

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

DRAFT POSITION STATEMENTS AND DRAFT CONCLUSIONS
SUBMITTED BY COMMONWEALTH EDISON COMPANY

PUBLIC VERSION

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PROPOSED ORDER

I. INTRODUCTION / STATEMENT OF THE CASE

A. Procedural History

On April 29, 2013, Commonwealth Edison Company (“ComEd”) filed with the Illinois Commerce Commission (the “Commission” or “ICC”) ComEd’s annual formula rate update and revenue requirement reconciliation and requested the Commission to authorize and direct ComEd to make the compliance filings necessary to place into effect the resulting charges to be applicable to delivery services provided by ComEd beginning on the first day of ComEd’s January 2014 billing period, as authorized by Section 16-108.5(d) of the Public Utilities Act (the “Act”), 220 ILCS 5/16-108.5(d).

ComEd's filing, consistent with Section 16-108.5(d)(1), included:

- updated inputs to the performance-based formula rate for the applicable rate year (2014) that are based on final historical data reflected in the utility’s most recently filed annual FERC Form 1 (for 2012) plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed (2013).
- a reconciliation of the revenue requirement that was in effect for the prior rate year (2012) (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 (for 2012) that reports the actual costs for the prior rate year).

The filing, consistent with Section 16-108.5(d)(1), also included: (1) a corporate officer certification relating to reconciliation Schedule “Sch FR A-1 REC” and (2) the new delivery services charges corresponding to the updated costs and reconciled revenue requirement.

Statutorily, this docket must conclude by December 25, 2013. 220 ILCS 5/16-108.5(d)(3).

The following ComEd witnesses testified in this case: Dr. Ross Hemphill, Christine M. Brinkman, Martin G. Fruehe, Joseph R. Trpik, Jr., Michelle Blaise, Ronald E. Donovan, Todd J. Jirovec, Anastasia M. Polek-O'Brien, Michael F. Born, Bradley L. Bjerning, and Christ T. Siambekos.

The following Staff witnesses testified in this case: Richard W. Bridal, Daniel Kahle, Scott Tolsdorf, Dianna Hathhorn, William Johnson, and Michael McNally.

In addition to ComEd and Staff, the following parties have submitted testimony in this case: the People of the State of Illinois ("AG"); and the City of Chicago ("City"), the Citizens Utility Board ("CUB"), and the Illinois Industrial Energy Consumers ("IIEC") (collectively, "CCI").

During the course of the proceeding, Staff and other parties proposed various adjustments and changes to the Company's proposed revenue requirements. ComEd accepted some of these adjustments and changes.

An evidentiary hearing was convened in this docket at the Commission's Chicago Office before duly authorized Administrative Law Judges ("ALJs") on September 30, 2013. The parties filed and served Initial Briefs on October 15, 2013. Reply Briefs were filed and served on October 22, 2013. Briefs on Exception were filed and served on November 22, 2013. Reply Briefs on Exceptions were filed and served on November 27, 2013.

II. OVERALL REVENUE REQUIREMENT

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

1. The 2012 Reconciliation Adjustment – the difference between the revenue requirements used to set ComEd's rates in effect in 2012¹ and the 2012 Reconciliation Revenue Requirement determined based on ComEd's actual 2012 costs as reported in its Federal Energy Regulatory Commission ("FERC") Form 1 for 2012, corrected for the lost time value of money;
2. The 2014 Initial Rate Year Revenue Requirement – a projection of 2014 costs based on ComEd's actual 2012 operating expenses and rate base plus projected 2013 plant additions and the associated adjustments to

¹ Because EIMA became effective in 2012, those rates are a blend. See *Commonwealth Edison Co.*, ICC Docket No. 10-0467 (Order May 24, 2011); *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012, and Order on Rehearing Oct. 3, 2012).

accumulated depreciation (the associated change in the depreciation reserve), depreciation expense, and, per the Commission's prior Orders, accumulated deferred income taxes ("ADIT"); and

3. The "ROE Collar" adjustment relating to 2012.

E.g., ComEd Ex. 1.0 REV. at 4-8.

ComEd presented detailed evidence supporting its proposed 2014 Rate Year Net Revenue Requirement and the components thereof through the testimony of ten witnesses and the attachments, schedules, and other exhibits they sponsored. Staff and intervenors presented evidence on a limited number of contested issues. The Commission's determinations on the subject of rate base issues are reflected and set forth below in the applicable sections of this Order.

A. 2014 Initial Rate Year Revenue Requirement

ComEd presented extensive evidence showing that its properly calculated 2014 Initial Rate Year Revenue Requirement, reflecting the adjustments made in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$2,189,267,000. *E.g.*, ComEd Ex. 14.0 at 1-6; ComEd Ex. 14.01, Sch FR A-1, line 23; ComEd Ex. 18.0 CORR. at 2. [The Commission approves ComEd's figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the 2014 Initial Rate Year Revenue Requirement is set forth later in this Order.]

B. 2012 Reconciliation Adjustment

ComEd presented detailed evidence that its properly calculated 2012 Reconciliation Adjustment, reflecting the difference between the revenue requirements used to set rates in effect in 2012 and the actual 2012 Reconciliation Revenue Requirement, and the time value of money, is \$179,433,000. *E.g.*, ComEd Ex. 14.01, Sch FR A-1, line 24.² [The Commission approves ComEd's figure based on the detailed evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the 2012 Reconciliation Adjustment is set forth later in this Order.]

C. ROE Collar

ComEd presented detailed evidence that its properly calculated ROE Collar adjustment is (\$6,885,000). *E.g.*, ComEd Ex. 14.01, Sch FR A-1, line 35. Staff agrees. *E.g.*, Staff Init. Br. at 5. [The Commission approves ComEd's figure based on the

² The \$179,433,000 reconciliation adjustment is the sum of: (1) the \$149,279,000 difference between (a) the weighted average revenue requirements used to set the rates in effect in 2012 and (b) the 2012 actual costs; (2) the (\$6,885,000) (*i.e.*, negative) "ROE Collar" figure discussed below; and (3) interest reflecting the two years from 2012 when costs were under-recovered to 2014 when the reconciliation adjustment will be reflected in rates. ComEd Ex. 14.01, Sch FR A-1, line 24, and Sch FR A-4.

detailed evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the ROE Collar Adjustment is set forth later in this Order.]

D. 2014 Rate Year Net Revenue Requirement

Accordingly, ComEd provided extensive evidence that its properly calculated 2014 Rate Year Net Revenue Requirement, reflecting the adjustments made in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$2,361,814,000. *E.g.*, ComEd Ex. 14.0 at 2, 6; ComEd Ex. 14.01, Sch FR A-1, line 36; ComEd Ex. 18.0 CORR. at 3.

ComEd's 2014 Rate Year Net Revenue Requirement is \$338,546,000 higher than the 2013 Rate Year Net Revenue Requirement of \$2,023,269,000 approved by the Order in ComEd's 2012 formula rate update proceeding,³ or \$353,017,000 higher than the 2012 formula rate update Order figure when the latter is adjusted to reflect Public Act 98-0015.⁴

However, over half of the increase in that revenue requirement, \$179,433,000, is due to the 2012 Reconciliation Adjustment. ComEd had rates in effect in 2012 that were based on revenue requirement figures that turned out to be far below ComEd's actual 2012 costs.

III. SCOPE OF THIS PROCEEDING

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

ComEd's Position

This proceeding was initiated pursuant to Section 16-108.5(d) of the PUA, a provision of EIMA that defines this proceeding and limits its scope. ComEd states that the statutory purpose of this proceeding is to "evaluate the prudence and reasonableness of the costs incurred by [ComEd] to be recovered during the applicable [2014] rate year that are reflected in the inputs to the performance-based formula rate derived from the utility's FERC Form 1." 220 ILCS 5/16-108.5(d). ComEd explains that while input data is updated annually, the formula itself is not.

ComEd's recently approved rate formula governs the calculation of ComEd's 2014 Initial and 2012 Reconciliation Revenue Requirements, and any adjustment attributable to the ROE Collar. ComEd Ex. 1.0 REV. at 4-5. ComEd states that "the specifics of [the rate] calculation and the identification of the specific inputs used to

³ *Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) at 106.

⁴ ComEd Ex. 14.01, Sch FR A-1, lines 36-38.

conduct it are found in the formula rate itself and are not a subject of this proceeding.” ComEd Ex. 2.0 REV. at 4.

ComEd asserts that the AG, CCI, and Staff propose “adjustments that are counter to the established formula.” ComEd Ex. 16.0 at 2. The AG argues for using an average rate base in the ROE collar calculation instead of FERC Form 1 year end data. The AG and CCI argue that ADIT related to the reconciliation balance should be netted against the reconciliation balance before calculating the interest expense. The AG, CCI, and Staff argue that the rate of interest applicable to the reconciliation balance should be ComEd’s weighted average cost of capital or “WACC” without consideration of the associated income tax costs. Staff witness Kahle argued for two separate cash working capital calculations that would require changes to the rate formula. ComEd contends that the Parties’ proposals are inconsistent with the current rate formula and would calculate revenue requirement components differently, and/or using different data than what is required by the current formula. ComEd Ex. 12.0 CORR. at 5-6; ComEd Ex. 16.0 at 2. ComEd notes that the Parties’ witnesses either admit or acknowledge that their proposals conflict with the current approved formula. ComEd Ex. 16.0 at 3.

ComEd argues that because the suggested four “proposals are inconsistent with the established rate formula, they must be rejected in this case.” ComEd Ex. 12.0 CORR. at 6. ComEd explains that adoption of any of the four proposals would change the current formula, and EIMA expressly bars changes to the rate formula in FRU proceedings and provides that the Commission “shall not ... have the authority... to consider or order any changes to the structure or protocols of the performance-based formula rate” in annual update cases. 220 ILCS 5/16-108.5(d). Notably, in ComEd’s last FRU case (ICC Docket No. 12-0321), Staff recognized that changes to the formula rate structure or protocols cannot be considered in an annual update filing/reconciliation proceeding.” ComEd Ex. 12.0 CORR. at 5. ComEd asserts that EIMA requires changes to the “performance-based formula rate structure or protocols” to be made in a utility rate filing or by the Commission after an investigation “as set forth in Section 9-201 of this Act.” 220 ILCS 5/16-108.5(c). Importantly, the Commission’s recently opened an expedited investigation proceeding, *Illinois Commerce Comm’n v. Commonwealth Edison Co.*, ICC Docket No. 13-0553, which is such an investigation proceeding. ComEd notes that the subject proceeding includes three issues that it asserts were improperly raised in this proceeding.

In the instant proceeding, Staff acknowledges that the Commission has no authority in annual FRU proceedings, such as the instant case, “to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section.” Staff Init. Br. at 6. ComEd contends Staff attempts to bypass that restriction by construing the mandates of EIMA to treat only those few Rate Formula Sheets that are filed **as tariff pages** as the formula rate, contrary to the plain language of EIMA, past Commission decisions, past Staff positions in ComEd cases, and the evidence in this case. To support its attempt to bypass the restriction, Staff points to an investigation of Ameren’s formula rates (*Ameren Illinois Co.*, ICC Docket Nos. 13-0501 and 13-0517 (cons.) (“Ameren FR Investigation”)), to

which ComEd is not a party, and claims that it has sought in that case a “determination” regarding whether “change[s] to the formula rate schedules, appendices and work papers that support the two schedules in the filed formula rate tariff but are not themselves within such tariff” constitute changes to the structure or protocols of a performance-based formula rate. Staff Init. Br. at 6. ComEd notes, that without reference to any legal authority or due process standards, Staff argues that “in this docket, as well as future ComEd formula rate cases, the final order should be made consistent with any Commission Order in Docket Nos. 13-0501 and 13-0517 consolidated, where applicable.” *Id.* at 7. ComEd asserts that this argument offered by Staff is flawed and lacks merit when applied to ComEd’s Commission-approved formula rate.

Staff’s assertion that the statutory prohibition does not apply to the supporting schedules and other filed papers constituting ComEd’s formula rate, is, according to ComEd, contrary to the specific requirements of EIMA. EIMA requires a Commission-approved formula rate to “specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility’s actual costs to be recovered during the applicable rate year” 220 ILCS 5/16-108.5(c). ComEd argues that Staff’s position would exclude from ComEd’s formula rate the very details that were statutorily required to be included in the formula rate for it to operate in a standardized and transparent manner. ComEd also notes that the mandated structures and protocols set forth in items (1) through (6) of Section 16-108.5(c) of the Act are not contained in the two formula rate schedules included in ComEd’s tariffs, but are instead included in the supporting schedules and workpapers ComEd was ordered to file separately from its compliance tariffs in ICC Docket No.11-0721. *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) at 178. ComEd concludes that Staff’s position that the schedules and workpapers meeting these statutory requirements should somehow not be considered part of the formula rate or as part of the structure and protocols included in its formula rate is contrary to EIMA.

ComEd states that Staff’s position is also contrary to prior Commission Orders, which approved the schedules and workpapers Staff would deem to be excluded from ComEd’s formula rate. ComEd maintains that the schedules and workpapers in question were never excluded by the Commission from the formula rate, but were only excluded from the sheets to be filed as tariffs because the Commission concluded that the full formula was too complex to be contained in a tariff. *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) at 153. ComEd states that when the Commission approved ComEd’s rate formula in *Commonwealth Edison Co.*, ICC Docket No. 13 0386 (Order June 5, 2013), it specifically held that ComEd’s formula “rate sheets, and the revenue requirement calculations filed with and supporting them, are consistent with the provisions of Public Act 98-15 ...” (*Id.* at 3) and approved the revenue requirements calculated not just under the sheets filed as tariffs, but also under ComEd’s “Filed Rate Schedule Sheets” in their entirety (*Id.* at 3-4).

ComEd contends Staff also errs in claiming that, unless diluted as it recommends, Section 16-108.5(d) would somehow limit the Commission's ability to ensure that rates are just and reasonable. The purpose of the strict adherence to a formula is to provide transparency by identifying the cost inputs used to set rates in advance; adherence to the formula bars parties from bending the rules based on their own view of the inputs. This transparency facilitates the Commission's unbiased review of the cost inputs, and thus the rates, for prudence and reasonableness. To the extent that changes to the structure and protocols of the formula rate are deemed necessary or appropriate, EIMA establishes the investigation process to make such changes and that process is currently being followed in ICC Docket No. 13-0553. ComEd asserts that the ability to review and consider prudence and reasonableness are fully preserved under the statutorily required processes.

ComEd asserts that the decision in the Ameren FR Investigation cannot control the decision in this case, or in ComEd cases generally. The Ameren FR Investigation is not a rulemaking proceeding and was not initiated as an industry-wide proceeding of general applicability. ComEd is not a party to that proceeding, and the facts and circumstances of ComEd's Commission-approved formula rate are neither an issue in that proceeding nor within the scope of that proceeding. The Commission must decide this case "exclusively on the record for decision" in this case. 220 ILCS 5/10-103. Moreover, it is well established that "orders [of the Commission] are not *res judicata* in later proceedings before it," *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953), and they certainly cannot bind parties like ComEd, who were not even a party to the other case. As a factual matter, nothing requires Ameren and ComEd to include the same level of detail on each type of sheet, or to have identical rate formulae. ComEd submits that it is impossible to determine the structure or protocols of ComEd's Commission approved formula rate without considering ComEd's actual formula rate. According to ComEd, an assertion that ComEd must somehow be bound to follow and apply the determination in the Ameren FR Investigation to which it is not a party and in which ComEd's Commission-approved formula rate is not at issue makes improper presumptions, could not be supported by substantial evidence based on relevant and necessary record evidence, and would violate both the Act's direction that Commission decisions be made exclusively on the record in that case, and due process notice and hearing requirements.

Staff and Intervenor Positions

Commission Analysis and Conclusion

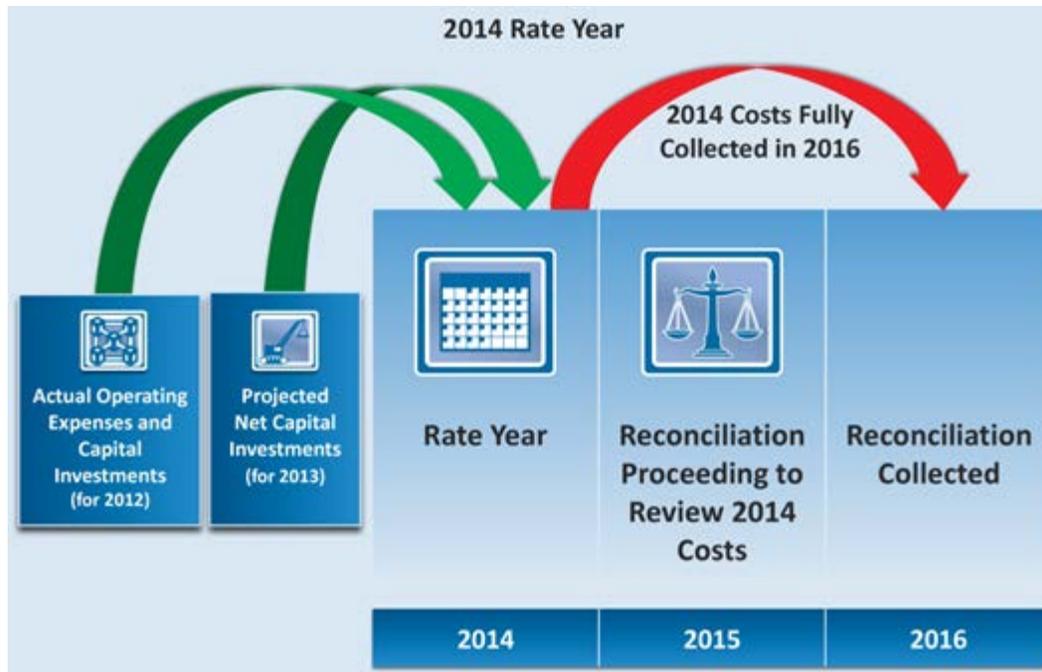
The Commission finds that the four proposals presented by the AG, CCI, and Staff as discussed above contain approaches that conflict with the current approved performance-based formula rate. Staff does not contest that changes to the CWC components of ComEd's formula rate should occur outside of this proceeding. Section 16-108.5(d) of the Act clearly specifies that the Commission is not granted authority in an annual update and reconciliation proceeding to consider or order any changes to the

structure or protocols of a performance-based formula rate. 220 ILCS 5/16-108.5(d). The Commission agrees that EIMA requires that any changes to the formula rate structure be made in a utility rate filing or by the Commission after an investigation as set forth in Section 9-201 of the PUA; as such, consideration or approval of the four proposals is improper and outside the scope of this proceeding. The Commission therefore declines to consider proposed changes to the structure or protocols of a formula rate in this annual update and reconciliation proceeding or in future update and reconciliation proceedings.

B. The Definition of Rate Year and the Reconciliation Cycle

ComEd states that EIMA establishes an annual process by which ComEd's rate year costs and revenue requirements are first estimated, and then finally fixed and reconciled when actual costs are known. The objective is to "...ultimately reconcile the revenue requirement reflected in rates for each calendar year ... with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date." 220 ILCS 5/16-108.5(d).

ComEd explains, to accomplish this objective, EIMA requires that each annual update and reconciliation filing involve both a final reconciliation of the revenue requirement "for the prior rate year," for which actual costs will be known by the time of filing, and a provisional projection of the revenue requirement for the following calendar year. That provisional Initial Revenue Requirement will be reconciled two years after the year it is reflected in rates. EIMA requires ComEd to base the provisional projection on "historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." 220 ILCS 5/16-108.5(d)(1). ComEd states that this rubric was used in this case. ComEd Ex. 1.0 REV. at 9. Additionally, ComEd provided the following graphic to illustrate how the 2014 Initial Revenue Requirement is calculated in this case and how it relates to the actual 2014 Reconciliation Revenue Requirement that will ultimately be collected (*Id.* at 8):



ComEd asserts that the Company is using the reconciliation process specified by EIMA. 220 ILCS 5/16-108.5(d); ComEd Ex. 16.0 at 7. The reconciliation process is conducted using the rate formula as approved by the Commission “in both Docket Nos. 11-0721 and 13-0386, and using the specific rate formula the Commission found fully compliant with EIMA in its Order in Docket No. 13-0386.” *Id.* at 8. ComEd states that this structure replicates the structure used in Docket No. 12-0321 (which reconciled rate year 2011 and calculated an initial revenue requirement for rate year 2013 based on 2011 actual costs and 2012 projected plant additions) and, insofar as is possible given the special start up rules, also mirrors the process followed in Docket No. 11-0721 (which set the initial revenue requirement for rate year 2012 based on 2010 actual costs and 2011 plant additions). *Id.*

ComEd argues that the CCI erroneously suggests that the reconciliation process is defective or that mismatches exist. Notably, no other witness supports CCI’s claims. ComEd asserts that CCI’s suggestion is contrary to law, the approved rate formula, and past practice. ComEd maintains that “There is no mismatch in the years” being reconciled and the Company is using “exactly the reconciliation approach approved by the Commission in prior ComEd and Ameren rate orders.” ComEd Ex. 12.0 CORR. at 7.

CCI alleges that the manner in which ComEd’s Commission-approved formula rate treats the term “rate year” and the reconciliation cycle is improper. CCI Init. Br. at 5-21. ComEd asserts that CCI ignores the law and the Commission’s prior orders to make an erroneous argument that proposes to mismatch revenue requirements in the reconciliation process.

ComEd observes that EIMA specifies the processes that are to be used (i) to develop the revenue requirement that will be included in rates for the January through December calendar year following each annual update filing (what ComEd labels the “Initial Revenue Requirement” or “Initial Rate Year Revenue Requirement” for ease of understanding) and (ii) the process to reconcile the revenue requirement reflected in rates for each calendar year with the revenue requirement that would have been determined had the actual cost information for the applicable calendar year been available at the filing date (the latter of which ComEd labels the “Reconciliation Revenue Requirement” or “Reconciliation Rate Year Revenue Requirement”). ComEd Reply Br. at 11. ComEd notes that Section 16-108.5(c) of the Act states, as observed by CCI (CCI Init. Br at 5), that “the applicable rate year ... is the period beginning with the first billing day of January and extending through the last billing day of the following December.” 220 ILCS 5/16-108.5(c).

According to ComEd, CCI erroneously contends that the Act “does not explicitly designate which of the calendar year periods used in the formula rate calculations is the Rate Year.” CCI Init. Br. at 5. ComEd submits that EIMA clearly defines the “applicable rate year” as the applicable January to December calendar year billing period. 220 ILCS 5/16-108.5(c). Regarding the applicable Rate Year in which the Initial Revenue Requirement is to be reflected in rates, the Act clearly states that “[t]he new charges [from the annual filing of updated cost inputs] shall take effect beginning on the first billing day of the following January billing period and remain in effect through the last billing day of the next December billing period” 220 ILCS 5/16-108.5(d)(2). Thus, ComEd states that the new revenue requirement from the instant case (based on ComEd’s most recent FERC Form 1 (2012) plus projected plant additions and related depreciation reserve and expense for the filing year (2013)) will be reflected in rates from January through December of 2014 (the 2014 Rate Year).

ComEd explains that with respect to the reconciliation Rate Year, the Act clearly states that the reconciliation is “an annual reconciliation ... of *the revenue requirement reflected in rates for each calendar year ... with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.*” 220 ILCS 5/16-108.5(c)(6) (emphasis added). EIMA repeats this clear and unambiguous directive multiple times in a subsequent subsection. See 220 ILCS 5/16-108.5(d)(1). ComEd asserts that there can be no question that the applicable Rate Year for a reconciliation is the calendar year the initial approved revenue requirement was reflected in rates (i.e., 2012 in the instant case) with the revenue requirement that would have been determined with the filing (ICC Docket No. 11-0721) used to set rates for that calendar year if actual cost information for that calendar year (2012) had been available at the filing date (2011). ComEd notes that EIMA follows this same reconciliation format even for rate years where EIMA was not used to set the initial rates. 220 ILCS 5/16-108.5(d)(1).

ComEd states that CCI would true-up the initial revenue requirement being developed in the instant case to be reflected in rates during 2014, with the revenue requirement reflecting actual costs incurred in 2013. CCI Init. Br. at 9. ComEd argues

that CCI proposes a mismatch of rate years, reconciling the revenue requirement determined using actual costs for any given calendar year (e.g. 2013) with the revenue requirement used to establish rates for the following rate year (e.g., 2014), and violates the specific repeated directives in EIMA to the contrary.

ComEd notes that CCI's argument regarding selected language in the Commission's Order on Rehearing in Docket No. 11-0721 misinterprets and misapplies that language. ComEd states that the Commission noted and observed in its order that Section 16-108.5(c)(6) of the Act requires a reconciliation of the revenue requirement reflected in rates for each calendar year "with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date." *Commonwealth Edison Co.*, ICC Docket No. 11-0721, (Order on Reh. Oct. 3, 2012) at 17.

ComEd observes that the Commission made the following statement, which was not part of the Commission's ruling on the year-end versus average rate base issue being addressed on rehearing, three paragraphs later:

To make matters abundantly clear to all parties, reconciliations pursuant to 220 ILCS 5/16-108.5(d)(1) must be from whatever projected figures were used in a given year (e.g., 2012) versus the final historical data for that year (2012). Any other construction of the term reconciliation in the statute would render use of the term "reconciliation" meaningless. If the year in question did not match or actually "resolve" the projection for that year, there would be no actual "reconciling" of any figures regarding what occurred. What would happen, instead, would be a meaningless mismatch of numbers. This cannot be what the General Assembly intended.

Id. ComEd states that given the Commission's prior discussion of the reconciliation language in Section 16-108.5(c)(6) and its requirement to reconcile costs for the calendar year they are reflected in rates, this language recounts and makes clear – consistent with the multiple explicit directives in the Act – that the costs and projected figures used to set rates for a given calendar year (i.e., 2012) must be reconciled against the revenue requirement using actual cost for that calendar year (i.e., 2012). ComEd asserts that it has done this and CCI's proposal does not.

Finally, ComEd states that CCI's other arguments are improper because they amount to disputes with the statute as enacted. Additionally, ComEd asserts that these arguments are wrong on the merits. CCI points to the fact that the formula rate law does not attempt to develop a revenue requirement based on projections of the costs that will exist in the rate year the revenue requirement will be reflected in rates, but instead calls for establishing the revenue requirement for initial rates using the most recently available historical data plus projected plant additions for the filing year. ComEd states that there is nothing unreasonable or improper about this structure, and it is more than consistent with the prior use of historical test years with *pro forma* adjustments to set rates. Further, ComEd states that the legislature's decision to use

the most recent historical data with projections limited to plant additions for the filing year was well designed to minimize contested issues in setting the initial rates collected under the formula. Similarly, ComEd states that CCI's suggestion that erring on the side of under recovery is somehow harmful to consumers is neither logical nor reasonable, and at worst the process is neutral given the true-up of revenue requirements to actual costs.

C. Original Cost Finding

ComEd's Position

ComEd requests that the Commission, as it has in past FRU Orders, approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2012. ComEd Ex. 1.0 REV. at 28-29. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2012 is \$15,662,485,000. ComEd Ex. 3.0 REV. at 27.

ComEd agrees with Staff's condition that if the Commission "makes any additional adjustments to plant, commensurate adjustments should also be reflected in the original cost determination." Staff Ex. 2.0 at 7; ComEd Ex. 14.0 at 12 – 13. Staff agrees that with ComEd's acceptance of this condition, Staff recommends that the "Commission approve \$15,654,123,000 as the original cost of plant as of December 31, 2012." Staff Ex. 2.0 at 7. ComEd states that the Company also accepts the Findings and Orderings language proposed by Staff. ComEd Ex. 14.0 at 12-13; citing Staff Ex. 2.0 at 7.

Staff and Intervenor Positions

Commission Analysis and Conclusion

The Commission finds that ComEd's original cost of plant in service as of the end of the reconciliation rate year, December 31, 2012, is \$15,662,485,000.

D. Issues Pending on Appeal

ComEd's Position

ComEd has preserved several arguments that were decided in ICC Docket Nos. 11-0721 and 12-0321 through pending appeals from the Commission's orders. ComEd waives none of those arguments; however, until and unless those appeals result in reversals or remands of the portions of those decisions on appeal, those Orders remain effective. Therefore, while ComEd "requests that its rates be set based on the full rate year and reconciliation revenue requirements authorized by EIMA" as ComEd understands it, ComEd did not "actively re-litigate those legal issues [on appeal] in this

proceeding. They are before the courts and will be decided there.” ComEd Ex. 1.0 REV. at 23. To avoid confusion, ComEd’s stated revenue requirements have been “calculated in conformity with those Orders’ interpretation of EIMA except insofar as they are preempted and superseded by PA 98-0015.” *Id.* at 22.

ComEd notes that several issues warrant particular mention. First, ComEd believes there must be “[c]onsistent Federal and Illinois functionalization” of General and Intangible Plant, property tax costs, and certain other expenses based on the Wages and Salaries (“W&S”) allocator applied under Federal law. *Id.* at 22. However, ComEd has not proposed a change in the established rate formula until and unless an appellate court finds legal error. Rather, ComEd conducted an updated Facilities Study and calculated its revenue requirement based on that study. ComEd Ex. 17.0 at 4; ComEd Ex. 18.0 CORR. at 3. Second, ComEd believes that the Commission must, based on the factual record, use historical weather normalized billing determinants to determine ComEd’s 2014 rates. ComEd has made that showing despite assuming in this case that the Commission has “authority to modify actual historical weather normalized billing determinants.” ComEd Ex. 1.0 REV. at 22. ComEd’s argument to the contrary is preserved on and for appeal. *Id.* at 23.

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

Staff and Intervenor Positions

Commission Analysis and Conclusion

The Commission agrees that ComEd has preserved several arguments that were decided in ICC Docket Nos. 11-0721 and 12-0321 through appeals currently pending before the Appellate Court. As a result, the Commission finds that ComEd has not waived its right to re-litigate said issues in a later proceeding before this Commission.

IV. RATE BASE

A. Overview

ComEd fully supported its 2012 Reconciliation Year rate base and its 2014 Initial Rate Year rate base through the testimony of multiple witnesses. There are only two potentially contested rate base issues, [and on each of them ComEd has supplied the correct calculation,] as discussed below.

1. 2012 Reconciliation Rate Base

ComEd submitted extensive evidence that its properly calculated 2012 Reconciliation Year rate base, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$6,389,262,000. *E.g.*, ComEd Ex. 14.0 at 11; ComEd Ex. 14.01, Sch FR B-1, line 28; ComEd Ex. 18.0 CORR. at 5. [The Commission approves ComEd's figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the 2012 Reconciliation Rate Base is set forth later in this Order.]

2. 2014 Initial Rate Year Rate Base

ComEd also submitted extensive evidence that its properly calculated 2014 Initial Rate Year rate base as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$6,702,419,000. *E.g.*, ComEd Ex. 14.0 at 11-12; ComEd Ex. 14.01, Sch FR B-1, line 36; ComEd Ex. 18.0 CORR. at 5. [The Commission approves ComEd's figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the 2014 Initial Rate Year Rate Base is set forth later in this Order.]

B. Potentially Uncontested Issues

1. Plant in Service

a. Distribution Plant

ComEd's Distribution Plant in rate base for the 2012 Reconciliation Revenue Requirement and the 2014 Initial Rate Year Revenue Requirement should be approved. ComEd Ex. 14.01, Sch FR B-1, line 29. ComEd demonstrated that its Distribution Plant for the 2012 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its Distribution Plant for the 2014 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. Neither Staff nor any intervenor disagreed. The Commission therefore approves the foregoing Distribution Plant costs.

b. General and Intangible Plant

ComEd's General and Intangible ("G&I") Plant in rate base for the 2012 Reconciliation Revenue Requirement and the 2014 Initial Rate Year Revenue Requirement should be approved. ComEd Ex. 14.01, Sch FR B-1, line 31. ComEd demonstrated that its G&I Plant for the 2012 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its G&I Plant for the 2014 Initial Rate Year

Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. Neither Staff nor any intervenor disagreed. The Commission therefore approves the foregoing G&I Plant costs.

c. Functionalization / Use of W&S Allocator

ComEd's updated Facilities Allocation Study should be approved. ComEd provided an updated Facilities Allocation Study in accordance with the Commission's Order in Docket No. 11-0721; this updated study shows that 89.84% of ComEd owned facilities should be allocated to the Illinois jurisdictional delivery service function and that 80.1% of ComEd's leasehold improvements should be allocated to delivery services. ComEd Ex. 3.15. All parties have agreed to the use of ComEd's updated Facilities Allocation Study in this proceeding. The Commission therefore approves ComEd's updated Facilities Allocation Study.

[ComEd noted that although ComEd has acted in compliance with the Order in Docket No. 11-0721, it remains ComEd's legal position that the decision in Docket No. 11-0721 to reject a functionalization consistent with FERC's was unlawful. ComEd has preserved the issue of the implementation of a Wages & Salaries allocator, and has presented the evidence required to implement a W&S allocator in this case. The Commission notes that ComEd has preserved this issue.]

d. Plant Additions

ComEd's projected Plant Additions for the Initial 2014 Rate Year Revenue Requirement should be approved. ComEd Ex. 14.01, Sch FR B-1, lines 29 and 31; ComEd Ex. 14.02, WP 19 (Public and Confidential). ComEd demonstrated that its Plant Additions included in the rate base component of ComEd's Initial 2014 Rate Year Revenue Requirement were prudent and reasonable and the underlying assets are used and useful. The Commission therefore approves ComEd's projected Plant Additions.

2. Materials & Supplies

ComEd's Distribution Plant Materials & Supplies ("M&S") inventory for the 2012 Reconciliation Revenue Requirement rate base and the 2014 Initial Rate Year Revenue Requirement rate base is uncontested. ComEd Ex. 14.01, Sch FR B-1, line 18. ComEd demonstrated that its Distribution Plant M&S was prudent and reasonable, and that the underlying assets are used and useful. Neither Staff nor any intervenor disagreed. The Commission therefore approves this component of rate base.

3. Construction Work in Progress

ComEd's Construction Work in Progress ("CWIP") for the 2012 Reconciliation Revenue Requirement rate base should be approved. ComEd Ex. 14.01, Sch FR B-1, line 14. ComEd demonstrated that its CWIP for the 2012 Reconciliation Revenue

Requirement was prudent and reasonable. Neither Staff nor any intervenor disagreed. Therefore, the Commission approves this component of rate base.

4. Regulatory Assets and Liabilities

ComEd's Regulatory Assets and Liabilities are comprised of (1) a regulatory asset representing the unamortized balance (as of year-end 2012) of capitalized incentive compensation costs, and (2) the unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot. ComEd Ex. 14.01, Sch FR B-1, line 19, App 5, line 4; ComEd Ex. 3.0 REV. at 33-34. The Regulatory Assets and Liabilities for the 2012 Reconciliation Revenue Requirement and the 2014 Initial Rate Year Revenue Requirement are uncontested. Therefore, the Commission approves this component of rate base.

5. Deferred Debits

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

6. Other Deferred Charges

ComEd's Other Deferred Charges relating to incremental distribution costs for storms greater than \$10 million are uncontested. ComEd included in its 2012 Reconciliation Revenue Requirement rate base and its 2014 Initial Rate Year Revenue Requirement rate base Other Deferred Charges related to certain storm expenses which ComEd is amortizing over five years pursuant to Section 16-108.5(c)(4)(F). ComEd Ex. 3.0 REV. at 35. In direct testimony, Staff recommended an adjustment to correct the removal of minor 2012 storm costs from ComEd's revenue requirement. Staff Ex. 3.0 (Public) at 9-10. ComEd accepted these adjustments. ComEd Ex. 14.0 at 21; ComEd Ex. 14.02, WP 8, line 3a, column (B). No intervenor disagreed. Therefore, the Commission approves this component of rate base.

7. Accumulated Provisions for Depreciation and Amortization

ComEd's Accumulated Provisions for Depreciation and Amortization related to ComEd's rate base is uncontested. ComEd Ex. 14.01, Sch FR B-1 "Rate Base Summary Computation," lines 7-12. The Commission approves this component of rate base.

8. Accumulated Miscellaneous Operating Provisions

ComEd's Accumulated Miscellaneous Operating Provisions include Operating Reserves, Asset Retirement Obligations, and Deferred Credits. ComEd Ex. 14.02 WPS (Public). In direct testimony, Staff recommended an adjustment to the calculation of ComEd's Operating Reserve, which ComEd accepted. ComEd Ex. 14.0 at 12. No intervenor disagreed. ComEd's additional Accumulated Miscellaneous Operating Provisions are uncontested. Therefore, the Commission approves this component of rate base.

9. Asset Retirement Obligation

ComEd's Asset Retirement Obligation is uncontested. ComEd Ex. 14.01, Sch FR B-1, line 22. Therefore, the Commission approves this component of rate base.

10. Customer Advances

ComEd's Customer Advances for the 2012 Reconciliation Revenue Requirement rate base and the 2014 Initial Rate Year Revenue Requirement rate base are uncontested. ComEd Ex. 14.01, Sch FR B-1, line 26, App 1. Therefore, the Commission approves this component of rate base.

11. Customer Deposits

ComEd's Customer Deposits for the 2012 Reconciliation Revenue Requirement rate base and the 2014 Initial Rate Year Revenue Requirement rate base are uncontested. ComEd Ex. 14.01, Sch FR B-1, line 25, App 2 "Customer Deposits Information". Therefore, the Commission approves this component of rate base.

12. Other

No other rate base issues, apart from those addressed in Section IV.C, *infra*, were raised by Staff and the parties.

C. Potentially Contested Issues

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

ComEd states that as of December 31, 2012, the appropriate level of Accumulated Deferred Income Taxes ("ADIT"), after adjustments, to be deducted from its rate base is \$2,659,789,000. ComEd Ex. 14.01, Sch. FR B-1. ComEd explains that ADIT reflects the temporary difference between when an expense (or revenue) is recognized in a company's books versus when the company recognizes that expense (or revenue) on its tax return. ComEd Init. Br. at 21-22. According to ComEd, the 2012 ADIT balance is reflective of the 50% bonus depreciation applicable to 2012 capital investments as well as the adoption of the safe harbor method of tax accounting for repair costs. ComEd Ex. 3.0 REV. at 32-33. The AG, however, proposes a reduction to rate base of \$8,945,000 related to accrued vacation pay ADIT. AG Init. Br. at 13.

ComEd recommends that this reduction be rejected because AG witness, Mr. Effron, incorrectly imputes a deferred tax liability with regard to the capitalized portion of accrued vacation pay where none exists. ComEd Init. Br. at 21. ComEd states that as a preliminary matter, Mr. Effron erroneously mingles a discussion of the treatment of the underlying accrued vacation pay liability with the issue of deferred taxes on accrued vacation pay. *Id.* ComEd argues that Mr. Effron's question regarding whether the capitalized portion of accrued vacation pay should be included in the rate base does not inform the issue of deferred taxes on accrued vacation pay and is not the subject that the Commission asked that the parties address in this proceeding in its Order in Docket No. 12-0321. *Id.*; see *Commonwealth Edison Co.*, ICC Docket No. 12-0321 Order (Dec. 19, 2012) at 11, 17. ComEd also asserts that the same proposal by Mr. Effron was properly rejected by the Commission in Docket No. 12-0321 and that ComEd has confirmed in the instant docket that that outcome in Docket No. 12-0321 regarding this issue was correct. ComEd Init. Br. at 21; *Commonwealth Edison Co.*, ICC Docket No. 12-0321 Order (Dec. 19, 2012) at 17.

In support of its position, ComEd first describes deferred income tax liabilities and deferred income tax assets. ComEd Init. Br. at 22. ComEd explains that a deferred tax liability occurs when ComEd receives the tax benefit before it recognizes the item on its book income statement. *Id.* ComEd states that this means that on its tax return, the expense or deduction realized is larger than the expense recorded on the company's books resulting in a tax benefit for ComEd before it has recognized the expense on its books. *Id.* When this happens, ComEd states that it deducts that amount from rate base because the funds are not investor, but rather customer, supplied. *Id.* ComEd further explains that conversely, a tax asset occurs when ComEd receives a tax benefit before it recognizes the item on its books based on a specific tax method of accounting. *Id.* When this happens, ComEd states that it is allowed to add the amount to rate base (or offset deferred tax liabilities) because investors supply these additional funds until receipt of the tax benefit and thus the funds are entitled to be included in ComEd's rate base. *Id.*

ComEd states that per GAAP provision, ASC 710-10-25-2 Compensated Absences, ComEd records an operating reserve liability at December 31 for vacation days granted on January 1 of the following year as well as carryover balances related to the current and prior years, offset by an operating expense (for the expense portion) and a deferred debit (for the amount that ComEd anticipates will ultimately be allocated to capital projects in the future) for the next calendar year. *Id.* at 23. According to ComEd, this operating liability is the underlying liability related to vacation pay and ComEd calculates deferred taxes on this underlying liability. *Id.*

ComEd asserts that it calculates a deferred tax asset on the full amount of the operating reserve liability, both expense and capital portions, because a temporary difference exists between when the entire liability is accrued on ComEd's books and when impacts related to the liability will ultimately be reflected on the tax return. *Id.* at 23-24. ComEd explains that with respect to the portion of this underlying liability that is expensed (the operating expense), a temporary tax difference exists because ComEd

must recognize the expense for book purposes in the current period (because it is known and measurable), but does not receive the deduction on the tax return until the vacation pay is actually paid to the employee in a future period. *Id.* at 24. This results in a deferred tax asset because ComEd receives the tax benefit after it recognizes the expense on its books. *Id.* With respect to the portion of this underlying liability that will be capitalized (the deferred debit), a temporary tax difference exists because ComEd does not realize this amount in income for book purposes as it is held in the deferred debit balance sheet account. *Id.* However, based on ComEd's tax method of accounting, it adds this capitalized portion back to taxable net income and thus pays tax on that amount in the current year (book income is less than taxable income). *Id.*

The tax benefit, according to ComEd, is deferred to a subsequent period and ComEd's investors supply the funds until the tax benefit is realized. *Id.* Because investors have supplied the funds related to the temporary differences until the tax benefit is received, ComEd states that for ratemaking purposes, it is adding the entire net amount of deferred taxes to its rate base. *Id.* at 24-25. ComEd asserts that its calculating ADIT on accrued vacation pay based on its FERC Form 1 is the correct accounting treatment for this ADIT. ComEd Reply Br. at 18. ComEd states that the AG and CCI's argument that ComEd should calculate ADIT on accrued vacation pay based on the input figures in ComEd's formula rate schedule is erroneous because ComEd's formula schedules should not dictate accounting treatment. *Id.* at 18-19; AG Init. Br. at 14, 14 n.8, 15; CCI Init. Br. at 23. ComEd states that contrary to what Mr. Effron asserts, it is irrelevant whether or not the underlying liability increases or decreases (or is included in or excluded from) ComEd's rate base because neither scenario alters the fact that ComEd has paid taxes on the underlying liability in the current period and the tax benefit is deferred to a future period. *Id.* at 19. Consequently, ComEd asserts, neither scenario alters what is recorded on ComEd's FERC Form 1. *Id.*

ComEd states that the deferred tax asset of \$17,183,00 increases ComEd's rate base by the same amount and increases its 2014 Rate Year Net Revenue Requirement by approximately \$2 million. ComEd Init. Br. at 25.

Staff and Intervenor's Positions

Commission Analysis and Conclusions

The Commission agrees with Staff and ComEd. The Commission has repeatedly observed that EIMA's ratemaking approach is based on the use of FERC Form 1 data. As noted by both ComEd and Staff, ComEd's ADIT calculation, including its calculation of its deferred tax asset on the operating reserve liability on its accrued vacation pay, is based on this data. For this reason we conclude, as we did in Docket No.12-0321, that ComEd's calculation reaches the correct result. Mr. Effron's proposal in effect infers a deferred tax liability that does not exist on ComEd's FERC Form 1. Nor does it exist on ComEd's books. Moreover, we agree that the impact of the underlying liability on ComEd's rate base is irrelevant. ComEd has paid taxes on the underlying liability in the

current period and the tax benefit is deferred to a future period, creating a tax asset. The record shows that it is undisputed that no deferred tax liability is associated with the capitalized portion of ComEd's accrued vacation pay. We conclude that it would be inappropriate to impute such a deferred tax liability where none exists and therefore we decline to adopt the adjustment proposed by the AG and CCI.

2. Cash Working Capital

ComEd submitted detailed evidence that its properly calculated cash working capital ("CWC") requirement in rate base, as revised in its rebuttal testimony (there were no surrebuttal revisions), is \$8,022,000. *E.g.*, ComEd Ex. 14.01, Sch FR B-1, line 16, incorporating the CWC figure from ComEd Ex. 14.01, formula rate Appendix App. 3, line 40. As approved and directed by the Commission in ComEd's 2011 formula rate case,⁵ ComEd's CWC requirement in rate base is calculated based on reconciliation year data, using the leads and lags approved by the Commission in Docket No. 11-0721, revised to reflect changes in law, and the applicable dollar figure inputs of the current case. *E.g.*, ComEd Ex. 3.0 REV. at 31-32. There is only one remaining contested issue with respect to the CWC determination as such, as discussed below.

a. Final Inputs

It is uncontested that the Commission's final approved CWC figure for inclusion in rate base should reflect the Commission's rulings on the applicable operating expenses items that affect the dollar figure inputs to the CWC calculation. ComEd Init. Br. at 26; Staff Ex. 2.0 at 7-9. Staff did propose an adjustment, but the adjustment was derivative of Staff's proposed operating expenses adjustments and Staff correctly indicated that the final CWC figure should reflect the Commission's rulings on the applicable operating expenses items. Staff Ex. 2.0 at 7-9. The final CWC in rate base figure approved in this Order has been calculated accordingly.

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

Staff and Intervenor Positions

ComEd's Response

Staff proposed that the Commission should use not one, but two, different CWC calculations – one for the Reconciliation Rate Year and a separate one for the Initial Rate Year Revenue Requirement. The Staff proposal (1) was unlawful because it seeks a change in the formula that is beyond the authority of the Commission in this proceeding (and contrary to Staff's own position in the 2012 formula rate update proceeding) and (2) is unnecessary for multiple reasons. ComEd Init. Br. at 26-28. Staff's Initial Brief argued that its proposal still had merit, but Staff did not effectively

⁵ *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) at 55-56.

refute ComEd's points, and, in any event, Staff stated that it was no longer contesting that its proposal should be addressed outside of this proceeding. See Staff Init. Br. at 6-7, 14-15. CCI's Initial Brief supported the Staff proposal, but CCI did not provide any independent grounds for it. See CCI Init. Br. at 3, 24-25. The Staff proposal should not be adopted, either because of Staff's concession or, if the merits are to be reached, because it is unlawful and unnecessary.

Staff's concession had the proviso that final Orders in the instant and future ComEd formula rate update proceedings on this subject should be made consistent with the final Orders in two pending proceedings involving Ameren. See Staff Init. Br. at 6-7, 14-15.⁶ The Staff proviso should not be adopted. ComEd's response to Staff's position regarding consistency among Orders involving ComEd and Ameren is discussed in Section III.A of this Order.

Finally, Staff also recommended that the Commission direct ComEd to meet with Staff to seek to resolve the subject of Staff's proposal within 60 days of the final Order here. See Staff Init. Br. at 15. ComEd's Reply Brief (at 21) stated that it does not oppose such a direction, provided that this Order makes clear that what the Commission is requiring is a good faith discussion, not a mandated agreement. ComEd also noted that Staff indicated that if there is not a "satisfactory agreement", then Staff would request that the Commission initiate a proceeding under Section 9-250 of the Act to investigate this subject, and that that is Staff's prerogative.

Commission Analysis and Conclusion

[The Commission need not address the Staff proposal of two CWC calculations given Staff's concession.][The Staff proposal of two CWC calculations was contrary to the approved rate formula for the reasons ComEd stated and was, thus, outside the scope of this proceeding. See *also* Section III.A of this Order, *supra*.]

Staff's proposed proviso regarding consistency among Orders involving ComEd and Ameren is discussed in Section III.A of this Order.

The Commission notes ComEd's agreement to Staff's request for a meeting to seek to resolve the subject of Staff's proposal within 60 days of this final Order. The Commission directs that Staff and ComEd meet, subject to the clarification that what is required is a good faith discussion. The Commission is not compelling an agreement.

3. Other (including derivative adjustments)

In rebuttal testimony Staff witness, Mr. Bridal, corrected his Schedules 7.10, Adjustment for Pension Expense Related to Disallowed Incentive Compensation and 7.12, Adjustment for Payroll Taxes Associated with Disallowed Incentive Compensation. Staff agrees with ComEd that where an original cost determination has been made it

⁶ Staff also indicated that if its proposal were to be adopted, Staff accepts ComEd's alternative position regarding detail about certain Schedules. Staff Init. Br. at 14. This point now is moot, so it will not be addressed in this Order.

would be inappropriate to adjust rate base in this proceeding for costs associated with disallowances in previous years. Staff's corrected adjustments reflect this position and no longer seek removal of such costs. No party contests this correction. ComEd Init. Br. at 28. The Commission approves Staff's correction.

Remaining contested issues regarding ComEd's pension and payroll tax expense relating to its disallowed incentive compensation are discussed in further detail in the Operating Expense section of this Order, *infra*, V.C. 4 and 5.

V. OPERATING EXPENSES

ComEd fully supported its 2012 Reconciliation Year operating expenses and its 2014 Initial Rate Year operating expenses through the testimony of multiple witnesses. There are a limited number of contested operating expenses issues, [and on each of them ComEd has supplied the right number,] as discussed below.

A. Overview

ComEd submitted extensive evidence that its properly calculated actual 2012 total operating expenses, adjusted to reflect the depreciation expense associated with the 2013 plant additions, before income taxes, are \$1,678,970,000. *E.g.*, ComEd Ex. 14.01, Sch FR A-1, lines 1-11. [The Commission approves ComEd's figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding operating expenses is set forth later in this Order.]

B. Potentially Uncontested Issues

1. Distribution O&M Expenses

ComEd states that its Distribution Operating and Maintenance ("O&M") expenses were \$409,805,000 for 2012. ComEd explains that after reflecting adjustments, a revised total of \$400,003,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement. No parties contest the amount of distribution O&M expenses. ComEd Init. Br. at 29. The Commission approves this amount.

2. Customer-Related O&M Expenses

ComEd states that its customer-related expenses are expenses recorded in FERC Accounts 901-910, which include the costs of maintaining and servicing customer accounts, *e.g.*, meter reading, recordkeeping, and billing and credit activities. ComEd Init. Br. at 29. ComEd explains that in determining the revenue requirement, ComEd has adjusted the \$394,186,000 of customer related expense for the following:

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

ComEd Init. Br. at 30.

ComEd states that after these adjustments, \$209,464,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function are included in the revenue requirement. No party has objected to the amount of customer related O&M expenses. *Id.* The Commission approves this amount.

3. Administrative and General Expenses

ComEd states that its Administrative and General ("A&G") expenses were \$424,355,000 for 2012. ComEd explains that costs are recorded in FERC Accounts 920-935 and include corporate support and overhead costs that benefit or derive from more than one business function; costs of employee pension benefits; regulatory expenses and certain other non-operation costs. ComEd states that after subtracting \$25,483,000 of deferred merger related costs to achieve, \$398,872,000 in A&G expense is included in the revenue requirement. No party has objected to the amount of A&G expense. ComEd Init. Br. at 30-31. The Commission approves this amount.

4. Charitable Contributions

ComEd states that it includes \$8,576,000 of charitable contribution expense in its revenue requirement. ComEd explains that this amount reflects a downward adjustment of \$75,000 proposed by Staff witness Mr. Tolsdorf. ComEd further explains that in order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd does not object to Mr. Tolsdorf's disallowance. ComEd also states that it has moved \$3,803,000 it donated to the Science and Technology Fund from A&G expenses into Customer expenses in order that ComEd may recover 70%, or \$2,662,000 of the donation that it is allowed to

recover under law. No party has objected to the adjusted amount of charitable contribution expense. ComEd Init. Br. at 31. The Commission approves this amount.

5. Chicago Forward Sponsorship

ComEd states that in order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd does not object to the adjustment proposed by Mr. Tolsdorf relating to costs associated with ComEd's sponsorship of Chicago Forward. ComEd further states that this adjustment results in \$66,000 being removed from the revenue requirement. ComEd Init. Br. at 31. The Commission approves this amount.

6. Outside Services Employed

ComEd states that in order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding it has accepted the adjustment proposed by Mr. Tolsdorf relating to certain outside professional services and has voluntarily removed \$414,000 of such costs from its revenue requirement. ComEd Init. Br. at 31-32. The Commission approves this amount.

7. Transmission Legal Fees

ComEd states that in order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding it has accepted the adjustment proposed by Mr. Tolsdorf relating to certain transmission-related legal fees and has voluntarily removed \$66,000 of such costs from its revenue requirement. ComEd Init. Br. at 32. The Commission approves this amount.

8. 2012 Merger Expense

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted the calculation and adjustment proposed by Mr. Tolsdorf to reduce the amount of 2012 merger expense to be amortized in order to correct the inclusion of an incorrect W&S allocator in ComEd's calculation of 2012 merger expense. This reduces the revenue requirement by about \$12,000 and the remaining amount to be amortized (deferred debit) by about \$48,000. ComEd Init. Br. at 32. The Commission approves this amount.

9. Uncollectibles Expenses

ComEd states that the May Order in Docket No. 11-0721 moved ComEd's distribution-related uncollectibles expense to recovery through Rider UF. ComEd explains that it has accordingly removed \$42,320,000 of customer-related O&M costs to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904 and that are recovered through Rider UF. Thus, no uncollectibles expense is

included in ComEd's revenue requirement. ComEd Init. Br. at 32-33. The Commission finds as it did in the May 11-0721 Order that Rider UF is the correct vehicle through which ComEd recovers uncollectibles expense.

10. Advertising Expenses

ComEd states that in order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd does not object to the adjustment proposed by Staff witness, Mr. Bridal, disallowing recovery of \$29,000 in customer service and informational expense associated with several items that Mr. Bridal considers to be promotional advertising. ComEd Init. Br. at 33. The Commission approves this amount.

11. Sales and Marketing Expenses

ComEd has not included any sales or marketing expense in its revenue requirement. ComEd Init. Br. at 33. The Commission finds that sales and marketing expenses are not at issue in this docket.

12. Depreciation and Amortization Expense

ComEd states that its revenue requirement includes \$461,037,000 of depreciation and amortization expense. ComEd explains that the level of 2012 depreciation and amortization expenses included in the revenue requirement is \$436,587,000, comprised of \$340,571,000 related to Distribution Plant and \$96,016,000 related to G&I Plant. ComEd further explains that the 2014 Initial Rate Year Revenue Requirement and 2014 Rate Year Net Revenue Requirement include \$24,450,000 of depreciation expense associated with the 2013 projected plant additions. No party has objected to the amount of depreciation and amortization expense. ComEd Init. Br. at 33. The Commission approves this amount.

13. Regulatory Asset Amortization

ComEd's revenue requirement includes \$24,380,000 of regulatory asset amortization. This amount includes the effects of the Commission's order in Docket No. 10-0467, which revised the amount of amortization of several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. ComEd's regulatory asset amortization also includes \$67,000 of the \$200,000 filing fee paid in 2011 and \$699,000 of the \$2,095,000 in formula rate case expenses incurred in 2012 related to Docket No. 11-0721, the initial formula rate proceeding. Section 16-108.5(c)(4)(E) of the PUA provides that these costs be amortized over a three year period. No party has objected to the amount of regulatory asset amortization. ComEd Init. Br. at 33-34. The Commission approves this amount.

14. Operating Cost Management Efforts

ComEd submits that during 2012, it continued its aggressive and successful measures to manage and reduce its costs. No parties contest ComEd's operating cost management efforts. ComEd Init. Br. at 34.

15. Storm Damage Repair Expenses

ComEd's revenue requirement includes \$21,246,000 in storm damage repair expense. This amount reflects Mr. Tolsdorf's proposed adjustment to ComEd's calculation of 2012 storm costs, which ComEd accepted in order to limit the issues in this proceeding, but without waiving any right to object to the same or a similar proposal in a future proceeding. No party has objected to the adjusted amount of storm damage repair expense. ComEd Init. Br. at 34-35. The Commission approves this amount.

16. Interest Expense

ComEd asserts that it appropriately included \$77,000 of interest on customer deposits in its revenue requirement. ComEd Ex. 14.01, App 7, line 19; Staff has withdrawn its proposed adjustment to disallow this interest expense and no other parties contest ComEd's interest expense calculation on customer deposits. ComEd Init. Br. at 35. The Commission approves this amount.

17. Lobbying Expense

ComEd has not included any lobbying expenses in its revenue requirement. ComEd Init. Br. at 35. The Commission finds that lobbying expenses are not at issue in this docket.

18. Gross Revenue Conversion Factor

ComEd submits that its Gross Revenue Conversion Factor ("GRCF") is 1.700. No party has disagreed with ComEd's GRCF. ComEd Init. Br. at 35. Therefore the Commission approves ComEd's GRCF.

C. Potentially Contested Issues

1. Rate Case Expenses

Based on the copious evidentiary record, which includes approximately 1300 pages of supporting documentation including, but not limited to, invoices, certain data requests responses, time entries as well as direct, rebuttal and surrebuttal written testimony and live testimony, the Commission concludes that ComEd's rate case expenses incurred in 2012 for ComEd's 2011 and 2012 rate cases (Docket Nos. 11-0721 and 12-0321, respectively) and Docket Nos. 07-0566 and 10-0467 are just and reasonable pursuant to Section 9-229. Through the evidence ComEd provided in support of its rate case expenses, ComEd has sufficiently met the requirements stated

in *Madigan v. Illinois Commerce Comm'n*, 2011 IL App (1st) 101776 ¶ 51 (2012). Specifically, we find that the evidentiary record sufficiently presents (1) the services performed by ComEd's outside counsel and experts in connection to the rate case expenses incurred; (2) by whom those services were performed; (3) the time expended providing the services; (4) and the amounts charged for those services. See generally, ComEd Ex. 8.0 CORR. and attachments, ComEd Ex. 15.0 CORR. and attachments, and ComEd Ex. 19.0 2nd CORR. and attachments. Moreover, we find that the evidence shows that the amount of rate case expense incurred, and which ComEd seeks to recover, is just and reasonable in light of the skill of the attorneys and experts involved, the complexity of the issues presented in the rate cases and the customary charges and market rates for such services. See ComEd Ex. 8.0 CORR. at 5-8; see also ComEd Init. Br. at 37-44. Specific issues relating to ComEd's rate case expense are discussed in detail below.

a. Appeal & Remand

ComEd states that the Commission should reject Mr. Bridal's proposed disallowance of \$101,723 and \$16,000 in expenses relating to appeals in Docket Nos. 07-0566 and 10-0467 respectively. ComEd Init. Br. at 35. ComEd states that litigation expenses, including those associated with appeals are normal operating expenses of ComEd and are recoverable subject to prudence and reasonableness. *Id.* at 35-36. ComEd further states that appeals are a part of the legal framework designed to correct erroneous Commission decisions, ensure that rates are just and reasonable, and foster healthy utilities that are capable of providing safe and reliable electric service. *Id.* at 36. ComEd avers that Commission orders, in addition to addressing factual and technical issues, also rest on legal determinations and statutory interpretations. ComEd Reply Br. at 25-26. As a result, ComEd observes that in any case the Commission may inadvertently incorrectly apply a legal standard. *Id.* at 26. ComEd maintains that in such instances, a reasonable and prudent utility will routinely appeal Commission orders when a legal basis to do so exists, and that its witness, Ms. Polek-O'Brien, believed a reasonable legal basis for appeals existed in Docket Nos. 10-0467 and 07-0566. ComEd Init. Br. at 36. ComEd asserts that a reasonable system of adjudication of just and reasonable rates, in which appeals are allowed as of right, cannot impose on the utility the costs of appealing from a Commission decision which it believes to be erroneous or unlawful. ComEd Reply Br. at 26.

According to ComEd, Staff's contention that a utility's appeal of a Commission rate order only benefits utility shareholders is incorrect. ComEd Init. Br. at 36.; Staff Init. Br. at 22. ComEd avers that a utility appeal is identical in substance and effect to an initial rate increase filing in that each attempts to supplant rates that the Commission has previously found to be just and reasonable. ComEd Init. Br. at 36. ComEd further states that Section 9-229 supports its position because it does not distinguish between the costs of litigating rate orders at the Commission or in the appellate court and simply provides for the recovery of the costs "to prepare and litigate a general rate case filing." *Id.*; 220 ILCS 5/9-229. ComEd states that because, as Staff asserts, appeal costs are as much within the scope of Section 9-229 as the costs of litigating at the Commission, they should be held to same standard. ComEd Init. Br. 36-37.

Staff and Intervenor's Positions

Commission Analysis and Conclusion

The Commission agrees with ComEd. Section 9-229 clearly contemplates recovery of a utility's just and reasonable costs "to prepare and litigate a general rate filing." As ComEd correctly notes, the provision does not distinguish between Commission and appellate rate case litigation costs. Moreover, we agree that appeals are a normal part of the rate case process and that the utility's ability to appeal plays a role in ensuring that rates are just and reasonable and enabling utilities to provide safe, adequate, and reliable service for customers. Errors in legal determinations, do, on occasion, occur and we concur that proper adjudication of rates, where appeals are allowed by right, cannot impose on a utility the cost of appealing a Commission decision that the utility believes to be erroneous in some regard. For these reasons, we conclude that the rate case expenses related to ComEd's appeals in Docket Nos. 07-0566 and 10-0467 are recoverable.

b. Attorneys

ComEd's Position

ComEd states that the Commission should reject Staff witness Mr. Bridal's proposed disallowance of rate case expenses for attorney work that exceeds ten hours per day. ComEd Init. Br. at 37. ComEd argues (1) that Mr. Bridal has no basis for concluding that it is unreasonable or imprudent for attorneys to work on client matters for more than ten hours in a day and (2) that his calculation is based on an unreasonably small sample size, and his methodology is flawed and was arbitrarily and inconsistently applied. *Id.*

In support of its first argument, ComEd states Mr. Bridal is not qualified to make the judgment that billing in excess of ten hours per day is unjust or unreasonable, and presents no evidence to support his assertion. ComEd states that as Mr. Bridal admitted, he is not an attorney, has never worked in a law firm and cannot speak to the number of hours lawyers in law firms typically bill in a year. *Id.* ComEd also contends that Mr. Bridal's only rationale that billing in excess of ten hours a day is unreasonable, his disbelief that any attorney needed to bill that much time, is not the standard for determining if rate case expense can be recovered, reasonableness is. *Id.* at 37-38. In any event, ComEd asserts that Mr. Bridal has conceded that billing in excess of ten hours is sometimes reasonable and that Staff has not identified any of the hours billed over ten per day as wasteful or unreasonably duplicative. *Id.* at 38; ComEd Reply Br. at 27. ComEd further states that its witness, Ms. Polek-O'Brien is an attorney with twelve years of experience in private law firm practice and that she testified that it was not unusual for attorneys to bill 2,500 or more hours per year, an average of more than ten per day. ComEd Init. Br. at 38. ComEd states that after reviewing over a thousand pages of supporting documentation attached to Ms. Polek-O'Brien's direct testimony,

Mr. Bridal has failed to take issue with a single narrative time entry, task, or activity, or claimed any of the underlying work was unreasonable. *Id.*

ComEd also presents several reasons why it believes Mr. Bridal's methodology to be improper. ComEd states that Mr. Bridal's disallowance is an estimate based on a limited and unrepresentative sample of time entries he reviewed during discovery. *Id.* ComEd states that Mr. Bridal has acknowledged that the eight days in the sample period were particularly busy because two formula rate cases were pending before the Commission and ComEd had just received the Commission's order in its first formula rate case, Docket No. 11-0721. *Id.* ComEd explains that it was dealing with a number of serious issues and had given outside counsel, Eimer Stahl LLP ("Eimer Stahl"), just eight days to prepare a petition for rehearing in Docket No. 11-0721. *Id.* ComEd further explains that at the same time, one of Eimer Stahl's attorneys who usually is extensively involved in ComEd matters was on maternity leave, requiring the rest of the Eimer Stahl team to work more hours per day than usual. *Id.* According to ComEd, use of a more inclusive and representative sample size shows that only 1.17% of the total hours billed to ComEd by Eimer Stahl represented hours in excess of ten hours per day. *Id.* at 39. ComEd maintains that such a percentage does not suggest such instances were "routine" as Mr. Bridal claims, but in fact rare. ComEd Reply Br. at 27. ComEd also states that a large portion of the hours were billed by legal assistants who were processing large numbers of data requests served on ComEd and to which ComEd had to respond in a short amount of time. *Id.*

ComEd also contends that Mr. Bridal's methodology was flawed and arbitrarily and inconsistently applied. ComEd Init. Br. at 39. In support of its position ComEd states that his 5% reduction was not a calculated number. *Id.* ComEd states that Mr. Bridal first calculated that 14.4% of the hours billed were in excess of ten per day but later reduced the 14.4% to 5% (a 65.3% decrease) based on his conclusion that it is not always unreasonable to bill more than ten hours per day. *Id.* ComEd states that Mr. Bridal provided no explanation to support the quantification of this reduction. *Id.*

ComEd further contends that although Mr. Bridal acknowledged that he had miscalculated and that the percentage of hours in excess of ten per day in his sample was not 14.4% but 4.3%, he increased his calculated 4.3% to achieve his projected 5%. *Id.* ComEd concludes that this demonstrates that Mr. Bridal's methodology is results driven. *Id.*

Staff and Intervenor's Positions

Commission Analysis and Conclusion

The Commission finds that there is no evidence in the record that supports Staff's proposed disallowance of \$180,963 of outside attorney costs. To the contrary, the testimony of ComEd's witness, Ms. Polek-O'Brien, an attorney with twelve years of experience in private law firms and over 25 years experience as a practicing attorney,

provides persuasive support for the position that billing in excess of ten hours a day is not unreasonable for lawyers in private practice. Indeed, Staff concurs that there are occasions when billing ten hours a day is reasonable. The record evidence also shows that ComEd's outside attorneys only billed in excess of ten hours a day 1.17% of the time. This can only be characterized as rare and is imminently reasonable. In light of this admission and the evidence, the Commission is unclear as to what is in fact the basis of Staff's disallowance. Further, the Commission finds Staff's methodology for arriving at its 5% reduction wholly unsupported in the record. As there is no evidence to support the disallowance or the quantification of the proposed reduction, the Commission declines to adopt Staff's proposal.

c. Experts

ComEd's Position

ComEd states that the expert expense of \$23,502.55 reflected in an Analysis Group invoice was prudently incurred and reasonable in amount. ComEd Init. Br. at 40. ComEd explains that Dr. Hubbard was engaged when, based on discovery requests issued by Staff and Intervenor, it appeared to ComEd that Staff and potentially others intended to contest ComEd's capital structure and propose an alternate structure. *Id.* ComEd states that Dr. Hubbard was thus engaged to evaluate the prudence and reasonableness of ComEd's capital structure, focusing specifically on its equity ratio. *Id.* ComEd further states that Dr. Hubbard and his team reviewed capital structure data from ComEd, analyst reports and data such as income statements and balance sheets for relevant entities, including Exelon. *Id.* Specifically, ComEd contests Staff's characterization of Analysis Group as Dr. Hubbard's "paymaster" and states that Analysis Group provides the research, background review and other professional assistance needed to prepare its witness. ComEd Reply Br. at 29. In addition, ComEd states that a workbook of potential exhibits was compiled and testimony of several witnesses in Docket No. 11-0721 was reviewed. ComEd Init. Br. at 40. When the anticipated challenges did not occur, ComEd explains that it requested Dr. Hubbard and his colleagues cease work immediately. *Id.* Even though the work performed by Dr. Hubbard did not result in numbered exhibits used during the hearing or any reports, ComEd asserts that the Commission has previously held that this is not a prerequisite in determining whether these costs were just and reasonable, and thus recoverable. *Id.*

ComEd states that contrary to what Mr. Bridal asserts, by retaining Dr. Hubbard ComEd was not seeking to gain any kind of advantage but instead was preparing itself to litigate a potential issue concerning the prudence of ComEd's capital structure. ComEd Reply Br. at 25, 28. ComEd maintains that Mr. Bridal's proposed disallowance, based on the fact that ComEd did not ultimately use Analysis Group at the evidentiary hearing and therefore the related expense was not necessary, is a test that is based on hindsight, and disregards the reasonableness of the decision to retain Analysis Group viewed at the time it was made. *Id.* at 25. ComEd contends "necessity" is not the standard by which recovery of expenses is assessed, justness and reasonableness is and that the Commission has always refused to and may not lawfully adopt after-the-fact hindsight tests. *Id.* at 24.

ComEd further states that while some work performed by the Analysis Group pre-dated the engagement letter, that is a normal occurrence and provides no grounds to disallow the expense. ComEd Init. Br. at 40. In support of its position, ComEd explains that as in this instance, the turn-around time for expert work can be extremely short and experts' schedules tend to be busy. *Id.* at 40-41. Once an individual is selected, ComEd states, work can sometimes begin before the details of the letter are formalized and the letter executed. *Id.* at 41. ComEd states that Analysis Group was hired and then requested to begin work immediately and not to wait for a letter to be signed. *Id.* According to ComEd, this is especially common when specific rates and terms of work had been recently agreed upon for a similar matter, as here, and those rates and terms could simply be applied to the new matter pursuant to an oral agreement that is later memorialized. *Id.* ComEd asserts that retroactivity clauses are not necessary to ensure billings under a letter agreement are proper. *Id.*

ComEd also asserts that blended rates are not improper. *Id.* at 41. ComEd states that the standard rates that Analysis Group charges have been disclosed, along with the hours billed per professional and that the blended rate was the actual billing rate so the entire arrangement was transparent. *Id.* ComEd states that the blended rate was a cost savings mechanism and was used as a way to avoid incurring charges of the type that the Staff and Intervenors objected to in Docket No. 10-0467, and in response to concerns regarding expert hourly rates in that docket. *Id.* ComEd avers that in any event, use of a blended rate is not a basis to disallow Analysis Group expenses in their entirety and the alternative would be allowance of these fees at the standard rates. *Id.* ComEd states that the standard rate fees are reasonable and consistent with market rates and would likely have exceeded total charges under the blended rate. *Id.*

Staff and Intervenor's Positions

Commission Analysis and Conclusion

The Commission concludes that the evidentiary record provides sufficient support that the \$23,502.55 of expenses relating to work performed by Analysis Group on capital structure issues in Docket No. 11-0721 were prudently incurred and reasonable in amount. Specifically, the evidence shows that ComEd's decision to engage Dr. Hubbard and Analysis Group was reasonable based on ComEd's belief that ComEd's capital structure may be contested in light of the discovery requests issued by Staff and Intervenors. Also, as ComEd correctly states, the fact that the work did not result in a numbered exhibit or a report does not prohibit a determination that the costs associated with the work were just and reasonable. Nor does the fact that some of the work performed by Analysis Group pre-dated the engagement letter prohibit such a determination. ComEd provided sufficient evidence to support that all work performed was reasonable. Last, the use of a blended rate also provides no basis to disallow this expense. We agree with ComEd that because the blended rate was in fact the billing

rate the arrangement was transparent. Transparency was further enhanced because ComEd disclosed the standard rate that Analysis Group charged as well as the hours billed per professional. Further, the blended rate was a cost savings mechanism that should be encouraged. ComEd's expert expenses are just and reasonable.

d. **Other**

(i) **SFIO Consulting**

ComEd's Position

ComEd states that the Commission should reject Staff witness Mr. Bridal's proposed disallowance of \$42,383 of SFIO costs related to services provided by Mr. Fiorella. ComEd Init. Br. at 42. ComEd states that Mr. Bridal's claim that the services provided by SFIO could have been duplicative of services reasonably expected to be performed by attorneys or ComEd personnel was speculation and as such is not a sufficient basis to find the costs unjust or unreasonable. *Id.*; Staff Ex. 7.0 at 23. ComEd asserts that ICC findings must be based on evidence, not speculation. ComEd Init. Br. at 42.

ComEd also states that Mr. Bridal's position that only rate case expenses which result in a testimonial exhibit admitted into evidence or tangible work product is recoverable is also incorrect. ComEd points to a Commission Order cited by Mr. Bridal in his rebuttal testimony which ComEd asserts refutes Staff's claim because it states, "the Commission is not suggesting that all rate case work must take the form of testimony or tangible work product..." *Id.* (quoting *Illinois American Water Co.*, ICC Docket No. 11-0767, Order (Sept. 19, 2012) at 50-51). ComEd further states that in any event, the work performed by SFIO in the instant case did result in tangible work product. ComEd Init. Br. at 42. Specifically, ComEd states that Mr. Fiorella regularly provides ComEd oral and written reports on what he observed and learned from attending proceedings that involve issues similar to those faced by ComEd. *Id.* at 42. ComEd also states that Mr. Fiorella served as a consulting expert in connection with review of testimony and policy advice which included providing summaries of the positions of other parties in various proceedings involving issues similar to those ComEd confronted. *Id.* at 43. ComEd avers that the fact that ComEd's witness could not answer two questions on cross examination regarding Ameren's position on an issue is of no consequence and does not aid Staff because Mr. Fiorella was not engaged to educate every ComEd employee on every position taken by every utility or to prepare witnesses for cross-examination. ComEd Reply Br. at 30.

ComEd further asserts that in Docket No. 11-0767, cited by Mr. Bridal (Staff Ex. 1.0 at 17), the utility was not allowed to recover similar SFIO expenses because the utility did not show that the "services are not duplicative or redundant of those provided by others in the face of expert testimony to the contrary." ComEd Init. Br. at 43; Staff Ex. 1.0 at 17. ComEd states that no such expert testimony has been presented in this docket and that it has provided documentation in the form of retention agreements and invoices, detailed time entries, narrative testimony, and discovery responses to

substantiate that the work performed by SFIO was just and reasonable. ComEd Init. Br. at 43. ComEd further states that ComEd Ex. 19.01 CORR. (ComEd's Responses to Staff Data Requests RWB 20.01 – 20.04) identifies the services Mr. Fiorella performed for ComEd and that no challenge has been raised against these exhibits other than the proposition that these charges may be redundant. ComEd Reply Br. at 30. ComEd asserts that Staff's inability to specifically point to anything in the record which demonstrates a redundancy requires that these costs be found just and reasonable. *Id.*

Staff and Intervenor's Positions

Commission Analysis and Conclusion

Staff seeks to disallow \$42,383 of SFIO costs related to services provided by Mr. Fiorella. ComEd, however has produced sufficient evidence to show that the costs relating to Mr. Fiorella's work are just and reasonable. This evidence includes retention agreements, invoices, detailed time entries, narrative testimony and Mr. Fiorella's actual work product. In contrast, Staff merely speculates that the services provided could have been duplicative of work performed by another individual. We agree with ComEd that such speculation is insufficient to find these costs unjust or unreasonable. We also agree that contrary to what Staff asserts, lack of a tangible work product does not prohibit a determination that the costs associated with the work were just and reasonable. In any event, the existence of Mr. Fiorella's oral and written reports refutes Staff's claim that no tangible work product was created. The Commission declines to adopt Staff's disallowance.

(ii) Westlaw/Lexis Research

ComEd's Position

ComEd states that \$8,000 of charges it incurred in connection with legal research on the Lexis and Westlaw research platforms are recoverable and Mr. Bridal's disallowance should not be adopted. ComEd Init. Br. at 43-44. ComEd asserts that Mr. Bridal erroneously relies on ComEd's Billing Guidelines to support his belief that online research requires documented approval for all research performed and he wrongly claims the charges were unauthorized. ComEd Init. Br. at 43; *see also* Staff Init. Br. at 27. ComEd explains that when an outside firm is tasked with preparing specific court papers or engaging in other projects, the attorneys are authorized to conduct reasonable legal research to enable them to complete the assignment and issue by issue approval to conduct research has never been required. *Id.* at 43. ComEd states that the Billing Guidelines protect ComEd from electronic research done without explicit or implicit approval, and are not intended to deprive outside counsel of payment for work reasonably performed. ComEd Init. Br. at 44. According to ComEd, requiring attorneys to obtain documented permission prior to engaging in legal research would make it unnecessarily expensive and time consuming to provide legal advice and prepare briefs. *Id.* at 43. ComEd further states that "specific" authorization does not mean written or contemporaneous. ComEd Reply Br. at 31.

Staff and Intervenor's Positions

Commission Analysis and Conclusion

The Commission declines to adopt Staff's proposed disallowance of \$8,000 for charges ComEd incurred in connection with legal research performed on the web-based research platforms Westlaw and Lexis. We agree with ComEd that there is no evidence showing that written authorization is required for this expense and authorization to conduct reasonable electronic research exists when ComEd tasks outside counsel to engage in specific projects. As ComEd correctly observes, "specific" need not mean written or contemporaneous. We also agree that requiring attorneys to obtain documented permission to engage in such research would make providing legal services unnecessarily time consuming and expensive. The charges ComEd incurred in connection to legal research performed on Westlaw and Lexis are recoverable.

(iii) Attorney General Position

ComEd's Position

ComEd states that the Commission should reject the AG's recommendation to exclude costs relating to in-house rate case expense from the rates set in this proceeding because ComEd provided no documentation pursuant to Section 9-229 to support them. ComEd Reply Br. at 31-32; AG Init. Br. at 18.

In support of its position, ComEd states that the evidence shows that ComEd has not separately charged its in-house or affiliate time to rate case expense. ComEd Reply Br. at 31. ComEd further states that Section 9-229 does not require any documentation and that the issue of whether in-house and affiliate time should be considered under Section 9-229 has been litigated in the pending rule-making concerning rate case expenses (Docket No. 11-0711), and a Commission ruling on the issue is pending. *Id.* ComEd adds that at least one court has held that the only in-house or affiliate costs that would be subject to treatment as rate case expense would be "incremental" costs, and the record in this case contains no evidence that any ComEd in-house or affiliate costs were "incremental." *Id.* at 31-32; *see also, Apple Canyon Lake Prop. Owners' Ass'n*, 2013 IL App (3d) 100832 ¶ 60, fn 15. ComEd asserts that until the Commission decides the in-house/affiliate issue in the pending rule-making, the AG's recommendation (AG Init. Br. at 18) that "the Company should be instructed to provide specific evidence in the next formula rate case on the alleged reasonableness of these in-house fees" should be rejected. ComEd Reply Br. at 32.

Staff and Intervenor's Positions

Commission Analysis and Conclusion

The Commission declines to adopt the AG's recommendations relating to in-house/affiliate expert expense. We agree with ComEd that the evidence shows that ComEd has not separately charged its in-house or affiliate time to rate case expense and that in any event Section 9-229 does not require such documentation. Moreover, the issue of whether in-house and affiliate time should be considered under Section 9-229 has been litigated in the pending rule-making concerning rate case expenses (Docket No. 11-0711). Until the issue is decided in that proceeding, we conclude that it is inappropriate to instruct ComEd to provide evidence in the next formula rate case on the reasonableness of its in-house or affiliate rate case expense.

2. Incentive Compensation Program Expenses

The incentive compensation program expenses at issue in this docket are: (1) ComEd's Long-Term Performance Share Awards Program ("LTPSAP"), and (2) incentive compensation associated with ComEd's energy efficiency employees. ComEd originally sought to recover 50% of its LTPSAP expenses, amounting to \$1,573,000, and 100% of its energy efficiency incentive compensation expenses in the amount of \$981,000. ComEd Init. Br. at 44.

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

ComEd's Position

ComEd states that in the interest of narrowing the issues in dispute and without prejudice to its position on this or similar issues in the future, ComEd accepted Staff's initial proposal of allowing recovery of 13.6% of ComEd's LTPSAP expenses, or \$428,000. ComEd Init. Br. at 44. ComEd continues to believe, however, that a higher recovery is justified. *Id.* ComEd recommends that if the Commission disagrees with both ComEd's position requesting 50% of these expenses and Staff's initial position recommending allowance of 13.6% of these expenses, the Commission should exercise its business judgment and allow the percentage of recovery that it perceives to be appropriate based on the evidentiary record. *Id.* at 48.

In support of recovery of a portion of its LTPSAP expenses, ComEd states that the LTPSAP contains operational metrics, including goals related to CAIDI and SAIFI, the achievement of which serves as a basis for recovery of incentive compensation under Section 16-108.5(c)(4)(A). *Id.* at 45; see also 220 ILCS 5/16-108.5(c)(4)(A). ComEd also states that these metrics contained specific benchmarks and that the evidence shows that ComEd met or exceeded these goals. ComEd Init. Br. at 45; ComEd Reply Br. at 33.

ComEd further states that the evidence shows that the compensation committee, who determine LTPSAP awards, considered the fact that ComEd met or exceeded these operational goals and that in determining the 2012 awards, was provided with suggested scores, importance rankings, and weighted scores for each metric. ComEd Init. Br. at 45. ComEd asserts that the operational metrics were given the second

highest score, the second highest importance rank, and the second highest weighted score. *Id.* at 45-46. ComEd contends that no evidence exists that indicates that the compensation committee disregarded this suggested scoring and weighting in determining the LTPSAP awards. *Id.* at 46.

ComEd also states that Staff, AG and CCI seek to apply an unprecedented and incorrect evidentiary standard by arguing that ComEd must show “precisely” the dollar amounts of the LTPSAP awards that directly tie to operational metrics. ComEd Reply Br. at 32; CCI Init. Br. at 27; AG Init. Br. at 19. ComEd avers that this has never been the evidentiary standard in rate cases and that nothing in EIMA requires every dollar of incentive compensation to explicitly tie to the achievement of an operational metric. ComEd Reply Br. at 32.

ComEd asserts that contrary to what Staff, the AG and CCI opine, the fact that the award is based on a qualitative analysis does not negate the metrics but instead relates to the development of the scores, weights, and weighted scores given to performance under each metric. ComEd Init. Br. at 46. ComEd states that while the qualitative aspect of the LTPSAP may be a reason to accept Staff’s initial proposed allowance of only 13.6%, it is not a basis to treat these expenses as zero and to do so ignores the fact that a portion of the LTPSAP is tied to metrics that benefit customers and for which recovery is permitted. *Id.*

ComEd contends that such a result would not be reasonable or consistent with Commission practice and states that the Commission has recognized that it would be improper to make the kind of disallowances proposed by Staff and the intervenors. *Id.* at 46-47. In support of its contention, ComEd states that in its 2007 rate case, the Commission addressed whether ComEd could recover the salaries and wages of certain ComEd employees who in addition to performing utility functions (recoverable costs) also worked on a merger (non-recoverable costs). *Id.* at 47. The Attorney General had recommended a full disallowance but the Commission instead disallowed 25% of the costs in question. *Id.* at 47; *Commonwealth Edison Co v. Illinois Commerce Comm’n, et al.*, 405 Ill. App. 3d 389, 398-401, 937 N.E. 2d 685, 698-701 (2d Dist. 2010).

ComEd states that the appellate court upheld the Commission’s action on the ground that the Commission was entitled to exercise its “business judgment” to reach “‘pragmatic solutions’ by filling gaps in the record.” ComEd Init. Br. at 47.; 405 Ill. App. 3d. at 402. ComEd notes that the court relied upon the Commission’s position that, “once it identifies a recoverable cost item, such as the labor costs related to the utility-services work performed by its employees, the Commission is not authorized to treat the expense as zero.” ComEd Init. Br. at 47; 405 Ill. App. 3d. at 401. ComEd concludes that here, Staff and Intervenors are attempting to treat a recoverable expense as if the expense were zero. ComEd Init. Br. at 47.

ComEd also asserts that the fact that the Total Shareholder Return (“TSR”) feature has the ability to increase or decrease awards is not a basis to disallow LTPSAP expense. *Id.* ComEd explains that this is because TSR is not a metric and thus it is not

used to determine the awards in the first instance. *Id.* ComEd further explains that the TSR is also not a measure of net income or earnings per share (“EPS”) but instead is a measure of how Exelon’s stock performed relative to a group of similar utilities. *Id.* ComEd states the value of the price of a stock is affected by many things other than net income or EPS. *Id.* Further ComEd states that the compensation committee may reject application of the TSR and [REDACTED] CONFIDENTIAL [REDACTED] *Id.* at 47-48.

Staff and Intervenor’s Positions

Commission Analysis and Conclusion

Staff, the AG and CCI recommend disallowing the incentive compensation program expenses associated with LTPSAP entirely. We disagree and find that based on the evidentiary record, some portion of LTPSAP expense is recoverable under EIMA. Section 16-108.5(c)(4)(A) provides that a Commission-approved formula rate should permit, subject to a determination of prudence and reasonableness:

recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance.

220 ILCS 5/16-108.5(c)(4)(A).

ComEd has provided sufficient evidence demonstrating that the LTPSAP is in part based on operational metrics that included specific benchmarks and that ComEd has met or exceeded all of the goals related to those metrics. Also, the evidence shows that ComEd’s meeting of the operational metric goals was a factor considered by the compensation committee in their determination of LTPSAP awards. We agree with ComEd that the evidentiary standard that Staff, CCI and the AG seek to apply here is unprecedented and incorrect. Moreover, in light of the fact that the TSR feature is discretionary [REDACTED] CONFIDENTIAL [REDACTED] we agree with ComEd that it cannot be a basis for disallowing these expenses entirely. The evidence shows these costs to be prudent and reasonable.

The Commission does recognize, however, that as Staff, AG and CCI correctly note, a portion of the LTPSAP is based on metrics besides operational metrics. We therefore conclude that 13.6% of ComEd’s expenses relating to LTPSAP are recoverable.

b. Energy Efficiency/Rider EDA

ComEd’s Position

ComEd states that the Energy Efficiency and Demand Response Adjustment (“Rider EDA”) provides for the recovery of all incremental costs associated with

ComEd's energy efficiency and demand response programs and plans, which includes, the costs associated with the incremental employees ComEd hires to implement and administer the programs and plans. ComEd Init. Br. at 49; Rider EDA, Ill. C. C. No. 10, 1st Revised Sheet No. 245. ComEd states that as full ComEd employees energy efficiency employees participate in the same AIP applicable to all ComEd employees. ComEd Init. Br. at 49. ComEd has included in this formula rate update \$981,000 of AIP expense associated with the energy efficiency employees whose costs are otherwise recovered through Rider EDA. *Id.* at 48. ComEd states that it charged this amount to FERC Account 908 (Customer Assistance Expense) in 2012 after the Commission issued an order in October 2012 concluding that the AIP expenses at issue there should no longer be recovered through Rider EDA. *Id.* ComEd further states that the 2012 charge to FERC Account 908 includes \$268,000 of 2012 expense and \$713,000 of expense incurred in 2009 through 2011. *Id.* ComEd believes these costs are properly reflected in the 2012 FERC Form 1 and are recoverable in this docket. *Id.* at 52.

ComEd states that though the Commission initially approved the recovery of the energy efficiency employees' AIP expense through Rider EDA, in Docket No. 10-0570 it established a new recovery standard applicable only to incentive compensation costs to be recovered through Rider EDA whereby ComEd was to show in its next Rider EDA reconciliation proceeding "how its current incentive compensation relates to EE or how it has tailored its incentive compensation for these employees." *Id.* at 50; *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Order (Dec. 21, 2010) at 44. The Commission applied the new standard in Docket No. 10-0537 and determined that the AIP costs could not be recovered through Rider EDA because they were not sufficiently related to energy efficiency or tailored to energy efficiency employees. ComEd Init. Br. at 50; see also *Commonwealth Edison Co.*, ICC Docket No. 10-0537, Order (Oct. 17, 2012) at 23.

ComEd asserts that Staff's belief that the Commission's disallowance of the AIP costs in Docket No. 10-0537 - under this new standard - conclusively prohibits their recovery in this docket is incorrect. In support of its position, ComEd states that the standard applied to incentive compensation costs to be recovered under Rider EDA does not apply in formula rate cases and no other bar to the recovery of these costs exists. ComEd Init. Br. at 51. Specifically, ComEd states that the incentive compensation standard in Section 16-108.5(c)(4)(A) applies here and that that standard expressly permits "recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance" *Id.* at 51; 220 ILCS 5/16-108.5(c)(4)(A). ComEd further asserts that Staff's claim that the Commission has previously determined that if incentive compensation costs are to be recovered they must be recovered through Rider EDA is not supported by the language in the order in Docket No. 10-0570 to which Staff cites. ComEd Reply Br. at 34; see also Staff Init. Br. at 40. ComEd states that according to the Commission's order, "the General Assembly has determined that the costs associated with ComEd's plans are to be recovered through the automatic adjustment clause authorized under Section 8-103" ComEd Reply Br. at 34-35 (quoting *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Order (Dec. 21, 2010) at

44). ComEd asserts that it is because the Commission has found that energy efficiency employees' AIP costs are not associated with ComEd's energy efficiency plans that ComEd is seeking recovery of those costs here. ComEd Reply Br. at 34,.

ComEd states that under the standard set forth in Section 16-108.5(c)(4)(A), there is no dispute that the energy efficiency employees' incentive compensation is associated with the same operational metrics applicable to all other ComEd employees and whose associated costs are not questioned in this docket. ComEd Init. Br. at 51. ComEd avers that like other employees, the energy efficiency employees as part of the Customer Operations organization contribute to the achievement of AIP metrics and by so doing contribute to creating a safe working environment, reducing the frequency and duration of outages through their participation in storm restoration efforts, increasing customer satisfaction through the offering of energy efficiency solutions, and controlling expenses. *Id.* at 49. ComEd concludes that because the energy efficiency employees delivered the customer benefits described above, the associated AIP expense should be recovered along with the AIP expense associated with all other ComEd employees. *Id.* at 51.

ComEd further states that Staff's claim that AIP costs incurred prior to 2012 cannot be recovered in this docket is also incorrect. *Id.* ComEd believes that Staff ignores the fact that the costs were not expensed until 2012 following the Commission's disallowance of AIP expense in Docket No. 10-0537 and have yet to be recovered through any mechanism. *Id.* According to ComEd, these costs were initially recorded as part of a regulatory asset, in accordance with GAAP and well-established utility accounting practice because Rider EDA provided ComEd with the assurance that these costs would be recovered in the future. *Id.* at 51-52. ComEd further states that contrary to what Staff asserts, ComEd's recording of the AIP costs in a regulatory asset is consistent with past Commission practice. *Id.* at 52. ComEd provides as an example that prior to EIMA, ComEd recorded in a regulatory asset its costs associated with rate case expenses incurred prior to filing and during a rate case because it believed it would recover these costs in future periods and notes that no Commission order approving the creation of the regulatory asset was required. *Id.* ComEd adds that Staff's claim that ComEd should have recovered these costs in prior years ignores the fact that the Commission did not issue its order disallowing AIP costs associated with energy efficiency employees until October 2012. ComEd Reply Br. at 34. As a result, ComEd states, these AIP costs could not have been expensed until 2012 when ComEd did so. *Id.*

Staff and Intervenor's Positions

Commission Analysis and Conclusion

ComEd seeks to recover AIP expense associated with ComEd's incremental employees who implement and administer ComEd's energy efficiency programs and plans. The Commission denied recovery of these costs through Rider EDA in Docket

No. 10-0537 because it found that they did not meet the standard for recovery in that docket, finding specifically that the costs were not sufficiently related to energy efficiency or tailored to energy efficiency employees. See *Commonwealth Edison Co.*, ICC Docket No. 10-0537, Order (Oct. 17, 2012) at 23. The evidence provided in the instant docket, however, supports the recovery of these costs here.

As discussed above, EIMA explicitly allows recovery of incentive costs relating to the achievement of operational metrics. See 220 ILCS 5/16-108.5(c)(4)(A). The Commission treats reasonable and prudent ComEd employee AIP expense associated with the achievement of ComEd's operational metrics as recoverable. ComEd has shown that the incremental energy efficiency employees are full ComEd employees who participate in the same AIP program as other ComEd employees and Staff does not dispute this fact. The AIP expense associated with the energy efficiency employees therefore should be treated no differently than any AIP expense associated with ComEd employees and is similarly recoverable. Further Staff's assertion that these expenses must be recovered through Rider EDA misstates the Commission's finding. As ComEd correctly states, the Commission disallowed these costs in Docket No. 10-0537 expressly because it found that energy efficiency employees' AIP costs are not associated with ComEd's energy efficiency plans and it is therefore proper to seek them in this proceeding.

The Commission further finds that ComEd's AIP expense associated with the energy efficiency employees incurred prior to 2012 were properly recorded as a regulatory asset. We agree with ComEd that its recording of these costs as a regulatory asset is in line with GAAP as well as past Commission practice. We further agree that Staff's contention that ComEd should have recovered these costs in prior years does not properly consider that the Commission did not issue its order disallowing AIP costs associated with energy efficiency employees until October 2012. As a result, ComEd's AIP costs could not have been expensed until 2012. We conclude, therefore, that the AIP expenses associated with ComEd's incremental energy efficiency employees are prudent and reasonable and ComEd should be allowed to recover \$981,000 of AIP expense.

3. Employee Stock Purchase Plan ("ESPP")

The AG proposes the removal of \$2,334,000 of A&G expenses and \$1,185,000 of income tax expenses arising from ComEd's Employee Stock Purchase Plan ("ESPP") from ComEd's revenue requirement. The AG contends that the ESPP is incentive compensation that is related to net income or an affiliate's EPS and therefore does not meet the criteria set forth in Section 16-108.5(c)(4)(A). AG Ex. 1.0 at 28-29; AG Ex. 1.3 at 3; ComEd Init. Br. at 52. CCI joins the AG in recommending these disallowances. CCI Init. Br. at 28-29.

a. Stock Price Issue

ComEd's Position

ComEd and Staff assert that the disallowance proposed by the AG and CCI should not be adopted by the Commission. ComEd Init. Br. at 52-53; Staff Init. Br. at 41-42. ComEd states that Section 16-108.5(c)(4)(A) governs incentive compensation and that it is undisputed that ComEd's ESPP is not an incentive compensation program. ComEd Init. Br. at 53; ComEd Reply Br. at 35. ComEd explains that ESPP is a fringe benefit available to ComEd employees under which they are voluntarily allowed to purchase Exelon Corporation ("Exelon") common stock at a discounted price, regardless of their individual performance or the attainment of any corporate goals. ComEd Init. Br. at 53. ComEd states that this is not unlike medical, vision, or dental insurance that employees purchase at a price below that which is offered on the market because of a subsidy provided by an employer. *Id.*

ComEd explains that incentive compensation, on the other hand, is merit based compensation that is awarded to employees based on achieving stated goals and that it seeks to reward good work. *Id.* ComEd further explains that incentive compensation is also often available only to a limited group of employees while the stock purchased pursuant to the ESPP is not awarded but instead each employee determines whether to purchase the stock with his or her own funds. *Id.* ComEd states that the ESPP has no merit or performance component and is open to all ComEd employees as long as they meet minimum employment requirements. *Id.*

ComEd further contends that the reasons stated above are also the reasons why the ESPP is not comparable to the Key Manager restricted stock program as CCI contends. See ComEd Reply Br. at 36; CCI Init. Br. at 28-29. ComEd adds that unlike the Key Manager restricted stock program where all parties agreed that the program was compensation, ComEd contends that as a fringe benefit, ESPP is not compensation. ComEd Reply Br. at 36. ComEd further states that as a fringe benefit the fact that ESPP is not fully funded by employees is not a valid basis upon which to disallow these expenses. *Id.* at 37.

ComEd asserts that even if the ESPP was an incentive compensation program the fact that the expenses for the program are somehow related to Exelon's stock price is irrelevant. ComEd Init. Br. at 53. According to ComEd witness Ms. Brinkman, this is because "[t]he correct inquiry would be whether eligibility for the plan and the size of the award under the plan are based on, or dependent upon achievement of, one of the statutorily prohibited metrics – net income or an affiliate's earnings per share" and ComEd asserts they are not. *Id.* at 53-54.

Staff and Intervenor's Positions

b. Income Tax Issue

ComEd's Position

ComEd asserts that the income tax expense attributable to ComEd's ESPP related to tax years prior to 2012 is recoverable. ComEd states that the disallowance

proposed by the AG and CCI should be rejected because it fails to recognize that tax return amendments that involve expenses realized or recorded in 2012 are appropriately included in ComEd's 2012 rate year. ComEd Init. Br. at 54. ComEd states that its income tax expenses attributable to ESPP have not been reflected in prior revenue requirements nor has ComEd accounted for or recovered them. *Id.*

ComEd further asserts that AG and CCI inappropriately conflate ESPP-related taxes, which are associated with the value of the benefit provided (in this case taxes on the discount received), with tax deductions that Exelon takes regarding dividends paid on shares of Exelon stock held in employee 401(k) accounts. ComEd Reply Br. at 37; see AG Init. Br. at 29-30; CCI Init. Br. at 29. ComEd explains that the ESPP and employee 401(k) accounts are not related and the derivative tax issues presented by them are also unrelated. ComEd Reply. Br. at 37. ComEd further states that it has explained this and the AG is clearly aware of this because it specifically requested information from ComEd regarding tax impacts of programs other than the ESPP, using employee 401(k) accounts as an example. *Id.*; see AG Ex. 3.4. ComEd avers that the AG and CCI twist the information provided by ComEd in response to those requests about 401(k) accounts in an attempt to show an inequity related to the ESPP. ComEd Reply Br. at 37-38; see AG Init. Br. at 29-30; CCI Init. Br. at 29.

ComEd also contends that the AG misrepresents Staff's position on this issue when it states "Staff offered no position on this proposed adjustment to operating expenses, Staff also acknowledged that it performed no discovery on this issue and Staff witness Mr. Bridal provided no workpapers or evidence of analysis to the ESPP or its costs." ComEd Reply Br. at 38; AG Init. Br. at 30. ComEd states that in fact Staff offered the testimony of Mr. Bridal, who specifically analyzed this issue and concluded that both the A&G and tax aspects of Mr. Brosch's proposed disallowance are incorrect and should be rejected by the Commission. ComEd Reply Br. at 38; Bridal Reb., Staff Ex. 7.0, 37:802-38:827. ComEd further states that the document the AG cites in support of its characterization of Mr. Bridal's efforts does not undermine his analysis of the ESPP issue. ComEd Reply Br. at 38; see AG Cross Ex. 6 at 4. ComEd asserts that the AG's tactics hinder the ability of the Commission and customers to understand these complicated issues, and should be discouraged. ComEd Reply Br. at 38.

Staff and Intervenor's Positions

Commission Analysis and Conclusion

The Commission agrees with Staff and ComEd that both the A&G expenses and the income tax expenses arising from ComEd's ESPP are recoverable in their entirety. Specifically, the Commission finds that ESPP is a fringe benefit as it is not designed to incentivize good work. Nor is ESPP given as a reward because employees must purchase stock with their own funds. The AG and CCI's attempt to compare it to ComEd's Key Manager restricted stock program is unpersuasive. Further, because ESPP is not incentive compensation, it is not governed by Section 16-108.5(c)(4)(A) and the criteria therein does not apply. In any event, there is no evidence in the record

that any aspect of ESPP is dependent on the achievement of metrics relating to net income or an affiliate's earnings per share for which recovery under the Section is prohibited. Moreover, the fact that ESPP is not fully funded by employees provides no basis to disallow these expenses. As ComEd observes, employers routinely incur expenses relating to employee fringe benefits that are recoverable.

The record shows that income taxes associated with ESPP are associated with the value of the benefit provided. Here, that benefit is the discount received. The AG and CCI however, improperly conflate the ESPP-related taxes with tax deductions that Exelon takes regarding dividends paid on shares of Exelon stock held in employee 401(k) accounts. The record shows, however, that the ESPP and employee 401(k) accounts are not related and the derivative tax issues presented by them are also unrelated. We also find that, contrary to the AG's assertions, the record shows that Staff has concluded that the A&G and tax aspects of the proposed disallowance are incorrect. The Commission also finds that the ESPP tax expenses related to years prior to 2012 are appropriately included in ComEd's 2012 rate year because they have not been reflected in prior revenue requirements and ComEd has not accounted for or recovered them. The Commission thus declines to adopt AG and CCI's proposed disallowances relating to ComEd's ESPP.

4. Payroll Taxes

ComEd's Position

ComEd posits that Staff's proposed disallowance of payroll taxes associated with incentive compensation disallowed in this docket should be rejected because payroll taxes are not incentive compensation. ComEd Init. Br. at 54. Instead, ComEd states, payroll taxes are a separate and distinct operating expense of ComEd and an actual cash disbursement that ComEd is required by law to make. *Id.* ComEd also states that the PUA section governing the recovery of incentive compensation does not contemplate payroll taxes and the Commission therefore should not read a prohibition on the recovery of those operating expenses into the statutory language. *Id.* at 54-55.

ComEd also asserts that the Commission has not addressed this issue on a substantive basis. *Id.* at 55. Specifically, ComEd states that in those instances where payroll taxes were included in an incentive compensation disallowance, the Commission did not specifically address that portion of the disallowance. *Id.* In addition, ComEd notes that the Commission has also disallowed incentive compensation without adjusting for payroll taxes in several instances. *Id.*

Staff & Intervenor's Position

Commission Analysis & Conclusion

The Commission finds that the payroll taxes associated with the incentive compensation disallowed in this docket are a distinct operating expense of ComEd and

a cash disbursement that ComEd is required to make by law. In addition, recovery of the payroll taxes is not prohibited under EIMA because Section 16-108.5 (c)(4)(A) does not contemplate payroll taxes. See 220 ILCS 5/16-108.5(c)(4)(A). The Commission therefore declines to disallow ComEd's payroll taxes associated with the incentive compensation disallowed in this docket and declines to adopt Staff's proposal.

5. Pension Costs

ComEd's Position

ComEd states that like Staff's proposed disallowance of payroll taxes associated with disallowed incentive compensation, Staff's proposed disallowance of pension costs associated with disallowed incentive compensation is erroneous because pension expense is also not incentive compensation, but an employee fringe benefit. ComEd Init. Br. at 56. Therefore, ComEd contends that Section 16-108.5(c)(4), which governs the recovery of incentive compensation, does not contemplate pension expense and the Commission should not read a prohibition on the recovery of those expenses into the statutory language. *Id.*; see also 220 ILCS 5/16-108.5(c)(4)(A).

ComEd further states that the proposed disallowance should be rejected because no pension expense associated with incentive compensation disallowed in this proceeding is included in ComEd's revenue requirement. ComEd Init. Br. at 56. ComEd explains that the only incentive compensation program that affects ComEd's pension expense is AIP and that pension expense for 2012 was determined using an actuarial study that assumed only a 100% payout of AIP in 2012. *Id.* ComEd further explains that because only AIP paid out over 102.9% is "disallowed," as ComEd has excluded those amounts from its revenue requirement based on the Commission's Order in Docket No. 11-0721, no pension expense related to incentive compensation exists to be disallowed in this proceeding. *Id.*; see also *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 29, 2012) at 90.

ComEd also asserts that Staff improperly estimates a disallowance because the impact of disallowed incentive compensation on pension expense in future years cannot be calculated with certainty. ComEd Init. Br. at 57. ComEd states that is because the pension expense associated with many ComEd employees is dependent upon their highest average annual pay ("HAAP"), which cannot be determined until they retire. *Id.* ComEd states that in order to address this issue, it approached its actuarial consultant, Towers Watson, and inquired about a detailed calculation of the impact of disallowed AIP on pension expense. *Id.* According to ComEd, Towers Watson stated that this could be conducted only by performing an employee-by-employee review of approximately 2,300 management pension plan participants across ComEd's two pension plans, and would cost approximately \$50,000. *Id.* ComEd states that it is willing to work with Staff to conduct such an analysis outside of this proceeding if a future adjustment is deemed warranted, but it is opposed to any estimated disallowance in this proceeding. *Id.* 57-58.

ComEd further argues that Staff's calculation overstates its estimated disallowance because it includes \$883,000 of incentive compensation that ComEd voluntarily excluded from its revenue requirement. *Id.* at 57. ComEd avers that the voluntarily excluded incentive compensation associated with certain executives has never been disallowed by the Commission. *Id.* ComEd contends that a voluntary exclusion is not the same as a disallowance and that Staff's erroneous inclusion of the amount associated with this expense provides an additional basis for rejecting Staff's proposed disallowance. *Id.*

Staff & Intervenor's Position

Commission Analysis & Conclusions

Like the payroll taxes discussed above, the Commission finds that the recovery of pension costs associated with the incentive compensation disallowed in this docket is not prohibited because Section 16-108.5(c)(4)(A) does not contemplate such pension costs as they are not incentive compensation. Further, the evidentiary record shows that no pension expense associated with incentive compensation disallowed in this proceeding is included in ComEd's revenue requirement. Specifically, the record shows that the actuarial study used to determine pension expense for 2012 assumed 100% payout of AIP in 2012 and only AIP paid out over 102.9% is disallowed.

Even if the pension costs were prohibited, we find that there is sufficient evidence in the record showing that Mr. Bridal's estimated disallowance is improper. First, the evidence shows that the impact of disallowed incentive compensation on pension expense in future years cannot be calculated with certainty because the pension expense associated with many ComEd employees is dependent upon their HAAP which cannot be determined until they retire. In addition, we agree that Mr. Bridal's calculation improperly overstates its estimated disallowance because it includes \$883,000 of incentive compensation that ComEd voluntarily excluded from its revenue requirement. For these reasons we conclude that Staff's proposed disallowance should not be adopted.

VI. RATE OF RETURN

A. Overview

ComEd fully supported its rate of return to be applied to the 2012 Reconciliation Year and the 2014 Initial Rate Year through the testimony of multiple witnesses.

B. Capital Structure

ComEd provided its capital structure and cost for the purpose of determining both the 2012 Reconciliation Year and the 2014 Initial Rate Year. ComEd and Staff agree and mutually recommend a 6.94% rate of return on rate base for both the 2012

Reconciliation Year and the 2014 Initial Rate Year. ComEd Reply Br. at 39. Certain other parties continue to refer to the 6.91% rate of return reflected in ComEd's direct testimony, rather than the 6.94% rate of return that was mutually agreed upon by Staff and ComEd. AG Init. Br. at 44, 50; CCI Init. Br. at 30, 35. Because ComEd has updated its rate of return through agreement with Staff, the Commission disregards the inaccurate references to the 6.91% rate of return and approves ComEd's 6.94% rate of return to be applied to the 2012 Reconciliation Year and the 2014 Initial Rate Year. ComEd's capital structure, including its Cost of Capital Components, are reflected in the chart below. Therefore, the Commission approves ComEd's rate of return (weighted average costs of capital) of 6.94%.

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

In ICC Docket No.11-0721 the Commission “note[d] that ComEd, Staff, and IIEC agree[d] to work together to explore more leveraged capital structures and/or an equity cap for future years,” and adopted Staff’s recommendation by “order[ing] ComEd to work with Staff to explore such capital structures and provide a report to the Commission with ComEd’s 2013 formula rate filing.” *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) at 134. ComEd submitted a Capital Structure Report (ComEd Ex. 4.01) with its direct testimony regarding the meetings held by Staff, ComEd and the IIEC. The Capital Structure Report examines the drivers of capitalization and ComEd’s capital structure, discusses the methodology of the credit rating agencies and the impact of ComEd’s capital structure on its credit ratings, addresses the importance of debt-to capitalization ratios, discusses how ComEd compares to utility peers, addresses ComEd’s base long range plan with alternate scenarios, and summarizes discussions of IIEC’s proposed equity cap. ComEd Ex. 4.0 at 6. The conclusions that can be reached based on the findings in the Capital Structure Report were summarized in ComEd’s direct testimony (*id.* at 6-7), and neither Staff nor any party raised any issues related to the Capital Structure Report or its findings. ComEd has fully satisfied the capital structure reporting requirement set forth in the Commission’s May 29 Order in ICC Docket No. 11-0721.

C. Cost of Capital Components

1. Rate of Return on Common Equity

See Section VI.B, *supra*.

2. Cost of Long-Term Debt

See Section VI.B, *supra*.

3. Cost of Short-Term Debt

See Section VI.B, *supra*.

4. Overall Weighted Cost of Capital

See Section VI.B, *supra*.

VII. RECONCILIATION

A. Overview

ComEd fully supported its reconciliation adjustments for the 2012 Reconciliation Year through the testimony of multiple witnesses, as discussed below.

B. Potentially Contested Issues

1. Deferred Income Taxes on Reconciliation Balance

ComEd's Position

ComEd states that it should be allowed to recover interest, at the allowable rate (WACC), on its full reconciliation balance and that the Commission should reject AG and CCI's \$13 million downward adjustment to ComEd's revenue requirement resulting from their proposals that ComEd recover interest on only the balance net of ComEd's tax savings. ComEd Init. Br. at 63. Preliminarily, ComEd avers that the proposals to net ADIT with the reconciliation balance in calculating interest on the reconciliation balance exceed the statutorily specified scope of this proceeding. *Id.* at 60. According to ComEd, Schedule FR A-4, which establishes the rate formula for the calculation of interest on the reconciliation balance, does not provide for netting ADIT with the reconciliation adjustment within that calculation. *Id.* ComEd explains that because the instant proceeding is an annual update and reconciliation proceeding filed pursuant to Section 16-108.5(d), the Act explicitly denies the Commission the authority to consider or order changes to the structure and protocols of a formula rate approved pursuant to Section 16-108.5(c). *Id.*; see also 220 ILCS 5/16-108.5(d). Consequently, ComEd contends, the proposals to alter the structure and protocols of ComEd's Commission-approved formula rate to change the method of calculating interest on reconciliation balances are illegal because they seek to have the Commission take actions that are

beyond the scope of its statutorily specified authority in this proceeding. ComEd Init. Br. at 60-61.

ComEd further argues that the adjustment should be rejected on the merits. ComEd avers that the fact that these deferred taxes may be reflected on ComEd's books of account as ADIT with GAAP is true but irrelevant. ComEd Reply Br. at 42. In support, ComEd states that it has long been established that accounting treatment does not dictate ratemaking treatment. *Id.* (citing *Bus. & Prof'l People for the Pub. Interest v. Illinois Commerce Comm'n*, 205 Ill. App. 3d 891, 561 N.E.2d 877 (1st Dist. 1990) (recording for accounting purposes of deferred charges does not compel ratemaking treatment of those charges)). ComEd also states that the deferred taxes at issue here differ from typical ADIT in that the reconciliation amount is not recovered by the utility until a year later and thus produces no cash benefit, *i.e.*, nothing exists against which to net the deferred taxes. ComEd Init. Br. at 61. In addition, ComEd states that it is irrelevant that the cash flow impact to ComEd as a result of the delay in receiving the reconciliation balance may be the net amount of the balance and the tax impact because EIMA provides that interest is to be paid on the reconciliation balance, not on the reconciliation balance less deferred taxes. *Id.*; see also 220 ILCS 5/16-108.5(d)(1). ComEd states that the fact that where EIMA intended that adjustments be made it has done so specifically and that the rule of statutory construction prohibiting words from being read into a statute also support rejecting the adjustment. ComEd Init. Br. at 60-61.

ComEd also asserts that the proposed calculation would deny ComEd the ability to earn the allowed interest on "net-of-tax incremental capital balance" while ComEd's method of calculating the allowed interest on the entire reconciliation balance permits ComEd to earn interest on the "net-of-tax incremental capital balance" but only that balance, as the AG proposes. *Id.* at 62-63. ComEd provides several mathematical illustrations of this in both testimony and briefing. ComEd Init. Br. at 59-63; ComEd Reply Br. at 40-42. In addition, ComEd states that the examples that the AG and CCI provide in their reply brief provide no support for the proposed deduction and instead reinforce the correctness of ComEd's approach. ComEd Reply Br. at 41. First, ComEd explains that CCI's example is unavailing because under its methodology ComEd would not be made whole because it does not apply the interest rate to the full reconciliation balance. *Id.* Using CCI's hypothetical \$100,000 recovery amount, ComEd states that assuming a 10% interest rate and a one-year delay of recovery, the amount the utility company will need to recover to be made whole is \$64,900, which is the net cash investment plus interest thereon at 10%. *Id.* CCI's methodology in contrast results in recovery of less than \$64,900. *Id.* ComEd then explains that the AG's example using the regulatory asset related to unrecovered storm costs fails because, contrary to what the AG asserts, the treatment of the regulatory asset relating to ComEd's unrecovered storm costs is not comparable to the treatment of the deferred taxes on ComEd's undercollection. *Id.* at 42. ComEd states that unlike the unrecovered storm costs, the undercollection does not produce any revenue in the current year. *Id.*

Staff & Intervenor's Position

Commission Analysis & Conclusion

AG and CCI propose that ComEd's reconciliation balance be reduced by netting ADIT with the reconciliation balance in calculating interest on the reconciliation balance. The proposed adjustment, however, contravenes the language and intent of EIMA.

First, the proposed adjustment exceeds the statutory scope of this annual update and reconciliation proceeding as set forth in Section 16-108.5(d). That section explicitly states as follows:

The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section.

220 ILCS 5/16-108.5(d). We agree with ComEd that the adjustments proposed by AG and IIEC/City/CUB would impermissibly alter the structure and protocols of ComEd's approved formula rate and that the Commission is not authorized to do so in this proceeding.

Second, we agree that Section 16-108.5(d)(1) of EIMA provides that participating utilities be paid interest on the reconciliation balance and not the reconciliation balance less deferred taxes. See 220 ILCS 5/16-108.5(d)(1). The proposed adjustments violate this provision by inserting conditions that do not appear in the Act. The record shows that the proposed adjustments would also violate this provision because they would prevent ComEd as a participating utility from being made whole by the reconciliation which is the clear intent of Section 16-108.5(d)(1). On the other hand, the record shows that ComEd's method of calculating interest on the full reconciliation balance, which Staff supports, would allow ComEd to earn the amount of the lost net cash flow. Neither of the examples that the AG and CCI provide in their reply briefs provide any support for the proposed adjustment. The record shows that CCI's example falls short because it will not make ComEd whole. And, the record also shows that contrary to what the AG asserts, the treatment of the regulatory asset relating to ComEd's unrecovered storm costs is not comparable to the treatment of the deferred taxes on ComEd's undercollection because unlike the unrecovered storm costs, the undercollection does not produce any revenue in the current year.

Finally, we agree that the fact that generally ADIT is deducted from a utility's rate base is irrelevant. Unlike other investments to which ADIT relates, the reconciliation amount produces no current cash benefit because it is not recovered by ComEd until a year later.

For all of the above reasons, we decline to adopt AG and CCI's proposed adjustment relating to the ADIT on ComEd's reconciliation balance.

2. WACC Gross-Up

ComEd's Position

As noted in Section III.A, ComEd contends that with respect to this issue the parties seek to alter the structure and protocols of ComEd's Commission-approved formula rate, and that this issue cannot be legally considered in this FRU proceeding. See 220 ILCS 5/16-108.5(d).

ComEd notes that under EIMA, the interest rate (*i.e.*, the time value of money) applicable to the delay in receiving (or refunding) the reconciliation adjustment is "to be calculated at a rate equal to" ComEd's weighted average cost of capital ("WACC"). 220 ILCS 5/16-105.8(d)(1)⁷; see also 220 ILCS 5/16-108.5(k)(2) and (3). The equity component of this WACC-based interest will be fully taxable without any related deduction (unlike for the debt component). ComEd asserts that to recover the costs of financing the reconciliation balance, it is necessary to recognize the added tax costs associated with the equity component of the capital that is financing that portion of rate base. ComEd Init. Br. at 63-64. ComEd contends that if the interest rate is not grossed up for this added tax cost the utility will not, in fact, recover interest at WACC. *Id.* ComEd asserts that the straightforward principle that WACC must be adjusted for this tax effect has been recognized for decades in the context of WACC applied to rate base, and its critical importance is no different in this context. *Id.* .

Witnesses for the AG and CCI advocate the use of the WACC without income tax impacts, contrary to the interest calculation for the reconciliation adjustment specified by ComEd's Commission-approved formula. AG Ex. 1.0 at 13-18; AG Ex. 3.0 at 9-12; CCI Ex. 1.0 at 3-4; CCI Ex. 2.0 at 4-6. In rebuttal testimony, Staff witness Mr. Bridal (Staff Ex 7.0 at 38-41) also took a similar position. ComEd argues their position cannot be squared with EIMA or the facts.

ComEd submits that there can be no doubt that income tax costs are real and must be considered given that the interest received on the reconciliation balance is subject to income taxes. ComEd Init. Br. at 64. The WACC computation with adjustments for income taxes is shown in Sch FR D-1 – Cost of Capital Computation of the rate formula and is used on Sch FR A-4 – Reconciliation Computation to calculate interest on the reconciliation adjustment, as no other gross-up for income taxes is performed on Sch FR A-1 or elsewhere in the formula. *Id.* The income tax gross-up is

⁷ The relevant portion of Section 16-108.5(d)(1) provides *in toto* as follows: "Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year." *Id.*

clearly reflected in the rate formula approved in Docket No. 13-0386. *Id.*; ComEd Ex. 14.01, Sch FR A-4, line 2.

ComEd asserts that the argument that it receives a tax benefit that offsets a portion of the tax to be paid on the reconciliation balance is incorrect because ComEd receives no such tax benefit or offset. ComEd Init. Br. at 65. This argument infers that ComEd financed the reconciliation asset with debt that had an interest rate equal to the WACC and therefore has interest expense which would be an expense deductible for purposes of calculating current year income tax. Both the premise and logic of this argument are flawed. *Id.* ComEd's capital structure is not bifurcated to allocate certain capital to finance specific items. The reconciliation balance is an asset or liability just like any other asset or liability on ComEd's financial statements, and is financed by all of the financing elements included in the WACC. *Id.* While debt is included in ComEd's overall capital structure and its costs contribute to the WACC, the "tax benefit" associated with the debt component is already recognized and addressed in the calculation that defines the "gross-up" for tax costs. The AG's "adjustment" deducts an added tax "benefit" related to the cost of equity that does not exist. *Id.*

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

Staff witness Mr. Bridal claims that the gross-up of the WACC for the effect of income taxes is not necessary because the reconciliation amount is the difference between two revenue requirements that were already grossed-up for taxes. Staff Ex 7.0 at 38–39. ComEd does not dispute that the reconciliation amount is the difference between two revenue requirements that include a gross-up for taxes (though limited largely to the equity component of return on rate base), but the fact that the principal amount on which interest will be earned reflects taxes related to that principal does not affect the fact that the interest itself will result in still greater tax. Claiming, as Mr. Bridal does, that the revenue requirements already consider taxes says nothing about the tax effects of the interest. Just as the return on rate base must be grossed up, as Mr. Bridal points out, so must the WACC interest in order for ComEd to fully recover or refund the costs of financing the reconciliation asset at WACC. According to ComEd, without the income tax gross-up on the equity portion of the WACC, these additional revenues are not grossed up for the impact of income taxes. ComEd Init. Br. at 66.

ComEd argues that Staff's view that it is inconsistent Commission practice to gross up the interest rate applied to a reconciliation amount (Staff Ex 7.0 at 39) is inapposite. Staff's assertion mixes under the label "reconciliations" very different things.

EIMA ratemaking is aimed at providing accurate recovery of rate year revenue requirements and, unlike the EIMA formula rate template, other “reconciliations” do not involve a reconciliation of ComEd’s full distribution revenue requirement or provide for the recovery of interest set at the WACC. A better example in ComEd’s case is the cash working capital calculation in ComEd’s purchased electricity adjustment rider. There, the cost of capital is grossed up for taxes to account for the full cost of financing the lag (or lead) related to procuring electricity supply for ComEd customers. The reconciliation balance is similar in that it is a lag (or lead) on recovery of ComEd’s net revenue requirement for an individual rate year and the full cost of its financing should be recovered (or refunded). ComEd Init. Br. at 66-67.

ComEd disputes Staff’s assertion that the law prohibits including tax effects in the calculation of interest at a rate equal to WACC because the statute does not specifically state “including tax effects.” According to ComEd, Staff confuses legislative intent with unnecessary ultimate detail and asks the Commission to read into the statute a prohibition not expressed by the legislature. ComEd Reply Br. at 43-44. ComEd submits that the Act does specifically direct a participating utility to “calculate” interest at a rate that is equivalent to its WACC. That language must be given meaning under statutory construction principles. Further, it is not required that the General Assembly spell out in detail that the calculation necessarily includes equity, debt, and taxes. ComEd Reply Br. at 44.

ComEd agrees with Staff that the primary objective of statutory construction is to ascertain and give effect to the intent of the legislature, and that the statutory language itself is considered the best indication of legislative intent. Staff Init. Br. at 53. ComEd contends, however, that Staff’s argument is not supported by these principles because it fails to analyze or consider relevant statutory language. The legislature made absolutely clear that the purpose of EIMA was to “[p]rovide for the recovery of the utility’s *actual costs* of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.” 220 ILCS 5/16-108.5(c)(1) (emphasis added). The statutorily specified “intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates ... with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been *had the actual cost information for the applicable calendar year been available at the filing date.*” 220 ILCS 5/16-108.5(d)(1) (emphasis added). ComEd asserts that interest calculated at a utility’s WACC without accounting for tax effects in the calculation does not place the utility in the position it would have occupied “*had the actual cost information for the applicable calendar year been available at the filing date.*” *Id.* (emphasis added).

ComEd claims that Staff, the AG, and CCI cannot square their proposals to disallow actual costs with these statutory precepts. Moreover, the legislature in Public Act 98-0015 made clear that it was inconsistent with the original provisions and intent of EIMA for the Commission to set reconciliation interest at a rate other than a utility’s weighted average cost of capital, and stressed that in specifying that interest was to be calculated at a rate equal to WACC it was giving binding effect to the provisions of

House Resolution 1157, adopted by the House of Representatives of the 97th General Assembly and Senate Resolution 821, adopted by the Senate of the 97th General Assembly:

(k) The changes made in subsections (c) and (d) of this Section by this amendatory Act of the 98th General Assembly are intended to be a restatement and clarification of existing law, and intended to give binding effect to the provisions of House Resolution 1157 adopted by the House of Representatives of the 97th General Assembly and Senate Resolution 821 adopted by the Senate of the 97th General Assembly that are reflected in paragraph (3) of this subsection.

220 ILCS 5/16-108.5(k).⁸ ComEd argues that the House and Senate Resolutions make absolutely clear that the intent of requiring the reconciliation to be “with interest” was to ensure that the utility and customers are made whole when a reconciliation adjustment is necessary:

WHEREAS, The Energy Infrastructure Modernization Act further provides in subsections (c) and (d) of Section 16-108.5 that those amounts to be credited or charged to customers following the annual reconciliation process under the performance-based formula rate shall be "with interest" *so the utility will be made whole for unrecovered amounts that were prudently and reasonably incurred and customers will be made whole for amounts they overpaid*, if any; and

WHEREAS, Such interest is intended to be set at the utility's weighted average cost of capital, determined in accordance with the statute, which represents the reasonable cost and means of financing a utility's investments and operating costs, *so that the utility and customers are made whole when charges or credits are necessary to reconcile to actual prudent and reasonable investments and costs*.

Senate Resolution 821, 97th General Assembly, at 2-3; House Resolution 1157, 97th General Assembly, at 2-3 (emphasis added). ComEd asserts that the proposals to exclude the tax effects of receiving or paying interest on the reconciliation balance in calculating interest equal to a utility's WACC would prevent the utility and customers from being made whole when charges or credits are necessary to reconcile to actual prudent and reasonable investments and costs; as such, these proposals are contrary to EIMA and must be rejected. ComEd Reply Br. at 46.

ComEd also strongly contests the AG's assertion that ComEd was somehow less than forthright in submitting its calculation including income tax effects in the calculation of interest at a rate equal to ComEd's WACC. ComEd notes that the interest calculation

⁸ Paragraph (3) of subsection (k) includes a specific reference to “interest calculated at a rate equal to the utility's weighted average cost of capital.” *Id.*

was specifically and explicitly vetted with Staff before ComEd made its formula rate filing with the Commission. ComEd also notes that the interest calculation increased credits to rate payers for the reconciliation of the 2011 Rate Year by millions of dollars.⁹ ComEd submits that there was nothing improper or surreptitious about reflecting the calculation of interest on the reconciliation balance at a rate equal to WACC with tax effects in the formula rate schedules where those items have been contained since day one. ComEd Reply Br. at 47. ComEd submits that the AG's claim that interest on the reconciliation balance is somehow different from a return on a utility's investments (AG Init. Br. at 50) is wrong and was explicitly rejected by the legislature, which found that interest was intended to be set at WACC under EIMA because it "represents the reasonable cost and means of financing a *utility's investments and operating costs*, so that the utility and customers are made whole when charges or credits are necessary to reconcile to actual prudent and reasonable *investments and costs*." Senate Resolution 821, 97th General Assembly, at 2-3; House Resolution 1157, 97th General Assembly, at 2-3 (emphasis added).

Commission Analysis and Conclusion

As the Commission concluded in Section III.A. of this Order, the proposal to consider and change the structure and protocols of ComEd's Commission-approved formula rate related to the calculation of WACC are beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding.

Alternative Commission Analysis And Conclusion

The Commission concurs with ComEd that the legislature clearly expressed that interest was intended to be set at WACC under EIMA because it "represents the reasonable cost and means of financing a *utility's investments and operating costs*, so that the utility and customers are made whole when charges or credits are necessary to reconcile to actual prudent and reasonable *investments and costs*." Senate Resolution 821, 97th General Assembly, at 2-3; House Resolution 1157, 97th General Assembly, at 2-3 (emphasis added). Nor can it be disputed that the statutorily specified "intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates ... with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been *had the actual cost information for the applicable calendar year been available at the filing date*." 220 ILCS 5/16-108.5(d)(1) (emphasis added). The Commission agrees with ComEd that calculating interest on the reconciliation balance equal to a utility's WACC without accounting for tax effects in the calculation does not place the utility in the position it would have occupied had the initial revenue requirement been determined using the subsequently available actual cost for the applicable calendar year. The law is clear that a utility and its customers are to be made whole through the reconciliation process when charges or credits are necessary to reconcile to actual prudent and reasonable investments and costs. This can be

⁹ See *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, ICC Docket No. 12-0553, ComEd Ex. 3.0 at 18.

accomplished only by taking income tax effects into account in calculating interest at a rate equal to the utility's WACC.

VIII. ROE COLLAR

A. Overview

The ROE Collar is established by EIMA and implemented through specific portions of ComEd's formula rate found on Sch FR A-3 – Return on Equity for Collar Computation ("Sch FR A-3"). The only contested issue concerning the ROE Collar relates to a proposal to perform the ROE Collar calculation using average rate base rather than year-end rate base as set forth in ComEd's formula.

B. Potentially Contested Issues

1. Rate Base for ROE Collar Calculation

ComEd's Position

ComEd submits that Line 1 of Sch FR A-3 of its formula rate defines the rate base used for purposes of the ROE Collar calculation as the year-end rate base reported on ComEd's Federal Energy Regulatory Commission ("FERC") Form 1 that is also used in calculating the reconciliation revenue requirement on Sch FR A-1 REC – Revenue Requirement Reconciliation Computation ("Sch FR A-1"). ComEd maintains that it complied with PA 98-0015 by revising its formula template to reflect year-end rate base and capital structure, including updates to the reconciliation rate base, cost of debt, and several rate base adjustments. ComEd Ex. 13.0 at 6. The Commission approved that formula on June 5, 2013 in ICC Docket No. 13-0386. ComEd argues that the use of a year-end rate base in calculating the applicable revenue requirements and reconciliation is required by Public Act 98-0015, including the following codified as Section 16-108.5(d)(1):

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

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

ComEd observes that AG witness Mr. Effron (AG Ex. 2.0 at 11–14) advocates using an "average rate base" calculated by deriving the mean value of the rate base during the year instead of the year-end rate base specified in ComEd's rate formula. The AG is proposing that the EIMA approved year-end capital structure ratios be applied to an average rate base balance, which ComEd maintains created a mismatch

when calculating ComEd's earned ROE. In contrast, according to ComEd, there is no average rate base in the approved formula, and the formula does not use the prior year's rate base as an input. ComEd submits that the AG is not raising an issue about the updated year-end rate base, its prudence, or its reasonableness. Rather, ComEd argues that the AG is advocating a different way of calculating when and to what extent the ROE Collar is triggered than is provided by the approved rate formula. ComEd concludes that the AG's position is inconsistent with the approved formula and must, therefore, be rejected as beyond the scope of this proceeding per Section 16-108.5(d)(1). ComEd Init. Br. at 5-8, 68.

ComEd submitted testimony that its year-end capital structure ratios are calculated using year-end common equity balances and year-end debt balances as shown on Sch FR D-1 – Cost of Capital Computation (“Sch FR D-1”), lines 5-6. By adding these two balances and dividing each by the total, the formula shows that ComEd's sources of financing its operations are made up of 45.28% equity and 54.72% debt. Earned ROE is defined as operating income divided by the amount of common equity used to fund rate base. The year-end capital structure ratios are used to allocate rate base by the amounts financed by debt and equity. This is necessary to calculate the interest costs related to rate base funded with debt, which typically has the effect of lowering net income. Subsequently, the earned ROE is calculated by dividing that resulting net income by the amount of rate base funded with common equity. ComEd Ex. 13.0 at 7.

ComEd asserts that the amounts of debt and equity on the financial statements at the end of the year may differ from the amounts carried throughout the year. Thus, a year-end capital structure may differ from an average capital structure. As ComEd sees it, the mismatching advocated by the AG creates an artificially inflated earned ROE, thus artificially creating the impression that ComEd's earnings were further outside the ROE Collar band than they actually were. ComEd Init. Br. at 69.

ComEd submits that the AG's and CCI's argument that an average rate base should be utilized for purposes of making the ROE Collar calculation is contrary to law. ComEd notes that the legislature explicitly enacted Public Act 98-0015 to make clear that the original intent of EIMA was to establish rates and determine formula rate revenue requirements using final *year-end* values reflected in a utility's FERC Form 1. ComEd Reply Br. at 48. ComEd notes that Staff agrees that the proposal to utilize average rate base for purposes of the ROE collar calculation is improper and inconsistent with EIMA. Staff Init. Br. at 55-56. ComEd points to Staff's observation that a “year-end rate base is the only rate base specifically prescribed anywhere in Section 16-108.5 of the Act” and concurs with Staff's view that it would not be consistent with EIMA to calculate the ROE collar using anything other than a year-end rate base. *Id.* at 56.

Section 16-108.5(c)(5) provides, in part, as follows:

If the participating utility's earned rate of return on common equity related to the provision of delivery services for the prior rate year (calculated using

costs and capital structure approved by the Commission as provided in subparagraph (2) of this subsection (c), consistent with this Section, in accordance with Commission rules and orders ...) is more than 50 basis points less than the return on common equity calculated pursuant to paragraph (3) of this subsection (c) ... then the participating utility shall apply a charge through the performance-based formula rate that reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points less than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) ... for the prior rate year, adjusted for taxes.

220 ILCS 5/16-108.5(c)(5) (emphasis added). ComEd asserts that although the words “year-end” do not literally appear within the ROE Collar language in Section 16-108.5(c)(5) of the Act, they are incorporated therein by reference through the language requiring the earned rate of return on common equity to be calculated “consistent with ... Section [16-108.5]” *Id.*

ComEd observes that Section 16-108.5 repeatedly refers to use of a year-end rate base. Section 16-108.5(c)(2) requires that the formula rate “[r]eflect the utility's actual year-end capital structure for the applicable calendar year” *Id.* at (c)(2) (emphasis added). Section 16-108.5(d)(1) provides that the reconciliation and reconciliation revenue requirement shall be determined using a year-end rate base:

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

Id. at (d)(1) (emphasis added). Subsection (d)(1) further specifies that the intent of the reconciliation is to reconcile the “revenue requirement reflected in rates for each calendar year ... with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.” *Id.* (emphasis added). ComEd submits that the ROE collar calculation would not be consistent with Section 16-108.5 if it were based on anything other than a year-end rate base, which, as noted by Staff, “is the only rate base specifically prescribed anywhere in Section 16-108.5 of the Act.” ComEd Reply Br. at 48-50.

ComEd also notes that the following language from House Resolution 1157 and Senate Resolution 821 was incorporated by reference in Public Act 98-0015, and contends that the legislature made absolutely clear by this language that its intent was that nothing other than a year-end rate base may be used with respect to EIMA:

WHEREAS, The Energy Infrastructure Modernization Act also provides that the final *year-end* cost data filed in FERC Form 1 should generally be used to determine rates; and

WHEREAS, No statutory authority was given to the Illinois Commerce Commission to set rate base and capital structure using average numbers that do not represent final *year-end* values reflected in the FERC Form 1, and the Illinois Commerce Commission's use of such average is contrary to the statute;

RESOLVED ... that we express serious concerns that the Illinois Commerce Commission Order, entered on May 29, 2012 in Commission Docket No. 11-0721, fails to reflect the statutory directives and the intent of the Illinois General Assembly by: ... (3) determining rate base and capital structure using an average, rather than the *year-end* amounts as reflected in FERC Form 1.

Senate Resolution 821, 97th General Assembly, at 3, 4-5; House Resolution 1157, 97th General Assembly, at 3, 4-5; see *also* 220 ILCS 5/16-108.5(k).

ComEd concludes that the AG's and CCI's argument that there is no statutory requirement to use year-end rate base in performing the ROE collar calculation under EIMA is contrary to law and must be rejected in view of the clear statutory language and the specific legislative pronouncements to the contrary. ComEd also submits that the AG's and CCI's proposal would undermine the legislature's intent and clearly defined twin goals of ensuring investment to update and modernize the electric grid for the benefit of customers, and allowing a participating utility which commits to make such investments to recover its actual prudent and reasonable costs based on a revenue requirement determined using a year-end rate base as reflected in its FERC Form 1. ComEd further finds the AG's and CCI's proposal unreasonable in that it suggests the legislature required use of a year-end rate base methodology to calculate the revenue requirements to be included in rates and utilized for reconciliations, only to undo and undermine that requirement by requiring an ROE collar adjustment each year that would be based on an average rather than a final year-end rate base. The AG's argument on this issue is obviously contrary to law, and it must be rejected.

Staff and Intervenor's Position

Commission Analysis and Conclusion

As the Commission concluded in Section III.A. of this Order, the proposal to consider and change the structure and protocols of ComEd's Commission-approved formula rate related to the ROE Collar calculation are beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding.

Alternative Commission Analysis And Conclusion

The Commission concurs with Staff and ComEd that the AG's and CCI's proposal to use an average rate base rather than a year-end rate base in calculating the ROE Collar adjustment is inconsistent with and contrary to EIMA. As Staff noted, a year-end rate base "is the only rate base specifically prescribed anywhere in Section 16-108.5 of the Act." Further, as ComEd observes, Section 16-108.5(c)(5) provides for the ROE Collar calculation to be consistent with Section 16-108.5, and Section 16-108.5 specifically requires use of a year-end rate base in multiple contexts. Further, as ComEd notes, the legislature made clear in giving effect to House Resolution 1157 and Senate Resolution 821 through Public Act 98-0015 that the intent of EIMA was to provide for the general use of final *year-end* cost data to determine rates, and no authority was provided under EIMA that set rate base using average numbers that do not represent final *year-end* values reflected in a utility's FERC Form 1. Accordingly, the Commission rejects the AG's and CCI's proposal to use an average rate base rather than a year-end rate base in calculating the ROE Collar adjustment.

IX. REVENUES

A. Overview

There are few contested Revenue issues. ComEd has sustained its position with respect to these issues.

B. Potentially Uncontested Issues

1. Allocation of PORCB LPCs to Delivery Services

ComEd accepted the AG's proposal to allocate 100% of late payment charges associated with ComEd's "PORCB" (Purchase of Receivables and Consolidated Billing) program to delivery services. *E.g.*, ComEd Ex. 14.0 at 27; ComEd Ex. 14.02, WP 10, line 5. Staff agrees. Staff Ex. 9.0 at 8; *see also* ComEd Ex. 18.0 CORR. at 13; Fruehe, Tr. at 122. Thus, this subject is uncontested. The AG proposal is approved.

2. Other Revenues

ComEd's applicable Miscellaneous Revenues, also referred to as Other Revenues, of \$129,272,000, have been incorporated in calculating ComEd's proposed 2014 Reconciliation and Rate Year Net Revenue Requirements. *E.g.*, ComEd Ex. 14.01, Sch FR A-1, line 22; Sch FR A-1 REC, line 22; App 10. This figure includes ComEd's acceptance of the AG's proposal to allocate 100% of late payment charges associated with ComEd's PORCB program to delivery services. *E.g.*, ComEd Ex. 14.0 at 27; ComEd Ex. 14.02, WP 10, line 5. The Commission adopts the Miscellaneous Revenues figure of \$129,272,000[, subject to its determination of the issue of late payment revenues related to transmission discussed in Section IX.C.1 of this Order].

3. Other

There are no other issues in this category.

C. Potentially Contested Issues

1. Late Payment Revenues related to Transmission

ComEd's Position

ComEd proposes to treat the late payment charge revenues associated with transmission service in the same manner approved by the Commission in ComEd's 2010 "Article IX" rate case, in the 2011 formula rate case, and in the 2012 formula rate case. *E.g.*, Staff Ex. 9.0 at 6. The AG successfully proposed that treatment in ComEd's 2010 rate case. *Commonwealth Edison Co.*, ICC Docket No. 10-0467 (Order, May 24, 2011) at 303-06. In fact, a similar split of these revenues between transmission and distribution rates also was used in ComEd's 2005 and 2007 "Article IX" rate cases. AG Ex. 1.4 at Response b. Staff also supports ComEd's proposal. Staff Ex. 6.0 at 7-8.

In contrast, when the AG proposed to allocate these revenues to distribution rates in ComEd's 2011 rate case, the Commission rejected that proposal. *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) at 73.

The AG once again proposes to reduce distribution rates based on late payment charge revenues related to ComEd's transmission service, even though ComEd credits those revenues to customers in the transmission rate. CCI now supports the AG's proposal. The Commission rejected the very same AG proposal before, as noted above, and should do so again here.

Both Staff and ComEd agree that the Commission should once again reject the AG proposal here because customers already are credited fully with the late payment charges revenues associated with transmission service, and thus crediting them again in distribution rates for the portion already credited in transmission rates would improperly count that fraction twice. ComEd Ex. 14.0 at 28; Staff Ex. 9.0 at 7-8; ComEd Ex. 18.0 CORR. at 13-14. Accordingly, the AG proposal should be rejected.

The AG and CCI offer a series of mistaken and irrelevant responses, none of which justifies their attempt to double-count these revenues. First, they contend that the FERC did not order that the transmission service late payment charges revenues be credited to customers in transmission rates. *E.g.*, AG Init. Br. at 59; see *also* CCI Init. Br. at 42. That is true, but it is irrelevant, for it does not alter the fact that these revenues nonetheless are credited to customers in transmission rates, and thus it cannot alter the fact that double-counting these revenues would be wrong.

Second, the AG and CCI note that the late payment charges in question are charged under a page of ComEd's General Terms and Conditions (Ill. C.C. No. 10, 1st

Revised Sheet No. 207) in its ICC-approved Schedule of Rates. *E.g.*, AG Init. Br. at 59 and fn. 37; see *also* CCI Init. Br. at 43. That is true, but it is another red herring, because it does not alter that the revenues in question are associated with transmission service, nor does it alter that double-counting these revenues is wrong.

Third, the AG speculates that Retail Electric Suppliers (“RESs”) might not pass through to their supply customers the revenues that ComEd credits to those customers in relation to transmission service. *E.g.*, AG Init. Br. at 60. The AG’s point relates only to a portion of the revenues, which the AG has not quantified (see AG Init. Br. at 60, fn. 40), but, even more importantly, this AG argument, too, ultimately does not justify the AG-CCI position. ComEd already credits to customers the revenues in question. That is undisputed. If RESs do not pass through those credits to their supply customers, that is not a reason to make ComEd credit the very same revenues a second time.

Fourth, the AG and CCI state that Ameren credits 100% of late payment charge revenues to distribution rates, and that there is no evidence explaining why ComEd should treat them differently. *E.g.*, AG Init. Br. at 61; see *also* CCI Init. Br. at 43. That is no answer to the fact that ComEd already credits the revenues in question. Furthermore, ComEd has shown that the revenues relate to transmission service and that historically they have been split as ComEd proposes in this case, as discussed above. The AG and CCI do not address whether such facts were shown in the Ameren proceedings. Not only that, but the method that the AG and CCI are attacking here is the method that the AG itself successfully proposed in ComEd’s 2010 rate case, as stated above. The AG and CCI cannot accurately (or credibly) contend that this method is unsupported. In contrast, Staff agrees with ComEd that it is the AG that has failed to present sufficient evidence for a change in method. Staff Init. Br. at 58.

Finally, the AG and CCI never come to grips with the fact that the initial rate year revenue requirement starting point, and the reconciliation revenue requirement, in this case each involve 2012. Neither the AG nor CCI does or could contend that ComEd did not credit the revenues in question to customers in 2012. Nor do they present any mechanism that would avoid a double-counting of the revenues in 2014 under their proposal. The facts are plain that the AG and CCI are trying to manufacture a windfall for customers at ComEd’s expense, contrary to the AG’s own position in the 2010 rate case, and contrary to the methods used in ComEd’s last five rate cases / formula rate updates. The AG/CCI position must be rejected.

Staff and Intervenor Positions

Commission Analysis and Conclusion

The Commission approves ComEd’s proposed allocation of late payment revenues related to transmission. That approach credits customers with these revenues through the transmission rate, and it is the method used in ComEd’s last five “Article IX” and formula rate cases. The AG itself in ComEd’s 2010 rate case

successfully proposed the method used by ComEd. The allocation is reasonable given the relation between the revenues and transmission service. The AG's proposal unreasonably would count as a credit against distribution rates revenues that already are credited to customers through the transmission rate. The AG proposal is not approved.

2. Billing Determinants

ComEd's Position

The Commission should calculate ComEd's rates using actual 2012 historical weather normalized billing determinants. ComEd points out that EIMA specifies that such billing determinants be used and that no other billing determinants are authorized or mentioned in EIMA. 220 ILCS 5/16-108.5(c)(4)(H). Notably, Staff does not dispute the fact that historical weather-normalized billing determinants are the *only* billing determinants specified in the law. Staff Reply Br. at 31; 220 ILCS 5/16-108.5(c)(4)(H); Johnson, Tr. at 211.

Staff and the AG (supported in briefing by CCI) recommend that the Commission should nonetheless use non-historical projections of the number of customers as a billing determinant in lieu of the historical weather-normalized number of customers. Staff Init. Br. at 58-62; AG Init. Br. at 63-68; CCI Init. Br. at 43-45. This is an obvious departure from the historical billing determinants that ComEd contends is inconsistent with EIMA. ComEd acknowledges that such departures have been approved by the Commission in past rate formula decisions. ComEd notes that those decisions are on appeal, but for the purposes of this case also argues (and emphasizes) that the Commission found, based on the records in those cases, that a departure from EIMA's specified historical billing determinants was required, while in this case the record cannot justify any such departure, even if the law permitted it in theory. ComEd Reply Br. at 55-56. This case addresses 2012 costs and must be decided based on the record in this case. The evidence in this cases supports the use of 2012 billing determinants, as the law says. See ComEd Init. Br. at 73.

ComEd contends that use of appropriate billing determinants is critical to a utility's ability to recover the revenue requirement the Commission finds to be just and reasonable, and notes that revenues lost through inflated billing determinants will never be offset by, or recovered through, the reconciliation process. ComEd Init. Br. at 71-2.

The rationale for rejecting here the statutory historical billing determinants rests on a deeply flawed syllogism: because *pro forma* plant additions for new business under traditional ratemaking have been found to produce permanent revenue requirement differences requiring a corresponding adjustment to billing determinants for new business plant additions, use of projected plant additions under EIMA similarly produces permanent revenue requirement differences requiring use of adjusted billing determinants. Johnson, Tr. at 207-209; ComEd Ex. 2.0 REV. at 34. ComEd maintains that this inferred conclusion is invalid. ComEd states that the Company is not

increasing any permanent revenue requirement – or its total recoveries – by virtue of projected plant additions.

The **only** projected plant additions affecting ComEd's revenue requirement affect **only** the Initial Rate Year Revenue Requirements, which are temporary and subject to subsequent full reconciliation, with interest, to a revenue requirement with no projected plant additions at all (the actual costs of the Rate Year). ComEd Ex. 2.0 REV. at 34-35, 37; Johnson, Tr. at 205. The Initial Revenue Requirements and the plant additions have **no effect** on ComEd's final, actual cost revenue requirement for reconciliation purposes or ComEd's ultimate reconciled costs. ComEd Ex. 2.0 REV. at 36-37. Staff's attempt to analogize this erroneous conclusion to the logic behind the "new business" adjustment previously used by the Commission when *pro forma* future plant additions were added to a test year rate base is without merit. Johnson, Tr. at 208. Unlike the projected plant that ComEd must include in Initial Rate Year Revenue Requirements, test year *pro forma* plant additions had real, significant, and permanent dollar impacts, and there was no offset and reconciliation as will be had in this case. ComEd Ex. 2.0 REV. at 37.

ComEd further states that the use of historical billing determinants matches the costs being recovered – ComEd's actual and reconciled costs for Rate Year 2012. ComEd Ex. 13.0 at 33-34, 27. Additionally, ComEd explains that outside of reconciliation, the largest share of the 2014 Rate Year Initial Revenue Requirement is based purely on 2012 costs, which include the 2012 operating costs and ComEd's 2012 year-end rate base. See ComEd Init. Br. at 75. ComEd explains that only a small portion of that rate base, and an even smaller portion of the temporary revenue requirement (about 0.6%), can be attributed to projected plant additions for 2013. *Id.* ComEd therefore asserts that if the Commission is concerned about "matching" billing determinant data with the costs underlying the temporary Initial Revenue Requirement, the actual, historical 2012 billing determinants are a far better "match." *Id.*

ComEd also points out that neither Staff nor the AG propose a consistent adjustment. Both of the latter argue "matching" as a rationale to using 2013 data *only when the data is favorable* to their proposal – i.e., when the data relates to the number of customers. See ComEd Init. Br. at 75. ComEd states that Staff and the AG do not argue for "matching" with respect to usage when it cuts against them. *Id.* If the 2013 data supposedly "matches" with the Initial Rate Revenue Requirement, that principle should apply to *all* data. *Id.*

As ComEd acknowledged, Staff takes the position that the Commission's decisions in Docket Nos. 11-0721 and 12-0321 dispose of this billing determinants issue as a matter of law. See Staff Init. Br. at 58-62. ComEd points out that this position is not consistent with the Orders. Neither the Order in Docket No. 11-0721 or in Docket No. 12-0321 rejects historical billing determinants as a matter of law. Rather, each adopted non-historical customer accounts based on the records in those cases. ComEd Ex. 17.0 at 23-24. Moreover, if these decisions were made as a matter of law, the Commission could not explain why Ameren's billing determinants are set

inconsistently and could not explain how it could conclude that two adjacent sections of EIMA passed by the same General Assembly are inherently contradictory. ComEd Ex. 2.0 REV. at 33-34. Staff cannot sensibly argue that the General Assembly's express specification of historical billing determinants can be overridden because the same General Assembly later specified that projected plant be used in the projected revenue requirements. The General Assembly saw no conflict between historical billing determinants and this extremely limited and temporary use of projected plant. ComEd Init. Br. at 76.

Staff's unsupported claim that billing determinants must be adjusted here because the Commission accepted billing determinant adjustments in ComEd's previous formula rate cases is inadequate and devoid of evidence to demonstrate why such adjustments are warranted here. ComEd provided relevant factual evidence showing why Staff's proposal is unfair and unlawful given applicable facts; Staff has failed to address factual issues and evidence presented by ComEd, and instead focuses on prior Commission decisions, which is inconsistent with EIMA's directives. ComEd also argued, in the alternative, that Staff and Intervenors' proposal to mix historical and projected billing determinants was unjust and unreasonable.

The AG's Initial Brief candidly acknowledges that, under EIMA, the projected plant additions included in the Initial Revenue Requirement for a Rate Year ultimately have no effect on the costs included in rates. The AG claims that this fact does not invalidate the rationale for the proposed adjustment, but ComEd replies that such argument defies reason. By inflating the billing determinants, the use of "projected" data creates a permanent loss of revenue that ComEd can never recover, through reconciliation or otherwise. ComEd claims this argument ignores the rationale for adjusting billing determinants for pro forma plant additions for new business under traditional ratemaking, and further ignores that the legislature saw no inherent conflict as it passed legislation that required use of both historical billing determinants and projected plant additions. ComEd concludes that there is no "just or reasonable" basis to engineer a permanent under-recovery of ComEd's Commission-approved revenue requirement based on the existence of a wholly temporary use of projected plant data that has *no* ultimate impact on ComEd's revenues or customers. ComEd Reply Br. at 56-8.

Staff and Intervenor Positions

Commission Analysis and Conclusion

After a thorough review of the record in the present case, the Commission cannot find evidence warranting a departure for this year from the use of historical weather normalized billing determinants. See, e.g., 220 ILCS 5/16-108.5(c)(4)(H). While we have held that we have the authority to depart where the evidence is compelling, it is not compelling here. The sole rationale for refusing to use the billing determinants specified by the General Assembly is the argument that ComEd uses projected plant

additions in its Initial Revenue Requirement. But, as has been shown by ComEd and acknowledged by Staff and Intervenor, that limited use of projected data *has no ultimate effect* on ComEd's revenues and rates. Whatever effect the projection has, it is completely offset in the reconciliation. In contrast, the Commission also notes that Staff and the AG's proposals to use non-historical billing determinants would *permanently* deny ComEd revenues based on plant additions that have no actual financial effect. Moreover, EIMA simultaneously provided for use of historical billing determinants and projected plant additions. Thus, that fact alone (i.e., use of projected plant additions for an Initial Revenue Requirement) cannot justify departing from the specified use of historical billing determinants. As such, the proposed adjustments by the Staff and AG cannot be justified – based on the record in this case – and the Commission declines to adopt them.

3. Other

There are no other contested Revenues issues.

X. COST OF SERVICE AND RATE DESIGN

A. Overview

Cost of service issues in formula rate proceedings are traditionally uncontested. ComEd has fully supported all of the cost of service issues in this docket, and neither Staff nor any intervenor has disagreed. Rate design issues are not at issue in this formula rate update case – instead, they are being addressed in the rate design tariff that was filed on April 30, 2013 in Docket No. 13-0387.

B. Potentially Uncontested Issues

1. Embedded Cost of Service Study

ComEd submitted its updated Embedded Cost of Service Study (“ECOSS”), utilizing the uncontested methodology that was relied upon in Docket Nos. 11-0721 and 12-0321. ComEd's updated ECOSS reflects the updated input values that reflect the costs and data for calendar year 2012 as well as the 2014 Initial Rate Year Net Revenue Requirement. ComEd Ex. 10.0 REV at 4-5; ComEd Ex. 10.01 REV. ComEd's updated ECOSS is uncontested. Therefore, the Commission finds that ComEd's updated ECOSS reasonably allocates costs among customer classes and is approved.

2. Distribution System Loss Factor Study

ComEd prepared and submitted its Distribution System Loss (“DSL”) Study in Docket No. 13-0387 pursuant to the Commission's Order in the 2012 Formula Rate Update Case. ComEd Ex. 9.0 at 4-5; *see also Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) at 82. Neither Staff nor any intervenor has contested the updated DSL study. Therefore, for the purposes of this formula rate update proceeding, the Commission approves ComEd's DSL Study.

3. Rider PE - Purchased Electricity

The working capital methodology and W&S Allocator used to establish ComEd's Rider PE should be approved. The parties agree that the W&S Allocator applicable to procurement should be used in the determination of rates under Rider PE, and mutually acknowledge that because the W&S Allocator changes every year, the calculation of the allocation applicable to procurement may change yearly. ComEd Ex. 18.0 CORR. at 14-15.

ComEd explained that the W&S Allocator should also be used in the development of the Miscellaneous Procurement Components Charge determined under Rate BESH, to be applicable beginning with the January 2014 monthly billing period. ComEd Ex. 18.0 CORR. at 15. Neither Staff nor any intervenor has contested this issue.

Staff asserted that there had been confusion between Staff and ComEd regarding the interpretation of certain language contained within Rider PE. Staff Ex. 9.0 at 9-10. To address this concern, ComEd and Staff have agreed to work collaboratively to resolve any issues related to the interpretation of Rider PE (and Rate BESH), and have agreed to file any proposed tariff revisions as a separate 45-day filing. ComEd Ex. 18.0 CORR. at 15-16; ComEd Ex. 26, at Staff's Response to Data Request ComEd→8.03.

The Commission approves the working capital methodology and W&S Allocator used to establish ComEd's Rider PE. Therefore, the Commission approves the following language to be incorporated into this Order:

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

ComEd Ex. 18.0 CORR. at 15; ComEd Ex. 26, at Staff Response to Data Request ComEd→Staff 8.02.

In addition, the Commission appreciates the parties' willingness to work in a collaborative manner, and encourages the parties to file any proposed tariff revisions as a separate 45-day filing.

XI. OTHER

A. Overview

The uncontested issues in this section have been agreed to by the parties, and should be approved. With respect to the remaining contested issue contained in this Section XI, ComEd has sustained its position.

B. Potentially Uncontested Issues

1. Staff investigation into BSC

ComEd's Position

In the Order in Docket No. 11-0721, the Commission directed Staff to investigate the relationship between BSC and ComEd in a subsequent formula rate update proceeding. In furtherance of that investigation, ComEd states that it has had discussions with Staff on a number of occasions and has responded to numerous informal data requests propounded by Staff. ComEd Init. Br. at 80. ComEd also states that it routinely provides reports of BSC costs to Staff throughout the year. *Id.*

As a result of this investigation, Staff made three recommendations in the current docket. Staff Init. Br. at 64. ComEd states that it has reached an agreement with Staff as to how to implement each of these recommendations and has reached consensus on the language that they propose to incorporate these recommendations into this Order. ComEd Init. Br. at 80.

Specifically, ComEd states that it agreed (1) to file certain information and schedules in future formula rate update cases; (2) to provide a copy of the Modified Massachusetts Formula ("MMF") documentation procedures to the Commission's Manager of Accounting upon completion (but in no event later than March 1, 2014); and (3) that if BSC were to request a filing extension for its FERC Form 60 that would impact ComEd's formula rate proceeding, it would notify Staff immediately and offer a plan on how to reflect potential changes (based on the facts and circumstances of the extension). *Id.* at 80-81.

Commission Analysis & Conclusion

In its direct case in all future formula rate update cases, ComEd shall file a set of schedules showing (1) total BSC amounts charged on ComEd's ledger by FERC Account bifurcated between direct and indirect charges; (2) a listing of BSC amounts charged on ComEd's ledger by the Modified Massachusetts Formula ("MMF") allocator as well as the top five BSC allocators other than MMF; (3) BSC amounts charged on ComEd's ledger that are included in the distribution revenue requirement operating expenses with an estimated categorization between amounts (i) directly charged, (ii) indirectly charged via the MMF, and (iii) indirectly charged via a non-MMF factor; and (4) BSC amounts charged on ComEd's ledger that are included in the distribution revenue requirement rate base with an estimated categorization between amounts (i) directly charged, (ii) indirectly charged via the MMF, and (iii) indirectly charged via a non-MMF factor. The data in these schedules should reflect the prior year actual costs

as reflected in the revenue requirement filed in the direct case. Examples of these schedules are included in Staff direct testimony in this proceeding (Staff Ex. 4.0 Attachments A and B). If BSC data changes as a result of the final BSC FERC Form 60 filing, ComEd shall file updated schedules within 5 business days of the BSC FERC Form 60 filing.

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

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

2. Reporting Requirements

a. EIMA Investments

ComEd presented evidence in its case in chief identifying separately its EIMA-related expenditures included in the Rate Year 2012 Reconciliation Revenue Requirement and in the projected plant additions included only in the Initial Rate Year 2014 Revenue Requirement. ComEd Ex. 11.0 CORR at 3-7. This data meets the Commission's requirements as set forth in Docket No. 12-0321. *Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) at 98. Neither Staff nor any intervenor disagreed. Therefore, the Commission approves ComEd's reporting of EIMA Investments.

b. Reconciliation Year Plant Additions

In direct testimony, Staff recommended that ComEd (1) beginning with the next formula rate update, identify by category cumulative actual investments made under Section 16-108.5(b)(1) of the Act in addition to the annual actual investments for each year, and (2) in the current proceeding, file an investment summary by category of cumulative actual and projected investments for each of the 10 years of EIMA. Staff Ex. 2.0 CORR. at 5. ComEd accepted Staff's recommendations, and has worked with Staff to develop agreed reporting templates. ComEd Ex. 12.0 CORR. at 10; ComEd Ex. 16.0 at 8. No other intervenor contested this issue. Therefore, the Commission approves ComEd's reporting of Reconciliation Plant Year Additions.

c. Contributions to Energy Low-Income and Support Programs

ComEd presented sufficient evidence demonstrating that it met its commitment to make certain contributions to low-income and other energy assistance programs, as required by EIMA. This evidence was presented both in testimony and in the Annual Customer Assistance Report for 2012 as filed by ComEd on February 20, 2013. ComEd Ex. 1.0 REV. at 20; ComEd Ex. 6.01. No party contests that ComEd has met this commitment. Therefore, the Commission approves ComEd's reporting of Contributions to Energy Low-Income and Support Programs.

C. Potentially Contested Issues

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

ComEd's Position

ComEd's rate formula was first approved by the Commission in Docket No. 11-0721. While this formula has not been substantively altered since its establishment, it was modified pursuant to the direction of the General Assembly in light of PA 98-0015, which became effect on May 22, 2013. PA 98-0015 required that specific corrections be made to the formula and revenue requirements established under the prior uncorrected formula. ComEd Ex. 12.0 CORR. at 4. The Rate Formula template defines the process of calculating each revenue requirement and specifies how each input affects it. ComEd maintains that because the Commission-approved Rate Formula must be used to calculate the final revenue requirement, the template must be used by all parties when presenting and analyzing proposed revenue requirement adjustments or disallowances. ComEd Ex. 13.0 at 4-5.

ComEd emphasizes that this docket is not designed to challenge or revise the Rate Formula template, but is instead intended to reflect the new and updated data used to populate that formula. ComEd Init. Br. at 84. According to ComEd, the use of the formula rate template is the only way to determine the actual impact of a proposed disallowance, as changes to one part of the formula calculation often results in changes to other parts of the formula. ComEd Ex. 12.0 CORR. at 6.

Staff makes proposals that are incompatible with and cannot be adopted without changing the substance of the Commission-approved formula. These proposals request a deviation from the rate formula expressly approved by the Commission, and request the Commission to find that "the 'traditional' revenue requirement schedules should continue to be used for both the analysis of adjustments and disallowances and for the presentation of the Commission's final revenue requirements." Staff Init. Br. at 67. Staff bases this request on its claim that the Commission-approved formula rate template "does not provide for the input of adjustments into the formula rate revenue requirement calculations." *Id.* at 67-68.

ComEd explains that these concerns are unfounded; not only is the Rate Formula template the only way to determine the actual impact of a proposed adjustment or disallowance, the template is more transparent and less subject to error than the traditional schedules proposed by Staff. ComEd Reply Br. at 59-60. ComEd further explains that it has established that the values resulting from the rate formula are mathematically correct, and that the formula is functioning as intended. *Id.* at 60. Moreover, ComEd has committed to transparency with regards to the rate formula, and stated that it will provide a clear list of adjustments to all concerned parties. *Id.* Among other things, this list would identify the agreed adjustments, the source of the adjustments, and where the adjustments would be located within the formula rate itself. *Id.*; ComEd Ex. 14.07.

Lastly, ComEd points to the fact that EIMA ratemaking is currently in its third year, and that the Rate Formula template is neither new nor untested. ComEd Reply Br. at 60. The rate formula is well-established and effective, and while parties have been given two years to adjust to the template, they cannot continue to disregard the Rate Formula template that has been specifically approved by this Commission.

Staff and Intervenor's Positions

Commission Analysis and Conclusions

The Commission concurs with ComEd that the Rate Formula template must be used by all parties when analyzing proposed adjustments and disallowances. Staff's proposals contradict the Commission's Order in Docket No. 11-0721, which approved ComEd's rate formula, as well as PA 98-0015. Moreover, in Docket No. 13-0386, the Commission approved ComEd's revised formula rate tariff sheets, the resulting complete rate formula template populated with the updated data called for by PA 98-0015, and certain informational sheets.

We disagree with Staff's claim that the formula rate schedules are in their infancy; Staff has had adequate time adjust to the structure and requirements of the Rate Formula template. In addition, we note that although the formula rate schedules do not reflect adjustments and disallowances as separate line items, as the "traditional" schedules do, ComEd's commitment to transparency and provision of a chart tracking such agreed adjustments and disallowances remedies this concern.

For the above reasons, the Commission rejects Staff's proposed reliance on "traditional" schedules, and requires all parties to rely on the Rate Formula template when analyzing proposed revenue requirement adjustments or disallowances.

XII. CONCLUSION

For the reasons stated herein, the Commission approves Commonwealth Edison Company's annual formula rate update and revenue requirement reconciliation,

including the ROE Collar adjustment relating to 2012, to be applicable to delivery services provided by ComEd beginning on the first day of its January 2014 billing period, subject to ComEd's final compliance filing and the rulings in this Order.

XIII. FINDINGS AND ORDERING PARAGRAPHS

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;
- (4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is \$6,389,262,000 for the 2012 Reconciliation Year Revenue Requirement and \$6,702,419,000 for the Initial 2014 Rate Year Revenue Requirement;
- (5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 6.94% for both the 2012 Reconciliation Revenue Requirement and the 2014 Rate Year Initial Revenue Requirement, this rate of return incorporating a return on common equity of 8.72%, on long-term debt of 5.39%, and on short term debt of 0.50%;
- (6) the rates of return set forth in Finding (5) result in tariffed operating revenues of \$2,361,814,000 and net annual operating income of \$465,148,000 (both figures reflecting the reconciliation and ROE Collar adjustment);
- (7) the Commission, based on ComEd's proposed original cost of plant in service as of December 31, 2012, before adjustments, of \$15,654,123,000, and reflecting the Commission's determination adjusting that figure, unconditionally approves \$15,654,123,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2012;
- (8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual

tariffed revenues of \$2,361,814,000, which represent an increase of \$353,017,000 over total revenues established in Docket 12-0321 for the 2013 Rate Year Net Revenue Requirement); such revenues in addition to other revenues will provide ComEd with an opportunity to earn the rates of return set forth in Finding (5);

- (9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;
- (10) new charges authorized by this Order shall become effective beginning with the first day of the January 2014 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated informational sheets to be effective with the first day of the January 2014 monthly billing period; Commonwealth Edison Company shall provide supporting work papers to the Staff of the Commission concurrently with such informational compliance filing;
- (11) that the approved 2014 Rate Year Initial Revenue Requirement includes \$244,597,002 of projected plant additions expected to be placed in service in 2013 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	\$126,506,245
Training facility construction or upgrade programs (construction of training facilities program)	\$0
Wood pole inspection, treatment, and replacement	20,885,330
Reducing the susceptibility of storm-related damage (storm hardening program)	<u>19,729,195</u>
Total electric system upgrades, modernization programs, and training facilities	<u>\$167,120,770</u>

Additional smart meters	\$ 0
Distribution automation and associated cyber secure data communication network	61,718,680
Substation micro-processor relay upgrades	<u>15,757,552</u>
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	<u>\$77,476,232</u>
Total projected incremental 2013 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	<u>\$244,597,002</u>

- (12) that the approved Reconciliation Revenue Requirement for 2012 includes \$173,966,069 of plant additions placed in service in 2012 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. The detail of these actual plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	\$92,773,001
Training facility construction or upgrade programs (construction of training facilities program)	2,400,034
Wood pole inspection, treatment, and replacement	9,415,472
Reducing the susceptibility of storm-related damage (storm hardening program)	<u>24,578,469</u>
Total electric system upgrades, modernization programs, and training facilities	<u>\$129,166,976</u>
Additional smart meters	\$68,030
Distribution automation and associated cyber secure data communication network	37,775,047
Substation micro-processor relay upgrades	<u>6,956,016</u>
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	<u>\$44,799,093</u>
Total actual incremental 2012 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	<u>\$173,966,069</u>

IT IS THEREFORE ORDERED that the updated charges in ComEd's initial filing shall not go into effect.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file a compliance filing in accordance with Findings (8), (9), and (10) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said compliance filing, with updated charges to be effective with the first day of the January 2014 monthly billing period; work papers supporting the compliance filing shall be provided to the Staff of the Commission concurrently with the filing of said compliance filing.

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding 8 above reflects \$173,966,069 of plant additions placed in service in 2012 by ComEd, and \$244,597,002 of projected plant additions expected to be placed in service in 2013 by ComEd, in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Act.

IT IS FURTHER ORDERED that Commonwealth Edison Company's updated Embedded Cost of Service Study is accepted as a basis for setting rates in this proceeding.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain outstanding are hereby disposed of consistent with the conclusions herein.

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

By Order of the Commission this ____ day of December, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman