STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)	
	)	
Reconciliation of revenues collected under Rider EDA	)	Docket No. 10-0537
with actual costs associated with energy efficiency and	)	
demand response programs.	)	

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

Dated: May 31, 2012

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I. INTRODUCTION AND SUMMARY

On August 31, 2010, Commonwealth Edison Company ("ComEd") filed its "Annual Report to the Illinois Commerce Commission Concerning the Operation of Rider EDA – Energy Efficiency and Demand Response Adjustment for the period beginning June 1, 2009 and extending through May 31, 2010" ("Annual Report"). ComEd Exhibit ("Ex.") 1.0. The Annual Report reflects the incremental costs ComEd incurred to implement energy efficiency programs during the second year ("Plan Year 2" or "PY2") of its three-year 2008 – 2010 Energy Efficiency and Demand Response Plan. In sum, the Annual Report and accompanying testimony reflected that during PY2 ComEd spent nearly $16 million less than projected while exceeding the energy savings goals.

Following a 20-month discovery period, the only issue in this docket is the Staff of the Illinois Commerce Commission's ("Staff") proposal to disallow approximately $263,000[1] of incentive compensation expense that was incurred by ComEd during Plan Year 2, which was paid to the incremental energy efficiency employees hired to implement the energy efficiency programs and whose costs are recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment ("Rider EDA"). Specifically, these incentive compensation costs were incurred under the 2009 and 2010 Annual Incentive Programs ("AIP"). Indeed, the Illinois Commerce Commission ("Commission") expressly noted in its 2010 rate case order that Staff "reviewed the AIP Program, and concluded that the program, in fact, benefits ratepayers." *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65.

Faced with this prior position, Staff provides no legal or factual basis for its claim that these very same AIP plans suddenly do not benefit customers any longer. Staff equally ignores

[1] The amount of Staff's disallowance is incorrect and unsupported in the record. The uncontested evidence demonstrates that only approximately $96,000 of incentive compensation expense was charged through Rider EDA during Plan Year 2. Staff Cross Ex. 3; ComEd Cross Ex. 1.

that some of the most obvious customer benefits are provided through energy efficiency programs and the employees who administer them. Indeed, it is uncontested that these employees worked diligently during PY2 to contain costs and deliver energy savings, which resulted in ComEd significantly exceeding its Plan Year 2 energy savings goal at a cost of $16 million below budget.

Finally, although Staff now concedes that the Commission's order in ICC Docket No. 10-0570 does not retroactively apply to this docket (which was filed months before the order in ICC Docket No. 10-0570 and relates to costs incurred as early as 18 months prior to the order), ComEd's Plan Year 2 incentive compensation already addresses the Commission's directive in that order. Specifically, ComEd's incentive compensation "relates to EE or [is] tailored [] for these employees." *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010) at 44. Inherent in the AIP structure is the requirement that employees are evaluated based on their achievement of specific, individual goals during the year that relate to their particular department within ComEd. As a result, the AIP, when applied to the incremental energy efficiency employees, ensures that their incentive compensation relates to energy efficiency and is specifically tailored to them.

ComEd therefore requests that the Commission reject Staff's proposed disallowance of all incentive compensation costs.

II. OVERVIEW OF COMED'S ENERGY EFFICIENCY AND DEMAND RESPONSE PLAN AND RIDER EDA.

A. Summary of ComEd's Energy Efficiency and Demand Response Plan's Energy Savings Goals and Spending Screen.

On November 15, 2007, ComEd filed its 2008 – 2010 Energy Efficiency and Demand Response Plan ("Plan") pursuant to the requirements of Section 8-103 of the Act. Although the Plan addressed a variety of issues, the core of ComEd's Plan was a portfolio of energy efficiency and demand response measures designed to meet the statutory energy savings goals within the spending screens in each of the three plan years. For Plan Year 2, Section 8-103(b) required that ComEd "implement cost-effective energy efficiency measures" to achieve an annual energy savings goal of 0.4% of energy delivered during Plan Year 2 (220 ILCS 5/8-103(b)), and Section 8-103(c) mandated that ComEd "implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers" (220 ILCS 5/8-103(c)). Brandt Dir., ComEd Ex. 2.0, 5:98-103.

Moreover, Section 8-103(d) established a "spending screen," which provided that, for Plan Year 2, ComEd "reduce the amount of energy efficiency and demand-response measures implemented … by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to … the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007." 220 ILCS 5/8-103(d); Brandt Dir., ComEd Ex. 2.0, 5:104-11. Applying these goals to Plan Year 2, ComEd's Plan calculated an energy efficiency savings goal of 393,691 MWhs, a demand response savings goal of 11.1 MWs, and a spending screen of $81.6 million. Brandt Dir., ComEd Ex. 2.0, 5:111-6:113. Because the statute requires that the Department of Commerce and Economic Opportunity ("DCEO") implement

25% of the energy efficiency measures, of the 393,691 MWhs energy efficiency savings goal, ComEd was responsible for 312,339 MWhs, and DCEO was responsible for 81,352 MWhs. *Id.*, 6:114-25.

In its February 6, 2008 order approving ComEd's Plan, the Commission approved the calculations of the energy efficiency savings goals, the spending screen, and the split with DCEO. *See Commonwealth Edison Co.*, ICC Docket No. 07-0540, Final Order (Feb. 6, 2008). Because the order required ComEd to recalculate the spending screen prior to the start of each plan year to reflect the most recent year's revenue, the revised spending screen for Plan Year 2 was $79.3 million. Brandt Dir., ComEd Ex. 2.0, 6:131-7:134.

B. Overview of Rider EDA and Reconciliations Thereunder.

Rider EDA prescribes the method of computing the charges that reflect the recovery of the incremental costs associated with energy efficiency and demand response measures. Brandt Dir., ComEd Ex. 2.0, 18:390-91. The purpose and intent of Rider EDA is to pass through to retail customers the incremental costs incurred by ComEd associated with the measures, without markup or profit. *Id.*, 18:392-94. Each May, ComEd files with the Commission an Informational Filing, which includes its projected costs for measures to be implemented during the next plan year and the calculations necessary to determine the Rider EDA charges for the coming plan year for each of the three customer classes identified in the rider.[2] *Id.*, 18:394-97. A key component of the Rider EDA calculation is the Automatic Reconciliation Factor ("ARF"), which Rider EDA defines as "equal to the cumulative over collection or under collection from applicable retail customers, pursuant to plans approved by the ICC, resulting from the

[2] Rider EDA also provides that the Rider EDA charges may be revised by ComEd during a given plan year if ComEd determines that "a revised EDA results in a better match between EDA revenues and applicable Incremental costs." Rider EDA, ILL. C. C. No. 10, Original Sheet No. 248.1.

application of then applicable EDAs through the end of the following May monthly billing period." *Id.*, 18:401-19:405; Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 248.

The costs recoverable through Rider EDA include *__all incremental costs__* incurred by ComEd in association with the measures. Brandt Dir., ComEd Ex. 2.0, 19:411-12. Rider EDA defines "Energy Efficiency and Demand Response Measures" ("Measures") as "activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Economic Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC." Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 245. The rider then defines "Incremental Costs" as follows:

> Incremental Costs mean costs incurred after August 28, 2007 by the Company or recovered on behalf of DCEO in association with the Measures and include, but are not limited to (a) fees, charges, billings, or assessments related to the Measures; (b) costs or expenses associated with equipment, devices, or services that are purchased, provided, installed, operated, maintained, or monitored for the Measures; (c) the revenue requirement equivalent of the return of and on a capital investment associated with a Measure, based on the most recent rate of return approved by the ICC; and (d) all legal and consultative costs associated with the Measures.
>
> Incremental Costs also include incremental expenses for wages, salaries, and benefits of Company employees, including direct and indirect incremental costs associated with such Company employees, who are hired for positions that are specifically related to the Measures and that were created after August 28, 2007. Incremental Costs may not include any expenses for wages, salaries, and benefits of Company employees in positions that are related to the Measures, employed either before or after August 28, 2007, that are otherwise recovered under other effective tariffs.

Id., 1st Revised Sheet No. 246.

For Plan Year 2, the Rider EDA charges for each customer group were determined by dividing the projected incremental costs associated with the measures for Plan Year 2 for that customer group (less the ARF) by the projected energy to be delivered to that customer group in Plan Year 2, multiplying that figure by the Uncollectible Factor, and rounding to the nearest thousandth of a cent. Brandt Dir., ComEd Ex. 2.0, 23:505-09. The relevant Rider EDA charge was applied to each kWh of electricity delivered to ComEd's retail customers. The total charge or credit applied in accordance with the provisions of Rider EDA is separately stated on each retail customer's monthly bill as "Energy Efficiency Programs." *Id.*, 24:526-29.

Pursuant to the terms of Rider EDA, ComEd must file an annual report with the Commission summarizing the operation of Rider EDA and comparing actual incremental cost recovery from customers during each plan year with the incremental costs incurred in accordance with the provisions of Rider EDA for a given plan year. *Id.*, 24:532-36. As shown in ComEd Ex. 1.0 and described in the direct testimony of ComEd witness Mr. Brandt, ComEd's Annual Report for Plan Year 2 showed that ComEd's costs for Plan Year 2 were nearly $16 million less than projected, yet ComEd still exceeded the energy savings goals for Plan Year 2, as confirmed in the Commission's order in ICC Docket 10-0520. ComEd Ex. 1.0; Brandt Dir., ComEd Ex. 2.0, 16:341-45; *Commonwealth Edison Co.*, ICC Docket No. 10-0520, Final Order (May 16, 2012) at 7-8.

III. UNCONTESTED ISSUES

As described below, ComEd and Staff have reached agreement on certain reporting issues and adjustments.

Annual Reporting of Budget to Actual Comparison. Staff proposes that the Commission direct ComEd to include in its next Rider EDA Annual Report a comparison of the energy efficiency ("EE") Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with those articulated in ComEd energy efficiency plans. Hinman Dir., Staff Ex. 2.0, 6:98-7:102. In response to Staff's proposal, ComEd agreed to provide the comparison "in a form that is substantially similar to the one [Staff] requests" while explaining that it does not manage the individual cost categories for each program, but rather affords the program manager flexibility to manage the total budget. Brandt Reb., ComEd Ex. 3.0, 2:29-33. For this reason, ComEd must retain the flexibility to identify the most appropriate individual cost category or categories for the various expenses, especially in cases where an expense cannot be clearly defined by one cost category, but rather goes across two or more categories. *Id.,* 2:33-36. Staff did not take issue with this clarification, and ComEd therefore requests that the Commission adopt Staff's recommendation as modified by ComEd's clarification for flexibility to accommodate how ComEd manages the budget.

Filing of Annual Evaluation Reports. Staff recommends that the annual evaluation reports filed in the annual evaluation dockets also be filed in the reconciliation docket for the same plan year. Brandt Reb., ComEd Ex. 3.0, 2:39-42. For example, the Plan Year 2 evaluation reports would be filed in the Plan Year 2 reconciliation docket once they become available. *Id.,* 2:42-43. In addition, Staff requests that ComEd file the quarterly status reports it provides to the Stakeholder Advisory Group in the original, closed Plan docket to which the quarterly status reports relate. *Id.,* 2:43-3:45. Without commenting on whether these reports are relevant to this docket, ComEd agrees to file these reports in the requested dockets as a courtesy to Staff and for informational purposes only. *Id.,* 3:46-51.

Staff's Withdrawal of Its Rider EDA Revenue Adjustment. Although Staff initially proposed a revenue adjustment to disallow $189,020, it withdrew that proposal in its rebuttal testimony. Tolsdorf Reb., Staff Ex. 3.0, 1:16-22. As ComEd explained, Staff's proposal was unsupported and contradicted by all of the evidence provided by ComEd in this docket. Brandt

Reb., ComEd Ex. 3.0, 3:57-59. Accordingly, there is nothing for the Commission to decide regarding this now-withdrawn issue.

Removal of Certain Travel Expense. In order to narrow the issues in the case, ComEd agrees to remove a travel expense for an alcoholic beverage of $6 from the costs recovered through Rider EDA in this reconciliation docket. Brandt Reb., ComEd Ex. 3.0, 6:117-21.

IV. ARGUMENT REGARDING INCENTIVE COMPENSATION COSTS

A. Introduction

All eligible ComEd employees participate in the ComEd Annual Incentive Program ("AIP"). As explained in the 2010 AIP plan, "[t]his program is designed to reasonably insure that customers receive the benefits of reduced expenses and greater efficiencies in operations by putting a portion of employees' compensation at risk." Staff Cross Ex. 2 at 2. As the name of the program indicates, these benefits are intended to be effected by putting a portion of the employee's expected total compensation at risk: "It serves as an important part of your overall compensation package by linking individual and Company performance. The final amount of your award will be based on how well you, the group that shares your key performance indicators and the Company as a whole perform against the goals set for the year." *Id.*

As employees of ComEd, the incremental employees hired to implement ComEd's energy efficiency programs participate in the AIP along with all other ComEd employees. Fruehe Reb., ComEd Ex. 4.0, 3:50-55. Indeed, there is no dispute that these incremental employees are employees of ComEd and work in a department of ComEd (the Energy Efficiency department). Tr. at 39:11-40:2. As a result, incremental EE employees are subject to individual goals under the AIP (which are directly related to achieving ComEd's overall energy efficiency goals), and the degree to which each of these employees achieves his or her goals will determine the amount of compensation under the AIP, which could range from $0 to the full amount. Staff Cross Ex. 2; Fruehe Reb., ComEd Ex. 4.0, 6:124-29.

Although these incremental EE employees directly contributed to ComEd exceeding the energy savings goals during Plan Year 2 at a cost that was nearly $16 million below budget, Staff claims, incredibly, that all incentive compensation costs related to these employees should be disallowed. As explained below, Staff's arguments are without basis in fact or law and should be rejected.

B. Legal Standard

Because Staff's testimony reflects considerable confusion regarding the standard by which ComEd's incentive compensation costs should be reviewed by the Commission, a brief discussion of the legal standard is set forth below.

Initially, Staff claimed in its direct testimony that ComEd had failed to satisfy the Commission's order in ICC Docket No. 10-0570, which approved ComEd's second energy efficiency plan for 2011 – 2013 (Plan Year 4 through Plan Year 6). Specifically, the Commission directed in that December 2010 order that "in ComEd's *next reconciliation filing* it should show how its current incentive compensation relates to EE or how it has tailored its incentive compensation for these employees." *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010) at 44 (emphasis added). When ComEd explained in rebuttal testimony that its "next reconciliation filing" was its August 2011 reconciliation filing for Plan Year 3, Staff largely backed away from its argument regarding the application of this order to the present docket. Indeed, on cross examination Staff witness Mr. Tolsdorf conceded that the

Commission's reference to the "next reconciliation filing" was not a reference to the present Plan Year 2 reconciliation filing that was filed four months earlier in August 2010. Tr. at 43:7-18.[3]

Only in Mr. Tolsdorf's rebuttal testimony did he cite to the correct standards by which incentive compensation costs are to be reviewed and recovered. As with the other costs ComEd proposes to recover in this docket, the incentive compensation costs must be prudently incurred and reasonable in amount. Further, as Staff witness Mr. Tolsdorf noted in his rebuttal testimony, the Commission recently reaffirmed in ComEd's 2010 rate case order its "long-standing policy of allowing Incentive Compensation costs when those costs benefit ratepayers…." Tolsdorf Reb., Staff Ex. 3.0, 4:79-83 (quoting *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65). Importantly, incentive compensation costs must not be tied to net income or earnings per share metrics that primarily benefit shareholders. *See, e.g.*, *Commonwealth Edison Co.*, ICC Docket No. 07-0566, Final Order (Sept. 10, 2008) at 61. As explained in Section IV.C *infra*, Staff has already concluded that the AIP benefits customers. Indeed, these benefits are only further underscored here where the incremental EE employees provided direct benefits to customers during Plan Year 2 in the form of delivering energy savings far above the statutory minimum at a cost that was nearly $16 million below budget. Staff has not challenged these very real benefits or otherwise contested the prudence or reasonableness of the incentive compensation costs – indeed, it is uncontested that the AIP plans do not contain financial goals such as net income or earnings per share.

[3] To the extent any doubt remains regarding the timing of the Commission's directive in ICC Docket No. 10-0570, it is a well-established principle of Illinois law, that where an opinion clearly states that its effect shall be prospective (*i.e.*, "in ComEd's next reconciliation filing") it will not apply retroactively. *Aleckson v. Village of Round Lake Park*, 176 Ill. 2d 82, 86 (1997). This is consistent with the equally well-established rule prohibiting retroactive ratemaking. *Citizens Utils. Co. v. Ill. Commerce Comm'n*, 124 Ill. 2d 195, 207 (1988) ("The rule prohibiting retroactive ratemaking is consistent with the prospective nature of legislative activity, such as that performed by the Commission in setting rates.") Indeed, because the ICC is a creature of the legislature and derives its authority therefrom, the presumption against retroactive application of a statute is also instructive here. *Barrett v. Guaranty Bank & Trust Co.*, 123 Ill. App. 2d 326, 332 (1st Dist. 1970).

In sum, because it is unclear just what theory or theories Staff will attempt to rely upon in its Initial Brief, ComEd has addressed each potential argument below.

C. The Plan Year 2 Incentive Compensation Costs Provide Verified and Substantial Benefits to Customers and Were Otherwise Prudently Incurred and Reasonable in Amount.

Because Plan Year 2 straddles two calendar years (2009 and 2010), incentive compensation costs were governed by two separate AIP plans – the 2009 AIP and the 2010 AIP. *See* Staff Cross Exs. 1 and 2, respectively. Indeed, the Commission expressly noted in its 2010 rate case order that Staff "reviewed the AIP Program, and concluded that the program, in fact, benefits ratepayers." *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65. Consistent with this conclusion, ComEd fully recovered the incentive compensation costs it incurred during Plan Year 1 related to the incremental EE employees. *Commonwealth Edison Co.*, ICC Docket No. 09-0378, Final Order (Oct. 6, 2010) at 12.

There is no basis upon which Staff can now claim that these same AIP plans do not benefit customers. In fact, some of the most pronounced and verifiable customer benefits are delivered to customers through energy efficiency programs. Indeed, the incremental EE employees ComEd has hired to implement its Plan (and whose costs are recovered through Rider EDA) provide the benefits identified by the General Assembly in Section 8-103 of the Act:

> Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.

220 ILCS 5/8-103(a). These savings, as well as the energy savings achieved under subsection (b) of Section 8-103 of the Act, are effected in part by the employees who implement the energy efficiency plan, and who are compensated to do so. And, as the Commission has now confirmed in ICC Docket No. 10-0520, ComEd exceeded the Plan Year 2 energy savings goal, and was

permitted to apply to Plan Year 3 approximately 40,000 Megawatt hours of that additional energy savings. *Commonwealth Edison Co.*, ICC Docket No. 10-0520, Final Order (May 16, 2012) at 6. These significant savings were achieved at a cost $16 million below budget. Brandt Dir., ComEd Ex. 2.0, 2:35-37. Importantly, Staff neither addresses nor disputes these very real benefits.[4]

Because there can be no dispute regarding the customer benefits delivered by these incremental EE employees, Staff attempts to belittle the importance of these employees' contributions (and the benefits they deliver) by claiming that they should not receive "extra" compensation simply for doing their job. Tolsdorf Reb., Staff Ex. 3.0, 6:125-7:157. Staff's argument is wrong for two reasons. <u>First</u>, incentive compensation is not "extra" compensation. As ComEd witness Mr. Fruehe explained, incentive compensation is "a part of the employee's total compensation package. The AIP, similar to paid vacation and certain healthcare benefits, is a standard component of compensation offered to all ComEd employees, and is necessary for ComEd to remain competitive in the labor market with other utilities to attract qualified employees." Fruehe Sur., ComEd Ex. 6.0, 7:146-49. Indeed, the 2009 AIP itself expressly states that incentive compensation is "an important part of [the] overall compensation package." Staff Cross Ex. 1 at 2. Put another way, this compensation is not "extra" or a bonus, but rather a part of the employee's total compensation that is "at risk." Fruehe Sur., ComEd Ex. 6.0, 7:152-53. For example, if an EE employee fails to achieve his or her individual goals, he or she would receive less than the total annual compensation expected for the year. *Id.*, 7:153-55.

[4] ComEd notes that these results are particular to the unique goals and budgets for Plan Year 2 and do not necessarily set a standard by which future performance can be judged. This is because in future plan years the dollars available for administering energy efficiency programs remain relatively flat while the energy savings goals continue to increase, which makes achievement of the annual savings goals more difficult in each subsequent year.

Second, with respect to Staff's attempt to undermine the incremental EE employees' efforts by characterizing them as "the bare minimum of what is acceptable" (Tolsdorf Reb., Staff Ex. 3.0, 7:148-49), the evidentiary record flatly contradicts Staff's claim. To the contrary, these incremental EE employees contributed toward the remarkable cost containment efforts that resulted in a savings of nearly $16 million to customers during Plan Year 2. Notably, these savings were achieved while also exceeding the energy savings goals for Plan Year 2, which resulted in additional savings and benefits to customers.

Moreover, the AIP itself ensures that only those employees whose performance contributed to ComEd's success receive compensation under the AIP. Although Staff's cross examination of ComEd witness Mr. Fruehe initially mischaracterized the AIP as awarding even the poorest performing employees with incentive compensation, Mr. Fruehe corrected this erroneous reading of the AIP during redirect examination. Specifically, Mr. Fruehe highlighted those portions of the AIP ignored by Staff that clearly state that those employees who fail to meet expectations receive no compensation under the AIP. Tr. at 28:12-31:16. The AIP explains the effect of the Individual Performance Multiplier as follows:

- ➢ The annual performance review process determines your individual performance multiplier ("IPM") based on your individual performance and personal contribution to your team during the year. The IPM can range from 50 percent to 120 percent or zero percent, relative to your annual performance rating on a five-point rating scale (A, B+, B, B-, C).
- ➢ Your total AIP award, after application of ComEd Funding KPIs, individual multipliers and all other adjustments, can range from zero to 200 percent of your individual target incentive opportunity.

- You will not receive an award if your year-end performance rating is "does not meet expectations" (or its equivalent), or you are placed on but do not successfully complete a performance improvement plan by year end.

Staff Cross Ex. 2 at 6 (omitting footnote noting that the top of the IPM range is limited to 110% for certain officers).

In sum, the overwhelming record evidence indicates that the Plan Year 2 incentive compensation costs were prudently incurred, reasonable in amount and provided direct benefits to customers.

D. Plan Year 2 Incentive Compensation Relates to Energy Efficiency and Is Tailored to Energy Efficiency Employees.

As explained above, the Commission's order in ICC Docket No. 10-0570 plainly stated that it applies to ComEd's "next reconciliation filing" (*i.e.*, its August 2011 Plan Year 3 filing (*see* ICC Docket No. 11-0646)). It is worth noting, however, that ComEd's incentive compensation costs already satisfy the showing articulated by the Commission in that docket – "in ComEd's next reconciliation filing it should show how its current incentive compensation relates to EE *or* how it has tailored its incentive compensation for these employees." *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010) at 44 (emphasis added). Although the Commission requires that ComEd make only one of these showings, ComEd's incentive compensation both relates to energy efficiency *and* is tailored to EE employees.

Inherent in the AIP is the requirement that employees are evaluated based on their achievement of specific, individual goals during the year that relate to their particular department within ComEd. In other words, the AIP structure ensures that incentive compensation relates to energy efficiency and is tailored to EE employees. As Mr. Fruehe testified, EE employees' goals "are directly related to achieving ComEd's overall energy efficiency goals." Fruehe Sur., ComEd Ex. 6.0, 6:120-21. Moreover, employees are also evaluated based on their personal contribution to their team during the year. Staff Cross Ex. 2 at 6; *see also id.* at 2 ("The final amount of your award will be based on how well you, the group that shares your key performance indicators and the Company as a whole perform against goals set for the year.") Put simply, the amount of incentive compensation an incremental EE employee receives directly relates to energy efficiency and is tailored to the employee because such compensation depends on how well the employee performed in achieving energy efficiency goals and contributing to the success of the Energy Efficiency department during the year. During cross examination, Staff witness Mr. Tolsdorf admitted that he never addressed this relationship. Tr. at 50:22-51:7.

As explained in Section IV.C *supra*, the tailoring of the AIP to the incremental EE employees is accomplished in part through the Individual Performance Multiplier ("IPM"), which is based on an employee's "individual performance and personal contribution to [his or her] team during the year. The IPM can range from 50 percent to 120 percent or zero percent, relative to your annual performance rating on a five-point rating scale …." Importantly, an employee will not receive an award if his or her year-end performance rating is "does not meet expectations" or if the employee did "not successfully complete a performance improvement plan by year end." Staff Cross Ex. 2 at 6. Applying the IPM to the incremental EE employees, they are evaluated based on their individual performance as an energy efficiency employee and their contribution to the Energy Efficiency department. Based on these specific energy efficiency-related criteria, the incremental EE employees may receive a portion of their total compensation through the AIP if their performance rating qualifies for such compensation. Put another way, if the incremental EE employees do not achieve their EE-related goals, they will not be able to participate in the AIP and receive less than their total expected compensation. Again, when Mr. Tolsdorf was asked during cross examination whether he addressed the IPM anywhere in his direct or rebuttal testimony, he testified that he did not. Tr. at 50:22-51:7.

Finally, beginning with the 2010 AIP, ComEd added a Key Performance Indicator called the Focused Initiatives & Environmental Index, which includes a measure of energy efficiency savings achieved through ComEd's energy efficiency programs offered pursuant to Section 8-103 of the Act. Staff Cross Ex. 2 at 4, 8. The incremental EE employees are vital and necessary to achieving energy savings under Section 8-103, and their performance is directly tied to achievement of the KPI described above. Fruehe Sur., ComEd Ex. 6.0, 5:103-06. Staff witness Mr. Tolsdorf failed to address the addition of this KPI in his direct testimony, and only acknowledged it in his rebuttal testimony in response to ComEd witness Mr. Fruehe. Tr. at 48:5-18.

V. CONCLUSION

For the reasons set forth above, Commonwealth Edison Company respectfully requests that the Commission approve its Annual Report (ComEd Ex. 1.0) as filed on August 31, 2010 and as modified pursuant to the agreements described in Section III *supra*.

Dated: May 31, 2012

Respectfully submitted,

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