

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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

**INITIAL BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

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## **INITIAL BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

Commonwealth Edison Company (“ComEd”) has filed a Petition requesting that the Commission enter an order pursuant to Section 9-244 (“Section 9-244”) of the Illinois Public Utilities Act (“PUA”) (220 ILCS 5/101 *et seq*, 5/9-244.) approving its proposed Alternative Regulation Plan (“ARP” or “Plan”) and authorizing ComEd to file and put into effect its Rate ACEP tariff, to implement the proposed ARP. (ComEd Pet. at 13). Pursuant to Section 200.800 (83 Ill. Adm. Code Part 200.800) of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), and the briefing schedule set by the Administrative Law Judge, the Illinois Industrial Energy Consumers <sup>1</sup> (“IIEC”) participating in this proceeding present their Initial Brief in this docket for the Commission’s consideration.

This Initial Brief addresses both legal and factual issues raised by ComEd’s proposal pursuant to Section 9-244. Lawful Commission approval of the proposed ARP requires that ComEd demonstrate that its proposal meets the requirements of Section 9-244. The evidence shows that ComEd’s proposal is inappropriate, and fails to meet the statutory requirements for an Alternative Regulation proposal under Section 9-244. As IIEC explains below, the lawful exercise of the conditional authority granted by Section 9-244 requires that the Commission reject ComEd’s proposal.

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<sup>1</sup>A diverse group of large electricity and consumers including: Abbott Laboratories, Inc., Enbridge Energy, LLP; ExxonMobil Gas & Power Marketing Company; and Sterling Steel Company. They refer to themselves collectively as the Illinois Industrial Energy Consumers (“IIEC” or “IIEC Companies”).

## **I. INTRODUCTION**

### **A. The Specifics of ComEd's Alternative Regulation Proposal(s)**

ComEd's ARP consists of what it characterizes as an "alternative regulation mechanism" plus four programs that would be implemented under that mechanism. (ComEd Pet. at 4). The ARP consists of the Rate ACEP tariff and the following "programs":

- (i) accelerated Urban Underground Facility Reinvestment ("UURF");
- (ii) Electric Vehicles ("EV") pilot;
- (iii) Low Income Assistance ("LIA"); and
- (iv) Deployment of Smart Technologies. ("Smart Grid")  
(*Id.*).

ComEd proposes that the UURF, EV and LIA programs be implemented immediately upon approval of Rate ACEP. (*Id.*). The Smart Grid program would be implemented after specific investments and budgets are developed by ComEd and approved by the Commission. (*Id.*).

Under ComEd's proposal, there would be an incremental increase in capital and O&M expenditures for the UURF of \$30 million and \$15 million, respectively, over the life of the program (18 months). (ComEd Pet. at 5). The EV program involves an incremental capital expenditure of \$5 million. (*Id.*). The LIA involves an incremental expenditure of \$10 million per year to assist certain customers in paying their utility bills. (*Id.*). ComEd's ARP also proposes an incremental increase in capital expenditures of up to \$95 million plus expenses of up to \$30 million to accomplish the Smart Grid investment program. According to ComEd, those investments "may" include such things as Advanced Metering Infrastructure ("AMI"), Customer Applications ("CA"),

and Distribution Automation “(DA”) investments. Under the ARP, the capital and operation and maintenance (“O&M”) budgets, if any, for the UUFR, the EV and the LIA, would be approved in this case. The O&M and capital budgets for Smart Grid would be approved in subsequent proceedings. (ComEd Pet. at 6). The budgets (capital and O&M) in the ARP are alleged by ComEd to include incentive mechanisms. (ComEd Pet. at 7).

With regard to the capital budgets, ComEd proposes that it be permitted to recover a return of and on all of its actual capital investment in the UUFR, EV and Smart Grid programs, subject to budget constraints, until the Commission enters an order in the biennial review process ComEd suggests. In that process, the Commission would review ComEd’s actual capital expenditures in comparison to the approved capital budget for those expenditures. If the actual expenditures fall within a band that is 95% to 105% of the budget, ComEd would be permitted to continue a full recovery of the return of and on that investment until ComEd’s next rate case, when the investment would be included in rate base. (ComEd Pet. at 8). If the actual capital expenditures associated with the investment exceed 105% of the budget, ComEd would discontinue recovery of the return of and on the portion of the investment that exceeded 105% of the budget, until ComEd’s next rate case, when the full investment could be included in rate base. If the actual cost of the investment is less than 95% of the budget, then ComEd says it would share the savings, as compared to the budget, with its customers on a 50/50 basis. (*Id.*).

With regard to the O&M costs, ComEd proposes an incentive that would allow it to recover its actual O&M costs<sup>2</sup> associated with the defined programs, less a 5% reduction, up to a cap of \$2 million. ComEd suggests it would not recover any O&M costs above the budget. (*Id.*).

In total, under ComEd's ARP, ComEd would invest an additional incremental amount of capital up to \$130 million and additional O&M expense of up to \$65 million. (*Id.* at 9). ComEd alleges that its plan will meet the requirements of Section 9-244 because: (i) it is likely to result in lower rates than would be charged for the same services under traditional rate of return regulation; (ii) it is likely to result in other substantial and identifiable customer benefits that would not otherwise be realized; (iii) ComEd is in compliance with applicable standards for reliability; (iv) the plan is not likely to result in a deterioration of ComEd's financial condition; (v) the plan is not likely to adversely affect the development of competitive markets; (vi) ComEd is offering delivery services in compliance with Article XVI of the PUA; (vii) the plan includes reporting requirements and other provisions that enable the Commission to adequately monitor ComEd's implementation of the plan; and (viii) the plan provides for equitable sharing of any net economic benefits between ComEd and its customers. (ComEd Pet. at 11-12).

For the reasons identified herein, IIEC respectfully disagrees with ComEd's plan and the suggestion that the plan is in compliance with Section 9-244 of the PUA.

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<sup>2</sup> In Rate ACEP, ComEd proposes to recover all expenses associated with its programs which it defines as the total dollars of expense "equal to the O&M expense incurred by the Company". (See ComEd Ex. 1.2, Org. Sheet No. X+8, definition of "UE").

## **B. Issues Raised by ComEd's ARP/"Programs"**

The evidence of record, including ComEd's own description of its proposal, shows that ComEd's proposal does not satisfy certain tests for Commission approval defined by that section. Other critical questions appear unresolvable on the record evidence, precluding the favorable findings required for approval of the proposal. For example, to approve ComEd's proposal, the Commission must determine on this record: (1) whether ComEd's proposals provide an alternative to rate of return regulation or performance based rate adjustments, as opposed to simply a special cost recovery adder on top of the continuing safety net of rate of return regulation; and (2) whether ComEd's proposed reward/penalty mechanisms adjust rates "based on utility performance" for a regulated service.

Moreover, in IIEC's view, the record shows that ComEd's Rate ACEP is almost certain to result in higher regulated service rates than would otherwise be in effect under the traditional ratemaking process.<sup>3</sup> ComEd also has not shown on this record that its proposal is likely to result in substantial and identifiable benefits that would not be realized by its customers without its proposal. And ComEd's proposal has not been shown to assure equitable sharing of any net economic benefits between the utility and its customers. Equally problematic, ComEd has not provided sufficient information for the Commission to conduct a meaningful assessment of the equity of the utility's proposal. (220 ILCS 5/9-244(b)(1), 9-244(b)(2), and 9-244(b)(8); 16-108(d)). This state of the record precludes required favorable findings under the tests of Section 9-244(b).

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<sup>3</sup> Indeed, were this not the case, IIEC may have supported ComEd's proposal.

That provision defines particulars of the Commission’s statutory evaluation of a qualifying proposal.

In this brief, IIEC will address the broader context of alternative regulation, the requirements of Section 9-244, and Rate ACEP -- as well as application of Section 9-244's particular requirements to ComEd’s proposed Section 9-244 programs. As shown below, the record evidence respecting ComEd’s proposal and the applicable statutory imperatives preclude lawful Commission approval

## **II. LEGAL REQUIREMENTS FOR SECTION 9-244 APPROVAL**

Section 9-244 of the PUA empowers the Commission to authorize, under the circumstances described in this Section, “. . . for some or all of the regulated services” of the utility, “implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to, earnings sharing, rate moratoria, price cap or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance.” If the utility proposes “other regulatory mechanisms that reward or penalize the utility” based on performance, Section 9-244 provides that “utility performance” is to be compared to standards established in the order authorizing implementation of those mechanisms. (220 ILCS 5/9-244(a)). Section 9-244 also provides that a proposal must pass eight specific factual tests before the Commission is obliged to approve the proposal. (220 ILCS 5/9-244(b)).

### **A. ComEd’s Proposed ARP Does Not Qualify Under Section 9-244(a)**

ComEd has proposed that its ARP be implemented in accordance with its proposed Rate ACEP - Accelerated Customer Enhancements Pilot. (Hemphill, ComEd Ex. 1.2). ComEd claims that:

Rate ACEP contains one or more programs consisting of alternatives

to rate of return regulation and one or more programs consisting of regulatory mechanisms that reward or penalize the Company through the adjustment of rates based on the Company's performance. (Rearden, Staff Ex. 1.0, Att. 1 - ComEd Resp. to Staff DR. OGC 2.01).

Staff witness David Rearden stated that Staff believes Rate ACEP is an ARP under Section 9-244(a)(ii). (Rearden, Staff Ex. 1.0-R at 3-4:59-75). IIEC agrees that ComEd has not proposed "an alternative to rate of return regulation" under Section 9-244(a)(ii) for any of its regulated service. IIEC also agrees that ComEd's proposal, if it qualifies at all, must qualify under the second of the constructs described in Section 9-244(a). Accordingly, should the Commission approve ComEd's ARP, the Commission must define an appropriate standard or standards against which utility performance must be measured. Since ComEd's Rate ACEP applies to its delivery service customers and those rates must be just and reasonable, the performance standards in that rate must be just and reasonable. (Hemphill, ComEd Ex. 1.2, Orig. Sheet X ("This tariff is applicable to all retail customers."); 220 ILCS 16-108(d)).

The standard proposed by ComEd is essentially a budget. ComEd's performance -- in completing its management of construction work, not in providing its any delivery service -- would be measured against ComEd's O&M and capital budgets for the subject programs and projects. For reasons stated below, IIEC does not believe a construction budget is an appropriate standard for measuring ComEd's "utility performance." (220 ILCS 5/9-244(a)). Because ComEd's ARP does not incorporate an appropriate standard, the proposal must be rejected.<sup>4</sup>

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<sup>4</sup> In identifying modifications needed to satisfy Section 9-244(b) criteria (as that provision requires), the Commission should define standards that incorporate achievement of the

**B. ComEd's ARP's Do Not Satisfy the Particularized Tests of Section 9-244(b)**

In addition to the requirements discussed above, Section 9-244(b) of the PUA establishes eight findings the Commission must make in order to approve ComEd's proposed ARP. These findings are:

- (1) the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-244 of the Act; and
- (2) the program is likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program; and
- (3) the utility is in compliance with applicable Commission standards for reliability and implementation of the program is not likely to adversely affect service reliability; and
- (4) implementation of the program is not likely to result in deterioration of the utility's financial condition; and
- (5) implementation of the program is not likely to adversely affect the development of competitive markets; and
- (6) the electric utility is in compliance with its obligation to offer delivery services pursuant to Article XVI; and
- (7) the program includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor its implementation of the program; and
- (8) the program includes provisions for an equitable sharing of

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ratepayer benefits used to justify adoption of the mechanism.

any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits.  
(220 ILCS 5/9-244(b)).

As IIEC witness Robert Stephens demonstrated in his testimony, ComEd's proposal does not satisfy each of these particularized factual tests of Section 9-244(b).

The evaluation of ComEd's proposal requires that the Commission first determine whether ComEd has submitted one proposal or four proposals and whether the tests apply to the package of programs and tariff or each individually. ComEd has not been clear on that point (*See, e. g.*, Rearden, Staff Ex. 1.0, Att. 1; Stephens, IIEC Ex. 1.0-C at 16:344-354). Mr. Stephens' assessment of the various components described by ComEd shows that whether considered as one or individual pieces, ComEd's proposal(s) either fail applicable Section 9-244 tests, or there is insufficient information in this record to support a favorable Commission finding.

**1. The Required Finding Under Section 9-244(b)(1)**

ComEd's programs are not likely to result in rates lower than would have been in effect under traditional rate of return regulation for the services covered by those programs and are not fully consistent with the provisions of Section 9-241 of the Act.

ComEd's programs are not likely to produce rates lower than those under traditional ratemaking. In fact, ComEd's programs would almost certainly increase customers' rates compared to what they would have been under traditional ratemaking. ComEd's principal basis for arguing that rates would be lower than they would otherwise be under traditional ratemaking hinges on ComEd's proposal to give customers a 5% discount on certain O&M expenses it incurs. (Stephens,

IIEC Ex. 1.0-C at 19:441-443). However, this discount is capped at \$2 million, apparently for all “programs” combined rather than individually. (*See*, Hemphill, ComEd Ex. 1.0 Rev. at 19:396-398). Thus, the best case scenario for ComEd customers is that they will save a maximum of \$2 million in O&M costs, compared to traditional rate of return regulation. (Stephens, IIEC Ex. 1.0-C at 20:447-448).

However, ComEd also proposes to increase customer rates under Rate ACEP by \$10 million to fund ComEd’s low income energy assistance programs. That funding was previously furnished by ComEd or one of its affiliates pursuant to statute. (220 ILCS 5/16-111.5A(e)). ComEd was prohibited from recovering this contribution from its customers. (220 ILCS 5/16-111.5A(j)).

Besides being an offset to the \$2 million or other claimed savings in ComEd package, the low income program itself imposes charges that would not be allowed under traditional regulation. The Commission has previously held that lifeline rates requiring the cost of supplying energy to a certain group of customers be subsidized by other groups or classes of customers are not permitted under the PUA in the first instance. (*See, Re: Commonwealth Edison Company*, ICC Dkt. 59359, 59485 (Cons.), Final Order, August 27, 1975, 1975 Ill. PUC LEXIS 9 at \*25-26). Similarly, the Commission has also determined that delivery service only customers should not be required to pay the electric commodity costs of customers who receive both delivery service and commodity service from ComEd. (*See, Re: Commonwealth Edison Company*, ICC Dkt. 07-0166, Final Order, October 11, 2007 at 25-27). IIEC understands that ComEd’s proposal would result in delivery service only customers paying a portion of the full bill (commodity and delivery) for certain customers. This would constitute a payment that the Commission has already determined these customers should not

be required to make under traditional rate of return regulation. (Stephens, IIEC Ex. 1.0-C at 20:449-454). It is obvious ComEd would not be able to recover this cost from its customers under traditional ratemaking. Therefore, by definition, charges to customers under Rate ACEP will exceed those under traditional rate of return regulation.

Furthermore, the incentives that ComEd has built into its plan actually give ComEd less incentive to spend and invest efficiently under the ARP than under traditional cost of service regulation and may actually result in rates higher than those under traditional ratemaking. Under traditional regulation, ComEd is permitted to recover and earn a return on its prudent and used and useful investment. This requirement provides a strong incentive to ComEd to spend and invest wisely and efficiently. Furthermore, given the regulatory lag associated with traditional rate of return regulation, ComEd has an additional incentive to operate with increased efficiency in order to accrue and keep savings in the period between rate cases. (Stephens, IIEC Ex. 1.0-C at 10-11:232-236).

ComEd's ARP incentives, on the other hand, involve recovery of O&M expense up to budgeted amounts but with a discount of 5% of the budget O&M expense up to a total of \$2 million. Such an approach provides ComEd with a strong incentive to inflate its O&M budgets in order to ensure recovery of as much O&M as possible through Rate ACEP. (Stephens, IIEC Ex. 1.0-C at 11:237-241). Furthermore, given the \$2 million cap, once the cap has been exceeded, ComEd no longer has an incentive to contain O&M costs within budget. (*Id.* at 11:242-243). The perverse incentives of ComEd's proposal fail to provide significant incentive to control costs, and they are likely to lead to increased costs and higher rates than under traditional ratemaking.

Also, a point that ComEd fails to mention is that some of its programs may in fact save ComEd indirect or ancillary O&M expenses. For example, to the extent that smart meters are widely deployed, ComEd may be able to save on costs associated with meter reading, such as employee salary or insurance costs. Rate ACEP makes no recognition of indirect or ancillary O&M savings, and thus provides ComEd the opportunity to accrue such savings to itself which, in the presence of traditional regulation, would have served to lower customers' rates. (*See, e.g.*, Stephens, IIEC Ex. 1.0-C at 20-21:461-464; Brosch, Jan. 27 Tr. at 547).

On the capital side, ComEd proposes to collect a return of and on investments within a dead band of 95% to 105% of budgeted amounts. This approach gives ComEd the incentive to inflate the budget to ensure that it actually maximizes its recovery under Rate ACEP. (*Id.* at 11:247-249). In fact, Rate ACEP provides a financial reward to ComEd for costs below 95% of the budget, no matter how inflated the budget may be. (Stephens, IIEC Ex. 1.0-C at 11:246-249, Fn 6; Hemphill, ComEd Ex. 1.2 at Original Sheet No. X+15). ComEd also would have an understandable incentive to budget and invest as much as possible under its programs in order to maximize the pace and magnitude of its return. (Stephens, IIEC Ex.1.0-C at 11:249-252). While a similar incentive is often said to exist under traditional rate of return regulation, under ComEd's ARP, the effect is magnified because ComEd would recover these costs more quickly. In addition, the utilities return would be that approved in its last case, without regard to the potential reduction in regulatory risk and resulting capital costs associated with ComEd's ARP. (Stephens, IIEC Ex. 1.0-C at 11-12:252-258).

Rate ACEP has the potential to produce rates higher than those produced under traditional ratemaking because Rate ACEP has the practical effect of a separate cost recovery rider. Rate

ACEP does include only a calculated and capped surrogate for O&M savings associated with ComEd's programs. However, Rate ACEP, like a cost recovery rider, ignores the actual savings which are potentially greater, and other dynamic components of ComEd's cost of service that would be considered in a rate case and would affect charges to ComEd's customers. (*Id.* at 20-21:457-467). Overall, ComEd's ARP is deficient. ComEd proposes to collect costs that it could not collect under traditional ratemaking. The standard proposed by ComEd gives it an incentive to overstate its O&M and capital budgets and thus overstate its expenses and capital budgets compared to traditional ratemaking. Rate ACEP acts much like a single cost recovery rider. Therefore, under these circumstances, it is unlikely that ComEd's ARP in general, and its programs in particular, will result in rates lower than they would otherwise be under traditional ratemaking. In fact, it is likely that those rates will be higher. Thus, all else equal, Rate ACEP is likely to increase customer rates over time compared to traditional ratemaking. Therefore, the Commission should reject the ARP in this case.

## **2. The Required Finding under 9-244(b)(2)**

Based on the record in this case, IIEC respectfully states that the Commission will not be able to find that ComEd's proposed ARP in general, or the proposed programs that ComEd has identified, are likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program. (220 ILCS 5/9-244(b)(2)). ComEd has identified four benefits attributable to its ARP and the programs incorporated in same. The first of these four benefits is accelerated deployment of Smart Grid technologies. The second is increased safety and reliability benefits for customers served

through underground facilities. The third benefit is ComEd's commitment of \$5 million in ratepayer money for an electric vehicle experiment to examine operational, economic and environmental benefits associated with replacement of traditional vehicles in ComEd's fleet of vehicles. The fourth benefit is the cash contribution of ratepayer money to assist certain customers in the payment of their bills. (Hemphill, ComEd Ex. 1.0 Rev. at 30:621-630). ComEd claims that absent alternative regulation, customers would not receive these benefits. This is primarily because ComEd has said it will not undertake these programs if it does not gain approval of the ARP. (Hemphill, ComEd Ex. 6.0 at 3:60-62).

First, ComEd has argued that absent approval of its ARP, the benefits of approved Smart Grid investments would be delayed and lost. (*Id.* at 16:329-330). IIEC respectfully disagrees. The Commission has initiated a detailed and comprehensive procedure for Smart Grid in Illinois. (*See generally Re: Commonwealth Edison Company*, Dkt. 07-0566, Final Order, Sept. 10, 2008 (the "07-0566 Order") at 137-143; *Re: Central Illinois Light Company, d/b/a AmerenCILCO*, Dkts. 07-0585, et al., (Cons.), Final Order, Sept. 24, 2008 (the "07-0585 Order") at 261-265). In initiating that process, the Commission determined that the development and approval of cost recovery mechanisms for Smart Grid investment should await further information -- a determination of what Smart Grid is and an identification (and potential quantification) of the benefits of Smart Grid, which would inform the Commission's determination of the appropriate cost recovery mechanism or mechanisms.

As in Docket 07-0566, ComEd continues to put the cart before the horse by developing a cost recovery mechanism before the Commission endorses its vision of Smart Grid, defines Smart Grid

investment for Illinois, or evaluates claimed benefits. ComEd does not propose any particular Smart Grid investments, quantify or identify specific benefits that will accrue to customers in this filing. (See, Hemphill, Jan. 26 Tr. at 411, referencing the Table on page 22 of ComEd's Ex. 1.0 Rev., stating that ComEd is not recommending or proposing a budget for Smart Grid deployment discussed in the table in this case). In fact, the results of ComEd's first step, the on-going AMI pilot, are still under evaluation. Thus, deployment of Smart Grid investments "far earlier" than would otherwise be the case under the Commission's developed and well conceived approach cannot be said to be certain to produce benefits for customers when one considers the associated costs of the Smart Grid technologies. (Stephens, IIEC Ex. 1.0-C at 22:485-488).

Any delay in Smart Grid investment is not a function of traditional rate of return ratemaking, but rather, a function of the deliberate and well conceived process for the Commission's development and implementation of a Smart Grid policy for Illinois. That continuing process is still incomplete. Moreover, only ComEd's own discretionary decisions have delayed particular investments ComEd believes would be beneficial or necessary for the provision of safe and reliable delivery service. Among those decisions are its choice not to include such investments in its current rate case, or a case that includes planned Smart Grid investment in a future test year.

Second, ComEd claims that its proposal will result in "real safety and quantifiable reliability benefits to customers served through urban underground facilities." (Hemphill, ComEd Ex. 1.0 Rev. at 30:625-626). ComEd has reported its delivery service is currently 99.9% reliable. (Stephens, IIEC Ex. 1.0-C at 22:500-501). ComEd's proposal does not address the amount of investment and expense necessary to achieve any portion of the final 0.1% potential increase in reliability.

Third, with regard to the benefits associated with ComEd's \$5 million investment in the electric vehicle experiment, as IIEC understands the experiment, it is to determine the operational, economic, and environmental benefits associated with these vehicles. Consequently, ComEd has not identified (in dollars and cents) any net economic benefit associated with the premium customers would pay over the cost for an equivalent number of traditionally fuel vehicles. (Stephens, IIEC Ex. 1.0-C at 22-23:505-512).

ComEd's fourth and final claim -- that certain customers will receive \$10 million a year in benefits for two years under its low income assistance program -- is factually correct. However, ComEd ignores that only a few customers would receive this benefit and that the vast majority of ComEd customers would pay more. While it is also true, as IIEC has argued above, that eligible customers would not receive this benefit under traditional ratemaking, that does not mean ComEd or its affiliates could not continue the benefit for these customers without recovering those costs through mandatory charges on other ComEd customers.

On this evidence, the Commission cannot find that ComEd has been able to demonstrate that its programs are likely to result in other or substantial and identifiable benefits for customers under the programs that would not be realized in the absence of the program.

### **3. The Required Finding under Section 9-244(b)(8)**

IIEC does not believe, based on the record in this case, that the Commission can find that the ARP and various programs provide for equitable sharing of any economic benefits between ComEd and its customers, to the extent the programs are likely to result in such benefits. ComEd claims that the 5% discount of O&M expenses offers an immediate benefit compared to traditional

rates. (Hemphill, ComEd Ex. 1.0 Rev. at 32:675-677). Similarly, ComEd claims that capping the investments on which ComEd will recover carrying charges, based on a budget, is also an equitable sharing of benefits. (*Id.* at 32:677-678). Finally, ComEd points to greater flexibility and competitive opportunities that it believes will ultimately result from the installation of Smart Grid technologies as an equitable sharing of benefits.

ComEd's 5% discount on O&M expense does not represent an equitable sharing. Under ComEd's approach, the utility will be able to recover O&M expenses that might not otherwise be recoverable under traditional rate of return/test year ratemaking. Therefore, giving customers a 5% discount on O&M expense (up to the \$2 million cap), but requiring them to pay 95% of O&M expense that might not otherwise be reflected in their rates, does not appear to be equitable. (Stephens, IIEC Ex. 1.0-C at 24:538-543). Also, it does not appear to be equitable to cap recovery of carrying charges on investment made under the ARP if, as noted above, the underlying investments are measured against a budget inflated in response to clear economic incentives. If a budget were inflated, there would be no sharing whatsoever because the capital investment would not exceed the budget. (*Id.* at 24:544-546). Furthermore, under ComEd's approach, any investment above the budget is ultimately still eligible for recovery in the next ComEd rate case. (Hemphill, ComEd. Ex. 1.2, Org. Sheet No. X+20). In addition, as mentioned previously, Rate ACEP contains no provisions for sharing any indirect O&M savings that may result from ratepayer funded investments under the ARP, *e.g.*, gasoline savings, employee salary or insurance, etc.

Finally, the return on and of this investment, and the timing of that return, are more favorable to ComEd -- and less favorable to customers -- than what customers would otherwise pay under

traditional rate of return regulation. If ComEd does respond to the economic incentive to budget conservatively high, it can be no worse off than it would be under traditional regulation and would likely be better off, since under traditional regulation, investments are not immediately recognized in base rates. This hardly produces an equitable sharing. (Stephens, IIEC Ex. 1.0-C at 24-25:549-555).

ComEd's donation of \$10 million per year in ratepayer money to certain customers in need does not constitute an equitable sharing between ComEd and its customer base. The program is fully funded by ComEd ratepayers, with no contribution from ComEd shareholders. The program simply represents a transfer of money from the majority of ComEd's customers to those eligible for the funded program.

With regard to the alleged benefits of accelerated deployment of Smart Grid, ComEd has failed to identify in this record, any specific Smart Grid projects that would be covered under ARP. Therefore, the Commission lacks any basis in the record, other than speculation over potential benefits, on which to base a conclusion that the economic benefits associated with these unknown future investments will be either substantial or equitably shared under ComEd's approach. Furthermore, under ComEd's approach, the determination or quantification of monetary benefits would be based on whether the actual cost of construction of these facilities was within or without the approved budget. This tells us nothing about the alleged benefits of Smart Grid investment and may, for reasons discussed above, preclude an equitable sharing of those benefits. (*Id.* at 25:560-573). In summary, ComEd has failed to demonstrate the ARP provides for an equitable sharing of economic benefits.

### III. RATE ACEP

ComEd has proposed that its alternative rate regulation program be implemented in accordance with its proposed Rate ACEP - Accelerated Customer Enhancements Pilot. (ComEd Ex. 1.2). Specifically, ComEd proposes to collect the costs of its alternative rate regulation programs through Rate ACEP.

The operation of Rate ACEP is best understood by reviewing the formula contained in Original Sheet No. X+5 in the proposed tariff. The formula specified at this location in the tariff establishes the monthly charge that will be applicable to customers in each ComEd delivery service rate class. Each customer in the class pays the same dollar charge each month. The monthly charge for each class will be different. The formula on Original Sheet No. X+5 identifies eight cost components to be recovered under the ComEd ARP. These include components associated with the cost of each of the elements of ComEd's ARP. The formula determines the charge for each rate class by summing those eight cost components, as the costs are allocated to each delivery service class, to develop the cost responsibility of each class. The dollar sum of the eight cost components for each class is then divided by the total number of customers in that class. Lastly, this per customer amount is multiplied by a class-specific Uncollectible Cost Factor to determine the applicable unit charge for each class.<sup>5</sup> (Stephens, IIEC Ex. 1.0-C at 26:579-588).

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<sup>5</sup> For reasons stated above, even if the Commission approves ComEd's ARP, IIEC has recommended that the factors relating to ComEd's low income assistance assessment (Factor  $LIAA_{DC}$ ) and the Smart Grid-related components (Factors  $SMA_{DC}$ ,  $SMAA_{DC}$ , and  $DAA_{DC}$ ) be eliminated from the tariff.

## A. Rate Design Issues

Although IIEC does not agree with the approval of Rate ACEP or of the individual cost components that are to be recovered therein, most of the components are allocated among customer classes on a reasonable basis. However, IIEC proposes that if the Commission approves ComEd's ARP, in whole or in part, that the allocation of two of the cost components should be refined or modified

Factor  $UFA_{DC}$ , represents the cost component for ComEd's accelerated replacement of underground facilities (the UUFR program). The facilities that are the subject of this accelerated replacement are "generally high-capacity 12 kV cables". (Blaise, ComEd Ex. 4.0 at 2-3:31-47). ComEd uses a Coincident Peak ("CP") allocator to allocate these particular costs among the customer classes. However, the use of the CP allocator for the allocation of these types of facilities is in dispute in the ComEd rate case, Docket 10-0467. The Commission should approve the allocation of these particular costs using the allocator ultimately approved in the ComEd rate case. (Stephens, IIEC Ex. 1.0-C at 29-30:643-658). IIEC's approach is analogous to ComEd's proposed allocation of cost element  $EVA_{DC}$  - Electric Vehicle Assessment, which uses the allocation factor included in the Embedded Cost of Service Study approved by the Commission in ComEd's most recent rate case. (*Id.* at 30, Fn. 14). ComEd has also indicated that allocator  $UFA_{DC}$  should also be consistent with the allocator the Commission approves in the pending rate case. (Hemphill, ComEd Ex. 6.0 at 49:1073-1080).

IIEC also recommends that allocation of cost component  $DAA_{DC}$  be modified. This cost component relates to any distribution automation investments that are the subject of ComEd's ARP.

(*Id.* at 30:661-663). The facilities that will be the subject of these investments will be parts of both the primary and secondary distribution system. Therefore, they should be allocated in the same manner as the portions of ComEd's distribution system on which they are installed. (*Id.* at 30:663-667). That is, they should be allocated as other similar costs on the ComEd distribution system are allocated among the customer classes.

IIEC recommends the development of a composite allocation factor that would reflect the Commission's decision in ComEd's current rate case, Docket 10-0467. Specifically, any covered investments should be allocated in accordance with the allocation of costs in Account 364 - Poles, Towers and Fixtures, Account 365 - Overhead Conductors and Devices, Account 366 - Underground Conduit, and Account 367 - Underground Conductors and Devices. (*Id.* at 30:668-672). The composite allocator for these costs would be determined by summing the costs in each of the above identified accounts, by class, and comparing them to the system total for these accounts. (*Id.* at 30:672-674). The resulting allocation factor would then be used to allocate cost component  $DAA_{DC}$  distribution automation costs. ComEd has indicated the allocator of  $DAA_{DC}$  should be consistent with the allocator the Commission approves in Docket 10-0467 for primary lines and substations. (Hemphill, ComEd Ex. 8.0 at 22-23:495-503).

To the best of IIEC's knowledge, no other party has addressed these allocation issues. Therefore, if the Commission approves ComEd's ARP, in whole or in part, and the cost factors identified remain a part of Rate ACEP, those cost factors should be modified in accordance with IIEC's recommendation to ensure they are consistent with the cost factors ultimately included in the embedded cost of service study approved by the Commission in Docket 10-0467.

**B. ComEd's Rate ACEP and Its Associated Programs Are Not Just and Reasonable**

As revealed in IIEC's discussion of the Section 9-244 requirements, many elements of ComEd's ARP are not fair to ratepayers or shown to be reasonable on this record. Under the stated exception in Section 9-244, the just and reasonable requirement of PUA Section 16-108(d) applies to the charges, terms and conditions of ComEd's delivery service.

**1. The Utility Performance Standard**

Of particular note is the single proposed "utility performance" standard incorporated in ComEd's proposal. ComEd proposes uniformly<sup>6</sup> that its "utility performance" be assessed by its success in managing its construction or purchase tasks to completion under or approximating an approved budget. (Section 9-244(a)). That standard is completely divorced from the alleged benefits ComEd has presented to justify the programs. Essentially, ComEd has substituted for performance measures related to the claimed regulated service benefits of its proposal, a test of its ability to hold to a construction budget, which ComEd will devise in the first instance.

The budget standard, as proposed, also would allow the utility to collect more than it has spent (through an incentive collected from ratepayers) if the amount required is less than 95% of the target budget. Even then, there is no bar to later recovery of costs not allowed under the ARP. ComEd will have a strong economic incentive to inflate the budget, and the Commission and other

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<sup>6</sup> It appears that there is no performance standard for the low income assistance program, which has been described as a pass-through. (Thomas, Jan. 25 Tr. at 54, accepting characterization by ComEd counsel). Thus, it appears also that the 5% discount for O&M does not apply.

parties will have great difficulty reviewing and evaluating those complex engineering proposals in the brief period provided by the ARP for that task.

## **2. The Low-Income Customer Assistance Program**

ComEd seeks to unlawfully impose on its delivery service customers, the responsibility to fund an energy assistance program delivered to customers in need under ComEd's brand. There is nothing prohibiting ComEd, or one of its affiliates, from replacing such ratepayer-funded charity with real charity. ComEd could fund the \$10 million program to assist low income customers by allowing for a voluntary donation program (from the public or its corporate parent) to fund such a project. Approval of ComEd's proposed ARP would only ensure that the funding comes from customers, not from ComEd or its affiliate as in the past.

## **3. Future Rate ACEP Projects -- Smart Technology Investments**

As proposed, ComEd's Smart Grid investment program is not a pilot, since nothing is proposed for testing. It is not alternative regulation, since there is nothing to regulate. It is, plain and simple, a bare cost recovery proposal for unspecified costs.

The Commission has already rejected broad implementation of Smart Grid investments by ComEd. The Commission has approved only a relatively modest pilot program. Although ComEd states that its ARP in this case is merely a pilot, it has proposed a tariff that is intended implement an investment policy the Commission has not approved. Moreover, unlike a pilot, the proposed implementing tariff for ComEd's program is designed to operate into the future without a termination date. (Stephens, IIEC Ex. 1.0-C at 4:82-90).

The Commission's established three-step statewide process for evaluating further investment

in Smart Grid contemplates decisions on Smart Grid cost recovery after the Commission completes its established process for and is aware of the potential investments at issue. (*See* Stephens, IIEC Ex. 1.0-C at 4:91; Hemphill, ComEd Ex. 1.0 Rev. at 17, Timeline). The final step in the Commission’s comprehensive evaluation process -- the Policy Docket -- should not have its determination of issues pre-empted by proposed Rate ACEP. (*See* Stephens, IIEC Ex. 1.0-C at 5:108-121; IIEC Ex. 1.1). Indeed, the Commission expressed its expectation that ComEd would file a tariff for Smart Grid investments -- a role Rate ACEP is designed to fill -- after the Policy Docket.

The Commission finds that the Company may re-file Rider SMP (or more appropriately Rider SG-Smart Grid) after the completion of Phase 0 [AMI Pilot] and the Smart Grid Policy Docket. (*Commonwealth Edison Company*, Docket 07-0566, Order, Sep 10, 2008 (“*Docket 07-0566*”) at 142).

The many unanswered questions about Smart Grid in general, and ComEd’s Smart Grid investments in particular, render any kind of tariff that includes broad approval of or any cost recovery for Smart Grid investments premature. (*See* Stephens, IIEC Ex. 1.0-C at 6:133, 140). “Here, the scope, magnitude and nature of the investments the tariff covers are unknown, as ComEd has declined to make any actual Smart Grid investment proposal. Consequently, the Commission is forced to consider ComEd’s proposal in a vacuum, without facts sufficient for a fully reasoned determination of the issues defined by Section 9-244 . . . .”). (*See* Stephens, IIEC Ex. 1.0-C at 6:140-145). The Commission considered these very circumstances more generally:

**[W]ithout an overall plan for smart grid deployment and without any specific projects being proposed, the Commission does not know the extent of the costs and benefits involved,** with the possible exception of Phase 0. The estimates of costs in the record

have varied greatly and the estimates of benefits have been sporadic at best. (*Docket 07-0566* at 138 (emphasis added)).

In a further comment, the Commission articulated its conclusion on an argument ComEd offers again in this case. (*See* Hemphill, ComEd Ex. 6.0 at 13:271).

**This lack of cost and benefit information is a problem that is not overcome by the process proposed for Commission pre-approval of specific projects.** (*Docket 07-0566* at 138 (emphasis added)).

Given the Commission's reasoning in its *Docket 07-0566* decision, ComEd's inability even to provide a clear answer to the question "What is the definition of Smart Grid" is a serious concern. (*See*, IIEC Exhibit 1.2).

The claimed economic benefits of ComEd's unspecified Smart Grid investments are not supported by this record. There is, for example, no evidence in this record that the specialized equipment used in Smart Grid will be manufactured by Illinois firms or that associated advanced services will be provided by Illinois residents. However, it is absolutely certain that every dollar of funding for those investments will be recovered through mandatory charges from Illinois ratepayers, displacing other economic choices that may be more beneficial to the state and likely flowing out of state, or possibly to foreign countries, where economic benefits will be realized.

## **VI. CONCLUSION**

For the reasons stated above, IIEC respectfully requests that the Commission adopt the recommendations made by IIEC herein.

DATED this 17<sup>th</sup> day of February, 2011.

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