

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
	:	10-0467
Proposed general increase in rates for delivery service.	:	

REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

I. INTRODUCTION/STATEMENT OF THE CASE

The Illinois Industrial Energy Consumers¹ (“IIEC”) present this Reply Brief in response to certain issues raised and arguments made by Commonwealth Edison Company (“ComEd” or “Company”), the Illinois Commerce Commission Staff (“Staff”), the City of Chicago (“City”), the Commercial Group (“CG”), and the Kroger Company (“Kroger”) in their Initial Briefs.

IIEC’s failure to respond to the Initial Brief or arguments of any party should not be considered an acceptance of, or agreement with, that Initial Brief or argument, unless specifically stated otherwise herein. IIEC’s failure to revisit any issue in its Reply Brief raised in its Initial Brief, should not be considered an abandonment of that issue, unless specifically stated otherwise herein.

IV. RATE BASE

C. Potentially Contested Issues

1. Post-Test Year Adjustments

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

In its Initial Brief, ComEd makes two arguments to support its proposal to limit what it calls the “roll forward” of depreciation reserve to match its proposed Section 287.40 *pro forma* additions to rate base. (ComEd Br. at 23). First, ComEd argues that the Commission’s decision in ComEd’s

¹ Consisting of Abbott Laboratories, Inc., Corn Products International, Inc., Enbridge Energy, LLP, Exxon Mobil Power & Gas Supply Services, Inc., General Iron Industries, Merchandise Mart, Sterling Steel Company, LLC, and Thermal Chicago. In addition, the University of Illinois is participating as part of the IIEC intervention group.

last rate case to accept its one-sided Section 287.40 adjustment for post-test year plant additions should guide its decision in this case. Second, for factual support, ComEd relies on inapposite comparisons of its distorted test year calculations and hypothetical figures developed using future test year concepts not available under Section 287.40, the sole source of authority for post-test year adjustments. (*Id.* at 23-24).

ComEd notes that “in ComEd’s last rate case, ICC Docket No. 07-0566, . . . [the Commission] followed what had been its consistent practice since at least ICC Docket No. 01-0423, which was to deny the ‘roll forward’ where the utility’s plant investment was continuing to increase.” (*Id.* at 23). ComEd argues that the Docket 07-0566 decision and the allegedly relevant facts of this case mean the Commission should repeat the error made in Docket 07-0566 and reject the roll forward proposals made in this case. That argument ignores a later controlling decision of the Illinois Appellate Court that reversed the Commission decision on which ComEd relies. (*Commonwealth Edison Company v. Ill. Comm. Comm’n*, 937 N.E. 2d 685 (“*ComEd Appeal*”). (ComEd Br. at 24). It also ignores the Commission’s own earlier reexamination and ultimate rejection of the adjustment ComEd wants to replicate. (*Re Central Illinois Light Company d/b/a/ AmerenCILCO*, Dkt. 09-0306, *et al.*, (cons.) (“*2009 Ameren Cases*”), Order, Apr. 29, 2010 at 20-31 and Order on Rehearing, Nov 4, 2010 at 44-45).

Though fully aware of the Appellate Court’s decision (Houtsma, ComEd Ex. 29.0 at 7:136-137), ComEd has persisted in maintaining its rejected (by the Commission) and invalidated (by the Appellate Court) position throughout this case. ComEd’s only stated reason for ignoring those

decisions is the utility's intention (and later filing) to seek leave to appeal to the Illinois Supreme Court. (Houtsma, ComEd Ex. 29.0 at 7:138; Jan. 20 Tr. 2356).

ComEd's brief asks the Commission to join the utility in ignoring governing case law, even though the utility has advised its investors as follows respecting that decision.

The Court held the ICC abused its discretion in not reducing ComEd's rate base to account for an additional 18 months of accumulated depreciation while including test year pro forma plant additions through that same period, paren, the same position ComEd has taken in its 2010 electric distribution rate case discussed below, closed paren. (Houtsma, Jan. 20 Tr. 2353-2354).

The Commission, however, is legally bound to (1) reject ComEd's invitation; (2) to abide by the Appellate Court's decision; and (3) to adopt the corrective adjustment proposed by IIEC and others. (*See* IIEC Br. at 6-7).

Notwithstanding ComEd's contrary suggestion, ComEd's petition for leave to appeal to the Illinois Supreme Court does not delay or diminish the effectiveness of the Appellate Court decision, which became effective when it was entered on September 30, 2010. (ComEd Br. at 24-25 ("The mandate of the Appellate Court has not yet been issued . . ."); *compare PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 304-305 (1981) ("That judgment was final when entered and not on the date that the mandate of the appellate court issued. . . . The date of the issuance of the mandate does not control the effective date of the appellate court judgment."); *Long v. City of New Boston*, 91 Ill. 2d 456, 462 (1982). ComEd's continuing reliance on a prior Commission decision that was reversed upon judicial review provides no basis for any lawful Commission action.

As IIEC anticipated, ComEd relies on distorted calculations and inapt comparisons prepared

by ComEd witness Kathryn Houtsma as its evidentiary support for several immaterial contentions. (See IIEC Br. at 14-16). ComEd argues that Ms. Houtsma's calculations show that despite having its rates set using the adjustment declared unlawful by the Appellate Court, ComEd did not earn more than its authorized return on equity. (ComEd Br. at 24; Houtsma, ComEd Ex. 29.0 at 8-9:160-165). Therefore, ComEd suggests, the Commission can accept the same adjustment here. The utility's earnings since its last case are irrelevant to a determination of rate base in this case. And the associated argument for ignoring governing law is without legal merit. The issue here is whether ComEd's historical test year and *pro forma* adjustment are consistent with the applicable Commission test year rules, particularly Section 287.40, and Section 9-211 of the PUA. (83 Ill. Adm. Code 287.40; 220 ILCS 5/9-211). ComEd's proposed adjustment is not. It replicates an adjustment the appellate court reviewed in the *ComEd Appeal* decision and found unlawful for violating those very same provisions. (*ComEd Appeal* at 693).

In addition, ComEd contends that its unlawful determination of the rate base underlying its historical test year revenue requirement would match the revenue requirement that would be appropriate during the period rates set in this case would be in effect. (Houtsma, ComEd Ex. 29.0 at 8:153). Again ComEd's argument misses the mark, and its calculations are inapposite. Even if revenue requirements were similar in the 2009 test year and in ComEd's comparison time period, the rates developed could be different, because of changes in relevant billing determinants. Historical test year billing units may be lower or higher than those for a future test year period. In such circumstances, even if the revenue requirements in the historical test year and a future test year

were precisely the same, the resulting rates would be different. (Gorman, IIEC Ex. 4.0 at 16:359-364). ComEd's rate comparison calculations do not match revenue requirements and billing units from the same period. (*Id.*). In any case, the Commission's test year rules require that a revenue requirement be established based on the historical test year ComEd selected. Proper application of test year concepts ensures that rates are based on data determined as of a common date or period, so that the resulting rates are just and reasonable. (*See* Gorman, IIEC Ex. 4.0 at 21:450-460). ComEd's comparisons are not consistent with those principles.

As to the issue at hand, ComEd's rate base, ComEd's brief merely repeats Ms Houtsma's unsupported speculation that "ComEd will continue to make significant capital investments during the period when rates set here will be in effect, in amounts that will exceed the continuing accrual of depreciation." (ComEd Br. at 24). Based solely on this self-serving prediction, and despite the contrary indication of its own calculations, (*See*, IIEC Br. at 17; Gorman, IIEC Ex. 4.0 at 16:339-364; ComEd Ex. 6.3). ComEd concludes that "the roll forward is not needed to ensure that the rate base is not overstated." (ComEd Br. at 24). ComEd's brief does not identify any other record evidence to support its conclusion; it relies wholly on Ms. Houtsma's clairvoyance.

c. Accumulated Deferred Income Taxes (ADIT)

ComEd relies entirely on the arguments supporting its opposition to recognition of post-test year changes in the accumulated depreciation reserve, to support its parallel refusal to recognize contemporaneous changes in accumulated deferred income tax ("ADIT"). (*See* ComEd Br. at 25).

The evidence, arguments, and law that show ComEd's position respecting changes to the

accumulated depreciation reserve is wrong, are equally applicable to its position respecting post-test year changes in ADIT.

The Commission has concluded, after an exhaustive examination of post-test year adjustments, that “an adjustment to the ADIT balance is essentially a companion or derivative adjustment to the accumulated depreciation.” (*2009 Ameren Cases*, Order on Rehearing, Nov. 4, 2010 at 49). If both of the adjustments the Commission found necessary are not made, to offset ComEd’s one-sided post-test year plant additions adjustment, there would be a mismatch of rate base elements. That result is inconsistent with the Commission’s test year rules, and the effect would be that customers pay rates that are not just and reasonable.

VI. Rate of Return

E. Cost of Common Equity

ComEd bases its excessive return on equity (“ROE”) recommendation on its impression of recent market behavior, not valid analyses of market data. “The economic and financial uncertainties generated by the credit crisis have significantly impacted the cost of equity for the capital intensive electric utility industry” (ComEd Br. at 95). ComEd observes that “[w]hile the S&P 500 has increased significantly during the past year, utility prices have remained relatively flat” (*Id.* at 96). ComEd considers this observation an indication that “the cost of equity for utility companies has not declined to the same extent that interest rates have fallen or to the same extent that the cost of equity may have come down for the broader equity market.” ComEd characterizes this as support for its overstated ROE recommendation. (*Id.*).

However, any relative stability in utility stock prices is more rationally explained as a manifestation of the lower risk of utility equity. Amid the financial uncertainties that ComEd complains about, lower risk is seen in utility equities not falling as far as the overall market or in those stocks recovering to a greater extent than the market generally. (See Gorman, IIEC Ex. 1.0 at 7-8:176-182, 59:1288-1297; Thomas, AG/CUB Ex. 4.0 at 10-12:180-219, 31:637-644). This relative stability of utility equity validates intervenors' findings of lower risk and lower cost for utility equity. ComEd counters that "[a] strong case can be made that ComEd's cost of equity is well over 11%, based on evidence of actual investor alternatives." (ComEd Br. at 96). However, the relevant issue for the Commission is not alternative investments generally, but investments of comparable risk. (Gorman, IIEC Ex. 1.0 at 13-14:345-353).

Because the results of valid market analyses do not provide support for ComEd's excessive ROE recommendations, the utility turns to more subjective approaches. "Apart from any theoretical debate about methodology, the models underpinning those recommendations are simply not fair measures of ComEd's costs." (ComEd Br. at 96). ComEd asks the Commission to substitute its experts' subjective (and not unbiased) judgment in place of the results of analyses based on objective market data. Predictably, ComEd's more subjective impressions yield more favorable results for the utility. But the DCF and CAPM model analyses are relied on by the Commission precisely because they reduce subjectivity in the ROE estimation process. (Gorman, IIEC Ex. 4.0 at 11-12:243-249). ComEd focuses at length on perceived flaws in Staff's spot price estimation analyses. (ComEd Br. at 96-97). But estimates of the market required ROE from the analyses

performed by IIEC's Mr. Gorman -- which use data periods rather than spot prices, use Hadaway's sample group, and do not rely on the September date Dr. Hadaway criticizes -- are closer to Staff's estimates than to ComEd's. (Gorman, IIEC Ex. 1.0 at 14:366, 17:410-414). Indeed, Staff's estimate is higher. (*See* IIEC Br. at 21, Chart). There is no question that in relation to the non-utility experts' estimates, developed using DCF and CAPM methodologies this Commission has endorsed, ComEd's estimates are outliers. (*Id.*).

To criticize IIEC's analyses, ComEd predictably falls back on comparisons to the returns of other utilities, in other states, and in distinct economic circumstances. ComEd's experts have not even attempted show that those utilities have characteristics relevant to ROE determinations that are similar to ComEd's. (Fetter, ComEd Ex. 45.0 at 16:317-324). ComEd simply asserts "[t]he 9.6% cost of equity recommended by IIEC witness Gorman not only fails to reflect current capital costs, but is lower than the allowed returns on equity in all but 9 of the 552 utility commission rate cases decided since 1989."² (ComEd Br. at 98; Fetter, ComEd Ex. 45.0 at 16:317-321). It is difficult to state the appropriate response to Mr. Fetter's approach to market cost determinations more clearly than the Commission did in a prior ComEd rate case.

ComEd asserts its cost of equity should reflect the costs of equity recently approved for electric utilities in the United States. The cost of equity appropriate to ComEd, however, is specific to that utility. ComEd may not simply adopt the cost of equity set for other utilities scattered around the country, for which the factors and circumstances

² Some have referred to the recent financial market turmoil as the worst since 1929, and Federal Reserve interest rates are at historic lows. (*See, e.g.*, Thomas, AG/CUB Ex. 4.0 at 7:101). That today's utility equity costs do not resemble those in the recent past should come as no surprise to Mr. Fetter.

are not necessarily similar. Rather, pursuant to Section 9-201 of the Act, ComEd must prove that its proposed cost of equity is just and reasonable. (*Re Commonwealth Edison Company*, Dkt. No. 05-0597, Order, July 26, 2006 at 153).

ComEd agrees with IIEC's conclusions respecting the decisive effect of the long term growth rate inputs for DCF models. (ComEd Br. at 101). But ComEd asserts that the analyses of Messrs. McNally, Gorman, and Thomas produce low DCF return estimates because they use "unrealistically low growth rate assumptions." (ComEd Br. at 101). However, as shown on the chart at page 29 of IIEC's Initial Brief, the DCF growth rate dispute is between Dr. Hadaway on the one hand and every other ROE expert -- IIEC's Mr. Gorman, Staff's Mr. McNally, and CUB's Mr. Thomas -- on the other. (IIEC Br. at 29, Chart).

Dr. Hadaway concedes that a DCF growth rate must reflect long-term sustainable growth and that short-term analysts' growth rates may not reflect this long-term growth outlook. (Hadaway, ComEd Ex 11.0 at 12-15:257-333). Yet, Dr. Hadaway relies on growth rates that are not reflective of market participants' expectations and that do not reflect realistic sustainable growth rate outlooks. Dr. Hadaway also acknowledges that the measurement of GDP growth rate outlooks should be based on what investors expect over long periods of time. (Hadaway, ComEd Ex 11.0 at 34:719-722 (accepting premise of question)). Yet, Dr. Hadaway has not provided any evidence that any market participant believes long-term GDP growth will be as high as his personal forecast of GDP growth.

Published analysts' long-term GDP growth rates, like those used by the Staff and IIEC experts, are the basis for many market participants' expectations. Those estimates indicate that GDP growth rates will be much lower than the GDP growth rate Dr. Hadaway personally developed and

used in his DCF models. (*See* IIEC Br. at 29, Chart). Moreover, Dr. Hadaway's GDP growth rate is not even generally available to the investing public, since it can only be found in his return on equity testimony. In addition to its unavailability and the substantive defects discussed in IIEC's brief (*see* IIEC Br. at 30), Dr. Hadaway's GDP growth rate forecast was developed specifically for this litigation, and is therefore subject to the cautions that appropriately accompany such evidence.³

In contrast to the 6.0% GDP growth rate Dr. Hadaway developed just for this case, the other experts used GDP growth rates clustered within 15 basis points of 4.85%. (IIEC Br. at 29, Chart). The weight of the evidence is obvious. The growth rates used by the intervenor experts are reasonable, in the mainstream, and used by investors; Dr. Hadaway's are not.

Possibly because DCF and CAPM analyses produced results that were too low in ComEd's view, each of ComEd's ROE witnesses turned to Risk Premium (RP) and/or Comparable Earnings methodologies, approaches this Commission does not regularly use. (*See 2009 Ameren Cases*, Final Order Apr. 29, 2010 at 216). In ComEd's last rate case, Dr. Hadaway used DCF and CAPM analyses. (*Re Commonwealth Edison Company*, Dkt. 07-0566, Order, Sept. 10, 2008 at 78). Here, he dropped the CAPM methodology regularly relied upon by the Commission for a RP analysis.

Even after selecting among available analytical approaches, Dr. Hadaway adjusted the results of his chosen methodology, raising its ROE result even higher. Dr. Hadaway's use of problematic

³ ComEd complains that CUB's Mr. Thomas substituted "subjective opinions of academics for data that best predicts actual investor expectations, a stratagem that has not been accepted in Illinois." (ComEd Br. at 100-101). Yet, Dr. Hadaway's development of his GDP growth forecast is the direct result of a subjective weighting of various decades of his historical data; he then uses this subjective product in place of more accurate, published forecasts. (Gorman, IIEC Ex. 1.0 at 18:431).

forecasts of Treasury and utility bond yields to determine his equity risk premium and his additional upward adjustment to match an assumed relationship between equity risk premiums and interest rates inflate his RP estimate to an unreasonable level. An analysis of forecasts and outcomes shows unwarranted optimism in the forecasts Dr. Hadaway uses, and the assumed simplistic relationship for which he distorted his RP analysis is unsupported by the relevant academic research. His RP study produces nothing more than an inflated equity risk premium. Dr. Hadaway's risk premium ROE estimate is not reliable. (*See* IIEC Br. at 23-24).

Finally, ComEd states:

Dr. Hadaway identifies other issues affecting the ROE estimates of Messrs McNally, Gorman and Thomas, all of which will be discussed in more detail in ComEd's reply brief. Hadaway, ComEd Exs. 37.0, 62.0. (ComEd Br. at 102).

ComEd, having those witnesses' testimony at hand and apparently having criticisms to make, has determined in advance that it will withhold those arguments until its Reply Brief. Thus, intervenors will, to the extent ComEd actually makes additional criticisms, be denied any opportunity to respond to ComEd's unseen presentations. Such deliberately withheld arguments, untested by opposing views, should be ignored or given little weight in the Commission's deliberations. (*See Re Central Illinois Light Co. et al.*, ICC Dkt. 06-0070, et al., Order on Rehearing, May 16, 2007 at 35 (commenting unfavorably on ". . . the strategy of including arguments in its reply briefs that could have and should have been included in its initial briefs. . .")).

On all the evidence of record, a return on equity for ComEd within the range bounded by the estimates of Mr. Gorman (9.6%) and Mr. McNally (10.0%) clearly would be reasonable. The

Commission's determination of ComEd's authorized return in this case should fall within that range.

VII. COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

ComEd recommends adoption of the Embedded Cost of Service Study ("ECOS Study") presented as ComEd Exhibit 75.1 -- ComEd's "Proposed Study." According to ComEd, this study is ". . . substantially the same as the studies presented, . . . in prior ComEd delivery service rates cases." (ComEd Br. at 102). ComEd opines that such studies were ". . . used by the Commission as part of its rate setting process . . ." (*Id.*). Thus, ComEd proposes that the Commission adopt essentially the same ECOS Study the Commission identified as inaccurate and unsuitable for use in moving ComEd's rates even fifty percent (50%) of the way to cost. (*Re: Commonwealth Edison Company*, ICC Dkt. 07-0566, Order, Sept. 10, 2008 at 213). The Commission determined that study was deficient in Docket 07-0566, in part, because it failed to separate and properly allocate primary and secondary costs. (*Illinois Commerce Commission v. Commonwealth Edison Company*, Investigation of Rate Design, ICC Dkt. 08-0532, Order, Apr. 21, 2010 at 35) (the "RDIO" or "Rate Design Investigation Order").

ComEd's Proposed Study was declared deficient again in Docket 08-0532, for essentially the same reasons as in Docket 07-0566. (*Id.* at 38, (finding the ECOS Study in 08-0532 did not properly allocate Line Transformers). And the Commission refused to use ComEd's 08-0532 ECOS Study to adjust ComEd's rates because of "all the issues and questions that remain in respect to ComEd's ECOSS. . . ." (*Id.* at 83). ComEd's Proposed ECOS Study in this case, the successor to

the deficient and inaccurate studies described above, is still deficient and inaccurate. For the reasons stated in IIEC's Initial Brief, (IIEC Br. at 38-39, 42-47) and for the reasons stated below, the Commission should reject ComEd's Proposed Study (which the Commission has found deficient in two consecutive ComEd cases) once and for all.

ComEd argues, in the alternative, that if the Commission decides to create a new primary voltage delivery class, the ECOS Study it presents in ComEd Exhibit 75.2, the "Exemplar Study," should be used to set ComEd's rates.⁴ However, ComEd's Preferred Exemplar Study is also deficient and inaccurate. That study fails to properly separate and allocate primary and secondary costs, as explained below and in IIEC's Initial Brief. (IIEC Br. at 38-39,42-47). Use of the Preferred Exemplar Study should be rejected as well.

While the Staff's Brief does not clearly identify the cost of service study Staff supports in this case, Staff has implicitly endorsed ComEd's "Alternative Exemplar Study" (ComEd Exhibit 75.3). Staff's support for that study is implicit in Staff's recommendation that the Commission adopt ComEd's "Alternative Exemplar rate design." (Staff Br. at 133). ComEd's Alternative Exemplar rate design is based on the Alternative Exemplar Study. (Alongi, ComEd 2nd Rev. Ex.73.0 at 5:119-129). For the reasons stated in its Initial Brief (IIEC Br. at 38-39, 42-47) and for the reasons stated below, IIEC continues to support the use of the recommended ECOS Study presented in the direct and rebuttal testimonies of IIEC witness David Stowe. (Stowe, IIEC Ex. 3.0-C at

⁴ IIEC identified this Study as ComEd's "Preferred Exemplar ECOS Study" in its Initial Brief. (IIEC Br. at 40). ComEd also identified it as its "Preferred Exemplar" Study in its testimony in this case. (*See* Heintz, ComEd Ex. 75.0 at 1:17-18). IIEC will continue to refer to it as the "Preferred Exemplar Study" in this Brief.

29:651, IIEC Ex. 6.0 at 20:446).

C. Potentially Contested Issues

1. Embedded Cost of Service Study Issues

a. Class Definitions

(ii) Non-Residential

In its Initial Brief, IIEC explained that the definition of delivery service classes is a prerequisite to determining class cost of service. (IIEC Br. at 41). Said differently, one must define the customer classes before one can seek to determine the level of cost caused by each class. IIEC further explained that its proposed rate design, which appears to match Staff's recommendation, is to retain the existing class definitions, but to recognize the service voltage differences in the Medium Load ("ML"), Large Load ("LL"), Very Large load ("VLL") and Extra Large Load ("ELL" classes and to establish separate DFCs for service at primary or secondary voltages. (IIEC Br. at 41-42).

Of the other parties in this case, only ComEd and REACT specifically address this issue. (ComEd Br. at 106; REACT Br. at 22-24). ComEd continues to favor using its current class definition, unadjusted, as its proposed approach for cost of service and rate design. (ComEd Br. at 106). As IIEC explained in its Initial Brief, class definitions that are not distinguished by service voltages were rejected by the Commission in Docket No. 08-0532. (*See*, IIEC Br. at 62-64 (citing RDIO at 35, 40 and 84)). If the Commission determines that ComEd should establish delivery classes differentiated by primary versus secondary level voltages (as clearly indicated in the RDIO), ComEd urges the Commission to adopt its Preferred Exemplar ECOS Study, which utilizes

ComEd's single Primary Voltage Delivery ("PVD") class. (ComEd Br. at 106). ComEd did not address this study or the PVD class approach in its Initial Brief. IIEC discussed the problems with the PVD class approach at pages 64-66 of its Initial Brief, IIEC will not repeat its arguments here.

REACT's brief indicates that it is "neutral as to which of the three primary/secondary approaches best reflects cost causation and achieves the Commission's [RDIO] directives." (REACT Br. at 23). Therefore, IIEC makes no reply to REACT.

b. Primary/Secondary Split

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

(a) Functional Allocation of Costs

Line Transformers

For the functional allocation of costs ordered by the Commission, ComEd proposes the use of the first of two Primary/Secondary ("P/S") analyses it presented in this case. That P/S analysis, which was incorporated into ComEd's Proposed ECOS Study, is identified as ComEd Ex. 16.5. (See ComEd Br. at 106). In its Initial Brief, ComEd's argues that it "complied with the Commission's directives and incorporated a primary/secondary analysis into its ECOSS and proposed rate design filed in this proceeding on June 30, 2010." (ComEd Br. at 107). ComEd is simply incorrect. In the RDIO, the Commission stated:

We find that ComEd's current method of allocating transformer costs is not appropriate. When the existing voltage of the transformer is secondary, the transformer can only serve secondary customers and should be allocated as a secondary system cost." (RDIO at 38).

IIEC showed, in its Initial Brief, that ComEd's proposed P/S analysis (ComEd Ex. 16.5) does not functionally separate the cost of line transformers (IIEC Br. at 44). ComEd's Proposed ECOS study (ComEd Ex. 75.1), because it incorporates that flawed P/S analysis, also does not functionally separate these costs. In fact, ComEd witness Alongi agreed that the proposed cost study allocated line transformers to both primary and secondary voltage customers. (Alongi, Jan. 19 Tr. 2114-2115). As a result, in the Proposed ECOS Study and associates rates, costs of line transformers incurred to serve secondary customers are allocated to primary customers not served by those line transformers, instead of being allocated to the secondary customers who are served by them.

This is a clear violation of the RDIO. ComEd's insistence that it *has* complied with the Commission's directives is puzzling. The clarity of the Commission's directive (quoted above) precludes any reasonable possibility that ComEd believes it was not ordered to allocate line transformers to secondary customers. More plausible, and troubling, is the possibility that ComEd is simply unaware that its Proposed ECOS study (ComEd Ex. 75.1) does not comply with the Commission's directive on allocating line transformer costs. When questioned about the functional allocations in the P/S analysis, ComEd witness Lawrence Alongi, the author of that analysis, initially thought that the Company had allocated secondary line transformers to secondary customers. (Alongi, Jan. 19 Tr. 2083-2084). Whatever the cause, ComEd's Proposed ECOS study does not functionally separate the costs of line transformers as directed.

ComEd's continued insistence to the contrary (ComEd Br. at 107) is belied by even a quick review of ComEd's own evidence, specifically its proposed ECOS Study (ComEd Ex. 75.1). This study consists of four large spreadsheets. (The relevant portions of those spreadsheets are attached

as Appendix A to this brief.⁵ Appendix page A-1 shows that the total rate base associated with line transformers is \$556,197,492. (App. A at A-1, ln 116, col Line Transformers). The same entry also shows that the P/S analysis does not subdivide line transformer costs into primary and secondary portions. A proper subdivision of costs would have been shown as two separate columns for Line Transformer costs, like those shown (on the same page) for Distribution Lines (columns labeled “Primary Dist. Lines” and “Secondary Dist. Lines”). ComEd’s allocation of the \$556,197,492 in Line Transformer rate base is shown on Appendix page A-2. There, Line 83 shows Line Transformer costs allocated to every customer class -- confirming Mr. Alongi’s acknowledgment that the Proposed Study (ComEd Ex. 75.1) allocates line transformer costs to both primary and secondary voltage customers. (Alongi, Jan. 19 Tr. 2114-2115; App. A. at A-3, ln 83).

The allocation factor ComEd used to distribute line transformer rate base costs among the customer classes is called “NCP-LINE TR.” That allocation factor is shown on page A-2-A-3, line 83 of the Appendix. As the acronym suggests, the allocation is based on the relative NCP load of each class. However, unless the allocation factor is adjusted to reflect the portion of each classes’

⁵ The relevant portions of the ECOSS and the corresponding Appendix A page references are as follows:

<u>ComEd Ex. 75.1</u>	<u>Appendix A</u>
Schedule 1a - Functionalization, Page 8 of 21	A-1
Schedule 2a - Allocation, Page 5 of 16	A-2
Schedule 2a - Allocation, Page 6 of 16	A-3
Schedule 2b - Allocation Factors, Page 1 of 4	A-4
Schedule 2b - Allocation Factors, Page 2 of 4	A-5

The line (ln) numbers and column (col) references in this discussion and Appendix A are the same as those in ComEd Ex. 75.1, which can be referenced directly using the above table. The data confirming IIEC’s statements are highlighted.

demand delivered through line transformers, the function of nearly 98% of the line transformers – serving the loads of secondary customers – is not the basis for the allocation, and a functional allocation of costs cannot be achieved. (Alongi, ComEd Ex. 21.5 at 21). ComEd’s allocation factor is not adjusted to reflect the loads delivered through line transformers and consequently allocates costs as though 100% of line transformers serve the loads of both primary and secondary customers. The details of ComEd’s allocation of line transformers are shown on line 83 of Appendix pages A-2 and A-3; those details show line transformer costs allocated to all customer classes, including those customer classes that contain primary voltage customers.

A comparison of data shown on Appendix pages A-4 and A-5 confirms that no adjustment was made to account for the function of line transformers. Pages A-4 and A-5 show that (a) the NCP loads used to develop the allocation factor for line transformers serving secondary customers (NCP-LINE TR, displayed on line 22) and (b) the loads used to develop the allocation factor for plant serving both primary and secondary customers at voltages below 69 kV are identical.⁶

It is noteworthy that immediately after claiming that it complied with the Commission’s directives by incorporating a P/S analysis that separated “primary distribution system” costs (ComEd Ex. 16.5) in its Proposed ECOS Study (ComEd Ex. 75.1) and rate design, ComEd admits that it could not “fully address all aspects of the RDI order.”⁷ (ComEd Br. at 107). These statements by ComEd are significant. First, ComEd confirms that the P/S analysis in its Proposed ECOS Study uses the

⁶ The Railroad class is an exception, but is not relevant to the point IIEC makes.

⁷ (See, Alongi, Jan. 19 Tr. 2083, indicating results of the P/S analysis in ComEd Ex. 16.5 were incorporated into ComEd Ex. 75.1, the Proposed ECOS Study).

definitional approach the Commission has rejected, instead of the functional approach the Commission ordered. Second, ComEd admits it did not address the Commission's directive to "identify specific customers receiving electric service at or above 4kV" – the voltage level that distinguishes primary and secondary service -- in the its P/S analysis in this case. (ComEd Br. at 108). Having failed to allocate the cost of line transformers on a functional basis in its proposed P/S analysis (ComEd Ex. 16.5), Proposed ECOS Study (ComEd Ex. 75.1), and proposed rate design (ComEd Ex. 73.1), ComEd admits that it also failed to distinguish ComEd's primary voltage customers from its secondary voltage customers. The inability of ComEd's Proposed ECOS Study to do so (because of its flawed P/S analysis) means that even when costs are functionally separated into primary and secondary categories, there will be no way to allocate the secondary costs to only the secondary customers for which they were incurred.

Single-Phase Lines

ComEd's failure to comply with the Commission's directives regarding the allocation of line transformer costs, pertains only to the P/S analysis on which ComEd asks the Commission to rely (ComEd Ex. 16.5), its associated Proposed ECOS study (ComEd Ex. 75.1) and proposed rate design (ComEd Ex. 73.1). ComEd provided another P/S analysis (ComEd Ex. 21.5, revised as ComEd Ex. 49.4), that does comply with the Commission directives regarding line transformer costs. However, even this P/S analysis fails to comply with the Commission's directive to "... to develop and provide ... function based definitions of service voltages for facilities other than the line transformers already addressed." (RDIO at 40). ComEd's failure to allocate plant other than line transformers on a functional basis affects all of the P/S analyses, ECOS studies, and rate designs that were filed by

ComEd during the course of this proceeding.

In particular, ComEd defines single-phase primary circuits as “primary” using its definitional approach – *i.e.*, the fact that these facilities are energized at primary voltage levels. ComEd’s single-phase primary circuits, however, almost always function to serve only secondary voltage customers. Accordingly, based on function, the costs of single-phase primary circuits should be allocated to secondary customers in the same manner as line transformers.

ComEd’s initial brief misconstrues IIEC’s proposal regarding the proper allocation of single-phase primary facilities. According to ComEd:

IIEC contends that 24.78% of ComEd’s costs for overhead primary voltage conductor and 32.82% of ComEd’s costs for underground primary voltage conductor should be allocated as secondary costs and ***only customers that take service from a single-phase circuit should be responsible for those costs.*** (ComEd Br. at 110, (emphasis added)).

This blatant misrepresentation of IIEC’s position was first proffered by ComEd’s witness Alongi in his rebuttal testimony. (ComEd Ex. 49.0 Revised at 24:531-535). IIEC witness Stowe responded to Mr. Alongi’s improper characterization at length in his own rebuttal testimony (Stowe, IIEC Ex. 6.0 at 9-13:175-284). Nonetheless, ComEd persists in its flawed representation of IIEC’s position with regard to single-phase primary costs. No IIEC witness contended that “only customers that take service from a single-phase circuit should be responsible” for the cost of single-phase facilities, as ComEd alleges. Thus, ComEd’s horror stories about the need to identify each such customer and the difficulty of that task have no basis in IIEC’s proposal.

IIEC witness Stowe, has consistently testified that because single-phase facilities are almost

never used to serve primary voltage customers, they should not be allocated costs of those facilities. As to the allocation among secondary customers, IIEC has always said the cost of single-phase circuits should be allocated to all secondary voltage customers. Mr. Stowe has consistently explained this allocation treatment – in this case, and previously in his direct and rebuttal testimonies in Docket No. 08-0532. (Stowe, IIEC Ex. 6.0 at 10:190-212).

Mr. Stowe's claim that single-phase primary circuits are rarely used to serve primary voltage customers, is supported by clear and undeniable evidence. ComEd's primary distribution system contains nearly 28,000 miles of overhead and underground, primary distribution circuit that is operated in a single-phase configuration. (Stowe, IIEC Ex. 3.0-C at 14, Table 1). ComEd serves approximately 4 million customers; hundreds of thousands or even millions of them through these single-phase circuits. (IIEC Cross Ex. 4). However, ComEd serves only a very few of its primary voltage customers through these single-phase circuits. During cross examination, ComEd witness Alongi testified that ComEd has 936 primary voltage customers. (Alongi, Jan. 19 Tr. 2089). ComEd records the usage of only 21 of these 936 primary customers through a single-phase primary voltage meter. (Alongi, Jan. 19 Tr. 2090-2091). This means that only 21 of the 936 primary customers (i.e., 2.2%) receive single-phase service. However, that does not mean all 21 of these customers are served by a single phase primary line or circuit. Single-phase service can be supplied by connecting the customers' service to one of the three phases in a three-phase circuit, or by connecting the customer to a single-phase circuit. (*See*, Alongi, ComEd Ex. 49.5). Only eight of its 936 primary voltage customers were serviced by connecting them to a single-phase circuit. (Alongi, Jan. 19 Tr. 2091). This type of connection to ComEd's distribution system is illustrated by the blue lines in ComEd

Exhibit 49.5. (*Id.*). Thus, only eight customers on the ComEd system are primary voltage customers served from a single phase line or circuit.

ComEd also objects to IIEC's proposal to allocate single-phase primary circuit costs to secondary customers because it "would require a much more complex analysis than IIEC has presented to take into account the parts of ComEd's system that certain customers use more intensively than others, while maintaining equity among customers." (ComEd Br. at 110). ComEd's assertion is a red herring. ComEd currently allocates the cost of single-phase primary facilities as if all of ComEd's 936 primary voltage customers are served *via* those facilities. In fact, only eight of ComEd's 936 primary voltage customers are served *via* single-phase primary circuits. IIEC's proposal is simple; since single-phase primary circuits are almost always (*viz.*, in all but eight instances) installed to serve secondary customers, single-phase primary circuit costs should be separated from dual-phase and three-phase costs, and allocated to secondary customers only. This separation of costs has already been performed by IIEC witness Stowe using data provided by ComEd. (Stowe, IIEC Ex. 3.0-C at 13-15:579-90 and 26:579-590). Contrary to ComEd's argument, no complex analysis is required.

Reply to Staff

Staff also objects to IIEC's proposal regarding the allocation of single-phase primary lines. (Staff Br. at 96). According to Staff, the problem with IIEC's proposal "lies with Mr. Stowe's claim that primary customers ***cannot be served by single phase*** lines. . . ." (Staff Initial Brief at 96, (emphasis added)). Staff then concludes "[i]f true, the Company has no choice but to use three phase distribution lines to serve primary customers." In this, Staff perceived a problem of extra costs for

multi-phase circuits. (*Id.* at 96-97). Staff's conclusion, however, is based on a false premise. Mr. Stowe never claimed that primary customers cannot be served by single-phase lines as Staff asserts.⁸

Mr. Stowe testified:

Theoretically, the number of phases and the voltage level are independent parameters of a distribution system. Therefore, a single-phase circuit could operate at one of any number of primary or secondary voltages. Likewise, ***a primary voltage customer could receive single-phase***, dual-phase or three-phase service. (Stowe, IIEC Ex. 3.0-C at 12:280-283, (emphasis added)).

Mr. Stowe testified that because of the potential for load and voltage imbalances, utilities rarely, if ever, choose to use single-phase primary circuits to serve primary voltage customers. (Stowe, IIEC Ex. 3.0-C at 12:284-290). Staff's improper conclusion aside, Staff witness Lazare agreed during cross-examination that -- to the extent that the Commission desired the use of function-based definitions for distribution facilities -- it would be consistent with the Commission's intent to functionalize single-phase circuit costs as secondary costs, and to allocate them accordingly, if single-phase primary facilities are shown to only be used to serve secondary customers. (Lazare, Jan. 12 Tr. 897-898). The fact that only eight customers served at primary voltage receive service *via* a single phase circuit, out of the almost 1,000 primary voltage customers and millions of ComEd customers, demonstrates that allocation of single phase primary line costs to primary customers is inappropriate.

⁸ When pressed on this point during cross examination, Staff witness Lazare was unable to identify a passage in Mr. Stowe's testimony stating that primary customers cannot be served by single phase lines. (Lazare, Jan. 12 Tr. 893-894).

Staff expands its erroneous interpretation of Mr. Stowe's testimony into opposition to IIEC's proposal. (Staff Br. at 96, Jan. 12 Tr. 892-895). Staff builds on its faulty interpretation to argue that:

... serving primary voltage customers on a circuit may require the Company to incur the additional cost of a three phase line while a single phase line might be sufficient to serve secondary loads

Mr. Stowe's argument is one-sided because he only discusses how this requirement for three phase service absolves primary customers of responsibility for single phase line costs and ignores the potential cost increase imposed on the utility which could provide the basis for imposing additional distribution costs on primary customers. (Staff Ex. 26.0, pp. 16-17) ComEd joins in Staff's argument on this issue. (ComEd 2nd Rev. Ex. 73.0, pp. 20-21) (Staff Br. at 97).

Staff has merged its erroneous reading of IIEC testimony with a hypothetical situation originally described in the rebuttal testimony of Mr. Lazare. Regarding Mr. Stowe's proposal for allocating costs of single-phase primary circuits to secondary customers, Mr. Lazare stated:

It is one-sided because ***he only discusses how this requirement for three phase service absolves primary customers of responsibility for the cost of single phase lines.*** However, he fails to examine how this requirement for three phase service limits the flexibility of the utility to install less costly single phase distribution lines to serve the demands of secondary customers. (Staff Ex. 26.0 at 16-17:374-380, (emphasis added)).

There are at least three problems with Staff's argument. First, primary customers should be absolved of responsibility for the cost of single-phase lines not because they require three-phase service, but because those customers do not use single-phase circuits. Out of the hundreds of thousands (or even millions) of ComEd customers served via ComEd's nearly 28,000 miles of single-phase primary circuit, only eight are primary voltage customers.

Second, as with single-phase service to primary customers, a utility may sometimes choose to provide three-phase service to secondary customers. (Alongi, Jan. 19 Tr. 2088-2089). In fact, ComEd’s General Terms and Conditions expressly indicate that in 11 of 13 variations of secondary voltage service, including service to ComEd’s Residential customers, secondary voltage service is available in a three-phase configuration. (Lazare, Jan. 12 Tr. 899-903). Staff’s argument – that primary customers impose a “potential cost increase” on the utility because of three-phase service to primary customers – distorts the meaning of utility engineering choices about the configuration of their distribution facilities. No evidence has been presented to support either the existence of such cost increases or the allegation that primary service “limits the flexibility of the utility to install less costly single phase distribution lines.” It is unreasonable to reject the demonstrated proper allocation of single-phase primary circuit costs to the customers those costs were incurred to serve, based on the possibility that unproven “additional costs” might exist.

The costs of single phase primary facilities that should be allocated to secondary customers is \$1.8 billion.⁹ (Stowe, IIEC Ex. 3.0-C at 12-13:293-296). Staff has given no estimate of the level of its phantom costs; yet, by proposing to negate the entire allocation of single phase primary costs, Staff implies that the level of such costs is comparable or fully off-setting to the \$1.8 billion mis-allocation of single-phase primary costs. There is no record evidence for that proposition.

Third, three-phase primary circuits form a critical and necessary segment of ComEd’s distribution system infrastructure. (Donnelly, Jan. 11 Tr. 593-594). Three-phase distribution circuits

⁹ Staff erroneously reported this figure at \$2.9 billion, relying on a figure that had been corrected months before the brief was filed. (Staff Br. at 96).

are necessary to serve ComEd's customers at all voltages. In other words, if ComEd served only secondary customers, the utility would still need to install three-phase circuits. (Alongi, Jan. 19 Tr. 2089-2090).

- d. NCP vs. CP
and**
- e. Allocation of Primary Lines and Substations**

ComEd has used a CP allocator for allocation of primary lines and substations at the direction of the Commission in this case. (ComEd Br. at 118). Use of this CP allocator is supported by the City in its Brief (City Br. at 7-12).

In past cases, ComEd has allocated the costs of primary circuits and substations using allocation factors based on the system-wide, non-coincident peak ("NCP") demands of the various rate classes. In this case, due to the directive by the Commission in the RDIO, ComEd changed the allocation of costs associated with primary circuits and substations to one based on the class peak demands coincident with the system peak hour ("CP"). On the basis of its finding that substations and primary lines were designed to serve the combined peak of multiple classes, the Commission directed ComEd to use the CP method to allocate primary distribution lines and substations. The Commission also stated its belief that the CP method best reflects the demands of multiple customer classes.

In its brief, ComEd explained that its allocation was at the direction of the Commission. At the same time, ComEd noted that it continues to support allocations using CP rather than NCP, despite the Commission's conclusion. (ComEd Br. at 118-119). ComEd's continuing endorsement of NCP allocations is supported by testimony of ComEd witnesses, as well as by testimony provided by IIEC witness Stowe. ComEd witness Garcia has testified ComEd designs and builds its substations and

primary distribution circuits based on the NCP and not the CP demands. (Garcia, ComEd Ex. 10.0 at 27:570-576). In addition, ComEd witness McMahan, a professional electrical engineer, testified that ComEd relies on an aggregate area load, which is the sum of the highest peak demand on the particular substation or primary circuit in the previous 10 years, plus a projected future load estimate, when planning the construction or upgrade of these facilities. Mr. McMahan also explained that this aggregate load represents the “worst case” scenario, in terms of the amount of customer demand, that the facilities will be required to serve. (McMahan, Jan. 11 Tr. 500-501, 507).

IIEC’s own evidence showed that (1) the NCP method, like the CP method, reflects the demands of all ComEd’s customer classes, and (2) class NCP demands reflect the maximum demands of the customers classes whenever they occur and, therefore, more closely reflect that aggregate demand placed on substations and primary circuits than the CP demands. (Stowe, IIEC Ex. 3.0-C at 21-23:480-525).

Staff rejects the evidence presented by Mr. Stowe, Mr. Alongi and Mr. McMahan, all electrical engineers, and cites testimony provided by ComEd witness Hemphill (Hemphill, Jan. 10 Tr. 300-306) as “evidence” supporting the use of the CP methodology for allocating the costs of primary distribution circuits and substations, in ComEd’s ECOS study. (Staff Br. at 104-105). Staff’s alleged “evidence” is problematic. The “evidence” supporting CP allocations from non-engineer witness Dr. Hemphill includes the following:

- as a general rule, distribution facilities are sized to meet summer rather than winter demands (Hemphill, Jan. 10 Tr. 303);

- *distribution systems are designed to meet local peak conditions* (Hemphill, Jan. 10 Tr. 300-301) (emphasis added));
- *the demands that are expected from the customers that are within that area that is served that drives the level of the facility investment* (Hemphill, Jan. 10 Tr. 301, (emphasis added));
- *local demands can include the demands of customers from a variety of rate classes, if they all use those local facilities* (Hemphill, Jan. 10 Tr. 303-304, (emphasis added));

It is noteworthy that on two occasions during his cross examination, Dr. Hemphill clarified that he was neither a facilities planner nor a distribution system engineer (Hemphill, Jan. 10 Tr. 301 and 304). Dr. Hemphill clearly did not intend for his opinions to contradict the testimony of other ComEd witnesses whose responsibilities include system planning and engineering. And, in fact, Dr. Hemphill's testimony makes essentially the same points as that of ComEd engineers Mr. Alongi and Mr. McMahan, *i.e.*, that distribution facilities such as substations and primary circuits are designed to meet the highest combined peak demand of the customers connected to them, regardless of when that peak demand occurs. It is unreasonable for Staff to assume that Dr. Hemphill's testimony contradicts the position of ComEd's engineering witnesses, who have already made clear that ComEd does not design these distribution facilities to meet CP demand as Staff assumes.

Reply to City

The City defines coincident peak demand as “. . . the demand of a consumer at the time *the system reaches its peak load for the entire year.*” (City Ex. 2.1 at 1:4 (emphasis added)). In its Initial Brief, the City states:

Mr. Bodmer explained that *it is obvious that ComEd does not build its system on 'system-wide' coincident peak.* (City Br. at 10). (emphasis added).

This statement by the City is reasonable and supported by evidence in the record in this case. It is surprising, then, that the City then contradicts itself to support an allocation of the cost of distribution facilities using a CP method. Nevertheless, the City states:

. . . The Commission has issued Orders adopting use of CP to allocate primary lines and substations. . . . Both IIEC and the Commercial Group argued in this case that the Commission should reverse course, spurn the CP it so recently endorsed, and instead, use the NCP method. There is nothing in the record to support the Commission making such a drastic departure from its recent decisions. (City Br. at 8).

The reason the Commission should reconsider its directive to use the CP allocator is simple. Use of the allocator assumes that ComEd designs and builds its system to meet coincident peak demands. As the City has correctly pointed out, ComEd does not design and build its system to meet system coincident peak demand. Therefore, use of the system coincident peak allocator for allocation of primary lines and substations is not appropriate.

h. Allocation of Illinois Electricity Distribution Tax

ComEd argues that its current allocation of the Illinois Electric Distribution Tax (“IEDT”) only on the basis of kWh delivered, is appropriate because the tax is imposed on ComEd is on the basis of kWh delivered. (ComEd Br. at 121). It argues that IIEC’s approach is inappropriate because it does not reflect how the tax is imposed on ComEd. (*Id.*). IIEC has proposed that ComEd’s current allocation of the IEDT be modified to allocate the tax partly on plant in service and partly on kWh delivered. (*See*, IIEC Br. at 56-57). IIEC has explained in its Initial Brief why it disagrees with

ComEd's position and will not repeat those arguments here. (IIEC Br. at 54-56). However, it is worth noting that IIEC has presented extensive analysis to demonstrate that the IEDT paid by ComEd is a function of the invested capital tax paid by ComEd prior to 1998, adjusted for inflation, with .91.5% of the tax paid by ComEd explained by that factor. (*Id.*; Stephens, IIEC Ex. 2.0-C at 24:568-672). ComEd's brief marshals no evidence and presents no argument to refute IIEC's evidence of this fundamental and undeniable fact. The assumption that the amount of tax paid by ComEd in any given year is solely and exclusively a function of kWh delivered by ComEd is simply wrong. IIEC witness Stephens explained and illustrated how a utility's tax liability can vary in ways that are in opposition to its kWh change. (Stephens, IIEC Ex. 2.0-C at 22-23:509-531; Stephens IIEC 2.2)

IIEC's unrefuted and un rebutted regression analysis shows that, at best, only a small percentage of the tax paid by ComEd in any given year is a function of kWh delivered by ComEd. (Stephens, IIEC Ex. 2.0-C at 24:568-572). IIEC's allocation method gives recognition to this fact by allocating a portion of the tax on kWh delivered. It also gives recognition to the fact that the principal driver for the level of tax paid by ComEd at this time is the level of tax it paid on invested capital prior to 1998, which was a function of plant in-service. Therefore, IIEC's proposed allocation of IEDT costs, partly on the basis of plant in-service and partly on the basis of kWh, recognizes the factors actually driving the IEDT paid by ComEd. The current allocation factor, which assumes that the tax is 100% a function of kWh delivered does not.

Staff argues that the legislature intended to replace the invested capital tax with a tax determined by usage. (Staff Br. at 143). Staff's argument elevates form over substance. IIEC's un rebutted evidence shows that the level of IEDT paid and the refunds received by Illinois utilities

has not been affected solely or even primarily by the increase in kWh deliveries in any year since 1997. (Stephens, IIEC Ex. 2.0-C at 20-21:468-504). Staff appears to agree that the tax is, at least in part, a function of the level of invested capital tax paid by ComEd prior to 1998. (See, Staff Br. at 143, agreeing that the starting point for the tax corresponds to the pre-1998 levels that were based on invested capital). Staff however, substitutes a reference to legislative language for the evidentiary standard of actual causation, to implement the Commission's policy of cost-causation in ECOSS allocations.

The Staff also appears to argue that some portion of the tax is driven by factors other than plant investment. (Staff Br. at 143 (arguing that the increases in taxes are due to statutes mandating adjustment of the lesser of 5% or their CPI)). IIEC agrees. Hence, its proposal to allocate the tax partly on plant in service and partly on kWh delivered. IIEC's approach looks beyond a single sentence in the statute that authorized the IEDT to determine the exact factors that actually drive the total tax paid by ComEd.

Lastly, Staff argues that the Commission has recently voiced a preference for allocating these costs on a per kWh basis. (Staff Br. at 144). Staff quotes language from the recent Ameren rate cases decision. (*Re Central Illinois Public Service Company, d/b/a AmerenCIPS, et al.*, ICC Dkts. 09-0306 (Cons.), Final Order, Apr. 29, 2010). Staff notes that the Commission concluded that as utility plant increases or decreases, the level of tax does not increase or decrease. While this may be true, it is undeniable that the level of plant in service in 1997 affects the tax levels today (through the utility-specific tax rate) and that changes in kWh consumption do not necessarily lead to changes in tax imposed, as demonstrated by IIEC witness Stephens in IIEC Exhibit 2.1 The Commission attributed

this conclusion to the existence of the cap on the tax in the current law authorizing the tax. (Staff Br. at 144, quoting the Dkt. 09-0306 Order). However, the bulk of ComEd's tax is not due to changing investment but to a static plant investment tax amount retained by the revised statute. Therefore, the Commission is left with a choice; (1) allocate the tax on the basis of the kWh factor that modifies less than the last 10% of the tax; or (2) recognize that the tax paid by ComEd is a function of multiple factors, but is primarily a function of pre-1998 invested capital tax level, which in turn was a function of plant in-service. IIEC's allocation more closely reflects the reality that the Commission's policy on cost causation is meant to capture. No party contends that the IEDT is entirely and exclusively a function of kWh delivered. Yet, that is the basis for the current allocation. IIEC respectfully requests that the Commission examine the evidence of record, reconsider the current allocation of the IEDT, and more closely reflect actual cost causation by adopting IIEC's proposal.

D. Rate Moderation

Other than IIEC, only REACT addresses rate moderation directly in its initial brief.¹⁰ Surprisingly, Staff is silent on rate moderation, despite its positions endorsing the need for rate moderation in the recent Ameren and earlier ComEd cases, and the specific conclusions of the Commission in the *2009 Ameren Cases*. ComEd simply redirects readers to a (non-existent) different

¹⁰ Interestingly, one party is requesting gradual implementation of voltage differentiated rates, should the Commission approve ComEd's Preferred Exemplar rate design, due to concerns that some customers remaining in the ML and LL rate classes would experience increases of 5.3% and 7.6%, respectively, under ComEd's proposed rate request. (Kroger Co. Br. at 2). Such levels of increase are unlikely to be found excessive or create rate shock under the Commission's rate moderation standard of 150% of system average increase approved in the *2009 Ameren Cases* (and proposed by IIEC in this case).

section of its brief, which IIEC presumes was meant to be a reference to Section VIII.C.3.a., titled “Movement toward ECOSS Rates.”¹¹

ComEd, like some other parties, ignores the overarching principle of rate moderation, and focuses exclusively on movement toward cost based rates, as though less than full movement to cost guarantees avoidance of rate shock. Indeed, ComEd essentially equates avoiding rate shock with only moving partially toward cost. (ComEd Br. at 145).

As IIEC explained in its Initial Brief, the Commission’s two most recent rate decisions have not accepted that equivalency. The Commission has considered potential rate shock in terms of multiples of the utility’s overall increase, in addition to moderated movement to full cost of service. (IIEC Br. at 57-59). REACT’s Initial Brief reaches some conclusions that are similar to IIEC’s on rate moderation, though REACT’s brief focuses on a specific subgroup of customers. Specifically, REACT acknowledges the distinction between rate moderation and partial movement toward cost of service. (See, REACT Br. at 63-64). IIEC agrees with the distinction and IIEC has proposed a rate moderation plan that conforms to the Commission’s approach which recognizes that distinction as well.

In its Initial Brief, IIEC described its proposed rate moderation plan, which is essentially identical to the one approved in the recent *2009 Ameren Cases*. Specifically, IIEC proposes that the increase to any delivery service rate class or subclass be limited to 150% of the overall revenue

¹¹ Although ComEd did not respond directly to IIEC’s rate moderation proposal in its initial brief, it did so in testimony. IIEC witness Stephens summarized and fully responded to ComEd’s criticisms in his rebuttal testimony. (See, Stephens, IIEC Ex. 5.0-C at 15-19:351-438).

increase, inclusive of the impact of the IEDT approved for ComEd. As IIEC explained, its recommendation should be adopted for several reasons. Primary among them is the fact that rate moderation and avoidance of rate shock is an important principle of proper utility rate design. The Commission has recognized the importance of that principle in its recent decisions in the 2009 *Ameren Cases* and in the last ComEd rate case, *Re: Commonwealth Edison Company*, Dkt. 07-0566, Final Order, September 10, 2008. (IIEC Br. at 57-61). It should continue to recognize the importance of that principle in this case and adopt IIEC’s rate moderation approach.

VIII. RATE DESIGN

B. Potentially Uncontested Issues

1. High Voltage Rate Design Simplification

ComEd proposes to simplify the rate design for the High Voltage (“HV”) delivery service rate class by reducing the number of charges applicable to the class and reducing the list of possible Distribution Facilities Charges (“DFC”) for HV customers from five to three. (*See*, ComEd Br. at 132). ComEd correctly states that IIEC does not object to its proposed simplification. (ComEd Br. at 132). IIEC confirms that it does not have an objection to these rate design changes at page 62 of its Initial Brief.

C. Potentially Contested Issues

3. Class Definitions

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

In its Initial Brief, IIEC explained that a rate design that does not differentiate between

primary and secondary customers' costs does not comply with the Commission's RDIO directives and pointed out that ComEd's proposed rate design does not make such a differentiation. (ComEd Br. at 63). Accordingly, this failing must disqualify ComEd's proposed rate design and the associated Proposed ECOS studies (ComEd Ex. 75.1) from adoption in this case. This leaves IIEC's rate design, ComEd's Preferred Exemplar rate design (ComEd Ex. 73.2) which includes the proposed new PVD class, and ComEd's Alternative Exemplar (ComEd. Ex. 73.3) rate designs as the eligible choices. Accordingly, the Commission must determine whether (a) to adopt a new rate class composed of primary customers from each of ComEd's traditional, size-differentiated delivery classes (leaving only secondary customers in the existing classes), *i.e.*, ComEd's Preferred Exemplar design or (b) to create sub-classes within the existing classes to distinguish primary and secondary customers, with distinct DFCs for primary and secondary customers, *i.e.*, IIEC's rate design or ComEd's Alternative Exemplar rate design. (IIEC Br. at 62-64). The parties who address this issue in their briefs are ComEd, Staff, REACT and the Commercial Group.

In its Initial Brief, ComEd attempts to justify its current rate structure, which it has proposed be maintained, as being compliant with the RDIO:

ComEd's proposed nonresidential delivery classes account for voltage differences in that they include a delivery class for customer premises at which electricity is delivered at or above 69 kV. In addition, all nonresidential customers in demand-based delivery classes for customers that establish demands in excess of 400 kW are considered to be primary voltage customers as provided in ComEd's primary/secondary analysis used to prepare the ECOSS for ComEd's proposed rate design. ComEd's proposed rate design also provides for a rate reduction for customers that provide their own transformation through the application of a credit under Rider ACT – Allowance for Customer Owned Transformers (“Rider ACT”). These provisions of

ComEd's proposed rate design are reflective of Commission directives in the RDI Order and prior Commission Orders regarding how nonresidential customers should be classified. ComEd's proposed nonresidential delivery classes and charges are reasonably defined, take ComEd's historical rate design into account, are reflective of cost causation, and should be approved by the Commission. (citations omitted).
(ComEd Br. at 142-143).

ComEd does not mention, however, that it is proposing to use the same rate structure the Commission found deficient in the RDIO. The following excerpt from the RDIO makes the Commission's intention plain:

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

* * * *

(4) the following decisions are final and should be reflected in the ECOSS for consideration in any subsequent action in the Company's next rate case:

- a) customers receiving power at 4kV or higher are primary system customers who should be identified. Rates charged to these customers should be adjusted to reflect that they do not use the secondary distribution system;
- b) customers receiving power at levels below 4kV should be considered secondary system customers and charged accordingly;
(RDIO at 84).

ComEd's claims do not distinguish its proposal in this case from the rate design in place when the Commission identified deficiencies in ComEd's cost studies and rate structure. Recognizing voltage differences for customers at voltages above 69 kV is neither new nor sufficient for RDIO compliance in this case. ComEd's rates have recognized this high level voltage distinction since the

very first delivery service rate case in 1999 and such customers have been in their own rate class since Docket No. 05-0597. (*Re Commonwealth Edison Company*, ICC Dkt. 05-0597, Order, July 28, 2006 at 199). Rider ACT (for customers with transformers) has been in place since Docket No. 07-0566 and its predecessor, Rider 8 has existed since before delivery service was unbundled (*Re Commonwealth Edison Company*, ICC Dkt. 07-0566, Order, Sept. 10, 2008 at 227-228; *Re Commonwealth Edison Company*, ICC Dkt. 05-0597, Order, July 26, 2006 at 223). Finally, ComEd's claim that customers above 400 kW are all considered primary customers was based on its faulty determinations regarding the primary system (as found by the Commission in the RDIO) and runs counter to ComEd's own evidence in this case, finding that the LL, VLL and ELL classes which include customers above 400 kW demand range, include secondary loads.¹²

As mentioned, the Commission effectively rejected the status quo that ComEd argues to maintain. Moreover, ComEd's strained definitions of primary customers fitted to match its energized voltage classifications of facilities was also rejected in the RDIO, when the Commission ordered function based classifications. (*See*, RDIO at 38-40). Nothing is changed in ComEd's proposed rate design from the design rejected in the RDIO; the Commission should simply affirm its prior rejection.

¹² (*See, e.g.*, Alongi, ComEd Ex. 73.2 at 2 of 5). In this Preferred Exemplar rate design spreadsheet, ComEd shows non-zero billing units for the above 400 kW classes, i.e., LL, VLL and ELL classes, which are listed as "Secondary Nonresidential Delivery Classes" on the sheet (having removed primary voltage customers into the proposed PVD class, as shown on page 3 of 5).

ComEd goes on to discuss its Preferred Exemplar and Alternative Exemplar rate designs in this case (ComEd Br. at 143-144). IIEC has explained why its proposed rate design, which maintains the existing classes and rate elements but provides different DFCs, depending on service voltage, is superior to ComEd's exemplar structures, especially the Preferred Exemplar structure, and relies on its Initial Brief at pages 64-66 for that discussion.

Staff addresses this issue at pages 131-133 of its initial brief. Staff effectively disregards ComEd's proposed rate design (rejected in the RDIO – see discussion above) and focuses on ComEd's exemplar approaches. Staff points out some of the same failings as IIEC regarding ComEd's Preferred Exemplar approach and its use of a new PVD class. Staff ultimately recommends ComEd's Alternative Exemplar rate structure, with its separate DFCs for customers served at primary versus secondary, rather than establishment of a new PVD class. (Staff Br. at 133). Because Staff does not specifically address IIEC's nearly identical rate structure, IIEC infers that Staff would not object to IIEC's rate structure in the alternative.

REACT addresses this issue at page 66 of its brief. REACT supports neither a PVD class rate structure nor separate DFCs within existing classes. REACT argues for a system study to determine assets used for delivery to customers above 10 MW. As REACT favors neither approach over the other, IIEC has no response.

The Commercial Group appears to support ComEd's Preferred Exemplar rate approach (creation of a PVD class) over maintaining existing classes with two subclasses, using ComEd's Alternative Exemplar approach or IIEC's approach. (Commercial Group Br. at 8-9). In reply, IIEC

relies on its response to ComEd regarding the Preferred Exemplar rate design described above and in its Initial Brief.

4. Non-Residential

a. Movement Toward ECOSS Rates

(i) Extra Large Load and High Voltage Customer Classes

As explained in IIEC's Initial Brief, in this case, ComEd proposed to continue the four-step movement toward cost based rates for certain classes, as directed by the Commission in Docket 07-0566. Specifically, ComEd proposed to move the ELL class and the HV classes toward cost of service (as measured by its ECOS studies) by adjusting the DFCs for those rate classes. Rates for those classes, which are allegedly below cost, would move upward by 33% as the second step in the Commission's four-step process. IIEC supports the continuation of the four-step movement toward cost. (IIEC Br. at 66-67).

Parties who address this issue in their initial briefs are ComEd, Staff, and the Commercial Group. ComEd summarizes its position on this issue as follows:

ComEd's proposed mitigated rates for the ELL and HV delivery classes provide for movement toward costs based rates in accordance with previous direction provided by the Commission and should be approved.
(ComEd Br. at 145).

Because ComEd continues to support the Commission's four-step process established in Docket No. 07-0566, IIEC has no specific reply to ComEd's position.

Staff's Initial Brief, like its testimony in this case, remains enigmatic. Staff appears to recognize that the order in Docket 07-0566 established a four-step process to move the ELL, HV and

Railroad delivery classes' rates toward cost of service, which dictates 33% movement the rest of the way to cost.

Specifically, in Docket No. 07-0566, the Commission approved a four-step increase in the DFC to cost. With three steps remaining, the second step proposed by ComEd in this case would increase the DFC by 33% toward a cost-based level for the Extra Large Load and High Voltage classes.
(Staff Br. at 135).

Despite this clear direction from the Commission, Staff recommends against that approach and proposes to substitute its own rate design, which would essentially take the second and third steps in the four-step process at once. (Stephens, IIEC Ex. 5.0-C at 9:209-211; *see also*, Alongi, ComEd Ex. 49.0 Rev. at 9-10:217-222). IIEC adequately responded to and explained its disagreement with Staff's misguided proposal in its Initial Brief. (IIEC Br. at 67-69). However, one specific claim of Staff must be corrected. Staff states:

For the Extra Large Load, High Voltage and Railroad classes, the Company's proposed rate design determines the revenue allocation, whereas the revenue allocations for other rate classes are based on the cost of service.
(Staff Br. at 134).

By this statement, Staff implies that ComEd's proposed rates for the ELL and HV classes are not based on cost of service. While IIEC may agree that ComEd's rate proposals, for all classes, do not represent "cost of service," IIEC's disagreement is with ComEd's estimation of cost of service itself. ComEd's rate design does, in fact, move the rates of these classes 33% of the way toward cost of service, as measured by the ECOS Studies it has presented in this case, and, therefore, are "based on the cost of service" (as ComEd knows it). If the cost of service for one of these classes were higher,

the proposed DFC for that class would be higher. It is simply wrong for Staff to imply that ComEd's approach is not based on the cost of service, while Staff's approach is. In fact, since Staff's approach moves toward the same cost of service target as ComEd, and not some arbitrary target, its rates are "based on the cost of service" to the same extent as ComEd's. Staff's position is illogical, contrary to the Commission's defined, stepped movement approach, and it should be rejected.

REACT takes a somewhat different tack, as summarized in the first sentence in the relevant section of its brief:

The Commission should not move the over-10 MW customer classes toward ComEd's flawed, non-reflective of cost-causation ECOSS. (REACT Br. at 66).

To the extent the Commission agrees with REACT, or that none of the cost of service studies in this case adequately measure cost of service, REACT's position should be adopted. However, if the Commission approves the use of any cost of service study in this case, then it should maintain its four-step plan. The Commission should, of course, adopt IIEC's rate moderation plan as well.

CG states the following, at page 9 of its brief:

A number of representatives of the largest load classes insist that they deserve rate subsidies because of potential rate increases that may occur from moving to cost. . . . (CG Br. at 9).

Although CG does not cite to any particular party's testimony in support of its claim (*see* CG Br. at 9), to the extent it is referring to IIEC, the claim is simply incorrect. IIEC has not, at any point in this case, claimed that its members "deserve rate subsidies." Indeed, IIEC has brought to bear significant resources in this case to prove quite the opposite, that the largest load classes are significantly lower

cost to serve than ComEd claims, when correct classification of costs (primary versus secondary) and proper allocations (primary lines and substations and IEDT) are used. In fact, under IIEC's rates which do not even include the impact of the recommended change to allocation of IEDT, the rates of the ELL customers served at primary voltage will go down, not up, when moved toward cost, demonstrating that such customers are actually paying *more than* their cost of service. (Stephens, IIEC Ex. 5.4 at 2).

(iii) What Classes Should Pay for any Revenue Shortfall from Not Moving 100% to ECOSS

IIEC did not address this issue directly in its Initial Brief. Only Staff and CG did so. IIEC will generally refrain from taking an affirmative position on this matter in its Reply Brief, but must respond to a particular statement made by CG. To wit, CG states:

The over 10MW load classes (now called the Extra Large Load and High Voltage classes) have received subsidies exceeding \$23 million per year, at least since the conclusion of Docket No. 01-0423. CG Cross-Exhibit 1, p. 2. This annual subsidy, which does not include any subsidy paid to the railroad class, increased to over \$29 million per year. Id at p. 2-3. (CG Br. at 10)

CG's subsidy claims rely on CG Cross Exhibit 1, which is ComEd's response to REACT Data Request 8.06. (Hemphill, Jan 10, Tr. 330-331). Upon cross examination, the sponsoring witness, Dr. Hemphill, agreed that implicit in any claim of subsidy is the notion that an accurate cost of service has been determined. (Hemphill, Jan 11, Tr. 369-370, 424). Upon further cross examination, it became clear that Dr. Hemphill lacked direct knowledge of the use of ComEd's cost of service study (or lack thereof) in Docket No. 01-0423 and that the Commission, in fact established rates for the over 10 MW customers that were "cost-based." (*Re Commonwealth Edison Company*, ICC Dkt. Docket

01-0423, Mar. 28, 2003 Order at 137). Thus, the information cited by CG above (provided by ComEd) is simply counter to the Commission's conclusion in the subject docket. Furthermore, the Commission specifically found numerous flaws in ComEd's cost of service studies in Docket Nos. 07-0566 and 08-0532. (*See*, IIEC Br. at 34-38; *see also*, Section VII.A. above). Finally, as has been discussed at length in this case, ComEd's cost of service studies in this case (all eight of them) remain flawed.

Given the many identified problems with ComEd's ECOS Study, there is no reliable basis for the CG's claim of subsidy to the over 10 MW load classes. If the actual cost of serving these customers becomes known in this case, through adoption of IIEC's appropriate primary/secondary analysis and correct allocation of primary lines and substations, along with IEDT, it is quite likely, in IIEC's view, that such customers will be found not being subsidized at all, but more likely providing a subsidies to other classes.

5. Collection of Illinois Electricity Distribution Tax

ComEd proposes to modify its rate design to include a separate volumetric charge for collection of the IEDT and associated costs. (ComEd Br. at 147). ComEd makes two principal arguments in support of its position. First, ComEd argues that it seeks to recover the tax in the same manner that the tax is imposed on the utility. (ComEd Br. at 147). Second, ComEd argues that the proposal should be approved for the same reasons articulated in the Ameren cases. (ComEd Br. at 147-148, citing *Central Illinois Light Company, d/b/a AmerenCILCO, et al.*, Dkt. Nos. 09-0306 (Cons.), Final Order, Apr. 29, 2010). IIEC opposes ComEd's proposal and addressed these issues in its Initial Brief. (IIEC Br. at 71-72).

With regard to ComEd's first argument, IIEC has explained in detail why the tax paid by ComEd is not a function of kWh delivered. (*See*, Section VII.C.1.h. above, *see also* IIEC Br. at 53-56). Respecting ComEd's second argument, the Commission Order in the Ameren case was apparently based in large part on an assumption that the legislature intended to affect the allocation and collection of the tax for electric ratemaking purposes. (*See*, 2009 Ameren Cases, Apr. 29, 2010 Order at 244).

However, IIEC respectfully suggests that only one conclusion can be drawn from review of the statute adopting the IEDT (35 ILCS 620/1 et seq.) - - the General Assembly intended to preserve for the State of Illinois, the same level of tax revenue that it received from the invested capital tax. To do so, a mechanism had to be designed that would allow the tax to be collected in a manner that would ensure the recovery of the same level of tax regardless of the fact that Illinois electric utilities might dispose of their generating assets. Therefore, the General Assembly determined that the tax collected from electric utilities would be equal to the tax collected on invested capital prior to 1998, and recovered from utilities on the basis of a set of per kWh charges designed specifically to replicate the level of invested capital tax paid by the utilities prior to 1998. The legislature provided that the cap on the tax could be adjusted upwards to reflect inflation. (Stephens, IIEC Ex. 2.0-C at 21:492-495).

The record here clearly establishes that the tax paid by ComEd is primarily a function of – that is, caused by – the tax paid prior to 1998 on ComEd's plant investment, not kWh delivered. The statute imposing the tax does not contain any language that suggests the legislature intended to change or modify either the Commission's policy on allocating costs to reflect cost causation when setting

rates or the means or its methods for collecting the costs from the utility's customers. (*See generally*, 35 ILCS 620/1a, et seq.).

The Staff supports collection of the IEDT on the basis of a separate per kWh charge. (Staff Br. at 141-144). IIEC has addressed most of Staff's arguments immediately above in Section VII.C.1.h.

6. Distribution Loss Factors

ComEd points out that it has adjusted its distribution system loss study and Distribution Loss Factors ("DLFs") in the course of this proceeding to improve the allocation of energy losses to customer classes. In particular, ComEd notes that it has modified its distribution loss study to "recognize that customers metered at 138 kV and higher have no material distribution losses because there are no step-down transformers or significant conductor losses between the transmission system and the meter location and that the average of no load and full load percentages for HV ESS and 138-60 TSS transformers be calculated as MVA weighted averages." (ComEd Br. at 149). IIEC addressed this issue in its Initial Brief. (*See*, IIEC Br. at 73-74). IIEC supports these modifications of the Company's distribution loss study and the DLF for customers in the high voltage class with demands over 10,000 kW resulting there from. IIEC also supports ComEd's resulting DLF for high-voltage zero-distribution loss customers of 0.6% to 0.7%. (Alongi,, ComEd Ex. 73.8 Rev.). IIEC also notes that the Department of Energy supports the adoption of these particular DLFs. (*See generally*, DOE Br.). The Illinois Commerce Commission Staff apparently has no objection to these distribution loss factors. (*See*, Staff Br. at 144).

X. OTHER

C. Updated Distribution Loss Study

For IIEC's position with regard to the Company's Distribution Loss Factor, see IIEC discussion in Section VIII.C.3.b. above.

XI. CONCLUSION

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

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