STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	No. 10-0467
Proposed general increase in electric rates	:	

COMMONWEALTH EDISON COMPANY'S PRE-TRIAL MEMORANDUM

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I. INTRODUCTION / STATEMENT OF THE CASE

This proceeding is the result of major increases in ComEd's costs that could not be addressed despite rigorous cost reduction efforts. Since its last rate case, ComEd has made more than $2 billion of new distribution infrastructure investments and continues to invest about $900 million each year to maintain and modernize its system -- expenditures that have increased ComEd's annual costs by $179 million over current rates. After ComEd contributed $803 million to the employee pension fund in 2005, the devastating impact of the recession on the value of pension fund assets led ComEd to make an additional contribution of $152 million in 2009. ComEd's costs for pension, medical and employee benefits increased by $55 million. Faced with rising costs in these and other areas, ComEd acted aggressively to cut $100 million in expenses in 2009, enabling ComEd to avoid seeking a rate increase in 2009, but reductions in load related to the economy and energy efficiency efforts offset a significant portion of those savings, reducing ComEd's revenues by $40 million. While economic conditions and necessary capital investments have posed significant challenges, ComEd continues to meet the needs of its customers, improving the distribution system and achieving top quartile reliability with an average residential rate that is less than half New York City's and below rates in other major metropolitan areas such as Los Angeles, Houston, Washington, San Francisco, Dallas, Philadelphia, Boston, and Detroit.

The current situation is not sustainable. ComEd's revenues from existing rates are $326.3 million less than the amount needed to meet its costs, after taking into account cost cutting initiatives. Adjusting rates to align with current costs will affect customers, but the impact will be modest. Given reductions in supply costs, the average residential customer's bill will increase by about $3 per month. Moreover, even that increase could be more than offset by any customer who takes advantage of existing ComEd efficiency and demand response initiatives and programs.

The reaction from other parties to ComEd's request for a rate increase to recover its increased costs driven by these circumstances is disappointing, to say the least. The ICC Staff ("Staff"), the Illinois Attorney General / Citizens Utility Board ("AG-CUB") and other intervenors propose unsupportable disallowances, some of which directly conflict with the Commission's own decisions and the actions ComEd has taken to conform its operations to those decisions. Staff seeks to disallow recovery of $210 million – nearly two thirds of ComEd's increased costs. AG-CUB propose a roughly $400 million disallowance (when calculated correctly), an amount that equals 100% of ComEd's $326.3 million of increased costs plus a significant reduction in existing revenues.

ComEd has sought to be reasonable and to consider the views of other parties. In arriving at its $326.3 million request, ComEd carefully reviewed all of the proposals in Staff and Intervenor testimony and concluded that some of them had merit. Together with a $14.4 million reduction relating to passage of the Small Business Jobs Act, ComEd reduced its proposed rate increase in rebuttal testimony to accept $11.3 million of adjustments recommended by Staff and made other corrections causing the proposed increase to decline by about $42 million to $353.9 million from the $396.1 million amount proposed in ComEd's June, 2010 filing. In its surrebuttal testimony, ComEd further reduced its revenue requirement increase to $326.3 million to reflect depreciation tax benefits, plant addition updates, reductions in Advanced Metering

Infrastructure ("AMI") program outlays and cash working capital collections lag and other updates. When presented with differing views about ongoing cost levels, reasonable disagreements on the evidence or new developments, ComEd has responded with a willingness to compromise. In addition, there are some areas (such as the estimation of ComEd's cost of equity where judgment is involved and reasonable experts can arrive at different results) in which ComEd understands that the Commission must reach a decision that may not correspond completely with ComEd's view of its costs. However, as the discussion of the issues in this Pre-Trial Memorandum indicates, some of the most significant disallowances proposed by Staff, AG-CUB and other parties are simply wrong and cannot be justified by any reasonable view of the evidence or the law. Examples of such proposals include:

- Efforts by Staff and AG-CUB to reduce significantly the *pro forma* adjustment period specified in 83 Illinois Administrative Code § 287.40, essentially limiting ComEd's rate base adjustments to plant in service and reducing ComEd's rate base by as much as $317.5 million, and

- AG-CUB's proposal to cap recovery of pension expenses at the 2006-2008 average level, reducing ComEd's recovery of its actual expenses by $40 million per year.

Appendix A to this memorandum is a table identifying the issues presented in this proceeding, the rate base and revenue requirement impacts of the issues (as calculated by the proponents of the adjustments) and the Staff, intervenor and ComEd witnesses who discuss each issue. The remainder of this memorandum will provide a more complete description of the issues and the witnesses.

II. OVERALL REVENUE REQUIREMENT AND REVENUE DEFICIENCY

ComEd's overall revenue requirement is $2.267 billion and its revenue deficiency is $326.3 million. Houtsma, ComEd Exhibit ("Ex.") 55, 6:112-113.

III. TEST YEAR

ComEd's revenue requirement is based on its historical 2009 test year with *pro forma* adjustments.

IV. RATE BASE

A. Overview

ComEd's rate base is $7,349,227,000. ComEd Ex. 55.1, Schedule A-4-Revised.

B. Potentially Uncontested Issues

1. Plant

a. AMI Pilot Costs (including AMI Meter Redeployment) (Uncontested b/t Company and Staff)

ComEd's rate base includes $51,888,000 (gross plant amount) for AMI pilot costs. Marquez, ComEd Ex. 10.0, 18:334-19:363; McMahan, ComEd Ex. 9.0, ComEd Ex. 9.1. Staff initially proposed a $1.6 million adjustment to reduce ComEd's regulatory asset for 51,203 meters that were allegedly placed back in service, but, in rebuttal testimony, accepted ComEd's explanation that the vast majority of the 51,203 meters were retired and will not be reused. Rockrohr, Staff Ex. 21.0, 22:475-23:496. Staff's rebuttal testimony includes no rate base adjustment for this item. Staff Ex. 16.04.

b. Other

Although several witnesses seek to exclude portions of ComEd's *pro forma* plant additions from rate base, Terrence Donnelly testifies that no witness contests or presents evidence disputing:

- The justification, cost, or prudence of any actual or scheduled plant addition;
- The planning, design, or engineering of any proposed plant addition;
- The need for any pending plant addition to be completed on schedule;
- ComEd's commitment of all resources required to complete these plant additions on schedule; or
- The workplan or construction schedule for any proposed plant addition.

Donnelly, ComEd Ex. 32.0, 14:258-269.

ComEd agreed to the proposal of AG-CUB witness Brosch to adjust ComEd's rate base for a $5.27 million customer advance that has been determined to be related to a distribution project. Houtsma, ComEd Ex. 29.0, 38:807-814.

ComEd has accepted the proposal of Staff witness Tolsdorf to use a thirteen-month, rather than a twelve-month, average to calculate the amount of customer deposits in rate base. Houtsma, ComEd Ex. 29.0, 37:777-785.

2. General and Intangible Plant

3. Functionalization

C. Potentially Contested Issues

1. Post-Test Year Adjustments

a. *Pro Forma* Capital Additions

Terence Donnelly testifies that ComEd will place $461.5 million of additional plant investments into service from December 1, 2010 through June 30, 2011. When combined with the $555.8 million of plant already placed into service through November 30, 2010, *pro forma* plant additions totaling $1.017 billion are properly included in ComEd's rate base. Donnelly, ComEd Ex. 58.0, 67:1408-68:1428.

Mr. Donnelly explains that ComEd's $461.5 million of additional plant to be placed in service from December 1, 2010 through June 30, 2011 is supported by a detailed bottom-up analysis of the work to be done. Both unique investment projects and work managed through "blanket" investment project designations were analyzed for status, investment, and in service dates. Engineering and operating needs were assessed, and the individual projects and blankets were analyzed to determine the required level of activity by the responsible managers and category owners and their teams. Donnelly, ComEd Ex. 32.0, 15:277-286, ComEd Ex. 58.0, 16:349-17:365.

Robert Donohue testifies that the process ComEd used to determine the $461.5 million plant investment amount has proven to be reliable. It has been subject to review not only by ComEd, but by independent experts who have 75 years of combined experience in managing electric utilities and making the very types of investments ComEd included in its *pro forma* adjustment. Donohue, ComEd Ex. 35.0, ComEd Ex. 59.0, 2:29-3:49. A virtually identical process was used in ComEd's 2007 Rate Case in which *pro forma* plant additions were approved, and the Commission found no fault with ComEd's methodology. Donnelly, ComEd Ex. 32.0, 16:309-319.

Staff witness Ebrey (Ebrey Dir., Staff Ex. 1.0) and AG-CUB witnesses Effron (Effron Dir., AG-CUB Ex. 2.0) and Brosch (Brosch Dir., AG-CUB Ex. 1.0) seek to exclude some or all of ComEd's *pro forma* plant additions from rate base. Terence Donnelly explains that the data supporting ComEd's work and workplans for the plant additions has been available to all parties for months. None of the three witnesses who propose disallowing *pro forma* adjustments dispute any of the data on which they are based, nor, with the exception of various documents mentioned by Ms. Ebrey, do they indicate that they have even reviewed the underlying data. Donnelly, ComEd Ex. 32.0, 17:323-327, ComEd Ex. 58.0, 11:226-228; 17:368-18:373. The voluminous, detailed documentation and data supporting ComEd's *pro forma* plant additions is included in electronic form in ComEd Ex. 32.2, which contains approximately 2.3 gigabytes of material with over 52,000 pages in 10,423 files and 1,064 folders. *Pro forma* plant additions were approved for the Ameren Illinois utilities in Docket No. 09-0306 *et al* based on summary spreadsheet documentation, similar to that provided in ComEd Ex. 8.2 and ComEd Ex. 32.1. The documentation provided in ComEd Ex. 32.2 exceeds that documentation significantly in both scope and detail. Donnelly, ComEd Ex. 32.0, 18:344-349.

With a limited exception for $47 million of plant additions described in her rebuttal testimony, Staff witness Ebrey proposes to exclude from rate base ComEd's investments in plant for the period from January 1, 2011 to June 30, 2011, not because the detailed data supporting the plant additions is in any way deficient, but because Ms. Ebrey contends that ComEd's investment expenditures are subject to contingencies that could cause the amount and timing of the projects to change. Ebrey, Staff Exs. 1.0, 8:157-158, 8.0. Terence Donnelly testifies that ComEd knows with reasonable certainty that investments reflected in its *pro forma* adjustment will be made as scheduled.

Mr. Donnelly explains that, where changes are made to project plans, they occur because specific changes affecting ComEd's system have altered investment priorities, and ComEd has responded by investing in the higher priority work. In many cases this is driven by ComEd's customers or government entities. The fact that ComEd adapts as it should is not indicative of any flaw in the work scheduling process, or of any uncertainty in the overall work schedule.

The testimony of Messrs Donnelly and Donohue indicates that Ms. Ebrey's position that the potential for minor changes in project priorities bars inclusion of $317.5 million of plant additions in rate base is unreasonable, is not supported by Section 287.40 of the Commission's regulations, is inconsistent with the Commission's prior decisions and would effectively prohibit *pro forma* plant additions for all utilities. Other issues raised by Ms. Ebrey, and similar issues by Mr. Effron and Mr. Brosch are addressed in detail in the testimony of Mr. Donnelly, Mr. Donohue and Dr. O'Connor. Donnelly, ComEd Ex. 8.0, 32.0, 58.0; Donohue, ComEd Ex. 35.0, 59.0, O'Connor, ComEd Ex. 53.0, 8:166-9:195.

b. Accumulated Provisions for Depreciation and Amortization Related Provisions for Accumulated Depreciation

Staff witness Ebrey, AG-CUB witness Effron, and IIEC witness Gorman recommend adjustments to roll forward through the *pro forma* capital additions period the depreciation reserve and accumulated deferred income tax ("ADIT") liabilities related to embedded (test year) plant. Kathryn Houtsma testifies that, on September 30, 2010, the Illinois Appellate Court issued an opinion in the appeal of the 2007 rate case in Docket 07-0566 that addresses this issue. ComEd plans to file a petition for leave to appeal the Appellate Court's ruling to the Illinois Supreme Court; that filing is due in late January. Ms. Houtsma explains that, given the status of the appeal and the factors discussed in her direct and rebuttal testimony, ComEd continues to believe that the approach applied in the direct case is appropriate and a *pro forma* adjustment to roll forward the depreciation reserve is not warranted. Houtsma, ComEd Ex. 6.0, 10:209-15:302; ComEd Ex. 29.0, 7:131-11:210, ComEd Ex. 55.0, 7:125-12:237.

c. Accumulated Deferred Income Taxes (ADIT)

See Section IV C 1 b.

2. Construction Work in Progress

Kathryn Houtsma testifies that AG-CUB witness Brosch's proposal to disallow all construction work in process from inclusion in ComEd's rate base is inconsistent with Section 9-214 of the Public Utilities Act, which provides that CWIP may be included in rate base. She explains that the contention that CWIP should be excluded from rate base because it is "vendor financed" is incorrect and disregards the very short term interim nature of accounts payable as a source of funds, the results of ComEd's cash working capital analysis as well as Staff witness

McNally's capital structure conclusions, which he bases on assumptions about financing for CWIP. Houtsma, ComEd Ex. 29.0, 42:896-43:926, ComEd Ex. 55.0, 33:700-34:723.

3. Specific Plant Investments

a. West Loop project repair disallowances

Staff witness Greg Rockrohr's proposes a prudence disallowance in connection with the replacement of a distribution cable after it failed (Project ITN #37977). Michael McMahan testifies that the initial event that sparked this cable failure resulted from human error. The contractors involved were properly qualified and selected and ComEd had proper procedures and practices in place for constructing and operating such cable. Mr. McMahan explains that there was no fault in ComEd's practices or in its management. McMahan, ComEd Ex. 33.0, 1:16-22; ComEd Ex. 60.0, 2:31-14:300.

b. Plymouth Court Feeders

In direct testimony, Staff witness Elsaid questioned the prudence and used and usefulness of the Plymouth Court Feeders Project, but, following provision of additional detail and explanation in ComEd's rebuttal testimony, Ms. Elsaid concluded that the project was prudent and used and useful. Elsaid, Staff Ex. 22.0: 3:50-4:82.

c. Underground Cable

AG-CUB witness Effron and Staff witness Ebrey propose to reduce ComEd's rate base by $15.2 million because a Staff witness in Docket No. 07-0566 contended that the average unit costs for certain underground cable investments exceeded comparable costs in prior years. Kathryn Houtsma testifies that the Final Order in Docket No. 07-0566 and the evidence in this proceeding do not support this adjustment. She explains that ComEd disagreed with the adjustment in Docket No. 07-0566 and presented evidence showing that it was unwarranted, but, as part of a stipulation with Staff, agreed not to oppose it for purposes of that proceeding only. In its Final Order in Docket No. 07-0566, the Commission acknowledged ComEd's factual showing, concluding that "the Company provided justification for the increase in costs" (Docket 07-0566, Final Order at 46). Nothing in the Final Order in Docket No. 07-0566 provided or suggested that the $18.7 million of underground cable costs would be excluded from ComEd's rate base in future proceedings. The adjustment was premised entirely on arguments about the sufficiency of the evidentiary showing in that case. Houtsma, ComEd Ex 29.0, 11:211-12-251, ComEd Ex. 55.0, 32:680-699.

Ms. Houtsma testifies that the evidence in this proceeding demonstrates that the $15.2 million of underground cable costs were prudently incurred and reasonable. The difference between the 2005-2006 costs incurred and the average unit costs in the 2000-2004 period was attributable to a change in capitalization policy with respect to underground cable fault repairs. This change, which occurred in 2004, resulted in the capitalization of certain costs to Account 366 that had been recorded as expense in the prior years. As shown on ComEd 29.4, when the effect of the change in capitalization policy is removed from the calculation of the $18.7 million adjustment, the 2005-2006 average unit costs are lower than the 2001-2004 inflation adjusted costs. In other words, there was no increase in costs. Because no cost increase occurred and because that was the sole basis for the argument in Docket 07-0566 that an adjustment to rate base was appropriate, there is no basis for any adjustment in this proceeding. Houtsma, ComEd Ex 29.0, 11:211-12-251, ComEd Ex. 55.0, 32:680-699.

d. PORCB Costs

Dominion Retail witness Crist recommends disallowance of $12.147 million of the $14.147 million of information technology upgrade costs for Purchase of Receivables Consolidated Billing ("PORCB") that are included in ComEd's rate base, arguing that PECO and Ameren incurred $2 million in PORCB IT upgrade costs and ComEd should recover no more than that amount. ICEA witness Fein recommends that the Commission determine the portion of ComEd's PORCB costs that should be recovered through Rider PORCB and the portion that should be included in ComEd's rate base. Fidel Marquez testifies that, while ComEd agrees with Mr. Fein that the Commission should determine what, if any portion of these costs should be included in rate base, Mr. Crist is incorrect that any portion of the costs should be disallowed because the fundamental and extensive changes to ComEd's billing systems necessary to implement PORCB are prudent and reasonable. Marquez, ComEd Ex. 10.0, 27:541-29:583; ComEd Ex. 36.0, 3:65-20:454. In surrebuttal testimony, Mr. Marquez proposes an alternative under which approximately $6.8 million would be removed from the PORCB cost reovery mechanism. ComEd Ex. 61.0, 3:59-10:233.

e. Allocation of G & I Plant

Staff witness Rukosuev questions a change in ComEd's methodology for allocating general and intangible plant. Kathryn Houtsma testifies that the vast majority of the changes simply involve use of a different general allocator, not substitution of a general allocator for direct allocation of these costs. ComEd Ex 55.0, 35:758-37:803.

f. Other

4. Cash Working Capital

ComEd proposes to include a revised $67.7 million of cash working capital in its rate base, compared with its orginal proposal of $95.7 million. Subbakrishna, ComEd Ex. 57.0, 2:25-34. Nagendra Subbakrishna testifies that inclusion of cash working capital in rate base is provided for under Section 285.2070 of the Commission's regulations, is consistent with the Commission's decisions in recent People Gas, North Shore Gas, Ameren and Nicor cases, and is supported by a Lead Lag Study prepared and revised by Mr. Subbakrishna. Subbakrishna, ComEd Exs. 7.0, 31.0, 57.0.

Staff witness Pearce and AG-CUB witness Brosch propose to reduce ComEd's cash working capital balance to $75.77 million and $0, respectively, based on arguments addressed in the Subbakrishna rebuttal and surrebuttal testimony. Subbakrishna, ComEd Ex. 31.0, 57.0. Mr. Subakrishna points out, among other things, that many of the "assumptions" in ComEd's lead/lag study that Mr. Brosch criticizes were conservative, i.e., they reduced the cash working capital amount. Fidel Marquez responds to Mr. Brosch's suggestion that receivables balances in excess of a certain number of days should be excluded, explaining that there are many reasons why customers could have balances in the "up to 365" days category. Marquez, ComEd Ex. 36.0, 30:683-31:704; ComEd Ex. 10.0, 23:447-27:540.

5. 2009 Pension Trust Contribution

Kathryn Houtsma and Joseph Trpik testify that the defined benefit pension plan covering ComEd employees experienced significantly lower than expected performance over the last few years. Between January 1, 2007 and December 31, 2009 the unfunded status of the plan increased by $2,850 million to a total of $3,643 million, causing the plan to be approximately 40% underfunded. ComEd's portion of the underfunding was $1,389 million. Houtsma, ComEd Ex. 29.0, 19:387-389. To address the significant increase in the unfunded status of the plan, ComEd made an additional $152 million contribution to the plan in 2009. The $92.5 million ICC-jurisdictional portion of the contribution is included in ComEd's rate base as an "other asset" on Schedule B-1, Page 1, Line 14. Houtsma, ComEd Ex. 6.0, 28:559-561.

Making the contribution was the right thing to do. ComEd's goal is to provide adequate funding for the pension plan on which its employees' retirement benefits depend. The contribution benefited workers by making their pensions more secure, and benefited customers by helping ComEd attract and retain experienced and qualified workers needed to provide reliable service and reduced pension expense. Dean Apple, President of the International Brotherhood of Electrical Workers ("IBEW") Local 15, which represents 3,800 employees and 5,638 retirees whose pension benefits and retirement security depend on the pension fund, strongly supports ComEd's decision to address the increase in the unfunded status of the plan. Apple, ComEd Ex. 27.0, 3:53-64.

Staff opposes inclusion of the $92.5 million pension asset in ComEd's rate base[1] contending that the contribution was discretionary and that ComEd should have limited its contributions to the minimum pension expense amount required by law. Pearce, Staff Ex. 3.0. Kathryn Houtsma explains that deferring contributions to address the plan's unfunded status, in effect pushing the problem into future years, is no solution. It would leave the plan significantly underfunded, raising the concerns of ComEd's employees, and would require massive contributions in the future to compensate for the shortfall in plan earnings resulting from lack of funding. Houtsma, ComEd Ex. 29.0, 19:384-20:415. By facing up to the problem and making the contribution in 2009, ComEd avoided the compounding effect of continued underfunding and, as a result of earnings on the contribution, reduced pension expense component of the revenue requirement in this proceeding by $7 million. Houtsma, ComEd Ex. 29.0, 20-409-410. Denying ComEd recovery of the cost of the contribution would be poor regulatory policy and would discourage proper funding of ComEd's obligations to its employees. Tierney, ComEd Ex. 39.0. In rebuttal testimony, Staff witness Pearce revises her position, agreeing that the 2009 pension contribution was a prudent response to the decline in pension fund assets, but continues to contend that the pension asset should be removed from rate base. Ms. Pearce maintains that ComEd would be adequately compensated by provision for a regulatory return equal to the jurisdictional portion of the reduced pension expense resulting from the discretionary

[1] Shown on Appendix A as $68.5 million, which is net of ADIT of $23.8 million.

contribution. In surrebuttal testimony, Ms. Houtsma responds to this new proposal, explaining why inclusion of the pension asset in rate base is appropriate. Houtsma, ComEd Ex. 55.0, 15:315-21:437.

AG-CUB witness Effron contends that ComEd should be denied recovery of the cost of the $92.5 million pension asset, not because the underfunding should have been allowed to continue, but because it should have been addressed in prior years with larger contributions in 2006 through 2008. Effron, AG-CUB Exs. 2.0, 8.0. Ms. Houtsma testifies that the AG-CUB position underscores the need to address the problem and, if it had been handled as Mr. Effron proposes, the impact on ComEd's rate base would have been essentially the same. Houtsma, ComEd Ex. 29.0, 25:514-524; ComEd Ex. 55.0, 20:411-428. In rebuttal testimony, Mr. Effron corrects an error in his calculations, but Ms. Houtsma testifies that Mr. Effron's proposal continues to be based on incorrect assumptions and fails to reflect jurisdictional amounts. Houtsma, ComEd Ex. 55.0, 18:386-19:410.

6. Capitalized Incentive Compensation

Staff and AG-CUB propose disallowances of capitalized incentive compensation. The issues presented by these proposed disallowances are addressed in connection with the discussion of incentive compensation expense in Section V C 1.

7. Customer Deposits

AG-CUB witness Brosch contends that ComEd's customer deposits should be determined using a year end, rather than an average balance, and that non-jurisdictional balances should be included. Kathryn Houtsma testifies that the use of an average, rather than a year end, balance is appropriate because it smoothes out seasonal variations, providing a more accurate reflection of customer deposit amounts. Inclusion of non-jurisdictional customer deposits is inappropriate because this is a delivery services rate case, the outcome of which should not be affected by inclusion of non-jurisdictional amounts. Houtsma, ComEd Ex. 29.0, 37:776-38:814, ComEd Ex. 55.0, 25:529-27:582.

In direct testimony, Staff witness Tolsdorf proposed an adjustment to customer deposits that does not take into account accrued interest payable to customers, but Ms. Houtsma explains that accrued interest should be considered, either as a reduction in the customer deposit balance or through an annual interest accrual included in operating expense. Houtsma, ComEd Ex. 29.0, 37:781-785. In rebuttal testimony, Mr. Tolsdorf also supported AG-CUB witness Brosch's proposal to include non-jurisdictional balances in customer deposit accounts.

8. Material and Supplies Inventories

Staff witness Tolsdorf proposes that a thirteen month average balance be used for materials and supplies inventories, but Kathryn Houtsma testifies that there is no evidence that there are abnormal variations in balances that would call for an averaging approach. The cash working capital calculation already takes into account any benefits from accounts payable balances relating to inventories, making Mr. Tolsdorf's proposed adjustment in that area unnecessary and duplicative. Houtsma, ComEd Ex. 29.0, 42:883-849; ComEd Ex. 55.0, 30:640-32:679. Ms. Houtsma's surrebuttal testimony explains that, if Mr. Tolsdorf's proposal to reduce

Materials and Supplies inventory balances for accounts payable were to be accepted, the $4.9 million thirteen month average of accounts payable (rather than the $12.4 million estimate proposed by Mr. Tolsdorf) should be used. ComEd Ex. 55.0, 31:666-32:679.

9. Severance Cost - Regulatory Debit

Staff witness Tolsdorf proposes to reduce ComEd's recovery of 2009 severance costs by beginning the three-year amortization period on the date the costs were incurred. Ms. Houtsma testifies that Mr. Tolsdorf's proposal is inconsistent with the way in which other regulatory assets are recovered, would violate the prohibition against single issue ratemaking and would not provide for recovery of these costs. ComEd Ex. 55.0, 27:583-29:622. This issue is also discussed under Operaing Expenses.

D. Rate Base (Total)

ComEd's total rate base is $ 7,349,227,000. ComEd Ex. 55.1, Schedule A-4-Revised.

V. OPERATING EXPENSES

A. Overview

ComEd CFO Joseph Trpik testifies that ComEd has significant increased costs attributable to investment in plant ($116 million), depreciation expense ($63 million), pension and retiree health care costs ($55 million), bad debt expense ($22 million), cost of capital ($95 million) and other items. Trpik, ComEd Ex. 4.0, 4:58-76, ComEd Ex. 54.0, 2:19-3:60. He explains that, despite the major cost reduction efforts ComEd has undertaken, which actually *decreased* operating expenses before *pro forma* adjustments (other than pension and retiree health care) by $10 million when compared to the amount allowed in ComEd's last rate proceeding, ComEd has incurred many additional cost increases that are beyond its control. This section identifies the issues that have been raised by Staff and Intervenors concerning ComEd's operating expenses.

B. Potentially Uncontested Issues

1. 2009 Amortization Adjustment of Existing Regulatory Assets (Staff)

ComEd has accepted the proposal by Staff witness Hathhorn to reduce the unamortized balances of six regulatory assets to their May 2011 levels to be recovered over a three-year period. Fruehe, ComEd Ex. 30, 7:131-141.

2. Outside Professional Services – Jacobs Consultancy (Staff)

ComEd accepted the proposal by Staff witness Tolsdorf to remove the jurisdictional portion ($200,000) of costs related to Jacobs Consultancy from the revenue requirement. Fruehe, ComEd Ex. 30.0, 10:197-205.

3. Advertising Expense (Staff)

ComEd has accepted the proposal by Staff witness Tolsdorf to remove $51,538 of advertising expenses from the revenue requirement. Fruehe, ComEd Ex. 30.0, 10:206-211.

4. Investment Tax Credit Amortization (AG)

ComEd agreed to the proposal by AG-CUB witness Effron to reduce income tax by $113,000 by including the amortization of proceeds from the sale of investment tax credits in ComEd's income tax expense. Fruehe, ComEd Ex. 30.0, 13:262-268.

C. Potentially Contested Issues

1. Incentive Compensation Cost and Expenses

Joseph Trpik testifies that ComEd sets employee compensation at levels necessary to remain competitive with comparable companies. The total compensation ComEd pays its employees is the amount needed in the marketplace to attract and retain qualified personnel. Mr. Trpik explains that ComEd uses a "pay at risk" approach under which all employees are at risk of receiving less than competitive compensation if plan goals are not attained. Trpik, ComEd Ex. 4.0, 24:449-464, ComEd Ex. 28.0, 1:17-3:58.

Mr. Trpik testifies that ComEd has two basic incentive compensation programs: the Annual Incentive Program ("AIP") and the Long-Term Incentive Program ("LTIP"). The terms of each plan have been established specifically to comply with the Commission's standards for incentive compensation cost recovery as set forth most recently in Docket No. 07-0566. For the 2009 test year, ComEd revised the AIP to eliminate the net income metric that the Commission disapproved in Docket No. 07-0566, and, therefore, all of the costs incurred under the AIP during the 2009 test year were attributable to meeting operational goals of the type approved by the Commission in Docket No. 07-0566. Similarly, ComEd addressed the concerns identified in Docket No. 07-0566 with the LTIP metrics, eliminated the net income and legislative / regulatory goals from the plan for 2010, insuring that all LTIP costs ComEd will incur in the future meet the Commission's cost recovery standards. Trpik, ComEd Ex. 4.0, 24:448-27:530.

AG/CUB witness Smith proposes to disallow 50% of ComEd's 2009 AIP expense because of ComEd's extraordinary 2010 cost reduction efforts. Smith, AG-CUB Ex. 3.0. Mr. Trpik explains that Mr. Smith's proposal is without any basis because the extraordinary one-time limitations ComEd imposed on the 2010 incentive compensation plan were intended to reduce expenses below the reasonable levels reflected in the 2009 test year. The expected reduction in 2010 incentive compensation does not reflect the reasonable, ongoing costs ComEd will incur and is not an appropriate basis on which to determine the amount of incentive compensation expense properly recoverable in this proceeding. Trpik, ComEd Ex. 28.0, 3:60-4:70. Staff witness Pearce initially proposed significant reductions in AIP cost recovery, but withdrew those proposals in rebuttal testimony, citing new information provided by ComEd in its rebuttal testimony.

Other issues raised by Staff, including a proposed disallowance of LTIP costs, and by AG-CUB are discussed in more detail in the rebuttal testimony of Messrs. Trpik and Donnelly. ComEd Exs. 28.0, 54.0; ComEd Ex. 32.0. In addition, the importance of assuring cost recovery for incentive compensation expense is underscored by the testimony of Dean Apple, President of IBEW Local 15, who explains that ComEd employees represented by IBEW rely on incentive compensation as part of their pay and the Staff and AG-CUB proposals threaten the interests of IBEW employees in this component of their compensation. As Mr. Apple testifies, if ComEd sought to discontinue portions of the IBEW incentive compensation package to address disallowances proposed by Staff, AG and CUB, employees would essentially be taking a pay cut, causing further harm to the Illinois workforce. Apple, ComEd Ex. 27.0, 6:113-129.

2. Rate Case Expenses

a. Rate Case Expenses of the Instant Case

Staff proposes to reduce rate case expenses amortization by $263,000 as revised in rebuttal. Hathhorn, Staff Ex. 17.0, Schedule 17.01. AG-CUB proposes a larger reduction. Smith Reb., AG-CUB Ex. 9.0. ComEd has shown that its revised rate case expense number is prudent and reasonable and that Mr. Smith is incorrect to cut short the recovery given the allocation of work over the course of the case. Fruehe, ComEd Exs. 30.0 CONF., 13:270-17:362, 56.0, 11:218-19:403; ComEd Ex. 56.3 Rev.

b. Alternative Regulation Case

In direct testimony, ICC Staff witness Hathhorn's proposed significant reductions to ComEd's rate case expense based on an over allocation of 50% of legal costs to ComEd's Alt Reg proceeding, which involved only 13% of the total amount of testimony and only about 14% of the data requests involved in the matters, making an equal allocation of legal costs between them unreasonable. In rebuttal testimony, the Staff reduced the proposed disallowance, using an allocation of 18.33% of legal costs to the Alt Reg matter. ComEd opposes any such disallowances. That and the issues raised by Ms. Hathhorn and AG-CUB witness Smith concerning ComEd's rate case expenses are discussed in the testimony of Martin Fruehe. Fruehe, ComEd Ex. 30.0, 13:269-17:362; ComEd Ex. 56.0, 11:216-12:252.

3. Administrative and General (A&G) Expenses

a. Exelon Way Severance Amortization

AG-CUB witness Effron proposes that the Commission terminate any further recovery of the Exelon Way severance costs approved in Docket Nos. 05-0597 and 07-0566, which Kathryn Houtsma testifies would result in loss of 40% of the amount previously authorized for recovery. Ms. Houtsma explains the reasons why the Commission should not terminate the recovery of Exelon Way costs that were authorized in Docket Nos. 05-0597 and 07-0566. Houtsma, ComEd Ex. 29.0, 44:927-47:1010; ComEd Ex. 55.0, 29:623-30:639.

b. Accounts 920-923

An Account 923 issue raised by Mr. Effron is discussed under the Legal Fees-IRS Dispute heading.

c. Pension Costs

(i) Recovery of Actuarially-Determined 2010 Pension and OPEB Costs (Uncontested b/t Company and Staff)

Kathryn Houtsma testifies that ComEd retains an actuarial consulting firm, Tower Watson, to prepare a pension valuation report that is used to determine pension costs based on the funded status of the pension plan. Towers Watson prepared such a report in March 2010, and ComEd relied upon Towers Watson's work when establishing 2010 pension costs for approval in this proceeding. Ms. Houtsma explains that the use of an actuarial report of this type is standard practice in rate cases. In Docket No. 05-0597, ComEd relied upon an August 2005 actuarial report to document pension and post-retirement welfare costs for 2005. In Docket No. 07-0566, ComEd relied upon a May 2007 actuarial report to document pension and post-retirement welfare costs for 2007. Ms. Houtsma testifies that in both of these proceedings, the reports were comparable to the March 2010 report and were accepted as providing known and measureable verification of the ComEd's pension and post-retirement benefit costs. Houtsma, ComEd Ex. 29.0, 31:648-36:775.

In direct testimony, Staff witness Pearce recommended disallowance of ComEd's *pro forma* adjustment to reflect 2010 pension costs, and Ms. Houtsma responded. Houtsma, ComEd Ex. 29.0, 31:648-36:775. In rebuttal testimony, Ms. Pearce revised her position acknowledging that ComEd's adjustment is appropriate. Houtsma, ComEd Ex. 55.0, 21:438-445.

AG-CUB witness Smith argues that 2010 pension costs are high when compared to prior years and that the costs allowed in this proceeding should reflect a normalized average of 2006-2008 levels, rather than ComEd's actual 2010 pension expense. Ms. Houtsma testifies that Mr. Smith's adjustment would reduce ComEd's actual pension expense by $37.4 million, leaving ComEd with massive unrecovered pension costs. Ms. Houtsma indicates that Mr. Smith presented no evidence demonstrating that his proposed annual pension expense was representative of the actual costs ComEd will incur. The Towers Watson report shows that ComEd's actual costs are significantly higher. Houtsma, ComEd Ex. 29.0, 31:648-36:775; ComEd Ex. 55.0, 21:446-23:487.

(ii) 2005 Pension Funding Cost Recovery

In 2005, ComEd made an $803 million pension fund contribution for which the Commission in Docket 05-0597 authorized debt-based cost recovery at the rate of $25.5 million per year, lower than would have resulted from application of ComEd's overall return, as ComEd claimed was appropriate. In its final Order on Rehearing, the Commission recognized that, in making the contribution, ComEd had "incurred a cost" and that customers had derived benefit "as a result of the pension contribution." Order on Rehearing Docket No. 05-0597 at 28. The amount was also included in ComEd's approved revenue requirement in Docket No. 07-0566. In accordance with the Commission's orders, the annual $25.5 million annual cost recovery amount is included in ComEd's revenue requirement.

In direct testimony, Staff proposed to terminate the $25.5 million annual cost recovery the Commission authorized in Docket No. 05-0597, but in rebuttal testimony the Staff modified its position and now contends that the $25.5 million cost recovery authorized in Docket No. 05-0597 should be reduced by $6.329 million to reflect a supposed diminished value of the $803 million contribution due to the passage of time (much as the principal of a mortgage decreases over time). Pearce, Staff Ex. 3.0, 18.0. Kathryn Houtsma testifies that the analogy to an amortizing home mortgage is inapt because less than 1% of ComEd's debt is amortizing debt. ComEd Ex. 55.0, 13:258-15:314. For the vast majority of ComEd's debt, the principal balance remains outstanding until maturity. As Ms. Houtsma explains, there is no indication that the Commission had amortizing debt in mind when it authorized ComEd to recover its $25.5 million debt-based annual cost of the $803 million contribution.

d. Wages and Salaries *Pro Forma* Adjustment

Martin Fruehe testifies that Staff witness Pearce's recommendation to modify ComEd's pro forma 2010 salary and wage increase is unsupported by the evidence and conflicts with the fact that management wage increases went into effect on March 1, 2010 and ComEd incurred other increased costs that support the adjustment. Fruehe, ComEd Ex. 30.0, 18:382-19:405; ComEd Ex. 56.0, 4:73-6-108. See Section V C 3 l, below, regarding AG-CUB's position.

e. Directors' Fees and Expenses

Martin Fruehe testifies that Staff witness Pearce's proposal to reduce directors' fees and expenses by 50% should be rejected because, among other things, a utility is required by law to have a board of directors to govern the affairs of the corporation and the costs of a board of directors are therefore a necessary expense. Fruehe, ComEd Ex. 30.0, 17:363-18-381, ComEd Ex. 56.0, 20:405-415.

f. Corporate Aircraft Costs (Uncontested by ComEd and Staff)

Staff witness Pearce and AG-CUB witness Brosch proposed disallowance of 100% and 50% respectively of ComEd's corporate aircraft costs. To limit the issues in dispute, ComEd has agreed to reduce aircraft expense by 50% or $384,000. Fruehe, ComEd Ex. 30.0, 6:117-130. Staff accepted this adjustment and withdrew its proposed disallowance of 100% of corporate aircraft costs in rebuttal testimony. Pearce, Staff Ex. 18.0.

g. Perquisites and Awards

In direct testimony, Staff witness Pearce proposed disallowance of $3,568,000 of perquisites and awards expense on the ground that these costs were not necessary for the provision of utility service and did not provide direct ratepayer benefits. Ms. Pearce modified her position in rebuttal testimony and now seeks disallowance of $513,000 of this amount. AG-CUB witness Smith proposes disallowance of $1,348,000 of such expenses. Joseph Trpik testifies that these adjustments should be rejected because perquisites and awards are reasonable business expenses that benefit customers. He explains that the majority of the expense represents retention awards, special recognition performance awards and meter reader performance awards designed to improve accuracy and completeness of meter reads. The retention awards are intended to insure that employees filling critical roles within the organization continue in those roles by providing a long term financial incentive. Trpik, ComEd Ex. 28.0, 8:175-9:197. Mr. Trpik testifies that disallowance of such expenses is inappropriate and would discourage the very type of performance that most benefits customers.

h. Severance Expenses

Kathryn Houtsma testifies that ComEd incurred $12.8 million of severance costs in 2009, which it proposes to amortize over a three year period. She explains that the Commission authorized recovery of ComEd's "Exelon Way" severance costs in Docket No. 05-0597 and reached a similar conclusion in Ameren's rate case Docket No. 09-0306 *et al*, providing for amortization of the costs in both situations. Recovery of severance costs is consistent with the intent of Section 285.3125 filing requirements for rate cases.

Staff witness Tolsdorf and AG-CUB witness Effron each propose to disallow portions of ComEd's severance costs. Mr. Tolsdorf would prohibit recovery of all but $269,000 of the $12.8 million expense on the ground that reduced salary expense during the period before rates take effect will adequately compensate ComEd for its severance costs. Ms. Houtsma explains that the savings from ComEd's cost cutting initiative are already reflected in ComEd's revenue requirement so that disallowance of the upfront severance cost would leave ComEd with $12.53 million of unrecovered costs. Mr. Effron makes a similar argument concerning ComEd's 2009 severance costs. To disallow these costs would constitute prohibited single-issue ratemaking because the focus is exclusively on a single element of ComEd's costs, and ignores how other costs during the same period may have exceeded those reflected in existing rates. The Commission rejected a similar argument proposed by the AG in Docket No. 08-0312, and Staff there opposed the kind of adjustment its witness makes here. Houtsma, ComEd Ex. 55.0, 27:584-29:682; ComEd Ex. 29.0, 44:928-47:1010.

Kathryn Houtsma describes the reasons why the Commission should approve recovery of ComEd's $12.8 million of 2009 severance costs over a three-year amortization period. Houtsma, ComEd Ex. 29.0, 44:927-47:1010. In rebuttal testimony, Mr. Tolsdorf proposes adjustments to the amortization amount. Staff Ex. 19.04. Ms. Houtsma responds in her surrebuttal testimony. Houtsma ComEd Ex. 55.0, 27:583-29:622..

i. Charitable Contributions

Staff witness Tolsdorf and AG-CUB witness Brosch propose disallowance of portions of ComEd's $6.3 million (before jurisdictional allocations) of charitable contributions. Martin Fruehe testifies that ComEd's contributions are reasonable, are lower than the $6.8 million of contributions approved in Docket No. 07-0566, support well-established civic or charitable organizations and should be approved. Fruehe, ComEd Ex. 30.0, 7:142-9:196, ComEd Ex. 56.0, 6:109-8:166.

j. Legal Fees – IRS Dispute

Martin Fruehe testifies that AG-CUB witness Effron's proposal to reduce ComEd's jurisdictional operating expenses by $2.187 million for legal costs related to an IRS dispute associated with the gain on the sale of the fossil generating units (which Staff adopted in rebuttal) should be rejected because these costs are likely to relate to both the transmission and distribution functions and are properly allocable to the appropriate function by use of a general allocator that applies to the thousands of charges in Account 923. Fruehe, ComEd Ex. 30.0, 10:213-11:221, ComEd Ex. 56.0, 8:167-9:179.

k. Professional Sporting Activity Expenses

Martin Fruehe testifies that the proposal by Staff witness Tolsdorf and AG-CUB witness Smith to remove costs associated with professional sporting activities should be rejected because these are reasonable business expenses for employee recognition, team building and development of customer relationships. Fruehe, ComEd Ex. 30.0, 11:222-229; ComEd Ex. 56.0, 9:180-194.

l. Workforce Expense Reduction

Mr. Fruehe testifies that the proposal by AG-CUB witness Effron to cut $4.2 million from ComEd's *pro forma* wage and salary expense due to a reduction in the number of employees in 2010 is not supportable because ComEd has already taken into account sustainable savings from the reductions and the proposed adjustment overlooks offsetting increases in overtime and fringe benefits. Mr. Fruehe explains the reasons Mr. Effron's proposed adjustment, and an adjustment by Ms. Pearce, should be rejected. ComEd Ex. 30.0, 5:102-6:116; ComEd Ex. 56.0, 4:71-6:108.

4. AMI Pilot Expenses

Staff witness Tolsdorf in rebuttal proposes a reduction in ComEd's AMI Pilot operating and maintenance expenses. Martin Fruehe and Fidel Marquez in surrebuttal testify that ComEd has reduced its AMI Pilot O&M expenses from $2.8 million to $1.306 million. Fruehe, ComEd Ex. 56.0, 25:526-29:599; Marquez, ComEd Ex. 61.0, 10:234-12:259.

5. New Business Revenue Credit

This issue is discussed in the Revenues section of this Pre-Hearing Memorandum.

6. Tax Repair Methodology – New IRS procedures

AG-CUB witness Effron contends that ComEd's revenue requirement should be adjusted to reflect a new method of tax accounting for repair charges. Kathryn Houtsma testifies that implementation guidelines for the new method have not yet been issued by the IRS. She explains that, if guidelines for the new method are issued and can be implemented by ComEd, customers will benefit because any resulting cash flows will help finance new plant investment and the cumulative accelerated benefit will be reflected as a reduction to rate base in future rate cases. Houtsma, ComEd Ex. 29.0, 38:815-41:882. Staff also opposes the adjustment. Hathhorn, Staf Ex. 17.0.

7. Depreciation of Intangible Plant

Kathryn Houtsma testifies that AG-CUB witness Effron proposes to reduce depreciation expense for intangible plant based on a flawed analysis that significantly understates the expected annual depreciation expense on a going forward basis. Houtsma, ComEd Ex. 29.0, 47:1011-47:1025; ComEd Ex. 55.0, 34:733-35:757.

8. Late Repayment Charge Reclassification

Martin Fruehe testifies that the proposal by AG-CUB witness Brosch in his direct testimony to increase other revenues by $15.99 million for late payment charges received by ComEd is without merit because the payments do not relate to delivery services and should not reduce ComEd's Illinois jurisdictional revenue requirement. Fruehe, ComEd Ex. 30.0, 20:416-21:452. In rebuttal testimony, Mr. Brosch reduced his adjustment by $2 million to account for amounts he believes are allocable to the transmission function, but Mr. Fruehe explains that Mr. Brosch continues to include the remaining non-jurisdictional amounts in his reclassification. Fruehe, ComEd Ex. 56.0, 23:484-24:500. Staff also opposes the adjustment. Hathhorn, Staff Ex. 17.0.

9. Illinois Electric Distribution Taxes

AG-CUB witness Brosch proposes to reduce ComEd's revenue requirement using an alternative methodology for determining Illinois Electric Distribution Taxes (IEDT). Mr. Fruehe testifies that Mr. Brosch's proposal should be rejected because it fails to recognize that the IEDT credit ComEd receives lags ComEd's IEDT payment by three years, and ComEd appropriately used an average credit amount that smoothes out year to year fluctuations. Fruehe, ComEd Ex. 30.0, 11:230-12:261, ComEd Ex. 56.0, 10:195-215. Staff also opposes the adjustment. Hathhorn, Staff Ex. 17.0.

10. Depreciation and Amortization Expenses (Derivative and Direct)

11. Regulatory Asset Relating To Tax Liability for Medicare Part D (Uncontested b/t Company and Staff)

Kathryn Houtsma testifies that the March 2010 federal health care reform legislation changed the tax-free status of cash subsidies paid to employers who provide prescription drug coverage to retirees. Absent the subsidy, there was concern in Congress that, after the adoption of Medicare prescription drug benefits in 2003, employers might cancel their coverage and have retirees become Medicare Part D participants. The tax-free subsidy, together with the deductibility of the prescription drug coverage costs, provided an incentive for employers to continue their programs. Houtsma, ComEd Ex. 29.0, 26:536-31:647.

Ms. Houtsma explains that, in prior rate cases, ComEd passed on to customers through a reduction in post-retirement costs the full estimated benefit of an accrual for tax-free subsidies to be received from the federal government, even though actual payments to ComEd lagged significantly behind the rate of the accruals. She testifies that, now that the subsidies to be received will be taxable, it is clear that the reduction in post-retirement costs provided in the past were overstated. In order to recover these excessive credits for the 2004-2009 period, ComEd proposed that a regulatory asset be established equal to the amount of the tax obligation imposed by the new legislation and that the asset be amortized over a three year period. ComEd also provided for recovery taxes due on subsidies for 2010-2012. Houtsma, ComEd Ex. 29.0, 26:536-31:647.

In direct testimony, Staff witness Pearce opposed ComEd's proposal and Ms. Houtsma responded. Houtsma, ComEd Ex. 29.0, 26:536-31:647. In rebuttal testimony, Ms. Pearce agrees with ComEd's position on this issue.

AG-CUB witness Effron acknowledges that recognition of a regulatory asset is appropriate, but argues for a longer ten-year amortization period, which Ms. Houtsma testifies would leave ComEd with insufficient funds to make required tax payments when they became due. She explains that the three-year period proposed by ComEd is therefore appropriate and should be approved. Houtsma, ComEd Ex. 29.0, 26:536-31:647; ComEd Ex. 55.0, 23:488-25:528.

12. Taxes Other than Income Taxes (Derivative Adjustments)

13. Income Taxes (Derivative Adjustments)

14. Photovoltaic Pilot Costs

In order to narrow the issues in this proceeding, ComEd has accepted Mr. Tolsdorf's proposed adjustment to photovoltaic pilot costs. Houtsma, ComEd Ex. 55.0, 34:724-732

15. Customer Deposits – Interest Expense Component

D. Operating Expenses (Total)

VI. RATE OF RETURN

A. Overview

The following chart summarizes the rate of return recommendations of ComEd and the Staff and Intervenor witnesses addressing cost of capital issues, showing the individual components on which the overall weighted average cost of capital is based.

Party	**Capital Structure**	**Long Term Debt Cost**	**Short Term Debt Cost**	**Return on Equity**	**Rate of Return**
ComEd	LTD 52.54% STD 0.18% Equity 47.28%	6.52%	0.39%	11.50%	8.98%
Staff	LTD 52.53% STD 0.54% Equity 47.11%	6.52%	0.54%	10.0%	8.24%
IIEC	LTD 52.56% STD 0.11% Equity 47.33%	6.53%	0.73%	9.60%	8.10%
AG-CUB	LTD 52.56% STD 0.11% Equity 47.33%	6.53%	0.73%	8.94%	7.79%

B. Capital Structure

ComEd proposes to use its actual capital structure adjusted as in past proceedings to remove goodwill. No Staff or intervenor witness recommends a hypothetical capital structure. With the exception of the small issue concerning the balance of short-term debt discussed in the next section of this memorandum, the parties addressing capital structure issues agree on the components and percentage weights used in ComEd's capital structure.

C. Cost of Short-Term Debt

Martin Fruehe testifies that ComEd's short-term debt balance is $15,870,000. Staff proposes a balance of $49,344,124. Mr. Fruehe explains that the difference is due to Mr. McNally's use of a thirteen month average balance ending September 2010, whereas ComEd used an average balance for the thirteen month period ending March 31, 2010 -- the month in which the balances of the other components of ComEd's capital structure were determined. Fruehe, ComEd Ex. 30.0:541-550. In surrebuttal testimony, Mr. Fruehe acknowledges that Staff's proposal is an alternative approach that could be used, but continues to support use of an average balance for the thirteen month period ending March 31, 2010. Fruehe, ComEd Ex. 56.0, 25:510-519. IIEC and AG-CUB accepted the capital structure proposed in ComEd's direct testimony before the revisions from ComEd's rebuttal testimony to accommodate, in part, Staff's thirteen month averaging methodology.

D. Cost of Long-Term Debt (Potentially Uncontested)

No issues remain concerning the cost of the long-term debt (6.52%) in ComEd's March 31, 2009 capital structure. IIEC and AG-CUB agreed with ComEd's direct testimony supporting a 6.53% cost of long term debt. Given that ComEd and Staff now have concluded a 6.52% cost of long-term debt is appropriate, IIEC and AG-CUB presumably support that position. No other parties addressed this issue.

E. Cost of Common Equity

ComEd's cost of equity is supported by the testimony of three expert witnesses. Samuel Hadaway is a professor of economics and finance and a principal in FINANCO, Inc., Financial Analysis Consultants. Carl Seligson is an independent consultant with nearly 50 years' experience in the financial markets who specialized in financial matters related to the utility industry. Dr. Hadaway and Mr. Seligson performed independent assessments of ComEd's base cost of equity. The mid-point of Dr. Hadaway's estimates using three discounted cash flow approaches is 10.6%. Mr. Seligson performed both a risk premium and a comparable earnings analysis concluding that ComEd's cost of equity is 12.0%. Based on the Hadaway and Seligson studies, ComEd requests a base cost of equity of 11.1%.

In addition to ComEd's base cost of equity, Hon. Susan Tierney Ph. D., a Managing Principal at the Analysis Group and former assistant U.S. Secretary of Energy for Policy and Commissioner of the Massachusetts Department of Public Utility Control, analyzed the adverse financial implications that arise from ComEd's successful implementation of mandated energy efficiency and demand response programs, and testifies that the risks and revenue erosion resulting from those programs justify a 40 basis point cost of equity adder proposed by ComEd. Tierney, ComEd Exs. 39.0, 64.0. When added to the 11.1% base cost of equity resulting from the Hadaway and Seligson analyses, Dr. Tierney's recommended 40 basis point adjustment produces a total cost of equity of 11.5%.

Staff witness McNally proposes a return on equity of 10%. IIEC witness Gorman submits an estimate resulting in a 9.6% return on equity, which Steven Fetter testifies is lower than the allowed returns on equity in all but 9 of the 552 utility commission rate cases decided since 1989. Fetter, ComEd Ex. 45:317-321; ComEd Ex. 63.0. AG-CUB witness Thomas proposes an even lower return on equity of 8.94%.

Samuel Hadaway testifies that the principal difference in the cost of equity estimates using the discounted cash flow approach is that Messrs McNally, Gorman and Thomas use unrealistically low growth rate assumptions. ComEd Ex. 37.0:279-300, 369-375, 407-423, 506-533. Dr. Hadaway explains that Staff's capital asset pricing model analysis was conducted on September 22, 2010 when the risk free 30 year long term Treasury rate of 3.77% was near an all-time low, McNally (Staff Ex. 5.0:504-505), 67 basis points below the rate on December 29, 2010. Hadaway, ComEd Ex. 62.0, 9 fn 1. Dr. Hadaway identifies other issues affecting ROE of Messrs McNally, Gorman and Thomas. Hadaway, ComEd Ex. 37.0, 62.0.

F. Adjustments to Rate of Return

Staff proposes a downward adjustment of between 20 and 32 basis points to ComEd's return on equity in the event that ComEd's straight fixed variable proposal is adopted. McNally (Staff Ex. 5.0:807-827). Dr Tierney's rebuttal testimony explains why no such adjustment is appropriate and why Mr. McNally's reliance on Dr. Tierney's testimony is support of his adjustment is misplaced. Tierney, ComEd Ex. 39.0:116-288, ComEd Ex. 64.0.

G. Overall Cost of Capital (Derivative)

The positions of the parties on ComEd's overall weighted average cost of capital – its rate of return - are shown on the chart included in section VI A of this memorandum.

VII. COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

ComEd has presented an embedded cost of service study ("ECOSS") that allocates embedded distribution and customer costs among the retail delivery service classes and develops the unit costs. Alan Heintz testifies that the structure of the ECOSS is substantially the same as studies that ComEd proposed, and the ICC approved, in prior ComEd delivery service rate cases. Heintz, ComEd Ex. 15.0, 1:17-2:31.

B. Potentially Uncontested Issues

C. Potentially Contested Issues

1. Embedded Cost of Service Study Issues

a. Class Definitions

(i) Residential Classes

(ii) Non-residential Classes

b. Primary/Secondary Split

(i) Appropriate Methodology/Compliance with Docket No. 08-0532

a) Functional Identification of Costs

IIEC contends that 24.78% of ComEd's cost for overhead primary voltage conductor and 32.82% of ComEd's costs for underground primary voltage conductor should be allocated as secondary costs and only customers that take service from a single-phase circuit should be responsible for those costs. REACT suggests that costs for single-phase and two-phase primary voltage overhead or underground line sections should not be allocated to any customer in the Extra Large Load Delivery Class, although REACT later retreated from that position. Mr. Alongi testifies that these proposals are inequitable to other customers that do not use other parts of ComEd's distribution system and that a much more complex analysis than IIEC and REACT have presented would be required to take into account the parts of ComEd's system that certain customers use more intensively than others while maintaining equity among customers. Alongi, ComEd Ex. 49.0, 23:523-25:557, ComEd Ex. 68.0.

b) Direct Observation of ComEd Facilities

Staff witness Lazare suggests that "direct observation" should have been used to determine the allocators for ComEd's primary/secondary analysis. Mr. Alongi testifies that "direct observation" appropriately includes analysis of ComEd's system maps and that experience has shown that ComEd's maps provide a reliable representation of the facilities that are in the field when the facilities are mapped, making additional analysis of the type proposed by Mr. Lazare unnecessary. Alongi, ComEd Ex. 49.0, 32:713-39:885, ComEd Ex. 68.0.

c) Sampling

d) Review of Other Utilities Treatment of Primary/Secondary Issues

Staff witness Lazare raised questions about ComEd's review of the methods used by other utilities to differentiate between primary and secondary costs as required by the Commission's order in the rate design docket. Final Order, Docket No. 08-0532, p. 40. Lawrence Alongi's testimony explains that the Commission's order involved two tasks: examining how utilities distinguish between primary and secondary systems, and how they allocate the costs. Mr. Alongi explained that Mr. Lazare's questions fail to account for the first task, which ComEd performed by examining the tariffs of 35 unbundled distribution utilities in California, Texas, the Midwest, the Mid-Atlantic, and the Northeast. ComEd's review showed that most utilities use a specific voltage level (i.e., a bright line) to distinguish between primary and secondary systems, and several use 4 kV as that bright line at which the primary system is defined, which confirms that the basic approach used by ComEd is consistent with the approach used by other utilities. In addition, ComEd made significant efforts to investigate the second task, concluding that the necessary cost allocation information was simply unavailable, demonstrating that Mr. Lazare's proposals for more elaborate efforts to discover additional facts are neither practical nor likely to be productive. Alongi, ComEd Ex. 49.0, 39:886-44:989, ComEd Ex. 68.0.

(ii) Other Primary/Secondary Split issues

a) 4kv facilities allocation

CTA/Metra maintains that the costs for 4 kV facilities, as well as 34 kV facilities, should be excluded from the calculation of the Railroad Delivery Class' rates because the facilities are not used to serve the Railroad Delivery Class. REACT claims that any costs for 4 kV overhead or underground primary voltage sections should be excluded from cost allocations to the Extra Large Load Delivery Class. Lawrence Alongi testifies that it is not appropriate to exclude all costs for these facilities from these classes because there are instances in which such customers use circuits or facilities that operate at 4 kV or 34 kV and that any attempt to segment ComEd's 3.8 million customers by usage of 4kV, 12 kV and 34kv facilities would be burdensome, complicated and fraught with assumptions. Alongi, ComEd Ex. 49.0, 29:651-30-682; ComEd Ex. 68.0.

c. Investigation of Assets Used To Serve Extra Large Load Customer Class

d. NCP vs. CP

IIEC witness Stowe recommends that ComEd allocate primary lines and substations costs based on noncoincident peak ("NCP") rather than coincident peak ("CP"). Commercial Group witness Mr. Baudino offers a similar recommendation. Robert Garcia explains that the Commission, in its recent Rate Design Investigation order in Docket No. 08-0532, directed that ComEd use CP for allocation of these costs in this proceeding and that is what ComEd has done.. Garcia, ComEd Ex. 50.0, 5:108-6:133.

e. Allocation of Primary Lines and Substations

This issue is discussed under the NCP vs. CP heading.

f. Functionalization of General and Intangible Plant

Staff witness Rukosuev raises issues about the manner in which general and intangible plant is functionalized in ComEd's embedded cost of service study. The surrebuttal testimony of Kathryn Houtsma explains that appropriate general allocators were used in the functionalization process and, given the absence of a basis on which to make a direct allocation, ComEd's approach is reasonable. Houtsma, ComEd Ex. 55.0, 35:758-37:803 .

g. Street Lighting

This issue is discussed in sections VII C 3 c. and VII G 1.

h. Allocation of Illinois Electricity Distribution Tax

IIEC and REACT disagree with the allocation of the Illinois Electricity Distribution Tax in ComEd's embedded cost of service study on the basis of kWh, recovery of the cost of the tax through a cents per kWh charge and reflecting the tax as a separate item on customer bills. Lawrence Alongi testifies that the kWh charge is appropriate to avoid subsidization of high load factor customers, that this variable charge should be recovered in the manner ComEd proposes and that, in the Ameren case, the Commission endorsed use of a separately identified line item for the charge. Alongi, ComEd Ex. 49.0, 17:378-18:426. Alan Heintz discusses the Commission's analysis of this issue in the Ameren case in more detail, noting the conclusion in the ICC's order that cost causation is best accounted for by allocating the tax among classes based on energy usage. Heintz, ComEd Ex. 51.0, 4:116-9:191.

i. Indirect Uncollectible Costs and Uncollectible Costs

City of Chicago witness Bodmer contends that, in allocating uncollectible costs, ComEd failed to allocate indirect costs of collecting, administering, managing, disconnecting and reconnecting uncollectible accounts. Robert Garcia testifies that the City has not provided support for the additional costs it proposes to allocate, the proposal would make little difference to multi-family residential class rates, and ComEd's revenue based allocation of uncollectibles costs is preferable to the kWh charge proposed by the City. Garcia, ComEd Ex. 50.0, 6:134-9:199.

j. Customer Care Cost Allocation

REACT witness Merola proposes to remove ComEd's recovery of "customer care" costs from delivery service rates and shift that recovery to supply rates. Ronald Donovan presents a study, denominated the switching study, that shows that the costs ComEd incurs in providing these services will not be reduced as customers switch to RES supply and hence that these costs should continue to be recovered in delivery service rates. He also presents an alternative analysis, denominated the allocation study, that shows how a portion of these costs might be allocated away from the delivery function. Phillip Rukosuev of Staff agrees with ComEd that these costs are properly delivery service costs that should continue to be recovered in charges to delivery service customers. Mr. Garcia for ComEd testifies that ComEd's switching analysis is not inconsistent with an embedded cost of service methodology and that the switching study is a proper means of determining which portion of common costs are distribution related. Garcia, ComEd Ex. 50, 10:224-12:275; Donovan, ComEd Exs. 19.0, 48.0, 72.0.

k. Other Docket No. 08-0532 Compliance Issues

l. Other Issues

D. Rate Moderation

VIII. RATE DESIGN

A. Overview

In its initial filing, ComEd proposes rates using the same rate design methodology employed in the last rate case, Docket No. 07-0566, ("proposed rate design") . Pursuant to the final Order entered in the Commission's Rate Design Investigation Order (Docket No. 08-0352), ComEd, submitted, among other things, an exemplar rate design and exemplar tariff revisions that would be implemented in the event the Commission directs ComEd to institute a Primary Voltage Delivery Class ("exemplar rate design"). In response to certain concerns raised during the proceeding, ComEd submitted an alternative exemplar rate design in which the demand-based nonresidential classes are subdivided to incorporate certain charges for service points to which electricity is delivered above a certain threshold ("alternative exemplar rate design"). The three proposed rate designs mainly differ in their recovery of the costs of the primary distribution system.

In this proceeding, ComEd proposes two main rate design changes. First, ComEd proposes rates that properly reflect fixed and variable delivery service costs. Those delivery services costs that vary with a customer's short-term use should be recovered through use and demand charges that vary each period. Those costs that do not so vary should be recovered through fixed charges. ComEd is proposing rates that accomplish this in a revenue neutral way, without any change in its total revenues. In addition, ComEd proposes rates that implement a differentiation in recovery of the costs of ComEd's primary and secondary distribution systems as called for by prior Commission orders.

As noted by Dr. Hemphill, the issues of interclass revenue allocation and rate design must be placed in their proper perspective. The rate design portion of the case is not about determining ComEd's revenue requirement. Rather, it concerns the allocation of the revenue requirement among customer classes and rate elements. This is a zero-sum (revenue neutral) process, with the objective of allocating the revenue requirement among customer classes in a manner that is fair to customers, while allowing for full recovery of these revenues. If one customer class does not pay its fair share of costs, another customer class ultimately must pick up the bill, which results in a subsidy.

In this proceeding ComEd proposes a reasonable approach to apportion costs using the Commission's preferred embedded cost approach to minimize interclass rate subsidies. In making decisions concerning interclass revenue allocation and rate design, ComEd sought to balance the interests of all customers that receive services and pay rates established through this regulatory process.

While various customers and customer groups endorse shifting costs to other customer classes to reduce their own rates, ComEd seeks to set delivery service rates on traditional cost-causation principles and other goals of rate design to ensure that all customers are paying their fair share for delivery service. Accordingly, ComEd asks the Commission to approve its proposed interclass allocation and rate design, as described in ComEd's testimony in this proceeding.

B. Potentially Uncontested Issues

1. High Voltage Rate Design Simplification

For both the customer charge and the standard metering service charge, ComEd proposes to reduce the list of six possible charges for each to a single customer charge and a single standard metering service charge. With respect to the DFCs, ComEd proposes to reduce the list of five possible standard voltage DFCs to a single DFC for all load provided at voltages entering customer premises below 69 kV. For all load provided at voltages entering the customer premises at or above 69 kV, ComEd proposes to continue having two DFCs, one applicable if the customer's highest thirty minute demand in the past twelve monthly billing periods exceeded 10 MW and the other applicable if the customer's highest thirty minute demand in the past twelve monthly billing periods did not exceed 10 MW. No party has objected to ComEd's proposal to simplify the rate design for the High Voltage Delivery Class. ComEd's proposal is reasonable as well as unopposed and should be approved.

2. Rate MSPS (Staff- need to verify in Rebuttal)

ComEd proposes a change to the Meter Reading Charges, which would apply if a retail customer elects to be provided metering service from a Meter Service Provider. Staff witness Harden recommends that the Meter Reading Charges and that charges to read additional meters or for special exchanges be limited to an increase of 50%. Ms. Harden also recommended increase in the amounts to read the first meter and any additional meters or special exchanges. ICC Staff Ex. 11.0, 32:656-35:726. In rebuttal, ComEd witness Alongi accepted Staff witness Harden's recommendation. ComEd Ex. 49, 57:1279-1281.

3. General Terms and Conditions

a. New Customer with load that includes motors equal or greater than five horse power (Staff- need to verify in Rebuttal)

ComEd's proposal seeks to clarify that when a new customer has load that includes motors equal to or greater than 5 horsepower, a 3 phase voltage is provided as standard. ComEd Ex. 16.0 Revised, p. 45:859-870. To date, no party has objected to ComEd's proposal.

4. Miscellaneous Charges and Fees (Staff)

ComEd accepts Staff witness Harden's recommendation to limit the increases to certain miscellaneous charges and fees that are contained in ComEd's General Terms and Conditions ("GTC"), Rate MSPS – Metering Service Provider Service ("Rate MSPS"), and Rate RDS – Retail Delivery Service ("Rate RDS") and make corresponding adjustments to ComEd's revenue requirement.

5. Meter Lease Charges

ComEd has proposed revisions to Rider ML – Meter-Related Facilities Lease ("Rider ML") which update meter lease charges and simplify the manner in which meter leases are administered. To date, no party has objected to ComEd's proposal. ComEd believes this proposal is reasonable and should be approved

6. Residential Real Time Pricing Program Costs (Staff- need to verify in Rebuttal)

ComEd proposes a change in the recovery of costs associated with its residential real time pricing program ("RRTP") in Rider RCA that would reduce the charge from $0.14 per month to $0.05 per month and proposes to eliminate the $2.25 charge currently applicable to residential customers taking service under rate RRTP. Staff witnesses Ms. Harden and Dr. Schlaf voiced no objection to ComEd's proposals. See, generally ICC Staff Ex. 31.0 and 27.0.

7. Standard Meter Allowances

The Standard Meter Allowances ("SMA") were changed due to the identification of additional customers eligible for the exemplar Primary Voltage Delivery Class and to adjust for an error as to the number of customers in the Extra Large Load Delivery Class. To date, no party objected to ComEd's proposal. ComEd believes this proposal is reasonable and should be approved.

C. Potentially Contested Issues

1. SFV (ComEd Proposal)

Dr. Hemphill testifies that the single most important step in bringing ComEd's rate design into line with its cost is to properly align the fixed and variable prices in ComEd's delivery rates with the fixed and variable costs of customers' use of ComEd's delivery system. This is accomplished by moving towards a straight fixed-variable ("SFV") rate design. The SFV rate design, as proposed by ComEd only pertains to customers without demand-recording meters, (i.e. residential and small general service or watt-hour customers) and establishes fixed and variable charges that track the fixed and variable costs of serving each customer or customer class. ComEd Ex. 14 Revised, 8-9:179-184.

Failing to properly make the distinction between fixed and variable costs results in misallocations of costs. Charges to individual customers are further distorted as their behavior changes, because the rates do not reflect the costs of their changed behavior. The current rate structure recovers an inordinate proportion of fixed costs through rates that are not fixed, but that vary with volume. This penalizes utilities for conservation programs and sends a distorted price signal to customers.

ComEd proposes that the delivery rate design for the residential delivery classes that do not have demand-based charges move toward SFV in a manner similar to that approved for other delivery utilities. In an SFV design, distribution costs are first classified as fixed or variable. Fixed costs, which do not vary from billing period to billing period based on monthly energy use, are collected through charges (such as the customer charge and the standard metering service charge) that also do not vary with energy use. Those delivery costs that do vary with a customer's energy use are recovered though charges that also change with the customer's use (such as the Distribution Facilities Charge or "DFC" and the proposed Illinois Electricity Distribution Tax Charge). Dr Hemphill concluded that the Commission should approve ComEd's proposal to gradually move to an 80% SFV because that proposed rate design more closely reflects the correct division between fixed and variable costs.

Certain parties testified that a revenue decoupling rate design could also be considered as a means of eliminating or significantly weakening the link between the revenue of a utility and the utilization of its system by customers. NRDC witness Cavanagh offered a decoupling proposal as an alternative to ComEd's SFV proposal. (See, generally, NRDC Ex. 2.0). While ComEd addressed the merits and the shortcomings of the NRDC proposal, ComEd is not recommending that such a proposal be adopted. However, ComEd did offer a sample tariff reflecting Mr. Cavanagh's proposal to ensure that the proposal if approved is implemented in a way that is consistent with ComEd's other tariffs.

Staff witness Boggs raised a number of concerns relative to ComEd's SFV proposal. Dr. Hemphill refuted these concerns and noted that Mr. Boggs' positions were either arbitrary or inconsistent with ratemaking principles and with recent Commission decisions to either decouple or move toward an SFV in rate cases filed by North Shore/Peoples Gas, the Ameren Companies, and Nicor Gas, all of which recognize the importance of recovering fixed costs predominantly through fixed charges. ComEd Ex. 46: 215-419. Dr. Hemphill also addressed the concerns raised by City of Chicago witness Bodmer, NRDC witnesses Dr. McDermott and Mr Cavanagh and AG-CUB witness Rubin. ComEd Ex. 46: 42-588.

2. Decoupling (NRDC Proposal)

3. Class Definitions

a. Residential Rate Design – Consolidation of Classes

ComEd proposes to reduce the number of residential delivery classes from four to two. First, ComEd proposes to combine the two single family delivery classes into one class: the Residential Single Family Delivery Class. Second, ComEd proposes to combine the two multi-family delivery classes into one class: the Residential Multi Family Delivery Class. In doing so, ComEd proposes to have one DFC for all single family customers and one DFC for all multi-family customers. The effect of this is to eliminate separate rates for those customers with electric space heat and those without.

ComEd witness Alongi explained that designing electric delivery service rates based on the end use of electricity by customers - - such as for space heat - - is inappropriate, requiring ComEd to, among other things, police the use of electricity within customers' homes (or businesses, as the case may be) for billing purposes. Moreover, the cost of delivering the electricity is not affected in any way by whether the electricity is used for space heating or anything else.

Staff witness Boggs finds ComEd's proposal regarding the consolidation of the four residential delivery classes into two, with the elimination of distinctions for customers with electric space heat to be reasonable. Staff Ex. 13.0, 30:596, 32:637. However, Mr. Boggs voiced concern about the elimination of separate supply charges for residential customers with electric space heat and recommends the consolidation of the four residential delivery classes at this time as long as the Commission does not order ComEd to eliminate the differentiation in supply charges in this proceeding. Torsten Clausen of Staff recommends that the Commission initiate a separate proceeding to investigate ComEd supply charges. ComEd agrees with these recommendations of Mr. Boggs and Mr. Clausen.

AG-CUB witness Rubin testifies that cost allocation should be based on the energy demands of the delivery classes, and yet he does not allocate costs on the basis of the delivery classes' noncoincident peak ("NCPs") demands. If Mr. Rubin insists on maintaining four distinct rate classifications for residential customers (single family versus multi family and with electric space heat versus without electric space heat), then (1) he should acknowledge that there are four NCPs for residential customers that are different from and occur at different times from one another, and (2) he should use those different NCPs for cost allocation in the ECOSS instead of proposing the use of a single NCP for all residential customers. By using a single NCP for all residential customers for cost allocation in the ECOSS while insisting on retaining four distinct and different DFCs for four classes of residential customers, Mr. Rubin most certainly is proposing inappropriate cost responsibility diversion away from residential customers.

ComEd witness Alongi disagrees with AG-CUB witness Rubin and testified that if Mr. Rubin's proposal to use a single NCP for the residential sector for cost allocations in the ECOSS is to be taken seriously, then there should be only one DFC developed for application for all residential customers. ComEd Ex. 73.0, 16:343-345.

b. New Primary Voltage Delivery Class vs. Primary Subclass Charges

4. Non-Residential

a. Movement Toward ECOSS Rates

(i) Extra Large Load, High Voltage Customer Classes

Kroger witness Townsend, IIEC witness Stephens, and Staff witness Boggs addressed ComEd's proposal to move the Extra Large Load, High Voltage, and Railroad delivery classes closer toward cost-based rates. Mr. Townsend supports ComEd's proposal to move the three delivery classes toward cost-based rates, and adds that ComEd's proposed movement toward cost based rates for the Extra Large Load, High Voltage1, and Railroad delivery classes is consistent with the Commission directives in ComEd's last general rate case. (Kroger 198 Ex. 1.0, 5:108-111).

Mr. Stephens agrees with ComEd that the Extra Large Load Delivery Class and the High Voltage Delivery Class should be moved 33% of the remainder of the way to cost-based rates. However, he disagrees that the Railroad Delivery Class should be moved only 10% of the remainder of the way to cost-based rates. Instead, Mr. Stephens recommends that the Railroad

Delivery Class also be moved 33% of the remainder of the way to cost of service. (IIEC Ex. 2.0, 6:156-159)

Mr. Boggs, of Staff, appears to disagree with ComEd's proposed movement toward cost-based rates. With respect to ComEd's proposal for the Railroad Delivery Class, Mr. Boggs' disagreement may stem from a simple misunderstanding. ComEd's proposal to move the Railroad Class only 10% in this proceeding would be the first in a ten-step process, rather than the second in a four-step process, to move the Railroad Delivery Class to cost-based rates. ComEd's ten-step process to move the Railroad Delivery Class toward cost-based rates is consistent with the Commission's directive in its Order in ComEd's last rate case, Docket No. 07-0566, instructing ComEd to implement rates for the Railroad Delivery Class that do not cause rate shock for customers in that delivery class. ComEd extended the four-step process to a ten-step process with respect to the Railroad Delivery Class in order to comply with this Commission directive.

ComEd disagrees with IIEC witness Stephens proposal to limit the increase in rates to any delivery class or subclass to 150% of the system average increase. Based upon the data in ComEd Ex. 49.1, under Stephens' proposal the Watt-Hour, Small Load, Extra Large Load, and General Lighting delivery classes would all be limited to an increase of 27.6%. However, that would mean that ComEd could not follow the Commission's directive with respect to moving the Extra Large Load Delivery Class 33% of the remainder of the way to cost-based rates.

Furthermore, all the residential and lighting delivery classes, as well as the Watt-Hour Delivery Class, have proposed rates set at 100% of an equal percentage of embedded cost ("EPEC") for each individual class. If limits were placed on the increase to the Watt-Hour and General Lighting delivery classes, then other classes that are currently proposed to be at 100% of EPEC would likely have to bear more than their fair share of the costs to provide them with electric service. History has shown that if rates are set that do not reflect costs, those receiving the benefit of rates that are not cost-based are likely to oppose movement toward cost based rates. Moreover, ComEd has cost based rates for a number of delivery classes; so it would be a step backward to order the implementation of rates that serve to explicitly diverge from that fundamental concept in rate design. Finally, Mr. Stephens calls for the 150% limit to be applied to subclasses which adds yet another level of complexity to what could become a very complicated rate design. ComEd recommends that the Commission reject Mr. Stephens proposal and instead implement a rate design that provides for 100% of EPEC cost recovery for as many delivery classes as possible.

(ii) Railroad Customer Classes

ComEd has determined that, under some circumstances, power flows through CTA and METRA owned facilities to other customers. Those flows are largely unintended by products of the multiple-feed design that was put in place to benefit the railroads – and that continues to benefit the railroads. However, under the unique history and circumstances of these railroads' installations, and in light of the Commission's past direction concerning METRA and the CTA, ComEd is proposing a cost allocation adjustment that reflects these flows through the railroad's equipment.

ComEd's proposal results in a cost allocation adjustment in ComEd's embedded cost of service study that reallocates from the Railroad Delivery Class to other customer classes 1/3 of the annual carrying cost of the undepreciated investment that would be required for ComEd to install 12kV busses and breakers at locations equivalent to such railroad owned facilities located at the 71 railroad traction power substations.

Currently, for the Railroad Delivery Class, annual delivery service revenue is about $2,614,000 below the cost incurred to provide service to the class. Of this amount, ComEd proposes to recognize approximately $452,000 as a cost allocation adjustment within the ECOSS that reflects a value for ComEd's use of railroad electric facilities to serve other customers. With this allocation adjustment, annual delivery service revenue is about $2,162,000 below the cost incurred to provide service to the class. With respect to this remaining difference, ComEd is proposing to move the Railroad Delivery Class DFC 10% toward a cost-based rate from the currently effective DFC for the class. Given the Commission's directives in ComEd's last two rate cases to take public policy into consideration, ComEd believes it is appropriate to move the Railroad Delivery Class DFC to a cost-based rate very gradually.

b. Allocating Secondary Costs Among Customer Classes

c. Railroad customers - Utilization of Railroad Customers' Facilities

d. Dusk to Dawn Street Lighting

In the Rate Design Investigation Order, the Commission directed ComEd to carve out from the ECOSS and directly ascertain secondary system costs as they were estimated in that proceeding by the witness for the City of Chicago, known as the "Chicago Method. Under ComEd's proposed rates, the Dusk to Dawn Lighting Delivery Class is going to see a reduction in delivery service charges which is largely reflective of the use of Coincident Peak ("CP") factors to allocate the costs of primary lines and substations and the Chicago Method to allocate certain other costs, as directed by the Commission in the Rate Design Investigation Order. " City witness Bodmer appears to continue to be dissatisfied with ComEd's proposal for dusk to dawn street lighting rates.

While ComEd does not consider the proposed rate design for the Dusk to Dawn Lighting Delivery Class to be reasonable, the rate design is in compliance with the Commission's directives in the Rate Design Investigation Order. Mr. Alongi notes that in complying with the Commission's directives, ComEd may have among the lowest dusk to dawn street lighting delivery service rates in the nation.

5. Collection of Illinois Electricity Distribution Tax

6. Distribution Loss Factors

ComEd provided DLFs that correspond to the revised loss studies provided in the testimony of ComEd witness Born. See, ComEd Exs. 34.1 and 34.2. Updated DLFs are provided in ComEd Ex. 49.9 which also incorporate provisions to address DOE witness Etheridge's concerns regarding the DLFs applicable to customers with service points at which electricity is metered at or above 138 kV. ComEd's systems are designed to apply DLFs on an account-level basis, not a meter-level basis. Consequently, ComEd proposes to address Mr. Etheridge's concerns by determining and applying the weighted average DLF for all points of delivery for the 18 accounts that have at least one point of delivery metered at 138kV or higher. ComEd is not opposed to DOE witness Etheridge's recommendation to clarify the definition of the Dc component in the computation of the DLF provided in Rate RDS. ComEd believes Mr. Etheridge's recommendation to clarify the definition of the Dc component of the DLF computation as shown in Rate RDS is reasonable. ComEd Ex. 49.10 provides a further revision to Sheet No. 75 in Rate RDS to accommodate Mr. Etheridge's recommendation.

However, ComEd is opposed to REACT witness Fults' recommendation that ComEd should be required to make an annual filing to reconcile its losses assessed to customers with actual losses. Mr. Fults' recommendation that ComEd be required to make an annual filing reconciling its losses assessed to customers with actual losses is unnecessarily burdensome on ComEd as well as on the Commission. There is no reason why losses should be treated so radically differently than other distribution costs. Moreover, Mr. Fults does not recognize the unintended consequences that this proposal could have. The only losses that such an annual filing could address would be distribution losses. Because of the manner in which PJM measures and recovers the cost of losses, changing distribution losses without regard to transmission losses and FERC jurisdictional matters can shift wholesale costs, including wholesale supply costs, in an unreasonable and arbitrary manner. Mr. Fults' proposal should be rejected.

7. General Terms and Conditions

a. Residential Service Station (Ownership of Non-Standard Residential Connections)

ComEd has proposed adding language that is consistent with the long standing policy that the residential customer is responsible for providing the transformer pole in a Residential Service Station.

b. Limitation of Liability Language

ComEd has proposed to add a separate Limitation of Liability section in GTC. Staff witness Harden reviewed ComEd's proposal and did not object to ComEd's proposed Limitation of Liability language. (Staff Ex. 11.0, 43:888-890) Ms. Harden "agrees with the goal of uniformity with other Illinois utilities' tariffs, the basis for the Company's proposed change in the Limitations of Liability section" (Id 42:882-884).

However, Mr. Capra, a Metra witness, and two CTA witnesses, Mr. Harper and Ms. Kovalan, expressed concern about ComEd's proposed tariff revisions to incorporate a Limitations of Liability section in GTC. Mr. Capra's testimony is premised on basic misunderstandings of the language of the tariff, its inapplicability to non-service liability matters, and the importance of treating all customers consistently under the tariff.

Mr. Capra's concerns over existing and future Wireline Easement Agreements ("WEAs") between ComEd and Metra are also misplaced. As the existing tariff already addresses installation of ComEd equipment on customer property to serve a customer, the WEAs are only necessary when ComEd is using Metra property to serve ComEd customers other than Metra. Accordingly, like the example of the commuter that Capra uses, the proposed limitation of liability provisions would have no impact at all on the existing or future WEAs signed for ComEd's use of Metra property to serve only other ComEd customers. Further, Mr. Capra suggests that the tariff language transfers a liability burden from ComEd to Metra. He fails completely to articulate why Metra will be affected more than any other ComEd customer, or why standard tariff terms already used by other utilities elsewhere in the State should not be applied equivalently to all ComEd customers.

Finally, Messrs. Capra, Harper, and Ms. Kovalan apparently all want liability rules that apply to all other customers be inapplicable to them. This is particularly true of Ms. Kovalan, who uses a 1958 CTA/ComEd Agreement, which was approved by the Commission, as a justification for claiming that the standard limitation of liability provisions rarely apply to it. In fact, the CTA's 1958 Agreement expressly provides that it is subject to alteration in future Commission proceedings like this one. Accordingly, CTA is already subject to limitation of liability provisions in the tariff that were approved by the Commission since 1958. Nonetheless, ComEd sees the value of clarifying what remains of the 1958 Agreement and has already suggested to CTA that it implement a replacement to the 1958 Agreement to clarify and restate whatever remains relevant today in that over 50-year old document. Similarly, ComEd is willing to work with Metra to replace its 24-year old 1986 agreement.

8. Rider UF

ComEd implemented the Commission's Orders in Docket no. 07-0566 and Docket No. 08-0532 in this case by deriving the amount of uncollectible costs for residential rate payers attributed to the distribution segment of the company. ComEd then allocated the cost to the single-family classes and the multi-family classes.

City of Chicago witness Bodmer claims ComEd ignored the indirect costs of collecting, administering, managing, disconnecting and reconnecting uncollectible accounts and that these costs should be allocated in the same manner as uncollectible costs.

Neither Staff nor any Intervenor offered testimony in support of Mr. Bodmer's position. ComEd's proposal is reasonable and should be adopted.

9. Notification Regarding Elimination of Self Generation Customer Group

10. Docket No. 08-0532 Compliance Issues

11. Other Issues

a. Street Lighting

IX. REVENUES

A. Uncontested Issues - Other Revenues – Rate Relief Payment (Staff)

ComEd accepted the proposal by Staff witness Hathhorn and AG-CUB witness Effron to adjust other revenues to eliminate an inadvertent and incorrect $8 million reduction for a rate relief payment. Fruehe, ComEd Ex. 30.0. 19:407-415.

B. Miscellaneous Revenues

AG-CUB withdrew its proposed adjustment to miscellaneous revenues as unnecessary. AG-CUB Ex. 7.1, Sch C-2.

C. Weather Normalization

D. Late Payment Charge Revenues

Martin Fruehe testifies that the proposal by AG-CUB witness Brosch to increase other revenues by $15.99 million for late payment charges received by ComEd is without merit because the payments do not relate to delivery services and should not reduce ComEd's Illinois jurisdictional revenue requirement. Fruehe, ComEd Ex. 30.0, 20:416-21:452; ComEd Ex. 56.0, 23:484-24:500.

E. New Business Revenue Credit

In direct testimony, AG-CUB witness Effron proposed to increase ComEd's new business credit by $17.583 million relying upon a kilowatt-hour sales forecast included in one of ComEd's data request responses. Martin Fruehe's rebuttal testimony explained that Mr. Effron incorrectly relied on an estimated increase in sales, not growth in the number of customers, incorrectly applied his adjustment to seven rather than five quarters and used a sales forecast that was no longer current. Fruehe, ComEd Ex. 30.0, 21:453-25:537. In rebuttal testimony, Mr. Effron changed his position to rely on a customer growth forecast, but, as Mr. Fruehe explains in his surrebuttal testimony, fails to reflect the decrease in large commercial and industrial customers. Fruehe, ComEd Ex. 56.0, 20:416-22:460. Mr. Fruehe's surrebuttal testimony also addresses a proposal by Staff witness Ebrey to adjust new business revenues if Staff's limitations on *pro forma* plant additions are adopted. Fruehe, ComEd Ex. 56.0, 22:461-23:483.

X. OTHER

A. RES Services Issues

ICEA witness Fein raises a number of RES operational issues to which Mr. Marquez responds. Marquez, ComEd Ex. 36.0, 61.0.

B. UUIR

Staff witness Stutsman recommends that the Commission order ComEd to proceed with a $45 million Urban Underground Infrastructure Reinvestment ("UUIR") project that ComEd proposed to be part of its Alternative Regulation proposal. The testimony of Ross Hemphill explains that, although the UUIR project would provide *additional* reliability benefits, it is not required in order for ComEd to meet its service reliability obligations. Mr. Hemphill explains that Mr. Stutsman's recommendation constitutes a request that the Commission issue an unfunded mandate, compliance with which would necessitate significant cutbacks in other areas. Mr. Hemphill explains the reasons why the Commission should deny the request to require ComEd to proceed with an unfunded UUIR project and, instead, should consider and provide for the funding of the project under ComEd's Alternative Regulation proposal. Hemphill, ComEd Ex. 40.0, 11:220-13:272; McMahan, ComEd Ex. 33.0, 14:306-15:343, Ex. 60.0 .

C. Updated Distribution Loss Study

This issue is discussed in section VIII C 6.

D. Meters and Meter Reading

In rebuttal testimony, Staff witness Rockrohr, and ICEA witness Fein express concerns about meter reading and estimated bills and, in Mr. Fein's case, unbilled meters. (Staff Ex. 21.0, page 25; ICEA Ex. 2.0, pages 8-10). Fidel Marquez addresses these concerns in his surrebuttal testimony. Marquez, ComEd Ex. 61.0

E. Competitive Retail Market Development Issues

ICEA witness Fein raises retail market development issues to which Mr. Hemphill responds. Hemphill, ComEd Exs. 40.0, 65.0.

F. New Section 9-250 Investigation of ComEd's electric rate design

This issue is discussed in section VIII C 3 a.

G. Other

Staff witness Rockrohr recommends that ComEd "assume" ownership of certain non-standard customer-owned facilities used to bring power from the ComEd system into privately owned residential property. Michael McMahan testifies that this proposal is unnecessary for any operational, safety or reliability reason, and would be expensive and difficult (if even possible) to accomplish, and should therefore be rejected. McMahan, ComEd Ex. 33.0, 18:404-21:458.

XI. CONCLUSION

ComEd respectfully requests that the Illinois Commerce Commission approve ComEd's recommended rate base of $ 7,349,277, its weighted cost of capital of 8.98%, which reflects an estimate of the investor-required rate of return on common equity of 11.50%; its revenue requirement of $2,267,000,000, and ComEd's embedded cost of service study and rate design.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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