

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	
Reconciliation of revenues collected under Rider)	Docket No. 10-0537
EDA with actual costs associated with energy)	
efficiency and demand response programs.)	

**BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY**

July 25, 2012

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INTRODUCTION AND SUMMARY

Commonwealth Edison Company (“ComEd”) submits this Brief on Exceptions to the Proposed Order (the “Proposed Order” or “PO”) issued by the Administrative Law Judge (“ALJ”) on July 10, 2012. ComEd respectfully submits that the Proposed Order’s conclusion to disallow approximately \$263,000 of incentive compensation expense is contrary to the Public Utilities Act (the “Act”), Illinois Commerce Commission (“Commission”) law and practice, and the evidence. Pursuant to Section 200.830 of the Rules of Practice of the Commission, 83 Ill. Admin. Code § 200.830, suggested replacement language is included in the attached Appendix.

The Proposed Order, the Staff of the Commission (“Staff”) and ComEd agree that incentive compensation costs must provide benefits to customers in order to be recoverable, and the Commission has recognized in numerous orders that a showing of “specific dollar savings” for customers satisfies this “customer benefits” standard. However, the Proposed Order then goes on to ignore the uncontested evidence proffered by ComEd demonstrating that the incremental energy efficiency employees (“EE employees”) responsible for implementing the energy efficiency programs (and whose incentive compensation is at issue) delivered quantifiable and uncontested dollar savings of nearly \$16 million during Plan Year 2 while exceeding the energy savings goal. These benefits are not only uncontested, but are now confirmed and verified in the Commission’s recently issued order in ICC Docket No. 10-0520.

Rather, the Proposed Order bases its disallowance on the claim that ComEd “had failed to show how the incentive cost it sought to recover relate[s] to energy efficiency or how the AIP had been tailored for ComEd’s EE employees.” PO at 24. As an initial matter, the Proposed Order’s language does not relate to the customer benefits standard, but instead appears to be a reference to the Commission’s December 2010 order approving ComEd’s second energy efficiency plan, which was issued well after this docket commenced. As ComEd explained in its

Initial Brief (and Staff conceded on cross-examination), this Order is not applicable to the present docket, but rather applies by its own explicit terms to ComEd's "next reconciliation filing", which was filed on August 31, 2011 and is pending in ICC Docket No. 11-0646. Although ComEd cited ample support for the well-settled principle that an order cannot be construed to apply retroactively where it explicitly provides that it applies prospectively, the Proposed Order concludes that ComEd's argument "is misplaced" without any explanation or citation to authority regarding why this is so.

However, even if this order applied to the present docket (and it does not), there can be no question that the incentive compensation costs relate to energy efficiency and are tailored to ComEd's EE employees. ComEd provided substantial evidence demonstrating that the Annual Incentive Plan ("AIP") requires the 17 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 Act. 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 EE employees to achieve their energy efficiency-related goals. The Proposed Order, however, considered none of this evidence.

The only portion of the AIP the Proposed Order 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, the Proposed Order concludes that the AIP does not sufficiently relate to energy efficiency. Notwithstanding that the AIP already incents the EE employees to achieve their energy efficiency goals even in the absence of this KPI, the Proposed Order's conclusion is still flawed. Indeed, the Proposed Order never acknowledges that the AIP, which addresses

thousands of ComEd employees, more than takes into account the 17 EE employees who also receive a portion of their compensation under the AIP.

In summary, the Proposed Order's conclusion rests on the untenable assumption that the extraordinary performance of the EE employees and customer benefits it yielded during Plan Year 2 occurred spontaneously and without incentive. Indeed, the uncontested facts belie this assumption – the EE employees delivered certain and quantifiable customer benefits directly related to energy efficiency goals during Plan Year 2 and these employees were incented to do so under the AIP. These employees would not receive their total, expected compensation if they did not achieve their individual, energy efficiency-related goals. Accordingly, the Proposed Order should be revised to permit recovery of the incentive compensation costs in this docket.

However, in the event that the Commission adopts the Proposed Order's conclusion to disallow recovery of the incentive compensation costs, this disallowance cannot exceed the amount of incentive compensation costs actually recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment (“Rider EDA”). Although the uncontested evidence demonstrates that only approximately \$96,000 of incentive compensation expense was charged through Rider EDA during Plan Year 2, the Proposed Order incorrectly disallows nearly \$263,000 of incentive compensation expense during Plan Year 2. Staff Cross Ex. 3; ComEd Cross Ex. 1. To be sure, 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. To disallow more than \$96,000 would unlawfully and, without any support, effect a disallowance of other costs recovered through Rider EDA during Plan Year 2 that are indisputably prudent and reasonable.

I. Exception 1: The Proposed Order Should Be Revised to Permit the Recovery of Incentive Compensation Costs.

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.

As described more fully below, the Proposed Order should be revised to permit the recovery of the incentive compensation costs associated with the EE employees because these costs directly relate to concrete customer benefits associated with energy efficiency (*i.e.*, exceeding the energy savings goals during Plan Year 2 at a cost \$16 million below budget).

However, in the event the Proposed Order is not so revised, it must, at a minimum, be changed to reflect a disallowance of no more than \$96,148, which reflects the actual amount of incentive compensation expense charged through Rider EDA during Plan Year 2.

A. Legal Standard

Although the Proposed Order, Staff and ComEd agree that the standard by which ComEd's incentive compensation costs should be reviewed by the Commission is the customer benefits standard, the Proposed Order ultimately ignores all evidence of customer benefits and instead concludes the incentive compensation costs are not recoverable because they do not relate to energy efficiency or are not tailored to EE employees. Because of the confusion regarding the legal standard, a discussion and clarification of the appropriate legal standard follows.

As explained at length in Staff witness Tolsdorf's rebuttal testimony and Staff's Initial Brief, 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 I.B *infra*, Staff has already concluded that the AIP benefits customers. Indeed, these benefits are only further underscored here where the 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. The Proposed Order does not acknowledge, much less challenge or doubt, these very real benefits or otherwise contest 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.

Rather, the Proposed Order’s Analysis and Conclusion focuses exclusively on a different, undefined “standard” under which it claims that “the Company had failed to show how the incentive cost it sought to recover relate[s] to energy efficiency or how the AIP had been tailored for ComEd’s EE employees.” PO at 24. Although the Proposed Order does not cite to the origin of this “relate[s] to energy efficiency standard”, it is clear that the Proposed Order’s language comes from the Commission 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). Although Staff initially argued that this order applied to the present docket, 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 that was filed four months earlier in August 2010. Tr. at 43:7-18.

Moreover, 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 Commission is a creature of the legislature and derives its authority therefrom, the presumption against retroactive application of a statute is also instructive here. *See Barrett v. Guaranty Bank & Trust Co.*, 123 Ill. App. 2d 326, 332 (1st Dist. 1970). The Proposed Order neither acknowledges nor addresses the Commission’s own prospective language in the ICC Docket No. 10-0570 order or the unchallenged precedent cited by ComEd. Rather, the Proposed Order summarily concludes that “the argument that the Commission directive in Docket 10-0570 that ComEd show in its next reconciliation how its incentive compensation relates to energy efficiency exempts Com[E]d from that requirement in this Docket is misplaced.” PO at 25. The Proposed Order provides no explanation regarding why this precedent is inapplicable or why the argument is otherwise “misplaced.”

Accordingly, the Proposed Order should be revised to clearly articulate that the well-established customer benefits standard applies to the present docket, and, as described below, that ComEd has provided and demonstrated tangible and quantifiable customer benefits.

B. The EE Employees Delivered Customer Benefits During Plan Year 2.

As noted above, the Commission has articulated and affirmed the customer benefits standard on numerous occasions. In ComEd’s 2005 rate case order, for example, the Commission stated that the benefits associated with incentive compensation could be demonstrated through a showing of, among other things, “specific dollar savings or other tangible benefits.” *Commonwealth Edison Co.*, ICC Docket No. 05-0597, Final Order (July 26, 2006) at 96. In ComEd’s 2010 rate case, Staff reviewed one of the two AIP Plans at issue in the present docket (the 2009 AIP), and the Commission expressly noted in its order that Staff “concluded that the program, in fact, benefits ratepayers.” *Commonwealth Edison Co.*, ICC

Docket No. 10-0467, Final Order (May 24, 2011) at 65. Indeed, the evidence in this case undeniably demonstrates that some of the most pronounced and verifiable customer benefits are delivered to customers by EE employees. These employees, whom ComEd has hired to implement its 2008 – 2010 Energy Efficiency and Demand Response Plan (“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 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 a future year or years 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 benefits standard advocated by Staff and referenced in the Proposed Order. That the Proposed Order ignores the most probative evidence of customer benefits cannot support its disallowance.

C. The Incentive Compensation Costs Are Related to Energy Efficiency.

Although the incentive compensation costs associated with the EE employees are clearly recoverable under the customer benefits standard, the Proposed Order elects to ignore this evidence and instead disallows the incentive compensation costs based on a claim that the costs do not relate to energy efficiency. Although the Commission’s directive in ICC Docket No.

10-0520 does not apply to this docket, the incentive compensation costs unquestionably relate to energy efficiency. To claim otherwise, as the Proposed Order does, requires reliance on the unsupportable assumption that the benefits described in Section II.B *supra* were realized wholly independently of, and bear no relation to, the AIP and the specific individual performance goals set for the EE employees under the AIP. In this fictional Plan Year 2, the 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 incited 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, these assumptions do not reflect the facts or reality, ignore 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 EE employee is incited 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."). The Proposed Order fails to consider any of this evidence.

Also ignored by the Proposed Order is the tailoring of the AIP to the 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 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 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 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.

The Proposed Order, however, considers none of this evidence, and its conclusion that AIP does not “relate” to energy efficiency cannot stand while at the same 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 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 addressed by the Proposed Order was the discussion of Key Performance Indicators (“KPIs”). PO at 24. 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 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.

According to the Proposed Order, the addition of the Focused Initiatives & Environmental Index falls short of its “related to energy efficiency” standard because, in the Proposed Order’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* at 8-11. Moreover, the Proposed Order’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. The Proposed Order, however, fails to consider any of these facts.

D. Even if the Commission Disallows Recovery of Incentive Compensation Costs, the Proposed Order Errs in Disallowing Nearly Three Times the Amount of Such Costs That Were Actually Recovered through Rider EDA.

Although it is undisputed in this docket that only approximately \$96,000 of Plan Year 2 incentive compensation expense was recovered through Rider EDA, the Proposed Order disallows nearly \$263,000 of incentive compensation expense. In the event the Proposed Order is not revised to permit recovery of the incentive compensation costs, then the Proposed Order must be corrected so that the amount of the disallowance does not exceed the amount of incentive compensation expense actually charged through Rider EDA.

The discrepancy can be cleared up by referencing two of ComEd’s data request responses, which were admitted into evidence during the evidentiary hearing. In ComEd’s

Response to Staff Data Request ST 1.06(b), ComEd explained that the “total incentive compensation charged to Rider EDA during PY2 was \$96,148.06.” ComEd Cross Ex. 1; *see also* Staff Cross Ex. 3. The \$262,923 figure reflects the total incentive compensation costs associated with the EE employees during Plan Year 2, but only \$96,148 of the \$262,923 was charged through Rider EDA. As ComEd explained in its response to ST 2.04, the difference is the result of the application of the allocator that apportions incentive compensation expense across ComEd departments:

... AIP costs are charged to all ComEd departments via an allocation pool and AIP costs are allocated to each ComEd department based on salaries charged to the department. Therefore, while incentives charged to an individual department will be materially correct, they may not tie dollar for dollar to the actual amounts calculated and awarded to the employees in the department. In the case of the Rider EDA department, Rider EDA was charged less than the actual AIP amount distributed to its employees.

Staff Cross. Ex. 3. During the evidentiary hearing, Staff witness Mr. Tolsdorf conceded on cross examination that he does not contest that only \$96,148 was recovered through Rider EDA, and further noted that the remaining amount was presumably recovered through base rates. Tr. at 89:8-90:2.

Accordingly, in the event the Commission adopts the Proposed Order’s conclusion to disallow the recovery of incentive compensation costs (and it should not), the Proposed Order must be revised to reflect the correct amount of the disallowance, which is \$96,148.06. To disallow more than this amount would be unlawful for several reasons. First, the only figure supported by the evidentiary record in this docket is the \$96,148 figure. The scope of this docket is limited to reconciling the incremental costs incurred and revenues received during Plan Year 2 pursuant to the operation of Rider EDA. Because only \$96,148 of incentive compensation expense was charged through Rider EDA, this is the only amount that can be subject to a disallowance.

Second, there is no evidence in the present record regarding where, if at all, the remaining portion (*i.e.*, \$166,782) of the incentive compensation costs may have been recovered. Indeed, no other tariff is at issue in this docket other than Rider EDA. For example, the costs could have been approved in another docket as prudent and reasonable or disallowed. As a result, a disallowance here in excess of the amount recovered through Rider EDA could constitute an unlawful collateral attack on a prior Commission order as well as run afoul of the prohibition on retroactive ratemaking. *Citizens Utils. Co. v. Ill. Commerce Comm'n*, 529 N.E.2d 510, 515-16 (1988). Moreover, if the \$166,782 of incentive compensation costs were previously disallowed, their disallowance here would effect a double disallowance. There is no evidence to support such an outcome.

Third, each dollar of costs sought to be recovered in this docket is associated with a particular expense that has been shown to be prudently incurred and reasonable in amount. Put another way, the dollars are not fungible. For Plan Year 2, the total amount charged through Rider EDA was \$63,543,475, of which only \$96,148 related to incentive compensation. The remaining \$63,447,327 was tied to other specific expenses (supported by detailed invoices and documentation) that were found to be prudently incurred and reasonable in amount. Specifically, the actual incremental costs that ComEd incurred during Plan Year 2 were as follows:

Residential Program Costs (includes incentive compensation):	\$19,453,613
C&I Program Costs (includes incentive compensation):	\$23,459,874
Demand Response Program Costs:	\$819,145
Education/Market Transformation Activity Costs:	\$1,649,418
DCEO Costs:	\$11,471,616
<u>Portfolio-Level Costs:</u>	<u>\$6,689,809</u>
Total Plan Year 2 Costs:	\$63,543,475

Accordingly, the Proposed Order's disallowance of \$262,923 actually disallows \$166,782 of other costs that were already determined to be prudently incurred and reasonable in amount in this docket. In other words, there is no "miscellaneous" fund out of which these dollars can be taken – every dollar that is included within an annual reconciliation is tied to a specific and supported expenditure. Indeed, one of the chief purposes of the annual reconciliations under Rider EDA is to ensure that expenditures are properly recorded and accounted for, in addition to reviewing their prudence and reasonableness. *See* Rider EDA, ILL. C. C. No. 10, Original Sheet No. 248.1. The Proposed Order, however, fails to provide any justification for this excess disallowance or to identify which of the other costs it disallows. In the event the Commission affirms the Proposed Order's conclusion to disallow the Plan Year 2 incentive compensation costs, the Proposed Order should be revised to reflect a disallowance of no more than the actual amount of incentive compensation cost charge through Rider EDA during Plan Year 2 – \$96,148.

Proposed Alternative Language:

ComEd sets forth in Section I of the Appendix two proposals for alternative language. The first proposal approves the incentive compensation costs, and the second proposal adopts Staff's disallowance but only in the amount of incentive compensation costs actually charged through Rider EDA – \$96,148. Each alternative also incorporates portions of ComEd's Reply Brief, as appropriate. Moreover, because the Proposed Order did not include the Appendix A referred to in Findings and Orderings Paragraph (5) (PO at 25), ComEd proposes that the Proposed Order be revised to include the Appendix A attached to ComEd's Draft Proposed Order, which was submitted on June 7, 2012.

II. Exception 2: The Proposed Order Should Clarify the Scope of Staff's and ComEd's Agreement Regarding Provision of Budget to Actual Comparisons.

With respect to the agreement Staff and ComEd reached in testimony regarding annual reporting of budget to actual comparisons, Staff's Initial Brief substantially departed from its agreement with ComEd. As a result, the Proposed Order's conclusion should be revised to clarify the original and intended scope of the agreement.

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 expanded 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 Proposed Order should clarify Staff's and ComEd's agreement in a way that honors the original agreement as summarized above and in ComEd's Initial Brief.

Proposed Alternative Language:

ComEd's proposed alternative language appears in Section II of the Appendix, and also incorporates the relevant portions of ComEd's Reply Brief.

III. Exception 3: Technical and Typographical Errors Should be Corrected.

ComEd has set forth in Section III of the Appendix proposed corrections to technical typographical errors identified in the Proposed Order.

CONCLUSION

WHEREFORE, ComEd respectfully requests that the Proposed Order be revised as set forth herein and in the attached Appendix.

Dated: July 25, 2012

Respectfully submitted,

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