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

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

**BRIEF ON EXCEPTIONS OF REACT**

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),<sup>1</sup> by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission") respectfully submits this Brief on Exceptions in the above-captioned proceeding regarding revenue neutral tariff changes related to the rate design of Commonwealth Edison Company ("ComEd").<sup>2</sup> Attachment A to this Brief on Exceptions contains Proposed Replacement Language for the Proposed Order. The Evidentiary Hearings in the instant proceeding were highly informative, particularly regarding the lack of substantive analysis performed by some other parties, in comparison to the

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

<sup>2</sup> This Brief on Exceptions follows the Common Outline of Issues that was submitted to the Administrative Law Judges on October 2, 2013. Failure to address any particular outline issue in this Reply Brief is not intended as a waiver of the right to address such an issue in future filings and should not be interpreted as agreement with any other party on such an issue.

extensive independent analysis performed by REACT's expert witnesses. For the Commission's convenience, REACT attaches to this Brief on Exceptions four Attachments compiling admissions on subjects that are important to the case. For brevity, these Attachments do not contain every substantive admission that occurred at the Evidentiary Hearing, but are intended to convey a sense of the extent to which key points in REACT's case were largely uncontested or subject to admission by other parties. The relevant Attachments are:

- Attachment B - Admissions Regarding Cost Causation Principles;
- Attachment C - Admissions Regarding The Accuracy And Credibility Of REACT Witness Mr. Terhune's Analysis;
- Attachment D - Admissions Regarding The Rate Impacts Of ComEd's Proposed Cost of Service Studies; and
- Attachment E - Admissions Regarding The Feasibility Of REACT Witness Mr. Terhune's Proposed Cost Allocation Study.

## I.

### INTRODUCTION / STATEMENT OF THE CASE

The Proposed Order presents the Commission with a fundamental question about the application of cost causation principles:

What should be done when it is clear that certain customers groups are *not* using specific ComEd distribution facilities to receive their electricity, but are being charged **\$9 million a year** for those facilities?

The Proposed Order recommends that the Commission do nothing to correct that overcharge. Further, the Proposed Order declines even to recommend a statistically valid study to evaluate the extent to which those distribution facilities are used *by all customer classes*, even though ComEd has openly admitted that such a study is feasible. REACT respectfully requests that the Commission modify the Proposed Order to correct that basic error, as well as several others.

The Public Utilities Act ("Act") plainly requires the application of cost causation principles to rate design. Specifically, Section 1-102(d)(iii) of the Act requires the utilities to ensure:

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

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

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

Similarly, Section 16-108 of the Act states:

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

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

The Commission consistently has endorsed the application of such cost causation principles. For example, in the Commission's Final Order in the 2007 ComEd Rate Case, the Commission observed that:

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

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

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

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

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

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

Every party in this proceeding agreed that the Commission should apply cost causation principles in this proceeding. This was driven home at the Evidentiary Hearings, where every single witness questioned about cost causation principles confirmed that they should apply to the ComEd Embedded Cost of Service Study ("ECOSS") and the associated rate design. (*See* Attachment B, Admissions Regarding Cost Causation Principles; *see also* Tr. 44:15-45:2, 58:22-59:1, 62:4-12, 64:16-65:11, 68:6-10, 69:23-70:2 (ComEd witness Ms. Brinkman); 242:11-244:2 (ComEd witness Mr. Bjerning); 326:16-18 (ComEd witness Mr. O'Sheasy); 402:20-403:22 (ComEd witness Mr. Tenorio); 110:17-19,111:6-112:2 (Staff witness Mr. Rockrohr); 120:7-121:4, 122:21:123:13 (Staff witness Mr. Johnson); 291:8-12 (Kroger Co. witness Mr. Townsend); 301:8:24 (Commercial Group witness Mr. Chriss).)

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

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

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

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

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

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

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

Accordingly, it was uncontested in this proceeding that cost causation principles should apply to ComEd's cost of service studies and resulting rate design. Indeed, the Proposed Order itself repeatedly refers to cost causation principles to justify some of its conclusions. (*See, e.g.*, Proposed Order at 31 ("the Commission finds that performing a geographic cost study for the two Railroad customers is in accordance with cost causation principals [sic] and Metra's and CTA's recommendation is adopted."); *id.* at 36 ("Prior to this proceeding, the Commission directed ComEd 'to study, define, and delete from the costs assigned to the Railroad Class the costs that are associated with the 4kV facilities that are not used to serve the Railroad Class.' 2010 Rate Case Order at 191...The Commission finds, consistent with its express directive in Docket No. 10-0467, that costs for facilities at or below 4kV should be excluded from the

Railroad Class.")) The Proposed Order's reliance on cost causation principles for these other adjustments and studies makes its suggestion that the Commission decline to order any of the rate design modifications or studies proposed by REACT all the more puzzling.

The cost causation principles imposed by the Act and repeatedly endorsed by the Commission require that ComEd customers should not be charged for distribution facilities that they do not use. Similarly, if those customers only use certain facilities to a *de minimis* level, that too should be reflected in their electric rates. In order to apply cost causation principles, thereby ensuring that customers are not charged for facilities they do not use, it is first necessary to analyze which facilities are used by particular customer classes or subclasses. In previous cases, the Commission lacked the detailed analysis to appreciate which specific facilities were improperly assigned. REACT has performed such an analysis in this case, through three highly qualified expert witnesses, each of whom filed Direct and Rebuttal Testimony:

- Harry L. Terhune: Mr. Terhune is an electrical engineer, licensed professional engineer, independent consultant, and former 31-year employee of ComEd, where he ended his career as the Manager of ComEd's Transmission and Distribution Planning Department. Mr. Terhune testified on REACT's behalf in the 2010 ComEd Rate Case (ICC Docket No. 10-0467.) As the Commission recognized in that case, , Mr. Terhune has a deep and comprehensive understanding of ComEd's distribution system and has performed a detailed analysis. (*See, e.g.*, ICC Docket No. 10-0467, May 24, 2012 Final Order at 191; *see also generally* REACT Ex. 2.0-2.15; REACT Ex. 5.0-5.3; Tr. at 371-379; REACT Init. Br. at 4.) Mr. Terhune's expertise was shown in his written testimony and during his live testimony on cross-examination in this proceeding as he demonstrated -- based on ComEd-provided data -- what facilities are used and *not* used by the Extra

Large Load Delivery Class ("ELL class") and the High Voltage Over 10 MW subclass ("HV Over 10 MW class").<sup>3</sup> (*See id.*) In this proceeding, Mr. Terhune:

1. performed and presented a detailed engineering analysis of what distribution facilities are and are not used by the ELL and HV Over 10 MW classes;
  2. recommended a modification to the allocation of costs to those classes based on that study; and
  3. recommended a further Shared Distribution Lines Proportional Cost Assignment Study. (*See generally* REACT Ex. 2.0-2.15, REACT Ex. 5.0-5.3, Tr. at 368:9-379:12.)
- Bradley O. Fults: Mr. Fults is the Managing Principal of an energy consulting firm with over 25 years of experience and familiarity with large customer issues in the ComEd service territory. Mr. Fults has extensive experience analyzing cost impacts for the largest energy users associated with ComEd's rate design approaches. Mr. Fults testified on REACT's behalf in the 2007 ComEd Rate Case (ICC Docket No. 07-0566), the 2008 Special Investigation Proceeding (ICC Docket No. 08-0532), as well as the 2010 ComEd Rate Case. In this proceeding, Mr. Fults:
    1. analyzed the cost impacts associated with the various proposed rate design approaches, focusing both on current impacts and aggregated historic impacts;
    2. addressed currently-unresolved questions relating to charges from Unaccounted For Energy (which is related to, though apparently different from, ComEd's Distribution Loss Factor); and

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<sup>3</sup> In its filings in this case up to this point, REACT has referred to the Extra Large Load Delivery Class as the "ELLC." However, to conform to the terminology used in the Proposed Order, REACT now refers to the Extra Large Load Delivery Class as the "ELL."

3. explained the unfair burden imposed on the largest electricity customers from ComEd's method of recovering its Illinois Electricity Distribution Tax. (*See generally* REACT Ex. 1.0-1.9, REACT Ex. 4.0, Tr. at 360:19-368:4.)
- Jeffrey Merola: Mr. Merola is the Vice President of an energy consulting firm with over 15 years of experience related to retail and wholesale marketing of electric power and natural gas. An electrical engineer, Mr. Merola has extensive experience relating to the deregulated power industry throughout the United States. Mr. Merola testified on REACT's behalf in the 2007 ComEd Rate Case, the 2008 Special Investigation Proceeding, and the 2010 ComEd Rate Case. In this proceeding, Mr. Merola:
    1. analyzed ComEd's treatment of Customer Care Costs -- those costs that ComEd incurs to provide customer service to its delivery and supply customers;
    2. recommended modifications to ComEd's cost allocation approach to ensure that Customer Care Costs are appropriately allocated between ComEd's delivery function and supply function; and
    3. recommended that ComEd be required to appropriately track and analyze its Customer Care Costs to ensure that these costs are appropriately allocated between ComEd's delivery function and supply function in future proceedings. (*See generally* REACT Ex. 3.0-3.9, REACT Ex. 6.0-6.4.)

REACT's evidence in this proceeding demonstrates that ComEd's approach to rate design continues to violate the cost causation principles embraced by the Illinois General Assembly and the Commission. (*See generally* REACT Init. Br. at 20-44; REACT Reply Br. at 8-44.) Neither ComEd, Staff, nor any other party has offered any evidence to demonstrate that REACT's analyses were flawed or that the data upon which such analyses rely (which was provided by ComEd) were inaccurate. On the contrary, cross-examination revealed a consensus view that REACT's analysis constituted exactly the sort of refinement to the ECOSS that the

Commission called for in ComEd's last rate design case, and no witness raised any credible criticism of the actual, detailed analysis that REACT's experts performed. (*See generally* Attachment C, Admissions Regarding The Accuracy And Credibility Of REACT Witness Mr. Terhune's Analysis; *see also* Tr. at 126:20-127:12 (Staff witness Mr. Johnson); 250:24-251:15, 253:9-14 (ComEd witness Mr. Bjerning); 328:11-21 (ComEd witness Mr. O'Sheasy); 292:8-293:11; (Kroger Co. witness Mr. Townsend); 305:14-306:7 (Commercial Group witness Mr. Chriss).) To be clear, while certain parties expressed a conclusory disagreement with some of REACT's recommendations, no party actually provided a credible critique of the REACT analysis. As a result, the Proposed Order properly recognizes that these costs are being assigned to customers who do not cause those costs: "[It] is apparent in the evidence presented in this case that **certain groups of facilities are not used by larger load customers . . .**" (Proposed Order at 48.)

Similarly, REACT presented analysis demonstrating the inequitable, highly disproportionate impact that ComEd's rate design approach has had upon ComEd's largest customers, including the members of the ELL and HV Over 10 MW classes. (*See generally* REACT Ex. 1.0-1.9, REACT Ex. 4.0.) Cross-examination of ComEd's designated rate design witness established that while the average residential customer would see an *annual* rate increase amounting to **less than the cost of a gallon of milk** under REACT's proposal, individual members of the ELL and HV Over 10 MW classes -- the largest employers in Illinois and the economic engines that drive the economy -- have been hit with **multi-million dollar increases since 2007**, that would only continue and increase under the proposals of Staff and certain other parties now before the Commission. (*See* Attachment D, Admissions Regarding The Rate Impacts Of ComEd's Proposed Cost Of Service Studies; *see also* ComEd Ex. 6.13; Tr.

at 418:1-429:6 (ComEd witness Mr. Tenorio.) Unfortunately, the Proposed Order fails to recognize the impact of this improper allocation of costs.

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

REACT is an *ad hoc* coalition, with diverse members comprised of some of the largest commercial, industrial, and governmental delivery service customers of ComEd, united in opposing ComEd's proposed inequitable and unjustified cost allocations. REACT members include customers in both the ELL class and the HV Over 10 MW class. REACT also includes Retail Electric Suppliers ("RESs") that are active in ComEd's service territory.

REACT does not seek in this proceeding -- and has never sought in prior cases -- to attack or change ComEd's "bottom line." On the contrary, REACT respects ComEd's need for appropriate overall cost recovery to maintain and improve the electric distribution system. In other words, REACT is not questioning the "size of the pie" that constitutes ComEd's rate base. REACT's focus, however, is to ensure that the ComEd "pie" is split up appropriately, so that

charges to particular customer classes fairly and equitably reflect the costs ComEd incurs to provide service to those customer classes.

Customer classes should pay for the facilities they use, and the services they receive -- no more and no less. This fundamentally fair proposition is entirely consistent with straightforward cost causation principles that are explicitly set forth in the Act and that have been recognized often by the Commission. REACT respectfully requests that the Proposed Order be modified as set forth herein in order to embrace this concept.

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

- (1) Order a modification to ComEd's ECOSS now, based on REACT expert witness Harry Terhune's analysis of certain electric distribution facilities that are not used or are used only a *de minimis* amount by members of the ELL and HV Over 10 MW classes;
- (2) Order ComEd to undertake a Shared Distribution Lines Proportional Cost Assignment Study, which ComEd admits is feasible and which would build on previous cost allocation studies ordered by the Commission, to further refine the ECOSS's approach to cost allocation;
- (3) Maintain the *status quo* regarding any alleged "movement toward cost" based on ComEd's problematic ECOSS until the completion of the Shared Distribution Lines Proportional Cost Assignment Study;
- (4) Order a more accurate allocation of Customer Care Costs now, to reflect the unquestionable fact that a portion of those costs is attributable to ComEd's supply function;
- (5) Order ComEd to undertake a study of its allocation of Customer Care Costs to reflect market evolution;
- (6) Order ComEd to provide transparent information about the relationship between and charges associated with the Distribution Loss Factor and the charges imposed for Unaccounted For Energy, both of which deal with lost energy that is not consumed by customers who nonetheless have to pay for it; and

(7) Order ComEd to collect the Illinois Electricity Distribution Tax in a manner that reflects cost causation principles, consistent with the manner in which ComEd collected that tax for over a decade.

Accordingly, REACT respectfully requests that the Commission consider the evidence submitted and takes exception to the Proposed Order as set forth herein and in the accompanying proposed Replacement Language.

### **ORAL ARGUMENT REQUEST**

This is the first ComEd rate design proceeding brought pursuant to Section 16-108.5(e) of the Act, which addresses revenue neutral rate design and cost allocation. (*See* 220 ILCS 220 5/16-108.5(e).) The question in this proceeding is not how much money ComEd is entitled to recover -- that question will be answered in a separate formula rate proceeding -- but rather how that total revenue requirement is to be allocated among and recovered from the various ComEd customers and customer classes. REACT has demonstrated that ComEd's ECOSS, which is the starting point for ComEd's allocation of costs and rate design, contains flaws that violate basic cost causation principles. The Proposed Order in large part acknowledges the flaws and questions associated with the ComEd ECOSS, but declines to order the modifications and studies that REACT has advocated.

Although this proceeding is the first ComEd stand-alone rate design case under the new statutory scheme that separates formula rate modifications from rate design, the proceeding does not arise in a vacuum. In fact, the Commission in previous Orders in prior ComEd Rate Cases has addressed a number of the contested issues in this case. With due respect, the Proposed Order reaches some substantive conclusions that are contrary to prior Commission directives, both with respect to specific contested issues as well as with respect to broader

policy issues relating to cost causation, cost allocation, and rate design transparency. Accordingly, for that additional reason, Oral Argument would be appropriate.

Accordingly, pursuant to Section 200.850 of the Commission's Rules of Practice, REACT respectfully requests Oral Argument on the issues addressed herein.

## **II.**

### **COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES**

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

In its briefs, REACT explained that it is uncontested that cost causation principles apply to rate design. (*See* REACT Init. Br. at 17-20; REACT Reply Br. at 8; *see also* Attachment B, Admissions Regarding Cost Causation Principles.) The Proposed Order does not recognize this point in the Potentially Uncontested Issues sections. (*See* Proposed Order at 7-8, 59.)

The legal authority confirming that cost causation principles apply is unimpeachable. (*See supra* Section I. *See also* the full discussion of this issue in Section II.B. of REACT's Init. Br. at 17-20.) Accordingly, REACT respectfully requests that the Commission explicitly acknowledge that cost causation principles apply to rate design issues generally and specifically to the issues raised in this proceeding.

**C. Potentially Contested Issues**

**1. Cost Allocation of Primary/Secondary Distribution System**

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

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

ComEd's ECOSs improperly allocate \$9 million of costs to the ELL and HV Over 10 MW customer classes. REACT witness Mr. Terhune analyzed system data provided by ComEd; presented a detailed engineering analysis that identified with specificity which facilities are used and *not* used by ELL and HV Over 10 MW class customers; and offered substantial refinements to ComEd's ECOSs. (*See* REACT Ex. 2.0 at 18:434-39:925; REACT Ex. 5.0 6:105-21:436.) No party contested the accuracy of Mr. Terhune's analysis. (*See generally* Attachment C, Admissions Regarding The Accuracy And Credibility Of REACT Witness Mr. Terhune's Analysis.) The Proposed Order acknowledges that Mr. Terhune's analysis demonstrates that the ELL and Over 10 MW classes are being overcharged approximately \$9 million a year for distribution facilities that they do not use or use in only *de minimis* fashion. (*See* Proposed Order at 48.) Despite the fact that the implementation of Mr. Terhune's analysis would advance accurate and fair rate design that would be consistent with cost causation principles, the Proposed Order rejects REACT's recommended modification to ComEd's ECOSs:

The Commission agrees [with ComEd and Staff] that REACT's proposal is too narrowly focused on a subset of customers and leans toward what parties have termed "allocation by exclusion". The Commission applies cost causation principles to rate design issues. Nevertheless, the distribution system is large and highly complex. As Staff notes, it is not feasible to have a distribution system that maps the use of each customers' facilities so that each customer is only allocated costs for the facilities, or portions thereof, that the customer uses. Furthermore, as ComEd states, REACT does not suggest which delivery classes should be responsible for absorbing the approximately \$9 million reduction to the

ELL and HV Over 10 MW customers, nor does REACT discuss cost allocation adjustments for any *de minimis* use of facilities that operate at 4 kV or are in a single-phase or two-phase configuration. Accordingly, the Commission rejects REACT's proposal.

(Proposed Order at 13.)

REACT respectfully takes exception to the Proposed Order's conclusion. The Proposed Order appears to rely heavily upon Staff's opposition to more accurate rate design. Respectfully, that reliance is misplaced.

First, the Proposed Order improperly criticizes REACT for focusing solely on a "subset of customers" and performing "allocation by exclusion." (Proposed Order at 13.) It appears that the Proposed Order is embracing the position of Staff which referred without specifics to "repercussions of selectively eliminating some costs for one class". (Staff Init. Br. at 7.) Staff referred to the difficulty of identifying "the exact components of that system that serves each customer and allocate those costs precisely such that only cost causers shoulder all their respective costs." (*Id.*) The position of Staff (as embraced in the Proposed Order) rests on the false premise that a change in allocation is only justified if it would result in some sort of "perfect" allocation result for every single customer.

Rate design is a complex undertaking, and is not an exact science. Often rate design decisions require multiple incremental adjustments over time, rather than (as Staff seems to suggest) waiting until the moment when there is complete and perfect information about the cost allocation to each customer. In the 2010 ComEd Rate Case, the Commission recognized this issue, and carefully used language calling for "further refinement" when it described the type of incremental cost allocation improvements it expected to occur in future proceedings. (ICC Docket No. 10-0467, May 24, 2011 Final Order at 264.) Indeed, in the 2007 ComEd Rate Case, the Commission recognized that ComEd's ECOSS, upon which the Commission felt it

had to rely was "problematic" and contained "substantial deficiencies" in need of further refinement. (See REACT Ex. 1.0 at 10:211-14, quoting ICC Docket No. 07-0566, Final Order dated Sept. 10, 2008, at 213.)

In each of the last three relevant cases -- the 2007 ComEd Rate Case (ICC Docket No. 07-0566); the 2008 Special Investigation Proceeding (ICC Docket No. 08-0532); and the 2010 ComEd Rate Case (ICC Docket No. 10-0467) -- the Commission indicated a need for greater detail and more in-depth analysis of data to determine whether rate design and cost allocation is appropriate. REACT has taken the Commission's direction seriously, and has (1) obtained detailed data from ComEd that informs the cost allocation issues, and (2) analyzed that data careful and rigorously to determine if ComEd's cost allocation is accurate. As a result, as the Proposed Order appears to recognize, there is now clear proof that costs are not being designed consistent with cost causation principles. (See, e.g., Proposed Order at 48 ("it is apparent in the evidence presented in this case that certain groups of facilities are not used by larger load customers... .").) Yet, the Proposed Order suggests that the Commission reverse course and abandon the pursuit of more accurate cost allocation.

The Proposed Order's pejorative use of the phrase "allocation by exclusion" also is confusing. (Proposed Order at 13.) The Act specifically requires that costs for customer classes be assigned to "**customers that use the facilities and services associated with such costs.**" (220 ILCS 5/16-108(c) (emphasis added).) The only way to make such an assignment is to include certain costs and exclude others. (See REACT Ex. 5.0 at 18:383-88.) Indeed, the Proposed Order embraces this methodology in reducing the costs that are assigned to other groups of customers. (See, e.g., Proposed Order at 36 (excluding the costs associated with facilities at or below 4kV from the Railroad Class).)

Second, the Proposed Order improperly accepts Staff's mischaracterization of REACT's position. (See Proposed Order at 13 ("As Staff notes, it is not feasible to have a distribution system that maps the use of each customers' facilities so that each customer is only allocated costs for the facilities, or portions thereof, that the customer uses.") See also Staff Init. Br. at 7.) Mr. Terhune's analysis was *not* about customer-specific cost allocation, and he *never* made any suggestion that he or REACT studied or sought a study of customer specific cost allocation. On the contrary, he repeatedly emphasized that his analysis and REACT's recommendations focused on customer classes and subclasses. (See, e.g., REACT Ex. 2.0 at 20:475-36:859; Tr. at 371:9-379:9; REACT Ex. 5.0 at 9:178-182 ("If there are meaningful differences in the cost of ComEd's delivery services facilities used to provide delivery services to each customer **class and subclass**, those differences in cost causation should properly be reflected in ComEd's ECOSS and ultimately via rate design, in differences in delivery rates to the **customer classes and subclasses**.) (emphasis added).) Staff's inaccurate suggestion to the contrary obviously confused the issue in the Proposed Order. However, Staff's own witness Mr. Johnson, upon whom Staff relied to criticize REACT, openly admitted on cross-examination that he did not perform any engineering study as Mr. Terhune did, did not present any evidence to contest Mr. Terhune's analytical findings, and did not present any evidence to contest Mr. Terhune's recommended allocation modification. (See Tr. at 126:20-128:6.) Indeed, **Mr. Johnson admitted that his criticism did not apply to the study that Mr. Terhune described:**

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

A. That's correct.

(Tr. at 131:10-15.)

Furthermore, with all due respect for Staff, Staff witness Johnson is not an electrical engineer or a licensed Professional Engineer and has no experience in design, construction, or operation of electrical distribution facilities (*see* Tr. at 116:23-117:9). In contrast, Mr. Terhune holds Bachelors and Masters degrees in electrical engineering, holds a Professional Engineer license from the State of Illinois, and served for over 30 years in a wide variety of electrical engineering roles as an employee of ComEd, concluding that tenure as the Manager of ComEd's Transmission and Distribution Planning Department. (*See* REACT Ex. 2.0 at 2:26-3:43.)

Based on this record, it would be inappropriate for the Commission to rely upon Staff's position as a basis to reject REACT's requests for more accurate cost allocation.

Finally, the Proposed Order credits an argument raised by ComEd suggesting that REACT did not identify which delivery classes should be responsible for absorbing the approximately \$9 million reduction to the ELL and HV Over 10 MW customers. (*See* Proposed Order at 13.) This is simply inconsistent with the case record. REACT proposed that the \$9 million adjustment be spread among all other rate classes. (*See* REACT Ex. 5.0 at 12:250-58.) ComEd admitted that the result of Mr. Terhune's proposed reallocation adjustment would be a cost shift in the range of \$9 million, which in the context of ComEd's approximately \$2.3 billion overall revenue requirement is less than one half of a percent (0.5%) modification. (*See* Tr. at 254:12-255:3 (ComEd witness Mr. Bjerning); *see also* REACT Ex. 5.0 at 12:250-58.) Thus ComEd's rate design witness confirmed that the impact of such an allocation modification on the average residential customer would amount to rate increase of no more than \$2.58 *annually* -- less than the cost of a single gallon of milk. (*See* Tr. at 429:10-431:13 (ComEd witness Mr. Tenorio).) Finally, the Proposed Order suggests that REACT failed to address how the ELL and Over 10 MW customers' *de minimis* use of facilities that operate at 4

kV or are in a single-phase or two-phase configuration. No party contests that the minimal impact on ComEd's other customer classes associated with the proposed adjustment stands in stark contrast to the impact that the ELL and HV Over 10 MW class customers would experience under continued application of ComEd's flawed ECOSS. ComEd's largest customers have faced increases of many millions of dollars since 2007 under the flawed ECOSS that ComEd continues to advance. (*See* Tr. at 419:21-429:4 (ComEd witness Mr. Tenorio).)

Mr. Terhune's detailed analysis -- a highly credible, detailed and fact-based refinement of ComEd's ECOSSs -- stands as unrebutted evidence in this proceeding. REACT respectfully requests that the Commission (1) order ComEd to modify its ECOSS and the related rate design consistent with Mr. Terhune's recommendation and consistent with the cost causation principles that the Commission repeatedly has endorsed, and (2) modify the Proposed Order consistent with the Proposed Replacement Language contained in Attachment A.

**(iii) Cost Allocation of Combination Poles**

The Proposed Order finds:

ComEd and Staff both support adoption of the CA Distribution Study's recommendation to allocate 100% of combination poles – poles carrying both primary and secondary equipment – entirely to the primary service level. Previously, the Commission expressed concerns regarding the accuracy of using engineering estimates to differentiate between primary and secondary costs. In Docket No. 10-0467, the Commission directed ComEd to “use all available tools to improve the accuracy of its analysis.” One such tool related to Staff's opinion that direct observation, which would entail physical inspections of the poles, could be used to confirm engineering judgments.

The CA Distribution Study addresses the issue of direct observation to allocate a subset of costs for which ComEd previously used engineering estimates. The CA Distribution Study found that direct observation could provide information regarding the number of combination poles, but it cannot provide information regarding cost allocation of combination poles. The CA Distribution Study further states that “the combination pole exists to accommodate primary lines first and foremost,” and that, “attachment of secondary lines is a convenience for secondary service.”

Metra, CTA, REACT and IIEC all oppose allocating 100% of combination poles to the primary service level, and instead recommend that Commission keep the current 50/50 allocation method. The 50/50 allocation method assigns 50% as primary, which is shared costs between primary and secondary service levels, and 50% as secondary service level costs. In other words, secondary service level customers are paying 50% of the costs along with an additional share of the primary service level costs.

CTA argues that Christensen failed to use direct observation and instead substituted its own engineering judgment for that of ComEd's engineering judgment. This argument is lacking. Record evidence shows that Christensen performed a field review and found that direct observation was not useful in determining cost allocation of combination poles. Moreover, Christensen worked with ComEd in preparing the study, and did not merely substitute its judgment for ComEd's judgment.

Other opponents of allocating 100% of combination poles to primary service argue that primary service customers should not be responsible for paying for facilities used to provide secondary service. According to the record, however, there would not be secondary service without primary service. Tr. at 275; ComEd Ex. 3.07 at 11.

The Commission finds that the CA Distribution Study's recommendation to allocate 100% of the combination pole costs to primary service should be adopted.

(Proposed Order at 23.)

REACT respectfully takes exception to this conclusion. The costs associated with *combination* poles that carry both secondary and primary voltage facilities ought to be allocated between secondary and primary customer classes. Accordingly, REACT supports the position advocated by IIEC, CTA, and Metra to retain the current 50%/50% split of combination pole costs between secondary and primary voltages. IIEC, CTA, and Metra make a persuasive case that the 50%/50% approach, rather than the ComEd proposal to allocate 100% of the combination pole costs as shared costs, more closely aligns with cost causation principles, is supported by the preponderance of record evidence on the subject in this proceeding, and conforms with common sense. (*See* IIEC Init. Br. at 6-10; CTA Init. Br. at 5-6; Metra Init. Br.

at 4-5.) REACT notes, in particular, that the notion that the attachment of secondary lines to a combination pole is merely "a convenience for secondary service" (Staff Init. Br. at 14) appears to be inconsistent with the reality of efficient distribution planning. (See IIEC Init. Br. at 8-9.)

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

See Section II.D.

**(i) Shared Distribution Lines Proportional Cost Assignment Study**

See Section II.D.

**D. Overall ECOSS Recommendation**

The Proposed Order accurately recognizes that: (1) ELL and HV Over 10 MW classes are paying for facilities that they do not use; and (2) that the study that REACT proposes to obtain more information about which customer classes *do* use those facilities is feasible. Nevertheless, the Proposed Order suggests that the Commission do nothing to address this inequity:

In Docket No. 10-0467, the Commission directed ComEd to perform various studies including a primary/secondary distribution plant study, ComEd Ex. 3.07 (the "CA Distribution Study"). In this docket, ComEd provided multiple illustrative ECOSS including an illustrative ECOSS, ComEd Ex. 3.10, which incorporates all the findings and recommendations presented in the CA Distribution Study. Specifically, the ECOSS in ComEd Ex. 3.10 includes the CA Distribution Study's recommendations regarding: (1) use of direct observation; (2) sampling circuits; (3) treatment of assets used to serve the ELL Delivery Class; and (4) allocation of costs associated with 4 kV facilities. ComEd Ex. 3.0 at 23.

The Commission previously ordered ComEd to delete costs associated with 4kV facilities assigned to the Railroad Class that are not used to serve the Railroad Class. The CA Distribution Study attempts to address the Commission's directive by identifying and separating the costs into "at or below 4kV" and "above 4kV" primary voltage categories. ComEd, Metra, and CTA argue that the ECOSS including the CA Distribution Study's recommendations regarding the treatment

of 4kV facilities complies with the Commission's directive. This is true, but only in part. The CA Distribution Study's treatment of 4kV facilities does delete 4kV costs from the Railroad Class; however, it also deletes some costs to ELL customers as well. Therefore the Commission finds that ComEd failed to comply with the Commission's directive in Docket No. 10-0467. Again, the Commission directs ComEd to separate the "at or below 4 kV" costs from just the Railroad Class as soon as practicable. In the interim, the Commission adopts the CA Distribution Study's recommendation regarding the treatment of 4 kV facilities.

Both REACT and IIEC recommend conducting further studies related to how primary or secondary voltage customers use primary distribution facilities in 4kV single-phase or three-phase configuration. According to ComEd, such studies would require a highly complex study of the almost 4.8 million meter points connected to almost 6,400 circuits. Then, a further study would be required to precisely determine which costs are related to single-phase, two-phase, three-phase, 34 kV, 12 kV or 4 kV configurations. Additionally, ComEd asserts that such studies would require numerous assumptions to assign such costs. **While we note that ComEd has the capability to perform such studies**, the Commission agrees that such studies are highly complex. Moreover, the Commission finds that allocation by "path of service" is not the industry norm and can easily become an unsustainable process because the distribution system is constantly changing. As such, the Commission rejects both REACT's and IIEC's proposed future studies.

**While it is apparent in the evidence presented in this case that certain groups of facilities are not used by larger load customers**, segmenting the cost allocation by phase of service does not appear to be practicable. There is also some question as to whether any attempt to segment according to phase of service would be equitable or accurate. The Commission rejects the changes to cost allocations to primary service as proposed by REACT and IIEC as discussed in Section II.C.1.a.

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Overall, the Commission adopts the recommendations of the CA Distribution Study as indicated above, and the Indirect Uncollectible Cost Study.

(See Proposed Order at 47-48) (emphasis added).

REACT respectfully takes exception to the Proposed Order's conclusions regarding the what should be done about the improper allocation of costs to the ELL and HV Over 10 MW classes for specific types of facilities they do not use. The evidence before the Commission justifies requiring ComEd to make a cost allocation modification now, and to perform an

additional statistically valid study of which customers use those facilities as well as the associated costs.

**The Commission Should Modify The Proposed Order  
To Direct ComEd To Revise Its ECOSS To Reflect The  
Fact That "certain groups of facilities are not used by larger load customers"**

The Proposed Order improperly suggests that the Commission should reject the hard data which shows that ComEd's ECOSSs improperly assign \$9 million in annual costs to the ELL and HV Over 10 MW classes. The Proposed Order suggests that correcting that *inaccurate* allocation may not be "practicable," "equitable" or "accurate." Respectfully, the Proposed Order's suggested result is unfair and is contrary to the evidence in this proceeding, the requirements of the Act, and the direction provided in prior Commission Orders.

Over the past six years, the Commission repeatedly has examined ComEd's ECOSS methodology, and repeatedly has criticized ComEd for failing to provide sufficient detail regarding which groups of customers use which facilities. (*See* REACT Init. Br. at 24-25, *citing* ICC Docket No. 10-0467, May 24, 2011 Final Order at 180-82, 185, 315-16; ICC Docket No. 08-0532, Apr. 21, 2010 Final Order at 84-85; ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 235-237.)

In the 2010 ComEd Rate Case (the last time the Commission had an opportunity to address ComEd's ECOSS methodology), the Commission pointedly described ComEd's "less than perfect" ECOSS study, which "needs further refinement." ( ICC Docket No. 10-0467, May 24, 2011 Final Order at 264) The Commission specifically recognized that the additional analysis of hard data performed by REACT witness Mr. Terhune -- whose expertise as an engineer the Commission explicitly noted -- suggested that the costs were not properly allocated. (*See id.* at 191.) The Commission also stated:

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

(*Id.* at 176 (italic in original) (bold added).) Unfortunately, as the current Proposed Order recognized, ComEd again failed to further refine or segment its ECOSS methodology for assigning costs to the ELL and HV Over 10 MW classes in the current proceeding. (See Proposed Order at 48 . See also Tr. At 246:7-11 (ComEd witness Mr. Bjerning).)

Nevertheless, contrary to the suggestion in the Proposed Order, the evidence in this proceeding demonstrated that improvements upon ComEd's ECOSS are "practicable." REACT witness Mr. Terhune provided exactly what the Commission called for in the 2010 ComEd Rate Case -- a refinement to the ComEd ECOSS and further segmentation of ComEd's costs. As Mr. Terhune explained, he relied upon additional data that ComEd itself provided in this proceeding, which showed the way in which the ELL and HV Over 10 MW customer classes use ComEd's facilities. (See REACT Ex. 2.0 at 9:177-39:925.) Mr. Terhune's analysis was methodical and detailed, beginning with a detailed explanation of ComEd's distribution system, a focused discussion of what customers do and do not use particular distribution facilities, and a conservative presentation of the appropriate reallocation based on current data, together with a proposal for a study to further refine the analysis for *all* customer classes. (See *id.*) His unrebutted analysis demonstrates that there are "certain groups of facilities that ELLC and HV Over 10 MW customers either never use or use to a *de minimis* level as part of receiving service from primary voltage distribution lines." (REACT Ex. 5.0 at 21:441-43; see also *id.* at 3:43-59.)

Based upon Mr. Terhune's fact-based engineering analysis of ComEd's system, he recommended that, in this proceeding, the Commission "direct ComEd to make reasonable adjustments to the allocation of Share Distribution Lines costs to the ELL and High Voltage over 10 MW customer classes based upon my analysis and ComEd's own engineering judgment." (*Id.* at 21: 448-50.) ComEd confirmed that this would result in adjustment that would reduce the costs assigned to the ELL and HV Over 10 MW customer classes by \$9 million. (*See* Tr. at 254:12-20(ComEd witness Mr. Bjerning).)

Furthermore, the evidence in this proceeding demonstrates that the adjustment recommended by Mr. Terhune would be "equitable." Indeed, it hard to envision a more inequitable result than what would result if the Commission were not to modify the Proposed Order: ComEd's ECOSSs inaccurately assign \$9 million in costs to the ELL and HV Over 10 MW customer classes when it is un rebutted that those classes do not use the related facilities.

Staff witness Mr. Rockrohr specifically favored refinements to ComEd's ECOSS that "resulted in more accurate results" to inform rate design because getting more accurate results is "consistent with cost causation principles." (Tr. at 110:114-19.) Among other things supporting increased accuracy, Mr. Rockrohr supported expanded study sampling data, in the name of simple fairness:

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

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

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

A. In my mind there is, yes.

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

Indeed, the accurate allocation of costs based upon the facilities that the customer class uses is required by the Act, and forms the basis for creating different customer classes. (*See* 220 ILCS 5/1-102(d)(iii), 16-108(c).) As ComEd witness Mr. Bjerning explained:

Q. Why is it appropriate to have a separate rate for high voltage customers?

A. Because the attributes for those specific types of customers lend itself to a specific rate, meaning that the facilities that serve those customers are relatively unique, relative to other classes or groups of customers.

(Tr. at 243:14-20.)

Furthermore, the impact of reallocating the \$9 million would have minimal impact upon the rates of other customers. (*See generally* Attachment D, Admissions Regarding The Rate Impacts Of ComEd's Proposed Cost Of Service Studies.) ComEd's own witnesses confirmed that the approximately \$9 million reallocation would be less than a .5% adjustment across the board in the context of the overall \$2.3 billion revenue requirement. (*See* Tr. at 254:12-255:3 (ComEd witness Mr. Bjerning); *see also* REACT Ex. 5.0 at 12:250-58.) REACT's recommended modification to the ECOSS is supported by un rebutted, credible, and compelling evidence and should be implemented now.

**The Commission Should Modify The Proposed Order To Direct ComEd To Perform A Statistically Valid Study To More Accurately Allocate Costs Based Upon The Facilities Used By Various Customer Classes**

Mr. Terhune recommended that the Commission "direct ComEd to perform a statistically valid analysis to determine the proper proportion of Shared Distribution Lines costs to be assigned to each customer class or subclass and incorporate those results into the ECOSS." (REACT Ex. 5.0 at 21:451-54.) The evidence establishes that the suggested study is feasible, that ComEd possesses the relevant information and technical knowledge, and that increased accuracy in cost assignment will result. (*See* Attachment E, Admissions Regarding The

Feasibility Of REACT Witness Mr. Terhune's Proposed Cost Allocation Study; *see also* Attachment C, Admissions Regarding The Accuracy And Credibility Of REACT Witness Mr. Terhune's Analysis; REACT Ex. 5.0 at 15:305-19:409.) The objections of ComEd and Staff mischaracterize what Mr. Terhune advocates; ComEd has openly admitted that it can perform the study. (*See* Tr. at 257:1-9 (ComEd witness Mr. Bjerning); *see also* Tr. at 129:2-131:15 (Staff witness Mr. Johnson); *see also* Attachment E, Admissions Regarding The Feasibility Of REACT Witness Mr. Terhune's Proposed Cost Allocation Study.) The Proposed Order confirms that fact. (*See* Proposed Order at 48.) REACT's recommended study is supported by unrebutted, credible, and compelling evidence, and should be ordered in order to further refine ComEd's ECOSS methodology.

The Proposed Order's suggestion that the study would be "highly complex" is unpersuasive. Mr. Terhune explained that the study he recommends is realistic and feasible. (*See id.* at 10:196-205.) ComEd confirmed Mr. Terhune's position. (*See* Tr. at 257:1-9 (ComEd witness Mr. Bjerning).) Further, Mr. Terhune explicitly stated that his recommended study:

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

- Would not require numerous, repetitive allocation studies for each rate, rate design, or formula rate case.

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

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

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

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

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

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

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

Regarding timing, ComEd failed to present any evidence about timing to perform the study, even though the proposal for the study was included in REACT's direct testimony. (*See* REACT Ex. 2.0 at 39:913-16.) REACT made a reasonable suggestion that ComEd be given

four months to conclude the study. (*See* REACT Draft Proposed Order at 45, 49.) If ComEd needs additional time, it can petition the Commission within 30 days of this Order and present evidence of why it is unable to meet that deadline. (*See id.*) However, any extension should be limited to no more than an additional four months and should be granted only on a showing of good cause. (*See id.*)

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

REACT believes that ComEd's ultimate conclusion regarding applying cost allocation principles in a "reasonable and practical manner" is sensible and appropriate. That is why the study that REACT witness Mr. Terhune proposed was fully explained and carefully designed to be not only feasible -- a point that the Proposed Order acknowledges (*see* Proposed Order at 48) and that ComEd admits (*see* Tr. at 257:6-9 (ComEd witness Mr. Bjerning)) -- but also capable of being conducted *without* the need for further physical field study or overly burdensome modifications to ComEd's current account classifications and system design specifications. (*See*

REACT Ex. 5.0 at 6:105-19:409.) To use ComEd's language, the study Mr. Terhune advocated *is* "reasonable" and "practical," and would be "fair to all customer groups." (ComEd Init. Br. at 15.) Further, because Mr. Terhune's recommended comprehensive approach would use statistically valid sampling for all customer classes, it "recognizes that ComEd's distribution system is complex, interconnected and built to serve all customers." (*Id.*)

It should be noted that the witnesses upon whom ComEd relied for its comments about the study -- ComEd witnesses Mr. O'Sheasy and Mr. Bjerning -- made substantial admissions on cross-examination that undermine ComEd's expressed concerns. For example:

- Mr. O'Sheasy admitted that he did not even attempt to provide a response to Mr. Terhune's proposed study in his surrebuttal testimony, even though Mr. Terhune's rebuttal testimony had specifically responded to Mr. O'Sheasy's earlier rebuttal testimony expressing Mr. O'Sheasy's concerns. (*See* Tr. at 326:1-12.) Thus, as far as Mr. O'Sheasy is concerned, Mr. Terhune's testimony stands unrebutted.
- Mr. Bjerning repeatedly acknowledged that Mr. Terhune was not proposing a study that included the components about which ComEd has expressed concerns, such as the complexity of the study, potential need for field sampling, the potential need to classify all 4.8 million Com Ed customers. (*See* Tr. at 259:17-260:19.) Mr. Bjerning also acknowledged that ComEd expressed similar concerns in prior rate cases, but ultimately was able to perform the studies that the Commission ordered. (*See* Tr. at 260:23-261:24.) Finally, although ComEd now raises concerns about a study being "resource intensive" (ComEd Init. Br. at 14), Mr. Bjerning specifically admitted that ComEd had provided no evidence about the cost to undertake the study that Mr. Terhune advocated. (*See* Tr. at 257:15-19.)

With regard to the Shared Distribution Lines Study, Mr. Terhune advocated "**a statistically valid sampling of the distribution delivery facilities used to provide delivery services to each customer class.**" (REACT Ex. 5.0 at 13:263-65 (emphasis added).) Any

concerns expressed by ComEd or Staff were addressed comprehensively in Mr. Terhune's written testimony (to which ComEd witness Mr. O'Sheasy admitted he did not even respond). (*See* REACT Ex. 5.0 at 6:107-19:409; Tr. at 326:1-6.)

The bottom line remains that ComEd admitted that it has the data and technical ability to perform the study that Mr. Terhune recommends. (Tr. at 257:1-9 (ComEd witness Mr. Bjerning).) That data would result in the ability to more accurately and more fairly design ComEd's rates.

REACT acknowledges that Staff opposed the study, stating categorically that "Staff opposes the segregation of costs proposed by other parties throughout this proceeding." (Staff Init. Br. at 18.) To support its opposition, Staff merely restated the "concerns" that the ComEd witnesses identified, such as potential "allocation by exclusion," whether the study would be "time consuming," concerns about direct assignment of costs (i.e., customer specific cost assignments). (*See id.* at 9-13, 17-18.) However, as discussed above, Mr. Terhune addressed all of those concerns in his written testimony. (*See* REACT Ex. 5.0 at 6:107-19:409; *see also* IIEC Ex. 3.0 at 14:11-20:20.)

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

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

A. That's correct.

(Tr. 131:10-15.) Notwithstanding that admission, Staff continued to cite Mr. Johnson's pre-filed testimony. (*See* Staff Init. Br. at 18.) Moreover, Staff witness Mr. Rockrohr agreed that the statistically valid sampling approach was entirely viable:

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

A. Yes.

(Tr. at 112:15-18.) Mr. Terhune advocated for exactly what Staff witness Mr. Rockrohr stated would achieve fairer rates: further refinements based upon statistically valid sampling of the actual facilities that are used to provide service to the various classes. Significantly, ComEd admits the study is feasible, and does not object to performing the study. (*See* Tr. at 257:6-9 (ComEd witness Mr. Bjerning); ComEd Init. Br. at 11.) Thus, the suggestion by Staff and the Proposed Order that REACT's proposed study is unduly complex is not well taken.

### **Conclusion**

The Proposed Order properly finds that ComEd has both the data and technical ability to perform the study that Mr. Terhune recommends. That data would result in the ability to more accurately and more fairly design ComEd's rates for all rate classes. Accordingly, REACT respectfully requests modification of the Proposed Order and that the Commission order ComEd to undertake the Shared Distribution Lines Proportional Cost Assignment Study advocated by Mr. Terhune to more accurately allocate these costs and develop a more fair rate design, to be completed within four months.

### III.

#### CUSTOMER CARE COSTS

The Proposed Order accurately finds that as a result of the restructuring of the Illinois electric markets, ComEd now has two distinct functions: a supply function, and a delivery function. (*See* Proposed Order at 53.) As a result, in order to have a properly functioning competitive supply market, it is critically important for the costs to be appropriately allocated between those functions. (*See id.* at 54 ("The Commission agrees that ComEd is entitled to collect its customer care costs ..., but pursuant to long established policy, costs are to be collected from the cost causers, who in this case may include supply customers.)) No party disputes this. Unfortunately, the Proposed Order suggests that the Commission wait until a future proceeding to address a flaw in ComEd's current allocation. Respectfully, the suggestion for a further delay in addressing this flaw is inconsistent with the Act's direction that the Commission is to "promote the development of an effectively competitive electricity market . . ." (220 ILCS 5/16-101A(d). *See also* REACT Ex. 3.0 at 11:239-45; 13:291-14:321.)

The Proposed Order accurately explains that Customer Care Costs include:

the calculation and generation of bills, tracking and maintaining customer information, mailing of bills, responding to customer phone calls, metering services, payment processing, credit and collections, and general customer relations activities.

(Proposed Order at 53, *citing* REACT Ex. 3.0 at 5:92-96; Tr. at 73:10-15 (ComEd witness Ms. Brinkman); Tr. at 134:20-135:4 (Staff witness Mr. Johnson).) The Proposed Order appears to recognize that ComEd clearly incurs these Customer Care Costs associated with its supply function as well as its delivery service function. (*See id.*) Despite this fact, ComEd consistently has assigned none of those Customer Care Costs to its supply function. (*See generally* REACT Ex. 3.0.)

The basic question presented is whether 100% of those Customer Care Costs should be attributed to ComEd's delivery services function going forward, or whether some percentage of those costs should be attributed to ComEd's supply function.

ComEd continues to maintain that 100% of Customer Care Costs are attributable to its delivery services function, a position that the Commission previously found highly unlikely *even before* mass retail customer switching. In the 2010 ComEd Rate Case, the Commission recognized that the retail market was "just beginning to blossom." (ICC Docket No. 10-0467, May 24, 2011 Final Order at 210. *See also* ICC Docket No. 07-0566, Sept. 10, 2008 Order at 207-08 ("The Commission believes that some percentage of customer care costs may well be attributable specifically to bundled supply customers").) As a result, the Commission directed ComEd to continue to examine this issue "as market conditions evolve." (ICC Docket No. 10-0467, May 24, 2011 Final Order at 210.) Despite this specific direction by the Commission, ComEd failed to present *any* new or updated study on this issue even though market conditions have changed *drastically* since the 2010 ComEd Rate Case as a result of explosive retail customer switching to RESs. REACT, on the other hand, presented an expert witness in this proceeding who provided a specifically updated study showing that approximately one-third of ComEd's Customer Care Costs should be attributed to ComEd's supply function.

While appropriately discussing much of the background associated with this problem and apparently concluding that less than 100% of Customer Care Costs should be assigned to the delivery service function, the Proposed Order improperly suggests that the Commission wait to implement a solution until Staff presents a further analysis. The Proposed Order states:

Pursuant to the Electric Service Customer Choice and Rate Relief Law of 1997, Illinois electric utilities now have two distinct functions -- a supply function and a delivery function. See 220 ILCS 5/16-101, *et seq.*

The parties agree that Customer Care Costs include the calculation and generation of bills, tracking and maintaining customer information, mailing of bills, responding to customer phone calls, metering services, payment processing, credit and collections, and general customer relations activities. REACT Ex. 3.0 at 5:92-96; Tr. at 73:10-15 (ComEd witness Ms. Brinkman); see also Tr. at 134:20-135:4 (Staff witness Mr. Johnson). This includes not only the costs associated with direct customer interaction but also the cost of computer systems and infrastructure to support these business activities. These costs are allocated to all customers through distribution service tariffs.

REACT argues that a large proportion of these costs are attributable solely to ComEd's bundled supply customers. ComEd asserts that \$0 should be collected from its supply customers for customer care costs. In dockets in 2005, 2007, 2008 and 2010 the Commission has considered this issue.

The Commission notes that ComEd's analyses on all other cost issues are presented as embedded cost studies. On this issue, it has repeatedly emphasized avoided cost studies. It has invariably concluded on the basis of these avoided cost studies that even when there were only a relative handful of delivery service customers, no customer care costs were allocable specifically to its supply customers.

REACT argues that attributing all of these to costs to delivery service customers reduces the supply side cost of service at the expense of delivery service customers. ComEd can charge supply customers less because their rates are in effect subsidized by the total allocation of these costs to parties only responsible for some fraction of them.

ComEd and Staff point out that as the number of delivery service customers has increased, its customer care costs have increased not declined. ComEd contends that this is proof that all customer care costs are properly delivery service costs. The Commission is not entirely convinced. The increase in customer care costs and the concomitant increase in number of delivery service customers does not prove the total absence of costs for ComEd's supply customers. The increase in customer service costs may only reflect that billing and other services supplied to delivery service customers are more complex and expensive than those for supply customers. In addition, a simple correlation between number of delivery service customers and the level of customer care costs provides no information regarding cost causation.

ComEd also argues that because this is a proceeding to determine delivery service costs it would improper to reduce the overall assessment of costs. However, If a fraction of customer service costs are attributable only to supply customers, they should be collected from supply customers and not through delivery service tariffs. ComEd can recover its costs, just not from the wrong customers.

Staff argues that as the default supplier, ComEd has an obligation to provide supply service no matter how few supply customers it has. It is entitled to collect customer costs. The Commission agrees that ComEd is entitled to collect its customer care costs and entitled to a profit over and above those costs, but pursuant to long established policy, costs are to be collected from the cost causers, who in this case may include supply customers.

In Docket No. 08-0532 at 68-69, the Commission found that REACT's arguments regarding customer care costs had merit, but that specific cost data was lacking. In Docket No. 10-0467, the Commission further recognized that in its switching study ComEd selectively examined categories of costs supporting its customer care cost position while ignoring others that did not. Docket No. 10-0467 at 213.

In this case, the only numerical information on allocation of customer care costs for bundled customer supply issues is Mr. Merola's analysis on behalf of REACT. His study indicates that ComEd incurs a total of \$326.8 million in Customer Care Costs, exclusive of metering services. He attributes approximately \$109 million of that figure to ComEd's supply function. This number implies that bundled supply customers generate supply related customer care costs roughly equal to their present proportion of ComEd's customer base. This allocation seems inconsistent with a large fraction of customer care costs properly allocated to all customers for distribution related issues. It also overlooks the reality that distribution customers generate more complex bills likely to require more service. ComEd's assertion that there are no customer care costs attributable to its supply customers is equally suspect.

Thus, the record presents the Commission with what it perceives to be two extreme points of view that have been presented to us repeatedly in successive dockets. The Commission declines to credit either position. The Commission directs Staff in the next appropriate case to present analysis to assist the Commission in determining whether a subset of customer care costs are properly attributable to bundled supply customers.

(Proposed Order at 53-55.)

Respectfully, the Proposed Order's reference to "two extreme points" is inaccurate. Only ComEd takes an extreme position -- suggesting that *zero* of its Customer Care Costs are supply related. To be clear, REACT is not making some radical proposal to shift 100% of Customer Care Costs from the current recovery category to a wholly new category. Rather, REACT recommended that ComEd be directed to perform a further transparent analysis to more accurately allocate those costs. (*See* REACT Ex. 6.0 at 24:555-61.) In the meantime, based on

a reasonable analysis of the available data, REACT seeks a reallocation of about one-third of overall Customer Care Costs from the delivery function to the supply function. (*See* REACT Init. Br. at 36-37.) Under REACT's recommended approach, ComEd would continue to recover 100% of its Customer Care Costs (actual costs plus profit), but those costs would be allocated consistent with cost causation principles. (*See id.* at 40-41.)

Although neither ComEd nor Staff maintain that the supply function does not incur Customer Care Costs, and although neither ComEd nor Staff contest that in the last ComEd Rate Case the Commission specifically stated that the subject of Customer Care Costs should be re-examined as market conditions evolve, ComEd and Staff both assert that the Commission should not even look at the issue of how Customer Care Costs should be recovered. Indeed, ComEd goes so far as to suggest that the Commission is prohibited from examining this issue. REACT appreciates that the Proposed Order rejects this position in directing Staff to present analysis of Customer Care Costs in an unspecified future proceeding, however, the Proposed Order's failure to direct concrete steps now based on record evidence in this proceeding should be addressed by the Commission.

Part of the frustration in addressing this issue stems from the fact that ComEd -- the party that is best positioned to collect the information -- has completely ignored the issue of proper allocation of Customer Care Costs both in this proceeding and in its business practices. ComEd admitted that it has not even attempted to track which Customer Care Costs are attributable to its supply function and which are attributable to its delivery function. (*See* REACT Init. Br. at 36, *citing* REACT Ex. 6.1 (ComEd Data Request Responses confirming ComEd's lack of tracking).) ComEd further admitted that it did not perform any update or study to attempt to allocate Customer Care Costs subsequent to its 2010 Rate Case. (*See* REACT Init.

Br. at 36, *citing* REACT Cross Ex. 12 Donovan (*see specifically* ComEd's Response to REACT Data Request 3.04 included in that cross exhibit).) Rather, notwithstanding the significant evolution of market conditions, ComEd continues to simply lump 100% of its Customer Care Costs into its delivery services rates, while allocating 0% of its Customer Care Costs to its supply rates. (*See* REACT Init. Br. at 36-37, *citing* REACT Cross Ex. 12 Donovan (*see specifically* ComEd's Responses to REACT Data Requests 3.06, 4.16, and 4.17 included in that cross exhibit). For the Commission's convenience, these Data Request Responses are attached hereto as Attachment F.)

REACT recognized that the preferred solution would be for ComEd to provide the necessary data, and REACT set forth the detailed methodology for the study. (*See* REACT Ex. 6.0 at 17:400-18:411; REACT Init. Br. at 37-39.) REACT further explained that, given the prior work that ComEd has performed on this issue, ComEd should be able to conclude that study within 90 days following the conclusion of this docket. (*See* REACT Ex. 6.0 at 21:497-22:503.) To the extent that the Proposed Order is suggesting that Staff should be included in that study, that is fully consistent with REACT's recommendation for a transparent study of this issue. (*See id.* at 17-18:403-06.)

REACT also provided an analysis that the Commission can rely upon in the interim. (*See id.* at 24:567-71 ("the Commission should order ComEd to perform an updated Customer Cost Allocation Study that accurately allocates Customer Care Costs between ComEd supply and delivery service functions. Until such a study is performed and evaluated, however, the Commission should adopt the results of my study in this proceeding."))

In sharp contrast to ComEd, REACT witness Mr. Merola did re-examine the data and provided an updated estimate of the appropriate allocation of Customer Care Costs. (*See*

REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:528-25:574.) In particular, Mr. Merola updated the study that he performed in the 2010 ComEd Rate Case to reflect the ComEd "RDI ECOSS" submitted by ComEd in this case. (*See* REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:529-32; 23:539-24:553.) Mr. Merola's updated analysis was presented in REACT Ex. 6.4.

Mr. Merola's updated analysis shows that ComEd incurs a total of \$326.8 million in Customer Care Costs, exclusive of metering services. (*See* REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:535-36.) Of that amount, he calculated that approximately \$109 million should be allocated to ComEd's supply function. (*See* REACT Init. Br. at 37, *citing* REACT Ex. 6.0 at 23:536-37.) Thus, contrary to the implication in the Proposed Order, Mr. Merola recommended that nearly two-thirds of the Customer Care Costs be allocated to the delivery services function.

Moreover, it is unclear what evidence was presented in this proceeding to support the Proposed Order's suggestion that "distribution customers generate more complex bills likely to require more service." (Proposed Order at 54-55.) ComEd's supply rate involves a number of inputs, as reflected in ComEd's Rate BES and Rider PEA. Further, as Mr. Merola explained, the recent dynamics of the supply market -- with ComEd's rates being significantly higher than rates offered in the competitive market -- also may have caused ComEd to incur additional Customer Care Costs. (*See* REACT Ex. 6.0 at 15:341-17:396.) In any event, the study recommended by REACT would address this issue based upon ComEd's actual costs.

Despite ComEd's unwillingness to engage on this issue (or perhaps because of ComEd's failure to engage), in each of its last three Orders, the Commission affirmatively indicated that this issue required attention in future proceedings. In each one of those proceedings, the Commission observed that ComEd appeared to be allocating supply-related Customer Care

Costs to the delivery function, and, as a result, costs may not be assigned to the true causers of such costs. (See REACT Init. Br. at 31-33.) In the last ComEd Rate Case -- the most recent opportunity for the Commission to address this issue -- the Commission explicitly directed ComEd to further examine this issue as competitive markets and customer choice continued to develop. (See ICC Docket No. 10-0467, May 24, 2011 Final Order at 210 ("[T]he alternative electric supplier market is just beginning to blossom. It is possible that, in the future, ComEd's customer care costs could differ from what they are now . . . . Therefore, this issue should continue to be explored in the future as market conditions evolve.")) ComEd declined to follow that Commission directive, and should not now be essentially rewarded for its inaction.

The evidence demonstrates that ComEd has failed to accurately allocate Customer Care Costs between its supply function and its delivery function -- ComEd admits it has made no attempt to perform such an allocation. In the last ComEd Rate Case, the Commission specifically called for further examination of Customer Care Cost allocation as the market conditions evolved. Those market conditions have evolved significantly, but ComEd performed no further analysis. REACT expert witness Mr. Merola *did* perform an updated analysis that supports a modified allocation of Customer Care Costs. Given the indisputable evolution of the competitive market, and the absence of any viable attempt from ComEd to allocate Customer Care Costs, the evidence supports immediate implementation of the allocation advocated by Mr. Merola. Mr. Merola also recommended a further study by ComEd based on updated data within ComEd's possession to further refine the Customer Care Cost allocation. That study also should be ordered by the Commission, with the results to be reported within 60 days following entry of the Final Order.

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

#### IV.

#### **RATE DESIGN**

##### **A. Overview**

The different rate design scenarios before the Commission in this proceeding are all based on the ECOSS approach ComEd used in the 2010 ComEd Rate Case. (*See* ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio); ComEd Init. Br. at 24.) To this day, ComEd has failed to explain what its largest customers have done to merit enormous and disproportionate rate increases suggested by that ECOSS. No party contested the fact that the Commission's Final Order in the 2010 Rate Case specifically called for further refinement to the ECOSS, yet ComEd openly admitted that it did not present a further refined ECOSS. (*See* Tr. at 246:7-11 (ComEd witness Mr. Bjerning); Tr. at 133:2-6 (Staff witness Mr. Johnson); Tr. at 294:15-24 (Kroger Co. witness Mr. Townsend).) Therefore, contrary to the finding in the Proposed Order, the Commission should reject any modification of rate design intended as a further movement toward "ECOSS-based rates" that on the flawed ComEd ECOSS. (*See* REACT Init. Br. at 43-48.)

The "Overview" section of the Proposed Order merely is a summary of the positions of Staff, ComEd, REACT, City/CUB, and the Commercial Group; it does not contain any finding:

The Commission has addressed arguments raised by parties in this rate design overview section in other sections of this Order.

(Proposed Order at 59.) While a particular finding in this Section is not necessary, it is important that the Commission recognize that REACT's expert witnesses demonstrated that there are two specific and quantifiable flaws in the way in which ComEd's ECOSSs address cost allocation and the resulting rate design.

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

Second, REACT witness Mr. Merola demonstrated that approximately \$109 million of ComEd's \$326.8 million in total Customer Care Costs should be allocated to ComEd's supply function. (*See* REACT Ex. 6.0 at 23:536-37; REACT Init. Br. at 36-37.) The rate design implemented by ComEd also should reflect that adjustment.

The Commission also should recognize that ComEd confirmed in its Initial Brief that it is not actually advocating any movement toward "cost" and would accept the modifications to the ECOSS that REACT proposes without any further movement "toward cost." (*See* ComEd Init. Br. at 26; *see also* Tr. at 70:20-71:3 (ComEd witness Ms. Brinkman).)

Accordingly, REACT respectfully requests that the Commission modify the Proposed Order and direct ComEd to modify its ECOSS consistent with the proposals of REACT expert witnesses Mr. Terhune and Mr. Merola. Certainly unless and until the flaws in the ECOSS are

remedied, there should not be any movement toward so-called ECOSS-based rates; the *status quo* should be maintained until ComEd completes the studies that REACT and other party witnesses are recommending. Further, consistent with the recommendations of REACT witness Mr. Fults, REACT respectfully requests that the Commission direct ComEd to modify its method of assessing the Illinois Electric Distribution Tax and prepare a study of the causes of Unaccounted For Energy.

**B. Potentially Uncontested Issues**

**Cost Causation Principles Apply**

In this section, the Proposed Order states:

The Commission will not address uncontested rate design issues in this Order.

(*See Proposed Order at 59.*)

As noted in Section I of this Brief on Exceptions, the Act plainly requires the application of cost causation principles to ComEd's ECOSS and resulting rate design. (*See 220 ILCS 5/1-102(d)(iii), 16-108(c).*) No party contests this. Please see also the full discussion of this issue in Section II.B. of REACT's Initial Brief. (*See REACT Init. Br. at 17-20.*) Accordingly, the Commission should apply cost causation principles to ComEd's rate design.

**C. Potentially Contested Issues**

**2. Non-Residential**

**a. Preliminary Issues**

In this section, the Proposed Order summarizes the positions of Staff and REACT but makes no findings. (*See Proposed Order at 77.*) While findings in this particular section may not be required, it is important for the Commission to understand and confirm that ComEd's ECOSS -- which forms the basis for its rate design -- is flawed.

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

Mr. Terhune recommended a modification to the ECOSS based upon his engineering analysis -- that modification would reallocate approximately \$9 million from the ELL and HV Over 10 MW classes. Again, although certain parties apparently dislike that conclusion, no party contests Mr. Terhune's actual analysis or factual conclusion. The ECOSS applied to ComEd's rate design should reflect Mr. Terhune's recommended modification.

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

**b. Movement Toward ECOSS-Based Rates**

The ECOSSs ComEd presented in this proceeding are all based on the ECOSS approach ComEd used in the 2010 ComEd Rate Case. (See ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio); ComEd Init. Br. at 24.) As a result, ComEd's ECOSSs contain significant flaws which should prevent the Commission from embracing "ECOSS based rates" as a legitimate goal.

Nevertheless, the Proposed Order suggests that the Commission take the "next step" toward those "ECOSS based rates":

The Commission finds that the record supports the continuation of the “next step” process followed in Docket No. 10-0467, in order to move non-residential customers towards cost based rates. For the ELL class, the Commission concludes that after the effective date of this Order, this should result in revenue responsibility of 84.2%. Further, the new HV class revenue responsibility shall become 90.7%. The Commission also finds, consistent with its ruling in Docket 10-0467, that the rates for the railroad class should be moved to the second of ten steps, bringing that revenue responsibility for that class to 82.6% subject to appropriate adjustments for the removal of 4kV and under costs as separately identified in ComEd Ex. 3.12 in this proceeding. (*See* Section II C 1. c. of this Order). We note that the revenue responsibilities for the SL, ML, LL, and VLL classes should be reduced accordingly.

(Proposed Order at 88.)

REACT respectfully takes exception to the Proposed Order's conclusion. ComEd presented several different rate design scenarios in this proceeding, though it professes to not advocate any particular design. (*See* ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio); ComEd Init. Br. at 26.) ComEd admitted that all of those rate designs are based on the ECOSS approach from the 2010 ComEd Rate Case. (*See* ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio).) The Commission's Final Order in that case specifically called for further refinement to the ECOSS, yet ComEd openly admits that it has not presented a further refined ECOSS. (*See* Tr. at 246:7-11 (ComEd witness Mr. Bjerning).) REACT did present expert testimony that explained why the flaws in ComEd's ECOSS methodology make it inappropriate for the Commission to use the ECOSS to design rates. (*See* REACT Exs. 1.0-6.0.) Therefore, the Commission should reject any movement toward so-called "cost" based upon the flawed ComEd ECOSS.

It appears that the Proposed Order's conclusion relies upon Staff 's suggestion that "the next step revenue responsibility rate design in this case." (Staff Init. Br. at 37.) Staff asserted that "No reason has been presented as to why that [movement toward cost based rates] should not be continued in this proceeding." (*Id.*)

However, REACT *did* set forth *in detail* reasons to maintain the *status quo* rather than push toward "ECOSS based rates": Mr. Terhune's detailed, unrebutted analysis demonstrates that the *current* ECOSS is flawed; Mr. Merola demonstrates in detailed, unrebutted analysis that ComEd continues to misallocate Customer Care Costs in the ECOSS; and Mr. Fults explains in detailed, unrebutted analysis the disproportionate impact that ComEd's rate increases have had on the ELL and HV Over 10 MW classes.

Moreover, while Staff did not provide a specific citation in its Initial Brief to any evidence to support its suggestion, it appears that Staff based its upon the position of Staff witness Mr. Johnson. (*See id.* at 36.) However, on cross-examination, Mr. Johnson admitted that he had not performed any analysis relating to the validity of the ECOSS, let alone offered up any "refinement" of the ECOSS. (*See Tr.* at 126:20-128:6.) He also confirmed that notwithstanding ComEd's refusal to make any changes to Customer Care Cost allocations, the facts on the ground today are substantially different from when ComEd prepared the speculative study upon which it still relies. (*See Tr.* at 136:24-137:11.) Finally, he admitted that ComEd's alleged "increases" in Customer Care Costs -- which ComEd offers up to suggest that costs have gone up even though it serves significantly fewer bundled customers now -- are in large part due to a simple increase in the cost of postage, rather than any explanation that would suggest that a portion of Customer Care Costs should not be accurately allocated to its supply function. (*See Tr.* at 142:5-143:2.)

Similar arguments apply to the suggestions from the Commercial Group and Kroger regarding movement toward ECOSS based rates. Both the Commercial Group and Kroger simply made conclusory statements advocating movement, apparently premised on the view that prior problems with ComEd's ECOSS are now resolved. (*See Commercial Group Init. Br.*

at 9; Kroger Init. Br. at 2-3.) Neither the Commercial Group nor Kroger provided any actual evidence of how the flaws in the ECOSS methodology had been remedied. On the contrary, the Commercial Group's witness Mr. Chriss and Kroger's witness Mr. Townsend admitted that they had not performed any actual analysis to determine anything about the current or proposed rate design. (See Tr. at 291:8-292:7, 305:3-13.) Mr. Chriss also admitted that the Commission had found previous problems with the ComEd ECOSS and had called for further refinements. (See Tr. at 306:8-308:3.) He further admitted that the Commission could certainly call for further refinements to the ECOSS in this proceeding. (See Tr. at 310:7-10.) Thus, there is no evidentiary basis for the calls for further movement toward ECOSS based rates.

The impact of ComEd's flawed ECOSS methodology upon the ELL and HV Over 10 MW classes is substantial and disproportionate. REACT's presented compelling evidence demonstrating the size and importance of REACT's members and similarly situated ELL class and HV Over 10 MW class customers to the Illinois economy; the challenging business environmental and lagging unemployment numbers in northern Illinois; and the enormous and disproportionate rate increases that would result with any continued movement toward so-called "cost" based on the current ComEd ECOSS. (See REACT Init. Br. at 46-48 *citing* REACT Ex. 1.0 at 15:349-356; 16:360-77, <http://www.bls.gov/news.release/laus.nr0.htm>, <http://www.saukvalley.com/2013/06/28/unemployment-rises-in-chicago/a8alxu1/>, and <http://www.chicagobusiness.com/article/20130726/EMPLOYMENT/130729834?template=mobile>.) Even ComEd witness Mr. Tenorio, who disagreed with some of the precise calculations made by REACT regarding the rate impact, acknowledged on cross-examination that the cost implications of any continued movement toward ECOSS based rates for ELL and HV Over 10 MW customers. (See Tr. at 418:1-429:6.) Indeed, ComEd's own analysis showed that the

aggregate rate increases for many ELL and HV Over 10 MW class customers since 2007 has been hundreds of thousands of dollars, and in several cases these customers have paid millions of dollars more as a result of past movements toward rates established by the flawed ECOSS. (See ComEd Ex. 6.13.)<sup>4</sup>

Accordingly, REACT respectfully requests that the Commission reject any step toward so-called "cost" that is based upon ComEd's flawed and unrefined ECOSS, and instead direct ComEd to modify its ECOSS consistent with the proposals of REACT witnesses Mr. Terhune and Mr. Merola. Rather than making any movement toward ECOSS based rates, the *status quo* should be maintained until ComEd completes the studies that REACT and other party witnesses are recommending.

#### **4. Illinois Electricity Distribution Tax**

The Proposed Order finds that no modifications should be made to the manner in which ComEd calculates the Illinois Electric Distribution Tax ("IEDT"):

The distribution tax was previously determined by the utilities' plant investment levels. The General Assembly expressly amended the method of computing the tax effective January 1, 1998:

The amount of tax is computed on the basis of usage, rather than on invested capital. Sales, rather than plant investment, determine distribution taxes. Changes in the amount of plant in service are now irrelevant in computing the amount of tax due.

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<sup>4</sup> Even using ComEd's "median" calculation rather than the common-sense average calculation, ComEd's own numbers showed that if a move to "100%" so-called "cost" were implemented an increase of over **136%** would be experienced by the median ELLC customer and over an increase of over **52%** would be experienced by the median HV Over 10 MW customer. (See *id.*).

This interpretation is consistent with the Commission's conclusion regarding the collection of the IEDT in Docket No. 10-0467: The Commission finds that ComEd's method of collecting the IEDT on a kWh basis is correct and consistent with 35 ILCS 620/1a.

(Proposed Order at 94.)

REACT respectfully takes exception to the Proposed Order's conclusion. REACT explained that the 2011 change in ComEd's method for recovering its IEDT has unfairly and unnecessarily burdened ComEd's largest customers with unnecessary costs. (*See* REACT Init. Br. at 46-47.) Accordingly, REACT respectfully requests that the Commission direct ComEd to recover the IEDT in its Distribution Facilities Charge ("DFC"), just as it had for over a decade prior to the 2010 ComEd Rate Case.

The IEDT is a tax imposed by the State of Illinois on Illinois electric distribution companies under the Public Utilities Act. (*See* 35 ILCS 620/2a.1; REACT Init. Br. at 48.) The tax originally was enacted to collect money based upon a percentage of each utility's invested capital. (*See* REACT Init. Br. at 48-49, *citing* REACT Ex. 1.0 at 29:641-42.) From 1999 (when the first ComEd delivery services rates became effective), until the conclusion of ComEd's 2010 Rate Case, ComEd recovered the IEDT as part of its distribution facility charge or "DFC." (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:644-46.) Under the DFC method, for non-residential customers such as those in the ELL and HV Over 10 MW classes, the tax was included in the \$ per kW DFC charge, applied to each customer's Maximum Kilowatts Delivered; for residential, watt-meter, and lighting customers the tax was included in the \$ per kWh DFC. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:650-53.)

In the 2010 ComEd Rate Case, ComEd was allowed to change its collection methodology, and removed the IEDT costs from its DFC, and instead began assessing the IEDT as a separate per kWh charge. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:649-

50.) The new approach has several undesirable and inequitable consequences. First, the changed approach creates confusion and further complexity for customers in understanding their monthly ComEd bill. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 1.0 at 29:656-59.) Second, the largest customers who operate 24 hours per day and use the same amount of electricity each hour -- *i.e.*, large, high-load factor customers who are using ComEd's system efficiently -- now pay a disproportionately large portion of the tax. (*See* REACT Init. Br. at 49; *see also* REACT Ex. 1.0 at 30:666-669.)

These problems arose because the IEDT charges no longer have any relationship to ComEd's invested capital -- which is the purpose of the tax -- but rather are just tied to the amount of kilowatts delivered to each customer. (*See* REACT Init. Br. at 49, *citing* REACT Ex. 4.0 at 16:338-41.) As REACT explained, the solution is to reinstitute the methodology that ComEd used for well over a decade. (*See* REACT Init. Br. at 49-50.)

The Proposed Order improperly suggest that the Commission's approval of the change in the IEDT collection method in the 2010 ComEd Rate Case means that further evaluation of this issue is unneeded. As the Commission is aware, its prior decision is not binding in this proceeding. Basic rules of Commission procedure dictate that similar issues may be raised in succeeding proceedings. (*See, e.g., Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 407-408 (2nd Dist. 2010) (holding that a "record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a different result.")) Indeed, ComEd itself regularly asks the Commission to revisit issues that are important to it. This approach makes sense, for the simple reason that a decision made at one moment may not apply to facts on the ground at a later moment. That is precisely the case here.

ComEd and Staff claimed that ComEd was compelled by an act of the General Assembly to alter its IEDT collection method. (*See* ComEd Init. Br. at 35; *see also* Staff Init. Br. at 38.) However, the relevant chronology demonstrates that ComEd's prior DFC method of assessing this tax was a legal and practical method that avoided the problems with the current per kWh method. (*See* REACT Init. Br. at 50.) The modification in the law regarding how ComEd is assessed the IEDT became effective as a result of 1997 amendments to the Public Utilities Act. (*See* REACT Init. Br. at 50, *citing* REACT Ex. 4.0 at 341-44.) However, ComEd waited until 2010 to modify its assessment methodology. (*See id.*) The DFC method of collecting the IEDT was entirely appropriate, and was not required by the 1997 amendments to the Act. (*See id.*; *see also* IIEC Init. Br. at 3, 22-23.))

For the reasons stated by both REACT and IIEC, REACT respectfully requests that the Commission modify the Proposed Order and direct ComEd to collect the tax in the same manner it did from 1999 to 2011, rather than the manner that it has since the conclusion of the 2010 ComEd Rate Case.

**D. Overall Recommended Rate Design**

In this section, the Proposed Order recommends adoption of the AG's proposed residential rate design, makes no mention of ComEd's flawed ECOSS, and declines to adopt REACT's Customer Care Cost and IEDT recommendations:

The Commission has adopted the residential rate design proposed by the AG which conforms residential class billing parameters more closely to the cost of service. This design reduces or eliminates the cross subsidization of high use customers by low use customers in residential rate classes. The Order continues the SFV rate design for WH customers.

The Order adopts no changes in regard to customer care costs. The Order continues the process of conforming customer class rates to the cost of service. Consistent with prior orders, this Order brings rates for the ELL and HV classes half of the remaining way to

the cost of service and the Railroad Class to the second of ten rate adjustments. The Order directs ComEd to immediately eliminate charges to the Railroad Class for under 12kV service as ordered by the Commission's directive in Docket No. 10-0467.

In keeping with the recommendation of Staff and ComEd, the Commission has reaffirmed in this case that the IEDT is to be assessed on a per kWh charge consistent with the legislature's directive in 35 ILCS 620/1(a).

(Proposed Order at 97.)

REACT respectfully takes exception to the Proposed Order's conclusion. Fairness and the application of cost causation principles dictate both that costs be allocated to cost causers, based upon an analysis of the facilities used to serve the various classes of customers, and that rates be designed to prevent unfair and disproportionate impacts upon the largest energy users, who provide countless jobs and drive the Illinois economy. ComEd should be precluded from simply relying upon flawed assumptions contained in a study that it presented years ago to continue to overcharge the ELL and the HV Over 10 MW customers \$9 million a year and subsidize its own supply rates by misallocating supply-related Customer Care Costs to the delivery function. Credible refinements to cost studies such as those presented by REACT should be implemented based upon new data that has been developed and changes to the market conditions. Accordingly, REACT respectfully requests that the Commission modify the Proposed Order to:

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

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

(3) Order a more accurate allocation of Customer Care Costs, to reflect the unquestionable fact that a certain portion of those costs is attributable to ComEd's supply function;

(4) Order ComEd to collect the Illinois Electricity Distribution Tax consistent with the manner in which ComEd collected that tax for over a decade.

## VI.

### OTHER

#### A. Distribution System Losses

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

#### B. Unaccounted For Energy

The Commission should be concerned that the Proposed Order suggests that the Commission limit its own authority and allow ComEd to continue to be non-transparent with regard to the way in which a significant cost is developed and allocated. It is undisputed that ComEd "loses" electricity as ComEd takes that electricity from the wholesale market and delivers it to retail customers. The issue in this proceeding is whether the Commission should further investigate how the costs associated with "lost" electricity are being caused and recovered from customers.

Significantly, REACT is not suggesting that *any* adjustment to rates be made in this proceeding regarding the "lost" electricity. Rather, REACT has respectfully requested that the

Commission direct ComEd to further investigate the causes of the costs associated "lost" electricity and whether those costs are properly being allocated to the cost causers. The Proposed Order improperly suggests that the Commission deny REACT's request. (*See* Proposed Order at 109.)

There are two categories of costs that customers experience associated with "lost" electricity: (1) the Distribution Loss Factor ("DLF") that is a specific charge in ComEd's tariffs; and (2) the cost for Unaccounted For Energy ("UFE"). (*See* REACT Init. Br. at 52-55; REACT Ex. 1.0 at 25:574-26:592.) While ComEd presented analysis associated with the distribution loss percentages and the accompanying DLFs for the various customer classes, it presented no analysis associated with UFE -- despite the fact that the cost impact of UFE can be greater than 2% per month, twice as great as that of the DLFs. (*See* ComEd Ex. 4.0 at 5:85-11:213; ComEd Ex. 8.0 at 3:46-60; REACT Ex. 1.0 at 25:561-65, 27:599-605.) In short, there is significant price risk uncertainty that the Commission and stakeholders should better understand, to be able to determine whether these costs are being allocated appropriately. (*See* REACT Ex. 1.0 at 28:627-31; REACT Ex. 4.0 at 18:380-19:399.)

Given the cost impact, as well as the confusing nature of the interrelationship between UFE and the DLFs, REACT requested that the Commission order ComEd to perform a study regarding the causes of UFE, and to provide additional information that would enable the Commission and interested parties to determine whether the UFE is being calculated properly and allocated appropriately among ComEd's customer classes and subclasses. (*See* REACT Init. Br. at 54-55; REACT Ex. 4.0 at 19:396-99.) Without that information, there is a risk that there is improper cross-subsidization as well as over-recovery or double recovery through the DLFs and UFE charges. (*See* REACT Ex. 4.0 at 18:391-19:393.)

The Proposed Order improperly suggests that the Commission should cede its authority to investigate this issue and allow ComEd to continue to "hide the ball" with respect to UFE:

REACT argues that the Commission should order a study to determine whether the UFE is being properly calculated and allocated.

UFE is one of the performance metrics in the Commission-approved Multi-Year Performance Metrics Plan under EIMA. ComEd will be providing this Commission with information on that subject in accordance with that plan. The Commission agrees with ComEd that any investigation that the ICC may undertake now with regard to that data is plainly premature. Moreover [sic], UFE pertains to wholesale charges within the exclusive jurisdiction of the Federal Energy Regulatory Commission that are beyond the Commission authority.

The Commission rejects REACT's argument that a study of UFE is necessary.

(Proposed Order at 109.)

The Proposed Order suggests that because UFE "pertains to wholesale charges" the Commission has no role to play, basically accepting ComEd's assertion that UFE is "outside the scope of this proceeding." (ComEd Init. Br. at 43.) However, there is nothing in the Act that would preclude the Commission from ordering the investigation requested by REACT; rather, the Commission is given plenary authority to oversee utilities. (*See, e.g.*, 220 ILCS 5/4-101; 220 ILCS 5/10-101.) Moreover, given the interrelationship between UFE and distribution losses, combined with ComEd's unwillingness or inability to provide information regarding UFE, it is not possible for the Commission to be confident there is no "double counting" of losses or improper cost allocation as a result of ComEd's treatment of UFE.

The Proposed Order's suggestion that the Commission has no authority to find out more information about UFE also is perplexing given the Proposed Order's reference to the fact that ComEd must include UFE as one of the metrics in ComEd's Multi-Year Performance Metrics Plan ("Metrics Plan") that the Commission must approve. Thus, the Proposed Order simultaneously suggests that UFE is wholly outside the Commission's jurisdiction *and* that it is

a component of ComEd's Commission-approved Metrics Plan. This is an internally contradictory position.

However, as the Commission is aware, the Metrics Plan does not provide the Commission with *any* substantive information regarding the causes of UFE costs or the way in those costs are allocated. (*See* ICC Docket No. 11-0772, Apr. 4, 2012 Final Order at 10; *see also* Apr. 9, 2012 ComEd Compliance Filing of Metrics Plan as amended to conform to the Apr. 4, 2012 Final Order, at 18-19.) The Metrics Plan contains very few references to UFE, including just two pages that substantively discuss UFE, and those merely recite the definition of UFE and set forth raw figures regarding the UFE baseline and performance goals. (For the Commission's convenience, those two pages are attached hereto as Attachment G.) Such a bare bones report provides no useful information regarding cost causation, much less appropriate rate design or allocation of those costs. In fact, at best, the document raises additional questions.

For example, the Metrics Plan contains the definition of UFE:

Unaccounted for energy (“UFE”) is unmetered electricity that is not billed to an individual retail customer, such as theft of service. As a result, the costs for such unmetered electricity are recovered from all ComEd customers, rather than from an individual retail customer that is responsible for such usage.

(Metrics Plan at 18.) This undercuts or at least raises a question about the Proposed Order's statement that UFE "pertains to wholesale charges." (Proposed Order at 109.)

To the extent that the Proposed Order is suggesting that the fact that UFE is addressed in Commission-approved Metrics Plan precludes the Commission from further investigating the causes of UFE and whether the costs associated with UFE are properly allocated, the Proposed Order is unconvincing. Nothing in the Act limits the Commission's authority in such a manner. Further, the Act specifically directs that questions regarding cost allocation and rate design appropriately are addressed in the instant proceeding. (*See* 220 ILCS 5/16-108(c).)

Investigating the causes of UFE and current cost recovery methods also would be consistent with the Commission's directive to ensure that the costs are recovered from the cost-causers. (See 220 ILCS 5/1-102(d)(iii).) It also would be in line with ComEd's assertion that it wants to provide "as much information as possible" so that there is "a comprehensive investigation of cost allocation and rate design." (ComEd Ex. 13.0 at 2:29-33; see also Tr. at 413:24-414:5 (ComEd witness Tenorio).) If it is appropriate for ComEd to have separate distribution loss percentages and DLFs for the various classes, it is appropriate to investigate whether UFE likewise should be charged in a manner that reflects cost causation principles.

Accordingly, consistent with REACT expert witness Mr. Fults' recommendation, REACT respectfully requests that the Commission modify the Proposed Order and direct ComEd to perform a transparent study regarding the causes of UFE, and direct ComEd to provide additional information that would enable the Commission and interested parties to determine whether UFE is being calculated properly and allocated appropriately among customer classes. (See REACT Init. Br. at 55.)

## VII.

### CONCLUSION

For the reasons stated herein, in REACT's Initial and Reply Briefs, and in the written testimony of REACT's three expert witnesses, REACT respectfully requests that the Commission modify the Proposed Order to:

- (1) Order a modification to ComEd's ECOSS now, based on REACT expert witness Harry Terhune's analysis of certain electric distribution facilities that are not used or are used only a *de minimis* amount by members of the Extra Large Load Delivery Class and the over 10 MW High Voltage Delivery Class;
- (2) Order ComEd to undertake a Shared Distribution Lines Proportional Cost Assignment Study, as described by Mr. Terhune;

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

(4) Order a more accurate allocation of Customer Care Costs now, to reflect the unquestionable fact that a portion of those costs is attributable to ComEd's supply function;

(5) Order ComEd to undertake a study of its allocation of Customer Care Costs to reflect market evolution.

(6) Order ComEd to provide transparent information about the relationship between and charges associated with the Distribution Loss Factor and the charges imposed for Unaccounted For Energy; and

(7) Order ComEd to collect the Illinois Electricity Distribution Tax consistent with the manner in which ComEd collected that tax for over a decade.

Respectfully submitted,

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

By: /s/ Christopher J. Townsend  
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