

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 :

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

COMPRISED OF:
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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
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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 Reply 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

The two basic positions set forth by REACT are straightforward and reasonable, and each was endorsed by the Commission both in its Final Order in ComEd’s 2007 Rate Case, as well as in initiating this proceeding. First, if ComEd is going to maintain that its Extra Large customer class should receive a massive, disproportionate rate increase, it should present substantial, meaningful evidence that justifies such a result. ComEd’s position should not be based upon ephemeral theories; it should be based upon detailed proof that accurately reflects reality. If that

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

evidence is missing, ComEd's position must fail. Second, to the extent ComEd incurs Customer Care Costs that support its supply function, those costs should be recovered through ComEd's supply rates, thereby reducing its delivery services rates so that customers who take supply from an alternative retail electric supplier do not improperly cross-subsidize ComEd's supply customers. To the extent that Customer Care Costs are not tracked precisely by ComEd, reasonable allocations should be made, relying upon expert witness calculations that utilize the best available data.

In each instance, the direction by the Commission, consistent with the request by REACT, is that ComEd allocate its costs equitably. In each instance, ComEd is in the best position to collect and present the necessary data, but failed to present such evidence in its 2007 Rate Case. In each instance, the Commission, therefore, directed ComEd to collect and present such evidence in this proceeding. Specifically, the Commission initiated this case to get to the bottom of the problems with ComEd's deficient Embedded Cost of Service Study ("ECOSS"), which, among other things, unjustifiably and improperly assigned a massive rate increase to ComEd's largest customers, and failed to allocate sufficient Customer Care Costs to ComEd's supply function. As a result, the Initiating Order explicitly directed an investigation into "**all aspects of the rate design of ComEd.**" (Initiating Order at 2) (emphasis added).

ComEd certainly has not rectified the problems with the ECOSS identified by the Commission and has not justified its proposed rate design. Rather than confront that reality, ComEd's initial brief ignores substantial evidence, mischaracterizes REACT's position, and suggests that all of the parties that pose legitimate questions about ComEd's failure to present meaningful evidence to support its position have tried to paint ComEd as "the villain in this proceeding." (ComEd Init. Br. at 3.) REACT takes exception to that rhetoric, which has no

basis in fact. Setting such linguistic diversions aside, the *evidence* tells the story, and a close reading of ComEd's initial brief reveals that ComEd simply has not provided the information necessary to comply with the Commission's directives.

ComEd's evidentiary failures were explained at length in the prefiled testimony of Staff, REACT, and other parties, and highlighted during the cross-examination hearings. In addition, REACT presented its own expert testimony identifying the supply-related Customer Care Costs that should be recovered in ComEd's supply rates. While the initial briefs of REACT, Staff and other parties again summarize ComEd's shortcomings, ComEd's initial brief is surprisingly silent regarding the substantial evidence presented by REACT, among others. In particular, ComEd's initial brief presents nothing to rebut the strength of the analysis presented by REACT's witnesses:

- **ComEd's initial brief is *silent* with respect to the analysis presented by Mr. Fults regarding the cost impact that would result from the massive increases imposed by ComEd's ECOSS.²** (See REACT Init. Br. at 17-22.) There is no explanation for that silence.
- **ComEd's initial brief is also *silent* with respect to the flaws identified by Mr. Fults in ComEd's analysis of the primary/secondary split.** (See *id* at 9-12, 22-29.) There is similarly no explanation for that silence, which is especially striking since variations of the issues raised by Mr. Fults were also raised by Staff and several other parties. (See, e.g., Staff Init. Br. at 11-15, 38; Metra Init. Br. at 12-14; CTA Init. Br. at 6; IIEC Init. Br. at 24-30.)
- **ComEd's initial brief is again *silent* with respect to the evidentiary problems with ComEd's position on Customer Care Costs.** Ample evidence exposed the shakiness of ComEd's methodology and strongly suggested that the Company had essentially decided going into this case that it would simply make the same assertions it made its 2007 Rate Case about Customer Care Costs. ComEd's Customer Care Cost "expert" witness openly admitted his lack of experience and expertise in cost allocation issues, eventually simply admitting that "I don't do cost allocations." (Tr.

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.

at 384:22-385:6; 409:16-18.) He also candidly admitted that he did not even evaluate all of the known Customer Care Costs; and simply followed instructions that were given to him in deciding what costs were to be allocated. (*See id* at 390:11-13.)

- **ComEd’s initial brief mischaracterizes Mr. Merola’s detailed and credible analysis of Customer Care Cost allocation.** (*See* REACT Init. Br. at 12-15, 31-48.) Mr. Merola was the only witness that presented expert testimony that actually answers the question on Customer Care Costs posed in the Initiating Order. Instead of presenting an analysis of its own, ComEd engages in a totally unjustified suggestion that Mr. Merola somehow “abandon[ed]” the testimony he presented in the 2007 ComEd Rate Case and presented an analysis in this case that is “unsupported and arbitrary.” (ComEd Init. Br. at 12-13.) Neither accusation has any basis in fact. (*See* REACT Ex. 2.0 at 16:331-29:604; REACT Ex. 4.0 (Corrected)³ at 22:417-31:607; Tr. at 512:3-525:19; 527:4-528:1.)

Accordingly, REACT respectfully requests that the Commission endorse Staff’s request to initiate workshops to collect information related to the actual costs to serve its Extra Large customers, and direct ComEd to adjust its delivery services rates immediately to remove supply-related Customer Care Costs. REACT agrees with Staff that any issues not determined by the Commission in its Final Order in this proceeding should be addressed in a workshop process. (*See* Staff Init. Br. at 38-39.)

II.

COMED IMPROPERLY IGNORES THE EVIDENTIARY HEARINGS

ComEd’s initial brief merely parrots the positions taken by ComEd in its pre-filed testimony. The story told in ComEd’s initial brief is, therefore, incomplete. The evidentiary record in the instant proceeding includes two days of hearings, during which each ComEd witness was cross-examined on the subject matter of his pre-filed testimony. Each ComEd witness gave live testimony, and made numerous admissions that raise additional substantial doubt about the validity and credibility of the positions ComEd has taken. Reading the initial

³ Consistent with the approach in REACT’s Initial Brief, unless otherwise indicated, all references hereafter to Mr. Merola’s Corrected Rebuttal Testimony will be to “REACT Ex. 4.0.”

briefs of ComEd and other parties who back ComEd's assertions, one might assume that the evidentiary hearings were merely an academic exercise without impact on the investigation that the Commission ordered. In fact, the evidentiary hearings provided a crucial test of the evidence and resulted in additional substantive information undercutting ComEd's unreasonable, anti-competitive positions. In contrast to the briefs of the other parties, REACT's Initial Brief cites to that evidence repeatedly.

Although ComEd chose not to cross-examine REACT witness Bradley Fults, ComEd's cross-examination of REACT witness Jeffrey 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. In fact, 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 further highlighted the conservative, reasonable approach that Mr. Merola took to reaching an appropriate cost allocation. (*See id.* at 527:13-528:1.)

In sum, the evidentiary hearings demonstrated:

- The inequity of the massive rate increases ComEd continues to try to impose on large customers (*see, e.g., id.* at 267:19-274:17; 341:6-347:8; 651:1-17; 661:3-662:11; 674:1-20);
- The invalidity of ComEd's assumptions in undertaking the revised ECOSS, and the miniscule sampling undertaken to "verify" a few of those assumptions (*see, e.g., id.* at 280:22-283:15; 664:16-671:15);
- ComEd's repeated refusal to provide requested information about plant facilities and other costs to serve the largest customers – indeed, ComEd admitted that it failed to provide any such information even for three of the nine REACT members (*see, e.g., id.* at 524:15-19; 662:20-663:24);
- The serious flaws in ComEd's approach to responding to the Initiating Order (*see, e.g., id.* at 326:21-327:11; 390:6-393:5; 413:12-22; 414:1-420:16; 421:4-15; 637:10-18; 649:20-650:18);

- The contradiction between ComEd’s purported support for accurate cost allocation and competition that would benefit all customers (*see, e.g., id.* 233:11-18; 255:11-12; 620:13-21) and ComEd’s actual misallocation and/or outright refusal to allocate certain costs (*see, e.g.,* Tr. at 430:1-11; 433:12-436:4; 439:10-14;), the result of which is inaccurate cost allocation and anti-competitive, inaccurate price signals;
- The fact that Mr. Merola is the only expert 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 (*see, e.g.,* 384:22-385:6; 409:16-18; 410:13-413:22; 466:14-19; 523:17-528:1.);
- The need to include issues addressed by REACT in any workshop process, and the fact that a workshop process may not preclude the need for a third-party, independent analysis of ComEd’s cost of service. (*see, e.g.,* Tr. At 460:20-463:17; 472:1-475:8; 677:11-17.)

Evidentiary hearings provide a forum to test the validity of pre-filed testimony and evaluate the credibility of witnesses. The cross-examination of ComEd’s witnesses exposed substantial flaws in ComEd’s analysis and questions about the expertise of its witnesses and thoroughness of the analysis ComEd performed. That evidentiary record further undermines ComEd’s ECOSS and supports REACT’s proposed allocation of the Customer Care Costs.

III.

COMED’S ECOSS REMAINS FUNDAMENTALLY FLAWED

ComEd’s ECOSS continues to lack credibility and would, if implemented, impose unjustified, enormous, disproportionate rate increases of more than \$2 million annually upon some of ComEd’s largest customers. The record evidence – submitted not only by REACT but also by Staff and other intervenors such as the City of Chicago, IIEC, Metra, and the CTA – demonstrates that substantial deficiencies in the ECOSS persist. The evidence also demonstrates that ComEd’s attempt in this proceeding to fill the gaps – through questionable assumptions and deficient, tiny sampling, and the like – raises more questions than it answers.

ComEd devotes only *one-paragraph* in its entire initial brief to respond to this overwhelming evidence, asserting that criticisms of the ECOSS “are based upon positions that diverge from the historic, Commission-approved definitions of ComEd’s primary and secondary distribution systems.” (ComEd Init. Br. at 8.) Of course, ComEd’s response plainly ignores the fact that the criticisms of the ECOSS are almost entirely unrelated to any “historic definitions.” (See, e.g., REACT Ex. 1.0 at 9:178-22-500; REACT Ex. 2.0 at 9:183-16:329; REACT Ex. 3.0 (Corrected)⁴ at 8:155-21:446; REACT Ex. 4.0 at 8:144-19:384; see also Staff Init. Br. at 38; City of Chicago Init. Br. at 3-31; IIEC Init. Br. at 6-30; Metra Init. Br. at 6-12; CTA Init. Br. at 1-2, 6-9. .)

Moreover, ComEd’s response plainly ignores the Commission’s own explicit directive that the instant proceeding include an investigation into “**all aspects of the rate design of ComEd.**” (Initiating Order at 2) (emphasis added).⁵ The breadth of that directive lacks any hint that the Commission intended the scope of the investigation to be constrained by any “historic definitions.” Indeed, this proceeding, which is outside the confines of the statutory deadlines, is an appropriate setting for the Commission to revisit any “historic definitions” to determine whether they make sense and reflect reality. Furthermore, that directive does not put limits upon the extent to which the ECOSS may need revision and reconsideration, notwithstanding ComEd’s complaint in its initial brief that parties are somehow unfairly seeking “wholesale changes” to the ECOSS. (ComEd Init. Br. at 4.) In any event, REACT and, it appears, other

⁴ Consistent with the approach in REACT’s Initial Brief, unless otherwise indicated, all references hereafter to Mr. Fults’ Corrected Rebuttal Testimony will be to “REACT Ex. 3.0.”

⁵ There is no doubt that ComEd is fully aware of the broad scope of the Initiating Order’s directive to investigate “all aspects” of rate design – ComEd itself quotes this passage twice in its initial brief. (See ComEd Init. Br. at 1, 4.)

parties are merely seeking what the Initiating Order explicitly requires – a reality check to determine whether the rates are, in fact, “just and reasonable.” (Initiating Order at 3.)

A. Disproportionate Rate Impacts For The Largest Customers Remain Unjustified

ComEd has been unable to provide a meaningful response to the question posed by REACT since the beginning of ComEd’s 2007 Rate Case: **What did ComEd’s largest customers do to deserve such a massive, disproportionate rate increase?** In the 2007 Rate Case, the Commission concluded that the evidence presented by ComEd lacked sufficient reliability to form a basis to impose such an increase. The Commission gave ComEd the opportunity in this proceeding to muster the requisite evidence to relate its ECOSS back to reality, and – despite REACT’s continued requests for such evidence – ComEd again has failed.

REACT witness Mr. Fults presented uncontradicted testimony about the massive rate impacts upon the Extra Large Customer Classes implicated by ComEd’s ECOSS. The lack of any contradictory evidence is confirmed by ComEd’s initial brief, which is silent on this issue. Accordingly, REACT’s evidence about the enormous, disproportionate rate increases implied by the ECOSS, and ComEd’s complete failure to even consider the effects of rate shock that follow from those increases, stands unopposed. (*See* REACT Init. Br. 17-22.)

The only party that even tangentially touches on this issue is the Commercial Group, which asserts that Medium, Large, and Very Large Load customers are subsidizing the cost to serve certain other customer classes. (*See* Commercial Group Init. Br. at 4.) ComEd makes a similar assertion in passing in its initial brief. (*See* ComEd Init. Br. at 2.) However, this position rests on the premise that the ECOSS establishes the “true cost” of service to ComEd’s various customer classes. (*Id.*) That premise is palpably false. The Commission concluded that the evidence in the 2007 ComEd Rate Case demonstrated the deficiencies in the original Rate Case

ECOSS were so substantial that it could not be relied upon to set rates; the evidence in the instant proceeding shows an even higher level of deficiencies, questions, problems, and gaps in the current ECOSS. (*See* 2007 ComEd Rate Case, ICC Docket No. 07-0566, Final Order at 213; *see also* Staff Init. Br. at 38; City of Chicago Init. Br. at 3-31; IIEC Init. Br. at 6-30; Metra Init. Br. at 6-12; CTA Init. Br. at 1-2, 6-9.)

In short, ComEd's ECOSS lacks the reliability and credibility to form a basis to enact the type of massive, disproportionate rate increases that are threatened by ComEd's position in this case.

B. ComEd Makes No Effort To Address Or Defend The Deficient Sampling That Exposed The Problems With The Deficient ECOSS But Did Not Cure Those Problems

Charged in the Initiating Order with presenting a revised ECOSS that, among other things, 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. In direct testimony, witnesses for REACT, Staff and other parties provided a critique of ComEd's approach and raised questions about whether ComEd's assumptions and judgments rested on any verifiable basis in reality. (*See, e.g.*, REACT Ex. 1.0 at 9:181-225; Staff Ex. 1.0 at 12:267-14:326; 19:432-37; 20:455-21:485; City of Chicago Ex. 1.0 *generally*; CTA/Metra Jt. Ex. 1.0 at 5:93-109; IIEC Ex. 2.0 at 15:312-20:434; .)

ComEd responded by undertaking what at best can be described as an extremely limited sampling of a limited set of facilities in a limited set of categories. Indeed, ComEd witness Mr. Alongi acknowledged the "tiny" sample sizes that the Company took. (Tr. at 666:11-13.) 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. Those criticisms are catalogued in REACT's Initial Brief. (*See* REACT Init. Br. at 23-29.) As a result, even in its final piece of pre-filed testimony in this proceeding Staff witness Mr. Lazare called upon the Commission to initiate a workshop process because there is a "clear need" to expand the scope of ComEd's visual inspections to test ComEd's "engineering judgments" that underlie its ECOSS 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.) That non-opposition perhaps explains why ComEd's initial brief is reduced to offering a single sentence defense of the ECOSS, suggesting that it relies on historic, Commission-approved definitions. As discussed above, that attempted explanation carries no weight given the explicit instructions in the Initiating Order. ComEd's failure to even attempt to confront the problems with the analytical methodology (or lack thereof) relating to the ECOSS should not be interpreted as anything other than what it is: a legal admission of clear, continuing substantial deficiencies in ComEd's ECOSS.

C. ComEd Repeatedly Mischaracterizes The Relief That REACT Is Seeking

ComEd's apparently attempts to direct attention away from its deficient ECOSS by mischaracterizing REACT's request for additional information. (*See* ComEd Init. Br. at 23.) ComEd claims that REACT seeks "wholesale changes" to ComEd's ECOSS and wants 79 customer-specific cost analyses. (*See id.* at 4; 23.) REACT does not seek that and, in the face of never-ending opposition from ComEd, has clarified and refined its information requests – in an attempt to tie the ECOSS back to reality. (*See, e.g.*, REACT July 7, 2009 Verified Response of REACT to ComEd's Motion for Reconsideration at 4 (agreeing to further limit the scope of

REACT's data requests, and citing ComEd's response to REACT Data Request 2.34 in the 2007 ComEd Rate Case, attached as Exhibit B to the REACT Verified Response, which data request response indicated that ComEd could provide the relevant information in a couple of months.) Regardless of how ComEd seeks to characterize REACT's request, the evidence demonstrates that ComEd could actually meet REACT's request within a reasonable amount of time and without an unduly burdensome cost. (*See, e.g.*, Tr. at 675:12-677-24.)

IV.

REACT PRESENTED COMPREHENSIVE, CREDIBLE, AND COMPELLING EVIDENCE THAT ADDRESSED THE ISSUE OUTLINED BY THE COMMISSION AND SHOWED THAT COMED HAS MISALLOCATED CUSTOMER CARE COSTS

To address the extent to which Customer Care Costs are “attributable specifically to bundled supply customers” (2007 ComEd Rate Case Final 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. The record evidence – in particular, the evidence from the hearings – indicates that ComEd provided non-responsive assertions that cannot withstand even minimal scrutiny. Nothing in ComEd's initial brief on this issue, which verges on a baseless *ad hominem* attack on Mr. Merola, changes this fact.

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; REACT Init. Br. at 12-15; 31-41.)

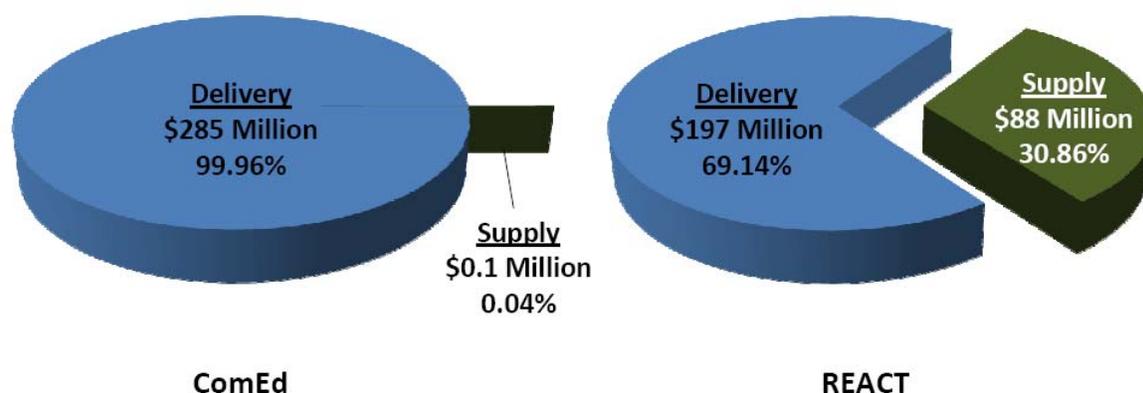
Mr. Merola’s written testimony explains his analysis in detail. That analysis is recounted in REACT’s Initial Brief. (*See* REACT Init. Br. at 31-41.) As ComEd’s own witness Mr. Meehan admitted at the hearings, Mr. Merola analyzed the full amount of Customer Care Costs, as opposed to a smaller amount arbitrarily chosen by ComEd for analysis. (*See* Tr. at 392:9-393:5.) Mr. Merola then provided specific figures, both to show the total amount of Customer Care Costs that should be allocated to the delivery and the supply functions, and also provided precise figures about the specific costs to provide Customer Care to individual residential and non-residential customers, in direct response to the Commission’s directive in the Initiating Order. (*See* REACT Init. Br. at 14-15; 32.)

In particular, 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, Mr. Merola’s 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, Mr. Merola's 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.

The disparity between Mr. Merola's reasoned, credible analysis and the incomplete and methodologically questionable approach that ComEd took was illustrated in a chart comparing the positions of ComEd and REACT on Customer Care Cost allocation, which was admitted into the evidentiary record as REACT Cross Exhibit Meehan 9:

Customer Care Costs Allocated to the Supply Function Comparison of ComEd and REACT Positions



Sources

ComEd Data: Supply function allocation from ComEd Exhibit 2.0, page 17. Delivery function allocation from ComEd Exhibit 7.1, Schedule 2a, page 1 of 16, sum of column "Total ICC" for rows 12, 13, 14, and 15.

REACT Data: REACT Exhibit 4.3, Column i and Column j.

That exhibit is illustrative of two important points. First, the pie chart on the left side of the exhibit shows that ComEd's position defies common sense – it simply cannot be the case that less than half of one one-hundredth of a percent -- .04% -- is the entire amount of Customer Care Costs attributable to the supply function. Second, the pie chart on the right side of the exhibit shows that REACT's position is far from extreme – indeed, as Mr. Merola cogently explained in his pre-filed testimony and on cross-examination, REACT's position is quite conservative. (*See* REACT Ex. 2.0 at 23:491-25:528; Tr. at 523:17-525:22.) Based on Mr. Merola's analysis, less than one third of total Customer Care Costs are allocated to the supply function.

In summary, Mr. Merola performed the analysis specifically requested by the Commission that "analyzes the cost of providing Customer Care" to ComEd supply and non-

supply customers -- he concluded that 30.86%, or approximately \$88 million, of the total Customer Care Costs should be allocated to ComEd's supply function.

B. 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." (Initiating Order at 2.) Instead, ComEd purported to analyze whether or not Customer Care Costs would go down with an increase in switching to alternative suppliers. REACT has maintained its position since Mr. Merola submitted his direct testimony on May 22, 2009. Yet, even in its initial brief, ComEd fails to explain how it could have possibly answered the Commission's directive.

Mr. Merola explained in detail that even in performing its non-responsive, alternative analysis, ComEd made numerous errors that resulted in ComEd overstating its delivery services Customer Care Costs and understating its supply-related costs. (See REACT Init. Br. at 41-48; REACT Ex. 2.0 at 6:105-15.) Mr. Merola's pre-filed testimony provided a comprehensive critique of ComEd's approach. (See REACT Ex. 2.0 at 9:186-16:329.) Again, however, nothing in ComEd's initial brief even attempts to respond to that evidence.

At the evidentiary hearings, it became clear that ComEd had not undertaken a credible analysis to answer the Commission's directive, had used a methodology that was inconsistent with the approach the ComEd 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. 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 id.* at 421:11-15.) Additionally, although Mr. Meehan testified on direct and acknowledged on cross-examination that ComEd has actually allocated a small amount of costs to the supply function historically – \$112,482 in costs relating to its “ESSD Department (*see* ComEd Ex. 2.0 at 17:347-52; Tr. at 386:16-387:1) – Mr. Meehan was unable to provide to explain the basis for that allocation:

Q. You have no idea where the 112,000 came from?

A. The 112,000 was – how the 112,000 was arrived at from that case?

Q. Yes.

A. No.

(Tr. at 398:4-9.)

Amazingly, ComEd's initial brief ignores these fundamental admissions and evidentiary holes, makes no attempt to defend ComEd's witness or explain the problematic admissions, and states, without qualification or explanation, that its analysis applied only to O&M costs. (*See* ComEd Init. Br. at 9.) Evidentiary hearings are not an academic exercise – what occurs there matters, even if, as here, ComEd simply acts as if it never happened.

**C. ComEd's Reliance On ICC Docket No. 07-0528/07-0531
Is Inapplicable And Unpersuasive**

ComEd's only fallback defense of its position is to suggest that it was somehow constrained in its approach to allocating Customer Care Costs by an issue addressed in the 2007 proceeding involving ComEd's proposed procurement plan and related supply tariffs, ICC

Docket No. 07-0528/07-0531. (*See* ComEd Init. Brief at 11.) This argument lacks merit. As ComEd itself explains it, in that proceeding Staff expressed some concern about whether the “proposed procurement tariff would create an inappropriate incentive [for ComEd] to *inflate the supply rate*” through inappropriate allocation of certain costs. (*Id.*) (emphasis added). To accommodate the Staff concern, ComEd apparently itself decided to modify its tariff to limit the kinds of costs that could be recovered through Rider PE. (*See id.*) The Commission ultimately approved that tariff. (*See id.*)

To say that this episode somehow constrains ComEd’s ability to accurately allocate Customer Care Costs as a result of the Commission’s explicit directive in the Initiating Order strains credulity. Of course, it is also well established that Commission Orders do not have precedential standing of the sort that judicial orders possess. (*See Abbott Laboratories, Inc. v. Ill. Commerce Comm’n*, 289 Ill. App. 3d 705, 715, 682 N.E.2d 340, 349 (1st Dist. 1997); ICC Docket No. 00-0393, *Re: Ill. Bell Tel. Co.*, March 28, 2002 Order on Second Rehearing at 21.) Even if they did, the Initiating Order in the instant proceeding post-dates the Order in ICC Docket No. 07-0528/07-0531 by more than nine months, so there is no question that the Initiating Order would take precedence over the older order. Moreover, even if the Order in Docket No. 07-0528/07-0531 were relevant, it is clear that the Staff concern in that case was that ComEd might have some incentive to allocate certain costs toward the supply function and away from the delivery function. Of course, in this case, ComEd is trying to do *exactly the opposite* – ComEd is strenuously trying to avoid assigning or allocating anything beyond .04% of Customer Care Costs to the supply function. Thus, it is oddly ironic that ComEd would purport to believe that the Order in Docket No. 07-0528/07-0531 somehow trumps the Commission’s explicit directive in initiating the instant proceeding to accurately allocate Customer Care Costs.

At the hearing, ComEd witness Mr. Alongi tried to defend ComEd's position, but even he admitted that "as a matter of ratemaking principle" supply-related Customer Care Costs "could be" allocated properly through supply rates and also admitted that the Commission directed ComEd to examine the Customer Care Cost issue again, notwithstanding the Order in Docket No. 07-0528/07-0531. (*See* Tr. at 632:14-633:4.)

D. ComEd's Criticisms Of Mr. Merola Completely Lack Merit

ComEd's initial brief attempts several completely unsubstantiated criticisms of Mr. Merola's analysis. Each falls flat.

1. Mr. Merola's Analysis Is Thorough And Complete

As explained at length in REACT's Initial Brief at pages 12 to 15 and 31 to 41, Mr. Merola provided detailed, expert testimony that analyzed ComEd's Customer Care Costs and recommended that \$87,970,634 (or 30.86% of the total Customer Care Costs) be allocated to ComEd's supply function. This expert testimony is based upon his nearly 20 years of professional experience in a variety of relevant positions in the energy industry. Currently a Vice President of Intelometry, Inc. of Houston, Texas, Mr. Merola possesses experience in 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* REACT Ex. 2.1; REACT Init. Br. at 12-13.) 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.) He was the only witness possessing such qualifications to testify in this case.

ComEd's attack on Mr. Merola reaches the low point when it suggests that "he made no meaningful attempt to address the threshold question of whether ANY of the costs are reasonably allocated to supply." (ComEd Init. Br. at 13) (emphasis in original). In a bizarre rebuttal of its own position, ComEd includes at the end of that very sentence its footnote 8, which explicitly admits that Mr. Merola did do an analysis that excluded 100% of metering costs from the allocation, based on his analysis that none of those costs are appropriately allocated to the supply function. (*See id.* at 13 n.8). So, ComEd levels an allegation of bad analysis against Mr. Merola and at the end of the sentence inserts a footnote that withdraws the criticism.⁶

However, as if that is not strange enough, ComEd truly went down the rabbit hole on this point at the evidentiary hearing when, on cross-examination of Mr. Merola, ComEd questioned Mr. Merola on why he did not include metering costs in his allocation, as if to suggest that he should have. Of course, Mr. Merola soberly explained that under his conservative approach to the cost allocation question, he determined in his professional opinion that such an allocation was inappropriate, although if he had made it, it would have "certainly increased[d] the allocation of the supply function," which is exactly what ComEd has been fighting against. (Tr. at 527:4-528:1.)

2. Mr. Merola's Position In This Proceeding Is Consistent With His Position In ComEd's 2007 Rate Case

ComEd quotes Mr. Merola's testimony from the 2007 ComEd Rate Case that "ComEd's supply procurement costs should be bypassable for those customers who do not take supply service from ComEd, and thus, should not be embedded in the delivery service rates." (ComEd

⁶ ComEd then insultingly says of Mr. Merola's position, "A less reasoned 'analysis' is difficult to imagine." (ComEd Init. Br. at 13.) Of course, the very argument that ComEd tries to cobble together to criticize Mr. Merola's reasoned analysis is, in plain fact, a much less reasoned analysis – it is self-contradictory within the same connected sentence and following footnote.

Init. Br. at 12.) ComEd then states that in the instant proceeding, “Mr. Merola now abandons his ‘bypassable’ rationale and, instead, points to various ‘adjustments’ and a ‘functionalization factor’ to support his conclusion that nearly \$88 million in customer service costs should be allocated to ComEd’s supply function and, therefore, removed from ComEd’s distribution service-related revenue requirement.” (*Id.*)

This statement is so sloppy and inaccurate that it deserves to be ignored out of hand. There is absolutely no evidence or testimony of any kind from Mr. Merola or any other witness in the instant proceeding to suggest in any way that Mr. Merola has “abandoned” his position that ComEd’s supply-related costs should be “bypassable” for customers who do not take supply from ComEd. Indeed, that is perhaps the most fundamental point that Mr. Merola and REACT have made throughout the course of both the 2007 ComEd Rate Case and the instant proceeding – that supply-related costs that are not attributable to customers who do not take ComEd supply should not be paid by those customers. (*See, e.g.*, REACT Ex. 2.0 at 8:159-9:181; REACT Ex. 4.0 at 21:408-16.) This is the basic principle of cost causation – that is, the Commission’s “explicit policy objective of assigning costs where they belong.” (ComEd 2007 Rate Case Final Order at 206.) Each ComEd witness other than Mr. Meehan, who claimed to lack experience or expertise with cost allocation, purported to agree with that principle. (*See* Tr. at 233:16-18 (Dr. Hemphill); 335:3-6 (Mr. Heintz); 621:3-6 (Mr. Alongi); 384:17-385:6 (Mr. Meehan).) Mr. Merola also clearly explained the connections between his testimony in the 2007 ComEd Rate Case and in the instant proceeding in his Rebuttal Testimony. (*See* REACT Ex. 4.0 at 9:170-10:181.) Of course, if ComEd really thought that Mr. Merola had changed his position, it had ample opportunity to explore that issue on cross-examination, but never even raised the subject. (*See* Tr. at 511:14-523:10; 528:9-529:14.) In short, it is totally unclear why ComEd would allege

that Mr. Merola has abandoned his position – but the facts are clear. Mr. Merola’s view on the necessity to accurately allocate Customer Care Costs has remained consistent throughout.

3. Mr. Merola’s Updated Numbers Are Completely Explained

ComEd also suggests some issue with the fact that in the 2007 ComEd Rate Case Mr. Merola recommended allocation of approximately \$65 million in Customer Care Costs to the supply function and in the instant proceeding he recommends approximately \$88 million. (*See* ComEd Init. Br. at 12.) Oddly, ComEd itself accurately cites the portion of Mr. Merola’s testimony that explains why he made the upward adjustment. (*See id.* at 13, citing REACT Ex. 4.0 at 9:174-76.) As discussed above, in that cited testimony, Mr. Merola candidly and clearly explains his rationale, which includes the fact that ComEd itself had provided additional information that informed Mr. Merola’s analysis. (*See* REACT Ex. 4.0 at 9:170-10:181).

4. Mr. Merola Addressed All Of ComEd’s Arguments – Even Those That Do Not Make Sense

Finally, ComEd criticizes Mr. Merola for “completely ignor[ing]” ComEd’s contention that certain of its Customer Care Costs might increase at switching levels of 10% or 100%. (ComEd Init. Br. at 13.) Of course, Mr. Merola did not “ignore” that contention, though he thoroughly debunked it. His testimony explained in detail why ComEd’s position is unpersuasive:

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. 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**. This conclusion seems to be totally implausible on its face, and, at a minimum, raises fundamental questions about ComEd’s analytical model.

(REACT Ex. 2.0 at 12:251-13:260; *see also* REACT Ex. 4.0 at 15:289-304.)

Mr. Merola then further explained that ComEd's concern over cost allocation problems associated with high levels of residential customer switching are theoretical at best, since ComEd admits that it projects switching levels that are *orders of magnitude smaller* than the switching levels that would lead to its theoretical concerns. (See REACT Ex. 4.0 at 16:306-17:333.) This point was illustrated at the hearings when ComEd witness Mr. Meehan admitted that even if ComEd's projections underestimated residential switching by 1000%, the level of switching would still be only approximately 1.5%. (See REACT Init. Br. at 47-48; Tr. at 419:8-420:7.) The bottom line is that Mr. Merola did address the issue, and conclusively demonstrated that it is nothing more than a diversion. ComEd's witnesses confirmed this at the hearings.

E. Accurate Allocation Of Customer Care Costs Should Not Be Precluded By Theoretical Concerns About Rate Disparities or Precedents

Staff opposes REACT's proposed allocation of Customer Care Costs. Staff does not express any specific criticism of Mr. Merola's methodology or analysis; rather, Staff apparently has some theoretical concerns about (1) potential rate disparities that could occur if the accurate cost allocation that Mr. Merola has articulated were put into practice and (2) a possible conflict with the Commission's view of the "level of credit for ratepayers if their bill comes from a RES under the Single Bill Option." (Staff Init. Br. at 30-31.)⁷ Staff also expresses a concern that implementation of Mr. Merola's accurate cost allocation could set a "precedent" that might apply to other electric and natural gas utilities. (*Id.* at 31-32.)

⁷ Although its participation in the instant docket has been somewhat limited and did not address the Customer Care Cost issue previously, the Attorney General ("AG") indicates in its initial brief that it opposes REACT's suggested allocation of Customer Care Costs for some of the reasons stated by Staff. (See AG's Init. Br. at 7.)

Staff's concerns are unsubstantiated and insufficient given the evidentiary record. As an initial matter, Staff witness Mr. Lazare endorsed the fundamental principle of accurate cost allocation specifically in the context of Customer Care Costs.

Q. You would agree that, as a general matter, delivery services costs should be recovered in delivery services rates, right?

A. Yes.

Q. And you agree, as a general matter, supply costs should be recovered in supply rates, right?

A. Yes.

Q. Do you agree with Mr. Merola that customer-care costs that are solely delivery services related should be recovered in ComEd's delivery services rates?

A. Yes.

Q. Do you agree with Mr. Merola that customer-care costs that are solely supply-related should be recovered in ComEd's supply rates?

A. Yes.

Q. Would you agree that if the underlying costs associated with providing customer-care services varies substantially between bundled and unbundled customers that the bundled and unbundled rates should be different?

A. Yes.

(Tr. at 463:23-464:5; 464:12-20; 467:2-7.)⁸

⁸ In its Initial Brief, the AG seems to agree, stating: Given that there are real differences in this cost of service, and the fact that this difference is reasonably related to the service classification, specific cost differences should not be ignored when performing a cost of service study. (AG Init. Br. at 5.)

Mr. Merola's testimony and documentary evidence demonstrates that, in fact, there is a substantial variance between the Customer Care Costs incurred to serve bundled and unbundled customers. (*See* REACT 4.0 at 7:115-8:142.) He showed that for residential customers, the cost to provide Customer Care to a ComEd bundled customer is 45% higher than for a unbundled (i.e., non-ComEd supply customer); for non-residential the cost to provide Customer Care is 163% higher than for a non-ComEd supply customer. (*See id.* at 7:117-8:142; REACT Init. Br. At 32.) Thus, according to the principle of accurate cost allocation that Mr. Lazare recognized, those costs differences should be reflected in the rates. It is unclear, given its witness' stated position on cost allocation, why Staff would oppose implementation of that allocation based upon a theoretical concern about rate impacts about which Staff presented no study or analysis.

Mr. Lazare acknowledged that he did not actually perform an analysis of allocation of Customer Care Costs, as did Mr. Merola. (*See* Tr. at 466:14-19.) Mr. Lazare also acknowledged that he did not perform any study or analysis to support his theoretical concerns about what precedent might be set for other utilities – indeed, he further acknowledged that he had performed no analysis to even know how other utilities deal with similar cost allocation issues. (*See id.* at 467:12-468:1.) Finally, Mr. Lazare acknowledged that the Commission would have authority to intervene if, in actuality rather than theoretically, there were future unintended consequences on bill impacts resulting from accurate Customer Care Cost allocations. (*See id.* at 468:2-8.) Again, given these fair and candid acknowledgements by Staff's expert witness, Staff's position in opposition to accurate allocation of Customer Care Costs is unpersuasive.

V.

ANY WORKSHOP PROCESS MUST INCLUDE ISSUES RAISED BY REACT

ComEd attacks Staff witness Mr. Lazare for clarifying the scope and content of his workshop proposal. (*See* ComEd Init. Br. at 27-28.) Mr. Lazare’s vision of a workshop process is fair and wholly defensible, and ComEd’s criticism is unfounded.

REACT has, though the testimony and analysis of Mr. Fults and Mr. Merola, provided the Commission with a persuasive, comprehensive, and credible basis regarding (1) the invalidity of ComEd’s ECOSS and the methodology underlying the ECOSS, and (2) accurate allocation of Customer Care Costs. The evidentiary record in favor of REACT is strong and provides a basis for final disposition of the issues raised in a Final Order in the instant proceeding.

If, however, the Commission determines that it cannot resolve the ECOSS or Customer Care Cost allocation question in a Final Order, those issues should be included in the workshop process that Staff witness Mr. Lazare has proposed. 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 issues raised by REACT relating to calculation of cost of service to the largest customer classes and Customer Care Cost allocation issues raised by REACT are not objectionable and should be included. (*Id.* at 5; *see also* REACT Init. Br. at 29-30; 49-50.)

Mr. Lazare cogently 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 cost of service and Customer Care Cost issues. If the Commission does not reach a final determination on these issues in its Final Order and instead directs workshops, the issues REACT has raised should be included.

VI.

CONCLUSION

Evidence and credibility matter. The evidence shows that ComEd has failed to cure the substantial deficiencies in the ComEd ECOSS that motivated the Commission to initiate this investigation. The evidence shows that while ComEd uses words that suggest that the Company supports accurate cost allocation and competition for all of its customers, ComEd's deficient ECOSS and the "analysis" underlying that deficient ECOSS belie those words. The evidence also shows that ComEd's position lacks credibility – the numerous substantial questions raised during the cross-examinations of ComEd's witnesses by REACT and other intervenors should not be ignored, as much as ComEd would prefer to do so.

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. Nothing in the initial brief of ComEd or any other party rebuts these evidentiary facts.

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. Again, nothing in the initial brief of ComEd, Staff, or any other party rebuts these evidentiary facts.

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 reiterates its requests that the Commission enter an Order consistent with the arguments herein, requiring 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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