

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Annual formula rate update and revenue	:	No. 12-0321
requirement reconciliation authorized by Section	:	
16-108.5 of the Public Utilities Act.	:	

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

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INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company (“ComEd”), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”) and the scheduling order of the Administrative Law Judges, submits this Initial Brief.

I. INTRODUCTION / STATEMENT OF THE CASE

The Energy Infrastructure Modernization Act (“EIMA”)¹ established a new formula rate structure and set out in detail a process, including annual updates and retroactive reconciliations, linking rates to a participating utility’s actual prudent and reasonable costs of service. 220 ILCS 5/16-108.5(c), (d). The General Assembly found this to be essential to stimulating billions of dollars of new investment in infrastructure, building a 21st Century electric grid with smart technology and world-class reliability, creating thousands of new jobs, and expanding low-income assistance. Those benefits, however, can be achieved only if formula rates are designed and, in update and reconciliation proceeding like this, applied in a manner that sets charges based on utilities’ actual cost information for the applicable period. *E.g.*, 220 ILCS 5/16-108.5(c)(6) and (d)(1).

Establishing a proper formula rate structure that allows recovery of utilities’ actual prudent and reasonable costs of providing delivery services – not just costs of particular

¹ Illinois Public Act (“PA”) 097-0616, as amended and supplemented by PA 097-0646.

investments – is essential to realizing EIMA’s benefits. The Commission’s May 29, 2012, final Order (“*May 11-0721 Order*”) in ComEd’s initial formula rate case, ICC Docket No. 11-0721, however, changed ComEd’s formula rate in ways that ensured that ComEd would seriously under-recover its costs, year after year, both at the initial rate-setting stage and after reconciliation. In the instant Docket, ComEd originally filed and presented evidence fully supporting a revenue requirement for rate-setting purposes of \$2,131,121,000. *E.g.*, Fruehe Direct (“Dir.”), ComEd Exhibit (“Ex.”) 3.0 REV., 2:41 – 3: ComEd Ex. 3.1, Sch. FR A-1, line 26. The effect of the *May 11-0721 Order* was to reduce that figure by \$250 million, to \$1,880,578,000. ComEd Ex. 10.1, Sch. FR A-1, line 36.

The Commission’s October 3, 2012, Order on Rehearing in that same Docket (“*Order on Rehearing*”) did recognize the pension asset on which EIMA entitles ComEd to earn a debt-based rate of return. However, the *Order on Rehearing* corrected no other error. Indeed, it backed still further away from EIMA’s mandates and full cost recovery by making an additional *reduction* to the reconciliation adjustment interest rate that was already set well below ComEd’s actual and statutorily-defined capital cost and time value of money.

In addition to applying the *Order on Rehearing* rulings, the Commission must correctly resolve the contested issues in the instant Docket concerning both the application of the formula rate and the reconciliation of the revenue requirements initially used to set rate year 2011 charges with actual 2011 costs. While the issues are fewer, once again some parties seek to deny ComEd recovery of its prudent and reasonable costs of service.

Every step away from full and timely recovery of ComEd’s reasonable and prudent costs of service is contrary to the directives, and the purpose, of EIMA. ComEd cannot deliver the benefits EIMA promises without a means of recovering the costs. In this Docket, the

Commission should ensure that neither the application of ComEd's formula rate to its updated data nor the 2011 reconciliation moves further away from cost recovery or further imperils EIMA's benefits.

Perhaps the most glaring effort, led by AG/AARP and CUB, is their proposal to avoid consistent use of *2011 historical weather normalized* billing determinants, as Section 16-108.5(c)(4)(H) of the Public Utilities Act (the "Act"), 220 ILCS 5/16-108.5(c)(4)(H), requires. They would instead substitute incomplete *2012 data on customer growth*, while still using 2011 weather normalized usage data (*i.e.*, not recognizing the 2012 data showing declining usage). In the *May 11-0721 Order*, the Commission made the serious reversible error of approving a similar mismatch, having been misled to conclude that the proposal was based on then-historical data when, in fact, it was based on selective use of 2011 data. However, in this Docket, it has been acknowledged by the testimony of *every* witness on the subject that the proposed selective "adjustment" of customer growth relies on 2012, not historical 2011, data. Moreover, the Staff rebuttal testimony supporting this adjustment for the first time is silent on the fact that the adjustment is utterly one-sided, *i.e.*, the adjustment rejects historical data in order to increase the number of customers but refuses to adjust for the decrease in usage per customer during the very same period. Because this billing determinant issue does not involve any term of the formula rate, there is no reason the Commission can or should violate its duty to decide this issue, and all other issues in the instant Docket, lawfully and in accordance with the evidence in this Docket. 220 ILCS 5/10-103, 10-201(e)(iv)(A), 16-108.5(c)(4)(H).

II. OVERALL REVENUE REQUIREMENT

The calculation of the revenue requirement to be reflected in delivery service charges beginning with the January 2013 monthly billing period is based on historical data for the 2011

calendar year, plus an adjustment for the projected capital additions and change in the accumulated depreciation and depreciation expense for 2012. Because the reconciliation shows that the actual revenue requirement for 2011 was different from the revenue requirements reflected in delivery service charges for 2011, that differential, as well a Return on Equity (“ROE”) collar adjustment, must be incorporated in the revenue requirement calculation in this Docket. *E.g.*, Houtsma Dir., ComEd Ex. 2.0 REV., 11:229 - 12:236.

In the instant Docket, ComEd originally filed and presented evidence fully supporting a revenue requirement for rate-setting purposes of \$2,131,121,000. Fruehe Dir., ComEd Ex. 3.0 REV., 2:41 – 43; ComEd Ex. 3.1, Sch. FR A-1, line 26. That original revenue requirement was composed of the following:

RR and Components	Amount
2011 Actual Costs With 2012 Projected Plant Additions. Depreciation Reserve Roll Forward, and Depreciation Expense	\$2,111,197,000
Reconciliation Adjustment, With Interest	\$4,235,000
ROE Collar Adjustment, Grossed Up for Taxes	\$15,689,000
Total	\$2,131,121,000

Fruehe Dir., ComEd Ex. 3.0 REV., 2:41 – 3:54.

The effect of the *May 11-0721 Order*, however, was to reduce ComEd’s original revenue requirement by \$250 million, to \$1,880,578,000. ComEd Ex. 10.1, Sch. FR A-1, line 36. The May 11-0721 Order compliance revenue requirement was composed of the following:

<i>May 11-0721 Order Compliance RR and Components</i>	Amount
2011 Actual Costs With 2012 Projected Plant Additions. Depreciation Reserve Roll Forward, and Depreciation Expense	\$1,963,823,000
Reconciliation Adjustment, With Interest	(\$99,269,000)
ROE Collar Adjustment, Grossed Up for Taxes	\$16,024,000
Total	\$1,880,578,000

ComEd Ex. 10.1, Sch. FR A-1, lines 23, 24, 35, 36.

ComEd's rebuttal and surrebuttal testimony, reflecting the *May 11-0721 Order*, presented a revenue requirement of \$1,875,337,000, composed of the following:

Rebuttal and Surrebuttal RR and Components	Amount
2011 Actual Costs With 2012 Projected Plant Additions. Depreciation Reserve Roll Forward, and Depreciation Expense	\$1,959,382,000
Reconciliation Adjustment, With Interest	(\$102,075,000)
ROE Collar Adjustment, Grossed Up for Taxes	\$18,030,000
Total	\$1,875,337,000

ComEd Ex. 13.01, Sch. FR A-1, lines 23, 24, 35, 36; ComEd Ex. 19.1, Sch. FR A-1, lines 23, 24, 35, 36.

When the *Order on Rehearing* is reflected, ComEd's revenue requirement is \$2,024,953,000, which still is more than \$100 million below ComEd's direct case revenue requirement. That figure's components are as follows:

<i>Order on Rehearing</i> Compliance RR and Components	Amount
2011 Actual Costs With 2012 Projected Plant Additions. Depreciation Reserve Roll Forward, and Depreciation Expense	\$2,030,958,000
Reconciliation Adjustment, With Interest	(\$24,035,000)
ROE Collar Adjustment, Grossed Up for Taxes	\$18,030,000
Total	\$2,024,953,000

The foregoing *Order on Rehearing* compliance figures are set forth in ComEd's October 11, 2012, compliance filing, in ComEd Ex. 23.0, at Sch. FR A-1, lines 23, 24, 35, 36, which at this time is pending admission. The same figures all can be derived mathematically by starting with the ComEd rebuttal and surrebuttal figures, applying the amount for pension asset funding cost

recovery in ComEd's original filing,² and applying the reconciliation adjustment interest rate from the *Order on Rehearing*.³

A. 2013 Inception Revenue Requirement (Based on 2011 Costs and 2012 Projected Plant)

Sch. FR A-1 of Rate DSPP – Delivery Service Pricing and Performance (“Rate DSPP”) provides the summary level calculation of the revenue requirement that will go into effect beginning with the January 2013 monthly billing period and extending through the December 2013 monthly billing period. The calculation utilizes the well-established formula: Revenue Requirement = (Rate of Return x Rate Base) + Operating Expenses, using the components from supporting documentation, and is based upon 2011 historical data plus projected plant additions, depreciation reserve and depreciation expense for 2012 (as required by EIMA). *E.g.*, Houtsma Dir., ComEd Ex. 2.0 REV., 12:239-13:259.

In ComEd's original filing, its updated revenue requirement, before the reconciliation and ROE Collar adjustments, was \$2,111,197,000. ComEd Ex. 3.1, Sch. FR A-1, line 23. That was reduced to \$1,963,823,000 in the *May 11-0721 Order* compliance filing. ComEd Ex. 10.1, Sch. FR A-1, line 23.

In Mr. Fruehe's rebuttal and surrebuttal testimony, ComEd's updated revenue requirement, before the reconciliation and ROE Collar adjustments, as revised to reflect the impact of the *May 11-0721 Order*, resulted in a revenue requirement of \$1,959,382,000. ComEd Ex. 13.01 Sch. FR A-1, line 23; ComEd Ex. 19.1, Sch. FR A-1, line 23. That amount

² There is a very slight difference in the pension asset funding cost recovery amount, due to a change in long-term debt cost agreed to by Staff and ComEd in the instant Docket, as discussed later in this Initial Brief. In ComEd's direct case, the pension asset funding cost recovery amount was \$71,461,000. ComEd Ex. 3.1, Sch. FR A-1, line 9. In the *Order on Rehearing* compliance filing, the pension asset funding cost recovery amount is \$71,576,000. ComEd Ex. 23.0, Sch. FR A-1, line 9 (pending admission).

³ In setting forth its calculations and proposals in this Initial Brief, and in identifying which issues are contested, ComEd has reflected the *May 11-0721 Order* and the *Order on Rehearing*. In doing so, ComEd does not waive any rights it has in its appeal from ICC Docket No. 11-0721 or otherwise.

incorporates adjustments, including to operating expense, rate base and cost of capital, agreed to by ComEd and others. Fruehe Rebuttal (“Reb.”), ComEd Ex. 13.0, 4:77-79.

Given the *Order on Rehearing*, as reflected in ComEd’s compliance filing (ComEd Ex. 23.0, Sch. FR A-1, subject to pending request for admission into evidence) made as a result of the *Order on Rehearing*, ComEd’s final revenue requirement, before the reconciliation and ROE Collar adjustments, is \$2,030,958,000. As noted earlier, the figures in ComEd’s *Order on Rehearing* compliance filing also can be mathematically derived from the materials already in evidence and the *Order on Rehearing*.

B. 2011 Reconciliation and ROE Collar Adjustments⁴

The purpose of the 2011 reconciliation is to reconcile the actual revenue requirement(s) in effect through delivery services charges in 2011 with what the revenue requirement would have been had actual cost data been available when rates reflecting the 2011 revenue requirement became effective. Two revenue requirements were in effect through delivery services charges during 2011. The first was established by the Commission’s Order in ICC Docket No. 07-0566, which established a delivery services revenue requirement of \$1,961,065,000.⁵ The rates established by that Order were in effect for five months, in 2011, from January 1, through May 31, 2011. The second revenue requirement was established by the Commission’s Order in ICC Docket No. 10-0467 which established a delivery services revenue requirement of \$2,084,072,000.⁶ Therefore, ComEd’s weighted delivery service revenue requirement in effect

⁴ ComEd added the reference to the ROE Collar to this heading, for clarity.

⁵ See *Commonwealth Edison Co.*, ICC Docket No. 07-0566 (Order September 10, 2008), at 77. ComEd believes that seeking administrative notice of final Orders of the Commission is not required before they may be cited for their rulings, any more than citations to court precedent require notice. However, if the ALJs and the Commission disagree, ComEd (without waiving its arguments) asks that such notice be taken of all Commission Orders cited in this Initial Brief. 83 Ill. Adm. Code § 200.640.

⁶ See *Commonwealth Edison Co.*, ICC Docket No. 10-0467 (Order May 24, 2011), at 316.

through delivery services charges in 2011 was \$2,032,819,000, Fruehe Dir., ComEd Ex. 3.0 REV, 8:168-179, later revised to \$2,008,159,000 to reflect the *May 11-0721 Order* relating to uncollectibles expense recovery through Rider UF, ComEd Ex. 19.1, Sch. FR A-4, line 2.

Per ComEd's direct testimony, the reconciliation adjustment, with interest, therefore was \$4,235,000. ComEd Ex. 3.1, Sch. FR A-1, line 24, and Sch. A-4, line 31.

Per ComEd's rebuttal and surrebuttal testimony, however, reflecting the *May 11-0721 Order*, the reconciliation adjustment, with interest, was (\$102,075,000), *i.e.*, a reduction to the total revenue requirement of \$102,075,000. ComEd Ex. 13.01 Sch. FR A-1, line 24, and Sch. A-4, line 31; ComEd Ex. 19.1, Sch. FR A-1, line 24, and Sch. A-4, line 31.

Finally, given the *Order on Rehearing*, the reconciliation adjustment, with interest, is (\$24,035,000), *i.e.*, a reduction to the total revenue requirement of \$24,035,000 using the interest rate adopted by the *Order on Rehearing*. ComEd Ex. 23.0, Sch. FR A-1, line 24, and Sch. FR A-4, line 31 (admission pending).

Per ComEd's direct testimony, the ROE Collar calculation shown on Sch. FR A-3, reflected that ComEd's actual earned return in 2011 was 8.94%. ComEd Ex. 3.1 Sch. FR A-3, line 26. The allowed ROE as calculated per the EIMA was 9.81%, and, for purposes of calculating the ROE collar, the minimum allowed ROE was 9.31%. *Id.*, lines 27, 29.

Per ComEd's rebuttal and surrebuttal testimony, the ROE collar calculation shown on Sch. FR A-3 reflected that ComEd's actual earned return in 2011 was 8.90%. ComEd Ex. 13.01 Sch. FR A-3, line 26; ComEd Ex. 19.1, Sch. FR A-3, line 26. Again, the allowed ROE as calculated per the EIMA was 9.81%, and, for purposes of calculating the ROE collar, the minimum allowed ROE was 9.31%. *Id.*, Sch. FR A-1, lines 26, 28.

Therefore, as of its direct testimony, ComEd’s actual earned return for 2011 was \$9,878,000, or 0.37% below the ROE Collar’s minimum ROE, and, as of its rebuttal and surrebuttal, ComEd’s actual earned return for 2011 was \$10,606,000, or 0.41% below the ROE collar’s minimum ROE. ComEd Ex. 3.1, Sch. FR A-3, lines 33, 32; ComEd Ex. 19.01, Sch. FR A-1, lines 32, 31. An ROE collar adjustment as of the direct testimony of \$15,689,000 (reflecting tax gross-up), and, as of rebuttal and surrebuttal testimony, of \$18,030,000 (reflecting tax gross-up), was necessary to restore the actual earned ROE up to the 9.31% collar minimum. ComEd Ex. 3.1, Sch. FR A-3, line 36; ComEd Ex. 19.01, Sch. FR A-1, line 35.

The ROE Collar adjustment is not affected by the *Order on Rehearing*. (See pending ComEd Ex. 23.0, Sch. FR A-1, line 35).

Thus, the net effect of the reconciliation and ROE Collar adjustments, reflecting the *Order on Rehearing*, is a reduction in the revenue requirement of \$6,005,000, which is the sum of (1) negative \$24,035,000 (reconciliation adjustment) and (2) \$18,030,000 (ROE Collar adjustment).

C. Total Revenue Requirement

As indicated above, per ComEd’s direct case, ComEd’s updated revenue requirement is \$2,131,121,000, but reflecting the *May 11-0721 Order* and the *Order on Rehearing* results in a revenue requirement of \$2,024,953,000.

Updated RR With Reconciliation and ROE Collar Adjustments		
Stage	Amount	Source
ComEd Direct	\$2,131,121,000	ComEd Ex. 3.1, Sch. FR A-1
<i>May 11-0721 Order</i> Compliance	\$1,880,578,000	ComEd Ex. 10.1, Sch. FR A-1
ComEd Rebuttal and Surrebuttal Reflecting the <i>May 11-0721 Order</i>	\$1,875,337,000	ComEd Ex. 13.01, Sch. FR A-1; ComEd Ex. 19.1, Sch. FR A-1
Order on Rehearing Compliance	\$2,024,953,000	ComEd Ex. 23.0, Sch. FR A-1 (pending admission)

Thus, given the *May 11-0721 Order* and the *Order on Rehearing*, as reflected in ComEd's compliance filing (pending ComEd Ex. 23.0, Sch. FR A-1), the final revenue requirement for rates to become effective January 1, 2013 is \$2,024,953,000. This considers the final 2012 revenue requirement, the 2011 reconciliation and the ROE collar calculation.

III. RATE BASE

A. Overview

ComEd's final revised rate bases are \$6,025,650,000 for the 2011 reconciliation year and \$6,367,003,000 for the 2012 filing year, reflecting the *May 11-0721 Order*. *E.g.*, ComEd Ex. 19.1, Sch. FR B-1, lines 28 and 36. ComEd's rate bases are calculated based on final 2011 Federal Energy Regulatory Commission ("FERC") Form 1 balances, functionalization of plant between the transmission and distribution functions, applicable ratemaking adjustments consistent with the statute or in conformance with the *May 11-0721 Order*, plus its estimated 2012 plant additions less the corresponding updating of its accumulated reserve for depreciation and amortization (the "depreciation reserve") and accumulated deferred income taxes, *e.g.*, Fruehe Dir., ComEd Ex. 3.0 REV., 18:376-20:408; 220 ILCS 5/16-108.5(c)(6), subject to the application of the *May 11-0721 Order*.⁷

Staff's testimony's only difference with the foregoing rate base figures is that Staff calculates an allowance cash working capital that is \$36,000 higher than ComEd's figure. *See also* Section III.C.1, *infra*.

Intervenors AG/AARP's and CUB's only contested adjustments to the above rate base figures involve calculation of the Accumulated Deferred Income Taxes ("ADIT") tied to the rate

⁷ Section 16-108.5(c) consists of an opening paragraph, a paragraph with six indented subsections (1) through (6) and six additional paragraphs that are not separately numbered and which, therefore, also are cited herein as subsection (6).

base reduction for the operating reserve for accrued vacation pay that was ordered by the *May 11-0721 Order*. Their proposals are wrong, and they seek improperly to artificially reduce rate base, as discussed in Section III.C.2, *infra*.

B. Potentially Uncontested Issues

1. Plant in Service

a. Distribution Plant

ComEd's Distribution Plant in rate base for the 2011 reconciliation year and the 2012 filing year should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 4 and 29; ComEd Ex. 13.03, Sch. B-1RY, p. 1., col. D, line 2; ComEd Ex. 13.03, Sch. B-1 FY, p. 1., col. D, line 2. ComEd demonstrated that its Distribution Plant for the 2011 reconciliation year was prudently acquired at a reasonable cost and were used and useful when placed into service. ComEd further demonstrated that its Distribution Plant for the 2012 filing year is prudent and reasonable and the underlying assets used and useful. *E.g.*, Blaise Dir., ComEd Ex. 6.0 REV., 9:165-16:319, 24:499-26:535; Donovan Dir., ComEd Ex. 7.0 REV., 4:77-8:172, 15:302-16:324. Neither Staff nor any intervenor disagreed.

b. General and Intangible Plant

ComEd's General and Intangible ("G&I") Plant in rate base for the 2011 reconciliation year and the 2012 filing year should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 5 and 31; ComEd Ex. 13.03, Sch. B-1RY, Col. D, line 3; ComEd Ex. 13.03, Sch. B-1 FY, Col. D, line 3. ComEd demonstrated that its G&I Plant for the 2011 reconciliation year was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its G&I Plant for the 2012 filing year is prudent and reasonable and the underlying assets used and useful. *E.g.*, Blaise Dir., ComEd Ex. 6.0 REV., 16:320-18:374,

24:499-26:535; Donovan Dir., ComEd Ex. 7.0 REV., 4:77-8:172. Neither Staff nor any intervenor disagreed.

c. Plant Additions

ComEd's Plant Additions for the 2012 filing year should be approved. ComEd Ex. 13.03, Sch. B-2.4 FY; ComEd Ex. 13.04, WPB-2.4 FY. ComEd demonstrated that its Plant Additions for the 2012 filing year are prudent and reasonable and the underlying assets used and useful. *E.g.*, Blaise Dir., ComEd Ex. 6.0 REV., 21:431-60:1238; Donovan Dir., ComEd Ex. 7.0 REV., 16:325-20:417. Neither Staff nor any intervenor disagreed.

d. Original Cost Finding

ComEd requested that the Commission approve the original cost of plant in service as of December 31, 2011, before adjustments of \$15,028,488,000. Fruehe Dir., ComEd Ex. 3.0 REV., 14:289-15:293. In direct testimony, Staff recommended that an original cost finding be made in the amount of \$15,005,282,000. Bridal Dir., Staff Ex. 2.0, 9:204-209. However, in rebuttal testimony, ComEd stated that based on the compliance filing made following the Commission's Order in ICC Docket No. 11-0721, the original cost of plant in service at December 31, 2011 should be \$14,996,019,000. Fruehe Reb., ComEd Ex. 13.0, 10:193-11:226; ComEd Ex. 13.06. Staff agreed. Bridal Reb., Staff Ex. 7.0, 9:212-10:238. Therefore, the Commission's final Order should reflect the following language:

the Commission, based on ComEd's proposed original cost of plant in service as of December 31, 2011, before adjustments, of \$15,036,912,000, and reflecting the Commission's determination adjusting that figure, unconditionally approves \$14,996,019,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2011.

Id. at 10:232-238. No intervenor disagreed.

2. Materials & Supplies

ComEd's Distribution Plant Materials & Supplies ("M&S") inventory in rate base for the 2011 reconciliation year and the 2012 filing year is uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, p. 1., line 18; ComEd Ex. 13.03, Sch. B-1RY, p. 1., col. D, line 11; ComEd Ex. 13.03, Sch. B-1 FY, p. 1, col. D, line 11; Blaise Dir., ComEd Ex. 6.0 REV., 18:375-19:397.

3. Construction Work In Progress

ComEd's Construction Work in Progress ("CWIP") for the 2011 reconciliation year should be approved. ComEd Ex. 19.1, Sch. FR B-1, p. 1, line 14; ComEd Ex. 13.03, Sch. FR B-1 RY, p. 1, col. D, line 9. ComEd demonstrated that its CWIP for the 2011 reconciliation year were prudent and reasonable. *E.g.*, Blaise Dir., ComEd Ex. 6.0 REV., 19:398-21:430. Neither Staff nor any intervenor disagreed.

4. Regulatory Assets and Liabilities

ComEd's Regulatory Assets and Liabilities are comprised of (1) a regulatory asset representing the unamortized balance of capitalized incentive compensation costs, and (2) the unamortized balances of costs related to ComEd's Advanced Metering Initiative ("AMI") pilot. Fruehe Dir., ComEd Ex. 3.0 REV., 17:351-18:362. The Regulatory Assets and Liabilities for the 2011 reconciliation year and 2012 filing year are uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 19.

5. Deferred Debits

The Deferred Debits are comprised of: (1) Cook County Forest Preserve Fees related to licensing fees for distribution lines; (2) a Long Term Receivable from the Mutual Beneficial Association Plan related to ComEd's payments to the trust on behalf of union employees for

short term disability and for which it is awaiting reimbursement; and (3) ComEd's adjustment related to the operating reserve for accrued vacation pay as a result of the Order in ICC Docket No. 11-0721. Fruehe Dir., ComEd Ex. 3.0 REV., 18:363-18:370; ComEd Ex. 10.4, Sch. B-2.8. The Deferred Debits for the 2011 reconciliation year and 2012 filing year should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 20.

The only contested issue regarding Deferred Debits is the adjustment proposed by AG/AARP and CUB regarding accrued vacation pay, which lacks merit, as discussed in Section III.C. of this Initial Brief.

6. Other Deferred Charges

ComEd's Other Deferred Charges relating to incremental distribution costs for storms greater than \$10 million for the 2011 reconciliation year and the 2012 filing year are uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 24; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 19:400-20:408.

7. Accumulated Provisions for Depreciation and Amortization

ComEd's Accumulated Provisions for Depreciation and Amortization for the 2011 reconciliation year and 2012 filing year are uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, lines 12, 30 and 32-33.

8. Accumulated Miscellaneous Operating Provisions

ComEd's Operating Reserves and Deferred Liabilities for the 2011 reconciliation year and 2012 filing year are uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, lines 15 and 17; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 18:371-19:384.

9. Asset Retirement Obligation

ComEd's Asset Retirement Obligation for the 2011 reconciliation year and the 2012 filing year is uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 22; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 18:376-19:384, 19:393-399.

10. Customer Advances

ComEd's Customer Advances for the 2011 reconciliation year and the 2012 filing year are uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 26; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 20:416-423.

11. Customer Deposits

ComEd's Customer Deposits for the 2011 reconciliation year and the 2012 filing year are uncontested and should be approved. ComEd Ex. 19.1, Sch. FR B-1, line 25; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 20:409-415.

12. Other

ComEd believes that there are no other rate base issues raised by the parties at this time, apart from those items addressed in Section III.C, *infra*.

C. Potentially Contested Issues

1. Cash Working Capital

The Commission should approve a cash working capital ("CWC") requirement in rate base of negative \$21,274,000 (ComEd's figure). ComEd initially presented and supported a CWC requirement in rate base of \$42,439,000. Hengtgen Dir., ComEd Ex. 5.0; ComEd Exs. 5.1, 5.2, 5.3. ComEd subsequently provided a revised figure of negative \$21,274,000, reflecting the determinations in the *May 11-0721 Order*, plus recent legal changes in when remittance of certain pass-through taxes are due to the City of Chicago. *E.g.*, Hengtgen Reb., ComEd Ex.

16.0, 1:1 – 2:28. Staff did not contest ComEd’s change related to the City of Chicago taxes, however, Staff provided a slightly different calculation based on its level of operating expenses, adding an amount of \$36,000, resulting in a CWC figure of negative \$21,238,000. Jones Reb., Staff Ex. 6.0, Sch. 6.03 FY, line 11, Sch. 6.04 FY, col. (b), and Sch. 6.10 FY. ComEd did not calculate a new figure in its surrebuttal. No intervenor presented a different figure.

The only potentially contested issue, other than the \$36,000 difference noted above, is the treatment of current and deferred income taxes in the CWC calculation, if that treatment were to be considered within the scope of the instant Docket. In the *May 11-0721 Order*, the Commission approved a new treatment of current and deferred income taxes proposed there at the briefing stage by Staff, even though Staff had filed no narrative testimony in opposition to ComEd’s testimony on this subject. *See May 11-0721 Order* at 54-55. Accordingly, ComEd’s rebuttal CWC calculation in the instant Docket adhered to the new treatment directed by the *May 11-0721 Order*, but ComEd’s rebuttal testimony also pointed out that recently, in the first Ameren formula rate case, ICC Docket No. 12-0001, Staff had filed testimony that advocated a method of not considering the current and deferred income taxes separately, contrary to the method Staff advocated and approved by the ICC in the *May 11-0721 Order*, and ComEd quoted and provided a copy of an excerpt of the relevant Staff testimony from the Ameren case. In the instant Docket, the Administrative Law Judges, on their own motion, struck that portion of ComEd’s rebuttal testimony on evidentiary grounds, but that ruling was erroneous as a matter of

law, and ComEd respectfully requests that the ruling be corrected.⁸ Staff’s rebuttal in the instant Docket did not deny that inconsistency, but Staff took the position that reconsidering the change in the treatment of these taxes that had been directed by the *May 11-0721 Order* was beyond the scope of the instant Docket. *See* Jones Reb., Staff Ex. 6.0, 10:207 – 11:219. In its September 19, 2012, final Order in the first Ameren formula rate case, ICC Docket No. 12-0001 (“*Ameren 2012*”), the Commission adopted Ameren’s method as supported by Staff, stating in part as follows:

The Commission finds that AIC, as supported by Staff, has proposed the appropriate method in this docket for determining the appropriate income tax lead and lag. The Commission agrees that it has a long-standing practice of not considering current and deferred income taxes separately. The Commission finds no evidence present in this docket to cause it to vary from this treatment. The Commission recognizes that a different result was adopted in the ComEd docket, Docket No. 11-071 [*sic*]; however, the Commission recognizes that ComEd and AIC calculate income taxes using different methodologies. Should those methodologies align in the future, or new evidence be presented, the Commission will certainly re-visit this issue in future proceedings.

Ameren 2012 at 29. Section 16-108.5 does refer to application of “Commission practice”, although that term must be read in context. *See* 220 ILCS 5/16-108.5(c)(1) (reference to Commission practice). Because ComEd agrees with Staff that this subject was addressed with respect to the formula rate by the *May 11-0721 Order*, ComEd requests that the Commission, in the final Order, include a paragraph similar to the above paragraph from *Ameren 2012*, which

⁸ The Staff testimony from the Ameren case was admissible as a party admission under Ill. R. Ev. 801(d)(2) (and, as a party admission, was not required to be presented to the Staff witness for explanation, Ill. R. Ev. 613(b)). Under Illinois law, moreover, it is error to exclude a party admission on the theory that it is not a statement against interest or other “admission”, as long as the admission is inconsistent with the position of the party in the instant case. *E.g.*, M. Graham, Handbook of Illinois Evidence 812-817 (10th ed. 2011); G. DiVito, The Illinois Rules of Evidence 102 (Rev. Mar 7, 2012). Nor is the party admission excludable on the theory that it must meet the requirements for administrative notice, even if that material *also* could be subject to administrative notice. There is no Illinois law of which ComEd is aware that supports the proposition that a rule regarding administrative or judicial notice imposes a limitation on other aspects of law of evidence under which material is admissible. In any event, however, the party admission here is one that is *required* to be admitted as a matter of judicial notice under Ill. R. Ev. 201(b) and (d), and for that and other reasons also meets the requirements for administrative notice by the Commission. *E.g.*, 83 Ill. Adm. Code § 200.640(a)(7).

would state that, if the methodologies align in the future or new evidence is presented, the Commission will re-visit this issue in an appropriate future proceeding.

2. Accumulated Deferred Income Taxes

As of December 31, 2011 the appropriate level of Accumulated Deferred Income Taxes (“ADIT”), after adjustments, to be deducted from rate base is \$2,469,748,000. *E.g.*, ComEd Ex. 19.1, Sch. FR B-1. The level of ADIT deducted was derived through an analysis of the components of the deferred tax balances and then either by: (1) directly assigning or allocating the items based on assignment; or (2) allocation of the operating items to which they relate. Fruehe Dir., ComEd Ex. 3.0 REV., 16:335 – 17:337. The 2011 ADIT balance is reflective of the 100% bonus depreciation applicable to 2011 capital investments as well as the adoption of the safe harbor method of tax accounting for repair costs. *Id.* at 17:337-340.

One of the issues in this case is the amount of ADIT related to ComEd’s accrued vacation pay liability. ADIT typically includes both deferred income tax liabilities and deferred income tax assets. In general, a deferred income tax liability is booked when a company recognizes an expense for income tax purposes, but not for book purposes (*i.e.*, actual income taxes paid are less than recognized on the income statement). A deferred income tax asset is booked when a company records an expense for book purposes but not for income tax purposes (*i.e.*, actual income taxes paid are greater than recognized on the income statement). Thus, for rate making purposes, deferred income tax assets increase rate base and deferred income tax liabilities decrease rate base. Fruehe Surrebuttal (“Sur.”), ComEd Ex. 19.0, 3:54-61.

At the end of each calendar year, ComEd records a liability related to the vacation pay it expects to incur during the next year.⁹ ComEd does not record an expense for income tax

⁹ The recoding of a liability is referred to as the “operating reserve” for accrued vacation pay.

purposes related to the full amount of this liability, but does recognize the expense for book purposes. As a result, ComEd does not receive the full amount of the income tax benefit in that year and a deferred income tax asset is booked. ComEd also records a vacation pay deferred debit related to the vacation pay that it estimates will ultimately be capitalized, but does not include this amount as a reduction to expense for either income tax or book purposes, resulting in no deferred tax booked for the vacation pay deferred debit. Fruehe Sur., ComEd Ex. 19.0, 3:62 - 4:71.

AG/AARP witness Mr. Effron and CUB witness Mr. Smith recommend that the deferred debit and the operating reserves liability related to accrued vacation pay be netted against each other prior to their inclusion in rate base. After these amounts are netted, they both calculate a revised amount of ADIT associated with the net amount of accrued vacation pay. In summary, AG/AARP and CUB both multiply the net amount of deferred debt and the operating liability times the applicable income tax rate. AG/AARP and CUB's adjustment reduces the deferred tax asset, and thus ComEd's rate base, by \$8,540,000. Fruehe Reb., ComEd Ex. 13.0, 6:115-121.

AG/AARP and CUB's recommendation should not be accepted. AG/AARP and CUB have essentially imputed a deferred tax liability (which reduces rate base) related to the accrued vacation pay debit when none exists. As of December 31, 2011, there was a deferred income tax asset (which increases rate base) associated with the vacation pay operating liability of \$18,116,000. Fruehe Reb., ComEd Ex. 13.0, 7:123-127; ComEd Ex. 10.3, WP 4, line 5, col. (D). The jurisdictional amount of \$18,952,000¹⁰ is included in ComEd's rate base calculation and fully reflects deferred tax impacts associated with the accrual of a vacation pay liability. No other deferred income taxes related to either the vacation pay deferred debit or operating liability

¹⁰ Calculated in accordance with *May 11-0721 Order*, see ComEd Ex. 10.3, WP 4, line 5, col.(G) plus line 107, col. G.

appear on ComEd's books as of December 31, 2011. AG/AARP and CUB have simply incorrectly conjured one up mathematically where none exists. Fruehe Reb., ComEd Ex. 13.0, 7:127-134. Accordingly, AG/AARP and CUB's proposal is contrary to the Act and should be rejected. Section 16-108.5(c) and (d) of the Act state that, with limited exceptions, a participating utility is to use its actual costs as recorded in FERC Form 1. 220 ILCS 5/16-108.5(c), (d). AG/AARP's and CUB's imputing of a hypothetical tax benefit that does not exist is not consistent with the EIMA. Fruehe Reb., ComEd Ex. 13.0, 7:134-140.

Furthermore, there is no deferred tax liability associated with the accrued vacation pay deferred debit as of December 31, 2011 because the accrued vacation pay was not recognized as a reduction to expense for either book or tax purposes. These costs, as of December 31, 2011 had not yet been distributed to capital projects and thus could not be deducted for income tax purposes. Thus, since no tax benefit existed at that time, imputing one would be improper. Fruehe Reb., ComEd Ex. 13.0, 7:141 – 8:147.

In his rebuttal testimony, AG/AARP witness Mr. Effron disputes that he has imputed a deferred tax liability where none mathematically exists. He is wrong. As shown by Mr. Fruehe, the calculation of the ADIT in rate base begins with an itemization of all deferred taxes that ComEd has recognized and reported in its FERC Form 1. Fruehe Sur., ComEd Ex. 19.0, 7:131-36. ComEd then allocates those deferred tax elements between transmission and distribution, or excludes items that are deemed to not be related to distribution to WP 4.¹¹ Finally, adjustments for items that are recovered through other riders, or to reflect ratemaking disallowances are made

¹¹ ComEd Ex. 19.5 includes a copy of WP 4 from ComEd Ex. 10.3 which includes the entirety of ComEd's 2011 deferred income taxes and clearly shows the deferred income tax asset associated with vacation pay on line 5 (ComEd Ex. 19.5, page 2). There is no other line item in ComEd's 2011 total deferred income taxes for vacation pay, either deferred asset or deferred liability. Line 107 of ComEd Ex. 10.3 includes an adjustment to the vacation pay deferred income tax asset to be in compliance with the *May 11-0721 Order*.

on WP 4. *The key point is that if a deferred income tax liability were associated with the vacation pay deferred debit it would be presented on WP 4, and a review of WP 4 fails to show any actual deferred tax liability associated with the deferred debt.* Fruehe Sur., ComEd Ex. 19.0, 7:136-42; ComEd Ex. 10.3, WP 4. Mr. Effron additionally argues that he has not imputed a deferred income tax liability where none exists, but instead he has limited the deferred income tax; however, his claim is disingenuous. The only basis for “limiting” the deferred tax asset is the assumption of a deferred tax liability associated with the vacation pay deferred debit. The fact that he has netted the deferred tax liability against the vacation pay deferred income tax asset does not change the fact that Mr. Effron’s mathematical calculation does indeed impute a deferred income tax liability where no actual tax benefit or ADIT exists. Fruehe Sur., ComEd Ex. 19.0, 7:143-50.

Second, Mr. Effron asserts that he has calculated the deferred income tax asset in accordance with the *May 11-0721 Order*. Effron Reb., AG/AARP Ex. 4.0, 3:51-4:69. Mr. Effron references Staff Schedule 16.07R from ICC Docket 11-0721 as evidence that he has calculated the deferred income tax asset in accordance with that Order; he has, however, clearly performed a different calculation. Analysis of Mr. Effron’s calculations shows that he has reduced the accrued vacation pay liability by the vacation pay deferred debit and then calculated the deferred income tax asset on the remaining balance. Fruehe Sur., ComEd Ex. 19.0, 5:92-102; Effron Dir., AG/AARP Ex. 2.1. Importantly, the vacation pay deferred debit was never part of Staff’s calculation on Schedule 16.07R. Fruehe Sur., ComEd Ex. 19.0, 5:102-103. In this Docket, ComEd has performed the calculation of the deferred income tax asset in accordance with the *May 11-0721 Order*. As shown in ComEd Ex. 13.02, WP5, page 6, the deferred income tax asset is the product of multiplying the thirteen (13) month average vacation pay liability

balance (listed as “deferred credit amount” on WP 5) by the income tax rate; which is exactly how it was done on the Staff Schedule 16.07R. Fruehe Sur., ComEd Ex. 19.0, 5:104-6:110; Bridal, Tr. at 139:22 - 141:9.

Finally, Mr. Effron asserts that the deferred tax asset balance of \$18,952,000 associated with the vacation pay reserve would be appropriate only if ComEd’s tax rate was 75%. Effron Reb., AG/AARP Ex. 4.0, 2:41-42. But this point would be valid only accepting Mr. Effron’s unfounded assumption that a deferred income tax liability exists related to the vacation pay deferred debit discussed above. Mr. Effron’s mathematical assumption that every rate base element must have a corresponding ADIT balance equivalent to 41% of the rate base value is overly simplistic and ignores the reality that not all cost elements carry a tax benefit. Fruehe Sur., ComEd Ex. 19.0, 8:158-167. For these reasons, the imputed tax benefit and related rate base reduction proposed by AG/AARP and CUB should be rejected.

3. Accumulated Reserve for Depreciation and Amortization

ComEd does not believe that there is a contested depreciation reserve issue, and, in the event any other party identifies such an issue, stands by its positions as presented in evidence.

4. Other

ComEd does not believe that there is any other contested rate base issue, and, in the event stands by its positions as presented in evidence.

IV. REVENUES

A. Overview

The subject of revenues is not contested, apart from the improper and incorrect billing determinants adjustment proposed by AG/AARP and CUB. See Fruehe Dir., ComEd Ex. 3.0 REV., 3:59-65; ComEd Ex. 19.1, Sch. FR A-1, line 22 (total other revenues of \$145,638,000); Section IV.C.1, *infra*.

B. Potentially Uncontested Issues

1. Other Revenues

2. Other

C. Potentially Contested Issues

1. Billing Determinants

ComEd applies two basic types of billing determinants in its calculation of charges: (1) the number of customers; and (2) the amount of electricity delivered (kilowatt-hours (kWh)) Fruehe Reb., ComEd Ex. 13.0, 20:404-410.

The billing determinants are applied in the calculation of both fixed and variable charges. In general, the fixed charge is determined by dividing the fixed costs by the number of bills in a year, which is generally the number of customers multiplied by twelve (12) monthly bills, and the variable charge is determined by dividing the variable costs by the number of kWhs delivered. Billing determinants generally do not have any effect on ComEd's revenue requirement; however, changing the billing determinants does change the amount of revenue which ComEd will ultimately recover. For example, with all else being equal, if the customer count is increased, the fixed charge will be lower and the amount of revenue will be lower; conversely, if the customer count is decreased, the fixed charge will be higher. This same principle holds true for the kWh deliveries and the variable charges. In short, assuming more customers or kWh deliveries than actually exist in a given period will, again all other factors held constant, prevent the utility from recovering its revenue requirement in that period. Fruehe Reb., ComEd Ex. 13.0, 20:411-21:430.

In the determination of its charges, ComEd correctly applied its 2011 weather-normalized billing determinants. Section 16-108.5(c)(4)(H) of EIMA requires the application of historical,

weather-normal billing determinants. Fruehe Reb., ComEd Ex. 13.0, 21:431-437; 220 ILCS 5/16-108.5(c)(4)(H).

AG/AARP witness Mr. Effron and CUB witness Mr. Smith, by contrast, both recommended that the customer count portion of the 2011 weather-normal billing determinants be revised to include estimated growth in customers in 2012. Mr. Effron and Mr. Smith both relied on the *May 11-0721 Order*, which required ComEd to revise the customer count portion of its 2010 weather-normal billing determinants to use 2011 data and the fact that ComEd included its 2012 forecasted plant additions in its requested rate base. Fruehe Reb., ComEd Ex. 13.0, 22:447-452.

The *May 11-0721 Order* mistakenly assumed that the AG/AARP proposal approved in that docket was based solely on 2010 data, with no update for 2011 data, stating in part: “AG/AARP stated in the very beginning of their argument that the information they have is 2010 information, not 2011 information.” Fruehe Reb., ComEd Ex. 13.0, 22:452-456; *May 11-0721 Order* at 75. In fact, the adjustment was based on use of 2011 customer growth data to “update” 2010 data as AG/AARP repeatedly and consistently made clear in that Docket and again in the instant Docket. Fruehe Reb., ComEd Ex. 13.0, 22:456 - 23:466.

Contrary to AG/AARP witness Mr. Effron’s recommendations, the Commission’s decision regarding billing determinants in ICC Docket No. 11-0721 should not apply to this proceeding and the 2012 estimated increase in customer count should not be included in the billing determinants. The Commission’s decision in ICC Docket No. 11-0721 was specific to the application of billing determinants for rates that went into effect in June, 2012. Additionally, the Order there concluded that 2010 data should be used, but, in fact, AG/AARP’s data included a

selective adjustment based on 2011 data. Fruehe Reb., ComEd Ex. 13.0, 23:474-483; *see May 11-0721 Order* at 73-76.

Although both AG/AARP witness, Mr. Effron and CUB witness Mr. Smith argue, in the same words, that it is appropriate “to match the billing determinants used in the calculation of rates necessary to produce the approved net revenue requirement to the plant used to provide service included in rate base” (Effron Dir., AG/AARP Ex. 2.0, 8:178-181; Smith Dir., CUB Ex. 1.0, 18:426-429) they are incorrect for two reasons. First, it is not in compliance with EIMA. ComEd has included its 2012 forecasted plant additions in its requested rate base as required by Section 16-108.5(c)(6). Fruehe Reb., ComEd Ex. 13.0, 23:467-469; 220 ILCS 5/16-108.5(c)(6). Section 16-108.5(c)(4)(H) very clearly requires that historical, weather-normal billing determinants be applied. Fruehe Reb., ComEd Ex. 13.0, 23:470-473; 220 ILCS 5/16-108.5(c)(4)(H).

Second, their recommended adjustment is one-sided and will result in billing determinants that do *not* match the costs included in the revenue requirement, as the weather-normalized kWh billing determinants have decreased, but both Mr. Effron and Mr. Smith ignore this crucial fact. Fruehe Reb., ComEd Ex. 13.0, 24:500-503. Although a decrease in kWh deliveries was clearly identified in ComEd’s Supplemental Response to Attorney General Data Request AG 1.07, AG/AARP and CUB do not recommend a change to reflect the estimated decrease in ComEd weather-normal kWh sales in 2012 versus 2011. Fruehe Reb., ComEd Ex. 13.0, 23:484-24:491. If, contrary to EIMA, AG/AARP’s and CUB’s proposal to use customer counts for 2012 were to be approved, 2012 billing determinants for kWh sales would have to be reflected by lowering the amount of kWh deliveries in 2012 versus

2011 in order to consistently “match” billing determinants with plant used to provide service. Fruehe Reb., ComEd Ex. 13.0, 24:504-25:509.

The effect of increasing the customer count, proposed by AG/AARP and CUB, will decrease the fixed side of the equation (which will result in less revenue) and ignore the fact that weather-normal kWh deliveries are lower, which also results in lower revenue if a corresponding adjustment is not made. In other words, it is less likely that ComEd will actually recover its fully allowed revenue requirement if AG/AARP and CUB’s position is accepted and no change to kWh deliveries is made. Fruehe Reb., ComEd Ex. 13.0, 25:510-516. Analysis of the impact of the increase in customer count and decrease in kWh deliveries show an increase in the customer counts of the residential and Small C&I customer classes of 0.29% and 0.39%, respectively. These percentages are less than the 2011 over 2010 increases used in the testimonies of Mr. Effron and Mr. Smith. Mr. Effron incorrectly relies on an estimated 0.40% increase in residential customers and an estimated 0.88% increase in Small C&I customers, while Mr. Smith inappropriately relies on an estimated 0.42% increase in the number of residential customers and an estimated 0.90% increase in the number of Small C&I customers. Effron Dir., AG/AARP Ex. 2.0 9:188-191; Smith Dir., CUB Ex. 1.0, 16:385-17:388. Weather normal kWh deliveries have decreased in the residential and Small C&I classes by 2.53% and 0.97%, respectively. Further, analysis shows that usage per customer has declined in both the residential and Small C&I classes by 2.81% and 1.36%. Fruehe Reb., ComEd Ex. 13.0, 26:527-533; ComEd Ex. 13.08. Assuming normal weather, revenues will be lower by \$12.8 million because of the combined effects of increased 2012 customer count and lower 2012 kWh deliveries: an increase in revenues due to increased customer count of \$1.8 million offset by a revenue decrease of \$14.6 million due to decreased kWh deliveries.

Neither CUB witness Mr. Smith nor AG/AARP witness Mr. Effron respond to the suggestion that if the Commission were to revise ComEd's 2011 weather normal billing determinants for 2012 customer count growth then it should also revise them to reflect the decrease in 2012 kWh sales. Fruehe Sur., ComEd Ex. 19.0, 13:276-14:280. ComEd's calculations clearly show that ComEd is likely to under recover its costs (due to the decline in kWh sales) and that accepting AG/AARP's and CUB's adjustment will exacerbate the under recovery. Fruehe Sur., ComEd Ex. 19.0, 14:280-283; ComEd Ex. 13.08. If AG/AARP and CUB were truly concerned with "matching the costs and revenues," they would either withdraw their adjustment or accept a companion adjustment to decrease kWh sales billing determinants. Fruehe Sur., ComEd Ex. 19.0, 14:283-285.

In his rebuttal testimony, Staff witness Mr. Rukosuev submits that AG/AARP's and CUB's adjustments are needed "to ensure that the billing determinants are based on accurate information,"¹² However, AG/AARP's and CUB's proposed adjustment does not accomplish that goal. First, the historic billing determinants ComEd has used are the actual 2011 determinants; no party has questioned the accuracy of that data. Second, the adjustment proposed to the 2011 actual billing determinants is not based on actual 2012 data; indeed it cannot be because it was proposed long before complete 2012 actual data are available. Instead, AG/AARP's and CUB's adjustment is based on an assumption that the number of customers will increase by percentages which are based on historical data. These numbers may (or may not) be a close approximation of what growth might turn out to be, but to pretend that this data is more "accurate" than the complete 2011 data ComEd provided (consistent with EIMA) is flatly wrong.

¹² Rukosuev Reb., Staff Ex. 11.0, 6:108-109.

Therefore, this data may be “updated” data, but it is certainly not more “accurate” data. Fruehe Sur., ComEd Ex. 19.0, 15:306-320.

The AG/AARP and CUB proposal should be rejected.

2. Other

V. OPERATING EXPENSES

A. Overview

ComEd’s revised operating expenses total (pre-tax) as of rebuttal and surrebuttal, before application of the *Order on Rehearing*, was \$1,474,876,000. Fruehe Reb., ComEd Ex. 13.0, 11:230-231; ComEd Ex. 13.1, Sch. FR A-1, line 11; ComEd Ex. 19.1, Sch. FR A-1, line 11. ComEd’s distribution and operating expenses include: (1) expenses recorded in Operating and Maintenance (“O&M”) Accounts that are functionalized to the distribution function; (2) the portion of expenses recorded in other O&M Accounts that are customer-related and appropriately assigned or allocated to the delivery service function; and (3) the portion of expenses recorded in other Accounts appropriately assigned or allocated to the delivery service function, including Administrative and General (“A&G”) Expenses Accounts, Depreciation and Amortization Expenses Accounts, Taxes Other Than Income Taxes Accounts, and Income Taxes Accounts. Fruehe Dir., ComEd Ex. 3.0 REV., 22:453-465.

Given the *Order on Rehearing*, as reflected in ComEd’s compliance filing (pending ComEd Ex. 23.0, Sch. FR A-1), ComEd’s revised operating expenses total (pre-tax) is \$1,546,452,000. The difference is driven by inclusion of the debt-based rate of return on ComEd’s pension asset net of deferred taxes required by the *Order on Rehearing* and the EIMA.

B. Potentially Uncontested Issues

1. Distribution O&M Expenses

ComEd's Distribution Operating and Maintenance ("O&M") expenses were \$414,484,000 for 2011. After reflecting adjustments, a revised total of \$412,317,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement. ComEd Ex. 19.1, Sch. FR A-1; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 23:479-481. No party has objected to the amount of distribution O&M expenses.

2. Customer-Related O&M Expenses

Customer-related expenses are expenses recorded in FERC Accounts 901-910, which include the costs of maintaining and servicing customer accounts, *e.g.*, meter reading, recordkeeping, and billing and credit activities. Fruehe Dir., ComEd Ex. 3.0 REV., 23:485-489. In determining the revenue requirement, ComEd has adjusted the \$352,704,000 of customer related expenses for the following:

- (1) \$110,232,000 reduction to remove the costs associated with ComEd's energy efficiency and demand response program recovered under Rider EDA;
- (2) \$57,943,000 reduction to reflect the uncollectibles costs recoverable through Rider UF and outside collection agency costs;
- (3) \$44,000 reduction to remove costs associated with incentive compensation related to net income recorded in customer accounts;
- (4) \$9,000 reduction for certain industry association dues for which recovery is not being sought;
- (5) \$2,115,000 reduction to remove general advertising expenses;
- (6) \$730,000 increase to include interest on customer deposits in operating expenses; and
- (7) \$2,000 increase to adjust for an accrual reversal related to Customer's Affordable Reliable Energy expenses.

After these adjustments, \$183,093,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function and are included in the revenue requirement. ComEd

Ex. 10.2, App. 7; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 24: 507-25:511; ComEd Ex. 3.1, Sch. FR A-1; Donovan Dir., ComEd Ex. 7.0 REV., 9:175-10:204. No party has objected to the amount of customer related O&M expenses.

3. Uncollectibles Expenses

ComEd's direct case presented distribution-related uncollectibles expense in its revenue requirement, but the *May 11-0721 Order* moved that expense to recovery through Rider UF. Uncollectibles expense accordingly is not reflected in 2011 costs or the reconciliation adjustment and thus is removed from the revenue requirement.

4. Incentive Compensation Expenses

ComEd has two basic incentive compensation programs: the Annual Incentive Program ("AIP"), and the Long-Term Incentive Program ("LTIP"). All ComEd employees participate in the AIP while the LTIP is applicable to key managers and those at or above the vice president level. Fruehe Dir., ComEd Ex. 3.0 REV., 27:557-562. ComEd seeks to include \$32,563,000 of AIP expense in O&M and \$20,590,000 capitalized AIP in rate base. Fruehe Dir., ComEd Ex. 3.0 REV., 27:564-567; ComEd Ex. 3.7. ComEd seeks to include \$4,984,000 of expense included in O&M and \$606,000 is included in rate base. Fruehe Dir., ComEd Ex. 3.0 REV., 29:599-602; ComEd Ex. 3.7, p. 2.

ComEd's 2011 AIP plan did not include any goals related to net income or return on equity or earnings per share. ComEd has seven goals, or Key Performance Indicator's ("KPIs") associated with its 2011 AIP. These goals all conform to 220 ILCS 16/108.5 and recent ICC orders regarding recovery of incentive compensation through rates.¹³

¹³ A small number of ComEd employees participated in BSC's AIP in 2011. Because 75% of the BSC AIP is related to a net income goal, 75% of the BSC AIP costs were removed in light of the *May 11-0721 Order*. Specifically, rate base was reduced by \$1,901,000 and operating expenses by \$4,923,000. *See* ComEd Ex. 10.2, WP7, page 26.

The LTIP performance metrics for 2011 were not based on goals related to Net Income or Return on Equity, including an affiliate's earnings per share, however, during 2009 one of the three performance metrics applicable to the executive LTIP included a return on equity component. Because the LTIP plans typically vest over three years, one third of the amounts awarded for 2009 were expensed in 2011, however, the amounts related to return on equity metrics were removed. Fruehe Dir., ComEd Ex. 3.0 REV., 29:603-609. \$127,000 was removed from jurisdictional O&M expense and \$13,000 was removed from rate base. Fruehe Dir., ComEd Ex. 3.0 REV., 29:610-614; ComEd Ex. 3.2, WP 7, p. 16, line 4; ComEd Ex. 3.2, WP 1, p. 7, line 2. No party has objected to the amount of incentive compensation expenses.

5. Sales and Marketing Expense

ComEd has not included any sales or marketing expenses in its revenue requirement. Fruehe Dir., ComEd Ex. 3.0 REV., 34:717-719.

6. Depreciation and Amortization Expense

ComEd seeks to include its depreciation and amortization expenses of \$433,936,000 in its revenue requirement. The level of 2011 depreciation and amortization expenses included in the revenue requirement is \$413,315,000, comprised of \$327,445,000 related to Distribution Plant and \$85,870,000 related to G&I Plant. Additionally, the revenue requirement includes \$20,661,000 of depreciation expense associated with the 2012 projected plant additions. ComEd Ex. 19.1, Sch. FR C-2. No party has objected to the amount of depreciation and amortization expense.

7. Taxes Other than Income

The level of taxes other than income taxes originally included in the revenue requirement was \$150,895,000, revised to \$147,122,000 after the *May 11-072 Order*. ComEd Ex. 3.1, Sch.

FR A-1, line 7; ComEd Ex. 13.01, Sch. FR A-1, line 7; ComEd Ex. 19.1, Sch. FR A-1, line 7. In general, these include real estate taxes, the Illinois Electric Distribution Tax (“IEDT”), payroll taxes, and several other taxes. Fruehe Dir., ComEd Ex. 3.0 REV., 35:730-737; ComEd Ex. 3.1, Sch. FR C-1, line 12. In 2011, ComEd recorded an accrual for an estimated IEDT credit of \$11,376,000 related to its actual 2011 IEDT of \$117,576,000 and included the net amount of \$106,200,000 in operating expense. Fruehe Dir., ComEd Ex. 3.0 REV., 35:738-742; ComEd Ex. 3.1, line 54. No party has objected to the amount of taxes other than income as revised.

8. Income Taxes

The amount of income taxes included in the revenue requirement, a final revised \$150,072,000 (apart from the reconciliation and ROE Collar adjustments) is the sum of lines 15, 18, and 19 of Sch. FR A-1 in each of ComEd Ex. 3.1 (ComEd’s direct case), ComEd Ex. 13.01 (ComEd’s rebuttal reflecting the *May 11-0721 Order*), and ComEd Ex. 19.1 (same figure as ComEd Ex. 13.01). Income taxes have been calculated based upon the expenses and miscellaneous revenues assigned or allocated to the delivery services function. Fruehe Dir., ComEd Ex. 3.0 REV., 36:748-750. ComEd has analyzed differences in book and tax treatment of 2011 revenues and expenses and assigned or allocated those differences to the delivery service function. *Id.*, 36:751-753; Sch. FR C-4 and App 9 in ComEd Exs. 3.1, 13.01, and 19.1.

Sch. FR C-4 is used in the development of ComEd’s delivery service revenue requirement. Sch. FR C-4 provides the calculations of ComEd’s effective income tax rate, gross-up factor for income taxes, interest synchronization deduction, and gross revenue conversion factor. Sch. FR C-4 also summarizes the permanent tax differences and amortization of permanent tax differences. App 9 is also used in developing ComEd’s delivery service requirement by providing a detailed analysis of ComEd’s Permanent Tax Differences by

presenting each tax difference on a line-by-line basis and applying a jurisdictional allocator. Additionally, App 9 identifies ComEd's Investment Tax Credits and a jurisdictional calculation of each. Fruehe Dir., ComEd Ex. 3.0 REV., 36:754-760.

The passage of Public Act 96-1496 (Illinois Senate Bill 2505) on January 13, 2011, increased the previous corporate income tax rate of 7.3% to 9.50% for the years 2011 through 2014, with reductions to 7.75% in 2015 and 7.3% in 2025. This change impacts the revenue requirement in several ways. First, the statutory income tax rate used to calculate the overall total income tax rate on Sch. FR C-4 has been revised to reflect the 9.5% statutory income tax rate. Second, as a result of the change in the rate, previously recorded ADIT balances, i.e. balances as of December 31, 2010, were required to be re-measured to reflect the deferred tax balances calculated by applying the new tax rates noted above. The re-measurement of ADIT resulted in a required increase to jurisdictional ADIT as of January 1, 2011 of \$13.1 million. Consistent with prior ICC guidance,¹⁴ this shortfall in ADIT is offset by a regulatory asset and is being amortized prospectively over the remaining life of the underlying asset by applying a weighted average rate for future reversals. Amortization of the re-measurement balance was a credit of \$1.9 million in 2011. Finally, in 2011, ComEd recognized a significant benefit due to the difference between the current income tax rate of 9.50% and the rate at which the related deferred tax expense is recorded. The deferred tax rate is lower because, as described above, the state income tax rate is scheduled to decline in 2015 and again in 2025, which means that some of the deferred taxes recorded in 2011 will reverse in later years when the state income tax rate is scheduled to be lower. Fruehe Dir., ComEd Ex. 3.0 REV., 37:767-89. This difference in current and deferred tax rates combined with the fact that during 2011 ComEd had two notable and

¹⁴ ICC Docket No. 83-0309 addressing the manner in which deferred tax impacts resulting from tax rate changes should be addressed.

significant tax deductions¹⁵ resulted in a jurisdictional 2011 tax benefit of \$16,960,000. Fruehe Dir., ComEd Ex. 3.0 REV., 37:789 - 38:793; ComEd Ex. 3.1, Sch. FR C-4. No party has objected to the amount of income taxes as revised.

9. Regulatory Asset Amortization

ComEd included in its revenue requirement \$8,656,000 of regulatory asset amortization. This amount includes the effects of the Commission's Order (entered in 2011) in ICC Docket No. 10-0467, which revised the amount of amortization of several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. Fruehe Dir., ComEd Ex. 3.0 REV., 38:797-801. Regulatory asset amortization also includes \$524,000 for rate case expenses incurred in 2011 related to ICC Docket No. 11-0721, the initial formula rate proceeding. Fruehe Dir., ComEd Ex. 3.0 REV., 38:801-804; ComEd Ex. 3.9. Additionally, Section 16-108.5(c)(4)(E) of the Act provides that these costs be recovered over a three-year period. Fruehe Dir., ComEd Ex. 3.0 REV., 38:804-805. No party has objected to the amount of regulatory asset amortization.

10. Operating Cost Management Efforts

During 2011, ComEd continued its aggressive and successful measures to manage and reduce its costs. Blaise Dir., ComEd. Ex. 6.0 REV, 66:1354-68:1399; Donovan Dir., ComEd Ex. 7.0 REV., 20:405-21:430. ComEd does not believe this issue is contested, but reserves the right to address this subject further in its Reply Brief if any other party raises an issue.

¹⁵ 100% bonus depreciation and the expense related to the adoption of the T&D repairs safe harbor methodology.

11. Storm Damage Repair Expense

During 2011, ComEd experienced 14 storms reportable under the Illinois Administrative Code that affected 2.8 million customers, which is the highest customer impact on record. In addition to these storms, there were also five non-reportable storms affecting an additional 155,000 customers during 2011. Blaise Dir., ComEd Ex. 6.0 REV, 71:1452-76:1556. The total jurisdictional (distribution) storm damage repair expense for 2011 was approximately \$140 million. *Id.*, 72:1464-1467; ComEd Ex. 3.4, WPC 2.2. Consistent with Section 16-108.5(c)(4)(F), ComEd amortized over five years the expenses of three storms, each of which was in excess of \$10 million, and in total were \$68,201,000. The unamortized balance of the storm expenses, \$54,561,000, is included in rate base. *Id.*, 72:1464-76:1556.; 220 ILCS 5/16-108.5(c)(4)(F); Fruehe Dir., ComEd Ex. 3.0 REV, 20:404-408; ComEd Ex. 3.1, App 7, line 27. No party contests these expenses or proposed amortization.

12. Interest Expense

ComEd appropriately calculated interest on customer deposits in its revenue requirement. Fruehe Dir., ComEd Ex. 3.0 REV, 23:489 – 24:510. ComEd does not believe any interest expense issue is contested, but reserves the right to address this subject further in its Reply Brief if any other party raises an issue.

13. Lobbying Expense

ComEd agrees with Staff witness Mr. Tolsdorf's recommendation that lobbying expenses should not be included in ComEd's revenue requirement. Mr. Tolsdorf's proposed adjustment, however, is unnecessary. Fruehe Reb., ComEd Ex. 13.0, 19:391-394. The costs that Mr. Tolsdorf recommends disallowing were initially recorded in account 928, but were reclassified to FERC Account 426.4 (a "below the line" account) prior to ComEd's completion

of its 2011 FERC Form 1 and were not included in ComEd's revenue requirement. Because this information was provided to Mr. Tolsdorf in ComEd's Supplemental Response to Staff Data Request ST 2.06, which was served subsequent to Staff's submission of its direct testimony, Mr. Tolsdorf likely did not have all the information at the time his direct testimony was filed. Fruehe Reb., ComEd Ex. 13.0, 19:395-402. Mr. Tolsdorf agreed with ComEd in his rebuttal testimony. Tolsdorf Reb., Staff Ex. 8.0, 14:358 – 15:370. Therefore, all parties are in agreement in regard to ComEd's lobbying expenses.

14. Gross Revenue Conversion Factor

ComEd's Gross Revenue Conversion Factor ("GRCF") is 1.700. Fruehe Dir., ComEd Ex. 3.0 REV., 43:904; ComEd Ex. 3.1, Sch. FR C-4, line 13. No party has disagreed with ComEd's GRCF.

C. Potentially Contested Issues

1. Administrative and General Expense

a. Charitable Contributions

ComEd seeks to include \$6.862 million (total amount, before removal of non-jurisdictional portion) in charitable contributions in its revenue requirement. Fruehe Sur., ComEd Ex. 19.1, App. 7, line 5, column G. Inclusion of these charitable contributions in the revenue requirement is expressly provided for in Section 9-227 of the Act, 220 ILCS 5/9-227. Section 9-227 allows the Commission to consider as an operating expense "donations made by a public utility for the public welfare or for charitable scientific, religious, or educational purposes, provided that such donations are reasonable in amount." *Id.* Further, Section 9-227 states that the Commission is "prohibited from disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes." *Id.*

Staff witness Mr. Tolsdorf seeks to disallow \$692,000 (before jurisdictional allocation) of ComEd's \$6.862 million of charitable contributions, or \$620,000 jurisdictional. Tolsdorf Reb., Staff Ex. 8.0, Sched. 8.01, p. 1. Mr. Tolsdorf proposes a rule disallowing all donations made to organizations that are not tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code, and also recommends disallowing donations to organizations outside of ComEd's service territory and organizations that he characterizes as political. Tolsdorf Dir., Staff Ex. 3.0, 2:42-3:46. Staff does not contend that ComEd's charitable donations are unreasonable in amount. In effect, Staff proposes just the type of blanket disallowance - - by "rule" - - the Commission is prohibited from making by Section 9-227.

Section 9-227 recognizes donations made for scientific, religious, or educational purposes, and donations made for "the public welfare," 220 ILCS 5/9-227, but Mr. Tolsdorf argues that the Commission should interpret "public welfare" to mean only those donations made to organizations classified by the IRS as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. Tolsdorf Dir., Staff Ex. 3.0, 6:145-149; Tolsdorf Reb., Staff Ex. 8.0, 8:196 - 10:232. He argues that, without such a rule, the "Company could make a donation to any individual to supplement his or her income and claim that it was made for the public welfare." Tolsdorf Dir., Staff Ex. 3.0, 6:136-42. Mr. Tolsdorf further argues that a rule allowing only donations to 501(c)(3) organizations is proper because, according to his understanding, 501(c)(3) organizations are not permitted to participate in political activities. Tolsdorf Reb., Staff Ex. 8.0, 9:212-25.

Mr. Tolsdorf's contention that the Commission should determine eligibility for charitable contributions based on the recipient's IRS tax status is not supported in Section 9-227, is based on a misunderstanding of Section 501(c)(3), and directly contradicts the Commission's recent

decisions in ICC Docket Nos. 11-0721 and 12-0001. In Docket No. 11-0721, the Commission explained that “the term ‘public welfare’ only means contributing to the general good of the public.” *May 11-0721 Order* at 98. Furthermore, in *Ameren 2012*, the Commission recently explicitly rejected Staff’s argument that donations should be limited to 501(c)(3) organizations, explaining that:

[R]eliance on Section 501(c)(3), as Staff recommends, does not provide the intended clarity as to when a donation made for the ‘public welfare’ would be recoverable from ratepayers. For instance, as a 501(c)(3) organization may also engage in limited political and legislative lobbying activities, there is simply not the bright line between 501(c)(3) organizations and 501(c)(6) organizations that Staff posits exists.

Ameren 2012 at 79. Thus, the Commission rejected Staff’s proposal to base charitable contribution eligibility on IRS tax status. *Id.*

ComEd agrees with the Commission’s holding in *Ameren 2012*. Staff’s proposal to allow only donations made to 501(c)(3) organizations would not be a workable or logical distinction. It would also contravene Section 9-227 by categorically denying contributions made for charitable purposes. Moreover, Mr. Tolsdorf’s argument that drawing a distinction on the grounds of a recipient organization’s tax status is necessary to prevent ComEd from giving money to an individual to supplement his or her income and then attempting to recover the expense as a charitable contribution to public welfare strains credulity, at best. This is especially so in light of the fact that ComEd has, in this docket as in others, detailed the charitable purposes of its donations through discovery responses, sworn testimony, and exhibits. *Fruehe Reb.*, ComEd Ex. 13.0, 13:262 - 19:389; *Fruehe Sur.*, ComEd Ex. 19.0, 8:169 - 11:216; ComEd Ex. 3.2, WP 7, p. 20, subpages1-8; ComEd Ex. 13.05. As it did in ICC Docket No. 12-0001, the Commission can rely on ComEd’s descriptions of its charitable contributions, which are accompanied by sworn testimony, to determine that the contributions “were made for the stated

public welfare or scientific, educational, or religious purposes.” *Ameren 2012* at 79. Surely, any “income supplements” to individuals masquerading as charities, in the implausible event one would ever be attempted, would be easily uncovered and disallowed. Staff’s shotgun approach to address a non-existent problem is unnecessary.

Mr. Tolsdorf also argues that ComEd’s charitable donation to the Metropolitan Mayors Caucus was made to a “political organization” and it should be disallowed because Section 9-224 of the PUA states that the Commission shall not consider any amount expended for political activity or lobbying as a recoverable expense. Tolsdorf Dir., Staff Ex. 3.0, 4:95 – 5:106. Simply because a recipient organization may be involved in political activity does not mean that ComEd made its donation for political purposes, however. The Commission implicitly recognized in ICC Docket No. 12-0001 that organizations accepting donations may be involved in political activity and that this does not necessarily render the donations unacceptable. *See Ameren 2012* at 79 (“[f]or instance, as a 501(c)(3) organization may also engage in limited political and legislative lobbying activities...”). As ComEd describes in ComEd Ex. 3.2, its donation to the Metropolitan Mayors Caucus was made for charitable purposes because that organization is involved with community and neighborhood development and economic development.

Finally, Mr. Tolsdorf recommends that the Commission bar, as a rule, recovery for charitable contributions made outside ComEd’s service territory. Tolsdorf Dir., Staff Ex. 3.0, 3:49-51. That practice would be prohibited by Section 9-227, which states that the Commission may not adopt a blanket rule preventing any type of contribution for the public welfare. 220 ILCS 5/9-227. To the extent that the Commission may have held otherwise in the *May 11-0721 Order* or *Ameren 2012*, ComEd respectfully disagrees with that conclusion on the grounds that Section 9-227 contains no such limitation and, in fact, expressly prohibits the Commission from

making such a rule. Further, the statute does not limit the definition of “public” to the rate-paying public in ComEd’s service territory.

The only proper tests to determine whether charitable contributions constitute a recoverable expense are: (1) whether the charitable contributions were made “for the public welfare or for charitable scientific, religious, or educational purposes”; and (2) whether they are “reasonable in amount.” 220 ILCS 5/9-227. ComEd’s charitable contributions qualify on both counts and should be approved in their entirety, and Staff’s proposed disallowance should be rejected.

b. Rate Case Expenses -- Instant Docket

There are no rate case expenses of the instant Docket in the revenue requirement, due to their timing.

c. Rate Case Expenses –Docket No. 11-0721 and Article IX Filing¹⁶

Rate case expenses for ICC Docket No. 11-0721 are uncontested. Fruehe Dir., ComEd Ex. 3.0 REV., 38:807 – 40:836.

ComEd’s formula rate update also includes about \$244,000 in costs incurred in 2011 as a result of preparing an Article IX rate case filing. As Mr. Fruehe noted in his testimony, in 2011 it was unclear to ComEd if, or when, EIMA would become law. As a result, because of a revenue shortfall it was then facing, ComEd undertook to prepare for filing of a traditional Article IX rate case, along with the necessary Part 285 filing requirements, an effort that ordinarily requires six months. Fruehe Reb., ComEd Ex. 13.0, 12:246-13:254. Had ComEd not done so, and had EIMA not been enacted, ComEd would have lost at least six months of cost recovery. *Id.*, 13:256-260. When EIMA became law, ComEd elected to become a “participating

¹⁶ ComEd has added to the sub-title of this heading to reflect the contested issue also addressed here.

utility” under that statute and discontinued its Article IX case preparation. Up to that time, however, ComEd had incurred about \$244,000 in costs in the preparation of that filing, the amount it has included in its formula rate update.

Staff opposes recovery of these costs. The sole basis for the disallowance is that recovery is inappropriate because customers should not be expected to pay for both an Article IX filing and an EIMA filing, where the Article IX case was never filed. Tolsdorf Reb., Staff Ex. 8.0, 11:274-79. Staff does not doubt that these costs were incurred, or claim that they are not reasonable in amount or even that ComEd was imprudent in incurring these costs. Rate case expenses have long been recognized to be a recoverable cost, and to disallow these prudently incurred and reasonable costs would violate established principles of cost recovery.

A close parallel to the issue presented by these costs is the issue of the treatment of the costs invested in utility plant that was never completed and thus never provided service to the public. Despite arguments that recovery of those costs should be disallowed, this Commission – like others – allowed a full *recovery* of the costs prudently incurred in connection with the construction of the Duck Creek generating plant, even though that plant was not completed because of changed circumstances. *Cent. Ill. Light Co.*, ICC Docket No. 83-0177 (Interim Order December 21, 1983). *See also Peoples Org. for Wash. Energy Res. v. Wash. Util. and Transp. Comm’n*, 711 P.2d 319 (Wash. 1985); *State Util. Comm’n v. Thornburg*, 385 S.E.2d 451 (N. Car. 1989); *Abrams v. Pub. Serv. Comm’n*, 492 N.E.2d 1193 (N.Y. 1986); *Attorney Gen’l v. Dep’t of Pub. Util.*, 455 N.E.2d 414, and cases cited at n. 12 (Sup. Jud. Ct. Mass. 1983), each of which affirmed Commission decisions allowing recovery of (and in some cases a full or partial return on) prudent investment in cancelled plant. The same principle should be applied here and

ComEd should be allowed recovery of the \$244,000 in expenses incurred in 2011 in connection with the contemplated Article IX rate case.

d. Merger Expense

**(i) ComEd Is Entitled To Recover \$7.2 Million
In So-Called “Merger Expenses.”**

ComEd has included in its formula rate update approximately \$7.2 million of what have been referred to in this proceeding as “merger expenses,” costs related to the merger of Exelon and Constellation. The “merger costs” label is a bit of a misnomer as applied to this \$7.2 million. Insofar as it implies that the \$7.2 million includes costs incurred to pay lawyers or bankers to arrange or consummate the merger, the term is completely misleading. The record demonstrates that this \$7.2 million instead represents costs that were incurred in 2011 in order to achieve post-merger operational cost savings that will be passed on to ComEd’s customers in 2012 and for the indefinite future thereafter.

Through 2015 these savings are estimated to amount to \$156 million net of the costs that will be incurred to achieve them. Furthermore, in 2015 and annually thereafter the per-year cost savings are estimated to be \$66 million, and no further costs to achieve these savings will be incurred. Jirovec Reb., ComEd Ex. 15.0, 5:97-103.

The \$7.2 million represents a very small fraction, about 4%, of the total costs incurred in 2011 in connection with the merger.

Staff initially objected to recovery of the \$7.2 million in 2011 costs, as did the AG/AARP and CUB. After ComEd filed its rebuttal testimony further explaining these costs, Staff withdrew its objection in its entirety, and AG/AARP withdrew their objection to \$400,000 of those costs. Thus, at this point, only AG/AARP and CUB maintain an objection to recovery of these costs, in the amount of \$6.8 million or \$7.2 million, respectively. For reasons explained

below, the objections are not meritorious and ComEd should be allowed full recovery of these 2011 “costs to achieve” operational savings.

In the remaining portions of this section, ComEd will first describe these costs in greater detail and will show why they were prudently incurred and are appropriately recoverable under established regulatory principles. ComEd will then explain why the remaining objections to recovery are not well-taken.

By way of a broad overview, the process utilized by Exelon to estimate potential merger-related cost savings and then to realize those savings is consistent with the process utilized by other companies in previous merger transactions. Having committed massive amounts of shareholder capital to the merger, Exelon has painstakingly identified and planned for the realization of these synergies by developing a robust integration structure to oversee the execution of the integration plans, established individual accountability for synergy realization and developed a detailed tracking and reporting process to evaluate synergy attainment. As a result, as Mr. Todd Jirovec, of Booz, Inc., testified, the level of merger savings identified by the Company is reasonably attainable so long as Exelon and ComEd execute the integration plans in a manner consistent with their intent and how other utilities have pursued similar opportunities. Mr. Jirovec has testified, based on his observations, that management is firmly committed to doing just that.

(ii) The Costs to Achieve Are Prudent and Recoverable.

ComEd witness Joseph Trpik, ComEd’s senior Vice President and Chief Financial Officer, described the nature of these costs in his rebuttal testimony. He explained that, aside from the \$400,000 of costs that are no longer contested by Staff and AG/AARP (but are contested by CUB), the remaining \$6.8 million of costs consisted of \$3.7 million of Exelon Business Services Co. (“BSC”) costs and \$3.1 million for external vendors. Trpik Reb., ComEd

Ex. 14.0, 5:92-94. As AG/AARP witness Brosch admitted in rebuttal testimony, the \$400,000 reflects ComEd internal employee costs, which should not be disallowed because “[t]hese labor and benefit costs are not incremental expenses that would have been avoided by the Company in the absence of merger preparations.” Brosch Reb., AG/AARP Ex. 3.0, 4:87-89. Mr. Trpik specifically testified, with respect to the remaining costs at issue, that “[t]hese costs were incurred to reduce O&M-related costs associated with ComEd’s provision of delivery service.” Trpik Reb., ComEd Ex. 14.0, 5:95-96. These are the cost reductions that lead directly to the anticipated \$156 million of net savings through 2015 referenced above.

More specifically, Mr. Trpik identified the \$3.7 million of BSC costs as “primarily payroll-related expenses associated with employees conducting various pre-merger integration activities necessary to ensure that the combined companies would operate successfully upon completion of the merger (*i.e.*, on ‘Day 1’) and deliver the anticipated benefits. These activities included the evaluation and development of combined company processes, policies, procedures, organizational structures, compensation and benefits plans, information technology systems, internal and external communications plans, coordination of a combined calendar for key meetings, events and deliverables, the identification of risks, and development of risk mitigation plans. Trpik Reb., ComEd Ex. 14.0, 5:96-104.

The \$3.1 million of external vendor costs were “primarily for consultants and experts supporting merger integration planning, coordination and execution efforts.” Trpik Reb., ComEd Ex. 14.0, 5:104-06.

Mr. Trpik then identified with greater specificity the BSC departments whose employees and related costs comprised the work accounted for by the \$3.7 million, and the outside vendors who provided the services in question as well as a description of the services provided by each.

Mr. Trpik testified that all of these efforts “were *necessary* to realize future savings through reductions in BSC costs and ComEd specific supply savings.” Trpik Reb., ComEd Ex. 14.0, 6:108-7:153 (emphasis added). Despite the opportunity for extensive discovery on this testimony, which was filed six weeks before the evidentiary hearing, no party cross examined Mr. Trpik on this testimony.

(iii) Objections to Recovery of the Costs are Invalid.

(a) The Costs Were Incurred to Produce Savings to Customers

AG/AARP witness Brosch contends that the \$6.8 million in costs should be disallowed because they “were not incurred to ‘achieve’ any specific merger savings within ComEd’s business. Rather, these costs were incurred in connection with the assessment of the merger itself and Exelon’s decision whether to acquire Constellation.” Brosch Reb., AG/AARP Ex. 3.0, 4:81-84. They are, according to Mr. Brosch, “parent company ownership costs incurred by Exelon to expand and manage its portfolio of businesses” and not prudent or reasonably incurred expenses of operating a utility. Brosch Dir., AG/AARP Ex. 1.0, 6:123-25, 6:134-35. These statements are simply incorrect, and the characterizations are meaningless.

Notably, Mr. Brosch, who does not claim to have any firsthand knowledge of the activities that gave rise to the incurrence of these costs, presents no evidence to support his assertions. Instead, Mr. Brosch relies entirely on his interpretation of the testimony of ComEd witnesses Trpik and Jirovec, and concludes that the activities they describe were not undertaken to achieve merger savings. Brosch Reb., AG/AARP Ex. 3.0, 7:135-8:172. But that interpretation is groundless; as shown above, Mr. Trpik testified unequivocally, and free of any attempt to undermine that testimony on cross examination, that the costs were incurred in connection with efforts to realize future cost savings. Trpik Reb., ComEd Ex. 14.0, 5:96-99;

6:108-10. Mr. Trpik specifically testified that “[t]ransaction costs of the merger (*e.g.*, regulatory and compliance costs, credit facilities costs, consent fees, and attorneys and bankers fees) were held at the Exelon Corporate level and were not charged to ComEd.” *Id.*, 5:85-87. *See also* Jirovec Reb., ComEd Ex. 15.0, 10:201-05: “Transaction costs incurred to secure the required approvals from the Boards of Directors and external approvals from the shareholders and regulators, and fees for transaction structuring and valuation assistance, financial market analysis and fairness opinions have not been included as a cost-to-achieve allocated to ComEd and are not within the \$7.2 million sought to be recovered by ComEd in this case.” The costs Mr. Brosch cites “were not required to effectuate the merger transaction; rather they are costs incurred to integrate the two companies, a step necessary to facilitate achievement of savings.” Jirovec Sur., ComEd Ex. 20.0, 2:40-43.

Mr. Brosch’s characterization of these costs as “parent company ownership costs” is meaningless as it ignores the substance of the costs and the reason they were incurred - - to reduce operating costs to benefit customers. If cost reduction efforts were implemented outside a merger context, no one would credibly suggest that the costs incurred to achieve long-term reductions should not be recovered. The simple fact that costs were incurred in connection with a merger is no sound basis to disallow them.

Similarly Mr. Brosch’s position that the costs should be disallowed because they were incurred prior to consummation of the merger is without merit. Brosch Reb., AG/AARP Ex. 3.0, 11:230-234. As Mr. Jirovec pointed out, “[d]elaying planning for the integration and subsequent realization of the merger synergies until after the merger was consummated would delay the realization of savings and the resultant benefits to ComEd,” increasing risk to customers that the envisioned savings will be realized. Jirovec Sur., ComEd Ex. 20.0, 3:59-64. Exelon’s

Integration Office has estimated that delaying the planning process by only one month would have reduced savings by between \$3 and \$5 million. *Id.*, 4:70-72. It follows that Mr. Brosch's implicit assumption that the planning process should have been delayed by a year or more - - until after March 2012 - - would have had enormous adverse consequences to customers.

**(b) Recovery of these Costs does not
Impermissibly Shift Risks**

Mr. Brosch also objects to recovery of the costs in question on the grounds that to allow recovery would "shift the risks of merger integration from shareholders to ratepayers." Brosch Dir., AG/AARP Ex. 1.0, 6:126-28. This broad generalization is inaccurate. As Mr. Jirovec pointed out, and as should be obvious in any event, both shareholders and customers face risks in any merger context. Jirovec Reb., ComEd Ex. 15.0, 12:251-52. No interested stakeholder group can be assured that expected savings, synergies and other benefits will be realized. Because both shareholders and customers face the risk that savings can be achieved, it is reasonable to ask both to bear some of the costs to achieve those savings. Here, the \$6.8 million at issue is a small fraction of overall 2011 merger costs, less than 4%. Jirovec Sur., ComEd Ex. 20.0, 8:158-59. Furthermore, throughout the entire period through 2015, ComEd customers will bear only 9% of total merger costs, but will receive the benefit of 15% of total expected savings. Jirovec Reb., ComEd Ex. 15.0, 5:99-101. No party has questioned this evidence.

In light of these uncontradicted facts, it cannot be said that allowing recovery of the \$6.8 million represents any shifting of risks from shareholders to customers. For the same reasons, Mr. Smith's argument that because shareholders expect to benefit from the merger they should bear all of the 2011 costs (Smith Reb., CUB Ex. 2.0, 9:210-14) is illogical and unfair. Because both shareholders and customers will benefit, they should share in the costs, and the costs

allocated to ComEd are far less than the expected benefits, both on an absolute and a percentage basis.

**(c) The Expected Savings are Not Too
Speculative to Justify Recovery**

Mr. Brosch also opposes recovery of these costs on the grounds that the expected savings are “speculative” and “highly uncertain.” Brosch Dir., AG/AARP Ex. 1.0, 136-39; Brosch Reb., AG/AARP Ex. 3.0, 5:109-14. Admittedly, no savings were realized in 2011 inasmuch as the merger was not consummated until March 2012. The savings are anticipated to begin in 2012 and on a net basis in 2013. Jirovec Reb., ComEd Ex. 15.0, 5:97-98. But those facts should not bar recovery. If they did, no utility would have an incentive to spend money to achieve future savings. As the Commission well knows, many utility expenditures produce benefits only in future periods. This is especially true of cost savings programs. As Mr. Trpik pointed out in his Rebuttal Testimony, Part 285.3215 of the Commission’s Rules of Practice allows the recovery of costs incurred in a “test year” related to a cost savings program that is anticipated to result in future jurisdictional cost savings. 83 Ill. Admin. Code §285.3215(a). In ComEd’s 2005 rate case, the Commission applied this section to allow ComEd to recover \$21 million of severance cost related to the Exelon Way, a defined cost savings initiative designed to achieve long-term sustainable savings. *Commonwealth Edison Co.*, ICC Docket No. 05-0597, Final Order (July 26, 2006) at 90. This principle was applied, and accompanying cost recovery was allowed, in ComEd’s next two rate cases as well. *Commonwealth Edison Co.*, ICC Docket No. 07-0566, Final Order (Sept. 10, 2008) at 66; *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 105. *See also* Trpik Reb., ComEd Ex. 14.0, 10:220-11:244.

The more relevant questions in cases of costs incurred to achieve future savings are whether (1) it is reasonable to expect that net benefits will result and (2) measures are being

taken to monitor efforts to achieve those savings so as to ensure that they can be realized. As Mr. Jirovec testified, “[t]he critical consideration is whether sufficient analyses have been performed to identify savings, and controls have been put in place to provide reasonable assurance that these savings will be realized - - in order to mitigate, for all stakeholders, those risks. In my opinion that has been done here.” Jirovec Reb., ComEd Ex. 15.0, 12:252-56.

Here, the evidence shows that although savings at any particular level cannot be guaranteed it is reasonably likely to expect that customers will achieve substantial savings, and that institutional mechanisms and controls have been put in place to ensure that result as much as is possible. First, Mr. Jirovec’s rebuttal testimony described in detail the process by which the merger savings were identified and quantified. Jirovec Reb., ComEd Ex. 15.0, 5:105-7:135. The savings estimates “were the result of hundreds of hours of planning analysis,” and were developed by teams “intimately familiar with operations of the utilities involved.” Jirovec Sur., ComEd Ex. 20.0, 5:108-6:112. Mr. Jirovec also identified the types of savings that are expected to occur, noting specifically that these savings are “directly related to the transaction, and would not be expected to occur absent the combination.” Jirovec Reb., ComEd Ex. 15.0, 12:263-265. The savings are expected to be realized in connection with a number of corporate and operating support functions, including the integration and avoidance of overlapping information technology systems; avoidance of overlap in such business support functions as professional services, benefits administration, facilities and insurance; consolidation of supply chain and sourcing strategies, *e.g.*, the enhanced scale provided by a larger utility creates the opportunity to negotiate lower prices with suppliers. *Id.*, 12:266-14:308.

Indeed, savings have been realized in the first few months after the merger close, and as of June 2012, Exelon is expecting to realize overall merger savings of about \$170 million in 2012. Jirovec Reb., ComEd Ex. 15.0, 20:436-40.

Moreover, a framework has been put into place to monitor and track achievement of synergies. An Integration Office is staffed with individuals responsible for governance and oversight of integration activities, including synergy capture and tracking. This office oversees management of Integration Teams that have been established at the operating company functional level to execute, monitor and report on integration activities. Individuals accountable for achieving synergies and savings in specific areas update progress towards achieving those goals and report that progress monthly to the Integration Office. Remediation plans are developed where necessary. The Integration Office reports to an Integration Steering Committee, which is comprised of executives who report directly to the Exelon CEO, and which is tasked with executive oversight of integration activities. The Integration Office formally meets with the Steering Committee at least monthly. Jirovec Reb., ComEd Ex. 15.0, 19:404-424; *see also* ComEd Ex. 15.3 for a further description of the integration structure, and ComEd Ex. 15.4 for a further description of the tracking and reporting processes.

Finally, as Mr. Jirovec testifies, although savings at a particular level cannot be guaranteed, neither Mr. Brosch nor Mr. Smith points to any evidence or analysis to lead the Commission to doubt that *some* net benefits are reasonably likely to occur. Neither points to any evidence that savings estimates are flawed for some operational, structural or quantification reason. Jirovec Sur., ComEd Ex. 20.0, 8:163-67.

(d) The Maryland PSC Order Provides No Basis to Disallow Recovery

CUB witness Smith claims that the Maryland PSC found that the merger savings are “inherently speculative” and were “too intangible to quantify as a benefit under its statutes.” Smith Reb., CUB Ex. 2.0, 5:103-7:162. In no way does the Maryland Order stand as a bar to recovery of the costs at issue here. That case did not address the recoverability of merger costs, but rather the separate question whether the merger should be approved. The statute addressed by the Maryland Commission required that merger benefits be “direct” and “certain” as opposed to “contingent” or “intangible” before a merger could be approved. The portion of the Maryland decision relied upon by Mr. Smith characterized “foregone requests for rate relief” as a benefit too “intangible” to qualify as a customer benefit and thereby justify a merger under the Maryland law. The benefit of cost savings created by the merger would be realized only if the utility filed future requests for rate relief, and the uncertainty about the timing of any such filings was what led the Commission to conclude that the benefit was too speculative and intangible, and to require BG&E to provide the one-time \$100 bill credit. *See* Jirovec Sur., ComEd Ex. 20.0, 6:123-32. Nothing in that decision holds that future cost savings were not likely to be realized from the merger.

For all of the above reasons, the objections to ComEd’s recovery of the full \$7.2 million of 2011 costs-to-achieve savings should be rejected.

VI. RATE OF RETURN

A. Overview

The rates of return (weighted average costs of capital) to be applied in the instant Docket, *i.e.*, 7.54% for purposes of determining the revenue requirement for the 2013 rate year and 7.58% for purposes of determining the reconciliation adjustment, are not contested, given the facts in

the record and the rulings in the *May 11-0721 Order*, Staff witness McNally’s rebuttal testimony, McNally Reb., Staff Ex. 9.0, 4:80 – 5:84; and ComEd witness Mr. Fruehe’s surrebuttal testimony, Fruehe Sur., ComEd Ex. 19.0, 12:238-241, setting aside the subject of how the reconciliation adjustment interest rate ruling in the *Order on Rehearing* affects ComEd’s capital structure and thus the rate of return, which ComEd anticipates will be addressed in its next formula rate filing. ComEd notes that the *Order on Rehearing* is not consistent with the IIEC proposal that it indicates it approves, because it does not adjust the short-term debt balance in the capital structure by the amount of the reconciliation adjustment.

B. Capital Structure

As indicated above, the capital structure is not disputed at this time. McNally Reb., Staff Ex. 9.0, 4:80 – 5:84; Fruehe Sur., ComEd Ex. 19.0, 12:238-241. As presented in Staff witness McNally’s rebuttal, the capital structure, and the cost of capital components, for purposes of determining the revenue requirement for the 2013 rate year are as follows:

	<u>Amount</u>	<u>Percent of Total Capital</u>	<u>Cost</u>	<u>Weighted Cost</u>
Short-Term Debt	\$17,947	0.18%	0.71%	0.00%
Long-Term Debt	\$5,702,622	57.27%	5.78%	3.31%
Common Equity	\$4,236,935	42.55%	9.71%	4.13%
Credit Facility Fees				0.10%
Total Capital	\$9,957,503	100.00%		
Weighted Average Cost of Capital				7.54%

McNally Reb., Staff Ex. 9.0, 4:80 – 5:82.

As presented in Staff witness McNally’s rebuttal, the capital structure, and the cost of capital components, for purposes of determining the reconciliation adjustment are as follows:

	<u>Amount</u>	<u>Percent of Total Capital</u>	<u>Cost</u>	<u>Weighted Cost</u>
Short-Term Debt	\$17,947	0.18%	0.71%	0.00%
Long-Term Debt	\$5,702,622	57.27%	5.78%	3.31%
Common Equity	\$4,236,935	42.55%	9.81%	4.17%
Credit Facility Fees				0.10%
Total Capital	\$9,957,503	100.00%		
Weighted Average Cost of Capital				7.58%

McNally Reb., Staff Ex. 9.0, 5:83-84.

C. Cost of Capital Components

1. Rate of Return on Common Equity

See Section VI.B, *supra*.

2. Cost of Long-Term Debt

See Section VI.B, *supra*.

ComEd notes that Staff presented a slightly different method of calculating a portion of the cost of long-term debt, more specifically a difference in input data relating to amortization of debt discounts, premiums, and expenses. ComEd used the amounts provided in its annual ILCC Form 21, which represents actual amounts recorded for the year, while Staff initially used a straight line methodology and ultimately accepted the actual amounts except as to the 2011 actual amortization of loss on reacquired debt associated with Pollution Control Obligation Series 2005, which yields a figure that is \$15,000 higher, which is not enough to change the cost of long-term debt. Fruehe Sur., ComEd Ex. 19.0, 12:242-258. ComEd does not agree with Staff's methodology because it does not represent ComEd's actual cost, but, because it has no impact on the cost of long-term debt here, in order to limit the contested issues in this

proceeding, ComEd will not oppose this Staff change for purposes of the instant Docket. *Id.* at 13:259-266.

3. Cost of Short-Term Debt

See Section VI.B, *supra*.

4. Overall Weighted Cost of Capital

See Section VI.B, *supra*.

VII. COST OF SERVICE AND RATE DESIGN

A. Overview

The proposed delivery service charges employ cost allocations that are consistent with the cost allocations employed in the development of delivery service charges in compliance with the Order in ICC Docket No. 10-0467, which is the most recent Commission Order regarding a ComEd request for a general increase in its delivery service rates, consistent with 220 ILCS 5/16-108.5(c). Specifically, cost data used in this proceeding are from the Embedded Cost of Service Study (“ECOSS”) developed in accordance with the provisions of 83 Ill. Adm. Code § 285.5110, updated with 2011 data as presented in ComEd’s 2011 FERC Form 1 and with modifications that are consistent with directives in the *May 11-0721 Order*. Tenorio Dir., ComEd Ex. 9.0, 4:84 - 5:102. Other inputs included in the ECOSS reflect applicable customer, billing determinant, and delivery class load data for the year 2011. *Id.* Furthermore, the rate design used to determine the delivery service charges is consistent with the rate design approved by the Commission in its Order in ICC Docket No. 10-0467, as further directed by the Commission in the *May 11-0721 Order*. The rate design formula was populated with cost data from the updated ECOSS and weather normalized historical billing determinants for 2011. *Id.* at 7:134-143.; *see also* ComEd Exs. 9.1, 9.2 and 9.3 and Rate DSPP (ILL. C. C. No. 10) 1st Revised Sheet No. 430.

B. Potentially Uncontested Issues – Embedded Cost of Service Study

ComEd’s updated ECOSS and rate design formula as presented in ComEd Exs. 9.1 and 9.3 respectively are, with one exception, uncontested and should be approved. Further, the related update to the single billing option (“SBO”) credit listed in Rate RDS and Rider SBO is appropriate and should be approved. With respect to the Distribution System Loss Study, see Section VIII.A. of this Initial Brief.

The only contested issue related to the rate design is associated with the erroneous, improper, and one-sided intervenor proposals regarding billing determinants, which are addressed in Section IV.C, *infra*.

VIII. OTHER

A. Overview

B. Potentially Uncontested Issues

1. Distribution System Loss Factor Study

ComEd updated its 2011 Distribution System Loss Factor Study (“DLF Study”) to comply with the *May 11-0721 Order*. See ComEd Ex. 10.6. In direct testimony, Staff raised several concerns regarding ComEd’s DLF Study and Secondary and Service Loss Study (“Secondary/Service Study”). Rockrohr Dir., Staff Ex. 5.0, 3:47-7:143. ComEd responded to Staff’s concerns and revised the studies accordingly. Born Reb., ComEd Ex. 17.0; 3:52-8:164; ComEd Exs. 17.1, 17.2. With respect to Staff’s concern related to the sample size of customers used in the Secondary/Service Study, ComEd witness Mr. Born testified that while he believed that an increase in the sample size would have a de minimis effect on the study, such an analysis could not be practically completed in the time constraints of this proceeding. Born Reb., ComEd Ex. 17.0, 7:129-137. Thus, Mr. Born recommended that: (1) ComEd work with Staff to increase the number of customers in the sample for each of the four largest customer categories in the

Secondary/Service Study to determine if the current weighting of models is appropriate; and (2) that the results of this analysis be presented in an updated Secondary/Service Study and DLF Study to be submitted at the outset of the revenue neutral cost of service and rate design proceeding that will be initiated in the first half of next year. *Id.* at 7:130-142. Staff agreed with ComEd's revisions to both studies and its proposal to address the sample size analysis for the Secondary/Service Study. Rockrohr Reb., Staff. Ex. 10.0, 2:25-5:104

Thus, there are no remaining issues relating to the revised DLF Study, ComEd Ex. 17.2, and, as such, it should be approved and used in the design of compliance rates. No intervenor disagreed.

2. Computation of ROE Collar Adjustment for 2011

The purpose of the collar calculation is to ensure that the earned Return on Equity ("ROE") for the calendar year is within 50 basis points of the ROE prescribed for that year in EIMA. Generally, the reason that an ROE for a given year may vary from the statutorily prescribed rate is because (1) the actual costs for the year are different from the costs included in the revenue requirement in effect for that year; and/or (2) actual sales volumes vary from those used to establish the billing determinants that underlie rates in effect in the calendar year. Because the reconciliation fully accounts for any differences between actual costs and the costs reflected in the revenue requirement for the calendar year, the collar need only address the actual sales volumes variations. If the collar adjustment were to account for differences in costs in addition to the reconciliation's accounting for such differences, the result would be double counting. Houtsma Reb., ComEd Ex. 12.0, 2:40-3:51.

Since costs incurred in 2011 are recoverable through future rates (to the extent rates in effect in 2011 were not sufficient to provide for recovery of those costs), an accounting accrual was recorded for the additional revenue estimated to be collected in 2013 related to 2011 costs

under the reconciliation. Inclusion of the accrued revenues associated with the reconciliation avoids a circular outcome in the collar calculation and ensures that differences in the revenue requirement are captured in the reconciliation and not in the collar calculation. To the extent the amount of the reconciliation requested or ultimately approved by the Commission is different from the estimated amount accrued during the reconciliation year, an adjustment must be reflected on line 13 of Sch. FR A-3 to keep the costs in alignment. The end result is that the collar calculation will be reflective of differences in revenue levels between those that resulted from application of historical weather-normalized billing determinants used to determine rates in effect during the historical calendar year for which costs are measured and the actual revenues for that calendar year. Houtsma Dir., ComEd Ex. 2.0 REV., 9:185-10:198.

Accordingly, ComEd recorded an estimate of \$29,005,000 for reconciliation and collar revenues that would be recovered in 2013 following completion of this docket, which was based on ComEd's best estimate of year-end 2011. While this accrual addressed the costs that ComEd believed would be recoverable under the reconciliation, ComEd also had to account for subsequent changes to the estimated revenues that would be recoverable. For example, ComEd's estimated 2011 reconciliation revenues were revised in March 2012 to reflect the filing in this docket on April 30, 2012. These reconciliation revenues were again revised in ComEd's compliance filing in this docket on June 13, 2012, which updated various schedules to reflect the effects of the *May 11-0721 Order*. Houtsma Reb., ComEd Ex. 12.0, 3:53-66; ComEd Ex. 10.2. Therefore, because the Commission determined in the *May 11-0721 Order* that a variety of costs should not be recovered under the formula rate, ComEd revised the formula to (1) remove those costs from the revenue requirement; and (2) remove both the costs and the associated reconciliation revenues from the collar calculation. The end result was a significantly lower

revenue requirement and reconciliation amount, but the collar results were unchanged because the costs and associated reconciliation revenues were adjusted consistently. Houtsma Reb., ComEd Ex. 2.0, 4:67-73.

Staff witness Ms. Jones did not initially calculate Staff's ROE collar adjustment in the manner described. Instead, Staff removed only the costs that it proposes to disallow from the collar calculation, but did not make a corresponding adjustment to also remove the accrued true-up revenues that ComEd recorded based on the estimated recovery of those costs. As explained above, these revenues must be removed from the collar calculation because those revenues will not be recovered under Staff's proposals and hence should not be considered in determining whether ComEd's earned ROE was within the collar. Houtsma Reb., ComEd Ex. 12.0, 4:74-82.

Staff witness Ms. Jones' rebuttal testimony agreed that Staff's calculation did not properly align revenues with the underlying costs. She also recognized, however, that those revenues should be removed and "should not be considered in determining whether or not ComEd's earned ROE is within the collar." Jones Reb., Staff Ex. 6.0, 9:171-177. Therefore, all parties are in agreement in regard to ComEd's computation of ROE Collar for 2011.

C. Potentially Contested Issues

1. Presentation of ROE Collar Adjustment on Schedule FR A-3 and WP 22

There are two items to be discussed here, although ComEd currently expects both of these items to be resolved in ICC Docket No. 11-0721, and not in the instant Docket, as explained below. First, Staff has proposed a change in the presentation of the ROE Collar calculation, in formula rate Sch. FR A-3 (and work paper WP 22). Staff revised (corrected) that proposal in its rebuttal, and asked that ComEd's surrebuttal indicate: (1) ComEd's position on this presentation item and (2) how this item could be effectuated given that it involves the

formula. Jones Reb., Staff Ex. 6.0, 9:168 – 10:196. ComEd’s surrebuttal agreed to the presentation item as revised in Staff’s rebuttal, and indicated that ComEd planned to file a motion to revise its additional August 12, 2012, compliance filing in ICC Docket No. 11-0721 to effectuate this item (without taking a legal position on whether this item could be addressed in the instant Docket). Hemphill Sur., ComEd Ex. 18.0, 4:81 - 5:88. No intervenor contested this item.

Second, ComEd notes that in its additional August 10, 2012, compliance filing in ICC Docket No. 11-0721, while effectuating a compliance item to separately present the ROE Collar adjustment on Sch. FR A-1, ComEd inadvertently removed the ROE Collar amount from the interest calculation on Sch. FR A-4. ComEd currently plans to address that correction item in same motion in ICC Docket No. 11-0721.

If that motion is granted and the approval occurs by the time of ComEd’s compliance filing in the instant Docket, then ComEd will effect each of the two above items in the compliance filing here.

2. Preservation of Docket No. 11-0271 Rehearing Issues

By submitting data in this Docket that faithfully complies with the *May 11-0721 Order*, ComEd did not change its position on the issues, nor did it waive any rights to pursue them currently or in the future. In the instant Docket, in his rebuttal testimony, ComEd witness Dr. Hemphill incorporated and set forth his testimony in ICC Docket No. 11-0721 prior to the *May 11-0721 Order* that:

... even if ComEd respectfully disagrees with a modification, we will comply with the Commission’s final Order until and unless it is stayed, reversed, vacated, or superseded.

Submitting a revised update to reflect Rate DSPP as approved by the Commission in the 2011 Formula Rate Case is, however, not intended to waive any right ComEd has to appeal or seek rehearing of that order, or any portion thereof, nor to

seek subsequent corrective changes to the performance-based formula rate structure, protocols, or formulae pursuant to the EIMA or the Commission's continuing Article IX ratemaking authority.

Hemphill Reb., ComEd Ex. 11.0, 6:119 - 7:131.

On June 22, 2012, the Commission granted in part ComEd's Application for Rehearing and ordered rehearing on three issues: the investment return on ComEd's pension asset, the determination of the appropriate interest rate applicable to future reconciliation adjustments, and the use of a year-end rate base in the reconciliation calculation. That rehearing was commenced in a timely manner and is presently being litigated on a schedule that would permit any Commission decision on rehearing to also be reflected in its decision in this Docket. Hemphill Reb., ComEd Ex. 11.0, 7:133-139.

The *Order on Rehearing* was entered on October 3, 2012 and modified the *May 11-0721 Order* in two ways: with respect to the existence of a pension asset, and with respect to the interest rate applicable to reconciliation balances. ComEd has filed a compliance filing providing mathematical data in accordance with the *Order on Rehearing* and, because Rate DSPP governs the measurement of certain costs and the calculation of the charges in this Docket, and appropriately will reflect the *Order on Rehearing* in its compliance filing after the final Order in the instant Docket.

a. Pension Asset Funding Costs

ComEd presented and supported the pension asset funding cost recovery in its direct case. The recovery of this cost now has been confirmed by the *Order on Rehearing*. In ComEd's direct case, the pension asset funding cost recovery amount was \$71,461,000. ComEd Ex. 3.1, Sch. FR A-1, line 9. In the *Order on Rehearing* compliance filing, the pension asset funding cost recovery amount is \$71,576,000, reflecting a revised cost of debt of 5.78% as

agreed to by ComEd witness Fruehe and Staff witness McNally. ComEd Ex. 23.0, Sch. FR A-1, line 9 (pending admission), and ComEd Ex 19.1, Sch. FR D-1, line 12.

b. Average or End of Year Rate Base in Reconciliations

In light of the Commission’s denial of rehearing on this issue, no additional changes will be made to ComEd’s delivery service revenue requirement.

c. Interest Rate for Reconciliation Adjustments

In light of the *Order on Rehearing*, ComEd’s revenue requirement must reflect the reduced rate of return (interest rate) on the reconciliation adjustment. The reconciliation adjustment, reflecting that reduced rate, was discussed in Section II.B, *supra*.

3. Section 16-108.5 of the PUA

Staff witness Mr. Bridal recommends that ComEd “be required to identify in each formula rate filing the costs that were incurred in compliance with or in meeting the requirements of Subsections 16-108.5(b) and 16-108.5(b-10) of the Act.” Bridal Dir., Staff Ex. 2.0, 6:152-154. ComEd’s obligation as a participating utility to make infrastructure investments in general under Section 16-108.5(b) and contributions for an energy low-income and support program under Section 16-108.5(b-10) are separate and distinct from the issues presented in ComEd’s formula rate filings. The EIMA already establishes detailed reporting requirements related to the infrastructure investment program, and there is no basis to establish new and overlapping reporting requirements beyond those contained in the Act. Hemphill Reb., ComEd Ex. 11.0, 10:188-194.

a. Identification Of Costs Incurred In Compliance With Section 16-108.5

Staff witness Mr. Bridal requested that ComEd calculate the incremental costs “incurred or projected to be incurred in compliance with or in meeting the infrastructure investment

requirements of Subsection 16-108.5(b) of EIMA.” Bridal Reb., Staff Ex. 7.0, 7:153-55. This information is not called for by EIMA and is simply impractical to provide. Tr. (Hemphill) September 25, 2012 at 13:8-10; Hemphill Sur., ComEd Ex. 18.0, 5:96-97. Dr. Hemphill states that “it’s ... possible to actually spend the time to try to identify item by item exactly what was and was not EIMA. But given the nature of the investment, it’s not correct.” Tr. at 14:2-7. EIMA investments are not simply “bolt on” additions to a baseline investment program.¹⁷ Hemphill Sur., ComEd Ex. 18.0, 6:107-108. Dr. Hemphill states that “on a year-by-year basis, it’s impracticable to take individual investments and basically paint them as to whether they are EIMA or not.” Tr. at 29:7-10. As new investments are made, they change the nature of the system and affect future investments and costs. As time passes, it rapidly becomes impractical, and then completely impossible, for ComEd to say how it would have reacted to those changes, and with what changed investments, had there been no EIMA. ComEd cannot generally know what specific investments it would have made both absent EIMA at the time of the investment and given a hypothetical system where only hypothetical non-EIMA investments were made in prior years as well. Trying to guess the hypothetical cost of those investments, as Mr. Bridal requests, is even less realistic. Hemphill Sur., ComEd Ex. 18.0, 6:108-117.

Mr. Bridal’s position is not consistent with the EIMA structure in how the investment target is determined. EIMA, Section 16-108.5(b), measures the target investment not by comparison to a base case, nor by characterizing individual investments or their costs, but by comparing ComEd’s investment to a calculated average of past investment, specifically “ComEd’s average capital spend for the calendar years 2008, 2009, and 2010 as reported in the

¹⁷ Even where EIMA mandates particular investments that would otherwise not have been made, *e.g.*, AMI meters and Test Bed, those investments affect other operations and costs. Even if they did not, those investments are not sufficient to determine what Mr. Bridal requests.

applicable Federal Energy Regulatory Commission (FERC) Form 1.” Hemphill Sur., ComEd Ex. 18.0, 6:119-124; 220 ILCS 5/16-108.5(b). The use of this calculated baseline was necessary because ComEd cannot identify specific “incremental” investments or their costs. Hemphill Sur., ComEd Ex. 18.0, 6:124-126. For example, it would be impracticable “to go out in the field and find a place where cable is being... replaced, determine whether that particular cable replacement project was an EIMA funded incremental cable replacement program or a baseline cable replacement project. [I]ndividual projects or the investments related to those projects out in the field are not painted whether they’re incremental or the EIMA or not.” Hemphill, Tr. at 32:14-18. Dr. Hemphill further confirmed that “there is no reason why you’d need to know that in order to determine that ComEd has complied with the incremental investment requirements of the EIMA.” Tr. at 32:19 – 33:23.

Additionally, the data that Mr. Bridal seeks is not required to assess prudence. The annual formula rate update filings will include documentation to support the prudence and reasonableness of all new plant investments, as well as other expenditures. The statutory determination of prudence Mr. Bridal cites, not the cost of particular investments, establishes the prudence of the decision to engage in the investments described in the Infrastructure Investment Plan and Smart Grid AMI plan. Mr. Bridal did not respond to this point. Hemphill Sur., ComEd Ex. 18.0, 7:127-133.

Furthermore, under Article IX or under EIMA’s formula rate process, ComEd has routinely provided detailed information specific to many of its larger projects as well as a variety of other data about investments and their cost. ComEd will do the same in its future formula rate filings under EIMA. ComEd submits that it could also provide with its filing, the incremental investment calculated as specified in EIMA, *i.e.*, as a difference between actual or forecast

investment and the statutory average investment baseline, however, that data will already appear in ComEd's annual EIMA reports. Thus, ComEd would simply be repeating the provision of this information, and it is not a calculation with any ratemaking significance. Hemphill Sur., ComEd Ex. 18.0, 7:135-142. For these reasons, Staff witness Mr. Bridal's recommendations should be rejected.

b. Contributions to Energy Low-Income and Support Programs

Staff witness Mr. Bridal recommended that ComEd be required to identify in each formula rate filing the costs that were incurred in compliance with or in meeting the requirements of Subsection 16-108.5(b-10). Bridal Dir., Staff Ex. 2.0, 6:152-154. Section 16-108.5(b-10) of EIMA states that with respect to the disbursement of funds to energy low-income and support programs:

The participating utilities whose customers benefit from the funds that are disbursed as contemplated in this Section shall file annual reports documenting the disbursement of those funds with the Commission. The Commission has the authority to audit disbursement of the funds to ensure they were disbursed consistently with this Section.

220 ILCS 5/16-108.5(b-10). ComEd agrees with Mr. Bridal that this language does not specify an annual filing date or define any report format. Moreover, ComEd excludes other non-recoverable costs from its formula rate input data and there is no reason why these particular excluded costs should have an additional pre-filing requirement imposed on them above and beyond the provision of EIMA. Hemphill Sur., ComEd Ex. 18.0, 8:152-156.

ComEd is prepared to work promptly with Staff toward a mutual recommendation for submitting this report prior to the annual formula rate update and reconciliation filing so as to allow for a "timely and in-depth review" as Staff witness Mr. Bridal suggests. Hemphill Sur., ComEd Ex. 18.0, 8:157-159; Bridal Reb., Staff Ex. 7.0, 5:91. Additionally, ComEd proposes to work with Staff on developing a report format that includes transparent information to identify

where non-recoverable costs are recorded in order to demonstrate that these costs are excluded from the revenue requirement update and reconciliation filing. The annual reporting requirement in Subsection 16-108.5(b-10) and the reconciliation both cover the same time period, thus any reconciliation between the two should be straightforward. First, filing for the annual report required by Subsection 16-108.5(b-10), and then submitting an additional report with the same data as part of the annual formula rate update and reconciliation filing is neither required by EIMA nor an effective use of anyone's time and scarce resources. *Hemphill Sur., ComEd Ex. 18.0, 8:159-168*. Therefore, Staff witness Mr. Bridal's recommendations should be rejected.

4. Format of Revenue Requirement Schedules and Related Documents

The formula rate, in App 3, should be corrected as to (1) descriptions of portions of the cash working capital calculation. *Fruehe Sur., ComEd Ex. 19.0, 15:322 – 16:329*. ComEd believes this correction, which had been identified in discovery, to be uncontested.

The presentation of the ROE Collar adjustment should be corrected in Sch. FR A-3 and WP 22 as discussed in Section VIII.C.1, *supra*.

ComEd's rebuttal testimony discussed Staff's use in direct testimony of "traditional" revenue requirement Schedules, and discussed several concerns with Staff's schedules. *Fruehe Reb., ComEd Ex. 19.0, 32:656 – 34:705*; *Houtsma Reb., ComEd Ex. 12.0, 1:15 – 6:125*. Staff's rebuttal acknowledged certain concerns and did not agree with others. *Jones Reb., Staff Ex. 6.0, 5:107 – 8:165*. While ComEd does not oppose the use of traditional revenue requirement schedules, ComEd adheres to its view that the formula rate template should also be used in the Commission's final Order to ensure that the calculations are aligned.

IX. CONCLUSION

For all reasons appearing of record and herein, the Commission should approve ComEd's filing, subject to those corrections and revisions, and proposed acceptances of proposals in order to narrow the issues, made in its rebuttal and surrebuttal testimony, and in its compliance filings.

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Respectfully submitted,

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