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REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS (IIEC)

I

INTRODUCTION

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

After its review of the briefs of other parties and the evidence cited therein, IIEC still concludes that the embedded cost of service study (“ECOSS”) revised and submitted in this proceeding by ComEd continues to be deficient in important respects and should not be used to set rates until further modified to meet the Commission directive that the utility “cure the deficiencies” the Commission identified in its Initiating Order of September 10, 2009 in this case. (Initiating Order at 2, 3, 4).

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

¹Abbott Laboratories, Inc., Caterpillar, Inc., Enbridge Energy, LLP, ExxonMobil, General Iron Industries, ArcelorMittal USA, Sterling Steel Company, Thermal Chicago, as well as the University of Illinois.

IIEC will specifically discuss: the primary/secondary analysis (“P/S Analysis”) arguments and comments of ComEd and the Staff; the Workshop proposal as discussed by ComEd and the Staff; the ComEd and Staff responses to IIEC’s suggestions regarding voltage base rates; the arguments and comments of the Staff on use of coincident peak (“CP”) and non-coincident peak (“NCP”) to allocate primary distribution costs; and the proposal of the Commercial Group to adjust or increase rates in this proceeding.

IIEC recommends (i) that the Commission not accept unconditionally ComEd’s P/S Analysis in this case since it still contains serious deficiencies in both conception and implementation and (ii) that, in its Final Order in this proceeding, the Commission direct ComEd to correct the deficiencies still remaining.

IIEC further recommends the Commission reject the use of workshops to identify or to resolve continuing deficiencies in the ComEd P/S Analysis. Workshops are not a substitute for Commission identification of any remaining deficiencies and Commission determination of needed corrections, all on the merits of the record in this case. However, if the Commission believes that workshops have a value, they should be used to implement specific directions from the Commission, issued in its Final Order in this case, that mandate specific actions to correct the deficiencies in the ComEd P/S Analysis. In sum, workshops may be useful in determining “how” ComEd is to implement Commission decisions, but they are not adequate to the task of determining “what” needs correction and “whether” those corrections must be undertaken.

As IIEC has noted, it is not necessary to adopt voltage based rates in this case or in a subsequent case to resolve the deficiencies in the ComEd P/S Analysis. However, adoption of such

rates in a future proceeding would allow the results of a properly performed P/S Analysis to be more efficiently reflected in the Company's rates on a going forward basis. Therefore, the Commission should direct ComEd to address, in its next case, the voltage based rate issue.

The Commission should reject proposals by the Staff to allocate costs of primary lines and primary substations on the basis of a CP allocator. The Commission should retain the use of the NCP allocator for that purpose.

Finally, the Commission need not adjust rates in this investigation proceeding even if it ultimately concludes that the updated ECOSS presented by ComEd makes progress in curing the deficiencies identified by the Commission. ComEd's ECOSS relies on its flawed inaugural P/S Analysis as a major input. With refinement of that analysis over time, a better reflection of the true costs of primary and secondary service can be known and rates can be adjusted accordingly, in light of all ratemaking criteria.²

II.

ARGUMENT

A. Separating and Properly Allocating Primary and Secondary Service Costs

1. Response to ComEd

ComEd's opposes the proposed corrections to the P/S Analysis incorporated in its revised ECOSS (ComEd Ex. 7.1) that were offered by IIEC and other parties. (*See generally* ComEd Br. at 5-8 and 23-24 (IIEC's Alternative Approach)). ComEd's opposition rests on (i) ComEd's

² One such criterion is rate stability. Current rates have only been in place for a little over one year.

interpretation of the meaning of the utility's tariffed primary system definition, and (ii) on ComEd's position that it need not conduct any actual verification of its ECOSS' costs of service inputs. As demonstrated in the issue discussions below, each of ComEd's arguments is fatally flawed.

In brief, the purpose of a cost of service study is to determine what costs are caused by each of the customer groups analyzed. In this case, per the Initiating Order in this docket, the relevant customer groups are primary and secondary service (i.e., those taking service at primary or secondary voltages) customers. The purpose of the P/S Analysis is not to determine simply how much or how many facilities are energized at what voltage. Yet that is the beginning and end of ComEd's approach. While the latter analysis may assist in determining the costs caused by customer groups, it is neither definitive, nor complete. For example, single phase primary lines are energized at primary voltages, but exist for the sole purpose of serving customers at secondary voltage levels. (IIEC Ex. 2.0 at 21:451-458). Therefore, despite the energized voltage level, proper cost analysis would allocate the costs of such single phase primary lines to customers in accordance with the demand levels of secondary voltage customers in that customer class. ComEd's approach merely defines the costs of assets as either primary or secondary based on operating voltage. It utterly fails to consider whether primary or secondary customers (i.e., those taking service at primary or secondary voltages) cause particular asset costs to be incurred. This fundamental difference accounts for much of the disagreement between IIEC and ComEd in this case.

ComEd argues first, and principally, that the proposed corrections of IIEC and others "...are based upon positions that diverge from the historic, Commission-approved definitions of ComEd's primary and secondary distribution systems." (ComEd Br. at 8). In fact, however, it is ComEd that

abandons the actual, functional definition in its tariff, in favor of its reliance on arbitrary categorizations of facilities. Further, in the context of this argument, ComEd's brief confirms that the utility's P/S Analysis is flawed in precisely the ways IIEC identified, because ComEd is pursuing an objective that is fundamentally different from curing the deficiency in "separating and properly allocating primary and secondary service costs." (Initiating Order at 2 (emphasis added)). Second, ComEd argues briefly that verification of the accuracy of its assumptions and revisions would be require "special studies" that it should not be required to perform. That position is at odds with the purpose of this proceeding and explicit Commission directive for studies ComEd has not previously performed.

a. ComEd's Tariff

The tariff provision that is the claimed justification for most of ComEd's P/S Analysis provides the following functional definition of ComEd's primary distribution system:

The Company's primary distribution system utilizes electric facilities to distribute electricity at the following common nominal voltages: 4,000 volts, 12,000 volts, and/or 34,500 volts.

(ComEd Ex. 6.0 at 9:258-261). This definition comports with IIEC's approach, which examines which facilities are used to distribute electricity at the named voltages. If a facility, such as a primary-to-secondary line transformer, is used exclusively to distribute energy at lower, secondary voltages, it is not part of the primary distribution system as defined above. With this definition, ComEd defines the secondary system as those facilities that distribute electricity at a secondary voltage (less than 4 kV). (Alongi, ComEd Ex. 1.0 at 14:278-280). As ComEd's Lawrence Alongi testified, and ComEd's Brief confirms, ComEd abandoned this functional definition to use an

inconsistent set of “principles in developing ComEd’s primary/secondary analysis.” (ComEd Ex. 6.0 at 10:277; ComEd Br. at 5-6). ComEd claims that when it had to “define those facilities that comprise the primary distribution system, and those facilities that comprise the secondary distribution system . . . ComEd used its long-standing definitions of its primary and secondary distribution systems, as set forth in ComEd’s Commission-approved tariffs.” (ComEd Br. at 5-6). In fact, as explained below, ComEd did not.

ComEd continues to use the words of its approved tariff (*see, e.g.*, ComEd Br. at 6), but it actually gives primacy to its unapproved “principles.” (ComEd Ex. 6.0 at 10:270, 277-292). The functional specification in ComEd’s tariff -- “distributing electricity at or above 4 kV” -- is discarded in ComEd’s “principles.” Sometimes it is replaced by an arbitrary and inconsistent separation of facilities on the basis of whether they operate at 4 kV or above, regardless of the distribution function they actually serve. Other times, both the function and voltage elements of the tariff definition are displaced and a facility is categorized on the basis of whether the facility is connected to a previously defined “primary component,” even if they both distribute electricity at less than 4 kV. ComEd’s “principles” were *ad hoc* determinations that shifted certain facilities from their functional category. Those arbitrary determinations shift facilities, by definition, into ComEd’s primary system -- in particular, primary-to-secondary line transformers and related facilities that cannot be used, and are not used, “to distribute electricity” at nominal voltages at or above 4 kV.” These transformers are used to distribute electricity at secondary voltages (less than 4 kV). Such transformers, under ComEd’s tariff definition of its primary system, should be classified as part of the secondary system.

ComEd also wrongly determined that the primary-to-secondary line transformer taps, which attach to the low voltage side of the transformer and operate at voltages between 120 and 600 volts, are similarly part of the primary distribution system.

ComEd's designation of primary and secondary voltage levels (i.e., above or below 4 kV) may be long-standing, but ComEd has never before attempted to separately identify and allocate costs to customers served at primary and secondary voltage levels in an ECOSS. The deficiencies identified by IIEC in this case are not the result of ComEd's long-standing voltage designations. Rather, they stem from the fact that ComEd lacks experience in separately identifying the costs of providing service at primary and secondary voltage levels and reflecting those voltage definitions in its ECOSS, and resists changing its current deficient approach.

b. ComEd's Substitute for Cost-Causation

In the process of attacking proposed corrective modifications to its P/S Analysis, ComEd confirmed the validity of IIEC's criticisms of that analysis. As IIEC has explained above (*also see* IIEC Br. at 9-24), ComEd begins its analysis with an inconsistently applied definition of its primary system, with remaining facilities making up ComEd's secondary system. "ComEd first needed to define those facilities that comprise the primary distribution system, and those facilities that comprise the secondary distribution system." (ComEd Br. at 5). ComEd then identifies the costs of those facilities defined as primary and secondary and considers them, without further analysis, its primary and secondary costs, respectively. (ComEd Br. at 6). "ComEd conducted an analysis of its primary and secondary distribution systems for the purpose of separating the costs of such systems in the ECOSS." (ComEd Br. at 5). This separation of the cost of facilities (not the cost of

service) is overlaid on ComEd's size-based customer classes (i.e., non-residential customers are separated into customer classes on the basis of demand) as a substitute for a determination of what services or customers caused the costs. "ComEd then identified the customers in each of its delivery classes receiving service directly from the secondary distribution system, and those customers that utilize only the primary distribution system." (ComEd Br. at 6). ComEd's secondary cost allocations were made to its size-based customer classes on the basis of total demand, not primary and secondary demands separately. (Heintz, Tr. 354-355; *Id.* at 6-7).

c. ComEd's Distinctive Objective

ComEd's Initial Brief also confirms that the utility is pursuing a fundamentally different objective from that of IIEC and other customers. ComEd declares in its brief that "ComEd's primary/secondary analysis reasonably allocates the costs of its primary and secondary distribution systems." (ComEd Br. at 7 (emphasis added)). Even in ComEd's own description of what it purported to do, proper allocation of the costs of providing service to primary and secondary customers (i.e., customers served at primary voltages and customers served at secondary voltages) is never a consideration. ComEd's facilities focus was not changed by the knowledge that ComEd uses facilities that it designates as primary to distribute electricity exclusively to customers taking service at secondary voltages, *viz.*, primary to secondary line transformers and single-phase primary circuits. Similarly, the knowledge that some customers taking service at secondary voltages use no facilities that ComEd has designated as secondary (customers with their services directly connected

to line transformers) did not prompt ComEd to examine more closely its process of allocating facilities costs to broad, size-based classes.³

The choice between rates based on cost of service, as IIEC proposes, or a continuation of ComEd's deficient separation of the costs of primary and secondary service on the basis of arbitrarily categorized facilities was described in IIEC's Brief. (IIEC Br. at 2). That choice, which is now before the Commission, is placed in bold relief by ComEd's brief.

d. ComEd's Criticisms of Proposed Corrective Modifications

ComEd asserts that "the proposals of CTA/Metra and IIEC squarely conflict with ComEd's Commission-approved definitions of its primary and secondary distribution systems." (ComEd Br. at 24). As IIEC explained in subsection a. above, the Commission-approved tariff defines ComEd's primary distribution system on a functional basis. Adhering faithfully to that approach would lead ComEd to the modifications IIEC proposes. Though ComEd repeatedly attempts to portray this investigation as a contest over the classification of assets, the objective the Commission set is the separation and allocation of costs of service.

As IIEC explained in its Initial Brief, the system definitions ComEd used in its P/S Analysis, even as those definitions deviate from its tariff definition, are not an insurmountable obstacle to reflecting cost causation. However, the utility must properly allocate the costs of service, instead of using definitions of facilities and costs as an ineffective substitute for identifying and separating

³ IIEC notes that nearly all the customers who are designated by ComEd as primary, actually take service at secondary voltage (i.e., single and multiple family residential customers connected to primary and secondary line transformers). (Stowe, IIEC Ex. 4.0 at 16:328, 13:262,14:287).

costs of service on the basis of cost causation. When ComEd's designation of 4 kV as the voltage level that separates primary voltages from secondary voltages is used in the rigid manner ComEd uses it, viz, as a substitute for cost causation, it does hinder proper cost of service allocations. For example, ComEd owns and operates single-phase circuits energized at primary voltage levels; those circuits provide service exclusively to customers that take service at secondary voltage levels. (Stowe, IIEC Ex. 2.0 at 21:435-24:512). While IIEC reasonably contends that the costs of such circuits are costs of serving secondary customers. (*Id.*). ComEd treats these costs as costs of serving primary customers on the basis that they operate at primary voltage levels. Especially if ComEd's peculiar definitions are not changed, the Commission must insist that ComEd's P/S Analysis be modified to incorporate a serious process to separate and to allocate the costs of providing primary and secondary service, as the Initiating Order directed.

ComEd notes that some parties have not challenged its analyses and ECOSS, commenting that "certain parties attack ComEd's primary/secondary analysis with the goal of shifting even more of the cost allocation to other customers." (ComEd Br. at 2, 8). It is no surprise that customers benefitted by ComEd's deficient ECOSS would support it, while those burdened by ComEd's ECOSS would oppose it. In opening this investigation, the Commission validated the complaints of IIEC and others challenging ComEd's ECOSS in Docket 07-0566. The Commission must remain focused on the merits of their continued and more informed objections, and on the inadequacy of ComEd's response.

ComEd also complains that:

IIEC's proposal to redefine ComEd's distribution system to include three subsystems for the primary/secondary analysis would require ComEd to identify the approximately 300 "primary customers" as defined by IIEC. ComEd would then need to determine where on its distribution system those customers are connected in order to determine that portion of the system that comprises the "primary subsystem," the "general subsystem," and the "secondary subsystem," all as defined by IIEC.

(ComEd Br. at 23). IIEC does not propose to turn ComEd's system into something it is not. IIEC's recommended procedure for more precise cost determinations simply recognizes the current utilization of ComEd's facilities. Some are used to provide service exclusively at primary voltages, some are used to provide service only at secondary voltages, and some facilities are used to provide service at both primary and secondary voltage levels. ComEd simply wishes to ignore those distinctive functions in separating and allocating the costs of primary and secondary service. It is the functional (cost causation) aspect of the proposal that is problematic for ComEd, not the number of subsystem labels. ComEd's apparent horror at the prospect of "analyses of the actual costs to serve" customers in a distinctive cost category (ComEd Br. at 23) is emblematic of the divergence of ComEd's aims in conducting its ECOSS from the directives of the Initiating Order.

2. Response to Staff

Staff finds that ComEd's revised P/S Analysis and ECOSS continue to have significant deficiencies: "The evidence in this case clearly demonstrates that the Company needs to refine its analysis of primary and secondary costs. . . ." (Staff Br. at 38). Staff recommends a specific procedure (workshops) to accomplish those further corrections. Staff nonetheless endorses that ECOSS, including its faulty P/S Analysis, as "the most reasonable approach." (Staff Br. at 4, 15).

Staff misapprehends the purpose of this case. "[T]he task in this proceeding is to identify

the most reasonable estimate of primary and secondary costs.” (Staff Br. at 24). Staff never asks whether ComEd’s revised P/S Analysis and ECOSS constitute -- as the Initiating Order required -- “an updated cost of service study that cures the deficiencies outlined” in that order. (Initiating Order at 4). Staff’s conclusion is in error. Indeed, Staff finds that ComEd’s extensive reliance on unsupported “engineering judgment” and “engineering experience” in its studies “makes it difficult to reach a conclusion concerning the reasonableness of ComEd’s approach.” (Staff Br. at 12). Therefore, Staff’s endorsement of ComEd’s approach as the most “reasonable approach” is at best premature.

Staff also criticizes IIEC’s alternative approach on several grounds. (*See generally* Staff Br. at 6-24, *especially* 19-24 (IIEC’s Alternative Approach)). Staff complains that IIEC’s approach (a) is not useful in determining responsibility for ComEd’s secondary distribution wires because it does not count the customers who “bypass” ComEd’s secondary system (Staff Br. at 21), (b) “would restrict primary service to approximately 300 ComEd customers” (*Id.*), (c) “does not indicate the relative sizes of these three sub-systems” of ComEd’s distribution system that IIEC identified (*Id.* at 22), and (d) has only one picture from its investigation of ComEd’s actual system configurations as support in the record. (*Id.* at 24). As discussed below, each Staff argument is either contrary to the evidence of record or illogical and biased in its evaluation of that evidence.

a. Staff’s Support for ComEd’s P/S Analysis and ECOSS Is Inconsistent With Its Own Factual Findings

Staff finds that ComEd’s revised study “incorporates the Company’s proposed method for identifying the costs for primary and secondary service.” (Staff Br. at 4). This statement reaffirms

IIEC's understanding of the mission defined by the Initiating Order. The costs to be identified, separated, and properly allocated are the "costs for primary and secondary service" -- not, as ComEd would have it, the costs of the facilities ComEd chooses to label as primary or secondary. (*See also*, Staff Br. at 6, 7). Against this standard Staff-recited a litany of continuing problems with ComEd's approach.

As IIEC has indicated, the clearest, and one of the most significant, problems in ComEd's P/S Analysis is the exclusion of primary to secondary line transformers, used exclusively to provide service to customers at secondary voltages, from its bucket of secondary costs. Staff agrees.

This argument is problematic because even though the incoming voltage in the preceding example is primary, it steps down to secondary voltage upon leaving the transformer. Since the exiting voltage is secondary, the transformer can only serve secondary customers and from that standpoint it would be unreasonable to associate transformers with primary service. Staff Ex. 1.0, pp. 12-13.

(Staff Br. at 10). This continuing, fundamental error at the center of ComEd's analysis is problematic even for supporters of ComEd's study. "[T]he assumption that customers directly associated with a transformer are in fact, bypassing the secondary system and receiving service at the primary level cannot be corroborated." (*Id.* at 17). This baseless assumption persists in ComEd's P/S Analysis, despite the ease of correcting it. (*See*, Heintz Tr. 362:19-364:9; Stowe Ex. 2.0 at 36:766-782). No customer who takes service at secondary voltage levels can bypass all facilities energized at secondary voltage, since even the low voltage side of the primary to secondary transformer and tap wires on that side are at secondary voltage (despite ComEd's artificial

definitions to the contrary). There is no actual bypass of facilities operating at secondary voltages. (Stowe Ex. 4.0 at 10:211-214).

Staff concluded after examining ComEd's approach that overall ComEd's "judgmental process is difficult to follow." (Staff Br. at 9, 12). The Staff also found that "ComEd does not provide much in the way of explanations beyond statements that either 'engineering experience' or 'engineering judgment' was employed," making it "difficult to evaluate the reasonableness of ComEd's approach." (*Id.* at 12). As with line transformer costs, Staff observed a lack of corroborating evidence for the assumptions ComEd relied on to assign the costs recorded in Account 364-Poles, Towers and Fixtures (Staff Br. at 11), Account 365-Overhead Conductors and Devices (*Id.* at 12-13), Account 366-Underground Conduit (*Id.* at 13), and Account 367-Underground Conductors and Devices (*Id.* at 14). In light of the persistent deficiencies and unsubstantiated assumptions Staff found in ComEd's P/S Analysis, it is perplexing that Staff can then conclude that ComEd's approach is reasonable at all.

Staff also observed that ComEd "made no physical inspections of facilities to verify the reasonableness of those assumptions." (Staff Br. at 18). It was obvious to Staff that "some visual analyses would enable ComEd to test the validity of certain engineering assumptions that drive its analysis of primary and secondary costs." (*Id.*). "ComEd indicated it considered, but rejected, the use of direct observation in its analysis of primary and secondary costs." (*Id.* at 8).

Staff's call for "visual analysis" implicitly rejects ComEd's attempt to portray all suggestions for validation of its cost assignment and allocation assumptions as requests for customer-specific costs studies. (*See* ComEd Br. at 23). Mr. Stowe, who, unlike ComEd, has previously performed

primary/secondary analyses and ECOSs, provided refined estimates of the allocation factors ComEd assumed, without having to resort to “customer-specific” efforts. (Stowe, IIEC Ex. 1.0 App. A; IIEC Ex. 1.0 and IIEC Ex. 2.0 generally). Staff’s findings validate the two major criticisms of ComEd’s analyses discussed above, which were detailed by IIEC and other parties. (*See, e.g.*, Metra Br. at 13).

It was equally clear to Staff that ComEd did not actively review studies of primary and secondary costs prepared by more experienced utilities. (Staff Br. at 17).

A review of existing studies might enable the Company to learn from the experience of other utilities in this area and avoid some of their mistakes. Furthermore, a comparison of the Company’s method with the approach taken by other utilities would make it easier to determine whether that the Company has adopted the most reasonable method of identifying primary and secondary costs.

(*Id.* at 17-18). Staff overlooks the fact that IIEC did compare the results of ComEd’s P/S Analysis to those of more experienced utilities and concluded that ComEd’s analysis produced results of the secondary system that were substantially different from the estimates of the more experienced utilities. (Stowe, IIEC Ex. 2.0 at 27:553-28:600; IIEC Ex. 2.4; IIEC Ex. 4.0 at 27:555-28:578; IIEC Ex. 4.3).

It appears that ComEd’s mix of unique terminology and definitions has confused Staff on an important point. Staff’s brief states: “The Company also estimates the number of primary and secondary customers so that customers taking service at the primary level are allocated a share of only the primary component of these costs while secondary level customers receive both primary and secondary costs.” (Staff Br. at 6-7). This statement is simply incorrect. ComEd estimated the

number of customers that “bypass” its secondary system, as ComEd defines it. (ComEd Ex. 6.0 at 8:228). But ComEd’s estimator, Mr. Alongi admitted (a) that ComEd did not ascertain whether its customers served with underground facilities “bypass” that system and (b) that ComEd allocates costs at the class level, so that secondary costs are allocated to customers taking service at primary voltages if they are in an affected class. (Heintz, Tr. at 354:19-355:3; Alongi, Tr. at 573:10, 574:15; *see also* IIEC Br. at 22). As a result, distribution costs that are incurred to provide service only to customers that take that service at secondary voltages, are assigned to the primary system and allocated to customers that take service at primary voltage levels.

Also, Staff occasionally made the same error that ComEd did by confusing (a) the categorization of facilities costs as primary and secondary, and (b) proper allocation of the costs of providing service to customers at primary and secondary voltages as the Commission mandated. (*See, e.g.*, Staff Br. at 13 (equating primary/secondary wire and primary/secondary costs)). Elsewhere in its Brief the Staff recognized “. . . the theme of the current proceeding initiated by the Commission is to set aside precedent and examine whether the Company’s cost of service study is truly reflective of costs.” (Staff Br. at 35).

ComEd has clearly failed to meet Staff’s expressed standards for evidentiary support for its cost assignment and allocation assumptions. Staff’s account of ComEd’s “engineering judgments” and baseless assumptions includes more than a dozen instances where questionable or unsubstantiated assumptions were made by ComEd in the process of performing its P/S Analysis. That account shows why Staff should not have concluded that ComEd’s ECOSS is reasonable in any way. Furthermore, ComEd did not consider the practical solutions more experienced utilities have

implemented for primary/secondary analyses, a minimal prudent step that Staff found absent. (Staff Br. at 17). Nevertheless, Staff claims, it "has not identified any alternative approach that would produce better results." (Staff Br. at 17). Staff's endorsement is justified neither by the evidence of record nor by its own review of that record.

b. Staff's Criticisms of IIEC's Alternative Are Not Substantive and Do Not Diminish the Superior Cost Causation Determinations of IIEC's Proposed Modifications

i. Count of "Bypass" Customers

"Conceptually, it is difficult to quarrel with IIEC's notion that primary service means receiving power at a primary voltage level and not sharing cost responsibility for the Company's network of transformers which step down voltages to secondary levels." (Staff Br. at 21). IIEC's notion of the proper conception of primary and secondary service (and customers) is shared by the Commission. (*Commonwealth Edison Company*, Final Order, ICC Dkt. 07-0566 at 206) (the "Dkt. 07-0566 Order") ("ComEd's network can be divided into primary and secondary service on the basis of voltage. Some customers take electric service at high voltage only. These are primary customers."). Staff acknowledges other critical facts when it argues:

. . . ComEd's analysis is not consistent with the Commission's initial understanding of the primary/secondary issue. The Commission presented the following definition of primary service in its Final Order for Docket No. 07-0566 accordingly:

Some customers take electric service at high voltage only. These are primary customers. They comprise .2% of customers, yet they represent 20% of the system's peak demand.

Order, 07-0566, September 10, 2008, p. 206. The Company in this case has presented a much broader definition of primary service that reaches down to

4 kV of service and includes customers in all classes, even the residential class.

(Staff Br. at 19). Despite these acknowledged facts, Staff concludes that “IIEC’s definition dos (*sic*) not appear to be useful in determining responsibility for ComEd’s network of secondary distribution wires. In particular, it would fail to count the numerous secondary customers identified by ComEd who bypass the Company’s secondary distribution network and receive service directly from a transformer.” (Staff Br. at 21). Staff’s claim is not valid.

The “numerous secondary customers . . . who bypass the Company’s secondary system” referenced by Staff, are defined by ComEd as "primary" customers, and not "secondary" customers as Staff implies. (Alongi, ComEd Ex. 6.0 at 8:228). It is simply wrong to suggest that IIEC's method would fail to count secondary customers that ComEd does count, when in fact, ComEd has clearly identified those customers as "primary customers." Staff may have been confused by ComEd’s unique, counter-intuitive definitions. But even if that is not the case, as Staff has argued, there is no presumption favoring ComEd’s study approach in this proceeding. (Staff Br. at 35).

Note also this criticism that “bypass” customers are not counted, implicitly accepts another unusual exception to ComEd’s voltage-based separation of primary and secondary facilities. To accept the Staff’s conclusion, on the counting of bypass customers, one must permit ComEd to define wires connected to the low-side of line transformers, energized at secondary voltage, and useful only for providing service at secondary voltages as primary facilities. Staff itself explained why that approach is problematic for separating and allocating primary and secondary costs. (Staff Br. at 10).

ii. Number of Primary Customers

Staff also points to the smaller number of customers who would be categorized as primary under IIEC's (and the Commission's) definition of primary customers as a reason to reject it. (Staff Br. at 24; IIEC Ex. 2.0 at 2:18-19; Final Order, Dkt. 07-0566 at 206). That contention is addressed below.

Staff observes that "ComEd has already acknowledged it does not know the number of customers receiving service at the primary level and it would be reasonable to assume it does not know the rate classes under which these customers take service. "Thus, it would be premature to conclude that the IIEC's definitions of primary and secondary service would have little impact on the overall allocations of system costs." (Staff Br. at 23) Despite this observation, Staff complains that

The IIEC's argument is based on restrictive definitions of primary and secondary service which, based on information provided by ComEd, would limit primary service to approximately 300 customers.

(Staff Br. at 24). Cost causation does not depend on the number of customers. If certain customers cause distinctive costs, those costs should be separated and assigned or allocated to the cost causers, and those customers should not be burdened with costs they do not cause. Neither Staff nor ComEd has provided a single reason why there must be more than 300-400 primary customers, to properly assign the costs of serving customers where they belong.

Staff expressed a specific concern that because the number of affected customers might be smaller than ComEd's currently defined rate classes, "[c]onsequently, there may not be much change in the allocation of distribution costs among customer classes under the IIEC's proposed

definitions and the role of the primary and secondary cost analysis in the embedded cost study will be diminished.” (Staff Br. at 21). The Commission does not share Staff’s concern. As Staff knows, the Commission has already observed that even though primary customers may be less than two-tenths of one percent of all customers, accurate cost identification is nonetheless important. (Dkt. 07-0566 Order at 206). This small group of customers account for 20% of the demand ComEd uses to allocate costs. Thus, the combined effect of the significant costs ComEd’s P/S Analysis mis-allocates and ComEd’s demand-based allocation of costs can produce very large impacts on the small number of primary customers. (Staff Br. at 19 citing the Dkt. 07-0566 Order at 206)). When, in its last rate case, ComEd presented the argument Staff advances now, the Commission responded:

Although admitting on cross examination that it did not know how expensive this analysis would be, ComEd, nevertheless argues that the cost of the primary secondary analysis exceeds the benefits because the benefits would flow to a small number of customers. This overlooks our explicit policy objective of assigning costs where they belong.

(Dkt. 07-0566 Order at 206).

The Commission's order emphasizes its explicit policy objective of assigning costs where they belong, and the importance of separating and properly allocating primary and secondary service costs regardless of the number of customers affected. Consistently, in Docket 05-0597 ComEd created a separate high voltage class and began to separate and properly allocate the costs of serving customers that take service at voltage levels of 69 kV and higher, (*i.e.*, customers now typically referred to as "high voltage" or in the High Voltage Delivery Service rate class). (*See, Commonwealth Edison Company*, ICC Dkt. 05-0597, Order, July 26, 2006 at 198-199). As a result of the Commission order in that case, ComEd now separately identifies and allocates costs to a high

voltage subclass of 67 such customers, far fewer than the 300 customers Staff counts in this case. (Alongi, Tr. at 582:12-583:7). In any case, demonstrating that reasonable modifications to improve its P/S Analysis are practicable, ComEd has signaled that it “does not object to identifying the non-high voltage customers that do not use a ComEd transformer to review the allocation of costs for transformers not used by certain customers or certain delivery classes and presenting those findings in ComEd’s next rate case.” (See Staff Br. at 11 *citing* ComEd Ex. 10.0, p. 8).

Staff’s criticism of IIEC’s proposal for more refined identification of primary and secondary costs is, in effect, also an objection to Staff’s own proposal for a rate credit to recognize the actual (lower) costs of serving primary customers. Staff’s proposal would require ComEd to perform at least part of the refined cost of service identification that IIEC proposed in this case. Staff asks that the Company identify, in its next rate case, “the non-high voltage customers on the system that receive service at the primary level.” (Staff Br. at 23). This information would also be required and support for the modified P/S Analysis recommended by IIEC.

iii. Sizes of Distribution Sub-Systems

Staff criticizes IIEC’s proposed recognition of the distinctive uses of ComEd distribution system facilities in providing service -- exclusively primary service, exclusively secondary service, both primary and secondary service. Staff objects that “IIEC does not indicate the relative sizes of these three sub-systems.” Staff contends that this “makes it difficult to evaluate whether each of the sub-systems is meaningful from a cost-causation standpoint. . . .” (Staff Br. at 22).

Cost causation does not depend on the sizes of the differently utilized portions of the distribution system or the associated distribution costs. Moreover, IIEC’s proposal does not change

ComEd's system in any way. IIEC's recommended procedure simply recognizes the current utilization of ComEd's facilities. Some are used to provide service exclusively at primary voltages, some are used to provide service only at secondary voltages, and some facilities are used to provide service at both primary and secondary voltage levels.

Other parties -- including Staff -- have recognized the same cost of service distinctions, though they were not quantified by ComEd. (*See* Metra Br. at 13 *citing* CTA/Metra Joint Ex. 1.0 at 5:98-103 and 108-09 ("It may be appropriate for an additional category of secondary system cost, that being primary voltage level performing secondary voltage level functions.")). In fact, Staff witness Mr. Lazare has acknowledged that ComEd owns, operates and maintains distribution system components that comprise these three sub-systems. (IIEC Lazare Cross Ex. 16). He also recognized that some ComEd distribution facilities used to provide electrical service exclusively to customers at secondary voltage levels operate at primary voltage levels, undermining ComEd's basis for its definitional approach to cost identification. (*Id.*). Since Staff witness Lazare agrees that it is inappropriate to assign the cost of facilities that operate at primary voltage levels, yet serve customers at secondary voltage levels exclusively, to customers that take service at primary voltage levels, Staff's opposition to a refinement that would prevent such misallocations is curious.

Identification of the distinctive sub-systems identified by Mr. Stowe is clearly meaningful from a cost-causation standpoint, and it enhances the cost allocation process.⁴

⁴ Mr. Lazare also agreed that one goal of the primary and secondary analysis is to make the relative sub-system size determination that Staff now asks IIEC to provide in advance. (IIEC Lazare Cross Ex. 16).

iv. Number of Pictures in Record

Staff complains that the evidence of Mr. Stowe's visual inspection of approximately 100 locations on ComEd's system "is a single picture of an individual pole." (Staff Br. at 24 *citing* IIEC Ex. 2.3). Through that inspection, Mr. Stowe found that ComEd's system contains facilities configurations of single- and multi-phase laterals that serve secondary customers, but no primary customers. (Stowe, IIEC Ex. 2.0 at 22:459-23:507). Staff claims further that "there is no way to independently verify that the other 99 locations Mr. Stowe inspected via Google Earth (*sic*) support his argument." (*Id.*).

The picture that Staff references is not the only evidence of Mr. Stowe's findings; there is sworn expert testimony from the witness who conducted the inspection. That witness has personally conducted more P/S analyses (and supporting investigations) than all the other experts in this case supporting ComEd's approach. (*See*, Stowe, IIEC Ex. 2.0, App. A). Mr. Stowe's testimony was subject to discovery. Mr. Stowe was also available for cross examination, about the details and data underlying his inspection. However, Staff elected not to conduct any cross examination. Therefore, Mr. Stowe's testimony on the issue is unchallenged and unrefuted by the Staff.

In addition, Mr. Stowe, in fact, used the free StreetView feature of the on-line program Google Maps. (IIEC Ex. 2.0 at 23:490-502). Mr. Stowe's observations could have been verified using an internet browser program by anyone with (and willing to use) an internet connection -- without purchasing, licensing, or downloading any special software.

Inconsistently, Staff did not demand similar documentation from ComEd before endorsing its approach. Indeed, Staff's endorsement is accompanied by complaints of information and data

shortfalls. (Staff Br. at 22, 23). However, Staff has not demanded that ComEd provide such documentary evidence on the record. A consistent demand may have exposed even more clearly the lack of substantive evidence to support the deficient analyses from ComEd that Staff ultimately supported. Even now, Staff accepts ComEd's cost allocations based on engineering judgment as the “most reasonable,” but Staff is unwilling to accept inspection results from an expert, non-utility engineer who has performed more primary/secondary analyses and supporting investigations than ComEd has. (*See*, Stowe, IIEC Ex. 2.0, App. A).

According to Staff, “[t]hese deficiencies render IIEC’s proposed definitions of primary and secondary service inappropriate for allocating the cost of service among customer classes.” (Staff Br. at 24). The deficiencies Staff identifies in its brief, which are discussed above are insubstantial quibbles that do not justify rejection of IIEC’s recommended P/S Analysis improvements.

Staff, in its criticism of IIEC’s approach is effectively creating an insurmountable evidentiary burden for IIEC or any other intervenor challenging a utility’s analysis of facilities and records held only by the utility. As a practical matter, no party, without a mandate of the Commission, can investigate utility records to the same degree the utility can. As a result, the utility is given the “benefit of the doubt” by Staff, since no other party can quantify the precise size of alternative utility subsystems, even when the utility itself is imprecise in its estimation.

B. Workshops

1. Response to Staff

Staff correctly concludes that ComEd’s P/S Analysis requires further work or refinement (Staff Br. at 38). However, Staff’s solution is to extend further a process that began more than 2

years ago, when ComEd made its rate case filing in Docket 07-0566 on October 17, 2007. Staff proposes a workshop process controlled by ComEd and the Staff to examine “. . . issues such as use of direct observations in developing estimates of primary and secondary costs and future data gathering efforts to insure a more accurate differentiation of primary and secondary services costs.” (Staff Br. at 39) Staff also recommends that the workshops address any other issues not resolved by the Final Order in this case. (*Id.*)

IIEC does not believe the workshop process should become a substitute for resolving the major deficiencies in ComEd’s P/S Analysis in this case. IIEC, as well as the Staff, have identified major deficiencies in the ComEd P/S Analysis and the Commission should direct the Company to correct them in its Final Order in this case. If the Commission believes workshops would be of value, a process could be initiated to discuss the mechanics associated with the new or modified P/S Analysis that would be performed by ComEd to correct the major deficiencies in the P/S Analysis presented in this case. For example: the Commission should find that primary to secondary line transformers serve customers who take service at secondary voltages, and that all such customers are responsible for these transformers, whether their secondary service voltage line is two feet from the transformer or two thousand feet. Then, workshops could identify or develop methods to estimate the total costs associated with these transformers and how best to reflect these costs in the ECOSS.

Other potential topics for workshop examination include:

- research/discussion regarding other utilities’ methods of analyzing primary and secondary systems;

- identification of sampling and other estimation techniques to estimate more precisely, or verify, engineering judgments;
- development of a common definition of service voltage (e.g., voltages of lines entering customers premises);
- thorough analysis of system components to determine which customer groups are functionally served by the delivery service components; and
- usefulness of redesign of ComEd's rate classes to better reflect voltage differentiation and costs.

However, if Staff's approach to the workshop is approved by the Commission without modification or alteration of the P/S Analysis as recommended by IIEC then, the issues about the ComEd P/S Analysis raised by IIEC should be included in a specific list of issues to be considered by the workshop. (*See*, IIEC Br. at 32-34). Staff Witness Lazare has already agreed that IIEC's issues should be considered in the workshop process. (Lazare Tr. 478:3-11).

2. Response to ComEd

ComEd does not oppose workshops as long as they have goals and are focused. (ComEd Br. at 27-28). ComEd argues that the goal of the workshop should be to identify a reasonable means to test the engineering judgments used in its P/S Analysis. (ComEd Witness Alongi argued that the goal of the workshop should be to identify a reasonable means to test the engineering judgments used in ComEd's P/S Analysis. (See: Alongi, ComEd Ex. 10.0C 8:191-9:206; ComEd Br. at 28)). The ComEd witnesses identified four specific engineering judgments that would be the subject of the workshop. These judgments related to the percentage of poles used to support primary and

secondary lines and the number of customers who “bypass the secondary system” according to ComEd. (*Id.*).

ComEd’s approach to the workshops presumes that the Commission accepts ComEd’s P/S Analysis in this case either unconditionally or with only minor reservations relating to ComEd’s use of engineering judgment. While IIEC agrees that any workshop should be focused and have identified goals, the goal and focus suggested by ComEd is much too narrow. Furthermore, ComEd’s workshop recommendation is based on the assumption that the Commission did not direct ComEd to determine the cost of service for customers served at primary voltage and the cost of service for customers served at secondary voltage. The Commission directed that ComEd should present an updated cost of service study to identify the cost of service for primary voltage customers and secondary voltage customers. (Initiating Order at 2). ComEd’s P/S Analysis in this case does not accomplish that goal. The workshop process, if any, must begin from the Commission’s determinations respecting persistent deficiencies and needed modifications, not from ground zero. Workshops should focus on the mechanics of accomplishing those P/S Analysis modifications, as well as testing ComEd’s engineering judgments, to the extent those judgments remain relevant to the Analysis as modified. (For example, if the Commission ordered appropriate corrections, it would no longer be necessary to estimate the percentage of customers “bypassing” the secondary system.

In any case, the workshop process should not become a substitute for clear determinations by the Commission identifying the deficiencies in the ComEd P/S Analysis and directing that they be resolved. The Commission’s Order in this case should inform and give direction to any ancillary

workshop process approved in this case to implement the specific changes the Commission directs ComEd to make.

C. Voltage Based Rates

1. Response to ComEd

IIEC addressed the fact that ComEd's current rates do not account for voltage differences and that the Commission should consider the possibility of modifying ComEd's rates to reflect voltage differences in a future case (IIEC Br. at 31-32). In its Brief, ComEd argues there is no legal basis or other basis for requiring ComEd to present a rate design in a future case that is inconsistent with its operations and which it does not support. (ComEd Br. at 27). Therefore, ComEd reasons that the recommendation of IIEC witness Stephens that ComEd be directed to provide voltage differentiated rates for all non-residential classes in its next delivery service rate case, should be rejected. (IIEC Ex. 1.0 at 9:169-172). ComEd is wrong.

Section 16-108(d) of the Public Utilities Act provides in pertinent part:

The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and shall take into account customer impacts when establishing such charges. In establishing charges, terms and conditions for delivery service, the Commission shall take into account voltage level differences.

(220 ILCS 5/16-108(d)). This Section of the Public Utilities Act certainly gives the Commission the legal authority to consider voltage differentiated rates. To the extent the Commission determines that ComEd's rates do not reflect voltage differentiations, the Commission has the authority under this Section to direct the utility to present rates, which do reflect such a differentiation.

ComEd also suggests that IIEC's proposal conflicts with the Commission's "concern for ComEd's historic rate structure." (ComEd Br. at 27). ComEd quotes the Commission's Initiating Order in this proceeding in support of its argument. (*Id.*) The Commission, according to ComEd, stated:

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.

IIEC notes that the language quoted by ComEd clearly indicates that the Commission is going to determine, based on the analysis presented in this case, what changes are necessary to ComEd's rate structure to insure that ComEd's rates are just and reasonable. (*Id.*) The fact that consideration is given to ComEd's historic rate structure does not prevent the Commission from making changes to that rate structure to ensure that ComEd's rate structure is just and reasonable.

It is IIEC's view that the analysis presented in this case justifies voltage-differentiated rates, and that such rates should be presented for the Commission's consideration in ComEd's next case. However, establishment of voltage base rates is not a pre-condition to necessary corrective modifications to ComEd's P/S Analysis as recommended by IIEC and others. Voltage based rates adopted in a future proceeding will simply allow the results of the properly performed P/S Analysis to be more efficiently reflected in the rates ComEd charges to its customers.

2. Response to Staff

Staff does not disagree with IIEC's contention that voltage differentiated rates would allow ComEd rates to more accurately reflect the costs customers impose on ComEd's system. (See Staff

Br. at 25). Instead, Staff questions the usefulness of IIEC's approach given the testimony of ComEd witness Alongi that approximately 300 non-high voltage customers receive service at the primary level and all other customers of Commonwealth Edison receive service at the secondary level. Staff argues that if virtually all customers take service at the secondary level it is not clear that ComEd's reorganization of customers into the voltage based rate classes would be useful. (*Id.*). Therefore, Staff recommends IIEC's proposal be rejected. (*Id.*).

Staff's argument focuses on the fact that there may be as few as 300 customers on the ComEd system served at the primary voltage level. However, ComEd already has a High Voltage Delivery service rate class that consists of only 67 customers. (Alongi Tr. 582:12-24-583:1-7). The High Voltage Delivery class has been previously approved by the Commission in Commonwealth Edison Company Docket 05-0597. (Alongi Tr. 579:10-20). In that case the Company proposed the creation of a High Voltage Delivery class, because high voltage customers did not utilize significant portions of ComEd's overall distribution system and, therefore, had a different cost of service than those ComEd customers that used the distribution system at levels below 69,000 volts. (Alongi, Tr. 580:15-22). In the case at bar a similar situation exists. Customers served at primary voltages, such as 34 kV, pay for part of the secondary system, even though none of the customer's load is served at a secondary voltage level. (Alongi, Tr. 581:20-24-582:1-9).

Staff's argues that because only 300 customers are served at primary voltage levels reorganizing ComEd customers into voltage based rate classes would not be useful. That argument is without merit. The Commission determined a high voltage class was appropriate for only 67 customers in Docket 05-0597, on the basis of ComEd's recommendation that a separate high voltage

class was necessary in order to insure that high voltage customers (customers served at 69,000 volts and above) paid only for the portions of the distribution system they use. Likewise, in the case at bar, customers served at primary voltage should not be required to pay for portions of the distribution system they do not use. If a voltage differentiated class can be established for a few as 67 customers, they most certainly can be established for as many as 300. The size of the class as measured by the number of customers is not a bar to distinctive cost and rate treatment as suggested by the Staff.

D. Coincident Peak Allocator v. Non-Coincident Peak Allocator

1. Response to Staff

In the Street Lighting section of its Brief, Staff says that evidence in this case “. . . calls into question the use of the NCP for distribution sub-stations and primary lines.” (Staff Br. at 32). Staff reasons that these facilities are designed to meet the multiple demands of multiple classes, rather than the demands of customers in an individual class. (Staff Br. at 32-37). Therefore, Staff concludes that use of a CP allocator, rather than an NCP allocator, to assign cost responsibility to customers is appropriate. (Staff Br. at 33). Staff alleges there is no evidence to challenge its claim that coincident peak demands more accurately reflect cost incurrence for primary lines and distribution sub-stations on the ComEd system than non-coincident peak demands. (Staff Br. at 34-35).

Based on Staff’s Brief, IIEC now understands Staff’s position has broader implications than just correcting a perceived inequity for the street lighting class. (See Staff Br. at 34). IIEC originally understood Staff’s direct testimony as addressing inequities for the Street Lighting class.

(See Lazare Staff Ex. 1.0 at 34; 791-795-35-796-808). IIEC opposes Staff's broader recommendation that a CP allocator rather than an NCP allocator, be used for allocation of the costs associated with primary lines and sub-stations for all customer classes.

Staff's argument that there is no evidence to disprove its claim that coincident peak demands are a more accurate reflection of cost incurrence for primary lines and transformers than non-coincident peak demand is without merit.

First, IIEC notes that the Staff itself has offered no testimony addressing how ComEd designs and makes investments in its distribution system. Thus, it is Staff which provides no basis for its claim.

Second, Staff overlooks the testimony of Commercial Group Witness Baudino, that the NCP allocator is proper for use in allocating the demand portion of distribution system costs. Mr. Baudino points out that load diversity at the distribution level is the factor that provides the basis for investing in and the sizing of distribution equipment, not CP demands. (Baudino CG Ex. 2.0 at 3: 57-60). Mr. Baudino explained that the Electric Utility Cost Allocation Manual, published by the National Association of Regulatory Utility Commissioners, provides that the NCP allocator is normally used for allocation of distribution sub-stations and primary lines, because load diversity is usually high at distribution sub-stations and primary feeders. (See Baudino CG Ex. 2.0 at 4: 61-74, quoting from the subject manual.)

Third, as Staff itself points out, the evidence presented by ComEd in this case is that it plans and designs its primary lines and sub-stations on the basis of the NCP demands on these facilities. (Staff Br. at 35). Ironically, this statement of fact by Company witnesses is challenged by the Staff

because it is “unsupported.” Actually Staff’s claim that CP demands drive the design and investment in these facilities on the ComEd system, is unsupported and actually contradicted by substantial evidence in the record.

Because it is generally recognized that NCP demands drive the investment in primary lines and distribution sub-stations and because ComEd testified that it plans and designs its primary lines and sub-stations on the basis of NCP demands, Staff’s broad recommendation that CP demands be used to allocate the costs of these facilities should be rejected.

2. Response to City

The City of Chicago also argues for the use of the CP allocator, as opposed to the NCP allocator, for distribution sub-stations and primary lines. (See, generally, City Br. at 18-22). The City summarizes its position by stating that ComEd Witness Heintz provided no support for ComEd’s preferred NCP allocator, and that City Witness Mr. Bodmer and Staff Witness Lazare explained why the CP allocator is consistent with cost causation principles. (City Br. at 22). The evidence cited above in response to Staff’s argument is equally applicable here, and IIEC will not repeat its arguments.

E. Rate Adjustment

1. Response to Commercial Group

The CG appears to be the only party to suggest, in the context of its Initial Brief, that current rates be adjusted so that some customers will see an increase in their rates and other customers will see a decrease. (See GC Br. at 5-6). CG recommends the Commission revise the “rate design” to reflect the findings made and conclusions reached in this case. (*Id.*). CG’s position is actually

somewhat confusing, in the sense that “rate design” is a term that is ordinarily used to refer to the actual design of rates, not the “level of charges” in those rates. However, for the purpose of its Reply Brief, IIEC assumes that CG uses the term “rate design” as short hand for increasing and decreasing the charges in ComEd’s current rates, based on the Order ultimately entered by the Commission in this case.

IIEC opposes rate increases for any party on the basis of the P/S Analysis and ECOSS ComEd has presented in this case, both because of their persistent deficiencies and because of other ratemaking considerations the Commission has recognized, like rate continuity. The rates approved by the Commission in Docket 07-0566, (ComEd’s last rate case) have been in effect for only a little more than one year. (The Final Order in Docket 07-0566 was entered on September 10, 2008.) Especially in light of the current economic environment and continued high unemployment levels, this is not the time to increase rates for any customer group or class in the context of a case where ComEd has not requested a rate increase of any kind.

In support of its argument for rate increases for some customers and decreases for others, CG argues that ComEd should be directed to file revised tariffs in this proceeding, to reduce or eliminate rate inequities, that CG alleges are identified in Docket 07-0566. (CG Br. at 2-3). CG overlooks the fact that the Commission identified major deficiencies in ComEd’s ECOSS in Docket 07-0566. (Dkt. 07-0566 Order at 207-208, 213). Because of these inequities and a desire to mitigate rate increases to certain customer classes, the Commission elected to move rates only 25% of the way to cost as measured by ComEd’s flawed ECOSS in that case. (*Id.* at 213). IIEC and other parties have identified serious deficiencies in ComEd’s P/S Analysis and/or ECOSS in this case as

discussed above. Under these circumstances, the Commission should use what has been learned in this case to adjust and modify ComEd's P/S Analysis and ECOSS so that it can be used in the next delivery service rate case to set ComEd's rates. Here the Commission should not use an ECOSS that reflects a deficient P/S Analysis, as well as other deficiencies, to justify rate increases for some customer classes in this case.

CG argues: "(b)ased on ComEd's revised ECOSS, the rate inequities currently being born by the Medium Load, Large Load and Very Large Load customer classes are even more significant than previously understood." (CG Br. at 3). However, what was 'previously understood' was based on a fatally flawed ECOSS that the Commission all but rejected in the last rate case, and as a result, opened the instant docket. (Initiating Order at 2). The current study remains deficient in that it is based on ComEd's deficient P/S Analysis. Therefore, the Commission should reject CG's recommendation for rate increases.

Furthermore, in its Order in ComEd's last delivery service rate case the Commission directed a graduated four step movement towards rates based on cost stating

"Instead, an allocation that more closely reflects a proper cost of service would be reflected in a four-step, gradual movement toward rates based on the ECOSS for Extra Large Load, High Voltage and Railroad Delivery Classes. (citation omitted) Thus, the Commission authorizes a 25% movement toward ECOSS based rates for these customers, instead of a 50% movement. (*Commonwealth Edison Company*, ICC Dkt. 07-0566, Final Order September 10, 2008, at 213).

Thus, ComEd's current rates reflect 25% movement toward an inaccurately determined cost of service target established on the basis of ComEd's flawed ECOSS in Docket 07-0566. The ECOSS

performed in this case, whether it uses ComEd's P/S Analysis or IIEC's modified P/S Analysis, shows lower costs of service for the Extra Large Load, High Voltage and Railroad delivery service classes than were shown by ComEd's ECOSS in Docket 07-0566. (Compare ComEd Ex. 1.1A and IIEC Ex. 2.5). Thus, by either measure, current rates already reflect more than a 25% movement toward cost and there has been a more rapid movement toward cost than was originally approved by the Commission Order in Docket 07-0566. There is no way to know exactly how much more movement toward cost has occurred, because the ECOSS in this case still does not fully reflect cost of service. Under these circumstances, it would be imprudent to attempt to move rates further toward an ill-defined cost target.

CG also argues: "If the Commission had not intended to adjust the rate inequities, which it stated is 'a necessary condition to rate setting,' there was no reason to expedite the proceeding." (CG Br. at 5). The Commission certainly did not commit itself to increase rates for some customers and decrease rates for others as a result of findings made or conclusions reached in this docket. It did suggest that based on the analysis presented in this case it would "... 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." (Initiating Order at 3) (emphasis added). Clearly, the language of the Commission's Order does not bind the Commission to order rate increases for some customers and rate decreases for others in the context of this proceeding.

Furthermore, the Initiating Order for this proceeding, while indicating it would not make any changes in ComEd's revenue requirement or modify its conclusions in the Docket 07-0566 Order,

“... (other than those related to rate design,)” does not contain any Commission determination that rate increases for any class of customers are necessary in this proceeding.⁵ (Initiating Order at 3).

2. Response to Staff

The Staff proposes that if the Commission decides to adopt the revised set of class revenue allocations in this case, it will be necessary to modify the ECOSS presented by the Company in this case. (Staff’s argument is a good demonstration of why it would not be appropriate to make any adjustment to the revenue allocation or to ComEd’s rates, at this time, that would result in an increase to any customer class.) Staff lists the modifications of the ComEd study that would be required. Among the modifications listed is the allocation of distribution substation and distribution lines according to coincident, rather than non-coincident peak demand. (Staff Br. at 37) For the reasons stated above in Section II.D.1. above, IIEC opposes such an adjustment to ComEd’s ECOSS.

Staff also argues that any effort to recognize bill impacts and class revenue allocation should not be based on the mitigation method employed by the Commission in Docket 07-0566. Staff argues that such an approach would lead to rate reductions for customer classes who are most efficient in recovering their associated cost of service. On its face, this provides additional reason not to make rate changes in the context of this docket. However, IIEC notes that the Commission

⁵ In fact, given the traditional use of the term “rate design” one could argue that the Commission did not intend to authorize changes in rate charges in this case at all, but rather to actually consider the “design” of ComEd’s rates and the possible modification of that design to insure that the results of a properly performed P/S Analysis were reflected in the rates (e.g. establish voltage based rates).

set out a four-step process, as discussed above, which Staff's recommendation would violate if the process were abandoned after only the first step.

Staff suggests that a reasonable alternative would be to move rates for all classes by an equal percent from current rates to fully recover their applicable cost of service. (Staff Br. at 38) Staff presents an option to move rates 10%, 20% or 50% towards cost as measured by the ECOSS presented by the Company in this proceeding. However, the ECOSS presented in this proceeding contains deficiencies related to ComEd's P/S Analysis. Any further movement toward cost in this case would be movement toward an unclear and inaccurately defined cost of service target. Since current rates may already represent a more significant movement toward cost of service than contemplated by the Commission in Docket 07-0566, the Commission should defer changes to current rates while the ComEd ECOSS is modified and adjusted by the Commission in this docket and in the workshops, if any.

Finally, Staff argues that it would not be reasonable to make any changes to the design of individual charges that customers pay, stating that the Commission has not "... expressed an interest in changing ComEd's rate design." (Staff Br. at 38). It is noted above that the Commercial Group seems to equate rate design with rate increases or decreases. It is not absolutely clear what the Staff had in mind here. If the Staff is using the term "rate design" in its traditional sense, IIEC agrees that it is not necessary to make any rate design changes in this case. However, it is not necessary to increase rates paid by any customer group in this case either, given the flaws and deficiencies in ComEd's P/S Analysis and ECOSS discussed by the parties in this proceeding.

III.

CONCLUSION

For the reasons stated above, IIEC's recommendations and positions should be adopted by the Commission.

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Respectfully submitted,

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