

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,)
Proposal to establish Rider PORCB)
(Purchase of Receivables with Consolidated Billing) and) Docket No. 10-0138
to revise other related tariffs.)

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

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I. INTRODUCTION AND SUMMARY

Commonwealth Edison Company's ("ComEd") January 19, 2010, tariff filing to implement the purchase of receivables program set forth in Section 16-118(c) of the Public Utilities Act ("PUA" or "Act") reflects a remarkable degree of stakeholder input, collaboration and agreement. Building upon the relationships developed during the collaborative stakeholder workshop process conducted by the Office of Retail Market Development ("ORMD Workshops") and the Ameren Illinois Utilities ("AIU") purchase of receivables program filing, ComEd has worked closely with two retail electric supplier ("RES") organizations representing some 15 individual RESs¹ and with the Citizens Utility Board ("CUB") to reach agreement, both formal and informal, on a number of issues, including the overall design of the cost recovery mechanism and the discount rate reflected in the tariffs.

These discussions culminated in a formal agreement among ComEd, RESA and ICEA and an informal agreement between ComEd and CUB. Since filing, the RES organizations have maintained their strong support of the cost recovery mechanism and discount rate. ICEA has testified, for example, that the agreement "represents a reasonable and equitable compromise that should help bring the benefits of customer choice and competition to residential and small commercial retail customers in ComEd's service territory." (Wright Dir., ICEA Ex. 1.0, 3:22-24.)

¹ These organizations include the Retail Electric Supply Association ("RESA") (whose members at the time the parties reached agreement included Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Exelon Energy Company, Gexa Energy, Hess Corporation, Liberty Power, Sempra Energy Solutions LLC, GDF SUEZ Energy Resources NA, Inc., and Just Energy Illinois Corp.) and the Illinois Competitive Energy Association ("ICEA") (whose members at the time the parties reached agreement included Constellation NewEnergy, Inc., Direct Energy Services, LLC, Exelon Energy Company, Integrys Energy Services, Inc., MC Squared Energy Services, LLC, and Midwest Generation). (ComEd Ex. 1.3.)

Consistent with Section 16-118(c) and these agreements, ComEd proposed a new tariffed service whereby a RES may, at its option, sell to ComEd receivables for power and energy service for certain of its customers at a discount rate, which is based on the costs the utility incurs in setting up and administering the program and on historic bad debt. The new tariff provisions include a new rider, Rider PORCB – Purchase of Receivables with Consolidated Billing (“Rider PORCB”), which includes the provisions under which ComEd purchases receivables from RESs for the electric power and energy supply service provided by such RESs to selected retail customers. They also include proposed revisions to Rider RCA – Retail Customer Assessments (“Rider RCA”) and General Terms and Conditions, which also provide for the recovery of the costs ComEd incurs in providing service under Rider PORCB and serve to enable ComEd to effectively provide service under Rider PORCB.²

Because Section 16-118(c) does not prescribe the structure of the cost recovery mechanism or how the discount rate must be applied to each receivable purchased, ComEd worked with stakeholders to develop both a cost recovery mechanism and a discount rate that would provide for timely cost recovery while also encouraging RES participation. Except for Dominion Retail Inc. (“Dominion”), no party objects to the overall cost recovery mechanism, which reflects the key features of the mechanism approved for AIU.

With respect to the fixed, \$0.50 portion of the discount rate, however, both the Staff of the Commission (“Staff”) and Dominion argue that the discount rate should instead be applied as a percentage charge to each bill, which Staff refers to as a single “rate.” This results in unjustly charging RESs different amounts per customer for what is a fixed cost that does not vary based on the dollar amount of each bill. Ignoring the overwhelming consensus of the RES community

² A list of ComEd’s proposed tariff changes is attached hereto as Appendix A.

reflected in the formal agreement, Staff claims the percentage charge should be adopted here because it was adopted in the AIU docket. However, the Commission of course cannot be bound by its decision in the AIU docket because a fixed charge proposal was never presented or discussed in that docket. There, only a percentage charge was proposed. Indeed, the ability to entertain and adopt alternative approaches to the discount rate is critical given the lack of RES participation in the AIU's purchase of receivables program during the 12 months since the final order was issued on August 19, 2009.

With respect to the cost estimates themselves, only Dominion argues that ComEd's costs should be arbitrarily capped at \$3 million. This claim has no basis in fact and flatly contradicts the plain language of the statute permitting a utility offering a purchase of receivables program to recover all of its prudently incurred costs. Both Staff and ICEA agree with ComEd that the estimates presented are for informational purposes only, and a determination about whether the incurred costs were reasonable and prudent will be made in the reconciliation proceedings required by the tariff.

Although Staff does not directly attack the cost estimates, it nevertheless advances arbitrary and baseless proposals that would prematurely preclude the recovery of certain costs related to the implementation of PORCB. Examples of these proposals include (i) an arbitrary cut-off date for the recovery of implementation costs, (ii) a challenge to the deferred costs ComEd has prudently incurred since the passage of Section 16-118(c) related to the statute's implementation, and (iii) tariff revisions that would exclude the ability to recover costs related to the operation of employee training and procedures, operating and maintenance, and communication and education. These proposals are inappropriate because they would

preemptively disallow cost recovery and deprive ComEd of its statutorily granted right to demonstrate the prudence of such costs.

Staff also questions whether all of the costs ComEd has identified are properly recoverable through Rider PORCB. However, to the extent the proper categorization of these costs is a legitimate issue, the appropriate forum for investigating such allocations is ComEd's recently filed rate case pending in ICC Docket No. 10-0467.

Despite introducing substantial cost recovery risks in this fashion, Staff goes on to make the incredible argument that there is actually *less* risk with respect to the recovery of PORCB costs, and, therefore, that ComEd's return on equity for these assets should be drastically reduced based on a comparison to AAA-rated transitional funding instruments. As explained by both ComEd and expert witnesses, however, the PORCB statute lacks the cost recovery assurances set forth in the transition funding law (*e.g.*, a State pledge, segregation of funds, and placement of the funds in a bankruptcy remote vehicle), without which no transition bonds would have attained a AAA rating and the attendant lower return. Moreover, investors do not view a rider mechanism as necessarily reducing risks, especially where there is the risk of disallowance in a *post facto* prudence review, and Staff has already indicated its intent to question and even disallow recovery of costs both in this docket and in future reconciliation dockets. And finally, in any event, Staff's proposal ignores that ComEd does not issue individual debt and equity securities to finance investments for specific projects but rather finances its entire construction budget and projects as a whole.

In addition, the tariff filing reflects various other tariff changes stemming from the ORMD Workshops and settlement discussions with CUB. These proposed changes affect the switching rules applicable to mass market customers, which include all residential customers and

other customers that establish demands for electricity that do not exceed 100 kilowatts (“kW”). These changes are supported by CUB as consumer protections that should be in place at the time the PORCB program goes live,³ and they will facilitate the orderly switching of large numbers of customers as the competitive market becomes more robust.

Although Staff initially opposed these changes to the switching rules, it has since agreed to withdraw its opposition provided certain language is added to the order limiting its effect in future proceedings. Dominion and RESA ask for certain other changes to the switching rules and the definition of the mass market; however, the adoption of these changes would cause a delay in the implementation of Rider PORCB.

II. OVERVIEW OF SECTION 16-118(c) OF THE ACT

The primary purpose of ComEd’s filing is to implement Section 16-118(c) of the Act, which provides as follows:

An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that provides alternative retail electric suppliers, and electric utilities other than the electric utility in whose service area the retail customers are located, with the option to have the electric utility purchase their receivables for power and energy service provided to residential retail customers and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts. Receivables for power and energy service of alternative retail electric suppliers or electric utilities other than the electric utility in whose service area the retail customers are located shall be purchased by the electric utility at a just and reasonable discount rate to be reviewed and approved by the Commission after notice and hearing. The discount rate shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables. The discounted rate for purchase of receivables shall be included in the tariff filed pursuant to this subsection (c). The discount rate filed pursuant to this subsection (c) shall be subject to periodic Commission review. The electric utility retains the right to impose the same terms on retail customers with respect to credit and collection,

³ These changes are reflected in Rate BES – Basic Electric Service (“Rate BES”), Rate BESH – Basic Electric Service Hourly Pricing (“Rate BESH”), Rate RDS – Retail Delivery Service (“Rate RDS”), Rate RESS – Retail Electric Supplier Service (“Rates RESS”) and Rate MSPS – Metering Service Provider Service (“Rate MSPS”). See App. A.

including requests for deposits, and retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services or purchased receivables, in the same manner that it would be permitted to if the retail customers purchased power and energy from the electric utility. The tariff filed pursuant to this subsection (c) shall permit the electric utility to recover from retail customers any uncollected receivables that may arise as a result of the purchase of receivables under this subsection (c), may also include other just and reasonable terms and conditions, and shall provide for the prudently incurred costs associated with the provision of this service pursuant to this subsection (c). Nothing in this subsection (c) permits the double recovery of bad debt expenses from customers.

220 ILCS 5/16-118(c). Consistent with the statute, ComEd's tariffs address all of the features of Section 16-118(c), including (i) applicability to residential retail customers and non-residential retail customers with non-coincident peak demand of less than 400 kW; (ii) a just and reasonable discount rate based on ComEd's historic bad debt and reasonable start-up and administrative costs and provision for the recovery of the prudently incurred costs associated with the provision of the tariffed services; (iii) a periodic Commission review process; and (iv) terms and conditions applicable to retail customers enrolled by RESs under Rider PORCB such as disconnection policies. Each of these features is discussed in more detail in Sections IV and V, *infra*.

In response to the Administrative Law Judge's request that parties address the legislative history of Section 16-118(c), if any, in their briefs, ComEd notes that there was a brief discussion of the underlying bill, Senate Bill 1299 ("SB 1299"), in the House of Representatives on August 10, 2007. The relevant portion of the legislative history is attached hereto as Appendix B, but is neither terribly clear nor particularly helpful with respect to any of the issues in this case.

III. INPUT OF AND COLLABORATION WITH STAKEHOLDERS

As noted previously, ComEd's tariff filing reflects two years' worth of ORMD Workshops, including the input, collaboration and any consensus achieved during that process.

These workshops, which began in January 2008, addressed the provisions of SB 1299,⁴ including the requirements of Section 16-118(c) of the Act, and benefited from the participation of a variety of stakeholders, including Staff, ORMD, RESs, CUB, the Attorney General, the utilities, and other interested parties. Several of the changes proposed by ComEd are a direct result of the input obtained in this process. (Mittelbrun Dir., ComEd Ex. 2.0, 5:98-6:110.)

Prompted by the discussions flowing from the ORMD Workshop process, ComEd and CUB worked together to develop the cost recovery mechanism and were able to reach informal agreement as to how it should function. (Garcia Dir., ComEd Ex. 1.0, 7:169-177.) In fact, CUB appears to have modeled the cost recovery mechanism it proposed (and which was ultimately approved) in the AIU docket on the cost recovery mechanism developed in cooperation with ComEd and presented in this docket. (*Id.*, 13:319-320.) Moreover, last fall, RESA, ICEA and ComEd began having settlement discussions with some 15 RESs to narrow the issues in this proceeding, and were able to reach a formal agreement on the discount rate and cost recovery mechanism and other terms and conditions. (*Id.*, 7:171-174; ComEd Ex. 1.3.) Ultimately, ComEd was able to strike a balance between CUB and RESA/ICEA on several key aspects of the filing, and having these agreements in place at the outset has served the parties well in narrowing and refining the issues in this docket. (Garcia Dir., ComEd Ex. 1.0, 7:174-177.)

Notably, ComEd's cost recovery mechanism also reflects the key features of the cost recovery mechanism approved by the Commission for AIU. In that case, CUB's proposal to recover costs from customers with demands under 400 kW and ultimately reimburse those customers from RESs through the discount rate was approved. *AIU*, ICC Docket No. 08-0619, 08-0620, 08-0621 (Cons.) (Final Order, Aug. 19, 2009) ("*AIU Order*").

⁴ SB 1299 took effect November 9, 2007 as Public Act 95-0700 ("PA 95-0700").

IV. STATEMENT OF UNCONTESTED ISSUES

In addition to the formal and informal agreements ComEd has reached with RESA/ICEA and CUB, respectively, ComEd has also reached agreement with Staff and certain intervenors with regard to a variety of proposals. These are described below.

- ***Impact of Future Filings under Section 16-118(d) & (e):*** Staff recommends that in light of the fact that some of the system modifications made to provide PORCB service may also be utilized in the future to provide stand-alone consolidated billing and the purchase of uncollectibles services pursuant to subsections (d) and (e) of Section 16-118, respectively, the Commission should expressly note in its order in this proceeding that such future tariff filings could impact the level of the Consolidated Billing (“CB”) Adjustment and Purchase of Receivables (“POR”) Adjustment in Rider RCA. (Clausen Dir., ICC Staff Ex. 1.0, 4:76-80.) ComEd agrees with Staff’s interest to ensure that RESs that use the variety of services required by PA 95-0700 are all allocated their fair share of the costs of the modifications required to enable the particular service or services they are using. (Garcia Reb., ComEd Ex. 3.0, 5:104-106.)
- ***Purpose and Applicability:*** Consistent with the statute, RESs may enroll in PORCB “residential retail customers and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts,” as set forth in Section 16-118(c) of the PUA. (Garcia Dir., ComEd Ex. 1.0, 5:114-116.) No party objects to this provision.
- ***Setting the Initial Adjustments at Zero:*** With one exception, ComEd’s proposed cost recovery mechanism appears to be acceptable to the parties.⁵ Although Staff initially objected to ComEd’s proposal to set the POR and CB Adjustments at zero for the first three monthly billing periods of any POR Application Period, Staff withdrew this proposal in its rebuttal testimony to narrow the issues in this docket. (Ebrey Reb., ICC Staff Ex. 7.0, 10:207-210.) Moreover, no party objects to ComEd’s proposal that, “[i]n calculating the POR Adjustment, no carrying costs will be applied to the amounts under-recovered from RESs in one POR Application Period and essentially reallocated to customers with demands under 400 kW in the subsequent POR Application Period.” (Garcia Dir., ComEd Ex. 1.0, 20:472-474.)
- ***Use of Rider UF to Determine Percentage Reduction for Recovery of Uncollectible Costs:*** No party contests ComEd’s proposal that, to determine the percentage reduction for the recovery of uncollectible costs associated with the purchase of receivables, ComEd will apply the same supply-related uncollectible cost factors set forth in its Rider UF – Uncollectible Factors (“Rider UF”) that it applies to its own supply charges under Rate BES, ComEd’s fixed-price bundled electric service tariff. (Garcia Dir., ComEd Ex. 1.0, 14:333-15:357.) This proposal links the historic bad debt rates used in setting

⁵ As explained in more detail *infra*, only Dominion proposes socialization of the PORCB costs related to modification of the billing system. (Crist Dir., Dominion Ex. JC-1.0, 8:173-9:188.)

ComEd's supply charges with those used in the PORCB discount rate and identifies when the uncollectible cost factors will be established. (*Id.*, 15:352-357.)

- ***Net Actual Uncollectible Costs:*** Staff accepts the formula ComEd proposed in ComEd Exhibit 3.5 (Corrected) to clarify the calculation of these costs, and ComEd does not object to including a definition of this cost in Rider PORCB. (Ebrey Reb., ICC Staff Ex. 7.0, 9:195-203; Garcia Sur., ComEd Ex. 6.0, 20:452-458.) ComEd notes there is one inconsistency in the definition, however: Staff's proposed definition uses the term "calendar year" but Staff's rebuttal also accepted ComEd's formula, which is applicable during the "prior POR Application Period." ComEd proposes that Staff's definition incorporate the latter term. (Garcia Sur., ComEd Ex. 6.0, 20:452-458.)
- ***Cost Estimates:*** Both Staff and ICEA correctly note that ComEd's cost estimates were presented for informational purposes only and not for approval in this docket. Rather, these costs will be subject to a prudence review in the reconciliation proceedings. (Clausen Dir., ICC Staff Ex. 1.0, 19:403-409; Wright Dir., ICEA Ex. 2.0, 10:11-17.)
- ***Amortization Period:*** Based on pre-filing discussions with CUB, Rider PORCB reflects a 10-year amortization period for cost recovery purposes in this case only, which will lower the annual costs that customers with demands under 400 kW will incur through the application of both the CB Adjustment and POR Adjustment in Rider RCA and provide more time for RESs to ramp up their use of PORCB service and begin covering the entire costs of this service through the \$0.50 per bill charge. The amortization period was also part of the overall cost recovery mechanism upon which RESA, ICEA and ComEd reached agreement, and Staff does not oppose the 10-year amortization period. (Garcia Dir., ComEd Ex. 1.0, 23:548-24:562; Clausen Dir., ICC Staff Ex. 1.0, 15:328-16:357.) Further, this protracted recovery period is unique to ComEd's Rider PORCB.
- ***Review of CB Adjustments:*** ComEd does not object to Staff's recommendation "that the Commission direct ComEd to evaluate the CB Adjustment rate in effect for the first Application Period when they file the first annual report as provided for in Rider PORCB, Original Sheet 399. Based on the total costs included in that annual report, ComEd should confer with Staff to determine if an interim revision to the CB adjustment rate is necessary." (Ebrey Reb., ICC Staff Ex. 7.0, 15:320-324.)
- ***Mid-Application Period Adjustments:*** ComEd has no objection to Staff's proposal to include the ability to adjust the POR and CB Adjustments in the middle of a POR Application Period. (Garcia Reb., ComEd Ex. 3.0, 22:540-542.)
- ***Audit and Reporting Requirements:*** ComEd proposes to establish a Commission reconciliation process that reflects the major features commonly implemented for the oversight of tracking riders. The first reconciliation process would occur after the initial three-year POR Application Period, with a two-year cycle for reconciliations occurring thereafter. (Garcia Dir., ComEd Ex. 1.0, 25:584-595.) ComEd also accepts Staff's proposed revisions to Rider PORCB concerning the audit and reporting requirements and reconciliation process, including express acknowledgment that the Commission will

“allow only prudently incurred costs to be recovered.” (Garcia Reb., ComEd Ex. 3.0, 24:600-604.)

- **“All In” Provision:** No party contests the proposed “all-in” provision. Although ComEd does not object to certain wording changes proposed by Staff, ComEd notes that there are minor inconsistencies between the terminology employed in Staff’s proposal and the terminology used in ComEd’s tariffs, which can be corrected as part of the compliance filing process. (Garcia Sur., ComEd Ex. 6.0, 23:519-522.)
- **Switching Rules:** Although Staff originally proposed that the Commission reject ComEd’s proposed changes to the switching rules, in rebuttal, without conceding it agreed with ComEd’s changes, Staff stated it could recommend approval of the switching provisions if the Commission notes in its order in this docket that it is not deciding a new rescission period generally and that the order in this docket will have no impact on the Part 412 rulemaking docket (ICC Docket No. 09-0592). (Clausen Reb., ICC Staff Ex. 5.0, 29:657-30:690.) ICEA also stated that it would not support Staff’s rejection of ComEd’s proposed changes to the switching rules because of the possibility of delay cited by ComEd. (Wright Reb., ICEA Ex. 2.0, 11:6-12.) ComEd has no objection to Staff’s revised proposal. (Garcia Sur., ComEd Ex. 6.0, 21:470-477.)
- **Bill Inserts:** Although Staff initially proposed additions to Rider PORCB requiring that ComEd offer a bill insert service to RESs for their Rider PORCB customers, in rebuttal Staff explains that it “does not wish to force the Commission to make a decision on this issue in this proceeding as it did not have to do so in the AIU tariff investigation, either.” Moreover, Staff admits “that, as of now, no RES has currently used that provision of the AIU tariffs.” (Clausen Reb., ICC Staff Ex. 5.0, 31:696-709.) ICEA also concedes that this is not necessarily an issue for the present proceeding and may be more appropriate for the ORMD Workshop process. (Wright Reb., ICEA Ex. 2.0, 12:10-20.)
- **Various Other Tariff Changes:** As reflected in the testimony, ComEd and Staff have been able to reach agreement on a number of other issues regarding tariff language.
- **General Terms and Conditions:** Neither Staff nor intervenors objected to ComEd’s proposed modifications to its General Terms and Conditions to incorporate the authority granted to ComEd in Section 16-118(c) to disconnect electric service to participants that default on the payment of charges for the receivables that ComEd purchases from RESs, which will only be undertaken in conformance with the relevant provisions of Part 280 of the Commission’s rules. (Garcia Dir., ComEd Ex. 1.0, 28:650-661.)

V. ARGUMENT REGARDING CONTESTED ISSUES

A. Rider PORCB and Rider RCA

1. Purpose and Applicability

As originally proposed, RESs would be allowed to begin enrolling customers in PORCB through direct access service requests (“DASRs”) beginning December 1, 2010. As described in more detail below, however, certain proposals affecting the information technology (“IT”) infrastructure (*e.g.*, changes to the definition of mass market customers and the proposed switching rules), if adopted, would result in a delay in availability until no later than April 1, 2011. (Garcia Reb., ComEd Ex. 3.0, 26:637-27:650; Mittelbrun Reb., ComEd Ex. 4.0, 10:224-12:251; Garcia Sur., ComEd Ex. 6.0, 21:478-484; Mittelbrun Sur., ComEd Ex. 7.0, 7:147-10:213.) In the event such changes were adopted, the tariff language proposed in ComEd Exhibit 3.5 (Corrected) reflecting an availability date of no later than April 1, 2011, would need to be adopted as well.

2. Cost Recovery Mechanism and Discount Rate

Section 16-118(c) states that “[t]he discount rate shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables,” and provides for the utility’s recovery of the “prudently incurred costs associated with the provision of this service pursuant to this subsection (c).” 220 ILCS 5/16-118(c). Because the statutory language does not dictate the design of the cost recovery mechanism or the way in which the discount rate is applied, ComEd, CUB, ICEA and RESA engaged in discussions and entered into agreements, both formal and informal, regarding the cost recovery mechanism and discount rate.

Because RESs' enrollment of their customers in Rider PORCB is not mandatory and, therefore, the number of customers that could be enrolled at any given point in time could vary from zero to over 3 million, ComEd proposes to recover the costs associated with PORCB⁶ through a combination of tracking rider mechanisms set forth in Rider PORCB and Rider RCA:

- ***Rider PORCB Charge Applicable to RESs:*** ComEd will initially allocate and attempt to recover costs associated with purchasing RESs receivables under Rider PORCB (*i.e.*, DICs and AOCs) from RESs through a fixed, \$0.50 per bill charge portion of the discount rate, which will remain in effect through the initial three-year POR Application period. The \$0.50 per bill charge was the product of settlement discussions with ICEA and RESA and CUB, and strikes a balance between full and somewhat timely cost recovery and a discount rate that is not so high as to make RESs' participation under Rider PORCB cost prohibitive or make full cost recovery from RESs doubtful. Rider PORCB further provides for contingencies in which ComEd either over- or under-recovers during that initial three-year period.
- ***Rider RCA Charges Applicable to Customers with Demands Under 400 kW, Including Residential Customers:*** For the costs associated with enabling ComEd to bill the charges associated with the receivables purchased (*i.e.*, BSMICs and BSAOCs), ComEd will initially allocate and recover those costs from all customers with demands under 400 kW through the CB Adjustment, which can be applied to the fixed, monthly Customer Charge applicable to such customers as early as the April 2011 monthly billing period, and will continue into subsequent POR Application periods.

(Garcia Dir., ComEd Ex. 1.0, 19:455-21:513.) This approach avoids setting charges to RESs that would prove cost-prohibitive to RES participation while also ensuring that all of the costs associated with PORCB will eventually be recovered from RESs to the extent PORCB usage reaches threshold levels – that is, to the extent PORCB is sufficiently utilized, the RESs using

⁶ ComEd has divided the costs associated with the PORCB program into two categories for cost recovery purposes: (1) costs associated with purchasing RESs' receivables under Rider PORCB and (2) costs associated with modifying ComEd's billing system to enable it to reflect on its bills the charges associated with the receivables purchased from RESs. Each of these categories is then further broken down between operating and maintenance ("O&M") expense and capital investments. As a result, the costs related to the purchase of receivables include Developments and Implementation Costs ("DICs") and Administrative and Operations Costs ("AOCs"), and the costs related to billing system modifications include Billing System Modification and Implementation Costs ("BSMICs") and Billing System Administrative and Operations Costs ("BSAOCs"). These categorizations are used to determine which costs are initially allocated for rate setting and cost recovery purposes to RESs (through the discount rate in Rider PORCB) and to customers with demands under 400 kW (through Rider RCA). (Garcia Dir., ComEd Ex. 1.0, 17:410-18:434.)

PORCB service will reimburse customers with demands under 400 kW for the costs they have borne. (*Id.*, 10:248-252.) This cost recovery framework has been widely accepted by the parties participating in this docket, and in fact is not unique in Illinois. In the docket addressing AIU's purchase of receivables program, the Commission approved a cost tracking rider with dual charges to both RESs and customers with demand under 400 kW and a reimbursement feature. *See AIU Order.*

Only Dominion challenges the cost recovery framework, and argues that "ComEd should use the authority granted it in PA 95-0700, which allows the utility to collect [the billing system modification costs] via distribution rates." (Crist Dir., Dominion Ex. JC-1.0, 8:173-182.) Dominion conveniently omits any specific citation to PA 95-0700, much less to Section 16-118(c), which governs the approval of ComEd's tariffs in this docket. Indeed, the statutory framework of Section 16-118(c) provides that ComEd's costs are to be recovered from RESs through the discount rate. Consistent with the statute, ComEd's cost recovery mechanism does just that – RESs will ultimately pay for the costs to implement PORCB so long as participation reaches threshold levels.

The fact that Dominion points to the cost recovery mechanisms for ComEd's Rider EDA – Energy Efficiency and Demand Response Adjustment ("Rider EDA") and Rider AMP – Advanced Metering Pilot Adjustment ("Rider AMP") in support of its socialization proposal only further underscores Dominion's confusion. Neither Rider EDA nor Rider AMP involved a statute explicitly providing for the recovery of costs from RESs. To the contrary, Section 8-103 of the Act, which governs Rider EDA, specifically provides for the recovery of the incremental costs incurred in offering energy efficiency and demand response programs from ComEd's retail customers. *See* 220 ILCS 5/8-103(d), (e) and (f)(6). With respect to Rider AMP, no statute

prescribed the specifics of the cost recovery mechanism, and the Commission allocated costs by class using the weighted meter allocator from the embedded cost of service study approved in ComEd's last rate case. *Commonwealth Edison Co.*, ICC Docket No. 09-0263, at 43 (Final Order, Oct. 14, 2009).⁷

The two-part discount rate is addressed further below.

a) **Percentage reduction for the recovery of uncollectible costs**

Although no party contests ComEd's proposal to use Rider UF to determine the percentage reduction for the recovery of uncollectible costs associated with the purchase of receivables, only Dominion proposes that late payment charges collected by ComEd from customers enrolled in PORCB "should be applied against the uncollected revenue balances to reduce the uncollectible percentage." (Crist Dir., Dominion Ex. JC-1.0, 14:304-305.)

Dominion's proposal reflects a fundamental misunderstanding of late payment charges, however. Such an adjustment is not appropriate because RESs will not be exposed to any delays in customer payments or incur any carrying costs by virtue of ComEd's purchase of the RESs' receivables. (Garcia Reb., ComEd Ex. 3.0, 14:378-15:387.) RESs are paid timely for their receivables by ComEd, regardless of customer payment activity; and only ComEd will be exposed to payment delays and activity. Moreover, Dominion ignores the fact that before a debt is written off, there are also late fees that go unpaid, which are not reflected in the discount rate

⁷ Dominion also ignores the way in which it and other RESs will benefit from ComEd's existing infrastructure and investments. Through the proposed \$0.50 per bill charge and cost recovery mechanism, ComEd has not sought to allocate to RESs any portion of the embedded capital investments or operating and maintenance ("O&M") expenses associated with the ComEd billing system itself, even though RESs served under Rider PORCB will be utilizing those core systems (not just the enhancements required to provide PORCB service) just as ComEd does to bill its (or the Illinois Power Agency's) supply customers. Rather, ComEd seeks only the recovery of those incremental costs associated with the provision of PORCB services from RESs utilizing the services. (Garcia Reb., ComEd Ex. 3.0, 4:84-5:93.)

itself. Dominion does not seek to reflect any unpaid late fees in the bad debt portion of the discount rate. (*Id.*)

b) Recovery of start-up and administrative costs

Although it does not object to the overall cost recovery mechanism, Staff, joined by Dominion, takes issue with the fixed, \$0.50 per bill portion of the discount rate. Ignoring the months of negotiations ComEd and some 15 individual RESs (as represented by ICEA and RESA) and CUB engaged in and that culminated in an agreement regarding the fixed charge, Staff and Dominion propose that this cooperation and agreement be rejected in favor of the percentage charge approach approved in the AIU docket. According to Staff, they are “concerned that, under ComEd’s fixed [\$0.50] per bill charge proposal, the effective discount rate has the potential to be too high for some portion of customers and to be too low for other portions of customers.” (Clausen Dir., ICC Staff Ex. 1.0, 11:225-228.) Staff and Dominion speculate that RESs will not serve lower use residential customers because the discount rate will be too high per bill. (*Id.*, 9:190-192; Crist Reb., JC-2.0, 5:106-113.)

As an initial matter, the fact that a percentage charge approach was approved for AIU is of no consequence here. A fixed-charge mechanism was never presented or even discussed in that docket, and “[t]he concept of public regulation includes of necessity the philosophy that the commission shall have power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding.” *See Mississippi River Fuel Corp. v. Ill. Commerce Comm’n*, 1 Ill. 2d 509, 513 (1953).

Moreover, it is without question that the Commission has the authority to consider and adopt an alternative proposal that is broadly supported by those for whom the program is being designed. Indeed, it is critical that the Commission be able to fashion a discount rate that encourages rather

than chills participation, especially in light of the fact that the percentage charge approach adopted for AIU has not yet proven to be a model of success.⁸ As described in more detail below, ComEd has proposed a just and reasonable rate, and it should be approved.

From a rate design perspective, the fixed charge is actually more consistent with traditional ratemaking principles because it reflects the fixed nature of the costs. In other words, ComEd's purchase of receivables costs are the same regardless of whether the customer for whom it is purchasing receivables is a high-use or low-use customer. (Garcia Sur., ComEd Ex. 6.0, 6:124-128.) Imposing a fixed charge is therefore the most accurate reflection and allocation of these fixed costs. Indeed, in setting ComEd's distribution rates, the costs of billing and payment processing are recovered through the fixed, monthly customer charge applied on a dollars per month basis. These distribution costs are allocated to delivery classes based on the number of customers in the embedded cost of service studies filed with the distribution rate cases, and the costs to provide these services do not vary with the amounts billed for ComEd energy supply or distribution service. (Garcia Reb., ComEd Ex. 3.0, 8:185-9:204.) Similarly, under ComEd's Rider SBO – Single Billing Option ("Rider SBO"), RESs seeking to consolidate the energy-related bills for their customers see a fixed, \$0.54 per bill monthly credit for the billing of ComEd's distribution and related charges. (Garcia Reb., ComEd Ex. 3.0, 9:211-221.)

The percentage charge approach, on the other hand, unjustly demands much higher charges from high-use customers despite the fact these customers impose no higher costs on ComEd than low-use customers. The percentage charge therefore results in a discriminatory rate that applies different charges for each RES customer every month for the exact same service

⁸ Mr. Garcia noted in his rebuttal testimony that, at that time, he was unaware of a single mass market customer, large or small, being billed under AIU's purchase of receivables program. (Garcia Reb., ComEd Ex. 3.0, 11:304-310.)

based on a factor completely unrelated to the underlying cost of such service. (Garcia Sur., ComEd Ex. 6.0, 5:113-7:153.) Moreover, Staff's speculation that the fixed charge will discourage use of PORCB for low-use customers is unfounded, and Staff has failed to show that the percentage charge is any more likely to encourage RES participation. (Garcia Reb., ComEd Ex. 3.0, 10:253-11:275.) In fact, AIU's experience to date with the percentage charge would suggest otherwise. (*See supra*, n. 7.) To the extent Staff is concerned about future challenges, ICEA, RESA and ComEd have already built in to their agreement a process for monitoring and addressing any issues that arise with the PORCB program. (*See* ComEd Ex. 1.3.)

At the end of the day, it is of course the RESs, not Staff, that will have to decide whether or not to use the PORCB service, and the degree to which RESs participate will largely determine the success of the program and enable the recovery of costs from RESs. It is therefore significant that RESA and ICEA, representing some 15 RESs, have maintained support for the proposed rate structure precisely because it strikes the right balance of encouraging participation and timely cost recovery. As ICEA explained, it has been a champion of the purchase of receivables program since the legislation's infancy, and its membership includes RESs licensed and ready to serve residential customers in Illinois:

ICEA would not have agreed to enter into the MOU had its members thought it would result in an unused, unworkable and unwanted POR and UCB service. ICEA and its member companies have been, and continue to be, vocal and active participants in the quest to foster and maintain the development of retail electric competition in Illinois. Indeed, ICEA members actively sought passage of the legislation that would become the POR and UCB provisions in the Public Utilities Act. ICEA member companies have several years of experience serving customers in other jurisdictions using POR and UCB mechanisms. In addition, ICEA members Champion, Integrys and Direct Energy collectively serve over three million residential gas and/or electric customers in North America. Three ICEA members are currently licensed to serve residential electric customers within ComEd's service territory (Champion Energy, LLC; Direct Energy Services, LLC; and, Integrys Energy Services, Inc.) and others are contemplating

entry into that market. The successful implementation of PORCB in ComEd's service territory will likely expedite that market entry.

(Wright Reb., ICEA Ex. 2.0, 3:17-4:5.)

3. Scope of Rider Recoverable Costs

With the exception of Dominion, the parties agree with ComEd that the cost estimates presented in this docket are for informational purposes only and not for approval in this docket. Staff noted that it “does not disagree with this position, especially in light of the fact that the implementation is still ongoing at this point. As explained by Staff witness Ebrey, Staff expects the costs to be reviewed during the Rider PORCB reconciliation proceedings.” (Clausen Dir., ICC Staff Ex. 1.0, 19:405-408.) Similarly, ICEA explained:

ICEA understands that ComEd is not requesting approval of its implementation costs in this proceeding but that these costs will be subject to review during the Rider PORCB reconciliation proceedings. Accordingly, ICEA's only comment at this time is to note our expectation that we, Staff and all the parties will have an opportunity to review these costs and their reasonableness, as well as ComEd's supporting arguments, in detail in a future proceeding.

(Wright Reb., ICEA Ex. 2.0, 10:12-17.)

a) Dominion’s proposed arbitrary cap on ComEd’s costs violates the statute and should be rejected.

Dominion, however, proposes that ComEd’s costs be capped at an arbitrary \$3 million. (Crist Reb., Dominion Ex. JC-2.0, 12:252.) As an initial matter, this proposal contradicts the statute’s provision that the utility shall recover its “reasonable start-up and administrative costs” and that the tariff shall provide for the recovery of all of “the prudently incurred costs associated with the provision of this service pursuant to this subsection (c).” 220 ILCS 5/16-118(c). Indeed, in the recent order approving ComEd’s on-bill financing program, the Commission

rejected arguments to arbitrarily cap ComEd's costs because there, like here, the statute provided for recovery of all of the utility's prudently incurred costs:⁹

The AG's request to cap Program Fees at 10% of the program dollars is denied. It is contrary to the express statutory language that the utilities are allowed to recover all of their prudently incurred costs. All costs that the utilities seek to recover from ratepayers will be subject to a prudence review in the annual reconciliation proceeding for the utilities' automatic adjustment clause rider. In our prudence reviews for this program the Commission will pay close attention to the reasonableness of all administrative costs. The Commission cautions against administrative costs that may limit or adversely affect whether to continue with the program in future years.

The Commission agrees that any estimates that the Utilities' have provided are merely informational, and the Commission's approval of the OBF program does not include approval of the associated proposed budget amounts.

Commonwealth Edison Co., ICC Docket No. 10-0091, at 35 (Final Order, June 2, 2010).

Because Dominion does not (and cannot) point to a penny of ComEd's cost estimates as unreasonable or imprudently incurred, Dominion instead makes references to the AIU and PECO Energy ("PECO") cost estimates, which are irrelevant and inapposite. (*See* Crist Dir., JC-1.0, 13:284-296; Crist Reb., JC-2.0, 11:231-12:247.) With respect to the AIU's cost estimates to implement its purchase of receivables program, ComEd did not participate in the AIU docket and therefore has not reviewed the assumptions underlying its estimates. ComEd can only speak to its own estimates, which reflect the prudent and reasonable costs ComEd currently expects to incur to properly implement Rider PORCB. (Mittelbrun Reb., ComEd Ex. 4.0, 3:56-60.)

Concerning Dominion's references to ComEd's Pennsylvania-based sister delivery company, PECO, "ComEd and PECO are two entirely separate delivery services companies located in two different states and serving separate services territories." (Mittelbrun Reb.,

⁹ Subsection (f) of the on-bill financing statute provides that "[a]n electric utility shall recover all of the prudently incurred costs of offering a program approved by the Commission pursuant to this Section, including, but not limited to, all start-up and administrative costs and the costs for program evaluation." 220 ILCS 5/16-111.7(f).

ComEd Ex. 4.0, 4:66-67.) Although both companies use the same core billing system, each uses customized programming code and interfaces tailored to the requirements of the state in which it is located and to the service territory it serves. (*Id.*, 4:67-69.) Also, the difference in the timing of when each company implemented customer choice along with the various billing options means that each company had to implement the changes differently. (*Id.*, 4:70-72.) Nevertheless, and where applicable, design and/or programming code was adopted from the PECO application, but the implementation of Rider PORCB in Illinois requires that unique, customized programming code must be written for ComEd's IT infrastructure. (*Id.*, 4:72-74.) Hence, ComEd's costs would quite naturally be different from PECO's costs.

These differences are highlighted in the PECO order cited by Dominion regarding PECO's purchase of receivables program, which ComEd addresses here not because of its relevance, but in order to correct Dominion's mischaracterizations of that order. Specifically, Dominion carelessly cites to a \$2.5 million figure in the PECO order as alleged support for its \$3 million cap. (Crist Reb., Dominion Ex. JC-2.0, 11:245.) The \$2.5 million of costs, however, reflects an amount that parties to a settlement agreement cannot challenge as unreasonable. Pursuant to that settlement agreement, if such costs exceed \$2.5 million, the parties are not precluded from challenging the reasonableness of the costs. Thus the \$2.5 million is not a "cap" on the amount that may be spent. (Order, PA P-2009-2143607, 11-12.) Moreover, the PECO purchase of receivables project and ComEd purchase of receivables project are not at all comparable in scope. The \$2.5 million does not include any of PECO's costs to implement electronic data interchange ("EDI") transactions, which will not be immaterial. (Mittelbrun Sur., ComEd Ex. 7.0, 5:102-104.) Dominion also fails to mention that PECO already has in place a consolidated billing program, and therefore the \$2.5 million reflects only those incremental costs

to implement a purchase of receivables function. (*Id.*, 5:104-106.) The \$2.5 million estimate did not include a penny of cost related to implementing consolidated billing. (*Id.*, 5:106-108.) For ComEd, the costs related to implementing consolidated billing (\$17.6 million) reflect the bulk of the \$22.1 million cost estimate. (*Id.*, 5:108-109.) Moreover, ComEd must effectuate new EDI transactions in order to implement PORCB, as well as conform to the new EDI standards that were approved by the Illinois Communications Protocol Working Group. This will include EDI testing with all 28 RESs active in ComEd's territory. (*Id.*, 5:109-113.)

b) **Staff's proposals to prematurely disallow costs are contrary to the statute and should be rejected.**

Although Staff does not propose to arbitrarily cap ComEd's costs at \$3 million, several of its proposals would, if adopted, have the effect of unlawfully precluding or disallowing recovery of certain costs related to the implementation of PORCB before ComEd ever has the opportunity to show that these costs were prudently incurred and reasonable in amount. Like Dominion's \$3 million cap, Staff's proposals, which are discussed further below, should be rejected because they violate ComEd's statutory right to an opportunity to recover its "reasonable start-up and administrative costs associated with [its] purchase of receivables" and all of "the prudently incurred costs associated with the provision of this service." 220 ILCS 5/16-118(c).

December 31, 2011 Cut-Off Date. Without citing to a single fact in support of its proposal, Staff proposes to limit rider recovery of capital investment to those capital investments incurred before January 1, 2012, opining that "[c]osts incurred to modify the system after December 31, 2011 would ... not be for the 'development,' 'modification' or 'implementation' of the program but would be further enhancements that may be required for reasons unrelated to the initiation of the PORCB program." (Ebrey Dir., ICC Staff Ex. 3.0, 5:118-121.) The statute

of course imposes no such arbitrary cut-off date for the recovery of capital investments, and Staff fails to provide any basis for its claim that costs incurred after December 31, 2011, would not be for PORCB's development, modification or implementation.

To the contrary, it is likely that ComEd's implementation costs will extend beyond December 31, 2011. (Mittelbrun Reb., ComEd Ex. 4.0, 6:132-7:136.) Rider PORCB requires fundamental and extensive changes to ComEd's billing system that will enable it to reflect on applicable customer bills the charges associated with the receivables purchased from RESs. (*Id.*, 6:137-139.) And, because RESs utilizing Rider PORCB service will significantly change the nature of billing and remittance transactions handled by ComEd, it will place new and unprecedented demands on ComEd's current billing and related systems. (*Id.*, 6:139-142.) Those systems were not designed for, nor are they capable of handling, expected increases in RES activity and the numerous new and updated EDI transactions. (*Id.*, 6:142-144.) In sum, ComEd must make substantial changes to its existing systems as well as create new IT infrastructure that can handle the demands Rider PORCB will place on the billing system. (*Id.*, 6:144-146.) These changes affect over 120 business process flows and include (i) redesigning ComEd's bill, (ii) upgrading ComEd's EDI infrastructure, and (iii) implementing changes to ComEd's customer billing system. (*Id.*, 6:146-149.)

Like any new programming code or IT changes, ComEd will need to undertake extensive internal and external testing to ensure the accuracy of the new or modified functionality and to validate that the interfaces between ComEd and the RESs are functioning correctly. (*Id.*, 7:150-153.) Indeed, because these changes affect the EDI standards and transactions with RESs, IT will have to undertake testing with each of ComEd's external partners. (*Id.*, 7:153-154.) ComEd currently has 28 active RESs with which it must test the new EDI standards, along with 2 RESs

currently in the registration process with ComEd. (*Id.*, 7:154-156.) All RESs must complete EDI testing with ComEd before the go-live date, or they will not be able to communicate with ComEd. (*Id.*, 7:156-8:158.) Moreover, any new RESs will have to participate in testing prior to taking service under Rider PORCB. (*Id.*, 8:158-159.) As a result, ComEd expects that the required testing with RESs, fixes to software bugs and general post-production support of these brand new systems will result in ongoing implementation costs that will continue beyond the December 2011 cut-off date. (*Id.*, 8:160-162.) Notably, the date proposed by Staff is unsupported and arbitrary, and Staff provides no basis for artificially cutting-off these costs after December 2011.¹⁰

The impact of Staff's proposal, if adopted, will be protracted litigation for what might otherwise be very simple changes or tweaks to the PORCB program. Because *any* changes after December 31, 2011 would require a tariff filing, RESs and customers may suffer as such changes would require significant lead time before they could be enabled. Any IT-related work would not commence until cost recovery was fully addressed. If such approval means an 11-month proceeding before the Commission, with due consideration for the potential of rehearing, and assuming 18 months of IT development, even a relatively simple change could take more than 30 months to approve and implement.

Tariff Language Revisions to Prematurely Preclude Costs. In ComEd Exhibit 3.5

(Corrected), ComEd provided revised definitions in response to Staff's request for greater clarity

¹⁰ For example, ComEd has designed the billing functionality under Rider PORCB as "bill ready" – the RES calculates its charges for each customer's billing period and submits that information to ComEd through an EDI transaction, and ComEd then prepares the consolidated bills. It is possible, however, that because of a Commission order or as a result of RESs and ComEd continuing to work together after the close of this docket, it may also be appropriate to include additional billing functionalities such as "rate ready" capability. Although costs to implement such things might be incurred after December 2011, these changes would nevertheless represent an additional step in the implementation of Rider PORCB. Imposing an artificial cut-off date of December 2011 would preclude ComEd from responding to additional implementation requirements that may arise under this new offering and that are needed to ensure the success of the program. (Mittelbrun Reb., ComEd Ex. 4.0, 8:167-179.)

regarding the categories of recoverable costs. (Garcia Sur., ComEd Ex. 6.0, 14:313-16:343.) Staff in turn objects to the revised language based on claims that it inappropriately expands the scope of the rider recoverable costs. (Ebrey Reb., ICC Staff Ex. 7.0, 8:136-194.) As explained below, Staff has failed to articulate why these costs are not recoverable or how its proposal to arbitrarily exclude costs before the program even goes live is consistent with the statute's provision of cost recovery for all reasonable and prudently incurred costs.

For example, Staff objects to the addition of the phrase "communication and educational activities," which in fact more accurately characterizes the expenses associated with educating Rider PORCB users. (Ebrey Reb., ICC Staff Ex. 7.0, 3:41.) Staff prefers the phrase "staffing required to address questions from RES and others regarding the PORCB Program." (*Id.*, 8:147-148.) This phrase, however, unnecessarily limits recovery to "staffing" costs, and therefore would inappropriately deny, for example, recovery of written educational materials that ComEd may have printed, which in turn may result in a misallocation of the expenses from RESs using Rider PORCB to all delivery services customers. (Garcia Sur., ComEd Ex. 6.0, 15:325-332.) Staff has offered no explanation for its recommendation that such administrative expenses are not recoverable under Rider PORCB.

Similarly, ComEd included the phrases "implementation and operation of employee training and procedures" and "operating and maintenance (O&M) activities" to further describe purchase of receivables-related and consolidated billing-related expenses, which Staff also cites as examples of inappropriate expansion. (Ebrey Reb., ICC Staff Ex. 7.0, 2:39-40.) To the extent that these costs are incremental expenses related to either the purchase of receivables or consolidated billing, these costs are appropriately allocated to and recovered from RESs. (Garcia Sur., ComEd Ex. 6.0, 15:340-341.) Again, Staff offers no rationale for excluding these costs

from the rider or, in turn, why they should be recovered from delivery services customers through delivery services rates.

Staff also opposes the phrase “but not limited to” in the sentence outlining the examples of recoverable costs because it “leaves the door open for the recovery of any type of costs under the PORCB Program.” (Ebrey Reb., ICC Staff Ex. 7.0, 4:63-69.) Staff, however, pulls this phrase out of the larger context of the definition. Although the inclusion of the “but not limited to” phrase does not preclude specific categories of expenses from recovery through the rider simply because the drafters failed to identify them all up front, the overarching definition of such costs does limit the types of costs recoverable to those “incremental expenses incurred by or for the Company after [effective date of this rider, 2010], associated with the purchase of RESs’ receivables,” as shown in the following excerpt from ComEd Exhibit 3.5 (Corrected):

Administrative and Operational Costs

Administrative and Operational Costs (AOCs) **mean incremental expenses incurred by or for the Company after [effective date of this rider, 2010], associated with the purchase of RESs’ receivables** for the electric power and energy supply service provided by RESs to residential retail customers and other retail customers that establish demands for electricity that are less than 400 kW. **Such incremental expenses include, but are not limited to, ongoing incremental costs incurred by the Company associated with such purchases of receivables for** (a) operating and maintenance (O&M) activities, (b) electronic exchange of data, (c) participation in regulatory proceedings, (d) financial tracking, audit, and reconciliation activities, (e) implementation and operation of employee training and procedures, (f) communication and educational activities, and (g) net actual uncollectible costs. AOCs may not include any expenses that are otherwise recovered under other effective tariffs.

(ComEd Ex. 3.5 Corr. (emphasis added).) The inclusion of the “but not limited to” phrase is important because it enables meaningful examples of the categories of costs recoverable to be provided to set reasonable expectations while preventing reconciliation proceedings from degenerating into debates as to whether a particular cost fits or does not fit into a category listed.

Moreover, the phrase “including but not limited to” is consistent with and reflected in every one of ComEd’s tracking riders, including Rider PE – Purchased Electricity (approved in ICC Docket No. 10-0336), Rider ECR – Environmental Cost Recovery Adjustment (approved in ICC Docket No. 05-0597), Rider AMP (approved in ICC Docket No. 09-0263), and Rider EDA (approved in ICC Docket No. 07-0540 and recently revised in ICC Docket No. 10-0091). Staff has cited no examples of this language being abused, and in fact the evidentiary record in ComEd’s first reconciliation proceeding under Rider EDA has just been marked “Heard and Taken” without a dollar of costs disallowed. (*See* ICC Docket No. 09-0378.)

Challenge to Deferred Costs. For the first time in rebuttal testimony, Staff questions the nature and appropriateness of ComEd’s deferred costs, and suggests that such costs must be pre-approved. (Ebrey Reb., ICC Staff Ex. 7.0, 5:70-6:103.) It is unclear why Staff raises this point because it has not proposed any tariff language regarding such pre-approvals and does not expressly propose that pre-approvals be obtained. In fact, Staff has explicitly proposed tariff language providing for the recovery of costs incurred following the date the statute took effect. (Ebrey Dir., ICC Staff Ex. 3.0, 4:95-96.)

In any event, the \$2.5 million of deferred costs was incurred in 2008 and 2009 in the early phases of the PORCB implementation project. (Mittelbrun Sur., ComEd Ex. 7.0, 6:120-121.) ComEd participated in the ORMD Workshop process beginning with the initial workshop in January 2008, and, based on the input received during those workshops, ComEd used its standard development methodology to gather the requirements and guide the development process for considering changes that would be implemented for billing and related systems. (*Id.*, 6:121-126.) During 2008 and 2009, ComEd incurred costs related to the Conceptual Design phase, which sets the business boundaries of the work and defines the high-level business

processes (resulting in a blueprint of the new system) and the Analysis and Design phase, which drives the business processes down to user requirements, user design, technical solution, and information flows (resulting in detailed specifications for the system components and their related costs). (*Id.*, 6:126-131.)¹¹

Staff's questioning of the deferred costs is even more puzzling given that ComEd has recovered deferred costs related to other statutorily mandated programs where costs must be incurred prior to approval of the cost recovery mechanism. For example, ComEd's Rider AMP allows for the recovery of certain expenses (*e.g.*, customer applications and communications) ComEd incurred prior to the first Rider AMP application period. (Fruehe Sur., ComEd Ex. 8.0, 4:75-78.) Another example is ComEd's Rider EDA, which allows for the recovery of certain start-up costs associated with ComEd's energy efficiency and demand response programs and its recently approved on-bill financing program. (*Id.*, 4:78-81.) None of the deferred costs in the first reconciliation proceeding under Rider EDA was challenged or disallowed. (*See* ICC Docket No. 09-0378.)

Questioning of PORCB Costs. Staff also raises a concern regarding the allocation of costs associated with consolidated billing, speculating that “[t]he Commission might find that the costs identified ‘to facilitate the orderly switching of customers and the expected increase in RES activity and electronic data interchange transactions’ are not ‘incremental costs’ related to billing for purchased receivables. Therefore they would not be recoverable costs under Rider PORCB.” (Ebrey Reb., ICC Staff Ex. 7.0, 14:290-294.) Oddly, Staff does not propose resolution of its

¹¹ In response to Staff witness Ms. Ebrey's confusion regarding whether ComEd had previously identified these expenses, ComEd noted that the “\$2.5 million of deferred expenses is reported in ComEd's 2009 FERC Form 1 on page 233.1, line 13, as ‘UCB/POR – Regulatory Program – Deferred Implementation Expenses.’” (Fruehe Sur., ComEd Ex. 8.0, 3:65-67.) Moreover, “ComEd's supplemental response to ICC Staff Data Request TEE 1.01, Attach_1 and Attach_2 clearly show the recovery of previously incurred O&M expenses via amortization of a regulatory asset.” (Fruehe Sur., ComEd Ex. 8.0, 4:70-72.)

speculation in either this docket or any other docket. Rather, Staff proposes that ComEd provide workpapers and third party invoices to Staff no later than February 1, 2011, well after the final order in this docket has been entered. (*Id.*, 15:316-319.) It is unclear what sort of process or outcome is contemplated by Staff for this informal review, and indeed Staff's proposal introduces substantial risk of ComEd's costs becoming "trapped" (or unrecoverable) for some period of time.

In order for ComEd to fully recover its costs associated with the PORCB program, it must either recover the costs through Rider PORCB or through base distribution rates. (Fruehe Sur., ComEd Ex. 8.0, 5:102-103.) ComEd has currently included the costs associated with the PORCB program in its rate case revenue requirement (ICC Docket No. 10-0467, ComEd Ex. 6.0), and has stated that it will remove such costs when the PORCB recovery mechanism is approved by the Commission in Docket 10-0138 (Fruehe Sur., ComEd Ex. 8.0, 5:104-107). However, in light of the questions Staff poses in its rebuttal testimony, if ComEd removes these costs from its revenue requirement in anticipation of recovery through Rider PORCB and some of these costs allocated to consolidated billing are later deemed to not be recoverable through the rider when ComEd files its annual report, then ComEd will not recover these costs in a timely manner, if at all. (Fruehe Sur., ComEd Ex. 8.0, 5:107-111.)

Because the parties to this docket have the benefit of ongoing discovery in ComEd's currently pending rate case in ICC Docket No. 10-0467, ComEd proposes that the cost allocation issue be reviewed as part of that case. That case is currently in the initial discovery phase, and parties would have ample time to determine which costs should remain in base rates and which should be allocated to Rider PORCB. If those costs are determined to be more appropriately recoverable in base distribution rates, appropriate adjustments will be made to remove them from

Rider PORCB. (Fruehe Sur., ComEd Ex. 8.0, 6:114-118.) This approach ensures both proper allocation and timely cost recovery.

4. Calculation of Costs

ComEd proposes that for the capital investments associated with the POR and CB Adjustments, it is appropriate to use the sum of the annual revenue requirement equivalents of the BSMICs and DICs, amortized over a 10-year period at the most recent weighted average cost of capital approved by the Commission, over the relevant application period. (Garcia Dir., ComEd Ex. 1.0, 24:563-568.)

Staff, however, opposes ComEd's proposed rate of return.¹² Seemingly oblivious to Staff witness Ms. Ebrey's numerous challenges to ComEd's ability to recover its prudently incurred costs and the attendant risk and uncertainty such challenges introduce, Staff witness Ms. Phipps argues that ComEd should be limited to a drastically lower return on equity because ComEd will realize "dollar for dollar cost recovery." (Phipps Dir., ICC Staff Ex. 4.0, 3:47-54.) In what appears to be a case of the left hand not knowing what the right hand is doing, Ms. Phipps completely ignores and fails to take into account the material risks introduced by her colleague, Ms. Ebrey, and the future *ex post* prudence review. Even the most cursory review of Ms. Ebrey's testimony shows that her proposals introduce substantial risk and, if adopted, would leave ComEd with something far less than "dollar for dollar cost recovery." (*Id.*)

Nevertheless, in this fictional world of no-risk, Ms. Phipps patches together a calculation of an absurdly low return on equity based on three flawed assumptions – (i) that the PORCB statute is analogous to the transitional funding law, (ii) that the investing community will ascribe

¹² Staff is later joined by CUB witness Mr. Thomas in rebuttal testimony. (*See generally* Thomas Dir., CUB Ex. 1.0.) Because Mr. Thomas' testimony is largely supportive or derivative of Ms. Phipps' testimony, this section simply refers to Ms. Phipps but responds to both witnesses.

an absence of risk, or even lower risk, to assets subject to an adjustment clause, and (iii) that ComEd finances projects individually. (*See generally* Phipps Dir., ICC Staff Ex. 4.0.) As explained below, each assumption is wrong.

Improper Reliance on the Transitional Funding Law. Staff witness Ms. Phipps recommends a 6.61% rate of return on common equity for PORCB assets, which is a 369 basis point adjustment from the base cost of equity the Commission authorized in ComEd’s last rate case. (Phipps Dir., ICC Staff Ex. 4.0, 7:118-120.) She relies upon four “similarities” to transitional funding instruments in order to support her flawed assumption that the PORCB projects could be financed using AAA-rated securitized debt, but at the same time she ignores the numerous differences between the statutory framework behind the transitional funding instruments, which was specifically designed to allow securitization of a guaranteed revenue stream related to transitional costs, and that of the PORCB program, which involves recovery of an investment mainly in IT infrastructure to implement a new and uncertain regulatory program. (Fruehe Reb., ComEd Ex. 5.0, 3:52-59.)

Transitional funding instruments were issued pursuant to the Electric Utility Transitional Funding Law of 1997, 220 ILCS 5/18-101 *et seq.* (the “Funding Law”), which was enacted in 1997 as part of the package of legislation mandating greater competition in the provision of utility services (“Restructuring Act”). The Funding Law was expressly designed to allow Illinois utilities to issue AAA-rated securities as a means of offsetting the stranded costs and mandatory rate reductions imposed on such utilities as a result of the Restructuring Act. (*Id.*, 3:61- 4:67.) The issuance of such transitional funding instruments and the ability to obtain AAA debt ratings required that very specific criteria be met, including:

1. An irrevocable State pledge for recovery;

2. Segregation of funds collected (and placed into a trust within two days);
3. That funds be collected from a wide spectrum of customers;
4. Statutory recognition of the revenue stream as a separate, identifiable present property right that could be sold to a bankruptcy-remote trust pursuant to a “true sale” for bankruptcy purposes and that could not be impaired due to bankruptcy of the utility or the supplier; and
5. A “true-up” mechanism that automatically increased (or decreased) the charges annually (or more frequently if necessary) to ensure payment in full of the debt service on the transitional funding instruments due to shortfalls resulting from customer payment defaults and delinquencies or less than anticipated electricity usage.

(*Id.*, 4:67-78.) Ms. Phipps’ four “similarities”, however, are irrelevant to the ability to issue securitized debt if the above-mentioned criteria are not met, and they are certainly not met here.

(*Id.*, 4:79-81.) Under the Transitional Funding Order, ComEd had a predetermined amount of revenues it would collect, on a monthly basis, for a fixed period and was entitled to adjust charges as needed to cover the revenue for the bonds. Collection of these revenues (as adjusted through the true-up) was backed by an irrevocable State pledge not to revoke the authorization for the charges, and Illinois utilities like ComEd were therefore able to securitize and sell the future revenue stream to investors through AAA-rated bonds regardless of a utility’s own credit rating. (*Id.*, 4:81-87.)

With respect to PORCB, however, ComEd does not have the same fixed recovery risk factors. For example, in place of a State pledge, there is instead a pledge to conduct a review of whether all of the costs were prudently incurred (220 ILCS 5/16-188(c)), and Staff, through the testimony of Ms. Ebrey, has provided every indication it will challenge costs both in this proceeding and in future proceedings (*see generally* Ebrey Reb., ICC Staff Ex. 7.0). Moreover, although Ms. Phipps argues that the criteria requiring the segregation of funds and the bankruptcy remote trust that would protect that stream of revenues from the consequences of

bankruptcy of the utility to which they were formerly attached “do not affect the riskiness of recovery of the cost of the underlying costs” (Phipps Reb., ICC Staff Ex. 8.0, 2:43-44), both of these provision are critical to the AAA ratings of the transition bonds (Abbott Sur., ComEd Ex. 9.0, 6:123-124).

While these provisions may not strictly affect “cost recovery” *per se*, they are essential to the AAA rating, and therefore lower cost, of transition bonds. (*Id.*, 6:124-125.) The segregation of funds assures investors that funds flowing from the transition charge will not be commingled with, and therefore potentially misappropriated by, the utility. (*Id.*, 6:125-127.) The bankruptcy remote status of the trust ensures that should the utility declare bankruptcy, the flow of funds from the transition charge would continue to flow to the benefit of the transition bondholders and not creditors of the utility. (*Id.*, 6:127-7:130.) Testifying on behalf of ComEd, Ms. Abbott summarized the importance of these provisions at the evidentiary hearing:

And the [] whole purpose of this very structured, very tight configuration was to make sure that the risk of any interruption of the investors’ payments from those transition bonds would be de minimis and, therefore, allow a [AAA] rating, which, in turn, allowed the very low interest, which, in turn, allowed the economics to work for the whole situation.

(Tr. at 73:4-11.) For Staff witness Ms. Phipps to dismiss these provisions, without which no transition bonds would have attained a AAA rating, as seemingly irrelevant indicates a lack of understanding of the structure of the transition bonds and why that structure is critical to investors. Importantly, the PORCB program does not have any of these provisions.

Investors Do Not Necessarily Ascribe an Absence of Risk to Assets Subject to Adjustment Clauses. In order to invoke the Funding Law, Ms. Phipps had to downplay the prudence risk. In addition to her erroneous claims that ComEd will receive “dollar for dollar cost recovery” (Phipps Dir., ICC Staff Ex. 4.0, 3:48), she also claims that “there is virtually *no*

risk that ComEd will recover less than 100% of the *prudent costs* it incurs to implement the PORCB program” (Phipps Reb., ICC Staff Ex. 8.0, 9:175-177 (emphasis added)). These statements leave the false impression that ComEd is at no risk whatsoever of having costs disallowed. However, when investors see that a prudence review of any costs is contemplated, they assume that some of those costs are at risk of disallowance, which is no different from the assumptions investors make about all other utility costs that are dealt with in the course of traditional ratemaking activity – each and every one of them is subject to review by the Commission and therefore subject to the potential for non-recovery. (Abbott Sur., ComEd Ex. 9.0, 4:75-81.) The investing community, therefore, “does not necessarily ascribe an absence of risk, or even a lowering of risk, to assets subject to adjustment clauses.” (*Id.*, 3:57-58.) Investors generally perceive that the relationship between these mechanisms and return on equity is a complicated one that requires the evaluation of the specifics of the mechanism in question. (*Id.*, 3:59-61.) As a result, Ms. Phipps’ general assumption that the adjustment clause associated with the PORCB program neutralizes risk is overreaching and overly simplistic.

Indeed, a whole spectrum of costs associated with the PORCB program, from the discount rate to uncollected receivables, is subject to approval by the ICC. Even though there are provisions that eventually “true up” ComEd’s various costs under PORCB, the ICC still has to approve those costs. The Commission is ranked a “Below Average 2” by Regulatory Research Associates, the regulatory framework in Illinois is rated Ba by Moody’s, and cost recovery provisions are rated Baa by Moody’s. These assessments indicate that regulatory risk is fairly high in Illinois, and therefore investors will be more cautious of investments in Illinois than they would be for a utility in a jurisdiction with a better ranking. (Abbott Sur., ComEd Ex. 9.0, 4:82-5:90.)

At bottom, Staff has introduced no credible evidence that investors would view the PORCB investments as any less risky than ComEd's other capital investments, and therefore the PORCB investments should not be subject to a lower return.¹³

ComEd Does Not Finance Projects Individually. Ms. Phipps mistakenly proposes a return level that presupposes that ComEd can issue individual debt and equity securities to finance different investments and thus achieve returns commensurate with the risks of the individual assets being financed. (*See generally* Phipps Reb., ICC Staff Ex. 8.0.) However, ComEd simply cannot do so in a manner that is cost effective. (Vogt Sur., ComEd Ex. 10.0, 2:39-42.) ComEd finances its entire construction budget and projects as a whole, and incurs a cost equal to its overall cost of capital when it does so. (*Id.*, 3:43-44.) Ms. Phipps' proposal, on the other hand, would require ComEd to do something it cannot do in a cost-effective manner – place assets (and the associated revenue) into individual debt and equity offerings to ensure that the cost of capital incurred from the financing transactions matches the underlying assets, similar to the way banks sell mortgage backed securities. (*Id.*, 3:44-48.) ComEd does not believe this is a cost-effective or practical way for it to finance its capital projects. (*Id.*, 3:48-49.) Moreover, Ms. Phipps' approach is inconsistent with the Commission treatment of costs under ComEd's Rider AMP. That rider provides for cost recovery of installed assets at a return equivalent to the

¹³ CUB witness Mr. Thomas cites the inapposite 2007 rate case order of North Shore Gas Co. and Peoples Gas Light and Coke Co. as alleged support for a reduction in the return on equity. *See In re North Shore Gas Co. and Peoples Gas Light & Coke Co.*, ICC Docket Nos. 07-0241 & 07-0242 (Consol.) (Feb. 5, 2008). Notably, Mr. Thomas' testimony omits any discussion of the facts of that case, which show that it has no bearing on the present case. There, in the context of an overall rate case, the Commission made an adjustment of 10 basis points related to a decoupling mechanism proposal. The present case is neither a rate case nor a review of a complex decoupling mechanism.

allowed return in the most recent rate case, which includes a return on equity of 10.3%.¹⁴ (*Id.*, 3:52-54.)

Further, it would make no sense for ComEd to attempt to finance the PORCB assets distinctly or try to achieve a financing cost commensurate with Staff's proposed rate of return. ComEd has already invested half of the cost related to PORCB without knowing what the resulting revenue recovery stream will be. ComEd has financed these investments in the same way it finances all of its capital investments – with a mixture of debt and equity consistent with the weighting allowed in the last rate case with the reasonable presumption that the returns would also be fair, timely and consistent. The assets in question represent a relatively small opportunity of investment for the capital markets and would not likely support a cost-effective debt or equity placement. Moreover, the administrative costs resulting from tracking and separating the cash flow specific to these assets may eliminate any perceived reduction in the cost of capital of these assets. (Vogt Sur., ComEd Ex. 10.0, 4:65-74.)

B. Rate BES, Rate BESH, Rate RDS and Rate MSPS

1. Defining mass market customers and the switching rules applicable to such customers.

In order to begin planning and implementing the changes to the IT infrastructure necessary to offer PORCB, some degree of consensus and resolution had to be reached regarding both how mass market customers would be defined and the switching rules that would be applicable to such customers (*i.e.*, the terms by which the anticipated switching will occur).

¹⁴ To the extent that the Commission deviates from prior established methods – such as the method applied to the AMP program – in establishing the allowed cost of capital for investments, and does not provide for a cost of capital that is consistent with the actual cost incurred by ComEd, undertaking incremental investments in the system may not be feasible, given the lack of understanding as to the resulting cash flows. The reality is that ComEd simply cannot raise capital to invest in projects at the artificially low cost hypothesized by Ms. Phipps. (Vogt Sur., ComEd. Ex. 10.0, 3:55-61.)

(Garcia Reb., ComEd Ex. 3.0, 25:618-622.) ComEd's understanding of the ORMD Workshop process is explained further below, and forms the basis for the definition of the mass market and proposed changes to the switching rules.

With respect to the definition of mass market customers, it is ComEd's understanding that the ORMD Workshop participants generally indicated that the mass market would be defined as all residential customers and those small commercial customers having demands of less than 100 kW. (Mittelbrun Dir., ComEd Ex. 2.0, 14:311-314.) RESA is the only party that proposes to redefine the mass market, and proposes that it include residential and small commercial customers that consume 15,000 kWhs or less of electricity annually. (LoCascio Reb., RESA Ex. 1.0, 9:185-10:187.) Staff has previously noted in the Part 412 rulemaking proceeding that it "anticipates that the electric utilities will find it difficult and/or costly to automatically recognize a small commercial customer account (based on the statutory 15,000 kWh annual usage definition) when it receives an enrollment request for such an account." (ICC Staff Corr. Verified Reply Comments, 10 (ICC Docket No. 09-0592).)¹⁵

Staff is correct that it would be difficult and costly for ComEd to identify such customers based on their usage. ComEd's systems currently do not "flag" or identify such customers because the requirements for understanding if a customer is a small commercial customer is a requirement for RESs, and not utilities. In order for ComEd to do so, it would need to establish both the definition of what constitutes a 15,000 kWh and below customer and the process to identify those customers, including when and how often such process must be undertaken. RESA's proposal therefore should be rejected because it is not consistent with the ORMD

¹⁵ RESA's proposal relies on Section 16-102 of the Act's definition of "small commercial retail customer", which is primarily used in Article XVI to define those customers for which utilities retain an obligation to offer bundled service. *See, e.g.*, 220 ILCS 5/16-103.

Workshops and, as described further below, would further delay the go-live date. (Mittelbrun Sur., ComEd Ex. 7.0, 10: 205-213.)

Concerning the proposed changes to the switching rules, based on feedback ComEd received during the ORMD Workshops, ComEd proposed an 18-calendar day DASR *enrollment* window, not, as RESA suggests, an 18-day *rescission* window. This 18-day period, which begins upon the receipt of the DASR, takes into account that the letter informing the customer of the pending switch could take 3-5 days to reach the customer, including weekends and holidays. As a result, a mass market customer would have no more than 10 days to rescind the DASR because the latest a customer can rescind is 5 days before the regularly scheduled meter read date. This proposal is intended to strike a balance between providing sufficient time for rescission of the enrollment (taking into account weekends and holidays) while also setting a fixed amount of time that is easy for mass market participants to understand. (Mittelbrun Sur., ComEd Ex. 7.0, 10:216-225.)

CUB, in particular, wanted to ensure that the appropriate consumer protections were in place as of the go-live date of the program, and the 18-day enrollment period is designed to provide added customer protections for smaller customers that may not be as sophisticated or experienced as larger customers in navigating the market. (*Id.*, 10:228-230.) As CUB recommended in its rebuttal testimony, “ComEd’s proposal regarding the initial rescission period should be in place and functional contemporaneous with the approval of its Purchase of Receivables with Consolidated Billing (“PORCB”) program.” (McDaniel Reb., CUB Ex. 2.0, 2:43-45.) “The initial rescission period gives customers the opportunity to review and reconsider the contract they signed with a [RES]. It is also important that ComEd agrees to field customer calls and process rescissions during this 10-day post-contract period because this will shield

customers from potential high pressure retention efforts on the part of the contracting RESs.”
(*Id.*, 2:31-35.)

Although Staff initially opposed the changes to the switching rules, it eventually agreed to support the changes, provided that their application was limited to this docket. (Clausen Reb., ICC Staff Ex. 5.0, 29:661-30:690.) ICEA also supports the changes to the switching rules subject to a similar limitation. (Wright Dir., ICEA Ex. 1.0, 6:1-9; Wright Reb., ICEA Ex. 2.0, 11:6-12.) Although Dominion joined Staff in its original opposition to the switching rules, it is not clear whether Dominion will similarly agree to now support the switching rules changes. (Crist Reb., JC-2.0, 12:261-13:271.) As explained further below, the switching rules, which were based on the ORMD Workshop process, have been incorporated into the IT infrastructure. If changes were ordered to the rules, programming code would have to be rewritten and additional testing conducted to accommodate such a change in key functionality, which would increase costs and likely push back the go-live date of the program.

2. Any changes to the definition of mass market or the proposed switching rules will push back the go-live date.

ComEd has already programmed the changes needed for the originally proposed December 2010 release based on the proposed definition of mass market and changes to the switching rules, and the testing of these billing system changes is close to completion. (Mittelbrun Sur., ComEd Ex. 7.0, 8:155-157.) In response to Staff’s recommendation to reject ComEd’s proposed switching rules (now withdrawn), ComEd discussed with IT and the project team what the programming and testing impacts would be and what changes would be required for business readiness. (*Id.*, 8:157-160.) These changes would include revisions to the employee training materials and Customer and RES Handbooks under development, as well as

programming code changes and extensive testing by the project team. (*Id.*, 8:160-162.)

Moreover, because of the complexity and security requirements of ComEd's billing system, new programming is planned to be released on average seven times per year. (*Id.*, 8:163-164.) All programming code must be available three weeks before the next scheduled code release, and must be regression tested before it can be implemented.¹⁶ (*Id.*, 8:164-169.)

Thus, if Staff's rejection of the switching rules prevails, ComEd would have to rewrite the programming code and retest all customer switching modules (enrollments, drops, rescinds, reinstatements). (*Id.*, 8:170-172.) The customer switching programming code is very complex, critical to customer choice operations, and impacts RESs, customers, and the settlement process with the PJM markets. (*Id.*, 8:172-174.) And as discussed above, additional testing would have to be undertaken to ensure all of the new functionality is working properly. (*Id.*, 8:174-175.) Because this new programming code would be completed after the current testers have rolled off the project, ComEd would also have to contract out for more testers. (*Id.*, 8:175-177.)

As a result of these considerations, ComEd projected that the next billing system release after December 2010 that could realistically be considered for these changes would be in March of 2011. (*Id.*, 9:178-180.) Of course, in the event other changes impacting the IT infrastructure were ordered, such as RESA's change to the definition of the mass market, the recoding and retesting process described above would have to be performed, which would likely affect the go-live date. (*Id.*, 9:180-183.) Accordingly, because of the uncertainty created by these proposals, ComEd has revised the Availability section of Rider PORCB and replaced the previous go-live date of December 1, 2010 to a date no later than April 1, 2011. (ComEd Ex. 3.5 Corr.)

¹⁶ Regression testing means that all new programming code must be retested (in addition to the project team testing mentioned above) along with all of the other new programming code to ensure there are no problems. (Mittelbrun Sur., ComEd Ex. 7.0, 8:166-169.)

C. Miscellaneous

Definition of “Legitimate Billing Dispute”. Staff proposes an expansive definition of the term “legitimate billing dispute” that would place unnecessary operational detail into the tariff. (Pound Dir., ICC Staff Ex. 2.0, 2:35-5:99.) This level of detail is not appropriate for the tariff, however, and should instead be set forth in the RES and Customer Handbooks, which allows for the revision of operational rules in the Handbooks, as and when appropriate, after discussion with the impacted parties. (Mittelbrun Reb., ComEd Ex. 4.0, 12:270-13:274.) Moreover, the dispute resolution process for RES charges that appear on ComEd’s bills is currently pending in ICC Docket No. 09-0592, and ComEd will update its Handbooks at the conclusion of that rulemaking proceeding as appropriate. ComEd’s proposed revision to the definition of “legitimate billing dispute” is set forth in ComEd Exhibit 3.5 (Corrected), and should be adopted.

Language Regarding New Customers. Staff also proposes revised language to Rate RDS to clarify that new residential customers are not eligible to take delivery service and RES supply until after they have first established service with ComEd under its bundled service tariff. (Pound Dir., ICC Staff Ex. 2.0, 8:206-222; Pound Reb., ICC Staff Ex. 6.0, 2:33-46.) These revisions are not appropriate, however, because Staff identifies an applicant for electric service as a “new customer,” which is not technically correct. An applicant for electric service is not a “customer” at the time such application is made. (Garcia Reb., ComEd Ex. 3.0, 27:659-662.) A retail customer, as defined in ComEd’s General Terms and Conditions, refers to the definition of retail customer in Section 16-102 of the Act, which defines a retail customer as an entity using electric power and energy at a single premises. (*Id.*, 27:662-664.) An applicant for electric service is not using electric power and energy at the time such application is made, and ComEd

makes this distinction between applicants for electric service and retail customers in ComEd's Schedule of Rates. (*See, e.g.*, ComEd's General Terms and Conditions at Sheet No. 149.)

Moreover, it appears that Staff's proposed change does not align with the definition of retail customer as provided in the Act. In addition, Illinois Administrative Code 280.40 defines the term "applicant" as "a person who applies for residential or non-residential utility service."

Staff's proposed revisions therefore should be rejected.

RES Bill Inserts. Although Staff initially proposed that ComEd be required to offer a bill insert service to RESs for their PORCB customers (Clausen Dir., ICC Staff Ex. 1.0, 28:613-29:677), in rebuttal testimony Staff withdrew this proposal, stating that it would not "force the Commission to make a decision" (Clausen Reb., ICC Staff Ex. 5.0, 31:698-701; *see also* Wright Reb., ICEA Ex. 2.0, 12:14-20 (stating it would not press the issue in this docket)). Staff acknowledged the Commission did not reach the issue in the AIU docket because Staff and the AIU agreed on compromise tariff language regarding the bill inserts (Clausen Reb., ICC Staff Ex. 5.0, 31:696-697), and further admitted that "as of now, no RES has currently used that provision of the AIU tariffs" (*id.*, 31:707). Indeed, the fact that the bill insert service was a product of agreement comports with the fact that utilities are not legally obligated to provide bill inserts under Section 16-118(c) as a tariffed service (220 ILCS 5/16-118(c)), and Section 16-103(e) would prohibit compelling utilities to offer billing inserts under tariffed rates (220 ILCS 5/16-103(e)).

Dominion, however, supported Staff's bill inserts proposal in its rebuttal testimony despite Staff's withdrawal (Crist Reb., Dominion Ex. JC-2.0, 13:275-279), and it is unclear whether Dominion remains supportive. Assuming it does, the proposal raises serious issues regarding implementation obstacles, increased costs, and the calculation of avoided costs. First,

under Rider PORCB, RESs will already be permitted to include messages on the consolidated bills issued by ComEd. (Mittelbrun Reb., ComEd Ex. 4.0, 9:194-95.) The messages will appear in the new Message Center section of the redesigned ComEd bill and will be described in more detail in the RES Handbook, and, specifically, each RES will be allowed up to two messages, each one up to 80 characters in length, on each bill. (*Id.*, 9:196-199.) It is unclear why RESs would need additional messaging capability, and indeed no party has provided such an explanation.

Second, the proposed bill inserts, in addition to being redundant to the messaging opportunities that will already be available to RESs, would be a very costly feature for ComEd to offer. (*Id.*, 9:200-202.) Moreover, Staff suggests that a RES taking advantage of the bill insert option “reimburse the Company only for the net costs that the RES avoids by not distributing such information.” (Clausen Dir., ICC Staff Ex. 1.0, 29:664-665.) This net avoided cost would be much less than ComEd’s cost to provide this service because ComEd would have to break up the bill print files that are passed to its bill print vendor, effectively telling them which supplier was on each bill. (Mittelbrun Reb., ComEd Ex. 4.0, 10:204-207.) The print vendor would then use that segregation as the means to include the appropriate bill insert in only the envelopes associated with a particular RES’s bills. (*Id.*, 10:207-208.) If all 28 suppliers had a bill insert to put in at the same time, the vendor would not be able to meet time commitments in producing and mailing the bills. (*Id.*, 10:209-210.) Also, ComEd plans its bill inserts months in advance, and must keep the inserts limited to a certain weight as to not incur additional postage fees. (*Id.*, 10:210-212.)

Third, ComEd cannot present inserts to a customer who receives eBills (electronic bill presentment), and would have to submit separate mailings to such customers for any required

messages. (*Id.*, 10:213-215.) ComEd’s costs for what would be a manual process would be higher than could otherwise be accomplished by the RESs themselves. (*Id.*, 10:215-216.)

Fourth, Staff’s proposed revisions would either result in insufficient or excessive cost recovery from the RESs using PORCB because Staff proposes that ComEd be paid an amount equal to the “net costs that the RES avoids” – not an amount equal to ComEd’s cost. (*See* Clausen Dir., ICC Staff Ex. 1.0, 29:664-665; Garcia Reb., ComEd Ex. 3.0, 29:697-700.)

Moreover, the determination of each RES’s avoided cost would be a tremendously cumbersome administrative process to implement for the 28 RESs. (Garcia Reb., ComEd Ex. 3.0, 29:701-703.) Most importantly, even assuming a utility could be compelled to offer bill inserts as a tariffed service, it would be grossly inappropriate and discriminatory for a regulated utility to effectively charge different customers different amounts for the same service based on factors unrelated to ComEd’s cost to provide such service. (*Id.*, 29:703-706.)

Notably, no party responded to, much less rebutted, the implementation and cost concerns identified by ComEd. Accordingly, this proposal should be rejected to the extent any party still supports it.

VI. ACRONYMS AND TERMS

Appendix C to this Initial Brief includes a list that defines acronyms and terms used in this Initial Brief and throughout the evidentiary record.

VII. CONCLUSION

For the reasons set forth above, ComEd respectfully requests that the Commission approve its tariffs as filed on January 19, 2010 and as modified pursuant to the agreements described in Section IV *supra* and reflected in ComEd Exhibit 3.5 (Corrected).

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Respectfully submitted,

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APPENDIX A: LIST OF PROPOSED TARIFF REVISIONS

ComEd requests that the Commission approve the following tariff revisions as filed on January 19, 2010 and as modified pursuant to the agreements described in Section IV of its Initial Brief and reflected in ComEd Exhibit 3.5 (Corrected).

Rate BES: 1st Revised Sheet No. 25 canceling Original Sheet No. 25
1st Revised Sheet No. 26 canceling Original Sheet No. 26
1st Revised Sheet No. 27 canceling Original Sheet No. 27
1st Revised Sheet No. 28 canceling Original Sheet No. 28

Rate BESH: 1st Revised Sheet No. 44 canceling Original Sheet No. 44
1st Revised Sheet No. 45 canceling Original Sheet No. 45
1st Revised Sheet No. 46 canceling Original Sheet No. 46
Original Sheet No. 46.1

Rate RDS: 1st Revised Sheet No. 48 canceling Original Sheet No. 48
1st Revised Sheet No. 76 canceling Original Sheet No. 76
1st Revised Sheet No. 77 canceling Original Sheet No. 77
Original Sheet No. 77.1
Original Sheet No. 77.2
1st Revised Sheet No. 78 canceling Original Sheet No. 78

Rate RESS: 1st Revised Sheet No. 90 canceling Original Sheet No. 90
1st Revised Sheet No. 91 canceling Original Sheet No. 91

Rate MSPS: 1st Revised Sheet No. 115 canceling Original Sheet No. 115
1st Revised Sheet No. 116 canceling Original Sheet No. 116
1st Revised Sheet No. 117 canceling Original Sheet No. 117
1st Revised Sheet No. 118 canceling Original Sheet No. 118
1st Revised Sheet No. 119 canceling Original Sheet No. 119
1st Revised Sheet No. 120 canceling Original Sheet No. 120

**General Terms
and Conditions:** 1st Revised Sheet No. 210 canceling Original Sheet No. 210

Rider RCA: 1st Revised Sheet No. 257 canceling Original Sheet No. 257
Original Sheet No. 257.1
Original Sheet No. 257.2
Original Sheet No. 257.3

Rider SBO: 1st Revised Sheet No. 367 canceling Original Sheet No. 367
1st Revised Sheet No. 368 canceling Original Sheet No. 368
1st Revised Sheet No. 369 canceling Original Sheet No. 369
1st Revised Sheet No. 370 canceling Original Sheet No. 370

Rider PORCB: Original Sheet No. 393
Original Sheet No. 394
Original Sheet No. 395
Original Sheet No. 396
Original Sheet No. 397
Original Sheet No. 398
Original Sheet No. 399
Original Sheet No. 400
Original Sheet No. 401
Original Sheet No. 402
Original Sheet No. 403

APPENDIX B: LEGISLATIVE HISTORY

STATE OF ILLINOIS
95th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

115th Legislative Day

8/10/2007

Clerk Mahoney: "Senate Bill 1299, a Bill for an Act considering regulation. Amendment #1 was adopted in Committee. Floor Amendment #2 was adopted by the Body. Floor Amendments 4 and 5, offered by Representative Holbrook, have both been approved for consideration."

Speaker Turner: "On Amendment #4, Representative Holbrook, the Gentleman from St.Clair."

Holbrook: "With the Chair's leave, I'd like to adopt Amendments #4 and 5, 4 becomes the Bill, 5 is a technical cleanup from LRB. And then debate the Bill on Third Reading."

Speaker Turner: "Seeing no questions, the question is, 'Shall the House adopt Floor Amendment #4 to Senate Bill 1299?' All those in favor shall say 'aye'; all those say opposed 'no'. In the opinion of the Chair, the 'ayes' have it. And Amendment #4 is adopted. Further Amendments, Mr. Clerk."

Clerk Mahoney: "Floor Amendment #5, offered by Representative Holbrook."

Speaker Turner: "Seeing no further questions, the question is, 'Shall the House adopt Floor Amendment #5 to Senate Bill 1299?' All those in favor saying 'aye'; all those say opposed 'no'. In the opinion of the Chair, the 'ayes' have it. And Amendment #5 is adopted. Third Reading. Read the Bill, Mr. Clerk."

Clerk Mahoney: "Senate Bill 1299, a Bill for an Act considering Regulation. Third Reading of this Senate Bill."

Speaker Turner: "The Gentleman from St. Clair, Representative Holbrook, on Senate Bill 1299."

Holbrook: "Thank you, Speaker. Senate Bill 1299 as amended will bring Illinois the tools it needs to meet competition for

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residential and small business consumer electric in this deregulated state and the environment we're in now. The original Bill allows the Commerce Commission to review utility construction process and approve them if it promotes competition. As amended today, Senate Bill 1299 will give Illinois consumers the best practices that we have in the country for competitive residential electric markets and small consumers. Consumers who switch to a competitor don't have to receive two (2) bills, it will be consolidated billing just like we do right now in the competitive telephone markets and natural gas. Consumers that want to switch the utility... from a utility to an alternative supplier can now have to sign written statements and contracts. This will allow the enrollment by electronic means and have a system for recording it. The Commerce Commission will have authority over establishing a consumer choice referral program and raise awareness to consumers that they have alternatives to their current utilities. The fourth tool will create a vibrant competitive market to help purchases of receivables, which will allow the alternative supplier to exchange uncollectible payments with incumbent utilities. The utilities already is reimbursed for this bad debt, and all bad debt will be shared by utilities and the alternative supplier. They will pay upfront on their payments. There have been a number of questions raised by Ameren about this provision. There is no change to the customer base, and therefore, there should be no change to the customer base as this is done with both Ameren and ComEd. And I'd like to note, the only utility that raised

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an objection in committee was Ameren, and we had a lengthy dialogue over that issue. And we feel these provisions provide for the competitiveness. There are other states that already provide this: Ohio, New York, Connecticut, Maryland just passed it, along with utilities in New Jersey, Virginia, Indiana, and Michigan. And this is the system we use for this. We think it is the way to go. Consumers in this territory won't have to change their billing, they'll have ability to pay on a one bill and the purchase receivables means that these alternate suppliers do not have to pre-qualify customers in order to sign them up. I'd be glad to answer any questions and for the purpose of legislative intent, I believe, if we could first call on Representative Scully, he has a couple questions for me."

Speaker Turner: "The Gentleman from Cook, Representative Scully, for what reason do you rise?"

Scully: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "Indicates he will."

Scully: "Representative Holbrook, we have very..."

Holbrook: "Yes, you may."

Scully: "...well informed debate yesterday during committee and I rise with a question for the purpose of establishing legislative intent, may I proceed?"

Holbrook: "Yes."

Scully: "With regards to the Customer Service Call Center Referral Program, which is referred to in Section 20-130(e)(3), which states 'that customers choosing to participate in a referral program would be transferred to a customer service representative for the program. And would

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either select the electric supplier from which they would like to take service or be placed with a participating electric supplier chosen at random on a rotating basis.' Mr. Holbrook, are you familiar with the Section I'm referring to?"

Holbrook: "Yes."

Scully: "Would the phrase, 'program', as used in that context, be affiliated with any utility?"

Holbrook: "No. The program would not be affiliated with any utility."

Scully: "Thank you. And who would the program be affiliated with, if not a utility?"

Holbrook: "The program would refer to it would be affiliated with a third party, such as Illinois Commerce Commission or another third, neutral entity that the ICC Office of Retail Market Development decides is best situated to promote retail competition in a neutral manner."

Scully: "So, I want to clarify that. Would the program be affiliated with a neutral, third party or a neutral entity?"

Holbrook: "Yes, it would."

Scully: "Thank you, Mr. Holbrook. That clarifies a question that some people raised about the possibility of an ambiguity. I do not think the language is ambiguous, I think the language is clear and concise. But certainly, your answers to these questions would clarify any ambiguity that someone might construe. Thank you."

Holbrook: "Thank you, Representative Scully."

Speaker Turner: "The Lady from Cook, Representative Mulligan, for what reason do you rise?"

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Mulligan: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "I,ndicates he will."

Mulligan: "Representative, unfortunately I wasn't in committee and in our area we've had some problems, particularly with the gas company, who was a subsidiary, who enrolls people on an automatic payment program which is different than the one if you automatically enroll on your bill. They do this... they do this by letter and they do it by phone. What they don't tell you, is if you've sign up for the automatic payment program with your bill, you can opt out or receive moneys back if you're overcharged. On the other program, in small print on the letter, and the one that also comes to you also by telephone, if you sign up for an automatic payment problem... payment program that turns out to be more than your gas bill, you get penalized if you drop out and you have a hard time getting the money back. So my area of concern on your Bill is where it states that you can sign up by phone. Particularly for seniors, and other people that are solicited, so there is a difference in the way you sign up, there's a difference in the way you get out, there's a difference in the way if you're overcharged. And so I have some concern about that part of your program. So, I don't know if the Representative that just asked about the neutral part would answer the part, but I felt, particularly since it was a major gas company and when I call them they said the other people were affiliated with them, but a subsidiary, and it made it appear that it was the actual gas company. I warned my constituents, that what... and particularly of the senior centers, that I thought there was

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a problem with this. So, can you tell me how your Bill would deal with something like that?"

Holbrook: "As we said, it would be a neutral third party, one under the purview of the Commerce Commission that they would set up. And in addition, Amendment #5 that we adopted adds to either the further requirements when they do sign up, that the subscriber initiating the call that they... that are being enrolled in this program as a customer, that the electric supplier must, with the consent of the customer, make a date stamp, time-dated audio recording that elicits, at a minimum, that type of information."

Mulligan: "All right. So would they then follow it up by a written contract or something in the mail that would allow the person they've solicited to again review all, maybe what would be call the fine print of this?"

Holbrook: "Yes. It requires them to provide them with the written."

Mulligan: "And do they have at least the time from when they receive the mail to take a look at that contract and then still opt out if they choose?"

Holbrook: "I'm gonna have to read it. I know there's an opt-out provision. Representative Mulligan, can we get back to you? We're looking that specific Section up for you."

Mulligan: "All right. I wouldn't be so concerned if it hadn't happened in our area."

Holbrook: "We're getting you an answer. My folks say if you look at page 17, between lines fourteen (14) through nineteen (19) it pretty well covers that. It says that after that written notification is done, they'll be able to

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find out exactly what... it says, 'the letter of the agency shall be a separate document contained with the authorization and with the sole purpose for authorizing the program and a letter of the agency must be signed and dated.' The agency shall combine these within the document that they've approved."

Mulligan: "All right, thank you. I'm sorry to take up the time when everybody's rushing but..."

Holbrook: "That's fine."

Mulligan: "...a major gas company in our area did this and I'm very concerned about it."

Holbrook: "That's fine. I think that covers it."

Speaker Turner: "The Gentleman from Champaign, Representative Rose, for what reason do you rise?"

Rose: "Ground control to Major Tom, could you have the blast shields lowered, please? Thank you"

Speaker Turner: "We weren't planning on being here that long. The Gentleman from Vermilion, Representative Black, for what reason do you rise?"

Black: "Thank you very much, Mr. Speaker. First of all, I got a message from the veterinarian, he gave that goose some antibiotics and he got well very fast. So, I'm really happy for that. I rise in support of this Bill. Competition is the only way we're really gonna to see honest to goodness rate relief. I don't know what the Governor's gonna do on the rate relief Bill. I have no idea. Blue Star Energy is interested in this Bill and I can tell you from my experience, Blue Star is an alternative... not an alternative energy company, but another company that can supply power,

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has written to several constituents in my district saying that they would like to talk to them about becoming a customer of Blue Star, and perhaps being able to save 10 to 12 percent on their electric bill. But Blue Star wants to make certain that the regulatory climate in Illinois will not suddenly change so that they can enter into those contracts and be reasonably assured of delivering the power at a discounted rate and being able to make, obviously, a profit, which is not a dirty word. Every business must, in fact, make a profit. I think the Sponsor has given a reasonable and thorough explanation of the Bill. I think it has been examined fairly carefully, and from everything that I can read, and I know we're all nervous about voting on electric Bills after what we've been through. But I think this will lead to competition. The Illinois Commerce Commission is in favor of the Bill and I think it's worthy of a 'yes' vote."

Speaker Turner: "Representative Holbrook to close."

Holbrook: "Thank you. I ask for a 'yes' vote."

Speaker Turner: "Seeing no further questions, the question is, 'Shall the House pass Senate Bill 1299?' All those in favor should vote 'aye'; all those opposed vote 'no'. The voting is now open. Have all voted who wish? Have all voted who wish? Molaro. The Clerk shall take the record. On this question, there are 105 voting 'aye', 1 voting 'nay'. This Bill, having received a Constitutional Majority, is hereby declared passed. We have House Bill 664. Read the Bill, Mr. Clerk... concurrence... The Lady from Cook, Representative Currie on a concurrence Motion for House Bill 664."

APPENDIX C: LIST OF ACRONYMS AND TERMS

The following list defines acronyms and terms used in Commonwealth Edison Company's Initial Brief and throughout the evidentiary record.

1. **ACH** Automated Clearing House
2. **Act** Section 16-118(c) of the Public Utilities Act
3. **AIU** Ameren Illinois Utilities
4. **AOCs** Administrative and Operational Costs
5. **ARES** Alternative Retail Electric Supplier
6. **BlueStar** Bluestar Energy Services, Inc.
7. **BSAOCs** Billing Systems Administrative Operational Costs
8. **BSMICs** Billing Systems Modification and Implementation Costs
9. **BUF** Base Uncollectible Cost Factor
10. **CB** Consolidated Billing
11. **CB Adjustment** Consolidated Billing Adjustment
12. **CB Balance** Consolidated Billing Balance
13. **CBBF** Consolidated Billing Balancing Factor
14. **CBOR** Consolidated Billing Ordered Reconciliation Adjustment
15. **CIMS** Customer Information Management System
16. **ComEd** Commonwealth Edison Company
17. **Commission** Illinois Commerce Commission
18. **CPWG** Illinois Communications Protocol Working Group
19. **CUB** Citizens Utility Board

20.	DASR	Direct Access Service Request
21.	DIC(s)	Developmental and Implementation Costs
22.	Dominion	Dominion Retail Inc.
23.	DRECC	Discounted Receivables
24.	EbcB	Expected Bills to which the CB Adjustment is applicable.
25.	EBpor	Expected Bills to which the POR Adjustment is applicable
26.	EDI	Electronic Data Interchange
27.	EFT	Electronic Funds Transfer
28.	FERC	Federal Energy Regulatory Commission
29.	Funding Law	Electric Utility Transitional Funding Law of 1997, 220 ILCS 5/18-101 et seq.
30.	ICC	Illinois Commerce Commission
31.	ICEA	Illinois Competitive Energy Association
32.	ILEMC	Illinois Energy Marketers Coalition
33.	ISUF	Incremental Supply Uncollectible Cost Factor
34.	IT	Information Technology
35.	kW	Kilowatts
36.	KWh	Kilowatt-hour
37.	MSP	Metering Service Provider Service
38.	NEM	National Energy Marketers Association
39.	O&M	Operating and Maintenance
40.	ORMD	Office of Retail Market Development
41.	POR	Purchase of Receivables
42.	POR	Purchase of Receivables (POR) Adjustment

	Adjustment	
43.	POR Balance	Purchase of Receivables Balance
44.	PORBF	Purchase of Receivables Balancing Factor
45.	PORCB	Purchase of Receivables with Consolidated Billing service
46.	POROR	Purchase of Receivables Ordered Reconciliation Adjustment
47.	RATE BES	Basic Electric Service
48.	Rate BESH	Basic Electric Service Hourly Pricing
49.	Rate MSPS	Metering Service Provider Service
50.	Rate RDS	Retail Delivery Service
51.	Rate RESS	Retail Electric Supplier Service
52.	RECC	Receivables.
53.	RESA	Retail Energy Supply Association
54.	RESs	Retail Electric Suppliers
55.	Restructuring Act	Article XVI of the Public Utilities Act
56.	Rider AMP	Advanced Metering Program Adjustment
57.	Rider EDA	Energy Efficiency and Demand Response Adjustment
58.	Rider PORCB	Purchase of Receivables with Consolidated Billing
59.	Rider PPO	Power Purchase Option
60.	Rider RCA	Retail Customer Assessments
61.	Rider RRTP	Residential Real Time Pricing Program
62.	Rider SBO	Single Bill Option
63.	Rider UF	Uncollectible Factors
64.	Staff	Staff of the Illinois Commerce Commission

- 65. **UCB** Utility Consolidated Billing
- 66. **Ufc** Uncollectible Factor