

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

**REPLY BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY**

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Commonwealth Edison Company (“ComEd”), by its counsel, submits to the Illinois Commerce Commission (“Commission” or “ICC”) this Reply Brief on Exceptions (“RBOE”) pursuant to Section 10-111 of the Public Utilities Act (the “PUA”), 220 ILCS 5/10-111, Part 200.830 of the Commission’s Rules of Practice, 83 Ill. Admin. Code § 200.830, and the Administrative Law Judges (“ALJs”) Scheduling Order.

I. Introduction

The parties’ Briefs on Exceptions (“Briefs on Exception” or “BOEs”) generally restate positions that have been briefed at length in earlier pleadings. Consequently, this RBOE does not restate ComEd’s position on all issues argued in those BOEs.¹ Of the issues addressed in the Commission Staff (“Staff”) and Intervenor BOEs, the arguments presented concerning ComEd’s current, Commission-approved straight fixed variable (“SFV”) rate design for residential customers is noteworthy.

It remains ComEd’s position that, as urged by Staff in the evidentiary record, the SFV rate design should remain in place. However, the parties who claim to represent the interests of

¹ ComEd’s silence on such issues in this RBOE does not reflect its acceptance of such claims. Instead, ComEd incorporates by reference its response to such claims in its Initial and Reply Briefs, and BOE.

residential customers present competing arguments on residential rate design. The Illinois Attorney General (“AG”) presents one argument, which the Proposed Order adopts. PO at 71-72. Meanwhile, the City of Chicago (“City”) and the Citizens Utility Board (“CUB”) (collectively “City/CUB”) argue for an entirely different approach to residential rate design. City/CUB BOE at 3, 25-30. This substantial difference of opinion between parties who each claim to represent the interests of residential customers underscores the importance of further examining ComEd’s residential rate design in a separate, follow-on proceeding. ComEd BOE at 10, 17-18. Accordingly, rather than consider a rate design that is inconsistent with prior Commission decisions and cost causation principles, the Commission should direct interested stakeholders to develop and examine an alternative cost-based rate design tailored to the needs of all users but especially low usage customers.

For the reasons set forth in the Argument section below, and in ComEd’s BOE, the Proposed Order should be amended consistent with ComEd’s suggested replacement language.

ARGUMENT

II.C.1.a(i) Cost Allocation of Primary/Secondary Distribution System - Studies and Analysis Performed Regarding Changes to Cost Allocations to Primary Service - Extra Large Load and High Voltage Over 10 MW

REACT² continues to argue that, based on its analysis, the allocation of costs for facilities that operate at 4 kV or are in a single-phase or two-phase configuration should be limited to only the proportional *de minimis* use characteristic of the Extra Large Load (“ELL”) Delivery Class customers and a subdivision of the High Voltage (“HV”) Delivery Class including only customers with loads over 10 megawatts (“HV Over 10 MW customers”). REACT BOE at 14-21. In the embedded cost of service studies (“ECOSSs”) that ComEd

² The Coalition to Request Equitable Allocation of Costs Together (“REACT”)

presented in this proceeding, these costs are contained in the Shared Distribution Lines sub-function. Bjerning Reb., ComEd Ex. 7.0, 25:423-426. REACT proposes that the allocation in the ECOSS in the Shared Distribution Lines sub-function to the ELL and HV Over 10 MW customers be reduced by one-third, or \$9,261,212. Terhune Dir., REACT Ex. 2.0, 38:900-39:916; Bjerning Reb., ComEd Ex. 7.0, 27:436-447. Subject to the concerns expressed in its Initial Brief (at 10-15) regarding the related REACT study, ComEd does not take a position with respect to this REACT proposed adjustment. However, ComEd notes that REACT did not indicate to which other customers those costs should be reallocated. Bjerning Reb., ComEd Ex. 7.0, 5:62-68.

While ComEd did not take a position with respect to REACT's proposed adjustment, certain statements in REACT's Brief on Exceptions warrant clarification. Citing "admissions" by various witnesses, including ComEd witnesses Bradley L. Bjerning and Michael T. O'Sheasy, REACT claims that no party contested the accuracy of the engineering analysis supporting REACT's proposed adjustment. REACT BOE at 14; REACT BOE Att. C. Though ComEd took no position on this subject, that does not mean that ComEd agreed with REACT. As Mr. Bjerning testified during evidentiary hearings, the methodology used in REACT witness Harry Terhune's engineering analysis is "one type of methodology that could be used. It doesn't necessarily mean that it's the best and most appropriate methodology." Bjerning, 09/24/13, Tr., 253:18-20. ComEd notes that Mr. Bjerning's statement is not highlighted in REACT's "admissions" contained in Attachment C of REACT's Brief on Exceptions. Furthermore, Mr. O'Sheasy, Vice President of Christensen Associates Energy Consulting, LLC ("CA")³, who is an

³ CA prepared the report, *Meeting Commonwealth Edison's Distribution Allocation Requirements from Illinois Commerce Commission Order 10-0467*, ("CA Distribution Study"), which is ComEd Ex. 3.07.

expert regarding cost of service studies, did not review Mr. Terhune's engineering analysis and as such had no opinion much less made an admission regarding its accuracy. Thus, ComEd made no "admissions" regarding the accuracy of the REACT analysis.

Furthermore, relying on language from the ICC's Order in Docket No. 10-0467 ("2010 Rate Case"), REACT implies that ComEd did not take the Commission's comments regarding the ECOSS seriously. REACT BOE at 15-16. The evidence demonstrates that ComEd has complied with all prior Commission directives. Tenorio Dir., ComEd Ex. 2.0, 67:958-75:1006; ComEd Init. Br. at 3-6, 8-9, 15-19, 24-26, 30-31, 33-34, 40-42; ComEd Reply Br. at 3, 5-6, 9-10, 14-18, 24-25; ComEd BOE at 6-8, 11-14, 18-19. Furthermore, as detailed in its Initial Brief (at 3-6), ComEd provided a substantial amount of data, including seven illustrative ECOSSs. The passage in the 2010 Rate Case Order to which REACT refers states "[w]hile the ECOSS approved here still needs further refinement, which shall take place in a future rate case, it is accurate enough to move, gradually, toward cost-based rates for [the Extra Large Load and High Voltage Delivery Classes]." 2010 Rate Case Order at 264. However, that language does not direct ComEd to change a future ECOSS based upon the results of a particular study. To the extent the ECOSS requires further refinement, ComEd has provided extensive information for Staff and Intervenors to evaluate and to serve as the basis for their proposals in this case.

Finally, REACT takes exception to ComEd's pointing out that REACT did not indicate to which other customers the over \$9 million in costs should be reallocated. REACT BOE at 18. REACT claims that it should be allocated to all other rate classes. *Id.* To support this statement, REACT cites the following testimony of Mr. Terhune:

Using the data already presented in this proceeding, ComEd should be required to reallocate these costs. Based upon ComEd's RDI ECOSS, ComEd's total revenue requirement is approximately \$2 Billion. The Shared Distribution Lines allocation to the ELLC and HV Over 10 MW customer classes is about \$26 Million; which is artificially inflated by approximately

one-third due to the improper inclusion of single-phase and two-phase and 4 kV facilities. If the adjustment of \$8.7 Million (one-third of the \$26 Million) *were simply spread over all classes, including the ELLC and HV Over 10 MW classes*, the impact would be less than one-half percent to each class.

Terhune Reb., REACT Ex. 5.0, 12:250-258. (emphasis added). This testimony expressly includes the ELL Delivery Class and the HV Over 10 MW customers in “all classes.” But under this approach the customers that REACT seeks to shift costs away from would be allocated additional costs. That simply makes no sense.

II.C.1.a(ii) Cost Allocation of Primary/Secondary Distribution System - Studies and Analysis Performed Regarding Changes to Cost Allocations to Primary Service - Single-Phase/Three Phase (Shared) Primary Separation

IIEC⁴ believes that customers who take service at primary voltages or primary service customers should not be allocated single-phase primary system costs as it maintains these facilities are used exclusively or almost exclusively by secondary service customers. IIEC BOE at 4-9. As such, IIEC continues to argue for reassignment of 10 to 20% of primary voltage costs, reallocating costs from the Shared Distribution Lines sub-function to the Secondary Voltage Distribution Lines sub-function in the ECOSS. *Id.* Subject to the concerns expressed in its Initial Brief (at 10-15) regarding the related IIEC study, ComEd does not take a position with respect to this IIEC proposed adjustment. However, ComEd calculated the impact of IIEC’s proposal. Using the IIEC 10% proposed adjustment, \$27.13 million in costs would shift away from the nonresidential sector. Bjerning Reb., ComEd Ex. 7.0, 5:61. Of that amount, residential customers would absorb a \$26.28 million cost increase, with the balance, \$0.85 million, reallocated to lighting customers. *Id.* Using the IIEC 20% proposed adjustment, IIEC proposed adjustment would shift \$54.26 million in costs away from nonresidential customers. Bjerning

⁴ Illinois Industrial Energy Consumers (“IIEC”)

Sur., ComEd Ex. 14.0, 5:52. Of that amount, residential customers would absorb a \$52.57 million cost increase, with the balance, \$1.69 million, allocated to lighting customers. *Id.*

II.C.1.a.(iii) Cost Allocation of Primary/Secondary Distribution System - Studies and Analysis Performed Regarding Changes to Cost Allocations to Primary Service - Cost Allocation of Combination Poles

The Proposed Order adopted the recommendation in the CA Distribution Study, ComEd Ex. 3.07, to allocate 100% of the cost of combination poles, which are poles carrying both primary and secondary equipment – entirely to the primary service level. PO at 23. REACT and IIEC take exception to the Proposed Order’s conclusion. REACT BOE at 19-21; IIEC BOE at 10-12. Having completed the direct observation of poles as required by the 2010 Rate Case Order (at 180-181), CA determined that the allocation of the costs of combination poles should be based on what caused the poles to be installed, or in other words, what caused the cost to be incurred. O’Sheasy Reb., ComEd Ex. 11.0, 4:71-76; *see also* ComEd Init. Br. at 8-10; ComEd Reply Br. at 5-7. Based on information learned from ComEd’s distribution engineering personnel as to ComEd’s construction practices and the experience of the CA project team, CA’s recommendation was to allocate 100% of the combination pole costs to shared costs. O’Sheasy Reb., ComEd Ex. 11.0, 5:92-95. Secondary service customers would still be allocated an appropriate share of the costs of these poles under the CA Distribution Study’s recommendation because they are allocated a portion of the shared costs. O’Sheasy Reb., ComEd Ex. 11.0, 5:99-107; O’Sheasy Sur., ComEd Ex. 17.0, 3:56-75. CA’s recommendation recognizes that the secondary system benefits from the combination poles; however, it also recognizes that the poles first exist to attach primary lines. O’Sheasy Reb., ComEd Ex. 11.0, 4:82-85. The Proposed Order’s conclusion is based on the record evidence.

II.C.1.b(i) and (ii) Cost Allocation of Primary/Secondary Distribution System - Studies and Analysis Proposed Regarding Changes to Cost Allocations to Primary Service - Shared Distribution Line Proportional Cost

Assignment Study and Single-Phase/Three Phase (Shared) Primary Separation Investigation/Workshop

The Proposed Order rejects studies proposed by REACT and IIEC that would further segment ComEd's distribution system as a prelude to reallocating its costs among the various customer classes. PO at 48. REACT and IIEC take exception the Proposed Order's conclusion regarding their respective studies. ComEd does not take a position as to whether these proposed studies should be undertaken but raised several concerns the Commission should consider when assessing these arguments. *See* ComEd Init. Br. at 10-15. ComEd will not repeat those concerns here but they include the value of the information that would likely result from these studies, certain fairness questions that arise in determining the scope of the studies, as well as the burdens or costs of undertaking the studies. *Id.* However, ComEd will respond to certain statements made by REACT in its Brief on Exceptions.

REACT argues that the Proposed Order (at 48) errs in stating that the REACT study would be highly complex. REACT BOE at 27-28. As ComEd explained in its Initial Brief (at 13-15), there are certain basic questions of fairness attendant to undertaking a study like REACT proposed. Segmenting a complex distribution system while only considering certain facilities that certain customers do not use is short-sighted. Any customer on ComEd's system could argue that it should not be allocated costs of facilities located in areas of ComEd's service territory that are remote from the customer's location. Bjerning, 9/24/13, Tr., 270:22-271:4. ComEd explained and provided an example of the complexities associated with such a study. ComEd Init. Br. at 13-14; Bjerning Sur., ComEd Ex. 14.0, 21:334-23:373. Even-handedly applying the same cost allocation methodology to all customers would require that the study evaluate how each circuit is used by each delivery class and what voltage the circuit is operating at before, at, and after each of the 4.8 million service points in ComEd's service territory.

Bjerner Sur., ComEd Ex. 14.0, 23:374-24:395. In short, an evenhanded approach to cost causation in this circumstance would be a challenging undertaking and, at best, would only represent a fleeting snapshot in time of ComEd's distribution system. Further, if such an analysis were completed, numerous new assumptions would be required to assign such costs in the ECOSS. PO at 48; see also Bjerner Sur., ComEd Ex. 14.0, 21:321-333.

Finally, if the Commission did approve the study proposed by REACT, REACT claims it would be reasonable to have its completed in four months. REACT BOE at 28-29. This time frame, first proposed by REACT in its Initial Brief, is unsupported by the record. If the study were approved, it must be comprehensive as to avoid being one-sided. Bjerner Reb., ComEd Ex. 7.0, 27:449-28:472. As previously noted, applying the same cost allocation methodology to all customers would require that the study evaluate how each circuit is used by each delivery class and what voltage the circuit is operating at before, at, and after each of the 4.8 million service points in ComEd's service territory. Bjerner Sur., ComEd Ex. 14.0, 23:374-24:395. Time would be required to retain the proper resources, develop the appropriate scope and sample size, and then to actually complete the work and prepare a report. For all the foregoing reasons and the reasons in ComEd's Reply Brief (at 7-8), the Commission should reject this time frame to complete the proposed study if the proposed study were to be approved by the Commission.

II.C.3.b. Residential Cost Allocation Adjustment

The Proposed Order declines to adopt the City/CUB proposed residential cost allocation adjustment, thus rejecting the notion that in the residential sector all customer-related costs be allocated on the basis of revenues or energy usage with the exception of the meter and postage costs. PO at 45. The Proposed Order also rejects the CUB/City claim the only fixed costs incurred in providing delivery service are meter and postage costs. *Id.* City/CUB continue to maintain that the only costs that should be regarded as customer-related are the costs of standard

meters and the costs of printing and sending bills. City/CUB BOE at 16-22. The Commission has previously addressed this subject in Docket No. 08-0532, the 2008 ComEd Rate Design Investigation proceeding (“2008 RDI”). In that proceeding, ComEd analyzed and demonstrated that additional or diminished usage by its customers does not affect customer-related costs. ComEd concluded that additional or diminished usage by its customers will not cause ComEd’s billing and data management costs, customer installations costs, service costs, and customer information costs to increase or decrease. Staff agreed, testifying that the allocation of these costs was reasonable from a cost standpoint (2008 RDI, Lazare Dir., Staff Ex. 1.0, 33:750-753). Donovan Reb., ComEd Ex. 9.0, 19:385-393. In the 2008 RDI Order, the Commission determined that ComEd’s approach was reasonable except for only one category of costs. 2008 RDI Final Order at 76-77. Interestingly, with respect to the City’s arguments in the 2008 RDI, the Commission stated that:

We note at the outset that the City raises many of the same arguments that it raised in the Docket 07-0566 proceeding. Also, the City’s position *appears to be results driven* in that it seeks to reduce rates for multi-family residential customers, without necessarily looking at cost-causation.

2008 RDI Order at 76. (emphasis added). ComEd’s analysis in the 2008 RDI was grounded in and consistent with its own extensive experience and the conclusion reached there remains valid today. Donovan Reb., ComEd Ex. 9.0. 19:392-393. Furthermore, focusing solely on the purchase price of the meter and cost of postage ignores many related costs associated with infrastructure, personnel and services associated with the meter in order to render the charges on a customer bill. Bjerning Sur., ComEd Ex. 14.0, 19:282-284. There is simply no evidence that costs such as the costs of reading meters and preparing bills are driven by a customer’s usage.

For all the foregoing reasons and the reasons set forth in ComEd's Initial Brief (at 18-20) and Reply Brief (at 10-12), the Commission should adopt the Proposed Order's conclusion to reject City/CUB's proposed residential cost allocation adjustment.

III. Customer Care Costs

For all the reasons set forth in ComEd's Initial Brief (at 12-13) and ComEd's Reply Brief (at 21-23), the Commission should reject REACT's exceptions on this issue and adopt the Proposed Order's conclusion regarding customer care costs, as revised by ComEd's exception language (see Exception No. 3 of ComEd's BOE at 8-9). Staff now suggests that ComEd, not Staff, should conduct any additional study related to this issue. Staff BOE at 6-14. While it remains ComEd's position that facts have not changed to warrant yet another study of these costs, ComEd will complete any study that the Commission directs that it perform. However, ComEd requests that any directive to prepare an additional study provide specificity with respect to the type of study to be performed (i.e. whether any particular cost is at least partially supply-driven or how such cost category might be allocated between supply and delivery), when it should be completed, and the proceeding in which the study should be presented. As to this last matter, ComEd suggests that the most appropriate proceeding to further address customer care costs may be the Section 9-250 proceeding that Staff proposed to address supply related subsidies for dusk-to-dawn lighting customers and nonresidential customers with electric space heat that have demand that does not exceed 100kW. *See* Section VI.D of the Proposed Order. Both the customer care cost issue and the supply related subsidy issue for dusk-to-dawn lighting customers and nonresidential customers with electric space heat pertain to electric supply rates.

IV.C.1.a Rate Design – Residential – Straight Fixed Variable

The BOEs that address ComEd's current, Commission-approved residential SFV rate design serve to underscore the Proposed Order's erroneous conclusions on this issue. In this

proceeding, Staff presented testimony and briefs supporting the continued use of an SFV rate design for residential customers, consistent with the Commission's 2010 Rate Case Order. Johnson Dir., Staff Ex. 1.0, 29:630-632; Staff Init. Br. at 33-34; Staff Reply Br. at 18-19. Staff's BOE does not address the Proposed Order's decision to reverse the Commission's 2010 Rate Case Order's conclusion.⁵ However, as Staff correctly noted in testimony and in its Reply Brief, the Commission *never* indicated that the elimination of an SFV rate design was contemplated when it directed ComEd to evaluate the impacts of such a design on low use customers. Johnson Reb., Staff Ex. 4.0, 26:591-595; Staff Init. Br. at 33.

Meanwhile, in supporting the Proposed Order's decision, the AG and City/CUB each continue to advance an argument that is squarely at odds with prior Commission Orders and the facts. The AG and City/CUB argue that residential rate design should be premised on the assumption that a large percentage of a delivery utility's costs are variable, not fixed. AG BOE at 1-3; City/CUB BOE at 3, 25-30. The Commission has rejected that claim previously, when it recognized that ComEd must have facilities in place to serve the demand a premises places on ComEd's distribution system, and that demand costs are fixed, not variable. 2010 Rate Case Order at 231-232. Indeed, the Commission went so far as to say, in adopting an SFV rate design, "that it is important to design rates to reflect cost causation." *Id.* at 232. Moreover, the Commission has rejected similar claims against the establishment of an SFV rate design when establishing an SFV rate design for the residential customers of Nicor Gas Company ("Nicor Gas") and the Ameren Illinois ("Ameren") gas utilities. *See*, Docket No. 08-0363 at 88-90 (Order March 25, 2009), and Docket Nos. 07-0585/0586/0587/0588/0589/0590 (Consol.) at 236-

⁵ However, Staff does identify the Proposed Order's error in requiring the use of an incorrect ECOSS to implement its conclusion. Staff BOE at 15-16. If the Proposed Order's conclusion on the SFV issue stands, ComEd supports Staff's exception, as ComEd also identified this error in its BOE. *See* ComEd BOE at 16, fn 9.

238 (Order September 24, 2008), respectively. In short, it is the AG's and City/CUB's claims concerning the nature of ComEd's costs that should be characterized as "myth" or "fiction." AG BOE at 1; City/CUB BOE at 5.

The AG's and City/CUB's BOEs also point to another problem. They disagree with each other as to the proper approach for ComEd's residential rate design. While neither the AG nor City/CUB highlight this disagreement in their BOEs or earlier pleadings, their differences are clear. The AG proposed, and the Proposed Order adopted, a residential rate design that would reduce the customer charge for single family home customers and increase the customer charge for the vast majority of multi family customers, those without electric space heating. PO at 72. In contrast, City/CUB suggest an entirely different approach that contemplates a complex, multi-tiered residential delivery service rate design that would substantially reduce the customer charge for some customers in each residential delivery class, dramatically increase the customer charge for other customers in each residential delivery class, and increase the variable charge for three of the four residential delivery classes.⁶ City/CUB Ex. 1.1. While ComEd disagrees with both approaches, this difference of opinion between parties who each claim to represent the interests of residential customers suggests that the Commission should adopt ComEd's alternative proposal to further examine ComEd's residential rate design in a separate, follow-on proceeding. ComEd BOE at 10, 17-18. That proceeding would allow the Commission and stakeholders to consider a cost-based rate design tailored to the needs of residential customers generally and especially low usage customers.

⁶ City/CUB's BOE also reiterates a number of arguments that ComEd has previously responded to in earlier briefs and testimony. This brief will not repeat ComEd's prior arguments but, instead, incorporates by reference those earlier arguments supporting rejection of the City/CUB claims.

Finally, City/CUB's claim that ComEd did not comply with a Commission directive concerning ComEd's Commission-approved SFV rate design is without merit. A reasonable reading of the 2010 Rate Case Order's conclusion on this topic makes clear that ComEd fully complied with that directive.

i) **The Commission Has Regularly Determined That the Majority of Costs to Provide Delivery Service Are Fixed, And That Such Costs Should Be Recovered Through a Fixed Charge.**

The Proposed Order relies on the claims of the AG and City/CUB that a larger percentage of ComEd's cost to provide delivery service is variable, not fixed, and should be recovered through a variable charge. PO at 71-72. The AG's and City/CUB's claims are contrary to a string of Commission Orders on this topic. Nonetheless, the AG and City/CUB continue to present this claim in their BOEs in an effort to support the Proposed Order. AG BOE at 1-3; City/CUB BOE at 3, 25-30. There is no reasonable basis for the Commission to step back from its prior decisions and require ComEd to recover more of its fixed costs through a variable charge.

Time and again, the Commission has recognized that fixed costs comprise the majority of costs a utility incurs to provide delivery service to customers. Importantly, neither the AG nor City/CUB ever attempts to square their positions in this proceeding with these prior Orders. For example, in the 2010 Rate Case Order, the Commission recognized that ComEd must have in place the capacity to serve peak load [or demand] whenever it occurs. 2010 Rate Case Order at 231-32. There, the Commission recognized that ComEd's investment to meet demand on its system, *not the volume of usage*, drove the level of the size of the investment. Notably, the Commission compared ComEd's function as a delivery service provider to that of the gas

utilities, where the Commission already had approved an SFV rate design for Nicor Gas and the Ameren gas utilities in their respective rate cases.⁷ *Id.* In arriving at these conclusions, the Commission rejected similar usage versus demand arguments that the AG and City/CUB raise again in this proceeding. *Id.*

In another example, the Commission rejected a Staff proposal to reduce ComEd's customer charges by 20% to address environmental issues. Docket No. 05-0597 Order at 204. In that case, Staff sought to move recovery of that 20% increment from the customer charge to a volumetric charge. *Id.* However, the Commission recognized the importance of recovering fixed costs through a fixed charge, stating:

All things considered, the Commission believes Staff's proposed twenty percent adjustment, as it would apply to ComEd, should be rejected, because it results in the recovery of what are largely fixed costs through variable charges.

Id. In sum, on multiple occasions the Commission has rejected the concepts that investment in a utility's delivery facilities is based on usage considerations and that fixed costs should be recovered through a usage-based charge. The AG's and City/CUB's claims to the contrary simply ignore these prior Commission decisions. The Commission, however, should recognize and reaffirm these prior conclusions that represent the application of sound regulatory and rate design principles, and are supported by the facts in this record.

ii) The Evidence Demonstrates That ComEd Plans and Constructs Its System Based on Demand, Not the Customer's Volume of Usage.

⁷ ComEd also notes that the Commission has approved a decoupling rate mechanism for residential customers of North Shore Gas Company and The Peoples Gas Light & Coke Company. Docket Nos. 07-0241 and 07-0242 Consol., at 138-153 (Order approving pilot program, entered Feb. 5, 2008); Docket Nos. 11-0280 and 11-0281 Consol., at 163-64 (Order approving permanent mechanism, entered Jan. 10, 2012) This mechanism recognizes that a utility's investment in its system is based on demand, not usage. Hence, fixed costs should be recovered through a fixed charge.

The AG's and City/CUB's claims that usage drives system investment conflicts with the evidence. AG BOE at 1-3; City/CUB BOE at 3, 25-30. Consistent with the Commission's prior evidentiary determinations, the record again supports maintaining the existing SFV rate design for residential customers. First, ComEd explained that:

[t]he Company must plan and build its distribution facilities to provide electric delivery service based upon maximum demands established at a premises, *regardless of the electricity usage of the current occupant of the premises*. The Company also does not remove and install distribution facilities as people move out and in of individual premises. It is not the monthly electricity usage, even if that usage is low for several months out of a year, or even if it is consistently low for the current resident, that determines the delivery service facilities the Company must have in place to provide electric service to its customers.

ComEd Ex. 2.33 at 17 (emphasis added). No party disputed this statement. Additionally, during cross-examination by the City's attorney, ComEd witness Hanser explained that:

...distribution system costs are largely invariant with respect to kilowatt hour consumption. So there are few costs that are distribution related that can be specifically tied to kilowatt hour consumption.

Tr. 207:21-208:1. Importantly, such facts are consistent with the Commission's factual determinations made in prior Orders. *See* Section IV.C.1.a.i. above.

ComEd also presented an example as to why it constructs its facilities based on demand:

An example using the building of a multi family complex in Chicago may be useful to illustrate this point. Long before customers take up residence in the complex, the developer of the complex and ComEd work together to determine the electrical requirements for the complex, which is based upon the developer's computations for connected load per unit in the building. The developer provides ComEd with that kW/unit information, as well as the number of units in the complex in order for ComEd to determine the distribution facilities, and their associated costs, needed to serve the units in the multi family complex. ComEd then upgrades existing distribution facilities or installs new distribution facilities to meet the potential electrical needs for every unit in the complex. This all happens before the first customer takes up residence in the complex. It also happens regardless of the occupancy rate or if tenants end up being high kWh or low kWh use customers.

Tenorio Sur., ComEd Ex. 13.0, 12:252-12:263. Again, no party asserted that this example was incorrect.

While the AG and City/CUB offer theories as to what drives investment in facilities to provide delivery service, ComEd has presented facts explaining how it plans and constructs its facilities. Not only is ComEd's factual presentation undisputed, it also is consistent with how the Commission has historically viewed the manner in which a delivery utility plans and operates its system: that is, customer demand, not usage, drives investment in the delivery system.

iii) ComEd's Proposal to Further Examine Residential Rate Design

ComEd's BOE offered the Commission an alternative to its current options related to residential rate design. ComEd BOE at 17-18. The AG's and City/CUB's BOEs seemingly provide an additional reason to adopt ComEd's alternative approach: the parties who purport to represent the interests of residential customers disagree with each other as to the proper approach for ComEd's residential rate design. *See* City/CUB BOE at 25-30. While ComEd continues to support the current, Commission-approved SFV rate design for residential delivery service charges (as does Staff), ComEd understands that concerns pertaining to its lowest usage customers may point to the need to engage in additional study of the cost responsibility of low use customers. Accordingly, rather than adopt a rate design that is inconsistent with prior Commission decisions and cost causation principles, the Commission can direct interested stakeholders to further explore this topic.

iv) ComEd Complied With the Commission's Directive to Evaluate Whether an SFV Rate Design Has A Disparate Impact on Low Use Customers

City/CUB continues to argue that ComEd failed to carry out a Commission directive that ComEd identify a low use subclass of residential customers. City/CUB BOE at 36. That claim is

unfounded, disregarding the actual words of the 2010 Rate Case Order. ComEd's BOE explains in detail the actions it took to comply with the Commission's directive to assess its SFV rate design and its bill impacts on low use customers. ComEd BOE at 10-14. ComEd also presented substantial evidence explaining that a variety of factors frustrated an effort to place low use customer accounts into a reasonably defined category. ComEd Ex. 2.33, pp. 9-23; ComEd BOE at 12. In short, ComEd did as the Commission directed: ComEd 1) evaluated the SFV rate design and its impact on low use customer accounts; 2) determined that the SFV rate design did not have a material impact on the vast majority of the 2.8 million residential customer accounts analyzed; and 3) determined that there was no reasonably defined sub group of low use customers. City/CUB's claim to the contrary is baseless.

IV.C.1.b Rate Design – Residential – Consideration of low-use sub class

See Section IV.C.1.a. herein.

IV.C.2.c Rate Design – Non-Residential – Straight Fixed Variable for Watt-Hour Delivery Class

Staff's Brief on Exceptions (at 16-18) notes that if the Commission adopts the Proposed Order's conclusion regarding SFV, the only delivery class with a SFV rate design would be the Watt-Hour Delivery Class. ComEd agrees that an inconsistency in rate design would exist if the Proposed Order is adopted as written.

IV.C.3 Rate Design – Street Lighting

City/CUB states that "[t]he PO also correctly finds that ComEd failed to obey the Commission's order regarding how Street Lighting rates should be determined." City/CUB BOE at 4. However, because the Proposed Order's conclusion regarding street lighting is unclear (*see* ComEd's BOE at 18-20), City/CUB does not indicate whether the Proposed Order correctly addresses the City/CUB concerns raised in City/CUB rebuttal testimony and how those concerns

should be addressed in rates, i.e. whether there should be charges that apply only to the City of Chicago street lighting customer or whether there should be charges that apply only to all who provide alley lighting service. The ambiguity in the PO must be clarified. ComEd again notes its concerns and recommendations provided in its BOE (1) that Staff and other Intervenors were not afforded the opportunity to respond to the City/CUB claim concerning Dusk to Dawn Lighting because the claim was first made in City/CUB's rebuttal testimony and (2) that that the Commission should direct its Staff to examine the Chicago Method for allocating costs and work with ComEd in the determination of implementing delivery service charges for the Dusk to Dawn Delivery Class. ComEd BOE at 18-20.

IV.C.4 Illinois Electricity Distribution Tax

The Proposed Order concluded that ComEd's method to recover the Illinois Electricity Distribution Tax ("IEDT") on a kWh basis, which the Commission approved in its 2010 Rate Case Order (at 285), is correct and consistent with 35 ILCS 620/1a. PO at 94. REACT and IIEC each take exception to the Proposed Order's conclusion and continue to argue that the IEDT should be recovered through the application of a \$/kilowatt ("\$/kW") charge. REACT BOE at 48-51; IIEC BOE at 18-20. The REACT and IIEC arguments are contrary to cost causation principles⁸ and the facts regarding IEDT. Unlike other costs recovered in \$/kW distribution facilities charges ("DFCs"), ComEd incurs costs associated with this tax based on usage. Thus, as the Commission correctly concluded, the IEDT for nonresidential classes should be a per-kWh charge as opposed to the DFC which is a \$/kW charge. 2010 Rate Case Order at 285. For all the foregoing reasons and the reasons set forth in ComEd's Initial Brief (at 35) and Reply Brief (at

⁸ REACT and IIEC both support the application of cost causation principles. REACT Init. Br. at 17-20; REACT BOE at 3-6, 11, 13, 19-20, REACT BOE Attachment B; IIEC Init. Br. at 10-11, 14, 23; IIEC BOE at 3-4.

25-26), the Commission should approve the Proposed Order's finding relating to the recovery of the IEDT.

V.B.1 Other Miscellaneous Charges and Fees and Corresponding Tariff Revisions - Invalid Payment Fee

For all the reasons set forth in its Initial Brief (at 38-39), Reply Brief (at 26-27) and Brief on Exceptions (at 20), ComEd requests that the Commission approve its proposed Invalid Payment fee of \$34.10. However, based on ComEd's and the AG's BOE, there appears to be a difference of opinion as to what the Proposed Order intends the amount of the Invalid Payment Fee is to be: the current charge of \$21.00 or something in between \$21.00 and \$34.10. ComEd's reads the Proposed Order to require that the current charge be updated to reflect increases in certain cost components but not others. ComEd requests that the Commission clarify what is intended.

VI.B Unaccounted For Energy

The Proposed Order correctly rejects REACT's proposal that that ComEd be directed to undertake a study regarding Unaccounted for Energy ("UFE"). PO at 109. However, REACT continues to argue for a study though it acknowledges that UFE is not within the Commission's jurisdiction. REACT BOE at 53-57. The Proposed Order correctly notes that UFE relates to wholesale electricity matters within the exclusive jurisdiction of the Federal Energy Regulatory Commission (*see* 16 USC 824(b)). PO at 109; *see also* Brinkman Reb., ComEd Ex. 5.0 Corr., 10:207-11:217; Tenorio Reb., ComEd Ex. 6.0, 39:726-727. The Proposed Order also correctly finds that UFE is one of the performance metrics in the Commission-approved Multi-Year Performance Metrics Plan, under the Energy Infrastructure Modernization Act. PO at 109; *see also* Tenorio Sur., ComEd Ex. 13.0, 32:615-622. Accordingly, for the reasons set forth in

ComEd's Initial Brief (at 43) and Reply Brief (at 28-29), the Commission should approve the Proposed Order's finding relating to UFE.

VII. Conclusion

For all the reasons appearing in the record and herein, the Commission should grant Commonwealth Edison Company's Exceptions and issue a final Order consistent herewith.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 

One of its attorneys

Thomas S. O'Neill
Senior Vice President & General Counsel
COMMONWEALTH EDISON COMPANY
440 S. LaSalle Street, Suite 3300
Chicago, Illinois 60605
(312) 394-5400
thomas.oneill@exeloncorp.com

Eugene H. Bernstein
10 S. Dearborn Street, Suite 4900
Chicago, IL 60603
(312) 394-5400
eugene.bernstein@exeloncorp.com

John E. Rooney
Carla Scarsella
ROONEY RIPPPIE & RATNASWAMY LLP
350 W. Hubbard St., Suite 600
Chicago, Illinois 60654
(312) 447-2800
john.rooney@r3law.com
carla.scarsella@r3law.com

G. Darryl Reed
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7000
greed@sidely.com

Attorneys for Commonwealth Edison Company