

**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.	:	

**DRAFT POSITION STATEMENTS AND DRAFT CONCLUSIONS**  
**SUBMITTED BY COMMONWEALTH EDISON COMPANY**

## TABLE OF CONTENTS

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

C.	Potentially Contested Issues.....	15
1.	Cash Working Capital .....	15
a.	Pension and OPEB expense leads .....	15
b.	Pass-through taxes revenue lags for the IEET and CIMF.....	18
c.	Pass-through taxes expense leads .....	21
d.	Intercompany billings expense lead .....	23
2.	Other .....	24
V.	OPERATING EXPENSES .....	24
A.	Overview .....	24
B.	Potentially Uncontested Issues.....	24
1.	Distribution O&M Expenses (issues not identified in V.C.).....	24
2.	Customer-Related O&M Expenses (issues not identified in V.C.).....	25
3.	Administrative and General Expenses (issues not identified in V.C.) .....	25
4.	Charitable Contributions.....	26
5.	2013 Merger Expense.....	26
6.	Sales and Marketing Expenses.....	26
7.	Depreciation and Amortization Expense (issues not identified in V.C.) .....	26
8.	Regulatory Asset Amortization.....	26
9.	Operating Cost Management Efforts.....	27
10.	Lobbying Expense.....	27
11.	Rate Case Expenses .....	27
12.	Corporate Credit Cards .....	29
13.	Gross Revenue Conversion Factor .....	29
C.	Potentially Contested Issues.....	29
1.	Depreciation for the Filing Year Revenue Requirement.....	29
2.	Incentive Compensation Program Expenses .....	29
a.	Annual Incentive Program (“AIP”).....	29
i.	EIMA.....	31
ii.	Cannons of Statutory Interpretation and Construction .....	32
iii.	Recent Commission Practice and Legislative Acquiescence .....	36
iv.	Prior Commission Practice .....	37
v.	Staff’s Alternative Recommendation for Recovery of 102.9% of Target .....	40
b.	Key Manager Long Term Performance Plan (“LTTP”) .....	44
c.	Long-Term Performance Share Awards Program (“LTPSAP”).....	47
3.	Collection Agency Costs .....	49
VI.	RATE OF RETURN .....	50
A.	Overview.....	50

B.	Capital Structure .....	50
C.	Cost of Capital Components .....	51
1.	Rate of Return on Common Equity .....	51
2.	Cost of Long-Term Debt.....	51
3.	Cost of Short-Term Debt.....	51
4.	Overall Weighted Cost of Capital .....	51
VII.	RECONCILIATION .....	51
A.	Overview .....	51
B.	Potentially Contested Issues.....	52
1.	Calculation of Interest on Reconciliation Balance .....	52
a.	Applicable Law and Commission Decisions .....	52
b.	Substantive Issues with the Proposal.....	56
c.	The Proposal’s Lack of Consistency and Symmetry .....	56
d.	Defects with the “Alternative Proposal” to Reduce Rate Base for ADIT Unrelated to Rate Base .....	58
VIII.	REVENUES.....	59
A.	Overview.....	59
B.	Potentially Contested Issues.....	59
1.	Billing Determinants .....	59
IX.	COST OF SERVICE AND RATE DESIGN .....	63
A.	Overview .....	63
B.	Potentially Uncontested Issues.....	63
1.	Embedded Cost of Service Study .....	63
2.	Distribution System Loss Factor Study .....	64
3.	Secondary and Service Loss Study .....	64
4.	Other .....	65
a.	Rate Design.....	65
b.	SBO Credit and DLFs.....	65
X.	OTHER.....	66
A.	Overview.....	66
B.	Potentially Uncontested Issues.....	66
1.	Intercompany Receivables and Payables Management Model Document.....	66
2.	Wages and Salaries Allocator Utilized in Rider PE and Rate BESH .....	66
3.	Reporting Requirements .....	66
a.	EIMA Investments .....	66
b.	Reconciliation Year Plant Additions.....	67
c.	Contributions to Energy Low-Income and Support Programs.....	67
C.	Potentially Contested Issues.....	67
1.	Update of Exelon Business Services Company General Services Agreement.....	67

2.	Customer Care Costs.....	69
a.	Allocation Study vs. Switching Study.....	69
b.	Direct Operation and Maintenance (O&M) Costs and Indirect Costs .....	71
c.	Allocation Study.....	71
3.	Capacity Unbundling.....	73
XI.	CONCLUSION.....	74
XII.	Findings and Ordering Paragraphs.....	74

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**PROPOSED ORDER**

**I. INTRODUCTION / STATEMENT OF THE CASE**

**A. Procedural History**

On April 16, 2014, Commonwealth Edison Company (“ComEd”) filed with the Illinois Commerce Commission (the “Commission” or “ICC”) ComEd’s annual formula rate update and revenue requirement reconciliation and requested the Commission to authorize and direct ComEd to make the compliance filings necessary to place into effect the resulting charges to be applicable to delivery services provided by ComEd beginning on the first day of ComEd’s January 2015 billing period, as authorized by Section 16-108.5(d) of the Public Utilities Act (the “Act” or “PUA”), 220 ILCS 5/16-108.5(d).

ComEd’s filing, consistent with Section 16-108.5(d)(1), included:

- updated inputs to the performance-based formula rate for the applicable rate year (2015) that are based on final historical data reflected in the utility’s most recently filed annual FERC Form 1 (for 2013) plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed (2014).
- a reconciliation of the revenue requirement that was in effect for the prior rate year (2013) (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 (for 2013) that reports the actual costs for the prior rate year).

The filing, consistent with Section 16-108.5(d)(1), also included: (1) a corporate officer certification relating to reconciliation Schedule “Sch FR A-1 REC” and (2) the new delivery services charges corresponding to the updated costs and reconciled revenue requirement.

Statutorily, this docket must conclude by December 12, 2014. 220 ILCS 5/16-108.5(d)(3).

The following ComEd witnesses testified in this case: Melissa Y. Sherrod, Christine M. Brinkman, Sandeep S. Menon, John Hengtgen, Kevin H. Garrido, Michael C. Moy, Ronald E. Donovan, Russell A. Feingold, Michael F. Born, John L. Leick, Dr. Ross Hemphill, Kathryn Houtsma, Gary Prescott, Kevin B. Brookins, David J. Wathen, Dean F. Apple, Christ T. Siambekos, and James I. Warren.

The following Staff witnesses testified in this case: Theresa Ebrey, Richard W. Bridal II, Phil A. Hardas, Philip Rukosuev, and Greg Rockrohr.

In addition to ComEd and Staff, the following parties have submitted testimony in this case: the People of the State of Illinois ("AG"); the City of Chicago ("City"), the Citizens Utility Board ("CUB"), and the Illinois Industrial Energy Consumers ("IIEC") (collectively, "CCI"); Retail Energy Supply Association ("RESA"); the Chicagoland Chamber of Commerce ("CCC"); the Illinois Competitive Energy Association ("ICEA"); and the Illinois Chamber of Commerce ("IL Chamber").

During the course of the proceeding, Staff and other parties proposed various adjustments and changes to the Company's proposed revenue requirements. ComEd accepted some of these adjustments and changes.

An evidentiary hearing was convened in this docket at the Commission's Chicago Office before duly authorized Administrative Law Judges ("ALJs") on August 27th and 28th, 2014. The parties filed and served Initial Briefs on September 10, 2014. Reply Briefs were filed and served on September 17, 2014. Briefs on Exceptions were filed and served on October 23, 2014. Reply Briefs on Exceptions were filed and served on October 30, 2014.

## **II. OVERALL REVENUE REQUIREMENT**

This formula rate update ("FRU") proceeding sets ComEd's distribution rates applicable during 2015. Those rates are set in order to recover the balance of ComEd's fully reconciled actual costs for rate year 2013 as well as the initial projection of ComEd's 2015 costs as provided for by EIMA.<sup>1</sup> The 2015 Rate Year Net Revenue Requirement used to set those rates derives from the following figures:

1. The 2013 Reconciliation Adjustment – the difference between ComEd's rates in effect in 2013 and the 2013 Reconciliation Revenue Requirement determined based on ComEd's actual 2013 costs as reported in its Federal Energy Regulatory Commission ("FERC") Form 1 for 2013, corrected for the lost time value of money;

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

2. The 2015 Initial Rate Year Revenue Requirement – a projection of 2015 costs based on ComEd’s actual 2013 operating costs and rate base plus projected 2014 plant additions and the associated adjustments to accumulated depreciation (the associated change in the depreciation reserve), depreciation expense, and, per the Commission’s prior Orders, accumulated deferred income taxes (“ADIT”);
3. The “ROE Collar” adjustment relating to 2013 and the “ROE Penalty Calculation” applicable to 2013.

*E.g.*, ComEd Ex. 2.0 at 6-13.

ComEd presented substantial evidence supporting its proposed 2015 Rate Year Net Revenue Requirement and the components thereof through the testimony of 18 witnesses and the attachments, schedules, and exhibits they sponsored. Staff and intervenors presented evidence on a limited number of contested issues. The Commission’s determinations on the subject of rate base issues are reflected and set forth below in the applicable sections of this Order.

**A. 2015 Initial Rate Year Revenue Requirement**

ComEd presented extensive evidence showing that its properly calculated 2015 Initial Rate Year Revenue Requirement, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$2,361,589,000. ComEd Ex. 13.0 at 5; ComEd Ex. 13.01, Sch FR A-1 REC, line 23. [The Commission approves ComEd’s figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission’s determination regarding the 2015 Initial Rate Year Revenue Requirement is set forth later in this Order.]

**B. 2013 Reconciliation Adjustment**

ComEd presented detailed evidence that its properly calculated 2013 Reconciliation Adjustment (including interest), reflecting the difference between the rates in effect in 2013 and the actual 2013 Reconciliation Revenue Requirement, is \$257,621,000. *E.g.*, ComEd Ex. 13.01, Sch A-1, line 24. [The Commission approves ComEd’s figure based on the detailed evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission’s determination regarding the 2013 Reconciliation Adjustment is set forth later in this Order.]

**C. ROE Collar and ROE Penalty Calculation**

ComEd presented detailed evidence that its properly calculated ROE Collar adjustment is \$0. *E.g.*, ComEd Ex. 13.01, Sch FR A-1, line 35. The ROE Penalty Calculation is set forth on workpaper (“WP”) 23 and is reflected in ComEd’s Cost of

Capital Computation on Sch FR D-1. See ComEd Exs. 3.02 and 13.01. ComEd has reflected a penalty of 5 basis points for the Reconciliation Year on Sch FR D-1, line 9 as a result of failing to meet a service reliability performance metric resulting in a reduction of the allowed ROE to 9.20%. ComEd Ex. 2.0 at 11; ComEd Ex. 13.01, Sch FR D-1, lines 9, 11. The Commission approves ComEd's figure based on the detailed evidence in the record and the reasons indicated later in this Order with respect to the contested issues.

**D. 2015 Rate Year Net Revenue Requirement**

Accordingly, ComEd provided extensive evidence that its properly calculated 2015 Rate Year Net Revenue Requirement, reflecting the adjustments made in rebuttal testimony, is \$2,619,210,000. *E.g.*, ComEd Ex. 13.0 at 1, 5; ComEd Ex. 13.01, Sch FR A-1, line 36.<sup>2</sup>

**III. SCOPE OF THIS PROCEEDING**

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

**ComEd's Position**

This proceeding was initiated pursuant to Section 16-108.5(d) of the PUA, a provision of EIMA that defines this proceeding and limits its scope. ComEd states that the statutory purpose of this proceeding is to evaluate “the prudence and reasonableness of the costs incurred by [ComEd] to be recovered during the applicable [2015] rate year that are reflected in the inputs to the performance-based formula rate derived from the utility’s FERC Form 1.” 220 ILCS 5/16-108.5(d). ComEd explains that while input data is updated annually, the formula itself is not.

ComEd’s Commission-approved rate formula governs the calculation of ComEd’s 2015 Initial and 2013 Reconciliation Revenue Requirements, and any adjustment attributable to the ROE Collar. ComEd Init. Br. at 6-7. ComEd states that “the specifics of [the rate] calculation and the identification of the specific inputs used to conduct it are found in the formula rate itself and are not a subject of this proceeding.” *Id.*

ComEd asserts that witnesses for the AG, CCI, and Staff propose adjustments that are counter to the established formula under EIMA. ComEd Init. Br. at 7-8.<sup>3</sup>

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<sup>2</sup> ComEd notes that a portion of its credit card charges that have been voluntarily excluded are not reflected in the rebuttal position revenue requirement, but ComEd will make the necessary adjustment in its compliance filing. See Section V.B.12, *infra*.

<sup>3</sup> Staff witness Ms. Ebrey proposes a change in the way that depreciation is estimated in the rate formula in response to ComEd’s latest depreciation study. Staff Ex. 7.0 at 12-13. ComEd and Staff agree, however, that the issue will be decided in Docket No. 14-0316, ComEd’s Petition to Make Housekeeping

ComEd states that these proposals are inconsistent with the rate formula and would calculate revenue requirement components in different ways and/or using different data than the formula spells out. In the prior formula update proceeding (Docket No. 13-0318), witnesses for the AG and CCI argued that “ADIT related to the reconciliation balance [should] be netted against the reconciliation balance before calculating the interest expense,” an adjustment the Commission has previously rejected and found to require impermissible formula changes. ComEd notes that these same arguments are raised again in this proceeding (AG Ex. 4.0 at 4-12; CCI Ex. 2.0 at 9-16; AG Ex. 3.0 CORR. at 3-21). ComEd contends that the witnesses’ arguments should be rejected for the same reasons and because ComEd properly accounts for ADIT related to the reconciliation.<sup>4</sup> As this Commission has previously held, “The proposal to consider and change the structure and protocols of ComEd’s formula rate related to the calculation of deferred income taxes on reconciliation balance are beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding.” *Commonwealth Edison Co.*, ICC Docket No. 13-0318, Final Order (“2013 Rate Case Order”) (Dec. 18, 2013) at 63.

ComEd contends that because the suggested proposals are inconsistent with the established rate formula, they must be rejected in this case. ComEd Ex. 25.0 at 8, 19. ComEd explains that adoption of any of the proposals would change the current formula, and EIMA expressly bars changes to the rate formula in FRU proceedings and provides that the Commission “shall not ... have the authority... to consider or order any changes to the structure or protocols of the performance-based formula rate” in annual update cases. 220 ILCS 5/16-108.5(d). EIMA rather requires changes to the “performance-based formula rate structure or protocols” to be made in a utility rate filing or by the Commission after an investigation “as set forth in Section 9-201 of this Act.” 220 ILCS 5/16-108.5(c). The proceeding mentioned in footnote 4, Docket No. 14-0316, ComEd’s Petition to Make Housekeeping Revisions and a Compliance Change to the filed Rate Formula, is just such a proceeding. That proceeding also specifically includes the issue of what constitutes the formula rate structure and protocols. Finally, the Commission has interpreted Section 16-108.5(d) and expressly found that proposals to consider and change the structure and protocols of the formula rate are beyond the scope of a Section 16-108.5(d) annual update and reconciliation proceeding. See 2013 Rate Case Order at 62-63. For these reasons as well, ComEd asserts that the Commission should decline to consider formula rate changes in this FRU.

### **Staff and Intervenor Positions**

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Revisions and a Compliance Change to the filed Rate Formula. Accordingly, there is no need to address the issue here.

<sup>4</sup> This issue was also considered and determined by the Commission in Docket No. 13-0553, which involved ComEd’s compliance with Public Act 98-0015 in Docket No. 13-0386.

## **Commission Analysis and Conclusion**

The Commission agrees that EIMA requires that any changes to the formula rate structure be made in a utility rate filing or by the Commission after an investigation as set forth in Section 9-201 of the PUA. In particular, the Commission determined in our decision last year in ComEd's 2013 formula rate update proceeding, Docket No. 13-0318, that proposals to alter the reconciliation interest recovered through the rate formula on account of deferred income taxes related to the reconciliation balance "are beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding." There is no reason to revisit that issue offered. The AG and CCI proposed adjustment is discussed further in Section VII.B.1. of this Order.

Other issues related to proposed adjustments that may affect the formula itself, such as the treatment of depreciation, are the subject of pending Docket No. 14-0316. The Commission therefore declines to consider here any proposed changes to the structure or protocols of a formula rate in this annual update and reconciliation proceeding.

### **B. The Definition of Rate Year and the Reconciliation Cycle**

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

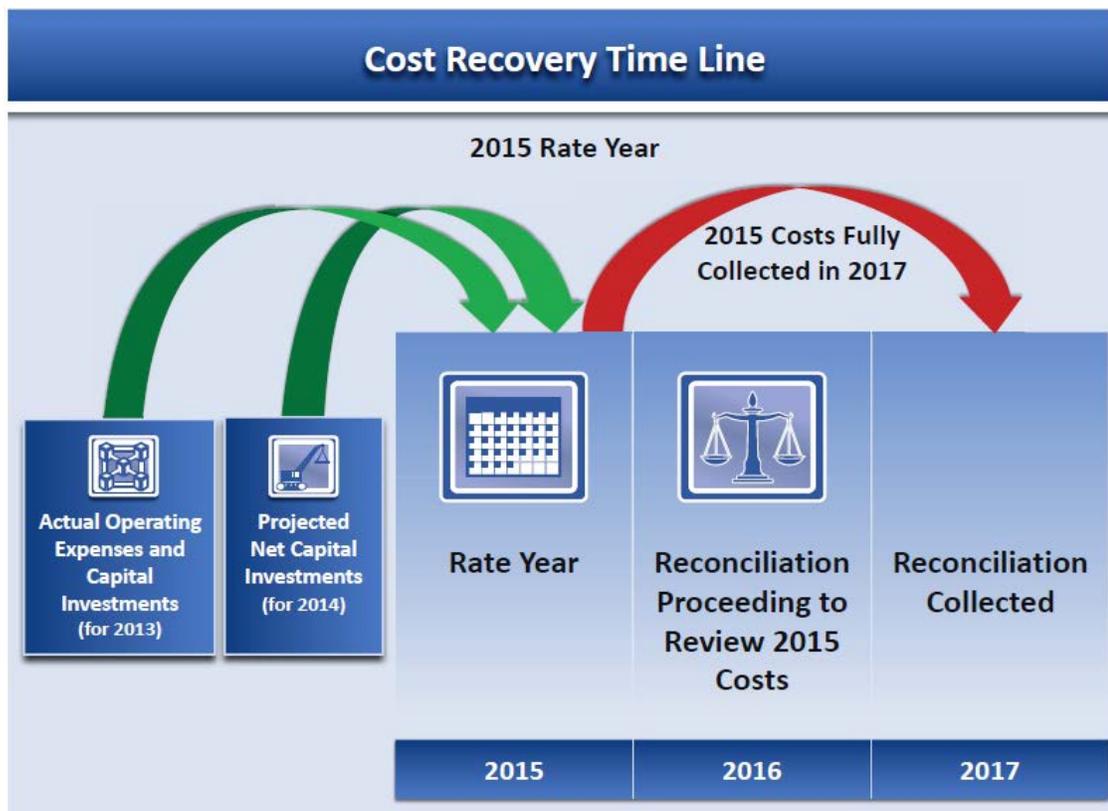
... ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate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

220 ILCS 5/16-108.5(d)(1).

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

Requirement with the actual data. Thus, in the end, and after adjustment for interest, the rates for each year should be based purely on actual cost. ComEd Init. Br. at 9.

ComEd states that this rubric was used in this case. ComEd Init. Br. at 9. Additionally, ComEd provided a graphic to illustrate how the 2015 Initial Revenue Requirement is calculated in this case and how it relates to the actual 2015 Reconciliation Revenue Requirement that will ultimately be collected (*id.*):



ComEd Init. Br. at 10.

ComEd asserts that the Company is using the reconciliation process specified by EIMA. 220 ILCS 5/16-108.5(d). ComEd states that that process is conducted using the rate formula exactly as approved in Docket Nos. 11-0721, 13-0386, and 13-0553, and using the specific rate formula the Commission found compliant with EIMA in its Orders in Docket Nos. 13-0386 and 13-0553. ComEd further states that this structure replicates the structure used in Docket No. 13-0318 (which reconciled rate year 2012 and calculated an initial revenue requirement for rate year 2014 based on 2012 actual costs and 2013 projected plant additions), Docket No. 12-0321 (which reconciled rate year 2011 and calculated an initial revenue requirement for rate year 2013 based on 2011 actual costs and 2012 projected plant additions), and, insofar as is possible given the special start up rules, also mirrors the process followed in Docket No. 11-0721 (which set the initial revenue requirement for rate year 2012 based on 2010 actual costs and 2011 plant additions). ComEd Init. Br. at 10.

## **C. Original Cost Finding**

### **ComEd's Position**

ComEd requests that the Commission, as it has in past FRU Orders,<sup>5</sup> approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2013. ComEd Init Br. at 11. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2013 is \$16,299,132,000. *Id.*; ComEd Ex. 3.0 at 15.

ComEd also notes that in Staff witness Ms. Ebrey's direct testimony, Ms. Ebrey recommends an original cost determination of \$16,275,590,000. Staff Ex. 1.0 at 39-41. According to ComEd, this reduction of \$23,541,000 from the amount sought by ComEd represents the removal from the original cost determination of certain capital costs recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment, Rider PORCB – Purchase of Receivables with Consolidated Billing, and Rider PE – Purchased Energy. ComEd states that it accepts Staff witness Ms. Ebrey's original cost determination of \$16,275,590,000 so long as the Commission makes clear in its final Order that a separate original cost finding will be made in future non-formula rate update proceedings where plant assets apply, resulting in multiple original cost findings as opposed to one for assets that come under the jurisdiction of the Commission. ComEd Ex. 13.0 at 10. ComEd further states that subject to that condition, ComEd also accepts the language proposed by Ms. Ebrey. *Id.* at 10 (citing Staff Ex. 1.0 at 40-41); ComEd Init. Br. at 11.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusion**

The Commission finds that ComEd's original cost of plant in service as of the end of the reconciliation rate year, December 31, 2013, is \$16,275,590,000, and, consistent with ComEd's proposal, the Commission will make separate original cost findings with respect to the assets Ms. Ebrey excluded from the original cost determination in this case.

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<sup>5</sup> See *Commonwealth Edison Co.*, ICC Docket No. 11-0721 ("2011 Rate Case Order") at 178; *Commonwealth Edison Co.*, ICC Docket No. 12-0321 ("2012 Rate Case Order") at 106; 2013 Rate Case Order at 88-89.

## **D. Issues Pending on Appeal**

### **ComEd's Position**

ComEd has preserved several arguments that were decided in ICC Docket Nos. 11-0721 and 12-0321 through appeal from the Commission's orders. On most issues, those appeals have been resolved; further appellate review remains open with respect to the allocation of costs between transmission and distribution. ComEd has also preserved several arguments that were decided in ICC Docket Nos. 13-0318 and 13-0553 through appeal from the Commission's orders, including the allocation issue. Those appeals are pending before the Appellate Court, and ComEd waives none of those arguments. Until and unless those appeals result in reversals or remands of the portions of those decisions on appeal, however, those Orders remain effective as issued. ComEd therefore states that while it "requests that its revenue requirements be calculated in accordance with EIMA and that its delivery service charges be set based on the revenue requirements authorized by EIMA" as ComEd understands it, ComEd did not "actively relitigate" those legal issues on appeal in this proceeding as they are before the courts and will be decided there. ComEd Ex. 1.0 at 4; ComEd Init. Br. at 11-12. ComEd notes that to avoid confusion, ComEd's stated revenue requirements have been "calculated [in] its updated revenue requirement in a manner conforming to the Commission's previous rulings while also maintaining its positions on appeal." ComEd Ex. 1.0 at 4; ComEd Init. Br. at 12. ComEd requests that if its views prevail during the pendency of this case, "charges reflecting those positions be put into effect in the most effective lawful manner." ComEd Ex. 1.0 at 4; ComEd Init. Br. at 12.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusion**

The Commission agrees that ComEd has preserved several arguments that were decided in ICC Docket Nos. 11-0721, 13-0318 and 13-0553 through appeals and Petitions for Leave to Appeal currently pending before the Illinois Appellate and Supreme Courts. ComEd has not waived its right to litigate said issues in a later proceeding before this Commission.

## **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. ComEd's figures should be approved. There are only four potentially contested rate base issues, all related to CWC, [and for each of them ComEd has supplied the correct calculation,] as discussed below.

**1. 2013 Reconciliation Rate Base**

ComEd submitted extensive evidence that its properly calculated 2013 Reconciliation Year rate base, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$6,595,626,000. *E.g.*, ComEd Ex. 13.0 at 6; ComEd Ex. 13.01, Sch FR B-1, line 28. [The Commission approves ComEd's figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the 2013 Reconciliation Rate Base is set forth later in this Order.]

**2. 2015 Initial Rate Year Rate Base**

ComEd also submitted extensive evidence that its properly calculated 2015 Initial Rate Year rate base as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is \$7,368,745,000. *E.g.*, ComEd Ex. 13.0 at 6; ComEd Ex. 13.01, Sch FR B-1, line 36. [The Commission approves ComEd's figure based on the extensive evidence in the record and the reasons indicated later in this Order with respect to the contested issues.] [The Commission's determination regarding the 2015 Initial Rate Year Rate Base is set forth later in this Order.]

**B. Potentially Uncontested Issues**

**1. Plant in Service**

**a. Distribution Plant**

ComEd's Distribution Plant in rate base for the 2013 Reconciliation Revenue Requirement and the 2015 Initial Rate Year Revenue Requirement should be approved. ComEd Ex. 13.01, Sch FR B-1, line 28. ComEd demonstrated that its Distribution Plant for the 2013 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its Distribution Plant for the 2015 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, ComEd Ex. 6.0 at 9-15. Neither Staff nor any intervenor disagreed. The Commission therefore approves the foregoing Distribution Plant costs.

**b. General and Intangible Plant**

ComEd's General and Intangible ("G&I") Plant in rate base for the 2013 Reconciliation Revenue Requirement and 2015 Initial Rate Year Revenue Requirement should be approved. ComEd demonstrated that its G&I Plant for the 2013 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its G&I Plant for the 2015 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, ComEd Ex. 6.0 at 16-

18. Neither Staff nor any intervenor disagreed. The Commission therefore approves the foregoing G&I Plant costs.

**c. Plant Additions**

ComEd's projected plant additions of \$1,214,362,000 included in the rate base component of ComEd's Initial 2015 Rate Year Revenue Requirement pursuant to Section 16-108.5 of the PUA are uncontested and should be approved. ComEd Ex. 13.01, Sch FR B-1, lines 29, 31. These additions include Distribution (\$1,005,094,000) and General and Intangible Plant (\$209,268,000) additions that ComEd expects to place in service during 2014. *Id.* ComEd demonstrated that the projection represents prudent and reasonable investments that will be used and useful. *E.g.*, ComEd Ex. 6.0 at 23-25. The Commission therefore approves ComEd's projected Plant Additions.

**2. Materials & Supplies**

ComEd's Distribution Plant Materials & Supplies ("M&S") inventory for the 2013 Reconciliation Revenue Requirement rate base and 2015 Initial Rate Year Revenue Requirement rate base should be approved. ComEd Ex. 13.01, Sch FR B-1, line 18. ComEd demonstrated that its Distribution Plant M&S are prudent and reasonable and that the underlying assets are used and useful. *E.g.*, ComEd Ex. 6.0 at 18-19. The Commission therefore approves ComEd's projected Plant Additions.

**3. Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset**

ComEd agreed to Staff's proposed adjustment to ADIT. This adjustment was made in ComEd's rebuttal testimony and no party contests the adjustment. ComEd Ex. 13.0 at 9; ComEd Ex. 13.02, WP 4, page 3, line 100. The Commission therefore approves Staff's proposed adjustment to ComEd's ADIT.

**4. Construction Work in Progress**

ComEd's Construction Work in Progress ("CWIP") for the 2013 Reconciliation Revenue Requirement rate base is uncontested. ComEd demonstrated that its CWIP for the 2013 Reconciliation Revenue Requirement is prudent and reasonable. *E.g.*, ComEd Ex. 6.0 at 20. Neither Staff nor any intervenor disagreed. Therefore, the Commission approves this component of rate base.

**5. Regulatory Assets and Liabilities**

ComEd's Regulatory Assets are comprised of: (1) a regulatory asset representing the unamortized balance (as of year-end 2013) of capitalized incentive compensation costs, (2) the unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot, and (3) the unrecovered balance of the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI pilot). ComEd Ex. 3.0 at 23; ComEd Ex. 13.01, App 5, line 4. The Regulatory Assets and

Liabilities for the 2013 Reconciliation Revenue Requirement and the 2015 Initial Rate Year Revenue Requirement are uncontested. Therefore, the Commission approves this component of rate base.

**6. Deferred Debits**

ComEd's Deferred Debits included in the rate base are comprised of: (1) Cook County Forest Preserve Fees related to licensing fees for distribution lines; (2) a Long Term Receivable from the Mutual Beneficial Association ("MBA") Plan related to ComEd's payments to the trust on behalf of union employees for short term disability and for which it is awaiting reimbursement; (3) a deferred debit associated with ComEd's capitalized vacation pay not included in plant-in-service; (4) expected recoveries from insurance on claims made by the public against ComEd; and (5) payment to the Commission for fees related to purchasing new money as part of future long-term debt issuances. ComEd Ex. 3.0 at 23-24; ComEd Ex. 13.01, App 5, lines 5-9. The Deferred Debits for the 2013 Reconciliation Revenue Requirement rate base and the 2015 Initial Rate Year Revenue Requirement rate base are uncontested and therefore approved.

**7. Other Deferred Charges**

ComEd's Other Deferred Charges relating to incremental distribution costs for storms greater than \$10 million are uncontested. ComEd included in its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base Other Deferred Charges relating to incremental distribution storm costs, which ComEd is amortizing over five years pursuant to Section 16-108.5(c)(4)(F). In addition, ComEd removed certain merger expenses from its operating expenses, and is amortizing them over a five-year period. ComEd Ex. 3.0 at 24. No party contested these issues. The Commission therefore approves this component of rate base.

**8. Accumulated Provisions for Depreciation and Amortization**

ComEd's Accumulated Provisions for Depreciation and Amortization related to ComEd's rate base is uncontested. ComEd Ex. 13.01, Sch FR B-1, lines 7-12; ComEd Ex. 3.0 at 17. The Commission approves this component of rate base.

**9. Accumulated Miscellaneous Operating Provisions**

ComEd's Accumulated Miscellaneous Operating Provisions include Operating Reserves, Asset Retirement Obligations, and Deferred Credits for the 2013 reconciliation year and 2014 filing year. ComEd Ex. 13.02, WP 5. These items are uncontested. The Commission therefore approves this component of rate base.

## **10. Asset Retirement Obligation**

ComEd's Asset Retirement Obligation is uncontested. ComEd Ex. 13.01, Sch FR B-1, line 22; ComEd Ex. 3.0 at 25. Therefore, the Commission approves this component of rate base.

## **11. Customer Advances**

ComEd initially reduced its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base to reflect the customer deposits and advances that are related to projects that were included in the rate base as of December 31, 2013 as well as those deposits and advances related to projects included in its 2014 projected plant additions. ComEd initially reduced rate base for these deposits and advances related to projects included in rate base as of December 31, 2013 or in its 2014 projected plant additions by \$61,034,000. ComEd Ex. 3.0 at 26-27; ComEd Ex. 3.01, Sch FR B-1, line 26. Both Staff witness Ms. Ebrey and AG witness Mr. Effron proposed adjustments to customer advances. Staff Ex. 1.0 at 38; AG Ex. 2.0 at 4. ComEd agreed that the amount stated in ComEd Ex. 3.01, Sch FR B-1 was understated by \$6,982,000, primarily due to the inadvertent exclusion of two material deposits. ComEd made this adjustment which resulted in a revised reduction to rate base of \$68,016,000. ComEd Ex. 13.0 at 8-9; ComEd Ex. 13.01, Sch FR B-1, line 26. ComEd disagreed with an additional adjustment proposed by AG witness Mr. Effron, and the proposed adjustment was not raised again in AG rebuttal testimony. ComEd Ex. 13.0 at 8-9. For these reasons, ComEd's adjusted Customer Advances for the 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base are uncontested. Therefore, the Commission approves this component of rate base.

## **12. Customer Deposits**

ComEd's Customer Deposits for the 2013 Reconciliation Revenue Requirement rate base and the 2015 Initial Rate Year Revenue Requirement rate base are uncontested. ComEd Ex. 3.0 at 26; ComEd Ex. 13.01, Sch FR B-1, line 25, and App 2 "Customer Deposits Information." Therefore, the Commission approves this component of the rate base.

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

### **a. Overview of CWC and ComEd's Lead/Lag Study**

In its final Order in ComEd's 2011 Rate Case, the Commission directed ComEd to provide an updated lead/lag study once every three years to determine the amount of Cash Working Capital ("CWC") ComEd required. 2011 Rate Case Order at 56. The CWC reflected in ComEd's rate base is the amount of cash that ComEd maintains in order to meet its expenses and other cash outflow obligations. ComEd Init. Br. at 20. In accordance with the Commission's directive, ComEd updated its study and presented it in direct testimony in this proceeding. *Id.*

ComEd states that its revenue lag measures the number of days from the date service was rendered by ComEd until the date payment was received from customers and the payment funds become available to ComEd. ComEd Ex. 4.0 at 4-5. In its lead/lag study, ComEd divides the revenue lag into five components: (1) service lag, (2) billing lag, (3) collections lag, (4) payment processing lag, and (5) bank float on collections from customers. *Id.* at 5. ComEd calculated the collections lag component of the revenue lag using a mid-point methodology that is reasonable and that was approved by the Commission in ComEd's 2011 formula rate case and in its 2010 rate case. 2011 Rate Case Order at 41-42; *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) ("2010 Rate Case Order") at 47. ComEd also states that it incorporated methodologies that reduced the CWC requirements of the lead/lag study including: excluding accounts receivable amounts over 365 days old, excluding amounts related to inactive accounts and excluding customer grace periods from its collections lag calculations. ComEd Ex. 4.0 at 3-4; ComEd Init. Br. at 20-21. ComEd's revenue lag calculation generally is not contested, and is therefore approved by the Commission. The portion of the revenue lag related to certain pass-through taxes is discussed in Section IV.C.1.b., *infra*.

ComEd also submitted calculations of its expense lead based on actual payment data from the calendar year 2013. ComEd Ex. 4.0 at 11. In ComEd's lead/lag study, the expense lead consists of three components: (1) a service lead, (2) a payment lead, and (3) a bank float lead if the amount is paid by check. *Id.*; ComEd Init. Br. at 21. Certain expense leads are contested and are discussed in Section IV.C. below.

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

ComEd submitted a CWC deduction to delivery service rate base. ComEd Ex. 3.0 at 19; ComEd Ex. 3.01, Sch FR B-1, lines 16 and 34a. On rebuttal, ComEd agreed with a CWC adjustment proposed by Ms. Ebrey relating to a change to ComEd's Payroll and Withholdings expense lead and the related changes to the FICA tax lead and the employee benefits – other lead. See ComEd Ex.13.0 at 16; ComEd Ex. 14.0 at 3; see *also* Staff Ex. 1.0 at 29-30. No party contests the adjustment proposed by Ms. Ebrey and no further adjustments were submitted in surrebuttal. ComEd Init. Br. at 21-22. The Commission therefore approves a CWC deduction to delivery service rate base that is consistent with Ms. Ebrey's adjustment.

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

ComEd objected to certain changes Staff proposed to ComEd's CWC calculation. These components are discussed in Section IV.C. below.

In response to Staff proposals, ComEd also noted a formula error in Staff's proposals relating to the balance between the level of ComEd receipts and outlays in

Staff's CWC calculations. ComEd Ex. 14.0 at 18-19. In rebuttal, Staff corrected the error in its CWC adjustment. Staff Ex. 7.0 at 6.

Staff and ComEd agree that the final CWC figures in the reconciliation and filing year rate bases should reflect the derivative impacts on the inputs to the CWC calculations resulting from applicable adjustments to expenses or revenues, if any, ordered by the Commission's final Order. ComEd Ex. 14.0 at 18; ComEd Init. Br. at 22. Accordingly, the Commission adopts this approach.

#### **14. Other (including derivative adjustments)**

The Commission's final Order in ICC Docket No. 13-0318 disallowed pension costs associated with disallowed or excluded incentive compensation. ComEd has reduced its revenue requirement consistent with the Commission's order. ComEd Ex. 2.0 at 28-29; ComEd Ex. 3.01, App 7, line 21; ComEd Ex. 3.01 WP 7, page 2, line 33, and WP 1, page 12. No parties contest this adjustment.

No other rate base issues, apart from those addressed in Section IV.C, *infra*, were raised by Staff and the parties.

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

##### **1. Cash Working Capital**

ComEd states that its CWC requirement is based on its properly updated lead/lag study, a study similar to that approved by the Commission in the 2011 formula rate case. See 2011 Rate Case Order at 55-56. ComEd asserts that its final revised CWC figures of (\$6,860,000) for the rate year and (\$8,576,000) for the filing year represent its real CWC requirement resulting from the applicable actual cash outflows and inflows during calendar year 2013. ComEd Ex. 13.01, App 3, page 19, line 40; ComEd Ex. 13.01, App 3, page 20, line 80. The various contested Staff and intervenor adjustments to ComEd's CWC requirement would result in a reduction to rate base of approximately \$112,000,000 for the rate year and approximately \$111,000,000 for the filing year, with a revenue requirement reduction of approximately \$11,000,000 for both the rate and filing year. See Staff Ex. 7.03, Sched. 7.03 RY, line 7; Staff Ex. 7.03, Sched. 7.03 FY, line 7; Staff Ex. 7.05 RY, line 11; Staff Ex. 7.05 RY, line 7. ComEd Init. Br. at 22-23.

##### **a. Pension and OPEB expense leads**

##### **ComEd's Position**

ComEd has submitted evidence demonstrating that ComEd correctly attributes zero expense lead time to its pension and Other Post-Employment Benefits ("OPEB") expense in its CWC calculation and that Staff's proposal to use 203.24 lead days for these expenses should be rejected. As thoroughly explained by ComEd witness Ms. Houtsma, the cash flow impacts of the \$153.5 million of accrued expense amounts for

both pension and OPEB, and for periodic cash payments to the trusts (cash outflows) for both pension and OPEB, are already fully accounted for in ComEd's rate base outside the CWC calculation under its approved EIMA formula rate and revenue requirements. See ComEd Ex. 15.0 at 2; ComEd Ex. 28.0 at 2. Were the Commission to adopt Staff's recommendation of including this expense in CWC calculations, it would result in a significant and improper "double count" reduction to ComEd's rate base. ComEd Init. Br. at 23.

Specifically, ComEd states that the \$153.5 million includes \$97 million for pension expense that has been applied as a reduction to ComEd's pension asset for pension asset financing cost recovery purposes, and \$55 million for OPEB expense that is already included as a component of operating reserves, which reduces rate base. ComEd Ex. 15.0 at 3-4; ComEd Ex. 15.01. Staff's recommendation must be rejected because ComEd's treatment of these items as reductions to rate base for OPEB accruals and to the pension asset for pension accruals is equivalent to including those expense accruals in the lead/lag study and assigning them a 365-day lead – substantially longer than the 203.24-day lead suggested by Staff. See ComEd Init. Br. at 23-24.

ComEd observes that Staff presents no evidence denying that Staff's proposal results in a double count, and that Staff also acknowledges that pension accruals reduce the pension asset and OPEB accruals reduce rate base. ComEd Init. Br. at 24. ComEd notes that Staff, in rebuttal, presents a flawed justification regarding the matching of expenses and revenue within the CWC calculation that was rejected by the Commission in ComEd's first formula rate case and in its ruling in ComEd's 2010 rate case. ComEd explains that the Commission has in fact repeatedly affirmed ComEd's proposal to reflect zero lead days for ComEd's Pension and OPEB expense. See 2011 Rate Case Order at 51; 2010 Rate Case Order at 48. ComEd notes that in ComEd's 2011 formula rate case, the Commission properly found that "expense leads for the various operating expenses are calculated independently of revenue lag and can be positive, negative or zero." 2011 Rate Case Order at 51. ComEd maintains that Staff has provided no basis for the Commission to abandon its practice in this proceeding and the Commission should accordingly decline to adopt Staff's recommendation. ComEd Init. Br. at 24.

With respect to Staff's 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, ComEd asserts that this apples comparison is unavailing because it is factually inaccurate. ComEd Reply Br. at 5-6.

Regarding pension, Staff claims 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. According to ComEd, 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. Instead, ComEd states, 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 ComEd Reply Br. at 6. ComEd states that it does not contend that the pension asset funding cost is double counted. Instead, ComEd states that it is 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. *Id.*

Regarding OPEB, Staff claims that “[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. According to ComEd, Staff's statement misses the point, as it completely ignores OPEB expense. ComEd contends that, 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 ComEd Reply Br. at 6-7. ComEd explains that 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. *Id.* at 7.

ComEd further explains that Staff witness Ms. Ebrey errs when she claims that because ComEd uses the accrual method rather than cash basis method of accounting that the pension and OPEB cash payment amounts included in rate base are not reflective of the cash requirement that is measured by CWC. See Staff Ex. 1.0 at 13. In fact, the amounts reflected in rate base consider both the accounting *accruals* as well as the *cash* contributions. ComEd Init. Br. at 24-25. Additionally, ComEd states that Staff's 203.24 lead-day calculation is flawed. Unlike most vendor and payroll related costs, pension and OPEB accruals are determined independently from the cash contributions and the timing of the cash payments cannot be directly assigned to particular accruals. *Id.* at 25. In any event, ComEd explains that its inclusion of the amounts elsewhere in the revenue requirement at the equivalent of a full 365-day lead eliminates the need for such direct assignment. *Id.*

ComEd also contends that Ms. Ebrey's references to the Commission order in Docket Nos. 12-0511/0512 Cons. (“PGL case”) in support of her proposal (Staff Ex. 1.0 at 13-14) are equally unavailing. ComEd notes that the facts of that case differ substantially from the relevant facts in this proceeding. Specifically, the PGL case did not involve participating utilities under EIMA pursuant to which pension and OPEB accrued expense amounts and cash trust payments are fully accounted for in the revenue requirement. ComEd Init. Br. at 25. In addition, in the PGL case intercompany billing lead values were used, which Staff asserts here would be 45 days. See Staff Ex. 1.0 at 24. Yet, ComEd notes, in this case Staff is proposing a longer lead value of approximately 203 days. Moreover, ComEd explains that, historically, Commission orders on this issue relating to PGL utilized the intercompany billing lead value while, as

discussed above, ComEd orders have included zero lead for those expenses. ComEd Init. Br. at 25.

Finally, ComEd also asks the Commission to reject Staff's flawed assertion that the inclusion of lag days is "more reasonable" because cash inflows and outflows associated with recovery of payment of pension or OPEB costs should match as is the case with other lead/lag study items. ComEd Init. Br. at 25-26; see Staff Ex. 1.0 at 12-13; see *also* Staff Ex. 7.0 at 8. According to ComEd, this matching premise could only be sound if one ignores the fact that the cash outflows are accounted for elsewhere in the revenue requirement, as they are here. Further, the Commission has expressly rejected this matching justification in ICC Docket Nos. 10-0467 and 11-0721. ComEd Init. Br. at 25-26.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusions**

The Commission approves ComEd's recommendation of attributing zero expense lead time to its pension and OPEB expense in the CWC calculations. The evidence shows that ComEd's pension expense has been applied as a reduction to ComEd's pension asset and that the OPEB expense is included as a component of operating reserves, which reduces rate base. Because these amounts are therefore already accounted for in ComEd's formula rate and revenue requirements, the Commission concludes that applying Staff's proposed 203.24 lead would result in an impermissible double count reduction to ComEd's rate base. Staff's argument that expense lead and revenue lag associated with pension and OPEB should match is unconvincing. As stated in the Order in ComEd's 2011 rate case, "expense leads for the various operating expenses are calculated independently of revenue lag and can be positive, negative or zero." 2011 Rate Case Order at 51. The Commission's conclusion here is consistent with the conclusion reached in both ComEd's 2011 and 2010 Rate Cases and Staff has provided no reason that warrants a change in the treatment of ComEd's pension and OPEB expense in this proceeding.

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

##### **ComEd's Position**

ComEd proposes a 49.54 day pass-through tax revenue lag for the Illinois Electricity Excise Tax ("IEET") and the City of Chicago Infrastructure Maintenance Fee ("CIMF"). ComEd Ex. 4.0 at 8. ComEd explains that this lag time is appropriate because it utilizes the same lag associated with ComEd's revenue collection. *Id.* According to ComEd, its primary source of cash is receipt of customer payments of their monthly bills. The pass-through tax and fee amounts are included as separate charges on the monthly bills, and payments are received for these amounts by ComEd at the same time as all other cash from its customers. *Id.* Accordingly, ComEd suggests that

it is appropriate that the lag time for the pass-through tax amounts be identical to the revenue lag of 49.54 days. ComEd Init. Br. at 26.

ComEd opposes Staff's proposal to remove the service lag component from the pass-through tax revenue lag and asserts that Staff's proposal is based on the faulty premise that the pass-through taxes are somehow separate from the provision of utility service. Staff Ex. 1.0 at 15. In fact, ComEd notes, pass-through taxes are part of the bill for utility service and customers pay the amounts for pass-through taxes at the same time they pay all other components of their bill. ComEd Init. Br. at 26. ComEd contends that Staff's Initial Brief states nothing that refutes this fact, and observes that Staff simply 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; ComEd Reply Br. at 7.

ComEd asserts that CCI makes a similar and equally incorrect claim that the billing and collecting of pass-through taxes represent a separate service because the taxes are not known, measurable or calculated until the bill is prepared. See CCI Ex. 2.0 at 3. According to ComEd, the fact that the taxes are not known, measurable or calculated until the bill is prepared is irrelevant. ComEd Init. Br. at 26-27; ComEd Reply Br. at 7-8. That point applies to many components of a bill until the meter is read and the volume of electricity delivered to (and used by) the customer is known. ComEd Init. Br. at 26-27. Indeed, even if a customer takes no delivery of electricity in a given monthly service period and thus no IEET or CIMF amounts are calculated or due, the billing and collection processes for the customer would still occur. *Id.* at 27. ComEd contends that 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. ComEd notes that 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; ComEd Reply Br. at 8.

ComEd further notes that removing the service lag for IEET and CIMF without removing the corresponding service lead, as Staff and CCI propose, would be inconsistent and inappropriate under the mid-point methodology upon which ComEd's service lag and service lead are based. ComEd Init. Br. at 27. According to ComEd, that methodology assumes that service is provided to a customer evenly over an entire month. *Id.* The 15.21 service lag days at issue here must be included in the overall lag calculation in order to properly capture the inflow of funds as well as the fact that customers are delivered service over an entire month. *Id.* ComEd asserts that Staff and CCI have not rebutted this fact and have instead relied on citations to previous orders – an inadequate response to this factual point. *Id.*

ComEd explains that 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 states that it has provided undisputed

evidence that shows that in the 2010 rate case both the service lag and service lead were excluded in direct testimony. ComEd Init. Br. at 27; ComEd Reply Br. at 8. ComEd further states that, 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. ComEd explains that 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. ComEd contends that the Commission should similarly include the service lag for IEET and CIMF here. ComEd Reply Br. at 8.

ComEd submits that although the final Order in the 2011 formula rate case excluded the service lag for IEET and CIMF, including both a service lag and a service lead for pass-through taxes is more appropriate for the reasons set forth above, and recommends that the Commission allow ComEd its full 49.54 days of revenue lag for IEET and CIMF in this proceeding. However, in order to narrow the contested issues (without waiving any rights to contest this issue in future proceedings), ComEd offers an alternative solution. ComEd states that because in this instance the service lead and the service lag are an identical 15.21 days and the appropriate impact on CWC can also be obtained by eliminating both, 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. According to ComEd, this treatment would be consistent with the treatment of pass-through taxes in the 2010 rate case, where both the service lead and service lag were excluded. *Id.*

### **Staff and Intervenor Positions**

### **Alternative A Commission Analysis and Conclusions**

The Commission approves ComEd's calculation of the revenue lag related to IEET and CIMF pass-through taxes. The Commission agrees with ComEd that the lag for the pass-through tax amounts should be identical to the revenue lag of 49.54 days. ComEd presented evidence that showed that using the 49.54 day revenue lag is appropriate because the pass-through tax amounts are included as separate charges on customer monthly bills, and payments for these amounts are received by ComEd at the same time as all other cash from its customers is received.

This evidence reveals that Staff's and CCI's view that the service lag component should be removed from the revenue lag related to pass-through taxes is flawed. Specifically, the evidence supports ComEd's point that it is electricity delivery service that triggers the collection of pass-through taxes and that it is irrelevant that pass-through taxes are not known, measurable or calculated until a customer's bill is prepared. The Commission also agrees that removing the service lag without removing

the service lead, as Staff and CCI propose, would be inconsistent and inappropriate under ComEd's Commission approved mid-point methodology upon which ComEd's service lag and service lead are based. Moreover, while the inclusion of the service lag here departs from the calculation of the pass-through tax revenue lag approved in Docket No. 11-0721, the inclusion of the service lag in the calculations of the pass-through tax revenue lag is consistent with the more recent decision in Docket Nos. 12-0511/12-0512 (Cons.) where we recognized that a service lag component could be included in the calculation of a pass-through tax revenue lag. See ICC Docket Nos. 12-0511/12-0512 Cons., Final Order (June 18, 2013) at Appendix B., page 13, line 2. For all of the above reasons, ComEd's 49.54 day pass-through tax revenue lag for IEET and CIMF is adopted.

### **Alternative B Commission Analysis and Conclusions**

The Commission agrees with Staff and CCI that the 15.21 day service lag component should be removed from the IEET and CIMF pass-through tax revenue lag calculation. The question of the proper length of the pass-through tax revenue lag was considered in Docket No. 11-0721 and we concluded that Staff's calculation, reflecting the removal of the service lag component of the revenue lag, was appropriate. Based on the record here, we agree with Staff and CCI that the service lag should remain excluded. However, the Commission agrees with ComEd that removing the service lag without removing the service lead, as Staff and CCI propose, would be inconsistent and inappropriate under ComEd's Commission approved mid-point methodology.

The Commission therefore concludes that ComEd's pass-through tax CWC revenue lag should exclude the 15.21 day service lag component and the expense lead calculation should exclude the 15.21 day service lead component. Though the removal of the service lead departs from the calculation of the pass-through tax CWC approved in ICC Docket No. 11-0721, removal of both the service lag and service lead is consistent with the calculation of the pass-through tax CWC in Docket No. 10-0467 and we conclude that the calculation in that docket is more appropriate under the mid-point methodology.

#### **c. Pass-through taxes expense leads**

##### **ComEd's Position**

ComEd states that its 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. ComEd Init. Br. at 28; ComEd Reply Br. at 9.

ComEd explains that 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. ComEd contends that Staff provides no argument refuting ComEd's analysis of the heightened risk that would be incurred by adopting Staff's proposal. ComEd Reply Br. at 9.

ComEd contends that Staff's statement that ComEd calculates pass-through taxes based on the payment due date for EAC/REC and "Other Taxes", see Staff Init. Br. at 13, is both factually inaccurate and irrelevant. ComEd first contends that 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. According to ComEd, 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.* ComEd further explains that it makes many tax payments for many different types of taxes over the course of a given month. ComEd Ex. 14.0 at 8. ComEd states that for that reason, the fact that 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 interest payments associated with *these* taxes. See ComEd Init. Br. at 29; ComEd Reply Br. at 9. ComEd notes that both Staff and the Commission recognized the prudence of ComEd's approach in ComEd's 2011 formula rate case. ComEd Reply Br. at 9.

ComEd also explains that, contrary to what Staff witness Ms. Ebrey now asserts, dropping a tax payment in a mail box on the due date or setting up a payment on the due date through an Automated Clearing House ("ACH") is no guarantee that late payments and the resulting severe interest and penalty payments will be avoided. ComEd explains that ACH transactions are settled in one to two business days. ComEd Init. Br. at 28. If ComEd initiates an ACH payment on the due date as Staff suggests, the funds would not settle for at least one day and possibly two days after the amounts are due. *Id.* at 28-29. As ComEd notes, this would mean that the payment arrives to the receiving party late and, consequently, ComEd could be liable under severe penalty and interest provisions resulting in payments of possibly hundreds of thousands of dollars. *Id.* at 29. Moreover, ComEd argues, ACH failures do occur (and a payor may not be aware of such a failure for days), and there is a significant likelihood that mail dropped in a post office box on the due date will not arrive at its destination, much less be processed, on that same day. *Id.* ComEd contends that the Commission should accept the prudence of ComEd's proposed pass-through tax expense leads, and reject Staff's unnecessarily risky approach. *Id.*

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusions**

The Commission approves ComEd's practice of calculating its pass-through tax expense leads based on the actual payment date. The Commission agrees with

ComEd that paying its taxes three to four days early to avoid severe penalty and interest payments is prudent, reasonable and in ComEd's customers' interest. The evidence shows that Staff's proposal, calculating ComEd's pass-through tax expense lead using the due date of the taxes, would unnecessarily expose ComEd and its customers to the risk of potential penalties of hundreds of thousands of dollars in light of the time required for ACH settlement and mail delivery and processing. The Commission therefore approves ComEd's proposed pass-through tax expense leads.

**d. Intercompany billings expense lead**

**ComEd's Position**

ComEd proposes an intercompany billing expense lead of 31.54 days, including 16.33 days allocated for the payment lead component. ComEd states that it has calculated this lead based on actual billing amounts and payment dates and therefore it reflects the actual CWC requirement of ComEd for intercompany billings. ComEd Init. Br. at 29. ComEd contends that these expense leads are therefore fully supported by the evidence. *Id.*

ComEd objects to Staff and CCI proposals to increase the payment lead component by 13.67 days and 15 days, respectively (which correspond with intercompany billing expense lead of 45.21 and 46.54 days). See Staff Ex. 1.0 at 24; CCI Ex. 1.0 at 10. According to ComEd, both proposals are unsupported by the evidence and should be rejected. ComEd Init. Br. at 29. ComEd contends that Staff and CCI witnesses arbitrarily add days to ComEd's proposal without providing facts or data to support their proposals. *Id.* at 30; see Staff Ex. 1.0 at 23-26; CCI Ex. 1.0 at 10.

ComEd also contends that Staff and CCI wrongly complain that ComEd's payment of amounts owed to its affiliate, BSC, is cross-subsidization. ComEd asserts that there is no valid legal or factual basis that supports their complaint and that paying amounts owed in a timely manner consistent with corporate policy is not cross-subsidization. According to ComEd, a large part of the charges that BSC bills to ComEd is for BSC labor, that if performed by ComEd employees, would be included in the CWC calculation at the Payroll and Withholdings lead, which, at approximately 16 days, is a much shorter lead time than the 31.54 days ComEd proposes in this proceeding for its intercompany billing expense and significantly shorter than the number of days being proposed by Staff and CCI witnesses. ComEd Init. Br. at 30.

ComEd further contends that Staff should not equate the payment terms for non-affiliated vendors with ComEd's intercompany billing because the circumstances are not parallel. The types of services non-affiliate vendors provide are much different as are their billing practices. ComEd Ex. 14.0 at 15. In addition, ComEd notes that Staff and CCI proposals contain longer lead times than have been recently approved for other utilities. See *id.* at 16; ComEd Init. Br. at 30.

## **Staff and Intervenor Positions**

### **Commission Analysis and Conclusions**

The Commission approves ComEd's proposed intercompany billing expense lead of 31.54 days. ComEd's intercompany billing expense lead is appropriate because the lead is calculated based on actual billing amounts and payment dates and therefore it reflects the actual CWC requirement of ComEd for intercompany billings. Though in Docket No. 11-0721 we concluded that ComEd's proposed intercompany billing lead resulted in cross-subsidization, the evidentiary record in this proceeding supports ComEd's assertion that its proposed lead does not subsidize BSC at the expense of ComEd's customers. ComEd has shown that, instead, BSC provides a large number of corporate services for ComEd that, if performed by ComEd employees, would be included in the CWC calculation at the Payroll and Withholdings lead, which is significantly shorter than the intercompany billing lead ComEd proposes and which would result in an increased cost of CWC.

#### **2. Other**

No other rate base issues were raised by Staff and the parties.

## **V. OPERATING EXPENSES**

### **A. Overview**

ComEd fully supported its 2013 total operating expenses, adjusted to reflect the depreciation expense associated with the projected 2014 plant additions. ComEd Ex. 13.01, Sch FR A-1, line 11. There are a limited number of contested operating expenses issues, [and on each of them, ComEd has supplied the correct number,] as discussed below.

### **B. Potentially Uncontested Issues**

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

ComEd states that its Distribution Operating and Maintenance ("O&M") expenses were \$438,781,000 for 2013. ComEd explains that after reflecting adjustments, a revised total of \$432,760,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement. No parties contest the amount of distribution O&M expenses. ComEd Init. Br. at 31. The Commission approves this amount.

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

ComEd states that its customer-related expenses are expenses recorded in FERC Accounts 901-910, which include the costs of maintaining and servicing customer accounts, e.g., meter reading, recordkeeping, and billing and credit activities. ComEd Init. Br. at 31. ComEd explains that in determining the revenue requirement, ComEd has adjusted the \$417,692,000 of customer related expense for the following:

- (1) \$162,780,000 reduction to remove the costs associated with ComEd's energy efficiency and demand response program recovered under Rider EDA;
- (2) \$33,132,000 reduction to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904, costs recovered through Rider UF;
- (3) \$647,000 reduction to remove the non-jurisdictional amount of Outside Agency Collection Fees related to uncollectibles;
- (4) \$30,000 increase to include interest on customer deposits in operating expenses;
- (5) \$2,618,000 reduction to remove costs recovered under Rider PORCB;
- (6) \$860,000 reduction to remove customer assistance costs incurred as part of the \$10,000,000 EIMA customer assistance program;
- (7) \$1,970,000 reduction to remove certain customer communications costs recorded in FERC Account 908;
- (8) \$2,660,000 increase for a donation to the Illinois Science and Technology Foundation; and
- (9) \$106,000 reduction for Residential real-time pricing.

ComEd Ex. 3.0 at 30; ComEd Init. Br. at 31-32.

ComEd states that after these adjustments, \$218,224,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function are included in the revenue requirement. No party has objected to the amount of customer-related O&M expenses. ComEd Init. Br. at 32. The Commission approves this amount.

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

ComEd states that its Administrative and General ("A&G") expenses were \$430,366,000 for 2013. ComEd explains that A&G costs are recorded in FERC Accounts 920-935 and include corporate support and overhead costs that benefit or derive from more than one business function; costs of employee pension benefits; regulatory expenses; and certain other non-operation costs. ComEd states that after subtracting \$9,133,000 of deferred merger related costs to achieve (which will be recovered over the next four years), \$421,233,000 in A&G expense is included in the revenue requirement. No party has objected to the amount of A&G expense. ComEd Init. Br. at 32-33. The Commission approves this amount.

#### **4. Charitable Contributions**

ComEd states that it included \$7,956,000 of charitable contribution expense in its revenue requirement. ComEd Ex. 13.01, App 7, line 5. ComEd has included in its operating expenses a jurisdictional amount based on the W&S allocator of \$7,332,000. ComEd Ex. 3.0 at 46. No party has objected to the adjusted amount of charitable contribution expense. ComEd Init. Br. at 33. The Commission approves this amount.

#### **5. 2013 Merger Expense**

In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted Staff's proposed adjustments to correct the Deferred Debit and Amortization of 2012 Merger Costs as well as the Calculation of the Deferred Debit and Amortization of 2013 Merger Costs. Staff Ex. 1.0 at 37. Staff contended that the adjustment from Docket No. 13-0318 should be reflected in the balances in this case and ComEd agreed and made the appropriate adjustments. *Id.* at 37-38; ComEd Ex. 13.0 at 14. These adjustments reduce the revenue requirement by about \$14,000 and the remaining amount to be amortized (deferred debit) by about \$48,000. Staff Ex. 1.0, Sched. 1.12 FY; ComEd Ex. 13.02, WP 5, page 1; ComEd Ex. 13.02, WP 8, page 1; ComEd Ex. 13.02, WP 7, page 15. ComEd Init. Br. at 33. The Commission approves these adjustments.

#### **6. Sales and Marketing Expenses**

ComEd has not included any sales or marketing expense in its revenue requirement. ComEd Init. Br. at 33. The Commission finds that sales and marketing expenses are not at issue in this docket.

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

ComEd states that its revenue requirement includes \$482,096,000 of depreciation and amortization expense. ComEd explains that the level of 2013 depreciation and amortization expenses included in the revenue requirement is \$451,588,000, comprised of \$353,607,000 related to Distribution Plant and \$97,981,000 related to G&I Plant. ComEd Ex. 3.0 at 39. ComEd further explains that the 2015 Initial Rate Year Revenue Requirement and 2015 Rate Year Net Revenue Requirement include \$30,508,000 of depreciation expense associated with the 2014 projected plant additions. No party has objected to the amount of depreciation and amortization expense. ComEd Init. Br. at 34. The Commission approves this amount.

#### **8. Regulatory Asset Amortization**

ComEd's revenue requirement includes \$37,441,000 of regulatory asset amortization. ComEd Ex. 13.01, Sch FR C-1, line 18. This amount includes the effects of the Commission's order in Docket No. 10-0467, which revised the amount of

amortization of several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. ComEd's regulatory asset amortization also includes (1) \$67,000 of the \$200,000 filing fee paid in 2011, (2) \$694,000 of the \$2,083,000 in formula rate case expenses incurred in 2012 related to Docket No. 11-0721 and allowed for recovery in the final Order in ICC Docket No. 13-0318; and (3) \$72,000 of the \$215,000 in formula rate case expenses incurred in 2013 related to ICC Docket No. 11-0721. Section 16-108.5(c)(4)(E) of the PUA provides that these costs be amortized over a three-year period. After agreeing to an adjustment of \$5,000 to remove unrelated costs from 2013 rate case expense and an adjustment of \$10,000 to correct the merger costs amortization amount, no party has objected to the amount of regulatory asset amortization. ComEd Init. Br. at 34. The Commission approves this amount.

#### **9. Operating Cost Management Efforts**

ComEd submits that during 2013, it continued its aggressive and successful measures to manage and reduce its costs. No party has objected to the measures that ComEd has taken to manage its costs. ComEd Init. Br. at 35. The Commission finds these measures to be prudent.

#### **10. Lobbying Expense**

ComEd has not included any lobbying expenses in its revenue requirement. ComEd Init. Br. at 35. The Commission finds that lobbying expenses are not at issue in this docket.

#### **11. Rate Case Expenses**

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

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

ComEd supported these expenses with an affidavit (ComEd Ex. 2.07) and supporting invoices. ComEd Init. Br. at 35.

ComEd submits that this evidence allows the Commission to make a finding pursuant to Section 9-229 of the PUA that the expenses incurred were just and reasonable. ComEd explains that the attachments to the affidavit provide the evidentiary support for each ICC proceeding for which ComEd seeks recovery. See ComEd Ex. 2.07, Ex. APO-04 (ICC Docket No. 07-0566), Ex. APO-05 (ICC Docket No. 10-0467), Ex. APO-06 (ICC Docket No. 11-0721), Ex. APO-07 (ICC Docket No. 12-0321), Ex. APO-08 (ICC Docket No. 13-0318). ComEd further explains that the affidavit also describes the services provided in connection with the fees for which recovery is sought, identifies the individuals working on the matters and their qualifications, and discusses the market rates charged by regulatory lawyers in Chicago to support the reasonableness of the fees charged. ComEd Ex. 2.07; ComEd 2.07, APO-01 (identifying individuals and qualifications). ComEd Init. Br. at 36.

In response to Staff witness Mr. Bridal's proposed adjustment to disallow certain amounts expended on non-rate case matters (Staff Ex. 2.0 at 3), ComEd agreed not to seek recovery for these expenses totaling \$6,042 in this Docket and has made the appropriate adjustments. ComEd Init. Br. at 36. Mr. Bridal also proposed further disallowances related to rate case expense invoice line items that were completely redacted and for attorney and witness meals. Staff Ex. 2.0 at 4-5. In order to limit the issues in this proceeding and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd agreed to no longer seek recovery of \$12,002 related to completely redacted invoice line items as well as \$904 of miscellaneous charges for attorney and witness meals. ComEd Init. Br. at 36-37.

The Commission has considered the costs expended by the Company during 2013 to compensate attorneys and technical experts to prepare and litigate rate case proceedings and finds, pursuant to Section 9-229 of the PUA, that the amount included as rate case expense in the revenue requirements of \$3,097,176 is just and reasonable. This amount includes the following costs: (1) \$826,820<sup>6</sup> amortized rate case expense associated with the initial formula rate proceeding, Docket No. 11-0721; (2) \$2,280,395<sup>7</sup> associated with Docket No. 13-0318; and (3) \$(10,039)<sup>8</sup> associated with the litigation of Dockets Nos. 07-0566, 10-0467, 12-0321, and 14-0312.

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<sup>6</sup> See Staff Ex. 2.0, Sched. 2.01, page 2, line 11. The rate case expense amount included in the revenue requirements and related to Docket No. 11-0721 consists of 1/3 of the one-time filing fee incurred during 2011 plus 1/3 of the Docket No. 11-0721 rate case expenses incurred during 2012 and 1/3 of the Docket No. 11-0721 rate case expense incurred during 2013, as permitted by Section 16-108.5(c)(4)(E) of the Act (220 ILCS 5/16-108.5(c)(4)(E)).

<sup>7</sup> See Staff Ex. 2.0, Sched. 2.01, page 3, line 6. The rate case expense included in the revenue requirements and related to Docket No. 13-0318 is not amortized.

<sup>8</sup> See Staff Ex. 2.0, Sched. 2.01, page 4, line 10 less \$98 correction identified in ComEd Ex. 13.0 at 15. The rate case expense included in the revenue requirements and related to these proceedings is not amortized. The amount is a credit due to a refund associated with Docket No. 12-0321.

## **12. Corporate Credit Cards**

ComEd explains that in the course of discovery and developing rebuttal, it voluntarily excluded approximately \$448,000 in credit card charges. In order to limit the issues in this proceeding, and without waiving any right to object to the same or a similar proposal in a future proceeding, ComEd accepted an additional adjustment proposed by Mr. Bridal relating to ComEd credit card charges and agreed to voluntarily remove \$253,565 of such costs from its revenue requirement. ComEd Init. Br. at 37. ComEd stated in its surrebuttal testimony that this additional adjustment is not reflected in the rebuttal schedules and revenue requirement. ComEd agreed to make the necessary adjustment to the revenue requirement used to develop delivery service charges to be computed in compliance with the Commission's final Order in this proceeding. *Id.* No party other than ComEd and Staff submitted testimony in this proceeding regarding ComEd's credit card charges. The Commission therefore approves the credit card charges subject to the adjustment.

## **13. Gross Revenue Conversion Factor**

ComEd submits that its Gross Revenue Conversion Factor ("GRCF") is 1.700. ComEd Init. Br. at 37. No party has objected to the GRCF. Therefore, the Commission approves ComEd's GRCF.

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

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

ComEd and Staff have both provided testimony on this issue in the instant docket, but both agree that the issue will be decided in Docket No. 14-0316, ComEd's Petition to Make Housekeeping Revisions and a Compliance Change to Filed Rate Formula. That docket is pending and a final order is expected by November 30, 2014. *Commonwealth Edison Co.*, ICC Docket No. 14-0316, Interim Order (Aug. 19, 2014) at 5. The Commission will incorporate the directives of the final order in Docket No. 14-0316 in the final order in this docket. The Commission therefore finds it unnecessary to address this issue in this docket at this time.

#### **2. Incentive Compensation Program Expenses**

##### **a. Annual Incentive Program ("AIP")**

##### **ComEd's Position**

ComEd opposes the AG's request that the Commission disallow the entirety of ComEd's AIP expense – roughly \$66 million dollars. The AG claims that the Shareholder Protection Feature ("SPF") that limits the amount of AIP paid by reference to Exelon's earnings per share ("EPS") means the incentive compensation is "based on" the earnings per share of Exelon. ComEd explains, however, that the SPF is not a

metric on which employees earn their AIP compensation. Instead, it is a “limiter” that can never increase but can only decrease (as it has the last two years) the amounts that employees are paid and the amount that is incorporated into the revenue requirement. ComEd Init. Br. at 38.

ComEd asserts that the expense the AG challenges is highly beneficial to customers. ComEd states that its AIP is based on eight operational and cost control metrics that are expressly permitted by EIMA. ComEd Reply Br. at 12. ComEd notes that it is undisputed that incentive compensation based on those metrics is recoverable. 220 ILCS 16-108.5(c)(4)(a). ComEd further notes that 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. ComEd Reply Br. at 12. The portion of AIP that is being challenged is a limiter that can only ever *reduce* incentive compensation expense.

As set forth in more detail below, ComEd contends that the AG’s proposal to disallow these prudent and reasonable costs of providing delivery service should be rejected because the program is consistent with: (1) EIMA; (2) canons of statutory interpretation and construction; (3) recent Commission practice and legislative intent; and (4) prior Commission practice. ComEd Init. Br. at 39.<sup>9</sup>

ComEd further contends that the total cost disallowance advocated by the AG is unduly harsh and disproportionate to the alleged wrong. ComEd Reply Br. at 12. Indeed the AG states 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.”). Thus, ComEd also asserts that even if the Commission determines the EPS limiter is inconsistent with the statute, 100% disallowance of AIP expense is a disproportionate remedy where, according to ComEd, the evidence is clear that the AIP award results from undisputed achievement of performance metrics that bestow benefits on customers. ComEd Reply Br. at 13. For that reason, ComEd supports, in the alternative, Staff’s alternative proposal to allow recovery of 102.9% of target. ComEd also notes that 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; ComEd Reply Br. at 12. ComEd therefore requests that, in the event the Commission believes that the limiter used in 2013 is contrary to EIMA, 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, ComEd states that it should nonetheless reject the total disallowance proposed by the AG and exercise its business judgment to apply Staff’s alternative limiter of 102.9%. ComEd Reply Br. at 13.

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<sup>9</sup> ComEd also identifies and discusses in detail numerous inaccuracies and inconsistencies in the AG’s position. See ComEd Reply Br. at 24-26.

**i. EIMA**

ComEd explains that under EIMA, incentive compensation expense based on operational and cost control metrics is recoverable. 220 ILCS 5/16-108.5(c)(4)(A). ComEd further explains that incentive compensation expense based on net income or an affiliate's earnings per share is not recoverable. *Id.* EIMA sets forth this framework in two very clear sentences providing that the formula rate approved by the Commission shall permit:

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

*Id.* ComEd explains that it constructed its AIP to comply with these two sentences and contends that the evidence shows that ComEd's incentive compensation expense does in fact reflect only the achievement of those recoverable operational and cost control metrics. ComEd Init. Br. at 40.

ComEd provided detailed evidence showing that the AIP operational and cost control metrics, also known as the AIP Key Performance Indicators ("KPIs"), are as specified in EIMA and are what ComEd employees are working towards achieving on a daily basis. *Id.* ComEd explained how those operational and cost control metrics are weighted and tracked through monthly reporting and quarterly scorecards. *Id.* ComEd also provided detailed evidence that as ComEd has revised its incentive compensation programs generally – and AIP specifically – to focus on customer centric metrics, ComEd's performance on those metrics has improved and customer benefits have increased. *Id.* And ComEd notes that no party disputes that ComEd's AIP expense was prudently and reasonably incurred. See ComEd Cross Ex. 2, Staff's Responses to ComEd's Data Requests ComEd-Staff 8.02 and 8.03; ComEd Cross Ex. 3, AG's Responses to ComEd's Data Requests ComEd-AG 5.01 and 5.02. ComEd Init. Br. at 40-41.

ComEd notes that it is undisputed that the amount of AIP compensation *earned* by ComEd's employees is based on operational and cost control metrics. Stated another way, ComEd explains that the evidence shows that *all of the components* of the 2013 AIP award *earned* are based on the achievement of the allowable metrics. ComEd Ex. 31.0 at 2-3. Accordingly, ComEd contends that it is also necessarily true that *all of the components* of the 2013 AIP award *paid* are based on the achievement of the allowable metrics. *Id.* at 1-2. These metrics are weighted, and the sum of that weighting adds up to 100%. ComEd Reply Br. at 16. As the 100% weighting indicates, the metrics are the entire universe of what the incentive compensation award is based on. ComEd further states that none of ComEd's AIP *expense* resulted from anything

other than ComEd's achievement of those KPI's and the resulting customer benefits. Indeed, ComEd notes that EIMA discusses "expense" which is understood to be a positive number. The EPS limiter only limits the amount of AIP paid – it will never increase the payment – and thus it can never form the basis of an expense. ComEd Init. Br. at 41. As discussed in greater detail in subpart iv supra, the Commission has recognized this fundamental difference between a metric and a limiter.<sup>10</sup>

## ii. Cannons of Statutory Interpretation and Construction

ComEd also contends that its position is the most consistent with the purpose of EIMA. ComEd notes that it is evident that the General Assembly wanted to ensure that incentive compensation only enhance customer benefits, not provide employees with incentives to enhance the profitability of utility affiliates. And that was the way that the Commission interpreted the statute in its Order in Docket No. 11-0721: "the new statute prohibits recovery, through rates, of incentive compensation that is based upon increasing the profitability of affiliates." 2011 Rate Case Order at 87. In that light, for incentive compensation to be impermissible, the incentive compensation must be designed to or have the effect of incentivizing employees to achieve that goal. ComEd points out that it is quite evident, however, that the AIP at issue here is not designed to and does not have the effect of incentivizing ComEd employees to increase Exelon's EPS. According to ComEd, the AIP at issue here is thus not "based on" Exelon's EPS. ComEd Init. Br. at 42.

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

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

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<sup>10</sup> ComEd notes that its incentive compensation expense cannot therefore be based on Exelon's EPS. ComEd illustrates this point by citing the impact of income taxes on AIP: the amount of AIP compensation an employee ultimately keeps is limited by income taxes, but no one would argue that ComEd's AIP is based on the Internal Revenue Code. Tr. at 293-294. ComEd Init. Br. at 41.

*United Savings Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (citations omitted). ComEd also notes that the AG's position violates the well known principles of statutory interpretation that courts should not interpret statutes in a way that produces an absurd result or renders portions of the statutory language superfluous. *Antunes v. Sookhakitch*, 146 Ill. 2d 477, 486, 588 N.E.2d 1111, 1115 (1992) (statutes should be construed to give reasonable meaning and avoid absurdity); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting the word "law" broadly could render other words superfluous). ComEd Init. Br. at 42-43; ComEd Reply Br. at 21.

ComEd observes that the AG's interpretation renders one sentence of the two sentence incentive compensation framework meaningless for two reasons. First, ComEd explains, the AG's remedy of disallowing the AIP expense in its entirety contravenes the plain language of EIMA that the Commission "shall" permit "recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance." 220 ILCS 5/16-108.5(c)(4). According to ComEd, it is undisputed that the AIP KPIs track these statutorily described metrics exactly. ComEd also notes that it is undisputed that the KPIs are benefiting customers. ComEd. Init. Br. at 43.

Second, ComEd contends that the operational and cost control metrics explicitly deemed permissible in EIMA, such as the EIMA reliability index metric, are related to and can decrease Exelon's EPS. Compare 220 ILCS 5/16-108.5(c)(4)(A) with 220 ILCS 5/16-108.5(c)(5). For example, ComEd notes, ComEd can – and did in 2013 – incur return on equity penalties for not meeting specified reliability metrics. This has a direct impact on Exelon's EPS. According to the AG's interpretation, incentive compensation based on those explicitly allowable metrics is also based on Exelon's EPS and would therefore not be recoverable. Thus, according to ComEd, the AG's interpretation creates an unavoidable conflict, leads to an absurd result, and renders either the first or second sentence of the statutory framework superfluous. ComEd thus claims that the AG's interpretation is fatally flawed and should be rejected by the Commission. ComEd Ex. 2.0 at 11; Tr. at 312-313, 340-344; ComEd Init. Br. at 43-44.

ComEd contends that 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. ComEd points out that each of the cases relied upon by the AG actually undermines its position.<sup>11</sup> ComEd Reply Br. at 21.

ComEd asserts that the AG misinterprets the point of the first case it cites regarding criminal sentencing guidelines. According to ComEd, in that case, the court specifically stated that "based on" does not mean influenced by or even that something

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<sup>11</sup> ComEd notes that 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; ComEd Rep. Br. at 21.

may finally impact the numerical value reached. *U.S. v. Ray*, 598 F.3d 407, 409 (7th Cir. 2010). ComEd explains that 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.* ComEd contends that if the Commission applied the court’s reasoning to the instant case, the Commission should find that 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. ComEd Reply Br. at 21-22.

ComEd notes that 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. ComEd explains that 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). ComEd points out that utilizing “substantially similar to” as the definition of “based on” in EIMA does not make sense. ComEd further notes that 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. ComEd Reply Br. at 22.

ComEd contends that 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). According to ComEd, 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. ComEd explains that 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. ComEd further explains that the court also specifically stated that “based on” does not mean “related to,” which would have provided a broader immunity. *Id.* ComEd Reply Br. at 22.

According to ComEd, the Commission should not interpret “based on” in a vacuum and without regard to whether incentive compensation actually incentivizes employees to enhance affiliate profitability. According to ComEd, 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. ComEd Init. Br. at 42-43; ComEd Reply Br. at 23.

ComEd contends that its interpretation, by contrast, is consistent with the purpose of EIMA. ComEd’s witness, Mr. Brookins, explained that due to the formula rate structure in place since 2011, the ability of ComEd employees to increase Exelon’s EPS

is extremely limited. The way to increase earnings within those caps would be to increase capital spending. This would increase ComEd's rate base and the total amount of investment on which ComEd can earn its allowed rate of return, in turn increasing ComEd's net income and Exelon's EPS. Under formula rates, however, increases or decreases in operating and maintenance expense do not impact ComEd or Exelon's earnings because they flow through to customers dollar for dollar, and ComEd does not earn a return on operating expenses. In other words, under ComEd's interpretation, operating expenses do not contribute to net income and do not impact Exelon's EPS. Tr. at 321-347. ComEd Init. Br. at 44.

ComEd also states that it provided compelling and uncontroverted evidence that employees are not motivated to benefit shareholders by increasing Exelon's EPS, which also shows that ComEd's interpretation is consistent with the statutory purpose. ComEd notes that Mr. Brookins provided a numerical example that illustrates this point. ComEd explains that Exelon has approximately 900 million common shares outstanding. Thus it would take about \$9 million of ComEd earnings to increase Exelon's EPS by one penny. ComEd also explains that because of ComEd's capital structure, half of that \$9 million would be financed by equity. 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. Tr. at 344-347, 351. ComEd Init. Br. at 44-45; ComEd Reply Br. at 20.

ComEd further notes that its capital expenditure KPI incentivizes employees to decrease capital spending. And ComEd also notes that the capital expenditure metric accounts for 25% of the total AIP award that employees can earn. ComEd explains that 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. \$180 million is more than four times that delta. Thus, ComEd observes, 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. According to ComEd, such behavior would be entirely illogical. See ComEd Ex. 19.01; Tr. at 345-347. ComEd Reply Br. at 20.

ComEd states that it has provided evidence that even when employees' awards are in fact limited, employees continue to work to increase customer benefits. See *generally* ComEd Ex. 19.0 at 7-14. ComEd notes that 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. ComEd Ex. 25.0 at 5-6; ComEd Ex. 19.0 at 5-6. According to ComEd, the bottom line is that ComEd's AIP cannot and does not incentivize employees to increase the profitability of Exelon and cannot therefore be “based on” Exelon's EPS as the Commission has logically interpreted that term. ComEd Init. Br. at 44-45.

In addition, ComEd provided evidence that the limiter at issue has benefited customers in that it reduced incentive compensation expense by \$8.5 million in 2013.

ComEd. Init. Br. at 45. ComEd also states that in 2012, the limiter likewise reduced ComEd's AIP award by \$17 million. *Id.* ComEd notes that 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.* ComEd contends that these amounts constitute significant customer savings. In contrast, ComEd notes, there is no evidence to suggest that the limiter provides any benefit to shareholders. To the contrary, Mr. Brookins' and Mr. Prescott's testimony shows that without the limiter, these increased compensation expenses would simply flow through to customers. Tr. at 347; ComEd Ex. 18.0 REV. at 9. ComEd Init. Br. at 45.

### **iii. Recent Commission Practice and Legislative Acquiescence**

ComEd asserts that its analysis is also completely consistent with recent post-EIMA and prior Commission practice (discussed in section V.C.2.a.iv. below). ComEd notes that in Docket No. 11-0721, the Commission specifically based the amount of AIP recoverable under ComEd's 2010 plan on the amount determined pursuant to the net income limiter applicable to that plan. ComEd further notes that the AIP plans at issue in Docket Nos. 12-0321 (2011 plan) and 13-0318 (2012 plan) contained net income and Exelon EPS limiters, respectively, and no disallowance was made on the basis of those limiters. ComEd also explains that these three cases represent the Commission's interpretation of ComEd's allowable AIP protocols since the passage of EIMA. ComEd Init. Br. at 45.

ComEd further contends that the Illinois General Assembly has acquiesced in this interpretation. ComEd explains that the Commission issued the final orders in Docket Nos. 11-0721 and 12-0321 by the end of 2012. In both of those dockets the Commission's interpretation was that an incentive compensation plan is not "based on" EPS if the incentive compensation award is earned pursuant to operational and cost control metrics, even though that earned award can be reduced by a limiter that is based on EPS. ComEd Init. Br. at 46.

ComEd notes that subsequently, on May 22, 2013, the General Assembly passed PA 98-0015. This amendment to EIMA states that its express legislative purpose is to correct errant Commission decision-making under EIMA. PA 98-0015, Section 1, eff. May 22, 2013. ComEd notes that this amendment does not change or correct anything regarding the Commission's decisions on incentive compensation. See *generally* PA 98-0015, eff. May 22, 2013. "[W]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent." *In re Marriage of O'Neill*, 138 Ill. 2d 487, 495-96, 563 N.E.2d 495, 498 (1990) (internal quotations omitted). ComEd also notes that the Illinois Supreme Court has indicated that legislative acquiescence is particularly powerful, where, as here, the legislature has amended other portions of the same law but left the relevant provision unchanged.

We also note that *Farm Fresh* is the only federal court of appeals decision to squarely decide the issue .... Yet in the eight years since the case was

decided, Congress has chosen not to amend the Act ... even though it has amended section 1631 during that period in other respects. This raises the presumption that Congress is satisfied with the judicial construction placed on the statute by *Farm Fresh*.

*State Bank of Cherry v. CGB Enters., Inc.*, 2013 IL 113836, ¶ 61. ComEd observes that in *Karbin v. Karbin*, 2012 IL 112815, ¶ 47, the Illinois Supreme Court noted that the Illinois General Assembly had amended the pertinent statute after two decisions separately construing that statute. The court added that the legislature had taken no action to indicate any disapproval of the judiciary's construction. *Id.* Accordingly, ComEd states, the court concluded that the legislature had acquiesced in the court's interpretation.<sup>12</sup> *Karbin*, 2012 IL 112815, ¶ 47. ComEd Init. Br. at 45-46.

ComEd thus asserts that here, the General Assembly has clearly acquiesced in the Commission's view that an incentive compensation plan is not "based on" EPS even though earned awards can be reduced by an EPS or net income limiter. ComEd therefore requests that the Commission apply the same interpretation of the relevant section of EIMA and reject the contrary interpretation offered by the AG. ComEd Init. Br. at 47.

#### **iv. Prior Commission Practice**

ComEd notes that over the past decade, the Commission has consistently allowed incentive compensation based on customer focused metrics and disallowed the portion of ComEd's AIP expense that reflects achievement of metrics that are based on Exelon's EPS or ComEd's net income. ComEd further notes that 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. As ComEd explains (and Staff recognizes), this is the distinction between AIP compensation *earned*, *i.e.* based on a metric – and AIP compensation *paid*, *i.e.* subject to a limiter. ComEd Init. Br. at 48.

As an example, ComEd points to its 2004 AIP, which included an Exelon EPS metric and an Exelon EPS limiter with a minimum threshold EPS performance

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<sup>12</sup> The First and Second District Illinois Appellate courts have reached similar conclusions:

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

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

requirement, very similar to the limiter at issue in this case. ComEd explains that in that year's AIP, the EPS metric accounted for 50% of the total award. In Docket No. 05-0597, the Commission disallowed recovery of 50% of the award – the portion that was based on the EPS metric – but allowed recovery of the remainder of the award that was subject to the Exelon EPS limiter. ComEd Init. Br. at 48.

ComEd cites its 2006 AIP as a further example. The 2006 plan contained a net income funding metric and an Exelon EPS limiter. The Commission disallowed recovery of the portion of the award that was based on the net income metric but allowed recovery of the remainder of the award that was subject to the Exelon EPS limiter. ComEd responded to and relied on this direction from the Commission and removed both EPS and net income metrics from its AIP, but retained the limiting features based on EPS or net income. *Id.* at 49.

ComEd explains that in its 2007 rate case, the Commission addressed whether ComEd could recover the salaries and wages of certain ComEd employees who, in addition to performing their usual and customary utility functions (recoverable costs), also worked on a merger (non-recoverable). The Attorney General had recommended a full disallowance, but the Commission instead disallowed 25% of the costs in question, though it never explained how it arrived at that figure. *Commonwealth Edison Co v. Illinois Commerce Comm'n, et al.*, 405 Ill. App. 3d 389, 398-401, 937 N.E. 2d 685, 698-701 (2d Dist. 2010). On appeal, the court upheld the Commission's action on the ground that the Commission was entitled to – and did – exercise its “business judgment” to reach “‘pragmatic solutions’ by filling gaps in the record.” *Id.* at 402. Significantly, the court relied upon the Commission's position that, “once it identifies a recoverable cost item, such as the labor costs related to the utility-services work performed by the employees, the Commission is not authorized to treat the expense as zero.” *Id.* at 401. ComEd contends that that is precisely what the AG requests here: to treat an unquestionably recoverable labor cost item as though it were “zero.” ComEd Init. Br. at 49.

ComEd notes that in 2013, ComEd's AIP was based on customer focused operational metrics that are the same metrics that are set forth in EIMA. ComEd explains that the 2013 AIP had eight metrics. According to ComEd, two of the eight metrics comprised 50% of the AIP's weighting and related to ComEd cost control. ComEd further explains that six of the eight metrics – the other 50% of the AIP's weighting – related to ComEd operations. Thus, according to ComEd, the AIP was equally weighted between the ComEd cost control metrics and the ComEd operational metrics. ComEd notes that its employees earn 100% of their AIP awards pursuant to these EIMA metrics and the award is based on these metrics. ComEd Reply Br. at 16-17.

ComEd states that in its 2013 AIP, the limiter was calculated by determining the percentage achievement of the target EPS of Exelon plus 20 percentage points. ComEd notes that in 2013, the limiter was calculated as follows: Exelon's EPS was 104.4% of target. Adding 20 percentage points to that figure results in a payout limit of

124.4%. 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%. ComEd explains that its employees do not earn their award pursuant to this limiter and their award is not based on this limiter. *Id.*

As discussed above, ComEd notes that, over the past decade, the Commission has recognized the distinction between a metric and a limiter and has consistently allowed incentive compensation based on customer focused *metrics* and disallowed the portion of ComEd's AIP expense that reflects achievement of *metrics* that are based on Exelon's EPS or ComEd's net income.<sup>13</sup> ComEd also observes that, 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. ComEd Reply Br. at 18. ComEd notes that 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, but the AG does not. AG Second Corr. Init. Br. at 14 (incorrectly describing EPS limiter as a metric). ComEd explains that the parties nonetheless 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* Staff Ex. 8.0 at 22-26. ComEd contends that, in each of the cases cited by the parties, the Commission disallowed incentive compensation that was based on achievement of a financial metric.<sup>14</sup> ComEd observes that 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.* Accordingly, ComEd asserts that the cases relied on by the parties are therefore inapposite. ComEd Reply Br. at 18-19.

ComEd states that the Commission practice of requiring incentive compensation to confer a benefit on customers does not change this analysis. ComEd explains that EIMA explicitly codified the metrics that unquestionably confer customer benefits and no further evidence should be required. ComEd further explains that, 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. See Staff Init. Br. at 35-36; ComEd Reply Br. at 19; ComEd Reply Br. at 19.

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. ComEd Ex. 2.0 at 23. Further, ComEd showed that, in 2012, the limiter reduced ComEd's AIP

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<sup>13</sup> See 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.

<sup>14</sup> 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).

award by \$17 million. ComEd Ex. 18.0 REV. at 12. According to ComEd, that figure constitutes significant customer savings. ComEd Reply Br. at 19.

ComEd stresses that no evidence suggests that the limiter provides any benefit to shareholders, and certainly not at the expense of customers. To the contrary, ComEd argues, 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; ComEd Ex. 18.0 REV. at 9. ComEd further explains that, 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 Reply Br. at 19-20.

**v. Staff's Alternative Recommendation for Recovery of 102.9% of Target**

ComEd observes that, in contrast to the AG's proposed disallowance of ComEd's entire AIP award, Staff's alternative of allowing 102.9% of target better approximates the actual 140.4% of target earned by ComEd employees pursuant to the operational and cost control metrics set forth in EIMA and the 124.4% paid by ComEd. ComEd Init. Br. at 50. For this reason, ComEd contends, Staff's remedy is proportionate, and the AG's is not. ComEd therefore requests that in the event that the Commission dislikes the limiter currently in place, the appropriate remedy is to eliminate the effect of that limiter, not disallow ComEd's AIP expense in its entirety.<sup>15</sup>

ComEd explains that 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. ComEd Reply Br. at 13. ComEd states that 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. ComEd contends that 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. ComEd therefore submits that 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. ComEd Reply Br. at 13-14.

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<sup>15</sup> ComEd has also offered an alternative proposal of allowing recovery of 124.2%. This proposal is also rooted in prior Commission practice and, ComEd contends, is more reasonable than disallowing ComEd's AIP expense in its entirety. ComEd Init Br. at 50, fn. 12. Looking at ComEd's historical performance of the operational metrics and total payout since the adoption of EIMA, ComEd's three-year average (2011-2013) of earned AIP based on operational metrics totals 140.7%, which would yield an actual payout of 124.2%. *Id.* This alternative uses a three year average that considers the facts specific to the 2013 plan as well as ComEd's operational performance and total payout trend since the adoption of EIMA. *Id.*

ComEd explains that 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). According to ComEd, this certainty is critical to proper implementation of EIMA. ComEd further explains that 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. ComEd Reply Br. at 14. ComEd contends that 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).

ComEd notes that 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%, ComEd notes that 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%).

2011 Rate Case Order at 89. ComEd explains that if it had been aware that the limiter was a problem, it certainly would have removed it. ComEd Ex. 18.0 REV. at 9-10 (explaining how each time the Commission took issue with a portion of ComEd's AIP, ComEd removed the offending element). ComEd Reply Br. at 14-15.

ComEd contends that the AG also 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. ComEd explains that, 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., 2012 Rate Case Order at 52-59 (disallowing rate case expenses even though no party contested their recovery). ComEd Reply Br. at 15.

In short, ComEd submits that it is 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. ComEd therefore submits that the Commission should reject the AG's attempt at an end run around EIMA through its proposed disallowance of \$66 million in prudently incurred labor costs. ComEd further submits that, in the alternative, the Commission is entitled to – and should – exercise its “business judgment” to apply an alternative limiter if the Commission dislikes the current 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). ComEd Reply Br. at 15-16.

ComEd contends that the weight of the evidence provided in this case shows that ComEd's AIP expense is recoverable. ComEd states that 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; ComEd Reply Br. at 26.

ComEd states that, 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. Staff Ex. 8.0 at 16, 33. ComEd states that disallowing the AIP expense entirely would require the Commission to knowingly disallow incentive compensation when at the very least a portion of that incentive compensation is clearly recoverable. ComEd further states that 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. ComEd Reply Br. at 26.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusion**

As a preliminary matter, the Commission notes that there is a fundamental difference between an incentive compensation metric and an incentive compensation plan limiter. A metric is a measure by which, if prescribed goals are met, employees earn their incentive compensation. Metrics are weighted, and the sum of that weighting adds up to 100%. 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 otherwise earned. Utilizing a limiter is a standard feature in good incentive plan design. The portion of ComEd's AIP that both the AG and Staff take issue with is a limiter that reduces ComEd's incentive compensation expense. This limiter is not a metric that creates an incentive compensation expense. For the reasons set forth below, the Commission finds that this limiter does not render the AIP earned based on those statutorily specified metrics unrecoverable.

First, the statutory text at issue is set forth above in the summaries of the parties' positions. It is undisputed that ComEd's AIP is earned only pursuant to, and thus is

“based on,” the eight operational and cost control metrics that are expressly permitted by that statutory text. The Commission notes that EIMA explicitly codified the metrics that unquestionably confer customer benefits and no further evidence of customer benefit is required. The Commission notes further that ComEd nonetheless provided detailed evidence that ComEd’s AIP focuses on customer centric metrics, that ComEd has achieved above target performance on those metrics, and that customers have benefitted from that performance. The Commission finds that the amount of AIP compensation earned by ComEd’s employees is based on those expressly recoverable operational and cost control metrics as specified in EIMA. The Commission therefore also finds that ComEd’s AIP expense is based on the achievement of those metrics. The EPS limiter that the AG objects to only limits the amount of AIP paid, it cannot create any entitlement to an AIP payment if the statutorily-prescribed metrics are not achieved and it cannot increase the payment; thus, it can never form the basis of the AIP expense.

Second, the Commission finds that the General Assembly, in the portion of EIMA that is at issue here, wanted to ensure that incentive compensation only enhance customer benefits, not provide employees with incentives to enhance the profitability of utility affiliates. This comports with the way the Commission interpreted the statute in its Order in Docket No. 11-0721: “the new statute prohibits recovery, through rates, of incentive compensation that is based upon increasing the profitability of affiliates.” 2011 Rate Case Order at 87. For incentive compensation to be impermissible, the incentive compensation must be designed to or have the effect of incentivizing employees to achieve that goal. The evidence shows that the AIP at issue here is not designed to and does not have the effect of incentivizing ComEd employees to increase Exelon’s EPS. For this reason as well, the AIP at issue here is not “based on” Exelon’s EPS.

Third, it is also clear that the legislature has acquiesced in this interpretation of the governing section of EIMA that does not prevent use of a limiter identical to that challenged here, having amended EIMA twice since its enactment without amending the incentive compensation portion of the law. “[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). Legislative acquiescence is particularly powerful, where, as here, the legislature has amended other portions of the same law but left the relevant provision unchanged. *State Bank of Cherry v. CGB Enters., Inc.*, 2013 IL 113836, ¶ 61; *Karbin v. Karbin*, 2012 IL 112815, ¶ 47; *Carrera v. Smith*, 305 Ill. App. 3d 1079, 1082, 713 N.E.2d 1282, 1285 (2d Dist. 1999); *Stevens v. Lou’s Lemon Tree, Ltd.*, 187 Ill. App. 3d 458, 464, 543 N.E.2d 293, 297 (1st Dist. 1989).

Fourth, over the past decade, even predating enactment of EIMA, the Commission has consistently allowed ComEd’s incentive compensation expense that is based on customer focused metrics and disallowed only the portion of ComEd’s incentive compensation expense that was earned pursuant to whether net income or EPS metrics were achieved. In that same time frame, the Commission has never

disallowed the entirety of ComEd's incentive compensation expense when it was subject to a limiter based on EPS or net income. See 2013 Rate Case Order at 38-61; 2012 Rate Case Order at 31-32; 2011 Rate Case Order at 80-92; 2007 Rate Case Order at 54-61; 2005 Rate Case Order at 90-97. The AG has not offered a compelling reason to depart from this well-established practice.

### **Alternative A Commission Analysis and Conclusion**

The Commission therefore finds that ComEd's AIP expense is a prudent and reasonable cost of providing delivery service and is "based" only on the permissible metrics specified by Section 16-108.5(c)(4)(A) of EIMA and therefore is recoverable in its entirety. The Commission rejects the AG's proposed disallowance because ComEd's AIP program is consistent with the EIMA framework, canons of statutory interpretation and construction, the doctrine of legislative acquiescence, and Commission practice.

### **Alternative B Commission Analysis and Conclusion**

The Commission agrees with the AG, however, that a portion of the AIP is contrary to the statute, but the remedy the AG seeks – total cost disallowance – is unreasonably harsh, unprecedented, and disproportionate. The Commission therefore agrees with Staff that the appropriate remedy is to eliminate the limiter, not disallow ComEd's AIP expense in its entirety. As Staff points out, ComEd's incentive compensation is materially based on EIMA's operational metrics and to allow recovery of nothing would not be just and reasonable. Applying its knowledge of incentive compensation over the past decade, as well as its analysis of the relationship between the EIMA metrics and the narrow role of the limiter, the Commission agrees with Staff and finds 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." The Commission therefore applies the alternative limiter of 102.9 %.

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

##### **ComEd's Position**

ComEd notes that CCI, through its witness Mr. Gorman, seeks to disallow all of ComEd's LTPP compensation – roughly \$1.1 million in expense and \$0.5 million in rate base. ComEd observes, however, that Mr. Gorman's proposed disallowance is based solely on his fundamental misunderstanding of ComEd's total compensation package. Mr. Gorman believes that because the LTPP shares the same KPIs as the AIP, it is duplicative of the AIP. CCI Ex. 1.0 at 12; CCI Ex. 2.0 at 8. ComEd notes that Staff does not support Mr. Gorman's proposed disallowance. Staff Ex. 8.0 at 38. ComEd Init. Br. at 50.

ComEd observes that Mr. Gorman fails to understand that the AIP is a short-term incentive plan and the LTPP is a long-term incentive plan. ComEd Ex. 18.0 REV. at 14.

ComEd explains that 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.* In other words, 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.* ComEd Init. Br. at 50-51.

ComEd explains that if it did not have the LTPP as part of its market competitive pay mix, employees who are eligible to receive awards under the LTPP would simply be eligible for larger AIP awards or increased base salaries. ComEd Ex. 31.0 at 7. Thus, as ComEd explains, the total compensation of these employees is not increased by their participation in the LTPP – a portion of their total compensation has simply been designated as long term incentive compensation as opposed to base salary or short term incentive compensation. *Id.* Stated another way, the total size of their compensation pie is still the same, but the incentive compensation piece has been cut into two slices. *Id.* ComEd therefore asks the Commission to reject CCI's proposal to disallow ComEd's prudent and reasonable compensation expenses. ComEd Init. Br. at 51.

ComEd explains that a ComEd employee who participates only in ComEd's AIP would have a total compensation mix broken down between base salary (80%) and short term incentive compensation (20%). ComEd then notes that 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 (12%) as opposed to base salary (now 70%) or short term incentive compensation (now 18%). ComEd notes that 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. ComEd Reply Br. at 28-29.

ComEd notes that 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 explains that it is not seeking recovery of expenses incurred under previous plans, nor is this a traditional Article IX rate case. Instead, ComEd explains, it is seeking recovery of expenses incurred under the current LTPP pursuant to an EIMA FRU. ComEd concedes that Commission practice and procedure is still relevant, but ComEd maintains that EIMA explicitly codified the metrics that unquestionably confer customer benefits and no further evidence should be required. ComEd Reply Br. at 26-27.

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. ComEd explains that because 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. ComEd notes that Staff agrees with ComEd, astutely observing that using “similar operational metrics places even more emphasis on the achievement of metrics that provide ratepayer benefits.” Staff Ex. 8.0 at 38; see *a/so* Staff Init. Br. at 45-46; ComEd Reply Br. at 27.

ComEd notes that 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. According to ComEd, 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. According to ComEd, 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 explains that it is simply trying to make its money work harder: to encourage achievement of customer benefits *and* to retain employees with valuable institutional knowledge. ComEd contends that this approach is prudent and reasonable and the Commission should reject CCI’s proposed disallowance. ComEd Reply Br. at 29.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusion**

The Commission agrees with ComEd and Staff and rejects CCI’s proposed disallowance. The Commission finds that the AIP is a short-term incentive plan and the LTPP is a long-term incentive plan. The Commission understands that 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. The Commission agrees with ComEd and Staff that 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. This does not render the LTPP duplicative of the AIP, and the Commission finds that the two plans are not duplicative. Moreover, even assuming ComEd can encourage retention of experienced employees other than through the LTPP, that does not mean that ComEd cannot also designate a portion of those employees’ at risk pay as long term incentive compensation.

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

**ComEd's Position**

ComEd initially requested recovery of 13.5% of its LTPSAP expense in this proceeding, or \$588,000. See ComEd Ex. 13.03, Sched. C-2.4. The AG seeks to disallow 100% of ComEd's LTPSAP expense. AG Ex. 1.0 2nd CORR. at 27; AG Ex. 1.3 REV. at 3. CCI seeks to allow only 4.5% of ComEd's LTPSAP expense, or \$137,000. CCI Ex. 1.0 at 11. Staff does not take a position on this issue but states that the Commission could disallow all of ComEd's LTPSAP expense because it is "dependent, in part, on financial measures of the type that the Commission has disallowed in previous proceedings." Staff Ex. 8.0 at 35. To limit the issues in this proceeding, ComEd proposed a true 1/3 approach that results in 5.7% recovery, or \$174,000. Mr. Gorman accepted ComEd's alternate proposal. CCI Ex. 2.0 at 8. ComEd Init. Br. at 52.

ComEd explains that the LTPSAP is a long term incentive program, applicable only to executives at the level of vice president and above. ComEd Init. Br. at 52. There is no overlap in participation between the LTPP and the LTPSAP. Tr. at 134-135. As shown in ComEd Ex. 2.01, the 2013 LTPSAP includes payout percentages for individual customer-focused goals, specifically Customer Average Interruption Duration Index ("CAIDI") and System Average Interruption Frequency Index ("SAIFI"). ComEd Ex. 2.01; ComEd Ex. 12.0 REV. at 10. ComEd has shown that its CAIDI and SAIFI metrics performed at distinguished levels. ComEd Ex. 12.0 REV. at 10. ComEd's initial position requested inclusion of the total CAIDI and SAIFI metrics as calculated under the LTPSAP metrics with a limit of 125%. ComEd Ex. 2.0 at 27. Mr. Gorman's alternate proposal results in an inclusion of 1/3 of that amount. ComEd Ex. 12.0 REV. at 11; CCI Ex. 1.0 at 11. ComEd Init. Br. at 52-53.

ComEd contends that the AG's only basis for disallowing these prudent and reasonable costs is Mr. Brosch's contention that the payout was limited by the Compensation Committee of the Exelon Board of Directors from 147.8% to 125%. AG Ex. 1.0 2nd CORR. at 27; ComEd Ex. 12.0 REV. at 11. He then deduces that because the payout was limited, ComEd's assertion that 13.5% of payouts are based on ComEd's operations performance is not supportable. AG Ex. 1.0 2nd CORR. at 27; ComEd Ex. 12.0 REV. at 11. ComEd explains that the opposite is true, however. ComEd Init. Br. at 53. The 13.5% is based on target performance. *Id.* ComEd contends that since its performance met the distinguished level in 2013, a higher percentage of payout is supportable for ComEd. *Id.* ComEd further notes that ComEd's reduction of its request to 5.7% in accordance with Mr. Gorman's recommendation essentially moots Mr. Brosch's argument. ComEd Init. Br. at 53.

ComEd accepts Mr. Bridal's observation that it is true that the LTPSAP payouts are subject to an overall Total Shareholder Return ("TSR") modifier. ComEd Ex. 31.0 at 5. But ComEd also notes that TSR is not the same thing as net income or EPS. *Id.* ComEd therefore asserts that while Mr. Bridal's description of TSR in his rebuttal

testimony is accurate (see Staff Ex. 8.0 at 34-35), his characterization of TSR as “financial measures of the type that the Commission has disallowed in previous proceedings” is not (*id.* at 35; ComEd Ex. 31.0 at 5). ComEd explains that the Commission has disallowed ComEd’s incentive compensation when the amount earned was based on Exelon’s EPS or ComEd’s net income. ComEd notes that the Commission has never disallowed incentive compensation in past ComEd proceedings because the amount was subject to a total shareholder return modifier. ComEd Init. Br. at 53.

ComEd notes that 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. ComEd contends that this position is ironic considering the AG’s contrary position regarding recovery of AIP costs. See *id.* at 38. ComEd notes that 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.* ComEd asserts that the AG cannot have it both ways. According to ComEd, 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. ComEd Reply Br. at 30.

ComEd concludes that, in sum, neither the Commission nor EIMA has prohibited all incentive compensation that is in any way related to or limited by financial measures. Accordingly, ComEd submits that the Commission should reject the AG’s proposal to disallow ComEd’s prudent and reasonable compensation expenses.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusion**

The Commission agrees with ComEd and CCI and rejects Staff’s and the AG’s proposed disallowance. The Commission notes that the LTPSAP is a long term incentive program, applicable only to executives at the level of vice president and above. There is no overlap in participation between the LTPP and the LTPSAP. As shown in ComEd Ex. 2.01, the 2013 LTPSAP includes payout percentages for individual customer-focused goals, specifically Customer Average Interruption Duration Index (“CAIDI”) and System Average Interruption Frequency Index (“SAIFI”). No party disputes ComEd has shown that its CAIDI and SAIFI metrics performed at distinguished levels. The basis for Staff’s and the AG’s proposed disallowance is that the LTPSAP award is subject to a Total Shareholder Return (“TSR”) modifier. The Commission agrees with Staff and ComEd that TSR is not the same thing as net income or EPS,

which are the metrics prohibited under EIMA. The Commission also notes that the TSR modifier is not a metric, it is a limiter, playing the same role as the limiter described above in the section on AIP and permissible for the same reasons. The Commission thus disagrees with Staff's characterization of TSR as "financial measures of the type that the Commission has disallowed in previous proceedings." Neither Commission practice nor EIMA have prohibited all incentive compensation that is in any way related to or limited by financial measures. Accordingly, the Commission rejects the AG's and Staff's proposal to disallow ComEd's LTPSAP expenses. The Commission also notes that the exercise of board discretion to limit an award does not render that award unrecoverable.

### **3. Collection Agency Costs**

#### **ComEd's Position**

ComEd asserts that it has incurred a total of \$2,171,000 in outside collection agency fees in 2013. ComEd explains that it has included \$1,524,000 in its delivery service revenue requirement – \$1,019,000 of which is specifically related to delivery service and \$505,000 of which is related to providing PORCB service. ComEd Ex. 3.0 at 33; ComEd Ex. 13.02, WP 7, page 5; ComEd Init. Br. at 54. Staff recommends that collection agency costs related to PORCB be recovered through Rider PORCB. Staff Init. Br. at 49. ComEd notes that it does not object to Staff's recommendation regarding the recovery of collection agency costs related to Rider PORCB with the understanding that the Commission should make a final definitive determination as to where they will be recovered in the final Order in this docket. ComEd explains that it provided the necessary tariff language changes to implement Staff's recommendation. ComEd Init. Br. at 54.

ComEd notes that ICEA has taken issue with Staff's recommendation that collection agency costs related to PORCB should be recovered through Rider PORCB. ICEA takes the position that these costs should be recovered through delivery services. ICEA Init. Br. at 3. ComEd and Staff agree that the remaining \$647,000 in collection agency fees can be attributed to ComEd supply and should be recovered through Rider PE. ComEd Ex. 3.0 at 33; Staff Ex. 2.0 at 12; ComEd Ex. 13.0 at 12. ComEd Init. Br. at 54.

#### **Staff and Intervenor Positions**

### **Alternative A Commission Analysis and Conclusion**

The Commission agrees with Staff's recommendation, and finds that the \$505,000 of collection agency costs related to providing PORCB service should be recovered through the pending PORCB reconciliation docket (Docket No. 14-0313). Accordingly, the tariff changes proposed by ComEd are also approved, and the Commission rejects ICEA's contention that these PORCB-related costs should be recovered here.

### **Alternative B Commission Analysis and Conclusion**

The Commission agrees with ICEA that the \$505,000 of collection agency costs related to providing PORCB service should be recovered in the present docket. No party contests the prudence or reasonableness of these costs, and they are therefore approved.

## **VI. RATE OF RETURN**

### **A. Overview**

ComEd fully supported its rate of return to be applied to the 2013 Reconciliation Year and the 2015 Initial Rate Year through the testimony of multiple witnesses.

### **B. Capital Structure**

ComEd provided its capital structure and cost for the purpose of determining both the 2013 Reconciliation Year and the 2015 Initial Rate Year. ComEd and Staff agree and mutually recommend a 7.04% rate of return on rate base for the 2013 Reconciliation Year and a 7.06% rate of return on rate base for the 2015 Initial Rate Year. Staff Ex. 1.0, Sched. 1.01 RY, line 25; *id.*, Sched. 1.01 FY, line 25; Staff Ex. 3.0 at 3-4; ComEd Ex. 3.0 at 47-49; ComEd Ex. 13.01, Sch FR D-1, line 21; ComEd Init. Br. at 55. ComEd has updated its rate of return through agreement with Staff. Therefore, the Commission approves ComEd's rates of return for the 2013 Reconciliation Year and the 2015 Initial Rate Year.

**2013 Reconciliation Year**

*Capital Structure Component*

*Common Equity*

*Long Term Debt*

*Short Term Debt*

*Credit Facility Cost*

*Total Weighted Average*

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

**2015 Initial Filing Year**

*Capital Structure Component*

*Common Equity*

*Long Term Debt*

*Short Term Debt*

*Credit Facility Cost*

*Total Weighted Average*

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

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

ComEd Init. Br. at 55.

**C. Cost of Capital Components**

**1. Rate of Return on Common Equity**

See Section VI.B., *supra*.

**2. Cost of Long-Term Debt**

See Section VI.B., *supra*.

**3. Cost of Short-Term Debt**

See Section VI.B., *supra*.

**4. Overall Weighted Cost of Capital**

See Section VI.B., *supra*.

**VII. RECONCILIATION**

**A. Overview**

ComEd fully supported its reconciliation adjustments for the 2013 Reconciliation Year through the testimony of multiple witnesses, as discussed below.

**B. Potentially Contested Issues**

**1. Calculation of Interest on Reconciliation Balance**

**ComEd's Position**

ComEd observes that both AG and CCI propose reducing the reconciliation balance upon which interest is calculated by the amount of accumulated deferred income taxes ("ADIT") said to be related to that balance. That would mean that interest would be paid on only a portion of the reconciliation balance at the end of 2013. ComEd Ex. 12.0 REV. at 29. In contrast, EIMA requires that, "[a]ny over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year." 220 ILCS 5/16-108.5(d)(1). There is no provision for interest to be calculated on any smaller or different amount. Although the proposed 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 Reply Br. at 31-32.

As the Commission noted in its decision last year in Docket No. 13-0553, the General Assembly has already amended this section of EIMA, and has thereby clearly spoken regarding the calculation of the reconciliation balance and the interest rate applicable to it, and its implementation is no longer in doubt. That amendment left undisturbed the Commission's prior rejection of any such ADIT adjustment to ComEd's reconciliation balance or reconciliation interest. ComEd further notes that while the General Assembly amended the very sentence of EIMA at issue to, *inter alia*, change the calculation of the interest rate applicable to the reconciliation balance, it made no similar correction or change in response to the AG's claim that an ADIT adjustment to the reconciliation balance was simply overlooked. ComEd explains that 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. ComEd further explains that 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. *Id.* at 32.

According to ComEd, three independent reasons compel rejection of this proposal: (i) the proposal is contrary to the law and Commission decisions; (ii) the proposal is without merit; and (iii) the proposal is inconsistent and asymmetrical. ComEd also explains why the AG's "alternative proposal" must be rejected.

**a. Applicable Law and Commission Decisions**

ComEd notes that the same proposal has been rejected in at least five prior ComEd cases and that no new argument in support of the proposal is advanced here. ComEd Ex. 12.0 REV. at 24-25 (citing cases). ComEd also notes that while the General Assembly has amended the relevant sections of EIMA since the Commission

first rejected this proposal, the General Assembly did not change any statutory language to authorize the subtraction of ADIT as proposed here, thus evincing a legislative endorsement of the correctness of the Commission's rejection of that proposal, as the Commission itself has recognized. *Id.* at 25. See ComEd Init. Br. at 45-47.<sup>16</sup>

ComEd contends that, despite this background, the Initial Briefs of the AG and CCI fail 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. According to ComEd, these materials, when duly considered, form a clear, coherent and controlling framework for determining the reconciliation adjustment and applicable interest rate. This framework, ComEd notes, does not allow for adjustments to the reconciliation balance such as that proposed by the AG and CCI. ComEd Reply Br. at 32-33.

ComEd asserts that beginning with ComEd's initial formula rate case, the AG and others advanced proposals designed to erode recovery of the full reconciliation balance. ComEd explains that 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. As ComEd notes, 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. ComEd Reply Br. at 33.

ComEd also observes that 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

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<sup>16</sup> ComEd further notes that the Commission has held that, under EIMA, a proposal such as this that would change the structure and protocol of ComEd's formula rate may not be considered in a Section 16-108.5 annual update proceeding, which this is. ComEd Init. Br. at 57-58. See also Section III.A., *supra*.

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"). ComEd notes that these 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. ComEd Reply Br. at 33-34.

ComEd explains that 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). ComEd notes that, 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). ComEd stresses that 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. ComEd Reply Br. at 34.

ComEd contends that 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* AG Ex. 1.0 CORR. at 18 (citing to ICC Docket Nos. 11-0721, 12-0321, 13-0318, 13-0386, and 13-0553). According to ComEd, 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. ComEd Reply Br. at 34-35.

ComEd states that, 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. ComEd notes that 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. ComEd also notes that, 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. Thus, according to ComEd, 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. ComEd emphasizes that 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 ComEd Ex. 23.0 at 4-11. In other words, ComEd notes, the Commission interpreted EIMA and the legislative history as plainly prescribing the reconciliation balance and interest rate without further adjustment. ComEd Reply Br. at 35-36.

ComEd observes that, against this backdrop, it is unclear why the AG and CCI persist in challenging the Commission’s consistent treatment of these “reconciliation balance” issues. According to ComEd, 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. Nor, ComEd contends, can the integrity and, as Mr. Warren explained, harmony of these conclusions be questioned, and neither the AG nor CCI mounts any serious challenge to their logic.

**b. Substantive Issues with the Proposal**

The central principal of EIMA is to “[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. ComEd witness Ms. Brinkman explains that an ADIT liability generally represents a deferred tax liability arising from tax laws that provide present tax benefits. The best example is the deferred tax liability arising from a utility’s right to reflect tax depreciation at a rate faster than “book” depreciation, a right that provides an immediate cash benefit (through reduced taxes) to the utility. In that case, the deferred tax liability is properly deducted from a utility’s rate base not simply because it is a deferred tax item, but because that liability is, in effect, a source of capital for ComEd not provided by investors but by the U.S. Treasury. ComEd explains that the ADIT resulting from accelerated depreciation is a source of capital in the rate year only because the utility receives a present cash benefit from that taxpayer “investment.” ComEd Init. Br. at 58. If the benefit as well as the tax were deferred, no adjustment would be appropriate.

ComEd explains that in the case of a positive reconciliation balance, the payment of the income taxes associated with the future recovery of that balance is deferred until that balance is recovered through the revenue requirement. There is no mismatch. The benefit and tax are both deferred. ComEd notes that the AG and other proponents have provided no proof that any reconciliation balance results in reduced cash tax payments in the rate year. Rather, ComEd explains that the reconciliation balance is simply that—an accounting balance that will be paid to the utility in the future. It provides no source of funds to the utility. ComEd analogizes this situation to that in which a utility is not paid by a customer for two years while that customer reorganizes. ComEd explains that that situation also results in a deferral of the tax liability related to the payment because the utility does not pay a tax until it is paid, but no ADIT adjustment is made for uncollected revenue. ComEd Init. Br. at 58.

ComEd states that the fact that interest is paid on the reconciliation balance when it is finally paid to ComEd does not change the fact that ComEd does not receive the revenue until after the reconciliation; the income *and* the tax are both deferred. ComEd explains that the irrelevance of interest in this regard is especially pronounced given that the interest rate paid on the reconciliation balance does not reflect ComEd’s tax liability associated with receipt of the interest payment. ComEd Init. Br. at 59.

**c. The Proposal’s Lack of Consistency and Symmetry**

ComEd contends that the principle governing this issue is clear: where a utility is able to defer payment of some portion of taxes attributable to revenue it has received, the deferred taxes must be taken into account in establishing rates. ComEd asserts that where, however, the utility has received no revenue and the related taxes are deferred only because the revenue has also been deferred, that it makes no sense to account for the deferred taxes. To do so would in fact amount to an improper acceleration of taxes before the underlying revenue is received. Thus, according to

ComEd, it is inconsistent to argue, as the AG and CCI do, that ComEd receives a deferred tax benefit well before the reconciliation revenues are ever collected, while denying that the interest payment results in taxes that should be recoverable. ComEd Init. Br. at 59. At bottom, ComEd contends that 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. ComEd therefore contends that it should be rejected. ComEd Reply Br. at 36.

ComEd witness Mr. Warren offers a further conceptual basis in opposition to the AG and CCI proposals, and explains why logic and consistency require that these proposals be rejected. According to Mr. Warren, two possible models exist for the treatment of reconciliation balances and the related tax issues, including treatment of ADIT. ComEd therefore asserts that tax impacts either should be fully considered or not considered at all; however, according to ComEd, the AG and CCI approach treats those issues in an asymmetrical manner. ComEd explains that if ADIT were to reduce the reconciliation balance (the only other factor that determines the reconciliation amount to be refunded or surcharged to customers), as those parties propose, the interest rate applicable to the reconciliation balance (the weighted average cost of capital) should also be “grossed up” to account for the taxes that apply to that interest. ComEd Ex. 23.0 at 11. ComEd contends that AG and CCI do not advocate this symmetrical approach to the treatment of tax issues. By contrast, ComEd notes, the Commission’s approach to date has been internally consistent. The Commission has rejected consideration of tax impacts in applying the interest rate to the reconciliation balance (by holding that the rate may not be “grossed up” for income tax effects), while its prior treatment of the reconciliation balances has rejected proposals to reduce that balance by the associated ADIT. *Id.* at 9-10. ComEd urges that this approach be followed here. ComEd Init. Br. at 59-60.

ComEd contends that the absence of any principled basis for the AG and CCI proposals is shown by ComEd’s 2012 formula rate update proceeding. In that case, the reconciliation balance was negative. ComEd explains that when it calculated interest for purposes of making refunds due to customers, ComEd did not deduct the related ADIT from the reconciliation balance due to customers, the same position it advocates here. Had the reconciliation balance been deducted, as AG and CCI now propose, the amount of the refund would have been lower. ComEd explains that in that case, although their witness noted the fact that approving an ADIT adjustment would reduce the refund ComEd paid there, neither the AG nor CCI objected to approval of the calculation of refund interest on the full reconciliation balance. ComEd notes that the Commission also approved the refund on that basis, and the interest paid to customers was calculated on the full reconciliation balance, without reduction due to ADIT. ComEd thus asserts that to change course 180 degrees now, when the balance goes the other way, would be arbitrary and capricious and should be rejected. ComEd Init. Br. at 60-61.

Finally, ComEd notes that, 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. ComEd

explains that 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' adoptions of ADIT adjustment in various cases. See generally AG Second Corr. Init. Br. at 44-53; CCI Init. Br. at 14-18, 22-25. According to ComEd, all of this is beside the point. ComEd notes that its witness Ms. Brinkman testifies extensively about the accounting rationale for ADIT; no issue exists with the concept generally. ComEd Ex. 12.0 REV. at 23-35; ComEd Ex. 25.0 at 18-27. Indeed, ComEd adds, 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). ComEd further notes that, for these same reasons, CCI's discussion of an Ameren appellate case and the AG's discussion of a Hawaii case are irrelevant. ComEd contends that 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, ComEd notes, 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 III. Co. v III. Commerce Comm'n et al*, 2013 IL App (4th) 121008, ¶¶ 34-39; ComEd Ex. 33.0 at 5-7. ComEd Reply Br. at 37.

d. **Defects with the “Alternative Proposal” to Reduce Rate Base for ADIT Unrelated to Rate Base**

ComEd opposes AG witness Mr. Brosch's proposed alternative to subtracting ADIT from the reconciliation balance – to include the ADIT related to the reconciliation balance in rate base, *i.e.*, deduct that ADIT from ComEd's overall rate base. ComEd explains that this proposal, also proposed by the AG in prior cases, would reduce ComEd's revenue requirement even more than the principal reconciliation balance/ADIT proposal, and suffers from the same, and additional, defects as the principal proposal. First, ComEd notes that this proposal also fails to recognize that this ADIT does not provide any rate year cash benefit or source of financing to ComEd. ComEd Init. Br. at 61. ComEd also contends that it is conceptually improper to deduct from rate base ADIT that relates to an item that itself is not given rate base treatment, in this case the reconciliation balance. *Id.* ComEd explains that on rate base items, it recovers a return of and on its investment as well as its associated income tax liability (the tax “gross up”). On the reconciliation balance, by contrast, ComEd recovers only its weighted average cost of capital without any tax gross up. As Ms. Brinkman succinctly explains: “[It] is unfair and unreasonable to propose reducing the rate base on which ComEd earns a full return (including tax costs) on account of a deferral related to an asset on which tax costs are not recover[ed]. ComEd asserts that the AG's primary position treats tax awareness inconsistently – adjusting the reconciliation balance down for taxes while not adjusting the rate up for tax costs – and that the AG's alternative proposal compounds the problem by attempting to reduce a balance (rate base) on which all parties acknowledge ComEd is entitled to earn a return that includes its tax costs.” ComEd Ex. 25.0 at 26-27; see also ComEd Init. Br. at 61-62.

For all the foregoing reasons, ComEd asks the Commission to reject the AG and CCI proposals to reduce the reconciliation balance by the related ADIT, as well as the AG's alternative proposal to reduce ComEd's rate base by ADIT related to the reconciliation balance, consistent with its past decisions and the clear directives of the General Assembly.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusion**

Consistent with the Commission's prior orders, we again decline to adopt the adjustment proposed by the AG and CCI. As we explained in our Final Order in Docket No. 13-0553, the General Assembly has clearly addressed the calculation of the reconciliation balance and associated interest rate through its Resolutions and amendments to EIMA, and has left no room for additional modifications such as the ADIT adjustment proposed by intervenors. Furthermore, considering the proposal on the merits, we reject it because an ADIT adjustment recognizes that the utility has received an overall benefit from the deferral of taxes in question. Here, that is not the case because although the taxes have been deferred, that is only because the receipt of the accompanying revenue has been deferred and thus the utility has received no cash benefit.

## **VIII. REVENUES**

### **A. Overview**

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

### **B. Potentially Contested Issues**

#### **1. Billing Determinants**

#### **ComEd's Position**

ComEd states that billing determinants ("BD" in the following equation) are used to translate the revenue requirement ("RR") into charges, or rates, recovered from customers. The general formula is  $\frac{RR}{BD} = \text{rates}$ .<sup>17</sup> ComEd explains that if the determinants are set too high, the rates will be insufficient to recover the revenue

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<sup>17</sup> ComEd witness Ms. Brinkman explains that three types of billing determinants are applicable to ComEd's delivery services: (1) the volume of their use, measured in kilowatt-hours ("kWh"); (2) the maximum rate of their use, or demand, measured in kilowatts ("kW"); and (3) the number of separate customers requiring services. ComEd Ex. 2.0 at 46-47.

requirement; conversely if they are set too low, the rates will over-recover the revenue requirement. ComEd further explains that it is neither unusual, nor cause for legitimate complaint, for billing determinants to be set that turn out, after the fact, to be too high or low due to factors beyond anyone's control. Those kinds of variations have always been inherent in the rate-making process, but the process was not systematically biased either for or against utilities or customers. Here, however, ComEd notes that there is a systematic bias against utilities that is one-sided, unusual and improper, and that will result in a permanent downward adjustment of the utility's revenues. ComEd Init, Br. at 62. Accordingly, ComEd contends that while the proposed billing determinants incorporate the adjustment adopted by the Commission in ComEd's last formula rate update, the Commission should depart from that ruling here because the evidence in this docket does not support the adjustment. See 2013 Rate Case Order at 80. ComEd Reply Br. at 38.

As an initial matter, ComEd notes that no party challenges the Commission's *authority* to make the adjustment. ComEd also notes that the parties also agree that the Commission is not *required* to make the adjustment. According to ComEd, though, the parties disagree over whether making the adjustment on the facts of this case is a sound exercise of the Commission's ratemaking role in setting just and reasonable rates. ComEd contends that making the adjustment would not serve any useful purpose and would result in rates that would permanently deprive ComEd of the opportunity to recover the revenue requirement reflecting 2013 costs. ComEd argues that such an outcome cannot possibly represent lawful, just, and reasonable rates. ComEd Init. Br. at 63.

ComEd notes that 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, ComEd observes, 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. And, ComEd further observes, if the adjustment did follow simply from the law and the nature of EIMA ratemaking without need of specific factual support, the Commission's imposition of an adjustment on ComEd and not Ameren would necessarily be arbitrary and discriminatory. ComEd Reply Br. at 38-39.

ComEd notes that EIMA specifies that in establishing rates to be collected initially for a given year the billing determinants should be "historical weather normalized billing determinants." 220 ILCS 5/16-108.5(c)(4)(H). According to ComEd, the value of this quantity is not in dispute. Instead, what ComEd disputes is whether that value should be adjusted upwards to account for growth in billing determinants in the year following the year whose data are otherwise used to set initial rates. ComEd explains that in the context of this case, that means whether 2013 weather normalized billing determinants should be adjusted upward to account for the increase in customers projected for 2014, when setting rates that will be applied in the calendar year beginning in January 2015. ComEd contends no such adjustment should be made, while the AG contends an adjustment should be made. ComEd Init. Br. at 63.

ComEd explains that intervenors have not provided the evidence required to support adoption of the adjustment again in this docket. ComEd emphasizes that 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, ComEd notes that 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. ComEd Reply Br. at 39.

Moreover, in ComEd’s view, the proposed adjustment is a solution in search of a problem and its implementation poses serious cost recovery risk to ComEd. First, ComEd notes, an adjustment to account for 2014 plant additions is not needed. ComEd Reply Br. at 39. ComEd asserts that the only justification advanced for the proposed adjustment for the 2014 customer count is that rates are based in part on plant additions to be made in 2014. According to the AG, “the additions of the 2014 plant additions to the 2013 rate base is the basic justification for the adjustment to billing determinants.” See AG Ex. 4.0 at 3. ComEd contends that this is no justification at all – any over-collection because of the inclusion of new plant additions will be temporary and corrected by the reconciliation, with interest. ComEd suggests that Mr. Effron himself concedes this point when he states, “because of the reconciliation process, the inclusion of New Business plant additions in the pro forma rate base does not ultimately affect the revenues recovered by ComEd after the reconciliation process is complete.” AG Ex. 2.0 at 5. Thus, according to ComEd, no further adjustment need be made to protect customers, and especially not an adjustment like the intentional upward adjustment of billing determinants that cannot and will not be corrected through reconciliation and that will permanently deprive the utility of a fair opportunity to recover its revenue requirement. ComEd Init. Br. at 64-65.

Second, ComEd notes that 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, ComEd explains that overstating the billing determinants results in a shortfall that is never reconciled and corrected. ComEd states that while CCI claim otherwise (CCI Init. Br. at 26), they are clearly mistaken and fundamentally misunderstand formula ratemaking under EIMA. Thus, according to ComEd, 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. ComEd Reply Br. at 40. As ComEd explained earlier, the utility can be expected to bear the risk that billing determinants turn out to have been overstated because of, for example, actual kWh sales lower than those forecasted. In later years, the utility might benefit from higher than forecasted kWh sales. But what is at issue here, according to ComEd, is an overstatement that is intentional and one-sided, with the result that the utility will always and consistently under-recover. ComEd Init. Br. at 63-64.

ComEd illustrates these principles, and the problem, with the following example. Rates for a given year are set on a revenue requirement of \$1 billion. Actual costs for the year, the actual revenue requirement, turn out to have been \$1.1 billion. But the utility collected revenues of only \$900 million, because billing determinants were overstated by \$100 million, half due to lower than forecasted sales, but half due to an intentional overstatement of customers. The reconciliation process will allow ComEd to recover only the \$100 million revenue shortfall due to the revenue requirement having been understated, not the \$100 million revenue shortfall due to the inaccurate billing determinants. In ComEd's view, the \$50 million revenue shortfall due to lower sales can be tolerated because the utility has a symmetrical opportunity in future years if unusually hot weather (for example) leads to higher than forecasted sales (though under the EIMA formula rate this opportunity is limited by the ROE collar). According to ComEd, what cannot be tolerated is the \$50 million revenue shortfall due to the intentional upward adjustment of one of three of the statutorily prescribed "weather normalized historical billing determinants." But that, ComEd contends, is precisely what the billing determinant adjustment accomplishes. ComEd Init. Br. at 64.

ComEd also contends that all of the arguments for an adjustment prove too much. As Ms. Brinkman notes, "All of the arguments Mr. Efron makes apply equally to any Illinois utility using EIMA. Yet, ComEd notes, the Commission has made no analogous adjustments to Ameren Illinois Company's (or its predecessors') historical weather normalized billing determinants." ComEd Ex. 12.0 REV. at 22-23. ComEd suggests that the same is true of the effort by Mr. Rukosuev, the only other witness to support the adjustment, to simply rely on past decisions, without addressing the testimony in this record. ComEd asserts that if there were something universal in EIMA's two-year rate cycle or the resulting reconciliation lag that warranted the use of non-2013 billing determinants when 2013 costs are at issue, such a statutory feature would demand that the adjustment be applied universally. Yet, while Ameren's formula rates are calculated and collected on the same schedules as are ComEd's, no billing determinants adjustment as is proposed here has been made. ComEd concludes that since no factual basis supports treating Ameren's billing determinants differently from ComEd's, continuing to apply the adjustment only to ComEd "would be arbitrary." *Id.* at 23; ComEd Init. Br. at 65.

Accordingly, because the proposed adjustment is not needed to protect customers from overpayment and would cause ComEd irreversible harm, ComEd asks the Commission to reject the upward adjustment of the customer count billing determinant. Instead, ComEd proposes that the EIMA protocol should be implemented without modification – 2013 "historical weather normalized billing determinants." 220 ILCS 5/16-108.5(c)(4)(H).

### **Staff and Intervenor Positions**

## **Commission Analysis and Conclusion**

It is well established and beyond dispute that the Commission may depart from a prior decision based on the record in the current case. In this 2013 formula rate update proceeding, we find that Staff and intervenors have not proffered the substantial evidence necessary to support the proposed modification to the 2013 historical billing determinants. This is especially so given that AG witness Mr. Effron essentially admitted that – because of the reconciliation – no harm would ultimately come to customers if the proposed modification were not adopted. Moreover, we are troubled by the cost recovery risk this adjustment would impose upon ComEd, which, oddly, is not also borne by the only other participating utility under EIMA, Ameren. Ameren is not subject to this adjustment to its billing determinants, and we can identify no reason as to why this disparate treatment should persist. We therefore adopt, without adjustment, the 2013 historical weather normalized billing determinants, which will also ensure that the billing determinants are “matched” to the same rate year – 2013.

### **IX. COST OF SERVICE AND RATE DESIGN**

#### **A. Overview**

Cost of service issues in formula rate proceedings are traditionally uncontested. ComEd has fully supported all of the cost of service issues in this docket, and neither Staff nor any intervenor has disagreed. Rate design issues are not at issue in this formula rate update case – instead, they are being addressed in the rate design tariff that was filed April 30, 2013 in Docket No. 13-0387, the 2013 Rate Design Investigation (“2013 RDI”). The Commission entered a final Order in that docket on December 18, 2013 and the matter is currently being appealed to the Appellate Court of Illinois for the Second District. The cost of service and rate design issues that are uncontested should be approved.

#### **B. Potentially Uncontested Issues**

##### **1. Embedded Cost of Service Study**

ComEd submitted its updated Embedded Cost of Service Study (“ECOSS”) as ComEd Ex. 10.01: this updated ECOSS is based upon the ECOSS ComEd submitted to the ICC Staff on January 16, 2014 in compliance with the Commission’s final Order in the 2013 RDI. The updated ECOSS includes modifications from the ECOSS approved in the 2013 Formula Rate Update proceeding, Docket No. 13-0318, to comply with the final Order in the 2013 RDI. ComEd Ex. 10.0 at 4-6; see *also* ComEd Ex. 10.01. ComEd Init. Br. at 66.

The updated ECOSS presented in ComEd Ex. 10.01 is unchanged from the ECOSS submitted in compliance with the Commission’s final Order in the 2013 RDI other than a correction to formulas related to the addition of the Indirect Uncollectible sub-function. The updated ECOSS reflects the updated input values that reflect the

costs and data for calendar year 2013. ComEd Ex. 10.0 at 6-7. In other words, ComEd included current cost data that was presented in its 2013 FERC Form 1, which also has been used to populate the revised updated revenue requirement formula as presented by ComEd witness Mr. Menon. *Id.*; see also ComEd Ex. 3.0. In addition, the ECOSS is constructed so that it is able to reflect the approved 2015 Rate Year Net Revenue Requirement as well as applicable billing determinants and delivery class load and loss data from the updated Distribution System Loss Study presented by ComEd witness Mr. Michael F. Born. ComEd Ex. 10.0 at 7; ComEd Ex. 9.0 at 4-7; ComEd Ex. 9.01. ComEd Init. Br. at 66-67.

Except for the issue of the proposed adjustment to billing determinants discussed in Section VIII.B.1., *supra*, and subject to the resolution of that issue there, ComEd's updated ECOSS is uncontested. Consistent with such resolution, the Commission finds that ComEd's updated ECOSS reasonably allocates costs among customer classes and is approved.

## **2. Distribution System Loss Factor Study**

ComEd uses distribution losses – the difference between energy that is delivered to the distribution system and the energy that actually reaches customers – in the development of its ECOSS. ComEd Ex. 9.0 at 4. In its final Order in the Rate Design Investigation proceeding (Docket No. 13-0387), the Commission directed that ComEd submit an updated Distribution System Loss (“DSL”) Study along with a revised Secondary and Service Loss (“SSL”) Study in this proceeding. *Commonwealth Edison Co.*, ICC Docket No. 13-0387, Final Order (Dec. 18, 2013) (“2013 RDI Order”) at 109; ComEd Ex. 9.0 at 5. In the Rate Design Investigation, Staff recommended that ComEd extend its sample size beyond those surveyed previously and use actual customer loads and conductor information for the remaining customer categories that use secondary and service elements. 2013 RDI Order at 110-111; ComEd Ex. 9.0 at 5. Accordingly, ComEd updated the DSL Study using 2013 customer and zone loads, 2013 transformer data, and the results of an updated SSL Study (ComEd Ex. 9.02) that includes information obtained from field surveys of secondary and service conductors used to serve customers in seven categories that were not included in the prior SSL Study. ComEd Ex. 9.0 at 5; ComEd Ex. 9.01. ComEd Init. Br. at 67.

No parties have contested the updated DSL study, and Staff witness Mr. Rockrohr recommends that the Commission accept the study. Staff Ex. 5.0 at 5. Accordingly, the Commission approves ComEd's DSL study.

## **3. Secondary and Service Loss Study**

The results of the Secondary and Service Loss Study are a direct input to the DSL Study. The purpose of the SSL Study is to provide a basis for estimating losses for each customer category by the use of field surveys of the type, length and load of a representative set of sample customers for each category. This study determined average losses at the annual customer peak load as a percent of the peak load by customer category. ComEd used the results from field surveys of 419 customers in the

Single Family Electric Space Heat, Watt Hour, Medium, Large, Very Large, Extra Large, and Lighting categories to determine typical secondary and service conductor losses during peak load conditions. ComEd Ex. 9.0 at 6-7. No parties have contested the updated SSL study, and Staff witness Mr. Rockrohr recommends that the Commission accept the study and find that ComEd has met the requirement to separately identify losses on secondary and service elements. Staff Ex. 5.0 at 5-6. ComEd Init. Br. at 68. Accordingly, the Commission approves ComEd's SSL study.

**4. Other**

**a. Rate Design**

ComEd submitted its updated Rate Design Model as ComEd Ex. 10.03. This updated model is based upon the rate design model ComEd submitted to the ICC Staff on January 16, 2014 in compliance with the Commission's final Order in the 2013 RDI. The updated rate design model includes modifications from the rate design model approved in the 2013 Formula Rate Update proceeding, Docket No. 13-0318, to comply with the final Order in the 2013 RDI. ComEd Init. Br. at 68.

The updated rate design model presented in ComEd Ex. 10.03 is unchanged from the rate design model submitted in compliance with the Commission's final Order in the 2013 RDI, except that it includes updated input values that reflect the costs from the updated ECOSS presented in ComEd Ex. 10.01 and billing determinant data for calendar year 2013. In addition, the rate design model is constructed to allow for the recovery of the approved 2015 Rate Year Net Revenue Requirement with no over recovery. ComEd Init Br. at 69.

Except for the issue of the proposed adjustment to billing determinants discussed in Section VIII.B.1., *supra*, and subject to the resolution of that issue there, ComEd's updated rate design model is uncontested. Accordingly, and consistent with such resolution, the Commission finds that ComEd's updated rate design reasonably provides for the recovery of costs from the customer classes and is approved.

**b. SBO Credit and DLFs**

ComEd submitted an updated Single Bill Option ("SBO") credit and updated Distribution Loss Factors ("DLFs") for its customer classes. The methodologies used to determine these values are consistent with the manner in which these values have been determined as approved by the Commission in previous proceedings. ComEd Ex. 10.0 at 20-22, ComEd Ex. 10.06, ComEd Ex. 10.07. ComEd Init. Br. at 69.

ComEd's methodologies used to update its SBO credit and DLFs are uncontested. Accordingly, the Commission finds that these update methodologies are reasonable, uncontested, and are approved.

## **X. OTHER**

### **A. Overview**

The uncontested issues in this section have been agreed to by the parties, and should be approved. With respect to the remaining contested issue contained in this Section X, ComEd has sustained its position.

### **B. Potentially Uncontested Issues**

#### **1. Intercompany Receivables and Payables Management Model Document**

Staff witness Ms. Ebrey recommended that ComEd address its plan to finalize and execute the document titled "Settling Certain Intercompany Receivables and Payables Procedures." Staff Ex. 1.0 at 41. On July 22, 2014, ComEd provided an updated and final version of this document and, accordingly, no party has contested this issue. ComEd Init. Br. at 69-70. Accordingly, the Commission approves ComEd's plan to finalize and execute this document.

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

In his direct testimony, Staff witness Mr. Bridal recommended that ComEd provide the wages and salaries allocator applicable to supply so that he could recommend a wages and salaries allocator to be used in the determination of rates under Rider PE. Staff Ex. 2.0 at 14-15. ComEd provided this data in ComEd Ex. 13.12, and Mr. Bridal agreed that the wages and salaries allocator applicable to supply is 0.44% and had no objection to ComEd's calculation of the allocator. ComEd Ex. 13.12; Staff Ex. 8.0 at 3-4. ComEd agreed with the language proposed by Mr. Bridal (Staff Ex. 8.0, 3:75-4:82), and no other party contested the calculation or objected to the proposed language. ComEd Ex. 13.0 at 17-18. ComEd Init. Br. at 70. The Commission therefore accepts the use of ComEd's wages and salaries allocator applicable to supply.

#### **3. Reporting Requirements**

##### **a. EIMA Investments**

ComEd presented evidence in its case in chief identifying separately its EIMA-related expenditures included in the Rate Year 2013 Reconciliation Revenue Requirement and in the projected plant additions included only in the Initial Rate Year 2015 Revenue Requirement. ComEd Init. Br. at 70. This data meets the Commission's requirements as set forth in ICC Docket No. 12-0321. 2012 Rate Case Order at 98. Furthermore, in ICC Docket No. 13-0318, the Commission noted that ComEd had agreed to Staff's recommendation that it identify by category cumulative actual EIMA investments in addition to annual actual investments for each year. 2013 Rate Case

Order at 85; ComEd Ex. 5.0 at 15. To these ends, and in compliance with these orders, ComEd provided this information as ComEd Ex. 5.01. ComEd Init. Br. at 70-71.

No party contests that ComEd has satisfied its obligation to provide the required information. Accordingly, the Commission finds that ComEd has satisfied its investment obligation.

**b. Reconciliation Year Plant Additions**

In the Commission's final Order in Docket No. 13-0318, Findings paragraph 13 set forth a table with details for the plant additions placed in service in 2012. 2013 Rate Case Order at 90-91. In this proceeding, ComEd provided a similar summary of the \$257,679,181 investment amount by category placed in service in 2013 by ComEd under Section 16-108.5(b) of the PUA. ComEd Ex. 5.0 at 17-18. ComEd also provided a similar table for the \$449,004,969 of plant additions projected to be placed in service in 2014. *Id.* at 18-19. ComEd Init. Br. at 71. No party contests that ComEd has satisfied its obligation to provide the required information. Accordingly, the Commission finds that ComEd has satisfied its obligation to provide the required plant addition information.

**c. Contributions to Energy Low-Income and Support Programs**

ComEd presented sufficient evidence demonstrating that it met its commitment to make certain contributions to low-income and other energy assistance programs, as required by EIMA. See 220 ILCS 5/16-108.5(b-10). This evidence was presented both in testimony and in the Annual Customer Assistance Report for 2012 as filed by ComEd on February 20, 2013. ComEd Ex. 7.0 at 28-30; ComEd Ex. 7.01. No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by EIMA. Staff witness Mr. Bridal agrees that ComEd has made the required contributions in 2013 and that the contributions were properly excluded from the revenue requirement. Staff Ex. 2.0 at 15; ComEd Init. Br. at 71-72. Therefore, the Commission approves ComEd's reporting of Contributions to Energy Low-Income and Support Programs.

**C. Potentially Contested Issues**

**1. Update of Exelon Business Services Company General Services Agreement**

**ComEd's Position**

ComEd notes that Staff recommends that ComEd update its GSA for Commission approval. Staff Init. Br. at 63-68. ComEd states that this recommendation would require ComEd to engage in a burdensome and wholly unnecessary endeavor that will inevitably increase ComEd's costs and should not be adopted by the Commission. ComEd Init. Br. at 72.

According to ComEd, Staff's recommendation is rooted in its concern that the GSA is obsolete because it references the Public Utility Holding Company Act of 1935 ("PUHCA"). See Staff Ex. 1.0 at 41-42. In 2005, the United States Congress repealed PUHCA and subsequently enacted the Public Utility Holding Company Act of 2005 ("2005 PUHCA"). Nonetheless, ComEd explains that even though the GSA references the outdated PUHCA, it is in fact compliant with the 2005 PUHCA, including all of the citations to the Code of Federal Regulation that Ms. Ebrey references in her testimony. *Id.* at 13. ComEd Init. Br. at 72. ComEd also notes that in 2009, Exelon completed an Implementation Plan to comply with corrective actions identified through a 2008 FERC audit of Exelon affiliated transactions. *Id.*

In addition, ComEd notes that, on an annual basis, BSC prepares Service Level Arrangements ("SLA") which are the operational documents governing services provided by BSC to ComEd. ComEd states that these documents reflect the then-current services being provided. ComEd provided BSC's 2012 SLAs to Staff in ComEd's 2013 rate case. ComEd also keeps Staff abreast of BSC costs through the numerous and varied reports regarding BSC costs that ComEd submits to Staff throughout the year. ComEd Init. Br. at 72-73.

ComEd contends that this evidence shows that the references to the PUHCA in the GSA in no way affect any of the transactions, procedures or regulatory oversight that takes place under the GSA. Moreover, ComEd explains, any change to the GSA would impact all Exelon Operating Companies and would require approval from several state Commissions. *Id.* ComEd maintains that such a process would create substantial costs and burdens for all the companies associated with obtaining such approval. Citing those costs and the lack of any necessity to revise the GSA, ComEd opposes Staff's recommendation and requests that it not be adopted by the Commission. ComEd Init. Br. at 73.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusions**

The Commission agrees with ComEd that Staff's recommended update of the GSA is unnecessary. The evidence supports ComEd's arguments that the GSA is fully compliant with the 2005 PUCHA. Specifically, the evidence shows that Exelon completed an Implementation Plan to comply with corrective actions identified through a 2008 FERC audit of Exelon affiliated transactions and that the GSA is currently compliant with the applicable provisions of the Code of Federal Regulation that Staff identified. Also, any change to the GSA would require approval from several state Commissions creating substantial costs and burdens for all the Exelon Operating Companies associated with obtaining such approval. For all of the above reasons, the

Commission declines to adopt Staff's recommendation that ComEd update its GSA for Commission approval.

## **2. Customer Care Costs**

### **ComEd's Position**

ComEd presented two updated cost studies that evaluated its customer care costs using 2013 actual costs. The first, entitled the Allocation Study, examined the costs ComEd incurs in providing customer services and allocates these costs between delivery and supply. The second, entitled the Switching Study, analyzed the costs ComEd incurs in providing customer services to determine if these costs are sensitive to customers switching from ComEd to retail electric suppliers ("RESs"). ComEd Init. Br. at 74-75. Additionally, ComEd presented a third approach, entitled the Alternative Analysis, which considers the results of the Switching Study by identifying and allocating costs associated with business activities that are sensitive to changes in customer switching. ComEd Ex. 7.0 at 66. ComEd contends that the Commission should utilize the Switching Study to assess how to allocate its customer care costs because it is based on actual operations and experience. ComEd notes that both Staff and ICEA also found the Switching Study to be the best tool to analyze the proper allocation of these costs. ComEd Init. Br. at 75; ComEd Reply Br. at 43.

ComEd states that the Switching Study shows 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. ComEd Reply Br. at 42. ComEd argues that the Allocation Study should not be employed because it is not based on ComEd's actual experience and ComEd realizes virtually no cost savings when its supply customers switch to a RES. ComEd Init. Br. at 80. According to ComEd, the evidentiary record demonstrates that ComEd's updated Switching Study presents the most accurate approach to apportioning responsibility for ComEd's customer care costs. *Id.* at 74; ComEd Reply Br. at 42. ComEd also presented evidence explain that recovering such costs through delivery charges is consistent with the manner in which other Illinois utilities recover such costs. Additionally, ComEd presented evidence showing that the vast majority of other jurisdictions where retail competition exists also allow utilities to recover such costs through delivery charges. Thus, ComEd explains, the adjustments to ComEd's allocators and recommendations of RESA regarding the use of the Allocation Study should be rejected as unsupported by the record. ComEd Init. Br. at 74-75; ComEd Reply Br. at 42-43.

#### **a. Allocation Study vs. Switching Study**

ComEd explains that the Switching Study examined the impact on ComEd's costs at customer switching levels of 64%, 69%, and 100%. ComEd also notes that both the Switching Study and the Allocation Study started by identifying ComEd's embedded customer care costs for 2013, at a time when 69% of ComEd's delivery service customers switched to RES supply. ComEd Ex. 7.0 at 40, 43. ComEd explained that by considering costs at the 64%, 69% and 100% levels, ComEd's

Switching Study captures the impact on ComEd's costs if additional customers switch to RES supply or if the level of switching to RES supply decreases. ComEd Ex. 7.0 at 39. ComEd Init. Br. at 75-76.

ComEd states that the results of the Switching Study showed whether customer service costs are inherently related to delivery service, or to supply service. ComEd Ex. 8.0 at 23; see *also* Staff Init. Br. at 78. ComEd explains that the Switching Study determines how customer care costs actually change due to customers taking supply service from a RES. ComEd Ex. 7.0 at 65. ComEd avers that the evidence presented showed that ComEd's customer care costs do not decrease as customers switch from ComEd to RES-provided supply service. ComEd Ex. 2.0 at 40; ComEd Init. Br. at 77.. ComEd notes that, upon examining the merits of both the Switching Study and the Allocation Study, Staff found the switching study to be "superior." Staff Ex. 4.0 at 12. ComEd further notes that Staff added that the Switching Study "more accurately captures the actual causation of ComEd's customer care service costs than the Allocation Study." *Id.* at 24; ComEd Init. Br. at 77-78.

ComEd explains that the Allocation Study, on the other hand, is premised on the assumption that some level of customer care costs should be attributed to ComEd's supply function and then applies allocation factors to assign a percentage of costs to that function. ComEd Ex. 7.0 at 41, 65; ComEd Ex. 8.0 at 24; ComEd Init. Br. at 79. ComEd contends that the evidentiary record does not support such an approach to allocate customer care costs between supply and delivery because it is inherently arbitrary. ComEd notes that over the past several years, more than two-thirds of customers have switched to RES supply and the evidence presented shows that ComEd's customer care costs have not declined in any meaningful way. ComEd Ex. 16.0 at 8; ComEd Ex. 16.02; ComEd Init. Br. at 79-80. According to ComEd, the adoption of such premise fails to acknowledge ComEd's actual experience and the reality of ComEd's operations, thereby yielding inherently flawed results. ComEd Ex. 7.0 at 65; see *also* Staff Ex. 4.0 at 19. For example, the Allocation Study assumes that 17% of the costs of bill printing activities are related to ComEd's supply function. According to ComEd, even if 100% of ComEd's delivery service customers take supply service from a RES, ComEd would continue to incur the cost to print bills and would not enjoy any "savings" in the delivery service function. ComEd Init. Br. at 80.

ComEd contends that the Allocation Study also fails to recognize ComEd's statutory role as the provider of last resort ("POLR"). ComEd explained that its POLR obligation requires that it must ensure that it has the applicable systems, procedures and operations in place to be ready to serve all customers. ComEd Ex. 24.0 at 3; ComEd Reply Br. at 45-46. ComEd notes that the results of the Switching Study, in this proceeding and the prior switching study presented in Docket No. 10-0467, show that at various levels of customer switching ComEd's costs or savings do not vary significantly. Staff Ex. 9.0 at 12-16. According to ComEd, the fact that its customer care costs have not declined in any meaningful way despite unprecedented levels of switching shows that ComEd is incurring these costs on behalf of all customers. ComEd avers that the evidentiary record establishes that that ComEd's responsibilities as an electric

distribution utility and POLR thus explain the limited variability of customer care costs. ComEd cannot simply avoid common customer care costs because of its role as the POLR, no matter how many customers obtain electric supply services from RESs. ComEd Ex. 11.0 at 6; ComEd Reply Br. at 45-46.

ComEd contends that the Switching Study ComEd presented in this proceeding comports with the Commission's past treatment of customer care costs as part of delivery services costs. ComEd Ex. 2.0 at 35; see *also* Staff Ex. 4.0 at 10. ComEd also states that the record supports that the Switching Study more accurately captures how costs actually change due to customers taking supply service from a RES. ComEd Ex. 7.0 at 64; Staff Ex. 4.0 at 24. ComEd Init. Br. at 77-78..

ComEd notes RESA's suggestion that the Commission adopt an allocation study to provide "competitive parity" between RES supply rates and ComEd's supply rate. RESA Init. Br. at 3, 13-14, 21; ComEd Reply Br. at 44. ComEd and Staff showed that retail competition is vibrant with approximately 70% of ComEd distribution customers taking supply from a RES. ComEd Ex. 7.0 at 43. ComEd states that the record in this proceeding presents no reasonable basis to deviate from the Commission's past treatment of customer care costs. ComEd Reply Br. at 43-44.

**b. Direct Operation and Maintenance (O&M) Costs and Indirect Costs**

ComEd notes that in direct testimony, Staff suggested that ComEd include indirect costs in its analysis instead of limiting its analysis on direct operation and maintenance (O&M) costs within its Switching Study, Allocation Study and Alternative Analysis in order account for the full revenue requirement associated with customer care costs. Staff Ex. 4.0 at 25-26. ComEd explains that, in response to Staff's recommendation to the Commission, ComEd presented an updated Switching Study, Allocation Study and Alternative Analysis in rebuttal. ComEd Init. Br. at 76; see ComEd Exs. 16.01-16.03. ComEd notes that the preparation of the updated studies (ComEd Exs. 16.01-16.03) involved the review of approximately \$172 million in total costs. ComEd Ex. 16.0 at 6.

**c. Allocation Study**

ComEd objects to RESA's recommendation that the Commission adopt RESA's Modified Allocation Study, which would allocate \$52 million to ComEd's supply rate. RESA Init. Br. at 15; ComEd Init. Br. at 85. ComEd argues that RESA's proposal to use this approach is premised on a false narrative. Namely, ComEd asserts that neither competitive considerations nor a RES's costs has any role in the analysis of whether, and to what extent, ComEd's customer care costs should be allocated to its supply function. Rather, as ComEd explained, this proceeding is solely concerned with ComEd's costs, appropriate functional allocation and, ultimately, cost causation. ComEd noted that Staff also disagreed with RESA's underlying basis to support use of any allocation study.

ComEd contends that it is clear from the record that adoption of any of the Allocation Study options is premised on the Commission reaching the threshold conclusion that it is appropriate to allocate customer care costs to ComEd's supply function. RESA Init. Br. at 4, 14; see *also* ComEd Reply Br. at 48-49. However, ComEd argues that such an assumption is belied by the record. ComEd also notes, as it did earlier, that the evidence presented shows that ComEd's customer care costs are incurred to serve all customers, regardless of which entity provides supply. ComEd Init. Br. at 75-79. ComEd states that based upon the record in this proceeding, it is not appropriate to allocate customer care costs to ComEd's supply function as RESA suggests.

ComEd also observes that RESA's proposed modifications to the Allocation Study are inherently arbitrary and not supported by the record. ComEd avers that the record in this proceeding supports the conclusion that the Allocation Study is entirely based on assumptions, does not represent ComEd's actual operations and is inherently arbitrary. ComEd Ex. 7.0 at 65; ComEd Reply Br. at 48; see *also* Staff Ex. 4.0 at 19. ComEd states that the record shows that RESA failed to identify even \$1 of ComEd's customer care costs that are incurred solely to provide supply-related customer care. ComEd Reply Br. at 47. ComEd further states that RESA did not show any correlation between ComEd's actual operations and its association with its Modified Allocation Study proposal. *Id.* ComEd therefore contends that RESA's Modified Allocation Study simply adds more assumptions to an already flawed study. ComEd Reply Br. at 48-49. According to ComEd, its Switching Study is superior and the Allocation Study is based on arbitrary assumptions. RESA's proposal merely inflates the level of costs assumed to be supply related. *Id.*; see *also* Staff Reply Br. at 29. ComEd contends that RESA provides no reasonable explanation for adding additional assumptions to an already flawed study. *Id.* at 49.

### **Staff and Intervenor Positions**

### **Commission Analysis and Conclusions**

Initially, the Commission finds that ComEd met the Commission's directive from Docket No. 13-0387 to present an Allocation Study in this proceeding to examine the proper allocation of ComEd's customer care costs. The Commission notes that Staff found the Allocation to be conducted appropriately. However, the Allocation Study should not be utilized to assess whether to allocate any customer care costs to ComEd's supply function, as it relies on assumptions about ComEd's customer care operations that do not reflect ComEd's actual experience.

The evidence establishes that ComEd's Switching Study is the most accurate tool to analyze ComEd's actual operations and corresponding customer care costs. The Switching Study shows that ComEd's customer care costs have not, and do not, fluctuate materially as more customers switch to RES-provided supply service. Rather,

the Switching Study demonstrates ComEd's customer care costs are tied to the provision of service to all customers and will not be reduced as customers switch to RES-provided supply.

Staff also presented extensive evidence explaining why the Switching Study was "superior" to the other studies offered for consideration. Staff explained how the Switching Study looks at actual costs and operations and confirms the findings from a prior analysis that the Commission utilized in Docket 10-0467 (ComEd's last general rate case). Staff also noted that recovering customer care through delivery service charges would send the proper price signals to the market, and is consistent with how other Illinois utilities, and other jurisdictions where retail competition exists, recover such costs. Furthermore, ICEA, an organization representing a variety of competitive retail suppliers, support adopting the Switching Study.

The Commission also concludes that artificially shifting costs to ComEd's supply rates, despite the fact that such costs are driven by the provision of delivery service, will understate the true costs of the delivery service and send improper signals to both customers and the market. For these reasons, the Commission adopts the Switching Study. Because the Commission approves the use of the Switching Study to allocate costs, there is no need to examine the other issues presented. The Commission agrees with Staff and ComEd that the adjustments proposed by RESA to the Allocation Study are unsupported by the record. Accordingly, ComEd's customer care costs should continue to be recovered in delivery service rates.

### **3. Capacity Unbundling**

#### **ComEd's Position**

ComEd states that in its rebuttal testimony, ICEA raised the issue of "unbundling" ComEd's charges for capacity and energy supply services by including the following recommendation: "Thus, to the extent the Commission does not address this issue in a docket that is currently open, I recommend that the Commission act in this docket by ordering ComEd to file a draft unbundling tariff no later than 30 days after the final order in this docket." ICEA Ex. 1.0 CORR. at 13. ComEd Init. Br. at 85-86.

ComEd explains that this docket concerns delivery service rates, not supply charges. ComEd states that neither it, Staff, nor any other intervenor has addressed that subject in this delivery service related docket, nor has Staff or any other intervenor had an opportunity to respond to ICEA's recommendation. While ComEd generally expects to support unbundling of its supply charges in an appropriate proceeding, this docket is not that proceeding. Accordingly, ComEd requests that the Commission refrain from prejudging or otherwise addressing this subject in its order in this docket. ComEd Init. Br. at 86.

#### **Staff and Intervenor Positions**

## **Commission Analysis and Conclusions**

This docket concerns delivery service rates, not supply charges. Accordingly, the Commission rejects ICEA's request to order ComEd to file a draft unbundling tariff and declines to address this subject in its order in this docket.

### **XI. CONCLUSION**

For the reasons stated herein, the Commission approves Commonwealth Edison Company's proposed 2015 Rate Year Net Revenue Requirement as presented in ComEd's rebuttal testimony (including the credit card adjustment agreed to after testimony was filed and ComEd's other acceptances of proposals of others, whether to narrow the issues or otherwise), approves the original costs of ComEd's electric plant in service as of December 31, 2013, makes the required factual findings in support thereof, and authorizes and directs ComEd to make a compliance filing implementing the resulting rates and charges. These updates are applicable to delivery services provided by ComEd beginning on the first day of its January 2015 billing period, subject to ComEd's final compliance filing and the rulings in this Order.

### **XII. FINDINGS AND ORDERING PARAGRAPHS**

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;
- (4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is \$6,595,626,000 for the 2013 Reconciliation Year Revenue Requirement and \$7,368,745,000 for the Initial 2015 Rate Year Revenue Requirement;
- (5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 7.04% for the 2013 Reconciliation Year and 7.06% for the 2015 Rate Year Initial Revenue Requirement, this rate of return incorporating a return on common equity

of 9.20% and 9.25%, respectively, on long-term debt of 5.16%, and on short term debt of 0.40%;

- (6) the rates of return set forth in Finding (5) result in tariffed operating revenues of \$2,619,210,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of \$520,233,000;
- (7) the Commission, based on ComEd's proposed original cost of plant in service as of December 31, 2013, before adjustments, of \$16,299,132,000, and reflecting the Commission's determination adjusting that figure, unconditionally approves \$16,275,590,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2013;
- (8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual tariffed revenues of \$2,619,210,000. Such revenues in addition to other revenues will provide ComEd with an opportunity to earn the rates of return set forth in Finding (5);
- (9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;
- (10) new charges authorized by this Order shall become effective beginning with the first day of the January 2015 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated informational sheets to be effective with the first day of the January 2015 monthly billing period; Commonwealth Edison Company shall provide supporting work papers to the Staff of the Commission concurrently with such informational compliance filing;
- (11) that the approved 2015 Rate Year Initial Revenue Requirement includes \$449,004,969 of projected plant additions expected to be placed in service in 2014 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	\$153,791,022
Training facility construction or upgrade programs (construction of training facilities program)	0
Wood pole inspection, treatment, and replacement	19,920,688
Reducing the susceptibility of storm-related damage (storm hardening program)	33,396,407
<b>Total electric system upgrades, modernization programs, and training facilities</b>	<b><u>\$207,108,117</u></b>
Additional smart meters	\$148,370,342
Distribution automation and associated cyber secure data communication network	62,800,213
Substation micro-processor relay upgrades	30,726,298
<b>Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades</b>	<b>\$241,896,853</b>
<b>Total projected incremental 2013 plant additions in compliance with Section 16-108.5(b)(1) of the PUA</b>	<b><u>\$449,004,969</u></b>

- (12) that the approved Reconciliation Revenue Requirement for 2013 includes \$257,679,181 of plant additions placed in service in 2013 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. The detail of these actual plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	128,384,659
Training facility construction or upgrade programs (construction of training facilities program)	\$396,163
Wood pole inspection, treatment, and replacement	18,728,239
Reducing the susceptibility of storm-related damage (storm hardening program)	12,647,799
<b>Total electric system upgrades, modernization programs, and training facilities</b>	<b><u>\$160,156,859</u></b>

Additional smart meters	\$31,655,718
Distribution automation and associated cyber secure data communication network	60,470,214
Substation micro-processor relay upgrades	5,396,390
<b>Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades</b>	<b>\$97,522,322</b>
<b>Total actual incremental 2013 plant additions in compliance with Section 16- 108.5(b)(1) of the PUA</b>	<b><u>\$257,679,181</u></b>

IT IS THEREFORE ORDERED that the updated charges in ComEd's initial filing shall not go into effect.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file a compliance filing in accordance with Findings (8), (9) and (10) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said compliance filing, with updated charges to be effective with the first day of the January 2015 monthly billing period; work papers supporting the compliance filing shall be provided to the Staff of the Commission concurrently with the filing of said compliance filing.

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding (8) above reflects \$257,679,181 of plant additions placed in service in 2013 by ComEd, and \$449,004,969 of projected plant additions expected to be placed in service in 2014 by ComEd, in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Act.

IT IS FURTHER ORDERED that Commonwealth Edison Company's updated Embedded Cost of Service Study is accepted as a basis for setting rates in this proceeding.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain outstanding are hereby disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_ day of \_\_\_\_\_ 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman