

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,)	
)	
Approval of the Energy Efficiency and)	Docket No. 07-0540
Demand-Response Plan Pursuant to Section 12-103(f) of)	
the Public Utilities Act)	

COMMONWEALTH EDISON COMPANY'S PRETRIAL MEMORANDUM

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COMMONWEALTH EDISON COMPANY'S
PRETRIAL MEMORANDUM

In accordance with the schedule approved by the Administrative Law Judge (“ALJ”) on November 20, 2007, Commonwealth Edison Company (“ComEd”), by its attorneys, submits this Pretrial Memorandum.

I. INTRODUCTION

On August 28, 2007, Illinois Governor Rod Blagojevich signed into law Public Act 95-0481 (“P.A. 95-0481”), which created a new Section 12-103 of the Illinois Public Utilities Act (the “Act”). Section 12-103 requires that Illinois utilities subject to its provisions implement energy efficiency and demand response programs to meet some of the most aggressive energy reduction goals set forth for electric utilities in the country. Working with the Illinois Department of Commerce and Economic Opportunity (“DCEO”) and drawing upon energy efficiency best practices and input from national energy efficiency experts and stakeholders,¹ in a short time period ComEd devoted substantial resources to design its Energy Efficiency and Demand Response Plan (“Plan”), which meets the statutory requirements in Section 12-103.

Since ComEd filed its Plan on November 15, 2007, no party has disputed that ComEd’s Plan is designed to meet the statutory goals, and several witnesses complemented ComEd’s Plan and its efforts. Although parties have requested clarification, suggested additional refinements or disagreed with certain aspects of the Plan, as shown below, there are actually very few contested

¹ In developing its Plan, ComEd has also met with stakeholders collectively multiple times, and briefed and solicited input from many of the stakeholders individually on the proposed composition of the portfolio. These stakeholders have included the Building Operators and Managers Association (“BOMA”), Center for Neighborhood Technology, Citizens Utility Board (“CUB”), City of Chicago (“City”), Environment Illinois, Environmental Law and Policy Center (“ELPC”), Illinois Attorney General’s Office (“AG”), Illinois Commerce Commission Staff (“Staff”), Illinois Industrial Energy Consumers (“IIEC”), Metropolitan Mayors Caucus, Midwest Energy Efficiency Alliance and the Natural Resources Defense Council (“NRDC”). Many stakeholder recommendations were incorporated into ComEd’s Plan.

issues. Many of the witnesses simply make suggestions or recommendations for ComEd to consider, but do not request that these comments be considered in this docket. Of those issues that are contested, as shown below, opposing arguments are without merit and should be rejected. ComEd, therefore, requests that the Commission approve its Plan, including its cost recovery mechanism, Rider EDA – Energy Efficiency and Demand Response Adjustment.

II. OVERVIEW OF SECTION 12-103 OF THE ACT

This section provides a summary of the Section 12-103 statutory scheme, including the General Assembly’s policy underlying the enactment of Section 12-103, the energy efficiency and demand response energy savings goals, the spending screens limiting the Plan’s effect on rates, required coordination with State agencies, cost recovery, the filing requirements for Plan approval, limitation on funds spent on breakthrough technologies, and penalties.

Policy Rationales Underlying Section 12-103. Section 12-103(a) sets forth the policy objectives underlying the new statutory framework for energy efficiency and demand response initiative in Illinois, which recognizing the many direct and indirect benefits that inure to customers and the State as a result of such initiatives. The General Assembly states that “[i]t is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load,” and recognizes that “[r]equiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.” 220 ILCS 5/12-103(a). Finally, the General Assembly ensured that utilities implementing such measures receive total and complete cost recovery, stating that “[i]t serves the public interest to allow

electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures.” *Id.*

Energy Efficiency and Demand Response Savings Goals. Subsections (b) and (c) of Section 12-103 set forth two separate energy savings goals. The first pertains to energy efficiency, which “means measures that reduce the amount of electricity required to achieve a given use,” 20 ILCS 3855/1-10, and requires that, for the purposes of this first three-year Plan, “[e]lectric utilities shall implement cost-effective energy efficiency measures to meet the following incremental annual energy savings goals: (1) 0.2% of energy delivered in the year commencing June 1, 2008; (2) 0.4% of energy delivered in the year commencing June 1, 2009; [and] (3) 0.6% of energy delivered in the year commencing June 1, 2010.” 220 ILCS 5/12-103(b).

The second energy savings goal concerns demand-response, which “means measures that decrease peak electricity demand or shift demand from peak to off-peak periods,” 20 ILCS 3855/1-10, and provides that “[e]lectric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers” 220 ILCS 5/12-103(c).²

Statutory Spending Screens. A utility’s obligations under subsections (b) and (c) of Section 12-103 are modified by subsections (d) and (e), however. In particular, Section 12-103(d) puts in place “spending screens” to limit the Plan’s effects on rates:

² “Eligible retail customers” is defined as “those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service.” 220 ILCS 5/16-111.5. For ComEd, this group includes all residential supply customers (except those on the hourly pricing plan) and small business supply customers (except those on the hourly pricing plan) with demands less than 100

[A]n electric utility shall reduce the amount of energy efficiency and demand-response measures implemented in any single year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to:

(1) in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;

(2) in 2009, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; [and]

(3) in 2010, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007.

220 ILCS § 5/12-103(d).

Coordination with State Agencies. Section 12-103(e) requires that the utility and DCEO share the duties of implementing the energy efficiency measures. Specifically, the statute provides that “[e]lectric utilities shall implement 75% of the energy efficiency measures approved by the Commission The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by [DCEO], and must be designed in conjunction with the utility and the filing process.” 220 ILCS 5/12-103(e).

Cost Recovery. Consistent with the policy objectives set forth in Section 12-103(a), Section 12-103(e) permits the utility to recover the costs of the energy efficiency and demand response programs “through an automatic adjustment clause tariff filed with and approved by the Commission.” 220 ILCS 5/12-103(e). The statute further provides for an annual Commission “review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures.” *Id.*

kilowatts. The business customers in this group represent only about 19% of ComEd's total non-residential energy deliveries (not supply).

Filing Requirements for Commission Approval of the Plan. Section 12-103(f) sets forth the elements that the utility must include in its Plan filed with the Commission on or before November 15, 2007, which in turn must show how it will meet the energy efficiency and demand response goals for the Plan years 2008 through 2010. These filing requirements are discussed in detail in Section III *infra*. Each utility must set forth in its plan its “proposal to meet [its] portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e),” and, in particular, make the following showing:

- (1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
- (2) Present specific proposals to implement new building and appliance standards that have been placed into effect.
- (3) Present estimates of the total amount paid for electric service expressed on a per kilowatt-hour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
- (4) Coordinate with [DCEO] and the Department of Healthcare and Family Services to present a portfolio of energy efficiency measures targeted to households at or below 150% of the poverty level at a level proportionate to those households’ share of total annual utility revenues in Illinois.
- (5) Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.
- (6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.
- (7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility’s portfolio of measures and [DCEO’s] portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-

forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of the portfolio resources in any given year.

220 ILCS § 5/12-103(f).

Breakthrough Technologies. Under Section 12-103(g), “[n]o more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.” 220 ILCS 5/12-103(g).

Penalties. Section 12-103(i) sets forth clear penalties if utilities fail to meet the prescribed energy efficiency savings goals. “If, after 2 years, [ComEd] fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program” (“LIHEAP”) of \$665,000. 220 ILCS 5/12-103(i). Additionally, “[i]f, after 3 years, [ComEd] fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to [LIHEAP]” of \$665,000. *Id.* Moreover, “the responsibility for implementing the energy efficiency measures of the utility making the payment shall be transferred to the Illinois Power Agency if, after 3 years, or in any subsequent 3-year period, the utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e).” *Id.*

III. COMPLIANCE WITH FILING REQUIREMENTS OF SECTION 12-103(f)

This section provides an overview of the relevant issues, if any, with respect to each of the filing requirements of Section 12-103(f), and identifies the ComEd witnesses who provide testimony with respect to each issue.

A. ComEd's Plan Is Designed to Achieve the Energy Savings Goals of Subsections (b) and (c) of Section 12-103, as Modified by Subsections (d) and (e).

1. No party disputes that ComEd's Plan, when considered in conjunction with DCEO's portfolio of measures, meets the energy savings goals within the spending screens.

As fully described in ComEd's Plan, as well as the testimony of Messrs. Michael **Brandt**, James **Eber**, and Val **Jensen**, ComEd's Plan contains a portfolio of energy efficiency and demand response measures that includes a mix of investments designed to meet the energy savings goals laid out in subsections (b) and (c) of Section 12-103. *See* 220 ILCS 5/12-103(b) & (c). As explained by Mr. **Brandt** in his direct testimony, the portfolio is built around five broad *Solutions* programs, each of which contains several program elements intended to provide a diverse range of energy efficiency options for all customer classes. (*See* ComEd Ex. 2.0, pp. 18-19.) These programs rest on several crosscutting initiatives designed as a foundation for market transformation. As explained by Messrs. **Brandt** and **Jensen** in their direct testimony, the main objective of the planning process was to design a portfolio of energy efficiency and demand response measures that would meet the statutory energy savings goals, and the portfolio that ComEd has set forth in its Plan, when considered in conjunction with the programs to be implemented by DCEO, is in fact designed to meet the energy efficiency and demand response energy savings goals. (*See* ComEd Ex. 2.0, Ex. 3.0 Corrected & Ex. 6.0 Corrected.) No party claims otherwise.

In “[d]emonstrat[ing] that its proposed energy efficiency and demand-response measures will achieve the [energy savings] requirements that are identified in subsections (b) and (c),” Section 12-103(f)(1) also requires that the utility take into account how these requirements are “modified by subsections (d) and (e).” 220 ILCS 5/12-103(f)(1). As explained in Section II *supra*, subsection (d) requires that “an electric utility shall reduce the amount of energy

efficiency and demand-response measures implemented in any single year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to” the statutorily prescribed percentages. 220 ILCS 5/12-103(d). Mr. **Crumrine** presents these “spending screens” in his direct testimony. (ComEd Ex. 5.0.) Mr. **Jensen** further explained in his direct testimony that “ComEd provided ICF [Mr. Jensen’s firm] with its estimates of the spending screen calculations for each year of the Plan. The sum of the costs that we have estimated for ComEd’s programs, the costs that the Department estimates for its programs, and portfolio-wide costs for portfolio administration, evaluation, and information, awareness and education programs is less than the spending screen for each year of the Plan.” (ComEd Ex. 6.0 Corrected, p. 43.) This issue is not disputed.

Subsection (e), on the other hand, requires that the utility and the Illinois Department of Commerce and Economic Opportunity (“DCEO”) share the duties of implementing the energy efficiency measures. Specifically, the statute provides that “[e]lectric utilities shall implement 75% of the energy efficiency measures approved by the Commission The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by [DCEO], and must be designed in conjunction with the utility and the filing process.” 220 ILCS 5/12-103(e). As described by Mr. **Brandt** in his direct testimony, “ComEd and DCEO calculated the split by considering the nature of the programs and allocating the amount under the statutory spending screen to correspond with the statutory percentages.” (ComEd Ex. 2.0, pp. 13-14.) Section 12-103(e) also requires that “[a] minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts,” and that DCEO

“coordinate the implementation of such measures.” 220 ILCS 5/12-103(e). And finally, “ComEd and DCEO have agreed that DCEO would be responsible for presenting and implementing the portfolio of energy efficiency measures targeted at low-income households as required by Section 12-103(f)(4).” (ComEd Ex. 2.0, p. 14.) The proposed split between ComEd and DCEO is not disputed.

2. Program design suggestions and recommendations offered by intervenors.

Although no party disputes that ComEd has “[d]emonstrate[d] that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) . . . , as modified by subsections (d) and (e),” 220 ILCS 5/12-103(f)(1), several parties nevertheless offer suggestions and recommendations concerning the proposed program elements and proposing new program elements. In their rebuttal testimony, ComEd’s witnesses address each of these suggestions and recommendations and, in effect, show why such recommendations should not preclude the Commission from approving ComEd’s Plan. These comments, and ComEd’s responses, are summarized by party as follows:

- **AG:** Although AG witness Mr. **Mosenthal** offers comment “on some of the program designs as presented in the plan,” he nevertheless “believe[s] it is appropriate for the ICC to allow program design issues to be worked out through a collaborative process that commences when this docket closes.” (AG Ex. 1.0, p. 5.) ComEd witness Mr. **Jensen** agrees that this docket is not the appropriate forum for discussing program design issues, and that “[t]he program designs ComEd proposes are initial designs that most likely will be modified to greater or lesser extents based on discussions with stakeholders and implementation contractors.” (ComEd Ex. 12.0, p. 4.) However, to the extent Mr. **Mosenthal**’s recommendations are not advisory, Mr. **Jensen** provides comment on Mr. **Mosenthal**’s proposals, and cautions that the Commission should not adopt them. (*Id.*, pp. 4-7.)

- **City of Chicago:** City witness Mr. **Abolt** recommends that ComEd “leverage” its proposed energy efficiency programs with some of the City’s existing programs. (City Ex. 1.0.) As explained by Mr. **Brandt** in his rebuttal testimony, although ComEd is certainly willing to explore potential synergies from leveraging existing programs, the City has not shown that leveraging such programs will reduce ComEd’s costs or that such leveraging is cost-effective under the TRC test. (ComEd Ex. 9.0, p. 17.) Further, the

City of Chicago includes only one-third of ComEd's customers and, of course, ComEd's Plan must take into account all of its customers. The City's proposal therefore should be rejected.

- **NRDC:** Although NRDC witness Mr. **Henderson** requests that the Commission approve ComEd's Plan as filed, it asks "ComEd [to] consider adding a Residential New Construction program." (NRDC Ex. 1.0, p. 4.) As explained in the rebuttal testimony of Mr. **Jensen**, "ComEd did consider such a program explicitly in its analysis. An Energy Star Homes program was analyzed for cost-effectiveness, but did not achieve a TRC benefit-cost ratio of greater than 1.0." (ComEd Ex. 12.0, pp. 8-9.) This proposal is merely a request that ComEd *consider* this program, however, and for the reasons stated above, ComEd cannot implement this program.

- **CUB:** CUB witness Mr. **Thomas** asks that the Commission "order ComEd to schedule demand response events for Nature First to maximize energy revenues," and suggests that the event be scheduled on the twenty "hottest days of the year." (CUB Ex. 1.0, p. 9.) In Mr. **Eber**'s rebuttal testimony, he explains that ComEd can only self-schedule up to ten calls per year, and that there are serious risks to program participation when the program is called unnecessarily, especially when the maximum additional benefit per customer from calling the program ten times in 2007 would be \$1.54 per customer. (ComEd Ex. 10.0, pp. 4-6.) The proposal therefore should be rejected.

- **BOMA and City of Chicago:** City witness Mr. **Abolt** "asks that the Commission require ComEd to provide business owners free access to [energy consumption] data [and] require ComEd to install interval meters as part of the [Business Solutions] program." (City Ex. 1.0, pp. 11-12.) BOMA witness Mr. **Zarumba** similarly proposes that provision of "electric consumption information . . . be considered as an energy efficiency program and be provided subsidies like many of the other measures proposed," and suggests that ComEd provide the real time meters. (BOMA Ex. 1.0, pp. 6-7.) ComEd witness Mr. **Brandt** explained in his rebuttal testimony that the Plan "proposes to provide certain services previously available on a 'for fee' basis as part of the energy efficiency portfolio," including certain "energy consumption data for non-residential customers . . . who participate in the Business Solutions program." (ComEd Ex. 9.0, p. 14.) "The only cost to the customer will be the cost of interval metering equipment – this cost will still remain with the customer." (*Id.*, p. 15.) Mr. **Brandt** further explained that to the extent the City's and BOMA's proposal requests that ComEd provide real-time energy usage information for free or minimal cost, this is not possible or practical at this time. (*Id.*) Finally, Mr. **Brandt** notes that "neither the City nor BOMA showed that any of its proposals were cost-effective under the TRC test." (*Id.*) These proposals therefore should be rejected.

- **NRDC and ELPC:** ELPC witness Mr. **Crandall** states that "[t]he utilities also may want to consider a shared website and call center to provide information on [the] programs" (ELPC Ex. 1.0, p. 6), and NRDC witness Mr. **Henderson** asks that ComEd "consider" "support[ing] development of a statewide web site that contains information about energy efficiency measures, tools and resources, training, and a description of all energy efficiency programs that are available statewide" (NRDC Ex. 1.0, p. 4). As

explained by Mr. **Brandt** in his rebuttal testimony, ComEd believes that although a shared website may have some value, it is unnecessary “for the successful implementation of ComEd’s Plan,” because: (i) ComEd already has a website to which its customers have already grown accustomed, (ii) costs associated with a statewide website have not been built into ComEd’s Plan, and (iii) customers expect information to be available at the ComEd website and call center. (ComEd Ex. 9.0, pp. 16-17.) These proposals are merely requests that ComEd *consider* these programs, however, and for the reasons stated above ComEd cannot implement them.

3. Flexibility to manage the portfolio going forward

As explained in the direct testimony of ComEd witnesses Messrs. **Brandt** and **Jensen**, there are a number of risks involved in implementing the measures and programs, nearly all of which are new to Illinois. (*See* ComEd Ex. 2.0 & Ex. 6.0 Corrected.) ComEd therefore proposes, as part of its Plan, that the Commission grant ComEd sufficient flexibility to reallocate funds across program elements, including the ability to modify, add or discontinue program elements within approved programs as dictated by additional market research and actual implementation experience, which is essential to risk management.

As explained in ComEd witness Mr. **Brandt**’s rebuttal testimony, no party opposes the concept of flexibility. ComEd is not proposing unlimited flexibility (ComEd Ex. 9.0, pp. 19-20), and its proposal is in harmony with the concepts offered by the other parties. ComEd believes that its exercise of this flexibility “would be one of the primary purposes of the stakeholder collaboration.” Further, all portfolio changes “would be subjected to a rigorous analysis, including application of the TRC test,” and ComEd recognizes that it “must maintain a diverse cross-section of programs that provides opportunities to all customers” (*Id.*, p. 19.) As discussed in Section III.H *infra*, however, ComEd opposes AG witness Mr. **Mosenthal**’s recommendation that the exercise of flexibility by ComEd must be subject to agreement by the collaborative.

B. ComEd Satisfies the Statutory Requirements Regarding New Building And Appliance Standards

Section 12-103(f)(2) requires that the utility “[p]resent specific proposals to implement new building and appliance standards that have been placed into effect.” 220 ILCS 5/12-103(f)(2). As explained in the direct and rebuttal testimony of Mr. **Brandt**, “ComEd coordinated with DCEO with respect to [this] requirement. . . . Programs offered by the Department will address this requirement,” (ComEd Ex. 2.0, p. 10), because, at this time, ComEd only is aware of new State standards applicable to school buildings, and DCEO’s programs will address that market segment. ComEd is not aware of any new State standards applicable to appliances, and no one has claimed otherwise. (*See* ComEd Ex. 9.0, p. 6.)

C. ComEd Provides Estimates of the Total Amount Paid for Electric Service Associated with the Plan.

As required by Section 12-103(f)(3), the utility must “[p]resent estimates of the total amount paid for electric service expressed on a per kilowatt hour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).” 220 ILCS 5/12-103(f)(3). In his direct testimony and exhibits attached thereto, ComEd witness Mr. **Crumrine** provides the estimates of the total amount paid for electric service, expressed on a per kilowatt hour basis, that would be associated with the proposed portfolio of measures designed to ensure statutory compliance. (*See* ComEd Ex. 5.0, Ex. 5.1 & Ex. 5.2.) No party contests that ComEd has complied with this requirement.

D. ComEd Has Cooperated with State Agencies in Developing Its Plan.

Section 12-103(f)(4) requires that ComEd “[c]oordinate with [DCEO] and the Department of Healthcare and Family Services [(“DHFS”)] to present energy efficiency

measures targeted to households at or below 150% of the poverty level.” 220 ILCS 5/12-103(f)(4). As described in ComEd’s Plan and the testimony of Messrs. **Brandt** and **Jensen**, ComEd and DCEO met twice per week throughout the planning process to coordinate on the portfolio offerings, and ComEd and DCEO agreed that DCEO would oversee the low-income portfolio. (See ComEd Ex. 2.0, p. 11.) Mr. **Brandt** further explains in his rebuttal testimony that “ComEd, [DCEO] and DHFS all met to discuss a strategy for low-income customers,” “DCEO worked directly with DHFS on the low-income portfolio,” and “[t]hroughout the remainder of the planning process, ComEd kept abreast of the DCEO-DHFS effort to develop this portfolio.” (ComEd Ex. 9.0, p. 6.)

E. The Measures and Programs Set Forth in ComEd’s Plan Are Diverse and Cost-Effective.

As required by Section 12-103(f)(5), the direct testimony of Mr. **Jensen** describes the diversity of ComEd’s proposed programs. (ComEd Ex. 6.0 Corrected.) The two major programs in ComEd’s Plan, Residential Solutions and Business Solutions, contain a wide variety of energy efficiency and demand response options for residential and commercial and industrial (“C&I”) customers. (*Id.*; see also ComEd Ex. 1.0 & Ex. 2.0.) No party disputes the diversity of ComEd’s Plan.

Moreover, the programs in ComEd’s Plan are cost-effective. ComEd witness Mr. **Jensen** demonstrates that ComEd’s portfolio includes energy efficiency and demand response measures that are cost-effective under the statutory Total Resource Cost (“TRC”) test. (ComEd Ex. 6.0 Corrected.) Mr. **Jensen**’s direct testimony includes an extensive discussion of the Illinois TRC test, the methodology employed by ICF International, Inc. to test the measures, program elements, programs and portfolios making up ComEd’s Plan, and data showing that each of these

items is cost-effective (*i.e.*, passes the Illinois TRC test). (*Id.*) The Illinois TRC test is defined as follows:

“Total Resource Cost test” or “TRC test” means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

(ComEd Ex. 1.0, p. 3.) Only those programs passing the TRC test were included in ComEd’s final portfolio, and “[t]he portfolio as a whole is cost-effective with a [TRC] test benefit-cost ratio of 1.43.” (*Id.*) No party challenges ComEd’s computation of the TRC test or the cost-effectiveness of ComEd’s programs.

F. ComEd Proposes to Recover the Costs Incurred Under its Plan Through Rider EDA.

In compliance with Section 12-103(f)(6) of the Act, ComEd is proposing a cost-recovery mechanism, Rider EDA, which is attached to the Plan (ComEd Ex. 1.0, App. F) and is described in more detail in the direct and rebuttal testimony of ComEd witness Mr. **Crumrine** (ComEd Ex. 5.0, Ex. 11.0). Rider EDA is consistent with the policy of this State that “[i]t serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures.” 220 ILCS 5/12-103(a); *see also* 220 ILCS 5/12-103(e) (permitting the utility to recover the costs of the energy efficiency and demand response programs through an “automatic adjustment clause tariff”).

Comments by intervenors regarding ComEd's proposed Rider EDA fall into two categories: (1) comments regarding the structure of the Rider, and specifically concerns regarding the use of a single ¢/kWh charge, and (2) comments regarding estimates of particular incremental costs that ComEd proposes to recover.

1. Single Charge Issue

The proposed Rider EDA would collect only prudently and reasonably incurred incremental costs through a "single cent per kilowatt-hour ('kWh') charge that applies uniformly to all customer classes." (ComEd Ex. 11.0, p. 1.) Staff witness Mr. **Lazare** agrees that ComEd's Rider is reasonable and comports with the Act's requirements, commenting that Rider EDA "is reasonable because these are usage-related costs that confer benefits on all ComEd customers." (Staff Ex. 3.0, p. 3.)

Intervenors BOMA and IIEC, however, propose separate cost-recovery mechanisms for different customer classes. Specifically, IIEC witness Mr. **Stephens** proposes that "[a] three customer class structure consisting of Residential, Small C&I and Large C&I, at a minimum, should be used for cost recovery." (IIEC Ex. 1.0, p. 2.) IIEC would differentiate between "Small C&I" and "Large C&I" as those non-residential customers receiving electricity below and above the 1 MW level. (*Id.*; *see also* IIEC Ex. 2.0.) Alternatively, BOMA witness Mr. **Zarumba** proposes a cost-recovery mechanism that "differentiates customers by Distribution Delivery Class and proposes a volumetric rate (cents per KWH) which is applied to each Distribution Delivery Class" rather than applying a single factor to all retail customers. (BOMA Ex. 1.0, p. 10.)

ComEd witnesses Messrs. **Brandt** and **Crumrine** respond in rebuttal testimony that IIEC's proposal would increase the administrative burden and cost of implementing ComEd's

Plan and detract from actual program efforts. (ComEd Ex. 9.0, p. 10; Ex. 11.0, p. 5.) Similarly, regarding BOMA’s proposal, Mr. **Crumrine** states in his rebuttal testimony that it “is not sufficiently developed to be implemented by ComEd,” and “would reduce the level of revenues that ComEd will have to expend on” the energy efficiency and demand response programs, thereby “imped[ing] ComEd’s ability to implement the programs.” (ComEd Ex. 11.0, pp. 8-9.) Further, with respect to both proposals, “the traditional class or group-based distinctions used for ratemaking purposes are meaningless” in the context of energy efficiency and demand response programs, as no customer is the “cost-causer” in the traditional sense of programs that are offered to the class. In fact, the literal application of the traditional cost causation principle of ratemaking would lead to the assessment of program costs only to those customers that participated in the programs. (ComEd Ex. 11.0, pp. 5-6.) As a result, neither IIEC’s proposal nor BOMA’s proposal would result in charges that are any more just and reasonable than those resulting from ComEd’s proposed single ¢/kWh charge. (*Id.*) These proposals, therefore, should not be regarded as grounds for rejecting ComEd’s Plan.

2. Comments Regarding Specific Incremental Costs

Recovery under Rider EDA would include “Incremental Costs” incurred by ComEd or to be recovered on behalf of DCEO in association with “activities and programs that are developed, implemented, or administered by or for the Company, or [DCEO], that are related to energy efficiency and demand response plans approved by the” ICC. (ComEd Ex. 1.0, App. F.) Some intervenors have provided comments regarding the nature of specific incremental costs to be recovered under Rider EDA, which are addressed by ComEd witness Mr. **Crumrine**.

First, AG witness Mr. **Mosenthal** raises the “possibility of amortizing costs over the life of the savings associated with energy efficiency and demand-response programs, similar to

investments in supply.” (AG Ex. 1.0, p. 6.) ComEd witnesses Messrs. **Brandt** and **Crumrine** both note that the scope of Mr. **Mosenthal**’s proposal is unclear. (ComEd Ex. 9.0, p. 11; Ex. 11.0, p. 10.) Mr. **Brandt** responds that “the spending screen itself is the General Assembly’s stated mechanism for dealing with rate impacts, and . . . ComEd believes that its Plan is designed to achieve the statutory targets within the spending screen with cost recovery on a current basis.” (ComEd Ex. 9.0, p. 11.) Mr. **Crumrine** states that to the extent this is a recommendation that all program costs be amortized, it is not fully developed, and “raises much larger financial issues associated with deferred cost recovery that cannot be adequately addressed within [this] expedited proceeding.” (ComEd Ex. 2.0, pp. 10-12.)

Second, Staff witness Ms. **Pearce** recommends that ComEd “clarify that the date limitation of cost recovery applies to all incremental costs and not just legal and consultative costs.” (Staff Ex. 2.0, p. 4.) Mr. **Crumrine** responds that “ComEd’s intent is to limit cost recovery through Rider EDA to all incremental costs incurred after August 28, 2007,” and “ComEd will refine the definition of Incremental Costs in its compliance [tariff] filing” to better reflect its intent. (ComEd Ex. 11.0, p. 12.)

Third, ELPC witness Mr. **Crandall** expresses general concerns regarding costs to be recovered under Rider EDA and makes various recommendations regarding Staff oversight. (ELPC Ex. 1.0, p. 12.) Mr. **Crumrine** notes, however, that Rider EDA “establishes annual reporting requirements, including a verified internal audit.” Moreover, ComEd engaged ICC Staff in pre-filing discussions and is committed to working cooperatively with Staff going forward. (ComEd Ex. 5.0, p. 10; ComEd Ex. 11.0, p. 13.)

Finally, CUB witness Mr. **Thomas** raises concerns with certain estimated costs related to the Nature First program. (CUB Ex. 1.0, pp. 2, 4-7.) Mr. **Crumrine** notes that these questions

concern ComEd's cost estimates prepared for this proceeding (for determining compliance with the statutory spending screen), not necessarily the actual costs that ComEd ultimately will be seeking to recover through Rider EDA, and clarifies that ComEd is not seeking pre-approval of any of these cost estimates, including the Nature First cost estimates, and only will seek to recover its actual incremental costs through Rider EDA when the rider is filed and populated with an actual rate. (ComEd Ex. 11.0, pp. 13-14.)

G. ComEd's Filing Includes an Evaluation, Measurement & Verification Plan That Comports with Standard Industry Practice.

As required by Section 12-103(f)(7), ComEd has proposed an evaluation, measurement and verification ("EM&V") process, including the purposes of EM&V and the specific activities ComEd intends to undertake. (ComEd Ex. 2.0, pp. 41-49.) ComEd witness Mr. **Hall** testifies that ComEd's approach to EM&V is reasonable and consistent with standard industry practice, particularly given the EM&V budget constraint of 3% of portfolio resources in each year. (*See* ComEd Ex. 7.0.) Mr. **Hall** notes that the program evaluation budget of 3% "limits the options for evaluation approaches" (*Id.*, p. 9), and that the constrained evaluation budget (as compared to most other states implementing energy efficiency programs) "affects the reliability of the evaluation findings" (ComEd Ex. 13.0, p. 4). ComEd's EM&V proposal includes several features intended to both promote the best evaluation possible and minimize the risk to ComEd, which faces significant penalties based on the evaluation's outcome. These features, which include the "banking" and "annualizing" of measure savings and the "deeming" of certain measure savings and net-to-gross ("NTG") ratio values, were commented on by several parties.

1. Banking Savings

ComEd requests that it be permitted to apply any excess kWh energy savings that exceed a given Plan year's goal to the next year's goal. In such a circumstance, forecast costs for the

subsequent year of the Plan correspondingly would be adjusted downward to reflect the need to achieve a lower kWh reduction in that year. ComEd witness Mr. **Brandt** describes this “banking” of goals in his direct testimony (ComEd Ex. 2.0), and ComEd witness Mr. **Hall** provides expert testimony as to the appropriateness of this approach given the unpredictability in initiating new energy efficiency and demand response programs (ComEd Ex. 7.0). Staff witness Mr. **Zuraski** concurs, and recommends that the Commission approve such banking, noting that the absence of banking might disincent ComEd from surpassing the Act’s savings goals for any given Plan year. (Staff Ex. 1.0, pp. 47-48.)

The only party who objects to ComEd’s “banking” proposal is AG witness Mr. **Mosenthal**. Mr. **Mosenthal**’s suggested treatment of any “over-performance” by ComEd is for Illinois to “advanc[e] the ramp up to higher goals as fast as possible.” (AG Ex. 1.0, p. 40.) Mr. **Brandt** addresses Mr. **Mosenthal**’s suggestion in his rebuttal testimony, stating that he is “incorrect for two reasons”: (1) “simply because ComEd exceeds its goals in one year does not necessarily mean it will do so in years two and three, especially in light of the fact that the goals ramp up each year,” and (2) the energy efficiency savings goals cannot “be accelerated at any given point in time. This is not authorized by Section 12-103, and appears to be an attempt to rewrite the legislation.” (ComEd Ex. 9.0, pp. 8-9.)

Staff witness Ms. **Pearce** also seeks clarification concerning ComEd’s corollary proposal that it be permitted to recover *de minimis* excess costs that exceed a given Plan year’s spending screen. (Staff Ex. 2.0.) Although ComEd’s Plan is designed to meet the energy efficiency and demand response goals within the spending screens, Mr. **Brandt** states in his rebuttal testimony that “ComEd will be running multiple programs simultaneously throughout the Plan year, and... it would be virtually impossible to manage these programs on a real-time basis such that all

programs could be instantaneously suspended once the spending screen is reached, leaving no amount that exceeds the spending screen.” (ComEd Ex. 9.0, p. 10.) Therefore, ComEd is “requesting approval to recover any *de minimis* costs that may exceed the spending cap in a given Plan year that are prudently and reasonably incurred even though ComEd does not also exceed the energy efficiency or demand response goal in that year.” (*Id.*; see also ComEd Ex. 11.0, p. 15.)

2. Annualizing Savings

As explained by ComEd witness Mr. **Brandt** in his direct testimony, “annualization” of savings for evaluation purposes simply “means that no matter when a measure is installed during the year, its savings are calculated as if the measure had been in place for the full year.” (ComEd Ex. 2.0, p. 48.) ComEd witness Mr. **Hall** notes that “[a]nnualized savings . . . is an effective use of evaluation resources, especially in light of the limited budget in Illinois,” because adopting such an approach “saves significant amounts of money in evaluation, program planning, and projection of cost-effectiveness efforts.” (ComEd Ex. 7.0, p. 10-11.)

Although Staff witness Mr. **Zuraski** raises some “‘policy’ considerations” regarding ComEd’s annualization proposal, he also acknowledges that he is unsure whether the Act’s percentage savings goals “are realistic either with or without annualizing savings” and states that allowing annualization of savings “at least does not exacerbate the Act’s built-in bias for measures and programs that promise instant gratification.” (Staff Ex. 1.0, p. 16.) Mr. **Hall** is unaware of any “state implementing energy efficiency programs [that] credits energy savings by any other approach. . . .” (ComEd Ex. 13.0, p. 3.) Further, Messrs. **Brandt** and **Hall** state that without annualization, ComEd would in fact be unable to reach the statutory goals. (ComEd Ex. 2.0, p. 48; Ex. 13.0, p. 3.)

3. Use of Deemed Values

As discussed in ComEd's Plan and the direct testimony of Messrs. **Brandt, Jensen** and **Hall**, ComEd proposes that certain measure savings values for (1) common, non-weather sensitive, measures and (2) NTG ratio values be "deemed" appropriate by the Commission for use in evaluating ComEd's portfolio performance. (See ComEd Ex. 6.0 Corrected & Ex. 7.0.)

Mr. **Brandt** explained these proposals in his direct testimony:

Stipulated savings values or "deemed" values are the savings that ComEd proposes using in the impact evaluation of the program. While discussed in much more detail in the direct testimony of Messrs. **Jensen** and **Hall** (ComEd Exs. 6.0 & 7.0), the policy underlying stipulated savings is that many measures have been evaluated numerous times for several years, establishing levels of energy savings that are consistently achieved. Instead of trying to "reinvent the wheel" for common, non-weather-sensitive measures, ComEd proposes that kWh savings values for such measures be adopted up-front so that evaluation dollars can be used more effectively on other parts of the analysis.

The NTG ratio, on the other hand, establishes a value reflecting the program's net impact, taking into account the impact of "free riders" and "free drivers." Free riders are customers who would have installed the measures for which they received the incentives even in the absence of the program. Free drivers are customers who did adopt a measure that is promoted by a program after having been influenced by the program, but without taking the program incentive, the savings effect of which is called "spillover". Again, this concept is discussed in more detail in the direct testimony of Messrs. **Jensen** and **Hall**. The policy behind deeming NTG ratio values is based on the same logic as deeming the measure savings values. These values have been evaluated numerous times over several years, and projections of the NTG ratio from these other analyses will provide ComEd with reasonable projections of their expected results. There is no reason to use limited evaluation dollars to conduct new analyses of this data.

(ComEd Ex. 2.0, p. 45.)

"Deeming" values is a common practice in energy efficiency proceedings, is based on well-established research, and saves significant resources. Moreover, ComEd proposes that any changes in the deemed values that the independent evaluator believes are appropriate should be applied on a prospective basis only, meaning that if the independent evaluator modifies values deemed by the Commission or otherwise establishes new values, those values only should be

applied in subsequent Plan years and not to savings booked to that point or otherwise booked in the current Plan year. ComEd witness Mr. **Jensen** proposes the values ComEd is requesting the Commission to adopt, and ComEd witness Mr. **Hall** provides expert testimony as to the propriety and importance of deeming the proposed values and applying any modifications to those values prospectively. (*See* ComEd Ex. 6.0 Corrected & Ex. 7.0.)

With the exception of Staff witness Mr. **Zuraski**, no party objects to ComEd's proposal to deem certain non-weather-sensitive measure savings values. Indeed, AG witness Mr. **Mosenthal** opines "that it is reasonable to deem savings where there is a great deal of certainty about savings from past studies," including "the gross savings estimates (kWH and kW) for prescriptive lighting." (AG Ex. 1.0, p. 28.) Although Mr. **Zuraski** believes that deeming values may be sensible, he believes that if such deeming occurs, it should be done in a future docket, after Staff and other parties have more of an opportunity to review the relevant data, rather than as part of this proceeding. (Staff Ex. 1.0, pp. 42-44.) Messrs. **Hall** and **Jensen** note in their rebuttal testimony that "[t]his position is an outlier," because every state implementing "energy efficiency programs has deemed certain non-weather-sensitive measure savings values." (ComEd Ex. 13.0, p. 13; *see also* ComEd Ex. 12.0, pp. 11-12.) Moreover, Mr. **Hall** states that applying the results of Illinois evaluation studies one or two years out will not bring the Commission any closer to "getting the numbers *right*," as Mr. **Zuraski** urges. (ComEd Ex. 13.0, p. 13.) In fact, changing savings values on a small number of studies with such a limited evaluation budget "is just as likely" to result in a less accurate number as it is a more accurate number. (*Id.*)

With respect to ComEd's proposal to deem certain NTG ratio values, only Mr. **Mosenthal** and Mr. **Zuraski** oppose the proposal. (Staff Ex. 1.0, pp. 31-33; AG Ex. 1.0, pp. 29-

31.) As stated in the rebuttal testimony of Messrs. **Jensen** and **Hall**, ComEd maintains that deeming NTG values is appropriate, sound, fair and reasonable. (ComEd Ex. 12.0, p. 13; Ex. 13.0, p. 8.) Because NTG values depend largely “on the strength of the evaluation study,” “deeming NTG ratio values for the pre-evaluation period is particularly important in Illinois, where the evaluation budget is limited.” (ComEd Ex. 13.0, p. 8.) ComEd witness Mr. **Jensen** highlights the risk to ComEd should the Commission not deem these values, stating that absent such deeming, ComEd may face penalties for missing the statutory savings goals “simply by virtue of an evaluator, after the fact, arriving at a new measure savings value or an estimate of a NTG ratio that is below 0.8.” (ComEd Ex. 12.0, p. 13.) ComEd further proposes that if the Commission does not accept the proposal to deem values, any changes to values should still only be applied prospectively. (ComEd Ex. 12.0, pp. 14-15.)

Further, Messrs. **Jensen** and **Hall** take issue with Mr. **Zuraski**’s characterization of ComEd’s use of 0.8 as a default NTG ratio for most programs as “suspicious” and a “guesstimate.” (Staff Ex. 1.0, p. 31.) Rather, the 0.8 value is based on review and discussion of evaluation findings for hundreds of programs over many years, and it is completely appropriate for these values to be adopted initially by the Commission for evaluation purposes. (ComEd Ex. 12.0, pp. 12-13; Ex. 13.0, pp. 11-12.) Further, no party has recommended any default values that are preferable to those from California, where the most reliable studies have taken place. (ComEd Ex. 13.0, pp. 12-13.) Finally, if further reliable studies in Illinois yield different numbers, ComEd does not oppose adoption of those numbers on a going-forward basis. (*Id.*, p. 12.)

4. Reporting

Finally, in its Plan ComEd proposes the preparation of semi-annual evaluation status reports by the evaluator. (ComEd Ex. 1.0, p. 12.) NRDC witness Mr. **Henderson** also proposes that ComEd be required to submit to the Commission a series of monthly, quarterly, and annual reports. (NRDC Ex. 1.0, p. 10-11.) ComEd responds that reporting schedules should be worked out through the collaborative process described *infra*, as ComEd “will need to balance the costs associated with producing these reports with the value received from the reports.” (ComEd Ex. 9.0, p. 13.)

H. Collaborative Process

Although not a statutorily required element of ComEd’s Plan, the continuation of a stakeholder collaborative process was a subject of comment by Staff and intervenors. In its Plan, ComEd notes that it “is committed to continued engagement with our stakeholders to provide not only opportunities to review our progress, but also to contribute to the continued development and strengthening of the portfolio.” (ComEd Ex. 1.0, p. 27.)

Staff witness Mr. **Zuraski** notes that ComEd is “responsible for implementing the plan approved by the Commission.” (Staff Ex. 1.0, p. 26.) “If [ComEd] wishes to enlist interested parties in that implementation process, that should be left to [ComEd’s] discretion, and need not be approved or ordered by the Commission.” (*Id.*) In addition, multiple intervenors comment on the advisory collaborative process described in the testimony of NRDC witness Mr. **Henderson**. (*See* NRDC Ex. 1.0, pp. 5-6.) The City of Chicago “generally supports” NRDC’s proposal, as does the ELPC. (City Ex. 1, p. 5; ELPC Ex. 1, p. 4.) AG witness Mr. **Mosenthal**, however, appears to promote a collaborative that will “meet frequently ” and make recommendations that are binding on the utility. (AG Ex. 1.0, pp. 6-8.) Mr. **Mosenthal** suggests that “[i]f consensus

cannot be reached, collaborative stakeholders should still be free to seek resolution of the disagreement at the ICC or in another forum.” (*Id.*, p. 8.)

ComEd agrees with Staff witness Mr. **Zuraski** that the collaborative process should be voluntary and non-binding. Mr. **Brandt** states in his rebuttal testimony that, although ComEd anticipates engaging interested stakeholders in ongoing discussions and believes that such collaboration has been, and will continue to be, valuable, “ComEd is not seeking Commission approval of a collaborative process in this docket. Indeed, Section 12-103 makes no mention of a stakeholder advisory group or collaborative process, and, as AG witness Mr. **Mosenthal** and other parties note, the utilities “[u]ltimately . . . bear responsibility for their plans and actions.” (ComEd Ex. 9.0, p. 12 (citing AG Ex. 1.0, p. 8).)

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Respectfully submitted,

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