

**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	:	

**EXCEPTIONS OF**  
**COMMONWEALTH EDISON COMPANY**

**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 :

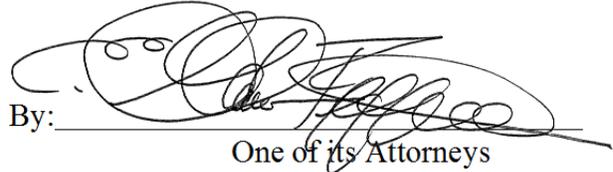
**EXCEPTIONS OF**  
**COMMONWEALTH EDISON COMPANY**

Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the "Commission" or "ICC"), 83 Ill. Admin. Code § 200.830, replacement language, in legislative "redline" form, is provided herein for each of the individually numbered Exceptions of Commonwealth Edison Company. Argument and citations to evidence supporting these Exceptions is found in ComEd's separate Brief on Exceptions, filed herewith.

Dated: April 15, 2011

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By:   
One of its Attorneys

Thomas S. O'Neill  
Senior Vice President & General Counsel  
COMMONWEALTH EDISON COMPANY  
440 S. LaSalle Street, Suite 3300  
Chicago, IL 60605  
312-394-7205  
thomas.oneill@comed.com

Richard G. Bernet, Eugene M. Bernstein, and  
Bradley R. Perkins  
10 S. Dearborn, Suite 4900  
Chicago, IL 60603  
(312) 394-5400  
richard.bernet@exeloncorp.com  
eugene.bernstein@exeloncorp.com  
brad.perkins@exeloncorp.com

E. Glenn Rippie, Carmen Fosco, and  
Carla Scarsella  
ROONEY RIPPIE & RATNASWAMY LLP  
350 W. Hubbard Street, Suite 430  
Chicago, IL 60654  
(312) 447-2800  
glenn.rippie@r3law.com  
carmen.fosco@r3law.com  
carla.scarsella@r3law.com

G. Darryl Reed  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, IL 60603  
(312) 853-7766  
greed@sidley.com

Counsel for Commonwealth Edison Company

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**Commonwealth Edison Company**                   :  
  :  
**Petition for approval of an Alternative Rate**   :  
**Regulation Plan pursuant to Section 9-244**   :  
**of the Public Utilities Act.**                       :  
  :

**10-0527**

**PROPOSED ORDER**

March 25, 2011

Table of Contents

- I. Procedural History ..... 1
- II. ComEd’s Rate ACEP Proposal..... 2
  - A. Proposed Budget Baseline ..... 2
  - B. Recovery of O&M Expenses..... 3
  - C. Recovery of Capital Investments ..... 4
  - D. Proposed Projects ..... 4
  - E. Mechanism for Future Rate ACEP Projects..... 5
  - F. Proposed Rate ACEP Review Procedure ..... 5
- III. Statutory Requirements..... 6
  - A. Section 9-244(a) ..... 8
    - 1. ComEd ..... 8
    - 2. IIEC ..... 8
    - 3. AG 10
    - 4. Metra ..... 11
    - 5. CTA ..... 13
    - 6. AARP ..... 13
    - 7. CUB ..... 13
    - 8. Staff..... 14
    - 9. ComEd Reply ..... 15
    - 10. Commission Analysis and Conclusion ..... 17
  - B. Findings under 9-244(b)..... 22
    - 1. Finding under 9-244(b)(1) ..... 22
    - 2. Finding under 9-244(b)(2) ..... 36
    - 3. Finding under 9-244(b)(3) ..... 44
    - 4. Finding under 9-244(b)(4) ..... 45
    - 5. Finding under 9-244(b)(5) ..... 45
    - 6. Finding under 9-244(b)(6) ..... 46
    - 7. Finding under 9-244(b)(7) ..... 47
    - 8. Finding under 9-244(b)(8) ..... 48
  - C. Section 9-244(c) Review ..... 54
    - 1. ComEd ..... 54
    - 2. CUB ..... 55
    - 3. AG 56
    - 4. ComEd Reply ..... 57
    - 5. Commission Analysis and Conclusion ..... 58
  - D. “Rider” ACEP ..... 58
    - 1. AG 58
    - 2. ComEd ..... 59
    - 3. Commission Analysis and Conclusion ..... 60
  - E. Rate Design Issues..... 60
  - F. Interaction with General Rate Case ..... 60
    - 1. ComEd ..... 60
    - 2. AARP ..... 61
    - 3. Commission Analysis and Conclusion ..... 61
- IV. Immediate Projects..... 61

A.	Low Income Assistance Provisions (“LIAP”) .....	61
	1. ComEd’s Proposal .....	61
	2. CUB .....	62
	3. AARP .....	62
	4. AG 63 .....	
	5. Staff.....	64
	6. ComEd’s Reply .....	65
	7. Commission Analysis and Conclusion .....	66
B.	Urban Underground Facilities Reinvestment Program (“UUFR”) .....	68
	1. ComEd’s Proposal .....	68
	2. CG 72 .....	
	3. CUB .....	73
	4. AG 73 .....	
	5. Staff.....	75
	6. ComEd Reply.....	78
	7. Commission Analysis and Conclusion .....	79
C.	Electric Vehicle Pilot .....	81
	1. ComEd.....	81
	2. ELPC.....	84
	3. CUB .....	84
	4. AG 84 .....	
	5. Staff.....	86
	6. ComEd Reply.....	89
	7. Commission Analysis and Conclusion .....	95
V.	Smart Grid .....	98
	A. ComEd.....	98
	B. IIEC.....	99
	C. Metra.....	100
	D. AARP .....	101
	E. CTA.....	101
	F. AG .....	101
	G. Staff .....	102
	H. ComEd Reply.....	103
	I. Commission Analysis and Conclusion .....	104
VI.	Findings and Ordering Paragraphs.....	105

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**Commonwealth Edison Company** :  
:  
**Petition for approval of an Alternative Rate** : **10-0527**  
**Regulation Plan pursuant to Section 9-244** :  
**of the Public Utilities Act.** :

**PROPOSED ORDER**

By the Commission:

**I. Procedural History**

On August 31, 2010, ComEd filed a Petition with the Commission seeking approval of an Alternative Rate Regulation Plan (“Alt Reg”) pursuant to Section 9-244 of the Public Utilities Act (the “Act”) (“Petition”). Filed with and supporting ComEd’s Petition were the direct testimonies of Ross C. Hemphill, Ph.D., Vice President, Regulatory Policy & Strategy (ComEd Ex. 1.0 Rev.); Michael McMahan, P.E., Vice President, Smart Grid/Technology (ComEd Ex. 2.0); Fidel Marquez, Senior Vice President, Customer Operations (ComEd Ex. 3.0); Michelle Blaise, Vice President, Engineering & Project Management (ComEd Ex. 4.0); and Mary Anne Emmons, Director, Customer Assistance Programs (ComEd Ex. 5.0). ComEd also submitted the rebuttal and surrebuttal testimonies of Dr. Hemphill (ComEd Exs. 6.0 and 8.0) and Mr. McMahan (ComEd Exs. 7.0 and 9.0).

The following Petitions to Intervene were granted: Illinois Power Agency, Citizens Utility Board (“CUB”), the Illinois Attorney General’s Office (“AG”), AARP; Natural Resources Defense Council (“NRDC”); Commercial Group; Chicago Transit Authority (“CTA”), Illinois Industrial Energy Consumers (“IIEC”), Environmental Law & Policy Center (“ELPC”); Northeast Illinois Regional Commuter Railroad d/b/a Metra (“Metra”), Nucor Steel Kankakee, Inc., Illinois Competitive Energy Association, and Building Owners and Managers Association of Chicago. The City of Chicago also filed an appearance.

The following witnesses filed testimony on behalf of Staff: David Rearden (Staff Exs. 1.0 Rev. and 8.0), Jennifer L. Hinman (Staff Exs. 2.0 and 9.0 Rev.), Eric P. Schlaf (Staff Exs. 3.0 and 10.0), John V. Stutsman (Staff Exs. 4.0 and 11.0), Dianna Hathorn (Staff Exs. 5.0 and 12.0), Cheri L. Harden (Staff Exs. 6.0) and Harold Stoller (Staff Exs. 7.0 and 13.0).

The AG filed the testimony of Michael L. Brosch (AG Exs. 1.0 and 3.0) and Roger D. Colton (AG Exs. 2.0 and 4.0). AARP submitted the testimony of Barbara R. Alexander (AARP Exs. 1.0 and 2.0). CTA/Metra offered the testimony of James Bachman (CTA/Metra Joint Ex. 1.0). CUB filed the testimony of Christopher C. Thomas

(CUB Exs. 1.0 Rev. and 2.0). IIEC submitted the testimony of Robert R. Stephens (IIEC Exs. 1.0-C and 2.0). Finally, NRDC offered the testimony of Dylan Sullivan (NRDC Exs. 1.0 and 2.0).

The Administrative Law Judge entered a Protective Order on October 15, 2010.

Staff and Intervenors filed direct and rebuttal testimony on November 9, 2010 and December 22, 2010, respectively. ComEd filed rebuttal and surrebuttal testimony on December 3, 2010 and January 10, 2011, respectively. Evidentiary hearings were held on January 25, 26, and 27, 2011 at the conclusion of which the record was marked Heard and Taken.

Pursuant to Section 9-244(b) the Act, the Commission must make specific findings in order to approve ComEd's Alt Reg proposal. These specific findings are addressed below. The Commission must issue an order approving or denying the proposal no later than 270 days from August 31, 2010, that is May 28, 2011.

## **II. ComEd's Rate ACEP Proposal**

Section 9-244 of the Act allows the Commission, upon petition by a utility, to authorize, for some or all of the regulated services of that utility, "the implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to earnings sharing, rate moratoria, price caps or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance." 220 ILCS 5/9-244(a). ComEd asks the Commission to approve a pilot Alt Reg program mechanism, Rate ACEP – Accelerated Customer Enhancements Pilot ("Rate ACEP") pursuant to Section 9-244 of the Act. This section of the Commission's Order describes the elements of that mechanism.

### **A. Proposed Budget Baseline**

ComEd states that, under the Alt Reg program, and unlike the typical rate case process, the prudence of undertaking each proposed project will be reviewed prior to making the actual investments. Those approvals are made based on evidence about the expected benefits and the budgets laying out what is proposed to be a reasonable cost of accomplishing the work. Because capital and operating expense have different ratemaking and cost implications, and because they are treated distinctly under ComEd's plan, each proposed project includes both a capital investment and Operating and Maintenance ("O&M") expense budget, along with benchmarks defining the investment or work to be accomplished within those budgets. Pet. at ¶12; ComEd Ex. 1.0 Rev. at 18. A key portion of the Alt Reg proposal is that both the capital costs and O&M expenses are accompanied by incentive mechanisms that ComEd asserts pushes it to do the work for less. Except for future Smart Grid technology proposals, the review and approval of the proposed investments and O&M projects will be made in this proceeding. ComEd explains that determinations for Smart Grid technology proposals, which are subject to the Commission's Policy Docket, will be made in a subsequent proceeding.

ComEd maintains that, in constructing these budgets, it used the same budgeting process used in its own internal review evaluation of various investment proposals.

ComEd Ex. 6.0 at 14; see also Tr. at 146-78 (discussing detailed budgeting, challenge and review process). Further, the budgets are based upon vendor proposals and on the costs ComEd has historically incurred. ComEd believes that a budget-based evaluation mechanism is an effective tool to evaluate a project's benefits and costs. Before approving any investment, the Commission will consider the investment and the O&M budgets as a tool to determine whether the programs are likely to result in net benefits to customers. Further, ComEd states that during the operation of the program, the budgets serve as a powerful incentive mechanism for it to operate efficiently. The budgets also ensure that ComEd actually makes the investment it is ordered to make up front. ComEd Ex. 6.0 at 11-12. Thus, ComEd maintains that in making investments under the Alt Reg program, it is accepting the risk under Rate ACEP that the approved budgets may not be adequate to meet its up-front investment and O&M obligations under the approved projects. *Id.* at 16; ComEd Ex. 8.0 at 10. ComEd states that it would be bound to complete the work as prescribed in the Commission-approved budgets. ComEd Ex. 8.0 at 10. ComEd notes that if capital cost exceeds 105% of the capital budget, it will not collect any carrying costs on the difference between its actual investment expenditure and the budgeted amount unless and until consideration is given to the prudence and reasonableness of the expenditure in excess of the budget in ComEd's next general rate case. Finally, during the biennial review proceeding after a project is complete, the Commission will be able to review ComEd's performance against the originally Commission-approved budget, as well as performing other tasks pursuant to Section 9-244(c) of the Act. ComEd Ex. 1.0 Rev. at 18.

## **B. Recovery of O&M Expenses**

ComEd states that Rate ACEP allows ComEd to recover, on Commission-approved projects, its O&M expenses as incurred but only up to the budgeted amounts. The O&M expenses are calculated quarterly. ComEd explains that Rate ACEP will allow recovery of the expenses incurred through the previous quarter for approved programs. ComEd Ex. 1.0 Rev. at 7, 22. O&M expenses will also include the amortization expenses associated with the full recovery of prematurely retired assets associated with the proposed projects. The quarterly amortization expense is computed by dividing the undepreciated costs of the assets which are removed before being fully depreciated, such as retired non-AMI meters, by the applicable amortization period. ComEd maintains that this treatment is consistent with the Commission's Order in Docket 07-0566, in which ComEd's Rider AMP – Advanced Metering Program Adjustment was approved. ComEd states that the Commission agreed that it was appropriate to establish a regulatory asset for the cost associated with the remaining net book value of the prematurely retired meters. ComEd maintains that full recovery of these assets is appropriate because the cost of these assets was prudently incurred and reasonable at the time that they were installed and placed in service. Thus, ComEd is requesting that these costs should continue to be recovered through rates over an appropriate period of time. *Id.* at 22-23.

Under Rate ACEP, ComEd states that customers receive an immediate benefit. In particular, a 5% reduction is applied to all O&M expenses, with the exception of low income assistance expenses, up to a \$2 million cap. ComEd explains that the reduction flows directly back to customers. Also, if ComEd reduces its operating costs in

response to the proposed incentives, those additional savings will be passed on to customers immediately. ComEd Ex. 1.0 Rev. at 7, 22. Thus, ComEd asserts that as it 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. As an additional incentive, ComEd states that it will not recover O&M costs above the Commission-approved budget. ComEd Ex. 1.0 Rev. at 19; Pet. at ¶14.

### **C. Recovery of Capital Investments**

While Commission-approved projects are underway, ComEd states that Rate ACEP will allow it to recover a return of and on its actual capital investment for each project, up to the budgeted amount, until an order is entered in the Commission's biennial review proceeding (as required pursuant to Section 9-244(c) of the Act) after the project is complete. ComEd Ex. 1.2 Original Sheet No. X+15. ComEd explains that the carrying costs of its actual investments made will be recovered on a quarterly basis, calculated at the most recently allowed weighted average cost of capital for ComEd. ComEd Ex. 1.0 Rev. at 7, 18.

ComEd explains that during the biennial review proceeding, after the project is complete, the Commission will be able to review ComEd's performance against the original Commission-approved budget. *Id.* at 18. ComEd states that if the Commission finds that the project has been completed at a capital cost that is within 5% of the approved capital budget (a  $\pm 5\%$  "deadband"), then ComEd will continue to recover its carrying costs through Rate ACEP until such time that the investment is included in rate base in a future general rate case. *Id.* at 18; ComEd Ex. 1.2 Original Sheet No. X+15. Further, ComEd adds that if the Commission finds that 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. That 50/50 sharing is implemented through an adjustment to the balancing amount. *Id.* at 19; Original Sheets Nos. X+14 and X+15.

However, ComEd states that if the Commission finds that capital cost exceeds 105% of the capital budget, ComEd will not collect any carrying costs on the difference between its actual investment expenditure and the budgeted amount must wait until consideration is given to the prudence and reasonableness of the expenditure in excess of the budget in ComEd's next general rate case. ComEd adds that the carrying charges previously recovered under Rate ACEP for such difference will be refunded to customers. *Id.*

### **D. Proposed Projects**

ComEd has proposed four projects to be included within the scope of the cost recovery mechanism included in Rate ACEP. Of these, ComEd also requests approval to proceed in this Docket: (1) Urban Underground Facilities Reinvestment ("UUFR"); (2) Utility Electric Vehicle ("EV") Pilot; and (3) Low Income Assistance Program. For the other work, including Accelerated Deployment of Advanced Metering Infrastructure ("AMI") with and Outage Management System ("OMS") Interface, and accelerated deployment of Distribution Automation ("DA"), Rate ACEP includes only a mechanism for future cost recovery, but ComEd does not seek authority to proceed with the work, or

to begin recovering costs of that work, in this docket. This chart summarizes the proposed projects and their respective budgets.

<u>Project</u>	<u>O&amp;M</u>	<u>Capital</u>
Low Income Assistance Provisions	\$20 (\$millions)	----
Uufr	\$15	\$30
Electric Vehicle Pilot	----	\$5
Accelerated Smart Grid Deployment		
<ul style="list-style-type: none"> <li>• 190,000 additional AMI meters and Outage Management System Interface</li> </ul>	\$10	\$55
<ul style="list-style-type: none"> <li>• Accelerated deployment of Distribution Automation</li> </ul>	----	\$40
<ul style="list-style-type: none"> <li>• Customer Applications</li> </ul>	\$20	

#### **E. Mechanism for Future Rate ACEP Projects**

ComEd states that its proposal is designed to accommodate future Commission-approved projects, such as Smart Grid. ComEd explains that specific capital and O&M budgets for future investment, such as AMI and DA, would be developed and approved in an implementation proceeding. Pet. at ¶11. ComEd adds that when a specific proposal is ready to be made, stakeholders will have the opportunity both for informal input at workshops and for formal input in the required implementation docket that would precede any approval or deployment of technology, such as Smart Grid, under Rate ACEP.

ComEd states that under the process articulated in ComEd's 2007 rate case, Docket 07-0566, the Commission is expected to open a Smart Grid Policy Docket ("Policy Docket") soon. In addition, the results of ComEd's AMI Pilot authorized in Docket 09-0263 will soon be available. ComEd explains that if, as a result of the Policy Docket and the AMI Pilot, the Commission determines to move forward with further DA or AMI deployment, specific capital and O&M budgets for DA and AMI investment would be developed and approved in a later implementation proceeding, under Rate ACEP. Pet. at ¶11.

#### **F. Proposed Rate ACEP Review Procedure**

ComEd maintains that as required by Section 9-244(c) of the Act, its tariff provides for a biennial review cycle after the Alt Reg program is initially approved and implemented. ComEd explains that during this review (1) the Commission can assess the success of the efforts to date; (2) stakeholders can express their views; (3) the Commission can reassess the appropriate program levels of spending and investment; and (4) the Alt Reg program can further evolve. Pet. at ¶18; ComEd Ex. 1.0 Rev. at 20. This review process, ComEd states, is different from a reconciliation docket. *Id.* at 24. If approved in this proceeding, ComEd argues that it can immediately proceed with the Uufr project, the EV pilot, and the Low Income project and provide for their funding. ComEd add that these projects can then be reviewed and modified as appropriate

based upon the experience gained. Pet. at ¶ 16, 18; ComEd Ex. 1.2 (Original Sheet No. X+2).

For the first review, in 2013, any approved Smart Grid projects will have been in effect for a shorter time, because AMI and DA investments will not occur until they are separately approved by the Commission. However, ComEd states that if the Commission chooses, they can be evaluated as well if they have been operating for enough time that it makes sense to review them again going forward. Finally, the review cycle for the Alt Reg program will be every two years. ComEd concludes that these additional review proceedings will allow Stakeholders to stay engaged and for the Commission to continue to evaluate and adjust the Alt Reg program and the specific projects it funds.

### III. Statutory Requirements

This case is governed by Section 9-244 of the Act. As amended by the General Assembly in 1997, Section 9-244 states, in relevant part, as follows:

*(a) Notwithstanding 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, and except as provided in Article XVI, the Commission, upon petition by an electric or gas public utility, and after notice and hearing, may authorize for some or all of the regulated services of that utility, the implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to earnings sharing, rate moratoria, price caps or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance. In the case of other regulatory mechanisms that reward or penalize utilities through the adjustment of rates based on utility performance, the utility's performance shall be compared to standards established in the Commission order authorizing the implementation of other regulatory mechanisms. The Commission is specifically authorized to approve in response to such petitions different forms of alternatives to rate of return regulation or other regulatory mechanisms to fit the particular characteristics and requirements of different utilities and their service territories.*

*(b) The Commission shall approve the program if it finds, based on the record, that:*

*(1) the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-241 of the Act; and*

*(2) the program is likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program; and*

- (3) the utility is in compliance with applicable Commission standards for reliability and implementation of the program is not likely to adversely affect service reliability; and*
- (4) implementation of the program is not likely to result in deterioration of the utility's financial condition; and*
- (5) implementation of the program is not likely to adversely affect the development of competitive markets; and*
- (6) the electric utility is in compliance with its obligation to offer delivery services pursuant to Article XVI; and*
- (7) the program includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor its implementation of the program; and*
- (8) the program includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits.*

*The Commission shall issue its order approving or denying the program no later than 270 days from the date of filing of the petition. Any program approved under this Section shall continue in effect until revised, modified or terminated by order of the Commission as provided in this Section. If the Commission cannot make the above findings, it shall specifically identify in its order the reason or reasons why the proposed program does not meet the above criteria, and shall identify any modifications supported in the record, if any, that would cause the program to satisfy the above criteria. In the event the order identifies any such modifications it shall not become a final order subject to petitions for rehearing until 15 days after service of same by the Commission. The utility shall have 14 days following the date of service of the order to notify the Commission in writing whether it will accept any modifications so identified in the order or whether it has elected not to proceed with the program. If the utility notifies the Commission that it will accept such modifications, the Commission shall issue an amended order, without further hearing, within 14 days following such notification, approving the program as modified and such order shall be considered to be a final order of the Commission subject to petitions for rehearing and appellate procedures.*

*(c) The Commission shall open a proceeding to review any program approved under subsection (b) 2 years after the program is first implemented to determine whether the program is meeting its objectives, and may make such revisions, no later than 270 days after the proceeding is opened, as are necessary to result in the program meeting its objectives. A utility may elect to discontinue any program so revised. The Commission shall not otherwise direct a utility to revise, modify or cancel a*

*program during its term of operation, except as found necessary, after notice and hearing, to ensure system reliability.*

\* \* \*

*(e) The Commission shall not be authorized to allow or order an electric utility to place a program into effect, pursuant to this Section, applicable to delivery services provided by a utility, unless the utility already has in effect a delivery services tariff conforming to the requirements of Section 16-108 of this Act.*

220 ILCS 5/9-244.

**A. Section 9-244(a)**

**1. ComEd**

Section 9-244 of the Act allows the Commission, upon petition by a utility, to authorize for some or all of the regulated services of that utility, “the implementation of one or more programs consisting of (i) alternatives to rate of return regulation, including but not limited to earnings sharing, rate moratoria, price caps or flexible rate options, or (ii) other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance.” 220 ILCS 5/9-244(a). ComEd’s proposal is both – it is a flexible rate option that adjusts rates to reflect costs and investments and also rewards or penalizes ComEd based upon its performance implementing Commission-approved projects. Under the proposal, ComEd will commit to capital investment and Operating and Maintenance (“O&M”) expense budgets that are approved by the Commission.

ComEd’s proposed Alternative Regulation program and the tariff that implements it, Rate ACEP, provide strong, objective incentives for ComEd to spend and invest most efficiently. The Commission has acknowledged that one very important aspect of a sharing mechanism is that “it is consistent with the basic premise of incentive regulation, that companies with rate incentives are likely to be more efficient and productive than if there were no incentives.” *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 added that “[e]conomic incentives ... promote innovation, encourage efficiency, lower regulatory costs and encourage utilities to respond to new market challenges.” *Id.*

Under the proposed program, ComEd is strongly incentivized to control costs because it can benefit from those savings, which customers will also benefit from without having to wait for the next rate case. ComEd Ex. 1.0 Rev. at 10. These incentives operate together with the mechanism ensuring customers enjoy both rate benefits of the proposed alternative regulation structure and the reliability, environmental, and operational benefits of the proposed projects themselves. *Id.* at 7.

**2. IIEC**

IIEC does not think that ComEd has proposed “an alternative to rate of return regulation” under Section 9-244(a)(i) for any of its regulated service. IIEC asserts that

ComEd's proposal, if it qualifies at all, must qualify under the second of the constructs described in Section 9-244(a). Accordingly, should the Commission approve ComEd's Alt Reg, IIEC argues that the Commission must define an appropriate standard or standards against which utility performance must be measured. Since ComEd's Rate ACEP applies to its delivery service customers and those rates must be just and reasonable, the performance standards must also be just and reasonable.

IIEC notes, however, that ComEd argues that its Alt Reg is offered under both Section 9-244(a)(i) and 9-244(a)(ii) and, therefore, the Commission must first determine whether ComEd's proposal must meet the criteria for one or for both forms of alternative regulation. However, for ComEd to prove that its proposal meets the qualifications of either subsection, ComEd must identify the regulated services to which its Alt Reg would apply. An identification of the relevant regulated services is a prerequisite to such a determination, and an essential element of ComEd's case. ComEd has not identified any such service and, therefore, the Commission is unable to grant ComEd's petition.

If the Commission can somehow determine, despite the absence of an express identification in the record by ComEd, what "regulated services" are the subject of ComEd's proposal and that Section 9-244(a)(ii) applies, the Commission must then determine whether ComEd's budget performance incentives constitute a Section 9-244(a)(ii) "adjustment of rates based on utility performance" of any regulated services identified as the subject of ComEd's Alt Reg.

IIEC observes that the standard proposed by ComEd is essentially a budget. ComEd's performance -- in completing its management of construction work, not in providing its any delivery service -- would be measured against ComEd's O&M and capital budgets for the subject programs and projects. ComEd's standard is completely divorced from the alleged benefits ComEd has presented to justify the programs. IIEC does not believe a construction budget is an appropriate standard for measuring ComEd's "utility performance." 220 ILCS 5/9-244(a). Because ComEd's Alt Reg does not incorporate an appropriate standard, IIEC asserts that the proposal must be rejected.

Moreover, IIEC explains that the budget standard, as proposed, would allow the utility to collect more than it has spent (through an incentive collected from ratepayers) if the amount required is less than 95% of the target budget. Even then, there is no bar to later recovery of costs not allowed under Rate ACEP. ComEd will have a strong economic incentive to inflate the budget, and the Commission and other parties will have great difficulty reviewing and evaluating those complex engineering proposals in the brief period provided by the Rate ACEP for that task.

That review and assessment capability is essential to the Commission's performance of its own statutory duties, including assuring just and reasonable rates. Even when supplemented by scarce intervenor resources, parties' ability to review proposals as contemplated by Rate ACEP could easily be overwhelmed by the utility's construction projects and budget submissions.

As has been pointed out by other witnesses, no party is in as good a position as ComEd to know and to control the costs of a future project. ComEd -- unlike the

Commission Staff or intervenor parties – has the direct knowledge, information, expertise and resources needed to craft a budget proposal. ComEd's plan would compel the Commission Staff and other parties to undertake an evaluation of potentially very complex or technical proposals in a short timeframe. IIEC Ex. 2.0 at 8.

Looking at these very real limitations on regulator capabilities reveals how and why utility regulation evolved to the current system of after-the-fact prudence reviews. Under that traditional regulation approach -- as opposed to the proposed pre-approval approach -- the Commission's oversight of utility capital and expense expenditures is greatly assisted by the investment and management discipline imposed when the utility has its own money at risk.

### 3. AG

Given that ComEd will continue to file traditional rate cases under its Rate ACEP proposal, the AG states that ComEd's petition should be assessed based on the second category of alternative regulatory programs listed in 9-244(a), i.e. "other regulatory mechanisms that reward or penalize the utility through the adjustment of rates based on utility performance." 220 ILCS 5/9-224(a).

Fundamentally, Rate ACEP is on shaky legal ground, the AG argues, because the individual project proposals are not "services" in any traditional sense of the word. Requiring ratepayers to pay an additional Rate ACEP surcharge for accelerated UUFRR investment is not providing a "service" for which a rate comparison to traditional rates can be made. For example, under traditional regulation, a utility does not establish a separate tariffed rate for 59 EVs. The capital and O&M costs associated with the vehicles are a component of the Company's overall, aggregate revenue requirement. Neither can the replacement of underground mainline feeder cable, cable support hardware and manholes where necessary be characterized as a "service" for which a traditional regulation rate comparison can be made. Again, like EVs and their related expenses, these are utility capital and O&M expense categories that are merely small parts of the aggregate costs that rates are designed to cover.

That being said, Section Sec. 3-115 of the Act provides:

"Service" is used in its broadest and most inclusive sense, and includes not only the use or accommodation afforded consumers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any public utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public."

220 ILCS 5/3-115. While this provision suggests the word "service" is to be interpreted broadly, rules of statutory interpretation also require that the language of a statute not be considered in isolation, but rather interpreted in light of other relevant statutory provisions. *People v. Spurlock*, 903 N.E.2d 874 (5th Dist. 2009). In interpreting a statute, legislative intent must be ascertained from a consideration of the entire act, its nature, its object and the consequences resulting from different constructions. *Ryan v.*

*Board of Trustees of General Assembly Retirement System*, 236 Ill. 2d 315, 924 N.E.2d 970 (2010).

Section 9-244 of the Act falls within the ratemaking provisions of Article IX of the Act. The General Assembly, in codifying Section 9-244, provided the Commission with the authority to utilize alternative regulation to set customer rates, not create new, isolated categories of capital and O&M costs. Section 9-244(b)(1), in particular, discusses rates for services covered by the program. Section 3-115 of the Act references the components of “service”, but not rates. So, in the context of Section 9-244, a key question the Commission must address is the proposal’s effect on rates. Unless 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.

#### **4. Metra**

Metra submits that ComEd’s proposed alternative regulation initiative is an ill-conceived idea that is devoid of any merit whatsoever. No party to this proceeding other than ComEd supports ComEd’s proposed initiative and Rate ACEP. That is because witnesses who have reviewed the proposal, other than witnesses sponsored by ComEd, have rapidly concluded that the only party who will benefit from the purported alternative regulation initiative is ComEd.

According to Metra, the lynchpin of the purported alternative “regulation” is illogical. Under ComEd’s scheme, ComEd is guaranteed to recover its costs for any project for which the final costs are within 105 percent of the ComEd budget for the project. Under that scheme, as many witnesses have noted, ComEd has every incentive to make sure that its proposed budget is large enough to ensure that the actual project costs will not exceed 105 percent of the budget. Metra asks, what mid level manager of ComEd, given the choice between two reasonable budgetary assumptions, is going to choose the one that will produce a lower budget when that manager knows that the profitability of his or her unit is going to depend upon the project coming in on budget? The answer is none. Thus, the lynchpin of the entire alternative “regulatory” scheme is subject to manipulation by ComEd with little meaningful opportunity for challenge by Staff or Intervenors. This is most empathetically not alternative regulation. Rather, Metra argues that it is like giving ComEd the keys to the bank or, more accurately, ratepayers’ wallets.

Multiple witnesses have testified that the Achilles heel of ComEd’s purported alternative regulation scheme is that ComEd can inflate its budget estimates to ensure 100 percent recovery of the cost of projects funded through Rider ACEP. ComEd witness Hemphill took umbrage of the suggestion that ComEd could conceivably inflate its budget estimates. ComEd Ex. 6.0 at 14. However, the plain fact, Metra states, is that the natural tendency of any ComEd Manager whose business unit’s profitability, and therefore its perceived success or failure, hinges on bringing a project in at or below budget, will be to make sure that the assumptions and contingencies built into that budget will generate a budget estimate large enough to make it easy to ensure that the actual projects meet or are below the budget estimate.

Moreover, Metra argues that it will be very difficult to effectively challenge ComEd's budget estimates, particularly in the construction arena, which is where most of the budget estimates would likely occur. Budgets for construction are very difficult to accurately establish. For that reason, standard engineering practice is to include contingencies for unidentified costs, and contingencies vary depending upon the stage and complexity of the design. Competitive bidding practices mandated for most governmental entities are predicated on the fact that bidders' estimates of likely construction cost will vary, sometimes dramatically.

In the case of ComEd, Metra notes, trying to assess the validity or accuracy of ComEd's construction cost estimates will be even more difficult. ComEd's electricity delivery system is very complex, and the number of similar systems, and therefore possible expert witnesses, is small. No one knows the ComEd system better than ComEd's own engineers and employees.

The vagaries of budget estimates, and thus the resultant difficulty of challenging ComEd's budget estimates, is illustrated in various ways by testimony in this case. For example, when Staff witness Hinman challenged ComEd's calculation of \$5 million for the Electric Vehicle project, ComEd witness McMahan responded to the criticism by explaining that he based part of his estimate on discussions with suppliers. ComEd Ex. 7.0 at 13. As Ms. Hinman indicated, the Staff is not a potential significant purchaser in the marketplace, will never have or be privy to the conversations ComEd witness McMahan allegedly had with a supplier, and neither Staff nor Intervenors can objectively verify such conversation. Staff Ex. 9.0 (Rev.) at 12-13. Otherwise stated, when this sort of issue surfaces, neither Staff nor Intervenors can ever effectively challenge ComEd budget estimates, according to Metra.

Another issue identified by Metra is with the proposed Uufr program. This is a dynamic, variable project being compared to a static budget. Thus, if ComEd was approaching its budget estimate, in order to recover its costs, its employees have an incentive to do the minimum to ensure that ComEd stays within budget. For example, if ComEd was approaching its budget estimate, one of its foreman easily could direct the replacement of cable where possible rather than manholes to save costs. This is a subtle and likely unrecorded shift in priorities, but one that means that ComEd recovers its full costs.

These are but a few of the examples that emerged during testimony. Since there is no proposed expiration date or cap to the proposed Rate ACEP, one could expect future ComEd projects to raise more thorny, if not insurmountable, obstacles for Staff and Intervenors to ever provide a meaningful analysis of the issue associated with future ComEd projects.

The bottom line is that establishing an alternative "regulation" procedure whose sole source of regulation is a comparison of ComEd's budget estimate to ComEd's actual project cost would be unwise and reflect terrible publicly. It is not regulation at all because ComEd and its employees have every incentive to inflate ComEd's budget estimate, and Staff and Intervenors cannot realistically mount a reasonable challenge to or provide a check upon ComEd's ability to inflate its budget estimate to ensure 100 percent recovery of the cost of every project run through Rate ACEP.

## 5. CTA

CTA argues that Rate ACEP inappropriately rewards ComEd for “beating” its own, easily manipulated budgets. As CTA/Metra witness Bachman observed:

Utilization of budget estimates creates inherent costing uncertainties which cannot be eliminated but must be recognized. The policy concern becomes a real problem when the entity making the budget projections is rewarded based on its budget projections, which is ComEd’s proposal. In order to have ComEd rewarded for saving actual costs based on its own budget projections, there would have to be an independent after-the-fact review of the budget versus actual expenditures. Unfortunately, this type of audit would require expending additional regulatory resources.

CTA/Metra Joint Ex. 1.0 at. 5.

## 6. AARP

ComEd wants the Commission to approve a pilot program without any evaluation plan to govern the decision as to whether the pilot was beneficial to customers or whether it delivered the benefits that ComEd has promised would occur as a result of these proposed investments. ComEd has not identified any performance standard (other than keeping within a negotiated budget) that would govern cost recovery or that would link this recovery of costs to the delivery of actual benefits to customers in the form of lower costs, more efficient operations, increased reliability of service, or any other indicator that would link the promised benefits from each of these five investment proposals to its cost recovery formula. In other words, ComEd’s plan is a “test” of whether it can make investments that conform to a predetermined and negotiated budget for selected investments. AARP Ex. 2.0, p. 4. Furthermore, ComEd has selected several unrelated investment proposals, one of which (the Smart Grid) is not even identified in terms of a specific proposal, but which is estimated to cost \$95 million in capital costs and \$30 million in O&M costs, and others of which bear no relationship to the need for an alternative rate plan for recovery of costs. AARP Ex. 1.0, p 2.

ComEd does not identify which “regulated services” that its proposal is supposed to apply, and so it is initially difficult to determine to what its alternative is being compared. ComEd witness Hemphill admits that Smart Grid investments themselves are not “regulated services”. Tr. 406-407. The regulated service at issue cannot be the distribution of electric service generally, because ComEd is still seeking cost of service regulation for that service in a current rate case, Docket 10-0467. Every one of the projects proposed to be recovered under Rate ACEP are in categories that can and routinely do occur under traditional cost of service regulation. AARP Ex. 1.0 at 2. Rate ACEP is really not an alternative to anything—it’s merely a proposal to add on to traditional ratemaking, in excess of just and reasonable electric rate levels.

## 7. CUB

ComEd’s proposal is not one that satisfies the criteria set forth in Section 9-244 – in short, it is not a request for alternative regulation but a proposal to pilot the piecemeal recovery of isolated program costs through a new rate on top of continuing, “traditional

regulation.” The projects ComEd has proposed are discretionary, and similar project investments have been made by the Company and evaluated under traditional regulation. Rate ACEP benefits ComEd shareholders by shifting costs and risks associated with proposed future investments in the specific, discretionary projects ComEd proposes. This one-sided proposal is not the win/win approach that ComEd portrays it to be. Rate ACEP is poor regulatory policy which is little more than a repackaging of the Company’s previously submitted – and rejected – Rider SMP.

The Company expresses interest in moving away from traditional regulation, and is therefore interested in a “pilot” alternative regulation scheme as a first step away from traditional regulation. ComEd Ex. 1.0 at 4-5. True alternative regulation would involve creating performance metrics to ensure the Company invests wisely to benefit customers while meeting its statutory obligation to provide “adequate, efficient, reliable, environmentally safe and least-cost public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens.” CUB Ex. 1.0 at 18-19, citing 220 ILCS 5/1-101. The key characteristics of alternative regulation should be transparency and accountability. There should be an open, collaborative process designed to facilitate information sharing with minimal administrative burdens which includes opportunities for ongoing evaluation of utility investment performances. CUB Ex. 1.0 at 19-20. It should provide an incentive for cost-efficient investments that provide the utility with incentive to maintain a level of investment that focuses on providing safe and reliable service over there long-term, with continuing improvements and long-term cost reductions. *Id.* Most importantly, the Commission should have a clear standard by which to measure a proposal’s success or failure, such as an overall reduction in customer bills and improvements in customer service (reliability improvements, reduction of billing errors, and improved customer access to data). *Id.* ComEd’s proposal does not have any of these characteristics.

The most important task before the Commission is to evaluate the legality of ComEd’s Rate ACEP under the alternative regulation framework provided for by the Act, which spells out the specific findings the Commission must make in order to approve an alternative regulation proposal. 220 ILCS 5/9-244(b). The Company would prefer to debate the merits of the individual programs it has proposed rather than the legality of Rate ACEP. Tr. at 404. While the Company would not like to “get bogged down with the intricacies of the statute and its application to what [they’re] proposing here” (Tr. at 405), this evaluation must come before any evaluation of the individual projects they have proposed. Without a finding that Rate ACEP meets all of the requirements of 9-244, any details of the individual projects are irrelevant and Commission approval impossible.

## **8. Staff**

It is Staff’s position that what ComEd proposes in this docket, Rate ACEP and the process for the Commission to authorize Rate ACEP, is beyond the Commission’s authority. The language does not mean that the ratemaking provisions in Article IX, or any other section of the Act or the Commission’s rules, do not apply to Section 9-244 petitions but rather that the ratemaking provisions in Article IX, the Act or the Commission rules that would require rate of return regulation, do not prohibit a utility from filing a Section 9-244 petition to recover rates outside of rate of return regulation.

While Section 9-244 gives the Commission authority to approve utility rates other than through traditional rate of return regulation, Section 9-244 does nothing to expand the authority delegated to the Commission by the General Assembly to allow in utility rates the costs of programs that are not necessary for a public utility to provide adequate, reliable, efficient and least-cost public utility service. The standards identified in Section 9-244(b) which the Commission must find to have been met to permit approval of a utility's Section 9-244 proposal apply to the Section 9-244 proposal itself, not underlying utility investments or activities. Section 9-244 uses the terms "program" or "programs" to identify the utility-proposed alternatives to rate of return regulation. Section 9-244(b) begins with language identifying when the Commission is obliged to approve a utility's Section 9-244 proposal: "(b) The Commission shall approve the program if it finds, based on the record. . ." (emphasis added) That language is entirely consistent with a conclusion that Section 9-244 standards apply only to a utility-proposed Section 9-244 ratemaking program, not to the utility investments and activities to which that program might apply.

The Commission is, in Staff's view, delegated authority by the General Assembly in the Act to identify whatever methodology it might wish to apply to determine whether a proposed utility investment or activity was or might be necessary, prudent or required to provide adequate, efficient, reliable and least-cost public service. However, a utility's proposal to recover from its ratepayers the costs of that project or investment under Section 9-244 would not alter or modify traditional standards the Commission must use to identify costs the utility could recover from ratepayers. Section 9-244 authorizes the Commission to determine how a utility should be permitted to recover investment and activity costs from ratepayers, but not as a substitute for which investments and activity costs a utility might be able to recover from ratepayers. Section 9-244 expands the Commission's authority to determine only the method through which those costs are recoverable.

## 9. ComEd Reply

In response to various parties that focused on the word "services" in Section 9-244(b)(1), ComEd states that the AG, in particular, 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 Alt Reg 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.

According to ComEd, 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).

Also, ComEd states that it has proposed a budget-based Alt Reg mechanism. 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 they 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.

ComEd notes that parties contend 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. Metra claims that it would be difficult to challenge the budgets, particularly in the construction area. According to ComEd, 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. ComEd Ex. 6.0 at 14; 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. ComEd argues that 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. ComEd Ex. 6.0 at 13. Further, despite complaining

throughout the proceeding that they are not in the position to verify the budgets, Staff and Intervenor 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 10-0467. Many of these same parties were able to review ComEd's proposed forward looking pro forma additions. *Id.* at 13. 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.* 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. ComEd Ex. 8.0 at 11. 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.*

The CTA argues that Rate ACEP inappropriately rewards ComEd for "beating" its own, easily manipulated budgets; several other parties make similar claims. 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 UFR 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.

## 10. Commission Analysis and Conclusion

The Commission's analysis begins with the language of the statute, which will be considered piece by piece and as a whole. The Commission is required to give effect to the plain language of the statute and should also interpret it, where there is any doubt, in a manner that is sensible and consistent with its overall purpose.

Initially, the Commission notes that, at the request of a utility, the Commission may file a petition "may authorize for some or all of the regulated services of that utility, the implementation of one or more programs" of alternative regulation. While some parties suggest that this language means that only an entire service – a term with a broad definition under the law – can be encompassed by an alternative regulation proposal, that is plainly not what the statute says and the Commission's authority under. Section 9-244 is not so limited. Section 9-244 authorizes that Commission to implement "one or more programs" for a service. It does not require those programs to swallow up the entire service, and the Commission has not interpreted the statute to have such a meaning in the past. See Docket No. 99-0217, Order dated Nov. 23, 1999 (approving program limited to the gas purchase portion of natural gas service). that utility.

EXCEPTION #1

~~Although, ComEd belittles parties' focus on the word "service" in the statute, the Commission is similarly vexed by the difficulty in finding compliance with the statute when it is not even entirely clear what currently regulated service will now be covered by an alternate form of regulation. ComEd argues that because Nicor was able to recover its gas costs through an Alt Reg program, ComEd should also be able to recover its project costs through alternative regulation. Although ComEd doesn't provide a detailed comparison of the two programs, it bears noting It is true that in the absence of Nicor's Alt Reg program, these costs are would have been recovered separately through a rider under traditional regulation. Thus, the comparison of rates for the costs under either would be easier than under ComEd's proposal. ComEd, on the other hand, recovers its costs, such as DA and UUFR investment through its traditional base rates. However, that is beside the point when then issue is one of the Commission's jurisdiction. Whether it is Hence, it seems to the Commission that if the Nicor case is actually worth relying on, it would support alternative regulation for the energy portion of ComEd's bills, not or ComEd's infrastructure investment, the Nicor decision makes clear that an alternative regulation plan can quite properly address a portion of a utility service.~~

~~In addition, if the statute meant that any program a utioity proposed had to include the entire service, the statute would not have expressly authorized the Commission to approve "one or more" programs. The fact that we are expressly granted authority to approve multiple programs confirms the conclusion that any one program need not encompass all features of an entire utility service.~~

~~Parties also appear confused about what service ComEd's proposal relates to. This is curious, as all of the programs relate to ComEd's provision of electric delivery services. For example, the UUFR program relates to facilities used to provide delivery services. The EV pilot encompasses vehicles that ComEd would use to provide delivery services. LIAP assists customers in paying for their electric service. And, future Smart Technologies would be installed on the system that also provides delivery services.~~

~~The AG points out that the definition of service under Section 3-115 is quite broad and might encompass infrastructure investment as proposed by ComEd. In the context of Section 9-244, however, the service for which the utility seeks alternative regulation must be sufficiently defined in order to make the findings required by the rest of Section 9-244. Likewise, the Commission agrees with Staff's view that the standards identified in Section 9-244(b) which the Commission must find to have been met to permit approval of a utility's Section 9-244 proposal apply to the Section 9-244 proposal itself, not underlying utility investments or activities.~~

~~In order to address the rest of Section 9-244(a), the Commission will assume that ComEd's infrastructure investments are Given that ComEd's proposal is for programs relating to its electric delivery "services." The statutory language specifies that for the service that the utility is seeking alternative regulation, it ComEd may petition to implement a program(s) consisting of one of two options: (i) alternatives to rate of return regulation or (ii) an adjustment of rates based on utility performance.~~

Although ComEd states that Rate ACEP is really a combination of both (i) and (ii), the Commission does not find ComEd's Rate ACEP to fall under option (i). The Commission agrees. The costs of the programs ComEd proposes will be recovered and the programs themselves will be approved under an incentive regulation mechanism that is quite clearly an alternative to rate of return regulation. The notion that to be an alternative the program must be optional is inconsistent with the common meaning of alternative regulation and inconsistent with the *Nicor* decision. Ratepayers that will receive the "service" chosen by ComEd for its Alt Reg petition will still take service under its traditional rate of return tariffs. Rate ACEP charges will be in addition to customers' base rates, not in the alternative. Also, Moreover, ComEd will receive not only the rate of return approved by the Commission in the Company's latest rate case for the "service" provided under Rate ACEP, but an adjustment (up or down) based on its performance. In the Commission's view, Rate ACEP is a supplement to traditional rate of return regulation and because it provides for recovery of operating expense, capital expenditures and associated carrying charges it may not be fairly characterized as an alternative to rate of return regulation.

ComEd's proposal also clearly satisfies option (ii). It's rates are quite literally adjusted based on its performance in completing the programs at or below an approved target budget. The fact that the programs have many other goals and benefits – for example, improving overall reliability – does not negate the fact that ComEd's rates do most certainly adjust based on its performance in controlling costs. The statute nowhere requires that this be the only goal, or even the only metric, and we decline read into the statute such a restriction on our jurisdiction that is not present in the law itself.

~~IIEG and the AG argue that, therefore, Rate ACEP must be considered under option (ii). While this may be what the Company envisioned, it is difficult for the Commission to understand how Rate ACEP conforms to option (ii) either. This option requires a finding that the "service" provided under Rate ACEP will be compared to performance standards, which the Commission must herein adopt. As noted, the "services" proposed by ComEd are certain utility investments and associated expenses. The "standard" proposed by ComEd for assessing its performance of the "service" is whether or not ComEd will be able to beat its budget for the investments. To say that ComEd's performance for Rate ACEP "services" can be judged by whether it beats its own budget, even if approved by the Commission, does not seem consistent with what is contemplated by the statute – adjustments to rates based on utility performance. For instance, one "service" that is proposed for Rate ACEP treatment is the urban underground facilities reinvestment ("UUFRR") which involves replacing aged cables and manholes. The stated benefit of the UUFRR is to increase reliability. It appears to the Commission that the benefit of system reliability improvement is completely divorced from the performance standard proposed by ComEd, beating its budget.~~

~~Staff is Some parties express concernThe Commission is concerned that not only are the services not related to the standard proposed, but the proposed performance standard is that ComEd must beats its own budget. Staff witness Rearden found this to be a "grave structural flaw" Staff Ex. 1.0 at 3. The AG describes this as a "false metric." AG RB at 10. The Commission is similarly unenthusiastic about ComEd's~~

proposal, ed metric, and point out that ComEd has tremendous control over the proposed budget. However, those budgets are only proposals and it is this Commission that approves them. In particular, while we reject the claim that, in this case, there is not sufficient transparency to determine if the proposed budgets are reasonable, we emphasize that we will require proof of the reasonableness of the budgets, as we discuss below.

Some parties also make much of the claim that uUnder the Rate ACEP tariff, ComEd is “rewarded” for inflated budgets. We will address the specifics of those budgets in the relevant sections of this Order. However, on a general note, we observe that this is a limited pilot program and ComEd can gain incentive payments only by beating the capital portion of its budget. Those incentives are, in turn, limited to a sharing of the saved carrying costs of the investment pending ComEd’s next rate case. They are not tied to the assets total costs. Thus, they are quite modest. While we recognize that parties do and will disagree about costs and budgets, that is part of the regulatory process. We find no reason to accuse any party of bad faith and are confident that we can sort out the evidence just as we would for any budget-based cost in a traditional rate case. Although explored more fully in the discussion below for each of the proposed projects, the Commission believes a few examples are worth noting at this juncture.

Finally, we emphasize that this is a pilot program. If there is any evidence that budgets or work is being manipulated to “game” the incentive regulation system, the Commission has ample power to remedy the situation, protect customers, and deter any future abuse. Frankly, we expect no abuse.

The Commission notes that Staff, the only party to review the proposed budgets, found the EV budget overstated and difficult to verify. For instance, in response to Staff’s complaint that ComEd did not specify the exact number of hybrid bucket trucks with each particular type of equipment that it proposes to purchase, ComEd has this to say:

~~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...If ComEd were to purchase 4 or 3 hybrid bucket trucks with the lower cost Altec TA40 Aerial Devices, the 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.~~

~~ComEd RB at 22-23. In the Commission’s view, this paragraph illuminates many of the problems with ComEd’s budget based ratemaking. The Commission agrees that ComEd should have flexibility at the time of purchase for deciding things like what equipment to put on a bucket truck. The Commission does not want to and, indeed, should not micro-manage this sort of decision. Because ComEd should have this flexibility at the time of purchase, Staff rightly points out that such flexibility contributes~~

~~to the difficulty in assessing the reasonableness of ComEd's budget. In response, ComEd says that if it doesn't buy what it said it would, then it is not in compliance. To determine whether ComEd has complied, Commission Staff would have to inspect the equipment installed on the new bucket trucks. The Commission believes this proposal would take regulation to a new, and not necessarily improved, level. The Commission is similarly concerned that the UUFRR project would have the Commission, and intervenors, intimately involved in infrastructure decisions usually made by the utility.~~

~~Also with respect to the EV pilot, Staff identified several areas where it had difficulty verifying the information provided by ComEd. In particular the Company proposed a \$5,000 budget for installation of charging stations. ComEd witness McMahan justified this budget by stating that the "per-unit costs for charging infrastructure are based on estimates generated from conversations with charging infrastructure providers and not actual quotes for work." ComEd Ex. 7.0 at 13. The Commission believes that although this is one of the more egregious examples of the difficulty in appraising the reasonableness of ComEd's budgets because of lack of transparency, it is indicative of the overall problems that could be encountered in attempting to evaluate ComEd's budgets.~~

~~With respect to the incentive to inflate its budgets, ComEd states that it would be illogical for it to do so because it stands to gain so little because the dollar amounts being requested are so small. ComEd RB at 1, 18, 20. Similarly, ComEd says it would not risk its regulatory reputation for so little. ComEd RB at 2. The Commission does not find ComEd's arguments convincing. The potential gain may be small for these initial projects as noted by ComEd, but if Smart Grid costs are subject to Alt Reg recovery, much larger sums will be at issue. The Commission is persuaded by Staff witness Rearden's testimony that "ComEd has a strong incentive to overestimate the budget" and that "there appears to be nothing in Rate ACEP to prevent ComEd from strategically declaring a project complete to reap benefits from the incentive scheme." Staff Ex. at 19, 22. The Commission is wary of approving an Alt Reg program that provides a utility the ability to manipulate data or information provided to the Commission.~~

One more issue should be discussed here. Several parties expressed displeasure that ComEd did not, in its initial brief, fully challenge claims that they made in their testimony. Instead, ComEd waited until those claims were made in the initial briefs of the parties supporting them, and then responded. We express no opinion on the wisdom of this, but it is not improper. As the Petitioner, ComEd had an obligation to make a *prima facie* case for its proposal and then subsequently to counter and bear the ultimate burden of proof with respect to responses of others meeting their burden of going forward. ComEd was not legally required to include responses to expected arguments of opponents in its initial brief. ComEd is entitled to wait and see what and how arguments in opposition are actually made and need not anticipate. Illinois law is clear on that subject. [CITE] That is why the second brief is called a "response." Moreover, we find METRA's inimation that waiting to reply to arguments until they are made is "traditionally" a sign of an inability to respond less than persuasive, and irrelevant. We will weigh the arguments on their merits, not based on attempts to characterize parties' motives.

Although not central to our decision, we note two other factors on this subject. First, as the party with the ultimate burden of proof, ComEd by tradition and the technical rules of evidence would enjoy the right to make the final reply. Thus, opponents are hadly prejudiced by ComEd being permitted to reply to their arguments after they are made, rather than in anticipation. Moreover, ComEd was hardly the only party to include substantial new material in its replies. Indeed, the most startling example was Staff's Reply Brief, which included a page discussion of the Utility EV Pilot that, unlike ComEd's responses to arguments of others, could have been included in its opening brief.

~~The Commission notes that ComEd states that Rate ACEP is being proposed as a pilot of budget based alternative regulation. Accordingly, the budget process is first being tested in this docket. In this docket, ComEd proposed budgets and parties had an opportunity to comment and express concerns. ComEd says that for future projects it foresees a collaborative workshop followed by a formal proceeding. Tr. at 574. In this docket, which is a pilot of future budget reviews, ComEd's Initial Brief was remarkably short and lacked a meaningful discussion of other parties' positions as presented in the evidence of record. The Commission is concerned that ComEd, by deliberately not responding to Staff and other parties' positions until its Reply Brief, is foreshadowing its behavior in future budget reviews. In other words, the Commission believes ComEd has shown itself to be anything but collaborative. As such, the Commission concludes that the pilot has already failed.~~

~~Staff filed extensive testimony responding to and critiquing ComEd's proposed EV Pilot budget. ComEd included one paragraph in its Initial Brief regarding the "dispute concerning the estimated costs of the various vehicles and other facilities to be used for the pilot." ComEd IB at 26. Its Reply Brief contains 16 pages of argument in response to Staff's position, which was mostly covered in its testimony. Metra says ComEd used the "Ostrich Strategy" in its Initial Brief, which it defines as:~~

~~a strategy that is very, very rarely used in Commission proceedings. Its use appears to be confined to those situations in which every other party to the proceeding is opposed to the petitioner's proposal, and the petitioner cannot effectively or persuasively respond to the legitimate objections made by other parties to the proposal. In that case, a petitioner employing the Ostrich Strategy files an opening brief in which petitioner merely repeats in its opening brief the positive aspects of its proposal that were identified in its petition and direct testimony.~~

~~Metra RB at 2. Putting aside the Initial Brief, the Commission is concerned that even in its Reply Brief, ComEd barely touches on how its program conforms to Section 9-244(a). The Commission is left with the conclusion that this is because the program does not conform to Section 9-244(a). When Section 9-244(a) is considered in its entirety, the Commission cannot find that ComEd's proposed budget based recovery of certain infrastructure investments conforms to even the loosest definition of alternative regulation. With this in mind, the Commission now turns to Section 9-244(b).~~

## **B. Findings under 9-244(b)**

### **1. Finding under 9-244(b)(1)**

**a) ComEd**

The finding required under Section 9-244(b)(1) is that “the program is ‘likely’ to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-241 of the Act.” 220 ILCS 5/9-244(b)(1). ComEd maintains that its proposed Alt Reg program, including all of the proposed projects taken as a whole, meets this requirement.

ComEd explains that from the start, customers’ rates will be lower than they would be if the same projects were implemented through traditional rate of return regulation. 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. Were ComEd to fund the same investments through traditional test year regulation – e.g., by annually filing a future test year general rate case – where customers would receive no 5% credit and the realization of savings would await the next general rate case. Moreover, because of the pass-through nature of O&M costs under the Alt Reg program, customers will receive the benefit of any actual operational savings and additional efficiency benefits without waiting for the next rate case, or for Alt Reg review. Under Rate ACEP, recovery of O&M expenses are limited to approved amounts. 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.

The program also limits the recovery of carrying costs for capital expenditures to approved budgeted amounts  $\pm 5\%$ , which incentivizes ComEd to reduce capital costs below approved budgeted amounts and allows ratepayers to share in any savings achieved below the budgeted amounts. ComEd maintains that these incentive and sharing mechanisms are likely to produce greater cost savings for ratepayers than would occur under traditional rate of return regulation. ComEd Ex. 6.0, 27-28, 40-41.

ComEd also argues that the determination of whether to proceed with an Alt Reg program cost recovery mechanism is a separate question from the determination of which AMI and DA projects should or will be deployed. ComEd will only proceed with those AMI and DA projects ultimately approved by the Commission, with Commission approved budgets and work scopes. ComEd contends that approved AMI and DA projects will be likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the same reasons expressed above, including the budget limitations and sharing provisions. Moreover, continuing compliance with the requirements of Section 9-244 is an issue that can be considered when ComEd subsequently submits specific AMI and DA projects for approval by the Commission.

**b) IIEC**

The evaluation of ComEd’s proposal requires that the Commission first determine whether ComEd has submitted one proposal or four proposals and whether the tests apply to the package of programs and tariff or each individually. ComEd has not been clear on that point. IIEC witness Stephens’ assessment of the various components described by ComEd shows that whether considered as one or individual

pieces, ComEd's proposal(s) either fail applicable Section 9-244 tests, or there is insufficient information in this record to support a favorable Commission finding.

Further, ComEd has not identified any regulated service as covered by its Alt Reg and appropriate for the necessary 9-244(b)(1) comparison. According to IIEC, ComEd neither makes the required showing under that provision; nor has it provided information necessary to enable the Commission (or any party) to undertake such a comparison. In addition, ComEd's evidence of record does not provide any comparison to rates that would be in effect under traditional ratemaking -- for any service. Therefore, it has not demonstrated, and cannot demonstrate from the record evidence, that the rates resulting from its program would be lower than those otherwise in effect under traditional rate of return regulation.

IIEC asserts that ComEd's programs are not likely to result in rates lower than would have been in effect under traditional rate of return regulation for the services covered by those programs and are not fully consistent with the provisions of Section 9-241 of the Act. In fact, ComEd's programs would almost certainly increase customers' rates compared to what they would have been under traditional ratemaking. ComEd's principal basis for arguing that rates would be lower than they would otherwise be under traditional ratemaking hinges on ComEd's proposal to give customers a 5% discount on certain O&M expenses it incurs. However, this discount is capped at \$2 million, apparently for all "programs" combined rather than individually. Thus, IIEC notes that the best case scenario for ComEd customers is that they will save a maximum of \$2 million in O&M costs, compared to traditional rate of return regulation.

Also, according to ComEd, the 5% O&M credit actually represents expected savings from ComEd's performance of proposed programs. Tr. at 613. That is, the credit represents an amount that ComEd would not spend, and, therefore, would not be allowed to collect, if its programs were implemented under traditional regulation. Thus, the credit is illusionary.

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

Besides being an offset to the \$2 million or other claimed savings in ComEd package, the low income program itself imposes charges that would not be allowed under traditional regulation. The Commission has previously held that lifeline rates requiring the cost of supplying energy to a certain group of customers be subsidized by other groups or classes of customers are not permitted under the Act in the first instance. See, *Re: Commonwealth Edison Company*, Docket 59359, 59485 (Cons.), Final Order, August 27, 1975, 1975 Ill. PUC LEXIS 9 at \*25-26. Similarly, the Commission has also determined that delivery service only customers should not be required to pay the electric commodity costs of customers who receive both delivery service and commodity service from ComEd. See, *Re: Commonwealth Edison Company*, Docket 07-0566, Final Order, October 11, 2007 at 25-27. IIEC understands that ComEd's proposal would result in delivery service only customers paying a portion

of the full bill (commodity and delivery) for certain customers. This would constitute a payment that the Commission has already determined these customers should not be required to make under traditional rate of return regulation. (Stephens, IIEC Ex. 1.0-C at 20:449-454). It is obvious ComEd would not be able to recover this cost from its customers under traditional ratemaking. Therefore, by definition, charges to customers under Rate ACEP will exceed those under traditional rate of return regulation.

ComEd claims that the LIAP program helps customers, other than those eligible for the program, by reducing uncollectibles and collection costs. ComEd IB at 3. However, ComEd does not explain how a reduction in uncollectibles helps other customers, when those other customers themselves provide the funds for the reduction.

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

Also, a point that ComEd fails to mention is that some of its programs may in fact save ComEd indirect or ancillary O&M expenses. For example, to the extent that smart meters are widely deployed, ComEd may be able to save on costs associated with meter reading, such as employee salary or insurance costs. Rate ACEP makes no recognition of indirect or ancillary O&M savings, and thus provides ComEd the opportunity to accrue such savings to itself which, in the presence of traditional regulation, would have served to lower customers' rates.

On the capital side, ComEd proposes to collect a return of and on investments within a dead band of 95% to 105% of budgeted amounts. This approach gives ComEd the incentive to inflate the budget to ensure that it actually maximizes its recovery under Rate ACEP. In fact, Rate ACEP provides a financial reward to ComEd for costs below 95% of the budget, no matter how inflated the budget may be. ComEd also would have an understandable incentive to budget and invest as much as possible under its programs in order to maximize the pace and magnitude of its return. While a similar incentive is often said to exist under traditional rate of return regulation, under ComEd's Alt Reg, the effect is magnified because ComEd would recover these costs more quickly. In addition, the utilities return would be that approved in its last case, without regard to the potential reduction in regulatory risk and resulting capital costs associated with ComEd's ARP.

Further, it is a mathematical impossibility for the Commission to make a finding of lower rates under ComEd's alternative rate regulation program as a whole because ComEd has not provided specific cost estimates on the Smart Grid component of that program, and the Smart Grid component is potentially the largest program (by far) in ComEd's ARP. Without that information, including the mix of capital and O&M

expenditures, the Commission cannot determine whether ComEd's ARP is likely to result in rates lower than those that would have otherwise been in effect under traditional rate of return regulation.

IIEC opines that Rate ACEP's incremental tariff charges are always equal to or greater than zero. Therefore, rates that include Rate ACEP surcharges can only be the same as, or greater than, rates under traditional rate of return regulation. As to ComEd's claim that customers will receive greater value for the higher charges they will experience under the ARP, (see, e.g., ComEd Br. at 2, 18), the Commission cannot make a determination of the relative value of the relevant services because ComEd has not identified either existing regulated services or specific enhanced services for comparison.

As to its future investments under the ARP, ComEd has asserted that the Commission need not decide whether its proposal will actually comply with Section 9-244(b)(1) when applied to its "on going investment programs" for Smart Grid. (ComEd Br. at 34). In ComEd's view, whether ratepayers will see rates lower under the ARP than would otherwise be the case under traditional rate of return regulation is something that can be determined after the Commission approves ComEd's ARP. Nothing in the wording of Section 9-244(b) suggests that the Commission can postpone making a finding (required for approval of an alternative regulation program in the first place) until after approval of the program. Section 9-244 requires that the Commission make required findings before it approves a proposal, not after.

### **c) Staff**

Under Section 9-244(b)(1) ComEd must show that the "program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-244." ComEd witness Dr. Hemphill states, "Compared to implementing these programs through traditional regulation, the proposal is likely – indeed, essentially certain – to lower customers' rates." ComEd Ex. 1.0R at 29. He reasons that Rate ACEP reduces ComEd's O&M expenses by 5%, and he further argues that the budgeted O&M amount already includes "known and measureable savings." ComEd Ex. 1.0R at 13. Even though the 5% reduction is restricted to \$2 million, total recovery is also limited to the budget.

Staff disagrees. The proposed 5% reduction in O&M expenses represents savings for some portion of O&M costs. However, the expense reduction is limited to \$2 million, and the limit applies not just to currently proposed projects, but to all projects whose costs are to be recovered under Rate ACEP. Thus, the \$2 million limit remains constant even if smart grid and distribution automation (budgeted at \$125 million) are implemented in Rate ACEP. A spending cap equal to the budget also imposes some restraint; however, ComEd has an incentive to set budgets as high as it can, and it is difficult to verify that the budget is correctly specified. Staff Ex. 1.0R at 14. Also, the budgets which ComEd alleges will induce it to restrain spending below counterfactual traditional regulation levels are based more on trust than evidence. For example, Staff points to Staff witness Hinman's rebuttal testimony, in which she discusses the EV Pilot budget. Staff Ex. 8.0 at 18.

As Dr. Rearden points out, customers pay higher rates under Rate ACEP in the period from its inception until ComEd's next rate case, because ComEd would begin recovering its costs within three months from when it starts the project's construction. Under traditional regulation, ComEd's cost recovery would only begin after the next rate case concludes. For that reason, costs should be compared over the life of the equipment. In Rate ACEP, customers begin paying for the investment and expenses only three months after they are incurred. The difference in lifetime costs between the two approaches is that under Rate ACEP, ComEd begins recovery of and on soon after incurring costs, but depreciation accumulates every quarter, so Rate ACEP revenues decrease until the next rate case, because the revenues are based upon net plant which is decreasing every quarter. Under traditional regulation, cost recovery is dependent on the timing of the next rate case and whether the Company bases its request for a rate increase on a historical or future test year. Cost recovery only begins after the subsequent rate case is concluded and the cost recovery revenue stream is constant until new rates are determined in a subsequent rate case. Staff Ex. 1.0R at 14-16. traditional regulation would also allow the Company to begin cost recovery prior to the Company incurring the costs if the Company based its revenue requirement on a future test year.

On the other hand, Rate ACEP might comply with Section 9-244(b)(1) if ComEd implements the program more efficiently by spending less under Rate ACEP than it would if its costs were recovered under traditional regulation. And this can be true only if those induced reductions exceed the costs imposed by the quicker recovery that occurs under Rate ACEP. Dr. Hemphill appears to contend that these incentives are effective in inducing ComEd to be more efficient in its investments and thus lower costs relative to TR. ComEd, however, offers no persuasive evidence that Rate ACEP's structure provides those strong incentives. According to Staff, investment implementation is largely an engineering function that engineers presumably design using least cost techniques. ComEd appears to argue that that is not sufficient incentive, and that only when recovering its costs through Rate ACEP will it complete projects more cheaply and run them more efficiently. Dr. Hemphill simply does not support his contention that Rate ACEP can induce such a leap in efficiency. While it is not theoretically impossible that these incentives are sufficiently strong, ComEd offers no concrete evidence to support his contention.

The calculations that could demonstrate compliance with Section 9-244(b)(1) require significantly more analysis than ComEd has provided. Staff argues that ComEd needs to calculate the difference in customers' rates between traditional regulation and Rate ACEP that are likely to occur over time. And it should clearly state its assumptions concerning its cost incurrence and how quickly those costs are likely to be recovered in rates under traditional regulation and Rate ACEP. ComEd does not adequately examine these issues.

#### **d) AG**

The AG notes both the terms and project proposals of the Rate ACEP tariff as well as the reference to "services" in this portion of the statute, support a Commission conclusion that the Rate ACEP petition will not "result in rates lower than otherwise would have been in effect", and in no way satisfies this criterion.

According to the AG, even if the Commission considers the Rate ACEP programs to be “services” (which it should not), the Rate ACEP program can only produce rate increases to consumers and higher revenues for ComEd, than would exist without Rate ACEP. ComEd Ex. 1.2. Rate ACEP terms for the dollar assessments for each program are based upon plant investment amounts associated with electric vehicles, underground facilities plant and smart meters, along with associated depreciation expenses and O&M expenses. These amounts and anticipated expenditures for low income assistance cannot, under any credible assumptions, be negative in amount. Therefore, the AG asserts, Rate ACEP can only produce positive net charges to consumers, as illustrated in ComEd Ex. 1.3 and 1.4.

ComEd witness Hemphill suggests that by charging customers for only 95 percent of the incremental O&M expenses for the programs (other than Low Income) through Rate ACEP, customers have somehow “saved” money relative to what they would have paid under traditional regulation. For consumers to save, the AG states, it would be necessary to assume that 100 percent of the same incremental O&M in each future year would be incrementally recoverable under traditional regulation between test years – which is clearly not how traditional, test year regulation functions and is not realistic.

The strained logic required to support an assertion that Rate ACEP could produce lower customer rates is revealed in ComEd’s Petition at page 10 with the statement, “Were ComEd to fund the same investments through traditional test year regulation – e.g., by annually filing a future test year general rate case – customers would receive no 5% credit and the realization of savings would await the next rate case.” The AG notes that traditional regulation for ComEd has not involved annual rate cases or future test years. Even if such an approach were assumed, it would not be possible for the Company to adjust rates on a piecemeal basis for only incremental program spending, because ComEd would need to also account for growth in accumulated depreciation and accumulated deferred taxes, as well as reasonably anticipated load/sales growth, productivity gains and inflationary impacts upon all of its other costs. These facts, the AG argues, are ignored in the Company’s assertion that rates for the Rate ACEP “programs” would be lower than under traditional regulation.

As described above, Rate ACEP can only produce higher rates to consumers and higher revenues for ComEd. Otherwise, this piecemeal rate adjustment mechanism would be of no incremental value to the Company in helping to fund the programs offered in connection with Rate ACEP.

#### **e) CG**

CG asserts that in order for customers to get any benefit requires that ComEd earn a lower equity return on its Alt Reg investment or use a higher percentage of lower-cost debt to finance Alt Reg investment.

Also, CG states that with respect to the Rate ACEP formula itself, it is not apparent that the formula properly accounts for the negative salvage value already collected from ratepayers for the facilities being replaced. Tr. 383-384. For example, some of the costs in the UFR program budget are likely to be costs to remove present infrastructure such as the manholes that need to be replaced. Such costs for facilities in

rate base are considered as negative salvage value costs that utilities routinely collect from ratepayers. Hence, there is a potential for ComEd to recover the same costs under Rate ACEP that it has already recovered under TR. To the extent the Commission considers adopting any portion of ComEd's proposal, the CG recommends that the Commission closely examine the formula to verify that no double-recovery occurs.

**f) AARP**

ComEd's proposal fails to meet the very first and all-important finding required under the law—that “the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation”. Section 9-244(b)(1). There is no evidence that the investments that ComEd has chosen to include in this proposal will result in rates that would otherwise be lower than if these programs were funded under traditional cost of service regulation. AARP Ex. 1.0 at 12. Every one of the proposed projects can and routinely do occur under traditional cost of service regulation. ComEd could implement all of these programs without any Commission pre-approval, with the possible exception of expanding ratepayer funded low income programs. As a result, there is no benefit here for customers since the manner in which ComEd is seeking cost recovery through the customer charge will result in higher rates for some customers than if ComEd sought recovery through the volumetric kWh charge for delivery services in a traditional base rate case.

Under cross-examination, ComEd regulatory witness Hemphill admitted that ratepayers would indeed bear the risk of paying higher rates under the proposed projects than under traditional regulation. Tr. 415. He further agreed that regulatory lag is an incentive for cost efficiency that is built into traditional regulation, as opposed to the Rate ACEP proposal. Tr. 414. He also acknowledged that while the Rate ACEP proposal would allow ratepayers to “share” in 50% of the cost savings for projects that came in under budget, ratepayers would enjoy 100% of costs savings in a similar situation under traditional ratemaking. Tr. 416-41.

**g) CUB**

The Act requires that in order to approve an alternative regulation plan, the Commission must find that the plan would result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and that are consistent with the provisions of Section 9-241. 220 ILCS 5/9-244(b)(1). The evidence presented in this case shows just the contrary – in fact, ComEd has stated repeatedly that it would not undertake these projects under traditional regulation. ComEd Ex. 8.0 at 21. Even if the Company did so, the incentive put in place by Rate ACEP to inflate project budgets makes it more likely than not customers would pay less for the same investment under “traditional” rate case regulation. ComEd has argued that the 5% operations and maintenance expense (“O&M”) discount is “all but certain” to reduce customer rates; however, the Company carefully makes the distinction that the statute does not require that rates will be lower - only that they are likely to be lower. ComEd Ex. 6.0 at 40. ComEd's eagerness to make that distinction should raise red flags with the Commission: if the Company was

truly “all but certain” that they met the criterion of (b)(1), would such fine distinctions be necessary?

The only evidence ComEd has offered to support a finding under (b)(1) is this proposed 5% O&M savings. The expense reduction is limited to \$2 million. Staff Ex. 1.0R at 14. That limit applies not just to the projects proposed here but to all future costs recovered under Rate ACEP as well, which could include many other projects. Id. The Company argues that the savings are actually even greater than 5% because the budget includes “ascertainable operational savings.” ComEd Ex. 1.0 Rev. at 19. However, the Company has admitted that those “savings” are not measurable. Tr. at 418. Such savings, which the Company essentially asks the Commission to simply trust will be included in the calculation, are clearly not specific enough to meet the requirements of the statute. Moreover, ComEd alone has set the budgets for this “first generation” of Rate ACEP projects. Tr. at 400-401. This means ComEd alone determines whether it has met its targets based on its own budgets—providing great incentive for the Company to inflate budgets as much as possible.

It is true that Rate ACEP provides that if ComEd exceeds the O&M budget for a given project, customers will not pay the overage. ComEd Ex. 1.0 Rev. at 29. Therefore, ComEd has no incentive to go over its budget. However, ComEd also has no incentive to spend as little as possible to complete a project. The Company claims that because it would share the savings of work performed for less than 95% of the budget with customers, it has incentive to do so. That is not true. The Company sees much greater benefit from spending as much as it can to earn greater returns on those investments. If ComEd spends only 80% of its budget, it must share part of the savings with customers, and earns its return on a less-costly investment. If ComEd spends exactly 95% of its budget, it earns a greater return on its investment with no additional savings to be credited to customers. In fact, if ComEd spends even 105% of its investment, it earns a return on that entire amount. ComEd Ex. 1.0 Rev. at 7. If ComEd spends even more, it can seek to recapture the shortfall in a rate case. Staff Ex. 8.0 at 16. The 5% O&M discount that ComEd points to as meeting (b)(1) is far from the definitive savings ComEd claims.

Under traditional regulation, part of the costs of an investment may be disallowed, so the Company has incentive not to over-spend on projects. However, under this scheme, the Company is encouraged to inflate the budget so that its investments are as large as possible, creating larger returns on those investments for the Company. Under Rate ACEP, ComEd does not have an incentive to restrain spending below what would occur for these projects under traditional regulation, and it is not likely that they would do so.

ComEd has attempted to estimate the costs of the proposed projects. ComEd Exhibit 1.3 is a summary of the projected investment, O&M and Rate ACEP recovery amounts. Based upon these illustrative calculations and the underlying assumptions, ComEd customers would be charged \$4.4 million to \$5.2 million per calendar quarter, on top of base rates approved by the Commission in traditional regulation, with cumulative charges through January of 2013 totaling \$24.1 million. Id. Actual costs incurred by the Company and passed along to customers would depend upon the timing of Commission approval of programs and ComEd's rate of actual spending. AG Ex. 1.0

at 16. Charges through Rate ACEP would continue and grow until ComEd's next base rate case provides an opportunity to include the cumulative investments within test year approved utility rates. *Id.*

#### **h) ComEd Reply**

For the first time in briefs and without providing ComEd the opportunity to respond on the record, CG claims that Rate ACEP may result in double recovery of capital costs. ComEd explains that 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.

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. 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 Alt Reg program. The record establishes that these savings are likely, and that they would not be available under traditional regulation.

ComEd notes here that Staff concedes that a "spending cap equal to budget ... imposes some restraint ...." Staff IB at 52. According to ComEd, 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.

Many parties dispute ComEd's contention that its proposal meets Section 9-244(b)(1) of the Act, 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.

The AG argues that Rate ACEP can only result in higher rates than would exist without Rate ACEP. ComEd argues that if the AG's position is 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. According to ComEd, 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.

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. 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. 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.

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. 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. 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.

#### **i) Commission Analysis and Conclusion**

The Commission has reviewed the requirements of Section 9-244(b)(1) and testimony of ComEd, Staff and Intervenors. ComEd argues that the 5% O&M discount, up to \$2 million, means that Rate ACEP will result in a reduction of rates below what would occur under traditional regulation for the same services covered by the program. Staff and Intervenors argue that this discount is illusory, that customers will not actually receive it. A careful analysis of the Rate ACEP cost recovery mechanism demonstrates that they are wrong. Rate ACEP allows ComEd to recover only those costs it actually incurs. Before O&M costs are added, they are discounted by 5%. Hence, the discount directly reduces the cost exposure to customers for costs that are actually incurred by utilities and that would be recoverable under traditional ratemaking. Moreover, if ComEd responds to the budget limits with increased efficiency, customers benefit from these savings via reduced billing under Rate ACEP. ComEd’s test-year expenses would not benefit from such discounts nor from ongoing efficiency improvements.

A few parties contend that, because the evidence shows that ComEd would not undertake the proposed programs outside of an alternative regulation plan, that means that rates under alternative regulation will automatically be higher than they otherwise would be. If that were the proper way to construe the statute, any alternative regulation proposal that provided additional services to customers would be impossible under Section 9-244(b)(1), even if the incremental benefits far exceeded the costs. Indeed, taken to its logical conclusion, this interpretation would preclude any form of alternative regulatory proposal that involves capital and O&M expenses. The Commission does not believe that such a nonsensical result is a reasonable reading of Section 9-244(b)(1). As the statute makes clear, an alternative regulation proposal meets this test

EXCEPTION #2

if it is “‘likely’ to result in rates lower than otherwise would have been in effect under traditional rate of return regulation....” 220 ILCS 5/9-244(b)(1).

A similar argument is made that traditional regulation as it is often implemented denies utilities timely cost recovery through regulatory lag. However, that too, is not the comparison to make. If we were free to compare an alternative regulatory proposal to a version of traditional regulation that denies utilities timely cost recovery, we once again would not be fairly comparing the two systems. The rates that otherwise result under traditional regulation should be rates that recover the costs of the proposed program. The comparison that should be made is between implementing a proposal the costs of which are recovered through traditional ratemaking versus recovering those costs through alternative regulation. The proper question is whether, for a given program, customers rates are lower when set via alternative regulation.

~~believes that a fundamental problem with ComEd’s position is that Section 9-244(b)(1) relates back to which service is being proposed for alternative regulation under Section 9-244(a). In the Commission’s view, because Rate ACEP is more an alternative recovery mechanism for certain costs and not alternative regulation for a specific service, the comparison of rates required under 9-244(b)(1) is difficult to perform. Nonetheless, the Commission will attempt to make the required comparison.~~

~~ComEd explains that its capital cost savings mechanism works like this:~~

- ~~• If the project has been completed at a capital cost that is within 5% of the approved capital budget (a  $\pm 5\%$  “deadband”), then ComEd will continue to recover its carrying costs through Rate ACEP until such time that the investment is included in rate base in a future general rate case.~~
- ~~• 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.~~
- ~~• If the capital cost exceeds 105% of the capital budget, ComEd will not collect any carrying costs on the difference between its actual investment expenditure and the budgeted amount until consideration is given to the prudence and reasonableness of the expenditure in excess of the budget in ComEd’s next general rate case. Carrying charges previously recovered under Rate ACEP for such difference will be refunded to customers.~~

~~ComEd IB at 11-12. The Commission believes a few points about this mechanism are worth noting. When ComEd performs well, by its own standard, it completes a project within  $\pm 5\%$  of the budget. To reach the conclusion that ComEd has performed well, however, requires that the Commission ignore the many problems already discussed regarding the budget process, particularly the incentive to overstate its budgets. Regardless, in this instance, ratepayers immediately start paying the carrying costs on the capital investment, rather than at the end of a traditional rate case.~~

Viewed another way, if ComEd excels, by its own as measured against the standard of a Commission-approved budget, and beats the budget, ComEd asserts that ratepayers share in the savings of coming in below budget. Said another way, under Rate ACEP, ratepayers only pay more than actual costs if ComEd is below budget by considerably more, lowering their actual bills. For example, if actual capital costs are \$10 million below budget, ratepayers share a portion of that savings equal to 50% of the return on the difference until ComEd's next rate case (they do not pay ComEd \$5 million over actual costs, as some assert). Customers come out far ahead as they save the remainder of the return until the next rate case and all of the remaining cost difference of the asset. AARP, in its Initial Brief, points out argues that ComEd witness Hemphill acknowledged that while the Rate ACEP proposal would allow ratepayers to "share" in 50% of the cost savings for projects that came in under budget, ratepayers would enjoy 100% of cost savings in a similar situation under traditional ratemaking. See, Tr. 416-441; AARP IB at 10. This is, of course, incorrect. The purpose of incentive ratemaking is to drive the utility to perform at a cost lower than, in the words of the statute, it "otherwise" would have. Under traditional regulation, there would have been no savings for ratepayers to retain.

~~It appears to the Commission that the only time that ratepayers have the possibility of paying less than actual costs is if ComEd's actual capital expenditures are greater than 105% of the budgeted amount. In that instance, ratepayers pay actual costs (including everything over 105%) for the first two years of a project until the review proceeding. At the time of the two year review, a credit would be given to ratepayers for any carrying costs paid on capital expenditures over 105%. As the Commission understands it, after the 2-year review, ratepayers would not be assessed the carrying costs on ComEd's capital costs over 105% for the limited time period before ComEd files its next rate case. Of course, for these capital investments over 105%, such costs would then be treated just like capital expenditures under traditional regulation. Indeed, ComEd has reserved the right to seek recovery of these costs in a later rate case. It is difficult for the Commission to see, in any circumstance, how the treatment of capital costs under Rate ACEP could possibly result in lower rates for ratepayers than under traditional regulation, let alone be likely to result in lower rates.~~

~~With respect to O&M expenses, the Commission understands that ComEd's proposal allows it to begin recovering O&M expenses immediately, rather than waiting until the end of a rate case as would occur under traditional regulation. Ratepayers would be charged ComEd's actual O&M expenses for the previous quarter with a 5% reduction. ComEd Ex. 1.0R at 22. The Commission understands that this quarterly process continues until the project is completed. Notably, of the current projects, this reduction to O&M expenses only applies to UUFR. The EV pilot has no proposed O&M expenses and ComEd has proposed that the 5% reduction does not apply to LIAP. Further, the Commission understands the proposed 5% reduction to O&M expenses to be capped to never exceed \$2 million. ComEd argues that ratepayers are further protected because the O&M expenses charged to ratepayers would never be greater than the budgeted and approved O&M expenses. Some parties have claimed that While the tariff is exceedingly complex, it appears to the Commission that the way the tariff is written, ratepayers would pay 100% of budgeted amounts. While the tariff is complex, this is simply not correct. ComEd witness Hemphill testified that ratepayers~~

are charged 95% of actual O&M costs, but it is not clear to the Commission how the tariff operates to reflect any reductions from the budgeted amounts. Again, the Commission finds the tariff difficult to read, it is not evident how the reduction flows through the tariff.

~~Not only is the tariff difficult to follow, but t~~The Commission notes that the proposed cap on the 5% reduction in O&M expenses is \$2 million. The limit applies not just to the projects proposed here but to all future O&M expenses (like Smart Grid) recovered under Rate ACEP as well. However, the Commission also notes that a \$2 million cap permits the full 5% discount to be received on \$40 million in O&M expenses, more than is now proposed or authorized. If the question of the justness or reasonableness of that cap is raised with respect to future programs with greater O&M costs, the Commission can revisit it there. But, for the programs noew before it, the cap has little or no impact. In the Commission's view, ComEd has effectively offered a maximum of a \$2 million reduction in O&M expenses in exchange for immediate recovery of its O&M expenses and the carrying costs on its capital investments.

Finally, we note that the question of the accuracy of ComEd's program budgets is in issue. However, rather than discussing those issues here – either in generalities or divorced from the discussion of the particular programs proposed – we will take up the question of the accuracy of the budgets in Sections of this order dealing with the individual programs.

Thus, with the express understadning that we approve those budgets for the reasons stated in later sections, the Commission finds that Rate ACEP will result in lower rates than what would occur under traditional regulation. ComEd Alternative Regulation proposal fulfills the requirements of 9-244(b)(1).

~~Under Section 9-244(b)(1), the Commission must compare rates under Rate ACEP with rates under traditional rate of return regulation. ComEd argues that the regulatory lag that is inherent to traditional regulation is not relevant to the question under Section 9-244(b)(1). ComEd argues that the Commission, when comparing Rate ACEP to traditional regulation, should look at what rates would be if ComEd annually filed a general rate case with a future test year – where customers would receive no 5% credit and the realization of savings would await the next general rate case.~~

~~The Commission concludes that ComEd's position is inconsistent with the statutory language. The rates under alternative regulation are to be compared to the rates that “would have been in effect under tradition rate of return regulation.” Section 9-244(b)(1). The Commission finds that ComEd's position ignores that generally under “traditional rate of return regulation” the rates remain in effect for a number of years. Under traditional rate of return regulation, ratepayers would be assessed no O&M expenses or carrying costs for these projects until the next rate case. Although ComEd accuses Staff of treating this as a discount to rates under traditional regulation, the Commission believes that ComEd fails to consider that this constitutes a real ratepayer benefit and protection under traditional rate of return regulation. See ComEd RB at 48-49.~~

~~ComEd would have the Commission compare Rate ACEP rates to a hypothetical situation that has never happened in the past and seems unlikely to happen in the~~

~~future. The Commission observes that ComEd also ignores the costs associated with its assumed annual rate filings which would ultimately be borne by ratepayers. In fact, the Commission observes that ComEd does not provide any quantification of what the difference in rates would be under its annual rate case scenario and Rate ACEP. Based on the record provided, the Commission cannot find that Rate ACEP 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.~~

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

### **a) ComEd**

The finding required under Section 9-244(b)(2) 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). ComEd asserts that the Alt Reg program is likely to result in other substantial and identifiable customer benefits that would not be otherwise realized without the program. Unlike subparagraph (1) of Section 9-244(b), subparagraph (ii) does not require a demonstration that the program is likely to result in other benefits that would not be available if the services covered by the program were implemented under traditional regulation. The relevant comparison is benefits without the Alt Reg program versus benefits with the Alt Reg program.

The Uufr project has direct and significant reliability benefits. The EV Pilot will help educate ComEd and the public about uses of commercial EVs. ComEd will gain an understanding of how EV technology can be used and how it can impact its system. ComEd Ex. 6.0, 43. ComEd’s Low Income Program will help customers who otherwise might be unable to receive essential electric service. In addition, low-income assistance will mitigate some of the costs recovered under Rider UF. ComEd Ex. 6.0 at 43. AMI and DA investments will timely proceed only if the Commission adopts this Alt Reg program and then expressly finds those investments to be cost-beneficial. The AMI, DA, and EV projects also have potential environmental benefits.

### **b) IIEC**

Based on the record in this case, IIEC respectfully states that the Commission will not be able to find that ComEd’s proposed Alt Reg in general, or the proposed programs that ComEd has identified, are likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program. (220 ILCS 5/9-244(b)(2)). ComEd has identified four benefits attributable to its Alt Reg and the programs incorporated in same.

ComEd has argued that absent approval of its Alt Reg, the benefits of approved Smart Grid investments would be delayed and lost. IIEC respectfully disagrees. The Commission has initiated a detailed and comprehensive procedure for Smart Grid in Illinois. In initiating that process, the Commission determined that the development and approval of cost recovery mechanisms for Smart Grid investment should await further information -- a determination of what Smart Grid is and an identification (and potential

quantification) of the benefits of Smart Grid, which would inform the Commission's determination of the appropriate cost recovery mechanism or mechanisms.

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

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

IIEC agrees that ComEd's claim that certain customers will receive \$10 million a year in benefits for two years under its low income assistance program is factually correct. However, ComEd ignores that only a few customers would receive this benefit and that the vast majority of ComEd customers would pay more. ComEd also claims that funds collected under the LIAP program would offset costs it now recovers from the same customers under Rider UF. Renaming the flow of funds from customers does not demonstrate the existence of a benefit for these customers. It merely shows that ComEd is funding essentially the same cost by a different means and customers receive no benefit greater with the program than without.

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

IIEC also notes that ComEd attempts to distinguish the benefits requirement of Section 9-244(b)(2) from the requirement of Section 9-244(b)(1), acknowledging in the process the services element of Sections 9-244(a) and 9-244(b)(1). ComEd argues that ". . . unlike subparagraph (1) of Section 9-244(b), subparagraph (b)(sic) does not require a demonstration that the program is likely to result in other benefits that would not be available if the services covered by the program were implemented under traditional regulation." ComEd IB at 39. ComEd goes on to argue that "[t]he relevant comparison is benefits without the Alternative Regulation program versus the benefits with the Alternative Regulation program." (Id.).

Under that unique ComEd interpretation, a utility passes the second test of Section 9-244(b) simply by stating it will not implement the programs/projects described in its alternative regulation program absent approval of that ARP by the Commission. Such a construction of Section 9-244(b)(2) disconnects that test from the regulated service that is the qualifying subject of a Section 9-244 program. Under ComEd's interpretation, Section 9-244(b)(2) is devoid of all context, and the test is largely meaningless. ComEd's test essentially says: "Is this proposal better than doing nothing?" ComEd's contorted interpretation is not possible if the "regulated services"

limitation of Section 9-244(a) is respected. That threshold qualification provides the context in which a utility must demonstrate that a regulated service, covered by the proposed ARP, meets all the tests of Section 9-244(b).

ComEd's unique interpretation of Section 9-244(b)(2) and its insistence that it will not undertake the program unless the proposed ARP is approved are the utility's only bases for asserting compliance with the second test. However, a utility cannot meet that test by simply stating it refuses to do the project under traditional regulation.

**c) Staff**

Under Section 9-244(b)(2) the Company must show that "the program is likely to result in other substantial and identifiable benefits that would be realized customers served under the program and that would not be realized in the absence of the program.

Dr. Hemphill argues that all proposed programs have benefits not available under traditional regulation, but the only reason that potential benefits are not available under traditional regulation is that ComEd states that it will not proceed with the projects unless the costs to implement them are recovered through Rate ACEP. Thus ComEd's perception of compliance with Section 9-244(b)(2) is a tautology. However, ratepayers as a whole do not receive "substantial benefits" from the Low Income Assistance Program, since it is a simple transfer from one group of ratepayers to another. Also, the incentive mechanism does not operate on Low Income Assistance Program costs, so Rate ACEP cannot generate any benefits beyond the simple transfer of value from one group of ratepayers to another. (Staff Ex. 1.0R, p. 20)

Further, in response to Dr. Hemphill's rebuttal testimony, Dr. Rearden noted there are many ways that programs to aid low income families could be funded. The benefits to low income customers are not uniquely available only under Rate ACEP, so if Rate ACEP is not approved, any benefits from a low income program are available "in the absence of the program." And using Dr. Hemphill's logic, many reallocation programs could comply with Section 9-244(b)(2), if the Commission only need consider the extent to which one group benefits without regard to the costs imposed on other customers. (Staff Ex. 8.0, pp. 18-19)

**d) AG**

Section 9-244(b)(2) provides that the Commission must conclude 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). Aside from the Low Income Assistance program, however, ComEd has not demonstrated "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." The costs and benefits from the other three proposed programs can readily be addressed and realized under traditional regulation without Rate ACEP.

The AG notes that ComEd argues that the "relevant comparison is benefits without the Alternative Regulation program versus benefits with the Alternative Regulation program." ComEd IB at 39. According to the AG, however, this argument is not sustainable. It is not enough to assert that benefits will be created by investing in

these programs because if the Rate ACEP program is not approved the projects will not be pursued.

The AG asserts there is nothing special about the EV pilot, as it could readily be absorbed into ComEd's routinely large need to deploy replacement vehicles each year. Rather than simply integrating the proposed EV Pilot into normal vehicle replacements, Rate ACEP clearly envisions shifting all the up-front costs and risks of the Company's planned EV research project onto customers, even though any benefits from this pilot are far from certain. AG Ex. 1.0 at 28.

With respect to the UUFR program, the AG states that there has been no showing by ComEd that existing urban underground facility maintenance practices or spending levels are inadequate or that customers should be made to fund more aggressive testing and replacement of such facilities in order to correct unreliable or unsafe conditions or cost-effectively create new jobs. If a more pro-active maintenance policy was appropriate and cost justified, ComEd could have commenced such spending and proposed recovery for such investment in the context of its overall rate case revenue requirement, rather than a discrete Rate ACEP surcharge. Even if the Commission accepts Ms. Blaise' suggestion that paying for an accelerated level of investment provides some level of improved reliability, there is no specific information provided in the Company's filing identifying or quantifying any benefits, nor any showing that such benefits are not achievable under traditional regulation.

With respect to the installation of AMI meters and other smart grid technology, whether benefits to customers can justify cost-effective, widespread deployment of smart grid remain unanswered at this time. Approving a cost recovery mechanism for these investments before the Commission has had a chance to evaluate the technology's benefits is a classic case of putting the cart before the horse.

As noted by AG witness Brosch, for now and even after the smart grid Policy Docket is concluded, ComEd can continue to invest in distribution automation as it has historically, where that investment is needed based on applying conventional technical criteria to the individual circumstance. Customers can continue to enjoy the benefits of such cost-effective ongoing deployment under traditional regulation. It simply is inappropriate to require ratepayers to pay a Rate ACEP surcharge for new smart meters – or to design a special cost recovery mechanism for the meters – before the Commission and stakeholders have formally evaluated the results and any benefits of the ratepayer-funded pilot.

The AG does not dispute that the continuation of ComEd's Low Income Assistance Programs will produce benefits, as discussed in detail in the Direct testimony of Roger Colton. However, as explained by AG witness Colton, there is no reason such programs could not be made available under traditional rate case regulation with funding by Exelon shareholders rather than ratepayers. The Company's attempt to link continuation of Low Income Assistance to approval of Rate ACEP is opportunistic and inappropriate, as there is nothing about program cost recovery that requires a separate rate adjustment mechanism. The costs of the proposed low income programs have historically been paid by Exelon, rather than by ComEd's consumers. According to the AG, the request to fund these expenses through Rate ACEP is nothing

more than a repackaged rider request, albeit buried in the customer charge. However, riders are typically used to recover utility expenses that are large or volatile, difficult to quantify and beyond the control of utility management. The low income program expenses, however, fit none of these criteria. Recovery of low income assistance program costs should be resolved in ComEd's pending base rate case and not be the subject of additional, incremental charges through Rate ACEP.

**e) AARP**

ComEd has failed to offer any identifiable benefits, performance metrics, or other means to assure that its proposal will adjust rates based on the utility's performance, as required by Section 9-244(b)(2). The "benefits" that Dr. Hemphill identifies are not accompanied by anything other than unenforceable promises and vague and unsupported assertions that the programs that ComEd has identified will in fact deliver measurable benefits. Nor does ComEd link its cost recovery to the delivery of any measurable benefits other than its plan to meet a negotiated budget. ComEd undertakes no risks in this proposal since (1) ComEd has selected the projects that it alleges would not be required or contemplated under traditional base rate regulation; (2) ComEd will undertake these projects pursuant to a negotiated budget; and (3) ComEd will obtain cost recovery via a surcharge without any delay between incurring the expense and seeking rate recovery and without any demonstration that the investments have actually produced any measurable benefits.

ComEd has not proposed any objective or quantifiable means to evaluate its performance other than keeping to its predetermined budgets for any of the four areas of proposed investment. AARP Ex. 1.0 at 17-18. ComEd's Petition that each program will include a "benchmark of the investment or work that is to be accomplished within those budgets." Petition at Para. 12. However, ComEd defines the term "benchmark" as merely referring to ComEd's ability to meet or beat the applicable capital investment budget, within a plus or minus 5% deadband, and to perform the work within the O&M budgets, less its "voluntary" deduction of 5% of those expenses up to a cap of \$2 million. AARP Ex. 1.0, p. 18. A proper implementation of alternative regulation (and which is clearly required by the Illinois statute) requires the identification of performance areas, the identification of performance metrics to assure that performance is measured against an historical baseline, and verification of results during and after the term of the program. AARP Ex. 1.0, p. 18. ComEd has failed to identify any means by which customer benefits will be tracked, delivered, or verified in any of its proposed investment areas.

Whether a utility spends a certain amount of dollars on a proposed project does not link the expenditures to the delivery of any "performance for the program" as alleged by Dr. Hemphill on behalf of ComEd. Dr. Hemphill's stated in response to AARP's testimony that "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." Hemphill Rebuttal at p, 10, lines 201-202. Dr. Hemphill confuses the means and the ends. The budget for an agreed upon program is only the means to achieve the purpose of the program. ComEd's failure to propose how or even whether to measure the "ends" or the actual performance implicit in the purpose of the proposed budget is a fatal defect in its filing.

Furthermore, Dr. Hemphill's statement that a pre-approved budget "will be a powerful incentive mechanism for ComEd to operate efficiently" (Hemphill Rebuttal at 12, line 245). is also without merit. The incentive to operate efficiently is best achieved when the performance of the utility is measured against the request for cost recovery. The question is not whether a pre-approved budget is achieved, but whether ratepayers received the promised benefits in a cost effective manner that is an improvement on traditional cost recovery policies. However, even Dr. Hemphill's reliance on pre-approved budgets in this proposal is a mirage since the Company reserves the right to spend more than the approved budget and seek cost recovery in a future base rate case. ComEd wants to cover every conceivable risk to itself and makes no promise to deliver actual performance or measurable benefits to its customers in return for this guaranteed cost recovery mechanism. Whether the budget is met is not the point of regulation and certainly should not be the purpose of alternative rate regulation. Simply raising customer rates to accomplish a pre-approved budget is not a proper purpose of alternative rate regulation.

ComEd's proposal to "submit reports" to the Commission on a regular basis is also an insufficient means to achieve the statutory objective to measure utility performance. The purpose of alternative regulation in Illinois law is not to submit reports, but to identify how benefits that would not otherwise occur will be measured, what results will be tracked and reported, and how the baseline performance against which performance under the alternative regulation plan will be measured. AARP Ex. 1.0, p. 18.

#### **f) CUB**

The Act requires that an alternative regulation program be "likely to result in other substantial and identifiable benefits that would be realized by customers served under the program and that would not be realized in the absence of the program." 220 ILCS 5/9-244(b)(2). ComEd has not demonstrated "other substantial and identifiable benefits that would be realized by customers served under the program that would not be realized in the absence of the program" as required by the Act. 220 ILCS 5/9-244(b)(2). The "program" here is not any specific project but the mechanism itself, Rate ACEP. The Company readily uses Rate ACEP in general as "the program" to meet the criteria of (b)(1) and (b)(8). ComEd Ex. 6.0 at 39-40. While the specific projects proposed each have some benefits to customers, investing in them under Rate ACEP does not have any greater benefits than investing in them under traditional regulation. In fact, the projects proposed by ComEd have all been undertaken by the Company under traditional regulation in the past in different forms. This leads to the inescapable inference that in the absence of Rate ACEP, these projects would likely still occur in some form. A project by project review only highlights how these projects, while they might be discretionary, are by no means inappropriate or impossible under traditional regulation.

Rate ACEP, the program at issue in 9-244(b)(2), does not provide substantial and identifiable benefits to customers that would not be realized in absence of the program, because each of the projects proposed by ComEd under Rate ACEP can and has benefitted customers under traditional regulation. ComEd's apparent refusal to undertake these projects absent UFR amounts to nothing more than a threat to the

Commission to try to ensure alternative regulation, which results in no benefits other than to shareholders.

### **g) ComEd Reply**

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 IB at 55. Staff complains that the comparison to benefits realized in the absence of the program is not the comparison under subparagraph (b)(1). 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. 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. ComEd Ex. 6.0 at 35. 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. The AG also argues that there is nothing about the EV pilot that could not be achieved under traditional regulation. According to ComEd, the AG has lost sight of the fact that no Rate ACEP equals no programs.

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. ComEd states, however, that it has provided testimony that these programs are discretionary, but that they would be beneficial nonetheless. ComEd Ex. 1.0 Rev. at 8. ComEd witness Blaise has testified regarding the number of interruptions the UUFR is likely to avoid, and Staff has testified that the UUFR is so beneficial, it should be mandated. ComEd believes it has demonstrated that substantial benefits will be available with the UUFR 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. The AG’s argument ignores that Section 9-244(b)(2) does not require that the benefits only be achievable under alternative regulation. Section 9-244(b)(2) only requires a showing of stand-alone benefits, not in comparison to traditional regulation.

### **h) Commission Analysis and Conclusion**

As noted above, the finding required under Section 9-244(b)(2) 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.” ~~It appears to the Commission that ComEd has lost sight of what is being evaluated under Section 9-244(b)(2). It is the Rate ACEP mechanism itself that must provide benefits to ratepayers that would not otherwise be available. ComEd, perhaps in an attempt to obfuscate the real issue, focuses on the individual~~

EXCEPTION #3

~~projects it has proposed. In the Commission's view, ComEd's focus on the proposed projects misses the purpose, and possibilities, of alternative rate mechanisms under Section 9-244.~~

~~The Commission understands that Rate ACEP is designed so that the Commission could reject any or all of the proposed projects. This would leave the Rate ACEP mechanism in place without some or even all of the benefits enumerated by ComEd. The Commission believes, however, that this exposes the basic flaw in ComEd's focus on the projects and not the mechanism. Because ComEd has proposed for the recovery of certain costs through alternative regulation, and not specific services, the Commission does not see how the proposed Alt Reg mechanism provides any benefits in and of itself.~~

~~The Commission has reviewed the parties' arguments regarding the appropriate comparison for this element of the statute and further observes ComEd to vigorously oppose any consideration of traditional regulation. At a very basic level, the Commission agrees with ComEd that, unlike Section 9-244(b)(1), there is no explicit mention of traditional regulation in Section 9-244(b)(2). Thus to give meaning to this statutory construction of Section 9-244(b)(2), the Commission agrees with ComEd that the Commission only need find substantial and identifiable benefits to the Rate ACEP programs. While it is tempting to analyze the benefits of the programs with that which is available under traditional regulation, as Staff and Intervenors do, practically speaking this comparison makes little sense because ComEd would not make such discretionary investments and expenditures under traditional regulation. Pursuant to Section 9-244(b)(2), the Commission must consider benefits for customers "served" under the program, i.e., all of ComEd's delivery service customers. In the absence of Rate ACEP, these customers continue to be ComEd delivery service customers served under traditional regulation. Because of the form of alternative regulation proposed by ComEd, i.e. infrastructure investment costs recovered from all its delivery service customers in addition to base rates, it is inevitable when considering any benefits under Section 9-244(b)(2) that a comparison with traditional regulation will be made because that is what remains in the absence of Rate ACEP.~~

~~If the Commission ignores this problem and accepts ComEd's framing of the issue, we can look at the individual Rate ACEP programs. The Commission believes that one way to view ComEd's position is as follows: the programs at issue here provide benefits to customers; ComEd will not undertake the programs at issue here in the absence of Rate ACEP; therefore, Rate ACEP provides benefits to customers that would not be realized in the absence of Rate ACEP.~~

~~With regard to LIAP, the Commission agrees that, as discussed below, those who would take advantage of LIAP would benefit from the program, and that these benefits would otherwise expire. ; The Commission also agrees with ComEd that Rate ACEP is a reasonable approach to cost recovery. -however, the Commission concludes that benefit is exactly off-set by the cost it imposes on those who must pay more as a result of LIAP.~~

~~With regard to the EV pilot, the Commission agrees that there may be significant benefits for ComEd to employ more widespread use of EVs. understands that ComEd~~

~~claims benefits will accrue to customers, it is not entirely clear, however, that the alleged benefits constitute "substantial and identifiable benefits." In fact, it seems to the Commission that the benefits associated with the EV pilot are difficult to identify and the record does not support a conclusion that the benefits are substantial. Finally, it is not clear to the Commission that any benefits associated with the EV pilot will not ultimately be obtained in the absence of Rate ACEP or even that any such benefits will occur at a substantially later point in time.~~

~~Finally, as the Commission understands it, UUFR is intended to provide improved reliability at an earlier point in time than would otherwise occur. The Commission believes that, everything else equal, improved reliability at an earlier point in time is beneficial to customers. Unfortunately, everything else is not equal. If the Commission were to approve Rate ACEP and UUFR was to proceed, customers would face higher rates to pay for UUFR investments and expenses at an earlier point in time. An additional consideration is Staff's recommendation that ComEd be required to undertake UUFR even if Rate ACEP is not approved. This further draws into question any benefits of Rate ACEP. Based upon the record in this proceeding, the Commission cannot conclude that UUFR under Rate ACEP would result in substantial and identifiable benefits for customers that would not be realized in the absence of UUFR under Rate ACEP.~~

~~Accordingly, the Commission finds that ComEd's proposal does not satisfy the requirements in Section 9-244(b)(2). The Commission concludes that the proposed Rate ACEP mechanism does not provide substantial and identifiable benefits for customers that would not be realized in the absence of Rate ACEP. Even if the Commission was to accept ComEd's argument that the individual projects can support the necessary findings under Section 9-244(b)(2), the record does not support a finding that any customer benefits are more likely to be realized with Rate ACEP than without it.~~

### **3. Finding under 9-244(b)(3)**

#### **a) ComEd**

The finding required under Section 9-244(b)(3) is that "the utility is in compliance with applicable Commission standards for reliability and implementation of the program is not likely to adversely affect service reliability." 220 ILCS 5/9-244(b)(3). ComEd states that it is in compliance with applicable Commission standards for reliability. Implementing this proposal is not likely to adversely affect service reliability. In fact, the UUFR project and future AMI and DA investments are expected to increase service reliability.

#### **b) Staff**

With respect to Section 9-244(b)(3), Staff does not contest that ComEd currently meets Commission standards, and it does not dispute that UUFR has a good chance to improve reliability. However, as discussed in Staff witness Stutsman's testimony, there is a danger under Rate ACEP that the UUFR reliability program gets shortchanged in order to bring it in under budget.

### c) Commission Analysis and Conclusion

The evidence shows that UUFR will improve reliability. As discussed elsewhere, we have ample ability to review the UUFR budget and monitor its performance to ensure that it is not shortchanged. But, regardless, that fear would be no reason to reject the program under this provision of the law. Even a partially completed UUFR program will improve reliability, albeit by a lesser amount. There is no basis to conclude that approving ComEd's alternative regulation plan is likely to adversely affect reliability.

~~While Staff raises a legitimate concern that UUFR is not appropriate for budget based ratemaking. The Commission agrees that UUFR decisions should be based on reliability, not whether a budget will be met. The Commission is concerned that there is a potential that Rate ACEP could adversely affect reliability, if it were approved. Thus, it is not clear that ComEd's proposal meets the requirements of Section 9-244(b)(3).~~

## 4. Finding under 9-244(b)(4)

### a) ComEd

The finding required under Section 9-244(b)(4) is that "implementation of the program is not likely to result in deterioration of the utility's financial condition." 220 ILCS 5/9-244(b)(4). ComEd contends the proposed Alt Reg program is not likely to result in deterioration of ComEd's financial condition. The program allows ComEd to recover budgeted capital carrying costs and incremental O&M expenses, less the guaranteed customer credit, provided ComEd successfully implements the approved projects.

### b) Staff

Staff notes that with respect to the condition in Section 9-244(b)(4), Dr. Hemphill contends that ComEd's financial condition will deteriorate if it is not granted approval for Rate ACEP and the proposed projects are funded through traditional regulation. ComEd Ex. 1.0 R at 31. Thus, he claims that Rate ACEP protects customers, and ComEd only intends to engage in the program if Rate ACEP is granted. ComEd Ex. 6.0 at 42. However, it appears to Staff that Rate ACEP is not likely to lower rates relative to traditional regulation, i.e., it will not likely lower ComEd's revenues, so it does not seem that Rate ACEP is likely to result in a deterioration of ComEd's financial condition.

### c) Commission Analysis and Conclusion

The Commission finds that all evidence points to Rate ACEP is not likely to result in deterioration of the utility's financial condition improving ComEd's financial condition. Staff's claim concerning the reduction in ComEd's rates has been previously addressed.

## 5. Finding under 9-244(b)(5)

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). ComEd submits that implementation of the program is not likely to adversely affect the development of the competitive markets. Indeed, AMI investment may improve the ability of competitive suppliers to deal with their customers.

**a) Staff**

With respect to Section 9-244(b)(5), Staff notes that during cross examination, ComEd witness Hemphill reiterated his opinion that ComEd may be the provider of charging infrastructure when he quoted Acting Commission Chairman Flores, “It’s not just about being able to hook up or plug in your electric car at home. ...It’s also about being sure you have the necessary infrastructure so that you can facilitate the electrification of transportation throughout the state.”

In a report provided to the Commission, ComEd stated that the deployment of plug-in electric vehicle charging infrastructure appears to fall within the definition of a competitive service. In essence, it is a service “related to, but not necessary for, the provision of electric power and energy or delivery service.” ComEd described the existence of numerous entities, at least 14 in the Chicago area, that are “ready, willing and able” to provide electric vehicle charging services and noted that “competition can be expected to be robust” in the electric vehicle charging services market, unless it is “stifled by the costs of regulation[.]”

Given that Section 9-244(b)(5) of the Act requires that the “implementation of the program is not likely to adversely affect the development of competitive markets,” Staff would point out that the expertise ComEd gains through operating these charging stations may give it a first-mover advantage that could adversely affect a potentially competitive EV charging station service provider market.

**b) ComEd Reply**

ComEd maintains that Staff’s assertion is incorrect and that Staff’s concern is not supported by the record. The “infrastructure” referred to by Hemphill 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.

**c) Commission Analysis and Conclusion**

ComEd’s EV Pilot is of utility electric vehicle charging stations and the delivery services infrastructure required to support EV charging. Moreover, ComEd has affirmatively offered – from the start – to make the results of the pilot freely available to all. There is no evidence to support any fear that ComEd’s utility fleet vehicle pilot is a surreptitious entry into providing commercial charging or, for that matter, that this pilot would give ComEd any “first mover” advantage in a market that is not even part of the pilot.

~~Clearly Staff is concerned with whether the EV pilot might allow ComEd to get “first-mover” advantage in the competitive marketplace for charging stations. It is an interesting question, but also one that has not been fully developed and is unnecessary for reaching a decision in this docket.~~

**6. Finding under 9-244(b)(6)**

**a) ComEd**

The finding required under Section 9-244(b)(6) is that “the electric utility is in compliance with its obligation to offer delivery services pursuant to Article XVI.” 220 ILCS 5/9-244(b)(6). ComEd submits it is in compliance with its obligation to offer

EXCEPTION #6

delivery services pursuant to Article XVI of the Act. ComEd has offered retail delivery services since 1999, and continues to offer those services.

**b) Commission Analysis and Conclusion**

No party has argued that Rate ACEP would impact ComEd's compliance with its obligation to offer delivery services. Based on the record, the Commission does not find that Rate ACEP would impact ComEd's compliance with its obligation to offer delivery services.

**7. Finding under 9-244(b)(7)**

**a) ComEd**

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). ComEd contends the program includes reporting requirements and other provisions that will enable the Commission to adequately monitor ComEd's implementation of the program. The Commission will have a central role 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. Further, Rate ACEP contains reporting requirements that will ensure that the Commission can adequately monitor the implementation of the program.

**b) AG**

As noted by AG witness Brosch, ComEd's proposal would require the Commission to play, what is characterized as a "central role in determining the direction ComEd will take with future investments in Smart Grid technology, accelerated underground facility reinvestment, and EV, as well as low income assistance." Given the amount of analysis Staff and Intervenors must accomplish in reviewing any of the Rate ACEP project proposals, as well as the short time frames (five months) envisioned for the formal Commission proceedings, it is unlikely that the Commission can effectively play "a central role" in determining ComEd's investments. In addition, the Commission's review is limited to the proposed projects and budgets offered by the Company and the constraints of the administrative process. ComEd's reports regarding how it performed in comparison to the budgets it sets is not meaningful information to evaluate performance.

For these reasons, the evidence in the record failed to demonstrate that the ComEd-proposed reporting requirements will enable the Commission to adequately monitor its implementation of the program.

**c) Commission Analysis and Conclusion**

The Commission concludes that ComEd's Alt Reg proposal fulfills the requirements of Section 9-244(b)(7). The AG's concern is not borne out by a reading of the Rate ACEP Tariff (ComEd Ex. 1.2, Original Sheet X+19), which calls for proceedings that are more involved than what the AG claims. Moreover, the Commission finds merit in ComEd's intention to obtain broad public input when proposing investments and expenditures for the type of programs covered by Rate

ACEP. Especially when considering programs for new technologies and other expenditures that go above and beyond what is necessary for ComEd to fulfill its basic service obligations, public input and Commission review will ensure that such investments and expenditures are prudent. ~~Because the Commission has already found Rate ACEP does not meet the requirements of Section 9-244, it is not necessary to delve into the specifics of the reports that the Company proposes. The AG, however, does raise a valid point that a mere comparison of actual costs to the budgeted amounts may not provide enough information to decide whether Rate ACEP should be extended beyond the pilot period. The Commission believes that perhaps additional information regarding whether the investments were prudently made would also be beneficial in evaluating Rate ACEP. Also, the Commission believes it would be useful to have information quantifying benefits.~~

## **8. Finding under 9-244(b)(8)**

### **a) ComEd**

The finding required under Section 9-244(b)(8) is that “the program includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits.” 220 ILCS 5/9-244(b)(8). ComEd submits that the proposed Alt Reg program provides for equitable sharing of any net economic benefits between the utility and its customers. Customers get a guaranteed O&M credit and shared efficiency benefits, on top of program benefits. In addition, ComEd’s recovery of its O&M expenses and return on capital investments are at risk. Full recovery thereof is dependent on ComEd successfully bringing plan benefits to customers on or within the budget deadband.

### **b) IIEC**

IIEC does not believe, based on the record in this case, that the Commission can find that the Alt Reg proposal and various programs provide for equitable sharing of any economic benefits between ComEd and its customers, to the extent the programs are likely to result in such benefits. According to IIEC, ComEd’s 5% discount on O&M expense does not represent an equitable sharing. Under ComEd’s approach, the utility will be able to recover O&M expenses that might not otherwise be recoverable under traditional rate of return/test year ratemaking. Therefore, giving customers a 5% discount on O&M expense (up to the \$2 million cap), but requiring them to pay 95% of O&M expense that might not otherwise be reflected in their rates, does not appear to be equitable. Also, it does not appear to be equitable to cap recovery of carrying charges on investment made under Rate ACEP if the underlying investments are measured against a budget inflated in response to clear economic incentives. Furthermore, under ComEd’s approach, any investment above the budget is ultimately still eligible for recovery in the next ComEd rate case. Org. Sheet No. X+20. In addition, Rate ACEP contains no provisions for sharing any indirect O&M savings that may result from ratepayer funded investments, e.g., gasoline savings, employee salary or insurance, etc.

Finally, the return on and of this investment, and the timing of that return, are more favorable to ComEd -- and less favorable to customers -- than what customers would otherwise pay under traditional rate of return regulation. If ComEd does respond

to the economic incentive to budget conservatively high, it can be no worse off than it would be under traditional regulation and would likely be better off, since under traditional regulation, investments are not immediately recognized in base rates. This hardly produces an equitable sharing. IIEC Ex. 1.0-C at 24-25.

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

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

Separately, ComEd has rejected proposals to share the benefits of the reduced cost of capital ComEd will likely realize as a result of Commission pre-approval of Smart Grid investments under the ARP, if the proposal is approved. See, Tr. 381-382 (indicating that ComEd is not ready to accept a lower ROE or use lower cost debt for such investments)).

### **c) Staff**

Under Section 9-244(b)(8) the Company must show that the "program includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits." ComEd has not demonstrated that there are any net benefits to any of its programs. Due to problems with using budgets to evaluate the utility's performance, Dr. Rearden argues that Rate ACEP's incentive mechanisms do not, by themselves, guarantee that net benefits are fairly allocated. ComEd has proposed to collect its costs through a per customer charge allocated by customer class.

### **d) AG**

The AG states that Rate ACEP is designed to provide full recovery, on a piecemeal basis, of all the incremental costs incurred by ComEd, except for five percent of O&M expenses for the EV pilot and Uufr programs, so long as ComEd contains its discretionary capital spending to within 105 percent of its own budgeted amounts. AG witness Brosch characterized this not as equitable sharing, but rather an aggressive recovery of, and conversion of, discretionary costs into new revenues for ComEd, rather than an "equitable sharing". AG Ex. 1.0 at 34. The EV program is a pilot, for which any

economic benefits are uncertain and for which ComEd's proposal would shift costs and risks to ratepayers and away from shareholders. If the UFR produces any net economic benefits, through reduced outages and outage response costs, the AG argues that the resulting cost savings would not be shared with ratepayers until they are captured within a future rate case test year.

AG witness Colton explains in his testimony why recovery of low income assistance program costs from ratepayers is inequitable. The inescapable message he delivers is that ComEd, along with its Exelon parent and generation affiliate, having spent significant amounts to support ComEd CARE over the past five years, cannot now argue that continuing to offer bill payment customer assistance programs is a corporate burden so great that it must ask ratepayers to bear even higher rates to fund what its independent judgment embraced years ago as a reasonable expenditure, and in the same breath argue that this is a significant benefit to ratepayers. The AG believes that the Commission must surely see the inequity of this request. Exelon shareholders have supported ComEd CARE programs every year since 2006 with at least \$5 million in annual funding, and more than \$10 million per year most years and reaped the goodwill associated with those efforts. ComEd's request that ratepayers now take over this responsibility, the AG states is not only unsupported in the record, but unfair to so many customers who struggle to pay even existing rates.

**e) CTA**

CTA notes that ComEd argues that the rider meets Section 9-244(b)(8) because it would provide an equitable sharing of any net benefits and a guaranteed operations and maintenance benefit. CTA points out, however, that ComEd neglects to state that the O&M benefit to ratepayers is capped per Rate ACEP at \$2 million for all projects, so ComEd alone would keep all O&M savings in excess of the \$2 million - and not share them with ratepayers.

**f) AARP**

In addition to the transferring risk, ComEd's so-called "incentives" are more heavily weighted toward the Company than customers, in violation of the Section 9-244(b)(8) requirement that any alternative regulation provide for an "equitable sharing of any net economic benefits between the utility and its customers . . ."

There is no reasonable basis for the proposal that passes through a 5% reduction in Operations and Maintenance ("O&M") costs that would not otherwise occur except through this proposal, particularly when ComEd controls the basis for the derivation of the budget. AARP Ex. 1.0 at 14. ComEd's proposed "incentive" with respect to recovery of capital costs is a no-risk proposition to the electric company since any under-recovery could be the subject of a request for recovery in a future base rate case, thus eliminating the purpose of an alternative rate plan. *Id.*

ComEd's profits or ability to earn its authorized rate of return is not threatened in any manner by this proposal. As a result, ComEd's proposal will transfer risks from shareholders to customers without any apparent benefit to customers in terms of actual performance and results associated with these proposed investments.

**g) CUB**

CUB argues that even if ComEd's proposed investments result in any economic benefits, Rate ACEP does not include a means to share those benefits with customers. The proposal is designed to provide full recovery, on a piecemeal basis, of all the incremental costs incurred by ComEd (with the dubious 5% "discount")—this is not savings sharing, but instead is a shifting of risk from the Company to shareholders. Economic benefits from each of the programs proposed are uncertain, and any economic benefits the programs do have would not be shared with customers until the Company's next rate case.

The company has pointed to three ways in which the "net economic benefits" of Rate ACEP are shared between the Company and customers. ComEd Ex. 1.0 Rev. at 32. First, they claim that 50/50 sharing of the carrying costs saved due to projects completed under budget meets the requirements of 9-244(b)(8). *Id.* at 19, 32. However, that assumes that the mechanism encourages savings—which it does not in fact do. As previously explained, Rate ACEP actually has incentives for the Company to overstate the budget, and then to spend the entire budget in order for the Company to see the greatest returns.

Second, the Company's assertion that the benefit to low-income customers of the CARE program fulfills the (b)(8) requirement requires an extremely broad interpretation of the statute. ComEd Ex. 1.0R at 32. Reallocation of company revenues is not the same as sharing net economic benefits. The statute cannot be stretched to the degree the Company desires. It clearly does not envision that taking money from one group of customers and giving it to another group would qualify as "sharing" of economic benefits.

Finally, ComEd claims that customers will derive "other" benefits "from the greater flexibility and competitive opportunities that will ultimately result from the installation of smart grid technologies." ComEd Ex. 1.0R at 32. There is no proposal in this docket for approval of smart grid investments. The Company has been very clear on this point. They cannot claim that the Commission should consider benefits of a project that might be proposed sometime in the future when determining the whether the current proposal meets the statutory requirements.

The Company has failed to show that any net economic benefits will even exist, much less that they will be equitably shared with customers. Instead, the Company has shown that it alone will retain economic benefits of making investments of larger size than they might otherwise under traditional regulation, due to overstated budgets, and that they will begin earning a return on those investments sooner than they would under traditional regulation.

In order for the Commission to approve alternative regulation, it must make specific findings that the Company has met each of the eight requirements of 9-244. These findings must come before any evaluation of the specifics of the projects proposed under Rate ACEP. Because the Company has failed to meet three of the five requirements, (b)(1), (2) and (8), Rate ACEP cannot be approved.

## **h) ComEd Reply**

ComEd asserts that Staff and intervenors 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, according to ComEd.

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. IIEC makes similar arguments. 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 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

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. ComEd argues that 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.

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 also argues that the rate of return of, and on, investment is more favorable under Rate ACEP than traditional regulation. 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. 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.

## **i) Commission Analysis and Conclusion**

The statutory language of Section 9-244(b)(8) requires that, to the extent the program is likely to result in net economic benefits, those benefits must be shared

~~between the utility and its customers. Several aspects of ComEd's alternative regulation program will work to ensure that customers share in any benefits. First, the Commission agrees with ComEd that Rate ACEP will only permit recovery of costs actually spent. Moreover, the Commission finds that the budget caps offer an incentive for ComEd to operate efficiently, and customers will automatically share in the ongoing reductions in O&M and investment expenses pursuant to the 50/50 sharing mechanism of Rate ACEP. To make this determination it must first be determined if there are net economic benefits associated with implementing Rate ACEP. If the Commission considers the Rate ACEP on its own as an alternative regulation mechanism, the Commission is convinced the answer is no. The Commission believes Rate ACEP would produce a shifting of economic responsibility, but no net economic benefit to customers. As explained above, the 5% reduction in O&M expenses and the budget based capital investment scheme are of no benefit to ratepayers and merely shift risk for investments from shareholders to ratepayers.~~

~~The Commission further finds that this incentive is enhanced by the 5% reduction in O&M expenses, with a \$2 million maximum. CTA's concern that, once the \$2 million cap is reached, ComEd would keep all of the savings is contrary to workings of Rate ACEP. ComEd's incentive to operate efficiently is governed by the budget caps, not the 5% O&M discount.~~

~~As mentioned previously, the parties' concerns that budgets have the potential to be inflated ignores the fact Rate ACEP only permits recovery of costs ComEd actually incurs. Customers suffer few, if any, adverse consequences from a project being under budget. Thus, there is no logical reason why customers would not share in benefits, even if the budgets were inflated.~~

~~The Commission finds the concerns of IIEC about the 95% of expenses being recovered by ComEd for discretionary expenditures to be misplaced. As discussed elsewhere in this Order, the Commission finds that the programs under ComEd's alternative regulation proposal are beneficial for customers and that these benefits are not likely to be available under traditional regulation. For Rate ACEP to pass the sharing of benefits test proposed by IIEC, the programs would have to be free—clearly a nonsensical result. AARP's arguments fail for a similar reason.~~

~~The AG is wrong when it suggests that, if UFR results in any economic benefits through reduced outages, those benefits would not be shared until the next rate case. Customers will benefit immediately from improvements in reliability. Moreover, cost savings will accrue immediately in the form of reduced operational and investment savings. A rate case is unnecessary for customers to realize these benefits.~~

~~For these reasons, the Commission finds that the requirements of Section 9-244(b)(8) are satisfied by ComEd's alternative regulation program.~~

~~If the Rate ACEP mechanism is considered in conjunction with the programs proposed for recovery thereunder, as ComEd would have the Commission do, there might be net economic benefits. The Commission is concerned that the benefits, however, are loosely defined and totally unquantified. Moreover, the Commission is concerned that any efficiencies that will be gained will not be realized by customers until ComEd's next rate case. So, although Rate ACEP allows for the immediate recovery of~~

~~O&M expenses it does not immediately reflect the potential savings and thus, the Commission believes any net economic benefits are not equitably shared with customers.~~

~~For instance, EV vehicles presumably cost ComEd less in fuel costs. The Commission notes that this difference is not quantified and there is certainly no sharing in the savings with customers. For UUFR, the Commission finds no attempt in the record by ComEd to quantify any economic benefits. The Commission notes that any cost savings from reliability increases that the Company experiences will be captured in the next rate case and not shared through Rate ACEP.~~

~~The Commission observes that ComEd asserts that its UUFR budget is based on '08 and '09 actual costs with no inflation and, therefore, ratepayers are sharing in the savings in that way. The Commission finds it problematic to identify a reasonable budget for UUFR, which has absolutely no specified level of work. The Commission's review shows the record to be replete with evidence of why customer rates should not be based on budgets. Moreover, the Commission agrees with CTA's observation that "the O&M benefit to ratepayers is capped per Rate ACEP at \$2 million for all projects, so ComEd alone would keep all O&M savings in excess of the \$2 million - and not share them with ratepayers." Thus, the Commission finds it improbable that ratepayers will equitably share in any net benefits under ComEd's proposed Rate ACEP because of the incentive for ComEd to inflate the budget and the difficulty for the Commission to evaluate proposed budgets.~~

~~The Commission agrees with intervenors that Smart Grid benefits, in particular, should not be considered for this element of the statute. There is no specific proposal in this docket for Smart Grid projects or any quantification of benefits and, therefore, there can be no consideration of net benefits.~~

~~Not only has ComEd failed to demonstrate an equitable sharing of economic benefits under Rate ACEP, but the Commission considers there to be a real possibility of ratepayers overpaying. It appears to the Commission that every time ComEd spends less than 95% of its proposed budget, ratepayers pay more than ComEd's actual costs. This is further exacerbated by the failure to share savings from gains in efficiencies until its next rate case. Accordingly, the Commission finds that ComEd has not shown that Rate ACEP includes provisions for an equitable sharing of any net economic benefits between the utility and its customers to the extent the program is likely to result in such benefits.~~

## **C. Section 9-244(c) Review**

### **1. ComEd**

As required by Section 9-244(c) of the Act, ComEd's tariff provides for a biennial review cycle after the Alt Reg program is initially approved and implemented. During this review (1) the Commission can assess the success of the efforts to date; (2) stakeholders can express their views; (3) the Commission can reassess the appropriate program levels of spending and investment; and (4) the alternative regulation program can further evolve. Pet. at ¶18; ComEd Ex. 1.0 R at 20. The review, however, is not a reconciliation docket. *Id.* at 24. If approved in this proceeding, ComEd can immediately

proceed with the Uufr project, the EV pilot, and the Low Income project and provide for their funding. These projects can then be reviewed and modified as appropriate based upon the experience gained. For the first review, in 2013, any approved Smart Grid projects will have been in effect for a shorter time, because AMI and DA investments will not occur until they are separately approved by the Commission. However, if the Commission chooses, they can be evaluated as well if they have been operating for enough time that it makes sense to review them again going forward.

Finally, the review cycle for the Alt Reg program will be every two years. These additional review proceedings will allow Stakeholders to stay engaged and for the Commission to continue to evaluate and adjust the Alt Reg program and the specific projects it funds.

## 2. CUB

CUB notes that Section 9-244(c) requires a review two years after an alternative regulation program is first implemented to determine whether the program is meets its objectives and to make revisions if necessary. 220 ILCS 5/9-244(c). This review process would also address what projects should be allowed under Rate ACEP going forward. For example, ComEd discusses smart grid investments at length in its testimony in this docket, but does not request recovery for that project at this time. Instead, it envisions Rate ACEP as a mechanism by which it could recover those investment costs in the future when specific smart grid projects are approved in the biennial review.

ComEd is clear that this is not a reconciliation docket, as its costs would have been pre-approved in the instant docket. ComEd Ex. 1.0 Rev. at 24. Instead, it is strictly forward-looking, and the only review of the first two years of the projects is to evaluate actual vs. budgeted costs. CUB notes that Rate ACEP provides for an upfront determination of the prudence of a given investment. In fact, ComEd believes that just having Rate ACEP in place can make an “imprudent” investment in a discretionary project a “prudent” investment because the discretionary project costs recovered under Rate ACEP are no longer displacing essential activities. Tr. at 402, 404. ComEd’s proposal also does not provide any post-hoc review of how investments are deployed, or indeed, even whether any decision to stop an investment was appropriate. This lack of a “used and useful” standard to review the scope, pace and completion of projects is troubling. For example, assume ComEd decides after spending three-quarters of its approved budget on electric vehicles that it no longer wishes to evaluate electric vehicles. ComEd could cease project investment without penalty, having recovered all of the costs it incurred for the program.

ComEd’s proposal relies on regular rate cases in addition to Rate ACEP and increases, rather than alleviates, the burdens on Staff and Intervenor to make sure the utility is investing – and deploying – wisely. If Rate ACEP is approved, the Commission should expect to be pulled into a much more active role in the planning, budgeting and managing of capital investments through various filing review procedures, reconciliations and other activities. In essence, ComEd’s proposal would do in five months what it now eleven: formal discovery with expert witnesses investigating the prudence of proposed investments. Tr. at 581-582, 586, 590.

### 3. AG

ComEd witness Hemphill suggests that the Rate ACEP review process would somehow streamline the installation of smart grid technology, and create a more collaborative regulatory environment. He testified that one of the important objectives of alternative regulation was to reduce regulatory costs. Tr. 570-571; ComEd Ex. 1.0 at 5. But cross-examination revealed the opposite would occur under the Rate ACEP proposal.

First, Commission adoption of Rate ACEP would not eliminate or in any way reduce the need for rate cases. Tr. at 571. All Rate ACEP filings would be discretionary, and not be subject to the kinds of checks and balances inherent in ComEd's annual capital budget process. See Tr. at 147-170. Given the frequent Rate ACEP filings envisioned by the Company, it is highly likely that Staff and intervenors will find themselves addressing both ComEd's frequent (as of late) rate cases and Rate ACEP filings at the same time, something Mr. Hemphill agreed was possible. Tr. at 571. In addition, Rate ACEP requires a biennial review process.

Any Rate ACEP project approval filing would involve a ComEd filing by October 1st and a Commission Order by the following April 1st, thus adding five-month Rate ACEP project review proceedings to the Commission's usual workload. Tr. at 571-572. In the filing, the Company would be requesting an advance prudence determination on the proposed investment from the Commission. Tr. at 582. Under the timeline ComEd envisions, a workshop process involving the Company, Staff and intervenors would start before the first Rate ACEP filing and would precede each Rate ACEP filing. Tr. at 574-576. The workshop process would start with consideration of the particular ComEd investment proposal. Tr. at 576-577. That ComEd proposal would then be reviewed and analyzed by Staff accountants, engineers and economists in order to assess, for example, the proposed budget baseline. Among the issues to be resolved would be assessing ComEd and outside contractor staffing needs, given the requested Commission approval for both the budget baselines and prudence of the investment. Tr. at 582.

In addition, in order to assess the prudence of a proposed investment, ComEd witness Hemphill agreed it would be important for Staff and any interested stakeholders to examine alternatives to the proposed investment to ensure that the project, in fact, could be called prudent. Tr. at 583. And this overall evaluation would necessitate looking into other technologies or even another investment as a whole to determine whether the alleged benefit associated with the proposed project could be achieved in another less expensive manner. Staff and parties would also have to evaluate whether the amount of the proposed project, including the number of reclosers and AMI meters was, in fact, an appropriate amount, in order to conclude the proposal was prudent. ComEd witness Hemphill further concurred that Staff might want to perform some type of cost-benefit analysis or at least review a ComEd cost-benefit analysis to assess a pre-investment prudence decision. Tr. at 584.

In addition, any such assessment presumably would also involve examining the proposed locations of the projects to determine whether the location made sense from a reliability and cost-effectiveness viewpoint. Tr. at 583-585. Such an examination would

be especially relevant when one considers that the Rate ACEP projects are, by the Company's own admission, discretionary, non-essential projects. The Company simply assumes Staff and intervenors are equipped to make that assessment on a regular basis outside of, and in addition to, the traditional rate case review process. If the parties could not come to any kind of an agreement on the terms of the proposed Rate ACEP projects during the workshop process, the Company would still move forward with its cost recovery proposal. At that point, the review process would be repeated in the formal, docketed, five-month proceeding – a timeline that ComEd witness Hemphill admits is “tight”, in terms of discovery and review. Tr. at 588-590.

AG witness Brosch criticized the Rate ACEP “collective” regulatory process. Far from streamlining regulation, he noted that the Rate ACEP process would pull Staff and intervenors into a much more active role in the planning, capital and expense budgeting, resource prioritization and management oversight of numerous projects and programs that have historically been the province of utility management, and for which management has historically been held accountable. AG Ex. 1.0 at 47. Acceptance of this new regulatory role would require Commission and Staff participation in the various filings, review proceedings, reconciliation proceedings and other activities so they can be, as explained by Mr. Hemphill, “fully informed of the progress of all of these projects so that these reviews may be informed and efficient.”

According to the AG, neither the Commission nor concerned intervenors are staffed or equipped to engage in this sort of micro-management of ComEd resource planning and operations. Indeed, Staff admits it has neither the resources nor desire to engage in such a role. And it remains less than clear as to whether the Rate ACEP review process would permit both the time and access to specific utility data needed to effectively assess the budget baselines that are the foundation of the Rate ACEP proposal and the requisite prudence assessment. This so-called collaborative Rate ACEP process also shifts the risk of investment decision-making onto the Commission (on behalf of ratepayers) rather than shareholders -- who provide the traditional source of needed capital for infrastructure investments and control the hiring of management to plan and oversee such investments.

#### **4. ComEd Reply**

ComEd asserts that the AG disregards the intent of ComEd's Alt Reg 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.” ComEd Ex. 6.0 at 3. 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.

## 5. Commission Analysis and Conclusion

~~Obviously Pursuant to the statute, if Rate ACEP were approved, the Commission would have to hold a review proceeding in two years and Rate ACEP reflects this requirement. At that time, ComEd must present the evidence of how each project was deployed including actual cost data. This would give the Commission, Commission Staff and Intervenors the opportunity to examine how ComEd's budgets compared with actual costs. As noted above, however, it is not clear that ComEd intends to provide enough information to assess whether its Alt Reg pilot was a success.~~

~~As the Commission understands ComEd's timeline, it intends to request inclusion of Smart Grid projects under Rate ACEP before the two year review. If ComEd is truly proposing this to be a pilot of alternative regulation, the Commission believes that ComEd should not object to limiting Rate ACEP to the first three projects – UUFR, EV and LIAP – until the Commission has completed its review of the Company's proposed alternative regulation pilot. This would give the Commission the opportunity to examine how ComEd's budgets compared with actual costs. Thus, the review would happen before the huge increase in dollar amounts that will go along with any Smart Grid investments.~~

~~From the arguments of the parties, While the Commission is also concerned with the additional understands regulatory burden that Rate ACEP would place on Commission Staff and the intervenors were it approved, it is no greater than burdens on resources during a general rate case. It is possible that the two year review would overlap requests for other projects which could also overlap another ComEd rate case further burdening Staff and other interested parties.~~

~~Finally, should the Commission determine that Smart Grid projects should be deployed, at that time ComEd is instructed to file budgets for the planned investments and demonstrate that the criteria of Section 9-244 have been met.~~

### D. "Rider" ACEP

#### 1. AG

The AG notes that throughout the hearings, counsel for different intervenors repeatedly referred to Rate ACEP as Rider ACEP. While inadvertent, the AG states that there is no coincidence in that phenomenon. Like a rider, Rate ACEP would increase customers' rates on a piecemeal basis for recovery of specific investments and expenses for targeted programs. However, riders are typically used to recover utility expenses that are large or volatile, difficult to quantify and beyond the control of utility management. The low income program expenses, accelerated UUFR investment, EV pilot and future smart grid technologies, fit none of these criteria.

The AG states that the Second District Appellate Court recently reversed the Commission's approval of Rider SMP, the rider used to recover the AMI pilot costs. In *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, ("ComEd"), 937 N.E.2d 685 (2d Dist. 2010), the Court ruled that a rider was not an appropriate way to recover the costs of AMI meters and other plant investment. Like the rider deemed illegal in ComEd, Rate ACEP is proposed to be used for the recovery of plant investment, and in particular, smart grid investment.

In proposing Rate ACEP, the AG argues that ComEd has merely repackaged the illegal Rider SMP that was the subject of *ComEd*, thereby raising similar single-issue ratemaking concerns. Traditional rate case regulation requires consideration of all elements of the revenue requirement, including sales volumes, rate base elements, wage and benefit expenses, non-labor expenses, taxes and depreciation/amortization, as well as the current cost of capital, all within an internally consistent or matched test year. Isolation of specific investments or programs for separate piecemeal rate changes, through mechanisms like the proposed Rate ACEP, distort the matching and tend to overstate revenue requirements.

In addition, Rate ACEP does not account for any of the continuing growth in accumulated depreciation or accumulated deferred income taxes that are associated with existing electric Plant in Service ("Plant"). It is improper and unreasonable to adjust utility rates for only additions to Plant in Service, while ignoring the continuous recovery of existing Plant that ComEd collects through its approved rates.

The AG notes that ComEd may call its cost recovery proposal a "rate", but it talks and walks like a rider, and an illegal one at that.

## 2. ComEd

ComEd notes that 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 IB at 41. CUB and AARP also express similar concerns.

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. 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). ComEd asserts that this convoluted argument should be rejected.

According to ComEd, the decision of the Appellate Court is not applicable because ComEd is not proposing a rider. That decision 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.

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. 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.

### **3. Commission Analysis and Conclusion**

The Commission determines that it is not necessary to address whether Rate ACEP fails the AG’s test for rider recovery, because it is irrelevant to the question of whether Rate ACEP should be approved pursuant to Section 9-244. As an aside, the Commission notes that rider recovery of investments will be further explored in the appeal of Peoples Gas’ Rider ICR.

#### **E. Rate Design Issues**

The Commission declines to address the many rate design issues raised by Staff, IIEC and others. The Commission has found that Rate ACEP does not meet the statutory requirements for an alternative regulation program as provided for in Section 9-244 of the Act. The Commission is of the opinion that the proposals to alter Rate ACEP in no way overcome the fundamental deficiencies in ComEd’s proposal.

#### **F. Interaction with General Rate Case**

##### **1. ComEd**

ComEd asserts that its ability to proceed with this Alt Reg program is contingent on ComEd’s general delivery services rates allowing it a fair opportunity to recover its reasonable and prudent costs of delivery service. ComEd Ex. 1.0R at 9-10. If ComEd’s rates do not allow it that opportunity, the competition for resources will necessitate cuts in existing operations and investments. Proceeding with the Alt Reg program under such circumstances would compound the competition for already inadequate financial resources. Projects such as the EV Pilot and UUFR, in particular, require capital investments which are paid for up front, but recovered only over a period of years. *Id.* at 10. That is why, from the start, ComEd has been clear about this contingency. To be clear, this does not mean that ComEd must be awarded every penny of revenue requirement it requests for the Alt Reg program to proceed. However, a revenue increase like that currently recommended by Staff (between \$100 and \$110 million) would require ComEd to implement strong capital conservation measures under which the proposed Alt Reg program cannot proceed.

**2. AARP**

AARP notes that ComEd, in its discussion of the interaction of this case with its ongoing rate case, ComEd’s Brief makes it crystal clear that its Rate ACEP proposal is really not a proposal for an “alternative” to traditional regulation. Rather, this is a proposal for a new surcharge in addition to traditional regulation of its overall revenue requirement (at a level that ComEd deems adequate, as opposed to the Staff recommendation). ComEd IB at 47. Moreover, Rate ACEP plan would still reserve to ComEd the right to request recovery for certain costs of these projects through the traditional ratemaking process as well. Rate ACEP would not be alternative regulation; it would be traditional regulation plus extra charges. This is not what Illinois law’s definition of alternative regulation intends.

**3. Commission Analysis and Conclusion**

It is not apparent that a Commission conclusion is necessary here, but ComEd’s ~~bold statement regarding the interaction of this proceeding with the rate case cannot go with comment. So, if the Commission overturns the Proposed Order, ComEd states that it will not go ahead with these projects unless it gets a large enough rate increase. For that reason alone, the Commission is confident that Rate ACEP should be denied because Rate ACEP has no independent merit.~~

**IV. Immediate Projects**

**A. Low Income Assistance Provisions (“LIAP”)**

Project	O&M	Capital
Low Income Assistance Provisions	\$20 million	----

**1. ComEd’s Proposal**

ComEd has proposed the Low Income Customer Assistance Program (“Low Income Assistance Program” or “LIAP”) as part of its Alt Reg proposal. ComEd states that a sizeable number of its low income customers have difficulty paying their bills. ComEd believes that low income assistance programs are necessary to ensure these customers are not deprived of essential electric service. ComEd Ex. 5.0 at 3. Therefore, ComEd states that it is proposing to fund seven low income programs with \$10 million each year for the next two years under the Alt Reg program. ComEd estimates that its program will help 300,000 customers per year, with an expected dollar value of benefits to customers between \$10 and \$1,000. ComEd explains that the specific dollar value amount will depend on the customer’s individual circumstances. ComEd anticipates that incremental administrative costs may include contractor(s), third party low income agency administration, and vendors.

ComEd states that since 2007, it has administered its Customers’ Affordable Reliable Energy (“CARE”) programs, which offer a broad range of assistance programs for customers in need. The CARE programs have been funded under Public Act 95-0481 (“PA-95-0481”), which expired in 2010. See 220 ILCS 5/16.111.5A(e). ComEd explains that the CARE programs are unique in that they work in concert with multiple nonprofit organizations and extend assistance to the working poor and the small business community. For example, the Residential Special Hardship program provides assistance for the working poor not eligible for federal or state programs, such as

EXCEPTION #10

LIHEAP and PIPP. The Small Businesses and Non-Profit Energy Assistance program assists the small business community. Other customer assistance programs available in 2010 include: Helping Hand, C.H.A.M.P. (ComEd Helps Activated Military Personnel), Fresh Start Payment Plan, All Clear, CARE Technology Pilot Program, Community Education, and Outreach. ComEd maintains that even though funding for these programs has varied since 2007, it has distributed more than 800,000 grants to eligible customers.

ComEd states that given the success of ComEd's CARE program and the continued need of its low income customers, it now seeks to obtain funding through its Alt Reg program to continue seven Low Income Programs, including: (1) Residential Special Hardship, (2) Summer Assistance Program, (3) Fresh Start Payment Plan, (4) Helping Hand Program (Id. at 10), (5) Small Business and Non-Profit Energy Assistance Program, (6) Nonprofit Agency Matching Programs, and (7) Educational Outreach. Under CARE, ComEd explains that it administered these programs with third parties. As a result, ComEd maintains that aside from some additional information technology capabilities that may be required, the program mechanics and network of community agencies are already in place and can begin immediately.

## **2. CUB**

CUB notes that ComEd has had a low-income assistance program for years. The Company has had CARE programs since 2006, which at that time were funded using shareholder dollars. Tr. at 340. ComEd and Exelon continued to fund at least part of the programs. Tr. at 348-351. ComEd now states that it has not and will not contribute any further funding to low-income assistance programs. Tr. at 365. However, CUB says the Company will happily take the benefits of the goodwill engendered by offering a low-income assistance program with their name and logo attached, even though they contribute nothing. CUB believes the Company's attempt to link continuation of low-income assistance to approval of Rate ACEP is opportunistic and inappropriate. Nothing about low-income assistance makes that program more likely to show benefits to customers under Rate ACEP than such a program would otherwise.

## **3. AARP**

While AARP appreciates the Company's recognition that low income customers need additional financial assistance, ComEd has historically funded such programs with shareholder contributions. AARP believe it is not appropriate to initiate a significant budget of \$20 million in this proceeding and change the method of cost recovery for these programs without a full evaluation of both what might be needed and how funding should be coordinated with the existing financial assistance programs, particularly the newly developed Percent of Income Payment Plan ("PIPP"). AARP Ex. 1.0 at 14. A settlement has just recently been reached among the stakeholders in Docket 10-0640, regarding how various ComEd low-income programs will be funded in the near term.

The low income program expenditure provision of ComEd's proposal is not accompanied by any analysis of current expenditures for low income programs and their effectiveness, an analysis of the need for additional funding by ratepayers as opposed to the current funding streams by shareholders, or why funding such expenditures

through a separate Rider is somehow beneficial to customers compared to expenditures that flow through base rates. AARP Ex. 1.0 at 17, 25-26.

There is also nothing special with respect to funding low income programs that suggests that cost recovery through the fixed customer charge is either appropriate or necessary since many other states fund such programs through base rates. Furthermore, there is a potential that because ComEd's proposed method of cost recovery is through the customer charge for all of these Rate ACEP programs that low income customers would actually be harmed more than other customers because these customers use less electricity on average than other residential customers.

#### **4. AG**

The AG notes that for the most part, the ComEd CARE programs now being promoted as part of the Company's alternative regulation plan were previously provided by the Company in fulfillment of its obligation under amendments to Section 16 of the Public Utilities Act. Under Public Act 95-0481, which was enacted in August of 2007, ComEd and the Ameren companies were required to fund certain customer bill payment assistance initiatives. That formal obligation to implement and finance those programs ended in 2010. ComEd's response is to ask the Commission to approve the collection of \$10 million per year from ratepayers through two years of Rate ACEP to fund certain ComEd CARE programs which the Company itself once funded and offered pursuant to P.A. 95-0481. ComEd Petition at 5-6; ComEd Ex. 5.0 at 6.

The AG points out that ComEd witness Emmons says the programs will not continue beyond 2010 if the Commission does not approve their continuation under ComEd's alternative regulation proposal. ComEd Ex. 5.0 at 3. According to the AG, however, this is only true if ComEd and its parent choose to pull the plug on these programs in the absence of new ratepayer funding. ComEd's alternative regulation plan would increase rates by \$10 million so that consumers – not ComEd or its parent – would fund the continuation of seven designated programs. Absent ratepayer funding, Emmons states, "ComEd will not be able to offer these programs if it cannot recover its costs under the alternative regulation plan." ComEd Ex. 5.0 at 6.

ComEd repeatedly sounds the alarm that funding will "end" or funding will "expire" in 2010 for those ComEd CARE programs previously offered pursuant to P.A. 95-0481. ComEd Pet. at 5-6; ComEd Ex. 5.0 at 3; Tr. at 364. These admonitions, however, cannot be taken as an indication of a lack of corporate interest in customer assistance programs. In fact, ComEd recognized well before passage of the bill payment assistance mandate that there were benefits associated with offering such programs. ComEd CARE programs actually began in 2006, prior to the enactment of any statutory requirements, and Exelon shareholders were funding these programs.

What ComEd ignores in making its case for ratepayer funding of these programs is that there is nothing standing in the Company's way of continuing the commitment to customer assistance it began five years ago. Without any prompting from lawmakers, ComEd and its Exelon parent corporation demonstrated not only the foresight but the financial wherewithal to initiate and fund these programs in 2006. Significantly, under cross-examination, ComEd witness Emmons did not hesitate to point out that ComEd branded these programs as "ComEd CARE" programs before the legislation codified

their implementation. Presumably, the Company anticipated that it would reap measurable benefits associated with this branding in 2006. Its enjoyment of those benefits after the law was passed was no less real.

## 5. Staff

Staff is not attempting to downplay the critical need for low-income assistance, but it believes certain critical facts must be brought forward so that the Commission may make an informed decision. First, regarding ComEd's comment that the funding of low-income assistance has been terminated and more specifically to Dr. Hemphill's statement that the funding is to terminate per Section 16-111.5A, this statement does not accurately reflect the state of the law. ComEd, as all other Illinois electric and gas utilities, are required by law to continue the funding established under Section 16-111.5A through December 31, 2011 by a new Section 8-105 provision of the Act.

The second fact regarding low-income energy assistance funding to be brought to the Commission's attention is the Stipulation and Order entered into by ComEd and the other parties in Docket 10-0640. In that proceeding 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 previously raised by ComEd witness Emmons. ComEd Ex. 5.0 at 7.

Third, ComEd customers are currently paying for low-income energy assistance. Each and every month ComEd's residential customers are charged 48 cents for energy assistance under the provisions of the Supplemental Energy Assistance Fund. 305 ILCS 20/13. This amount is included in the monthly customer charge. On an annual basis ComEd's residential customers contribute approximately \$19.8 million to the Supplemental Energy Assistance Fund. Tr. at 433-435. Should these same ComEd residential customers also be customers of the local gas utility (i.e., Ameren, Nicor, Peoples Gas, or North Shore) then an additional 48 cents per month for energy assistance (or approximately \$19.8 million annually) is also collected for such gas service. 305 ILCS 20/13. Additional low-income assistance funding is provided by those electric customers with an annual demand of less than 10,000 kWhs (kilowatts) at a rate of \$4.80 per month; electric customers with an annual demand greater than 10,000 kWhs are charged \$360 per month. *Id.* Thus, ComEd customers are currently making substantial contributions to low-income energy assistance.

Fourth, contrary to ComEd's statements, low-income energy assistance will continue, and it will continue after 2011. The newly enacted Section 18 of the Energy Assistance Act requires that, by September 1, 2011 a statewide Percent of Income Payment Plan (PIPP or PIP) is to be fully operational. This is a mandatory bill payment assistance program for low-income residential customers of Illinois utilities serving more than 100,000 retail customers as of January 1, 2009. Utilities in this category include Ameren, Nicor, Peoples Gas, North Shore Gas, and ComEd. In addition to providing assistance for current monthly charges, the PIPP also includes an Arrearages Reduction Program. 305 ILCS 20/18. Thus, recently enacted legislation will provide additional support for low-income energy assistance.

Fifth, as previously discussed, ComEd's customers currently pay a low-income energy assistance charge as mandated by law, which were established by legislative

action. ComEd's proposal circumvents the normal legislative process. It puts ComEd in a role that has traditionally been reserved for the General Assembly on a state-wide basis. ComEd's proposal gives priority to its service territory over a comprehensive state-wide approach. Furthermore, ComEd's proposal adds new or incremental charges to the existing monthly charges for the Supplemental Low-Income Assistance Fund. Thus, if approved ComEd's residential customers would pay the required 48 cents per month plus any additional amounts required by its alternative regulation proposal.

Sixth, ComEd's low-income energy assistance request appears to lack a certain level of sincerity on ComEd's part when it does not even provide a basic billing option to collect voluntary funding. ComEd appears to be saying that low-income funding is acceptable, so long as the ratepayers provide the funding and it does not require any effort on its part.

Staff recommends that the Commission deny Rate ACEP. If the Commission disagrees and approves Rate ACEP, however modified, then for all the reasons stated above, Staff believes ComEd's request for a Low-Income Customer Assistance Program as part of its proposed Rate ACEP should be denied.

## **6. ComEd's Reply**

Staff raises a number of concerns relating to the approval of the Low Income Assistance Program. 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. 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. Docket 10-0640 Order at 6.

ComEd notes that 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 IB 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.

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." ComEd Ex. 5.0 at 9. 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." ComEd Ex. 6.0 at 35.

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. ComEd explains, however, that 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. ComEd Ex. 6.0 at 33. 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.*

ComEd asserts that 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.* 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.*

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'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.

## **7. Commission Analysis and Conclusion**

Under this program, ComEd proposes to continue seven low income programs:

- Residential Special Hardship (one-time grants for residential customers with household incomes up to 200% of the federal poverty level)
- Helping Hand (matching a certain percentage of customers' payments if those payments are made on time over a given period of time in order to establish prompt payment behavior)
- Summer Assistance Program (one-time annual bill credit of \$10 to residential customers who are LIHEAP customers or have household incomes of up to 200% of federal poverty level not eligible for LIHEAP)

- Fresh Start Payment Plan (credits to customers pre-program arrearages up to \$1,000 if customer makes full monthly payments of budget bill amount by the due date for five consecutive months)
- Small Business and Non-Profit Energy Assistance Program (one-time variable grants of the lesser of 25% of annual electric bill or program cap for non-residential customers such as churches, daycare centers, senior center and learning institutions that demonstrate financial hardship)
- Nonprofit Agency Matching Programs (matching funds to help low income customers resolve outstanding balances and prevent eviction due to disconnection of service)
- Educational Outreach (partnership with nonprofit agencies and municipalities to provide low income customers with information, tools and assistance on electric bills).

The Commission finds these programs to be beneficial to the qualifying low income customers of ComEd. In fact, ~~there is also reason to believe that these programs are beneficial to all of ComEd's delivery service customers because they reduce the Company's uncollectibles-- provided they are not funded by ratepayers. If the programs are funded by ratepayers, the programs merely result in a rate increase for the majority of ComEd's delivery service customers and an inappropriate shifting of costs from one group to another and provide no net benefits to customers as a whole.~~

Based on the record, ComEd's proposed Low Income Assistance Program should be approved. The Commission is certainly cognizant of the great need for these programs, and that the need is continuing. No evidence suggests otherwise. These programs not only confer benefits on the customers who receive assistance, they benefit all customers by tending to reduce uncollectible expense and by reducing operational costs of cutoff and restoration. We also disagree with the IIEC contention that these type of costs would not be allowed to be recovered under traditional regulation. ComEd is entitled to recover its reasonable and prudent costs of service and providing assistance such as this, while not mandatory under the Act, certainly is not so foreign to the utility function as to be outside of the definition of service. Therefore, the Commission approves (1) the Low Income Program as proposed by ComEd in this proceeding and (2) its O&M budget amount of \$10 million a year for two years to be recovered under Rate ACEP.

~~Interestingly, it is even disputed by AARP that these programs would be beneficial to low income customers. AARP says, in its Initial Brief, that "there is potential that because ComEd's proposed method of cost recovery is through the customer charge for all of these Rate ACEP programs that low income customers would actually be harmed more than other customers because these customers use less electricity on average than other residential customers." AARP IB at 17-18.~~

After reviewing ComEd's LIAP proposal~~Finally, despite the arguments by various parties, the Commission concludes that this portion of ComEd's Rate ACEP can only be described as is not a pass through rider. ComEd proposes to pass through \$10 million annually in CARE costs to ratepayers. There is no budget that ComEd is trying to beat and there is no reduction in O&M expenses.~~

EXCEPTION #11

~~CUB calls the low income program “opportunistic” because the Company will get goodwill for these programs at no cost to itself. CUB IB at 17. The Program will have the ComEd name and logo attached, but ratepayers will pay. The Commission is concerned that LIAP was included in an effort to make an otherwise questionable Alt Reg proposal more palatable to some.~~

~~Whether there is some other benefit to the CARE programs that qualifies them for special rate recovery is a question that has to be examined outside the parameters of Section 9-244. The Commission agrees with Staff that this is generally a question for the legislature. Undoubtedly there is a need for programs such as these, but in the context of alternative regulation, the Commission notes the problem identified by AARP that the LIAP provision is not accompanied by any analysis of current expenditures for low income programs and the effectiveness of such programs.~~

**B. Urban Underground Facilities Reinvestment Program (“UUF”)**

<u>Project</u>	<u>O&amp;M</u>	<u>Capital</u>
UUF	\$15 million	\$30 million

**1. ComEd’s Proposal**

The UUF project would provide an incremental \$45 million over 18 months to accelerate proactive maintenance and reconstruction of underground mainline cable, cable support hardware and manholes in Chicago and other urban areas. ComEd Ex. 4.0 at 8, 14; Pet. at ¶ 7. Of this, \$30 million would be capital investment and \$15 million would be incremental O&M expense. The UUF project would accelerate and reprioritize the process of testing and, where needed, replacing underground mainline feeder cable. ComEd Ex. 4.0 at 2. It also includes accelerated inspection and, where appropriate, repair, rebuilding, or replacement of the cable support hardware and, where necessary, the manholes through which mainline cable runs. *Id.* at 2. The UUF project will enhance reliability and is estimated to prevent about 30,000 to 40,000 customer interruptions when complete. *Id.* at 12. This additional investment will create jobs directly by employing workers for the project and indirectly through what economists refer to as the multiplier effect. ComEd Ex. 1.0 Rev. at 27-28; see also ComEd Ex. 4.0 at 12; Pet. at ¶ 7.

ComEd maintains that the UUF project will further improve reliability, create meaningful jobs, and reduce risks to safety and the environment, but that achieving those benefits will require a significant capital and O&M commitment above that required to meet minimum service requirements. ComEd submits that the UUF project represents an excellent opportunity to demonstrate how proactive replacement, enhancement, and upgrade programs, when properly designed and approved by the Commission, can benefit customers. ComEd maintains that the Alt Reg program provides a means for the Commission to make the policy decision to proceed with this program. ComEd Ex. 4.0 at 16; see also ComEd Ex. 1.0 Rev at 12.

In addition, by approving a program like this in advance, ComEd hopes to be able to achieve work management and other operational efficiencies. One purpose of alternative regulation is to promote such efficiencies. ComEd submits that the UUF

project will be a good “field test” of whether alternative incentive regulation works for this type of distribution work. ComEd Ex. 4.0 at 16-17; ComEd Ex. 1.0 Rev. at 13.

#### Description of the UUFR Project

ComEd states that its mainline feeder cable system consists of cable, joints, terminations, cable support hardware (vertical channels, horizontal brackets, and cable saddles), conduit, and manholes. Underground mainline cables are generally high-capacity 12kV cables. Most are insulated by oil-impregnated paper enclosed by a solid lead sheath, called Paper Insulated Lead Covered (“PILC”) cables. ComEd Ex. 4.0 at 2-3. The mainline cables supply switchgear and transformers that, in turn, provide power to most of the residential customers, and many of the commercial and small and medium sized industrial customers, in these areas. *Id.* at 3.

In dense urban areas that include the Cities of Chicago, Evanston, Aurora, Elgin, Joliet, Rockford, and several immediate suburbs of Chicago, ComEd explains that the mainline feeder cable is typically installed in concrete or masonry manhole structures connected by conduit which is typically fiber/PVC pipe encased in concrete. This conduit and manhole system protects the cable from many types of physical disturbances that can occur in this type of urban environment and also allows for the cable to be removed and/or replaced without the need to excavate the streets, alleys, and property under which they run. The manholes provide a location where splices and joints can be located. *Id.* at 4.

ComEd submits that it routinely inspects its manhole systems and its cable. ComEd also tracks cable faults and failures and reacts when data indicates that a cable is failing. While failures of underground mainline feeder cable systems are a leading cause of customer interruptions, only a very small proportion of the mainline cable system fails. ComEd Ex. 4.0 at 7. Therefore, ComEd states that it has historically refurbished manholes and related cables opportunistically, as failures occur or new business or capacity expansion projects require. The current testing program targets 60-100 circuit sections per year, out of approximately 1,800 targeted cable sections that have experienced two or more mainline failures in a 36-month period, under a budget of about \$2 million per year. ComEd targets for replacement underground mainline segments on these circuits that have cable joint issues, fail diagnostic testing, or are of relatively smaller length. The replacement program targeting known joint issues is primarily in cable in conduit systems, typically circuit sections of greater length, and inside dense urban areas. This program currently has an annual budget of about \$5 million and will annually repair or replace about 45 – 55 underground circuit segments. ComEd maintains that this current approach is reasonable, prudent, and consistent with good utility practice. ComEd Ex. 4.0 at 6-7.

Although ComEd maintains that its system already provides acceptable levels of reliability, ComEd is proposing the UUFR project to build on those levels of reliability and to prevent problems that might otherwise occur. ComEd asserts that addressing the cable support system and manholes on a larger and accelerated basis through the UUFR project will provide a significant enhancement to the performance of the underground cable system, reducing customer interruptions. Moreover, by planning cable testing and manhole refurbishment in advance, rather than reacting to emergent

conditions, ComEd submits that the unit costs of replacement and refurbishment work completed and the total cost of the underground cable operations could be reduced over the long term. ComEd Ex. 4.0 at 7-8.

ComEd states that it would conduct diagnostic testing through the UUFR project – using state-of-the-art Very Low Frequency (“VLF”) technology – on underground circuits not previously tested that have experienced two outages due to an underground fault in the past 36 months. For cable in conduit sections, typically of longer lengths, ComEd will target cable segment replacements where visual inspection has revealed cable joint issues are present. Following proactive maintenance and reconstruction of cable support hardware in the manholes, VLF validation of the cable section will be completed. An accelerated repair or replacement effort would also target sections that are approximately 3,000 feet or less for full replacement. PILC cable segments that require replacement will be replaced with a more modern dielectric polymer insulated cable. Under this approach, ComEd anticipates replacing or refurbishing approximately 2,400 - 3,600 additional manholes, VLF testing 130 – 196 circuit miles of cable, and replacing approximately 25 – 37 miles of cable over the 18-month program time frame. *Id.* at 8-9.

ComEd explains that VLF testing involves applying high voltages to a cable segment while monitoring the cable segment for evidence of failure, as described in IEEE publication 400.2-2004. Cable segments are selected for VLF testing based on their past performance history, when a failure occurs, or when manhole cable support hardware refurbishment work is identified. Cable will also be tested following cable replacements. Cable segments can often be replaced by using existing conduit and installing the necessary joints in manholes. In the atypical case where a manhole itself needs to be rebuilt or replaced, that work will be performed too. ComEd Ex. 4.0 at 9-10.

Under the UUFR project, ComEd states that the order in which testing will be performed will be prioritized based on historical performance and likelihood of future failure based on indicators such as the material condition of the facilities, the incidence of failures on the same line, and the condition of other facilities. Manholes will be selected for refurbishment based on the material condition of the equipment and the performance history of the mainline feeder cables using the manhole. ComEd Ex. 4.0 at 10-11.

ComEd adds that it will also increase the priority of work in areas where underground mainline crews are already deployed and working which is expected to result in significant unit cost savings. It will also reduce public inconvenience by reducing the number of construction disruptions and reducing the chance that crews will have to come back later and fix a second problem in a nearby location. *Id.* at 11. Finally, ComEd will prioritize work in areas where municipal or other public works projects are underway and require opening streets or relocating electric facilities. ComEd asserts that this, too, will reduce unit costs in the long term and reduce public inconvenience. *Id.*

ComEd maintains that improved reliability, improved safety, meaningful job creation; and potential reduction in long-term costs are the four main benefits that will result from undertaking the UUFR project. ComEd states that while the UUFR work

model will reduce public inconvenience, use resources more efficiently, and offer opportunities to lower unit costs in the long term, those benefits do cost money. ComEd Ex. 4.0 at 11.

ComEd explains that the UUFR project will enhance reliability by reducing customer interruptions. The failure of mainline underground cable – in conduit or otherwise – is the single leading cause of interruptions on ComEd’s urban underground system. Within the City of Chicago, mainline underground faults account for approximately one third of the total customer interruptions. Improving the performance of that system will have significant reliability benefits. Quantitatively, ComEd estimates that rebuilding or refurbishing 2,400 – 3,600 manholes and replacing approximately 25 – 37 miles of cable will prevent about 30,000 to 40,000 customer interruptions after the work is complete. ComEd Ex. 4.0 at 12. While harder to quantify in the longer-term, ComEd states that the enhancement to the performance of the underground cable system is also expected to provide reliability benefits that will continue years after the program period. *Id.*

ComEd asserts that the UUFR project will also enhance safety. The existing PILC cable has a solid operating history, but it also presents inherent risks. PILC is manufactured using oil impregnated paper tapes wound around copper conductors and covered with a lead sheath. It requires working with molten lead in confined spaces. The replacement polymer cable uses solid insulation with no lead and involves no oil that can leak. ComEd Ex. 4.0 at 13. ComEd explains that using the extruded dielectric cable avoids occupational exposure to lead fumes, handling of molten lead solder, combustible insulating oil in the cable or joint, and susceptibility to oil migration or leakage.

The installation and splicing of PILC cable requires highly specialized skills that are difficult to acquire. Even when performed by highly-qualified personnel, making PILC cable terminations and splices is labor-intensive and potentially error prone, and there are no commercially available splicing and terminating components. Finally, only one PILC manufacturing plant remains in North America, limiting ComEd’s access to supply. ComEd Ex. 4.0 at 13-14. Phasing out PILC cable in a more expeditious manner has additional long-term benefit of addressing these issues.

ComEd maintains that the proposed UUFR project would create 40-50 full-time equivalent jobs on an annual basis. These positions will be both within ComEd and the contractors ComEd may hire to work on the UUFR project. These jobs are skilled positions; the workers who fill them will gain valuable training as well as employment. ComEd Ex. 4.0 at 13.

The proposed UUFR project may also reduce costs in the long-run. By taking a more proactive approach, UUFR will maximize efficiency and reduce the total cost of the repairs, refurbishments, and replacements. But, achieving this requires a significantly greater commitment of capital up front. Without that additional investment in UUFR, ComEd will meet its obligations by continuing to respond on an emergent basis. ComEd Ex. 4.0 at 14.

#### Costs of the Program

ComEd proposes to spend \$45 million over 18 months on the UUFR project. \$30 million would be capital investment in cable, manhole refurbishment, and related cable support systems. The remaining \$15 million would be O&M expense for testing, inspection, and related activities. ComEd Ex. 4.0 at 14.

ComEd states that its budget was developed based on actual unit costs of underground mainline work performed system wide in 2009 and in Chicago in 2008. ComEd Ex. 4.0 at 15. To be conservative, ComEd also did not apply any inflation or supply cost indices to these prices. Much of the work involves skilled labor and the installation of equipment whose costs are generally rising. However, for purposes of the proposed Alt Reg program, no cost or inflation escalators were included with respect to labor or materials for the UUFR project.

ComEd has also accounted for anticipated efficiencies in developing its cost budgets in two ways. First, ComEd's budget contains a built-in discount of approximately 10%. When priced at actual historical cost, the work ComEd is budgeting for this program would cost just over \$49 million. ComEd asserts that assuming a nearly 10% productivity gain on a program that is scheduled to be completed over only 18 months is very aggressive and overstates the savings that are likely to be achieved absent innovation in work management. ComEd Ex. 4.0 at 15-16. ComEd adds that it has not increased the historical unit costs for increases in underlying labor and supply costs. Thus, the initial \$49 million used to develop the budget is already an understatement of what the work would cost in 2011 and 2012 based on actual experience. ComEd also proposes that the O&M work undertaken as part of the UUFR project will be tracked separately from the emergent corrective maintenance work that ComEd has been doing. *Id.* at 15-16.

## 2. CG

The CG states that it makes some sense for ComEd to be assured of revenue recovery for accelerating investment in underground infrastructure in order to improve safety and reliability. But one of the problems with the UUFR program is that cost recovery is based on ComEd budgets that are impossible to verify. First, the CG notes, the neat division of the \$45 million program budget into a \$30 million capital budget and \$15 million O&M budget gives the appearance of picking numbers out of the air. Second, in the marketplace, bids from multiple competitors test budgets, but here there is only a budget from one party and this budget is for work that itself is not fully defined. For example, manhole costs appear to constitute the majority of the UUFR capital budget but not even ComEd will not know until it gets underground and inspects the manholes whether these manholes will only need to have support parts replaced/refurbished (ComEd Ex. 4.0 at 10) or whether more extensive manhole rebuilding or replacements needs to be performed. *Id.* This after-budget decision will drive actual costs. In such a circumstance, it is not easy to see how a "beat the budget" approach is appropriate. Third, Staff does not have the ability evaluate such budgets (nor does any other party). Nor should Staff be expected to have such knowledge, according to the CG. These are the types of business decisions that are within ComEd knowledge, expertise, and business judgment; decisions that seem better fit for after-the-fact prudence review than a before-the-fact budget appraisal.

### 3. CUB

CUB notes ComEd has been testing and replacing underground cable for many years. ComEd Ex. 4.0 at 6. A Company witness has testified that “there is nothing improper or imprudent” about its current pace of testing and replacing this cable. *Id.* at 7. However, if it could undertake this investment under Rate ACEP, the Company could earn an immediate return on that investment rather than having to wait until its next rate case for that benefit. Tr. at 320. The Company explains that the benefit of UUFR is improved reliability for customers. *Id.* As Staff noted, if these improvements truly will improve reliability to the extent ComEd claims, then ComEd is being irresponsible by not undertaking this work in absence of alternative regulation. Staff Ex. 4.0 at 4. The Commission should not reward such behavior with alternative regulation. The greatest benefit to come then from instituting UUFR under ACEP would seem a greater rate base investment – and higher return – for ComEd.

### 4. AG

Through the proposed UUFR program, ComEd seeks to accelerate and re-prioritize the process of testing and, where indicated by those tests, replacing underground mainline feeder cable as well as accelerated inspection, repair, rebuilding, or replacement of cable support hardware and manholes where necessary. ComEd Ex. 4.0 at 2. ComEd is not proposing a new program of testing and replacement of facilities, but rather is indicating a proposed discretionary expansion of an existing program. Present levels of expenditures for testing and replacement of these facilities occurs under ongoing normal operations with a budget of about \$2 million and \$5 million per year, respectively. *Id.* at 6-7; Tr. at 74-75. In his rate case testimony in Docket 10-0467, ComEd witness McMahan addresses capital investments more globally, including the repair of over 26,500 underground cable faults in 2008 and 2009. He also indicates a total cost for underground cable faults, emergent cable and equipment replacement work involving \$95 million in capital costs and another \$60.8 million in expenses. In this case, the proposed expansion and acceleration of ComEd’s UUFR program would devote an additional \$45 million over 18 months for proactive maintenance and reconstruction. Thus, the UUFR program is an expansion of existing work that is addressed in the pending rate case.

Benefits from UUFR to consumers are claimed in four areas: a) improved reliability, b) improved safety, c) meaningful job creation, and d) potential reduction in long-term costs. ComEd has historically approached this work, according to ComEd witness Blaise, using a reactive approach to cost-effectively meet service requirements. She testified that there is nothing improper or imprudent about the Company’s approach to underground facilities maintenance. On cross-examination, she stated that, in the Company’s annual capital budget process, UUFR investment proposals have been based upon prioritizing reliability and customer needs. Tr. at 69-70. Ms. Blaise admitted that in the past, she has proposed approval of accelerated UUFR investment in the Company’s annual capital budget, but those proposals were ultimately rejected by the Company due to other capital priorities. Tr. at 71-73.

Based on this testimony, and under these circumstances, there has been no showing by ComEd that existing urban underground facility maintenance practices or

spending levels are inadequate or that customers should be made to fund, through a separate Rate ACEP charge, more aggressive testing and replacement of such facilities in order to correct unreliable or unsafe conditions or cost effectively create new jobs. Even if the Commission accepts Ms. Blaise' suggestion that paying for an accelerated level of investment provides some level of improved reliability, there is no specific information provided in the Company's filing identifying or quantifying any benefits, nor any showing that such benefits are not achievable under traditional regulation. In addition, the Company provided no evidence that the proposed UUFR program "will, in fact, actually move ComEd's delivery service quality beyond what is required to meet service requirements." *Id.* The fact that any form of accelerated UUFR investment has not survived the capital budget process due to other pressing customer and reliability needs does not constitute proof that ratepayers should be assessed an additional charge for such investment. This information, to the contrary, argues against assessing ratepayers for the investment.

Moreover, the Company presented no specific evidence of a financial need for Rate ACEP related to UUFR investment. For example, it failed to show that it could not simply go to the capital markets and finance the additional Rate ACEP investment projects rather than assess ratepayers a discrete surcharge each month for the projects.

The Commission, in a past order, has specifically rejected the notion that ratepayers should pay extra charges for capital projects that are of a type normally funded in base rates and do not survive a utility's own capital budget process. In Docket 07-0585 (cons.) (Ameren Illinois Utilities – Proposed general increase in delivery service rates), Ameren proposed Commission adoption of a mechanism that, like Rate ACEP, would assess a surcharge for specific, discretionary capital projects. Docket 07-0585 through 07-0590 cons., Order of September 24, 2008 at 238-239. Like ComEd's Rate ACEP proposal, the Ameren-proposed Rider QIP would have established a separate charge for discretionary projects that did not survive the Company's own capital budget process. Also, Ameren would present its proposed project for Rider QIP cost recovery in a Commission proceeding for Staff and intervenor review and Commission approval, similar to the Rate ACEP plan. *Id.* Like the Rider QIP projects at issue in the Ameren case, UUFR investment is normally recovered in base rates. Like the Ameren Rider QIP projects, the accelerated level that ComEd seeks cost recovery of through Rate ACEP is simply an accelerated amount that failed to pass its own capital budget process. And, like Ameren, ComEd failed to show in this docket that it made any attempt to, or in fact could not, access the capital markets to fund the accelerated investment.

Other reasons exist for rejecting Rate ACEP as the funding source for accelerated UUFR investment. Rate ACEP would provide for recovery of a piecemeal return and depreciation as well as for O&M recovery on UUFR activities, but would not account for either the avoided cost of the normal level of ongoing UUFR replacement that is embedded in test year rate cases or for any prospective O&M savings that may result from the acceleration of UUFR replacements and reduced outage response costs, AG witness Michael Brosch testified. AG Ex. 1.0 at 40. This fact supports the view that Rate ACEP amounts to illegal, single-issue ratemaking.

In addition, Rate ACEP is designed to provide full recovery, on a piecemeal basis, of all the incremental costs incurred by ComEd, except for five percent of O&M expenses for the UFR programs, so long as ComEd contains its discretionary capital spending to within 105 percent of its own budgeted amounts. This is not equitable sharing, but rather an aggressive recovery of and conversion of discretionary costs into new revenues for ComEd. If the UFR produces any net economic benefits, through reduced outages and outage response costs, the resulting cost savings would not be shared with ratepayers until they are captured within a future rate case test year. AG Ex. 1.0 at 34.

For all of these reasons, the AG argues that adoption of Rate ACEP to fund accelerated UFR investment should be denied.

## 5. Staff

Staff is concerned that ComEd is being irresponsible in denying customers the benefits of the UFR project when it conditions the implementation of the UFR project on the Commission's adoption of ComEd's Alt Reg proposal and on a favorable outcome (by ComEd's perspective) in the rate case. In short, it appears ComEd is using this necessary project to leverage the adoption of its Alt Reg proposal and the current rate case.

Staff notes that the current underground maintenance program is a "reactive approach" that "spends and invests as little as possible" and, based on this approach, refurbishment of all manholes could take up to 100 years to complete, and replacement of cable will only occur as failure indicators appear. The current reactive program approach is inconsistent with ComEd's own commitments in the Blueprint for Change Investigation Report ("Blueprint") that found too much of ComEd's maintenance work was reactive rather than preventive, driven by actual or pending equipment failures as well as ComEd's commitments to recommendations in the Liberty Consulting Group's ("Liberty") first report on the Investigation of Commonwealth Edison's Transmission and Distribution Systems.

Staff reviewed the UFR project and determined that it was necessary to meet the requirements of Section 8-401 and that it provides appropriate consideration to costs of service interruptions while protecting the public health, safety and welfare under Section 1-102 of the Act. Additionally, the UFR project will have a long term positive impact on utility earnings. Staff recommends that ComEd be ordered by the Commission to undertake the UFR project irrespective of whether ComEd receives approval of its Alt Reg proposal because Staff believes the UFR program would be prudent, and if the reliability work is completed, it would be used and useful.

Staff was influenced by ComEd's description of the "leading cause" of underground mainline feeder cable system failures that the UFR project has been designed to proactively address. Staff found convincing the many benefits the UFR project provided in reliability, safety, environmental and operational efficiencies derived from implementation of the UFR project. Staff determined that UFR supports the statutory goals in Section 8-401 of adequacy, reliability, efficiency, environmental safety and least-cost; Section 1-102(d)(i) objectives of protecting public health, safety, and welfare; Section 1-102(d)(vi) long-term utility earnings; and is consistent with good utility

practices as well as ComEd's past commitments to the Commission and to ComEd's customers.

The UUFR project has definite reliability benefits for customers. ComEd calculated an annual expectation of 38,363 estimated incremental avoided customer interruptions for the UUFR project. This equates to a SAIFI reduction of approximately 0.01 or about 10% of the \$53.5 to \$102.3 million annual financial benefits flowing to customers for every 0.1 reduction of SAIFI. Staff finds this persuasively supports the statutory goals in Sections 8-401, 1-102(i) and Section 1-102(vi) long-term utility earnings (through reduced restoration costs and operational savings) and is consistent with good utility practices. Additionally, this is consistent with Section 1-102(c) because it gives appropriate consideration to the costs likely to be incurred as a result of service interruptions as addressed in Illinois Adm. Code Part 411 Section 411.10(a)(2).

Staff also evaluated the UUFR project by reviewing the Company's calculated Cost per Avoided Customer Interruption ("CPACI") for the project. When it was compared to several existing programs, the CPACI for the UUFR project is higher than CPACI's calculated for the existing mainline underground cable testing and replacement program, which Staff has noted was not consistent with "good utility practice" or the requirements of Section 8-401. The CPACI of the UUFR project is lower than the CPACI's calculated for the existing vegetation management program and the existing underground residential design cable replacement/injection program. Staff finds it persuasive that the CPACI of the UUFR project lies within the range of currently implemented reliability projects at ComEd. Staff finds that this supports the statutory goals in Section 8-401.

ComEd witnesses opined that if the Commission required the UUFR project to be implemented it would "necessitate significant cutbacks" or displacement of other reliability projects. This argument has no merit. The UUFR project represents a modest part of ComEd's total rate base and a fraction of ComEd's approximately \$900 million annual additions to rate base. In addition, if ComEd were to hypothetically reduce a program with a higher CPACI than the UUFR project such as the tree trimming program, ComEd would be in violation of National Electric Safety Code ("NESC") Rule 218(A)(1) as adopted from the 2002 NESC by the Commission in Illinois Administrative Code 305.20 on June 15, 2003. In order to track ComEd's actions in response to a Commission order to implement the UUFR project, in rebuttal Staff witness Stutsman added to his recommendation that the Commission order ComEd to report the details of all programs and projects that are displaced or cutback because of ComEd's implementation of the UUFR project. Staff believes this additional information would alert the Commission, should the need arise, if it is necessary to initiate future actions or investigations into ComEd's activities.

ComEd's rebuttal testimony contended that the UUFR project was not necessary because it improved reliability beyond the levels that are required by the applicable laws, regulations, and regulatory decisions. When Staff asked ComEd witnesses what laws or minimum reliability standards the UUFR project specifically exceeded, ComEd's witnesses apparently had no idea except to point to the reporting requirements in Part 411 and the Act in general as well as Ms. Blaise' testimony in the Alt. Reg. docket that described the benefits of the UUFR project. ComEd witness Hemphill finally admitted

that reliability requirements are, for the most part, qualitative not quantitative and that, in his opinion, the current program met the requirements of Section 8-401 but that it was his “understanding and belief that the UUFR project is not necessary to meet the current reliability level that is required by law.” ComEd’s technical witness, Mr. McMahan, had no explanation of how the UUFR project exceeded minimum reliability standards and concurred with Dr. Hemphill. Neither ComEd’s policy nor technical experts could explain how or why the UUFR project with its many benefits for customers, ComEd, the environment, and the local economy was not a necessary project. ComEd’s technical expert apparently uses no technical criteria in determining the need for a reliability project and defers to a policy analyst’s qualitative opinions of what meets the requirements of Section 8-401.

Staff maintains that it is important to remain focused on the topic at hand, i.e., ComEd’s underground mainline feeder cable system failures, not the reliability statistics of ComEd’s entire system spread over the northern third of the State of Illinois. Staff witness Stutsman emphasized the importance of looking beyond total system reliability statistics when evaluating a subgroup of circuits or even an individual circuit to identify “leading causes” or pockets of unreliability. This was convincingly illustrated by ComEd showing that while on a system-wide basis ComEd’s reliability performance was good yet seven concerns were noted that revealed reliability deficiencies.

ComEd criticized Staff for turning to a 10-year old document to locate criticisms of ComEd’s reliability. Nevertheless, Staff referenced ComEd’s own Blueprint and ComEd’s responses to Liberty’s 1st set of Recommendations to illustrate commitments made by ComEd to its customers and the Commission on how ComEd would meet its statutory requirements and obligations to customers in the future. The Blueprint, Liberty and Wanda Reder’s paper on RCM for distribution underground systems provided support for what good utility practice should be in the maintenance of distribution underground systems with an actual case example from Northern States Power in the late 1990’s. Staff referenced these to demonstrate that ComEd has not been committed to improving reliability and has not followed the recommendations in the reports.

Staff notes that ComEd tried to paint Staff’s recommendation as an asymmetrical approach or unfunded mandate upon ComEd. Staff has proposed no such mandate nor would such a mandate be consistent with Section 1-102(d). ComEd controls when it files a rate case, what test year it will use, and the start and end dates for the UUFR project. Staff finds the intense budget driven emphasis of the UUFR project in the Alt. Reg. proposal to be problematic. Staff believes that from a cost control or cost management point of view, it is total nonsense to compare costs (or gauge performance) of one activity level with costs at a different activity level. Staff’s concerns were further heightened by ComEd’s emphasis on doing only the minimal work to become eligible to recover the full budget or share in any savings if costs are below budget. Because of this and the programmatic concerns inherent in the design of the Alt. Reg. projects, Staff believes customer interests would be better served by ComEd recovering its reasonable costs in a future rate case. If the Commission issued a Section 8-503 order directing ComEd to initiate the UUFR project, ComEd acknowledged that an order from the Commission regarding UUFR would solve the regulatory risk problem and there would be little doubt that reasonable costs would be

afforded recovery in its next rate case. This would further maintain consistency with the requirements of Section 1-102(d)(vi), which is further supported by Staff's belief that, due to regulatory lag, ComEd would reap operational savings which could offset any O&M expenses brought about by the implementation of the UUFR project until the rates from its next rate case become effective.

## **6. ComEd Reply**

ComEd notes that Staff discusses the reliability and other benefits of the UUFR project and 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. As an initial matter, the question of whether ComEd should be ordered to pursue the UUFR project is being addressed in ComEd's current rate case, Docket 10-0467. The scope of this alternative regulation docket is ComEd's petition for approval of its Alt Reg plan.

ComEd disagrees with Staff's assertions regarding the absolute need for the UUFR project funding. ComEd maintains that 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.

The AG points to Ms. Blaise' 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. 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 07-0585 et al. (cons.)). 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 is contradicted by the AG's earlier correct assessment

that the UUFR is discretionary. ComEd also notes that the Commission has approved an investment cost recovery rider (Infrastructure Cost Recovery Rider) in North Shore/Peoples Gas 2009 rate case, Docket 09-0166/09-0167 (cons.). Order (Jan. 21, 2010) at 164-182.

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 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 ComEd Ex. 4.0 at 9, 14-15. 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.

## 7. Commission Analysis and Conclusion

ComEd proposes to provide an incremental \$45 million over 18 months to accelerate proactive maintenance and reconstruction of underground mainline cable, cable support hardware and manholes in Chicago and other urban areas through the UUFR project. ComEd maintains that the UUFR project will further improve reliability above that required to meet minimum service requirements, create meaningful jobs, and reduce risks to safety and the environment. ComEd also asserts that the UUFR project represents an excellent opportunity to demonstrate how properly designed proactive replacement, enhancement and upgrade programs can benefit customers, and will be a good "field test" of how well alternative incentive regulation works for this type of distribution work. ComEd's proposed Alternative Regulation program provides a means for the Commission to make the policy decision whether to proceed with this program.

The Commission recognizes the many potential benefits of the UUFR program. Notably, the UUFR project will enhance reliability and ComEd estimates it could prevent 30,000 to 40,000 customer interruptions when complete. Besides reliability improvements, UUFR will enhance safety, create jobs, reduce leakage, avoid occupational exposure to lead fumes and has the potential to reduce costs in the long run. There are so many benefits that Staff believes the Commission should require ComEd to follow through with the UUFR project, irrespective of whether Rate ACEP is approved. This is not the docket, or the record, however, on which to base such a decision. This docket only considers whether Rate ACEP is an appropriate alternative regulation proposal.

~~The Commission is sure that Staff could very well be correct regarding the necessity of the UUFR project. Indeed, Staff makes a compelling argument that certain areas of ComEd's territory need more attention. The Commission concludes that the potential benefits and need for the UUFR project in no way satisfies or replaces the requirements that must be met for Commission approval of Rate ACEP under Section 9-244 of the Act.~~

~~The Commission does not find any support in the record for the proposition that UUFR performed under Rate ACEP provides any benefits that are not likely to accrue for UUFR performed under traditional regulation. The Commission recognizes that ComEd has said it will not undertake the UUFR project unless Rate ACEP is approved,~~

EXCEPTION #12

but the Commission does not find this persuasive. If Staff is correct that this project is necessary to ensure adequate reliability for Illinois ratepayers, then ComEd should complete it, with or without Rate ACEP. The Commission rejects ComEd's argument that this would be an unfunded mandate. The ability of a utility under traditional regulation to recover its reasonable and prudently incurred costs for necessary, used and useful investments is long-standing and if UUFR is required to provide adequate reliability there is no basis for assuming the associated costs will not be recovered from ratepayers.

In addition the Commission does not believe that Rate ACEP appropriately provides for the sharing of benefits with consumers. With the UUFR program, ComEd claims to share the economic benefits with ratepayers, by basing its budget on 2008 and 2009 actual costs and not adjusting for inflation. ComEd asserts that this captures the efficiencies that will be gained through the UUFR. Also, as the only program with budgeted O&M costs, ratepayers will receive an immediate 5% reduction in these costs. Because of the risk of inflated budgets and the cap on O&M savings, it is not apparent to the Commission that the record supports a finding that ComEd's UUFR proposal appropriately reflects an equitable sharing of the net economic benefits. In fact, ComEd provided no quantitative analysis to support its assertion that Rate ACEP's, and in particular UUFR's, net economic benefits are being equitably shared with ratepayers. The Commission notes that the AG states that Rate ACEP "would not account for either the avoided cost of the normal level of ongoing UUFR replacement that is embedded in test year rate cases or for any prospective O&M savings that may result from the acceleration of UUFR replacements and reduced outage response costs" AG Ex. 1.0 at 40. The Commission is likewise concerned that UUFR benefits are not shared with customers until the next rate case.

Additionally, the Commission finds that the very nature of the UUFR proposal highlights the problems with ComEd's proposed budget-based Alt Reg. In the Commission's view, it is impossible to approve a reasonable budget when the scope of the work is so fluid and undefined. Indeed, because UUFR involves testing, which has not been undertaken, followed by a decision on what level of work is required, the Commission believes the nature of UUFR makes it extremely difficult to assess the reasonableness of ComEd's UUFR budget. UUFR is remarkably ill suited for what the Company proposes in Rate ACEP and the Commission finds the CG's argument compelling:

manhole costs appear to constitute the majority of the UUFR capital budget but not even ComEd will know until it gets underground and inspects the manholes whether these manholes will only need to have support parts replaced/refurbished (ComEd Ex. 40.0, p. 10, Ins. 149-152 [Blaise]) or whether more extensive manhole rebuilding or replacement needs to be performed Id. Ins. 151-154. This after-budget decision will drive actual costs. In such a circumstance, it is not easy to see how a "beat the budget" approach is appropriate.....Nor would anyone on Staff know whether it is more cost efficient in the long run to replace outdated cable with higher (or lower insulation) level polymer cables...These are the types of business decision that are within ComEd's knowledge, expertise,

~~and business judgment; decision that seem better fit for after-the-fact prudence review than a before-the-fact budget appraisal.~~

~~CG IB at 3. It would be near impossible to determine when the UUFR project is complete because there are no specific scope of work parameters defined before the budget is established. The Commission understands that the proposed project is to replace 2,400-3,600 manholes and 25-37 miles of cable. The Commission is concerned that this is a huge range that could easily be manipulated to allow ComEd to declare a project complete in order to come in under budget.~~

~~Because reliability improvements are easily quantified and documented, the Commission is perplexed why, in the context of alternative regulation, ComEd did not propose a performance standard for this project based on measures related to improved reliability rather than budget. Whether the Company can complete this project under budget has nothing to do with the reliability of its system and, in the Commission's view, is an unsuitable performance standard in the context of alternative regulation.~~

~~Finally, it is difficult for the Commission to imagine how oversight of a budget and construction decisions would be a constructive use of Staff's, and Interveners', time and resources. Thus, the Commission does not approve Rate ACEP recovery of UUFR costs.~~

The record clearly supports ComEd's assertion that the UUFR project will substantially benefit customers, principally by further enhancing reliability of service, but also by improving operational efficiency and reducing the impact on customers of emergent repairs. No party presents credible evidence or arguments to the contrary, and Staff strongly supports the reliability benefits of this project. One purpose of alternative regulation is to promote such efficiencies, and the UUFR project is a good candidate for achieving such efficiencies. ComEd has presented a detailed work plan. The proposed work plan and budget is based on actual costs of comparable work in prior years, work which no one contends was conducted imprudently or unreasonably. Further, because the budget does not correct for inflation-driven cost increases and includes a built-in discount of approximately 10%, it is, if anything, a conservative cost estimate. We conclude that it is prudent for ComEd to proceed with the UUFR project at the budgeted cost and that the proposed budget is reasonable. Therefore, the Commission approves (1) the UUFR project as proposed by ComEd in this proceeding, (2) its targeted investment expenditure amount of \$30 million, the carrying charges for which are allowed to begin to be recovered under Rate ACEP, and (3) its O&M budget amount of \$15 million to be recovered under Rate ACEP, subject to the applicable caps and reductions as provided in Rate ACEP.

### **C. Electric Vehicle Pilot**

<u>Project</u>	<u>O&amp;M</u>	<u>Capital</u>
Electric Vehicle Pilot	----	\$5 million

#### **1. ComEd**

Under the Alt Reg program, ComEd states that the EV Pilot project would fund investment of \$5 million in a pilot of utility EVs and charging stations, with \$4.43 million of that amount functionalized to the distribution function and, therefore, Illinois-

jurisdictional. Plug-in EVs, unlike hybrids, derive all their motive power from electricity. They are the next generation in clean vehicle technology. ComEd maintains that its operational pilot of EVs will not only help educate ComEd and the public about uses of commercial EVs, but will have its own environmental benefits. ComEd requests that the Commission authorize this investment and provide for its recovery via Rate ACEP.

Under the EV Pilot project, ComEd proposes to purchase EVs and EV equipment, including installation of the charging stations, for the amounts indicated in the following table:

<b>ComEd EV Pilot Program Assets</b>	<b>Unit Cost</b>	<b>Quantity</b>	<b>Total ComEd Cost</b>
Plug-in car	\$ 36,000	45	\$ 1,620,000
Plug-in cargo/service vehicle	\$ 135,000	8	\$ 1,080,000
Hybrid bucket truck (non-pluggable)	\$ 250,000	4	\$ 1,000,000
PHEV digger-derrick	\$ 350,000	2	\$ 700,000
Level 2 charging stations for company vehicles	\$ 10,000	55	\$ 550,000
Incidental equipment and contingency	\$ 50,000		\$ 50,000
<b>Total Vehicles:</b>			<b>59</b>
<b>Total Charging Stations:</b>			<b>55</b>
<b>Total EV Pilot Program Investment:</b>			<b>\$ 5,000,000</b>

ComEd states that the majority of the EVs to be purchased under the EV Pilot are plug-in electric vehicles rather than hybrids. The plug-in car unit cost is based on the MSRP of \$32,780 for a Nissan Leaf plus tax, title, and freight costs. ComEd Ex. 7.0 at 6. 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). Id. at 3. The \$250,000 unit cost is the average of the prices paid by ComEd for a hybrid bucket truck in 2009. The faster Level 2 charging stations were chosen because the EVs will be used in a commercial utility fleet and must be available at least 8 hours per day and potentially 16 hours or more during emergency situations. The charging stations selected by ComEd also provide communications, control, and data collection capability which ComEd asserts are vital to the informational gathering goal of the EV Pilot.

ComEd explains that the proposed installation cost budget for the charging stations reflects additional material and labor costs to reflect the following circumstances: (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.

ComEd submits that the EV Pilot program investments would be made over the period from approximately August 2011 through May 2012. Individual investments may vary slightly based on factors such as availability of particular vehicles and equipment. The Pilot study period would extend through December 2013, although ComEd expects

to use the vehicles and charging stations beyond that time. ComEd does not believe the EV Pilot will cause it to incur additional O&M costs. ComEd is, therefore, not requesting any additional O&M costs be recovered through Rate ACEP. ComEd also does not plan on removing any vehicles from service prematurely as a result of this project.

ComEd proposes to provide information about the EV experience at the end of the pilot period. While ComEd is proposing the pilot period conclude at the end of 2013, ComEd believes it will have collected enough data by that time to develop a total life cycle cost of ownership for each class of vehicle as well as data on how the vehicles performed. Additionally, ComEd will use information acquired through the pilot to help our customers prepare for EV adoption. To the extent the information is not a trade secret of a third party, or ComEd is not otherwise legally prohibited from doing so, ComEd proposes to make the results of the EV Pilot public.

ComEd notes that there was some dispute concerning the estimated costs of the various vehicles and other facilities to be used for the pilot. ComEd submits that the evidence shows this was almost exclusively the unfortunate result of confusion about what assets would be acquired and piloted. For example, Staff questioned the per-unit costs for hybrid bucket trucks used by ComEd in its budget estimate. However, in rebuttal, ComEd explained that bucket truck costs vary widely depending on the type of mounted aerial equipment as well as other vehicle components such as lighting and storage compartments. ComEd Ex. 7.0 at 2-3. Additionally, in its response to Staff data request JLH 1.10, ComEd provided invoices from past purchases of hybrid bucket trucks that illustrate this price variability and shows that the estimate ComEd used is within the range of expected costs. ComEd submits that the record shows that its budget for the EV Pilot is reasonable.

ComEd recognizes that tax credits and/or grants may be available for both EVs and charging infrastructure when ComEd makes its equipment purchases. ComEd states that if these credits and/or grants are available at the time of EV and charging infrastructure purchases, ComEd will offset the approved budgeted amounts to take those credits and/or grants into account. Additionally, ComEd is willing to work with Staff to develop appropriate language and identify appropriate places in the tariff to insert such language.

ComEd observes that EVs hold great potential to revolutionize transportation. They offer environmental benefits and studies suggest lower costs for “fuel” and maintenance may offset higher upfront costs over the life of the vehicle. ComEd Ex. 2.0 at 3. However, many EVs are in the early stages of commercialization, and little information is available about the total life-cycle costs of these vehicles in a fleet environment. There is especially little information about how such vehicles perform in an industrial setting, or in an area like ComEd serves, which includes urban, suburban, and rural areas over a large geographic footprint with diverse climate conditions. *Id.* ComEd contends that a pilot program is, thus, appropriate.

The pilot will provide new information about EV lifecycle costs and operational considerations that will be valuable in the operation of ComEd’s own utility fleet, as well as to customers considering EVs. ComEd’s use of EVs and EV charging stations

through the EV Pilot program will provide much needed experience and information at the product introduction stage regarding the use, benefits, and costs of EVs in an industrial and commercial fleet. Much of the information gained will also be valuable to both residential and commercial customers who may be considering adopting EVs for their personal use and fleet applications. This is why ComEd has committed to make the results of this Pilot public.

ComEd advises that the EV Pilot will also produce operational benefits in its own right, although they will be limited by the limited size of the pilot itself. For example, ComEd believes that EVs may be an effective means of reducing emissions, replacing carbon-fueled vehicles. The limited deployment of EVs can also be expected to produce a limited reduction in emissions and other environmental benefits compared to vehicles that run on conventional fuels. EVs also run more quietly than their combustion-powered counterparts, which should enhance worker health and comfort.

## **2. ELPC**

ELPC states that it is a strong proponent of EVs and believes that the development of the EV market is an important part of America's global warming strategy. ELPC states, however, that ComEd customers should not be paying more for ComEd to purchase EVs for itself without ComEd demonstrating the benefit for ComEd customers.

ELPC argues that it's not clear that what ComEd is testing in the "pilot" will have any real benefit to customers. ELPC points out that ComEd never tries to define or categorize what it will learn or how it will share the information. ELPC anticipates a number of customers will purchase EVs, and that much can be learned from the market without ComEd customers paying for ComEd to purchase EVs.

As electric vehicles become available in 2011 and 2012, many ComEd customers will purchase them for private use. If ComEd believes it needs information, it should study the use of EVs by those customers. Finally, if ComEd believes that it needs a more controlled study, ELPC proposes that it hold a lottery for ComEd customers and allow the winners to purchase EVs. ComEd would pay the difference between the cost of the EV and the cost of a similar traditional automobile, in return for the customers' cooperation with ComEd on a study of the vehicles.

## **3. CUB**

The Company already has a fleet of hybrid cars which were purchased under traditional regulation because of its own interest in the benefits of hybrid vehicles. Apparently the Company is now interested in the newer models of electric vehicles. CUB notes that ComEd will receive eleven all-electric Chevy Volts through the Clean Cities Grant. Tr. at 184. The Company now claims that it needs more all-electric vehicles to get a sufficient "sample size." Tr. at 186. Based on its history of purchasing hybrid vehicles, and its stated intent to purchase all-electric vehicles without ACEP, the Company cannot contend that this project has benefits under Rate ACEP that would not be seen without this alternative regulation.

## **4. AG**

Assessing a discrete charge through Rate ACEP for an EV Pilot is unnecessary, will result in higher rates and provides no benefits to ratepayers, according to the AG. ComEd currently owns 10 converted plug-in hybrid electric vehicles; and nine hybrid electric bucket trucks. The AG notes that ComEd's fleet of approximately 3,300 vehicles includes various hybrids, biofuel and flex-fuel vehicles. Alternative-fuel vehicles already represent 63 percent of ComEd's total fleet of cars and trucks. The 59 incremental vehicles proposed under the EV Pilot program represent replacement of less than two percent of the entire fleet. In the normal course of business, ComEd would expect to replace at least 150 to 200 vehicles annually, given its depreciation accrual rates of 11.59% for passenger cars, and ranges from 5.72% to 12.04% for various types of trucks. As noted by Mr. Brosch, there is nothing special about the EV pilot, as it could readily be absorbed into ComEd's routinely large need to deploy replacement vehicles each year. However, rather than simply integrating the proposed EV Pilot into normal vehicle replacements, Rate ACEP clearly envisions shifting all the up-front costs and risks of the Company's planned EV research project onto customers, even though any benefits from this pilot are far from certain.

In particular, use of to Company-developed budgets creates misaligned incentives, shifts the risk of the investment to ratepayers and provides illusory benefits at best. The AG asserts that the EV Pilot budgets under Rate ACEP are not necessarily, as Company witness Hemphill asserted, "assumptions and numbers [that] can be double checked, and ... budgets [that] can be altered if appropriate." ComEd Ex. 6.0 at 13. Instead the EV Pilot budget process is more appropriately described by Staff witness Hinman, who characterized it as ComEd asking the Commission "to place a great deal of trust in ComEd's Alt Reg proposal and Rate ACEP budget estimates." Staff Ex. 9.0. Given the inherent incentive mechanism that rewards the Company for an inflated budget, any lack of transparency in the Company's "trust-us" budget is particularly problematic.

In addition, the AG notes that ComEd already is conducting research studies of alternative vehicles through grants under the "Clean Cities Project" and an Electric Power Research Institute ("EPRI") award. Specifically, the Clean Cities grant awards ComEd \$610,000 for vehicles, and \$421,480 for infrastructure. Staff Ex. 2.0 at 21; Staff Ex. 9.1, Part 1. In cross examination, Company witness McMahan stated that ComEd, through the Clean Cities Grant, has been awarded money for bucket trucks, hybrid bucket trucks; hybrid Ford Escapes; a hybrid digger derrick truck and 36 charging stations. Tr. at 134.

Under the EPRI grant, ComEd is partnering with EPRI and others to demonstrate PHEV in a commercial fleet application. Under the grant, ComEd will deploy PHEV bucket trucks. Each utility's cost share is the cost of the base vehicle (approximately \$106,000 per vehicle in ComEd's case) while the grant covers the incremental PHEV. All vehicles acquired under this grant are expected to be in service by the second quarter, 2011. Staff Ex. 2.0 at 21; Staff Ex. 9.1, Part 1. In addition, on cross-examination, ComEd witness McMahan stated the Company would receive 11 GM Chevy Volts (EVs) under the demonstration project with EPRI. Tr. at 184.

In short, ComEd already is engaged in what looks to be meaningful assessments of the performance of EVs and other non-traditional vehicles. Their proposal to require

ratepayers to pay a premium for the privilege of having ComEd study efficiencies gained from 59 EVs is not the kind of tangible “benefit” that Section 9-244(b)(2) of the Act envisions.

## 5. Staff

As Staff and several intervenors noted, tying the monetary incentive of this Alt Reg proposal to budgets creates an economic incentive for ComEd to inflate the proposed Rate ACEP budgets. ComEd witness Hemphill denied that ComEd has an incentive to make the budgets larger, stating that the budgets were offered in “good faith” and that, “these budgets are based on vendor proposals and on the costs ComEd has incurred in the past.” However, Staff argues that ComEd failed to provide sufficient documentation or evidence to support its cost estimates for most of the assets it proposes to purchase as part of the EV Pilot.

Significantly, the EV Pilot program appears to be the most transparent of the proposed Alt Reg programs, in that ComEd provided a listing of asset types for purchase and their respective price estimates. Yet despite this apparent transparency, Staff asserts that ComEd failed to substantiate the budgeted costs for this program and clearly indicate the specific assets it proposes to purchase. Thus, upon investigation, this program proved not to be transparent.

Staff determined that ComEd’s proposed \$5 million budget for the EV Pilot is inflated, and Staff witness Hinman’s review suggested that the budgeted \$3.22 million cost of some of these assets may be inflated by \$1.12 million. Further, this overstatement is likely conservative, because Staff lacks access to the same information that a market participant like ComEd has.

### Hybrid Bucket Trucks (non-pluggable)

ComEd originally proposed to purchase hybrid bucket trucks (non-pluggable) consisting of an International chassis with Eaton hybrid drive system and Altec TA40 aerial equipment, with a budgeted cost of \$250,000, for deployment to the Distributions System Operations and Construction & Maintenance Departments. In support of this unit cost, ComEd provided invoices for its current fleet of hybrid bucket trucks which listed costs of \$214,589.50 and \$215,072.94 for the hybrid bucket trucks with TA40 aerial equipment in 2009. In direct testimony, Staff witness Hinman concluded that the hybrid bucket truck budget was inflated by approximately \$140,000.

Ms. Hinman also explained how ComEd’s budgeted cost for hybrid bucket trucks (non-pluggable) varies depending on the use of the budget. In ComEd’s “Clean Cities Project” grant proposal, ComEd budgeted a \$230,000 cost per hybrid bucket truck (non-pluggable), which can be broken down into \$175,000 for the standard diesel vehicle and \$55,000 for the incremental hybrid cost. Staff notes that ComEd budgeted \$20,000 more per hybrid bucket truck (non-pluggable) for its Alt Reg proposal than it did for its “Clean Cities Project” grant proposal. ComEd provided no explanation for the discrepancy between these cost estimates.

In response, ComEd witness McMahan criticized Ms. Hinman’s estimates, and suggested that ComEd plans to purchase hybrid bucket trucks with a variety of aerial equipment whose composition is currently unknown, not just the Altec TA40 model of

aerial equipment that ComEd had originally indicated. Not only is the appropriateness of the budget blurred by lack of specificity of vehicle models, it is also blurred by lack of specificity of equipment of the trucks. Technical specifications missing from the proposed program budgets can significantly impact ComEd's final investment expenditure amounts. Mr. McMahan states, "Bucket truck costs vary widely depending on the mounted aerial equipment (e.g., TA40, TA45, TA50), as well as other components such as lighting, storage boxes, and ladder racks."

Staff asserts that ComEd can easily complete a program under budget by purchasing assets with lower functionality or with different components. ComEd can simply choose the functionality of the assets it procures to ensure that it beats the budgeted cost. In other words, the budget is an illusory benchmark for measuring performance for an Alt Reg program.

With respect to plug-in cars, ComEd proposes to purchase Nissan Leaf plug-in cars at \$36,000 per car for deployment to its Meter Reading Department. ComEd provided no supporting documentation for its Nissan Leaf unit cost estimate. Staff witness Hinman found that the Manufacturer Suggested Retail Price ("MSRP") equals \$32,780. This MSRP excludes bulk purchase discounts and the federal tax credit available for this vehicle which amounts to \$7,500 per vehicle. ComEd did not propose to flow through the federal tax credit to customers in the originally filed Rate ACEP tariff. In sum, Staff found that the EV Pilot budget was inflated by almost \$500,000 for just the plug-in car portion of the EV Pilot budget.

ComEd agreed to change the Rate ACEP tariff to allow the benefits of grants and tax credits to flow through to ComEd's customers, if approved. However, Staff notes that ComEd did not address whether the MSRP was the appropriate cost to include in the budget, or the availability of fleet discounts to ComEd.

With respect to plug-in cargo/service vehicles and PHEV digger-derricks, ComEd proposes to purchase Navistar eStar plug-in cargo/service vehicles at a unit cost of \$135,000 for deployment to the Supply and Field & Meter Services Departments and IHC chassis with DUECO C4047 plug-in hybrid digger derrick trucks at a unit cost of \$350,000 for deployment to ComEd's Construction & Maintenance Department. ComEd provided no price quotes or other verifiable information to support the budgeted unit cost estimates of these vehicles.

Staff witness Hinman attempted to independently verify the budgeted prices. She was unable to view the prices of new vehicles, because the manufacturers' websites are protected so that information can only be viewed by members and previous customers. Thus, Staff could not double-check the current list price of plug-in cargo/service vehicles or the PHEV digger-derrick trucks. ComEd did not provide the necessary evidence to show that the Rate ACEP budgeted costs for these vehicles, which represent 36% of the EV Pilot budget, are reasonable.

For the EV pilot, ComEd proposes to purchase and install 55 Level 2 charging stations at a total cost of \$600,000. ComEd states that the Coulomb Technologies CT 2100 "charging station has been chosen for its ability to be networked and remote communications capability, enabling aggregate management of the electrical load associated with ComEd's fleet of plug-in vehicles." Although ComEd's current fleet of

ten Toyota Prius plug-in hybrid electric vehicles (“PHEVs”) do not utilize the top-of-the-line Level 2 charging stations such as those ComEd is proposing for the EV Pilot, ComEd still could remotely acquire vehicle performance data and aggregately manage the electrical load of the vehicles without them, as ComEd admitted in ComEd’s Initial Assessment of Plug-in Electric Vehicles in discussing its current PHEV Prius fleet.

ComEd witness McMahan stated that the proposed Navistar eStar plug-in cargo/service vehicle “and the Dueco PHEV digger derrick included in ComEd’s EV Pilot both require Level 2 charging, per the manufacturers’ specifications.” Staff witness Hinman investigated the budgeted cost of Level 2 charging stations. The Coulomb Technologies CT 2100 charging station price was not publicly available when Staff filed direct testimony. Based on publicly available information, Ms. Hinman discovered that a Level 2 charging station that the proposed plug-in vehicles apparently require can be purchased for approximately \$530. Thus, ComEd could purchase 55 of the cheaper charging stations and be significantly under budget by approximately \$245,850, excluding the installation costs and available federal tax credits. Thus, 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.

In his rebuttal testimony, Mr. McMahan stated, “The \$5,000 per unit estimate for the CT-2100 [charging station] is based on a quote from Coulomb Technologies.” Mr. McMahan provided this expired vendor quotation three months after ComEd’s initial filing. However, the vendor quotation did not provide the number of charging stations the quotation applied to, which potentially failed to account for any bulk discounts that ComEd might receive from purchasing 55 charging stations. ComEd did not offer any less expensive alternatives to the charging station it proposed.

Staff also takes issue with ComEd’s budgeted installation costs for the charging stations. Because ComEd did not provide actual quotes or any other supporting documentation for its budgeted installation costs, Ms. Hinman relied on publicly available information to estimate charging station installation costs. Staff reviewed a U.S. Department of Energy Study (“DOE Study”) regarding charging infrastructure that was completed in November of 2008 and which provided estimates for the costs of Level 2 charging stations and the installation costs in a variety of settings. The DOE Study disaggregated commercial Level 2 charging infrastructure costs by labor, material, permits, and signage for the EVs wall boxes, EV charge cords, circuit installation with separate meter and breaker panel, and administration costs. In sharp contrast to the information provided by ComEd, the DOE Study actually listed assumptions used to develop the cost estimates for the Level 2 charging stations and their installation. The cost per charge point (including the charging station and installation cost) changed significantly from \$1,520 for a 5-vehicle station, \$1,852 for a 10-vehicle commercial facility charging station, to as high as \$2,146 for a single vehicle residential charger. However, these figures are still all significantly less than the \$10,909 per charge point budgeted by ComEd. ComEd could purchase and install charging stations significantly under budget without any efficiency advantage. Based on the aforementioned estimates, Staff witness Hinman estimated the charging

infrastructure budgeted cost to be inflated by approximately \$498,135 (excluding available tax credits).

In rebuttal testimony, Mr. McMahan criticized some of the assumptions used by the DOE Study, but his critique did not present many alternative assumptions to support replacement of those assumptions or how their replacement would justify ComEd's higher budgeted cost. Rather than provide documentation for ComEd's installation cost estimates, Staff notes that Mr. McMahan simply asserted that the only publicly available study of EV charging station installation costs should not apply to ComEd's proposed EV Pilot program.

In addition, ComEd states that it would select the locations for charging stations to optimize the balance between installation costs and vehicle deployment benefits, and that required upgrades to the distribution system would be one of the criteria used to select deployment locations. Rather than building this consideration into its budget, ComEd simply proposes the maximum amount for installation cost in addition to a \$50,000 installation cost variability fund.

Mr. McMahan concludes, "ComEd feels that its \$5,000 estimate for installation is more reasonable than those cited by Ms. Hinman from the 2008 U.S. Department of Energy Study." Mr. McMahan tries to justify ComEd's budget for charging station installation costs by stating, "per-unit costs for charging infrastructure are based on estimates generated from conversations with charging infrastructure providers, and not actual quotes for work." ComEd did not offer the actual quotes for the installation of the 36 charging stations in surrebuttal testimony and did not offer the invoices for the 36 charging stations recently installed. ComEd provided no verifiable evidence to support its conversation-based installation cost estimates. Without documentation or even the vendor contact information upon which Mr. McMahan's opinion was based, it was impossible to double-check his conclusion. Considering the dearth of publicly available price information for EV Pilot assets, Staff asserts that Dr. Hemphill's comment implying that the Commission can easily or readily double-check ComEd's budgeting assumptions and numbers for Alt Reg programs is overly optimistic and an unfair representation of ComEd's proposed budget.

#### Double Recovery of Costs

When questioned at the hearing about the MSRP of the Chevy Volts that ComEd plans to purchase under traditional regulation, Mr. McMahan stated in part, "Well, it doesn't cost us that... we're not paying that full price... the grant program takes into account the incremental cost between a traditional vehicle and EV, and then our cost share portion is the base cost of the car." 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.

## 6. ComEd Reply

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 then jumps to its superficial claim that using budgets to measure performance creates an incentive for ComEd to inflate its proposed Rate ACEP budgets. 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.

Staff also asserts that the EV Pilot project is not sufficiently supported and is not transparent. 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 ComEd Ex. 7.0 at 6. Given that ComEd agreed in testimony to modify Rate ACEP to account for any tax credits available when it purchases EVs or charging stations, 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. 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. ComEd Ex. 7.0 at 3. 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. 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. To the contrary, this 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. 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 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. 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 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 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.

Staff addresses the cost estimates for the purchase and installation of Coulomb Technologies CT 2100 charging stations. 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. This is significant regarding the spurious claim that ComEd EV Pilot budget demonstrates Staff's assertion that ComEd is incited 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 Alt Reg 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 appears to question ComEd's selection of the Coulomb Technologies CT 2100 charging station, but never makes a direct recommendation in this regard. ComEd witness McMahan explained the basis for ComEd's selection of the CT 2100 charging stations was 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. ComEd Ex. 7.0 at 10. 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.

Staff also complains that the vendor quote provided by ComEd was provided in rebuttal testimony rather than direct and was expired. 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 also disagrees with ComEd's budget estimate for installation costs for the Coulomb Technologies CT-2100. 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." ComEd Ex. 7.0 at 13. ComEd's proposed installation cost budget also reflects additional material and labor costs. 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. ComEd Ex. 7.0 at 11. Mr. McMahan further explained that those cost estimates were based on assumptions inconsistent with the facts and circumstances applicable to ComEd. *Id.* at 11-12. 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.* 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.*

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.

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 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. 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." ComEd Ex. 7.0 at 13. 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.* Mr. McMahan – who has extensive experience in distribution engineering, capacity planning, reliability engineering, project management, long range work planning and budgeting, and vendor management (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." ComEd Ex. 7.0 at 13. 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.

With respect to Staff's double recovery argument, ComEd states that 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.

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. 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.

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 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.

## 7. Commission Analysis and Conclusion

Under the EV Pilot project, ComEd proposes to invest \$5 million in a pilot of utility EVs and associated charging stations. Of this amount, \$4.43 million is functionalized to the distribution function and therefore could be recovered under retail rates. This pilot is designed to be focused on the less studied aspects of how EVs could be used in an industrial fleet setting where significant daily driving is required. ComEd's service territory, which contains both urban and rural areas, is a suitable region in which to undertake such test. The record contains details regarding the particular EVs and EV equipment ComEd proposes to purchase. ComEd maintains that its operational pilot of EVs will not only help educate ComEd and the public about uses of commercial EVs, but will have its own environmental benefits. The charging stations selected by ComEd provide communications, control, and data collection capability which ComEd asserts are vital to the informational gathering goal of the EV Pilot. The EV Pilot project investments would be made over the period from approximately August 2011 through May 2012. The Pilot study period would extend through December 2013, at which time ComEd proposes to provide available information about the EV experience including information regarding total life cycle cost of ownership and data on how the vehicles performed. ComEd will make this information publicly available (with the exception of data that it might be legally prohibited from publicizing, such as vendor trade secrets). This has the additional benefit of spreading the information learned rapidly and without additional cost to customers and others exploring EV options.

The Commission believes that the advent of EVs is important both to specific policies defined by our Public Utilities Act and to the broader public interest. We have taken a keen interest in how these vehicles will function as well as what their effects will be on the electric systems. We are, in particular, aware of how little actual experience there is and of the fact that, when EVs are rolled out more broadly, problems may develop that could not have been foreseen in the absence of advance study and pilots. In this, the Commission agrees with ComEd that although EVs have environmental benefits and potential fuel and maintenance savings that may exceed their additional upfront costs, there is little information about how such vehicles perform in an industrial setting or in an area which includes urban, suburban, and rural areas over a large geographic footprint with diverse climate conditions. Nor is information regarding the total lifecycle costs for these vehicles readily available.

EXCEPTION #13

The proposed EV Pilot will provide such information. While there were some questions raised as to the costs of the particular EVs and equipment, we find that as the record was fully developed, it provides adequate detail regarding the EVs and equipment to be purchased. As noted above, we are cognizant of Staff's concerns regarding the use of budgets. But, in this case in particular, that concern seems unjustified. ComEd provided detail far more granular than is typically requested or reviewed in the context of a rate case (e.g., prices of specific individual vehicles) and the manner in which those data were investigated in this docket underscores that it was more than sufficient to allow us to reach a conclusion as to whether a \$5 million project as described is prudent and whether \$5 million is a reasonable cost to conduct it. Therefore, the Commission approves (1) the EV Pilot program as proposed by ComEd in this proceeding and (2) its Illinois-jurisdictional targeted investment expenditure amount of \$4.43 million, the carrying charges for which are allowed to begin to be recovered under Rate ACEP.

As an initial matter, the Commission wishes to state its belief that in the long-run electric vehicles have the potential to provide benefits to society and that, as the market for electric vehicles expands, there may ultimately be implications on the electric grid in Illinois. After reviewing the details of the Company's proposed EV Pilot, however, the Commission is more confident in the appropriateness of the denial of the Petition. The Commission agrees with Staff when it states in its Reply Brief that not only does ComEd have "an incentive to inflate its budgets under its proposed Alt. Reg. plan, but also that it has in fact inflated its proposed EV Pilot budget." Staff RB at 21.

For example, with respect to the \$5,000 per unit vendor quote for charging stations, Staff notes that the quote does not indicate the number of stations it is for. Staff opines that the quote may not capture discounts for bulk purchases like that proposed here. In response, ComEd says it has made a *prima facie* showing of the reasonableness of its budget and it can't be held accountable for not proving a negative (that discounts don't exist). Further, ComEd states that because it has shown its budget estimate to be reasonable, it now falls on Staff to show the estimate is not reasonable. The Company's position may be correct for other types of proceedings, but the Commission does not agree that it applies to this unique pilot where the Company is requesting pre-approval of its budget. The Commission finds the evidence submitted in support of its proposed budget to be deficient and in this unique budget process, the burden remained with ComEd to further substantiate its numbers when this deficiency was highlighted by Staff. Contrary to ComEd's suggestion, Commission Staff is not in a position to procure quotes for bulk purchases of charging stations.

The Commission notes that ComEd has framed its Rate ACEP proposal and, therefore, this docket as a pilot for future projects to be approved under its proposed budget process. ComEd has said that it hopes this process will be collaborative. It will include workshops followed by a docketed proceeding, such as this one, where parties will have the opportunity to comment on ComEd's proposed budgets. The Commission finds it interesting that, in this first time test of the budget process, ComEd's budget resulted in so much criticism in testimony from Commission Staff. But, as noted above, the Company did not address this testimony in its Initial Brief. Also exasperating to the process is that the Company has not compromised on its initial budget proposal in any

~~way, except to agree to the obvious need to reflect any tax credits that may be available. As is so frequently the case, the “correct” number is probably somewhere between the Company and Staff, but this highlights yet another problem with the Company’s proposed Rate ACEP. It would be inappropriate for the Commission to allow the Company to recover costs based on a number the Commission would essentially have to make up. This is in contrast to an after-the-fact review where, the Commission might adopt a compromise position, but at least that position would be based on actual numbers.~~

~~It is clear to the Commission that ComEd failed to consider using cheaper charging stations. Staff argues that ComEd could easily come in under budget by actually using cheaper charging stations than are proposed in the budget. In response, ComEd says that at the two year review the Commission can find the Company has not complied if it doesn’t buy the equipment it budgeted for. ComEd’s response demonstrates, in part, why the Commission is concerned with the possible perverse incentives ComEd’s alternative regulation proposal could create. When faced with the suggestion that its budget may be too high, rather than reducing its budget and potentially reducing costs, ComEd instead suggests that to comply with its proposed budget, it should simply purchase the budgeted equipment. While such a process may be in ComEd’s economic interest, the Commission believes it is clearly not in customers’ economic interest. The Commission concludes that this single example demonstrates a fundamental flaw in the proposal to measure ComEd’s actual performance against a pre-approved budget. It appears to the Commission that in at least some instances, ComEd will have an incentive to act in a manner that is in its shareholders economic interests and, at the same time, contrary to customers’ economic interests.~~

~~In conjunction with this conclusion, the Commission sees more in Staff’s observation than just complying with the budget. Rate ACEP, as ComEd has proposed, entails the Commission making a prudency finding at the time of budget approval. The Company, by not considering, and thus not presenting evidence, regarding any other available charging stations, has not presented a record upon which the Commission can make a prudency determination.~~

~~The Commission also finds evidence of the inappropriateness of the Rate ACEP budget process in the proposed installation costs for the charging stations. The DOE Study is apparently the only publicly available information regarding the cost of installing charging stations, which are remarkably lower than ComEd’s estimated costs. The Commission is left wondering on what basis it could determine a reasonable estimate of the costs. The Commission believes that in this instance, an after-the-fact review of what it actually costs to install the charging stations is obviously necessary to determine whether the costs were reasonable and prudently incurred.~~

~~The Commission is also cognizant that alternative fuel vehicles are 63% of ComEd’s current fleet and that the Company is piloting EVs through a grant with EPRI. AG RB at 24. Because of the problems with the budget process, ComEd has not shown that the proposed EV pilot, which the Commission finds to be poorly defined, should be funded through Rate ACEP. Indeed, the Commission questions how useful the pilot~~

will be to the majority of ComEd's delivery service customers because it focuses on how EVs will perform in a fleet environment.

## V. Smart Grid

Project	O&M (\$millions)	Capital
<b>Accelerated Smart Grid Deployment</b>		
<ul style="list-style-type: none"> <li>• 190,000 additional AMI meters and Outage Management System Interface</li> </ul>	\$10	\$55
<ul style="list-style-type: none"> <li>• Accelerated deployment of Distribution Automation</li> </ul>	----	\$40
<ul style="list-style-type: none"> <li>• Customer Applications</li> </ul>	\$20	

### A. ComEd

ComEd states that under the process articulated in ComEd's 2007 Rate Case, the Commission is expected to open a Smart Grid Policy Docket ("Policy Docket") soon. In addition, the results of ComEd's Advanced Metering Infrastructure ("AMI") Pilot authorized in Docket 09-0263 will soon be available. ComEd explains that if, as a result of the Policy Docket and the AMI Pilot, the Commission determines to move forward with further DA or AMI deployment, specific capital and O&M budgets for DA and AMI investment would be developed and approved in a later implementation proceeding.

With the approval of the Alt Reg program, ComEd states that it would be able to move forward immediately following the Smart Grid implementation proceeding as a cost recovery mechanism would already be in place. ComEd maintains that approving a recovery mechanism for future Smart Grid technology does not prejudice or presuppose what the AMI Pilot might show or what the Commission Policy Docket will conclude. ComEd states that the proposed Alt Reg program provides the means to timely use the data that the Illinois Statewide Smart Grid Collaborative ("ISSGC") and AMI Pilot will provide and to implement the policies set in the Policy Docket. ComEd adds that it will not ask to recover the costs of future expanded Smart Grid pilots or Smart Grid deployments through Rate ACEP unless they meet the policy directives established by the Commission and will benefit customers. Moreover, under the Alt Reg program, ComEd states that it will not proceed with any Smart Grid projects unless the Commission approves such projects.

ComEd argues that there are three reasons why the Commission should approve Rate ACEP as a Smart Grid cost recovery mechanism. First, ComEd states that the Commission should make clear that Smart Grid funding will be reviewed and approved on a prospective basis, so that policy issues can be determined before rather than after the commitment of funds. Second, ComEd maintains that the Commission should put in place a mechanism that allows utilities to plan and justify Smart Grid investments on a programmatic basis. Third, ComEd explains that waiting to confront all over again the issues that have been litigated in this docket will complicate and – inevitably – delay the deployment of whatever Smart Grid programs the Commission does approve. In

addition, that delay will decrease the influence and flexibility Illinois will have in guiding and, then, choosing among Smart Grid options.

## **B. IIEC**

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

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

The Commission's established three-step statewide process for evaluating further investment in Smart Grid contemplates decisions on Smart Grid cost recovery after the Commission completes its established process for and is aware of the potential investments at issue. The final step in the Commission's comprehensive evaluation process -- the Policy Docket -- should not have its determination of issues pre-empted by proposed Rate ACEP.

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

ComEd defends its proposed pre-approval process, at least in part, by arguing that its engineers need guidance on policy questions related to potential Smart Grid investments. The policy questions ComEd would like have answered are all issues contemplated for the aptly named Smart Grid Policy Docket. To overcome this particular perceived hurdle, ComEd need only accept the guidance the ICC has already given -- wait.

ComEd nonetheless asserts that its bare Smart Grid cost recovery proposal should be approved, because "waiting to confront all over again the issues that have been litigated in this docket will complicate and -- inevitably -- delay the deployment of whatever Smart Grid programs the Commission does approve." ComEd IB at 31. However, had the orderly process the Commission defined been allowed to play out, there would be no duplication. Ratepayers were forced to respond on the issues raised by this case to protect their interests.

Moreover, even when compelled to deal with Smart Grid issues in this case by ComEd's proposal, some questions cannot be addressed, because ComEd has refused to make any specific proposal. The record in this proceeding illustrates why the Commission has concluded that decisions on cost recovery for undefined costs was not

a course it wished to follow. ComEd has provided no reason for the Commission to reverse its position to adopt a premature Smart Grid cost recovery proposal here.

### **C. Metra**

According to Metra, neither Metra nor the other Intervenor believe that ComEd's real interest in this case lies in securing funding for the four projects that ComEd has indicated it would like to fund using its alternative regulation scheme. Metra and the other Intervenor believe that the real purpose of Rate ACEP is to establish a cost recovery mechanism for Smart Grid costs before the appropriate Smart Grid projects are even identified. Until the forthcoming Smart Grid docket is completed and the resultant Smart Grid projects proposed, no cost recovery mechanism for future Smart Grid projects should be approved. Any reference to Smart Grid should be stricken from Rate ACEP, and the final order in this case should expressly provide that no cost recovery mechanism for Smart Grid projects is being approved.

Metra notes that at the conclusion of the evidentiary hearing in Docket 09-0263, the Commission ruled that the Railroad Class should not be required to pay for any part of the AMI pilot meter and related costs on essentially two grounds: (1) the Commission concluded that the Railroad Class would not benefit from the AMI pilot meter project, and therefore should not pay any of the costs; and (2) the Commission concluded that the public interest considerations associated with the Railroad Class supporting not imposing AMI pilot project costs on the Railroad Class.

In defiance of the two prior Commission Final Orders in Dockets 07-0566 and 09-0263, respectively, ComEd has requested approval of Rider ACEP in which, among others, ComEd is seeking approval of a recovery mechanism for Smart Grid projects before the Smart Grid projects are known or identified and ComEd has proposed a rate designed to recover additional AMI pilot meter project costs from the Railroad Class. There are no reasons why this case should be decided differently than the two recent decisions dealing with exactly the same subject matter.

In addition to effectively asking the Commission to overrule prior rulings, ComEd's proposal to establish a cost recovery mechanism for Smart Grid projects before the projects are actually known violates what ComEd's policy witness, Dr. Hemphill, candidly admits is one of the most fundamental rate design principles. In both this and a prior proceeding, Dr. Hemphill testified that one of the most fundamental principles of rate design is to assign costs to the maximum extent practical to the rate classes benefiting from these costs. Tr. at 496-497.

The same principles and consideration that caused the Commission in Docket 07-0566 to refuse to approve Rider SMP until Smart Grid projects are specifically proposed, and related benefits to rate classes identified, are equally applicable here. In the unlikely prospect that the Commission is inclined to approve any part of Rate ACEP, the Commission should direct that any reference to Smart Grid should be stripped from the tariff language and recovery mechanisms that would enable ComEd to recover Smart Grid tests should be removed from Rate ACEP.

#### **D. AARP**

The most significant potential investment proposed by ComEd in this filing and for which approval of its proposed surcharge cost recovery mechanism is sought is the \$30 million in O&M and \$95 million in capital costs for “accelerated smart grid deployment.” These figures comprise almost 50% of the O&M costs in this proposal and 73% of the total capital costs in this proposal. Clearly, these unknown future investments are driving the creation of this surcharge cost recovery mechanism in this alternative rate regulation plan.

AARP argues that the Commission should not establish any precedent for the manner of cost recovery for Smart Grid deployment costs as ComEd seeks in this proposal. Rather, any decision about cost recovery should be done in the context of a specific request for additional deployment where all the costs and benefits can be evaluated in an evidentiary proceeding and the Commission can consider a variety of alternative means of allowing ComEd to include costs as they incur in rates and a reasonable rate of return for capital investments. Finally, Smart Grid deployment should be implemented based on an overall deployment plan that identifies the full range of potential investments, their costs, potential customer benefits, bill impacts, and include a schedule for multi-year implementation to modernize the distribution system. No such plan has been submitted in this proceeding nor has ComEd suggested that it will prepare and submit such a plan in the future. Rather, what ComEd wants in this proceeding is an approved method of cost recovery for future unknown investments, the costs and benefits of which are also unknown. This Commission should not agree to such an approach to the important issue of modernization of the electric utility’s distribution and transmission systems.

#### **E. CTA**

The CTA states that include alternative regulation costs in rates for the Railroad Class is contrary to the Commission’s finding in ComEd’s AMI pilot project, Docket 09-0263. In that case, the Commission found that costs associated with the AMI pilot should not be allocated to the Railroad Delivery Class. Thus, even if the alternative regulation proposal is adopted, the CTA states that the provisions relating to Smart Grid should not be imposed on the Railroad Delivery Class.

#### **F. AG**

The AG notes that ComEd asserts that Rate ACEP is necessary if the Company’s electric distribution system is to be modernized with digital smart grid technology. ComEd Ex. 2.0 at 6-8. The record shows, however, that the Company failed to demonstrate that, in fact, Rate ACEP is either appropriate or necessary, or that traditional regulation prevents the Company from making beneficial investments in new technology.

As AG witness Brosch noted, ComEd continuously invests in its distribution system, including deployment of distribution automation technologies, and other smart grid investments, where they can be cost effectively integrated. ComEd witness McMahan confirmed that the Company has been investing in smart grid digital technology for years “based on applying conventional technical criteria to the individual

circumstance.” ComEd Ex. 2.0 at 8. Mr. McMahan could not identify the particular DA investments that ComEd would be proposing under Rate ACEP, but suggested that “favorable candidates for significant investment in the short term, include” 1) Automatic Switches and Reclosers; (2) Automatic Line Reconfiguration; (3) Enhanced Line Isolating Control; and (4) Intelligent Substations. ComEd Ex. 2.0 at 9.

Moreover, the Company and other utilities have relied upon the deployment of technology to improve service and reduce expenses for many years. For example, in ComEd’s Docket 07-0566 rate case, ComEd witness Williams described the Company’s past deployment of SCADA technology, smart switches and mobile dispatch systems to improve service and reduce expenses. He also described the Company’s use of aerial spacer cable, dielectric injection treatment of underground cables and other new technologies to improve distribution system performance. AG Ex. 1.0 at 45-46. The Company has not suffered any past disallowance of these or other technology investments when its rate base was calculated within rate case proceedings. *Id.* In short, there has been no showing in this Docket 10-0527 that traditional regulation will not continue to offer ComEd a reasonable opportunity for cost-effective deployment of new technologies, as it has in the past. AG Ex. 1.0 at 45-46.

If ComEd’s concern is focused on any cost recovery risk associated with the purchase of thousands of AMI meters, the Company should wait until the Commission has evaluated the AMI pilot before asking the Commission to approve a specific cost recovery mechanism. Once again, the Commission has not been provided the information it needs to determine that ratepayers should pay a premium for such technology through an extraordinary cost-recovery mechanism.

#### **G. Staff**

ComEd proposes to include terms in Rate ACEP that refer to the costs of Distribution Automation and other future smart grid projects. The terms are DAADC (“Distribution Automation Assessment”), SMADC (“Smart Meter Assessment”), APADC (“Approved Program Assessment”), and SMCAADC (“Smart Meter Customer Applications Assessment”). ComEd is not proposing any smart grid investments in this proceeding, so these terms would be equal to zero until ComEd receives approval for and starts spending money on smart grid projects. Staff Ex. 3.0 at 2-3. If Rate ACEP is approved, inclusion of the terms in the tariff would permit ComEd to use Rate ACEP as a funding mechanism for approved smart grid projects. Inclusion of the smart grid terms are premature and unnecessary and, in the absence of specific smart grid proposals, inappropriate. ComEd’s proposal should be rejected.

The Company, however, argues that customers will be harmed unless ComEd secures a smart grid cost recovery mechanism in this proceeding. In response, Staff witness Dr. Schlaf noted that ComEd’s timetable for submitting smart grid projects is essentially the same as the timetable that was set in the Docket 07-0566 Order; that is, regardless of whether a recovery mechanism is approved now or pursuant to an Implementation Plan docket, the timeline for submitting projects for Commission approval would remain the same. No customer benefits would be lost because of the “delay” in obtaining approval for the recovery mechanism.

ComEd's proposal in this proceeding to include smart grid terms in Rate ACEP is inappropriate because ComEd has offered only limited information about the types of smart grid investments it might consider and propose in the future. Aside from a general description of the types of smart grid investments, there is nothing for the Commission or interested parties to evaluate with respect to potential smart grid investments. Staff Ex. 3.0 at 3.

Staff notes that Commission rejection of ComEd's proposal to include the smart grid terms in Rate ACEP would be unlikely to diminish ComEd's continuing interest in evaluating smart grid technologies. For example, ComEd has been studying advanced metering for several years. The Company submitted a full-deployment proposal for advanced meters in Docket 07-0566 (the Commission ultimately determined to approve only the AMI pilot). It has already deployed approximately 131,000 advanced meters. ComEd Ex. 1.0 R at 14. ComEd also applied for funding to expand its metering program through the federal stimulus program.

Staff notes that although the Commission has not yet opened the Policy Docket, the docket will presumably consider some of the issues discussed in the ISSGC, including the type and amount of information that utilities should file with smart grid proposals. Further, it is unclear to what extent policy decisions the Commission might make in the Policy Docket would apply to filings under Section 9-244, including any future smart grid proposals ComEd intends to offer subsequent to the conclusion of the Policy Docket. Additionally, Staff notes that ComEd does not state whether it believes it would be bound by any such policy decisions when it offers smart grid proposals under Section 9-244, or whether ComEd intends to file Section 9-244 smart grid proposals in conformance with the outcome of the Policy Docket. Dr. Schlaf explained his concern that the information that Dr. Hemphill states that ComEd will file with a future Section 9-244 smart grid proposal appears to fall short of the amount and type of information that many ISSGC participants concluded would be necessary to support a smart grid proposal. Dr. Schlaf, therefore, recommended that the Commission state in its order that any future Section 9-244 filing in which ComEd seeks approval to commence smart grid projects that ComEd conform its proposal to meet any requirements, policies, or other guidelines that result from the Smart Grid Policy Docket.

#### **H. ComEd Reply**

ComEd notes that 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. In response, ComEd states that 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. 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.

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. 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. ComEd Ex. 6.0 at 27. Also, 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 notes that several parties argue that it would be premature for the Commission to consider DA and AMI in this proceeding, but responds that the Commission has not yet initiated its Policy Docket and that 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 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.

### **I. Commission Analysis and Conclusion**

~~Initially, the Commission observes the lack of a concrete proposal for Smart Grid programs. Because of this omission, the Commission does not find any of the possible benefits of Smart Grid projects to have any weight in the consideration of Rate ACEP.~~

~~That being said, as noted by all parties, Even though the Commission has adopted a process for consideration of Smart Grid in Illinois, the Commission has determined that this process should be amended in this proceeding. That process is well under way and ~~the~~ The Commission notes that the Illinois Statewide Smart Grid Collaborative ("ISSGC") report has been filed but the Smart Grid Policy docket has yet to be commenced is complete. Also, IIEC informs the Commission that one of the topics discussed at the ISSGC was different funding proposals for Smart Grid. The next step in the process is the Smart Grid Policy Docket. The Policy Docket is the appropriate proceeding to consider funding proposals for Smart Grid. T. Further, after consideration of the arguments set forth by ComEd, Staff, and Intervenors the Commission sees ComEd's various warnings regarding the need to have a cost recovery mechanism in place now, but we find that adopting a cost recovery mechanism at this point of the process would be premature. Thus, the Commission concludes that in order to move quickly to implement the technology approved, if any, in the Implementation Docket, the~~

EXCEPTION #14

future approved investment costs, if any, of AMI project and DA project shall begin to be recovered under Rate ACEP and the approved O&M costs of any such projects will be recovered under Rate ACEP. There are two reasons for this. First, adopting a mechanism in advance offers real benefits to customers. Any technology approved in the Implementation Docket will be approved because it offers benefits, including cost savings, reliability improvements, greater control over energy use, and environmental benefits that outweigh the costs. There is no reason why, once such a determination is made, delivery of those benefits should be delayed by many months while another tariff proceeding is initiated, litigated, and completed simply to approve a recovery mechanism. Moreover, the reasons offered against this proposal largely depend upon the risk that the mechanism will be misused or could require ratepayers to fund Smart Grid technologies that are not cost-beneficial. This is not a risk with ComEd's proposal because only those Smart Grid programs that are separately reviewed and approved by the Commission all the reasons noted above, Rate ACEP is an appropriate recovery mechanism for these costs. The Commission notes this is simply a recovery mechanism. Not one dollar associated with these projects is to be recovered under Rate ACEP unless the project is specifically approved in advance by the Commission. Without considering all options for Smart Grid cost recovery, adopting Rate ACEP at this juncture would be inappropriate. By following their amended defined process, the Commission will not put the State behind in the Smart Grid discussion going on throughout the nation, as suggested by ComEd witness Hemphill, but rather and it will allow the Commission to maintain control over the discussion. Of course, the Policy Docket should be initiated as soon as possible.

~~Several parties note that ComEd has been investing in various degrees of DA for years and has been allowed recovery of those investments through the traditional ratemaking process. ComEd responds that what it is proposing here goes well beyond what it is currently deploying. The Commission cannot verify this, however, because the Company has not made a specific proposal in this docket. The Commission sees no reason why the Company should not continue its current course until the Policy Docket is complete.~~

Also, several parties provided interesting testimony regarding what alternative regulation, and Smart Grid alternative regulation in particular, could look like - NRDC proposed linking energy efficiency measures and decoupling and CUB proposed constructing a sharing mechanism that gives utilities an economic incentive to develop demand-side initiatives while simultaneously stabilizing and reducing costs for customers. These ideas are not relevant to the discussion of whether ComEd's Rate ACEP satisfies the requirements of Section 9-244 and, therefore, a complete discussion of the parties' testimony is not included. ~~These ideas, however, are illustrative of the conversation that should take place regarding Smart Grid cost recovery in the Policy Docket.~~

## **VI. Findings and Ordering Paragraphs**

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

- (1) Commonwealth Edison Company, an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois, is a public utility within the meaning of Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter herein;
- (3) Commonwealth Edison Company requests approval of its Rate ACEP under Section 9-244 of the Act;
- (4) the recitals of fact heretofore set forth are supported by the evidence in the record and are hereby adopted as findings of fact herein;
- (5) Rate ACEP, on the terms proposed by ComEd ~~does not satisfy~~ies the requirements of Section 9-244(b), in particular:
  - (i) Rate ACEP is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program and is consistent with the provisions of Section 9-241 of the Act;
  - (ii) Rate ACEP is likely to result in other substantial and identifiable benefits that would not be realized by customers served under the program and that would not be realized in the absence of the program;
  - (iii) ComEd is in compliance with applicable Commission standards for reliability, and implementation of Rate ACEP is not likely to adversely effect service reliability;
  - (iv) implementation of Rate ACEP is not likely to result in deterioration of ComEd's financial condition;
  - (v) implementation of Rate ACEP is not likely to adversely affect the development of competitive markets;
  - (vi) ComEd is in compliance with its obligation to offer delivery services pursuant to Article XVI of the Act;
  - (vii) Rate ACEP includes annual reporting requirements and other provisions that will enable the Commission to adequately monitor implementation of the program; and
  - (viii) Rate ACEP provides for an equitable sharing of any economic benefits between ComEd and its customers to the extent the program results in such benefits.
  - ~~Rate ACEP is not 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, required by Section 9-244(b)(1);~~
  - ~~Rate ACEP is not likely to result in other substantial and identifiable benefits that would not be realized by customers served under the program and that would not be realized in the absence of the program, as required by Section 9-244(b)(2);~~

- ~~Rate ACEP does not include annual reporting requirements and other provisions that will enable the Commission to adequately monitor implementation of the program, as required by Section 9-244(b)(7); and~~
  - ~~Rate ACEP does not provide for an equitable sharing of any economic benefits between ComEd and its customers to the extent the program results in such benefits, as required by Section 9-244(b)(8);~~
- (6) based on Finding (5), Commonwealth Edison Company's Petition for Approval of Rate ACEP should be ~~denied~~approved;
- (7) The Commission approves the budgets for and thus authorizes ComEd to implement the following projects under Rate ACEP: UUFR, EV Pilot, and Low Income Assistance Program;
- ~~(7)~~ all motions, petitions and objections made in this proceeding which remain undisposed of should be disposed of consistent with the ultimate conclusions herein stated.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Rate ACEP, as set forth in the verified Petition filed in this proceeding filed by Commonwealth Edison Company, and as modified in this proceeding, is ~~not~~ approved.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the budgets for the following projects under Rate ACEP are approved: UUFR, EV Pilot, and Low Income Assistance Program and ComEd is authorized to implement such projects.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are to be disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Leslie Haynes,  
Administrative Law Judge