STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	**ICC Docket No. 07-0566**
Proposed General Increase in Rates.	**:**	

INITIAL BRIEF
OF
THE COALITION TO
REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER
REACT

COMPRISED OF:

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AUX SABLE LIQUID PRODUCTS, LP.
THE CITY OF CHICAGO
COMMERCE ENERGY, INC.
FLINT HILLS RESOURCES, LLC
INTEGRYS ENERGY SERVICES, INC.
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
PDV MIDWEST REFINING LLC
UNITED AIRLINES, INC.
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The Coalition to Request Equitable Allocation of Costs Together ("REACT"), by and through its attorneys DLA Piper US LLP, pursuant to Section 10-101 of the Public Utilities Act (the "Act") and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") (83 Ill. Admin. Code 200.800), hereby submits its Initial Brief regarding the proposed general increase in rates of Commonwealth Edison Company ("ComEd" or the "Company".) [1]

[1] Positions stated herein do not necessarily represent the positions of any particular member of REACT.

I. INTRODUCTION / STATEMENT OF THE CASE

Actions speak louder than words. The cross-examination of ComEd President and COO J. Barry Mitchell ended with the following exchange:

> **Q. Are you familiar with the phrase "actions speak louder than words"?**
> **A. Yes, I am.**

(Tr. at 132-33, Lines 21-22, 1.) Such a wrap-up was appropriate, given that on two extremely important issues in this proceeding, it has become clear that the Commission must look beyond ComEd's assertions, and instead look to the actions that ComEd has taken – or has failed to take:

- **While claiming to be concerned about rate shock, ComEd has proposed a massive, disproportionate, and unjustified rate increase for its largest customers.** Mr. Mitchell claimed that ComEd cares about and is conscious of rate shock. (*See* Tr. at 109-10, Lines 19-21, 14-16; Tr. at 110-11, Lines 20-22, 1.) Nevertheless, Mr. Mitchell acknowledged that ComEd has proposed **an increase of over 125% for its largest customers**, in the context of a case in which ComEd is seeking a delivery services rate increase of approximately 21% for its residential customers. (*See* Tr. at 111-12, Lines 5-22, 1-13.) Further, despite ComEd's claims that it desires to assign costs fairly and accurately, when the basis for assigning the costs to its largest customers was called into question by numerous parties, including the Commission's Staff, ComEd flatly refused to examine the actual costs it incurs with serving these customers – even while admitting that these customers have done nothing to justify such a massive increase. (*See, e.g.*, Tr. at 113-14, Lines 22, 1-9.)

- **While claiming to support competition, ComEd has proposed to allocate costs in a manner that would continue to block customer choice for residential and the smallest commercial customers.** Mr. Mitchell stated that ComEd supports a competitive market for electricity, including for its residential and smallest commercial customers, because competition fosters "more efficiency, less risk, greater innovation, and the lowest possible cost." (Tr. at 125, Lines 8-13; *see generally* Tr. at 125-128.) However, he acknowledged that, although customer choice was supposed to be available to residential customers in 2002, to date, **zero residential customers have switched to competitive suppliers, and *ComEd does not anticipate that any residential customers will switch prior to 2011* under its**

proposed structure. (*See generally* Tr. at 129-32.) When faced with the opportunity to appropriately remove its *supply-related* Customer Care Costs from its *delivery services* rates – in a manner that would neither increase customers' overall rates nor decrease ComEd's overall revenues, but that would remove one of the significant obstacles to the development of choice for residential customers – ComEd flatly refused. (*See* ComEd Ex. 43.0 (Corrected) at 33-34, Lines 726-34.) By artificially reducing its supply costs, ComEd is intentionally creating a significant obstacle to the development of choice for residential customers. At a minimum, ComEd has given the appearance that it is more interested in protecting the amount of electricity sold by its Exelon affiliate under the supplier forward contracts than it is in promoting choice for its smallest customers. (*See* REACT Corrected Ex. 7.0 at 5-7, Lines 110-46.)[2]

The members of REACT respectfully request that the Commission reject ComEd's proposal to recover its costs in a manner that would simultaneously impose a massive, disproportionate, unjustified rate increase upon ComEd's largest customers, while continuing to stymie the development of competition for its smallest customers. Although REACT addresses other issues in the course of the instant proceeding, it is clear that the lip service that ComEd has paid regarding appropriately setting rates for its largest customers and promoting competition for its smallest customers rings hollow when viewed in the light of ComEd's actions.

<u>Background Regarding REACT</u>

REACT is an *ad hoc* group, with diverse members, including some of the largest of ComEd's commercial, governmental, and industrial delivery service customers as well as retail electric suppliers ("RESs") that are interested in providing service to residential and small commercial customers. REACT's members are committed to advocating that the Commission ensure accurate, appropriate, and equitable allocation of ComEd's costs – both among its

[2] All citations hereafter to REACT Exhibits 3.0, 4.0, and 7.0 are to the "Corrected" versions of such exhibits filed on eDocket on May 6, 2008.

customer classes and between the supply and delivery services components of its rates. (*See* REACT Ex. 1.0 at 9, Lines 201-02.) Thus, in response to ComEd's unfair and anticompetitive proposal, the REACT members were compelled to organize in order to present their collective viewpoint for the Commission's consideration. (*See* REACT Ex. 5.0 at 6, Lines 116-17.)

REACT's over-10 MW commercial/industrial/municipal customer-members include: A. Finkl & Sons, Co.; Alsip Paper Condominium Association; Aux Sable Liquid Products, LP; the City of Chicago; Flint Hills Resources, LLC; the Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining LLC; United Airlines, Inc.; and Wells Manufacturing Company. Each of these REACT members – and each of ComEd's customers in the over-10 MW class – is a substantial employer in the state, and an important member of the community in Northern Illinois. (*See id.* Lines 120-23.) Each of these customers represents a part of the economic engine that drives the larger Illinois economy. (*See id.*, Lines 123-25.) Although ComEd has slightly scaled back its overall rate increase request based upon a stipulation it entered into with Staff, and has proposed a misnamed "mitigation proposal" that apparently would have the Commission implement a "mere" 60% increase now, ComEd continues to maintain that the Commission should endorse an eventual **increase in excess of $1 million *per customer, per year*** for its largest customers. (*See id.* at 10, Lines 197-203.)

The evidentiary record seriously undercuts ComEd's purported rationale for the proposed increase for its largest customers, leading Staff, REACT, and other parties to advocate that the Commission simply reject ComEd's embedded cost-of-service study ("ECOSS") and impose a system-wide average increase, at least for the over-10 MW customer classes. ComEd only has 79 customers in its over-10 MW customer classes. (*See* Tr. at 122, Lines 4-7; Tr. at 1372, Lines 16-18.) Given the deficiencies identified with ComEd's ECOSS, REACT advocates individualized cost-of-service studies for each of the 79 over-10 MW customers in order to determine aggregate cost of service for the over-10 MW customer classes. (*See* REACT Ex. 2.0 at 19-21, Lines 398-450; REACT Ex. 6.0 at 17-19, Lines 380-412.) Although ComEd has signaled quite clearly that it would *prefer* not to perform individualized cost-of-service study for its largest customers, there is also no doubt that *performing such studies is feasible*; indeed, ComEd admitted as much. (*See* Tr. at 1374-75, Lines 4-22, 1-14; Tr. at 1646, Lines 7-8; Tr. at 1654-55, Lines 9-22, 1-3. *See also* REACT Ex. 2.0 at 20-21, Lines 434-442; REACT Ex. 2.5.)

The other members of REACT, Commerce Energy, Inc. ("Commerce"), and Integrys Energy Services, Inc. ("Integrys") are certificated as alternative retail electric suppliers, qualified to provide service in the ComEd service territory. (*See* REACT Ex. 1.0 at 8-9, Lines 185-97.) Each provides retail electric service to residential and small commercial customers in a number of other North American jurisdictions and is a potential participant in the residential and small commercial retail electric market in the ComEd service territory. (*See id.*) Of critical importance to Commerce, Integrys, and all other RESs that are considering entering the ComEd residential and small commercial market is ensuring a level playing field between retail suppliers and the incumbent supplier, ComEd. ComEd's proposal in this proceeding clearly gives preference to ComEd by causing the ***supply-related*** component of ComEd's bundled product (against which RESs will be competing) to be cross-subsidized by the ***delivery services*** or "wires" side of ComEd's business (which charges rates that all customers, including those of RESs, must pay.) (*See id.*)

ComEd's Approach Undermines Development of Competition

The evidentiary record seriously calls into question the *bona fides* of ComEd's purported commitment to embrace the portion of the now decade-old law that mandates that a competitive electricity market be developed for *all* customers. (*See* 220 ILCS 16-5/16-101A(d).) As discussed at length in the testimony of REACT's competitive markets expert witness Mr. Merola, there is a substantial body of evidence, including several admissions by ComEd, that demonstrates that ComEd has failed to properly allocate its supply-related costs, and is attempting to recover those costs under its delivery services rates. (*See, e.g.*, REACT Ex. 1.0 at 9, Lines 204-25; REACT Ex. 2.0 at 9, Lines 178-89; REACT Ex. 7.0 at 13-14, Lines 293-304.) By improperly allocating its supply-related costs to its delivery services, ComEd would **artificially raise delivery services rates** to customers, **<u>and</u>** simultaneously **artificially lower the rate it charges for the commodity of electricity –** the component of residential and small commercial customers' rate against which RESs compete. (*See id.*) Significantly, assuming costs are otherwise properly allocated, the impact of this improper allocation would <u>not</u> be to reduce the **overall** rate ComEd's bundled rate customers would pay – it would only reduce the "bypassable" energy component of its rates while increasing the "non-bypassable" delivery services component. (*See id.*)

Why would ComEd discourage switching by its residential and smallest commercial customers? Although ComEd's apparent motives should not distract the Commission from the task at hand of properly allocating supply and delivery services costs, REACT witness Mr. Merola suggested that the Commission follow the money to find the motive. (*See* REACT Ex. 7.0 at 5-7, Lines 110-46; at 28, Lines 590-97.) In doing so, the Commission will discover ComEd has short-term incentives to improve its cash flow and its likelihood of cost recovery, and has a longer term incentive to retain bundled service load that is being served by its affiliate Exelon Generation. (*See* Tr. at 1817-18, Lines 6-22, 1-12; Tr. at 2231-32, Lines 1-22, 1-17; REACT Ex. 7.0 at 5-7, Lines 111-12, 126-33, 137-46.)

One mechanism that ComEd appears to be using to discourage residential customers from switching is its recently-approved Rider PE. As ComEd witness Mr. Alongi admitted, under the terms of ComEd's Rider PE, if ComEd overestimates the level of future residential customer switching, then ComEd will both over-collect Rider PE charges in the short-term and, in the longer term, change the price signal for the level of switching. (*See* Tr. at 2231-32, Lines 1-22, 1-17.) That is because the reconciliation process under Rider PE works on "a lag basis." (Tr. at 2231, Line 12.) In calculating the Rider PE rate, an overestimation of customer switching results in a Rider PE rate that is artificially high in the current year, resulting in over collections in the current year, which then will be refunded next year. (*See* 220 ILCS 5/16-111.5(l); Tr. at 1818, Lines 1-12.) The refund appears as a credit against the supply-related component of the customers' bills. (*See* Tr. at 2231, Lines 13-18.) Thus, by including assumptions that competition is blossoming while stifling competition now, ComEd gets a double benefit – first, it is able to overcollect in the first instance, based on switching projections that appear dubious; and second, to the extent it must credit back that over-collection, that credit will lower the supply-related portion of a customer's bill, thus giving ComEd a competitive advantage over the 2009 supply rates that can be offered by RESs. (*See* Tr. at 2231, Line 10-15.) By reducing the level of switching for these customers, ComEd is able to ensure that more electricity is supplied by its affiliate Exelon Generation Company under its long-term forward contracts.

Simply stated, the record evidence establishes that ComEd is charging supply-related costs to delivery services customers and intends to continue doing so – for whatever reason. (*See* REACT Ex. 7.0 at 17, Lines 364-73.) REACT expert witness Mr. Merola established that ComEd charges at least some of its supply-related costs to delivery services customers. (*See id.* at 13-14, Lines 291-304.) This point was established beyond doubt in ComEd's response to discovery and at the live hearings, where ComEd conceded as much. (*See* REACT Cr. 11; Tr. at 1339, Lines 6-7.) Thus, the pertinent question is not *if* ComEd is misallocating supply-related costs; the pertinent question is *how much* of that supply-related cost is ComEd misallocating. A conservative estimate, based upon analysis by Mr. Merola, is that $64,860,008 of ComEd's Customer Care Costs should be removed from delivery services and allocated to ComEd's supply function. (REACT Ex. 7.0 at 20-21, Lines 436-54.)

ComEd's misallocation of supply-related costs is not a subject of merely theoretical interest. On the contrary, the issue goes to the very heart of the Electric Service Customer Choice and Rate Relief Law of 1997, 220 ILCS 5/16-101, *et seq.* ("Customer Choice Act"), which obligates the Commission to "**promote the development of an effectively competitive electricity market that operates efficiently and is equitable to *all* consumers**." (220 ILCS 5/16-101A(d)) (emphasis added.) ComEd's misallocation of supply-related costs causes a dramatic distortion of ComEd's supply rate. As calculated by Mr. Merola, if ComEd's supply-related charges would increase by 0.15746 cents/kWh, the administrative portion of ComEd's supply charges would increase more than six-fold. (*See* REACT Ex. 7.0 at 21, Lines 456-63.**)** An inappropriate subsidy of this magnitude will clearly impact a supplier's ability to compete against ComEd, and as a result, deprive customers of the full benefits of the competitive market.

Additional Revisions To ComEd's Proposed Rate Design

REACT weighed in on several other important rate design issues:

Rider SMP Should Not be Approved. ComEd has proposed an unprecedented rider mechanism – Rider SMP – to ensure before-the-fact cost recovery for unspecified projects purportedly to implement advanced technology into the ComEd's distribution system. A broad consensus of parties, including REACT, questions the wisdom of Rider SMP for a variety of reasons. REACT raised one issue related to Rider SMP that is unique to the customers in the over-10 MW customer classes: As currently presented by ComEd, Rider SMP would give no credit to those customers who previously invested in SMP-like advanced meter technology projects – using their own money and at their own risk. This is simply unfair. It is also ironic, since ComEd has argued that the very reason *it* needs the before-the-fact cost recovery guarantee that Rider SMP provides is so that it can implement advanced technology into its distribution system at no risk. The over-10 MW customers who invested in advanced technology with none of the protections the ComEd seeks through Rider SMP have been providing system benefits for years. REACT respectfully requests that the Commission reject Rider SMP. However, to the extent the Commission approves any form of this rider, REACT respectfully requests that the Commission provide that customers with advanced meters installed prior to the effective date of the Order be exempt from Rider SMP charges, in recognition of having previously undertaken the very type of system-enhancing projects that ComEd now proposes.

The Proposed Increase in ComEd's Distribution Loss Factor is Unjustified. ComEd proposes an increase in the Distribution Loss Factor ("DLF") for its over-10 MW high voltage customers that is disproportionate to the proposed increase for other customer classes: DLF increases to the over-10 MW high voltage customers would increase by 36% versus the proposed increases to the "Large" and "Very Large" and "Extra Large" non-high voltage customer classes which are in the 9-15% range. (*See* REACT Ex. 5.0 at 23-24, Lines 486-98.) ComEd makes this proposal while admitting that within the over-10 MW customer class there are very widely ranging DLFs. (*See* Tr. at 542, Lines 3-22.) As with cost-of-service generally, ComEd opposes performing a particularized DLF analysis for over-10 MW customers. Of course, ComEd's intransigence undercuts its purported desire to implement accurate cost causation systems in an effort to move "toward cost." (ComEd Ex. 30.0 at 50, Lines 1127-28.) REACT respectfully requests that the Commission reject ComEd's proposed increases in DLFs, and instead order ComEd to determine the actual losses associated with providing service to its 79 largest customers.

Rider ACT Should Be Retained. ComEd has failed to justify any proposed revisions to Rider ACT. ComEd's naked assertions about the inconvenience of providing service under Rider ACT fall short of a proper justification for elimination of the Rider, especially when ComEd apparently admits that Rider ACT better reflects the cost of serving applicable customers, whose needs are, ComEd recognizes, often unique. (*See* ComEd Ex. 45.0 at 21, Line 414.) If the Commission determines that it is appropriate for ComEd to make changes to the existing Rider ACT, then the proposal to remove the mandatory termination provision, close Rider ACT to new customers, and offer a voluntary termination provision is more appropriate than ComEd's original proposal. (*See* REACT Ex. 5.0 at 27, Lines 545-57.)

ComEd Fails to Meet Its Burden Of Proof Regarding Cost Allocation Issues. ComEd alone bears the burden of proof to demonstrate the appropriateness of its proposed rates and its proposed allocation between supply-related and distribution-related costs. The Act explicitly places the burden of proof upon the utility in the context of a rate case:

> [T]he burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility. No rate or other charge, classification, contract, practice, rule or regulation shall be found just and reasonable unless it is consistent with Sections of this Article.

(220 ILCS 5/9-201(c).)

The record evidence in the instant proceeding demonstrates that ComEd has failed to meet its statutory burden of proof.

II. OVERALL REVENUE REQUIREMENT AND REVENUE DEFICIENCY

REACT does not challenge ComEd's statutory right to a reasonable rate of return. However, REACT objects vehemently to the *allocation* of the rate increase. Specifically, as a direct result of ComEd's *anti-competitive misallocation of supply-related costs* to its delivery services function, ComEd has overstated its delivery services revenue requirement by approximately $64 million (*See* REACT Ex. 7.0 at 20-21, Lines 436-54.) Further, the over-10 MW customers that would bear the brunt of ComEd's proposed rate hike – with increases well over 100% – have done nothing to cause ComEd to incur additional costs. Thus, ComEd has failed to justify either the anti-competitive misallocations of supply-related costs to delivery services rates or the disproportionate rate increase that ComEd has proposed for its largest customers.

VII. NEW RIDERS

A. Overview

1. REACT's Position

Along with the clear majority of parties in the instant proceeding, REACT objects to ComEd's proposed Rider SMP. Rider SMP as originally proposed had multiple problems that were identified by REACT and other parties. (*See, e.g.*, REACT Ex. 4.0 at 7-23, Lines 147-472; AG/CUB-MLB-Ex.-1.0 at 30-38; AG/CUB-Ex.-MLB-3.0 at 1-24.) In apparent recognition of the problems associated with Rider SMP as it was originally presented, ComEd proposed a revised Rider SMP that is essentially a "shell" rider with many details to be determined at a later date. (*See* ComEd Ex. 30.0 at 10-13, Lines 230-89; REACT Ex. 5.0 at 13-14, Lines 261-79.) REACT, along with Staff and many other parties, continues to maintain that the Commission should reject outright the revised Rider SMP, as the rider's problems persist. (*See* REACT Ex.

5.0 at 14-16, Lines 281-331; ICC Staff Ex. 21.0 at 1, Lines 15-16; AG/CUB Ex. MLB-4.0 at 4, Lines 1-10; IIEC Ex. 5.0 at 19, Lines 359-70; AARP Ex. 2.0 at 2, Lines 15-20.)

B. Rider SMP

ComEd's proposed Rider SMP is an unprecedented mechanism to ensure before-the-fact, Commission-approved cost recovery for unspecified projects purportedly to implement advanced technology into the ComEd's distribution system. A broad consensus of parties, including REACT, questions the wisdom of Rider SMP – even in its revised form – for a variety of reasons. (*See* REACT Ex. 5.0 at 13-16, Lines 261-331.) The problems include:

- Rider SMP is inappropriately broad. (*See id.* at 14-15, Lines 283-91.)
- Savings achieved by Rider SMP projects would not be passed along to customers. (*See id.* at 15, Lines 292-97.)
- The review period even under revised Rider SMP is inadequate. (*See id.*, Lines 298-312.)
- Rider SMP would create customer confusion. (*See id.* at 16, Lines 313-16.)
- ComEd has failed to address the potential for competitive service issues potentially created by Rider SMP. (*See id.*, Lines 317-23.)
- ComEd has failed to address the fact that some of the proposed Rider SMP projects may be duplicative. (*See id.*, Lines 324-331.)

1. Rider SMP is Open-Ended and Unnecessary

Rider SMP is an inappropriate, open-ended mechanism for before-the-fact cost recovery. Although ComEd has proposed some revisions, the fact that ComEd has now presented Rider SMP as a "shell" proposal, with details of the actual SMP projects to be filled in later, just exacerbates the ill-defined nature of the rider. In addition to its other deficiencies, Rider SMP increases rather than decreases complexity and uncertainty relating to the regulatory scheme.

Rider SMP remains inappropriately broad. The definition of System Modernization Project in the proposed Rider SMP tariff includes such general items as "any project, for which there are capital investments (a) that the Company classifies as pertaining to the improvement of the Company's distribution system for the purposes of enhancing service…," which may include "(6) implement[ing] innovative or otherwise novel approaches to providing electric service to retail customers or increasing operational efficiency." (*Id.*, Lines 283-91, *citing* ComEd Ex. 30.01, Ill. C.C. No. 4, First Revised Sheet No. 626.) This type of language fails to provide the specificity necessary to control potential manipulation of Rider SMP and necessary to create an appropriate level of regulatory certainty.

Contrary to ComEd's suggestion, the Commission's Order in the Peoples Gas Light and Coke Company ("Peoples Gas") matter, ICC Docket No. 07-0242, does not support proposed Rider SMP. The Peoples Gas proposed Rider ICR applied only to accelerate cost recovery for replacement of old pipeline facilities. (*See* REACT Ex. 5.0 at 19, Lines 385-95.) Proposed Rider SMP is not comparable to Rider ICR, which:

- Was significantly more focused and limited in scope than Rider SMP;
- Appeared to involve or implicate no competitive market issues, but addressed only projects which clearly fell within the scope of the regulated activities of the utility; and
- Involved little, if any, risk of illegitimate or unjustified projects being incorporated under the guise of Rider ICR.

(*See id.* at 19-20, Lines 397-412.)

2. **Rider SMP Would Impose an Unjustified Burden on Over-10 MW Customers that Already Invested in Advanced Technology**

Rider SMP is allegedly intended to support ComEd's infusion of advanced technology in its distribution system. Thus, ComEd has suggested that Rider SMP would provide a before-the-fact, Commission-approved funding mechanism for initiatives such as advanced meters. This approach fails to recognize the historical and ongoing investments made particularly by over-10 MW customers in the type of technologies ComEd is now proposing to implement.

a. **<u>There is No Credit For Prior Investment by Extra Large Customers</u>**

Although advanced meters and similar technology are not widely prevalent among the majority of ComEd's customers, many over-10 MW customers have themselves previously invested in those technologies. (*See* REACT Ex. 4.0 at 14-15, Lines 275-92.) ComEd reluctantly admits this fact. (*See* Tr. at 261, Lines 14-16, Tr. at 271, Lines 9-11.) Although ComEd maintains that there are widespread system benefits associated with such advanced technology, Rider SMP would give *no credit* or other recognition to those customers who previously invested in SMP-like project – using their own money and at their own risk. (*See* ComEd Ex. 38.0 at 14, Lines 296-99.) ComEd admits this point as well. (*See generally* Tr. at 263-267.)

Thus, under ComEd's Rider SMP, a customer that has already implemented the type of advanced technology that ComEd now seeks to infuse into its distribution system gets no credit whatsoever for its previous investment and risk. (*See id.*) This treatment of over-10 MW customers is simply unfair. It is also ironic, because ComEd has argued that the very reason *it* needs the before-the-fact cost recovery guarantee that Rider SMP provides is so that it can implement advanced technology in its distribution system without financial risk. (*See* Tr. at 95, Lines 18-22; Tr. at 1216, Lines 15-17.) The over-10 MW customers who invested in advanced technology on their own dime and at their own risk had none of the protections the ComEd seeks through Rider SMP – yet, ComEd thinks those customers should receive no credit, consideration, or other recognition for having previously undertaken the very type of system-enhancing projects that ComEd now proposes. (*See* REACT Ex. 5.0 at 15, Lines 306-12.)

Duplication is another issue. Some of the SMP projects may duplicate what customers, ComEd, and RESs already have installed or are already offering to reduce customers' energy costs. Many non-residential customers are already participating in PJM Demand Response Programs through either ComEd or RESs. (*See* REACT Corrected Ex. 4.0 at 14-15, Lines 275-92; Tr. at 261-62.) It remains unclear whether or how ComEd proposes to recognize such actions under the Rider SMP shell. (*See* REACT Ex. 5.0 at 16, Lines 324-31.)

ComEd's refusal to provide a credit to customers that have made investments in advanced technologies is <u>not</u> based on infeasibility of providing a credit. ComEd witness Mr. Crumrine admitted that ComEd possesses the ability to survey individual over-10 MW customers to determine which of those customers have made investments in projects similar to those that ComEd might propose under Rider SMP. (*See* Tr. at 1375, Lines 2-14.) Likewise, Mr. Crumrine admitted that ComEd's billing system could accommodate a Commission order to credit over-10 MW customers for previous advanced technology investments. (*See id.*, Lines 7-18.)

b. <u>ComEd's Explanations of Alleged "Benefits" to Over-10 MW Customers is Unpersuasive</u>

ComEd refers to certain "system benefits" associated with the implementation of advanced technology under Rider SMP. Those benefits allegedly include "avoided energy purchases and reduced capacity charges." (ComEd Ex. 38.0 at 14, Lines 296-99.) Oddly, ComEd implies that those benefits accrue only from advanced technology that ComEd would implement under Rider SMP, but that no similar benefits have accrued to the distribution system as a result of the advanced technology investments undertaken by over-10 MW customers. This position does not ring true. Indeed, on cross-examination, ComEd witness Ms. Clair acknowledged that to the extent over-10 MW customers have already implemented AMI-type technologies and are participating in demand response programs, such customers are *already* contributing these so-called system benefits. (*See* Tr. at 273, Lines 1-9.) However, on cross-examination, Ms. Clair acknowledged that she did not specifically know whether RES customers would or would not actually benefit from such avoided energy purchases and reduced capacity charges. (*See* Tr. at 272, Lines 9-22.) Yet, ComEd relies upon this rationale to refuse to give a credit to over-10 MW customers that have previously invested in the very types of projects for which ComEd seeks before-the-fact, Commission-approved cost recovery.

3. **<u>Rider SMP Would Result in Procedural Burdens of Multiple, Simultaneous, Overlapping ICC Proceedings</u>**

ComEd's revised Rider SMP "shell" proposal would result in increased regulatory complexity that would be burdensome for stakeholders. As proposed by ComEd, Rider SMP would add at least three new formal or informal proceedings into the already complex regulatory scheme. First, ComEd has embraced the suggestion of a six-month pre-filing workshop process to help determine what projects would actually be appropriate for implementation under Rider SMP. (*See* ComEd Ex. 43.0 (Corrected) at 2, Lines 40-43.) Second, after the workshop process, ComEd would initiate a formal proceeding before the Commission to seek Commission pre-approval of Rider SMP projects. (*See id.* at 9, Lines 133-34.) ComEd has now suggested a formal proceeding lasting six months. (*See id*.) Third, ComEd has suggested an annual cost reconciliation process and informational filings in connection with Rider SMP collections and expenditures. (*See id.*, Lines 134-36.)

The upshot of this stew of SMP-related procedures is that any stakeholder – be it governmental entity, public interest advocate, private party, or any group or combination thereof – would be called upon to participate in a completely new set of formal and informal regulatory proceedings, in addition to what already exists, all in the name of a new Rider that is primarily focused on assuring the novel concept of before-the-fact cost recovery for ComEd.

All of the SMP-related proceedings would be *in addition to* ComEd's standard rate cases – and ComEd has stated an intention to increase the frequency of its standard rate cases. (*See* ComEd Ex. 30.0 at 29, Lines 654-55.) As the instant proceeding demonstrates, substantial resources must be expended to participate meaningfully in a standard rate case. Those resources are not unlimited. Yet, Rider SMP would impose additional rate case-type proceedings that almost certainly would overlap chronologically with each other and with ComEd's *actual* rate cases and that almost certainly would deal with substantively similar issues as those raised in ComEd's standard rate case. This is a daunting prospect.

For the foregoing reasons, the Commission should reject proposed Rider SMP.

If the Commission chooses to approve some form of Rider SMP, the Commission should, at a minimum:

1. Ensure that customers enjoy cost saving benefits associated with proposed SMP projects. For example, anticipated savings should be identified for each proposed project and be included in formula for calculating Rider SMP charges. As ComEd proposes its projects, the project timeline should include a schedule of when savings will be achieved. These savings would then be included in Rider SMP charges at the appropriate time.

2. Ensure that any proposed projects do not put ComEd or any of its affiliates at a competitive advantage over RESs. For example, if an SMP project will only benefit a small group of customers, and other suppliers offer similar services, then it may not be appropriate to recover those costs from all customers.

3. Ensure that extra large customers, many of whom have already implemented demand response programs and advanced energy monitoring systems, are not required to pay for projects under Rider SMP that do not benefit such customers. At a minimum, all extra large customers that have installed advanced meters as of the effective date of the Order should not be required to pay Rider SMP charges.

4. Ensure that the project selection process is properly confined and limited. If the Commission approves Rider SMP, approval should be limited to projects identified in this proceeding.

5. Ensure that there is sufficient time for Commission oversight. The 180-day review period is too short, and Staff and other interested parties should be allowed to suggest changes to SMP projects where appropriate.

(*See* REACT Ex. 5.0 at 21-22, Lines 426-49.)

VIII. <u>COST OF SERVICE AND ALLOCATION ISSUES</u>

A. <u>Overview</u>

1. <u>REACT's Position</u>

REACT opposes ComEd's proposal to recover its costs in a manner that would simultaneously impose a massive, disproportionate, unjustified rate increase upon ComEd's largest customers, while continuing to stymie the development of competition for its smallest customers.

The disproportionate impact of ComEd's proposed rate design on over-10 MW customers remains unjustified and unsupported by a legitimate cost-of-service study. Even under ComEd's "modified" proposal, the largest of the 26 Extra Large High Voltage Customers eventually would receive more than a **$900,000 *annual* rate increase**; for the 53 Extra Large customers that are not served via high voltage, the annual impact of ComEd's proposal would range from approximately **$420,000 at the "low" end to more than a $3.2 million increase** – these proposed increases are ***per year, per customer.*** (*See id.* at 2-3, Lines 25-40.) ComEd's "modified" proposal simply would "phase in" this increase imposing a rate increase in this proceeding that it would double in ComEd's next rate case. (*See* ComEd Ex. 32.0 at 9, lines 137-46.)

ComEd's proposed rate increase for the over-10 MW customers is:

- **Disproportionate**: ComEd is proposing an increase of more than 120% for the over-10 MW customer classes -- a massive and disproportionate in the context of an overall system average increase of approximately 21%.
- **Not derived from delivery service usage**: ComEd's proposed increase is not derived from changes in the manner in which the over-10 MW classes use delivery services; equally important, the allocation is not at all supported by a valid cost-of-service analysis.
- **Not based on a rational approach for cost allocation**: ComEd's proposed increase is not based on a rational methodology for establishing rates for the over-10 MW classes. Instead, ComEd should analyze the *actual facilities* used to serve its 79 extra large customers, and then use the actual data to allocate the cost of service. Because ComEd has refused to voluntarily compile the actual cost-of-service data for

> inclusion in this proceeding, to the extent that the Commission allows a rate increase, that increase for the over-10 MW classes should be no larger, on a percentage basis, than the overall system revenue requirement increase.

(*See* REACT Ex. 6.0 at 2, Lines 14-33.)

Fundamentally, REACT objects to the imposition of an *enormous* rate hike for over-10 MW customers based on a faulty and highly questionable ECOSS. REACT advocates the feasible alternative of individualized cost-of-service studies for the relatively few customers in the over-10 MW classes in order to calculate the aggregate cost of service for those customers.

REACT also fundamentally objects to the fact that ComEd has proposed to recover at least $64,860,008 of supply-related Customer Care Costs in its delivery services' rates. (*See* REACT Ex. 7.0 at 20-21, Lines 436-54.) This gross misallocation will cause ComEd's supply rates to be subsidized by the delivery services rates by 0.15746 cents/kWh. (*See* REACT Ex. 7.2.) ComEd's proposed misallocation of costs violates basic cost causation principles, forcing RESs' customers to foot part of ComEd's supply-related bill. Further, an improper allocation of supply costs of this magnitude will clearly place RESs at a competitive disadvantage to ComEd. Despite ComEd's rhetoric that it supports the development of competition, its actions in this case appear clearly designed to ensure that it retains as many of its bundled supply resident and smallest commercial customers as possible.

ComEd's defense of this extreme position is illogical. ComEd has taken the position that the test for determining if costs are supply related should be "[whether] such costs would be avoided if all customers served under Rate BES migrated to alternative suppliers .…" (ComEd Ex. 43.0 (Corrected) at 34, Lines 741-42.) This approach is not, and has never been, the test to determine whether a cost should be recovered through ComEd's supply charges; and such an approach is inconsistent with the cost allocation methodology employed by ComEd throughout the remainder of this proceeding. Even if it were the proper test, ComEd has admitted in this proceeding that it would not result in a zero allocation of ComEd's Customer Care Costs to the supply function.

ComEd has not contested the method employed by REACT witness Merola to calculate the $64,860,008 misallocation of supply-related Customer Care Costs to the delivery services rates. Thus, it remains the only evidence in this case that quantifies the portion of delivery services rates that should be embedded in a supply-related charge. REACT respectfully requests that and the Commission direct ComEd to modify its proposed delivery services rates to remove the $64,860,008 in supply-related costs that ComEd has improperly allocated.

B. Uncontested Issues

1. Cost Causer Should Pay Costs

A broad consensus of parties supports the uncontroversial notion that costs should be allocated to actual cost causers. The Commission accepted that view in ComEd's last rate case. (*See* ICC Docket No. 05-0597, Dec. 20, 2006 Order on Rehearing at 74.) ComEd accepts this proposition as well. (*See* Tr. at 540, Lines 7-9) (ComEd witness Mr. Donnelly: "In general if a customer is responsible for a cost or involved in that cost, they should pay a portion of that cost.")

This principle dictates not only that cost should be accurately assigned to various customers classes, but also that costs must be allocated accurately to reflect the distinction between supply-related costs and delivery services-related costs. (*See* REACT Ex. 3.0 at 6-9, Lines 105-83; REACT Ex. 7.0 at 2, Lines 20-28.) ComEd witness Mr. Crumrine repeatedly admitted this point.

> Q. You would agree, as a guiding principal, that all procurement costs should be recovered in the commodity component of ComEd's rates, correct?
>
> A. Generally, yes.
>
> Q. You'd agree that it would be inappropriate for ComEd to include procurement costs in its delivery services rates, right?
>
> A. The costs that ComEd incurs to directly procure power should be in the supply price, and I think that's a yes or – I'm losing track whether that's a yes or a not [sic]. I'm sorry.
>
> Q. Do you agree that if ComEd were to include procurement costs in its delivery services rate that the result would be for ComEd to artificially reduce its supply price?
>
> *** [Colloquy of counsel and instruction from ALJ that witness may answer the question.]
>
> A. I think as a general principal the costs that ComEd incurs to directly procure supply should be a supply – assigned to the supply function and to the supply price.

(Tr. at 1355-56, Line 4-22, 1-17.)

2. <u>Identifying Cross-Subsidies Requires an Accurate Cost Study</u>

The record in the instant proceeding establishes indubitably that without a valid cost-of-service study, it is <u>impossible</u> to determine the existence of any cross-subsidies between customer classes. Mr. Alongi, ComEd's Manager, Retail Rates, admitted this fact repeatedly, as did other witnesses presented as qualified to testify on that point. (*See, e.g., generally* Tr. at 2097-99 (Mr. Alongi); Tr. at 2250, Lines 4-14 (Mr. Alongi); REACT Ex. 6.0 at 23, Lines 509-19 (REACT witness Mr. Bodmer); Tr. at 1558, Lines 17-20 (Mr. Bodmer); Tr. at 1644, Lines 4-10 (Commercial Group witness Mr. Baudino).)

As discussed below, the point is critical. ComEd has repeatedly discussed "moving toward cost" and avoiding cross-subsidies between customer classes. (*See* Tr. at 107, Lines 6-8) ComEd witness Mr. Mitchell: "I think, fundamentally, the first test [when designing or when approving rates] is the appropriate and fair allocation of cost among the different customer classes.") While there appears to be a broad consensus that those are valid goals, in order to achieve those goals, there *must* be a *valid* cost-of-service study. REACT and others explained that ComEd's ECOSS is not such a study. Accordingly, it is impossible, based on the ECOSS, to determine whether cross-subsidies exist.

3. **Customer-Specific Cost of Service Studies are Possible for the Over-10 MW Customer Class**

In lieu of using ComEd's ECOSS to determine the costs that should be allocated to the over-10 MW customer classes, REACT recommends individualized cost-of-service studies for the relatively few customers in the over-10 MW classes in order to calculate the aggregate cost of service for those customers. (*See* REACT Ex. 2.0 at 19-21, Lines 398-450; REACT Ex. 6.0 at 17-19, Lines 380-412.)

Although ComEd has signaled quite clearly that it would *prefer* not to perform individualized cost-of-service study for its largest customers, there is also no doubt that *performing such studies is feasible*. ComEd admitted this in its responses to Data Requests propounded during discovery in the instant proceeding (*see* REACT Ex. 2.0 at 20-21, Lines 434-442; REACT Ex. 2.5/REACT Cr. Ex. 16), and acknowledged this during live testimony. (*See* Tr. at 1374, Lines 4-15.) Other witnesses, such as the Commercial Group witness Mr. Baudino, also admitted the feasibility of customer-specific cost-of-service studies. (*See* Tr. 1646, Lines 7-8; Tr. 1654-55, Lines 9-22, 1-3.)

Cost of service can be studied on an individualized basis. In addition to the record evidence establishing the feasibility of individualized cost-of-service studies, actual examples exist. ComEd already has investigated specific information regarding each transformer that is used to provide service to each of its customers in the over-10 MW high voltage class. (*See* REACT Ex. 6.0 at 20, Lines 434-39, *citing* ComEd Response to REACT Data Request 5.01.) Furthermore, ComEd has suggested that it computes the line loss on a transformer-by-transformer basis for each transformer that provides service to a customer in the over-10 MW high voltage class. (*See* REACT Ex. 6.0 at 20, Lines 443-50.) This computation is apparently made through an analysis of the specific transformation equipment that is used for individual ratepayers. (*See id.*) If ComEd can compute the line loss experienced from the facilities used by individual ratepayers, that begs the question why not compute the net book value of equipment used to serve the ratepayers. (*See id.*)

As discussed below, the fact that ComEd did affirmatively acknowledge that computation of the book value of plant associated with individual ratepayers was possible, and that ComEd already has information regarding transformers serving each of the over-10 MW customers, means that cost of service can be particularized. Additionally, a reasonable allocation of overall operation and maintenance expense could be determined for each ratepayer that considers specific expenses associated with substation equipment as well as the span of wire used to serve the ratepayers and the type of lines used to serve the ratepayers (i.e., underground versus overhead lines.) REACT maintains that such particularized reasonable allocation approaches certainly would be vastly superior to the ECOSS assumptions that clearly are wide of the mark.

Notably, ComEd did not deny that it can compute the costs; instead, ComEd only stated that the exercise would be "potentially expensive." (ComEd Ex. 33.0 at 2, Lines 31-32.) The most significant statement that ComEd made with respect to this issue is its use of the word "potentially." (*Id.*) ComEd is asking the Commission to rule against accurate cost measurement which could affect ratepayer bills by millions of dollars because the analysis may be "potentially" costly. At the same time ComEd is asking the Commission to approve rate case expenses that include numerous consultants that defend its revenue requirement. Obviously when something affects ComEd's bottom line, it worries much less about the cost than when something affects the bottom line of an over-10 MW ratepayer. Without any cost-benefit analysis and without any quantification of the costs involved to compute individual cost of service, the statement with respect to the cost of the audits should have no effect on the Commission's ultimate decision on this matter. (*See* REACT Ex. 6.0, Lines 417-78.)

C. <u>Embedded Cost of Service Study Issues</u>

As discussed above, the record evidence establishes that ComEd's ECOSS is an insufficient basis upon which to justify a rate increase to the over-10 MW customers – particularly a rate increase of the magnitude that ComEd has proposed.

1. <u>Appropriate Study</u>

As recently as ComEd's last rate case, the Commission questioned the ECOSS approach as applied to over-10 MW customers, and expressly invited the use of alternative approaches, stating:

> [T]he Commission would be interested in whether any party believes that considering marginal cost of distribution service has any place in setting electric distribution rates. The Commission invites parties to address this subject in ComEd's next rate case.

(ICC Docket No. 05-0597, July 26, 2006 Order at 160.)

The Commission's questioning of the ECOSS approach was motivated, at least in part, by none other than ComEd itself. The Company's own skepticism toward the ECOSS approach was summarized in the Final Order as follows:

> **ComEd also notes that for purposes of establishing delivery service charges, ComEd generally supports the use of a marginal cost of service study**. Crumrine Dir., ComEd. Ex. 9.0 Corr., 43:925-36. ComEd explains, however, that in light of the Commission's approval and use of an ECOSS in the last two ComEd delivery services rate cases (ICC Dockets 99-0117 and 01-0423), and in the interest of narrowing the issues in this case, it proposes the use of an ECOSS for both interclass revenue allocation and rate design purposes. Id. **Notwithstanding this proposal, ComEd notes that it continues to reserve the right to propose the use of a marginal cost study in future proceedings**. Id.

(*Id.* at 156) (emphasis added.)

Of course, ComEd and the Commission are not alone in questioning the ECOSS approach. The record in the instant proceeding establishes substantial questions from various parties about ComEd's ECOSS -- ComEd openly acknowledged this unprecedented level of skepticism toward the ECOSS at hearing. (*See* Tr. at 2043, Lines 1-5.)

In addition to ECOSS problems identified by REACT (*See* REACT Ex. 2.0 at 12-19, Lines 243-393; REACT Ex. 6.0 at 5-6, 14-17, Lines 103-21, 290-374), deficiencies with the ECOSS have also been identified by:

- The Staff of the Commission ("Staff") (*See* Staff Ex. 18.0 at 18, Lines 402-03);
- The Illinois Industrial Energy Consumers ("IIEC") (*See* IIEC Ex. 5.0 at 3-4, 7-8, Lines 24-44, 122-31; IIEC Ex. 7.0 at 2-3, Lines 15-41);
- The United States Department of Energy ("DOE") (*See* DOE Ex. 2.0 at 2-3, Lines 21-23, 26-59);
- The City of Chicago (*See* City of Chicago Ex. 2.0 at 3, 5, Lines 69-73, 116-18);

- The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra and Chicago Transit Authority ("Metra/CTA") (*See* Metra/CTA Ex. 3.0 at 4, Lines 10-25);
- The Building Owners and Managers Association ("BOMA") (*See* BOMA Ex. 5.0 at 4, Lines 35-38); and
- The Commercial Group (*See* CG Ex. 2.0 at 4, Lines 75-84.)

In addition, although the Illinois Attorney General ("AG") does not directly question the ECOSS, the AG certainly does not endorse it either. Instead, the AG presented evidence about what the Commission should do *if* the Commission finds that the ECOSS is invalid. (*See, e.g.*, AG Ex. (SJR) 6.0 at 7, Lines 159-61.)

Thus, a broad consensus of parties either openly questions ComEd's ECOSS or assumes the ECOSS is sufficiently questionable that it is necessary and appropriate to consider how to implement ComEd's requested rate increase in lieu of the ECOSS.

ComEd does not rebut the Direct Testimony presented by REACT witness Bodmer and other witnesses, including DOE witness Swan and IIEC witnesses Stephens and Stowe, which highlight a number of fundamental deficiencies in ComEd's proposed cost of service study. (*See* IIEC Ex. 1.0 at 16, Lines 289-96; IIEC Ex. 3.0 at 3, Lines 19-27; DOE Ex. 1.0 at 3-4, Lines 54-69 and at 9-10, Lines 185-225.) (*See also* REACT Ex. 5.0, Lines 41-46.)

Notwithstanding the Commission's explicit questioning of the ECOSS approach and ComEd's own prior reluctance to foreclose other approaches, ComEd has suggested in the instant proceeding that it was forced to rely on the ECOSS because the Commission has previously used that approach. (*See* ComEd Ex. 11.0 at 7, line 149-57.) Given the somewhat questionable history of the ECOSS approach – and the very explicit questions raised in the instant proceeding – that approach by ComEd is strange, to say the least.

Further, ComEd simply misunderstands or mischaracterizes the position of the Commission. The Commission has not found that ComEd's ECOSS is appropriate with respect to over-10 MW ratepayers. Again, in the last rate case, the Commission explicitly questioned whether the ECOSS approach was valid, or whether there might be a better alternative methodology. (*See* ICC Docket No. 05-0597, July 26, 2006 Order at 156, 160; REACT Ex. 6.0 at 25, Lines 550-606.)

a. <u>There are Numerous Questions about the ECOSS Raised in this Case as Applied to Over-10 MW Customer Classes</u>

As noted above, REACT, the Commission Staff, IIEC, the Chicago of Chicago, DOE, Metra/CTA, BOMA, and the Commercial Group all raise questions about ComEd's ECOSS in the instant proceeding. (*See* REACT Ex. 2.0 at 12-19, Lines 243-393; REACT Ex. 6.0 at 5-6, 14-17, Lines 103-21, 290-374; Staff Ex. 18.0 at 18, Lines 402-03; IIEC Ex. 5.0 at 3-4, 7-8, Lines 24-44, 122-31; IIEC Ex. 7.0 at 2-3, Lines 15-41; City of Chicago Ex. 2.0 at 3, 5, Lines 69-73, 116-18; DOE Ex. 2.0 at 2-3, Lines 21-23, 26-59; Metra/CTA Ex. 3.0 at 4, Lines 10-25; BOMA Ex. 5.0 at 4, Lines 35-38.)

ComEd's ECOSS has a number of flaws that in particular render it invalid for setting rates for over-10 MW customers. Some of the problems are specific and obvious while other problems are more generic. Among the problems with the ECOSS are:

- Including the cost of secondary wire in the cost for the over-10 MW ratepayers[3];
- Including the cost of distribution lines in the high voltage class when many of the those ratepayers use no distribution lines whatsoever;

[3] The secondary system is defined by ComEd as the part of the system that operates at 3,740 volts or less.

- Assuming that the age of the lines, the quantity of poles, and the spans of primary under-ground and overhead lines will be the same for over-10 MW ratepayers as other ratepayers if the non-coincident load is the same; and
- Assuming the cost of tree trimming, the cost of underground cable repairs, and other distribution line costs will be the same for over-10 MW ratepayers as other ratepayers if the load is the same.

(*See* REACT Ex. 6.0 at 5-6, Lines 105-21.) REACT witness Mr. Bodmer specifically identified each of these deficiencies in concluding that ComEd's ECOSS should not be used to set rates for the over-10 MW customers. (*See id.*)

2. <u>Primary/Secondary Split</u>

One major flaw in ComEd's ECOSS is illustrated by the case of secondary wire. (*See id.* at 14-16, Lines 298-346.) For example, under ComEd's ECOSS, ComEd assigns as much secondary wire to a single 10 MW customer as it assigns to 1,000 residential customers. IIEC witness Stowe discussed this issue in detail and demonstrated why it is inappropriate to allocate any cost of secondary wire to the class. (*See* IIEC Ex. 3.0 at 12-27, Lines 199-439.)

Mr. Bodmer identified the obvious error of secondary wire allocation in the ECOSS as a symptom of much larger problems with the study. (*See* REACT Ex. 6.0 at 14, Lines 305-10.) That is, even if ComEd were to "fix" the secondary line allocation problems, ComEd's ECOSS improperly ignores the actual age of equipment, the actual nature of primary lines used to service the ratepayers, the actual O&M expenses, and other factors that are important to determine the actual cost of serving the over-10 MW customers. (*See id.*)

ComEd's logic in defending its allocation of secondary wires to over-10 MW ratepayers symbolizes problems with the entire cost study. (*See* REACT Ex. 6.0 at 15, Lines 314-16.) Mr.

Bodmer observed that ComEd witness Mr. Heintz acknowledged that the secondary wire error has been raised and discussed in prior dockets and that it is possible that performing a primary/secondary split of distribution lines would improve the ECOSS. (*See* ComEd Ex. 33.0 at 3, Lines 59-64.) The reason given by Mr. Heintz for not improving the ECOSS in this manner is simply that "ComEd does not record its gross plant or accumulated depreciation on its books in a manner that would facilitate changing the ECOSS to recognize this distinction." (*Id.*) Mr. Heintz somehow later concludes:

> "… the benefit of modifying the ECOSS … is problematic, compared to the costs involved if the Commission were to order ComEd to revise its books to accommodate the proposal."

(ComEd Ex. 33.0 at 4, Lines 66-68.)

Mr. Bodmer summarized the *non sequitur* that ComEd proposes:

1. ComEd admits that the ECOSS is wrong. ComEd knew that this was a problem, based upon testimony from prior rate cases.
2. It would be expensive for ComEd to fix a problem that only affects certain ratepayers.
3. Therefore, the ComEd ECOSS is reasonable.

(REACT Ex. 6.0 at 15-16, Lines 339-346.)

Mr. Bodmer also pointed out that by failing to particularize costs for the net book value of equipment, **ComEd has made the implausible assumption that the following costs are the same for *a single over-10 MW* customer that has the same non-coincident peak load as *1,000 single-family residential* customers**:

- Age of the lines
- Quantity of poles

- Quantity of primary lines
- Quantity of secondary lines
- Distance of underground lines
- Distance of overhead lines
- Cost of tree trimming; and
- Cost of underground cable repairs.

(*Id.* at 16, Lines 350-60.) (Emphasis added.) In reality, the costs of serving the single over-10 MW customer likely are much *less* than the group of single family residential customers as a result of the single over-10 MW customer using older equipment, being located in the downtown business district, not requesting underground service for aesthetic purposes, or being located closer to the transmission substation than the group of residential customers. (*See id.* at 16-17, Lines 361-65.) Additionally, the over-10 MW customer will likely not use secondary wire, and economies of scale may impact service to the large ratepayer. (*See id.* at 17, Lines 366-369, *citing* IIEC Ex. 1.0 at 16, Lines 289-96; IIEC Ex. 3.0 at 3, Lines 19-27; DOE Ex. 1.0 at 3-4, Lines 54-69 and at 9-10, Lines 185-225.)

An audit of the actual costs for each ratepayer is necessary to confirm the cost differences. (*See* REACT Ex. 6.0 at 17, Lines 371-73.) In spite of these variables, ComEd has refused to even begin that process. (*See id*.)

5. <u>Customer-Specific Cost of Service Study Recommendations</u>

Given the ECOSS's deficiencies, REACT advocates individualized cost-of-service studies for each of the 79 over-10 MW customers in order to determine aggregate cost of service for the over-10 MW customer classes. (*See* REACT Ex. 2.0 at 19-21, Lines 398-450; REACT Ex. 6.0 at 17-19, Lines 380-412.)

The testimony of ComEd and other intervenors reaffirms that the only reasonable alternative with respect to cost of service measurement for over-10 MW ratepayers is to analyze particularized actual costs as a basis for calculating applicable rates. The benefits of computing particularized costs on a transparent basis far outweigh the costs, given the gigantic rate increases ComEd seeks to impose on the ratepayers and given the likely, far-reaching negative economic impacts of the rate increase. ComEd's silence on certain issues is as important as the statements it made in its rebuttal testimony. Two important issues are the lack of response to rate comparisons and the omission of any testimony stating that ComEd could not compute particularized costs. (*See* REACT Ex. 6.0, Lines 81-93.)

REACT witness Mr. Bodmer explained that the Commission should direct ComEd to perform a customer-specific cost of service study for its 79 largest customers and then aggregate the particularized costs across all ratepayers in the class to evaluate the true cost of service for the two over-10 MW classes. (*See id*.) As noted above, without any analysis, ComEd has summarily dismissed this recommendation as being "impractical," "unnecessary" and "potentially expensive."

ComEd witness Mr. Heintz, who is ComEd's consultant in charge of performing cost of service studies, stated "ComEd urges the Commission to reject this recommendation as impractical and unnecessary for the purpose of setting appropriate rates for these customers." (ComEd Ex. 33.0 at 15, Lines 316-19.) He also stated: "The recommendations by several witnesses that ComEd conduct detailed and potentially expensive 'audits' for the purpose of directly assigning distribution facilities to selected classes should be denied." (*Id*. at 2, Lines 31-33.)

Neither ComEd witness Heintz nor any other witness has provided any concrete reasons as to why a customer-specific cost of service study for the over-10 MW classes is "unnecessary." To the contrary, as discussed above, the testimony presented by various parties involving rates and costs for the over-10 MW classes confirms the need for a completely different approach to measurement of embedded cost of service.

ComEd's implication that individual audits of its 79 largest customers would be unjustifiably expensive is ironic to say the least, in the context of a rate case in which ComEd itself has proposed to raise rates for these very customers by **tens of millions of dollars *per year***. (*See* ComEd Ex. 33.0 at 2, Lines 31-33) The costs associated with allowing ComEd blindly to rely upon its proposed study obviously dwarfs the cost of performing audits for each of the 79 individual very large ratepayers. (*See* REACT Ex. 6.0 at 7-10, Lines 137-211.)[4]

a. More Accurate than the ECOSS

REACT witness Mr. Bodmer testified that:

> Because of the very crude manner in which ComEd's embedded cost study allocates costs for the over-10 MW classes, it should be

[4] Although ComEd presented extensive pre-filed testimony, the omissions from the testimony are most telling. ComEd failed to explain why its ECOSS improperly allocates numerous costs, including the cost of secondary wire, to the over-10 MW customers; it failed to explain why reliance upon actual costs would be inappropriate, while its own witness makes comments regarding the need to measure actual costs in an embedded cost of service study (*See* ComEd Ex. 33.0 at 4, Lines 66-68); it failed to deny that it is possible to compute particularized costs for individual ratepayers in the over-10 MW classes – to the contrary, ComEd affirmatively stated in response to a data request that it is "technically possible" to perform such an analysis. (*See* ComEd Response to REACT Data Request 4.28); it failed to explain why it has not hired a single expert to evaluate the actual costs to serve these 79 customers, while it has hired many experts to advocate for higher overall revenue requirements; it failed to deny that its rate level for its largest ratepayers is very high relative to the rates charged by other utility companies, thus confirming that ComEd's ECOSS is seriously disproportionate with respect to the over-10 MW customers; and it failed to recognize the fundamental flaws in the ECOSS that undercut ComEd's repeated assertion that the over-10 MW customers are being "subsidized," a position that is contrary to the Commission's observations in prior cases, such as ICC Docket No. 05-0597. (*See* REACT Ex. 6.0 at 11-13, Lines 235-81.)

> rejected as a tool to assign costs to these customers. Instead, ComEd should analyze the actual facilities used by those customers to set rates for those classes.

(REACT Ex. 2.0 at 19, Lines 400-03.) Mr. Bodmer testified at length and in detail about the need and justification for individualized cost studies in both his direct and rebuttal testimony. (*See id* at 19-21, Lines 398-450; *see also* REACT Ex. 6.0 at 17-19, Lines 380-412.) Yet, when Mr. Bodmer was presented by REACT for cross-examination, his pre-filed testimony was not challenged in any way by ComEd or any other party with respect to his recommendation of individualized costs studies.

Given the substantial evidence from various parties questioning the validity of the ECOSS, particularly with respect to the over-10 MW customer class, and given the substantial unchallenged record evidence supporting individualized cost studies for ComEd's largest customers, the Commission should direct ComEd to perform individualized cost-or-service studies for the over-10 MW customers in lieu of applying the ECOSS to determine those customers' delivery services rates.

It would be wholly appropriate, and in line with methodologies ComEd claims to endorse, for ComEd to use an audit of actual costs to calculate costs for its 79 largest customers. Particularization of costs would have an impact on the measured cost of service. ComEd witness Mr. Bodmer provided specific examples of why the individualized cost of service would be preferable. (*See* REACT Ex. 2.0 at 17-18, Lines 344-85.) Yet, ComEd continues to ignore the impacts a particularized cost study could have. Instead, in discussing alternative allocation methods, ComEd witness Mr. Heintz testified that "ComEd's ECOSS is not grounded on speculative and debatable allocation theories; it is grounded in costs that are on ComEd's books." (ComEd Ex. 33.0 at 14, Lines 299-300.) While an appropriate cost study *should* be grounded in costs that are on the utility's books, numerous witnesses have demonstrated that ComEd's ECOSS is in fact grounded in highly speculative and debatable assumptions. (*See* IIEC Ex. 1.0 at 16, Lines 289-96; IIEC Ex. 3.0 at 3, Lines 19-27; DOE Ex. 1.0 at 3-4, Lines 54-69 and 9-10, Lines 185-225.) (*See also* REACT Ex. 6.0, Lines 380-412.)

In sum, the record evidence establishes that:

- Performing individualized cost-of-service studies for its 79 largest customers is feasible. (*See* REACT Ex. 6.0 at 19-20, Lines 417-50.)
- Performing individualized cost-of-service studies is consistent with ComEd's stated desire to "move toward cost." (*See id*. at 17, Lines 380-84.)
- Performing individualized cost-of-service studies is consistent with the principle of avoiding cross subsidization. (*See id.*)

In the end, despite the volumes of testimony discussing cost of service and rate design issues for the over-10 MW classes – classes that currently comprise only 5% of ComEd's revenue (ComEd schedule E-5) – the Commission basically has two (2) policy alternatives: blindly adhere to ComEd's obviously flawed ECOSS; or, direct ComEd to measure the cost to serve the customers through audits of actual costs for each of the 79 customers, so as to evaluate rate levels relative to the depreciated cost that ComEd actually has on its books for equipment installed to serve each customer.

D. Rate Impact Analysis

1. The Proposed Rate Increase for Over-10 MW Customers is Quintessential "Rate Shock"

The numbers speak for themselves and, on any reasonable scale, ComEd's proposed rate increases for its over-10 MW customers constitute rate shock. ComEd has proposed an **overall 21% rate increase for its customers**. (*See* REACT Ex. 1.0 at 10, Lines 230-37; REACT Ex.

5.0 at 7, Lines 132-35.) Yet, ComEd has proposed an overall **140.4% increase** for Extra Large Delivery Class (over-10 MW), and a **129.4% increase** for the High Voltage Delivery Class (over-10 MW). (*See* REACT Ex. 1.0 at 10, Lines 230-37; REACT Ex. 5.0 at 7, Lines 132-35.) These percentages translate into substantial dollar amounts. Even under ComEd's "modified" proposal, the largest of the 26 Extra Large High Voltage Customers eventually would receive more than a **$900,000 *annual* rate increase**; for the 53 Extra Large customers that are not served via high voltage, the annual impact of ComEd's proposal would range from approximately **$420,000 at the "low" end to more than a $3.2 million increase –** these proposed increases are ***per year, per customer.*** (*See* REACT Ex. 5.0 at 2, Lines 31-37.)

ComEd and the Commission have repeatedly expressed concern about causing rate shock. In this proceeding, ComEd has again reiterated its purported commitment to avoid rate shock. (*See* Tr. at 109-10, Lines 19-21, 14-16; Tr. at 110-11, Lines 20-22, 1.) ComEd's commitment, however, rings hollow in light of the facts about the proposed rate hike.

In this proceeding, ComEd proposed an overall 21% rate increase for its customers. However, ComEd proposed an overall **140.4% increase** for Extra Large Delivery Class (over 10-MW), and a **129.4% increase** for the High Voltage Delivery Class (over-10 MW). (*See* REACT Ex. 1.0 at 15, Lines 322-26.)

- o The annual cost impact for the 26 Extra Large High Voltage Customers would range from $158,000 (for customers with a demand of 10 MW) up to $1,188,000 (for customers with a demand of 75 MW).
- o Extra Large customers that are not served via high voltage would experience even larger annual increases, ranging from approximately $426,000 (for customers with a demand of 10 MW) up to $3,195,000 (for customers with a demand of 75 MW).

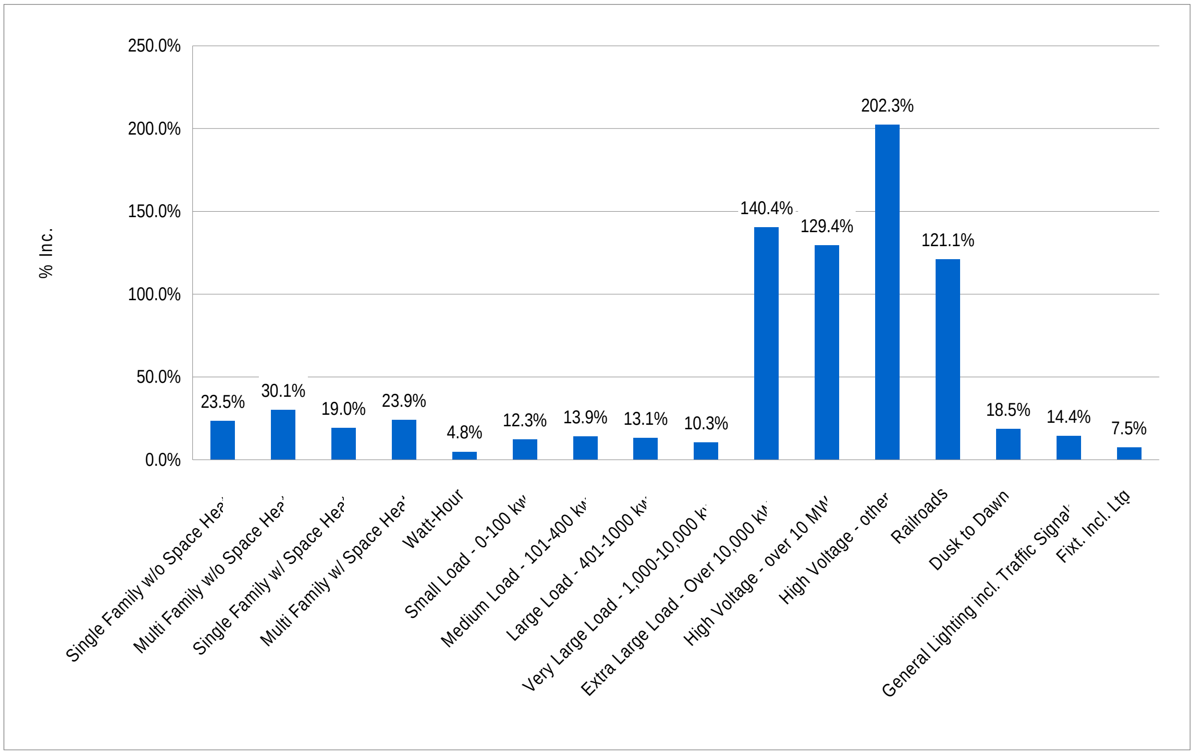
- o Again, for customers with demands greater than 75 MW, under ComEd's proposal, their rates would increase by significantly more than $3,000,000 every single year.

(*See* REACT Ex. 5.0, Lines 130-46.)

2. <u>The Proposed Rate Increase for Over-10 MW Customers is Out of Proportion to the Increase for Other Customer Classes</u>

The massive percentage rate increase faced by over-10 MW customers stands in stark contrast with the much lower percentage rate increases proposed by ComEd for other customer classes. REACT presented uncontradicted evidence demonstrating the disparities at issue. For example, REACT witness Mr. Bodmer presented the following chart comparing the overall percentage rate increase by customer class:

Overall Proposed Rate Increase For Delivery Services
Charged By Customer Class % Increase



(Source: ComEd Exhibit 11.0, at 10, Table 5.)

(REACT Ex. 2.0 at 5, Lines 93-98.)

3. <u>The Over-10 MW Customers Did Not Do Anything To Deserve Such A Disproportionate, Massive Rate Increase</u>

Mr. Bodmer repeatedly raised the question: “What did the over-10 MW customers do to deserve such a disproportionate, massive rate increase?” (REACT Ex. 2.0 at 4, Lines 64-65; REACT Ex. 6.0 at 3, Lines 54-55.) Through three rounds of pre-filed testimony and the presentation of numerous witnesses for live cross-examination, ComEd has failed to articulate an answer to that fundamental question. Indeed, ComEd President Mr. Mitchell testified quite candidly that ComEd failed to address the question:

Q. Mr. Bodmer asked the question in his direct testimony, 'What did the over 10-megawatt customers do to deserve such disproportionate massive rate increase?' Correct?
A. That's the question.

Q. Did you present any testimony answering that question?
A. No, I did not.

Q. Do you know of any ComEd witness that did?
A. I'm not aware.

(Tr. at 113-114, Lines 22, 1-9.)

Although no ComEd witness provided an answer, ComEd counsel *did* answer the question during an on-the-record colloquy at the hearings. In response to a relevance objection by REACT during the cross-examination of Mr. Bodmer, ComEd's counsel responded:

> Well, he's asking the rhetorical question of what in the world did these [over-10 MW] customers do to deserve this fate. **And the fact of the matter is, they didn't do anything** . . .

(Tr. at 1542, Lines 3-7) (emphasis added.)

Instead, ComEd has rather generically pointed to alleged cross-subsidies of the larger customers by the smaller customers.[5] However, ComEd's "subsidy" argument is based on an invalid ECOSS. Thus, ComEd's argument contains a fatal flaw -- without a valid ECOSS or other valid cost-of-service study, a discussion of alleged cross subsidies is *prima facie* invalid. (*See* discussion in Section VIII.B.2 above.)

Moreover, Mr. Bodmer explained that if such a subsidy actually existed, one would expect ComEd's proposed rates for its biggest customers to be in the same range as the rates other utilities charge their biggest customers. (*See* REACT Ex. 6.0 at 22, Lines 494-98.)

[5] This view is contradicted by, among other things, the Commission's conclusion in ComEd's last rate case, where the Commission stated: "the Commission is persuaded that the cost of serving such very large customers [over-10 MW customers] is potentially <u>lower</u> than serving significantly smaller customers." (ICC Docket No. 05-0597, July 26, 2006 Order at 196) (emphasis added).

However, ComEd offered no rebuttal to the testimony that explained how ComEd's proposed rates are simply out of line with the rates other utilities charge their largest customers. In earlier cases, ComEd proudly pointed out that its distribution rates are below those of other companies. For example, in the order in ICC Docket No. 01-0423 (March 28, 2002 at 22-23), the Commission cited ComEd's testimony that its distribution rates were at the low end of a comparison with ten other distribution companies. The fact that ComEd did not respond to my testimony or the testimony of IIEC witness Stephens on this issue is notable. (*See* IIEC Ex. 1.0 at 8-10, Lines 160-76.) If ComEd's cost of service for large ratepayers were consistent with cost of service measurement in other jurisdictions, rates would also be reasonably similar. The record in this case with respect to rate comparisons therefore further confirms that ComEd's cost of service measurement is not credible for the very large rate classes. (*See* REACT Ex. 6.0 at 22, Lines 483-98.)

4. <u>The Proposed Rate Increase for Over-10 MW Customers Threatens a Negative Rippling Economic Effect</u>

The over-10 MW customers are among the largest employers in Illinois. For example, the City of Chicago alone employs approximately 40,000 people. (*See* Tr. at 1682-83, Lines 21-22, 1-2.) The over-10 MW customers represent a critical part of the economic engine that runs Northern Illinois and the Midwest more generally, and are central components to the economic vitality of their respective communities. (*See* REACT Ex. 5.0 at 6, Lines 120-125.)

The rate increases that ComEd proposes for the over-10 MW customers are far from trivial. As explained elsewhere, and as acknowledged by ComEd's president Mr. Mitchell, the increases represent *triple figure* percentages, resulting in actual dollar increases running into the millions of dollars. (*See* Tr. at 113, Lines 1-3.) As Illinois Retail Merchants Association President and Commercial Group witness Mr. Vite acknowledged, it is appropriate for the

Commission to take into consideration the fact that these types of increases threaten a negative, rippling effect, in terms of employment and other effects on the community. (*See* Tr. at 1684, Lines 10-16.) ComEd itself, through its president Mr. Mitchell, has recognized that the Commission retains a "total prerogative to review anything that comes before [it] in the context of a rate increase." (Tr. at 106, Lines 18-20.) REACT certainly agrees that the Commission has discretion under the Public Utilities Act to consider the economic effects that a particular rate increase might have on particular customers, the region, and the state.[6] ComEd's proposal in the instant proceeding demands that the Commission do just that.

E. Interclass Allocation Issues

1. Across-The-Board Increase

Given the well-established invalidity of the ECOSS, the Commission must order implementation of an alternative to ComEd's proposed massive rate hike for the over-10 MW customers. Ordering ComEd to perform individualized cost-of-service studies is necessary, but that step will not resolve the immediate question or whether any rate increase is appropriate.

Substantial evidence in the record demonstrates that until a much more fundamental change is made to the ComEd cost-of-service study approach with respect to the over-10 MW classes, the Commission should simply limit the percent rate increase of this class to the overall system-wide average increase. (*See* REACT Ex. 6.0, Lines 125-32.) Interestingly, even the AG, who does not explicitly question the ECOSS, suggests the system-wide average increase as the preferred answer to dealing with an invalid ECOSS. (*See, e.g.*, AG Ex. (SJR) 6.0 at 7, Lines

[6] *See Abbott Laboratories, Inc. v. Illinois Commerce Comm'n*, 289 Ill. App. 3d 705, 716, 682 N.E.2d 340, 350 (1st Dist. 1997) ("A determination of what is 'just and reasonable' involves a *balancing* by the Commission of the interests of the utilities' stockholders and the utilities' consumers. **The Commission cannot fulfill its statutory duty to balance the competing interests of stockholders and ratepayers without taking into account the impact of**

159-61.) Furthermore, even ComEd witness Mr. Alongi – who *does* support the ECOSS – admitted that an across-the-board increase was the preferable alternative in the event of an invalid ECOSS. (*See* Tr. at 2091-92, Lines 16-22, 1-11.)

Certainly, the across-the-board proposal is preferable to ComEd's "mitigation" proposal, which would merely delay imposition of the full brunt of the enormous rate increase that ComEd is proposing for the over-10 MW customers. As discussed below, that increase is severe, and the "phase in" of that increase is largely immaterial. That proposal is unacceptable and threatens serious economic damage upon the over-10 MW customers, that itself threatens a potentially negative, rippling effect on the economy of Northern Illinois.

Under the circumstances, particularly in light of the invalidity of the ECOSS, the across-the-board increase represents the best option for the Commission to ensure that ComEd obtains the revenue it needs without penalizing the over-10 MW customer class with an enormous rate hike that lacks adequate cost-of-service support. (*See* REACT Ex. 5.0 at 28, Lines 562-574.) REACT respectfully requests that the Commission, at most, implement a system-wide average increase upon the over-10 MW customers.

2. Other Rate Moderation/Mitigation Proposals

a. ComEd's "Mitigation" Plan is Unacceptable

Apparently in response to concerns raised by REACT, Staff and others, ComEd has proposed to "mitigate" the potential cost increase to the Extra Large Delivery Class, High-Voltage Customer Class and Railroad Delivery Class. This "mitigation" would consist of cutting in half the proposed increase in the Distribution Facilities Charge ("DFC") for this case. (*See* ComEd Ex. 32.0 at 9, Lines 137-39.) However, this misnamed "mitigation" is contingent upon

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proposed rates on ratepayers.") (internal citations omitted) (emphasis added).

the Commission promising to impose another huge increase at the conclusion of ComEd's next general rate proceeding. (*See id.*, Lines 140-42.) (*See also* REACT Ex. 5.0 at 8, Lines 161-70.)

ComEd's "mitigation" proposal would not materially lessen the impact to the over-10 MW customer classes. Essentially, it would only delay a portion of the proposed rate increase for a presumably short amount of time, and then apparently guarantees that the affected customers will receive yet another massive rate increase in ComEd's next general rate increase proceeding based upon the same type of flawed ECOSS. (*See* REACT Ex. 5.0 at 5, Lines 89-94.)

In other words, ComEd is *not* retreating from the enormous, unjustified rate increase that it has proposed for the over-10 MW customers. Rather, ComEd still asserts that the Commission should find that ComEd is entitled to raise these customers' rates by the very same full amount based upon its current ECOSS. The only difference is that ComEd now seeks to impose half the increase immediately and half the increase at a later date, most likely not later than 2010 given ComEd's claim that it intends to file more frequent rate cases. (*See* ComEd Ex. 30.0 at 29, Lines 654-55.) In that next rate case, ComEd undoubtedly will again seek another increase in its revenue requirements – which means that under ComEd's proposal, ComEd's largest customers would be subject to annual per customer increases of well over $1.5 million now, and a total in the range of $3.5 million per customer, per year by the end of the next rate case. Essentially, ComEd has simply provided a little more detail to the unjustified "phase-in" that Mr. Crumrine alluded to in his direct testimony. (*See* ComEd Ex. 11.0 at 7, Lines 134-42.)

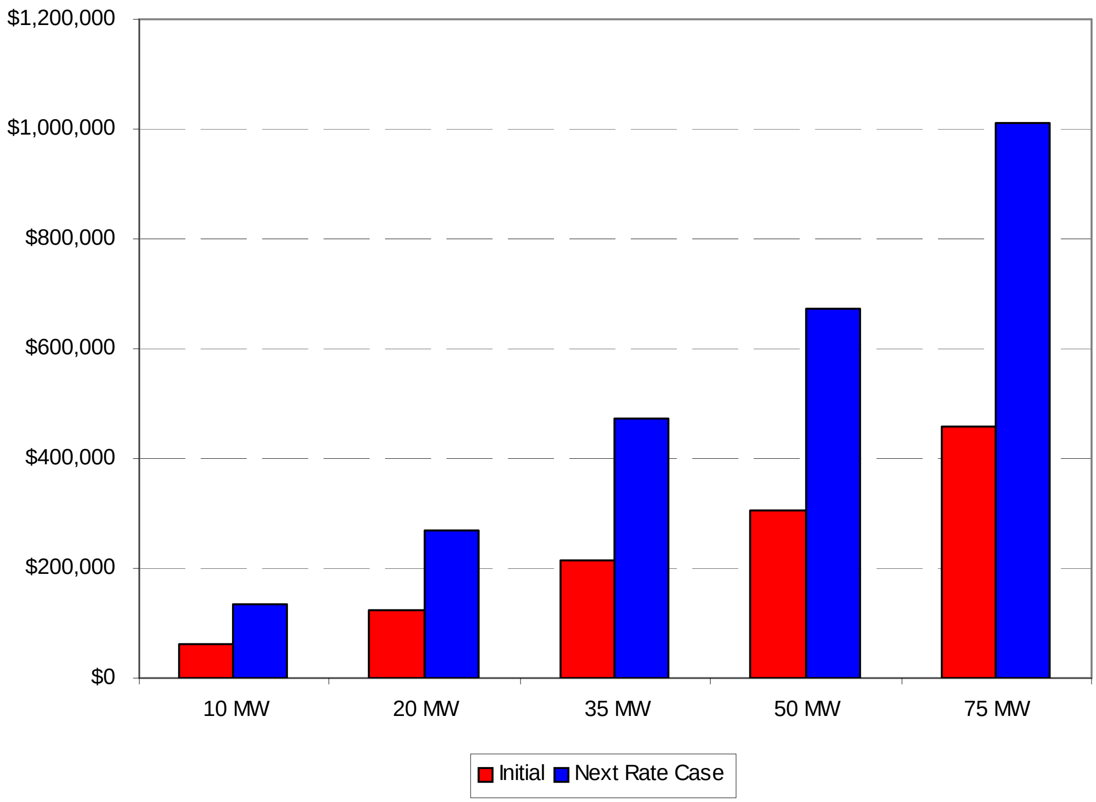
It would be inappropriate for the Commission to adopt ComEd's "mitigation" proposal, a concept that assumes that ComEd has accurately determined the costs for serving its customers. Numerous intervenors have demonstrated that this assumption is blatantly untenable, in particular, by identifying flaws in ComEd's cost study for the over-10 MW customers, and ComEd even seems to admit that its cost study is flawed when it comes to evaluating the actual cost to serve its 79 largest customers. (*See* IIEC Ex. 1.0 at 16, Lines 289-96; IIEC Ex. 3.0 at 3, Lines 19-27; DOE Ex. 1.0 at 9-10, Lines 185-225.) (*See also* ComEd Ex. 33.0 at 3, Lines 59-64.)

In proposing a "mitigation" plan, ComEd quite definitely is not retreating from the enormous, unjustified rate increase that it has proposed for the over-10 MW customers. (*See* REACT Ex. 5.0 at 8, Lines 163-84.) On the contrary, it appears that ComEd is trying to get the Commission to accept the framework for the proposed rate increase, without accepting the full amount of the proposed increase at this time. The "mitigation" plan appears to be a fairly transparent attempt to obtain the Commission's endorsement of the flawed ECOSS approach now, with the prospect that ComEd can come back later (likely very soon) to collect on the remaining "balance" of the increase that is due under the ECOSS approach. No doubt, when it comes back for its next rate case, ComEd would simply point to the Commission's acceptance of the ECOSS approach and "mitigation" plan in the instant proceed as the basis to impose the next round of increases. This approach is faulty and cynical. If ComEd can sustain the burden of proof in this proceeding to justify the rate increase it seeks, so be it. However, if it cannot sustain that burden – and it appears that based on the proposal of the "mitigation" plan, the Company essentially concedes it cannot – there should be no reward or prospect of coming back to the Commission at a later date to collect the "outstanding balance" on the increase that ComEd could not justify in the instant proceeding.

(i) ComEd's "Mitigation" Plan Still Would Result In Massive Rate Increases Disproportionate For Over-10MW Customers

Under ComEd's proposed "mitigation" plan, the immediate annual DFC cost impact for the 26 Extra Large High Voltage Customers would range up to $459,000 (for customers with a demand of 75 MW), and would escalate to an over $1,000,000 annual increase following the next rate case, assuming that ComEd receives a 10% increase in that case.

Table 1. Annual Impact of ComEd Proposed DFC for
Over-10 MW High-Voltage Customers
(Initial Impact and "Promised" Impact of Next Rate Case)

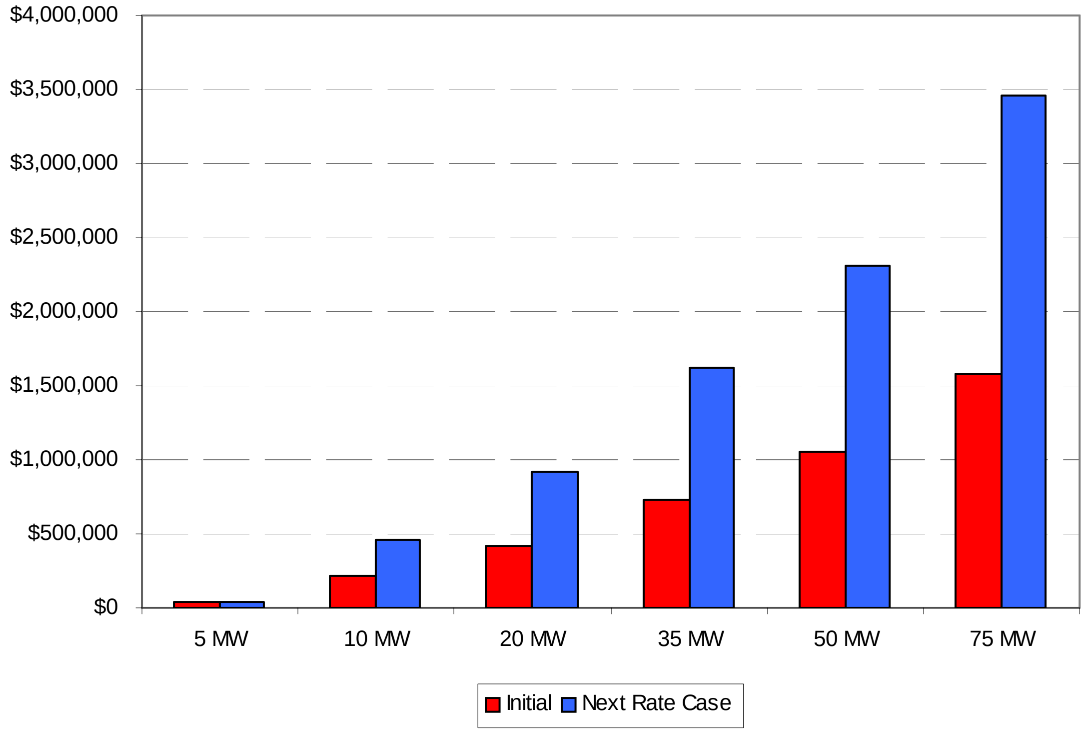


Annual increases in Table 1 are calculated by multiplying customer monthly kW by 12 months and by ComEd's proposed increase in the $/kW distribution facilities charge (proposed DFC less current DFC of $1.09/kW.) (ComEd Ex. 32.0 at 8, 10, Tables R3 and R3A.) "Next Rate Case" increase assumes that the Commission grants ComEd a 10% increase in its next general rate proceeding.

(REACT Ex. 5.0 at 8-10, Lines 161-213.)

Those Extra Large customers not served via High Voltage would still experience immediate annual DFC increases ranging from approximately $210,000 (for customers with a demand of exactly 10 MW) to $1,575,000 (for customers with a demand of 75 MW.) That is, for customers with demands greater than 75 MW, under ComEd's proposal, their rates would *immediately* increase by significantly more than $1.5 million *every single year*. Then, in ComEd's next general rate increase proceeding, in addition to any further rate increase approved by the Commission, ComEd's "mitigation" proposal would double these annual increase amounts. For the largest customers, the eventual impact would be increases of more than $3.5 million every single year. This compares to an immediate increase of approximately $41,400 for a 5 MW customer, that eventually would experience a $35,000 increase.

Table 2. Annual Impact of ComEd Proposed DFC for
5 MW and Over-10 MW High-Voltage Customers
(Initial Impact and "Promised" Impact of Next Rate Case)



Annual increases in Table 2 are calculated by multiplying customer monthly kW by 12 months and by ComEd's proposed increase in the $/kW distribution facilities charge (proposed DFC less current DFC of $2.46/kW). (ComEd Ex. 32.0 at 8, 10, Tables R3 and R3A.) 5 MW customer based upon the current DFC of $5.22/kW. "Next Rate Case" increase assumes a 10% increase over "Promised" values.

(REACT Ex. 5.0 at 11-12, Lines 215-40.)

It is misleading for ComEd to refer to its proposal as a "mitigation" plan, which initially assumes (incorrectly) that there is a legitimate basis for the original proposal. Further, what ComEd has proposed is simply to delay the proposed increase, requiring as a condition of its proposal that the Commission take the highly unusual step of pre-determining the size of the increase it would assign to ComEd's over-10 MW customers in ComEd's next rate case. Essentially, ComEd has proposed that the Commission approve an unjustified increase now of more than 60% and promise that it will impose another unjustified increase of 60% in ComEd's next rate case; perhaps ComEd believes that this somehow is "better" than an unjustified increase of more than 120% now. The Commission should reject the unjustified increase, not phase it in. (*See* REACT Ex. 6.0, Lines 64-76.)

(ii) <u>It Is Intellectually Dishonest For ComEd To Assert "Subsidies" Exist</u>

ComEd's repeated assertions that the over-10 MW customers are being "subsidized" are intellectually dishonest. In order for there to be a "subsidy" there must be a clear understanding of what costs are appropriately allocated to each customer class. In this proceeding, there is no legitimate basis upon which the Commission could conclude what the costs are to serve the over-10 MW customers. Instead, the sole basis is an ECOSS that even ComEd cannot seriously suggest reflects the actual costs to serve those customers; indeed, ComEd has recognized limitations and flaws with the ECOSS since at least 2005. (*See* ICC Docket No. 05-0597, July 26, 2006 Order at 156 (noting ComEd's position that "for purposes of establishing delivery service charges, ComEd generally supports the use of a marginal cost of service study," rather than an ECOSS).) Without a fundamental analysis of appropriate allocation, it is wrong to suggest that a subsidy exists.

Further, ComEd has steadfastly refused to take the steps necessary to properly evaluate the cost to serve its largest customers, resulting in a total lack of customer-specific facts to support any claim that subsidies exist. Until ComEd corrects its cost of service analysis to more accurately reflect actual costs, one simply cannot determine whether a class or a ratepayer is being subsidized or is subsidizing other ratepayers.

The Commission, in ICC Docket No. 05-0597, seemed unconvinced that there was evidence of a subsidy of very large customers. On the contrary, the Commission found itself "persuaded that the cost of serving such very large customers is potentially lower than serving significantly smaller customers." (ICC Docket No. 05-0597, July 26, 2006 Order at 196.)

ComEd presents no credible evidence in the instant proceeding that would lead to a different conclusion. (*See* REACT Ex. 6.0, Lines 503-48.)

F. <u>Supply vs. Delivery Services Allocation Issues</u>

ComEd's proposed delivery services rates are overstated by approximately $64 million because they include supply-related costs that properly should be recovered under ComEd's supply charges. (*See* REACT Ex. 7.0 at 20-21, Lines 436-54.)

Both the Commission and ComEd have accepted the view that costs should be allocated to actual cost causers. (*See* ICC Docket No. 05-0597, Dec. 20, 2006 Order on Rehearing at 74; Tr. at 540, Lines 7-9: ComEd witness Donnelly: "In general if a customer is responsible for a cost or involved in that cost, they should pay a portion of that cost.") This principle dictates not only that cost should be accurately assigned to various customers classes, but also that costs must be allocated in a manner that accurately reflects the distinction between supply-related costs and delivery services-related costs. (*See* REACT Corrected Ex. 3.0 at 6-9, Lines 105-83; REACT Corrected Ex. 7.0 at 2, Lines 20-28.) Again, in its words, ComEd admits this point. ComEd witness Crumrine stated: "I think as a general principal the costs that ComEd incurs to directly procure supply should be a supply – assigned to the supply function and to the supply price." (Tr. at 1356, Lines 14-17.) However, in its actions, ComEd has failed to properly allocate those costs.

Under ComEd's proposal in this proceeding, substantial supply-related costs would be recovered through ComEd's proposed delivery services rates, rather than through ComEd's bypassable supply tariff. Such a result is bad for customers and lethal to the development of competition for residential and the smallest commercial customers. It is bad for customers because under ComEd's proposed rates, distribution customers who do not obtain their supply from ComEd would be forced to pay ComEd for costs that they should be able to avoid. (*See* REACT Ex. 7.0, Lines 20-28.) ComEd's proposal has the very real potential to kill the competitive market for residential customers and the smallest commercial customers because it would artificially deflate the supply price against which RESs must compete. (*See* REACT Ex. 5.0, Lines 576-86.)

Although ComEd no longer provides bundled fixed-price electricity to the over-10 MW customer classes, it does, and will continue to, provide bundled fixed-price services to its residential and small commercial customers with peak demand less than 400 kW. Customers in the 100 to 400 kW class taking bundled service from ComEd as of August 28, 2007 are entitled to remain on bundled service through May 31, 2010. Customers in the 100 to 400 kW class that have already switched from bundled service are not eligible to return to bundled service. Residential customers and customers in the under 100 kW classes continue to be eligible for ComEd's bundled service. (*See* 220 ILCS 5.16-113(g); *see also*, Order, *Petition of Commonwealth Edison for Competitive Declaration With Respect to Customer With Peak Demands of at Least 100 Kilowatts but less than 400 Kilowatts*, ICC Docket No, 07-0478 at *2.) Thus, to compete against the bundled ComEd service offerings with rates set utilizing improperly allocated costs, the RESs would have to compete against an artificially low, subsidized commodity option for bundled customers. (*See* REACT Cr. Ex. 18.)

Simply stated, ComEd is engaging in a misallocation of its supply-related costs that results in ComEd's delivery services customers improperly subsidizing ComEd's supply rate. (*See generally* REACT Ex. 7.0; REACT Ex. 5.0, Lines 576-86.)

ComEd's misallocation of supply-related costs such as Customer Care Costs is not a subject of merely theoretical interest. On the contrary, the issue goes to the very heart of the

Customer Choice Act, which obligates the Commission "**to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers**." (220 ILCS 5/16-101A(d)) (emphasis added). A misallocation of supply-related costs to the delivery services rates has several negative consequences, including:

- Unfairly forcing all customer classes to improperly pay for <u>supply</u> procurement costs even though many of those customer classes are <u>not even eligible</u> to obtain their supply from ComEd;
- Inappropriately "double charging" customers who choose to purchase energy from a RES for services that ComEd provides to customers receiving supply from ComEd; and
- Hampering competition for residential and small commercial customers by creating an artificially low, and therefore distorted price comparison for ComEd bundled customers who shop for alternative suppliers.

(*See* REACT Corrected Ex. 7.0 at 4, Lines 81-93.)

The "bottom line" is that ComEd's current proposal would require RES customers to foot part of ComEd's supply-related bill. Such cross-subsidization would hamper, and potentially even prevent, competition from developing for residential and small commercial customers. (*See id.* at 5, Lines 95-105.) Perhaps this is the result that ComEd desires, but it is certainly not a result that the Commission should tolerate. Fairness and sound regulatory policy dictate that ComEd's supply customers, and only ComEd's supply customers, should pay ComEd's supply-related bill. (*See id.*, Lines 107-08.)

1. <u>ComEd is Seeking to Recover Supply-Related Costs in its Delivery Services Rates</u>

The record evidence establishes that ComEd *is* charging supply-related costs to delivery services customers and, absent Commission direction to the contrary, ComEd intends to continue doing so. (*See id.* at 17, Lines 364-73.)

Notwithstanding its admissions to the contrary, ComEd's "official" position in the instant proceeding appears to be that exactly 0% of its costs associated with Billing, Customer Support (including Call Center Operations), and Credit and Collections (collectively, "Customer Care Costs") are attributable to supply. At the hearing, ComEd witness Mr. Crumrine initially stated:

> **Q. So it's your position that a hundred percent of the customer care costs are attributed to delivery services?**
> **A. Yes.**
>
> **Q. Zero percent to supply?**
> **A. Yes.**

(Tr. At 1330, Lines 8-13. *See also* ComEd Ex. 30.0 at 58, Lines 1300-01.) Eventually recognizing the futility of his earlier statement, Mr. Crumrine later recanted, admitting: "**You're right. It's not absolute zero."** (Tr. at 1339, Lines 6-7.)

Further, ComEd has made no allocation of shared service costs from Exelon Business Services Company to its supply function. Exelon Business Services Company provides services through ten practice areas that include Information Technology, Supply, Commercial Operations, Finance, Human Resources, Government & Environmental Affairs and Public Policy, General Counsel, Corporate Secretary, Strategy, and Communications. (*See* ComEd Ex. 8.0 at 9, Lines 182-93.) It is unclear why ComEd would allocate *zero* costs associated with these support services to supply administration – at a minimum, given the myriad of functions that Exelon Business Services Company performs and the recent prominence of supply issues for ComEd in a variety of forums, it seems to verge on nonsensical to allocate *zero* of its costs to supply-related costs. (*See* Tr. at 1339, Lines 6-7.)

ComEd's "official" position about the treatment of supply-related costs is dubious on its face and is specifically undercut by both ComEd's own admissions, and by the testimony presented by REACT's expert witness Mr. Merola. In its initial filing in this proceeding, ComEd allocated a portion of its Customer Care Costs as supply related costs, allocating $112,483 of Account 903 (Customer Records and Collections Expense) as supply-related. (*See* ComEd Ex. 12.3_SAC, page 3.) This point was further demonstrated beyond doubt in ComEd's Response to REACT Data Request 8.06 (made a part of the record as REACT Cr. Ex. 11), where ComEd admitted that Mr. Merola has accurately concluded that ComEd is charging some Customer Care Costs to supply customers. While this represents a minimal allocation (.11% of the total $100,156,711 allocated to this account), it is clear that, in contrast to ComEd's apparent "official" position, ComEd previously has allocated some portion of its Customer Care Costs to a bypassable supply-related tariff. (*See* ComEd Ex. 13.1, Schedule 1a, page 10). Thus, the appropriate inquiry for the Commission in this proceeding is what level of Customer Care Costs should be allocated to supply procurement. (*See* REACT Ex. 7.0 at 17, Lines 363-72).

To assist the Commission with this inquiry, REACT expert witness Mr. Merola analyzed ComEd's treatment of Customer Care Costs, and calculated a reasonable allocation of these costs to ComEd's supply function. (*See id.* at 17-22, Lines 375-486.) Mr. Merola is Vice President of Intelometry, Inc. of Houston, Texas, and leads that company's Business Services Practice, which focuses on wholesale and retail marketing in the power and natural gas industries. (*See* REACT Corrected Ex. 3.0 at 2, Lines 23-26.) Mr. Merola has over 17 years of diversified experience in the energy industry, working for regulated and unregulated entities, and has testified numerous times before federal courts, state regulatory commissions, FERC, and arbitration panels. (*See* REACT Ex. 3.1.)

Mr. Merola established that "there is no question" that ComEd is charging some of its supply-related costs to delivery services customers. (REACT Corrected Ex. 7.0 at 13-14, Lines 291-304.) Again, based on these facts, the pertinent question for the Commission is not *if*

ComEd is misallocating supply-related costs but rather *how much* of that supply-related cost is ComEd misallocating.

Mr. Merola explained that his calculation of the appropriate amount of supply-related Customer Care Costs was made much more difficult because ComEd failed to specifically track the actual costs associated with providing supply-related customer care and failed to include any allocation assumptions in its ECOSS. (*See id.* at 19-20, Lines 416-28, *citing* ComEd Response to REACT Data Request 4.24.) In the absence of ComEd providing any useful information either in its testimony or in response to very specific data requests, Mr. Merola explained that one rational means of allocating these costs would be based on the share of revenue associated with supply compared to the share of revenue associated with distribution. Clearly, supply represents a much higher percentage of a customer's bill than does distribution, and under that methodology the allocation factor would likely be in the range of 67%. (*See* REACT Ex. 7.0 at 20, Lines 436-41.)

However, instead of applying such a rough allocator for these costs, Mr. Merola adopted a conservative, analytic approach to determine a reasonable allocation of ComEd's $162,150,019 Customer Care Cost revenue requirement for fixed-price bundled customers, concluding that 40%, or $64,860,008, of ComEd's Customer Care Costs should be allocated to the supply function. (*See id.* at 20-21, Lines 441-54.)

As Mr. Merola explained, his analysis was conservative in a number of ways, fully removing costs attributable to meter reading and the establishment of delivery services, and, again in the absence of ComEd providing actual data or meaningful assumptions of its own, making a very reasonable assumption regarding the percentage of Customer Care Costs that are associated with providing supply. (*See id.*, Lines 436-48.) Mr. Merola also confirmed that his methodology captured some costs associated with ComEd's use of Exelon Business Services Company to support its supply function, but was careful not to double count this expense. (*See id.* at 21-22, Lines 465-86.) Finally, Mr. Merola investigated how other utilities that are providing service in competitive markets in other states calculate their supply administration costs, and concluded that the allocation of 40% of the Customer Care Cost to a bypassable supply charge would be fully in line with the treatment of this issue by the other similarly-situated utilities. (*See id.* at 23-27, Lines 492-580.) Mr. Merola concluded that ComEd's supply administration recovery "is far lower than the supply administration rates set by the other utilities I examined. This confirms my concern that ComEd's recovery of supply-related administrative costs appears to be artificially low." (*Id.* at 26, Lines 540-42.)

2. **<u>There Should Be A Significant Increase In ComEd's Supply Rate, With An Equal Decrease In ComEd's Delivery Services Rate</u>**

Proper allocation of these Customer Care Costs would make a substantial difference in the supply rate ComEd charges under its Rider PE. ComEd has allocated $11,958,572 in costs related to supply administration to Rider PE in its March 13, 2008 filing. This would equate to an average rate of 0.02903 cents/kWh. (*See* REACT Ex. 7.2). ComEd's Customer Care Costs for fixed-price bundled customers is $162,150,019, a figure derived by extracting cost allocations for residential customers and commercial customers below 400 kW for the functionalized categories contained in ComEd's ECOSS ("Billing - Computation & Data Mang.", "Bill Issue & Processing" and "Customer Information"[7]). By multiplying each

[7] These function categories cover the functions consolidated at "Customer Care Costs," confirmed by ComEd witness Clair in Direct Testimony. (*See* ComEd Ex. 6.0 at 5, line 95; at 6, lines 114-15, 122; and at 4, line 80-82). Costs associated with the establishment of delivery services are not separated in ComEd's ECOSS, and were not removed.

customer class' allocation by ComEd's expected rate of retention for that class, the total Customer Care Costs for fixed-price bundled customers was determined. (*See* REACT Ex. 7.1).

Applying a conservative allocation factor of 40% to the total Customer Care Costs for fixed price bundled customers, the supply related Customer Care Costs is $64,860,008. (*See* REACT Ex. 7.0 at 20-21, Lines 436-54.) Adding the Customer Care Costs associated with the supply function would increase the supply administration costs more than six fold, from 0.02903 cents/kWh to 0.18649 cents/kWh. (*See* REACT Ex. 7.2).

ComEd should substantially increase the supply administration costs that it is recovering in Rider PE, and accordingly decrease its delivery services charges. ComEd should increase the supply administration costs reflected in its March 13, 2008 Rider PE rate filing from $11,958,572 to $76,818,580 -- that is, ComEd's supply administration costs should increase by 642% -- and should decrease its delivery services revenue requirements by the identical dollar amount. (*See* REACT Ex. 7.0 at 3-4, Lines 50-79).

2. <u>ComEd's Criticisms of Mr. Merola's Analysis Lack Merit</u>

ComEd took a shotgun approach in trying to respond to Mr. Merola's analysis, and while ComEd made many assertions, each effort misses the mark.

First, ComEd erroneously suggests that the Commission should be bound by its prior review of the issue of cost allocation. (*See* ComEd Ex. 43 (Corrected) at 735-36.) Of course, what ComEd tries to pass off as "precedent," was nothing more than a conclusion by the Commission that a vague recommendation regarding one component of Customer Care Costs in the prior case presented an insufficient basis upon which the Commission could properly allocate costs. (*See* ICC Docket No. 05-0597, July 26, 2006 Order at 257.) By contrast, in the instant proceeding, Mr. Merola presented a *specific* dollar adjustment recommendation, supported by a *specific* substantial analysis, as well as information from an investigation into the manner in which other utilities in competitive markets have addressed this issue. (*See* REACT Ex. 7.0 at 23-27, Lines 492-580.) Moreover, the prior policies have failed to establish the necessary structure for the development of competition for residential and the smallest commercial customers. As Mr. Merola explained,

> As the Commission is well aware, retail competition for residential and small commercial customers has not developed in Illinois. As a result, if the Commission wants to promote retail competition for the benefit of all customers, **a "business as usual" approach is a recipe for failure**. A key impediment to retail choice for these customers is the improper allocation of supply procurement costs to delivery services rates. The question of appropriate cost allocation for providing services to residential and small commercial customers must be confronted if the Commission wants a vibrant and sustainable competitive retail electric market to develop where competitive suppliers, not the regulated utility, provide retail electric service to consumers.

(*Id.* at 10, Lines 205-14.) (Emphasis added.)

Next, ComEd criticized Mr. Merola's analysis as being "arbitrary" because he failed to identify the costs that are "directly related" to ComEd providing supply. (*See* ComEd Ex. 43.0 (Corrected) at 34, Lines 737-42.) Such a criticism is almost laughable, given that ComEd – the only entity that could compile the actual data regarding the percentage of actual customer care costs that are supply-related – has chosen not to do so, even after repeatedly being instructed by RESs in prior cases that this allocation issue is central to the development of competition. (*See, e.g.*, Tr. at 1357, Lines 2-7; REACT Cr. Ex. 12 at 11-12, Lines 233-67.) Moreover, ComEd did not take issue with the reasonableness of any of the specific assumptions that Mr. Merola made in presenting his analysis. Finally, ComEd offers no explanation as to why the Commission should view ComEd's proposed allocation of *zero* percent as being anything other than "arbitrary."

Next, ComEd sets forth a false test for determining whether a cost is "supply-related," and then claims that Customer Care Costs do not satisfy that test. According to Mr. Crumrine, the sole inquiry should be "[whether] such costs would be avoided if all customers served under Rate BES migrated to alternative suppliers . . .." (ComEd Ex. 43.0 (Corrected) at 34, Lines 741-42.) Of course that is not, and never has been, the test to determine whether a cost should be recovered through ComEd's supply charges. For example, in the last rate case, ICC Docket No. 05-0597, the Commission specifically directed ComEd to include its attorneys fees associated with the procurement docket in its supply charges, even though ComEd would not avoid any of those costs if all customers were to switch to an alternative supplier, a point that Mr. Crumrine conceded. (*See* Tr. at 1354-55, Lines 17-22, 1-3.)

Further, Mr. Crumrine's proposed false test is inconsistent with the overall cost allocation methodology ComEd has endorsed in this proceeding. As the Commission is aware, ComEd is relying on an embedded cost of service study to justify its allocation of costs. As discussed by ComEd witness Heintz, an embedded cost of service study "utilizes historical relationships among booked costs and the volumes of services delivered by a company. By contrast, for example, a marginal cost of service study employs analyses and estimates of incremental changes in costs, as these changes are related to (caused by) incremental changes in volumes of services forecasted to be delivered in the future." (ComEd Ex. 13.0. at 6, Lines 111-15.) Mr. Crumrine's false test would have the Commission inquire into the hypothetical, incremental marginal costs ComEd incurs to provide supply service rather than looking at the actual historic ComEd incurred in providing supply-related services. As Mr. Merola explained in discussing ComEd's inconsistent position:

> In this proceeding, ComEd is relying on an embedded cost of service study to justify its allocation of costs. . . .. However, in

> connection with the analysis of the cost allocation approach for the particular items that we are focusing on here, Mr. Crumrine apparently is endorsing a marginal cost of service approach related to these critical supply related costs. The reason for this analytical shift is not explained by ComEd. The point, however, is quite clear. **The attempt to recover Customer Care Costs as 100% distribution related and 0% supply related simply cannot withstand scrutiny under an embedded cost of service approach**.

(REACT Corrected Ex. 7.0 at 16-17, Lines 345-62.) (Emphasis added.)

Finally, ComEd suggests that the "cost-causer" philosophy that supports ComEd recovering its supply-related costs in its supply charges could be used by someone at some time to suggest that all costs to enable competition – including the costs associated with ComEd providing purchase of receivables utility consolidated billing ("POR/UCB") programs – should be recovered only from those customers who choose an alternative supplier or take service under the POR/UCB programs. (*See* ComEd Ex. 43.0 (Corrected) at 34-35, Lines 749-52.) Significantly, this is not a position that ComEd advocates, but rather a straw man that ComEd posits someone else might advocate at some later date. (*See* Tr. at 1370-71, Lines 16-22, 1-3.) Moreover, the Commission has ***never*** endorsed the concept that the costs associated with enabling customer choice should be recovered solely from customers who actually choose. Instead, the Commission repeatedly has recognized that providing customers with the opportunity to switch suppliers and promoting competition benefits all customers, and accordingly has directed that costs should be recovered from all customers. (*See* Tr. at 1371, Lines 4-7.) Just as it would be inappropriate to charge only those citizens who vote for the costs of the ballots and staffing the polling places, it would be inappropriate to charge only those customers who exercise their right to choose an alternative supplier the costs associated with making that choice possible. Thus, if someone were to raise such an argument in the future, it almost certainly would fail.

In order to ensure that the foundation is laid to enable a competitive market for residential and small commercial customers in Northern Illinois, REACT respectfully requests that the Commission act now to correct ComEd's gross misallocation of supply-related costs to their delivery services rates. A failure to address this issue in this proceeding, will be detrimental to competition and will unfairly burden those customers that do choose a RES for supply service, with ComEd's costs associated with providing supply.

IX. RATE DESIGN

A. Overview

1. REACT's Position

a. What Did The Over-10 MW Customers Do To Deserve Such A Massive, Disproportionate Rate Increase?

As discussed above at Section VIII.D.3, while REACT witness Mr. Bodmer raised the question of justification for the massive increase proposed for the over-10 MW customers, ComEd refused to address this issue, apparently recognizing that these very large customers have done nothing to justify the proposed increase in this proceeding. (*See* REACT Ex. 2.0 at 4, Lines 64-65; REACT Ex. 6.0 at 3-4, Lines 54-62.) In spite of this complete lack of justification, ComEd continues to press forward with an admittedly inaccurate, fundamentally flawed methodology to assign costs to these customers. Instead of confronting the problems that are the core of its allocation methodology, in its rebuttal testimony ComEd offered a misnamed "mitigation plan." (*See* REACT Ex. 6.0 at 3-4, Lines 54-62.) REACT respectfully requests that the Commission assign no more than the system average increase to ComEd's over-10 MW customers and direct ComEd to perform an individualized cost of service study for each of its 79 largest customers.

b. <u>Review Of ComEd Supply-Related Cost Allocation Must Be Transparent And Permit Stakeholder Input</u>

ComEd has indicated that supply-related costs will be recovered largely through Rider PE. The Rider PE filing process is an *ex post* review of certain cost items which does not provide a practical way for stakeholders to become involved. In this proceeding, the Commission should clearly articulate the cost allocation principles to which ComEd must adhere, and then should establish a process to allow stakeholders to confirm that ComEd's filings conform to those principles.

Failure to address these issues in the instant proceeding would result in significant damage to the development of a competitive retail market for residential and small commercial customers. Although the Customer Choice Act provided for residential competition to begin on or before May 1, 2002, there has been substantively zero residential switching in ComEd's service area to date. Further, ComEd has internally projected there will be no switching until 2011, when merely .5% of residential customers will switch, it has yet to come to fruition. ComEd's actions in this proceeding appear clearly to be trying to prevent residential customer switching from increasing from its current zero status.

The Commission may wonder why ComEd would be motivated to prevent the development of a competitive market for residential customers. ComEd's President and Chief Operating Officer, J. Barry Mitchell, provided a potentially significant insight to answer this question – it may be that ComEd is trying to keep Exelon happy. Exelon Generation provides a substantial portion of the wholesale requirements for ComEd's fixed price customers under long-term supplier forward contracts. A loss of ComEd supply customers to a RES would the loss of revenue to Exelon Generation under those contracts. Clearly, ComEd has both the means (by inaccurately allocating its supply-related costs) and the apparent motive (retain load being served under its affiliate's contracts) to inhibit the development of a competitive retail market. Further, the design of Rider PE inhibits ComEd from earning a rate of return on the same costs that it can earn a rate of return on under its delivery services rates.

B. Uncontested Issues

1. Identifying Cross-Subsidies Requires an Accurate Cost Study

REACT incorporates herein the discussion of this issue from Section VIII.B.2 above.

2. Prudent Rate Design Should Avoid Rate Shock

REACT incorporates herein the discussion of Rate Shock from Section VIII.D.1 above.

3. Prudent Rate Design Should Consider Wider Economic Effects of Increase

REACT incorporates herein the discussion of wider economic effects from Section VIII.D.4 above.

D. Existing Riders

1. Rider ACT

ComEd originally proposed that Rider ACT be closed to new customers and that existing customers who have been receiving credits for more than 30 years would be removed from Rider ACT and receive a one-time payment equal to one-year's worth of credits based on the average annual credits received during the most recent three years. (*See* ComEd Ex. 12.0 at 22, Lines 371-92.) ComEd also proposed a voluntary option for customers who have been on Rider ACT for less than 30 years to receive a payment equal to two years' worth of payments based on the average annual credits received during the most recent three years. These customers could continue on Rider ACT for a maximum time period of 30 years if they do not elect the voluntary payment option.

Based on concerns raised by REACT, Staff, and DOE, ComEd subsequently modified its proposal for Rider ACT, which would remove the mandatory termination provision in Rate ACT. (*See* REACT Ex. 5.0 at 27, Lines 538-45; ICC Staff Ex. 8.0 at 17, Lines 363-64; ComEx. 32.0 at 41, Lines 673-74.) Rider ACT still would be closed to new customers and existing customers would have the option to voluntarily receive the payment equal to two years' worth of payments and terminate service under Rider ACT. If these customers ever take such a payment, they no longer would be able to return to Rider ACT. (*See* REACT Ex. 5.0 at 26-27, Lines 526-45.)

In spite of its revised proposal, ComEd still has failed to justify any proposed revisions to Rider ACT. It is not sufficient for ComEd simply to assert, without any proof, that a particular rate is inconvenient, especially when ComEd apparently admits that Rider ACT better reflects the cost of serving these customers. If the Commission determines that it is appropriate for ComEd to make changes to the existing Rider ACT, then the proposal to remove the mandatory termination provision, close Rider ACT to new customers, and offer a voluntary termination provision is more appropriate than ComEd's original proposal. (*See id.* at 27, Lines 545-57.)

Notwithstanding the revised proposal, ComEd still has failed to justify any proposed revisions to Rider ACT. ComEd's naked assertions about inconvenience fall short of a proper justification for elimination of the Rider, especially when ComEd apparently admits that Rider ACT better reflects the cost of serving applicable customers, whose needs are, ComEd recognizes, often unique. (*See* ComEd Ex. 45.0 at 21, Line 414.) REACT respectfully requests that the Commission order ComEd to retain Rider Act. If the Commission determines that it is appropriate for ComEd to make changes to the existing Rider ACT, then the proposal to remove the mandatory termination provision, close Rider ACT to new customers, and offer a voluntary termination provision is more appropriate than ComEd's original proposal. (*See* REACT Ex. 5.0 at 27, Lines 545-57.)

E. <u>Distribution Loss Factors</u>

ComEd proposes an increase in the Distribution Loss Factor ("DLF") for its over-10 MW high voltage customers that is clearly disproportionate to the proposed increase for other customer classes: DLF increases to the over-10 MW high voltage customers would increase by 36% versus the proposed increases to the "Large" (9%) and "Very Large" (15%) and "Extra Large" non-high voltage (15%) customer classes. (*See* REACT Ex. 5.0 at 23-24, Lines 486-98.) ComEd makes this proposal while admitting, through ComEd witness Mr. Donnelly, that over-10 MW customers have not done anything unique to justify a disproportionate DLF increase (*See* Tr. at 546-47, Lines 21-22, 1-3) and that within the over-10 MW customer classes there are very widely ranging DLFs. (*See* Tr. at 541-42, Lines 21-22, 1-22.) As with cost of service generally, ComEd opposes performing a particularized DLF analysis for over-10 MW customers, even though Mr. Donnelly specifically stated that:

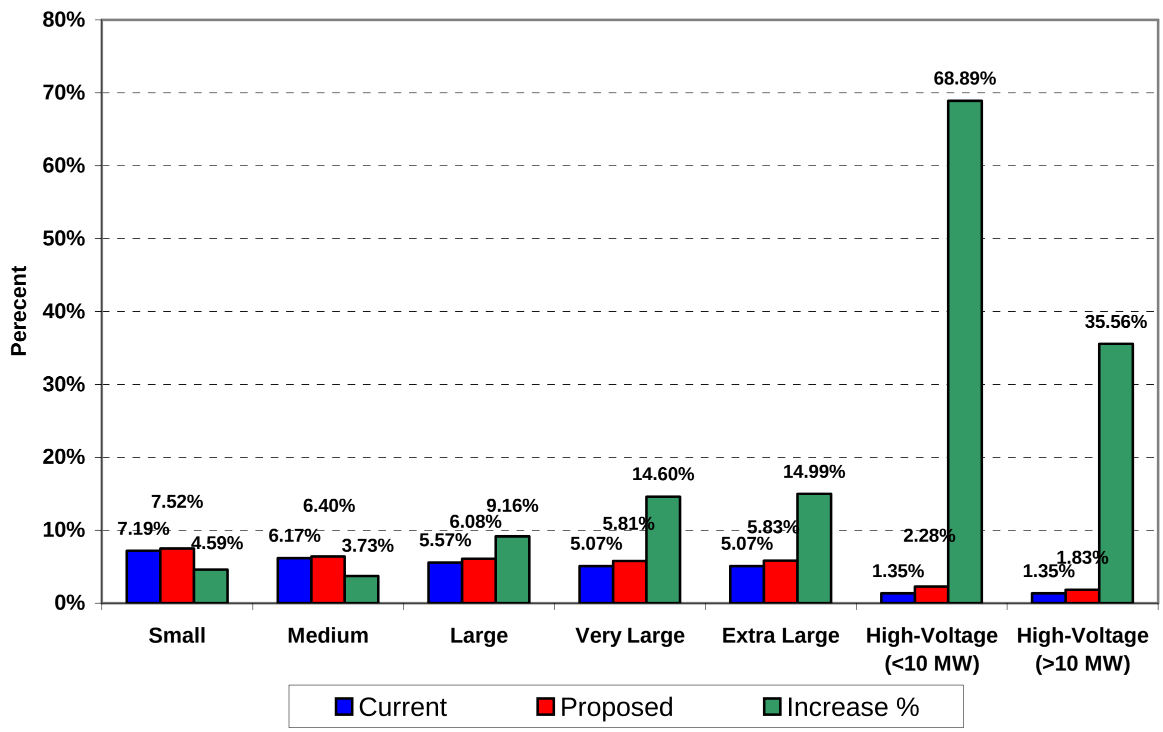
> In general if a customer is responsible for a cost or involved in that costs, they should pay a portion of that cost.

(Tr. at 540, Lines 7-9.) Of course, ComEd's intransigence undercuts its purported desire to implement accurate cost causation systems in an effort to "move toward cost."

1. <u>ComEd Proposes Disproportionate DLF Increases for Over-10 MW Customers</u>

ComEd's proposed annual DLF increase for the over-10 MW High Voltage customers, as compared with the DLF increases for the Very Large and other Extra Large customers, demonstrates the disparate impact of ComEd's proposal. Table 4 below presents a graphical representation of the current ComEd distribution line loss factor, the proposed distribution line loss factor, and the resulting variation percentage increase.

Table 4. ComEd Distribution Loss Factors for Non-Residential Customers



(Source: ComEd Ex. 32.0 at 53, Table R12)

(REACT Ex. 5.0 at 23-24, Lines 486-98.)

The annual cost impact to over 10-MW customers of the increase in the DLF ranges from $12,700 to $200,000 depending on customer size, service level and their supplier cost of electricity – Mr. Donnelly did not contest the increase estimates. (*See*, *e.g.*, Tr. at 536-37, Lines 20-22, 1-12.) This example assumes an energy cost of only 4.4¢ per kWh, which may be significantly lower than current supplier electric costs.

Table 5. Annual Cost Impact of Proposed Increase in Distribution Loss Factor

Customer Size	Annual kWh	Extra Large	High-Voltage
10 MW	60,000,000	$20,064	$12,672
20 MW	140,000,000	$46,816	$29,568
35 MW	260,000,000	$86,944	$54,912
50 MW	395,000,000	$132,088	$83,424
75 MW	600,000,000	$200,640	$126,720

Note: Annual increases were calculated by multiplying the difference between the current and proposed line loss factors by $0.044 and multiplying that number by the annual kWh. (ComEd Ex. 32.0 at 53, Table R12.

(REACT Ex. 5.0 at 25, Lines 502-09.)

2. ComEd's Justification For Its Proposed DLF Increase is Unpersuasive

ComEd's proposal to increase the DLF should be rejected because there is an inadequate evidentiary record to support the requested increase. In its rebuttal testimony, ComEd asserted that the proposed increases in DLFs are primarily due to two changes in the way in which ComEd calculated DLFs. (*See* ComEd Ex. 21.0 at 117, Lines 2373-74.)

First, ComEd has revised its study methodology since the 2003 study for calculating losses by customer classes. According to Mr. Donnelly, for this 2007 rate case, ComEd used its Geographical Information System ("CEGIS"), rather than its Passport System, resulting in ComEd identifying precise transformer location, allowing ComEd to more accurately assign transformer data to customer classes.

Second, ComEd revised the inputs for the calculation of its proposed DLF for the high-voltage customer classes. This revision is a result of ComEd making an adjustment to reflect loads served by lines entering high-voltage customers' premises. The result slightly reduces ComEd's proposed DLF for high voltage customers. For high-voltage customers, ComEd relied upon its one-line diagrams to identify specific data regarding each transformer serving each high-voltage customer, and used this data to calculate the DLF for these customer classes. For all other customers, ComEd allocated a percentage of the remaining transformers to each customer class. Then based on historical load data, ComEd calculated the DLF for each class. (*See* REACT Ex. 5.0 at 22-23, Lines 452-83.)

Neither explanation is persuasive a persuasive reason to increase DLFs for the entire group of customers in the over-1-MW classes, particularly in light of Mr. Donnelly's candid admission that customers within the over-10 MW customer classes may have very different actual line losses. (*See* Tr. at 541-42, Lines 21-22, 1-22.)

3. Individualized Distribution Loss Study for Each Over-10 MW Customer

ComEd should be ordered to calculate the loss factor for each of its high-voltage and over-10 MW customers. ComEd has admitted that it failed to satisfy the basic requirement that it explain the basis for a proposed increase in its initial filing. ComEd still has failed to explain why it adopted the methodology that it used for this case. That is, ComEd has continued to propose that DLFs increase for its largest customers at an alarming rate while it has failed to analyze the actual losses that those customers experience, instead stopping short and analyzing losses only to the transformers that serve those customers. (*See* REACT Ex. 5.0 at 25-26, Lines 512-21.)

If the cost causer principle applies, as Mr. Donnelly maintains it should in the arena of DLFs, then it is incumbent upon ComEd to perform individualized distribution loss studies for over-10 MW customers. (*See* Tr. at 540, Lines 7-9) These customers are ComEd's very largest, and their line losses vary widely. (*See* Tr. at 541-42, Lines 21-22, 1-22.) Individualized loss studies is the only fair approach, consistent. Absent such a study, ComEd's proposal should be rejected.

F. <u>Recovery of Supply-Related Costs</u>

As discussed above in Section VIII herein, ComEd's proposed delivery services rates are inflated because they improperly seek to recover substantial supply procurement costs. All of ComEd's supply-related costs should be allocated solely to customers who take supply from ComEd, under the terms of a bypassable tariff. Additionally, costs that ComEd incurs to support both its supply procurement and its delivery services functions must be appropriately allocated to each function. It is critical that the Commission review the recovery of those costs in this proceeding and order ComEd to move them to be recovered through a bypassable mechanism. Given ComEd's withdrawal of Rider SAC that mechanism is now presumably Rider PE. In addition, it would seem to be in all parties' best interest to be administratively efficient and address these issues in this proceeding, as opposed to opening up a separate investigation proceeding regarding ComEd's Rider PE filings. (*See id.* at 9, Lines 188-99.)

1. <u>ComEd's Structure For Recovering Supply-Related Costs</u>

Given the critical importance of ensuring that ComEd properly allocates costs related to supply to only those customers that receive supply from ComEd, the Commission must ensure that stakeholders have both a transparent means to review these costs and the allocation methodology, and a mechanism to comment upon and if necessary challenge the cost allocation. In this proceeding, ComEd originally proposed to recover administrative costs associated with supply through Rider SAC. ComEd later withdrew that proposal and now indicates that supply-related costs (including supply administrative costs) largely will be recovered through Rider PE. Accordingly, it is important that the process for allocating costs to Rider PE be transparent and allow for stakeholder input. (*See* REACT Ex. 7.0 at 10-11, Lines 226-33.)

In this proceeding, the Commission should clearly articulate the cost allocation principles to which ComEd must adhere in classifying its supply-related costs, and should establish a process to allow stakeholders to confirm that ComEd's filings conform to those principles. (*See id.* at 13, Lines 279-85; *see also id.* at 2-3, Lines 35-42; at 11, Lines 245-46.) Unfortunately, the existing Rider PE filing process is an ex post review of certain cost items which does not provide a practical way for stakeholders to become involved. That approach is an insufficient substitute for a candid disclosure now and in the future of the information necessary to determine the way in which ComEd should fairly and properly allocate its costs, including cost justification of the amount of internal administrative and operational costs associated with supply procurement. In short, an after-the-fact review and cost adjustment process is not a substitute for up-front, ongoing transparency.

G. Competitive Retail Market Development Issues

1. ComEd Claims to Support Residential Competition

From its President on down the line, ComEd professes to support a competitive market for residential customers. (*See* Tr. at 128, Lines 2-4; Tr. at 1317-18, Lines 18-22, 1-7.) The facts, both historical and recent, belie ComEd's assertion.

The Customer Choice Act provides for residential competition *no later* than May 1, 2002. Section 16-104(a)(4) of the Act states: "**On or before May 1, 2002**, the electric utility shall offer delivery services to all residential retail customers in its service area." 220 ILCS 5-16-104(a)(4). (Emphasis added.) Yet, there has been substantively zero customer switching in ComEd's service area to date.[8]

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[8] Conflicting information provided by ComEd in responses to Data Requests and in live testimony indicate that the number of residential customers that have switched to a RES is either

In response to data requests in the instant proceeding inquiring when ComEd believes residential switching will begin, ComEd represented that it internally projects that **there will be absolutely no residential switching until 2011**. (*See* REACT Cr. Ex. 7) (ComEd Response to REACT Data Request 8.03). Even then, ComEd internally predicts there will be switching of only approximately 11,707 residential customers in 2011 and 11,821 in 2012, based on a projection of .5% of ComEd's residential customers switching suppliers by the end of 2012. (*See id.*; Tr. at 1808-09, Lines 22, 1-6.)

Although ComEd's responses to discovery indicated that ComEd ***internally*** projects zero residential switching before 2011, ComEd's **public** filings project a completely different picture.

On or about March 12, 2008, ComEd made an information filing with the Commission in connection with ComEd's Rider PE in which ComEd indicated substantially different projections with respect to residential switching. (*See* REACT Cr. Ex. 20: Table #13b Attachment 2 to ComEd's Response to REACT Data Request 4.30.) That informational filing indicated that for certain residential customer classes, ComEd predicts 3% residential customer switching *in June 2008* rising up to 9% by May 2009. (*See id.*) These numbers, obviously, are materially different from the numbers ComEd provided in response to discovery. Whereas ComEd's internal projection predicted *zero* residential customers switching by 2011, and thereafter *under 12,000* switching customers by 2013, the projections that formed the basis for ComEd's March 12, 2008 Rider PE filing suggest switching by approximately 240,000 residential customers by May 2009. (*See* Tr. at 2229, at Lines 3-7: "Q. So according to REACT Cross Exhibit 20 [ComEd's Informational Filing], there would be approximately 240,000 residential customers switching by May of 2009, correct?" ComEd witness Mr. Alongi "A: That's what that would suggest."; Tr. at

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0 or 1. In either event, as Administrative Law Judge Hilliard observed at hearing, in 2008 the

2230, at Lines 13-20: "Q. Would you agree that for the small customer, the watt-hour, and the residential customers, that the Rider PE calculation has a much greater switching number for December of 2008 than the responses to the REACT data requests in the 8.03 and 9.02?" ComEd witness Mr. Alongi "A. It would be [sic] appear so, yes.").)

Why would ComEd have different switching projections in different contexts? REACT's competitive markets expert suggested that the Commission follow the money to find that answer. (*See* REACT Ex. 7.0 at 5-7, Lines 110-46.) ComEd's March 12, 2008 information filing was made in the context of ComEd's Rider PE. As ComEd witness Mr. Alongi admitted, changes in the level of charges under Rider PE change the price signal, and impact the level of switching. (*See* Tr. at 2231-32, Lines 1-22, 1-17.) If ComEd overestimates the level of residential customer switching (as it appears that ComEd has done), then ComEd will over-collect Rider PE charges. Although there is a reconciliation process under Rider PE, that process works on "a lag basis." (Tr. at 2231, Line 12.) As a result, an over-collection of Rider PE charges in one year results in a credit being made against the supply-related component of customer bills the next year. (*See id.*, Lines 13-18.) Thus, ComEd gets a double benefit – first, it is able to overcollect in the first instance, based on switching projections that appear dubious (when ComEd has blocked switching through improper supply cost allocation); and second, to the extent it must credit that over-collection, that credit will lower the supply-related portion of a customer's bill, thus giving ComEd a potential competitive advantage over the supply rates offered by RESs in the following year. As discussed below, ComEd may have further incentives to block residential competition.

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residential market is still "nonexistent." (Tr. at 1317, Line 13.)

2. <u>ComEd's Apparent Incentive to Inhibit Residential Competition</u>

ComEd has both the means and potential motive to improperly allocate supply costs, and thus block customer switching by its residential customers and its smallest commercial customers.

ComEd professes absolute indifference on the issue of whether it collects its costs via its supply charges or its delivery services charges. (*See* ComEd Ex. 30.0 at 60, Lines 1342-43.) However, the cost recovery mechanisms at issue in this proceeding are not all the same. Rider PE specifies that ComEd recovers "the costs incurred" … "in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return." (*See* Rider PE, Original Sheet No. 637, filed on January 14, 2008.) In other words, ComEd is not permitted to earn a mark-up or return for costs under Rider PE, even though it may be permitted to earn a mark-up or return for the same costs under its delivery service rates. While Mr. Crumrine suggests that an alternative reading of the Rider PE language is possible, it is clear that there is additional risk that any return may be disallowed. (ComEd Ex. 43.0 at 38, Lines 817-34; REACT Ex. 7.0 at 9, Lines 186-200.) Therefore, it would seem that ComEd would be at a disadvantage if it shifts costs that it is permitted to earn a return on within its delivery services rates to Rider PE, where it may not be able to earn a return.

Additionally, ComEd's affiliate Exelon Generation provides a substantial portion of the wholesale requirements to meet the demand of ComEd's fixed-price bundled service customers via the Supplier Forward Contracts and the Financial Swap. If ComEd "loses" residential or small commercial bundled supply customers, this presumably would impact Exelon's profitability as the volume associated with their Supplier Forward Contract would be reduced as customer load migrates, particularly when the wholesale price of electricity is dropping, as it was at the time ComEd filed the instant proceeding. (*See* REACT Ex. 4.1 at 26.) This may provide a corporate incentive, particularly from an Exelon perspective, for ComEd to try to retain bundled service customers, and deny residential and small commercial customers opportunities to achieve savings in the competitive market, at least until such time as the Exelon Generation Supplier Forward Contracts expire in 2011. (*See* REACT Ex. 7.0 at 5-7, Lines 110-46.)

a. ComEd President Mitchell Admits Desire to Keep Exelon Happy

On the first day of hearings in the instant proceeding, J. Barry Mitchell, a former Exelon executive who retains ownership of Exelon stock but now serves as President and Chief Operating Officer of ComEd, was asked a series of questions about the relationship between ComEd and its parent company, Exelon. Mr. Mitchell made a quite revealing admission about his thoughts on the interplay between Exelon and ComEd:

Q. Now, although, you're an employee of ComEd, you have a financial interest in Exelon; isn't that correct?
A. I always want to make sure that the parent does well, but, yes.

Q. That is a concern for you, isn't it, that the parent does well?
A. Certainly.

(Tr. at 117, Lines 3-10.) Stated directly, Mr. Mitchell's comments demonstrate an awareness at ComEd of the business interests of Exelon. That awareness, combined with the financial interest of Exelon to retain fixed-price bundled load, at a minimum, implies a potential motive for ComEd to suppress residential competition. The inconsistencies in ComEd's various residential switching projections made in different contexts fits with that motive.

XII. CONCLUSION

ComEd's actions speak louder than its words.

ComEd *says* that it embraces cost causation and fair allocation. ComEd's *actions* suggest otherwise: it has proposed massive, disproportionate, and unsubstantiated rate hikes for the over-10 MW customers classes – quintessential rate shock – based on a cost study that is invalid on its face as applied to these customers.

ComEd *says* that it embraces residential and small commercial competition. ComEd's *actions* suggest otherwise: its brazen misallocation of tens of millions of dollars of supply-related costs to its delivery services function undermines competition to the financial advantage of itself and its affiliate.

REACT respectfully requests that the Commission enter an Order consistent with the arguments herein, rejecting ComEd's proposal to recover its costs in a manner that would simultaneously impose a massive, disproportionate, and unjustified rate increase upon ComEd's largest customers, while continuing to stymie the development of competition for its smallest customers. ComEd's position is at odds with the Customer Choice Act and the evidentiary record in the instant proceeding and should not prevail.

Respectfully submitted,

THE COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

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