

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

COMMONWEALTH EDISON COMPANY'S
POST-HEARING REPLY BRIEF

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POST-HEARING REPLY BRIEF

Commonwealth Edison Company (“ComEd”) submits its post-hearing reply brief in accordance with the order of the Administrative Law Judge and the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”).

I. INTRODUCTION / RELIEF REQUESTED

ComEd proposes this alternative regulation pilot as a means to test whether a budget-based incentive mechanism can deliver utility services at lower cost and whether advance project review can reduce uncertainty and provide better investment guidance. Hemphill Dir., ComEd Ex. 1.0 Rev, 4:80 – 5:101; Hemphill Sur., ComEd Ex. 8.0, 3:44-53. ComEd proposes to begin that pilot with three discrete and modestly sized programs with demonstrated and concrete customer benefits. Specific Smart Grid projects may be added later if, and only if, the Commission finds them beneficial and prudent, and subsequently determines they are appropriate for alternative regulation. *Id.*

The reaction to ComEd’s proposal has been disproportionate, negative, and unfortunately combative. Not one party offered a concrete alternative or, rate design aside, even a change to ComEd’s proposal. Despite what one might conclude from the opponents’ arguments:

- *ComEd is not motivated to “sell” the Commission overstated budgets, even if it could.* ComEd earns a shared incentive based only on saved return. ComEd’s proposed budget is for \$35 million of capital investment. If that budget were 100% overstated, extreme by any measure, ComEd could net an extra \$900,000. Budgets that were overstated by 25% could net ComEd less than \$250,000. Even if ComEd could evade regulatory review, and its witnesses would willingly fabricate inflated budgets, do opponents seriously think ComEd would jeopardize its long-term regulatory credibility over this?¹
- *ComEd’s proposal is not a plot to kill off traditional ratemaking.* This is a limited pilot of a type of incentive regulation with which Illinois has little experience. Hemphill Sur. ComEd Ex. 8.0, 3:48-53. ComEd believes it can have advantages over traditional regulation, particularly for discretionary and high-tech investments. *E.g.*, Hemphill Reb., ComEd Ex. 6.0, 29:623-33, 20:426-44, 22:478-81. But, for those who claim to believe that nothing but test year regulation can ever adequately protect consumers, this pilot does not displace it. The pilot projects are modest and incremental. The only thing opponents really have to fear is that actual data and experience concerning alternative regulation may disprove their biases.
- *The Commission is in control.* ComEd cannot expand, or even continue, the pilot without the Commission’s approval. The Commission’s decisions on those questions will no doubt focus on whether the program benefitted customers and

¹ \$35 million of investment budgeted at double actual cost could be accomplished for \$17.5 million. The return on the resulting \$17.5 million savings at 10.3% ROR is \$1.803 million, half of which is ComEd’s incentive. ComEd Ex. 1.2, Original Sheet No. X+15. The prospect that the Commission might approve up to \$95 million in future Smart Grid investments under Rate ACEP does not change the results. If that budget were 25% overstated, ComEd’s incentive is less than \$1 million.

whether ComEd lived up to its promises during the next two years. If ComEd cheats – inflates its budgets, promises to use quality materials and then uses something less, or says work is “complete” when it is not – the Commission’s biennial evaluation will end this program or take other remedial measures.

On top of their loss of perspective, ComEd is also struck by the degree to which objectors continue to confuse or misstate how ComEd’s proposal actually works and how it recovers project costs. For example:

- Approval of a project budget does not mean that ComEd will recover the budgeted amount. ComEd recovers from customers only project costs that ComEd actually spends. The budgets and the 5% capital deadband around them set an upper bound to what ComEd can recover via Rate ACEP – Accelerated Customer Enhancements Pilot (“Rate ACEP”). Budgets guarantee ComEd nothing.
- Costs exceeding the budget and capital deadband are unrecoverable under Rate ACEP. Staff wrongly asserts that ComEd retains its “ability to seek any O&M costs not recovered under Rate ACEP in a rate case.” Staff Init. Br. at 14.² All

² While Staff’s Initial Brief cites to page 14 of Dr. Rearden’s Rebuttal Testimony for this assertion, it appears Staff meant to cite to page 15. See Rearden Reb., Staff Ex. 8.0, 15:347-54. Dr. Rearden supports this assertion by testifying that “Rate ACEP states on page X+20, ‘...the Company may request that any unrecovered expense amounts ... be included in the Company’s revenue requirement for such general rate case and amortized over a period approved by the ICC.’” *Id.* (omissions in original). The full text of the sentence quoted and relied upon by Dr. Rearden, with the omitted text underlined and bolded, is as follows: “the Company may request that any unrecovered expense amounts **associated with the UFA_{PCS}, SMA_{PCS}, DAA_{PCS}, or APA_{PCS}, as applicable, subject to the limitations set forth in this tariff** be included in the Company’s revenue requirement for such general rate case and amortized over a period approved by the ICC.” ComEd Ex. 1.2, p. X+20. The language omitted by the ellipsis in Dr. Rearden’s quote is critical to the meaning of that sentence, and makes clear that the reference to “unrecovered expense amounts” is limited to expense amounts included in the Underground Facilities, Smart Meter, Distribution Automation, or Approved Program Assessments under Rate ACEP (i.e., expense amounts within their applicable budget and the other limitations of Rate ACEP) that have not yet been recovered through Rate ACEP. Those expense amounts that would otherwise be recovered through Rate ACEP over time may alternatively be recovered, with Commission approval, through base rates. This language does not allow ComEd to attempt to recover the amount, if any, by which its actual O&M expenses exceed the budgeted O&M expenses for approved work that was performed. See Hemphill Dir., ComEd Ex. 1.0 Rev., 29:613-16.

ComEd can hope to do in a subsequent rate case is to show that over-budget *capital* investments were prudent and thus should not be totally written off. ComEd recovers no over-budget Operating and Maintenance (“O&M”) expenses and cannot recoup the return it lost on any over-budget investments during the period when recovery occurred under Rate ACEP.

- ComEd makes no windfall off this program. It must pay for the investments up front and cannot fully recover for years. Realistic opportunities for incentives are modest – far less than the \$2 million O&M credit customers can receive.
- ComEd’s budgets are not soft or inflated. The Urban Underground Facilities Reinvestment (“UUFRR”) budget is based on actual historical costs, discounted further by about 10%. The UUFRR budget numbers were not even adjusted for inflation. The Electric Vehicle (“EV”) budget is detailed down to the level of individual vehicles and pieces of equipment. This is a far more granular level of support than what is typically provided or examined in a rate case. The Low Income Assistance Program budget is the sum of specified program expenditures.
- The Commission has ample legal authority to approve projects that deliver more than minimum levels of service. Claims that the Commission cannot approve discretionary utility investments are inconsistent with law and past Commission decisions. However these very claims do underscore the unreasonable risks that ComEd would be undertaking if it forged ahead and made these investments without any advance Commission review or action. *See* Hemphill Sur., ComEd Ex. 8.0, 2:24-28.

Objections to Rate ACEP's establishment of a mechanism to fund future Smart Grid investments are also misplaced. Rate ACEP provides a cost recovery mechanism for any distribution automation ("DA") or advanced metering infrastructure ("AMI") programs that may emerge from the Commission's ongoing examination of DA and AMI. That mechanism gives the Commission a tool to fund Smart Grid programs that the Commission finds to be beneficial without further litigation and delay over cost recovery. Establishing that cost recovery mechanism in advance does not conflict with either the Commission's Order in ComEd's last rate case, Docket No. 07-0566, or the other ongoing proceedings on Smart Grid.

The bottom lines are these:

- *ComEd has proposed an alternative regulation program that meets all of the requirements of Section 9-244 and that the Commission can approve. The program satisfies each of the required statutory findings and, in particular, delivers projects to customers at lower rates than otherwise would apply under traditional ratemaking.*
- *Customers will benefit if the Commission approves this proposal. The UUFR project indisputably has significant customer benefits – benefits Staff feels so strongly about that it would *require* ComEd to undertake the UUFR project. The EV pilot, about which there is some dispute, offers significant longer-term benefits, meshes with the Commission's own EV goals, and costs less than 10% of the overall proposed spending. No one seriously disputes that low income assistance should be continued. If there were evidence to the contrary, it is not in this record.*

“The world is changing, and innovation in this industry is increasingly critical to keeping our state competitive and its economy strong. It is time to begin exploring ways that we can all

win, rather than continuing the emphasis on trying to ensure that utilities lose.” Hemphill Sur., ComEd Ex. 8.0, 3:56-59. ComEd’s alternative regulation pilot is a first step in that direction. For the reasons stated in ComEd’s Initial Brief and supported by the evidence, that proposal should be approved.

II. PROCEDURAL HISTORY

Based on ComEd’s review of the Initial Briefs filed by others, no contested issues concerning the procedural history of the case are raised.

III. RATE ACEP PROPOSAL

A. Proposed Rate ACEP Mechanism

ComEd has proposed a budget-based Alternative Regulation mechanism, Rate ACEP. Rate ACEP strikes the proper balance of penalizing ComEd when it does not meet a Commission-approved budget and rewarding ComEd when it acts efficiently and comes in under budget. Further, customers are protected when ComEd fails to meet budget goals and share with ComEd when it performs efficiently. However, except Staff witnesses Hinman and Stutsman, no witness opted to review the budgets and provide the type of constructive analysis ComEd had expected and could have viewed as a counter proposal. This is how ComEd had envisioned Rate ACEP would work – not as a “take it or leave it” proposal from ComEd, but as a collaborative effort where Staff and Intervenors would provide a counter proposal. The Commission would consider the proposals and decide upon an appropriate budget, which ComEd could accept or not.

However, not only did Staff and Intervenors not review the budgets but for Ms. Hinman and Mr. Stutsman, they opted to argue against the use of budgets based upon either

mischaracterizations of ComEd's proposal or unsubstantiated motives attributed to ComEd. Therefore, ComEd respectfully requests that the Commission approve Rate ACEP.

1. Proposed Budget Baseline

Staff and Intervenors make sweeping arguments concerning the use of budgets as a baseline for the Alternative Regulation mechanism. However, these arguments either are unsupported by the record or are based on misrepresentations of ComEd's proposal. ComEd's budget-based evaluation mechanism should be approved because it is an effective tool for the Commission to use to evaluate a project's benefits and costs.

a. Proposed Budgets Are Reviewable and Are Not Inflated

Staff contends that the budget-based Rate ACEP is faulty because there is a strong incentive to increase the budget by overestimating the market price of budget inputs or by using asymmetric information to inflate budgets. Staff Init. Br. at 13. Several Intervenors make similar arguments. IIEC Init. Br. at 12; CUB Init. Br. at 13; CTA Init. Br. at 3. Metra claims that it would be difficult to challenge the budgets, particularly in the construction area. Metra Init. Br. at 5; *see also* CG Init. Br. at 2. These arguments fail for several reasons. First, the contention that the budget-based mechanism incents ComEd to inflate its proposed budgets must be rejected as it has not been demonstrated by the record. In preparing the proposed budgets, ComEd used the same budgeting process as it uses in its own internal evaluation of various investment proposals. Hemphill Reb., ComEd Ex. 6.0, 14:306-308; *see also* McMahan, Tr. 146-78 (discussing detailed budgeting, challenge and review process). Even though many witnesses opine on the veracity of ComEd's budgets, only Staff witnesses Hinman and Stutsman actually performed an analysis of a budget. The remaining witnesses, who apparently did not review any

of ComEd's proposed budgets, rely on unsubstantiated motives that they attribute to ComEd to support their arguments.

IIEC also argues that Rate ACEP magnifies utility incentive to inflate budgets because costs are recovered faster under Rate ACEP than traditional regulation. IIEC Init. Br. at 12. This argument must also fail. Rate ACEP only allows ComEd to recover the actual O&M expense up to the Commission-approved budget and the carrying costs up to 105% of capital expenditures. Furthermore, ComEd has proposed very modest projects to form this pilot of Alternative Regulation. The Commission will have the opportunity to review the projects in two years and evaluate whether the pilot should be continued.

Second, Staff and Intervenors understate their capabilities with regard to their ability to review project budgets, including the construction aspects of the proposed budgets. ComEd provided initial, good-faith estimates of these budgets, as well as supporting documentation, such as workpapers and analyses that produced the budgets. This allowed allow for ComEd's assumptions and numbers to be checked, and the budgets altered if needed. Hemphill Reb., ComEd Ex. 6.0, 13:281-284. Further, despite complaining throughout the proceeding that they are not in the position to verify the budgets, Staff and Intervenors perform similar budget reviews when evaluating the prudence of ComEd's spending decisions after the fact in rate cases, such as in ComEd's current rate case, Docket No. 10-0467. Many of these same parties were able to review ComEd's proposed forward looking *pro forma* additions. *Id.*, 13:285-288. Staff also performs similar up-front budget reviews in certification proceedings, which involve construction. Thus, there is nothing illusive about reviewing budgets for ComEd's alternative regulation program. *Id.*, 13:288-14:290. In fact, in this proceeding, Staff witnesses Hinman and Stutsman actually performed an analysis. While ultimately their arguments concerning the

particular project budgets were flawed, actions speak louder than words – they have shown that they were capable of reviewing and challenging the budgets proposed by ComEd.

As Dr. Hemphill testified, even if asymmetric information did exist, the alleged problem would be present regardless of the form of regulation is neither aggravated by budget-based alternative regulation, nor solved by traditional regulation. Hemphill Sur., ComEd Ex. 8.0, 11:235-237. Further, if regulators really could not review a utility's cost due to the "asymmetry of information", the concern should be greater when those costs have already been spent and now must be recovered, rather than where advance approval is required and can be withheld if critical information is unavailable. *Id.*, 11:237-241. Rate ACEP does just that because (1) Staff and Intervenors know up-front the basis for ComEd's cost expectation and can challenge this basis in the form of budget review, and (2) the Commission can then order ComEd to live up to the expectations contained in the budgets. *Id.*, 11:242-244.

Even, if, *arguendo*, Staff and Intervenors could not review budgets, there are few adverse consequences under Rate ACEP to customers if ComEd spends less than the budgets. The proposed budgets are modest. Further, customers benefit in that: (1) if the capital investment is under budget (*i.e.*, comes in under 95% of the budget) then ComEd will share with customers on a 50/50 basis the savings realized as a result (ComEd Ex. 1.2, Original Sheets Nos. X+14 and X+15); (2) there is an immediate reduction of O&M expenses of 5%, capped at \$2 million (ComEd Ex. 1.2, Original Sheets Nos. X+2, X+3, X+4, X+8, X+9, X+11, and X+15); and (3) O&M expense savings from efficiencies will be immediately realized by customers as ComEd only recovers the amount spent (ComEd Ex. 1.2, Original Sheets Nos. X+2, X+3, X+4, and X+15). Thus, Staff's statement that "ComEd only earns revenues less than its costs when it expends more than 105% of the budget, but ComEd shares in 'savings' when its expenditures are

less than 95% of the budget” is misleading. Staff Init. Br. at 13. Under Rate ACEP, with respect to O&M expenses, ComEd only recovers what it spends, and only if the amount spent does not exceed the budgeted amount. Certain O&M costs are also subject to the previously described 5% reduction. When ComEd can beat the budget by greater than 5%, customers receive the program benefits for less and share in the financing saving. In addition, if ComEd reduces its operating costs in response to the proposed incentives, those additional savings will be passed on to customers immediately. Hemphill Dir., ComEd Ex. 1.0 Rev., 7:138-143; 22:455-458. However, in Rate ACEP, the budget numbers are binding, and ComEd is accepting the risk that it will not be able to meet its up-front budgetary obligations. Hemphill Reb., ComEd Ex. 6.0, 16:341-342.

Staff, AG, and IIEC express concern that, if the actual costs exceed the budget, ComEd will be able to seek recovery of budget overages in a future rate case. Staff Init. Br. at 13; AG Init. Br. at 4; IIEC Init. Br. at 3. These concerns are misplaced. ComEd agrees that if and to the extent actual costs exceed 105% of the capital budget for a particular project, it will have to wait until its next rate case to seek cost recovery of additional capital costs. However, ComEd can recover such capital costs that exceed 105% of an approved capital budget only if approved by the Commission in a subsequent traditional rate case with full due process for Staff and Intervenors to evaluate the cost overruns and reasons for the overruns. Hemphill Sur., ComEd Ex. 8.0, 12:248-250.

b. Risk Is Not Shifted to Customers

The argument by Staff and Intervenors that Rate ACEP shifts risks to customers should be rejected because the opposite is true. Staff Init. Br. at 10; CUB Init. Br. at 4; AARP Init. Br. at 11; AG Init. Br. at 40. When the Commission establishes the budget for the Rate ACEP

projects, the Commission is establishing the maximum amount ComEd will be able to recover from customers under Rate ACEP. Thus, up to 105% of the approved budgets is the maximum ComEd will recover from customers under Rate ACEP. Furthermore, if ComEd can meet its obligations under budget, customers will share in the resulting savings. Thus, ComEd's budget-based alternative regulation creates ratepayer certainty, with any uncertainty working to the benefit of customers. Hemphill Reb., ComEd Ex. 6.0, 16:352-358.

If ComEd's proposal shifts anything, it is simply the timing of regulatory review. This allows the Commission to guide policy driven investment instead of limiting itself to Monday morning quarterbacking over whom, if anyone, made "imprudent" navigation decisions. The only risk removed from ComEd is the risk that ComEd, having decided it would be reasonable and prudent to make a certain investment, may have its recovery of those investments second-guessed after the fact. That risk is not "shifted" to consumers because the legal standard applicable to investment decisions under traditional regulation is that those decisions must be evaluated based on information that was or should have been known at the time those decisions were made; hindsight review is impermissible. *Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 428; 790 N.E.2d 377, 379 (1st Dist. 2003); *see also Illinois Power Co. v. Illinois Commerce Comm'n*, 245 Ill. App. 3d 367, 371, 612 N.E.2d 925, 929, (1993) ("Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made."). This standard is and will be applied under ComEd's alternative regulation proposal. ComEd has decided now that it would be reasonable and prudent to proceed as proposed under Rate ACEP with the Uufr program, the Low Income Assistance Plan, and the EV Pilot. Were these same decisions considered after the fact in a traditional rate case, the analysis and operative facts

would be the same as they are here. Only facts that are or should have been known now may be considered; hindsight review is legally impermissible. No change of the applicable standard is implemented through Rate ACEP; the risk to ratepayers is unchanged.

c. Conclusion

A budget can be a very effective tool for measuring and verifying the performance of the program, as the final numbers will speak for themselves. Because the budget will limit what can be collected, ComEd will have a strong incentive to meet or beat the budget targets, which is an important aspect of Alternative Regulation. *See* Northern Illinois Gas Company, Petition for permission to place into effect Rider 4, Gas cost, pursuant to Section 9-244 of the Illinois Public Utilities Act, Docket No. 99-0127, Order (Nov. 23, 1999), 198 P.U.R.4th 436, 1999 Ill. PUC LEXIS 921*88-89. If ComEd cannot beat the budget targets, Rate ACEP will still have worked in the sense that it will have protected customers from risks that ComEd was willing to take itself. *Hemphill Reb.*, ComEd Ex. 6.0, 10:201-206. Therefore, the Commission should approve the budget baseline aspect of ComEd's Rate ACEP.

2. Recovery of O&M Expenses

Rate ACEP allows ComEd to recover, on Commission-approved projects, its O&M expenses as incurred but only up to the budgeted amounts, with a 5% reduction that is applied to O&M expenses, with the exception of low income assistance expenses, up to a \$2 million cap. With respect to this aspect of Rate ACEP, Staff and certain Intervenors argue either that customers receive no protection or that the savings do not flow through to customers. These arguments should be rejected as customers benefit immediately and in the long term.

Staff argues that limiting recovery of O&M expenses to 95% offers customers no protection. Staff Init. Br. at 14. Staff errs by failing to see that the Rate ACEP tariff mechanism

deducts the 5% directly from the amount to be charged to customers. Thus, customers receive an immediate substantive benefit of a reduction of 5% of certain O&M expenses (capped at \$2 million) from Rate ACEP. In the longer term, the incentives in Rate ACEP will encourage ComEd to operate efficiently in completing the project, with the related savings flowing directly to customers.

Furthermore, Staff's position is based in part on a misunderstanding of ComEd's tariff. Staff states that "Rate ACEP preserves ComEd's ability to seek any O&M costs not recovered under Rate ACEP in a rate case." Staff Init. Br. at 14. Rate ACEP does not allow ComEd to recover O&M expenses beyond the Commission-approved budgets amounts. For example, for the UUFRR project, the tariff provides that:

The Company is allowed to recover the O&M expenses it incurs that are associated with the Urban Underground Facility Reinvestment Program approved by the ICC in its Order in Docket No. 10-XXXX up to a maximum of \$15,000,000, subject to applicable provisions in this tariff addressing reductions applied to the recovery of expenses.

ComEd Ex. 1.2, Original Sheet No. X+2. As the tariff indicates, recovery of O&M expenses are limited to approved amounts. This is confirmed by Dr. Hemphill, who testifies that "the O&M expenses that ComEd does recover will be limited to the Commission-approved O&M budget for all projects. If actual O&M costs exceed the budgeted amount, customers will not pay the difference even if such additional costs are prudent and reasonable." Hemphill Dir., ComEd Ex. 1.0 Rev., 29:613-617.

Both the AG and IIEC contend that Rate ACEP does not factor in the O&M savings that ComEd will experience from the Alternative Regulation projects. AG Init. Br. at 5; IIEC Init. Br. at 12. This argument should be rejected. The budget for each project will be a powerful incentive mechanism for ComEd to operate efficiently. Hemphill Reb., ComEd Ex. 6.0, 11:244-12:245. As a result, if ComEd reduces its operating costs in response to the proposed incentives,

those additional savings will be passed on to customers immediately. Hemphill Dir., ComEd Ex. 1.0 Rev., 7:138-143; 22:455-458. Thus, as ComEd recovers the O&M costs under Rate ACEP, the costs should already include any ascertainable operational savings, less a further voluntary deduction of 5% of those expenses up to a cap of \$2 million.

3. Recovery of Capital Investments

Staff and Intervenors claim that there is an incentive for ComEd to inflate the capital budgets for the proposed projects. Staff Init. Br. at 14-15; IIEC Init. Br. at 12; CUB Init. Br. at 13; CTA Init. Br. at 3. ComEd explained why these arguments should be rejected in Section III.A.1 of this Reply Brief.

For the first time in briefs and without providing ComEd to respond on the record, CG claims that Rate ACEP may result in double recovery of capital costs. CG Init. Br. at 4. The CG concern is not accurate as ComEd will only calculate its Rate ACEP depreciation expense associated with the UUFR program on the amount that is placed in service and not the removal costs. *See* ComEd Ex. 1.2, Original Sheet X+8.

4. Treatment of Costs Under/Over Budget

See Sections III.A.1 and III.A.2 of this Reply Brief.

B. Description of Proposed Projects

1. Urban Underground Facilities Reinvestment (“UUFR”)

a. Response to Staff

Staff’s Initial Brief discusses the reliability and other benefits of the UUFR project, and discusses at length why it believes ComEd should be ordered to pursue the UUFR project regardless of the outcome of ComEd’s proposal for approval of an alternative regulation plan. *See generally* Staff Init. Br. at 16-26. As an initial matter, as noted in ComEd’s Initial Brief

(ComEd Init. Br. at 15, fn. 5), the question of whether ComEd should be ordered to pursue the UUFR project is being addressed in ComEd's current rate case, Docket No. 10-0467. The scope of this alternative regulation docket is ComEd's petition for approval of its Alternative Regulation plan. No order has been entered or pleading filed expanding the scope of this docket. Accordingly, Staff's arguments in this regard are beyond the scope of this docket and should not be considered here.

ComEd disagrees with Staff's assertions regarding the absolute need for the UUFR project funding (Staff Init. Br. at 16) as explained in testimony and does not restate all of those disagreements here. *See e.g.*, McMahan Sur., ComEd Ex. 9.0, 2:21-4:67; Hemphill Sur., ComEd Ex. 8.0, 14:297-16:340. However, Staff has lost sight of the fact that the prudence of any individual expenditure cannot be established in isolation without viewing the entire picture. Since there is no record in this case about the overall investment or reliability needs of ComEd's distribution system, there is no way Staff can credibly make the assertion, in this docket, that ComEd is irresponsible for not pursuing UUFR. ComEd proposed UUFR because it believes that it would be beneficial, and Staff seems to agree. However, ComEd has other more pressing investment needs that provide even greater benefits. These other needs require that UUFR can only be undertaken with its own dedicated source of cost recovery that will not displace those other investments. Staff's declaration is devoid of any support in this regard.

b. Response to AG

The AG points to Ms. Blaise's testimony that there is nothing improper or imprudent about ComEd's current approach to underground facility maintenance, and that proposals for accelerated UUFR investment have been considered in ComEd's capital budgeting process but rejected. As a result, the AG concludes that there is no reason to undertake investments that

have already been rejected by ComEd's management. AG Init. Br. at 10-11. The AG hits on one of the key reasons ComEd proposed the UUFR project for its Alternative Regulation plan (the UUFR project offers ratepayer benefits but is not necessary and has not been adopted pursuant to the budget process which gives precedence to other higher priority investments), but then misses its overall implication. The UUFR project offers considerable benefits, as verified by Staff. The UUFR investment ComEd is proposing is a tiny share of what ComEd ordinarily spends on expansion and maintenance over 18 months. There is little potential harm in adopting a trial run in an alternative regulation format for a program that Staff argues is vital.

The AG likens the UUFR project to Ameren's Rider QIP, which the Commission rejected in Ameren's 2007 rate case (Docket No. 07-0585 et al. (cons.)). AG Init. Br. at 11-13. Rate ACEP, however, is not a tracking rider and is not subject to the requirements applicable to riders. Rate ACEP implements an Alternative Regulation plan and meets the requirements applicable to such a plan. Moreover, the AG's statement that UUFR costs can be recovered in base rates (AG Init. Br. at 13) is contradicted by the AG's earlier correct assessment that the UUFR is discretionary. ComEd also notes that the Commission did approve an investment cost recovery rider (Infrastructure Cost Recovery Rider) in North Shore/Peoples Gas 2009 rate case, Docket Nos. 09-0166/09-0167 (cons.). *North Shore Gas Co.*, Docket Nos. 09-0166/09-0167 (cons.), pp. 164-182 (Order, Jan. 21, 2010).

c. Response to Metra

Metra argues that if ComEd is approaching the UUFR budget limits, ComEd employees will have the incentive to do the minimum to ensure ComEd stays within budget. Metra Init. Br. at 8. Metra has not taken into account that ComEd's proposed budget for the UUFR project is separately stated for each of its 6 quarters, with the scope of work reduced during the summer

peak months when ComEd's ability to take a line out of service for maintenance or repair work is more limited. *See* Blaise Dir., ComEd Ex. 4.0, 9:134-40, 14:245-15:258. Each quarter has its own maximum and minimum targets, and such a work plan does not lend itself to the unsupported manipulation suggested by Metra.

2. Utility Electric Vehicle ("EV") Pilot

a. Response to Staff

(i) Introduction

Staff contends that it has established that ComEd's proposed EV Pilot budget is inflated and was not supported sufficiently to determine its reasonableness. Staff Init. Br. at 26. In a related argument addressed in detail in Section A.1 above, Staff claims that analysis of the EV Pilot budget supports the conclusion that use of budgets does not provide a reasonable standard upon which to base an alternative regulation mechanism. *Id.* Staff's arguments regarding inflated budgets are based on speculation and not supported by the record. To the extent that Staff does discuss information in the record, its arguments present a distorted and incorrect view of ComEd's burden and the state of the record. ComEd has supported the reasonableness of its budgeted amount for the EV Pilot.

While Staff's view on overstated budgets is based on an assumption that ComEd is motivated to overstate its budgets because of great potential gain, the reality is that ComEd would stand to gain very little for the EV Pilot project even if Staff's unsupported assertions were reality. The total cost of the EV Pilot is \$5 million. If one assumes this amount is overstated by 100%, ComEd could retain one half of the return on the difference between the budgeted amount and the assumed actual amount of \$2.5 million. At a 10.3% ROR, this would amount to a \$257,500 savings that would be split evenly with ratepayers. Staff's assumption that

ComEd would intentionally overstate its budgets for this sort of gain (which is based on an extreme overstatement of the budget) is not only lacking in any evidentiary support, but contrary to reason and logic.

Similarly, the record is clear that ComEd has presented support for its proposed budget. Many of Staff's arguments address matters that were not clear at the direct testimony portion of this case, but were clarified during rebuttal or surrebuttal testimony. Even Staff's witness acknowledged that the Commission must make its decision based on all of the evidence in this case, not just the evidence presented as of direct testimony. Hinman, Tr. 272:10-15. Similarly, a common theme in Staff's Initial Brief is that it was unable to verify certain information. ComEd provided information demonstrating that its budgeted amount for the EV Pilot is reasonable. ComEd does not control whether other parties make information publicly available for Staff to verify, and this does not undermine ComEd's showing. ComEd responded to Staff's data requests and cross examination, and Staff's negative speculations do not form a sufficient basis for not approving the EV Pilot or finding its budgeted costs reasonable. Staff's argument is a red herring, and disregards the proof that was provided.

Staff has also failed to consider that the Commission will be reviewing the program in two years. This review will examine ComEd's expenditures to determine that ComEd has fulfilled its obligations under the approved budget. The Commission can determine whether ComEd bought the types of equipment ComEd promised and whether the project is actually complete. If the Commission makes findings that ComEd's performance was not satisfactory or otherwise inconsistent with its obligations, the Commission can require ComEd to comply with its obligation and order changes to or termination of the program.

(ii) ComEd Has Supported the EV Pilot

Staff acknowledges that ComEd has specified the types and exact number of vehicles and charging stations to be purchased under the EV Pilot. Staff Init. Br. at 26-7. Staff also acknowledges that “[t]he EV Pilot will study EVs’ operational, economic, and environmental costs and benefits, and assess EVs’ ability to replace carbon-fueled vehicles in the utility fleet.” *Id.* at 27 (quoting from ComEd’s Response to Staff Data Request JLH 2.02). ComEd’s testimony also provided additional details, explaining that “EVs may be an effective means of reducing emissions, supporting the replacement of carbon-fueled vehicles, and ultimately reducing [ComEd’s] costs. However, there is little information about how such vehicles perform in an industrial setting, especially in [an] area like ComEd serves [that] includes urban, suburban, and rural areas over a large geographic footprint [with] fairly diverse climate conditions.” McMahan Dir., ComEd Ex. 2.0, 3:53-7. ComEd also explained that it “cannot prudently deploy [the new types of hybrid, plug-in hybrid, and all-electric vehicles for utility applications becoming available on the market] on a widespread basis without first piloting them. [The EV Pilot] will provide knowledge of EV lifecycle costs and operational considerations that will be valuable in the operation of [ComEd’s] utility fleet, as well as to customers considering adoption of EVs.” *Id.* at 3:59-64. This information will help determine whether lower fuel costs for EVs may offset their higher upfront costs as suggested by some studies. *Id.* at 4:69-73. Thus, “[a] pilot program will permit a detailed analysis and the development of strategies ComEd may be able to employ to reduce total life-cycle ownership costs.” *Id.* at 4:73-5. Staff does not challenge any of these benefits that will result from the EV Pilot.

(iii) ComEd’s Use of Budgets Is Appropriate and Supported

Staff correctly indicates that ComEd proposes to use its EV Pilot budget as the standard for measuring its performance under Section 9-244(a). Staff Init. Br. at 27. Staff then jumps to

its superficial claim that using budgets to measure performance creates an incentive for ComEd to inflate its proposed Rate ACEP budgets. *Id.* at 27-28. While there is a benefit to coming in under budget, the potential benefit from performing under budget does not involve anything approaching the windfall contemplated by Staff’s assertion given the modest size of this alternative regulation pilot as explained in Section I above. Thus, even if one can get past the unrealistic claim that a utility would knowingly inflate and overstate its budgets, Staff’s assertion is still nonsensical when considered in connection with the actual operation of the proposed Alternative Regulation plan.

Staff also asserts that the EV Pilot project is not sufficiently supported and is not transparent. Staff Init. Br. at 28. Staff’s assertions are not supported by the record and, in many cases, ignore evidence and information provided subsequent to direct testimony. This information is part of the record, and there is no basis for disregarding record evidence. Staff begins by asserting that \$3.22 million of costs may be inflated by \$1.12 million. *Id.* at 29. Staff’s Initial Brief does not clearly identify the specific components of these alleged amounts, but it appears to ComEd that Staff derived these numbers as follows:

	(a)	(b)	(c)	(d)	(e)	(f)
	ComEd Unit Cost	Quantity	ComEd Total Cost (a) x (b)	Staff Unit Cost	Staff Total Cost (b) x (d)	Asserted Budget Inflation (e) - (c)
ComEd EV Pilot Program Assets						
Hybrid Bucket Truck (non-pluggable)	\$ 250,000	4	\$ 1,000,000	\$ 215,000	\$ 860,000	\$ (140,000)
Plug-in Car	\$ 36,000	45	\$ 1,620,000	\$ 25,280	\$ 1,137,600	\$ (482,400)
Level 2 charging stations (Installed)	\$ 10,000	55	\$ 550,000	\$ 1,852	\$ 101,860	\$ (448,140)
Incidental equipment and contingency	\$ 50,000	1	\$ 50,000	\$ -	\$ -	\$ (50,000)
Total			\$ 3,220,000		\$ 2,099,460	\$ (1,120,540)

See Staff Init. Br. at 26-27, 29, 32, 36.

Staff’s reliance on its direct testimony unit costs to make its budget inflation assertion is unfounded at best. For instance, as Mr. McMahan explained, the difference between Staff’s and

ComEd's unit costs for the Plug-in-Cars is more than eliminated after accounting for \$7,500 that Ms. Hinman incorporated for potential tax credits, \$2,772 of costs she did not include for tax and title, and \$700 she did not include for freight charges. *See McMahan Reb., ComEd Ex. 7.0, 6:96-107.* Given that ComEd agreed in testimony to modify Rate ACEP to account for any tax credits available when it purchases EVs or charging stations (*see ComEd Init. Br. at 26*), it is misleading to represent to the Commission that ComEd's budget is overstated by \$1.12 million when the basis for \$482,400 of that amount has been clearly explained or resolved by clarifications to Rate ACEP agreed to in the record.³ The other bases for Staff's budget inflation contention also lack merit.

Staff contends that ComEd has inflated its Hybrid Bucket Truck budget amount by \$140,000. *Staff Init. Br. at 29.* ComEd clarified in rebuttal testimony that the hybrid bucket trucks to be purchased under the EV Pilot are to include a variety of aerial equipment of varying heights and capabilities (*e.g., Altec TA40, TA45, and TA50 Telescopic/Articulating Aerial Devices*), and not just the Altec TA40 listed in ComEd's Response to Staff Data Request JLH 1.09 and relied upon for Staff's cost estimate. *McMahan Reb., ComEd Ex. 7.0, 3:41-2; see also ComEd Init. Br. at 23.* ComEd also explained in testimony that the \$250,000 unit cost is the average of the prices paid by ComEd for hybrid bucket trucks in 2009 for the types of equipment to be purchased under the EV Pilot. *Id. at 3:44-56.*⁴ No price increase or inflation factor was added to these 2009 cost figures, making them conservative. Staff extrapolates from this clarification that ComEd's budgets are not transparent. *Staff Init. Br. at 30.* To the contrary, this

³ Staff does acknowledge ComEd's agreement to flow through tax credits later in its Initial Brief, but does not correct its \$1.12 million number for the acknowledged resolution of this issue. *Staff Init. Br. at 32.*

⁴ Staff also asserts that \$250,000 is not the average unit cost for all the hybrid bucket trucks purchased by ComEd in the past. *Staff Init. Br. at 30 (fn. 71).* Mr. McMahan never testified that \$250,000 was an average of all past purchases. Rather, it is an average for hybrid bucket trucks with the various types of aerial equipment to be purchased under the EV Pilot. *McMahan Reb., ComEd Ex. 7.0, 3:48-56.*

demonstrates ComEd's point that parties and Staff can competently analyze and question budgets, and generate clarifications and corrections where warranted. This is simply a case where an initial data request response contained an inadvertent misstatement that was corrected in testimony.

Similarly, Staff points to a data request response providing a \$230,000 per unit cost estimate for hybrid bucket trucks utilized in connection with the Clean Cities Grant program to question ComEd's \$250,000 per unit budget. Staff Init. Br. at 30. There is nothing in the Clean Cities Grant number cited by Staff indicating that it is for hybrid bucket trucks with the mix of aerial equipment to be purchased under the EV Pilot. To the extent the Clean Cities Grant number is solely for hybrid bucket trucks with Altec TA40 Telescopic/Articulating Aerial Devices, it suggests that the \$215,000 estimate for hybrid bucket trucks with an Altec TA 40 used for the \$250,000 average cost is overly conservative.

Staff's also appears to complain that ComEd did not specify the exact number of hybrid bucket trucks with each particular type of aerial equipment it will purchase under the EV Pilot. Staff Init. Br. at 31.⁵ ComEd's proposal under the EV Pilot is to purchase hybrid bucket trucks with a mix of Altec TA40, TA45, and TA50 Telescopic/Articulating Aerial Devices as described in Mr. McMahan's testimony. ComEd intended to provide some flexibility to purchase the exact type of aerial equipment most needed at the actual time of purchase while at the same time providing sufficient specificity to support the budget estimate. Given the limited number of hybrid bucket trucks to be purchased, ComEd believes it has achieved that goal and demonstrated the reasonableness of its budget amount for hybrid bucket trucks. If ComEd were to purchase 4 or even 3 hybrid bucket trucks with the lower cost Altec TA40 Aerial Devices, the

⁵ While Staff raises this concern, it does not appear that any amount of specificity would ever resolve it from Staff's perspective. Ms. Hinman testified on cross that even if the mix of vehicles was fixed, that would not address her concern. Hinman, Tr. 274:5-10.

Commission could find that ComEd had not complied with its proposed budget. If the Commission finds greater specificity regarding the exact mix of hybrid bucket trucks is required from a budget perspective, ComEd is open to the Commission requiring greater specificity by, for instance, providing that the purchases shall include no more than two Altec TA40s and at least one TA50.

While the Plug-in cargo/service vehicles and PHEV digger-derrick trucks were not part of Staff's "budget inflation" assertion, Staff argues in its Initial Brief that it was not able to "independently verify" the budget prices for these vehicles "because the manufacturers' websites are protected so that information can only be viewed by members and previous customers." Staff Init. Br. at 33. Staff supports this assertion by citation to page 7 of Ms. Hinman's direct testimony, Staff Ex. 2.0 Rev. This information regarding manufacturer's websites is in footnote 3 of Ms. Hinman's rebuttal testimony, which is part of an answer to a question about hybrid bucket trucks – not plug-in cargo/service vehicles or PHEV digger-derrick trucks. Thus, the record does not support Staff's assertion or demonstrate its applicability to plug-in cargo/service vehicles or PHEV digger-derrick trucks. In fact, Staff did not specifically address or challenge the unit costs for plug-in cargo/service vehicles or PHEV digger-derrick trucks in testimony. Even accepting the unsupported assertions made for the first time in briefs with respect to these cost estimates, they do not provide a valid attack on ComEd's budget estimate. As indicated in Ms. Hinman's testimony, ComEd provided the basis for its costs estimates for these vehicles. Hinman Dir., Staff Ex. 2.0 Rev., 6:106-7. Staff clearly is in error. Staff's claim that those costs are not adequately supported is contrary to the record and lacks merit.

Staff spends a significant portion of its Initial Brief addressing the cost estimates for the purchase and installation of Coulomb Technologies CT 2100 charging stations. Staff Init. Br. at

33-39. As shown in the table at the beginning of this section, Staff's assertion that the budget for the purchase and installation of charging stations is inflated by \$498,135⁶ is based on Staff's cost estimate of \$1,852 per unit with no contingency compared to ComEd's cost estimate of \$10,000 per unit plus an overall EV Pilot contingency of \$50,000. *Id.* at 36. Staff's overall position lacks merit, as will be explained below, but an important preliminary observation is that with respect to the charging station equipment itself, Staff is contending that different equipment costing less should be used. *Id.* at 33-36. This is significant regarding the spurious claim that ComEd EV Pilot budget demonstrates Staff's assertion that ComEd is incented to inflate its budgets to enrich itself. The issue of what equipment should be purchased for a particular project is separate and distinct from the reasonableness of the budget for the particular investment actually proposed, and has no relationship to ComEd's potential rewards for cost reductions under its proposed Alternative Regulation program. ComEd has clearly proposed to purchase the Coulomb Technologies CT 2100 charging stations. Staff's cost estimates are based on the use of different equipment that costs less. If the Commission approves ComEd's proposal to purchase the Coulomb Technologies CT 2100 charging stations, which it should, the Commission can find ComEd has not complied with its proposed budget if it purchases different less expensive equipment. Staff's arguments to the contrary are nonsensical.

Staff's Initial Brief appears to question ComEd's selection of the Coulomb Technologies CT 2100 charging station, but never makes a direct recommendation in this regard. *See* Staff Init. Br. at 33-34. ComEd witness McMahan explained the basis for ComEd's selection of the CT 2100 charging stations as follows:

⁶ The \$5 difference between the table and the amount in Staff's Initial Brief (\$448,140 plus \$50,000 or \$498,140 versus \$498,135) is due to Staff's use of rounding to develop ComEd's per unit number including the contingency. Staff divides the \$50,000 contingency by 55 -- which is \$909.0909 -- and adds a rounded \$909 to ComEd's \$10,000 per unit cost estimate to arrive at a ComEd unit cost of \$10,909. The \$5 difference is equal to \$0.0909 * 55. *See* Staff Init. Br. at 36.

In order to evaluate the total lifecycle costs of EV ownership and the methods to reduce those costs, remote communications, load management, and usage data collection and analysis are all essential. As mentioned in ComEd's response to Staff Data Request JLH 1.09, the Coulomb Technologies CT-2100 charging station was chosen for its ability to be networked and for its remote communications capability, enabling aggregate management of the electrical load associated with ComEd's fleet of plug-in vehicles.

McMahan Reb., ComEd Ex. 7.0, 10:179-84. Staff asserts that ComEd admitted in its Initial Assessment of Plug-In Electric Vehicles submitted in the Commission's Initiative on Plug-In Electric Vehicles (admitted into the record at the hearings as Staff Cross Ex. 1) that it was able to "remotely acquire vehicle performance data and aggregately manage the electrical load" for its 10 Prius hybrids that were converted to plug-in hybrids ("PHEVs"). Staff Init. Br. at 33-34. While ComEd was able to remotely acquire vehicle performance data and aggregately manage electrical load for its 10 converted Prius PHEVs, the record also indicates that this capability required special equipment from GridPoint, Inc. *See* Staff Cross Ex. 1, p. 12. However, the record does not indicate the exact capabilities of the GridPoint equipment or its cost. ComEd has never indicated that there are no alternative charging stations. The record indicates that there are sound reasons for using the Coulomb Technologies CT-2100 charging station, particularly for a pilot with a primary goal of gathering information to assess the total lifecycle costs and benefits of EVs in a fleet application such as ComEd's. The Commission should approve ComEd's proposal in this regard.

After reviewing Staff witness Hinman's direct testimony indicating that there are Level 2 charging stations that are less expensive than the Coulomb Technologies CT-2100, Staff asserts that "ComEd could purchase 55 of the cheaper charging stations and be significantly under budget by approximately \$245,850 [$=(\$5,000 - \$530)*55$]" Staff Init. Br. at 34. According to Staff, this means that "ratepayers could be required to pay an incentive return on half the difference between ComEd's budgeted amount and the price of cheaper units due to the incentive

component of Rate ACEP.” *Id.* Staff’s argument is incorrect and illogical. As explained above, if the Commission approves ComEd’s proposed budget, including its proposal to purchase 55 Coulomb Technologies CT-2100 charging stations, then that is the unit that ComEd is obligated to purchase and ComEd cannot demonstrate savings by purchasing different charging stations that have fewer functions and capabilities but cost less.

Staff then reviews ComEd witness McMahan’s responsive testimony indicating that the cheaper charging station utilized by Staff witness Hinman include only the most basic safety and operational functions and provide no communications, control, or data collection capabilities which are vital to the ComEd EV Pilot. Staff Init. Br. at 34; McMahan Reb., ComEd Ex. 7.0, 10:173-188. Staff does not refute these points but states that “Mr. McMahan provided no explanation as to why the smart charging technology [utilized in connection with the converted Prius PHEVs and] that enables data collection capability and remote charge management could not be included in some of the EVs and be used in conjunction with the cheaper Level 2 charging stations.” Staff Init. Br. at 34. The information Staff refers was not introduced in pre-filed testimony, but rather came into the record through a cross exhibit introduced at hearings through another witness and about which Staff never even cross-examined Mr. McMahan. *See* Hemphill, Tr. 445:5-446:3. As indicated above, there is no substantive evidence about the costs or capabilities of the equipment utilized for the 10 converted Prius PHEVs. Further, it is not surprising that Mr. McMahan did not respond to a new issue not made in testimony. Finally, the courts have been clear – it is inappropriate for a party to “lay in the weeds until the briefing stage”, when there is no opportunity to respond via testimony, and then criticize the utility for not responding in testimony. *See City of Chicago v. Illinois Commerce Com’n*, 264 Ill.App.3d 403, 409-410 (1st Dist. 1993) (Court rejected argument that Commission failed to make sufficient

findings by omitting City's argument from its order where "the City offered none of its own evidence to the Commission but, instead, chose to 'lay in the weeds until the briefing stage' before raising its objections.")

Staff also complains that the vendor quote provided by ComEd was provided in rebuttal testimony rather than direct and was expired. Staff Init. Br. at 35. ComEd supported its cost estimate, and the fact that additional details were discussed in response to direct testimony is not a legitimate criticism. Indeed, as just discussed, Staff also argues (regarding the issue it raised through a cross exhibit at the hearings) that ComEd did not respond to that issue in testimony. Staff cannot have it both ways, and both of its arguments lack merit. While ComEd agrees that the particular quote used to develop ComEd's budget cost estimate was binding on the vendor for a term that has since expired, this is a risk factor for ComEd under a budget-based alternative regulation program and does not undermine the reasonableness of ComEd's budget. Similarly, Staff's other arguments about what ComEd allegedly did not show are based on speculation and are inappropriately based on requiring ComEd to prove a negative. Arguing that ComEd did not submit proof of the absence of discounts proves nothing and does not establish that such discounts exist. ComEd has met its burden to present a *prima facie* case establishing the reasonableness of its budgeted costs. As in a general rate case, after presenting a *prima facie* case the burden of going forward with the evidence shifts to other parties to show that the costs are unreasonable. *Illinois Bell Tel. Co. v. Illinois Commerce Comm'n*, 327 Ill. App. 3d 768, 776 (3rd Dist. 2002); *City of Chicago v. Cook County*, 133 Ill. App. 3d 435, 442-443 (1st Dist. 1985). Staff's statements that ComEd has not disproven its negative assertions does not meet its burden of going forward and, even if it did, the record as a whole supports the reasonableness of ComEd's cost estimate for the EV Pilot investments to be made.

Staff also disagrees with ComEd's budget estimate for installation costs for the Coulomb Technologies CT-2100. Staff Init. Br. at 35-38. As Mr. McMahan explained, "per-unit costs for charging infrastructure are based on estimates generated from conversations with charging infrastructure providers, and not actual quotes for work." McMahan Reb., ComEd Ex. 7.0, 13:243-45. ComEd's proposed installation cost budget also reflects additional material and labor costs to address the following: (i) the majority of existing parking spaces at ComEd's facilities where charging stations would be located are not within 40 feet of the breaker panel; (ii) a portion of the existing circuit breaker panels will not be able to accommodate additional circuit breaker locations to serve the new EV charging loads, given the age of many of ComEd's facilities and the fact that load has already been added to them over the years; and (iii) concrete saw cutting or additional concrete work will be required because a majority of ComEd's parking spaces where charging stations would be located are not directly adjacent to buildings housing electric service panels. *Id.* at 11:207-12:233; *see also* ComEd Init. Br. at 24.

Mr. McMahan explained that Ms. Hinman's lower cost estimate used to develop her asserted budget overstatement was based on charging infrastructure cost estimates from a U.S. Department of Energy ("DOE") Study from November of 2008. McMahan Reb., ComEd Ex. 7.0, 11:203-6. Mr. McMahan further explained that those cost estimates were based on assumptions inconsistent with the facts and circumstances applicable to ComEd discussed above. *Id.* at 11:207-12:233. In addition, the U.S. DOE Study cost estimates were based on charging station functionality limited to vehicle charging. Use of cheaper charging stations with only rudimentary functionality defeats the purpose of ComEd's EV Pilot, as it provides neither the capability to collect data nor the ability to exercise remote charge management. *Id.* at 12:215-18. Similarly, the U.S. DOE Study cost estimates do not account for the installation of protective

guard rails, which will be required for ComEd locations given that the charging stations will be installed in areas with high levels of heavy-duty vehicle traffic. *Id.* at 12:227-30.

For all the foregoing reasons, Staff's criticisms of ComEd's budget cost estimate and Staff's use of lower cost estimates for purchasing and installing the charging stations lack merit. Staff's arguments focusing on direct testimony inappropriately disregard evidence provided in rebuttal. Moreover, since Staff's estimates are based on different equipment and different installation field conditions, its argument that "ComEd could purchase and install charging stations significantly under budget without any efficiency advantage" is illogical, inconsistent with ComEd's proposal, and reflects a lack of understanding regarding the meaning of Commission approval of a specific proposal. If the Commission approves ComEd's proposal to purchase the Coulomb Technologies CT-2100 charging stations with their advanced functionality, the Commission could find ComEd not in compliance with its proposed budget if it purchases cheaper charging stations with more rudimentary functionality. Similarly, while ComEd's proposal allows for future selection of specific installation sites, if the Commission approves ComEd's installation budget based on ComEd's assumptions stated above and those assumptions are not applicable to the actual installations, then the Commission could find ComEd to not be in compliance with its proposed budget for that reason too.

Staff's argument that the 10 converted Prius PHEVs are charged from wall outlets does not support its use of the DOE cost estimates or discredit Mr. McMahan's testimony distinguishing the DOE Study assumptions from those applicable here. *See Staff Init. Br.* at 37. The fact that 10 vehicles in ComEd's current fleet use Level 1 charging stations (McMahan, Tr. 126:9-13) and are plugged into existing 110 Volt outlets has no bearing on ComEd's plans for Level 2 charging stations which operate on a higher voltage and provide faster charging times.

McMahan Reb., ComEd Ex. 7.0, 8:139-46. Even disregarding the voltage issue, the fact that 10 existing vehicles were able to be plugged into existing outlets does not undermine or contradict ComEd's clear testimony that "[t]he majority of ComEd's parking spaces where charging stations would be located are not directly adjacent to buildings housing electric service panels." *Id.* at 223-26. Staff's reference to ComEd's indication that required upgrades to ComEd's distribution system would be taken into account in selecting deployment locations is similarly unavailing. Staff Init. Br. at 37. Since ComEd's budget does not include any costs for utility distribution system upgrades that may be required, Staff's argument that ComEd should have built this consideration into its budget is not relevant and would have no impact on the proposed budget.

Referring again to ComEd's Initial Assessment of Plug-In Electric Vehicles submitted in the Commission's Initiative on Plug-In Electric Vehicles, Staff argues that ComEd did not offer quotes or invoices for the 36 charging stations to be installed by the end of 2010 pursuant to a grant for two EPRI demonstration projects. Staff Init. Br. at 38; Staff Cross Ex. 1, pp. 14-15. Staff's argument is nothing more than mere speculation that such quotes or invoices were available. In fact, the record does not appear to contain any information on the type of charging stations to be installed as part of the EPRI demonstration projects or their comparability to the charging stations to be installed as part of the EV Pilot. To the extent that there is any comparable information in the record, it is for the Clean Cities Grant program. ComEd's proposal in connection with that grant calls for use of a Coulomb Technologies Smart Charging station and contains a \$10,000 per unit cost estimate for the equipment and installation that is identical to ComEd's estimate here. Staff Ex. 9.1, p. 33.

Staff also disagrees with ComEd’s incorporation of a contingency amount in its budget. Staff Init. Br. at 38-39. ComEd witness Mr. McMahan explained that “the \$50,000 included for incidental equipment and contingency reflects the level of variability in the actual costs for installing the infrastructure for 55 Level 2 charging stations.” McMahan Reb., ComEd Ex. 7.0, 13:239-41. The contingency will cover various types of equipment including conduit, conductors, service panels, breakers, and other material and equipment necessary to provide electrical service to the 55 Level 2 charging stations, as well as any upgrades to electric supply. *Id.* at 13:246-49. Mr. McMahan – who has extensive experience in distribution engineering, capacity planning, reliability engineering, project management, long range work planning and budgeting, and vendor management (McMahan Dir., ComEd Ex. 2.0, 1:19-3:45) – testified that “[t]his contingency represents 1% of the project cost and, as such, is quite conservative” and “deletion of this contingency is not reasonable.” McMahan Reb., ComEd Ex. 7.0, 13:249-51. The Commission has approved recovery of costs for contingency factors in the past, and there is nothing *per se* improper about recovery of such costs. *See e.g., Commonwealth Edison Co., Petition for Approval of a Revision to Decommissioning Expense Adjustment Rider to Take Effect on Transfer of ComEd’s Generating Stations*, Docket No. 00-0361, 2000 Ill. PUC LEXIS 968, *76-*78 (Order, Dec. 20, 2000). ComEd has supported its proposal to include a contingency factor in its budget, and explained why such costs should be included. The Commission should approve ComEd’s budget with the proposed contingency factor.

(iv) **Staff’s New Double Recovery Argument Lacks Merit**

Finally, while not contained in Staff’s testimony, Staff makes the following new argument and recommendation in its Initial Brief:

All of the vehicles that ComEd proposed in the EV Pilot “will be used to replace older vehicles that are at the end of their useful life.” If the Commission approves the EV Pilot and the Alt. Reg. proposal, which Staff recommends it should not,

ComEd should not be allowed to recover the full cost of the vehicles prior to their inclusion in rate base in a subsequent rate case, since they are replacing vehicles that were already in rate base. At most, recovery of the incremental cost above a standard gas vehicle is appropriate. ComEd's current proposal would be a double recovery of costs.

Staff Init. Br. at 39 (footnotes omitted). Staff's argument lacks merit and should be rejected. As discussed earlier with respect to other new arguments made by Staff at the briefing stage, this position and recommendation is not supported by any Staff testimony and ComEd has not had an opportunity to offer responsive testimony.

While it is true that the vehicles acquired under the EV Pilot will replace older vehicles at the end of their useful lives with no premature retirement of existing vehicles, there is no evidence whatsoever supporting Staff's alleged double recovery. In fact, ComEd's proposed tariff accounts for retired vehicle plant. *See* ComEd Ex. 1.2, Original Sheet No. X+7. Further, ComEd makes many new investments on a regular basis between rate cases, and Staff's double recovery argument fails to consider those investments or whether ComEd is earning its authorized return. Staff's argument is also inconsistent with the nature of base rates which are forward looking and allow a utility the opportunity to recover its authorized rate of return – base rates do not track and recover actual costs as suggested by Staff's argument. Indeed, since base rates under traditional regulation do not include a return of and on investments from the time they are placed in service through their inclusion in base rates, the type of costs recovered by the EV Pilot through Rate ACEP are not reflected in base rates and cannot, from that perspective, be double recovered.

Staff's recommendation to limit recovery to the incremental cost above a standard gas vehicle is not even consistent with its problematic theory. Clearly, the current cost of a standard gas vehicle would be above and beyond the historical cost of an old vehicle that has reached the end of its useful life. Further, ComEd's current rate case utilizes a 2009 test year and Staff has

proposed to restate ComEd's plant in service as of December 2010. Thus, the rate base value of Staff's theoretical "replaced" vehicle that is reaching the end of its useful life over the next year will already reflect depreciation through 2009 or 2010, contrary to Staff's proposal to use the full current value of such a vehicle. For all these reasons, Staff's recommendation should be denied.

b. Response to the AG and CUB

The AG mainly echoes Staff's testimony but also points to ComEd's other alternative fueled vehicles already in its fleet and to the other programs in which ComEd is already engaged. AG Init. Br. at 16-20. The AG argues that it is unnecessary to recover the costs of EVs in Rate ACEP since 63% of ComEd's fleet is already alternative fueled vehicles, which were paid for under traditional regulation. AG Init. Br. at 18-19. CUB repeats many of these same themes. CUB Init. Br. at 16.

The AG and CUB have lost sight of the fact that the EV Pilot is different. These will be the first plug-in electric vehicles that were not retrofitted, or that were not purchased in a piecemeal fashion. ComEd is also procuring advanced charging stations and modifying its fleet parking lots to accommodate them. These advanced charging stations will facilitate the gathering of information under the EV Pilot.

The AG also points to ComEd's involvement in the Clean Cities Grant Project and the grant project with EPRI to test PHEVs. AG Init. Br. at 19. CUB makes a similar assertion. CUB Init. Br. at 16. The AG and CUB fail to recognize that these programs, while complementary to the EV Pilot, do not include the variety of vehicle types and test parameters as the EV Pilot. For example, the Clean Cities grant includes only two plug-in hybrid digger derrick trucks, and the EPRI project includes only plug-in hybrid bucket trucks, while the EV Pilot includes several plug-in electric vehicles, such as sedans, and cargo/delivery vehicles.

c. Response to ELPC

ELPC argues that ComEd's EV pilot is inappropriate and that the information ComEd seeks to gain through the pilot will be available from ComEd customers who buy EVs. ELPC Init. Br. at 1-3. ELPC suggests that, if ComEd needs a more robust test, it should subsidize EV purchases by its customers. ELPC sponsored no testimony in this case. Its alternative proposal to test EVs is presented for the first time in Briefs. Hence, it is not supported by the record and is improper to consider in this case.

3. Low-Income Customer Assistance Program

Under the Low Income Assistance Program, ComEd is proposing to fund seven low income programs with \$10 million each year for the next two years under the Alternative Regulation program. Staff's and Intervenors' objections to this program are either incorrect or attempt to put legal obligations upon ComEd or its parent company which do not exist. These arguments should be rejected and the program approved.

a. Response to Staff

Staff raises a number of concerns relating to the approval of the Low Income Assistance Program. First, Staff cites to Section 8-105 of the Act which extends funding under Section 16-111.5A through December 31, 2011. Citing Dr. Hemphill's testimony, Staff implies that ComEd is not providing the Commission with the complete picture. Staff Init. Br. at 43. However, Staff conveniently ignores the testimony of Ms. Emmons, Director of Customer Assistance Programs, who testifies that "[w]ith Public Act 96-0033, ComEd anticipates limited funding in 2011 for the CARE programs through the Low Income Supplemental Fund." Emmons Dir., ComEd Ex. 5.0, 1:19-21. Ms. Emmons also explains that funding under P.A. 95-0481 expires in 2010. *Id.*, 3:56. ComEd not only identified the *limited* funding available through Section 8-105 but explained

why it was not sufficient. *Id.*, 3:49-4:74, 6:80-7:106. Further, as indicated in the Order in Docket No. 10-0640 (dated Jan. 5, 2011) (“10-0640 Order”), the extended funding only applied to four programs: PIPP Phase 1 (a percentage of income payment program), the Residential Special Hardship Program, the Helping Hand Program, and Education and Outreach. 10-0640 Order at 6.

Second, Staff claims that in Docket No. 10-0640, which was initiated by ComEd pursuant to Section 8-105 of the Act, “ComEd agreed to fund its [CARE] programs through 2011 and further agreed to expand funding up to 200% of the federal poverty level, thus alleviating a concern” raised by Ms. Emmons. Staff Init. Br. at 44. Staff’s implication is that ComEd is funding these programs is incorrect. The 10-0640 Order states that

ComEd’s reimbursement for CARE program benefit costs for calendar year 2011, pursuant to Section 8-105 of the Public Utilities Act, 220 ILCS 5/8-105, **will come solely from the “incremental change” to charges imposed on customers by the Energy Assistance Act, 305 ILCS 20/13**, such charges being the monthly collections from customers for the benefit of the Supplemental Low Income Energy Assistance Fund. **Any such reimbursement will be available for ComEd’s CARE programs only to the extent such incremental change exceeds any costs incurred for ComEd’s PIPP Phase 1 Extension** and arrears reduction plan or subsequent PIPP programs for 2011 and only pursuant to the terms and conditions described in this Stipulation.

10-0640 Order at 6 (emphasis added).

Third, Staff argues that “[e]ach and every month ComEd’s customers are charged 48 cents for energy assistance under the provisions of the Supplemental Energy Assistance Fund.” Staff Init. Br. at 44. Staff fails to acknowledge that if the Commission approves UUFR, EV and the Low Income Assistance Program, the amount added, for example, to a customer in the Single Family Residential Customer Class would range between 22 cents to 27 cents a month. ComEd Ex. 1.4 at 1. Thus, the incremental amount for customers is minimal in exchange for the funding of seven low income programs through 2012.

Fourth, making this argument for the first time in Briefs, Staff claims that by September 1, 2011, a Statewide PIPP will be in place extending funding beyond 2011. However, Staff does not provide the status of the plan or whether the utilities have indicated that September 1, 2011 is a realistic deadline. With the approval of ComEd's Low Income Assistance Plan, the Commission will assure that funding for Residential Special Hardship Program, the Helping Hand Program, and Education and Outreach will be uninterrupted and four additional programs will be available to low income customers.

Finally, Staff's argument that ComEd is attempting to circumvent the legislature must be rejected. Legislative efforts do not bar ComEd from identifying a need and proposing a solution. For pennies a month, the Commission can ensure that seven worthwhile programs are still available to ComEd's customers. Further, as explained by Ms. Emmons, some of these programs target payment behavior. For example, the Fresh Start Program "attempts to change payment behavior of customers not eligible for LIHEAP by rewarding timely bill payments." Emmons Dir., ComEd Ex. 5.0, 9:149-150. Further, as Dr. Hemphill explains "programs such as CARE reduce the amount that would flow through Rider UF – Uncollectible Factors ("Rider UF"). To the extent that ComEd receives funds through CARE, the customer receivable is collectible, and thus has no reason to go through Rider UF." Hemphill Sur., ComEd Ex. 6.0, 35:759-761.

b. Response to the AG

The AG argues that ComEd began funding prior to P.A. 95-0481 and can continue funding the program even though no longer mandated by law. AG Init. Br. at 20-24. The AG fails to identify the very purpose behind the funding provided in P.A. 95-0481 or more specifically, Section 16-111.5A of the Act. Section 16-111.5A(a) states in part:

The General Assembly finds that action must be taken in order to mitigate the 2007 electric rate increases approved for residential and certain nonresidential

customers served by the State's largest electric utilities in 2007. The General Assembly further finds that although various means of providing rate relief have been proposed, including imposition of a rate freeze on the electric utilities or a tax on generation within the State, the establishment of voluntary rate relief programs provides the most immediate and certain means of providing that rate relief.

220 ILCS 5/16-111.5A(a). Thus, as Dr. Hemphill explained ComEd's parent company, Exelon Corporation ("Exelon"), agreed to fund the ComEd CARE program as part of a broad compromise enacted by the General Assembly in response to the rate increases that accompanied the expiration of the nine-year rate freeze. Hemphill Reb., ComEd Ex. 6.0, 33:718-720. The AG actively participated in the negotiations leading to the rate relief law, and when it passed, publicly supported it. Exelon and ComEd have fulfilled the commitments they undertook, and, per the terms of the rate relief plan, the low-income assistance provided by that arrangement has ended. *Id.*, 33:720-723.

In proposing that ComEd continue to fund these social programs beyond the terms of the compromise, the AG seems to be dissatisfied with the deal it negotiated. Even so, it is incredulous that the AG is now seriously expecting Exelon or ComEd to fund the low-income assistance programs in perpetuity without cost recovery from other customers. *Id.*, 33:724-728. The legislative settlement did not contemplate that these programs would continue at all. However, instead of simply allowing the programs to lapse during these difficult times, ComEd is bringing this problem to the Commission's attention and recommending a reasonable and viable solution. *Id.*, 33:732-735.

c. Response to IIEC

IIEC argues that the Low Income Assistance Program imposes charges that would not be allowed under traditional regulation. In particular, IIEC argues that ComEd's proposal is essentially lifeline rates that require the cost of supply to be subsidized by other customers. IIEC

Init. Br. at 10. IIEC's arguments mischaracterize ComEd's proposal and should be rejected. The cases cited by IIEC each deal with the design of rates that subsidize other customers' service. However, ComEd is not amending its rate design; rather, it is offering a discreet two-year pilot program. The program will allow ComEd to continue important programs for low income customers in a difficult economy.

C. Mechanism for Future Rate ACEP Projects

1. Subsequently-Approved Smart Technology Investments

In their initial briefs, several parties argue that ComEd can and already has used traditional regulation for distribution automation and grid investments and that Rate ACEP is not necessary. AG Init. Br. at 25-31, CUB Init. Br. at 4, AARP Init. Br. at 15. This conclusion is both factually incorrect and misleading. In responding, ComEd will focus on the AG's formulation of the argument, as the others' are generally reflective of the AG's positions. ComEd's failure to address a particular issue does not reflect agreement with those issues.

In particular, the AG argues that ComEd continuously upgrades its system with smart grid and other DA under traditional regulation and that ComEd has not suffered any disallowances (AG Init. Br. at 26-27); the Commission, in Ameren's 2009 rate case, rejected using Rider QIP for smart grid cost recovery, preferring instead to wait for the outcome of the Policy Docket (*Id.*, at 29-30); and ComEd has failed to demonstrate a financial need for Rate ACEP and can still access credit markets. *Id.* at 30. The AG's arguments are not persuasive.

As Dr. Hemphill noted, the programs and services ComEd is proposing under Rate ACEP go well beyond those that ComEd is obliged to offer in order to provide adequate and reliable electric delivery service. They represent: (a) new technologies that are significantly more expensive than the technologies currently in use, as is the case with the EV Pilot, AMI and Smart Grid; (b) a dramatic acceleration in investments in specific areas, as is the case for the UUFR; or

(c) a continuation of several expiring Low Income Assistance Programs currently funded by ComEd's corporate parent Exelon Corporation, but not included in ComEd's test year delivery costs. Hemphill Dir., ComEd Ex. 1.0, 12:242-18:365. The fact that ComEd has invested billions in its system on projects that were both required to meet service standards and that are unlikely to be second guessed is hardly indicative of any commitment to invest in Smart Grid "on spec." Smart Grid technologies are new and absent approval of this mechanism any Commission approved Smart Grid plan will be delayed by at least the time it takes to litigate a cost recovery and approval tariff all over again. ComEd Init. Br. at 31

Moreover, ComEd would be subjected to prohibitively high levels of regulatory risk were it to undertake the Rate ACEP programs under traditional regulation, without some form of Commission pre-approval under alternative regulation. *See, e.g.*, ComEd Ex. 6.0, 20:436-9, 28:607-9. This is a risk that ComEd simply cannot take. ComEd competes for capital with other utilities and businesses and cannot attract capital if it is at risk of such disallowances. ComEd's access to capital is not unlimited, and approaching capital markets to fund projects for which cost recovery is risky and imperfect is hardly a viable solution. Hemphill Reb., ComEd Ex. 6.0, 27:583-586.

Finally, ComEd is cognizant of the Commission's rejection of Ameren's use of Rider QIP for Smart Grid cost recovery, but the proposals are not comparable. ComEd's proposal involves the use of alternative regulation tariff, not a pass through rider. ComEd's proposal provides for Commission oversight of the entire alternative regulation proposal as well as of each project, both in a way Ameren's proposal did not. Moreover, as an alternative regulation proposal, any Smart Grid program that the Commission ultimately approves will have to satisfy the Section 9-244 safeguards. These are all substantial differences.

2. Proposed Future Use of Rate ACEP as Recovery Mechanism

Several parties argue that it would be premature for the Commission to consider DA and AMI in this proceeding. Staff Init. Br. at 47-50; AG Init. Br. at 28-29; IIEC Init. Br. at 14-15; CTA Init. Br. at 5. In particular, Staff argues that ‘[i]nclusion of smart grid terms are premature and unnecessary and, in the absence of specific smart grid proposals, inappropriate.’ Staff Init. Br. at 47. Staff also points out that the stages of the process are currently underway, and concludes that, under that current time frame ComEd will not be in a position to propose any smart grid investment until 2011. Based on this analysis, Staff concludes that “... there is no particular urgency for the Commission to approve ComEd’s proposal.” Staff Init. Br. at 48. IIEC makes similar arguments, claiming that benefits will not be “lost.” IIEC Init. Br. at 14. Metra argues that by including Smart Grid in Rate ACEP, ComEd is in defiance of the Commission because ComEd is seeking cost recovery for AMI/Smart Grid before that Policy Docket is finalized and because ComEd is seeking to charge the railroad class for future Smart Grid or AMI. Metra Init. Br. at 11. CTA also claims that the railroad class should be exempt. CTA Init. Br. at 6.

The Commission has not yet initiated its Policy Docket. However, it is indisputable that Smart Grid issues are currently being debated in many forums throughout the country. The world is changing, and innovation in this industry is increasingly critical to the keeping our state competitive and its economy strong. The fact that there is no active proceeding currently underway in Illinois makes it all the more urgent that the recovery mechanism be considered and approved as part of Rate ACEP. Specific proposals should have no impact on the form of the cost recovery mechanism because the specific proposals will be discussed in the implementation filing after the Policy Docket concludes.

Finally, in response to the arguments of the railroads ComEd notes that both Metra and the CTA ignore the previously referenced testimony of ComEd that explains why it is appropriate to deal with Smart Grid/AMI cost recovery now and not in the future. The railroads also ignore the fact that the Commission did not preclude all Smart Grid/AMI cost recovery from the Railroad Delivery Class *ad infinitum*. ComEd believes the Commission's 2007 Rate Case Order was limited to those investments in the AMI Pilot alone and looks to the Commission for further guidance on this issue. ComEd Init. Br. at 32.

3. Proposed Rate ACEP Review Procedure

The AG argues that the Rate ACEP review process would not be an improvement over traditional regulation, that Rate ACEP would not streamline regulation, that Rate ACEP would not reduce the need for rate cases; and that it is likely that parties would have to participate in both rate cases and Rate ACEP review proceedings. In addition to the foregoing, the AG contends that the Rate ACEP proceedings would be complex, lasting five-months, with preliminary workshops and other areas necessitating party participation. AG Init. Br. at 31-34.

The AG also relies on Staff witness Reardon's testimony that criticizes ComEd's "collective approach to its investment decisions" and pre-investment prudence review. AG Init. Br. at 33, quoting Staff Ex. 1.0 at 9. AARP echoes the AG's criticisms and argues that ComEd has proposed a pilot program without any evaluation plan to govern the decision as to whether the pilot was beneficial to customers. AARP Init. Br. at 3.

The arguments proffered by the AG, Staff, and AARP are misplaced. The AG (and Staff) disregard the intent of ComEd's Alternative Regulation proposal. ComEd has proposed an Alternative Regulation pilot. As Dr. Hemphill explained, Rate ACEP "would allow ComEd, Staff and Intervenors to learn from a "test run" of alternative regulation and determine whether

application on a broader scale would be worthwhile.” Hemphill Reb., ComEd Ex. 6.0, 3:54-56. Further, Rate ACEP offers a method to determine whether and how ComEd should undertake discretionary investments that are beneficial to customers that ComEd would not otherwise undertake. Furthermore, the budgets, combined with the general evaluation at the biennial proceeding, will provide a sufficient tool to evaluate the program.

Clearly, the Commission will not have gathered the requisite information necessary to determine the validity of ComEd’s review proposal until after the Rate ACEP review procedure has run its course. As noted throughout this proceeding, ComEd proposed alternative regulation as a pilot to explore whether alternative regulation can be an improvement over traditional regulation. Building on the success of the AMI Pilot, ComEd believes that the workshop and biennial review process could result in superior decisions that better meet the needs of customers. The review provided in Rate ACEP will provide the Commission with the opportunity to review both the particular programs and the alternative regulation pilot itself, consistent with the requirements of the Act. The Commission should welcome this opportunity to explore uncharted territory relative to electric utility regulation in Illinois.

D. Alternative Regulation in General and Rate ACEP

1. Defining Alternative Regulation

Several parties take issue with ComEd’s alternative regulation proposal and question whether it is truly alternative regulation. The AG posits a vision of alternative regulation that is different than the proposal submitted by ComEd and asserts that Section 9-244 of the Act envisions a comprehensive alternative regulation plan. AG Init. Br. at 38-40. CUB also offers a different approach to alternative regulation (CUB Init. Br. at 20-33), while AARP claims that a proper implementation for an alternative regulation plan requires the identification of performance areas, identification of performance metrics to assure that performance is measured

against historical baseline, and verification of results during and after the term of the program. AARP at 12. Finally, NRDC, in a different vein, takes no position on the advisability of approving Rate ACEP or its appropriateness of a Section 9-244 mechanism for any of the four projects chosen by ComEd. Instead, NRDC views this proceeding as an appropriate forum for the Commission and ComEd to consider the use of a Section 9-244 alternative regulation mechanism to enhance ComEd's ability to implement energy efficiency measures. NRDC Init. Br. at 1-9.

The Act does prescribe the exact form that alternative regulation must take. There are many different forms of alternative regulation and ComEd is simply proposing a version different than that preferred by the parties. Ultimately, the Commission will decide if ComEd's vision of alternative regulation is just and proper.

As Dr. Hemphill noted, the concept of "alternative regulation" refers to a form of utility rate-making where additional factors are used to set utility rates, besides the utility's historic or test year forecast of embedded costs. Under alternative regulation, rate changes can be based on external benchmarks of utility efficiency, industry rates of inflation, or improvements in reliability or operational performance. Dr. Hemphill also noted that these changes are usually tied to some benchmark measuring success in achieving whatever goal is set. In this case, ComEd is proposing to use pre-approved budgets as the benchmark. Dr. Hemphill further noted that Section 9-244 of the Act allows ComEd to propose alternative regulation, but does not specify the form that alternative regulation must take. Hemphill Reb., ComEd Ex. 6.0, 5:105-110, 6:111-113. Finally, in response to NRDC, ComEd notes this docket does not address the concerns related to energy efficiency and any attempts to bootstrap this issue to ComEd's alternative regulation proposal should be rejected.

2. Analyzing Rate ACEP

Several of the parties have taken positions on Rate ACEP and have recommended that ComEd's proposal be rejected. Although the following list is not dispositive of all the arguments offered by the parties in their respective pleadings, it does present a snapshot of their positions. For instance, the AG argues that ComEd's Rate ACEP is little different from a Rider in that, "[l]ike a rider, Rate ACEP would increase customers' rates on a piecemeal basis for recovery of specific investments and expenses for targeted programs." AG Init. Br. at 41. CUB and AARP also express similar concerns. CUB Init. Br. at 23 and AARP Init. Br. at 4.

The AG puts a novel twist on its argument. In contrast to its argument that Rate ACEP is similar to a rider, the AG properly notes that the Rate ACEP programs do not meet the typical requirements for riders which are typically used to recover utility expenses that are large and volatile, difficult to quantify, and beyond the control of utility management. AG Init. Br. at 41. The AG then cites to an Appellate Court decision reversing the Commission's order approving in part ComEd's Rider SMP (a previously proposed rider which was modified and approved as Rider AMP, which remains on appeal). AG Init. Br. at 42-43. This convoluted argument should be rejected.

The decision of the Appellate Court is not applicable because ComEd is not proposing a rider. That decision – which ComEd maintains is erroneous and has sought leave to appeal – invalidated Rider AMP based on what the Court held to be traditional Article IX ratemaking principles, including single issue ratemaking and the Court's new two-part test for riders. ComEd's current proposal is made under Section 9-244 which expressly authorizes the Commission to adopt rate structures that do not meet the traditional standards or other legal requirements of Article IX ratemaking. Section 9-244 expressly states that (except as limited by Article XVI, which is not an issue here) the Commission may adopt "alternatives" to traditional

regulation, “[n]otwithstanding any of the ratemaking provisions of this Article IX or other Sections of this Act, or the Commission's rules that are deemed to require rate of return regulation” 220 ILCS 5/9-244(a). Whatever limitations the Appellate Court’s decision imposes by virtue of its construction of those traditional Article IX ratemaking rules, neither those rules nor the decision limits the Commission’s authority under the alternative regulation statute. That explains why – tellingly – no opponent cites to a single case holding an alternative regulation plan unlawful because it may violate some other portion of Article IX or holding the an alternative regulation plan must meet a ratemaking criterion based on other provisions of the Article.

However, the Court’s decision does exemplify the regulatory risk ComEd would face were it to make the alternative regulation investments in the context of a traditional rate case. Under Rate ACEP, ComEd accepts considerable risk that it will not fulfill Commission-approved investment programs within the Commission approved budgets. Moreover, much of Rate ACEP is driven by Commission-approved project budgets, rather than actual costs as they occur. Cost tracking riders do not operate in this manner. Customers also immediately receive a 5% discount of certain O&M expenses, up to \$2 million. *Hemphill Reb.*, ComEd Ex. 6.0, 8:168-173. Clearly, the AG, CUB, and AARP have lost sight of the fact that ComEd considers its alternative regulation proposals to be discretionary. Despite the position taken by some of the parties, this fact should be recognized by the Commission.

Another alleged fallacy of ComEd’s proposal asserted by the AG is that Rate ACEP does not include provisions accounting for accumulated depreciation or ADIT. AG Init. Br.at 43-44. The AG’s arguments are misplaced because under ComEd’s alternative regulation proposal, the capital costs of the alternative regulation programs will not be put into rate base until the next

general rate case, so considering the full range of *pro forma* additions or accumulated depreciation/ADIT is inappropriate. However, Rate ACEP does factor in the depreciation of the capital costs of the alternative regulation programs themselves.

Staff disputes Dr. Hemphill's contentions about the shortcomings of traditional regulation, and insists that Rate ACEP would not be an improvement. Staff Init. Br.at 9-10. However, as noted in Section III.C.1 of this Reply Brief, Section 9-244 of the Act does not require that the Commission conclude that traditional regulation is broken. Rate ACEP was proposed as a pilot in order to determine whether alternative regulation would be better than traditional regulation.

CUB, citing AG Ex. 1.0, contends that charges under Rate ACEP will continue to grow until ComEd's next rate case, when the cumulative investments will be put into rate base. CUB Init. Br.at 7. However, this statement is false because Rate ACEP, as proposed is predicated on a "pay as you go" methodology, not an accumulation of charges methodology.

The CTA argues that Rate ACEP inappropriately rewards ComEd for "beating" its own, easily manipulated budgets (CTA Init. Br.at 2); several other parties make similar claims. *See, e.g.,* AARP Init. Br.at 3 and Metra Init. Br.at 4-5. These parties ignore the fact that budgets are not set in a vacuum. While the current budgets were set in a litigated setting, ComEd hopes that future budgets will reflect the input of interested parties. Furthermore, these parties fail to see that ComEd has demonstrated customers will benefit from the UUFR program, that they will benefit from the experienced gained in the EV pilot, that low-income customers will benefit from low-income programs, and that other customers will have some offset in Rider UF charges. The Commission should reject these arguments and approve ComEd's alternative regulation proposal.

E. Rate Design Issues

ComEd and Staff have resolved a great many of rate design issues. *See* Hemphill Reb., ComEd Ex. 6.0, 46:1006-13, 47:1033-36, 47:1042 – 48:1063; Hemphill Sur., ComEd Ex. 8.0, 22:476-85. ComEd has also expressed a willingness to work with Staff and IIEC on all but a few of their remaining rate design concerns, and in those few remaining cases, good reasons were identified not to change the tariff. Hemphill Reb., ComEd Ex. 6.0, 46:1014 – 47:1032, 47:1037-41, 49:1064-85; Hemphill Sur., ComEd Ex. 8.0, 22:486 – 23:503.

IV. STATUTORY REQUIREMENTS AND REQUESTED APPROVALS

A. Section 9-244 of the Public Utilities Act

1. Section 9-244(b): Findings for Approval of Alternative Rate Regulation Program

a. Finding under 9-244(b)(1)

Many parties dispute ComEd’s contention that its proposal meets Section 9-244(b)(1) of the PUA, which requires a finding that rates under Rate ACEP are likely to be lower than if the programs covered by the plan were to be conducted under traditional regulation. Many of these arguments are based on a misinterpretation of the applicable standard that elevates observations about some of the indirect effects of traditional regulation – such as the potential non-recovery of certain costs due to regulatory lag -- into formal disallowances for purposes of the comparison required by Section 9-244(b)(1). These positions are baseless and contrary to the law.

(i) Response to Staff

One basis upon which ComEd meets the requirements of Section 9-244(b)(1) is the voluntary and automatic O&M cost reduction incorporated in Rate ACEP. Staff asserts that the 5% O&M reduction is capped at \$2 million and applies not just to current Rate ACEP programs, but to all programs. Staff Init. Br. at 52. ComEd does not dispute that the \$2 million O&M

reduction does not automatically regenerate, but this does not change the fact that the O&M savings will occur, that those savings are meaningful, and that those savings are factored in immediately to customers' rates. This reduction is also on top of the efficiency savings likely to be generated under ComEd's proposed Alternative Regulation program. The record establishes that these savings are likely, and that they would not be available under traditional regulation. Accordingly, ComEd's proposed Alternative Regulation program meets this requirement.

Staff's arguments regarding the effectiveness of budgets are addressed earlier in Section III.A.1. of this Reply Brief, but ComEd notes here that Staff concedes that a "spending cap equal to budget ... imposes some restraint" Staff Init. Br. at 52. Further, Staff misapprehends the mechanics of Rate ACEP and the ability of the Commission to review budgets. Customers are not harmed in the event ComEd can increase efficiencies and complete the projects under budget – rather, they share in those benefits. Even if, *arguendo*, Staff is unable to verify to its satisfaction the costs of each and every proposed expenditure, Staff is more than capable of reviewing the size of the overall budgets to determine if they are too big.

Staff also appears to incorporate into its argument on this requirement the position that the comparison to rates that would have been in effect under traditional rate of return regulation for the services covered by the program should account for regulatory lag. *See* Staff Init. Br. at 53-54. As Staff acknowledged earlier in this proceeding, "[t]he criteria [under Section 9-244(b)] are forward looking theoretical standards, while a rate case largely involves an empirical analysis. That is, Section 9-244(b) mandates that the Commission compare outcomes that would occur or will likely occur under traditional regulation with outcomes that would occur or will likely occur under the Alt. Reg. Case." Docket No. 10-0527, Staff Response to Joint Motion to Consolidate Dockets Nos. 10-0467 and 10-0527, p. 2 (Oct. 19, 2010). There is not now and

never has been an adjustment for regulatory lag in a traditional rate case. To the extent Staff is making this argument, it is improperly elevating an observation regarding one of the possible effects of traditional regulation to a specific disallowance. Moreover, this is clearly not the theoretical comparison required by Section 9-244(b)(1).

(ii) **Response to AG**

The AG focuses on the word “services” in Section 9-244(b)(1), essentially arguing that the Alternative Regulation projects are not “services.” AG Init. Br at 47-9. AARP also focuses on the “services” question. AARP Init. Br. at 8. The AG argues that “[u]nless the components of service are sold separately, which they are not, the proposal increases rates for electric distribution service that currently includes (or not) all of the Rate ACEP program components.” AG Init. Br. at 49. First, the AG ignores that Section 9-244(a) authorizes alternative regulation plans “for some or all of the regulated services of that utility” 220 ILCS 5/9-244(a). This language is consistent with ComEd’s proposed Alternative Regulation program for certain projects. Second, in *Northern Illinois Gas Company, Petition for permission to place into effect Rider 4, Gas cost, pursuant to Section 9-244 of the Illinois Public Utilities Act*, Docket No. 99-0127, Order (Nov. 23, 1999), 198 P.U.R.4th 436, 1999 Ill. PUC LEXIS 921*88-89. (“Nicor Alt Reg Order”), the Commission approved an alternative regulation program specific to gas costs. There is no sound basis in the law to limit the Commission’s ability to authorize an alternative regulation program to the elimination of whole categories of service under traditional regulation.

The law imposes no such requirement, and under well-established principles of statutory construction, the primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature, and that intent is best evidenced by the language used by the legislature. *Thomas M. Madden & Co. v. Department of Revenue*, 272 Ill.App.3d 212, 215, 651 N.E.2d 218, 220 (2nd Dist. 1995); *Metro Utility Co. v. Illinois Commerce Comm'n*, 262 Ill.App.3d 266, 273-

74, 634 N.E.2d 377, 382 (2nd Dist. 1994). Thus, it is improper “to depart from the plain language and meaning of the statute by reading into it exceptions, limitations[,] or conditions that the legislature did not express.” *Kraft, Inc. v. Edgar*, 138 Ill.2d 178, 189, 561 N.E.2d 656, 661 (1990); see also *Davis v. Toshiba Machine Co., America*, 186 Ill.2d 181, 184-85, 710 N.E.2d 399, 401 (1999).

The AG also argues that Rate ACEP can only result in higher rates than would exist without Rate ACEP. AG Init. Br. at 49. Taken to its logical extension, under this approach the only way to meet 9-244(b)(1) would be if the programs were free, clearly an absurd result. The AG argues that the 5% O&M discount would only be a net benefit if 100% of the O&M costs would be recoverable in a traditional rate case. AG Init. Br. at 49-50. This reveals the true motive of the AG: preserving the opportunity to second guess every expenditure after-the-fact. Finally, as discussed above in responding to Staff, the AG’s position elevates an observation about traditional regulation into a disallowance when no such disallowance could ever be awarded. This is improper and contrary to the intent and meaning of this requirement.

(iii) Response to IIEC

IIEC argues that, since ComEd is not recovering the cost of the ComEd CARE program now, recovering it via Rate ACEP means that rates will be higher under Alternative Regulation. IIEC Init. Br. at 10. This is an improper application of the standard, which is whether the alternative regulation plan 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” 220 ILCS 5/9-244(b)(1). The standard is not a comparison to current rates, but rather a comparison to rates under traditional regulation for the services covered by the program.

IIEC also argues that, once the \$2 million O&M reduction cap is reached, ComEd will have no incentive to continue to operate efficiently. IIEC Init. Br. at 11. This argument ignores

that it is the budget, not the 5% reduction, that drives efficiency. Exhaustion of the \$2 million cap does not alter incentives in any way.

(iv) **Response to Others**

According to CUB, the fact that ComEd would not undertake the projects without alternative regulation somehow means that rates would automatically be lower with traditional regulation. CUB Init. Br. at 13. As previously explained, the required comparison is to rates for the services covered by the program, not rates without the program.

AARP suggests that the mere potential for higher rates means that Section 9-244(b)(1) is not met. AARP Init. Br. at 10. The statute only requires that lower rates be “likely” to occur, not that lower rates will definitely occur. AARP’s other arguments are similar to arguments raised by Staff and other parties, and will not be repeated.

b. Finding under 9-244(b)(2)

The required finding under Section 9-244(b) is that “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.” 220 ILCS 5/9-244(b)(2). Staff argues that, under the counterfactual of Rate ACEP versus no Rate ACEP, “[c]ompliance with Section 9-244(b)(2) is a tautology.” Staff Init. Br. at 55. Staff complains that the comparison to benefits realized in the absence of the program is not the comparison under subparagraph (b)(1). *Id.* This is true, but it is a complaint with the statute and not a valid argument against ComEd’s Alternative Regulation proposal or its satisfaction of the requirements under Section 9-244(b)(2).

The only other argument by Staff is to assert that the Low Income Assistance project does not benefit all ratepayers. *Id.* at 55. ComEd has pointed out that these projects could result

in a reduction of costs otherwise collected under Rider UF, and in that regard do benefit all ratepayers. Hemphill Sur., ComEd Ex. 6.0, 35:759-761. Also, ComEd's Alternative Regulation as a whole must meet this standard, not each component part.

The AG argues that ComEd has not demonstrated any net benefits of the programs, although it concedes that ComEd does so for the low-income programs. AG Init. Br. at 51. The AG also argues that there is nothing about the EV pilot that could not be achieved under traditional regulation. AG Init. Br. at 51. The AG has lost sight of the fact that no Rate ACEP equals no programs. It makes no sense and is contrary to the law to compare the net benefits to that available under traditional regulation. The statutory comparison is benefits with the program versus benefits without the program, not benefits under traditional versus benefits under alternative regulation.

The AG argues that, since ComEd has argued that its system is already sufficiently reliable, it has not demonstrated that an accelerated program is warranted. AG Init. Br. at 51-2. The AG also argues that ComEd has not quantified any reliability benefits that would result from UUFR. *Id.* IIEC argues that ComEd claims it is 99.9% reliable and that ComEd's proposal does not address the amount of investment and expense necessary to make up for the extra 0.1%. This applies both to smart grid and UUFR. IIEC Init. Br. at 15.

The AG and IIEC have lost sight of several facts. ComEd has provided testimony that these programs are discretionary, but that they would be beneficial nonetheless. Hemphill Dir., ComEd Ex. 1.0 Rev., 8:159-63. ComEd witness Blaise has testified regarding the number of interruptions the UUFR is likely to avoid (Blaise Dir., ComEd Ex. 4.0, 12:191-201, and Staff has testified that the UUFR is so beneficial, it should be mandated. Stutsman Dir., Staff Ex. 4.0,

3:55-63, 6:118-30. Clearly, ComEd has demonstrated that substantial benefits will be available with the UFR project that would not be available without the project.

The AG argues that the benefits of the low-income programs could be accomplished by other means. AG Init. Br. at 53. The AG's argument ignores that Section 9-244(b)(2) does not require that the benefits only be achievable under alternative regulation. This is a test to make sure that there are benefits under the program, and ComEd's proposal meets that test.

Similarly, CUBs arguments about 9-244(b)(2) are inappropriately couched as a comparison to traditional regulation. CUB Init. Br. at 16. Section 9-244(b)(2) only requires a showing of stand-alone benefits, not in comparison to traditional regulation.

c. Finding under 9-244(b)(8)

Staff argues that ComEd has not demonstrated there is a sharing of benefits, as required by 9-244(b)(8), or that there are any net benefits to any of the programs. Staff argues that the incentive mechanisms do not, in and of themselves, guarantee that benefits are fairly allocated. Staff Init. Br. at 56. The AG argues that recovering costs through Rate ACEP does not constitute equitable sharing of benefits. AG Init. Br. at 55. These arguments ignore the fact that Rate ACEP only recovers the costs that have already been spent. ComEd's ability to fulfill the budget at a lower cost gets immediately passed on to the customers in the form of reduced billing under Rate ACEP equal to half of any savings. Arguments that a 50% sharing is not equitable lack merit.

The AG argues that the EV program is a pilot, for which any economic benefits are uncertain and which would shift costs and risks to customers and away from shareholders. AG Init. Br. at 55. IIEC makes similar arguments. IIEC Init. Br. at 16. ComEd has explained in other sections of this Reply Brief that arguments contending that ComEd's proposal "shifts risks to

ratepayers” is incorrect and lacks merit, and will not repeat those arguments here. The AG and IIEC have also lost sight of the fact that recoveries under Rate ACEP are limited to 105% of the budget amounts found reasonable by the Commission, that within the Rate ACEP dead band customers will only pay for costs that are actually spent, and that if ComEd accomplishes the planned investments at less than the budgeted amounts ratepayers share in those savings that would not otherwise be available. The AG and IIEC also ignore that the whole point of the EV Pilot is to examine how commercial installation of EVs will impact ComEd’s system, how they will perform, and what will they cost over the lifetime of the vehicle. As far as risk goes, the AG is simply referring to the fact that, under an alternative regulation program, the AG will not have the opportunity to second-guess the basic prudence of the expenditures, although the Commission will evaluate whether ComEd actually fulfilled the investment appropriately within budget. Shareholders accept the risk that it will cost more than 105% of what is budgeted to fulfill the investment, for which the Commission does not allow future cost recovery. Also, Section 9-244(b)(8) does not require economic benefits, only the equitable sharing of any such benefits “to the extent the program is likely to result in such benefits”.

The AG also argues that, having spent significant amounts to support ComEd CARE in prior years, ComEd cannot now ask ratepayers to bear the costs of these programs. AG Init. Br. at 55. First, this is not within the requirements of Section 9-244(b)(8). Moreover, it is wrong. The mere fact that ComEd funded these costs in the past does not obligate it to do so in the future. The ComEd CARE costs are legitimate costs with real ratepayer benefits as previously discussed. It is not inequitable to have such costs reflected in rates through Rate ACEP. *See* Hemphill Reb., ComEd Ex. 6.0, 33:715-34:753.

The IIEC argues that the 5% O&M discount is not equitable sharing, since the other 95% would not be incurred were it not for Rate ACEP. IIEC Init. Br. at 17. IIEC also argues that the rate of return of, and on, investment is more favorable under Rate ACEP than traditional regulation. IIEC Init. Br. at 17-18. IIEC has lost sight of the fact that Section 9-244(b)(8) does not require a comparison with traditional regulation.

CUB argues that Rate ACEP has no sharing of benefits. CUB Init. Br. at 18. This is incorrect and ignores the way the Rate ACEP mechanism works. The benefits are realized as ComEd expends resources. It is hoped that the cost ComEd incurs to provide the programs are reduced, and these benefits are shared with ratepayers.

d. Findings under 9-244(b)(3) – (b)(7)

The AG contends that the Alternative Regulation proposal does not have sufficient evidence to demonstrate that it meets Section 9-244(b)(7), which requires ComEd to file sufficient annual information. AG Init. Br. at 56-7. The finding required under Section 9-244(b)(7) is that “the program includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor its implementation of the program.” 220 ILCS 5/9-244(b)(7). The program includes reporting requirements. ComEd Ex. 1.2, Original Sheets X+18, X+19; McMahan Dir., ComEd Ex. 2.0, 6:105-7:115. The Commission will have a central role under Rate ACEP in determining the direction ComEd will take with future investments in Smart Grid technology, accelerated underground facility reinvestment, and EVs, as well as low income assistance. ComEd Ex. 1.2, Original Sheets X through X+4, X+15. These provisions satisfy the requirement of Section 9-244(b)(7) and demonstrate that Rate ACEP contains reporting requirements that will ensure that the Commission can adequately monitor the implementation of the program.

Staff appears to argue that ComEd is planning to be a provider of competitive charging services, and expresses a concern with compliance with Section 9-244(b)(5). Staff Init. Br. at 57-58. Staff's assertion is incorrect. The finding required under Section 9-244(b)(5) is that "implementation of the program is not likely to adversely affect the development of competitive markets." 220 ILCS 5/9-244(b)(5). Staff's concern is not supported by the record, the "infrastructure" referred to in the record is delivery service infrastructure not charging infrastructure. Staff's concern, raised for the first time in briefs, is totally misplaced and based on incorrect assumptions.

2. Request for Approval of Rate ACEP Tariff

a. Approval of Terms and Provisions

Staff acknowledges that ComEd has agreed to several tariff changes proposed by Staff. However, there remains several areas of disagreement. Staff Init. Br. at 58.

Staff recommends eliminating the "Approved Program Assessment" term from the Rate ACEP formula. Because ComEd is proposing Rate ACEP as a pilot, Staff argues ComEd can always add other terms after the Commission has reviewed the program after the biennial review. Staff Init. Br. at 60-1. This term is a placeholder for any future programs the Commission approves for recovery to start via Rate ACEP. Until that happens, it will be set to zero. ComEd prefers to have a Rate ACEP formula that does not require future changes for a new program. Hemphill Reb., ComEd Ex. 6.0, 46:1014-19.

Staff recommends that the tariff eliminate all references to the "August 2012" date, which related to the Smart Grid Implementation Order, and instead include "in accordance with the Smart Grid Implementation Order." Staff Init. Br. at 61-2. ComEd has already indicated it will

base this date on the outcome of that docket and that it is willing to work with Staff to develop appropriate alternative language for the tariff. Hemphill Reb., ComEd Ex. 6.0, 46:1009-13.

Staff recommends revising the date when unrecovered plant would be transferred to rate base. The tariff specifies that ComEd would not transfer unrecovered plant for the Rate ACEP programs to rate base until December 31, 2013, even if ComEd filed a rate case before that date. Staff Init. Br. at 62-4. ComEd has explained that it would not transfer any balances to rate base until after the pilot has run its course so as not to tamper with the pilot. Hemphill Reb., ComEd Ex. 6.0, 47:1026-32.

Staff recommends excluding incentive compensation costs from Rate ACEP cost recovery. Staff argues that the incentive compensation costs in this case are de minimus. Staff Init. Br. at 64-6. As explained in testimony, these are legitimate *bona fide* costs and there is no reason for excluding them from the proposed program, even if de minimus. Hemphill Reb., ComEd Ex. 6.0, 47:1037-41.

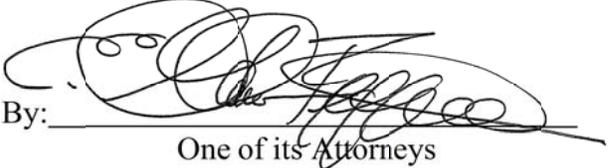
B. Interaction with General Rate Case

The interaction is simple. No matter the method or timing of cost recovery, the prospect of incentives, or the advance review and approval process, the proposed projects require ComEd to invest significant sums up front. Hemphill Sur., ComEd Ex. 8.0, 10:215-18. ComEd will not recover those sums for years. *Id.* at 10:214-16. In the event that ComEd's ability to fund core operational needs is placed at risk by a decision in the rate case awarding it insufficient revenues, ComEd will be unable to shoulder that burden. *Id.* at 10:212-16. Otherwise, as noted above, the projects proposed here are independent of investments and operations reflected in ComEd's proposed revenue requirement.

V. OTHER ISSUES RAISED BY PARTIES

VI. CONCLUSION

ComEd respectfully requests that the Illinois Commerce Commission approve ComEd's proposed Alternative Regulation program and authorize ComEd to file, subject to the provisions of Section 9-244 of the Act, tariffs implementing that program in accordance both with ComEd's initial proposal and the revisions accepted by ComEd during this proceeding.

<p>Dated: March 4, 2011</p>	<p>Respectfully submitted, COMMONWEALTH EDISON COMPANY</p>  <p>By: _____ One of its Attorneys</p>
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