

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
:
: 11-0721
Formula Rate Tariff and Charges Authorized by Section :
16-108.5 of the Public Utilities Act. :

REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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April 10, 2012

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REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

I. INTRODUCTION/STATEMENT OF THE CASE

Illinois Industrial Energy Consumers (“IIEC”)¹ present this Reply Brief in response to certain issues raised, and arguments made, by Commonwealth Edison Company (“ComEd” or “the Company”), the Illinois Commerce Commission Staff (“Staff”), the Illinois Attorney General and AARP (“AG/AARP”), the Commercial Group (“CG”), and the Chicago Transit Authority and Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra (“CTA/Metra”) in their Initial Briefs (“Brief” or “Briefs”).

IIEC’s lack of response to the Brief or arguments of any party should not be considered acceptance of, or agreement with, that Brief or argument, unless specifically stated otherwise herein. IIEC’s failure to revisit any issue in its Reply Brief raised in its Brief, should not be considered an abandonment of that issue.

A. Undisputed Governing Legal Precepts

As to important legal mandates that govern the Commission’s determinations in this case, it appears that ComEd agrees with IIEC (at least rhetorically, if not in its application). ComEd recognizes the clear statutory mandate for, and the importance of, the application of Article IX of

¹ Abbott Laboratories, Inc., Caterpillar Inc., Chrysler Corporation, Corn Products International, Inc., Enbridge Energy, LP, General Iron Company, Sterling Steel Company and Thermal Chicago

the Public Utilities Act (220 ILCS 5/9-101 *et seq.* (“Article IX” and “PUA”) in Commission determinations of ComEd’s actual, prudent, and reasonable costs for use as inputs to the formula rate.

As underscored in numerous passages of Section 16-108.5, the General Assembly unambiguously preserved the duty of the Commission to review the prudence and reasonableness of costs and ensure the accuracy of cost and revenue data. Indeed, the law directs that “[t]he Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this [Section 16-108.5](c) and the provisions of Article IX of this Act to the extent they do not conflict with this [Section 16-108.5](c).” 220 ILCS 5/16-108.5(c). (ComEd Br. at 2).²

Also:

[U]nder 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. (*Id.* at 112).

ComEd’s formula tariff and initial rates are expressly subject to the same Article IX regulatory review required of the Commission in traditional general rate cases. (220 ILCS 5/16-108.5(c)).

ComEd also accepts that Section 16-108.5’s “mandatory emphasis on standardization and transparency does not sacrifice Commission oversight.” (ComEd Br. at 2).

Consistently, the formula rate statute itself plainly states its overarching objectives, which inform the correct interpretation of its language and the proper determination of all formula rate cost inputs. In particular, the statute provides that:

² All references to ComEd’s Brief are to its Corrected Brief.

The performance-based formula rate approved by the Commission shall do the following: (1) Provide 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) (emphasis added)).

However, the principles ComEd embraces in its introductory remarks are too frequently abandoned when applied to specific cost issues.

B. ComEd Inconsistencies

As to cost of service issues in this case, the formula rate statute (Section 16-108.5) incorporates the legal substance of past decisions by requiring that determinations of ComEd's prudent and reasonable costs be "consistent with Commission practice and law" and made in accordance with the non-conflicting provisions of Article IX of the PUA. (220 ILCS 5/16-108.5(c)).³ ComEd's prudent and reasonable costs, as determined by the Commission in this case, also must be "based on its most recently filed FERC Form 1," which is defined as the source of the raw data for formula rates. (*Id.*).

However, it is clear from ComEd's Brief that the Company's arguments based on the asserted inviolability of (or a reliance on) the formula rate statute itself, the Commission's most recent statement of its practices (*Re Commonwealth Edison Co.*, ICC Dkt. 10-0467, Order, May 24, 2011 ("*ComEd 10-0467*")), or ComEd's FERC Form 1 are not to be taken seriously. ComEd

³ As to cost allocation and rate design issues, which will be addressed in a later case, "the Commission's most recent order regarding the participating utility's request for a general increase in its delivery services rates" controls. (220 ILCS 5/16-108.5(c)).

repeatedly ignores those standards, to propose alternatives the Company prefers that also are inconsistent with an applicable standard.

When ComEd does emphasize one of these legal standards as controlling, it is to reject another party's proposal or to laud a position of its own that happens to be consistent. ComEd's position is essentially that applicable legal provisions constrain other parties, but not ComEd. That self-serving flexibility undermines all of ComEd's arguments, whether they rely on or reject consistency with relevant standards.

The Briefs of other parties highlight ComEd's self-serving inconsistencies with undeniable clarity.⁴ Attached to this reply brief (as Attachment A) is an incomplete two-page list of instances identified by other parties where ComEd has treated pertinent directives as less than mandatory, while simultaneously arguing that they absolutely preclude proposals by other parties. Among those instances of inconsistent applications of governing law are some that relate directly to IIEC proposals.

For instance, with respect to the determination of ComEd's rate base, ComEd acknowledges the words of the formula rate statute, but in its application of the statute, ComEd's flexible interpretations supplant statutory language with the Company's preference for end-of-year

⁴ Staff summarized ComEd's approach in the context of Staff's capital structure discussion:

[I]n essence, the Company's position is 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 determines otherwise. (Staff Br. at 69).

investment as the basis for calculating its actual capital costs for the rate year. ComEd also ignores the statute's "consistent with Commission practice and law" requirement, where it might alter the Company's proposed rate base. However, as IIEC explained in its Brief, both Commission practice and the provisions of Article IX bar the excessive rate base ComEd proposes. (IIEC Br. at 17-26).

Other instances of deviations from governing directives relate to proposals by other parties. ComEd alleges that "Staff and intervenors advance proposals that undermine or disregard the core features of the formula rate and the statute itself," and that the proposals would "artificially defer or even exclude actual costs." However, ComEd does not identify specific proposals that fit its accusations and violate the law.⁵ (ComEd Br. at 4). ComEd ignores that the statutory phrase "actual costs" is expressly qualified in nearly every specific instance (and generally by the statute's overarching objective) to include only prudent and reasonable costs, as determined by the Commission. (220 ILCS 5/16-108.5(c)).

ComEd also argues that intervenors' proposals would "make cost recovery less timely, less certain, and even less adequate than it was under Article IX." (ComEd Br. at 5). In fact, intervenors are asking only that ComEd's proposals not be accepted without the mandated regulatory review and that the Commission subject ComEd's proposals to the scrutiny that is explicitly required by the formula rate statute. (220 ILCS 5/16-108.5(c)). Generally, intervenors propose that the Commission disallow costs they allege are not actual, prudent and reasonable costs under the law. ComEd's

⁵ Non-specific ComEd allusions that appear to refer to IIEC proposals are addressed in the sections of this brief relating to those specific issues.

arguments proceed from an assumption that actual costs are what the Company proposes, not what the Commission finds based on the record evidence. (220 ILCS 5/10-103).

ComEd complains broadly that intervenors' proposed cost determinations "are not remedied or only partially and inadequately remedied by the reconciliations. . . ." ⁶ (ComEd Br. at 5). The design and operation of the reconciliation process is not the fault of intervenor parties in this case. And there is no fault in a denial of recovery where the Commission finds the Company's proposed costs are improper. ComEd's desires do not diminish the Commission's duty to determine the Company's prudent, reasonable costs, based on FERC Form 1 data and other record evidence, in its Article IX review. (220 ILCS 5/16-108.5(c); 220 ILCS 5/10-103).

II. OVERALL REVENUE REQUIREMENT

IIEC does not address any issues in this section.

III. RATE BASE

A. Overview

IIEC made three proposals designed to improve the accuracy of the Commission's rate base determination – use of an average year rate base, correction of the calculation of the Company's CWC collection lag and the revenue lag associated with pass-through taxes, and recognition of accumulated deferred income taxes ("ADIT") related to ComEd's plant additions. (*See* IIEC Br. at 17-26, 27-29 and 31-35, respectively). ComEd does not dispute that a more accurate measurement

⁶ The disconnect between reconciled revenue requirements and rates and the revenues actually collected by ComEd is discussed in IIEC's Brief at page 15, Fn. 7.

of rate year costs would minimize reconciliation adjustments (which is desirable) and would better meet Article IX tests (which is required). (*See* Hemphill, Mar. 7 Tr. at 138, 140). Yet, ComEd opposes IIEC’s proposals, for reasons that are shown below to be without merit.

At no point does ComEd contest that the Commission’s Article IX review must determine a rate base that is prudent, reasonable, and providing delivery service. The record evidence establishes that an average year rate base is the best available measure (based on FERC Form 1 data) of the investment ComEd actually uses to provide service during the rate period for which costs are being determined. ComEd identifies no evidence to the contrary in this record.

Similarly, there appears to be no dispute that recognizing the ADIT related to ComEd’s plant additions will also reduce the reconciliation adjustment that will be required to match ComEd’s actual costs with the revenue requirement determined in this case. (*See, e.g.*, Effron, Mar. 12 Tr. at 713-715, 723). Finally, while ComEd disputes the improved accuracy of IIEC’s criticisms of and corrections to its CWC calculation, ComEd does so without having collected the data necessary for a precise determination of its CWC needs. (Hengtgen, ComEd Ex. 16.0 at 10:195). These points are discussed in greater detail below.

C. Potentially Contested Issues

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

ComEd complains that “[a]lthough it is undisputed that the FERC Form 1 contains final end of year balances, IIEC nevertheless proposes that the formula rate should instead use an ‘average’ rate base.” (ComEd Br. at 9). IIEC’s case for using an average year rate base measure of the

prudent and reasonable investment ComEd actually used to provide service during the rate year was discussed in IIEC's Brief. (IIEC Br. at 17-26). ComEd's Brief presents nothing that requires a revision of IIEC's position. In this Reply Brief, IIEC refutes the various arguments ComEd presented, which have been grouped by common theme for ease of reference.

a. ComEd's Arguments

The Statutory Objective.

The performance-based formula rate approved by the Commission shall do the following: (1) Provide 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)).

ComEd opposes use of an average year rate base, which was found appropriate by every commenting party other than ComEd, as the most accurate available measure of ComEd's lawful rate base. ComEd has argued that its year-end figure is better. But ComEd asks its year-end measure to perform different functions, ones that do not satisfy the formula rate objective quoted above.

First, ComEd praises its year-end rate base as the better measure of ComEd's "activity" during the rate year. ComEd clearly knows that "activity" and "investment" are distinct concepts, and are not the same amounts. When asked whether the year-end balance accurately represents the balance of plant ComEd actually had in service for the entire year, ComEd's Mr. Hemphill answered:

No, it is the plant that was in service at the end of that year. So it represents that year's activity, if you will, in terms of total investment. (Hemphill, Mar. 7 Tr. at 65).⁷

Thus, ComEd concedes that the year-end amount does not accurately reflect the Company's investment devoted to providing service throughout the year and that the correct formula rate input is the investment ComEd actually used to provide service during the rate year. (Hemphill, Mar. 7 Tr. at 142; *also see* 220 ILCS 5/9-211).

Second, ComEd appears to argue that its year-end rate base better reflects costs during the period "when the rates being set will be in effect." (ComEd Br. at 27). But that is not the rate period whose costs formula rates are intended to recover. (220 ILCS 5/16-108.5(c)).

Third, ComEd contends that its proposal to use a year-end rate base amount replicates a historic test year case, despite having declared that test year concepts are inapposite to a formula rate proceeding. (ComEd Br. at 26; Hemphill, ComEd Ex. 11.0 at 6:115-116 ("test year rules have little or no remaining application in the annual formula ratemaking world")). But not one of these functions matches the expressly stated objective of the formula rate statute.

ComEd's lead witness has hailed the superiority of a more accurate measure of rate base to avoid swings in reconciliation adjustments. (Hemphill, ComEd Ex. 20.0 at 8:162-168; Mar. 7 Tr. at 138, 140). He also essentially concedes the necessity of meeting the just and reasonable requirements of Article IX review. (Hemphill, Mar. 7 Tr. At 86). Most important, at least with respect to the rate base input to the formula rate, Mr. Hemphill acknowledges that "ComEd is

⁷ ComEd admitted, however, that year-end rate base is not even an accurate measure of its "activity" during a given year. (Hemphill, Mar. 7 Tr. at 119-120).

entitled to earn only on the investment used to provide service.” (Hemphill., Mar. 7 Tr. at 141-142; *see*, 220 ILCS 5/9-211). The record establishes that the best measure of that rate year investment devoted to providing service, based on FERC Form 1 data, is the average of the investment amounts shown for the beginning and end of the year on that form.⁸

Statutory Language. ComEd’s principal argument against an average rate base is that the formula rate statute bars use of any rate base amount other than the FERC Form 1 end-of-year figure. (ComEd Br. at 20-21). ComEd alleges that “[t]he costs at issue in this case are limited to two – and only two – categories: “(i) ‘final data’ regarding 2010 costs based on the 2010 FERC Form 1, and (ii) 2011 projected plant addition costs and correspondingly updated depreciation reserve and expense.”⁹ (ComEd Br. at 8). As IIEC explained in its Brief, ComEd has attempted to graft a specialized meaning (year-end data) onto the phrase “final data” in the statute’s filing requirements, in an attempt to supplant the ordinary meaning of those words and to legitimize a more favorable formula rate input. (IIEC Br. at 17-26).

ComEd’s argument also improperly transforms what is clearly a filing requirement to an immutable formula input. ComEd’s year-end rate base argument rests on a single portion of the

⁸ ComEd’s comment that “the reconciliation revenue requirement for actual 2012 will reflect the average of the rate base as of the end of 2011 and the end of 2012” (ComEd Br. at 115) is merely a rhetorical alternative description of the January 1 and December 31 amounts for 2012, as the end of one year is the same as the beginning of the following year.

⁹ ComEd also would severely constrain the Commission’s determination of a prudent reasonable, and lawful rate base by construing the statute in a way that assures inaccurate measurement of investment dedicated to providing service by ignoring the effect of ADIT on rate base. This issue is examined in Section III.C.5.(a). below.

statute: “The utility shall file, together with its tariff, final data based on its most recently filed FERC Form 1” (220 ILCS 5/16-108.5(c)(6)). First, the provision is simply a filing directive. Like the Commission’s Part 285 filing requirements, the formula rate filings provide data for, but are not themselves, the Commission’s determination of prudent, reasonable costs. (Gorman, IIEC Ex. 1.0-C at 3-4:64-70). Second, that language obviously specifies neither a “year-end” rate base amount nor an “average” rate base amount. Either quantity can be determined from data appearing on the FERC Form 1. (Gorman, IIEC Ex. 2.0 at 3:68-76). Third, by its terms, the phrase does not require that rates be set using the particular numbers appearing on the FERC Form 1 or filed with the Commission. The formula rate inputs need only be “based on” such data and subject to the Commission’s Article IX review and modification. Fourth, the substantive core of ComEd’s argument comprises a specialized meaning and a broader application for this filing requirement. However, neither appears anywhere in the formula rate statute. (*See generally* 220 ILCS 5/16-108.5). The ordinary meaning of the words used suggest a different meaning.

The filing requirement – “final data based on its most recently filed FERC Form 1” – appears on its face to require data that is (a) no longer subject to revision, (b) based on what the Company submitted to FERC, and (c) shown on its most recent Form 1. In numerous places in the legislation enacting the formula rate, the word “final” is given that ordinary meaning, not ComEd’s self-serving “end-of-year” definition. (*See, e.g.*, 220 ILCS 5/16-108.5(d)(3) (“The Commission’s determinations . . . shall be final upon entry”); 220 ILCS 5/16-108.5(e) (“incorporate the findings of any final rate design orders of the Commission”); 220 ILCS 5/16-108.6(e) (“Following the date of a

Commission order approving the final annual report or the date on which the final report is deemed accepted”). Instead, ComEd injects additional meaning that the General Assembly did not, reading the phrase as requiring the particular end-of-year figures ComEd has selected from its FERC Form 1. That specialized meaning would conflict – unnecessarily – with the statute’s objective. (*See* IIEC Br. at 21, 32; *also* 220 ILCS 5/16-108.5(c); 220 ILCS 5/9-101 *et seq.* (PUA Article IX)).

The formula rate statute clearly states the over-arching objective of the formula rate process as the recovery of the utility's actual, prudently incurred and reasonable costs of delivery services consistent with Commission practice and law. (220 ILCS 5/16-108.5(c)). ComEd’s reading of the statute would pervert that mandate and hinder the Commission’s effort to determine ComEd’s costs lawfully and most accurately.

Since the portion of the filing provision ComEd relies upon does not specifically require (or even mention) either a “year-end” or an “average year” rate base, the legislature’s plainly stated statutory objective must control as to the meaning properly given to the language of the statute. The statute must be construed to give effect to the intent of the legislature. (*Gibbs v. Madison County Sheriff’s Dep’t*, 326 Ill. App. 3d 473, 476, 760 N.E.2d 1049, 1051 (5th Dist. 2001), appeal denied, 198 Ill. 2d 614, 264 Ill. Dec. 324, 770 N.E. 2d 218 (2002). The “terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out.” (5 ILCS 70/1.01 (Ill. Stat. on Statutes)).

ComEd also comments that “[t]he General Assembly knows how to direct use of an average in the Act, including with respect to rate base in general and capital investments in particular.” (ComEd Br. at 22, 116). The General Assembly knows equally well how to designate an end of year

requirement - - when it intends that meaning. Where the General Assembly intended an end of year requirement in the formula rate statute itself, it did so in unambiguous language. (220 ILCS 5/16-108.5(c)(4)(D)) (“long-term debt cost of capital as of the end of the applicable calendar year”). End of the year is also clearly indicated in other parts of the PUA -- where the legislature intended the use of that end of year data. (*See, e.g.*, 220 ILCS 5/21-1101 (“a report that includes, based on year-end data,”). The General Assembly simply did not do so with respect to the FERC Form 1 data from which the Commission must determine ComEd’s lawful and appropriate rate base.

ComEd argues that the Commission may not impose unstated requirements on public utilities. (ComEd Br. at 23-24). However, the Article IX determination of rate base that intervenors seek in this case is a duty the Commission has performed for decades, and one that the formula rate statute expressly preserves. (220 ILCS 5/16-108.5(c)). ComEd also alleges a constitutional violation, based on its claim that the Company is denied “the opportunity to obtain full recovery of its prudent and reasonable costs of service, including its costs of capital.” (ComEd Br. at 24). However, the question at issue here is “What are ComEd’s prudent and reasonable costs of service?” And ComEd’s argument assumes that the answer must be the FERC Form 1 year-end rate base it prefers.

Statutory Functions. Even though the formula rate statute requires reconciliation only of estimated and actual revenue requirements (dollar amounts) for each rate period, ComEd continues to argue that the formula rate implementation (process) in this unique first proceeding must be the template for future applications of the formula. (See Houtsma, ComEd Ex. 12.0 at 32:712-714; ComEd Br. at 115). According to ComEd, the importance of this first formula rate proceeding cannot be overstated. (ComEd Br. at 9). ComEd asserts that “the Commission is setting a standardized

formula rate structure that will be employed for years to come.” (*Id.*). For that reason, IIEC has cautioned the Commission that a decision made with only this case in mind may have unintended consequences. IIEC’s proposal for determining ComEd’s lawful rate base addresses that possibility.

ComEd points to the effects of its election to file this formula rate case near the end of 2010 (instead of in 2011), the distinctive data inputs required by the Company’s filing decision, and the statute’s unique initial filing provisions as an indictment of IIEC’s average rate base proposal. (See ComEd Br. at 116). One of those effects is an extended period for completion of the reconciliation process. That effect is attributable to the design of the formula rate statute and ComEd’s filing date, not an average year rate base. However, the use of an average rate base can avoid egregious overstatements of ComEd’s rate base for specific rate periods, in this proceeding and in future reconciliation proceedings.

ComEd asserts that use of an average year rate base conflicts with “how the formula rate rate-setting and revenue requirement process works.” (ComEd Br. at 24-25). But “how the formula rate rate-setting and revenue requirement process works” is something the Commission – not ComEd – will determine, in this case. How ComEd wants the statute to work is not the standard.

ComEd similarly claims that IIEC’s proposal will “cut in half” ComEd’s projected additions to its existing rate base made over the course of the rate year. Initially, recall that the investment actually providing service during the pertinent rate year -- not a summation of “activity” at the end of the year -- is the proper formula rate input. “ComEd is entitled to earn only on the investment used to provide service.” (Hemphill., Mar. 7 Tr. at 142; *see also* 220 ILCS 5/9-211). In addition, ComEd’s argument is meaningless unless one assumes – ahead of any Commission analysis or finding – that the

end of year amounts ComEd proposes to use are, in fact, the correct quantification of its projected additions to the plant providing service over the relevant period. Otherwise, nothing is “cut in half.”

ComEd suggests the rate base input to formula rates should capture its investment “activity” rather than its used and useful investment. (ComEd Br. at 20, 25). Section 9-211 of the PUA does not permit that distortion of permissible rate setting investment amounts. (220 ILCS 5/9-211). IIEC and other parties have established that the highest level of investment in a rate year is not an accurate measurement of ComEd’s actual investment used to provide service during that period. Reducing excessive rate base proposals is not inconsistent with the formula rate statute.

ComEd dismisses “concerns that . . . year-end rate base will cause ComEd to over earn the intended return on equity” in coming years. The Company asserts that the concerns are unfounded because of “how the process actually works.” (ComEd Br. at 116). IIEC interprets ComEd’s reference here to be to the statutory earnings collar, which actually provides considerable latitude in ComEd’s permissible earnings. Over-collections from distorted rate base costs, for example, are possible, and the statutory reconciliation of revenue requirements and rates (but not revenues) does not provide a way for ratepayers to recoup over-collections. Using an average rate base is simply the best way to establish rates that will match ComEd’s actual prudent, and reasonable costs as closely as possible, to avoid an “increase [in] the aggregate error term and hurt customers and utilities alike” (Hemphill, ComEd 20.0 at 11:221-222).

Initial and Reconciliation Proceedings. Like its testimony, ComEd’s Brief refuses to acknowledge that the formula rate statute contains distinctive procedures for this initial formula rate proceeding and the first reconciliation proceeding. (*See, e.g.*, 220 ILCS 5/16-108.5(c) (“After the

utility files its proposed performance-based formula rate structure and protocols and initial rates . . .”); 220 ILCS 5/16-108.5(d)(1) (“Provided, however, that the first such reconciliation shall be” and “(B) for the first such reconciliation only,”).

For example, ComEd complains that IIEC’s proposal for a more accurate measure of its rate period rate base is “flawed” because the reconciliation process “denies” ComEd cost recovery until 2014. (ComEd Br. at 25). The formula rate statute defines a new process, which defines recovery periods, the effective periods of formula rates and provides interest on any delayed recovery. However, the Company is not permitted to recover more than its actual costs during the relevant rate period, regardless of when reconciliation is complete. ComEd’s complaint recalls utility arguments that the Commission should artificially increase rate bases to offset regulatory lag because rates would be in effect for a future period. As the Appellate Court held in recent appeals of Commission orders, the Commission cannot lawfully inflate rate base above the ceiling established by Section 9-211 – the value of its prudently incurred investment that is actually used to provide service. (220 ILCS 5/9-211; *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 405 Ill. App. 3d 389, 405 (2nd Dist. 2010)); *Ameren Illinois Company v. Ill. Commerce Comm’n*, Nos. 4-10-0962, 4-10-0976, 4-11-0075 cons., 2012 Ill. App. LEXIS 175, ¶ 89-¶ 90) (Ill. App. Ct. 4th Dist. Jan. 10, 2012)).

Test Year Arguments. As in its testimony, when ComEd is unable to find support in the applicable statutory language ComEd’s brief turns to test year arguments. Though ComEd declared test year concepts irrelevant in this case, they are quickly raised when ComEd needs them. (*See* ComEd Br. at 26). For instance, at one point, ComEd observes:

Both Article IX historic test year cases and this formula case share a single critical attribute: rates will become effective after the costs have been incurred. And because an end of year rate base was deemed proper in the former, it is equally proper here. (ComEd Br. at 26).

From this, the Company draws an inapt conclusion, commenting that “IIEC’s witness Mr. Gorman eventually admitted that an end of year rate base would better reflect costs in 2012 when the rates being set will be in effect, although he still tried to rationalize his proposal.” (ComEd Br. at 27). The Company’s costs during the period rates are in effect are statutorily irrelevant to setting rates to recover costs for a different period. ComEd's argument is, in essence, that its proposal is a better measure of ComEd's actual costs in a period after the period the formula rate is supposed to measure. Mr. Gorman’s rejection of that reasoning was not a rationalization; it was the only rational response, and unlike ComEd’s argument, it is consistent with the objective of the formula rate.

Setting rates for the period when rates will be in effect is a test year ratemaking objective. In test year cases, rates are meant to be in effect for an indefinite period (possibly years into the future) and retroactive adjustments are prohibited. Under the formula rate regime, neither of those things is true. In fact, the opposite circumstances are mandated by the statute. The formula rates are set to recover costs for a particular rate year, they will be in effect for only one year (or less), and there will be a retroactive adjustment to match the formula rate (initial rate plus reconciliation charge) with ComEd's actual, prudent and reasonable costs during the rate period.

ComEd rejected the test year approach when it elected to become a Participating Utility under Section 16-108.5. (220 ILCS 5/16-108.5(c)). ComEd thus contradicts the formula rate setting scheme it chose and its arguments against other parties, by making test year arguments only when they are advantageous.

ComEd-Staff Agreement. ComEd also argues that “the IIEC ‘average’ proposal also is contrary to the ComEd-Staff agreement on how to calculate the updating of the depreciation reserve.” (ComEd Br. at 17, 27). First, the non-unanimous ComEd-Staff agreement has no legal evidentiary significance, is irrelevant to the Commission’s adjudication of this case, and cannot be lawfully be relied upon as a basis for a Commission decision. *Business and Professional People for the Public Interest v. Ill. Commerce Comm’n*, 555 N.E. 2d 693, 700, 702; 136 Ill. 2d 192, 209-210, 212 holding that all parties must agree to a settlement and the Commission must base its decision on the record, not on a settlement among some of the parties. Second, this Staff-ComEd agreement proposes that the Commission set rates using a rate base that is inflated above the “value of investment prudently incurred and used and useful in providing service.” (220 ILCS 5/9-211). Section 9-211 is a provision of PUA Article IX, which was continued by express direction in the formula rate statute. That provision denies the Commission authority to use an excessive rate base (no matter how it was produced) to set rates.

4. Cash Working Capital Issues

ComEd argues that its cash working capital (“CWC”) requirement is based on a proper lead/lag study “similar” to the one approved by the Commission in ComEd’s last rate case, *ComEd 10-0467*. (ComEd Br. at 38). ComEd observes that it has made three changes to the study in this case.

According to ComEd, the first change was ordered by the Commission in *ComEd 10-0467*, and the second and third changes were designed to make the lags and leads for certain pass-through tax items more accurate. (*Id.* at 38).

IIEC has identified flaws in the ComEd lead/lag study associated with the calculation of the collection lag (32.34 days) used by the Company to calculate its overall revenue lag of 51.25 days. (IIEC Br. at 27-29). IIEC supports further study and analysis of ComEd's approach to calculate its CWC requirement and in the meantime, supports AG/AARP witness Brosch's proposal for a 46.08 day revenue lag. (Brosch, AG/AARP Ex. 1.0 at 29:618). IIEC also pointed out the inappropriateness of changing the revenue lag assigned to energy assistance charges/renewable energy charges (EAC/REC) and gross receipts taxes and municipal taxes (GRT and MUT) from zero-days approved in *ComEd 10-0467* to 51.25 days in this case. (*Id.* at 29-31). IIEC addresses ComEd's argument regarding the revenue collection lag and the pass-through taxes and charges below.

a) Revenue Collections Lag

ComEd makes several arguments in support of its 32.34 day collection lag. First, ComEd suggests that it uses a midpoints methodology approved by the Commission in *ComEd 10-0467* and other proceedings. (ComEd Br. at 38). Second, ComEd suggests that it incorporated a grace period into its calculation of the revenue lag, which made the lag 9.1 days shorter than it would have otherwise been. (*Id.*). Finally, ComEd argues that the IIEC and AG/AARP proposals for additional studies of this topic are not warranted. (*Id.* at 39). The Staff indicates that it did not take issue with ComEd's revenue lag calculation and has no reason to endorse a study or investigation of the collection lag. (Staff Br. at 33). IIEC disagrees with ComEd and the Staff.

First, while the Commission may have approved a methodology similar to the midpoints methodology approved by the Commission in *ComEd 10-0467*, that result is not controlling here. It does not appear, from a review of the Order in *ComEd 10-0467*, that the Commission actually considered the appropriateness of a revenue collection lag based on an accounts receivable analysis that included billed revenues “that would never be collected by the Company (uncollectibles). (See *ComEd 10-0467*, Order at 42-48). However, in this case, IIEC witness Gorman, ComEd witness Hengtgen and others agree that ComEd’s accounts receivable analysis in this case includes revenues that will never be collected.” (Gorman, IIEC 2.0 at 14:227-330; Hengtgen, ComEd Ex. 16.0 at 6:108-109; Brosch, AG/AARP Ex. 1.0 at 28-29:601-628; Smith, CUB Ex. 1.0 Revised at 31-32:687-701). In addition, to the extent that a flaw is detected in a previously accepted methodology, reliance on a prior Commission endorsement cannot sustain a position not otherwise supported by the record. Continuing to support the flawed methodology would violate the PUA (220 ILCS 5/10-103), and it would not produce just and reasonable rates.

Because the circumstances here are different from the circumstances in *ComEd 10-0467*, an analysis of ComEd’s methodology by the Commission is warranted.

Second, ComEd itself acknowledges that the study approved in the last case could be more accurate when it proposes changes to that study to improve its accuracy. (ComEd Br. at 38). Other than ComEd’s own wish that the Commission not examine the accuracy of the Company’s study further, ComEd does not identify a single credible reason why the Commission should refuse to study the matter any further.

Third, ComEd's argument that it has incorporated a grace period into its calculation, and thereby understated its collection lag, is not persuasive. The use of a grace period does not mean that the Commission need not consider ComEd's inclusion of billed revenues that will not be collected (uncollectibles) in its aged accounts receivable analysis. The fact that, despite the grace period, ComEd's revenue collection lag is greater than it would have otherwise been – because of the inclusion of uncollectibles in its analysis -- justifies further review and analysis by the Commission. (Gorman, IIEC Ex. 2.0 at 16:331-346).

Fourth, ComEd (and the Staff) continue to overlook or downplay the undeniable fact that ComEd's proposed collection lag exceeds the 21 day period in which customers have to remit their bill payments by a little over 11 days (32.34 days vs. 21 days). (*See*, Gorman, IIEC Ex. 2.0 at 15:347-354). On its face, this suggests that ComEd's collection lag of 32.34 days is unreasonable.

Indeed, in a relatively recent case, the Commission rejected a utility's proposed CWC allowance, even though it was based on the same lead/lag study methodology approved by the Commission in that utility's last rate case, because the revenue collection lag assumed by the utility was greater than the 21 days customers were given to pay their bills. (*Illinois-American Water Company*, ICC Docket 09-0319, Order, April 13, 2010 at 17). Based on the evidence presented in that case, the Commission ultimately concluded that a 21 day collection lag should be used for the CWC calculation. (*Id.*). The Commission found that a 21 day collection lag was appropriate over the objection of the utility and the Staff.

Likewise, in this case, the Commission should reject ComEd and Staff recommendations that ComEd's CWC allowance be based on a collection lag of 32.34 days. It is well in excess of the 21

days customers are given under Commission rules to pay their bills.¹⁰

The Commission also should require and direct further study and analysis of ComEd's methodology. IIEC witness Gorman explained:

The most accurate method for calculating the collection lag is to perform a customer sample. Although this methodology requires more calculations of individual customer bills, it provides the most accurate calculation of actual customer paying habits. (Gorman, IIEC Ex. 2.0 at 18:413-416).

The current ComEd methodology produces a collection lag that is not reasonable or reflective of ComEd's actual operations. Therefore, further review and study of the ComEd approach is appropriate.

b) Pass-Through Taxes

ComEd defends its excessive 51.25 day revenue lag for "pass-through taxes",¹¹ which it admits is derived from a methodology different from that approved by the Commission in *ComEd 10-0467*. (See, ComEd Br. at 40 (explaining how ComEd has identified, explained and supported the differences between its methodology in this case and the methodology approved by the Commission in *ComEd 10-0467*)).¹² IIEC supports the assignment of a zero day lag to these pass-through taxes in this case.

¹⁰ In the meantime, the Commission should adopt the recommendation of AG/AARP witness Brosch on the appropriate overall revenue lag of 46.08 days. (Brosch, AG/AARP Ex. 1.0 at 29:618).

¹¹ ComEd includes in that term EAC/REC and GRT/MUT charges and taxes.

¹² It is interesting to note that ComEd argued that its collection lag of 32.34 days should be approved because the methodology it used was approved by the Commission in *ComEd 10-0467*. (ComEd Br. at 38). Apparently ComEd does not feel obligated to adopt methodologies approved by the Commission in *ComEd 10-0467* if they do not produce the result ComEd desires.

ComEd argues that “. . . [t]he essential task here is to capture and reflect the proper timing differences . . .” relating to the outflow and inflow of pass-through taxes. (ComEd Br. at 40) (emphasis added)). IIEC agrees that a principal issue here is “proper timing differences”. However, ComEd has not properly reflected those timing differences. The Company has failed to recognize that the revenue to pay these taxes is collected from customers before the taxes are required to be paid. (Gorman, IIEC Ex. 1.0-C at 27:606-632 and Ex. 2.0 at 16-17:372-385). ComEd also does not address the Commission’s finding in *ComEd 10-0467* that zero revenue lag days for EAC/REC and GRT/MUT charges and taxes was appropriate. (*ComEd 10-0467*, Order at 48). The Commission did so based in large part on the fact that ComEd was not required to remit EAC/REC charges until “the 20th day of the month following the month of collection” and was not required to remit the GRT/MUT tax until “the last day of the month following the month during which such tax is *collected*.” (*ComEd 10-0467*, Order at 48). The record here shows that ComEd has not changed its collection and remittance practices for these taxes since the Order in *ComEd 10-0467*. (Hengtgen, Mar. 8 Tr. at 235-236). Thus, ComEd has identified no change in facts or circumstances that would warrant a change in the Commission’s determination of this issue in *ComEd 10-0467*. Capturing proper timing differences in this case requires that the Commission reflect the statutory or ordinance timing of ComEd’s remittances. ComEd’s CWC cost should not reflect timing differences created by the Company’s practice of voluntary early payments – a practice that produces costs ComEd has not justified as prudent or reasonable.

The only argument ComEd made in this case, but not in its last case, is that the governmental bodies receiving taxes would “experience a reduction in their cash flow . . . quantified by the proposed

adjustments in its CWC requirement for pass-through taxes.” (ComEd Br. at 41). First, ComEd’s argument is legally irrelevant. The cash flow or missed payments of governmental entities receiving ComEd’s early remittances is not a responsibility of the Commission, except as it affects utility costs of service. Second, the argument lacks substantive merit. As noted above, ComEd did not change its remittance practices as a result of the Commission’s assignment of zero lag days to these taxes and charges in *ComEd 10-0467*. Undeniably, whether the municipalities see a reduction in their cash flow is entirely within ComEd’s control. Furthermore, the record here shows that the governmental entities benefitting from these charges and taxes would receive every payment due them. (Gorman, Mar. 12 Tr. at 768). Contrary to the implication of ComEd’s argument, the taxing authorities will not lose one dollar of revenue.

ComEd also mischaracterizes the testimony in this case when it alleges that IIEC witness Gorman acknowledged “in essence, that a payment would be missed in the first 12 month period.” The following exchange between Mr. Gorman and the attorney for ComEd demonstrates this mischaracterization:

Q. And you claim in your testimony that the recommendation that you are making here to change the cash working capital allowance to reflect what you think is a more appropriate method of payment by ComEd, that a change in payment to – from billed revenues to revenues collected would not result in a skipped or a missed payment to one of the municipalities. Do you recall that testimony?

A. Yes. Yes.

Q. And is it fair to say that another way of paraphrasing your testimony is to say that a change in the timing of ComEd’s tax remittance practices, which you contend will reduce the cash

working capital needs, will have no effect on the cash flows of the municipalities to whom these taxes are paid?

A. Oh, it would have cash flow impact on the municipalities, yes.

Q. Yes. And, in fact, there would be, at least in the first year in which the change is made, a situation in which a municipality would have missed one of its tax payments under your proposal, if ComEd adopts your proposal?

A. Well, there might be a lag in receipt, but it wouldn't miss them. Ultimately, ComEd would make all payments required.

Q. Ultimately it would; but in a particular calendar year, if the change were made on January 1st of a calendar year, because of the time required for ComEd to make these payments to municipalities, at least one payment would, in fact, be missed, would it not?

A. It would be pushed off to the following year.

Q. Right.

A. I'm not accepting the word 'missed' because it would be delayed and paid on time, which may reduce the number of payments received in one calendar year.

Q. I understand your reluctance to say 'missed' and I don't disagree with that. . . .

(Gorman, Mar. 12 Tr. at 767-769).

Municipalities and governmental agencies would receive all payments due from ComEd.

In addition to Mr. Gorman's explanation of the effect of a remittance of pass-through taxes based on the statutory schedule, ComEd's attorney agreed that there is no "missed" payment. "Attorneys are deemed agents of their clients for the purpose of making admissions in all matters relating to the progress and trial of an action. (*Lowe v. Kang*, 167 Ill. App. 3d 772, 776 (2nd Dist.

1988)). Further, “[a]n admission by an attorney for a party during trial supersedes all proofs upon the point in question.” (*Id.*). Thus, it is ComEd that “essentially” agrees there is no missed payment.

Finally, ComEd’s reliance on the *Ameren Illinois Company* case is misplaced. ComEd claims that the Commission disapproved of Staff’s adjustment to Ameren Illinois’ CWC requirement for EACs “where, if the utility were to alter its payment practices, then in the first year the utility would remit \$2.3 million less to the state.” (ComEd Br. at 41, citing *Ameren Illinois Co.*, ICC Dkt. 11-0282, Order, January 10, 2012 (“*Ameren Illinois Co.*” at 13-14). However, as the Ameren Order itself notes, the only disputed cash working capital issue in that case related to the treatment of EAC charges. (*Ameren Illinois Co.*, at 13). In that case, the Commission assigned the EAC (referenced as the Energy Assistance Tax) a lag of only 4 days, not the 51.25 days ComEd proposes here. (*Ameren Illinois Co.*, App. A, B, and C at 10:Line 15, Column (c)).

Also, a review of the Commission Order in the Ameren Illinois case discloses that the Commission actually assigned zero-day lags to pass-through taxes. (*See, Ameren Illinois Co.*, App. A, B and C at 10:Line 10, Column (c)).

In summary, the Commission should recognize that ComEd is not required to pay EAC/REC charges and GRT/MUT taxes until well after they are collected from customers. In *ComEd 10-0467*, the Commission assigned zero day lags to EAC/REC charges and GRT/MUT taxes. It should assign zero day lags to these taxes and charges in this case. If the Commission considers the cash flow of affected governmental bodies, the record in this case shows that each affected governmental body will

receive all charges and taxes due them, even if ComEd changes its payment practices in response to a Commission's Order that appropriately does not impose on ratepayers the cost of ComEd's imprudent and unreasonable early payment practice.

5. Accumulated Deferred Income Taxes

a) 2011 Plant Additions

ComEd notes the proposal of AG/AARP, CUB, and IIEC to update the ADIT component of rate base, along with plant additions and accumulated depreciation. ComEd then declares those proposals "contrary to Section 16-108.5(c)(6)," asserting that only projected costs specifically mentioned in the statute are at issue in this docket. (ComEd Br. at 8; *see also*, ComEd Br. at 44)..

ComEd would even bar Commission consideration of rate base components that the Commission and the Illinois Appellate Court have held is required to comply with Section 9-211 of the PUA. (*See Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 405 (2nd Dist. 2010)); *Ameren Illinois Company v. Ill. Commerce Comm'n*, Nos. 4-10-0962, 4-10-0976, 4-11-0075 cons. 2012 Ill. App. LEXIS 175, ¶¶89-¶90 (Ill. App. Ct. 4th Dist. Jan. 10, 2012). Section 9-211 is part of Article IX of the PUA, which the Commission is required to use in setting rates in formula rate proceedings. (220 ILCS 5/16-108.5(c); 220 ILCS 5/9-211). That provision denies the Commission authority to use a rate base that exceeds the actual investment devoted to providing service. ComEd's reading of the statute would preclude effective Article IX review, which is required by the formula rate statute. ComEd's interpretation should be rejected by the Commission.

ComEd's own application of the terms of the formula rate statute belies the restrictive statutory construction ComEd asserts with respect to the proposals of other parties. For example, ComEd argues

that the Commission cannot recognize ADIT related to ComEd's plant additions because ADIT is not specifically mentioned in the formula rate statute. At the same time, as Staff points out, ComEd did not find even a slight obstacle to its proposal to include bank fees in its proposed rate calculation – even though such fees are also not mentioned in the statute and do not even appear on its FERC Form 1. (Staff Br. at 56-57). Similarly, despite the absence of any mention in the formula rate statute's specific provision on amortization, ComEd proposes to amortize distribution taxes in the manner specified for the identified amounts.¹³ (*See*, 220 ILCS 6/16-108.5(c)4.C, E, and F).

ComEd makes four additional arguments opposing recognition of the effect of ADIT on the rate base used to set formula rates. Most were addressed in IIEC's initial brief, and they will be treated only briefly in this reply brief. (ComEd Br. at 44-45).

First, ComEd argues that specific mention of projected changes in accumulated depreciation without a similar identification of ADIT precludes Commission consideration of the ADIT component of rate base when it determines ComEd's actual, prudent, reasonable costs. (*Id.*). ComEd admits that the Commission has undiminished Article IX review authority; and the Commission's concomitant Article IX obligations also remain in place. (ComEd Br. at 2). As IIEC explained in its Brief, (IIEC Br. at 33-34) the Commission and the Illinois Appellate Court have determined that under, the statutory provisions of Article IX, prudent, reasonable and lawful determinations of rate base require recognition of changes in ADIT (as well as accumulated depreciation changes) when determining a

¹³ IIEC does not accept ComEd's selectively applied, restrictive construction of the statute. A reading restricting the Commission's determinations is not compatible with the statute's explicit emphasis on prudent, reasonable costs as determined by the Commission and mandated application of Article IX standards.

rate base that can lawfully be used for setting rates. (*Ameren Illinois Company v. Ill. Commerce Comm'n*, Nos. 4-10-0962, 4-10-0976, 4-11-0075 cons. 2012 Ill. App. LEXIS 175, ¶¶89-¶90 (Ill. App. Ct. 4th Dist. Jan. 10, 2012)..

Second, ComEd admits “it is correct that adding ADIT for the 2011 plant additions would make the rate base closer. . . to the actual 2011 rate base.” (ComEd Br. at 44). Yet, the Company opposes recognizing the ADIT offset associated with its projected plant additions to rate base because IIEC’s proposal “ignores all other changes in 2011 ADIT, not to mention other changes in rate base and operating expenses.” (*Id.*). Thus, ComEd projects and quantifies only selected components of its rate base. ComEd has made no attempt to identify or to quantify the “other changes” it deems essential in determining rate base. (*See* Fruehe, ComEd Ex. 13.0 at 6:121-127; ComEd Br. at 44). Then ComEd opposes consideration of other acknowledged components of rate base (as proposed by intervenors), ostensibly because those parties (like ComEd) did not identify and quantify every other change in rate base and operating expense. (ComEd Br. at 44).

ComEd, no less than intervenors, must present a prudent, reasonable, and lawful rate base amount for use in setting rates. ComEd has recognized only one of the two largest rate base components that will reduce rate base contemporaneously with the rate base increases from ComEd’s plant additions. (Gorman, IIEC Ex. 2.0 at 11:254-257). IIEC has proposed recognition of the other reduction (ADIT), which amounts to hundreds of millions of dollars. (Effron, AG/AARP Ex. 2.0 at 16:341-342). As AG/AARP witness Effron explained, the magnitude of ADIT (like that of plant additions or accumulated depreciation) makes it different from other elements of rate base in this case. (Effron, AG/AARP Ex. 4.0 at 9:193-194; Fruehe, ComEd Ex. 22.0 at 6:114-115) Moreover, the

formula rate statute is clear that there is no intent that ComEd recover more than its actual costs. (220 ILCS 5/16-108.5(c)). ComEd's refusal to take account of the change in the Company's actual rate base (and resulting actual capital costs) attributable to ADIT unavoidably tends to inflate the Company's rate base beyond its actual investment devoted to providing service. That approach cannot produce a reasonable or lawful rate base amount. (*See Re Central Illinois Light. Co.*, Dkt. 09-0306 (cons.), Order on Rehearing, Nov. 4, 2010 at 49; *Ameren Illinois Company v. Ill. Commerce Comm'n*, Nos. 4-10-0962, 4-10-0976, 4-11-0075 cons. 2012 Ill. App. LEXIS 175, ¶¶89-¶90 (Ill. App. Ct. 4th Dist. Jan. 10, 2012)).

ComEd's third argument is that recognition of ADIT is unnecessary, because the reconciliation will catch it later. As IIEC explained in its initial brief, that argument is essentially meaningless, since that is true of every cost -- including those (like ADIT) that are necessary to any reasonable quantification of ComEd's prudent, reasonable, and lawful rate base costs. (IIEC Br. at 9).

Finally, ComEd restates its initial argument for barring any change in rate base attributable to a component not specifically identified in Section 16-108.5(c). ComEd rests its argument on the principle *inclusio unius est exclusio alterius*. (ComEd Br. at 45). When there is nothing more to guide proper construction of a statute the principle applies in a way it cannot here.

Here the statutory list on which ComEd relies does not stand in isolation. There is a clear statement of the General Assembly's over-arching objective that generally informs construction of other provisions of the formula rate statute.

The performance-based formula rate approved by the Commission shall do the following: (1) Provide 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) (emphasis added)).

More important, it applies directly to the immediately following implementation provisions in Section 16-108.5(c), of which both the statement of objective and ComEd's list are a part.

ComEd's construction of the statute creates an unnecessary, direct conflict with the prime objective of actual, prudent and reasonable costs during the rate period. (220 ILCS 5/16-108.5(c)). ComEd selectively invokes portions of the language of subsection 16-108.5(c), instead of reading the statute as a whole and giving effect to the plainly articulated intent of the legislature. The statute's focus on ComEd's actual, prudent, reasonable costs and the emphasized preservation of Article IX standards (*See*, ComEd Br. at 2) preclude ComEd's construction. ComEd's reading of the formula rate statute -- as a limitation, instead of the starting point for the Commission's mandated cost determinations -- would implicitly repeal large portions of Article IX and effectively nullify portions of the same formula rate statutory provision. (220 ILCS 5/16-108.5(c)).

Staff agrees with ComEd and opposes recognition of the ADIT related to ComEd's plant additions. (Staff Br. at 34). Staff admits recognition of this component of rate base would narrow the adjustment required to reconcile ComEd's initial and final revenue requirements. Staff, however, gives greater weight to – and rests its position on – its claim that “[t]he Act is silent” on whether ADIT should be recognized in determining the revenue requirement in this case. (*Id*).

In fact, the Act is not silent on this issue. The formula rate statute limits ComEd's rate recovery to the Company's actual costs of delivery services that are prudently incurred and reasonable in amount, consistent with Commission practice and law. Commission practice and law

regarding ADIT is very clear. In the Commission's most recent decisions on this issue, Commission practice and law were explained. As AG/AARP recounted in their brief:

The Commission affirmed that conclusion in ComEd's most recent case, where the Commission held "it is not controverted that, if accumulated depreciation must match *pro forma* plant additions, ADIT must also correspond in this manner." ICC Docket 10-0467, Order at 24 (May 24, 2011)." (AG/AARP Br. at 41).

In *Re Central Illinois Light. Co.*, Dkt. 09-0306 (cons.), Order on Rehearing, Nov. 4, 2010 at 49), the Commission reaffirmed that:

[A]n adjustment to the ADIT balance is essentially a companion or derivative adjustment to the accumulated depreciation. Because the Commission has adopted post -test year changes in accumulated depreciation for existing plant, the Commission concludes that the companion adjustment for post -test year changes in ADIT associated with existing plant should also be made.

That has been the Commission's consistent position except for a small number of (now repudiated) exceptions. Relevant substantive holdings of those exceptional cases were also rejected by the Illinois Appellate Court. (*See Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 405 (2nd Dist. 2010)); *Ameren Illinois Company v. Ill. Commerce Comm'n*, Nos. 4-10-0962, 4-10-0976, 4-11-0075 cons. 2012 Ill. App. LEXIS 175, ¶89-¶90, ¶99 (Ill. App. Ct. 4th Dist. Jan. 10, 2012).

V. OPERATING EXPENSES

A. Overview

C. Potentially Contested Issues

1. Administrative and General Expenses

c) Incentive Compensation

(iii) Advanced Cap on Incentive Compensation Costs

ComEd makes its arguments against IIEC's proposal to condition the Company's recovery of incentive compensation costs on its achievement of operational metrics. ComEd presented those arguments in Section V.C.1.(c) of its Brief. (ComEd Br. at 65-66). IIEC addressed this issue in Section VIII.B.3. of its Brief. (IIEC Br. at 53-55). IIEC will again address ComEd's arguments against the conditional recovery of incentive compensation in Section VIII.B.3. below.

VI. RATE OF RETURN

A. Overview, Including Overall Cost of Capital

B. Capital Structure

4. Common Equity Ratio/Cap Limit

IIEC has recommended that the Commission implement a common equity ratio cap or limit of 55% for ComEd. IIEC identified the specific modifications that would have to be made to Schedule FRD-1 of the ComEd Formula Rate. IIEC explained the operation of the cap in its Initial Brief. (IIEC Br. at 36-37). IIEC noted that ComEd's formula rate for transmission service already reflected a common equity ratio of 55%. (IIEC Br. at 36).

Interestingly, ComEd does not directly argue against a cap or limit on its common equity ratio. Instead, the Company suggests that the Commission need not implement such a cap in this proceeding. ComEd asserts that IIEC's proposed 55% common equity ratio cap is not relevant now, because their actual common equity ratio is currently far below this level (ComEd Br. at 101-102). ComEd also suggests this issue should be addressed "contemporaneously with the discussions with the Staff" on a more leveraged capital structure subsequent to this proceeding. (ComEd Br. at 101-102).

Even though ComEd will not exceed IIEC's proposed interim cap in this case, the structure of the formula rate should include a cap to ensure that its capital cost inputs in all cases are reasonable and prudently incurred. For the reasons discussed below, IIEC asks that the Commission order an interim cap in this proceeding and also order a formal process to address Staff's additional requests.

The formula rate statute contains a cost of equity calculation that cannot be modified by the Commission. With that statutory cost of equity, increasing the portion of its capital that is entitled to earn at that computed rate is an obvious path to greater earnings. (*See* Staff Br. at 81-82). To address ComEd's economic incentive to increase its equity ratio, as an element of its regulatory oversight the Commission should act to blunt that incentive, rather than reacting to an excess of equity after ratepayers have been harmed. Under the reconciliation process defined by statute, which does not consider actual revenue collection, there is no assurance that excessive costs collected through the formula rates could be recouped by ratepayers. (*Compare* 220 ILCS 5/16-108.5(c)(5) and (c)(6)). A cap on this component of ComEd's capital costs, as a structural element of the formula rate, is sound regulatory policy. Such a cap is already present in the Formula Rate applicable to ComEd's transmission service and approved by the Federal Energy Regulatory Commission. (Gorman, IIEC Ex. 1.0 at 31:696-699 *Ameren Illinois Company v. Ill. Commerce Comm'n*, Nos. 4-10-0962, 4-10-0976, 4-11-0075 cons. 2012 Ill. App. LEXIS 175, ¶99 (Ill. App. Ct. 4th Dist. Jan. 10, 2012)). ComEd suggests that imposing a fixed cap could prevent it from utilizing the most appropriate means of financing, if current conditions change. (ComEd Br. at 102). IIEC's proposal will not prevent ComEd from demonstrating to the Commission that conditions have changed and that a common equity ratio greater than the cap would be just and reasonable. The

important point is that ComEd would be required to make that case. ComEd could not simply increase its common equity ratio above the cap without that demonstration. Indeed, Staff makes the argument that conditions have changed so significantly as a result of having a formula rate that ComEd's operating risk is lowered. Staff concluded that ComEd's current common equity ratio of 46.12% may already be unreasonably high. (*See*, Kight-Garlich, Staff Ex. 12.0 at 5-8:93-141). A common equity ratio cap in the formula rate is needed to help the Commission ensure that ComEd's costs are just and reasonable.

ComEd also suggests that a cap would be unlawful to the extent it precludes the use of ComEd's actual capital structure - so long as that capital structure is prudent and reasonable - as required by Section 16-108.5(c)(2). (ComEd Br. at 102). IIEC's cap is lawful. Adoption of IIEC's cap would merely be an advance warning to ComEd that (absent specific proof), any capital structure with a common equity ratio greater than the cap would not be considered prudent and reasonable by the Commission, in the context of Section 16-108.5 formula ratemaking where ComEd enjoys reduced operating risk. (Kight-Garlich, Staff Ex. 12.0 at 7:129-131).

5. Subsequent Procedure/Process Re: Capital Structure Issues

IIEC has stated in its Brief that it agrees there should be a separate analysis or study done by the Commission to determine an appropriate common equity ratio cap for ComEd on a going-forward basis. (IIEC Br. at 37). As to subsequent proceedings to consider this issue, ComEd urges a course of inaction for the Commission. "Such an order is not necessary when ComEd is clearly willing to

work with Staff voluntarily” (Vogt, ComEd Ex. 23.0, 13-14:266-295), and “it is unclear whether the issues discussed will be relevant to the next formula rate proceeding” (ComEd Br. at 103). IIEC disagrees.

The better course for the Commission is to avoid an *ad hoc* decision in the midst of another short deadline proceeding. The ad hoc approach would produce the opposite of the certainty and transparency ComEd asserts the formula rate should provide. (Hemphill, ComEd Ex. 20.0 at 6:120-121). A more formal examination of cap issues in advance of a need for such a limit would avoid uncertainty and enhance transparency.

Though ComEd commits “to work with Staff outside of this proceeding on this issue to understand these concerns” (ComEd Br. at 102), the Company’s offer, even if fully honored, is not adequate. ComEd’s commitment is not the equivalent of a Commission order, and the danger of relying on ComEd’s mere promise is evident in the offer itself and in the Company’s past performance.

First, ComEd commits only to “work with Staff.” The participation of ratepayer representatives is not assured. Second, ComEd commits only to work with Staff “to understand these concerns.” Does ComEd expect simply to engage in conversations to get more information? Could ComEd walk away once it understands other parties concerns? Staff’s concerns parallel those of IIEC. Like IIEC, Staff seeks a Commission order and formal structure in the resolution of this issue. (Kight-Garlich, Staff Ex., 23.0 at 2-3:37-53; Staff Br. at 82).

Second, the particulars of the setting and expected product of the promised activity is wholly undefined. ComEd has already started to qualify and limit the potential outcome of such a process. It argues in its Brief that a report to the Commission on such a process and the presumptions that could

follow from such a report, are unwarranted, since it is not clear whether the issues discussed would be relevant to a future formula rate proceeding. (ComEd Br. at 103). ComEd's statement does not inspire confidence, and suggests that ComEd is willing to talk, but is not willing to come to any specific agreement on these issues. Finally, given ComEd's failure in recent proceedings, despite the presence of a Commission order, to provide rate case filings as directed by the Commission, ComEd's commitment without a Commission order offers little assurance. (*See ComEd 10-0467* at 77).

Therefore, the Commission should initiate a more formal process with a view towards developing a cap that can be implemented in future proceedings. In the meantime, the Commission should direct the use of the 55% common equity cap proposed by IIEC in this proceeding pending the outcome of the Commission's subsequent investigation of a different cap.

VII. COST OF SERVICE AND RATE DESIGN

B. Rate Design, Including Upcoming Docket

1. Response to CG

In its Brief, CG appears to argue that the Commission should address revenue allocation and rate design issues more broadly in this case. CG couches its argument in terms of a possible alternative interpretation of Section 16-108.5(c). The pertinent part of that section provides:

Until . . . the Commission approves a different rate design and cost allocation pursuant to subsection (e) of this Section, rate design and cost allocation across customer classes should be consistent with the Commission's most recent Order regarding the participating utility's request for a general increase in its delivery service rates.

IIEC disagrees that the Commission should address revenue allocation and rate design issues more broadly in this case (*See*, CG Br. at 1) for the following reasons.

First, CG did not present direct testimony on this issue. Therefore, parties were denied a fair opportunity to respond to CG proposals.

Second, the cost of service study was not litigated in this case. Indeed, CG states that with the exception of distribution losses, it “shall not comment on the embedded cost of service study submitted by ComEd,” in this proceeding. (CG Br. at 4). The Commission cannot say, with confidence, that had cost of service study issues been litigated, no modifications would have been required. CG’s cost study-based recommendation, without that examination of the underlying studies, is made in circumstances where the cost target is unknown or unmeasurable.

CG itself acknowledges that it would be necessary to change class allocations and rate designs ordered in *ComEd 10-0467* to implement the allocation and rate design changes CG considers appropriate on a going forward basis in this case. (See, CG Br. at 3 (discussing “. . . requirement for change to class allocations and rate designs contained in the 2010 Rate Order . . .”). Yet, other than evidence on whether ComEd’s proposals in this case are consistent with the rate design and cost allocation decisions in *ComEd 10-0467*, there is no evidence in the record addressing the appropriate rate design and revenue allocation on a going-forward basis. Further, Section 16-108.5(c) requires that the rate design and cost allocation in this case be consistent with, not different from, those approved in *ComEd 10-0467*.

Third, the ALJs have noted that (before now) no party has contended that rate design was within the scope of this proceeding.¹⁴ (Notice of ALJ’s Ruling, Jan. 6, 2012). CG’s emphasis on

¹⁴ No party really contended that rate design and revenue allocation were within the scope of this proceeding, until the Commercial Group presented its rebuttal testimony in this case on

statements made by CTA/Metra witness Bachman is inconsistent with CTA/Metra's position that the rate design docket contemplated by the statute is the best forum for addressing issues from *ComEd 10-0467*, not this case. (CTA/Metra Pretrial Memo at 2).

Under the circumstances, CG's recommendation, which is essentially that the Commission change the revenue allocation and rate design approved in the Dkt. 10-0467 Order, should be rejected.

2. *Response to CTA/Metra*

Though CTA/Metra apparently agree that rate design and revenue allocation issues are not appropriately considered in this docket (CTA/Metra Br. at 2-3), they request that the Commission "restate as findings the rate design conclusions regarding the Railroad Class on pages 190-191 of the Docket 10-0467. . ." to ". . . trigger the PUA's one-year time clock for ComEd to file a revenue neutral rate design case." (CTA/Metra Br. at 2). In the alternative, CTA/Metra request that the Commission "open a separate docket for the purposes of implementing the findings regarding cost allocation and rate design in Docket 10-0467." (*Id.*).

IIEC questions whether a bare restatement of findings and conclusions from a prior rate order would be adequately supported by the record of this case. Separately, a proceeding opened specifically to implement the findings in Docket 10-0467, would seem to have its outcome predetermined, without input from affected parties on the merits.

March 14, 2012.

VIII. ADDITIONAL FORMULA/TARIFF ISSUES

A. Tariff Issues

1. Separate Statement of Earnings Collar Effects

ComEd's sole argument against IIEC's proposal to display the effects of the earnings cap is that "[t]he proposal should be rejected as unnecessary." (ComEd Br. at 109). ComEd provided no further substantive argument on this topic in its Brief. Though ComEd listed the calculations displayed in its tariff spreadsheets, as IIEC explained in its Brief, those spreadsheet entries do not provide information on the actual effects of the earnings collar on ComEd's revenue requirement and on the amounts collected from ratepayers. (IIEC Br. at 38-41).

As IIEC has explained (IIEC Br. at 6, 15), there is a disconnect between what ComEd collects from its ratepayers and what is accomplished through the statutory reconciliation of revenue requirements and rates. The effect on ratepayers is disclosed by the line items in ComEd's proposed spreadsheet only if (and to the extent) the collar is exceeded. The total effect of the earnings collar cannot be ascertained without separate calculations of the revenue variance within the collar and the interest cost on any credit or charge for earnings outside the collar.

2. Calculation of Increases for Three-Year Report

On the measurement of rate increases for the statutory three-year assessment, ComEd opines (as it did respecting the prudent equity ratio cap):

IIEC's argument is premature and not within the scope of this proceedings (*sic*). The time to determine how to calculate the starting residential rate is more appropriately addressed when the issue arises in the Docket dealing with that issue. (ComEd Br. at 111).

But arguing that procedures and requirements for the formula rate are not relevant until the numbers come in and an *ad hoc* decision is required, presents the opposite of what ComEd asserts the formula rate provides in certainty and transparency. (*See*, Hemphill, ComEd Ex. 20.0 at 6:120-121, (discussing benefits of formula ratemaking)).

Moreover, ComEd has proposed a formula rate that purports to encompass not just this initial rate setting exercise, but reconciliation proceedings as well. ComEd's self-serving approach would enshrine its own proposal in a Commission approved tariff, while deferring any consideration of the reconciliation proposals of other parties until the eleventh hour. That is not a prudent decision making approach for the Commission, and it denies intervening parties any chance to have their positions considered fairly, at the same time as ComEd's. The Commission should determine now -- not three years from now -- what the proper starting point will be for the statutorily mandated measurement of increases.

The experience before the Commission with ComEd's CWC collection lag calculation is a cautionary lesson. ComEd argues that it should not be required to alter its proposal because the information required for a proper calculation is not available. (Hengtgen, Mar. 8 Tr. at 250-254). The Commission should define the requirements for the mandated rate increase assessment now, so that the Commission's decision and parties' arguments are not skewed later by an avoidable lack of appropriate record keeping and data.

3. Other

a. Tariff Structure/Detail

ComEd did not address IIEC's testimony on the unnecessary complexity of its proposed

tariff. (*See* Gorman, IIEC Ex. 1.0-C at 4-6:76-120, 9-11:194-251; IIEC Ex. 2.0 at 19-22:423-508).

IIEC's position on this issue is explained in its Brief. (IIEC Br. at 43-47).

B. Ratemaking Process and Filing Issues

1. Access to Information re: Formula Rate Filing

ComEd objects to being required to provide data and information required by Parts 285 and 286, as part of its annual rate filing, as recommended by IIEC. (ComEd Br. at 111). ComEd says that IIEC's recommendation is unnecessary and unreasonable. ComEd reasons that it has voluntarily provided, and will continue to voluntarily provide, the Part 285 and 286 data it deems relevant. (*Id.*). ComEd simply does not want to be ordered to do so. Furthermore, it does not want to be ordered to provide the data and information the Commission or other parties deem relevant.

In its initial brief, IIEC made proposals for the provision of additional information and data relating to ComEd's annual filing to the parties and the Commission. (IIEC Br. at 47-51). ComEd has elected to address only IIEC's recommendations respecting the provision of Parts 285 and 286 data. (*See*, ComEd Br. at 111-112).

IIEC merely asks the Commission to hold ComEd to its promise and, at a minimum, order ComEd to provide 285 and 286 data and information identified as relevant in this case, plus any additional information the Commission finds relevant or useful in this proceeding. ComEd should not be the final arbiter of what is relevant to the Commission and other parties. Adoption of ComEd's "voluntary" approach would allow ComEd to determine what data and information other parties and the Commission will timely receive for the review and analysis of its annual filing. Such an approach is not workable given: (i) the short time period for Commission review of the annual reconciliation

filing to decide whether a proceeding is needed; (ii) the absence of discovery rights for parties until after the Commission's decision; and (iii) the absence of a mechanism for parties to request and receive information regarding the filing in a timely manner that permits meaningful analysis.

Ordering ComEd to provide the relevant Parts 285 and 286 data to the Commission and the parties is fully consistent with Sections 16-108.5. Requirements for filing such data are contemplated by the formula rate statute. (*See*, 220 ILCS 5/16-108.5(d)(3) (requiring inclusion of relevant and necessary data and documentation consistent with the Commission's rules "applicable to a filing for a general increase in rates" and any other rules adopted by the Commission to implement Section 16-108.5)). Under these circumstances, IIEC's recommendation should be adopted. Parties should not be required to rely on ComEd's promise and voluntary performance to receive needed information. The Commission should order ComEd to provide the Commission and the parties with data from Parts 285 and 286 that ComEd concedes or the Commission finds relevant and useful.

2. Triggers for Hearing on Certain Operating Costs

ComEd objects to IIEC's proposal to condition inclusion of certain operating expenses in its formula rate. (ComEd Br. at 112). Under IIEC's proposal, ComEd could include regulatory expense and affiliate charge expense up to the designated limit in its formula rate. If the limit is exceeded, the Commission would conduct a hearing to determine the prudence and reasonableness of the expense. (Gorman, IIEC Ex. 1.0-C at 15:340-350).

ComEd argues that "generally" authorized caps and collars are "stated in the law." (ComEd Br. at 112). The caps and collars referred to by ComEd are substantive, not procedural. (ComEd Br. at 112). IIEC's proposed cap/limit on regulatory expense and affiliate charge expense is procedural.

Therefore, the presence of other “caps and collars in the statute” does not suggest that the Commission cannot set caps or limits that would trigger a prudence and reasonableness review.¹⁵

ComEd also argued that IIEC’s proposal is not consistent with Section 16-108.5 “filing structure and process specification”. (ComEd Br. at 113). ComEd does not explain how or why the inclusion of a cap or limit on a particular expense, which would trigger a hearing on the prudence and reasonableness of the cost, as contemplated by Section 16-108.5(d), is inconsistent with that section. Describing in advance the circumstances under which a 16-108.5(d) hearing will be initiated is certainly permitted, since the Commission is empowered to initiate rules to implement Section 16-108.5, including presumably, the hearing process contemplated therein. Therefore, describing the circumstances under which the Commission will initiate the hearing contemplated by that Section is fully consistent with the statute.

3. Performance Condition for Incentive Compensation Costs

In Section V.C.1.(c)(iii) of its brief, ComEd disagrees with IIEC’s proposal that ComEd’s incentive compensation costs be conditioned upon the achievement of certain operational metrics. (ComEd Br. at 65-66). IIEC addressed this issue in Section VIII.B.3. of its Brief. (IIEC Br. at 53-55). IIEC will address ComEd’s arguments in this section of its Reply Brief.

ComEd makes three arguments in opposition to IIEC’s proposal. First, ComEd asserts that Section 16-108.5 does not provide for ComEd’s forfeiture of the recovery of incentive compensation expense if the Company fails to meet performance metrics. (ComEd Br. at 65). Second, ComEd states

¹⁵ IIEC does not concede that the Commission cannot also set substantive limits, where it finds such devices appropriate to its implementation of the formula rate statute.

that if incentive compensation expense were disallowed under IIEC's proposal, the result would be an earned return on equity reduction of more than the 30 basis points provided by the formula rate statute. (ComEd Br. at 66). Third, ComEd alleges that IIEC's conditional recovery proposal constitutes an additional remedy that may not be applied where another remedy is specifically created. (*Id.*).

ComEd's first argument fails for several reasons. ComEd overlooks the fact that the Commission is required to determine whether the costs incurred by ComEd are prudent and reasonable. (*See*, 220 ILCS 5/16-108.5(c)(1)). A determination of the prudence and reasonableness of incentive compensation can consider performance under metrics designed to ensure system reliability, safety and efficiency. Failure to meet such metrics suggests that incentive compensation costs would be imprudent or unreasonable and, therefore, disallowable.

Furthermore, the Commission is required under Section 16-108.5(c)(4)(A) to approve a formula rate that "permits and sets forth protocols for . . . recovery of incentive compensation expense that is based on the achievement of operational metrics . . ." (220 ILCS 5/16-108.5(c)(4)(A)). The Commission also is empowered to adopt rules for the implementation of Section 16-108.5. (*See*, 220 ILCS 5/16-108.5(d)(3) (discussing rules adopted by the Commission to implement Section 16-108.5)). Therefore, Section 16-108.5 need not specify or provide specifically for a denial of recovery of incentive compensation costs deemed imprudent and unreasonable, whether for failure to meet the metrics identified by IIEC or for other reasons.

ComEd's second argument is also without merit. It is true that ComEd faces the possibility of up to a 30 basis point reduction if it fails to meet the performance metrics described in Section 16-108.5(f). (*See*, 220 ILCS 5/16-108.5(f) and (f-5)). ComEd argues that if IIEC's proposal is

adopted, and it fails to meet the subject metrics, its return on common equity reduction could be greater than 30 basis points. However, as IIEC witness Gorman explained, if ComEd does not meet the metrics and does not pay incentive compensation, there would be no increase in the 30 basis points. Disallowance of the incentive compensation expense would have no impact on the Company's return on equity under that circumstance. (Gorman, March 12 Tr. at 780-781). ComEd's scenario is possible only if the Company pays incentive compensation even while the utility fails to meet reliability requirements. Also, any denial of recovery of an imprudent or unreasonable cost could, in theory, add to the basis point reduction. ComEd's rate should not reflect imprudent or unreasonable costs simply because of such a possibility. The Commission should also recognize that if incentive compensation works as ComEd asserts, the possible disallowance of incentive compensation costs could increase ComEd management's incentive to meet the performance goals that benefit ratepayers. In contrast, an adjustment to ComEd's return on equity affects only its stockholders, not those parts of the ComEd organization directly involved with system performance.

ComEd's third argument, that an additional remedy (conditional recovery of incentive compensation expense) cannot be implied where a remedy is specifically created, is misplaced. (ComEd Br. at 66). The Commission is already empowered under Section 16-108.5 to determine whether the utility's actual costs are prudently and reasonably incurred. ComEd agrees that the General Assembly "unambiguously preserved the duty of the Commission to review the prudence and reasonableness of costs" (ComEd Br. at 2). Establishing a standard by which such a determination will be made does not add any new remedy to the act. The Commission is permitted to disallow imprudent and unreasonable expense.

C. Reconciliation

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

ComEd's argues that the formula rate statute requires "that the reconciliation be calculated consistently with the initially established revenue requirement to which it is reconciled," primarily to justify its proposal to use year-end rate base amounts as the measure of its actual investment cost during (not at the end of) a formula rate period. (ComEd Br. at 115). By conflating the statute's distinctive treatments of the initial formula rate proceeding and the reconciliation proceedings to follow, ComEd uses arguments that could only apply to the initial proceeding to support its proposals for reconciliation proceedings, and *vice versa*.

For instance, the Company misuses the unusual data source periods in this case to justify year-end rate base amount in reconciliation proceedings. (ComEd Br. at 24-26 and ComEd Br. at 115 (arguing that initial and reconciliation calculations must be consistent). As IIEC has shown, that argument does not justify using a year-end rate base, even in this initial proceeding. The year used for initial data and the effective period of the resulting rates are results of (1) ComEd's election to make a filing in 2011 and (2) the distinctive initial proceeding specifications of the formula rate statute. In any case, the Commission cannot select formula inputs to change statutory effects of ComEd's knowing decision on a filing date.

This issue (average or year-end rate base) also is discussed above in Section III.C.1 of this brief.

2. Interest Rate Proposals

ComEd opposes the use of customer deposit rates (Staff) and/or short-term interest rates (AG/AARP) for calculation of the interest included in reconciliation adjustments. (ComEd Br. at 117-120). While ComEd discusses briefly IIEC's recommendation that the Commission adopt the Staff or the AG/AARP position, it does not directly respond to any specific argument made, or position taken, by IIEC. It does opine that the rebuttal testimony of IIEC witness Gorman "misunderstands ComEd's analysis, is internally contradictory, relies on fallacies, and is misleading." (ComEd Br. at 120). IIEC cannot respond to such statements because ComEd has not explained the specific deficiencies it believes exist in IIEC's testimony. The accuracy of these assertions, however, is suspect. IIEC's testimony demonstrated that ComEd's arguments against Staff's proposed use of a customer deposit rate as a proxy carrying charge rate for reconciliation deferrals can also legitimately be made against ComEd's proposed use of long-term capital as the proxy carrying charge rate. (Gorman, IIEC Ex. 2.0 at 6-8:142-195). ComEd simply has not made a credible response to IIEC arguments. Therefore, ComEd's argument should be disregarded.

ComEd devotes the lion's share of its brief on this issue to the arguments made and positions taken by Staff witnesses Ebrey and Phipps. IIEC will rely on Staff to reply to specific arguments made against the Staff position.

However, it is worth repeating that IIEC supports the use of either the customer deposit rate or short-term interest rate for calculation of the reconciliation adjustment for the following reasons. IIEC demonstrated that these short-term capital rates are the most balanced and accurate measure of ComEd's actual carrying costs rates for the reconciliation deferrals. As IIEC witness Gorman

explained, it is not likely ComEd will issue long-term capital to finance a short-term reconciliation balance. (*Id.* at 7:158-161). Rather, ComEd will use short-term borrowing, customer cash deposits or even reduce its own cash deposits resources to finance the reconciliation balance that will have terms of 3 years or less. Mr. Gorman explained that short-term debt or customer deposit rates are short-term capital sources and are the best proxy of ComEd's actual cost to carry these short-term deferral balances. (*Id.* at 7:166-178).

ComEd responded indicating these funds are already being used in developing the revenue requirement and cannot also be used to cover the short-term deferrals. (Houtsma, ComEd Ex. 12.0 at 35-36:782-802). However, Mr. Gorman noted that ComEd assumed more precision in the formula rate calculation than actually exists. He stated that balance of short-term borrowings and short-term cash deposits will vary each month throughout the rate year. (*Id.* at 8:179-186). The balance of these resources will change monthly and the monthly variation will not be measured or tracked in the formula rate calculations. As a result, ComEd did not give full recognition to all of its short-term capital resources. (Gorman, IIEC Ex. 2.0 at 8:181-183). Therefore, ComEd can rely on short-term resources to carry the short-term deferral balances.

For these reasons, ComEd's proposed carry rate for reconciliation deferrals is not reasonable and should be rejected. Instead, the Commission should adopt Staff's proposed carrying charge rate for reconciliation deferrals.

X. CONCLUSION

For the reasons stated herein, IIEC respectfully requests the Commission adopt the positions taken and recommendations made by IIEC herein.

DATED this 10th day of April, 2012.

Respectfully submitted,

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COMED POSITION	SEC. 16-108.5 INCORPORATION OF COMED 10-0467 ORDER	BRIEFS CITATIONS
Direct assignment or FERC allocator for G&I plant	Rejected proposed FERC allocator	CUB at 17-19, 38-39 (nothing new since ICC rejected wages allocator; AG at 11-12;; Staff at 11-12
51.25 day revenue lag for EAC/REC & GRT/MUT	Zero days revenue lag for these items	CUB at 22-23; AG/AARP at 30; ComEd at 39-40
CWC assumption of lower number expense lead days for inter-company billings	Higher number (45.35) expense lead days.	CUB at 23; Staff at 29-30
Restricted stock expense included	Disallowed	CUB at 32-33
Defends Annual Incentive Program payments above target or 100% as consistent with 10-0467	Disallowed ComEd reads 10-0467 as accepting	CUB at 33-34; ComEd at 65
Full perquisites and awards expense	Reduced and amortized	AG at 57; Staff at 51; ComEd at 66-67
Unrestricted charitable contributions	Restricted to in-state organizations	CUB at 38; Staff at 52; ComEd at 72
Provided incomplete update of loss study	Update loss study	ComEd at 121-122; USDOE at 3 (all elements update or none updated); Staff at 108; CG at 7-8 (10-0467 or full update)
Include FIN 47 ADIT	Not included	CUB at 28; ComEd at 39-40
Sporting events expense [no longer contested]	Disallowed	CUB at 30
Photovoltaic pilot expense [no longer contested]	Disallowed	CUB at 30
Defends CWC calculation using mid-point assumptions as consistent with ComEd 10-0467	Mid-point assumption accepted	CUB at 28; ComEd at 38
Conditioned acceptance of Staff uncollectibles proposal on consistency with 10-0467		ComEd at 53
Reject CUB proposal to allocate late payment charge as not consistent with 10-0467	Allocate to D unless credited under FERC tariff	ComEd at 50

COMEd POSITION	SEC. 16-108.5	BRIEFS CITATIONS
Amortization of IEDT meets “spirit” of statute because it has the effect of an accounting change	Not one of the items specifically addressed in the statute	Staff at 54-55; CUB at 39
Actual capital structure per statute is end-of-year on Form 1, not average	Statute does use either term	Staff at 69; ComEd at 93
Long term debt used is not on FERC Form 1	Statute requires use of FERC Form 1 Data - Not Used	Staff at 69
ST debt used not that on Form 1	Statute requires use of FERC Form 1 - Not Used	Staff at 69
CWIP w/ AFUDC not on Form 1	Statute requires use of FERC Form 1 - Not Used	Staff at 69
Bank facility fees used not in statute or Form 1 not a problem	Not mentioned in statute; not on FERC Form 1	Staff at 56-57, 70
ComEd reads final data to mean end of year, precluding consideration of average rate base	Neither mentioned in statute	IIEC at 19, 22; Staff at 100; ComEd at 8-9
Opposes recognition of ADIT for plant additions as not specifically mentioned	Does not specifically mention, but requires adherence to law, ICC practice, and determination of prudent reasonable costs	IIEC at 9; ComEd at 8