**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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| Illinois Commerce Commission,<br>On Its Own Motion<br><br>vs.<br><br>Commonwealth Edison Company<br><br>Investigation into the compliance with the efficiency standard requirements of Section 8-103 of the Public Utilities Act. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Docket No. 11-0593 |

# REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY

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# TABLE OF CONTENTS

## INTRODUCTION AND SUMMARY

Pursuant to Section 200.830 of the Illinois Commerce Commission's ("ICC" or "Commission") Rules of Practice and the order of the Administrative Law Judge ("ALJ"), Commonwealth Edison Company ("ComEd") submits this Reply Brief on Exceptions relating to the Briefs on Exceptions ("BOEs") filed by the Staff of the Commission ("Staff") and the People of the State of Illinois ("AG") on July 31, 2013.

Importantly, all participants in this docket – ComEd, Staff and the AG – take exception to the ALJ's Proposed Order's ("Proposed Order" or "PO") incorrect conclusion that cumulative banking of energy savings is prohibited. Joining ComEd, both Staff and the AG cite to the Commission's express consideration and approval of cumulative banking in its final order in Docket No. 10-0570, which the Proposed Order overlooks. Consistent with the BOEs, the Proposed Order should be revised to reflect the Commission's order in Docket No. 10-0570 and approve cumulative banked savings of 97,777 megawatt-hours ("MWhs").[1] Indeed, the Proposed Order correctly rejects the AG's proposal regarding a separate banking issue, which is based on an attack of a recently issued Commission order.

While Staff and the AG made various proposals regarding the calculation and modification of the Department of Commerce and Economic Opportunity's ("DCEO") future energy savings goals, the Proposed Order correctly observes that DCEO's goals for Plan years 4 through 6 were already reduced in Docket No. 10-0570 to account for DCEO's difficulties in achieving its energy savings goals, and the evaluation of DCEO's performance under those reduced goals is pending. Accordingly, the Proposed Order concludes no further Commission action is warranted at this time, and parties are free to propose revised methodologies for setting

[1] If the Proposed Order is revised to approve cumulative banking, ComEd would withdraw its request for oral argument on this issue. *See* ComEd BOE at 2.

Plan Years 7 through 9 energy savings goals when ComEd files its next three-year energy efficiency plan on or before September 1, 2013. Although Staff takes no exception to the Proposed Order's rejection of its arguments, the AG persists in urging the Commission to adopt specific guidance here for the purported purpose of informing the September 1 filings. Notwithstanding that the utilities are already on the eve of filing their next three-year plans after months of preparation, the AG's proposal also lacks any evidentiary support. For these reasons, the Proposed Order should not be revised as the AG suggests.

Finally, the Proposed Order's conclusions regarding Staff's proposed three-year cost effectiveness review and Compact Fluorescent Light ("CFL") bulb carryover methodology should not be disturbed. Staff's exceptions regarding these issues rest on arguments that were already considered and properly rejected by the Proposed Order. ComEd also supports the final exception raised by the AG regarding free ridership.

In sum, the Commission's Final Order in this proceeding should adopt the changes to the Proposed Order proposed in ComEd's BOE and accompanying Appendix as well as the changes proposed in this Reply BOE.

## I. The Proposed Order Should Reflect and Implement the Commission's Orders Regarding the Banking of Excess Energy Savings.

Before the Commission are two issues related to the banking of energy savings[2] – one raised *sua sponte* by the ALJ's Proposed Order and the other raised by the AG in the course of this proceeding. With respect to the first issue, every participant in this docket – Staff, the AG, and ComEd – takes exception to the Proposed Order's conclusion that cumulative banked energy

[2] "Banking of energy savings" is the ability to save excess energy savings from a given year and apply it to the achievement of a future year's energy savings goal.

savings[3] are prohibited. Like ComEd, both Staff and the AG point out in their BOEs that the Proposed Order overlooks – and thus does not give effect to – the Commission's order in Docket No. 10-0570, which expressly considered and approved cumulative banking of energy savings. Staff BOE at 3-7; AG BOE at 10-12; ComEd BOE at 3-7. Accordingly, the Proposed Order should be revised to reflect this prior order and approve cumulative banked savings.

Concerning the second issue related to banking, the AG takes the contradictory position that the Commission should, in this instance, overlook its recent order in Docket No. 10-0520 and instead adopt a different calculation for determining the maximum amount of energy savings that may be banked in a given Plan year. As discussed below, however, the Proposed Order correctly rejects the AG's proposal and follows the Commission's order in Docket No. 10-0520, which expressly considered and adopted Staff's proposal on this very issue.

***The AG's Proposal Is an Impermissible Collateral Attack on the PY2 Goals Order.*** In the immediately preceding docket to investigate whether ComEd achieved its Plan Year 2 energy savings goal, the Commission adopted Staff's proposal that the combined annual energy savings goal applicable to ComEd and DCEO must first be achieved and exceeded prior to the banking of any energy savings. In other words, if DCEO fails to achieve its individual energy savings goal, ComEd would have to make up that shortfall <u>and</u> exceed the combined goal before being permitted to bank any excess savings. If the overall annual goal is achieved and exceeded, then ComEd may bank no more than 10% of the combined savings goal. *Commonwealth Edison Co.*, ICC Docket No. 10-0520 (Order May 16, 2012) at 5 ("*PY2 Goals Order*"). In this docket, however, the AG proposes that while ComEd should still be held to the standard of achieving the combined energy savings goal, ComEd should not be permitted to bank more than 10% of its

[3] "Cumulative banked energy savings" means applying accumulated banked energy savings from past Plan years to future Plan years.

own *individual* goal rather than 10% of the combined goal. AG BOE at 9-16. Remaining faithful to the Commission's order in Docket No. 10-0520, the Proposed Order rejects the AG's proposal. PO at 15.

Notably, the AG's BOE never mentions the *PY2 Goals Order* despite having participated in that docket and voicing no objection to the methodology adopted by the *Order*. Nevertheless, the AG's attack on the *Order* is obvious – its exception to the Proposed Order's application of the Commission-approved methodology for calculating banked energy savings is actually an argument that the *PY2 Goals Order's* method of calculating banked energy savings is wrong – a position tantamount to an impermissible collateral attack on the *PY2 Goals Order. See Cbeyond Communications, LLC v. Ill. Bell Tel. Co.,* ICC Docket No. 11-0696 (Order March 27, 2013) at 8-9 (strongly disfavoring arguments regarding issues already decided in prior dockets that are essentially impermissible collateral attacks on prior Commission orders); *see also* ComEd Init. Br. at 10-11; ComEd Rep. Br. at 4-5. And, far from merely proposing a tweak or refinement to the Commission-approved banking methodology, the AG is asking the Commission to wholly repudiate that banking methodology. Indeed, the AG's own witness admits that ComEd and Staff calculated the correct amount of banked savings pursuant to the *PY2 Goals Order*. AG's Pre-Trial Memorandum at 5; Mosenthal Dir., AG Ex. 1.0, 7:18-9:8. Accordingly, the Proposed Order's conclusion should not be disturbed.

***The AG's Proposal Would Deprive Customers of the Energy Savings They Have Funded.*** Notwithstanding the AG's impermissible collateral attack, the AG's policy arguments in support of its proposed change to the banking methodology are also deeply flawed and warrant rejection of its proposal. While the AG's BOE ignores the *PY2 Goals Order,* a careful review of that *Order* demonstrates that the Commission's approved banking methodology is neither "illogical" nor contrary to "the interests of ratepayers", as the AG claims.  AG BOE at 13.  Requiring that the overall savings goal applicable to ComEd and DCEO must first be achieved prior to permitting banking ensures that the energy savings goal for the given Plan year is achieved while also ensuring that the full amount of customer-funded energy savings is captured (*i.e.*, no more than 10% in excess of the *overall* energy savings goal for the Plan year). Staff Init. Br. at 5; ComEd Init. Br. at 5-6.  Indeed, as Staff explains in its Initial Brief, "[t]he banking approach the Commission adopted in the *Plan 1 Order* and reaffirmed in the *PY2 Savings Order* is beneficial in that it gives ComEd an incentive to fill shortfalls by DCEO, thereby helping to ensure that the goals set forth in Section 8-103(b) of the Act are achieved." Staff Init. Br. at 5.

The Commission's linking together of ComEd and DCEO for purposes of banking further discredits the AG's proposal, which is based on the fiction that "ComEd has never had responsibility for the DCEO goals" and therefore should not be permitted to bank based on the overall combined goal.  AG BOE at 13.  While it is true that ComEd is not penalized for DCEO's failure to achieve its energy savings goals, the Commission has now expressly and directly tied ComEd's ability to bank energy savings to DCEO's performance.  *PY2 Goals Order* at 5.  To illustrate, if ComEd's goal were 450,000 MWhs and it achieved 500,000 MWhs, ComEd would not be permitted to bank any of the excess energy savings if DCEO did not also meet its energy savings goal (or ComEd's excess energy savings were not sufficient to make up the difference).  Thus, contrary to the AG's claim, the Commission has linked together ComEd and DCEO for purposes of banking in order to incent achievement of the combined goal every year, which is why the Commission permitted ComEd to calculate its banked savings based on the overall energy savings goal.  *See PY2 Goals Order* at 5.

The AG's proposal, however, would have the perverse effect of substantially diminishing this incentive. Although the AG's proposal would similarly require ComEd to ensure that the overall Plan year goal is achieved (*i.e.*, ComEd would have to cover any DCEO shortfall before banking is permitted), the AG's proposal would then unfairly switch back to focus only on ComEd's goal and permit ComEd to bank no more than 10% of its individual goal. AG BOE at 9-16. In other words, after being called on to achieve its own goal and cover any DCEO shortfall, ComEd would then be limited to banking only 10% of its own goal. While unreasonable and illogical on its face, this proposal also harms customers by discarding the energy savings they have funded.

More specifically, no party disputes that customers fund the energy efficiency programs and the energy savings those programs achieve, and all parties further agree that the maximum amount of savings to be achieved for a given Plan year is no more than 10% in excess of that Plan year's *combined* energy savings goal. Brandt Dir., ComEd Ex. 1.0 Corr., 7:138-141; Hinman Dir., Staff Ex. 1.0, 17:303-18:316; Mosenthal Dir., AG Ex. 1.0, 8:18-9:4. However, under the AG's proposal, if ComEd achieves both its own goal and makes up for DCEO's shortfall (as it did in PY3), then ComEd can only bank the 10% in excess of its own goal (and DCEO cannot bank any excess). This means that a portion of the savings that could be banked for that year is stranded (or "orphaned") despite customers having paid for those savings. In the case of PY3, the amount of customer-funded energy savings that would be wasted under the AG's proposal is 12,516 MWhs. *See* AG Init. Br. at 11. The Proposed Order should not be revised to implement this misguided exception.

***Proposed Language.*** Because the AG asserts that the Proposed Order "seems to misread both the nature and intent of the AG's recommendation" (AG BOE at 12), ComEd proposes language to strengthen the Proposed Order's analysis and conclusion rejecting the AG's recommendation.

***The first full paragraph on page 15 of the Proposed Order should be modified as follows***:[4]

> The Commission ~~further~~ notes that the purpose of Section 8-103(a) of the PUA is that:
>
> > Requiring investment in cost-effective energy efficiency and demand-response measures will reduce the direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.
>
> 220 ILCS 5/8-103(a). All citizens of Illinois thus benefit from DCEO's programs, which primarily serve two segments of the population that are more difficult to serve than the general residential and commercial population. The two segments that DCEO serves are, generally, low-income residents and governmental agencies. These groups of ratepayers can be more difficult to serve, (*e.g.*, due to the difficulty of identifying who is in a low-income household and the difficulty of dealing with governmental "red tape." Thus, DCEO has an important, but challenging, role in Illinois energy efficiency programs. ~~Because a~~All ratepayers benefit, as the statutory citation above states, from the lower energy consumption of all ratepayers, and there is no evidence here that DCEO did not perform its challenging role in good faith.~~,~~
>
> Even so, DCEO did not achieve its PY3 energy savings goal, but ComEd achieved energy savings that covered DCEO's shortfall and exceeded ComEd's and DCEO's combined energy savings goal. While all parties agree that ComEd exceeded the PY3 energy savings goal and is entitled to the maximum banking permitted under law, the AG alone argues that the parties and this Commission should disregard the banking methodology adopted in the PY2 goals docket, ICC Docket No. 10-0520 ("*PY2 Goals Order*"), in which the AG participated but raised no objection, and instead adopt a different methodology. We conclude that the AG's challenge to our *PY2 Goals Order* in this docket is precisely the kind of impermissible collateral attack that we rejected recently in *Cbeyond Communications, LLC v. Ill. Bell Tel. Co.*, ICC Docket No. 11-0696. Rather, ComEd should be permitted to bank 10% of the combined energy savings goal pursuant to our *PY2 Goals Order*. To not permit this result would have the perverse effect of discarding 12,516 MWhs of customer-funded energy savings while also discouraging ComEd from covering any DCEO shortfall. Therefore,

[4] These changes supplement and are in addition to those set forth in Exception 1 of the Appendix to ComEd's BOE.

> the Commission declines to segregate the "banked" energy savings in the manner that the AG proffers. Accordingly, ComEd is entitled to bank 58,408 MWhs (10% of the achieved PY3 energy savings goal), in addition to the 39,369 MWhs which it was permitted to bank from PY2, and is also entitled to cumulatively bank a total of 97,777 MWhs that may be used in future plan years.

## II. The Proposed Order Correctly Concludes That This Docket Is Not the Forum to Consider Untimely Issues Relating to DCEO.

In response to various (and at times conflicting) proposals by Staff and the AG regarding DCEO and its energy savings goals (*see generally* ComEd Init. Br. at 14-21; ComEd Rep. Br. at 8-14), the Proposed Order carefully considers the statutory framework and Commission orders on this issue and correctly concludes that no further action is required at this time. PO at 10. While Staff takes no exception to the Proposed Order's rejection of its proposals, the AG persists in its plea that the Commission provide specific "guidance" here despite a virtually nonexistent evidentiary record in support thereof.

As explained below, the AG's fears of a drifting and unaccountable DCEO are entirely unfounded. Rather, the Commission, pursuant to the authority granted to it by the General Assembly under Section 8-103 of the Act, has already put in place a framework to oversee the approval of DCEO's goals, consider later modifications of those goals, and annually review DCEO's performance. ComEd Init. Br. at 15-19; ComEd Rep. Br. at 9-13. While the AG blames the Commission and others for DCEO's failure to achieve its energy savings goals, this is not necessarily due to a crisis of Commission authority or inaction. Indeed, the AG participated in the dockets that approved DCEO's proposed energy savings goals for Plan Years 1 through 6, and nothing prevented the AG or others from exhaustively investigating the methodology DCEO used to set those proposed goals or from proposing different goals. *See generally* *Commonwealth Edison Co.*, ICC Docket No. 07-0540 (Order February 6, 2008); *Commonwealth Edison Co.*, ICC Docket No. 10-0570 (Order December 21, 2010) ("*2011-2013 Plan Order*").

When DCEO and the utilities file their next three-year energy efficiency plans by September 1, 2013, the AG is free to undertake just the sort of investigation that it contemplates in its proposed "guidance" here, should it so choose.

The Proposed Order fully accounts for this framework and the Commission action taken in the *2011-2013 Plan Order* to further modify and lower DCEO's annual goals, and recognizes that performance under these lower goals is just now being evaluated. PO at 10. Noting that DCEO will be proposing new goals by September 1, 2013, the Proposed Order directs the AG and others to further explore these issues in that docket and correctly declines the AG's invitation to do so here. *Id*.[5]

### A. The Commission Has Already Addressed the Issue of Authority Over DCEO, Lowered DCEO's Goals, and Set Up a New Process for Evaluating DCEO's Compliance.

In its order approving ComEd's 2011-2013 Energy Efficiency and Demand Response Plan ("2011-2013 Plan"), the Commission adopted a three-pronged approach for addressing DCEO's goal compliance: (i) clarification of authority over DCEO, (ii) modification of DCEO's goals, and (iii) initiation of annual dockets to review DCEO's compliance with its modified goals. *See generally 2011-2013 Plan Order*; ComEd Init. Br. at 15-19; ComEd Rep. Br. at 9-13. As explained below, the AG's concerns regarding DCEO's performance (many of which are shared by ComEd and Staff) are fully addressed by one or more of these components.

[5] It should be noted that the Initiating Order in this docket makes no reference to DCEO, and AG witness Mr. Mosenthal further observes that changes to the methodology to calculate DCEO's energy savings goals impact not just ComEd, but all Illinois gas and electric utilities. *See* ComEd Init. Br. at 19-20. As a result, the investigation of DCEO's goals and the methodology to determine those goals should be conducted in the utilities' upcoming three-year plan filings on or before September 1, 2013. Under this approach, the Commission can uniformly address DCEO's goals across all utilities and with all interested stakeholders' participation.

With respect to the issue of the Commission's authority over DCEO, both Staff and ComEd have explained in testimony and briefing that the Commission already investigated and decided the scope of its jurisdiction over DCEO in the 2011-2013 Plan docket. ComEd Init. Br. at 15-16; Hinman Reb., Staff Ex. 2.0, 14:272-281. While the AG correctly invokes Section 8-103(e) of the Act as the statutory authority for the Commission to set energy savings goals for the utilities and DCEO (AG BOE at 3-4), the AG goes too far when it turns to blaming the Commission and others for DCEO's performance shortcomings.[6] AG BOE at 4.

While the AG's BOE sets forth hindsight observations and recommendations that could be considered in determining DCEO's next set of energy savings goals, it is unfair to blame the Commission or others for not having identified the alleged problems with DCEO's goals during the original proceedings to set those goals, which the AG only now identifies. Notably, the AG was an active participant in each of the two dockets that set DCEO's goals (ICC Docket Nos. 07-0540 and 10-0570), but in each instance the AG did not object to DCEO's proposed goals or otherwise propose different goals for the Commission's consideration. To the contrary, in ICC Docket No. 10-0570, the AG entered into a settlement stipulation with ComEd, the Citizens Utility Board, the City of Chicago, the Natural Resources Defense Council, and the Environmental Law & Policy Center, which, *inter alia*, specifically addressed and set *modified* energy savings goals for ComEd <u>and</u> DCEO. *2011-2013 Plan Order* at 18, 20, 35, 40.

Put simply, although ComEd's and DCEO's energy savings goals were subject to the parties' and Commission's scrutiny and already reflect downward adjustments required by the spending cap, nothing prevented the AG from undertaking in either of those cases the sort of

[6] For example, the AG claims that the Commission-approved allocation methodology used to set ComEd's and DCEO's energy savings goals in the first plan years was "less than scientific and not tied to the actual loads of the customer segments DCEO serves," and remarks that ComEd's allocated share of the energy savings goal was "inappropriately reduced" (despite the fact that ComEd met its goal and carried the portion of DCEO's goal that it was unable to meet). AG BOE at 2.

investigation into DCEO's goals that the AG calls for now, and nothing prevents the AG, the Commission or others from investigating DCEO's proposed goals in the upcoming three-year plan filings. Like its banking argument, the AG's present efforts to impugn the Commission's orders approving these goals are impermissible collateral attacks on those orders. *2011-2013 Plan Order* at 18, 20, 35, 40; ComEd Init. Br. at 17; ComEd Rep. Br. at 10-11; *Cbeyond Communications, LLC v. Ill. Bell Tel. Co.*, ICC Docket No. 11-0696 (Order March 27, 2013) at 8-9.

With respect to the AG's reference to modified plan filings in response to DCEO having failed to achieve its energy savings goal, the Proposed Order correctly acknowledges that ComEd's and DCEO's filing in Docket No. 10-0570 already modified and lowered DCEO's goals. PO at 10; *see also* ComEd Init. Br. at 14, 16-18; ComEd Rep. Br. at 11. In brief, ComEd and DCEO proposed modified (*i.e.*, lower) goals for DCEO for Plan Years 4 through 6 in Docket No. 10-0570. ComEd Init. Br. at 16-18; ComEd Rep. Br. at 11-12. Because the evaluation of the first year – Plan Year 4 – is not yet complete, it is not yet known whether the modification was sufficient. ComEd Init. Br. at 17; ComEd Rep. Br. at 11. Although the AG's BOE does not propose a specific modified filing, its exceptions language proposes that ComEd and DCEO review the Plan Year 6 goal and propose a modified goal in an unspecified proceeding. AG BOE at 7. However, this proposal entirely ignores that the Commission *already* lowered DCEO's PY6 goal in Docket No 10-0570, and there is not a scintilla of evidence supporting a further adjustment. Moreover, Plan Year 6 commenced on June 1, 2013 after months of planning and preparation. 220 ILCS 5/8-103(b); *2011-2013 Plan Order* at 2. It is not possible to retroactively modify DCEO's *current* goal at some undetermined *future* time and place.

Finally, as Staff and ComEd note in their Initial Briefs, DCEO's performance and any modified plan resulting therefrom can be considered by the Commission in the new DCEO annual goal evaluation dockets. *2011-2013 Plan Order* at 2. The Commission order approving ComEd's 2011-2013 Plan explicitly included DCEO within the scope of the annual goal evaluation dockets for the first time. *Id*. Pursuant to this framework, the Commission will be reviewing DCEO's performance under these modified goals for Plan Years 4 through 6. *See* Hinman Reb., Staff Ex. 2.0, 2:34-37. ComEd agrees with Staff that these annual goal evaluation dockets are also the appropriate forum for considering whether a modified plan should be filed. Staff Init. Br. at 10-11. As the Proposed Order correctly concludes, there is no basis to prejudge DCEO's PY4 performance here. PO at 10.

In sum, the Proposed Order avoids casting blame and instead wisely observes that energy efficiency in Illinois is still "nascent." *Id*. After taking into account the various filings and Commission orders governing DCEO, the Proposed Order reaches the correct conclusion that DCEO's goals have already been lowered for Plan Years 4 through 6, the results of which are pending evaluation, and therefore no additional Commission action is called for at this time. *Id*.

### B. This Docket Lacks Evidentiary Support to Provide the Guidance Requested by the AG.

Ignoring the Commission's orders and action regarding DCEO, the AG asks the Commission to "direct a more formal and rigorous process to establish the goals allocation based on real analysis and historical performance" rather than "hop[ing] for the best in the next three year planning process." AG BOE at 5. Putting aside the baseless insinuation that virtually no scrutiny is leveled upon DCEO's energy savings goals (which was thoroughly discredited in Section II.A *supra*), this request misunderstands the scope of this proceeding. Indeed, the Initiating Order in this docket nowhere mentions or contemplates a review of DCEO and its performance, and as a result there is no record evidence to support the specific proposals that the AG wishes the Commission to adopt as "guidance" here. *In re Commonwealth Edison Co.*, ICC Docket No. 11-0593 (Order August 23, 2011) ("*Initiating Order*").

For example, although the AG proposes as "[o]ne recommended option" that the energy savings goals for ComEd and DCEO be calculated based on the statutory percent of load savings (AG BOE at 5), the record in this proceeding contains no evidence that this methodology is valid – or even capable of being implemented. Indeed, it is unclear how the load attributable to the DCEO customer segments would be determined. *See* Staff Cross Ex. 1. And, if it could be calculated, it is unclear how this number would correspond to the statutory mandate that DCEO receive 25% of the annual budget. 220 ILCS 5/8-103(e). In other words, if DCEO's annual goal were reduced to 10% of the annual energy savings goal while still receiving 25% of the funds, utilities would unfairly be left to achieve 90% of the goal with only 75% of the funds. Yet, in the face of this uncertainty, the AG goes on to turn this "one recommended option" into a proposed Commission requirement. AG BOE at 8. The AG also proposes other vague factors that are equally unsupported. *Id.*

As explained above and in the Proposed Order, ComEd will file its next three-year plan no later than September 1, 2013 (220 ILCS 5/8-103(f)), and this future proceeding will provide a far superior forum in which to address these issues and provide the type of guidance the AG seeks. Indeed, DCEO's own witness specifically testified that the Commission should not prematurely adopt the AG's proposals here, and instead allow DCEO to develop its next set of energy efficiency goals to be filed on September 1, 2013. Mrozowski Dir., DCEO Ex. 1.0, 10:155-11:183. In that docket, the AG can fully explore DCEO's methodology, propose a different methodology, or call on the Commission to provide direction based on a full record.

## III. The Proposed Order Correctly Rejects Staff's Untimely Request to Conduct a Three-Year Cost-Effectiveness Review of Energy Efficiency Programs.

Although Staff has conceded in both rebuttal testimony and its Initial Brief that "the initiating order did not explicitly require ComEd to provide the three-year cost-effectiveness analysis of its portfolio in this docket" (Staff Init. Br. at 18), Staff takes exception to the Proposed Order's decision to refrain from directing that a separate docket be opened to review the independent evaluator's recently completed analysis.[7] Indeed, with no statute or order requiring that a docket be initiated to consider this analysis (ComEd Init. Br. at 13; ComEd Rep Br. at 8; *Initiating Order* at 2), the Proposed Order correctly concludes that the Commission should first be permitted the opportunity to review the analysis and determine whether a docket is even warranted. PO at 11. As the AG noted, the involvement of numerous stakeholders and Staff in developing and approving three-year plans "provide[s] important protections that the planned programs and portfolio are sufficiently cost-effective to provide net benefits to ratepayers." AG Init. Br. at 24.

And, while Staff contends that the Proposed Order "provides little reasoning" to support its disagreement with Staff, nothing more is needed to support the Proposed Order's simple conclusion to "wait and see" rather than pre-judge the issue and potentially waste resources of Staff, utilities and intervenors. Staff's proposed language should not be adopted.

## IV. The Commission Has Already Determined the CFL Carryover Methodology in Docket No. 12-0528 and Further Consideration of the Issue Is Outside the Scope of This Proceeding.

The Proposed Order correctly declines Staff's invitation to determine Plan Year 5 CFL carryover issues that are not ripe for adjudication in this Plan Year 3 docket or otherwise relevant. PO at 20. Concurring in the positions taken by the AG and ComEd, the Proposed

[7] The analysis was completed during the pendency of this docket, and is not in evidence. Tr. at 41:1-8.

Order observes that the carryover savings that Staff attempts to address here will be claimed and considered in later Plan years that are not the subject of nor implicated by this docket. *Id.;* ComEd Init. Br. at 11-13; ComEd Rep. Br. at 7; AG Init. Br. at 22-23; AG Rep. Br. at 15-16. Moreover, the CFL carryover methodology to be applied in those later Plan years has already been decided by the Commission during the pendency of this docket. *See Commonwealth Edison Co.*, Docket No. 12-0528 (Order January 9, 2013) at 4-5 (approving the CFL carryover methodology as part of the overall Technical Reference Manual ("TRM")). As a result, any issue with regard to the CFL carryover methodology is now moot because it is governed by the Commission-approved TRM.[8] Staff's BOE presents no arguments not already considered and rejected by the Proposed Order, and its exception should once again be rejected.

## V. The Proposed Order Need Not Address the Calculation of Free Ridership.

ComEd generally supports the exception raised by the AG and its proposed modifications to the Proposed Order with regard to the manner in which the Proposed Order addresses Free Ridership. AG BOE at 16-20. Conclusions not supported by the record should be eliminated from the Proposed Order.

[8] With respect to Staff's insinuations regarding conversations between ComEd and the independent evaluator concerning how the CFL carryover methodology will be implemented, ComEd notes that the hearsay on which Staff relies is presumably based on Staff having been a participant in the discussion. Staff BOE at 9. The evaluator is not ComEd's evaluator, as Staff appears to suggest; rather, the Commission ensured in Docket No. 07-0540 that an *independent* evaluator is retained to review whether the utility achieved its energy savings goal. *See* ICC Dkt. No. 07-0540 (Order on Rehearing, March 26, 2008) (recognizing that the evaluator would not be "independent," as required by statute, if ComEd had complete control over the evaluator). To the extent a dispute exists regarding how the TRM is implemented, the Commission will have the final say on the issue.

## CONCLUSION

ComEd respectfully requests that the Proposed Order be revised as set forth in its Brief on Exceptions and the attached Appendix and as provided herein.

Dated: August 7, 2013

Respectfully submitted,

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