

**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

ATTACHMENT A

**PROPOSED
REPLACEMENT
LANGUAGE**

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PROPOSED REPLACEMENT LANGUAGE
SUPPLEMENTING THE BRIEF ON EXCEPTIONS OF REACT

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),¹ by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission") respectfully submits this Attachment A containing Proposed Replacement Language Supplementing REACT's Brief on Exceptions in the above-captioned proceeding regarding revenue neutral tariff changes related to the rate design of Commonwealth Edison Company ("ComEd").²

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

² This Attachment A containing Proposed Replacement Language follows the Common Outline of Issues as reflected in the Proposed Order. Failure to address any particular outline issue in this Proposed Replacement Language 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.

INTRODUCTORY STATEMENT

Classes and subclasses of ComEd's customers should not be charged for 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. This result, which is the cornerstone of REACT's position in this proceeding, is not only fair; it is mandated under the Illinois Public Utilities Act ("Act" or "Public Utilities Act"), which explicitly requires application of cost causation principles to rate design. (*See* 220 ILCS 5/1-102(d)(iii), 5/16-108(c).) This result is also consistent with substantial Commission precedent applying cost causation principles to rate design. (*See, e.g.*, ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 205-06; ICC Docket No. 10-0467, May 24, 2011 Final Order at 38, 203, 285, 231-32.)

In order to apply cost causation principles, it is necessary to analyze the facts regarding which facilities are used by particular customer classes or subclasses. REACT has performed such a fact-based analysis in this case, through highly qualified expert witnesses. REACT has demonstrated that ComEd's Embedded Cost of Service Study ("ECOSS"), which is the starting point for ComEd's rate design, contains flaws that violate basic cost causation principles by improperly assigning costs to the Extra Large Load Delivery Class (referred to herein as the "ELL" class)³ and the over 10 MW High Voltage Delivery Class customers (referred to herein as the "HV Over 10 MW" class).

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

³ 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."

opposing ComEd's proposed inequitable and unjustified cost allocations. REACT members include customers in both the ELL class and 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 proposal 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.

I.

INTRODUCTION

A. Procedural History

B. Legal Standards

The scope of this proceeding is limited to considering revenue neutral tariff changes to the allocation of delivery service costs among ComEd's rate classes and possible changes to the rate design formula of Rate DSPP - Delivery Service Pricing and Performance ("Rate DSPP") in accordance with provisions of subsection 16-108.5(e) of the Act.

Section 16-108.5(e) of the Act provides:

Nothing in subsections (c) or (d) of this Section shall prohibit the Commission from investigating, or a participating utility from filing, revenue-neutral tariff changes related to rate design of a performance-based formula rate that has been placed into effect for the utility. Following approval of a participating utility's performance-based formula rate tariff pursuant to subsection (c) of this Section, the utility shall make a filing with the Commission within one year after the effective date of the performance-based formula rate tariff that proposes changes to the tariff to incorporate the findings of any final rate design orders of the Commission applicable to the participating utility and entered subsequent to the Commission's approval of the tariff. The Commission shall, after notice and hearing, enter its order approving, or approving with modification, the proposed changes to the performance-based formula rate tariff within 240 days after the utility's filing. Following such approval, the utility shall make a filing with the Commission during each subsequent 3-year period that either proposes revenue-neutral tariff changes or re-files the existing tariffs without change, which shall present the Commission with an opportunity to suspend the tariffs and consider revenue-neutral tariff changes related to rate design.

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

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

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

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

Similarly, Section 16-108 of the Act states:

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

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

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

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

(ICC Docket No. 07-0566, Sept. 10, 2008 Final Order at 205.) Indeed, we have articulated an "explicit policy objective of assigning costs where they belong." (Id. at 206.) We reiterated this point in our decision in the 2010 ComEd Rate Case, invoking cost causation principles repeatedly in its analyses and conclusions, for example:

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

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

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

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

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

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

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

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

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

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

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

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

II.

COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

A. **Overview**

B. **Potentially Uncontested Issues**

1. **Indirect Uncollectible Costs**

Cost Causation Principles Apply **[At Page 7 of the Proposed Order]**

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

Commission Analysis and Conclusions

Pursuant to the Commission's decision in the 2010 Rate Case Order, Docket 10-0467, ComEd included in the instant proceeding an Indirect Uncollectible Cost Study (ComEd Ex. 3.08). The AG and Staff recommend that the Commission approved ECOSS in this proceeding incorporate the results of the Indirect Uncollectible Cost Study. The Commission finds that the ECOSS should incorporate the results of the Indirect Uncollectible Cost Study.

As explained in the Section I.B. of this Order, it is uncontested that cost causation principles apply to cost of service and rate design issues presented in this proceeding.

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**

Commission Analysis and Conclusion **[Beginning at Page 12 of the Proposed Order]**

REACT proposes that the Commission adopt adjustments to the allocation of the Shared Distribution Lines costs to the ELL and HV Over 10 MW customer classes. REACT argues that data confirms that the ELL and HV Over 10 MW customer classes either do not use certain types of facilities, or only use them to a *de minimis* degree. As such, according to REACT, these customer classes should either not be charged for those facilities, or only be charged for

the *de minimis* proportion of such use of those facilities. Accordingly, REACT recommends that the Commission reduce approximately 36%, roughly \$9 million, of the costs for Shared Distribution Lines currently borne by the ELL and HV Over 10 MW customer classes. REACT proposes that the \$9 million adjustment be spread evenly among other customer classes.

ComEd does not take any position regarding REACT's recommendation; however, ComEd raises concerns regarding the basic fairness of allowing parties to identify equipment that either does not serve them or serves them in some *de minimis* manner. ComEd argues that the ECOSS cannot accommodate every such instance without becoming increasingly disaggregated and complex.

Staff agrees with ComEd's concerns, and argues that the Commission should reject REACT's proposal. Staff argues that the distribution system is a large interconnected system, and as such, if costs associated with certain components are excluded from allocations to certain customers, then the Commission must also consider whether all other component costs were taken into consideration. Staff argues it is not feasible to have a distribution system where each component is identified so that each customer only bears the costs associated with their specific service. Staff urges the Commission to be cautious when segmenting certain costs for one class without applying the same approach across the classes.

The Commercial Group argues that REACT's proposal is too narrowly focused on the ELL and HV Over 10 MW customers. The Commercial Group states that, under the REACT proposal, customers in the Large and Very Large Load classes will receive an increased allocation of Shared Distribution despite the fact that REACT's witness agrees that the larger load classes should be allocated less.

~~The Commission agrees 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.~~

Cost causation principles dictate that the allocation of costs be made as accurately as reasonably possible, based upon the best available information. The Commission has no hesitation in supporting serious efforts to bring further refinement to the process of cost allocation and rate design, where those efforts involve credible analysis by qualified experts. That type of analysis is precisely what REACT has provided, through the study performed by Mr. Terhune, a highly qualified expert who has demonstrated his specific knowledge about the ComEd distribution system and has provided a detailed analysis that has not been rebutted. The refinements to the ComEd ECOSS based upon Mr. Terhune's engineering analysis of

information provided by ComEd would bring greater accuracy to the cost allocation process and result in fairer rate design, and no party presents credible, specific contrary evidence. Indeed, there appears no question that Mr. Terhune's analysis regarding the facilities used and not used by the ELL and HV Over 10 MW classes is correct.

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

The Commission acknowledges that Mr. Terhune's analysis is limited to only one class (ELL) and one subclass (HV Over 10 MW) of customers. However, that fact does not undercut the validity of Mr. Terhune's analysis. Nor does it allow the Commission to ignore the analysis, just because of the possibility that further analysis -- i.e., even further refinement of the ECOSS -- might justify additional allocation modifications. The Commission's process is to make decisions based on evidence presented in each particular docket, and in this docket the compelling and unrebutted evidence shows that the ELL and HV Over 10 MW classes are being charged fully for specific categories of facilities these customers do not use or use only minimally. Arguments by other parties that REACT's analysis was too narrowly focused begs the question why those other parties did not present evidence about cost of service to other specific customer classes. REACT is not under an obligation to present a comprehensive analysis of ComEd's entire distribution system. In this case, REACT presented compelling and persuasive evidence that further refines the ComEd ECOSS, consistent with prior Commission directives. Thus, it is wholly appropriate -- indeed, legally mandated -- that the ComEd ECOSS be modified accordingly.

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

(iii) Cost Allocation of Combination Poles

Commission Analysis and Conclusion
[Beginning at Page 23 of the Proposed Order]

~~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 IEC 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.~~

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

The Commission is also unconvinced that a combination pole is merely "a convenience for secondary service." (Staff Init. Br. at 14; Staff Reply Br. at 8.) As IIEC explains (with REACT's support), using the "same poles benefits both the primary and secondary systems through economies of scale" and is consistent with efficient distribution planning. (IIEC Init. Br. at 8; *see also* REACT Reply Br. at 19.) In the absence of combination poles, the costs for secondary system distribution obviously would rise. (*See* IIEC Init. Br. at 8; *see also* ComEd Reply Br. at 6 (acknowledging that the "secondary system benefits from the combination poles").) Thus, the suggestion that secondary customer classes do not benefit from combination poles -- and therefore should not pay for some portion of them -- is unconvincing.

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

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

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

**Commission Analysis and Conclusion
[Beginning at 26 of the Proposed Order]**

See Section H.D.

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

The study advocated by REACT witness Mr. Terhune is feasible -- ComEd openly admits as much -- and is intended to be a statistically valid analysis of the proportionate use of shared distribution lines for all classes. In this instance, as in the instance of the CTA/Metra

Geographical Study discussed in Section II.C.1.b.iii of this Order, the Commission believes that it would be appropriate to have more information rather than less.

Opposition to the proposed study seems to be based on the notion that since "perfect" information might not result, there is no point in even performing the study. That approach is inconsistent with the Commission's long-standing support for incremental refinement of rate design through accurate cost allocation. The current information used by ComEd in its ECOSSs certainly is not "perfect," and this study will provide more accurate information that will improve the basis for cost allocation.

ComEd admitted that it has 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. Accordingly, the Commission directs ComEd to undertake the Shared Distribution Lines Proportional Cost Assignment Study advocated by Mr. Terhune to more accurately allocate these costs and develop a more fair rate design. ComEd shall conduct the planning and implementation of the study in an open and transparent manner, in consultation with Staff, REACT, and other interested parties.

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

D. Overall ECOSS Recommendation

Commission Analysis and Conclusion [Beginning at Page 47 of the Proposed Order]

~~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 IEC 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 IEC'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. In particular, REACT expert witness Mr. Terhune's unrebutted engineering analysis demonstrates that there are "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; see also id. at 3:43-59.) Mr. Terhune provided a refinement to the ComEd ECOSS and further segmentation of ComEd's costs. This is exactly what was called for at the conclusion of the 2010 ComEd Rate Case. Mr. Terhune's refinement is highly detailed and has been comprehensively explained, and no party attacks the analytical validity of Mr. Terhune's work. (See REACT Ex. 2.0 at 9:177-39:925.), 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 IEC as discussed in Section II.C.1.a.~~

~~City/CUB did not support any particular overall ECOSS. Instead, City/CUB recommends the Commission go through a three step process to create a new ECOSS by making modifications to the allocations in the Residential Sector. City/CUB's proposed recommendations are discussed in Section II.C.3.b. and are rejected.~~

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

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

ECOSS," again confirming the feasibility of what REACT recommends. (*Id.*) As discussed above, ComEd now expresses some concern about the timing to complete the study that Mr. Terhune advocates, stating that the suggested four months is insufficient. (*See* REACT Init. Br. at 27 n.3; ComEd Reply Br. at 7-9.) The discussion in Section II.C.1.b.ii. of this Order addresses this issue.

Staff recommends that the "Commission should be cautious when considering parties proposals that claim they do not use certain components of the system and therefore should not be allocated certain costs." (Staff Init. Br. at 24; Staff Reply Br. at 14.) However, REACT has provided *highly specific and comprehensive analytical information* that refines the ECOSS to justify the relatively modest allocation modification that it advocates. (*See* REACT Init. Br. at 20-24; REACT Ex. 2.0 at 9:179-39:925; REACT Ex. 2.7-2.15; REACT Ex. 5.0 at 6:106-21:436.) If Staff or any other party believed that other costs should be assigned to the ELL and Over 10 MW High Voltage classes, then they should have presented evidence to support such claims; however, neither Staff nor any other party presented any substantive rebuttal to REACT's analysis. Indeed, other parties openly admitted that they performed no independent analysis of the facilities that serve customers. (*See, e.g.,* Tr. 246:7-11 (ComEd witness Mr. Bjerning); Tr. 126:20-128:6 (Staff witness Mr. Johnson); Tr. at 305:24-306:1-7 (Commercial Group witness Mr. Chriss); Tr. at 291:8-15, 291:24-292:1-7 (Kroger Co. witness Mr. Townsend); REACT Cross Ex. 10 Townsend.) Accordingly, Staff's attempt to lump all proposals for accurate cost allocation together is inappropriate.

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

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

For the reasons stated herein, ComEd is ordered to reallocate the amount identified by ComEd witness Bjerning (approximately \$9.25 million) (*see* ComEd Ex. 7.0 at 27:439-47) to reflect costs that have been improperly attributed to the ELL and Over 10 MW High Voltage customer classes -- that amount shall be spread evening across all of the other rate classes. ComEd is further ordered to undertake the Shared Distribution Lines Proportional Cost

Assignment Study advocated by REACT witness Mr. Terhune. The Commission directs ComEd to begin the study immediately with a goal of completing the study within four months. If it appears that additional time will be needed -- a period that shall not exceed four additional months -- ComEd shall notify the Commission and the parties through a filing made within 30 days of this Order explaining the status of the study process and the timeline, if any, that will exceed the currently-approved four months.

III.

CUSTOMER CARE COSTS

Commission Analysis and Conclusion [Beginning at Page 53 of the Proposed Order]

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 ~~portion~~^{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. That outcome is contrary to cost causation principles and sound rate design.

ComEd and Staff point out that as the number of delivery service customers (i.e., customers taking supply service from a RES) has increased, ~~its~~ ComEd's 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. Such an absence is highly unlikely, if not impossible. 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. Further, the evidence demonstrated that a substantial part of the increased customer care costs that ComEd and Staff highlighted was due simply to an increase in postage rates applicable to ComEd's mailing of bills. That increase, which applies to both ComEd's delivery services and its supply function, obviously is not proof that ComEd is accurately allocating costs between supply and delivery service.

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. In light of that analysis, ComEd's assertion that there are no customer care costs attributable to its supply customers is equally highly 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.~~

The General Assembly has directed that the Commission is to "promote the development of an effectively competitive electricity market". (220 ILCS 5/16-101(A)(d) (emphasis added).) In order to satisfy this statutory obligation, it is necessary to be constantly vigilant in examining not only the fundamentals of the market, but also the changes that occur in the electricity market, and to take affirmative steps to further encourage competition. One of the basic tenants of the competitive market is that the utilities' supply function cannot be cross-subsidized by the rates paid for the delivery services provided by the utility.

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

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

In each one of those proceedings, 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 31-32; REACT Ex. 3.0 at 6:100-9:183; REACT Exs. 3.2-3.6.) In the last ComEd Rate Case -- the most recent opportunity for the Commission to address this issue -- we explicitly directed ComEd further examine this issue as competitive markets and customer choice continued to develop. (See *id.*)

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

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

increasing bundled supply rates. The Commission believes that it is reasonable to investigate the allocation of customer care costs.

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

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

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

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

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

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

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

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

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

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

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

ComEd now makes the remarkable assertion that "REACT here has articulated no change in circumstance that would warrant the Commission's revisiting this subject. . . ." (ComEd Reply Br. at 13.) Yet, it is unquestioned that there has been a dramatic increase in customer switching since that proceeding (a 1,333,333% increase from May 2010 and April 2013). ComEd itself recognizes that "of ComEd's 3.8 million customers, only 1.2 million customers still receive supply from ComEd." (*Id.*) Given that fact and the fact that the primary focus of this proceeding is ComEd's cost allocation to ComEd's rates, it is entirely appropriate to examine ComEd's improper allocation of supply-related Customer Care Costs to the delivery function. (See REACT Init. Br. at 35.) Yet, not only has ComEd failed to provide any updated analyses with respect to the allocation of Customer Care Costs, it has actively resisted all attempts to substantively engage on the issue in this docket. (See REACT Init. Br. at 34, comparing ComEd Ex. 9.01 in this proceeding with ComEd Ex. 19.1 in ICC Docket No. 10-0467; ComEd Init. Br. at 23.)

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

Second, Commission procedure permits, and often requires, that similar issues be raised in succeeding proceedings. (See, e.g., *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 407-408 (2nd Dist. 2010) (holding that a "record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a different result.")) ComEd itself regularly asks the Commission to revisit issues that are important to it. This approach makes sense, for the simple reason that a decision made at one moment may not apply to facts on the ground at a later moment. Given the significant market developments since the 2010 ComEd Rate Case, that is precisely the case here.

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

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

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

Second, REACT is proposing a "revenue-neutral tariff change," consistent with the Act's terms. (See REACT Init. Br. at 40, citing REACT Ex. 6.0 at 8:159-68.) The Act does not prohibit a decrease in ComEd's "delivery services revenue requirement," as ComEd's argument would suggest; rather, it merely requires that changes be "revenue neutral". (220 ILCS 5/16-108.5(e).) REACT does not question the overall amount of Customer Care Costs that ComEd has incurred. (See REACT Init. Br. at 40-41.) REACT has explained that ComEd should recover *all* of its prudently incurred reasonable Customer Care Costs, but it should recover those costs from the cost-causers. (See *id.*) Customers who do not take supply service from ComEd should not pay for supply-related Customer Care Costs; but those supply-related costs should be fully recovered from those customers who do take supply service from ComEd. (See *id.*) Any decrease in ComEd's delivery services revenue requirement would be offset by an increase in ComEd's supply services charges. ComEd witness Ms. Brinkman admitted that the Commission could enter such an Order. (See Tr. at 81:23-82:7.) ComEd will not lose revenue under the REACT proposal -- this is purely a question of revenue neutral rate design and cost allocation. (See REACT Init. Br. at 40-41.)

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

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

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

REACT witness Mr. Merola did specifically examine the causes for the increases, and concluded that based upon the data ComEd has collected, it is impossible to determine whether the increase is due to ComEd's supply function or its delivery function. For example, Mr. Merola noted that ComEd's Billing Department costs have increased from \$22.15 million to \$26.15 million, largely due to a postage rate increase. (See REACT Ex. 6.0 at 16:368-71.) In other words, the cost increase has nothing to do with new delivery services obligations that ComEd has undertaken -- it results from an increase in the price of stamps. Mr. Merola explained that because ComEd uses the U.S. mail to send bills which contain charges for both its supply service and its delivery services, using a proper embedded cost allocation methodology, a portion of those postage costs -- including the increased costs -- should be allocated to ComEd's supply function. (See *id.*) Staff witness Mr. Johnson acknowledged this point on cross examination, and admitted that the cost increase that ComEd pointed to was postage-related. (See Tr. 142:13-143-2.)

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

Staff continues to invoke the validity of the Switching Study from Docket No. 10-0467. (See Staff Reply Br. at 15-16.) Staff completely ignores the fact that the Switching Study was a marginal cost study that ignored the fact that ComEd has embedded costs associated with

providing customer service to both its supply and its delivery function. (See REACT Ex. 6.0 at 17:400-18:426.) For example, costs associated with billing, payment processing, revenue management, and information technology are related to both the delivery and supply functions. (See id.) As a fundamental rate design matter, these types of shared costs must be allocated appropriately to each function, using the same type of embedded cost methodology that is the basis for ComEd's allocation of all other costs. (See id.) That is precisely why the Commission should order ComEd to perform a transparent embedded cost of service study that allocates supply-related Customer Care Costs to the supply function and delivery-related Customer Care Costs to the delivery function. (See id.)

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

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

Accordingly, ComEd is ordered to: (1) modify its cost allocations between its supply function and its delivery function immediately by allocating approximately \$109 million currently in its delivery services function to its supply function; and (2) initiate a transparent 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

B. Potentially Uncontested Issues [At Page 59 of the Proposed Order]

~~The Commission will not address uncontested rate design issues in this Order.~~
Cost Causation Principles Apply

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

Commission Analysis and Conclusions

As explained in the Section I.B. of this Order, it is uncontested that cost causation principles apply to cost of service and rate design issues presented in this proceeding.

C. Potentially Contested Issues

2. Non-Residential

b. Movement Toward ECOSS-Based Rates

Commission Analysis and Conclusion **[Beginning at Page 88 of the Proposed Order]**

~~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.~~

ComEd has presented several different rate design scenarios in this proceeding, though it professes to not advocate any particular design. (See ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio); ComEd Init. Br. at 26.) REACT highlights ComEd's admission that all of those rate designs are based on the ECOSS approach from the 2010 ComEd Rate Case. (See ComEd Ex. 6.0 at 26:454-61 (ComEd witness Mr. Tenorio).) The Commission's Final Order in

that case specifically called for further refinement to the ECOSS, yet ComEd openly admits that it has not presented a further refined ECOSS. (See Tr. at 246:7-11 (ComEd witness Mr. Bjerning).) Therefore, REACT states that the Commission should reject any modification of rate design intended as a further movement toward so-called "cost" based upon the flawed ComEd ECOSS.

The flaws in ComEd's ECOSS methodology are not merely theoretical -- the impact upon the ELL and HV Over 10 MW classes is substantial, and, particularly when taken with the historic disproportionate increases imposed upon those classes, the prospect of an additional movement toward so-called "cost" is troubling. REACT presented evidence demonstrating the importance of the largest energy users to the Illinois economy; the challenging business environmental and lagging unemployment numbers in northern Illinois; and the enormous and disproportionate rate increases that would result with any continued movement toward so-called "cost" based on the current ComEd ECOSS. (See REACT Init. Br. at 46-48.)

Even ComEd witness Mr. Tenorio, who disagreed with some of the precise calculations made by REACT, acknowledged on cross-examination that the cost implications of any continued movement toward so-called "cost" are substantial for ELL and HV Over 10 MW customers. (See Tr. at 418:1-429:6.) Indeed, ComEd's own analysis showed that the aggregate increases for ELL and HV Over 10 MW class customers since 2007 are in many cases hundreds of thousands of dollars, and in several cases multiple-millions of dollars. (See ComEd Ex. 6.13.) Even using ComEd's "median" calculation rather than the common-sense average calculation, ComEd's own numbers showed that if a move to "100%" so-called "cost" were implemented an increase of over **136%** would be experienced by the median ELL customer and over an increase of over **52%** would be experienced by the median HV Over 10 MW customer. (See *id.*) ComEd tries in its Reply Brief to blunt the impact of those numbers, first suggesting that ComEd provided different numbers in its testimony. (See ComEd Reply Br. at 22.) While ComEd did offer different numbers in testimony, the record establishes that on cross-examination of ComEd's witnesses -- in particular Mr. Tenorio -- ComEd's numbers were called into question and REACT's view of cost impacts was confirmed. Indeed, in its Reply Brief, ComEd candidly acknowledges that "Mr. Tenorio did confirm that the math calculations for the differences in costs computed by counsel for REACT for various customers was correct. . . ." (ComEd Reply Br. at 23.) ComEd continues that Mr. Tenorio "stated that he could draw no conclusion as to whether such impacts were significant or not for those customers." (ComEd Reply Br. at 23.) While Mr. Tenorio chose not to draw any conclusions about cost impacts, the Commission is not so constrained. The evidence confirms REACT's characterization of the cost impacts.

The Commission, therefore, rejects any step toward so-called "cost" based on ComEd's flawed and unrefined ECOSS.

4. Illinois Electricity Distribution Tax

Commission Analysis and Conclusion [Beginning at Page 94]

~~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.~~

~~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.~~

The IEDT is a tax imposed by the State of Illinois on Illinois electric distribution companies under the Public Utilities Act. (See 35 ILCS 620/2a.1; REACT Init. Br. at 48.) REACT explains that this tax originally was enacted to collect money based upon a percentage of each utility's invested capital. (See REACT Init. Br. at 48-49, citing REACT Ex. 1.0 at 29:641-42.) From 1999 (when the first ComEd delivery services rates became effective), until the conclusion of ComEd's 2010 Rate Case, ComEd recovered the IEDT as part of its Distribution Facilities Charge ("DFC"). (See REACT Init. Br. at 49, citing REACT Ex. 1.0 at 29:644-46.) REACT further explains that under the DFC method, for non-residential customers such as those in the 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.) REACT asserts that these problems arose because the IEDT charges no longer have any relationship to ComEd's invested capital -- which is the purpose of the tax -- but rather are just tied to the amount of kilowatts delivered to each customer. (See REACT Init. Br. at 49, citing REACT Ex. 4.0 at 16:338-41.)

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

the 2010 ComEd Rate Case. The un rebutted evidence in this proceeding demonstrates that the way in which ComEd currently is collecting the IEDT has a significant negative impacts upon the largest energy users in Northern Illinois.

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

ComEd and Staff also claim that ComEd was compelled by an act of the General Assembly to alter its IEDT collection method. (See ComEd Init. Br. at 35; Staff Init. Br. at 38; Staff Reply Br. at 21.) However, the relevant chronology demonstrates that ComEd's prior DFC method of assessing this tax was a legal and practical method that avoided the problems with the current per kWh method. (See REACT Init. Br. at 50.) The modification in the law regarding how ComEd is assessed the IEDT became effective as a result of 1997 amendments to the Public Utilities Act. (See REACT Init. Br. at 50, citing REACT Ex. 4.0 at 341-44.) However, ComEd waited until thirteen years, until 2010, to modify its assessment methodology. (See id.) The DFC method of collecting the IEDT was entirely appropriate, and was not required by the 1997 amendments to the Public Utilities Act. (See id.)

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

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

object to the Commercial Group's request to have ComEd collect the IEDT from the Medium, Large, and Very Large load classes through the DFC as it did historically, in order to avoid penalizing customers that efficiently use ComEd's distribution system, REACT would support that approach. (See REACT Reply Br. at 54.)

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

D. Overall Recommended Rate Design

Commission Analysis and Conclusion [Beginning at Page 97 of the Proposed Order]

With regard to residential customers, 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.

Regarding non-residential customers, the Commission rejects any assumption by ComEd or another party that rate design may be based upon flawed assumptions contained in a ComEd ECOSS that the company presented years ago to again raise the rates it charges its largest customers. On the contrary, credible refinements to cost studies should be implemented based upon new data that has been developed and changes to the market conditions.

On this point, the Commission notes, and rejects, the suggestion by Staff that rate design modifications are inappropriate unless a party "proposes a comprehensive set of rates for each and every class." (Staff Reply Br. at 23.) Staff cites no authority for such a position, and that has never been the standard applied by the Commission. As discussed above, rate design by its very nature is a process of incremental refinement based upon the best available information at a given time. Staff's standard suggests that even in the face of credible and persuasive evidence about flaws in the ComEd ECOSS, the Commission's hands are tied if there is any possibility that any modification in the rate design might adversely affect one or another rate class. Of course, no single customer class or small group of customer classes has all the information necessary from ComEd to develop such a comprehensive solution. A customer class should be able to make the case that it has received discriminatory treatment from its utility, and if it does so through credible and unrebutted expert evidence, it will receive fair consideration of the merits of the issue without criticisms or insinuations about motives.

Accordingly, ComEd is ordered to:

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

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

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

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

~~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 also 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).~~

VI.

OTHER

B. Unaccounted For Energy

Commission Analysis and Conclusion [Beginning at Page 109 of the Proposed Order]

REACT argues that the Commission should order a study to determine whether the UFE is being properly calculated and allocated. Based on the record evidence, the Commission agrees.

~~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, 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.~~

REACT explains that there are two categories of costs that customers experience associated with lost electricity: (1) the Distribution Loss Factor ("DLF") that is a specific charge in ComEd's tariffs; and (2) the cost for Unaccounted For Energy ("UFE"). (See REACT Init. Br. at 52-55; REACT Ex. 1.0 at 25:574-26:592.) While ComEd presented analysis associated with the distribution loss percentages and the accompanying DLFs for the various customer classes, it presented no similar analysis associated with UFE -- despite the fact that the cost impact of UFE can be twice as great as that of the DLFs. (See ComEd Ex. 4.0 at 5:85-11:213; ComEd Ex. 8.0 at 3:46-60; REACT Ex. 1.0 at 25:561-65, 27:599-605.)

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

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

The confusing nature of the interrelationship between UFE and the DLFs was highlighted during cross-examination of ComEd witness Mr. Tenorio, ComEd's Manager of Regulatory Strategies and Solutions, and ComEd's lead rate design witness and the sole ComEd witness testifying about these issues, who admitted repeatedly that even he knew only "a little bit" about how the UFE charge is calculated and collected. (Tr. at 409:13-15; see also Tr. at 410:2-3 ("I don't really understand or know how the UFE is accounted for other than what I just described."; Tr. at 410:8-12 ("I guess what I don't know how to answer is [sic], I don't know how that UFE is calculated; if it is a distinct number, if it's a subtraction, I don't know how that piece works and how that allocation works. I really couldn't attest to that."))

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

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

ComEd asserts that "UFE is not within the purview of the Commission . . ." and states that it is a "wholesale electricity issue." (ComEd Init. Br. at 43; ComEd Reply Br. at 28.) This is a perplexing and unconvincing position for ComEd to take, because just one paragraph after making this allegation in its Initial Brief, ComEd states that under the Energy Infrastructure Modernization Act, which is part of the Public Utilities Act, "UFE is one of the performance metrics in the *Commission-approved* Multi-Year Performance Metrics Plan." (*Id.* (emphasis added).) Thus, ComEd simultaneously suggests that UFE is wholly outside this Commission's jurisdiction *and* at the same time is a component of a Commission-approved Metrics Plan. ComEd's internally contradictory position -- asserted literally on the same page of its Initial Brief -- speaks for itself and undermines the credibility of ComEd's refusal to undertake the requested study and provide the requested information.

Further, contrary to ComEd's implication, ComEd does not provide sufficient information in its Metrics Plan for the Commission to evaluate the causes of UFE, much less whether the current rate design properly matches costs with the cost causers.

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

Investigating the causes of UFE and current cost recovery methods also would be consistent with the Commission's directive to ensure that the costs are recovered from the cost-causers. (See 220 ILCS 5/1-102(d)(iii).) If it is appropriate to have separate distribution loss percentages and DLFs for the various classes, it is appropriate to investigate whether UFE likewise should be charged in a manner that reflects cost causation principles.

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

VII.

FINDINGS AND ORDERING PARAGRAPHS **[Beginning at Page 116 of the Proposed Order]**

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (...)
- (5) ComEd is ordered to modify its 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;
- (6) ComEd is ordered to undertake a Shared Distribution Lines Proportional Cost Assignment Study, as described by Mr. Terhune;
- (7) ComEd is ordered to 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;
- (8) ComEd is ordered to make 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;
- (9) ComEd is ordered to undertake a study of its allocation of Customer Care Costs to reflect market evolution;
- (10) ComEd is ordered to provide transparent information about the relationship between and charges associated with the Distribution Loss Factor and the charges imposed for Unaccounted For Energy;
- (11) ComEd is ordered to collect the Illinois Electricity Distribution Tax consistent with the manner in which ComEd collected that tax for over a decade; and
- (~~5~~12) new tariff sheets authorized to be filed by this Order should reflect an effective date that is consistent with the requirements set forth in Section 9-201(b) of the Public Utilities Act.

Respectfully submitted,

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

By: /s/ Christopher J. Townsend
One Of Its Attorneys

Christopher J. Townsend
Christopher N. Skey
Adam T. Margolin
Quarles & Brady LLP
300 N. LaSalle, Suite 4000
Chicago, IL 60654
christopher.townsend@quarles.com
christopher.skey@quarles.com
adam.margolin@quarles.com