

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

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of an Alternative	:	No. 10-0527
Rate Regulation program pursuant to	:	
Section 9-244 of the Public Utilities Act	:	

Rebuttal Testimony of  
**ROSS C. HEMPHILL, PH.D.**  
Vice President,  
Regulatory Policy & Strategies  
Commonwealth Edison Company

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1 **I. Introduction**

2 **A. Witness Identification**

3 **Q. Please state your name and business address.**

4 A. My name is Ross C. Hemphill. My business address is 440 S. LaSalle, Suite 3300,  
5 Chicago, Illinois 60605.

6 **Q. By whom and in what position are you employed?**

7 A. I am the Vice President, Regulatory Policy and Strategies of Commonwealth Edison  
8 Company (“ComEd”).

9 **Q. Are you the same Ross Hemphill who previously submitted direct testimony in this  
10 docket?**

11 A. Yes.

12 **B. Summary of Testimony**

13 **Q. What is the purpose of your rebuttal testimony?**

14 A. I am here to respond to questions and rebut objections made in the direct testimony of the  
15 majority of the Staff and Intervenor witnesses in this docket.

16 **Q. Please summarize your rebuttal testimony.**

17 A. My testimony is divided into seven sections.

18 First, I discuss overall concepts of alternative regulation and rebut arguments that  
19 ComEd’s approach is contrary to that envisioned by Section 9-244 of the Public Utilities  
20 Act (“PUA”). I also address other approaches to alternative regulation offered by the  
21 parties.

22           Second, I respond to criticism that ComEd’s budget-based approach to alternative  
23 regulation is inadequate or otherwise faulty. I also rebut arguments that ComEd’s Rate  
24 ACEP shifts risk to customers and that its incentive structure will not reduce costs. I  
25 further address criticism of ComEd’s budgets proposed for the various Rate ACEP  
26 programs.

27           Third, I address the contention that the Rate ACEP programs could be  
28 accommodated by traditional test-year regulation. I point out the paradoxes and  
29 inconsistencies in the testimony of the parties regarding the use of traditional, test-year  
30 regulation with discretionary programs not necessary for the provision of adequate and  
31 reliable service.

32           Fourth, I rebut contentions that ComEd can simply fund the Rate ACEP programs  
33 within its annual capital budgeting process. I also rebut the testimony that the Illinois  
34 Commerce Commission (“Commission”) should order ComEd to undertake the Urban  
35 Underground Facilities Reinvestment (“UUFRR”) program. I further address proposals that  
36 ComEd ask corporate parent Exelon Corporation (“Exelon”) to continue funding the  
37 ComEd CARE programs.

38           Fifth, I rebut arguments that the time is not ripe for a recovery mechanism for  
39 costs associated with advanced metering infrastructure or smart grid programs.

40           Sixth, I rebut concerns that ComEd’s Rate ACEP proposal does not satisfy the  
41 requirements of Section 9-244 of the PUA.

42           Seventh, I address various proposals regarding the Rate ACEP tariff and its  
43 provisions.

44 **II. Overview and Status of the Proposal**

45 **Q. Have you reviewed the testimony submitted by Staff and Intervenors in this docket?**

46 A. Yes I have.

47 **Q. Do you have any general concerns about the testimonies?**

48 A. Yes, I do. My general concern is that the testimonies of Staff and Intervenors obfuscate  
49 the larger issues that ComEd is trying to address through the Rate ACEP proposal and  
50 that the Commission should address regardless of whether it approves the specific  
51 alternative regulation proposal ComEd makes in this case.

52 **Q. What larger issues are the Rate ACEP proposals intended to address?**

53 A. There are three. First, Rate ACEP tests on a pilot scale how alternative regulation might  
54 work. This would allow ComEd, Staff and Intervenors to learn from a “test run” of  
55 alternative regulation and determine whether application on a broader scale would be  
56 worthwhile. The point of Rate ACEP and of our entire proposal is not to be an across-  
57 the-board alternative regulation proposal even if, ultimately, that is where alternative  
58 regulation should lead us. Parties who object to Rate ACEP because they believe that, in  
59 general, alternative regulation should be comprehensive appear to miss this point.

60 Second, Rate ACEP includes four specific programs which have value in  
61 themselves and which will not be implemented under traditional regulation on the scale  
62 and scope envisioned here. Thus, all comparisons to a world in which those programs  
63 happen under traditional regulation are irrelevant. The counterfactual would never  
64 happen because the regulatory risk would be too great.

65 A. Third, Rate ACEP is intended to pilot a new way of recovering costs. Arguing that Rate  
66 ACEP does not lower rates versus a hypothetical world in which additional programs are  
67 costless is pointless. Those programs are not free. The “low rate” counterfactual where  
68 program costs are never recovered is both irrelevant and misleading. So is the  
69 counterfactual where the programs are not done. Comparing scenarios in which different  
70 levels of service and investment are provided tells us nothing about whether alternative  
71 regulation is beneficial. That comparison, too, is irrelevant and misleading.

72 **Q. How have parties responded to ComEd’s proposal?**

73 A. We sincerely had believed that this proposal, whether ultimately approved or not, would  
74 stimulate a constructive discussion on the future of alternative regulation in Illinois.  
75 ComEd is convinced that traditional ratemaking is not the best path forward for  
76 customers or the state because the overriding problem with traditional rate making in the  
77 context of Rate ACEP is insurmountable levels of regulatory risk. We proposed Rider  
78 ACEP as a pilot because we want to investigate this type of incentive mechanism before  
79 making a broader proposal. We appreciate comments, such as those of Staff witness  
80 Hathorn, offered with the intent of improving the proposal. While we may not agree  
81 with every suggestion, they represent the type of dialog we anticipated.

82 Many parties, however, seem to be intractably opposed to alternative regulation.  
83 Perhaps this opposition is simply due to the newness of the concept. However, some of  
84 the opposition seems to be rooted in a desire to maintain the opportunity to disallow  
85 actual capital and operating costs in a rate case, after they are already incurred. This is  
86 often mischaracterized in the form of accusations that ComEd wants to “shift risks” to  
87 customers. The principle embodied in ComEd’s pilot proposal is simple: a full regulatory

88 review can and should be undertaken before new and innovative investments are  
89 undertaken. If they are beneficial, ComEd should proceed with an assurance that, while  
90 its implementation will be reviewed, the decision to proceed will not be second guessed  
91 later, after the money is spent.

92 I understand that, in theory, ComEd should not be subject to that type of risk  
93 under traditional regulation with a proper application of prudence review. Ultimately,  
94 however, that argument, too, is not dispositive. The reality is that these investments  
95 simply will not be undertaken under a regulatory structure where ComEd can be left  
96 holding the bag and must fight, after the fact, for even partial recovery of its costs. Since  
97 many projects that offer huge benefits to customers over the next few years require those  
98 types of investments, it benefits us all to work on a mechanism to make those investments  
99 possible, rather than to continue to fight over ways to deny recovery of their costs.

100 During the remainder of my testimony, I will respond to many of the issues raised  
101 by Staff and Intervenors. The failure to address any particular point raised by Staff and  
102 Intervenors does not equal acquiescence to that point.

103 **III. Rate ACEP Offers a Way to Test How Alternative Regulation Would Work**

104 **Q. When you refer to the phrase “alternative regulation,” what exactly do you mean?**

105 A. The concept of “alternative regulation” refers to a form of utility rate-making where  
106 additional factors are used to set utility rates, besides the utility’s historic or test year  
107 forecast of embedded costs. Under alternative regulation, rate changes can be based on  
108 external benchmarks of utility efficiency, industry rates of inflation, or improvements in  
109 reliability or operational performance. These changes are usually tied to some  
110 benchmark measuring success in achieving whatever goal is set. In this case, ComEd is

111 proposing to use pre-approved budgets as the benchmark. Section 9-244 of the PUA  
112 allows ComEd to propose alternative regulation, but does not specify the form that  
113 alternative regulation must take.

114 **Q. Why did ComEd propose this form of alternative regulation?**

115 A. ComEd put forward this alternative regulation proposal as a pilot program to evaluate a  
116 different approach to making improvements to ComEd’s electrical distribution system, to  
117 provide increased reliability and efficiency to customers, to reduce ComEd’s  
118 environmental impact, and to offer assistance to low-income customers which would  
119 otherwise expire. These programs are not being offered as necessary to fulfill ComEd’s  
120 ongoing regulatory minimum requirement to provide adequate and reliable service.  
121 Indeed, ComEd’s current service already amply meets its service obligations. Rather,  
122 ComEd selected these particular programs because of their potential benefit to  
123 customers—benefits that would not otherwise exist and which I believe outweigh their  
124 costs.

125 ComEd also deliberately chose these projects because they encompass different  
126 aspects of alternative regulation. Two programs are large, two programs are small. Three  
127 programs involve capital and operating and maintenance (“O&M”) expenses, one  
128 involves only expenses. Each program offers likely benefits to all of ComEd’s  
129 customers, but one program targets a particular subset of ComEd’s customers. Each  
130 program also offers different kinds of benefits: one program is targeted toward enhancing  
131 the reliability of ComEd’s system; two programs test the potential and application of new  
132 technology; one program involves customer assistance. These will result in a well-  
133 rounded blend of experience that could be tested in an alternative regulation setting.

134 As I said above and in my direct testimony (*e.g.*, ComEd Ex. 1.0, at 5), I am  
135 concerned that traditional test year regulation may no longer be the best way for the  
136 Commission to regulate ComEd’s distribution rates and capital investment going  
137 forward. In addition, I shared those concerns and listed several reasons why  
138 discretionary programs like those in this proceeding are particularly ill-suited to  
139 traditional, test-year regulation. *Id.* at 8.

140 **Q. How do you respond to various parties who attempt to dismiss your concerns about**  
141 **traditional test year regulation?**

142 A. I believe they are wrong, for the reasons I have explained. But, ultimately, this dispute is  
143 beside the point. ComEd is entirely within its rights to make this proposal under Section  
144 9-244, which lists eight requirements that an alternative regulation proposal must satisfy.  
145 The eight requirements of Section 9-244 do not include a showing that traditional, test-  
146 year regulation has failed; nor do they include a requirement that the alternative  
147 regulation be the only possible regulatory approach to accomplishing these programs.

148 **Q. AG witness Brosch and CUB witness Thomas argue that Rate ACEP is not a**  
149 **comprehensive form of alternative regulation. Are they correct?**

150 A. Yes. ComEd did not propose comprehensive alternative regulation. Rate ACEP is a pilot  
151 program to gain a greater understanding of how alternative regulation might work in  
152 Illinois. While I am not lawyer, the plain words of Section 9-244 state that ComEd may  
153 apply alternative regulation to “some or all of the regulated services....” Section 9-244  
154 further states that alternative regulation may also involve “one or more programs...”  
155 Counsel can argue legalities in briefs, but there is no policy reason why alternative

156 regulation should not be applied to discrete programs, instead of ComEd's entire array of  
157 delivery services, especially in the context of a pilot. While ComEd may in the future  
158 propose applying alternative regulation to additional programs, first testing how  
159 alternative regulation might work on a smaller scale is valid and sensible. Rate ACEP  
160 offers a way to test alternative regulation on a variety of programs, large and small,  
161 offering an array of potential benefits.

162 **Q. Is Mr. Brosch correct when he states that Rate ACEP is simply “a repackaging of**  
163 **Rider SMP.” (AG Exhibit 1.0, 13:279)?**

164 **A.** No. Rate ACEP is not a cost tracking rider similar to Rider SMP, which was the subject  
165 of a recent opinion of the Second District Appellate Court. (*Commonwealth Edison Co.*  
166 *v. Illinois Commerce Comm'n*, No. 2-08-0959 (Ill. App. Ct., 2nd Dist., Sept, 30, 2010))  
167 Rate ACEP is not even proposed under the traditional ratemaking provisions of the PUA.  
168 It differs significantly in both scope and operation. For example, under Rate ACEP,  
169 ComEd accepts considerable risk that it will not fulfill Commission-approved investment  
170 programs within the Commission approved budgets. Moreover, much of Rate ACEP is  
171 driven by Commission-approved project budgets, rather than actual costs as they occur.  
172 Cost tracking riders do not operate in this manner. Customers also immediately receive a  
173 5% discount of O&M expenses, up to \$2 million.

174 **Q. How do you respond to Mr. Brosch's contentions that “ComEd has not proposed any**  
175 **new regulatory framework driven by changes in ComEd's overall financial**  
176 **performance, revised methods to determine revenue requirements, sharing of earnings**  
177 **or any other meaningful expansion of performance incentives” (AG Ex. 1.0, 13:281-4)?**

178 A. If Mr. Brosch is simply repeating his argument that alternative regulation must be  
179 “comprehensive,” then there is nothing further to be said. It need not be, as I discussed  
180 above. If he uses phrases like “new regulatory framework” to mean that ComEd must  
181 offer a proposal that goes beyond the requirements of Section 9-244 or should meet other  
182 additional requirements than those expressly required by Section 9-244(b), then he is  
183 advocating a policy that has been rejected in Illinois. Illinois utilities are allowed  
184 flexibility in the forms of alternative regulation that they may propose, and none of the  
185 concerns he lists in the above quote are requirements of Section 9-244(b). The only one  
186 that comes close is “sharing of earnings”; however, Section 9-244(b)(8) requires a  
187 sharing of “benefits,” not “earnings.” Finally, if he does not understand that Rate ACEP  
188 puts ComEd at a financial risk and offers real benefits sharing opportunities to customers,  
189 then he is simply mischaracterizing the proposal.

190 Q. **Do you agree with the contention of AARP witness Alexander that “A proper**  
191 **implementation of alternative regulation (and which is clearly required by the**  
192 **Illinois statute) requires the identification of performance areas, the identification of**  
193 **performance metrics to assure that performance is measured against an historical**  
194 **baseline, and verification of results during and after the term of the program.”**  
195 **(AARP Ex. 1.0, 18:394-8)?**

196 A. No. There are many problems with Ms. Alexander’s statement. First, alternative  
197 regulation can take many forms. While I believe that there are alternative regulation  
198 programs that could work as Ms. Alexander suggests, all alternative regulation programs  
199 do not have to operate this way, and they do not have to include any reference to  
200 historical baselines. Her use of “proper” simply reflects her own narrow view.

201           Second, a budget can be a very effective tool for measuring and verifying the  
202 performance of the program, as the final numbers will speak for themselves. Because the  
203 budget will limit what ComEd can collect from the Rate ACEP programs, ComEd will  
204 have a strong incentive to meet or beat the budget targets. If ComEd cannot beat the  
205 budget targets, Rate ACEP will still have worked in the sense that it will have protected  
206 customers from risks that ComEd was willing to take itself.

207           Third, I don't know to which "Illinois statute" Ms. Alexander refers, but I see  
208 none of these requirements in Section 9-244. Her lay legal opinion seems to be  
209 attempting to create requirements that simply are not there.

210 **Q. How do you respond to Mr. Brosch's list of characteristics of alternative regulation**  
211 **programs?**

212 A. Mr. Brosch says that alternative regulation involves a rate moratorium, a price cap,  
213 reporting and monitoring, and regulatory mechanisms to punish or reward utilities for  
214 their performance. Mr. Brosch's list suffers from the same deficiencies as does Ms.  
215 Alexander's list, mentioned above.

216 **Q. How do you respond to Mr. Thomas' assertion that Rate ACEP does not represent**  
217 **"what alternative regulation should be" (CUB Ex 1.0, 12:269)?**

218 A. Mr. Thomas identifies several forms of alternative regulation, for example, incentive or  
219 performance-based approaches using energy efficiency, reliability, or other indicia as  
220 benchmarks. Each of the approaches Mr. Thomas suggests might have their merits. That  
221 does not, however, mean that the budget-based approach of Rate ACEP is not an equally  
222 valid form of alternative regulation.

223 Q. **How do you respond to Mr. Thomas' proposal for alternative regulation?**

224 A. It is clear that Mr. Thomas has thought a lot about alternative regulation. However,  
225 Section 9-244 does not prescribe the form of alternative regulation ComEd may propose.  
226 Rate ACEP is not the kind of proposal that Mr. Thomas recommends. That does not,  
227 however, make it inappropriate for the Commission or the parties to consider.

228 Q. **How do you respond to the proposal by NRDC witness Sullivan that ComEd should**  
229 **adopt NRDC's alternative regulation mechanism?**

230 A. ComEd appreciates the alternative regulation proposal put forward by Mr. Sullivan.  
231 However, the NRDC alternative regulation program addresses energy efficiency, which is  
232 the subject of Docket No. 10-0570. This proceeding, Docket No. 10-0527, addresses the  
233 concept of "alternative regulation," and energy efficiency topics are non-germane to the  
234 programs under consideration here. ComEd's witnesses in Docket No. 10-0570 are in a  
235 better position to comment on the merits of NRDC's alternative regulation proposal.

236 A. **Budget-Based Benchmarks Are a Viable Form of Alternative Regulation**

237 Q. **Please elaborate on the concept of budget-based alternative regulation.**

238 A. As I mentioned above, ComEd is proposing to: (1) use budgets as a benchmark for  
239 evaluating the success of its alternative regulation program; and (2) make discretionary  
240 investments out of a conviction that their benefits will be greater than their costs. The  
241 budget-based evaluation mechanism offers an effective tool to evaluate the benefits and  
242 the costs. Before approving the Rate ACEP investments, the Commission will consider  
243 the investment and O&M budgets as a tool to determine whether the programs are indeed  
244 likely to result in net benefits to customers. During the operation of the program, the

245 budget will be a powerful incentive mechanism for ComEd to operate efficiently. It will  
246 also ensure that ComEd actually makes the investments ComEd agrees to make up front.

247 Customers will benefit from the programs and the efficiency improvements that  
248 will result from ComEd having to adhere to investment and O&M budgets. Customers  
249 will also benefit from the upfront, 5% reduction in O&M expenses, up to \$2 million.  
250 During the biennial review process, the Commission will determine whether ComEd  
251 actually adhered to the budgets and whether the benefits are greater than the costs.

252 Also, I note that every other form of alternative regulation discussed by the parties  
253 ultimately comes down to budgets. If the alternative regulation is based on price caps,  
254 the utility will have to design budgets to stay within the caps and still earn its required  
255 return. If it is based on productivity benchmarks, the utility will have to design budgets  
256 to meet those benchmarks on that same basis. If it is based on reliability indicia, the  
257 utility will have to design budgets to accommodate the desired level of reliability. If it is  
258 based on reducing end-use consumption, the utility will have to design budgets to achieve  
259 these levels of energy usage. Whichever alternative regulation indicia are chosen,  
260 utilities will have to design budgets to meet these desired indicia and still earn the  
261 required return. I see no reason why designing alternative regulation based directly on  
262 the budgets themselves presents the challenge the parties say it does.

263 **Q. Have Staff and Intervenors raised concerns with respect to the budget-based**  
264 **benchmarks that ComEd has proposed?**

265 **A.** Yes. I will address the general concerns raised by Staff and Intervenors regarding the use  
266 of budget-based alternative regulation. Mr. McMahan will address the concerns raised by

267 Staff witness Hinman concerning the EV budget. No objections were raised concerning  
268 the proposed budgets for UFFR or the Low Income program.

269 Q. **Is Mr. Brosch correct that Rate ACEP is “open ended, providing for future  
270 expansion ...” (AG Ex. 1.0, 16:347)?**

271 A. No. ComEd will be authorized to undertake only those investments approved by the  
272 Commission. Once those investments are made, the pilot essentially ends. Every two  
273 years the Commission will evaluate how Rate ACEP functioned. During that review,  
274 ComEd may propose new investments to be covered by Rate ACEP. If ComEd decides  
275 to propose new investments, it will provide capital and O&M budgets. The Commission,  
276 with input from Staff and Intervenors, will review any new proposals and budgets. While  
277 it is impossible to speculate how the Commission will act in future years, it could always  
278 reject the new investment proposals, thereby rejecting expansion of the pilot.

279 Q. **How do you respond to Staff witness Rearden’s concern about Staff involvement in  
280 the budget pre-approval process?**

281 A. I believe his concerns are overstated. ComEd must provide initial, good-faith estimates  
282 of these budgets, as well as the work papers and analyses that produced the budgets.  
283 ComEd’s assumptions and numbers can be double checked, and the budgets can be  
284 altered if appropriate.

285 Staff and Intervenors perform similar budget reviews when evaluating the  
286 prudence of ComEd’s spending decisions after the fact in rate cases. For example, in  
287 ComEd’s current rate case, Docket No. 10-0467, Staff and several Intervenors reviewed  
288 ComEd’s proposed *pro forma* additions. Staff performs similar up-front budget reviews

289 in certification proceedings. There is nothing magical or mysterious about doing this  
290 before the costs are actually spent in an alternative regulation context. However, in Rate  
291 ACEP, the budget numbers are binding, with consequence if ComEd is unable to meet  
292 them.

293 **Q. Is Staff witness Hinman’s characterization of the budget-review process as**  
294 **“intractable” accurate (Staff Ex. 2.0, 19:360)?**

295 A. No. Indeed, Ms. Hinman herself was able to provide alternative budget numbers for  
296 several of the items on the EV budget. While the rebuttal testimony of ComEd witness  
297 McMahan, ComEd Ex. 7.0, responds to Ms. Hinman’s testimony, she demonstrates that it  
298 is possible to double check ComEd’s budgeting assumptions and numbers. This is the  
299 kind of process I envision when I refer to a collaborative effort. Ultimately, these sorts of  
300 disagreements could be resolved around a conference table, instead of through litigation.

301 **Q. How do you respond to the contention of Mr. Rearden, Ms. Hinman, Mr. Brosch,**  
302 **and IIEC witness Stephens that the budget approach creates an incentive for**  
303 **ComEd to overestimate or inflate the costs of the program?**

304 A. First, I want to register ComEd’s vociferous objection to the contention, implied or  
305 otherwise, that ComEd either has deliberately proposed, or intends to propose, inflated  
306 budgets for the Rate ACEP programs. In constructing the Rate ACEP budgets, ComEd  
307 used the same budgeting process as it uses in its own internal evaluation of various  
308 investment proposals. ComEd offers these budgets in good-faith.

309 Second, these budgets are based on vendor proposals and on the costs ComEd has  
310 incurred in the past. ComEd has documented how it derived its budget proposals. While

311 numbers can and will fluctuate as the program is implemented, this fluctuation can go  
312 both ways to the benefit or detriment of ComEd. Either way, the Commission knows up  
313 front what the programs will cost customers.

314 Third, while ComEd's actual expenditures could deviate from the budgets, the  
315 deviation could go either way. This is the risk ComEd accepts. However, the budgets  
316 provide a powerful incentive mechanism for ComEd to out-perform the budget, which is  
317 precisely what the Commission should want. These benefits will be shared with  
318 customers.

319 **Q. How do you respond to Mr. Rearden's assertion that a budget is not a "good way to**  
320 **evaluate ComEd's performance" (Staff Ex. 1.0, 19:429)?**

321 A. While referring to the EV Pilot, Mr. Rearden's concern is essentially that ComEd's  
322 budgets could be wrong and that ComEd has the incentive to overestimate the budget. As  
323 I said above, the Rate ACEP budgets are being reviewed in this very proceeding. While  
324 budgets may prove to be wrong, the Commission will know up front the maximum costs  
325 that customers will pay.

326 **Q. How do you respond to the contention of Mr. Rearden and Ms. Hinman that**  
327 **ComEd could manipulate the budget process by when it could declare a project**  
328 **"complete"?**

329 A. These contentions are overblown and unfounded. As ComEd discussed in response to  
330 Staff data request JLH 2.06 (See ComEd Ex. 6.1), ComEd considers a project to be  
331 "complete" when all investments to be made under the Commission-approved budget  
332 have been made and the project is in service or otherwise operational. During the

333 biennial review process ComEd will provide the evidence it typically does in any review  
334 proceeding. The Commission will be the ultimate arbiter of when a project is  
335 “complete.”

336 **Q. Do you agree with Mr. Brosch and Mr. Rearden that ComEd accepts no risk in**  
337 **budget-based alternative regulation?**

338 A. No. Much of their claim seems to be based on the incorrect notion that ComEd would, or  
339 successfully could, inflate a Commission-approved budget. Putting that erroneous  
340 assertion aside, budget-based regulation programs present very real risks to ComEd.

341 In making investments under Rate ACEP, ComEd is accepting the risk that it will  
342 not be able to meet its up-front budgetary obligations. It is also giving customers a 5%  
343 discount on O&M costs, up to \$2 million. In exchange, ComEd is recovering its costs  
344 faster than usual and is given the incentive to operate more efficiently and beat the  
345 budget—the rewards of which are later shared with customers. Indeed, as I discuss  
346 below, the concerns of Staff witness Stutsman with ComEd’s use of a static budget for  
347 the UUFR program essentially boils down to risk. Mr. Stutsman’s concern over budgets  
348 contradicts Mr. Rearden’s assertion that ComEd would face no risk with budget-based  
349 alternative regulation.

350 **Q. Does ComEd’s overall proposal in general, and the use of budgets in particular,**  
351 **shift risk to ratepayers, as suggested by Messrs. Brosch, Rearden, and Thomas?**

352 A. No. In fact, the opposite is true. When the Commission establishes the budget for the  
353 Rate ACEP programs, the Commission is establishing the maximum amount ComEd will  
354 be able to recover from customers. This is the most ComEd will recover from customers

355 under Rate ACEP. Further, if ComEd can meet its obligations under budget, customers  
356 will share in the resulting savings. Thus, ComEd's budget-based alternative regulation  
357 does not create ratepayer risk, it creates ratepayer certainty. Any uncertainty works to the  
358 benefit of customers.

359 **Q. How to you respond to the contention of Messrs. Rearden and Brosch that ComEd**  
360 **can avoid risk by seeking to recover cost overruns in future rate cases?**

361 A. No recovery of O&M "overruns" is possible. Recovery of additional capital costs under  
362 Rate ACEP is subject to the same regulatory risk ComEd would face were it to propose  
363 recovering the costs of discretionary programs in traditional rate cases. Presumably, the  
364 Commission would only approve that recovery if it were prudently incurred and  
365 reasonable in amount. I would not assume lightly that Messrs. Rearden and Brosch were  
366 objecting to recovery of reasonable and prudent capital costs in a rate case. However, if  
367 they are, this is yet another illustration of the unacceptable risks utilities face under test  
368 year regulation.

369 **Q. How do you respond to Mr. Rearden's concerns that the incentive effects are not**  
370 **likely to be strong enough to restrain costs?**

371 A. If ComEd is able to beat the budget benchmarks its profits will be higher; these profits  
372 will be shared with customers. Mr. Rearden's apparent view of the profit motive is  
373 contradicted by virtually every economics text book, all of which explain the powerful  
374 impact the profit motive has on a firm's incentives to improve efficiency. This essential  
375 truth underpins the success of businesses in the free enterprise system. ComEd has every  
376 incentive to perform well because of the larger potential benefits at stake.

377 Q. **Is Mr. Stephens correct that, once the \$2 million is reached, ComEd will have no**  
378 **incentive “to contain costs once the cap has been exceeded” (IIEC Ex. 1.0, 11:243)?**

379 A. No. Mr. Stephens appears to misunderstand the purpose of the 5% O&M credit, which is  
380 to ensure that customers reap immediate benefits from Rate ACEP. The 5% O&M credit  
381 does not, in and of itself, promote efficiency. Rather, efficiency is promoted with the  
382 imposition of stringent budgets on ComEd’s operations.

383 Q. **Is Mr. Stutsman correct that “a highly variable or flexible activity such as the**  
384 **UUFR program is not appropriately managed with a static budget” (Staff Ex. 4.0,**  
385 **7:147-8)?**

386 A. No. ComEd is striving to reach reliability levels above and beyond the high levels it  
387 already achieves. The static budget serves as a benchmark toward ComEd’s goal. Mr.  
388 Stutsman’s concerns essentially boil down to the high level of risk ComEd accepts when  
389 it subjects itself to a static budget, which demonstrates the fallacy of Staff witness  
390 Rearden’s argument that ComEd accepts no risk in a budget based alternative regulation  
391 program.

392 Q. **Will “managerial personnel who are responsible for getting the work done ...**  
393 **become so budget-focused that reliability work ... become shortchanged in order to**  
394 **beat budget numbers,” as Mr. Stutsman worries (Staff Ex. 4.0, 9:180-2)?**

395 A. No. The UUFR programs will have the opposite effect, by bringing to light potential  
396 problem areas that ComEd can remedy before actual problems occur. ComEd is  
397 committed to ensuring its system is safe and reliable. Moreover, under current rate-case  
398 regulation, on a larger scale ComEd is effectively constrained by the “budget” imposed

399 by the rates approved in the last case. Under ComEd's proposal, that budget will be more  
400 current and focused.

401 **B. The Discretionary Rate ACEP Programs**  
402 **Are Ill-Suited to Traditional Regulation.**

403 **Q. Throughout their testimonies, Messrs. Rearden, Stoller, Stutsman, Thomas, and**  
404 **Stephens argue that Rate ACEP is not necessary to undertake the Rate ACEP**  
405 **programs. How do you respond?**

406 **A.** While I am not a lawyer, it is my understanding that Section 9-244 of the PUA does not  
407 require a showing of need. Rather, Section 9-244 permits ComEd to propose alternative  
408 regulation if ComEd can show its proposal meets eight standards. Those standards  
409 include neither a showing that these programs cannot be undertaken with traditional, test-  
410 year regulation, nor a showing that alternative regulation is the only possible approach.

411 **Q. Although a showing of "need" is not required, can the Rate ACEP programs be**  
412 **accommodated by traditional regulation, as Messrs. Rearden, Stoller, Stutsman,**  
413 **Brosch, Thomas, and Stephens contend throughout their testimonies?**

414 **A.** No, for several conceptual and practical reasons.

415 While these witnesses contend that ComEd could undertake these projects under  
416 traditional test-year regulation, they actually acknowledge the barriers inherent in  
417 traditional test-year regulation. Mr. Rearden's testimony illustrates the fundamental  
418 problem when he states, "Under TR [traditional regulation], customers do not begin  
419 paying those costs until after the next rate case in which the investment is determined to  
420 be used and useful and the expenses approved." Staff Ex. 1.0, 16:369-360 (emphasis  
421 provided). Mr. Brosch adds that the investments in question will be subject to a

422 “prudence review.” AG Ex. 1.0, 6:122 (emphasis in original). Staff witness Stoller adds  
423 another requirement that investments under traditional regulation have to be “reasonable  
424 in cost” (Staff Ex. 7.0, 12:262) (emphasis provided), perhaps also at the time of the rate  
425 case, not of the investment.

426 So, herein lies the rub. Suppose ComEd (or anyone) identifies potential  
427 investments or other programs that offer significant public benefits but are not necessary  
428 to satisfy the minimum required levels of service. The reality is that ComEd cannot rely  
429 on recovering its prudent and reasonable costs. Under traditional test year ratemaking,  
430 ComEd faces a real risk that, after the investments are made and the benefits delivered,  
431 the Commission will not make the necessary findings for cost recovery. Indeed, Mr.  
432 Rearden explains why ComEd is almost certain to not recover its costs. This is true even  
433 for projects that are desirable in hindsight, let alone for project that were prudent and  
434 reasonable in cost when undertaken, but that may look more questionable in hindsight.

435 The practical result is that customers lose because beneficial investments are not  
436 made. Given the requirements of review under traditional regulation, as articulated by  
437 Messrs. Rearden, Brosch, and Stoller, ComEd would have to accept prohibitively high  
438 levels of regulatory risk to implement the Rate ACEP programs without some form of up-  
439 front Commission approval provided by a budget-based alternative regulation program.  
440 An up-front evaluation process, as is possible under alternative regulation, avoids the  
441 after-the-fact, second guessing of ComEd’s investment decisions that takes place in a  
442 traditional rate case.

443 Frankly, having read again and again the testimonies of Messrs. Rearden, Stoller,  
444 Stutsman, Brosch, Thomas, and Stephens on this particular subject, I find them

445 paradoxical. If ComEd were to expend resources on discretionary, Rate ACEP projects,  
446 which go above and beyond regulatory minimums, would Staff, CUB, the AG, and IIEC  
447 really support cost recovery in a rate case? Taking their testimonies to their logical  
448 conclusion, one could guess the answer might be “yes.” If I were a betting man,  
449 however, I would place all of my chips on “no.” In this alternative regulation docket, it is  
450 easy for these witnesses to say that ComEd could recover these costs in a traditional rate  
451 case. If these programs were ever the subject of a traditional rate case, I would be  
452 astonished if these parties would not advocate for disallowances.

453 One need look no further than ComEd’s current rate case in Docket No. 10-0467  
454 to test this thesis. In its rate case, ComEd is proposing recovery only of those costs  
455 necessary for the provision of adequate and reliable service. However, Staff proposes  
456 disallowing 80% of ComEd’s increased costs, while the AG and CUB propose a rate cut.  
457 If these parties oppose recovery of costs that are necessary for the provision of adequate  
458 and reliable service, how do they expect anyone to believe their assurances that the costs  
459 of discretionary programs could be recovered in a future rate case? I certainly do not.

460 **Q. Messrs Thomas, Stephens, Rearden and other witnesses point out that ComEd has**  
461 **made several investments similar to those covered by Rate ACEP in the past and**  
462 **has recovered the cost in rates. What is different about the programs that make up**  
463 **Rate ACEP?**

464 **A.** ComEd has not made individual investments of this nature and scope, i.e., investments  
465 expressly designed to bring benefits to customers above and beyond regulatory  
466 minimums, in the past with the possible exception of our AMI Meter pilot, which is itself  
467 an illustrative example of the length to which parties will go to prevent cost recovery.

468 Moreover, as a whole, the scale of what is being proposed in Rate ACEP is far greater  
469 than what ComEd has undertaken in the past.

470 Consider, for example, EVs. ComEd is very interested in large-scale use of  
471 electric hybrid vehicles, but must first test them, their application, their reliability, and  
472 their impact on ComEd's grid. Such a study might also be useful were ComEd's  
473 customers to increase their use of EVs.

474 As Ms. Hinman points out, ComEd already owns 19 electric-hybrid vehicles. The  
475 EV pilot would quadruple this total and add capabilities that ComEd does not already  
476 possess, such as charging stations. ComEd believes that there may be many  
477 environmental and efficiency benefits to EVs, but EVs are much more expensive than  
478 non-hybrid, fossil-fueled vehicles. Given that the EV program is not necessary for the  
479 provision of adequate and reliable service, ComEd must have up-front Commission  
480 approval before it can undertake a program that may run afoul of the "reasonable in cost"  
481 and other standards mentioned by Messrs. Stoller, Rearden, and Brosch.

482 Given the size of its utility fleet, ComEd was able to justify the inclusion of 19  
483 relatively expensive EVs in its rate base, especially since none of these EVs required  
484 additional infrastructure to operate. ComEd's EV Pilot represents a much greater  
485 commitment to EVs. ComEd needs Rate ACEP to mitigate the regulatory risk it would  
486 face were it to make such an investment under traditional regulation.

487 **Q. Do you agree with Mr. Stoller's statement, "I believe that utilities must continually be**  
488 **alert to new technologies and refinements of current technology that could improve the**  
489 **quality of their service to their customers to satisfy that obligation." (Staff Ex. 7.0,**  
490 **10:218-20)?**

491 A. Yes.

492 Q. **Do you share Mr. Stoller’s belief “that taking advantage of such technology is part of**  
493 **their basic obligation to provide adequate, reliable and safe public utility service” (*Id.*,**  
494 **220-2)?**

495 A. Yes and no. I agree that utilities should to take advantage of new technologies. As  
496 ComEd’s system expands and old equipment is replaced, ComEd routinely installs  
497 modern equipment that is compatible with its existing system, where it is necessary to  
498 fulfill its basic obligation to provide adequate, reliable, and safe public utility service.  
499 However, that does not mean that every beneficial application of new technology is part  
500 of a utility’s minimum regulated service obligation. ComEd does not have to make the  
501 sort of investments proposed in Rate ACEP when its existing equipment is more than  
502 adequate to fulfill its obligations. Indeed, the PUA itself makes clear that ComEd’s  
503 obligation does not extend to new services made possible by technology.

504 This is the problem ComEd seeks to address with its alternative regulation  
505 program. There are many new technologies on the market that ComEd could install that  
506 could lower ComEd’s cost of providing service. Similarly, there are many energy  
507 efficiency and other beneficial applications that customers might want to install in their  
508 homes and businesses, but cannot because these applications require more modern  
509 equipment on ComEd’s system. The new equipment could be quite expensive, while the  
510 old equipment is still working properly and may still have many years of useful life.  
511 While I believe the net benefits of modernization could be substantial, this does not  
512 necessarily mean that ComEd needs to pursue such an approach to fulfill its service  
513 obligations.

514           This is also why I use the word “discretionary” in describing the Rate ACEP  
515 programs. They are not necessary for ComEd to provide reliable and adequate service at  
516 the lowest reasonable cost.

517 **Q. How do you respond to Mr. Stoller’s contention that ComEd could simply petition**  
518 **the Commission for a certificate of public convenience and necessity (“CPCN”) for**  
519 **the Rate ACEP programs?**

520 A. These programs are not necessary for the provision of adequate and reliable service.  
521 While not a lawyer, pursuant to the PUA (220 ILCS 5/8-406), filing for a CPCN is not a  
522 viable option. Moreover, I understand that CPCNs are issued for specific new  
523 investments, and not for other types of projects and programs. At a minimum, this is an  
524 uncharted regulatory road that does not begin to address all of the risk issues ComEd has  
525 identified with rate cases.

526 **Q. Do you agree with Mr. Stoller’s recommendation that, “... if investments that**  
527 **ComEd is proposing will provide public utility service quality which is clearly above**  
528 **and beyond what is required to provide adequate, efficient, and reliable service,**  
529 **then ComEd should clearly distinguish those proposals for the Commission and**  
530 **clearly articulate why its customers should pay higher than normal rates for the**  
531 **enhanced service.” (Staff Ex. 7.0, 11:244-8)?**

532 A. Yes. This is the spirit in which ComEd is proposing Rate ACEP, which includes  
533 programs or “investments” that go “beyond” the minimum required levels of adequacy,  
534 efficiency, and reliability. ComEd’s task in this proceeding is to show that the higher

535 costs that will result from these investments and programs will be more than offset by the  
536 benefits. I believe ComEd has met that burden.

537 **Q. Mr. Stoller completes his thought with the following statement: “Only if a specific**  
538 **Commission determination is made that doing that is appropriate should customers**  
539 **be expected to pay for enhanced delivery service levels.” *Id.* 248-50. How do you**  
540 **respond?**

541 **A.** Mr. Stoller does not address the full implications of his logic. He suggests that ComEd  
542 could file a petition for CPCN, but, as I addressed above, a CPCN is at best imperfect and  
543 at worst inappropriate. Mr. Stoller does not offer any other viable platform on which  
544 ComEd could actually petition for the Commission determination that Mr. Stoller  
545 suggests is necessary; nor does he say what happens after the Commission makes such a  
546 determination; nor does he address how such a determination will allow ComEd to obtain  
547 cost recovery in a traditional rate case for discretionary investments, even ones that the  
548 Commission has approved. When the full implications of Mr. Stoller’s recommendations  
549 are considered, it becomes readily apparent that traditional regulation is simply not viable  
550 for the Rate ACEP programs. Indeed, what he suggests is conceptually exactly what  
551 ComEd is proposing with Rate ACEP: ComEd comes to the Commission with a proposal  
552 and a showing of benefits and the Commission makes a specific determination as to  
553 whether customers benefits from it and should pay for it. That is the essence of our  
554 proposal.

555 **C. Rate ACEP Offers A Desirable Opportunity**  
556 **To Allocate Limited Investment Resources.**

557 **Q. How do you respond to Mr. Stoller’s contention that ComEd has not demonstrated**  
558 **that ComEd’s financial situation prevents it from making capital investments?**

559 A. I simply point to the testimony of Joseph R. Trpik, Jr., CPA, (ComEd Ex. 4.0, 3-4:59-84)  
560 in ComEd’s rate case (Docket No. 10-0467), which shows that ComEd is relatively weak  
561 financially. While some parties may—and do—dispute this, nobody can dispute the fact  
562 that even companies that are strong financially have only limited resources to invest. If  
563 they cannot recover their costs, they cannot maintain strength. In ComEd’s case, the  
564 funds made available from traditional capital resources and utility operations are fully  
565 allocated to projects that are necessary to provide adequate and reliable service. ComEd  
566 cannot simply fund other projects, however beneficial, without some form of cost  
567 recovery between rate cases. Additional resources to pay for these projects have to come  
568 from somewhere. Rate ACEP provides an ideal approach for funding beneficial projects  
569 that are not essential for adequate and reliable service.

570 **Q. How do you respond to the concerns of Messrs. Stutsman, Stoller, and other**  
571 **witnesses that ComEd conditions Rate ACEP on favorable outcome in the rate case?**

572 A. The outcome in the rate case can affect Rate ACEP in two ways: cash flow and return on  
573 equity (“ROE”). As mentioned above, regardless of its financial condition, ComEd only  
574 has limited resources with which it can make investments. ComEd’s top priority is  
575 providing adequate and reliable service. If the new rates the Commission sets are too low  
576 for ComEd to make those necessary investments, ComEd cannot also make investments  
577 in discretionary programs, regardless of how fast it recovers the costs. ROE is important

578 because ComEd accepts considerable new risk when agrees to operate within strict  
579 budget limitations. The ROE approved in the rate case must be sufficient for ComEd to  
580 accept this new risk.

581 **Q. How do you respond to Mr. Brosch’s discussion about ComEd’s access to capital**  
582 **markets?**

583 A. As ComEd indicated in its response to Data Request AG 1.08 (AG Exhibit 1.3), ComEd  
584 has access to credit markets, but this is beside the point. ComEd’s access is not  
585 unlimited, and approaching capital markets to fund projects where cost recovery is risky  
586 and imperfect is hardly a viable solution.

587 **Q. Mr. Brosch argues that ComEd “is looking to ratepayers to provide a source of new**  
588 **revenues for projects that would otherwise not likely be approved in the Company’s**  
589 **own internal capital budgeting process, as the Company itself admits when it asserts**  
590 **that these projects, if invested in under traditional regulation, ‘would harm**  
591 **ComEd’s financial position.’” (AG Ex. 1.0, 24:505-8.) Why should ComEd be**  
592 **allowed to recover costs as they are incurred?**

593 A. ComEd should be allowed to recover costs as they are incurred because ComEd is  
594 proposing to make Rate ACEP investments in discretionary programs that the  
595 Commission finds will result in benefits that are greater than their costs. I see nothing  
596 wrong with customers contributing to the costs of programs that benefit them.

597 Moreover, in making these investments, ComEd is accepting the risk that it will  
598 not be able to meet its up-front budgetary obligations. It is also giving customers a 5%  
599 discount on O&M costs, up to \$2 million. While ComEd is given an incentive to operate

600 more efficiently and beat the budget, even those rewards are later shared with customers.  
601 There is nothing unjust or unreasonable about this arrangement. Indeed, ComEd should  
602 be encouraged to make investments that benefit its customers in this way.

603 Finally, the issue is not whether these projects would be approved in ComEd's  
604 capital budgeting process. As discussed above, ComEd's internal resources are limited  
605 and external resources are costly. ComEd's budgeting process is focused on those  
606 investments necessary for the provision of adequate and reliable service, which are the  
607 only costs recoverable in a rate case. The Rate ACEP programs are discretionary.  
608 ComEd would subject itself to prohibitively high regulatory risk were it to invest in Rate  
609 ACEP programs without Commission pre-approval.

610 **Q. Is Mr. Stephens' contention that ComEd should earn a reduced ROE to account for**  
611 **a reduction in regulatory risk valid?**

612 A. No. Once again, opponents want to have it both ways. If traditional regulation offers  
613 ComEd the opportunity – without unreasonable risk – to recover its costs of these  
614 investments, Rate ACEP will not change its financial risk. While, as I have said, the  
615 reality is that traditional regulation does pose these risks, ComEd's ROE is set assuming  
616 its revenue requirement is accurate. No discount is applied to ROE based on this risk that  
617 must be "undone" in an alternative regulation scenario.

618 As a practical matter, Rate ACEP imposes other risks. ComEd accepts the risks  
619 of operating within the constraints of Commission approved budgets. ComEd is already  
620 volunteering to forego recovery of up to \$2 million in O&M costs. Assuming that the  
621 Commission grants ComEd a reasonable ROE in the rate case, ComEd is willing to  
622 accept this new, different kind of risk.

623           Budget-based alternative regulation actually creates an environment for ComEd to  
624 consider taking on more risk when the potential benefits can be shown to be greater than  
625 the potential costs. Traditional regulation discourages taking even those risks that could  
626 result in potentially great benefits to customers. Under traditional prudence review,  
627 utility gets no reward for taking the risk, but suffer the consequences if it cannot prove  
628 after the fact that the risk was worth taking given what was known at the time. Under the  
629 traditional risk/reward payoff, utilities are discouraged from innovating, except for those  
630 investments that are either low in cost or whose benefits are well understood. In putting  
631 forth Rate ACEP, ComEd offers a way that allows for up-front discussion of those  
632 potential benefits and risks. Clearly, reducing allowed ROE for these programs, as Mr.  
633 Stephens suggests, diminishes the benefits of taking the risk.

634 **Q. Do you agree with Mr. Stutsman's recommendation that the Commission order**  
635 **ComEd to implement the Uufr program?**

636 **A.** No. While I welcome Mr. Stutsman's approval of the program, as I testify in Docket No.  
637 10-0467, the Commission should not order ComEd to implement Uufr. Docket No. 10-  
638 0467, ComEd Ex. 40.0, 1:2-13.

639           Mr. Stutsman argues that, because the program can provide additional reliability  
640 benefits, the Commission should order ComEd to undertake it. What he doesn't  
641 acknowledge, however, is that ComEd's reliability already exceeds minimum  
642 requirements. There are always things a utility can do to improve reliability. Attempting  
643 to implement all of them would be wildly expensive and, in all likelihood, imprudent.  
644 Moreover, ComEd already has an underground facility replacement program under  
645 traditional regulation, although, as Mr. Stutsman notes, at the current rate, total

646 replacement would take 100 years. Requiring ComEd to undertake UUFR would deprive  
647 funding for higher priority projects that are actually necessary for the provision of  
648 adequate and reliable service.

649 Mr. Stutsman's enthusiasm for UUFR illustrates the problem ComEd is trying to  
650 solve with Rate ACEP. UUFR is a discretionary program with tremendous potential  
651 benefits, but too risky to undertake without more incentives and greater assurances of  
652 cost recovery than traditional regulation provides. While a Commission order for ComEd  
653 to pursue UUFR would solve the regulatory risk problem, it does not address the reality  
654 that other, more pressing investments would not get funded if ComEd were ordered by  
655 the Commission to undertake UUFR under traditional regulation. Rate ACEP offers a  
656 much better approach.

657 Finally, Mr. Stutsman also does not seem to recognize that Commission approval  
658 of Rate ACEP effectively would be a Commission mandate to undertake the program.  
659 ComEd would be bound by the UUFR budgets and would be required to carry out the  
660 program. After two years, ComEd's performance would be evaluated. Rate ACEP  
661 obligates ComEd to undertake UUFR, while still allowing ComEd to address its other  
662 capital investment needs.

663 **Q. With respect to the EV Pilot, CTA/Metra witness Bachman argues, “[i]t makes no**  
664 **sense from a policy perspective to burden the most efficient and environmentally**  
665 **sound mode of transportation with the costs associated with a transportation pilot**  
666 **that will provide no benefit to the Railroad Class.” (CTA/Metra Ex. 1.0. 6:116-8). Is**  
667 **he correct?**

668 A. No. There are at least two problems with Mr. Bachman's arguments. First, the EV Pilot  
669 is not a "transportation pilot." While the EVs will transport ComEd employees to various  
670 points around its system, the EVs are actually used for service and maintenance, which  
671 benefits the railroad class.

672 Second, the contention, unproven in this docket, that CTA and Metra offer the  
673 most efficient and environmentally sound mode of transportation is irrelevant because  
674 ComEd's employees cannot simply ride trains and busses to conduct maintenance and  
675 service on the facilities that serve CTA and Metra. ComEd's employees need vans and  
676 trucks to carry the equipment required to address maintenance and reliability issues.  
677 ComEd's employees also need greater flexibility than CTA and Metra can offer.  
678 Everyone benefits if we learn how to do that more efficiently or with lower  
679 environmental impact.

680 Q. **Has the Commission or individual Commissioners expressed support for the**  
681 **promotion of EVs in Illinois?**

682 A. Yes. In a recent newspaper article, Acting Commission Chairman Flores is quoted as  
683 saying: "It's not just about being able to hook up or plug in your electric car at home. ...  
684 It's also about being sure you have the necessary infrastructure so that you can facilitate  
685 the electrification of transportation throughout the state. We want the consumer to have a  
686 positive experience with their electric vehicle." Illinois Herald and Review, Decatur,  
687 Illinois, December 1, 2010<sup>1</sup>, (emphasis provided).

688 The article goes on to note that Commissioner O'Connell-Diaz and the Acting  
689 Chairman "are chairing a Commission project called 'The Plug-In Vehicle Initiative' that

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<sup>1</sup>[http://nl.newsbank.com/nl-search/we/Archives?p\\_action=doc&p\\_docid=133DA8B1C6E1EEB0&p\\_docnum=1](http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=133DA8B1C6E1EEB0&p_docnum=1)

690 has asked the state's utility companies ... to assess the impact from the 'first wave of  
691 plug-in vehicle deployments.'" *Id.* The article also states: "[Chairman] Flores said  
692 getting out in front of the alternative vehicle trend and having a framework in place to  
693 encourage their use may pay off in other ways for the state. He said manufacturers who  
694 see the Land of Lincoln leading the charge toward alternative-fuel vehicles will be more  
695 likely to sell their products here and make investments to support those sales, spurring  
696 economic activity and creating jobs." This approach is not unlike ComEd's overall  
697 Alternative Regulation Pilot, which seeks to get "out in front" of projects and initiatives  
698 that are important to its customers and the state of Illinois.

699 I would also like to point to a Commission Press Release of September 27, 2010,  
700 announcing the creation of the Plug-in Vehicle Initiative. The Press Release states, "[a]t  
701 the outset, the Commission is requesting that the state's three investor-owned electric  
702 utilities submit Initial Assessments of the expected impact of the first wave of plug-in  
703 vehicle deployments." ICC Press Release, September 27, 2010. ComEd's EV pilot is  
704 precisely the sort of program that will enable ComEd to make the evaluation the  
705 Commission is seeking. It will assess the impact of large-scale use of EVs on ComEd's  
706 system. It will provide valuable information to go a long way toward the Commissioners'  
707 stated goal of promoting the use of EVs in Illinois. ComEd is participating in the  
708 initiative.

709 **Q. How do you respond to Ms. Hinman's concern about the \$7,500 federal tax credit**  
710 **available for the purchase of EVs?**

711 **A.** ComEd is simply not in a position to take advantage of the current tax credits expiring  
712 this year, with or without Rate ACEP. If these credits were to be extended, ComEd

713 would certainly revise the budget to take them into account, as well as the tariff, as Staff  
714 witness Hathhorn recommends.

715 **Q. Mr. Brosch, AG witness Colton, and Mr. Stephens contend that ComEd should**  
716 **directly fund the low-income assistance programs, or should seek funding from**  
717 **ComEd’s corporate parent, Exelon. Does this recommendation make sense?**

718 **A.** No. Exelon agreed to fund the ComEd CARE program as part of a broad compromise  
719 enacted by the General Assembly in response to the rate increases that accompanied the  
720 expiration of the nine-year rate freeze. The Attorney General was an active participant in  
721 the negotiations leading to the rate relief law, and when it passed, she publicly supported  
722 it. Exelon and ComEd have fulfilled the commitments they undertook, and, per the terms  
723 of the rate relief plan, the low-income assistance provided by that arrangement is ending.

724 In proposing that Exelon’s shareholders fund these social programs beyond the  
725 terms of the compromise, Messrs. Brosch and Colton seem to be dissatisfied with the deal  
726 the AG negotiated. Dissatisfaction aside, Messrs. Brosch and Colton cannot seriously be  
727 expecting Exelon or ComEd to fund the low-income assistance programs in perpetuity  
728 without cost recovery from other customers.

729 While Mr. Colton is correct that “the ‘legislative settlement’ that originally  
730 established funding for the CARES (sic) programs did not contemplate that these  
731 programs would eventually be continued through ratepayer delivery rates” (AG Ex. 2.0,  
732 39: 901-3), the fact is that the settlement did not contemplate that these programs would  
733 continue at all. Instead of simply allowing the programs to lapse during these difficult  
734 times, ComEd is bringing this to the attention of the Commission and recommending a  
735 reasonable and viable solution to continue them.

736 Q. **How do you respond to the contentions of Mr. Colton that the funding of low**  
737 **income assistance by Exelon is consistent with the public interest?**

738 A. Mr. Colton's opinions appear to be unfettered by even a rudimentary understanding of  
739 public utility regulatory principles. While public utility regulation is infused with the  
740 public interest, this does not translate into Exelon, ComEd, or their shareholders  
741 becoming a public welfare agency. ComEd has always gone beyond its obligation to its  
742 communities. We employ thousands of skilled and talented people who are active in  
743 their communities. We endeavor to provide services with as little environmental impact  
744 as possible. We also partner with governments and other organizations to improve the  
745 quality of life in the communities we serve in a variety of ways, including sponsoring our  
746 employees' participation in a whole host of volunteer projects. And, we offer bill  
747 payment assistance to low-income customers, in a variety of ways.

748 While ComEd believes that these assistance programs continue to serve an  
749 important public purpose and that now is not the time to end them, Exelon (and ComEd)  
750 should not be tasked with the burden of paying for them, as Mr. Colton suggests. This is  
751 contrary to every one of the many regulatory frameworks I have studied over a long  
752 career. All of them would find Mr. Colton's recommendation to be unjust and  
753 unreasonable.

754 Q. **Do you agree that "requiring ratepayers to also pay for the Low-Income programs**  
755 **through an 'alternative regulation' funding source would provide a double**  
756 **recovery" (AG Ex. 2.0, 41:943-4)?**

757 A. No. Mr. Colton's entire analysis appears to be premised on the belief that ComEd  
758 recovers uncollectible expenses in Rider UF without any offsets for programs such as

759 CARE. The reality is that programs such as CARE reduce the amount that would flow  
760 through Rider UF. To the extent that ComEd receives funds through CARE, the  
761 customer receivable is collectible, and thus has no reason to go through Rider UF. Rider  
762 UF incorporates management's best estimate of uncollectible expenses. It is tried up on  
763 a monthly basis taking into account the outstanding balance of accounts receivables as  
764 well as accounts written off during the month.

765 **Q. Ms. Alexander contends that “the low income program expenditure is not**  
766 **accompanied by any analysis of current expenditures for low income programs and**  
767 **their effectiveness, an analysis of the need for additional funding by ratepayers as**  
768 **opposed to the current funding streams by shareholders, or why funding such**  
769 **expenditures through a separate Rider is somehow beneficial to customers**  
770 **compared to expenditures that flow through base rates.” (AARP Ex 1.0, 17:375-80.)**  
771 **How do you respond?**

772 **A.** I recommend that Ms. Alexander review the testimony of ComEd witness Emmons,  
773 ComEd Ex. 5.0, who offers a thorough explanation of each of the Low-Income  
774 Assistance Programs under discussion in this proceeding.

775 **Q. Do you agree with Mr. Bachman, who argues that, because CTA and Metra already**  
776 **subsidize seniors, persons with disabilities, and students, they should not also have**  
777 **to subsidize the Low-Income Assistance?**

778 **A.** No. Many of ComEd's customers provide assistance to the needy or are otherwise  
779 engaged in charitable or social services. ComEd also serves governmental, religious, and

780 non-profit organizations. These customers pay their fair share of ComEd's costs; CTA  
781 and Metra should do the same.

782 **IV. Now is the Appropriate Time to Consider Cost**  
783 **Recovery Mechanisms for Advanced Metering**  
784 **Infrastructure and Smart Grid Investments.**

785 **Q. Do any of the parties contest the timing of ComEd's Rate ACEP regarding**  
786 **advanced metering infrastructure ("AMI") and Smart Grid cost recovery?**

787 A. Yes. Staff witness Schlaf, Mr. Stephens, Mr. Brosch, Mr. Thomas, and Ms. Alexander  
788 argue that selecting a recovery mechanism for AMI and Smart Grid is premature. I will  
789 respond to their individual concerns below.

790 **Q. Dr. Schlaf and Mr. Stephens quote language in ComEd's last rate case (Docket No.**  
791 **07-0566) establishing the process for considering Smart Grid in Illinois. How do**  
792 **you respond?**

793 A. That language does not specifically address a cost recovery mechanism, nor does it  
794 prevent ComEd from making a practical proposal for establishing a cost recovery  
795 mechanism in advance of the approval of specific projects. A "Commission docket to  
796 adopt specific goals and policy framework" (Order, Docket No. 07-0566, p.143) might  
797 consider a cost recovery mechanism, as might "a plan for implementation ..." (*Id.*), but  
798 neither necessarily has to. Nor is there anything else in the Order suggesting that a cost  
799 recovery mechanism cannot be considered in a separate proceeding.

800 **Q. How do you respond to Mr. Stephens' assertion that, "[t]he Commission has**  
801 **established a deliberate three-step process on a statewide basis for evaluating the**

802 **efficiency of, the need for, and a guiding policy for further investment in Smart**  
803 **Grid, as well as the ComEd-specific AMI pilot program.” (IIEC Ex. 1.0, 4:87-90)?**

804 A. ComEd supports the Commission’s Smart Grid and AMI process and has been an active  
805 participant in every phase of the Commission’s AMI and Smart Grid proceedings. In no  
806 way does Rate ACEP undermine these procedures. ComEd hopes that the Commission  
807 will be issuing its Order initiating the Smart Grid Policy Docket (“Policy Docket”) very  
808 soon, which will eventually result in a Commission Order. ComEd will follow that Order  
809 with an implementation filing proposing specific smart grid investments. Rate ACEP  
810 simply facilitates implementation of the Commission’s Smart Grid policy that emerges  
811 from the Policy Docket.

812 Q. **Is Dr. Schlaf correct “that in the absence of detailed information about the**  
813 **programs, including cost information and other programs details, it would be**  
814 **inadvisable to assume that the particular cost recovery methodology proposed in**  
815 **this proceeding would be suitable for these future programs.” (Staff Ex. 3.0, 3:64-**  
816 **6)?**

817 A. No. Ms. Alexander, who makes similar arguments, is also incorrect. The determination  
818 of the cost recovery mechanism is a separate question from the determination of which  
819 AMI and Smart Grid programs will be deployed. Dr. Schlaf offers no explanation for his  
820 contention that the choice of recovery mechanism has anything to do with the  
821 technologies chosen. The logical conclusion from Dr. Schlaf’s statement is that, every  
822 time the Commission evaluates a new AMI or smart grid technology, it will also have to  
823 determine a cost recovery mechanism. I simply do not see that as being necessary.

824 Q. **Do you agree with Dr. Schlaf's recommendation that ComEd could file an**  
825 **alternative regulation plan for smart grid cost recovery following the Policy Docket?**

826 A. No. There is no purpose for a second alternative regulation docket when ComEd is  
827 proposing one here. It makes no sense to argue the merits of alternative regulation a  
828 second time. It would add more uncertainty and will delay and impede the  
829 implementation of any Smart Grid proposal that the Commission finds may benefit  
830 customers.

831 Q. **Do you agree with Dr. Schlaf's suggestion that ComEd could rely on rate-of-return**  
832 **regulation?**

833 A. As I discuss at length above, such an approach for discretionary smart grid investments  
834 would subject ComEd to prohibitively high levels of regulatory risk.

835 Q. **Do you have any comments Dr. Schlaf's recommendation that ComEd could refile**  
836 **for rider recovery of smart grid costs?**

837 A. As Dr. Schlaf suggests, unless it is overturned or otherwise limited, the Appellate Court  
838 decision (*Commonwealth Edison Co. v. Illinois Commerce Comm'n*, No. 2-08-0959 (Ill.  
839 App. Ct., 2nd Dist., Sept, 30, 2010)) makes that, at best, a more risky option.

840 V. **ComEd's Alternative Regulation Proposal Meets the Standards of Section 9-244(b).**

841 Q. **Did any of the witnesses comment on the applicable standards of Section 9-244(b) of**  
842 **the PUA?**

843 A. Yes.

844 Q. **Which of the standards do various witnesses contend ComEd's alternative**  
845 **regulation proposal does not meet?**

846 A. Section 9-244(b)(1), (b)(2), and (b)(8).

847 Q. **Before discussing the actual requirements of Section 9-244(b), please discuss some of**  
848 **the other “requirements” several parties erroneously suggest ComEd’s alternative**  
849 **regulation program needs to meet.**

850 A. I have discussed some of these phantom “requirements” above, but to be clear:

851 Section 9-244 does not require ComEd to demonstrate that traditional regulation  
852 has failed, or that alternative regulation is better than traditional regulation;

853 Section 9-244 does not require ComEd to demonstrate a “need” for Rate ACEP,  
854 or that alternative regulation is “necessary” for the Rate ACEP programs;

855 Section 9-244 does not require that alternative regulation be comprehensive; they  
856 may apply to portions of ComEd’s services and to specific programs;

857 Section 9-244 does not require ComEd to show a change in financial  
858 performance, revised methods to determine revenue requirements, sharing of earnings, or  
859 any other meaningful expansion of performance incentives; and

860 Section 9-244 does not prescribe the form that alternative regulation has to take.  
861 Nothing in Section 9-244 requires that alternative regulation involve price caps,  
862 efficiency benchmarks, baseline comparisons, performance indicia, or other items  
863 suggested by the parties.

864 A. **Section 9-244(b)(1)**

865 Q. **Ms. Alexander, and Messrs. Brosch, Thomas, and Stephens contend that ComEd’s**  
866 **alternative regulation proposals fail to meet section 9-244(b)(1). Does it meet those**  
867 **requirements?**

868 A. It does. The Rate ACEP proposal is likely to result in lower rates than would be charged  
869 to customers to provide the same services under traditional regulation. As I noted above,  
870 it is pointless to argue that traditional regulation would result in lower rates if ComEd  
871 provided fewer services. The purpose of this section is to evaluate methods of providing  
872 service and selecting the lower cost method, not to set up artificial comparisons that tell  
873 the Commission nothing about the underlying rate mechanisms' effectiveness. Indeed, as  
874 I mentioned above, given the 5% O&M reduction, capped at \$2 million, and the powerful  
875 incentives for improved efficiency inspired by the budget caps, Rate ACEP is all but  
876 certain to reduce customer rates over the long term.

877 I also note that ComEd's burden under Section 9-244(b)(1) is not to show that  
878 "this proposal will result in rates that would otherwise be lower than if these programs  
879 were funded under traditional cost of service regulation," as Ms. Alexander would have  
880 the Commission believe. AARP Ex. 1.0, 12:280-1. Rather, Section 9-244(b)(1) requires  
881 that the proposal is "likely to result in rates lower" than would be the case under  
882 traditional regulation. 220 ILCS 5/9-244(b)(1), emphasis supplied. That is what ComEd  
883 has amply done.

884 Q. **Do you agree with Mr. Rearden's contention that the use of budgets makes lower**  
885 **rates less likely?**

886 A. No. In the case of Rate ACEP, at the outset, customers receive a 5% discount on O&M,  
887 up to \$2 million. Under traditional regulation, customers would have to pay the entire  
888 O&M budget. Moreover, I believe that O&M would be higher under traditional  
889 regulation because the extra incentives to save would not be present under traditional  
890 regulation. While Mr. Rearden disputes that budgets will result in greater efficiency, he

891 agrees that “Rate ACEP might comply with the condition if ComEd implements the  
892 program more efficiently by spending less under Rate ACEP than it would if its costs  
893 were recovered under TR [traditional regulation],” Staff Ex. 1.0, 16-7:373-5.

894 Mr. Rearden also notes that, while the Rate ACEP programs will speed up an  
895 increase in capital costs on customers, it will also hasten the depreciation deduction from  
896 revenues for Rate ACEP program. The ultimate impact will depend on the timing of rate  
897 cases. While many factors play into the decision to file a rate case, having to recover the  
898 costs of Rate ACEP programs in a traditional rate case would, all else equal, decrease the  
899 time between rate cases.

900 **Q. How do you respond to Mr. Stephens’ assertion that the \$10 million annual low-**  
901 **income assistance program will simply result in a rate increase for other customers**  
902 **than would have been the case under traditional regulation?**

903 **A.** Mr. Stephens ignores the likelihood that ComEd’s other customers will benefit from a  
904 reduction of uncollectibles expense. The expenses that would have to be paid for in Rider  
905 UF when those low income customers are unable to pay their bills. Regardless, Mr.  
906 Stephens’ argument, at best, is that ComEd’s low income proposals are a wash when  
907 compared to their rate impact if implemented under traditional regulation; the proposal as  
908 a whole meets this criterion, which is all that is required.

909 **B. Section 9-244(b)(2)**

910 **Q. Ms. Alexander, and Messrs. Rearden, Brosch, Thomas, and Stephens contend that**  
911 **ComEd’s alternative regulation proposals fail to meet Section 9-244(b)(2). Are they**  
912 **correct?**

913 A. No. Section 9-244(b)(2) should be read to compare the program benefits with what  
914 customers would gain absent the program. Counsel informs me that Section 9-244(b)(2)  
915 does not, unlike Section 9-244(b)(1), require a comparison of the program's benefits to  
916 the benefits that would be available if the same programs were implemented under  
917 traditional regulation. Yet, except for Mr. Rearden, every one of these witnesses couches  
918 their benefits' evaluations largely in terms of what would be available under traditional  
919 regulation, as if these programs would be implemented in the absence of alternative  
920 regulation. The fact is, they will not be. The way to gain these benefits is through  
921 alternative regulation.

922 Q. **How do you respond to Mr. Stephens' skepticism that the potential benefits of**  
923 **UUFRR might not be worth their cost?**

924 A. Mr. Stephens notes that ComEd reports that its service is 99.9% reliable and questions  
925 "exactly how much investment and expense or what special cost recovery provisions  
926 should be made chasing any achievable portion of the final 0.1% increase in reliability."  
927 IIEC Ex 1.0, 22:502-4. Mr. Stephens' skepticism is countered by Staff witness Stutsman,  
928 who praises the UUFRR for the reliability benefits that would result. Moreover, that is  
929 ultimately the question that ComEd's proposal asks the Commission to answer. If the  
930 Commission does not feel that the additional reliability benefit is in the public interest,  
931 then it will not approve the program.

932 Q. **How do you respond to Mr. Stephens' concerns, in reference to the EV pilot, that**  
933 **"ComEd certainly has not proven that the additional \$5 million will result in any**  
934 **quantified benefit" (IIEC Ex. 1.0, 23:507-8)?**

935 A. Mr. Stephens ignores the potential environmental benefits of EVs, as well as the value of  
936 ComEd gaining an understanding of how this new technology can be used and how it can  
937 impact its system. While ComEd is interested in potentially moving its fleet of utility  
938 vehicles to EVs for its own use, its customers might want to do the same. The experience  
939 ComEd gains with the EV Pilot could be invaluable as it absorbs an increasing amount of  
940 EV technology on its system.

941 Q. **How do you respond to the concerns of several parties regarding the benefits of the**  
942 **AMI and Smart Grid investments?**

943 A. Questions regarding the benefits of AMI and Smart Grid investment will be the subject of  
944 the Policy Docket, which ComEd hopes the Commission will open soon. Also, since  
945 ComEd is not making any specific investment proposals in this area, it is impossible to  
946 evaluate any specific benefits.

947 Q. **How do you respond to the concerns of Mr. Rearden and Mr. Stephens regarding**  
948 **the benefits of the Low Income Assistance Program?**

949 A. Mr. Rearden contends that ratepayers as a whole do not appear to benefit from this  
950 assistance. Mr. Stephens notes that relatively few customers would receive any benefit  
951 from this program, with the vast majority of customers paying the cost. Both witnesses  
952 fail to see that Section 944(b)(2) only requires that the “substantial and identifiable  
953 benefits” be realized “by the customers served under the program.” Both agree that the  
954 low-income customers receiving the assistance would indeed benefit. They also fail to  
955 recognize that this low-income assistance might mitigate some of the costs recovered  
956 under Rider UF.

957 **C. Section 9-244(b)(8)**

958 **Q. Do you agree with Mr. Stephens' concerns about the 5% O&M budget discount?**

959 A. Section 9-244(b)(8) on its face requires an equitable sharing of the benefits of the  
960 alternative regulation program with customers. Mr. Stephens' concerns only make sense  
961 as being a comparison of Rate ACEP with no Rate ACEP. This is an irrelevant  
962 comparison under 9-244(b)(8).

963 Moreover, aside from the contention that ComEd could present budgets that are  
964 "conservatively high," Mr. Stephens offers no evidence whatsoever that, "the recovery on  
965 expenditures within the capital budget is over and above what ratepayers would otherwise  
966 have to pay." IIEC Ex. 1.0, 24:548-51. As I mentioned above, in proposing Rate ACEP,  
967 ComEd accepts risk that it will be able to accomplish its investment commitments within  
968 the budget. This gives ComEd a powerful incentive to beat the budget—a situation that  
969 is not present when ComEd makes investments in a traditional rate case setting.  
970 Moreover, if ComEd is able to beat the budget, Rate ACEP allows a sharing of those  
971 enhanced profits with customers. I believe that this will serve as a powerful incentive to  
972 ensure that customers will not pay more for these same projects than they would without  
973 alternative regulation.

974 **Q. How do you respond to Mr. Stephens' concerns regarding the low-income**  
975 **assistance?**

976 A. Mr. Stephens ignores the benefit all ComEd customers receive when the direct  
977 beneficiaries of the low-income assistance are more able to pay their electricity bills.  
978 ComEd's customers would have to pay many of these costs with higher payments under

979 Rider UF. Moreover, nothing in Section 9-244(b)(8) requires that all customers benefit  
980 from every portion of an alternative regulation plan.

981 **Q. How do you respond to Mr. Brosch's assertions about the sharing of Rate ACEP**  
982 **benefits?**

983 A. Mr. Brosch makes the same error as Mr. Stephens in assuming that Section 9-244(b)(8)  
984 requires a comparison to the situation without the Rate ACEP programs. It does not.  
985 Moreover, Mr. Brosch ignores the benefits ComEd's customers would receive from a  
986 widespread deployment of EVs by ComEd and by its customers that the EV pilot could  
987 facilitate. In making the statement that, "[i]f the UFR produces any net economic  
988 benefits, through reduced outages and outage response costs, the resulting cost savings  
989 would not be shared with ratepayers until they are captured within a future rate case test  
990 year." AG Ex. 1.0, 34:742-5. Mr. Brosch ignores the fact that the reduced outage benefit  
991 accrues immediately. His claim that those cost savings are not realized until a rate case is  
992 simply wrong. Moreover, the testimony of Staff witness Stutsman certainly refutes Mr.  
993 Brosch's contention that the reliability benefits of UFR would not be valuable to  
994 customers. Finally, while some operational savings will not flow through immediately,  
995 once customers begin to receive them, they receive them indefinitely. That is hardly  
996 inequitable.

997 **Q. How do you respond to Mr. Rearden's contention that "ComEd has not**  
998 **demonstrated that there are any net benefits to any of its programs." (Staff Ex. 1.0,**  
999 **22:490-1)?**

1000 A. I would refer Mr. Rearden to ComEd's direct testimony filed in this case and, perhaps, to  
1001 that of Mr. Stutsman. Regarding his discussion of Section 9-244(b)(8), Mr. Rearden  
1002 offers nothing to suggest Rate ACEP fails to provide an equitable sharing of the benefits  
1003 with customers, whatever those benefits may be.

1004 **VI. ComEd accepts some of the proposed revisions to the Rate**  
1005 **ACEP tariff and cost recovery mechanism, but rejects others.**

1006 **Q. Have the parties proposed revisions of the Rate ACEP vehicle itself?**

1007 A. Yes. Several parties have proposed changes to the Rate ACEP mechanism itself. I will  
1008 discuss these below.

1009 **Q. Staff witness Harden recommends that Rate ACEP costs be reflected separately**  
1010 **from other customer charges on customer bills. Does ComEd accept this**  
1011 **suggestion?**

1012 A. ComEd can accept this recommendation, and is willing to discuss its implementation  
1013 with Staff.

1014 **Q. Do you accept the recommendation of Staff witness Hathhorn to remove the**  
1015 **Approved Program Assessment ("APA") and the Underground Regulatory Asset**  
1016 **Amortization ("UAA") factors from the Rate ACEP formula?**

1017 A. No. ComEd expects Rate ACEP to be in place without the need for future revisions to  
1018 the extent possible and prefers to keep these terms in the tariff. These terms can be set to  
1019 zero until actual costs arise.

1020 **Q. Do you accept Ms. Hathhorn's recommendation to eliminate the date in accordance**  
1021 **with Smart Grid Implementation Order?**

1022 A. ComEd intends to honor the outcome the Policy Docket and will base this date on that  
1023 outcome. ComEd is willing to work with Staff to develop appropriate tariff language  
1024 once the Policy Docket, which ComEd hopes the Commission will open soon, is  
1025 concluded.

1026 Q. **Do you accept Ms. Hathhorn's recommendation to revise the date when**  
1027 **unrecovered plant would be transferred to rate base?**

1028 A. No. As ComEd explained in its response to Data Request DLH-1.08, Staff Ex. 5.0,  
1029 Attachment A, ComEd wants to gain experience with the alternative regulation concept  
1030 and wants Rate ACEP to run its course before unrecovered plant is transferred into rate  
1031 base, as would ordinarily happen should ComEd file a new rate case before the Rate  
1032 ACEP pilot is finished. ComEd does not support this recommendation.

1033 Q. **Do you accept Ms. Hathhorn's recommendation to add language to ensure**  
1034 **applicable grants are credited to Rate ACEP Recoveries?**

1035 A. Yes. ComEd accepts this suggestion and is willing to work with Staff to develop  
1036 appropriate language and identify appropriate places in the tariff to insert such language.

1037 Q. **Do you accept Ms. Hathhorn's recommendation to remove incentive compensation**  
1038 **costs from Rate ACEP Cost recovery?**

1039 A. No. ComEd believes that incentive compensation is a *bona fide* cost of doing business  
1040 that is necessary to retain and attract talented employees. It should be recovered from rate  
1041 payers.

1042 Q. **Do you accept Ms. Hathhorn's recommendation to require biennial report be filed**  
1043 **on e-Docket?**

1044 A. Yes. ComEd accepts this recommendation and is willing to work with Staff to clarify the  
1045 proposed language.

1046 Q. **Do you accept Ms. Hathhorn’s recommendation that the biennial review report**  
1047 **“quantify separately for each program the Investment Recovery Amounts, Expense**  
1048 **Limiters Components, and Expense Cap Components related to the previous two**  
1049 **year period” (Staff Ex. 5.0, 13:317-14:319)?**

1050 A. Yes. ComEd accepts this recommendation and is willing to work with Staff to clarify the  
1051 proposed language.

1052 Q. **Do you accept Ms. Hathhorn’s recommendation to accompany the biennial filing**  
1053 **with a statement from a ComEd officer regarding the reasonableness of the costs of**  
1054 **the programs as compared to the Commission approved budgets?**

1055 A. Yes. ComEd accepts this recommendation and is willing to work with Staff to clarify the  
1056 proposed language.

1057 Q. **Do you accept the recommendation of Ms. Hathhorn that ComEd file testimony**  
1058 **with its biennial filing?**

1059 A. Yes. ComEd accepts this recommendation and is willing to work with Staff to clarify the  
1060 proposed language.

1061 Q. **Do you accept the recommendation of Ms. Hathhorn to change “approval of**  
1062 **recovery” to more commonly used term of “recoverable costs”?**

1063 A. Yes. ComEd accepts this recommendation.

1064 Q. **Do you accept the recommendations of Mr. Stephens and Dr. Schlaf that terms**  
1065 **associated with the Low-Income Assistance Program and Smart Grid be removed**  
1066 **from the formula?**

1067 A. No. As discussed above I disagree with Mr. Stephens' and Dr. Schlaf's  
1068 recommendations regarding the Low Income Assistance Proposal and Smart Grid. These  
1069 terms must remain in the Rate ACEP formula.

1070 Q. **Do you accept the recommendation of Dr. Schlaf that terms associated with the**  
1071 **Smart Grid be removed from the formula? (Staff Ex. 3.0, p9, lines 200-3)**

1072 A. No, for the same reason stated above.

1073 Q. **Do you accept the recommendations of Mr. Stephens regarding the allocation of**  
1074 **Factor  $UFA_{DC}$ ?**

1075 A. The allocator of  $UFA_{DC}$  should be consistent with whatever allocator the Commission  
1076 approves in ComEd's pending rate case (Docket No. 10-0467) for primary lines and  
1077 substations. The Commission explicitly directed ComEd to allocate the cost of primary  
1078 facilities on the basis of coincident peak ("CP") method in Docket No. 08-0532. Order,  
1079 Docket No. 08-0532, at 55. If the Commission reverses this ruling then a corresponding  
1080 change to the allocation factor for UFA would be reasonable.

1081 Q. **Do you accept Mr. Stephens' recommendations regarding the allocation of Cost**  
1082 **Component  $DAA_{DC}$ ?**

1083 A. ComEd might be able to support Mr. Stephens' recommendation, depending on the  
1084 relative amount of distribution automation investment on secondary versus primary  
1085 compared to the total ratio of secondary versus primary costs.

1086 **VII. Conclusion: Rate ACEP should be approved.**

1087 **Q. Having reviewed the testimonies provided by the parties, what are your**  
1088 **conclusions?**

1089 A. The parties have raised several issues regarding ComEd's testimony and supporting  
1090 evidence. While several parties have raised concerns warranting minor changes to  
1091 ComEd's Rate ACEP filing, nobody has successfully refuted the merits of ComEd's case.  
1092 The Commission should approve Rate ACEP.

1093 **Q. Does this complete your rebuttal testimony?**

1094 A. Yes it does.