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.	)	

DRAFT PROPOSED ORDER
SUBMITTED BY COMMONWEALTH EDISON COMPANY

Dated: June 7, 2012

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By the Commission:

I. Procedural History

On September 9, 2010, the Illinois Commerce Commission ("Commission") entered an Order commencing this reconciliation proceeding. The Order required Commonwealth Edison Company ("ComEd") to reconcile the revenues it collected under its Energy Efficiency and Demand Response Adjustment Rider ("Rider EDA"), from June 1, 2009 through May 31, 2010 ("reconciliation period"), with the costs it prudently incurred with respect to energy efficiency and demand response measures, as that term is defined in Rider EDA.

On August 31, 2010, ComEd filed its Annual Report to the Commission Concerning the Operation of Rider EDA ("Annual Report") for Plan Year 2 beginning June 1, 2009 and ending May 31, 2010 ("Plan Year 2" or "PY2"). The Annual Report was accompanied by Direct Testimony. ComEd posted notice of the filing of its testimony and exhibits in its offices and in newspapers with general circulation in ComEd's service territory in the manner prescribed by 83 Ill. Adm. Code Sec. 255, in compliance with the Commission's Order initiating this proceeding.

On September 7, 2011, Staff of the Illinois Commerce Commission ("Staff") filed Direct Testimony. ComEd filed Rebuttal Testimony on February 9, 2012, and Staff filed Rebuttal Testimony on March 22, 2012. On April 19, 2012, ComEd filed Surrebuttal Testimony.

Pursuant to notice given as required by law and by the rules and regulations of the Commission, the evidentiary hearing in this proceeding convened at the Commission's offices in Chicago, Illinois on May 10, 2012, before a duly authorized Administrative Law Judge ("ALJ"). Appearances were entered by counsel on behalf of ComEd, Staff, the People of the State of Illinois ("AG"), and the Citizens Utility Board ("CUB"). ComEd presented the testimony of Michael S. Brandt, ComEd's Manager – Energy, Efficiency Planning & Measurement Department, and Martin G. Fruehe, ComEd's Manager – Revenue Policy Department. Staff presented the testimony of Scott Tolsdorf, an accountant in the Accounting Department of Staff's Financial Analysis Division, and Jennifer L. Hinman, an economic analyst in the Policy Program of Staff's Energy Division. At the conclusion of the hearing, the record was marked "Heard and Taken." The Parties filed and served Initial Briefs on May 31, 2012. On June 7, 2012, Staff filed its Position Statement and ComEd filed a Draft Proposed Order. Reply Briefs were filed and served on June 21, 2012.

II. Overview of ComEd's Energy Efficiency and Demand Response Plan and Rider EDA

Mr. Brandt testified regarding: (i) ComEd's 2008-2010 Energy Efficiency and Demand Response Plan ("Plan"); (ii) the various energy efficiency and demand response measures ComEd implemented for Plan Year 2 and ComEd's accounting for Plan Year 2 expenditures; (iii) ComEd's process for the selection and the oversight of contractors to ensure costs are reasonable; (iv) the reasonableness and prudence of Plan Year 2's measures and costs; and (v) the reconciliation of revenues collected under Rider EDA with the costs incurred by ComEd associated with the implementation of the energy efficiency and demand response measures approved in the Plan, as recorded on ComEd's books, for the period beginning June 1, 2009 and extending through May 31, 2010. ComEd Ex. 2.0 at 1. In sum, during Plan Year 2 ComEd spent $15.7 million less than projected while also exceeding the ComEd portion of the energy savings goal by an estimated 14%. *Id*. at 2.

In addition to implementing the programs set forth in its Plan, ComEd worked closely with the Stakeholder Advisory Group ("SAG") throughout the Plan Year on many matters, including program evaluation issues, plan development and review, portfolio and program status, portfolio and program design changes, demand response programs and market potential studies. ComEd Ex. 2.0 at 2.

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

Mr. Brandt stated that on November 15, 2007 ComEd filed its 2008-2010 Energy Efficiency and Demand Response Plan ("Plan") pursuant to the requirements imposed by Section 8-103 of the Public Utilities Act ("Act"). The core of ComEd's Plan is 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)). 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, as defined in Section 16-111.5 of this Act." 220 ILCS 5/8-103(c); ComEd Ex. 2.0 at 5; ComEd Init. Br. at 3. 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); ComEd Ex. 2.0 at 5; ComEd Init. Br. at 3. Applying these goals to Plan Year 2, ComEd's Plan calculated a statutory energy efficiency savings goal of 393,691 megawatt hours ("MWhs"), a demand response savings goal of 11.1 megawatts ("MWs"), and a spending screen of $81.6 million. ComEd Init. Br. at 3.

According to Mr. Brandt, ComEd was responsible for implementing all of the demand response measures in the Plan; however, under Section 8-103(e), ComEd shared responsibility for the implementation of energy efficiency measures with the Department of Commerce and Economic Opportunity ("DCEO"). The statute provides that ComEd should implement 75% of the energy efficiency measures and DCEO was responsible for implementing the remaining 25%. 220 ILCS 5/8-103(e); ComEd Init. Br. at 3-4. Mr. Brandt explained that ComEd and DCEO calculated the split by considering the nature of the programs and allocating the amount under the statutory spending screen to correspond with the statutory percentage. He testified that as a result, of the 393,691 MWh energy efficiency saving goal, ComEd was responsible for 312,339 MWhs and DCEO was responsible for 81,352 MWhs. ComEd Ex. 2.0 at 6.

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); ComEd Ex. 2.0 at 6; ComEd Init. Br. at 4. Mr. Brandt further testified that pursuant to the Commission's Order, ComEd recalculated the spending screen to reflect the most recent year's revenue. The recalculation resulted in an adjusted spending screen of $79.3 million, which was $2.3 million less than the spending screen originally calculated in the Plan for Plan Year 2. ComEd Ex. 2.0 at 6-7; ComEd Init. Br. at 4.

B. Overview of Energy Efficiency and Demand Response Measures Implemented During Plan Year 2 and Plan Year 2 Incremental Costs

Mr. Brandt described the individual energy efficiency measures that ComEd implemented in Plan Year 2 to achieve its energy savings goals. He explained that the individual energy efficiency measures were organized into an overall portfolio consisting of a variety of programs. The basic building block of the portfolio is the energy efficiency measure – an individual technology or service that reduces the amount of electricity used when installed or performed. An energy efficiency program or program element consists of the bundling of one or more of these energy efficiency measures into an entire program concept, which includes program delivery mechanisms, incentive rebate levels, and marketing approaches. The measure is one component of the program element. Mr. Brandt testified that a program represents a bundle of program elements. ComEd Ex. 2.0 at 7.

Mr. Brandt testified that the portfolio was designed to blend together the program elements under two broad solutions-based programs for Residential and Business customers – "Smart Ideas for Your Home" and "Smart Ideas for Your Business." ComEd's final Plan Year 2 portfolio consisted of a set of energy efficiency program elements that included six residential program elements and three commercial and industrial ("C&I") program elements. ComEd Ex. 2.0 at 7.

As Mr. Brandt explained, the "Smart Ideas for Your Home" program elements were technology based, focused on simple customer actions and emphasized customer education with the goal of moving residential customers to comprehensive "whole home" solutions. They included the Residential Lighting Program element, the Appliance Recycling Program element, the Residential Multi-Family "All-Electric" Sweep Program element, the Central Air Conditioner Energy Services ("CACES") Program element, the Single Family Home Performance Program element, and the Air Conditioning ("AC") Cycling Program element. ComEd Ex. 2.0 at 8-11. Mr. Brandt further testified that the "Smart Ideas for Your Business" program elements offered a complimentary set of energy efficiency options to C&I customers during Plan Year 2. These included the Prescriptive Incentive Program element, the Custom Incentive Program element, the Retrocommissioning Program element, and the C&I New Construction Program element. ComEd Ex. 2.0 at 11-12.

Mr. Brandt also testified about the incremental costs ComEd incurred related to implementing energy efficiency and demand response measures during Plan Year 2. He explained that the incremental costs included costs for: (i) residential programs, (ii) C&I programs, (iii) the demand response program, (iv) education and market transformation activities, (v) DCEO costs, and (vi) portfolio-level costs. ComEd Ex. 2.0 at 12. Mr. Brandt described the incremental costs associated with each of the program elements ComEd implemented during Plan Year 2 as follows: Residential Lighting – $11,691,347; Appliance Recycling – $3,646,603; Residential Multi-Family "All-Electric" Sweep – $822,397; Residential HVAC Diagnostic & Tune-Up and Residential New HVAC with Quality Installation – $2,919,925; Single-Family Home Performance – $373,341; AC Cycling – $819,145 (net of PJM Interconnection credits of $223,470); C&I Prescriptive/Custom – $20,844,585; C&I Retrocommissioning – $2,036,491; and C&I New Construction – $578,798. ComEd Ex. 2.0 at 13.

According to Mr. Brandt, ComEd also undertook a variety of education and market transformation activities that were designed to promote energy efficiency education awareness of ComEd's Plan. These activities included: (i) providing Energy Insights Online and Energy Data Services for business customers, (ii) participating in trade ally events to promote the programs, (iii) conducting general marketing activities, and (iv) operating two pilot programs – ComEd Community Energy Challenge and Positive Energy Home Energy Report – whose costs were split with the Research and Development budget. Mr. Brandt testified that the incremental costs associated with these activities during Plan Year 2 were $1,649,418. *Id*.

Mr. Brandt also explained that because ComEd collects 100% of the revenue, it must reimburse DCEO for its incremental costs relating to the energy efficient measures

DCEO implemented. As DCEO executed grants or contracts for energy efficiency measures during Plan Year 2, it would forward to ComEd an invoice including the necessary supporting documentation for these grants and contracts. ComEd reviewed the invoice documentation to ensure completeness and then released the money to DCEO. Mr. Brandt explained that this process provided oversight and ensured that the money was being allocated towards energy efficiency measures. ComEd reimbursed DCEO $11,471,616 for its incremental costs. ComEd Ex. 2.0 at 14.

Mr. Brandt testified that the Plan Year 2 portfolio-level costs included the operation and administration costs of the Plan and consisted of three categories – portfolio administration costs, measurements and verification costs, research and development, and emerging technology costs. The portfolio administration costs included costs associated with: (i) internal ComEd labor for new, incremental positions added to implement ComEd's Plan, (ii) market research and baseline studies across all customer classes, and (iii) implementation and management of the tracking system. According to Mr. Brandt, during Plan Year 2 the incremental costs were $3,285,956. The measurement and verification costs related to expenses incurred in retaining a consultant to conduct the required independent evaluation function for the portfolio. Mr. Brandt explained that the hiring of the consultant was subject to the Commission Staff's approval. According to Mr. Brandt, the incremental costs incurred during Plan Year 2 for measurement and verification were $2,377,679. Mr. Brandt stated that research and development and emerging technologies costs could be divided into three groups: (i) pilot programs, (ii) energy efficiency industry memberships, and (iii) technology research. He testified that during Plan Year 2 these incremental costs totaled $1,026,174. ComEd Ex. 2.0 at 15.

Summarizing the PY2 incremental costs, Mr. Brandt testified that the actual incremental costs ComEd incurred related to the implementation of the Plan during Plan Year 2 totaled $63,543,474. *See* ComEd Ex. 1.0; ComEd Ex. 2.0 at 16. He explained that ComEd accounts for the expenditures associated with the measures by assigning each program and activity a unique project number within ComEd's accounting system. He testified that the Plan Year 2 forecast of expenditures associated with the measures was $79,256,000 (ComEd Ex. 2.1) and actual expenditures for Plan Year 2 were $63,543,474. Mr. Brandt stated that the primary reasons for the difference between the forecast and actual expenditures are (i) ComEd's success in managing the C&I programs, and (ii) DCEO costs were less than projected. ComEd Ex. 2.0 at 16. However, actual revenues collected for Plan Year 2 were $70,546,051. ComEd Ex. 1.0.

C. Contractor Selection and Oversight to Ensure Reasonable and Prudent Costs

Mr. Brandt also described the types of activities for which ComEd retains third-party consultants and contractors. Specifically, these roles include: (i) program implementation, (ii) program evaluation, (iii) market research, and (iv) program tracking system development and implementation. Mr. Brandt explained that to ensure the consultant and contractor costs are reasonable and prudent, ComEd uses a standard competitive solicitation process administered by its affiliate, Exelon Business Services

Company ("BSC"). According to Mr. Brandt, ComEd, in conjunction with BSC, developed Request for Proposals ("RFP") documents that detailed the requirements for the programs. A list of qualified vendors was created for the programs and projects based on numerous sources and then the RFPs were sent to the vendors for bid. For each RFP, ComEd and BSC put together an internal team to review each bid based on specific qualifications, including previous experience and cost. In all cases, contract negotiations were conducted by the BSC procurement team and followed standard procedures. Mr. Brandt explained that in the case of the evaluation contract, Staff was also offered the opportunity to review all bids, participate in any vendor interviews, and have sign-off on the vendor selection. In addition, SAG members were kept apprised of all steps in the process and had the opportunity to comment on the process at any time. ComEd Ex. 2.0 at 16-17.

Mr. Brandt further testified that during the contract implementation phase, ComEd's program managers review the invoices submitted by the consultants and contractors to ensure the invoices reflect only those charges that relate to work that has been authorized. He explained that to assist its review of expenditures, ComEd requires that invoices include detailed backup documentation. ComEd Ex. 2.0 at 17. Mr. Brandt also identified the primary consultants and contractors that worked on the project, including those contractors who were responsible for implementing the programs. ComEd Ex. 2.0 at 17-18.

D. Reconciliations under Rider EDA

1. Overview of Operation of Rider EDA

Mr. Brandt testified that Rider EDA prescribes the method of computing the charges that reflect the recovery of incremental costs associated with energy efficiency and demand response measures. He explained that 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. Each May, ComEd files with the Commission an Informational Filing for Energy Efficiency and Demand Response Adjustments ("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. Rider EDA 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 costs." ComEd Ex. 2.0 at 18; ComEd Init. Br. at 4.

Mr. Brandt further explained that 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 application of then applicable EDAs through the end of the following May monthly billing period." He explained that because the Plan Year 2 ARF reflected an over-collection of Plan Year 1 Rider EDA revenues by approximately $3.9 million, its application during Plan Year 2 decreased the amount that would be recovered from retail customers by approximately $3.9 million. *See* ComEd Ex. 1.0; ComEd Ex. 2.0 at 18-19; Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 248; ComEd Init. Br. at 4-5.

Mr. Brandt also testified that all incremental costs associated with the measures were recoverable under Rider EDA. ComEd Ex. 2.0 at 19; ComEd Init. Br. at 5. He stated that 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 Electric Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC." Rider EDA defines "incremental costs" as:

> [C]osts 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.

Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 246.

2. Plan Year 2 Reconciliation

Mr. Brandt explained that Exhibits 2.1 and 2.2 to his Direct Testimony showed how ComEd calculated the Rider EDA charges for the reconciliation period. Mr. Brandt explained that for each of the three customer classes, the following information was included in the calculations of Rider EDA for Plan Year 2: (1) the Plan Year 2 projected incremental costs associated with the measures, (2) the Plan Year 2 ARFs (over-collection of Plan Year 1 Rider EDA revenues), (3) the Total Dollar Amount to be recovered through the rider, (4) the Projected Energy to be Delivered to each of the three classes of Retail Customers (in kWhs), (5) the Uncollectible Factor, and (6) the Plan Year 2 Rider EDA Adjustments, rounded to the nearest thousandth of a cent. ComEd Ex. 2.0 at 20-21.

Moreover, Mr. Brandt explained that the methodology used to calculate the Rider EDA charges, described in Rider EDA, takes into account the Reimbursements of Incremental Costs ("RIC"), which is equal to reimbursement funds from any source other than the application of the Rider EDA charges to the bills of retail customers. If the RIC is greater than zero, then the amount of the RIC is subtracted from the projected incremental costs to obtain the total amount to be charged through the rider. Mr. Brandt testified that in Plan Year 2 the value of the RIC was zero. Although ComEd received credits of $223,470 from PJM Interconnection for the AC Cycling Program element, these credits were directly applied to the total expenses associated with the AC Cycling Program element. The total AC Cycling costs were $1,042,615. Subtracting $223,470 from $1,042,615 results in the net program costs of $819,145. ComEd Ex. 2.0 at 21-22.

Mr. Brandt also explained how ComEd determined the projected energy to be delivered during Plan Year 2 to retail customers in the Rider EDA calculations, stating that ComEd obtained a forecast of the projected energy to be delivered to its retail customers in Plan Year 2 from its Load Forecasting Division, which is part of ComEd's Financial Planning and Analysis department. He also testified as to how ComEd determined the Uncollectible Factor. He explained that Rider EDA provides that the Uncollectible Factor is "equal to the uncollectible factor listed in Rider UF – Uncollectible Factors (Rider UF) for retail customers taking service under Rate BESH – Basic Electric Service Hourly Pricing (Rate BESH)." Mr. Brandt stated that for Plan Year 2 EDA charges, the Rider UF uncollectible factor for retail customers taking service under Rate BESH was 1.0061. ComEd Ex. 2.0 at 22.

Mr. Brandt testified that as reflected in ComEd Ex. 2.2, however, the Rider EDA Uncollectible Factor was changed from 1.0061 to 1.0 consistent with the Commission's order in Docket No. 09-0433. Mr. Brandt explained that as a result, new Plan Year 2 EDA charges took effect with the April 2010 monthly billing period through the May 2010 monthly billing period. ComEd Ex. 2.2; ComEd Ex. 2.0 at 22-23.

According to Mr. Brandt, 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. He explained that, as shown in ComEd's Informational Filing, the Rider EDA charges appearing on retail customers' bills beginning June 2009 and extending through the March 2010 billing period were as follows: Residential (EDA-R) – 0.089 cents per kWh; Small C&I (EDA-NS) – 0.073 cents per kWh; and Large C&I (EDA-NL) – 0.90 cents per kWh. ComEd Ex. 2.1; ComEd Ex. 2.0 at 23. He further explained that, as shown on ComEd's Tariff Revisions and Informational Sheet Revisions Pursuant to the Illinois Commerce Commission Order in Docket No. 09-0433, submitted to the Commission on February 8, 2010, the Rider EDA charges appearing on retail customers' bills beginning with the April 2010 monthly billing period and extending through the May 2010 monthly billing period were as follows: Residential (EDA-R) – 0.088 cents per kWh; Small C&I (EDA-NS) – 0.073 cents per kWh; and Large C&I (EDA-NL) – 0.089 cents per kWh. ComEd

Ex. 2.2; ComEd Ex. 2.0 at 23. The relevant Rider EDA charge was then applied to each kWh of electricity delivered to ComEd's retail customers, and 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." ComEd Ex. 2.0 at 24.

Mr. Brandt testified that ComEd filed an annual report, ComEd Ex. 1.0, with the Commission, consistent with Rider EDA, which requires that the annual report summarize the operation of Rider EDA and compare actual incremental cost recovery from customers in Plan Year 2 with the incremental costs incurred in accordance with the provisions of Rider EDA for Plan Year 2. Mr. Brandt testified that the first page of the Annual Report provides a summary of the incremental costs incurred and recovered through Rider EDA during Plan Year 2, as well as a cumulative figure from Rider EDA's inception through May 31, 2010. The second page shows the amounts recovered through rates by class of retail customers to whose bill the Rider EDA charges were applied in Plan Year 2, as well as cumulative figures from Rider EDA's inception through May 31, 2010. Finally, the third page illustrates the incremental costs incurred by ComEd and associated with the measures during Plan Year 2. The costs are broken down by program and activities, and then by customer group. ComEd Ex. 2.0 at 24.

With respect to the calculation of the ARF for Plan Year 2 activity, Mr. Brandt explained that, for the Plan Year 2 reconciliation period, each ARF is equal to the amount of the under or over collection of incremental costs resulting from the application of the Rider EDA adjustment to retail customers' bills. According to Mr. Brandt, the difference between the incremental costs incurred for each of the three customer classes and the amount recovered in rates from each of the customer classes resulted in an under-collection for the residential class of $1,448,531, and an over-collection for the small C&I and large C&I classes of $4,130,993 and $8,223,131, respectively. *See* ComEd Ex. 1.0; ComEd Ex. 2.0 at 25.

Mr. Brandt also testified that ComEd made changes to Rider EDA charges for Plan Year 3 based on two factors. First, under ComEd's Plan, both the energy savings goal and spending screen increased substantially for Plan Year 3, with the spending screen increasing to $120.7 million. As a result, the Rider EDA charges had to be recalculated for all three customer classes using the same methodology employed during Plan Year 2. *See* ComEd Ex. 2.3. Second, as shown in ComEd's Revised Informational Filing for Energy Efficiency and Demand Response Adjustment, sent to the Commission on May 19, 2010 for charges to be effective beginning with the June 2010 monthly billing period and extending through the May 2011 billing period, ComEd estimated an over-collection at that time for each of the three customer classes: $1,334,850 for Residential; $1,294,400 for Small C&I; and $1,415,750 for Large C&I. *See Id*. Mr. Brandt explained that the estimated amount of over-collection was subtracted from the estimated incremental costs for each customer class for Plan Year 3 to determine the total amount to be recovered through the rider from each class. ComEd Ex. 2.0 at 25. Mr. Brandt further explained that following the May 19, 2010 filing and the close of Plan Year 2 on May 31, 2010, ComEd began finalizing the Plan Year 2 figures. During that process, ComEd learned that DCEO materially under-spent during Plan Year 2, which increased the over-collection for Plan Year 2 by approximately $6 million. Mr. Brandt testified that as a result, in September 2010, ComEd filed a revised informational report that updated the EDA charges to reflect the $6 million over-collection, which became effective in the October 2010 billing period. ComEd Ex. 2.0 at 25-26.

Mr. Brandt further testified that as required by Rider EDA, the Annual Report included "the results of an internal audit verified by an officer of the Company." *See* ComEd Ex. 2.4. He explained that consistent with Rider EDA, Exelon's internal audit team performed testing to ensure that: (1) expenses recovered through the rider were associated with the energy efficiency programs and were not recovered through other approved tariffs; (2) revenue obtained through the rider was correctly stated; (3) funds other than those collected through the rider were identified and reflected in the EDA and ARF; and (4) customer bills accurately reflected the appropriate rate. According to Mr. Brandt, the audit found that the control activities were effective at mitigating the financial risks mentioned above and no issues were discovered as a result of the above tests. ComEd Ex. 2.0 at 26.

III. Uncontested Issues

A. Annual Reporting of Budget to Actual Comparison

1. ComEd's Position

Staff proposed 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. Staff Ex. 2.0 at 6-7. 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 to individual cost categories for each program, but rather affords the program manager flexibility to manage the total budget. ComEd Ex. 3.0 at 2. ComEd noted that for this reason it 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*. Because Staff did not take issue with this clarification, ComEd believes it has reached agreement with Staff on this issue and requests that the Commission adopt Staff's recommendation as modified by ComEd.

2. Staff's Position

3. Commission Analysis and Conclusions

The Commission find Staff's proposal, as modified by ComEd's clarification, reasonable. It is therefore approved.

B. Filing of Annual Evaluation Reports

1. ComEd's Position

Staff recommended that the annual evaluation reports filed in the annual evaluation dockets also be filed in the reconciliation dockets, and that ComEd also file the quarterly status reports it provides to the SAG in the original, closed Plan docket to which the quarterly status reports relate. Staff Ex. 4.0 at 1-2, 4-5. Mr. Brandt responded that ComEd would file the evaluation reports in the reconciliation docket for the same Plan Year. ComEd Ex. 3.0 at 2. For example, the Plan Year 2 evaluation reports would be filed in the Plan Year 2 reconciliation docket once they become available. *Id*. ComEd also agreed to file the quarterly status reports as requested by Staff. ComEd further noted that the filing of these reports was for informational purposes only and as a courtesy to Staff, and that it was not commenting at this time on whether these reports are relevant to this docket or any docket. According to ComEd, because Staff did not object to ComEd's description of the agreement, ComEd believes they have reached agreement.

2. Staff's Position

3. Commission Analysis and Conclusions

The Commission approves the agreement reached between ComEd and Staff. ComEd will file the following, for informational purposes only: (i) the evaluation reports for a given Plan Year in the reconciliation docket for the same Plan Year, and (ii) the quarterly status reports provided to the SAG in the original, closed Plan docket to which the quarterly status reports relate.

C. Rider EDA Revenue Adjustment

1. ComEd's Position

ComEd observed that although Staff initially proposed a revenue adjustment to disallow $189,020, it withdrew that proposal in its rebuttal testimony. Staff Ex. 3.0 at 1; see also Staff Ex. 1.3. ComEd noted that since Staff has withdrawn its proposed revenue adjustment, there is nothing for the Commission to decide on this issue.

2. Staff's Position

3. Commission Analysis and Conclusions

We find that because Staff has withdrawn its proposed disallowance, there is nothing for the Commission to decide.

D. Removal of Travel Expense

1. ComEd's Position

Mr. Brandt testified that Staff identified one invoice that shows a travel expense of $6 for an alcoholic beverage, which Staff recommends ComEd withdraw as a reconciliation expense. Mr. Brandt explained that ComEd has reviewed this expense, and in order to narrow the issues in this case, ComEd has agreed to remove the expense from the costs recovered through Rider EDA in this reconciliation docket. ComEd Ex. 3.0 at 6.

2. Staff's Position

3. Commission Analysis and Conclusions

The Commission approves the agreement reached between ComEd and Staff with respect to this issue.

IV. Contested Issue

A. Incentive Compensation

1. Staff's Position

2. ComEd's Position

Staff witness Mr. Tolsdorf recommended that the Commission deny ComEd's incentive compensation expense that is related to the incremental employees hired by ComEd to implement its energy efficiency portfolio and whose costs were recovered through Rider EDA. Specifically, Mr. Tolsdorf requested that the Commission disallow $262,929.[1]

According to ComEd, all eligible ComEd employees participate in the ComEd Annual Incentive Program ("AIP"). ComEd Init. Br. at 8. The 2010 AIP plan provides that "[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." ComEd Init. Br. at 8; Staff Cross Ex. 2 at 2. ComEd

[1] ComEd noted that 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 charge through Rider EDA during Plan Year 2. ComEd Init. Br. at 1, fn. 1; Staff Cross Ex. 3; ComEd Cross Ex. 1.

explained that, 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.*

ComEd witness Mr. Fruehe testified that, 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. ComEd Init. Br. at 8; ComEd Ex. 4.0 at 3. ComEd noted that there is no dispute that these incremental employees are employees of ComEd and work in a department of ComEd (the Energy Efficiency Department). ComEd Init. Br. at 8; Tr. at 39-40. ComEd asserted that 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. ComEd Init. Br. at 8-9; Staff Cross Ex. 2; ComEd Ex. 4.0 at 6.

With respect to the legal standard to be applied by the Commission in reviewing this issue, ComEd noted that Staff's testimony reflects considerable confusion regarding the standard by which ComEd's incentive compensation should be reviewed by the Commission. ComEd Init. Br. at 9. ComEd explained that 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). There the Commission directed in its 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." *Id*. at 9; *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010), at 44 (emphasis added). According to ComEd, when it 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. ComEd Init. Br. at 9. Indeed, ComEd noted that Staff witness Mr. Tolsdorf conceded during the evidentiary hearing 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. *Id*. at 9-10; Tr. at 43.[2]

[2] ComEd further submitted that 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). Also, according to ComEd, 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."). Furthermore, ComEd explained that 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).

ComEd observed that 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. ComEd Init. Br. at 10. ComEd asserted that along with other costs ComEd proposes to recover in this docket, the incentive compensation costs must be prudently incurred and reasonable in amount. ComEd also observed that Mr. Tolsdorf's rebuttal testimony noted that 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…." *Id*. at 10; Staff Ex. 3.0 at 4 (quoting *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65). ComEd noted that 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. According to ComEd, Staff has already concluded that the AIP benefits customers, and 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. ComEd Init. Br. at 10. ComEd asserted that Staff has not challenged these benefits or otherwise contested the prudence or reasonableness of the incentive compensation costs, and it is uncontested that the AIP plans do not contain financial goals such as net income or earnings per share. *Id*.

With respect to the customer benefits associated with the AIP, ComEd explained that the Plan Year 2 incentive compensation costs provided verified and substantial benefits to customers and are prudently incurred and reasonable in amount. ComEd observed that 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). ComEd Init. Br. at 11; Staff Cross Exs. 1 and 2. ComEd submitted that 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. ComEd further noted that consistent with the Commission's conclusion in the 2010 rate case, ComEd fully recovered the incentive compensation costs it incurred in Plan Year 1 related to the incremental EE employees. ComEd Init. Br. at 11; *Commonwealth Edison Co*., ICC Docket No. 09-0378, Final Order (Oct. 6, 2010) at 12.

Against this backdrop, ComEd stated that there was no basis upon which Staff could now claim that these same AIP plans do not benefit customers. ComEd Init. Br. at 11. In fact, according to ComEd, some of the most pronounced and verifiable customer benefits are delivered to customers through energy efficiency programs. *Id*. ComEd asserted that 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). ComEd explained that 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. ComEd Init. Br. at 11. ComEd further explained that the Commission has now confirmed in ICC Docket No. 10-0520 that ComEd exceeded the Plan Year 2 energy savings goal, and was permitted to apply to Plan Year 3 approximately 40,000 MWhs of that additional energy savings. *Commonwealth Edison Co.*, ICC Docket No. 10-0520, Final Order (May 16, 2012) at 6. ComEd submitted that these significant savings were achieved at a cost $16 million below budget. ComEd Init. Br. at 12; ComEd Ex. 2.0 at 2. According to ComEd, Staff neither addressed nor disputed these benefits. ComEd Init. Br. at 12.

ComEd underscored that because there can be no dispute regarding customer benefits delivered by incremental EE employees, Staff attempted 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. ComEd Init. Br. at 12; Staff Ex. 3.0 at 6-7. ComEd stated that Staff's argument is wrong for two reasons. First, ComEd explained that incentive compensation is not "extra" compensation. ComEd Init. Br. at 12. ComEd witness Mr. Fruehe testified that incentive compensation is "a part of the employee's total compensation package. The AIP, similar to paid vacation and certain health care 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." ComEd Init. Br. at 12; ComEd Ex. 6.0 at 7. ComEd witness Mr. Fruehe further explained that the 2009 AIP itself expressly states that incentive compensation is "an important part of [the] overall compensation package." Staff Cross Ex. 1 at 2. Therefore, this compensation is not "extra" or a bonus, but rather a part of the employee's total compensation that is "at risk." ComEd Ex. 6.0 at 7. Second, ComEd asserted that the evidentiary record flatly contradicts Staff's attempt to undermine the incremental EE employees' efforts by characterizing them as "the bare minimum of what is acceptable." ComEd Init. Br. at 13; Staff Ex. 3.0 at 7. ComEd submitted that 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. ComEd Init. Br. at 13. ComEd further noted that these savings were achieved while also exceeding the energy savings goals for Plan Year 2, which resulted in additional savings and benefits to customers. *Id*.

ComEd also explained that the AIP itself ensures that only those employees whose performance contributed to ComEd's success receive compensation under the AIP. *Id*. According to ComEd, Mr. Fruehe highlighted the portions of the AIP ignored by Staff that clearly state that those employees who fail to meet expectations receive no compensation under the AIP. ComEd Init. Br. at 13-14; Tr. at 28-31. The AIP explains the effect of individual performance 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.

ComEd Init. Br. at 13-14; Staff Cross Ex. 2 at 6 (omitting footnote noting that the top of the IPM range is limited to 110% for certain officers).

ComEd further explained that even though the Commission's order in ICC Docket 10-0570 plainly stated that it applies to ComEd's "next reconciliation filing" (*i.e.*, its August 2011 Plan Year 3 filing), ComEd's incentive compensation costs already satisfy the showing articulated by the Commission in that docket. ComEd Init. Br. at 14; *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010) at 44 ("[I]n ComEd's next reconciliation filing it should show how its current incentive compensation relates to EE <u>or</u> how it has tailored its incentive compensation for these employees." (emphasis added)). ComEd stated that while the Commission will only require ComEd to make one of these showings, its incentive compensation program both relates to energy efficiency and is tailored to EE employees. ComEd Init. Br. at 14.

ComEd explained that 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. *Id*. Therefore, the AIP structure ensures that incentive compensation relates to energy efficiency and is tailored to EE employees. *Id*. ComEd witness Mr. Fruehe testified that EE employees' goals "are directly related to achieving ComEd's overall energy efficiency goals." ComEd Ex. 6.0 at 6. ComEd further explained that employees are also evaluated based on their personal contribution to their team during the year. ComEd Init. Br. at 15; 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."). Thus, according to ComEd, 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. ComEd Init. Br. at 15. Additionally, ComEd further noted that Staff witness Mr. Tolsdorf admitted that he never addressed this relationship during cross examination. Tr. at 50-51.

ComEd further explained that the tailoring of AIP to the incremental EE employees is accomplished in part through the Individual Performance Multiplier ("IPM"), which is based upon 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 ….". ComEd Init. Br. at 15; Staff Cross Ex. 2 at 6. According to ComEd, this is important because an employee will not receive an award if his or her year-end performance rating "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; ComEd Init. Br. at 15. When applying the IPM to the incremental EE employees, ComEd explained that they are evaluated based on their individual performance as an energy efficiency employee and their contribution to the Energy Efficiency department. ComEd Init Br. at 15. ComEd further noted that based on these specific energy efficiency-related criteria, the incremental EE employees may receive a portion of their total compensation through AIP if their performance rating qualifies for such compensation. *Id*. Therefore, according to ComEd, if the incremental EE employees do not achieve their EE-related goals, they will not be able to participate in the AIP and will receive less than their total expected compensation. *Id*. at 15-16. ComEd noted that Mr. Tolsdorf testified during his cross-examination that he did not address the IPM anywhere in his direct or rebuttal testimony. Tr. at 50-51.

Finally, ComEd explained that beginning with the 2010 AIP, ComEd added a Key Performance Indicator ("KPI") called the Focused Initiatives & Environmental Index, which includes a measure of energy efficiency savings programs offered pursuant to Section 8-103 of the Act. ComEd Init. Br. at 16; Staff Cross Ex. 2 at 4, 8. According to ComEd, 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. ComEd Init. Br. at 16; ComEd Ex. 6.0 at 5. ComEd observed that 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. ComEd Init. Br. at 16; Tr. at 48. ComEd concluded that Staff's recommendation should therefore be rejected by the Commission.

3. Commission Analysis and Conclusion

Staff proposes to disallow all of ComEd's incentive compensation expense that is related to the incremental employees hired by ComEd to implement its energy efficiency ("EE") portfolio and whose costs are recovered through Rider EDA. The Commission declines to adopt Staff's proposal.

As an initial matter, we agree with ComEd and Staff that the Commission has a "long standing policy of allowing Incentive Compensation costs when those costs benefit ratepayers…." ComEd Init. Br. at 10; Staff Ex. 3.0 at 4. (quoting *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65.

As ComEd noted, the 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. Because of this well-established policy, the Commission does not agree with Staff's mischaracterization of incentive compensation costs as "extra" or bonus compensation. Rather, incentive compensation represents the portion of the employee's compensation that is at risk in a given year in the event performance goals are not achieved.

Under this customer benefits standard, we find that the incentive compensation costs related to the incremental energy efficiency employees provide clear and significant customer benefits. We agree with ComEd that these employees assist in delivering the benefits described in Section 8-103(a) of the Act, as well as the annual energy savings required under Section 8-103(b) of the Act. ComEd Init. Br. at 11. Indeed, the Commission recently concluded in its order in ICC Docket No. 10-0520 that ComEd exceeded the Plan Year 2 energy savings goal and was permitted to apply to Plan Year 3 approximately 40,000 MWhs of that additional energy savings. *Commonwealth Edison Co.*, ICC Docket No. 10-0520, Final Order (May 16, 2012) at 6. Notably, these significant savings were achieved at a cost $16 million below budget. ComEd Init. Br. at 12; ComEd Ex. 2.0 at 2. Importantly, Staff did not (nor could it) dispute these very real benefits delivered by the incremental energy efficiency employees. ComEd Init. Br. at 12.

With respect to the Commission's directive in ICC Docket No. 10-0570 that ComEd show *in its next reconciliation filing* how its current incentive compensation relates to energy efficiency or how it has tailored its incentive compensation for EE employees, there can be no dispute that this directive applies to the next reconciliation to be filed as of the Commission's December 2010 order. That filing was made on August 31, 2011 in ICC Docket No. 11-0646, and is not at issue in this docket.

Although the Commission's directive in ICC Docket No. 10-0570 does not apply here, we agree with ComEd that the 2009 and 2010 AIP plans already both relate to EE and are tailored to EE employees. ComEd explained that 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. ComEd Init. Br. at 14. Therefore, the AIP structure ensures that incentive compensation relates to energy efficiency and is tailored to EE employees. *Id*. ComEd witness Mr. Fruehe testified that EE employees' goals "are directly related to achieving ComEd's overall energy efficiency goals" (ComEd Ex. 6.0 at 6), and employees are also evaluated based on their personal contribution to their team during the year (ComEd Init. Br. at 15; Staff Cross Ex. 2 at 6; *see also id*. at 2). Thus, 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. ComEd Init. Br. at 15. We also find that incentive compensation is further tailored to the incremental energy efficiency employees through the application of the Individual Performance Multiplier.

Accordingly, the Commission declines to adopt Staff's recommendation to disallow the recovery of ComEd's Plan Year 2 incentive compensation costs recovered through Rider EDA.

V. Findings and Orderings Paragraphs

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

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;

(3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

(4) for the period June 1, 2009 through May 31, 2010, ComEd prudently incurred Rider EDA program expenditures of $63,543,468.

(5) for the period June 1, 2009 through May 31, 2010, ComEd recovered $70,546,051 from ratepayers in accordance with the terms of Rider EDA, resulting in an over-recovered amount, or ARF, of $10,905,600 after taking into account the cumulative over-recovery from the prior reconciliation periods, as reflected in Appendix A attached hereto; and

(6) Commonwealth Edison Company shall file the evaluation and quarterly reports as described in this Order.

IT IS THEREFORE ORDERED that the reconciliation submitted by Commonwealth Edison Company of the energy efficiency and demand response measures and associated costs actually incurred with the revenues received under Rider EDA covering the period beginning June 1, 2009 and ending May 31, 2010, inclusive of the parties' agreed-to adjustments as detailed herein, is hereby approved.

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

By order of the Commission this ______ day of ___________________, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman