STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	**)**	
	)	
	)	**DOCKET NO. 07-0566**
Proposed general increase in electric rates.	**)**	

METRA'S POST-HEARING REPLY BRIEF

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METRA'S POST-HEARING REPLY BRIEF

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra ("Metra"), submits this reply brief in which it addresses the following rate issues that concern Metra: the propriety and wisdom of allowing Commonwealth Edison Company ("ComEd") to proceed with Rider SMP; the propriety and wisdom of allowing ComEd to proceed with Rider SEA; whether ComEd should be permitted to base its rates on its embedded cost of service study when that study contains known defects and produces anomalous and unreasonable results; whether ComEd should be required to revise its cost of service study in the next case to correct the known defects; whether ComEd should be required to conduct a specific cost identification study for the Railroad Class to refine the cost allocation used to calculate the Railroad Class' cost of service; whether, given the fact that there is no reliable cost of service study, an equal across-the-board increase is warranted; and if an across-the-board increase is not warranted, whether public interest considerations warrant setting the rate increase for Railroad Class at the average increase for either all classes or the residential classes. Each of these issues is discussed below. The memorandum is organized in accordance with the brief outline approved by the Administrative Law Judges.

VII. NEW RIDERS

B. Rider SMP

Either Rider SMP is a brilliant diversionary tactic designed to divert the attention of the Commission and the parties from the more fundamental rate making issues in this proceeding, or it is one of the most ill-conceived and least thought out of ComEd's initiatives in recent memory. Virtually every party in this proceeding opposes Rider SMP based on a seemingly endless number of flaws and problems with the Rider. Rider SMP should be unconditionally rejected.

1. The Definition Of The Projects Eligible For Funding Under Rider SMP Is Unacceptably Broad.

When ComEd initially proposed Rider SMP, the Rider included a very broad definition of eligible projects that would be included in the first group of projects funded under Rider SMP. ComEd's opening brief argues that Rider SMP is required to help ComEd implement critical "Smart Grid" technologies and that virtually all parties agree that is a good thing. ComEd Opening Brief at 66. The plain fact is that ComEd withdrew all of the proposed projects from consideration in this proceeding, ostensibly because there is no agreed definition of "Smart Grid" or the projects appropriate for inclusion in Rider SMP, and very few parties in this proceeding support Rider SMP. Moreover, when ComEd deleted the projects from Rider SMP, it declined to revise the definition of eligible projects which had been roundly criticized by the parties. [*See* ComEd Ex. 43.0 (Corr.) at 4:75-81].

The projects that are eligible for funding under Rider SMP are defined to include any capital improvement project that ComEd undertakes. Only "System Modernization Projects" are eligible for Rider SMP funding. However, the definition of a "System Modernization Project" in Rider SMP is:

> any project, for which these 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 provided by the Company to its retail customers; and (b) for which the Company requests recovery to begin through this rider; and (c) for which recovery to begin under this rider is approved by the ICC.

[ComEd Ex. 30.1, 1st Revised Sheet 626]. If it is proposed and approved for funding under SMP, an eligible project can be any ComEd capital improvement project that ComEd "classifies as pertaining to the improvement of the Company's distribution system for the purposes of enhancing services provided by the Company to its retail customers." Since ComEd is a company whose principal business is providing electricity distribution services to retail customers, the eligibility definition in Rider SMP effectively allows ComEd to fund any capital improvement project that it wants to undertake under Rider SMP. That is unacceptable, and standing alone is a sufficient reason to reject Rider SMP.

2. Rider SMP Does Not Impose SMP Project Costs On The Customers Who Benefit From the Projects.

As originally proposed, the costs of Rider SMP projects would have been imposed on kilowatt hour usage, pending adjustment of future costs in the next rate case. ComEd replaced that cost assessment methodology with a very complicated formula that appears to be primarily demand based, but is so complicated it is almost indecipherable. [*See* P. Crumrine Rebuttal (Corr.), Ex. 30.0 at 11:260 to 12:266 and ComEd Ex. 30.1, 1st Revised Sheet Nos. 629, 629.1 and 629.2]. According to ComEd's opening brief, the Rider SMP eligible costs "would be recovered through a charge based on a percentage of distribution charges, which are predominately based on demand charges in the case of large non-residential customers." ComEd Opening Brief at 79.

The testimony in this case demonstrates that the original "Smart Grid" projects proposed by ComEd would have little or no benefit to the Railroad Class. [J. Bachman Supplemental, Metra CTA Joint Ex. 2.0 at 4:16 to 5:10; S. Claire, Tr. at 243:7 to 249:22]. Yet ComEd projects that the average cost to members of the Railroad Class of SMP project cost assessments will be more than four times the average to members of any other class. [ComEd Ex. 43.1 at 2]. That wholesale disconnect between the benefits and costs of Rider SMP projects is another independent reason to reject Rider SMP.

3. ComEd's Anticipated Smart Grid Projects Are Not Projected To Generate Benefit In Excess Of Their Costs.

ComEd's Terrance Donnelly testified that the financial benefits of projected Rider SMP projects will not exceed the cost of the projects. [T. Donnelly, Tr. at 557:22 to 558:2]. At a time when all of ComEd's customers are beset with dramatically increased costs for electricity delivery and supply, why on earth would the Commission be interested in adding to that burden by authorizing ComEd to adopt a rider when the anticipated projects will generate more costs than financial benefits?

4. Rider SMP Will Result In A Costly Procedural Nightmare.

ComEd's Paul Crumrine, Director of Regulatory Affairs, admitted that it is entirely possible that ComEd, Staff and Intervenors could find themselves litigating at the same time a new rate case, a Rider SMP proceeding involving a proposed new set of capital projects, and reconciliation proceeding relating to prior SMP projects. [P. Crumrine, Tr. at 1078:6-14]. While ComEd's legal and other costs can be recovered because they are eligible for inclusion in the base rates, other parties do not have that luxury. It simply will not be feasible or possible for some intervenors to participate in the multiplicity of proceedings envisioned by Rider SMP.

5. Rider SMP Summary.

Rider SMP is an ill-conceived and unwarranted Rider. If the Commission is truly interested in evaluating Smart Grid issues, it should study the issue and develop some Smart Grid standards, as suggested in Staff's opening brief. *See* Initial ICC Staff Brief at 70-74. If the Commission determines that Smart Grid projects are appropriate, it should ensure that the parties who will reap the benefits also are responsible for the costs. There is no good reason for a rush to judgment, particularly given the fatal flaws in Rider SMP.

C. Rider SEA

Metra believes that proposed Rider SEA should not be approved because it does not involve the kind of unexpected, volatile or fluctuating expenses that would otherwise cause problems for ComEd; it suffers from the same procedural defects as Rider SMP; and it would allow ComEd to perform routine maintenance and include them in its Rider SEA costs whenever there was an eligible storm. *See* Metra Initial Post-Hearing Brief at 12-13.

In its opening brief, ComEd argues that its storm costs fluctuate dramatically. *See* ComEd Initial Brief at 87-88. However, as the ICC Staff's brief emphasizes, ComEd's fluctuation argument is based on an extraordinary cost in 2007 that exceeded the normal annual storm costs by 102 percent. That abnormal year was directly attributable to a summer storm of unparalleled severity, according to Staff, and all of the other years do not demonstrate sufficient volatility to warrant a separate rider. ICC Staff's Initial Brief at 83-84. Metra agrees with Staff's analysis.

ComEd never addressed in its opening brief the costs and problems associated with multiple mini-rate cases and overlapping reconciliation proceedings. And, while ComEd argued that preventative maintenance and storm repair costs are different, *see* ComEd Opening Brief at 50, its own witness testified that storm repairs would also include items scheduled for routine maintenance. [*See* P. Crumrine Tr. at 1237:16 to 1238:13]. At bottom, there is no good reason to treat storm expenses differently from other variable expenses, and therefore no justification for Rider SEA.

VIII. COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

It is axiomatic that it costs less to serve large customers of higher voltages than smaller customers who take service of lower voltage. ComEd's Rate Manager acknowledged that fact in his testimony at the hearing. [L. Alonji, Tr. at 2089:20 to 2090:15]. ComEd's initial proposed average kW/hr charge to the Railroad Class would have made the Railroad Class' costs higher than any other non-residential class, other than the Watt-Hour and Small Load Classes. [P. Crumrine Direct, ComEd Ex. 11.0 at 10, Table 2].

As discussed below and in Metra's Initial Post-Hearing Brief, there is ample testimony in this record that there are fundamental problems with ComEd's cost of service study that cause that study to generate inflated rates for the Railroad Class and several other classes that include the Extra Large Load Class and High Voltage classes. Instead of acknowledging that there is a problem, ComEd has tried to deflect the criticism by arguing that it has no obligation to prepare a perfect cost of service study; its study methodology has been previously approved; and in any event it has effectively addressed the problem by mitigating the impact on the Railroad Class and others via ComEd's "mitigation" plan. ComEd Initial Brief at 91-93, ComEd's "mitigation" plan, with respect to the Railroad Class, means that the proposed increase to the Railroad Class' distribution facility charges would be reduced from 124.4% to "only" 62.2%, and the overall rate increase would be "only" 60.5%, provided that the rates are increased to fully cost-based rates in the next rate case. [P. Crumrine Rebuttal, ComEd Ex. 30.0 at 50:116-23; Alonji/Jones Rebuttal, ComEd 32.0 at 8, Table R3, and at 10, Table R3A].

The plain fact is that there is no valid cost of service study upon which to base rates. Cutting a rate increase in half that is based on an invalid study, on condition that rates be increased in the next rate case based on the same invalid study, is not a reasonable solution. Absent a valid cost of service study, the most practical thing for the Commission to do in this case is to adopt an equal across-the-board rate increase for all classes to meet the approved ComEd revenue requirements. If the Commission elects not to do that, it should set the Railroad Class rate increase at either the average increase for all classes or the average residential classes' rate increase based on the public interest considerations identified in the Commission's last delivery services rates case.

B. Embedded Cost of Service Study

1. Primary/Secondary Split.

Expert witnesses for IIEC, DOE and the Commercial Group all concluded that ComEd's embedded cost of service study is flawed because it does not separate primary and secondary voltage distribution costs. [D. Stowe, Direct IIEC Ex. 3.0 (Corr.) at 12:201 to 13:233; D. Swan, DOE Ex. 1.0 at 16:348-56; R. Baudino Rebuttal, CG Ex. 2.0 at 4:75-84.] The practical effect is that customers taking service only at primary voltages, like the Railroad Class, are charged inflated rates because they are assessed costs associated with the secondary system that they do not use. [D. Stowe Rebuttal, IIEC 7.0 at 4:43-49].

ComEd's key witnesses admitted at the hearing the ComEd's embedded cost of service study would provide more accurate cost based rates if the study allocated the costs of the primary and secondary voltage to the users of those voltages, rather than lumping the costs together and allocating the combined costs to all customers who take service under 69kV. [A. Heintz, Tr. at 2019:3-12; L. Alonji, Tr. at 2175:1-10]. ComEd's lawyers effectively admitted the same thing in ComEd's initial brief, as well as admitting that the flaw in ComEd's cost of service study results in inflated rates for primary voltage users, such as the Railroad Class. ComEd acknowledged at page 9 of ComEd's initial brief that: "A more refined identification and assignment of primary and distribution facilities costs would likely reduce the total cost allocation to customers in the Extra Large Load, High Voltage or Railroad delivery classes."

ComEd argued in its pre-filed testimony that ComEd's record keeping practices do not "facilitate" separating primary and secondary distribution costs, and that the benefits of being required to do so are outweighed by the costs. [A. Heintz Rebuttal, ComEd Ex. 33.0 at 3:60 to 4:68]. ComEd's cost of service study expert, however, admitted in the hearing that he had no idea how much it would cost to do the analysis, and that neither he nor anyone else at ComEd had made any effort to determine what that cost would be. [A. Heintz, Tr. at 2020:6-20]. Thus, all that ComEd could assert in its initial brief was that its books are not kept in a manner that would "facilitate" changing its ECOSS to recognize the primary/secondary distribution split. ComEd Initial Brief at 92. While ComEd keeps saying its books and records are not kept in a manner that would "facilitate" the required analysis, it has never volunteered or explained exactly what that means, and it is certainly not self evident. The fact that ComEd claims its books and records are not kept in a manner that would "facilitate" separation of primary and secondary voltage system costs is not sufficient to excuse ComEd's failure to correct a fundamental flaw in its cost of service study.

ComEd also asserts that it is not required to separate primary and secondary voltage costs because "ComEd's ECOSS in this proceeding follows the basic structure of the ECOSS's filed by ComEd and approved in ComEd's last three rate cases – ICC Docket Nos. 99-0117, 01-0423 and 05-0597." ComEd Initial Brief at 92. IIEC effectively anticipated and debunked that argument in its opening brief. IIEC Initial Brief at 60. As the IIEC pointed out, ComEd's ECOSS was not used to set rates for the largest customers, including the Railroad Class, in the last rate case, Dkt. 05-0597. *Id*. In fact, in the last case, the Commission questioned the reliability of the results of ComEd's ECOSS with respect to large customers. July 26, 2006 Final Order at 196.[1] In Dkt. 01-0432, the Commission used an across-the-board rate increase for the subclasses within the non-residential customer class. IIEC Initial Brief at 60. In Dkt. 99-0017, the Commission used ComEd's ECOSS, but it also used credits to reduce the rates of customers taking service at high voltage. *Id*. Those prior dockets do not excuse ComEd from correcting a known flaw in its embedded cost of service study.

Finally, ComEd argues that its failure to separate primary and secondary voltage costs does not really matter because ComEd has offered a "mitigation" plan pursuant to which the one time reduction in rates for ComEd's largest customers would be greater than the rate reduction those customers would receive if ComEd had properly allocated secondary voltage distribution costs. ComEd Initial Brief at 93. The problem with ComEd's analysis is that the rate reduction that it is using for comparative purposes is not a study that completely separates or distinguishes primary and secondary voltage distribution costs. What it is using is an estimate prepared by the IIEC's Mr. Stowe of what the potential rate reduction for the largest customers might be if ComEd had properly conducted a cost of service study. Mr. Stowe clearly is a recognized and reputable electric utility cost of service study expert. But he admittedly was required to make some estimates and some judgment calls on preparing his estimate. [*See*, *e.g.*, D. Stowe Direct,

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1 In fact, in adopting the IIEC's rate mitigation proposal in the last case, the Final Order stated:

> [T]he Commission notes that the IIEC has made interesting arguments regarding the cost of serving the large customers here-and the Commission is persuaded that the cost of serving such very large customers is potentially lower than serving significantly smaller customers.

July 26, 2006 Final Order at 196. For ComEd to cite that decision for the proposition that the Commission approved ComEd's ECOSS results in the last case with respect to large customers, as ComEd did at Page 92 of its initial brief, can be most charitably described as misleading.

IIEC Ex. 3.0 (Corr.) at 23:383 to 24:406]. That estimate is not a replacement for an appropriate study using ComEd's documents, and ComEd in fact has been critical of the documents that Mr. Stowe used and the assumptions he made.[2] [A. Heintz Rebuttal, ComEd Ex. 33.0 at 4:69-77]. It, therefore, is not appropriate for ComEd to suggest that it should be excused from doing an appropriate study because it has offered a one time rate reduction that is greater than the rate reduction estimates prepared by an intervenor of what the rates would be if ComEd had done an appropriate study, particularly where: (1) ComEd has attempted to discredit the estimate that it now would like to use for comparative purposes; and (2) ComEd's "mitigation" rate reduction is a one time event, and is conditioned on the Commission's future adoption of rates based on ComEd's admittedly flawed study.

3. Minimum Distribution System.

The IIEC has offered persuasive testimony endorsing the use of a Minimum Distribution System ("MDS") analysis to establish part of the costs included in the cost of service study because some portion of ComEd's costs are driven by the number of customers rather than demand. [D. Stowe Direct, IIEC 3.0 (Corr.) at 14:243-47, 27:442-48, and 32:546-56]. The Commercial Group's expert agreed with the IIEC. [R. Baudino Rebuttal, CG Ex. 2.0 at 4:88 to

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2 Alan Heintz, ComEd's cost of service expert, testified as follows:

> Q. Do you agree that Mr. Stowe's estimate of the impact of distinguishing primary and secondary uses among customers is reasonable?
>
> A. No, I do not. Mr. Stowe's analysis suffers from the same lack of data that has kept ComEd from modifying the ECOSS to distinguish primary/secondary investment among customer groups. For actual data, Mr. Stowe substitutes guesstimates based on data he obtained from ComEd that represents purchases of overhead and underground wires for the five year period 2002 through 2006. Mr. Stowe does not address how his analysis could approximate the net plant split between primary and secondary.

[A. Heintz Rebuttal, ComEd Ex. 33.0 at 4:69-77 (citations omitted)].

5:99]. Metra endorsed the IIEC's analysis in its opening brief. Metra's Initial Post-Hearing Brief at 20-24.

In its opening brief, ComEd argued that the Commission had rejected the MDS methodology in prior cases, and it therefore should do so again in this case. ComEd's Initial Brief at 94. The Final Order entered in the last rate case stated that the "Commission is willing to consider the merits of the MDS approach in future rate proceedings." Dkt. 05-0597, July 26, 2006 Final Order at 165.

If there ever was a case that warranted partial use of an MDS approach, it is this one. According to ComEd's President and Chief Operating Officer, one of the principal reasons ComEd was required to file for new rates is because of the capital investment required to construct new distribution facilities to service customers in the rapidly growing suburban collar counties. [B. Mitchell Direct, ComEd Ex. 1.0 at 2:45 to 3:59]. These costs are driven by the number of customers and the construction of new lines and equipment, and not by demand. Accordingly, it was an error by ComEd not to use an MDS approach. Had that approach been used, Mr. Stowe's analysis shows that it would have dramatically reduced the rate calculated for the Railroad Class and that ComEd could no longer employ its "subsidy" mantra when talking about the rates charged to the Chicago metropolitan area's public transportation providers. [*See* D. Stowe Direct, IIEC 3.0 at 49, Table 8].

ComEd also argues that the MDS approach should not be used because it could result in a substantial increase in residential rates. ComEd Initial Brief at 94-95. Apparently, ComEd's fealty to cost causation principles only exists when it is politically expedient.

ComEd's cost of service methodology should be based on the methodology that will develop the most accurate assessment of the cost to serve the various classes. Then, if there are policy reasons to make adjustments, those adjustments should be made. Adopting a faulty cost of service methodology because a more accurate methodology would produce results that might be politically difficult is not a valid justification for use of faulty cost of service methodology.

ComEd's embedded cost of service study is defective because it does not employ, in part, an MDS approach.

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

Metra firmly believes that ComEd's cost of service methodology produces unreasonable and unrealistic costs of service and resultant proposed rates for the Railroad Class. Some of the flaws in ComEd's methodology have been identified and are described above. Other flaws may not yet be known. Metra therefore has requested that ComEd be directed to do a specific cost identification study for the Railroad Class for use in analyzing the Railroad Class' cost of service in future rate cases.

ComEd's Initial Brief discusses at length the difficulties associated with an individualized cost of service study for each customer's point of service, which allegedly would involve hundreds of individual case studies. ComEd's Initial Brief at 96-97. That is not what Metra has requested. What Metra has requested is that ComEd be directed to undertake a specific cost of identification study where the resultant information will be used to refine the Railroad Class cost allocators within the overall ECOSS. The Railroad Class does not require, and unlike REACT is not requesting, individual cost of service studies, because the Railroad Class is relatively uniform in delivery voltage, electric use and load factor composition.

There is something fundamentally wrong with ComEd's calculation of the cost to serve the Railroad Class because it is producing illogical results. There also is testimony in the record that ComEd uses Metra facilities to enhance the reliability of ComEd's system. [*See, e.g.*, Stipulation, Tr. at 2235:5 to 2236:13]. Under the circumstances, Metra believes that some extra effort to refine the analysis of what those costs actually are is warranted.

E. INTERCLASS ALLOCATION ISSUES

1. Across-the-Board Increase.

Numerous parties, including Metra and Staff have urged the Commission to adopt an average, across-the-board increase. R. Stephens Direct, IIEC Ex. 1.0 at 16:295-96; D. Swan Direct, DOE Ex. 1.0 at 3:61-62; D. Goins Direct, NUCOR Ex. 1.0 at 6:13-27; E. Bodmer Direct, REACT Ex. 2.0 at 22:477-79; J. Bachman Direct, METRA/CTA Joint Ex. 1.0 at 4:20-25; P. Lazare Rebuttal, Staff Ex. 18.0 at 17:390-18:398. In ComEd's Initial Brief, ComEd objects to an average, across-the-board increase based on four arguments: (1) "new subsidies would be created that do not currently exist by shifting millions of dollars from the residential class to the nonresidential class"; (2) "an across-the-board increase would continue to exacerbate existing subsidies, which would make cost-based rate setting in future proceedings even more difficult and heighten the conflict between rate classes"; (3) "ComEd's revised rate design proposal is consistent with the Commission's long-standing goal of moving rates toward costs"; and (4) "ComEd's proposal addresses rate impact concerns by gradually moving the largest nonresidential customers to cost-based rates." ComEd's Initial Brief at 99-100.

All of ComEd's arguments are based on the assumption that ComEd's embedded cost of service study is not flawed, and that it is perfectly logical that the cost to serve the Railroad Class is greater than all but two very small non-residential delivery service classes. If, as Metra has asserted above and many other parties have argued as well, the ComEd embedded cost of service study is flawed and does not produce sufficiently accurate cost estimate upon which reasonable and fair rates can be based, then all of ComEd's arguments must fail. Under the circumstances, Metra submits that an average across-the-board increase is the most fair and reasonable result.

IX. RATE DESIGN

C. Rate Design Issues

b. Railroad Customers

i. <u>The Commission's Prior Recognition Of The Public Considerations Associated With Public Transportation Are Deserving Of Respect</u>.

In the last rate case, the Commission specifically found that public interest considerations warranted keeping the increase in the rates to the Railroad Class to a minimum. Dkt. 05-0597, July 26, 2006 Final Order at 189-90. The Commission found that ComEd's proposed rate increases to the Railroad Class in the last case failed to take into account the important public policy considerations associated with the rates charged public transportation providers:

> Also, the fact that the CTA and METRA are providers of mass public transportation raises an additional public interest concern. ComEd's proposal fails to account for the potential impact of increased utility rates for entities providing public transportation on the citizens of Illinois. The Commission is very concerned that any changes to the provisions of service providers of mass transit will not unduly burden the millions of passengers who depend on public transportation. This Commission also believes that it must consider the public policy implications of establishing delivery rates that encourage energy conservation and encourage electric usage during off-peak periods. While the Commission is not prepared to disregard cost of service, the Commission believes that important public policy considerations cannot be ignored.

Id. at 189. The Commission then reiterated these concerns in rejecting ComEd's proposal to change the ComEd contracts with the Railroad Class to eliminate the Railroads' right to aggregate their demand for purposes of calculation of the Railroad Class distribution facilities charges:

> The Commission finds that rates set herein should place the CTA and Metra in a situation where they pay similar rates to those that are currently in effect. In addition, the Commission must consider the potential adverse impact of utility rate increases on entities that provide public transportation. The Commission desires to encourage the efficient use of energy and conservation of scarce resources. The conclusions reached in this portion of the Order are, in the Commission's view, important public policy issues and are in the public's best interest. Accordingly, the Commission finds that minimizing the change to existing contractual terms as necessitated by the post-2006 market changes, as well as avoiding rate shock to the railroad customers, is in the public's best interest.

Id. at 190. The Commission specifically recognized that its order requiring ComEd to abide by the existing contract's terms might create a subsidy:

> This demand consolidation provision would make these railroad customers eligible for the distribution facilities charges assessed to customers with demands in excess of 10 megawatts. The Commission observes that this arrangement follows the aggregation of demand under the existing CTA and Metra contracts. To the extent that the aggregation creates or otherwise represents a subsidy to the railroad class, the difference in cost should be recovered from the other non-residential classes.

Id.

When ComEd filed its proposed rates in this case, in which it sought to increase the Railroad Class' rates by 121%, it elected to defy the Commission and ignore its most recent policy guidance. That defiant attitude is reflected in ComEd's opening brief filed in this case, where ComEd stated:

> However, neither the ComEd nor the Commission should be put in the position of picking worthy causes and requiring that other customers subsidize their use of the electric distribution system. *Id*., 51:1148-50. In particular it is ComEd's position that it would be inappropriate to arbitrarily set the public interest value of public transportation over other entities that promote the public interest, such as hospital, universities, churches, homeless shelters, government buildings or even businesses and industries that support job growth.

ComEd's Initial Brief at 109 (citations omitted). Otherwise stated, ComEd has elected not to follow the Commission's policy guidelines issued in the last case because ComEd disagrees with them.

Metra submits that the Commission's policy guidance and directions issued in the last delivery services rate case were correct and deserving of respect. There is no other rate class whose only members are imbued with public interest considerations. [L. Alonji, Tr. at 2148:6-19]. The Railroad Class is very unique in that respect. [*Id.*]

Furthermore, the unrebutted testimony in this case demonstrates the enormous energy conservation and associated environmental benefits of public transportation. [*See, e.g.,* L. Ciaverella Direct, Metra Ex. 3.0 at 2:5 to 4:13 and Metra Ex. 3.01; D. Anosike Direct, CTA Ex. 1.0 at 8:154 to 9:172 and CTA Ex. 1.03]. Contrary to the Commission's most recent decision, ComEd argues in its brief that those benefits are irrelevant and should be ignored. ComEd Initial Brief at 109. That is a rather curious and inconsistent position for ComEd to take, given that one of the four key reasons that ComEd cited to support adoption of Rider SMP were the environmental benefits resulting from Smart Grid Technology! [T. Donnelly, Tr. at 466:22 to 468:18]. The Commission and ComEd's own witness both had it right. Environmental benefits are important public policy considerations that can and should be taken into account by public bodies in their decision-making process, including the rate-making arena.

Another unlikely advocate of homeless shelters, the Commercial Group, also weighed in on the issue and argued that the Railroad Class was not deserving of a subsidy. Commercial Group Post Hearing Brief at 11-12.[3] First of all, the Commercial Group's lawyer ignored his

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3 The Commercial Group familiarity with the homeless is reflected by its reference to shelters as "homeless centers."

own expert's analysis, which was that Railroad Class is not currently paying a subsidy; in fact, the Commercial Group's expert adopted and endorsed the IIEC's analysis which showed that the Railroad Class' rates are set too high and the Railroad Class is paying more than ComEd's cost to serve the Railroad Class. [R. Baudino, CG Ex. 2.0 at 4:75 to 5:10 at 6, Table 1]. Second, as noted above, the Railroad Class is a unique class imbued with public interest considerations that the Commission has determined are deserving of respect. Third, as a purely philosophical matter, the Commercial Group has it wrong when it characterized the taxing power and public grants afforded the Railroad Class as "subsidies". The Commercial Group Post Hearing Brief at 12. Those public powers and funds are no more "subsidies" than the public taxes and funds associated with public streets and highways, bridges, airports, and locks and dams. Fourth, the Commercial Group has very little credibility in its railing against subsidized rates, as the record shows that the members of the Commercial Group quietly enjoyed their own subsidy when they cut a deal in connection with the passage of legislation authorizing the reorganization of the utility industry in Illinois in 1997. [D. Vite, Tr. at 1667:1-14 and at 1670:13 to 1671:22]. The Commercial Group's arguments are devoid of merit.

ii. Potential Areas In Which Those Public Interest Considerations Could Be Taken Into Account.

As discussed in prior sections of this reply brief, Metra believes that the Commission should approve an average, across-the-board increase for all customer classes. However, in the event the Commission is unwilling to approve an average across-the-board increase, then Metra believes that the public interest considerations previously recognized by the Commission warrant setting the Railroad Class' rate increase at either the average increase for all rate classes or the average rate increase for the residential classes.

CONCLUSION

For all the reasons set forth above, Metra urges the Commission to:

- Reject Riders SMP and SEA;
- Set the rates for the Railroad Class based on the system average rate increase or average residential class increase;
- Direct ComEd to distinguish between the costs of primary and secondary voltage usage in future rate cases;
- Direct ComEd to utilize an MDS approach in the next rate case;
- Direct ComEd to conduct a specific cost identification study to refine the allocators used to establish the cost of service for the Railroad Class in the next rate case; and
- Direct ComEd to perform a load flow study of ComEd's use of Railroad Class facilities to serve other customers.

Respectfully Submitted,

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