

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)	

BRIEF OF COMMONWEALTH EDISON COMPANY

Mark R. Johnson
Matthew R. Lyon
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000
mrjohnson@sidley.com
mrlyon@sidley.com

Michael S. Pabian
Attorney for Commonwealth Edison Company
10 South Dearborn Street, 49th Floor
Chicago, Illinois 60603
(312) 394-5831
michael.pabian@exeloncorp.com

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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 the 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, which “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). Working with the Illinois Department of Commerce and Economic Opportunity (“DCEO”) and drawing upon energy efficiency best practices and input from both national energy efficiency experts and stakeholders, Commonwealth Edison Company (“ComEd”) devoted substantial resources in a short time period to design its 2008-2010 Energy Efficiency and Demand Response Plan (“Plan”). ComEd’s Plan meets the statutory requirements in Section 12-103.

Since ComEd filed its Plan on November 15, 2007, neither the Staff (“Staff”) of the Illinois Commerce Commission (“ICC” or “Commission”) nor any intervenor has disputed that ComEd’s Plan is designed to meet the statutory energy reduction goals. In fact, several witnesses complemented ComEd’s Plan and its efforts:

- Natural Resources Defense Council (“NRDC”) witness Henry Henderson “recommends that the Commission approve ComEd’s Energy Efficiency and Demand Response Plan that is before it so that the programs can move forward and start producing energy savings for the State of Illinois.” (NRDC Ex. 1.0, p. 12.)
- Illinois Attorney General’s Office (“AG”) witness Philip H. Mosenthal “conclude[s] that ComEd, Ameren and DCEO . . . have done a thorough job, using an appropriate planning

process, to develop their plans. Overall, the portfolio is a reasonable start, and provides a platform to develop a comprehensive set of effective programs.” (AG Ex. 1.0, p. 4.)

- City of Chicago (“City”) witness William F. Abolt notes that ComEd “produced what is, overall, a thorough and sound plan” (City Ex. 1.0, p. 3; Tr., p. 97.)

With the core of ComEd’s Plan uncontested, each party filing direct testimony (Staff excluded) instead focused either on post-Plan approval issues like final program design or on its own “wish list” of preferences, tweaks and even new program elements, which, in some instances, sought only to cater to a party’s particular interests or even directly conflicted with another party’s proposal. Moreover, these wish lists failed to take into account the requirements of Section 12-103, including the spending screens, the total resource cost test requirements, and the fact that the Plan must be balanced to provide opportunities to *all* customers throughout the entire ComEd service territory. With the exception of Staff, these parties ignored the central issue in this docket of whether ComEd’s Plan satisfies the statutory criteria of Section 12-103.

The variety of comments simply reflects the fact that there are many ways that a plan might be configured to meet the statutory goals, and it is not disputed the ComEd’s Plan represents one such configuration. Further, even taking these suggestions and comments into consideration, the evidence shows there are actually very few contested issues. Many witnesses make recommendations for ComEd to *consider* certain suggestions, but do not request that the Commission decide these issues in this docket. Indeed, ComEd responded in its rebuttal testimony that it is willing to explore certain comments during the stakeholder advisory process that will continue following this docket. Those proposals that do purport to affect the Commission’s approval of ComEd’s proposed Plan, however, either are insufficiently developed, contradict the proposals of other intervenors, or otherwise are without merit, and should be

rejected. With respect to ComEd's proposed cost-recovery mechanism, Rider EDA – Energy Efficiency and Demand Response Adjustment, no party has presented an alternative cost-recovery mechanism that is any more just and reasonable than that proposed by ComEd.

In the end, all parties acknowledge that ComEd bears the ultimate responsibility for whether or not its Plan achieves the statutory goals, and only ComEd--not Staff, intervenors or stakeholders--is potentially subject to the statutory penalties for failing to meet the goals. ComEd, therefore, requests that the Commission approve its Plan and its cost recovery mechanism, Rider EDA.

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 initiatives in Illinois, while 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 ensures 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 end use.” 20 ILCS 3855/1-10. It 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. It 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).¹

¹ “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 with demands less than 100 kilowatts (except those on the hourly pricing plan). The business customers in this group represent only about 19% of ComEd’s total non-residential energy deliveries (not supply).

“[C]ost-effective” as used in subsections (b) and (c) of Section 12-103 “means that the measures satisfy the total resource cost [(“TRC”)] test.” 220 ILCS 5/12-103(a). The Illinois version of the 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.

20 ILCS 3855/1-10. One significant difference between the standard formulation of the TRC test and the Illinois version is that “the standard formulation includes the value of all energy savings attributable to a measure, while the Illinois version includes only the value of electricity savings and excludes natural gas savings.” (ComEd Ex. 6.0 Corrected, pp. 15-16; *see also* AG Ex. 1.0, p. 20.)

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:

[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). 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.” *Id.* “The portfolio of measures, administered by both the utilities and [DCEO], shall, in combination, be designed to achieve the annual savings targets” in the statute. *Id.*

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.*

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 the utility will meet the energy efficiency and demand response goals for the Plan years 2008 through 2010. 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 kilowatthour 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). Following the utility’s submission of its Plan, “[t]he Commission shall seek public comment on the utility’s plan and shall issue an order approving or disapproving each plan within 3 months after its submission.” *Id.* As explained in Section III *infra*, the evidence shows that ComEd has made the requisite showing under each of these criteria, and ComEd therefore requests that the Commission approve its Plan.

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. COMED’S PLAN COMPLIES WITH THE FILING REQUIREMENTS OF SECTION 12-103(f), AND SHOULD BE APPROVED.

As described below, ComEd’s Plan meets each of the filing requirements of Section 12-103(f). As such, the Commission should approve ComEd’s Plan.

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. ComEd’s Plan, when considered in conjunction with DCEO’s portfolio of measures, meets the energy savings goals within the prescribed spending screens.

No party disputes that the portfolio that ComEd has set forth in its Plan, when considered in conjunction with the programs to be implemented by DCEO, is designed to meet the energy efficiency and demand response energy savings goals laid out in subsections (b) and (c) of Section 12-103. *See* 220 ILCS 5/12-103(b) & (c). As fully described in ComEd’s Plan and supporting testimony, ComEd undertook a comprehensive planning process to develop its Plan. (*See* ComEd Ex. 1.0, Ex. 2.0, Ex. 3.0 Corrected & Ex. 6.0 Corrected). Throughout the planning process, ComEd engaged many Illinois stakeholders,² as well as national energy efficiency experts, to determine which energy efficiency programs worked in other locations and which combination of programs is most desirable and attainable in the ComEd service territory. ComEd adopted a number of the suggestions made by stakeholders. (*See, e.g.*, ComEd Ex. 2.0, pp. 11-12.) The result of this iterative process is a Plan built around five broad “Solutions” programs (Residential, Business, Public Sector, Low-Income and Market Transformational and Educational), each of which contains several program elements intended to provide a diverse range of energy efficiency options for all customer classes. (*See id.*, pp. 18-19.) These programs rest on several crosscutting initiatives designed as a foundation for market transformation. As

² In developing its Plan, ComEd 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 included the Staff of the Illinois Commerce Commission and many of the parties who have intervened in this docket, including: the AG, the Building Operators and Managers Association (“BOMA”), the Citizens Utility Board (“CUB”), the City, Environment Illinois, the Environmental Law and Policy Center (“ELPC”), the Illinois Industrial Energy Consumers (“IIEC”), and the NRDC. Other participating stakeholders included the Center for Neighborhood Technology, the Metropolitan Mayors Caucus, and the Midwest Energy Efficiency Alliance.

demonstrated in Tables 1 and 2 of the Plan (ComEd Ex. 1.0, pp. 2 & 5), these programs are designed to achieve the energy savings goals in each of the three Plan years, a fact no party disputes.

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). ComEd witness Mr. Crumrine presented these “spending screens” in his direct testimony (ComEd Ex. 5.0.), and 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.) Staff witness Mr. Zuraski notes that “[t]he computations appear to be correct” (Staff Ex. 1.0 at 10-11), and no party disputes their accuracy.³

³ Mr. Zuraski claims that there are legitimate reasons for updating the spending screens at various points during the Plan because they are based on projections. (Staff Ex. 1.0, pp. 11-12.) As Mr. Brandt explained, however, ComEd relied on these numbers in assembling its three-year Plan, and the statute requires that ComEd file a single, three-year plan, not three, one-year plans. (ComEd Ex. 9.0, p. 7.) Therefore, in order to develop such a plan while taking into account growth over a three-year period, it is

Subsection (e), on the other hand, requires that the utility and DCEO share the duties of implementing the energy efficiency measures. *See* Section II *supra*. ComEd and DCEO calculated the program split required by the statute 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.) That split also resulted in a specific determination with respect to each party’s share of the statutory energy efficiency targets of 79% for ComEd and 21% for DCEO, respectively. (*Id.*, pp. 14-15; *see also* ComEd Ex. 1.0, p. 2.) In addition, “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 should be rejected.**

Although no party disputes that ComEd has satisfied the Section 12-103(f)(1) requirement, several parties nevertheless offer suggestions and recommendations concerning the proposed program elements and proposing new program elements. There are, of course, a variety of ways in which an energy efficiency and demand response plan could be configured to meet the statutory goals, and ComEd recognizes that some of these suggestions may be worth exploring in the stakeholder advisory process described in Section IV, *infra*. However, the remaining recommendations generally represent wish lists of undeveloped program ideas and suggestions that fail to take into account the spending screens of Section 12-103(d), the TRC test, or the required diversity of the programs. Indeed, some of the parties’ recommendations are

critical that the spending screen for each year be determined at the outset to provide certainty throughout the planning process to both ComEd and its third-party implementers. Mr. Zuraski’s proposal fails to

even inconsistent with each other. To the extent that any proposed modifications to ComEd's Plan seek Commission action in this docket, they should be rejected. The parties' suggestions and recommendations include the following:

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 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 the AG's recommendations are not advisory, ComEd has raised various concerns with these proposals, and cautions that the Commission should not adopt them. (*Id.*, pp. 4-7.) In particular, the proposals, if implemented, raise serious questions about ComEd's ability to meet the energy savings goals and to track savings for evaluation, measurement and verification purposes. Also concerning is Mr. Mosenthal's recommendation that room air conditioners should now be dropped from the Appliance Recycling program. (AG Ex. 1.0, pp. 20-21.) This option actually was added to the program element at the suggestion of stakeholders during the planning process. (ComEd Ex. 2.0, pp. 11-12.) Clearly Mr. Mosenthal's proposals are, at best, for discussion purposes only, not for implementation.

City of Chicago: The City asked that the Commission "require that ComEd's Plan give preference to the use of existing programs for delivery of energy efficiency measures," and identified three existing programs that potentially could be used to leverage programs in

address these concerns, is insufficiently developed, and therefore should be rejected.

ComEd's portfolio. (City Ex. 1.0, pp. 5-10.) ComEd acknowledges that the potential to leverage existing programs does exist, including the City's programs,⁴ and, as part of the stakeholder advisory process, ComEd would expect to work with interested parties to evaluate and develop leveraging opportunities that would improve the economics of portfolio programs.

However, the City's "preference" or "leveraging" proposal is insufficiently developed at this time, and does not provide adequate justification for rejecting ComEd's Plan. Indeed, the City admitted that it has not determined whether any of its current programs are cost-effective under the TRC test, either with or without ComEd's participation, and the sample programs also focused, at least in part, on customer segments for which DCEO is responsible for implementing programs. (Tr., pp. 100, 106-07 & 111-12.) Moreover, the proposed leveraging raises a number of issues with respect to how ComEd would deliver programs cost-effectively to the other two-thirds of its customers located outside the City of Chicago. Such geographical fracturing was not addressed by the City.⁵

NRDC: Although the NRDC requests that the Commission approve ComEd's Plan as filed, it nevertheless asks "ComEd [to] *consider* adding a Residential New Construction program." (NRDC Ex. 1.0, p. 4 (emphasis added).) However, "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.

⁴ For example, the City suggested that ComEd leverage the energy efficiency recommendations identified through the City funded Chicago Industrial Rebuild Program (CIRP), thereby taking advantage of the fact that audits have already been conducted so that ComEd could move to the implementation phase more quickly with these customers. (City Ex. 1.0, p. 8.)

⁵ The City also "recommends that ownership of all environmental attributes of the efficiency resources be maintained by the incentive recipient." (City Ex. 1.0, p. 11.) However, the City does not define what an "environmental attribute" is or how one would "own" such an attribute. It is also unclear what effect such ownership would have on ComEd's ability to achieve the statutory goals. This proposal is not sufficiently clear or developed to be considered in this docket, and therefore should be rejected.

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: Although CUB does not dispute that the proposed Nature First Expansion program is designed to meet the statutory demand response goals, CUB nevertheless 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.) This proposal is both outside the scope of Section 12-103 and mischaracterizes ComEd’s obligations under PJM, and therefore should be rejected. First, ComEd can only self-schedule up to ten calls of the Nature First program per year, not twenty, and 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.) Second, CUB admitted that it did not analyze the effect of the 100% cycling option on customers’ comfort levels, which is the option nearly 60% of the Nature First customers select. (*See* ComEd Group Ex. 1, CUB’s Response to ComEd’s Data Request No. 1.10; ComEd Ex. 3.1.) At bottom, the proposal has nothing to do with whether the Nature First program meets the statutory demand response goals, and, therefore, should be rejected.

BOMA and City of Chicago: The City and BOMA also present their wish for free data access and interval meters. The City “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; *see also* BOMA Ex. 1.0, pp. 6-7.) BOMA also asserted, “[w]e want institutional programs that advance building owners’ energy efficiency goals . . .,” and proposed that the Commission and ComEd

should establish a formal partnership between ComEd and BOMA/Chicago. (BOMA Ex. 2.0, p. 5.) These proposals should be rejected.

ComEd already “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.) Further, 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.*) “[N]either the City nor BOMA showed that any of its proposals were cost-effective under the TRC test,” or how these proposals would be funded within the spending screens. (*Id.*) And finally, with respect to the formal partnership that BOMA “want[s]”, the proposal is undeveloped, outside the scope of the statute and should be rejected.

NRDC and ELPC: The ELPC suggests 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 the NRDC 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). Section 12-103, however, makes no provision for such a statewide website, and in fact directs the utility to “tak[e] into account the unique circumstances of [its] service territory.” 220 ILCS 5/12-103(f). Moreover, 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 grown accustomed, (ii) costs associated with a statewide website,

including the costs to reeducate and reorient customers away from ComEd's website and to 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. ComEd should have flexibility to manage the portfolio going forward.

No party disputes that ComEd needs the flexibility to manage its portfolio. Indeed, 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.) As such, ComEd requests that the Commission grant it 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. (*See* ComEd Ex. 1.0, p. 15; Ex. 2.0, p. 36.)

Staff witness Mr. Zuraski finds ComEd's proposal "reasonable," and appears to support it to the extent that ComEd's use of such flexibility will still comport with the Act's requirement that ComEd provide a diverse-cross section of opportunities. (Staff Ex. 1.0, p. 9; *see also* ELPC Ex. 1.0, p. 5 (agreeing that flexibility is important, with the caveat "that the relative share of funds assigned to specific sectors (residential, commercial, industrial) remain approximately proportionate to the proposed levels in the plan.")) ComEd agrees with Staff and ELPC, and is not proposing unlimited flexibility, as all portfolio changes "would be subjected to a rigorous analysis, including application of the TRC test." ComEd also recognizes that it "must maintain a diverse cross-section of programs that provides opportunities to all customers" (ComEd Ex. 9.0, pp. 19-20.) Further, ComEd believes that its exercise of this flexibility "would be one of the

primary purposes of the stakeholder collaboration” (*id.*, p. 19), although ComEd opposes AG witness Mr. Mosenthal’s recommendation that the exercise of flexibility by ComEd be subject to agreement by the stakeholder advisory process (*see* Section IV *infra*). ComEd therefore requests that the Commission grant it the flexibility to manage its portfolio to ensure the goals are achieved.

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). Although ComEd agrees with Staff witness Mr. Zuraski that this statutory directive is vague and ambiguous (Staff Ex. 1.0, p. 5), ComEd nevertheless has satisfied this requirement. With regard to new building standards, “ComEd coordinated with DCEO with respect to [this] requirement” and “[p]rograms offered by the Department will address this requirement.” (ComEd Ex. 2.0, p. 10.) ComEd coordinated with DCEO because at this time, ComEd only is aware of new State standards applicable to school buildings, and DCEO’s proposed programs currently address that market segment. ComEd is not aware of any new State appliance standards that it can implement as part of its Plan.⁶ (*See* ComEd Ex. 9.0, p. 6.)

C. ComEd Provided 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

⁶ As Mr. Zuraski notes (Staff Ex. 1.0, p. 5), it is not clear how ComEd would “implement” any new standards, except by making sure that, where new appliances are involved in a program, those appliances

subsections (b) and (c) of this Section, as modified by subsections (d) and (e).” 220 ILCS 5/12-103(f)(3). ComEd witness Mr. Crumrine provides the estimates of the total amount paid for electric service, expressed on a per kilowatt hour basis, that are 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. In fact, Staff witness Mr. Zuraski affirmatively notes that ComEd has presented these estimates and that “[t]he computations appear to be correct.” (Staff Ex. 1.0, pp. 10-11.)

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). At the outset of the planning process, ComEd and DCEO agreed that DCEO would oversee the low-income portfolio. (See ComEd Ex. 2.0, p. 14.) Staff witness Mr. Zuraski asked that ComEd clarify that it coordinated with DHFS (Staff Ex. 1.0, p. 5), and Mr. Brandt explained in response 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), ComEd’s “overall portfolio of energy efficiency and demand-response measures . . . represent a diverse cross-section of opportunities for customers

comply with any new applicable standards. (See ComEd Group Ex. 1, Staff’s Response to ComEd’s Data Request No. 1.03 (listing federal appliance standards applicable to appliance manufacturers).)

of all rate classes to participate in the programs.” (220 ILCS 5/12-103(f)(5); *see also* ComEd Ex. 6.0 Corrected.) Under the portfolio, ComEd’s Residential and Business Solutions programs contain a wide variety of energy efficiency and demand response options for residential and commercial and industrial (“C&I”) customers, and DCEO’s Public Sector, Low-Income and Market Transformational and Educational Solutions programs also provide opportunities across rate classes.⁷ (*Id.*; *see also* ComEd Ex. 1.0 & Ex. 2.0.) No party disputes the diversity of ComEd’s Plan, and in fact Staff witness Mr. Zuraski agrees that ComEd’s “portfolio of energy efficiency and demand response measures appear to comprise a ‘diverse cross-section of opportunities for customers of all rate classes.’” (Staff Ex. 1.0, p. 7.) As such, this statutory requirement is met.

Moreover, the programs in ComEd’s Plan are cost-effective. As described in great detail in both the Plan and the direct testimony of ComEd witness Mr. Jensen, ComEd’s portfolio includes energy efficiency and demand response measures that are cost-effective under the statutory Total Resource Cost (“TRC”) test. (ComEd Ex. 1.0 & 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). (ComEd Ex. 6.0 Corrected, pp. 9-18, 25-29 & 31-32.) Only those programs passing the TRC test were included in ComEd’s final portfolio,

⁷ Although the Nature First Expansion program, which ComEd proposes to meet its demand response requirements under Section 12-103(c), applies only to residential customers, the demand response measures are for “eligible retail customers” only, which in ComEd’s case include only residential customers and a limited number of small C&I customers. (*See supra* p. 3, n. 1; ComEd Ex. 3.0 Corrected, pp. 10-11.) Moreover, ComEd’s entire portfolio of programs includes opportunities for participation by customers of all rate classes. Section 12-103(f)(5) does not require that all programs be available to all customers.

and “[t]he portfolio as a whole is cost-effective with a [TRC] test benefit-cost ratio of 1.43.” (*Id.*) Staff witness Mr. Zuraski notes this calculation, and states that “given all the assumptions used by [ComEd], the TRC test was correctly computed.” (Staff Ex. 1.0, p. 20.) No party challenges ComEd’s computation of the TRC test or the cost-effectiveness of ComEd’s programs. Moreover, many of the intervenors’ proposals described in Section III.A.1 *supra* are not sufficiently developed because the parties offering them have not shown that they are cost-effective using the Illinois TRC test.

F. ComEd Proposes to Recover the Costs Incurred Under Its Plan Through Rider EDA, which Is Just and Reasonable.

In compliance with Section 12-103(f)(6) of the Act, ComEd has proposed a cost-recovery mechanism, Rider EDA, which was attached to the Plan (ComEd Ex. 1.0, App. F) and 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”).

Intervenors’ comments regarding ComEd’s proposed Rider EDA fall into two categories: (1) those regarding the structure of the Rider, and specifically concerns regarding the use of a single ¢/kWh charge, and (2) those regarding estimates of particular incremental costs that ComEd proposes to recover. Because ComEd’s proposed Rider EDA is just and reasonable, the Commission should approve it.

1. **The Single Charge Cost-Recovery Method Included in ComEd’s Plan is Lawful.**

Rider EDA, included as the cost-recovery mechanism in ComEd’s Plan, 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 appropriate, 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 or groups. 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.) These proposals do not provide sufficient grounds for the Commission to reject ComEd’s Plan.

a. **ComEd’s Single Charge Rider Is Consistent with the Legislative Goals.**

Although IIEC’s and BOMA’s proposals may not be unlawful, ComEd maintains that its proposal for a single charge for all customers is itself lawful, just and reasonable in light of the purposes of the legislation compelling the implementation of the energy efficiency and demand response measures for all of ComEd’s customers, which are described its Plan.

In that regard, it is important to look at both what the General Assembly said and what it did not say in enacting the new Section 12-103 of the Public Utilities Act. First, the General Assembly did not say that it was mandating the implementation of these energy saving measures in order to provide individual customers with very specific mechanisms to manage their individual electric bills – *i.e.*, the General Assembly was not primarily concerned about the so-called “direct” benefits that inure to individual customers who implement energy efficiency measures, even though such benefits may be obvious and substantial. Rather, Section 12-103(a) of the Act states:

It 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. Requiring 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) (emphasis added).

This policy makes clear that the measures to be implemented pursuant to Section 12-103 are for the benefit of society in general, and Illinois electricity users in particular – so-called “system benefits”.⁸ Furthermore, considering that Section 12-103(b) and (c) set firm energy efficiency and demand response goals for ComEd, and Section 12-103(f)(5) requires ComEd’s portfolio of energy efficiency measures to “represent a diverse cross-section of opportunities for customers of all rate classes to participate,” it is irrelevant from a ratemaking perspective whether more program dollars ultimately are spent on programs for one group or class of

⁸ See, e.g., Discussion of “System Benefits Charge” by the New York Public Service Commission, available at <http://www.dps.state.ny.us/sbc.htm>; *In re Systems Benefits Charge III*, No. 05-M-0090, at 8-9 (N.Y. Pub. Serv. Comm’n Dec. 21, 2005), available at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/5375707FAF2225B2852570D600700767/\\$](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/5375707FAF2225B2852570D600700767/$)

customers than another. Simply put, the goals must be met regardless of the customer groups or classes from which the energy savings are obtained or, in turn, where the program dollars are actually spent.

Under the circumstances, contrary to IIEC's claims, a customer's mere eligibility for certain programs (by being a member of a class to whom those programs are directed) does not confer on that customer any unique responsibility for the cost incurred in offering those programs, just as a customer's ineligibility does not create any limitations on responsibility for the costs of programs that must be offered to other customers to meet the requirements of the law and the savings goals.

As a result, it could be argued that the traditional class or group-based distinctions used for ratemaking purposes are meaningless, because no customer is a "cost-causer" in the *traditional* sense in the context of a mandatory energy efficiency and demand response program such as this one. Or, in another sense, because the General Assembly has mandated these programs for the benefit of all customers, then all customers may properly be viewed as the causers of the costs of the entire portfolio of programs.⁹

And while IIEC and BOMA may express some concern that no one in this proceeding has attempted to assess the relative "direct benefits" that might accrue to different classes or groups of customers under the programs, or to assess the magnitude of the "system benefits" that

[File/05m0090_12_21_05.pdf?OpenElement](#) (renewing the program and rejecting claims that the single volumetric charge structure has a disproportionate and unfair impact on "high-end users").

⁹ In this regard, it is not ComEd's position that there are any subsidies involved in this proceeding. In particular, IIEC's counsel's cross-examination of Mr. Crumrine about his testimony regarding a particular subsidy involved in another case (Tr., pp. 183-97) is not germane to the recovery of the costs involved in this proceeding. Mr. Crumrine explained that his testimony in the prior case was given in the context of discounted rates requested by the City of Chicago and the issue of which customers should be burdened with making up for the revenue shortfall generated by the resulting subsidy. In this proceeding, all Plan

inure to all customers as a result of ComEd's Plan, the fact is that it does not matter. The General Assembly has determined that all customers will benefit from the mandates of Section 12-103. Thus, it is reasonable to hold all customers jointly liable for *all* of the costs of complying with the law's requirements, because the costs are being incurred for the benefit of all customers. These are the very reasons that Staff witness Mr. Lazare concurs in the propriety of a single-charge cost recovery mechanism. (Staff Ex. 3.0, pp. 4-6.)

IIEC's and BOMA's Proposals for Multiple Charges Are Not More Compliant With Traditional Rate Making Principles of Cost Causation.

IIEC and BOMA may argue that their proposals for class or group-based charges are more in line with traditional rate making principles of cost causation. For endorsement of their proposals, they may even point to Section 1-102(a)(v) of the Public Utilities Act, wherein the General Assembly has indicated as a matter of policy that "variation in costs by customer class and time of use is taken into consideration in authorizing rates for each class." 220 ILCS 5/1-102(a)(v). Such an argument, however, would be misplaced.

IIEC's and BOMA's proposals for class-based charges are substantially different from traditional class-based electric rates. In the latter case, the electric service costs that are attributable to a class are included in the class-based rate and charged to all members of the class *who take the service to which the costs are attributed* – *i.e.*, customers of a particular class who take electric service are considered to be the causers of the costs of electric service attributable to that class and are charged accordingly. However, IIEC's and BOMA's proposals would allocate the costs of energy efficiency programs to each of their proposed groups or classes and then

costs are being incurred for the benefit of all customers. As Mr. Crumrine said, comparing the two cases would be an "apples and oranges" comparison. (Tr., pp. 184-85.)

charge them to all members of the particular group or class, *even those who do not participate in the programs to which the costs are attributed.*

It appears that the assumption behind these proposals is that a member of a class is somehow uniquely the causer of the costs of the programs offered to that class and not of programs offered to another class. While that logic might be persuasive if charges were assessed only to customers who participated in the programs, the argument loses all force when consideration is given to the fact that all of the costs of the Plan must be recovered from all customers, including, and especially, those customers who do not participate in the programs.¹⁰ Moreover, as noted *supra* p. 23, the goals must be met regardless of the customer groups or classes from which the energy savings are obtained or, in turn, where the program dollars are actually spent. A customer's mere eligibility for certain programs (by being a member of a class to which those programs are directed) does not confer on that customer any unique responsibility for the cost incurred in offering those programs, just as a customer's ineligibility does not create any limitations on responsibility for the costs of programs that must be offered to other customers to meet the requirements of the law and the savings goals.

c. BOMA's and IIEC's Proposals Are Themselves Deficient.

In addition to the fact that BOMA's and IIEC's proposals themselves fall short of compliance with traditional ratemaking principles, they are deficient in other respects as well.

BOMA, as ComEd witness Mr. Crumrine explained, offers no support whatsoever for its claim that its multi-class proposal is "superior from a policy standpoint". (BOMA Ex. 1.0, p.

11.) In addition, Mr. Crumrine noted:

¹⁰ No party has suggested that only programs participants be charged for program costs. Obviously, such a structure would ensure failure of the Plan's ability to achieve the Section 12-103 goals. For example,

[T]he proposal is not sufficiently developed to be implemented by ComEd. Key functions of Rider EDA are not specifically addressed, and the implications of BOMA's approach have not been fully articulated.

(ComEd Ex. 11.0, p. 8.) Mr. Crumrine went on to show that BOMA has not explained how the annual reconciliation process would work with BOMA's fifteen rate classes. (*Id.*, pp. 8-9.) In addition, to the extent that BOMA regards the fifteen "rate screens" as caps on annual cost recovery from the fifteen delivery service classes, respectively, and/or would seek to true-up Rider EDA revenues from each class with an allocation of the Incremental Cost incurred for each class, the proposal would reduce the level of revenues that ComEd will have to expend on the programs and, therefore, impede ComEd's ability to successfully implement the programs and meet the statutory goals. (*Id.*, p. 9.) Such an approach also would require extensive class-by-class cost tracking and allocation, thereby increasing the administrative burden and cost of implementing ComEd's Plan and detracting from actual program efforts.¹¹ (*Id.*)

With respect to IIEC, it appears that its main complaint with ComEd's single charge Rider EDA is summed up in Mr. Stephens' testimony as follows:

It is fundamentally unfair for some customer classes to be required to pay disproportionate amounts in excess of the costs they cause, for programs that do not directly benefit them or for which they are not eligible, when a more appropriate allocation of costs to cost-causers is easily accomplished.

(IIEC Ex. 1.0, p. 11.) As discussed above, ComEd does not agree with either IIEC's conclusion here or its assessment of the facts. Moreover, IIEC's logic is simply flawed – IIEC makes this argument where it would reduce the costs that C&I customers would pay, but abandons the

residential customers receiving a \$2 coupon for a compact fluorescent light bulb ("CFL") would be charged \$2 for the coupon and an additional amount to cover the administrative costs of the program.

¹¹ ComEd witness Mr. Brandt also agreed that both BOMA's and IIEC's proposals would likely result in increased administrative costs. (ComEd Ex. 9.0, p. 10.)

argument when it comes to the costs of low-income programs mandated by Section 12-103(f)(4), which IIEC would impose solely on residential customers. (IIEC Ex. 2.0, pp. 9-10.) For the vast majority of residential customers, these are costs, in Mr. Stephens' words, "for programs that do not directly benefit them [and] for which they are not eligible." (IIEC Ex. 1.0, p. 11.) While IIEC recognizes differences between subgroups of non-residential customers in order to minimize the cost of non-residential programs for which it would pay, it treats residential customers as one homogeneous group and does not acknowledge any responsibility for paying for a share of the costs of these mandatory low-income programs.

In conclusion, IIEC's and BOMA's arguments for multiple charges must be rejected as providing no legitimate basis for rejecting ComEd's Plan.

2. Rider EDA Only Seeks to Recover the Just and Reasonable Costs Related to ComEd's Plan.

ComEd seeks to recover "Incremental Costs" under Rider EDA, which are those 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" Commission. (ComEd Ex. 1.0, App. F.) Rider EDA also "establishes annual reporting requirements, including a verified internal audit." (ComEd Ex. 11.0, p. 13; *see also* ComEd Ex. 5.0, p. 10.) Although ComEd has provided the cost estimates required by the statute in its Plan and supporting testimony for planning purposes, it is not seeking pre-approval of any of these 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.). Any concerns

about whether those cost *estimates* are “just and reasonable” are premature, and therefore should be disregarded by the Commission.¹²

In addition, “proposed Rider EDA and its treatment of capital expenses is consistent with the traditional ratemaking treatment of supply-side resources, as well as distribution resources.” (*Id.*, p. 11.) As such, it stands in contrast to AG witness Mr. Mosenthal’s half-page suggestion that ComEd amortize all program 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; *see also* ComEd Group Ex. 1, AG’s Response to ComEd’s Data Request No. 1.28.) The Commission should ignore Mr. Mosenthal’s proposal, as 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. 11.0, pp. 10-12.) Moreover, “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.” (*Id.*, p. 11.)

As a final matter, ComEd engaged ICC Staff in pre-filing discussions regarding its proposed cost-recovery mechanism, and it is committed to working cooperatively with Staff going forward. (ComEd Ex. 11.0, p. 13.) As an example of this, in response to Staff witness Ms. Pearce’s recommendation 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), “ComEd will refine the definition of Incremental Costs in its compliance [tariff] filing” to better

¹² For example, CUB witness Mr. Thomas raises concerns with certain estimated costs related to the Nature First program. (CUB Ex. 1.0, pp. 2, 4-7.) However, CUB later states that “ComEd witnesses Paul R. Crumrine and James C. Eber address CUB’s concerns about the Nature First Expansion Cost Estimates” in their rebuttal testimony. *See* Pre-Hearing Memorandum of the Citizens Utility Board, at 1.

reflect its “intent [] to limit cost recovery through Rider EDA to all incremental costs incurred after August 28, 2007” (ComEd Ex. 11.0, p. 12).

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’s approach to EM&V, which includes the preparation of semi-annual evaluation status reports by the evaluator (with final reporting schedules being worked out through the stakeholder advisory process described in Section IV.A *infra*), 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.) Although the program evaluation budget of 3% “limits the options for evaluation approaches” (*id.*, p. 8) and “affects the reliability of the evaluation findings” (ComEd Ex. 13.0, p. 4), ComEd’s EM&V proposal includes several features intended to promote the best evaluation possible. These features also minimize the risks to ComEd. As noted in Section II *supra*, ComEd faces significant penalties based on the evaluation’s outcome. The evaluation features include the “banking” and “annualizing” of measure savings and the “deeming” of certain measure savings and net-to-gross (“NTG”) ratio values.

1. ComEd Should Be Permitted to “Bank” Excess kWh Savings.

ComEd requests that it be permitted to “bank” any excess kWh energy savings that exceed a given Plan year’s goal and apply those savings 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 Ex. 2.0, p. 40.) This approach is entirely appropriate given the unpredictability in initiating new

energy efficiency and demand response programs. (ComEd Ex. 7.0.) Moreover, 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.” (ComEd Ex. 9.0, p. 10; *see also* ComEd Ex. 11.0, p. 15.) Although ComEd’s Plan is designed to meet the energy efficiency and demand response goals within the spending screens, “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.)

Staff witness Mr. Zuraski concurs with ComEd’s “banking” proposal, 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.) Only AG witness Mr. Mosenthal opposes ComEd’s banking proposal, suggesting that any “over-performance” by ComEd should be used to “advanc[e] the ramp up to higher goals as fast as possible.” (AG Ex. 1.0, p. 40.) This is incorrect for two reasons. First, this shows a misunderstanding of the energy efficiency savings goals, which 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.) Second, it incorporates the erroneous assumption that simply because ComEd exceeds its goals in one year, it will do so in the subsequent years of the Plan. This is far from a certainty, “especially in light of the fact that the goals ramp up each year.” (*Id.*) The Commission should approve ComEd’s “banking” proposal.

2. ComEd Should Be Permitted to Annualize Savings.

The Commission also should approve the “annualization” of savings in ComEd’s EM&V proposal. “Annualization” of savings for evaluation purposes “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 is unaware of any “state implementing energy efficiency programs [that] credits energy savings by any other approach” (ComEd Ex. 13.0, p. 3.) Moreover, this approach “is an effective use of evaluation resources, especially in light of the limited budget in Illinois,” because it “saves significant amounts of money in evaluation, program planning, and projection of cost-effectiveness efforts.” (ComEd Ex. 7.0, p. 10-11.) Most significantly, without annualization, ComEd would in fact be unable to reach the statutory goals. (ComEd Ex. 2.0, p. 48; Ex. 13.0, p. 3.) No party has opposed ComEd’s annualization proposal.¹³

3. The Commission Should Deem Certain Values for Evaluation Purposes.

Finally, ComEd proposes that certain values for (1) energy savings related to common, non-weather sensitive measures and (2) net-to-gross (“NTG”) ratios 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

¹³ Staff witness Mr. Zuraski does raise some “‘policy’ considerations” regarding ComEd’s annualization proposal. (Staff Ex. 1.0, p. 16.) However, Mr. Zuraski also acknowledges that he is unsure whether the Act’s percentage savings goals “are realistic either with or without annualizing savings.” (*Id.*) In fact, ComEd could not meet the goals without annualization. Further, Mr. Zuraski 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.” (*Id.*) ComEd agrees with this comment, and accordingly has been incented to create a portfolio that includes long-term programs that ramp up over time, not simply short-term programs with instant savings benefits.

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, pp. 45-46.)

“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, pp. 38-43 & Ex. 7.0, pp. 12-14.)

First, the Commission should deem the non-weather-sensitive measure savings values proposed by ComEd. No party objects to this proposal except Staff witness Mr. Zuraski. Indeed, AG witness Mr. Mosenthal states “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. (Staff Ex. 1.0, pp. 42-44.) However, “[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, applying the results of Illinois evaluation studies one or two years out will not necessarily bring the Commission any closer to “getting the numbers *right*,” as Mr. Zuraski urges. (ComEd Ex. 13.0, p. 13 (citing Staff Ex. 1.0, p. 44 (emphasis in original)).) In fact, changing savings values based 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. (ComEd Ex. 13.0, p. 13.)

Second, it is appropriate, sound, fair and reasonable for the Commission to deem the NTG ratio values proposed by ComEd for purposes of evaluation. (*See* 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. 9.) ComEd’s proposed use of 0.8 as a default NTG ratio for most programs is neither “suspicious” nor a “guesstimate”, as Mr. Zuraski claims. (Staff Ex. 1.0, p. 31.) Rather, the 0.8 value comes directly from the California Public Utilities Commission Energy Efficiency Policy Manual, which Mr. Zuraski cited in his

direct testimony and provided to ComEd in response to a request for his work papers and relied-upon documents. (See ComEd Group Ex. 1, Staff's Response to ComEd's Data Request No. 1.02.) The 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.¹⁴ (ComEd Ex. 12.0, pp. 12-13; Ex. 13.0, pp. 11-12.) Finally, if further reliable studies in Illinois yield different numbers, ComEd does not oppose adoption of those numbers on a going-forward basis. (ComEd Ex. 13.0, p. 12.) Absent deeming of NTG ratio values, 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.) If the Commission does not accept ComEd's proposal to deem values, any changes to values should still only be applied prospectively. (*Id.*, pp. 14-15.) Indeed, prospective application of any change in values is consistent with the policy behind Section 12-103(f), which provides for "adjustment of the measures on a *going-forward* basis as a result of the evaluations." 220 ILCS 5/12-103(f) (emphasis added).

Finally, Mr. Zuraski's extreme position against all deeming seems to be driven, in part, by a belief that "the degree of risk to which the Company is exposed is negligible." (Staff Ex. 1.0, p. 44.) While claiming that the monetary penalty is "not-very-impressive" (*id.*), Mr. Zuraski completely ignores that "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" ComEd fails to meet the statutory energy efficiency goals. 220 ILCS 5/12-103(i). ComEd takes

¹⁴ It is notable that 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.)

seriously its obligations under Section 12-103, and believes that the potential to lose control of the energy efficiency programs is a grave, not “negligible”, risk.

IV. OTHER ISSUES

The parties have raised a couple of other issues in their briefs, and ComEd addresses them below.

A. ComEd Supports the Continuation of a Stakeholder Advisory Process.

In its Plan, ComEd states 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), and anticipates that the process will be similar to that proposed by NRDC. Multiple intervenors support a stakeholder advisory process as described in the testimony and of NRDC witness Mr. Henderson (see NRDC Ex. 1.0, pp. 5-6), and to the extent the proposed process is advisory, ComEd supports it as well.

Section 12-103, however, makes no mention of a stakeholder advisory 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).) Notwithstanding this statement, ComEd fully expects that the Commission would look favorably upon the continuation of a non-binding stakeholder process, similar to the one described by Mr. Henderson, after the close of this docket, and would express serious concern if the process were to be discontinued. However, the Commission should reject AG witness Mr. Mosenthal's collaborative proposal to the extent it promotes a collaborative that will make recommendations that are binding on the utility. (AG Ex. 1.0, pp. 6-8 (“If consensus cannot be reached,

collaborative stakeholders should still be free to seek resolution of the disagreement at the ICC or in another forum.”.)

B. ComEd Requests the Establishment of a Schedule for Commission Review.

Section 12-103(i), summarized in Section II *supra*, describes the penalties that ComEd potentially faces if it does not meet the statutory energy efficiency savings goals after years two and three of the Plan. As proposed in the Plan and the direct testimony of ComEd witness Mr. Brandt (ComEd Exs. 1.0 & 2.0), ComEd proposes that the Commission set a schedule for reviewing whether ComEd has met the individual energy efficiency savings goals for the second and third years of the Plan as set forth in Section 12-103(b). In particular, ComEd proposes that the Commission adopt the following review process:

After the second year of the Plan, the Commission shall determine whether or not ComEd achieved the goal for the year commencing June 1, 2009 and ending May 31, 2010. After the third year of the Plan, the Commission shall determine whether or not ComEd achieved the goal for the year commencing June 1, 2010 and ending May 31, 2011. The Commission shall base its review on the measure savings and net-to-gross ratio values deemed by the Commission. In the event that the independent evaluator modifies those values or otherwise establishes new values, those values only shall be applied to the Commission’s review prospectively (*i.e.*, to subsequent years of ComEd’s Plan).

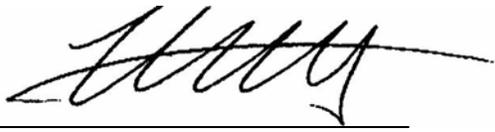
(ComEd Ex. 2.0, p. 49.) ComEd also notes Mr. Zuraski’s statements in his testimony regarding the interaction between Sections 12-103(f)(7) and 12-103(i) and (j), particularly his counsel’s belief that “it is an open question whether Section 12-103(f)(7) ‘independent’ evaluator(s) shall form any part of anticipated 12-103(i) and (j) proceedings.” (Staff Ex. 1.0, p. 21.) ComEd agrees that the statutory language is unclear on this point, and is interested in working closely with the Commission going forward regarding the bases upon which the Commission will make its findings under Sections 12-103(i) and (j).

V. **CONCLUSION**

WHEREFORE, Commonwealth Edison Company respectfully requests that the Commission issue an order on or before February 15, 2008 approving ComEd's 2008-2010 Energy Efficiency and Demand Response Plan and its proposed cost-recovery mechanism, Rider EDA.

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 

Michael S. Pabian
Attorney for Commonwealth Edison Company
10 South Dearborn Street, 49th Floor
Chicago, Illinois 60603
(312) 394-5831
michael.pabian@exeloncorp.com

Mark R. Johnson
Matthew R. Lyon
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000
mrjohnson@sidley.com
mrlyon@sidley.com