

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

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Commonwealth Edison Company	)	
	)	Docket No. 10-0467
Proposed general increase in electric rates	)	

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**REPLY BRIEF ON EXCEPTIONS**  
**OF THE STAFF OF THE**  
**ILLINOIS COMMERCE COMMISSION**

April 18, 2011

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The Company seems to believe that merely identifying an amount - “hundreds of millions of dollars of investment”<sup>1</sup> - satisfies the known and measurable criteria. The Company further claims that the PO’s decision creates “a standard that no prudent investment project could meet.”<sup>2</sup> The Company is simply wrong. The PO applies the same standard the Commission has historically used, that pro forma plant additions must meet the known and measurable criteria to be included in rate base.

The Company claims that it provided “overwhelming proof”<sup>3</sup> that its pro forma adjustment is known and measurable. While it is correct that the Company did identify the adjustment for pro forma plant additions in its direct testimony, the Company has updated the amount and specific projects included in the adjustment no fewer than three times since then (see Appendix C to Staff’s IB). Those updates merely serve to further demonstrate that the projects are simply not reasonably certain to occur as projected. Rather, there is just as great a likelihood that the projects will be replaced as priorities within the Company change. In fact, the Company admitted that “the projects on the work plan were constantly being reprioritized due to emergent requests and agency scheduling changes.”<sup>4</sup> Appendix C to Staff’s IB as well as the table and discussion on pages 9-11 illustrate just how uncertain the Company’s supporting documentation has been. Company witness Donnelly admitted during cross-examination that the actual projects that will be placed in service during January through June 2011 will change from those projected. (Tr., January 11, 2011, pp. 659-662) In fact, Mr. Donnelly conceded that those projections decreased by \$13 million

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<sup>1</sup> ComEd BOE, p. 2.

<sup>2</sup> Id., p. 10.

<sup>3</sup> Id., p. 15.

<sup>4</sup> ComEd Ex. 32.0, p. 43, lines 901-903.

(\$1.030 million minus \$1.017 million) between the rebuttal testimony filed on November 22 and surrebuttal testimony filed on January 4, just six weeks later. The overall change from the initial filing (\$1.038 million) to the surrebuttal filing (\$1.017 million) was a net **decrease** of over \$21 million. Staff addressed changes such as this in rebuttal testimony. (Staff Ex. 16.0, pp. 10-11)

The Company mischaracterizes the level of detail supporting its pro forma adjustment that was contained in the data room. While the Company claims there was a “room full of documents supporting each of the specifically identified projects,”<sup>5</sup> the information contained in the data room for pro forma plant additions was nothing more than a sample of the type of information available for a small sample of the projects budgeted as of December 31, 2009. The specific projects included in the budget at that time, which were the basis for the Company’s direct position, changed no less than 3 times throughout the course of the rate case, over the course of 7 months. The number of projects included in the Company’s direct case, 526, increased to 928 at the time of rebuttal testimony. At no time did the Company inform Staff that additional documentation was available in the data room to support the additional 557 projects.<sup>6</sup>

Staff has already explained the shortcomings in the support provided by the Company in ComEd Ex. 32.2 and Confidential Staff Group Cross Ex. 1, Company response to TEE 14.03 Attach 03, and will not repeat those observations here.<sup>7</sup> The Company claims that ComEd Ex. 32.2 (on DVD) included approval and engineering documents for each pro forma plant addition that exceeded \$100K<sup>8</sup>. However, a review

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<sup>5</sup> ComEd BOE, p. 16.

<sup>6</sup> See Staff Exhibit 16.0, p. 10 for statistics on the change in projects between Company direct and rebuttal testimonies.

<sup>7</sup> Staff RB, pp. 4-6.

<sup>8</sup> ComEd BOE, p.p. 17-18.

of that DVD shows that many of the files included were empty and contained no data. Those that were not empty provided conflicting evidence as to the amounts and timing of projects that might be placed into service during January 2011 through June 2011. Nothing was provided that specifically addressed the amounts for plant disallowed from January through June 2011.

While Staff agrees that the burden of going forward with the evidence shifts to other parties after a utility presents a prima facie case of the costs needed to provide service<sup>9</sup>, Staff believes that it has aptly demonstrated that the costs are unreasonable. The burden then shifts back to ComEd to demonstrate that they are. ComEd has not met this burden. As Staff has repeatedly argued in testimony and in briefs, and which the PO has correctly concluded, ComEd's plans and budgets are everchanging. Projects are dropped, projects are added, and work plans are constantly being reprioritized.

The Company further argues that variations in work items do not affect the certainty of the investment program or project.<sup>10</sup> To suggest that Staff's argument lacks merit, the Company offers the example of having a plan for building a house but not yet having costs identified since the subcontractor's plan is not finalized<sup>11</sup>. Using this example, the Company would argue that a builder could submit a blanket plan with a general budget for funding and that the builder would receive this entire amount for funding. However, a more accurate example of the situation in this case is that the builder has a plan to build a house but due to a change in priorities, decides it needs to build a barn instead. Using the Company's logic, the builder would have received

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<sup>9</sup> ComEd BOE, p. 16, fn 8.

<sup>10</sup> ComEd BOE, p. 20.

<sup>11</sup> Id., p. 17.

funding to build a house but ends up spending less to build a barn and would get to benefit from the extra money. The Company would have the Commission decide that there is no difference in the support needed for either specific project as long as the cost for either project is within some reasonable range. Staff believes the PO correctly sees through this argument. The fact that a number of projects were dropped since the inception of this case as well as the lack of support provided for newly added projects certainly calls into question whether the projects meet the known and measurable criteria, and even what those “final” projects will be.

As its final argument against the PO’s decision on pro forma plant additions, the Company offers a list of projects disallowed by the PO. Most of these projects were also described in the Company’s rebuttal testimony<sup>12</sup>. Staff responded to that discussion in its rebuttal testimony, at that time recommending that 4 of the 6 projects listed should be recovered in base rates.<sup>13</sup> However, the Company provided an update to the pro forma plant amounts in surrebuttal testimony that further revised the estimate, compelling Staff to change its position on those additional projects. ComEd Cross Exs. 5, 6, and 7 showed information pertaining to ITN 45170, but as Ms. Ebrey explained, the information provided by the Company presented conflicting information with no explanation for the conflicts, and could not be relied upon to support the project in question. Clearly, providing “a sample of the types of documentation available” does not constitute adequate support for “known and measurable” pro forma additions to plant-in-

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<sup>12</sup> ComEd Ex. 32.0, pp. 24-68.

<sup>13</sup> Staff Ex. 16.0, pp. 13-18 and Schedule 16.08, page 3 of 4.

service. (Tr., January 12, 2011, pp. 790-795)<sup>14</sup> Staff discusses this more fully on pages 7-9 of Staff's IB.

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

ADIT – Accumulated Deferred Income Taxes

ComEd is inconsistent in its BOE discussion of the ADIT. ComEd claims that ADIT is a separate and unrelated matter to the Accumulated Depreciation issue,<sup>15</sup> but then ComEd itself included an adjustment to ADIT related to its pro forma plant additions adjustment. At no time during the course of the case did ComEd provide any argument to counter Staff's adjustment to ADIT. The Company quotes the Appellate Court decision that an increase in the accumulated depreciation on existing plant is a change that affects ratepayers and therefore must be factored into rate base.<sup>16</sup> It is clear from the record in this case that the ADIT adjustment is a companion adjustment to the Accumulated Depreciation and, as a change that affects ratepayers, must also be included in this case.

Accumulated Depreciation

The Company in its last ditch effort, for the first time, argues that the roll forward of accumulated depreciation is not necessary because "the costs of continuing construction would not be reflected in the established rates."<sup>17</sup> The accumulated depreciation approved in the PO only reflects the additional accumulated depreciation through December 31, 2010, the date through which a comprehensive restatement of

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<sup>14</sup> Staff IB, pp. 7-9.

<sup>15</sup> ComEd BOE, p. 25.

<sup>16</sup> Id., p. 25.

<sup>17</sup> Id., p. 27.

plant is approved. The idea of reflecting “the costs of continuing construction” does not comply with the standard for pro forma adjustments to an historic test year. Only costs for plant that is in service would be allowed for recovery in rate base. The Company’s argument is inconsistent with this and it should be given no weight by the Commission.

The AG, IIEC and CUB make similar arguments that the Accumulated depreciation and ADIT should be rolled forward through June 2011 albeit at an amount proportionate to the amount of 2011 plant allowed for recovery.<sup>18</sup> Staff’s IB likewise discussed the timing for the roll forward of Accumulated Depreciation on embedded plant citing to Staff rebuttal testimony addressing this very issue.<sup>19</sup> In Staff’s opinion, the measurement date of December 31, 2010 is appropriate given the very limited number of projects beyond that date which were allowed in the PO’s conclusion.

**c. Accumulated Deferred Income Taxes (ADIT)**

Technical Correction

Staff agrees with the correction included in footnote 13 on page 26 of the Company’s BOE. Staff has recalculated the addition adjustment for ADIT based on the PO’s conclusion to allow 8 projects scheduled to be placed in service in 2011. Adjusting the depreciation rate on those projects to 100% and the income tax rate to 41.175% due to the state income tax change does result in an ADIT impact of \$(26,890,000) rather than the \$(12,673,000) provided on the additional workpapers provided by the ALJs. This change would result in an adjustment to ADIT of \$(117,366,000) as the Company notes. The AG and CUB opine that the ADIT amount

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<sup>18</sup> AG BOE, pp. 10-11, IIEC BOE, pp. 3-4, and CUB BOE, pp.3-4.

<sup>19</sup> Staff Revised BOE, pp. 5-6.

should be \$26.5 million rather than \$12.6 million<sup>20</sup>. Staff is unable to recreate those amounts and so rejects them in favor of the calculation described by the Company.

- 2. Construction Work in Progress**
- 3. Specific Plant Investments**
  - a. West Loop Project Repair Disallowances**
  - b. Plymouth Court Feeders**
  - c. Underground Cable**
  - d. PORCB Costs**

ComEd raises two concerns with the PO's conclusion regarding PORCB costs. The first concern appears to be about possible stranded costs. ComEd argues that it "could be whip-sawed, resulting in inappropriate and unfair denial of recovery of prudent and reasonable costs that no one denies should be recovered one way or the other, in either base rates or a rider."<sup>21</sup> However, Staff proposed replacement language in its Brief on Exceptions that makes it clear that the Commission has indeed the ability to allow ComEd to recover capital costs in a future rate case if it finds during the PORCB reconciliation proceedings that some capital costs are prudent investments but not investments that are associated with the provision of PORCB services.<sup>22</sup> In addition, Staff has stated, in its Reply Brief as well as in its Brief on Exceptions, that it is neutral on the allocation of the Customer Data Warehouse and Retail Office costs in this proceeding.<sup>23</sup> Staff has also proposed replacement language for the Order in this proceeding to accurately reflect Staff's position.<sup>24</sup> If Staff's proposed replacement

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<sup>20</sup> AG BOE, p. 13, and CUB BOE, p. 4.

<sup>21</sup> ComEd BOE, pp. 29-30.

<sup>22</sup> Staff BOE, pp. 16-17.

<sup>23</sup> Staff RB, pp. 14-15, Staff BOE, pp. 11-14.

<sup>24</sup> Staff BOE, pp. 14-18.

language is adopted by the Commission, ComEd's concern about "trapped" costs should be largely addressed.

ComEd further states that it might be ordered to refund amounts collected under the rider if the Commission finds later that some capital costs should be recovered through base rates.<sup>25</sup> However, given the total amount of costs labeled PORCB by ComEd, it is unlikely that allocating some of those costs to base rates will lead to refunds under the PORCB Rider recovery mechanism. This is especially true because the first PORCB reconciliation proceeding will occur well before the total PORCB recovery period will end.

Staff agrees with ComEd's second concern regarding possible ambiguity related to the authorization of a new rider.<sup>26</sup> Rather than filing a new rider as the language in the PO cited by the Company appears to indicate, Staff believes the language should be revised to agree with Staff's recommendation that the costs recoverable under Rider RCA for PORCB can be updated with revised informational sheets filed reflecting those updated amounts. It is Staff's understanding that Rider RCA provides for an update to the informational sheet, for both the POR Adjustment and the CB Adjustment during any POR Application period.<sup>27</sup> If the Company believes that its PORCB costs are not adequately provided for recovery, it may at its option file revised informational sheets reflecting any change necessary. Staff does not believe an update to the tariff language in Rider RCA, as the Company describes it,<sup>28</sup> is necessary for PORCB costs to be revised in the rates charged under Rider RCA.

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<sup>25</sup> ComEd BOE, p. 29.

<sup>26</sup> ComEd BOE, pp. 30-32.

<sup>27</sup> ILL.C.C. No. 10, Original Sheets 275.2 and 275.4.

<sup>28</sup> ComEd BOE pp. 30-31.

Technical Correction

In addition, Staff also accepts the corrections to the adjustment for PORCB costs as described on page 32 of ComEd's BOE. The amounts for the adjustment for PORCB costs included in the PO were based on the Company's rebuttal position rather than the surrebuttal position which was the basis for the adjustment for pro forma plant additions. The surrebuttal position for pro forma plant additions accepted all PORCB costs which were placed in service by December 31, 2010. Thus, the adjustment for PORCB costs should remove the entire \$13,927,000 and other associated adjustments.

- e. **Allocation of G&I Plant**
- f. **Other**

**4. Cash Working Capital (CWC)**

**Response to ComEd**

EAC/REC and GRT/MUT

The Company argues that the PO's acceptance of Staff's position on these two issues constitutes a substitution of theory for reality, when in fact, just the opposite is true. The Company claims that ComEd does not read the law as Staff does and argues that there is no reason to assume that taxing authorities will read the law as Staff does. (ComEd BOE, p. 37) This is curious, since Staff based its position on a plain reading of the statutes, which do not appear to require any degree of translation or interpretation beyond what is stated.

Specifically, Staff's adjustment to the expense lead days associated with EAC/REC pass-through taxes is based on language contained in the statute governing the Energy Assistance Charge ("EAC") (305 ILCS 20/13) which provides that a public utility engaged in the delivery of electricity shall assess each of its customer accounts a

monthly charge. The utility shall remit all monies received as payment to the Illinois department of Revenue by the 20<sup>th</sup> day of the month ***following the month of collection***. (305 ILCS 20/13 (f)) The statute requires ComEd to remit these pass-through taxes **after** they have been collected from customers. Therefore, there is no revenue lag associated with these collections. However, there is an expense lead because the Company has the use of these monies from the time they are collected from customers until they are remitted to the State of Illinois. Staff calculated an expense lead time of 35.21 days based on the assumption that revenues (including the collection of pass-through taxes) would occur on average, at the midpoint of a given month, 15.21 days, as calculated by Company witness Mr. Subbakrishna (ComEd Ex. 7.0, p. 14) and accepted by Staff, plus the number of days in the month prior to remittance, 20 days. The sum of these two amounts (15.21 plus 20) equals the average number of expense lead days for which the Company has the use of EAC/REC pass-through taxes, 35.21 days. (Staff Ex. 3.0R, p. 40)

The Company opposed Staff's calculation of expense lead days and instead argues that it remits the EAC/REC pass-through taxes 16 days before it collects them (revenue lag of 42.11 days minus expense lead of 26.11 days produces a net revenue lag of 16 days). The Company produces this counter-intuitive result by starting the clock, not when the taxes are collected, but at the end of the month for which the tax relates, regardless of when those taxes are collected from customers. (ComEd Ex. 31.0, p. 16) In so doing, Mr. Subbakrishna essentially utilized accrual basis accounting to derive a cash basis impact. (Staff Ex. 18.0, p. 33)

Staff adjusted the GRT/MUT pass-through taxes based on the language contained in the City of Chicago's ordinance. This ordinance requires ComEd to file a

monthly tax return to accompany the remittance of such taxes, due by the last day of the month following the month during which such tax is **collected**. The ordinance requires ComEd to remit these pass-through taxes after they have been collected from customers. Accordingly, there is no revenue lag associated with such collections. Moreover, there is an expense lead arising from the fact that the Company is not required to remit these taxes until after they are collected, thereby having the use of these monies until such time as they are remitted to the City of Chicago or other municipality. Staff calculated an expense lead time of 44.21 days based on the assumption that revenues (including the collection of pass-through taxes) would occur on average, at the midpoint of a given month, 15.21 days, as calculated by Company witness Mr. Subbakrishna (ComEd Ex. 7.0, p. 14) and accepted by Staff, plus a full 29 days prior to remittance in the month after collection, 29. Staff asserts that the sum of these two amounts (15.21 plus 29) equals the average number of expense lead days for which the Company has the use of GRT/MUT pass-through taxes. (Staff Ex. 3.0R, pp. 41-42)

ComEd claims that under Staff's theory, ComEd is effectively being punished for remitting taxes owed by its customers earlier than it has to remit them. (ComEd BOE, p. 39) Staff responds by noting that ratepayers should not be punished with additional CWC charges if the Company chooses to remit taxes earlier than necessary.

#### Expense Lead Days Associated with Intercompany Expenses

The Company argues against the PO's acceptance of Staff's proposed adjustment to increase the number of expense lead days for intercompany expenses from 30.35 to 45.35. (BOE, pp. 39-40)

These payments to affiliates are within the Company's discretion and a higher CWC charge for early payment represents a form of cross subsidization that is generally prohibited. Initially, Staff proposed to increase the intercompany expense lead days to 64.34 days to be consistent with the expense lead days for nonaffiliated vendors utilized for other O & M expenses in the Company's CWC calculation. However, Staff reduced it to 45.35 days to recognize that non-affiliated vendors are paid later than affiliated vendors partly because of wide variations in the non-affiliated vendors' billing and remittance requirements. (Staff Ex. 18.0, pp. 30-31) Staff's final proposal utilizes the midpoint of the service month, 15.35 days, and adds 30 days for payment. This length of time would more closely approach the expense lead time for non-affiliates, while recognizing that affiliates invoice charges for their services promptly and on a monthly basis. (Staff Ex. 18.0, p. 31)

The Company argued for 30.35 expense lead days for intercompany expenses based on "billing and settlement procedures contained in an annex to ComEd's General Service Agreement ("GSA"), i.e., payments due on or around the 15<sup>th</sup> of the month following the provision of service." (ComEd Ex. 7.0, p. 21) Staff finds this insufficient to support the Company's position.

The Company claims that Staff's position does not and cannot alter when ComEd actually owes or pays intercompany expenses, which is what causes ComEd's actual CWC requirement. (BOE, p. 40) Staff responds that because the timing of payments to affiliated interests is within the Company's discretion, it would not be proper to charge ratepayers a higher CWC requirement in order to pay ComEd's affiliates earlier than non-affiliated vendors are paid. This would constitute a form of cross-subsidization that is inappropriate. (Staff Ex. 3.0R, pp. 39-40) Second, Staff is not aware of any "annex"

to ComEd's GSA, as referenced by Company witness Mr. Subbakrishna. The GSA itself calls for preparation of monthly invoices, but appears to be silent as to the timing of remittance. Again, the timing of payment remains within the Company's discretion. (Staff Ex. 18.0, p. 31)

### **Response to AG Witness Brosch's Proposed Technical Correction**

AG witness Michael L. Brosch proposed a technical change to reduce the PO's CWC for the amount of ADIT reflected on page 1 of the PO's Appendix A. This would produce a new amount of CWC that is not in the evidentiary record (the AG/CUB has proposed zero CWC throughout the proceeding and maintains that position, but now claims the PO should be modified to reduce CWC for ADIT as a technical change). Staff believes that this is essentially a new calculation or even method that has not yet been presented during this proceeding.

- 5. 2009 Pension Trust Contribution**
- 6. Capitalized Incentive Compensation**
- 7. Customer Deposits**

#### **a. Illusory Non-jurisdictional Customer Deposits**

The Company takes exception to the inclusion of what it considers to be "non-jurisdictional" customer deposits in the calculation of rate base<sup>29</sup>. The Company's argument is flawed in its attempt to divorce customer deposits from delivery service customers. As pointed out in ComEd's BOE, customer deposits are governed by ComEd's General Terms and Conditions. (ComEd BOE, p. 41) According to the General Terms and Conditions, the Company has the right, in accordance with the provisions of 83 Ill. Adm. Code 280, Procedures for Gas, Electric, Water and Sanitary

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<sup>29</sup> An increase to customer deposits results in a decrease to rate base.

Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service ("Part 280"), to require the retail customer to pay a deposit to establish or maintain credit. Section 280.40 defines a customer as, "a person who has agreed with a utility to pay for gas, electric, water or sanitary sewer utility service." In other words, Part 280 allows the Company to collect deposits from delivery service customers. The only guidance as to how much the utility may collect in the form of a deposit is the annual cap of 1/6<sup>th</sup> of the estimated annual charges for service. It is up to a utility's management to decide how much customer deposits to collect but the collection itself is from delivery service customers. The Company has chosen to collect customer deposits based on a customer's total bill. The Company argues that because the total bill includes power supply costs, some of the customer deposits are not delivery service related. How the Company chooses to calculate the amount of customer deposits to collect is not the issue. What is at issue is that the Company has collected these deposits from delivery service customers pursuant to the section of the 83 Illinois Administrative Code that governs the provision of delivery services by an electric utility.

The PO correctly concludes that it is the total deposit amount that should be the amount used to reduce rate base.

**b. Adjustment Amount for Rate Base Reduction**

As a point of clarification, the PO correctly concluded that the total customer deposits balance should be deducted from rate base. However, the PO erred in the calculation of the deduction to rate base. Staff's position continues to be that a year-end balance of \$130,510,000 is the appropriate deduction from rate base. If the Commission determines that an average balance is to be used, then \$124,572,000

would be the reduction to rate base. The Company proposed a deduction to rate base of \$44,548,000 and the *adjustment* required to achieve the desired result is \$85,962,000 for a year-end balance or \$80,024,000 for an average balance. In addition, all parties agree that the interest expense associated with customer deposits should be added to the revenue requirement based on the Commission approved .5% applied to the final determined balance of customer deposits.

### **8. Material and Supplies Inventories**

The Company is simply incorrect in its argument that the reduction of accounts payable from the materials and supplies inventory is somehow double counting the effects of this vendor financing. (ComEd BOE, pp. 44-45) The Company's argument confuses the treatment of balance sheet versus income statement accounts. As pointed out in rebuttal testimony and briefs (Staff Ex. 19.0, pp. 3-4, Staff IB, pp. 31-32, and Staff RB, p. 26), the Company fails to recognize that the balance sheet portion of materials and supplies accounts payable is not accounted for in the revenues and expenses of the cash working capital calculation. The only aspect of materials and supplies cost included in the cash working capital calculation is that portion of materials and supplies that has been used to provide service and has become an operating expense. Staff's adjustment pertains only to the inventory portion of materials and supplies, not to the expense portion and is therefore not considered in the cash working capital calculation. (Staff Ex. 19.0, pp. 3-4) Therefore, the effects of the vendor financing are not double counted.

ComEd's opposition to the PO's conclusion regarding materials and supplies accounts payable is not persuasive and should be disregarded.



In surrebuttal testimony, Mr. Trpik responded that the restricted stock program provides a long-term incentive program for ComEd's key managers. He asserted that it provides the same sort of benefits as the LTIP - Cash program; however, he did not offer any support of what those benefits might be, other than to contend that compensation in stock helps managers stay focused on the long-term health of the business. (ComEd Ex. 54.0, p. 7)

Based on the evidence presented, it is clear that the LTIP – Restricted Stock Plan is designed to align the interests of ComEd's key managers with those of Exelon shareholders, not ComEd ratepayers. Therefore, Staff urges the Commission to support Staff's proposed disallowance of 100 percent of the costs related to the LTIP – Restricted Stock Plan.

## **2. Rate Case Expenses**

### **a. Rate Case Expenses of the Instant Case**

#### Rulemaking on Rate Case Expense is Unnecessary

ComEd's, AG's, and CUB's BOEs regarding the PO's acceptance of some, and denial of other, rate case expense costs principally repeat prior arguments already addressed by parties and considered in the PO. See ComEd IB, pp. 59-64; ComEd RB, pp. 78-80; Staff IB, pp. 39-44; Staff RB, pp. 33-34; AG IB, pp.49-74; AG RB, pp. 25-32; CUB IB, pp. 25-28; CUB RB, pp. 15-18. Staff will not burden the Commission or the parties by repeating counter arguments that were previously presented in briefs. Rather, those arguments should be incorporated by reference. However, Staff will respond to the Company's, AG's, and CUB's reaction to the PO's new proposal for a rate case expense rulemaking.

Staff notes that while it is still not in agreement with either the Company or AG/CUB on the appropriate amount of allowable rate case expense for this proceeding, unanimous agreement exists that a rulemaking on rate case expense is unnecessary. Staff agrees with ComEd's statement that "Section 9-229 requires a finding be made; it does not impose a substantive standard any different from the standard the Commission has employed to assess rate case expenses (or other expenses for that matter) for decades." (ComEd BOE, p. 54) The AG correctly points out that the analysis of a company's rate case expense is very fact specific, that a review of past rate case expenses can provide a backdrop to rate case analyses while recognizing the fact specific nature of each review, and that a rulemaking cannot provide the factual background necessary for the assessment. (AG Corrected BOE, pp. 55-56) CUB adds that the standards necessary to guide future rate case proceedings as to what level of detail is required to make the reasonableness determination required by Section 9-229 can be developed through the Commission developing guiding principles, starting with the Final Order in this case. (CUB BOE, pp. 21-22) Staff concurs with ComEd, and AG/CUB that a rulemaking on rate case expense is unnecessary.

- 3. b. Alternative Regulation Case (Alt. Reg.)**
- a. Administrative and General (A&G) Expenses**
- a. Exelon Way Severance Amortization**
- b. Accounts 920-923**
- c. Pension Costs**
- i. Recovery of Actuarially-Determined 2010 Pension and OPEB Costs**
- ii. 2005 Pension Funding Cost Recovery**
- d. Wages and Salaries Pro Forma Adjustment**
- e. Director Fees and Expenses**
- f. Corporate Aircraft Costs**
- g. Perquisites and Awards**
- h. Severance Expenses**

**i. Charitable Contributions**

The Company continues to support its absurd argument that charitable donations made to organizations outside of its territory are appropriate to recover from its ratepayers. (ComEd BOE, pp. 57-58) The Company's BOE raises no new arguments which would alter the PO's conclusion. The Commission should accept the PO's conclusion to disallow charitable contributions to organizations outside of ComEd's service territory. As the PO correctly reasoned, there is no evidence that these contributions provide any benefit to ratepayers in ComEd's service territory. (PO, p. 102)

**j. Legal Fees – IRS Dispute**

**k. Professional Sporting Activity Expenses**

As pointed out in Staff's Reply Brief on page 43, the Company normally reports these professional sporting activity expenses "below the line" as they are not appropriate for ratemaking consideration. An accounting oversight led to the inclusion of these costs in the Company's proposed rate base and revenue requirement. The Company's attempt to legitimize these costs in its BOE should be rejected. (ComEd BOE, pp. 59-60) The Commission should accept the PO's conclusion to remove these costs from the revenue requirement given that these expenses are not necessary for the provision of safe and reliable electric service. (PO, p. 105)

- 4. AMI Pilot Expenses**
- 5. New Business Revenue Credit**
- 6. Tax Repair Methodology – New IRS Procedures**
- 7. Depreciation of Intangible Plant**
- 8. Late Repayment Charge Reclassification**

- 9. **Illinois Electricity Distribution Taxes**
- 10. **Depreciation and Amortization Expenses (Derivative and Direct)**
- 11. **Regulatory Asset Relating to Tax Liability for Medicare Part D**
- 12. **Taxes Other Than Income Taxes (Derivative Adjustments)**
- 13. **Income Taxes (Derivative Adjustments)**
- 14. **Customer Deposits – Interest Expense Component**
- D. **Operating Expenses (Total)**
- VI. **RATE OF RETURN**
  - A. **Overview**
  - B. **Capital Structure**
  - C. **Cost of Short-Term Debt**
  - D. **Cost of Long-Term Debt**
  
  - E. **Cost of Common Equity**

Despite the PO's acceptance of all of the Company's cost of common equity ("ROE") analyses and rejection of all of the other parties' analyses, save a version of Staff's capital asset pricing model ("CAPM") that was altered on the basis of a Company argument, the Company still excepts the ROE adopted in the PO. The PO notes that the ROE it adopts, 10.50%, is "in the range of" the midpoint of the Company's estimate range. In fact, except for the two highest results presented by the Company, the result of every other analysis presented was well below the PO's adopted ROE. Still, the Company objects, insisting on nothing less than 10.90%, which represents the extreme high end of its estimate range. In contrast, CUB, whose results were on the low end, recommended a cost of common equity near the high end of its estimate range (8.94%). Similarly, IIEC and Staff, who produced results in the middle of the range of the witnesses' estimates, used the averages of their estimates (9.60% and 10.00%, respectively). The Staff and intervenor recommendations suggest a moderation of the authorized ROE. Not so for the Company. As IIEC pointed out, even at 10.50%, the PO's adopted ROE represents a material increase to ComEd's authorized rate of return,

despite a period of lower interest rates. (IIEC BOE, pp. 6) Nevertheless, the Company demands a cost of common equity at the highest point of its estimate range. Thus, on its face, the Company's objection is unreasonable.

Specifically, the Company's Exception 32 is based on two arguments: (1) the PO should not have accepted any analysis presented by any party other than ComEd, even if modified to reflect Company arguments, and (2) the PO should have adopted an ROE reflecting the high end of the Company's range of estimates. (ComEd BOE, pp. 62-63) Neither of those arguments is supported by the record evidence. To the contrary, the record clearly demonstrates that the Commission should reject the Company's analysis in its entirety.

First, as Staff explained in detail in its earlier briefs, the rejection of Staff's analysis represents a 180 degree departure from prior Commission findings and should clearly not be upheld by the Commission in its Final Order. (Staff BOE, pp. 56-69) None of the arguments presented warrant the rejection of Staff's analysis. To begin with, contrary to the Company's arguments, Staff's sample provides an appropriate basis from which to determine ComEd's cost of common equity. The propriety of Staff's sample and the impropriety of the Company's suggestion to cherry-pick for removal from that sample only the companies with the lowest cost of equity results, without consideration of the overall risk of the sample, was fully explained in Staff's Initial Brief. (Staff IB, pp. 69-74; Staff RB, pp. 54-56)

Moreover, the growth rates Staff employed were reasonable assessments of the growth that the utility companies in its sample can be expected to experience. To conclude they are understated, one would have to ignore the clear historical pattern of falling GDP growth over the last 40-45 years, all forward-looking data from independent

economists and investors themselves, and all evidence presented regarding the sustainability of growth for the utilities in the parties' samples<sup>30</sup> and, instead, simply accept that investors set their expectations for growth in the same convoluted, backward-looking manner the Company relied upon to set its GDP growth rate estimate in this proceeding. (Staff IB, pp. 74-76) Indeed, Company witness Hadaway admitted that Staff witness McNally's growth rate "is consistent with, and relative to some forecasts even higher than, current government and professional forecasts." (ComEd Ex. 37.0, p. 15) Ironically, Dr. Hadaway argued that "for Mr. Thomas to entirely ignore readily available surveys of analysts' growth rates in favor of his previously rejected 'b times r' format and his limited GDP analysis are not evidence that my growth rates are overstated." (ComEd Ex. 37.0, p. 31) The paradox is remarkable, as Dr. Hadaway relied upon a previously-rejected analysis that conflicts with published analyst growth forecasts as his entire basis for concluding that Staff's growth rate estimates are too low. His one-sided application of that argument could not be more self-serving. This is just one more example of the Company's hypocrisy: decrying Staff's analysis as "unfair" while applying a lower standard to its analyses than it applies to those of other parties.

Finally, the use of a September 22, 2010 spot U.S. Treasury bond yield is perfectly appropriate, contrary to the Company's claim. Nothing in the record suggests September 22, 2010 was an abnormal day. Further, the Commission, itself, has noted that use of spot data is a practice the Commission has traditionally relied upon and, in fact, is reluctant to deviate from. (Staff BOE, pp. 65-68) In addition, despite the Company's emphasis on the "magnitude" of the effect of using a December 29, 2010

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<sup>30</sup> Staff fully explained why the criticisms of its "br + sv" approach to evaluating the sustainability of the analyst growth rates for the companies in the parties' samples are unfounded. (Staff BOE, pp. 63-65)

U.S. Treasury bond yield rather than a September 22, 2010 U.S. Treasury bond yield (ComEd BOE, p. 63), Staff's CAPM estimate (10.32%) is only 18 basis points less than the contrived "CAPM" result using the yield that the Company hand-picked without any justification.<sup>31</sup> Moreover, since the Company failed to provide any information regarding the other CAPM inputs as of December 29, 2010, Staff's September 22, 2010 CAPM estimate may actually be even higher than a properly implemented CAPM result for December 29, 2010. Thus, Staff's result does not "stray from a zone of reasonableness to the degree where it offers an unreliable estimate of the appropriate ROE," as the Commission has set forth as the minimum standard for deviating from its accepted practice of using a spot date. (Order, Docket Nos. 07-0241/07-0242 (Cons.), February 5, 2008, p. 92) Likewise, Staff's 10.00% cost of common equity recommendation does not represent a large divergence from the current 10.30% authorized ROE. In fact, unlike the Company's proposal, it is consistent with that authorized return, given the current lower interest rate environment. Yet, Staff's recommendation still produces a higher equity risk premium (4.58%) than the return on common equity authorized in ComEd's last rate case (3.74%). (Staff Ex. 5.0, p. 33)

Second, as Staff explained in great detail in its Initial Brief, the Company's analysis should not be adopted at all, let alone the high end of that analysis. (Staff IB, pp. 77-80) Staff demonstrated through two independent analyses that the 3-5 year analyst growth rates Dr. Hadaway used were clearly unsustainable. His constant growth DCF analysis using those unsustainable growth rates produced his lowest ROE estimate (10.3%). (ComEd Ex. 37.4) Thus, **even the low end of his range of**

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<sup>31</sup> Even the Company now acknowledges that result is inappropriate for use in determining ComEd's cost of common equity. (ComEd BOE, p. 63)

**estimates overstates ComEd's cost of common equity.** Worse yet, Dr. Hadaway compounded that error by employing an even higher 6% long-term growth rate in the models that produce his two highest estimates (10.7% and 10.9%). He derived that "forecast" by not only looking backward at 60 years of historical data, a period he arbitrarily selected, but by idiosyncratically using the average of averages from multiple sub-periods within that span. He presented nothing to demonstrate that investors set their expectations for the future in that specific, convoluted manner. Moreover, the Company's long-term growth rate is contrary to all of the current independent economists' forecasts of long-term growth presented in this proceeding, which suggest a long-term growth of 5% or less. (Staff IB, p. 64) Thus, two Staff sustainable growth analyses, independent economists' forecasts, relative debt yields (Staff Ex. 5.0, p. 33), and even historical data over the last 40-45 years (Staff IB, pp. 75-76) all consistently indicate the growth rates the Company used are unsustainable. The overwhelming weight of the evidence decisively demonstrates that the Company's analysis is invalid.

#### **F. Adjustments to Rate of Return**

The Company takes exception to the PO's rejection of its proposal for a 40 basis point cost of common equity adder to compensate for alleged risks associated with energy efficiency measures, but fails to present any substantive rationale to invalidate the numerous reasons Staff presented for rejecting that adder. (ComEd BOE, pp, 66-71; Staff IB, pp. 86-93)

None of the four "risk" factors company witness Tierney points to warrant a 40 basis point adder to ComEd's cost of common equity. Simply put, the Company has failed to demonstrate that its investment risk is increased by the implementation of

energy efficiency measures. Fittingly, in its introductory paragraph on the matter, the Company's BOE refers only to "revenue erosion" as the basis for its proposed 40 basis point adder. This betrays the Company's true focus for the adder. It is not investment risk, but compensation for revenue losses. As Staff explained, that is a rates issue, not a cost of capital issue.

Further, the adder provides no additional incentive to comply with the energy efficiency law. As Staff explained, the 40 basis point adder would be awarded to the Company regardless of whether the Company actually complies with the energy efficiency law, and the adder provides no additional incentive to comply with the energy efficiency law. In fact, if the Company received this adder and subsequently decided not to comply with the energy efficiency law, it would be about \$30.1 million better off than if it failed to comply with no adder. Approving this adder could put the Commission in the position of having to explain to the General Assembly why it rewarded ComEd a \$30.1 million annual windfall, should ComEd fail to comply with state law. Moreover, Dr. Tierney admitted that the law provides "an out" that would allow ComEd to incur no penalties even if it fails to meet the statutory energy efficiency goals.

The Company claims that the PO's rationale "could be used to negate any return on equity at all on grounds that such a return 'excuses' the utility from 'managing its operational risks.'" The Company counters by noting that risk can never be managed away entirely. (ComEd BOE, pp. 70-71) This obvious straw man argument should be properly ignored. No one is suggesting that risk can be managed away entirely. Indeed, if all risk could be managed away, the proper cost of common equity would be the risk-free rate rather than the 10.50% adopted by the PO. What the PO correctly

found was that risk that can be managed away should be, and deserves no compensation through a higher authorized ROE.

Even if one inappropriately disregarded all other arguments supporting the rejection of the Company's proposed ROE adder, compensation for lost revenues due to decreased sales makes absolutely no sense when the Company's own witness on the matter, Dr. Tierney, testified that sales are expected to rise. This fact trumps all of the Company's arguments for a cost of capital energy efficiency adder.

The Company responds by arguing that "if the energy reduction goals mean anything, they mean that energy use will decrease." That is entirely illogical. To begin with, the number of customers could continue to increase. Energy efficiency has no influence on that factor. In addition, per customer usage could rise as well – while the efficiency of energy-consuming devices might increase, that could be more than offset by an increase in the number of those devices each customer owns. Clearly, one cannot conclude that energy efficiency measures will necessarily lead to an absolute reduction of energy use. This argument underscores one of the primary failings of the Company's proposal, namely, that its presentation fails to consider any other factors that affect sales volume, including those that might have a positive effect. Even if the effect of energy efficiency could be estimated with a reasonable degree of accuracy, it cannot be viewed in isolation. To compensate a company for the downside risk of factors reducing sales without consideration of the upside risk of factors increasing sales would be inappropriate. Obviously, the Company expects the factors increasing sales to more than offset the factors decreasing sales, since, as noted above, Dr. Tierney testified that energy sales are expected to rise, despite the energy efficiency measures. It appears that the Company is willing to accept, indeed expects, upward

deviations from the sales level in the test year *of its choosing*, but feels ratepayers should pay higher rates for the possibility that the Company miscalculated. The Company cannot have it both ways.

It is clear that the PO's rejection of the Company's 40 basis point adder was appropriate and should be upheld in the Final Order.

**G. Staff's Adjustment to Rate of Return**

**H. Overall Cost of Capital (Derivative)**

Despite the Company's claims, ComEd's overall cost of capital is 8.24%, given its current rate structure, based on the capital structure and component costs presented below.

	<u>Amount</u>	<u>Percent of Total Capital</u>	<u>Cost</u>	<u>Weighted Cost</u>
Short-Term Debt	\$49,344,124	0.54%	0.39%	0.00%
Long-Term Debt	\$4,755,524,265	52.35%	6.52%	3.41%
Common Equity	<u>\$4,279,120,870</u>	<u>47.11%</u>	10.00%	4.71%
Credit Facility Fees				<u>0.12%</u>
Total Capital	\$9,083,989,258	100.00%		
Weighted Average Cost of Capital				<b>8.24%</b>

However, if the Commission authorizes an SFV rate design, which the Company continues to support in its exceptions, a downward adjustment to ComEd's authorized cost of common equity would be necessary to reflect the associated reduction in ComEd's risk, as follows:

<b>SFV rate design</b>	<b>ROE Adjustment</b>
50/50	-0.10%
60/40	-0.20%
80/20	-0.40%

## **VII. COST OF SERVICE AND ALLOCATION ISSUES**

### **A. Overview**

The Company's claim that it is unreasonably burdened by Commission directives to update its cost study for its next rate filing should be rejected. ComEd states that it takes "exception to the Proposed Order's limitation, whether express or implied, on when it can file its next rate case." (ComEd BOE, p. 75) The Company then proceeds to cite case law that it contends do not allow regulators to place any barriers that impede the right of the utility to file for rate relief when it deems it necessary. ComEd then goes on to claim that the PO's directives run counter to this well-established right:

In this instance, the Proposed Order's linkage between legitimate informational requirements and the filing of ComEd's next rate case imposes an improper barrier to ComEd filing its next rate case. As stated above, the law does not allow such a barrier to be created. (ComEd BOE, p. 75)

ComEd's BOE fails to consider that the same Public Utilities Act ("PUA") which it argues does not restrict when or how often a utility may file for a rate increase, also imposes many requirements on the Commission, in particular the requirement that the Commission prohibit and declare unlawful, unjust or unreasonable rates. ComEd's BOE further ignores the fact that ever since the final order was issued in ComEd's 2007

rate case, ComEd has known that the Commission has significant concerns with the Company's ECOSS. The Commission found the ECOSS deficient in separating and properly allocating primary and secondary service costs. (Order, Docket No. 07-0566, September 10, 2008, p. 207) Therefore, while ComEd may believe that it is free to seek a rate increase at any time, it must weigh that belief against the fact that the Commission must prohibit unjust or unreasonable rates.

With regards to the particular language in the PO, despite ComEd's claims the PO does not suggest that the Company must delay its next rate case filing in order for ComEd to provide the analysis that it determines must be part of any initial rate case filing that ComEd makes. The Company can file its next case quickly if it provides the necessary analysis in an expeditious manner. For example, if the Company needs to file a rate case in the near future, it may not want to wait for an order in this case to move forward and provide all the necessary analysis requested in the PO. In fact, ComEd has indicated it already intends to do this (ComEd BOE, p. 74), and Staff supports this as discussed below.

It should be remembered that ComEd and every other Illinois utility already face Commission directives that they must satisfy in advance of a rate filing. One obvious example is the Part 285 requirements that utilities must satisfy and furnish with their initial rate filings. Staff is not aware of any Illinois utility ever arguing that those requirements could lead to delays in rate filings and thereby present an unreasonable regulatory burden for the utility.

Furthermore, the Company position, if accepted, could create problems for the regulatory process. For the Commission to perform its regulatory function, it must have requisite information. If the data is missing, the Commission must have the tools to

ensure it is provided in a timely fashion to render an appropriate decision. Thus, there must be a specific deadline for a directive to have meaning. So, for example, if the Commission were to direct the Company to employ direct observation in its analysis and did not specify when those observations were to be made, the Company could comply by providing the information five, ten or twenty years later.

The history of this case is instructive. These similar issues arose in ComEd's last rate case in Docket No. 07-0566. The problem then resulted in the initiation of the RDI docket, Docket No. 08-0532. Through the RDI docket, a full vetting of issues took place wherein ComEd was subsequently and specifically directed to comply with certain directives. ComEd failed to comply with these directives. Thus, at the conclusion of this case, the Company will have had significantly more than a year's time to have satisfied these directives. However, as the PO well documents, the Company has consistently fallen short in these areas. Thus, any harm for the Company resulting from the PO's conclusions is clearly self-inflicted.

Finally, the history of this case demonstrates the importance to maintain the utmost pressure on the Company to respond to Commission directives. In this case, ComEd's initial Filing failed to satisfy the directives from the RDI Order and the information provided in the Company's subsequent supplemental filing still fell short as the PO attests. The pressure on ComEd should not just be maintained, but increased, to ensure that useful information is provided in a timely manner. For these reasons, the Company's claim of an improper barrier to future rate filings should be rejected.

- B. Potentially Uncontested Issues**
- C. Potentially Contested Issues**
  - 1. Embedded Cost of Service Study Issues**
    - a. Class Definitions**
      - i. Residential Classes**
      - ii. Non-residential Classes**
    - b. Primary/Secondary Split**
      - i. Appropriate Methodology (Compliance With Docket No. 08-0532)**
        - (a) Functional Identification of Costs**

IIEC's arguments against the PO's position on the allocation of single-phase primary lines are flawed and should be rejected. The PO's recommendation to allocate these lines to primary service should be affirmed by the Commission.

IIEC begins its argument by contending that "the utility's single-phase primary lines or circuits serve secondary customers almost exclusively." (IIEC BOE, p. 37) IIEC considers this sufficient reason to allocate these costs to secondary service.

IIEC then takes issue with the PO's logic on this issue, specifically, the PO's statement "that IIEC did not proffer 'any evidence to indicate that Staff is incorrect when opining that serving primary voltage customers on a circuit may require ComEd to incur the additional cost of a three-phase line, while a single-phase line could serve secondary loads.'" (IIEC BOE, p. 37) IIEC strongly disagrees with this statement, labeling it as "both factually inaccurate and logically incorrect." (*Id.*)

IIEC goes on to contend "that Staff is the party that failed to proffer actual evidence, not IIEC." (*Id.*) IIEC goes on to claim "that the Staff presented its unsupported notion in the rebuttal phase of this case, when IIEC had no opportunity to provide any testimony or affirmative evidence in response." (*Id.*, p. 38) It is not clear what IIEC means by this criticism. Staff needed to answer a flawed argument presented in IIEC's

direct testimony. The earliest opportunity to respond was in rebuttal. It is not clear what else IIEC expects Staff to do in that situation.

IIEC characterizes Staff's argument that primary customers require more expensive three-phase service as "pure speculation," arguing that "Staff presented no proof to support its hypothesis." (*Id.*, pp. 38-39) IIEC further claims "the fundamental assumption underlying Staff's hypothesis is false." (*Id.*, p. 39) That assumption is that IIEC witness Stowe had argued "that primary customers cannot be served by single-phase primary lines." (*Id.*) IIEC contends that Mr. Stowe stated something quite different which is "that primary customers *could* receive single-phase or three-phase service, but because of the potential for load and voltage imbalances, utilities rarely choose to use single-phase primary circuits to serve primary voltage customers." (*Id.*, pp. 39-40)

IIEC is splitting hairs on this issue. If, according to Mr. Stowe, serving primary customers with single-phase lines would result in "load and voltage imbalances," it is difficult to understand how this could be considered a reasonable option. Thus, IIEC's own BOE confirms Staff's argument which is that, based on Mr. Stowe's argument, the Company's only reasonable choice in serving primary customers is to use a more costly three phase distribution line.

Thus, primary customers should not be rewarded with lower cost allocations when they are more costly to serve. IIEC's arguments against allocating single-phase line costs to primary customers should be rejected and the PO's conclusion on this issue should be accepted by the Commission.

**(b) Direct Observation of ComEd Facilities**

The Company's discussion of the PO's conclusions concerning its analysis of primary and secondary costs is confused and contradictory and should not receive consideration in the Commission's Final Order for this case. ComEd takes a conflicting approach on this issue. On the one hand, it criticizes the PO for erroneously finding that the Company failed to comply with the Commission's RDI Order in numerous aspects of its analysis. Nevertheless, ComEd declined to take exception to the PO's conclusions on these matters.

In criticizing the PO, the Company insists it did, in fact, employ direct observation in its analysis, despite the ALJs' conclusion otherwise:

In assigning costs within USOA Account 364 – Poles, Towers, and Fixtures, in addition to other steps, "ComEd applied the results from ComEd's field and map reviews of sample data conducted during the course of the rate design docket to estimate the percentage of poles by region that may have secondary facilities attached thereto." (ComEd BOE, p. 79)

The problem is that this argument does not mesh with the Company's discussion of the issue in its IB. Noticeably absent from that discussion in its IB is any indication that ComEd conducted any direct observations of its system for the analysis of primary and secondary costs. (ComEd IB, pp. 111-113) Instead, ComEd focused its arguments around the discredited notion that reading maps is one and the same as direct observation in the field. The following argument is illustrative:

Staff witness Lazare disagrees with ComEd's definition of "direct observation" and instead narrowly defines "direct observation" to mean directly observing the system out in the field, and not a review of system maps. Lazare Dir., Staff Ex. 10.0, 19:445-20:468. Staff's definition is in error and should be rejected. (ComEd IB, p. 112)

Given the Company's focus in its IB, it is reasonable for the PO to find that the Company failed to conduct direct observations of its system as required by the Commission's RDI Order.

**(c) Sampling**

A similar problem to the direct observation issues arises with the Company's response to the PO's acceptance of Staff's criticism of its sampling methods because it focused on only 4 out of 6,400 distribution circuits on the ComEd system. The Company claims that the samples used were more robust, arguing as follows:

The Proposed Order errs in concluding that ComEd did not examine a sufficiently large or representative sample as part of its primary/secondary analysis, pointing to ComEd's purported failure to explain "why sampling 4 out of 6,400 circuits constitutes [a] meaningful sample." PO at 168. In reaching this conclusion, the Proposed Order fails to recognize that ComEd did provide data for *all* of the nearly 6,400 circuits at issue. (ComEd BOE, pp. 80-81)

Again the Company's BOE stands in conflict with its IB which readily acknowledges that the Company did, in fact, limit its analysis to 4 out of 6,400 circuits:

Staff witness Lazare confirmed that ComEd did explore the use of sampling techniques, but expressed concern that ComEd's sample of four primary circuits may not be representative of the large population, and suggested a larger sample be examined. (Lazare Dir., Staff Ex. 10.0, 26:607-17)

\* \* \*

In rebuttal testimony, ComEd witness Alongi explained why examining a larger sample of information was unnecessary. (ComEd IB, p. 113)

The problem here lies not with the PO but with the Company which takes an inconsistent approach on these issues. Thus, the Company's arguments should be dismissed.

Another sampling issue arises when in its BOE, ComEd stated:

Consistent with ComEd's position that it is generally neutral on cost of service and cost allocation issues, ComEd will not be taking exception to most of the new requirements set forth in the Proposed Order other than to address incorrect conclusions or factual findings. In fact, in anticipation that many of the new requirements reflected in the Proposed Order ultimately will be adopted in the Commission's final order, ComEd has already undertaken efforts to marshal the internal and external resources that will be required to produce the information that Commission believes it needs to properly allocate costs and design rates. To this end, ComEd intends to work closely with Staff to ensure a reasonable and appropriate interpretation of the Commission's expectations as set forth in the Commission's final order and, in turn, to determine the full and appropriate scope of the work to be performed. The addition of more external resources to this effort sooner in the process will help to ensure that the information expected by the Commission will be provided in as timely a manner as possible and will be free from any future allegations of bias on ComEd's part. (ComEd BOE, p. 74)

Despite this expression by ComEd that it will work closely with Staff on the various studies that may be required by the Final Order, ComEd, in its Exceptions language, removes language that explicitly requires ComEd to work with Staff. While Staff accepts ComEd's statements that it will work with Staff to accomplish the Commission's directives, Staff believes that the Final Order should properly include such language in the various sections where the PO currently includes it.

In particular, in ComEd's Exception #38 regarding sampling, ComEd proposes the removal of the following sentence in the PO:

In addition, ComEd shall work with Staff to develop representative samples and to develop a scientifically acceptable sample of these circuits.

In ComEd's Exception #39 regarding review of other utilities' treatment of primary/secondary issues, ComEd proposes to delete the following sentence from the PO:

ComEd is also required to work with Staff regarding this issue.

Finally, ComEd moves on to provide an exception in the PO regarding primary/secondary split issues. In Exception #40, ComEd proposes two alternatives for replacement language:

(Alternative A)

In light of the evidence, the Commission finds that further segmentation of ComEd's primary distribution system is not warranted and ComEd need not perform any further analysis regarding the costs of 4 kV facilities.

(Alternative B)

In light of the evidence, the Commission finds that further analysis of the costs of 4 kV facilities may be useful in connection with the additional analysis it has committed to do with respect to its primary/secondary split. We therefore direct ComEd to work with Commission Staff to study, define, and delete from the costs assigned to the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class.

Staff disagrees with ComEd's proposed conclusion and related language in both alternatives A and B and recommends that the Final Order continue to require ComEd to carry out the appropriate study of the issue. Alternative A states that the study is not warranted, with which Staff disagrees, while Alternative B casts doubt on whether the analysis may be useful, with which Staff disagrees, but still directs ComEd to carry out the appropriate study of the issue.

Staff notes that ComEd's proposed revisions in Alternative B continue to include language that is similar to the PO in which the Commission directs ComEd to work with Commission Staff.

Staff appreciates ComEd's statements in its BOE that, in anticipation of the Final Order, the Company is already looking into the internal and external resources that are likely to be needed to produce the information which the Commission will require. Likewise, Staff intends to work with the Company to ensure that the Commission's

directives are accomplished regarding the primary/secondary split issues. However, Staff still recommends that ComEd's Exceptions #38, #39, #40 Alternative A, and #40 Alternative B be rejected for the reasons set forth above and that the Final Order maintain the PO's language, including the explicit language for studying these important issues.

**(d) Review of Other Utilities' Treatment of Primary/Secondary Issues**

ComEd contends that the PO errs in criticizing the Company's review of "other utilities' methods in differentiating primary and secondary systems and costs." (ComEd BOE, p. 82) To support its position, the Company cites its review of 35 sets of utility tariffs with respect to primary and secondary voltages. (ComEd BOE, pp. 82-83)

The Company's arguments are supported by the record in this case. As the Company acknowledges in its IB, "ComEd concluded that the necessary cost allocation information was simply unavailable." (ComEd IB, p. 115) Thus, the Company's failure to satisfy this directive is undisputed rendering ComEd's criticism of the PO's conclusion on this issue untenable.

Not only does the Company present a deficient defense of its record on these issues, but it goes on to further its position by stating in its BOE that it declines to take exception to the PO's conclusions on these issues. ComEd states:

Consistent with ComEd's position that it is generally neutral on cost of service and cost allocation issues, ComEd will not be taking exception to most of the new requirements set forth in the Proposed Order other than to address incorrect conclusions or factual findings. In fact, in anticipation that many of the new requirements reflected in the Proposed Order ultimately will be adopted in the Commission's final order, ComEd has already undertaken efforts to marshal the internal and external resources that will be required to produce the information that the Commission

believes it needs to properly allocate costs and design rates. (ComEd BOE, p. 74)

Based on the Company's abdication of its erroneous positions, the Commission can only conclude that the PO's conclusions on these compliance issues are uncontested. Therefore, the Commission should reaffirm the PO's conclusions with respect to direct observation, sampling and the review of other utility studies of the primary and secondary cost issues.

**ii. Other Primary/Secondary Split Issues**  
**(a) 4kV Facilities Allocation**

See discussion above.

- c. Investigation of Assets Used to Serve Extra Large Load Customer Class**
- d. NCP vs. CP**

IIEC's final attempt to convince the Commission to reverse its longstanding support for the CP allocator in favor of the NCP approach for primary lines and substations is not persuasive and should be rejected.

To dissuade the Commission from upholding its decision in Docket No. 08-0532 (RDIO) and in Docket Nos. 09-0306-09-0311 (Cons.) for the Ameren Illinois Utilities, IIEC insists in its Brief on Exceptions that "[i]n this case, IIEC presented evidence to demonstrate that the RDIO's reasoning was flawed." (IIEC BOE, p. 43) In essence, the problem, according to IIEC, is the Commission's mistaken reliance on past precedent regarding this issue and a fundamental disregard of evidence presented in this case in support of the NCP methodology. (IIEC BOE, p. 43)

IIEC presents two arguments on this issue. First, IIEC seeks to claim that the need for these facilities to serve multiple rate classes does not disqualify the NCP as an allocator for these costs:

IIEC's evidence demonstrated that the difference between the CP method and the NCP method was that the CP method focuses on the load contribution of each class during a particular hour of the year, whereas the NCP method reflects the maximum class demand regardless of when it occurs. (Stowe, IIEC Ex. 3.0-C at 23:520-525). Thus, the NCP method, just like the CP method, is based on the collective demands of customers in ComEd's multiple rate classes. Therefore, the fact that primary lines and substations are sized to meet the collective demands of customers from multiple rate classes, does not disqualify the use of the NCP method for the allocation of the cost of primary lines and substations. (IIEC BOE, p. 44)

The problems with this argument are revealed by a look at the lighting class. ComEd witness Hemphill, when asked which are more relevant in sizing distribution facilities designed to meet peak summer loads, lighting demands at the time of the peak or lighting demands at night when they reach their noncoincident peak, replied that lighting demands at the time of system peak are more relevant. Thus, ComEd itself directly contradicts IIEC's claims about the relevance of NCP demands in reflecting demands by multiple rate classes. (Staff RB, p. 62-63)

Second, IIEC claims that these facilities are designed to meet demands throughout the year:

The Commission's second concern (i.e., that some rate classes have demand that does not coincide with system peak demand, and therefore, play a lesser role in shaping investment in primary lines and substations), presumes that primary lines and substations are designed merely to meet demand that flows through those facilities at the time of the system peak. This presumption ignores the fact that these facilities are designed to provide safe and reliable power under both normal and extraordinary conditions, and at any time of the day. (Stowe, IIEC Ex. 3.0-C at 21:481-486). (IIEC BOE, p. 44)

This argument directly contradicts the statements of ComEd witness Dr. Hemphill who indicated that the coincident peak demands of all rate classes are the relevant factor in the distribution planning process. Mr. Hemphill testified that he considers most distribution facilities sized to meet summer (system peak) rather than winter demands. Therefore, the most reasonable, cost-based approach is to allocate the cost of this equipment according to the collective peak demands of all rate classes. While IIEC may be concerned that the Lighting class receives a smaller allocation, it should be remembered that a class with lower usage at the time of system peak bears less responsibility for these costs to be incurred. (Staff IB, pp. 106-107)

Furthermore, the PO effectively summarized the problems with IIEC's arguments as follows:

We additionally note that essentially, the IIEC and the Commercial Group maintain that these previous decisions were erroneous because the costs that are allocated should mirror engineering concerns for NCP. However, there is no credible evidence that the investments in question, distribution substations and primary lines, correlate to NCP-related investments.

This is true because that there is no indication from the evidence presented here, that NCP, which is a form of worst case scenario on a system-wide basis would fairly allocate the costs involved in calculating NCP amongst the customer classes. Generally, what is involved in a worst case scenario for an industrial area will be far different from that which is involved in a residential area. It therefore appears that, based on the evidence presented, imposition of NCP costs on this basis could raise the cost of electricity to lower-using customers, (e.g., residences) even though these lower-using customers did not cause much of the NCP-related costs on an overall basis, or to higher (e.g., industrial) users. This is inapposite to the notion of attributing cost-causation to those who incur the costs in questions. (PO, pp. 188-189, emphasis added)

Thus, despite IIEC's claims to the contrary, the evidence in this proceeding provides clear and compelling reasons for the Commission to reaffirm the use of the

Coincident Peak methodology for allocating distribution primary lines and substation costs in ComEd's Embedded Cost of Service Study. (Staff IB, pp. 104-105) In fact, Staff sees no material change in circumstances occurring since the proceeding in Docket Nos. 08-0532 and 09-0306-09-0311 (Cons.) that would produce different answers. Also, IIEC did not offer any new arguments in this case that have not already been successfully rebutted before by Staff and the City of Chicago. In fact, the PO's conclusion on this matter is clear:

In the *Rate Design Investigation* docket, docket 08-0532, Final Order of April 22, 2010, at 55; the Commission specifically addressed this issue in relation to the arguments of ComEd, the IIEC and others. This issue was thoroughly explored therein. In that Order, this Commission concluded that CP is the correct factor to use. (See also, *In re Central Illinois Light Company*, docket 09-0306, Final Order of April 29, 2010, at 237). We therefore decline to deviate from these past decisions. (PO, p. 188)

Based on the weight of evidence in this case, Staff respectfully recommends that the Commission continue to uphold its decision from previous cases and continue to use the CP method as its preference for allocating distribution primary lines and substation costs in ComEd's ECOSS.

**e. Allocation of Primary Lines and Substations**

**f. Functionalization of General and Intangible Plant**

ComEd's arguments in support of its exception to the PO's conclusion are based upon flawed premises and should be rejected by the Commission. The Commission should instead adopt the PO's recommendation to adopt Staff's position with respect to functionalization of G&I Plant.

First, ComEd claims that the PO's conclusion improperly relied on the assumption that "ComEd made one-sided methodological changes that increase the

functionalization of G&I Plant costs to the Distribution function and reduce it as to the Transmission function.” (ComEd BOE, p. 34) According to ComEd, this is not the case, as the results for some accounts were to increase the functionalization to Distribution versus Transmission, but the results as to the other accounts were just the opposite. (Id.) Staff has examined these arguments and finds them deficient. While there were some increases and some decreases to various plants accounts, the overall effect of ComEd’s proposed changes is an unjustified increase of \$15,693,000 (Staff Ex. 16.0, Schedule 16.12) in distribution plant, which is not an inconsequential amount by any means.

Next, ComEd claims that it “chose to use here a combination of methods (direct assignment for Account 397 and the GLA for the other Accounts) that is consistent with the methods it uses for the Formula Transmission Rate, which means that, over time, ComEd will neither over-nor under-recover these costs under its transmission and distribution rates.” (ComEd BOE, p. 35) This is not a sufficient basis to accept the Company’s revised allocation methodology. It is still essential for the Company to demonstrate that its proposed approach is cost-based. It should also be remembered that the parties in this case do not necessarily participate in proceedings involving transmission matters. Regardless of how the transmission allocation is determined, ComEd must still demonstrate that its proposed allocator for distribution is cost-based. (Staff IB, p. 108)

ComEd does purport to address the cost-causation issue by arguing that “ComEd has shown the changes are reasonable and they have a significant additional benefit of analyzing the cost-causation of its G&I Plant costs on a consistent basis for both its Formula Transmission Rate and its distribution rates, thereby over time avoiding

over- or under-recovery of these costs.” (ComEd BOE, p. 35) This is not a meaningful argument about costs, but rather a restatement of ComEd’s argument concerning the need to align distribution costs with transmission. The fact remains that the Company has failed to present any compelling reason why the current approach that has been approved by the Commission is not cost-based and should be revised. (Staff IB, p. 108)

Finally, given the strong support the Company expressed for direct assignment in the past, it is incumbent on the Company to explain why it is moving towards more general allocators for these costs. The Company, however, identifies nothing specific or unique that would distinguish the situation in this proceeding from that of past proceedings. (Staff IB, 108) In other words, ComEd has failed to demonstrate why the Commission should deviate from its prior practice.

Therefore, Staff recommends that the Commission reject ComEd’s arguments to alter the PO’s conclusion and adopt Staff’s recommendation that ComEd’s distribution rate base be decreased by \$15,693,000.

**g. Street Lighting**

**h. Allocation of Illinois Electricity Distribution Tax**

IIEC’s criticisms of the PO’s conclusions on the IEDT should be rejected. Those IIEC arguments have been thoroughly refuted not just in this case but in the last Ameren rate case (Docket No. 09-0306 et al. (Cons.)) and they provide no basis for reversing that Commission decision and the current PO’s recommendation with respect to these costs.

IIEC seeks to inject confusion and complexity into a straightforward, simple rate design issue. It is simple and straightforward because the Illinois General Assembly in

its amendatory Act of 1997 changed the way the distribution tax is determined from a tax on “invested capital” to a “tax based on the quantity of electricity that is delivered.” (35 ILCS 620/1a, PA. 90-561, eff. 1-1-98) Nevertheless, IIEC searches for arguments to suggest it is still mainly a plant-based tax.

IIEC claims that “[m]ore than 90% of ComEd’s IEDT expense is essentially fixed, unchanging from year to year, and completely unrelated to the kWh of electricity ComEd delivers.” (IIEC BOE, p. 20) Furthermore, IIEC contends “[t]hat static portion of ComEd’s IEDT expense (91.5% of the test year amount) is directly traced to the level of ComEd’s plant-in-service (invested capital) when, in 1997, the General Assembly replicated the then current level of Invested Capital Tax revenues, using a calculation based on kWh delivered.” (*Id.*)

It is true that the starting point for the tax levels after the Amendatory Act of 1997 corresponded to previous tax levels based on invested capital. However, usage has since become the determining factor for these taxes with the total taxes paid by Illinois utilities, as well as any rebates they receive, based solely on their share of the total deliveries by Illinois electric utilities. In addition, the total amount of distribution taxes collected by utilities increases each year by the lesser of 5% over the existing level or the yearly consumer price increase. None of these factors bears any relationship to plant investments. (Staff Ex. 26.0, p. 21)

IIEC cites a statistical analysis by its own witness Mr. Stephens which contended that “changes in ComEd’s kWh deliveries had only a weak explanatory value for changes in the IEDT.” (IIEC BOE, p. 24) However, IIEC should remember that under the current Act, changes in the level of invested capital have no bearing whatsoever on IEDT costs. So, if a utility’s plant investment were to double or to decline by half, that

would have no impact on the utility's distribution tax. In contrast, the level of deliveries by electric utilities does directly affect distribution taxes. If a utility's level of deliveries goes up or down relative to other electric utilities in Illinois, its share of distribution taxes will increase or decrease accordingly. Since the level of deliveries, not plant in service, determines the amounts of distribution taxes for individual utilities each year, usage should be the basis for allocating these costs. (Staff Ex. 26.0, pp. 21-22)

IIEC then presents a lengthy argument concerning why the Commission should not consider the Ameren case as an appropriate precedent for addressing the IEDT case in this proceeding. (IIEC BOE, pp. 27-31) Staff would note that the Ameren precedent is relevant for this case because the issue is quite similar for the two utilities. Even more important is that a usage-based approach is consistent with the causation of these costs while IIEC's plant-based approach is not. IIEC's arguments should be rejected.

**i. Indirect Uncollectible Costs and Uncollectible Costs**  
**j. Customer Care Cost Allocation**

**i. Allocation Study vs. Switching Study**

REACT's objections to the PO's recommendation that customer care costs be allocated using the Switching Study rather than the Allocation Study are ill-conceived and should be rejected. (React BOE, pp. 11-17) The Commission should instead uphold the PO's recommendation to adopt the Switching Study, which is consistent with the way other Illinois utilities allocate customer care costs between distribution and supply.

The issue here is not whether the Switching Study perfectly explains the allocation of customer care costs, but whether it explains them better than the Allocation Study. As Staff and ComEd have pointed out, the Switching Study recognizes that

ComEd must stand ready as the default provider to serve customers who have chosen to receive supply service from a RES. Regardless of the number of customers switching, ComEd must incur the necessary costs to stand ready to serve them again if they switch back to the utility. (Staff IB, p. 110)

In contrast, the Allocation Study fails to recognize ComEd's role as the default provider. It shifts a significant share of customer care costs to the supply function from ComEd's distribution service related revenue requirement and enables an unbundled service customer to potentially bypass some customer service costs, assuming they are allocated and charged to bundled supply customers only. As a result, the issue arises concerning how these supply-related customer care costs are to be recovered from ComEd ratepayers and it is unclear at this time exactly how that is to be done. (*Id.*, p. 111)

REACT continues to advocate the Allocation Study for ComEd's customer care costs. According to REACT, "ComEd's avoided cost Switching Study improperly examined only direct O&M costs that ComEd attributed to the supply function with 1% switching, and then tried to predict what those costs might be one day in the future based upon potential 10% and 100% customer switching levels ... Thus, the entire Switching Study was ComEd's test to see whether direct O&M costs somehow would be avoided under future switching scenarios; the purpose was not to allocate existing costs." (REACT BOE, p. 12) REACT goes on to contend that "[t]he embedded cost Allocation Study approach, as presented by ComEd and modified by REACT, is much more straight-forward ... and allocators are used to appropriately apportion those costs between the delivery and supply functions." (*Id.*, p. 12)

There are a number of problems with these arguments. One is that it fails to reflect the causation of these costs. The Allocation study fails to recognize that ComEd continues to incur customer care costs regardless of the level of customer switching or the entity providing supply services. The Allocation study, by allocating a significant share of these costs to supply fails to reflect the actual cost situation for ComEd.(Staff IB, p. 69) In addition, REACT's effort to tie its approach to the embedded cost methodology for allocating costs among customer classes is flawed. As noted by Staff, "[j]ust because ComEd's overall cost of service study is based on an embedded cost approach does not necessarily mean that an artificial manipulation of certain costs within the general study is warranted, especially when such cost re-allocation is based on arbitrary base allocators which render such exercise practically unsound. Under the Allocation Study's approach, bundled and unbundled customers would pay significantly different billing costs despite the fact that the underlying costs have not changed substantially." (Staff IB, p. 69)

Furthermore, despite REACT's claim to the contrary, the evidence in the case fails to demonstrate that REACT's modified Allocation Study featuring an arbitrary (50/50) allocator is cost-based. The following explanation of this approach by REACT witness Merola is instructive:

So based on my experience and based on looking at the underlying drivers, it seems to be a very reasonable assumption to assume that those costs are evenly supporting the delivery and the supply functions. (Tr., January 19, 2011, p. 2012, emphasis added)

This response clearly indicates the arbitrariness of REACT's proposed allocator for these costs. The allocator is not cost based but rather based upon an assumption made by Mr. Merola.

REACT criticizes ComEd's Switching Study by claiming that it "is highly speculative and necessarily depends on customer switching scenarios that neither exist today nor are likely to exist by any reasonably predictable future date" (REACT BOE, p. 14) and also that "one cannot simply use the 1% scenario allocation and disregard the 10% and 100% scenarios, as all three scenarios are required to arrive at a final result." (*Id.*)

This argument falls short in a number of respects. For one, REACT's first statement is plainly incorrect because the Switching Study examines a scenario based on current switching levels which are about 1% of total customers. Furthermore, the Company has found that the amount of current switching has not had a meaningful impact on ComEd's customer care cost levels. Thus, there is nothing speculative about the 1% scenario. (Staff RB, p. 68) REACT's second statement about the relevance of the 10% and 100% is misplaced as well, because the Switching Study does take into account all three scenarios to arrive to the resulting conclusion that, "[w]hile switching levels of 10% or 100% are not likely in the foreseeable future, these scenarios nevertheless show that customer care costs can be expected to rise as additional customers switch suppliers. Thus, for both current and future scenarios ComEd finds that customer switching will not reduce costs." (ComEd IB, pp. 123-124, emphasis added)

REACT presents a results-driven argument against the Switching Study by claiming that "[i]n addition to relying on unrealistic hypothetical scenarios, the end result of the Switching Study -- allocating more than 99% of costs to the delivery function -- is implausible and is further evidence that the Switching Study is flawed." (REACT BOE, p.14) REACT contrasts those results with ComEd's own Allocation Study which

allocates over 13 times more costs to the supply function and thereby concludes that ComEd's Switching Study is implausible. (Staff RB, p.69) In effect, REACT is seeking to use the Allocation Study, which Staff has shown to be arbitrary, divergent from cost, and speculative, to impeach ComEd's Switching Study.

REACT further opposes the PO's position by addressing the PO's statement that "Customer Care Cost allocation may have to be revisited as customer service changes, the information technology infrastructure changes, and the competitive market continues "blossom[ing]." (PO, p. 196) REACT finds this statement problematic because "[a]cknowledging that the cost causation structure could undergo significant changes in ways that are not predicted by ComEd's Switching Study undermines the suggestion that ComEd's avoided cost Switching Study methodology is appropriate by acknowledging the speculative nature of the future switching scenarios." (REACT BOE, p.15) However, REACT creates confusion when it goes on to say that "[t]he Allocation Study takes as its base what the Proposed Order acknowledged was the most reliable part of the Switching Study -- a scenario grounded in the 2009 test year -- but does not add extraneous and admittedly speculative 10% and 100% scenarios to arrive at an allocation approach. Furthermore, the Allocation Study would undoubtedly be adjusted in future ComEd rate cases, to the extent that ComEd could establish that its operational realities had changed since the last Rate Case." (REACT BOE, p.16, emphasis added)

The REACT arguments are curious and conflicting. On one hand, REACT cites the PO's acknowledgement that changes in the competitive market would create deficiencies in the Switching Study. But, on the other hand, REACT admits that the Allocation Study might have to be revised as well "to the extent that ComEd could

establish that its operational realities had changed since the last Rate Case.” (Id., p. 16)  
Thus, REACT acknowledges deficiencies in the Allocation Study and it is not clear why the Allocation Study should be considered superior in this regard.

The undisputed evidence in this case shows that under the present operational reality of ComEd, its customer care costs persist regardless of the level of customer switching. The PO concurred by stating:

We acknowledge that, in the *Rate Design Investigation Order*, a traditional embedded cost of service study was required. However, such a study does not recognize that many of the customer care costs, such as metering, customer service calls related to power outages, etc. will be incurred by ComEd, irrespective of whether a customer takes electricity from an alternative supplier. (PO, p. 196)

Furthermore, Staff agrees with ComEd that this issue should not be explored again unless and until some *material* change in circumstances appears regarding costs associated with customer switching. (ComEd BOE, p. 88)

Lastly, REACT contends the following with respect to its revisions to ComEd’s Allocation Study:

Until the present case, ComEd has not provided embedded cost information sufficient to design an embedded cost Allocation Study that the Commission could use to test the reasonableness of the implausible results of the avoided cost Switching Study methodology. Now that ComEd has presented an embedded study and additional embedded cost information in discovery, ComEd and REACT are less than three percentage points apart in their respective proposed embedded cost studies. (REACT BOE, p. 18, emphasis added)

This argument is flawed and should be dismissed. The main criteria for selecting a method for allocating customer care costs should be cost drivers, not results. The fact that the impact of REACT’s proposed changes to ComEd’s Allocation Study are “less than three percentage points apart” does not prove that ComEd’s analysis is flawed,



**C. Potentially Contested Issues**

**1. SFV (ComEd Proposal)**

ComEd's exceptions to the PO's conclusions on the SFV rate design should be rejected. ComEd's insistence that the Commission approve a significant increase in customer charges would undermine efforts to conserve electricity. Adoption of ComEd's proposal would discourage ratepayers from conserving electricity which conflicts with ComEd's own stated policy, ComEd's own efforts to promote ratepayer conservation and would undermine the energy efficiency objective of the National Action Plan for Energy Efficiency which one of ComEd's own witnesses cited to in her testimony. (Staff Ex. 13.0, pp. 18-20)

The Company has already made a strong commitment to conservation. John Rowe, CEO of Exelon Corp., indicated that ComEd plans to spend \$290 million per year over the next five years to implement a portfolio of energy efficiency and demand response programs aimed to help customers reduce their energy consumption. (See ICC Staff Exhibit 13.0, Attachment 13.2) Staff believes that rate design should enhance, rather than undermine, this effort. That requires keeping customer charges and usage costs at a level where they provide customers with the incentive to conserve. Staff believes that the current level of costs recovered through customer charges and usage costs provide that incentive. In contrast, the SFV would put less emphasis on usage charges and likely mitigate conservation and thereby undermine the effort to reduce overall energy consumption as is required by Section 5/8-103 (b) of the Public Utilities Act. (Staff Ex. 13.0, pp. 22-24) With that, the Final Order should amend its

Conclusions to the SFV section on pages 217-218, consistent with Staff's BOE, as follows.<sup>32</sup>

**Commission Analysis and Conclusion:**

\* \* \*

The Commission is not convinced that an SFV rate design reduces the incentive to conserve electricity. First, the Commission notes that the rate design in this proceeding relates to delivery services associated with electric power and energy. The actual commodity costs associated with the electric power and energy, which is the majority of the total electric bill in addition to the delivery costs and vary directly with usage. The customers under ComEd's proposal would not have an incentive to conserve because ~~they can avoid commodity costs associated through conservation. In addition, these costs at issue here are in fact fixed costs, cannot be conserved and result in an under-recovery of fixed costs for the utility~~ usage costs recovered through the usage charge would decrease in an SFV rate design, such that<sup>33</sup> conservation attempts by customers would become less meaningful; the incentive to conserve energy likewise would be less meaningful. Just as with the natural gas utilities, we conclude there is a ~~no~~ disincentive a consumer may have by a move toward recovering fixed costs through fixed charges, as opposed to recovery on a volumetric basis. We further conclude that a shift in cost recovery from usage charges to fixed charges under the SFV would send ratepayers inappropriate signals about the impact of their usage on environmental costs. SFV design that more accurately reflects a consumer's actual costs does not impede conservation. Commission decisions to either decouple or move toward an SFV in rate cases filed by North Shore/Peoples Gas, the Ameren Illinois Companies ("Ameren"), and Nicor Gas Company ("Nicor Gas"). All of which recognize the importance of recovering fixed costs predominantly through fixed charges. The Commission concludes that it is when customers respond to rates that send price signals which incent them to conserve energy. An SFV rate design would create a barrier to customer adoption of energy efficiency because it would reduce the savings that customers can realize from reducing usage do not accurately reflect cost causation, that inefficiency results and society suffers. Because electric and natural gas distribution utilities must have the capacity in place to serve peak loads whenever

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<sup>32</sup> Some underline and strikethrough language was inadvertently omitted in Staff's BOE. The language here has not changed, just the identification of proposed changes.

<sup>33</sup> Staff is suggesting this additional phrase for further clarification.

they occur, it is logical to apply pricing policies for both types of industries because they have similar underlying cost structures.

The Commission finds that a SFV proposal does not shift risk to residential customers. Further, the record does not demonstrate that low-income customers are necessarily low-usage customers, or vice versa. Further, there are other means in place that more precisely target the policy issue that the AG and City seeks to address here. Finally, we do not find that a SFV proposal is attempting to recover short term marginal costs. Instead, the SFV proposal is intended to recover additional fixed delivery costs through higher fixed delivery charges. The Commission has recognized the importance of recovering fixed costs predominantly through fixed charges impacts that energy conservation has on the environment. The Commission finds that the one of the most important steps in bringing ComEd's rate design in line with its costs is to properly align the fixed and variable portions of ComEd's delivery rates with the fixed and variable costs ComEd incurs to provide delivery service encouraging customer energy efficiency is to send price signals that promote conservation. We also believe that rate designs such as SFV, where electricity demand is more likely to increase, could lead to long-term higher rates and bills where new supply is more costly than customers trying to avoid higher bills by adopting energy efficient usage of electricity it is important to design rates that reflect cost causation. In addition, the Commission concludes that ComEd's current rate design, it is undisputed that ComEd which recovers 37% of its fixed charges, would mitigate rate shock by allowing customers more control of their monthly energy costs. Customers could realize larger savings by reducing usage. In an effort to gradually move towards more realistic cost causation and to avoid rate shock, the Commission concludes that the use of volumetric charges be reduced so that they recover 50% of fixed delivery service costs. Therefore, the Commission orders that ComEd retain its current rate design. This conclusion applies only to residential customers and nonresidential customers in the Watt-Hour Delivery Class. The Commission will not determine whether changes need to be addressed in future year's rates; this is an issue to be addressed in future rate cases.

2. **Decoupling (NRDC Proposal)**
3. **Class Definitions**
  - a. **Residential Rate Design – Consolidation of Classes**
  - b. **New Primary Voltage Delivery Class vs. Primary Subclass Charges**
4. **Non-Residential**
  - a. **Movement Toward ECOSS Rates**
    - i. **Extra Large Load and High Voltage Customer Classes**

The exceptions of ComEd taken to the PO's conclusions on the revenue shortfall (ComEd BOE, p. 97; Exception No. 59) should be rejected. The PO correctly adopts Staff's proposal to decrease the subsidies that the Small Load, Medium Load, Large Load and Very Large Load delivery classes provide in this rate case as well as ComEd's next rate case before eventually disappearing at the conclusion of the fourth and final step toward full revenue recovery for all rate classes. (Staff IB, pp. 137-38) Staff's proposal minimally affects only four classes and it also allows ComEd to fully-recover costs. (Staff RB, p. 79) This proposal, despite the PO's claims to the contrary, also applies the principle of gradualism (Staff BOE, p. 87) that Kroger and Metra advocate. (Kroger IB, p. 2; Metra IB, pp. 12-13)

However, Staff agrees with ComEd's observation in its exceptions that there is a conflict with the PO's adoption of Staff's proposal to decrease the subsidies the Small Load, Medium Load, Large Load and Very Large Load delivery classes provide but then adopting at the same time the rate design and revenue allocation that ComEd proposed for the Railroad, High Voltage and Extra Large Load classes. (ComEd BOE, p. 97) If the Commission adopts ComEd's rate design and revenue allocation for the Railroad, High Voltage and Extra Large Load delivery classes, which it should not, the subsidies that the Small Load, Medium Load, Large Load and Very Large Load delivery classes

provide cannot be reduced if ComEd was to fully recover costs. Therefore, to avoid this conflict and for the reasons previously set forth in Staff's exceptions on this issue (Staff BOE, pp. 86-87) the Commission should adopt the proposed rate design approach used in Staff Ex. 29.01C (pp. 2-3 of 5). Accordingly, the Final Order should amend its Conclusions to the Movement toward ECOSS Rates sections as proposed by Staff on pages 88-89 of its Revised BOE.

- ii. **Railroad Customer Class**
- iii. **What classes should pay for any revenue shortfall from not moving 100% to ECOSS**
- b. **Allocating Secondary Costs Among Customer Classes**
- c. **Railroad Customers – Utilization of Railroad Customers' Facilities**
- d. **Dusk to Dawn Street Lighting**

#### **5. Collection of Illinois Electricity Distribution Tax**

IIEC's arguments against the PO's recommendation of recovering the IEDT tax through a separate per-kWh charge are flawed and should be rejected.

IIEC insists that "[t]he record provides no basis for a line item on customer bills to collect an allocated tax amount through a separate per kWh charge." Rather, IIEC contends that the taxes should be "recovered with ComEd's other prudent and reasonable costs, through its existing delivery service charges." (IIEC BOE, p. 32) IIEC argues instead that "ComEd's IEDT cost should continue to be collected through ComEd's existing delivery service charges." (*Id.*, p. 33)

The problem is that existing charges for larger customers are based on demand, rather than energy. This would create a mismatch between costs based on annual usage and a recovery mechanism based on demands only at the time of the peak. Recovery through a separate usage charge is clearly the cost-based approach.

## 6. Distribution Loss Factors

The Commission should reject CG's arguments and proposed replacement language regarding ComEd's distribution loss study, presented on pages 2-5 of CG's BOE. CG's BOE asserts that, for customers in the Medium Load, Large Load, and Very Large Load classes, the percent of customer load that is supplied using the secondary and service components of ComEd's distribution system should be set to zero. Further, CG opines that the changes in ComEd's distribution loss study that the PO adopted occurred without a formal study, and therefore it is not CG's burden to prove that the "unsupported" values in ComEd's distribution loss study are inaccurate. (CG BOE, pp. 2-5)

CG's BOE appears to ignore the fact that the recommended changes to ComEd's distribution loss study that the PO accepted, and to which CG objects, were explained in testimony. (See, Staff Ex. 6.0, pp. 23-25 and ComEd Ex. 34.0, pp. 7-8) Since the record includes an explanation of the rationale for the revised values within the distribution loss study, these changes were not "unsupported," as CG argues. Unsupported is the position CG presented in its BOE: that the distribution loss study should assume that 0% of the electricity consumed by Medium Load, Large Load, and Very Large Load class customers flows through ComEd's service facilities, even though it is established that electricity supplied to these customer classes flows through service facilities (*id.*). ComEd's utilization of a distribution loss study that assumes that 0% of the electricity supplied to these customer classes utilizes services, as CG suggests the Commission require, would be unreasonable and incorrect. Staff continues to support the PO's adoption of ComEd's distribution loss studies presented in ComEd Ex. 67.1 and Ex. 67.2.

- 7. **General Terms and Conditions**
  - a. **Residential Service Station (Ownership of Residential Primary Service Connection facilities on private property)**
  - b. **Limitation of Liability Language**
- 8. **Rider UF**
- 9. **Notification Regarding Elimination of Self Generation Customer Group**
- 10. **Docket 08-0532 Compliance Issues**
- 11. **Other Issues**
- IX. **REVENUES**
  - A. **Uncontested Issues – Other Revenues – Rate Relief Payment**
  - B. **Miscellaneous Revenues**
  - C. **Weather Normalization**
  - D. **Late Payment Charge Revenues**
  - E. **New Business Revenue Credit**
- X. **OTHER**
  - A. **RES Service Issues**
  - B. **UUFR**

ComEd continues to attempt to maintain, within a rate case where other infrastructure costs are being proposed for inclusion in rate base, that it cannot understand how it might recover prudent expenses for a very modestly budgeted reliability project that ComEd claims, and Staff agrees, provides significant benefits to distribution system reliability. ComEd disingenuously claims that the reason UUFR project costs may not be recovered is because Staff did not propose a cost recovery mechanism. (ComEd BOE, p. 103) The claim is far from the truth. It is beyond comprehension that ComEd is not well aware that whether or not a utility might be able to include an investment in prudent, reasonable and used and useful infrastructure in its rate base has never even remotely depended upon Commission Staff or any other party having first to propose a cost recovery mechanism. In fact, Staff has repeatedly identified the many operational savings and benefits of UUFR and expressed no doubt at all that reasonable and prudently incurred costs for this necessary project could be

recoverable in one or more future rate cases under traditional regulation. ComEd's Exception #64 should be rejected and Staff's exception to replace the last three of the four paragraphs of the UUFR's Analysis and Conclusions section on page 297 of the PO as set forth on pages 100-103 of Staff's Revised BOE should be adopted by the Commission for the reasons set forth therein.

**C. Updated Distribution Loss Study**

**D. Meters and Meter Reading**

ComEd disagrees with the PO's reasonable instruction for ComEd to develop and implement an improved personnel policy that addresses timely meter reading and unsealed meters, and requires periodic internal audits. (PO, p. 299) Instead, ComEd recommends that the Commission adopt modified language that entirely ignores ComEd's on-going practice of leaving meters unsealed in the field, and inappropriately de-emphasizes the problems created by its estimated meter reads. (ComEd BOE, p. 105; ComEd Exceptions, pp. 331-334) ComEd's BOE opines that ComEd's existing policy regarding meter seals allows its personnel to exercise judgment that "reflects the employee safety, public health, cost, and other concerns that may be implicated by unsealed meters in any given instance." (ComEd BOE, p. 105) In short, ComEd indicated it plans no modifications to its current practice.

However, ComEd failed to explain in its testimony how leaving energized meters unsealed on the premise of customers for extended periods of time favorably affects "employee safety, public health, cost, and other concerns." Furthermore, ComEd's existing practice of leaving its meters unsealed means ComEd is not aware when customers remove, tamper with, or flip meters upside down for a period of time. In addition, customers who remove and reinstall meters without ComEd's knowledge

expose themselves to an electrical hazard. Sealed meters deter such activity. (Staff Ex. 6.0, p. 33) Staff was surprised to find that ComEd does not bother to keep its meters sealed when they are in service in the field, and now finds it to be incredible that ComEd objects to the PO's reasonable requirement that ComEd develop and implement an improved policy to address the problem. ComEd's BOE indicates that ComEd is unwilling to take the simple step of modifying its existing practice in order to minimize meter tampering, prevent unauthorized meter removals by the public, and potentially protect the public from electrical hazards. Staff supports the PO's requirement that ComEd develop improved personnel policy to address timely meter reading and unsealed meters, along with a requirement for internal audits. The Commission should adopt the language in the PO, and reject ComEd's Exception # 65.

- E. Competitive Retail Market Development Issues**
- F. New Section 9-250 Investigation of ComEd's Electric Rate Design**
- G. Other**

**XI. TECHNICAL CORRECTIONS**

**XII. CONCLUSION**

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's request for a general increase in electric rates.

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Respectfully submitted,

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