STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

REPLY BRIEF
OF
THE COALITION TO
REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

REACT

COMPRISED OF:

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The Coalition to Request Equitable Allocation of Costs Together ("REACT"), by and through its attorneys DLA Piper US LLP, pursuant to Section 10-101 of the Public Utilities Act (the "Act") and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") (83 Ill. Admin. Code 200.800), hereby submits its Reply Brief regarding the proposed general increase in rates of Commonwealth Edison Company ("ComEd" or the "Company").[1]

As explained in REACT's Initial Brief, REACT is an *ad hoc* group, with diverse members, including some of ComEd's largest and most prominent commercial, governmental, and industrial delivery services customers, as well as retail electric suppliers ("RESs") that are interested in providing service to residential and small commercial customers. (*See* REACT Init. Br. at 3.) REACT's members are committed to advocating that the Commission ensure accurate, appropriate, and equitable allocation of ComEd's costs – both among its customer classes and between the supply and delivery services components of its rates. (*See id.* at 3-4.)

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

I. INTRODUCTION / STATEMENT OF THE CASE

A. Executive Summary of REACT's Positions

Actions speak louder than words. Although ComEd has *claimed* to care about avoiding "rate shock" and setting rates according to cost for its largest customers, and has *claimed* to support developing competition in the retail electric market for its residential and smallest commercial customers, ComEd's actions suggest otherwise. As explained in REACT's Initial Brief, the Commission must look beyond ComEd's assertions, and instead look at ComEd's action – or inactions. In its Initial Brief, ComEd shows unwillingness to engage in issues of great importance to its customers and the competitive market; this simply underscores this point. ComEd repeatedly has been given opportunities to attend to issues important to its largest and smallest customers, and repeatedly has refused. ComEd's Initial Brief fails to acknowledge the real world implications of ComEd's positions; the Commission should not, and, as a matter of law, cannot ignore these implications.

Although ComEd filed a lengthy Initial Brief, ComEd said surprisingly little about the fundamental issues that REACT thoroughly addressed in its pre-filed testimony, at the live hearings, and in its Initial Brief. ComEd's reticence to address REACT's basic issues is telling. Certainly, ComEd has the resources and wherewithal to point to evidence to rebut REACT, if such evidence exists. However, ComEd takes a different tack, apparently on the theory that if it ignores the fundamental issues REACT has articulated – issues that Staff and other parties recognize as legitimate – those issues will just go away. ComEd's approach is disingenuous however, because the record evidence strongly supports the Commission adopting REACT's positions on straight-forward issues relating to the unjustified, massive rate increase proposed for over-10 MW customers and the misallocation of supply-related costs to delivery services rates.

ComEd's Initial Brief essentially is non-responsive with regard to the two most basic issues that REACT has raised:

- **ComEd has not justified a massive, disproportionate rate increase for its largest customers**. ComEd's Initial Brief skirts the issue, providing little more than a mere reference to "measured movement to cost." (ComEd Init. Br. at 101.) However, ComEd's President claimed that ComEd's current rate structure is fair and equitable, and does not contain cross-subsidies. (*See* Tr. at 108, Lines 5-9.) He also claimed to be concerned about rate shock, and yet he acknowledged that ComEd's proposed rate structure would result in **an increase of over 125% for its largest customers**, in the context of a case in which ComEd is seeking a delivery services rate increase of approximately 21% for its residential customers. (*See* Tr. at 109-10, Lines 19-21, 14-16; Tr. at 110-11, Lines 20-22, 1; Tr. at 111-12, Lines 5-22, 1-13.) Certainly, ComEd's Initial Brief does not even come close to answering REACT witness Bodmer's question: **What did the over-10 MW customers do to deserve such a massive, disproportionate rate increase?** (*See* REACT Init. Br. at 38-40, 60-61.) Of course, ComEd's counsel has provided that answer: "**they didn't do anything** . . . ." (Tr. at 1542, Lines 3-7.)

- **ComEd stands alone in advocating for an anti-competitive misallocation of supply-related costs**. ComEd's Initial Brief reinforces ComEd's refusal to appropriately remove its *supply-related* Customer Care Costs from its *delivery services* rates. (*See* ComEd Init. Br. at 116.) While ComEd has claimed to support competition for its smallest customers, appropriately noting that competition fosters "more efficiency, less risk, greater innovation, and the lowest possible cost," (*see* Tr. at 125, Lines 8-13; Tr. at 125-128.) ComEd has continued to allocate costs in a manner that would continue to block customer choice for residential customers and the smallest commercial customers**.** The proper allocation of those supply-related Customer Care Costs would neither increase customers' overall rates nor decrease ComEd's overall revenues, but proper allocation would remove one of the significant obstacles to the development of choice for its residential and smallest commercial customers. (*See* REACT Corrected Ex. 7.0 at 4, Lines 73-79.) By artificially reducing its supply costs, ComEd is intentionally impeding the development of choice for these customers. No party to the instant proceeding supports ComEd's anti-competitive position.

ComEd's ignore-it-and-it-will-go-away approach to the issues raised by REACT is most graphically illustrated by ComEd's stunning *non*-response to the topic of "Competitive Retail Market Development Issues." (*See* ComEd Init. Br. at 120.) REACT has explained that, at a minimum, it appears that ComEd is gaming the system to restrict residential choice and advantage its unregulated affiliate Exelon Generation. (*See* REACT Init. Br. at 72-73; REACT Corrected Ex. 7.0 at 5-7, Lines 110-46.)[2] Rather than deny wrongdoing or offer *any* substantive analysis, ComEd dismisses the competitive market development issue with a three-sentence waive of the hand, stating that the "purported issue simply has nothing to do with the purpose of this proceeding." (ComEd Init. Br. at 120.)[3] ComEd's position defies logic, and attempts to ignore extensive testimony relating to competitive market issues. (*See, e.g.*, REACT Ex. 3.0 at 4-5, Lines 77-87, at 9, Lines 172-83; REACT Ex. 7.0 at 4-7, Lines 81-146, Line 10, Lines 205-20.) ComEd never moved to strike a word of that testimony; indeed, all of REACT's pre-filed testimony was admitted into the record without any objection from ComEd or any other party. Competitive market issues also were explored repeatedly at the live hearings, beginning with the cross-examination of ComEd's very first witness, ComEd CEO J. Barry Mitchell, as well as during the cross-examinations of ComEd witnesses Ms. Clair, Mr. Crumrine, Mr. McDonald, and the panel of Mr. Alongi/ Dr. Jones. (*See*, *e.g.*, Tr. at 125-26, Lines 8-22, 1; Tr. at 259, Lines 13-16; Tr. at 1370-71, Lines 16-22, 1-7; Tr. at 1799-1800, Lines 7-22, 1; Tr. at 2230, Lines 13-20.)

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

[3] The typical reaction of a Court to this approach is to deem the issue waived by ComEd. (*See*, *e.g.*, *In re Meyer*, 197 B.R. 277, 280 (N.D. Ill. 1996) ("Nonchalant or perfunctory treatment of an issue indicates a party considers the issue of little consequence, and therefore waives the issue.").)

Apparently, ComEd thinks that the Commission will give weight to arguments in its Reply Brief – arguments that neither REACT nor the other parties will have an opportunity to address in brief. That sort of gamesmanship is not tolerated by courts and should not be tolerated by the Commission. (*See, e.g.*, *Autotech Tech. LP v. Automationdirect.com, Inc.*, 235 F.R.D. 435, 437 (N.D. Ill. 2006) ("Loading-up on a reply brief effectively results in a one-sided presentation, which is hopelessly inconsistent with the very premise on which the adversary system is based. In addition to being unfair to one's opponent, the tactic of saving everything for last adversely affects the accuracy of the judicial process, which depends on comprehensive presentations by both sides.").)

In summary, contrary to ComEd's view, the record in the instant proceeding demonstrates that:

- **ComEd has failed to justify the enormous, disproportionate rate increase for the over-10 MW customer classes.** (*See* REACT Init. Br. at 35-40.) The growing consensus of parties supports a rate increase of **nothing more than an across-the-board** increase. (*See* REACT Init. Br. at 41-42; Staff Init. Br. at 96-101; Department of Energy ("DOE") Init. Br. at 13; Illinois Industrial Electric Consumers ("IIEC") Init. Br. at 4, 53, 78-82; Metra Init. Br. at 7, 25-26; Chicago Transit Authority ("CTA") Init. Br. at 26-27; Nucor Init. Br. at 3, 10.)

- **ComEd's Embedded Cost of Service Study ("ECOSS") is not a valid basis to determine cost of service for ComEd's largest customers.** Staff and numerous intervenors continue to advocate against the Commission using ComEd's ECOSS as a basis for allocating ComEd's proposed rate increase. (See REACT Init. Br. at 26-27; IIEC Init. Br. at 52-70, 79-81; DOE Init. Br. at 2-12; Metra Init. Br. at 13-24; CTA Init. Br. at 17-25.) Of course, without a valid cost study, no determination of alleged "cross-subsidies" is possible. (*See* REACT Init. Br. at 22-23; CTA Init. Br. at 17-22; DOE Init. Br. at 3; IIEC Init. Br. at 55, 81.)

- **ComEd has failed to justify its refusal to perform an individualized cost study to determine the appropriate rates for its over-10 MW customers.** It is possible and appropriate for ComEd to perform a cost of service study that examines the actual facilities used to serve its 73 over-10 MW customers. (*See* REACT Init. Br. at 23-26, 31-35.) Indeed, given the flaws in ComEd's ECOSS, individual cost studies for over-10 MW customers is more consistent with ComEd's repeated call for cost-based rates. (*See, e.g.*, ComEd Init. Br. at 9, 100-01; *see also* REACT Ex. 6.0 at 17, Line 380-84.) ComEd continues to impliedly admit that it is feasible. (*See* ComEd. Init. Br. at 96 (carefully stating only that such studies are "impractical and inappropriate" rather than impossible or infeasible); s*ee also* REACT Init. Br. at 23.) Other party witnesses, including Commercial Group witness Mr. Baudino, also admitted the feasibility of such individualized cost studies. (*See* Tr. at 1646, Lines 7-8; Tr. at 1654-55, Lines 9-22, 1-3.) It is clear that several parties now favor some form of an individualized cost study for some or all over-10 MW customers. (*See* REACT Init. Br. at 31-35; IIEC Init. Br. at 65-67; Metra Init. Br. at 2, 15, 24; CTA Init. Br. at 16, 25-26.)

- **ComEd has failed to justify its misallocation of more than $64.8 million in supply-related costs.** ComEd unquestionably charges supply-related costs to its delivery services customers, resulting in improper cross-subsidies, thus stifling the competition for ComEd's smallest customers. (*See* REACT Init. Br. at 51-54.) REACT is not alone in identifying this misallocation. Staff and the Commercial Group also recognize this problem. (*See* Staff Init. Br. at 106; Commercial Group Init. Br. at 12-13.) ComEd fails to effectively rebut REACT's analysis that misallocated Customer Care Costs exceed $64.8 million. (*See* REACT Init. Br. at 53-60; Commercial Group Init. Br. at 13.) Instead, ComEd mischaracterizes REACT's position to suggest that an allocation of supply-related costs is appropriate only when a function is "solely" supply-related. (ComEd Init. Ex. at 118.) However, as Staff properly recognizes, "REACT is not claiming that any of these functions are *solely* supply-related. REACT seems to be arguing that *some portion* of these functions are supply-related but not the sum total." (Staff Init. Br. at 106 (emphasis in original).) Furthermore, properly allocating supply-related costs is consistent with ComEd's repeated call for cost-based rates as well as the Commission's statutory mandate to promote the development of competition for all consumers. (*See* ComEd Init. Br. at 9, 100-01; 220 ILCS 5/16-101A(d).)

- **ComEd has failed to come to grips with the near unanimous opposition to Rider SMP.** Numerous parties oppose Rider SMP for myriad reasons. (*See* REACT Init. Br. at 12-18; Staff Init. Br. at 69-81; Attorney General ("AG") Init. Br. at 1, 23-65; IIEC Init. Br. at 44-50; Metra Init. Br. at 7-12; CTA Init. Br. at 5-13; Commercial Group Init. Br. at 4-5; Citizens Utility Board ("CUB") Init. Br. at 36-46; Kroger Init. Br. at 2-4; AARP Init. Br. at 3-11; Nucor Init. Br. at 1-6.)

- **ComEd has failed to justify a disproportionately large increase in the Distribution Loss Factors for its over-10 MW high voltage customers.** ComEd admits that customers within the over-10 MW high voltage class have widely ranging distribution losses. (*See* REACT Init. Br. at 64.) An individualized distribution loss study for each over-10 MW customer would enable such an individualized calculation. (*See* REACT Init. Br. at 67.)

- **ComEd has failed to justify its Rider ACT proposal.** ComEd admits that Rider ACT customers have unique needs that are addressed by ComEd offering Rider ACT; ComEd has not justified its proposal to eliminate or close this rider. (*See* REACT Init. Br. at 63; ComEd Ex. 45.0 at 21, Line 414.)

REACT respectfully requests that the Commission enter an Order consistent with the arguments herein, as well as in REACT's Initial Brief and pre-filed testimony.

B. ComEd Bears The Evidentiary Burden, And Has Failed To Carry That Burden

Under the Act, ComEd alone bears the burden of proof to demonstrate the appropriateness of its proposed rates and its proposed allocation between supply-related and distribution-related costs. ComEd seems to suggest that it is somehow relieved of this burden once it presents its initial case. (ComEd Init. Br. at 10.) However, the Act explicitly places the burden of proof upon the utility in the context of a rate case:

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

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

The record evidence in the instant proceeding demonstrates that ComEd failed to meet its statutory burden of proof on issues related to the allocation of its proposed rate increase. Most obviously, as discussed herein and in REACT's Initial Brief, ComEd has not justified imposing a massive, disproportionate rate increase upon its over-10 MW customers, and has not justified its failure to allocate any Customer Care Costs to its supply function.

II. OVERALL REVENUE REQUIREMENT AND REVENUE DEFICIENCY

REACT reiterates that it does not challenge ComEd's statutory right to a reasonable rate of return. (*See* REACT Init. Br. at 11.) However, particularly given the lack of an adequate explanation by ComEd in its Initial Brief or elsewhere, REACT objects vehemently to the *allocation* of the rate increase. Specifically, as a direct result of ComEd's *anti-competitive* *misallocation of supply-related costs* to its delivery services function, ComEd has overstated its delivery services revenue requirement by more than $64.8 million. (*See* REACT Ex. 7.0 at 20-21, Lines 436-54.) Further, the over-10 MW customers that would bear the brunt of ComEd's proposed rate hike – with increases well over 100% – have done nothing to cause ComEd to incur additional costs. (*See* REACT Init. Br. at 38-40, 60-61.) ComEd's Initial Brief fails to justify the anti-competitive misallocation of supply-related costs to delivery services rates and is essentially silent on the enormous, disproportionate rate increase that ComEd has proposed for its largest customers.

VII. NEW RIDERS

A. Overview

1. REACT and Many Other Parties Oppose Rider SMP

The opposition to Rider SMP is overwhelming. Private, governmental, and public interest stakeholders oppose Rider SMP for myriad reasons. (*See* REACT Init. Br. at 12-18; Staff Init. Br. at 69-81; AG Init. Br. at 1, 23-65; IIEC Init. Br. at 44-50; Metra Init. Br. at 7-12; CTA Init. Br. at 5-13; Commercial Group Init. Br. at 4-5; CUB Init. Br. at 36-46; Kroger Init. Br. at 2-4; AARP Init. Br. at 3-11; Nucor Init. Br. at 1-6; s*ee also* REACT Ex. 5.0 at 14-16, Lines 281-331; ICC Staff Ex. 21.0 at 1, Lines 15-16; AG/CUB Ex. MLB-4.0 at 4, Lines 1-10; IIEC Ex. 5.0 at 19, Lines 359-70; AARP Ex. 2.0 at 2, Lines 15-20.) ComEd has attempted to sustain Rider SMP by basically reducing it to an empty place-holder Rider subject to future formal and informal proceedings during which the details will once again be filled in. (*See* ComEd Init. Br. at 68-69.) The Commission should reject that approach.

B. <u>Rider SMP</u>

1. ComEd Has Failed To Address The Fact That Rider SMP Imposes An Unjustified Burden On Its Over-10 MW Customers That Already Invested In Advanced Technology

In addition to being generally open-ended, unnecessary, confusing, procedurally inappropriate and burdensome, and potentially anti-competitive, Rider SMP poses particular issues for over-10 MW customers. (*See* REACT Init. Br. at 12-17.) Nowhere in its Initial Brief does ComEd address the SMP issues relating to its over-10 MW customers. (*See generally* ComEd Init. Br. at 66-83.) Instead, ComEd incorrectly suggests that its revisions to Rider SMP have alleviated all problems and that remaining disagreements surrounding Rider SMP are of a technical nature or are minor issues subject to resolution in a workshop. (*See id.*) This suggestion is quite plainly undercut by the fact that ComEd is compelled to devote a full *18 pages* of its Initial Brief to defending Rider SMP, significantly in excess of the words and pages that ComEd devotes to any other item in its Initial Brief.

REACT has identified the following specific problems with Rider SMP as it relates to over-10 MW customers, many of whom previously invested their own money in the very type of advanced technology that ComEd now seeks guaranteed before-the-fact recovery of costs:

- **Rider SMP fails to account for prior investment made by ComEd's over-10 MW customers.** (*See* REACT Init. Br. at 13-15.)
- **Rider SMP provides no credit for the system-wide benefits that all customers have received from the over-10 MW customers' previous investment in advanced meter technology.** (*See* REACT Init. Br. at 16.)
- **ComEd's assertions regarding alleged Rider SMP "benefits" to over-10 MW customers is unpersuasive.** (*See* REACT Init. Br. at 15-16.)

These issues, like the competitive market issues that ComEd has ignored, were the subject of pre-filed testimony and extensive cross-examination at the live hearings. (*See* *generally* REACT Ex. 4.0 at 8-16; REACT Ex. 5.0 at 16, 21; Tr. at 263-267, 271.) The Commission should not tolerate ComEd's failure to address this issue in the initial briefing round. (*See Autotech Tech.*, 235 F.R.D. at 437.) The Commission should view ComEd's failure to address these issues in its Initial Brief as an waiver of any objection to REACT's position. (*See In re Meyer*, 197 B.R. at 280.)

VIII. COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

REACT continues to oppose ComEd's proposal to recover its costs in a manner that would simultaneously impose a massive, disproportionate, unjustified rate increase upon ComEd's largest customers, while continuing to misallocate supply-related costs to stymie the development of competition for its smallest customers. REACT notes that other parties share its concerns both about the size of the rate increases for the largest customers (*see, e.g.*, DOE Init. Br. at 13-14; Nucor Init. Br. at 7-10; IIEC Init. Br. *passim*) and about the misallocation of supply-related costs. (*See, e.g.*, Staff Init. Br. at 106; Commercial Group Init. Br. at 12-13.)

REACT fundamentally objects to ComEd's proposed recovery of at least $64,860,008 of supply-related Customer Care Costs in its delivery services rates. (*See* REACT Ex. 7.0 at 20-21, Lines 436-54.) This gross misallocation will cause ComEd's supply rates to be subsidized by the delivery services rates by 0.15746 cents/kWh. (*See* REACT Ex. 7.2.) ComEd's proposed misallocation of costs violates basic cost causation principles, forcing RESs' customers to foot part of ComEd's supply-related bill. (*See* REACT Ex. 7.0 at 4, Lines 83-93.) Further, an improper allocation of supply costs of this magnitude will clearly place RESs at a competitive disadvantage to ComEd. (*See id*. at 4-5, Lines 83-105; s*ee also* ICC Docket No. 99-0117, Aug. 26, 1999 Order at 24.) ComEd's baseless assertion that REACT's position is an attempt to create excess "headroom" certainly does not resonate in light of the calls of Staff and the

Commercial Group that the Commission order ComEd to properly allocate its Customer Care Costs. (*See* Staff Init. Br. at 106; Commercial Group Init. Br. at 12-13.) Despite ComEd's rhetoric that it supports the development of competition for its residential and smallest customers, ComEd's actions appear clearly designed to ensure that it continues to provide supply to as many of those customers as possible.

REACT also fundamentally objects to the imposition of an *enormous* rate hike for over-10 MW customers based on a faulty ECOSS. REACT advocates the feasible alternative of individualized cost-of-service studies for the relatively few customers in the over-10 MW classes in order to calculate the aggregate cost of service for those customers. Even under ComEd's "modified" proposal, the largest of the 26 Extra Large High Voltage Customers eventually would receive more than a **$900,000 *annual* rate increase**; for the 53 Extra Large customers that are not served via high voltage, the annual impact of ComEd's proposal would range from approximately **$420,000 at the "low" end to more than a $3.2 million increase –** these proposed increases are ***per year, per customer.*** (*See* REACT Ex. 5.0 at 2-3, Lines 25-40.) ComEd's modified proposal simply would "phase in" this increase, imposing a rate increase in this proceeding that it would double in ComEd's next rate case. (*See* ComEd Ex. 32.0 at 9, lines 137-46.) As the DOE points out, even ComEd's "mitigation" approach would constitute rate shock. (*See* DOE Init. Br. at 14.)

ComEd fails to address these issues with any specificity in its Initial Brief; instead ComEd merely admits it "supports a substantial increase for its very largest customers" based on an alleged subsidization of the largest customers by medium-sized customers. (ComEd Init. Br. at 9.) Of course, the alleged subsidization to which ComEd refers has been seriously called into question by numerous parties, all of whom agree with the uncontested point that without a valid cost-of-service study, no determination of subsidization is possible. (*See* REACT Init. Br. at 22-23; CTA Init. Br. at 17-22; DOE Init. Br. at 3; IIEC Init. Br. at 55, 81.) Moreover, Mr. Mitchell, ComEd's President and CEO, testified that ComEd's current rates result in a fair allocation amongst ComEd's customer classes, and that there currently are no cross-subsidies. (Tr. at 108, Lines 3-9.)

In the end, it appears largely uncontested that ComEd's proposed rate increase for the over-10 MW customers is:

- **Disproportionate**: ComEd is proposing an increase of more than 120% for the over-10 MW customer classes -- a massive and disproportionate increase in the context of an overall system average increase of approximately 21%. Even under ComEd's modified proposal, the over-10 MW high voltage customers would receive an increase that is over 250% of the system-average increase; the other over-10 MW customers would receive an increase that is more than 375% of the system-average. (*See* ComEd-Staff Joint Ex. 1; ComEd Ex. 25.0 at 3, Lines 46-49; ComEd Ex. 32.0 at 9, Lines 137-39.)
- **Not derived from a change in delivery services usage or a valid cost study**: ComEd's proposed increase is not derived from changes in the manner in which the over-10 MW classes use delivery services; equally important, the allocation is not at all supported by a valid cost-of-service analysis.
- **Not based on a rational approach for cost allocation**: ComEd's proposed increase is not based on a rational methodology for establishing rates for the over-10 MW classes. Instead, ComEd should analyze the *actual facilities* used to serve its 79 extra large customers, and then use the actual data to allocate the cost of service. Because

> ComEd has refused to voluntarily compile the actual cost-of-service data for inclusion in this proceeding, to the extent that the Commission allows a rate increase, that increase for the over-10 MW classes should be no larger, on a percentage basis, than the overall system revenue requirement increase.

(*See* REACT Init. Br. at 19-20; REACT Ex. 6.0 at 2, Lines 14-33.)

1. <u>Points That ComEd Concedes or Fails to Rebut</u>

ComEd either concedes or fails to rebut the following critical points:

- **As a general rule, costs should be paid by the cost causer.** (*See* REACT Init. Br. at 21-22.)

- **It is necessary to have an accurate cost study in order identify any alleged cross-subsidies.** (*See id.* at 22-23; CTA Init. Br. at 17-22; DOE Init. Br. at 3; IIEC Init. Br. at 55, 81.)

- **The Commission has not endorsed the ECOSS as a method for allocating costs to the over-10 MW customers.** (*See* REACT Init. Br. 25-26.)

- **ComEd has historically questioned the ECOSS.** (*See id.* at 26.)

- **Numerous parties question ComEd's use of the ECOSS in the instant proceeding.** (*See id.* at 26-29; IIEC Init. Br. at 52-70, 79-81; DOE Init. Br. at 2-12; Metra Init. Br. at 13-24; CTA Init. Br. at 17-25; *see also* REACT Ex. 2.0 at 12-19, Lines 243-393; REACT Ex. 6.0 at 5-6, 14-17, Lines 103-21, 290-374; Staff Ex. 18.0 at 18, Lines 402-03; IIEC Ex. 5.0 at 3-4, 7-8, Lines 24-44, 122-31; IIEC Ex. 7.0 at 2-3, Lines 15-41; City of Chicago Ex. 2.0 at 3, 5, Lines 69-73, 116-18; DOE Ex. 2.0 at 2-3, Lines 21-23, 26-59; Metra/CTA Ex. 3.0 at 4, Lines 10-25; BOMA Ex. 5.0 at 4, Lines 35-38.)

- **Customer-specific cost of service studies are possible for the over-10 MW customer classes.** (*See* Tr. at 1646, Lines 7-8; Tr. at 1654-55, Lines 9-22, 1-3; s*ee also* REACT Init. Br. at 23-26, 31-35.)

2. Several Parties Favor A Customer-Specific Cost Study For ComEd's Largest Customers

Several parties now favor some form of an individualized cost study for some or all over-10 MW customers. (*See, e.g.*, REACT Init. Br. at 31-35; IIEC Init. Br. at 65-67; Metra Init. Br. at 2, 15, 24; CTA Init. Br. at 16, 25-26.) Given that there are a relatively small number of over-10 MW customers (there are only 79), and given that the parties advocating for some form of individualized cost study represent a large proportion of that group of customers, it would be reasonable to say that there is a consensus position among the particularly affected stakeholders on this general approach.

C. Embedded Cost of Service Study Issues

1. Appropriate Study

The results of ComEd's ECOSS simply do not make sense on a number of levels.

At the most basic level, the ECOSS suggests a massive increase for the over-10 MW customers that is inconsistent with the overall requested rate increase. The results of ComEd's ECOSS suggest that the over-10 MW customer classes should receive **129.4% and 140.4% rate increases** in the context of a case in which ComEd has proposed an **overall 21% rate increase for its customers**. (*See* REACT Init. Br. At 35-36.) These results would suggest ***either*** that there are subsidies in ComEd's current rates ***or*** that the over-10 MW customers have done something to change their usage that would justify an increase. However, ComEd's President acknowledged that ComEd's current rates do not contain cross-subsidies. (*See* Tr. at 108, Lines 3-9). Additionally, ComEd has admitted that the over-10 MW customers "didn't do anything" that would justify the increase. (Tr. at 1542, Lines 3-7. *See also* Tr. at 123, Lines 3-7.)

The application of the ECOSS as a basis to justify ComEd's proposed rate increase has been seriously questioned in the instant proceeding. (*See* REACT Init. Br. at 26-27; IIEC Init.

Br. at 52-70, 79-81; DOE Init. Br. at 2-12; Metra Init. Br. at 13-24; CTA Init. Br. at 17-25; s*ee also* REACT Ex. 2.0 at 12-19, Lines 243-393; REACT Ex. 6.0 at 5-6, 14-17, Lines 103-21, 290-374; Staff Ex. 18.0 at 18, Lines 402-03; IIEC Ex. 5.0 at 3-4, 7-8, Lines 24-44, 122-31; IIEC Ex. 7.0 at 2-3, Lines 15-41; City of Chicago Ex. 2.0 at 3, 5, Lines 69-73, 116-18; DOE Ex. 2.0 at 2-3, Lines 21-23, 26-59; Metra/CTA Ex. 3.0 at 4, Lines 10-25; BOMA Ex. 5.0 at 4, Lines 35-38.) The nature of the ECOSS's flaws render it particularly invalid for setting rates for ComEd's over-10 MW customers. Among the ECOSS's problems are:

- Including the cost of secondary wire in the cost for the over-10 MW ratepayers;
- Including the cost of distribution lines in the high voltage class when many of the those ratepayers use no distribution lines whatsoever;
- Assuming that the age of the lines, the quantity of poles, and the spans of primary under-ground and overhead lines will be the same for over-10 MW ratepayers as other ratepayers if the non-coincident load is the same; and
- Assuming the cost of tree trimming, the cost of underground cable repairs, and other distribution line costs will be the same for over-10 MW ratepayers as other ratepayers if the load is the same.

(*See* REACT Ex. 6.0 at 5-6, Lines 105-21.)

It simply would be inappropriate for the Commission to rely upon ComEd's ECOSS to allocate ComEd's rate increase to the over-10 MW customer classes.

2. Primary/Secondary Split

One major flaw in ComEd's ECOSS is illustrated by the case of secondary wire. (*See id.* at 14-16, Lines 298-346; *see also* REACT Init. Br. at 29-31.) For example, under ComEd's ECOSS, ComEd assigns as much secondary wire to a single 10 MW customer as it assigns to

1,000 residential customers. (*See* REACT Ex. 6.0 at 14, Lines 299-300.) REACT and IIEC have discussed this issue in detail and demonstrated why it is inappropriate to allocate any cost of secondary wire to the class. (*See id.;* IIEC Init. Br. at 63-70; IIEC Ex. 3.0 at 12-27, Lines 199-439.)

ComEd's response on this issue is curious, to say the least. ComEd seems to admit that there is a problem with its ECOSS regarding the primary/secondary split, but asserts that the Commission should ignore the problem, since the rate increase as currently proposed would allegedly be less than if ComEd adopted the primary/secondary separation proposal that IIEC advanced. (*See* ComEd Init. Br. at 93.)

Thus, ComEd has **admitted** a defect in the ECOSS and has **admitted** that a correction of that defect "would likely reduce the total cost allocation to customers in the Extra Large Load, High Voltage, or Railroad delivery classes." (ComEd Init. Br. at 93.) These are significant admissions by ComEd. ComEd's proposed "solution" to the problem, however, is to ask the Commission to just let the issue go, because the *current* rate increase impact is insufficient to invalidate the entire ECOSS. The Commission should not endorse ComEd's view – certainly ComEd's view is totally at odds with the Act's requirement that ComEd bear the burden of proof to justify its proposed rate increase. (*See* 220 ILCS 5/9-201(c).) If the ECOSS is faulty, as ComEd now admits, then the ECOSS should not be used as the basis for allocating ComEd's proposed rate increase.

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

REACT and several other parties continue to advocate some form of individualized cost-of-service study for over-10 MW customers. (*See* REACT Init. Br. at 31-35; IIEC Init. Br. at 65-67; Metra Init. Br. at 2, 15, 24; CTA Init. Br. at 16, 25-26.)

ComEd reiterates in its Initial Brief the same basic response it has maintained throughout: that such studies would be "impractical and inappropriate." (ComEd Init. Br. at 96.) In other words, ComEd continues to assert that the cost of such studies would outweigh the benefits, even though ComEd has not presented any specific evidence regarding the costs or the benefits. As a matter of fairness and sound policymaking, the Commission should reject ComEd's assertion.

ComEd's implication that individual audits of its 79 largest customers would be unjustifiably expensive or impractical is ironic where ComEd itself has proposed to raise rates for these very customers by **tens of millions of dollars *per year* based upon the faulty ECOSS**. (*See* ComEd Ex. 33.0 at 2, Lines 31-33.) Moreover, ComEd has not hired a single expert to evaluate the actual costs to serve these 79 customers, while it has hired many experts to defend the flawed ECOSS and advocate for ComEd's proposed higher overall revenue requirements. (*See* REACT Ex. 6.0 at 12, Lines 252-58.) From a customer perspective, the costs and inconvenience associated with allowing ComEd to rely upon its flawed ECOSS study obviously dwarfs the cost of requiring ComEd to perform audits for each of the 79 individual very large ratepayers. (*See id.* at 7-10, Lines 137-211.)

Furthermore, ComEd's Initial Brief does not take issue with the basic points that REACT and other parties have made repeatedly throughout this proceeding in support of individualized cost studies for over-10 MW customers.

- The ECOSS misallocates numerous costs, including the cost of secondary wire, to the over-10 MW customers. (*See* REACT Init. Br. at 28-29; IIEC Init. Br. at 54-70.)
- Individualized cost studies would be more accurate than the ECOSS. (*See* REACT Init. Br. at 33-35.) ComEd has failed to explain why reliance upon actual costs would be inappropriate; indeed, ComEd's own witness made comments regarding the need to

measure actual costs in an embedded cost of service study. (*See* ComEd Ex. 33.0 at 4, Lines 66-68.)

- Performing individualized cost-of-service studies for ComEd's 79 largest customers is feasible. (*See* REACT Init. Br. at 35; REACT Ex. 6.0 at 19-20, Lines 417-50; REACT Cr. Ex. 19, ComEd Response to REACT Data Request 4.28.)
- Performing individualized cost-of-service studies is consistent with ComEd's stated desire to "move toward cost." (*See* REACT Init. Br. at 35; REACT Ex. 6.0 at 17, Lines 380-84.)
- The rate level ComEd has proposed for its largest ratepayers is very high relative to the rates other utility companies charge their largest customers. (*See* REACT Ex. 6.0 at 22, Lines 483-98.)
- ComEd's repeated assertion that the over-10 MW customers are being "subsidized," is contrary to the Commission's observations in prior cases, such as ICC Docket No. 05-0597. (*See* REACT Ex. 6.0 at 11-13, Lines 235-81.)
- Performing individualized cost-of-service studies is consistent with the principle of avoiding cross subsidization. (*See id*.)

Nothing in ComEd's Initial Brief changes that fact that in the end the Commission basically has two policy alternatives: blindly adhere to ComEd's admittedly flawed ECOSS; or, direct ComEd to measure the cost to serve the customers through audits of actual costs for each of the 79 customers, so as to evaluate rate levels relative to the depreciated cost that ComEd actually has on its books for equipment installed to serve each customer. The record evidence, fairness, and sound policy all support the Commission ordering ComEd to perform individualized cost studies.

D. <u>Rate Impact Analysis</u>

1. ComEd Does Not Rebut The Fact That Its Proposed Rate Increase For Its Over-10 MW Customers Is Quintessential "Rate Shock"

ComEd's Initial Brief fails to come to grips with the "rate shock" issue that its President claimed was a matter of concern to ComEd. (*See* Tr. at 108, Lines 10-17; *but see* ComEd Init. Br. at 101.) Mr. Mitchell acknowledged that even though ComEd's current rates do not contain cross-subsidies, ComEd has requested **an increase of over 125% for its largest customers**, in the context of a case in which ComEd is seeking a delivery services rate increase of approximately 21% for its residential customers. (*See* Tr. at 108, Lines 3-9; Tr. at 109-10, Lines 19-21, 14-16; Tr. at 110-11, Lines 20-22, 1; Tr. at 111-12, Lines 5-22, 1-13.) Yet, ComEd's Initial Brief skirts the issue, providing little more than an assertion that ComEd's enormous proposed rate increase would be a "measured movement to cost." (ComEd Init. Br. at 101.)

ComEd apparently has conceded the evidence REACT presented regarding the sheer size of the increases faced by over-10 MW customers, as expressed both in percentage increases and in actual dollars (*see* REACT Init. Br. at 35-37):

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

Further, ComEd does not, and cannot dispute the fact that the increases faced by over-10 MW customers are grossly out of proportion to the much lower increases for other customer classes (*see* REACT Init. Br. at 37-38):

- ComEd proposals for **129.4% and 140.4% rate increases for the over-10 MW** customer classes come in the context of a case in which ComEd has proposed an **overall 21% rate increase for its customers**. (*See* REACT Ex. 1.0 at 10, Lines 230-37; REACT Ex. 5.0 at 7, Lines 132-35.)

The over-10 MW customers themselves have done nothing that would justify such a drastic increase in the rates that they are charged. (*See* Tr. at 123, Lines 3-7; Tr. at 1542, Lines 3-7.) Even if the Commission were to set aside the fact that ComEd has failed to provide adequate justification for its proposed increase for its over-10 MW customers, the enormity of the proposed increase for these customers is inappropriate in this context.

2. ComEd Offers Nothing to Guard Against The Potential Negative Rippling Economic Effect

ComEd's Initial Brief fails to confront the question of the negative rippling economic effects that could flow from the proposed increases for over-10 MW customers – some of the largest employers in Illinois. (*See* REACT Init. Br. at 40.) This is odd because this issue has been advanced by both REACT and IIEC since the inception of this proceeding. (*See* REACT Ex. 5.0 at 7-8, Lines 147-51; REACT Init. Br. at 32, 40-41; IIEC Ex. 7.0 at 14, Lines 265-81.) This point was echoed by Illinois Retail Merchants Association President and Commercial Group witness Mr. Vite, who acknowledged the propriety of the Commission taking into consideration the fact that these types of increases threaten a negative, rippling effect, in terms of employment and other effects on the community. (*See* Tr. at 1684, Lines 10-16.)

Of course, as a matter of Illinois law, the Commission is required to consider the impact of ComEd's proposal upon these customers. (*See Abbott Laboratories, Inc. v. Illinois Commerce*

Comm'n, 289 Ill. App. 3d 705, 716, 682 N.E.2d 340, 350 (1st Dist. 1997) ("A determination of what is 'just and reasonable' involves a *balancing* by the Commission of the interests of the utilities' stockholders and the utilities' consumers. **The Commission cannot fulfill its statutory duty to balance the competing interests of stockholders and ratepayers without taking into account the impact of proposed rates on ratepayers**.") (internal citations omitted) (emphasis added).) This requirement has been codified in the Customer Choice and Rate Relief Act of 1997 with respect to the Commission's review and approval of delivery services rates: "The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and **shall take into account customer impacts** when establishing such charges." (220 ILCS 5/16-108(d) (emphasis added).)

The magnitude of the rate increase proposed for the largest customers, be them businesses or governmental entities, is obvious. Likewise, it is obvious that the entire business climate in Northern Illinois could be put under substantial stress if the Commission were to accept ComEd's proposal. The rate impact that ComEd's proposed allocation of its rate increase would have upon its largest customers provides an independent basis for the Commission to reject ComEd's ECOSS. (*See* Staff Init. Br. at 98.)

3. Even ComEd's "Mitigation" Plan Constitutes Rate Shock

ComEd's proposed "mitigation" plan is unacceptable. (*See* REACT Init. Br. at 42-45.) REACT agrees with DOE that the impact of ComEd's "mitigation" plan, which still would result in massive, disproportionate rate increases for ComEd's largest customers, constitutes rate shock on any reasonable scale. (*See* DOE Init. Br. at 14; s*ee also* REACT Init. Br. at 45-48.) ComEd offers nothing to seriously challenge this view, and instead relies simply on generalizations about "measured movement to cost." (ComEd Init. Br. at 101.)

Apparently, ComEd is hoping that the Commission will measure ComEd's current request for unjustified, outrageous, massive rate increases against ComEd's original proposal which was equally unjustified, more outrageous, and even more massive. The characterization of the rate increases that ComEd now advocates as "measured" in any way, shape, or form is nothing short of absurd. ComEd's proposed increases for its over-10 MW customer classes are quintessential rate shock.

E. <u>Interclass Allocation Issues</u>

1. <u>Across-The-Board Increase</u>

a. <u>A Growing Consensus Favors an Across-the-Board Increase</u>

A relatively broad consensus has now formed in favor of limiting any rate increase to an across-the-board increase. (*See* REACT Init. Br. at 41-42; Staff Init. Br. at 96-101; DOE Init. Br. at 13; IIEC Init. Br. at 4, 53, 78-82; Metra Init. Br. at 7, 25-26; CTA Init. Br. at 26-27; Nucor Init. Br. at 3, 10.) ComEd responds that such an increase "does not reflect the costs customers impose on the system." (ComEd Init. Br. at 99.) This statement implies, of course, that ComEd has a valid cost-of-service study upon which to determine the "costs customers impose on the system." On that point, again, there is a robust consensus, based on substantial record evidence, that seriously undercuts the validity of ComEd's ECOSS as a basis to determine those costs. (*See* REACT Init. Br. at 26-27; IIEC Init. Br. at 52-70, 79-81; DOE Init. Br. at 2-12; Metra Init. Br. at 13-24; CTA Init. Br. at 17-25.) Thus, until there are fundamental changes in how ComEd develops its cost-of-service study for the over-10 MW customer classes, the Commission simply should limit the percent rate increase those classes receive to the overall system-wide average increase. (*See* REACT Ex. 6.0 at 6, Lines 125-32.)

Even the AG, who does not explicitly question the ECOSS, suggests the system-wide average increase is the preferred answer to dealing with an invalid ECOSS. (*See*, *e.g.*, AG Ex. (SJR) 6.0 at 7, Lines 159-61.) Interestingly, ComEd witness Mr. Alongi – who *does* support the ECOSS – admitted that an across-the-board increase was the preferable alternative in the event of an invalid ECOSS. (*See* Tr. at 2091-92, Lines 16-22, 1-11.) Further, in ComEd's last rate case, the Commission rejected ComEd's ECOSS as applied to the over-10 MW customers, and assigned a system-average increase to these customers, based upon a joint request made in part by ComEd. (*See* Order, ICC Docket No. 05-0597 at 196 (July 26, 2006).) ComEd conveniently omits this piece of history from its discussion of this issue.

b. An Across-The-Board Or System-Average Increase Is Preferable To ComEd's "Mitigation" Proposal

The across-the-board proposal or assigning a system-average increase is preferable to ComEd's "mitigation" proposal. ComEd's "mitigation" plan merely would delay imposition of the full brunt of the enormous rate increase that ComEd is proposing for the over-10 MW customers. Even the initial increase under ComEd's Proposal would be severe, and the "phase in" of that increase is largely immaterial. (*See* REACT Init. Br. at 42-47.) As REACT witness Fults explained:

> In sum, ComEd is asking the Commission to send the following message to the largest companies that are evaluating whether to locate or expand in Northern Illinois: electric rates are high now; electric rates are going to get shockingly higher in the very near future; and for the foreseeable future, electric rates will continue to increase at an alarming rate. If the Commission were to accept ComEd's proposal, it might be more appropriate to refer to the Commission as the Illinois ***Anti***-Commerce Commission.

(REACT Ex. 5.0 at 5, Lines 96-102. (emphasis in original).)

2. **Other Rate Moderation/Mitigation Proposals**

a. **ComEd Has Failed to Justify Its Proposed "Mitigation" Plan**

ComEd contends that its proposed "mitigation" plan constitutes a "measured movement to cost" based on "tradition[al] cost-causation principles to ensure that all customers are paying their fair share for distribution services, or moving in that direction." (ComEd Init. Br. at 101 [correction added]) This position is unconvincing for several reasons.

First, there is nothing "measured" about ComEd's proposal. Rather, it imposes a massive, disproportionate rate increase upon over-10 MW customers. (*See* REACT Init. Br. at 42-48.)

Second, in light of the evidence invalidating the ECOSS, particularly with regard to the over-10 MW customers, it is intellectually dishonest for ComEd to represent that it is actually moving away from alleged subsidies and toward cost. (*See id.* at 48-49.) Indeed, ComEd's President and CEO explained that no such subsidies exist. (*See* Tr. at 108, Lines 3-9.)

Third, approving a "mitigation" plan now would act as an "endorsement" for another massive rate increase in the future. The "mitigation" plan appears to be a fairly transparent attempt to obtain the Commission's approval of the flawed ECOSS approach now, with the prospect that ComEd can come back later (likely very soon) to collect on the remaining "balance" of the increase that is due under the ECOSS approach. (*See* REACT Init. Br. at 44.)

The Commission should not view ComEd's "mitigation" plan as somehow occupying a reasonable middle ground. Rather, the Commission should recognize that ComEd's plan is merely an attempt to hide the glaring flaws in ComEd's ECOSS, and provide cover for ComEd to impose multiple massive rate increases upon its largest customers.

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

1. ComEd Fails To Rebut The Fact That <u>It Is Charging Supply-Related Costs In Its Delivery Services Rates</u>

Fundamentally, ComEd cannot escape the fact that it is charging supply-related costs in its delivery services rates. Thus, ComEd cannot square its claim of proper cost allocation with reality. (*See* ComEd Init. Br. at 116; *but see* REACT Init. Br. at 51-53.) In reality:

- **ComEd's failure to properly allocate supply costs violates the principle that costs generally should be assigned to cost-causer.** (*See* REACT Init. Br. at 49.)
- **ComEd's failure to properly allocate supply costs would result in improper cross subsidization.** (*See id.* at 49-51.)
- **ComEd's failure to properly allocate supply costs is anti-competitive.** (*See id.* at 50-51.)

REACT is not alone in recognizing ComEd's misallocation of supply-related costs. Importantly, Staff and the Commercial Group agree with REACT on this issue. Staff seriously questions the *bona fides* of ComEd's purported explanation of its cost allocation approach and its rationale for criticizing REACT's position, while the Commercial Group openly endorses the analysis of REACT witness Mr. Merola. (*See* Staff Init. Br. at 106; Commercial Group Init. Br. at 12-13.) ComEd has misallocated more than $64.8 million of Customer Care supply-related costs to delivery services rates.

2. ComEd Fails To Rebut The Fact That <u>Certain Costs Are Undeniably Supply-Related</u>

As noted above and in REACT's Initial Brief at pages 49 to 60, the evidence establishes without doubt that certain disputed costs are supply-related rather than delivery services-related. At the live hearings, ComEd witnesses made statements that confirm this fact.

The cross-examination of Paul Crumrine, ComEd's Director, Regulatory Strategies & Services, and that of Sally Clair, ComEd's Senior Vice President, Customer Operations, illustrated the point that ComEd has misallocated supply-related Customer Care Costs.

Not surprisingly, Mr. Crumrine and Ms. Clair started out asserting the ComEd party line about allocation of Customer Care Costs, initially stating that 100% of Customer Care Costs are attributable to the delivery services function. (*See* Tr. at 1382-84, Lines 10-14, 20-22 and 1-18; Tr. at 274, Lines 21-22; Tr. at 276, Lines 13-16.) However, after questioning, it became clear that the company line was totally untenable. Ms. Clair admitted, for example, that even if a call center employee is answering a customer question that relates *solely* to a procurement question, all expenses associated with that call center employee would be deemed 100% delivery services by ComEd. (*See* Tr. at 287-89, Lines 15-22, 1-22, 1-6.) Mr. Crumrine likewise recognized the problem with ComEd's position and admitted that he, in fact, could not take the position that Customer Care Costs are 100% attributable to delivery services. (*See, e.g.*, Tr. 1387-88, Lines 14-22, 1-5; 1389-90, Lines 16-22, 1-2.) This means that the operative question for the Commission is *not whether* Customer Care Costs should be assigned to supply, but rather *what amount* of such costs should be assigned to supply. REACT witness Mr. Merola provided the answer: more than $64.8 million.

3. <u>ComEd's Position On Customer Care Costs Lacks Credibility</u>

Rather than confront the facts in the record, ComEd attempts to parse "supply-related" costs in a manner that makes the concept unrecognizable. (*See* ComEd Init. Br. at 117-19.) In fact, REACT has advanced the common-sense notion that costs associated with the supply-function should be allocated, at least in part, to supply rather than delivery services rates. ComEd's position, in stark contrast, violates a basic tenet of cost of service studies: while costs solely related to one function should be directly assigned to that function, costs that are related to multiple functions must be allocated between those functions. Notably, ComEd stands alone in the instant proceeding in claiming that none of its Customer Care Costs are properly allocated to its supply function.

a. ComEd Mischaracterizes REACT's Position

The crux of ComEd's argument is that REACT has not proven that Customer Care Costs are "***solely*** supply-related." (ComEd Init. Br. at 118 (emphasis added).) This is an obvious mischaracterization of REACT's position and is a classic example of creating a false, "straw man" argument in order to try to attempt to rebut REACT's position that has facts on its side. REACT has not attempted to prove that Customer Care Costs are ***solely*** supply-related. Rather, REACT has proven – and ComEd now has admitted – that Customer Care Costs are related to ***both*** supply and delivery services.

Ironically, in ComEd's Initial Brief, one sentence after accusing REACT of arguing that Customer Care Costs are "solely supply-related," ComEd shoots itself in the foot, stating: "For example, it is unclear why the Credit and Collections function may be properly considered supply-related. **Bad debt affects both supply and distribution charges** . . .." (ComEd Init. Br. at 118-19 (internal citations omitted) (emphasis added).) Thus, ComEd actually recognizes exactly what REACT is arguing – that Customer Care Costs are associated with both supply and distribution functions.

Far from maintaining that Customer Care Costs are "solely supply-related," REACT witness Mr. Merola performed an analysis of ComEd's Customer Care Costs and presented a conservative recommendation that **only 40%** of those costs should be allocated to ComEd's supply rates. (*See* REACT Init. Br. at 53-56.) Thus, contrary to ComEd's false charge, REACT has explained that 60% of the Customer Care Costs are properly allocated to delivery services. That is, when ComEd incurs costs that relate to both its supply function and its delivery services function, the question becomes how those costs should be allocated. Only Mr. Merola has supplied the answer to that question. The answer is simply that more than $64.8 million of Customer Care Costs that ComEd has allocated to delivery services must be allocated to supply charges.

The Commission need not solely rely on REACT's word here. Staff articulated this point very clearly in its Initial Brief, stating:

> ComEd points to no evidence that shows that 100% of the Customer Care Costs are caused by providing the distribution function. For example, Mr. Crumrine states that 'the Billing and Customer Support function exists regardless of whether or not a customer is a supply customer.' **However, the question is not whether ComEd should provide these functions (or even whether to recover the costs associates with these functions.) Rather, the question is whether zero % of the associated costs are caused by the fact that ComEd is the supplier of energy**. Similarly, Mr. Crumrine states that 'REACT has not adequately explained the basis for deeming any of these functions to be solely supply-related', **although it appears that REACT is not claiming that any of these functions is *solely* supply-related. REACT seems to be arguing that *some portion* of these functions are supply-related but not the sum total**.

(Staff Init. Br. at 106 (italics in original; bold provided).) Likewise, the Commercial Group, a group of predominantly under-10 MW customers that does not generally support REACT's views in this case, indicated in its Initial Brief that it supports REACT's analysis and proposal that more than $64.8 million in Customer Care Costs be allocated as supply-related costs. (*See* Commercial Group Init. Br. at 12-13.) Of course, ComEd's attempt to discount this cost allocation issue as an attempt to create "headroom" does not apply to the independent analysis and support of Staff and the Commercial Group. (*See* ComEd Init. Br. at 117; *but see* Staff Init. Br. at 106; Commercial Group Init. Br. at 12-13.)

b. <u>REACT's Position Relies Upon a Valid, Reasonable Analysis</u>

ComEd's suggestion that Mr. Merola's analysis and resulting 40% allocation factor is "completely arbitrary" is false. (ComEd Init. Br. at 117.) Mr. Merola is an ***expert*** witness, with over 17 years of diversified experience in the energy industry, including substantial experience analyzing competitive energy issues and testifying in a variety of forums – ComEd does not and cannot question his qualifications. Mr. Merola's expert analysis was reasonable based on the available data (keeping in mind that ComEd refused to provide additional data and does not track meaningful statistics relevant to the analysis and thus should not now be permitted to criticize Mr. Merola's analysis for lack of data).

ComEd does not and cannot deny that Mr. Merola's approach is entirely consistent with the embedded cost approach that ComEd has proposed for other cost allocation issues: examining actual historic costs; making reasonable assumptions regarding usage of specific assets for different customers. (*See generally* REACT Ex. 7.0 at 18-22.)

Further, ComEd does not and cannot deny that Mr. Merola's analysis adopted a conservative approach:

- Mr. Merola explained that one rational means of allocating these costs would be based on the share of revenue associated with supply compared to the share of revenue associated with distribution. Clearly, supply represents a much higher percentage of a customer's bill than does distribution, and under that methodology the allocation factor would likely be in the range of 67%. (*See id.* at 20, Lines 436-41.)
- However, instead of applying such a rough allocator for these costs, Mr. Merola adopted a more conservative, analytic approach to determine a reasonable allocation of ComEd's $162,150,019 Customer Care Cost revenue requirement for fixed-price bundled customers, concluding that 40%, or $64,860,008, of ComEd's Customer Care Costs should be allocated to the supply function. (*See id.* at 20-21, Lines 441-54.)

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

ComEd had the opportunity to develop actual data allocating Customer Care Costs between supply and delivery; ComEd also had the opportunity in its surrebuttal to challenge Mr. Merola's allocations by providing allocation factors of its own. ComEd did neither. Instead, ComEd chose to stand by its original position that there is **nothing** to allocate. The Commission should be mindful that ComEd bears the burden of proof in the instant proceeding. (*See* 220 ILCS 5/9-201(c).) Yet, it is indisputable that ComEd's position that it incurs zero supply-related Customer Care Costs cannot withstand scrutiny – particularly given its own witnesses' admissions. (*See* Tr. at 282, Lines 6-15; Tr. at 1382-87; REACT Init. Br. at 50-56.)

By failing to provide the Commission with an alternative supported by evidence contrary to Mr. Merola, ComEd leaves the Commission in the position to chose between Mr. Merola's careful study of those costs and ComEd's admittedly incorrect assumptions. The choice clearly should be in favor of allocating the costs based upon Mr. Merola's expert recommendation.

4. The Definition Of "Delivery Services" Does Not Preclude Appropriate Allocation Of Supply-Related Costs

At one point in addressing the cost allocation issue, ComEd seems to suggest that the definition of "delivery services" in the Act somehow precludes the Commission from properly allocating some supply-related costs to ComEd's supply function. According to ComEd:

> The very definition of delivery service [sic] includes metering and billings services: "Delivery Services means those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services."

(ComEd Init. Br. at 119.) ComEd overstates its case. The definition of "delivery services" does not prevent any category of costs from being both a supply-related cost and a distribution-related cost. Put another way, that definition does not delineate how costs should be "functionalized" or allocated between the utility's transmission, distribution, and supply-related rates. Indeed, if the Commission were to use that definition as the sole guidepost for what costs should be recovered in ComEd's delivery services rates set in the instant proceeding, *transmission services* would be included, because "delivery services" include those services necessary for the "transmission and distribution systems" to function. That result would be absurd. Just as there are categories of costs that relate to both transmission and distribution (and thus must allocated), so too there are types of costs (such as Customer Care Costs) that relate to both the supply function and the distribution function, and thus must be allocated.

Further, it should be noted that Mr. Merola's conservative analysis did not allocate any meter reading expenses to the supply function (*see* REACT Ex. 7.0 at 409-12); and even ComEd recognized that there must be some allocation of billing-related costs to the supply function; the only question is how much is appropriate. (*See* ComEd Ex. 12.3_SAC, page 3; *see also* REACT Ex. 7.0 at 363-485.) Again, the answer to that question is that more than $64.8 million in Customer Care Costs should be reallocated from ComEd's proposed distribution rates to its supply rates.

5. ComEd's Proposed Misallocation Of Supply-Related Costs Is Anti-competitive

ComEd does not attempt to debate whether misallocation of supply-related costs is anti-competitive – instead, incredibly, ComEd asserts that competitive issues are off-limits in this proceeding. (*See* ComEd Init. Br. at 120.) Thus, Mr. Merola's testimony on this point stands unopposed. (*See* REACT Init. Br. at 51.)

Of course, the Commission can look to prior ComEd delivery services rate cases - including the testimony of ComEd and Staff witnesses in those cases - to confirm precisely the argument that REACT makes today.

For example, in ComEd's inaugural delivery services rate case, ICC Docket No. 99-0117, ComEd itself presented an expert witness who testified about the need for pricing that would **"improve the efficiency of competition"** and the need for new market entrants to have **"correct distribution price signals.**" (*See* ICC Docket No. 99-0117, Aug. 26, 1999 Order at 52 (emphasis added).) In that same proceeding, **Staff explained that allocating any of the supply-related sales and marketing costs to distribution "would undermine the goal of creating a level playing field for providers in the emerging electricity market."** (*Id.* at 24 (emphasis added).) In that case as in this case, competitive market issues are inextricably intertwined with the question of the proper setting of delivery services rates. Misallocating supply costs into delivery services rates affects the price of electricity in the competitive market. (*See generally* Tr. at 2231-33; REACT Cr. Ex. 18.) Specifically, artificially increasing delivery services charges means improperly lowering ComEd's supply-related charges to ComEd Rate BES customers. An incorrect allocation would result in an incorrect price signal in both the supply and delivery of energy, and effectively inhibits development of competition. Further, it forces customers that choose a RES to pay twice for the same Customer Care services – once to ComEd for services the customer does not use, and a second time to the RES for services it does use. (*See* REACT Ex. 7.0 at 4, Lines 88-90.) ComEd's proposal clearly would inhibit the development of the competitive retail electric market.

6. ComEd Has Failed To Address Its Incentive To Inhibit Retail Competition For Its Smallest Customers

ComEd's Initial Brief fails to address the incentive that ComEd has to inhibit the development of retail competition. No doubt, ComEd professes to support residential competition, and recognizes the benefits that competition can deliver to these customers, if competition is allowed to develop. However, ComEd's actions speak louder than its words, and require an inquiry into its role and potential motive for suppressing competition for its residential and smallest commercial customers.

REACT has explained the incentives that exist. First, ComEd has a profit motive because ComEd can increase short-term revenues based upon inaccurate residential switching projections. (*See* REACT Init. Br. at 71-72.) Second, ComEd's sister company Exelon Generation is able to sell more supply to ComEd under the supplier forward contracts if ComEd suppresses competition for its residential and smallest commercial customers. (*See id.* at 72-73.) Based upon the market conditions that existed at the time ComEd had to make policy decisions related to the positions it would take in this proceeding, it appears that Exelon had a corporate incentive to have ComEd retain those customers. (*See id.*)

REACT articulated this issue repeatedly in its testimony and at the live hearings. (*See* REACT Ex. 7.0 at 5-7, Lines 110-46; Tr. at 117, Lines 3-10; Tr. at 2231-32, Lines 21-22, 1-17.) ComEd's failure to respond to this issue in its Initial Brief should be viewed as improper gamesmanship and an admission. (*See, Autotech Tech.*, 235 F.R.D. at 437; *In re Meyer*, 197 B.R. at 280.) Certainly, if ComEd has a response, ComEd should not be allowed to hold back that response until its reply brief, in the hopes that the Administrative Law Judges will give its untested position any weight. Gamesmanship on such an important issue should not be tolerated.

IX. <u>Rate Design</u>

A. <u>Overview</u>

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

ComEd's proposed rate design in the instant proceeding is flawed from the perspective of both ComEd's largest and ComEd's smallest customers.

It continues to be the case that ComEd has not even come close to answering REACT witness Bodmer's question: **What did the over-10 MW customers do to deserve such a massive, disproportionate rate increase?** (*See* REACT Init. Br. at 38-40, 60-61 (emphasis added).) Of course, ComEd's counsel has provided that answer: "**they didn't do anything** . . .." (Tr. at 1542, Lines 3-7 (emphasis added).)

Moreover, ComEd's claim in its Initial Brief that the massive, disproportionate rate increase is necessary to eliminate cross-subsidies is contradicted by its President and CEO, who testified that the current rates do not contain such cross-subsidies:

> Q: Do you believe that ComEd's current rates have avoided cross-subsidies between classes?
>
> A: In the current rates, I believe that it's a fair allocation amongst our customers, our classes of customers.
>
> Q: And that they have avoided cross-subsidies?

A: I believe so.

(Tr. at 108, Lines 3-9.)

In the meantime, ComEd still has not explained why it objects to properly allocating supply-related costs to its supply rates. ComEd's complete failure to address competitive market issues, at best, shows a complete lack of appreciation for the impact its decisions have upon the retail electric market; at worst, it is evidence of an effort to manipulate the process to advantage ComEd or its affiliates.

2. Widespread Agreement Regarding Guiding Philosophies

a. Cost Causer Should Pay Costs

None of the parties' initial briefs seriously questioned the proposition that cost causers should pay the costs caused. In the context of the instant proceeding, this is a non-controversial statement.

b. Identifying Cross-Subsidies Requires an Accurate Cost Study

Similarly, it is not controversial to conclude that the identification of cross-subsidies between or among different customer classes requires an accurate cost-of-service study. (*See* REACT Init. Br. at 22-23; CTA Init. Br. at 17-22; DOE Init. Br. at 3; IIEC Init. Br. at 55, 81.) Mr. Alongi, ComEd's Manager, Retail Rates, admitted this fact repeatedly, as did other witnesses presented as qualified to testify on that point. (*See generally* Tr. at 2097-99 (Mr. Alongi); Tr. at 2250, Lines 4-14 (Mr. Alongi); REACT Ex. 6.0 at 23, Lines 509-19 (REACT witness Mr. Bodmer); Tr. at 1558, Lines 17-20 (Mr. Bodmer); Tr. at 1644, Lines 4-10 (Commercial Group witness Mr. Baudino).)

c. <u>Individualized Cost Analysis for Over-10 MW Customers Would be Feasible and Consistent with ComEd's Goal of "Moving Toward Cost"</u>

As discussed in Section VIII.C herein and from Section VIII.C of REACT's Initial Brief, it is well-established in the evidentiary record that requiring ComEd to perform an individualized cost analysis is both feasible and consistent with ComEd's alleged goal of "moving toward cost." (*See* REACT Init. Br. at 25-35.)

d. <u>Prudent Rate Design Should Avoid Rate Shock</u>

Although there is apparently some disagreement about whether there *is* rate shock caused by ComEd's proposed rate increase for over-10 MW customers, there appears to be no disagreement that prudent rate design *should avoid* rate shock. On this point, REACT incorporates the discussion of rate shock from Section VIII.D.1 herein and Section VIII.D.1 of REACT's Initial Brief. (*See* REACT Init. Br. at 35-37.) Certainly no party has argued that rate increases should impose rate shock and the Act specifically requires the consideration of "customer impacts" with respect to electric rates. (*See* 220 ILCS 5/16-108(d); *see also Abbott Laboratories*, 289 Ill. App. 3d at 716, 682 N.E.2d at 350.)

e. <u>Prudent Rate Design Should Consider The Wider Economic Effects Of The Proposed Rate Increase</u>

Once again, ComEd is silent in its Initial Brief on the issue of whether the Commission should consider the rippling impact its proposed allocation of its increase would have upon the Illinois economy. This is an issue that was raised by several parties, including REACT, IIEC, and the Commercial Group, both in pre-filed testimony and at the live hearings. (*See, e.g.* REACT Ex. 5.0 at 6, Lines 120-25; Tr. at 1684, Lines 10-16.) On this point, REACT incorporates the discussion of rippling economic effects from Section VIII.D.2 herein and Section VIII.D.4 of REACT's Initial Brief. (*See* REACT Init. Br. at 40-41.)

D. **Existing Riders**

1. **Rider ACT**

ComEd has not justified its proposal to eliminate or close Rider ACT. ComEd seems to blame the customers who take service under Rider ACT for creating an inconvenience for ComEd. (*See* ComEd Init. Br. at 110-12.) This approach is odd – obviously, it is not the Rider ACT customers' *fault* that Rider ACT exists. The other oddity is that ComEd places its argument in the present tense, complaining about customers that "choose" to use their own transformers. This approach tries to direct attention away from the fact that many Rider ACT customers have owned their own transformers for *decades*. To suggest that those customers are making some contemporary decision to "choose" service under Rider ACT is absurd – for the vast majority of such customers, they *chose* (past tense) to take service under Rider ACT many years ago, and ComEd cannot change that fact through subtle choice of words. Certainly ComEd's word play is not sufficient to satisfy the burden of proof that is squarely on ComEd to justify its proposal. (*See* REACT Init. Br. at 62-64.)

E. **Distribution Loss Factors**

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

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

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

ComEd's Initial Brief, characteristically, ignored these facts. Instead, it merely criticized REACT witness Mr. Fults for failing to "challenge any of the methodology or data used." (ComEd Init. Br. at 115.) This criticism misses the point. The reality is that ComEd has proposed an enormous percentage increases in the DLFs for over-10 MW high voltage customers, due to a change in ComEd's proposed methodology for calculating DLFs, not anything that those customers have not done that would justify the increase. (*See* Tr. at 546-47, Lines 21-22, 1-3.) Further, because ComEd's proposed new methodology does not calculate individual DLFs, the amount ComEd has proposed be charged to the class definitely exceeds the particular distribution loss that many of the particular customers cause.

ComEd suggests that it is somehow relevant that the Commission has in previous cases accepted ComEd's class-wide calculation of DLFs. (*See* ComEd Init. Br. at 116.) Obviously, as ComEd is surely aware, the Commission is not bound by decisions in a prior case. Indeed, absent substantial evidence in *this evidentiary record*, the Commission is without authority to increase ComEd's DLFs. (*See* 220 ILCS 5/10-201(e)(iv)(A) (mandating appellate reversal of any Commission order "not supported by substantial evidence based on the entire record of evidence presented to or before the Commission . . .. ").)

On this evidentiary record, ComEd has not justified increasing its DLFs to its over-10 MW high voltage customers. (*See* REACT Init. Br. at 64-67.)

F. Recovery of Supply Related Costs

As a general matter, REACT has addressed the issues associated with ComEd's improper allocation of supply-related costs above, in Section VIII.F of the instant Reply Brief. However, since Staff addresses these allocation issues in this section of its Initial Brief and inquires about REACT's position on a related issue, REACT will respond to Staff's question in this section. (*See* Staff Init. Br. at 107.)

Specifically, while endorsing REACT's conclusion that ComEd has misallocated supply-related Customer Care Costs, Staff indicates that "REACT needs to better explain how their cost-causation argument is in line with the cost recovery of items that enable customer choice." (*Id.*) Staff's question appears to be in response to ComEd suggestion that the "cost-causer" philosophy that supports ComEd recovering its supply-related costs in its supply charges could be used by someone at some time to suggest that all costs to enable competition – including the costs associated with ComEd providing purchase of receivables utility consolidated billing ("POR/UCB") programs – should be recovered only from those customers who choose an alternative supplier or take service under the POR/UCB programs. (*See* ComEd Ex. 43.0 (Corrected) at 34-35, Lines 749-52.) REACT addresses this issue head-on in its Initial Brief at pages 59-60.

As noted in REACT's Initial Brief, the Commission has ***never*** endorsed the concept that the costs associated with enabling customer choice should be recovered solely from customers who actually choose. Instead, the Commission repeatedly has recognized that providing customers with the opportunity to switch suppliers and promoting competition benefits all customers, and accordingly has directed that costs should be recovered from all customers. For example:

- The costs associated with Rider CB, a consolidated billing experiment that was designed to provide experience with the early stages of the competitive market, were not recovered only from those customers who took that service (*see* REACT Cr. Ex. 14; Tr. at 1369, Lines 12-14);
- The costs associated with Nature First, a demand response program administered by ComEd, are recovered from all customers (*see* Tr. at 1364, Lines 8-15);
- The cost associated with the Affinity Group Billing Experiment for the Illinois Retail Merchant Association members ("IRMA") was not recovered from the IRMA members (*see* Tr. at 1370, Lines 6-8);
- The costs associated with ComEd's recently-approved energy efficiency and demand response programs are to be recovered from all customers (*see* ICC Docket 07-0540 Order dated Feb. 6, 2008 at 22-23); and
- Of course, the original costs with creating the systems associated with customer choice were not assigned to the first customers who chose to take service from a RES (*see* ICC Docket No. 99-0117, Aug. 26, 1999 Order), and the continued costs associated with implementing customer choice were recovered from all customers, not just those who chose. (*See generally* ICC Docket No. 01-0423, March 28, 2003 Order at 24-25; ICC Docket No. 05-0597, July 26, 2006 Order at 272-94.)

Since all customers benefit by having the opportunity to choose an alternative supplier, it would be inappropriate to charge only those customers who exercise that right to choose. (*See* Tr. at 1371, Lines 4-7.) In contrast, not all customers benefit by ComEd incurring supply-related Customer Care Costs; to the contrary, only ComEd's supply customers receive that benefit.

Significantly, not even ComEd advocates that competition-enabling costs should only be recovered from those customers that choose; rather, this is a straw man that ComEd posits someone else might advocate at some later date. (*See* Tr. at 1370-71, Lines 16-22, 1-3.) As explained in REACT's Initial Brief at page 60, if someone were to raise that straw man argument in the future, it almost certainly would fail.

G. <u>Competitive Retail Market Development Issues</u>

1. Contrary To ComEd's Assertion, Competitive Retail Market Development Issues <u>Have Been Part Of The Instant Proceeding From The Beginning</u>

ComEd summarily asserts that Competitive Retail Market Development Issues have "nothing to do with the purpose of this proceeding, which is to set ComEd's distribution rates." (ComEd Init. Br. at 120.) This is a rather stunning position that disregards the history of the instant proceeding and the history of previous delivery services rate cases.

During the course of the instant proceeding:

- There was extensive evidence introduced into the record through pre-filed testimony relating to competitive market issues. (*See, e.g.*, REACT Ex. 3.0 at 4-5, Lines 77-87, at 9, Lines 172-83; REACT Corrected Ex. 7.0 at 4-7, Lines 81-146, Line 10, Lines 205-20.)

- ComEd never moved to strike a word of that testimony; nor did ComEd file a pre-hearing motion *in limine* relating to that testimony, although the case management order specifically provided for such motions *in limine*.

- All of REACT's pre-filed testimony was admitted into the record without any objection from ComEd or any other party.

- Competitive market issues were explored repeatedly at the live hearings, beginning with the cross-examination of ComEd's very first witness, ComEd CEO J. Barry Mitchell. (Tr. at 125-26, Lines 8-22, 1.) Competitive market issues were also addressed in varying degrees during the cross-examinations of ComEd witnesses Ms. Clair, Mr. Crumrine, Mr. McDonald, and Mr. Alongi / Dr. Jones. (Tr. at 259, Lines 13-16; Tr. at 1370-71, Lines 16-22, 1-7; Tr. at 1799-1800, Lines 7-22, 1; Tr. at 2230, Lines 13-20.)

- The discussion of competitive market issues included, for example, an extensive examination of ComEd witness Mr. Crumrine regarding the effect of misallocation of supply-related costs on the development of the competitive market for residential and small commercial customers. (Tr. at 1382-87.) A demonstrative exhibit used during that cross-examination that focused *precisely* on competitive market development issues was admitted into evidence without objection from ComEd. (*See* REACT Cr. Ex. 18.)

- The presiding Administrative Law Judges approved a "common" briefing outline with a specific subsection on "Competitive Retail Market Development Issues." The ALJs approved that outline over another outline that did not include a line item for "Competitive Retail Market Development Issues."[4]

In light of these facts, it is remarkable that ComEd would so cavalierly dismiss the relevance of this topic.

ComEd's attempt to completely duck these issues is all the more remarkable because competitive retail market development issues are not new to ComEd's delivery services rate cases. Since the very first ComEd delivery services rate, competitive retail market issues have been central to the proceeding. (*See* ICC Docket No. 99-0117, Aug. 26, 1999 Order at 24, 52; ICC Docket No. 01-0423, March 28, 2003 Order at 24-25; ICC Docket No. 05-0597, July 26, 2006 Order at 272-94.) Of course, given the role that ComEd has played in suppressing competition, it may be understandable that it does not want to engage on these issues. The simple fact is that competitive market issues must be considered in the context of the question of delivery services rates presented in the instant proceeding.

XII. CONCLUSION

Nothing that ComEd asserts in its Initial Brief changes the fundamental facts.

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

[4] The ALJ-approved common outline also included specific line items for "**Supply vs. Delivery Services Allocation Issues**" and "**Recovery of Supply Related Costs**" – neither of those items were included in the alternative outline.

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

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

Respectfully submitted,

THE COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

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