STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
-vs-	**:**	
Commonwealth Edison Company	**:**	**ICC Docket No. 08-0532**
	:	
Investigation of Rate Design Pursuant	**:**	
to Section 9-250 of the Public Utilities Act	**:**	

INITIAL BRIEF
OF
THE COALITION TO REQUEST
EQUITABLE ALLOCATION OF COSTS TOGETHER
REACT

COMPRISED OF:

A. FINKL & SONS, CO.
FUTUREMARK PAPER COMPANY F/K/A
ALSIP PAPER CONDOMINIUM ASSOCIATION
AUX SABLE LIQUID PRODUCTS, LP.
THE CITY OF CHICAGO
COMMERCE ENERGY, INC.
FLINT HILLS RESOURCES, LLC
INTEGRYS ENERGY SERVICES, INC.
THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
PDV MIDWEST REFINING LLC
UNITED AIRLINES, INC.
WELLS MANUFACTURING, INC.

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The Coalition to Request Equitable Allocation of Costs Together ("REACT"), by and through its attorneys DLA Piper LLP (US), 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 Initial Brief in the Commission's investigation of rate design of Commonwealth Edison Company ("ComEd" or the "Company") pursuant to Section 9-250 of the Act.[1]

I.

INTRODUCTION

This case was initiated in large part because the Commission found that the cost of service study ComEd presented in its last rate case was fundamentally flawed insofar as it unjustifiably and improperly assigned a massive rate increase to ComEd's largest customers and did not allocate sufficient Customer Care Costs to ComEd's supply function, thereby inflating its delivery services rates and stifling competition. ComEd has done little in this proceeding to rectify those problems. REACT respectfully requests that the Commission take advantage of this

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

opportunity to require ComEd to both provide the information necessary to properly set its rates for its largest customers in its next rate case and immediately adjust its delivery services charges to remove supply-related Customer Care Costs.

On September 10, 2008, the Commission entered a Final Order in ComEd's last rate case, ICC Docket No. 07-0566 (the "2007 ComEd Rate Case Order"). That Order, *inter alia*, rejected the enormous rate increase that ComEd sought to impose upon the largest energy users in northern Illinois based upon ComEd's Embedded Cost of Service Study ("ECOSS"). The Commission found that the ECOSS contained "substantial deficiencies" that rendered it "problematic for purposes of rate setting," because it "failed in several respects to properly allocate significant costs to cost causers and to correctly measure the cost of service to various classes and subclasses." (2007 ComEd Rate Case Order at 213.) Those deficiencies were plainly inconsistent with the Commission's "explicit policy objective of assigning costs where they belong." (*Id.* at 206.)

The Commission was so troubled that it rejected the magnitude of the rate increase ComEd sought for its largest customers and simultaneously initiated the instant proceeding to investigate multiple aspects of ComEd's deficient ECOSS. (*See* Sept. 10, 2008 Order ("Initiating Order").)The instant proceeding has been revealing and disappointing: revealing, in that it has exposed numerous additional inadequacies in ComEd's approach to cost allocation; and disappointing, in that it has demonstrated that ComEd is simply unwilling to provide the adequate information and to undertake the type of analysis to facilitate the investigation that the Commission required in its Initiating Order.

Nevertheless, the instant proceeding has been a worthwhile endeavor. Among other things, it has provided an opportunity to continue the dialogue about ways to implement the

Commission's policies favoring accurate cost assignment and the development of retail competition, both of which benefit all customers. ComEd has repeatedly claimed to support both policy objectives. (*See, e.g.,* Tr. 233:11-18; 255:11-12; 620:13-21.) REACT applauds ComEd for its words. ComEd must now be directed by the Commission to match its actions to its words.

The ECOSS that ComEd presented in the instant proceeding deviates in only minor ways from the deficient ECOSS that ComEd presented in the 2007 ComEd Rate Case.[2] Thus, it continues to be the case that if ComEd's flawed ECOSS were used to allocate costs amongst the customer classes, it would impose upon the largest northern Illinois energy users enormous, disproportionate increases exceeding $2.5 million per year for some customers – increases in delivery service rates of well over 100% to many of those customers. ComEd does not deny this fact. (*See* Tr. at 674:1-6.) Nor does ComEd deny that such increases constitute rate shock, as repeatedly explained by REACT witness Mr. Bradley O. Fults in his testimony. (*See* REACT Ex. 1.0 at 26:566-69.) Indeed, on cross-examination, Dr. Ross Hemphill, the senior ComEd official testifying in this case, admitted that ComEd apparently completely ignored the rate shock issue, did not present any evidence to rebut Mr. Fults' testimony, and did not investigate whether or not rate shock would occur. (Tr. at 316:7-17.)

REACT tried hard during the course of the instant proceeding to obtain information that would allow it to test whether the enormous rate hikes implied by ComEd's ECOSS could be tied to reality. It is well documented, however, that ComEd fought at every turn to deny REACT the information necessary to determine the actual cost of service to REACT's customer members and other over-10 MW customers.

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[2] In the instant proceeding, ComEd presented an initial revised ECOSS, with its Direct Testimony, and a further revised ECOSS, with its Rebuttal Testimony. Unless otherwise indicated herein, all references to the ECOSS refer to the ECOSS that ComEd presented with its Rebuttal Testimony in the instant proceeding.

ComEd's position in this case also has been highly deficient regarding the allocation of Customer Care Costs, the costs associated with providing billing and customer service. In the 2007 ComEd Rate Case Order, the Commission stated its belief "that some percentage of customer care costs may well be attributable specifically to bundled supply customers." (2007 ComEd Rate Case Order at 207-08.) Thus, the Commission's Initiating Order in the instant proceeding **explicitly required** that ComEd present a specific analysis and calculation of Customer Care Costs, stating that ComEd's ECOSS should "analyze[] the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd." (Initiating Order at 2.)

ComEd failed to comply with the Commission's directive regarding Customer Care Costs. Instead of presenting the required analysis, it presented essentially the same testimony that it presented in the 2007 ComEd Rate Case, using an avoided cost methodology that deviated from the approach ComEd took both in this case and in its 2007 Rate Case to analyze every other cost – and came up with an approach that lacks credibility and contradicts common sense. That is, ComEd's position is exactly the same as it was in the last rate case – that, at most, $112,482 (or .04%) of Customer Care Costs should be allocated to the supply function. (*See* ComEd Ex. 2.0 at 17:350-52; Tr. at 386:21-387:22; REACT Cross Ex. Meehan 9.)

The instant proceeding has presented an opportunity for the presentation of a refined Customer Care Cost allocation analysis by REACT witness Jeffrey Merola – the **only** expert witness to comprehensively address the Customer Care Cost issue in the instant proceeding in a manner responsive to the Commission's direction. The evidence presented by Mr. Merola's pre-filed testimony was reiterated by the testimony at the hearings that exposed the shakiness of ComEd's methodology and strongly suggested that the Company had essentially decided going

into this case that it would simply parrot the assertions it made its 2007 Rate Case. On the one hand, the witness that ComEd presented to explain the allocation of Customer Care Costs – Mr. Michael Meehan – admitted that he lacks experience and expertise in cost allocation issues, recognizing that they are not within his normal duties at ComEd, and eventually simply admitting that "I don't do cost allocations." (Tr. at 409:16-18; 384:22-385:7.) Indeed, Mr. Meehan candidly admitted that he did not even evaluate all of the known Customer Care Costs to consider what allocation should apply. (*See* Tr. at 390:11-13.) On the other hand, Mr. Merola provided credible and thorough testimony and analysis – both in writing and during live hearings – that provides the Commission with a reliable and entirely reasonable basis to answer the question raised in the Initiating Order and to allocate Customer Care Costs in a fair, pro-competitive manner. (*See* REACT Ex. 2.0 at 16:331-29:604; REACT Ex. 4.0 at 22:417-31:607; Tr. at 512:3-525:19; 527:4-528:1.)

Apparently realizing that questions raised by the intervening parties and the Commission Staff were likely to result in an adverse ruling from the Commission in this proceeding, ComEd tried, in its surrebuttal testimony, to angle for the Commission to embrace an overly constrictive workshop process – twisting a proposal suggested by Staff witness Mr. Lazare. That is, ComEd agreed that workshops would be acceptable if convened to address a very limited scope of issues – much narrower than the scope of issues raised by Staff and intervenors in the instant proceeding. This strategy was exposed during the evidentiary hearing and rejected by persuasive testimony from Mr. Lazare, who explained that the fair and practical scope of subject matter that should be covered in any workshop process includes any issues raised by the parties to the instant proceeding – including those raised by REACT – that are not resolved by the Commission in its final order in this case.

REACT has provided credible, trustworthy evidence upon which the Commission could determine the overall invalidity of ComEd's flawed ECOSS and a fair allocation of Customer Care Costs. However, should the Commission not rule on those issues with finality in its Order, REACT certainly agrees with Mr. Lazare's fair proposal that any issues not determined by the Commission should be addressed in any workshop process. To exclude issues raised in good faith in this proceeding would be unfair and inequitable to REACT and other participating parties.

A. REACT

REACT is an *ad hoc* group, with diverse members, including some of the largest of ComEd's commercial, governmental, and industrial delivery service customers as well as retail electric suppliers ("RESs") that are interested in providing service to residential and small commercial customers. (*See* REACT Ex. 1.0 at 1-2:10-15.) 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 the Company's rates. (*See id.* at 2:15-26.) REACT actively participated in all phases of the 2007 ComEd Rate Case and presented substantial expert testimony and argument in support of fair, accurate, and equitable rate design that (1) avoids penalizing the largest customers based upon a fundamentally flawed cost study; and (2) allocates Customer Care Costs in a manner that respects principles of cost causation, encourages the development of retail electric competition for residential customers, and treats all customers fairly. (*See id.*) After analyzing the testimony and the flawed ECOSS that ComEd presented in the instant proceeding, the diverse members of REACT continue to recognize that their interests align in opposing

ComEd's proposed inequitable cost allocation. As a result, this group continues to **r**equest **e**quitable **a**llocation of **c**osts **t**ogether, or "REACT." (*See id.*)

REACT's over-10 MW commercial, industrial, and municipal customer-members include: A. Finkl & Sons, Co.; FutureMark Paper Company f/k/a Alsip Paper Condominium Association; Aux Sable Liquid Products, LP; the City of Chicago; Flint Hills Resources, LLC; the Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining LLC; United Airlines, Inc.; and Wells Manufacturing Company. Each of these REACT members – and each of ComEd's customers in the over-10 MW class – is a substantial employer in the state, and an important member of the community in Northern Illinois. (*See* REACT Ex. 1.4 at 6:120-26.) Each of these customers represents a part of the economic engine that drives the larger Illinois economy. (*See id.*)

The RES members of REACT, Commerce Energy, Inc. ("Commerce") and Integrys Energy Services, Inc. ("Integrys"), are certificated as alternative retail electric suppliers, qualified to provide service in the ComEd service territory. (*See* REACT Ex. 1.2 at 8-9:185-97.) Each provides retail electric service to residential and small commercial customers in a number of other North American jurisdictions and is a potential participant in the residential and small commercial retail electric market in the ComEd service territory. (*See id.*) Of critical importance to Commerce, Integrys, and all other RESs that are considering entering the ComEd residential and small commercial market is ensuring a level playing field between retail suppliers and the incumbent supplier, ComEd. As in the 2007 ComEd Rate Case, ComEd's position in the instant proceeding regarding Customer Care Costs clearly gives preference to ComEd by causing the ***supply-related*** component of ComEd's bundled product (against which RESs will be competing) to be cross-subsidized by the ***delivery services*** or "wires" side of ComEd's business,

which charges rates that all customers, including those of RESs, must pay. (*See id.*; *see also* REACT Ex. 2.0 at 8-9:162-81.) As REACT witness Mr. Merola explained in his direct testimony:

> Improper allocation of supply-related Customer Care Costs to delivery services rates has a number of negative consequences, including:
>
> - Charging customers who choose to purchase energy from a RES for costs that should be borne only by customers receiving supply from ComEd; and;
> - Hampering competition by creating an artificially low, and therefore, distorted, price comparison for ComEd customers who shop for alternative suppliers.
>
> In short, ComEd's improper allocation of its Customer Care Costs harms all customers. The Commission should remedy this problem as soon as possible.

(REACT Ex. 2.0 at 9:171-81.)

B. The Initiating Order

The Initiating Order in the instant proceeding cites the 2007 ComEd Rate Case Order, concluding that "the substantial deficiencies in specific elements of the ECOSS render it problematic for purposes of rate setting . . . ." (Initiating Order at 1, quoting 2007 ComEd Rate Case Order at 213.) Accordingly, the Commission took the unusual step of initiating an investigation into "**all aspects of the rate design of ComEd**, specifically for the rate increases granted in Docket 07-0566. (Initiating Order at 2) (emphasis added). The Commission further directed that:

> To facilitate that investigation. ComEd is directed to provide an updated cost of service study that **(1) differentiates between primary and secondary voltage level; (2) analyzes the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd**; (3) analyzes the extent to which usage contributes to customer billing costs, data management costs, installation costs, service drops, and customer information costs and whether factors other than the number of customers in a class should be taken into account in the assignment of these costs to rate classes; (4) that allocates uncollectible debt expense costs across all residential classes; and (5) taken into account

> ownership and maintenance responsibilities of street lighting in the City of Chicago and other municipalities and allocates cost accordingly. Docket 05-0597, Order at 190 (July 26, 2006). **The Commission will utilize these updated studies provided in this record to perform a comparative analysis with the rate structure allowed in our Order in Docket 07-0566. Based on this analysis we will determine what changes, if any, are necessary, to ensure that the rate structure of ComEd, with appropriate consideration of historic rate structures of the company, are in fact just and reasonable**.

(*Id.* at 2-3) (emphasis added).

C. REACT's Position On ComEd's Rate Design

During the course of this proceeding, REACT undertook extensive efforts to obtain information from ComEd through the discovery process in an attempt to determine whether ComEd's purported assignment of costs was factually and theoretically sound. Broadly speaking, REACT learned two things.

- First, ComEd remains completely unwilling to provide information sufficient to make a reasoned determination of whether the costs incurred to serve the over-10 MW customers justify the massive rate increases that ComEd sought in the 2007 ComEd Rate Case and that it would apparently continue to seek under the deficient ECOSS presented in the instant proceeding. REACT witness Mr. Fults provided credible testimony about the magnitude of those increases – no ComEd witness challenged his conclusions. Accordingly, ComEd has failed to respond meaningfully to the Commission's directive.
- Second, ComEd's approach to analysis of the primary/secondary split issue is highly speculative, lacks concrete detail, and rests on untested assumptions and miniscule sampling. At the evidentiary hearings, ComEd admitted both that its initial assumptions were inaccurate and that its remedial sampling was "tiny." (*See* Tr. at 665:12-17; 666:11-13.) ComEd also admitted that it had not undertaken further

sampling and that it did not take issue with the Staff witness recommendation that further sampling was required. (*See* Tr. at 670:17-19; 667:17-668:4.)

REACT witness Mr. Fults explained that ComEd made certain flawed assumptions in preparing its ECOSS in the instant proceeding, resulting in a deficient ECOSS demanding potential massive, disproportionate increases in delivery services rates to ComEd's largest customers. (*See* REACT Ex. 1.0 at 5:99-103.) Mr. Fults explained that, under ComEd's flawed ECOSS, the distribution facilities charges for over-10 MW customers would be increased by an additional 80% for Extra Large Customers, an additional 62% for High Voltage Customers, and an additional 66% for Railroad Customers. (*See id.* at 9:185-89; REACT Ex. 3.0 (Corrected) at 6:114-23.)[3] Mr. Fults also explained that ComEd's deficient ECOSS would result in these massive, disproportionate increases on an annual basis, excluding any additional future increases in rate base or expenses likely to be asserted by ComEd. (*See* REACT Ex. 3.0 at 7:140-44.) Meanwhile, Mr. Fults pointed out that ComEd has identified no changes in consumption or usage which would justify these massive rate increases for ComEd's largest customers. (*See id.* at 7:145-47.)

Mr. Fults further explained that ComEd's ECOSS remains flawed with respect to these customers, in part due to:

- ComEd's failure to review, or explain the reason for excluding, costs beyond four USOA accounts, in determining if other categories of costs contain any primary or secondary service costs, and whether those costs should also be allocated differently to account for the primary/secondary split, as ordered by the Commission. (*See* REACT Ex. 1.0 at 9:194-10:210.)

[3] Unless otherwise indicated, all references hereafter to Mr. Fults' Corrected Rebuttal Testimony will be to "REACT Ex. 3.0."

- ComEd's flawed assumptions, use of estimated data, and miniscule sample sizes to allocate primary and secondary costs, including the number of primary/secondary poles; percentage of primary overhead conductors and devices; percentage of secondary underground conduit within and outside the City of Chicago; and the assumption that non-unitized equipment assigned a specific address is primary. (*See id.* at 13:274-15:334; REACT Ex. 3.0 at 4:70-78; 9:177-13:265; and 13:278-14:300.)
- ComEd's failure to review how line transformer costs are assigned, as recommended by Staff witness Mr. Lazare. (*See* REACT Ex. 3.0 at 16:332-17:373.)
- ComEd's failure to reassess the allocation of costs in Accounts 364 to 367 for High Voltage customers, in contradiction to the Commission's directive. (*See* REACT Ex. 1.0 at 10:224-11:230.)
- ComEd's failure to perform any studies to determine what facilities are actually installed to serve over-10 MW customers. (*See id.* at 11:243-12:270.)

Mr. Fults explained that ComEd has not accurately allocated costs to its Extra Large customers, and that, in order to do so, ComEd should have undertaken at least several individual studies for those customers in order to more accurately determine cost causation. (*See id.* at 17:382-18:397.) Mr. Fults also explained that, according to a limited review of the available data for these customers, ComEd's flawed ECOSS assigns disproportionately high costs to the Extra Large customers. (*See id.* at 20:435-50.)

Mr. Fults recommended that the Commission: (1) reject ComEd's deficient ECOSS for purposes of setting rates for the over-10 MW customers (*see id.* at 6:109-17; REACT Ex. 3.0 at 5:88-94); (2) order ComEd to perform cost studies for Extra Large and High Voltage customers based on the facilities installed to serve those customers (*see* REACT Ex. 1.0 at 6:118-22); and

(3) consider engaging an independent company at ComEd's expense to develop an appropriate cost of service study. (*See id.* at 6:123-30 and 22:485-500; REACT Ex. 3.0 at 5:96-107 and 22:465-78.)

ComEd has failed to credibly answer the Commission's directives set forth in the Initiating Order regarding the re-evaluation of the overall costs assigned to its largest customers. Certainly, ComEd has failed to justify the massive, disproportionate rate increases that would follow from application of ComEd's current, problematic ECOSS – increases that are not materially different than the enormous increases that the Company sought, and the Commission rejected in the 2007 ComEd Rate Case. Furthermore, ComEd has failed to analyze the primary/secondary split issue in a manner that provides the Commission with a basis to determine the cost of service to customers taking only primary service. The shortcomings in ComEd's analysis – which are acknowledged not only by REACT but also by the Commission Staff, the Illinois Industrial Energy Users, Metra, and the CTA – render ComEd's flawed ECOSS ineffectual as a basis to determine cost of service.

D. REACT's Position On The Customer Care Cost Issue

During the course of this proceeding, REACT commissioned expert witness Jeffrey Merola to undertake an analysis of the proper allocation of Customer Care Costs. Mr. Merola is a Vice President of Intelometry, Inc. of Houston, Texas. Mr. Merola has over 19 years of experience in energy marketing. (*See* REACT Ex. 2.1 at 1.) His experience includes a diverse mix of professional roles in the energy industry, including wholesale market operations, transmission, risk management, product structuring, pricing and valuation, operations, and retail marketing. (*See id.*) In addition to his analytical experience, Mr. Merola possesses specific, direct experience with customer care and billing functions from a supplier perspective, including

design, testing, implementation, and training associated with billing software. (*See* Tr. at 526:15-527:3.)

As requested, Mr. Merola did undertake an analysis of the proper allocation of ComEd's Customer Care Costs, and he was the only witness who performed an analysis that actually responded to the Commission's directive in the Initiating Order. REACT also undertook extensive efforts to obtain information from ComEd through the discovery process in an attempt to determine whether ComEd's approach to allocation of Customer Care Costs was factually and theoretically sound. The evidence demonstrates that:

- ComEd adopted a methodology to analyze allocation of Customer Care Costs that lacks credibility.
- In contrast, the analysis undertaken by Mr. Merola directly responds to the Commission's directive, is credible and reasonable, and results in a fair and appropriate allocation, rather than the highly dubious result that ComEd reached.

Mr. Merola explained the inadequacies of ComEd's response to the Commission's directive that ComEd analyze the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd. (*See* REACT Ex. 2.0 at 4:74-77.) Specifically, Mr. Merola pointed out that ComEd failed to follow the Commission's directive to analyze the cost of providing Customer Care to RES and non-RES customers, instead purporting to analyze whether or not Customer Care Costs would go down with an increase in switching to alternative suppliers. (*See id.* at 5:111-12 and 11:215-16; REACT Ex. 4.0 (Corrected) at 3:38-41.)[4] Mr. Merola explained that ComEd's analysis, while off the mark of the Commission's directive and inconsistent with

[4] Unless otherwise indicated, all references hereafter to Mr. Merola's Corrected Rebuttal Testimony will be to "REACT Ex. 4.0."

the embedded cost approach of this proceeding, also contained numerous flaws and incorrect assumptions. (*See* REACT Ex. 2.0 at 11:235-12:248 and 5:113-15.) Mr. Merola noted that ComEd continues to assert that embedded Customer Care Costs that support both the delivery and supply functions should be allocated only to the delivery function, and recovered in ComEd's delivery services rates. (*See* REACT Ex. 4.0 at 4:58-61.)

Mr. Merola identified the following flaws in ComEd's purported analysis: (1) ComEd's position that it incurs no incremental Customer Care Costs to provide supply service is implausible (*see* REACT Ex. 2.0 at 12:251-58; REACT Ex. 4.0 at 4:74-5:79); (2) ComEd improperly identified all costs associated with the Large Customer Services Department as delivery function costs (*see* REACT Ex. 2.0 at 13:264-65; 13:274-14:281; REACT Ex. 4.0 at 10:195-11:201); (3) ComEd limited its analysis to only O&M costs to determine the level of Customer Care Costs (*see* REACT Ex. 2.0 at 13:266-67 and 14:284-91; REACT Ex. 4.0 at 13:244-56); and (4) ComEd applied inconsistent assumptions on the impact of customer switching on Call Center activity. (*See* REACT Ex. 2.0 at 13:268-69 and 14:295-16:322.)

Mr. Merola explained that, under his appropriate analysis of the Commission's directive, he quantified overall Customer Care Costs; directly assigned to the delivery function those costs that are associated only with the delivery function; directly assigned to the supply function those costs that are associated only with the supply function; and applied a functionalization factor to the remaining Customer Care Costs to allocate those costs to the delivery or supply function. (*See id.* at 7:132-38.) As a result:

- The average cost of providing Customer Care to a residential customer taking supply from an alternative supplier is 0.5549 cents/kWh, while the average cost of providing Customer Care to a

residential customer taking supply from ComEd is 0.8043 cents/kWh; and

- The average cost of providing Customer Care to a non-residential customer taking supply from an alternative supplier is 0.0604 cents/kWh, while the average cost of providing Customer Care to a non-residential customer taking supply from ComEd is 0.1587 cents/kWh.

(*See* REACT Ex. 4.0 at 7:117-8:142.)

Mr. Merola thus concluded that ComEd has improperly allocated $87,970,634 to the delivery function in its revised ECOSS – costs that are more appropriately allocated to the supply function. (*See id.* at 32:635-36.) As a result of this improper allocation, ComEd's flawed ECOSS overcharges customers who take supply from a RES, hampering competition, and creating an artificially low price comparison for supply from ComEd. (*See* REACT Ex. 2.0 at 9:171-178; REACT Ex. 4.0 at 21:409-16.)

E. The Evidentiary Hearings Demonstrated Several Important Points

As discussed further below, the evidentiary hearings included cross-examination of each ComEd witness that:

- Exposed the contradiction between ComEd's purported support for accurate cost allocation and competition and the Company's misallocation and/or outright refusal to allocate certain costs, the result of which is inaccurate cost allocation and anti-competitive, inaccurate price signals;
- Exposed serious flaws in ComEd's approach to responding to the Initiating Order;
- Raised questions about ComEd's methodologies, assumptions, and results; and

- Rebutted ComEd's purported criticisms of the REACT witnesses.

Although ComEd chose not to cross-examine REACT witness Mr. Fults, ComEd's cross-examination of REACT witness Mr. Merola demonstrated both his credibility and expertise in the area of his analysis as well as the substantive validity of his conclusions regarding fair and reasonable allocation of Customer Care Costs. Indeed, the main thrust of ComEd's cross-examination was apparently that Mr. Merola could have allocated *more* Customer Care Costs to the supply function than he actually did in performing his analysis. (*See* Tr. at 527:4-12.) ComEd's point highlights the conservative, reasonable approach that Mr. Merola took to reaching an appropriate allocation. (*See id.* at 527:13-24 to 528:1.)

In sum, the evidentiary hearings demonstrated:

1. The inequity of the massive rate increases ComEd continues to try to impose on large customers;

2. The invalidity of ComEd's assumptions in undertaking the revised ECOSS, and the miniscule sampling undertaken to "verify" a few of those assumptions;

3. ComEd's repeated refusal to provide requested information about plant facilities to serve the largest customers;

4. The fact that Mr. Merola is the only witness to undertake the analysis of Customer Care Costs as specifically called for in the Initiating Order, and the only witness to provide an answer in dollars and cents to the question asked by the Commission; and

5. The need to include REACT issues in any workshop process, and the fact that a workshop process may not resolve issues that require a third-party, independent analysis of cost of service.

REACT respectfully requests that the Commission enter an Order in the instant proceeding that requires ComEd to both provide the information necessary to properly set its rates for its largest customers in its next rate case and immediately adjust its delivery services charges to remove supply-related Customer Care Costs.

II.

COMED'S ECOSS REMAINS FUNDAMENTALLY FLAWED

ComEd's ECOSS continues to lack credibility and would, if implemented, impose enormous, disproportionate rate increases ranging up to over $2 million annually upon ComEd's largest customers. The record evidence – submitted not only by REACT but also by Staff and other intervenors such as the Illinois Industrial Energy Users, Metra, and the CTA – demonstrates that the ECOSS continues to have substantial deficiencies. The evidence also demonstrates that ComEd's attempts to fill the gaps – through questionable assumptions and deficient, tiny sampling, and the like – raises as many if not more questions than it answers. The ECOSS remains a deficient analysis, and certainly lacks the credibility to form a basis upon which to impose the enormous rate increases potentially faced by ComEd's largest customers.

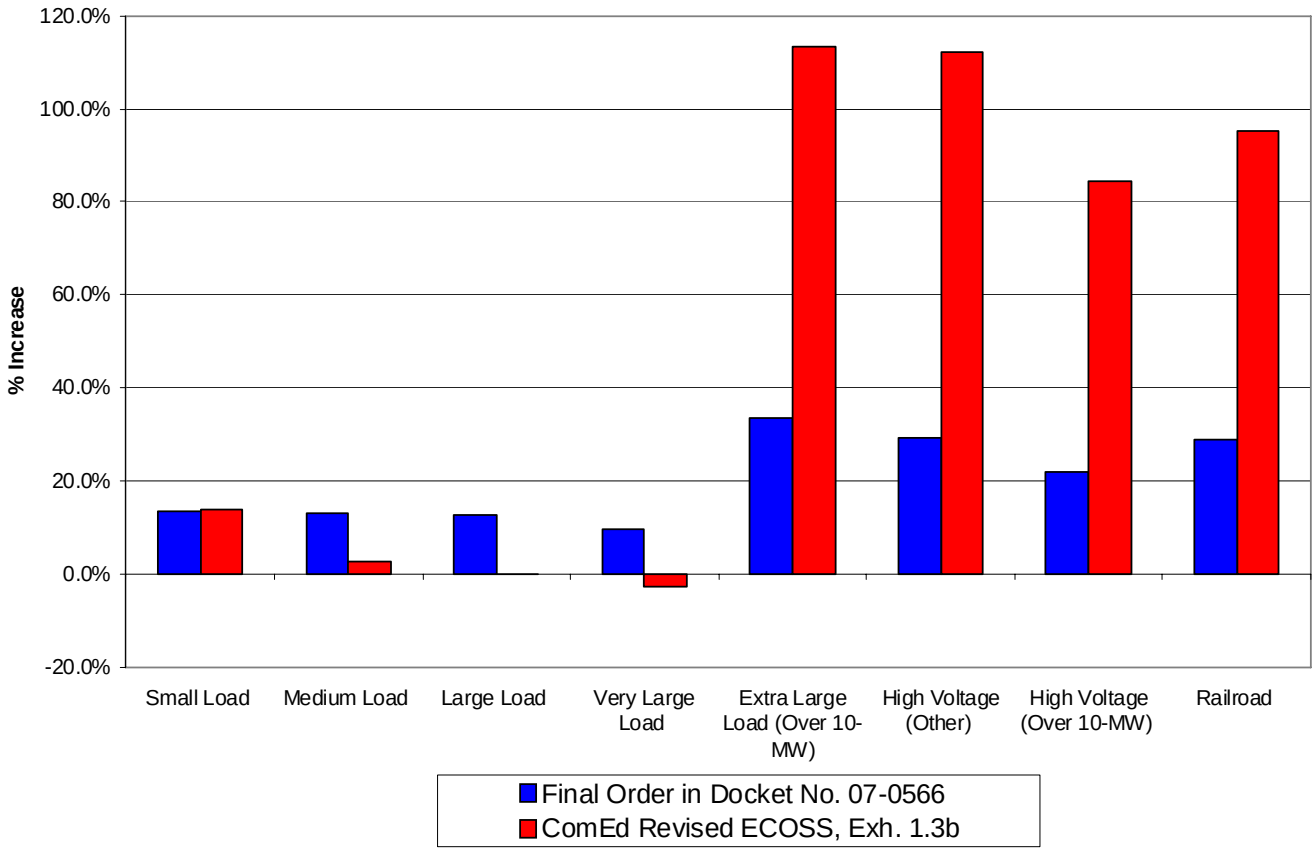
A. Rate Impacts For The Largest Customers Remain Disproportionate And Unjustified

REACT witness Mr. Fults presented uncontradicted testimony about the rate impacts implicated by ComEd's ECOSS. Based on rate design examples included in ComEd witness Mr. Alongi's testimony, Mr. Fults prepared a number of charts illustrating the rate impact to over-10 MW customers by adjusting the revised ECOSS for the primary/secondary separation and including the impact of the 25% mitigation cost movement factor ordered by the Commission in ICC Docket No. 07-0566 for the over-10 MW size customers and railroads.

Mr. Fults' bar chart, indicated as Figure 1 (REACT Ex. 1.0 at 24), shows in blue the percentage increases in the distribution facilities charge approved by the Commission in the 2007 ComEd Rate Case. Shown in red is the total increase over rates in effect prior to the 2007 ComEd Rate Case Order that would result from application of ComEd's initial ECOSS presented in the instant proceeding – this shows a potential cost increase of 113% for the Extra Large non-

high voltage over-10 MW customers and approximately 84% for High Voltage over-10 MW customers.

Figure 1. ComEd's Proposed Percentage Increase in Non-Residential Customer Class Distribution Facilities Charge Using the Revised ECOSS



Mr. Fults' Table 2 (REACT Ex. 1.0 at 24) summarizes the distribution facilities charges for non-residential customers over time.

Table 2. Summary of Distribution Facilities Charges for Non-Residential Customers

	Distribution Facilities Charge ($/kW-Month)			% Inc. Over Rates in Effect Prior to Final Order in ICC Docket No. 07-0566	
	(a)	(b)	(c)	(d)	(e)
Customer Class	Pre 9/16/08	Final Order (07-0566	Revised ECOSS P-S Split *	Final Order (07-0566)	Revised ECOSS P-S Split
Small Load (Less than 100 KW)	$4.29	$4.86	$4.88	13.3%	13.8%
Medium Load (100 KW to 400 KW)	$5.01	$5.67	$5.13	13.2%	2.4%
Large Load (400 KW to 1 MW	$5.37	$6.04	$5.36	12.5%	-0.2%
Very Large Load (1 MW to 10 MW)	$5.22	$5.71	$5.07	9.4%	-2.9%
Extra Large Load (Over 10-MW)	$2.46	$3.28	$5.25	33.3%	113.4%
High Voltage (Other)	$2.22	$2.87	$4.71	29.3%	112.2%
High Voltage (Over 10-MW)	$1.09	$1.33	$2.01	22.0%	84.4%
Railroad	$2.46	$3.17	$4.80	28.9%	95.1%

* Distribution facilities charges from ComEd Exhibit 1.3B

Both of these depictions show that the cost impact for higher distribution rates would be significant for Extra Large over-10 MW and High Voltage customers. At the evidentiary hearings, ComEd witnesses Mr. Heintz and Mr. Alongi conceded that these rate impacts are accurate. (*See* Tr. at 337:8-21; 651:10-16; 660:21-661:1; 674:1-6.)

Mr. Fults then illustrated these rate impacts in dollars. (*See* REACT Ex. 1.0 at 25:543-51.) He explained that in ICC Docket No. 07-0566 the typical Extra Large Customers received annual increases ranging from $98,400 for a customer with a demand of 10 MW to $738,000 for a customer with a demand of 75 MW. (*See id.*) For high-voltage customers the annual increase ranged from $28,800 for a customer with a demand of 10 MW to $216,000 for a customer with a demand of 75 MW. (*See id.*) If ComEd's proposed delivery service rates were to be adopted, the annual increase for Extra Large customers would range from $334,000 to $2,511,000. For high voltage customers, the increase would range from $110,000 to $828,000 per year. (*See id.*)

If the customer's load is larger than 75 MW, then the annual impact would be even larger. (*See id.*)

Mr. Fults presented the following chart (*see* REACT Ex. 1.0 at 26) demonstrating this.

Table 3. **Annual Impact of ComEd's Proposed Distribution Facilities Charges for Extra Large and Over 10-MW High Voltage Customers**

Increase Over Rates In Effect Prior to Final Order in Docket No. 07-0566

	Final Order, ICC Docket No. 07-0566		Revised ECOSS (Ex. 1.3B)	
Customer Size	**Extra Large**	**High-Voltage**	**Extra Large**	**High-Voltage**
10 MW	$98,400	$28,800	$334,800	$110,400
20 MW	$196,800	$57,600	$669,600	$220,800
35 MW	$344,400	$100,800	$1,171,800	$386,400
50 MW	$492,000	$144,000	$1,674,000	$552,000
75 MW	$738,000	$216,000	$2,511,000	$828,000

a) Increase calculated by multiplying customer monthly kW x 12 months x $/kW increase in distribution facilities charge.

Mr. Fults further updated his analysis in his Rebuttal Testimony to account for the minor changes that ComEd made in its flawed ECOSS during the course of the instant proceeding. He explained that the revisions by ComEd essentially would keep the massive rate increases intact. (*See* REACT Ex. 3.0 at 6:128-31.) For Extra Large Customers the annual increase would range from $333,000 to $2,520,000. (*See id.*) For high voltage customers, the increase is unchanged ranging from $110,000 to $828,000 per year. (*See id.*) Mr. Fults' Table 3.1 shows the cost increase, even under the second ECOSS that ComEd presented in the instant proceeding:

Table 3.1. Annual Impact of ComEd's Proposed Distribution Facilities Charges for Extra Large and Over 10-MW High Voltage Customers

Increase Over Rates In Effect Prior to Final Order in 2007 Rate Case

	Final Order, ICC Docket No. 07-0566		Revised COSS, Rebuttal Exhibit (6.3B)	
Customer Size	Extra Large	High-Voltage	Extra Large	High-Voltage
10 MW	$98,400	$28,800	$336,000	$110,400
20 MW	$196,800	$57,600	$672,000	$220,800
35 MW	$344,400	$100,800	$1,176,000	$386,400
50 MW	$492,000	$144,000	$1,680,000	$552,000
75 MW	$738,000	$216,000	$2,520,000	$828,000

a) Increase calculated by multiplying customer monthly kW x 12 months x $/kW increase in distribution facilities charge.

(REACT Ex. 3.0 at 7.)

At the evidentiary hearings, ComEd witness Mr. Alongi confirmed the fact that the changes that ComEd made to its flawed ECOSS during the course of the instant proceeding have what he initially described as a "fairly insignificant" effect on the massive rate increases that are implicated by ComEd's position on the ECOSS generally. (Tr. at 565:15-19.) When questioned about REACT Cross Ex. Alongi 19, which compares the impact of the initial and revised ECOSSs that ComEd presented during the course of the instant proceeding, Mr. Alongi revised his answer and admitted that the differences were "a very small variance." (Tr. at 658:1-5.)

Mr. Fults emphasized three important points about the rate impacts implicated by ComEd's position:

- First, any cost increase associated with adopting ComEd's flawed ECOSS would be an *annual* cost increase that, absent Commission intervention, would continue *forever*.
- Second, the forgoing analysis excludes any future increases in rate base or expenses that likely will be asserted by ComEd.

- Third, ComEd has not identified *any* changes in the consumption or usage patterns of these customers that could possibly justify these whopping rate increases.

(*See* REACT Ex. 1.0 at 26:560-63; REACT Ex. 3.0 at 7:138-147.) ComEd did not refute or rebut any of these points in pre-filed surrebuttal testimony or in live testimony at the hearings. On the contrary, ComEd witnesses admitted that each is true. (*See* Tr. at 272:2-8; 273:7-19; 661:3-12; 662:5-11; 674:11-20.)

ComEd witnesses also purported to strongly oppose rate shock and discriminatory rates, and agreed that the Commission should strive to avoid the same. (*See* Tr. at 264:15-22; 265:1-4; 266:5-9.) Yet, as in its last rate case, ComEd's actions speak louder than the words of its executives when presented with the facts at hearing. In fact, ComEd's actions in the instant proceeding appear to be remarkably similar to its actions in the 2007 ComEd Rate Case, and the Commission should regard ComEd's current, deficient ECOSS with the same if not more skepticism.

B. ComEd's Very Limited Sampling Exposed The Problems With The Deficient ECOSS But Did Not Cure Them

Charged in the Initiating Order with presenting an ECOSS that accounted for the primary/secondary split, and allocated costs accordingly, ComEd nonetheless initially submitted an ECOSS that relied in large part on unsubstantiated assumptions and unspecified "engineering judgments" performed by unidentified ComEd employees. Mr. Fults provided a critique of ComEd's approach in his direct testimony. (*See* REACT Ex. 1.0 at 9:181-22500.) Other parties, including the Commission Staff, questioned ComEd's approach to attempting to answer the Commission's directive without undertaking a verifiable study to determine if assumptions and judgments possessed any basis in reality.

ComEd responded by undertaking what can at best be described as an extremely limited sampling of a limited set of facilities in a limited set of categories. Mr. Fults, along with Staff witness Mr. Lazare and others, provided a thorough critique of this unsatisfactory attempt by ComEd to remediate its inadequate initial attempt. Mr. Fults catalogued the following points about ComEd's sampling:

1. Mr. Alongi admitted that, contrary to ComEd's original assumption, not all multi-family residential customers with 120/208 volt meters are primary service customers. (*See* ComEd Ex. 6.0 at 25:609-26:630.)

   ComEd initially made the assumption that all multi-family residential customers are primary and bypass ComEd's secondary distribution line. ComEd witness Mr. Alongi explained in his rebuttal testimony that ComEd subsequently selected and inspected engineering records for 20 multi-family residential customers out of a total of approximately 181,000, or 0.01% of these customers. Fifteen of the multi-family customers did not have electric space heating. There are approximately 159,000 such multi-family customers without space heating. This means that ComEd examined 0.01% of the relevant customers. ComEd also looked at five multi-family customers that do have space heat out of approximately 22,000 – that is 0.02% of the relevant customers. Based on the results of this tiny sample, ComEd determined that 82.4% rather than 100% of multi-family residential customers are classified as primary. ComEd offered no justification for the number of customers examined.

(*See* REACT Ex. 3.0 at 9:177-10:195.)

2. Mr. Alongi admitted that ComEd's original assumption regarding the percentage of wood poles 50 feet or less that have secondary facility attachments was flawed. (*See* ComEd Ex. 6.0 at 28:666-31:707.)

ComEd reviewed limited data for each of its 19 service territories and compared this to its original assumption that 57% of wood poles 50 feet or less have secondary facilities attached. ComEd then selected 10 poles from each of these service territories and examined whether secondary facilities are attached. ComEd offered no justification for the number of poles actually examined. The results of this very limited sampling showed widely diverging results. For example, in one area (Joliet) where ComEd had originally estimated that 70% of poles had secondary facilities, the sampling showed that 0% had secondary facilities. (*See id.* at 30, Table R1.) Widely diverging results appeared for other areas as well – for example, ComEd had also originally estimated that 70% of poles had secondary facilities in Rockford and Elgin, but the sampling showed just 10% and 20%, respectively.

Rather than use the actual data, however, ComEd discarded it with the garbled statement that: "ComEd's percentages are revised based upon the sample data results, adjusted to provide alignment with customer density data, as appropriate." (*Id*. at 31:706-07.) The meaning of this statement is unclear.

> In any event, as a result of its review of the actual facilities, ComEd estimated that 46.9% of the wood poles 50 feet or less have secondary facilities attached. For some reason, ComEd continued to estimate that 50% of wood poles have both secondary and primary facilities attached. Thus, ComEd estimated that 23.5% of wood poles 50 feet or less in height are assigned to secondary, rather than its prior estimate of 28.5%.

(*See* REACT Ex. 3.0 at 10:197-11228.)

3. Mr. Alongi admitted that ComEd's assumption that 100% of the wood poles over 50 feet in height support only primary service facilities was flawed. (*See* ComEd Ex. 6.0 at 31:708-13.)

> ComEd originally assumed that 100% of poles over 50 feet support only primary service. However, based on a sample of 50 wood poles over 50 feet in height, ComEd found that over one-third of those poles – 34.9% – actually support secondary facilities. ComEd did not justify the number of poles actually examined. Nevertheless, based on this information, Mr. Alongi admitted that ComEd's assumptions were "overstated." (*Id*. at 31:712.) ComEd revised its assumption to an estimate that only 82.5% of the wood poles over 50 feet in height are primary.

(*See* REACT Ex. 3.0 at 11:230-12242.)

4. Mr. Alongi asserted that ComEd demonstrated the reasonableness of its assumption that all customers with demands over 400 kW are primary. (*See* ComEd Ex. 6.0 at 25:595-608.)

> ComEd apparently examined the engineering records for 10 customers with demands over 400 kW. There are approximately 6,200 customers with such a demand. This means that ComEd examined engineering records for 0.16% of the relevant customers. ComEd did not explain how those customers were selected and did not justify the limited number of customers that it examined. ComEd found that all 10 of these customers bypass ComEd's secondary distribution system. ComEd then extrapolated from this miniscule sampling to assert that all customers with demands of 400 kW or greater bypass the secondary system and are primary customers.

(*See* REACT Ex. 3.0 at 12:244-57.)

5. Mr. Alongi asserted that ComEd has validated its assumption that only 1% of conduit used for secondary conductors outside the City of Chicago is secondary. (*See* ComEd Ex. 6.0 at 28:660-65.)

> Mr. Alongi explained that ComEd reviewed its CEGIS data and paper underground maps and through "manual tabulation" somehow concluded that the 1% estimate is appropriate.

(*See* REACT Ex. 3.0 at 12:259-13265.)

Mr. Fults highlighted these flaws in ComEd's "sampling" in his rebuttal testimony. He explained that the very limited sampling that ComEd chose to do to "test" its assumptions involved self-selected infinitesimal sample sizes. (*See id.* at 13:278-79.) As noted above, ComEd witness Mr. Alongi acknowledged the "tiny" sample sizes that the Company took. (Tr.

at 666:11-13.) For example, ComEd reviewed only 0.01% of engineering records for over 400 kW size customers; only 0.01% of multi-family customers that do not have electric space heating; only 0.02% of multi-family customers that have electric space heating; and just 10 poles in each of its service territories. (*See* REACT Ex. 3.0 at 13:279-83.) Given the extremely small size of these samples, it would be reasonable for the Commission to question whether ComEd is taking this investigation seriously. (*See id.* at 13:283-14:285.) Mr. Fults determined that even viewing ComEd's intentions in the best light, the Commission should conclude that ComEd's assumptions remain highly questionable, and that ComEd's analysis is unreliable. (*See id.* at 14:285-88.)

Mr. Fults further noted that even assuming that ComEd's revised assumptions were accurate, Mr. Alongi admits that what is shown – at least in part – is that ComEd's original assumptions were faulty. (*See id.* at 14:290-92.) Mr. Fults observed that the data ComEd has presented, for example with respect to wood poles less than 50 feet or less, shows that ComEd's original assumptions were way off. (*See id.* at 14:292-94.) This raises questions about the accuracy not only of the assumptions that ComEd has purported to test through its tiny sampling protocol, but also about ComEd's assumptions and approaches as embodied in the flawed ECOSS more generally. (*See id.* at 14:294-97.) Mr. Fults concluded that the Commission should be concerned that ComEd has refused to adequately check its purported analysis, and should be very concerned that it also refused to provide actual data to REACT so that REACT could test ComEd's assumptions. (*See id.* at 14:297-300.)

Concerns over sampling were raised as well by other parties and the Commission Staff. Staff witness Mr. Lazare observed that the limited sampling:

> [D]emonstrate[s] the limitations of using engineering judgment alone to identify primary and secondary costs on the ComEd system. There is a clear need to expand the scope of visual inspections to test those judgments and produce an accurate analysis of primary and secondary costs.

(Staff Ex. 2.0 at 19:416-22.) At the hearing, ComEd witness Mr. Alongi admitted that neither he nor any other ComEd witness took issue with Mr. Lazare's critique of the sampling. (*See* Tr. at 666:17-667:7.)

In addition to concerns about the methodology and results, Mr. Fults noted the irony of ComEd's new-found embrace of sampling:

> It appears that where convenient, ComEd has taken at least minimal steps to try to do some extremely limited sampling of actual physical facilities that exist in its system in order to make a "gut check" of whether certain assumptions have any basis in reality. This is commendable, as far as it goes. However, it is ironic in a sense as well. REACT has been seeking throughout this proceeding – as well as in the last ComEd rate case (ICC Docket 07-0566) – specific information regarding the physical facilities used to serve ComEd's Extra Large and High Voltage customer classes. ComEd has strongly resisted these Data Requests, repeatedly arguing about the supposed time and expense associated with providing that information. ComEd has *not* argued that providing the information would be impossible or even infeasible, and ComEd's recent limited sampling as reported in Mr. Alongi's testimony shows why. It *is* possible and it *is* feasible.
>
> Frankly, it seems unfair that ComEd would undertake sampling activities regarding a number of its assumptions relating to its analysis – an analysis that showed that some of its assumptions were substantially incorrect – but then would refuse to provide information in discovery that would allow some of its largest customers to test the assumptions contained in ComEd's revised ECOSS. This is particularly vexing because ComEd asserts that a number of its Extra Large and High Voltage customers should be faced with annual rate increases of millions of dollars based upon nothing more than the assumptions baked into its ECOSS. Given what is at stake, some delay or some expense to ComEd – which even ComEd estimates would be very small relative to the proposed rate increases – is completely reasonable. ComEd should not be permitted to avoid providing the information that would allow for a full and open exploration of the inputs that go into its revised ECOSS.

(REACT Ex. 3.0 at 14:303-15:328.) ComEd did not rebut these conclusions; indeed, ComEd did not present any testimony addressing these issues, and even chose not to cross-examine Mr. Fults.

Adding to the irony that Mr. Fults observed in ComEd's approach, was Mr. Alongi's acknowledgement at the hearings that his "high" estimate for providing the information that REACT had requested relating to cost of service would be a one-time, non-recurring $1 million. (*See* Tr. at 676:1-8.) This contrasts with the rate increases that would result from embracing ComEd's flawed ECOSS – increases that for ComEd's largest customers would exceed $2 million each, recurring every year. (*See* Tr. at 676:9-17.) Ultimately, Mr. Alongi admitted that the necessary information could be obtained and provided, and that neither cost nor timing was an impediment:

> Q. So you'd agree with me that neither the cost you've suggested nor the timing you've suggested would prevent the Commission, if it chose to do so, to retain an independent third party to conduct the work needed to provide the kind of information that REACT has been seeking in this proceeding, right?
>
> A. I think that's fair to say, yes.

(Tr. at 677:11-17.)

C. At A Minimum, Issues Raised By Mr. Fults Must Be Included In A Workshop Process, And May Require Review By An Independent, Third-Party

Staff witness Mr. Lazare has proposed a workshop process to address issues that are unresolved by the Commission's Final Order in the instant proceeding. ComEd, through the surrebuttal testimony of Mr. Alongi, proposed to severely limit the scope of issues that might be addressed in a workshop process. (*See* ComEd Ex. 10.0C at 8:183-9:206.) In response to a series of Data Requests, Mr. Lazare expressed clearly and unequivocally that he proposes that

any workshop process ordered by the Commission should not be constrained to the limited subject matter that ComEd favors. (*See generally* REACT Cross Ex. Lazare 14.) Instead, Mr. Lazare makes clear that a workshop process should include "issues raised, in this docket, and not otherwise resolved by the Final Order, by other parties that are relevant to the development of the cost of service." (*Id.* at 1.) Mr. Lazare's Data Request responses further clarify his position that the issues raised by REACT relating to calculation of cost of service to the largest customer classes – including issues relating to actual physical facilities and company functions used to serve those customers – are not objectionable and should be included. (*Id.* at 1-4.)

On cross-examination by ComEd, Mr. Lazare cogently explained his thinking about the workshop process and rejected attempts by ComEd to mischaracterize his written testimony on the subject or to prevent him from presenting his current, considered opinion about the scope of a workshop process. (*See* Tr. at 470:1-475:17.)

REACT has presented expert testimony and otherwise participated very actively in discovery and hearings in the instant proceeding in connection with the questions raised by Mr. Fults relating to the cost of service to serve the largest of ComEd's customers, including the members of REACT. If the Commission directs workshops, the issues REACT has raised should be included.

III.

REACT IS THE ONLY PARTY TO ANSWER THE COMMISSION'S DIRECTIVE ON CUSTOMER CARE COSTS

To address the extent to which Customer Care Costs are "attributable specifically to bundled supply customers" (2007 ComEd Rate Case Order at 207-08), the Commission provided in the Initiating Order in the instant proceeding a specific directive requiring an analysis of "the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd." (Initiating Order at 2.) The record evidence demonstrates that REACT presented a responsive, credible analysis, while ComEd provided a non-responsive response that does not withstand scrutiny.

A. Mr. Merola Undertook An Analysis That Specifically Answered The Commission's Directive

REACT witness Mr. Merola is the only witness who undertook the analysis required to answer the Commission's directive regarding allocation of Customer Care Costs. The Commission asked about the cost of providing Customer Care "to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd." (*Id.* at 2.) Mr. Merola performed the requisite analysis and answered the question. (*See generally* REACT Exs. 2.0, 4.0.)

Mr. Merola's written testimony explains his analysis in detail. Mr. Merola explained that in order to develop an appropriate response to the Commission's directive, he used data provided by ComEd to determine the costs of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd. (*See* REACT Ex. 2.0 at 6:120-7:126.)

After correcting for the initial errors in the data provided by ComEd, Mr. Merola calculated that of the $230,129,810 in Customer Care Costs for residential customers, $158,768,596 should be allocated to the delivery function while the remaining $71,361,214 should be allocated to the supply function. (*See* REACT Ex. 4.0 at 7:117-20.) In answer to the Commission's directive to ComEd in this investigation, his analysis demonstrated that for residential customers the average cost of providing Customer Care to a customer taking supply from an alternative supplier is .5549 cents/kWh while the average cost of providing Customer Care to a customer taking supply from ComEd is .8043 cents/kWh. (*See id*. at 7:120-25.) In other words, ComEd's cost of providing Customer Care to a residential ComEd supply customer is 45% higher than ComEd's cost of providing Customer Care to a residential non-ComEd supply customer. (*See id*. at 7:125-27.) This analysis is shown in REACT Exhibit 4.4.

Mr. Merola also concluded that of the $54,936,844 in Customer Care Costs for non-residential customers, $38,327,424 should be allocated to the delivery function while the remaining $16,609,420 should be allocated to the supply function. (*See id*. at 7:132-34.) In answer to the Commission's directive to ComEd in this investigation, his analysis demonstrated that for non-residential customers the average cost of providing Customer Care to a customer taking supply from an alternative supplier is .0604 cents/kWh while the average cost of providing Customer Care to a customer taking supply from ComEd is .1587 cents/kWh. (*See id*. at 7:134-8:139.) In other words, ComEd's cost of providing Customer Care to a non-residential ComEd supply customer is 163% higher than ComEd's cost of providing Customer Care to a non-residential non-ComEd supply customer. (*See id*. at 8:139-42.) This analysis is shown in REACT Exhibit 4.5.

B. Mr. Merola Provided A Highly Detailed Analysis

Mr. Merola identified four primary steps that should be included in an appropriate cost allocation of Customer Care Costs between the delivery and supply functions in a manner responsive to the Commission directive:

1. Quantify overall Customer Care Costs. He identified those costs related to Customer Care from ComEd's ECOSS filed in the 2007 ComEd Rate Case. (*See* REACT Ex. 2.0 at 16:341-43.)
2. Directly assign to the delivery function those costs that are associated only with the delivery function. He assigned to the delivery function all Customer Care Costs ComEd identified as being associated only with the delivery function. (*See id*. at 17:344-47.)
3. Directly assign to the supply function those costs that are associated only with the supply function. He assigned to the supply function all Customer Care Costs ComEd identified as being associated only with the supply function. (*See id*. at 17:348-51.)
4. Apply a functionalization factor to remaining Customer Care Costs to allocate those costs to the delivery or supply function. Employing a conservative methodology, Mr. Merola allocated the remaining Customer Care Costs – i.e., those that cannot be directly assigned to the delivery function or the supply function – in an equal split: 50% to the delivery function and 50% to the supply function. (*See id*. at 17:352-57.)

To perform his analysis, Mr. Merola used the same four ECOSS categories (billing – computation and data management; bill issue and processing; customer information; and

metering services) that ComEd used. (*See id*. at 17:360-62.) However, rather than restrict the analysis only to O&M costs as ComEd did – apparently pursuant to an arbitrary decision of a non-testifying manager whose rationale was not explained (*see* Tr. at 392:17-393:5) – Mr. Merola included the costs associated with the full revenue requirement. (*See* REACT Ex. 2.0 at 17:362-64.) This is the logical and most accurate approach because it includes all Customer Care Costs included in ComEd's ECOSS, and accordingly in ComEd's rates. (*See id*. at 17:364-66.) Indeed, at the hearing, Mr. Meehan, ComEd's witness on Customer Care Cost allocation admitted that no ComEd witness took issue with the validity of using the costs associated with the full revenue requirement – i.e., $285 million. (*See* Tr. at 392:9-11.)

The total costs by category include: (1) $158,963,136 for billing – computation and data management; (2) $24,879,861 for bill issue and processing; (3) $11,393,008 for customer information; and (4) $89,830,649 for metering services. (*See* REACT Ex. 2.0 at 18:368-70.) This represents a total of $285,066,654 in Customer Care Costs. (*See id*. at 18:371.) The analysis is shown in REACT Exhibit 4.3.

ComEd identified the following costs as being associated with the delivery function:

1. all costs associated with metering services;
2. all costs associated with the Large Customer Services department;
3. all costs associated with the Demand Management department;
4. all costs associated with the Advertising department; and
5. 65% of the costs associated with the Customer Contact Center.

(*See id*. at 18:376-82.)

Mr. Merola assigned all of these costs to the delivery function just as ComEd did, with the exception of adjustments for Large Customer Services and the Customer Contact Center.

(*See id*. at 19:385-87.) As noted above, on cross-examination ComEd seemed to take issue with Mr. Merola's decision *not* to make an allocation of metering services to the supply function. (*See* Tr. at 519:1-3.) This position is ironic, since, as Mr. Merola explained, if he had made such an allocation, that would have *increased* the Customer Care Costs allocated to the supply function. (*See* Tr. at 527:8-12.) In any event, although ComEd's point was unclear, the line of questioning served to demonstrate the reasonableness and conservatism of the approach that Mr. Merola adopted. (*See* Tr. at 527:13-528:1.)

Regarding the Large Customer Services department, Mr. Merola determined that since that department clearly supports activities related to customers that either take or could take supply from ComEd under Rate BESH – Basic Electric Service Hourly Pricing, some portion of these costs are not related solely to the delivery function. (*See* REACT Ex. 2.0 at 19:390-93.) Mr. Merola noted that ComEd explained that the Large Customer Services department supports six (6) activities including: demand response, billing inquiries, customer collections, new service installations, and storm restoration or emergency support. (*See id*. at 19:393-96.) Of these activities, two (2) also would also support the supply function – billing inquiries and customer collections – since both activities are necessary to support customers on Rate BES-H. (*See id*. at 19:396-98.) However, ComEd has provided no meaningful information to determine what portion of these costs should be allocated to the delivery and supply function. (*See id*. at 19:398-400.) As a result, since two-thirds of the functions covered by ComEd's Large Customer Services support the delivery function, Mr. Merola directly assigned two-thirds of the cost to the delivery function. (*See id*. at 19:400-03.)

Regarding the Customer Call Center, Mr. Merola testified that ComEd's analysis of the supply-related costs associated with the Customer Call Center utilized assumptions that were

based on no factual evidence and at best, were based upon experience that is completely irrelevant. (*See* REACT Ex. 4.0 at 25:477-79.) Further, Mr. Merola noted that ComEd's analysis was completely flawed. For example, in many cases ComEd justified that no costs for calls received from customers should be allocated to supply because "(c)ommercial accounts have switched in significant volumes and as a result, ComEd's best estimate is that call volumes will not be impacted further." (*See id.* at 25:484-86, citing ComEd Response to REACT Data Request 5.01.). However, Mr. Merola testified that ComEd's current level of switching for commercial accounts is 12.3%. In other words, nearly 90% of commercial accounts continue to purchase their supply from ComEd. It makes little sense that ComEd would conclude that because the level of switching is so high, call center volumes cannot be impacted any further by additional switching. (*See id.* at 25:483-90.)

Given ComEd's lack of evidence, irrelevant experience, and flawed logic, Mr. Merola performed his own analysis to allocate ComEd's Customer Call Center costs to the delivery and supply functions. First, Mr. Merola allocated all calls related to outages, emergencies, disconnects, moving, installations, or meter readings fully to the delivery function. (*See id*. at 26:493-95.) He then allocated the remaining calls, which clearly support both the supply and delivery functions, evenly to the supply and delivery functions. (*See id*. at 26:499-500.) Mr. Merola's analysis concluded with an allocation of 71% of the call center costs to the delivery function and 29% of the call center costs to the supply function. The calculations are shown in REACT Exhibit 4.2.

Mr. Merola then assigned the following costs directly to the delivery function:

1. $89,830,649 for Metering Services;
2. $4,301,914 for the Demand Management department;

3. $612,800 for the Advertising department;

4. $4,922,757 for the Large Customer Services department;

5. $16,142,549 for the Customer Contact Center.

The total direct assignment to the delivery function is $115,810,669. (*See* REACT Ex. 4.0 at 27:517-23.)

Mr. Merola directly assigned the $112,483 in Electric Supplier Services Department costs to the supply function, in the same manner as ComEd. (*See* REACT Ex. 2.0 at 20:423-25.) He also directly assigned $6,572,801 from the Customer Call Center costs for a total direct assignment to the supply function of $6,685,284. (*See* REACT Ex. 4.0 at 27:528-29.)

Mr. Merola then explained that the total costs by category that remain after direct assignment to the delivery and supply function include:

1. $126,910,632 for billing – computation and data management;

2. $24,879,861 for bill issue and processing;

3. $10,780,208 for customer information; and

4. $0 for metering services.

This represents a total of $162,570,701 of Customer Care Costs that remain to be allocated to the delivery and supply function. (*See id.* at 27:534-28:549.) This analysis is shown in REACT Exhibit 4.3.

Mr. Merola noted that these are fixed costs because ComEd has indicated that under current switching rates of 1%, its costs have not increased or decreased as a result of customer switching activity. (*See* REACT Ex. 2.0 at 22:458-63.) Further, ComEd has indicated that there will be little to no change in costs with switching rates of 10% or 100%. (*See id*. at 22:463-65.) Therefore, the Customer Care Costs associated with supporting the current business must be

fixed costs that do not vary significantly with changes in the number of customers to whom ComEd provides supply services. (*See id*. at 22:465-67.)

Mr. Merola determined that these costs support both delivery and supply functions because ComEd has clearly indicated where it had determined that costs are associated to only the delivery function or only the supply function, and he directly assigned those costs. (*See id*. at 22:471-23:473.) Therefore, according to ComEd's own analysis, these remaining costs must be associated with both functions. (*See id*. at 23:473-74.)

Mr. Merola pointed out that although ComEd has numerous functionalization factors (including factors for labor, equipment and software) to allocate various components of its revenue requirement, it has not developed functionalization factors designed to support allocation of Customer Care Costs to the delivery and supply functions. (*See id.* at 23:478-81.) Indeed, REACT propounded numerous data requests to ComEd to try and obtain data that might be useful for supporting the development of a functionalization factor, but ComEd repeatedly indicated that it does not track activities that would support the development of this data. (*See id.* at 23:486-89.)

Faced with this situation, Mr. Merola suggested a conservative approach – namely, that the Commission should allocate the costs 50% to the delivery function and 50% to the supply function. (*See id*. at 24:493-94.) Mr. Merola reasoned 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. (*See id*. at 24:497-99.) Mr. Merola indicated that 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% allocation to supply function, rather than the 50% that Mr. Merola recommended that the Commission use. (*See id*.

at 24:499-502.) Further, Mr. Merola noted that it is clear that from a customer care perspective, the supply portion of the business is very complex. (*See id*. at 24:502-03.) Supply rates include numerous tariff components that change far more frequently than the distribution rates. (*See id*. at 24:504-05.) For example, Rate BES-H - Basic Electric Service - Hourly Energy Pricing ("Rate BES-H") has numerous components that must be frequently computed, including the Capacity Charge, Hourly Energy Charge, PJM Services Charge, Miscellaneous Procurement Components Charge, and the Hourly Purchased Electricity Adjustment Factor. (*See id*. at 24:505-09.) Thus, Mr. Merola explained that the 50% functionalization factor is a very reasonable estimate of the percentage of the Customer Care Costs that are attributable to delivery and supply, given the lack of data provided by ComEd. (*See id*. at 24:509-11.)

Using that conservative approach, Mr. Merola concluded that of the $162,570,701 in Customer Care Costs that are not directly assigned to either the delivery or supply function, $81,285,350 should be allocated to the delivery function, and $81,285,350 should be allocated to the supply function. (*See id.* at 25:515-18; REACT Ex. 4.0 at 28:546-49.)

In summary, Mr. Merola evaluated a total of $285,066,654 in total Customer Care Costs based on ComEd's ECOSS. (*See* REACT Ex. 4.0 at 28:553-54.) Of those costs, $115,810,699 should be directly assigned to the delivery function while $81,285,350 should be allocated to the delivery function, for a total of $197,096,020 allocated to the delivery function. (*See id*. at 28:554-56.) Similarly, $6,685,284 should be directly assigned to the supply function while $81,285,350 should be allocated to the supply function, for a total $87,970,634 allocated to the supply function. (*See id*. at 28:556-58.) This analysis is shown in REACT Exhibit 4.3.

After computing the portion of Customer Care Costs that should be allocated to the delivery and supply functions, Mr. Merola further computed the Customer Care Costs for

customers taking supply from an alternative supplier versus taking supply from ComEd. (*See id*. at 29:564-67.) He performed the analysis separately for residential and non-residential customers, for two reasons. (*See* REACT Ex. 2.0 at 26:545-46.) First, there are significant differences in the total Customer Care Costs between residential and non-residential customers, reflected, for example, in ComEd's ECOSS, which allocates nearly 81% of these costs to residential customer classes. (*See id*. at 26:546-49.) Second, there are significant differences between the percentages of residential and non-residential customers that take supply service from ComEd. (*See id*. at 26:549-51.) For example, using the most recent data available, less than 0.1% of residential customers were taking supply service from a RES, while 11.8% of non-residential customers were taking supply from a RES. (*See id*. at 26:551-54..)

Allocating the Customer Care Costs separately to residential and non-residential customers, Mr. Merola concluded that $230,129,810 of the total Customer Care Costs should be allocated to residential customers, while the remaining $54,936,844 should be allocated to non-residential customers. (*See* REACT Ex. 4.0 at 29:571-75.) This analysis is shown in REACT Exhibit 4.4 and REACT Exhibit 4.5. Further dividing these costs into the delivery and supply functions, Mr. Merola determined that of the $230,129,810 in Customer Care Costs for residential customers, $158,768,596 should be allocated to the delivery function while the remaining $71,361,214 should be allocated to the supply function. (*See* REACT Ex. 4.0 at 29:579-30:582.) This analysis is shown in REACT Exhibit 4.4. For non-residential customers, Mr. Merola concluded that of the $54,936,844 in Customer Care costs for non-residential customers, $38,327,424 should be allocated to the delivery function while the remaining $16,609,420 should be allocated to the supply function. (*See* REACT Ex. 4.0 at 30:584-87.) This analysis is shown in REACT Exhibit 4.5.

C. ComEd Did Not Undertake An Analysis That Answered The Commission's Directive

ComEd did not undertake an analysis that responded to the Commission's directive. ComEd simply failed to answer the Commission's directive to analyze "the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd." Instead, ComEd purported to analyze whether or not Customer Care Costs would go down with an increase in switching to alternative suppliers.

Even in performing this non-responsive, alternative analysis, ComEd made numerous errors that resulted in ComEd overstating its delivery services costs and understating its supply-related costs. (*See* REACT Ex. 2.0 at 6:105-15.) Mr. Merola's pre-filed testimony provided a comprehensive critique of ComEd's approach. (*See id.* at 9-16:186-329.) At the evidentiary hearings, it became clear that ComEd had not undertaken a credible analysis to answer the Commission's directive, had undertaken a methodology that was inconsistent with the approach the Company took to answer all of the other items the Commission set out in the Initiating Order, and did not present credible testimony by a witness with expertise in the relevant area. Indeed, ComEd's witness on the subject – Mr. Meehan – candidly admitted that he lacked the requisite expertise in cost allocation and that baseline decisions about the methodology and costs to be considered were made, apparently without explanation, by ComEd management without Mr. Meehan's input. (*See* Tr. at 409:16-18; 392:17-393:5.) Mr. Meehan also acknowledged that the Initiating Order did not limit the analysis of Customer Care Costs to direct O&M costs, which is the only portion of costs that ComEd even reviewed. (*See* Tr. at 421:11-15.)

The Commission gave ComEd a straightforward directive: analyze "the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of

providing Customer Care to a customer taking supply from ComEd…" (*See* Initiating Order at 2.) ComEd's approach, as described in Mr. Meehan's testimony, does not provide such an analysis, despite the fact that such an analysis can be performed based on data within ComEd's possession. (*See* REACT Ex. 2.0 at 10:211-13.) Instead ComEd purports to analyze whether or not certain Customer Care Costs would vary if 1%, 10%, or 100% of customers took supply service from a RES. (*See id*. at 11:215-16.)

ComEd's analysis does not even attempt make an allocation of cost based on function. ComEd instead attempts to determine if there are marginal costs associated with providing Customer Care to customers taking supply from ComEd, rather than allocating its embedded costs. (*See id*. at 11:228-30.)

ComEd's marginal cost analysis of its Customer Care Costs is inconsistent with the Commission's directive, and indeed, is inconsistent with the embedded cost of service methodology used by ComEd to develop its ECOSS. (*See id*. at 11:235-12:237.) As discussed by ComEd witness Mr. Heintz in the 2007 ComEd Rate Case, an embedded cost of service study "functionalizes and classifies the utility's costs to Production (if any), Transmission, Distribution, and Customer-related ("P-T-D-C") functions." (*See* 2007 ComEd Rate Case, ICC Docket No. 07-0566, ComEd Ex. 13.0 at 6:111-15.) Further, Mr. Heintz stated that the embedded cost methodology

> utilizes historical relationships among booked costs and the volumes of services delivered by a company. By contrast, for example, a marginal cost of service study employs analyses and estimates of incremental changes in costs, as these changes are related to (caused by) incremental changes in volumes of services forecasted to be delivered in the future.

(*Id*.)

ComEd offered no explanation as to why it would be appropriate to insert a marginal cost analysis into an embedded cost of service study. (*See* REACT Ex. 2.0 at 12:246-48.) Each ComEd witness admitted, however, that its decision to use an approach other than embedded cost to analyze Customer Care Costs was unique and inconsistent with its analytical approach to all the other cost questions in the case. (*See* Tr. 246:17-247:6; 326:21-327:11; 413:11-17; 650:19-24.) Yet, not a single ComEd witness provided an explanation or defense of why this different approach was called for to answer the Commission's directive.

Of course, putting aside that nothing in ComEd's direct testimony answers the Commission's straightforward question, ComEd's apparent conclusion that it incurs no incremental Customer Care Costs to provide supply service is implausible. ComEd asserts that if it were not providing supply services to a single customer (*i.e.*, if there were 100% switching to RESs), ComEd's Customer Care Costs would actually go up. (*See* ComEd Ex. 2.0 at 2:47-48.) In other words, ComEd apparently is saying that if it had ***no*** obligations associated with procuring or providing power to ***anyone***, ComEd's Customer Care Costs would ***increase***. (*See id.* at 12:256-58.) This conclusion seems to be totally implausible on its face, and, at a minimum, raises fundamental questions about ComEd's analytical model. (*See id*. at 12:258-13:260.)

Mr. Merola described the other errors in ComEd's analysis, including:

1. ComEd improperly identified all costs associated with the Large Customer Services Department as being associated only with the delivery function. (*See id.* at 13:263-67.)
2. ComEd improperly limited its analysis to examining only O&M costs to determine the level of Customer Care Costs. (*See id*. at 13:263-67.)

3. ComEd's analysis of the impact of customer switching on Call Center activity was based on no factual evidence and irrelevant experience. (*See* REACT Ex. 4.0 at 25:477-79.)

ComEd's Large Customer Services Department provides services to customers that either receive their supply services from a RES or at the default hourly supply rate in accordance with Rate BESH – Basic Electric Service Hourly Pricing. (*See id*. at 13:274-76.) ComEd asserted that the customers served by the Large Customer Services Department do not cause ComEd to incur supply-related costs, even though ComEd offers supply services to all of these customers and actually provides supply services to many of them. (*See id*. at 13:277-14:280.) It simply does not make sense to associate 100% of these costs with the delivery function. (*See id*. at 14:280-81.) Indeed, on cross-examination, ComEd witness Mr. Meehan admitted that ComEd in fact **does** incur supply-related costs associated with the Large Customer Services Department. (*See* Tr. at 422:11-15.) Although he at first tried characterize those costs as limited while at the same time admitting that ComEd did not actually study the costs of providing that service, he acknowledged that those costs include hourly meter reading and hourly pricing, system investment, design, and modification associated with hourly reading of data, and systems associated with PJM price fluctuations. (*See* Tr. at 422:16-424:12.)

In order to address the Commission's directive, ComEd should account for the full revenue requirement associated with Customer Care, instead of just a subset. (S*ee* REACT Ex. 2.0 at 14:284-85.) By ignoring the other components of the revenue requirement, such as costs associated with salaries, pensions, benefits and other similar costs, ComEd has improperly excluded substantial costs that contribute to its overall revenue requirement. (*See id*. at 14:286-89.) These other costs are not trivial. On the contrary, the costs that Mr. Meehan excludes total

approximately $146,484,204, or 51% of the Customer Care Costs included in ComEd's revenue requirement. (*See id*. at 14:289-91.) At the hearing, it was shown that ComEd management made what can only be characterized as an arbitrary decision about what costs to include, and then directed ComEd's witness, Mr. Meehan, to work within that pre-determined structure. (*See* Tr. at 392:17-20.) Yet, Mr. Meehan admitted that nothing in the Initiating Order called for such an arbitrary limitation:

> Q. And it doesn't say anywhere in the initiating order that the analysis of customer care costs should be limited only to direct O & M costs, does it?
>
> A. No, it does not.

(Tr. at 421:11-15.)

ComEd also purported to look at how call center activity will be impacted by increased levels of switching. ComEd assumed that for certain categories of calls, call volume would be reduced by one for every ten customers that takes supply from a RES. (*See* REACT Ex. 4.0 at 23:437-39.) As a result, ComEd's analysis implied that only 3.7% of the calls received by ComEd's Customer Call Center were solely supply related. Accordingly, this would mean that 96.3% of the calls were solely distribution related. This conclusion is simply not plausible. (*See id.* at 23:439-44.) However, ComEd provided no analysis to support its conclusion and has no data to support such an analysis. Rather, ComEd's analysis is based on "an understanding of what has driven call volumes," even though ComEd has "no specific historical data to analyze." (*See id.* at 23:446-49.) In fact, ComEd's understanding of what drives call volumes was not even based on experience from the power industry, but was inexplicably based on experience from the telecommunications industry. (*See id.* at 24:460-62.)

As a result, Mr. Merola noted that it is clear that ComEd's assumption that certain categories of calls will only experience a reduction of one call for every ten customers that take

supply from a RES is based on no factual evidence – and, at best, it is based upon experience that is completely irrelevant. ComEd's "one in ten" assumption is baseless and arbitrary. (*See id.* at 25:477-79.)

Mr. Merola further testified that ComEd erred by assuming for many call categories that there will be no further changes to call center volumes because "(c)ommercial accounts have switched in significant volumes and as a result, ComEd's best estimate is that call volumes will not be impacted any further." (*See id.* at 25:484-86, citing ComEd Response to REACT Data Request 5.01.) ComEd's current level of switching for commercial accounts is 12.3%. In other words, nearly 90% of commercial accounts still purchase their supply from ComEd. As already indicated, it makes little sense that ComEd would conclude that because the level of switching is so high, call center volumes cannot be impacted any further by additional switching. (*See id.* at 25:483-90.)

Furthermore, at the hearing, ComEd witness Mr. Meehan was asked a series of questions about cost allocation associated with a customer call to ComEd's customer call center "with a question only about the supply portion of [the customer's] bill." (Tr. at 433:12-14.) Mr. Meehan admitted that with respect to that exclusively supply-related call, costs are charged "completely to delivery customers." (Tr. at 433:22-434:4.) He further admitted that 100% of the following costs associated with that exclusively supply-related call were charged to the delivery function:

- Cost of ComEd's telephone system;
- Cost of technology and infrastructure to route the call;
- Cost of script development to answer the supply-related call;
- Cost of the computer that the call center employee uses;
- Cost of training of the call center employee;

- Cost of training materials of used by the call center employee;
- Cost of infrastructure, software, and hardware associated with the call;
- Cost of the building and the real estate where the call center is located;
- Cost of the call center employee's time; and
- The call center employee's salary, benefits, and pension.

(*See* Tr. at 433:22-436:4.)

Throughout its testimony and at hearing, ComEd persisted in its view it has **no** marginal supply costs. In fact, ComEd argued that its costs will actually go up if all customers switched to a RES. (*See* ComEd Ex. 5.0 at 16:345-57.) Mr. Merola explained that this position is implausible on its face, and, at a minimum, raises fundamental questions about ComEd's analytical model. (*See* REACT Ex. 4.0 at 4:74-5:79.)

Finally, in an argument that is revealing for its implausibility, ComEd witness Mr. Meehan testified about concerns ComEd had regarding accurate cost allocation in the event of high levels of residential customer switching. (*See* ComEd Ex. 5.0C at 15:330-34.) Mr. Merola explained that ComEd's concern is, at most, merely theoretical, and it does not address the Commission's directive, which is based upon the existing state of affairs, as opposed to a wild hypothetical scenario. (*See* REACT Ex. 4.0 at 16:309-11.) Mr. Meehan's asserted worry is not based upon the current factual situation or any reasonably likely future factual situation. (*See id*. at 16:311-13.) Of the $88.0 million in Customer Care Costs, Mr. Merola recommend be allocated to the supply function, $71.4 million are attributable to residential rate classes. (*See id*. at 16:313-14.) Residential switching to a RES is almost non-existent and is projected by ComEd to remain minimal. (*See id*. at 16:315-16.) Mr. Meehan's concerns with 50%, 70%, 90% and 99% switching rates are unrealistic anytime in the foreseeable future. (*See id*. at 16:316-17.) At

the hearing, Mr. Meehan admitted this and also admitted that even if ComEd's switching projections underestimated residential switching by 1000%, such a level of switching would still be only approximately 1.5% of residential customers. (*See* Tr. at 419:8-22.)

> Q. So there's no realistic possibility that residential switching will be 50 percent, right, much less 70 percent, 90 percent or 99.9 percent, right?
>
> A. I would agree with that. We don't see a lot of switching. I still don't see a lot of switching subject to our current discussions, correct.

(Tr. at 420:1-7.)

In other words, ComEd's purported concern rings hollow because, based on ComEd's own projections and testimony, there is no chance of any substantial percentage of residential customer switching, and thus no concern about inequitable shouldering of costs by non-switching residential customers.

In summary, the record evidence overwhelmingly demonstrates two facts: (1) REACT witness Mr. Merola performed a detailed, credible, and reasonable analysis that directly responded to the Commission's directive on allocation of Customer Care Costs and provided specific, verifiable numbers upon which the Commission can make a decision on allocation; and (2) ComEd failed to answer the Commission's directive, and its non-responsive analysis was based on arbitrary numbers that ignored actual data and lacked credibility.

D. The Commission Has A Sufficient Evidentiary Basis To Issue A Ruling Requiring ComEd To Allocate Customer Care Costs Accurately

As discussed above, REACT presented a comprehensive, credible analysis that is directly responsive to the Commission's directive in the Initiating Order. ComEd did not answer the question asked, and nor did Staff or any other party provide an alternative analysis of the question. (*See* Tr. at 466:14-19.) Furthermore, even assuming that ComEd provided an analysis that deserves consideration, a fair comparison of the analysis of Mr. Merola versus the analysis

of Mr. Meehan, viewed in light of both their respective written and live testimony, should result in a decision finding that REACT's approach is more analytically sound, more consistent with the overall analysis that ComEd itself took with respect to the ECOSS generally, and more convincing as a fair and reasonable approach to allocating Customer Care Costs.

E. If The Commission Does Not Require Accurate Allocation, Customer Care Cost Issues And The Analysis Provided By Mr. Merola Must Be Included In A Workshop

As discussed above, REACT has, though the testimony and analysis of Mr. Merola, provided the Commission with a persuasive, comprehensive, and credible basis to allocate Customer Care Costs in the Final Order in the instant proceeding. The evidentiary record in favor of REACT is strong.

If, however, the Commission determines that it cannot resolve the Customer Care Cost allocation question in a Final Order, that issue should be included in the workshop process that Staff witness Mr. Lazare has proposed. As discussed above, ComEd, through the testimony of Mr. Alongi, has attempted to limit the scope of issues that might be addressed in a workshop process. (*See* ComEd Ex. 10.0C at 8:183-9:206.) In response to a series of Data Requests, Mr. Lazare expressed clearly and unequivocally that he proposes that any workshop process ordered by the Commission should not be constrained to the limited subject matter that ComEd favors. (*See generally* REACT Cross Ex. Lazare 14.) Mr. Lazare makes clear that a workshop process should include "issues raised, in this docket, and not otherwise resolved by the Final Order, by other parties that are relevant to the development of the cost of service." (*Id.* at 1.) Mr. Lazare's Data Request responses also confirm his opinion that he specifically believes that the Customer Care Cost issues raised by REACT are not objectionable and should be included. (*Id.* at 5.)

As discussed above, Mr. Lazare further explained his thinking about the workshop process on cross-examination by ComEd, and rejected attempts by ComEd to mischaracterize his

written testimony on the subject or to prevent him from presenting his current, considered opinion about the scope of a workshop process. (*See* Tr. at 470:1-475-17.)

REACT has presented expert testimony and otherwise participated very actively in discovery and hearings in the instant proceeding in connection with the Customer Care Cost analysis prepared by Mr. Merola. If the Commission does not reach a final determination on the Customer Care Cost allocation question in its Final Order and instead directs workshops, the issues REACT has raised should be included.

IV.

CONCLUSION

ComEd has failed to cure the substantial deficiencies in the ComEd ECOSS that motivated the Commission to initiate this investigation. While ComEd uses words that suggest that the Company supports accurate cost allocation and competition, ComEd's deficient ECOSS and the "analysis" underlying that deficient ECOSS belie those words.

REACT, the Staff, and other intervening parties have exposed major flaws in the ECOSS's assignment of primary and secondary costs. The record demonstrates that there are more questions than answers associated with ComEd's attempt to allocate those costs. REACT has demonstrated that the result of ComEd's inadequate ECOSS continues to be a prospect of massive, disproportionate rate increases for ComEd's largest customers, even though ComEd has repeatedly admitted that there has been no substantial change in usage patterns and no substantial change in physical plant associated with serving those customers.

REACT also has presented detailed and credible expert analysis regarding the allocation of Customer Care Costs that responded exactly to the Commission's directive on that issue. REACT has provided verifiable numbers that permit the Commission to make a decision on the

appropriate allocation. ComEd, in contrast, failed to answer the Commission's directive and provided non-responsive rhetoric based on a highly questionable methodology and highly questionable data.

The evidentiary "bottom line" is that ComEd's flawed ECOSS does not demonstrate accurate cost allocation for the largest of ComEd's customers. Instead, ComEd's results are inaccurate and anti-competitive, directly contrary to the Commission's well-established policies implementing accurate cost allocation and pro-competitive rules, which even ComEd acknowledges benefit all Illinois customers. (*See* Tr. at 331:18-332:14.)

Accordingly, REACT respectfully requests that the Commission enter an Order consistent with the arguments herein, in particular taking advantage of this opportunity to require ComEd to both provide the information necessary to properly set its rates for its largest customers in its next rate case and immediately adjust its delivery services charges to remove supply-related Customer Care Costs.

Respectfully submitted,

THE COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

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