STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	Docket No. 10-0467
Proposed general increase in rates for delivery service.	)	

INITIAL BRIEF OF THE ENVIRONMENTAL LAW & POLICY CENTER

February 10, 2011

Submitted By:

Robert Kelter, Senior Attorney
Brad Klein, Staff Attorney
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
(312) 795-3734
(312) 795-3730 (fax)
rkelter@elpc.org
bklein@elpc.org

INTRODUCTION

ComEd has taken a disappointing approach to this rate case. The Company has filed a case long on rhetoric and short on fact. ComEd implies that if the Commission does not grant a rate increase, straight fixed variable rates, an increase in ROE for providing energy efficiency, et al. that the Commission sends the signal to the investment community that it is anti-utility. The only thing that keeps utilities from getting their requests met is a failure to support the request with facts. If the Commission continues to focus on the law and the facts, it will find ComEd fails to support much of its case.

ELPC focuses on only three issues: straight fixed variable rates; the request for an increase to the rate of return for increased risk related to running the energy efficiency programs; and decoupling. While this case raises many important issues, in terms of the long term health of the Chicago region no issue is more important than energy efficiency. The Commission should not allow ComEd to send the wrong message to consumers that they should pay more while they use less – even for delivery services which is only approximately a third of the bill.

The Commission must also address ComEd's argument that running the energy efficiency programs raises its risk and it deserves an increase in its return on equity (ROE), even if the Commission allows the Company to reduce its risk by shifting costs to the fixed monthly charge through straight fixed variable rates. In fact the evidence in the record supports neither straight fixed variable rates nor an ROE increase. The evidence shows the opposite, that not only does running the efficiency programs pose only minimal risk, but also that ComEd reaps significant benefits from running those programs that it fails to acknowledge. Moreover, ComEd has a fundamental obligation

to serve its customers in return for the privilege of holding a monopoly. If it does not wish to fulfill that obligation it should either allow an independent third party to run the programs or it should sell the company.

VI. RATE OF RETURN

E. Cost of Common Equity

ComEd requests a 40 basis point increase in ROE to fulfill a statutory obligation to provide energy efficiency.

ComEd takes a hypocritical approach to its efficiency programs. On the one hand, it wants to run the programs rather than having an independent third party run them. On the other hand, it wants a 40 basis point or $50 million increase in ROE because running the programs constitutes unreasonable risk. ComEd Ex. 13.0 at 19. While Dr. Tierney makes her request sound routine, of the 22 states with efficiency targets only Nevada has granted a utility an ROE increase for efficiency. ComEd Ex. 13.2.

Any analysis of ComEd's proposal must start with an examination of whether the proposal is consistent with the PUA. Regardless of the energy efficiency law, by virtue of its agreement to serve customers as a regulated public utility, ComEd has an obligation to provide service at least cost. The Public Utilties Act states, "It is further declared that the goals and objectives of such regulation shall be to secure (a) Efficiency: the provision of reliable energy service at the least possible cost to the citizens of the State." 220 ILCS 5/1-102(a). Additionally, Section 8-101 requires utilities to provide service that is "in all respects just and reasonable," and Section 9-101 requires "all rates… must be just and reasonable." 220 ILCS 5/8-101, 220 ILCS 5/9-101.

In the provision of service ComEd faces numerous risks that are inherent in running a utility. Keeping the lights on is a challenge, keeping the delivery service system operating poses risk, and economic downturn poses risk. Customers' appliances use less energy than ever before, while they have more appliances than ever before. The Commission must answer the question, does ComEd somehow deserve special compensation for the "risk" of running energy efficiency programs? Review of the record does not support an increase. In fact, the record reflects that there is little risk from running the programs at all, and that the Company benefits from providing this service in ways it fails to acknowledge.

a. ComEd Fails to Demonstrate it Faces any Risk Increase that Warrants Special Treatment.

ComEd Witness Tierney cites three principle reasons for the increased risk: 1) increased prudency risk; 2) uncertainty related to load due to efficiency, including loss of revenue; and 3) other intangible risks including regulatory penalties and credit risk. ComEd Ex. 10 at 22-28. While on their face each sounds challenging, the facts in this proceeding indicate that ComEd faces little risk from running the efficiency programs. Moreover, the increase in ROE is inconsistent with the fact that the Company wants to run the efficiency programs, and in fact receives significant benefit from running the programs.

In terms of prudency risk, Dr. Tierney frames her arguments in terms of ComEd spending $264 million between Plan Years two and six (2009-2013). ComEd Ex. 1.0 at 23. While this sounds like a lot of money, in each year it is less than 2.0% of rates. Most importantly, Dr. Tierney fails to make any specific fact based argument that ComEd actually faces any significant risk it will fail to recover every penny. Moreover,

she bases her testimony on broad general concepts, which as discussed below, do not jibe with the circumstances in Illinois.

Dr. Tierney completely ignores the fact that ComEd recovers all of its costs up front in a rider, which Mr. Jensen acknowledges is advantageous to the Company. 220 ILCS 8-103(e); Tr. at 2311 (attached). Dr. Tierney also ignores the fact that the Commission pre-approves ComEd's energy efficiency plans, thereby significantly reducing the Company's risk regarding cost recovery. Dr. Tierney further ignores the fact that ComEd runs everything through the stakeholder advisory group (SAG) process and has consistently emphasized this stakeholder input over the years. Mr. Jensen notes, "ComEd has worked closely with the SAG on many issues, including evaluation methodologies and protocols, evaluation work plan development and review, portfolio and program statuses and updates, portfolio and program design changes, demand response programs and potential market studies…" ComEd Ex. 1.0 at 8. Mr. Jensen makes this point because the SAG process, while certainly a positive, provides cover to ComEd when it comes to any prudency review.

Dr. Tierney also cites ComEd's risk from the loss of revenue from the energy efficiency programs and other policies such as ARRA (federal stimulus) activity and changes in EISA (federal efficiency) standards. ComEd Ex. 13.0 at 23-24. However, as IIEC Witness Gorman points out, ComEd could have used a future test year to estimate such load changes:

> Indeed there are several regulatory mechanisms that can permit ComEd to set rates in an efficient manner that will capture the expected impact on sales in a future period that coincides with the expected cost in a future period. Most obviously, ComEd can choose set rates using a forecasted test year, which can reflect sales levels impacted by energy efficiency and demand response programs, and also all of the underlying projected cost of service in the

> forecasted period. Ms. Tierney has simply failed to provide any evidence that ComEd is not able to capture the effects on its retail sales, including the effects of energy efficiency and demand response, by use of a forecasted test year.

IIEC Ex. 1.0 at 54. Certainly, use of a future test year would take into account the efficiency targets for the next year and any future changes in EISA standards.

Dr. Tierney's response to the future test year issue is interesting. She acknowledges the Company could have used a future test year, "The reality is, however, that a future test year was not selected for this case." ComEd Ex. 39.0 at 5. This is of course a ridiculous and non-substantive response, as the Commission should certainly consider ComEd's failure to use a future test year in determining whether the Company deserves an ROE increase.

Finally, Dr. Tierney ignores the fact that ComEd has met its program goals for years 1 and 2, and agreed to the program goals for years 4-6. When the Commission considers this risk, in light of the other facts as they relate to the Illinois law, the chances of ComEd facing any real prudency challenge is very low.

b. ComEd's Customers Will Pay a Huge Price for ComEd Fullfilling its Fundamental Repsonsibility to Provide Service.

ComEd requests a forty basis point increase in its return on equity, which translates to $30.8 million dollars for the company after taxes. Based on a corporate tax rate of 40%, this translates to approximately $50 million in additional revenue from customers that they will pay every year. ($30,000,000÷0.6 =$50,000,000).[1] The numbers are also consistent with ComEd paying federal taxes and state taxes at the current rate of 35% and 7%.

[1] ELPC bases this calculation on ComEd's corporate tax rate of approximately 40% for 2007 and 2009, derived from figures in its 2010 SEC 10-K filing at p. 82.

To put this in perspective in 2008 the first year of ComEd's efficiency programs, it spent only $39.4 million total on all of its programs. Docket No. 07-0540, ComEd Ex. 1.0 at 18. Even with increased spending that rises to $160 million in 2011, this means customers will be paying an additional 31% for efficiency that goes straight to ComEd shareholders – and for what?

While Dr. Tierney supports the 40 basis point increase, her responses on cross-examination indicate a lack of understanding of what the request really means for ComEd customers. In her testimony she states that "a 40 basis-point ROE adjustment would be equivalent to a $30.8 million expense item in ComEd's cost of service." ComEd Ex. 13.0 at 27. However, when ELPC asked Dr. Tierney on cross whether the $30.8 million figure was before or after taxes, she could not answer the question. She said, "I wasn't attempting to indicate that this would be earnings after tax, before tax. I was just doing a straight calculation as an example." Tr at 1846. Subsequently, she responded to Judge Sainsot that she thought the figure was before taxes, but this would be incorrect as ROE earnings are after taxes.

c. ComEd Wants a Huge Increase in ROE to Run the Programs the Company Benefits from Running.

When the legislature passed the law that created the energy efficiency programs it gave ComEd responsibility for running the programs. Under cross-examination Mr. Jensen acknowledges that: a) ComEd wants to run the efficiency programs, Tr at 2313; b) ComEd views the programs as a positive way to connect with its customers, Tr at 2313; c) ComEd has taken a number of steps related to leverage the energy efficiency programs in order to enhance the Company's reputation – bill inserts, press releases, etc. Tr at 2313-2318.

The efforts to enhance the Company's reputation include marketing to customers that ComEd saves customers money ("low prices brought to you by ComEd"). Tr. at 2316, ELPC cross Ex. 1.0. Additionally, ComEd sent out numerous press releases touting the efficiency programs and ComEd's efforts. Tr. at 2318, ELPC cross Ex. 3.0, as well as numerous bill inserts over the last three years doing the same. Tr. at 2319. Finally, ComEd Communications has run an extensive marketing campaign related to energy efficiency that the Company does not mention in any of its testimony. This comprehensive campaign included the ComEd web site, numerous billboards and signs throughout the Chicago region promoting energy efficiency, newspaper ads and television commercials. Tr at 2313. While ComEd has not assessed the value of the goodwill it has derived from its energy efficiency efforts, this goodwill should be considered along with the "risk" ComEd claims it faces. Certainly, the value is not zero.

d. ComEd Witness Sue Tierney's Testimony Lacks Credibility.

Not only do the facts not support ComEd's request, but the Commission should take a hard look at Dr. Tierney's credibility. Dr. Tierney's testimony and her answers to questions during cross-examination demonstrate a lack of understanding of ComEd's energy efficiency programs and a surprising lack of understanding of the effect ComEd's request will have on ratepayers. There is no greater evidence of this than the fact that Dr. Tierney ignored a number of factors that indicate ComEd faces only minimal risk meeting the statutory targets. She cites the risk ComEd faces from challenging targets but she filed her testimony (Direct, June 30, 2010) months before ComEd and the intervenors settled the case (November 18, 2010). ComEd agreed to the very targets she claims create risk. The statute requires ComEd to achieve savings

of 0.8% in 2011, 1.0% in 2012 and 1.4% in 2013. Those targets have now been adjusted for 2012 down to 1.0%. Additionally, the parties agreed to make adjustments to the CFL net to gross ratios to ensure ComEd gets credit for 2012 and 2013 CFL sales, making those targets easily achievable.

As discussed above, the record reflects that the Company faces only minimal risk in all of the areas Dr. Tierney raises. Review of her testimony indicates that she never really looked at any of the facts related to ComEd and its efficiency programs, rather she threw out a bunch of general premises without applying them to the facts at hand. In the final analysis, Dr. Tierney ignores the realities of running a utility. In between rate cases, some costs go up and some costs go down. ComEd files rate cases whenever it feels that the decreases do not cover the increases, and in fact it has been in for rate hikes in 2005, 2007 and 2010. Dr. Tierney fails to address why energy efficiency should be treated any differently except in a very conclusory way – as though if she repeats how risky it is emphatically enough or enough times then it must be so. In the final analysis ComEd simply does not support a 40 basis point ROE increase.

VIII. RATE DESIGN

C. Potentially Contested Issues

1. SFV (ComEd Proposal).

The Commission should reject ComEd's proposed "straight fixed variable" (SFV) rate design. ComEd's proposal would raise the fixed portion of its residential customers' bills and correspondingly reduce the variable, "per-kWh" portion of their distribution charges. The increase in ComEd's flat customer charges would be dramatic – for example the proposal would increase customer charges more than 250% for

single-family customers and almost 108% for multi-family ratepayers. *See* Table 1 below. The variable component of the distribution rate would decline accordingly.

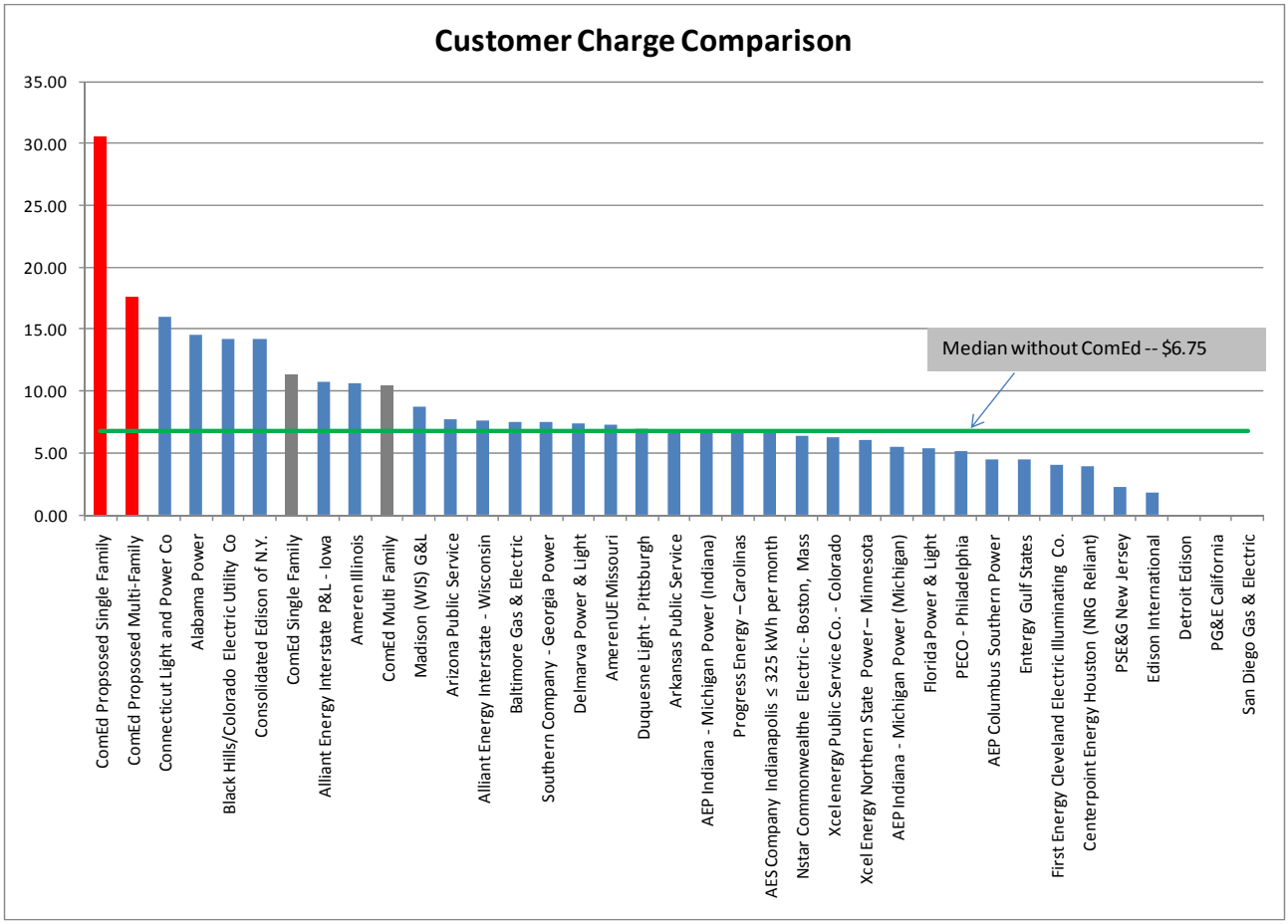
Table 1 – Customer Charges Under ComEd's SFV Rates (City Ex. 1.0 at 3)

	Single Family				Multi Family			
	Current	Proposed	Increase	Percent Increase	Current	Proposed	Increase	Percent Increase
Customer Charge	7.64	26.78	19.14	250.5%	6.65	13.81	7.16	107.7%
Metering Charge	2.24	3.20	0.96	42.9%	2.24	3.2	0.96	42.9%
Total	9.88	29.98	20.1	203.4%	8.89	17.01	8.12	91.3%

No other parties support ComEd's SFV proposal. Although ComEd characterizes its proposal as "reasonable and fair," the AG calls it "radical", the City "audacious", and Staff and NRDC find it "inequitable." AG/CUB Ex. 6.0 at 14; City Ex. 1.0 at 5; Staff Ex. 13.0 at 29; NRDC Ex. 2.0 at 9. As described in more detail below, SFV rates would also significantly change the economics of energy efficiency and renewable energy investment in Illinois even though distribution rates comprise only about one-third of a customer's overall bill. ComEd's proposal would move the goalposts and make the state's significant energy efficiency and renewable energy goals more expensive and difficult to achieve. It would also be inconsistent with the Company's statutory obligation to help its customers save through energy efficiency.

a. ComEd's proposal is out of step with other utility rates around the country.

If approved by the Commission, ComEd's SFV rates would increase customer charges for single family customers to 4.5 times the industry median, and more than double the next highest utility in the country. City Ex. 1.0 at 7-8. Presented graphically, the result is striking:



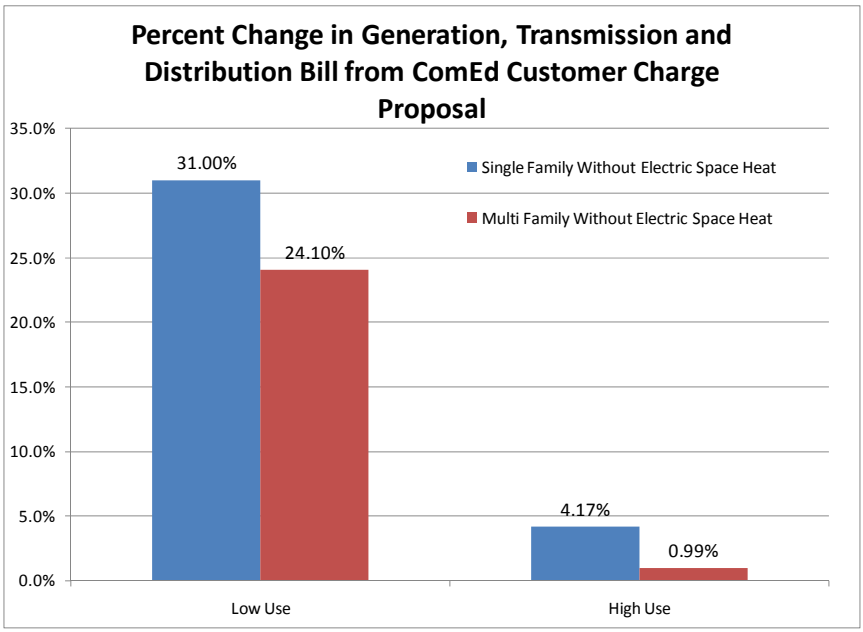
City Ex. 1.0 at 8.

ComEd characterizes its SFV proposal as consistent with the "evolution in distribution design" that has taken place since 1990. ComEd Ex. 46 (Hemphill) at 6. However, according to Staff's review of supporting documentation, there are no other states that have SFV pricing for electricity rates. Staff Ex. 13.0 at 27 (citing ComEd Ex.

13.4). In contrast to ComEd's testimony, the real "evolution" in electric rate design seems to be towards rate structures that keep customer charges low and reward customers that save energy. In fact, the National Action Plan for Energy Efficiency has identified an emerging trend away from rate structures that discourage energy efficiency like declining block and fixed-variable rates. National Action Plan for Energy Efficiency, *Customer Incentives for Energy Efficiency Through Electric and Natural Gas Rates,* pp. 15-16 (2009).[2]

b. ComEd's proposal would disproportionately impact low-usage customers.

ComEd's proposed increases in customer charges would have a much greater impact on ComEd's customers that use the least amount of electricity. City witness Bodmer developed the following graph using the numbers provided by ComEd witness Mr. Alongi:



[2] The Action Plan was discussed in several of the witnesses' testimonies and at the hearing. This report is available at http://www.epa.gov/cleanenergy/documents/suca/rate_design.pdf.

The witnesses for Staff, the AG, CUB, the City, and NRDC all took issue with this disproportionate impact on low-use customers. City Ex. 1.0 at 10-14; AG/CUB Ex. 6.0 at 25; Staff Ex. 13.0 at 24-25; NRDC Ex. 2.0 at 9. As noted by City witness Bodmer, "[t]he idea that the difference between short-run marginal cost and the revenue requirement should be paid in a disproportionate and discriminatory manner by low use consumers is the single most outrageous part of ComEd's proposal." City Ex. 1.0 at 23. Witness Cavanagh called it a "regressive subsidy for increased electricity consumption." NRDC Ex. 2.0 at 9. Bodmer calculated that "$50 million in annual revenue would be taken out of the pockets of City ratepayers and put into the pockets of suburban ratepayers each year." City Ex. 1.0 at 13. He concludes that ComEd's SFV proposal would result in "a multi-million dollar transfer of wealth from people who live in small bungalows to large mansions in Wilmette and other suburban regions." *Id.* at 12.

c. ComEd's proposal is based on an old and discredited economic theory that fails to account for real world market failures that block optimal consideration of energy efficiency.

ComEd argues that a movement towards SFV rates is necessary in order to "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." ComEd Ex. 14.0 Revised (Hemphill) at 8. However, other witnesses conclude that "[n]one of these dramatic shifts in rates are justified on the basis of cost of service." City Ex. 1.0 at 11; *see* AG/CUB Ex. 6.0 at 24; AG/CUB Ex. 11.0 at 2-3. Instead, these experts conclude that ComEd relied on old and discredited economic theory to support its SFV rate proposal. For example, AG/CUB witness Rubin states that there is "no support among reputable public utility

economists or among public utility commissions" for setting utility rates like ComEd proposes here:

> Economists considered and rejected ComEd's type of pricing proposal more than 50 years ago. Rather than promoting efficiency and social welfare, as Mr. Hemphill asserts, those who studied this problem concluded that it is simply a method of transferring wealth (or consumer surplus) from one group of customers to another.

AG/CUB Ex. 6.0 (Rubin) at 16, 19. "Not only do such payments have no net effect on social welfare," according to Rubin, they can also "encourage high-use customers to use even more electricity which is directly contrary to the promotion of energy efficiency." *Id.* at 21. Other witnesses reach similar conclusions. *See* Staff Ex. 13.0 at 18; City Ex. 1.0 at 27-28; NRDC Ex 2.0 at 10-11.

ComEd witness Hemphill also argues that SFV rates "send a better price signal to customers" and professes faith that the "competitive market will ultimately find superior ways to improve efficiency and reduce consumption…." ComEd Ex. 14.0 at 12; ComEd Ex. 46 at 24. While this may make sense from a purely academic viewpoint, witness Cavanagh explains that ComEd's economic rationale fails to consider real world market failures that "continue to block energy savings that are much cheaper than additional electricity purchases." NRDC Ex. 2.0 at 10-12.[3] According to Cavanagh, the Commission "would make a bad situation worse by reducing customers' rewards for conserving electricity." *Id.* at 11.

[3] Cavanagh cites "overwhelming evidence" of these pervasive market failures. NRDC Ex. 2.0 at 11 (citing the National Research Council of the National Academy of Sciences, the U.S. Congress's Office of Technology Assessment, the National Association of Regulatory Utility Commissioners, among "many other" sources).

d. ComEd's SFV Proposal Will Undermine Illinois Policy Regarding Energy Efficiency and Renewable Energy.

By decreasing the "per-kWh" portion of customers' bills, ComEd's proposed rate design would undermine Illinois policy and the public interest regarding clean energy in two related ways. First, it will diminish price signals and reduce ratepayers' incentives to conserve. Second, it will directly diminish the value of ratepayers' energy efficiency and renewable energy investments. The combined effect of these two outcomes will reduce the cost effectiveness of ComEd's energy efficiency and net metering programs and make compliance with the Illinois EEPS and RPS statutes more difficult and expensive.

1. SFV Rate Design Will Discourage Ratepayers From Conserving Energy.

Many witnesses testified that moving to a SFV design would "discourage ratepayers from conserving electricity." Staff Ex. 13.0 (Boggs) at 18; *see* City Ex. 1.0 (Bodmer) at 35; AG/CUB Ex. 6.0 (Rubin) at 41; NRDC Ex. 2.0 (Cavanagh) at 10-11. This is because:

> When charges which are based on usage comprise a larger portion of a customer's monthly bill, it increases the incentive for a customer to keep his or her electricity costs down by curtailing usage. If a larger portion of a customer's monthly bill is fixed, this limits the ability of a customer to reduce his or her bill by using less.

Staff Ex. 13.0 (Boggs) at 18. This point is colorfully illustrated by witness Bodmer's example drawn from the recollection of his childhood:

> With high variable charges and low customer charges, when a parent shouts at his or her children to turn off the lights or turn off the TV, they are probably not thinking about reducing CO2 emissions, global warming, nuclear waste from all of Exelon's plants, or other nasty environmental consequences associated with delivery and production of electricity. Rather, they are probably thinking about their electric bill. (One of the

> recurring memories I have of my childhood is my father yelling at me to turn off the lights.

City Ex. 1.0 at 27-28. Bodmer says that while "economists may explain the principle in fancier terms," the bottom line is that parents will "shout less" if turning out the lights won't have as much of an effect on the family's electric bill. *Id.* Bodmer concludes that ComEd's SFV rate proposal would result in ComEd having a "rate structure that is less favorable to energy conservation than any other utility company in the country." City Ex. 1.0 at 35.

Bodmer's conclusion is consistent with the National Action Plan for Energy Efficiency, which finds that SFV rate designs can "significantly reduce a customer's incentive to undertake efficiency improvement."[4] ComEd Witness Hemphill responds that the Action Plan "offers limited guidance on rate design for an unbundled distribution utility" as opposed to a fully bundled rate (energy plus distribution). ComEd Ex. 71 at 4. He notes that "the largest portion of an electric bill is for electric supply, and supply prices remain volumetric." ComEd Ex. 71 at 4-5. The implication is that ComEd believes customers will continue to feel adequate price signals to conserve electricity under a SFV rate design.

The Action Plan anticipates and rejects ComEd's argument that SFV distribution rates will not significantly deter conservation. Indeed, the Plan concludes that negative customer incentives for energy efficiency "persist even when SFV rates are applied to individual components of the bill, such as charges for distribution service."[5] The next

---

[4] National Action Plan for Energy Efficiency, *Aligning Utility Incentives with Investment in Energy Efficiency*, Ch 5, p 13 (available at http://www.epa.gov/cleanenergy/documents/suca/incentives.pdf).
[5] National Action Plan for Energy Efficiency, *Customer Incentives for Energy Efficiency Through Electric and Natural Gas Rate Design*, p. 14 (available at http://www.epa.gov/cleanenergy/documents/suca/rate_design.pdf).

section of this brief demonstrates that ComEd's SFV rates would in fact have a real significant impact on the economics of energy efficiency and renewable energy projects in Illinois. This impact is substantial even though ComEd's distribution service rate represents only about 1/3 of a customers' total bill.

2. SFV Rate Design Will Penalize Customers That Install Energy Efficiency and Renewable Energy Equipment.

When a ComEd customer installs an energy efficiency refrigerator, or more efficient lighting, or solar panels on her roof, she saves money equal to the value of the kWh she no longer has to purchase from ComEd. In order to decide whether to make these investments, the prudent customer will estimate the amount of energy they will save each year, calculate the value of that saved energy, and determine how long it will take for the clean energy investment to pay for itself – this is often referred to as the "payback period."

ComEd's proposal to increase flat charges and reduce the kWh-based distribution charge for residential customers means that each "saved" kWh will be worth that much less to ComEd's customers. Witness Cavanagh illustrates this with an example using compact fluorescent lightbulbs (CFLs):

> When a residential customer consumers less energy, she will see less benefit under ComEd's proposal than currently. I estimate that, compared to a rate design that keeps the current 37% of fixed costs in fixed charges, ComEd's proposal would lengthen the payback period for an investment in 5 CFLs by 20%, from around four months to around 6 months. A customer that chooses to install these CFLs would only save $1.89 over the year, compared to $5.54 if the rate design continued to collect 37% of fixed costs in fixed charges.

NRDC Ex. 2.0 at 10. Using ComEd's numbers in witness Alongi's testimony, under ComEd's SFV proposal every kilowatt-hour that a customer saves (or self-generates) would be worth approximately 1.5 cents less than under the current rate structure.[6] This adds up to very significant lost savings when you consider the scale of energy efficiency programs in ComEd's service territory.

For example, in the next three years ComEd plans to collect approximately $47 million from its ratepayers to provide residential incentives for approximately 31 million energy efficient lightbulbs. *See* ComEd 2011-2013 EE Plan, Case 10-0570, Ex. 1.0 at 56-57 ("EE Plan"). Under ComEd's SFV proposal, customers that install these bulbs will save approximately $6 million less than they would have under ComEd's existing rate structure.[7] These lost savings will compound over time because each CFL is expected to last "about ten times longer" than incandescent bulbs. EE Plan at 54.

Looking more broadly, ComEd plans to spend more than $106 million of ratepayer money on residential energy efficiency programs over the next three years. *See* EE Plan at 49 (Table 12). These programs are projected to save over 785,000,000 kWh of energy for ComEd ratepayers. *Id.* Using the same calculation, residential customers that participate in these programs will save nearly $12 million less under

[6] For single family residential, the difference is approximately 1.483 cents / kWh ($0.02407/kWh vs $0.00924/kWh). For multifamily, the difference is 1.428 cents / kWh ($0.02407/kWh vs. $0.00979/kWh). *See* ComEd Ex. 16.0 Revised (Alongi) at 11 (Table D2) (adding DFC and IEDT charges). The difference is somewhat smaller for space heating customers.

[7] ComEd projects that the residential lighting programs in its next 3-yr plan will save customers more than 400,000,000 kWh. *See* EE Plan at 49. As discussed above, each one of these kilowatt-hours saved will be worth approximately 1.5 cents less to ComEd's customers under the Company's SFV rate proposal. So multiplying the 400,000,000 kWh savings times 1.5 cents / kWh represents approximately $6 million of lost savings during the plan period.

ComEd's SFV proposal than they would have under ComEd's existing rate structure.[8] In other words, ComEd's SFV proposal will take approximately $12 million of bill savings directly out of the pockets of ComEd customers that have purchased and installed EE equipment and put it back in the pocket of ComEd's shareholders. This number will grow each year as ComEd's statutory savings targets continue to rise. The effect is the same as if ComEd had proposed to single out customers that improve their energy efficiency for a multi-million dollar annual rate increase.

When the Illinois legislature passed an energy efficiency performance standard (EEPS), it determined that it was worthwhile to collect ratepayer funds to pay for energy efficiency upgrades in part because ratepayers would have the chance to benefit from the utilities' programs in the form of saved energy and lower bills. ComEd's SFV rate proposal changes the terms of the deal. By reducing the value of energy efficiency, the Company's proposal will undermine the expectations of customers that have already made energy efficiency investments and will make future investments less favorable.

3. SFV Rate Design Will Make the Illinois EEPS and RPS More Difficult and Expensive to Achieve.

ComEd's SFV rates would also make the Legislature's EEPS savings goals more difficult to achieve. As described above, ComEd's SFV rate would reduce the value of energy efficiency and lower the cost-effectiveness of EE measures. Therefore, ComEd would need to offer higher monetary incentives to get the same amount of energy efficiency through its approved EE programs. The Illinois EEPS, however, is limited by a

[8] Again, each kWh saved is worth approximately 1.5 cents less for ComEd's customers under a SFV rate. So multiplying the 785,000,000 of anticipated savings times 1.5 cents / kWh represents approximately $12 million of lost savings.

"rate impact cap." *See* 220 ILCS 5/8-103(d). The more ComEd has to pay for EE incentives, the less room available under the rate cap. ComEd is already experiencing "significant challenges" meeting its savings goals while remaining within budget. *See* ICC Case 10-0570, Final Order at 35. Moving towards a SFV rate will even further reduce the amount of savings the Company will be able to achieve. This would undermine the goals set by the Legislature when it passed an EEPS.

On-site renewable energy operates the same way as energy efficiency from the customers' perspective except that the stakes are even higher. Instead of a CFL that costs a dollar or two per bulb, a typical residential solar PV system can cost more than $30,000. According to the Department of Energy's PVWatts solar calculator, a typical residential 5 kW rooftop system will generate approximately 6,000 kWh of electricity in the Chicago region each year.[9] Over the 25 year life of a solar PV system, ComEd's SFV proposal would reduce the value of the energy produced by more than $2,000.[10] This diminishes the value of customer-sited renewable energy systems in ComEd's service territory and will make it harder for ComEd customers to finance renewable energy projects.

In sum, the Illinois EEPS and RPS require ComEd to collect tens of millions of dollars from its customers each year to promote energy conservation and renewable energy. Under ComEd's SFV proposal, customers will not get the full benefit of the energy savings that they are paying for. Instead, ComEd (and Exelon's) shareholders will reap the benefit. *See* City Ex. 1.0 at 32-33. Because greater incentives will be required to motivate customer behavior, the Illinois policies will be just as expensive but

[9] See http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Illinois/Chicago.html. Enter "DC rating" of 5 kW and press "calculate."
[10] (6,000 kWh per year) x (25 years) x (1.5 cents lost / kWh) = $2,250.

less effective. As noted by Staff witness Boggs, "[i]t is contradictory for the Company to spend such large sums to promote energy efficiency and then knowingly implement a rate design that has the opposite effect." Staff Ex. 13.0 at 24; *see also* NRDC Ex. 2.0 at 9; AG/CUB Ex. 6.0 at 41; City Ex. 1.0 at 35; Staff Ex. 29.0C at 11-12.

e. The Commission's Gas Cases Are Distinguishable and Do Not Support ComEd's Proposed SFV Rate Here.

ComEd cites a number of recent natural gas cases to support its argument that the Commission should move towards SFV rates here. *See* ComEd Ex. 46 at 9-10 (citing *The Peoples Gas Light and Coke Company/North Shore Gas Company*, Docket Nos. 07-0241/07-0242 (cons.), *also* Docket Nos. 09-0166/09-0167 (cons.), *Ameren Illinois Utilities*, Docket 07-0585, *et al.* (cons.); *Northern Illinois Gas Co.*, Docket 08-0363).

These cases are distinguishable and do not compel the Commission to adopt a SFV rate here. First, there are inherent differences between electricity delivery and gas delivery. As explained in the National Action Plan for Energy Efficiency, "electricity and natural gas embody different supply, distribution, and consumption characteristics that have led to different rate treatments."[11] *See* Staff Ex. 29.0C at 10.

Second, the facts in the gas cases are different than the facts here. Notably, the Commission found that the impact on customers in the gas cases was 1. not significant; and 2. not disparate. *See*, *e.g.*, Docket 08-0363 (Nicor), Order (March 25, 2009) at 89-90; Docket 07-0585 (Ameren), Order (Sept. 24, 2008) at 238. For example, in the Nicor case, the Commission found that the increase for small heating customers would only

[11] National Action Plan for Energy Efficiency, *Customer Incentives for Energy Efficiency Through Electric and Natural Gas Rates,* p. 7 (available at http://www.epa.gov/cleanenergy/documents/suca/rate_design.pdf)

be $4.78 per month and "[t]he difference between the increase for the smaller customers and that for other customers is not great in terms of the actual monetary amounts." Docket 08-0363, Order (March 25, 2009) at 89. In contrast, several witnesses noted the significant and disparate impact of ComEd's proposal on low usage customers here. *See* City Ex. 1.0 at 10-14; AG/CUB Ex. 6.0 at 25; Staff Ex. 13.0 at 24-25; NRDC Ex. 2.0 at 9.

The Commission should also consider the fact that it *decreased* the gas utilities' authorized return on equity to compensate for their reduced risk under SFV rates. In adjusting Ameren's ROE downward by 10 basis points the Commission found:

> The Commission is of the opinion that this move toward AIU recovering more fixed costs through the fixed monthly charge will have a similar effect as adopting Rider VBA, in that AIU will be more assured of recovering its fixed costs of service for gas operations. As a result, AIU will face less risk and an accompanying reduction in the authorized return on equity is warranted.

Docket 07-0585, Order (Sept. 24, 2008) at 215. Similarly, the Commission deducted 6.5 basis points from Nicor's authorized return on common equity "to reflect the reduction in Nicor's risk" resulting from the approval of SFV rates. Docket 08-0363, Order (March 25, 2009) at 71. In contrast, ComEd here seeks a 40 basis point *increase* in its ROE. *See* ComEd Ex. 13.0 at 2-3. Clearly, the Commission should evaluate ComEd's SFV proposal on its own merits and not rely on gas cases with very different facts.

The facts in this case, as persuasively documented in the testimonies of the witnesses from Staff, City of Chicago, Attorney General, CUB, and NRDC, demonstrate that ComEd's SFV rate is an inequitable proposal, out of step with current utility practice and ratemaking principles, and would move Illinois in the wrong direction with respect to its vital energy conservation and renewable energy policy objectives.

2. Decoupling (NRDC Proposal)

The commission should reject NRDC's proposal to implement a decoupling mechanism.

Natural Resources Defense Council has proposed a decoupling mechanism as an alternative to ComEd's straight fixed variable rates. As described by NRDC, "This mechanism involves a simple comparison of actual sales to authorized fixed cost recovery during the period under review. The difference is then either refunded to customers or restored to the company." NRDC Ex. 2.0 at 14. ELPC supports neither ComEd's nor NRDC's proposal. No party in this proceeding has submitted persuasive evidence that ComEd should not recover its costs through traditional ratemaking mechanisms. ComEd comes in for rate cases whenever it believes it is under-earning, and in that context the Commission reviews all of the utilities costs and revenues in one proceeding. No party has offered any reason that supports changing that system as it applies to energy efficiency.

The Commission should reject decoupling on both legal and substantive grounds. Legally, Illinois has a long history of case law that rejects single issue ratemaking and decoupling falls under that category. Substantively, ComEd argues that it is already doing everything it can do deliver the best possible energy efficiency programs without decoupling. Moreover, the Commission should reject any further attempt to decouple until after it studies the results from the Peoples Gas decoupling pilot instituted in 2008. Ironically, while decoupling is to remove any disincentives to providing efficiency, as discussed below Peoples latest efficiency plan does the bare minimum under the statute. ICC Docket No. 10-0564.

a. Illinois Courts Have Rejected Single Issue Ratemaking.

The first question the Commission must address is the legality of decoupling in light of the case law that prohibits single issue ratemaking. The Illinois Supreme Court stated:

> The rule against single issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate costs and demand of the utility. Therefore it would be improper to consider changes to components of the revenue requirement in isolation. Oftentimes a change in one item of the revenue formula is offset by a corresponding change in another component of the formula.

Business Professional People for the Public Interest v. Illinois Commerce Commission, 146 Ill. 2d 175, 244 (1991) (*BPI* II). The utilities are not guaranteed profits, they have the opportunity earn them. Once the Commission sets rates the utilities then have an incentive to operate efficiently in order to achieve those earnings, and decoupling eliminates that incentive.

The courts have long upheld this principle, including as it relates to recovery of costs related to energy efficiency. In *Finkl Steel v. Illinois Commerce Commission* the Commission ruled that a special rider to recover energy efficiency costs "violated the prohibition against single issue ratemaking because the Commission had authorized the utility to charge customers for the demand-side management program costs without considering whether other factors offset the need for additional charges." Finkl Steel v. Illinois Commerce Commission, 250 Ill. App. 3d 317, 326 (1993). The court further noted, "Charging ratepayers for lost revenues due to decreased demand vitiates the goal of reducing energy costs by reducing demand." *Id.* at 329.

Most recently in *Commonwealth Edison Company v. Illinois Commerce Commission*, the Second District Appellate Court recently reached a similar finding

where the court ruled that the Commission erred by allowing ComEd to recover costs from delivery service modernization through a rider. Consistent with Finkl, the court stated, "Rider SMP is a classic example of improper single issue ratemaking because AMI is the type of cost that should be addressed through normal ratemaking procedures." *Commonwealth Edison Company v. Illinois Commerce Commission*, Case 937 N.E.2d 685, 707 (2010).

The Court in *Commonwealth Edison* cited *BPI* rationale that the rule against single issue ratemaking, "ensures that the utility's revenue requirement is based on the utility's aggregate costs and the demand on the utility, rather than on specific component of its operation." *Id.* citing *BPI II*, 146 Ill. 2d at 244. *See also, Citizens Utlity Board v. Illinois Commerce Commission*, 166 Ill. 2d 111, 137 (1995).

Finally, ELPC notes that the First District Appellate Court is currently reviewing the legality of the decoupling rider the Commission approved in the Peoples Gas rate case. In light of the recent finding in *Commonwealth Edison*, ELPC urges the Commission to refrain from approving any more decoupling programs until the Appellate Court issues its ruling.

b. The Facts in this Case do not Support the Need for Decoupling in Order to Encourage ComEd to Run Effective Programs.

While NRDC cites the need for decoupling in order to remove disincentives for ComEd when it comes to running its energy efficiency programs, the record in this case does not support NRDC's position. NRDC Ex. 2.0 at 5. ComEd knows exactly what its energy efficiency goals are for the next three years, and can adjust its test year accordingly. For some unexplained reason it chose not to do so in this proceeding, but it certainly could have taken advantage of this adjustment. NRDC also ignores the fact

that by statute, ComEd recovers its energy efficiency costs up front through a rider. 220 ILCS 8-103(e). While the rider does not completely solve NRDC's disincentive concern, it should certainly be a factor in the Commission's consideration of whether ComEd needs additional incentive. NRDC also ignores the fact that ComEd faces a real disincentive if it does not run good programs. If ComEd fails to meet the statutory EE targets, it automatically loses the programs. 220 ILCS 8-103(i).

The Commission should also consider ComEd's history running the efficiency programs and its testimony in this proceeding. ComEd Witness Jensen testified that ComEd wants to run the programs, and that the Company views the programs as a positive way to connect with its customers. Tr at 2313. Moreover, Mr. Jensen testified that the Company is fully committed to running the best programs possible under the current framework:

Q And during the course of the last three years has ComEd made the best effort possible to achieve energy efficiency savings for customers under the programs in its plan?
A Yes
Q Is ComEd committed to making its best effort to help customers save energy unde the Year 4 to 6 plan?
A Yes.

Tr at 2308 and 2309.

ComEd has met its efficiency goals as set by the legislature in years one and two of the first three year Plan, and there is no evidence in the record that it will not meet those goals in years 4-6 under the new Plan. While the current system may not be perfect when it comes to the signals to ComEd regarding efficiency, NRDC fails to provide evidence that supports the need for decoupling.

NRDC also fails to consider the fact that the only decoupling experience in Illinois has been Peoples Gas, and the decoupling plan Peoples operates under does not seem to be effective in removing Peoples disincentive to do efficiency. Mr. Cavanagh indicated that he is aware that Peoples is operating under a decoupling pilot. However, he was unaware that Peoples new three year plan proposes spending just over half ($14, 583,373 out of $27,117,358) the funds available for efficiency. Tr. at 1504-1505. While this is not definitive evidence that decoupling is failing, given that the Peoples program is a pilot, it certainly raises questions that we should answer before allowing ComEd to decouple.

CONCLUSION

Based on the above, ELPC urges to the Commission to reject ComEd's request for a 40 basis point increase in ROE, and the Company's request for straight fixed variable rates. The Commission should also reject NRDC's request for decoupling.

ComEd and NRDC fail to support their requests with sufficient evidence for the Commission to grant the requests. Traditional ratemaking principles address the problems these parties raise. In order to adjust for changes in customer usage due to energy efficiency, ComEd should utilize a future test year that makes such adjustments. This can be done without causing harm to ratepayers and without sending consumers the wrong signals regarding efficiency. Ultimately, the Company fails to justify why it needs radical reform rather than just using this basic adjustment.

Respectfully submitted,

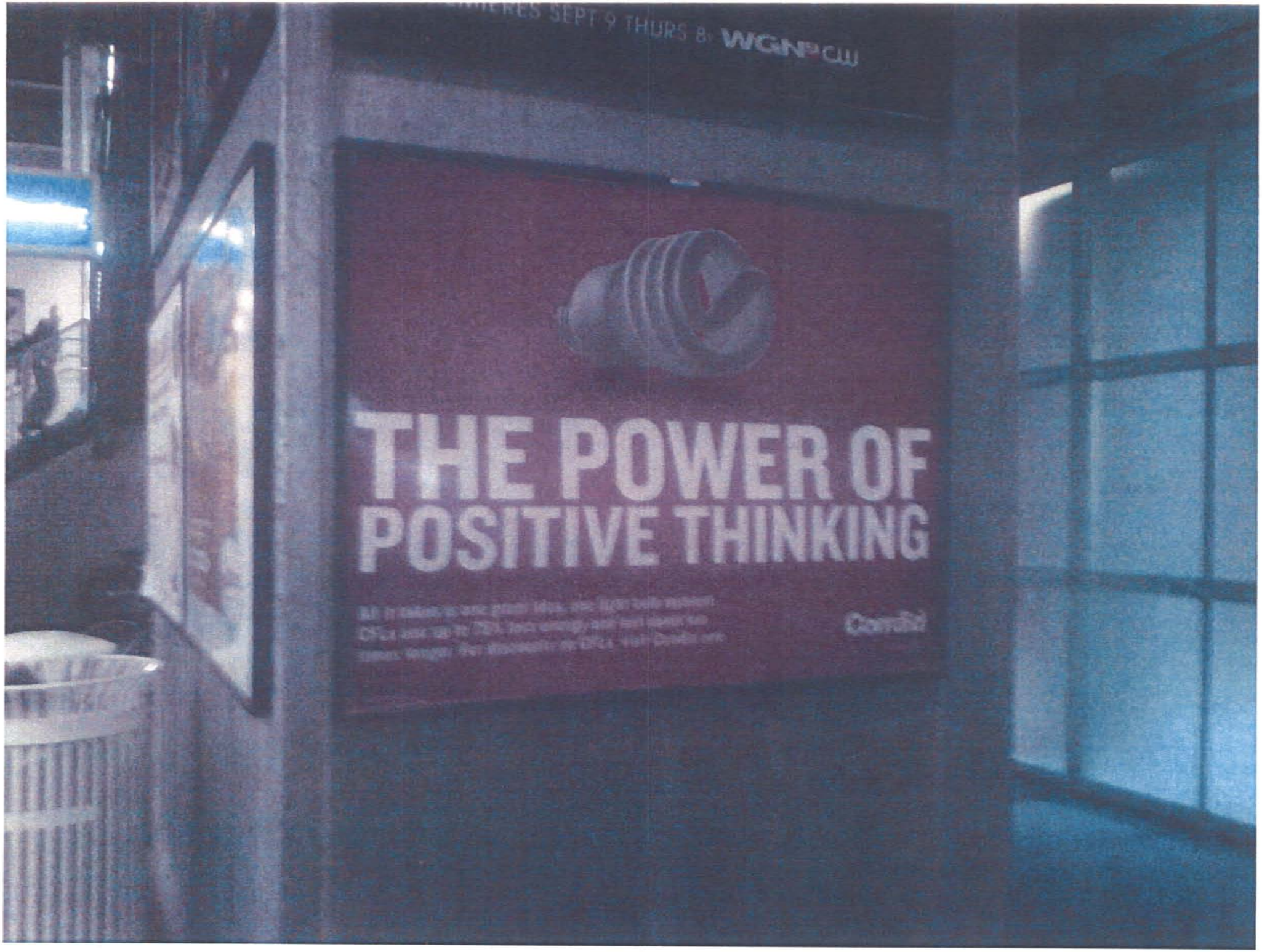
Robert Kelter, Senior Attorney
Brad Klein, Staff Attorney
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
(312) 673-6500
(312) 795-3730 (fax)
rkelter@elpc.org
bklein@elpc.org

CERTIFICATE OF SERVICE

I, Robert Kelter, hereby certify that the foregoing document was served to all parties of record listed on the attached service list by e-mail on February 10th, 2011. Paper copies will be provided upon request.

Robert Kelter

Robert Kelter
Senior Attorney
Environmental Law & Policy Center



ELPC Cross Exhibit 1.0

ELPC Cross Exhibit 2.0

ComEd
An Exelon Company

'Tis the Season for Holiday Lights and Energy Savings

ComEd brightens the season and sheds light on energy efficiency ideas

CHICAGO (Nov. 24, 2010) – This holiday season, ComEd is spreading joy across northern Illinois with illuminating LEDs (light emitting diodes), energy efficiency ideas and discounts to help customers reduce electricity consumption.

ComEd expects customers will use more than 180 hours of electricity per month this holiday season to illuminate their holiday decorations. To keep the holidays shining bright and save energy, ComEd recommends replacing traditional holiday lights with a more energy efficient lighting option, such as LEDs.

"According to ENERGY STAR, holiday LEDs generally consume 70 percent less energy and last up to 10 times longer than traditional holiday light strands," said George Malek, ComEd Energy Doctor. "Some holiday LEDs can pay for themselves in less than five years as a result of the electricity savings, which can help keep a little jingle in your pockets. In addition, they come in various shapes, colors and sizes and are weather resistant for outdoor use."

ComEd also offers the following tips to help customers think green while decorating their home this holiday season:

- **Power strips can help you save** - Use a power strip with an on/off switch to fully power down decorations that consume electricity such as holiday lights and inflatables. According to the U.S. Department of Energy, in the average home 75 percent of the electricity used to power home electronics and appliances is consumed when they are turned off. This can be as much as 10 percent of a homes overall energy usage.
- **Consider LEDs** - For a typical holiday tree illuminated with 1,100 lights and operating for six hours everyday of the week, customers can expect to save up to $8 per month, or 70 kilowatt-hours of electricity, by using LED lighting.
- **Take advantage of discounts** - Visit ComEd's Online Energy Store, now through Dec. 31 to receive an instant $2 rebate on each set of LED holiday lights. This rebate is in addition to the usual 20 percent discount offered on energy efficient products available through the store.

ComEd continues its tradition of shedding light on energy efficiency by hosting local holiday festivities for families to enjoy:

ComEd LED Holiday Tree

ComEd helped to kick-off the holiday season with its sponsorship of the 'ComEd LED Holiday Tree,' located on John Hancock Center's Garden Plaza. This radiant tree stands 35 ft. tall and is illuminated by 3,000 strands of LEDs courtesy of ComEd. By using energy efficient LEDs, this tree will cast a warm glow along the Magnificent Mile in a true green fashion this holiday.

Lincoln Park Zoo ZooLights

This marks ComEd's ninth consecutive year for ComEd as the proud sponsor of *ZooLights*. During this free event, customers can stroll through the Lincoln Park Zoo and enjoy crafts, live ice carvings and beautiful, bright light attractions. Please visit www.lpzoo.org for dates.

Chicago Botanic Garden's Wonderland Express

Customers can enjoy the beautiful outdoor decorations completely lit by energy efficient lighting, and a 10,000-square-foot indoor holiday exhibition featuring a miniature train chugging through 80 Chicago landmarks, including the Stanley Cup to celebrate the championship of the Chicago Blackhawks. This event runs from Nov. 26 to Jan. 2, visit www.chicagobotanic.org.

ComEd Festival of Trees

This weeklong holiday extravaganza includes a fabulous display of holiday trees, wreaths and decorations, showings of classic holiday films, and more. The Festival of Trees runs from Nov. 21 to Nov. 28, please visit www.rialtosquare.com for more information.

Brookfield Zoo's Holiday Magic

This marks the 29th year of Brookfield Zoo's *Holiday Magic* lighting festival, which features more than 120 animated light displays and a million twinkling lights. Festivities include live musical entertainment, an all new dolphin show, and many exhibits will be open for viewing animals, including Brookfield Zoo's newest, Great Bear Wilderness. Visit www.brookfieldzoo.org for dates.

ELPC Cross Exhibit 3.0

ComEd's environmental initiatives support Exelon 2020, a comprehensive strategy announced earlier this year by Exelon, ComEd's parent company, to reduce, offset or displace more than 15 million metric tons of greenhouse gas emitted by its family of companies and customers.

###

Commonwealth Edison Company (ComEd) is a unit of Chicago-based Exelon Corporation (NYSE: EXC), one of the nation's largest electric utilities with approximately 5.4 million customers. ComEd provides service to approximately 3.8 million customers across northern Illinois, or 70 percent of the state's population

© Commonwealth Edison Company, 2010-2011 All Rights Reserved

ELPC Cross Exhibit 3.0

ComEd.
An Exelon Company

Beware the Energy-Sucking *Vampires* in Your Home

ComEd Ads Help Customers Combat 'Vampire Power'

CHICAGO (October 5, 2010) – They lurk in the dark in your kitchen, your living room and even your bedroom while you sleep. They look like little glowing red fangs, on televisions, game consoles and other household electronics and appliances. You may know them as standby lights, but ComEd wants you to be aware that these lights are pesky little energy stealers also known as ***power vampires***.

Here's a scary thought: power vampires draw small amounts of electricity whether your electronic device is on or off. According to the U.S. Department of Energy, the average U.S. household spends $100 per year to power electronics and appliances while they are off or in standby mode.

"Many of the most common home electronics, such as computers and some kitchen appliances, are the biggest energy guzzlers," said Val Jensen, vice president, Marketing and Environmental Programs, ComEd. "These electronics waste energy when they are left plugged in and can be as much as 10 percent of a homes overall energy usage."

ComEd wants to ensure its customers are aware of power vampires and how they can slay them to better manage their energy usage and save money.

This fall, the utility will feature a series of advertisements warning customers of these power hungry creatures. In addition, from Oct. 15-31, ComEd customers can visit the Brookfield and Lincoln Park zoos to peek inside the company's "shadowboxes," which will reveal tips on how to banish these electric-sucking nightmares from their homes forever:

- Use a power strip with an on/off switch to fully power down home electronics while in standby mode.
- Use a power strip for multiple battery chargers so it can be easily switched off when not actively charging.
- Unplug or switch off all nonessential devices when preparing to travel out of town.
- Unplug your charger for your cordless phone, portable music play or other portable device after its recharged.
- Plug home electronics, such as TVs and DVD players, into power strips and turn the power strips off when the equipment is not in use (TVs and DVDs in standby mode still use several watts of power). However, while unplugging DVRs can save money, they will not be able to record programs while turned off and program scheduling may need to be reset when turned back on.
- Turn off your computer and monitor when not in use. Alternatively, set to hibernation or sleep mode rather than using screen savers, which generally do not save energy.
- Look for the **ENERGY STAR®** label on home appliances, electronics and other products. **ENERGY STAR®** products meet strict efficiency guidelines set by the **U.S. Environmental Protection Agency** and the U.S. Department of Energy.

For more information on vampire power please visit **www.ComEd.com**. For information on ComEd's and *Smart Ideas*[sm] and other energy saving tips, visit **www.comed.com/smartideas**, and keep these energy-sucking creatures out of your home.

###

Commonwealth Edison Company (ComEd) is a unit of Chicago-based Exelon Corporation (NYSE: EXC), one of the nation's largest electric utilities with approximately 5.4 million customers. ComEd provides service to approximately 3.8 million customers across Northern Illinois, or 70 percent of the state's population.

© Commonwealth Edison Company, 2010-2011 All Rights Reserved

ELPC Cross Exhibit 3.0

ComEd
An Exelon Company

'Fine Art Fridges' Take Northern Illinois Tour

Art Exhibit travels to Chicago's Navy Pier, Glenview's Kohl Children's Museum and Rockford's Discovery Center Museum

CHICAGO (September 30, 2010) – While ComEd's "Fine Art Fridges" may no longer be gracing the Magnificent Mile, customers can still check out the cool recycled fridge art in its new homes. Starting this week, the art exhibit goes on display at Navy Pier in Chicago, Kohl Children's Museum of Greater Chicago in Glenview and the Discovery Center Museum in Rockford. The new locations will each display the fridge art until Nov. 8.

Fine Art Fridges features nine recycled refrigerators that have been turned into works of art by Chicago-area artists. It was launched this summer along Chicago's Michigan Ave. and is helping ComEd raise awareness about its appliance recycling program, which received an 11 percent increase in enrollments the week following the launch of the exhibit.

"Fine Art Fridges generated quite a buzz this summer while delivering an important environmental message in a fun and creative way," said Anne Pramaggiore, ComEd president and COO. "We wanted to extend the exhibit further into our service territory to reach as many customers as possible. Our partners at Navy Pier, Kohl Children's Museum and the Discover Center Museum have provided great venues for us to do so."

Through appliance recycling, ComEd will haul away their customer's old, working refrigerator for free and pay them $25 per appliance. To date, the program has removed more than 50,000 inefficient appliances from the market.

Older refrigerators can use up to five times more electricity than newer models. They can also consume up to $150 a year in electricity.

Appliance Recycling is part of ComEd's Smart Ideas[sm] portfolio of energy efficiency programs which provides customers with information and tools they need to manage their electricity usage. Appliance recycling helps customers responsibly dispose of their inefficient units to save energy, money and the environment.

Navy Pier
600 E Grand Ave, Chicago, IL
Larry "VooDoo" Grobe – 'Recycled VooDoo Retro Rod'
Kathryn Trumbull Fimreite – 'Green Lifestyles'
Nicole Beck – 'Coldspot: A Gulf Story'

Kohl Children's Museum
2100 Patriot Blvd, Glenview, IL
Beth Kamhi – 'The Power of Flowers'
Ginny Sykes – 'Calming/Calling/Cooling'
Tyrue "Slang" Jones – 'The Last Tree Exhibit'

Discovery Center Museum
711 N Main St, Ste 2, Rockford, IL
Victoria Fuller – 'Peas and Quiet'
Lucy Slivinski – 'In the Land of Love, There is No Garbage'
Mike Helbing – 'Running Down, Out to Pasture'

For more information on ComEd's Fine Art Fridges exhibit, please visit www.ComEd.com. For information on Appliance Recycling and energy saving tips, visit www.comed.com/smartideas.

###

ELPC Cross Exhibit 3.0

Commonwealth Edison Company (ComEd) is a unit of Chicago-based Exelon Corporation (NYSE: EXC), one of the nation's largest electric utilities with approximately 5.4 million customers. ComEd provides service to approximately 3.8 million customers across Northern Illinois, or 70 percent of the state's population.

© Commonwealth Edison Company, 2010-2011 All Rights Reserved

ELPC Cross Exhibit 3.0

ComEd
An Exelon Company

From Your Kitchen to Michigan Avenue: Refrigerators and Art Converge

*ComEd Launches Refrigerator Art Exhibit Centered on **Green** Living*

CHICAGO (July 30, 2010) – Beginning Monday, pedestrians along Michigan Avenue will be in for a **cool** surprise when they encounter a new art exhibit sponsored by ComEd: Fine Art Fridges. The display, which runs through September 15, features recycled refrigerators that have been transformed into works of art.

Fine Art Fridges depicts themes ranging from Chicago architecture to a celebration of flowers. In one of the pieces, artist VooDoo Larry Grobe has transformed a vintage 1950s Philco fridge into a jazzy "VooDoo Hot Rod." In another, Nicole Beck celebrates wildlife in a mosaic tribute to endangered life in the Gulf of Mexico.

Nine pieces designed by Chicago-area artists will be displayed on the sidewalk along the Magnificent Mile between Chicago Avenue and Illinois Street.

The exhibit was created to raise awareness for ComEd's Appliance Recycling Program, through which ComEd will haul away your old, second working refrigerator or freezer free of charge. In return, customers receive $25.00 per appliance. To date, the program has removed more than 43,000 inefficient appliances from the market.

"Fine Art Fridges is a fresh approach to our ongoing efforts to educate our customers through our Smart Ideas[sm] portfolio of options that can help customers save money by becoming more energy efficient," said president and COO Anne Pramaggiore. "Many households have an extra working refrigerator or freezer in their basement or garage. What they may not know is that older refrigerator appliances can use up to five times more energy than their energy-efficient equivalents. Continued usage of an older model can result in $150 per year in extra electricity costs."

The specific Michigan Avenue exhibit locations are:

- **500 N. Michigan Avenue - #4:** VooDoo Larry – 'Recycled VooDoo Retro Rod'
- **505 N. Michigan Avenue - #5:** Lucy Slivinski – 'In the Land of Love, There is No Garbage'
- **540 N. Michigan Avenue - #2:** Kathryn Trumbull Fimreite – 'Green Lifestyles'
- **625 N. Michigan Avenue - #6:** Nicole Beck – 'Coldspot: A Gulf Story'
- **645 N. Michigan Avenue - #7:** Ginny Sykes – 'Calming/Calling/Cooling'
- **669 N. Michigan Avenue - #8:** Tyrue 'Slang' Jones – 'The Last Tree Exhibit'
- **676 N. Michigan Avenue - #3:** Victoria Fuller – 'Peas and Quiet'
- **700 N. Michigan Avenue - #1:** Beth Kamhi – 'The Power of Flowers'
- **777 N. Michigan Avenue - #9:** Mike Helbing – 'Running Down, Out to Pasture'

To learn more about ComEd's Fine Art Fridge exhibit, Refrigerator Recycling Program, please visit: www.comed.com. For energy saving tips, please visit www.comed.com/smartideas.

###

Commonwealth Edison Company (ComEd) is a unit of Chicago-based Exelon Corporation (NYSE: EXC), one of the nation's largest electric utilities with approximately 5.4 million customers. ComEd provides service to approximately 3.8 million customers across Northern Illinois, or 70 percent of the state's population.

© Commonwealth Edison Company, 2010-2011 All Rights Reserved

ELPC Cross Exhibit 3.0

ComEd
An Exelon Company

ComEd Offers Cool Ways to Combat Heat and Lower Electricity Bills

CHICAGO (July 16, 2010) – With summer temperatures considerably warmer than a year ago, it's tempting to just crank up the A/C, but now is the right time to change old habits in ways that can reduce your electricity usage and help keep more money in your pocket.

Chicago-area temperatures so far this July have averaged 87 degrees – or 10 degrees higher than the average high for the first 15 days of July 2009 during one of the coolest summers on record. Temperatures last month also were 3 degrees higher on average than the previous June, and ComEd customers used 12 percent more electricity than in June 2009.

ComEd customers' bills are also reflecting a slight increase in residential electricity rates that went into effect June 1. The increase – an average of approximately 30 cents per day – stems from the increased cost of wholesale power that the Illinois Power Authority procures on behalf of ComEd customers. ComEd passes this cost through to customers without mark-up.

"The heat is on this summer," said Tim Melloch, a ComEd Energy Doctor. "Customers are seeing higher bills as a result of higher electricity usage needed to allow people to cool their homes. However, by changing a few old habits, there are a number of ways for customers to combat the heat and lower their bills."

Everyone enjoys natural lighting, but the more summer sunshine is allowed to enter a home, the more it costs to keep a home cool, Melloch said. Most unwanted heat gains in a home come through the windows, but by closing shades, blinds and curtains during the day, a household can significantly reduce its cooling costs and lessen the need to crank up the air conditioner, he said.

"Many of us are also conditioned to think our home is only comfortable if we set the thermostat at 72 degrees," Melloch said. "But many people feel equally comfortable if they set their indoor temperature between 75 to 78 degrees and run a fan. It's a simple habit to change, and customers will use a lot less energy and can realize real savings on their next electricity bill."

So when returning home to a warm home, resist the urge to set the thermostat to arctic blast because it's a common misconception that this helps cool the home faster, Melloch added. A better way to cool off quicker is to install window coatings and film that can reflect as much as 80 percent of direct light, or install awnings, which can reduce heat gain by up to 75 percent.

To save money, many families may be cooking and baking at home more often. But a hot stove increases the heat in the home and puts more strain on the air conditioner. Consider using a microwave or barbecuing outside instead, Melloch said.

Melloch also suggests turning off all unnecessary lighting, appliances and electronic devices to lessen heat to the home and save electricity.

"Think about how much warmer a room can get if you have four or five people in it. Similarly the more appliances one has running, the more heat that will create, which requires more energy to cool," he said.

Melloch also advises those in the market for a new air conditioner to look for Energy Star-qualified A/C units, which will be at least 10 percent more efficient than conventional models. It's a buying decision that can translate into savings of $20 to $95 per year and also reduce the amount of greenhouse gas emissions.

And to avoid overworking the unit in the hot daytime sun, place it on the north or shady side of the house, the Energy Doctor added.

Customers can further reduce their energy consumption year round and lower their bills by applying other energy saving ideas from ComEd's Smart Ideas℠ for Your Home, a portfolio of easy to apply energy-efficient approaches. Visit www.ComEd.com/SmartIdeas.

###

Commonwealth Edison Company (ComEd) is a unit of Chicago-based Exelon Corporation (NYSE: EXC), one of the nation's largest electric utilities with approximately 5.4 million customers. ComEd provides service to approximately 3.8 million customers across northern Illinois, or 70 percent of the state's population.

ELPC Cross Exhibit 3.0

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:	)	
	)	
COMMONWEALTH EDISON COMPANY,	)	No. 10-0467
	)	
Proposed general increase in electric rates. (Tariffs filed June 30, 2010)	)	

Chicago, Illinois
January 20, 2011

Met, pursuant to notice, at Chicago.

BEFORE:

CLAUDIA SAINSOT and GLENNON P. DOLAN,
Administrative Law Judges

MR. PABIAN: Thank you.

Mr. Jensen is now available for cross-examination.

JUDGE DOLAN: Mr. Kelter.

CROSS-EXAMINATION

BY

MR. KELTER:

Q Good morning, Mr. Jensen.

A Good morning.

Q Turning -- well, I'm Rob Kelter, attorney for the Environmental Law & Policy Center.

Mr. Jensen, turning to Page 2 of your testimony, Line 38, you state that you're responsible for managing and the implementation of ComEd's energy efficiency and demand response portfolio; correct?

A Correct.

Q During the time you've managed the energy efficiency programs, have you mentioned these programs to the best of your ability?

A I have.

Q And during the course of the last three years has ComEd made the best effort possible to

achieve energy efficiency savings for customers under the programs in its plan?

A Yes.

Q Is ComEd committed to making its best effort to help customers save energy under the Year 4 to 6 plan recently approved in Docket 10-0570?

A Yes.

Q In regards to the 3-year plan submitted by ComEd in Docket 10-0570, the targets set under the plan were reduced from the targets set by the legislature; correct?

A The targets per the legislation were reduced to be consistent with the spending cap.

Q And ComEd agreed to those adjusted targets; correct?

A Correct.

Q ComEd participates in the SAG, does it not -- I'm sorry -- in the Stakeholder Advisory Group known as the SAG?

A Yes.

Q In fact, at Page 8 of your testimony, Line 155, you refer to the stakeholder process as a

collaboration, do you not?

A Which line? I'm sorry.

Q Line 155.

A Yes.

Q And at Line 175 you testify that ComEd has worked closely with the SAG on many issues including evaluation methodologies and protocols, evaluation work plan development and review, portfolio and program statuses and updates, portfolio and program design changes, demand response programs and potential market studies.

That's virtually all aspects of the EE programs; correct?

A Virtually, yes.

Q And would you say the relationship between ComEd and the SAG partners has been a positive one?

A Yes.

Q Is it fair to say that the parties have gotten along remarkably well?

A It calls for speculation, I guess; but, yes.

Q You also note in your testimony that ComEd

beat the targets for Year 1 of it's plan; correct?

A Correct.

Q And at Page 15, Line 329 of your testimony, you also note that ComEd believes it achieved its Plan Year 2 statutory energy savings goal of 312,339 megawatt hours under budget; correct?

A Correct.

Q And ComEd recovers the costs for the energy efficiency programs through an automatic adjustment clause; correct?

A We recover the program costs through an automatic adjustment clause, yes.

Q Do you know, did ComEd request in the legislation that provision that it recover its costs through that automatic adjustment clause?

A Honestly, I don't know. I wasn't here at the time.

Q Would you agree that it's advantageous to the Company to recover the costs through an automatic adjustment clause?

A Yes.

Q You're aware that there have been

discussions over the course of the last three years about whether an independent third party should be running the energy efficiency programs rather than ComEd, aren't you?

MR. PABIAN: Excuse me, your Honor.

Just a clarification, what do you mean "discussions"?

MS. McNEILL: That there have been -- I'll say discussions amongst the parties in the SAG.

MR. PABIAN: Rob, are you asking him if there were questions at the SAG meetings?

MS. McNEILL: I'm asking if he's aware that anybody -- that any of the parties in the SAG have discussed over the course of the last three years whether independent third parties should be running the energy efficiency programs rather than ComEd.

MR. PABIAN: Are you asking him about the discussions within that he's been involved in?

MS. McNEILL: I actually -- the question is, are you aware that there have been those discussions?

THE WITNESS: Honestly, I am not. I assume those discussions ended with the legislation.

BY MS. McNEILL:

Q ComEd wants to run the energy efficiency programs, doesn't it?

A Yes.

Q And ComEd views the programs as a positive way to connect with its customers, doesn't it?

A Yes.

Q In fact, ComEd has done a significant amount of marketing related to energy efficiency, hasn't it?

A Related to the energy efficiency programs we offer, yes.

Q And has ComEd done marketing related to energy efficiency that's not part of the programs?

A Ever?

Q In the last three years.

A ComEd Communications has sponsored a summer advertising campaign, which is independent of the energy efficiency programs, although they've used references to those programs in the content.

Q So they've -- they've done marketing related to energy efficiency?

A Yes.

Q Beyond the scope of the programs?

A Yes.

Q I want to show you something we'll mark as ELPC Cross-Exhibit 1.0.

(Whereupon, ELPC Cross-Exhibit No. 1.0 was marked for identification.)

BY MS. McNEILL:

Q Sorry it's not a clearer picture.

With this -- are you familiar with this billboard or sign?

A Not specifically, no.

Q Would it be fair to say that this would be part of that marketing that you just described that's not directly related to the energy efficiency program?

MR. PABIAN: Your Honor, at least I would object at this point. I'm not sure where this is going and the witness has already said he's not familiar with the sign. So, I'm --

MS. McNEILL: Well, I didn't -- but I can still

ask whether he's -- whether this looks like something that was part of this marketing campaign that he just talked about done by ComEd Communications. I think he can tell that by looking at it. If he can't then, you should just answer "no."

JUDGE DOLAN: Overrule the objection.

THE WITNESS: It looks to me like some of the collateral that was used in that advertising campaign.

BY MS. McNEILL:

Q And is it accurate to say that there were a number of signs and billboards around Chicago with similar messaging?

A Yes.

Q And do you know how much money ComEd spent on that marketing?

A No.

Q I'd like to show you something else.

MS. McNEILL: Mark this as ELPC Exhibit 2.0.

(Whereupon, ELPC Cross-Exhibit No. 2.0 was marked for identification.)

BY MS. McNEILL:

Q Are you familiar with the sticker shown in this exhibit?

A I am.

Q This sticker was used to promote ComEd compact fluorescents in grocery stores, hardware stores and other stores across ComEd's service territory; is that correct?

A Well, technically, it wasn't to promote ComEd fluorescents. It was to promote the program that provided discounts on fluorescent lights.

Q Fair enough.

The sticker does say "low price brought to you by ComEd"; correct?

A Correct.

Q And is it fair to say that ELPC and other members of the SAG objected to the use of these stickers because it sent customers the signal that ComEd was saving the customers money; is that correct?

A I recall that ELPC objected, yes.

Q And you agreed to stop using the stickers;

correct?

A What we agreed to do is include language on all collateral that we could that clearly indicated that the programs were paid for by customers of ComEd pursuant to the legislation.

The issue with the sticker, and you can see it if you compare it with the sticker next to it is it's very small. And the ability to have that language I just suggested to you show up on those stickers was -- it was very difficult to have that represented on these small stickers. But you will find it on virtually all other pieces of collateral.

MS. McNEILL: Your Honor, I don't --

BY MS. McNEILL:

Q Well, that's your characterization that the sticker is small; correct? It's actually bigger than the unit price sticker next to it; is that correct?

I'm sorry. I asked two questions so let me strike that.

It's actually your characterization that the sticker is small; correct?

A Correct.

Q And it's actually bigger than the sticker next to it with the unit price; is that correct?

A It's larger than the one to its immediate right, yes.

Q Mr. Jensen, I'd also like to show you a group of ComEd press releases marked as ELPC Exhibit 4.0.

JUDGE DOLAN: Did you have a 3?

MS. McNEILL: Pardon?

JUDGE DOLAN: You didn't have an Exhibit 3.

MS. McNEILL: Oh, I decided not to use it. I made a mistake. We could mark this 3.0.

JUDGE SAINSOT: Well, where -- have you marked these?

MS. McNEILL: No.

JUDGE DOLAN: No, he just -- he gave us the original with the -- this was one.

JUDGE SAINSOT: So why don't we call that 3.

MS. McNEILL: We'll call that 3.0.

BY MS. McNEILL:

Q Mr. Jensen, are you familiar with these press releases?

A I have seen most of them, I believe, yes.

Q Is it accurate to say that they relate to energy efficiency?

A Yes.

Q And is it accurate to say they were distributed to the press?

A I honestly don't know that. When I see these, I tend to see them before they're final and sent anywhere. So I assume they were, but I don't know for a fact.

Q And is it accurate to say that the Company has done several billing inserts over the last three years related to energy efficiency?

A Yes.

MS. McNEILL: That's all the questions I have.

JUDGE DOLAN: Thank you.

MS. McNEILL: I would like to -- can I move for the admission of the cross-exhibits now?

JUDGE DOLAN: Yeah.

MS. McNEILL: Your Honor, I'd like to move for the admission of ELPC Cross-Exhibits 1.0, 2.0 and 3.0.

JUDGE DOLAN: Any objections?

MR. PABIAN: No objections.

JUDGE DOLAN: All right. Then ELPC Cross-Exhibits 1.0, 2.0 and 3.0 will be admitted into the record.

(Whereupon, ELPC Cross-Exhibit Nos. 1.0, 2.0 and 3.0 were admitted into evidence.)

CROSS-EXAMINATION

BY

MS. LUSSON:

Q Good morning, Mr. Jensen.

A Good morning.

Q I just have a few questions.

At Page 7 of your testimony, Lines 151 through 154 you reference the risks associated with ComEd's provision of energy efficiency programs.

Do you see that there?

A Yes.

Q Now, I think in response to Mr. Kelter's testimony you agreed that the Company as part of its energy efficiency programs is out in the community;