

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.	:	

REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

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REPLY 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 Reply Brief.

I. INTRODUCTION / STATEMENT OF THE CASE

The main issue in this fourth annual formula rate update (“FRU”) is whether ComEd should be allowed to recover all of its prudently and reasonably incurred Annual Incentive Plan (“AIP”) expense. It is undisputed that ComEd’s AIP is based on metrics that are specifically set forth in the Energy Infrastructure and Modernization Act (“EIMA”). It is also undisputed that these metrics benefit customers. The point of contention between ComEd and the Attorney General (“AG”) is not these statutorily approved AIP metrics; it is ComEd’s application of a limiter to the AIP award after it is earned pursuant to those metrics. It is undisputed that this limiter has benefited customers by reducing costs and therefore by reducing rates. Nonetheless, the AG seeks to disallow the entirety of ComEd’s AIP expense because the limiter is calibrated to Exelon Corporation’s (“Exelon”) earnings per share (“EPS”). In essence the AG takes the position that the incentive compensation expense should not have been limited and it would have been *recoverable in its entirety* if it was higher – but because ComEd voluntarily limited it, the expense should be *disallowed in its entirety*.

In contrast, Staff supports a reasoned and proportionate solution to this disagreement – an alternative to total disallowance utilizing a 102.9% limiter that “effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation.” Staff Init. Br. at 45. Although ComEd does not waive its arguments that its entire AIP expense is recoverable, ComEd likewise supports the Staff alternative limiter of 102.9%. ComEd showed in its Initial Brief that this alternative is legally sound and is equitable under the circumstances, and ComEd re-iterates those arguments herein.

In regard to the other contested issues in this case, the positions advocated by Staff and Intervenor are contrary to the evidence and the applicable law. The Commission should therefore accept ComEd’s positions on cash working capital (“CWC”), calculation of interest on ComEd’s reconciliation balance, billing determinants, and update of the Exelon Business Services Company (“BSC”) General Service Agreement (“GSA”), as well as the remaining contested issues, for the reasons set forth below as well as those ComEd elaborated on in ComEd’s Initial Brief.

II. OVERALL REVENUE REQUIREMENT

As discussed in ComEd’s Initial Brief, ComEd’s properly calculated 2015 Net Rate Year Revenue Requirement is \$2,619,210,000. ComEd Init. Br. at 6.

A. 2015 Initial Rate Year Revenue Requirement

ComEd’s properly calculated 2015 Initial Rate Year Revenue Requirement is \$2,361,589,000. ComEd Init. Br. at 5. Staff proposes a figure of \$2,316,585,000. Staff Init. Br. at 5. ComEd’s calculation is supported by the evidence and the adjustments proposed by Staff and the AG should be rejected for the reasons set forth in section V.C. of ComEd’s Initial Brief and this Reply Brief.

B. 2013 Reconciliation Adjustment

ComEd's properly calculated 2013 Reconciliation Adjustment is \$257,621,000. ComEd Init. Br. at 5. ComEd's calculation is supported by the evidence and the adjustments proposed by CCI and the AG should be rejected for the reasons set forth in section VII.B. of ComEd's Initial Brief and this Reply Brief.

C. ROE Collar and ROE Penalty Calculation

ComEd's properly calculated ROE Collar adjustment is \$0. ComEd has reflected a penalty of 5 basis points for the Reconciliation Year as a result of failing to meet a service reliability performance metric resulting in a reduction of the allowed ROE to 9.20%. ComEd Init. Br. at 5. No party contests ComEd's ROE Collar and penalty calculation.

D. 2015 Rate Year Net Revenue Requirement

Given the above figures, ComEd's properly calculated 2015 Net Rate Year Revenue Requirement is \$2,619,210,000. ComEd Init. Br. at 6. Staff proposes a figure of \$2,516,117,000. Staff Init. Br. at 6. Staff's, the AG's, and CCI's respective proposed adjustments are discussed in the applicable sections of ComEd's Initial Brief and this Reply Brief.

III. SCOPE OF THIS PROCEEDING

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

B. The Definition of Rate Year and the Reconciliation Cycle

C. Original Cost Finding

D. Issues Pending on Appeal

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 and its figures should be approved. ComEd Init. Br. at 12-30. 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.

1. 2013 Reconciliation Rate Base

ComEd's properly calculated 2013 Reconciliation Year rate base is \$6,595,626,000. ComEd Init. Br. at 13. Staff proposes a figure of \$6,463,682,000. Staff Init. Br. at 7. ComEd's calculation is supported by the evidence and the adjustments proposed by Staff and CCI should be rejected for the reasons set forth in section IV.C. of ComEd's Initial Brief and this Reply Brief.

2. 2015 Initial Rate Year Rate Base

ComEd's properly calculated 2015 Initial Rate Year rate base is \$7,368,745,000. ComEd Init. Br. at 13. Staff proposes a figure of \$7,233,430,000. Staff Init. Br. at 7. ComEd's calculation is supported by the evidence and the adjustments proposed by Staff and CCI should be rejected for the reasons set forth in section IV.C. of ComEd's Initial Brief and this Reply Brief.

B. Potentially Uncontested Issues

1. Plant in Service

2. Materials & Supplies

3. Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset

4. Construction Work in Progress

5. **Regulatory Assets and Liabilities**
6. **Deferred Debits**
7. **Other Deferred Charges**
8. **Accumulated Provisions for Depreciation and Amortization**
9. **Accumulated Miscellaneous Operating Provisions**
10. **Asset Retirement Obligation**
11. **Customer Advances**
12. **Customer Deposits**
13. **Cash Working Capital (issues not identified in IV.C.)**
 - a. **Overview of CWC and ComEd's Lead/Lag Study**
 - b. **Payroll and withholding expense lead days and derivative changes to FICA tax and employee benefits – other Expense Leads**
 - c. **Final CWC calculation should reflect applicable adjustments to inputs**
14. **Other (including derivative adjustments)**

C. **Potentially Contested Issues**

1. **Cash Working Capital**

ComEd's properly calculated cash working capital CWC requirement in rate base is (\$6,860,000) for the rate year and (\$8,576,000) for the filing year. ComEd Init. Br. at 23.

a. **Pension and OPEB expense leads**

Staff's claim – that its proposed use of a 203.24 day payment lead for pension and Other Post-Employment Benefits ("OPEB") expense is proper – was thoroughly refuted by ComEd in its Initial Brief and by ComEd's testimonial evidence. In its Initial Brief, Staff presents an additional argument in an effort to demonstrate that its proposal does not result in an improper double count of these expenses. Essentially, Staff attempts to show that its CWC Adjustment

schedule (“Schedule 10 FY”) does not double count *pension* and *OPEB expense* by referencing its CWC treatment of ComEd’s *pension asset funding* and *return on equity* in its CWC calculation. This apples to oranges comparison, however, is unavailing because it is factually inaccurate as explained below.

First, regarding pension, Staff states that Schedule 10 FY shows that “the cash inflows and cash outflows associated with the Pension Asset are removed from CWC calculations (Staff Init. Br., Appendix A, Sched. 10, page 2 lines 5 and 22).” *See* Staff Init. Br. at 11. This is incorrect and misleading. Lines 5 and 22 of Staff’s Schedule 10 FY do not represent the cash inflow/outflow associated with pension expense. Those lines represent \$53M of pension asset funding cost removed from the CWC calculation – *i.e.*, the debt-based return on the \$1,063.3 million net pension asset. *See* Ebrey Reb., Staff Ex. 7.0, Sched. 10 FY, page 2, lines 5 and 22; *see also* Houtsma Reb., ComEd Ex. 15.0, 5:101-107 (explaining pension asset). ComEd does not contend that the pension asset funding cost is double counted. It is instead the \$97 million of pension expense (cash outflow) that Staff includes in its CWC calculation at line 17 that is double counted because that amount is also included as a reduction to ComEd’s pension asset. *See* Ebrey Reb., Staff Ex. 7.0, Sched. 10 FY, page 2, line 17; *see also* ComEd Init. Br. at 23; Houtsma Reb., ComEd Ex. 15.0, 4:86-5:92 (explaining how pension asset funding cost differs from pension expense).

Staff next claims that regarding OPEB, “[t]he only component for the OPEB liability included in revenues [to compute CWC] is the return on rate base which is also effectively accounted for in the CWC calculation through the reduction for return on equity (Appendix A, Schedule 10, p. 2, line 8) and the interest expense. (Id., p. 1, line 28.)” *See* Staff Init. Br. at 11. This statement too is beside the point, as it completely ignores OPEB expense. As with pension

expense, it is actually the \$55 million in OPEB expense that Staff includes in its adjustment at line 17 that is double counted in rate base because OPEB accruals are already included as a component of operating reserves, which reduces rate base. *See* Ebrey Reb., Staff Ex. 7.0, Sched. 10 FY, line 17; *see also* ComEd Init. Br. at 23; Houtsma Reb., ComEd Ex. 15.0, 4:86-5:92 (explaining OPEB expense). In sum, Staff’s new argument only underscores the fact that Staff’s CWC calculation double counts pension and OPEB expense by failing to consider CWC in the context of ComEd’s entire revenue requirement and provides no new support for its proposed lead.

For the reasons stated here and in ComEd’s Initial Brief, the Commission should find as it did in ComEd’s 2011 and 2010 rate cases that ComEd correctly attributes zero expense lead time to its pension and OPEB expense.

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

ComEd’s proposed 49.54 day pass-through tax revenue lag for the Illinois Electricity Excise Tax (“IEET”) and the City of Chicago Infrastructure Maintenance Fee (“CIMF”) is correct and should be approved. ComEd Init. Br. at 26. The lag time appropriately utilizes the same lag associated with ComEd’s revenue collection because these tax amounts are billed to customers and payment is subsequently received from customers at the *same time* that ComEd bills and receives payment for all other charges on a customer’s monthly bill relating to delivery service. *Id.*

Staff’s Initial Brief states nothing that refutes this fact. Instead, Staff disregards it and argues that pass-through taxes are somehow separate from the provision of utility service in its effort to support the erroneous removal of the service lag from its pass-through tax lag calculation. *See* Staff Init. Br. at 12. Similarly, CCI’s argument that the billing and collecting of pass-through taxes represent a separate service is also unavailing for the reasons detailed in

ComEd's Initial Brief – namely that electricity delivery is the service that triggers the collection of pass-through taxes. *See* ComEd Init. Br. at 26-27; *see also* CCI Init. Br. at 4-5, 7. CCI's claim that the pass-through tax revenue lag and expense lead should begin with the billing date is incorrect for the same reason. *See* CCI Init. Br. at 6-8. Because electricity is the service ComEd delivers and not the billing and collection of taxes as CCI claims, the lead and lag should begin when the electricity is delivered to the customer. *See* ComEd Init. Br. at 26-27; *see also* Hengtgen Sur., ComEd Ex. 27.0, 5:101-107.

Moreover, as explained in ComEd's Initial Brief, removing the service lag for IEET and CIMF without removing the corresponding service lead would be inconsistent and inappropriate under the mid-point methodology upon which ComEd's service lag and service lead are based. ComEd Init. Br. at 27. In an effort to circumvent this fact, Staff and CCI rely on citing previous orders. However, Staff's and CCI's proposal to remove only the service lag for IEET and CIMF is also not consistent with the treatment of pass-through tax lead and lag in multiple Commission dockets. ComEd has provided undisputed evidence that shows that in the 2010 rate case both the service lag and service lead were excluded in direct testimony.¹ ComEd Init. Br. at 27; ComEd Ex. 27.01. Also, contrary to what CCI claims in its Initial Brief, the order in Docket Nos. 12-0511/12-0512 Cons., disproves CCI's and Staff's position that it is *de facto* improper to include a service lag in the calculation of pass-through tax revenue lag. In that order, the Commission approved the inclusion of a service lag and service lead value in the calculation of revenue lag associated with the ICC Gas Revenue Tax – a pass-through tax. *See* ICC Docket Nos. 12-0511/12-0512 Cons., Final Order (June 18, 2013) at Appendix B, page 13, line 2. The Commission should similarly include the service lag for IEET and CIMF here.

¹ This issue was thus uncontested and not addressed in the final Order.

For the above reasons, including both a service lag and a service lead for pass-through taxes is appropriate and ComEd recommends that the Commission allow it its full 49.54 days of revenue lag for IEET and CIMF in this proceeding. Alternatively, 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. ComEd Init. Br. at 28.

c. Pass-through taxes expense leads

ComEd's pass-through tax expense leads of 31.46 days for Energy Assistance Charges/Renewable Energy Charges ("EAC/REC"), 37.35 days for Gross Receipts Tax/Municipal Utility Tax, 0.24 days for IEET and 26 days for CIMF are supported by the evidence and should be approved. *See* Hengtgen Dir., ComEd Ex. 4.0, 9:182-11:212.

Staff's Initial Brief provides no reason for the Commission to order ComEd to incur unnecessary risk by adopting 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. Specifically, Staff provides no argument refuting ComEd's analysis of the heightened risk that would be incurred by adopting Staff's proposal.

Instead, Staff merely remarks that ComEd calculates pass-through taxes based on the payment due date for EAC/REC and "Other Taxes." *See* Staff Init. Br. at 13. This statement is both factually inaccurate and irrelevant. First, the calculation of the EAC/REC lead is shown on page 32 of ComEd Ex. 4.02 and not on pages 36-39. *See* ComEd Ex. 4.02, page 32. A review of the calculation on page 32 reveals that, contrary to what Staff asserts, the payment lead is calculated using the actual payment date (Column E) and not the payment due date (Column D). *See id.* Moreover, as ComEd explained in testimony, ComEd makes many tax payments for many different types of taxes over the course of a given month. Hengtgen Reb., ComEd Ex. 14.0, 8:156-158. How ComEd may or may not calculate any other taxes is irrelevant to the fact

that the evidence demonstrates that for the taxes at issue *here*, paying taxes three or four days early is a prudent practice in light of the severe penalties and interests payments associated with *these* taxes. *See* ComEd Init. Br. at 29; *see also* Hengtgen Reb., ComEd Ex. 14.0, 10:203-210 (showing penalty amounts of up to \$400,000 for pass-through taxes based on the average tax payment made for each tax in 2013). Both Staff and the Commission correctly recognized the prudence of ComEd’s approach in ComEd’s 2011 formula rate case and the Commission should accordingly adopt ComEd’s proposed pass-through tax expense leads in this proceeding.

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 and should be approved. ComEd Init. Br. at 29.

Staff’s and CCI’s arguments in support of their proposals to increase the payment lead component of ComEd’s intercompany billing expense lead by 13.67 days and 15 days respectively are unpersuasive for all of the reasons stated in ComEd’s Initial Brief. *See* ComEd Init. Br. at 29-30. Specifically, the arguments in both Staff and CCI’s Initial Brief are not supported by any evidence. Moreover, neither Staff nor CCI address the fact that the evidence shows that ComEd’s proposed expense lead, far from subsidizing BSC, in fact results in BSC subsidizing the customer because the proposed lead is approximately 15 days longer than the Payroll and Withholdings lead that would be included in the CWC calculation if ComEd employees performed the labor instead of BSC. *See* ComEd Init. Br. at 30.

2. Other

V. OPERATING EXPENSES

A. Overview

B. Potentially Uncontested Issues

1. **Distribution O&M Expenses (issues not identified in V.C)**
2. **Customer-Related O&M Expenses (issues not identified in V.C.)**
3. **Administrative and General Expenses (issues not identified in V.C.)**
4. **Charitable Contributions**
5. **2013 Merger Expense**
6. **Sales and Marketing Expenses**
7. **Depreciation and Amortization Expense (issues not identified in V.C.)**
8. **Regulatory Asset Amortization**
9. **Operating Cost Management Efforts**
10. **Lobbying Expense**
11. **Rate Case Expenses**
12. **Corporate Credit Cards**
13. **Gross Revenue Conversion Factor**

C. **Potentially Contested Issues**

1. **Depreciation for the Filing Year Revenue Requirement**

Although Staff did discuss this issue on the merits in its Initial Brief (Staff Init. Br. at 19-24), Staff agrees that it is unnecessary to address this issue in this docket at this time. Staff Init. Br. at 22; ComEd Init. Br. at 38.

2. **Incentive Compensation Program Expenses**

a. **Annual Incentive Program (“AIP”)**

The Commission should reject the proposed disallowance of all of ComEd’s AIP expense. As explained below, the proposed disallowance is contrary to the law. And even if the Commission determines the EPS limiter is inconsistent with the statute, 100% disallowance of AIP expense is a disproportionate remedy where, as here, the evidence is clear that the AIP award results from undisputed achievement of performance metrics that bestow benefits on

customers. In the event the Commission believes that the limiter used in 2013 is contrary to EIMA, Staff has proposed a reasonable, proportionate, and legally sound alternative that ComEd supports.

ComEd's AIP is based on eight operational and cost control metrics that are expressly permitted by EIMA. Brinkman Dir., ComEd Ex. 2.0, 18:362-19:386; Brookins Reb., ComEd Ex. 19.0, 4:70-79; Brinkman Reb., ComEd Ex. 2.0, 4:66; Brinkman Sur., ComEd Ex. 25.0, 2:39-41. It is undisputed that incentive compensation based on those metrics is recoverable. 220 ILCS 16-108.5(c)(4)(a). It is also undisputed that ComEd's employees worked towards those metrics on a daily basis, and that customers benefited from their achievement of above target performance on those metrics. Brookins Reb., ComEd Ex. 19.0, 3:57-4:68, 5:87-14:257; Brookins Sur., ComEd Ex. 32.0, 2:27-3:64. The portion of AIP that is being challenged is a limiter that can only ever *reduce* incentive compensation expense. This limiter is not a metric, it never results in an expense being incurred, and it does not render the AIP earned based on the statutorily specified metrics unrecoverable.

Moreover, the total cost disallowance advocated by the AG is unduly harsh and disproportionate to the alleged wrong. The AG admits that if ComEd had not limited its own expense, the AG would not oppose its recovery. *See* AG Second Corr. Init. Br. at 25, fn 22 (“Indeed, it seems likely that *without* the Shareholder Protection Feature, neither the ICC Staff nor any intervening party would have challenged ComEd's recovery of AIP expense in this proceeding.”). Staff reasonably recognizes that “the alternative 102.9% limiter proposed in this proceeding **effectively negates** any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation.” Staff Init. Br. at 45 (emphasis added).

At a minimum then, the appropriate remedy is to remove the offending limiter. This, however, would increase the expense above the amount sought by ComEd. Instead, ComEd suggests the Commission adopt Staff's alternative limiter of 102.9%. This limiter is not related to Exelon's EPS and is based on past Commission practice. If the Commission believes that the limiter used in 2013 is contrary to EIMA and Commission practice, it should nonetheless reject the total disallowance proposed by the AG and exercise its business judgment to apply this alternative limiter.

ComEd explores this proposed alternative limiter in further detail in the first subsection below. In the second subsection below, ComEd explains the fundamental difference between a metric and a limiter, and why this distinction is consistent with Commission practice. In the third subsection below, ComEd explains why the parties' legal interpretations of "based on" are contrary to EIMA. The fourth subsection addresses the major inconsistencies and inaccuracies in the AG's Initial Brief.

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

Staff's alternative recognizes that ComEd's AIP compensation is materially based on statutorily prescribed operational metrics and to allow recovery of nothing would be fundamentally unfair. Bridal Reb., Staff Ex. 8.0, 16:371-377, 31:753-34:799. In every FRU since EIMA's enactment – and for almost a decade before that – ComEd's AIP has utilized either a net income or an EPS limiter. ComEd Init. Br. at 48-49. For the Commission to suddenly change course now, without warning and without any changes in fact or law, and disallow the entire AIP 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 disproportionately harsh and unprecedented. Staff is right – if there is any inappropriate impact

from the limiter, “the alternative 102.9% limiter proposed in this proceeding effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation.” Staff Init. Br. at 45.

Indeed, the purpose of EIMA was to enable utilities to make significant investment in infrastructure by ensuring cost recovery of certain categories of expenditures – including incentive compensation. *Compare* 220 ILCS 5/16-108.5 (b) *with* (c)(4). This certainty is critical to proper implementation of EIMA. In addition, the statutory framework, Commission practice over the last decade, well established rules of statutory construction and interpretation, and the legislature’s acquiescence in the Commission’s interpretation of this incentive compensation issue all require the Commission to reject the AG’s ill-conceived argument that ComEd’s AIP must now be disallowed in its entirety. ComEd Init. Br. at 38-50.

Moreover, it is undisputed that ComEd has been open and transparent about the fact that its incentive compensation plans have utilized EPS or net income limiters for the past decade. Prescott Reb., ComEd Ex. 18.0 REV., 10:201-203; Brinkman Sur., ComEd Ex. 25.0, 4:70-80; *see* AG Cross Ex. 13, specifically ComEd Data Request Response to AG 17.03 subpart (a)(ii), (b), (c)(i). And the undisputed evidence shows that ComEd provided incentive plan documents in discovery and as testimonial exhibits in previous dockets. *See* AG Cross Ex. 13, specifically ComEd Data Request Response to AG 17.03 subpart (a)(ii), (b), (c)(i).

The evidence also shows that in the past, the Commission has specifically analyzed, discussed, and relied on the amount determined pursuant to the limiter to determine the recoverable amount of AIP. Specifically, in Docket No. 11-0721, where the Commission capped recovery of ComEd’s AIP award at 102.9%, the Commission summarized Staff’s position as follows:

This transfer resulted in an increase in the net income limiter under the AIP plan to 112.9% from the initial net income limiter of 102.9%. The AIP actual performance resulted in a calculated payout percentage of 110.3%. Staff concludes that therefore, the CEO discretionary feature resulted in an AIP payout that was in excess of its initial net income limiter (110.3% rather than 102.9%).”

Commonwealth Edison Co., ICC Docket No. 11-0721, Final Order (“2011 Rate Case Order”) (May 29, 2012) at 89. To be sure, if ComEd had been aware that the limiter was a problem, it certainly would have removed it. Prescott Reb., ComEd Ex. 18.0 REV., 9:182-10:191 (explaining how each time the Commission took issue with a portion of ComEd’s AIP, ComEd removed the offending element).

The AG also conveniently ignores that the Commission’s approval of costs included in the revenue requirement is not limited to issues raised by the parties. *See* AG Second Corr. Init. Br. at 35-36. To the contrary, the Commission makes its own determination and has certainly disallowed costs that it believes do not meet statutory requirements even when no party has disputed the recoverability of those costs. *See, e.g., Commonwealth Edison Co.*, ICC Docket No. 12-0321, Final Order (“2012 Rate Case Order”) (Dec. 19, 2012) at 52-59 (disallowing rate case expenses even though no party contested their recovery).²

In short, it is eminently clear that ComEd has utilized limiters based on EPS or net income *and* that the Commission and the parties have been aware of those limiters since at least 2011 and at times specifically addressed them *and* that the Commission has never disallowed ComEd’s AIP expense in its entirety because of those limiters. The Commission should reject

² Staff cites *Citizens Utils. Co.*, 49 Ill. 2d 458, 463 (1971), in support of a proposition similar to the AG’s: that “approval of a revenue requirement in absence of the discussion of all its components does not provide implicit approval of every cost included in the development of the approved revenue requirement.” Staff Init. Br. at 41. *Citizens Utilities* does not stand for that proposition. As Staff recognizes, it holds that “[t]he Commission need not make a finding on each issue or evidentiary fact.” Staff Init. Br. at 41. But that does not mean that the remainder of the costs that make up the revenue requirement have not been approved – it means quite the opposite – that they most certainly have been approved even though the Commission did not specifically address them in its findings. *Citizens Utils.* at 463.

the AG's attempt at an end run around EIMA through its proposed disallowance of \$66 million in prudently incurred labor costs. The Commission is entitled to – and should – exercise its “business judgment” to apply an alternative limiter. *Commonwealth Edison Co v. Illinois Commerce Comm'n, et al.*, 405 Ill. App. 3d 389, 401-402, 937 N.E. 2d 685, 701 (2d Dist. 2010).

(ii) There is a Fundamental Difference between a Metric and a Limiter, and this Distinction is Consistent with Commission Practice

There is a fundamental difference between an incentive compensation metric and an incentive compensation plan limiter. Prescott Reb., ComEd Ex. 18.0 REV., 12:236-241. A metric is a measure by which employees earn their incentive compensation and by which the incentive compensation award is funded. Brinkman Reb., ComEd Ex. 12.0 REV., 4:66-70; Brinkman Sur., ComEd Ex. 25.0, 2:39-41. Metrics are weighted, and the sum of that weighting adds up to 100%. Brinkman Dir., ComEd Ex. 2.0, 18:361-383; Brookins Reb., ComEd Ex. 19.0, 4:70-79. As the 100% weighting indicates, the metrics are the entire universe of what the incentive compensation award is based on. In contrast, a limiter is a mechanism by which a company can place overall limitations on payouts of the awards that are earned. Prescott Reb., ComEd Ex. 18.0 REV., 8:155-158. Utilizing a limiter is a standard feature in good incentive plan design. *Id.*

In 2013, ComEd's AIP was based on customer focused operational metrics that, as shown in the graphic below, are the same metrics that are set forth in EIMA. Brookins Reb., ComEd Ex. 19.0, 4:69-79.

Statutory Incentive Compensation Metrics
220 ILCS 5/16-108.5(c)(4)(A).

ComEd Metrics

“Budget Controls”	➔	Capital Expenditures Total O&M Expenses
“Outage Duration”	➔	CAIDI 2.5 Beta Method
“Outage Frequency”	➔	SAIFI 2.5 Beta Method
“Safety”	➔	OSHA Recordable Rate
“Customer Service”	➔	Customer Operations Index Customer Satisfaction Index
“Efficiency and Productivity”	➔	Total O&M Expenses Capital Expenditures EIMA Performance Metrics Index

As this graphic shows, the 2013 AIP had eight metrics (also referred to as goals or Key Performance Indicators (“KPI”)). *Id.* Two of the eight metrics comprised 50% of the AIP’s weighting and related to ComEd cost control. *Id.* Six of the eight metrics – the other 50% of the AIP’s weighting – related to ComEd operations. *Id.* Thus, the AIP was equally weighted between the ComEd cost control metrics and the ComEd operational metrics. *Id.* ComEd employees earn 100% of their AIP awards pursuant to these EIMA metrics and the award is based on these metrics.

In ComEd’s 2013 AIP, the limiter was calculated by determining the percentage achievement of the target EPS of Exelon plus 20 percentage points. Prescott Reb., ComEd Ex. 18.0 REV., 9:164-169. By way of example, in 2013, the limiter was calculated as follows: Exelon’s EPS was 104.4% of target. *Id.* Adding 20 percentage points to that figure results in a payout limit of 124.4%. *Id.* Thus, even though ComEd’s performance relative to its KPIs would

have resulted in a payout of 140.4%, the payout was limited to 124.4%. *Id.* ComEd employees do not earn their award pursuant to this limiter and their award is not based on this limiter.

Over the past decade, the Commission has recognized this distinction and 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. *See Commonwealth Edison Co.*, ICC Docket No. 13-0318, Final Order (Dec. 18, 2013) ("2013 Rate Case Order") at 38-61; 2012 Rate Case Order at 31-32; 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. 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. *Id.*

Staff recognizes this fundamental difference between a metric and a limiter. *See* ComEd Cross Ex. 2, Staff's Response to ComEd's Data Request ComEd-Staff 8.09. The AG does not. AG Second Corr. Init. Br. at 14 (incorrectly describing EPS limiter as a metric). Nonetheless, the parties devote most of their discussion on this topic to Commission dockets that addressed only metrics, not limiters. *See* Staff Init. Br. at 35-44; *see also* Bridal Reb., Staff Ex. 8.0, 22:508-26:629. Indeed, in each of the cases cited by the parties, the Commission disallowed incentive compensation that was based on achievement of a financial metric. *See* ICC Docket Nos. 09-0166/0167 Cons., Order (Jan 21, 2010) at 58-59; ICC Docket No. 07-0507, Order (July 30, 2008) at 25-26; ICC Docket No. 08-0363, Order (March 25, 2009) at 28; ICC Docket Nos. 07-0585/0586/0587/0588/0589/0590 Cons., Order (Sept. 24, 2008) at 106-108; ICC Docket No. 93-0183, Order (April 6, 1994) at 52; ICC Docket No. 99-0534, Order (July 11, 2000) at 9; ICC

Docket Nos. 11-0281/0282 Cons., Order (Jan. 10, 2012) at 54; ICC Docket No. 06-0070 Cons. Final Order (Nov. 21, 2006) at 69 (using EPS as a funding measure as opposed to a limiter). None of the cases discussed by the parties addressed incentive compensation that was based on operational and cost control metrics that were then subject to an EPS or a net income limiter. *Id.* The cases relied on by the parties are therefore inapposite.

The Commission practice of requiring incentive compensation to confer a benefit on customers does not change this analysis. *See* Staff Init. Br. at 35-36. EIMA explicitly codified the metrics that unquestionably confer customer benefits and no further evidence should be required. And in any event, ComEd provided 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, 5:86-14:257.

ComEd also 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. While other ratemaking adjustments to the 2012 figure ultimately lowered the recoverable amount, before ratemaking adjustments those figures nonetheless add up to \$25.5 million. *Id.*, 12:230-232. That is a significant customer savings.

Importantly, no evidence suggests that the limiter provides any benefit to shareholders, and certainly not at the expense of customers. 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. Moreover, to the extent the limiter causes a disallowance of ComEd's AIP expense in whole or part, those compensation expenses will no longer flow through to customers and the limiter will in fact harm shareholders.

ComEd also provided compelling and uncontroverted evidence that employees are not motivated to benefit shareholders by increasing Exelon's EPS. ComEd Init. Br. at 4-45. Mr. Brookins provided a numerical example that illustrates this point. Tr. at 344:21-347:21, 351:7-18 (Brookins, Aug. 28, 2014). Exelon has approximately 900 million common shares outstanding. *Id.* at 345:8-9. Thus it would take about \$9 million of ComEd earnings to increase Exelon's EPS by one penny. *Id.* at 345:8-346:8. Given ComEd's capital structure, half of that \$9 million would be financed by equity. *Id.* Assuming an allowed return on equity of 10%, ComEd would need to place roughly \$180 million in capital expenditures in service to achieve that \$9 million increase in earnings and thereby increase Exelon's EPS by one penny. *Id.*

ComEd's capital expenditure KPI, however, incentivizes employees to decrease capital spending. And the capital expenditure metric accounts for 25% of the total AIP award that employees can earn. *Id.*; Tr. at 347:5-10 (Brookins, Aug. 28, 2014). Indeed, the delta between the threshold (\$824.6 million for AIP eligibility) and target (\$785.3 million goal) for the 2013 ComEd capital expenditure metric was only \$39.3 million. *See* ComEd Ex. 19.01. \$180 million is more than four times that delta. Thus in order to accomplish a one penny EPS increase, ComEd employees would necessarily miss the threshold for the capital spend metric and would lose 25% of their AIP award. Tr. at 346:4-347:10 (Brookins, Aug. 28, 2014). This behavior would be entirely illogical.

(iii) The Parties' Legal Interpretations of "Based on" Are Contrary to EIMA

The parties clearly indicate that they interpret the phrase "based on" to mean "determined by" or "impacted by." *See* Staff Init. Br. at 24, 26, 29, 32; AG Second Corr. Init. Br. at 12, 14, 16, 17, 34. This is slightly different than the definitions ComEd ascribed to the parties in its Initial Brief of "related to" or "impacted by," but it does not change the analysis set forth in ComEd's Initial Brief – the parties still attempt to ascribe a broad meaning to "based on" without regard to whether incentive compensation actually incentivizes employees to enhance affiliate profitability. Their interpretations of "based on" to mean "determined by" or "impacted by" suffer from the same statutory interpretation and construction flaws that ComEd addressed in its Initial Brief. ComEd Init. Br. at 42-45.

Staff reaches its conclusion because a Merriam Webster synonym of the word "base" is "rest" which in Staff's view is the same as "determines." Staff Init. Br. at 32. The AG claims that the "jurisprudence of 'based on' supports disallowance." AG Second Corr. Init. Br. at 31. Instead of looking to the most relevant and informative source of jurisprudence – Commission cases that have dealt with ComEd's incentive compensation and application of EIMA – the AG looks to completely inapplicable laws. AG Second Corr. Init. Br. at 31-34. Each of the cases relied upon by the AG actually undermines its position.

The AG misinterprets the point of the first case it cites, regarding criminal sentencing guidelines: In that case, the court specifically stated that "based on" does not mean influenced by or even that something may finally impact the numerical value reached. *U.S. v. Ray*, 598 F.3d 407, 409 (7th Cir. 2010). In determining whether a plea agreement was based on sentencing guidelines, the court stated: "it is a far cry from the unremarkable observation that the Guidelines influenced the negotiations that ultimately resulted in the agreed term of 263 months

to the more dubious contention that the sentence was ‘based on’ the Guidelines.” *Id.* Applying the court’s reasoning to the instant case, ComEd’s AIP award is not based on EPS even if one accepts that the final dollar amount of the award – like the final number of months in the plea deal – is “influenced by” EPS.

The Seventh Circuit has overruled the second case that the AG relies on, *U.S. v. Farmington*, 166 F.3d 853 (7th Cir. 1999), concerning the federal False Claims Act. In so doing, the court rejected the minority view adopted in that case that “based on” means “derived from” and instead held that “based on” means “substantially similar to.” *Glaser v. Wound Care Consultants, Inc.*, 570 F.3d 907, 909-910 (7th Cir. 2009). Utilizing “substantially similar to” as the definition of “based on” in EIMA does not make sense. Even if the Commission chose to utilize this definition, it does not support the AG’s position, as the AIP award is not substantially similar to Exelon’s EPS – the 2013 AIP award was not \$2.49 per ComEd employee.

Similarly, the third and final case the AG relies on, regarding the Local Governmental and Governmental Employees Tort Immunity Act, does not hold that “based on” means “derived from” as the AG states. *See Manuel v. Red Hill Cmty. Unit Sch. Dist. No. 10 Bd. of Educ.*, 324 Ill. App. 3d 279, 284, 754 N.E.2d 448, 454 (5th Dist. 2001). The *Manuel* court specifically stated that it was interpreting the broader phrase “liability is based on” and that the “phrase has been interpreted to refer to the source of the defendant’s obligation.” *Id.* at 284-286. The court thus held that “the entity’s duty must be derived from its control of the property ... The plain meaning of this phrase is that immunity is only granted if the theory of recovery which creates the defendant’s obligation is one of premises liability.” *Id.* at 284-285. The court also specifically stated that “based on” does not mean “related to,” which would have provided a broader immunity. *Id.*

These cases also illustrate the importance of the statutory interpretation points ComEd made in its Initial Brief that a statute should be read as a whole and in a manner that furthers the underlying statutory purposes. ComEd Init. Br. at 42-43. The Commission should not interpret “based on” in a vacuum and without regard to whether incentive compensation actually incentivizes employees to enhance affiliate profitability. *Id.* Looking to the definition of “based on” in other statutes that have different purposes, and without regard to the phrase that “based on” modifies is simply not informative.

In addition, the factual underpinning of the parties’ interpretation of “based on” – the *hypothetical* concern that the limiter potentially dilutes employee motivation – is misplaced. ComEd has provided hard evidence that even when employees’ awards are in fact limited, employees continue to work to increase customer benefits. *See generally* Brookins Reb., ComEd Ex. 19.0, 7:117-14:257. The facts show that ComEd’s performance on its customer-focused metrics was better in 2012 and 2013 – when AIP awards were in fact limited – than in 2011 – when the AIP awards were not limited. Brinkman Sur., ComEd Ex. 25.0, 5:104-6:112; Brookins Reb., ComEd Ex. 19.0, 5:98-6:100. And utilizing the income tax example provided in ComEd’s Initial Brief (*see* ComEd Init. Br. at 41), under the AG and Staff’s view, the income taxes withheld from employees’ paychecks necessarily disincentivizes them to meet their incentive compensation goals. Again, we know this to be false because ComEd employees are meeting

and exceeding these goals. Brookins Reb., ComEd Ex. 19.0, 5:86-14:257. There is no reason to believe that the AIP limiter has a different behavioral effect.³

(iv) Major Inconsistencies and Inaccuracies in the AG's Brief

The AG's Initial Brief is fraught with inconsistencies and suppositions that do not aid the Commission in the analysis of this issue and in fact provide a significant amount of misinformation. ComEd addresses the most egregious and disingenuous examples below.

- The AG admits that ComEd employees have “little control over” Exelon’s EPS but then claims that because of the EPS limiter, their “focus can be expected to shift towards efforts that improve Exelon EPS, rather than focusing on operational performance.” *Compare* AG Second Corr. Init. Br. at 14 *with* 20 (quoting Mr. Brosch). The AG cannot have it both ways and the undisputed facts show that most ComEd employees have no control over Exelon’s EPS and therefore cannot “improve it.” Tr. at 321:5-323:20, 344:21-350:3 (Brookins, Aug. 28, 2014).
- The AG proclaims that “the record evidence is clear that actual AIP payout can increase as Exelon Corp. earnings per share rises” but then admits in a footnote that this statement reflects only a hypothetical accounting error whereby year-end Exelon EPS would be calculated twice in one twelve month period. *Compare* AG Second Corr. Init. Br. at 16, 32 *with* 16 fn. 14.
- The AG falsely states that an alternative way of describing how AIP awards are calculated is that Exelon EPS is determined first, and then the payout within that EPS-determined range is calculated by looking at the KPIs. *See* AG Second Corr. Init. Br. at 17. The undisputed facts show the opposite – that the award earned pursuant to the KPIs is determined in late December or early January, and Exelon’s EPS is not calculated until late January or early February. *See* AG Second Corr. Init. Br. at 18; Tr. at 347:22-350:3 (Brookins, Aug. 27, 2014); Tr. at 274:15-276:4 (Prescott, Aug. 28, 2014).
- The AG seeks to discredit Mr. Brookins by implying that the numerical example Mr. Brookins provided – to increase Exelon’s EPS by once cent – is flawed

³ There is also nothing nefarious about ComEd’s “motives for offering the Shareholder Protection feature.” *See* AG Second Corr. Init. Br. at 10. ComEd has explained that its AIP incorporates the limiter because ComEd is part of the Exelon family. Prescott Sur., ComEd Ex. 31.0, 4:69-75. No one disputes that ComEd and its customers receive certain benefits and economies of scale as a result of this relationship. *Id.* And Exelon administers its policies, including its incentive compensation plans, consistently to the extent possible. *Id.* This helps Exelon achieve best practices across its corporate family. *Id.* It also avoids the potential for dissention between employees of different operating companies, who might perceive that there are unfair incentive outcomes across the organization. *Id.*

because Mr. Brookins did not state that this hypothetical would not involve issuing more equity or common equity shares. AG Second Corr. Init. Br. at 22. The AG's point is unclear, but to the extent the AG is implying that Exelon could issue additional equity to fund incremental ComEd capital expenditures, all else being equal, that would actually dilute or reduce Exelon's EPS. In any event it is simply irrelevant to the powerful and clear example Mr. Brookins provided.

- The AG claims that disallowance of the AIP expense in this case will reduce Exelon's EPS by over 2 cents per share in 2015. AG Second Corr. Init. Br. at 23. There is no evidence in the record to support this statement and it is patently false. A disallowance in this case has no impact on 2015 EPS.
- The AG claims that the evidence Mr. Brookins provided regarding the limited ability for ComEd employees to *increase* Exelon's EPS is not credible because ComEd employees in this proceeding can *impact* Exelon's EPS. AG Second Corr. Init. Br. at 22-23. There is no evidence in the record to support this conclusion and it is also patently false. The AG fails to realize that disallowances in formula rate update cases can only *reduce*, never *increase* Exelon's EPS, which Exelon calculates assuming no disallowances. *See e.g.*, Tr. at 347:11-21 (Brookins, Aug. 28, 2014). The AG's claim regarding administrators of energy efficiency programs (AG Second Corr. Init. Br. at 23) suffers from a similar flaw. And in any event, contrary to the AG's insinuation, those employees have consistently exceeded the energy savings goals by wide margins. *See* ICC Docket No. 10-0520, Final Order (May 16, 2012) at 6; ICC Docket No. 11-0593, Final Order (March 5, 2014) at 3. *See also* ICC Docket No. 13-0078.
- The AG claims that the limiter in the 2010 AIP plan (Docket No. 11-0721) is "nothing like" the 2013 plan because the 2010 plan was subject to a CEO discretionary feature and therefore did not create a "binding constraint." AG Second Corr. Init. Br. at 38. In addition to the fact that this does not make any sense, the AG is once again, simply wrong. The 2013 AIP plan was also subject to CEO discretion. AG Ex. 1.7 (2013 Exelon AIP Plan) at 10. Moreover, the Commission has recognized that such discretion is one of ComEd's constitutional rights. 2011 Rate Case Order at 90.

In short, the AG has taken liberties with the facts. The Commission should make its decision whether to disallow \$66 million dollars of wages and salaries – labor costs that were undisputedly prudently and reasonably incurred (*see* ComEd Init. Br. at 38) – on the facts in the record, not according to suppositions and inferences that are without evidentiary support and are incorrect.

The weight of the evidence provided in this case shows that ComEd's AIP expense is recoverable. The statutory framework, Commission practice over the last decade, well established rules of statutory construction and interpretation, the legislature's acquiescence in the Commission's interpretation of this incentive compensation issue, fundamental principles of fairness, and the evidence that ComEd's AIP has provided customer benefits all require the Commission to reject the AG's ill-conceived argument that ComEd's AIP must be disallowed in its entirety. ComEd Init. Br. at 38-50. For those same reasons, if despite the strong evidence to the contrary, the Commission concludes that ComEd employees may be incentivized to some extent to increase Exelon's EPS because of the limiter in place, the Commission should reject the disproportionately harsh remedy proposed by the AG and exercise its business judgment to adopt Staff's alternative limiter that would allow recovery of 102.9% of target. Bridal Reb., Staff Ex. 8.0, 16:371-377, 33:779-786. 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. Staff's alternative limiter solves this problem because it "effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation." Staff Init. Br. at 45.

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

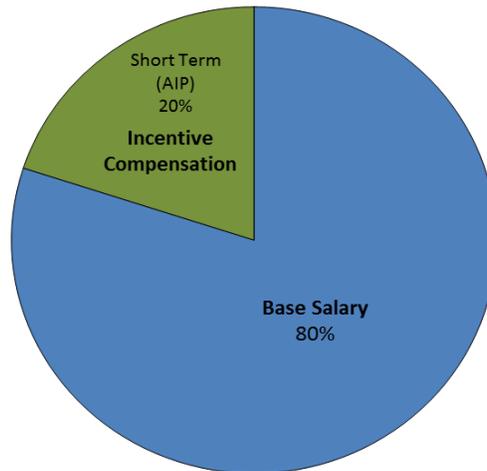
CCI devotes much of its time and energy opposing this issue to a discussion of ComEd's previous incentive compensation plan and the standard of recovery for incentive compensation in pre-EIMA cases. See CCI Init. Br. at 10-13. ComEd is not seeking recovery of expenses incurred under previous plans, nor is this a traditional Article IX rate case. ComEd is seeking recovery of expenses incurred under the current LTPP pursuant to an EIMA FRU. To be sure, Commission practice and procedure is still relevant, but as explained above, EIMA explicitly

codified the metrics that unquestionably confer customer benefits and no further evidence should be required.

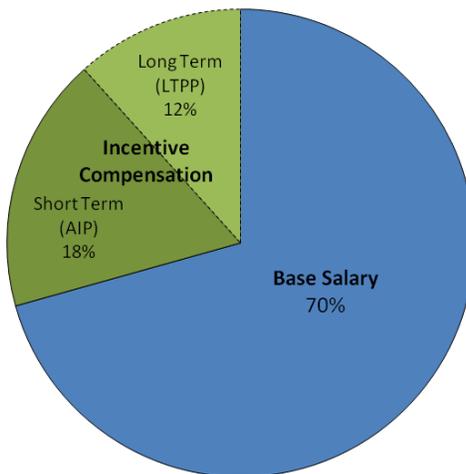
Nonetheless, ComEd provided evidence that as ComEd has revised its incentive compensation programs generally – including LTPP – to focus on customer centric metrics, ComEd’s performance on those metrics has improved and customer benefits have increased. Brookins Reb., ComEd Ex. 19.0, 5:86-14:257. Since 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. Prescott Reb., ComEd Ex. 18.0 REV., 14:267-275. Staff agrees with ComEd, astutely observing that using “similar operational metrics places even more emphasis on the achievement of metrics that provide ratepayer benefits.” Bridal Reb., Staff Ex. 8.0, 38:883-885 *see also* Staff Init. Br. at 45-46.

The remainder of CCI’s argument is based solely on its fundamental misunderstanding of ComEd’s total compensation package. CCI believes that because the LTPP shares the same KPIs as the AIP, it is duplicative of the AIP. CCI Init. Br. at 11-13; Gorman Dir., CCI Ex. 1.0, 12:239-245; Gorman Reb., CCI Ex. 2.0, 8:147-158. This is incorrect. As ComEd has repeatedly explained, the AIP is a short-term incentive plan and the LTPP is a long-term incentive plan. ComEd Init. Br. at 50-51; Prescott Reb., ComEd Ex. 18.0 REV., 14:276-283. The AIP and the LTPP 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 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.*

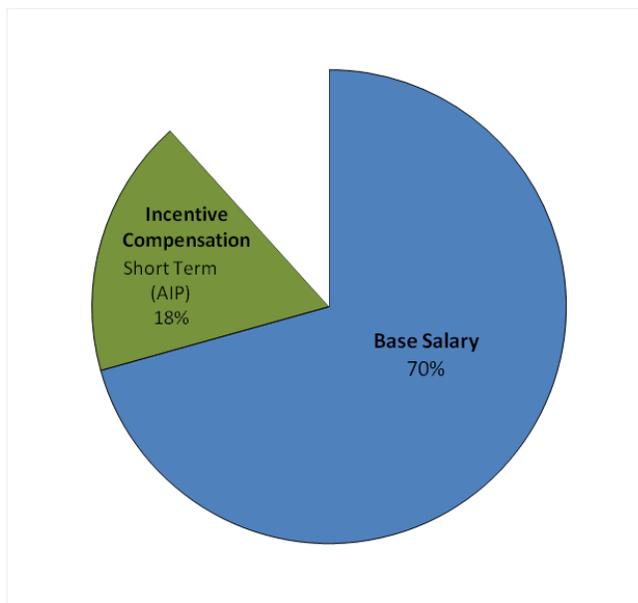
For example, a ComEd employee who participates only in ComEd’s AIP would have a total compensation mix broken down between base salary and short term incentive compensation along the following lines:



If that employee participates in the LTPP, the compensation mix changes. The total compensation is not increased, but more of the employee’s total compensation is “at risk,” and a portion is designated as long term incentive compensation as opposed to base salary or short term incentive compensation. Prescott Sur., ComEd Ex. 31.0, 7:131-139.



As the graphic above illustrates, the total size of the compensation pie is still the same, but the incentive compensation piece has been cut into two slices. *Id.* CCI seeks to disallow the long term piece of that pie, leaving a gaping hole in ComEd's cost recovery of this prudently and reasonably incurred labor cost, as the graphic below illustrates:



CCI then claims – without any supporting evidence or expert testimony – that the LTPP should be disallowed because ComEd has other ways of encouraging longevity of employment, such as awarding vacation days and pension benefits based on length of service. CCI Init. Br. at 12. This is irrelevant. Even assuming there are ways ComEd can encourage retention of experienced employees other than LTPP – and there is no evidence in the record that the items CCI relies on actually encourage employee retention – that does not mean that ComEd cannot also designate a portion of those employees' at risk pay as long term incentive compensation. As the graphics above illustrate, if the employees did not receive this compensation as long term incentive compensation, they would receive it as base salary or short term incentive compensation. ComEd is simply trying to make its money work harder: to encourage achievement of customer benefits *and* to retain employees with valuable institutional knowledge.

This is imminently prudent and reasonable and the Commission should reject CCI's proposed disallowance.

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

ComEd addressed most of the arguments raised by Staff and the AG in support of their proposed LTPSAP disallowance in its Initial Brief. One additional point is worth addressing here. The AG claims that the ability of the Compensation Committee of the Board of Directors of Exelon to exercise discretion to limit the LTPSAP payout – and the exercise of that discretion in 2013 – requires disallowance of these costs. *See* AG Second Corr. Init. Br. at 42-43. This position is ironic considering the AG's contrary position regarding recovery of AIP costs. *See* AG Init. Br. at 38. The AG specifically distinguishes the recoverable AIP expenses in Docket No. 11-0721 from what it claims are unrecoverable AIP expenses in this docket because the expenses in Docket No. 11-0721 were subject to management discretion, which "rendered the net income limiter non-operational; the purported restraint had no bite." *Id.* Once again, the AG cannot have it both ways. If the board discretion rendered a purportedly taboo restraint – and ComEd does not accept that characterization – non-operational and thereby rendered incentive compensation expenses recoverable in Docket No. 11-0721, it should have the same effect here for both ComEd's AIP and LTPSAP expenses.

3. **Collection Agency Costs**

Staff recommends that collection agency costs related to PORCB be recovered through Rider PORCB. Staff Init. Br. at 49. ICEA disagrees and recommends that these costs be recovered through delivery services. ICEA Init. Br. at 3. ComEd addresses this issue in its Initial Brief but reiterates its request here that the Commission make a final definitive determination as to where the collection agency costs will be recovered (*i.e.*, through Rider

PORBC or through delivery services) in the final Order in this docket. *See* ComEd Init. Br. at 54.

VI. RATE OF RETURN

A. Overview

B. Capital Structure

C. Cost of Capital Components

1. Rate of Return on Common Equity

2. Cost of Long-Term Debt

3. Cost of Short-Term Debt

4. Overall Weighted Cost of Capital

VII. RECONCILIATION

A. Overview

B. Potentially Contested Issues

1. Calculation of Interest on Reconciliation Balance

If the parties were called upon to reach consensus on the overarching theme of EIMA’s formula ratemaking provisions, they would likely land on the oft-cited language of EIMA itself – “[p]rovide for the recovery of the utility’s actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.” 220 ILCS 5/16-108.5(c)(1); AG Second Corr. Init. Br. at 44. To recover “actual costs” – no more and no less, EIMA’s formula rate calculates an initial revenue requirement to be recovered in the upcoming rate year and then, after the close of the rate year, reconciles that initial revenue requirement with the now known actual revenue requirement. This typically results in a “reconciliation balance” reflecting either an over or under recovery to which interest applies. Yet, despite the relative simplicity and transparency of this mechanism, these first four years of

formula rate implementation have been mired in arguments advanced by the AG, members of CCI and others to artificially reduce the reconciliation balance and, ultimately, ComEd's ability to recover its actual costs. Although the proposed accumulated deferred income tax ("ADIT") adjustment has been squarely rejected by the General Assembly and Commission, the AG and CCI again propose their stale ADIT adjustment here, just as they have done in five prior ComEd cases.

ComEd appreciates that the interpretation and implementation of EIMA's formula ratemaking provisions have presented some challenging and complex questions, and the Commission has, at times, had the unenviable task of sorting through difficult issues of first impression. As explained further below, however, the General Assembly has clearly spoken regarding the calculation of the reconciliation balance and the interest rate applicable to it, and its implementation is no longer in doubt. While the General Assembly amended EIMA to, *inter alia*, correct the erroneous calculation of the interest rate applicable to the reconciliation balance, it made no similar correction or accommodation for the AG's claim that an ADIT adjustment to the reconciliation balance was overlooked. The Commission has since faithfully implemented these amendments, and rejected proposals that would alter the reconciliation balance or the applicable interest rate to reflect tax impacts. Moreover, even if the General Assembly had made provision for tax adjustments, no ADIT adjustment would be warranted here because ComEd received no tax benefit in the rate year.

a. **The proposed adjustment is decidedly contrary to the law and Commission decisions.**

What is most striking about the Initial Briefs of the AG and CCI is their failure to directly and sincerely respond to the legislative history, case law, and Commission decisions regarding the calculation of the reconciliation balance and applicable interest rate. When duly considered,

they form a clear, coherent and controlling framework for determining the reconciliation adjustment and applicable interest rate. This framework does not allow for adjustments to the reconciliation balance such as that proposed by the AG and CCI.

Beginning with ComEd's initial formula rate case, the AG and others advanced proposals designed to erode recovery of the full reconciliation balance. Among these, the AG proposed the same ADIT adjustment that it continues to argue in this docket, and also joined others to argue that the interest rate applicable to the reconciliation balance should be set at ComEd's short-term debt rate rather than ComEd's weighted average cost of capital ("WACC"). *See generally* 2011 Rate Case Order at 166-167, 161-166. The Commission rejected the proposed ADIT adjustment on the merits, but set the interest rate based on a formula that produced a much lower rate than ComEd's WACC. *Id.* On rehearing, that rate was further lowered to ComEd's short-term debt rate. *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Order on Rehearing (Oct. 3, 2012) at 36.

The Commission's orders in ComEd's initial formula rate case caught the attention of the General Assembly, however, and swiftly prompted the passage of resolutions in both the House and Senate indicating that each house had thoroughly reviewed the orders and had identified a number of errors, including the failure to set the interest rate applicable to the reconciliation balance at ComEd's WACC:

WHEREAS, [EIMA] further provides in subsections (c) and (d) of Section 16-108.5 that those amounts to be credited or charged to customers following the annual reconciliation process under the performance-based formula rate shall be "with interest" so the utility will be made whole for unrecovered amounts that were prudently and reasonably incurred and customers will be made whole for amounts they overpaid, if any; and

WHEREAS, Such interest is intended to be set at the utility's weighted average cost of capital, determined in accordance with the statute, which represents the reasonable cost and means of financing a utility's investments and operating costs, so that the utility and customers are made whole when charges or credits

are necessary to reconcile to actual prudent and reasonable investments and costs;

House Resolution No. 1157, 2:23-3:14 (Aug. 17, 2012) (addressing the 2011 Rate Case Order); *see also* Senate Resolution No. 821, 2:23-3:14 (Nov. 29, 2012) (addressing the 2011 Rate Case Order and Order on Rehearing) (collectively, “Resolutions”). The Resolutions urged the Commission to correct this and other errors. Importantly, the Resolutions did not identify the Commission’s rejection of the AG’s proposed ADIT adjustment as an error.

Because the Commission did not correct all of these issues on rehearing or otherwise provide a means for ComEd’s tariffs to be revised to comply with the General Assembly’s Resolutions, the legislature subsequently amended EIMA to restate the existing law and “give binding effect to the legislative intent expressed in” the Resolutions. Public Act 98-0015, Sec. 1 (“PA 98-0015”) (May 23, 2013). Consistent with its Resolutions, the legislature made a number of clarifying changes to EIMA, including language specifying that the “interest” applicable to the reconciliation balance is the utility’s WACC. *See, e.g.*, PA 98-0015, 220 ILCS 5/16-108.5(d). Notably, PA 98-0015 made no changes to overturn the Commission’s rejection of the AG’s proposed ADIT adjustment, evincing the legislature’s acquiescence in the Commission’s ruling on this issue.⁴

Although the AG had no basis upon which to continue proposing the same ADIT adjustment rejected in Docket No. 11-0721, it nevertheless continued to argue for adoption of this proposal in four subsequent ComEd cases while the Resolutions and EIMA amendments made their way through the General Assembly. *See* Brosch Dir., AG Ex. 1.0 CORR., 18:415-18

⁴ “[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 presumption of legislative acquiescence is especially powerful where, as here, the legislature has amended other portions of the same law but left the relevant portion unchanged. *See State Bank of Cherry v. CGB Enters., Inc.*, 2013 IL 113836, ¶61.

(citing to ICC Docket Nos. 11-0721, 12-0321, 13-0318, 13-0386, and 13-0553). While the Commission rejected the ADIT proposal in each of these cases, it was not until Docket No. 13-0553 that the Commission had the opportunity to synthesize and apply the legislative history and recently enacted provisions of PA 98-0015 to the issues surrounding the reconciliation balance and interest rate.

At the AG's prompting, the Commission initiated Docket No. 13-0553 to investigate three issues regarding ComEd's formula rate tariff (Rate DSPP). Two of these issues involved adjustments to the reconciliation balance and associated interest rate: (i) ComEd proposed that the WACC interest rate applicable to the reconciliation balance should be "grossed up" to account for the taxes that apply to that interest, and (ii) the AG proposed the same adjustment it advances here – to reduce the reconciliation balance by the associated ADIT. In addressing these "reconciliation balance" issues, the Commission turned to the recent passage of PA 98-0015 and the legislative history to inform its analysis. With respect to the gross up of the WACC, the Commission concluded as follows:

The fact that the legislature, in P.A. 98-0015, specified an interest rate, not a return, and set WACC as the interest rate to be applied to the reconciliation balance without any mention of a "gross-up" for the effect of income taxes is determinative.

Commonwealth Edison Co., ICC Docket No. 13-0553, Final Order (Nov. 26, 2013) at 18.

Consistent with this plain and direct reading of the statute's language, the Commission also rejected the proposed ADIT adjustment to the reconciliation balance:

The Commission would note that this is not the first time the clarity of this subsection concerning the reconciliation balance has been called into question and that the legislature has already once amended it. Thus, it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express. *Davis v. Toshiba Machine Co.*, 186 Ill.2d 181, 184-185 (1999). Considering all the arguments presented regarding the meaning of Section 16-108.5(d)(1), the Commission cannot at this time support the AG and CCI's interpretation. For

purposes of this proceeding, ComEd is entitled to the full reconciliation balance with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior year. 220 ILCS 5/16-108.5(d)(1). In the future, if further arguments from the parties are presented or clarity from the legislature is provided on this topic, the Commission will revisit the issue.

Id. at 43. To summarize, then, the Commission addressed these reconciliation balance issues in a consistent, holistic manner that was faithful to PA 98-0015, the legislative history and the principle of legislative acquiescence. Indeed, this is precisely what ComEd witness Mr. Warren sought to elucidate in his testimony when he characterized these two conclusions as reflective of a “prescribed” rather than “cost-based” approach. *See generally* Warren Reb., ComEd Ex. 23.0, 4:83-11:240. In other words, the Commission interpreted EIMA and the legislative history as plainly prescribing the reconciliation balance and interest rate without further adjustment.

Against this backdrop, it is therefore unclear why the AG and CCI persist in challenging the Commission's consistent treatment of these “reconciliation balance” issues. Indeed, no further “clarity from the legislature [has been] provided on this topic.” *Commonwealth Edison Co.*, ICC Docket No. 13-0553, Final Order (Nov. 26, 2013) at 43. Moreover, the integrity and, as Mr. Warren explained, harmony of these conclusions cannot be questioned, and neither the AG nor CCI mounts any serious challenge to their logic. To the contrary, they entirely ignore the inconsistency in arguing for their ADIT adjustment without also calling for the gross-up of the WACC. At bottom, the “logic” or “principle” driving the AG and CCI proposal appears to be nothing more than an effort to reduce ComEd's recovery of the reconciliation balance and, ultimately, its actual costs. It should be rejected.

b. Even if the proposal were permissible under the law, it is not warranted and without merit.

If EIMA permitted adjustments to the reconciliation balance and associated interest rate (and it does not), the proposed ADIT adjustment to the reconciliation balance would not be

justified because ComEd received no current cash benefit due to the deferred payment of income taxes. Because neither the AG nor CCI offers any new arguments and the matter is explained at length in ComEd's testimony and Initial Brief, this Reply Brief will not belabor the point, except to again underscore that with reconciliation ADIT, *both* the receipt of the reconciliation balance revenue *and* payment of the income taxes associated therewith are deferred. As a result, the deferred payment of income taxes provides no current source of funds to the utility. *See generally* ComEd Init. Br. at 58-59; Brinkman Reb., ComEd Ex. 12.0 REV., 23:470-35:727; Warren Reb., ComEd Ex. 23.0, 4:79-15:318; Brinkman Sur., ComEd Ex. 25.0, 18:355-27:544; Warren Sur., ComEd Ex. 33.0, 2:23-12:244.

While not a new argument, it is important to correct a misunderstanding that is common to the Initial Briefs of both the AG and CCI. In short, these Briefs seem to suggest that ComEd opposes ADIT adjustments generally, and go to great lengths to explain the concept of ADIT and the Commission's and courts' adoption of ADIT adjustments in various cases. *See generally* AG Second Corr. Init. Br. at 44-53; CCI Init. Br. at 14-18, 22-25. All of this is beside the point. ComEd witness Ms. Brinkman testifies extensively about the accounting rationale for ADIT; no issue exists with the concept generally. Brinkman Reb., ComEd Ex. 12.0 REV., 23:470-35:727; Brinkman Sur., ComEd Ex. 25.0, 18:355-27:544. Indeed, it is that very accounting logic that requires that the ADIT adjustment be rejected here (*i.e.*, because there is no cash benefit to ComEd). For these same reasons, CCI's discussion of an Ameren appellate case and the AG's discussion of a Hawaii case are irrelevant. Neither speaks to the specific facts, law or legislative history at issue here with respect to whether adjustments are allowed *to the reconciliation balance*. Indeed, the ADIT issue in the Ameren case has nothing to do with the reconciliation balance at all, and, besides the obvious fact that the Hawaii decision does not involve the

interpretation of EIMA, ComEd witness Mr. Warren has otherwise explained the irrelevance of the Hawaii decision. *See Ameren Ill. Co. v Ill. Commerce Comm'n et al*, 2013 IL App (4th) 121008, ¶¶34-39; Warren Sur., ComEd Ex. 33.0, 5:88-7:133.

For these reasons, the proposed ADIT adjustment to the reconciliation balance should again be rejected by the Commission consistent with its past decisions and the clear directives of the General Assembly.

VIII. REVENUES

A. Overview

B. Potentially Contested Issues

1. Billing Determinants

While the proposed billing determinants incorporate the adjustment adopted by the Commission in ComEd's last formula rate update, ComEd urges the Commission to depart from that ruling here because the evidence in this docket does not support the adjustment. *See* 2013 Rate Case Order at 80. Indeed, the Initial Briefs of AG, CCI and Staff devote little attention to the matter, reflecting the incorrect assumption that they are now entitled to the billing determinants adjustment in each case regardless of what the facts show. Yet, as each of these parties readily admitted in recent briefing, the Commission is entirely free to depart from past rulings based on the record in the current case.⁵ And, moreover, if the adjustment did follow simply from the law and the nature of EIMA ratemaking without need of specific factual support,

⁵ ICC Docket No. 14-0316, Staff Response in Opposition to ComEd's Verified Expedited Motion to Open an Investigation Regarding the Definition of Formula Rate Structures and Protocols (July 3, 2014) at 8; AG Response to ComEd's Motion to Open an Investigation Regarding the Definition of Formula Rate Structure and Protocols (July 3, 2014) at 8-9; CUB Response to ComEd's Verified Expedited Motion to Open an Investigation Regarding the Definition of Formula Rate Structure and Protocols (July 3, 2014) at 3-5.

the Commission's imposition of an adjustment on ComEd and not Ameren would necessarily be arbitrary and discriminatory.

As ComEd explained at length in testimony and its Initial Brief, intervenors have not provided the evidence required to support adoption of the adjustment again in this docket.⁶ To be clear, what is at issue is an *adjustment to* the EIMA protocol calling for the determination of “historical weather normalized billing determinants.” 220 ILCS 5/16-108.5(c)(4)(H). While the historical period (2013) is not at issue, the modification to the matching historical billing determinant to increase the number of customers beyond the number actually served in 2013 is at issue, and intervenors have not proffered the substantial evidence necessary to again support modification to the EIMA protocol.

Because the Initial Briefs of AG, CCI and Staff presented no evidence or new argument in support of the modification, ComEd will not repeat all of its arguments here. Suffice it to say that the proposed adjustment is a solution in search of a problem and its implementation poses serious cost recovery risk to ComEd. First, an adjustment to account for 2014 plant additions is not needed. Any over collection due to the inclusion of new plant additions will be temporary and corrected through the reconciliation (with interest). Indeed, the AG concedes as much. Effron Dir., AG Ex. 2.0, 5:105-107 (“[B]ecause of the reconciliation process, the inclusion of New Business plant additions in the pro form rate base does not ultimately affect the revenues recovered by ComEd after the reconciliation process is complete.”)⁷ Moreover, the Commission

⁶ ComEd Init. Br. at 62-65; Brinkman Reb., ComEd Ex. 12.0 REV., 20:397-23:466; Brinkman Sur., ComEd Ex. 25.0, 15:298-18:351.

⁷ Indeed, as explained by ComEd witness Ms. Brinkman, the adjustment violates the “matching principle” that AG witness Mr. Effron claims to support. In short, the rates being set in this case recover (i) actual 2013 costs and (ii) a projection of approximate 2015 costs that will not be reconciled to actual 2015 costs until two years later. As a result, the adjustment's use of estimated *post-2013* billing determinates to set the rates recovering *actual 2013* costs creates a mismatch. Brinkman Reb., ComEd Ex. 12.0 REV., 22:445-456.

has never made an analogous adjustment to Ameren’s billing determinants despite Ameren’s parallel treatment of projected plant additions. Brinkman Reb., ComEd Ex. 12.0 REV., 22:459-23:462. As a result, this adjustment is superfluous to the formula rate process and not required to protect customers.

Second, adoption of this unnecessary adjustment would harm ComEd by permanently depriving it of the opportunity to recover the revenue requirement reflecting 2013 costs. In other words, overstating the billing determinants results in a shortfall that is never reconciled and corrected. While CCI claim otherwise (CCI Init. Br. at 26), they are clearly mistaken and fundamentally misunderstand formula ratemaking under EIMA. Although EIMA provides a reconciliation of the initial and actual *revenue requirement*, it does not provide a mechanism whereby ComEd can recover *revenues* which it failed to receive during 2015 due to incorrect (overstated) billing determinants.

Given that the proposed adjustment is not needed to protect customers from overpayment and would cause ComEd irreversible harm, the adjusted billing determinant should not be adopted. Instead, the EIMA protocol should be implemented without modification – 2013 “historical weather normalized billing determinants.” 220 ILCS 5/16-108.5(c)(4)(H).

IX. COST OF SERVICE AND RATE DESIGN

A. Overview

B. Potentially Uncontested Issues

- 1. Embedded Cost of Service Study**
- 2. Distribution System Loss Factor Study**
- 3. Secondary and Service Loss Study**
- 4. Other**

X. OTHER

- A. **Overview**
- B. **Potentially Uncontested Issues**
 - 1. **Intercompany Receivables and Payables Management Model Document**
 - 2. **Wages and Salaries Allocator Utilized in Rider PE and Rate BESH**
 - 3. **Reporting Requirements**
- C. **Potentially Contested Issues**
 - 1. **Update of Exelon Business Services Company General Services Agreement**

Staff recommends that the Commission order ComEd to update its GSA – a costly and burdensome endeavor that would require the participation of all Exelon Operating Companies as well as approval from several state Commissions – despite the fact that the GSA is *already* fully compliant with the Public Utility Holding Company Act of 2005 (“2005 PUHCA”). *See* ComEd Init. Br. at 72-73; *see also* Staff Init. Br. at 63-68. In support of its position, Staff repeats the same claims that ComEd fully rebutted with testimonial evidence and in its Initial Brief. *See* ComEd Init. Br. at 72-23; *see also* Brinkman Reb. ComEd Ex. 12.0 REV., 18:365-19:387; Brinkman Sur., ComEd Ex. 25.0, 12:240-15:296. Staff’s sole new claim, that the Commission is not bound to approve the GSA as the Pennsylvania Public Utility Commission has recently done, misses the point: the GSA is already compliant with the 2005 PUCHA for all of the reasons set forth in ComEd’s Initial Brief. *See* Staff Init. Br. at 68. The Commission should decline to adopt Staff’s recommendation.

2. **Customer Care Costs**

The evidentiary record demonstrates that ComEd’s Updated Switching Study (“Switching Study”), properly allocates its customer care costs to the delivery service function for recovery through delivery service charges. Since the restructuring of the electric industry and

the creation of delivery service charges, the Commission has consistently treated customer care costs as delivery service costs and has allowed for their recovery through delivery service charges. Brinkman Dir., ComEd Ex. 2.0, 35:710-712. The Switching Study identifies ComEd's embedded customer care costs for 2013, removes costs directly related to delivery services and then examines whether its customer service costs are sensitive to customer switching. ComEd Init. Br. at 74. This analysis has been used on multiple occasions to assess whether a portion of ComEd's customer care costs should be allocated to the supply function. *Id.* Of the three studies presented in this docket, the evidence demonstrates that the Switching Study presents the most accurate approach to allocating ComEd's customer care costs. Staff and the Illinois Competitive Energy Suppliers ("ICEA") support this fact-based analysis and recommend that the Commission adopt the Switching Study to analyze whether, and to what extent, customer care costs should be allocated to ComEd's supply function. Staff Init. Br. at 69; Wright Reb., ICEA Ex. 1.0 CORR., 7:136-139.

The Retail Energy Supply Association ("RESA") asks the Commission to reject the Switching Study's fact-based approach and, instead, *assume* that some level of customer care costs must be related to ComEd's supply function. RESA Init. Br. at 20. The Switching Study found that, despite more than two-thirds of ComEd's customers switching to RES-provided supply, there has been a *de minimis* change to its level of customer care costs. Brinkman Dir., ComEd Ex. 2.0, 40:831-832; Donovan Reb., ComEd Ex. 16.0, 8:152-155; ComEd Ex. 16.02. RESA's position would have the Commission ignore the facts and leap to the conclusion that a certain portion of ComEd's customer care costs are incurred to support ComEd-provided supply activities. RESA Init. Br. at 4, 14. No other party supports RESA's proposal to use its Modified Allocation Study, ComEd's Allocation Study, or any other allocation study as a basis to shift

customer care costs to ComEd's supply rate.⁸ Indeed, Staff recognized that the Allocation Study is inherently an exploratory exercise not tied to the reality of ComEd's operations, and is based on assumptions that are wholly unrelated to ComEd's actual customer service operations. Staff Init. Br. at 80. Accordingly, the Commission should reject RESA's position and find that ComEd's Switching Study is the best tool to evaluate the appropriate allocation of customer care costs.

a. RESA's Criticisms of the Switching Study Are Flawed

RESA presents a variety of flawed claims to support its proposal to reject the Switching Study and could not identify any *actual* customer care costs that solely relate to ComEd's supply function. In short, RESA urges rejection because the study allocates no costs to ComEd's supply function, (RESA Init. Br. at 2, 5), but fails to identify any *actual* customer care costs that solely relate to ComEd's supply function. The Commission should not adopt RESA's results-oriented approach.

RESA first takes issue with the fact that the Switching Study analyzes the extent to which ComEd's customer care costs vary at different customer switching levels. RESA Init. Br. at 5-6. It goes so far as to claim that the Commission "rejected" that approach in ComEd's last rate design investigation proceeding, Docket No. 13-0387 ("2013 RDI"). *Id.* That claim is false. ComEd did not present any switching study in the 2013 RDI proceeding. Brinkman Reb., ComEd Ex. 12.0 Rev., 36:766-37:773; 38:799-801. Moreover, the Commission adopted the use of a switching study in ComEd's 2010 rate case, and rejected the use of an allocation study.

⁸ It is unclear which members of RESA, if any, actually support RESA's position in this proceeding. RESA Init. Br. at 1, fn. 1; *see also*, ComEd Init. Br. at 83, fn. 21.

2010 Rate Case Order at 210.⁹ In sum, the Commission’s 2013 RDI Order (*Commonwealth Edison Co.*, ICC Docket No. 13-0387, Final Order (Dec. 18, 2013) (“2013 RDI Order”)) sought more information concerning the appropriate methodology to assess the customer care cost allocation issue, and did not preclude any party from presenting a Switching Study, or any other methodology, in this proceeding. Brinkman Reb., ComEd Ex. 12.0 REV., 35:744-36:761.

Next, RESA erroneously claims that the market requires “competitive parity” between RES supply rates and ComEd’s supply rate. RESA Init. Br. at 3, 13-14, 21. In truth, questions of competitive parity have no place in this proceeding. Instead, the sole focus of this proceeding is ComEd’s costs and how such costs are allocated. Moreover, ComEd is not competing against RES supply rates. Hemphill Reb., ComEd Ex. 11.0, 8:168-9:198. Rather, ComEd is statutorily obligated to offer supply service as the provider of last resort (“POLR”), and it must do so with no opportunity to earn a profit on that service. Hemphill Reb., ComEd Ex. 11.0, 13:271-14:277. Put another way, ComEd cannot compete against RES supply rates, and it has no incentive to do so. *Id.*

Even if competitive parity was a legitimate consideration, and it is not, RESA’s claim also fails to recognize that there is no way in which to compare the development of ComEd’s fully disclosed cost-based prices with prices charged by RESs that require no documentation or publication of how they are determined. Hemphill Sur., ComEd Ex. 24.0, 8:160-162. Unlike ComEd, RESs are “*not required*” to develop their prices in accordance with specified formulae,

⁹ In 2010, at a time when the percentage of customers taking supply service from a retail energy supplier (“RES”) was in the single digits, ComEd submitted a switching study to the Commission that concluded that ComEd’s customer care costs would not decrease, even if 100% of customers switched to RES-provided supply. Staff Init. Br. 74-76. The Commission approved the use of that study. *Id.* Now, with 69% of customers receiving RES-provided supply, ComEd submitted a Switching Study which again 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.

document how they develop their prices, list their costs, detail how their prices correspond to their costs, or even if there is any relationship between their costs and their prices.” *Id.*, 8:156-159 (emphasis included in original).

ICEA’s support for the Switching Study also undermines RESA’s competitive parity claim. Wright Reb., ICEA Ex. 1.0 CORR., 7:136-139; Donovan Sur., ComEd Ex. 29.0, 1:19-2:34. ICEA represents a group of retail energy suppliers – many of whom are also members of RESA.¹⁰ Yet, ICEA does not support RESA’s position. The facts explain ICEA’s position: the level of customer switching in ComEd’s service territory has rocketed to 69% for residential customers, and 80% for non-residential customers, even though *all* of ComEd’s customer care costs have been recovered through delivery service charges. Hemphill Sur., ComEd Ex. 24.0, 6:114-117. Similarly, the Commission’s Office of Retail Market Development’s report to the General Assembly for 2014 does not identify any competitive parity concerns. *Id.*, 6:117-120. For all of the foregoing reasons, RESA’s competitive parity claim provides no basis to reject the Switching Study.

RESA also claims that ComEd’s statutory POLR obligation is of no consequence when assessing whether to allocate a portion of customer care costs to ComEd’s supply function. RESA Init. Br. at 8. In doing so, RESA suggests that in its 2013 RDI Order the Commission rejected claims that ComEd’s POLR obligations should be considered. *Id.* That is not the case. The Commission made clear that costs should be recovered from cost causers. 2013 RDI Order at 57. Here, the facts confirm that ComEd’s customer care costs are incurred to serve *all* customers. Hemphill Reb., ComEd Ex. 11.0, 5:96-6:116. ComEd witness Dr. Hemphill

¹⁰ 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.

explained in detail that ComEd's POLR obligation requires it to have all of the systems and processes in place to support the customer care function, regardless of where customers obtain supply service. *Id.* Additionally, ComEd must maintain such systems and processes at all times, because it has no control as to when customers may leave to, or return from, RES-provided supply. *Id.*, 4:84-5:95. Put another way, ComEd simply cannot avoid common customer care costs because it cannot eliminate its role as the POLR, no matter how many customers obtain electric supply services from RESs. *Id.*, 6:110-112. Staff agrees with this assessment. Staff Init. Br. at 77. In conclusion, the facts support Dr. Hemphill's testimony, as ComEd's customer care costs have not decreased despite the fact that 69% of its residential customers are now taking supply service from a RES. Brinkman Dir., ComEd Ex. 2.0, 40:831-832; Donovan Reb., ComEd Ex. 16.0, 8:152-155; ComEd Ex. 16.02.

RESA then compounds this erroneous claim by repeatedly claiming that the Switching Study fails to consider the RESs' costs. RESA Init. Br. at 3, 6. RESs' costs are irrelevant to assessing how ComEd's customer care costs should be allocated. In fact, it would be inappropriate to consider – in any fashion – a RES' costs in this proceeding. Hemphill Reb., ComEd Ex. 11.0, 8:153-167. Indeed, a RES' price for supply service is not regulated, and ComEd has no information concerning a RES' cost structure. *Id.*

The fact that ComEd and RESs incur costs related to similar customer care activities does not provide a basis to reject the Switching Study. RESA Init. Br. at 6-8. RESA's underlying assertion is that customers who take supply from a RES are somehow paying twice for customer care services. *Id.* That claim is wrong. First, ComEd incurs customer care costs to support the provision of customer services to all of its customers. RESA has not identified a single dollar of ComEd's customer care costs that is related solely to its supply function. Second, the Illinois

General Assembly recognized that there would be some level of redundancy in costs. For example, the Act expressly requires both electric utilities and RESs to have call centers to address customer inquiries. 220 ILCS 5/16-123; Hemphill Reb., ComEd Ex. 11.0, 7:138-152. In the end, RESA offers speculation, not facts. It has provided no evidence showing where RES customers are *actually* paying twice for a specific customer care service because no such fact exists. Moreover, RESA's inference that ComEd supply customers pay nothing for customer care costs also is incorrect. RESA Init. Br. at 6-7. The evidence shows that all of ComEd's customer care costs are applicable to all customers, regardless of supplier. ComEd Init. Br. at 75-79.

Finally, RESA's claim that some level of ComEd's customer care costs is attributable to its supply function disregards how Illinois and the vast majority of other jurisdictions address this issue. As ComEd and Staff note, since the inception of retail competition, Illinois utilities have allocated customer care costs to its delivery service function. ComEd Init. Br. at 74; Staff Init. Br. at 80. Furthermore, the vast majority of jurisdictions authorize the recovery of all customer care costs through delivery charges. ComEd Init. Br. at 77; Staff Init. Br. at 80-81 ("Out of the 21 regulatory jurisdictions throughout the United States identified in an industry-wide review offered by ComEd, there is not one jurisdiction that reallocates customer care costs among regulated entities from delivery to supply.").

b. The Record Contains No Reasonable Basis to Adopt RESA's Modified Allocation Study

RESA's Initial Brief confirms why the Commission should reject RESA's Modified Allocation Study, or any allocation study, which will shift costs to ComEd's supply rates: RESA bases its position on assumptions, not facts. First, RESA asserts that, "as a threshold matter," the Commission should determine that it is appropriate to allocate customer care costs to ComEd's

supply function. RESA Init. Br. at 4, 14. RESA makes this claim despite the fact that it could not identify even \$1 of ComEd's actual customer care costs that is incurred solely to provide supply-related customer care. RESA did not, and cannot, refute this fact, and the evidentiary record proves otherwise. As discussed above and in ComEd's Initial Brief, ComEd's customer care costs are incurred to serve all customers, regardless of which entity provides supply. ComEd Init. Br. at 75-79.

Second, RESA's Initial Brief did not address, and cannot refute the fact that its Modified Allocation Study fails to consider ComEd's actual operations. In contrast, ComEd's Switching Study is based on actual operations and customer switching experience. Staff likewise recognized this flaw with the Allocation Studies, explaining that the evidentiary record shows that the Allocation Study "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." Staff Init. Br. at 80. In sum, RESA offers no reasonable explanation as to why the Commission should utilize assumptions instead of facts to assess the allocation issue.

RESA also urges the adoption of its Modified Allocation Study premised upon the concept of "competitive parity." RESA Init. Br. at 15. As described in the preceding subsection, the question of competitive parity is not properly before the Commission. Stated simply, ComEd is not competing with RESs, and claims about the market have no bearing on the Commission's determination as to whether, and to what extent, ComEd's customer care costs should be allocated to the supply function. Hemphill Reb., ComEd Ex. 11.0, 8:168-9:198.

RESA's Modified Allocation Study also improperly inflates the level of costs assumed to be supply-related. RESA Init. Br. at 15-18. Each of RESA's suggested modifications to

ComEd's Allocation Study rests on additional assumptions, not ComEd's actual experience. ComEd witness Donovan explained that RESA's suggested modifications were not reasonable. Donovan Reb., ComEd Ex. 16.0, 9:185-11:230; Donovan Sur., ComEd Ex. 29.0, 2:44-8:183, 13:280-289. For example, RESA's Modified Allocation Study does not limit itself to customer care costs. It inappropriately allocates charitable contribution costs to ComEd's supply function. Brinkman Reb., ComEd Ex. 12.0 REV., 43:926-44:938. Additionally, it inappropriately allocates customer service costs that are directly related to delivery service to ComEd's supply function. Donovan Reb., ComEd Ex. 16.0, 9:165-10:208, Donovan Sur., ComEd Ex. 29.0, 5:103-8:183.

Finally, RESA's claim that the use of an allocation study will not result in stranded costs is premised on an incorrect understanding of the Allocation Study. RESA Init. Br. at 9. In particular, RESA claims that the Allocation Study uses allocators based on revenues. *Id.* That is incorrect. ComEd witness Brinkman explained that certain allocators were based on assumptions, not revenues. Consequently, with the use of either the Modified Allocation Study or ComEd's Allocation Study, the potential for a "last one standing" problem remains. Brinkman Reb., ComEd Ex. 12.0 REV., 41:870-42:897.

For the reasons set forth above, the Commission should reject RESA's proposed Modified Allocation Study.

c. **RESA's Alternative Proposal – Adopting ComEd's Updated Alternative Analysis – Also Should Be Rejected**

Finally, the Commission should reject RESA's alternative proposal, which would have the Commission adopt ComEd's updated Alternative Analysis. RESA Init. Br. at 20. As detailed in ComEd's Initial Brief, the evidence demonstrates that the Switching Study presents the most accurate approach to allocating ComEd's customer care costs. ComEd Init. Br. at 79-

82. No other party supports RESA's position, and ComEd and Staff have provided detailed explanation as to why the updated Alternative Analysis and RESA's Modified Allocation Study are inappropriate. *Id.*; Staff Init. Br. at 74-81. Therefore, the Commission should reject RESA's proposals to adopt the updated Alternative Analysis.

3. Capacity Unbundling

ComEd has addressed ICEA's proposal regarding capacity unbundling in its Initial Brief. *See* ComEd Init. Br. at 85-86. ICEA's request – that the Commission order ComEd to file an unbundling tariff within 30 days – puts the cart before the horse and necessarily requires the Commission to prejudge that capacity costs should be unbundled. *See* ICEA Init. Br. at 6-7. ComEd reiterates that the Commission should refrain from prejudging or otherwise addressing this subject in its order in this docket.

XI. CONCLUSION

Based on the record and the arguments made in ComEd's Initial Brief and herein, the Commission should approve ComEd's proposed 2015 Rate Year Net Revenue Requirement as presented in ComEd's Initial Brief, 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.

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Respectfully submitted,
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