



## II. EXCEPTIONS

### **EXCEPTION 1: The Proposed Order Errs in Imposing the Burden of Proof on the Commercial Group for a Substantial Change to ComEd's Distribution Loss Factors That was not Supported by Substantial Evidence**

During this proceeding, ComEd made a significant change to its SEC/SERVICE distribution loss factor that was not supported by substantial evidence, but instead was proposed only as a rough approximation by a witness proposing that admitted that the approximation was “guesswork” without more study of the loss issue. The Proposed Order erred by adopting that guess and by transferring the burden of proof on the issue to the Commercial Group. Because the change to the SEC/SERVICE distribution loss factor is not supported by substantial evidence it should be rejected.

The SEC/SERVICE factor refers to the losses through secondary distribution lines (SEC) and service lines (SERVICE) for the various customer classes. In its initial filing, ComEd continued its historic practice of assigning zero losses for the Medium Load, Large Load, and Very Large Load classes for secondary and service lines. *See* ComEd Ex. 8.3 Rev App. C, row 19; *see also*, CG Ex. 1.0 p.17 Table 5. This reflects the fact that 1) secondary distribution lines are not used to serve customers above 100 kW in load (and therefore there are no losses from the SEC factor), and 2) the service lines (i.e., the SERVICE factor) for these classes are relatively short or non-existent (where larger customers are served directly from electric service stations). In the absence of substantial evidence to the contrary, zero losses should continue to be assigned for the SEC/SERVICE factor to the Medium Load, Large Load, and Very Large Load classes until such time as ComEd studies this loss issue.

Mr. Rockrohr on behalf of Staff testified that he agreed that customers in the Medium and Large Load classes “do not typically utilize ComEd’s secondary systems.” Staff Ex. 6.0, p.25,

line 560. Hence, there are no losses for these classes on secondary distribution lines. However, but he believed that the losses from service lines is more than zero. *Id.* at 24-25. With no particular evidence of what the non-zero values should be, Mr. Rockrohr recommended that the SEC/SERVICES factor for these classes be changed to 50 percent for the Medium Load class and 40 percent for the Large Load class, although he stated he “would consider alternative non-zero percentages.” *Id.* at 25. He did not suggest a change for the Very Large Load class. During the hearing, Mr. Rockrohr candidly admitted that he had not performed a study to come up with the 50% and 40% estimates (Tr. 815, Ins. 13-17), setting a particular value without a study was “largely guesswork” (Tr. 820, Ins. 18-19), and that lower estimates could be reasonable. *Id.* at lines 3-11. In rebuttal testimony, Mr. Born for Com Ed simply adopted Mr. Rockrohr’s 50% and 40% estimates saying only that he agreed with Mr. Rockrohr “there are no secondary conductor losses” and that there are “material” losses from service lines. ComEd. Ex. 34.0, lines 152-155. Mr. Born also changed the SEC/SERVICE loss factor for the Very Large Load class to 5% without explanation.

On page 276 of the Proposed Order, the ALJs stated that they “disagree with the Commercial Group’s contention that the evidence proffered here regarding this issue is mere conjecture.” Instead, the Proposed Order explained that “the correct values for the Medium and the Large Load customers is an approximation, which was based upon the engineering judgment of the persons who conducted the study.” (Emphasis added) But that is the point – the person making the approximation (Mr. Rockrohr of Staff) did not conduct a study.

Q. (Jenkins) Now, do I understand correctly from that statement that you have not performed a study of the losses that would occur from medium- and large-load service lines?

A. (Rockrohr) Correct.

Transcript 815:13-17. Nor did Mr. Born of ComEd study the issue. Indeed, as cited above, ComEd in its original distribution loss study assigned zero SEC/SERVICE losses for the Medium Load, Large Load, and Very Large Load classes. ComEd Ex. 8.3 Rev App. C, row 19.

The entire “evidence” then for the substantial change in the SEC/SERVICE loss factor is that Mr. Rockrohr and apparently Mr. Born believe that the losses in the SERVICE part of the factor are “not zero.” Clearly, the burden of proof for making a change in rates is on the utility and simply saying that the losses are not zero does not establish why 50% and 45% are the correct loss factors for the Medium and Large Load classes. Therefore, the change should be rejected and if ComEd chooses, the issue could be studied for the next rate case.

With no evidence to support the 50% and 40% guesstimates, the Proposed Order also errs by shifting the burden of proof to the Commercial Group where the P.O. states that “[t]he Commercial Group has not established that the values attributed to these two classes is incorrect.” The burden of proof is on the party proposing a change in rates. In the absence of any proof supporting the 50% and 40% changes to the loss factor, it is not the Commercial Group’s burden to prove that those unsupported figures are not accurate.

Finally, the Commercial Group agrees with the recommendation of the Proposed Order to segregate the SEC and SERVICE elements in future loss studies.

#### Proposed Language for Exception 1

#### **Analysis and Conclusions** (Proposed Order, p.276)

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We ~~also disagree~~ with the Commercial Group’s contention that the evidence proffered here regarding this issue is not substantial evidence mere conjecture. The record is clear that secondary distribution lines are not typically used to serve customers of 100 kW and higher and whereas there is evidence that there may be “some” losses on services lines serving such customers, no substantial evidence has been offered as to the correct SEC/SERVICE value. In the absence of such evidence, the SEC/SERVICE value for the Medium, Large and Very Large Load classes shall remain at 0. ~~As Staff has pointed out, the correct values for the Medium and~~

~~the Large Load customers is an approximation, which was based upon the engineering judgment of the persons who conducted the study. An approximation is not the “guesswork” that the Commercial Group suggests. Also, typically, the Extra Large Load and Very Large Load customers take service at a non-transformed voltage level; therefore, the lines that supply them, usually, would not be included as a SEC/SERVICE element. The Commercial Group has not established that the values attributed to these two classes is incorrect. Further, the cost of service for a particular class is not indicative of distribution losses. Therefore, the cost of service study prepared by Mr. Heintz does not aid the Commercial Group. However, to eliminate future confusions, ComEd shall segregate the SEC and SERVICE elements in any future rate case in its initial filing.~~

~~We also decline to adopt the values that the Commercial Group proffers, as it presents no evidence to support these values. In fact, the Commercial Group acknowledges in its argument that the values it proffers are ones that it would accept; it does not state that these values reflect reality.~~

... Additionally, so it is clear, the Distribution Loss Studies in ComEd Exs. 67.1 Rev. and 67.2 are approved, except that the SEC/SERVICE loss factor shall be zero percent for the Medium Load, Large Load, and Very Large Load classes.

**EXCEPTION 2: The Proposed Order Errs by Not Considering Record Evidence That the Low Proposed Rate Increases for Subsidized Classes Does Not Constitute Rate Shock**

Given the reduction in revenue requirement and changes being made to ECOSS in the Proposed Order, as well as the modest increases to subsidized rates that ComEd proposed, it appears that the rates for the Railroad and High Voltage classes would decrease as a result of this case and the rates for the other subsidized class, the Extra Large Load class, would increase only modestly. Nevertheless on page 249, the Proposed Order rejects Staff’s rate design proposal of moving subsidized rates more closely to cost on the basis that “Staff’s proposal is not consistent with the principle of gradualism, which avoids rate shock.” The P.O. (p.245) similarly rejected Staff’s proposal of moving the Railroad Class closer to cost citing rate shock concerns. *Id.* at 242. At the same time, the ALJs would ignore evidence that proposed increases for the Railroad and High Voltage classes were too low to constitute rate shock, perhaps erroneously thinking that the proposed revenue increases for the subsidized classes were larger than they are. These

decisions constitute plain error and the Commission should either move all rate classes to cost or adopt Staff's proposal of moving these classes partway toward cost.

In its initial post-hearing brief, the Commercial Group pointed out that rate shock is not a suitable basis for moving slowly toward cost in this case:

ComEd's proposed increases for the Railroad and High Voltage classes are only 4.6% and 7.4% respectively. ComEd. Ex. 49.1. Rate shock then cannot be the basis for a lower step up to cost because Witness Hemphill agreed that even increasing the rates for those classes by the system average of 14.8% would not constitute rate shock. Tr. 334:11-16.

In deciding that the DFC for the Railroad class should be moved only 10% of the way to cost, the ALJs stated on page 245 of the P.O. (emphasis added) that "**we shall not consider**" the above-quoted information citing only that "[i]t is not clear what the context is for the Commercial Group's contention that ComEd's proposed increases for the Railroad and High-Voltage classes are only 4.6% and 7.4% respectively." The context is, as was stated in the initial brief, ComEd's ECOSS figures. ComEd provided a comparison of the proposed changes in class rates in each ECOSS for its proposed rates. Thus, the reference to ComEd Ex. 49.1 is ComEd's rebuttal ECOSS for proposed rates, although the percentage class increases are the same in ComEd's surrebuttal ECOSS (ComEd Ex. 73.1). Column N of each of these exhibits contains this information and plainly shows (p.2 of each exhibit) that the High Voltage class would receive a 7.4% increase and the Railroad class a 4.6% increase. This compares to the over 14% increase on average that nonresidential customers on average would see. *Id.* Of course, the P.O. cut ComEd's overall revenue increase in half and made other changes that favor the largest load classes and so the actual increases for these classes would be substantially lower still than 7.4%

and 4.6%, and likely would constitute rate decreases.<sup>1</sup> Indeed, the proposed increase for the Extra Large Load class (listed as 31.8% in ComEd Ex. 73.1) is also now likely to be below the approximately 14% increase on average of nonresidential customers that is cited above. After Dr. Hemphill of ComEd stated that a 4.6 percent increase would not constitute rate shock for the railroad class and a 7.4 percent increase would not constitute rate shock for the High Voltage class, he also stated that a higher increase similar to the proposed average nonresidential increase also would not constitute rate shock.

Q. For that matter, if the Commission decided to increase the railroad or high voltage rates by the system average proposed increase of 14.8 percent, you wouldn't consider that to be rate shock, would you?

A. I would not. (Transcript 334:11-16)

The context then is quite clear for this record evidence and it is plain error for the evidence to have been consciously ignored in the Proposed Order. It is also plain error to consider rate decreases or the modest proposed increase for the Extra Large Load class to be rate shock.

#### Proposed Language for Exception 2

#### **Analysis and Conclusions** (Proposed Order, p.245)

~~We decline to extend the Railroad Class' increase in its cost of service beyond 10%. As the CTA and Metra have noted, there are public interest concerns regarding providing affordable public transportation, and the benefits that mass transit provides to the overall reduction in energy consumption and adverse environmental impacts. At this time, we decline to raise the rate that the CTA and Metra will incur beyond 10%. We note that any increase in the rate supplied to these two customers could be passed on to consumers. Also, an increase in the costs incurred by the CTA and Metra, beyond the modest one proposed by ComEd, could limit these providers' ability to provide public transportation to millions of people.~~

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<sup>1</sup> For example, under the IIEC ECOSS rate design contained in IIEC Ex. 5.4, p.2, each rate (column 5) for the High Voltage class (except for the standard metering charge) is lower than or equal to the current charges (column 1), and the rates in column 5 do not take into account the revenue decrease ordered in the Proposed Order.

~~It is not clear what the context is for the Commercial Group's contention. At the same time, we note that ComEd's proposed increases for the Railroad and High-Voltage classes are only 4.6% and 7.4% respectively, and with the reduced revenue requirement that we adopt in this Order, those increases would be even lower. Perhaps once final rates are calculated, the Railroad and High-Voltage classes would receive rate decreases. Certainly then, rate shock is not an issue. Without the necessary factual foundation for these figures, we shall not consider it. For the reasons cited in the next section, we shall adopt Staff's proposal for moving Railroad Class rates closer to cost.~~

### **Analysis and Conclusions** (Proposed Order p.249)

~~We decline to implement a rate design that moves these two classes more than what ComEd has proposed to do. While we appreciate that Staff's proposal moves these classes closer to actual cost, Given the other changes that we are ordering in ECOSS and the fact that rate shock is not a factor at the proposed rate levels, we adopt Staff's proposal which, is not consistent with the principle of gradualism, moves rates closer to cost while avoiding, which avoids rate shock. We also acknowledge that ComEd's rate design focuses on the DFC charge for these classes, which is "putting the cart before the horse," as the rates design here determined the revenue allocation, instead of having the cost of service determine the revenue allocation. However, we note that it appears that this was the case in ComEd's last rate case, where the model was created to have 25% increases toward cost of service for these two classes. We decline to alter that model at this time. We therefore decline to adopt Staff's proposal. We also decline to impose the caps that the IIEC proffers for rate increases. If limits are placed on some rate classes, other rate classes would be "making up the difference." We therefore approve ComEd's rate design.~~

In so ruling, we acknowledge, as REACT points out, that this movement toward ECOSS-based rates is, in fact, based upon faulty ECOSS studies. However the study approved herein is greatly-improved over what has been previously submitted in other dockets. And, rulings made herein have improved its accuracy. While the ECOSS approved here still needs further refinement, which shall take place in a future rate case, it is accurate enough to move, gradually, toward cost-based rates for these two classes.

### **EXCEPTION 3: The Proposed Order Errs by Requiring the Entire Subsidy Cost Burden For the Largest Load Classes to Fall Solely on the Small to Very Large Load Classes That Are Made up of Homeless Shelters, Churches, Schools, Retailers and Small Industrials**

The Proposed Order recommends the adoption of the alternative exemplar rates, as adjusted by IIEC for primary and secondary DFCs in the various nonresidential classes that have at least some primary customers. Under ComEd's alternative exemplar proposed rates (in overall \$/kWh), the classes with the cheapest rates on ComEd's system would be: High Voltage (\$0.0028), Dusk-to-Dawn Lighting (\$0.0077), Extra Large Load (\$0.0084), Railroad (\$0.0090)

and General Lighting (\$0.0140). ComEd Ex. 73.3, Column M. Under the P.O., the classes with the lowest, 3<sup>rd</sup> lowest and 4<sup>th</sup> lowest rates would be subsidized (with the Railroad class moving only 10% toward cost), and the classes with the 2<sup>nd</sup> and 5<sup>th</sup> lowest rates would be excluded from having to bear any portion of the subsidy burden. In fact, the Dusk-to-Dawn Lighting class would see its rates drop 50 percent (ComEd Ex. 73.1 p.3 Column P), even before the revenue increase is slashed in half as per the P.O. Nevertheless, without any record support, the P.O. (p.250) would continue to place all of the subsidy burden on four classes, the Small, Medium, Large and Very Large Load classes. Neither ComEd witness Hemphill nor Staff witness Lazare could provide any justification for why it is fair for such customers to bear 100% of the subsidy burden when other non-residential classes, namely the Watt-Hour and Lighting classes, bear none of the subsidy burden. *See* Tr. 334:17-335:6 (Hemphill) and 890:16-22 (Lazare). Indeed, Mr. Lazare was quite clear that the record does not support such a result:

Is there a valid reason why schools and retailers [in] the large load class must pay the subsidy while customers in the lighting delivery classes should not pay a share of the subsidy?

A. I don't find any specific evidence in this case to indicate why it should be some customers and not others. (Transcript 890:16-22)

Customers in the Small to Very Large Load classes that would bear this burden alone include retailers, industrials, schools, homeless shelters, and churches. *Id.* at p. 4, lns. 79-81. How could it possibly be fair for school, churches and retailers, that pay higher rates than those classes being subsidized and lighting classes that are being excluded from the subsidy burden, to bear this subsidy burden alone?

In addition, this finding in the P.O. appears to rest on a mistaken understanding of Staff's proposal (or perhaps the finding mis-states the remedy). The P.O. states that it adopts "Staff's proposal" and in the recitation of Staff's position, the P.O. cites "the basis for the

recommendation” is “the approach used in Staff Ex. 29.01C, (pp. 2-3 of 5).” *Id.* On those pages of Staff Ex. 29.01C, Staff uses the increased revenue it proposed would be recovered from the classes that would not pay full ECOSS rates (as compared to ComEd’s subsidy proposal) to decrease the subsidy burden on the four classes that would pay more than ECOSS. Thus, P.O. p.250 states that under this Staff approach “the amount of subsidy that each [subsidizing] class provides is lowered to 1.5%.” However on page 249 of the P.O., despite some stated misgivings, the ALJs recommend rejection of Staff’s proposal to move the over-10MW classes toward cost “more than what ComEd proposed to do” and on page 245, the P.O. rejected Staff’s proposal to adjust Railroad rates closer to cost. Therefore, the basis for Staff’s proposal that the P.O. adopts on page 250, increased revenue from subsidized classes that would be used to reduce the subsidy burden, was removed by the P.O. findings on pages 245 and 249. (Note: Commission action under Exception 2 would correct this anomaly.)

Finally, as demonstrated in Exception 2 above, rate shock is not a reason to move slowly toward cost based on the record evidence in this case. Therefore, if the Commission decides that some class or classes should not pay the cost to serve such class(es), it must be due to some other policy consideration. Indeed, some of the subsidies are alleged to be due to societal benefits created by the classes being subsidized. *See* Metra Ex. 2.0 (congestion benefits) and CTA Ex. 2.0 (greenhouse gas benefits). But if all members of society (or at least the State of Illinois) benefit, the subsidy burden to pay for such benefit should also be spread as widely as possible and not imposed on only four classes.

#### Proposed Language for Exception 3

#### **Analysis and Conclusions** (Proposed Order, p.250)

The extent to which all class rates are not moving 100% to the ECOSS cost results that we are approving in this Order is a result of policy decisions of this Commission. There is no valid

~~reason why particular classes alone should bear the burden of these policy decisions. We also note that spreading this revenue responsibility on an equal percentage basis to all non-subsidized rate classes, as we hereby order, would minimize the rate burden on any particular rate class. As we understand Staff's proposal, greater, but proportionate, recovery of the shortfall would come from four classes (the Small Load, Medium Load, Large Load and Very Large Load classes) where the rates proposed by ComEd already exceed the cost of providing service by 2.2%. This proposal minimally affects only four classes and it also allows ComEd to fully recover costs. This proposal also applies the principle of gradualism that Kroger, the Commercial Group and others advocate. Staff's proposal will therefore be adopted.~~

### III. CONCLUSION

WHEREFORE, the Commercial Group respectfully requests that the Commission grant the relief requested herein.

Respectfully submitted this 11th day of April, 2011.

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