

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

COMMONWEALTH EDISON COMPANY	:	
	:	
Annual formula rate update and revenue	:	No. 13-0318
requirement reconciliation under	:	
Section 16-108.5 of the Public Utilities Act.	:	

**INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY**

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**INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY**

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

**I. INTRODUCTION / STATEMENT OF THE CASE**

This is the third ComEd annual rate filing under the Energy Infrastructure Modernization Act (“EIMA”). While certain legal issues remain on appeal from prior rate orders, the scope of the parties’ disputes is narrowing and a number of potential issues have been resolved by consensus or to simplify the issues. Nonetheless, important issues remain, including efforts to: 1) improperly modify the established rate formula; 2) deny recovery of costs of providing delivery services, the prudence and reasonableness of which have not been contested; and 3) set charges using inflated billing determinants. Among the most critical are:

- ***Intervenors and Staff propose disallowances that violate the approved rate formula.*** Their efforts are meritless, contrary to the mandates of PA 98-0015, and contrary to the Commission’s approval in Docket No. 13-0386 of ComEd’s rate formula.<sup>1</sup> They are also improper in a formula rate update (FRU) case like this, where the Commission has no “authority ... to consider or order any changes to the structure or protocols of the performance-based formula rate ....” 220 ILCS 5/16-108.5(d). The same aspects of the formula are also already at issue in a recently-opened investigation, ICC Docket No. 13-0553. That proceeding is where these arguments should be addressed.

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<sup>1</sup> “EIMA” refers to the Energy Infrastructure Modernization Act, Public Act (“PA”) 97-0616, as amended by PA 97-0646 and PA 98-0015, and the changes and additions it made to the Illinois Public Utilities Act (“PUA”). Public Act (“PA”) 98-0015, previously known as Senate Bill (“SB”) 9, became law on May 22, 2013.

- ***The AG and Staff wrongly argue that statutorily-specified “historical weather normalized billing determinants” should be replaced with projected data.*** The premise of this argument – that ComEd recovers greater revenues due to future plant additions – is untrue, and the ratemaking preference for “matching” costs and billing determinants strongly supports the use of historical data. Assuming that the Commission has the authority to replace the historical billing determinants required by EIMA (an issue on appeal), the record in this case would still need to support that action. The factual record here, however, shows that using projected data would be unjust, and would deny ComEd the opportunity to recover the revenue requirement the Commission approves.
- ***Staff seeks to disallow reasonable actual rate case expenses*** that ComEd prudently decided to incur. Such expenses, whether they are costs of ICC hearings or appeals, are legitimate and recoverable operating expenses and have been consistently allowed for decades. Rate case expense cannot be disallowed based on hindsight second-guessing of ComEd’s litigation strategy, through arbitrary limits on hours worked, or because the work related to appeals. Nor can reasonable and prudent charges be rejected based on lay opinions of their “necessity.” To narrow the issues, ComEd has voluntarily accepted numerous exclusions, but the record supports going no further. Efforts to further cut ComEd’s recovery of this operating expense should be rejected.
- ***Intervenors and Staff wrongly characterize non-contingent benefits as incentive compensation.*** Benefits such as employee stock purchases do not change with employee performance and are not “incentive” compensation, whether paid in cash or stock. Intervenors and Staff also mischaracterize as 100% non-recoverable the metrics upon which actual long-term incentive compensation is awarded.
- ***The AG attempts to revive a previously-rejected disallowance for phantom vacation pay related tax effects.*** There has been no change in the facts. The record shows that vacation pay is correctly accounted for. As ComEd and Staff experts agree, there is no basis for this disallowance.

EIMA ratemaking allows utilities to recover their prudent and reasonable costs, to ensure that a “participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and the [EIMA ratemaking and reconciliation] process ....” That assurance is not just an obligation owed to utilities; it is also for the good of customers and the State who will reap lasting benefits from the investment EIMA is intended to fund. In this third cost-update cycle, ComEd urges the Commission to look beyond continued short-sighted efforts

to impair cost recovery and to exclude from rates certain costs, the prudence and reasonableness of which are unchallenged. The costs included in ComEd's proposed revenue requirements are prudent, reasonable, and recoverable. The Commission should approve those revenue requirements along with historical weather-normalized billing determinants.

## **II. OVERALL REVENUE REQUIREMENT**

This formula rate update ("FRU") proceeding sets ComEd's distribution rates applicable during 2014. Those rates are set in order to recover the balance of ComEd's fully reconciled actual costs for rate year 2012 as well as the initial projection of ComEd's 2014 costs. The 2014 Rate Year Net Revenue Requirement used to set those rates derives from three figures:

1. The 2012 Reconciliation Adjustment – the difference between ComEd's rates in effect in 2012<sup>2</sup> and the 2012 Reconciliation Revenue Requirement determined based on ComEd's actual 2012 costs as reported in its Federal Energy Regulatory Commission ("FERC") Form 1 for 2012, corrected for the lost time value of money;
2. The 2014 Initial Rate Year Revenue Requirement – a projection of 2014 costs based on ComEd's actual 2012 operating cost and rate base plus projected 2013 plant additions and the associated adjustments to accumulated depreciation (the associated change in the depreciation reserve), depreciation expense, and, per the Commission's prior Orders, accumulated deferred income taxes ("ADIT"); and
3. The "ROE Collar" adjustment relating to 2012.

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<sup>2</sup> Because EIMA became effective in 2012, those rates are a blend. *See Commonwealth Edison Co.*, ICC Docket No. 10-0467 (Order, May 24, 2011); *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order, May 29, 2012, and Rehearing Order, October 3, 2012).

*E.g.*, Hemphill Dir., ComEd Ex. 1.0 REV., 4:75 – 8:143. ComEd presented substantial evidence supporting this revenue requirement through the testimony of ten witnesses and the attachments, schedules, and exhibits they sponsored.

**A. 2014 Initial Rate Year Revenue Requirement**

ComEd's properly calculated 2014 Initial Rate Year Revenue Requirement, reflecting the adjustments made in rebuttal testimony (there were no further adjustments in its surrebuttal), is \$2,189,267,000. *E.g.*, Fruehe Reb., ComEd Ex. 14.0, 1:21-22, 6:116-120; ComEd Ex. 14.01, Sch A-1, line 23; Fruehe Sur., ComEd Ex. 18.0 CORR., 2:40-43.

**B. 2012 Reconciliation Adjustment**

ComEd's properly calculated 2012 Reconciliation Adjustment, reflecting the difference between the rates in effect in 2012 and the actual 2012 Reconciliation Revenue Requirement, is \$179,433,000. *E.g.*, ComEd Ex. 14.01, Sch A-1, line 24.

**C. ROE Collar**

ComEd's properly calculated ROE Collar adjustment is (\$6,885,000). *E.g.*, ComEd Ex. 14.01, Sch A-1, line 35.

**D. 2014 Rate Year Net Revenue Requirement**

Accordingly, ComEd's properly calculated 2014 Net Rate Year Revenue Requirement, reflecting the adjustments made in rebuttal testimony (there were no further adjustments in its surrebuttal), is \$2,361,814,000. *E.g.*, Fruehe Reb., ComEd Ex. 14.0, 1:22-23, 6:122-127; ComEd Ex. 14.01, Sch A-1, line 36; Fruehe Sur., ComEd Ex. 18.0 CORR., 3:45-48.

### **III. SCOPE OF THIS PROCEEDING**

#### **A. Changes to the Structure or Protocols of the Performance-Based Formula Rate**

ComEd initiated this proceeding pursuant to Section 16-108.5(d) of the PUA. That provision of EIMA defines this proceeding and limits its scope. Its statutory purpose is to “evaluate the prudence and reasonableness of the costs incurred by [ComEd] to be recovered during the applicable [2014] rate year that are reflected in the inputs to the performance-based formula rate derived from the utility’s FERC Form 1.” 220 ILCS 5/16-108.5(d). The record contains that data (Hemphill Dir., ComEd Ex. 1.0 REV., 10:188 – 11:204), and the evidence well supports the reasonableness and prudence of ComEd’s costs, as discussed in Sections IV and V, below.

In contrast to the annually updated data, the formula itself is not annually revised or updated. Rather, ComEd’s approved rate formula<sup>3</sup> governs the calculation of ComEd’s 2014 Initial and 2012 Reconciliation Revenue Requirements, and any adjustment attributable to the ROE Collar. Hemphill Dir., ComEd Ex. 1.0 REV., 4:76 – 5:79. Thus, in contrast to germane questions about the data, “the specifics of [the rate] calculation and the identification of the specific inputs used to conduct it are found in the formula rate itself and are not a subject of this proceeding.” Brinkman Dir., ComEd Ex. 2.0 REV, 4:80-82.

ComEd’s rate formula is not merely a general outline or description of calculations, but itself “specif[ies] the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with

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<sup>3</sup> The Commission approved ComEd’s rate formula on June 5, 2013, under Section 16-108.5(k)(1), 220 ILCS 5/16-108.5(k)(1). In *Commonwealth Edison Co.*, ICC Docket No. 13-0386, it held that ComEd’s formula “rate sheets, and the revenue requirement calculations filed with and supporting them, are consistent with the provisions of Public Act 98-15 ....” The Commission ordered into effect ComEd’s Filed Rate Schedule Sheets and approved the resulting revenue requirement modifications. Order, Docket 13-0386, at 3, 4.

transparent information that reflects the utility’s actual costs to be recovered during the applicable rate year ...” 220 ILCS 16-108.5(c). The approved rate formula defines – mathematically and in narrative detail – how the revenue requirements and the ROE Collar adjustment (if any) are calculated and what input data goes into those calculations. Brinkman Dir., ComEd Ex. 2.0 REV., 5:93-106.<sup>4</sup>

Contrary to EIMA, witnesses for the AG, CCI (CUB, Chicago, and the IIEC, jointly), and Staff propose “adjustments that are counter to the established formula.” Hemphill Sur., ComEd Ex. 16.0, 2:38-41. These proposals are inconsistent with the rate formula and would calculate revenue requirement components in different ways and/or using different data than the formula spells out. Hemphill Reb., ComEd Ex. 12.0 CORR., 5:90 – 6:113; Hemphill Sur., ComEd Ex. 16.0, 2:36-42. For example:

- AG witness Mr. Effron argued for “using an average rate base, which he misleadingly refers to as the ‘actual’ rate base, in the ROE collar calculation.” Brinkman Sur., ComEd Ex. 17.0, 4:80-84. The formula uses FERC Form 1 year end data.
- Witnesses for the AG and CCI argued that “ADIT related to the reconciliation balance [should] be netted against the reconciliation balance before calculating the interest expense,” an adjustment the Commission has previously rejected. *Id.* at 9:194-99, 10:205-07. The formula applies interest to the correct balance.
- Witnesses for AG, CCI, and Staff argued that the rate of interest applicable to the reconciliation balance should be “WACC without consideration of the associated income tax costs, which the approved rate formula expressly recognizes.” *Id.* at 6:117-23. The formula correctly reflects taxes and recovers interest at WACC.
- Staff witness Kahle argued for “two separate cash working capital calculations [that are] unnecessary considering the complexity of the calculation, the impact to the approved formula structure, and the immateriality of the adjustment.” Staff witness

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<sup>4</sup> The formula calculates ComEd’s 2014 Initial Rate Year Revenue Requirement using 2012 actual data and certain 2013 estimates, and uses the “same formula to calculate ComEd’s 2012 Reconciliation Revenue Requirement from the actual 2012 costs that are now available.” Hemphill Dir., ComEd Ex. 1.0 REV., 9:153-56. The ROE Collar is also calculated based on actual 2012 data. 220 ILCS 5/16-108.5(d); *see also* Hemphill Dir., ComEd Ex. 1.0 REV., 5:86-6:115.

Kahle's suggestions are also contrary to Staff's prior recommendation and the rate formula. *Id.* at 14:285-91, 293-96.

Indeed, the witnesses supporting these proposals either admit or acknowledge that their approach conflicts with the current approved formula. Hemphill Sur., ComEd Ex. 16.0, 3:45-54.

These proposals all lack merit as ComEd, in the alternative, points out later in this Brief.<sup>5</sup> But, regardless of that fact, because these four "proposals are inconsistent with the established rate formula, they must be rejected in this case." Hemphill Reb., ComEd Ex. 12.0 CORR., 6:118-19. While adopting any of these proposals would necessarily change the formula, EIMA expressly bars changes to the rate formula in FRU proceedings and gives the Commission no "authority ... to consider or order any changes to the structure or protocols of the performance-based formula rate" in annual update cases. 220 ILCS 5/16-108.5(d). Staff has also recognized that "changes to the formula rate structure or protocols cannot be considered in an annual update filing/reconciliation proceeding." Hemphill Reb., ComEd Ex. 12.0 CORR., 5:88-90 & fn. 5, *quoting* testimony of Staff witness Jones in ComEd's last FRU case, ICC Docket No. 12-0321.<sup>6</sup>

EIMA rather requires changes to the "performance-based formula rate structure or protocols" to be made in a utility rate filing or by the Commission after an investigation "as set forth in Section 9-201 of this Act." 220 ILCS 5/16-108.5(c). The Commission's recently opened and expedited investigation proceeding, *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, ICC Docket No, 13-0553, is just such a proceeding. The Initiating Order in that

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<sup>5</sup> See Hemphill Reb., ComEd Ex. 12.0 CORR., 6:120-21, and alternative arguments made in Sections IV.C.2, VII.B, and VIII.B of this Brief.

<sup>6</sup> In an Ameren Illinois proceeding, a Staff witness has claimed that the rate formula only included those portions filed *as tariffs*. See *Ameren Illinois Co.*, ICC Docket Nos. 13-0301, 13-0501, 13-0517 (cons.), Ebrey Dir., Staff Ex. 8.0, at 2:29 – 6:119. Staff has not made that argument concerning ComEd's rate formula, but should it be raised for the first time in briefs, ComEd reserves the right to reply. Among other things, that argument – at least if it were to be applied to ComEd – is inconsistent with how ComEd's rate formula functions, with the Orders in Docket Nos. 13-0386 and 11-0721, with past Staff testimony, and with EIMA itself.

proceeding also specifically includes the three issues improperly raised here that have any actual financial significance (the fourth, regarding cash working capital, is financially immaterial, regardless of the outcome). For that reason as well, the Commission should decline to consider formula rate changes in this FRU.

**B. The Definition of Rate Year and the Reconciliation Cycle**

EIMA establishes an annual process by which ComEd's rate year costs and revenue requirements are first estimated, and then finally fixed and reconciled when actual costs are known. The objective is to:

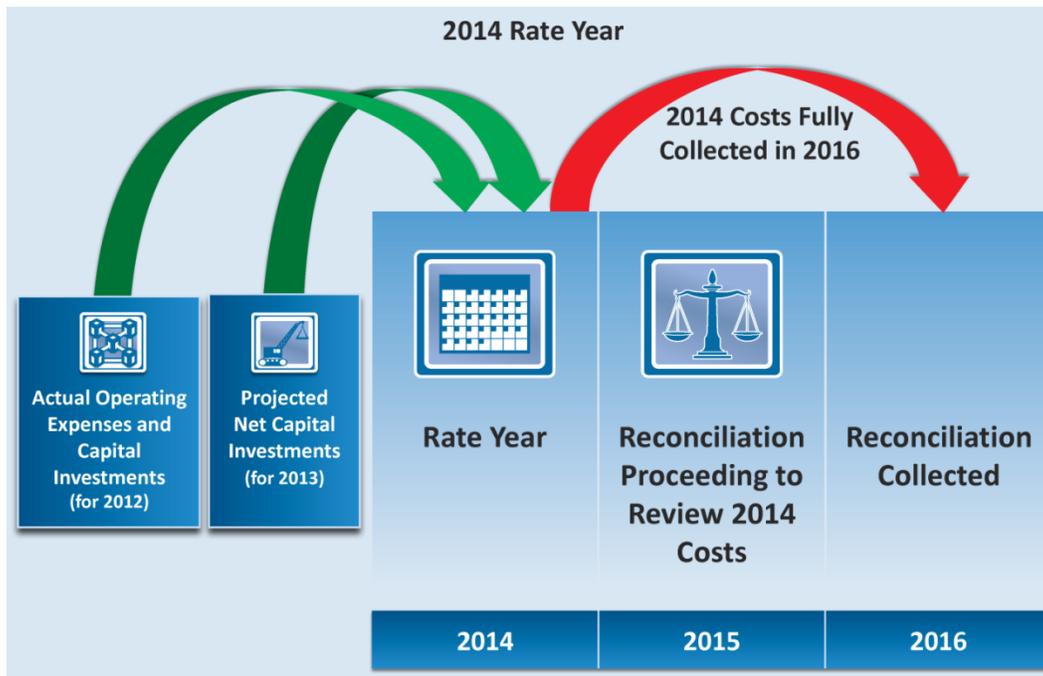
... ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.

220 ILCS 5/16-108.5(d). To accomplish that, EIMA requires that each FRU involve both a final reconciliation of the revenue requirement "for the prior rate year," for which actual costs will be known by the time of filing, and a provisional projection of the revenue requirement for the following calendar year. That provisional Initial Revenue Requirement will be reconciled two years hence. EIMA requires ComEd to base that projection on "historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." 220 ILCS 5/16-108.5(d)(1). EIMA thereby establishes a two-year cycle of before-the-fact estimation based on actual and projected costs for years earlier than the rate year and a subsequent after-the-fact reconciliation of that estimated Initial Rate Year Revenue Requirement with the actual data. Thus, in the end, and after adjustment for interest, the rates for each year should be based purely on actual cost.

Dr. Hemphill explained the application of that rubric in this case:

This filing calculates ComEd's 2014 Initial Rate Year Revenue Requirement using ComEd's revenue requirement formula and the specified inputs. It uses that same formula to calculate ComEd's 2012 Reconciliation Revenue Requirement from the actual 2012 costs that are now available. That 2012 Reconciliation Revenue Requirement is compared, in turn, to the 2012 Initial Rate Year Revenue Requirement (in this case, a weighted average of the revenue requirements from ICC Docket Nos. 10-0467 and 11-0721 that supported the rates in effect in 2012). The reconciliation adjustment is the difference between the revenue requirement(s) on which 2012 rates were based and the revenue requirement on which they would have been based had actual costs been known.

ComEd Ex. 1.0 REV., 9:153-61. In addition, ComEd provided (*Id.* at 8:136) a graphic to illustrate how the 2014 Initial Revenue Requirement is calculated in this case and how it relates to the actual 2014 Reconciliation Revenue Requirement that will ultimately be collected.



Once again, ComEd is using the reconciliation process specified by EIMA. 220 ILCS 5/16-108.5(d); Hemphill Sur., ComEd Ex. 16.0, 7:125-35. That process is conducted using the rate formula exactly as approved “in both Docket Nos. 11-0721 and 13-0386, and using the specific rate formula the Commission found fully compliant with EIMA in its Order in Docket

No. 13-0386.” *Id.* at 8:136-38. Moreover, this structure replicates that structure used in Docket No. 12-0321 (which reconciled rate year 2011 and calculated an initial revenue requirement for rate year 2013 based on 2011 actual costs and 2012 projected plant additions) and, insofar as is possible given the special start up rules, also mirrors the process followed in Docket No. 11-0721 (which set the initial revenue requirement for rate year 2012 based on 2010 actual costs and 2011 plant additions). *Id.* at 8:138-45.

Illinois Industrial Energy Consumers’ (“IIEC”) witness Mr. Gorman erroneously suggests that the reconciliation process is somehow defective or that mismatches exist. No other witness supports his claims. Rather, his suggestion is contrary to law, the approved rate formula, and past practice. “There is no mismatch in the years” being reconciled and ComEd is using “exactly the reconciliation approach approved by the Commission in prior ComEd and Ameren rate orders.” Hemphill Reb., ComEd Ex. 12.0 CORR., 7:150-51. The Commission should continue to respect that approach.

### **C. Original Cost Finding**

ComEd requests that the Commission, as it has in past FRU Orders,<sup>7</sup> approve ComEd’s original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2012. *See* Hemphill Dir., ComEd Ex. 1.0 REV, 28:550 – 29:553. The record shows that the original cost of gross investment in electric utility plant in service in ComEd’s rate base as of December 31, 2012 is \$15,662,485,000. Fruehe Dir., ComEd Ex. 3.0 REV., 27:565-68.

With ComEd’s acceptance of the one condition discussed below, Staff recommends that the “Commission approve \$15,654,123,000 as the original cost of plant as of December 31,

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<sup>7</sup> *See Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Final Order, May 29, 2012) at 178; *Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Final Order, December 19, 2012) at 106.

2012.” Kahle Dir., Staff Ex. 2.0, 7:108-09. ComEd agrees with Staff that if the Commission “makes any additional adjustments to plant, commensurate adjustments should also be reflected in the original cost determination.” Kahle Dir., Staff Ex. 2.0, 7:109-11; Fruehe Reb., ComEd Ex. 14.0, 12:262 – 13:268. ComEd also accepts the Findings and Orderings language proposed by Mr. Kahle. Fruehe Reb., ComEd Ex. 14.0, 12:267; *citing* Kahle Dir., Staff Ex. 2.0, 7:114-20.

**D. Issues Pending on Appeal**

ComEd has preserved several arguments that were decided in ICC Docket Nos. 11-0721 and 12-0321 through appeal from the Commission’s orders. Those appeals are pending before the Appellate Court, and ComEd waives none of those arguments. However, until and unless those appeals result in reversals or remands of the portions of those decisions on appeal, those Orders remain effective as issued. Therefore, while ComEd “requests that its rates be set based on the full rate year and reconciliation revenue requirements authorized by EIMA” as ComEd understands it, ComEd did not “actively relitigate those legal issues [on appeal] in this proceeding. They are before the courts and will be decided there.” Hemphill Dir., ComEd Ex. 1.0 REV., 23:431-34. To avoid confusion, ComEd’s stated revenue requirements have been “calculated in conformity with those Orders’ interpretation of EIMA except insofar as they are preempted and superseded by PA 98-0015.” *Id.* at 22:405-07.

Several issues warrant particular mention. First, ComEd believes there must be “[c]onsistent Federal and Illinois functionalization” of General and Intangible Plant, property tax costs, and certain other expenses based on the Wages and Salaries (“W&S”) allocator (*id.* at 22:413-16) applied under Federal law. However, ComEd has not proposed a change in the established rate formula until and unless an appellate court finds legal error. Rather, ComEd conducted an updated Facilities Study and calculated its revenue requirement based on that

study. Brinkman Sur., ComEd Ex. 17.0, 3:63 – 4:76; Fruehe Sur., ComEd Ex. 18.0 CORR., 3:51-63. Second, ComEd believes that the Commission must, based on the factual record, use historical weather normalized billing determinants to determine ComEd’s 2014 rates. ComEd has made that showing despite assuming in this case that the Commission has “authority to modify actual historical weather normalized billing determinants.” Hemphill Dir., ComEd Ex. 1.0 REV., 22:417-18. ComEd’s argument to the contrary is preserved on and for appeal. *Id.* at 23:434-37.

ComEd “prepared a schedule showing how a resolution of [financially material issues on appeal] in accordance with ComEd’s views would affect relevant revenue requirements.” *Id.* at 23:439-40. ComEd Ex. 3.20 contains the formula template adjusted for the issues currently on appeal. Fruehe Dir., ComEd Ex. 3.0 REV., 13:277-78. ComEd requests that if its views prevail during the pendency of this case, “charges reflecting those positions be put into effect in the most effective lawful manner, including if necessary through modification of a reconciliation adjustment applicable during a calendar year.” Hemphill Dir., ComEd Ex. 1.0 REV., 23:441-44.

#### **IV. RATE BASE**

ComEd fully supported its 2012 Reconciliation Year rate base and its 2014 Initial Rate Year rate base through the testimony of multiple witnesses.<sup>8</sup> ComEd’s figures should be approved. There are only two potentially contested rate base issues, and on each of them ComEd has supplied the correct calculation, as discussed below.

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<sup>8</sup> Primarily ComEd witnesses Fruehe, Blaise, Donovan, Born, and Siambekos.

**A. Overview**

**1. 2012 Reconciliation Rate Base**

ComEd's properly calculated 2012 Reconciliation Year rate base, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$6,389,262,000. *E.g.*, Fruehe Reb., ComEd Ex. 14.0, 11:226-229; ComEd Ex. 14.01, Sch FR B-1, line 28; Fruehe Sur., ComEd Ex. 18.0 CORR., 5:93-96.

**2. 2014 Initial Rate Year Rate Base**

ComEd's properly calculated 2014 Initial Rate Year rate base as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$6,702,419,000. *E.g.*, Fruehe Reb., ComEd Ex. 14.0, 11:231 – 12:245; ComEd Ex. 14.01, Sch FR B-1, line 36; Fruehe Sur., ComEd Ex. 18.0 CORR., 5:98-101.

**B. Potentially Uncontested Issues**

**1. Plant in Service**

**a. Distribution Plant**

ComEd's Distribution Plant in rate base for the 2012 Reconciliation Revenue Requirement and the 2014 Initial Rate Year Revenue Requirement is uncontested and should be approved. ComEd's Distribution Plant in service as of December 31, 2012 includes: (1) the ComEd Lincoln Centre Restack & Consolidation project; (2) the 900 MHz 2-Way Trunked Radio System project; (3) the Network Manager Ranger SCADA Upgrade (ITN 36262); (4) the Franklin Park Enhancements (ITN 47344); and (5) the Northern Region Headquarter Building (ITN 47042). ComEd Ex. 14.01, Sch FR B-1, line 29; Fruehe Dir., ComEd Ex. 3.0 REV., 38:802-805; Blaise Dir. ComEd Ex. 5.0 CORR., 31:619-42:827; ComEd Ex. 14.01, Sch FR B-1, line 29. ComEd's 2013 projected plant additions consists of \$760,172,000 of Distribution Plant additions expected to be in service as of December 31, 2013. Fruehe Reb., ComEd Ex. 14.0,

11:231 – 12:245; ComEd Ex. 14.01, Sch. FR B-1, line 29. These additions were described in accordance with 83 Ill. Adm. Code 285.6100.

ComEd demonstrated that its Distribution Plant for the 2012 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its Distribution Plant for the 2014 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, Blaise Dir., ComEd Ex. 5.0 CORR., 10:186 - 18:350, 27:533 - 28:568. These facts are uncontested.

**b. General and Intangible Plant**

ComEd's General and Intangible ("G&I") Plant in rate base for the 2012 Reconciliation Revenue Requirement and 2014 Initial Rate Year Revenue Requirement is uncontested and should be approved. ComEd's 2013 projected plant additions consists of \$160,709,000 of G&I Plant additions. ComEd Ex. 14.01, Sch FR B-1, line 31. ComEd demonstrated that its G&I Plant for the 2012 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its G&I Plant for the 2014 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, Blaise Dir., ComEd Ex. 5.0 CORR., 18:351 - 21:410; 27:533 - 28:568.

**c. Functionalization / Use of W&S Allocator**

The issue of jurisdictional allocations under the formula rate template is the subject of an ongoing appeal from the Commission's Order in Docket No. 11-0721, which ordered ComEd to use a Facilities Allocation Study to allocate its G&I accounts. Fruehe Dir., ComEd Ex. 3.0 REV., 19:398 – 25:522; Fruehe Reb., ComEd Ex. 14.0, 6:128 – 11:223. In that docket, the Commission directed ComEd to use a facilities allocator based upon a 2009 Facilities Allocation

Study to allocate specific FERC Accounts. *See Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012), at 172-73. Because the 2009 Facilities Allocation Study was outdated, ComEd updated its Facilities Allocation Study in this docket. Fruehe Dir., ComEd Ex. 3.0 REV., 20:431 – 21:437; ComEd Ex. 3.15. The updated Facilities Allocation Study shows that 89.84% of ComEd owned facilities should be allocated to the Illinois jurisdictional delivery service function and that 80.1% of ComEd’s leasehold improvements should be allocated to delivery services. Fruehe Dir., ComEd Ex. 3.0 REV., 21:438-441. Following an analysis of the updated Facilities Allocation Study, and ComEd’s provision of details regarding the methodology used in that study, witnesses for the AG and for Staff supported the use of ComEd’s updated study. *See Brosch Reb.*, AG Ex. 3.0 REV., 6:119-133; *Johnson Reb.*, Staff Ex. 11.0, 5:114-120, 7:161 – 8:180. All parties have agreed to the use of ComEd’s updated Facilities Allocation Study in this proceeding.

While ComEd provided an updated Facilities Allocation Study, it remains ComEd’s legal position that the decision in Docket No. 11-0721 to reject a functionalization consistent with FERC’s was unlawful. While ComEd is not re-litigating the issue here, if the Appellate Court reverses the Commission’s decision while this proceeding is pending, ComEd has preserved the issue and provided the evidence required to implement a W&S allocator in this case. *See Fruehe Sur.*, ComEd Ex. 18.0 CORR., 3:64-5:90.

**d. Plant Additions**

The projected plant additions of \$920,881,000 included in the rate base component of ComEd’s Initial 2014 Rate Year Revenue Requirement pursuant to Section 16-108.5 of the PUA are uncontested and should be approved. ComEd Ex. 14.01, Sch FR B-1, lines 29, 31. These additions include Distribution, General Plant, and Intangible Plant additions that ComEd expects to place in service during 2013. ComEd Ex. 14.02, WP 19 (Public and Confidential); *see also*

Blaise Dir., ComEd Ex. 5.0 CORR., 23:462-24:474. ComEd demonstrated that the projection represents prudent and reasonable investments that will be used and useful. *E.g.*, Blaise Dir., ComEd Ex. 5.0 CORR., 23:462 - 85:1680; Donovan Dir., ComEd Ex. 6.0 CORR., 21:442-27:583.

## **2. Materials & Supplies**

ComEd's Distribution Plant Materials & Supplies ("M&S") inventory for the 2012 Reconciliation Revenue Requirement rate base and 2014 Initial Rate Year Revenue Requirement rate base is uncontested and should be approved. ComEd maintains an inventory of distribution equipment to support its capital projects and to replace necessary equipment, including an emergency reserve; ComEd's adjusted inventory of jurisdictional M&S in the updated rate bases is \$35,118,000, which is based upon its inventory at year end 2012 per its FERC Form 1. ComEd Ex. 14.01, Sch FR B-1, line 18; Blaise Dir., ComEd Ex. 5.0 CORR., 21:412-418. ComEd demonstrated that its Distribution Plant M&S are prudent and reasonable and that the underlying assets are used and useful. *E.g.*, Blaise Dir., ComEd Ex. 5.0 CORR., 21:411-22:433.

## **3. Construction Work in Progress**

ComEd's Construction Work in Progress ("CWIP") for the 2012 Reconciliation Revenue Requirement rate base is uncontested. CWIP related costs can be recovered in one of two ways: for projects in excess of \$25,000 and with construction periods greater than 30 days, an Allowance for Funds Used During Construction ("AFUDC") is accrued and added to the total cost of such projects in order to capture the associated financing costs. Alternatively, for projects that do not meet the above standards, ComEd may recover its CWIP costs through its reconciliation rate base. *See* Blaise Dir., ComEd Ex. 5.0 CORR., 22:434-446. ComEd has included \$14,876,000 of CWIP for projects that do not accrue AFUDC in its rate base for the 2012 Reconciliation Rate Year. ComEd Ex. 14.01, Sch FR B-1, line 14. ComEd demonstrated

that its CWIP for the 2012 Reconciliation Revenue Requirement is prudent and reasonable. *E.g.*, Blaise Dir., ComEd Ex. 5.0 CORR., 22:434-23:461. Thus, ComEd's CWIP should be approved.

#### **4. Regulatory Assets and Liabilities**

ComEd included in its 2012 Reconciliation Revenue Requirement rate base and its 2014 Initial Rate Year Revenue Requirement rate base Regulatory Assets amounting to \$19,733,000. These Regulatory Assets and Liabilities are comprised of (1) a regulatory asset representing the unamortized balance (as of year-end 2012) of capitalized incentive compensation costs, and (2) the unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot. Fruehe Dir., ComEd Ex. 3.0 REV., 33:695-34:709; ComEd Ex. 14.01, App 5, line 4. These Regulatory Assets amount to \$19,733,000. ComEd Ex. 14.01, Sch FR B-1, line 19. ComEd's Regulatory Assets and Liabilities are uncontested and reasonable and should be approved.

#### **5. Deferred Debits**

ComEd included in its 2012 Reconciliation Revenue Requirement rate base and its 2014 Initial Rate Year Revenue Requirement rate base Deferred Debits amounting to \$29,492,000. Fruehe Dir., ComEd Ex. 3.0 REV., 34:710-719; ComEd Ex. 14.01, Sch FR B-1, line 20. The Deferred Debits included in the rate base are comprised of: (1) Cook County Forest Preserve Fees related to licensing fees for distribution lines; (2) a Long Term Receivable from the Mutual Beneficial Association ("MBA") Plan related to ComEd's payments to the trust on behalf of union employees for short term disability and for which it is awaiting reimbursement; (3) a deferred debit associated with ComEd's capitalized vacation pay not included in plant-in-service; and (4) expected recoveries from insurance on claims made by the public against ComEd. *Id.*; ComEd Ex. 3.18, App. 5, lines 5-9. These Deferred Debits are uncontested and reasonable and should be approved.

## **6. Other Deferred Charges**

ComEd included in its 2012 Reconciliation Revenue Requirement rate base and its 2014 Initial Rate Year Revenue Requirement rate base Other Deferred Charges relating to incremental distribution storm costs greater than \$10 million. Fruehe Dir., ComEd Ex. 3.0 REV., 35:720-34. These costs include certain storm expenses, which ComEd is amortizing over five years pursuant to Section 16-108.5(c)(4)(F). Staff witness Mr. Tolsdorf recommended an adjustment to correct the removal of minor 2012 storm costs from ComEd's revenue requirement. Under this adjustment, these costs would be amortized over a five-year period. Tolsdorf Dir., Staff Ex. 3.0 (Public), 9:211-10:221. ComEd accepted these adjustments. Fruehe Reb., ComEd Ex. 14.0, 21:443-449. *See also* Staff Ex. 3.04; ComEd Ex. 14.02, WP 8, line 3a, column (B). In addition, ComEd removed certain merger expenses from its operating expenses, and is amortizing them over a five-year period. Fruehe Dir., ComEd Ex. 3.0 REV., 35:721-23. No party contested this issue.

ComEd is amortizing over five years the expenses of three 2011 storms and two 2012 storms, each of which incurred costs in excess of \$10 million. In 2011 and 2012, these storm costs totaled \$68,201,000 and \$21,271,000, respectively. The unamortized balances of the 2011 and 2012 storm expenses, \$40,782,000 and \$16,997,000, respectively, are included in rate base. ComEd Ex. 14.02, WP 8; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 35:720-728; Blaise Dir., ComEd Ex. 5.0 CORR., 101:2022-104:2080.

ComEd's Other Deferred Charges, including the unamortized storm expenses and other liabilities, after adjustments, are uncontested and reasonable and should be approved.

## **7. Accumulated Provisions for Depreciation and Amortization**

The total Accumulated Depreciation related to ComEd's rate base, as of December 31, 2012, is \$6,114,756,000. This total was comprised of \$5,424,718,000 related to Distribution

Plant and \$690,038,000 related to G&I Plant. ComEd Ex. 14.01 – Sch FR B-1 “Rate Base Summary Computation,” lines 7 - 12; Fruehe Dir., ComEd Ex. 3.0 REV., 29:603-30:610. This figure is uncontested and should be approved.

**8. Accumulated Miscellaneous Operating Provisions**

ComEd has also included other liabilities in its rate base. These liabilities, after adjustments, are Operating Reserves of \$337,247,000, Asset Retirement Obligations of \$22,257,000, and Deferred Credits of \$99,957,000. ComEd Ex. 14.02 WPS (Public); Fruehe Dir., ComEd Ex. 3.0 REV., 35:735-741. Staff witness Mr. Bridal recommended a revision to the calculation of ComEd’s operating reserve, which ComEd accepted. *See* Fruehe Reb., ComEd Ex. 14.0, 12:257-60. ComEd’s Operating Reserves and Deferred Liabilities for the 2012 reconciliation year and 2013 filing year are uncontested and should be approved. ComEd Ex. 14.01, Sch. FR B-1, lines 21 and 23; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 35:735 – 37:784.

**9. Asset Retirement Obligation**

ComEd’s Asset Retirement Obligation represents asset removal costs recovered through depreciation accounts. The Asset Retirement Obligation consists of \$22,257,000 and is recorded in Account 230, as noted in the testimony of Mr. Fruehe. The Asset Retirement Obligation costs were previously recorded in Account 108- Accumulated Depreciation and were reclassified in 2005 in accordance with the USOA. ComEd Ex. 14.01, Sch. FR B-1, line 22; Fruehe Dir., ComEd Ex. 3.0 REV., 36:752-758. ComEd’s Asset Retirement Obligation is uncontested and should be approved.

**10. Customer Advances**

Under the terms of Rider DE – Distribution System Extensions, ComEd receives refundable distribution system extension deposits from customers; ComEd also receives

refundable customer advances to begin construction. ComEd has reduced its 2012 Reconciliation Revenue Requirement rate base and its 2014 Initial Rate Year Revenue Requirement rate base to reflect the customer deposits and advances that are related to projects that were included in the rate base as of December 31, 2012. ComEd also reduced its rate base for those deposits and advances related to projects included in its 2013 projected plant additions. The total amount of ComEd's reductions to its rate base is \$63,444,000. ComEd Ex. 14.01, Sch FR B-1, line 26 App 1; Fruehe Dir., ComEd Ex. 3.0 REV., 38:792-799. ComEd's Customer Advances are uncontested and should be approved.

#### **11. Customer Deposits**

ComEd receives refundable deposits from certain new customers as a condition of initiating electric service. ComEd applied its year-end balance of those refundable customer deposits to its 2012 Reconciliation Revenue Requirement rate base and its 2014 Initial Rate Year Revenue Requirement rate base; the application of those deposits resulted in a reduction to the rate base of \$136,022,000. Fruehe Dir., ComEd Ex. 3.0 REV., 38:785-791; ComEd Ex. 14.01 – FR B-1, line 25, and App 2 “Customer Deposits Information.” ComEd's quantification and treatment of deposits are uncontested and should be approved.

#### **12. Other**

ComEd is aware of no other rate base issues, apart from those addressed in Section IV.C.

#### **C. Potentially Contested Issues**

##### **1. Accumulated Deferred Income Taxes (ADIT) Adjustment on Vacation Pay**

Mr. Effron proposes a rate base disallowance of \$8,945,000 related to accumulated deferred income taxes (“ADIT”) on accrued vacation pay. Effron Dir., AG Ex. 2.0, 5:109-113; Effron Reb., AG Ex. 4.0, 4:78-81. The Commission should reject Mr. Effron's recommendation

because his analysis of the ADIT issue is incorrect – he imputes a deferred tax liability where none exists. Brinkman Reb., ComEd Ex. 13.0, 25:541-26:557. The Commission correctly rejected this same proposal in ICC Docket No. 12-0321 and ComEd has confirmed in this docket that the outcome in ICC Docket No. 12-0321 was correct. *See Commonwealth Edison Co.*, ICC Docket No. 12-0321, Order (Dec. 19, 2012) at 17. In addition, Staff agrees with ComEd’s analysis of this issue and disagrees with Mr. Effron’s proposed disallowance. Kahle Dir., Staff Ex. 8.0, 11:204-14.

As a preliminary matter, Mr. Effron clouds the issue at hand – deferred taxes – by mingling a discussion of the treatment of the *underlying* accrued vacation pay liability with a discussion of *deferred taxes* on accrued vacation pay. He attempts to re-cast this as a question of “whether the capitalized portion of accrued vacation pay should be included in rate base at all.” Effron Reb., AG Ex. 4.0, 2:28-29. That is a question regarding the underlying accrued vacation pay liability. It does not inform the issue of deferred taxes on accrued vacation pay and it is not the subject that the Commission requested the parties address in this proceeding. *See Commonwealth Edison Co.*, ICC Docket No. 12-0321 Order (Dec. 19, 2012) at 11, 17. Moreover, as Ms. Brinkman explained, it is an issue of semantics. Brinkman Sur., ComEd Ex. 17.0, 21:444-22:457. Whether ComEd applies the two components of the underlying liability to rate base on two separate lines in the formula (as it does) or nets the two components of the underlying liability on one line (as Mr. Effron proposes) results in the same net adjustment to rate base, and neither approach impacts the deferred tax issue. *Id.*

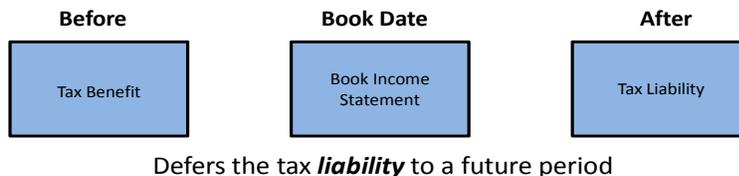
With that clarification, we can now discuss the issue at hand – ADIT. As Ms. Brinkman explained, generally speaking, ADIT reflects the temporary difference between when an expense (or revenue) is recognized in a company’s financial and accounting records, commonly referred

to as a company's "books," versus when the company recognizes that expense (or revenue) on its tax return. Brinkman Dir, ComEd Ex. 2.0 REV., 16:348-354. Deferred income taxes relate to future tax effects and can be classified as either deferred income tax liabilities or deferred income tax assets. *Id.*, 17:354-355.

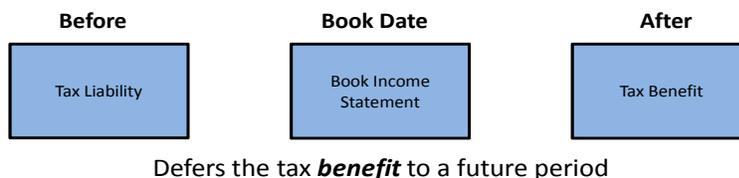
A deferred tax *liability*, *i.e.*, a future tax liability, occurs when ComEd receives the tax benefit before it recognizes the item on its book income statement, or when ComEd incurs a tax liability based on a specific tax method of accounting after it recognizes an item on its book income statement. *Id.*, 17:357-360. This means that on the company's tax return, the expense or deduction amount realized is larger than the expense recorded on the company's books, thus giving the company a tax benefit (lower taxes in the current period, resulting in increased cash) before it has recognized the expense on its books. *Id.*, 17:363-366. When this happens, ComEd deducts that amount from rate base because it has a source of funds for investments that are not investor, but rather taxpayer, supplied. *Id.*, 17:366-367.

Conversely, a deferred tax *asset*, *i.e.*, a future tax benefit, occurs when ComEd receives the tax benefit after it recognizes the item on its book income statement, or when ComEd incurs a tax liability before ComEd recognizes the item on its books based on a specific tax method of accounting. *Id.*, 17:368-371. When this happens for ComEd, ComEd is allowed to add the amount to rate base (or offset deferred tax liabilities) because investors are supplying these additional funds until receipt of the tax benefit, and like any investor supplied funds, they are entitled to rate base treatment. *Id.*, 18:381-384. The diagram below illustrates deferred tax liabilities and assets.

### Deferred Tax Liability (“DTL”) → Deducted from Rate Base



### Deferred Tax Asset (“DTA”) → Added to Rate Base



By way of background, ComEd employees, like those at many companies, are awarded vacation pay for their allotted vacation days each year. Vacation days are awarded for a given year in January, but Generally Accepted Accounting Principles (“GAAP”), specifically ASC 710-10-25-2 Compensated Absences, directs ComEd to record the known and measurable liability for the vacation pay on its books the preceding December. Thus, ComEd records an operating reserve liability at December 31 for vacation days granted on January 1 of the following year as well as carryover balances related to the current and prior years, with corresponding amounts recorded to operating expense (for the expense portion) and deferred debit (for the amount that ComEd anticipates will ultimately be allocated to capital projects in the future) for the next calendar year. See Brinkman Dir, ComEd Ex. 2.0 REV., 16:348-354. This operating reserve liability is the *underlying liability* related to vacation pay.

ComEd calculates *deferred taxes* on this *underlying liability*. As explained specifically in the following two paragraphs, ComEd calculates a *deferred tax asset* on the full amount of the

operating reserve liability – both the expense and capital portions – because a temporary difference exists between when this entire liability is accrued on ComEd’s books and when impacts related to the liability will ultimately be reflected on the tax return. *Id.*, 22:457-460. The tax benefit is deferred to a subsequent period and ComEd’s investors “supply the funds” until then.

With respect to the portion of this underlying liability that is expensed (the operating expense), a temporary tax difference exists because ComEd must recognize the expense for book purposes in the current period (because it is known and measurable), but does not receive the deduction on the tax return until the vacation pay is actually paid to the employee in a future period. Brinkman Dir, ComEd Ex. 2.0 REV., 22:462-465. This results in a deferred tax asset because ComEd receives the tax benefit after it recognizes the expense on its books (book income is less than taxable income). *Id.*, 22:466-468. This is represented by the box in the lower right corner of the diagram.

With respect to the portion of this underlying liability that will be capitalized (the deferred debit), a temporary tax difference exists because ComEd does not realize this amount in income for book purposes as it is held in the deferred debit balance sheet account. However, based on ComEd’s tax method of accounting, it adds this capitalized portion back to taxable net income and thus pays tax on that amount in the current year (book income is less than taxable income). *Id.*, 22:470-23:475. This is represented by the box in the lower left corner of the diagram.

For ratemaking purposes, ComEd is adding this net amount of deferred taxes (expense and capital portions) to rate base as investors have supplied the funds related to these temporary differences until the future tax benefit is received. *Id.*, 23:476-478. This deferred tax asset

ultimately has the effect of increasing rate base. This deferred tax asset of \$17,183,000, as shown on WP 4, page 1, line 5, column (G) (ComEd Ex. 3.02) increases ComEd's rate base by the same amount and increases the 2014 Rate Year Net Revenue Requirement by approximately \$2 million. *Id.*, 23:479-481.

In a nutshell, ComEd has a *deferred tax asset* on the full amount of the operating reserve liability – both the capital and expense portions. Mr. Efron does not dispute any of the testimony ComEd has presented regarding deferred taxes. And he agrees with ComEd and Staff that treating the deferred debit – the capitalized portion of vacation pay – as a deferred tax liability would be “inappropriate.” Efron Reb., AG Ex. 4.0, 2:41-44. But that is exactly what the mathematics of his proposed adjustment does. Whether or not he explicitly describes it that way, he imputes a *deferred tax liability* with regard to the capitalized portion of accrued vacation pay. See Kahle Tran. at 230:22-233:23 (Oct. 1, 2013). Because it is undisputed that no deferred tax liability is associated with the capitalized portion of accrued vacation pay and it would be “inappropriate” to impute such a deferred tax liability, the Commission should reject Mr. Efron's proposed disallowance. See Efron Reb., AG Ex. 4.0, 2:34-44; see Kahle Tran. at 230:22-233:23 (Oct. 1, 2013); Kahle Reb., Staff Ex. 8.0, 11:204-14; Brinkman Dir, ComEd Ex. 2.0 REV., 23:492-99; Brinkman Reb., ComEd Ex. 13.0, 25:547-26:557.

## **2. Cash Working Capital**

ComEd's properly calculated cash working capital (“CWC”) requirement in rate base, as revised in its rebuttal testimony (there were no surrebuttal revisions), is \$8,022,000. *E.g.*, ComEd Ex. 14.01, Sch FR B-1, line 16, incorporating the CWC figure from formula rate Appendix App. 3, line 40. As approved and directed in ComEd's 2011 formula rate case,<sup>9</sup>

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<sup>9</sup> *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) at 55-56.

ComEd's CWC requirement in rate base is calculated based on reconciliation year data, using the leads and lags approved by the Commission in Docket No. 11-0721, revised to reflect changes in law, and the applicable dollar figure inputs of the current case. *E.g.*, Fruehe Dir., ComEd Ex. 3.0 REV, 31:639 – 32:661.

**a. Final Inputs**

The Commission's conclusion on the CWC issue here should reflect the Commission's rulings on the applicable operating expenses items that affect the dollar figure inputs to the CWC calculation. Staff's proposed adjustments to the dollar figure inputs, and thus to the CWC figure, are based on the derivative impacts on those inputs of certain Staff-proposed adjustments to operating expenses. *See* Kahle Dir., Staff Ex. 2.0, 7:122 – 9:126. But Staff correctly indicated that the final CWC figure should reflect the Commission's rulings on the applicable items. *Id.* Thus, if the Commission approves ComEd's positions, which are supported by the record, then the final CWC figure will be \$8,022,000 as indicated above.

**b. Staff's Unlawful and Unnecessary Proposal to Change the Approved Formula by Adding a Second CWC Calculation**

The only contested CWC issue is Staff's unlawful and unnecessary proposal that the Commission should use not one, but two, different CWC calculations – one for the Reconciliation Rate Year that determines ComEd's ultimate revenue requirement and a separate one for the temporary Initial Rate Year Revenue Requirement. This proposal is contrary to the approved rate formula and is, thus, outside the scope of this proceeding. *See* Section III.A, *supra*. The remainder of this section, which explains why Staff's proposal should be rejected on the merits, is submitted in the alternative.

Since the formula was established, ComEd has made one cash working capital calculation each year based on actual, reconciliation year data. Under Staff's proposal: (1) the

CWC calculation based on actual costs would now be used only for the Reconciliation year rate base while (2) an entirely new CWC calculation based on projected costs would be used for the Initial Year Rate Base. Curiously, Staff has never made this claim before. It is unnecessary, inconsistent, and adds expense to the process. The proposal should be rejected.

First, Staff's proposal seeks to improperly modify the Commission-approved rate formula. The approved formula provides for a single CWC calculation based on the actual costs of the Reconciliation Year that is used in calculating both the Reconciliation Year rate base and the Initial Rate Year rate base. This proposal is unlawful because it requires a change in the established rate formula, in this case to a portion of the formula established early on, in ComEd's 2011 rate case. *See* Section III.A, *supra*. Staff agrees that its CWC proposal would require a change in the rate formula schedules approved in the 2011 rate case. *See* Kahle Reb., Staff Ex. 8.0, 6:95 – 8:152. On this basis alone, Staff's proposed CWC adjustment should be rejected as it conflicts with the PUA.

Staff's proposal also lacks merit. It adds unnecessary complexity to the already-complex CWC calculation. It also is unwarranted because even if Staff were right – that its proposal would make the Initial Rate Year rate base incrementally more accurate – the actual CWC costs for the Rate Year later will be determined in the reconciliation of the Rate Year, and any necessary reconciliation adjustment will be determined and applied accordingly. *Brinkman Reb.*, ComEd Ex. 13.0, 14:287-298; *Brinkman Sur.*, ComEd Ex. 17.0, 14:285-293. Moreover, the contribution of CWC to the Reconciliation Year Revenue Requirement is only 0.04% (in the current case). Staff's proposal only would affect a fraction of that amount, and, even if the impact were to be incrementally higher in a later period, that would not change the fact that the actual CWC costs for the Rate Year will be determined and applied in the later reconciliation of

the Rate Year. So, any virtue of the Staff proposal is of a limited interim nature only and does not justify interfering with the approved formula.

Finally, ComEd notes the inconsistency in Staff's position. Staff's testimony in ComEd's 2012 rate case both supported use of a single CWC calculation, and confirmed that the formula approved in the 2011 formula rate case calls for use of a single CWC calculation. Brinkman Reb., ComEd Ex. 13.0, 13:273 – 14:285, *quoting* testimony of Staff witness Jones in that case. Staff cites no rationale justifying the 180 degree turn-about from the Staff recommendation that the Commission approved just last year.

### **3. Other (including derivative adjustments)**

In his rebuttal testimony, Staff witness, Mr. Bridal, corrected his Schedules 7.10, Adjustment for Pension Expense Related to Disallowed Incentive Compensation and 7.12, Adjustment for Payroll Taxes Associated with Disallowed Incentive Compensation. Specifically, Mr. Bridal agrees with ComEd that where an original cost determination has been made it would be inappropriate to adjust rate base in this proceeding for costs associated with disallowances in previous years. Mr. Bridal therefore corrected his adjustments to reflect this position by no longer seeking removal of such costs. Bridal Reb., Staff Ex. 7.0, 14:296-15:301, 18:379-21:441; *see also* Staff Ex. 7.0, Schedules 7.10 and 7.12. Mr. Bridal's proposed disallowances regarding ComEd's pension and payroll tax expense relating to its disallowed incentive compensation, which could have a capital impact for the current year, will be discussed in further detail in the Operating Expense section of this brief, *infra*, V.C. 4 and 5.

## V. OPERATING EXPENSES

### A. Overview

ComEd's properly calculated actual 2012 total operating expenses, adjusted to reflect the depreciation expense associated with the projected 2013 plant additions, as presented in its rebuttal testimony (there were no adjustments in surrebuttal), are \$1,678,970,000. Fruehe Reb., ComEd Ex. 14.0, 13:271-273; ComEd Ex. 14.01, Sch FR A-1, line 11; Fruehe Sur., ComEd Ex. 18.0 CORR., 5:104-107. The prudence and reasonableness of those expenses were supported by detailed testimony<sup>10</sup> and documentation which, with limited exceptions addressed herein, was uncontested.

### B. Potentially Uncontested Issues

#### 1. Distribution O&M Expenses

ComEd Distribution Operating and Maintenance ("O&M") expenses were \$409,805,000 for 2012. After reflecting adjustments, a revised total of \$400,003,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement. ComEd Ex. 14.01, Sch. FR A-1, line 1; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 41:862-869. No parties contest the amount of distribution O&M expenses.

#### 2. Customer-Related O&M Expenses

Customer-related expenses are expenses recorded in FERC Accounts 901-910, which include the costs of maintaining and servicing customer accounts, *e.g.*, meter reading, recordkeeping, and billing and credit activities. Fruehe Dir., ComEd Ex. 3.0 REV., 41:871-42:874. In determining the revenue requirement, ComEd has adjusted the \$394,186,000 of customer related expense for the following:

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<sup>10</sup> Primarily ComEd witnesses Brinkman, Fruehe, Trpik, Blaise, Donovan, Jirovec, and Polek-O'Brien.

1. \$142,457,000 reduction to remove the costs associated with ComEd's energy efficiency and demand response program recovered under Rider EDA;
2. \$42,320,000 reduction to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904, costs recovered through Rider UF;
3. \$1,077,000 reduction to remove the non-jurisdictional amount of Outside Agency Collection Fees related to uncollectibles;
4. \$77,000 increase to include interest on customer deposits in operating expenses;
5. \$1,350,000 reduction to remove costs recovered under Rider PORCB;
6. \$594,000 reduction to remove customer assistance costs incurred as part of the \$10,000,000 EIMA customer assistance program;
7. \$134,000 reduction to remove certain customer communications costs recorded in FERC Account 908; and
8. \$500,000 increase to remove the reversal of a previously recorded accrual related to ComEd's photovoltaic program. This accrual was initially recorded in 2010 and ComEd removed it from its revenue requirement in its rebuttal testimony in Docket No. 11-0721.

Fruehe Dir., ComEd Ex. 3.0, 41:876-42:897. After these adjustments, \$209,464,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function are included in the revenue requirement. Fruehe Dir., ComEd Ex. 3.0 REV., 42:878-43:904; ComEd Ex. 14.01, Sch. FR A-1; Donovan Dir., ComEd Ex. 6.0 CORR., 6:112-122. No party has objected to the amount of customer-related O&M expenses.

### **3. Administrative and General Expenses**

ComEd's Administrative and General ("A&G") expenses were \$424,355,000 for 2012. A&G costs are recorded in FERC Accounts 920-935 and include corporate support and overhead costs that benefit or derive from more than one business function; costs of employee pension benefits; regulatory expenses and certain other non-operation costs. After subtracting \$25,483,000 of deferred merger related costs to achieve, \$398,872,000 in A&G expense is included in the revenue requirement. ComEd Ex. 14.01, Sch. FR A-1, line 4; ComEd Ex. 14.01, App 5, line 32; *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 51:1076-1080; Donovan Dir.,

ComEd Ex. 6.0 CORR., 14:282-298; Blaise Dir. ComEd Ex. 5.0 CORR., 90:1787-1797. No party has objected to the amount of A&G expense.

**4. Charitable Contributions**

ComEd includes \$8,576,000 of charitable contribution expense in its revenue requirement. This amount reflects a downward adjustment of \$75,000 proposed by Staff witness Mr. Tolsdorf. In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd does not object to Mr. Tolsdorf's disallowance. ComEd also has moved \$3,803,000 it donated to the Illinois Science and Technology Fund from A&G expenses into Customer expenses in order that ComEd may recover 70%, or \$2,662,000 of the donation that it is allowed to recover under law. No party has objected to the adjusted amount of charitable contribution expense. Fruehe Reb., ComEd Ex. 14.0, 19:402-20:426; ComEd Ex. 14.01, App 7; Tolsdorf Dir., Staff Ex. 3.0, 3:69-4:84.

**5. Chicago Forward Sponsorship**

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd does not object to the adjustment proposed by Mr. Tolsdorf relating to costs associated with ComEd's sponsorship of Chicago Forward. This adjustment results in \$66,000 being removed from the revenue requirement. Fruehe Reb., ComEd Ex. 14.0, 20:439-442; ComEd Ex. 14.02, WP 7, page 2, line 35, column (E); *see also* Tolsdorf Dir., Staff Ex. 3.0, 11:258-12:269 and Sched. 3.08. line 5.

**6. Outside Services Employed**

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted the adjustment proposed by Mr. Tolsdorf relating to certain outside professional services and has voluntarily removed \$414,000 of such costs from its revenue requirement. Fruehe Reb., ComEd Ex. 14.0, 21:458-

462; ComEd Ex. 14.02, WP 7 line 38, column (E); *see also* Tolsdorf Dir., Staff Ex. 3.0, 10:240-11:243 and Sched. 3.06, line 10.

**7. Transmission Legal Fees**

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted the adjustment proposed by Mr. Tolsdorf relating to certain transmission-related legal fees and has voluntarily removed \$66,000 of such costs from its revenue requirement. Fruehe Reb., ComEd Ex. 14.0, 22:464-467; ComEd Ex. 14.02, WP 7, page 8, line 26a, column (C); *see also* Tolsdorf Dir., Staff Ex. 3.0, 11:246-254 and Sched. 3.07, line 5.

**8. 2012 Merger Expense**

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted the calculation and adjustment proposed by Mr. Tolsdorf to reduce the amount of 2012 merger expense to be amortized in order to correct the use of an incorrect W&S allocator in ComEd's calculation of 2012 merger expense. This reduces the revenue requirement by about \$12,000 and the remaining amount to be amortized (deferred debit) by about \$48,000. Fruehe Reb., ComEd Ex. 14.0, 21:451-456; ComEd Ex. 14.02, WP 8, line 4, column (B); *see also* Tolsdorf Dir., Staff Ex. 3.0, 10:224-236 and Sched. 3.05, lines 6, 9.

**9. Uncollectibles Expenses**

The Commission's Order in Docket No. 11-0721 moved ComEd's distribution-related uncollectibles expense to recovery through Rider UF. ComEd has accordingly removed \$42,320,000 of customer-related O&M costs to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904 that are recovered through Rider UF. Thus, no uncollectible expense is included in ComEd's revenue requirement. Fruehe Dir., ComEd Ex. 3.0

REV., 42:882-883; *see also* Donovan Dir., ComEd Ex. 6.0 CORR., 15:316-325; *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 29, 2012) at 77.

**10. Advertising Expenses**

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd does not object to the adjustment proposed by Staff witness, Mr. Bridal, disallowing recovery of \$29,000 in customer service and informational expense associated with several items that Mr. Bridal considers to be promotional advertising. Fruehe Reb., ComEd Ex. 14.0, 20:427-436; ComEd Ex. 14.02, WP 7, page 2, line 37, column (D); *see also* Bridal Dir., Staff Ex. 1.0, Sched. 1.15.

**11. Sales and Marketing Expenses**

No sales and marketing expenses are included in ComEd's revenue requirement. Fruehe Dir., ComEd Ex. 3.0 REV., 55:1156-1159.

**12. Depreciation and Amortization Expense**

ComEd's revenue requirement includes \$461,037,000 of depreciation and amortization expense. The level of 2012 depreciation and amortization expenses included in the revenue requirement is \$436,587,000, comprised of \$340,571,000 related to Distribution Plant and \$96,016,000 related to G&I Plant. Additionally, the 2014 Initial Rate Year Revenue Requirement and 2014 Rate Year Net Revenue Requirement include \$24,450,000 of depreciation expense associated with the 2013 projected plant additions. No party has objected to the amount of depreciation and amortization expense. Fruehe Dir., ComEd Ex. 3.0 REV., 55:1160-1169; ComEd Ex. 14.01, Sch. FR C-1.

**13. Regulatory Asset Amortization**

ComEd's revenue requirement includes \$24,380,000 of regulatory asset amortization. No party has objected to the amount of regulatory asset amortization. This amount includes the

effects of the Commission's order in Docket No. 10-0467, which revised the amount of amortization of several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. ComEd's regulatory asset amortization also includes \$67,000 of the \$200,000 filing fee paid in 2011 and \$699,000 of the \$2,095,000 in formula rate case expenses incurred in 2012 related to Docket No. 11-0721, the initial formula rate proceeding. Section 16-108.5(c)(4)(E) of the PUA provides that these costs be amortized over a three year period. ComEd Ex. 14.09, page 2, lines 19 and 20; ComEd Ex. 14.07, page 2, line 13, column (D); *see also* Fruehe Dir., ComEd Ex. 3.0 REV., 58:1229-59:1240.

#### **14. Operating Cost Management Efforts**

ComEd aggressively manages its operating costs in several ways. For example, where outside contractors are used, ComEd's procurement process emphasizes cost control along with consistent quality and timely completion. ComEd also utilizes optimization and efficiency programs with the aim of providing reliable service at the lowest cost. Also, ComEd's budgeting and work management systems tie expenses to projects and activities. Examples of ComEd activities that help manage operating costs include a multi-year Engineering group initiative to identify financial opportunities and expand a sustainable model and the establishment of management practices to ensure the quality of its system. No party has objected to the measures that ComEd has taken to manage its costs. Blaise Dir., ComEd Ex. 5.0 CORR., 91:1799-93:1841.

#### **15. Storm Damage Repair Expenses**

ComEd's revenue requirement includes \$21,246,000 in storm damage repair expense. This amount reflects Mr. Tolsdorf's proposed adjustment to ComEd's calculation of 2012 storm costs, which ComEd accepted in order to limit the issues in this proceeding, but without waiving any right to object to the same or a similar proposal in a future proceeding. Fruehe Reb., ComEd

Ex. 14.0, 21:443-449; ComEd Ex. 14.02, WP 8, lines 2, 3 and 3a, column (B); *see also* Tolsdorf Dir., Staff Ex. 3.0, 9:212-10:221 and Sched. 3.04.

**16. Interest Expense**

ComEd includes \$77,000 of interest expense on customer deposits in its revenue requirement. Staff has withdrawn its proposed adjustment to disallow this interest expense and no other party has objected to the amount of interest expense. ComEd Ex. 14.01, App 7, line 19; *see also* Tolsdorf Reb., Staff Ex. 9.0, 3:55-59.

**17. Lobbying Expense**

No lobbying expenses are included in ComEd's revenue requirement. Bridal Dir., Staff Ex. 1.0, 31:663-670; Bridal Reb., Staff Ex. 7.0, 42: 904-906; ComEd Ex. 14.05, Sch. C-5 FY, page 2, line 16.

**18. Gross Revenue Conversion Factor**

ComEd's Gross Revenue Conversion Factor ("GRCF") is 1.700. No party has objected to the GRCF. Fruehe Dir., ComEd Ex. 3.0 REV., 67:1430-1433; ComEd Ex. 3.18, Sch. FR C-4, line 13; *see also* ComEd Ex. 14.01, Sch. FR C-4, line 13.

**C. Potentially Contested Issues**

**1. Rate Case Expenses**

**a. Appeal & Remand**

Costs related to appeals in two ComEd rate cases – Docket Nos. 07-0566 and 10-0467 – are at issue here. The amounts are \$101,723 and \$16,000, respectively, and are not themselves in question.<sup>11</sup> Bridal Tr. at 257:15-18, 255:3-256:2 (Oct. 1, 2013). Litigation expenses are

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<sup>11</sup> Mr. Bridal concedes that the evidence Ms. Polek-O'Brien provided with her rebuttal testimony is sufficient documentation in order to make a proper assessment of these costs. Bridal Reb., Staff Ex. 7.0, 36:779-782.

normal operating expenses of ComEd and are recoverable subject to prudence and reasonableness. A reasonable and prudent utility will routinely appeal Commission orders when a legal basis to do so exists, and in ComEd witness Ms. Polek-O'Brien's opinion, a reasonable legal basis for appeals existed in Docket Nos. 10-0467 and 07-0566. Polek-O'Brien Reb. ComEd Ex. 15.0 CORR., 10:272-11:273. Appeals are a normal part of the legal framework designed to correct erroneous Commission decisions, ensure that rates are just and reasonable, and foster healthy (financially and otherwise) utilities that are capable of providing safe and reliable electric service.

Nonetheless, Staff witness Bridal opposed recovery of these costs, on the apparent theory that utility efforts to overturn a Commission rate order must be deemed to be beneficial only to shareholders and thus shareholders should bear the cost of those efforts. Bridal Dir., Staff Ex. 1.0, 21:457-460).<sup>12</sup> That theory, however, simply does not hold water. First, a utility appeal is identical in substance and effect to an initial rate increase filing in that each attempts to supplant rates that the Commission has previously found to be just and reasonable. Just as no party contests the utility's ability to recover the costs of litigating a filing at the Commission, no challenge to recovery of appeal costs should be deemed meritorious. Indeed, the statute governing recovery of rate case expenses – Section 9-229 – does not distinguish between the costs of litigating rate orders at the Commission or in the appellate court; it simply provides for the recovery of the costs “to prepare and litigate a general rate case filing.” Indeed, Staff witness

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<sup>12</sup> Mr. Bridal's attempt to analogize appeal costs to unrecoverable incentive compensation costs based on metrics deemed to benefit only shareholders is also misplaced. First, EIMA specifically precludes recovery of such incentive compensation, but contains no such limitation as to the costs of litigating rate cases. Moreover, a utility's efforts to protect its right to just and reasonable rates is equally in the interest of ratepayers, as without that opportunity the utility will not be able to provide safe, adequate and reliable service. The courts have recognized the inextricable link between the level of service provided and the rates a utility is allowed to charge. *See e.g., Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166 ¶ 40. Finally, the right to appeal is specifically provided by law, and the Commission cannot lawfully presume that all appellate review of its Orders is imprudent, wasteful, or contrary to the public interest.

Bridal specifically testified that appeal costs are just as much within the scope of Section 9-229 as are the costs of litigating at the Commission. Bridal Reb., Staff Ex. 1.0, 22:472-485. Thus, they should be held to the same standard.

Accordingly, recovery of all the costs of the appeals related to Dockets 07-0566 and 10-0467 should be allowed.

**b. Attorneys**

Staff witness Bridal also proposes a disallowance of rate case expenses said to reflect his conclusion that it is somehow improper to allow recovery of fees for work that is done beyond ten hours per day. The amount disallowed by Mr. Bridal is \$180,963. Bridal Reb., Staff Ex. 7.0, Sched. 7.13, pages 2 and 3, line 8, column (C). This disallowance should be rejected for two reasons. First, Mr. Bridal has no basis for concluding – and the Commission thus has no basis for finding – that it is unusual, improper, unreasonable or imprudent for attorneys to work on client matters for more than ten hours in a day. Second, Mr. Bridal’s calculation is based on an unreasonably small sample size, and his methodology is wholly arbitrary and was inconsistently applied.

- (i) No evidence supports a conclusion that billing more than ten hours per day is unusual or improper; in fact, the evidence compels rejection of that conclusion.**

Mr. Bridal is not qualified to make the judgment that billing in excess of ten hours per day is unjust or unreasonable, and he presents nothing to support this assertion. As he readily admits in his rebuttal testimony, and again on cross-examination, he is not an attorney, has never worked in a law firm and cannot speak to the number of hours lawyers in law firms typically bill in a year. Bridal Reb., Staff Ex. 7.0, 30:648-649; Tr. at 248:19-249:6 (Oct. 1, 2013). His only rationale that billing in excess of ten hours a day is unreasonable can be found in his direct

testimony; he does not believe that any one attorney “needed” to bill that much time but at the same time he concedes that billing in excess of ten hours a day is sometimes reasonable. Bridal Reb., Staff Ex. 1.0, 18:387-19:404. “Need” or “necessity” is not the standard, reasonableness is. ComEd witness Polek-O’Brien, an attorney with twelve years of experience in private law firm practice, testified that it was not at all unusual for attorneys to bill 2,500 or more hours per year, an average of *more* than ten per day, considering week-ends, holidays and vacations. Polek-O’Brien Reb., ComEd Ex. 15.0 CORR., 15:375-16:382. Finally, Mr. Bridal has failed to take issue with a single narrative time entry, individual task or activity, or claimed any of the underlying work was unreasonable, from his review of over a thousand of pages of supporting documentation attached to Ms. Polek-O’Brien’s direct testimony.

**(ii) Mr. Bridal’s methodology is improper.**

Even if it were appropriate to disallow a percentage of attorney fees, the 5% reduction in attorney fees Mr. Bridal proposes to disallow is the result of an estimate based loosely on a limited, and exceptionally busy, sample of time entries that he reviewed during discovery. Bridal Tr. at 268:4-8 (Oct. 1, 2013). As Mr. Bridal acknowledges, the eight days in the invoice period (the period Mr. Bridal used to derive the 5%) were particularly busy, as two formula rate cases were pending before the Commission and ComEd had just received the Commission’s order in its first formula rate case, Docket No. 11-0721. *Id.* at 268:4-18; Polek-O’Brien Reb., ComEd Ex. 15.0 CORR., 18:425-427. ComEd was dealing with a number of serious issues and had given Eimer Stahl just eight days to prepare a petition for rehearing in Docket No. 11-0721. At the same time, one of Eimer Stahl’s attorneys who usually is extensively involved in ComEd matters was on maternity leave, requiring the rest of the Eimer Stahl team to work more hours per day than usual. Polek-O’Brien Reb., ComEd Ex. 15.0 CORR., 18:427-432.

Use of a more inclusive and representative sample size shows that only 1.17% of the total hours billed to ComEd by Eimer Stahl represented hours in excess of ten hours per day. Polek-O'Brien Reb., ComEd Ex. 15.0 CORR., 18:433-440.

Moreover, Mr. Bridal's methodology is both arbitrary and inconsistently applied by him. His 5% number is not even a calculated number. Bridal Tr. at 257:19-259:17 (Oct. 1, 2013). When he first attempted to calculate a disallowance, he calculated that 14.4% of the hours billed were in excess of ten per day. However, based on his own conclusion that it is not *always* unreasonable to bill more than ten hours per day (which completely undermines the entire basis for this disallowance in the first place), he reduced the 14.4% to 5% – a 65.3% decrease. Bridal Reb., Staff Ex. 7.0, 28:598-612; Bridal Tr. at 261:2-20 (Oct. 1, 2013). No explanation was offered by Mr. Bridal to support the quantification of this reduction.

Nonetheless, Mr. Bridal then acknowledged that he had miscalculated, and that the percentage of hours in excess of ten per day in his limited sample was not 14.4% at all, but only 4.3%. Bridal Reb., Staff Ex. 7.0, 29:640-644. However, instead of applying his earlier reasoning that his calculated number should be reduced (by 65.3%) because – as he acknowledges – it is not always unreasonable to work more than ten hours per day, he *increased* his calculated 4.3% to achieve his projected 5%, a 16.3% *increase*. *Id.* According to his cross-examination testimony, Mr. Bridal did not change his proposed disallowance from 5% down to 4.3% because he “didn’t see the difference between a 4.3% and the 5% to be a significant difference.” Bridal Tr. at 260:24-261:1 (Oct. 1, 2013). The only reasonable way to describe a methodology that produces a recommended 5% disallowance whether the calculated number is 14.4% or 4.3% is “result driven.” The Commission should not endorse such a transparently unjustified attempt to reduce ComEd’s revenue requirement.

c. **Experts**

The only remaining issue in this regard pertains to a single invoice (#833617) from Analysis Group, in the amount of \$23,502.55, for work on capital structure issues in Docket 11-0721. *See* ComEd Ex. 15.08 CORR. The expenses associated with this invoice were prudently incurred and reasonable in amount. Dr. Hubbard was engaged when, based on discovery requests issued by Staff and Intervenors, it appeared that Staff and potentially others intended to contest ComEd's capital structure and propose an alternate structure. Polek-O'Brien Reb., ComEd Ex. 15.0 CORR., 21:488-491; ComEd Redirect Exs. 21, 22, and 23. Dr. Hubbard was thus engaged to evaluate the prudence and reasonableness of ComEd's capital structure, focusing specifically on its equity ratio. Polek-O'Brien Reb., ComEd Ex. 15.0 CORR., 21:492-494. Dr. Hubbard and his team reviewed capital structure data from ComEd, analyst reports from organizations such as Moody's and other data such as income statements and balance sheets for relevant entities, including Exelon. *Id.*, 21:497-500. A workbook of potential exhibits was compiled and testimony of several witnesses in Docket No. 11-0721 was reviewed. *Id.*, 21:500-403. When the anticipated challenges did not materialize, ComEd requested Dr. Hubbard and his colleagues cease work immediately. *Id.*, 21:503-508. Again, even though the work performed by Dr. Hubbard did not result in numbered exhibits used during the hearing, the Commission has previously held that this is not a prerequisite in determining whether these costs were just and reasonable, and thus recoverable. *Illinois American Water Co.*, ICC Docket No. 11-0767, Order (Sept. 19, 2012) at 50.

Although some work by the Analysis Group pre-dated the engagement letter before the firm was retained, this is not unusual, or proper grounds for disallowance as Staff contends. Polek-O'Brien Reb., ComEd Ex. 15.0 CORR., 22:530-23:542. It is a normal occurrence for work to pre-date an engagement letter. *Id.*, 22:529-530: As in this instance, the turn-around time

for expert work can be extremely short and experts' schedules tend to be busy. *Id.*, 22:530-23:532. Once an individual is selected, work can sometimes begin before the details of the letter are formalized and the letter executed. *Id.*, 23:532-534. This is particularly common when specific rates and terms of work had been recently agreed upon for a similar matter, as here, and those rates and terms could simply be applied to the new matter pursuant to an oral agreement that is later memorialized. *Id.*, 23:534-538. Here, Analysis Group was hired, requested to begin work immediately and not to wait for a letter to be signed. *Id.*, 23:538-540. Retroactivity clauses are not necessary to ensure billings under a letter agreement are proper. *Id.*, 23:540-542.

Despite the objections from Staff, blended rates (such as those underlying the invoice in question) are not improper. The standard rates that Analysis Group charges have been disclosed, along with the hours billed per professional. Polek-O'Brien Reb., ComEd Ex. 15.0 CORR., 23:546-547. The blended rate was the actual billing rate so the entire arrangement was transparent. *Id.*, 23:547-553. The blended rate was used as a way to avoid incurring charges of the type that the Staff and Intervenor objected to in Docket No. 10-0467, and in response to concerns regarding expert hourly rates in that Docket.<sup>13</sup> *Id.*, 24:555-558. Regardless, use of a blended rate is not a basis to disallow Analysis Group expenses in their entirety; the alternative would be allowance of these fees at the standard rates, which are reasonable and consistent with market rates, and would likely have exceeded total charges under the blended rate – particularly if the assignment had not been terminated and Dr. Hubbard been required to do more work at his higher-than-blended rate. *Id.*, 24:558-569.

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<sup>13</sup> In any event, as shown in his curriculum vitae (ComEd Ex. 15.09), Dr. Hubbard is extremely qualified, having served as Chairman of the President's Council of Economic Advisers, among other achievements. His standard rate is reasonable given his eminent qualifications and stature. Indeed, Staff does not challenge "the hourly rate amount nor the qualifications of Dr. Hubbard." See *Commonwealth Edison Co.*, ICC Docket No. 13-0318, Staff's Motion to Strike Certain Portions of ComEd Exhibit 19.0 and ComEd Exhibit 19.03 in its Entirety (Sept. 26, 2013) at 3, fn. 2.

**d. Other**

**(i) SFIO Consulting**

Mr. Bridal proposes a disallowance of \$42,383 of SFIO costs related to services provided by Mr. Fiorella based on his view that the services provided could have been duplicative of work performed by another individual (attorney, paralegal, etc.) and that his work resulted in no tangible work product. Bridal Reb., Staff Ex. 7.0, 23:473-502 and Sched. 7.13. Mr. Bridal does not in fact claim the services provided by SFIO were duplicative, merely that they *could have been* “duplicative of services that are reasonably expected to be performed by attorneys or ComEd personnel.” Bridal Dir., Staff Ex. 1.0, 13:280-281. This speculation is not enough to find these incurred costs unjust or unreasonable. ICC findings must be based on evidence, not speculation. *See, e.g., Ameropan Oil Corp. v. Illinois Commerce Comm’n*, 298 Ill. App. 3d 341, 348, 698 N.E.2d 582, 587 (1st Dist. 1998) (“speculation has no place in the ICC’s decision”); *Allied Delivery System, Inc. v. Illinois Commerce Comm’n*, 93 Ill. App. 3d 656, 667, 417 N.E.2d 777, 785 (1st Dist. 1981) (“The speculation indulged in by the Commission is clearly an unsatisfactory and unacceptable basis for its decision.”).

Likewise, Mr. Bridal’s position that only rate case expenses which result in a testimonial exhibit admitted into evidence or tangible work product is recoverable is incorrect. The Commission Order cited by Mr. Bridal in his rebuttal testimony refutes this point: “the Commission is not suggesting that all rate case work must take the form of testimony or tangible work product ... .” (quoting *Illinois American Water Co.*, ICC Docket No. 11-0767, Order (Sept. 19, 2012) at 50-51). Even if that were the case, the work performed by SFIO in the instant case did result in tangible work product. Mr. Fiorella regularly provides to ComEd both oral and written reports on what he observed and learned from attending proceedings that involve issues similar to those faced by ComEd. *See* ComEd Cross Ex. 28 and also ComEd Ex. 15.05 CORR.

Mr. Fiorella served as a consulting expert in connection with review of testimony and policy advice which included providing summaries of the positions of other parties in various proceedings involving issues similar to those ComEd confronted. ComEd Ex. 15.05 CORR. substantiates this.

Furthermore, in Docket No. 11-0767, cited by Mr. Bridal (Bridal Dir., Staff Ex. 1.0, 17:370-378), the utility was not allowed to recover similar SFIO expenses because the utility did not show that the “services are not duplicative or redundant of those provided by others *in the face of expert testimony to the contrary.*” *Id.* (emphasis added). Here no such expert testimony has been given and ComEd has provided documentation in the form of retention agreements and invoices, detailed time entries, narrative testimony, and discovery responses to substantiate that the work performed by SFIO was just and reasonable. Polek-O’Brien Reb., ComEd Ex. 15.0 CORR., 14:347-353. The SFIO costs should be allowed.

**(ii) Westlaw/Lexis Research**

Staff witness Bridal’s last proposed disallowance is of \$8,000 in charges incurred in connection with legal research on such platforms as Lexis and Westlaw, based on the fact these costs were supposedly not authorized. Mr. Bridal relies on ComEd’s Billing Guidelines to support his belief that online research requires some sort of documented approval for every bit of research performed. Bridal Reb., Staff Ex. 7.0, Sched. 7.13. This is not the case. Requiring attorneys to obtain documented permission prior to engaging in legal research would make it unnecessarily expensive and time consuming to provide legal advice and prepare briefs. Polek-O’Brien Reb., ComEd Ex. 15.0 CORR., 20:466-470. When an outside firm is tasked with preparing specific court papers or engaging in other projects, the attorneys are authorized to conduct reasonable legal research to enable them to complete the assignment. *Id.*, 470-473. Requiring issue by issue approval to conduct research has never been required. Polek-O’Brien

Sur., ComEd Ex. 19.0 2nd CORR., 9:193-198. The Billing Guidelines protect ComEd from electronic research done without explicit or implicit approval, and not as a trap to ensnare outside counsel and deprive them of payment for work reasonably performed. Polek-O'Brien Sur., ComEd Ex. 19.0 2nd CORR., 10:199-204. The computerized legal research costs should be held recoverable.

## **2. Incentive Compensation Program Expenses**

The incentive compensation program expenses at issue in this docket are: (1) ComEd's Long-Term Performance Share Awards Program ("LTPSAP"), and (2) incentive compensation associated with ComEd's energy efficiency employees. ComEd originally sought to recover 50% of its LTPSAP expenses, amounting to \$1,573,000, and 100% of its energy efficiency incentive compensation expenses in the amount of \$981,000.

### **a. Long-Term Performance Share Awards Program ("LTPSAP")**

In direct testimony, Staff witness Mr. Bridal proposed allowing recovery of 13.6% of LTPSAP expenses, which resulted in a proposed disallowance of an additional \$1,125,000, and AG witness Mr. Brosch along with CCI witness Mr. Gorman recommended disallowing LTPSAP expenses in their entirety. Bridal Dir., Staff Ex. 1.0, 24:529-27:578 and Sched. 1.05 FY; Brosch Dir., AG Ex. 1.0, 31:702-708; Gorman Dir., CCI Ex. 1.0, 10:196-205.

In rebuttal, in the interest of narrowing the issues in dispute and without prejudice to ComEd's position on this or similar issues in the future, ComEd accepted Staff's proposal of allowing recovery of 13.6% of ComEd's LTPSAP expenses, or \$428,000. Fruehe Reb., ComEd Ex. 14.0, 14:297-305. Although ComEd accepted Mr. Bridal's initial allowance of only a small portion of the LTPSAP, ComEd continues to hold the opinion that a higher recovery is justified. Fruehe Sur., ComEd Ex. 18.0 CORR., 7:144-146. In his rebuttal testimony, however, Mr. Bridal

adopted Mr. Brosch and Mr. Gorman's proposed disallowance of all LTPSAP expenses. Bridal Reb., Staff Ex. 7.0, 15:312-318 and Sched. 7.11.

EIMA provides that, subject to a review for prudence and reasonableness, "actual costs of delivery services" incurred by a participating utility are recoverable. 220 ILCS 5/16-108.5(c)(1). EIMA further provides that incentive compensation "based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance" is recoverable. 220 ILCS 5/16-108.5(c)(4)(A).

The evidentiary record in this case shows that portions of ComEd's LTPSAP are recoverable expenses because the LTPSAP contains operational metrics, including goals related to CAIDI and SAIFI (both of which are related to outage duration and frequency, safety, and customer service). Bridal Tr. at 272:6-10 (Oct. 1, 2013); ComEd Cross Ex. 30 at 2013 CFRU 0004700; Fruehe Reb., ComEd Ex. 14.0, 14:306-15:318; Bridal Dir., Staff Ex. 1.0, 27:569-578. The evidence shows that ComEd met or exceeded these goals and that ComEd's performance against the "outage frequency" metric was "its best on record." ComEd Cross Ex. 30 at 2013 CFRU 0004700; Fruehe Reb., ComEd Ex. 14.0, 15:316-318; AG Ex. 1.9, p. 2.

The evidence also shows that the compensation committee – the group that determines the LTPSAP awards – considered the fact that ComEd met or exceeded these operational goals. Bridal Tr. at 273:21-25 (Oct. 1, 2013); ComEd Cross Ex. 30 at 2013 CFRU 0004692. The evidence further shows that in determining the 2012 awards, the compensation committee was provided with suggested scores, importance rankings, and weighted scores for each metric. Bridal Tr. at 274:1-275:8 (Oct. 1, 2013); ComEd Cross Ex. 30 at 2013 CFRU 0004702. The operational metrics were given the second highest score, the second highest importance rank, and

the second highest weighted score. *Id.* No evidence exists that would support an inference that the compensation committee disregarded this suggested scoring and weighting in determining the LTPSAP awards.

Despite this evidence of the role the allowable operational metrics played in determining LTPSAP awards, and the lack of evidence that they were disregarded, Messrs. Bridal, Brosch, and Gorman recommend disallowing 100% of the LTPSAP awards. Bridal Tr. at 273:21-275:15 (Oct. 1, 2013); Bridal Reb., Staff Ex. 7.0, 15:312-318 and Sched. 7.11; Brosch Dir., AG Ex. 1.0, 31:702-708; Gorman Dir., CCI Ex. 1.0, 10:196-205. Their basis for this is twofold: (1) that the award process is a qualitative analysis, and (2) that there is a Total Shareholder Return (“TSR”) feature that can influence the award. Bridal Reb., Staff Ex. 7.0, 16:327-18:378; Brosch Dir., AG Ex. 1.0, 31:709-34:790; Gorman Dir., CCI Ex. 1.0, 10:196-205.

First, the fact that the award is based on a qualitative analysis does not negate the metrics. To the contrary, the qualitative analysis relates to the development of the scores, weights, and weighted scores given to performance under each metric. Fruehe Reb., ComEd Ex. 14.0, 14:298-15:329. While the qualitative aspect of the LTPSAP may be a reason to accept Staff’s initial proposed allowance of only 13.6% as opposed to ComEd’s initial request for 50% of the expenses, it is not a basis to treat these expenses as zero. To do so would ignore the undisputed fact that a portion of the LTPSAP is tied to permissible metrics that benefit customers. Fruehe Sur., ComEd Ex. 18.0, 7:138-141. As Mr. Fruehe succinctly testified: “Disallowing the LTPSAP entirely requires the Commission to knowingly disallow incentive compensation in its entirety when a portion of that incentive compensation is clearly recoverable. That is not reasonable or consistent with Commission practice.” Fruehe Sur., ComEd Ex. 18.0, 7:141-144.

The Commission itself has recognized that it would be improper to make the kind of disallowance Messrs. Bridal, Brosch, and Gorman propose here. In ComEd’s 2007 rate case, the Commission addressed whether ComEd could recover the salaries and wages of certain ComEd employees who in addition to performing their usual and customary utility functions (recoverable costs) also worked on a merger (non-recoverable). The Attorney General had recommended a full disallowance. The Commission instead disallowed 25% of the costs in question, though it never explained how it arrived at that figure. *Commonwealth Edison Co v. Illinois Commerce Comm’n, et al.*, 405 Ill. App. 3d 389, 398-401, 937 N.E. 2d 685, 698-701 (2d Dist. 2010).

On appeal, the court upheld the Commission’s action on the ground that the Commission was entitled to – and did – exercise its “business judgment” to reach “‘pragmatic solutions’ by filling gaps in the record.” *Id.* at 402. Significantly, the court relied upon the Commission’s position that, “once it identifies a recoverable cost item, such as the labor costs related to the utility-services work performed by its employees, the Commission is not authorized to treat the expense as zero.” *Id.* at 401. Yet that is precisely what Messrs. Bridal, Brosch, and Gorman request here: to treat an unquestionably recoverable cost item as though it were “zero.”

Second, while the TSR feature does have the ability to increase or decrease awards determined pursuant to the metrics, it is not used to determine the awards in the first instance – it is not one of the award metrics. Fruehe Sur., ComEd Ex. 18.0, 7:133-138. Moreover, the TSR is not, strictly speaking, a measure of net income or earnings per share (“EPS”). Rather, it is related to the change in the price of a stock over a given period of time – it is a measure of how Exelon’s stock performed relative to a group of similar utilities. And the value of the price of a stock is affected by many things other than net income or EPS, for example, by perceptions of the company’s future business prospects. And perhaps more importantly for the Commission in

this docket, the compensation committee may reject application of the TSR, [\*\*  
CONFIDENTIAL CONFIDENTIAL \*\*]. Bridal Tr. at  
271:10-272:19 (Oct. 1, 2013); Bridal Reb., Staff Ex. 7.0, 17:357-360 (CONFIDENTIAL).  
Because the TSR [\*\* CONFIDENTIAL \*\*] it cannot be a basis to  
disallow these expenses in their entirety.

Thus, the Commission should adopt Mr. Bridal's initial position and allow recovery of at least 13.6% of ComEd's LTPSAP expenses. If the Commission disagrees with both ComEd's initial position requesting 50% of these expenses and Mr. Bridal's initial position recommending allowance of 13.6% of these expenses, at the very least the Commission should exercise its "business judgment" to fill what it perceives to be a "gap" in the evidentiary record. To disallow these costs entirely would be improper.

**b. Energy Efficiency/Rider EDA**

ComEd has included in this formula rate update \$981,000 of AIP expense associated with ComEd employees whose costs are otherwise recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment ("Rider EDA"). ComEd charged this amount to FERC Account 908 (Customer Assistance Expense) in 2012 after the Commission issued an order in October 2012 concluding that the AIP expenses at issue there should no longer be recovered through Rider EDA because they did not sufficiently relate to energy efficiency. The 2012 charge to FERC Account 908 includes \$268,000 of 2012 expense and \$713,000 of expense incurred in 2009 through 2011. Fruehe Dir., ComEd Ex. 3.0 REV, 46:965-979. While there is no dispute in this docket that these energy efficiency employees participate in the same AIP that is applicable to all ComEd employees and therefore deliver the very same customer benefits, Staff proposes that the proposed AIP expense of \$981,000 be disallowed in its entirety. Because

this AIP expense satisfies the standard for recovery under Section 16-108.5(c)(4)(A), Staff's disallowance should be rejected.

Rider EDA provides for the recovery of all incremental costs associated with ComEd's energy efficiency and demand response programs and plans, which includes, *inter alia*, the costs associated with the incremental employees ComEd hires to implement and administer the programs and plans. Rider EDA, Ill. C. C. No. 10, 1st Revised Sheet No. 245. Because these employees are fully ComEd employees, they participate in the same AIP applicable to all ComEd employees and join their colleagues in delivering the customer benefits outlined in the AIP. In other words, ComEd does not administer different plans for different departments – rather, all employees contribute to and share in the overall successes achieved during the year. Fruehe Reb., ComEd Ex. 14.0, 17:366-377.

The incremental energy efficiency employees, in particular, are included among the 1,493 ComEd employees who are part of the Customer Operations organization. *Id.* As explained in detail by ComEd witness Mr. Donovan, these employees joined their non-energy efficiency colleagues in contributing toward the achievement of the AIP metrics in innumerable ways, including, among others: (i) the OSHA Recordable Rate Metric; (ii) the Outage Frequency and Duration Metrics; (iii) the Customer Satisfaction Index Metric; and (iv) the Total O&M and Capital Costs Metrics. Donovan Dir., ComEd Ex. 6.0 CORR, 29:613-35:741. Put more simply, the incremental energy efficiency employees' contributions included creating a safe working environment, reducing the frequency and duration of outages through their participation in storm restoration efforts, increasing customer satisfaction through the offering of energy efficiency solutions, and controlling expenses. This is undisputed. *Id.*; Fruehe Reb., ComEd Ex. 14.0, 18:382-387.

While the Commission initially approved the recovery of the energy efficiency employees' AIP expenses through Rider EDA just like any other incremental energy efficiency expense (*see, e.g.*, ICC Docket No. 09-0378), the Commission first signaled a change in approach in the course of approving ComEd's second energy efficiency plan. *See* ICC Docket No. 10-0570. There, the Commission established a new cost recovery standard that would be applicable only to incentive compensation costs to be recovered through Rider EDA. Specifically, the Commission directed ComEd to show in its next Rider EDA reconciliation proceeding "how its current incentive compensation relates to EE or how it has tailored its incentive compensation for these employees." *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Order (Dec. 21, 2010) at 44.

It is this new standard that the Commission applied for the first time in ICC Docket No. 10-0537. In that docket, ComEd proposed to continue to recover through Rider EDA the AIP costs associated with energy efficiency employees incurred during the reconciliation period at issue – June 1, 2009 through May 31, 2010. In its October 2012 order, however, the Commission ultimately concluded that "[b]ecause AIP is not tailored to energy efficiency and demand response measures approved in ComEd's Energy Efficiency Plan that are ultimately implemented by ComEd for which ComEd seeks cost recovery through Rider EDA, ComEd is unable to meet the customer benefit standard set forth in past Commission orders ... ." *Commonwealth Edison Co.*, ICC Docket No. 10-0537, Order (Oct. 17, 2012) at 23. In other words, the Commission concluded that the incentive compensation costs could not be recovered through Rider EDA under this new standard because they were not sufficiently related to energy efficiency or tailored to energy efficiency employees.

According to Staff's testimony in the present docket, the Commission's disallowance of the AIP costs in ICC Docket No. 10-0537 under this new standard conclusively prohibits their recovery in any other docket, including this case. However, the unique standard applied to incentive compensation costs to be recovered under Rider EDA does not apply in formula rate cases and no other bar to the recovery of these costs exists.<sup>14</sup> Here, the inquiry is decidedly not whether the AIP costs are sufficiently related to ComEd's energy efficiency plans such that they should be recovered through ComEd's energy efficiency rider. Rather, Section 16-108.5(c)(4)(A) expressly *permits* "recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance ... ." Under this standard (which was neither applied nor considered by the Commission in ICC Docket No. 10-0537), there is no dispute that the energy efficiency employees' incentive compensation is associated with the very same operational metrics applicable to all other ComEd employees and whose associated costs are not questioned in this docket. The energy efficiency employees delivered the customer benefits described above, and the associated AIP expense should therefore be recovered along with the AIP expense associated with all other ComEd employees.

Finally, with respect to Staff's claim that the AIP costs incurred prior to 2012 cannot be recovered in this docket, Staff ignores that the costs were not expensed until 2012 following the Commission's disallowance of AIP expense in ICC Docket No. 10-0537 and had yet to be recovered through any mechanism. Indeed, these costs were initially recorded as part of a regulatory asset because Rider EDA provided ComEd with the assurance that these costs would

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<sup>14</sup> Indeed, the Commission did not find these costs to be imprudent or unreasonable, or otherwise evaluate the costs under the EIMA standard applicable to the present docket.

be recovered in the future. This accounting treatment is in accordance with Generally Accepted Accounting Principles (“GAAP”) as well as with well-established utility accounting practice, each of which Staff overlooks when it makes the unsupported claim that “[t]he company had no prior Commission approval or approval in the EIMA legislation to record these regulatory assets and recover the costs through formula rates.” Tolsdorf Reb., Staff Ex. 9.0, 6:118-120.

Contrary to Staff’s assertion, however, ComEd’s recording of these costs in a regulatory asset is consistent with past Commission practice. For example, prior to EIMA, ComEd recorded in a regulatory asset its costs associated with rate case expenses incurred prior to filing and during a rate case because it reasonably believed it would recover these costs in future periods. *See Commonwealth Edison Co.*, ICC Docket No. 05-0597, Order (July 26, 2006) at 47; *Commonwealth Edison Co.*, ICC Docket No. 07-0566, Order (Sept. 11, 2008) at 53-53, 74; *Commonwealth Edison Co.*, ICC Docket No. 10-0497, Order (May 24, 2011) at 68. Importantly, no Commission order approving the creation of the regulatory asset was required. In sum, ComEd correctly recorded the incentive compensation costs in a regulatory asset, which was then correctly expensed in 2012 following the Commission’s 2012 order in ICC Docket No. 10-0537. Thus, these costs are properly reflected in the 2012 FERC Form 1, and recoverable in this docket.

### **3. Employee Stock Purchase Plan (“ESPP”)**

Mr. Brosch seeks to disallow \$2,334,000 of A&G expenses and \$1,185,000 of income tax expenses arising from ComEd’s Employee Stock Purchase Plan (“ESPP”). AG Ex. 1.3, page 3 of 4. He characterizes the ESPP as incentive compensation that is related to net income or an affiliate’s EPS and therefore does not meet the criteria set forth in Section 16-108.5(c)(4)(A). Brosch Dir., AG Ex. 1.0, 28:621-29:659. Staff witness Mr. Bridal disagrees with Mr. Brosch’s proposed disallowance. Bridal Reb., Staff Ex. 7.0, 37:804-38:818. For the reasons discussed

below, Mr. Brosch's analysis is incorrect and the Commission should reject his proposed disallowances.

**a. Stock Price Issue**

First, Section 16-108.5(c)(4)(A) governs incentive compensation. ComEd's ESPP is not an incentive compensation program. Brinkman Reb., ComEd Ex. 13.0, 20:436-21:452. The ESPP is a fringe benefit available to ComEd employees under which they are voluntarily allowed to purchase Exelon Corporation ("Exelon") common stock at a discounted price, regardless of their individual performance or the attainment of any corporate goals. *Id.*, 20:432-435. This is not unlike medical, vision, or dental insurance that employees purchase at a price below that which is offered on the market because of a subsidy provided by an employer. *Id.*, 21:445-448.

As explained by Ms. Brinkman, "[i]ncentive compensation is merit based compensation that is awarded to employees based on achieving stated goals such as operational metrics, net income, or various other items. Incentive compensation seeks to reward good work." *Id.*, 20:437-439. Incentive compensation is also often available only to a limited group of employees. *Id.*, 20:439-21:440. In contrast, stock purchased pursuant to the ESPP is not awarded – it is up to each employee to determine whether to purchase the stock with his or her own funds. *Id.*, 21:444-445. The ESPP also has no merit or performance component and is open to all ComEd employees as long as they meet minimum employment requirements. *Id.*, 21:447-452.

Second, even if the ESPP was an incentive compensation program – and it is not – the fact that the expenses for the program are somehow related to Exelon's stock price is irrelevant. *Id.*, 23:481-485. As Ms. Brinkman testified: "The correct inquiry would be whether eligibility for the plan and the size of the award under the plan are based on, or dependent upon

achievement of, one of the statutorily prohibited metrics – net income or an affiliate’s earnings per share.” *Id.*, 23: 485-488.

**b. Income Tax Issue**

In the alternative, if the Commission finds that the ESPP is a fringe benefit, Mr. Brosch states that income tax expenses attributable to ComEd’s ESPP related to tax years prior to 2012 should be disallowed. Mr. Brosch fails to realize the simple fact that tax return amendments that involve expenses realized or recorded in 2012 are appropriately included in ComEd’s 2012 rate year. Brinkman Reb., ComEd Ex. 13.0, 25:533-540. These specific costs have not been reflected in prior revenue requirements and ComEd has not yet accounted for or recovered them. Brinkman Sur., ComEd Ex. 17.0, 20:427-428. This is true for all costs incurred by ComEd, not just ESPP. In addition, Staff witness Mr. Bridal also disagrees with Mr. Brosch’s proposed disallowance. Bridal Reb., Staff Ex. 7.0, 37:804-38:827.

**4. Payroll Taxes**

Mr. Bridal proposes a disallowance of payroll taxes associated with incentive compensation disallowed in this docket. Bridal Dir., Staff Ex. 1.0, 28:601-29:620; Bridal Reb, Staff Ex. 7.0, 18:379-19:387. This would result in a \$655,000 reduction in operating expenses and a \$230,000 reduction to rate base. Fruehe Sur., ComEd Ex. 18.0 CORR., 12:241-243 and ComEd Ex. 18.02. Mr. Bridal previously also recommended a similar disallowance associated with incentive compensation disallowed in prior cases, but has withdrawn that proposal. Bridal Reb, Staff Ex. 7.0, 21:436-441.

The problem with Mr. Bridal’s proposed disallowance is that payroll taxes are not incentive compensation. They are not compensation at all – they are a separate and distinct operating expense of ComEd and an actual cash disbursement that ComEd is required by law to make. Fruehe Reb., ComEd Ex. 14.0, 25:537-541. In addition, the PUA section governing the

recovery of incentive compensation does not contemplate payroll taxes (or any other cost associated with incentive compensation) and the Commission should not read a prohibition on the recovery of those operating expenses into the statutory language. *See* 220 ILCS 5/16-108.5(c)(4)(A).

Furthermore, although Mr. Bridal contends that the Commission has addressed this issue previously, it has not addressed it on a substantive basis. *Fruehe Sur.*, ComEd Ex. 18.0 CORR., 11:232-234. Specifically, in those instances where payroll taxes were included in an incentive compensation disallowance, the Commission did not specifically address that portion of the disallowance. Moreover, the Commission has also disallowed incentive compensation *without* adjusting for payroll taxes in several instances. *Id.*, 11:221-231. The Commission should reject Mr. Bridal's proposed disallowance regarding payroll taxes associated with disallowed incentive compensation.

##### **5. Pension Costs**

Similar to his recommendation regarding payroll taxes, Mr. Bridal proposes a disallowance of pension costs associated with incentive compensation disallowed in this docket. *Bridal Reb*, Staff Ex. 7.0, 12:241-13:258. Mr. Bridal has recommended an *estimated* \$145,000 disallowance. *Bridal Reb.*, Staff Ex. 7.0, Sched. 7.10, page 1. Staff Cross Ex. 1. Mr. Bridal previously also recommended a disallowance associated with incentive compensation disallowed in prior cases, but has withdrawn that proposal. *Bridal Reb*, Staff Ex. 7.0, 14:296-15:301. There are four independent reasons the Commission should reject this proposed disallowance: (1) pension expense is not incentive compensation and is not prohibited by EIMA; (2) in this docket, there is no disallowed incentive compensation that affects pension expense and therefore any disallowance is unjust and unreasonable; (3) Mr. Bridal's proposed disallowance that is purportedly based on *disallowed* incentive compensation includes pension expense associated

with *voluntarily excluded* incentive compensation; and (4) even if a disallowance of this nature is appropriate, it is undisputed that Mr. Bridal's disallowance is an unrefined estimate based on future circumstances that are unknown at this time and is therefore not an accurate and reasonable disallowance.

First, once again, the underlying problem with Mr. Bridal's proposed disallowance is that pension expense is not incentive compensation. Pension compensation is a fringe benefit provided to employees. Brinkman Reb., ComEd Ex. 13.0, 16:332-339. Similarly, the PUA section governing the recovery of incentive compensation does not contemplate pension expense and the Commission should not read a prohibition on the recovery of those operating expenses into the statutory language. *See* 220 ILCS 5/16-108.5(c)(4)(A).

Second, no pension expense associated with incentive compensation disallowed in this proceeding is included in ComEd's revenue requirement. Brinkman Reb., ComEd Ex. 13.0, 18:388-19:401. The only incentive compensation program that affects ComEd's pension expense is AIP. Pension expense for 2012 was determined using an actuarial study completed in January of 2012, and that study assumed only a 100% payout of AIP in 2012. *Id.* Only AIP paid out over 102.9% could be characterized as "disallowed," and ComEd has excluded those amounts from its revenue requirement based on the Commission's order in Docket No. 11-0721 (capping AIP recovery at 102.9%). *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 29, 2012) at 90. Because AIP over 100% was not factored into the January 2012 actuarial study, no pension expense related to incentive compensation exists to be disallowed in this proceeding. Brinkman Reb., ComEd Ex. 13.0, 16:393-396. The Commission should reject Mr. Bridal's proposed disallowance on this basis alone.

Third, another problem with Mr. Bridal's calculation is that he has overstated his estimated disallowance by including \$883,000 of incentive compensation voluntarily excluded from ComEd's revenue requirement. Staff Cross Ex. 1. While ComEd voluntarily excluded the incentive compensation associated with certain executives from its revenue requirement, it has never been disallowed by the Commission. Brinkman Sur., ComEd Ex. 17.0, 16:340-17:348. A voluntary exclusion is not the same as a disallowance and Mr. Bridal's proposed disallowance should be rejected on this basis as well. *Id.*

Finally, ComEd has explained that the impact of disallowed incentive compensation on pension expense in future years is not something that can be calculated with certainty. This is because the pension expense associated with many ComEd employees is dependent upon their highest average annual pay ("HAAP"), which cannot be determined until they retire. Brinkman Reb., ComEd Ex. 13.0, 17:364-18:379. Mr. Bridal has ignored this fact and *estimated* a proposed disallowance. Bridal Reb., Staff Ex. 7.0, 12:242-13:258; Brinkman Sur., ComEd Ex. 17.0, 16:340-19:410; *see also* Bridal Reb., Staff Ex. 7.0, Attachment G, page 2. Mr. Bridal's proposed disallowance should be rejected on this basis alone.

Nonetheless, in order to address this issue, ComEd approached its actuarial consultant, Towers Watson, and inquired about a detailed calculation of the impact of disallowed AIP on pension expense. *Id.*, 18:380-387. Towers Watson informed ComEd that this could be conducted only by performing an employee-by-employee review of approximately 2,300 management pension plan participants across ComEd's two pension plans, and would cost approximately \$50,000. *Id.*, 17:380-387. ComEd is willing to work with Staff to conduct such an analysis outside of this proceeding if a future adjustment is deemed warranted, but for the

reasons discussed above, ComEd is opposed to any estimated disallowance in this proceeding. *Id.*, 20:422-431; Brinkman Sur., ComEd Ex. 17.0, 19:399-410.

## **VI. RATE OF RETURN**

### **A. Overview**

The rates of return (weighted average costs of capital) to be applied in the instant Docket, *i.e.*, 6.94% pre-tax weighted average cost of capital for both the 2012 Reconciliation Year and the 2014 Initial Rate Year, are not contested. Fruehe Dir., ComEd Ex. 3.0 REV, 7:136-9, 8:159-62, 67:1436-7; McNally Dir., Staff Ex. 6.0, 7:118-21; Fruehe Reb., ComEd Ex. 14.0, 31:669-76; ComEd Ex. 14.01, Sch FR D-1, Ln 21.

### **B. Capital Structure**

Staff witness McNally and ComEd witness Fruehe concur with ComEd's capital structure and cost for purposes of determining both the 2012 Reconciliation Year and the 2014 Initial Rate Year. McNally Dir., Staff Ex. 6.0, 7:118-21; Fruehe Reb., ComEd Ex. 14.0, 31:669-76; ComEd Ex. 14.01, Sch FR D-1, Ln 21.

	<u>Amount</u> <u>(\$000s)</u>	<u>Percent of</u> <u>Total Capital</u>	<u>Cost</u>	<u>Weighted</u> <u>Cost</u>
Short-Term Debt		0.00%	0.50%	0.00%
Long-Term Debt	\$5,560,041	54.72%	5.39%	2.95%
Common Equity	\$4,600,725	45.28%	8.72%	3.95%
Credit Facility Fees	--	--	--	0.04%
Total Capital	\$10,160,766	100.00%	--	--
Weighted Average Cost of Capital				6.94%

ComEd also notes that, as the Commission directed, it worked during the last year to address capital structure issues with Staff. These discussions were productive, reached consensus on certain issues, and ComEd believes contributed to the absence of dispute this year.

**C. Cost of Capital Components**

**1. Rate of Return on Common Equity**

*See* Section VI.B, *supra*.

**2. Cost of Long-Term Debt**

*See* Section VI.B, *supra*.

**3. Cost of Short-Term Debt**

*See* Section VI.B, *supra*.

**4. Overall Weighted Cost of Capital**

*See* Section VI.B, *supra*.

**VII. RECONCILIATION**

**A. Overview**

The reconciliation process establishes the final revenue requirement, based entirely on actual cost data, for each rate year. The reconciliation adjustments offsets, on a dollar for dollar basis and corrected through interest for the time value of money, any difference between this actual cost revenue requirement and the previously-projected revenue requirement for that year. The rate year being reconciled in this case is 2012.

**B. Potentially Contested Issues**

**1. Deferred Income Taxes on Reconciliation Balance**

The AG and IIEC/City/CUB propose an arbitrary and unlawful reduction to the reconciliation balance for purposes of calculating the interest on that balance. Specifically, Mr.

Brosch, Mr. Effron and Mr. Gorman propose that the reconciliation balance be reduced by the tax savings to ComEd as a result of not having to pay income taxes on the \$132 million reconciliation. As Mr. Brosch asserts:

“Given the lower after-tax investment required from investors because of these income deferral benefits, the amount of interest properly applied to the reconciliation balance should be reduced accordingly. ... (T)he Commission should reduce the reconciliation balance that earns interest so that interest applies only to the net-of-tax incremental capital investment driven by [the] ... under-recovery of revenues.”

Brosch Dir., AG Ex. 1.0, 19:418-23; *see also* Effron Dir., AG Ex. 2.0, 14-315-18:400.

Mr. Gorman’s position is similar. Gorman Reb., CCI Ex. 2.0, 6:115-18; 7:142-46. The effect of this proposed adjustment is to reduce ComEd’s revenue requirement by about \$13 million. Gorman Dir., CCI Ex. 1.0, 7:143-44. This adjustment should be rejected.

First, the proposals to net ADIT with the reconciliation balance in calculating interest on the reconciliation balance exceed the statutorily specified scope of this proceeding. ComEd’s established rate formula for the calculation of interest on the reconciliation balance is set forth in Schedule FR A-4 and does not provide for “netting” ADIT with the reconciliation adjustment within that calculation. Brinkman Reb., ComEd Ex. 13.0, 9:185 – 10:197. The instant proceeding is an annual update and reconciliation proceeding filed pursuant to subsection (d) of Section 16-108.5 of the Act, 220 ILCS 16-108.5(d). When the legislature established the process and procedure for performance-based formula rates it made clear that the Commission does not “have the authority in a proceeding under ... subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) ....” *Id.* Hence, the proposals to alter the structure and protocols of ComEd’s Commission-approved formula rate to change the method of calculating interest on reconciliation

balances are illegal because they seek to have the Commission take actions that are beyond the scope of its statutorily specified authority in this subsection (d) proceeding

Second, this adjustment should be rejected on the merits. Preliminarily, it is not sufficient for AG and CCI to conclude that deferred taxes should reduce the revenue requirement simply because, generally, accumulated deferred income taxes are deducted from a utility's rate base. The deferred taxes at issue here are fundamentally different from "typical" ADIT in that in the usual case the investment to which ADIT relates is in rate base and providing cash (revenue) to the utility. Here that is not the case. The reconciliation amount is not recovered by the utility until a later year and thus produces no current cash benefit; in simple terms nothing exists against which to "net" the deferred taxes.

Moreover, although it is true that the cash flow impact to ComEd as a result of the delay in receiving the reconciliation balance may be the net amount of the balance and the tax impact, this fact is irrelevant to a determination of the balance on which interest is to be applied. EIMA provides that interest is to be paid on the reconciliation balance, not on the reconciliation balance less deferred taxes: "Any ... under-collection indicated by such reconciliation shall be ... recovered as an additional charge to, ... with interest, the charges for the applicable rate year." 220 ILCS 5/16-108.5(d)(1). Where EIMA intended that adjustments be made, to an amount or a balance, it has done so specifically, as in the case of projected plant additions which are to be included on a net basis considering updated depreciation reserve and expense. 220 ILCS 5/16-108.5(c)(6). That, along with the well-established rule that words are not to be read into a statute, *e.g.*, *The People of*

*the State of Illinois v. Johnson*, 2013 IL 114639, ¶ 12, compel the conclusion that the AG’s proposal must be rejected.

Moreover, ComEd’s method of calculating the allowed interest on the entire reconciliation balance – instead of the AG’s (fictional)<sup>15</sup> net of tax reconciliation amount – permits ComEd to earn the allowed interest on only the lost *net* cash flow, which should satisfy the AG and CCI concerns. Under ComEd’s approach, only the “net-of-tax incremental capital balance” earns interest, just as Mr. Brosch proposes. The AG’s proposal by contrast, would not allow for this recovery. This was shown by an example in Ms. Brinkman’s surrebuttal testimony, ComEd Ex. 17.0. In that example, the after-tax cash flow of which ComEd was deprived because of the delay in recovering the reconciliation amount was assumed to be \$60 million. At the assumed interest rate of 10%, this net-of-tax balance would be \$66 million one year later. ComEd’s methodology of applying the allowed interest rate to the full reconciliation amount – \$100 million in the example – allows ComEd to recover only that \$66 million one year later, as shown by the following calculation:

\$100 million	\$100 million
Plus \$100 million x 0.10%	<u>\$ 10 million</u>
Less taxes at 40%	<u>\$ 44 million</u>
Net cash =	\$ 66 million

The AG/CCI proposal to require interest to be calculated on the after-tax cash benefit –\$60 million in the example – guarantees that ComEd will *not* be made whole

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<sup>15</sup> It is “fictional” because in reality the reconciliation balance has not been received, which is what gives rise to the need for interest in the first place.

because it will not earn the allowed interest on the net-of-tax balance as Mr. Brosch says it should, as shown by the following:

\$100 million	\$100 million
Plus \$60 million x 0.10%	<u>\$ 6 million</u>
Less taxes at 40%	<u>\$ 42.4 million</u>
Net cash =	\$ 63.6 million

See Brinkman Sur., ComEd Ex. 17.0, 11:231-12:248.

The foregone net cash flow, with interest at the allowable rate, is \$66 million. ComEd’s method of calculating interest on the full reconciliation balance – a method supported by Staff – allows recovery of this amount. The AG’s method of requiring interest be calculated on a fictional net of tax balance does not.

Accordingly, ComEd ought to be allowed to recover interest, at the allowable rate (WACC), on the full reconciliation balance, not on only the balance net of tax savings.

## 2. WACC Gross-Up

Under EIMA, the interest rate (*i.e.*, the time value of money) applicable to the delay in receiving (or refunding) the reconciliation adjustment is “to be calculated at a rate equal to” ComEd’s weighted average cost of capital (“WACC”). 220 ILCS 5/16-105.8(d)(1)<sup>16</sup>; *see also* 220 ILCS5/16-108.5(k)(2) and (3). The equity component of this WACC-based interest will be fully taxable without any related deduction (unlike for the debt component). To recover the costs of that financing it is necessary to recognize the added tax costs associated with the equity component of the capital financing that portion of rate base. Brinkman Sur., ComEd Ex. 17.0, 5:107 – 6:115. If the interest rate is not grossed up for this added tax cost, the taxes will take a

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<sup>16</sup> The relevant portion of Section 16-108.5(d)(1) provides *in toto* as follows: “Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year.”

“bite” out of the interest revenues and the utility will not, in fact, recover interest at WACC. Fruehe Dir. ComEd Ex. 3.0 REV, 68:1451-69; Brinkman Reb., ComEd Ex. 13.0, 8:153-58. The straightforward principle that WACC must be adjusted for this tax effect has been recognized for decades in the context of WACC applied to rate base, and its critical importance is no different in this context. Brinkman, Tr. 103:2-16.

Witnesses for the AG and CCI advocate the use of the WACC without income tax impacts contrary to the interest calculation for the reconciliation adjustment specified by the Commission-approved formula. Brosch Dir., AG Ex. 1.0, 13:293-18:391; Brosch Reb., AG Ex. 3.0, 9:195 – 12:248; Gorman Dir., CCI Ex. 1.0, 3:47 - 4:81; Gorman Reb., CCI Ex. 2.0, 4:81 – 6:109. In rebuttal testimony, Staff witness Mr. Bridal (Staff Ex 7.0, 38:828 - 41:896) also took a similar position. Their position cannot be squared with EIMA or the facts.<sup>17</sup>

To begin, there can be no doubt that income tax costs are real and must be considered given that the interest received on the reconciliation balance is subject to income taxes. Fruehe Dir. ComEd Ex. 3.0 REV, 68:1451-69; Brinkman Reb., ComEd Ex. 13.0, 8:153-58. The WACC computation with adjustments for income taxes is shown in Sch FR D-1 – Cost of Capital Computation of the rate formula and used on Sch FR A-4 – Reconciliation Computation to calculate interest on the reconciliation adjustment as no other gross-up for income taxes is performed on Sch FR A-1 or elsewhere in the formula. Brinkman Reb., ComEd Ex. 13.0, 8:158-64. The income tax gross-up is clearly reflected in the rate formula approved in Docket No. 13-0386. *Id.*; ComEd Ex. 14.01, Sch FR A-4, line 2.

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<sup>17</sup> As noted in Section III.A, this proposal seeks to alter the structure and protocols of ComEd’s Commission-approved formula rate, and cannot be legally considered in this FRU proceeding. See 220 ILCS 5/16-108.5(d). This issue, while meritless, should be addressed in the pending investigation docket, not here.

The argument that ComEd receives a tax benefit that offsets a portion of the tax to be paid on the reconciliation balance (Brosch Reb., AG Ex. 3.0, 10:216 – 11:238) is incorrect because ComEd receives no such tax benefit or offset. Brinkman Sur., ComEd Ex. 17.0, 6:124 – 7:142. This argument infers that ComEd financed the reconciliation asset with debt that had an interest rate equal to the WACC and therefore has interest expense which would be an expense deductible for purposes of calculating current year income tax. Both the premise and logic of this argument are flawed. Brinkman, Tr. 104:14 – 105:11. ComEd’s capital structure is not bifurcated to allocate certain capital to finance specific items. The reconciliation balance is an asset or liability just like any other asset or liability on ComEd’s financial statements, and is financed by all of the financing elements included in the WACC. *Id.* at 7:134-7. While debt is included in ComEd’s overall capital structure and its costs contribute to the WACC, the “tax benefit” associated with the debt component is already recognized and addressed in the calculation that defines the “gross-up” for tax costs. The AG’s “adjustment” deducts an added tax “benefit” related to the cost of equity that does not exist. *Id.* at 7:138-42.

The AG’s argument that the WACC return on rate base is different from the interest amount allowed on the reconciliation balance is also incorrect. There is no difference between the cost of financing the reconciliation balance and the cost of financing rate base. *Id.* at 7:143-49. Moreover, the amendments to the Act made by PA 98-0015 state that ComEd is to recover (or refund) interest at WACC (220 ILCS 5/16-105.8(d)(1); *see also* 220 ILCS 5/16-108.5(k)(2) and (3)); ComEd cannot receive (or refund) WACC without the gross-up that the established formula includes – in the same way that a return on rate base at WACC is not obtained without a gross up for taxes. Brinkman Sur., ComEd Ex. 17.0, 7:143-49.

Staff witness Mr. Bridal claims that the gross-up of the WACC for the effect of income taxes is not necessary because the reconciliation amount is the difference between two revenue requirements that were already grossed-up for taxes. Bridal Reb., Staff Ex 7.0 38:828 – 39:849. ComEd does not dispute that the reconciliation amount is the difference between two revenue requirements that include a gross-up for taxes (though limited largely to the equity component of return on rate base), but the fact that the principal amount on which interest will be earned reflects taxes related to that principal does not affect the fact that the interest itself will result in still greater tax. Claiming, as Mr. Bridal does, that the revenue requirements already consider taxes says nothing about the tax effects of the interest. Just as the return on rate base must be grossed up, as Mr. Bridal points out, so must the WACC interest in order for ComEd to fully recover or refund the costs of financing the reconciliation asset at WACC. Without the income tax gross-up on the equity portion of the WACC, these additional revenues are not grossed up for the impact of income taxes. Brinkman Sur., ComEd Ex. 17.0, 8:160-77.

Staff's view that it is inconsistent Commission practice to gross up the interest rate applied to a reconciliation amount (Bridal Reb., Staff Ex 7.0, 39:853-58) is inapposite. Staff's assertion mixes under the label "reconciliations" very different things. EIMA ratemaking is aimed at providing accurate recovery of rate year revenue requirements and, unlike the EIMA formula rate template, other "reconciliations" do not involve a reconciliation of ComEd's full distribution revenue requirement or provide for the recovery of interest set at the WACC. A better example in ComEd's case is the cash working capital calculation in ComEd's purchased electricity adjustment rider. There, the cost of capital is grossed up for taxes to account for the full cost of financing the lag (or lead) related to procuring electricity supply for ComEd customers. The reconciliation balance is similar in that it is a lag (or lead) on recovery of

ComEd's net revenue requirement for an individual rate year and the full cost of its financing should be recovered (or refunded). Brinkman Sur., ComEd Ex. 17.0, 9:178-92.

For all the foregoing reasons, the proposals to change the computation of interest on the reconciliation balance in ComEd's Commission-approved formula rates to provide for the use of WACC without income tax impacts must be rejected.

## **VIII. ROE COLLAR**

### **A. Overview**

The ROE Collar is established by EIMA and implemented through specific portions of the rate formula found on Sch FR A-3 – Return on Equity for Collar Computation (“Sch FR A-3”). The only contested issue concerning the ROE Collar relates to an effort to calculate it contrary to that formula. That argument is outside the scope of this proceeding. See Section III.A, *supra*. The remainder of this section, which explains why the argument for changing the formula is also meritless, is submitted in the alternative.

### **B. Potentially Contested Issues**

#### **1. Rate Base for ROE Collar Calculation**

Line 1 of Sch FR A-3 defines the rate base used for this purpose as the year-end rate base reported on ComEd's Federal Energy Regulatory Commission (“FERC”) Form 1 that is also used in calculating the reconciliation revenue requirement on Sch FR A-1 REC – Revenue Requirement Reconciliation Computation (“Sch FR A-1”). ComEd complied with PA 98-0015 by revising its formula template to reflect year-end rate base and capital structure, including updates to the reconciliation rate base, cost of debt, and several rate base adjustments. The Commission approved that formula. Brinkman Reb., ComEd Ex. 13.0, xx:xx. The use of a year-

end rate base in calculating the applicable revenue requirements and reconciliation is required by PA 98-0015, including the following codified as Section 16-108.5(d)(1):

The filing shall also include a reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year.”

220 ILCS 5/16-108.5(d)(1).

AG witness Mr. Effron (AG Ex. 2.0, 11:228 – 14:312) advocates using an “average rate base” calculated by deriving the mean value of the rate base during the year instead of the year-end rate base specified in the rate formula. Mr. Effron is proposing that the EIMA approved year-end capital structure ratios be applied to an average rate base balance, creating a mismatch when calculating ComEd’s earned ROE. In contrast, there is no average rate base in the approved formula, and the formula does not use the prior year’s rate base as an input. Mr. Effron is not raising an issue about the updated year-end rate base, its prudence or its reasonableness. He is advocating a different way of calculating when and to what extent the ROE Collar is triggered than is provided by the approved rate formula. Mr. Effron’s position is inconsistent with the approved formula and it must, therefore, be rejected.

Year-end capital structure ratios are calculated using year-end common equity balances and year-end debt balances as shown on Sch FR D-1 – Cost of Capital Computation (“Sch FR D-1”), lines 5-6. By adding these two balances and dividing each by the total, the formula shows that ComEd’s sources of financing its operations are made up of 45.28% equity and 54.72% debt. Earned ROE is defined as operating income divided by the amount of common equity used to fund rate base. The year-end capital structure ratios are used to allocate rate base by the amounts financed by debt and equity. This is necessary to calculate the interest costs related to rate base funded with debt, which typically has the effect of lowering net income. Subsequently,

the earned ROE is calculated by dividing that resulting net income by the amount of rate base funded with common equity.

The amounts of debt and equity on the financial statements at the end of the year may differ from the amounts carried throughout the year. Thus, a year-end capital structure may differ from an average capital structure. The mismatching advocated by Mr. Efron creates an artificially inflated earned ROE, thus artificially creating the impression that ComEd's earnings were further outside the ROE Collar band than they actually were.

## **IX. REVENUES**

### **A. Overview**

There are few contested revenue issues. ComEd has sustained its position with respect to these issues, both contested and uncontested.

### **B. Potentially Uncontested Issues**

#### **1. Allocation of PORCB LPCs to Delivery Services**

ComEd accepted the AG's proposal to allocate 100% of late payment charges associated with ComEd's "PORCB" program to delivery services. *E.g.*, Fruehe Reb., ComEd Ex. 14.0, 27:571-590; ComEd Ex. 14.02, WP 10, line 5. Staff agrees. Tolsdorf Reb., Staff Ex. 9.0, 8:162-171; *see also* Fruehe Sur., ComEd Ex. 18.0, 13:264-265; Fruehe Tr. 9/30/13, 122:7-10. Thus, this subject is uncontested.

#### **2. Other Revenues**

ComEd's applicable Miscellaneous Revenues, also referred to as Other Revenues, of \$129,272,000, have been incorporated in calculating ComEd's 2014 Reconciliation and Rate Year Net Revenue Requirements. *E.g.*, ComEd Ex. 14.01, Sch FR A-1, line 22; Sch FR A-1 REC, line 22; App 10. This figure includes ComEd's acceptance of the AG's proposal to

allocate 100% of late payment charges associated with ComEd's "PORCB" (Purchase of Receivables with Consolidated Billing) program to delivery services. *E.g.*, Fruehe Reb., ComEd Ex. 14.0, 27:571-590; ComEd Ex. 14.02, WP 10, line 5. The Commission should adopt the Miscellaneous Revenues figure of \$129,272,000.

**3. Other**

ComEd is aware of no other issues in this category.

**C. Potentially Contested Issues**

**1. Late Payment Revenues related to Transmission**

The AG once again proposes to reduce distribution rates based on late payment charge revenues related to ComEd's transmission services, even though ComEd credits those revenues to customers in the transmission rates. The Commission rejected the very same AG proposal before, and should do so again here. *Commonwealth Edison Co.*, ICC Docket No. 11-0711 (Order May 29, 2012) at 73.

ComEd proposes to treat the late payment charge revenues in question in the same manner that the Commission approved both in the 2011 formula rate case, in ComEd's 2010 "Article IX" rate case, and in ComEd's 2012 formula rate case. Tolsdorf Reb., Staff Ex. 9.0, 6:140-152. The AG itself successfully proposed that treatment in ComEd's 2010 rate case. *Commonwealth Edison Co.*, ICC Docket No. 10-0467 (Final Order, May 24, 2011) at 303-06.

Both Staff and ComEd agree that the Commission should reject the AG proposal here because customers already are credited fully with the late payment charges revenues, and thus crediting them again in distribution rates for the portion already credited in transmission rates would improperly count that fraction twice. Fruehe Reb., ComEd Ex. 14.0, 28:602-606;

Tolsdorf Reb., Staff Ex. 6.0, 7:153 – 8:161; Fruehe Sur., ComEd Ex. 18.0, 13:267 – 14:294. Accordingly, the AG proposal should be rejected.

**2. Billing Determinants**

**a. The Importance of Billing Determinants**

Billing determinants play a critical role in establishing the correct charges for ComEd's delivery services. They are the means by which a revenue requirement is converted to individual unit charges, that is, the number of unit of service that a utility must actually provide at the established charge in order for it to actually recover the revenue requirement on which those charges were based. Brinkman Dir., ComEd Ex. 2.0 REV., 27:561 – 28:581. ComEd, like most electric utilities, has two sets of billing determinants that mirror their charges: (1) the number of customers, on which charges per customer (*e.g.*, the customer charge and meter charge) are based; and (2) electricity demanded and delivered (for residential customers, largely kilowatt-hours (kWh) of energy delivered), which set the delivery facility charges.

Correct billing determinants are essential if a utility is to have a reasonable and realistic opportunity to recover its Commission-approved revenue requirement over time. If they are inflated – that is, if the utility is assumed to have more customers to charge or will sell more units of service – then the charges are set too low. Brinkman Dir., ComEd Ex. 2.0 REV., 28:582 - 29:595. All other things being equal, if the charges are too low, the utility cannot recover the revenue requirement the Commission found to be just and reasonable.<sup>18</sup> Brinkman Dir., ComEd

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<sup>18</sup> Revenues recovered can depend on many factors (*e.g.*, weather) and, under EIMA, are also influenced by events relating to other years (i.e., initial revenue requirements for one rate year are collected along with final revenue requirements for another). Even more factors can affect earnings (*e.g.*, changes in costs). Therefore, in any given year, a utility with inflated billing determinants may do well for other reasons, but over time and holding these other factors constant, a utility with inflated billing determinants cannot recover its approved revenue requirement. Brinkman Dir., ComEd Ex. 2.0 REV., 29:598 - 30:604; Brinkman, Tr. 93:14-21.

Ex. 2.0 REV., 30:607-11. Such a result is unfair and contrary to law.<sup>19</sup> Moreover, the EIMA reconciliation process only functions at the revenue requirement level; it does not and cannot correct for errors in billing determinants or under recoveries in revenues. Revenue lost due to inflated billing determinants – losses that, all else being equal, prevent the utility from recovering its just and reasonable revenue requirement – are permanent. Lost revenues will never be offset by, or recovered through, the reconciliation process. Brinkman Dir., ComEd Ex. 2.0 REV., 31:627-33.

Because of their importance, the General Assembly specifically addressed billing determinants, instructing the Commission to implement rate formulae and protocols that include the use of “historical weather normalized billing determinants.” 220 ILCS 5/16-108.5(c)(4), (c)(4)(H). EIMA does not mention any other type of billing determinant. Brinkman Dir., ComEd Ex. 2.0 REV., 32:636-48; Johnson, Tr. 211:15-24. Nonetheless, in ComEd’s 2011 and 2012 cases, the Commission determined that ComEd’s rates should be set using a mix of historical weather normalized use and projected non-historical customer counts.<sup>20</sup> Witnesses for the AG and Staff propose that the Commission do the same thing again. The evidence in this proceeding, however, shows that to be an unfair, unsupported, and ultimately unlawful recommendation.

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<sup>19</sup> Needless to say, just and reasonable rates must be just and reasonable for the utility as well as its customers (Johnson, Tr. 206:5-12), under EIMA and bedrock constitutional principles, utilities are entitled to “recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process ....” 220 ILCS 5/16-108.5(b).

<sup>20</sup> See *Commonwealth Edison Co.*, Docket No. 11-0721 (Final Order, May 29, 2012), at 75-76; *Commonwealth Edison Co.*, Docket No. 12-0321 (Final Order, Dec. 19, 2012), 27-30; see also Brinkman Dir., ComEd Ex. 2.0 REV., 32:634-48.

**b. The Commission Should Use Historical Billing Determinants**

The case for historical billing determinants is straightforward. To begin with, as even Staff acknowledges, historical weather-normalized billing determinants are the only billing determinants specified in the law. 220 ILCS 5/16-108.5(c)(4)(H); Johnson, Tr. 211:15-24. Therefore, even if a departure from the law was permitted, that departure would have to be justified on the record. Brinkman Reb., ComEd Ex.13.0, 34:721-33; *see also* Johnson Dir., Staff Ex. 5.0, 11:247 - 12:273; Johnson, Tr. 212:5 – 216:9 (attempting to justify past use of non-historical billing determinants).<sup>21</sup> They are also the billing determinants that, as discussed further below, match the overwhelming majority of the cost data and all of the cost data that has lasting financial significance. This case addresses 2012 costs and the Commission should use 2012 billing determinants.

In contrast, the extraordinary step of imposing – and selectively, at that – billing determinants not authorized by EIMA cannot be supported.<sup>22</sup> The entire rationale for replacing the historical customer count billing determinant with projected data rests on a deeply flawed syllogism: because ComEd includes projections of future plant investment in one of its revenue requirements, the Commission must “match” that projection with a projection of the number of customers. Johnson Tr. 207:25 – 209:10; *see also* Brinkman Dir., ComEd Ex. 2.0 REV., 34:678-89. That argument cannot withstand scrutiny.

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<sup>21</sup> Oddly, the Order in Docket No. 11-0721 approves an AG/AARP billing determinant proposal based solely on historical 2010 data, and not non-historical 2011 data. *See* 11-0721 Order at 75 (“AG/AARP stated ... that the information they have is 2010 information, not 2011 information.”) However, as is now clear by AG’s and Staff’s citation to the Order, it did order the use of projected, non-historical 2011 data.

<sup>22</sup> To be sure, ComEd, as noted in Section III.A, maintains that the legislative mandate in EIMA does not permit the Commission to use billing determinants other than the “historical weather normalized billing determinants.” 220 ILCS 5/16-108.5(c)(4)(H). That issue is now before the Appellate Court. However, for the purposes of this case and without waiving its rights on appeal, ComEd is assuming *arguendo* that the Commission does have the authority to approve non-historical billing determinants if warranted by the record. As is shown here, they are not.

**First**, ComEd is not increasing any permanent revenue requirement – or its total recoveries – by virtue of projected plant additions. The **only** projected plant additions affecting ComEd’s revenue requirement affect **only** the Initial Rate Year Revenue Requirement. Brinkman Dir., ComEd Ex. 2.0 REV., 34:692 – 35:699, 37:740-61; Johnson, Tr. 205:4-15. The Initial Revenue Requirements are temporary and are all subject to subsequent full reconciliation with interest to a revenue requirement with no projected plant additions at all. The Initial Revenue Requirements and the plant additions have **no effect** on ComEd’s final, actual cost revenue requirement and no effect on ComEd’s ultimate reconciled costs. Brinkman Sur., ComEd Ex. 17.0, 23:483-90. Further, any temporary effect they have is completely washed out during the reconciliation. Brinkman Dir., ComEd Ex. 2.0 REV., 36:727-37; Brinkman Reb., ComEd Ex. 13.0, 32:678 – 35:763. In short, by using inflated non-historical billing determinants, ComEd is permanently denied revenues based on plant additions that have no actual financial effect.

Supporters of this unjust adjustment also analogized this syllogism to the logic behind the “new business” adjustment previously used by the Commission when *pro forma* future plant additions were added to a test year rate base. Johnson, Tr. 208:7-16. But, that is a false analogy. Unlike the projected plant that ComEd must include in Initial Rate Year Revenue Requirements, test year *pro forma* plant additions had real, significant, and permanent dollar impact. Brinkman Dir., ComEd Ex. 2.0 REV., 37:740-61. There was no offset and no reconciliation. The utility ended up with greater collections in every year as a result. Here, any projected plant additions is offset dollar for dollar in the reconciliation adjustment – a dollar added to the Initial Rate Year Revenue Requirement is simply a dollar (plus interest) less when the reconciliation occurs. Johnson, Tr. 204:13-19; Brinkman Dir., ComEd Ex. 2.0 REV., 36:727-37.

**Second**, the use of historical billing determinants matches the costs being recovered. Brinkman Reb., ComEd Ex. 13.0, 33:707 – 34:720, 27:588-90. There is no doubt that ComEd’s actual, reconciled costs for Rate Year 2012 are being recovered through rates being set here. While the Initial 2012 Rate Year Revenue Requirement was significant, the contribution those rates made were a “down payment” on the actual-cost 2012 Reconciliation Revenue Requirement now at issue. When EIMA specifies that historical billing determinants be used, it specifies data for 2012, the same year as the actual costs being recovered.

Even putting aside reconciliation, the lion’s share of the Initial 2014 Rate Year Revenue Requirement is also based purely on 2012 costs. The operating costs included in the Initial 2014 Rate Year Revenue Requirement are ComEd’s actual 2012 operating costs, and the great majority of the Initial 2014 Rate Year Revenue Requirement rate base used is ComEd’s year-end 2012 rate base. Only a small portion of that rate base and an even smaller portion of the temporary revenue requirement – or about 0.6% – can be attributed to plant additions made in 2013. Brinkman Dir., ComEd Ex. 2.0 REV., 35:705-08. Thus, even if the Commission were concerned about “matching” the billing determinant data with the costs underlying the temporary Initial Revenue Requirement, the actual, historical 2012 billing determinants are a far better “match.” Brinkman Reb., ComEd Ex. 13.0, 33:712 – 34:720.

**Third**, the proponents do not argue for a consistent adjustment, even under their own premises. While they argue “matching” as a rationale to use 2013 data when that data relates to the number of customers, they turn their back on the principle with respect to usage when it cuts against them. It does not matter *why* the number of customers or their usage changes, if 2013 data better “matches” with the Initial Rate Revenue Requirement (which it does not), that principle applies to all 2013 data. Brinkman Reb., ComEd Ex. 13.0, 36:774-84. Efforts to

justify the use of just the “favorable” 2013 data by arguing about why the customer population and use change are red herrings. *Id.* at 35:746 – 36:767. The record shows that both change and for a variety of reasons. And, we know that plant investments do not cause customer growth or increased use; they are a response to both.

Finally, in his rebuttal testimony, Staff witness Johnson, in particular, changes his approach and takes the position that the Commission’s decisions in Docket Nos. 11-0721 and 12-0321 dispose of this question as a matter of law. They do not. Neither decision makes such a ruling. Rather, each emphasizes factual conclusions at least purportedly based on the record. Brinkman Sur., ComEd Ex. 17.0, 23:498 – 24:505. Moreover, viewing this issue as one decided as a matter of law is inconsistent with ignoring the statutory directive. Brinkman Dir., ComEd Ex. 2.0 REV., 33:663 – 34:689. Staff has argued that the Commission can use non-historical billing determinants even though EIMA authorizes only historical billing determinants because the facts required it. But, one cannot sensibly argue that the General Assembly’s express specification of historical billing determinants can be overridden because the same General Assembly specified a few paragraphs later that projected plant be used in the projected revenue requirements. The General Assembly saw no conflict between historical billing determinants and this very limited and temporary use of projected plant. And, in the ratemaking context, where – subject only to constitutional limits – it is the General Assembly that determines what is just and reasonable, the Commission cannot conclude otherwise. In short, on this record, only historical billing determinants are just and reasonable.

### 3. Other

ComEd is aware of no other contested Revenues issue.

## **X. COST OF SERVICE AND RATE DESIGN**

### **A. Overview**

This docket is intended to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the 2014 Initial Rate Year. Basic rate design issues are not at issue in this formula rate update case – instead, they are being addressed in the rate design tariff that was filed on April 30, 2013 in Docket No. 13-0387. Cost of service and rate design issues that have been historically addressed in these formula rate proceedings are traditionally uncontested; indeed, the issues discussed below in the current docket are uncontested, and as a result, should be approved.

### **B. Potentially Uncontested Issues**

#### **1. Embedded Cost of Service Study**

ComEd submitted its updated Embedded Cost of Service Study (“ECOSS”) as ComEd Ex. 10.01 REV.: this updated ECOSS is consistent with the ECOSS submitted to support ComEd’s filing in its 2010 rate case, Docket No. 10-0467. Bjerning Dir., ComEd Ex. 10.0 REV., 2:24-29; *see also* ComEd Ex. 10.01 REV.

ComEd developed its updated ECOSS using the uncontested methodology that was relied upon in Docket Nos. 11-0721 and 12-0321. The updated ECOSS reflects the updated input values that reflect the costs and data for calendar year 2012. Bjerning Dir., ComEd Ex. 10.0 REV., 4:79-98. ComEd included current cost data that was presented in its 2012 FERC Form 1, which also has been used to populate the revised updated revenue requirement formula as presented by ComEd witness Mr. Fruehe. *Id.*; *see also* Fruehe Dir., ComEd Ex. 3.0 REV. In addition, the ECOSS reflects the revised 2014 Initial Rate Year Net Revenue Requirement of \$2,367,567,000 as presented by Mr. Fruehe as well as applicable billing determinants and

delivery class load and loss data for the year 2012. Bjerning Dir., ComEd Ex. 10.0 REV., 5:94-98.

ComEd's updated ECOSS reasonably allocates costs among customer classes, is uncontested, and should be approved.

## **2. Distribution System Loss Factor Study**

Distribution losses – the difference between energy that is delivered to the distribution system and the energy that actually reaches customers – are used in the development of ComEd's ECOSS. ComEd Ex. 10.01 REV. Pursuant to the Commission's Order in the 2012 Formula Rate Update Case, the Distribution System Loss ("DSL") Study was prepared and submitted in the revenue requirement neutral delivery service cost allocation and rate design tariff that was filed on April 29, 2013 in Docket No. 13-0387. Born Dir., ComEd Ex. 9.0, 4:66-5:93; *see also Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) at 82. No parties have contested the updated DSL study; as such, it should be approved.

## **3. Rider PE - Purchased Electricity**

ComEd's Rider PE is the tariff under which the Company recovers the costs of procuring power. While the purchased power costs are not recovered through the delivery service rates being established in this proceeding, the Rider PE tariff language establishes that the Commission shall approve a methodology related to working capital and the value of a wages and salaries allocator in its annual update case. *See* ILL. C.C. No. 10, 2<sup>nd</sup> Revised Sheet No. 317 – 2<sup>nd</sup> Revised Sheet No. 318; *see also* Tolsdorf Dir., Staff Ex. 3.0 (Public), 14:315-335. With the exception of one issue, the determination of the working capital methodology and the wages and salaries allocator used to establish Rider PE rates are uncontested and should be approved.

The parties agree that the W&S Allocator applicable to procurement – 0.47% – should be used in the determination of rates under Rider PE, with the acknowledgement that because the

W&S Allocator changes every year, the calculation of the allocation applicable to procurement may change yearly. The parties suggest that the Commission state in its findings:

The Commission finds that the wages and salaries allocator applicable to supply of 0.47%, as calculated in this proceeding, should be used to develop charges determined and filed with the Commission under Rider PE and Rate BESH to be effective with the January 2014 monthly billing period. Subsequent calculations of the wages and salaries allocator applicable to supply made in subsequent ComEd Formula Rate Update proceedings must be applied in the corresponding subsequent determination and filing of charges under Rider PE and Rate BESH.

Fruehe Sur., ComEd Ex. 18.0 CORR., 14:296-15:324; ComEd Ex. 26, at Staff Response to Data Request ComEd→Staff 8.02.

ComEd also explained that the 0.47% wages and salaries allocator should be used in the development of the Miscellaneous Procurement Components Charge determined under Rate BESH, to be applicable beginning with the January 2014 monthly billing period pursuant to the Order in the instant proceeding. Fruehe Sur., ComEd Ex. 18.0 CORR., 15:307-313. No party objected.

Staff asserts that there has been confusion between Staff and ComEd regarding the reading of language used in the Rider PE tariff, leading to misinterpretations related to determining the working capital component of Rider PE, among other issues. Tolsdorf Reb., Staff Ex. 9.0, 9:203-10:214. To address this concern, Staff and ComEd have agreed to work collaboratively to clarify Rider PE (and Rate BESH) and to file any proposed tariff revisions as a separate 45-day filing. Fruehe Sur., ComEd Ex. 18.0 CORR., 15:325 – 16:339; ComEd Ex. 26, at Staff's Response to Data Request ComEd→8.03. With the exception of this issue – whether the Commission should order ComEd to revise its tariff language – the determination of the working capital methodology and the wages and salaries allocator used to establish Rider PE rates are uncontested and should be approved.

## **XI. OTHER**

### **A. Overview**

The record addresses a handful of other matters, discussed in this Section XI.

### **B. Potentially Uncontested Issues**

#### **1. Staff investigation into BSC**

In ICC Docket No. 11-0721, the Commission directed Staff to investigate the relationship between BSC and ComEd, while noting that it was not making any determination that the BSC charges to ComEd were in any way improper. *See* ICC Docket No. 11-0721, Final Order (May 29, 2012) at 87. In 2012, Staff undertook such an investigation. *See* Trpik Dir., ComEd Ex 4.0 Rev., 11:223-13:256. Over the course of the investigation, ComEd representatives had discussions with Staff on a number of occasions, responded to numerous informal data requests from Staff, and routinely provided BSC cost reports to Staff throughout the year. *Id.* As a result of this investigation, Staff made three recommendations in the current docket. *See* Hathhorn Dir., Staff Ex. 4.0, 2:40-3:56. Staff and ComEd have reached agreement as to how to implement each of these recommendations and have reached consensus on the language that should incorporate these recommendations into the final order in this proceeding.

Specifically, ComEd agreed to Staff's first recommendation, to file certain information and schedules in future formula rate update cases. *See* Brinkman Sur., ComEd Ex. 17.0, 26:559-563; Hathhorn Reb., Staff Ex. 10.0, 2:31-3:46. ComEd also agreed to comply with Staff's second recommendation, to provide a copy of the Modified Massachusetts Formula ("MMF") documentation procedures to the Commission's Manager of Accounting upon completion (but in no event later than March 1, 2014). *See* Brinkman Sur., ComEd Ex. 17.0, 26:564-27:568; Hathhorn Reb., Staff Ex. 10.0, 2:31-3:46. Finally, ComEd and Staff agreed that if BSC were to request a filing extension for its FERC Form 60 that would impact ComEd's formula rate

proceeding, it would notify Staff immediately and offer a plan on how to reflect potential changes (based on the facts and circumstances of the extension). Brinkman Sur., ComEd Ex. 17.0, 27:569-573; Hathhorn Reb., Staff Ex. 10.0, 5:132-6:137.

The language that ComEd and Staff have agreed upon is set forth below:

In its direct case in all future formula rate update cases, ComEd shall file a set of schedules showing (1) total BSC amounts charged on ComEd's ledger by FERC Account bifurcated between direct and indirect charges; (2) a listing of BSC amounts charged on ComEd's ledger by the Modified Massachusetts Formula ("MMF") allocator as well as the top five BSC allocators other than MMF; (3) BSC amounts charged on ComEd's ledger that are included in the distribution revenue requirement operating expenses with an estimated categorization between amounts (i) directly charged, (ii) indirectly charged via the MMF, and (iii) indirectly charged via a non-MMF factor; and (4) BSC amounts charged on ComEd's ledger that are included in the distribution revenue requirement rate base with an estimated categorization between amounts (i) directly charged, (ii) indirectly charged via the MMF, and (iii) indirectly charged via a non-MMF factor. The data in these schedules should reflect the prior year actual costs as reflected in the revenue requirement filed in the direct case. Examples of these schedules are included in Staff direct testimony in this proceeding (Staff Ex. 4.0 Attachments A and B). If BSC data changes as a result of the final BSC FERC Form 60 filing, ComEd shall file updated schedules within 5 business days of the BSC FERC Form 60 filing.

Hathhorn Reb., Staff Ex. 10.0, 4:66-87.

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ComEd shall provide a copy of BSC's formal management model documentation related to the calculation of the MMF to the Manager of the Commission's Accounting Department no later than March 1, 2014; and ComEd shall provide a copy of ComEd's management model documentation related to ComEd's review of the results of BSC's MMF calculation to the Manager of the Commission's Accounting Department no later than March 1, 2014.

*Id.*, 4:99-5:106.

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In all future formula rate update cases, ComEd shall notify Staff immediately if BSC requests a FERC Form 60 extension, and at that time shall offer a plan on how to reflect any potential changes into that proceeding based on the facts and circumstances of the extension, if granted.

*Id.*, 6:152-156.

**2. Reporting Requirements**

**a. EIMA Investments**

As called for by the Commission’s Order in Docket No. 12-0321,<sup>23</sup> ComEd presented evidence in its case in chief identifying separately its EIMA-related expenditures included in the Rate Year 2012 Reconciliation Revenue Requirement and in the projected plant additions included only in the Initial Rate Year 2014 Revenue Requirement. Siambekos Dir., ComEd Ex. 11.0 CORR; ComEd Ex. 11.01 CORR. The data presented is further segregated by category and the specific investment activities supported. *Id.* This data meets the Commission’s requirements. Hemphill Dir, ComEd Ex. 1.0 REV., 28:543-45. “Staff witness Daniel Kahle acknowledges that ComEd has provided the data relating to incremental EIMA plant additions placed in service in 2012 and incremental EIMA plant additions projected to be placed in service in 2013 that the Commission in Docket No. 12-0321 ordered ComEd to provide.” Hemphill Reb., ComEd Ex. 12.0 CORR., 9:184-190; *see* Kahle Dir., Staff Ex. 2.0 CORR., 3:50 – 5:70. No witness disagrees.

**b. Reconciliation Year Plant Additions**

Staff witness Mr. Kahle also recommended that ComEd: (1) beginning with the next formula rate update, identify by category cumulative actual investments made under Section 16-108.5(b)(1) of the Act in addition to the annual actual investments for each year, and (2) in the current proceeding, file an investment summary by category of cumulative actual and projected investments for each of the 10 years of EIMA. Kahle Dir., Staff Ex. 2.0 CORR., 5:71-87. ComEd accepted Staff’s recommendations and has worked with Staff to develop agreed

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<sup>23</sup> Final Order (Dec. 19, 2012) at 98.

reporting templates. Hemphill Reb., ComEd Ex. 12.0 CORR., 10:201-209; Kahle Reb., Staff Ex. 8.0, 3:52 - 5-88; Hemphill Sur., ComEd Ex. 16.0, 8:147-150. No party contests the resolution of Staff's concerns.

**c. Contributions to Energy Low-Income and Support Programs**

EIMA requires ComEd to make certain contributions to low-income and other energy assistance programs. *See* 220 ILCS 5/16-108.5(b-10). These contributions include \$10 million per year, over five years, in customer assistance costs that are not recoverable and that ComEd has removed in full from the determination of its revenue requirements. *See* Hemphill Dir., ComEd Ex. 1.0 REV, 20:355-70. ComEd presented evidence demonstrating that these EIMA commitments have been met through the sponsorship of various initiatives under ComEd's CARE programs; through these programs, ComEd assists customers that face financial hardships and have difficulty paying their electric utility bills by helping them to avoid disconnection. Moreover, on February 20, 2013, ComEd filed its Annual Customer Assistance Report for 2012 with the Commission. Donovan Dir., ComEd Ex. 6.01. This Report specifies the programs that were funded and reports the amount of money each program received, further demonstrating ComEd's compliance with its obligation to fund EIMA customer assistance programs. Donovan Dir., ComEd Ex. 6.0 CORR., 12:275-281; ComEd Ex. 6.01. No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by EIMA.

**C. Potentially Contested Issues**

**1. Use of Rate Formula Template / Traditional Schedules for Analysis of Adjustments / Disallowances**

The Commission first approved a rate formula for ComEd in Docket No. 11-0721. While the rate formula has not been substantively altered since its establishment, it was modified pursuant to the direction of the General Assembly in light of PA 98-0015. PA 98-0015, which

became effective on May 22, 2013, required that specific corrections be made to the formula and to revenue requirements established under the prior uncorrected formula. Hemphill Reb., ComEd Ex. 12.0 CORR., 4:72-85. Pursuant to PA 98-0015, ComEd submitted revised formula rate tariff sheets, the resulting complete rate formula template populated with updated data called for by 98-0015, and certain informational sheets to the Commission; after a review of the revised and updated information provided by ComEd, the Commission approved the Rate Formula template in Docket No. 13-0386.

This Rate Formula template defines the process of calculating each revenue requirement and specifies mathematically how each input affects it. *Id.*; Brinkman Reb., ComEd Ex. 13.0, 4:59-68. The Rate Formula template is used to calculate the final revenue requirement – as a result, this template must be used by all parties when presenting and analyzing proposed revenue requirement adjustments or disallowances. Brinkman Reb., ComEd Ex. 13.0, 4:69-5:82. This docket is not designed to challenge or revise the Rate Formula template – instead, this docket reflects new and updated data that populate the formula. This position is further reflected in Mr. Hemphill’s testimony, which recommends that “challenges to the updated inputs should be analyzed using the rate formula and depicted with schedules that conform to that formula.” Hemphill Reb., ComEd Ex. 12.0 CORR., 6:124-127. Despite this Commission-approved Rate Formula template, Staff has proposed adjustments and disallowances that are inconsistent with and violate the approved Rate Formula template. As a result, those proposals must be rejected. Brinkman Reb., ComEd Ex. 13.0, at 5:83-6:104.

Staff witness Mr. Bridal deviates from the approved formula template, and proposes revenue requirements that are based on traditional Commission revenue requirement schedules. Bridal Dir., Staff Ex. 1.0, 5:104-119. In support of this position, Mr. Bridal states that “the

formula rate template does not provide for the input of adjustments into the formula rate revenue requirement calculations.” Bridal Reb., Staff Ex. 7.0, 9:185-186. However, as discussed by Mr. Hemphill, “using the rate formula is the only way to determine the actual impact of a proposed disallowance. If an input to one part of the formula calculation changes, other parts of the calculation often change, too.” Hemphill Reb., ComEd Ex. 12.0 CORR., 6:128-131. Indeed, in Staff’s direct testimony, which proposed disallowances and adjustments outside of the formula template, there were two errors in the calculation of the revenue requirement. Brinkman Sur., ComEd Ex. 17.0, 2:35-3:60.

For example, Staff recommended an adjustment to ComEd’s cost of long term debt from 5.34% to 5.39% (*See* McNally Dir., Staff Ex. 6.0, 5:78-88). In the formula rate template, this adjustment would be made on Sch FR D-1, Line 12, and would result in an adjustment to the return on ComEd’s pension asset on FR C-3, Line 6, which is multiplied by the “Jurisdictional Pension Asset Net of ADIT” to derive the pension funding cost. Staff’s adjustment missed this additional adjustment, resulting in an understatement to expense of \$551,000. *See* Brinkman Sur., ComEd Ex. 17.0, 2:35-3:60. Adjustments and disallowances must be made using the approved Rate Formula template in order to ensure that all parties and the Commission are presented with a complete picture of how those adjustments and disallowances can affect the ultimate revenue requirements and charges.

Despite Staff’s concerns that it cannot determine which adjustments, if any, have been made to the formula rate inputs, ComEd has made it clear that it supports a clear identification of all adjustments in an effort to promote transparency. “ComEd is not suggesting that parties hunt through the rate formula template looking for changed inputs that would signify an adjustment ... ComEd will provide a plain and clear list of all adjustments.” Hemphill Sur., ComEd Ex.

16.0, 5:100-103. The rate formula is more transparent and less subject to error than traditional schedules. Moreover, using the rate formula makes clear how each proposed adjustment affects the result, which would not necessarily be apparent with traditional schedules. Moreover, use of the rate formula accounts for features of EIMA ratemaking that are not present in traditional ratemaking and, thus, are absent from traditional schedules. Hemphill Sur., ComEd Ex. 16.0, 6:108-120. In addition, ComEd has established that the values resulting from the Commission-approved rate formula are mathematically correct and the formula is functioning as the Commission intended. *Id.*, 5:97-99. ComEd's position is also supported by CCI witness Mr. Gorman, who agrees that the Formula Rate schedules should be used to calculate the value of any adjustments. Gorman Reb., CCI Ex. 2.0, 4:65-74.

Staff's proposal – that challenges to the updated formula rate inputs should be analyzed using traditional schedules based on test year ratemaking – deviates from the rate formula expressly approved by the Commission and should be rejected.

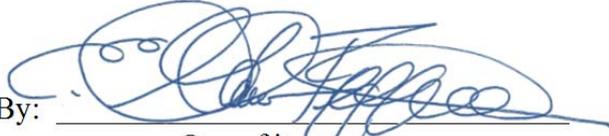
## **XII. CONCLUSION**

Based on the record and the arguments made herein, the Commission should approve ComEd's proposed 2014 Net Rate Year Revenue Requirement as presented in ComEd's rebuttal testimony (including ComEd's acceptances of proposals of others, whether to narrow the issues or otherwise), approve the original costs of ComEd's electric plant in service as of December 31, 2012, make the required factual findings in support thereof, and authorize and direct ComEd to make a compliance filing implementing the resulting rates and charges.

Dated: October 15, 2013

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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