

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition to approve an Advanced Metering	:	No. 09-0263
Infrastructure Pilot Program and associated tariffs.	:	

**BRIEF ON EXCEPTIONS OF PETITIONER**  
**COMMONWEALTH EDISON COMPANY**

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COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”) submits this Brief on Exceptions to the Proposed Order (the “Proposed Order” or “PO”) issued by the Administrative Law Judges (“ALJs”) on September 25, 2009. The Proposed Order correctly recognizes both the benefits of ComEd’s AMI Pilot and the need for a certain cost recovery mechanism if advanced technology pilots like these are to be undertaken. ComEd’s proposed revisions are limited and focus on several discrete issues. Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”), 83 Ill. Admin. Code § 200.830, suggested replacement language is provided in separate Exceptions filed contemporaneously herewith. Those Exceptions specify replacement language in the form redlined “legislative” revisions to the Proposed Order.

**I. EXECUTIVE SUMMARY AND  
RECOMMENDED COMMISSION ACTIONS**

The Proposed Order brings us one step closer to realizing the vision that the Commission first outlined in its *07-0566 Order*.<sup>1</sup> The Commission in that order recognized the benefit that a well designed Advanced Metering Infrastructure (“AMI”) can bring customers, ComEd, and Illinois. The Commission therefore approved in concept a pilot of up to 200,000 advanced

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<sup>1</sup> *Commonwealth Edison Co.*, ICC Docket No. 07-0566 (Final Order, Sept. 10, 2008) at 235 - 237 (hereinafter cited as the “*07-0566 Order*”).

meters and associated AMI systems and called upon ComEd to work with stakeholders to develop that AMI Pilot. Critically, the Commission also recognized that, for the AMI Pilot vision to become a reality, there had to be an established regulatory mechanism for the Commission to review and approve the Pilot in advance and for ComEd to recover the reasonable costs of projects approved as prudent. That is why the Commission authorized ComEd to file Rider AMP and place it into effect on October 31, 2008.

This Docket is the next regulatory step. As the Commission envisioned, ComEd, Staff, and a broad array of stakeholders worked together, openly and cooperatively, to develop the AMI Pilot. The record here demonstrated that the AMI Pilot will both meet Illinois' needs and will materially advance the study of innovative AMI customer applications. The Proposed Order recognizes those facts and approves the AMI Pilot and the experimental rates included in Rider AMP-CA. It recognizes that a significant scalable Pilot is essential and that the customer applications included in the Pilot offer a means of engaging customers and harnessing the power of customer action. With respect to the Proposed Order's approval of the Pilot, ComEd takes issue only with its exclusion of the City of Elgin and its discussion of Commission rules concerning disconnection. ComEd also suggests modest clarifications to the Proposed Order's discussion of the Pilot review process.

Beyond approving the Pilot, however, the Proposed Order affirms the critical need for regulatory certainty and cost recovery if innovative programs like the AMI Pilot are to proceed. It correctly and specifically rejects the notion that utilities can just implement and fund advanced technology programs on their own and "on spec," without Commission approval and without a means to recover their reasonable costs, especially in the face of opposition from naysayer groups. As the Proposed Order concludes:

... the AG/AARP's approach does not encourage utilities to try new ways to hold down or reduce consumers' utility costs. Utilities will be more likely to embrace innovation regarding this type of customer-oriented expenditure, if they have some assurance that reasonably-incurred costs spent on such innovation will be approved by this Commission.

PO at 17. The importance of this principle is hard to understate. ComEd hopes that the approach that worked here -- open and comprehensive stakeholder collaboration, Commission and Staff involvement and regulatory supervision, and recovery of reasonable and prudent costs -- can be a blueprint to deliver to customers the benefits of even more innovations.

This Brief on Exceptions, therefore, proposes only modest revisions to the Proposed Order. It proposes to revise the Order in the few instances where ComEd respectfully submits the ALJPO contains a legal error. It also supports restoring the City of Elgin to the Pilot, not to benefit Elgin or ComEd, but because we can all learn more with Elgin included. It also proposes a handful of language revisions and technical corrections in the interests of making the Order as clear and sustainable as possible. ComEd appreciates the Commission's and the ALJ's consideration of these constructive suggestions.

## **II. PROPOSED CONCLUSIONS THAT SHOULD BE REVISED**

### **A. Erroneous Conclusions Regarding Disconnection Rules Should Be Corrected (PO Section XII)**

The Proposed Order legally errs to the extent that that its language could be interpreted as prohibiting disconnection of a customer's service without simultaneous physical contact with the customer. Regardless whether the current technology, as a practical matter requires an employee to be on or near a customer's premise, neither the Act nor the Commission's rules require a premises visit to contact the customer. Nor does the Act or the rules impose any additional requirements to try to physically recheck a customer's health and safety status at the time of disconnection.

Section 280.130 of the Commission’s rules require two things, when conditions justifying disconnection are met. First, the utility must have “mailed or delivered by other means a written notice of discontinuance ... separately from any bill” and disconnection cannot occur “until at least five days after delivery or eight days after the mailing of this notice.” 83 Ill. Admin. Code. § 280.130(a)(2). Second, the “utility shall attempt to advise the customer that service is being discontinued by directing its employee making the disconnection to contact the customer at the time service is being discontinued.” 83 Ill. Admin. Code. § 280.130(d). The Proposed Order’s presumption that subpart (d) calls for face-to-face notice prior to the disconnection attempt is simply incorrect. The rule does not require that the contact be face-to-face and contacting a customer through other means, for example, via cell phone, is often both more effective and safer for the utility employee. Moreover, if AMI technology were to be employed, the employee effecting a remote disconnection remains able to “attempt to advise the customer that service is being discontinued” by making direct “contact [with] the customer at the time service is being discontinued” via the same types of phone contact now being used. *Id.*

The Commission should also consider the fact that revisions to Part 280 were the subject of a lengthy series of workshops that has just recently ended. Staff has filed a proposed rewrite of Part 280 and supporting testimony has been submitted in ICC Docket No. 06-0703. It is noteworthy that Staff is recommending that the disconnection rule as rewritten specifically not to require physical contact with the customer. The proposed new rule (280.130 Disconnection of Service) reads, in relevant part, as follows:

- j) Warning call to residential and master-metered customers:
  - 1) Unless the customer has no phone number on record, the utility shall provide a warning call to the customer a minimum of 24 hours prior to the scheduled disconnection.
  - 2) The warning call may be live or automated, and it shall advise the customer of the utility's intent to disconnect the service.

- 3) The warning call shall provide the customer with the toll free or local phone numbers that the customer may use to contact the utility to discuss the situation.
- 4) The utility shall make a record of the date, time of day, and its success or failure to reach the customer on the warning call. It shall retain the record for a period of two years.

Staff explains this specific language change in the joint panel testimony of Jim Agnew and Joan Howard of the Staff's Consumer Services Division.<sup>2</sup> After observing that the original justification for "personal contact" rules was to physically collect payments from customers, they state (at lines 380-394)<sup>3</sup>:

This requirement was likely useful to both customer and utility at a time when most customers had someone at home during the day, and when utility representatives could collect payment from the customer to prevent disconnection. Today, few if any utilities allow field representatives to accept payments from customers. A requirement to knock at the door to personally inform the customer that the service is being disconnected may be perceived as tantamount to taunting the customer and create a potential risk for the safety of the utility representative. As a result, utilities have a choice to either protect their field staff from potential safety concerns or comply with the rule. Further, developing technology may allow utilities to remotely disconnect and restore service without a need to make an actual visit to the premises, making this requirement impractical. With the strengthening of other parts of the Section on disconnection, such as the advance warning a customer gets before the day of disconnection, we believe that it is appropriate to remove the outdated "knock at the door" requirement for disconnects. (Emphasis added)

In short, the the issues relating disconnections – including the safty of utility personnel – and the rules that should govern them are the subject of another comprehensive, ongoing process and it makes the most sense to address the issue there. Moreover, any conclusion in this proceeding concering Part 280 must be strictly consistent with the existing rules. For these reasons, the Proposed Order should be revised as shown in Exception No. 7 of Attachment A.

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<sup>2</sup> ComEd notes that Mr. Agnew and Ms. Howard express the view that the current rule calls for face to face contact. While ComEd agrees that this may have been the assumption when the rule was adopted, since AMI technology did not exist, the plain language of the rule does not include such a requirement.

<sup>3</sup> ICC Docket No. 06-0703, Agnew-Howard Dir., Staff Ex. 1.0, 17:380 – 18:394.

**B. The City of Elgin Should Not Be Excluded From the Pilot (PO Section IV)**

ComEd included the installation of AMI meters in the City of Elgin – the municipality that won a competition for the most innovative use of AMI metering as part of a municipal energy plan – because Elgin’s inclusion in the Pilot will provide useful information concerning how municipal and local organizations can aid in the deployment of AMI technology. Hemphill Reb., ComEd Ex. 8.0, 28:585-93.

The Proposed Order therefore errs in its conclusion that “Without any test or evaluation of the Elgin project, the remainder of ComEd’s service territory receives no benefit from this project.” *Id.* at 19. As ComEd witness Val Jensen testified:

[I]t is fully expected that Elgin's experience with the use of these meters, specifically in connection with its energy conservation plan, will provide valuable information on how other communities will be able to leverage the capabilities of AMI in connection with efforts to reduce their communities’ energy consumption.

...

With the help of the City of Elgin, ComEd expects to issue a report of the lessons learned in that project that will be made available to the Commission, other municipalities, and the AMI Workshop and Statewide Smart Grid Collaborative.

Jensen Reb., ComEd Ex. 9.0, 2:33-37, 3:46-49.

Moreover, as part of the report referenced in Mr. Jensen’s testimony, ComEd intends to conduct measurement and verification (M&V) of the impacts the AMI meters have in the City of Elgin. In particular, ComEd will measure the impacts that the Elgin community educational approach to the AMI meters has on their residents’ energy usage. This analysis will involve two control groups – (1) a community similar in size and location to Elgin (to be determined) and (2) another community in the ComEd Energy Challenge. The M&V plan will consist of a pre- and post-AMI installation usage analysis of Elgin and these two other communities. Using this methodology will automatically take into account the effects of weather. ComEd would collect a

full 12 months of post-AMI installation data prior to conducting the analysis. A report of the analysis would be available approximately four months after the 12-month post-AMI installation period has ended.

Apart from that, the Proposed Order also errs when it concludes, “ComEd seeks to ‘saddle’ all of its ratepayers with the cost that it will incur on behalf of the contest winner”, and, “Apparently, ComEd has already promised to provide these meters to Elgin residents, businesses, and governmental entities.” PO at 18. In fact, ComEd’s commitment to Elgin and all contest participants has always been that the provision of AMI meters is contingent on the Commission’s approval of their inclusion in the AMI Pilot. Without the Commission’s approval, the meters will not be deployed and ComEd will not incur the cost.

Proposed language revising the Proposed Order is included in Exception No. 3 of Attachment A.

**C. Incentive Compensation (PO Section XI)**

The Proposed Order errs in two respects in holding that incentive compensation costs be excluded from the costs recoverable under Rider AMP. PO at 31. First, by recommending to exclude all incentive compensation costs, including the very same types of incentive compensation costs that were found appropriate and approved by the Commission in ComEd’s last rate case, ICC Docket No. 07-0566, the Proposed Order’s position is both unsupported and contrary to the Commission’s own rulings. Second, the Proposed Order incorrectly characterizes the type of incentive compensation at issue and the effect of the Illinois Appellate Court’s decision in *Commonwealth Edison Co v. Illinois Commerce Comm’n*, \_\_\_ Ill. App. 3d \_\_\_, 2009 Ill. App. LEXIS 913, Docket No. 2-6-1284 (2<sup>nd</sup> Dist. Sept. 17, 2009) (“*ComEd Appeal*”).

In its *07-0566 Order*, the Commission excluded only incentive compensation costs associated with ComEd's "net income" goal, finding that incentive compensation costs tied to the other metrics – those relating service and cost control – were appropriately recovered in rates and benefitted customers. *07-0566 Order* at 61. The *07-0566 Order* stated:

Regarding ComEd's AIP's Net Income Metric, the Commission agrees with Staff's proposed adjustment disallowing 100% of AIP costs related to the financial net income goal which primarily benefits shareholders. ComEd's net income goals are financially based and primarily result in shareholder benefits. The Commission has repeatedly held that the cost of financial goals should not be paid by ratepayers.

We agree with ComEd regarding its Total Costs goals. The Commission found as much in Docket 05-0597, Order at 96-97, and we see no reason to waiver.

ComEd's Long-Term Incentive Plan should be adjusted as well to reflect Staff's suggestions relating to the one-third of the LTIP based upon financial goals and another one-third based upon legislative and regulatory goals.

*07-0566 Order* at 61. The *07-0566 Order* specifically allowed ComEd to recover many of its incentive compensation costs. The Illinois Appellate Court affirmed the *05-0597 Order* with respect to incentive compensation costs. *ComEd Appeal*, Slip Op. at 14. There is no legal basis to treat incentive compensation costs relating to the AMI Pilot any different than other incentive compensation costs included in rate base or operating expenses. *Fruehe Reb.*, ComEd Ex. 15.0, 4:77 – 5:96. In particular, there is no factually valid or legally sustainable reason to exclude from Rider AMP the very same types of incentive compensation related to operational excellence and cost control that the Commission found properly recoverable.

Second, the Proposed Order factually errs in stating that ComEd has "acknowledged that the incentive compensation here is not related to operational metrics." PO at 31. ComEd made no such statement, and there is nothing in the record to support it. The conclusion is also untrue. As the Commission notes in its *07-0566 Order*, ComEd's incentive compensation program has included incentives that are driven by operational and cost control metrics as well as incentives

related to income. That is why a major portion of ComEd's incentive compensation costs were approved in ComEd's last general rate case. *07-0566 Order* at \_\_\_.

Finally, ComEd does not object to making clear that neither approval nor disallowance of particular incentive compensation costs prejudices the Commission's ability to address the reasonableness of such costs in the following Rider AMP reconciliation or general rate proceeding, as the case may be. Its proposed language revisions preserve this point.

For these reasons, the Proposed Order should be revised to allow recovery of incentive compensation costs consistent with the Commission's court-affirmed ruling in ICC Docket No. 07-0566. Proposed language accomplishing this is included in Exception No. 6 of Attachment A. In the alternative, even if the Commission excludes all incentive compensation from recovery in Rider AMP, the following alternative revisions should be made to the last full paragraph to the Proposed Order under the heading "Analysis and Conclusions" on page 31 to correct the record.

**Alternative Revisions: Proposed Order, page 31, Analysis and Conclusions Section:**

~~We also note that ComEd has, essentially, acknowledged that the incentive compensation here is not related to operational metrics. Otherwise, there would be no need to request deferral of a decision on this issue until the appeal of docket 05-0597, which concerns incentive compensation based upon non-operational metrics, is resolved. Additionally, ComEd's appeal of the final Order in one of its rate cases, docket 05-0597, is resolved. The the Illinois Appellate Court issued a decision on September 17, 2009, in which it upheld this Commission's decision in ICC Docket No. 05-0597 to exclude those particular incentive compensation costs that relate to ComEd's Net Income from ComEd's base rates. *Commonwealth Edison Co. v. Ill. Commerce Commission*, \_\_\_ Ill. App. 3d \_\_\_, docket No. 2-6-1284, at 9-18 (September 17, 2009). Therefore, there is no need to wait for an appellate decision on this issue. Finally, we note that neither approval nor disallowance of particular incentive compensation costs prejudices the Commission's ability to address the reasonableness of such costs in the following Rider AMP reconciliation or general rate proceeding, as the case may be.~~

**D. Cost Recovery Rate Design (PO Section XV)**

The Proposed Order incorrectly concludes that (1) Metra and CTA should be excluded in any Rider recovery for the cost of the AMI Pilot, and (2) adopting the IIEC methodology based on the weighted average meter allocation factors should be used.

In ICC Docket No. 07-0566, the Commission did not alter the rate design of the now-renamed Rider AMP even though the Metra and CTA argued these same points in that proceeding. *See Commonwealth Edison Co.*, ICC Docket No. 07-0566 (Final Order, September 10, 2008), at 127 (Metra claims Smart Grid will not benefit the Railroad Class), and 129 (CTA says Smart Grid will have little impact on the Railroad Class who will pay a disproportionate share of the costs). Further, the Commission should reject these arguments on their merits as all customers will benefit from the learnings of the AMI Pilot. AMI enables reliability improvements, improves the potential for demand response and energy efficiency, and allows ComEd to better and more efficiently manage its system. *Hemphill Reb.*, ComEd Ex. 8.0, 34:726-728. These benefits do not stop with residential customers but extend to the railroads. *Id.* at 34:728-731. Moreover, all customers, including the railroads, have contributed to the costs of the distribution system and, thus, all customers will benefit from the operational, financial, and reliability gains. *Id.* at 34:731-734. Neither Metra nor the CTA provided evidence to the contrary.

Further, the Proposed Order incorrectly adopts the IIEC methodology, which specifically proposes to re-allocate costs incurred by ComEd based on the weighted meter allocation factors from the last delivery services rate case and also used in the current rate investigation. The IIEC proposal must be rejected because AMI and customer applications pilot are not simply costs of measuring electricity usage. *Hemphill Reb.*, ComEd Ex. 8.0, 35:745-50. They include information system costs and load research costs, as well as the cost of the workshops – there is

no relation to energy usage. The IIEC proposal also ignores the fact that the benefits of the pilot are far broader than accurate measurement of use for the purposes for billing, and accrue to all customer classes and to customers who have invested in their own energy control system as well as those who have not. Lazare Reb., Staff Ex. 6.0, 6:147-7:149.

If the Commission concludes that the cost allocation scheme of Rider AMP should be revised, ComEd would not object to the implementation proposal of Staff witness Mr. Peter Lazare, who recommends that the meter portion of the Pilot's costs should be recovered by using a weighted meter allocator. Lazare Reb., Staff Ex. 6.0, 5:100-106. With respect to the Customer Applications Plan, Mr. Lazare recommends that the associated costs be recovered "from all rate classes." *Id.*, 6:147 – 7:150.

Thus, the Proposed Order should be revised to include Metra and CTA in any Rider recovery for the cost of the AMI Pilot, and to leave in place the rate design the Commission approved in ICC Docket No. 07-0566. The Commission Analysis and Conclusion section beginning on page 40 through page 42 of the Proposed Order should be deleted in its entirety and replaced with the language as shown in Exception No. 9 of Attachment A.

However, even if the Commission determines that Metra and CTA should be excluded in any Rider recovery for the cost of the AMI Pilot, then the Proposed Order should be deleted beginning on page 41 with the paragraph that begins "We also agree with the IIEC..." through the end of the Analysis and Conclusions section on page 42 and replaced with the following language:

**Alternative Revisions: Proposed Order, page 41, Analysis and Conclusions Section:**

Further, we reject the IIEC's rate design methodology. AMI and customer applications pilot are not simply costs of measuring electricity usage. They include information system costs and load research costs, as well as the cost of the workshops – there is no relation to energy

usage. The Commission finds that the IIEC proposal ignores the fact that the benefits of the pilot are far broader than accurate measurement of use for the purposes for billing, and accrue to all customer classes and to customers who have invested in their own energy control system as well as those who have not.

The Commission notes that its Order in ICC Docket No. 07-0566 addressed this issue, and we see no reason to waiver from that decision.

### **III. CLARIFICATIONS AND TECHNICAL CORRECTIONS**

ComEd also proposes a limited number of amendments to the Proposed Order that ComEd believes are in the nature of clarifications and technical corrections that do not propose to alter decisions made by the Proposed Order.

#### **A. 110% Cap On Customer Application Costs (PO Section IX)**

The Proposed Order (at 28-29) directs ComEd to implement in its filed tariff a 110% cost cap on the cost of customer applications. Although ComEd has opposed this cap as unnecessary, ComEd will not further oppose this recommendation (without prejudice to ComEd's right to oppose other caps in the future) and takes no exception to the substance of this provision of the Proposed Order. However, the second paragraph of that section of the Proposed Order goes on to needlessly – and without support in the record or in case law – criticize the future reconciliation proceeding as not “guard[ing] against over-spending.” PO at 28. The Commission should not make such a statement in advance of its actually conducting a reconciliation. Moreover, the statement could be misread as a criticism of the Commission's ability to use reconciliation proceedings to monitor and control costs generally, a view that is both unsupported and potentially harmful to other types of reconciliation proceedings. ComEd, therefore, proposes amendments to this paragraph in Exception No. 5 of Attachment A.

**B. Law Applicable To Cost Recovery Via Riders (PO Section VI)**

The Proposed Order (at 24-25) correctly finds, in accordance with past Commission decisions and controlling case law, that Rider AMP is lawful and does not constitute single issue ratemaking. In so doing, the Proposed Order also discusses and factually distinguishes *A.J. Finkl & Sons v. Ill. Commerce Comm.*, 250 Ill. App. 3d 317, 325 (1<sup>st</sup> Dist. 1993), on which parties objecting to Rider AMP heavily rely. Because of the emphasts placed on the *Finkl* case by opponents of Rider AMP and their repeated mis-citation of *Finkl* as the case that governs the circumstances under which cost-recovery riders are lawful,<sup>4</sup> the Proposed Order should be supplemented to reflect more fully Illinois law on the legality of cost-recovery riders and the Commission’s authority to approve them.

In particular the Proposed Order should reflect that the ICC has broad authority to set and design utility rates. *Business and Prof’l People for the Pub. Interest v. Illinois Commerce Comm’n*, 136, Ill. 2d 192, 204 (1989) (“*BPF*”). The ICC’s ratemaking authority is not limited to establishing base rates or to reviewing a utility’s overall revenue requirement. The Supreme Court has made clear that:

[T]he power of the Commission is not limited to the mere charge of a particular rate..., but it has the power to change under certain conditions, any part of a filed schedule, rate, rule or regulation that in any manner affects the rates charged or to be charged.

*City of Chicago v. Illinois Commerce Comm’n*, 13 Ill. 2d 607, 611-613 (1958). That broad authority includes the ability to use riders in appropriate circumstances. *Citizens Util. Bd. v. Illinois Commerce Comm’n*, 166 Ill. 2d 111 (1995) (“*CUB*”); *City of Chicago*, at 618.

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<sup>4</sup> Similar arguments were made in *Commonwealth Edison Co.*, ICC Docket No. 07-0566, and *North Shore Gas Co., et al.*, ICC Docket Nos. 07-0241/07-0242 Cons.

The Proposed Order should also make clear that *Finkl* does not limit the circumstances under which the Commission enjoys the authority to approve riders. *Finkl* simply cannot be fairly cited for the proposition that the Commission can only approve cost recovery riders when there are “unexpected, volatile or fluctuating expenses.” Since *Finkl* was first decided, the same court has made clear that while riders may be appropriate for “unexpected, volatile or fluctuating expenses,” the ICC’s authority to approve a rider is not limited to those circumstances. *CUB* at 138-139. In specifically rejecting the argument that *Finkl* limited Commission authority, the court stated:

*A. Finkl*, however, should not be so narrowly construed. In *A. Finkl*, we stated that “riders are useful in alleviating the burden imposed upon a utility in meeting unexpected, volatile or fluctuating expenses.” (Emphasis omitted.) *A. Finkl*, 250 Ill. App. 3d at 327, 620 N.E.2d at 1148. Nothing in the language of *A. Finkl*, or the case upon which we relied, *City of Chicago*, 13 Ill. 2d at 614, 150 N.E.2d at 780, limits the use of a rider only to those cases where expenses are unexpected, volatile, or fluctuating.

*City of Chicago*, 281 Ill. App. 3d at 628.

Finally, the Commission should include this additional discussion to, hopefully, put the misuse of *Finkl* to rest. The Commission has considered and rejected the very same arguments, both a year ago in *Commonwealth Edison Co.*, ICC Docket No. 07-0566 (Order, Sept. 10, 2008), and a few months before that, in *North Shore Gas Co., et al.*, ICC Docket Nos. 07-0241/07-0242 Cons. (Order, Feb. 5, 2008). It should be clear in this order that repeating the arguments yet again will not lead to a different result. ComEd requests, therefore, the the Proposed Order be revised as shown in Exception No. 4 of Attachment A.

**C. Publication of Report (PO Section XIX.1)**

The Proposed Order (at 48) states:

The City of Chicago’s request for dissemination of the pilot program’s results is reasonable and it shall be adopted. We note that this request respects

confidential customer information and ComEd has no objection to this request. ComEd is hereby directed, within 10 days from the date upon which pilot information and its report are completed, to post this report on its website, after having deleted confidential customer information.

The point of this finding is correct, and both the City of Chicago and ComEd strongly support public dissemination of the results of the Pilot. However, both ComEd and the City also recognized that there are limited classes of information that cannot be legally or appropriately made public. These classes of data, however, are not limited to only “confidential customer information.” As Dr. Hemphill testified, they also include “vendor pricing data, and intellectual property and trade secrets ... that cannot be disseminated legally or consistently with good public policy ....” Hemphill Reb., ComEd Ex. 8.0, 29:607-10. No witness opposed this recommendation. While ComEd does not expect any non-public data to be a material portion of the Pilot report, these types of data are legally entitled to protection. Moreover, by appearing to fail to protect it, the Proposed Order will have the unintended consequence of chilling participating in the Pilot by vendors who may fear that their proprietary pricing and intellectual property will be compromised. The Proposed Order therefore should be amended as proposed in Exception No. 10 of Attachment A.

**D. Quantification of Costs and Benefits (PO Section II)**

Portions of the Proposed Order can be read to assume that all benefits of AMI identified in the Pilot can and must be quantified. For example, the Proposed Order requires ComEd to “quantify, with specificity, all of the expenses and like items that have been reduced as a result of this pilot program.” PO at 14. ComEd supports a robust analysis of the Pilot, and has from the beginning. However, some benefits of the Pilot – *e.g.*, environmental benefits, enabling future customer smart devices – simply cannot be “quantified.” They are nonetheless real and important benefits and should not be entirely excluded from the analysis and the report. Other

portions of the Proposed Order expressly recognize that ComEd, working with stakeholders, will consider and evaluate factors “as much as is reasonably possible” (PO at 52), but that complete quantification may not be possible. Section II should reflect that realistic limitation as well. ComEd, therefore requests that two words be added to the Proposed Order to make clear that ComEd should quantify those benefits and costs that are practically quantifiable. That language change is shown in Exception No. 1 of Attachment A.

**E. Total Costs Of The Customer Applications Recovered through Rider AMP (PO Section III)**

The Proposed Order errs in its statement of the total amount of costs associated with the Customer Applications Plan that ComEd is seeking to recover through Rider AMP. The total amount is approximately \$12.6 million of operating and maintenance (O&M) expense plus approximately \$2.2 million of capital, for a total of \$14.8 million. *See* ComEd Ex. 4.0 at lines 495-501. *See also* Schlaf Dir., Staff Ex. 1.0, 11:260-62. The Proposed Order appears to use the \$12.6 million figure as the total cost in at least two places.

The Proposed Order also incorrectly states that ComEd is not seeking to recover \$8.5 million of customer applications costs. The figure of \$21,540,680 of O&M costs to which the Proposed Order refers is the total O&M estimate for the entire AMI Pilot. That figure includes O&M costs associated with program management, network infrastructure, and information technology, which ComEd is not asking to recover in Rider AMP. *See* ComEd Ex. 5.03. ComEd is asking to recover the total customer applications O&M costs; the portion of the O&M costs that ComEd is not seeking to recover relate to other portions of the Pilot, not customer applications.

In this light, ComEd requests that changes be made to the Proposed Order as shown in Exception No. 2 of Attachment A.

**F. IBR and Weather-Normalization (PO Section XIII)**

The Proposed Order correctly finds that the proposed inclining block rate (IBR) structure should be included in the Customer Applications portion of the AMI Pilot. However, the Proposed Order errs in ordering ComEd to use a five year weather-normalization period and to limit program participants to those who have resided at their residences or businesses for those five prior years. *See* PO at 34. This requirement should be rejected for several reasons.

First, there is nothing in the record to support a five-year weather normalization period. No witnesses addressed this issue in testimony or was cross examined with respect to the appropriate period to weather-normalize usage data.

Second, weather-adjusting electricity usage is a subject the Commission has addressed in the past and need not be resolved again or differently in this Order. For example, the billing units used in the prior rate case, ICC Docket No. 07-0566, were adjusted for normal weather conditions using econometric models developed by ComEd. In that case, normal weather was defined using a period of 30 years (*i.e.*, 1977 to 2006). *See* ComEd's Part 285 Submission in ICC Docket No. 07-0566, Schedule E-4(a)(2), p. 4 (employing 30 year normalization); *see also* 07-0566 Order at 233. ComEd has the experience and expertise to accurately adjust the usage data for residential and business customers to account for the cool summer weather conditions of 2009. It unnecessary to impose an inconsistent, five-year weather-normalization period approach when ComEd and the Commission have already addressed this issue.

Third, and most importantly, by limiting customers and businesses to those who have been at the same address for five years, the Proposed Order unnecessarily skews the data obtained from the Customer Applications program. ComEd witness Mr. Eber emphasized the importance of keeping all types of customers in the pool, testifying that "the validity of the evaluations depends on the ability to evaluate a broad cross-section of customers." Eber Dir.,

ComEd Ex. 4.0, 13:236-237. There is no evidence to the contrary. If, however, participation is limited to customers who rarely move, that limitation will render the sample unrepresentative, and the evaluation of the resulting data will be jeopardized.

Therefore, the Proposed Order should be revised to eliminate the five-year weather normalization period as shown in Exception No. 8 of Attachment A. Instead, ComEd should normalize using existing procedures accepted by the Commission in prior orders.

#### **IV. CONCLUSION**

For the reasons stated herein and in ComEd's Post-Hearing Opening and Reply Briefs, ComEd respectfully requests that the Commission modify the Proposed Order as provided in the Exceptions filed contemporaneously herewith.

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Respectfully submitted,

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