1871 - 84:1908; Meehan Sur., ComEd Ex. 43.0, 4:74-93; Schlaf Reb., Staff Ex. 20.0, 13:291 - 14:307. CES merely quips that anyone with interest could have intervened in this case. CES BOE at 8-9. Such a notion is dismissive to other parties that may have an interest in thoughtfully exploring the issues rather than prematurely litigating the issues in the context of an unrelated rate case.

The Proposed Order recognizes that CES' proposals would eliminate operational challenges for some market participants only by creating new problems for others. Proposed Order at 275. In order to implement CES' proposals, ComEd would need to implement "significant changes to its business practices and information technology systems" to accommodate an effective date and would incur additional costs and burdens to recognize multiple kinds of GAAs – the costs for which would ultimately be borne by customers. *Id.*; ComEd Init. Br. at 265-66; ComEd Rep. Br. at 156-62. Additionally, as pointed out in the Proposed Order, multiple types or levels of GAAs carry with it the potential for abuse and/or confusion (Proposed Order at 275), a problem ignored by CES. Based on the foregoing, CES' exceptions relating to GAAs should be rejected.

C. Electronic Data Interchange

The Commission's Proposed Order accurately identifies the challenges and burdens associated with CES' Electronic Data Interchange ("EDI") proposals, and properly rejects those proposals as unworkable or overly burdensome. Proposed Order at 281. CES takes exception to the Proposed Order, seeking a Commission determination that would force ComEd to accept enrollment on its Rider PPO - Purchase Power Option ("PPO") via EDI, and to provide "real-time" notification of pending disconnections to Retail Electric Suppliers ("RES"). CES BOE at 12-17; CES Exceptions at 2-5.

The Proposed Order properly concludes that ComEd has the right to decide the manner in which it chooses to interface with its own customers, including PPO customers. Proposed Order at 281. CES' allegation that competition would be hindered unless General Account Agents ("GAAs") are able to enroll customers on PPO specifically via EDI (CES BOE at 13, 14-15) is

pure rhetoric, as customers can be and currently are enrolled on PPO through use of a signed contract, allowing retail customers to realize the benefits of competition.

The Proposed Order also properly recognizes that CES's proposal to force ComEd to provide continuous, real-time notice of pending customer disconnections is both burdensome and is adequately addressed by ComEd's offer to provide weekly summaries of pending disconnections to RESs. Proposed Order at 281. ComEd's information technology systems are not designed to provide real-time notification of pending disconnections. Meehan Reb., ComEd Ex. 26.0, 15:331. ComEd's willingness to modify the definition of "new customer" and to provide a weekly report of pending disconnections adequately addresses any remaining potential issues. Proposed Order at 281.

As noted by the Proposed Order, CES' proposal to compel ComEd to alter the manner in which it interacts with its own customers is inappropriate, and ComEd has made a good-faith effort, with a workable solution, to address CES' proposal regarding notice to RESs of pending disconnections. Proposed Order at 281. Therefore, CES' exceptions should be rejected.

F. Utility Consolidated Billing with Purchase of Receivables

The Proposed Order appropriately rejects CES' Utility Consolidated Billing with Purchase of Receivables ("UCB/POR") proposals, finding it to be a "new service" that the Commission lacks the authority to compel, and that fails to properly balance the interests of RESs, retail customers, and ComEd. Proposed Order at 289-90. CES takes exception to the Proposed Order, claiming that UCB/POR is not a "new" or "competitive" service, and that the UCB/POR proposal should be adopted. CES BOE at 17-28; CES Exceptions at 5-9.

The Proposed Order appropriately characterizes as "untenable" CES' assertion that UCB/POR would not constitute a "new" service under Section 16-103(e) of the Act. Proposed

Order at 289. CES argues that UCB/POR cannot be considered “new” because it requires that ComEd continue to provide a bundled bill to, and be responsible for collections from, residential customers. CES BOE at 19-20. The fallacies in that argument are obvious and multiple – although ComEd currently provides a bill to, and collects monies from, its own bundled customers, the UCB/POR proposal would require that ComEd provide billing and collections services for customers taking supply of electric power and energy from RESs for services provided by the RES. Notably, for non-residential customers that currently take electric power and energy supply service from RESs, ComEd does not provide billing and collections relating to the RES-supplied services.

CES’ argument that the Commission may impose UCB/POR because it falls within the delivery of “delivery services” (CES BOE at 20-21) is equally without merit. “Delivery services” are defined by the Act as follows:

[T]hose services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility’s service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

220 ILCS 5/16-102 (emphasis added). ComEd’s obligations described above require that it provide only those services necessary for retail customers to receive electric power and energy from RESs, such as the ability to ascertain a customer’s usage data from the meter sufficient that a RES be capable of billing the customer for that usage. UCB/POR is not “necessary” for retail customers to receive electric power and energy from RESs. Indeed, they have been doing so since retail open access began. Moreover, as the Proposed Order points out, ComEd’s Rider SBO – Single Bill Option allows RESs to provide a single bill that includes charges for delivery services from ComEd as well as RES-supplied electric power and energy services, and CES’

proposal is the functional equivalent of single billing service. Proposed Order at 289. CES' disputed claim that UCB/POR would be more efficient is irrelevant to the question of whether ComEd can be forced to provide UCB/POR service. The Act does not contain any provision that would require ComEd to perform services that are not necessary for the RES' supply of electric power and energy, and affirmatively provides that ComEd cannot be so compelled. 220 ILCS 5/16-103(e).

CES' contention that UCB/POR will offer competitive benefits (CES BOE at 22-28) is likewise not demonstrated by the record. As noted by the Proposed Order, CES has not established that the UCB/POR proposal would benefit the competitive markets. Proposed Order at 290. However, as was established, implementation of UCB/POR would require substantial investment in business process and IT applications, which would ultimately be borne by ratepayers. Proposed Order at 290. CES suggests that ComEd's business processes and IT applications can easily be modified to include UCB/POR. CES BOE at 24. As indicated by the evidence, this is not the case, as ComEd would likely require an additional investment of between \$4 million to \$6 million for any UCB/POR option. Meehan Reb., ComEd Ex. 26.0, 25:538 - 26:574. Clearly, the big winners under the CES proposal are RESs, which would not be required to make any investment – financial or otherwise – but would be relieved of any obligation to provide billing or collection functions. Costs ultimately borne by customers, however, will rise.

Finally, CES' criticism of the Proposed Order's reference to a decision in ICC Docket 97-0173 in which the Commission authorized MidAmerican Energy Company to sell accounts receivable (CES BOE at 22-23), is likewise misplaced. Whether or not that proposal – which was a voluntary action taken by a utility – was successful is irrelevant. The citation in the

Proposed Order illustrated that a competitive market for the sale and purchase of accounts receivable exists free from regulatory oversight. The inescapable conclusion is that the ComEd cannot be compelled to offer such a service under the Act. CES' proposal should therefore be rejected.

XI. STAFF REPORTS ON COMED'S PERFORMANCE

C. Electric Metering

Staff recommends that the Proposed Order at 297 be modified to delete language that may incorrectly suggest that Staff intends to initiate a separate proceeding regarding 83 Illinois Administrative Code Part 410. Staff BOE at 88. ComEd does not oppose Staff's recommended modification of the Proposed Order.

XIII. FINDINGS AND ORDERING PARAGRAPHS

Other parties' Exceptions to the Finding and Ordering Paragraphs of the Proposed Order should be rejected, except to the extent that ComEd has expressly stated in its Brief on Exceptions, Exceptions to Proposed Order, and this Reply Brief on Exceptions that their exceptions are supported by the evidentiary record, correct, and lawful.

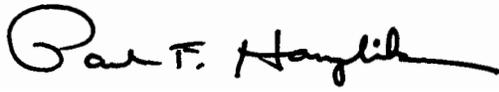
APPENDIX A

Other parties' Exceptions to Appendix A to the Proposed Order should be rejected, except to the extent that ComEd has expressly stated in its Brief on Exceptions, Exceptions to Proposed Order, and this Reply Brief on Exceptions that their exceptions are supported by the evidentiary record, correct, and lawful.

Dated: June 26, 2006

Respectfully submitted,

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TAB 1

Staff's proposed corrections related to ComEd Ex. 5.1, Schedule B-2.1 Errata, inadvertently consist of double-counts with adjustments already made by ComEd, except for an incremental \$8,000 reduction in General Plant in rate base.

Staff's witness: (1) incorrectly assumed that a figure for a \$1,973,781.09 salvage credit was overlooked by ComEd in ComEd Ex. 5.1, Schedule B-2.1 Errata, when it actually was reflected in that Schedule; and (2) overlooked \$81,825.90 of *pro forma* capital additions in ComEd Ex. 5.2, work paper WPB-2.1b.

That is shown as follows:

1. Staff's witness assumed that ComEd did not reduce its *pro forma* capital additions on ComEd Ex. 5.1, Schedule B-2.1 Errata, p. 1, line 14, of \$12,334,000 for a salvage credit of \$1,973,781.09 shown on ComEd Ex. 5.2, work paper WPB-2.1b, p. 4, col. G, line 42. That is shown by the fact that Griffin Dir., Staff Ex. 3.0, Sched. 3.4, p. 2, line 4, reflected the net jurisdictional amount of \$5,714,834 from ComEd Ex. 5.2, work paper WPB-2.1b, p. 4, col. T, line 41 (Staff's witness' Schedule mistakenly cited line 40), not the 2005 plant additions of \$7,688,615.41 found on that same work paper, col. H, line 42. That assumption is correct.
2. However, ComEd included that \$1,973,781.09 salvage credit in the line for the accumulated depreciation amount (the Depreciation Reserve adjustment) for *pro forma* General Plant capital additions of \$(2,333,000) on ComEd Ex. 5.1, Schedule B-2.1 Errata, line 15. That accumulated depreciation amount includes the salvage credit of \$(1,974,000), the test year depreciation expense of \$(734,000) from that same Schedule, col. D, line 18, and removal costs of \$374,000 related to Real Estate *pro forma* capital additions from ComEd Ex. 5.2, workpaper WPB-2.1b, p. 6, col. F, line 33. $\$(1,974,000) + \$(734,000) + \$374,000 = \$(2,334,000)$. (\$1,000 off due to rounding.)
3. Correcting Staff's calculation for the error regarding the salvage credit reduces Staff's proposed gross General Plant adjustment of \$(2,063,000) to \$(90,000), i.e.,
4. Griffin Dir., Staff Ex. 3.0, Sched. 3.4, p. 2, also fails to reflect the *pro forma* capital additions from ComEd Ex. 5.2, work paper WPB-2.1b, p. 7, lines 32 and 33, which total \$81,825.90. Staff's source references in Griffin Dir., Staff Ex. 3.0, Sched. 3.4, p. 2, col. (b), only cite the *pro forma* capital additions on ComEd Ex. 5.2, work paper WPB-2.1b, pp. 1-6. Including the additions on p. 7 reduces Staff's proposed gross General Plant adjustment of \$(2,063,000), already reduced to \$(90,000) above, by another \$82,000 (rounded) to \$(8,000).