





0467 Final Order”) to “provide evidence that demonstrates whether the impacts on the low-use sub-group in the residential customer class are such that it would be appropriate to have a new class cost of service and rate design for that identifiable group.” *Id.* at 11-12. Those two claims are irreconcilable, thus, the Proposed Order’s (“PO”) conclusion that ComEd did NOT comply with the 10-0467 Final Order should be adopted by the Commission. *See* PO at 45; 70.

ComEd claims that it did not define a low-use sub-class because the members of that sub-class could include accounts that are associated with vacation homes, alarms, or fire pumps. *See* ComEd BOE at 12. These excuses are unpersuasive, for the reasons provided in the PO, and also because ComEd did not attempt to quantify what proportion of residential accounts these anomalies represented. PO at 70; City/CUB Ex. 1.0C at 77:1225-1226; City/CUB Ex. 2.0 at 16:310-340. Nevertheless, even if it were quantified, the effect of anomalous accounts on determining the true impacts of an SFV rate design on low-use ratepayers was proven to be nominal to none by City/CUB witness Bodmer’s regression of usage versus peak load – which illustrated that 99% of peak load can be explained by usage and there is little to nothing else that contributes to peak load. City/CUB Ex. 2.0 at 16:323-330. Mr. Bodmer described, in detail, why the anomalies of vacation homes and fire pumps do not explain why low-use ratepayers must pay for the distribution equipment required to serve high-use ratepayers. *See* City/CUB Ex. 2.1. Taken together, these objective statistical analyses show why ComEd’s un-quantified and anecdotal stories do not result in the conclusion that low-users cannot be properly segregated to perform a cost of service determination.

The PO correctly points out that whether or not there are low use consumers whose usage is anomalous, ComEd’s “study” does not respond to the Commission directive to “examine [the] adequacy” of ComEd’s existing customer classes given the impacts of a SFV rate design. PO at

70. ComEd witness Mr. Tenorio’s method of segregating low-users into percentiles of usage is particularly unhelpful in responding to the Commission’s directive since he concedes that ComEd did not define the low-use subclass needed to determine costs of service. Sept. 25 Tr. at 499-500. That is, whether and how those percentiles are affected by rate impacts does not answer the Commission’s question regarding whether the costs of service supports the rates imposed on “low-users” in particular. ComEd further asserts that “no party argued that the Study’s findings were incorrect.” ComEd BOE at 12. This is inaccurate. In fact, City/CUB witness Mr. Bodmer dedicated an entire exhibit to questioning the Study’s findings. *See generally* City/CUB Ex. 2.1. Mr. Bodmer demonstrated that “ComEd’s anecdotal stories have virtually no impact whatsoever in the context of the entire sample,” the process of segregating users by smaller increments than ComEd corrects for vacant and vacation homes, and that variation in demand comes from both demand/usage variation as well as variation caused by consumers not using demand at the peak and off peak periods. *Id.* at 6; 7; 12.

Because, ComEd asserts, it “expended substantial resources to address the express language of the subject directive,” the Company concludes that it complied with the 10-0467 Final Order. ComEd BOE at 13. Of course, simply expending resources does not make an effort compliant with a Commission order. ComEd asserts that only 4% of SFNH customers saw a total bill increase exceeding 10%, and no MFNH customers saw a total bill increase exceeding 1%. *Id.* at 13. Although neither of those figures provides any information about low-use consumers, the Company believes it was justified in not defining a low use customer class for an investigation of its costs. *Id.* However, ComEd’s own misleading analysis cannot be used as a justification to decline to comply with a Commission order. ComEd’s use of a total bill analysis fails to address the portion of bills that the Commission actually has jurisdiction over setting the

rates for – the distribution portion. *See* City/CUB Ex. 1.0C at 77:1212-1214. On that portion of the bill, Mr. Bodmer demonstrated that distribution bill increases since the 10-0467 Final Order were 53% for low-use SFNH consumers in the City and 24% for low-use MFNH consumers in the City. City/CUB Ex. 1.0C at 34:509. Furthermore, Mr. Bodmer’s analysis illustrated how low users outside the City also experienced 43 or 25 percent increases on their distribution bills. *Id.*

Although City/CUB do not believe that another proceeding is necessary before the Commission acts on the record, if the Commission agrees to a “proceeding focused solely on residential rate design,” that proceeding must begin with a cost of service study that takes into account the unique characteristics of low-use residential ratepayers that City/CUB witness Mr. Bodmer testified to in this proceeding. *See* ComEd BOE at 11; City/CUB BOE at 10-16; 24. In addition, any such proceeding should properly address what, if any, costs are attributable to the mere existence of residential ratepayer accounts – starting with a definition of what an “account” entails. *See* City/CUB BOE at 16-21.

### **III. RATE DESIGN**

#### **A. Overview**

Only ComEd defends the Straight-Fixed Variable (“SFV”) rate design for residential consumers in the face of compelling evidence of record showing that its foundation -- a non-Embedded Cost of Service Study (“ECOSS”) classification of costs as “fixed” -- is a fiction and that it has unfair and unjust impacts on low use consumers. *See* ComEd BOE at 2; *contrast* AG BOE at 1, Staff BOE at 16-17; City-CUB BOE at 26. ComEd provided no analysis of the impact of SFV rates on low-use residential consumers. Instead, ComEd chose to present calculations of effects on larger groups of customers, undifferentiated by usage level, and to measure impacts on

consumer's total electricity bills, instead of on ComEd's delivery charges. ComEd also persists in claiming that its demand costs are "fixed," even as it concedes that a measured variable, "demand at the time of peak loads," drives its demand costs. ComEd BOE at 15. ComEd notes Staff's acceptance of the utility's analyses and conclusion regarding low use consumers. ComEd BOE at 1, 13; ComEd BOE Att. A at 9. However, ComEd ignores the near-universal condemnation of its various studies from other parties.<sup>1</sup> As to ComEd's residential studies, the evidence of City-CUB's expert witness shows that those criticisms are especially well-deserved.

### **C. Potentially Contested Issues**

#### *1. Residential*

##### *a. Straight-Fixed-Variable (SFV)*

#### Response to ComEd

ComEd's BOE continues to rely first on the Commission's past approvals in arguing to maintain its SFV rate design. ComEd BOE at 9-10. That reliance is misplaced. Even before this case, the Commission expressed concern about the impacts of SFV rates on residential consumers. PO at 70. The record in this case presents new information that validates the Commission's concerns about SFV rate impacts, especially as to low-use ratepayers. In addition, this record contains compelling evidence that exposes the false cost concept on which SFV rates are based -- the fiction of "fixed" costs that ComEd's own ECOSS disproves.

ComEd also challenges two conclusions that it characterizes as the bases for the PO's rejection of the SFV rate design. Specifically, the PO found (1) that ComEd failed to present information on low-use consumers that the Commission ordered and to define a low-use subclass and (2) that SFV rates require certain residential ratepayers to subsidize others. ComEd's

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<sup>1</sup> See, e.g., REACT BOE at 23-24 (arguing that ComEd also failed to follow Commission directives regarding costs of service for large customers).

challenges to each of these findings fail. The substantive content of the analyses put into evidence by City-CUB and the AG is only partially captured by the PO's summaries of parties' cases and by the PO's analysis. PO at 67-72. The full record provides ample support for the PO's findings that ComEd has failed to comply with the 10-0467 Final Order and for the PO's conclusion that ComEd's SFV rates are not cost based or just and reasonable.

Seeking to avoid a well-supported finding that ComEd failed to comply with the Commission investigation directives respecting low-use residential consumers, ComEd argues that it pursued a reasonable reading of the 10-0467 Final Order and that a finding of non-compliance is unwarranted. ComEd BOE at 12-13. ComEd argues that the Commission's directives can reasonably be read so that defining a low-use subgroup for study and determining the subgroup's costs of service and rate impacts are contingent on a prior finding of disparate or unfair SFV rate impacts on low-use consumers. *Id.* at 2, 13. "If a material impact was determined, then the development of a low use class and the development of cost data would proceed and be included in ComEd's evidentiary presentation." *Id.* at 13. However, without consideration of costs of service or a defined group of ratepayers, ComEd could not make any valid conclusion about low-use consumers. In fact, ComEd concluded only that its SFV rate design did not have a material impact on the vast majority of all its customers, offering little useful information on low-use consumers.

First, common sense reveals the absurdity of ComEd's contention that it could assess the materiality of SFV rate impacts on low-use consumers and the need for a sub-class, without considering either the costs of service of serving those consumers or the effects of fixed charge recovery of costs that the utility's ECOSS determines are not "fixed." ComEd's BOE confirms an obvious, common sense inference. Under cost causation principles, an evaluation of whether

particular rate impacts are acceptable or a new sub-class is needed depends, *inter alia*, upon whether the rates deviate from the relevant costs of service. ComEd concedes that an assessment of the appropriateness of a separate low-use subgroup cannot be made without the cost information ComEd makes contingent on the results of its uninformed impact assessment.

Neither the AG nor City/CUB, however, presented a study that properly examined and allocated between subgroups of customers within a class the costs of serving load on the basis of customer peak demand. Instead, their presentations contain only speculation as to cost responsibility among subgroups within a class based on consideration of usage, not peak demand.

ComEd BOE at 15. It is astonishing that ComEd's complaint relies on the essential role of a cost investigation to determine the appropriateness of a low-use subgroup. ComEd thus identifies a determination of costs for the subgroup as a critical element of the investigation that ComEd was ordered to (but did not) perform. Indeed, only ComEd could perform the necessary cost investigation, since ComEd alone has the necessary detailed cost data. Yet, ComEd argues that the Commission intended that ComEd condition its performance of this essential study on the results of an analysis that could not be completed properly without performance of the study. The circularity of reasoning ComEd must impute to the Commission just to make this argument makes ComEd's reading of the Commission's directives wholly unreasonable.

Second, the claimed evidentiary basis for ComEd's argument is flawed. ComEd changes the focus of its argument mid-stream, from the low-use consumers specified by the Commission to entire classes of residential consumers. Because of the mathematics alone, affected low-use consumers would comprise a smaller percentage of the larger groups ComEd chose to examine. The SFV rate impacts on low-use consumers are lost in noise of ComEd's figures on much larger consumer groupings.

ComEd claims that its study showed that SFV rates resulted in “only about 4% (78,000) of the **single family** customers **without electric heat** saw a total electric bill increase exceeding 10%; not a single **multi-family** customer **without electric heat** saw a total electric bill increase exceeding even 1.0%; only approximately 3,000 **single family** customers **with electric heat** saw total electric bill increases exceeding 10%.”

ComEd BOE at 13 (emphasis added). The percentages of consumers experiencing adverse rate impacts were further diminished by ComEd's decision to measure rate impact using total electric bills, rather than the delivery services charges at issue before the Commission.

ComEd summarizes its arguments in this passage from its BOE:

Due to those findings, and ComEd’s other previously noted findings pertaining to the inability to reasonably define a low use customer or a low use customer class, it did not find it appropriate to proceed with the next step and define a low use customer class. ComEd Ex. 2.33 at 31.

ComEd BOE at 13. This late arriving interpretation was not presented in any ComEd testimony as the reason ComEd’s experts proceeded in the manner they did. In fact, the record citation ComEd offers as support does not contain any mention of ComEd’s conditional reading of the Commission directives.

Finally, ComEd’s newly minted explanation for its non-compliance is simply not credible. Even in the utility’s proposals for another proceeding and future performance of the mandated studies, ComEd recognizes that cost determinations, not just rate impacts, are essential to any evaluation of the need for a new rate sub-class. *Id.* at 16. Contrary to ComEd’s arguments, cost determinations are unavoidable when considering delivery service rates, since they must, by law, reflect costs and cost causation. 220 ILCS 5/9-102(2)(d), 5/16-108(c). Whether in this case or some future proceeding, an assessment of the lawfulness and appropriateness of SFV’s rate impacts on low-use consumers cannot be made without considering the costs of serving low-use consumers. There was no reason for ComEd to infer

that the Commission would order the utility to condition its examination of relevant costs on a delivery service rate impact assessment untethered to any cost foundation. It is clear that ComEd simply did not perform the ordered studies and now attempts to explain away that decision.

#### Response to the AG

Even though the PO recommends a sound result, the AG proposes that the Commission add clarifying language “to put to rest once and for all the notion that all delivery service costs are fixed and not demand-sensitive.” AG BOE at 2. City-CUB support the AG’s proposal. In fact, City-CUB have already offered such language in their Brief on Exceptions. *See* City-CUB BOE at 32-36.

#### Response to Staff

For its part, Staff recommends that the Commission expand the elimination of the SFV rate design to all rate classes without demand meters. City-CUB do not oppose that action. The record shows that the “fixed” cost fiction on which SFV rates are based is so fundamental that it produces rates and rate impacts that are unfair to all affected rate classes.

The PO has properly considered the evidence of record and adopted the conclusions that the evidence requires. The Commission should approve the recommended move away from SFV rates.

As to the Commission’s choice of a specific rate design to replace SFV rates, Staff observes that adoption of the AG’s rate design proposal creates inconsistencies in the PO and recommends deletion of a paragraph to fix it. Staff BOE at 15-16. ComEd makes similar observations. ComEd BOE at 16-17, n. 9. For the reasons detailed in its BOE and earlier briefs, City-CUB urge the Commission to adopt instead Mr. Bodmer’s demand-sensitive tiered customer charge rate design. It will provide fairer, more cost-based rates (particularly with his

recommended cost study corrections), while providing a bridge to the demand sensitive charges enabled by AMI meters.

b. Consideration of Low-Use Sub Class

The PO concludes, in error, that the rate design changes proposed by the AG’s expert Mr. Rubin “rebalances fixed and variable costs and more closely aligns customer’s bills with the cost of service, especially for many low use customers.” PO at 72. The PO mis-identifies ComEd’s cost allocation problem as one of fixed and variable costs, which the PO presumes can be solved simply by removing the SFV rate structure. City-CUB expert Mr. Bodmer examined this very aspect of the interplay of ComEd’s cost studies and rate design. He concluded that “even if the SFV is rejected, ComEd will remain an outlier because of other policies that push costs into the ‘fixed’ category that it treats as ‘customer related’.” City-CUB Ex. 2.0 at 24:450. These additional cost errors in ComEd’s ECOSS, which the PO does not correct, are identified in City-CUB’s BOE, as well as in Mr. Bodmer’s testimony. *See* City-CUB BOE at 10-21. The PO should be modified to achieve the accurate cost objective that simply eliminating SFV rates cannot achieve. As explained in City-CUB’s BOE, the Commission must do more before it can achieve a reasonable alignment of the costs of service with the rates and bills of low-use residential consumers.

Presumably because the PO concluded that its modest rate design changes eliminated the problems of low-use consumers, the need for a separate sub-class for low use consumers was not seriously examined in the PO. ComEd would have the Commission find that “the evidence shows that there is no clear, discernible low use group that can be reasonably identified.” ComEd BOE Att. A at 9; ComEd BOE at 2, 12-13. ComEd’s assertion lacks support in this record.

The record contains extensive analyses regarding subgroups defined by various usage levels. City-CUB's testimony and exhibits report the results of their expert's numerous analyses of the impacts on low-use consumers. The AG's witness, Mr. Rubin, also examined the cost of service and rate impacts for residential consumers at different usage levels. Even ComEd's own evidence contradicts the claim that the Commission ordered an impossible task. In fact, ComEd created 100 subgroups defined by usage for its percentile and zip code analyses. ComEd also defined additional subgroups comprising combinations of the percentile subgroups, to perform low-use consumer analyses. *See* City-CUB Br. at 6, n. 1. ComEd simply refused to use any of those subgroups (a) in its ECOSS to determine whether there are distinctive costs for low-use consumers that warrant a separate sub-class or (b) to evaluate the impacts of SFV rates on low use consumers.

ComEd seeks to delay a verdict on its non-performance, by proposing yet another proceeding to receive and examine the information it was already ordered to produce. Contrary to ComEd's argument that the ordered studies could not be performed (*see* ComEd BOE at 13), ComEd's proposal for a new proceeding demonstrates that development of the mandated information and a sub-class cost study are not only possible, but tasks ComEd is now eager to perform. "That proceeding would allow the Commission to receive evidence, lacking from this record, regarding the cost responsibility of low use customers." ComEd BOE at 10.

ComEd identifies specific reasons it could not provide low-use consumers' cost information. *See Id.* at 10 (listing non-residential uses, usage fluctuations, and vacation premises). Each of those factors was in place when ComEd defined its current classes, and they will still be present in a new proceeding, when ComEd now proposes to gather information the

utility previously described as unattainable. ComEd's list provides nothing that excuses its non-performance.

City-CUB note that its expert, Mr. Bodmer, was able to overcome these obstacles, even without the resources and the access to comprehensive data that ComEd has always had. *See* City-CUB Ex. 2.0 at 43-44:798-803 (noting that ComEd could remove anomalous non-residential users to their own separate rate class). City-CUB are not aware of any ComEd filing seeking clarification from the Commission of its 10-0467 Final Order. During the case, ComEd did not perform parallel studies -- as it could have done, on the same time schedule imposed on intervenors. ComEd also did not present empirical evidence to rebut the results of the extensive analyses performed by the experts for ratepayer intervenors. ComEd simply asks the Commission to ignore this record and order a new one.

The only real impediment to determining whether a low use sub-class is appropriate is the lack of cost of service information for low-use consumers, due to ComEd's refusal to include such a sub-class in its cost of service study. Intervenors had enough information (through ComEd's usage and load research data) to assess rate impacts and to infer certain cost relationships, but only ComEd has the cost data that must be analyzed to evaluate whether the relationship of rates and costs for those customers require a sub-class to reflect disparate costs of service.

#### Remedial Commission Actions

In this case, ratepayers confronted with ComEd's non-compliance undertook and completed the Commission-mandated studies (to the extent possible with available data). ComEd proposes that the Commission ignore that evidence and open a new proceeding to allow the utility to perform as previously ordered. The substantive effect is to have the Commission

ignore this record, effectively discarding the evidence developed by intervenors. The law does not allow that course, which would entail a neglect of the Commission's statutory duties to "establish the rates or other charges . . . it shall find to be just and reasonable" and to decide questions "based exclusively on the record for decision in the case." 220 ILCS 5/9-201(c), 5/10-103. The Commission must promptly decide the rate design issues in this case based on the record now before it, not wait for a record ComEd likes better. 220 ILCS 16-108.5(e), 5/9-201(c), 5/10-103.

ComEd suggests that the Commission may either find that ComEd has not complied with a past Commission order or open a proceeding so ComEd can gather the information previously sought. ComEd's proposal offers a false dichotomy. The findings required by the evidence and the further study needed to assure appropriate rates and charges for ComEd's ratepayers are not mutually exclusive. The Commission can (and should) pursue both -- specifically, find, as the evidence dictates, that ComEd did not comply with the 10-0467 Final Order directives and order a proceeding to obtain the information necessary to assure just and reasonable rates for low-use residential consumers.

ComEd proposes that "[i]f the Commission determines that additional analysis is needed to determine whether there should be a low use subclass, the Commission has the opportunity to further examine the best overall approach for ComEd's residential rate design in a new proceeding." ComEd BOE at 3. ComEd's proposal appears to assume Commission acceptance of ComEd's explanation for its non-performance and no finding that ComEd failed to comply with a Commission order. In other words, as the remedy for ComEd's failure to provide Commission-mandated information "in its next rate proceeding" (10-0467 Final Order at 232),

ComEd recommends that the Commission order ComEd to conduct (now) the studies that it was ordered to conduct previously and to present them in a new proceeding. ComEd BOE at 10.

This is the next rate proceeding in which the Commission expected to review the information it ordered ComEd to provide. ComEd's proposal would condition relief for low-use consumers, which this record shows is appropriate, on the outcome of a future proceeding that may not have the ample record evidence adduced in this case. The extensive analyses of intervenors in this case were a strain on their scarce resources, and their efforts could not easily or affordably be performed for a second time, in a different case, to recreate the record already before the Commission. ComEd's proposal would severely prejudice the intervenors in this case, and it would have similar effects on the Commission's fact-finding process.

ComEd failed to present evidence to meet its burden of showing its rates are just and reasonable. 220 ILCS 5/9-201(c). Faced with that failure, ratepayer parties developed and provided the evidence ComEd did not. The challenges to ComEd's rates showed those rates are not lawful. Now ComEd asks the Commission to toss out the record built on intervenors' evidence, so that ComEd gets a second chance to do what it declined to do when first ordered. Accepting ComEd's approach would eviscerate Commission application of the Public Utilities Act's ("PUA") burden of proof in this case. 220 ILCS 5/9-201(c). Denying the findings required by the weight of record evidence, ComEd's proposal would not only be unlawful, but also grossly unfair and inconsistent with the Commission's procedural rules. *Id.*; 220 ILCS 5/10-103; 83 Ill. Adm. Code 200.25 (requiring integrity, fairness, expedition, convenience, and cost-effectiveness for all Commission proceedings). The Commission can and should act now on the record evidence before it, as the PO recommends and the PUA requires.

City-CUB also have proposed that the Commission order ComEd to complete the studies the Commission ordered, but as a supplement to (not instead of) record based decisions in this case. The usage and demand data used in the studies in this record were adequate for the impact investigation the Commission ordered. Those analyses were performed by City-CUB and the AG. There is no need to re-do those analyses or to delay the recommended decision on SFV rates. The PO's rejection of ComEd's SFV rate designs rests on a solid foundation and need not be re-studied, though the problems with ComEd's load research sample and data that City-CUB identified should be cured. *See* City-CUB Ex. 2.1 at 21.

Though the available cost data were less than perfect for certain cost of service tasks, the results of City-CUB's analyses provide added support to the PO's SFV decision and identify serious flaws in ComEd's cost studies. However, definitive answers to the Commission's inquiries about a low-use sub-class cannot be answered without additional work by ComEd. The Commission should order further studies and cost study modifications to provide accurate answers.

ComEd's language proposing further studies is particularly vague, and it firmly commits ComEd only to assemble data and present it in a future proceeding -- possibly returning ratepayers to where they are now. In addition, under ComEd's proposal, the Commission would "encourage" ComEd and ratepayers to work toward consensus, but provide no disincentive to ComEd simply bringing (possibly inadequate) data to another proceeding for more litigation at ratepayers' expense (on both sides). ComEd BOE Att. A at 13. As explained in City-CUB's BOE, the Commission should ensure that any supplemental proceeding is more than simply a "do-over" opportunity for ComEd.

At the least, the following enhancements of the evidence in this record must be required as part of any supplemental proceeding to address the studies that remain incomplete. *See also* City-CUB BOE at 42-45.

- ComEd must address its ECOSS deficiencies, including the cost drivers identified in this record as affecting low-use customers; City-CUB has identified those issues in its testimony. It is concerning that, despite ComEd’s enhanced computer capabilities, ComEd’s cost studies may be less complete and less accurate now than in the past, through their omission of cost drivers that were previously taken into account.
- The gaps and statistical flaws in ComEd’s residential demand/load research sample must be cured, so that analyses using that data are reliable;
- The Commission must provide a clear statement of its expectations for a cooperative process. The process ComEd describes is short on details about whether and how other stakeholders could participate. As explained in City-CUB’s BOE, past difficulties in completing the necessary studies impel the involvement of affected ratepayers and close Commission monitoring. The studies conducted for the Railroad class are a useful starting point model.
- To assure the success of any new order for completing the ordered studies and of any cooperative stakeholder process, the Commission’s order must specify that study designs and protocols will be cooperatively developed, a step more than justified by ComEd’s approach to the studies in this case.

### 3. *Street Lighting*

ComEd acknowledges that it “did in fact use the same cost calculation here for the street lighting class as a whole that it did previously.” ComEd BOE at 19. ComEd then argues that the Commission did not order a separate rate for alley lighting service in the 10-0467 Final Order.

*Id.* If costs did not change and the rate did not change, it is difficult for City/CUB to discern what, if anything, ComEd did to comply with the 10-0467 Final Order. The PO correctly concludes that ComEd must make appropriate calculations and adjustments lowering the charges for alley lighting. PO at 91. Nevertheless, City/CUB do not oppose ComEd’s proposal for the Commission to direct Staff to work with ComEd in determining the rates which would comply with the “Chicago Method,” originally ordered for use by ComEd in the 10-0467 Final Order.

ComEd BOE at 19. One hopes that the City, whose expert defined the “Chicago Method,” would also be consulted.

ComEd takes exception to the suggestion that its Dusk to Dawn Lighting rates were ordered to be changed by the 10-0467 Final Order. *Id.* ComEd claims that Staff’s review of ComEd’s compliance filings, the Commission’s decision not to direct specific implementation methods, and the general avoidance of location-specific rates suggest that the 10-0467 Final Order did not require a change in the rates of Dusk to Dawn class members. *Id.* at 19-20. As pointed out by City/CUB, Staff’s review of ComEd’s filings in non-adversarial settings where rate design was not a facet of the Company’s rates at issue should not give the Commission pause to correct a now-uncovered deficiency. See City/CUB Init. Br. at 56-57.

Moreover, the Commission was very specific in the 10-0467 Final Order. In that case, the Commission required adoption of the “Chicago Method,” noting that use of that method by other municipalities must take alley lighting into account. 10-0467 Final Order at 280. Finally, a general avoidance of location-specific rates can, of course, be overcome in a case where location-specific rates are shown to be cost-based, just, and reasonable. See City/CUB Init. Br. at 15-16. The “Chicago Method” has been shown, and acknowledged by the Commission, to apply to any location which bears the cost of alley lighting. Therefore, the Commission’s order does not require location-specific rates in order to be properly implemented, only rates that recognize the cost of service differences between ratepayers with different configurations of facilities.

ComEd claims that City/CUB witness Mr. Bodmer’s testimony regarding his belief that the Company properly calculated the “costs of secondary street lighting for City facilities” is evidence that the Commission ordered a change in costs but not rates. ComEd BOE at 19-20

(citing City/CUB Ex. 1.0C 12:198-199). This argument is misleading, since Mr. Bodmer clarified in his rebuttal testimony, after more carefully reviewing ComEd's workpapers, that while ComEd's cost calculations were reasonable, the manner in which the Company used those costs to determine rates did not comply with the 10-0467 Final Order. City/CUB Ex. 2.0 at 9:181-189. After review, Mr. Bodmer concluded that ComEd's Dusk to Dawn rates used a weighted average of the City's unique costs to spread out the benefit of the "Chicago Method" amongst all Dusk to Dawn class members instead of only those whose alley facilities impose the same or similar costs as the City's. *Id.* at 9:192-10:207.

ComEd also suggests that using the Chicago Method to determine Dusk to Dawn rates would create a geographic component of rates that is impermissibly location-specific. However, ComEd ignores the City/CUB position and the 10-0467 Final Order which clearly specify that ANY ComEd customer who takes service under the Dusk to Dawn lighting class (whether or not they are located in Chicago) should not have to pay for alley lights if the Company does not, in fact, install those lights or the associated facilities. 10-0467 Final Order at 280; City/CUB Ex. 2.0 at 9:197. Where those alleys are located is immaterial to the proper implementation of the 10-0467 Final Order, the "Chicago Method" could just as accurately be called "[The Municipality that pays for its own alley lighting facilities] Method." While City/CUB believe that the Commission's 10-0467 Final Order was clear, and ComEd did not comply with that order, City/CUB do not oppose a process whereby ComEd will properly re-calculate the costs and rates of all Dusk to Dawn members. Given past confusion on this point – and the Commission's express directive that ComEd ascertain the lighting configuration of each member of the class – that process must include input from members of that class.

#### IV. CONCLUSION

For all the reasons put forth herein, and in City/CUB's Initial and Reply Briefs, and its Brief on Exceptions, City/CUB request that the Commission adopt the Cost of Service and Rate Design Exceptions provided in their Brief on Exceptions and reject those Exceptions responded to above.

**Dated: November 25, 2013**

Respectfully submitted,

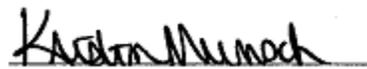
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