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.	)	

REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

Dated: June 21, 2012

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I. INTRODUCTION AND SUMMARY

The only contested issue[1] in this docket is Commonwealth Edison Company's ("ComEd") recovery of the incentive compensation costs paid to the incremental energy efficiency ("EE") employees who implemented ComEd's energy efficiency programs and whose costs were recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment ("Rider EDA") during Plan Year 2. Although the Staff of the Illinois Commerce Commission ("Staff") and ComEd agree that these costs must provide benefits to customers in order to be recoverable, Staff continues to ignore the uncontested evidence proffered by ComEd demonstrating that these incremental EE employees delivered substantial customer benefits.[2]

Indeed, Staff is tellingly silent regarding the substantial record evidence demonstrating that during Plan Year 2 these incremental EE employees played a vital role in implementing the energy efficiency programs at a cost nearly $16 million under budget while greatly exceeding the energy savings goal. These benefits are not only uncontested, but are now confirmed and verified in the Illinois Commerce Commission's ("Commission") recently issued order in ICC Docket No. 10-0520. In short, Staff cannot be heard to complain about the absence of customer benefits while willingly turning a blind eye to the overwhelming evidence of customer benefits delivered by these incremental EE employees.

In Staff's view, this extraordinary performance and the customer benefits it yielded occurred spontaneously and without incentive. Indeed, to accept Staff's position, the Commission would have to join Staff in ignoring that the Annual Incentive Plan ("AIP") requires

[1] In Section II of its Reply Brief, ComEd addresses and clarifies what appears to be a mischaracterization in Staff's Initial Brief of ComEd's position regarding an uncontested issue.

[2] ComEd notes that, in any event, the amount of Staff's disallowance is incorrect. 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. Indeed, on cross-examination, Staff witness Mr. Tolsdorf testified that nowhere in his direct or rebuttal testimony did he take issue with the $96,000 figure. Tr. at 56:8-11. Staff cannot propose to disallow amounts that are not at issue in this docket.

the 17 incremental EE employees to achieve individual and departmental goals directly related to energy efficiency, including achievement of the energy savings goals under Section 8-103 of the Public Utilities Act ("Act"). Incremental EE employees who do not achieve their goals do not receive their expected total compensation for the year under the AIP. In other words, the AIP unquestionably incents the incremental EE employees to achieve their energy efficiency-related goals. Given Staff witness Mr. Tolsdorf's admission on cross-examination that he ignored all of this evidence, his conclusion is, of course, inevitable and wrong. The Commission should not adopt such a flawed analysis and conclusion.

The only portion of the AIP that Staff addresses is the Key Performance Indicators ("KPI"). Although the 2010 AIP was revised to include a new KPI (Featured Initiatives and Environmental Index) that incorporates achievement of energy savings goals as a metric, Staff claims under some unarticulated and vague standard that the AIP does not sufficiently relate to energy efficiency. Notwithstanding that the AIP already incents the incremental EE employees to achieve their energy efficiency goals even in the absence of this KPI (as already described above and further in Section III.B.2 *infra*), Staff's analysis of the KPIs is still flawed. Indeed, Staff never acknowledges that the AIP, which addresses thousands of ComEd employees, more than takes into account the 17 incremental EE employees who also receive a portion of their compensation under the AIP.

In summary, ComEd has demonstrated that the incremental EE employees delivered certain and quantifiable customer benefits directly related to energy efficiency goals during Plan Year 2 and that these employees were incented to do so under the AIP. Indeed, these employees would not receive their total, expected compensation if they did not achieve their individual, energy efficiency-related goals. And finally, the fact that these 17 incremental EE employees' goals are also reflected in an AIP that covers thousands of ComEd employees only further underscores the nexus between the AIP and energy efficiency. Accordingly, the Commission should approve the recovery of the incentive compensation costs in this docket.

II. POTENTIALLY UNCONTESTED ISSUE

With one exception, Staff's descriptions of the uncontested issues in this docket generally comport with ComEd's understanding, as reflected in its Initial Brief. However, with respect to ***Annual Reporting of Budget to Actual Comparison***, Staff substantially departs from its agreement with ComEd. A brief summary of Staff's and ComEd's positions will bring much needed clarity. In rebuttal testimony, Staff witness Ms. Hinman proposed the following:

> I recommend that the Commission include language in its final order in this proceeding directing the Company to include in its Rider EDA Annual Report filed by August 31st of each year, a comparison of its EE Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with that presented in its EE Plan approved by the Commission.

Hinman Reb., Staff Ex. 4.0, 4:56-60. In response, ComEd witness Mr. Brandt agreed to provide the comparison "in a form that is substantially similar to the one [Staff] requests" while explaining that ComEd 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. In its Initial Brief, ComEd noted that Staff had not taken issue with this clarification, and requested that the Commission adopt Staff's recommendation as modified by ComEd's clarification to accommodate the flexibility ComEd needs to manage the budget. ComEd Init. Br. at 6-7.

However, Staff's Initial Brief expands Ms. Hinman's single recommendation into four recommendations, only the first of which was agreed to by ComEd as described above. Specifically, the Initial Brief states:

> …Staff recommends that the Commission order the Company to: (1) provide in its Annual Rider EDA Report a comparison of its energy efficiency Plan Year budgets versus actual energy efficiency expenditures by program-level and portfolio-level cost categories consistent with that presented in its energy efficiency Plan approved by the Commission; (2) consistently and accurately classify, track, and report energy efficiency expenditures in its Rider EDA Annual Report by cost categories consistent with those proposed in the Company's energy efficiency Plan; (3) provide invoices and supporting documentation for any requested cost category by energy efficiency program and it should substantiate that these expenses were reasonably and prudently incurred in future Rider EDA reconciliation proceedings; and (4) include in its direct testimony in Rider EDA reconciliation proceedings justification for significant shifts in expenditures in comparison to those forecasted in its approved energy efficiency Plan.

Staff Init. Br. at 7-8 (footnotes omitted). No agreement or record evidence supports the addition of recommendations (2) through (4). Accordingly, the Commission should reject this misrepresentation of Staff's and ComEd's agreement and honor the original agreement as summarized above and in ComEd's Initial Brief.

III. ARGUMENT REGARDING CONTESTED ISSUE

A. ComEd Has Demonstrated Verifiable Customer Benefits.

Staff's Initial Brief notes that "[i]t should [] have been no surprise to ComEd that a showing of benefit to ratepayers due to AIP is the condition upon which incentive compensation cost recovery depends as that standard has been used by the Commission for years with respect to incentive compensation." Staff Init. Br. at 13. Indeed, the customer benefits standard is not a surprise to ComEd, and is the standard ComEd advocates the Commission apply in reviewing the recoverability of the incentive compensation at issue in this docket. *See* ComEd Init. Br. at 11-12; Fruehe Sur., ComEd Ex. 6.0, 6:125-34. Although Staff spends nearly two pages of its Initial

Brief summarizing the uncontested customer benefits standard, it fails to devote a single line to considering or analyzing the evidence proffered by ComEd clearly demonstrating the existence of customer benefits.

Specifically, Staff claims that "the customer benefit required to be shown in this proceeding must be related to the incremental energy efficiency employees' efforts not the efforts of other ComEd employees." Staff Init. Br. at 14. Under Staff's own standard, the evidence undeniably demonstrates that some of the most pronounced and verifiable customer benefits are delivered to customers by incremental EE employees. Indeed, these employees, whom 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. Unquestionably, this uncontested evidence clearly meets the

customer benefit standard advocated by Staff. Staff's decision to ignore the most probative evidence of customer benefits cannot support its disallowance.[3]

B. The AIP Costs Are Recoverable Through Rider EDA and Are Related to Energy Efficiency Programs.

Although the customer benefits standard is the measure by which the Commission should determine the recoverability of incentive compensation costs, Staff attempts to obfuscate this clear standard with references to Rider EDA and a vague, unsupported claim that incentive compensation must relate to energy efficiency. As explained below, incentive compensation costs are clearly recoverable under the plain definitions of Rider EDA. Further, Staff's continued claims that the incentive compensation costs are unrelated to energy efficiency are not only irrelevant, but wrong. The AIP, and the benefits it delivers, relate to energy efficiency.

1. Incentive Compensation Costs Are Recoverable Under the Terms of Rider EDA.

As explained in ComEd's Initial Brief, Staff has changed its theory upon which it bases its proposed disallowance numerous times during this docket. ComEd Init. Br. at 9-11. The most recent change involves a claim that recovery is barred by Rider EDA. Staff Init. Br. at 12. As explained below, this latest theory, like the ones that preceded it, does not support the proposed disallowance.

Initially, Staff witness Mr. Tolsdorf attempted to apply to this docket a Commission order that was issued long after this docket commenced and that explicitly provided for its application only to ComEd's Plan Year 3 reconciliation. Tolsdorf Dir., Staff Ex. 3.0, 3:44-59. Specifically, that order provided that "in ComEd's next reconciliation filing it should show how its current

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[3] 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.

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; *see also* ComEd Init. Br. at 9. However, after ComEd pointed out this prospective application (Fruehe Reb., ComEd Ex. 4.0, 4:67-5:88; Fruehe Sur., ComEd Ex. 6.0, 4:69-82), Staff, in its rebuttal testimony, backed away from this position, and on cross-examination Staff admitted the order did not retroactively apply to this docket. *See* ComEd Init. Br. at 9-10; Tr. at 43:7-18. Indeed, Staff did not mention the order in its Initial Brief. Rather, in its rebuttal testimony Staff referenced the customer benefits standard (Tolsdorf Reb., Staff Ex. 3.0, 4:79-83), and, as explained in Section III.A *supra*, ComEd has clearly met that standard.

Nevertheless, Staff's Initial Brief attempts to muddle the customer benefits standard by introducing yet another new theory upon which it purports to base its disallowance. Staff now appears to be claiming that the terms of Rider EDA preclude recovery of incentive compensation because the incentive compensation does not "relate" to energy efficiency. Staff Init. Br. at 12. However, as explained below, Staff selectively omits a key definition of Rider EDA, which clearly permits the recovery of all incentive compensation costs associated with the incremental EE employees hired to implement the energy efficiency measures.

As ComEd explained in its Initial Brief, the costs recoverable through Rider EDA include <u>*all incremental costs*</u> incurred by ComEd in association with energy efficiency and demand response measures. ComEd Init. Br. at 5; 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 (emphasis added). Put simply, when the requirements of Section 8-103 of the Act took effect, ComEd had to hire additional ("incremental") employees to implement the extensive new energy efficiency measures and programs designed to achieve the energy savings goals. Accordingly, Rider EDA permits the recovery of the expenses for wages, salaries, and benefits of these incremental ComEd employees, including direct and indirect incremental costs associated with these employees, just as it permits the recovery of other incremental costs associated with the measures. The only "related to" standard here is that the positions must be "specifically related to the Measures." *Id.*

Under this "related to" standard, the incentive compensation costs associated with the incremental EE employees are clearly recoverable. Indeed, Staff does not question that the incremental EE employees and the positions they fill are specifically related to the Measures. Specifically, Staff does not contest the hiring of these incremental EE employees, that these employees are employees of ComEd, or that they implement energy efficiency measures and programs within ComEd's Energy Efficiency department. Tr. at 39:11-40:2. Rider EDA broadly permits recovery of expenses for "wages, salaries, and benefits," "including direct and indirect incremental costs." Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 246. Consistent with the terms of Rider EDA, the incentive compensation costs associated with the incremental EE employees during Plan Year 2 are appropriately recoverable through the rider.

2. The AIP Relates to Energy Efficiency and Is Tailored to Energy Efficiency Employees.

Although the incentive compensation costs associated with the incremental EE employees are clearly recoverable under the customer benefits standard and pursuant to the terms of Rider EDA, Staff continues to argue that the incentive compensation expense does not relate to energy efficiency. Staff's position appears to be that these benefits were realized wholly independently of, and bear no relation to, the AIP and the specific individual performance goals set for the incremental EE employees under the AIP. In Staff's fictional Plan Year 2, the incremental EE employees just happened to far exceed the energy savings goals at a savings of $16 million. Or, put another way, these employees were not at all incented by their individual performance goals under the AIP even though achievement of these goals determines whether they will receive the pay-at-risk portion of their compensation under the AIP. As explained below, Staff's view does not reflect the facts or reality, ignores the key features of the AIP, and should be rejected.

Substantial portions of the AIP are devoted to explaining how each individual employee's performance is measured against individual and departmental goals for purposes of determining whether a given employee will even receive compensation under the AIP. *See, e.g.,* Staff Cross Ex. 2 at 2, 6, 9-10. As a result, an incremental EE employee is incented to achieve individual goals related to energy efficiency because the employee's receipt of compensation under the AIP ultimately depends on that individual's successful performance of these energy efficiency-related tasks. As ComEd witness 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."). Staff witness Mr. Tolsdorf admitted on cross-examination that he did not consider any of this evidence. Tr. at 50:9-51:13.

Also ignored by Mr. Tolsdorf is the tailoring of the AIP to the incremental EE employees that is accomplished in part through the Individual Performance Multiplier ("IPM"). *Id.*; Staff Cross Ex. 2 at 6. The IPM is based on an employee's "individual performance and personal contribution to [his or her] team during the year." Staff Cross Ex. 2 at 6. The AIP explains the effect of the IPM 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.

Id. (omitting footnote noting that the top of the IPM range is limited to 110% for certain officers).

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. Under the IPM, the incremental EE employees 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 only 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 will receive less than their total expected compensation.

Staff, however, considered none of this evidence. On cross-examination, Mr. Tolsdorf admitted that he had not considered the AIP’s individual goals or the effect of the IPM. Tr. at 50:22-51:7. Accordingly, Staff cannot now be heard to argue that the AIP does not “relate” to energy efficiency while refusing to consider the very features of the AIP that ensure it relates directly and substantially to achievement of energy efficiency objectives. When this evidence is considered, the incremental EE employees are plainly incented under the terms and goals of the AIP to achieve energy efficiency goals, and therefore the incentive compensation these employees receive is indisputably “related” to energy efficiency.

The only portion of the AIP to which Staff paid any attention was the discussion of Key Performance Indicators ("KPIs"). Staff Init. Br. at 14-15. In the 2009 and 2010 AIPs, the cost KPIs included Operating & Maintenance Expense and Capital Expenditures, and the operational KPIs included SAIFI, CAIDI, OSHA Recordable Rate, and the Customer Satisfaction Index. Staff Cross Ex. 1 at 3; Staff Cross Ex. 2 at 3-4. Beginning with the 2010 AIP, ComEd added an operational KPI 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. As explained above, the incremental EE employees are vital and necessary to achieving energy savings under Section 8-103, and their performance is therefore directly tied to achievement of this new KPI. 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.

According to Staff, the addition of the Focused Initiatives & Environmental Index falls short of Staff's "related to energy efficiency" standard because, in Staff's view, it does not feature more prominently in the AIP. However, even without this KPI, the AIP already incents the incremental EE employees to achieve energy efficiency goals by linking a portion of their pay to such achievement. *See* discussion *supra*. Moreover, Staff's analysis of the KPIs is itself flawed. As ComEd witness Mr. Fruehe testified, "[t]he incremental [EE] employees are ComEd employees, and as such, participate in ComEd's AIP, just as all other ComEd employees do. In his or her own way, each employee has a stake in how successful ComEd as a whole is in achieving its goals." Fruehe Reb., ComEd Ex. 4.0, 6:118-21; *see also* Fruehe Sur., ComEd Ex. 6.0, 5:111-12 (testifying that the AIP ensures "that all ComEd employees together contribute to the success of the company as a whole"). Given that the AIP covers ***thousands*** of ComEd employees, the fact that the ***17*** incremental EE employees' energy efficiency goals are directly incorporated into a KPI more than demonstrates that the AIP, in yet another way, relates to these employees. Staff Cross Ex. 2; Staff Cross Ex. 3; ComEd Cross Ex. 1. Staff, however, fails to consider any of these facts.

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 of ComEd's Initial Brief.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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