STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

IIEC BRIEF ON EXCEPTIONS

Eric Robertson
Ryan Robertson
Lueders, Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040
erobertson@lrklaw.com
ryrobertson@lrklaw.com

Conrad Reddick
Attorney at Law
1015 Crest
Wheaton, IL 60187
Conradreddick@aol.com

July 24, 2008

INDEX

IIEC BRIEF ON EXCEPTIONS

COME NOW the Illinois Industrial Energy Consumers ("IIEC"), by their attorneys, Lueders, Robertson & Konzen LLC and Conrad Reddick, and pursuant to 83 Ill. Adm. Code Part 200.830, and Section 10-111 of the Public Utilities Act ("Act" or "PUA") (220 ILCS 5/10-111), offer the following Brief on Exceptions to the Administrative Law Judges' ("ALJs") Proposed Order ("PO" or "Proposed Order") dated July 10, 2008.

INTRODUCTION

IIEC agrees with and supports substantial portions of the Proposed Order. However, it respectfully seeks modification of the Proposed Order to (i) clarify the Proposed Order's correct decision to limit ComEd's post test year capital additions to rate base to only the amount that exceeds accumulated depreciation (PO at 26); and (ii) clarify the Proposed Order's appropriate parallel treatment of accumulated deferred income taxes (PO at 27).

IIEC does not except to the Proposed Order's authorization of a 10.3% return on common equity for ComEd (PO at 94), but maintains its position that only a 10.2% return on common equity is appropriate, if any return other than 10.3% is considered by the Commission.

IIEC respectfully takes exception to the Proposed Order's: (i) decision to approve Rider SMP in a limited form (PO at 135); (ii) failure to accept the minimum distribution system concept (PO at 201); (iii) suggestion that the Commission should remain open to the average and peak ("A&P") method to allocate distribution related costs (PO at 201); and (iv) suggestions that customer costs, installation costs, and customer information costs are in some measure related to usage, and that ComEd should be directed to incorporate usage in the assignment of these costs to all rate classes in the next rate case. (PO at 204). IIEC also recommends certain technical and grammatical corrections to the Proposed Order.[1]

To the extent IIEC has not discussed a specific issue in its Brief on Exceptions, it should not be considered to have abandoned or waived that issue. It relies on the arguments made in its Initial Brief of May 29, 2008 and its Reply Brief of June 16, 2008, unless specifically stated otherwise herein.

Exception 1

IV. Rate Base

C. Contested Issues

1. Plant

a. Pro Forma Capital Additions

2) Impact on Test Year Rate Base

(a) Accumulated Provisions for Depreciation and Amortization

The Proposed Order presents a full airing of the arguments, precedents, and record evidence respecting ComEd's *pro forma* adjustment for plant additions. ComEd's proposed adjustment would have increased the utility's rate base by the amount of planned gross additions to plant, without taking full account of the increase in the reserve for accumulated depreciation that will occur over the same post-test year period. (PO at 17-25).

[1] IIEC's request for clarifications, exceptions and the technical/grammatical corrections are discussed below as "Exception 1" and "Exception 2", etc.

How offsets to post-test year plant additions to rate base should be recognized for ratemaking purposes has been a contentious issue in each of ComEd's recent rate cases, as well as in a recent case involving a different utility. (*See Commonwealth Edison Co.*, ICC Dkts. 05-0597, 01-0423; *Peoples Gas Light & Coke Co.*, ICC Dkt. 07-0241 (Cons.)).

Moreover, past Commission decisions on this issue, involving various utilities, have not been read as consistent. (*See* IIEC Int. Br. at 15-20). The Commission's order in this case can provide clarity, consistency, and certainty on the issue for all stakeholders. It is important, therefore, that the order (a) faithfully recount the evidence and arguments the Commission considered and (b) articulate clearly, and in appropriate detail, the rationale for the Commission's correct conclusion.

It is IIEC's understanding of the Proposed Order that it adopts the analysis and reasoning of the Commission's decision in the 2003 Ameren cases and applies that analysis and reasoning to the facts of this case. (*See* Proposed Order at 25; *Central Illinois Public Service Company (AmerenCIPS), et al.*, ICC Dkts. 02-0798, 03-0008, 03-0009 (Cons.), Final Order, Oct. 22, 2003 at 10-11) ("AIU Cases"). Since the Commission's decision in that prior case is both comprehensive and clear, IIEC suggests that incorporation of a brief portion of the Commission's analysis in that decision into the body of the Commission Analysis and Conclusion in this case would clarify the conclusion, provide clear guidance for future cases, and enhance the articulation of the Commission's reasoning in this proceeding.

Accordingly, IIEC takes exception to this portion of the Proposed Order for the limited purpose of recommending that the order be modified to describe its reasoning in this case more clearly and to acknowledge its adoption of the AIU Cases analysis. IIEC's recommended substitute language is shown immediately below.

Proposed Language

IIEC proposes that Section IV.C.1.a. - Commission Analysis and Conclusions - of the Proposed Order's discussion of this issue (PO at 25-26) be amended as shown below.

(vii) Commission Analysis and Conclusion

> The Company proposes to include pro forma plant additions through September 2008. These are plant additions that are reasonably certain to occur within 12 months from the date of filing, October 2007. This unprecedented request to include 21 months of pro forma capital additions requires a careful examination of the impact on rate base. ComEd has never requested such a significant increase in post test year capital additions. As the Commission found under its analysis in Dockets 02-0798, et al., significant post test year capital additions might be ~~be~~ allowed if they are not largely or entirely offset ~~set off~~ by contemporaneous post test year increases in accumulated depreciation. Central Illinois Public Service Company (AmerenCIPS) et al., ICC Dkts. 02-0798, 03-0008, 03-0009 (Cons.), Final Order, October 23, 2003 at 10-11. Where, as here, the known and measurable post-test year increase in accumulated depreciation is a substantial offset to proposed plant additions, a failure to recognize increased accumulated depreciation would produce an adjusted test year rate base that would not be representative of the period when the rates set in this case will be in effect. 83 Ill. Adm Code 287.40.
>
> Staff originally proposed not allowing any additions beyond December 2007, but Staff witness Griffin stated that he would consider any additional evidence the Company provided in its rebuttal testimony. Staff now supports the inclusion in rate base of actual plant additions through June 30, 2008, whether the Stipulation is adopted or not. See Staff Int. Br. at 13. This ~~reducation~~ reduction to the Company's proposed rate base ~~from the Company's proposal~~ appears to be a compromise position premised on no reduction to rate base for accumulated depreciation. Staff's proposal to rely on actual plant increases through June 2008 is not approved because it relies on data not in the record and no opportunity is afforded to intervenors to dispute the proposed exhibit.

The AG improperly seeks to replace the evidence the Company has provided regarding its pro forma capital additions with a formula based on last year's data. This is inconsistent with Section 287.40 and is rejected.

With respect to the propriety of the additions, the Company provided extensive evidence in rebuttal testimony in response to Mr. Griffin's direct testimony for its plant additions through September 2008. These additions include projects to establish service to new customers, "summer critical" projects to ensure that ComEd has adequate capacity for the summer peak season, corrective and preventative maintenance projects, projects to enhance system performance, and relocation of necessary existing facilities displaced by public works projects. Accordingly, the Company has shown that these pro forma plant additions are reasonably certain to occur. and they are approved for inclusion in base for ratemaking purposes along with the increase to ~~the extent they exceed~~ accumulated depreciation reserve recorded during the same post test year period. This allows for an accurate estimate of the impact on test year rate base of post-test year changes in plant investment over the period defined by the post test year plant additions.

Exception 2

IV. Rate Base

C. Contested Issues

1. Plant

a. Pro Forma Capital Additions

(2) Impact on Test Year Rate base

(b) Accumulated Deferred Income Taxes (ADIT)

As the Proposed Order states, for the reasons discussed above with respect to accumulated depreciation, ComEd's post test year adjustment for plant additions to rate base should also recognize the offsetting post-test year change in accumulated deferred income taxes. (PO at 27). However, the language used in the Proposed Order may be misinterpreted. The Proposed Order's "Commission

Analysis and Conclusion" on ADIT uses a phrase that is similar to language ComEd used to limit offsetting adjustments in a manner inconsistent with the order's recognition of post-test year depreciation changes. (*See*, *Id*. at 27). In its testimony and briefs, ComEd has used phrases similar to "corresponding impact of that additional plant" to recognize offsets only from the post-test year plant additions themselves, instead of the change in rate base due to offsetting post-test year increases in accumulated depreciation and ADIT.

> • ComEd claims it "made the correct adjustments needed to reflect the impacts of its proposed adjustments to plant, including its pro forma adjustments for post-test year capital additions." (PO at 26; ComEd Int. Br. at 35-36).
>
> • ComEd describes its proposal as "the adjustments needed to reflect the impacts of its proposed adjustments to plant". (ComEd Int. Br. at 32).

IIEC's exception seeks to clarify the Proposed Order's conclusion, so that there is no ambiguity about the Commission's rejection of ComEd's incomplete adjustment for ADIT.

Proposed Language

IIEC proposes that Section IV.C.1.a.(2)(b)(v) - Commission Analysis and Conclusion - of the Proposed Order (PO at 27) be amended as shown below:

(v) Commission Analysis and Conclusion

> Consistent with the Commission's analysis respecting accumulated provisions for depreciation and amortization and to the extent post-test year plant investment is added to rate base, the contemporaneous changes in ~~corresponding impact of that additional plant on~~ ADIT likewise should be recognized in the determination of the Company's rate base. ~~added to rate base.~~ Accordingly, the AG's adjustment is adopted.

Exception 3

VI. Rate of Return on Common Equity

C. Cost of Equity

IIEC notes that the Proposed Order recommends that ComEd be authorized a return on common equity of 10.3%. (PO at 94). IIEC recommends a return on common equity for ComEd of 10.2%. In order to narrow the issues in dispute in this case, IIEC accepts the Proposed Order's determination, provided ComEd is not authorized a return on common equity greater than 10.3%. If a return on common equity greater than 10.3% is considered appropriate, IIEC does not waive its position in support of a return on common equity of 10.2%. IIEC's arguments in support of a return on common equity of 10.2% are set out in its Initial and Reply Briefs. (*See*, IIEC Int. Br. at 31-41). Because IIEC does not take exception to the Proposed Order's recommendation of return on common equity of 10.3%, it does not recommend any modified language for the Proposed Order on this issue.

Exception 4

VII. New Riders

B. Rider SMP - System Modernization Projects Adjustment

6. IIEC

a. In the partial paragraph at the bottom of Page 115 of the Proposed Order, there is language that reads "Since Rider SMP adjusts rates on the basis of only selected cost elements without taking into consideration other costs or factors that would affect the utility's overall profitability." This is not a sentence. Therefore, IIEC proposes to modify the Proposed Order as suggested below.

Proposed Language

IIEC recommends the Proposed Order be amended in Section VII.B.6., at Page 115 in the partial paragraph at the bottom of the page to read as follows:

> ~~Since~~ IIEC says that Rider SMP adjusts rates on the basis of only selected cost elements without taking into consideration other costs or factors that would affect the utility's overall profitability.

b. IIEC also recommends a grammatical change in this same section. At Page 117 of the Proposed Order, in the second full paragraph, last sentence, the word "orders" should be "riders." Therefore, IIEC proposes to modify the Proposed Order as suggested below:

Proposed Language

IIEC recommends the Proposed Order be amended in Section VII.B.6. at Page 117 in the second full paragraph on the page, so that the sentence reads as follows:

> IIEC states most customers, however, have concluded that the proposed ~~orders~~ riders would violate one or more legal strictures, be bad policy and distort the regulatory process.

Exception 5

VII. New Riders

B. Rider SMP - System Modernization Projects

13. Commission Analysis and Conclusion

The Proposed Order has admirably limited the scope of Rider SMP as proposed by ComEd. (*See*, PO at 135). But, IIEC must still, respectfully, take exception to the adoption of Rider SMP under any circumstance. As explained in IIEC's Reply Brief, Rider SMP is illegal. (IIEC R. Br. at 19, 20-22). IIEC also explains its opposition to Rider SMP on policy grounds. (IIEC Int. Br. at 45-50;

IIEC R. Br. at 20-24). IIEC notes that other parties have also pointed out substantial legal problems with Rider SMP. (*See*, AG Int. Br. at 23-35; AARP Int. Br. at 4-5). It will not repeat those arguments here.

Because Rider SMP is not appropriate in this case and is illegal, IIEC recommends the Proposed Order be modified to reject the use of Rider SMP. Language modifying the Proposed Order appears below.

Proposed Language

IIEC recommends that Section VII.B.13 - Commission Analysis and Conclusion - at Pages 132-135 of the Proposed Order, be deleted in its entirety and the following language inserted in its place.

> **13. Commission Analysis and Conclusion**
>
> Upon reflection, the Commission agrees in general terms, that a rider is an additional part of a utility's basic tariffs. It has distinct pricing or other terms that provide for the recovery of customer-specific costs the utility incurs for special circumstances such as special facilities or programs. The Commission agrees that riders should not be approved when they: (i) inappropriately shift operating risk from the utility to customers, as when the costs of service at issue are fully capable of base rate recovery; (ii) adjust rates on the basis of only selected cost elements without considering other (possibly offsetting) costs or other factors (such as increased revenues) that affect the utility's overall profitability, also known as single issue ratemaking; (iii) distort or otherwise compromise the incentive for prudent and efficient utility operation built into the regulatory oversight and ratemaking process; or (iv) create cross-subsidies or otherwise result in unfair cost recovery. We conclude based on the record in this case, that Rider SMP does inappropriately shift operating risk from utilities to customers; does adjust rates on the basis of only selected cost elements without considering other costs or other factors that affect the utility's overall profitability and, therefore, does constitute single issue ratemaking, which is not legally permitted in Illinois. We also

> conclude that Rider SMP distorts or otherwise compromises the incentives for prudent and efficient utility operation that are build into the traditional regulatory oversight and ratemaking process and will create cross-subsidies or otherwise result in unfair cost recovery. For all of these reasons, the Commission rejects Rider SMP in this case.

Exception 6

VIII. Cost of Service and Allocation Issues

O. Commission Analysis and Conclusion

Other Cost of Service Issues

i. Minimum Distribution System

The Proposed Order incorrectly rejects the MDS concept in this proceeding. (PO at 201). It appears the Proposed Order relies on the Commission's past rejection of other incarnations of the MDS concept. (*Id*.). It specifically notes that consistent with Commission orders in prior dockets, the distribution system is designed primarily to serve electric demand. (*Id*.). The Proposed Order concludes: ". . . attempts to separate the costs of connecting customers to the distribution system from the costs of serving their demand remains problematic." (*Id*.). IIEC respectfully disagrees with the Proposed Order's conclusion. IIEC addressed this issue in its Initial and Reply Briefs. (IIEC Int. Br. at 70-76; IIEC R. Br. at 32-35). It will not repeat all of those arguments here. However, the Proposed Order focuses on the alleged problematic nature of separating the costs of connecting customers to the electric system from the cost of serving their electrical demand. (PO at 201). The Proposed Order overlooks or misapprehends the evidence in the record in this case that demonstrates a practical means of separating the costs of connecting customers to the system from the costs of serving their demand.

First, it is worth noting that the Proposed Order appears to agree that there is a customer component to the distribution system. But the Proposed Order finds that the presumed inability to separate the cost of the distribution system associated with connecting customers and the costs of the distribution system associated with meeting the customer's electrical demand that is problematic.

Second, separating the cost of connecting customers to the system from the cost of serving demand is not problematic. IIEC has provided a means for identification of and quantification of the customer-related component of the distribution system. (*See,* Stowe, IIEC Ex. 3.0 at 38-39:678-690). IIEC explained that there is a minimum cost to the distribution system that does not vary with demand or energy usage, *i.e.*, is driven by the number of customers. (Stowe, IIEC Ex. 3.0-C at 28:450-460; Stowe, IIEC Ex. 7.0 at 20-22:411-468). This minimum cost is commonly known as the minimum distribution system. (Stowe, IIEC Ex. 3.0-C at 28:451-452). It is a cost that is incurred to meet the requirements of the National Electrical Safety Code ("NESC"). (*See, Id*. at 33:560-561). The cost can be measured by performing an MDS study that uses commercially available distribution system components that only just conform to the NESC. (Stowe, IIEC Ex. 3.0-C at 46:852-855).[2] This is IIEC's "preferred" method to perform an MDS study. Contrary to the Proposed Order's conclusion, there is nothing problematic about IIEC's preferred approach. It is not based on a hypothetical system, or a hypothetical calculation of costs. It is based on the very real cost of compliance with the NESC, which is the minimum cost the utility must incur to serve customers, and has been successfully

[2] Mr. Stowe testified that he was not able to perform a precise MDS study using this preferred approach due to the lack of time and the inability to secure the necessary data through discovery. He, therefore, attempted to make a reasonable estimate of the demand and customer percentages for the ComEd distribution system based on information from utilities similar to ComEd that have adopted the MDS approach. (Stowe, IIEC Ex. 3.0 at 47:863-868, 48:887-896).

implemented by other public utility commissions. (*See*, In Re: The Investigation and Suspension of Tariff Sheets Filed by Aquila, Inc., d/b/a Aquila Networks-PWC with Advise No. 586, 2004 Colo. PUB LEXIS 965, *30-*32).

Third, the fact that the Commission has rejected the use of other MDS approaches in past cases, should not, in any way, be determinative of the issue in this case. (*See*, PO at 201, citing to ICC Dkts. 05-0597, 99-0121 and 00-0802).

In none of the dockets identified by the Proposed Order did the Commission consider the preferred MDS method specifically presented by IIEC here. In Docket 00-0802, the Commission considered an MDS approach, proposed by Central Illinois Public Service Company, d/b/a AmerenCIPS and Union Electric, known as the zero-intercept method. This method determined the cost of connecting customers to the system by identifying costs related to a "hypothetical, no-load, zero intercept situation." (Central Illinois Public Service Company, et al.,, ICC Dkt. No. 00-0802, Order, December 11, 2001 at 41). IIEC's preferred method does not assume a hypothetical no-load situation. (*See*, Stowe, IIEC Ex. 3.0 at 38-39:678-690; *See*, Stowe, IIEC Ex. 7.0 at 20-21:417-424).

In Docket 99-0121 the Commission also dealt with the zero-intercept method and expressed concern that the individual components of the system could not be identified for the purpose of connecting customers only. (Central Illinois Public Service Company, d/b/a AmerenCIPS, et al., ICC Dkt. No. 99-0121, 1999 Ill. PUC Lexis 646, *163). IIEC's approach addresses that concern, through use of the NESC to identify the minimum system cost, for the first time before this Commission.

Finally, in Docket 05-0597, the Commission, based on the record in that case, did reject the use of an MDS approach, but the record in that case did not reflect the specific approach to identifying the MDS system and calculating its costs set forth by IIEC in this case. (*See,* Commonwealth Edison Company, ICC Dkt. No. 05-0597, Order, July 26, 2006 at 160-165).

The MDS, as defined by the NESC, represents a set of costs that can be calculated in the real world. IIEC provided a method for quantifying the MDS, through acknowledgment that facilities built to meet the NESC represent the minimum physical system which utilities are required to build, and thus the minimum investment cost associated with the distribution system. IIEC recognizes that parts of the distribution system exceeding the MDS are properly allocated based on customers' demand. IIEC has further demonstrated that calculation of the MDS cost is not unduly burdensome, given the utility's access to its property records. Rejection of the MDS approach presented by IIEC in this case would deprive the Commission of any reasonable method to quantify that part of the distribution system caused simply by the existence of customers, and determined by the minimum safety requirements.

As noted above, IIEC has presented an approach to identification of and calculation of MDS costs that is a real world approach that does not involve the use of hypothetical assumptions and costs of any kind. The Commission should direct Commonwealth Edison to use that real world approach in its cost of service study in the next ComEd rate case.

Given the Commission's determination that ComEd's cost of service study is not valid for determining rates in this case, a refinement such as the MDS is somewhat moot. The Commission need not make a decision to reject IIEC's MDS recommendation, particularly if the rejection is based on its prior decisions on approaches that are different from IIEC's approach in this case. The Commission should require ComEd to provide the MDS information in the next case, in order that the Commission may properly consider it a that time or simply find that a decision on the merits of MDS is not needed in light of the other parts of the Proposed Order.

IIEC has prepared language for modification of the Proposed Order to adopt this recommendation and presents two alternatives below depending on whether the Commission chooses to decide the MDS issue in this case, or defer its decision and fully address the issue in the next case.

Proposed Language

a. IIEC recommends that Section VIII.O. of the Proposed Order be amended at Page 201 to read:

> *Other Cost of Service Issues*
>
> *I. Minimum Distribution System*
>
> ComEd's proposed ECOSS does not reflect the minimum distribution system ("MDS") concept. ComEd Ex. 33.0 Corr. at 4. IIEC, Metra, the CG and the CTA assert that ComEd's ECOSS is flawed because it fails to recognize distribution system components that do not vary with demand. IIEC Ex. 3.0 Corr. at 14, 27, CG Ex. 2.0 at 4-5. The proponents of MDS argue that some portion of distribution-related costs should be identified as caused by the existence of customers and the requirement that ComEd meet minimum National Electrical Safety Code Standards ("NESC") in providing service. The argument is that this portion of distribution costs should be allocated to customer classes on the basis of number of customers in the various classes rather than demand. *Id.* at 32. This allocation method would attribute costs in excess of those incurred for the MDS to customer classes based on peak demand. ~~more costs to residential classes.~~
>
> ~~As it has~~ In the past, *See, e.g.* Dockets 05-0597, 99-0121 and 00-0802, the Commission has rejected ~~rejects~~ the minimum distribution or zero-intercept approach for purposes of allocating distribution costs between the customer and demand functions. ~~in this case. In~~ Our view in those cases was that the coincident peak method is consistent with the fact that distribution systems are designed primarily to serve electric demand and distinguishing the costs

> incurred to connect customers to the system was problematic, based on the presentations made to us in those cases.
>
> The Commission believes that attempts to separate the costs of connecting customers to the electric distribution system from the costs of serving their demand are no longer ~~remain~~ problematic. IIEC has provided a means for identification of, and quantification of, the customer-related component of the distribution system. IIEC explained that there is a minimum cost to the distribution system that does not vary with demand or energy use. It is a cost that is incurred to meet the requirements of the NESC. IIEC's recommended approach is not based on a hypothetical system, or a hypothetical calculation of costs. It is based on the very real cost of compliance with the NESC, which is the minimum cost the utility must incur to serve customers. We accept ~~reject~~ the use of this MDS approach. ~~in this proceeding.~~ Accordingly, the Commission directs ComEd to present a COSS in the next delivery service case based on IIEC's approach to identifying and calculating the MDS costs under the NESC. This will allows us to more fully evaluate the merits of this approach and to adopt it, should we choose to do so. ~~rejects the use of IIEC's COSS because it relies on the use of MDS.~~

b. In the alternative, the Commission may wish to adopt the following version of the last paragraph of the amendatory language[3] above:

> The Commission believes that attempts to separate the costs of connecting customers to the electric distribution system from the costs of serving their demand may no longer be ~~remain~~ problematic. However, we do not find it necessary to approve or ~~We~~ reject the use of the MDS in this proceeding given our findings on rate design elsewhere in this order. Accordingly, the Commission directs ComEd to present a COSS in the next delivery service case based on IIEC's approach to identifying and calculating the MDS costs under the NESC, in order that we may more fully evaluate the merit of the approach and adopt it at that time, should we so choose. ~~rejects the use of IIEC's COSS because it relies on the use of MDS.~~

[3] The first two paragraphs of proposed language are the same under both alternatives.

<u>Exception 7</u>

VIII. Cost of Service and Allocation Issues

O. Commission Analysis and Conclusion

Other Cost of Service Issues

(iv) Regional Delivery Service Rates

IIEC respectfully takes exception to the Proposed Order's conclusion that customer costs, customer installation costs and customer information costs are ". . . in some measure related to usage," and therefore, ComEd is directed to incorporate usage in the assignment of these costs to all rate classes in its next case. (PO at 204).

The Proposed Order's mistaken conclusion appears to be based, in part, on the erroneous assumption that by assigning customer related costs on the basis of energy usage, efficiency will be encouraged. (*Id*.). IIEC certainly agrees that the proper and accurate assignment of costs to cost causers will encourage and promote energy efficiency. However, the converse is also true. The misassignment or misallocation of costs will discourage the efficient use of energy because incorrect price signals will be sent. Assignment of costs that are not affected by energy usage, on the basis of energy usage, would clearly be a misassignment of costs and, by definition, would send incorrect price signals.

The problem with the Proposed Order is that it suggests costs that are, in fact customer related, are "in some measure" energy related, when there has been no valid demonstration in this record that such is the case. The City of Chicago is the only party to suggest that customer information costs and customer installation costs are energy related and they should be allocated across all customer classes on the basis of energy usage. A review of the evidence offered by the City demonstrates that there is no valid support for this assumption in the record and that the evidence that purports to demonstrate the existence of such a relationship is demonstrably incorrect.

First, it should be noted that the City witness did not recommend that customer costs generally be allocated on the basis of energy usage across all classes. He proposed such an allocation only for customer installation costs and customer information costs. (*See*, Bodmer, City Ex. 1.0 at 73:1345-1346). Therefore, the Proposed Order's suggestion that usage should be recognized in the allocation of all customer costs generally, to all customer classes, is not consistent with the City witness' proposal or testimony and, thus, is not supported by the record.

In addition, there is not adequate evidence in the record to demonstrate that customer installation costs and customer information costs "are in some measure energy related." The City did not present any evidence that "measured" the so-called energy-related customer installation and customer information costs.

Specifically, with regard to the connection between customer installation costs and energy usage, the City witness summarized the testimony he claimed supported the conclusion that these particular customer costs were somehow a function of energy usage. He stated in his rebuttal testimony that in his direct testimony:

> . . . I explained that my proposed allocation is superior because it properly allocates costs to cost causers, given that larger ratepayers with higher demands and more equipment needs cause ComEd to incur higher installation costs than smaller ratepayers. To account for the relationship size and cost, it is much more reasonable to allocate costs on the basis of energy sales across all customer classes. (One does not need a fancy empirical study to prove this). (Bodmer, City Ex. 2.0-C at 6:145-150).

Mr. Bodmer's statement is telling. First, he admits that he did no study to establish any relationship between energy usage and customer installation costs or to measure the energy related component of these costs. Second, his summary of his own testimony clearly demonstrates he offered no rationale for the relationship between these customer costs and energy usage. He actually suggests that these costs are a function of demand (not energy usage). Furthermore, even his reference to customer size, which he equates with energy usage elsewhere in his testimony, is made in the context of his allocation recommendation and does not establish a causal relationship between energy usage and installation costs. Thus, even the most generous interpretation of his testimony does not support the conclusion that there is a relationship between energy usage and customer installation costs. Indeed, Mr. Bodmer alleged that the customer installation costs addressed were a function of the addition of new <u>customers</u>, not energy consumption. (Bodmer, City Ex. 1.0-C at 66:1206-1208, 66-67:1211-1214).

Finally, the Proposed Order overlooks that ComEd presented evidence indicating that it took into consideration the differences in the level of the costs incurred by particular customer groups in its allocation process by weighting the costs based on those differences. (*See*, Heintz, ComEd Ex. 33.0-C at 13:272-275).

The City's testimony in support of an alleged relationship between energy usage and customer information costs is, if anything, even more tenuous than the testimony purporting to establish a relationship between energy usage and customer installation costs. In neither instance has the City's testimony justified an allocation of these costs on an energy usage basis across all customer classes.

In response to ComEd's criticism of his allocation of these customer costs on the basis of energy usage, which pointed out that ComEd had weighted the allocation of these costs between the residential and non-residential groups, Mr. Bodmer testifies that the point of his testimony was the "intra class allocation" of these costs, "within the residential class." (Bodmer, City Ex. 2.0 at 7:191-193). Thus, the City testimony does not support, and was apparently not intended to support, allocation of these costs to all classes on the basis of energy usage.

While Mr. Bodmer does go on to say that his rebuttal testimony will address how customer information costs should be allocated across customer classes, he does not do so. (*See*, Bodmer, City Ex. 2.0-C at 8-10:202-252). Most certainly, he does not offer any explanation of how or why customer information costs are a function of energy usage so as to justify their allocation to all customer classes on the basis of energy usage. (*See, Id.*).

In its direct testimony, the City's rationale for allocation of customer information costs among all customer classes on the basis of energy usage was limited to this simple statement:

> "As I have recommended with respect to customer installation expenses, a far more logical and reasonable approach is to allocate customer information costs across all ratepayer classes based on energy use. This method is consistent with the approach ComEd used in the era of marginal cost studies, as customer information was not considered a marginal cost."
> (Bodmer, City Ex. 1.0-C at 70:1279-1284).

This statement is devoid of any explanation of how or why customer information costs are a function of energy usage, nor does it justify allocation of these costs among all customer classes on the basis of energy usage.

Therefore, because the evidentiary record in this case fails to contain any credible evidence that customer installation costs, customer information costs, or any other element of ComEd's customer costs is incurred as a function of energy usage, so as to justify their allocation across all customer classes on the basis of energy usage, the Proposed Order should be modified as recommended by IIEC below.

Proposed Language

IIEC recommends that Section VIII.O. be amended at Page 204 of the Proposed Order to read:

> *Other Cost of Service*
>
> *(iv) Regional Delivery Service Rates*
>
> The City argues that imposing costs on customers who use less energy is, at best, inconsistent with the General Assembly's mandate that reducing energy use is an vital policy objective of the State.
>
> The Commission agrees ~~Customer costs are about 20% of the total cost of service. Because the allocation of customer costs, installation costs, and customer information costs are assigned on the number of customers, residential customers currently pay 80% of them. These costs should be attributed as far as is practical to the cost causers rather than disproportionately to ComEd's residential customer base. Under proposed rates the residential customer charge alone will be about $10 per month regardless of usage. These costs are in some measure related to usage.~~ <u>that energy efficiency is a policy objective of this state. However, proper allocation of costs is also a vital policy objective. The Commission does not believe the record in this case clearly establishes that the costs identified by the City are necessarily a function of energy usage. However, the City has raised some interesting suggestions on this issue.</u> The Commission directs ComEd to incorporate usage in the assignment of these costs ~~to all rate classes~~ <u>in a separate version of the cost study</u> in its next rate case <u>so this issue can be fully addressed.</u>

Exception 8

VIII. Cost of Service and Allocation Issues

B. IIEC

IIEC believes that the Proposed Order could be improved and clarified by adding additional captions to this Section. These captions would be consistent with similar captions included in the Proposed Order for its discussion of the positions of other parties.

a. Specifically, IIEC recommends that a caption reading “Primary/Secondary Split” be added to the Proposed Order at Page 167 between the last full paragraph on the page and the partial paragraph at the bottom of the page.

b. IIEC also recommends that a caption reading “Minimum Distribution System” be added before the first full paragraph at Page 169 of the Proposed Order.

c. IIEC recommends that a caption reading “Average and Peak Methodology” be added before the last full paragraph on Page 170 of the Proposed Order.

d. Finally, IIEC recommends that a caption reading “Rate Moderation/Mitigation Proposals” be added after the fourth full paragraph and before the fifth full paragraph at page 171 of the Proposed Order.

Proposed Language

IIEC sets out below the captions it suggests be added to the Proposed Order Pages 167, 169, 170 and 171 respectively:

a.

Primary/Secondary Split

IIEC says ComEd's COSS allocates secondary distribution system costs to customers who take service directly from the primary system. IIEC claims as a result, the study is not only unable to prevent the subsidization of secondary distribution costs by customers taking service from the primary system, it ensures such subsidies will occur. . . ..

b.

Minimum Distribution System

IIEC says while it is true that cost causation is often directly related to electrical parameters like voltage level or peak demand, they are not the only cost causing factors that should have been considered in the ComEd COSS. The Company ignored the fact that there are delivery service costs that are directly attributable to mandated safety and reliability requirements for electric utility distribution facilities and that these costs do not vary with customer demand. . . . .

c.

Average and Peak Methodology

IIEC says there is no evidentiary basis for accepting City witness Bodmer's recommendation in this case, even if the Commission agrees with the concept. Finally, IIEC notes the Commission has previously rejected the use of the A&P method in ComEd cases. . . . .

d.

Rate Moderation/Mitigation Proposals

IIEC provides a rate moderation proposal that it claims should be used for rate design and revenue allocation purposes, if the Commission determines that rates should be based on a valid COSS instead of on an across the board basis. Under IIEC's proposal, increases to the Distribution Facilities Charge (DFC) of any class would be limited to not more than 25 percentage points above the overall revenue increase approved in this case. . . . .

<u>Exception 9</u>

VIII. Cost of Service and Allocation Issues

A. ComEd

Interclass Allocation Issues

Across-the-Board Increase

At Page 159 of the Proposed Order, in the third full paragraph on that page, there is a sentence that suggests that certain parties support the across-the-board allocation approach to retain rate subsidies. This sentence is contained in the language describing ComEd's position on this subject and IIEC disagrees with the sentence. To clarify that sentence, which is intended to describe a ComEd position, not a statement of fact, IIEC recommends the Proposed Order should be modified as indicated below.

<u>Proposed Language</u>

IIEC recommends in Section VIII.A. that the first sentence of the third full paragraph on Page 159 of the Proposed Order be modified to read as follows:

> <u>ComEd</u> <u>claims that</u> DOE, IIEC, REACT, CTA and Metra each support an across-the-board allocation approach in an attempt to retain rate subsidies currently borne by other non-residential customers.

<u>Exception 10</u>

VIII. Cost of Service and Allocation Issues

O. Commission Analysis and Conclusions

The Proposed Order properly concludes that ComEd's cost of service study should not be used for revenue allocation in this case. (PO at 198). The Proposed Order rejects the use of IIEC's modified cost of service studies. (PO at 201). IIEC, for the purpose of this brief, does not take exception to the Proposed Order's conclusions on this issue. However, it does not waive its position with regard to IIEC's modified cost of service studies in this case. IIEC addresses this issue in its Initial and Reply Briefs. (IIEC Int. Br. at 52-76; IIEC R. Br. at 25-35). IIEC does take specific exception to the Proposed Order's rejection of the MDS approach presented by IIEC in this case, as described in Exception No. 6 above.

Exception 11

VIII. Cost of Service and Allocation Issues

O. Commission Analysis and Conclusion

Other Cost of Service Issues

ii. Average and Peak Methodology

The Proposed Order properly rejects the use of the A&P method in this case. (PO at 201). However, it invites parties to present an A&P cost of service study in the next case.

IIEC has argued against the use of the A&P method for allocation of distribution costs in this case. (*See*, IIEC Int. Br. at 76-78; IIEC R. Br. at 36-37). Average demand (energy usage) does not influence the cost of the distribution system. (Stowe, IIEC Ex. 7.0 at 20-22:411-468). The NARUC cost manual indicates that distribution costs are demand and customer related, not energy related. (*See*, Kroger Int. Br. at 4-5). Furthermore, elsewhere the Proposed Order concludes that the coincident peak method for allocating distribution system costs is consistent with the fact that the distribution system is designed primarily to serve electrical demand. (PO at 201). Finally, the Commission has previously rejected essentially the same A&P method for use in electric cases in Illinois. Therefore, IIEC recommends the Proposed Order be modified to eliminate the invitation to parties to present an A&P study in the next case. Parties have a right to present any type of cost study they wish in any future case. There is no need for the Commission to invite parties to present such a study in future cases. IIEC has proposed amendatory language below.

<u>Proposed Language</u>

IIEC recommends that Section VIII.O. - Commission Analysis and Conclusion - at Page 201 of the Proposed Order be amended to read:

> *Other Cost of Service Issues*
>
> *ii. Average and Peak*
>
> The City of Chicago requests that the Commission require ComEd to revise the ECOSS so that it incorporates the Average and Peak ("A&P") method for allocating distribution-related costs. The City apparently embraces the A&P allocation method because it attributes more cost to non-residential customers than to residential customers. The A&P approach produces an effect directly opposite to that produced by the MDS described above. There is no evidentiary basis in the record reflecting an ECOSS based on this methodology.
>
> ~~The Commission has previously adopted the A&P methodology for distribution costs in natural gas rate cases. As we stated in Docket 05-0597, because of similarities between gas and electric distribution businesses, the Commission remains open to adopting an A&P allocation based upon a more thoroughly developed record in future electric distribution rate cases. However it is incumbent upon the proponents of this methodology to introduce an A&P ECOSS into the record so that its merits can be compared and contrasted with other cost assignment plans.~~
>
> ~~However, o~~ <u>O</u>n the basis of the record, we reject the use of the Average and Peak method in this proceeding.

CONCLUSION

For the reasons stated above, IIEC's Exceptions to and Clarifications of the Proposed Order should be adopted.

DATED this 24th day of July, 2008.

Respectfully submitted,

____

Eric Robertson
Ryan Robertson
Lueders, Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040
erobertson@lrklaw.com
ryrobertson@lrklaw.com

Conrad Reddick
Attrorney at Law
1015 Crest
Wheaton, IL 60187
Conradreddick@aol.com

64456.1