

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

COMMONWEALTH EDISON COMPANY	:	
	:	No. 11-0721
Formula rate tariff and charges authorized by	:	
Section 16-108.5 of the Public Utilities Act	:	

**POST-HEARING REPLY BRIEF OF  
COMMONWEALTH EDISON COMPANY**

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. OVERALL REVENUE REQUIREMENT.....	5
III. RATE BASE.....	6
A. Overview.....	6
B. Potentially Uncontested Issues .....	6
C. Potentially Contested Issues .....	6
1. Average Year or End of Year Rate Base (see also VIII.C.1) .....	6
2. Plant-in-Service.....	9
a) Original Cost Finding 2010 Plant .....	9
b) 2010 General and Intangible Plant Functionalization.....	10
(1) Methodologies.....	10
(2) W&S Allocator Calculation (see also V.C.1.e) .....	12
c) 2011 Plant Additions.....	12
d) Derivative: Restricted Stock .....	17
e) Derivative: Incentive Compensation.....	17
f) Derivative: Perquisites and Awards.....	17
3. Accumulated Depreciation & Amortization .....	18
4. Cash Working Capital Issues .....	18
a) Revenue Collections Lag .....	18
b) Pass-Through Taxes.....	21
c) Intercompany Billing Lead .....	21
d) Employee Benefits – Pension and OPEB .....	22
e) Accounts Payable Related to CWIP .....	22
f) 401(k) Match.....	23
g) Impact of Current and Deferred Taxes .....	23
h) ComEd Proposal re Timing of Future Lead/Lag Study .....	24
5. Accumulated Deferred Income Taxes .....	25
a) 2011 Plant Additions.....	25
b) Bad Debt Reserve .....	26
c) Vacation Pay .....	27
d) Incentive Pay.....	28
e) FIN47 .....	28
6. Operating Reserves .....	28
a) Accrued Vacation Pay.....	29
b) Accrued Incentive Pay .....	30
7. Other .....	31
IV. REVENUES.....	31
A. Potentially Uncontested Issues .....	31
B. Potentially Contested Issues .....	31

1.	Late Payment Charges Revenues Allocation .....	31
2.	New Business and Billing Determinants .....	32
3.	Other .....	33
V.	OPERATING EXPENSES .....	33
A.	Overview .....	33
B.	Potentially Uncontested Issues .....	33
C.	Potentially Contested Issues .....	33
1.	Administrative and General Expenses .....	33
a)	Total .....	33
b)	Restricted Stock .....	33
c)	Incentive Compensation.....	35
(1)	BSC Annual Incentive Plan Cost Allocation.....	35
(2)	ComEd AIP Costs Above Target.....	36
(3)	Advance Cap on Incentive Compensation Costs .....	36
d)	Perquisites and Awards.....	36
e)	W&S Allocator Calculation (see also III.C.2.b.ii).....	37
f)	Charitable Contributions.....	38
g)	Advertising Expense .....	40
2.	Depreciation and Amortization Expense (Derivative Impacts) .....	41
3.	Taxes Other Than Income, Including Property Taxes .....	41
4.	Regulatory Asset Amortization: IEDT .....	41
5.	Pension Costs .....	41
a)	Pension Asset Funding.....	41
b)	Pension Expense .....	47
6.	Income Taxes: Interest Synchronization.....	48
7.	Other .....	48
VI.	RATE OF RETURN .....	48
A.	Overview, Including Overall Cost of Capital .....	48
B.	Capital Structure .....	48
1.	Year End/Average Year Capital Structure.....	48
2.	Long-Term Debt and Equity Adjustment Regarding CWIP Accruing AFUDC .....	50
3.	Equity Adjustment Regarding ComEd of Indiana .....	51
4.	Common Equity Ratio/Cap Limit.....	51
5.	Subsequent Procedure/Process re: Capital Structure Issues .....	52
6.	Other .....	54
C.	Cost of Capital Components .....	54
1.	Cost of Short-Term Debt .....	54
2.	Cost of Credit Facilities .....	54
3.	Cost of Long-Term Debt.....	55
4.	Cost of Common Equity .....	55
VII.	COST OF SERVICE AND RATE DESIGN.....	56
A.	Studies Submitted Pursuant to 2010 Rate Case Order.....	56
B.	Rate Design, Including Upcoming Docket .....	57

C.	Embedded Cost of Service Study, Including Distribution Losses .....	61
VIII.	ADDITIONAL FORMULA / TARIFF ISSUES .....	61
A.	Tariff Issues .....	61
1.	Separate Statement of Earnings Collar Effect .....	61
2.	Calculation of Increases for Three-Year Report.....	63
3.	Other .....	64
a)	Tariff Structure / Detail.....	64
B.	Ratemaking Process and Filing Issues.....	66
1.	Access to Information re Formula Rate Filing .....	66
2.	Triggers for Hearing on Certain Operating Costs.....	67
3.	Performance Condition for Incentive Compensation Costs.....	68
4.	Other .....	69
C.	Reconciliation .....	69
1.	Average Rate Base Proposals (see also III.C.1) .....	69
2.	Interest Rate Proposals.....	73
3.	Regulatory Asset / Deferred Expense Recommendation.....	73
4.	Other .....	73
D.	Other Proposals and Positions Regarding Formula, Tariff Schedules and Attachments, and Processes .....	73
IX.	OTHER .....	74
A.	Distribution System Loss Study .....	74
B.	Study Reports #2, 3, and 5 .....	75
X.	CONCLUSION.....	77

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

COMMONWEALTH EDISON COMPANY	:	
	:	No. 11-0721
Formula rate tariff and charges authorized by	:	
Section 16-108.5 of the Public Utilities Act	:	

**POST-HEARING REPLY BRIEF OF  
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”), by its counsel and in accordance with the scheduling order of the Administrative Law Judges, submits this Post-Hearing Reply Brief.

**I. INTRODUCTION**

In 2011 the General Assembly enacted the Energy Infrastructure Modernization Act (“EIMA”) to achieve three basic goals: (1) spur investment in the electric distribution system for the benefit of customers and the Illinois economy, (2) mandate that a utility that voluntarily undertakes that investment obligation shall be accountable to meet improved performance standards for reliability and customer service, and (3) provide a utility that undertakes these commitments the necessary resources to fulfill them. This new framework replaces the heavily adjusted “test year” assumptions about costs with a formula that provides for annual adjustments to ensure that the utility recovers no more – but also no less – than is prudent and reasonable to support utility operations. This is implemented through an annual reconciliation, effectively streamlining the rate-setting process, reducing crippling lag, and establishing rates that reflect reality. In certain instances, EIMA specifies categories of costs to be recovered, and when and how those costs are recovered.

This case is the key to the future of utility investment in Illinois. The General Assembly recognized EIMA holds great promise for Illinois electricity customers, stakeholders, and the economic future of the State. But its overall benefits will not be realized if it is not faithfully

implemented. The agencies responsible for rating ComEd's debt securities have expressed cautious optimism about the EIMA, but they "continue to view the state's regulatory framework for electric utilities as being less reliable and unpredictable and, as such, continue to score the regulatory framework within Illinois being below investment grade or at Ba."<sup>1</sup> This case presents the prime, and possibly only, opportunity to dispel that concern.

Unfortunately, many of the positions taken by Staff and Intervenors would, if adopted, turn back the clock and threaten the investment promise in EIMA. The ultimate effect of this will be to imperil the entire purpose of the statute. No rational utility would voluntarily undertake substantial investment or accept innovative and ambitious performance metrics while risking real financial penalties, while continuing to have its routine costs of providing delivery service arbitrarily disallowed. The potential for loss of job creation, innovation and long term economic development the General Assembly envisioned also is real, to the detriment of all citizens of the State.

Staff and Intervenors do not question the reality of the costs ComEd seeks to recover, nor their prudence or reasonableness. Instead, they advance opportunistic and contrived theories for disallowances which in total would, each year, deprive ComEd of the recovery of upwards of one hundred million dollars of unquestionably prudent and reasonable costs of providing delivery services to customers in northern Illinois.

- Efforts to deny any timely recovery of any return on the costs of ComEd's pension contribution defeat every salutary objective of the EIMA and are the prime example of the improper approach to the new law. The notion that for ComEd to have incurred recoverable pension assets costs, ComEd must overshoot the mark and

---

<sup>1</sup> Staff Exhibit ("Ex.") 12.0, Attachment A, p. 2.

overfund the pension plan – and even then, only recover the overfunded amount – finds no support in any plausible definition of “pension asset” – or in reality. Investing more than a billion dollars in meeting pension obligations carries a cost – a big one. Diverting attention to arguments about “overfunding,” a status that can easily be beyond the utility’s control and subject to market movements and interest rate volatility, creates uncertainty where the legal standard is clear. The General Assembly directed that the costs of utilities’ pension contributions should be recovered at a specific rate. Staff’s rule would twist that directive until it offered only a chance of recovering the sliver of those costs that resulted from *overfunding*. That is not only unlawful and unfair; it is also demonstrably bad policy that threatens the retirement security of thousands of employees and retirees, as explained by the IBEW’s witness Dean Apple and the IBEW brief. *See* discussion at Section V.C.5.a. of this Reply Brief.

- The EIMA calls for recovery, subject to annual reconciliation, of the total value of “projected” plant additions for 2011. Instead, Staff seeks to replace that directive with a rule that only looks at specific projects that can be individually identified and defined a year in advance, and that the utility can prove will not materially change. Staff would litigate each year in the initial rate proceeding what specific projects will be completed, cancelled, or delayed – ignoring whether other projects have been accelerated or added and, ultimately, ignoring whether the total value of plant additions was projected accurately. These same subjects would then be at issue again in the subsequent reconciliation proceeding. That approach is not only contrary to law, but accomplishes nothing useful. The annual reconciliation

proceedings ensure that rates *will* reflect actual investments. Similarly, IIEC tries to cut the projected plant additions in half, through the artifice of using an “average” when setting rates. These arguments are, in the end, simply attempts to reintroduce delay and uncertainty and, ultimately, to dismiss real costs. *See* discussion at Section III.C.2.c.

- Delivery costs are transmission or distribution, and recovered as such. Yet, some parties want to use “allocators” to create classification inconsistencies between the Federal Energy Regulatory Commission (“FERC”) and the Illinois Commerce Commission (the “Commission” or “ICC”) that can leave millions of real costs in limbo and unrecoverable, no matter how prudent or reasonable. *See* discussion at Sections III.C.2.b. and V.C.1.e.
- Decrease ComEd’s rate base in each year’s initial rate filing by “updating” not only the depreciation reserve (which is called for by the statute) but also Accumulated Deferred Income Taxes (“ADIT”) (which is not required), which is not only contrary to EIMA, but would accomplish nothing because, once again, the ADIT will be included in the reconciliation phase and appropriate credits issued. *See* discussion at Section III.C.5.a.
- Decrease ComEd’s rate base in each year’s reconciliation by using the “average rate base” methodology to cut in half the changes in rate base that occurred in the rate year, the year being reconciled, even though the reconciliation is not filed until the following year and it does not result in reconciliation adjustments until the year after that. That is contrary to EIMA. Under ComEd’s reading of the statute, only

plant that is in service is included in rates and in reconciliation adjustments when they go into effect. *See* discussion at Sections III.C.1. and VIII.C.1.

This case simply should not be approached with the same old perspective traditionally brought to Article IX cases. This is not an Article IX case, it is an Article XVI case. The General Assembly created the template for a formula rate for good reasons. The Commission's power to base rates on real costs has been strengthened, as has its authority to assess prudence and reasonableness in the context of both ratemaking and reconciliation. It has also been given enhanced responsibilities to ensure that the commitments made by participating utilities under EIMA are kept. The Commission is obliged to honor all those mandates equally. The Commission should implement the new statute in the manner intended to allow its promise to be achieved and permit Illinois to successfully transition to a new era of customer-focused electric utility investment, regulation and performance.

## **II. OVERALL REVENUE REQUIREMENT**

ComEd's final Illinois-jurisdictional revenue requirement (after reduction for other revenues) is \$2,024,932,000. ComEd Corrected Initial Brief ("Corr. Init. Br.") at 10. Staff proposes additional downward adjustments that would result in a proposed revenue requirement of \$1,939,933,000 (after reduction for other revenues). Staff Init. Br. at 3 and Appendix A, Schedule ("Sched.") 1, line 1.

In addition, although AG/AARP's witnesses did not offer any testimony or evidence supporting an argument that any of ComEd's costs are unreasonable or imprudent, AG/AARP states that a net reduction of \$119,389,000 to ComEd's overall revenue requirement is necessary to "adjust costs to reasonable and prudent levels." AG/AARP Init. Br. at 7-8. To arrive at this reduction, however, AG/AARP improperly uses a pro-rated 2011 revenue requirement. *See*

AG/AARP Init. Br. at 8. The revenue requirement at issue here, however, is based on 2010, not 2011, with limited, specific exceptions. Moreover, pro-rating of the 2010 revenue requirements is only proper in the first reconciliation, is improper in this initial proceeding, and overstates the AG/AARP proposed reduction. *See* 220 ILCS 5/16-108.5(d)(1) (requiring use of the revenue requirements in effect during 2011, weighted as applicable, in the first reconciliation only).

### **III. RATE BASE**

#### **A. Overview**

ComEd's correctly calculated rate base is \$6,600,997,000. ComEd Corr. Init. Br. at 10-49.

The contested rate base proposals of intervenors and Staff are unlawful and contrary to the evidence, as discussed in Section III.C of this Reply Brief. The contested adjustments improperly would turn the formula rate into an illegal construct that perpetually denies ComEd the ability to recover fully its capital investments. They should and must be rejected.

#### **B. Potentially Uncontested Issues**

Based on the parties' Initial Briefs, these issues are uncontested.

#### **C. Potentially Contested Issues**

##### **1. Average Year or End of Year Rate Base (see also VIII.C.1)**

ComEd's rate base is correctly calculated based on 2010 FERC Form 1 balances, functionalization, applicable ratemaking adjustments consistent with the statute, plus its projected 2011 plant additions less the corresponding updating of the depreciation reserve. *E.g.*, Fruehe Dir., ComEd Ex. 4.0, 10:197 – 11:220; 220 ILCS 5/16-108.5(c)(6).

Only IIEC proposes<sup>2</sup> that ComEd's rate base be "averaged" for rate-setting purposes, which means cutting in half, when setting rates, the forecasted plant additions for the filing year (in this case, 2011) and the corresponding updating of the depreciation reserve related to the 2011 plant additions. IIEC Init. Br. at 17, 18-26. That would reduce rate base by \$160,118,000. *See* ComEd Ex. 22.1 at Sch FR B-1 (line 55, minus line 64, times 50%).

ComEd's Initial Brief pointed out the numerous flaws in IIEC's position. ComEd Corr. Init. Br. at 21-27. AG/AARP also does not support IIEC's proposal, stating that use of end of year plant amounts in the rate-setting "is consistent with the goal of setting an (2011) inception revenue requirement as close to the actual rate base for the (2011) inception year as possible". *See* AG/AARP Init. Br. at 9-10; *see also id.* at 65-66.

The illegality and fallacy of IIEC's position are illustrated by IIEC's own claims on this subject. IIEC claims that its proposal is warranted "because of the obvious inaccuracy of using a rate period's probable maximum investment amount as ComEd's investment throughout the rate period." IIEC Init. Br. at 17. *See also, e.g., id.* at 18-19, 20.

It is not clear to what claimed "obvious inaccuracy" IIEC is referring. Even under ComEd's view of how the statute works, rates in effect as a result of an Order in this case will under-recover the costs ComEd will incur in the rate year.<sup>3</sup> The rates set here will be in effect from roughly June 1, 2012, until January 2013. The plant additions included in ComEd's proposed rates, however, are only the projected 2011 plant additions. They do not include any of the plant additions that will occur in 2012. Thus, ComEd's proposed net plant in rates will be far

---

<sup>2</sup> IIEC's Initial Brief is, at best, confusing when it refers to "the recommendation of IIEC and other parties to use an average rate base to calculate that revenue requirement." IIEC Init. Br. at 2-3. No other intervenor nor Staff has supported IIEC's "average" proposal as to rate-setting (ComEd Corr. Init. Br. at 26), as IIEC later tacitly acknowledges (*see* IIEC Init. Br. at 19).

<sup>3</sup> The "rate year" of the rates being set in this Docket, as that term is used in the statute, is 2012, because that is the year in which the rates will go into effect (*i.e.*, in June 2012). *See* 220 ILCS 5/16-108(d)(1).

below the level that will exist in the period in which rates being set will be in effect. IIEC has never claimed, and could not claim, otherwise. In fact, IIEC witness Mr. Gorman admitted that a 2011 end-of-year rate base would better reflect ComEd's costs in 2012 when the rates being set will be in effect. ComEd Corr. Init. Br. at 27. This undisputed reality should be conclusive, because IIEC itself argues that "as a general matter, the Commission's determination of ComEd's revenue requirement should seek to approximate, as close as practicable, ComEd's actual costs for the rate period at issue." IIEC Init. Br. at 20. Thus, it is IIEC's averaging proposal that would contribute to an even greater "obvious inaccuracy."

IIEC's claim is flatly inconsistent with Section 16-108.5(c)(6) of the Public Utilities Act (the Act"), which provides:

The utility shall file, together with its tariff, final data based on its most recently filed FERC Form 1, plus **projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the tariff and data are filed**, that shall populate the performance-based formula rate and set the initial delivery services rates under the formula.

220 ILCS 5/16-108.5(c)(6) (emphasis added.) "[P]rojected plant additions and correspondingly updated depreciation reserve ... for the calendar year in which the tariff and data are filed" are just that. They are not 50% of that. The language chosen by the General Assembly precludes such an interpretation. ComEd Corr. Init. Br. at 21-22. IIEC's Initial Brief claims the statutory language does not require a year end or an average rate base, but IIEC never gives a coherent and credible reason for its interpretation. *See, e.g.*, IIEC Init. Br. at 21-22.

IIEC's claim, moreover, is not supported by any coherent and credible rationale that fits the actual facts of how the formula rate rate-setting process works (the data specified to be used and the timing of the process, including when the rates go into effect), nor is it consistent with the Article IX ratemaking that IIEC invokes elsewhere. Year-end balances ensure that the most

current cost and investment data consistent with the statute populate the formula. The fact that ComEd pointed out that the formula rate process does not involve a test year (*see* IIEC Init. Br. at 23-24), does not undercut the fact that Article IX ratemaking also supports an end of year rate base when, as here, the starting point of the revenue requirement is past cost data. ComEd Corr. Init. Br. at 24-27. IIEC's repeated observation that costs must be found prudent and reasonable under Article IX (IIEC Init. Br. at 22, 23, 24-25) also is irrelevant here. The issue at hand does not involve any claim of imprudent or excessive costs.

IIEC's observation that an average rate base can be calculated from FERC Form 1 data, because the data also include the figures as of the end of the preceding year (IIEC Init. Br. at 23) is off point. The projected plant additions are not from FERC Form 1 data, because, by definition, they are for the year after the year of the most recent FERC Form 1,

The IIEC proposal to recognize in rates, each year, only half of the projected plant additions for the prior year (the year before the filing year) (and, as all agree, none for the filing year), fundamentally makes no sense. Year after year, new rates under the statute will go into effect after the end of the year for which the plant additions were projected. This plant will be in service, used and useful, when the rates go into effect. At no time will costs of plant additions be reflected in rates before those costs actually have been incurred. *Houtsma Reb.*, ComEd Ex. 12.0, 34:752-753. IIEC's proposal is unlawful, unmeritorious, and must be rejected.

## **2. Plant-in-Service**

### **a) Original Cost Finding 2010 Plant**

ComEd and Staff appear to agree that their differences on this subject turn on whether and to what extent the Commission adopts Staff's proposed 2010 plant reductions discussed in Sections III.C.2.b, d, e, and f of their briefs. *See* ComEd Corr. Init. Br. at 27; Staff Init. Br. at 8.

**b) 2010 General and Intangible Plant Functionalization**

**(1) Methodologies**

ComEd's Initial Brief showed that its proposed functionalization of 2010 General and Intangible Plant costs: (1) is cost-based and results in a proper allocation, with a level of accuracy that is as high and in some instances higher than the existing mix of methods; (2) simplifies and streamlines the splitting of these costs without sacrificing accuracy; and (3) aligns the methodologies for functionalization of these Accounts for purposes of ICC-jurisdictional rates with the methodologies used to functionalize these same Accounts for purposes of ComEd's FERC-approved Transmission Formula Rate ("TFR"), and thereby avoids a trapping of costs that is unlawful under 220 ILCS 5/16-108(c) and federal law and that would be unjust and unreasonable. ComEd Corr. Init. Br. at 27-33.

AG/AARP, CUB/City, and Staff advocate reliance on the existing set of methodologies, which would reduce net plant by \$18,197,000, and would reduce depreciation expense by \$492,000. *E.g.*, Staff Init. Br. at 13.

The arguments in the Initial Briefs of AG/AARP, CUB/City, and Staff are erroneous. First, Staff and AG/AARP argue that ComEd's proposal is not cost based and is not supported by a "study". Staff Init. Br. at 9, 12, 13; AG/AARP Init. Br. at 12-13. ComEd showed, however, that its proposal is cost-based and is at least as reasonable as, and in some instances superior to, the old mix of methods. ComEd Corr. Init. Br. at 29 and fn. 13. Further, the complaint that ComEd did not supply a "study" ignores the detailed facts ComEd provided as to the two Accounts (390 and 394) that drive the direction of the Staff and intervenor adjustments. *Id.*

Second, Staff complains that ComEd's proposal places greater reliance on a general allocator, the general labor (or wages and salaries ("W&S")) allocator. Staff Init. Br. at 10, 12-13. However, only 15% of Account 390 previously was functionalized by direct assignment

(a study that was time-consuming and still subjective), while the other 85% was functionalized with the W&S allocator. ComEd Corr. Init. Br. at 29. As to Account 394, the change is from a different general allocator, the T&D Gross Plant allocator, to the W&S allocator, and the latter is at least as, or more accurate. *Id.*

Third, AG/AARP, CUB/City, and IIEC invoke the decision in ComEd's 2010 rate case, ICC Docket No. 10-0467 (Order May 24, 2011) ("*ComEd 2010*"). Staff Init. Br. at 10; AG/AARP Init. Br. at 11-12; CUB/City Init. Br. at 17-18. However, there the Commission essentially had only one side of the facts before it, and it did not have the legal citations that ComEd has presented in this Docket regarding the impropriety of trapping the costs in question. ComEd Corr. Init. Br. at 30. The Commission should make the correct decision on this subject based on the facts in the record here. *Id.*

Fourth, Staff and now CUB/City claim that ComEd failed to prove that its proposal aligns with how these same Accounts are functionalized under ComEd's FERC-jurisdictional TFR, or that ComEd somehow has tried to shift the burden of proof in this point. Staff Init. Br. at 11-12; CUB/City Init. Br. at 18-19. Both claims are false, factually and as a matter of law. ComEd Corr. Init. Br. at 30-31.

Fifth, Staff's claims that ComEd's proposal penalizes customers (Staff Init. Br. at 13) is wrong. Even AG/AARP witness Mr. Brosch agreed that it is not desirable for a utility to under- or over-recover its costs due to inconsistent functionalizations between jurisdictions. *See Brosch Tr.*, 3/12/12, 645:4-19, 646:9-14. The trapping of costs means that customers currently are avoiding their statutory responsibility to pay costs of delivery services (*see, e.g.*, Section 16-108(c)), it follows that aligning the methodologies to prevent over- and under-recovery somehow would not penalize customers but simply require them to pay what

they should. *See* Houtsma Reb., ComEd Ex. 12.0, 30:663 – 31:669. Rates must be just and reasonable to the utility and its shareholders, as well as to customers. 220 ILCS 5/9-201(c); *Business and Professional People for the Public Interest v. Illinois Commerce Comm’n*, 146 Ill. 2d 175, 208, 582 N.E.2d 1032, 1045 (1991) (“*BPI IP*”). A systematic denial of cost recovery through misaligned allocations is neither just nor reasonable. CUB/City’s argument that, in effect, the trapped cost point can be ignored (*see* CUB/City Init. Br. at 19), is wholly without merit. ComEd’s combination of methodologies should be approved.

(2) **W&S Allocator Calculation (see also V.C.1.e)**

Staff continues to advocate reducing the functionalization to distribution of G&I Plant by another net \$3,247,000, and to reduce depreciation expense by another \$343,000, based on Staff’s proposed recalculation of the W&S allocator. Staff Init. Br. at 14-18. Staff’s proposal is incorrect and unnecessary, and should not be adopted, but, if this proposal is adopted, the Commission’s final Order should find that these costs are prudent and reasonable, which is undisputed, and that they shall be recovered through Rider PE. *See* Section V.C.1.e of this Reply Brief.

c) **2011 Plant Additions**

ComEd’s forecasted \$684,431,000 (gross plant amount) of 2011 plant additions in rate base should be approved. ComEd’s Initial Brief showed, among other things, that: (1) the forecast was supported by substantial and detailed evidence; and (2) though similar complete year evidence may not be available in future cases due to different filing timelines, the evidence is available here and shows that the projected plant additions were about \$69.2 million below the actual 2011 plant additions of approximately \$753,600,000 (gross plant amount). ComEd Corr. Init. Br. at 33.

Despite the evidence, Staff adheres to its proposal to revise the projected plant additions downward, reducing net plant by \$32,419,000, while increasing depreciation expense by \$86,000. The Staff proposal has two parts: (1) a \$14,926,000 net plant reduction is attributable to projects identified in the projection that were canceled or have a revised completion date after 2011; and (2) the remaining \$17,943,000 net plant reduction is based on Staff's substituting for the projection a five year average historical comparison of budgeted and actual additions, which suggested a 4% average variance of actual costs below budgets. Staff Init. Br. at 18-25; Rashid Reb., Staff Ex. 19.0, Sched. 19.01; ComEd-Staff Group Cross Ex. 1 at Staff response to ComEd data request 9.01.

ComEd's Initial Brief (at 33-36) showed that both parts of Staff's proposed adjustment are wrong, for numerous reasons, including, among other things: they are one-sided; unsupported by the statute; based on incomplete and aberrational data; fail to account for changes in cost drivers; fail to recognize that the cancellation or postponement of some capital projects, while other projects are added or moved up in time, is a normal and prudent business practice; and are unnecessary in light of the fact that the true up process will ensure that customers pay only for projects that are complete and used and useful. Staff's Initial Brief does nothing to undermine these conclusions. If Staff's proposal is adopted, the only real effect will be additional litigation over the accuracy of forecasts that, at the end of the day, will be tried up in the reconciliation proceeding.

In support of the first part of its adjustment, Staff mixes legal arguments regarding the used and useful standard for plant, including citation of an inapplicable Section of the Act,<sup>4</sup> with

---

<sup>4</sup> Staff cites 220 ILCS 5/9-212, for its language on when plant is used and useful. Staff Init. Br. at 19. That Section expressly applies only to significant additions to production plant, and Staff's attempt to suggest otherwise is erroneous and lacks credibility. *See also* Rashid Tr., 3/12/12, 561:11 – 564:12.

discussion of specific projects. Staff Init. Br. at 19-23. Although not entirely clear, Staff appears to be claiming: (1) later developments show that certain of the projects included in ComEd's original projected additions were canceled or have a revised completion date after 2011, and therefore they are not used and useful in 2011; (2) while ComEd provided evidence that components of project "ITN 13507" are completed and placed in service each year, including 2011, ComEd failed to show that the used and useful portions were put into service; and (3) while later developments may be taken into account in removing projects from the forecast, they cannot be taken into account in identifying projects that have been added or moved up in time that offset the removed projects, apparently on the theory that the latter but not the former somehow is inconsistent with Section 16-108.5(d)(1). Staff's first point is largely true, although Staff does not have all the details right, and Staff ignores that the plant is used and useful in the rate year, while Staff is mistaken as to its second point. *See, e.g.,* Blaise Sur., ComEd Ex. 26.0, 2:36 – 9:193.<sup>5</sup> That, however, is not what really matters here. The first part of Staff's proposal ultimately depends on its third point.

Staff's third argument, which is based on the proposition that Section 16-108.5(d)(1) requires the Commission to focus an eagle eye on all cancelled and postponed projects, but to turn a blind eye to all added and accelerated projects, is demonstrably incorrect. Staff claims that, because Section 16-108.5(d)(1), which addresses the reconciliations, refers to "projected plant additions", that somehow means what is "pertinent" is limited to projects that were included in the original projection, and that any projects that were added or accelerated are not

---

<sup>5</sup> Staff incorrectly suggests that ComEd's Response to Staff Data Request ENG 1.01 (Staff Ex. 19.0, Attachment B) did not include the \$1,974,541 of completion costs for ITN 13707, O'Hare Modernization Program. Staff Init. Br. at 21. As indicated in the narrative portion of part (d) of ComEd's Response to Staff Data Request ENG 1.01, Attach 1 to ComEd's response provided the "actual or estimated completion\in service costs of each of the requested projects ..." and ITN 13507 was specifically listed in Attach 1 with an estimated cost of \$1,974,541. Staff Ex. 19.0, Attachment B, pp. 2 and 3. Staff misinterprets this response in its Initial Brief.

relevant. *See* Staff Init. Br. at 20. The argument proves too much. If “projected” does not allow for subsequently added or accelerated projects, it similarly cannot exclude later cancelled or deferred projects. The “logic” of staff’s position cuts both ways. Staff’s one-sided construction of the statute is also unreasonable as well as contrary to specific statutory language.

The EIMA specifically requires that performance-based formula rates “[p]rovide for the **recovery of the utility's actual costs of delivery services** that are prudently incurred and reasonable in amount consistent with Commission practice and law.” 220 ILCS 5/16-108.5(c)(1) (emphasis added). Staff’s proposal to adjust the projection of 2011 plant additions by taking into account post-projection developments that removed or deferred specific projects while ignoring post-projection developments that show other projects were added or accelerated would implement ComEd’s performance-based formula rate in a manner that would exclude actual costs of delivery services that were prudently incurred and reasonable in amount.

Moreover, Illinois courts have consistently rejected as unreasonable disallowances that would punish a utility for acting prudently. Here, Staff agrees that it is appropriate for ComEd to manage its operations in a flexible manner by re-prioritizing projects as needed (*see* Rashid Reb., Staff Ex. 19.0, 8:165-67),<sup>6</sup> but Staff proposes to effectively punish ComEd for these prudent actions by using post-projection data to reduce the projection for projects that were cancelled or deferred while not taking into account other post-projection data showing that other projects were added or accelerated. In *Monarch Gas Co. v. Illinois Commerce Comm’n*, 261 Ill. App. 3d 94, 98-101; 633 N.E.2d 1260, 1264-66 (5<sup>th</sup> Dist. 1994), the Court rejected the Commission’s disallowance of pipeline unauthorized overtake charges as unreasonable where a gas utility opted

---

<sup>6</sup> The cancellation or postponement of some capital projects, while other projects are added or moved up in time, is a normal and prudent business practice. Blaise Reb., ComEd Ex. 17.0, 3:59 – 4:83.

to incur such charges as the least cost means of providing gas to its customers during a record-breaking cold spell. *Id.* Instead, the Court found “that the concurring commissioner was correct when she stated that section 525.10(c): (1) ‘[is] unfair and will discourage utilities from pursuing their least cost options in the future;’ (2) ‘punishes the utility for acting prudently;’ and (3) ‘sends the illogical message that utilities should avoid these charges at all cost--even if incurring them would be the least cost option.’” *Monarch Gas*, 261 Ill. App. 3d at 100-101, 633 N.E.2d at 1265-66 (bracketed material in original). Staff’s “used and useful” argument is fallacious as well. The statute does not require that the projected plant additions be “used and useful” at the time of the initial filing (after all, they are “projected”). The plant additions will certainly need to meet that test at the time they will be included in rate base in the upcoming true up. In any event, the entire “used and useful” argument depends on a project-specific approach to projected plant additions that is not embodied in Section 16-108.5(d).

As to the “historical variance” adjustment, Staff’s Initial Brief raises nothing of any substance that was not only anticipated but refuted in ComEd’s Initial Brief. Moreover, Staff’s historical variance adjustment also is inconsistent with the provision of Section 16-105.8(c)(1) of the Act that “[t]he sole fact that a cost differs from that incurred in a prior calendar year or that an investment is different from that made in a prior calendar year shall not imply the imprudence or unreasonableness of that cost or investment.” Staff adds the claim that use of a multi-year average of actual to budget variances to modify the projection is supported by ComEd’s observation that the goal of the projection of plant additions is to get the best aggregate forecast of the plant additions for that year. *See* Staff Init. Br. at 23. That simple and unexplained claim is a total *non sequitur*.

Finally, Staff argues that the actual 2011 plant additions should be ignored because similar data will not be available in future Dockets, and Staff claims it is trying to develop an approach that would apply to future Dockets. Staff Init. Br. at 24-25. ComEd already addressed this argument in its Initial Brief. ComEd would add only that nothing it proposes here is inconsistent with developing procedures for future cases when it is useful to do so. In fact, ComEd agrees with that approach. ComEd is not saying that the actual results supersede the projection for rate-setting purposes; the statute requires a “projection”. ComEd simply points out that the actuals exceed the forecast here largely to refute Staff’s implication, based on backward-looking variance analyses, that the forecast was “too high”. As ComEd has further pointed out, if, in future cases, the Commission wants to rely on variance analyses to test the reasonableness of forecasts in those cases, it will be free to do so. Here, however, a variance analysis is irrelevant because in this case the projections are demonstrably *low*.

Staff’s adjustment remains wrong and should be rejected (apart from the \$171,776 that ComEd accepted in its surrebuttal solely on functionalization grounds). ComEd Corr. Init. Br. at 36.

**d) Derivative: Restricted Stock**

The plant adjustments that are derivative of Staff’s, AG/AARP’s, and CUB’s proposed restricted stock deferred compensation adjustments should not be approved, for the reasons stated in Section V.C.1.b of this Reply Brief.

**e) Derivative: Incentive Compensation**

The plant adjustments that are derivative of Staff’s, AG/AARP’s, and CUB’s proposed perquisites and rewards adjustments should not be approved, for the reasons stated in Section V.C.1.c of this Reply Brief.

**f) Derivative: Perquisites and Awards**

The plant adjustments that are derivative of Staff's, AG/AARP's, and CUB's proposed perquisites and rewards adjustments should not be approved, for the reasons stated in Section V.C.1.d of this Reply Brief.

**3. Accumulated Depreciation & Amortization**

Setting aside the IIEC "average" proposal discussed in Section III.C.1 of this Reply Brief, the only contested aspect of the depreciation reserve is the derivative impacts of contested plant adjustments. *See* ComEd Corr. Init. Br. at 14-18. The contested plant adjustments should not be adopted, for the reasons stated in Sections III.C.2 and V.C.1.e of this Reply Brief.

**4. Cash Working Capital Issues**

ComEd's CWC requirement is based on a proper lead/lag study, and its final revised CWC figure of \$38,138,000<sup>7</sup> represents its real CWC requirement resulting from the applicable cash outflows and inflows, and should be approved. ComEd Corr. Init. Br. at 37-38. The various contested Staff and intervenor adjustments to ComEd's CWC requirement are incorrect and should be rejected, for reasons discussed below.

**a) Revenue Collections Lag**

ComEd's updated collections lag of 32.24 days is correct and should be approved. That figure was calculated using a midpoints methodology that is reasonable, and that was approved by the Commission in *ComEd 2010*, among other Dockets. Moreover, ComEd incorporated grace periods into its calculation, thereby significantly understating the collections lag, which would be 9.1 days longer without the incorporation of grace periods. ComEd Corr. Init. Br. at

---

<sup>7</sup> ComEd's CWC figure actually should be 38,384,000, given its acceptance of the removal of non-AFUDC CWIP from rate base (*see* ComEd Corr. Init. Br. at 18), but because non-AFUDC CWIP is expected to be included in the reconciliations, ComEd is using the lower figure. *See* ComEd Corr. Init. Br. at 37-38.

38-39. Staff's Initial Brief (at 33) in a later section notes that Staff takes no issue with ComEd's calculation of its collections lag.<sup>8</sup>

AG/AARP complains about ComEd's midpoint methodology, the absence of more granular data, and ComEd's use of grace period assumptions. Those criticisms lack any merit, they were rejected in *ComEd 2010*, and they ignore not only that the grace periods assumptions understated the collections lag but that AG/AARP's own witness in his rebuttal retreated from his criticism of those assumptions. ComEd Corr. Init. Br. at 39. For example, the fact to which AG/AARP points (AG/AARP Init. Br. at 19), that ComEd assumed no CWC requirement for the average nearly \$210 million that residential customers owe per month, for the first 30 days after billing, only confirms the fact that ComEd has understated its CWC requirement.

IIEC theorizes that the fact that residential customers have 21 days to pay means that ComEd collections lag somehow is overstated. IIEC Init. Br. at 27. That theory is not only unexplained but is contradicted by ComEd's grace period assumptions and the more than \$30 million in late payment fees paid by late paying customers in 2010. Hengtgen Reb., ComEd Ex. 16.0, 7:138-140.

AG/AARP correctly notes that the decision in *ComEd 2010* is not binding here (AG/AARP Init. Br. at 21), but AG/AARP does not and cannot point to any new facts presented in the evidence here that would support a different ruling on the collections lag. AG/AARP points to a sample of two months of bills for 50 of ComEd's over 3 million residential customers (AG/AARP Init. Br. at 22), but the assertion that this casts "serious doubt" on ComEd's lead/lag

---

<sup>8</sup> Staff's Initial Brief includes discussion in its Section III.C.4.a, but that discussion actually relates to pass-through taxes, which are addressed in Section III.C.4.b of this Reply Brief.

study is unsupported, lacks credibility, and ignores that the sample is not statistically significant. *See* AG/AARP Ex. 1.8.

AG/AARP also discusses at great length the fact that some of the receivables in ComEd's calculations ultimately will become uncollectible, and points out that uncollectibles are recovered through ComEd's Rider UF. AG/AARP Init. Br. at 22-28. CUB and IIEC also point to amounts ultimately not collected and CUB also points to the rider. CUB/City Init. Br. at 21, 22; IIEC Init. Br. at 28-29. Their points do not support any adjustments to ComEd's CWC requirement. All of the costs included in the cash working capital analysis are recoverable costs; the cash working capital requirement measures the time [delay ][difference ]between when the cost is recognized and when it recovered through rates. ComEd loses the time value of money with respect to receivables that ultimately are not collected, a fact also shown during the cross-examination at the hearing, although CUB witness Mr. Smith tried to obscure the point. ComEd has in fact incurred the capital costs of providing utility service while billing customers for that service later. That cost is a real cost. AG/AARP's claim, that not being paid somehow renders non-existent the time value of the money fronted by ComEd that is not recovered, ignores basic economics and is a fantasy. Moreover, the Rider UF argument is a red herring. Amounts owed do not make it to the rider until they have gone through the long process that leads to a write-off. Then, when they are included in the rider, no time value of money is incorporated; thus, that most amounts charged under the rider are collected is irrelevant. Hengtgen Reb., ComEd Ex. 16.0,6:108-125, 8:165-170; ComEd Ex. 16.1; Hengtgen Sur., ComEd Ex. 25.0,7:131-8:161; Hengtgen Tr., 3/8/12, 270:12 – 272:5, 274:18-22, 277:17-22. *See also* Smith Tr., 3/12/12, 688:21-692:5; Kahle Tr., 3/12/12, 591:14-595:17; Brosch Tr., 3/12/12, 614:9 – 616:22.

CUB's claim that rulings on the collections lag in rate cases involving other utilities should be ignored because they "might" have methodological flaws or "might" not have been challenged (CUB/City Init. Br. at 21) is rank speculation that CUB's witness undertook no effort to verify, and that stands in sharp contrast with his citation of rulings in other cases on other issues. *See* Smith Tr., 3/12/12, 688:21 - 692:5.

Finally, AG/AARP's (and IIEC's) request for more study on this subject is unwarranted. Hengtgen Reb., ComEd Ex. 16.0, 7:131 – 10:211; *see also* Staff Init. Br. at 33. ComEd's understated collections lag figure of 32.24 days should be approved.

**b) Pass-Through Taxes**

ComEd's revenue lag of 51.25 days for the "pass-through taxes" is supported by the evidence. ComEd's respective leads for the pass-through taxes are similarly substantiated. The lag and leads should be approved. ComEd identified, explained, and supported the two differences between its methodology and that approved by the Commission in *ComEd 2010*. ComEd Corr. Init. Br. at 39-40.

The various proposals of Staff, AG/AARP, CUB, and IIEC to alter or eliminate various figures in ComEd's pass-through taxes calculations (Staff Init. Br. at 26-29; AG/AARP Init. Br. at 30-32; CUB/City Init. Br. at 22-24; IIEC Init. Br. at 29-31) are unmeritorious. The required task here is to capture and reflect the proper timing differences related to ComEd's cash inflows and cash outflows. The attempts of Staff, AG/AARP, CUB, and IIEC to substitute theory for fact on this subject should be rejected. The errors and flaws of their positions were shown, in detail, in ComEd's Initial Brief. ComEd Corr. Init. Br. at 39-41. ComEd's lag and its leads for the pass-through taxes are correct and should be approved.

**c) Intercompany Billing Lead**

ComEd's intercompany expense lead of 30.55 days is supported by the evidence and should be approved. ComEd Corr. Init. Br. at 41. The Staff, AG/AARP, and CUB lead figures (Staff Init. Br. at 29-30; AG/ARP Init. Br. at 32-34; CUB/City Init. Br. at 24) again substitute theory for fact, *i.e.*, they ignore the actual average time within which these bills are paid, and substitute a longer lead based on the average time for payments to unaffiliated vendors, and they do so based on invalid comparisons. ComEd Corr. Init. Br. at 41-42.

**d) Employee Benefits – Pension and OPEB**

AG/AARP and CUB propose zero days for the revenue collections lag for pension and other post-employment benefits (“OPEB”). AG/AARP Init. Br. at 34-37; CUB/City Init. Br. at 24-25. Their proposal is baseless and incorrect. Staff also rejects the AG/AARP and CUB proposal. Staff Init. Br. at 30.

AG/AARP's claim, that ComEd “blindly” applied the full collections revenue lag to the cash inflows for these items (AG/AARP Init. Br. at 35; *see also* CUB/City Init. Br. at 24-25), is wrong. These costs are incurred in the course of providing utility service. These costs are part of and have the same collections lag as regular bills. Moreover, AG/AARP and CUB improperly ignore ComEd's treatment of the applicable amounts in its rate base calculations. The accrued expense amounts for both pensions and OPEB and the routine, periodic cash payments to the trusts (cash outflows) are fully accounted for as a 100% reduction to rate base in separate rate base line items and it would be a plain double count if the lag associated with the outflows were also accounted for in the cash working capital line item. The Commission rejected the same proposal from AG/AARP's witness in *ComEd 2010*. Neither he nor CUB's witness has presented any valid reason for a different result here. Hengtgen Reb., ComEd Ex. 16.0, 25:537 – 27:575; Hengtgen Sur., ComEd Ex. 25.0, 18:365-370.

**e) Accounts Payable Related to CWIP**

AG/AARP (Init. Br. at 37-39) and CUB (Init. Br. at 25) fail to recognize that the treatment in ComEd's lead/lag study of vendor accounts payable related to non-AFUDC CWIP is moot, at least for purposes of this rate-setting, because ComEd, in order to narrow the issues, has accepted Staff's two-part proposal excluding non-AFUDC CWIP from rate base for rate-setting purposes. ComEd Corr. Init. Br. at 42.

Moreover, even if non-AFUDC CWIP were to be included in rate base, as it will be in the reconciliations, the AG/AARP and CUB proposals to factor in related accounts payable still would be incorrect, and their proposal to study this issue further is unwarranted. ComEd Corr. Init. Br. at 42-43. Staff has adopted ComEd's approach to this issue. Staff Init. Br. at 31.

**f) 401(k) Match**

This issue also should be moot. AG/AARP and CUB in their rebuttal testimony proposed an adjustment to the lead time related to ComEd's 401(k) matching. Their proposal was valid in theory, but they proposed an incorrect amount for the adjustment. ComEd's surrebuttal incorporated the correct figure in its CWC requirement calculation. Hengtgen Sur., ComEd Ex. 25.0, 20:414-425. The AG/AARP Initial Brief (at 39-40) discusses this issue, but makes no mention of ComEd's surrebuttal, nor does it claim that ComEd's surrebuttal figure is incorrect. CUB's Initial Brief does not discuss the issue. Staff has adopted ComEd's approach to this issue. Staff Init. Br. at 31-32.

**g) Impact of Current and Deferred Taxes**

ComEd's rebuttal correctly revised its treatment of current and deferred income taxes. Staff and intervenors submitted no rebuttal on this point. Hengtgen Reb., ComEd Ex. 16.0, 30:641 – 31:677; Hengtgen Sur., ComEd Ex. 25.0, 21:435-451. AG/AARP (Initial Brief at 40) has confirmed it has no dispute on this subject, while CUB and IIEC did not address it.

Staff, however, in its Initial Brief (at 32-33) untimely suggests that its CWC calculation includes an approach that is superior on this component of the CWC calculation. Staff suggests that its proposal “is consistent with prior Commission practice of including all cash operating expenses included in the revenue requirement.” Staff Init. Br. at 32. The fact is, however, that negative income taxes are not a cash operating expense or a cash outflow in the current period. ComEd explained this in its rebuttal testimony and showed that these amounts should not be included in the CWC requirements. Hengtgen Reb., ComEd Ex. 16.0, 31:665-668. This testimony was not challenged or rebutted by Staff. Staff also had the opportunity to cross-examine on the subject at the evidentiary hearing.

ComEd further explained in rebuttal that an equal amount of deferred taxes (also non-cash) needs to be eliminated from the amount shown as an exclusion in the cash inflow section in order to properly balance the amount of cash inflows and outflows. Hengtgen Reb., ComEd Ex. 16.0, 31:669-677. This testimony also was not challenged nor rebutted.

Staff concludes by implying that ComEd is manufacturing an adjustment that arbitrarily increases the CWC requirement. *See* Staff Init. Br. at 33. On the contrary, ComEd has properly excluded the non cash amounts from the cash working capital calculation and it is Staff’s proposal that is incorrect and has no basis or support in the record. ComEd’s rebuttal calculation should be approved.

**h) ComEd Proposal re Timing of Future Lead/Lag Study**

ComEd’s proposal regarding the timing of future lead/lag studies is reasonable and should be adopted. ComEd Corr. Init. Br. at 43. Staff essentially did not take a position on this proposal. *See* Staff Init. Br. at 33. CUB’s and IIEC’s Initial Briefs do not discuss the proposal. AG/AARP now conveniently and belatedly suggests that perhaps CWC should not be included at all in rate base under formula rates, without identifying any actual grounds for that view. *See*

AG/AARP Init. Br. at 40. AG/AARP otherwise simply adheres to its various positions and study proposals discussed above. *Id.* ComEd’s proposal should be approved.

**5. Accumulated Deferred Income Taxes**

ComEd has correctly calculated the Accumulated Deferred Income Taxes (“ADIT”) deduction from rate base. ComEd Corr. Init. Br. at 44. Various substantive adjustments to ADIT are proposed by AG/AARP, CUB, and IIEC. Their proposals lack merit, in part are one-sided, and should not be adopted as discussed below.

**a) 2011 Plant Additions**

AG/AARP, CUB, and IIEC each propose to add the ADIT associated with the 2011 plant additions to rate base. AG/AARP Init. Br. at 41-43; CUB/City Init. Br. at 26-27; IIEC Init. Br. at 31-34. Their proposal is contrary to the Act, and also should be rejected for several additional reasons.

First, Section 16-108.5(c)(6) of the Act requires corresponding updating of the depreciation reserve and depreciation expense along with the plant additions, but it contains no such requirement as to ADIT. That makes reading ADIT into this portion of the statute unlawful. ComEd Corr. Init. Br. at 45. Staff’s rebuttal also opposed this adjustment as improper under the Act, and Staff’s Initial Brief (at 34) adheres to that position.

The only new point made by intervenors here is IIEC’s claim that its position is supported by the combination of (1) Section 16-108.5(j), which preserved a 2010 decision of the Appellate Court for the Second District that, in brief, under 220 ILCS 5/9-211, required rolling forward the depreciation reserve to the same date as the *pro forma* capital additions date in an historical test year case; (2) a 2012 Appellate Court decision making a similar ruling as to ADIT; and (3) the general language of Section 16-108.5 regarding Commission practice and law. IIEC Init. Br. at 8-9 and fn. 9, 13 fn. 5, 17-18, and 31-35.

IIEC's argument to try to fit its proposal within the scope of Section 16-108.5(c) is incorrect. A statutory provision preserving a court ruling on a particular issue (depreciation reserve) under one statute simply is not the same thing as mandating a future ruling on another issue (ADIT) under a different statute. That is especially so when the later appeal involving the ADIT issue was pending when the legislation was enacted and yet the General Assembly did not provide for it. Moreover, the General Assembly knew how to refer to deferred taxes, because it did so in Section 16-108.5(c)(4)(D). The legislature's choice not to include such a reference in relation to the plant additions adjustment precludes reading it into the law. *See ComEd Corr. Init. Br. at 22-24.*

Second, while it is correct that adding ADIT for the 2011 plant additions would make the rate base closer, as to this one item standing alone, to the actual 2011 rate base, the proposal ignores all other changes in 2011 ADIT, not to mention all other changes in rate base and all changes in operating expenses. *ComEd Corr. Init. Br. at 44-45.*

Finally, the proposal is unnecessary because the revenue requirement reconciliations will capture the difference between ADIT approved in the instant Docket and actual 2011 ADIT, and so on in later years. *ComEd Corr. Init. Br. at 45.* The existence of the reconciliations does not mean that rates should be set incorrectly, but the ADIT adjustment is not proper under the law applicable to the rate-setting, while it is provided for by the law applicable to the reconciliation.

**b) Bad Debt Reserve**

AG/AARP (*Init. Br. at 43-45*) and CUB/City (*Init. Br. at 27*) proposed to functionalize the 2010 ADIT debit balance<sup>9</sup> associated with the bad debt reserve, and to remove the

---

<sup>9</sup> An ADIT debit balance reduces total ADIT, and, thus, increases rate base.

non-distribution portion. Staff adopted that proposal. Staff Init. Br. at 34-37. The proposal should be rejected.

ComEd explained in its Initial Brief that the AG/AARP proposal is in direct contrast to AG/CUB's successful proposal adopted in *ComEd 2010* relating to treatment of late payment charges revenues. ComEd Corr. Init. Br. at 46. *See also* Section IV.B.1 of this Reply Brief.

AG/AARP's Initial Brief (at 44) relies on nothing other than semantics in an effort to obscure their inconsistent positions. CUB and Staff do not even address the blatant inconsistency. Moreover, AG/AARP, CUB, and Staff also propose reduction of the rate base based on G&I plant functionalization, even though it is undisputed that the methodologies they propose would trap costs between FERC and ICC tariffs, absent a tariff change, as discussed in Section III.C.2.b of this Reply Brief. The AG/AARP, CUB, and Staff proposal should be rejected.

c) **Vacation Pay**

CUB proposes to remove from rate base the ADIT debit balances relating to incentive pay and vacation pay, but at the same time inconsistently also proposes to reduce rate base by subtracting the operating reserves for these two items. CUB/City Init. Br. at 27-28. (The subject of subtracting the operating reserves is discussed in Section III.C.6 of this Reply Brief.)

CUB's proposal is defective because ComEd's lead/lag study as revised in rebuttal appropriately accounted for these two items and, moreover, CUB's calculation is incorrect. Fruehe Reb., ComEd Ex. 13.0, 11:227-239. Staff's rebuttal agreed with ComEd. Bridal Reb., Staff Ex. 16.0, 25:542 – 26:572. CUB's perfunctory treatment of this issue in its Initial Brief does nothing to rehabilitate its proposals. ComEd, in its surrebuttal, in order to narrow the issues and in light of certain AG/AARP testimony, removed from rate base the ADIT debit balance associated with the operating reserve for vacation pay, which also correspondingly undercut any

rationale for reducing rate base for the operating reserve for vacation pay. Fruehe Sur., ComEd Ex. 22.0, 10:218 – 11:226. Thus, assuming ComEd’s surrebuttal revision is approved, this issue should be considered moot as to the ADIT debit balance related to vacation pay. In any event, CUB’s proposals as to the ADIT debit balances for vacation pay and incentive pay remain incorrect.

**d) Incentive Pay**

*See* Section III.C.5.c of this Reply Brief.

**e) FIN47**

CUB proposes to remove the ADIT debit balance associated with “FIN 47” (FASB Interpretation No. 47), on the sole basis that this would be consistent with the ratemaking treatment approved in *ComEd 2010*. CUB/City Init. Br. at 28. CUB’s proposal is one-sided and wrong and should be rejected. ComEd Corr. Init. Br. at 47-48. CUB/City’s Initial Brief entirely fails to address the lack of merit of its proposal, simply asserting the fallacious and conclusory position that it is CUB, not ComEd, that either has been consistent with respect to *ComEd 2010* rulings or has presented a well-reasoned explanation for not doing so. CUB/City Init. Br. at 28. A review of the contested issues will show that claim to be false.

**6. Operating Reserves**

ComEd included certain operating reserves, both assets and liabilities, in rate base. Fruehe Dir., ComEd Ex. 4.0, 15:312-16:316. The only proposed operating reserves adjustments are AG/AARP’s and CUB’s proposals, which Staff supports, to reduce rate base by subtracting the operating reserves for vacation pay and incentive pay. AG/AARP Init. Br. at 45-48; CUB/City Init. Br. at 28-29; Staff Init. Br. at 43. The fundamental premises of the proposals are that the operating reserves, which are accounting entries relating to expected obligations are

funded by customers and are capital that can finance investments. Neither premise is correct. ComEd Corr. Init. Br. at 48-49. Those proposals should be rejected, as discussed below.

**a) Accrued Vacation Pay**

As noted in Section III.C.5.c of this Reply Brief, ComEd, in its surrebuttal, in order to narrow the issues and in light of AG/AARP's testimony pointing out that the ADIT debit balance related to the operating reserve for vacation pay was relatively minor in relation to the reserve, removed from rate base that ADIT debit balance. That removal eliminated the rationale for reducing rate base for the operating reserve for vacation pay. Fruehe Sur., ComEd Ex. 22.0, 10:218 – 11:226. Thus, assuming that position is approved, the AG/AARP and CUB proposal (also adopted by Staff's rebuttal) should be considered moot. Indeed, CUB/City recognize that if the ADIT debit balance is removed, then the associated operating reserve should not be subtracted from rate base, although CUB/City prefer that both be included. *See* CUB/City Init. Br. at 29.

AG/AARP's and CUB's proposal lacks merit in any event, for reasons detailed in ComEd's Initial Brief. ComEd Corr. Init. Br. at 48-49.<sup>10</sup>

AG/AARP's Initial Brief (at 46) assumes or implies that customers pay for the operating reserve when it is accrued, but AG/AARP cite no evidence that supports that theory. None exists. The evidence AG/AARP cites only indicates that the accrual precedes payment of the expense, but that does not mean that customers pay for the accrual. They do not, as discussed in ComEd's Initial Brief (at 49). AG/AARP (Init. Br. at 47) also offers a new theory that its proposal is supported because of tax benefits to ComEd, but AG/AARP does not cite any supporting evidence.

---

<sup>10</sup> *See also* Section III.C.5.c of this Reply Brief.

CUB/City's and Staff's Initial Briefs also point to no factual basis for the premises that customers fund the operating reserve for vacation pay or that it is a source of funds for investments. They simply assume or assert this conclusion. *See* CUB/City Init. Br. at 28-29; Staff Init. Br. at 40-42. Without any supporting record evidence, the premises cannot be accepted.

**b) Accrued Incentive Pay**

The AG/AARP and CUB proposal (also adopted by Staff in its rebuttal) to reduce rate base by subtracting the operating reserve for incentive pay also is erroneous.

This item, like the current liability for vacation pay, is not a source of funds that can finance rate base, and it is not financed by customers; in addition, this subject, too, was handled appropriately in ComEd's CWC analysis, so no rate base reduction is warranted. ComEd Corr. Init. Br. at 49.

AG/AARP argue that the portion of accrued incentive pay related to work on capital projects, \$10,562,000, should be subtracted from rate base, because, when capitalized projects that accrue AFUDC go into service, the AFUDC is included in the cost of the investment. *See* AG/AARP Init. Br. at 47-48. AG/AARP's argument lacks merit because, while the investment does earn AFUDC, the underlying asset is still in CWIP, which is not included in rate base (*see* ComEd Corr. Init. Br. at 18-20). CUB/City's Initial Brief (at 30) does not separately discuss the proposal to subtract the operating reserve for accrued incentive pay from rate base.

Staff cites AG/AARP's evidence, which does not show that the operating reserve for accrued incentive pay is a source of funds or that customers provided those funds, and Staff's rebuttal. Staff Init. Br. at 42. Staff also relies on its rebuttal, but that testimony simply assumes or asserts that this operating reserve is "a constant non-investor source of funds..." (*see* Bridal

Reb., Staff Ex. 16.0, 31:668-672), without any underlying explanation of how it is a source of funds or how customers paid for it.

**7. Other**

No other rate base issues have been raised by the parties at this time.

**IV. REVENUES**

**A. Potentially Uncontested Issues**

Based on the parties' Initial Briefs, these issues are uncontested.

**B. Potentially Contested Issues**

**1. Late Payment Charges Revenues Allocation**

ComEd allocated all late payment charges revenues, other than the portion credited to customers under its FERC-jurisdictional Transmission Formula Rate, to the other revenues credited against its revenue requirement, consistent with the Commission's Order in *ComEd 2010*. ComEd Corr. Init. Br. at 50. That treatment should be approved.

AG/AARP's Initial Brief (at 49-50) supports ComEd's treatment of late payment charges revenues, except AG/AARP persists in its improper punitive alternative position that, if its position on functionalization of General and Intangible Plant is rejected,<sup>11</sup> then 100% of late payment charges revenues should be credited here, even though that would be a double count with the \$2,647,000 credited to customers under the TFR. That proposal has no principled basis, and it is contrary to the Commission's ruling in *ComEd 2010*. AG/AARP's witness himself subtracted the late payment charges revenues credited against the TFR in his testimony in *ComEd 2010*. In light of the above, AG/AARP's claim that ComEd "was unable to cite any specific FERC Order or other authority justifying this allocation" (AG/AARP Init. Br. at 49) is

---

<sup>11</sup> See Section III.C.2.b.i (G&I plant) of this Reply Brief.

misplaced at best and should be disregarded. ComEd's allocation should be approved, consistent with the Order in *ComEd 2010*. Fruehe Reb., ComEd Ex. 13.0, 42:900 – 44:949.

## **2. New Business and Billing Determinants**

ComEd's proposed tariff, Rate DSPP, correctly uses "historical weather normalized billing determinants" (*i.e.*, for 2010) in accordance with Section 16-108.5(c)(4)(H) of the Act. ComEd Corr. Init. Br. at 51.

AG/AARP, for purposes of the initial rates, proposes improperly to cherry pick among 2011 data, using customer numbers data but not customer usage data, an approach that is contrary to Section 16-108.5(c)(4)(H) and to proper ratemaking practices. ComEd Corr. Init. Br. at 51.

AG/AARP's Initial Brief on this subject is a hodgepodge of incomplete and irrelevant information. Their Initial Brief, for example (at 50-51) notes that in past cases the Commission has made adjustments to other revenues credited against the revenue requirement for revenues associated with new business. AG/AARP's suggestion, however, that it is proposing a "similar adjustment" (or "consistent with prior Commission practice" (*id.* at 53)), is false. AG/AARP's proposal selectively adjusts for the increase in the number of customers but fails to adjust for the change in usage. AG/AARP does not cite a past Commission Order approving such a proposal, and AG/AARP eventually admits that that is not what was done in past cases. *See* AG/AARP Init. Br. at 53.

AG/AARP argues that the word "historical" in Section 16-108.5(c)(4)(H) cannot mean that customer growth in the filing year should be ignored (AG/AARP Init. Br. at 51-52), suggesting that such a reading would lead to cost over-recovery and noting that the reconciliations do not update the billing determinants used in setting rates. The statute says what it says. Moreover, AG/AARP ignores that usage went down, not up, in 2011, and furthermore,

omits that the statute requires that updated billing determinants be used in each annual rate-setting.

AG/AARP later refers to the 2011 usage decrease as “anomalous” (AG/AARP Init. Br. at 53), but AG/AARP’s witness presented no facts showing that usage would be likely to increase after 2011, and, in any event, AG/AARP’s proposal is based, albeit in a selective manner, entirely on what occurred in 2011.

Finally, AG/AARP denies that its proposal ignores the bigger picture of total billing determinants), but then notes that what its proposal recognizes is the decreased usage that occurred in 2010 (*see* AG/AARP Init. Br. at 53), not the decreased usage that occurred in 2011. AG/AARP’s proposal is unlawful and wrong.

**3. Other**

No other revenues issues have been raised by the parties at this time.

**V. OPERATING EXPENSES**

**A. Overview**

These issues were fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 51-52.

**B. Potentially Uncontested Issues**

Based on the parties’ Initial Briefs, these issues are uncontested.

**C. Potentially Contested Issues**

**1. Administrative and General Expenses**

**a) Total**

These issues were fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 59.

**b) Restricted Stock**

In its Initial Brief, ComEd addressed the majority of Staff's and Intervenors' arguments regarding ComEd's Key Manager Restricted Stock Award Program. *See* ComEd Corr. Init. Br. at 59-60. ComEd addresses here the claims made by Staff and Intervenors in their Initial Briefs. First, AG/AARP cites to dicta in *Commonwealth Edison Co. v. Ill. Commerce Comm'n* 398 Ill. App. 3d 510, 517, 924 N.E. 2d 1065 (2nd Dist. 2009) (rehearing denied 2010), to support its claim that a "customer benefit" test is applicable to the incentive compensation component of ComEd's revenue requirement. *See* AG/AARP Init. Br. at 54. Putting aside the fact that AG/AARP mischaracterizes the restricted stock award program as incentive compensation, no "customer benefit" test must be met in order for ComEd to recover its incentive compensation costs because, as ComEd has explained in its Initial Brief, Section 16-108.5(c)(4) sets forth specific protocols for the recovery of those costs and this supersedes any prior law regarding recovery of incentive compensation costs. *See* ComEd Corr. Init. Br. at 5-6, 60 n.19.

Second, even were a general "customer benefit" test relevant under the statute, Staff and Intervenors present unavailing arguments in an effort to refute that the restricted stock award program benefits customers. Staff and CUB claim that the Commission has rejected ComEd's position that the program directly benefits customers because it is designed to retain key managers. Staff Init. Br. at 48-49; CUB/City Init. Br. at 31-33. CUB's claims to the contrary notwithstanding, the Commission's decision in *ComEd 2010* to disallow the costs associated with the restricted stock award program does not support disallowance of these costs in this proceeding. *See* CUB/City Init. Br. at 33. This is because the decision mischaracterizes the program as incentive compensation that merely incentivizes management and therefore it does not accurately reflect that the program provides deferred compensation. *See ComEd 2010* at 65. Also, Staff fails to show how the Commission's discussion in *ComEd 2010* of the benefit to

customers of *perquisites and awards expense* is in any way relevant to how customers are benefitted by this *deferred compensation* program. See Staff Init. Br. at 49; see also *ComEd 2010 Order* at 103.

Third, AG/AARP argues that the Illinois Appellate Court has considered and rejected ComEd's position that the retention of key managers benefits customers. AG/AARP Init. Br. at 56. This claim also fails. In support of its claim, AG/AARP cites the Illinois Appellate Court's *ComEd* decision. *ComEd*, 398 Ill. App. 3d at 517-18; AG/AARP Init. Br. at 56. There, the court upheld the Commission's disallowance of a portion of ComEd's employee incentive costs that were based on earnings per share. *ComEd*, 398 Ill. App. 3d at 518. This ruling, however, is completely inapposite here because as ComEd explained in its Initial Brief, the Key Manager Restricted Stock Award is not incentive compensation, but even if it were, it is not tied to earnings per share or net income. ComEd Corr. Init. Br. at 60.

c) **Incentive Compensation**

(1) **BSC Annual Incentive Plan Cost Allocation**

Staff, AG/AARP, and CUB propose a disallowance of 75% of the Exelon Business Service Co. ("BSC") Annual Incentive Plan ("AIP") costs charged to ComEd relating to the BSC earnings per share goal because they claim such costs are specifically disallowed under Section 16-108.5(c)(4)(A). Staff Init. Br. at 50; AG/AARP Init. Br. at 55; CUB/City Init. Br. at 35. In its Initial Brief, ComEd explained why Staff's and Intervenors' interpretation of Section 16-108.5 is incorrect. ComEd Corr. Init. Br. at 62-64. Those same reasons apply to AG/AARP's proposal to eliminate \$109 in AIP costs (incorrectly claimed by AG/AARP to be \$109,000) charged to ComEd from PECO relating to labor expenses incurred during the June 18th and June 23rd storm events in 2010, and thus this additional proposed disallowance should also be rejected by the Commission. Compare Brosch Dir., AG/AARP Ex. 1.3, p. 4 (using incorrect

\$109,000 figure) *with* Smith Dir., CUB Ex. 1.3 Rev. p. 66 (using correct \$109 figure). *See also* Blaise Dir., ComEd Ex. 5.0, 54:1135-36 (discussing the use of hundreds of crews from different states in the restoration efforts after the June 2010 storm events).

CUB also recommends that the Commission investigate whether shareholder-funded compensation that “induces managers to build earnings beyond the authorized level” conflicts with a “utility’s obligation to serve ratepayers at lowest feasible cost.” CUB/City Init. Br. at 35. It further recommends that if a conflict is found the Commission should, “exercise extra scrutiny when determining the prudence and reasonableness of proposed utility expenditures.” *Id.* These recommendations are inappropriate. The issue of how *shareholders* compensate managers is far beyond the scope of this *rate-setting* proceeding and indeed, as CUB acknowledges, may be beyond the legal purview of the Commission entirely. *Id.* CUB’s recommendation should therefore be rejected by the Commission.

**(2) ComEd AIP Costs Above Target**

These issues were fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 64-65.

**(3) Advance Cap on Incentive Compensation Costs**

These issues were fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 65-66, 111-12.

**d) Perquisites and Awards**

ComEd has already responded to Staff’s and Intervenors’ proposals relating to perquisites and awards expense in its Initial Brief. *See* ComEd Corr. Init. Br. at 66-68. In an effort to bolster its argument that ComEd should not be allowed to recover its costs, CUB points to the fact that under Exelon’s Retention and “Reward and Recognition” policies ComEd’s management may modify or revoke the policies at its discretion. CUB/City Init. Br. at 36-37.

CUB raises this point however, without providing any reason why the Commission should deem it relevant to whether ComEd should be allowed to recover its perquisite and award costs. In fact, ComEd's ability to revoke or modify its award policies is completely beside the point. ComEd is entitled to recover its prudent and reasonable operating costs associated with these programs regardless of whether management has the authority to revoke or modify these programs at its discretion.

e) **W&S Allocator Calculation (see also III.C.2.b.ii)**

In its Initial Brief, ComEd addressed the majority of Staff's arguments regarding the calculation of the W&S Allocator. *See* ComEd Corr. Init. Br. at 68-70. Two issues require additional attention. First, although Staff admits that the overhead costs at issue here are *indirect* overhead costs, its proposed W&S allocator (and proposed disallowance of \$2.670 million) is based on the contradictory assumption that a *direct* dollar-for-dollar correlation exists between each dollar of salary incurred and each dollar of overhead costs. Staff Init. Br. at 14-15. Based on this flawed methodology, Staff claims that the handful of ComEd employees (roughly one-half of one percent) involved in the administration of ComEd's energy procurement contracts should be *directly* assigned approximately \$2.7 million in overhead costs. *Id.* at 14-16. ComEd witness Ms. Houtsma testified, however, the allocator *does not* presume a direct correlation between each dollar of salary incurred and each dollar of overhead costs, and, indeed, Staff has not pointed to any evidentiary support for its claims that delivery services customers are unfairly bearing costs that should be paid by supply customers. Houtsma Reb., ComEd Ex. 12.0, 20:459-21:465. While Staff characterizes a ComEd data request response as "essentially acknowledge[ing]" that the \$2.7 million at issue are supply-related costs (Staff Init. Br. at 15), the response itself belies this erroneous interpretation and reiterates what has been ComEd's

position throughout this Docket – these costs are “non-directly assigned Administrative and General costs, ADIT and other costs.” *Id.*

Second, Staff’s only complaint with recovery of these costs through Rider PE – Purchased Electricity (“Rider PE”) appears to be that ComEd objected to Staff’s proposal to litigate supply-related uncollectible factors in this Docket. Staff Init. Br. at 16-17. While ComEd did not object to Staff’s proposal related to delivery services-related uncollectible factors, which are included in the revenue requirement proposed in this Docket, ComEd noted that supply-related uncollectible factors are governed by ComEd’s Rider UF, which was not filed, and is not otherwise at issue, in this Docket. ComEd Corr. Init. Br. at 53-54; Staff Init. Br. at 44-45. Given that supply-related uncollectible factors are not at issue here, Staff agreed with ComEd’s proposal to consider the supply-related uncollectible factors outside of this Docket. *Id.* This agreement, however, has no bearing on or application to the W&S allocator issue. Unlike supply-related uncollectible costs, it is undisputed that the W&S allocator falls squarely within the issues being considered in this Docket. Accordingly, nothing is inappropriate about the Commission directing that certain disallowed costs in this Docket, which would result only from an unexpected departure from *ComEd 2010*, be recovered through Rider PE.

**f) Charitable Contributions**

In its Initial Brief, ComEd addressed the majority of the arguments regarding charitable contributions raised by Staff and CUB. ComEd Corr. Init. Br. at 70-74. After devoting just *one sentence* void of any authority to the definitional issue of “public welfare,” Staff has conjured up an additional argument that ComEd’s inadvertent placement of a comma after the term “charitable” reflects a flawed interpretation of Section 9-227 of the Act and supports its proposed disallowance. Staff Init. Br. at 51-52. In an argument that is unusual at best, Staff relies upon the hearing court reporter’s placement of a comma after the term charitable in transcribing the

cross-examination by ComEd's counsel at the hearing (though counsel clearly did not articulate placement of a comma or any punctuation for that matter). *Id.* at 52 (citing Toltsdorf Tr., 3/13/12, 799:1-8). In any event, the contrived argument is irrelevant because ComEd has not based recovery on such an interpretation.<sup>12</sup>

Staff and CUB seek to disallow a \$116,000 contribution made to the University of Wisconsin on the sole basis that it is outside of ComEd's service territory. Staff urges the Commission to adopt the rule that "[r]atepayers should not be funding an out-of-state university over an in-state university." Staff Init. Br. at 52. Aside from proposing a prohibitive blanket rule contrary to the statute, Staff's premise is incorrect given that ComEd does support in-state universities, and its contribution to the University of Wisconsin was not in lieu of supporting in-state schools. Fruehe Sur., ComEd Ex. 22.3, Sched. C-7, Lines Nos. 27 (Roosevelt University), 189 (Illinois Institute of Technology), 279 (Northern Illinois University), 373-74 (University of Chicago), 378 (University of Illinois). CUB does not provide any separate ground for the proposed disallowance. CUB/City Init. Br. at 38.

As a final point, while no appellate court decision appears to address directly the service territory limitation proposed by Staff's definition of "public welfare" under Section 9-227 of the Act, the Fourth District Appellate Court, in *Pliura Intervenors v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 199, 209, 942 N.E.2d 576, 584-85 (4th Dist. 2010) specifically considered the meaning

---

<sup>12</sup> This argument is reflective of the lengths to which Staff and others have gone in an effort to undermine the clear direction of Section 16-108.5 and the past practice of the Commission. Indeed, CUB steps fully outside of any statutory framework and suggests that ComEd demonstrate benefits to ratepayers stemming from contributions, a connection between contributions and safe and adequate utility service, and some linkage between the goals and objectives of the organizations and ComEd ratepayers. CUB/City Init. Br. at 37-38. No conceivable application of Section 9-227 supports such an approach. CUB also contends that because ComEd's affiliate, PECO, does not recover contributions from ratepayers yet makes substantial charitable contributions, this is "evidence" that ComEd would continue its charitable funding even if such contributions were not recoverable. *Id.* at 38. That "evidence" is certainly not any evidence in the record of this proceeding, nor is it anything but unsubstantiated guesswork on the part of CUB that ignores Illinois law and Commission practice.

of “public need” and “public convenience and necessity” in Section 15-401 of the Act and determined that those terms should be defined broadly and not limited to Illinois’ borders. The Court in *Pliura* rejected as unduly narrow the assertion “that the ‘Commission must consider the public need of Illinois citizens, not Midwesterners, [United States c]itizens, or citizens of the world’” under Section 15-401. *Id.* (brackets in original). The assertion here that public welfare and charitable scientific, religious or educational purposes should be narrowly construed and limited to educational institutions that are located in ComEd’s service territory should similarly be rejected. Moreover, customers and Illinois citizens will directly or indirectly benefit from such contributions (*e.g.*, by attending those institutions or receiving the benefits of highly skilled engineers educated at such institutions). *See* Hemphill Reb., ComEd Ex. 11.0, 13:253-261.

**g) Advertising Expense**

No party other than Staff seeks to disallow any of the advertising expense ComEd proposes to include in its revenue requirement, and ComEd has addressed the majority of the arguments raised by Staff in its Initial Brief. ComEd Corr. Init. Br. at 74-75. Staff, however, mischaracterizes the “several” (in fact, two) advertisements at issue. ComEd Cross Ex. 20 (ComEd Ex. 4.6 Corr., WPC-8, p. 3 of 15 and p. 6 of 15). First, the headline message in both advertisements is in a larger/taller font than the font of ComEd’s logo. Fruehe Dir., ComEd Ex. 4.6 Corr., WPC-8, pp. 3, 6. In one advertisement, the ComEd logo appears on the far right-hand side occupying less than the furthest quarter of the page. *Id.* at 3. In the other advertisement, the ComEd logo is positioned in the very bottom right-hand corner of the page. *Id.* at 6. Characterizing these locations of the ComEd logo as the “more prominent position[s]” (Staff Init. Br. at 53) defies logic. In any event, even if the Commission were to agree with Staff that the only two advertisements that Staff has placed at issue are goodwill in nature (and they are not), only some small fraction of ComEd’s advertising expense should be disallowed; Staff is

overreaching by a great distance in seeking to disallow more than 86% of ComEd's advertising expense. *See* Tolsdorf Tr., 3/13/12, 814:12-22.

**2. Depreciation and Amortization Expense (Derivative Impacts)**

These issues were fully addressed in ComEd's Initial Brief. *See* ComEd Corr. Init. Br. at 76.

**3. Taxes Other Than Income, Including Property Taxes**

These issues were fully addressed in ComEd's Initial Brief. *See* ComEd Corr. Init. Br. at 76-78.

**4. Regulatory Asset Amortization: IEDT**

CUB is the only party that opposes the five-year amortization period proposed by ComEd (and accepted by Staff) for the one-time 2010 Illinois Electric Distribution Tax ("IEDT") credit, and proposes in its place a three-year amortization period. CUB/City Init. Br. at 39-40. As fully addressed in ComEd's Initial Brief, CUB's proposal is inconsistent with the framework of Section 16-108.5 of the Act. ComEd Corr. Init. Br. at 78-82. Aside from the amortization period, CUB notably omits any argument regarding its erroneous proposal to include the amortization of the 2010 accrual related to the IEDT credit in the 2011 reconciliation. *Id.* at 81. CUB's silence on this issue presumably reflects that it now understands that no such credits are to be included in the 2011 reconciliation.

**5. Pension Costs**

**a) Pension Asset Funding**

In each of its rate cases since 2005, the Commission has granted ComEd recovery of between \$30 million and \$35 million related to the capital it invested to fund its pension plans. In this case, ComEd requests \$34.871 million, while Staff recommends zero. As set forth in

ComEd's Initial Brief and below, Staff's position is baseless, arbitrary, a perversion of the General Assembly's efforts, terrible policy and a rejection of the Commission's past practice.

Staff claims that the Commission has broad latitude in defining pension asset as that term is used in section 16-108.5 because the General Assembly has not provided any definition. It is true that the General Assembly has not specifically defined the term, but Staff provides a definition that appears to have no basis other than Ms. Ebrey's own personal dictionary. She first attempted to rely upon FAS standards to support her definition, but quickly abandoned that position in the face of Mr. Graf's contrary expert opinion. She then attempted to justify her definition by reference to "ratemaking theory," but has yet to articulate any such theory or policy to support her definition. Indeed, Staff now concedes that the Commission did not accept Staff's current definition in the Corrected Order on Rehearing in *Commonwealth Edison Co.*, ICC Docket No. 05-0597, Corrected Order on Rehearing (Dec. 20, 2006) ("*ComEd 2005*"). Staff Init. Br. at 58. Staff's definition – the key point of which is whether the pension fund is over-funded or underfunded – is a purely arbitrary definition that not only has no real source, but is not justified by any policy reason that Staff or Ms. Ebrey presents.

Aside from the complete absence of any legitimate basis for Staff's definition of pension asset is the unquestioned fact that its definition would require the Commission to believe that the Commission's practice of allowing a debt return in three prior cases was both so damaging to some state interest and was the subject of so much controversy that the General Assembly affirmatively decided to discontinue that prior practice, but did so *subtly* – not directly – by predicating cost recovery on the existence of something it generally referred to as a "pension asset." Staff's position would further require the conclusion that the General Assembly intentionally left this term undefined because it wanted to provoke *additional litigation and*

*uncertainty* under a statute that was designed to minimize controversy and make rate-setting more transparent and predictable.

If the General Assembly in fact had intended this unusual outcome, why would it have allowed any recovery at all? If the General Assembly in fact had believed some great (as yet unidentified) state purpose would be furthered by having utilities (alone among all employers in the State) invest scarce capital to *overfund* their pension plans, at the same time the utilities were required to make large infrastructure investments, why did it not specifically require this directly, or why did it not specifically adopt that as the definition of pension asset? Why would the General Assembly then impose a funding requirement that is largely beyond the control of the utility in the first place, affected much more by market conditions and interest rates. Or, looked at another way, what conceivable harm could the General Assembly have detected and intended to remedy in the Commission's prior practice of allowing a debt return on pension contributions that saved customers at least as much through lower annual pension expenses as it cost them by way of that debt return – in this case a savings of \$61 million compared to the debt return cost of \$34.871 million? Houtsma Reb., ComEd Ex. 12.0, 9:186-89; Fruehe Sur., ComEd Ex. 22.1, Sched. FR C-1, line 21 (updating figure).

The Act expresses that “[i]t is in the State’s interest to protect the interests of utility employees who have and continue to dedicate themselves to assuring reliable service to the citizens of this State.” 220 ILCS 5/16-128(a)(3). The International Brotherhood of Electrical Workers (IBEW), in its Initial Brief, has explained how detrimental adoption of Staff’s interpretation of “pension asset” could be to the interests of its utility employee members. Staff’s interpretation is clearly inconsistent with the statutory intent to protect the interests of

utility employees, and the General Assembly cannot be deemed to have accomplished a result so flatly inconsistent with its own stated policy.

The fact is, Staff's argument simply makes no sense from whatever angle it is viewed. It should be rejected.

Staff's Initial Brief raises a number of irrelevant points in an apparent effort to deflect attention from the fundamental inadequacy of its basic position. Staff claims, for example, that ComEd's position is undermined by statutory language to the effect that simply because costs are included in the FERC Form 1 they are not recoverable by that fact alone. Staff Init. Br. at 59. ComEd has never contended, nor does it now, that mere inclusion of costs in a FERC Form 1 *ipso facto* makes those costs recoverable. They are subject, of course, to prudence and reasonableness challenges, though no such challenge has been raised against any of ComEd's pension contributions since 2005. The importance of the FERC Form 1 issue as to the pension asset is that the FERC Form 1 is an independently audited financial statement that describes the \$1.038 billion as a "pension asset," and the statute directs that the FERC Form 1 establishes the base line test for recoverability. ComEd Corr. Init. Br. at 84. This is just one factor that supports ComEd's conclusion that a pension asset exists.

Staff separately argues that the Commission has consistently allowed ComEd a return on pension *contributions*, not *assets*. Staff Init. Br. at 60. Even if that were correct, that would hardly support Staff's definition of pension asset. At most it would show that the Commission would be forced to define the term without any guidance from precedent. But the argument is not correct and the Commission does have precedent to consider for guidance, because in *ComEd 2005* the Commission expressly referenced the Pension Asset in allowing a debt return on that asset; simply because it did not repeat that exact phrase in *Commonwealth Edison Co.*,

ICC Docket No. 07-0566, Order (Sept. 10, 2008) (“*ComEd 2007*”) or *ComEd 2010* is immaterial. A return on pension funding was approved in each case as a legitimate and prudent cost of delivery service. The precedent had been set in *ComEd 2005* and it was unnecessary (in light of the absence at those times of any statutory requirement that a pension asset exist) for the Commission to continue to make any such finding. Also, contrary to Staff’s assertion (Staff Init. Br. at 60), the Commission’s Amendatory Order in *ComEd 2007* did not “provide[] clarification” that the recovery “was not a return on a pension asset.” It does not say that the Commission’s use of the words “Pension Asset” in *ComEd 2005* was either inadvertent or erroneous.

In any event, whether a pension *contribution* is or is not significantly different from a pension *asset* – a distinction to which Staff appears to attach almost cosmic significance (Staff Init. Br. at 60-61) – is immaterial. ComEd is seeking – and the statute explicitly grants – a return on a pension asset as that term is defined under correctly-applied accounting standards and as referenced on its financial statements, and not simply on a pension contribution. Nor is ComEd seeking to justify recovery “solely on the *mechanics of the accounting entries* [ComEd] has made on its books.” Staff Init. Br. at 62 (emphasis added). ComEd has consistently looked to the substance of the matter, relying as it has on the fact that its contributions have exceeded the pension costs. It has consistently been Ms. Ebrey who has attempted to complicate and obscure the substance of this matter by her reliance on inter-company accounting entries between ComEd and Exelon, accounting which Mr. Graf has testified is mainstream and unexceptional in any respect. ComEd Corr. Init. Br. at 86.

In yet a further effort to make inter-company relationships paramount, Staff now cites section 9-230 of the Act<sup>13</sup> to support its position. But the statute is inapplicable, and in any event ComEd does not disagree with the fundamental proposition Staff mis-cites this statute to establish: that ComEd's plan should be viewed on a "stand-alone" basis. Staff Init. Br. at 62. ComEd does not dispute this, and further does not dispute the conclusion that, when so viewed, ComEd's plan is "underfunded." What ComEd disputes is the significance that should be attached to this stand-alone status. In ComEd's view, none.

Finally, Staff seeks to have the Commission revisit the conclusion reached in *ComEd 2005* because of what Staff considers new and additional facts known now but not in 2005. *Id.* at 63. These alleged new facts have no significance to this case and certainly nothing to do with whether Staff's baseless interpretation of the statute should be adopted.

Staff claims as a "new fact" that ComEd has made no commitment to fully fund its pension plan "within a certain number of years," and instead is focused only on making minimum payments required by law. Staff Init. Br. at 63-64. This fact shows, according to Staff, that whatever "incentive" the Commission thought it was creating by allowing a pension recovery is not working and is no longer appropriate. *Id.* This argument is completely misguided and unsupported by the facts. The pension asset at issue in this case arises *only because* ComEd has made sizeable pension contributions above the minimum required by law – contributions totaling \$382 million in 2009 and 2010 alone. *Houtsma Reb., ComEd Ex. 12.1.* That ComEd's pension plans are not fully funded is not due to lack of effort by ComEd, as Staff

---

<sup>13</sup> On its face, Section 9-230 simply provides that in calculating a utility's rate of return, the Commission shall not include any incremental risk to the utility or any increased cost of capital due to its affiliation with an unregulated non-utility company. Even if Staff's apparent position is accepted that this statute, dealing with a limited and specific subject, can be broadened to mean that at all times and for all purposes and in every context a utility must be viewed on a "stand-alone basis," still it has no conceivable bearing on the meaning of pension asset in Section 16-108.5.

implies, but rather to the economic realities of a stock market crash and low interest rates – factors that likely impacted every pension fund and 401(k) plan in the United States.

Moreover, and more significantly, Staff’s argument would introduce yet further elements of great uncertainty into application of the statute, and would read into the statute words that are not there: it would require the Commission to determine *how much* of a contribution above the minimum required by law is necessary to constitute a pension asset – instead of the bright line test provided by existing accounting rules – and make separate determinations about the “certain number of years” within which the pension fund must be fully funded, *e.g.*, is twenty years too long, ten, eight? This type of complexity and uncertainty is the antithesis of the transparency and certainty the formula rate was intended to accomplish.

For all the above reasons, and those set forth in ComEd’s Initial Brief, Staff’s pension asset position should be rejected and the return be allowed as provided by Section 16-108.5.

**b) Pension Expense**

Staff’s position on the \$9.977 pension expense reduction it proposes is another reflection of the cavalier approach it takes to interpretation of the new statute.<sup>14</sup> Staff acknowledges the statutory requirement that the pension expense be supported by an actuarial study. Staff Init. Br. at 66. Staff also recognizes, as it must, that ComEd’s pension expense request is based on the most recent actuarial study for 2010, the year of all the cost data underlying the proposed revenue requirement (other than the statutorily-allowed 2011 plant additions). Staff, however, argues that the statutory test is met because it uses the 2010 actuarial study as a starting point, but then “adjusts” that study in a way that Staff considers to be appropriate. *Id.* Under this

---

<sup>14</sup> This adjustment is deemed to be necessary only if the Commission rejects Staff’s unsupported pension asset adjustment discussed in section V.C.5.a of this Brief. Staff Init. Br. at 66.

“logic,” any party could take the 2010 actuarial study and “adjust” it in a manner it deems appropriate to justify any result it chose.

Recognizing the utter inconsistency between its “adjustment” theory and the statute, Staff then proposes as an alternative use of the “most current” 2012 actuarial study. Staff Init. Br. at 66. But this modification of the statute fares no better. The rates are not to be based on the “most current” data, they are to be based on data for the year in question, in this case 2010. Staff’s “selective updating” approach finds no support in the statute and should be rejected.

**6. Income Taxes: Interest Synchronization**

This issue was fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 92.

**7. Other**

No other operating expense issues have been raised by the parties.

**VI. RATE OF RETURN**

**A. Overview, Including Overall Cost of Capital**

These issues were fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 93.

**B. Capital Structure**

**1. Year End/Average Year Capital Structure**

Staff is the only party that objects to ComEd’s use of its actual capital structure as of December 31, 2010. In its Initial Brief, ComEd addressed the majority of Staff’s arguments regarding year-end or average capital structure. *See* ComEd Corr. Init. Br. at 93-96. ComEd would, however, like to clarify two points.

First, Staff mischaracterizes ComEd’s position on this issue. ComEd does not argue that “an actual capital structure must comprise end-of-year balances - unless ComEd decides otherwise” and that “all components of an actual capital structure must come from the FERC

Form 1 - unless ComEd decides otherwise.” *See* Staff Init. Br. at 69. Rather, it is ComEd’s position that year-end balances are preferable for all of the reasons enumerated in ComEd’s Initial Brief and testimony. In some instances, however, the Commission’s own Part 285 filing requirements state that ComEd should use something other than a year-end balance, and in those situations ComEd deviates from its preferred year-end calculations in order to comply with those requirements.

Specifically, Section 285.4000(b) of the Administrative Code states that: “The balance of short-term components of the capital structure shall be calculated from 12 months of average monthly balances.” 83 Ill. Admin. Code § 285.4000(b). *See* also 83 Ill. Admin. Code § 285.4020(d)(1) (utilities including CWC in rate base must calculate short-term debt (“STD”) using monthly average). ComEd therefore calculates its STD using an average balance as opposed to a year-end balance. That same code section also provides: “Utilities may elect to base the long-term components of the capital structure on either average or end-of-period balances.” 83 Ill. Admin. Code § 285.4000(b). ComEd therefore calculates its long-term debt (“LTD”) using a year-end balance. Although these are filing requirements as opposed to substantive rules, Staff’s argument that ComEd’s adherence to these requirements is somehow improper or unreasonable should be rejected.

Likewise, Staff has also misinterpreted ComEd’s point regarding the FERC Form 1. ComEd never stated that *all* components of the capital structure *must* come directly from the FERC Form 1. Rather, ComEd has argued that use of year-end balances is more *consistent* with use of “final data based on its most recently filed FERC Form 1” as required by Section 16-108.5. *See* ComEd Corr. Init. Br. at 94.

Second, Staff, through its witness Ms. Phipps, continues to argue that internal review of the drivers of ComEd's capital structure is meaningless because ComEd's Board of Directors are "elected by and answer to shareholders, not customers." Staff Init. Br. at 74. This argument boils down to a pronouncement that ComEd's Board of Directors cannot be trusted to comply with federal and state securities laws in discharging their duties. In short, Ms. Phipps predicates her adjustment on a wholly unsupported assumption that ComEd's board of directors will act improperly. A presumption of guilt is as inappropriate at the Commission as anywhere else, and Staff's adjustment based on such a presumption should be rejected.

## **2. Long-Term Debt and Equity Adjustment Regarding CWIP Accruing AFUDC**

In its Initial Brief, ComEd addressed the majority of Staff's arguments regarding its proposed LTD and equity adjustment regarding CWIP accruing AFUDC. *See* ComEd Corr. Init. Br. at 96-99. ComEd must, however, respond to three points raised in Staff's Initial Brief. First, Staff continues to rely on the fact that Staff proposed and ComEd accepted a similar adjustment in *ComEd 2010*. *See* Staff Init. Br. at 76. It is undisputed, however, that this adjustment was made in *ComEd 2010* only because ComEd agreed to do so, as it often does to narrow the issues in dispute and within the unique context of all other issues in that case. Phipps Tr., 3/9/12, 526:15-527:16. In any event, the Commission did not make a determination on the merits of this issue. Treating such voluntary commitments as binding in future cases would discourage utilities from entering such agreements.

Second, Staff attempts to paint ComEd as inconsistent because it accepts the AFUDC formula-based assignment of capital for the purpose of its adjustment to the balance of short-term debt but not to "adjust the balances of long-term debt and common equity." Staff Init. Br. at 77. In fact, ComEd's position follows the Commission's filing requirements. As discussed in

ComEd's Initial Brief, the filing requirement at issue – 83 Ill. Admin. Code § 285.4020 – requires that ComEd remove the amount of STD assumed to be financing CWIP accruing AFUDC but does not require the same adjustment for LTD and equity. ComEd Corr. Init. Br. at 96-97. Indeed, Ms. Phipps has admitted that she is not familiar with the filing requirement at issue. Phipps Tr., 3/9/12, 503:14-506:11.

Third, even though it is undisputed that CWIP accruing AFUDC is not included in rate base (Vogt Reb., ComEd Ex. 15.0, 6:122-25), Staff argues that because of the mere fact that CWIP accrues AFUDC, double counting occurs once CWIP is reclassified as plant in service because the costs of CWIP are recovered from customers through depreciation. Staff Init. Br. at 78-79. This argument is nonsensical and should be dismissed outright. It is well settled that CWIP projects do not overlap with plant in service projects, *i.e.*, projects must be one or the other and cannot be both at the same time. Therefore, the mere fact that a project was once being constructed and is now in service does not result in double counting.

**3. Equity Adjustment Regarding ComEd of Indiana**

These issues were fully addressed in ComEd's Initial Brief. *See* ComEd Corr. Init. Br. at 99-101.

**4. Common Equity Ratio/Cap Limit**

These issues were addressed in ComEd's Initial Brief. *See* ComEd Corr. Init. Br. at 101-102. One additional item to note is that IIEC mentions that the Commission has an "obligation under Section 16-108.5 to determine the reasonableness and prudence of the utility's actual capital structure" but has only 45 days to determine whether it will conduct a hearing. *See* IIEC Init. Br. at 36. This is, however, a red herring. These rules are not different from the obligations and suspension rules governing Article IX rate cases, in which a cap or limit on

ComEd's common equity ratio was never deemed necessary. *Compare, e.g., 220 ILCS 5/9-201(a) with 220 ILCS 5/16-108.5(d).*

**5. Subsequent Procedure/Process re: Capital Structure Issues**

Although ComEd and Staff agree that the Commission should not make a decision regarding an alternative capital structure in this proceeding, Staff does offer a limited substantive discussion of this issue. *See Staff Init. Br. at 82.* For the most part, ComEd will not address the merits of these issues in this proceeding, as they will be the subject of discussions with Staff at a future date. ComEd notes, however, that Staff's statement regarding rating agencies' interpretation of Section 16-108.5 and Moody's Investors Service ("Moody's") recent upgrade of ComEd's credit rating is misleading. *See Staff Init. Br. at 82.*

While rating agencies have indicated cautious optimism about Section 16-108.5, they have also stated that notwithstanding Section 16-108.5, "we continue to view the state's regulatory framework for electric utilities as being less reliable and unpredictable and, as such, continue to score the regulatory framework within Illinois as being below investment grade or at Ba." Kight-Garlich Dir., Staff Ex. 12.0, Attachment A, p.2. Specifically, on March 5, 2012, Moody's stated:

Regulatory environment improved but possibility of unpredictable outcomes remain[.]

An important factor in the rating methodology for Regulated Electric and Gas Utilities is the credit supportiveness of the regulatory framework.

ComEd's rating recognizes an improved, but still challenging regulatory environment that continues to persist for electric utilities in Illinois leading to lingering concerns about the framework's predictability. Intervention risk from key and influential stakeholders have occurred in past rate case decisions and regulatory actions involving ComEd making the framework less reliable. Specifically, actions by consumer groups, the Illinois Attorney General, and various legislators have had negative implications for regulatory decisions involving ComEd and other IOUs in the state.

... Key aspects of the FRP calculation include cost recovery of the utility's actual capital structure, excluding goodwill; a legislatively-set formula for purposes of calculating the allowed return on equity (ROE) equivalent to a 580 basis-point premium above the 12-month average 30-year Treasury Bond yield; recovery of pension-related costs, as well as recovery of certain incentive compensation expenses. ...

Although the passage of EIMA helps to offset lingering concerns about the predictability of the regulatory framework, the legislation remains untested. Moreover, we understand that the ICC and other stakeholders were opposed to the law's passage since, in their opinion, EIMA limits the oversight ability of the commission. We continue to view the state's regulatory framework for electric utilities as having the potential to be unpredictable and unreliable. Therefore, the regulatory framework (Factor 1 in the Methodology) for ComEd continues to be scored below investment grade or at Ba. Our future assessment of this Factor will be influenced by the manner in which the new regulatory framework is implemented and whether it is accepted as a workable regulatory model by key constituents.

Staff Cross Ex. 2 at CFRC 0089497; *see also* 0089490-91. Notably, several portions of the formula rate that Moody's considers "key aspects of the FRP calculations" – such as capital structure, pension-related costs, and incentive compensation expenses – are under attack in this proceeding and/or will be the subject of future procedures and processes.

Moreover, because Moody's previously rated ComEd lower than the other rating agencies did – "meaning that Moody's view[ed] ComEd as a riskier investment than S&P and Fitch do, and more risky than most regulated utilities" – Moody's recent upgrade simply brought ComEd to the same level that other rating agencies had previously assigned to ComEd, and did not result in an "upgrade" in the sense that Staff contemplates. Vogt Sur., ComEd Ex. 23.0, 14:292-95. In addition, Moody's upgrade was due in large part to ComEd's strong credit metrics, and was not solely related to the EIMA. Staff Cross Ex. 2 at CFRC 0089497.

In addition, IIEC continues to misinterpret Staff and ComEd's proposals to address these capital structure issues in subsequent *informal* discussions. In its brief, IIEC purports to agree with Staff and ComEd, but then requests "a formal – not informal – proceeding to determine an

appropriate common equity ratio cap for ComEd on a going-forward basis.” IIEC Init. Br. at 37. No need (or statutory basis) justifies adding to the already full calendar of proceedings a formal proceeding devoted solely to capital structure issues, when the parties can easily explore these issues in an informal manner and present them to the Commission in ComEd’s 2013 formula rate filing.

**6. Other**

No other capital structure issues have been raised by the parties.

**C. Cost of Capital Components**

**1. Cost of Short-Term Debt**

These issues were fully addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 103.

**2. Cost of Credit Facilities**

These issues were addressed in ComEd’s Initial Brief. *See* ComEd Corr. Init. Br. at 103-104. In addition to the arguments presented therein, ComEd notes that Staff’s argument that ComEd had an obligation to explain why ComEd and PECO’s fees were “disproportionately higher” than Exelon Generation’s (“ExGen”) fees is without legal or evidentiary support and improper. *See* Staff Init. Br. at 84-85. Staff *assumes* that ComEd and PECO’s fees were *disproportionally* higher. In fact the difference in fees is very minor (*see id.* at 84) and no evidence suggests that the fees were not related to the services offered. Vogt Tr., 3/9/12, 477:21 - 478:22. Moreover, ComEd does not have a burden to disprove all of Staff’s

assumptions, particularly when no allegation is made that the costs at issue are unreasonable or imprudent.<sup>15</sup>

In addition, Staff cites to two Dockets where it states that “the Commission accepted a very similar adjustment to Ameren Illinois Company’s credit facility costs based on 9-230 of the Act.” Staff Init. Br. at 86. Although ComEd is not familiar with the details of those credit facilities, and those facts are not in the record in this proceeding, it appears that those facilities are distinguishable in that they could be accessed by multiple affiliated companies and because information was presented by Ameren in an aggregate manner that Staff then potentially “misinterpreted.” See *Ameren Illinois Co.*, ICC Docket No. 11-0282 (Order Jan. 10, 2012) at 63; *AmerenCILCO*, ICC Docket No. 09-0306 cons. (Order April 29, 2010) at 157-58. In contrast, “only ComEd can draw on its facility, and ComEd gets no benefit from the PECO and Exelon Generation facilities.” Vogt Reb., ComEd Ex. 15.0, 10:203-05.

### **3. Cost of Long-Term Debt**

These issues were fully addressed in ComEd’s Initial Brief as well as the discussions in Sections VI.B.1. and 2, above. See ComEd Corr. Init. Br. at 104.

### **4. Cost of Common Equity**

These issues were fully addressed in ComEd’s Initial Brief. See ComEd Corr. Init. Br. at 104-105.

---

<sup>15</sup> A utility bears the burden of proof that its proposed rates are just and reasonable, but once it makes out a *prima facie* case, the burden of going forward with the evidence shifts to the other parties that challenge its costs. *Illinois Bell Tel. Co. v. Ill. Commerce Comm’n*, 327 Ill. App. 3d 768, 776, 762 N.E.2d 1117, 1123-1124 (3d Dist. 2002); *City of Chicago v. People of Cook County*, 133 Ill. App. 3d 435, 442-443, 478 N.E.2d 1369, 1375 (1st Dist. 1985). The utility does not have the burden of disproving in advance all other issues conceivably relevant to the reasonableness of its rates. *City of Chicago*, 133 Ill. App. 3d at 442, 478 N.E.2d at 1375.

## **VII. COST OF SERVICE AND RATE DESIGN**

### **A. Studies Submitted Pursuant to 2010 Rate Case Order**

ComEd's Initial Brief already addressed the arguments raised by Staff's Initial Brief (at 87-91) regarding the Studies submitted pursuant to the *ComEd 2010* Order. ComEd Corr. Init. Br. at 105-106. ComEd will not repeat those arguments here; however, ComEd will address several statements made by Staff in its Initial Brief. First, despite Staff's argument to the contrary (Staff Int. Br. at 88-89), ComEd and Staff are in agreement that these studies are best addressed in the upcoming revenue-neutral cost of service and rate design proceeding. See Hemphill Sur., ComEd Ex. 20, 25:518-520.

Second, with regard to its argument that ComEd must adopt all the studies as its position in this future proceeding, Staff provides an example from the *ComEd 2010* Order:

ComEd shall work with Staff on this issue to develop a scientifically-significant representative of its direct observations on this issue, it shall also have this representation in its cost of service study/studies in its next rate case. This analysis shall be part of any initial rate case filing that ComEd makes.

*ComEd 2010* Order at 180-181. Staff Int. Br. at 90. Staff's own reference does not support its position. The Commission states that following the development of a scientifically-significant representative of its direct observations, it shall include this representation in its "cost of service study/studies". Staff never explains why more than one cost of service study would be undertaken if ComEd were directed to adopt the results of all studies as its own position. The *ComEd 2010* Order directed that ComEd gather information, work with Staff and/or other stakeholders on specific projects and investigations, and perform and present studies including specifically revised embedded cost of service studies ("ECOSSs") as part of its initial filing. ComEd has done that in this Docket and will do so at the earliest possible stage in the upcoming revenue neutral cost of service and rate design proceeding. Nothing in the *ComEd 2010* Order

states that ComEd must support or advocate any particular rate design position. Hemphill Sur. ComEd Ex. 20.0, 25:526-26:536. In fact, all parties should be allowed to analyze the data or studies and the resulting impact on the interclass cost allocations.

In addition, for the first time in their Initial Brief, CTA and Metra argue that the findings regarding the allocations of costs associated with 4 kilovolt (“kV”) lines to the Railroad Class be restated in this Order so as to trigger the one-year period for ComEd to file a revenue neutral rate design proceeding. For all the very reasons Staff’s above proposal is unnecessary and should be rejected so should the CTA and Metra proposal. Again, ComEd, Staff and CTA and Metra are in agreement that these studies are best addressed in the upcoming revenue-neutral cost of service and rate design proceeding. Thus, CTA and Metra’s alternative proposal to initiate a separate proceeding is also unnecessary. *See* CTA/Metra Joint Init. Br. at 3-5; *see also* ComEd Corr. Init. Br., at 105-106.

**B. Rate Design, Including Upcoming Docket**

Staff’s argument that the Commission should approve a set of customer and meter charges that collectively recover 50% of fixed costs only (Staff Init. Br. at 61-65), in which the AG and AARP now join (AG-AARP Init. Br. at 61-65), relies on a single sentence of the *ComEd 2010 Order*:

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 costs.

*ComEd 2010 Order* at 232. *See* Staff Init. Br. at 92. Based on this single sentence, Staff argues that “[t]he Commission should approve a set of customer and meter charges that collectively recover 50% of fixed costs only.” Lazare Dir., Staff Ex. 9.0, 11:279-281 (emphasis added); *see also* Staff Int. Br. at 94. However, Staff witness Mr. Lazare has taken the one sentence out of context of the Order’s approval of a straight fixed variable (“SFV”) rate design. The rate design

approved by the Commission, and the changes required to put it into effect, are discussed in a variety of different places in the Order. The Order and those changes must be read together, as a whole, and individual sentences interpreted in that broader context. Hemphill Reb., ComEd Ex. 11.0, 27:557-562. Staff's proposal, which reflects Mr. Lazare's continued hostility to the SFV rate design adopted by the Commission, seeks to undermine the *ComEd 2010* Order and should be rejected for several reasons. *See also* ComEd Init. Br. at 107-108.

First, the word "only" never appears in the sentence quoted by Staff in the *ComEd 2010* Order. Consistent with the balance of the Order, the sentence should be read in the context of the Commission's approval of the SFV rate design, the purposes of which is to reduce the reliance on volumetric charges so that they recover no more than 50% of fixed costs. Contrary to Staff's interpretation, the sentence standing alone says nothing about the recovery of *total* costs, and thus cannot form the basis of an argument that precludes a rate design that recovers 50% of total costs through fixed charges. Moreover, the key closing sentence of the section that Staff quotes unambiguously calls for a reduction in the use of volumetric charges to recover fixed costs. Staff's proposal, however, would increase volumetric charges, contrary to the *ComEd 2010* Order, which Mr. Lazare considers "irrelevant." Lazare Reb., Staff Ex. 20.0, 10:262-263.

Second, the purpose of moving towards a SFV rate design is to reduce the recovery of fixed costs through the application of volumetric charges. Mr. Lazare acknowledged on cross-examination that, in its Sept., 24, 2008, Order in the 2007 Ameren Gas Companies Rate Cases, ICC Docket Nos. 07-0585 (cons.), the Commission approved and lauded the movement towards the recovery of fixed distribution expenses through fixed charges. Lazare Tr., 3/13/12, 853:3-16. In fact, Mr. Lazare expressed his continued opposition to SFV-style rate designs, despite recent Commission decisions approving them. *Id.*, 853:20-854:7. In the *ComEd 2010*

Order at 231, just prior to Staff’s quoted text, the Order reviews prior Commission decisions approving SFV designs and concludes that “[a]ll of those decisions recognize the importance of recovering fixed costs predominantly through fixed charges.” The Commission adds that, on the record before it in *ComEd 2010*, “[t]he Commission has recognized the importance of recovering fixed costs predominantly through fixed charges ....” *Id.* at 232 (emphasis added).

The compliance rates that ComEd submitted following that Order and which Staff approved were set so that fixed costs are recovered predominantly through fixed charges, as the Commission emphasized.<sup>16</sup> Furthermore, as the Commission intended, the recovery of fixed costs through volumetric charges was reduced to the extent possible, as is called for by a movement toward SFV rates. Hemphill Reb., ComEd Ex. 11.0, 28:581-29:596.

Staff’s proposal is nonsensical – under such proposal, fixed charges should recover 50% of fixed costs only and, thus, fixed costs would not be recovered predominantly through the application of fixed charges. Furthermore, to move from the prior non-SFV rate design to Staff’s proposed rate design, the volumetric DFC would have to be increased, the opposite of what the quoted text states.

Third, Staff’s proposed rate design, Staff Ex. 9.02, (Staff Init. Br. at 92; AG-AARP Init. Br. at 63) is flawed as it ignores one of the two volumetric charges. Staff claims that the IEDT charge “should not be lumped together with the variable DFC in the rate design process because the Commission accorded it a separate role to recover distribution tax costs.” Staff Int. Br. at 96. *See also* AG-AARP Init. Br. at 62-63. ComEd determined the value of the IEDT to comply with

---

<sup>16</sup> Specifically, for the Residential Single Family Without Electric Space Heat, Residential Multi Family Without Electric Space Heat, Residential Single Family With Electric Space Heat, Residential Multi Family With Electric Space Heat, and Watt-Hour delivery classes, respectively, 52%, 51%, 53%, 52%, and 51% of fixed costs are recovered through the application of fixed charges.

the *ComEd 2010* Order conclusions pertaining to the recovery of the Illinois Electricity Distribution Tax and its associated uncollectible costs. At the same time, ComEd submitted an overall rate design that set the two fixed delivery service charges (the customer charge and the standard metering service charge) and the two volumetric delivery service charges (the DFC and the IEDT) for the subject classes to comply with the Commission's conclusions pertaining to the SFV issue. In the very first paragraph in its conclusions on the SFV issue in the Order (at 231), the Commission specifically uses the term "volumetric charges" in describing the three-step SFV rate design proposed by ComEd, which includes *both* volumetric charges, the DFC and the IEDT, in the design. Hemphill Sur., ComEd Ex. 20.0, 32:667-677. It is illogical to interpret the use of the exact same phrase "The Commission concludes that the use of volumetric charges be reduced" a page later (*ComEd 2010* Order at 232) any differently from the manner in which it was used on the previous page.

Fourth, Staff's argument that ComEd's compliance rates contained a "mistake" that Staff failed to "uncover" (Staff Int. Br. at 93; AG-AARP Int. Br. at 64) is contrary to the evidence, contrary to the law, and without merit. No mistakes were in the rate design, which was reviewed in detail by Staff, and which correctly implements the language and the intent of the *ComEd 2010* Order. On April 15, 2011, over a month before the Commission's *ComEd 2010* Order, ComEd submitted a response to an Administrative Law Judges' ("ALJs") data request, that included delivery service charges which utilized the exact same rate design that was subsequently used in preparing the compliance delivery service charges for *ComEd 2010*. In the more than five weeks that elapsed between the submission of that response and the entry of the *ComEd 2010* Order on May 24, 2011, no one indicated that the rate design used to respond to the ALJs' request was in any manner inconsistent with the Proposed Order. When asked about that

response, Mr. Lazare confirmed that the response to the ALJs' Data Request had been reviewed by Staff. ComEd Ex. 20.1, Staff Response to ComEd Data Request 3.01. Staff's acceptance of ComEd's compliance filing pursuant to Section 9-201(b) was not an error, and Staff's oversight of ComEd's filing was not ineffective. Hemphill Sur., ComEd Ex. 20.0, 27:561-29:602; Hemphill Reb., ComEd Ex. 11.0, 24:499-26:550; Lazare, Tr., 867:4 - 874:14.

Finally, Staff's argument that ComEd's Brief on Exceptions ("BOE") in *ComEd 2010* is inconsistent with its position here (Staff Int. Br. at 97-98) is without merit and should be rejected. In its BOE in *ComEd 2010*, ComEd presented alternative language in an effort to simply to further clarify language pertaining to the SFV rate design in the Order, because ComEd's rate design was the only SFV rate design in the record in *ComEd 2010*.

Staff's and AG-AARP's attempt to undermine the *ComEd 2010* Order should be rejected as it is contrary to the evidence and without merit. ComEd's implementation of SFV rate design is proper and compliant with the *ComEd 2010* Order.

**C. Embedded Cost of Service Study, Including Distribution Losses**

For all the reasons set forth in ComEd's Initial Brief (at 108-109), the Commission should approve the cost allocations reflected in the Embedded Cost of Service Study ("ECOSS") as revised. ComEd Ex. 28.1. However, if the Commission determines that the distribution system loss study reflected in ComEd Ex. 27.1 should be approved, the ECOSS presented in ComEd Ex. 28.2 should be approved. For a discussion of the Distribution System Loss Study, *see* Section IX.A of this Reply Brief.

**VIII. ADDITIONAL FORMULA / TARIFF ISSUES**

**A. Tariff Issues**

**1. Separate Statement of Earnings Collar Effect**

In his direct and rebuttal testimony, IIEC witness Gorman proposes to remove any impact of the earnings collar from formula rate Schedule Sch FR A-1 REC to Sch FR A-1 because he does not believe it is part of the reconciliation determination. IIEC repeats the same arguments in its brief. IIEC Init. Br. at 38-41. As ComEd noted in its Initial Brief (at 109-110), IIEC is mistaken both about ComEd's tariff and Sch FR A-3, and how they operate, and is misreading the statute regarding customer bills. Nothing about the operation of the earnings collar is secret and IIEC's efforts to characterize it as hidden or obscure is misplaced. *See* Gorman Tr., 3/12/12, 742:7 – 744:5; ComEd Cross Ex. 18. Its mathematics are openly defined on Sch FR A-3; and the resulting adjustment is visible on Sch FR A-1 REC.<sup>17</sup>

IIEC's brief (at 39) also argues for the first time that the effect of the collar should be separately stated on customers' bills. That proposal should be rejected. The EIMA does not support the proposal. No more need exists for a separate line for "effects of the collar" than for any other revenue requirement component, such as return on rate base, or depreciation. Separate line items are used only when required by law or when the charges have different billing determinants (*e.g.*, distribution charges versus customer charges). *See, e.g.*, ILL. C. C. No. 10, 1<sup>st</sup> Revised Sheet No. 217 (Bill Format: Residential Retail Customer Bill: Bundled Electric Service). The Commission has never, to ComEd's knowledge, isolated a single *cost component* of a base rate or reconciliation adjustment and required it to be separately stated, except where required by law (*e.g.*, certain taxes). Moreover, breaking out separate charges for specific revenue components are very costly to implement and can add to customer confusion. Adding a charge or credit labeled "Effect of ROE Collar" is likely to confuse, not educate, customers.

---

<sup>17</sup> There is no question that any adjustment resulting from the collar is properly reflected in the calculation of any reconciliation adjustment. Houtsma Reb., ComEd Ex. 12.0, 37:825 - 38:839; Houtsma Sur., ComEd Ex. 21.0, 30:651-662. IIEC has not claimed otherwise.

Finally, IIEC requests a separate statement of the interest. IIEC Init. Br. at 40. The facts are the same. Interest is calculated separately and transparently. A separate line item on customers' bills for interest is not called for by law, is inconsistent with past Commission practice, and is unnecessary.

## **2. Calculation of Increases for Three-Year Report**

IIEC persists in arguing that the Commission should predetermine now, years in advance, inputs to the calculation of “average annual increase in the average amount paid per kilowatt-hour for residential eligible retail customers” (Section 16-108.5(g)) – a calculation that has nothing to do with the rates, costs, or charges now before the Commission. *See* IIEC Init. Br. at 41-43. This invitation to prejudge should be rejected.

IIEC's argument opens with a serious error. IIEC states that, if the annual increase exceeds 2.5%, it “would disqualify ComEd from continued use of the formula rate mechanism.” *See* IIEC Init. Br. at 41-42. In fact, if such a condition did occur, it could only occur over a statutorily prescribed three year period at which time Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 would be essentially “frozen” and ComEd would no longer be able to “annually update the performance-based formula rate tariff pursuant to subsection (d) of” Section 16-108.5. However, ComEd is not disqualified from continued use of the tariffed terms and conditions of service or continued assessment of the charges then in effect. The law expressly provides that “[i]n such event, the then current rates shall remain in effect until such time as new rates are set pursuant to Article IX of this Act ....” 220 ILCS 5/16-108.5(g).

IIEC also renews its effort to try to prejudge how that calculation should be conducted. Again, its position does not align with the law. The calculation is not one that can begin to be made now. For reasons set forth in ComEd's Initial Brief (at 110), Section 16-108.5(g) of the Act, 220 ILCS 5/16-108.5(g), requires that the calculation derive “the average amount paid per

kilowatt-hour for residential eligible retail customers, exclusive of the effects of energy efficiency programs, comparing the 12-month period ending May 31, 2012; the 12-month period ending May 31, 2013; and the 12-month period ending May 31, 2014.” None of that data is available now. Moreover, it calls for a report of that calculation, and not just a result calculated under a predetermined formula, to be filed with the Commission “on or before July 31, 2014 ....” The Commission receiving the required report on or before July 31, 2014, will have jurisdiction over it, and this Commission should not – and arguably may not – tie its hands. *Hemphill Reb.*, ComEd Ex. 11.0, 31:655 - 32:680.

Finally, IIEC’s argument for this unauthorized advance ruling is that ComEd will somehow “cook the books” by allocating an unreasonable share of any increases to non-residential customers. *See* IIEC Init. Br. at 42-43. Of course, IIEC has an incentive to make it as hard as possible for ComEd to argue for any reallocation of costs away from residential customers, which is what their proposal to preset the “starting rate” would do. The difference is, while any reallocation proposed by ComEd would require Commission approval – and, in fact, a Commission finding that it is “just and reasonable” – IIEC’s proposal freezes in the disincentive no matter what the Commission in the future might think is just. IIEC’s proposal should be rejected for that reason as well.

### **3. Other**

#### **a) Tariff Structure / Detail**

After pressing to greatly increase the level of complexity and detail on customers’ bills, IIEC – alone among the parties - argues to “simplify” the formula rate tariff by removing the very specificity that makes it a formula rate. This proposal is unlawful and works against customers, utilities, and the Commission. The proposal should be rejected.

The EIMA is clear. The formula rate tariff is to include “standard formulae that can be populated by defined transparent data.” 220 ILCS 5/16-108.5(c) (emphasis added). It requires further that the formula rate tariff itself must “specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information ....” *Id.* (emphasis added). The requirements that the tariff include the formulae, specify the cost component inputs, and do so in a defined way and specifically enough that can be applied transparently and annually, and then spell out the calculations in a standardized manner, are all *mandates* of the law, not a “preference” of ComEd (*see* IIEC Init. Br. at 43). IIEC’s “disagreement with the law’s requirement that the formula rate tariff contain these specific and standardized formulae is not an argument against Rate DSPP.” Hemphill Sur., ComEd Ex. 20.0, 35:738-40.

IIEC’s assertion that this is “unreasonable” (IIEC Init. Br. at 44) is not only an improper and futile argument with the law, it is unexplained and inconsistent. It is inconsistent with IIEC’s own prior arguments for greater detail, even unprecedented greater detail, in billing. It also is inconsistent with the reality that while unsophisticated customers may need or want to understand their basic terms of service, most have no need or interest in understanding the mathematics of revenue requirement calculation, which the formula rate does not make any more complex than it is now. Under the formula rate, “retail customers can understand – just as they do now – the charges that will apply to their service from the annual informational submissions stating those rates in dollars and cents, just as they do now for” supply rates. Hemphill Sur., ComEd Ex. 20.0, 35:746-48. “[A]s with Rate DSPP, they don’t have to understand the intricacies of ratemaking; they just need to understand their charge.” *Id.*, 35:752-753. Indeed, those few customers who do want to understand the details of the formula will actually be helped

by its codification in the tariff, rather than finding themselves forced to pour over rate case exhibits and Part 285 submissions, as they would have to do if IIEC has its way.

IIEC also repeats the canard that specificity will somehow impede the Commission's review function. This is not just wrong, it is backwards. ComEd has made clear that the tariff's specificity will not limit Commission authority in any way. *See* Hemphill Sur., ComEd Ex. 20.0, 34:714-30. Moreover, what would threaten the Commission's authority is if the thing over which they have the most direct power – the wording of the tariff itself – were so non-specific as to allow great discretion and latitude in interpretation. It is the absence of “standard formula,” the absence of “specif[ied] ... cost components”, and the absence of “defined transparent data” (220 ILCS 5/16-1078.5(c)), if anything, that would pose a risk to future Commission review.

**B. Ratemaking Process and Filing Issues**

**1. Access to Information re Formula Rate Filing**

As stated in ComEd's Initial Brief (at 111-112), ComEd has and will provide all data called for by applicable portions of Parts 285 and 286 in future formula rate filings, as required by law. IIEC's claim that its access to this data is in peril was fully refuted. IIEC's suggestion that additional rules are required to assure compliance is totally unfounded. There is no record of any effort by ComEd to hide data. The deficiency letter ComEd received in this case was perhaps the most minimal in recent history and not a single motion to compel discovery was filed. The suggestion that ComEd will act otherwise in the future is bald speculation, for which there is no support. IIEC, and every other party, will have all the data called for by the Commission's rules.

IIEC then challenges the procedure established by the EIMA itself. It complains that the time allotted by the general assembly for an annual update is too short. IIEC Init. Br. at 49. IIEC invites the Commission to open some sort of semi-permanent revolving docket for the

“receipt and review of the Company’s annual filing.” IIEC Init. Br. at 50. These suggestions are unnecessary, unworkable, and quite illegal. Section 16-108.5(c) spells out exactly how the process of reviewing annual updates occurs. It begins with the utilities’ filing and submission of annual data, after which time the Commission is empowered to open a proceeding to review that filing within a specified period. No other proceedings – and certainly no unorthodox “open” or continuing docket – is authorized. IIEC’s argument that some other states (perhaps only Missouri) do authorize such a procedure only underscores that Illinois does not. *See* IIEC Init. Br. at 50. IIEC’s suggestion that the Commission’s authority to “make the rules necessary to conduct its proceedings” (*see id.*) suffices lies at the border of credulity. The authority to adopt procedural rules does not authorize the commencement of unauthorized dockets, especially ones foreign to a carefully established and detailed legislative structure. Moreover, the law expressly states that the obligation to provide this information is with the formula rate filing, not earlier or in connection with some other docket. 220 ILCS 5/16-108.5(c)(3).

IIEC’s proposal also is unworkable in practice. ComEd does not arbitrarily delay production of Part 285 and Part 286 data, let alone any new data that is produced and collected to support of its formula rate filings. The availability of such data is dependent on the completion and audit of the results of activities that are ongoing through year end, completion of the FERC Form 1, and completion of an investment projection (which parties simultaneously demand be highly accurate), and other decisions about the rate filing ComEd will make. That data simply is not available weeks and months in advance of the filing. That is one reason annual filings are not due under the EIMA until May 1.

## **2. Triggers for Hearing on Certain Operating Costs**

IIEC witness Mr. Gorman recommends that certain operating expenses be limited for inclusion in the formula rate. IIEC Init. Br. at 51-53. Per his view, if that amount is exceeded

then ComEd can either stay at the ceiling amount in the formula rate or the Commission can initiate an investigation of the proposed amount. Gorman Dir., IIEC Ex. 1.0-C, 15:340-18:401; Gorman Reb., IIEC Ex. 2.0, 24:550-25:569.

IIEC's proposal should be rejected as without merit, unnecessary, and improper. ComEd Corr. Init. Br. at 112-113. Generally, where a cap or collar is authorized, it is stated in the law. *E.g.*, 220 ILCS 5/16-108.5(c)(5). However, under the formula rate structure, ComEd's delivery services rates otherwise are a function of its actual prudently incurred and reasonable costs. Under the formula rate process, the Commission can assess the prudence or reasonableness of these costs. Intervenors and Staff will have ample time to assess these costs, especially considering the limited range of issues (*i.e.*, there are no rate design or cost allocation issues) and the scope of costs (each case will concern only two annual periods). Further, because the tariff must use standardized calculations and transparent data, analysis should be easier. Hemphill Reb., ComEd Ex. 11.0, 31:655-32:680; Hemphill Sur., ComEd Ex. 20.0, 36:773-37:789. Moreover, regulatory expense, the first of the two subjects IIEC discusses in its Initial Brief here, is not even involved in the instant Docket, and there is no claim in this Docket that affiliate charges included in the revenue requirement, the second subject, are imprudent or excessive. Finally, IIEC's proposal is not consistent with the filing structure and process specifications of Section 16-108.5.

### **3. Performance Condition for Incentive Compensation Costs**

IIEC argues that ComEd should *only* be allowed to recover properly and fully recoverable costs of incentive compensation – essentially, costs tied to performance that benefits customers – if ComEd is also meeting the statutory multi-year performance benchmarks established under Section 16-108.5(f). This proposal is not sensible or legal.

It is not legal because Section 16-108.5(f) defines the specific consequences of a failure to meet a statutory metric. Those consequences are an enumerated and limited reduction in ComEd's calculated ROE. Nothing therein authorizes or permits disallowance of otherwise recoverable compensation costs. Moreover, the law unambiguously requires that these incentive compensation costs be recoverable without regard to performance on those metrics. Section 16-108.5(c)(4)(A) requires that the rate formula include recovery of incentive compensation expense that is based on the achievement of operational metrics ..." subject only to a "determination of prudence and reasonableness".

IIEC's proposal is also not sensible. Many of the metrics measure performance of a different type and in a different manner than the incentive compensation targets. It makes no sense, for example, and would be quite unjust to deny recovery of compensation costs incentivizing effective "budget controls" – expressly allowed by Section 16-108.5(c)(4)(A) – because ComEd did not achieve a performance metric under subsection (f) relating, for example, to unaccounted for energy. This proposal is simply another attempt to circumvent the directives of the EIMA and artificially and unjustly exclude prudent and reasonable costs of service from the revenue requirement. It should be rejected.<sup>18</sup>

#### **4. Other**

There are no other ratemaking process and filing issues raised by the parties at this time.

### **C. Reconciliation**

#### **1. Average Rate Base Proposals (see also III.C.1)**

AG/AARP, CUB, IIEC and Staff urge the Commission to adopt an "average rate base" approach in determining rate base in the reconciliations. AG/AARP Init. Br. at 65-70; CUB/City

---

<sup>18</sup> IIEC also uses its illegal incentive compensation proposal as the basis of a demand for premature filing of metrics data unrelated to the formula rates. IIEC Init. Br. at 51. That gambit should also be rejected.

Init. Br. at 41-43; IIEC Init. Br. at 18-26, 55; Staff Init. Br. at 7-8, 99-104. Their proposal is contrary to Section 16-108.5 and proper ratemaking, and would deny ComEd recovery of its actual costs, for the reasons discussed in ComEd’s Initial Brief (at 20-27, 114-117), in Section III.C.1 of this Reply Brief, and below.

Those intervenors and Staff make essentially three arguments in support of their proposal, although they are presented and characterized in multiple ways:

- (1) the applicable language of Section 16-108.5(c)(6) and (d)(1) permits the Commission to authorize use of either end of year figures or average figures for rate base items in the reconciliations;
- (2) an average rate base approach is more representative than final data of ComEd’s “actual costs” in the rate year, because averaging reflects changes in plant balances, the treatment of depreciation expense, and capital investments and return requirements during the year, and thus the average rate base approach is needed to avoid overstatement of rate base; and
- (3) the reconciliation adjustments, which include interest, prevent regulatory lag and adequately compensate the utility for the time value of the capital it invests in its system.<sup>19</sup>

Intervenors and Staff are wrong on all three points.

First, the intervenor and Staff interpretations of Section 16-108.5(c)(6) and (d)(1) in relation to this issue are incorrect given the plain language of the law, the choices made by the General Assembly about where to include provisions for averages, and the law of statutory

---

<sup>19</sup> AG/AARP acknowledge that this claim depends on the rate-setting revenue requirement including a full year of capital additions. *See* AG/AARP Init. Br. at 66-67. That assumes rejection of the IIEC “average” proposal for rate-setting purposes, discussed in Section III.C.1 of this Reply Brief.

interpretation, as ComEd has shown in its Initial Brief (at 20-24, 115-116) and in Section III.C.1 of this Reply Brief.

The intervenor and Staff Initial Brief discussions related to Article IX ratemaking do not support their position. Under the formula rate, with respect to both rate-setting and the reconciliations, costs are set based on historical data.<sup>20</sup> Staff acknowledges that end of year data is used in an historical test year rate case, although Staff with little explanation suggests that that is irrelevant to a reconciliation. *See* Staff Init. Br. at 103 and fn. 16. IIEC seeks to avoid this point by dismissing the relevance here of test year principles. *See* IIEC Init. Br. at 19. IIEC later argues that Article IX somehow supports its position, but what IIEC apparently means by that is nothing more than its view that the Commission should be persuaded by IIEC's factual arguments. *See id.* at 24-26. IIEC presents no meaningful argument that refutes either ComEd's evidence (*see* ComEd Corr. Init. Br. at 26-27) or Staff's recognition of how this issue would be decided under Article IX.

Second, the intervenor and Staff claims in their Initial Briefs about "actual costs" and potential overstatement of rate base also are wrong. Only the final data for the year as reported in ComEd's FERC Form 1 reports its "actual costs" for the rate year, and use of the average rate base approach would only set rate base far below ComEd's actual plant investment costs for the rate year. Year-end balances ensure that the most current cost and investment data populate the formula consistent with the statute. Intervenors and Staff present nothing new on this point, and all of their arguments on this point, including, but not limited to, their arguments based on the

---

<sup>20</sup> The only limited exception is that a portion of the projected plant additions are for a period occurring in the months after the filing of proposed rates for rate-setting purposes, but all of those additions will be in service by the time the rates go into effect in the following year, and this limited exception is not distinguishable from *pro forma* adjustments in an historical test year rate case. *See, e.g.*, 83 Ill. Adm. Code § 287.40.

fact that FERC Form 1's also contain data for the end of the prior year, and their various word games about whether year-end figures represent "activity" during the year (they certainly are the only numbers that represent the plant that went into service during the year), previously have been refuted. ComEd Corr. Init. Br. at 20 and fn. 12, 24-26, 115-116; and Section III.C.1 of this Reply Brief.

Finally, the intervenor and Staff arguments in their Initial Briefs that the rate-setting process combined with the reconciliation process will make ComEd whole, including for regulatory lag and the time value of money, present no new points and also previously have been shown to be erroneous. To begin with, as noted above, their arguments (except on IIEC's part) assume rejection of IIEC's average proposal relating to the rate-setting, discussed in Section III.C.1 of this Reply Brief. Setting that aside, however, the intervenor and Staff arguments fail to take into account correctly the undisputed facts regarding: when proposed rates are filed, which data from what periods are used to determine the rate-setting revenue requirement, when rates go into effect, when reconciliations are filed, which data from what period is used to determine the reconciliation revenue requirement, when reconciliation adjustments go into effect, and the attempts of intervenors and Staff to have reconciliation adjustments bear minimal or no interest. As ComEd has shown, the data and the timeline, when they are taken into account, mean that ComEd, even with an end of year rate base, never will recover on any plant that is not yet in service, and will not be made whole for the lost time value of money. ComEd Corr. Init. Br. at 24-27, 114-115, 116-17, and Section III.C.1 of this Reply Brief.

The intervenor and Staff proposal must be rejected under the law and in order to prevent the reconciliation from being a machine that continually prevents ComEd's from recovering its actual plant investment costs.

**2. Interest Rate Proposals**

ComEd's Initial Brief (at 117-120) already addressed and refuted the arguments raised by Staff's Initial Brief (at 104-107), AG/AARP's Initial Brief (at 70-71), CUB/City's Initial Brief (at 43-45) and IIEC's Initial Brief (at 55-57) regarding the interest rate proposals.

**3. Regulatory Asset / Deferred Expense Recommendation**

There are no Regulatory Asset / Deferred Expense Recommendation issues raised by the parties at this time.

**4. Other**

There are no other reconciliation issues raised by the parties at this time.

**D. Other Proposals and Positions Regarding Formula, Tariff Schedules and Attachments, and Processes**

ComEd has certain corrections to Appendix B to Staff's Initial Brief, which involves Staff's proposed language for formula changes. The following remarks are not intended to indicate views or arguments on the merits, but simply are comments on tariff implementation in the event the applicable Staff position is approved. As a general matter, although most of the formulaic changes Staff suggests in Appendix B work mechanically, ComEd does not agree, with limited exceptions, that they are needed, because ComEd does not agree with the underlying revenue requirement changes.

- Staff's proposed adjustment to remove the calculation of jurisdictional uncollectible costs on APP 7 references the wrong lines (they suggest deleting lines 23 through 25), but the correct deletion, if their position is accepted by the Commission, would be Lines 24 – 26).

- Staff’s proposed change to the pension asset calculation would allow for a negative value to be used in the return on pension asset calculation. In a Staff response to a ComEd data request, Staff noted that the intent was to not allow this amount to go below \$0, which otherwise would lead to negative return for return on pension asset. (FR C-3, line 1 “Pension Asset”). This line needs to be at least footnoted that it should not go below \$0.
- Staff’s recommended change to lines 5-17 of Sch FR A-4 should be to lines 5-16.
- Staff recommends adding two new lines above current line 1 in Sch FR C-3. That would make Sch FR C-3 nine lines instead of the current seven. Sch FR C-1 would have to be revised to reference Sch FR C-3 line 9 instead of line 7 to get the correct figure.
- Staff makes several other suggestions which refer to work papers using designations which refer to the schedules unnecessarily. For example, instead of using the term “WP 14” as ComEd does in the formula, Staff uses the longer term “Sch. FR D-1 WP 14”. Perhaps Staff included the additional information in the Appendix B for clarity, but the shorter form of the references should be used.
- Staff’s proposed changes to the formula relating to the methodologies for G&I plant functionalization of recalculation of the W&S allocator work mathematically independent of each other, but, when combined, they overlap, and result in double-counted reductions of approximately \$500,000. The difference can be seen by comparing Staff’s Initial Brief’s Appendix A, which was prepared in a different manner.

ComEd does agree:

- As to APP 7 Lines 24-26: If the Commission agrees with Staff that all uncollectibles should be recovered through Rider UF, then deleting these lines should not matter.
- As to FR A-3: Adding a new line for uncollectible expense. This is appropriate if the Commission decides \$0 goes through delivery service base rates.

## **IX. OTHER**

### **A. Distribution System Loss Study**

ComEd’s Initial Brief already addressed the arguments raised by Staff’s Initial Brief (at 108) and DOE’s Initial Brief (at 2-3) regarding the Distribution System Loss Study. ComEd’s Int. Br. at 121-122. ComEd will not repeat those arguments here.

For the first time in its Initial Brief (at 4-8), the Commercial Group argues that because the Distribution System Loss Study is a rate design/class cost of service issue and this is not the proceeding to address the latter issues (*see* Section VII.A of this Reply Brief), then the Commission should approve the distribution system losses approved in *ComEd 2010*. Commercial Group argues that ComEd incorrectly updated those losses using 2010 class load data in ComEd Ex. 7.1. While ComEd agrees that Study Report #7B (ComEd Ex. 27.1) should not be used (*see* ComEd Corr. Init. Br. at 121-122), ComEd properly updated the Distribution System Loss Study approved in *ComEd 2010* for 2010 class load data, data that reflects the relevant year for this purpose in this proceeding. Born Reb., ComEd Ex. 18.0, 2:20-29.

Alternatively, the Commercial Group (Init. Br. at 4-8) argues that if the Commission determines that the studies ordered pursuant to the *ComEd 2010* Order may be applied here as it is “the next rate case,” then the Commission should use the distribution loss factors developed in Study Report #3, which is the Distribution System Loss Study that segregates secondary and service conductor loss. However, this alternative should be rejected. There is simply nothing in the record supporting use of this study. In fact, the Report is not even in the evidentiary record.

**B. Study Reports #2, 3, and 5**

ComEd’s Initial Brief (at 122-123) already addressed the arguments raised by CTA and Metra’s Initial Brief (at 4-8) and Staff’s Initial Brief (at 108-109) regarding Study Report #2, the allocation of primary voltage costs for Railroad and Extra Large Load Class Customers; Study Report #3, the Distribution System Loss Study that segregates secondary and service conductor losses; and Study Report #5, the report that analyzes the use of Railroad customers’ traction power facilities.

CTA and Metra, in their Initial Brief (at 3, 7), argue that there should be an extension of the due date for Study Report #5, a report that is not even in the record in this proceeding.

However, the record in this proceeding lacks support for any claims as to the merits of Study Report #5. As ComEd has already committed to continuing discussions with CTA and Metra on a number of topics, and it now appears that CTA and Metra would like more time to consider this report, ComEd does not object to setting a supplemental filing date whereby ComEd would provide an update to the report following discussions among ComEd, CTA and Metra.

**X. CONCLUSION**

For all reasons appearing of record and herein, the Commission should approve ComEd's filing, subject to those corrections and revisions, and proposals to narrow the issues, made in its rebuttal and surrebuttal testimony.

Dated: April 10, 2012

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 

One of its attorneys

Thomas S. O'Neill  
Senior Vice President & General Counsel  
COMMONWEALTH EDISON COMPANY  
440 S. LaSalle Street, Suite 3300  
Chicago, Illinois 60605  
(312) 394-5400  
thomas.oneill@exeloncorp.com

Anastasia M. O'Brien  
Richard G. Bernet  
10 S. Dearborn Street, Suite 4900  
Chicago, IL 60603  
(312) 394-5400  
anastasia.obrien@exeloncorp.com  
richard.bernet@exeloncorp.com

G. Darryl Reed  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, Illinois  
(312)853-7000  
greed@sidley.com

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

David Stahl  
Ronit Barrett  
EIMER STAHL LLP  
224 South Michigan Avenue, Suite 1100  
Chicago, Illinois 60604  
(312) 660-7600  
dstahl@eimerstahl.com  
rbarrett@eimerstahl.com

Attorneys for Commonwealth Edison Company