

**BEFORE THE ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS**

Commonwealth Edison Company)
)
Tariff filing to present the Illinois Commerce) ICC Docket No. 13-0387
Commission with an opportunity to consider)
revenue neutral tariff changes related to rate)
design authorized by subsection 16-108.5(e) of)
the Public Utilities Act)

**DRAFT PROPOSED
ORDER**

On behalf of

**THE COALITION TO REQUEST
EQUITABLE ALLOCATION OF COSTS TOGETHER**

REACT

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DRAFT PROPOSED ORDER OF REACT

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),¹ by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.810 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), respectfully submits its Draft Proposed Order in the instant proceeding,² regarding revenue neutral tariff changes related to the rate design of Commonwealth Edison Company ("ComEd").³

¹ The REACT members currently include: A. Finkl & Sons, Co.; Aux Sable Liquid Products, LP; Charter Dura-Bar (f/k/a Wells Manufacturing, Inc.); The City of Chicago; Commerce Energy, Inc.; Flint Hills Resources, LP; FutureMark Paper Company; Interstate Gas Supply, Inc.; The Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining, LLC (CITGO); and United Airlines, Inc. The opinions herein do not necessarily represent the positions of any particular member of REACT. The City of Chicago is not participating in the Customer Care Cost issue in this proceeding and, therefore, as a member of REACT, the City does not join Section III of this Draft Proposed Order.

² The parties used a variety of titles for their filings on October 11, 2013 and October 18, 2013. For consistency, the October 11, 2013 filings are referred to herein by the filing party's name and "Initial Brief" (shortened to "Init. Br." in citations) and the October 18, 2013 filings are referred to here by the filing party's name and "Reply Brief" (shortened to "Reply Br." in citations).

³ This Draft Proposed Order follows the Common Outline of Issues that was submitted to the Administrative Law Judges on October 2, 2013. Failure to address any particular outline issue herein is not intended as a waiver of the right to address such an issue in future filings and should not be interpreted as agreement with any other party on such an issue.

I.

INTRODUCTION / STATEMENT OF THE CASE

REACT is an *ad hoc* coalition, with diverse members comprised of some of the largest commercial, industrial, and governmental delivery service customers of ComEd, united in opposing what REACT characterizes as ComEd's proposed inequitable and unjustified cost allocations. REACT members include customers in both the Extra Large Load Delivery Class (referred to herein as the "ELLC" class) and the over 10 MW High Voltage Delivery Class customers (referred to herein as the "HV Over 10 MW" class). REACT also includes Retail Electric Suppliers ("RESs") that are active in ComEd's service territory.

REACT does not seek to attack or change ComEd's "bottom line." On the contrary, REACT respects ComEd's need for appropriate overall cost recovery to maintain and improve the electric distribution system. In other words, REACT is not questioning the "size of the pie" that constitutes ComEd's rate base. REACT's focus, however, is to ensure that the ComEd "pie" is split up appropriately, so that charges to particular customer classes fairly and equitably reflect the costs ComEd incurs to provide service to those customer classes. Customer classes should pay for the facilities they use, and the services they receive -- no more and no less. This is entirely consistent with straightforward cost causation principles that are explicitly set forth in the Act and are well recognized by the Commission.

REACT presented three expert witnesses:

- Harry L. Terhune: Mr. Terhune is an electrical engineer, licensed professional engineer, independent consultant, and former 31-year employee of ComEd, where he ended his career as the Manager of ComEd's Transmission and Distribution Planning Department. Mr. Terhune testified on REACT's behalf in

the 2010 ComEd Rate Case (ICC Docket No. 10-0467.) Mr. Terhune has a deep and comprehensive understanding of ComEd's distribution system and has performed a detailed analysis -- based on ComEd-provided data -- of what facilities are used and *not* used by the ELLC class and the HV Over 10 MW class. In this proceeding, Mr. Terhune:

(1) performed and presented a detailed engineering analysis of what distribution facilities are and are not used by the ELLC and HV Over 10 MW classes;

(2) recommended a modification to the allocation of costs to those classes based on that study; and

(3) recommended a further Shared Distribution Lines Proportional Cost Assignment Study. (*See generally* REACT Ex. 2.0-2.15, REACT Ex. 5.0-5.3, Tr. at 368:9-379:12.)

- Bradley O. Fults: Mr. Fults is the Managing Principal of an energy consulting firm with over 25 years of experience and familiarity with large customer issues in the ComEd service territory. Mr. Fults has extensive experience analyzing cost impacts for the largest energy users associated with ComEd's rate design approaches. Mr. Fults testified on REACT's behalf in the 2007 ComEd Rate Case (ICC Docket No. 07-0566), the 2008 Special Investigation Proceeding (ICC Docket No. 08-0532), as well as the 2010 ComEd Rate Case. In this proceeding, Mr. Fults:

(1) analyzed cost impacts related to various proposed rate design approaches, focusing both on current impacts and aggregated historic impacts;

(2) addressed currently-unresolved questions relating to charges from Unaccounted For Energy (which is related to, though apparently different from, ComEd's Distribution Loss Factor); and

(3) explained the unfair burden imposed on the largest electricity customers from ComEd's method of recovering its Illinois Electricity Distribution Tax. (*See generally* REACT Ex. 1.0-1.9, REACT Ex. 4.0, Tr. at 360:19-368:4.)

- Jeffrey Merola: Mr. Merola is the Vice President of an energy consulting firm with over 15 years of experience related to retail and wholesale marketing of electric power and natural gas. An electrical engineer, Mr. Merola has extensive experience relating to the deregulated power industry throughout the United States. Mr. Merola testified on REACT's behalf in the 2007 ComEd Rate Case, the 2008 Special Investigation Proceeding, and the 2010 ComEd Rate Case. In this proceeding, Mr. Merola:

(1) analyzed ComEd's treatment of Customer Care Costs -- those costs that ComEd incurs to provide customer service to its delivery and supply customers;

(2) recommended modifications to ComEd's cost allocation approach to ensure that Customer Care Costs are appropriately allocated between ComEd's delivery function and supply function; and

(3) recommended that ComEd be required to appropriately track and analyze its Customer Care Costs to ensure that these costs are appropriately allocated between ComEd's delivery function and supply function in future proceedings.

(*See generally* REACT Ex. 3.0-3.9, REACT Ex. 6.0-6.4.)

**This Case Presents The Commission With An Opportunity
To Implement More Accurate Rate Design Based On Cost Causation**

Since the 2007 ComEd Rate Case, REACT has sought to ensure that ComEd's rates are designed in a manner that accurately and fairly reflects actual cost causation. REACT points out that the Commission has been *very clear* in its position that cost causation principles should be the touchstone in determining equitable rate design. (*See, e.g.*, ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 205-06; ICC Docket No. 10-0467, May 24, 2011 Final Order at 38, 203, 285, 231-32.) That view flows directly from the Public Utilities Act's explicit requirement for the application of cost causation principles to rate design. (*See* 220 ILCS 5/1-102(d)(iii), 16-108(c).) Accordingly, the Commission historically has exhibited a healthy skepticism toward ComEd's ECOSS and associated rate design, noting serious flaws and calling for further refinements, even when using the ECOSS (in the absence of any viable alternative) to set rate design. (*See, e.g.*, ICC Docket No. 10-0467, May 24, 2011 Final Order at 264.)

REACT's argues that its evidence in this proceeding is exactly the type of "further refinement" that the Commission called for in its last examination of ComEd's rate design in 2010, and that its evidence demonstrates that ComEd's base approach to rate design continues to violate cost causation principles that the Commission repeatedly has embraced. (*See id.*) REACT's expert witness Mr. Terhune performed and presented an engineering analysis of the ComEd electric distribution system, demonstrating that ComEd's ECOSS and associated rate design -- which would be perpetuated under the ECOSSs that ComEd has put forward in this case -- would unfairly saddle customers in the ELLC and HV Over 10 MW classes with costs for electric distribution facilities that they never use or only use to a *de minimis* level. (*See generally* REACT Ex. 2.0-2.15, REACT Ex. 5.0-5.3.)

REACT emphasizes that neither ComEd, Staff, nor any other party has offered any evidence to demonstrate that REACT's analyses were flawed or that the data upon which such analyses rely (which was provided by ComEd) was inaccurate. On the contrary, cross-examination revealed a consensus view that REACT's analysis constituted exactly the sort of refinement to the ECOSS that the Commission called for in ComEd's last rate design case, and no witness raised any credible criticism of the actual, detailed analysis that REACT's experts performed. (*See* Tr. at 126:20-127:12 (Staff witness Mr. Johnson); 250:24-251:15, 253:9-14 (ComEd witness Mr. Bjerning); 328:11-21 (ComEd witness Mr. O'Sheasy); 292:8-293:11; (Kroger Co. witness Mr. Townsend); 305:14-306:7 (Commercial Group witness Mr. Chriss).) While certain parties expressed some conclusory disagreement with some of REACT's recommendations, no party actually provided a credible critique of the REACT analysis.

Similarly, REACT presented analysis demonstrating what it characterizes as the inequitable, highly disproportionate impact that ComEd's rate design approach has had upon ComEd's largest customers, including the members of the ELLC and HV Over 10 MW classes. (*See generally* REACT Ex. 1.0-1.9, REACT Ex. 4.0.) Cross-examination of ComEd's designated rate design witness established that while the average residential customer would see an *annual* rate increase amounting to less than the cost of a gallon of milk under REACT's proposal, individual members of the ELLC and HV Over 10 MW classes -- the largest employers in Illinois and the economic engines that drive the economy -- have been hit with multi-million dollar increases since 2007, that would only continue and increase under the proposals of Staff and certain other parties now before the Commission. (*See* ComEd Ex. 6.13; Tr. at 418:1-429:6 (ComEd witness Mr. Tenorio).)

Finally, REACT presented expert witness analysis demonstrating that a portion of ComEd's Customer Care Costs are attributable to ComEd's supply function. REACT notes that this is an unremarkable conclusion, but one that ComEd has refused to accept, even though doing so would *not* change ComEd's bottom line. (*See generally* REACT Ex. 3.0-3.9, REACT Ex. 6.0-6.4.) REACT highlights that ComEd's response relies on a speculative "switching study" that was performed by ComEd *before* any material amount of residential customer switching had occurred. (*See* REACT Ex. 3.0 at 12:260-265 (discussing Illinois residential customer switching levels which grew from .03% at the end of 2010 to 68% as of April 30, 2013).) The facts on the ground are now obviously different, as well over half of all ComEd residential customers have switched to competitive supply. Again, while certain parties disagreed with REACT's conclusions, no party actually provided a credible critique of the REACT's analysis.

REACT points out that in briefs, instead of embracing the refinements to ComEd's rate design advocated by REACT to produce fair rates based on cost causation principles, ComEd, Staff, the Commercial Group, and Kroger tried to obfuscate, using a variety of tactics that the Commission should reject. For example, REACT states that these parties:

- **Improperly refer to "cost" based rates and "subsidies" without taking into consideration the actual cost to serve.** (*See* ComEd Init. Br. at 31-32; Staff Init. Br. at 36-37; Commercial Group Init. Br. at 1, 9-10; Kroger Init. Br. at 1, 3, *but see* REACT Init. Br. at 50 ("Fairness and application of cost causation principles requires that costs be allocated to cost causers, based upon an analysis of the facilities used to serve the various classes of customers.")) According to REACT, even those who oppose REACT's approach admit that in order to

establish cost-based rates and eliminate subsidies, it is first necessary to evaluate the actual facilities that are used to serve various classes of customers. (*See, e.g.,* Tr. at 291:8-12 (Kroger witness Mr. Townsend).) REACT presented un rebutted, substantial evidence, which shows that costs have been improperly allocated to the Extra Large Load Delivery Class (referred to herein as the "ELLC" class) and the over 10 MW High Voltage Delivery Class customers (referred to herein as the "HV Over 10 MW" class).⁴ REACT also advocated for studies to further refine those figures. Other parties have not performed the analysis and argue against further study.

- **Improperly create straw man arguments that do not reflect REACT's position.** REACT notes that both ComEd and Staff assert that the Shared Distribution Line study proposed by REACT would be potentially complex, resource intensive, and contentious. (*See* ComEd Init. Br. at 11-15; Staff Init. Br. at 6-7, 17-18.) However, REACT explained that Staff witness Mr. Johnson admitted on cross-examination that the study proposed by REACT is different than the study that Staff portrays in its testimony and briefs. (*See* Tr. at 131:10-

⁴ "Substantial" evidence is the applicable standard to support a Commission decision. (*See* 220 ILCS 5/10-201(e)(iv)(A); *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 2013 IL App. (2d) 120334, ¶¶ 13-14.)

15).⁵ The study proposed by REACT is entirely feasible, as ComEd's witness Mr. Bjerning admitted (*see* Tr. at 257:6-8).⁶

- **Cite portions of the transcript out of context.** REACT points in particular to the Commercial Group, which improperly cites to Mr. Terhune's cross-examination to suggest that he has concluded that the Large and Very Large customer classes should have a smaller allocation of the Shared Distribution Lines costs. (*See* Commercial Group Init. Br. at 4.) The transcript shows that Mr. Terhune stated he "did not attempt to analyze the attributes of those customer classes". (Tr. at 374.) REACT asserts that the Commercial Group also improperly suggests that REACT witness Mr. Fults admitted that the Commission should accept the Commercial Group's position to move 100% to "cost" based rates in this proceeding based upon ComEd's ECOSS. (*See id.* at 9.) However, the "admission" cited by the Commercial Group related to a hypothetical ECOSS that would make all of the adjustments that REACT is advocating (which would require additional study and allocations). In reality, Mr. Fults explained that "REACT's position is that there have been problems

⁵ Q. Would you agree, Mr. Johnson, that the type of study that Mr. Terhune describes in his rebuttal testimony is not the same type of testimony that -- the same type of study that's described in your rebuttal testimony?

A. That's correct.

⁶ Q. And you're capable of doing what REACT has asked that you do?

A. Yes, we're capable of performing the study.

with these costs, and we have not agreed with the ECOSS." (Tr. at 367. *See also* REACT Ex. 1.0 at 10-11, 14, 20.)

- **Incorrectly suggest prior Commission Orders were dispositive of cost allocation issues.** (*See* ComEd Init. Br. at 10-15, 21; Staff Init. Br. at 24-28, 36-37; Commercial Group Init. Br. at 2; Kroger Init. Br. at 2-3.) REACT emphasizes that in prior cases, the Commission had to make decisions on rate design based upon a flawed and problematic ECOSS, but the Commission put ComEd and interested parties on clear notice of the need for further refinement of the ECOSS and for the further evaluation of cost allocation issues as market conditions evolve. (*See* ICC Docket No. 10-0467, May 24, 2011 Final Order at 264 ("**[T]he ECOSS approved here still needs further refinement, which shall take place in a future rate case. . .**"); *see also id.* at 213 (noting Customer Care Cost allocation "**should continue to be explored in the future as market conditions evolve.**") (emphasis added).)

In sum, through the submission of detailed and comprehensive Direct and Rebuttal Testimony of three highly qualified expert witnesses, as well as the cross-examination of eight witnesses during the Evidentiary Hearings, REACT argues that it has established a compelling evidentiary basis for the Commission to take the following steps:

- (1) Order a modification to ComEd's ECOSS now, based on REACT expert witness Harry Terhune's analysis of certain electric distribution facilities that are not used or are used only a *de minimis* amount by members of the ELLC and HV Over 10 MW classes;
- (2) Order ComEd to undertake a Shared Distribution Lines Proportional Cost Assignment Study, which ComEd admits is feasible and which would build on previous cost allocation studies ordered by the Commission, to further refine the ECOSS's approach to cost allocation;

- (3) Maintain the *status quo* regarding any alleged "movement toward cost" based on ComEd's problematic ECOSS until the completion of the Shared Distribution Lines Proportional Cost Assignment Study;
- (4) Order an accurate allocation of Customer Care Costs now, to reflect the unquestionable fact that a portion of those costs is attributable to ComEd's supply function;
- (5) Order ComEd to undertake a study of its allocation of Customer Care Costs to reflect market evolution;
- (6) Order ComEd to provide transparent information about the relationship between and charges associated with the Distribution Loss Factor and the charges imposed for Unaccounted For Energy, both of which deal with lost energy that is not consumed by customers who nonetheless have to pay for it; and
- (7) Order ComEd to collect the Illinois Electricity Distribution Tax in a manner that reflects cost causation principles, consistent with the manner in which ComEd collected that tax for over a decade.

II.

COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

A. Overview

REACT argues that although ComEd continues to rely on a faulty ECOSS, and Staff largely accepts ComEd's approach without offering any independent analysis, REACT has provided new, updated, and credible analysis that directly conforms to the Commission prior directions and provides a persuasive evidentiary basis to order modifications to the ComEd ECOSS and associated rate design in this proceeding.

REACT's Initial Brief sets out the relevant history of Commission decisions in ComEd's last two rate cases (ICC Docket Nos. 07-0566 and 10-0467) as well as a special investigation proceeding that the Commission initiated to further examine, *inter alia*, rate design issues (ICC Docket No. 08-0532). (*See* REACT Init. Br. at 12-17.) According to REACT, the case history shows not only the Commission's relatively high level of skepticism about the accuracy of

ComEd's historic ECOSS (noting that it failed to allocate costs to cost causers, and observing that was "difficult to imagine" ComEd's allocation of Customer Care Costs was accurate), but also the Commission's straightforward direction for further study of cost allocation issues, segmentation of costs and refinement of the ECOSS. (*See* ICC Docket No. 07-0566, Final Order dated Sept. 9, 2008, at 213; *see also* REACT Init. Br. at 12-13). (*See* ICC Docket No. 08-0532, Apr. 21, 2010 Order at 38-39, 67; *see also* REACT Init. Br. at 13-14.) (ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 176, 264; *see also* REACT Init. Br. at 15-16.)

REACT states that notwithstanding the Commission's prior directive for "further refinement" of the ECOSS, ComEd has admitted that it has made *zero* further refinements to its ECOSS since the 2010 ComEd Rate Case. (*See* Tr. 246:7-11 (ComEd witness Mr. Bjerning); REACT Cross Ex. 10 Townsend.) In contrast, REACT -- through the analysis of its expert witnesses Harry Terhune and Jeffrey Merola -- actually provided further refinement to the ECOSS. (*See generally* REACT Exs. 2.0, 3.0, 5.0, 6.0.) Cross-examination confirmed that no party takes issue with the substantive analysis provided by Mr. Terhune in this proceeding. (*See, e.g.*, Tr. at 126:20-127:12 (Staff witness Mr. Johnson); 250:24-251:15, 253:9-14 (ComEd witness Mr. Bjerning); 328:11-21 (ComEd witness Mr. O'Sheasy); 292:8-293:11; (Kroger Co. witness Mr. Townsend); 305:14-306:7 (Commercial Group witness Mr. Chriss).) And no party cross-examined Mr. Merola.

COMMISSION ANALYSIS AND CONCLUSIONS

Each of ComEd's "illustrative" ECOSSs in the instant proceeding uses the same ECOSS methodology that the Commission consistently has found to be "problematic" and containing "substantial deficiencies" and in need of further refinement. (*See* REACT Ex. 1.0 at 10:211-14, *quoting* ICC Docket No. 07-0566, Final Order dated Sept. 10, 2008, at 213. *See also* ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 264.) As REACT witness Mr. Fults observed, the difference now is that ComEd has been more transparent in this proceeding than in prior proceedings, and as a result, in this proceeding, the Commission has a much more solid basis to reject any proposed rate increase to ComEd's largest customers. (*See* REACT Ex. 1.0 at 10:214-219.) Accordingly, the Commission must proceed cautiously with regard to the ECOSS, particularly since this is the first rate design case under the recent amendments to the Public Utilities Act whereby formula rate calculations and rate design are handled in separate proceedings.

As REACT explains in detail in its Initial Brief, the history of the Commission's analysis of the ECOSS supports such a cautious approach. (*See* REACT Init. Br. at 12-17 *citing* ICC Docket No. 07-0566, Final Order dated Sept. 10, 2008 at 213; ICC Docket No. 08-0532, Initiating Order dated Sept. 10, 2008 at 2-3; ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 264.) To put issues into context, we briefly review that history:

The 2007 ComEd Rate Case

In ComEd's 2007 Rate Case, the Commission noted that ComEd's ECOSS contained substantial deficiencies that rendered it problematic for purposes of setting rates. (*See* ICC Docket No. 07-0566, Final Order dated Sept. 9, 2008, at 213). In short, the costs were not properly assigned to the cost causers. The Commission determined that proper assignment of

costs likely would reduce the total cost allocation to customers in the ELLC and HV Over 10 MW classes. (*Id.* at 206-07.) To mitigate the large proposed increases of 129% for HV Over 10 MW class and 140.4% for ELLC class, the Commission authorized ComEd to only move rates 25% towards rates based upon ComEd's problematic and substantially deficient ECOSS. (*See* ICC Docket No. 07-0566, Final Order dated September 10, 2008 at 213; ICC Docket No. 07-0566, ComEd Ex. 12.0, Direct Panel Testimony of Lawrence S. Alongi and Chantal K. Jones, PhD, at 11; *see also* REACT Ex. 1.0 (in this proceeding) at 10:223-31.)

The 2008 Special Investigation Proceeding

Contemporaneous with the Commission entering its Final Order in ComEd's 2007 Rate Case, the Commission ordered an investigation into ComEd's rate design and opened the 2008 Special Investigation Proceeding as ICC Docket No. 08-0532. (*See* REACT Ex. 1.0 at 11:237-39.) That investigation required ComEd to provide updated reports and studies on the actual costs that various types of customers caused compared to the assumptions ComEd used in developing its ECOSS. (*See* ICC Docket No. 08-0532, Initiating Order dated Sept. 10, 2008 at 2-3.)

In the 2008 Special Investigation Proceeding, ComEd filed a revised ECOSS that purportedly addressed the issues directed by the Commission in the 2007 Rate Case Final Order. (*See* REACT Ex. 1.0 at 11:245-48, citing ICC Docket No. 07-0566, Final Order dated Sept. 10, 2008, at 207.) Problems identified by REACT and other intervenors in the ECOSS analysis included:

- Use of small sampling sizes to make cost allocations;
- Classification of line transformers as primary;

- Use of engineering estimates and assumptions;
- Failure to perform any studies to determine what facilities are actually installed to serve over-10 MW customers; and
- Improper allocation of Customer Care Costs.

After more than seventeen months of litigation, the Administrative Law Judges concluded that ComEd still had failed to provide necessary information, strongly criticized ComEd's failure to provide information, and recommended a six month workshop process to remedy the information gap, after which additional proceedings would be held. (*See* ICC Docket No. 08-0532, Feb. 1, 2010 Proposed Interim Order at 38-40, 67-69.) On April 21, 2010, the Commission issued its Order in that case, which, similar to the Order in the 2007 ComEd Rate Case, raised serious questions about the manner in which ComEd dealt with the facilities used to provide service to the over-10 MW customers and Customer Care Cost issues. (*See* ICC Docket No. 08-0532, Apr. 21, 2010 Order at 38-40, 67-69.) Instead of calling for a workshop, the Commission's Order simply directed ComEd to provide specific information its next rate case filing. (*See id.* at 40, 68-69, 85.) That Order included several requirements for a cost analysis:

- Direct observation or sampling and estimation techniques of ComEd's system to develop more accurate and transparent differentiation of primary and secondary costs;
- Function-based definitions of service voltages for facilities other than the line transformers already addressed;
- An analysis of which customer groups are served by which system service components; and

- Consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect cost of service.

(*See* REACT Ex. 1.0 at 12:272-13:282.)

The 2010 ComEd Rate Case

ComEd's compliance with the Commission's directives in the 2008 Special Investigation Proceeding was incomplete at best, and was plainly untimely. (*See id.* at 13:285.) ComEd did not address all of the required items in its filing to initiate its 2010 Rate Case, and instead sought, and was eventually granted, permission to file supplemental testimony. (*See id.* at 13:285-87.) There was motion practice to have the proceeding dismissed because of ComEd's non-compliance. (*See id.* at 13:287-89.) In considering whether to dismiss the proceeding, three of the five Commissioners strongly criticized ComEd for failing to abide by the Commission's Special Investigation Order. (*See id.* at 13:289-92, citing ICC Docket No. 10-0467, Tr. of Nov. 4, 2010 ICC Bench Session at 13-16.) One Commissioner pointed out that the requirements from the prior Commission Order "were pretty straightforward" and that ComEd's non-compliance was a "major flaw in the case." (ICC Docket No. 10-0467, Tr. of Nov. 4, 2010 ICC Bench Session at 13-14.)

The Commission, notwithstanding its skepticism of ComEd's approach, allowed the case to continue, and after the case concluded, REACT and several other parties filed appeals to challenge the Commission's failure to dismiss the case, as well as other specific items. (*See* REACT Ex. 1.0 at 13:295-98.) That appeal was not decided on the merits. Rather, the Appellate Court dismissed the appeal in response to a Commission Motion to Dismiss, which asserted that the appeal was moot. The Appellate Court neither provided any substantive

explanation for its decision nor made any finding on the merits, including whether ComEd had in fact complied with prior Commission Orders. (*See id.* at 13:297-301.)

The Commission approved new rates in the 2010 Rate Case that included a split between primary and secondary delivery services costs, more accurately identifying the facilities that particular customers used in order to more fairly set their rates. (*See id.* at 14:304-05; *see also* Tr. at 243:14-20 (ComEd witness Mr. Bjerning) ("Q. Why is it appropriate to have a separate rate for high voltage customers? A. Because the attributes for those specific types of customers lend itself to a specific rate, meaning that the facilities that serve those customers are relatively unique, relative to other classes or groups of customers.").)

Subsequently, ComEd filed "Exemplar" rates showing the rate designs with primary and secondary Distribution Facilities Charge for non-residential customers having a \$ per kW charge. (*See* ICC Docket No. 10-0467, ComEd Ex. 21.0R at 8; ComEd Ex. 21.1.) In approving those rates, the Commission also approved what ComEd and some other parties have improperly characterized as an additional 25% movement "toward cost of service." (*See* ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 264.) Indeed, the Commission itself acknowledged that this movement "toward" ComEd's ECOSS-based rates was, in fact, based upon "less than perfect" ECOSS study, which "needs further refinement." (*Id.*) The Commission also stated:

[T]he Commission does concur with the IIEC's argument that ComEd, generally, has not complied with the Commission's Order in the *Rate Design Investigation* Order in Docket No. 08-0532. The Commission further notes that **once ComEd finally complies with the requirements in that Order, further segmentation of ComEd's costs may be necessary**, depending upon the outcome.

(*Id.* at 176 (italic in original) (bold added).)

The Present Rate Design Proceeding

This is the first ComEd rate design proceeding brought pursuant to Section 16-108.5(e) of the Public Utilities Act. (220 ILCS 5/16-108.5(e).) Given our prior directive for "further refinement" of the ECOSS, there was a reasonable expectation that in this proceeding -- which is focused solely on rate design issues -- ComEd would have highlighted the further refinements that it incorporated into its ECOSS. However, ComEd has admitted that it has made no further refinements to its ECOSS since the 2010 ComEd Rate Case. (*See* Tr. 246:7-11 (ComEd witness Mr. Bjerning); REACT Cross Ex. 10 Townsend.) ComEd now argues that the Commission directive for further refinement "does not direct ComEd to change a future ECOSS based upon the results of a particular study. (ComEd Reply Br. at 3.) The point of ComEd's point is unclear, but in any event, it does confirm what the record already establishes -- ComEd has not made further refinements to its ECOSS.

Rather, it is REACT -- through the analysis of its expert witnesses Harry Terhune and Jeffrey Merola, that has actually provided further refinement to the ECOSS. (*See generally* REACT Exs. 2.0, 3.0, 5.0, 6.0.) Cross-examination revealed that no party actually takes issue with the substantive analysis provided by Mr. Terhune in this proceeding. (*See, e.g.*, Tr. at 126:20-127:12 (Staff witness Mr. Johnson); 250:24-251:15, 253:9-14 (ComEd witness Mr. Bjerning); 328:11-21 (ComEd witness Mr. O'Sheasy); 292:8-293:11; (Kroger Co. witness Mr. Townsend); 305:14-306:7 (Commercial Group witness Mr. Chriss).) And no party cross-examined Mr. Merola.

Thus, while ComEd continues to rely on a faulty ECOSS, offering proposed rate design alternatives in this proceeding based on the continued inequitable and unjustified cost allocations that formed the basis for its original request in the 2007 Rate Case, REACT has

provided new, updated, and credible analysis that directly conforms to the Commission prior directions and provides a persuasive evidentiary basis to order modifications to the ComEd ECOSS and associated rate design in this proceeding.

B. Potentially Uncontested Issues

Cost Causation Principles Apply

REACT cites the provisions of the Public Utilities Act, the Commission's past decisions, and the testimony in this case that all confirm that cost causation principles apply to the rate design issues before the Commission in this proceeding. (*See* REACT Init. Br. at 17-20; REACT Reply Br. at 8.) No party's briefs contest the application of cost causation principles.

COMMISSION ANALYSIS AND CONCLUSIONS

The Public Utilities Act plainly requires the application of cost causation principles to ComEd's ECOSS and resulting rate design based upon the facilities that are used by particular classes and subclasses of customers. Section 1-102(d)(iii) of the Act states one of the overarching goals of regulating utilities to ensure:

(d) Equity: the fair treatment of consumers and investors in order that

(iii) the cost of supplying public utility services is allocated to those who cause the costs to be incurred.

(220 ILCS 5/1-102(d)(iii) (emphasis added).)

Similarly, Section 16-108 of the Act states:

Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs.

(220 ILCS 5/16-108(c) (emphasis added).)

The Commission consistently has endorsed the application of cost causation principles.

For example, our Final Order in the 2007 ComEd Rate Case observed that:

Cost-causation principles seek to ensure that all customers are paying their fair share for distribution service.

(ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 205.) Indeed, we then articulated an "explicit policy objective of assigning costs where they belong." (*Id.* at 206.)

We reiterated this point in our decision in the 2010 ComEd Rate Case, invoking cost causation principles repeatedly in its analyses and conclusions, for example:

The Commission concludes that it is when customers respond to rates that do not accurately reflect cost causation, that inefficiency results and society suffers.

The Commission also believes it is important to design rates that reflect cost causation.

(ICC Docket No. 10-0467, May 24, 2011 Final Order at 231-32; *see also id.* at 38, 203, 285.)

No party in this proceeding alleged that cost causation principles should not apply. On the contrary, everyone agreed that cost causation principles apply. This was established at the Evidentiary Hearings, where every single witness questioned about cost causation principles confirmed that they should apply to the ECOSS and the associated rate design. (*See, e.g.*, Tr. 44:15-45:2, 58:22-59:1, 62:4-12, 64:16-65:11, 68:6-10, 69:23-70:2 (ComEd witness Ms. Brinkman); 242:11-244:2 (ComEd witness Mr. Bjerning); 326:16-18 (ComEd witness Mr. O'Sheasy); 402:20-403:22 (ComEd witness Mr. Tenorio); 110:17-19,111:6-112:2 (Staff witness Mr. Rockrohr); 120:7-121:4, 122:21:123:13 (Staff witness Mr. Johnson); 291:8-12 (Kroger Co. witness Mr. Townsend); 301:8:24 (Commercial Group witness Mr. Chriss).)

ComEd went so far as to indicate through its "lead policy witness" Ms. Brinkman (Tr. at 57:5-6), that application of cost causation principles was the *only* guiding point that ComEd believed must be used and that otherwise ComEd is "neutral" on the outcome of this proceeding:

Q. Is ComEd neutral with regards to the question of allocation of costs?

(ALJ Hilliard): As long as the principles of cost causation are embedded in the final result.

A. Yes, as long as the principles of cost causation are embedded, yes, ComEd is neutral.

Q. Thank you. So if the Commission were to order that the extra-large load class and/or the high voltage over 10 megawatt customers' allocations should be modified so that those costs would shift from those classes to another class, ComEd would be fine with that, as long as the order was consistent with cost causation principles, right?

A. As long as the order was consistent with cost causation principles, yes.

(Tr. at 70:13-71:3.)

Accordingly, it is uncontested that cost causation principles should apply to ComEd's ECOSS and associated rate design.

C. Potentially Contested Issues

1. Cost Allocation of Primary/Secondary Distribution System

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

REACT explains that in contrast to ComEd, Staff, The Commercial Group, and Kroger, REACT presented a "further refinement" of the ComEd ECOSS, in line with the Commission's Order in the 2010 Rate Case. (ICC Docket No. 10-0467, May 24, 2011 Final Order at 264; *see also* Tr. 246:7-11 (ComEd witness Mr. Bjerning); Tr. 126:20-128:6 (Staff witness Mr.

Johnson); Tr. at 305:24-306:1-7 (Commercial Group witness Mr. Chriss); Tr. at 291:8-15, 291:24-292:1-7 (Kroger Co. witness Mr. Townsend); REACT Cross Ex. 10 Townsend; REACT Init. Br. at 20-21.) REACT witness Mr. Terhune analyzed additional data; presented an engineering analysis that identified with specificity which facilities are used and *not* used by ELLC and HV Over 10 MW class customers; and offered substantial refinements to the ComEd ECOSS, the implementation of which would advance accurate and fair rate design, consistent with cost causation principles. (*See* REACT Ex. 2.0 at 18:434-39:925.) Mr. Terhune specifically identified and explained in detail an over-allocation that exists in ComEd's illustrative ECOSSs related to the "Shared Distribution Lines" component of retail delivery services costs assigned to customers in ComEd's ELLC and HV Over 10 MW classes. (*See id.*) REACT states that no party contests the accuracy of Mr. Terhune's analysis.

REACT points out that no party meaningfully contests the value and advantages of refined analysis designed to identify the facilities used to serve customer classes. On the contrary, Staff witness Mr. Rockrohr emphasized that greater accuracy in cost allocation results in rates that are fairer (*see* Tr. at 110:14-112:2), and other parties also linked increased accuracy to fairer rates. (*See* Tr. at 302:4-8 (Commercial Group witness Mr. Chriss) (describing the determination of cost of service that is "as accurate as reasonably possible" as the "optimal situation"); IIEC Ex. 1.0 at 4:89-5:115 (IIEC witness Mr. Stephens) (citing the most recent National Association of Regulatory Utility Commissions ("NARUC") "Electric Utility Cost Allocation Manual" and recent precedent from Wisconsin supporting the appropriateness of ECOSS refinements consistent with Mr. Terhune's recommendations).)

According to REACT, Staff's position regarding using additional analysis to advance cost causation principles is plainly inconsistent. REACT notes that although Staff admits that it

performed no independent analysis of cost causation (*see* Tr. at 126:20-128-6) (Staff witness Mr. Johnson)), Staff criticizes REACT's suggestion that the ECOSS be modified based on REACT's detailed analytical work showing very clearly that certain customers do not use certain facilities or use them in only *de minimis* levels. (*See* Staff Init. Br. at 12.) However, REACT points out that on the very next page of its Initial Brief, Staff endorses a modified allocation of cost for combined poles, on the basis that the Commission explained in its Order in the 2010 ComEd Rate Case that it "wants to consider more accurate and transparent differentiation of primary and secondary costs." (*Id.* 13-14.) Then, *four pages later*, Staff again switches position, and states flatly: "Staff opposes the segregation of costs proposed by other parties throughout this proceeding." (*Id.* at 18.) REACT argues that in the end Staff's position in opposition to further refinement in the face of unrebutted evidence of specific, material improper allocation of costs, is contrary to the Commission's clear dictates regarding the value of more accurate cost allocation. (*See, e.g.*, ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 176 ("further segmentation of ComEd's costs may be necessary").)

REACT notes that the basis for Staff's opposition to more accurate cost allocation (when it does oppose it) appears to be Staff's oft-repeated assertion that the ComEd's distribution system is a "large interconnected system that serves all customers." (Staff Init. Br. at 7, 20.) However, REACT explains that Staff's position that any attempts to allocate specific subset of costs is futile leads logically to a conclusion that every customer class should simply pay the same rates, which REACT characterizes as an absurd outcome standing alone, but obviously an outcome that is contrary to the Public Utilities Act and clear Commission precedent. (*See* 220 ILCS 5/1-102(d)(iii) ("...the cost of supplying public utility services is allocated to those who cause the costs to be incurred."), 5/16-108(c) ("Charges for delivery services shall be cost

based..."); ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 205("Cost-causation principles seek to ensure that all customers are paying their fair share for distribution service."); ICC Docket No. 10-0467, May 24, 2011 Final Order at 231 ("The Commission concludes that it is when customers respond to rates that do not accurately reflect cost causation, that inefficiency results and society suffers."); *see also* IIEC Init. Br. at 16.)

COMMISSION ANALYSIS AND CONCLUSIONS

Cost causation principles dictate that the allocation of costs be made as accurately as possible based on the best available information. The Commission has no hesitation in supporting serious efforts to bring further refinement to the process of cost allocation and rate design, where those efforts involve credible analysis by qualified experts. That type of analysis is precisely what REACT has provided, through the study performed by Mr. Terhune, a highly qualified expert who has demonstrated his specific knowledge about the ComEd distribution system and has provided a detailed analysis that has not been rebutted. The refinements to the ComEd ECOSS based upon Mr. Terhune's engineering analysis of information provided by ComEd would bring greater accuracy to the cost allocation process and result in fairer rate design, and no party presents credible, specific contrary evidence. Indeed, there appears no question that Mr. Terhune's analysis regarding the facilities used and not used by the ELLC and HV Over 10 MW classes is correct.

(i) Extra Large Load and High Voltage Over 10 MW

REACT asserts that no party questions REACT witness Mr. Terhune's expertise regarding the ComEd delivery system. REACT points out that Mr. Terhune -- an electrical engineer who worked at ComEd for over 30 years -- has established himself through his analyses in both this proceeding and the 2010 ComEd Rate Case as a highly knowledgeable

expert regarding ComEd's distribution system. (See REACT Ex. 2.0 at 2:16-18:432; Tr. at 371:9-379:9; *see also generally* REACT Exs. 2.3-2.6.) According to REACT, Mr. Terhune's analysis includes:

- A highly detailed explanation of ComEd's electric delivery system, including a description of the key elements of the physical delivery chain that transports electricity from generators and external markets to end-use customers in ComEd's system. (See REACT Ex. 2.0 at 9:179-18:432.)
- A discussion of the relationship between the delivery system elements and ComEd's customer classes. (See *id.*)
- An explanation of the distinctions between "standard" and "non-standard" service, including cost implications relating to same. (See *id.* at 10:243-18-432.)
- A description of the three main categories of additional new quantitative data (and sub-sets under each category) that had become available through discovery in this proceeding regarding the ELLC and HV Over 10 MW classes. (See *id.* at 18:436-20:473.) The categories include: (1) new detail of the facilities that are included and excluded in ComEd's Shared Distribution Lines costs; (2) additional detail regarding the usage of specific facilities by customers in the ELLC and HV Over 10 MW classes; and (3) details regarding the costs of single, two, and three phase lines. (See *id.* at 18:445-20:473.)
- A conclusion that:

[T]he new data confirm that the ELLC and HV Over 10 MW customer classes receiving Standard Service, or receiving non-Standard Service via Rider NS, either do not use certain types of facilities, or only use them to a de minimis extent, and thus should either not be charged for those facilities or should be charges only in proportion to that de minimis use of such facilities compared to the use of those types of facilities by other customer classes.

(*Id.* at 20:476-81.)

- A detailed description of the impact of the new information that led to that conclusion, including a careful and comprehensive discussion of his analysis, tying back the new information to the detailed description of the ComEd distribution system and specific facilities previously identified, with a focus on ComEd's highly inaccurate allocation of costs for "Shared Distribution Lines." (See *id.* at 20:483-33:781.)

- A recommendation based on the analysis that the Commission order a revised allocation of a portion of cost responsibility (i.e., 36%) for Shared Distribution Lines currently borne by the ELLC and HV Over 10 MW classes. (*See id.* at 38:900-39:911.)

REACT asserts that no party has provided any substantive criticism of Mr. Terhune's analysis or offered an alternative analysis. (*See generally* Init. Briefs of the parties; *see also* REACT Init. Br. at 21-23.) Nor, according to REACT, does any party suggest that Mr. Terhune's analysis is inconsistent with the Commission's prior direction for "further segmentation of costs" and "refinement" of the ECOSS. (ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 176, 264.)

REACT notes that no party contests ComEd's admission that the result of Mr. Terhune's proposed reallocation adjustment would be a cost shift in the range of \$9 million, which in the context of ComEd's approximately \$2.3 billion overall revenue requirement is less than a .5% modification. (*See* Tr. at 254:12-255:3 (ComEd witness Mr. Bjerning); *see also* REACT Ex. 5.0 at 12:250-58.) Nor, according to REACT, does any party contest ComEd's rate design witness who confirmed that the impact of such an allocation modification on the average residential customer would amount to an *annual* rate increase of no more than \$2.58. (*See* Tr. at 429:10-431:13 (ComEd witness Mr. Tenorio).)

As a final point, REACT notes that no party contests that the small impact that ComEd's other customers would experience as a result of proper cost allocation stands in stark contrast to the impact that the ELLC and HV Over 10 MW class customers would experience under continued application of ComEd's flawed ECOSS. REACT's evidence showed that ComEd's largest customers have faced increases of up to many millions of dollars since 2007 under the

flawed ECOSS that ComEd continues to advance. (*See* Tr. at 419:21-429:4 (ComEd witness Mr. Tenorio).)

In sum, according to REACT, Mr. Terhune's detailed analysis -- a highly credible refinement of the ComEd ECOSS -- stands as unrebutted evidence in this proceeding for an immediate adjustment to ComEd's ECOSS.

COMMISSION ANALYSIS AND CONCLUSIONS

As noted above, the Commission fully embraces cost causation principles, which require that the allocation of costs be made as accurately as possible, based on the best available information. In the last ComEd Rate Case, we specifically called for "further refinement" of the ComEd ECOSS and recognized that "further segmentation" of ComEd's costs would help focus rate design based on cost causation principles. The evidence in this proceeding confirms the value of that type of study. REACT's expert witness Mr. Terhune, a highly qualified expert who has demonstrated his specific knowledge about the ComEd distribution system, provided a thorough analysis of detailed information provided by ComEd that has not been rebutted. That analysis convincingly demonstrates that members of the ELLC and HV Over 10 MW classes are being charged for facilities that they either do not use at all or use in only *de minimis* amounts. The logical and legally mandated result is that the ECOSS be modified to ensure that such inaccurate charges are not imposed upon customers.

The Commission acknowledges that Mr. Terhune's analysis is limited to only one class and one subclass of customers. However, that fact does not undercut the validity of Mr. Terhune's analysis. Nor does it allow the Commission to ignore the analysis, just because of the possibility that further analysis -- i.e., even further refinement of the ECOSS -- might justify additional allocation modifications. The Commission's process is to make decisions based on

evidence presented in each particular docket, and in this docket the compelling and unrebutted evidence shows that the ELLC and HV Over 10 MW classes are being charged fully for specific categories of facilities these customers do not use or use only minimally. Accordingly, it is wholly appropriate -- indeed, legally mandated -- that the ComEd ECOSS be modified accordingly.

In reaching this conclusion, we briefly review the positions that various parties took regarding Mr. Terhune's analysis.

ComEd

ComEd offers no substantive response or critique to Mr. Terhune's analysis, and specifically states that ComEd "does not take a position" regarding Mr. Terhune's proposed allocation adjustment. (ComEd Init. Br. at 7; *see also* ComEd Reply Br. at 4.) ComEd suggests that its "silence" regarding REACT's position "does not mean that ComEd agrees with" REACT's conclusions. (ComEd Reply Br. at 4.) ComEd then notes the ComEd witness Mr. Bjerning agreed that Mr. Terhune offered "one type of methodology that could be used. It doesn't necessarily mean that it's the best and most appropriate methodology." (*Id.*) ComEd's citation to Mr. Bjerning begs the question of what alternative methodology would be preferable to Mr. Terhune's. ComEd fails to answer that question. ComEd has presented an array of sophisticated witnesses -- both in-house and retained outside consultants -- to present its case. The fact that none of those witnesses was able to offer any "alternative methodology" to Mr. Terhune's analysis speaks volumes and lends further credibility to Mr. Terhune. ComEd's position confirms that ComEd offers no reason not to adopt Mr. Terhune's analysis and the resulting allocation modification to the ECOSS.

Staff

Staff offers no substantive response or critique to Mr. Terhune's analysis, but does not support his proposed allocation adjustment. (*See* Staff Init. Br. at 5-8.) Staff begins by pointing out that the Commission's Order in the 2010 ComEd Rate Case directed ComEd to conduct certain investigations of the ELLC customer class. (*See* Staff Init. Br. at 5-6). Staff then notes that ComEd, through certain consultants, performed some investigations, but that ComEd did not provide separate ECOSSs that capture the investigation results individually, and that, therefore, the Commission could not adopt such a non-existent ECOSS. (*See id.*) Staff's point is unclear. Staff's statements have nothing to do with the independent analysis that Mr. Terhune performed -- his analysis was not dependent upon any study that ComEd performed or ECOSS that it failed to provide. Moreover, will prepare, as part of its compliance filing, an ECOSS that captures the allocation that Mr. Terhune advocated.

Next, Staff says that Mr. Terhune did not "specifically propose that any ECOSS be approved by the Commission." (*See* Staff Init. Br. at 6.) Again, Staff's point is unclear. At times it appears that Staff is suggesting that REACT itself is obligated to provide a comprehensive ECOSS for all customer classes before any incremental rate design modification may even be considered. (*See* Staff Reply Br. at 5.) There is no requirement that intervenors present their own ECOSS. Further, there is no question what Mr. Terhune is proposing -- a reallocation of approximately \$9 million from the ELLC and HV Over 10 MW classes, which will be spread evenly among the other customer classes. ComEd witness Mr. Bjerning performed calculations and provided specific numbers about the proposed reallocation based on his review of Mr. Terhune's analysis. (*See* ComEd Ex.7.0 at 27:439-47.) Staff itself summarized the analysis that Mr. Terhune performed, but did not raise any question about what

that means or provide any actual critique of that analysis. (*See* Staff Init. Br. at 6-7.) As Staff accurately summarized: "In essence, REACT is proposing that the ELL and HV classes not be allocated costs associated with facilities that are not used to provide service to those customers." (*Id.* at 7.) Staff's summary *exactly* captures what REACT is proposing, and the Commission does not see any reason that approaching rate design in that manner is wrong. REACT's proposal is entirely consistent with (1) the general cost causation principles that the Public Utilities Act mandates (*see* 220 ILCS 5/1-102(d)(iii), 16-108(c)); (2) the cost causation principles that the Commission has repeatedly endorsed (ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 205, 206; ICC Docket No. 10-0467, May 24, 2011 Final Order at 231-32; *see also id.* at 38, 203, 285); (3) and the Commission's specific direction for "further segmentation of ComEd's cost" and "further refinement" of the ECOSS. (ICC Docket No. 10-0467, Final Order dated May 24, 2011 at 176, 264.)

Staff's apparent hostility to accurate cost allocation here stands in contrast to Staff's embrace of a change to the cost allocation for combination poles, though ironically with respect to those combination poles, Staff seeks to allocate costs away from one of the two categories of customers (secondary customers) who actually use the facilities on those combination poles. (*See* Staff Init. Br. at 14 (citing Staff witness Mr. Johnson's invocation of the need for "more accurate and transparent differentiation of primary and secondary costs.").)

Finally, Staff notes Staff witness Mr. Johnson's explanation of the "repercussions of selectively eliminating some costs for one class." (Staff Init. Br. at 7.) Staff refers to the difficulty of identifying "the exact components of that system that serves each customer and allocate those costs precisely such that only cost causers shoulder all their respective costs." (*Id.*) Staff advances a variation of this argument in its Reply Brief, suggesting that because

REACT did not analyze all of the customer classes, but rather did its analysis in a "piecemeal" manner, REACT "is creating its own monopoly." (Staff Reply Br. at 4, 7.) Staff's position is unpersuasive; it rests on the false premise that a change in allocation is only justified if it would result in some sort of "perfect" allocation result for every single customer.

Rate design is a complex undertaking, often requiring multiple incremental adjustments over time, rather than (as Staff seems to suggest) waiting until the moment when there is complete and perfect information about the cost allocation to each customer. The Commission recognizes this issue, and that is why we have called for "further refinement" of the ECOSS following the 2010 ComEd Rate Case, encouraging incremental cost allocation improvements. (ICC Docket No. 10-0467, May 24, 2011 Final Order at 264.)

Moreover, Staff's suggestion that REACT seeks to identify "the exact components of that system that serves each customer and allocate those costs precisely" mischaracterizes REACT's position. (Staff Init. Br. at 7.) Mr. Terhune's analysis was not about customer-specific cost allocation, and he never made any suggestion that he or REACT studied or sought a study of customer specific cost allocation. On the contrary, he emphasized that his analysis focused on customer classes and subclasses. (*See, e.g.*, REACT Ex. 2.0 at 20:475-36:859; Tr. at 371:9-379:9.) Staff's suggestion to the contrary is inaccurate and unproductive.

Respectfully, the witness upon whom Staff relies for its position -- Mr. Johnson -- is not an electrical engineer or a licensed Professional Engineer and has no experience in design, construction, or operation of electrical distribution facilities (*see* Tr. at 116:23-117:9). In contrast, Mr. Terhune holds Bachelors and Masters degrees in electrical engineering, holds a Professional Engineer license from the State of Illinois, and served for over 30 years in a wide variety of electrical engineering roles as an employee of ComEd, concluding that tenure as the

Manager of ComEd's Transmission and Distribution Planning Department. (*See* REACT Ex. 2.0 at 2:26-3:43.) Further, Mr. Johnson openly admitted on cross-examination that he did not perform any engineering study as Mr. Terhune did, did not present any evidence to contest Mr. Terhune's analytical findings, and did not present any evidence to contest Mr. Terhune's recommended allocation modification. (*See* Tr. at 126:20-128:6.) Indeed, Mr. Johnson admitted that the criticisms in his testimony did not apply to the study that Mr. Terhune described. (*See* Tr. at 131:10-15.) Based on this record, the Commission confidently embraces Mr. Terhune's analysis and is unpersuaded by Staff's position.

IIEC

IIEC indicates that it does not object to Mr. Terhune's recommendation to reduce the Shared Distribution Lines allocation to ELLC and HV Over 10 MW customer classes by approximately one third. (*See* IIEC Init. Br. at 2-3.) Accordingly, IIEC certainly offers no reason not to adopt Mr. Terhune's analysis and the resulting allocation modification to the ECOSS.

The Commercial Group

The Commercial Group's position with respect to Mr. Terhune's analysis and recommendation is somewhat unclear. Notably, the Commercial Group's Initial Brief (it did not file a Reply Brief) repeatedly makes broad statements about cross-subsidies and what the "evidence shows" without any citation to record evidence. (*See, e.g.*, Commercial Group Init. Br. at 1 ("These classes (along with the Small Load class) have for the past several years borne the entire load of the subsidy burden for the Extra Large Load, High Voltage and Railroad classes." [no citation included]); at 3 ("Although there is dispute about how difficult it might be to perform a complete study to define more closely the correct allocation of single-phase

primary cost, the evidence shows that it is very likely that such costs are substantially over-allocated to the Medium, Large, Very Large and even higher load classes." [no citation included]); at 4 ("[T]here classes [Large and Very Large load classes] already are paying more than ComEd's ECOSS indicates they should." [no citation included].) The lack of record citation to support the Commercial Group's views suggests that the evidence is lacking in this proceeding.

Importantly, the Commercial Group's witness in this case -- Mr. Chriss -- made clear that he had not performed any actual analysis to support the Commercial Group's contentions. (*See* Tr. at 305:10-13.) Mr. Chriss also confirmed that he provided no information, critique, or analysis in response to REACT witness Mr. Terhune's independent analysis and did not challenge that analysis in any way. (*See* Tr. at 305:19-306:7.) Under these circumstances, the Commission affords little weight to the Commercial Group's position about the appropriate allocation modification associated with Shared Distribution Lines.

Conclusion

Mr. Terhune's detailed engineering analysis -- a highly credible refinement of the ComEd ECOSS -- stands as unrebutted evidence in this proceeding. Accordingly, we direct ComEd to modify its ECOSS and the related rate design consistent with Mr. Terhune's recommendation and consistent with the cost causation principles that we repeatedly have endorsed.

(iii) Cost Allocation of Combination Poles

REACT supports the view that the costs associated with combination poles that carry both secondary and primary voltage facilities ought to be allocated between secondary and primary customer classes. (*See* REACT Reply Br. at 18.) Accordingly, REACT supports the

position advocated by IIEC, CTA, and Metra to retain the current 50%/50% split of combination pole costs between secondary and primary voltages. (*See id.*) REACT indicates its belief that IIEC, CTA, and Metra make a persuasive case that the 50%/50% approach, rather than the ComEd proposal to allocate 100% of the combination pole costs as shared costs, more closely aligns with cost causation principles, is supported by the preponderance of record evidence on the subject in this proceeding, and conforms with common sense. (*See id.* at 18-19; *see also* IIEC Init. Br. at 6-10; CTA Init. Br. at 5-6; Metra Init. Br. at 4-5.) REACT notes, in particular, that the notion that the attachment of secondary lines to a combination pole is merely "a convenience for secondary service" (Staff Init. Br. at 14) appears to be inconsistent with the reality of efficient distribution planning. (*See* REACT Reply Br. at 19; IIEC Init. Br. at 8-9.)

COMMISSION ANALYSIS AND CONCLUSION

Cost causation principles dictate that customer classes that use a given type of distribution facilities should pay, at least in part, for the cost of those distribution facilities. There is no question that both primary and secondary voltage customers use and benefit from combination poles. By definition, those combination poles carry both primary and secondary voltage lines -- common sense suggests that exempting secondary voltage customers from paying an appropriate portion of combination pole costs would, therefore, contravene cost causation principles.

The Commission is also unconvinced that a combination pole is merely "a convenience for secondary service." (Staff Init. Br. at 14; Staff Reply Br. at 8.) As IIEC explains (with REACT's support), using the "same poles benefits both the primary and secondary systems through economies of scale" and is consistent with efficient distribution planning. (IIEC Init. Br. at 8; *see also* REACT Reply Br. at 19.) In the absence of combination poles, the costs for

secondary system distribution obviously would rise. (*See* IIEC Init. Br. at 8; *see also* ComEd Reply Br. at 6 (acknowledging that the "secondary system benefits from the combination poles".)) Thus, the suggestion that secondary customer classes do not benefit from combination poles -- and therefore should not pay for some portion of them -- is unconvincing.

Accordingly, the Commission will not modify the current 50/50 allocation method for the costs associated with combination poles.

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

REACT recommends that the Commission order ComEd to make some cost allocation modifications now, and also order ComEd to perform some additional studies of particular issues. In particular, REACT witness Mr. Terhune advocated an immediate modification to ComEd's ECOSS based on his analysis demonstrating a misallocation of costs to the ELLC and HV Over 10 MW classes associated with Shared Distribution Lines. (*See* REACT Init. Br. at 20-24; *see generally* REACT Ex. 2.0.) At the same time, because additional study by ComEd would further serve the goals of accuracy and fairness in cost allocation, Mr. Terhune advocated that ComEd undertake a statistically valid Shared Distribution Lines Proportional Cost Study based upon data ComEd already possesses, including some relevant customer-specific information that ComEd is unwilling to provide to third parties such as REACT. (*See* REACT Init. Br. at 25-27; REACT Ex. 5.0 at 21:451-56.)

REACT repeatedly points out that the study that Mr. Terhune actually advocates -- as opposed to the study that some parties inaccurately allege he advocates -- is feasible and entirely consistent with prior Commission-ordered studies, and no party advances any reason that justifies precluding the study.

COMMISSION ANALYSIS AND CONCLUSIONS

The Commission frequently has taken an incremental approach to improving cost allocation, under which it orders certain changes to cost allocation based upon evidence presented in a given proceeding, and also orders certain studies to be undertaken after the given proceeding. (See REACT Init. Br. at 24-25, *citing* ICC Docket No. 10-0467, May 24, 2011 Final Order at 180-82, 185, 315-16; ICC Docket No. 08-0532, Apr. 21, 2010 Final Order at 84-85; ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 235-237.) Likewise, in this proceeding, the evidence supports certain immediate cost allocation modifications -- such as the modification advocated by REACT witness Mr. Terhune, as discussed above -- and the performance of certain further studies, as discussed below.

(i) Shared Distribution Lines Proportional Cost Assignment Study

REACT points out that in addition to advocating for the immediate reallocation of certain costs, REACT witness Mr. Terhune also recommended that the Commission direct ComEd to undertake a statistically valid Shared Distribution Lines Proportional Cost Assignment Study:

[The Commission should] direct ComEd to perform a statistically valid analysis to determine the proper proportion of Shared Distribution Lines costs to be assigned to each customer class or subclass and incorporate those results into its ECOSS. This statistically valid analysis should, at a minimum, address REACT's concerns about allocation of single-, two- and three-phase and 4 kV primary distribution line costs.

(REACT Ex. 5.0 at 21:451-56.)

REACT emphasizes that Mr. Terhune confirmed that the study he recommends is realistic and feasible. (See *id.* at 10:196-205.) REACT also points out that ComEd confirmed that the recommended study is feasible:

Q. So, if the Commission orders the study that REACT recommends, ComEd is capable of undertaking that study, correct?

A. ComEd will comply with what the Commission directs us to do.

Q. And you're capable of doing what REACT has asked that you do?

A. Yes, we're capable of performing the study.

(Tr. at 257:1-9 (ComEd witness Mr. Bjerning).)

REACT also highlighted ComEd's recent experience working with outside consultants to prepare rate design-related studies that meet Commission requirements. (*See* REACT Ex. 5.0 at 10:200-01; *see also* IIEC Init. Br. at 16.) REACT witness Mr. Terhune noted that ComEd has complained before about the potential unfeasibility of Commission-ordered studies, but has been able to complete the studies as ordered. (*See id.* at 10:194-200.) REACT states that this was confirmed at the Evidentiary Hearing where ComEd acknowledged that, although ComEd previously has suggested a parade of horrors that would prevent certain studies, at the end of the day, working with qualified consultants, ComEd has in fact completed the Commission-ordered studies. (*See* Tr. at 260:23-261:24 (ComEd witness Mr. Bjerning).)

COMMISSION ANALYSIS AND CONCLUSIONS

The study advocated by REACT witness Mr. Terhune is feasible -- ComEd openly admits as much -- and is intended to be a statistically valid analysis of the proportionate use of shared distribution lines for all classes. Opposition to the proposed study seems to be based on the notion that since "perfect" information might not result, there is no point in even performing the study. That approach is inconsistent with the Commission's long-standing support for incremental refinement of rate design through accurate cost allocation. The current information used by ComEd in its ECOSSs certainly is not "perfect," and this study will provide more

accurate information that will improve the basis for cost allocation. In ordering ComEd to undertake the study that Mr. Terhune advocates, we briefly review the parties' positions regarding the study.

ComEd

ComEd straddles the fence regarding the Shared Distribution Lines Proportional Cost Assignment Study that REACT advocates. ComEd begins by stating that it "does not take a position as to whether these proposed studies should be undertaken." (ComEd Init. Br. at 11.) Thus, ComEd does not object to the study REACT advocates. ComEd then identifies certain challenges that can occur depending on the scope and nature of a particular study. (*See id.* at 12-15.) ComEd finishes by pledging its allegiance to cost causation principles: "To be clear, ComEd supports the development of delivery service charges based on cost causation principles." (*Id.* at 15.) Then ComEd concludes: "However, that principle should be applied in a reasonable and practical manner that is fair to all customer groups and that recognizes that ComEd's distribution system is complex, interconnected and built to serve all customers." (*Id.*)

ComEd's conclusion is sensible and appropriate. However, it is not a reason to oppose Mr. Terhune's proposed study (if that is what ComEd was suggesting). Mr. Terhune proposed study was fully explained and carefully designed to be not only feasible -- a point that ComEd admits (*see* Tr. at 257:6-9 (ComEd witness Mr. Bjerning)) -- but also capable of being conducted without the need for further physical field study or overly burdensome modifications to ComEd's current account classifications and system design specifications. (*See* REACT Ex. 5.0 at 6:105-19:409.) To use ComEd's language, the study Mr. Terhune advocated *is* "reasonable" and "practical," would be "fair to all customer groups," and, because his recommended comprehensive approach to using statistically valid sampling for all customer

classes, "recognizes that ComEd's distribution system is complex, interconnected and built to serve all customers." (ComEd Init. Br. at 15.)

The Commission notes that the witnesses upon whom ComEd relies for its expressed concerns about the study -- ComEd witnesses Mr. O'Sheasy and Mr. Bjerning -- made substantial admissions on cross-examination that undermine ComEd's expressed concerns. For example Mr. O'Sheasy admitted that he did not even attempt to provide a response to Mr. Terhune's proposed study in his surrebuttal testimony, even though Mr. Terhune's rebuttal testimony had specifically responded to Mr. O'Sheasy's earlier rebuttal testimony expressing Mr. O'Sheasy's concerns. (*See* Tr. at 326:1-12.) Thus, as far as Mr. O'Sheasy is concerned, Mr. Terhune's testimony stands unrebutted.

Mr. Bjerning repeatedly acknowledged that Mr. Terhune was not proposing a study that included the components about which ComEd has expressed concerns, such as the complexity of the study, potential need for field sampling, the potential need to classify all 4.8 million Com Ed customers. (*See* Tr. at 259:17-260:19.) Mr. Bjerning also acknowledged that ComEd expressed similar concerns in prior rate cases, but ultimately was able to perform the studies that the Commission ordered. (*See* Tr. at 260:23-261:24.) Finally, although in its briefs ComEd raises concerns about a study being "resource intensive" (ComEd Init. Br. at 14), Mr. Bjerning specifically admitted that ComEd had provided no evidence about the cost to undertake the study that Mr. Terhune advocated. (*See* Tr. at 257:15-19.)

Mr. Terhune advocated "a statistically valid sampling of the distribution delivery facilities used to provide delivery services to each customer class." (REACT Ex. 5.0 at 13:263-65.) Notably, ComEd does not appear to express particular concerns about the specific study that REACT witness Mr. Terhune advocated. (*See* ComEd Init. Br. at 10-15.) Rather, ComEd

generically identifies alleged concerns that may apply to one or more of the studies advocated by several different parties, such as the possible need to analyze 4.8 million meter points, possible reclassification of plant accounts by number of phases of primary voltage, the need for physical field inspections, the attempt to define any level of service by customer and by number of primary phases connected to serve that customer, "allocation by exclusion", customer specific cost causation, and potential future changes to the overall system that would not be specifically reflected in the study. (*See id.*)

All of these concerns were addressed in Mr. Terhune's written testimony (which ComEd witness Mr. O'Sheasy admitted he did not even respond to). (See REACT Ex. 5.0 at 6:107-19:409; Tr. at 326:1-6.) In particular, Mr. Terhune specifically confirmed that his recommended study:

- Would not require analysis of 4.8 million customer meter points, as alleged by ComEd;
- Would not require existing Shared Distribution Lines plant accounts to be reclassified by number of phases of primary voltage;
- Would not require physical field inspections, but could instead be performed based on existing ComEd internal records;
- Would not attempt to define any level of service by customer and by number of primary phases connected to serve that customer;
- Is not an "allocation by exclusion" study;
- Would not require a determination of costs for each specific customer; and
- Would not require numerous, repetitive allocation studies for each rate, rate design, or formula rate case.

(See REACT Ex. 5.0 at 6:107-19:409; see also IIEC Ex. 3.0 at 14:11-20:20) (IIEC witness Mr. Stephens) (rebutting suggestions by ComEd witness Mr. O'Sheasy that studies to refine cost of service determinations are neither feasible nor desirable); IIEC Init. Br. at 15-16.)

The bottom line is that ComEd admitted that it has the data and technical ability to perform the study that Mr. Terhune recommends. (Tr. at 257:1-9 (ComEd witness Mr. Bjerning).) That data would result in the ability to more accurately and more fairly design ComEd's rates, an outcome that is entirely consistent with the Commission's goals in this proceeding.

ComEd expresses some concern about the timing to complete the study that Mr. Terhune advocates, stating that the suggested four months is insufficient. (See REACT Init. Br. at 27 n.3; ComEd Reply Br. at 7-9.) Mr. Terhune suggested the study in his direct testimony. (See REACT ex. 2.0 at 39:913-16.) At no point in its rebuttal or surrebuttal testimony did any ComEd witness address timing, and even now that ComEd expresses concern about timing, it fails to state how long it needs to complete the study. The four month suggestion mirrors the timing apparently agreed upon by ComEd for the Secondary and Service Loss Study recommended by Staff witness Mr. Rockrohr. (See REACT Init. Br. at 27 n.3.)

Importantly, Mr. Terhune emphasized that field sampling would not be required and that the study could be performed "in the office." He proposes that a statistically valid sample set of customers be determined for each customer class/subclass. The analyst performing the study would look at each selected customer from the class/subclass sample and determine what types of facilities were used to serve that customer (e.g.: one, two, and/or three phase primary wires, 34, 12 and/or 4 kV). ComEd would then gross up the sample to the class/subclass size, and use the relative cost data to develop the allocation once all classes/subclasses were completed.

That being the case, and given the state of the record, the Commission directs ComEd to begin the study immediately with a goal of completing the study within four months. ComEd shall conduct the planning and implementation of the study in an open and transparent manner, in consultation with Staff, REACT, and other interested parties. If it appears that additional time will be needed -- a period that shall not exceed four additional months -- ComEd shall notify the Commission and the parties through a filing made within 30 days of this Order explaining the status of the study process and the timeline, if any, that will exceed the currently-approved four months.

Staff

Staff addresses the idea of a Shared Distribution Lines Proportional Cost Assignment Study that REACT advocates in two places in its Initial and Reply Briefs: first in Section II.C.1.a.(ii) ("Single-Phase/Three Phase (Shared) Primary Separation") (pages 8-13 of Staff's Initial Brief/pages 5-7 of Staff's Reply Brief) and again in Section II.C.1.b.(i) ("Shared Distribution Line Proportional Cost Assignment Study") (pages 17-18 of Staff's Initial Brief/pages 11-12 of Staff's Reply Brief).

Staff opposes the study, stating categorically that "Staff opposes the segregation of costs proposed by other parties throughout this proceeding." (Staff Init. Br. at 18; *see also* Staff Reply Br. at 12 (same).) To support its opposition, Staff merely restates the "concerns" that the ComEd witnesses identified, such as potential "allocation by exclusion," whether the study would be "time consuming," concerns about direct assignment of costs (i.e., customer specific cost assignments). (*See* Staff Init. Br. at 9-13, 17-18; Staff Reply Br. at 12.)

As discussed above, Mr. Terhune addressed all of those concerns in his written testimony. (*See* REACT Ex. 5.0 at 6:107-19:409; *see also* IIEC Ex. 3.0 at 14:11-20:20.)

Furthermore, at the Evidentiary Hearing, Staff witness Mr. Johnson admitted that the criticisms in his pre-filed testimony did not apply to the study that Mr. Terhune advocates:

Q. Would you agree, Mr. Johnson, that the type of study that Mr. Terhune describes in his rebuttal testimony is not the same type of testimony that -- the same type of study that's described in your rebuttal testimony?

A. That's correct.

(Tr. 131:10-15.)

Notwithstanding that admission, Staff continues to cite Mr. Johnson's pre-filed testimony, while pejoratively referring to REACT's proposed study as "an experiment." (Staff Init. Br. at 18.) Staff's pejorative characterization is not well taken. REACT advocates a study that (1) will use statistically valid sampling, and (2) will assess "the proper proportion of Shared Distribution Lines costs to be assigned to **each** customer class or subclass and incorporate those results into its ECOSS." (REACT Ex. 5.0 at 21:451-56 (emphasis added).) ComEd admits the study is feasible, and does not object to performing the study. (*See* Tr. at 257:6-9 (ComEd witness Mr. Bjerning); ComEd Init. Br. at 11.) Moreover, Staff witness Mr. Rockrohr agreed that the statistically valid sampling approach was entirely viable:

Q. But as a general principle, though, you believe that the study of distribution facilities can be done by using a statistically valid sample size, correct?

A. Yes.

(Tr. at 112:15-18.) Thus, Staff's suggestion that REACT is proposing some theoretical experiment is not well taken.

Staff's position is particularly surprising given the testimony of Staff witness Mr. Rockrohr, who actively advocated in favor of expanded and refined Commission-ordered studies in this case. (*See* Staff Ex. 3.0 4:87-8:166, advocating that ComEd expand sampling for

additional customer categories that use secondary and service elements and then update its Secondary and Service Loss Study accordingly.) Mr. Rockrohr specifically favored studies that "resulted in more accurate results" to inform rate design because getting more accurate results is "consistent with cost causation principles." (Tr. at 110:114-19.) Among other things supporting increased accuracy, Mr. Rockrohr supported expanded study sampling data, in the name of simple fairness:

Q. In other words, more accurate actual data will result in more accurate cost allocation, which is more fair to customers, right?

A. Yes. In this case, it's specific to the losses. But, yes, because it ultimately winds up in the distribution system loss study. But I think the accuracy is the main point, yes.

Q. There's a relationship between accuracy and fairness, right?

A. In my mind there is, yes.

(Tr. 111:17-112:2.)

Mr. Terhune advocated for exactly what Staff witness Mr. Rockrohr stated would achieve fairer rates: further refinements based upon statistically valid sampling of the actual facilities that are used to provide service to the various classes. On this record, the Staff's opposition to the study proposed by Mr. Terhune is confusing and unpersuasive.

The Commercial Group

The Commercial acknowledges that "there is merit to exploring the feasibility of such a study and options for more closely analyzing how Shared Distribution Lines cost can be more closely approximated and allocated to the various classes." (Commercial Group Init. Br. at 6.) This appears to be a statement of support for implementing the study advocated by REACT witness Mr. Terhune. That is particularly the case because the question of "feasibility" has been

resolved -- ComEd has admitted that the study is feasible. (*See* Tr. at 257:6-9 (ComEd witness Mr. Bjerning).)

Conclusion

ComEd admitted that it has the data and technical ability to perform the study that Mr. Terhune recommends. (*See id.*) That data would result in the ability to more accurately and more fairly design ComEd's rates. Accordingly, the Commission directs ComEd to undertake the Shared Distribution Lines Proportional Cost Assignment Study advocated by Mr. Terhune to more accurately allocate these costs and develop a more fair rate design. ComEd shall conduct the planning and implementation of the study in an open and transparent manner, in consultation with Staff, REACT, and other interested parties.

Regarding timing, ComEd failed to present any evidence about timing to perform the study, even though the proposal for the study was included in REACT's direct testimony. REACT made a reasonable suggestion that ComEd be given four months to conclude the study. If ComEd needs additional time, it can petition the Commission within 30 days of this Order and present evidence of why it is unable to meet that deadline. However, any extension will be limited to no more than an additional four months and will be granted only on a showing of good cause.

D. Overall ECOSS Recommendation

REACT summarizes two recommendations resulting from Mr. Terhune's engineering analysis of ComEd's system as follows:

First, Mr. Terhune recommended that, in this proceeding, the Commission "direct ComEd to make reasonable adjustments to the allocation of Share Distribution Lines costs to the ELLC and High Voltage over 10 MW customer classes based upon my analysis and

ComEd's own engineering judgment." (*Id.* at 21: 448-50.) ComEd's own witnesses confirmed that the approximately \$9 million reallocation would be less than a .5% adjustment across the board in the context of the overall \$2.3 billion revenue requirement. (*See* Tr. at 254:12-255:3 (ComEd witness Mr. Bjerning); *see also* REACT Ex. 5.0 at 12:250-58.) REACT's recommended modification to the ECOSS is supported by unrebutted, credible, and compelling evidence and should be implemented now.

Second, Mr. Terhune recommended that the Commission "direct ComEd to perform a statistically valid analysis to determine the proper proportion of Shared Distribution Lines costs to be assigned to each customer class or subclass and incorporate those results into the ECOSS." (REACT Ex. 5.0 at 21:451-54.) The evidence establishes that the suggested study is feasible, that ComEd possesses the relevant information and technical knowledge, and that increased accuracy in cost assignment will result. (*See id.* at 15:305-19:409.) The Initial Briefs of ComEd and Staff show that objections to the suggested study mischaracterize what Mr. Terhune advocates, and ComEd has openly admitted that it can perform the study. (*See* Tr. at 257:1-9 (ComEd witness Mr. Bjerning); *see also* Tr. at 129:2-131:15 (Staff witness Mr. Johnson).) REACT's recommended study is supported by unrebutted, credible, and compelling evidence, and should be ordered in order to further refine ComEd's ECOSS methodology.

COMMISSION ANALYSIS AND CONCLUSIONS

REACT witness Mr. Terhune provided exactly what was called for at the conclusion of the 2010 ComEd Rate Case -- a refinement to the ComEd ECOSS and further segmentation of ComEd's costs. Mr. Terhune's refinement is highly detailed and has been comprehensively explained, and no party attacks the analytical validity of Mr. Terhune's work. (*See* REACT Ex. 2.0 at 9:177-39:925.) Mr. Terhune's unrebutted engineering analysis demonstrates that there are

"certain groups of facilities that ELLC and HV Over 10 MW customers either never use or use to a de minimis level as part of receiving service from primary voltage distribution lines." (REACT Ex. 5.0 at 21:441-43; *see also id.* at 3:43-59.)

ComEd takes no specific position regarding the overall ECOSS recommendation. (*See* ComEd Init. Br. at 21.) Accordingly, ComEd expresses no objection to the REACT recommendations, and has confirmed that it "will implement the final Commission-approved ECOSS," again confirming the feasibility of what REACT recommends. (*Id.*)

As discussed above, ComEd now expresses some concern about the timing to complete the study that Mr. Terhune advocates, stating that the suggested four months is insufficient. (*See* REACT Init. Br. at 27 n.3; ComEd Reply Br. at 7-9.) This discussion above addresses this issue.

Staff recommends that the "Commission should be cautious when considering parties proposals that claim they do not use certain components of the system and therefore should not be allocated certain costs." (Staff Init. Br. at 24; Staff Reply Br. at 14.) However, REACT has provided *highly specific and comprehensive analytical information* that refines the ECOSS to justify the relatively modest allocation modification that it advocates. (*See* REACT Init. Br. at 20-24; REACT Ex. 2.0 at 9:179-39:925; REACT Ex. 2.7-2.15; REACT Ex. 5.0 at 6:106-21:436.) If Staff or any other party believed that other costs should be assigned to the ELLC and Over 10 MW High Voltage classes, then they should have presented evidence to support such claims; however, neither Staff nor any other party presented any substantive rebuttal to REACT's analysis. Indeed, other parties openly admitted that they performed no independent analysis of the facilities that serve customers. (*See, e.g.*, Tr. 246:7-11 (ComEd witness Mr. Bjerning); Tr. 126:20-128:6 (Staff witness Mr. Johnson); Tr. at 305:24-306:1-7 (Commercial

Group witness Mr. Chriss); Tr. at 291:8-15, 291:24-292:1-7 (Kroger Co. witness Mr. Townsend); REACT Cross Ex. 10 Townsend).) Accordingly, Staff's attempt to lump all proposals for accurate cost allocation together is inappropriate.

Staff's recommendation that the Commission reject the findings and recommendations presented in the CA Distribution Study pertaining to the allocation of costs associated with 4 kV facilities also is misplaced. (Staff Init. Br. at 24; Staff Reply Br. at 15.) Staff's position apparently is based upon the recommendation of Staff witness Mr. Johnson. However, as REACT witness Mr. Terhune explained, Mr. Johnson provided "no basis for the exclusion of the Christensen Associated Distribution Study recommendation 'pertaining to the allocation of costs associated with 4kV.'" (REACT Ex. 5.0 at 20:423-25.) Staff's recommendation also is inconsistent with cost causation principles; Mr. Terhune's engineering analysis clearly indicates an over-allocation of 4 kV costs to the ELLC and High Voltage Over 10 MW customer classes. (*Id.* at 20:430-33.)

At the Evidentiary Hearing, Mr. Johnson did not take issue with any of Mr. Terhune's analysis. (*See* Tr. at 127:4-24.) Nor was Mr. Johnson able to explain the basis for his recommended exclusion of the Christensen Associated study recommendation regarding 4 kV costs. (*See* Tr. at 132:6-22.) Mr. Johnson admitted that, although he is not an engineer, he thought that Christensen Associates "did a good job on the CA distribution study." (Tr. at 134:13-16.) On this record, Staff's position to exclude the allocation of costs associated with 4 kV facilities as set forth in the Christensen Associates Distribution Study is unpersuasive.

Conclusion

For the reasons stated herein ComEd is ordered to reallocate the amount identified by ComEd witness Bjerning (approximately \$9.25 million) (*see* ComEd Ex. 7.0 at 27:439-47) to

reflect costs that have been improperly attributed to the ELLC and Over 10 MW High Voltage customer classes -- that amount shall be spread evening across all of the other rate classes. ComEd is further ordered to undertake the Shared Distribution Lines Proportional Cost Assignment Study advocated by REACT witness Mr. Terhune. The Commission directs ComEd to begin the study immediately with a goal of completing the study within four months. If it appears that additional time will be needed -- a period that shall not exceed four additional months -- ComEd shall notify the Commission and the parties through a filing made within 30 days of this Order explaining the status of the study process and the timeline, if any, that will exceed the currently-approved four months.

III.

CUSTOMER CARE COSTS

REACT describes the effect of the passage of the Electric Service Customer Choice and Rate Relief Law of 1997, under which Illinois electric utilities were redefined to have two distinct functions -- a supply function and a delivery function. (*See* 220 ILCS 5/16-101, *et seq.*) With that re-definition, it became important to identify the costs associated with each function, since retail electric suppliers ("RESs") would compete against the utility's supply function, while the delivery function would remain a state-sponsored monopoly. According to REACT, if that cost allocation were improperly skewed by including costs associated with supply in the utilities' delivery services rates, the RESs would be competing against an artificially deflated supply rate. REACT notes that in 2007, when it appeared that the benefits of the competitive market might be expanded to the mass market, the way in which the costs were allocated between the supply and delivery functions drew increased scrutiny, with a particular focus upon Customer Care Costs. (*See* REACT Ex. 3.0 at 9:190-206.) REACT emphasizes that now that

competition has enveloped the mass market, it is again appropriate for the Commission to revisit the issue of the way in which Customer Care Costs are allocated. (*See id.* at 9:207-10:215.)

REACT explains that Customer Care Costs represent those costs ComEd incurs to provide customer service to support both its supply function and its delivery function. (*See id.* at 5:90-92; Tr. at 73:7-9, 15 (ComEd witness Ms. Brinkman).) As REACT explained in its written testimony, and as ComEd confirmed at the Evidentiary Hearings, Customer Care Costs include the calculation and generation of bills, tracking and maintaining customer information, mailing of bills, responding to customer phone calls, metering services, payment processing, credit and collections, and general customer relations activities. (*See* REACT Ex. 3.0 at 5:92-96; Tr. at 73:10-15 (ComEd witness Ms. Brinkman); *see also* Tr. at 134:20-135:4 (Staff witness Mr. Johnson).) This includes not only the costs associated with direct customer interaction but also the cost of computer systems and infrastructure to support these business activities. (*See* REACT Ex. 3.0 at 5:96-98.)

REACT explains that in this proceeding, ComEd seeks the Commission's approval to continue to recover all of its Customer Care Costs through its delivery services charges. Specifically, ComEd has proposed to recover 100% of its Customer Care Costs through its delivery services rate, Rate RDS. (*See id.* at 10:219-220.) REACT maintains that this is inappropriate, because it is very clear that less than 100% of ComEd's Customer Care Costs are attributable to ComEd's delivery function. Therefore, consistent with cost causation principles, it would be improper to allow ComEd to continue to recover all Customer Care Costs through its delivery services rate, according to REACT. (*See id.* at 10:220-222.)

REACT emphasizes that it is not making a proposal to shift 100% of Customer Care Costs from the current recovery category to a wholly new category. Rather, based on a analysis

of the available data, REACT seeks a reallocation of about a third of overall Customer Care Costs from the delivery function to the supply function. (*See id.* at 36-37.) REACT states that ComEd will continue to recover 100% of its Customer Care Costs, but those costs will be allocated consistent with cost causation principles. (*See id.* at 40-41.)

REACT emphasizes that in the 2010 ComEd Rate Case the Commission specifically stated that the subject of Customer Care Costs should be re-examined as market conditions evolve. REACT observes, however, that ComEd and Staff both assert that the Commission should not even look at the issue of how Customer Care Costs should be recovered. REACT notes that ComEd goes so far as to suggest that the Commission is prohibited from examining this issue.

REACT argues that ComEd has completely ignored the issue of proper allocation of Customer Care Costs both in this proceeding and in its business practices. REACT points to ComEd's admissions that it has not even attempted to track which Customer Care Costs are attributable to its supply function and which are attributable to its delivery function. (*See* REACT Init. Br. at 36, *citing* REACT Ex. 6.1 (ComEd Data Request Responses confirming ComEd's lack of tracking).) REACT also points to ComEd's admission that it did not perform any update or study to attempt to allocate Customer Care Costs subsequent to its 2010 Rate Case. (*See* REACT Init. Br. at 36, *citing* REACT Cross Ex. 12 Donovan (*see specifically* ComEd's Response to REACT Data Request 3.04 included in that cross exhibit).) Rather, according to REACT, notwithstanding the significant evolution of market conditions, ComEd continues to simply lump 100% of its Customer Care Costs into its delivery services rates, while allocating 0% of its Customer Care Costs to its supply rates. (*See* REACT Init. Br. at 36-37,

citing REACT Cross Ex. 12 Donovan (*see specifically* ComEd's Responses to REACT Data Requests 3.06, 4.16, and 4.17 included in that cross exhibit).)

REACT states that in sharp contrast to ComEd, REACT witness Mr. Merola has reexamined the data and provided an updated estimate of the appropriate allocation of Customer Care Costs. (*See* REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:528-25:574.) In particular, Mr. Merola updated the study that he performed in the 2010 ComEd Rate Case to reflect the ComEd "RDI ECOSS" submitted by ComEd in this case. (*See* REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:529-32; 23:539-24:553.) Mr. Merola's updated analysis was presented in REACT Ex. 6.4.

REACT states that Mr. Merola's updated analysis shows that ComEd incurs a total of \$326.8 million in Customer Care Costs, exclusive of metering services. (*See* REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:535-36.) Of that amount, approximately \$109 million should be allocated to ComEd's supply function according to REACT. (*See* REACT Init. Br. at 37, *citing See id.* at 23:536-37.) Given the indisputable evolution of the competitive market, and the absence of any viable attempt from ComEd to allocate Customer Care Costs, REACT states that the evidence supports immediate implementation of the allocation advocated by Mr. Merola.

COMMISSION ANALYSIS AND CONCLUSIONS

The General Assembly has directed that the Commission is to "**promote** the development of an effectively competitive electricity market". (220 ILCS 5/16-101(A)(d) (emphasis added).) In order to satisfy this statutory obligation, it is necessary to be constantly vigilant in examining not only the fundamentals of the market, but also the changes that occur in the electricity market, and to take affirmative steps to further encourage competition. One of

the basic tenants of the competitive market is that the utilities' supply function cannot be cross-subsidized by the rates paid for the delivery services provided by the utility.

In the 2010 ComEd Rate Case, we noted that as market conditions evolved it would be appropriate to further explore the way in Customer Care Cost are allocated between ComEd's supply and delivery services functions. (*See* ICC Docket No. 10-0467, May 24, 2011 Final Order at 210; Tr. at 135:20-137:11 (Staff witness Mr. Johnson acknowledging the Commission's directive and the changes in market conditions).) Since then, mass market competition has increased exponentially as a result of ComEd's purchase of receivables program and municipal aggregation, making it appropriate to revisit this issue under the current market conditions.

Both ComEd and Staff mischaracterize prior Commission Orders on this issue and gloss over the Commission's directives to ComEd. (*See, e.g.*, ComEd Init. Br. at 21 ("REACT has repeatedly raised, and the Commission has repeatedly rejected, proposals to shift the recovery of these costs from the delivery service revenue requirement to ComEd's supply rates."); Staff Reply Br. at 12 ("The Commission itself has previously considered and reject the same argument three times."); Staff Init. Br. at 26 ("The Commission approved the [ComEd] Switching Study."); Staff Reply Br. at 15 ("[t]he Commission has repeatedly addressed the allocation of customer care costs.")) In reality, each of the last three times we addressed this issue, we affirmatively indicated that this issue required attention in future proceedings, which is exactly the approach that REACT has taken.

In each one of those proceedings, we observed that ComEd appeared to be allocating supply-related Customer Care Costs to the delivery function, and, as a result, costs may not be assigned to the true causers of such costs. (*See* REACT Init. Br. at 31-32; REACT Ex. 3.0 at 6:100-9:183; REACT Exs. 3.2-3.6.) In the last ComEd Rate Case -- the most recent opportunity

for the Commission to address this issue -- we explicitly directed ComEd further examine this issue as competitive markets and customer choice continued to develop. (*See id.*)

For example, in the 2007 ComEd Rate Case, the Commission agreed with REACT's finding that some percentage of Customer Care Costs should be attributable to supply customers:

The Commission believes that **some percentage of customer care costs may well be attributable specifically to bundled supply customers**. This allocation **could substantially reduce costs assigned to distribution customers** while increasing bundled supply rates. The Commission believes that it is reasonable to investigate the allocation of customer care costs.

(ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 207-08 (emphasis added).)

In the 2008 Special Investigation Proceeding, ComEd provided no meaningful analysis demonstrating what portion of Customer Care Costs should be allocated to the delivery and supply functions, even in the face of a Commission directive to do so. At the conclusion of the proceeding, the Commission expressed concern that ComEd *still* had not appropriately allocated Customer Care Costs to the supply function, and the Commission found:

ComEd's proposal allocates less than one percent of its customer care costs to supply based on an avoided cost analysis. **If the Commission's goal is to assign costs to the cost causers, it is difficult to imagine that less than 1% of ComEd's customer care costs are caused by supply related matters**. ComEd does not explain why an avoided cost study is used for these costs and for every other cost an embedded cost study is done.

(ICC Docket No. 08-0532, Apr. 21, 2010 Final Order at 67 (emphasis added).)

Then, in the 2010 ComEd Rate Case, the Commission agreed with the position of Staff and REACT that ComEd had improperly excluded costs from the calculation of Customer Care Costs, including direct O&M, indirect O&M, and capital costs:

At the outset, **the Commission disagrees with ComEd's assertion that**

analyzing the total costs, instead of merely viewing the direct O&M costs, is not meaningful because, according to ComEd, analyzing the actual costs has no real impact upon the results of the Switching Study. **The impact that including the total costs here would have, at a minimum, would be to reflect reality,** instead of some artificial group of costs that ComEd arbitrarily chose. Additionally, **ComEd's decision in this regard ignores the mandate set forth by this Commission in the Docket No. 08-0532 Order.**

Staff and REACT correctly point out that the numerical difference between direct O&M costs and total costs indicates that the difference could exceed one million dollars, which is not insubstantial. The Commission agrees with Staff and REACT, that ComEd should revise its analysis to include the costs associated with the full revenue requirement amount (including direct operations and maintenance ("O&M"), indirect O&M, and capital costs), and include that allocation in ComEd's compliance rates for this docket.

(ICC Docket No. 10-0467, May 24, 2011 Final Order at 210 (emphasis added).)

In that same 2010 Rate Case, the Commission also made it absolutely clear that the allocation of Customer Care Costs would require additional study if competitive retail electric market conditions continued to evolve, as they obviously have:

However, the alternative electric supplier market is just beginning to blossom. It is possible that, in the future, ComEd's customer care costs could differ from what they are now, in terms of the amounts involved and the types of services involved, as, items like IT interfacing with alternative suppliers becomes more sophisticated. Also, pursuant to ComEd's PORCB program, consolidated billing is now an option (consolidated between the alternative supplier and ComEd). **Therefore, this issue should continue to be explored in the future as market conditions evolve.**

(ICC Docket No. 10-0467, May 24, 2011 Final Order at 213 (emphasis added).)

ComEd now makes the remarkable assertion that "REACT here has articulated no change in circumstance that would warrant the Commission's revisiting this subject. . . ." (ComEd Reply Br. at 13.) Yet, it is unquestioned that there has been a dramatic increase in customer switching since that proceeding (a 1,333,333% increase from May 2010 and April 2013). Indeed, on the very same page where ComEd makes that assertion, it also recognizes

that "of ComEd's 3.8 million customers, only 1.2 million customers still receive supply from ComEd." (*Id.*) Given that fact and the fact that the primary focus of this proceeding is ComEd's cost allocation to ComEd's rates, it is entirely appropriate to examine ComEd's improper allocation of supply-related Customer Care Costs to the delivery function. (*See* REACT Init. Br. at 35.) Yet, not only has ComEd failed to provide any updated analyses with respect to the allocation of Customer Care Costs, it has actively resisted all attempts to substantively engage on the issue in this docket. (*See* REACT Init. Br. at 34, *comparing* ComEd Ex. 9.01 in this proceeding with ComEd Ex. 19.1 in ICC Docket No. 10-0467; ComEd Init. Br. at 23.)

Both ComEd and Staff suggest that the Commission's prior Orders conclusively preclude an analysis of any Customer Care Cost issues in this proceeding. (*See* ComEd Init. Br. at 23; Staff Init. Br. at 24-26.) ComEd states: "REACT has now had four bites at this apple. There is just no reason to provide them yet another." (*See* ComEd Init. Br. at 23.) ComEd's rhetoric misses the mark, for two reasons. First, as noted above, our Order in the 2010 ComEd Rate Case specifically directed parties to examine Customer Care Cost allocation as the competitive market continued to develop: "**Therefore, this issue should continue to be explored in the future as market conditions evolve.**" (*See* REACT Init. Br. at 33, *citing* ICC Docket No. 10-0467, May 24, 2011 Final Order at 213 (emphasis added).) ComEd's position is directly contrary to that Commission directive.

Second, Commission procedure permits, and often requires, that similar issues be raised in succeeding proceedings. (*See, e.g., Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 407-408 (2nd Dist. 2010) (holding that a "record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a different result.").) ComEd itself regularly asks the Commission to revisit issues that

are important to it. This approach makes sense, for the simple reason that a decision made at one moment may not apply to facts on the ground at a later moment. Given the significant market developments since the 2010 ComEd Rate Case, that is precisely the case here.

ComEd also attempts to throw a "legal" obstacle in front of the accurate allocation of Customer Care Costs. (*See* ComEd. Init. Br. at 23 ("REACT's adjustment is improper for another reason. REACT's proposal seeks to reduce ComEd's delivery service revenue requirement recoverable in delivery service charges.") Notably, Staff does not join ComEd in this argument, which would effectively box the Commission out of regulating the accurate allocation of Customer Care Costs.

ComEd's position is invalid. For at least three independent reasons, this proceeding, which focuses on cost allocation and rate design proceeding, is the correct proceeding in which to address ComEd's allocation of its Customer Care Costs and ComEd's associated rate design.

First, as ComEd admitted during the Evidentiary Hearings, nothing in the Public Utilities Act prohibits the Commission from issuing an Order in this proceeding to properly allocate the Customer Care Costs between ComEd's supply function and its delivery function. (*See* REACT Init. Br. at 49, *citing* Tr. at 81:23-82:7 (ComEd witness Ms. Brinkman).) Indeed, this proceeding is brought pursuant to Section 16-108.5(e) of the Act, which makes clear that other subsections of Section 16-108.5 are not to limit the Commission's authority to order "revenue-neutral tariff changes". (*See* 220 ILCS 5/16-108.5(e).)

Second, REACT is proposing a "revenue-neutral tariff change," consistent with the Act's terms. (*See* REACT Init. Br. at 40, *citing* REACT Ex. 6.0 at 8:159-68.) The Act does not prohibit a decrease in ComEd's "*delivery services* revenue requirement," as ComEd's argument would suggest; rather, it merely requires that changes be "revenue neutral". (220 ILCS 5/16-

108.5(e).) REACT does not question the overall amount of Customer Care Costs that ComEd has incurred. (*See* REACT Init. Br. at 40-41.) REACT has explained that ComEd should recover *all* of its prudently incurred reasonable Customer Care Costs, but it should recover those costs from the cost-causers. (*See id.*) Customers who do not take supply service from ComEd should not pay for supply-related Customer Care Costs; but those supply-related costs should be fully recovered from those customers who do take supply service from ComEd. (*See id.*) Any decrease in ComEd's delivery services revenue requirement would be offset by an increase in ComEd's supply services charges. ComEd witness Ms. Brinkman admitted that the Commission could enter such an Order. (*See* Tr. at 81:23-82:7.) ComEd will not lose revenue under the REACT proposal -- this is purely a question of revenue neutral rate design and cost allocation. (*See* REACT Init. Br. at 40-41.)

Third, ComEd itself admitted that the Commission always has addressed the accurate allocation of Customer Care Costs as a rate design issue -- in the 2007 ComEd Rate Case, the 2008 Special Investigation Proceeding, and the 2010 ComEd Rate Case. (*See id.*, *citing* Tr. 76:17-77:10 (ComEd witness Ms. Brinkman).) Further, as ComEd admits, in the formula rate cases ComEd itself argued, and this Commission specifically found, that rate design issues were *not* to be addressed in those proceedings. (*See* ICC Docket No. 11-0721, May 29, 2012 Final Order at 141 ("ComEd argues that the upcoming revenue neutral cost of service and rate design proceeding is the appropriate docket to make arguments concerning rate design and cost allocation."); *see also* REACT Init. Br. at 40-41, *citing* Tr. at 79:1-7, 80:4-7 (ComEd witness Ms. Brinkman) ("Q. Would you agree that the Commission has made it clear that it is not going to address rate design issues in formula rate cases? A. I agree.").))

In sum, ComEd's "legal argument" appears to be an attempt to box the Commission out of ever addressing this fundamental cost allocation question -- ComEd has argued that no allocation issues should be addressed in formula rate case, and now ComEd argues that allocation of Customer Care Costs should not occur in this rate design proceeding. Thus, ComEd's arguments effectively would preclude us from ever appropriately assigning the Customer Care Costs -- a wholly irrational and unacceptable outcome.

The briefs of ComEd and Staff reiterate their misleading assertion that recent increases in overall Customer Care Costs show that such costs are not attributable to the supply function: (*See* ComEd Reply Br. at 13; Staff Init. Br. at 27; ComEd Init. Br. at 23. ("...ComEd's customer service costs have not declined, they have increased. Surely if they were attributable to supply, these costs would decline as ComEd's former supply customers switch to RES supply.")) However, both ComEd and Staff have failed to examine what caused the Customer Care Cost increases, instead each makes the illogical leap to assert that because Customer Contact Center costs have increased, 100% of that cost increase must be due only to delivery services-related functions and that 0% of those costs have anything to do with ComEd supply-related functions.

However, REACT witness Mr. Merola did specifically examine the causes for the increases, and concluded that based upon the data ComEd has collected, it is impossible to determine whether the increase is due to ComEd's supply function or its delivery function. For example, Mr. Merola noted that ComEd's Billing Department costs have increased from \$22.15 million to \$26.15 million, largely due to a postage rate increase. (*See* REACT Ex. 6.0 at 16:368-71.) In other words, the cost increase has nothing to do with new delivery services obligations that ComEd has undertaken -- it results from an increase in the price of stamps. Mr. Merola explained that because ComEd uses the U.S. mail to send bills which contain charges

for both its supply service and its delivery services, using a proper embedded cost allocation methodology, a portion of those postage costs -- including the increased costs -- should be allocated to ComEd's supply function. (*See id.*) Staff witness Mr. Johnson acknowledged this point on cross examination, and admitted that the cost increase that ComEd pointed to was postage-related. (*See* Tr. 142:13-143-2.)

Similarly, Mr. Merola noted that ComEd's Customer Contact Center costs increased from \$25.8 million to \$36.6 million, largely because the “number of calls increased by over 1M between 2010 and 2012 resulting in an incremental increase, not a decrease, in expenses.” (*See* REACT Ex. 6.0 at 15:349-362, *citing* ComEd Ex. 9.0 at 17:343-47.) However, ComEd provided no supporting evidence or analysis addressing *why* the number of calls increased. (*See* REACT Ex. 6.0 at 15:349-362.) Mr. Merola explained that a portion of this increase could very well be attributable to increased calls regarding ComEd's relatively high-priced supply service, compared to the price being offered by RESs. (*See id.*) In short, there is absolutely no basis for ComEd and Staff to conclude that the increased costs are all properly allocated to ComEd's delivery services function.

Staff continues to invoke the validity of the Switching Study from Docket No. 10-0467. (*See* Staff Reply Br. at 15-16.) Staff completely ignores the fact that the Switching Study was a marginal cost study that ignored the fact that ComEd has embedded costs associated with providing customer service to both its supply and its delivery function. (*See* REACT Ex. 6.0 at 17:400-18:426.) For example, costs associated with billing, payment processing, revenue management, and information technology are related to both the delivery and supply functions. (*See id.*) As a fundamental rate design matter, these types of shared costs must be allocated appropriately to each function, using the same type of embedded cost methodology that is the

basis for ComEd's allocation of all other costs. (*See id.*) That is precisely why the Commission should order ComEd to perform a transparent embedded cost of service study that allocates supply-related Customer Care Costs to the supply function and delivery-related Customer Care Costs to the delivery function. (*See id.*)

Staff also argues that ComEd should not be required to remedy its misallocation of Customer Care Costs because it is the provider of last resort. (*See* Staff Init. Br. at 27; Staff Reply Br. at 16.) This argument is unpersuasive. ComEd's obligation to be the provider of last resort does not excuse it from complying with the statutory obligation to assign costs to cost causers in its rate design. (*See* 220 ILCS 5/1-102(d)(iii), 5/16-108(c).) Under Staff's logic, *all* supply-related costs (not just Customer Care Costs) would be recovered in delivery services rates simply because ComEd must stand ready to serve customers if and when they return to ComEd. The Commission has never endorsed such a result, which is directly contrary to the Public Utilities Act's requirement for accurate cost allocation in rate design. The supply-related Customer Care Costs should be recovered just as all other supply-related costs are recovered -- through ComEd's supply rates.

In summary, the evidence demonstrates that ComEd has failed to accurately allocate Customer Care Costs between its supply function and its delivery function -- ComEd admits it has made no attempt to perform such an allocation. In the last ComEd Rate Case, this Commission specifically called for further examination of Customer Care Cost allocation as the market conditions evolved. Those market conditions have evolved significantly, but ComEd admits that it performed no further analysis. REACT expert witness Mr. Merola has performed an updated analysis that supports a modified allocation of Customer Care Costs. That allocation should be implemented immediately. Mr. Merola also recommended a further study by ComEd

based on updated data within ComEd's possession to further refine the Customer Care Cost allocation. That study also should be undertaken.

Accordingly, ComEd is ordered to: (1) modify its cost allocations between its supply function and its delivery function immediately by allocating approximately \$109 million currently in its delivery services function to its supply function; and (2) initiate a study to more accurately allocate the embedded costs associated with Customer Care Costs, in accordance with Mr. Merola's recommendation.

IV.

RATE DESIGN

A. Overview

REACT emphasizes that its expert witnesses demonstrated that there are specific and quantifiable flaws in ComEd's cost allocation and resulting rate design. First, REACT witness Mr. Terhune demonstrated that "certain groups of facilities that ELLC and HV Over 10 MW customers either never use or use to a de minimis level as part of receiving service from primary voltage distribution lines." (REACT Ex. 5.0 at 21:441-43.) Mr. Terhune recommended a modification to ComEd's ECOSS to account for this analysis -- that modification would reallocate about one-third of the currently allocated Shared Distribution Lines costs (i.e., approximately \$9 million) from the ELLC and HV Over 10 MW classes. (See REACT Ex. 2.0 at 38:900-39:911; REACT Ex. 5.0 at 12:250-258; REACT Init. Br. at 23.) REACT maintains that the ECOSS applied to ComEd's rate design should reflect that modification.

Second, REACT witness Mr. Merola demonstrated that approximately \$109 million of ComEd's \$326.8 million in total Customer Care Costs should be allocated to ComEd's supply

function. (See REACT Ex. 6.0 at 23:536-37; REACT Init. Br. at 36-37.) REACT maintains that the rate design implemented by ComEd also should reflect that adjustment.

REACT states that all parties appear to agree that the different rate design scenarios before the Commission in this proceeding are all based on the ECOSS approach from the 2010 ComEd Rate Case. (See ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio); ComEd Init. Br. at 24.) REACT asserts that no party contests the fact that the Commission's Final Order in that case specifically called for further refinement to the ECOSS, yet ComEd openly admits that it has not presented a further refined ECOSS. (See Tr. at 246:7-11 (ComEd witness Mr. Bjerning); Tr. at 133:2-6 (Staff witness Mr. Johnson); Tr. at 294:15-24 (Kroger Co. witness Mr. Townsend).) ComEd confirmed in its Initial Brief that it is not actually advocating any movement toward "cost" and would accept the modifications to the ECOSS that REACT proposes without any further movement "toward cost." (See ComEd Init. Br. at 26; see also Tr. at 70:20-71:3 (ComEd witness Ms. Brinkman).) REACT states that despite the fact that this so-called "movement toward cost" would have an enormous and disproportionate cost impact upon ComEd's largest customers, to this day, ComEd has failed to explain what these customers have done to merit such substantial rate increases. Therefore, REACT argues that the Commission should reject any modification of rate design intended as a further movement toward so-called "cost" based on the flawed ComEd ECOSS. (See REACT Init. Br. at 43-48.)

Thus, REACT requests that the Commission order ComEd to modify its ECOSS consistent with the proposals of REACT expert witnesses Mr. Terhune and Mr. Merola. REACT maintains that there should not be any movement toward so-called ECOSS-based rates at this time; the *status quo* should be maintained until ComEd completes the studies that REACT and other party witnesses are recommending. Further, consistent with the

recommendations of REACT witness Mr. Fults, REACT requests that the Commission direct ComEd to modify its method of assessing the Illinois Electric Distribution Tax and prepare a study of the causes of Unaccounted For Energy.

B. Potentially Uncontested Issues

Cost Causation Principles Apply

REACT emphasizes the Public Utilities Act's explicit requirement for the application of cost causation principles to ComEd's ECOSS and resulting rate design. (See 220 ILCS 5/1-102(d)(iii), 16-108(c).) REACT notes that no party contests this.

COMMISSION ANALYSIS AND CONCLUSIONS

For the reasons stated in Section II.B. of this Order, there is no questions that cost causation principles to ComEd's rate design.

C. Potentially Contested Issues

2. Non-Residential

a. Preliminary Issues

REACT maintains that ComEd's ECOSS -- which forms the basis for its rate design -- is flawed. REACT points to the extensive evidence from its expert witnesses to demonstrate significant flaws in ComEd's ECOSS and the resulting cost allocation and rate design. REACT witness Mr. Terhune has demonstrated that "certain groups of facilities that ELLC and HV Over 10 MW customers either never use or use to a de minimis level as part of receiving service from primary voltage distribution lines." (REACT Ex. 5.0 at 21:441-43.) No party contested Mr. Terhune's analysis or conclusion.

Mr. Terhune recommended a modification to the ECOSS based upon his engineering analysis -- that modification would reallocate approximately \$9 million from the ELLC and HV

Over 10 MW classes. Again, although certain parties apparently dislike that conclusion, no party contests Mr. Terhune's actual analysis or factual conclusion. Thus, REACT recommends that the ECOSS applied to ComEd's rate design should reflect Mr. Terhune's recommended modification.

Likewise, REACT witness Mr. Merola demonstrated that approximately \$109 million of ComEd's \$326.8 million in total Customer Care Costs should be allocated to ComEd's supply function. (*See* REACT Ex. 6.0 at 23:536-37.) REACT advocates that the rate design implemented by ComEd should reflect that adjustment as well.

COMMISSION ANALYSIS AND CONCLUSIONS

For the reasons stated above, the Commission endorses the allocation modifications and studies advocated by REACT witnesses Mr. Terhune and Mr. Merola. These issues as well as the determination of other rate design issues are further discussed in the following sections of this Order.

b. Movement Toward ECOSS-Based Rates

REACT notes that ComEd has presented several different rate design scenarios in this proceeding, though it professes to not advocate any particular design. (*See* ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio); ComEd Init. Br. at 26.) REACT highlights ComEd's admission that all of those rate designs are based on the ECOSS approach from the 2010 ComEd Rate Case. (*See* ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio).) The Commission's Final Order in that case specifically called for further refinement to the ECOSS, yet ComEd openly admits that it has not presented a further refined ECOSS. (*See* Tr. at 246:7-11 (ComEd witness Mr. Bjerning).) Therefore, REACT states that the Commission

should reject any modification of rate design intended as a further movement toward so-called "cost" based upon the flawed ComEd ECOSS.

COMMISSION ANALYSIS AND CONCLUSIONS

The flaws in ComEd's ECOSS methodology are not merely theoretical -- the impact upon the ELLC and HV Over 10 MW classes is substantial, and, particularly when taken with the historic disproportionate increases imposed upon those classes, the prospect of an additional movement toward so-called "cost" is troubling. REACT presented evidence demonstrating the importance of the largest energy users to the Illinois economy; the challenging business environmental and lagging unemployment numbers in northern Illinois; and the enormous and disproportionate rate increases that would result with any continued movement toward so-called "cost" based on the current ComEd ECOSS. (*See* REACT Init. Br. at 46-48.) Even ComEd witness Mr. Tenorio, who disagreed with some of the precise calculations made by REACT, acknowledged on cross-examination that the cost implications of any continued movement toward so-called "cost" are substantial for ELLC and HV Over 10 MW customers. (*See* Tr. at 418:1-429:6.) Indeed, ComEd's own analysis showed that the aggregate increases for ELLC and HV Over 10 MW class customers since 2007 are in many cases hundreds of thousands of dollars, and in several cases multiple-millions of dollars. (*See* ComEd Ex. 6.13.) Even using ComEd's "median" calculation rather than the common-sense average calculation, ComEd's own numbers showed that if a move to "100%" so-called "cost" were implemented an increase of over **136%** would be experienced by the median ELLC customer and over an increase of over **52%** would be experienced by the median HV Over 10 MW customer. (*See id.*) ComEd tries in its Reply Brief to blunt the impact of those numbers, first suggesting that ComEd provided different numbers in its testimony. (*See* ComEd Reply Br. at 22.) While ComEd did offer

different numbers in testimony, the record establishes that on cross-examination of ComEd's witnesses -- in particular Mr. Tenorio -- ComEd's numbers were called into question and REACT's view of cost impacts was confirmed. Indeed, in its Reply Brief, ComEd candidly acknowledges that "Mr. Tenorio did confirm that the math calculations for the differences in costs computed by counsel for REACT for various customers was correct. . . ." (ComEd Reply Br. at 23.) ComEd continues that Mr. Tenorio "stated that he could draw no conclusion as to whether such impacts were significant or not for those customers." (ComEd Reply Br. at 23.) While Mr. Tenorio chose not to draw any conclusions about cost impacts, the Commission is not so constrained. The evidence confirms REACT's characterization of the cost impacts.

The Commission, therefore, rejects any step toward so-called "cost" based on ComEd's flawed and unrefined ECOSS. This issue is discussed in further detail with respect to various parties positions below.

ComEd

ComEd's Initial Brief does not advocate any specific position in this Common Outline section. (*See* ComEd Init. Br. at 31-32.) However, ComEd does recite certain "revenue responsibility" percentages associated with a movement based on "the third of four steps" toward so-called cost. (*See id.*) Those percentages appear to be based on ComEd's ECOSS, which, as ComEd admits, has not undergone the Commission directed "further refinement" since the 2010 ComEd Rate Case. In this proceeding, REACT has offered into evidence specific analysis demonstrating substantial flaws in that ECOSS. Accordingly, it would be erroneous to relying upon that ECOSS and the "revenue responsibility" percentages that ComEd offers.

As noted above, ComEd's attempt in its Reply Brief to suggest that the cost impacts to the ELLC and HV Over 10 MW classes is not substantial is unconvincing. ComEd's own analysis showed that the aggregate increases for ELLC and HV Over 10 MW class customers since 2007 are in many cases hundreds of thousands of dollars, and in several cases multiple-millions of dollars. (*See* ComEd Ex. 6.13.) Even using ComEd's "median" calculation rather than the common-sense average calculation, ComEd's own numbers showed that if a move to "100%" so-called "cost" were implemented an increase of over **136%** would be experienced by the median ELLC customer and over an increase of over **52%** would be experienced by the median HV Over 10 MW customer. (*See id.*) ComEd makes an attempt to put some "context" on these numbers by comparing them to historic cost increases experienced for other goods and services. (*See* ComEd Reply Br. at 22-23.) This context is unhelpful to ComEd's professed position. As REACT witness Mr. Fults explained:

Further, ComEd's attempt to somehow mask those rate impacts by putting them "in context" with cost increases in other products and services never really gets to the point of explaining what the ELLC and HV Over 10 MW classes have done since the 2005 ComEd Rate Case to justify the enormous rate impacts. It should be clear to the Commission that the members of those classes have done nothing that would justify an enormous rate increase; if they had, ComEd surely would have pointed it out by now.

Further, it is curious and problematic that ComEd would try to defend its rate increases by pointing to things like college tuition and prescription drugs as comparable items (notably without attribution to the source of that information). (*See* ComEd Ex. 6.0 at 27:479-82.) College tuition and prescription drugs are obviously not comparable to electric delivery services. Moreover, it is common knowledge that the recent increases in college tuition and prescription drugs are widely considered as out of control and unsustainable. (*See, e.g.*, President Barack Obama, Remarks by the President on College Affordability at the State University of New York Buffalo (Aug. 22, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/08/22/remarks-president-college-affordability-buffalo-ny> ("The system's current trajectory is not sustainable."); Laurie Essig, *Obama's Right: The Cost of Higher Ed Is Not Sustainable*, THE CHRONICAL OF HIGHER EDUCATION, Jan. 27, 2012, available at

<http://chronicle.com/blogs/brainstorm/obamas-right-cost-of-higher-ed-not-sustainable/43535>; Andrew Pollack, *Doctors Denounce Cancer Drug Prices of \$100,000 a Year* N.Y. Times, April 25, 2013, available at http://www.nytimes.com/2013/04/26/business/cancer-physicians-attack-high-drug-costs.html?pagewanted=all&_r=0 (“The doctors and researchers ... [contend] “that the prices of drugs used to treat that disease are astronomical, unsustainable and perhaps even immoral.”).) Therefore, it is very odd that ComEd would point to those numbers when ComEd’s own numbers show an increase of 50.45% for the ELLC class, in comparison to a 43% increase for college tuition, and an increase of 29.32% for the HV Over 10 MW class, in comparison to a 22% increase for prescription drugs. In short, even using ComEd’s numbers, it is not persuasive to suggest that ComEd’s rate increases for the ELLC and HV Over 10 MW customer classes are acceptable; the increases for those classes, respectively, are *substantially higher* than the increases in the costs of college tuition and prescription drugs for the same period.

(REACT Ex. 4.0 at 6:115-8:147.)

Staff

Staff supports approval of "the next step revenue responsibility rate design in this case." (Staff Init. Br. at 37.) Staff bases this recommendation upon the position of Staff witness Mr. Johnson (though Staff does not provide a specific citation to Mr. Johnson's testimony for this assertion). (*See id.* at 36.) Staff then states that "No reason has been presented as to why that [movement toward cost based rates] should not be continued in this proceeding." (*Id.*)

However, REACT has set forth in detail a "reason" to maintain the *status quo* rather than push toward so-called cost: Mr. Terhune's detailed, unrebutted engineering analysis demonstrated that the *current* ECOSS is flawed; Mr. Merola demonstrates in detailed, unrebutted analysis that ComEd continues to misallocate Customer Care Costs in the ECOSS; and Mr. Fults explains in detailed, unrebutted analysis the disproportionate impact that ComEd's rate increases have had on the ELLC and HV Over 10 MW classes.

Moreover, Staff's reliance on Mr. Johnson's positions is unpersuasive. On cross-examination, Mr. Johnson admitted that he had not performed any analysis relating to the validity of the ECOSS, let alone offered up any "refinement" of the ECOSS. (*See* Tr. at 126:20-128:6.) He also confirmed that notwithstanding ComEd's refusal to make any changes to Customer Care Cost allocations, the facts on the ground today are substantially different from when ComEd prepared the speculative study upon which it still relies. (*See* Tr. at 136:24-137:11.) Finally, he admitted that ComEd's alleged "increases" in Customer Care Costs -- which ComEd offers up to suggest that costs have gone up even though it serves significantly fewer bundled customers now -- are in large part due to a simple increase in the cost of postage, rather than any explanation that would suggest that a portion of Customer Care Costs should not be accurately allocated to its supply function. (*See* Tr. at 142:5-143:2.)

Staff's final attempt to criticize REACT for expressing "woes about past increases" is unconvincing. (Staff Reply Br. at 20.) Staff's position takes for granted that ComEd's ECOSS is accurate. The evidence demonstrates that is not the case -- REACT witnesses Mr. Terhune and Mr. Merola both demonstrated convincingly that ComEd's basic cost allocations are wrong in material respects. Though Staff "disagrees" with that analysis at some conclusory level, Staff itself performed no analysis to undermine the accuracy of that analysis and points to no analysis by other parties that would undermine REACT's analysis either. Based on the record in the case, it appears that REACT's "woes about past increases" are, in fact, well justified.

In short, the we decline to give Staff's position substantial weight.

The Commercial Group

The Commercial Group asserts that the "basis for continued slow movement to cost for each class is no longer applicable." (Commercial Group Init. Br. at 8.) This conclusory

statement is apparently premised on the Commercial Group's view that prior problems with ComEd's ECOSS are now resolved. As noted above, in support of that apparent contention, the Commercial Group provides no actual evidence. On the contrary, the Commercial Group's witness Mr. Chriss admitted that neither he nor anyone else acting on behalf of the Commercial Group had performed any actual analysis to determine anything about the current or proposed rate design. (*See* Tr. at 305:3-13.) Mr. Chriss also admitted that the Commission had found previous problems with the ComEd ECOSS and had called for further refinements. (*See* Tr. at 306:8-308:3.) He further admitted that the Commission could certainly call for further refinements to the ECOSS in this proceeding. (*See* Tr. at 310:7-10.) Thus, the Commercial Group fails to provide any evidentiary basis to call for an acceleration of the so-called movement toward "costs."

Notwithstanding the lack of evidence actually demonstrating the subsidy that it claims it is paying, the Commercial Group then suggests that REACT has somehow agreed to a move to "100%" toward so-called cost, if the allocation modification that Mr. Terhune advocates were implemented. (*See* Commercial Group Init. Br. at 9, 11.) This position is misleading. The "admission" cited by the Commercial Group related to a hypothetical question to REACT witness Mr. Fults. (*See* Tr. at 367:19 ("Based on that hypothetical . . .").) After Mr. Fults explained that REACT has "not agreed with the ECOSS," (Tr. at 367:13), counsel for the Commercial Group asked:

Q. Right. My question is, if the Commission agrees with REACT's position except for the IEDT position -- which may have a legal implication -- would REACT then agree to pay 100 percent of the cost as shown by that ECOSS?

A. Based on that hypothetical, yes.

(Tr. at 367:14-19.)

The Commercial Group apparently believes incorrectly that the only thing that constitutes "REACT's position" in this proceeding is Mr. Terhune's recommended modification to the ECOSS allocation. However, REACT has plainly and explicitly also advocated additional allocation modifications of Customer Care Costs as well as additional studies, of both the Share Distribution Lines proportionate allocations and the Customer Care Cost allocations. Mr. Fults has been very clear that there should be no further move toward so-called cost until those additional studies are complete. (*See* REACT Ex. 1.0 at 31:686-91.) Because "REACT's position" involves additional studies that by definition have not and cannot be performed in the course of this proceeding, the Commercial Group's suggestion that REACT has now agreed to a 100% move toward so-called cost is not accurate.

Kroger Co.

Like the Commercial Group, Kroger asserts that there are certain subsidies that it is being forced to pay. (*See* Kroger Co. Init. Br. at 2.) Yet, while Kroger admits that to determine whether a subsidy exists "it is first necessary to understand what costs are incurred to provide service to the various classes," Kroger also admits that it has not undertaken any actual analysis of that issue, or any other issue in this proceeding. (*See* Tr. at 291:8-292:7.) Nor does Kroger take issue with the analysis of REACT witness Mr. Terhune, which Kroger agrees constitutes a "further refinement" of the ComEd ECOSS. (*See* Tr. at 293:8-11, 295:1-4.)

In short Kroger's position in this proceeding lacks a substantive evidentiary basis and is not persuasive.

IIEC

IIEC supports "taking the next incremental step toward cost based rates in this case." (IIEC Init. Br. at 21.) IIEC states that "It does not appear that there was any significant opposition to this approach in the evidentiary phase of this case." (*Id.*) However, REACT has set forth a credible evidentiary basis to maintain the *status quo* pending the outcome of various studies designed to further refine the ECOSS.

Conclusion

ComEd's ECOSS continues to contain substantial flaws; the expert analysis presented in this proceeding shows that the ECOSS is inaccurate in several material respects. Those inaccuracies compel the conclusion that rather than endorse any movement toward so-called "cost," the *status quo* should be maintained until ComEd completes the studies that are required by this Order.

4. Illinois Electricity Distribution Tax

The IEDT is a tax imposed by the State of Illinois on Illinois electric distribution companies under the Public Utilities Act. (*See* 35 ILCS 620/2a.1; REACT Init. Br. at 48.) REACT explains that this tax originally was enacted to collect money based upon a percentage of each utility's invested capital. (*See* REACT Init. Br. at 48-49, *citing* REACT Ex. 1.0 at 29:641-42.) From 1999 (when the first ComEd delivery services rates became effective), until the conclusion of ComEd's 2010 Rate Case, ComEd recovered the IEDT as part of its Distribution Facilities Charge ("DFC"). (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:644-46.) REACT further explains that under the DFC method, for non-residential customers such as those in the ELLC and HV Over 10 MW classes, the tax was included in the \$ per kW DFC charge, applied to each customer's Maximum Kilowatts Delivered; for residential, watt-

meter, and lighting customers the tax was included in the \$ per kWh DFC. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:650-53.)

In the 2010 ComEd Rate Case, ComEd was allowed to change its collection methodology, and removed the IEDT costs from its DFC, and instead began assessing the IEDT as a separate per kWh charge. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:649-50.) REACT explains why the new approach has several undesirable and inequitable consequences. First, the changed approach creates confusion and further complexity for customers in understanding their monthly ComEd bill. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:656-59.) Second, the largest customers who operate 24 hours per day and use the same amount of electricity each hour -- *i.e.*, large, high-load factor customers who are using ComEd's system efficiently -- now pay a disproportionately large portion of the tax. (*See* REACT Init. Br. at 49; *see also* REACT Ex. 1.0 at 30:666-669.) REACT asserts that these problems arose because the IEDT charges no longer have any relationship to ComEd's invested capital -- which is the purpose of the tax -- but rather are just tied to the amount of kilowatts delivered to each customer. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 4.0 at 16:338-41.)

REACT and IIEC request that the Commission order ComEd to collect the tax in the same manner it did from 1999 to 2011, rather than the manner that it has since the conclusion of the 2010 ComEd Rate Case.

COMMISSION ANALYSIS AND CONCLUSIONS

The unrebutted evidence in this proceeding is that the way in which ComEd currently is collecting the IEDT is having significant negative impacts upon the largest energy users in Northern Illinois.

ComEd's position regarding its modified IEDT collection method, which Staff also supports, is simply that the Commission approved the methodology in the 2010 ComEd Rate Case. (*See* REACT Init. Br. at 49, *citing* ComEd Ex. 6.0 at 35:628-36:657; *see also* ComEd Reply Br. at 25; Staff Reply Br. at 21.) The threshold question, therefore, is whether that decision is binding in this proceeding, and the unequivocal answer is that it is not. It is a basic rule of Commission procedure that similar issues may be raised in succeeding proceedings. (*See, e.g., Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 407-408 (2nd Dist. 2010) (holding that a "record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a different result.")) ComEd itself regularly asks the Commission to revisit issues that are important to it. This approach makes sense, for the simple reason that a decision made at one moment may not apply to facts on the ground at a later moment. That is precisely the case here.

ComEd and Staff also claim that ComEd was compelled by an act of the General Assembly to alter its IEDT collection method. (*See* ComEd Init. Br. at 35; Staff Init. Br. at 38; Staff Reply Br. at 21.) However, the relevant chronology demonstrates that ComEd's prior DFC method of assessing this tax was a legal and practical method that avoided the problems with the current per kWh method. (*See* REACT Init. Br. at 50.) The modification in the law regarding how ComEd is assessed the IEDT became effective as a result of 1997 amendments to the Public Utilities Act. (*See* REACT Init. Br. at 50, *citing* REACT Ex. 4.0 at 341-44.)

However, ComEd waited until thirteen years, until 2010, to modify its assessment methodology. (*See id.*) The DFC method of collecting the IEDT was entirely appropriate, and was not required by the 1997 amendments to the Public Utilities Act. (*See id.*)

REACT does not stand alone in advocating a return to the DFC method of collection. Notably, IIEC supports REACT's recommendation that the IEDT be recovered by ComEd through the ComEd DFC. (*See IIEC Init. Br. at 3, 22-23.*) IIEC points out that the statutory structure imposes the tax on ComEd -- not its customers -- and does not allow ComEd to establish separate individual charges for the collection of the tax. (*See id. at 22.*) IIEC also echoes REACT's point that ComEd never collected the tax from its customers through a separate charge until 2011, even though the statute upon which ComEd now relies for this collection methodology was enacted years earlier. (*See id.*) Finally, IIEC points out that ComEd "has never demonstrated any legitimate reason for separating this particular cost from the plethora of ComEd costs, including taxes imposed on ComEd , and now collected in ComEd's exhibit DFC charges." (*Id.*) REACT agrees with IIEC on these points, each of which support collection of the IEDT through the DFC charge.

The Commercial Group asserts that ComEd's assessment of the IEDT as a separate per kWh charge also has negative impacts upon the Medium, Large, and Very Large Load customer classes and that ComEd should recover the IEDT as part of its DFC charge. (*See Commercial Group Init. Br. at 11.*) The Commercial Group did not present any actual evidence of this, however, the Commission notes that REACT, which did present specific evidence, does not object to the Commercial Group's request to have ComEd collect the IEDT from the Medium, Large, and Very Large load classes through the DFC as it did historically, in order to avoid

penalizing customers that efficiently use ComEd's distribution system, REACT would support that approach. (*See* REACT Reply Br. at 54.)

On the record presented here, the Commission determines that ComEd should collect the IEDT as it did prior to the conclusion of the 2010 ComEd Rate Case. The Commission is particularly troubled that the current methodology of collection disproportionately impacts customers who operate 24 hours per day and use the same amount of electricity each hour -- *i.e.*, large, high-load factor customers who are using ComEd's system efficiently. That outcome is neither required nor desirable. Accordingly, ComEd is directed to immediately begin IEDT collection in the same manner it did from 1999 to 2011, rather than the manner that it has since the conclusion of the 2010 ComEd Rate Case.

D. Overall Recommended Rate Design

COMMISSION ANALYSIS AND CONCLUSIONS

Fairness and the application of cost causation principles dictate both that costs be allocated to cost causers, based upon an analysis of the facilities used to serve the various classes of customers, and that rates be designed to avoid unfair and disproportionate impacts upon the largest energy users, who provide countless jobs and drive the Illinois economy.

The Commission rejects any assumption by ComEd or another party that rate design must or can be based upon flawed assumptions contained in a ComEd ECOSS that the company presented years ago to again raise the rates it charges its largest customers. On the contrary, credible refinements to cost studies should be implemented based upon new data that has been developed and changes to the market conditions. On this point, the Commission notes, and rejects, the suggestion by Staff that rate design modifications are inappropriate unless a party "proposes a comprehensive set of rates for each and every class." (Staff Reply Br. at 23.) Staff

cites no authority for such a position, and that has never been the standard applied by the Commission. As discussed above, rate design by its very nature is a process of incremental refinement based upon the best available information at a given time. Staff's standard suggests that even in the face of credible and persuasive evidence about flaws in the ComEd ECOSS, the Commission's hands are tied if there is any possibility that any modification in the rate design might adversely affect one or another rate class. Of course, no single customer class or small group of customer classes has all the information necessary from ComEd to develop such a comprehensive solution. A customer class should be able to make the case that it has received discriminatory treatment from its utility, and if it does so through credible and unrebutted expert evidence, it will receive fair consideration of the merits of the issue without criticisms or insinuations about motives.

Of course, if Staff believes it appropriate, the statistical sampling methodology proposed by REACT for shared distribution lines in the proposed Shared Distribution Line Proportional Cost Assignment Study could also be used to more accurately allocate the costs of distribution substations, primary and secondary transformers as well as secondary wires and ComEd service wires. As REACT has testified, using the same methodology for all classes/subclass and employing ComEd supplied data would produce statistically credible results that would be fair for all classes.

Accordingly, ComEd is ordered to:

- (1) Modify its ECOSS now, based on REACT expert witness Mr. Terhune's analysis of certain electric distribution facilities that are not used or are used only a *de minimis* amount by members of the Extra Large Load Delivery Class and the over 10 MW High Voltage Delivery Class;

(2) Maintain the *status quo* regarding any alleged "movement toward cost" based on ComEd's current, problematic ECOSS until the completion of the Shared Distribution Lines Proportional Cost Assignment Study;

(3) Accurately allocate Customer Care Costs consistent with the recommendations of REACT witness Mr. Merola, to reflect the unquestionable fact that a certain portion of those costs is attributable to ComEd's supply function; and

(4) Collect the Illinois Electricity Distribution Tax consistent with the manner in which ComEd collected that tax prior to the 2010 ComEd Rate Case.

VI.

OTHER

A. Distribution System Losses

REACT does not at this time take issue with ComEd's proposal relating to its distribution loss percentages and the related Distribution Loss Factors ("DLFs") that are used to recover ComEd's lost energy. (*See* REACT Init. Br. at 52.) Instead, REACT notes that ComEd has provided analysis which allocates these costs on a customer class basis. REACT's greater concern in the instant proceeding, however, is the related issue of Unaccounted For Energy ("UFE"), which is an *additional* category of costs associated with electricity lost in the ComEd system and for which ComEd does not allocate costs among customer classes. (*See* REACT Ex. 1.0 at 25:570-78.) UFE is discussed further below in Section of VI.B. of this Reply Brief. (*See also* REACT Init. Br. at 52-55.)

B. Unaccounted For Energy

REACT explains that there are two categories of costs that customers experience associated with lost electricity: (1) the Distribution Loss Factor ("DLF") that is a specific charge in ComEd's tariffs; and (2) the cost for Unaccounted For Energy ("UFE"). (*See* REACT Init. Br. at 52-55; REACT Ex. 1.0 at 25:574-26:592.) REACT points out that while ComEd presented analysis associated with the distribution loss percentages and the accompanying DLFs

for the various customer classes, it presented no similar analysis associated with UFE -- despite the fact that the cost impact of UFE can be twice as great as that of the DLFs. (*See* ComEd Ex. 4.0 at 5:85-11:213; ComEd Ex. 8.0 at 3:46-60; REACT Ex. 1.0 at 25:561-65, 27:599-605.)

Given this cost impact, as well as the confusing nature of the interrelationship between UFE and the DLFs, REACT requests that the Commission order ComEd to perform a study regarding the causes of UFE, and to provide additional information that would enable the Commission and interested parties to determine whether the UFE is being calculated properly and allocated appropriately among ComEd's customer classes and subclasses. (*See* REACT Init. Br. at 54-55; REACT Ex. 4.0 at 19:396-99.)

COMMISSION ANALYSIS AND CONCLUSIONS

ComEd has claimed that it is providing "as much information as possible" so that there is "a comprehensive investigation of cost allocation and rate design." (ComEd Ex. 13.0 at 2:29-33; *see also* Tr. at 413:24-414:5 (ComEd witness Tenorio).) However, as REACT has noted, ComEd inappropriately has refused to conduct a study to explain the causes of UFE, and to provide additional information that would enable the Commission and interested parties to determine whether the UFE is being calculated properly and allocated appropriately among ComEd's customer classes and subclasses.

The confusing nature of the interrelationship between UFE and the DLFs was highlighted during cross-examination of ComEd witness Mr. Tenorio, ComEd's Manager of Regulatory Strategies and Solutions, and ComEd's lead rate design witness and the sole ComEd witness testifying about these issues, who admitted repeatedly that even he knew only "a little bit" about how the UFE charge is calculated and collected. (Tr. at 409:13-15; *see also* Tr. at 410:2-3 ("I don't really understand or know how the UFE is accounted for other than what I just

described."; Tr. at 410:8-12 ("I guess what I don't know how to answer is [sic], I don't know how that UFE is calculated; if it is a distinct number, if it's a subtraction, I don't know how that piece works and how that allocation works. I really couldn't attest to that."))

In its Reply Brief, ComEd attempts to suggest that the cross-examination of Mr. Tenorio on UFE was inappropriate because Mr. Tenorio "was not the witness to address UFE." (ComEd Reply Br. at 28) The basis for this assertion is unclear: Mr. Tenorio testified about UFE in both his Rebuttal Testimony (ComEd Ex. 6.0 at 38:692-39:727) and Surrebuttal Testimony (ComEd Ex. 13.0 at 31:598-32:622), so REACT was well within its rights to ask Mr. Tenorio UFE-related questions on cross-examination, and the Commission is well within its rights to evaluate the persuasiveness of the answers given on cross-examination in relation to the positions asserted by ComEd.

In seeking to avoid performing such a study, ComEd improperly suggests that UFE is "outside the scope of this proceeding." (ComEd Init. Br. at 43.) However, there is nothing in the Public Utilities Act that would preclude the Commission from ordering the investigation requested by REACT; rather, the Commission possesses plenary authority to oversee utilities. (*See, e.g.*, 220 ILCS 5/4-101; 220 ILCS 5/10-101.) Moreover, given the interrelationship between UFE and distribution losses, combined with ComEd's unwillingness or inability to provide information regarding UFE, the current lack of information prevents the Commission from ensuring that there is no "over-recovery" or "double recovery" of losses or improper cost allocation as a result of ComEd's treatment of UFE. (REACT Ex. 4.0 at 19:392-93.)

ComEd asserts that "UFE is not within the purview of the Commission" and states that it is a "wholesale electricity issue." (ComEd Init. Br. at 43; ComEd Reply Br. at 28.) This is a perplexing and unconvincing position for ComEd to take, because just one paragraph after

making this allegation in its Initial Brief, ComEd states that under the Energy Infrastructure Modernization Act, which is part of the Public Utilities Act, "UFE is one of the performance metrics in the *Commission-approved* Multi-Year Performance Metrics Plan." (*Id.* (emphasis added).) Thus, ComEd simultaneously suggests that UFE is wholly outside this Commission's jurisdiction *and* at the same time is a component of a Commission-approved Metrics Plan. ComEd's internally contradictory position -- asserted literally on the same page of its Initial Brief -- speaks for itself and undermines the credibility of ComEd's refusal to undertake the requested study and provide the requested information.

To the extent that ComEd is suggesting that the fact that UFE is addressed in Commission-approved Metrics Plan precludes the Commission from further investigating the causes of UFE and whether the costs associated with UFE are properly allocated, ComEd is mistaken. Nothing in Public Utilities Act limits the Commission's authority in such a manner, particularly given that there is the possibility of double recovery. Further, the Act specifically directs that questions regarding cost allocation and rate design appropriately are addressed in the instant proceeding. (*See* 220 ILCS 5/16-108(c).) Similarly, the suggestion that UFE's connection with "wholesale" issues precludes Commission inquiry is invalid. The Commission possesses plenary oversight authority of public utilities in the State of Illinois, and certainly is entitled to confirm that there is no double recovery for lost energy-related costs that would obviously adversely affect Illinois rate payers.

Investigating the causes of UFE and current cost recovery methods also would be consistent with the Commission's directive to ensure that the costs are recovered from the cost-causers. (*See* 220 ILCS 5/1-102(d)(iii).) If it is appropriate to have separate distribution loss

percentages and DLFs for the various classes, it is appropriate to investigate whether UFE likewise should be charged in a manner that reflects cost causation principles.

Accordingly, consistent with REACT expert witness Mr. Fults' recommendation, ComEd is ordered to perform a study regarding the causes of UFE, and to provide the Commission and interested parties with the study and sufficient information to determine whether UFE is being calculated properly and allocated appropriately among customer classes.

VII.

CONCLUSION

For the reasons stated herein, ComEd is ordered to:

- (1) Modify its ECOSS now, based on REACT expert witness Mr. Terhune's analysis of certain electric distribution facilities that are not used or are used only a *de minimis* amount by members of the Extra Large Load Delivery Class and the over 10 MW High Voltage Delivery Class;
- (2) To undertake a Shared Distribution Lines Proportional Cost Assignment Study, as described by Mr. Terhune;
- (3) Maintain the *status quo* regarding any alleged "movement toward cost" based on ComEd's problematic ECOSS until the completion of the Shared Distribution Lines Proportional Cost Assignment Study;
- (4) Accurately allocate Customer Care Costs now consistent with the analysis of REACT expert witness Mr. Merola, to reflect the unquestionable fact that a portion of those costs is attributable to ComEd's supply function;
- (5) Undertake a study of its allocation of Customer Care Costs to reflect market evolution;
- (6) Provide transparent information about the relationship between and charges associated with the Distribution Loss Factor and the charges imposed for Unaccounted For Energy; and
- (7) Collect the Illinois Electricity Distribution Tax consistent with the manner in which ComEd collected that tax for over a decade prior to the Final Order in the 2010 ComEd Rate Case.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE
ALLOCATION OF COSTS TOGETHER**

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