

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)
Tariff filing to Present the Illinois Commerce)
Commission with an Opportunity to Consider) 13-0387
Revenue Neutral Tariff Changes Related to Rate)
Design Authorized by Subsection 16-108.5(e))
Of the Public Utilities Act.)

METRA'S INITIAL POST-HEARING BRIEF

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METRA’S INITIAL POST-HEARING BRIEF

The Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority, collectively known as Metra (“Metra”), submit this Initial Post-Hearing Brief in accordance with the ALJ’s June 20, 2013 Scheduling Order. The Brief is structured in accordance with the Common Brief Outline.

I. INTRODUCTION/STATEMENT OF THE CASE

A. Background Information Concerning Metra and the Railroad Class

Metra is a local public entity and unit of local government that provides commuter rail service over 500 track miles that serve approximately 240 stations in the Counties of Cook, DuPage, Lake, Will, McHenry and Kane. Metra is governed by the Commuter Rail Board under the Regional Transportation Authority Act, 70 ILCS 3615. In 2011, Metra provided more than 81 million annual passenger trips. L. Ciavarella Direct Testimony, Metra Ex. 1.0 at 3:36-37.

Part of Metra’s system consists of electric train service. Metra’s electric train service district is powered by electricity delivered by Commonwealth Edison Company (“ComEd”) and commonly known as traction power. J. Bachman Direct Testimony, CTA/Metra Jt. Ex. 1.0 at 5:92-94. The electricity delivered to Metra’s electric train service district is billed by ComEd

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pursuant to the rates established for the Railroad Delivery Service Class ("Railroad Class"). There are only two members of the Railroad Class, Metra and the Chicago Transit Authority ("CTA"). *Id.* Traction power is uniformly delivered to the Railroad Class at 12.5 kV. *Id.* at 5:98-100.

The remainder of Metra's passenger service utilizes diesel locomotives to pull and push the trains. Electricity delivered to Metra facilities other than the electric train service district is billed at ComEd's generally applicable rates governing service at that particular delivery point. *Id.* at 4:86-88.

B. Summary of Metra's Position

Metra's principal concerns and arguments are summarized below.

- The ECOSS employed by ComEd to set rates at the conclusion of this case must eliminate from the costs assigned the Railroad Class the cost of facilities carrying voltages under 12 kV, as ComEd was directed to do in Docket 10-0467.
- The Commission should continue with the 10-step movement toward Railroad Class rates that fully recover the costs to serve the Railroad Class, but the calculation of costs to serve the Railroad Class must be accurate and not inflated like past ComEd calculations.
- ComEd should be directed to work with Metra and the CTA, and if appropriate Staff, to conduct a study to determine whether the cost allocation to the Railroad Class can be further refined to eliminate assignment to the Railroad Class for costs of facilities in counties or geographic areas not used for service to the Railroad Class.
- The current allocation of the cost for combined poles carrying both primary and secondary voltage lines should not be altered.
- If the Commission believes it is appropriate to authorize or direct ComEd to revise ComEd's system to eliminate ComEd's reliance upon the Railroad Class members' facilities to serve other ComEd customers, it should do so but provide in its Order that the revision shall be accomplished without cost to the Railroad Class. Further, as the revisions apparently would not eliminate ComEd's use of the Railroad Class

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members' facilities to serve other customers, and the revisions may not be completed prior to the next rate case, the current compensation to the Railroad Class for use of the Railroad Class' facilities to serve other customers, in the form of a cost credit, should not be altered or adjusted.

C. Metra's Evidence

Metra filed its Petition to Intervene on June 11, 2013, and the petition was granted by the Administrative Law Judges ("ALJ's") on June 20, 2013. Metra filed the Direct Testimony of Lynnette Ciavarella, which was marked as Metra Exhibit 1.0, along with the *2012 Urban Mobility Report and Appendices A and B*, prepared by the Texas Transportation Institute and marked as Metra Exhibit 1.01, and the *2012 Chicago Regional Green Transit Plan*, marked as Metra Exhibit 1.02, all of which were filed on July 29, 2013. The Verification of Lynnette Ciavarella attesting to the truth of her Direct Testimony was filed as Metra Ex. 2.0 on September 23, 2013. Also filed on behalf of Metra was the Direct Testimony of James G. Bachman, CTA/Metra Joint Exhibit 1.0, and accompanying CTA/Metra Joint Exhibits 1.01, 1.02 and 1.03, filed on July 29, 2013, and the Rebuttal Testimony of James G. Bachman, filed as corrected CTA/Metra Joint Exhibit 2.0 on September 12, 2013, along with CTA/Metra Joint Exhibit 2.01. Verifications of James G. Bachman attesting to the truth of his Direct and Rebuttal Testimony were filed as CTA/Metra Joint Exhibits 3.0 and 4.0, respectively, on September 23, 2013. All of the foregoing testimony and exhibits were admitted into evidence on September 24, 2013.

II. COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

C. Potentially Contested Issues

1. Cost Allocation of Primary/Secondary Distribution System

a. Studies and Analysis Performed Regarding Changes to Cost Allocations to Primary Service

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iii. Cost Allocation of Combination Poles

In the prior ComEd general delivery services rate case, which was Docket 10-0467, ComEd allocated the cost of poles carrying both primary voltage and secondary voltage lines fifty percent to primary costs and fifty percent to secondary costs. It did so based on the judgment of its engineers. The 10-0467 Final Order accepted the argument made by Staff, and directed ComEd to use direct observation to allocate the cost of combined poles. Dkt. 10-0467 Final Order at 180 (May 24, 2011).

ComEd did not comply with the Commission's order. Instead, it hired a consultant, Christensen Associates Engineering Consulting, LLC (Christensen), who refused to follow the Commission's directive, and expressly rejected the notion that direct observation would be any benefit to allocation of costs for combined poles. ComEd Ex. 3.07 at 11; Metra Cross Ex. 3 at 11. Instead, Christensen simply substituted its own judgment for that of ComEd's engineers, and concluded that all of the costs for combined poles should be allocated to the primary system costs. *Id.*

Absent evidence as to the relative benefit of shared poles for primary and secondary voltage service, the 50/50 allocation proposed by ComEd engineers is the most logical. If no pole was there, and a pole was required for primary voltage service, a pole to carry primary voltage only would have to be installed and the entire cost would be allocated primary voltage service. Conversely, if there was no pole and a pole was required for secondary voltage service, a pole to carry secondary voltage would have to be installed, and the entire cost of the pole would be allocated to secondary service costs. As ComEd explained in Docket 10-0467, a 50/50 split of the costs for combined poles is appropriate "because a pole with both types of facilities is

equally important to the delivery of the primary voltage and the secondary voltage.” Dkt. 10-0467, L. Alongi Rebuttal Testimony (Corrected) at 34:774-776.

At the hearing, ALJ Hilliard asked questions that suggested a concern that customers taking service at secondary voltage actually would pay more than 50% of the combined pole costs if a 50/50 split were to be adopted because the secondary voltage customers would pay 100% of the cost of the 50% allocation to secondary voltage customers, and they would pay some part of the fifty percent assigned to primary voltage, because those costs are shared by both primary and secondary costs. 9/24/13 Tr. at 272:22 to 273:5. That is perfectly appropriate and consistent with traditional rate-making principles.

Primary voltage customers do not use voltage at secondary levels, and therefore should not pay costs associated with service facilities delivering voltage at secondary levels. Those costs should be paid by secondary voltage customers, who are the only ones who use or benefit from secondary voltage facilities. In contrast, both primary and secondary voltage customers benefit from facilities carrying voltage at primary levels, and those costs are shared. As the Christensen report succinctly explained:

Shared costs within the COS study are associated with distribution equipment used at primary service level. All primary and secondary voltage customers are allocated a portion of shared costs in the COS study. The reason that secondary voltage customers are rightfully allocated a portion of shared costs is that their load first went through the primary voltage service level before being delivered to them at the secondary voltage service level. This handling of shared costs coincides with traditional utility practice.

ComEd Ex. 3.07 at 11; Metra Cross Ex. 3 at 11.

The costs of combined poles should be allocated on a 50/50 split basis as ComEd recommended and did in the last general delivery services rate case.

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II. COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

C. Potentially Contested Issues

1. Cost Allocation of Primary/Secondary Distribution System

* * * * *

b. Studies and Analysis Proposed Regarding Future Changes to Cost Allocations to Primary Service

* * * * *

iii. [OTHERS]

CTA/Metra Witness James Bachman recommended that ComEd be directed to work with the CTA and Metra, and Staff if appropriate, to prepare a study identifying the costs of the ComEd system that are within Cook and Will Counties, and the system costs outside Cook and Will Counties. Cook and Will Counties were selected because those are the geographic limits of the locations in which the two members of the Railroad Class take delivery of traction power billed at Railroad Class rates. CTA/Metra Jt. Ex. 1.0 at 14:332 to 16:366.

At the hearing, the Commercial Group tried to suggest that a Macy's Department Store located in a shopping center ought to be able to make the same argument based on geographic location, and that such geographic segregation would be extraordinary difficult for ComEd to analyze or manage. 9/24/13 Tr. at 269:21 to 271:4.

Macy's is just like the other numerous Metra and CTA locations that are delivered electricity that is not used for traction power, such as at Metra's diesel yards. Metra and the CTA pay for the delivery of non-traction power electricity in accordance with rates for the relevant rate class that is geographically diverse and has numerous other members of the class. Unlike that scenario, the Railroad Class, as the Commission has repeatedly recognized, is a

unique class. It has only two members who take service at a uniform 12.5 kV; there are public interest considerations associated with setting their rates; the facilities required to serve them already have been identified; and they operate in a limited part of ComEd's geographic system.

ComEd witness Bjerning suggested in his testimony that ComEd does not keep its records in a manner that would enable it to track costs in outlying counties, and it would be very difficult to perform the requested study. ComEd Ex. 7.0, B. Bjerning Rebuttal Testimony at 22:361 to 23:371. The testimony about the difficulty of performing a study is a familiar refrain that ComEd witnesses repeat each time ComEd is requested to perform a study to refine its cost causation analysis. *See, e.g.*, Docket 07-0566 Final Order at 160 (Sept. 10, 2008) (ComEd argued that a primary/secondary cost differentiation is neither practical nor necessary and ComEd's books are not kept in a way that would facilitate the requested analysis); Docket 08-0532 Final Order at 5 (Apr. 21, 2010) (study to eliminate 4 kV costs from Railroad Class costs would be very difficult and time consuming to do); Dkt. 10-0467 Final Order at 190 (May 24, 2011) (noting that ComEd argues that elimination of 4 kV analysis requested by Railroad Class would be costly, complicated and fraught with assumptions).

At the hearing, Mr. Bjerning testified that ComEd has an electronic system in place known as the Commonwealth Edison Geographic Information System in which ComEd has mapped its facilities in its entire service territory. 9/24/13 Tr. at 275:23 to 276:13. While Mr. Bjerning had testified that the study requested by Mr. Bachman would be difficult because "ComEd does not directly track costs for ComEd facilities located in Stephenson, Winnebago and Ogle Counties or other counties that do not directly serve Railroad Delivery Class customers," ComEd Ex. 7.0 at 22:362-66, he testified at the hearing that he was not familiar with the ComEd Geographic Information System. 9/24/13 Tr. at 268:23 to 269:7. However, after

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conferring with his colleagues, Mr. Bjerning was able to confirm that ComEd Geographic Information System covers and maps the distribution facilities in ComEd's entire service territory, and the only significant gap is the underground secondary service outside the City of Chicago. *Id.* at 276:2-13.

Thus, it would appear that ComEd does at least have its distribution facilities identified geographically. Metra urges that the Commission direct ComEd to work with Metra and the CTA, and Staff if appropriate, to perform the requested study.

c. Cost Allocation of Facilities that Operate Below 12 kV – Railroad Delivery Class

The Commission has repeatedly emphasized that there are public interest considerations that must be taken into account to avoid adverse impacts on the two members of the Railroad Class, Metra and the CTA, resulting from ComEd rates. The Commission's prior recognition of the public interest benefits flowing from the Railroad Class provision of public transportation of reasonable costs has been based not only on the recognition of the economic, environmental and social benefits flowing from a reasonably priced public transportation system in the third most populous metropolitan area in the United States, but also has recognized the unique historical contractual relationships between the Railroad Class and ComEd, and the fact that power flowing through Railroad Class facilities has served other ComEd customers for more than forty years. While the prior Commission pronouncements were identified in Mr. Bachman's Direct Testimony, CTA/Metra Jt. Ex. at 7:138 to 8:189, at the risk of being redundant, they are repeated below.

Docket 05-0597:

The Commission is very concerned that any changes to the provisions of service providers of mass transit will not unduly

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burden the millions of passengers who depend on public transportation. The Commission also believes that it must consider the public policy implications of establishing delivery service rates that encourage energy conservation and encourage electric usage during off peak periods. While the Commission is not prepared to disregard cost of service, the Commission believes that important public policy considerations cannot be ignored. Order at 189.

In addition, the Commission must consider the potential adverse impact of utility rate increases on entities that provide public transportation. The Commission desires to encourage the efficient use of energy and conservation of scarce resources. The conclusions reached in this portion of the Order are, in the Commission's view, important policy issues and are in the public's best interest. Accordingly, the Commission finds that minimizing the change to existing contractual terms as necessitated by the post-2006 market changes, as well as avoiding rate shock to the railroad customers, is in the public's best interest. Order at 190.

Dkt. No. 05-0597, 2006 Final Order at 189-90 (July 26, 2006).

Docket No. 07-0566:

Our commitment to a policy of encouraging conservation, efficient energy use and the environmental benefits of affordable public transportation has not lessened since the July 26, 2006 Final Order in Docket 05-0597. We find that the modified rate proposal fails to comport with our explicit direction in the last rate case to avoid rate shock to the Railroad Delivery Class. Docket 05-0597, Order at 190. We direct ComEd to take this policy directive into account in preparing for the next rate case. Order at 223.

Dkt. No. 07-0566, Final Order at 223 (Sept. 10, 2008).

Docket No. 09-0263:

With regard to imposing the cost of this pilot program upon the Railroad Delivery Class, (the CTA/Metra) this Commission has previously rejected imposition of those costs in rate cases upon the Railroad Delivery Class. As the CTA and Metra note, the railroads already have systems in place that equate to, or, are indeed superior to, the ones that will be included in the pilot program here. And, this pilot program concerns, primarily, residential customers, with some small businesses also being tested. Imposing the cost of this pilot program upon the CTA and Metra, when they are not the

cost-causers, is unfair. Additionally, imposing more costs upon these two entities runs counter to this Commission's policy of encouraging the use of public transportation for environmental reasons. Therefore, the Railroad Delivery Class shall not be included in any Rider recovery for the cost of the project that is the subject of this docket. Order at 43.

Dkt. No. 09-0263, Final Order at 43 (Oct. 14, 2009).

Docket No. 10-0467:

However, the Commission need not decide this issue with respect to the Railroad Class. ComEd has had, for many decades, a unique relationship with the CTA and Metra. Proof of this unique relationship can be found in the fact that ComEd has contracts with these two entities. These contracts define the relationship between ComEd and these two entities. This is true because, necessarily, there is no point in entering into a contract if a tariff governs all of the terms and conditions between the parties. Also, ComEd uses railroad-owned facilities to supply electricity to other customers. In fact, as is set forth elsewhere herein, in some instances, ComEd is dependent upon the railroads' facilities in order to supply electricity to other, non-railroad customers. The Railroad Class is truly a unique class, which has been segregated for decades. It should be segregated here.

The Commission also notes that, while ComEd maintains that it would be difficult and costly to segregate-out the 4 kV costs from the Railroad Class, this class has but two customers. And, the load-flow study, presented herein, should guide it. The Commission therefore directs ComEd to work with Metra and the CTA, and Staff if appropriate, to study, define, and delete from the costs assigned to the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class. Pursuant to that effort, ComEd shall develop a new embedded cost of service study for the next rate case that excluded the costs that are associated with facilities below 12 kV from the Railroad Class. This study shall be part of ComEd's initial rate case filing. Failure to comply with any portion of this directive could subject ComEd to the penalties provided in the Public Utilities Act for failure to comply with a Commission Order.

Dkt. No. 10-0467 Final Order at 191 (May 24, 2011).

In this docket, Metra's Senior Division Director of Metra's Division of Strategic Capital Planning testified that in 2012 Metra provided more than 81 million passenger trips. Metra Ex. 1.0 at 3:36-37. Ms. Ciavarella testified that Metra had performed a historical study using 2006 data reflecting that if Metra's intercity passenger rail services were not available, the Chicago metropolitan area would require 29.3 additional lanes of expressway. *Id.* at 3:42-49.

Ms. Ciavarella was asked about Metra's contribution to reduction of traffic congestion in the Chicago metropolitan area. She testified:

Each weekday Metra provides over 300,000 passenger trips with 80% of those trips occurring during the peak travel hours. The commuters who ride Metra to and from work during peak hours obviously are not in cars and, therefore, help reduce congestion on the region's highways, roads and streets.

Id. at 4:86-89.

Ms. Ciavarella was asked about the authoritative *2012 Urban Mobility Report* prepared by the Texas Transportation Institute. The *2012 Urban Mobility Report* was introduced into evidence as Metra Ex. 1.01. Ms. Ciavarella summarized some of the relevant analyses and conclusions in the *2012 Urban Mobility Report* as follows:

On average, every Chicago area motorists in Chicago lost 51 hours as a result of traffic congestion in 2011.

Overall, Chicago area motorists in Chicago lost a combined 271.7 million hours and 127 million gallons of fuel due to traffic congestion in 2011, at a combined cost of \$6.21 billion. The Report indicated that only travelers in Los Angeles and New York City lost more resources to traffic congestion.

* * * * *

The *Urban Mobility Report* combined the contribution of Metra and the other two operating divisions of the Regional Transportation Authority, CTA and Suburban Bus Division (Pace). The Report concluded that Metra, the CTA and Pace helped

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Chicago area travelers avoid losing an additional 67.4 million hours and \$1.5 billion to traffic delays in 2011. Only New York City's public transportation system saved travelers more time and money.

Id. at 4:78 to 5:83 and 93-98 (citations omitted).

Ms. Ciavarella also testified concerning the *2012 Chicago Regional Green Transit Plan*. That Plan was the product of a working group comprised of Metra, the CTA, the Regional Transportation Authority, the Illinois Department of Transportation, the Chicago Metropolitan Agency for Planning, and the Chicago Department of Transportation. *Id.* at 5:100 to 6:106. The *2012 Chicago Regional Green Transit Plan* was attached to Ms. Ciavarella's Direct Testimony as Metra Ex. 1.02, and was admitted into evidence. Ms. Ciavarella briefly summarized one of the most significant findings of the *2012 Chicago Regional Green Transit Plan*:

The plan reported that the Chicago region's transit system saves more than 6.7 million metric tons of carbon emissions each year, which is the equivalent to taking one million cars off the road each year based on 2008 data. Without transit, the region's drivers would have consumed 750 more gallons of gasoline and driven 32 million more miles each year.

Id. at 6:121-24.

All of Ms. Ciavarella's testimony was admitted into evidence, as were the *2012 Urban Mobility Report* and the *2012 Chicago Regional Green Transit Plan*. All of that evidence is uncontroverted and is not challenged by any other witness in this proceeding.

There is no question that multiple recent Commission decisions in prior cases have recognized the public interest considerations that must be taken into account in setting ComEd's delivery service rates for the Railroad Class. There also can be no question that the unrebutted evidence introduced by Metra (and the CTA) in this case justifies continuation of that policy.

ComEd's struthious approach to the public interest considerations associated with the setting of the Railroad Class' delivery service rates is best exemplified by the testimony of ComEd's highest ranking and policy witness, Christine Brinkman.

Q. And what instructions did you give your staff, if any, regarding the public interest considerations repeatedly recognized by the Commission in proposing the various alternate rate schemes that you have in this case?

A. I didn't give any specific direction on that.

* * * * *

You didn't give any specific directions with respect to the public interest considerations concerning setting Railroad Class rates, but you were aware of those provisions in the prior orders; is that your testimony?

A. Yes.

9/24/13 Tr. at 87:6-18, 89:22 to 88:2.

The Railroad Class litigated in the ComEd rate design investigation that was ICC Docket 08-0832 the issue of whether the cost of facilities carrying voltages under 12 kV should be deleted from the costs assigned to the Railroad Class for rate-making purposes. Dkt. No. 08-0532 Final Order at 33-34 (Apr. 21, 2010). That resulted in a directive in the Commission's Final Order to ComEd to conduct an analysis for the next rate case of which customer groups are served by which system components, and to consider redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service. *Id.* at 40.

In the next ComEd general delivery services rate case, which was Docket 10-0467, the Railroad Class once again argued that it does not use facilities and lines delivering voltage of less than 12 kV, and therefore the cost of such facilities should not be utilized in determining the Railroad Class' rates. *See* May 24, 2011 Final Order at 185-188. ComEd vigorously opposed

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any effort to segment its system for cost causation purposes. *Id.* at 190. The Commission rejected ComEd's arguments, and included the following directive in its Final Order:

The Commission therefore directs ComEd to work with Metra and the CTA, and Staff if appropriate, to study, define and delete from the costs assigned to the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class.

Id. at 191. The full text of the Commission's order on this issue makes it abundantly clear that the Commission considered and rejected contrary arguments, and directed that ComEd's cost of service study for the next rate case should exclude the costs that are associated with facilities below 12 kV from the costs assigned the Railroad Class:

Based on the evidence provided, it is clear that the Railroad Class does not, and probably will never, take service at 4 kV.

The question then becomes whether this fact justifies requiring ComEd to exclude 4 kV costs in a future cost of service study. ComEd argues, essentially, that its customers, in general, must pay a percentage of the whole of its costs, as they have usage of the system as a whole. This contention is not without merit, as, at some point, exclusion of certain asset costs for a particular group of customers could result in a distortion of the price that all customers must pay to benefit from the use of a utility.

However, the Commission need not decide this issue with respect to the Railroad Class. ComEd has had, for many decades, a unique relationship with the CTA and Metra. Proof of this unique relationship can be found in the fact that ComEd has contracts with these two entities. These contracts define the relationship between ComEd and these two entities. This is true because, necessarily, there is no point in entering into a contract if a tariff governs all of the terms and conditions between the parties. Also, ComEd uses railroad-owned facilities to supply electricity to other customers. In fact, as is set forth elsewhere herein, in some instances, ComEd is dependent upon the railroads' facilities in order to supply electricity to other, non-railroad customers. The Railroad Class is truly a unique class, which has been segregated for decades. It should be segregated here.

The Commission also notes that, while ComEd maintains that it would be difficult and costly to segregate-out the 4 kV costs from the Railroad Class, this class has but two customers. And, the load-flow study, presented herein, should guide it. The commission therefore directs ComEd to work with Metra and the CTA, and Staff if appropriate, to study, define, and delete from the costs assigned to the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class. Pursuant to that effort, ComEd shall develop a new embedded cost of service study for the next rate case that excludes the costs that are associated with facilities below 12 kV from the Railroad Class. This study shall be part of ComEd's initial rate case filing. Failure to comply with any portion of this directive could subject ComEd to the penalties provided in the Public Utilities Act for failure to comply with a Commission Order.¹

For inexplicable reasons, ComEd ignored the Commission's directive and filed a base RDI embedded cost of service study (ECOSS) that did not exclude from the Railroad Class costs associated with facilities under 12 kV. The RDI ECOSS then served as the base ECOSS which was revised in various "illustrative" ECOSS's, only two of which, ComEd Exs. 3.10 and 3.12, excluded under 12 kV costs in accordance with the Commission's 10-0467 order. ComEd's policy witness and highest ranking witness who testified at the hearing certainly had no good explanation for ComEd's failure to follow the Commission's 10-0467 Final Order:

Q. Now, if ComEd was ordered on penalty of sanction to, quote, study, define, and delete from the costs assigned to the Railroad Class the costs that are associated with 4 kV facilities that are not used to serve the Railroad Class, unquote, can you tell me why those costs were not deleted from the RDI ECOSS's that were used for the basis for the preparation of all of the illustrative ECOSS's that ComEd prepared to file in this case?

¹ ComEd continued to oppose eliminating under 12 kV facilities' costs from the Railroad Class throughout the briefing of exceptions to the proposed order in Docket 10-0467. While ComEd focused its rhetoric in its exceptions briefs on REACT, its proposed exceptions to the Final Order would have gutted the language quoted above concerning the Railroad Class. See ComEd Exception 40 in Exceptions of Commonwealth Edison Company, Dkt. 10-0467 (filed May 24, 2011).

A. Because, again, the RDI ECOSS's were prepared consistent with the 2010 case. We did provide an illustrative RDI—I'm sorry, an illustrative ECOSS that put this directive in.

9/24/13 Tr. at 91:23 to 92:11.

The only witness who testified in this proceeding that the cost of under 12 kV facilities should still be assigned the Railroad Class was Staff Witness William Johnson. However, the argument asserted by Mr. Johnson was the same system segmentation argument that the Commission specifically rejected in the Docket 10-0467 Final Order. *Cf.* Dkt. 10-0467 Final Order at 190-91 (May 24, 2011) with ICC Ex. 4.0, Rebuttal Testimony of W. Johnson at 16:383 to 18:431. Further, Mr. Johnson's testimony was based on selective quotation from the Commission 10-0467 Final Order in which he quoted the instructions to ComEd to prepare and file an ECOSS eliminating the under 12 kV facilities from the Railroad Class' costs, but he did not quote the Commission directive that ComEd should "delete from the costs assigned the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class." When asked why, Mr. Johnson could not provide a coherent justification:

Well, I don't know that I have a reason. I mean, I wanted to point out that they were supposed to do something for a Cost of Service Study.

* * * * *

Yeah, I don't know that I can answer your question of why I didn't put it in there. I just thought it—I thought it read to what I put in there.

9/24/13 Tr. at 182:20-22 and 183:10-12.

When Mr. Johnson's attention was directed to the other studies ComEd was directed to perform in the Final Order in Docket 10-0467, he was forced to admit that unlike the language in the order concerning the Railroad Class, the language concerning other studies: (1) did not direct

ComEd what conclusion to reach or which costs to delete; and (2) did not threaten ComEd with sanctions if it failed to do what it was directed by the Commission to do. *Id.* at 183:13 to 185:18.

The Commission's language in the 10-0467 Final Order was simple and direct. It did not tell ComEd to please prepare a study for consideration in the next rate case. It told ComEd, in effect: (1) we reject your argument that it is not appropriate to segment the system and eliminate from costs assigned the Railroad Class the costs of under 12 kV facilities; (2) you shall study, define and delete those under 12 kV facilities costs from the costs assigned the Railroad Class; (3) you shall file an embedded cost of service study carrying out our directive as part of your initial filing in the next rate case; (4) and ComEd, if you do not comply with any part of our directive, you could subject yourself to sanctions. The only witness who testified that the Commission's directives should not be carried out is ICC Staff Witness Johnson. Mr. Johnson's testimony is not credible and should be given no weight because: (1) it is inconsistent with the express language of the Commission's 10-0467 Final Order; (2) it is based on selective quotation from that Order, and fails to address other language that is fatal to Mr. Johnson's interpretations; and (3) it is predicated on a system segmentation argument that the Commission already has rejected with respect to the Railroad Class.

Any Final Order entered in this proceeding must require ComEd to comply with the Commission's prior order in Docket 10-0467, and establish rates for the Railroad Class which are not based on assignment of costs to the Railroad Class of under 12 kV facilities not used to supply traction power to the Railroad Class.

II. COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

C. Potentially Contested Issues

3. Other Cost Allocation Issues

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a. Railroad Cost Allocation Adjustment (related to ComEd's Use of Railroad Customer Facilities)

Because this issue is integral to and intertwined with the report on utilization of Railroad Class facilities to serve other customers, it is addressed below in Section VI.C. of this brief, which is captioned Railroad Customers-Utilization of Railroad Customers' Facilities Report. Metra's basic position on this issue is that there has been no change in circumstances to justify a modification or alteration to the cost credit established in Dkt. 10-0467.

IV. RATE DESIGN

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C. Potentially Contested Issues

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2. Non-Residential

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b. Movement Toward ECOSS-Based Rates

In Docket 10-0467, the Commission, in recognition of the public interest considerations associated with setting rates for the Railroad Class, ordered that ComEd should adopt a 10-step movement toward setting the Railroad Class' rates at a level designed to ensure full cost recovery, with Railroad Class rates in each of the next nine successive rate cases designed to move the Railroad Class rates to full cost recovery in the tenth rate case. Dkt. 10-0467 Final Order at 259-60 (May 24, 2011). That same philosophy should be followed in this case. But given past history, the Commission should be reluctant to accept at face value ComEd's calculation of the Railroad Class full cost-based rates.

The hearing testimony of ComEd rate witness Lawrence Alongi in Docket 10-0467 demonstrates that ComEd has consistently tried to assign to the Railroad Class inflated costs. A copy of the relevant part of Mr. Alongi’s testimony in Docket 10-0467 is attached as Exhibit 1. What it shows is that the costs ComEd has assigned to the Railroad Class have been inflated and have dramatically decreased with continued refinements in ComEd’s cost causation analysis.

Docket Number	ComEd’s Initial Calculated Cost to Serve the Railroad Class
05-0597	\$8,521,989
07-0566	\$8,586,072
10-0467	\$5,999,805 to \$6,351,783
13-0387	\$5,688,000 (RDE ECOSS, ComEd Ex. 3.01)

And, of course, the \$5.6 million cost to serve the Railroad Class in ComEd’s base RDI ECOSS is significantly inflated because ComEd did not delete from the costs assigned the Railroad Class the costs of under 12 kV facilities, as directed by the Commission in Docket 10-0467. The point of this exercise is a simple one: neither the ALJ’s nor the Commission should succumb to the rhetoric of ComEd, the Commercial Group or the occasional Staff witness, who casually and carelessly toss around the word “subsidy” to describe the failure of the rates assigned the Railroad Class to pay for ComEd’s inflated and inaccurate cost assignments to the Railroad Class.

The only witness who offered any substantive testimony urging the Commission in effect to abandon the 10-step process was Walmart employee Steve Chriss, who testified on behalf of the Commercial Group. Mr. Chriss urged the Commission to move the Railroad Class

immediately to rates designed to fully recover costs on the theory that, in light of the 2011 amendments to the Public Utilities Act, it could be longer between rate cases. Alternatively, Mr. Chriss urged the Commission to adopt a three step process to move the Railroad Class to full costs. Commercial Group Ex. 1.0. S. Chriss Rebuttal Testimony at 6:128 to 6:145.

As Mr. Chriss was forced to acknowledge at the hearing, prior to the change in the law authorizing ComEd to utilize formula rates to recover statutorily defined revenue requirements, ComEd recently has filed a general delivery service rate case every three years, but ComEd had complete discretion as to whether and when to file a rate case and could wait ten or more years between cases. 9/25/13 Tr. at 318:14 to 319:18 and 320:19-23. Mr. Chriss further admitted that under the new statutory scheme, ComEd must file a rate design case at least every three years, but may in its discretion file rate design cases more frequently than every three years. *Id.* at 320:24 to 321:5. Thus, Mr. Chriss speculative theory to support jettisoning the 10-step process, which was that it may take longer between ComEd rate cases under the new regulatory scheme, has no basis in fact.

Mr. Chriss also offers absolutely no justification for the Commission to adopt a three step movement toward costs instead of the 10-step process ordered in Docket 10-0467. The 10-step process ordered in Docket 10-0467 should remain in place, but the movement should not be calculated based on an inflated and inaccurate cost to serve the Railroad Class.

VI. OTHER

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A. Railroad Customers-Utilization of Railroad Customers' Facilities Report

As a result of the Commission's Final Orders in Dockets 10-0467 and 11-0721, ComEd filed the TS study as ComEd Exhibit 4.03 to analyze and address ComEd's reliance on and use

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of the Railroad Class' traction substations to serve other ComEd customers. With respect to any proposed changes in the ComEd facilities serving the Railroad Class, Metra's first preference is that the Commission's Final Order follow the recommendations in Mr. Bachman's Direct Testimony. The unrebutted evidence is that ComEd's current design and system have not resulted in any service disruption or problems for the Railroad Class or other customers who take service through the Railroad Class' facilities. 9/25/13 Tr. at 384:17-23. Mr. Bachman's suggestion is that in light of the fact that the Railroad Class traction substations have been served the same way by ComEd for the last several decades with no apparent problems for service to either the Railroad Class or other customers who are served through the Railroad Class substations, the most sensible approach, over time, is to convert the Railroad Class traction substations when operationally and economically feasible to operate with one of the railroad circuit breakers normally open as the Railroad Class substations are modified or upgraded. CTA/Metra Jt. Ex. 1.0 at 14:320-29.

If on the other hand the Commission believes it is essential to immediately try and eliminate ComEd's reliance upon Railroad Class traction substations to serve other customers, Metra has no objection if ComEd were ordered to implement the lesser cost Approach 2 options, discussed in Mr. Born's Rebuttal Testimony, ComEd Ex. 8.0, and Mr. Rockrohr's Direct Testimony, ICC Staff Ex. 3.0, subject to the provisions specified in Mr. Bachman's Rebuttal Testimony, CTA/Metra Jt. Ex 2.0 at 5:75 to 87. As Mr. Bachman explained in his Rebuttal Testimony:

While the Railroad Class prefers that any change in the configuration of the traction power substation service from ComEd be done as the substations are modified or improved, based upon economics, if the Commission finds an overwhelming benefit from Approach 2 as outlined in the Study, then Approach 2 could be

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implemented. However, because this is a change from more than forty years of reliable operations, the Railroad Class would prefer that the changeover occur only after it is proven that it will not adversely affect service to the traction power substations. This is critical because if power is lost to the traction power substations, then it adversely affects mass transit. For example, if the failure were to occur on the CTA, it could result in rapid transit cars being stopped underground or on overhead elevated tracks. In addition if Approach 2 is implemented as noted by Mr. Born, the cost of implementing Approach 2 should explicitly be considered a ComEd electric system cost and in no way considered a cost specifically related to the Railroad Class, either in regard to future ECOSS or an implementation of Rider NS. In other words, the Railroad Class should not pay for the changes made under Approach 2 by ComEd, because, from the Railroad Class perspective, the ComEd system costs were not requested and are not necessary for the delivery service to the Railroad Class.

Id.

In the last general delivery services rate case, the Commission ordered an annual cost credit to the Railroad Class based upon the calculated costs of facilities that would have to be constructed to eliminate ComEd's use of Railroad Class traction power facilities to serve other customers. Dkt. No. 10-0467, Final Order at 274-75 (May 24, 2011). The amount of the annual cost credit ordered by the Commission is \$678,104. *Id.* at 275.

While the Commission's prior order suggested that the amount of the credit might be adjusted as the tractions substations were modified or redesigned, no party to this proceeding currently is recommending any change in the cost credit. Nor is one warranted. There has been no substantive change in substation or system configuration since the last general delivery services rate case order. Further, there is no timetable established if ComEd was ordered to implement Approach 2, it might not be completed prior to the next rate case, and under Approach 2, ComEd will still be using the Railroad Class' traction power substations to serve

other customers. CTA/Metra Jt. Ex. 2.0 at 6:102-10. There is no reason to modify or eliminate the current annual cost credit to the Railroad Class.

VII. CONCLUSION

For the reasons set forth above, Metra requests that the Commission enter a Final Order in conformity with Metra's positions detailed in this brief.

Respectfully submitted,

/s/ Edward R. Gower

One of the Attorneys for Northeast Illinois
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