

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Annual formula rate update and revenue	:	No. 14-0312
requirement reconciliation under	:	
Section 16-108.5 of the Public Utilities Act.	:	

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

TABLE OF CONTENTS

I.	INTRODUCTION / STATEMENT OF THE CASE	1
II.	OVERALL REVENUE REQUIREMENT.....	4
A.	2015 Initial Rate Year Revenue Requirement	5
B.	2013 Reconciliation Adjustment.....	5
C.	ROE Collar and ROE Penalty Calculation	5
D.	2015 Rate Year Net Revenue Requirement	6
III.	SCOPE OF THIS PROCEEDING.....	6
A.	Changes to the Structure or Protocols of the Performance-Based Formula Rate	6
B.	The Definition of Rate Year and the Reconciliation Cycle	9
C.	Original Cost Finding	11
D.	Issues Pending on Appeal	11
IV.	RATE BASE.....	12
A.	Overview.....	12
1.	2013 Reconciliation Rate Base	13
2.	2015 Initial Rate Year Rate Base.....	13
B.	Potentially Uncontested Issues	13
1.	Plant in Service	13
a.	Distribution Plant.....	13
b.	General and Intangible Plant.....	14
c.	Plant Additions.....	14
2.	Materials & Supplies.....	14
3.	Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset.....	15
4.	Construction Work in Progress	15
5.	Regulatory Assets and Liabilities	16
6.	Deferred Debits	16
7.	Other Deferred Charges	17
8.	Accumulated Provisions for Depreciation and Amortization.....	18
9.	Accumulated Miscellaneous Operating Provisions	18
10.	Asset Retirement Obligation.....	18
11.	Customer Advances	19
12.	Customer Deposits	19
13.	Cash Working Capital (issues not identified in IV.C.)	20
a.	Overview of CWC and ComEd’s Lead/Lag Study.....	20
b.	Payroll and withholding expense lead days and derivative changes to FICA tax and employee benefits – other Expense Leads	21
c.	Final CWC calculation should reflect applicable adjustments to inputs.....	22
14.	Other (including derivative adjustments).....	22
C.	Potentially Contested Issues	22

1.	Cash Working Capital.....	22
a.	Pension and OPEB expense leads.....	23
b.	Pass-through taxes revenue lags for the IJET and CIMF.....	26
c.	Pass-through taxes expense leads.....	28
d.	Intercompany billings expense lead.....	29
2.	Other.....	30
V.	OPERATING EXPENSES.....	31
A.	Overview.....	31
B.	Potentially Uncontested Issues.....	31
1.	Distribution O&M Expenses (issues not identified in V.C.).....	31
2.	Customer-Related O&M Expenses (issues not identified in V.C.).....	31
3.	Administrative and General Expenses (issues not identified in V.C.).....	32
4.	Charitable Contributions.....	33
5.	2013 Merger Expense.....	33
6.	Sales and Marketing Expenses.....	33
7.	Depreciation and Amortization Expense (issues not identified in V.C.).....	34
8.	Regulatory Asset Amortization.....	34
9.	Operating Cost Management Efforts.....	35
10.	Lobbying Expense.....	35
11.	Rate Case Expenses.....	35
12.	Corporate Credit Cards.....	37
13.	Gross Revenue Conversion Factor.....	37
C.	Potentially Contested Issues.....	38
1.	Depreciation for the Filing Year Revenue Requirement.....	38
2.	Incentive Compensation Program Expenses.....	38
a.	Annual Incentive Program (“AIP”).....	38
(i)	The EIMA Framework.....	39
(ii)	Statutory Interpretation and Construction.....	42
(iii)	Recent Commission Practice and Legislative Acquiescence.....	45
(iv)	Staff’s Alternative Recommendation for Recovery of 102.9% of Target.....	47
b.	Key Manager Long Term Performance Plan (“LTPP”).....	50
c.	Long-Term Performance Share Awards Program (“LTPSAP”).....	52
3.	Collection Agency Costs.....	54
VI.	RATE OF RETURN.....	55
A.	Overview.....	55
B.	Capital Structure.....	55
C.	Cost of Capital Components.....	56
1.	Rate of Return on Common Equity.....	56
2.	Cost of Long-Term Debt.....	56
3.	Cost of Short-Term Debt.....	56

4.	Overall Weighted Cost of Capital.....	56
VII.	RECONCILIATION.....	56
A.	Overview.....	56
B.	Potentially Contested Issues	56
1.	Calculation of Interest on Reconciliation Balance.....	56
a.	The Proposal is Inconsistent with ComEd’s Formula Rate and Prior Commission Decisions.....	57
b.	The Proposal is Without Merit.....	58
c.	The Proposal is Inconsistent and Asymmetrical.....	59
d.	AG Witness Brosch’s “Alternative” is Equally Without Basis and Would Make an Improper Adjustment to Rate Base.....	61
VIII.	REVENUES.....	62
A.	Overview.....	62
B.	Potentially Contested Issues	62
1.	Billing Determinants.....	62
IX.	COST OF SERVICE AND RATE DESIGN.....	66
A.	Overview.....	66
B.	Potentially Uncontested Issues	66
1.	Embedded Cost of Service Study	66
2.	Distribution System Loss Factor Study	67
3.	Secondary and Service Loss Study	68
4.	Other	68
a.	Rate Design.....	68
b.	SBO Credit and DLFs.....	69
X.	OTHER.....	69
A.	Overview.....	69
B.	Potentially Uncontested Issues	69
1.	Intercompany Receivables and Payables Management Model Document.....	69
2.	Wages and Salaries Allocator Utilized in Rider PE and Rate BESH	70
3.	Reporting Requirements	70
a.	EIMA Investments	70
b.	Reconciliation Year Plant Additions	71
c.	Contributions to Energy Low-Income and Support Programs	71
C.	Potentially Contested Issues	72
1.	Update of Exelon Business Services Company General Services Agreement.....	72
2.	Customer Care Costs.....	73
a.	Summary of ComEd’s Allocation Study and Switching Study.....	75

b.	The Evidence Supports Using the Switching Study to Determine Whether to Allocate Certain Customer Care Costs to the Supply Function	76
c.	The Allocation Study Should Be Rejected as a Tool For Determining Whether to Allocate a Portion of ComEd's Customer Care Costs to Its Supply Function.....	79
d.	RESA's Claims About the Switching Study Are Baseless – The Evidence Does Not Support the Commission Adopting Any of RESA's Cost Allocation Proposals	83
3.	Capacity Unbundling	85
XI.	CONCLUSION.....	87

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Annual formula rate update and revenue	:	No. 14-0312
requirement reconciliation under Section 16-	:	
108.5 of the Public Utilities Act.	:	

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company (“ComEd”), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”) and the scheduling order of the Administrative Law Judges, submits this Initial Brief.

I. INTRODUCTION / STATEMENT OF THE CASE

This is the fourth ComEd annual rate filing under the portion of the Public Utilities Act (“PUA”) known as the Energy Infrastructure and Modernization Act (“EIMA”).¹ At this point in the process, the scope of the parties’ disputes should be narrowed. In this formula rate update (“FRU”) proceeding, however, the positions advocated by certain parties are directly contrary to EIMA and would, if adopted by the Commission, erode the simplicity and clarity intended by formula ratemaking. The most dangerous of these proposals would require the Commission to adopt strained interpretations of both EIMA and Commission practice in an effort to deny recovery of \$66 million dollars of incentive compensation costs that are specifically identified as recoverable in EIMA and that are prudent and reasonable costs of providing delivery service.

Specifically, the Attorney General (“AG”) wrongly characterizes ComEd’s Annual Incentive Program (“AIP”) as based on earning per share (“EPS”) of an affiliate. This is an

¹ “EIMA” refers to the Energy Infrastructure Modernization Act, Public Act (“PA”) 97-0616, as amended by PA 97-0646 and PA 98-0015, and the changes and additions it made to the PUA.

incorrect interpretation of both EIMA and the facts. ComEd's AIP is based on operational and cost control metrics that are explicitly allowed under EIMA. *See* 220 ILCS 5/16-108.5(c)(4)(A). Moreover, ComEd's position is consistent with prior Commission practice – the Commission has previously approved the exact same incentive compensation program at issue here, as well as other similar incentive compensation programs in the last decade.² There is no reason to depart from this past practice that has provided stability and clarity, especially as no one has questioned the prudence of the costs or the value to customers of the performance ComEd's employees achieved. Adopting the AG's proposed disallowance here would create regulatory uncertainty that has serious financial consequences for ComEd and its customers, and that EIMA was intended to alleviate.

The entirety of ComEd's incentive compensation expense should be allowed. ComEd also understands, however, that utilizing Exelon's EPS to limit the amount earned under operational and cost control metrics has caused unnecessary conflict in this docket. ComEd does not wish to continue chasing regulatory interpretations that are acceptable in one year, *e.g.*, 2012, and unacceptable the next year, *e.g.*, 2013. The Commission has the power to reject use of this well-established limiter in future dockets. But to change course now, without warning and without any changes in fact or law, and disallow the "at risk" compensation of each and every ComEd employee – over 6,000 employees who achieved operational and cost control targets that provided substantial benefits to customers – is not just and reasonable. At the very least, the Commission should consider the compromise offered by Staff of the Illinois Commerce

² *See Commonwealth Edison Co.*, ICC Docket No. 13-0318, Final Order (Dec. 18, 2013) ("2013 Rate Case Order") at 38-61; *Commonwealth Edison Co.*, ICC Docket No. 12-0321, Final Order (Dec. 19, 2012) ("2012 Rate Case Order") at 31-32; *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 29, 2012) ("2011 Rate Case Order") at 80-92; *Commonwealth Edison Co.*, ICC Docket No. 07-0566, Final Order (Sept. 10, 2008) ("2007 Rate Case Order") at 54-61; *Commonwealth Edison Co.*, ICC Docket No. 05-0597, Final Order (July 26, 2006) ("2005 Rate Case Order") at 90-97.

Commission (“Staff”) through its witness Mr. Bridal, who recommends recovery of ComEd’s AIP expense at 102.9% of target.

Among the other issues contested in this case are: 1) cash working capital (“CWC”); 2) calculation of interest on ComEd’s reconciliation balance; 3) billing determinants; and 4) update of the Exelon Business Services Company (“BSC”) General Services Agreement (“GSA”). In summary:

- 1) The proposed changes to the leads and lags that comprise ComEd’s CWC calculation do not accurately reflect ComEd’s costs of providing delivery service and should be rejected.
- 2) The proposed adjustment to reduce the reconciliation balance upon which interest is calculated by the amount of accumulated deferred income taxes (“ADIT”) purportedly related to that balance is the same proposal that has been rejected in at least five prior ComEd cases. The parties do not present any new arguments here and the Commission should once again reject this proposal.
- 3) There is no factual record which supports the continued adjustment of selected billing determinants this year. In fact, the record shows the continued adjustment of selected billing determinants will result in consistent under recovery of revenues that will never be reconciled. Moreover, the notion that this adjustment somehow flows naturally from the nature of EIMA reconciliation itself is not only unproven, but is directly refuted by the Commission’s inconsistent application of the same statute to Ameren for which no such adjustments have been made.
- 4) Staff’s request that BSC update the GSA is unnecessary and would not be an efficient use of resources. Adoption of this proposal would have no impact on the functioning of the GSA but would require costly regulatory approval from several different states.

EIMA ratemaking allows utilities to recover their prudent and reasonable costs, to ensure that a “participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and the [EIMA ratemaking and reconciliation] process” 220 ILCS 5/16-108.5(b). That assurance is not just an obligation owed to utilities; it is also for the good of customers and the State who will reap lasting benefits from the investment EIMA is

intended to fund. In this fourth cost-update cycle, ComEd urges the Commission to look beyond continued short-sighted efforts to impair cost recovery and to exclude from rates certain costs, the prudence and reasonableness of which are unchallenged. The costs included in ComEd's proposed revenue requirements are prudent, reasonable, and recoverable, and should be approved by the Commission.

II. OVERALL REVENUE REQUIREMENT

This FRU proceeding sets ComEd's distribution rates applicable during 2015. Those rates are set in order to recover the balance of ComEd's fully reconciled actual costs for rate year 2013 as well as the initial projection of ComEd's 2015 costs. The 2015 Rate Year Net Revenue Requirement used to set those rates derives from the following figures:

1. The 2013 Reconciliation Adjustment – the difference between ComEd's rates in effect in 2013 and the 2013 Reconciliation Revenue Requirement determined based on ComEd's actual 2013 costs as reported in its Federal Energy Regulatory Commission ("FERC") Form 1 for 2013, corrected for the lost time value of money;
2. The 2015 Initial Rate Year Revenue Requirement – a projection of 2015 costs based on ComEd's actual 2013 operating costs and rate base plus projected 2014 plant additions and the associated adjustments to accumulated depreciation (the associated change in the depreciation reserve), depreciation expense, and, per the Commission's prior Orders, ADIT;
3. The "ROE Collar" adjustment relating to 2013 and the "ROE Penalty Calculation" applicable to 2013.

E.g., Brinkman Dir., ComEd Ex. 2.0, 6:103-13:264. ComEd presented substantial evidence supporting this revenue requirement through the testimony of 18 witnesses and the attachments, schedules, and exhibits they sponsored.

A. 2015 Initial Rate Year Revenue Requirement

ComEd's properly calculated 2015 Initial Rate Year revenue requirement, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$2,361,589,000. Menon Reb., ComEd Ex. 13.0, 5:102-106; ComEd Ex. 13.01, Sch FR A-1 REC, line 23.

B. 2013 Reconciliation Adjustment

ComEd's properly calculated 2013 Reconciliation Adjustment (including interest), reflecting the difference between the rates in effect in 2013 and the actual 2013 Reconciliation Revenue Requirement, is \$257,621,000. *E.g.*, ComEd Ex. 13.01, Sch A-1, line 24.

C. ROE Collar and ROE Penalty Calculation

ComEd's properly calculated ROE Collar adjustment is \$0. *E.g.*, ComEd Ex. 13.01, Sch FR A-1, line 35. The ROE Penalty Calculation is set forth on workpaper ("WP") 23 and is reflected in ComEd's Cost of Capital Computation on Sch FR D-1. *See* ComEd Exs. 3.02 and 13.01. ComEd has reflected a penalty of 5 basis points for the Reconciliation Year on Sch FR D-1, line 9 as a result of failing to meet a service reliability performance metric resulting in a reduction of the allowed ROE to 9.20%. Brinkman Dir., ComEd Ex. 2.0, 11:226-231; ComEd Ex. 13.01, Sch FR D-1, lines 9, 11.

D. 2015 Rate Year Net Revenue Requirement

Accordingly, ComEd's properly calculated 2015 Rate Year Net Revenue Requirement, reflecting the adjustments made in rebuttal testimony is \$2,619,210,000. *E.g.*, Menon Reb., ComEd Ex. 13.0, 1:18-21, 5:109-113; ComEd Ex. 13.01, Sch FR A-1, line 36.³

III. SCOPE OF THIS PROCEEDING

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

ComEd initiated this proceeding pursuant to Section 16-108.5(d) of the PUA. That provision of EIMA defines this proceeding and limits its scope. Its statutory purpose is to evaluate “the prudence and reasonableness of the costs incurred by [ComEd] to be recovered during the applicable [2015] rate year that are reflected in the inputs to the performance-based formula rate derived from the utility’s FERC Form 1.” 220 ILCS 5/16-108.5(d). The record contains that data, and the evidence supports the reasonableness and prudence of ComEd’s costs, as discussed in Sections IV. and V., below.

Unlike the annually updated input data, the formula itself is not annually revised or updated. Rather, ComEd’s approved rate formula⁴ governs the calculation of ComEd’s 2015 Initial and 2013 Reconciliation Revenue Requirements, and any adjustment attributable to the ROE Collar. Thus, in contrast to germane questions about the data, the specifics of the rate

³ ComEd notes that a portion of its credit card charges that have been voluntarily excluded are not reflected in the rebuttal position revenue requirement, but ComEd will make the necessary adjustment in its compliance filing. *See* Section V.B.12, *infra*.

⁴ The Commission approved ComEd’s rate formula on June 5, 2013, under Section 16-108.5(k)(1), 220 ILCS 5/16-108.5(k)(1). *See Commonwealth Edison Co.*, ICC Docket No. 13-0386. In that docket, the Commission held that ComEd’s formula “rate sheets, and the revenue requirement calculations filed with and supporting them, are consistent with the provisions of Public Act 98-15” *Commonwealth Edison Co.*, ICC Docket No. 13-0386, Final Order (June 5, 2013) at 3, 4. The Commission ordered into effect ComEd’s Filed Rate Schedule Sheets and approved the resulting revenue requirement modifications. *Id.*

calculation and the identification of the specific inputs used to conduct it are found in the formula rate itself and are not a subject of this proceeding.

ComEd's rate formula is not merely a general outline or description of calculations, but itself "specif[ies] the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year" 220 ILCS 5/16-108.5(c). The approved rate formula defines – mathematically and in narrative detail – how the revenue requirements and the ROE Collar adjustment (if any) are calculated and what input data goes into those calculations.⁵

Contrary to EIMA, witnesses for the AG, Citizens Utility Board, City of Chicago, and the Illinois Industrial Energy Consumers, jointly ("CCI"), and Staff propose adjustments that are counter to the established formula. These proposals are inconsistent with the rate formula and would calculate revenue requirement components in different ways and/or using different data than the formula spells out. For example:

- Staff witness Ms. Ebrey proposes a change in the way that depreciation is estimated in the rate formula in response to ComEd's latest depreciation study. Ebrey Reb., Staff Ex. 7.0, 12:236-13:244. ComEd and Staff agree, however, that the issue will be decided in Docket No. 14-0316, ComEd's Petition to Make Housekeeping Revisions and a Compliance Change to the filed Rate Formula. Accordingly, there is no need to address the issue in this docket.
- In the prior formula update proceeding (Docket No. 13-0318), witnesses for the AG and CCI argued that "ADIT related to the reconciliation balance [should] be netted against the reconciliation balance before calculating the interest expense," an adjustment the Commission has previously rejected and found to require impermissible formula changes. These same arguments are raised again in this proceeding (Effron Reb., AG Ex. 4.0, 4:75-12:254; Gorman Reb., CCI Ex. 2.0, 9:178-16:325; Brosch Reb., AG Ex. 3.0 CORR., 3:51-21:466) and should be

⁵ The formula calculates ComEd's 2015 Initial Rate Year Revenue Requirement using 2013 actual data and certain 2014 estimates, and uses the same formula to calculate ComEd's 2013 Reconciliation Revenue Requirement from the actual 2013 costs that are now available. The ROE Collar is also calculated based on actual 2013 data. 220 ILCS 5/16-108.5(d).

rejected for the same reasons and because ComEd properly accounts for ADIT related to the reconciliation.⁶ As the Commission held, “The proposal to consider and change the structure and protocols of ComEd’s formula rate related to the calculation of deferred income taxes on reconciliation balance are beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding.” 2013 Rate Case Order at 63.

These proposals lack merit as ComEd, in the alternative, points out later in this Brief.⁷ But, regardless of that fact, because these proposals are inconsistent with the established rate formula, they must be rejected in this case. Brinkman Sur., ComEd Ex. 25.0, 8:146-156, 19:380-381. While adopting these proposals would necessarily change the formula, EIMA expressly bars changes to the rate formula in FRU proceedings and gives the Commission no “authority ... to consider or order any changes to the structure or protocols of the performance-based formula rate” in annual update cases. 220 ILCS 5/16-108.5(d). EIMA rather requires changes to the “performance-based formula rate structure or protocols” to be made in a utility rate filing or by the Commission after an investigation “as set forth in Section 9-201 of this Act.” 220 ILCS 5/16-108.5(c). The proceeding mentioned above, Docket No. 14-0316, ComEd’s Petition to Make Housekeeping Revisions and a Compliance Change to the filed Rate Formula, is just such a proceeding. That proceeding also specifically includes the issue of what constitutes the formula rate structure and protocols. Finally, the Commission has interpreted Section 16-108.5(d) and expressly found that proposals to consider and change the structure and protocols of the formula rate are beyond the scope of a Section 16-108.5(d) annual update and reconciliation proceeding. *See* 2013 Rate Case Order at 62-63. For these reasons as well, the Commission should decline to consider formula rate changes in this FRU.

⁶ This issue was also considered and determined by the Commission in Docket No. 13-0553, which involved ComEd’s compliance with Public Act 98-0015 in Docket No. 13-0386.

⁷ *See generally* Brinkman Sur., ComEd Ex. 25.0, 7:128-12:239, 18:352-27:544, and alternative arguments made in Sections V.C.1 and VII.B of this Brief.

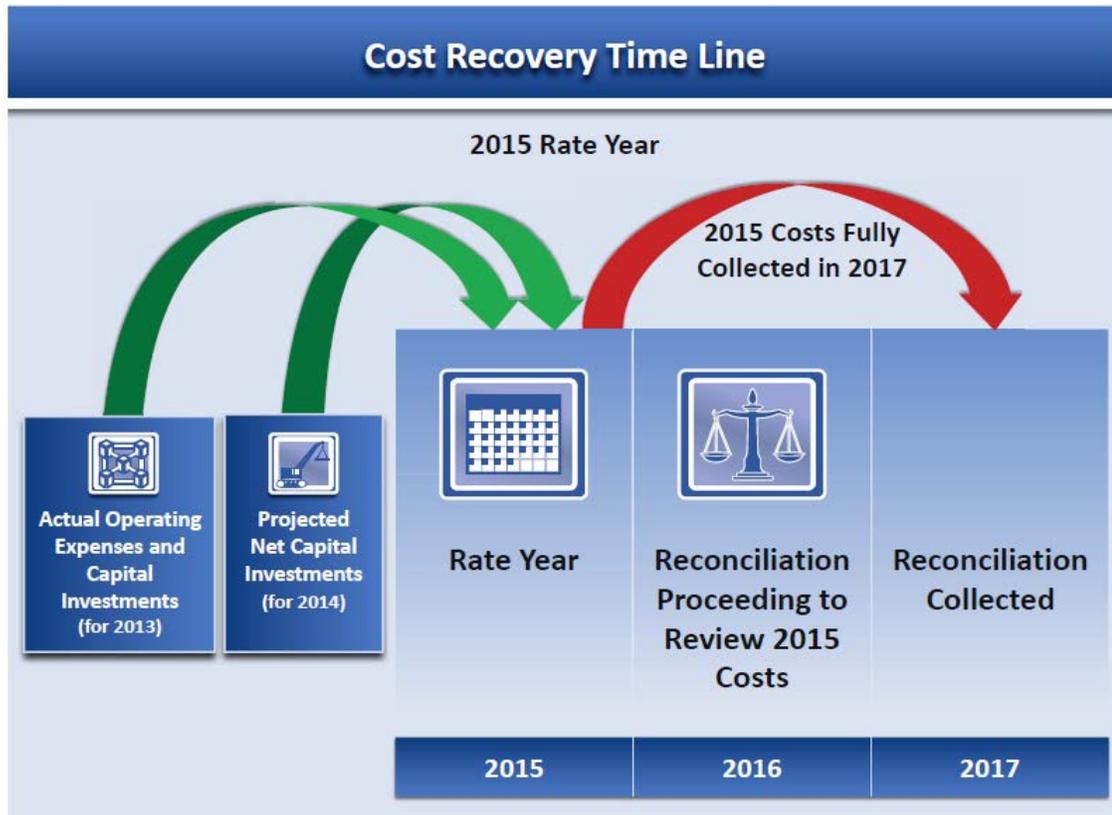
B. The Definition of Rate Year and the Reconciliation Cycle

EIMA establishes an annual process by which ComEd's rate year costs and revenue requirements are first estimated, and then finally fixed and reconciled when actual costs are known. The objective is to:

... ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

220 ILCS 5/16-108.5(d)(1). To accomplish that, EIMA requires that each FRU involve both a final reconciliation of the revenue requirement "for the prior rate year," for which actual costs will be known by the time of filing, and a provisional projection of the revenue requirement for the following calendar year. That provisional Initial Revenue Requirement will be reconciled two years hence. EIMA requires ComEd to base that projection on "historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." 220 ILCS 5/16-108.5(d)(1). EIMA thereby establishes a two-year cycle of before-the-fact estimation based on actual and projected costs for years earlier than the rate year and a subsequent after-the-fact reconciliation of that estimated Initial Rate Year Revenue Requirement with the actual data. Thus, in the end, and after adjustment for interest, the rates for each year should be based purely on actual cost.

ComEd provided a graphic to illustrate how the 2015 Initial Revenue Requirement is calculated in this case and how it relates to the actual 2015 Reconciliation Revenue Requirement that will ultimately be collected.



Brinkman Dir., ComEd Ex. 2.0, 5:95.

Once again, ComEd is using the reconciliation process specified by EIMA. 220 ILCS 5/16-108.5(d). That process is conducted using the rate formula exactly as approved in Docket Nos. 11-0721, 13-0386, and 13-0553, and using the specific rate formula the Commission found compliant with EIMA in its Orders in Docket Nos. 13-0386 and 13-0553. Moreover, this structure replicates the structure used in Docket No. 13-0318 (which reconciled rate year 2012 and calculated an initial revenue requirement for rate year 2014 based on 2012 actual costs and 2013 projected plant additions), Docket No. 12-0321 (which reconciled rate year 2011 and calculated an initial revenue requirement for rate year 2013 based on 2011 actual costs and 2012 projected plant additions), and, insofar as is possible given the special start up rules, also mirrors the process followed in Docket No. 11-0721 (which set the initial revenue requirement for rate year 2012 based on 2010 actual costs and 2011 plant additions).

C. Original Cost Finding

ComEd requests that the Commission, as it has in past FRU Orders,⁸ approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2013. *See* Menon Dir., ComEd Ex. 3.0, 14:293-15:305. The record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2013 is \$16,299,132,000. Menon Dir., ComEd Ex. 3.0, 15:305.

In her direct testimony, Staff witness Ms. Ebrey recommends an original cost determination of \$16,275,590,000. Ebrey Dir., Staff Ex. 1.0, 39:830-41:862. This reduction of \$23,541,000 from the amount sought by ComEd represents the removal from the original cost determination of certain capital costs recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment, Rider PORCB – Purchase of Receivables with Consolidated Billing, and Rider PE – Purchased Energy. ComEd accepts Staff witness Ms. Ebrey's original cost determination of \$16,275,590,000 so long as the Commission makes clear in its final Order that a separate original cost finding will be made in future non-formula rate update proceedings where plant assets apply, resulting in multiple original cost findings as opposed to one for assets that come under the jurisdiction of the Commission. Menon Reb., ComEd Ex. 13.0, 10:190-219. Subject to that condition, ComEd also accepts the language proposed by Ms. Ebrey. *Id.*, 10:200-202 (citing Ebrey Dir., Staff Ex. 1.0, 40:856-41:862).

D. Issues Pending on Appeal

ComEd preserved several arguments that were decided in ICC Docket Nos. 11-0721 and 12-0321 through appeal from the Commission's orders. On most issues, those appeals have been resolved; further appellate review remains open with respect to the allocation of costs between

⁸ *See* 2011 Rate Case Order at 178; 2012 Rate Case Order at 106; 2013 Rate Case Order at 88-89.

transmission and distribution. ComEd has also preserved several arguments that were decided in ICC Docket Nos. 13-0318 and 13-0553 through appeal from the Commission’s orders, including the allocation issue. Those appeals are pending before the Appellate Court, and ComEd waives none of those arguments. Until and unless those appeals result in reversals or remands of the portions of those decisions on appeal, however, those Orders remain effective as issued. Therefore, while ComEd “requests that its revenue requirements be calculated in accordance with EIMA and that its delivery service charges be set based on the revenue requirements authorized by EIMA” as ComEd understands it, ComEd did not “actively relitigate” those legal issues on appeal in this proceeding as they are before the courts and will be decided there. Sherrod Dir., ComEd Ex. 1.0, 4:70-74. To avoid confusion, ComEd’s stated revenue requirements have been “calculated [in] its updated revenue requirement in a manner conforming to the Commission’s previous rulings while also maintaining its positions on appeal.” *Id.*, 4:75-78. ComEd requests that if its views prevail during the pendency of this case, “charges reflecting those positions be put into effect in the most effective lawful manner.” Sherrod Dir., ComEd Ex. 1.0, 4:78-81.

IV. RATE BASE

A. Overview

ComEd fully supported its 2013 Reconciliation Year rate base and its 2015 Initial Rate Year rate base through the testimony of multiple witnesses.⁹ ComEd’s figures should be approved. There are only four potentially contested rate base issues, all related to CWC, and for each of them ComEd has supplied the correct calculation, as discussed below.

⁹ Primarily ComEd witnesses Menon, Brinkman, Moy, Donovan, and Garrido.

1. 2013 Reconciliation Rate Base

ComEd's properly calculated 2013 Reconciliation Year rate base, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$6,595,626,000. *E.g.*, Menon Reb., ComEd Ex. 13.0, 6:117-120; ComEd Ex. 13.01, Sch FR B-1, line 28.

2. 2015 Initial Rate Year Rate Base

ComEd's properly calculated 2015 Initial Rate Year rate base as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$7,368,745,000. *E.g.*, Menon Reb., ComEd Ex. 13.0, 6:123-125; ComEd Ex. 13.01, Sch FR B-1, line 36.

B. Potentially Uncontested Issues

1. Plant in Service

a. Distribution Plant

ComEd's Distribution Plant in rate base for the 2013 Reconciliation Revenue Requirement and the 2015 Initial Rate Year Revenue Requirement is uncontested and should be approved. ComEd's Distribution Plant in service as of December 31, 2013 includes: (1) the TDC 207 Tonne Enhancement Distribution (ITN 47598); and (2) the Southwest Suburban Capacity Expansion Project (ITN 20702). ComEd Ex. 13.01, Sch FR B-1, line 28; Moy Dir., ComEd Ex. 6.0, 29:603-35:710. ComEd's 2014 projected plant additions consist of \$1,005,094,000 of Distribution Plant additions expected to be in service as of December 31, 2014. Menon Dir., ComEd Ex. 3.0, 27:559-563; ComEd Ex. 13.01, Sch FR B-1, line 29. These additions were described in accordance with 83 Ill. Adm. Code 285.6100.

ComEd demonstrated that its Distribution Plant for the 2013 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its Distribution Plant for the 2015 Initial Rate

Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, Moy Dir., ComEd Ex. 6.0, 9:181-15:309. These facts are uncontested.

b. General and Intangible Plant

ComEd's General and Intangible ("G&I") Plant in rate base for the 2013 Reconciliation Revenue Requirement and 2015 Initial Rate Year Revenue Requirement is uncontested and should be approved. ComEd's 2014 projected plant additions consists of \$209,268,000 of G&I Plant additions. Menon Dir., ComEd Ex. 3.0, 27:559-563; ComEd Ex. 13.01, Sch FR B-1, line 31. ComEd demonstrated that its G&I Plant for the 2013 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its G&I Plant for the 2015 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, Moy Dir., ComEd Ex. 6.0, 16:312-18:364.

c. Plant Additions

The projected plant additions of \$1,214,362,000 included in the rate base component of ComEd's Initial 2015 Rate Year Revenue Requirement pursuant to Section 16-108.5 of the PUA are uncontested and should be approved. Moy Dir., ComEd Ex. 6.0, 21:420-428; ComEd Ex. 13.01, Sch FR B-1, lines 29, 31. These additions include Distribution, General Plant, and Intangible Plant additions that ComEd expects to place in service during 2014. ComEd Ex. 13.02, WP 19 (Public and Confidential); *see also* Moy Dir., ComEd Ex. 6.0, 21:430-23:470. ComEd demonstrated that the projection represents prudent and reasonable investments that will be used and useful. *E.g.*, Moy Dir., ComEd Ex. 6.0, 23:477-25:508.

2. Materials & Supplies

ComEd's Distribution Plant Materials & Supplies ("M&S") inventory for the 2013 Reconciliation Revenue Requirement rate base and 2015 Initial Rate Year Revenue Requirement

rate base is uncontested and should be approved. ComEd maintains an inventory of distribution equipment to support its capital projects and to replace necessary equipment, including an emergency reserve; ComEd's adjusted inventory of jurisdictional M&S in the updated rate bases is \$41,057,000, which is based upon its inventory at year end 2013 per its FERC Form 1. ComEd Ex. 13.01, Sch FR B-1, line 18; Menon Dir., ComEd Ex. 3.0, 22:458-465. ComEd demonstrated that its Distribution Plant M&S are prudent and reasonable and that the underlying assets are used and useful. *E.g.*, Moy Dir., ComEd Ex. 6.0, 18:366-19:387.

3. Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset

ComEd agreed to Staff's proposed adjustment to accumulated deferred income taxes ("ADIT") on its regulatory asset related to distribution merger costs of \$12,375,000. Ebrey Dir., Staff Ex. 1.0, 38:817-39:828; Ebrey Dir., Staff Ex. 1.0, Sched. 1.14 FY. This adjustment was made in ComEd's rebuttal testimony and no party contests the adjustment. Menon Reb., ComEd Ex. 13.0, 9:185-189; ComEd Ex. 13.02, WP 4, page 3, line 100.

4. Construction Work in Progress

ComEd's Construction Work in Progress ("CWIP") for the 2013 Reconciliation Revenue Requirement rate base is uncontested. CWIP related costs can be recovered in one of two ways: for projects in excess of \$25,000 and with construction periods greater than 30 days, an Allowance for Funds Used During Construction ("AFUDC") is accrued and added to the total cost of such projects in order to capture the associated financing costs. Alternatively, for projects that do not meet the above standards, ComEd may recover its CWIP costs through its reconciliation rate base. *See* Moy Dir., ComEd Ex. 6.0, 19:389-20:400. ComEd has included \$11,219,000 of CWIP for projects that do not accrue AFUDC in its rate base for the 2013 Reconciliation Rate Year. Moy Dir., ComEd Ex. 6.0, 20:403-405; ComEd Ex. 13.01, Sch FR B-

1, line 14. ComEd demonstrated that its CWIP for the 2013 Reconciliation Revenue Requirement is prudent and reasonable. *E.g.*, Moy Dir., ComEd Ex. 6.0, 20:409-415. Thus, ComEd's CWIP should be approved.

5. Regulatory Assets and Liabilities

ComEd included in its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base Regulatory Assets amounting to \$46,877,000. ComEd Ex. 13.01, Sch FR B-1, line 19. These Regulatory Assets are comprised of: (1) a regulatory asset representing the unamortized balance (as of year-end 2013) of capitalized incentive compensation costs, (2) the unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot, and (3) the unrecovered balance of the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI pilot). Menon Dir., ComEd Ex. 3.0, 23:468-480; ComEd Ex. 13.01, App 5, line 4. ComEd's Regulatory Assets are uncontested and reasonable and should be approved.

6. Deferred Debits

ComEd included in its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base Deferred Debits amounting to \$32,762,000. Menon Dir., ComEd Ex. 3.0, 23:482-483; ComEd Ex. 13.01, Sch FR B-1, line 20. The Deferred Debits included in the rate base are comprised of: (1) Cook County Forest Preserve Fees related to licensing fees for distribution lines; (2) a Long Term Receivable from the Mutual Beneficial Association ("MBA") Plan related to ComEd's payments to the trust on behalf of union employees for short term disability and for which it is awaiting reimbursement; (3) a deferred debit associated with ComEd's capitalized vacation pay not included in plant-in-service; (4) expected recoveries from insurance on claims made by the public against ComEd; and (5) payment to the Commission for fees related to purchasing new money as part of future long-term

debt issuances. Menon Dir., ComEd Ex. 3.0, 23:483-24:492; ComEd Ex. 13.01, App 5, lines 5-9. These Deferred Debits are uncontested and reasonable and should be approved.

7. Other Deferred Charges

ComEd included in its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base Other Deferred Charges relating to incremental distribution storm costs greater than \$10 million. Menon Dir., ComEd Ex. 3.0, 24:494-495. These costs include certain storm expenses, which ComEd is amortizing over five years pursuant to Section 16-108.5(c)(4)(F). In addition, ComEd removed certain merger expenses from its operating expenses, and is amortizing them over a five-year period. Menon Dir., ComEd Ex. 3.0, 24:502-504. No party contested these issues.

ComEd is amortizing over five years the expenses of three 2011 storms, two 2012 storms, and two 2013 storms, each of which incurred costs in excess of \$10 million. In 2011, 2012, and 2013, these storm costs totaled \$68,201,000, \$21,271,000, and \$21,987,000, respectively. Menon Dir., ComEd Ex. 3.0, 24:497-506. The unamortized balances of the 2011, 2012, and 2013 storm expenses, \$27,188,000, \$12,748,000 and \$17,589,000, respectively, are included in rate base. ComEd Ex. 13.02, WP 8, lines 11-14. Additionally, ComEd initially recorded merger expenses of \$31,912,000 and \$11,432,000 in 2012 and 2013, respectively, and unamortized merger expense balances for 2012 and 2013 of \$19,147,000 and \$9,145,000, respectively. Menon Dir., ComEd Ex. 3.0, 24:497-506. After making the \$48,000 adjustment to the 2012 and 2013 merger costs proposed by Staff (*see* Section V.B.5), ComEd included unamortized merger expense balances for 2012 and 2013 of \$19,111,000 and \$9,133,000, respectively, in rate case. ComEd Ex. 13.02, WP 8, line 15-17. The total unamortized balance related to all of these merger and storm-related expenses is \$85,769,000. ComEd Ex. 13.01, Sch FR B-1, line 24.

ComEd's Other Deferred Charges, including the unamortized storm expenses and merger expenses and other liabilities, after adjustments, are uncontested and reasonable and should be approved.

8. Accumulated Provisions for Depreciation and Amortization

The total Accumulated Depreciation related to ComEd's rate base, as of December 31, 2013, is \$6,328,820,000. This total was comprised of \$5,570,463,000 related to Distribution Plant and \$758,357,000 related to G&I Plant. ComEd Ex. 13.01, Sch FR B-1, lines 7-12; Menon Dir., ComEd Ex. 3.0, 17:342-348. This figure is uncontested and should be approved.

9. Accumulated Miscellaneous Operating Provisions

ComEd has also included other liabilities in its rate base. These liabilities, after adjustments, are Operating Reserves of \$429,569,000, Asset Retirement Obligations of \$21,832,000, and Deferred Credits of \$94,401,000. ComEd Ex. 13.02, WP 5. ComEd's Operating Reserves and Deferred Liabilities for the 2013 reconciliation year and 2014 filing year are uncontested and should be approved. ComEd Ex. 13.01, Sch FR B-1, lines 21 and 23; *see also* Menon Dir., ComEd Ex. 3.0, 24:510-25:525, 26:534-536.

10. Asset Retirement Obligation

ComEd's Asset Retirement Obligation represents asset removal costs recovered through depreciation accounts. The Asset Retirement Obligation consists of \$21,832,000 and is recorded in Account 230, as noted in the testimony of Mr. Menon. The Asset Retirement Obligation costs were previously recorded in Account 108 – Accumulated Depreciation and were reclassified in 2005 in accordance with the USOA. ComEd Ex. 13.01, Sch FR B-1, line 22; Menon Dir., ComEd Ex. 3.0, 25:528-532. ComEd's Asset Retirement Obligation is uncontested and should be approved.

11. Customer Advances

Under the terms of Rider DE – Distribution System Extensions, ComEd receives refundable distribution system extension deposits from customers; ComEd also receives refundable customer advances to begin construction. ComEd has reduced its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base to reflect the customer deposits and advances that are related to projects that were included in the rate base as of December 31, 2013. ComEd also reduced its rate base for those deposits and advances related to projects included in its 2014 projected plant additions.

ComEd initially reduced rate base for these deposits and advances related to projects included in rate base as of December 31, 2013 or in its 2014 projected plant additions by \$61,034,000. Menon Dir., ComEd Ex. 3.0, 26:551-27:556; ComEd Ex. 3.01, Sch FR B-1, line 26. Both Staff witness Ms. Ebrey and AG witness Mr. Effron proposed adjustments to customer advances. Ebrey Dir., Staff Ex. 1.0, 38:808-815; Effron Dir., AG Ex. 2.0, 4:70-77. ComEd agreed that the amount stated in ComEd Ex. 3.01, Sch FR B-1 was overstated by \$6,982,000, primarily due to the inadvertent exclusion of two material deposits. ComEd made this adjustment which resulted in a revised reduction to rate base of \$68,016,000. Menon Reb., ComEd Ex. 13.0, 8:160-9:164; ComEd Ex. 13.01, Sch FR B-1, line 26. ComEd disagreed with an additional adjustment proposed by AG witness Mr. Effron, and the proposed adjustment was not raised again in AG rebuttal testimony. Menon Reb., ComEd Ex. 13.0, 8:165-9:179. Accordingly, ComEd believes that its Customer Advances are uncontested and should be approved.

12. Customer Deposits

ComEd receives refundable deposits from certain new customers as a condition of initiating electric service. ComEd applied its year-end balance of those refundable customer

deposits to its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base; the application of those deposits resulted in a reduction to the rate base of \$133,094,000. Menon Dir., ComEd Ex. 3.0, 26:544-548; ComEd Ex. 13.01, Sch FR B-1, line 25, and App 2 “Customer Deposits Information.” ComEd’s quantification and treatment of deposits are uncontested and should be approved.

13. Cash Working Capital (issues not identified in IV.C.)

a. Overview of CWC and ComEd’s Lead/Lag Study

The CWC reflected in ComEd’s rate base is the amount of cash that ComEd maintains in order to meet its expenses and other cash outflow obligations. Menon Dir., ComEd Ex. 3.0, 18:375-377. ComEd determines the amount of CWC based on its lead/lag study, which is a specific analysis of the timing of applicable cash inflows to and cash outflows from a utility. *Id.*, 18:377-19:379. The Commission, in its final Order in ComEd’s 2011 formula rate case, directed ComEd to provide an updated lead/lag study once every three years. *Id.*, 19:393-395; 2011 Rate Case Order at 56. In accordance with the Commission’s directive, ComEd updated its study and presented it in direct testimony in this proceeding. Hengtgen Dir., ComEd Exs. 4.0, 4.01, 4.02.

ComEd’s revenue lag measures the number of days from the date service was rendered by ComEd until the date payment was received from customers and the payment funds become available to ComEd. Hengtgen Dir., ComEd Ex. 4.0, 4:85-5:88. In the lead/lag study, the revenue lag is divided into five components: (1) service lag, (2) billing lag, (3) collections lag, (4) payment processing lag, and (5) bank float on collections from customers. *Id.*, 5:88-90. These five components total 49.54 lag days. *Id.*, 5:90-91. ComEd calculated the collections lag component of the revenue lag using a mid-point methodology that is reasonable and that was approved by the Commission in ComEd’s 2011 formula rate case and in its 2010 rate case. 2011 Rate Case Order at 41-42; *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order

(May 24, 2011) (“2010 Rate Case Order”) at 47. Moreover, ComEd incorporated methodologies that reduced the CWC requirements of the lead/lag study including: excluding accounts receivable amounts over 365 days old, excluding amounts related to inactive accounts and excluding customer grace periods from its collections lag calculations. Hengtgen Dir., ComEd Ex. 4.0, 3:61-4:68. ComEd’s non-contested revenue lag calculation of 49.54 days is correct and should be approved by the Commission.

ComEd’s expense lead measures the time difference between when a good or service is provided to ComEd and when ComEd pays for that good or service. *Id.*, 11:214-216. In the lead/lag study, the expense lead consists of three components: (1) a service lead, (2) a payment lead, and (3) a bank float lead if the amount is paid by check. *Id.*, 11:217-219. ComEd’s expense leads are based on actual payment data during calendar year 2013. *Id.*, 3:56-57. ComEd notes that certain expense leads are contested and are discussed in Section IV.C. below.

b. Payroll and withholding expense lead days and derivative changes to FICA tax and employee benefits – other Expense Leads

ComEd’s direct testimony presented and supported a CWC deduction to delivery service rate base of \$5,947,000 for the rate year and \$1,716,000 for the filing year. Menon Dir., ComEd Ex. 3.0, 19:380-389; ComEd Ex. 3.01, Sch FR B-1, lines 16 and 34a. On rebuttal, ComEd agreed with the CWC adjustment proposed by Ms. Ebrey relating to a change to ComEd’s Payroll and Withholdings expense lead and the related changes to the FICA tax lead and the employee benefits – other lead. *See* Menon Reb. ComEd Ex.13.0, 16:336-341; Hengtgen Reb., ComEd Ex. 14.0, 3:57-60; *see also* Ebrey Dir., Staff Ex. 1.0, 29:617-30:625. This adjustment increased the CWC rate base deduction by \$1,033,000 for both the rate year and the filing year. *See* ComEd Ex. 13.07, line 12. This in turn resulted in a \$102,000 decrease to ComEd’s rate year revenue requirement and a \$116,000 decrease to ComEd’s filing year revenue requirement.

See ComEd Ex. 13.07, line 12. No party contests this adjustment and there were no further adjustments on this subject in surrebuttal.

c. **Final CWC calculation should reflect applicable adjustments to inputs**

Staff proposed changes to ComEd's CWC calculation. ComEd disagrees with certain of the proposals as discussed in Section IV.C. below. In addition, ComEd noted a formula error relating to the balance between the level of ComEd receipts and outlays in Staff's CWC calculations. Hengtgen Reb., ComEd Ex. 14.0, 18:391-19:407. In rebuttal, Staff corrected the error in its CWC adjustment. Ebrey Reb., Staff Ex. 7.0, 6:113-117. Staff and ComEd agree that the final CWC figures in the reconciliation and filing year rate bases should reflect the derivative impacts on the inputs to the CWC calculations resulting from applicable adjustments to expenses or revenues, if any, ordered by the Commission's final Order. Hengtgen Reb., ComEd Ex. 14.0, 18:378-381.

14. Other (including derivative adjustments)

The Commission's final Order in ICC Docket No. 13-0318 disallowed pension costs associated with disallowed or excluded incentive compensation. Accordingly, ComEd has reduced the revenue requirement by approximately \$0.2 million jurisdictional. Brinkman Dir., ComEd Ex. 2.0, 28:592-29:596; ComEd Ex. 3.01, App 7, line 21; ComEd Ex. 3.01 WP 7, page 2, line 33, and WP 1, page 12. No parties contest this adjustment.

ComEd is aware of no other rate base issues, apart from those addressed in Section IV.C.

C. Potentially Contested Issues

1. Cash Working Capital

ComEd's CWC requirement is based on its properly updated lead/lag study, a study similar to that approved by the Commission in the 2011 formula rate case. See 2011 Rate Case

Order at 55-56. ComEd's final revised CWC figure of (\$6,860,000) for the rate year and (\$8,576,000) for the filing year represents its real CWC requirement resulting from the applicable actual cash outflows and inflows during calendar year 2013 and should be approved. ComEd Ex. 13.01, App 3, page 19, line 40; ComEd Ex. 13.01, App 3, page 20, line 80. The various contested Staff and intervenor adjustments to ComEd's CWC requirement would result in a reduction to rate base of approximately \$112,000,000 for the rate year and approximately \$111,000,000 for the filing year, with a revenue requirement reduction of approximately \$11,000,000 for both the rate and filing year. *See* Staff Ex. 7.03, Sched. 7.03 RY, line 7; Staff Ex. 7.03, Sched. 7.03 FY, line 7; Staff Ex. 7.05 RY, line 11; Staff Ex. 7.05 RY, line 7. These adjustments are improper and should be rejected for the reasons discussed below.

a. Pension and OPEB expense leads

The evidence shows that ComEd correctly attributes zero expense lead time to its pension and Other Post-Employment Benefits ("OPEB") expense and Staff's proposal to use 203.24 lead days for that expense should be rejected. As thoroughly explained by ComEd witness Ms. Houtsma, the cash flow impacts of the \$153.5 million of accrued expense amounts for both pension and OPEB, and for periodic cash payments to the trusts (cash outflows) for both pension and OPEB, are already fully accounted for in ComEd's approved EIMA formula rate and revenue requirements. *See* Houtsma Reb., ComEd Ex. 15.0, 2:30-37; Houtsma Sur., ComEd Ex. 28.0, 2:28-30. Adopting Staff's recommendation of including this expense in CWC calculations would therefore result in a significant and improper "double count" reduction to ComEd's rate base.

Specifically, the \$153.5 million includes \$97 million for pension expense that has been applied as a reduction to ComEd's pension asset, and \$55 million for OPEB expense that is already included as a component of operating reserves, which reduces rate base. Houtsma Reb.,

ComEd Ex. 15.0, 3:63-4:66; ComEd Ex. 15.01. ComEd's treatment of these items as reductions to rate base for OPEB accruals and to the pension asset for pension accruals is equivalent to including those expense accruals in the lead/lag study and assigning them a 365-day lead – substantially longer than the 203.24-day lead suggested by Staff. *See* Hengtgen Dir., ComEd Ex. 4.0, 13:262-263.

Staff presents no evidence denying that their proposal results in a double count, and acknowledges that pension accruals reduce the pension asset and OPEB accruals reduce rate base. ComEd Cross Ex. 1, Staff Responses to ComEd Data Requests ComEd-Staff 14.01 and 14.02. Instead, in rebuttal, Staff presents a flawed justification regarding the matching of expenses and revenue within the CWC calculation that was rejected by the Commission in ComEd's first formula rate case and in its ruling in ComEd's 2010 rate case. The Commission has repeatedly affirmed ComEd's proposal to reflect zero lead days for ComEd's Pension and OPEB expense. *See* 2011 Rate Case Order at 51; 2010 Rate Case Order at 48. In ComEd's 2011 formula rate case, the Commission properly found that "expense leads for the various operating expenses are calculated independently of revenue lag and can be positive, negative or zero." 2011 Rate Case Order at 51. Staff has provided no basis for the Commission to abandon its practice in this proceeding and the Commission should accordingly decline to adopt Staff's recommendation.

Staff witness Ms. Ebrey errs when she claims that because ComEd uses the accrual method rather than cash basis method of accounting that the pension and OPEB cash payment amounts included in rate base are not reflective of the cash requirement that is measured by CWC. *See* Ebrey Dir., Staff Ex. 1.0, 13:271-274. In fact, the amounts reflected in rate base consider both the accounting *accruals* as well as the *cash* contributions. Houtsma Reb., ComEd

Ex. 15.0, 6:114-8:153; ComEd Ex. 15.01. In addition, Staff's 203.24 lead-day calculation is flawed. Unlike most vendor and payroll related costs, pension and OPEB accruals are determined independently from the cash contributions and the timing of the cash payments cannot be directly assigned to particular accruals. Houtsma Reb., ComEd Ex. 15.0, 9:173-178. In any event, ComEd's inclusion of the amounts elsewhere in the revenue requirement at the equivalent of a full 365-day lead eliminates the need for such direct assignment.

Ms. Ebrey's references to the Commission order in Docket Nos. 12-0511/0512 Cons. ("PGL case") in support of her proposal (Ebrey Dir., Staff Ex. 1.0, 13:276-14:300) are equally unavailing. The facts of that case differ substantially from the relevant facts in this proceeding. Specifically, the PGL case did not involve participating utilities under EIMA pursuant to which pension and OPEB accrued expense amounts and cash trust payments are fully accounted for in the revenue requirement. *See* Houtsma Reb., ComEd Ex. 15.0, 8:160-162. In addition, in the PGL case intercompany billing lead values were used, which Staff asserts here would be 45 days. *See* Ebrey Dir. Staff Ex. 1.0, 24:496-502. Yet, in this case Staff is proposing a longer lead value of approximately 203 days. Moreover, historically, Commission orders on this issue relating to PGL utilized the intercompany billing lead value while as discussed above, ComEd orders have historically included zero lead for those expenses. Hengtgen Reb., ComEd Ex. 14.0, 13:269-281; *see also* Houtsma Reb., ComEd Ex. 15.0, 2:30-37; Houtsma Sur., ComEd Ex. 28.0, 2:28-30.

Finally, Staff's assertion that the inclusion of lag days is "more reasonable" because cash inflows and outflows associated with recovery of payment of pension or OPEB costs should match as is the case with other lead/lag study items is flawed. *See* Ebrey Dir., Staff Ex. 1.0, 12:258-13:265; *see also* Ebrey Reb., Staff Ex. 7.0, 8:158-161. This matching premise could only

be sound if one ignores the fact that the cash outflows are accounted for elsewhere in the revenue requirement, as they are here. Further, the Commission has expressly rejected this matching justification in ICC Docket Nos. 10-0467 and 11-0721. Houtsma Sur. ComEd Ex. 28, 3:53-71.

b. Pass-through taxes revenue lags for the IIET and CIMF

ComEd correctly proposes a 49.54 day pass-through tax revenue lag for the Illinois Electricity Excise Tax (“IEET”) and the City of Chicago Infrastructure Maintenance Fee (“IMF”). Hengtgen Dir., ComEd Ex. 4.0, 8:162-163. The lag time is appropriate because it utilizes the same lag associated with ComEd’s revenue collection. *Id.* ComEd’s primary source of cash is receipt of customer payments of their monthly bills. The pass-through tax and fee amounts are included as separate charges on the monthly bills, and payments are received for these amounts by ComEd at the same time as all other cash from its customers. *Id.*, 8:160-162. As a result, it is appropriate that the lag time for the pass-through tax amounts be identical to the revenue lag of 49.54 days.

Staff’s proposal to remove the service lag component from the pass-through tax revenue lag is based on the faulty premise that the pass-through taxes are somehow separate from the provision of utility service. Ebrey Dir. Staff Ex. 1.0, 15:312-315. In fact, pass-through taxes are part of the bill for utility service and customers pay the amounts for pass-through taxes at the same time they pay all other components of their bill. Hengtgen Reb., ComEd Ex. 14.0, 4:81-87. CCI witness Gorman makes a similar and equally incorrect claim that the billing and collecting of pass-through taxes represent a separate service because the taxes are not known, measurable or calculated until the bill is prepared. *See* Gorman Reb., CCI Ex. 2.0, 3:46-49. The fact that the taxes are not known, measurable or calculated until the bill is prepared is irrelevant. Hengtgen Sur., ComEd Ex. 27.0, 4:82-5:89. That point applies to many components of a bill until the meter is read and the volume of electricity delivered to (and used by) the customer is known. *Id.*,

5:89-91. Indeed, even if a customer takes no delivery of electricity in a given monthly service period and thus no IEET or CIMF amounts are calculated or due, the billing and collection processes for the customer would still occur. *Id.*, 5:94-97. Electricity delivery is the service that triggers the collection of pass-through taxes – not the billing and collection process.

Further, removing the service lag for IEET and CIMF without removing the corresponding service lead, as Staff and CCI propose, would be inconsistent and inappropriate under the mid-point methodology upon which ComEd's service lag and service lead are based. That methodology assumes that service is provided to a customer evenly over an entire month. *See id.*, 5:91-97. The 15.21 service lag days at issue here must be included in the overall lag calculation in order to properly capture the inflow of funds as well as the fact that customers are delivered service over an entire month. *See id.*, 5:91-103; *see also* Hengtgen Dir., ComEd Ex. 4.0, 9:175-181; Hengtgen Sur., ComEd Ex. 27.0, 4:82-5:100. Staff and CCI do not rebut this fact but instead rely on citing previous orders – an inadequate response to this factual point.

Though the final Order in the 2011 formula rate case excluded the service lag for IEET and IMF, ComEd believes that including both a service lag and a service lead for pass-through taxes is more appropriate for the reasons set forth above and recommends that the Commission allow ComEd its full 49.54 days of revenue lag for IEET and CIMF in this proceeding. This would be consistent with a more recent decision by the Commission in Docket Nos. 12-0511/12-0512 (cons), where the Commission entered an order which reflected both a service lag and a service lead for a pass through tax. *See* Hengtgen Reb., ComEd Ex. 14.0, 5:104-108. The service lag and the service lead in those cases were also based on the midpoint methodology. *Id.*, 5:108-109. In addition the Staff witness in those cases agreed that both a service lag and a service lead were appropriate. *Id.*, 6:110-112.

Alternatively, because in this instance the service lead and the service lag are an identical 15.21 days and the appropriate impact on CWC can also be obtained by eliminating both, in order to narrow the contested issues (without waiving any rights to contest this issue in future proceedings), ComEd is willing to eliminate the service lag of 15.21 days for the IEET and CIMF if the service lead of 15.21 days is also eliminated. Hengtgen Reb., ComEd Ex. 14.0, 7:141-149. Staff's assertions to the contrary notwithstanding, this treatment would be consistent with the treatment of pass-through taxes in the 2010 rate case, where both the service lead and service lag were excluded. *See* Hengtgen Reb., ComEd Ex. 14.0, 6:113-120; Hengtgen Sur., ComEd Ex. 27.0, 4:82-5:100; ComEd Ex. 27.01.

c. Pass-through taxes expense leads

The Commission should also decline to adopt Staff's proposal to increase the lead for ComEd's pass-through taxes by using the due date of the taxes instead of the actual payment date as ComEd proposes. Ebrey Dir., Staff Ex. 1.0, 17:355-23:485; Hengtgen Dir., ComEd Ex. 4.0, 9:182-11:212. As Staff correctly recognized in ComEd's 2011 formula rate case, ComEd's practice of paying the taxes early to avoid severe penalty and interest payments is reasonable and in ComEd's customers' interest. *See* Ebrey Dir., Staff Ex. 1.0, 19:390-396 (referencing testimony of Staff witness Kahle in ICC Docket No. 11-0721, Kahle Reb., Staff Ex. 15.0, 2:29-37).

Contrary to what Staff witness Ms. Ebrey now asserts, dropping a tax payment in a mail box on the due date or setting up a payment on the due date through an Automated Clearing House ("ACH") is no guarantee that late payments and the resulting severe interest and penalty payments will be avoided. ACH transactions are settled in one to two business days. Hengtgen Reb., ComEd Ex. 14.0, 8:172. If ComEd initiates an ACH payment on the due date as Staff suggests, the funds would not settle for at least one day and possibly two days after the amounts

are due. Hengtgen Sur., ComEd Ex. 27.0, 8:152-158. This would mean that the payment arrives to the receiving party late and, consequently, ComEd could be liable under severe penalty and interest provisions resulting in payments of possibly hundreds of thousands of dollars. *See* Hengtgen Reb., ComEd Ex. 14.0, 10:203-210; Hengtgen Sur., ComEd Ex. 27.0, 8:152-169. Moreover, ACH failures do occur and a payor may not be aware of such a failure for days. Hengtgen Reb., ComEd Ex. 14.0, 9:177-179. And, it should go without saying that there is a significant likelihood that mail dropped in a post office box on the due date will not arrive at its destination, much less be processed, on that same day.

ComEd believes that its policy of paying taxes three or four days early is prudent. Hengtgen Reb., ComEd Ex. 14.0, 9:180-10:210. On the other hand, the evidence demonstrates that Staff's approach is unnecessarily risky. *Id.*; *see also* Hengtgen Sur., ComEd Ex. 27.0, 8:152-169. The Commission should reject Staff's risky recommendation and allow ComEd's proposed pass-through tax expense leads.

d. Intercompany billings expense lead

ComEd's proposed intercompany billing expense lead of 31.54 days – which includes 16.33 days allocated for the payment lead component – is supported by the evidence. Hengtgen Dir., ComEd Ex. 4.0, 13:268-14:279; Hengtgen Reb., ComEd Ex. 14.0, 14:298-18:376; Hengtgen Sur., ComEd Ex. 27.0, 8:170-9:182. Staff proposes to increase the payment lead component of ComEd's intercompany billing expense lead by 13.67 days and CCI proposes to increase that component by 15 days, resulting in an intercompany billing expense lead of 45.21 and 46.54 days, respectively. *See* Ebrey Dir. Staff Ex. 1.0, 24:496-502; Gorman Dir., CCI Ex. 1.0, 10:191-202. Both proposals are unsupported by the evidence and both should be rejected. ComEd has calculated this lead based on actual billing amounts and payment dates and therefore it reflects the actual CWC requirement of ComEd for intercompany billings. Hengtgen Reb.,

ComEd Ex. 14.0, 14:305-308. In contrast, by arbitrarily adding days to ComEd's proposal, the Staff and CCI witnesses substitute theory for fact and have no actual data to support their proposals. *See* Ebrey Dir. Staff Ex. 1.0, 23:488-26:530; Gorman Dir., CCI Ex. 1.0, 10:191-202.

Staff and CCI complain that ComEd's payment of amounts owed to its affiliate, BSC, is cross-subsidization. No valid legal or factual basis supports their complaint. Paying amounts owed in a timely manner consistent with corporate policy is not cross-subsidization. Indeed, a large part of the charges that BSC bills to ComEd is for BSC labor that if performed by ComEd employees would be included in the CWC calculation at the Payroll and Withholdings lead which, at approximately 16 days, is a much shorter lead time than the 31.54 days ComEd proposes in this proceeding for its intercompany billing expense and significantly shorter than the number of days being proposed by the Staff and CCI witnesses. Hengtgen Reb., ComEd Ex. 14.0, 15:330-16:339; *see also* Ebrey Dir. Staff Ex. 1.0, 24:496-502; Gorman Dir., CCI Ex. 1.0, 10:191-202.

Staff claims that its CWC calculation reflects the payment of inter-company billings upon terms that are equivalent to the payment terms for non-affiliated vendors. Ebrey Dir., Staff Ex. 1.0, 24:496-25:516. However, this theory – that ComEd's intercompany billing lead should be increased because the average payment time for non-affiliates is longer – ignores that the circumstances are not parallel. *See id.* The types of services non-affiliate vendors provide are much different as are their billing practices. Hengtgen Reb., ComEd Ex. 14.0, 15:317-329. Moreover, Staff and CCI propose longer lead times than have been recently approved for other utilities. *See id.*, 16:340-348. ComEd's intercompany lead is correct and should be approved.

2. Other

Com Ed is aware of no other contested rate base issues.

V. OPERATING EXPENSES

A. Overview

ComEd's properly calculated actual 2013 total operating expenses, adjusted to reflect the depreciation expense associated with the projected 2014 plant additions, as presented in its rebuttal testimony (there were no adjustments in surrebuttal), are \$1,766,454,000. ComEd Ex. 13.01, Sch FR A-1, line 11. The prudence and reasonableness of those expenses were supported by detailed testimony¹⁰ and documentation which, with limited exceptions addressed herein, was uncontested.

B. Potentially Uncontested Issues

1. Distribution O&M Expenses (issues not identified in V.C.)

ComEd Distribution Operating and Maintenance ("O&M") expenses were \$438,781,000 for 2013. After reflecting adjustments, a revised total of \$432,760,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement. Menon Dir., ComEd Ex. 3.0, 29:608-613; ComEd Ex. 13.01, Sch FR A-1, line 1. No parties contest the amount of distribution O&M expenses.

2. Customer-Related O&M Expenses (issues not identified in V.C.)

Customer-related expenses are expenses recorded in FERC Accounts 901-910, which include the costs of maintaining and servicing customer accounts, *e.g.*, meter reading, recordkeeping, and billing and credit activities. Menon Dir., ComEd Ex. 3.0, 29:616-618. In determining the revenue requirement, ComEd has adjusted the \$417,692,000 of customer related expense for the following:

- (1) \$162,780,000 reduction to remove the costs associated with ComEd's energy efficiency and demand response program recovered under Rider EDA;

¹⁰ Primarily ComEd witnesses Brinkman, Menon, Garrido, Donovan, Moy, Brookins, Prescott, Warren, Apple, Siambekos, and Wathen.

- (2) \$33,132,000 reduction to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904, costs recovered through Rider UF;
- (3) \$647,000 reduction to remove the non-jurisdictional amount of Outside Agency Collection Fees related to uncollectibles;
- (4) \$30,000 increase to include interest on customer deposits in operating expenses;
- (5) \$2,618,000 reduction to remove costs recovered under Rider PORCB;
- (6) \$860,000 reduction to remove customer assistance costs incurred as part of the \$10,000,000 EIMA customer assistance program;
- (7) \$1,970,000 reduction to remove certain customer communications costs recorded in FERC Account 908;
- (8) \$2,660,000 increase for a donation to the Illinois Science and Technology Foundation; and
- (9) \$106,000 reduction for Residential real-time pricing.

Menon Dir., ComEd Ex. 3.0, 30:622-641. After these adjustments, \$218,224,000 of FERC Accounts 901-910 directly relate to and support the delivery service function and are included in the revenue requirement. Menon Dir., ComEd Ex. 3.0, 30:641-31:644; ComEd Ex. 13.01, Sch FR A-1, lines 2 and 3 and Sch FR A-1 – REC, line 2 and 3. No party has objected to the amount of customer-related O&M expenses.

3. Administrative and General Expenses (issues not identified in V.C.)

ComEd included Administrative and General (“A&G”) expenses of \$430,366,000 in the revenue requirement for 2013. A&G costs are recorded in FERC Accounts 920-935 and include corporate support and overhead costs that benefit or derive from more than one business function; costs of employee pension benefits; regulatory expenses and certain other non-operation costs. Menon Dir., ComEd Ex. 3.0, 34:721-35:734. After subtracting \$9,133,000 of deferred merger related costs to achieve (which will be recovered over the next four years), \$421,233,000 in A&G expense is included in the revenue requirement. ComEd Ex. 13.01, Sch

FR A-1, line 4; *see also* Moy Dir., ComEd Ex. 6.0, 52:1030-53:1041; Garrido Dir., ComEd Ex. 5.0, 10:202-12:246. No party has objected to the amount of A&G expense.

4. Charitable Contributions

ComEd adjusted its operating expenses to include charitable contributions. In 2013, ComEd's total charitable contributions amounted to \$7,956,000. ComEd Ex. 13.01, App 7, line 5. ComEd has included in its operating expenses a jurisdictional amount based on the W&S allocator of \$7,332,000. Menon Dir., ComEd Ex. 3.0, 46:982-989. ComEd provided a description of each charitable organization, the purpose of each donation, and how the donation meets the requirements set by Section 9-227 of the PUA. ComEd Ex. 3.02, WP 7, page 4 of 18, subpages 1-23. No party has objected to the adjusted amount of charitable contribution expense. ComEd Ex. 13.01, App 7, line 5.

5. 2013 Merger Expense

Staff proposed adjustments to correct the Deferred Debit and Amortization of 2012 Merger Costs as well as the Calculation of the Deferred Debit and Amortization of 2013 Merger Costs. Ebrey Dir., Staff Ex. 1.0, 37:794-796. Staff contended that the adjustment from Docket No. 13-0318 should be reflected in the balances in this case and ComEd agreed and made the appropriate adjustments. Ebrey Dir., Staff Ex. 1.0, 37:796-38:802; Menon Reb., ComEd Ex. 13.0, 14:292-302. These adjustments reduce the revenue requirement by about \$14,000 and the remaining amount to be amortized (deferred debit) by about \$48,000. Ebrey Dir., Staff Ex. 1.0, Sched. 1.12 FY; ComEd Ex. 13.02, WP 5, page 1; ComEd Ex. 13.02, WP 8, page 1; ComEd Ex. 13.02, WP 7, page 15.

6. Sales and Marketing Expenses

No sales and marketing expenses are included in ComEd's revenue requirement. Menon Dir., ComEd Ex. 3.0, 39:824-827.

7. Depreciation and Amortization Expense (issues not identified in V.C.)

ComEd's revenue requirement includes \$482,096,000 of depreciation and amortization expense. The level of 2013 depreciation and amortization expenses included in the revenue requirement is \$451,588,000, comprised of \$353,607,000 related to Distribution Plant and \$97,981,000 related to G&I Plant. Menon Dir., ComEd Ex. 3.0, 39:832-834. Additionally, the 2015 Initial Rate Year Revenue Requirement and 2015 Rate Year Net Revenue Requirement include \$30,508,000 of depreciation expense associated with the 2014 projected plant additions. No party has objected to the amount of depreciation and amortization expense. Menon Dir., ComEd Ex. 3.0, 39:828-839; ComEd Ex. 13.01, Sch FR C-2.

8. Regulatory Asset Amortization

ComEd's revenue requirement includes \$37,441,000 of regulatory asset amortization. ComEd Ex. 13.01, Sch FR C-1, line 18. This amount includes the effects of the Commission's order in Docket No. 10-0467, which revised the amount of amortization of several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. ComEd's regulatory asset amortization also includes (1) \$67,000 of the \$200,000 filing fee paid in 2011, (2) \$694,000 of the \$2,083,000 in formula rate case expenses incurred in 2012 related to Docket No. 11-0721 and allowed for recovery in the final Order in ICC Docket No. 13-0318; and (3) \$72,000 of the \$215,000 in formula rate case expenses incurred in 2013 related to ICC Docket No. 11-0721. Section 16-108.5(c)(4)(E) of the PUA provides that these costs be amortized over a three-year period. Menon Dir., ComEd Ex. 3.0, 43:903-913. After agreeing to an adjustment of \$5,000 to remove unrelated costs from 2013 rate case expense, and an adjustment of \$10,000 to correct the merger costs amortization amount (ComEd Ex. 13.07, page 1, lines 9, 15), no party has objected to the amount of regulatory asset amortization.

9. Operating Cost Management Efforts

ComEd aggressively manages its operating costs in several ways. For example, where outside contractors are used, ComEd's procurement process emphasizes cost control along with consistent quality and timely completion. ComEd also utilizes optimization and efficiency programs with the aim of providing reliable service at the lowest cost. Also, ComEd's budgeting and work management systems tie expenses to projects and activities. No party has objected to the measures that ComEd has taken to manage its costs. Moy Dir., ComEd Ex. 6.0, 60:1198-1210.

10. Lobbying Expense

No lobbying expenses are included in ComEd's revenue requirement. ComEd Ex. 13.05, Sch C-5 FY, page 2, line 13.

11. Rate Case Expenses

In this proceeding, ComEd seeks to recover rate case expenses totaling \$3.1 million, comprised of the following:

- (1) ComEd's rate case expenses of \$25,000 incurred in 2013 for ICC Docket No. 07-0566;
- (2) ComEd's rate case expenses of \$2,000 incurred in 2013 for ICC Docket No. 10-0467;
- (3) Amortization of \$66,667 of allowed expenses incurred in 2011 for ICC Docket No. 11-0721 and approved in ICC Docket No. 12-0321;
- (4) Amortization of \$694,000 of allowed expenses incurred in 2012 for ICC Docket No. 11-0721 and approved in ICC Docket No. 13-0318;
- (5) Amortization of \$72,000 of expenses incurred in 2013 for ICC Docket No. 11-0721;
- (6) ComEd's rate case expenses of \$248,000, offset by a credit of \$295,000 in legal fees recorded in 2013 for ICC Docket No. 12-0321;
- (7) ComEd's rate case expenses of \$2.3 million incurred in 2013 for ICC Docket No. 13-0318; and
- (8) ComEd's rate case expenses of \$10,000 incurred in 2013 for this proceeding.

ComEd supported these expenses with an affidavit (ComEd Ex. 2.07) and supporting invoices. Brinkman Dir., ComEd Ex. 2.0, 42:877-46:971.

This evidence allows the Commission to make a finding pursuant to Section 9-229 of the PUA that the expenses incurred were just and reasonable. The attachments to that affidavit provide the evidentiary support for each ICC proceeding for which ComEd seeks recovery. *See* ComEd Ex. 2.07, Ex. APO-04 (ICC Docket No. 07-0566), Ex. APO-05 (ICC Docket No. 10-0467), Ex. APO-06 (ICC Docket No. 11-0721), Ex. APO-07 (ICC Docket No. 12-0321), Ex. APO-08 (ICC Docket No. 13-0318). The affidavit also describes the services provided in connection with the fees for which recovery is sought, identifies the individuals working on the matters and their qualifications, and discusses the market rates charged by regulatory lawyers in Chicago to support the reasonableness of the fees charged. ComEd Ex. 2.07; ComEd 2.07, APO-01 (identifying individuals and qualifications).

In response to Staff witness Mr. Bridal's proposed adjustment to disallow certain amounts expended on non-rate case matters (Bridal Dir., Staff Ex. 2.0, 3:66-74), ComEd agreed not to seek recovery for these expenses totaling \$6,042 in this Docket and has made the appropriate adjustments. Brinkman Dir., ComEd Ex. 2.0, 46:963-967; Menon Reb., ComEd Ex. 13.0, 14:307-312; ComEd Ex. 13.02, WP 5, page 1; ComEd Ex. 13.02, WP 7, pages 8, 15. Mr. Bridal also proposed further disallowances related to rate case expense invoice line items that were completely redacted and for attorney and witness meals. Bridal Dir., Staff Ex. 2.0, 4:88-5:112. In order to limit the issues in this proceeding and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd agreed to no longer seek recovery of \$12,002 related to completely redacted invoice line items as well as \$904 of miscellaneous

charges for attorney and witness meals. Menon Reb., ComEd Ex. 13.0, 15:317-322; ComEd Ex. 13.02, WP 7, page 8.

Finally, Mr. Bridal proposed language for the final Order in this proceeding that would specifically address the requirement of Section 9-229 of the PUA that the Commission specifically assess the justness and reasonableness of rate case expenses to which ComEd did not object. Bridal Reb., Staff Ex. 8.0, 5:105-123.

12. Corporate Credit Cards

In the course of discovery and developing rebuttal, ComEd voluntarily excluded approximately \$448,000 in credit card charges. In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted an additional adjustment proposed by Mr. Bridal relating to ComEd credit card charges and agreed to voluntarily remove \$253,565 of such costs from its revenue requirement. *See* Bridal Reb., Staff Ex. 8.0, Sched. 8.02; Hemphill Sur., ComEd Ex. 24.0, 1:16-2:23. As ComEd made clear in its surrebuttal testimony, this additional adjustment is not reflected in the rebuttal schedules and revenue requirement. ComEd agreed to make the necessary adjustment to the revenue requirement used to develop delivery service charges to be computed in compliance with the Commission's final Order in this proceeding. Hemphill Sur., ComEd Ex. 24.0, 2:23-26. No party other than ComEd and Staff submitted testimony in this proceeding regarding ComEd's credit card charges. Hemphill Sur., ComEd Ex. 24.0, 2:30-32.

13. Gross Revenue Conversion Factor

ComEd's Gross Revenue Conversion Factor ("GRCF") is 1.700. No party has objected to the GRCF. Menon Dir., ComEd Ex. 3.0, 47:1011-1014; ComEd Ex. 3.01, Sch FR C-4, line 13; *see also* ComEd Ex. 13.01, Sch FR C-4, line 13.

C. Potentially Contested Issues

1. Depreciation for the Filing Year Revenue Requirement

ComEd and Staff have both provided testimony on this issue in the instant docket. *See* Brinkman Reb., ComEd Ex. 12.0 REV., 12:225-17:353; Brinkman Sur., ComEd Ex. 25.0, 7:128-12:239; Ebrey Dir., Staff Ex. 1.0, 33:684-37:790; Ebrey Reb., Staff Ex. 7.0, 12:235-21:431. ComEd and Staff agree, however, that the issue will be decided in Docket No. 14-0316, ComEd’s Petition to Make Housekeeping Revisions and a Compliance Change to Filed Rate Formula. That docket is currently pending and a final order is expected by November 30, 2014. *Commonwealth Edison Co.*, ICC Docket No. 14-0316, Interim Order (Aug. 19, 2014) at 5. Once that order is issued, the Commission can incorporate the directives in that final order in the final order in this docket. It is therefore unnecessary to address this issue in this docket at this time.

2. Incentive Compensation Program Expenses

a. Annual Incentive Program (“AIP”)

The AG asks the Commission to disallow the entirety of ComEd’s AIP expense – roughly \$66 million dollars – because a limiting feature in ComEd’s plan purportedly means the incentive compensation is “based on” the earnings per share of Exelon. Ironically, the provision that the AG opposes is not a metric on which employees earn their AIP compensation. Instead, it is a “limiter” that can never increase but can only decrease (as it has the last two years) the amounts that employees are paid and the amount that is incorporated into the revenue requirement. The expense the AG challenges is highly beneficial to customers. ComEd’s AIP incorporates the specific operational and cost control metrics set forth in EIMA and incentivizes every employee to meet those metrics, all of which benefits customers. ComEd Ex. 2.01, page 3. This type of compensation program, which puts a percentage of each employee’s compensation at risk depending on the achievement of performance goals, is well-established as an appropriate

way to compensate utility employees. *See generally*, Wathen Reb., ComEd Ex. 20.0, 5:97-7:134; Prescott Reb., ComEd Ex. 18.0 REV., 5:90-100.

The AG's proposal to disallow these prudent and reasonable costs of providing delivery service should be rejected because the program is consistent with: (1) EIMA; (2) canons of statutory interpretation and construction; (3) recent Commission practice and legislative intent; and (4) prior Commission practice. Even if the Commission were to agree with the AG that a portion of the program is now somehow contrary to the statute, the remedy the AG seeks – total cost disallowance – is not only unreasonably harsh and unprecedented, it is disproportionate. If the Commission dislikes the limiter in place, the appropriate remedy is to eliminate that limiter, not disallow ComEd's AIP expense in its entirety. The AG's proposal also ignores the undisputed facts that the metrics reflected in the program benefit customers and that performance on those metrics has exceeded expectations.

In the event the Commission does find that the EPS limiter the AG opposes is contrary to EIMA, the proposal made by Staff to limit recovery at 102.9% of target would be far more equitable and appropriate. Staff realizes that ComEd's incentive compensation is materially based on EIMA's operational metrics and to allow recovery of nothing would not be just and reasonable. Staff's alternative of allowing 102.9% of target better approximates the 124.4% paid by ComEd than does the AG's proposed disallowance of the entire AIP award. An alternative limiter of 102.9% is a reasonable proxy that the Commission may apply in its business judgment. And as Mr. Bridal testified, there is Commission precedent supporting this outcome as well. Bridal Reb., Staff Ex. 8.0, 16:371-377, 33:779-786.

(i) The EIMA Framework

It is undisputed that under EIMA incentive compensation expense based on operational and cost control metrics is recoverable. 220 ILCS 5/16-108.5(c)(4)(A). It is also undisputed that

incentive compensation expense based on net income or an affiliate's earnings per share is not recoverable. *Id.* EIMA sets forth this framework in two very clear sentences providing that the formula rate approved by the Commission shall permit:

recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance. Incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate.

Id.

ComEd constructed its AIP to comply with these two sentences, and the evidence shows that ComEd's incentive compensation expense does in fact reflect only the achievement of those recoverable operational and cost control metrics. *See generally* Brookins Reb., ComEd Ex. 19.0, 5:86-7:116; Brookins Sur., ComEd Ex. 32.0, 1:13-2:26; Prescott Reb., ComEd Ex. 18.0 REV., 9:179-181; Prescott Sur., ComEd Ex. 31.0, 1:19-2:43; Brinkman Dir., ComEd Ex. 2.0, 18:361-20:408; Brinkman Reb., ComEd Ex. 12.0 REV., 7:145-8:161; Brinkman Sur., ComEd Ex. 25.0, 2:34-41.

ComEd provided detailed evidence showing that the AIP operational and cost control metrics, also known as the AIP Key Performance Indicators ("KPIs"), are as specified in EIMA and are what ComEd employees are working towards on a daily basis. Brookins Reb., ComEd Ex.19.0, 5:96-6:100; Brookins Sur., ComEd Ex. 32.0, 1:20-2:26. ComEd explained how those operational and cost control metrics are weighted and tracked through monthly reporting and quarterly scorecards. Brookins Reb., ComEd Ex. 19.0, 5:88-95; Brookins Sur., ComEd Ex. 32.0, 2:27-44. ComEd also provided detailed evidence that as ComEd has revised its incentive compensation programs generally – and AIP specifically – to focus on customer centric metrics, ComEd's performance on those metrics has improved and customer benefits have increased.

Brookins Reb., ComEd Ex. 19.0, 7:117-14:257. And no party disputes that ComEd's AIP expense was prudently and reasonably incurred. See ComEd Cross Ex. 2, Staff's Responses to ComEd's Data Requests ComEd-Staff 8.02 and 8.03; ComEd Cross Ex. 3, AG's Responses to ComEd's Data Requests ComEd-AG 5.01 and 5.02.

In short, it is undisputed that the amount of AIP compensation *earned* by ComEd's employees is based on operational and cost control metrics. Stated another way, the evidence shows that *all of the components* of the 2013 AIP award *earned* are based on the achievement of the allowable metrics. Prescott Sur., ComEd Ex. 31.0, 2:44-3:56. Given these facts, it is also necessarily true that *all of the components* of the 2013 AIP award *paid* are based on the achievement of the allowable metrics. *Id.*, 1:19-2:25. It is equally undeniable that not a dollar of ComEd's AIP *expense* resulted from anything other than ComEd's achievement of those KPI's and the resulting customer benefits. Indeed, EIMA discusses "expense" which is understood to be a positive number. The EPS limiter only limits the amount of AIP paid – it will never increase the payment – and thus it can never form the basis of an expense. Tr. at 236:17-237:13 (Brinkman, Aug. 27, 2014); Brinkman Reb., ComEd Ex. 12.0 REV., 3:51-4:76; Prescott Reb., ComEd Ex. 18.0 REV., 1:21-28.

The amount of AIP compensation paid out is undeniably limited or affected or impacted – or whatever verb the AG prefers to use – by Exelon's EPS, but the amount earned is not. Prescott Sur., ComEd Ex. 31.0, 1:19-2:29. ComEd's incentive compensation expense cannot therefore be based on Exelon's EPS. This point is also illustrated by looking at the impact of income taxes on AIP. The amount of AIP compensation an employee ultimately keeps is limited by income taxes, but no one would argue that ComEd's AIP is based on the Internal Revenue Code. Tr. at 293:18-294:4 (Prescott, Aug. 27, 2014). The Commission should reject the AG's

strained attempt to disallow these prudent and reasonable expenses that EIMA specifically allows.

(ii) Statutory Interpretation and Construction

ComEd's position is also the most consistent with the purpose of EIMA. It is quite evident that the General Assembly, in the two sentences that are at issue here, wanted to ensure that incentive compensation only enhance customer benefits, not provide employees with incentives to enhance the profitability of utility affiliates. And that was the way that the Commission interpreted the statute in its Order in Docket No. 11-0721: "the new statute prohibits recovery, through rates, of incentive compensation that is based upon increasing the profitability of affiliates." 2011 Rate Case Order at 87. And in that light, for incentive compensation to be impermissible, the incentive compensation must be designed to or have the effect of incentivizing employees to achieve that goal. It is quite evident, however, that the AIP at issue here is not designed to and does not have the effect of incentivizing ComEd employees to increase Exelon's EPS. It is thus not "based on" Exelon's EPS.

The AG would broaden the meaning of the term "based on" to mean "related to" or "impacted by" without regard to whether incentive compensation actually incentivizes employees to enhance affiliate profitability. This interpretation conflicts with the plain purpose of the statute as reflected on its face and as understood by the Commission. Indeed, this contrived interpretation of "based on" violates almost every rule of statutory construction and interpretation, including the most basic rule that a statute should be read as a whole and in a manner that furthers the underlying statutory purposes.

Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme – because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.

United Savings Ass'n v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988) (citations omitted). It also violates the well known principles of statutory interpretation that courts should not interpret statutes in a way that produces an absurd result or renders portions of the statutory language superfluous. *Antunes v. Sookhakitch*, 146 Ill. 2d 477, 486, 588 N.E.2d 1111, 1115 (1992) (statutes should be construed to give reasonable meaning and avoid absurdity); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting the word “law” broadly could render other words superfluous).

The AG’s interpretation renders one sentence of the two sentence incentive compensation framework meaningless for two reasons. First, the AG’s remedy of disallowing the AIP expense in its entirety contravenes the plain language of EIMA that the Commission “shall” permit “recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance.” 220 ILCS 5/16-108.5(c)(4). It is undisputed that the AIP KPIs track these statutorily described metrics exactly. Brinkman Dir., ComEd Ex. 2.0, 18:361-395. And it is undisputed that the KPIs are benefiting customers. Brookins Reb., ComEd Ex. 19.0, 7:117-14:257.

Second, the operational and cost control metrics explicitly deemed permissible in EIMA, such as the EIMA reliability index metric, are related to and can *decrease* Exelon’s EPS. Compare 220 ILCS 5/16-108.5(c)(4)(A) with 220 ILCS 5/16-108.5(c)(5). For example, ComEd can – and did in 2013 – incur return on equity penalties for not meeting specified reliability metrics. Brinkman Dir., ComEd Ex. 2.0, 11:224-231; Tr. at 312:19-313:20, 340-19:344:20 (Brookins, Aug. 28, 2014). This has a direct impact on Exelon’s EPS. According to the AG’s interpretation, incentive compensation based on those explicitly allowable metrics is also based

on Exelon's EPS and would therefore not be recoverable. This creates an unavoidable conflict, leads to an absurd result, and renders either the first or second sentence of the statutory framework superfluous. This illustration shows that the AG's broad interpretation is fatally flawed and should be rejected by the Commission.

In contrast, ComEd's witness Mr. Brookins clearly and concisely explained that due to the formula rate structure in place since 2011, the ability of ComEd employees to increase Exelon's EPS is extremely limited. Tr. at 321:5-323:20, 344:21-350:3 (Brookins, Aug. 28, 2014). The way to increase earnings within those caps would be to increase capital spending. Tr. at 346:4-8 (Brookins, Aug. 28, 2014). This would increase ComEd's rate base and the total amount of investment on which ComEd can earn its allowed rate of return, in turn increasing ComEd's net income and Exelon's EPS. *Id.* Under formula rates, however, increases or decreases in operating and maintenance expense do not impact ComEd or Exelon's earnings because they flow through to customers dollar for dollar, and ComEd does not earn a return on operating expenses. *Id.* at 347:11-21. In other words, operating expenses do not contribute to net income and do not impact Exelon's EPS. *Id.*

Mr. Brookins also clearly and concisely explained that the vast majority of ComEd employees do not have authority to increase capital spending. Tr. at 321:18-322:1 (Brookins, Aug. 28, 2014). Moreover, even for those few employees who can increase capital spending, ComEd employees are not incentivized to do so. *Id.* at 321:5-323:20. This is because ComEd employees are incentivized to *minimize* capital expenditures via the capital expenditures cost control metric in ComEd's AIP, not *maximize* them. *Id.* at 346:9-16. The bottom line is that ComEd's AIP cannot and does not incentivize employees to increase the profitability of Exelon

and cannot therefore be “based on” Exelon’s EPS as the Commission has logically interpreted that term.

In addition, ComEd provided evidence that the limiter at issue has benefited customers in that it reduced incentive compensation expense by \$8.5 million in 2013. Brinkman Dir., ComEd Ex. 2.0, 23:470-475; Prescott Reb., ComEd Ex. 18.0 REV., 12:226-228. Likewise, in 2012, the limiter reduced ComEd’s AIP award by \$17 million. Prescott Reb., ComEd Ex. 18.0 REV., 12:229-230. That is a significant customer savings. In contrast, no evidence suggests that the limiter provides any benefit to shareholders. To the contrary, Mr. Brookins’ and Mr. Prescott’s testimony shows that without the limiter, these increased compensation expenses would simply flow through to customers. Tr. at 347:11-21 (Brookins, Aug. 28, 2014); Prescott Reb., ComEd Ex. 18.0 REV., 9:170-174.

(iii) Recent Commission Practice and Legislative Acquiescence

The analysis above is also completely consistent with recent post-EIMA and prior Commission practice (discussed in section V.C.2.a.iv. below). In Docket No. 11-0721, the Commission specifically based the amount of AIP recoverable under ComEd’s 2010 plan on the amount determined pursuant to the net income limiter applicable to that plan. Brinkman Dir., ComEd Ex. 2.0, 23:479-24:494; Brinkman Sur., ComEd Ex. 25.0, 3:56-4:69; 2011 Rate Case Order at 89, 90. Likewise, the AIP plans at issue in Docket Nos. 12-0321 (2011 plan), and 13-0318 (2012 plan) contained net income and Exelon EPS limiters, respectively, and no disallowance was made on the basis of those limiters. Brinkman Sur., ComEd Ex. 25.0, 4:78-80; 2012 Rate Case Order at 31-32; 2013 Rate Case Order at 38-61. These three cases represent the Commission’s interpretation of ComEd’s allowable AIP protocols since the passage of EIMA.

It is clear that the Illinois General Assembly has acquiesced in this interpretation. The Commission issued the final orders in Docket Nos. 11-0721 and 12-0321 between May and October of 2012. In both of those dockets the Commission's interpretation was that an incentive compensation plan is not "based on" EPS if the incentive compensation award is earned pursuant to operational and cost control metrics, even though that earned award can be reduced by a limiter that is based on EPS. This is precisely the situation before the Commission again here.

Subsequently, on May 22, 2013, the General Assembly passed PA 98-0015. This amendment to EIMA states that its express legislative purpose is to correct errant Commission decision-making under EIMA. PA 98-0015, Section 1, eff. May 22, 2013. Notably, this amendment does not change or correct anything regarding the Commission's decisions on incentive compensation. *See generally* PA 98-0015, eff. May 22, 2013.

"[W]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent." *In re Marriage of O'Neill*, 138 Ill. 2d 487, 495-96, 563 N.E.2d 495, 498 (1990) (internal quotations omitted). The Illinois Supreme Court has indicated that legislative acquiescence is particularly powerful, where, as here, the legislature has amended other portions of the same law but left the relevant provision unchanged.

We also note that *Farm Fresh* is the only federal court of appeals decision to squarely decide the issue Yet in the eight years since the case was decided, Congress has chosen not to amend the Act ... even though it has amended section 1631 during that period in other respects. This raises the presumption that Congress is satisfied with the judicial construction placed on the statute by *Farm Fresh*.

State Bank of Cherry v. CGB Enters., Inc., 2013 IL 113836, ¶ 61. Likewise, in *Karbin v. Karbin*, 2012 IL 112815, ¶ 47, the Illinois Supreme Court noted that the Illinois General Assembly had amended the pertinent statute after two decisions separately construing that statute. The court

added that the legislature had taken no action to indicate any disapproval of the judiciary's construction. *Id.* Accordingly, the court concluded that the legislature had acquiesced in the court's interpretation.¹¹ *Karbin*, 2012 IL 112815, ¶ 47.

Here, the General Assembly has clearly acquiesced in the Commission's view that an incentive compensation plan is not "based on" EPS even though earned awards can be reduced by an EPS or net income limiter. The Commission should therefore continue applying the same interpretation of the relevant section of EIMA and should reject the contrary interpretation offered by the AG.

(iv) Staff's Alternative Recommendation for Recovery of 102.9% of Target

If the Commission concludes upon the record before it that ComEd employees may be incentivized to some extent to increase Exelon's EPS, Staff has proposed an alternative remedy of allowing recovery of 102.9% of target. Allowing ComEd recovery of 102.9% of target is a reasonable proxy that the Commission may apply in its business judgment, and is also consistent with longstanding Commission precedent. *See* Bridal Reb., Staff Ex. 8.0, 16:371-377, 33:779-786.

Staff's proposal for partial recovery is far superior to the AG's proposal to disallow recovery entirely. Staff realizes that ComEd's "at risk" AIP compensation is materially based on

¹¹ The First and Second District Illinois Appellate courts have reached similar conclusions:

Although the language of the Act does not express the distinction established in *Zimmerman*, the legislature has apparently accepted that interpretation of the Act's intended coverage. The legislature has amended the Act several times since *Zimmerman* was decided more than a decade ago, but has taken no action to abrogate that case. ... When the legislature chooses not to amend a statute to reverse a judicial construction, we must presume that it has acquiesced in the court's statement of legislative intent.

Carrera v. Smith, 305 Ill. App. 3d 1079, 1082, 713 N.E.2d 1282, 1285 (2d Dist. 1999); *see also* *Stevens v. Lou's Lemon Tree, Ltd.*, 187 Ill. App. 3d 458, 464, 543 N.E.2d 293, 297 (1st Dist. 1989) ("Despite several amendments to the damages provision from time to time ... the legislature has implicitly accepted these judicial interpretations of 'means of support' by declining to expand the scope of damages available under the Act further.").

operational metrics and to allow recovery of nothing would not be just and reasonable. Bridal Reb., Staff Ex. 8.0, 16:371-377, 31:753-34:799. Indeed, disallowing the AIP expense entirely would require the Commission to knowingly disallow incentive compensation in its entirety when at the very least a portion of that incentive compensation is clearly recoverable. That is not reasonable or consistent with Commission practice, whether pre- or post-EIMA.

Over the past decade, the Commission has consistently allowed incentive compensation based on customer focused metrics and disallowed the portion of ComEd's AIP expense that reflects achievement of metrics that are based on Exelon's EPS or ComEd's net income. In that same time frame, the Commission has never disallowed ComEd's AIP expense when it was subject to a **limiter** based on EPS or net income. This is the distinction between AIP compensation *earned*, *i.e.* based on a metric – and AIP compensation *paid*, *i.e.* subject to a limiter. Prescott Reb., ComEd Ex. 18.0 REV., 8:160-162; Prescott Sur., ComEd Ex. 31.0, 1:21-2:25; Brinkman Reb., ComEd Ex. 12.0 REV., 6:122-130; Brinkman Sur., ComEd Ex. 25.0, 2:39-41. Staff recognizes this distinction. *See* ComEd Cross Ex. 2, Staff's Response to ComEd's Data Request ComEd-Staff 8.09. The AG does not.

For example, ComEd's 2004 AIP included an Exelon EPS metric and an Exelon EPS limiter with a minimum threshold EPS performance requirement, very similar to the limiter at issue in this case. Prescott Reb., ComEd Ex. 18.0 REV., 9:182-10:186; Brinkman Sur., ComEd Ex. 25.0, 4:70-77. The EPS metric accounted for 50% of the total award. Prescott Reb., ComEd Ex. 18.0 REV., 9:182-186. In Docket No. 05-0597, the Commission disallowed recovery of 50% of the award – the portion that was based on the EPS metric – but allowed recovery of the remainder of the award that was subject to the Exelon EPS limiter. *Id.*; Brinkman Sur., ComEd Ex. 25.0, 4:70-77; 2005 Rate Case Order at 95-97.

ComEd's 2006 AIP provides a further example. The 2006 plan contained a net income funding metric and an Exelon EPS limiter. Prescott Reb., ComEd Ex. 18.0 REV., 10:187-191; Brinkman Sur., ComEd Ex. 25.0, 4:77-80. The Commission disallowed recovery of the portion of the award that was based on the net income metric but allowed recovery of the remainder of the award that was subject to the Exelon EPS limiter. Prescott Reb., ComEd Ex. 18.0 REV., 10:187-191; 2007 Rate Case Order at 61. ComEd responded to and relied on this direction from the Commission and removed both EPS and net income metrics from its AIP, but retained the limiting features based on EPS or net income. Prescott Reb., ComEd Ex. 18.0 REV., 10:192-196; Tr. at 290:8-291:6 (Prescott, Aug. 27, 2014).

In ComEd's 2007 rate case, the Commission addressed whether ComEd could recover the salaries and wages of certain ComEd employees who in addition to performing their usual and customary utility functions (recoverable costs) also worked on a merger (non-recoverable). The Attorney General had recommended a full disallowance. The Commission instead disallowed 25% of the costs in question, though it never explained how it arrived at that figure. *Commonwealth Edison Co v. Illinois Commerce Comm'n, et al.*, 405 Ill. App. 3d 389, 398-401, 937 N.E. 2d 685, 698-701 (2d Dist. 2010).

On appeal, the court upheld the Commission's action on the ground that the Commission was entitled to – and did – exercise its “business judgment” to reach “‘pragmatic solutions’ by filling gaps in the record.” *Id.* at 402. Significantly, the court relied upon the Commission's position that, “once it identifies a recoverable cost item, such as the labor costs related to the utility-services work performed by the employees, the Commission is not authorized to treat the expense as zero.” *Id.* at 401. Yet that is precisely what the AG requests here: to treat an unquestionably recoverable labor cost item as though it were “zero.”

In stark contrast to the AG's proposed disallowance of ComEd's entire AIP award, Staff's alternative of allowing 102.9% of target better approximates the actual 140.4% of target earned by ComEd employees pursuant to the operational and cost control metrics set forth in EIMA and the 124.4% paid by ComEd. Brinkman Sur., ComEd Ex. 25.0, 3:45-48. Staff's remedy is proportionate, the AG's is not. If the Commission dislikes the limiter in place, the appropriate remedy is to eliminate that limiter, not disallow ComEd's AIP expense in its entirety.¹²

b. Key Manager Long Term Performance Plan ("LTTP")

CCI, through its witness Mr. Gorman, seeks to disallow all of ComEd's LTTP compensation – roughly \$1.1 million in expense and \$0.5 million in rate base. Mr. Gorman's proposed disallowance is based solely on his fundamental misunderstanding of ComEd's total compensation package. Mr. Gorman believes that because the LTTP shares the same KPIs as the AIP, it is duplicative of the AIP. Gorman Dir., CCI Ex. 1.0, 12:239-245; Gorman Reb., CCI Ex. 2.0, 8:147-158. Staff does not support Mr. Gorman's proposed disallowance. Bridal Reb., Staff Ex. 8.0, 38:878-885.

What Mr. Gorman fails to understand is that the AIP is a short-term incentive plan and the LTTP is a long-term incentive plan. Prescott Reb., ComEd Ex. 18.0 REV., 14:276-283. The AIP and the LTTP work together, with different eligibility requirements and vesting periods but identical performance goals, definitions, and metrics and are part of a total compensation package at market levels. *Id.* Stated another way, the AIP is designed to immediately

¹² ComEd has also offered an alternative proposal of allowing recovery of 124.2%. This proposal is also rooted in prior Commission practice and is eminently more reasonable than disallowing ComEd's AIP expense in its entirety. *See* Brinkman Sur., ComEd Ex. 25.0, 3:42-48. Looking at ComEd's historical performance of the operational metrics and total payout since the adoption of EIMA, ComEd's three-year average (2011-2013) of earned AIP based on operational metrics totals 140.7%, which would yield an actual payout of 124.2%. Brinkman Sur., ComEd Ex. 25.0, 5:104-6:112. This alternative uses a three year average that considers the facts specific to the 2013 plan as well as ComEd's operational performance and total payout trend since the adoption of EIMA. *Id.*

compensate all ComEd employees for high levels of performance that benefit customers. *Id.* In contrast, the LTPP is designed to defer compensation for certain employees – applicable only to key managers – with the goal of retaining those employees for the long-term. *Id.*

If ComEd did not have the LTPP as part of its market competitive pay mix, employees who are eligible to receive awards under the LTPP would simply be eligible for larger AIP awards or increased base salaries. Prescott Sur., ComEd Ex. 31.0, 7:131-139. The total compensation of these employees is not increased by their participation in the LTPP – a portion of their total compensation has simply been designated as long term incentive compensation as opposed to base salary or short term incentive compensation. *Id.* Stated another way, the total size of their compensation pie is still the same, but the incentive compensation piece has been cut into two slices. *Id.* The Commission should reject this misguided proposal to disallow ComEd's prudent and reasonable compensation expenses.

Mr. Gorman is correct that the performance goals, definitions, and metrics of the LTPP mirror those of the AIP. Prescott Reb., ComEd Ex. 18.0 REV., 14:267-275. This is simply due to the fact that the plan was designed based on feedback from stakeholders (*e.g.*, the Commission) that ComEd's long-term incentive programs should include performance goals that benefit customers. *Id.* Since the AIP includes the goals that are most critical to ComEd's business, those goals are also used in the LTPP to ensure ComEd's key managers retain focus on them. *Id.* Staff agrees with ComEd. Bridal Reb., Staff Ex. 8.0, 38:883-885. Mr. Bridal astutely observes that using “similar operational metrics places even more emphasis on the achievement of metrics that provide ratepayer benefits.” *Id.*

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

ComEd initially requested recovery of 13.5% of its LTPSAP expense in this proceeding, or \$588,000. *See* ComEd Ex. 13.03, Sched. C-2.4. The AG seeks to disallow 100% of ComEd's LTPSAP expense. Brosch Dir., AG Ex. 1.0 2nd CORR., 27:624-629; AG Ex. 1.3 REV., p. 3. CCI seeks to allow only 4.5% of ComEd's LTPSAP expense, or \$137,000. Gorman Dir., CCI Ex. 1.0, 11:223-230. Staff does not take a position on this issue but states that the Commission could disallow all of ComEd's LTPSAP expense because it is "dependent, in part, on financial measures of the type that the Commission has disallowed in previous proceedings." Bridal Reb., Staff Ex. 8.0, 35:831-832. Although ComEd believes its initial proposal to recover 13.5% of its 2013 LTPSAP is reasonable, ComEd does see some merit in Mr. Gorman's alternative proposal, and, in order to limit the issues in this proceeding, ComEd proposed a true 1/3 approach that results in 5.7% recovery, or \$174,000. Brinkman Reb., ComEd Ex. 12.0 REV., 11:217-224. Mr. Gorman accepted ComEd's alternate proposal. Gorman Reb., CCI Ex. 2.0, 8:140-145.

The LTPSAP is a long term incentive program, applicable only to executives at the level of vice president and above. Brinkman Dir., ComEd Ex. 2.0, 26:550-27:557. There is no overlap in participation between the LTPP and the LTPSAP. Tr. at 134:21-135:8 (Brinkman, Aug. 27, 2014). As shown in ComEd Ex. 2.01, the 2013 LTPSAP includes payout percentages for individual customer-focused goals, specifically Customer Average Interruption Duration Index ("CAIDI") and System Average Interruption Frequency Index ("SAIFI"). Brinkman Reb., ComEd Ex. 12.0 REV., 10:201-203. ComEd has shown that its CAIDI and SAIFI metrics performed at distinguished levels. *Id.*, 10:203-204; Brinkman Dir., ComEd Ex. 2.0, 20:425-21:429; Brookins Reb., ComEd Ex. 19.0, 9:152-156, 9:169-10-171. ComEd's initial position requested inclusion of the total CAIDI and SAIFI metrics as calculated under the LTPSAP

metrics with a limit of 125%. Brinkman Dir., ComEd Ex. 2.0, 27:558-565; Brinkman Reb., ComEd Ex. 12.0 REV., 10:201-11:216. Mr. Gorman's alternate proposal results in an inclusion of 1/3 of that amount. Brinkman Reb., ComEd Ex. 12.0 REV., 11:217-224; Gorman Dir., CCI Ex. 1.0, 11:223-230.

The AG's only basis for disallowing these prudent and reasonable costs is Mr. Brosch's contention that the payout was limited by the Compensation Committee of the Exelon Board of Directors from 147.8% to 125%. Brosch Dir., AG Ex. 1.0 2nd CORR., 27:613-621; Brinkman Reb., ComEd Ex. 12.0 REV., 11:210-214. He then deduces that because the payout was limited, ComEd's assertion that 13.5% of payouts are based on ComEd's operations performance is not supportable. Brosch Dir., AG Ex. 1.0 2nd CORR., 27:613-621; Brinkman Reb., ComEd Ex. 12.0 REV., 11:210-214. In fact, the opposite is true. Brinkman Reb., ComEd Ex. 12.0 REV., 11:214-216. The 13.5% is based on target performance. *Id.* Since ComEd's performance met the distinguished level in 2013, a higher percentage of payout is supportable for ComEd. *Id.* In any event, ComEd's reduction of its request to 5.7% in accordance with Mr. Gorman's recommendation essentially moots Mr. Brosch's argument.

With regard to Mr. Bridal's observation, it is true that the LTPSAP payouts are subject to an overall Total Shareholder Return ("TSR") modifier. Prescott Sur., ComEd Ex. 31.0, 5:97-99. But as Mr. Bridal understands, TSR is not the same thing as net income or EPS. *Id.* His description of TSR in his rebuttal testimony is accurate. *See* Bridal Reb., Staff Ex. 8.0, 34:809-35:816. His characterization of TSR as "financial measures of the type that the Commission has disallowed in previous proceedings" is, however, inaccurate. *Id.*, 35:831-832. Prescott Sur., ComEd Ex. 31.0, 5:100-102. As explained above, the Commission has disallowed ComEd's incentive compensation when the amount earned was based on Exelon's EPS or ComEd's net

income. The Commission has never disallowed incentive compensation in past ComEd proceedings because the amount was subject to a total shareholder return modifier. In short, neither the Commission nor EIMA have prohibited all incentive compensation that is in any way related to or limited by financial measures. The Commission should reject this proposal to disallow ComEd's prudent and reasonable compensation expenses.

3. Collection Agency Costs

In total, ComEd incurred \$2,171,000 in outside collection agency fees in 2013. ComEd has included \$1,524,000 in its delivery service revenue requirement – \$1,019,000 of which is specifically related to delivery service and \$505,000 of which is related to providing PORCB service. Menon Dir., ComEd Ex. 3.0, 33:691-698; ComEd Ex. 13.02, WP 7, page 5. Mr. Bridal recommends that collection agency costs related to PORCB be recovered through Rider PORCB. Bridal Dir., Staff Ex. 2.0, 10:225-11:236. ComEd does not object to Mr. Bridal's recommendation regarding the recovery of collection agency costs related to Rider PORCB with the understanding that the Commission should make a final definitive determination as to where they will be recovered in the final Order in this docket. ComEd provided the necessary tariff language changes to implement Mr. Bridal's recommendation. Menon Reb., ComEd Ex. 13.0, 2:30-33; 12:250-253, 12:258-14:287; ComEd Exs. 13.09, 13.10, and 13.11. ICEA has taken issue with Mr. Bridal's recommendation that collection agency costs related to PORCB should be recovered through Rider PORCB. ICEA takes the position that these costs should be recovered through delivery services. Wright Reb., ICEA Ex. 1.0C, 8:146-155. ComEd and Staff agree that the remaining \$647,000 in collection agency fees can be attributed to ComEd supply and should be recovered through Rider PE. Menon Dir., ComEd Ex. 3.0, 33:699-702; Bridal Dir., Staff Ex. 2.0, 12:256-263; Menon Reb., ComEd Ex. 13.0, 12:254-257.

VI. RATE OF RETURN

A. Overview

The rates of return (weighted average costs of capital) to be applied in the instant Docket, *i.e.*, 7.04% for the 2013 Reconciliation Year and 7.06% for the 2015 Initial Rate Year, are not contested. Ebrey Dir., Staff Ex. 1.0, Sched. 1.01 RY, line 25; *id.*, Sched. 1.01 FY, line 25; Hardas Dir., Staff Ex. 3.0, 3:52-4:56; Menon Dir., ComEd Ex. 3.0, 47:1015-49:1038; ComEd Ex. 13.01, Sch FR D-1, line 21.

B. Capital Structure

Staff witness Ms. Ebrey and ComEd witness Mr. Menon concur with ComEd's capital structure and cost for purposes of determining both the 2013 Reconciliation Year and the 2015 Initial Rate Year. Ebrey Dir., Staff Ex. 1.0, Sched. 1.01 RY, line 25; *id.*, Sched. 1.01 FY, line 25; Hardas Dir., Staff Ex. 3.0, 3:46-49; Menon Dir., ComEd Ex. 3.0, 47:1015-49:1038; ComEd Ex. 13.01, Sch FR D-1, line 21.

2013 Reconciliation Year

Capital Structure Component

Common Equity

Long Term Debt

Short Term Debt

Credit Facility Cost

Total Weighted Average

<i>Weighting</i>	<i>Cost</i>	<i>Weighted Cost</i>
45.77%	9.20% ⁽¹⁾	4.21%
54.01%	5.16%	2.79%
0.22%	0.40%	0.00%
		0.04%
100.00%		7.04%

2015 Initial Filing Year

Capital Structure Component

Common Equity

Long Term Debt

Short Term Debt

Credit Facility Cost

Total Weighted Average

<i>Weighting</i>	<i>Cost</i>	<i>Weighted Cost</i>
45.77%	9.25%	4.23%
54.01%	5.16%	2.79%
0.22%	0.40%	0.00%
		0.04%
100.00%		7.06%

(1) Incorporates 5 basis points penalty for missing EIMA reliability metric in 2013

Menon Dir., ComEd Ex. 3.0, 48:1022.

C. Cost of Capital Components

1. Rate of Return on Common Equity

See Section IV.B., *supra*.

2. Cost of Long-Term Debt

See Section IV.B., *supra*.

3. Cost of Short-Term Debt

See Section IV.B., *supra*.

4. Overall Weighted Cost of Capital

See Section IV.B., *supra*.

VII. RECONCILIATION

A. Overview

The reconciliation process establishes the final revenue requirement, based entirely on actual cost data, for each rate year. The reconciliation adjustment offsets, on a dollar for dollar basis and corrected through interest for the time value of money, any difference between this actual cost revenue requirement and the previously-projected revenue requirement for that year. The rate year being reconciled in this case is 2013.

B. Potentially Contested Issues

1. Calculation of Interest on Reconciliation Balance

Both AG and CCI propose reducing the reconciliation balance upon which interest is calculated by the amount of accumulated deferred income taxes (“ADIT”) said to be related to that balance. Here, that would mean that interest would be paid on only a portion of the

reconciliation balance at the end of 2013. Brinkman Reb., ComEd Ex. 12.0 REV., 29:596-598.¹³ As ComEd witness Mr. Warren testified, this proposal treats the tax impacts of rate issues in a flatly inconsistent manner: on the one hand, it seeks to reduce the reconciliation balance by a (in fact illusory) tax benefit (ADIT) while on the other hand accepting the Commission's prior determination that the interest rate applicable to the reconciliation should not be "grossed up" to reimburse ComEd for the taxes that it will undeniably pay on the interest it receives. The Commission, having accepted what Mr. Warren refers to as the "prescribed interest" model (ignoring tax impacts) with respect to the reconciliation interest rate, should not now switch away from that model when it comes to calculating the reconciliation balance to which that rate should be applied. That is particularly true where the ADIT which AG and CCI proposed to subtract from the reconciliation balance in fact does not provide any net tax benefit to ComEd. These points are discussed more fully later in this section, but at the outset three independent reasons compel rejection of this proposal.

a. **The Proposal is Inconsistent with ComEd's Formula Rate and Prior Commission Decisions.**

This same proposal has been rejected in at least five prior ComEd cases. No new argument in support of the proposal is advanced here. Brinkman Reb., ComEd Ex. 12.0 REV., 24:502-25:509, 25:527 (citing cases). Second, although the General Assembly has amended the relevant sections of EIMA since the Commission first rejected this proposal, it did not change any statutory language to authorize the subtraction of ADIT as proposed here, thus evincing a legislative endorsement of the correctness of the Commission's rejection of that proposal, as the Commission itself has recognized. *Id.*, 25:521-23. *See* cases cited in Section V.C.2.a.iv., *supra*. Third, the Commission has held that, under EIMA, a proposal such as this that would change the

¹³ The ADIT related to this reconciliation balance is about \$92 million. *Id.*

structure and protocol of ComEd's formula rate may not be considered in a Section 16-108.5 annual update proceeding, which this is. Brinkman Reb., ComEd Ex. 12.0 REV., 26:534-538. Those reasons alone are sufficient to require rejection of the AG and CCI ADIT proposal.

b. The Proposal is Without Merit.

Moving to the substance of the proposal, Ms. Brinkman explains that an ADIT liability generally represents a deferred tax liability arising from tax laws that provide present tax benefits. The best example is the deferred tax liability arising from a utility's right to reflect tax depreciation at a rate faster than "book" depreciation, a right that provides an immediate cash benefit (through reduced taxes) to the utility. This deferred tax liability is properly deducted from a utility's rate base because the amount of the liability is, in effect, a source of capital for ComEd not provided by investors but by the U.S. Treasury. Brinkman Reb., ComEd Ex. 12.0 REV., 27:557-571. However, it is only because the utility receives the present cash benefit from that taxpayer "investment" that deducting the ADIT from rate base is appropriate.

In the case of a positive reconciliation balance, it is true that the payment of the income taxes associated therewith is deferred until that balance is reflected in the revenue requirement. However, the benefit of this is negated by the fact that the receipt of the reconciliation revenue is also deferred. The fact is, the reconciliation balance is simply that, an accounting balance that will be paid to the utility in the future. It provides no source of funds to the utility. Brinkman Reb., ComEd Ex. 12.0 REV., 28:589-29:608.¹⁴ Ms. Brinkman analogizes this situation to that in which a utility is not paid by a customer for two years while that customer reorganizes. That

¹⁴ This also explains why the deferred storm treatment cited by Mr. Brosch in support of his position is off the mark. As explained by Ms. Brinkman, the ADIT liability associated with deferred storm costs is properly included in rate base because the deferred storm cost asset is also given rate base treatment. This deferred storm cost asset reflects a reduction to expense for tax purposes even though the expense was recognized on ComEd's books of account. The deferral of these taxes provides a real cash benefit to ComEd. Brinkman Reb., ComEd Ex. 12.0 REV., 34:709-35:727.

situation also results in a deferral of the tax liability related to the payment because the utility does not pay a tax until it is paid, but no ADIT adjustment is made for uncollected revenue. *Id.*, 28:578-582.

The fact that interest is paid on the reconciliation balance when it is finally paid to ComEd does not change the fact that ComEd does not receive the revenue until after the reconciliation; the income *and* the tax are both deferred. Brinkman Reb., ComEd Ex. 12.0 REV., 30:619-622. The irrelevance of interest in this regard is especially pronounced given that the interest rate paid on the reconciliation balance does not reflect ComEd's tax liability associated with receipt of the interest payment.

c. The Proposal is Inconsistent and Asymmetrical.

The principle governing this issue is clear: where a utility is able to defer payment of some portion of taxes attributable to revenue it has received, the deferred taxes must be taken into account in establishing rates. Where, however, the utility has received no revenue and the related taxes are deferred only because the revenue has also been deferred, it makes no sense to account for the deferred taxes. To do so would in fact amount to an improper acceleration of taxes before the underlying revenue is received. It is inconsistent to argue, as the AG and CCI do, that ComEd receives a deferred tax benefit well before the reconciliation revenues are ever collected, while denying that the interest payment results in taxes that should be recoverable. Brinkman Reb., ComEd Ex. 12.0 REV., 30:623-628.

ComEd witness Mr. Warren offers a further conceptual basis in opposition to the AG and CCI proposals, and explains why logic and consistency require that these proposals be rejected. According to Mr. Warren, an expert in the subjects of taxation and tax accounting – in particular as those issues affect regulated public utilities – two possible models exist for the treatment of reconciliation balances and the related tax issues, including treatment of ADIT. In summary, tax

impacts either should be fully considered or not considered at all. The AG and CCI approach, however, treats those issues in an asymmetrical manner. Specifically, if ADIT were to reduce the reconciliation balance (the only other factor that determines the reconciliation amount to be refunded or surcharged to customers), as those parties propose, the interest rate applicable to the reconciliation balance (the weighted average cost of capital) should also be “grossed up” to account for the taxes that apply to that interest. Warren Reb., ComEd Ex. 23.0, 11:223-229. AG and CCI do not advocate this symmetrical approach to the treatment of tax issues. The Commission’s approach to date, by contrast, has been internally consistent. It has rejected consideration of tax impacts in applying the interest rate to the reconciliation balance (by holding that the rate may not be “grossed up” for income tax effects), while its prior treatment of the reconciliation balances has rejected proposals to reduce that balance by the associated ADIT. *Id.*, 9:179-10:213. This is the approach that ought to be followed here.

The absence of any truly principled basis for the AG and CCI proposals is shown by ComEd’s 2012 formula rate update proceeding. In that case, the reconciliation balance was negative. In calculating interest for purposes of making refunds due to customers, ComEd did not deduct the related ADIT from the reconciliation balance due customers, the same position it advocates here. Had the reconciliation balance been deducted, as AG and CCI now propose, the amount of the refund would have been lower. In that case, although their witness noted the fact that approving an ADIT adjustment would reduce the refund ComEd paid there, neither the AG nor CCI objected to approval of the calculation of refund interest on the full reconciliation balance. Brinkman Reb., ComEd Ex. 12.0 REV., 32:658-661. The Commission approved the refund on that basis, and the interest paid to customers was calculated on the full reconciliation

balance, without reduction due to ADIT. To change course 180 degrees now, when the balance goes the other way, is one-sided and should be rejected.

d. AG Witness Brosch’s “Alternative” is Equally Without Basis and Would Make an Improper Adjustment to Rate Base.

AG witness Brosch has presented what he claims is an alternative to subtracting ADIT from the reconciliation balance, and that is to include the ADIT related to the reconciliation balance in rate base, *i.e.*, deduct that ADIT from ComEd’s overall rate base. This proposal, also supported by the AG in prior cases, would reduce ComEd’s revenue requirement even more than the principal reconciliation balance/ADIT proposal (*see* Warren Reb., ComEd Ex. 23.0, 13:268-281, 15:310-318), and suffers from the same, and additional, defects as the principal proposal. First, it too fails to recognize that this ADIT does not provide any rate year cash benefit or source of financing to ComEd. Brinkman Sur., ComEd Ex. 25.0, 27:540-543.

Beyond that, it is conceptually improper to deduct from rate base ADIT that relates to an item that itself is not given rate base treatment, in this case the reconciliation balance. Brinkman Sur., ComEd Ex. 25.0, 26:516-520. On rate base items, ComEd recovers a return of and on its investment as well as its associated income tax liability (the tax “gross up”). On the reconciliation balance, by contrast, ComEd recovers only its weighted average cost of capital without any tax gross up. As Ms. Brinkman succinctly explains: “[It] is unfair and unreasonable to propose reducing the rate base on which ComEd earns a full return (including tax costs) on account of a deferral related to an asset on which tax costs are not recover[ed]. It is unfair enough that the AG’s primary position treats tax awareness inconsistently – adjusting the reconciliation balance down for taxes while not adjusting the rate up for tax costs – but that AG’s alternative proposal compounds that unfairness by attempting to reduce a balance (rate base) on which all parties acknowledge ComEd is entitled to earn a return that includes its tax costs.”

Brinkman Sur., ComEd Ex. 25.0, 26:529-27:535; *see also* Brinkman Reb., ComEd Ex. 12.0 REV., 33:677-696.

For all the foregoing reasons, the Commission should reject the AG and CCI proposals to reduce the reconciliation balance by the related ADIT, as well as the AG's alternative proposal to reduce ComEd's rate base by ADIT related to the reconciliation balance.

VIII. REVENUES

A. Overview

There are few contested revenue issues. ComEd has sustained its position with respect to these issues, both contested and uncontested.

B. Potentially Contested Issues

1. Billing Determinants

Billing determinants ("BD" in the following equation) are used to translate the revenue requirement ("RR") into charges, or rates, recovered from customers. The general formula is $\frac{RR}{BD} = \text{rates}$.¹⁵ If the determinants are set too high, the rates will be insufficient to recover the revenue requirement; conversely if they are set too low, the rates will over-recover the revenue requirement. It is neither unusual, nor cause for legitimate complaint, for billing determinants to be set that turn out, after the fact, to be too high or low due to factors beyond anyone's control. Those kinds of variations have always been inherent in the rate-making process, but the process was not systematically biased either for or against utilities or customers. What is at issue here, however, is a systematic bias against utilities that is one-sided, unusual and improper, and that will result in a permanent downward adjustment of the utility's revenues.

¹⁵ As ComEd witness Ms. Brinkman explains, three types of billing determinants are applicable to ComEd's delivery services: (1) the volume of their use, measured in kilowatt-hours ("kWh"); (2) the maximum rate of their use, or demand, measured in kilowatts ("kW"); and (3) the number of separate customers requiring services. Brinkman Dir., ComEd Ex. 2.0, 46:978-47:982.

EIMA specifies that in establishing rates to be collected initially for a given year the billing determinants should be “historical weather normalized billing determinants.” 220 ILCS 5/16-108.5(c)(4)(H). The value of this quantity is not in dispute. What is in dispute is whether that value should be adjusted upwards to account for growth in billing determinants in the year following the year whose data are otherwise used to set initial rates. In the context of this case that means whether 2013 weather normalized billing determinants should be adjusted upward to account for the increase in customers projected for 2014, when setting rates that will be applied in the calendar year beginning in January 2015. ComEd contends no such adjustment should be made, while the AG contends an adjustment should be made.¹⁶

It is uncontested that the Commission has the *authority* to make the adjustment. On the other hand, the Commission is not *required* to make the adjustment. Brinkman Dir., ComEd Ex. 2.0, 47:990-992, 47:998-1000. The parties disagree over whether making the adjustment on the facts of this case is a sound exercise of the Commission’s ratemaking role in setting just and reasonable rates. ComEd contends that making the adjustment would, on the facts of this case, not only not serve any useful purpose, but would in fact result in rates that would permanently deprive ComEd of the opportunity to recover the revenue requirement reflecting 2013 costs. Such an outcome cannot possibly represent lawful, just, and reasonable rates.

This permanent deprivation of revenues due to overstated billing determinants results from the fact that only revenue requirements are reconciled under EIMA, not revenues or billing determinants.¹⁷ No mechanism allows ComEd to recover *revenues* which it failed to receive in 2015 not because costs were understated, but instead because billing determinants were

¹⁶ ComEd’s proposed rates do reflect the adjustment as the Commission has directed in prior cases. Nonetheless, for the reasons stated herein, the adjustment should not be made.

¹⁷ Ms. Brinkman’s Direct and Rebuttal Testimony generally explains the reconciliation process. Brinkman Dir., ComEd Ex. 2.0, 6:108-114; Brinkman Reb., ComEd Ex. 12.0 REV., 23:471-24:491.

overstated. As stated earlier, the utility can be expected to bear the risk that billing determinants turn out to have been overstated because of, for example, actual kWh sales lower than those forecasted. In later years, the utility might benefit from higher than forecasted kWh sales. But what is at issue here is an overstatement that is intentional and one-sided, with the result that the utility will always and consistently under-recover.

These principles, and the problem, are illustrated by the following example. Rates for a given year are set on a revenue requirement of \$1 billion. Actual costs for the year, the actual revenue requirement, turn out to have been \$1.1 billion. But the utility collected revenues of only \$900 million, because billing determinants were overstated by \$100 million, half due to lower than forecasted sales, but half due to an intentional overstatement of customers. The reconciliation process will allow ComEd to recover only the \$100 million revenue shortfall due to the revenue requirement having been understated, not the \$100 million revenue shortfall due to the inaccurate billing determinants. The \$50 million revenue shortfall due to lower sales can be tolerated because the utility has a symmetrical opportunity in future years if unusually hot weather (for example) leads to higher than forecasted sales (though under the EIMA formula rate this opportunity is limited by the ROE collar). What should not be tolerated is the \$50 million revenue shortfall due to the intentional upward adjustment of one of three of the statutorily prescribed “weather normalized historical billing determinants.” But that is precisely what the billing determinant adjustment accomplishes.

The only justification advanced for the proposed adjustment for the 2014 customer count is that rates are based in part on plant additions to be made in 2014. *See* Effron Reb., AG Ex. 4.0, 3:58-59: “the additions of the 2014 plant additions to the 2013 rate base is the basic justification for the adjustment to billing determinants” But that is no justification at all. Any

over-collection because of the inclusion of new plant additions will be temporary and corrected by the reconciliation, with interest. Mr. Effron himself concedes this point: “because of the reconciliation process, the inclusion of New Business plant additions in the pro forma rate base does not ultimately affect the revenues recovered by ComEd after the reconciliation process is complete.” Effron Dir., AG Ex. 2.0, 5:105-107. No further adjustment need be made to protect customers, and especially not an adjustment like the intentional upward adjustment of billing determinants that cannot and will not be corrected through reconciliation and that will permanently deprive the utility of a fair opportunity to recover its revenue requirement.

Moreover, all of these arguments for an adjustment prove too much. As Ms. Brinkman notes: “All of the arguments Mr. Effron makes apply equally to any Illinois utility using EIMA. Yet, the Commission has made no analogous adjustments to Ameren Illinois Company’s (or its predecessors’) historical weather normalized billing determinants.” Brinkman Reb., ComEd Ex. 12.0 REV., 22:459-23:462. The same is true of the effort by Mr. Rukosuev, the only other witness to support the adjustment, to simply rely on past decisions, without addressing the testimony in this record. If there were something universal in EIMA’s two-year rate cycle or the resulting reconciliation lag that warranted the use of non-2013 billing determinants when 2013 costs are at issue, such a statutory feature would demand that the adjustment be applied universally. Yet, while Ameren’s formula rates are calculated and collected on the same schedules as are ComEd’s, no billing determinants adjustment as is proposed here has been made. Because no factual basis supports treating Ameren’s billing determinants differently from ComEd’s, continuing to apply the adjustment only to ComEd “would be arbitrary.” *Id.*, 23:462.

The Commission should reject the upward adjustment of the customer count billing determinant.

IX. COST OF SERVICE AND RATE DESIGN

A. Overview

This docket is intended to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the 2015 Initial Rate Year. Basic rate design issues are not at issue in this formula rate update case – instead, they were addressed in the rate design tariff filing that was filed on April 30, 2013 in Docket No. 13-0387, the 2013 Rate Design Investigation (“2013 RDI”). The Commission entered a final Order in that docket on December 18, 2013 and the matter is currently being appealed to the Appellate Court of Illinois for the Second District. The cost of service and rate design issues that are uncontested should be approved.

B. Potentially Uncontested Issues

1. Embedded Cost of Service Study

ComEd submitted its updated Embedded Cost of Service Study (“ECOSS”) as ComEd Ex. 10.01: this updated ECOSS is based upon the ECOSS ComEd submitted to the ICC Staff on January 16, 2014 in compliance with the Commission’s final Order in the 2013 RDI. The updated ECOSS includes modifications from the ECOSS approved in the 2013 Formula Rate Update proceeding, Docket No. 13-0318, to comply with the final Order in the 2013 RDI. Leick Dir., ComEd Ex. 10.0, 4:84-6:132; *see also* ComEd Ex. 10.01.

The updated ECOSS presented in ComEd Ex. 10.01 is unchanged from the ECOSS submitted in compliance with the Commission’s final Order in the 2013 RDI other than a correction to formulas related to the addition of the Indirect Uncollectible sub-function. The updated ECOSS reflects the updated input values that reflect the costs and data for calendar year 2013. Leick Dir., ComEd Ex. 10.0, 6:133-7:140. In other words, ComEd included current cost data that was presented in its 2013 FERC Form 1, which also has been used to populate the revised updated revenue requirement formula as presented by ComEd witness Mr. Menon. *Id.*;

see also Menon Dir., ComEd Ex. 3.0. In addition, the ECOSS is constructed so that it is able to reflect the approved 2015 Rate Year Net Revenue Requirement as well as applicable billing determinants and delivery class load and loss data from the updated Distribution System Loss Study presented by ComEd witness Mr. Michael F. Born. Leick Dir., ComEd Ex. 10.0, 7:136-144; Born Dir., ComEd Ex. 9.0, 4:70-7:136; ComEd Ex. 9.01.

ComEd's updated ECOSS reasonably allocates costs among customer classes, is uncontested, and should be approved.

2. Distribution System Loss Factor Study

Distribution losses – the difference between energy that is delivered to the distribution system and the energy that actually reaches customers – are used in the development of ComEd's ECOSS. Born Dir., ComEd Ex. 9.0, 4:71-73; ComEd Ex. 9.01. In its final Order in the Rate Design Investigation proceeding (Docket No. 13-0387), the Commission directed that ComEd submit an updated Distribution System Loss (“DSL”) Study along with a revised Secondary and Service Loss (“SSL”) Study in this proceeding. *Commonwealth Edison Co.*, ICC Docket No. 13-0387, Final Order (Dec. 18, 2013) (“2013 RDI Order”) at 109; Born Dir., ComEd Ex. 9.0, 5:88-92. In the Rate Design Investigation, Staff recommended that ComEd extend its sample size beyond those surveyed previously and use actual customer loads and conductor information for the remaining customer categories that use secondary and service elements. ICC Docket No. 13-0387, Final Order (Dec. 18, 2013) at 110-111; Born Dir., ComEd Ex. 9.0, 5:92-96. Accordingly, ComEd updated the DSL Study using 2013 customer and zone loads, 2013 transformer data, and the results of an updated SSL Study (ComEd Ex. 9.02) that includes information obtained from field surveys of secondary and service conductors used to serve customers in seven categories that were not included in the prior SSL Study. Born Dir., ComEd Ex. 9.0, 5:96-105; ComEd Ex. 9.01. No parties have contested the updated DSL study, and Staff witness Mr. Rockrohr

recommends that the Commission accept the study. Rockrohr Dir., ComEd Ex. 5.0, 5:108-6:111. Accordingly, the DSL study should be approved.

3. Secondary and Service Loss Study

The results of the Secondary and Service Loss Study are a direct input to the DSL Study. The purpose of the SSL Study is to provide a basis for estimating losses for each customer category by the use of field surveys of the type, length and load of a representative set of sample customers for each category. This study determined average losses at the annual customer peak load as a percent of the peak load by customer category. ComEd used the results from field surveys of 419 customers in the Single Family Electric Space Heat, Watt Hour, Medium, Large, Very Large, Extra Large, and Lighting categories to determine typical secondary and service conductor losses during peak load conditions. Born Dir., ComEd Ex. 9.0, 6:106-7:136; ComEd Ex. 9.02. No parties have contested the updated SSL study, and Staff witness Mr. Rockrohr recommends that the Commission accept the study and find that ComEd has met the requirement to separately identify losses on secondary and service elements. Rockrohr Dir., Staff Ex. 5.0, 5:108-6:111. Accordingly, the SSL study should be approved.

4. Other

a. Rate Design

ComEd submitted its updated Rate Design Model as ComEd Ex. 10.03: this updated model is based upon the rate design model ComEd submitted to the ICC Staff on January 16, 2014 in compliance with the Commission's final Order in the 2013 RDI. The updated rate design model includes modifications from the rate design model approved in the 2013 Formula Rate Update proceeding, Docket No. 13-0318, to comply with the final Order in the 2013 RDI. Leick Dir., ComEd Ex. 10.0, 9:175-11:239; *see also* ComEd Ex. 10.03.

The updated rate design model presented in ComEd Ex. 10.03 is unchanged from the rate design model submitted in compliance with the Commission’s final Order in the 2013 RDI except that it includes updated input values that reflect the costs from the updated ECOSS presented in ComEd Ex. 10.01 and billing determinant data for calendar year 2013. In addition, the rate design model is constructed to allow for the recovery of the approved 2015 Rate Year Net Revenue Requirement with no over recovery. Leick Dir., ComEd Ex. 10.0, 11:240-12:251.

ComEd’s updated rate design model reasonably provides for the recovery of costs from the customer classes, is uncontested, and should be approved.

b. SBO Credit and DLFs

ComEd submitted and updated Single Bill Option (“SBO”) credit and updated Distribution Loss Factors (“DLFs”) for its customer classes. The methodologies used to determine these values are consistent with the manner in which these values have been determined as approved by the Commission in previous proceedings. Leick Dir., ComEd Ex. 10.0, 20:358-22:386, ComEd Ex. 10.06, and ComEd Ex. 10.07.

ComEd’s methodologies used to update its SBO credit and DLFs are reasonable, uncontested, and should be approved.

X. OTHER

A. Overview

The record addresses a handful of other matters, discussed in this Section X.

B. Potentially Uncontested Issues

1. Intercompany Receivables and Payables Management Model Document

Staff witness Ms. Ebrey recommended that ComEd address its plan to finalize and execute the document titled “Settling Certain Intercompany Receivables and Payables

Procedures.” Ebrey Dir., Staff Ex. 1.0, 41:868-870. On July 22, 2014, ComEd provided an updated and final version of this document and, accordingly, no party has contested this issue. Brinkman Reb., ComEd Ex. 12.0 REV., 19:391-395.

2. **Wages and Salaries Allocator Utilized in Rider PE and Rate BESH**

In his direct testimony, Staff witness Mr. Bridal recommended that ComEd provide the wages and salaries allocator applicable to supply so that he could recommend a wages and salaries allocator to be used in the determination of rates under Rider PE. Bridal Dir., Staff Ex. 2.0, 14:308-15:325. ComEd provided this data in ComEd Ex. 13.12, and Mr. Bridal agreed that the wages and salaries allocator applicable to supply is 0.44% and had no objection to ComEd’s calculation of the allocator. ComEd Ex. 13.12; Bridal Reb., Staff Ex. 8.0, 3:63-4:83. ComEd agreed with the language proposed by Mr. Bridal (Staff Ex. 8.0, 3:75-4:82), and no other party contested the calculation or objected to the proposed language. Menon Reb., ComEd Ex. 13.0, 17:362-18:383.

3. **Reporting Requirements**

a. **EIMA Investments**

In its final Order in ICC Docket No. 12-0321, the Commission stated that Section 16-108.5 of the PUA requires ComEd to provide specific evidence in its case-in-chief as to what it intends to spend its EIMA funds on and further requires ComEd to distinguish between projected plant additions and reconciliation of previous years’ expenditures. 2012 Rate Case Order at 98; Garrido Dir., ComEd Ex. 5.0, 14:295-15:309. Furthermore, in ICC Docket No. 13-0318, the Commission noted that ComEd had agreed to Staff’s recommendation that it identify by category cumulative actual EIMA investments in addition to annual actual investments for each year. 2013 Rate Case Order at 85; Garrido Dir., ComEd Ex. 5.0, 15:315-326. To these ends, and in

compliance with these orders, ComEd provided this information as ComEd Ex. 5.01. Garrido Dir., ComEd Ex. 5.0, 14:295-19:376; ComEd Ex. 5.01. No party contests that ComEd has satisfied its obligation to provide the required information.

b. Reconciliation Year Plant Additions

In the Commission's final Order in Docket No. 13-0318, Findings paragraph 13 set forth a table with details for the plant additions placed in service in 2012. 2013 Rate Case Order at 90-91. In this proceeding, ComEd provided a similar summary of the \$257,679,181 investment amount by category placed in service in 2013 by ComEd under Section 16-108.5(b) of the Public Utilities Act. Garrido Dir., ComEd Ex. 5.0, 17:366-18:371. ComEd also provided a similar table for the \$449,004,969 of plant additions projected to be placed in service in 2014. *Id.*, 18:372-19:376. No party contests that ComEd has satisfied its obligation to provide the required information.

c. Contributions to Energy Low-Income and Support Programs

EIMA requires ComEd to make certain contributions to low-income and other energy assistance programs. See 220 ILCS 5/16-108.5(b-10). These contributions include \$10 million per year, over five years, in customer assistance costs that are not recoverable and that ComEd has removed in full from the determination of its revenue requirements. ComEd presented evidence demonstrating that these EIMA commitments have been met through the sponsorship of various initiatives under ComEd's CARE programs; through these programs, ComEd assists customers that face financial hardships and have difficulty paying their electric utility bills by helping them to avoid disconnection. Donovan Dir., ComEd Ex. 7.0, 28:618-30:657. Moreover, on February 20, 2014, ComEd filed its Annual Customer Assistance Report for 2013 with the Commission. This Report specifies the programs that were funded and reports the amount of

money each program received, further demonstrating ComEd's compliance with its obligation to fund EIMA customer assistance programs. Donovan Dir., ComEd Ex. 7.0, 28:658-30:664; ComEd Ex. 7.01. No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by EIMA. Staff witness Mr. Bridal agrees that ComEd has made the required contributions in 2013 and that the contributions were properly excluded from the revenue requirement. Bridal Dir., Staff Ex. 2.0, 15:329-333.

C. Potentially Contested Issues

1. Update of Exelon Business Services Company General Services Agreement

Staff witness Ms. Ebrey recommends that ComEd update its GSA for Commission approval. Ebrey Dir., Staff Ex. 1.0, 41:872-42:884. This recommendation would require ComEd to engage in a burdensome and wholly unnecessary endeavor that will inevitably increase ComEd's costs and should not be adopted by the Commission.

Ms. Ebrey's recommendation is rooted in her concern that the GSA is obsolete because it references the Public Utility Holding Company Act of 1935 ("PUHCA"). See Ebrey Dir., Staff Ex. 1.0, 41:872-42:844. In 2005, the United States congress repealed PUHCA and subsequently enacted the Public Utility Holding Company Act of 2005 ("2005 PUHCA"). Although the GSA references the outdated PUHCA, it is in fact compliant with the 2005 PUHCA. Specifically, in 2009 Exelon completed an Implementation Plan to comply with corrective actions identified through a 2008 FERC audit of Exelon affiliated transactions. Brinkman Sur., ComEd Ex. 25.0, 13:253-258. The GSA is also currently compliant with all of the Code of Federal Regulation cites that Ms. Ebrey references in her testimony. *Id.*, 13:247-253.

In addition, on an annual basis BSC prepares Service Level Arrangements ("SLA") which are the operational documents governing services provided by BSC to ComEd. Brinkman

Reb., ComEd Ex. 12.0 REV., 19:379-387. These documents reflect the then current services being provided. *Id.* ComEd provided BSC's 2012 SLAs to Staff in ComEd's 2013 rate case. *Id.*, 19:386-387. ComEd also keeps Staff abreast of BSC costs through the numerous and varied reports regarding BSC costs that ComEd submits to Staff throughout the year. Brinkman Sur., ComEd Ex. 25.0, 13:259-14:288.

This evidence shows that the references to the PUHCA in the GSA in no way affect any of the transactions, procedures or regulatory oversight that takes place under the GSA. Moreover, any change to the GSA would impact all Exelon Operating Companies and would therefore require approval from several state Commissions. Brinkman Reb., ComEd Ex. 12.0 REV., 18:374-19:376. This would create substantial costs and burdens for all the companies associated with obtaining such approval. In light of these costs and the lack of necessity to revise the GSA, Staff's recommendation would unnecessarily squander resources and should not be adopted by the Commission.

2. Customer Care Costs

The evidentiary record shows that ComEd incurs customer care costs in providing delivery service to *all* of its customers, both bundled and RES-supplied customers. In its statutory role as the provider of last resort ("POLR") for supply service, ComEd must stand ready to serve all customers. Hemphill Sur., ComEd Ex. 24.0, 3:49-60. Regardless of the entity providing supply service, customers who take delivery service from ComEd are responsible for causing these costs. *Id.* As such, these costs are properly recovered through ComEd's delivery service charges.

"Customer care costs" is a phrase used to describe ComEd's expenditures that pertain to almost every aspect of its customer interactions. Brinkman Dir., ComEd Ex. 2.0, 33:681-682. These expenditures include costs of processes and activities related to maintaining customer

information, billing services, credit and payment processing, field and meter services, operating the call center and responding to customer inquiries, as well as the information technology infrastructure used to support such activities. *Id.*, 33:682-688. The Commission has examined the allocation of ComEd’s customer care costs in six separate proceedings, beginning with the 2001 rate case. Brinkman Dir., ComEd Ex. 2.0, 35:713-39:806. In each case, the Commission determined that such costs were properly allocated to ComEd’s delivery service function and, accordingly, recovered from all customers through delivery service charges. *Id.*

In this proceeding, ComEd presented an Updated Allocation Study (“Allocation Study”) in compliance with a Commission directive arising from ComEd’s 2013 rate design investigation (“2013 RDI”), ICC Docket No. 13-0387. *Id.*, 38:799-39:811; Donovan Dir., ComEd Ex. 7.0, 39:847-854; ComEd Ex. 7.04. ComEd also submitted an Updated Switching Study (“Switching Study”) – an analysis the Commission has used on multiple occasions to assess whether a portion of ComEd’s customer care costs should be allocated to the supply function.¹⁸ *Id.*, 39:811-826. For both studies, ComEd used its actual 2013 customer care costs as the baseline for these analyses. The evidence demonstrates that the Switching Study is more accurate, and determines how customer care costs would actually change due to customers switching suppliers. ComEd, Staff and ICEA support using the Switching Study as the basis to allocate such costs between ComEd’s distribution and supply functions. Donovan Dir., ComEd Ex. 7.0, 64:1401-65:1417; Rukosuev Reb., Staff Ex. 9.0, 2:37-43; Wright Reb., ICEA Ex. 1.0 CORR., 7:136-139. The Retail Energy Supply Association (“RESA”), meanwhile, argues against using the Switching Study and offers an array of alternatives; none of which has merit. White Reb., RESA Ex. MW

¹⁸ ComEd also presented an alternative analysis in order to provide the Commission, Staff and other interested parties with as much information as possible to address this issue. Donovan Dir., ComEd Ex. 7.0, 66:1421-1425. No party supported the alternative analysis. Therefore, this brief limits its discussion to the Allocation Study and Switching Study.

2.0, 31:635-32:664. The following details the evidence supporting the use of the Switching Study to allocate customer care costs and explains why RESA's position is without merit.

a. Summary of ComEd's Allocation Study and Switching Study

The Commission's 2013 RDI Order directed ComEd to provide in its next formula rate update filing an "updated Customer Cost Allocation Study that allocates customer care costs between supply and delivery service functions" 2013 RDI Order at 57. Responding to this directive, ComEd presented its Allocation Study, which allocated \$203,407,637 in direct customer care costs. Brinkman Dir., ComEd Ex. 2.0, 39:807-820; Donovan Dir., ComEd Ex. 7.0, 39:848-851; ComEd Ex. 7.04. Staff witness Rukosuev praised the Allocation Study for "its notable thoroughness and efforts to calculate and allocate costs 'properly'" Rukosuev Dir., Staff Ex. 4.0, 19:438-439.

In general, the Allocation Study applies allocation factors to approximate the contribution of each function (*i.e.*, Field and Meter Services, and Billing Department costs) related to the provision of delivery service or supply service. Donovan Dir., ComEd Ex. 7.0, 40:872-875. These allocation factors are assumptions, however, and do not necessarily reflect ComEd's *actual* customer service operations. *Id.*, 41:905-906.

The Allocation Study and the Switching Study start by identifying the embedded customer care costs for 2013, and then removing those costs directly related to delivery service, *i.e.*, meter reading. Donovan Dir., ComEd Ex. 7.0, 40:876-880; Feingold Dir., ComEd Ex. 8.0, 26:508-512. In contrast to the Allocation Study's use of allocation factors, the Switching Study examines whether its customer service costs are sensitive to customers switching to RES-provided supply to determine what costs continue to be related directly to the provision of delivery service. *Id.*, 43:947-952. The Switching Study uses the same methodology as had been used, and which the Commission accepted, for similar studies in Docket Nos. 08-0532 and 10-

0467. Rukosuev Dir., Staff Ex. 4.0, 10:235-239. The only difference from those past studies is that ComEd examined the impact of customer switching at a 69% level (the current level of switching in ComEd's service territory), and at levels of 64% and 100%. Donovan Dir., ComEd Ex. 7.0, 43:947-952. The purpose behind conducting an analysis at these levels was to ascertain the level to which customer care costs may increase or decrease because of fluctuations in customers switching to a RES.

Pursuant to Staff witness Rukosuev's request in direct testimony (Rukosuev Dir., Staff Ex. 4.0, 27:619-28:635), ComEd updated its Allocation Study and Switching Study to include both direct and indirect costs¹⁹ of providing customer care services: together these costs total \$374,578,469. Donovan Reb., ComEd Ex. 16.0, 2:38-6:118; ComEd Ex. 16.01. Using this revised pool of customer care costs, the Allocation Study finds that \$21,386,393 should be allocated to the supply function. Donovan Reb., ComEd Ex. 16.0, 8:152-155. Meanwhile, the Switching Study concludes that \$0 should be allocated to the supply function as ComEd's costs have not decreased because of customers switching to RES-provided supply service. ComEd Ex. 16.01. In rebuttal testimony, Mr. Rukosuev recommended that the Commission accept the updated Allocation Study and Switching Study, and found them to be consistent with the Commission's directive in Docket No. 10-0467. Rukosuev Reb., Staff Ex. 9.0, 2:33-36, 5:112-114.

b. The Evidence Supports Using the Switching Study to Determine Whether to Allocate Certain Customer Care Costs to the Supply Function

The record contains substantial and compelling evidence explaining why the Switching Study is the best tool to assess whether a certain level of customer care costs should be allocated

¹⁹ Indirect costs are costs for pensions, health care, incentives, payroll taxes, office facilities, human resources function, payroll department, computer equipment and software, accounting, legal, procurement forms and other administrative and general expenses. ComEd Ex. 16.01, fn. 5.

to the supply function. ComEd witness Donovan explained that the Switching Study determines how customer care costs *actually* change due to customers taking supply service from a RES. Donovan Dir., ComEd Ex. 7.0, 65:1408-1409; Donovan Reb., ComEd Ex. 16.0, 1:16-20. The Switching Study showed that such costs do not decrease as customers switch from ComEd to RES-provided supply service. Brinkman Dir., ComEd Ex. 2.0, 40:831-832; Donovan Reb., ComEd Ex. 16.0, 8:152-155; ComEd Ex. 16.02. In fact, customer care costs would *increase* if the level of switching increased to 100%. *Id.* Such a result is not surprising, as the evidence indicates that ComEd incurs additional costs to serve customers who purchase supply from a RES. Donovan Reb., ComEd Ex. 16.0, 12:242-250.

ComEd witness Feingold presented an independent assessment of the Switching Study and the Allocation Study. Feingold Dir., ComEd Ex. 8.0, 22:436-24:467. He explained that the Switching Study is “a direct means of determining whether customer service costs are inherently related to delivery service, or to supply service.” *Id.*, 23:457-458. Mr. Feingold further testified that the Switching Study’s use of avoided cost concepts “serve to establish the important one-to-one relationships between the costs incurred and the levels of service that help define which specific activities are necessary to support each utility function.” *Id.*, 24:464-467. Based upon his review of the Switching Study and its results, Mr. Feingold concluded that all of ComEd’s customer care costs are necessary to support its provision of delivery services. *Id.*, 23:450-454. This result is consistent with his findings on how other states with full or partial electric deregulation have addressed the issue: the vast majority of these states do not assign *any* customer service costs to the utilities’ supply function. *Id.*, 4:85-5:88.

Staff witness Rukosuev also examined the merits of both the Switching Study and the Allocation Study and found the Switching Study to be “superior.” Rukosuev Dir., Staff Ex. 4.0,

12:277. He stated that the Switching Study “more accurately captures the actual causation of ComEd’s customer care services costs than the Allocation Study.” *Id.*, 24:532-533. He explained that the Switching Study “would not create artificial cost disparities between bundled and unbundled customers that would be difficult to justify from a cost standpoint.” *Id.*, 25:547-549; *see also*, Rukosuev Reb., Staff Ex 9.0, 36:926-928. As part of his analysis, Mr. Rukosuev also provided six reasons to support his conclusion, summarized as follows:

1. ComEd’s customer care costs did not decline significantly, despite the fact that, at present, almost 70% of its customers have switched to RES-provided supply service. He also noted that this situation is consistent with the result that ComEd’s prior switching study presented in Docket No. 10-0467.
2. The Switching Study recognizes that ComEd is the provider of last resort (“POLR”) and that it must stand ready to provide supply service to all customers. Thus, ComEd cannot avoid costs that support its supply function.
3. ComEd incurs customer care costs in association with RES-related actions. He noted that such costs can increase when customers switch to RES-provided supply service.
4. There is no change of circumstances justifying the allocation of any customer care costs to ComEd’s supply function.
5. ComEd’s treatment of customer care costs is similar to how the Commission treats such costs for other Illinois utilities.
6. ComEd’s treatment of such costs is similar to how these costs are treated in other jurisdictions.

Id., 12:278-16:371.

Members of the RES community also support using ComEd's Switching Study. Illinois Competitive Energy Association ("ICEA")²⁰ witness Wright concluded that the Commission should use the Switching Study as it will "provide more stability and certainty (avoiding the fluctuations that harm the market), avoid a potentially confusing price signal, and reduce waste of administrative and litigant resources." Wright Reb., ICEA Ex. 1.0 CORR., 7:136-139.

In sum, the evidence overwhelmingly supports a Commission conclusion that the Switching Study is the best approach to determine whether any customer care costs should be allocated to ComEd's supply function. Assessing whether such costs actually fluctuate as a result of switching – rather than assuming such costs must be supply-related – provides a realistic evaluation of the issue. Given the evidence showing that these costs have not declined despite 69% of customers switching the RES-provided supply, there is no factual basis to allocate any costs to ComEd's supply function. Accordingly, the Commission should adopt the Switching Study and find that all customer care costs are properly recovered from all delivery service customers.

c. The Allocation Study Should Be Rejected as a Tool For Determining Whether to Allocate a Portion of ComEd's Customer Care Costs to Its Supply Function.

The Commission should not use the Allocation Study to determine whether, and to what extent, customer care costs should be allocated to ComEd's supply function. The record contains several reasons to support rejecting the study's use. First, it is premised on the assumption that some level of customer care costs must be attributable to the supply function and then applies allocation factors to assign a percentage of costs to that function. Donovan Dir., ComEd Ex. 7.0, 41:895-897, 65:1411-1414; Feingold Dir., ComEd Ex. 8.0, 24:474-477. That assumption, which

²⁰ ICEA's members include Homefield Energy, Inc., Constellation NewEnergy, Inc., Direct Energy Services, LLC, FirstEnergy Solutions Corp., Integrys Energy Services, Inc., MC Squared Energy Services, LLC, Nordic Energy Services, Inc.; NextEra Energy Services, and Verde Energy. Wright Reb., ICEA Ex. 1.0 CORR., 1:11-14

is the foundation of the study, is inherently arbitrary and does not square with the facts. The record contains no persuasive evidence demonstrating that ComEd's customer care costs have, in any meaningful way, declined because of the substantial customer switching that has occurred in the past several years. To the contrary, the Switching Study demonstrated that customer care costs have not decreased even though 69% of ComEd's customers are now taking supply from a RES. Donovan Reb., ComEd Ex. 16.0, 8:152-155; ComEd Ex. 16.02. Indeed, the Switching Study showed that ComEd's customer care costs would *increase* if the level of switching increased to 100%. *Id.*

The second flaw is that the Allocation Study fails to reflect a utility's economies of scope and scale. Feingold Dir., ComEd Ex. 8.0, 24:478-480. Scale economies, such as customer care services, are analyzed by examining the avoided or incremental costs associated with increased or reduced service levels. *Id.*, 25:488-491. However, a methodology that fails to account for fluctuations in service levels is necessarily problematic. For example, the Allocation Study assumes that 17% of the costs of bill printing activities are related to ComEd's supply function. Yet, ComEd is not avoiding that cost. It must continue to incur the cost to print bills for 100% of its customers even if every customer takes supply service from a RES. *Id.*, 25:493-503. Consequently, ComEd is not enjoying any "savings" in the delivery function that the Allocation Study assumes.

A third problem with the Allocation Study is that its use would pose real cost recovery problems as the level of customers procuring supply from a RES changes. There are two aspects to this concern. First, costs allocable to supply customers would vary as the level of customer switching changes. That inevitably means rate instability, because history teaches that there will be ebbs and flows in the level of switching from time to time. Mr. Wright on behalf of ICEA

concisely articulated this very real concern. Wright Reb., ICEA Ex. 1.0 CORR., 3:49-5:93. Both supply charges and delivery charges would be subject to frequent change as the costs attributed to each under this arbitrary methodology change from month to month and year to year. Moreover, as the level of switching increases, remaining supply customers would be required to foot an increasingly overwhelming burden – the “last one standing” concept. Brinkman Dir., ComEd Ex. 2.0, 40:828-848. As noted above, ComEd’s customer care costs have not declined as the level of switching has increased. However, the Allocation Study shifts approximately \$21 million to the supply function. Donovan Reb., ComEd Ex. 16.0, 8:152-155; ComEd Ex. 16.01. As the number of ComEd supply customers continues to decline, there will be fewer customers to allocate that \$21 million in additional supply costs. At present, ComEd has approximately 1.2 million supply customers, so these customers will incur an additional \$17.50 per year supply costs. If the number of customers drops to 200,000, then those customers will incur an additional \$105 per year in supply costs. Taking this “last one standing” concept to its extreme, the last ComEd supply customer would be responsible for the entire \$21 million. Brinkman Dir., ComEd Ex. 2.0, 40:828-848. While at first blush that may appear extreme, the facts show the dramatic decline in ComEd supply customers. In just the last three years, the number of ComEd supply customers has plummeted from 3 million to 1.2 million. *Id.* Thus, contrary to claims otherwise, the questions of how and whether ComEd will recover costs shifted to the supply function in the future is a real issue, affecting both ComEd and its remaining supply customers.

The Allocation Study also fails to consider costs that ComEd incurs associated with RES-provided supply. Put another way, the study does not attempt to identify and allocate costs that should be recovered only from RES supplied customers. Brinkman Dir., ComEd Ex. 2.0,

41:856-869. For example, the Allocation Study does not account for ComEd's costs associated with handling customer complaint calls pertaining to RES price increases. Donovan Reb., ComEd Ex. 16.0, 12:242-246. Without such an apportionment, the Allocation Study results in ComEd supply customers paying for customer care costs allocated to ComEd's delivery service function, customer care costs allocated to ComEd's supply function, and customer care costs incurred to benefit RES supply customers. *Id.*, 12:246-250. Such a result is neither reasonable nor equitable.

While recognizing ComEd's efforts to present a thorough Allocation Study, Staff witness Rukosuev also found the study to be "inherently flawed." Rukosuev Dir., Staff Ex. 4.0, 19:437-440. He presented several pages of testimony analyzing whether the Allocation Study was the proper tool to assess whether it should be used. *Id.*, 19:374-25:556. Given the results of the Switching Study, he found that using any allocation factor to identify customer care costs as supply or delivery related was arbitrary. *Id.*, 19:440-20:442. The following passage succinctly presents his assessment of the Allocation Study:

The Allocation Study is inherently an exploratory exercise not tied to the reality of ComEd's operations and sets up an artificial allocation of costs between supply and delivery. The allocation Study, despite the fact that it is based on embedded cost of service principles, is based more on assumptions that are wholly unrelated to ComEd's actual customer service operations and the Company's experience with switching levels since 2008 with their associated costs.

Id., 20:442-448. ComEd concurs. The evidence does not support using the Allocation Study to divide customer care costs among ComEd's delivery and supply functions.

d. **RESA’s Claims About the Switching Study Are Baseless – The Evidence Does Not Support the Commission Adopting Any of RESA’s Cost Allocation Proposals**

RESA’s²¹ assertions supporting the rejection of the Switching Study are replete with factual errors and reflect a fundamental misunderstanding of the regulatory construct governing the Illinois marketplace. The following provides examples of these errors and confusion. Absent any reasonable basis to reject the factually-based Switching Study, the Commission should reject RESA’s claims and its efforts to artificially inflate ComEd’s supply rate for its own benefit.²²

RESA witness White began his criticism of the Switching Study claiming that ComEd ignores the costs a RES must incur to provide service. White Dir., RESA Ex. MW 1.0, 24:493-25:507. This statement misapprehends the purpose of this proceeding. This case is about ComEd’s costs: RES costs are not relevant to a determination of how ComEd’s costs are allocated. ComEd witness Dr. Hemphill explained that it would be wholly inappropriate to consider RES costs in this proceeding. Hemphill Reb., ComEd Ex. 11.0, 8:153-167; *see also* ComEd Ex. 17.0, 5:94-102. Moreover, RES prices are not subject to traditional rate regulation. *Id.* Put simply, ComEd’s ignoring RES costs is not a basis to reject the Switching Study.

Mr. White next claims that if no customer care costs are allocated to ComEd’s supply function, then RES customers will pay twice for such costs and create an “unfair competitive advantage to the default supply project.” White Dir., RESA Ex. MW 1.0, 25:514-520. Not only

²¹ RESA is an entity comprised of various competitive retail electricity and natural gas suppliers. White Dir., RESA MW Ex. 1.0, p. 1, fn. 1. However, it is unknown which, if any, of these suppliers actually support RESA’s position in this docket. *See* ComEd Ex. 29.02, p. 2. Interestingly, many of the suppliers which comprise RESA also are members of ICEA (*see* fn. 20 *infra*), yet ICEA supports using ComEd’s Switching Study.

²² RESA’s efforts to artificially inflate ComEd’s supply rate is best exemplified by its efforts to reallocate a share of ComEd’s charitable contributions from delivery rates to supply rates. White Dir., RESA MW Ex. 1.0, 21:432-22:450. Charitable contributions have no relationship to customer care costs. *See* Brinkman Dir., ComEd Ex. 2.0, 33:682-686. The Commission should reject RESA’s efforts to lump as many costs as possible into ComEd’s supply rate.

is this claim factually incorrect, it reveals another misconception about Illinois' regulatory paradigm. First, ComEd's default supply rate is not a competitive service offering. Hemphill Reb., ComEd Ex. 11.0, 8:111. Rather, it is statutorily obligated to provide these offerings. *Id.*, 8:112. Moreover, ComEd has no incentive to provide this service as it makes no profit from offering supply service. *Id.*, 13:271-14:277. Second, Mr. White provides no facts to support his claim that RES customers will pay twice. In fact, the Switching Study will require RES supply customers to pay for ComEd's customer care costs that are properly allocated to the delivery function. Meanwhile, the record contains no evidence as to what is included in a RES' supply price. In sum, these claims are baseless and provide no basis to reject the Switching Study.

Mr. White also mistakenly claims that the Commission must reject the Switching Study because it is not an embedded cost study, which is what the Commission required. White Dir., RESA Ex. MW 1.0, 4:68-69. In fact, the Commission never precluded ComEd – or any other party – from submitting a study that was something other than an embedded costs study. Brinkman Reb., ComEd Ex. 12.0 REV., 35:729-36:761. The Commission's 2013 RDI Order makes clear that parties could argue the merits of an allocation study. 2013 RDI Order at 57-58. Moreover, the Commission has raised concerns about using an embedded cost study to allocate customer care costs. 2010 Rate Case Order at 210 (“an embedded cost study may not recognize that many of the customer care costs, such as metering, customer service calls related to power outages, etc. will be incurred by ComEd, irrespective of whether a customer takes electricity from an alternative supplier.”). The facts refute RESA witness White's claim.

ComEd is not alone in refuting Mr. White's testimony. Staff witness Rukosuev likewise rejects Mr. White's claims concerning the Switching Study. Born Dir., ComEd Ex. 9.0, 6:137-10:236. Mr. Rukosuev's detailed examination of the issue serves to refute Mr. White's

assertions and reaffirms that the Switching Study is the best tool to assess whether to allocate customer care costs to ComEd's supply function. Ironically, another RES organization, ICEA – with many common members – also disagrees with RESA and supports the Switching Study. Wright Reb., ICEA Ex. 1.0 CORR., 7:136-139.

As an alternative to the Switching Study, RESA witness White urges the adoption of one of a variety of options based on the use of a RESA-modified Allocation Study. White Reb., RESA Ex. MW 2.0, 31:635-651. These proposals are based upon the unfounded claims about the Switching Study, as discussed above. Given that the evidentiary record refutes RESA's claims, and that ComEd's customer care costs have not declined despite a dramatic increase in the level of customer switching, it is ComEd's position that there is no basis to adopt any alternative proposal that utilizes the arbitrary Allocation Study. Accordingly, ComEd will not detail the flaws in RESA's alternative approach, but reserves the right to respond in its Reply Brief.

Nonetheless, should the Commission decide to shift a portion of the customer care costs out of the delivery service revenue requirement and into ComEd's supply rates, then the Commission should provide direction regarding recovery of these costs. Specifically, the Commission should direct ComEd to include with its compliance filing in this docket the corresponding tariff revisions to allow ComEd to recover these costs from ComEd customers, and ComEd's RES-related customer service costs from the RESs.

3. Capacity Unbundling

In its rebuttal testimony, ICEA raised the issue of "unbundling" ComEd's charges for capacity and energy supply services by including the following recommendation: "Thus, to the extent the Commission does not address this issue in a docket that is currently open, I recommend that the Commission act in this docket by ordering ComEd to file a draft unbundling

tariff no later than 30 days after the final order in this docket.” Wright Reb., ICEA Ex. 1.0 CORR., 13:264-267. This docket concerns delivery service rates, not supply charges. Neither ComEd, Staff, nor any other intervenor has addressed that subject in this delivery service related docket, nor has Staff or any other intervenor had an opportunity to respond to ICEA’s recommendation. While ComEd generally expects to support unbundling of its supply charges in an appropriate proceeding, this docket is not that proceeding. The Commission should refrain from prejudging or otherwise addressing this subject in its order in this docket. Certainly ComEd’s compliance filing in this docket, if that is what ICEA references, would not be an appropriate vehicle for exploration of the implications of separating capacity and energy cost recovery in supply charges.

XI. CONCLUSION

Based on the record and the arguments made herein, the Commission should approve ComEd's proposed 2015 Rate Year Net Revenue Requirement as presented in ComEd's rebuttal testimony (including the credit card adjustment agreed to after testimony was filed and ComEd's other acceptances of proposals of others, whether to narrow the issues or otherwise), approve the original costs of ComEd's electric plant in service as of December 31, 2013, make the required factual findings in support thereof, and authorize and direct ComEd to make a compliance filing implementing the resulting rates and charges.

Dated: September 10, 2014

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: /s/ Ronit Barrett
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

Ronit C. Barrett
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
(312) 660-7600
rbarrett@eimerstahl.com

Richard G. Bernet
Clark M. Stalker
10 S. Dearborn Street, Suite 4900
Chicago, IL 60603
(312) 394-5400
richard.bernet@exeloncorp.com
clark.stalker@exeloncorp.com

E. Glenn Rippie
ROONEY RIPPIE & RATNASWAMY LLP
350 W. Hubbard St., Suite 600
Chicago, Illinois 60654
(312) 447-2800
glenn.rippie@r3law.com

Attorneys for Commonwealth Edison Company