

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :
: :
Petition to determine the applicability of : 11-0588
Section 16-125(e) liability to events : :
caused by the Summer 2011 storm : :
systems. :

ORDER

June 5, 2013



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By the Commission:

I. PROCEDURAL HISTORY

On August 18, 2011, Commonwealth Edison Company ("ComEd") filed with the Illinois Commerce Commission ("Commission") a Verified Petition to Determine the Applicability of Section 16-125(e) Liability to Events Caused by the Summer 2011 Storm Systems ("Petition"), pursuant to Section 16-125 of the Public Utilities Act (the "Act") (220 ILCS 5/16-125).

The following parties filed Petitions to Intervene which were granted by the Administrative Law Judge ("ALJ"): Citizens Utility Board ("CUB"), and the Attorney General ("AG"). The City of Chicago ("City") filed an appearance.

Pursuant to notice duly given in accordance with the law and the rules and regulations of the Commission, a pre-hearing conference was held in this matter before a duly authorized ALJ of the Commission, at its offices in Chicago, Illinois, on October 6, 2011. A status hearing was also held on April 24, 2012.

Evidentiary Hearings were held on July 10-12, 2012, at the offices of the Commission in Chicago, Illinois. At the evidentiary hearings, ComEd, the Staff of the Commission ("Staff") and the AG each presented testimony and exhibits that were admitted into the evidentiary record. CUB and the City also appeared at these hearings. Certain additional materials were received into the record thereafter by order of the ALJ. On January 25, 2013, the ALJ marked the record "Heard and Taken."

The following witnesses testified on behalf of ComEd: Michael Guerra (ComEd Ex. 1.0 Rev., ComEd Ex. 5.0); William J. Gannon and John Mehrrens (ComEd Ex. 2.0, ComEd Ex. 7.0, ComEd Ex. 14.0 Rev.); Cheryl Maletich (ComEd Ex. 3.0 Rev., ComEd Ex. 10.0., ComEd Ex. 17.0); Thomas R. Piazza (ComEd Ex. 4.0, ComEd Ex. 9.0, ComEd Ex. 18.0); Philip R. O'Connor (ComEd Ex. 6.0 Rev.); Craig Chesley (ComEd Ex. 8.0 Rev., ComEd Ex. 15.0); Eugene L. Shlatz (ComEd Ex. 11.0, ComEd Ex. 19.0),

Maggie Duque and Hector Artze (ComEd Ex. 12.0, ComEd Ex. 20.0); Emily Kramer (ComEd Ex. 16.0).

In addition, ComEd filed the report of Navigant Consulting, Inc. ("Navigant"), "Material Conditions Assessment and Benchmarking Study of the Commonwealth Edison Company Delivery System", as ComEd Ex. 13.0.

Staff submitted the direct and rebuttal testimony of Greg Rockrohr (Staff Ex. 1.0; Staff Ex. 2.0R).

The following witness testified on behalf of AG: George C. Owens (AG Ex. 1.0; AG Ex. 6.0); Nancy Rotering (AG Ex. 2.0)-Mayor of the City of Highland Park, Il., whose testimony was adopted by Paul Frank, a city councilman for the City of Highland Park, on July 11, 2012 at the evidentiary hearing; Carina Walters City Manager for Lake Forest, Il. (AG Ex. 3.0); Fred Vogt City Manager of Rolling Meadow, Il. (AG Ex. 4.0, AG Ex. 7.0); Jane Mordini a resident of Highland Park, Il. (AG Ex. 5.0).

The ALJ's Proposed Order was served on January 25, 2013. Briefs on Exceptions were filed by ComEd, Staff and the AG on February 13, 2013. Replies to Exceptions were filed by ComEd, Staff and the AG on February 27, 2013.

II. STATUTORY AUTHORITY AT ISSUE

Section 16-125(e) of the Public Utilities Act (the "Act") imposes liability on electric utilities for interruptions when certain circumstances are present. In pertinent part, Section 16-125(e) states:

In the event that more than either (i) 30,000 of the total customers or (ii) 0.8% of the total customers, whichever is less, of an electric utility are subjected to a continuous power interruption of 4 hours or more that results in the transmission of power at less than 50% of the standard voltage, or that results in the total loss of power transmission, the utility shall be responsible for compensating customers affected by that interruption for 4 hours or more for all actual damages, which shall not include consequential damages, suffered as a result of the power interruption. The utility shall also reimburse the affected municipality, county, or other unit of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of the interruption.

220 ILCS 5/16-125(e).

Liability is not automatic. Even if these conditions are met, the statute permits the Commission to waive liability in certain circumstances:

A waiver of the requirements of this subsection may be granted by the Commission in instances in which the utility can show that the power interruption was a result of any one or more of the following causes:

- (1) Unpreventable damage due to weather events or conditions.
- (2) Customer tampering.
- (3) Unpreventable damage due to civil or international unrest or animals.
- (4) Damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors.

220 ILCS 5/16-125(e).

Six large storm systems, occurring on June 8-9, June 21, June 30- July 1, July 11, July 22-23, and July 27-28, 2011, caused damage to ComEd's electric delivery system during the summer of 2011 (the "Summer 2011 Storms"). Accordingly, on August 18, 2011, ComEd filed a Petition to Determine the Applicability of Section 16-125(e) liability to Events Caused by the Summer 2011 Storm Systems ("Petition") with the Commission. As set forth in the Petition, ComEd seeks a Commission Order finding that ComEd is not liable under Section 16-125(e) for damages resulting from service interruptions caused by the Summer 2011 Storms. ComEd argues: (i) by its terms, Section 16-125(e) does not apply to the power interruptions caused by the Summer 2011 Storms; or, alternatively, (ii) any liability should be waived because the interruptions were caused by "[u]npreventable damage due to weather events or conditions" as set forth in Section 16-125.

III. FACTUAL BACKGROUND

This case concerns six storm systems that struck Northern Illinois between June and July of 2011. It is undisputed that each storm, to its own extent, caused significant damage and disruption throughout Northern Illinois.

It is generally undisputed that each storm system caused significant damage to thousands of different ComEd facilities. The vast majority of damage was due to contact between trees and lines, uprooted trees, broken limbs and high winds. Ground lightning strikes damaged equipment and caused faults. In other circumstances, ComEd had to intentionally initiate interruptions in order to safely restore power to customers. The damage interrupted service to many customers throughout ComEd's service territory.

IV. APPLICABILITY OF SECTION 16-125(e)

A. ComEd's Affirmative Presentation

ComEd argues that Section 16-125(e) does not apply to the Summer 2011 Storms. The plain language of Section 16-125(e) applies only when more than 30,000 ComEd customers "are subjected to a continuous power interruption of 4 hours or more." The phrase "a continuous power interruption" was written by the General Assembly in the singular, not the plural. Here, it is undisputed that no single continuous

power interruption left more than 30,000 customers without power for four hours or more in any of the storms at issue. Instead, aggregate damage caused by the Summer 2011 Storms caused thousands of power interruptions across ComEd's territory, with widely varying start times, end times, durations and locations, and affected different groups of customers.

There is a distinction between whether there was any four hour period when at least 30,000 customers were without service for a period of four hours versus whether 30,000 or more of ComEd's customers were "[s]ubjected to a continuous power interruption of 4 hours or more..." even if that means the customer in question was only out of power for several minutes. To apply Section 16-125 to circumstances when at least 30,000 customers were without service for four hours or more, regardless of the number of individual power interruptions involved, would radically alter the regulatory significance of Section 16-125, and is not supported by its history, purpose, or the evidence here. Mr. Guerra testified that such an interpretation is incompatible with "longstanding and sound" regulatory principles.

Multiple ComEd witnesses presented testimony on the definition of "interruption." Mr. Guerra stated that "an interruption in the utility industry ... occurs when some component of a utility's system, or the generators that supply it, fails or operates in a way that causes customers to lose electric service because of a disruption to the flow of electric current." He confirms that common examples of "interruptions include when a tree limb falls on a line causing a wire to fail or a fuse or breaker to operate and to cut off service to customers 'downstream' of that point, or when a lightning strike damages or destroys a transformer cutting off service to those customers that it served." Similarly, Messrs. Gannon and Mehrtens testified that the word "interruption" means a "discrete event, caused by the failure of a piece of equipment or directly connected groups of equipment, that causes an interruption of the flow of electric current and affects a discrete set of customers, and has a specific start time and duration to full restoration."

ComEd asserts that the manner in which Staff and Intervenors use the term "interruption" is improper as it contravenes the plain language of the statute, the purpose of the statute, and general industry usage. In particular, ComEd claims Staff and Intervenors unreasonably aggregate multiple interruptions that were not continuous, that occurred in different locations, started at different times, ended at different times, affected different customers and different equipment, and were caused by different types of weather damage. If one were to apply Section 16-125(e) to circumstances when at least 30,000 customers were without service for four hours or more regardless of the number of individual power interruptions involved, it would radically alter the regulatory significance of Section 16-125(e), which, in Mr. Guerra's opinion, is inconsistent with the history preceding Section 16-125(e) and good regulatory policy under the Commission's enabling act and legal precedent.

Under the plain language of the statute, a triggering interruption must be a single interruption of service – a single break in the transmission of power to customers. Nothing in Section 16-125(e) suggests the term "interruption" itself has anything other

than its plain and ordinary meaning. According to the Oxford University Dictionary, an interruption is “the action of being interrupted,” and “interrupt” means “a stop or break in continuity.”¹ No party contests this meaning. Both the noun “interruption” and the article “a” in the operative phrase “a continuous power interruption of 4 hours or more” are singular. The end of that same sentence provides that (if liability is not waived) claims under Section 16-125(e) are available to those “affected by *that interruption*” and extend to certain damages suffered as a result of “*the power interruption.*” The plain and unambiguous language of Section 16-125(e) does not refer to multiple interruptions.

The singular use of the word “interruption” is also consistent with the General Assembly’s use of this term in Section 16-125 as a whole. In construing statutes, language used by the General Assembly may also be read in the context of the entire statute of which it forms an integral part. *Krautsack v. Anderson*, 223 Ill. 2d 541, 552-53 (2006); *People v. Fink*, 91 Ill. 2d 237, 239 (1982); *Illinois Wood Energy Partners, L.P. v. County of Cook*, 281 Ill. App. 3d 841, 850 (1st Dist. 1995); *McHenry County v. Duenser*, 49 Ill. App. 3d 125, 129 (2^d Dist. 1977). For example, the singular word “interruption” appears in Section 16-125(j), which defines various record keeping requirements. See, e.g., 220 ILCS 5/16-125(j). Once again, the General Assembly chose to use the word “interruption” in its singular form and uses it to refer to a single break in service.

Likewise, the triggering interruption must be “continuous.” A continuous event is one that is uninterrupted and unbroken² and “marked by uninterrupted extension in space, time, or sequence.”³ Whether viewed individually or collectively, distinct breaks in the flow of power to customers that start at different times, end at different times, and affect different locations and areas (even widely different) are not continuous in any sense of the word.

ComEd states that none of the Staff or Intervenor witnesses explain how the singular term “interruption” can be appropriately used to encompass the many distinct interruptions and instances of damage resulting from a single continuous power interruption. For example, “no reasonable person in Highland Park who experiences an interruption on a stormy afternoon due to a tree limb falling on a wire can say that their interruption started hours earlier in Rockford when lightning struck a transformer. Nor could they say that their interruption persisted hours (or days) after their own service was restored, when the last storm-related interruption ended and the last of the damage was repaired.”

¹ Oxford University Dictionary, http://oxforddictionaries.com/definition/american_english/interruption?region=us&q=interruption; http://oxforddictionaries.com/definition/american_english/interrupt?region=us&q=interrupt (Sept. 24, 2012).

² See, e.g., Oxford University Dictionary, http://oxforddictionaries.com/definition/American_english/interrupt?region=us&q=continuous.

³ Merriam-Webster’s Dictionary, as reported at <http://www.merriam-webster.com/dictionary/continuous> (Sept. 24, 2012).

Navigant Director and Professional Engineer, Eugene Shlatz, who has worked with utilities and regulators around the world for decades, confirms what ComEd also describes as the commonly understood industry definition of interruption:

An interruption is an event on the system that causes customers to lose their connection with the integrated grid to which generation is connected and the loss of service associated with that event. This is how the term is used by engineers, how it is used to measure outage performance statistics established by engineering organizations including the IEEE, and as it is understood by regulators

Thus, the technical, trade usage of the term interruption in the industry is consistent with the ordinary and plain meaning of Section 16-125(e).

Even if the Commission were to determine that Section 16-125(e) is ambiguous, the legislative history supports its interpretation of the term. (If the meaning of a statute is unclear from reading its language, the Commission may consider the purpose of the law, what it was intended to remedy, and the legislative history. *M.A.K. v. Rush-Presbyterian-St.-Luke's Medical Center*, 198 Ill. 2d 249, 257 (2001).)

To support this, ComEd presented testimony from Dr. Philip R. O'Connor, a former Commission Chairman who was involved in the passage of 16-125. He explains the history and regulatory policy behind Section 16-125(e) and concludes that it was not intended, nor would it be good regulatory policy, to interpret its liability provisions to apply in the manner advocated by Staff and the Intervenors.

As Dr. O'Connor testified, Section 16-125 was enacted in the late 1990s in response to a series of high profile interruptions caused by the failure of specific, significant equipment that interrupted service to many thousands of customers for extended periods of time. In particular, during the summer of 1990, ComEd customers on Chicago's West and Near Southwest sides experienced three major interruptions in less than two months. These interruptions, which each lasted for several days and which each affected many thousands of customers, resulted from the failure of specific delivery equipment at (a) the Crawford station switchyard, (b) the Columbus Park substation, and (c) the Jefferson Park substation. These large-scale equipment failures were followed in December of 1993 by a fire at ComEd's Pleasant Hill substation. The failure of this substation interrupted service to nearly 22,000 customers in northwestern DuPage County. In July of 1996 there was a cable fault and fire at ComEd's Bartlett Transmission Distribution Center. The resulting service interruption impacted 29,000-30,000 customers. None of those interruptions involved the impacts of severe weather systems nor resulted in distinct interruptions across the system. These events all involved the failure of specific equipment of systemic importance, utility decisions related to the operation of such equipment, and resulting operations located within fairly clear geographical boundaries as defined by the configuration of the distribution network supplied by the specific failed equipment.

The General Assembly's intent that 16-125(e) should not apply to interruptions in the aggregate is confirmed by other legislative action during the same session. At the time Section 16-125 was enacted, a separate bill, House Bill 43, was pending that would have imposed similar liability on a utility if a customer experienced "power interruptions of 4 hours or more, *cumulatively* ..." That Bill would have applied to small distinct interruptions, as well as major ones. It did not become law. These events further support the presumption that the General Assembly understood the difference between multiple interruptions with different start and end times, and a continuous power interruption.

Reading Section 16-125 to potentially impose significant unrecoverable costs on utilities does not comport with the regulatory objective that utilities have a fair opportunity to recover all their reasonable and prudent costs. Expanding strict liability from the very narrow confines of Section 16-125(e) to reoccurring storm damage would undermine this principle. Imposing crippling sanctions on utilities in response to severe weather multiple times a year – and year after year – cannot be sustained. Such a result cannot be presumed to have been the General Assembly's intent, particularly where no other jurisdiction in the country has taken such a step.

Under the AG's reading of the liability provisions, ComEd could be successful in preventing any loss of service to more than 99% of its customers and still be forced to defend its right to recover its costs. It makes no sense to force the Commission and utilities to engage year after year in extensive storm litigation when its systems perform well. Moreover, Illinois utilities do not need periodic fines or to be repeatedly threatened with them absent a waiver in order to appreciate the magnitude of the potential liability they face. Rather, the goal of penalties like 16-125 is to never experience the events that trigger them, not to encourage watering down the trigger until the penalties are imposed.

The Staff and Intervenors' interpretation of Section 16-125(e) also runs afoul of bedrock regulatory and constitutional principles. The General Assembly's deliberate and highly restrictive choice of words reinforces a foundational principle in Illinois – utilities are not obligated to provide uninterrupted service.⁴ No utility in this country is immune from weather damage. Thus, consistent with the Illinois Supreme Court's ruling in *Sheffler v. Commonwealth Edison Co.* ("Sheffler"), utilities cannot be insurers of customers' losses due to power interruptions, especially those caused by acts of God. *Sheffler*, No. 2011 IL 110166 at ¶¶ 32-38. Misapplying Section 16-125(e) to storms like the July 11 derecho is an improper end run around this important regulatory principle. A "derecho" is defined as a widespread, long-lived, straight-line windstorm that is associated with a fast-moving band of severe thunderstorms.

⁴ Citing *Sheffler v. Commonwealth Edison Co.*, No. 2011 IL 110166 at ¶ 32 (June 16, 2011), citing *Illinois Bell Switching Station Litigation*, 161 Ill. 2d 233, 243-44 (1994); 220 ILCS 5/8-401 (1992); ILL. C. C. No. 10, Orig. Sheet No. 146.

B. Staff Position

Staff first observes that ComEd has both the burden of proof and of going forward with the evidence in this proceeding.

Staff next points out that, as a threshold issue, ComEd and Staff disagree regarding whether Section 16-125(e) applies to the service interruptions caused by the six storm events at issue in this proceeding. Staff makes clear that it has, without exception, construed and applied Section 16-125(e) exactly the same way in each matter in which ComEd sought relief under this section, utilizing the same approach throughout. Specifically, Staff points out that it has always, in determining whether more than 30,000 customers have been interrupted for four hours or more, counted customers who are simultaneously subjected to a four-hour or longer interruption – as opposed to merely counting the number of customers interrupted for four hours or more, whether those interruptions are simultaneous or not - as the most logical and fairest method to determine the applicability of Section 16-125(e) of the Act. It is Staff's opinion that the utility's liability under Section 16-125(e) does not include claims submitted by customers who experienced an interruption that (i) lasted under four hours; (ii) lasted four hours or longer but occurred at a time when fewer than 30,001 customers were experiencing a four hour or longer interruption, or (iii) is covered by a Commission waiver.

Staff disagrees with ComEd's argument that liability under Section 16-125(e) of the Act could only apply if an individual outage event caused more than 30,000 of its customers to be subjected to a continuous interruption for four or more hours. Specifically, Staff observes Company witnesses William J. Gannon and John Mehrtens to claim that the word "interruption" means "...a discrete event, caused by the failure of a piece of equipment or directly connected groups of equipment, that causes an interruption of the flow of electric current and affects a discrete set of customers, and has a specific start time and duration to full restoration." Staff notes that the same witnesses conclude that because none of the discrete outages that occurred during the Summer 2011 Storm Systems resulted in more than 30,000 customers experiencing an interruption of four hours or longer, Section 16-125(e) of the Act should not apply.

In Staff's view, ComEd's interpretation is incorrect and leads to an absurd result. Staff points out that Section 16-125(f) of the Act states, in relevant part:

Customers with respect to whom a waiver has been granted by the Commission pursuant to subparagraphs (1)(4) of subsections (e) and (f) shall not count toward the either (i) 30,000 (or some other number, but only as provided by statute) of the total customers or (ii) 0.8% (or some other percentage, but only as provided by statute) of the total customers required therein.

For the purpose of determining whether to count customers for determining utility liability, Staff understands Section 16-125(f) to provide for the exclusion of some customers who experienced an interruption lasting 4 or more hours if their interruption was caused by one of the following causes:

- (1) unpreventable damage due to weather events or conditions;
- (2) customer tampering;
- (3) unpreventable damage due to civil or international unrest or animals; or
- (4) damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors.

Staff argues that, if the Commission were to accept ComEd's interpretation of the statute's applicability, whereby all of the customers experiencing a four-hour or longer interruption would necessarily have to lose power due to the exact same discrete outage event in order for those customers to count toward the liability threshold of 30,001 customers, then a Commission waiver could not exclude only some of the customers who experience an interruption lasting 4 or more hours, as Section 16-125(f) contemplates. Staff notes that this is true since each discrete equipment outage would have a single cause, so that all customers affected by that discrete outage would either be counted toward the 30,001 threshold, or all would be covered by the waiver, and therefore the Commission's waiver would therefore cover all or none of the customers affected.

Staff contends that the outcome which results from ComEd's interpretation, where all or none of the customers are included in the waiver, would contradict the language in Section 16-125(f) of the Act that clearly contemplates excluding only some of the customers who are subjected to a continuous interruption lasting 4 or more hours based upon the cause of the interruption. Staff states that its interpretation of Section 16-125(e) of the statute is reasonable and fair, because liability would not exist in cases where the utility shows 30,000 or fewer customers were affected by preventable interruptions.

C. AG Position

The AG points out that Section 16-125(e) of the Public Utilities Act ("PUA") provides that when 30,000 customers are without power for at least four hours, "the utility shall be responsible for compensating customers." 220 ILCS 5/16-125(e). In the summer of 2011, literally millions of Illinois residents lost power and hundreds of thousands of ComEd customers were without power for at least four hours, some multiple times. While the threshold for statutory liability to attach is 30,000 customers out of service for at least four hours, more than 256,000 customers were without electricity for more than 24 hours (1,440 minutes) following the July 11th storm, and more than 76,600 customers were without electricity for more than 24 hours following the June 21st storm. See Appendices D and B, respectively, attached to ComEd's

Petition. Yet, in its Initial Brief, ComEd argues that (1) the statute does not apply to the summer 2011 outages because no one single interruption left 30,000 customers without electricity at the same time, and (2) even if it did, the weather was so severe that enough outages should be excluded from the total number of outages so that the threshold 30,000 customer outages is not reached.

All parties agree that the Commission must first apply the words of the statute as written, but they disagree about the actual meaning of the statutory language. Staff's Initial Brief, the City/CUB's joint Initial Brief, as well as the AG, maintain that Section 16-125(e) does apply to the 2011 outages notwithstanding that no single interruption or incident resulted in 30,000 customers being out of service.

The words of Section 16-125(e) are straightforward:

In the event that more than either (i) 30,000 (or some other number, but only as provided by statute) of the total customers ... of an electric utility are subjected to a continuous power interruption of 4 hours or more that results in the transmission of power at less than 50% of the standard voltage, or that results in the total loss of power transmission, the utility shall be responsible for compensating customers affected by that interruption for 4 hours or more for all actual damages, which shall not include consequential damages, suffered as a result of the power interruption.

The AG points out that ComEd makes much of the portion of the statute that uses the singular form of the word "interruption" in describing when a customer is eligible for compensation. Specifically, ComEd argues that the statutory language that customers that "are subjected to a *continuous interruption* of 4 hours or more" means that there must be a single interruption that affects at least 30,000 customers. *Id.* The language of the statute does not support ComEd's view.

Section 16-125(e) premises liability on how many customers experience a power interruption (30,000) and for how long (at least 4 hours). If the General Assembly meant to limit liability to cases where there is a single interruption or incident leading to at least 30,000 customers being out of service, the statute would read:

In the event that a single continuous power interruption results in the transmission of power at less than 50% of the standard voltage, or results in the total loss of power transmission affecting more than 30,000 customers of an electric utility for 4 hours or more, the utility shall be responsible for compensating customers affected by that interruption for 4 hours or more for all actual damages.

This is not the language of the statute, however. ComEd's position requires that the statute be rewritten, and should be rejected.

The AG maintains that the statute as written both makes sense and conforms to the rules of English grammar. The General Assembly used a threshold number of customers that must be without service for four hours for the utility to be subject to a claim for compensation for actual damages. This is a reasonable approach to measuring the effect of service interruptions on Illinois residents and businesses and to provide an incentive to the utility to properly maintain its system to avoid widespread power interruptions. Once that threshold number of customers is defined, English grammar requires that each customer be subject to "a continuous power interruption." Otherwise, if the plural were used ("subjected to continuous power interruptions"), the statute would be internally inconsistent because a "continuous" power outage experienced by a customer cannot mean more than one power outage or it would not be continuous. Using the plural would imply that each customer could aggregate the power interruptions that affected him/her to reach the four hour threshold, while at the same time requiring that the interruptions be "continuous." ComEd's view of the statute requires the Commission to turn the phraseology of the statute inside-out and ignores basic grammar. It should be rejected.

The AG points out that the rules of statutory construction are not in dispute. The Commission must apply Section 16-125(e) in accordance with its plain language. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166 at para. 77; 955 N.E.2d 110 (2011); *Hadley v. Illinois Dept. of Corrections*, 224 Ill.2d 365, 371 (2007). The General Assembly used the number of customers (30,000) and the duration of the interruptions (4 hours) as the threshold factors in order for customers to seek damages for service interruptions. ComEd's attempt to parse the language of the statute to add another requirement, i.e. that only one incident give rise to the 30,000 customer interruptions, is not consistent with the plain language of the statute or its clear meaning. The Commission should reject ComEd's position that the statute only applies when a single incident leads to 30,000 experiencing an interruption in service.

As noted above, ComEd also refers to the portion of Section 16-125(e) and (f) that provides that "Loss of revenue and expenses incurred in complying with this subsection may not be recovered from ratepayers." According to the AG, while acknowledging that "Illinois law recognizes that a reasonable and prudent balance must be struck between reliability, and rates and costs," ComEd would ignore the very balance adopted by the General Assembly and written into the statute – a balance that requires the electric distribution utility to compensate customers for actual damages caused by widespread and sustained power outages that could have been prevented. See ComEd In. Br. at 11. ComEd produced no evidence about the size of the damages that might be claimed, leaving the Commission with no bases to conclude that the balance struck by the General Assembly in Section 16-125(e) is unreasonable or would be confiscatory. See Tr. at 23 (ComEd witness Guerra "would have to speculate" about the dollars claimed for storm damage).

The AG also does not agree with the Company over potential liability for the outages. ComEd asserts that if the Commission does not limit liability under the statute to outages resulting from a single incident, it will expose utilities to "strict liability."

ComEd In. Br. at 11. Strict liability is defined as fault or liability without fault. See *Olle v. C House Corp.*, 2012 Ill.App.1st, 110427, 967 N.E.2d 886 (March 23, 2012) (the Dramshop Act imposes strict liability because it is not based on fault). Although the statute does not use the term negligence or other terms associated with “fault,” liability can be waived if the Company shows that the damage was “preventable.” 220 ILCS 5/16-125(e)(1)(liability can be waived for *unpreventable* weather damage).⁵ This recognizes the Company’s responsibility for conditions that can give rise to widespread interruptions. Because ComEd, as owner and operator of the distribution system, is the only party that can take action to prevent or minimize widespread outages, requiring the utility to show that widespread service outages were “unpreventable” implies an element of fault (failure to act to prevent loss) when liability attaches. This is not strict liability. See *American Family Mut. Ins. Co. v. Albers*, 407 Ill.App.3d 569, 573, 943 N.E.2d 791 (3d Dist. 2011) (the law provides relief from harsh consequences of strict liability by providing a defense where an owner acted with reasonable care in restraining an animal involved in an accident and did not know of the animal’s escape).

ComEd also argues that the statute as applied by the AG, the Staff, the City of Chicago and the Citizens Utility Board (to more than a single incident resulting in 30,000 customers out of service for four or more hours) would make it responsible for the effects of weather conditions. ComEd In. Br. at 23-24. ComEd’s argument should be rejected for the simple reason that it ignores the entirety of Section 16-125(e). The statute includes a general statement of liability *and* conditions that must be met for a waiver of general liability. It is disingenuous to argue that the statute makes ComEd strictly liable for weather conditions while ignoring the very waiver provision at issue in this docket: was the damage due to weather, preventable. 220 ILCS 5/16-125(e) (1). The statute holds the utility liable for weather conditions unless the damage was unpreventable. Factors such as maintenance and the deployment of appropriate storm-hardening equipment influence whether weather conditions will result in widespread but *preventable* outages. This reflects an appropriate policy to protect the public while holding utilities responsible for widespread outages and damages they could have prevented.

The AG points out that a distribution utility such as ComEd is fundamentally responsible for maintaining customers’ connection to the grid in small sets based on distribution plant that serves relatively small groups of customers. As Staff witness Rockrohr pointed out, “[n]o single outage on individual primary voltage distribution circuits could result in an interruption of service to more than 30,000 ComEd customers because none of these distribution circuits supply that many customers.” Staff Ex. 1.0 at 14. Indeed, the AG notes that even the damage that ComEd witness O’Connor discusses in his testimony affected fewer than 30,000, with one set of outages affecting

⁵ Section 16.125(e) authorizes a waiver in other circumstances where damage is caused by non-utility circumstances, including: (2) Customer tampering. (3) Unpreventable damage due to civil or international unrest or animals. (4) Damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors.

“several thousands of customers,” one affecting 22,000, and one affecting between 29,000-30,000. ComEd Ex. 6.0 at 7-8. Clearly, it is close to impossible for damage to a single piece of distribution equipment to put “at least 30,000” customers out of service. The AG concludes that ComEd’s labored view of the statute would frustrate the objective of the statute and render it ineffective, violating one of the basic tenets of statutory construction. See, e.g., *People v. Jones*, 223 Ill.2d 569, 580-581 (2006) (“courts should consider the statute in its entirety, keeping in mind the subject it addresses and the legislature’s apparent objective in enacting it.”)

The AG also states that the Company’s position concerning the effect of this statute on common law rules or tariffs is also incorrect. ComEd further argues that the statute “does not generally repeal the common law rule, or invalidate any utility’s exculpatory tariffs.” ComEd In. Br. at 23. This argument must be rejected. First, the Commission is a creature of the General Assembly and derives its powers solely from the Public Utilities Act. *Business and Professional People in the Public Interest v. Illinois Commerce Commission*, 146 Ill.2d 175, 195 (1991) (“The Commission is an administrative agency whose power is derived from the legislature.”). Further, even if the Commission could apply the common law (which it cannot), when the General Assembly enacts a statute to address a situation or to establish rights and obligations, the statute supersedes common law to the extent they are inconsistent. E.g., *In Re Scarlett Z.-D*, 2012 Ill.App.2d 120260, 2012 WL 3757370 at 8 (8/30/12). In addition, a tariff is invalid to the extent that it is contradicted by statute because a private company – even a utility – cannot repeal state statute by adopting a tariff or rule or practice. *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971) (“We recognize, however, that an agency has the power and in some cases the duty to reject a tariff that is demonstrably unlawful on its face. Thus, an agency will reject a tariff that conflicts with a statute, agency regulation or order, or with a rate fixed in a contract sanctioned by statute; similarly, a tariff will be rejected if it is unlawful without prior agency approval, and approval has not been obtained.”). ComEd’s assertions to the contrary are simply incorrect statements of law.

D. City-CUB Position

City-CUB point out that as a threshold matter, the Commission must determine whether 16-125(e) applies to the Summer 2011 Storms. In making that determination, the Commission must decide if more than 30,000 customers experienced a continuous power outage of more than four hours during any of the six storms that occurred during June and July, 2011. According to City-CUB, the only rational interpretation of Section 16-125(e) and the record in this case shows that the 30,000 customer threshold was met for each of the six storms.

According to City-CUB, ComEd offered a faulty interpretation of Section 16-125(e), in its testimony. ComEd witness Michael Guerra asserted that Section 16-125(e) does not apply because “there was no continuous power interruption on ComEd’s system during those times that caused 30,000 or more customers to lose service.” ComEd Ex. 1.0 at 2:42-44. Mr. Guerra’s opinion is predicated on what he claimed is the utility industry’s definition of an “interruption.” According to Mr. Guerra,

an "interruption" "means a discrete event, caused by the failure of a piece of equipment or directly connected groups of equipment, that affect a discrete set of customers, and has a specific start time and duration to full restoration." *Id.* at 7:157-159. Mr. Guerra went on to explain, in essence, that the outages that occurred during the Summer 2011 Storms were a large series of independent interruptions that are unrelated, that have different start and end times, are caused by different factors, and are the result of the failure of different pieces of equipment. *Id.* at 9:185-204. Because none of these individual outages – as defined by ComEd – meet the 30,000 customer threshold, Mr. Guerra concluded that section 16-125(e) does not apply to the Summer 2011 Storms). *Id.* at 5: 95-97.

City-CUB states that Staff witness Greg Rockrohr provided an excellent analysis of section 16-125(e), showing that ComEd's interpretation is not tenable. Staff Ex. 1.0 at 12-14:246-300. Mr. Rockrohr pointed out that the Commission includes a definition of interruption in its Part 411 – Electric Reliability rule. Mr. Rockrohr explained that the definition of "interruption" in the Commission's rule is similar to the definition Mr. Guerra advocated in his testimony. *Id.* at 12:250-251, *citing*, 83 Ill. Admin. Code §411.20. Like ComEd's definition, the definition in section 411.20 refers to "failure or operation of a single component, or the simultaneous failure or operation of physically and directly connected components" of an electric utility's transmission or distribution system. 83 Ill. Admin. Code §411.20. Importantly, Mr. Rockrohr noted that the Commission's definition in section 411.20 explicitly states that it does not apply to sections 411.210 and 411.220 of the Reliability Rule. Staff Ex. 1.0 at 12:251-253. Sections 411.210 and 411.220 relate directly to the Commission's implementation of section 16-125(e) of the Act. 83 Ill. Admin. Code §§411.210, 411.220. Thus, as Mr. Rockrohr pointed out, the Commission obviously meant that its definition for the purposes of implementing Section 16-125(e) is different than the Commission's definition of "interruption" for the other provisions in the Reliability Rule. Staff Ex. 1.0 at 13:256-265.

Mr. Rockrohr added that the waiver provision in section 16-125(e) also makes ComEd's interpretation nonsensical. As stated above, section 16-125(e) permits the Commission to grant an electric utility a waiver if interruptions were the result of four identified causes. 220 ILCS 5/16-125(e)(1-4). Section 16-125(f) of the Act provides that customer interruptions that were caused by any of the four enumerated causes, and for which the Commission has granted a waiver, "shall not count toward[s]" the 30,000 threshold. 220 ILCS 5/16-125(f). The only rational interpretation of this provision is that the General Assembly intended that some customer outages caused by an interruption can be waived and not counted towards the 30,000 threshold while other outages caused by the same interruption would count towards the threshold. ComEd's definition of "interruption" does not allow for such a distinction.

City-CUB goes on to argue that ComEd's interpretation of an interruption is not consistent with Section 16-125(e). ComEd's witness, Mr. Guerra testified: "An interruption that, for example, occurred in Joliet due to a downed tree and an interruption that occurred in Streator hours later due to a lightning strike are not the same interruption. They affect different customers." ComEd Ex. 1.0 at 9:196-199.

Under ComEd's definition of "interruption," the waiver provisions in section 16-125(e) would apply to the two "interruptions" in Mr. Guerra's example separately. Thus, either all of the customers who suffered an outage because of the downed tree in Joliet would count towards the 30,000 threshold or none would if a waiver were granted. The same is true for the customers in Streator who suffered an outage due to the lightning strike. There is no room for parsing between outages that count towards the threshold and those who do not. This is plainly inconsistent with Section 16-125(f).

Finally, Mr. Rockrohr testified that ComEd's interpretation does not make practical sense either. Mr. Rockrohr stated that "No single outage on individual primary voltage distribution circuits could result in an interruption of service to more than 30,000 ComEd customers because none of these distribution circuits supply that many customers." Staff Ex. 1.0 at 14:297-300. Thus, ComEd's interpretation would render sections 16-125(e) and 16-125(f) meaningless, violating a basic tenant of statutory construction. *Chestnut Corp. v. Pestine, Brinati. Gamer, Ltd.*, 281 Ill. App 3d 719, 724 (1st Dist. 1996).

In Illinois, rules of statutory construction require that, in determining the intent of the legislature, "the court considers the plain and ordinary meaning of the statute's language in the overall context of its reason and necessity and its stated purpose." *Lakehead Pipeline Company v. Illinois Commerce Comm'n, et al*, 296 Ill.App.3d 942 (3rd Dist. 1998), citing *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 282 Ill.App.3d 672, 676 (1996). ComEd's interpretation of Section 16-125(e) would render it meaningless in all contexts. This is clearly an absurd result that is not supportable. Therefore, as described above, the plain meaning of Section 16-125(e) requires that it be applied to each of the Summer 2011 Storms.

E. Commission Analysis and Conclusion

Having carefully reviewed the evidence and arguments of the parties, the Commission finds that Section 16-125(e) of the Public Utilities Act applies to each of the following: the June 8, 2011, June 21, 2011, June 30, 2011, July 11, July 22, 2011 and July 27, 2011 storm systems. In so finding, the Commission specifically rejects ComEd's contention that the General Assembly intended Section 16-125(e) to apply only to single discrete interruptions that continuously interrupt power to over 30,000 of the same customers for the same four hour period. The Commission ascribes no weight to ComEd's arguments that the plain language of Section 16-125(e) should be viewed in a "historical context" which, as Staff argued, is in any case unsupported by the legislative history, the testimony of Dr. O'Connor notwithstanding.

According to that testimony, prior to the adoption of the legislation that resulted in Section 16-125(e), there were no incidents which resulted in an interruption of 30,000 or more customers due to a specific discrete equipment failure. It would thus be bizarre for the Commission to say that the General Assembly took action to respond to something that had never happened rather than to the outages that Dr. O'Connor testified were the impetus for the legislation.

In addition, the record indicates that there is no single piece of distribution equipment in the ComEd system that could fail and result in 30,000 customers having their service interrupted. The language that ComEd would have us adopt would not only ignore the plain language of the Act, but would also obviate the need for exclusion of customers based on the waiver criteria listed in Section 16-125(e). Either all customers would be included or would be excluded if we were concerned with one piece of equipment. This Commission views the language of 16-125(e) as plain and unambiguous, and specifically finds that Section 16-125(e) applies when 30,000 or more of ComEd's customers have their service interrupted during the same four-hour period.

1. Applicability of Section 16-125(e) to the Summer 2011 Storms

V. APPLICABILITY OF SECTION 16-125(e) WAIVER PROVISIONS

A. ComEd's Affirmative Waiver Presentation

ComEd asserts that if the Commission determines that Section 16-125(e) is applicable to the Summer 2011 Storms, any liability should be waived because the interruptions were caused by "unpreventable damage due to weather events" 220 ILCS 5/16-125(e) (1). Initially, ComEd states that there can be no reasonable dispute about the severity of and damage caused by the storm systems. ComEd refers to the detailed reports and testimony from Mr. Thomas Piazza, a Certified Consulting Meteorologist, which showed that each storm subjected large expanses of ComEd's service territory to extreme winds, tens of thousands of lightning strikes, hail, and heavy rain. These storm systems also hit in rapid succession, as only five to 13 days separated the storms. Mr. Piazza described that the July 11, 2011 derecho as "the worst severe weather event to affect ComEd's territory in more than 15 years," and the most costly ever in ComEd's history. In this regard, ComEd notes that no party contests any of these facts, or Mr. Piazza's conclusions.

ComEd also states that due to the nature of the storms, which included high levels of cloud-to-ground lightning strikes, high winds, thunderstorms and flooding, ComEd's distribution system was directly and indirectly damaged from causes such as downed trees, broken limbs and flying debris that resulted in broken utility poles, fallen conductors, failure of wires and/or support structures, and faults. This resulted in numerous interruptions due to: wires being torn down due to wind; trees and tree limbs falling on wires, poles, and other facilities; broken tree limbs falling on wires/equipment; broken limbs making contact with primary wires and equipment causing short circuits and protective devices to open; lightning strikes and induced voltages from nearby strikes; damaged overhead facilities including conductors and support equipment; and, damage to underground equipment due to the hot and wet weather associated with the storms.

ComEd asserts that its system was designed, constructed, and maintained in accordance with good utility practice, applicable design and construction standards, and all applicable national and state rules and regulations in June and July 2011 when the

storms moved across ComEd's service territory. Although its distribution system must be constructed to withstand normal exposure to winds, icing, and temperature extremes, a system constructed to the requisite standards cannot be reasonably expected to withstand falling trees, limbs, and the impacts from large blown debris, direct wind stress, and lightning. Therefore, ComEd states that it could not have reasonably prevented the damage caused by the storms.

ComEd also presented evidence regarding its monitoring and restoration efforts. Prior to the storms striking, ComEd monitored the storm fronts as they approached and while they were moving across its service territory in order to prepare. ComEd deployed its own crews and outside contractors, and deployed foreign crews for all but the June 8-9 storm. Field patrols, vegetation crews, and construction crews were also dispatched. ComEd points to evidence showing that it spent many millions of dollars on restoration efforts, ranging from \$6.8 million for the June 30-July 1 storm to \$75 million for the July 11, 2011 storm.

ComEd argues Mr. Rockrohr's distinction is unfounded as he relies on a wind speed derived from strength standards for man-made utility equipment and misapplies it to trees. ComEd witness Kramer, the only certified arborist who testified, explained that trees do not obey the same standards applicable to utility facilities. Unique characteristics will likely impact a tree's ability to withstand the forces imposed on it. Other factors distinctive to trees may individually or cumulatively impact whether a load will cause a tree to fail, such as age, branch attainment, previous damage, pest damage, previous prevailing winds, past abuse, twist, general health, size, location/exposure, and health of the root system. In particular, trees simply are not biologically adapted to withstand any and all winds up to 60 miles per hour. Moreover, the repeated effect of the six back to back summer 2011 storms, with winds ranging up to 90-plus miles per hour, placed loads "far in excess of what the trees in [ComEd's] service territory are adapted to withstand on an isolated basis, let alone the repeated basis presented last summer." ComEd asserts there is no competent evidence to the contrary; therefore, it could not have prevented this category of storm damage.

According to ComEd, Mr. Rockrohr also incorrectly concludes that even at wind speeds of 70, 80, or 90 miles per hour, as seen during the July 11 derecho, ComEd's tree trimming program must be able to prevent all tree contact. ComEd states that this assumption is unreasonable and contrary to the actual facts. Although vegetation management programs are designed to minimize interruptions, some tree-related contact interruptions can, will, and reasonably should be expected to occur on any utility's system, especially in cases of extreme weather.

ComEd adds that even with a four-year trimming cycle, some trees can grow closer to utility equipment in the period between trims. Clearances are designed by species to try to account for some of that growth. But no standard can eliminate the issue of interim growth. The only way ComEd could further minimize tree contact interruptions during storms would be to clear-cut large swaths around utility lines and engage in ground-to-sky trimming that would essentially shear off extensive portions of tree canopies and limbs. Aside from the astronomical costs, the public places a high

value on trees and overhang. ComEd must maintain a delicate balance between reliability, arboricultural standards, and the viewpoints of its approximately 3.9 million customers. To assess its maintenance programs and practices, ComEd relies on an approach that reasonably utilizes trained arborists who draw on specialized knowledge of trees, including growth habits, failure potential and electrical configurations.

ComEd asserts that its vegetation management program complies with Commission and Staff parameters (e.g., four-year cycle) and is implemented under Commission supervision, including annual reports to the Commission and its Staff on the program's execution. Even then, storms of the magnitude and severity of the 2011 Summer Storm Systems that have high winds can, and do, bend trees and branches. If tree contact occurs during a severe storm, despite ComEd having and following a proper vegetation management plan, that contact is unpreventable. ComEd presented evidence that at the time the Summer 2011 Storms struck, it was in compliance with its Commission-reviewed vegetation management plan: according to Mr. Chesley, prior to experiencing the Summer 2011 Storms, ComEd's vegetation management activities for 2011 were on track for meeting annual plans. As of May 1, 2011, ComEd was ahead of plan, having completed 491 circuits against a plan of 459 circuits. Meanwhile, as of May 31, 2011, ComEd had completed the four-year cyclic tree trimming work on 588 of the planned 590 circuits. The delayed circuits were due to unavoidable road closures.

ComEd points out those large storms with damaging winds will break small limbs and branches and hurl them into utility facilities, which may result in damage to those facilities. Such events are unpreventable even with a perfect vegetation management program. In a severe storm, debris often originates outside of the clearance zone and there is nothing ComEd or any utility can do to prevent that. Even AG witness Owens admits that tree debris from far outside a clearance zone may contact conductors during a windstorm.

ComEd states there are times when it is reasonable and prudent to initiate an interruption in order to address an emergency situation, preserve safety, and make needed repairs. Intentional interruptions are the result of underlying unpreventable weather damage. For instance, a crew may initiate an intentional interruption where the crew determines it is unsafe to repair a live electric cable that was knocked down by an uprooted tree. ComEd argues that labeling the necessary intentional interruption as "preventable" for purposes of imposing Section 16-125(e) liability on ComEd is unreasonable as it would penalize ComEd for prioritizing safety.

ComEd argues that the AG offers no evidence that any of the interruptions that occurred during any of the Summer 2011 Storm Systems were preventable. In particular, the AG improperly relies on 20-years' worth of data and reports that do not specifically address the condition of ComEd's distribution system at the time of the Summer 2011 interruptions. Instead, the AG attempts to direct the Commission's attention away from the only relevant timeframe. Moreover, Mr. Owens failed to link any particular piece of equipment that he criticizes in his testimony to any specific interruption experienced during the 2011 Summer Storm Systems. He has no

independent knowledge of the attributes of any of the six 2011 Summer Storm Systems. And, he never asked ComEd whether any of the “failures” he portrays in his testimony relate, in any way, to the 2011 Summer Storm Systems interruptions. Indeed, even Staff rejected Mr. Owens’ findings, stating that the AG’s evidence does not “specifically focus on the actual customer outages for which ComEd seeks a Commission waiver.” Thus, the AG has presented no evidence tying any of Mr. Owens’ criticisms to any of the interruptions.

ComEd also argues that the AG improperly calls into question the totality of ComEd’s distribution system based upon a “biased, inadequate, and flawed evaluation of ComEd’s system.” This is evidenced by the fact that Mr. Owens spent a total of approximately 800 minutes over three days, while accompanied by AG counsel, to evaluate ComEd’s entire distribution system. Mr. Owens viewed 12 “hand-picked municipalities” from the 400-plus municipalities in ComEd’s service territory (excluding the City of Chicago). During his review (which included travel time) he claims to have visually “inspected”, among other things: 5,000-7,000 poles; 1,000-1,500 lightning arrestors; 1,000-1,500 primary transformers; 150-200 pad-mounted primary transformers; 20-25 occasions where underground switchgear is located; 200-300 overhead service connections; and, approximately 100 feeders.

Mr. Owens never consulted ComEd about the nature, purpose, or design of the equipment he saw, nor sought that information in discovery. He also made no effort to inspect facilities with ComEd personnel, even though he lacked his own knowledge about the specifics of ComEd’s system – a fact he admitted on cross examination.

Mr. Owens admitted he directed field observers only to take pictures of ComEd equipment that would suggest or imply the existence of problems, such as aged/degraded structures, deteriorating poles, insufficiently guyed poles, discolored or rusted transformers, and single and three phase conductors with trees growing around them. Mr. Owens’ investigation was further tainted because he did not select the areas to review; rather, attorneys for the AG selected the municipalities to visit and routes taken. Mr. Owens did not conduct an objective and reliable investigation and his conclusions cannot be relied upon.

Contrary to Mr. Owens’ inspection, ComEd argues that age is not a factor or predictor of when poles or transformers fail. In fact, wood pole failures rarely occur due to storms, regardless of age. Only 12 of 1,400,000 poles failed during all of the 2011 Summer Storms Systems. Likewise, distribution transformer failures accounted for less than 1% of the interruptions during the Summer 2011 Storms. Mr. Owens admitted that no pole that he visually inspected failed during the 2011 Summer Storm Systems. Nor could he cite to an instance of a failed transformer.

ComEd has a lightning protection program that meets or exceeds applicable industry standards. ComEd maintains and inspects its arrestors and installs them in a configuration, and in sufficient proximity, that the presence of an arrestor “blown” by lightning does not impair the protection scheme. Moreover, ComEd has evaluated the merits of the use of static wire versus arrestors. Static wire systems are not a panacea

and pose their own reliability risks and benefits. ComEd's balance is, for its system, appropriate.

ComEd witness Mr. Chesley testified that at the time of the summer 2011 storms, ComEd was in compliance with its Commission-reviewed vegetation management program. ComEd trims on four-year cycle along its distribution lines and also employs mid-cycle trimming where warranted. Its program is generally consistent with national standards, state law and best utility practices. The program has also been tailored to address needs and issues unique to the vegetation in ComEd's territory.

Ms. Kramer explained the inherent limitations of any vegetation management program, no matter how compliant with best utility practices. Even on the four-year trimming cycle, it is impossible for a utility to avoid trees contacting its equipment during severe weather conditions. As Ms. Kramer explained, trees do not respect the wind speed limits applicable to man-made devices like utility poles.

Mr. Owens criticizes ComEd for vegetation he claims to have observed near service drops and secondary lines. However, any such vegetation was not a material contributor to the storm interruptions. Mr. Owens also presents no evidence that his proposals would have reduced vegetation interruptions during the 2011 storms. In fact, the only utility Mr. Owens identifies as having a "proper" vegetation management plan, Delmarva Power and Light, recently lost service to nearly half a million customers after a derecho similar to the July 11 storm ComEd experienced, largely due to tree and limb contact. Approximately 84,000 customers remained out of power for at least two days.

ComEd recognizes that interruptions can cause frustration for customers. That is why ComEd worked intensely and brought "all hands on deck" to restore customers as quickly and safely as possible. In each case, ComEd monitored the weather and began advance preparations. ComEd deployed a field workforce of between 611 and 1407 of its own crews and outside contractors to restore customers. It also called in crews from other utilities to help with each of the storm systems, with the exception of the June 8-9 storm.

During the July 11 derecho storm, ComEd states that essentially every capable ComEd employee was working on storm restoration. ComEd also brought in 429 contract and mutual assistance crews – the highest number ever – from as far away from Alabama, Georgia, Texas, Tennessee, and Pennsylvania. All told, the response to the July 11 derecho involved approximately 5,800 people, with crews working around-the-clock in three, staggered 16-hour shifts. As a result of these efforts, ComEd, on average, restored nearly 50% of customers who lost service within four hours of their individual interruption, 65% within eight hours, and 75% within 12 hours.

B. Staff

Staff asserts that, assuming more than 30,000 customers (which staff interprets as "metered accounts") have experienced an outage of four hours or longer, the next issue is, in this case, whether such outages were unpreventable due to weather events

or conditions. Staff has identified several factors to be considered in determining whether the outages were preventable.

First, Staff urges the Commission to assess whether the facilities involved with the interruptions were appropriately designed, constructed and maintained. Staff argues that the ability of electric distribution facilities to withstand adverse weather conditions or events is largely a function of the design and maintenance of those facilities. Staff contends that if the damage to the facilities would not have occurred if the facilities been appropriately designed, constructed and maintained, then that damage cannot be classified as unpreventable. Accordingly, Staff urges the Commission to require ComEd to show that facilities involved in outages were appropriately designed, constructed, and maintained.

Second, Staff recommends that the Commission consider if the weather conditions or events in question occurred at or near outage locations that exceeded the standards to which the utility's system were appropriately designed, constructed, and maintained. Staff argues that if ComEd's facilities experienced conditions or events that exceeded the standards to which the facilities were appropriately designed, constructed, and maintained, then damage resulting from such conditions or events could be considered unpreventable from an engineering perspective. Conversely, Staff notes, if ComEd does not establish that its facilities were subjected to weather conditions or events that exceeded appropriate design standards, then it has not established that the damage which occurred due to those conditions was unpreventable.

Third, Staff recommends that the Commission determine whether the particular outages at issue were caused by damage resulting from the weather events or conditions that exceeded appropriate design standards. From an operating perspective, it is neither reasonable nor feasible to expect a utility to be able to provide direct and specific evidence regarding the exact cause of each interruption. That is, a utility typically obtains information about damage causing an interruption by viewing the damage after it has already occurred. Staff notes that while an after-the-fact damage assessment will sometimes allow the utility to reasonably assess the cause of the damage (for instance, when an uprooted tree is observed on top of downed power lines), it will sometimes be difficult to determine the exact cause of the damage from an after-the-fact viewing of the facilities (for instance, where a line fuse operates and there is no evidence of animal activity or tree limbs in contact with the conductor). Staff argues that, at a minimum, ComEd should be able to make some showing that the damage causing the interruptions was consistent with, and likely caused by, damage from the applicable weather events or conditions.

Fourth and finally, Staff urges the Commission to consider whether ComEd's restoration effort was reasonable and did not contribute to the number or length of interruptions. If ComEd could have reasonably restored power in 10 minutes, but did not restore power for 10 hours and 10 minutes, then 10 hours of the interruption duration was preventable.

Staff observes that more than 30,000 of ComEd's customers simultaneously experienced an interruption that lasted four hours or more during each of the Summer 2011 Storm Systems. Consequently, in Staff's view Section 16-125(e) of the Act applies to each of the six individual weather events that comprise the Summer 2011 Storm Systems and that the Commission consider ComEd's waiver request separately for each storm system.

In Staff's estimation, the issue then becomes whether the damage that caused the simultaneous outages was unpreventable, based upon the assessment criteria set forth above, such that the customers subject to those outages would be "[c]ustomers with respect to whom a waiver has been granted[,]" within the meaning of Section 16-125(f), and would thus be subtracted from the 30,000 or more customers subject to a simultaneous outage for purposes of determining liability.

Staff sees ComEd has provided adequate evidence that its distribution facilities damaged during the Summer 2011 Storm Systems were originally designed and constructed to appropriate standards. Further, Staff notes that ComEd provided evidence that its restoration effort was reasonable and did not contribute to the number or length of interruptions. Based upon Staff's investigation of the storms, and upon information provided by ComEd in testimony, it is Staff's view that ComEd has demonstrated that it merits waivers for those customers whose interruptions were caused by lightning or uprooted trees or which are attributed to broken tree limbs or wind/tornados if wind gusts exceeded 60 miles per hour at the approximate time and location of the associated outage.

Staff notes that if the Commission were to apply this measured approach and criteria to the six storm systems at issue in this proceeding, the number of customers who simultaneously experienced an interruption of four hours or more falls below the 30,000 threshold for the June 8, 2011, June 21, 2011, June 30, 2011, July 22, 2011 and July 27, 2011 storm systems. In Staff's opinion, however, the customer count for the July 11, 2011 storm event remains above this "trigger value."

Staff observes ComEd's storm outage information to demonstrate that the maximum number of customers simultaneously experiencing an interruption during any four-hour period as a result of the July 11, 2011 storm event was 483,816. Staff further notes that 30,000 customers simultaneously experienced an interruption lasting at least four hours during each of the four-hour periods ending on July 11, 2011, from 11:31 a.m. to 11:00 p.m. on July 14; on July 14 during each of the four-hour periods ending 11:39 p.m. to 11:43 p.m.; on July 14 during each of the four-hour periods ending 11:50 to 11:51 p.m.; on July 15 during the four-hour period ending 12:01 a.m.; on July 15 during each of the four-hour periods ending 12:04 a.m. to 12:08 a.m.; and on July 15 during each of the four-hour periods ending 12:23 a.m. to 8:05 a.m. Staff's analysis of ComEd's data eliminated customers from this total when ComEd showed that interruptions were caused by lightning and uprooted trees. After ComEd provided additional information in rebuttal testimony, Staff's analysis of that information

eliminated additional customers whose interruption was caused by broken tree limbs and/or attributed to wind/tornados when winds exceeded 60 miles per hour, bringing the maximum number of affected customers for any single four-hour period to 82,449. Information provided in ComEd's surrebuttal testimony demonstrated that additional outages were attributed to damage from wind speeds exceeding 60 miles per hour, reduced this number to 51,767. Staff notes that that number is still above the 30,001 "trigger value" for liability and ComEd has not yet proved that a waiver can be granted that would eliminate ComEd's potential liability for damages under Section 16-125(e) of the Act for the storm event of July 11, 2011.

Based on the totality of evidence provided by ComEd, Staff argues that the Commission should find that Section 16-125(e) applies to all six Summer 2011 Storm Systems, and grant ComEd a waiver as to customers whose interruptions were caused by unpreventable damage due to weather events or conditions, specifically interruptions associated with outages caused by lightning, uprooted trees, or which are attributed to broken tree limbs, and/or wind/tornado when winds exceeded 60 miles per hour. The Commission should further find that ComEd's evidence does not demonstrate that it is not potentially liable for actual damages, not including consequential damages, suffered as a result of power interruption, when more than 30,000 customers not included in a waiver simultaneously experienced an interruption of four hours or more as a result of the July 11, 2011 storms. In that respect, there is the potential that ComEd may also be required to reimburse affected municipality, county, or other units of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of this interruption.

Staff next asserts that the exclusive procedural vehicle for remedies under 16-125(e) is to file a complaint with the Commission pursuant to Section 10-109 of the PUA. 220 ILCS 5/16-125(h); Sheffler v. Commonwealth Edison Co., 2011 IL 110166, *319, 955 N.E.2d 1110, 1130 (2011) ("Here, the meaning of section 16-125 could not be more clear. Subsection (h) provides that any remedies sought under section 16-125 are to be brought exclusively through the Commission."). Staff further argues that damages are limited to actual damages, and do not include consequential damages or litigation costs. 220 ILCS 5/16-125(h). Staff notes that Section 10-109 in turn grants the Commission the discretion to determine the methods for establishing damages, providing in pertinent part that, "[t]he Commission shall have power to receive complaints regarding loss or damage occasioned by a public utility, and to make inquiry as to the methods of adjusting such claims." 220 ILCS 5/10-109.

Staff cautions that while Section 10-109 grants the Commission the discretion to determine the methods of adjusting claims for damages, it provides no direction as to those methods. Nor has Staff's research uncovered any decisions addressing Section 10-109 in that context. Therefore, a discussion of the principles underlying damages may provide some guidance to the Commission in this regard.

With respect to proof and apportionment of damages, Staff argues: A party seeking to recover damages must prove the right to recover damages by a

preponderance of the evidence. Gill v. Foster, 157 Ill.2d 304, 312-13, 626 N.E.2d 190, 194 (1994); Alover Distributors, Inc. v. Kroger Co., 513 F.2d 1137, 1141 (7th Cir. 1975). The evidence must establish the cause of injury, and may not be based on mere speculation. Foster, 157 Ill.2d at 312-13, 626 N.E.2d at 194; Hutchings v. Sternberg, 124 Ill.App.3d 433, 438, 464 N.E.2d 651, 655 (5th Dist. 1984). The damages sought to be recovered must be shown with reasonable certainty as to their nature and extent such that a court or jury may determine the actual loss, although the amount awarded does not have to be proved with mathematical certainty. La Grange Metal Products v. Pettibone Mulliken Corp., 106 Ill.App.3d 1046, 1054, 436 N.E.2d 645, 651 (1st Dist. 1982); Ransom v. A.B. Dick Co., 289 Ill.App.3d 663, 674, 682 N.E.2d 314, 323 (1st Dist. 1997). However, where damages are susceptible to proof in dollars and cents, direct and tangible proof must be made showing the exact amount thereof. Sheetz v. Morgan, 98 Ill.App.3d 794, 801, 424 N.E.2d 867, 872 (2d Dist. 1981); Ralph v. Karr Mfg. Co., 20 Ill.App.3d 450, 458, 314 N.E.2d 219, 225 (1st Dist. 1974).

In Gill v. Foster, the plaintiff appealed the appellate court's finding affirming the trial court's decision to exclude evidence pertaining to damages in a surgical malpractice action. Foster, 157 Ill.2d at 311-13, 626 N.E.2d at 193-94. At trial, the plaintiff had attempted to introduce two medical bills and related testimony as proof of damages. Id. at 311-12, 626 N.E.2d at 193-94. The evidence was excluded because the plaintiff provided no basis for determining which costs included therein were attributable to the defendant's negligence, as opposed to costs that would have been incurred regardless of the defendant's negligence. Id. at 311, 626 N.E.2d at 193-94. The Illinois Supreme Court affirmed, emphasizing that it was the plaintiff's burden to establish a reasonable basis for computing damages and that neither the bills nor the offered testimony satisfied this burden. Id. at 312-13, 626 N.E.2d at 194. The Court further noted that the voluminous bills could have confused or misled the jury as to the extent of the damages caused by the defendant's alleged negligence and that the offered testimony could not have aided in the reasonable apportionment of damages as it would not have addressed the basis for the charges. Id. at 313, 626 N.E.2d at 194.

Similarly, in Sheetz v. Morgan, the defendant estate appealed the trial court's award of \$97,650 in damages to the plaintiff for breach of contract due to a deceased attorney's failure to file financing statements necessary to secure a fixture and equipment lease, resulting in the plaintiff's loss of all equipment under the lease. Morgan, 98 Ill.App.3d at 801, 424 N.E.2d at 872. The evidence for the award of damages consisted solely of testimony by the client and the client's attorney regarding the executory lease. Id. at 802, 424 N.E.2d at 873. The appellate court reversed, finding that the evidence introduced was too remote, speculative and uncertain to support the award of damages. Id. at 801, 424 N.E.2d at 872. The appellate court noted the plaintiff had the responsibility of proving damages to a reasonable degree of certainty and that where damages were susceptible to proof in dollars and cents, direct and tangible proof was required. Id. at 801, 424 N.E.2d at 872. The court found that the measure of damages, the market value of the property at the time of loss, could be directly demonstrated by expert appraisal testimony and that the testimony of the plaintiff and the plaintiff's attorney was clearly speculative and uncertain in comparison. Id. at 801-802, 424 N.E.2d at 872-73.

Staff contends that the above discussion supports the following conclusions: First, if ComEd's waiver request is rejected in the instant proceeding, ComEd's liability for damages or other expenses is not automatic. Rather, any party seeking recovery for damages or costs must pursue an individual action with the Commission under Section 10-109 of the Act. Second, in any such action, like the plaintiff in Foster, the party seeking damages or recovery of costs would be required to establish a causal connection between the events in question and those damages or costs, i.e. that they were the result of a preventable outage or interruption. Third, as in Foster and Morgan, damages or costs would need to be shown by a preponderance of the evidence and that evidence would need to provide a reasonable basis for determining the nature and extent of any damages or costs. Moreover, as in Morgan, where actual amounts of damages or costs can be proven by direct and tangible evidence, such evidence would have to be provided. Finally, any damages awarded would be limited to actual damages and would not include consequential damages or litigation costs.

Staff notes that evidence presented by the Attorney General addresses the state of repair or maintenance of the ComEd distribution system. Staff's position, as mentioned above, is that this proceeding requires a detailed examination of ComEd evidence regarding specific customer outages. Staff has not addressed the Attorney General's evidence since it does not specifically focus on the actual customer outages for which ComEd seeks a Commission waiver.

July 11, 2011 Storm Event

ComEd's storm outage data demonstrates that the maximum number of customers simultaneously experiencing an interruption during any four-hour period as a result of the July 11, 2011 storm event was 483,816. ICC Staff Ex. 1.0, Attachment A. More than 30,000 customers simultaneously experienced an interruption lasting at least four hours during each of the four-hour periods ending on July 11, 2011, from 11:31 a.m. to 11:00 p.m. on July 14; on July 14 during each of the four-hour periods ending 11:39 p.m. to 11:43 p.m.; on July 14 during each of the four-hour periods ending 11:50 to 11:51 p.m.; on July 15 during the four-hour period ending 12:01 a.m.; on July 15 during each of the four-hour periods ending 12:04 to 12:08 a.m.; and on July 15 during each of the four-hour periods ending 12:23 a.m. to 8:05 a.m. ICC Staff Ex. 1.0, pp. 25-26. Staff's analysis of ComEd's data eliminated customers from this total when ComEd showed that interruptions were caused by lightning and uprooted trees. Id. After ComEd provided additional information in rebuttal testimony, Staff's analysis of that information eliminated additional customers, whose interruption was caused by broken tree limbs and/or attributed to wind/tornados when winds exceeded 60 miles per hour, bringing the maximum number of affected customers in any single 4 hour period to 82,449. ICC Staff Ex. 2.0R, p. 8. Information provided in ComEd's surrebuttal testimony demonstrated that additional outages were attributed to damage from wind speeds exceeding 60 miles per hour, reduced this number to 51,767. Tr., July 11, 2012, p. 240. That number is still above the 30,001 "trigger value" for liability, and ComEd has not yet proved that a waiver can be granted that would eliminate ComEd's

potential liability for damages under Section 16-125(e) of the Act for the storm event of July 11, 2011.

Based on the totality of evidence provided by ComEd, the Commission should find that Section 16-125(e) applies to all six Summer 2011 Storm Systems, and grant ComEd a waiver as to customers whose interruptions were caused by unpreventable damage due to weather events or conditions, specifically interruptions associated with outages caused by lightning, uprooted trees, broken tree limbs, and/or wind/tornado when winds exceeded 60 miles per hour. The Commission should further find that ComEd's evidence failed to demonstrate that it is not potentially liable for actual damages, not including consequential damages, suffered as a result of power interruption, when more than 30,000 customers not included in a waiver simultaneously experienced an interruption of four hours or more as a result of the July 11, 2011 storms. In that respect, there is the potential that ComEd may also be required to reimburse affected municipality, county, or other units of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of this interruption.

C. AG

The investigation conducted by AG's witness Mr. Owens as well as the ICC Assessment of Commonwealth Edison Co. Reliability Report and Reliability Performance for Calendar Year 2009, dated December 31, 2010 and the ICC Assessment of Commonwealth Edison Co. Reliability Report and Reliability Performance for Calendar Year 2008, dated April 15, 2010 and the Appendix demonstrate that there are continuing deficiencies in the ComEd system. These deficiencies include failure to extensively install technology that has been available for decades and that is designed to limit the number and duration of interruptions when there are faults such as tree contact with ComEd's energized plant. Lack of fuses, reclosers, SCADA switches, functional lightning arresters, as well as the presence of deteriorated poles and loose equipment on the poles and overgrowth and other vegetation interfering with ComEd equipment all contributed to the numerous and extended outages suffered by customers in the summer of 2011. These conditions were preventable and, if addressed prior to the storms, would have prevented damage that resulted in service interruptions.

Section 16-125(e) holds electric utilities responsible to their customers when extensive service interruptions result in loss. The statute does not excuse liability for weather conditions, although it could have so provided. Instead liability can be waived by the Commission only if the damage resulting from weather conditions was "unpreventable." Had ComEd's system been modernized and kept in repair, the extent of the damage would have been reduced. A waiver is not authorized under these circumstances.

Following the storms, in November, 2011, the General Assembly amended the PUA to add Section 16-108.5. 220 ILCS 5/16-108.5. This section allows an electing utility such as ComEd to commit to invest \$2.6 billion dollars in systems upgrades over a 10 year period, including \$200 million over five years “for reducing the susceptibility of certain circuits to storm-related damage.” *Id.* at 16-108.5(b)((1)(A)(iv). This \$200 million investment is in addition to ComEd’s baseline plant additions, because the law specifies that this amount was to be incremental to ComEd’s average annual capital spending for calendar years 2008, 2009 and 2010, as reported in the applicable FERC Form 1 16-108.5(b). 220 ILCS 5/16-108.5(b).

As a result of the conditions revealed in this docket, the Commission should investigate the expenditure of funds for storm-hardening to assure that in the future, Illinois residents are not left in the dark for days or weeks due to summer thunderstorms. ComEd has filed with the Commission its “Infrastructure Plan” under Section 16-108.5 and is obligated to update that plan annually. 220 ILCS 5/16-108.5(b). However, the Commission should investigate the nature of ComEd’s baseline annual plant investments. To date, ComEd has not invested in storm hardening technology that could have both reduced the burden of service interruptions on consumers and saved the utility and consumers potentially hundreds of millions of dollars in restoration costs. The condition of ComEd’s facilities and the limited adoption of available technology demonstrate that without Commission oversight, Illinois residents will remain vulnerable to widespread and prolonged storm related service interruptions. The People request that the Commission initiate an investigation into ComEd’s storm hardening investment and maintenance.

D. Administrative Law Judge’s Post Record Data Request

On January 10, 2013, The ALJ issued a post record data request to obtain additional information concerning the customers whose outages Staff claims were preventable from the July 11, 2011 storm. On January 15, 2013, Staff served a response on the parties providing the specific outage ID codes for the customers who Staff determined simultaneously experienced an interruption lasting 4 hours or more during the July 11th storm event that were not covered by the waiver. On January 18, 2013, ComEd filed a reply to Staff’s response to the ALJ’s post record data request. In its reply, ComEd identified the interruptions by cause code for the specific outage ID codes that Staff provided. The Company also provided information concerning the number of interruptions and the number of customers associated with each cause code. Both Staff’s response and ComEd’s reply were admitted into the record on January 25, 2013.

E. Commission Analysis and Conclusion

The Commission must next address the question of whether ComEd is entitled to a waiver of liability under Section 16-125(e) (1) for any or all of the storms, i.e., whether more than 30,000 simultaneous four-hour customer interruptions resulting from each

storm were caused by: “[u]npreventable damage due to weather events or conditions.” With respect to this question, the Commission finds as follows:

1. ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e)(1) for the June 8, 2011 storm system;
2. ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e)(1) for June 21, 2011 storm system;
3. ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e)(1) for the June 30, 2011 storm system;
4. ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e)(1) for the July 22, 2011 storm system;
5. ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e)(1) for the July 27, 2011 storm system;
6. ComEd has failed to demonstrate that it is entitled to, and should not be granted, a waiver of liability under Section 16-125(e)(1) for the July 11, 2011 storm system.

In so finding, the Commission specifically adopts the decisional criteria advanced by the Staff in this and several previous proceedings. Staff has focused on whether the facilities involved with the interruptions were appropriately designed, constructed and maintained; if the weather conditions or events in question occurred at or near outage locations that exceeded the standards to which the utility’s system were appropriately designed, constructed, and maintained; whether the particular outages at issue were caused by damage resulting from the weather events or conditions that exceeded appropriate design standards; and whether the company’s restoration effort was reasonable and did not contribute to the number or length of interruptions. If customer outages – as defined by ComEd’s own outage codes – are found to be unpreventable, they are excluded those from the universe of interruption contributing to the 30,000 figure. The Commission finds this methodology to be consistent with the statute and is fair and reasonable.

Having made this finding, however, two points need to be raised. First, the burden of proof for the waiver rests with the Company, at every stage of this proceeding. That includes the determination of whether particular outages were

"unpreventable." The second point concerns the use of codes to determine the cause of a particular outage. In relying on the ComEd codes, the Commission is mindful that it is very difficult to check to determine the accuracy of the coding after the fact. In future instances, it will serve ComEd to make sure that the reasons for exclusion meet their burden. We certainly understand that it may be difficult to make the proper coding due to the nature of when it is being done and the other responsibilities of those who are doing the coding, but the statute at issue is clear in the burden.

Moreover, in this case, Staff has specifically identified interruptions associated with outages caused by lightning, uprooted trees, broken tree limbs, and/or wind/tornado when winds exceeded 60 miles per hour. Consistent with its methodology, Staff identified very precise numbers of customers whose outages can properly be deemed unpreventable (or the converse). According to Staff, in only one case, that of the July 11, 2011 storm, does that number exceed 30,000; Staff's review finds that number is 51,767.

We do not dispute that the July 11 storm was very harsh, and we specifically decline to adopt, based on this record, the AG's argument that the design, construction and maintenance of the ComEd distribution system is systemically inadequate. Likewise, we concur with Staff's argument, advanced in briefs, that adopting the AG's position, the trigger for liability would offer a disincentive to restoring customers who experienced outages in excess of four hours, in favor of customers who had not yet experienced outages of that duration.

We do not find or suggest in adopting this order that ComEd has systematically failed in its duty to provide adequate, reliable and safe service. Accordingly, we decline to adopt the AG's recommendation that we open an investigation of the adequacy, safety and reliability of ComEd's system. However, we must specifically reject ComEd's argument that because they have not systematically failed to meet their duty, or because they are meeting a generalized maintenance plan, that they can have no liability under Section 16-125. Such a reading would also obviate the need for the Section 16-125, as every interruption would thus be subject to a waiver of all claims. This cannot be what the General Assembly intended. In addition, the Commission is working through implementation of the Energy Infrastructure Modernization Act, which not only calls for a tremendous amount of ratepayer-funded infrastructure improvements to harden the grid, but has resulted in specific measures to be taken in specific communities which have experienced numerous interruptions of service. That legislation also calls for specific penalties for failure to make progress in reducing the number and duration of interruptions. It would make no sense for the Commission to ignore EIMA in its reading of 16-125, and rule that a generalized maintenance and infrastructure plan would obviate any responsibility for ComEd.

The Commission adopts Staff's interpretation of Section 16-125(e), and in this case, we find that over 30,000 customers experienced a simultaneous, preventable interruption of service of four hours or more in duration during the July 11, 2011 storm event. Accordingly, a waiver of liability cannot be granted concerning this storm. In

reviewing the post record data response from both Staff and ComEd, we determine that the number is lower than Staff has recommended. Section 16-125 (e) specifically excludes certain unpreventable interruptions. We would exclude the interruptions related to emergency repairs, broken tree limbs, wind/tornado, customer equipment, animals and vehicle related outages. Therefore, the number is reduced to 34,559 customers who may be eligible for compensation.

In adopting Staff's proposed reading of Section 16-125(e), the Commission rejects the AG's proposed reading. The AG appears to conclude that, if 30,000 customers have service interrupted during a four-hour period, any other customers whose service was interrupted for four hours during the same storm or event are entitled to compensation. This reading is contrary to the statutory language. Moreover, as noted, it offers perverse incentives to companies in prioritizing restoration.

We further find that Section 16-125(h) governs the manner in which remedies for violations under Section 16-125(e) may be sought and obtained. The Illinois Supreme Court has so stated as recently as last year. Accordingly, any customers eligible for compensation – a group consisting exclusively of the 34,559 identified in the Company's post record data response, as well as the municipalities in which such outages took place – must file an individual complaint under Section 10-109 of the Public Utilities Act.

The Commission has always made it a priority to protect consumers in the State of Illinois. With that said, it is important that consumers are aware of the process for which to file their complaints. We, therefore, deem it necessary, to make clear that the burden of proof lies with the consumer so that in the best of their interests, they may preserve time and evidence, if necessary. As discussed by Staff in briefs and as recounted above, ComEd's liability for damages or other expenses is not automatic under Section 10-109 of the Act. In an action under Section 10-109, the party seeking damages or recovery of costs would be required to establish a causal connection between the events in question and those damages or costs. Additionally, the evidence must provide a reasonable basis for determining the nature and extent of any damages or costs.

Finally, we find that the Company shall, with the involvement and approval of the Commission's Consumer Services Division and within sixty (60) days of this Order, draft written notice to the above-described 34,559 customers identified in the Company's post record data response. This notice shall inform the relevant customers that they are entitled to seek damages in accordance with Commission rules and regulations, it shall inform them of the types of evidence that they may present in seeking such damages, and it shall provide instructions on procedural next-steps in seeking such damages. Such written notice shall be supplemented by other forms of notice, as appropriate. Copies of such notice, along with a list of the 34,559 customers by name and customer number, shall be provided to the Commission's Consumer Services Division. Costs incurred in providing such notice, and all associated costs, shall not be included in rate base or treated as allowable expenses for purposes of determining the rates to be charged by the public utility.

VI. AG'S REQUEST THAT THE COMMISSION OPEN AN INVESTIGATION

The AG requests that the Commission open an investigation into ComEd's "infrastructure and storm hardening investments." Based on our ruling and findings herein, such an investigation is unnecessary at this time and therefore the Commission declines to adopt the recommendation.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (3) Commonwealth Edison Company seeks a waiver of liability imposed by Section 16-125(e) of the Public Utilities for summer storm systems occurring June 21, 2011; June 30-July 1, 2011; July 11, 2011; July 22-23, 2011; and July 27-28, 2011;
- (4) Section 16-125(e) of the Public Utilities Act applies to the storm systems here at issue;
- (5) ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e) (1) for the June 8, 2011 storm system;
- (6) ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e) (1) for June 21, 2011 storm system;
- (7) ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e) (1) for the June 30, 2011 storm system;
- (8) ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e) (1) for the July 22, 2011 storm system;
- (9) ComEd has demonstrated that it is entitled to, and should be granted, a waiver of liability under Section 16-125(e) (1) for the July 27, 2011 storm system;

- (10) ComEd has failed to demonstrate that it is entitled to, and should not be granted, a waiver of liability under Section 16-125(e) (1) for the July 11, 2011 storm system;
- (11) 34,559 customers experienced a simultaneous four-hour interruption of service during the July 11, 2011 storm system, and those customers alone are entitled to file for compensation under Section 16-125(e);
- (12) Municipalities in which those customers reside are entitled to file for compensation under Section 16-125(e);
- (13) Any person or entity seeking compensation must comply with the requirements of Section 16-125(h);
- (14) ComEd is directed to file a confidential document with the Commission identifying the customers or areas that would be entitled to file a claim for compensation because of the interruption of service.

IT IS HEREBY ORDERED THAT Section 16-125(e) of the Public Utilities Act shall apply to the storm systems here at issue;

IT IS FURTHER ORDERED THAT ComEd's request for a waiver of liability under Section 16-125(e) for the June 21, 2011; June 30, 2011; July 22, 2011; and July 27, 2011 storm systems are granted;

IT IS FURTHER ORDERED THAT ComEd's request for a waiver of liability under Section 16-125(e) for the July 11, 2011 storm system is denied;

IT IS FURTHER ORDERED THAT the 34,559 customers experiencing a simultaneous four-hour interruption of service during the July 11, 2011 storm system, and those customers alone shall be entitled to file for compensation under Section 16-125(e);

IT IS FURTHER ORDERED THAT municipalities in which those customers reside shall be entitled to file for compensation under Section 16-125(e);

IT IS FURTHER ORDERED THAT any person or entity seeking compensation shall be required to comply with the requirements of Section 16-125(h);

IT IS FURTHER ORDERED THAT ComEd shall file with the Commission a confidential document that identifies the customers or areas that could be entitled to compensation because of the interruption of service;

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

By Order of the Commission this 5th day of June, 2013.

(SIGNED) DOUGLAS P. SCOTT

CHAIRMAN