

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	Dkt. 07-0566
Proposed general increase in rates for delivery service.	:	

**REPLY BRIEF OF THE
ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

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DATED: June 16, 2008

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**REPLY BRIEF OF THE
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I. INTRODUCTION/STATEMENT OF THE CASE

The Illinois Industrial Energy Consumers¹ (“IIEC”) present this Reply Brief in response to certain issues raised and arguments made by Commonwealth Edison Company (“ComEd” or “Company”), the Illinois Commerce Commission Staff (“Staff”), the City of Chicago (“City”) and the Illinois Attorney General (“AG”) in their Initial Briefs in this proceeding. IIEC will refer to the Initial Briefs of the parties as “Brief(s)” throughout its Reply Brief.

IIEC’s failure to respond to a Brief or argument of any party should not be considered an acceptance of, or agreement with, that Brief or argument, unless specifically stated otherwise herein. IIEC’s failure to raise any issue in its Reply Brief that was raised in its Initial Brief should not be considered an abandonment of that issue, unless specifically stated otherwise herein.

There are several common threads in ComEd’s treatment of various issues in its Brief. In each instance, ComEd attempts to elevate a short cut to its desired result over consideration of the record evidence and a substantive examination of parties’ positions and argument on the issues. Such tactics or arguments should be rejected.

One tactic is pervasive. On many issues, ComEd’s Brief does not address the entire evidentiary record in this case. As a result, other parties are denied an opportunity to respond to the

¹Abbott Laboratories, Inc., Caterpillar Inc., Corn Products International, Inc., Chrysler LLC, Enbridge Energy, LLP, ExxonMobil, Ford Motor Company, General Iron Industries, Merchandise Mart, ArcelorMittal USA, Sterling Steel Company, Thermal Chicago, as well as the University of Illinois.

arguments of the petitioning utility on all the evidence in the record. Equally important, the Commission is denied the benefit of briefs and replies on the full record, since arguments and assertions presented for the first time in a reply brief cannot be tested for coherence and accuracy by the responsive briefs of other parties.

For example, ComEd does not confront the substantive record evidence that (a) its one-sided *pro forma* adjustments are not representative of the period that rates will be in effect -- or any other point in time and (b) its interpretation of 287.40 is inconsistent with applicable accounting conventions. ComEd merely says that it has “us[ed] the same methodology” the Commission allegedly approved in prior cases. (ComEd Br. at 32). Similarly, ComEd’s Brief does not address the evidence that its cost of common equity estimate incorporates unrealistic growth assumptions. ComEd simply withholds all comment. (*Id.* at 63-64).

The substance of the Commission’s admonition in another recent case is fully appropriate here.

The Commission first observes that Ameren’s Initial Brief on Rehearing did not address the issue of reporting requirements but its Reply Brief on Rehearing fully addressed the issue. Having reviewed Ameren’s Reply Brief on Rehearing closely, it is clear to the Commission that Ameren’s arguments on this issue, in their entirety, could have been included in Ameren’s Initial Brief on Rehearing. The Commission hereby notifies Ameren that the strategy of including arguments in its reply briefs that could have and should have been included in its initial briefs is not viewed favorably. The Commission directs Ameren to cease this practice in future proceedings. (*Re Ameren*, Dkt. 06-0070 et al., (Cons.), Order on Rehearing, May 16, 2007 at 35).

Other tactics are more targeted. On selected issues, ComEd puts forward prior Commission decisions as determinative. In such instances, the utility claims entitlement to the same treatment as in a prior case, notwithstanding evidence of distinguishing factual circumstances.² As one prominent example, ComEd does not deny the accuracy of many of the substantive criticisms that make its Cost of Service Study (“COSS”) unsuitable for allocating costs and setting rates. Instead of trying to rebut that evidence or modifying its study, ComEd repeats its claim that the COSS is essentially the same as prior studies the Commission allegedly has approved. (*See, e.g.*, ComEd Br. at 9). IIEC and other parties have shown that ComEd’s claims of prior Commission approval are not accurate; the Commission did not approve ComEd’s studies for setting rates for all customer classes. (*See, e.g.*, IIEC Br. at 60; DOE Br. at 15; REACT Br. at 27-28). In addition, ComEd uses that COSS to support dramatically different rate structures that do not track the costs its COSS identifies. With respect to ComEd’s *pro forma* adjustments, the utility’s expansive application of prior decisions is so extreme that the proposal itself distinguishes any prior decision. (IIEC Br. at 13-15). Under the Public Utilities Act (220 ILCS 5/1-101 *et seq.* (“PUA” or “Act”)), the Commission’s decision in every case must consider (and be based on) the evidence of record in that case, not a replication of a prior result.³

² At the same time, as Staff observed (Staff Br. at 38-39), ComEd dismisses prior orders that do not support its preferred positions and continues to propose those positions.

³ The merits of the evidence and argument in this record cannot lawfully be subordinated to decisions reached on different evidence. Even as to decisions characterized as determinations of policy, changed facts or additional knowledge, shown in the record, can require a different result.

In this historical test year case, ComEd proposes changes to test year data using a self-serving mixture of devices culled from the Commission's historical and future test year procedures. For example, ComEd proposes *pro forma* adjustments (permitted with a historical test year) that recognize post-test year gross plant additions. ComEd simultaneously proposes updates (permitted with a future test year) to cost of equity evidence and to supposedly "known and measurable" plant additions. But, ComEd rejects *pro forma* treatment of changes that decrease its revenue requirement. (ComEd Br. at 13-14, 17-19, 63-64; Staff Br. at 11).

Legal Standards

Finally, ComEd predictably attempts to shift as much as possible of its burden of proof to other parties. To that end, ComEd has mined court opinions for language the utility reads to suggest that its burden of proof can be avoided. (*See* ComEd Br. at 10-11). It cannot. As a creature of the legislature, the Commission has only those powers granted by statute. *Union Electric Co. v. Illinois Commerce Comm'n*, 77 Ill. 2d 364 (1979) at 383. The Commission's enabling legislation expressly mandates the evidentiary burden of proof that the Commission must use in rate case determinations. (220 ILCS 5/9-201(c)). No court can grant the Commission the power to reverse or to diminish the burden of proof the Commission is required to use. Any other adjudicative process would be beyond the Commission's jurisdiction.

On this point ComEd argues as follows:

It has long been the law in Illinois that when the utility provides a *prima facie* case as to its prudence generally, the burden for disallowing the utility's proposed rates is heavy. The Commission may disallow rates only if record evidence shows the utility's business decisions to have been unreasonable,

or if the amounts spent thereon were shown to have been not prudently incurred. *BPI v. Illinois Commerce Comm'n*, 279 Ill. App. 3d 824, 829-830 (1st Dist. 1996). ComEd has established its general prudence; no party contends otherwise. (ComEd Br. at 10).

ComEd stretches and conflates the actual decisions in that case. The court in the cited case actually held:

Petitioners also claim that Edison's affirmative showing was inadequate because Edison's witnesses testified . . . for fewer than seven transcript pages - three on direct examination and four on cross-examination by the Commission's staff. We hold this "page-length" argument to be completely inadequate for the petitioners to meet their burden of proof on appeal and overcome the *prima facie* veracity of the Commission's findings. (*BPI v. Illinois Commerce Comm'n*, 279 Ill. App. 3d 824 (1st Dist. 1996) at 830). (emphasis added).

There was no imposition of a "heavy burden." And, the burden in this passage related to an appeal of a Commission decision, where the appellant has the burden of proof -- not to rebutting a *prima facie* case at trial, where the PUA imposes the burden of proof on ComEd. Even with a *prima facie* case, once opposing evidence is introduced, all evidence is considered, with the utility retaining the burden of proof.

The court's actual holding regarding the "general prudence" ComEd referenced was this:

However, Edison, by proving its general prudence, established a *prima facie* case that it was not responsible for instances of individual employee error. The Commission then examined the record to conclude that the outages did not rebut Edison's demonstration of its prudence" (*Id.*).

ComEd conflates this holding on a distinct issue with its curious reading of the court's ruling on an appellant's burden. It is not clear what relevance these legal decisions have in this case. But, it is clear that this case (or any other) does not relieve ComEd of its obligation to prove that its proposals

are just and reasonable. A utility cannot stand by and demand that others prove the opposite.

Also, ComEd's broad claims do not distinguish its statutory burden from the procedural burden of going forward. (ComEd Br. at 10). Assuming a *prima facie* case has been made, other parties must present opposing evidence, but that burden is met by its presentation. There is no further burden, as ComEd claims, "to show that the costs are unreasonable" (*Id.* at 11) or to "show[] the utility's business decisions to have been unreasonable" or to show costs were "not prudently incurred." (*Id.* at 10). The PUA requires, without qualification, that in ratemaking proceedings like this one:

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

Thus, where (as here) there is competing evidence, ComEd -- not any other party -- has the burden of proof. Non-utility parties do not have the burden of proving the inappropriateness of utility proposals.⁴ The burden is always on ComEd to prove that its proposals are just and reasonable -- that its costs and rates are reasonable, that its decisions were sound, and that its costs were prudently incurred. (220 ILCS 5/9-101, 9-201, 9-211).

⁴ "Requiring intervenors to establish unreasonableness is . . . no substitute for requiring proof of reasonableness," since intervenors are not required to appear or to present evidence. *People ex rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill. 2d 120 (1987) at 135-136.

IV. RATE BASE

B. Uncontested Issues

1. Plant

e. Contested Staff-Proposed Adjustments That Are Uncontested If the Set of Resolutions Reflected in the Stipulation Is Approved

In its Brief, IIEC explained why the ComEd-Staff Stipulation's provision on ComEd's post-test year adjustments for plant additions is improper and unlawful. (IIEC Br. at 6-23, esp. 13). IIEC also discusses its position on post test year plant adjustments in Section IV.C.1.a.ii.(a) below. Accordingly, IIEC opposes Commission acceptance of the Stipulation as to that issue. (By the Stipulations own terms (Staff-ComEd Joint Ex. 1 at 6-7), rejection of those adjustments, as is appropriate, dooms the entire agreement.)

C. Contested Issues

1. Plant

a. *Pro Forma* Capital Additions

ii. Impact on Test Year Rate Base

(a) Accumulated Provisions for Depreciation and Amortization

Though ComEd and Staff purport to maintain the positions stated in their testimony, their Briefs focus on the provisions of their Stipulation instead of the evidence of record. As a result, whatever arguments they may present respecting that testimony are not available for scrutiny and comment by other parties. However, Staff's and ComEd's discussions of the Stipulation

demonstrate clearly why ComEd's unbalanced post-test year *pro forma* adjustment for gross plant additions is inappropriate and unlawful.

Response to ComEd

ComEd's one-sided *pro forma* adjustment for plant additions is one of the more contentious and significant issues in this case (more than \$650 M in rate base, \$94 M in revenue requirement). Several witnesses for the Company and others for intervenors addressed aspects of this topic in extensive testimony. Nevertheless, ComEd's Brief largely avoids the substantive criticism of its proposal. Instead, ComEd offers its reading of past Commission orders, without addressing the pertinent substantive distinctions identified in the record. (*See* ComEd Br. at 19, 32-35). Under the Commission's rules, IIEC is therefore limited in its ability to assist the Commission in evaluating arguments ComEd has not yet made. (83 Ill. Adm. Code 200.800(c)).

In its short comments on this issue, ComEd claims that it has "made the adjustments needed to reflect the impacts of its proposed adjustments to plant" -- meaning (to ComEd) only the depreciation on its plant additions. (ComEd Br. at 32). ComEd's assertion that this is all that is "needed to reflect the impacts of its proposed adjustments to plant" is incorrect. (*Id.*).

Section 287.40 permits *pro forma* adjustments for "changes affecting ratepayers in plant investment." ComEd's proposed adjustment does not reflect the impact on customers and the rates they pay under the PUA. As IIEC witness Michael Gorman explained, the impact of post-test year plant additions is not a dollar for dollar increase in the utility's rate base. (Gorman, IIEC Ex. 2.0-C at 55-56:1187-1192). Yet, that is the consequence of ComEd's one-sided adjustment. Moreover,

ComEd's own expert testified that the foundation of proper rates is net plant. (Heintz, May 5 Tr. 2011). The determination of that quantity, at any point in time, requires that the utility's gross plant be offset by the contemporaneous balance in the reserve for accumulated depreciation. ComEd's proposed adjustment distorts the matching of utility cost and revenue elements codified in the Commission's rules. The effects are miscalculation of the impact on customers and overstatement of ComEd's rate base and cost of capital. (IIEC Br. at 10-13).

The mandate of Section 287.40 for comprehensive *pro forma* adjustments also precludes ComEd's attempt to limit application of the rule to items they choose. Allowing ComEd's self-serving selection of favorable *pro forma* adjustments to limit recognition of other known and measurable changes would violate the rule and unlawfully subordinate it to utility discretion. The resulting distortion would make the adjusted test year data less representative of the period rates will be in effect than the unaltered test year data.

ComEd resorts to strained readings of the Commission's *pro forma* rule to defend its unbalanced post-test year adjustments. (ComEd Br. at 33). ComEd faults the Commission's rule for encompassing all elements of the utility's revenue requirement determination ("changes ... in plant investment, operating revenues, expenses, and cost of capital"), instead of identifying each potentially affected account by name.⁵ (83 Ill. Adm. Code 287.40). Section 287.40 as interpreted

⁵ ComEd finds meaning in the fact the rule does not use the words "net plant (or rate base)." (ComEd Br. at 33). In contrast, ComEd's concern for precision in language is less evident in its attempt to equate distinct concepts with very different impacts. ComEd slides from "[287.40's] changes . . . in plant investment" (a term with established regulatory and accounting meaning) to "capital investment" to "capital additions" (ComEd's shorthand for one-sided adjustments), as though they are the same, when they are not:

by IIEC:

- » tracks changes in the rate base amounts on which rates are set;
- » is supported by logic (the revenue requirement formula is tracked in the rule);
- » conforms to the PUA's statutory ceiling on rate base;
- » is consistent with conventional accounting calculations and definitions; and
- » conforms to governing case law on test year requirements and single-issue ratemaking. (IIEC Br. at 9-13).

ComEd's interpretation of the rule is not consistent with any of those standards.

Ultimately, ComEd can defend its one-sided adjustment for plant additions only by referring to inapposite past decisions. In essence, ComEd argues that because the Commission accepted a one-sided plant additions adjustment (on different facts), it is entitled to a much more unbalanced version of that proposal, notwithstanding the facts in this case. (ComEd Br. at 32 (“calculated the Depreciation Reserve using the same methodology that it employed . . . in ComEd's 2005 and 2001 rate cases.”)). As demonstrated in IIEC's Brief, ComEd has repeatedly expanded its invocations of anomalous Commission decisions on this issue. Its proposed imbalances are now so enormous that no circumstances of record can justify the contested *pro forma* adjustment.

Pursuant to **Section 287.40** of the Commission's rules, ComEd is permitted to make *pro forma* adjustments to reflect **capital investments** that occurred or are reasonably expected to occur up to twelve months after the date of its initial filing. 83 Ill. Admin. Code § 287.40. Known as ***pro forma capital additions***,”) (ComEd Br. at 19).

ComEd also adjusts the reserve for accumulated depreciation – for removal costs associated with retirements of test year plant and depreciation on plant additions. (IIEC Br. at 16, Chart). Neither is an investment, as ComEd would define it. (*See*, Apr. 30 Tr. 861).

Unlike ComEd, the Commission cannot seek to blindly replicate past results. The Commission is required by law to decide each case on the merits of the record evidence. Its prior decisions are not *res judicata*. Mississippi River Fuel Corp. v. Illinois Commerce Comm'n, 1 Ill. 2d 509 (1953) at 513. Accordingly, the Commission has unquestioned authority -- indeed, a legal duty -- to make a different determination if the evidence before it does not support the same result as in a previous case or supports a change in a prior Commission position.

ComEd also claims that the proposals for a *pro forma* adjustment to recognize known and measurable changes in accumulated depreciation “disregard that the rule prohibits adjustments based on ‘[a]ttrition or inflation’ (the depreciation on test year plant in their proposal being attrition over time).” (ComEd Br. at 33).

The attrition and inflation arguments have no merit. The word “attrition” has not been used as a synonym for “calculated” in proceedings before this Commission. Attrition has been described as “primarily the result of the effect of inflation on operating expenses and rate base, the loss of margin from declining sales volumes, and increases in the cost of capital as a consequence of the rising cost of senior securities.” (*Peoples Gas Light and Coke Company*, Dkt 82-0082, 1982 Ill. PUC LEXIS 1 at 29). IIEC’s proposal is not an attrition adjustment; it merely corrects the biased timing mismatch of ComEd’s adjustment. (IIEC Br. at 21-22). Because utility plant is not tracked individually, but as part of group accounts, actual depreciation amounts are determined using the process ComEd appears to criticize -- applying Commission approved percentages to the balances in group accounts. IIEC’s adjustment quantifies such actual data. (Even ComEd’s flawed partial

recognition of post-test year depreciation is computed in this fashion.) IIEC's proposal also is not an inflation adjustment, and ComEd presents no evidence supporting its assertions.

Without ComEd's proposed *pro forma* adjustment for plant additions, the corresponding adjustment for depreciation and amortization over the period of the additions would not be necessary. (See IIEC Br. at 23). The Commission's objective must be an accurate determination of rate base -- not a summing of ComEd's self-serving selections from among all allegedly known and measurable changes that will or might occur.⁶ (220 ILCS 5/9-211). ComEd, in contrast, clearly views the *pro forma* adjustments as simply another contest to increase revenues, arguing that the Commission "should award ComEd these *pro forma* adjustments." (ComEd Br. at 18-19; *see also* IIEC Br. at 21-22).⁶

IIEC does not challenge the amount of ComEd's proposed additions -- if appropriate offsetting adjustments are made. However, absent an appropriate calculation and recognition of the actual effect on net plant and rate base, not just an increase in gross plant, then proposed addition of such extraordinary scope are unacceptable.

⁶ ComEd's adjustments are hardly "known and measurable" in the first instance. ComEd argues "Moreover, the evidence shows that ComEd's bottom-up analysis of actual projects is superior to the simplistic and erroneous use of average investments in other years, involving different projects, that AG/CUB witness David Effron proposed." However, the series of transitory estimates ComEd itself describes (ComEd Br. at 12-14) and the Stipulation's correction process (Staff Br. at 11) disprove any claim of "known and measurable." Moreover, ComEd's adjustments have varied from actual additions more than Mr. Effron's projections, which he acknowledged were estimates. (AG Br. at 6).

Response to Staff

Staff explains that the ComEd-Staff Stipulation provides that ComEd will provide a late-filed exhibit or compliance filing showing actual plant additions for the six months ended June 30, 2008, and that its plant additions adjustment will be conformed to the late filing. (Staff Br. at 11). Staff then provides a description of the plant additions adjustment's basis and effect:

While ComEd bases this adjustment as resulting in its plant in service balance at June 30, 2008, it can also be viewed as reflecting a reasonable amount for those *pro forma* plant additions that will be known and measurable (*Id.*).

It is clear that ComEd and Staff have agreed -- using ComEd's phrase -- to "carry forward" ComEd's test year plant in service to June 2008. (*See* Effron Apr. 29 Tr. at 596).⁷ Their embrace of that action here, stands in stark contrast to ComEd's complaint that such an adjustment for accumulated depreciation (to synchronize it with the period of ComEd's plant additions) violates the Commission's *pro forma* adjustment rule, by changing the test year for that element of the rate base calculation. (*See* ComEd Br. at 33). The Stipulation is inconsistent with the logic of that contention. The Stipulation, like ComEd's original proposal, seeks approval of a type of adjustment that ComEd claims is unlawful, when not to its benefit.

⁷ *See* Gorman Apr. 30 Tr. at 849 (disputing ComEd's characterization of his adjustment).

Staff (pre-Stipulation) saw the improper imbalance of ComEd's proposal.

Mr. Griffin proposed a restatement of all components of the plant in service balance to September 31, 2008 to align the balance of accumulated depreciation forward 21 months -- from December 31, 2006 to September 31, 2008 -- to be synchronized with the pro forma plant in service balance. (Staff Br. at 29).

Staff confirms that the Stipulation adjustment is not "a comprehensive restatement of the net plant in service balance." (*Id.* at 30). But, no witness (including Staff's) disputed that the rate base on which ComEd's rates are set reflects net plant amounts -- not gross plant figures. (*See* IIEC Br. at 10-13).

In Staff's words, the Stipulation provides for later modification of the agreed "proxy" plant additions adjustment, if actual additions are less than "projected," reducing ComEd's "rate base" accordingly. (Staff Br. at 11, 30). This simple summary of Stipulation terms confirms several critical facts that preclude Commission approval of ComEd's *pro forma* adjustment or the Stipulation.

First, as Staff contended in its pre-Stipulation testimony, ComEd's planned additions to gross plant are not "known and measurable." (*Id.* at 11). Staff and ComEd have reduced that uncertainty to a stipulated procedure for correcting errors in the utility's projections. This provision belies any assertion that either ComEd's proposed adjustment or the stipulated update procedure is for a "known and measurable" change, as required by 287.40. (83 Ill. Adm. Code 287.40).⁸

⁸ Showing that a post-test year cost will be incurred and that it will be big does not satisfy the "known and measurable" requirement. If a utility desires to use estimates or projections of future amounts, the utility has the option of using a future test year, which can be lawfully updated with actual data. Having selected a historical test year, ComEd is limited to

Second, the Stipulation is essentially an agreement between two parties to ignore the “known and measurable” pre-condition of the rule, in exchange for shortening the period of plant additions to an agreed date. This agreement is contingent on ComEd maintaining an imbalance in its favor: “ComEd’s agreement in the Staff/ComEd Stipulation to exclude the capital additions for that quarter is conditioned upon, among other things, there being no adjustment at all to the Depreciation Reserve for test year plant.” (ComEd Br. at 33, fn.22). ComEd’s gross plant, carried forward to an agreed post-test year date, is to be confirmed by a future test year type update. Neither post-test year adjustments for changes that are not known and measurable nor updates to historical test year data are permitted under the Commission's rules. (83 Ill. Adm. Code 287.40, 287.30).

(b) Accumulated Deferred Income Taxes (ADIT)

IIEC supports the arguments of the AG respecting ADIT. Like IIEC, the AG recommends that the Commission recognize a *pro forma* adjustment for ADIT over the same period ComEd proposes to recognize plant additions for an accurate determination of rate base. (The amounts of the parties’ recommended disallowances are slightly different). (*See*, Gorman, IIEC Ex. 2.21; Effron, AG/CUB Ex. 5.1, Sch. B-2).

known (reasonably certain) and measurable (not estimated) changes.

V. OPERATING EXPENSES

C. Contested Issues

1. Incentive Compensation Cost and Expenses

ComEd's proposal to include certain incentive compensation amounts in its revenue requirement rests on several propositions challenged by other parties.⁹ Those parties argue that ComEd's proposed incentive compensation costs exceed test year amounts, contain an adder for conditional (and thus not known or measurable) post-test year payments, rely on plan features divorced from the test year amounts, and are not supported by record evidence of actual customer benefit.

The Commission should approve an approach that apportions proven incentive compensation costs based on the identity of the primary beneficiary. IIEC's proposal is a fair application of that principle.

VI. RATE OF RETURN

C. Cost of Common Equity

The cost of equity is one of the most important factors in the determination of ComEd's revenue requirement. Yet, in what may be the crowning example of tactical "non-argument" in ComEd's Brief, the utility provides little discussion of the record evidence from four experts on a very complex issue. (*See*, ComEd Br. at 63-64). Under the Commission's rules, IIEC can respond

⁹ This proposal is another instance of ComEd's tactic of mixing procedures permitted for future test year cases and historical test year cases, for maximum benefit to ComEd.

only to “arguments raised” in ComEd’s brief, where a response is merited. (83 Ill. Adm. Code 200.800(c)). ***Response to Staff***

IIEC’s witness Mr. Gorman testified that current circumstances make consideration of the Risk Premium analysis he conducted appropriate in this case. As its full response in Brief to IIEC, Staff declines any substantive evaluation of IIEC’s position in its Brief. Instead, Staff merely parrots statements from past Commission orders -- without any meaningful analysis of the record at hand, the factual distinctions among cases, or the merits of the issue raised. (Staff Br. at 66).

E. Effects of Riders SMP and SEA

Response to ComEd

ComEd’s cost of equity witness, Dr. Hadaway, took the position that no downward adjustment is warranted if Rider SMP and Rider SEA are approved. He deems the 10.75% return on equity he recommends appropriate whether or not the Commission approves Rider SMP. (ComEd Br. at 65). However, ComEd never specifically denies that the utility’s risk will decrease if the riders are approved. It simply criticizes others’ attempts to address that substantive reality and declines to offer an opposing estimate of the effect.

Dr. Hadaway’s implicit assertion that there would be no effect on ComEd’s cost of equity defies common sense. ComEd has asked for approval of Rider SMP specifically because there is an anticipated effect on the utility’s ability to fund SMP projects from external sources. Rider SEA is a virtual guarantee that ComEd will recover certain broadly defined operations and maintenance costs. Thus, the fact that regulatory lag and non-recovery risks are eliminated, for the quantities

covered by the riders, unavoidably affects the Company's riskiness. ComEd, which has the burden of proving that its proposed cost of equity is reasonable, has not proposed any recognition of the potential reduction in riskiness attributable to approval of Rider SMP and Rider SEA.

If one or both of the proposed riders are approved, the Commission should adopt the reasonable approach offered by IIEC.

Response to Staff

Staff witness Mr. McNally, acknowledges the potential for the proposed riders to have a significant effect on ComEd's cost of equity. However, because he was uncertain how the riders would operate, and because he was unsure how to quantify that effect in any case, he proposes no reduction in ComEd's overall rate of return on rate base assets in the event that Rider SMP is adopted. (McNally Reb., Staff Ex. 17.0, 18:381-82). Staff takes no position with respect to Rider SEA.

Staff acknowledges that Rider SMP would have a financial effect on ComEd. Staff witness Mr. McNally testified:

If adopted, Rider SMP would effectively create two classes of assets from a risk perspective: rate base and Rider SMP assets. Rider SMP assets would not affect the risk of rate base assets; therefore, I do not recommend any adjustment to the authorized rate of return on rate base assets. However, since the riskiness of Rider SMP assets could be substantially different from that of rate base assets, I would recommend that the Commission authorize a different rate of return for Rider SMP assets than it authorizes for rate base, should the Commission approve Rider SMP. This is the approach Mr. Thomas advocates. (McNally Reb., Staff Ex. 17.0, 18:379-386).

Staff's (and CUB's) recommendation for a different return on SMP assets only, ignores that

ComEd's testimony confirmed that the effect of Rider SMP and the planned SMP assets could not be so neatly compartmentalized. ComEd witnesses confirmed that the market would not treat the outside capital needed to fund SMP projects as separate. (McDonald, May 2 Tr. 1787). Similarly, the effect on ComEd's credit ratings will be for the entire undifferentiated utility, not just SMP assets and operations. (Abbott, Apr. 30 Tr. 969-970). IIEC's recommendation for a reduction in ComEd's cost of equity recognizes these facts.

Response to CUB

CUB witness Mr. Thomas takes the same approach in his analysis as Staff, that is, he distinguished SMP assets from delivery service assets. However, Mr. Thomas proposed an adjustment to recognize the reduction in risk to ComEd. He testified that "if Riders SEA and/or SMP are approved, I recommend that the Commission allow the company to recover only their embedded cost of long-term debt, ComEd has proposed 6.74%, on projects financed under these riders." (Thomas, CUB Ex. 1.0 at 3:49). For the reasons discussed in connection with Staff's analysis, IIEC's cost of equity reduction is the superior response to the reduction in ComEd's risk if Riders SMP and/or SEA are approved.

VII. NEW RIDERS

A. Overview

In its testimony and Brief, IIEC and other parties have demonstrated that ComEd's proposed Riders SMP and SEA are unlawful, procedurally unworkable, and inappropriate as a matter of regulatory policy. Those briefs present evidence and argument that compel rejection of the riders.

B. Rider SMP

Response to Other Intervenors

The Briefs of the parties assemble record evidence and legal arguments that preclude Commission approval of Rider SMP. The big supporters of Rider SMP, aside from ComEd, are primarily Retail Electric Suppliers (“RESs”), entities for which Rider SMP charges are not their main interests.¹⁰ (*See*, RESA Br. at 3-4; *See*, CNE Br. at 3). For RESs, the major interest in SMP projects is the potential for expanding their market opportunities, through the expenditure of Rider SMP surcharges collected from ratepayers. (*Id.*) Most customers, however, have concluded that the proposed riders would violate one or more legal strictures, be bad policy, and distort the regulatory process. A non-exhaustive, summary of conclusions on the principal objections to Rider SMP is presented below.

Rider SMP Is Unlawful. Like IIEC, AARP concludes that the rider is unlawful because it imposes mandatory surcharges for “projects that are *not necessary for basic electric service.*” (IIEC Br. at 49-50; AARP Br. at 3 (emphasis in original)). Delivery services are expressly limited to “those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function” (220 ILCS 5/16-102). ComEd’s potential SMP projects, in contrast, appear to have “no meaningful limit.” (Metra Br. at 12).

In addition, AARP and the AG point out that the surcharges for unnecessary facilities violate the least-cost mandate of the PUA. (AARP Br. at 4; 220 ILCS 5/8-401; AG Br. at 32-33). Parties

¹⁰ Building Owners and Managers of Chicago are an exception, offering conditional support. (BOMA Br. at 4).

filing Briefs in this proceeding discuss a slate of additional Rider SMP infirmities, including those described below.

- » Rider SMP permits ComEd's rates to reflect costs of plant that has not been proved used and useful or added to rate base, in violation of PUA Section 9-211 (AG Br. at 23; 220 ILCS 5/9-211).
- » Rider SMP violates the matching principle of test year ratemaking and the related prohibition against single-issue ratemaking (*Id.* at 24-25, 29-32).
- » Rider SMP does not satisfy the established tests for extraordinary cost recovery mechanisms (*Id.* at 26-28; Staff Br. at 67 (*re* Rider SEA); CTA Br. at 11-13; CG Br. at 4), and there is no specific statutory authorization for Rider SMP's recovery of and on amounts not in rate base.¹¹
- » Rider SMP permits later periodic adjustments of rates set in this rate case, if the rates set prove too low or too high because of costs incurred to build certain facilities or because of weather events. (AG Br. at 34).
- » Especially for large customers like IIEC companies, there is a disconnect between Rider SMP's costs and benefits and its charges, which do not reflect cost causation and will create new subsidies. (Metra Br. at 10-11; CTA Br. at 11-13; IIEC Br. at 47-48). The calculated rider charges also fail to take account of savings from SMP projects. (REACT Br. at 12, 14-18; IIEC Br. at 46).

Rider SMP Is Unnecessary. As ComEd acknowledges, the utility has continually modernized its grid, including ongoing installation of technologies like those Rider SMP would cover -- all without an extraordinary rider mechanism like Rider SMP. (Donnelly, Apr. 29 Tr. 432). Staff's examination of the record finds no demonstration of need or appropriateness respecting Rider

¹¹ Rider SMP arguments based on current water utility infrastructure riders ignore their express statutory authorization. Besides extending a uniquely authorized rider to an electric utility, the scope of ComEd's Rider SMP goes far beyond the water infrastructure statute or the related regulations.

SMP. (Staff Br. at 68).

Staff also performed a comparison of pertinent record data. The analysis shows that the cost of projects ComEd has identified as potential SMP projects is far less than the amount ComEd normally spends on capital improvements from year to year. The amounts ComEd insists require special recovery are also less than the annual fluctuation in ComEd's operating expenses. (*Id.* at 74-75). Thus, the rider is not justified by a demonstration of need or the materiality of SMP costs. Ultimately, Staff notes what should be a determinative fact in the Commission's consideration of this issue: ComEd is seeking approval of an extraordinary cost recovery mechanism without first taking advantage of the regulatory tools already at its disposal. (*Id.* at 75).

Rider SMP Is Procedurally Impractical. Staff concludes that Rider SMP - covered "AMI and Smart Grid investments are important issues that deserve more consideration and attention than they can be given in this proceeding." (Staff Br. at 69). That reason alone, which IIEC endorses, is an adequate basis for the Commission to reject the proposed rider in favor of a more deliberate exercise of its regulatory responsibilities. As REACT noted, "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." (REACT Br. at 12-13).

Metra finds ComEd's plan for a continuing series of rider proceedings unnecessary, given ComEd's announced intention for more frequent rate filings. (Metra Br. at 7). Such added proceedings would place an unreasonable burden on all parties, except the utility. (*Id.* at 11). The Commercial Group deems ComEd's plan "not realistic." (CG Br. at 5). CTA concludes that any

reasonable analysis of ComEd's proposed time line for approval of Rider SMP projects shows that it is unworkable. (CTA Br. at 9-11).

Response to ComEd

ComEd's proposed Rider SMP proceedings schedule sets up a continuous process of workshops, filing reviews, and reconciliation proceedings that would challenge the resources of any non-utility party, including Staff. (*See*, ComEd Br. at 74-75). With Rider SMP approval, the resulting multiple tracks of biennial SMP filings and cases, annual SMP reconciliations, periodic Rider SEA proceedings, and (according to ComEd) more frequent general rate cases could price ratepayers out of meaningful participation in many proceedings affecting their rates. The theoretical opportunity for stakeholder participation in Rider SMP proceedings that ComEd touts will likely be illusory and could compromise participation on other Commission proceedings.

ComEd can file rate cases as often as *necessary* to modernize its grid. In fact, ComEd has completed past periods of modernization investment without special cost riders, and it continues those activities today. (Donnelly, Apr. 29 Tr. 432). As in the past, ComEd need only prove its case under the bright lights of a rate case, not in the shadows of constrained ancillary proceedings.

ComEd's evidence respecting the impact of proposed Rider SMP presents an incomplete picture. On one side, ComEd lists every potential benefit as though it were real (ComEd Br. at 7); on the other, it presents uncertain cost estimates for poorly defined technological functions that (a) may or may not ever be proposed by ComEd, and (b) if proposed, may not be built. (*See Id.* at 70). Based on ComEd's evidence, there is no rational way for the Commission to determine whether

ratepayers would enjoy a net benefit that they are willing to fund.¹²

Response to Staff

Given the uncertain sweep of the rider and ComEd's declaration that SMP projects are not necessary for delivery services, Staff reasonably suggests that the Commission first examine the definition of delivery services. (Staff Br. at 72). It would be premature to approve an "empty" rider that may be entirely inappropriate if the nature of ComEd's core services is redefined.

C. Rider SEA

Many of the problems identified and parties opposing Rider SMP reappear with respect to Rider SEA. In addition, the procedural burdens discussed above for Rider SMP would be exacerbated by the addition of separate annual reconciliation proceedings for Rider SEA.

Response to Staff

The storm related costs at issue were scrutinized by Staff in an analysis presented in its Brief. Staff's analysis showed that ComEd's storm related costs are not unexpected, volatile or materially fluctuating. (Staff Br. at 82-87). Staff also found, as did IIEC witness Mr. Stephens, that the proposed rider recovery of poorly defined storm costs would undermine the cost control incentives inherent in traditional rate case procedure. (*Id.* at 87-89; *also* CTA Br. at 15). The category of costs for which ComEd proposes a rider "does not satisfy the established tests for extraordinary cost recovery mechanisms." (Staff Br. at 67). Staff affirmed a common conclusion among the parties --

¹² ComEd opines that "The benefits of Smart Grid technologies are widely accepted," but neither the technologies nor the benefits for ComEd customers are proven on this record. (ComEd Br. at 7).

that the proposed rider is not necessary. (*See, e.g.*, CG Br. at 5; IIEC Br. at 51).

The vagueness of the proposed definition of storm costs in the rider elicited fair condemnation from many parties. Staff proposed language changes to limit the scope of the rider. However, Staff's revisions are of little effect since the phrase "including, but not limited to" remains in the rider definition of eligible costs. That phrase must be deleted if Staff's changes are to have any real meaning.

Response to ComEd

ComEd's brief points to Section 16-125 of the PUA as evidence that critical regulatory incentives -- incentives Mr. Stephens testified will be lost if Rider SEA is approved -- would remain intact. (Stephens, IIEC Ex. 1.0 at 51-52; ComEd Br. at 90). Staff has effectively refuted ComEd's argument. (Staff Br. at 90). Staff points out that ComEd has already asked the Commission for a waiver of that provision -- and of the economic responsibilities ComEd identifies in its Brief as the disciplinary incentives compelling ComEd to maintain its distribution system. (*Id.*).

VIII. COST OF SERVICE AND ALLOCATION ISSUES

C. Embedded Cost of Service Study Issues

1. Appropriate Study

Response to ComEd

ComEd argues that it has presented a reasonable COSS and that it should be approved by the Commission. (ComEd Br. at 91). ComEd reasons that the basic structure of its COSS is similar to studies it has filed in past ComEd delivery service cases. (*Id.*). ComEd devotes a single paragraph

to substantive explanation and defense of its COSS.

IIEC and other parties in this case have demonstrated that ComEd's COSS has produced results that are illogical and inconsistent. (*See* IIEC Br. at 52-53 (large unexplained cost increases from recently approved cost levels)). The COSS is substantively flawed in several respects. (*See* IIEC Br. at 52-53 (no primary/secondary split and assumption system is 100% demand related); Metra Br. at 14-15 (echoing IIEC); Nucor Br. at 8 (failure to distinguish entry voltage); REACT Br. at 23-26 (failure to consider uniqueness of > 10 MW customers); City of Chicago Br. at 2-4 (inadequate intra-class cost differentiation). These flaws produce illogical results that include, but are not necessarily limited to, rates that conflict with long standing rate relationships based on customer demand and voltage levels, and rates that are dramatically above those of other Illinois utilities without any coherent justification. (*See* IIEC Br. at 56-59). ComEd's failure to properly differentiate between primary and secondary distribution system costs (Stowe, IIEC Ex. 3.0-C at 12) and the failure to recognize that a large portion of the distribution system is not demand related, but customer related, are principal sources of the noted distortions. (Stephens, IIEC Ex. 1.0-C at 5:92-97 and 5:101; Stowe, IIEC Ex. 3.0-C at 27; Swan, DOE Ex. 1 at 11:237; Swan, DOE Ex. 2.0 at 5:95).

Instead of explaining and defending its study, ComEd chooses to argue that the COSS flaws identified and adjustments proposed by various parties, including IIEC, are simply attempts to shift costs from one group of customers to another. (*Id.*). In making this argument, ComEd ignores or overlooks the fact that its own COSS witness, Mr. Heintz, acknowledged the validity of the criticisms when he made changes and modifications to his COSS in response to testimony from

these same parties. (*See*, Heintz, ComEd Ex. 33.0 at 6:122-125 (discussing alteration of certain allocation factors to reduce the amount of low voltage costs allocated to high voltage customers)). Mr. Heintz' alteration of the ComEd COSS resulted in the effect ComEd criticizes - less cost being allocated to one customer group and more costs being allocated to another. Furthermore, Mr. Heintz agreed that ComEd's study would be more accurate if it differentiated primary and secondary distribution costs. (Heintz, ComEd Ex. 33.0 at 3:60). It is obvious from Mr. Heintz' response that ComEd's expert did not consider the criticisms made by IIEC and others to be simply self-serving.

AG witness Scott Rubin testified he had no problem with the theory of recognizing a primary/secondary split in this case. (Rubin, Apr. 30 Tr. 912). His testimony -- on behalf of the AG's broad constituency, undercuts ComEd's unsupported assertion that the identification of flaws in the ComEd COSS and the recommended modifications of same are simply a self-interested attempt by one group of customers to shift costs to another.

Furthermore, ComEd's argument overlooks or ignores the fact that IIEC's major recommendations for modification of the ComEd study have been proposed by other utilities and adopted by other Commissions. (*See*, Stowe, IIEC Ex. 7.0 at 6:91-7:112 and IIEC Ex. 3.0-C at 43 (describing other Illinois utilities' use of the primary/secondary split and the use of the minimum distribution system ("MDS") concept by other state commissions)). The adoption of the primary/secondary split by other Illinois utilities and the acceptance of the MDS concept by other Commissions demonstrates that these proposals are not mere self-serving mechanisms conceived to shift cost responsibility from one customer group to another.

ComEd also ignored or overlooked that the Commission Staff, which surely cannot be accused of promoting changes to the Company's COSS out of self interest, has recognized the legitimacy of IIEC's arguments regarding the primary/secondary split.¹³ (*See*, Staff Br. at 100).

The Commission should not be swayed by ComEd's simplistic and uninformed arguments that the modifications to ComEd's COSS proposed by other parties in this case are motivated exclusively by self-interest. IIEC's recommended modifications are consistent with good regulatory policy and will produce a COSS that more accurately tracks ComEd's costs of service.

2. Primary/Secondary Split

ComEd argues that modification of its COSS to recognize a primary/secondary differential (primary/secondary split), is unnecessary and impractical. (ComEd Br. at 92). To the contrary, the primary/secondary split is both practical and necessary.

ComEd's impracticality argument is based on the utility's position that it is not required to record and, in fact, does not record, gross plant or accumulated depreciation on its books in a manner that facilitates such a modification. (ComEd Br. at 92). Mr. Stowe, who testified for IIEC on this issue, is a former utility cost analyst. He demonstrated that ComEd's argument was simply and absolutely without merit. He testified that the books and records of a utility are kept in a way that allows the utility to gather the information needed to establish a primary/secondary split. He specifically noted that the utility was required to keep records and information on its distribution system costs in a manner dictated by the system of accounts of the Federal Energy Regulatory

¹³Staff's Brief contradicts ComEd's claim that "Staff fully supports [ComEd's study]". (ComEd Br. at 9).

Commission. (Stowe, IIEC Ex. 7.0 at 6-7:94-112). Furthermore, he testified that a single cost analyst was capable of doing the study necessary to differentiate between primary and secondary costs for multiple utilities in the space of only six months. (*See*, Stowe, IIEC Ex. 7.0 at 9:153-167 (describing his own experience in separating primary/secondary costs while employed by Aquila)). Surely, ComEd, with its internal resources or external expertise should be able to replicate and verify or refine the method and results demonstrated by Mr. Stowe. Therefore, the Commission should recognize ComEd's argument as the red herring Mr. Stowe's testimony clearly demonstrates it to be.

Next, ComEd argues that IIEC's recommendation to have ComEd's COSS differentiate between primary and secondary distribution costs would reduce the cost allocated to certain customer classes. (ComEd Br. at 93). ComEd goes on to suggest that the rate design put forward as part of its rate mitigation plan, addresses such a potential result. (*Id.*). Specifically, ComEd argues that its proposed rates would not exceed those resulting from the incorporation of IIEC's primary/secondary split. (*Id.*). Therefore, according to ComEd, the failure of its COSS to include a primary/secondary split does not provide a basis for rejection of that study. (*Id.*).

ComEd's argument is without merit and proves nothing with respect to the validity of ComEd's study. First, under ComEd's rate mitigation proposal, which would move rates fully to cost -- as measured by ComEd's flawed COSS -- in two steps; it is only the first step in which rates are lower than those that would result from use of IIEC's primary/secondary split. (Alongi, May 5 Tr. 2179). Second, as ComEd's Mr. Alongi agreed, a rate moderation proposal and a cost analysis

are fundamentally different, separate, and independent concepts. (*Id.* Tr. 2180). ComEd's argument mistakenly assumes that they are the same concept. Third, because ComEd's flawed COSS fails to recognize any differentiation between primary and secondary distribution costs, it inevitably allocates low voltage costs to high voltage customers. (Heintz, May 5 Tr. 2023). As the Department of Energy ("DOE") stated:

This flaw in the cost of service methodology is overarching. It causes the Company's recommended rates and rate increases to be illogical and disunified. Both the methodology and the resultant rates and rate increases are in fundamental disharmony with the basic premises that costs shall be allocated to those who 'cause' them and that rates shall be based on the costs thus allocated.
(DOE Br. at 12).

Under such circumstances, adjusting rates to make them lower or higher as part of a rate mitigation plan, is not a valid substitute for accurately determining cost responsibility through an appropriate cost of service study in the first instance. (*See also* Alongi, May 5 Tr. 2179 (rate moderation plan would not correct COSS)).

The essence of ComEd's argument appears to be that because the rates in the first step of its two-step mitigation plan are lower than the rates supported by a correctly performed study, IIEC's concerns are addressed. ComEd's argument ignores the essential point of a COSS. It is not to design the lowest rates, but to fairly and equitably identify costs for designing rates. The unmodified ComEd COSS simply cannot fairly and equitably identify costs. Instead, ComEd has elected to produce a lower rate through an arbitrary rate design fix instead of correcting its flawed COSS. This is a poor substitute for proper COSS and rate design practices.

Finally, it is worth noting that many parties in this proceeding are supportive of the differentiation between primary and secondary distribution costs, or they have identified the failure of the Company's COSS to differentiate those costs as a major flaw in that study. Staff, for example, agreed that IIEC had made reasonable arguments that the higher voltage customers are improperly allocated low voltage costs under the Company's COSS, but Staff did not reject use of the study on that basis. (Staff Br. at 100). Metra identified the failure to include a primary/secondary split as a major flaw in the Company's study. (Metra Br. at 15-20). Nucor also identified the omission of a primary/secondary split as a deficiency in the Company's study and recommended that such a split be incorporated into the study. (Nucor Br. at 8 and 11). REACT recognized the failure to differentiate between primary and secondary costs as a substantial flaw in the Company's study. (REACT Br. at 29). The Commercial Group, while not rejecting the Company's study, supported differentiation of primary/secondary costs. (Commercial Group Br. at 7). Finally, DOE provided extensive and well-reasoned arguments in support of the concept of a primary/secondary split and suggested that the failure to incorporate such a split in the Company's COSS rendered it invalid. (DOE Br. at 4-13).

Under the circumstances, the Commission should recognize that the failure to distinguish primary and secondary distribution system costs in the ComEd COSS is a fundamental flaw, with significant, problematic consequences. The Commission should reject the ComEd COSS or modify it in accordance with the IIEC's recommendations for a primary/secondary cost split. If the Commission is uncomfortable in reflecting IIEC's specific primary/secondary split in the COSS in

this case, it can direct ComEd to do so in its next case. But, if the COSS is not corrected, the Commission should not use the unmodified ComEd COSS for revenue allocation and rate design purposes in this case. Absent a valid cost of service study, there is no basis for determining an appropriate revenue allocation and rate design in this case or assigning disparate increases to various customer classes.

3. Minimum Distribution System

Response to ComEd

ComEd argues that the Commission should reject the MDS proposal of IIEC in this case, as it has in other cases. (ComEd Br. at 94-95). ComEd incorrectly claims that IIEC has provided no new information on MDS, but has instead “repackaged” previously rejected arguments. (*Id.* at 95).

ComEd is wrong in suggesting that the Commission should reject IIEC’s approach on this record simply because the Commission has previously rejected the MDS approach under other circumstances. In ComEd’s last delivery service rate case, the Commission expressly invited parties to address the MDS issue in future cases. The Commission stated: “[t]he Commission is willing to consider the merits of the MDS approach in future proceedings.” (*Commonwealth Edison Company*, ICC Dkt. 05-0597, Order, July 26, 2006 at 165). Certainly the Commission never would have extended this invitation if it simply intended to reject the MDS approach out of hand as ComEd suggests.

In addition, ComEd’s “repackaging” argument is not supported by any citation to the record in this proceeding. ComEd has not identified any specific arguments made by IIEC in this case that

were rejected by the Commission in past cases. The simple truth is that IIEC has presented an approach that enables identification of the types and sizes of components of the ComEd distribution system that are not demand related. IIEC's approach is not one that attempts to identify and cost out a hypothetical minimum system. It identifies the very real costs associated with meeting safety and reliability standards, such as the National Electrical Safety Code ("NESC"), as the minimum costs required to provide service to customers. (Stowe, IIEC Ex. 3.0-C at 32:551-33:561).

Indeed, IIEC's approach specifically addresses the Commission's stated concern in the case cited by ComEd. (ComEd Br. at 94). In that case, as ComEd correctly notes, the Commission concluded, based on the record then before it, that the components of the system related to connecting customers could not be identified. (*Central Illinois Public Service Company*, ICC Dkt. 00-0802, Order, December 11, 2001 ("*CILCO*") at 42). However, in the case at bar, IIEC has recommended a different approach, one that will allow identification of the components of the distribution system that are customer related.

Furthermore, in *CILCO*, the Commission was concerned that separating the costs of connecting customers to the electrical distribution system from the costs of serving their demand, remained problematic. (*See Id.*). However, that concern was expressed more than seven years ago, and it did not consider the approach described by Mr. Stowe, which allows these costs to be separately identified and classified.

It is true that if MDS is adopted, a portion of the cost of the distribution system would be reallocated on a customer basis instead of a demand basis. As a result, correctly defined costs would

reveal that certain classes, including the residential class, cause relatively more costs to be incurred and, if revenue requirements are allocated in accordance with cost causation, those classes would see greater cost responsibility. Assuming the Commission finds IIEC's cost of service study in this proceeding a valid tool, IIEC has proposed a rate mitigation approach that would apply to all customer classes, including the residential class. IIEC's proposal would mitigate the impact of any class cost increases resulting from adoption of the MDS approach recommended by IIEC. Under IIEC's mitigation approach, no customer class would receive a rate increase greater than 25 percentage points above the system average increase. (Stephens, IIEC Ex. 5.0 at 9:173-174).

Even if the Commission finds no valid and appropriate COSS in this record, the Commission can direct the Company to incorporate the MDS approach recommended by IIEC in the COSS presented in ComEd's next delivery service rate case. In the absence of a valid COSS, the Commission must implement an across-the-board increase, and there would be no immediate MDS impact on any customer class. Thus, there would be no obstacle to the Commission adopting and ordering future incorporation of the MDS approach.

Response to Others

Staff opposes adoption of the MDS approach on the basis that it allegedly improperly allocates demand related costs on a customer basis. (Staff Br. at 99-100). The only other parties specifically addressing this issue in their Briefs are parties supporting IIEC's MDS approach in this case. (Metra Br. at 20-24; Commercial Group Br. at 7, CTA Br. at 22-25).¹⁴ The Staff's statement

¹⁴ The AG does not specifically address the MDS concept in its Brief. It simply opposes any increase in cost allocation to residential class. It does so without due consideration of the

of its position is limited to a single sentence in its Brief. Staff's position is, in turn, based on a single sentence in the testimony of Staff witness Peter Lazare. (Lazare, Staff Ex. 18.0 at 17-18, 396-400). Mr. Lazare simply stated that he believed the MDS improperly allocates distribution level costs that are appropriately considered demand related. Unsupported pronouncements such as this should be given no weight.

Mr. Lazare did not discuss or consider the extensive testimony offered by Mr. Stowe explaining why the costs in question cannot properly be considered demand related and are, in fact, not demand related. Staff offered no testimony in the evidentiary portion of this case challenging Mr. Stowe's conclusion that the costs in question are not demand related. And, Staff offers no substantive argument in its brief on this issue.

In sum, the arguments presented in the Briefs against MDS by ComEd and Staff are cursory and simplistic. They fail to give any credence to the Commission's contemplation of serious consideration of the MDS issue in future ComEd cases. They also avoid confronting the substantial new evidence and arguments presented by IIEC in support of the use of the MDS. Their unsupported opposition to the MDS, as presented by IIEC, should be rejected. The Commission should either (a) incorporate the MDS, as proposed by IIEC, into ComEd's COSS in this case, or (b) to the extent the Commission is not comfortable with IIEC's specific MDS proposal in this case, reject the Company's study and direct the Company to incorporate the concept in its next delivery service case.

cost evidence or arguments in the record. (AG Br. at 79-80).

4. Average and Peak Methodology

Only the City of Chicago has supported the use of the Average and Peak (“A&P”) method for allocating distribution costs in this proceeding. (City Br. at 23-24). Other parties to this proceeding, including IIEC, have opposed the use of the A&P method in this case. (IIEC Br. at 76-78; ComEd Br. at 95-96; Kroger Br. at 4-5; Commercial Group Br. at 8).

Generally, opponents of the A&P method agree that distribution costs are not energy related. (*See, e.g.*, IIEC Br. at 76-78; Kroger Br. at 4). Also, they generally agree that the Commission has previously rejected the use of the A&P method in electric delivery service rate cases. (*See, e.g.*, IIEC Br. at 78; ComEd Br. at 95-96). At least one party has correctly pointed out that the cost allocation manual for the National Association of Regulatory Utility Commissioners clearly establishes that distribution costs are not energy related, but are customer or demand related. (*See*, Kroger Br. at 4-5 *quoting* the NARUC Manual).

IIEC witness Stowe explained in detail why distribution costs are not energy related. (Stowe, IIEC Ex. 7.0 at 20-22:411-468). Mr. Stowe’s testimony is discussed in further detail in IIEC’s Brief. (IIEC Br. at 76-78). The City has failed in its testimony in this proceeding and again in its Brief to explain the nexus between energy usage and the construction of any portion of the ComEd distribution system. As Mr. Stowe testified:

The basis of Mr. Bodmer’s criticism of ComEd’s COSS is that it allocates certain distribution costs solely on a single hour of peak demand. He argues that this is incorrect because these costs are not caused solely by the peak hour of demand. However, when he concludes that these costs would be allocated more appropriately if the COSS used factors that included average demand or energy usage, he stops short of showing how costs are caused or

affected by average demand and energy usage.
(Stowe, IIEC Ex. 7.0-C at 20:404-410)

Extensive testimony in this record clearly establishes that some of ComEd's distribution costs are demand related and some are customer related. The record also shows that no distribution costs are energy related. Thus, there is no basis upon which the Commission can reasonably adopt the A&P method in this proceeding. Therefore, the City's recommendation that the A&P method should be used to allocate distribution costs should be rejected.

E. Interclass Allocation Issues

1. Across-the-board increase

IIEC wishes to correct any mistaken impression that IIEC has asked the Commission to abandon its commitment to cost-based rate setting. (*See* ComEd Br. at 99). IIEC and other parties have shown clearly why ComEd's COSS is not valid and should not be used to allocate cost responsibility or to set rates. IIEC has offered an alternative study for the Commission's use. (Stephens, IIEC Ex. 1.0 at 3:49-54; IIEC Br. at 62).

Response to ComEd

ComEd argues that its rate design, which includes a rate mitigation plan for only three non-residential rate classes, is more appropriate and reasonable than the across the board increase proposed by Staff and others. (ComEd Br. at 99). ComEd reasons that (i) the across the board increase creates new subsidies; (ii) the across the board increase exacerbates existing subsidies; and (iii) that its rate design would move rates to cost. (*Id.*).

ComEd's arguments assume the existence of a valid COSS. For the reasons stated in Section

VII.C.1, 2, and 3 of this Reply Brief, and for reasons stated in IIEC’s Brief, ComEd has not presented a valid COSS. (*See* IIEC Br. at 52-75). The ComEd COSS produced illogical results, fails to differentiate between primary and secondary distribution costs, and wrongly assumed that the distribution system was 100% demand related. The IIEC COSS is based on traditional cost causation principles and would help ensure that customers pay their fair share of the cost of the distribution system.

2. Other Rate Moderation/Mitigation Proposals

ComEd has argued in support of its rate mitigation proposal in Section IX.A. of its Brief. (*See*, ComEd Br. at 100). Under ComEd’s proposal, the Extra Large Load Delivery Class, the High Voltage Delivery Class and the Railroad Delivery Class would be moved 50% toward cost-based distribution facilities charges (“DFC”) in this case and fully to cost-based rates in the next case. (ComEd Br. at 101). However, as previously noted by IIEC, ComEd’s mitigation approach is based on a flawed study. Therefore, ComEd’s plan cannot be assumed to move these customer classes 50% toward cost-based rates, because it does not accurately identify the cost of serving these customers. (*See*, Section VIII. C. 1,2 and 3, *supra*, and IIEC Br. at 52-75). Furthermore, IIEC has pointed out that the ComEd proposal applies only to certain classes, unlike the rate mitigation plan proposed by IIEC or by Staff. (IIEC Br. at 83-84).

Finally, contrary to ComEd’s arguments, its proposed distribution rates are not based on traditional cost-causation principles, which ensure all customers are paying their fair share for distribution service. ComEd’s flawed study cannot even indicate that they are moving in the correct

direction. (*See*, ComEd Br. at 101). Indeed, ComEd's COSS turns traditional rate relationships on their head, fails to differentiate between primary and secondary distribution costs, and ignores the fact that the ComEd distribution system is not 100% demand related. Therefore, its rate mitigation proposal based on that COSS should be rejected.

IX. Rate Design

C. Rate Design Issues

2. Non-Residential

c. Primary and Secondary Billing Proposal

ComEd argues that the Commission should reject a DOE recommendation on how to charge high voltage class customers that are served at multiple points and at voltages above and below 69,000 volts under both delivery class rates. (ComEd Br. at 109). ComEd then goes on to discuss the impracticality of and problems associated with placing such a customer in two separate delivery service classes. (*See*, ComEd Br. at 109-110). First, IIEC believes that ComEd has mischaracterized the DOE proposal. IIEC does not understand the DOE proposal to require the company to create two separate classes or to place one customer into two separate classes. The DOE proposal would require the company to bill the customer's standard voltage load under the appropriate rate schedule for standard voltage load and the high voltage load under the appropriate rate schedule for high voltage load. (*See*, DOE Br. at 15).

Furthermore, ComEd ignores the fact that it was originally directed by the Commission to bill these customers separately for their standard voltage load in the Company's last delivery service

rate case. (*See Commonwealth Edison* at 196-199). ComEd actually filed tariffs that distinguished distribution facility charges for load served at standard voltage and load served at high voltage, in compliance with the Commission's Order. (*See Commonwealth Edison Company*, ICC Dkt. 05-0597, Order on Rehearing, Dec 20, 2006 at 66).

In the rehearing phase of that case, the Commission's action on a related issue caused the High Voltage Delivery Class rate structure to change. Because tariffs in that case had to be in effect on January 2, 2007, the Commission's December 20, 2006 Order on Rehearing allowed ComEd to eliminate the service voltage distinction in its tariffs "to facilitate implementation by January 2, 2007" of the new tariffs. (*Id.*). However, there is no indication in the order that the expedited arrangement was to be permanent, or was to extend beyond the duration of the January 2, 2007 rates.

The Commission's decision to eliminate that billing distinction was based on the exigent circumstances of the transition period termination. It did not evince a Commission conclusion that the billing distinction it ordered was no longer meritorious. ComEd previously was able to file tariffs that allowed customers to be billed separately for standard voltage load without any need to create two customer classes or to assign customers to two classes. There is no evidence of a change in its capabilities that indicates they would be required to do so now.

Furthermore, even if ComEd has correctly characterized the DOE proposal, and it has not, IIEC has made a proposal, described in its Brief, that would eliminate any need to create separate rate classes or to assign customers to two separate classes. (*See*, IIEC Br. at 86-87). IIEC's approach would establish a surcharge that allows ComEd to collect delivery service charges for the small

portions of the High Voltage Delivery Class loads that are not served at high voltage. IIEC's proposal also is consistent with ComEd's past practice. (*See* Stephens, IIEC Ex. 5.0 at 14-15:256-278). IIEC witness Mr. Stephens explained that the Company has historically distinguished between high voltage and lower voltage loads in the implementation of certain riders applicable to high voltage customers. (*Id.*).

For these reasons, ComEd's arguments that the DOE proposal is too complex and impractical should be rejected by the Commission. In the alternative, IIEC's proposal should be adopted, since it easily accomplishes the correct result.

XII. CONCLUSION

For the reasons discussed in IIEC's Initial and Reply Briefs, the Commission should adopt IIEC's recommendations in this case.

Respectfully submitted,

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