STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	Docket No. 14-0316
Petition to Make Housekeeping Revisions and a Compliance Change to filed Rate Formula.	:	

COMMONWEALTH EDISON COMPANY'S
EXCEPTIONS TO THE PROPOSED ORDER

Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission, 83 Ill. Admin. Code § 200.830, Commonwealth Edison Company ("ComEd") submits these individually numbered Exceptions to the Proposed Order, including replacement language in legislative "redline" form. ComEd's Brief on Exceptions, filed simultaneously, presents argument and cites evidence supporting these Exceptions.

Dated: October 29, 2014

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: _____
One of its Attorneys

Thomas S. O'Neill
Senior Vice President & General Counsel
COMMONWEALTH EDISON COMPANY
440 S. LaSalle Street, Suite 3300
Chicago, Illinois 60605
312-394-7205
thomas.oneill@comed.com

Clark M. Stalker
Bradley R. Perkins
10 S. Dearborn Street, Suite 4900
Chicago, Illinois 60603
(312) 394-5400
clark.stalker@exeloncorp.com
bradley.perkins@exeloncorp.com

E. Glenn Rippie
John P. Ratnaswamy
Rooney Rippie & Ratnaswamy LLP
350 W. Hubbard Street, Suite 600
Chicago, Illinois 60654
(312) 447-2800
glenn.rippie@r3law.com
john.ratnaswamy@r3law.com

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Commonwealth Edison Company	**:**	
	:	
Petition to Make Housekeeping Revisions	**:**	**14-0316**
and a Compliance Change to filed Rate	**:**	
Formula.	**:**	

PROPOSED ORDER

October 23, 2014

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Petition to Make Housekeeping Revisions and a Compliance Change to filed Rate Formula.	:	**14-0316**

~~PROPOSED~~ ORDER

By the Commission:

I. INTRODUCTION

On April 16, 2014, Commonwealth Edison Company ("ComEd" or "Company") filed a Petition under Section 16-108.5(c) and 9-201 of the Public Utilities Act ("Act") seeking approval of a housekeeping revision and a compliance change to its delivery services rate formula. In the Petition, ComEd states that it provides delivery services under performance based formula rates established pursuant to the Energy Infrastructure and Modernization Act ("EIMA") and that the Commission approved ComEd's rate formula on May 29, 2012, in Docket No. 11-0721. ComEd further states in the Petition that Section 16-108.5 of the Act provides that "[s]ubsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act." 220 ILCS 5/16-108.5(c).

On August 19, 2014, the Commission entered an Interim Order, which set forth the scope of Phase 2 of this docket to address:

(A) The definition of "formula rate structure and protocols" as it is used in Section 16-108.5 as it applies to ComEd;

(B) Determine whether changes to the formula rate schedules, appendices, and workpapers that support Schedules FR A-1 and FR A-1 REC in ComEd's formula rate tariff require Commission approval through a Section 9-201 filing; and

(C) If the determination in (B) above is that the Commission must approve changes to all formula rate schedules, appendices and workpapers through a Section 9-201 proceeding, determine the necessary changes to be made to any of those documents to appropriately reflect the change in ComEd's depreciation rates between the reconciliation year and the filing year.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a status hearing was convened on August 21, 2014, before duly authorized Administrative Law Judges ("ALJs") at the Commission's offices in Chicago, Illinois. A schedule was established for testimony, hearings, and briefing. The Phase 2

direct testimony of Ms. Theresa Ebrey on behalf of Staff (Staff Ex. 1.0) and Ms. Christine M. Brinkman on behalf of ComEd (ComEd Ex. 1.0) was filed and served on September 11, 2014. The Phase 2 rebuttal testimony of Staff witness Ebrey (Staff Ex. 2.0) and ComEd witness Brinkman (ComEd Ex. 2.0) was filed and served on September 24, 2014.

An evidentiary hearing was convened at the Commission's offices in Chicago, Illinois, on September 29, 2014. The record was marked heard and taken on September 29, 2014. Simultaneous Initial Briefs were filed on October 8, 2014 and simultaneous Reply Briefs were filed on October 15, 2014. The ALJs' Proposed Order was served on October 23, 2014.

II. DEFINITION OF FORMULA RATE STRUCTURE

A. ComEd's Position

ComEd notes that in Docket No. 11-0721, the Commission first considered the issue of how to define the formula rate structure for ComEd. While the Commission ruled on what schedules to attach to the Order itself ("traditional" revenue requirement schedules), and which formula rate Schedules and Appendices to set forth in full in Rate DSPP and which to include as part of the compliance filing, the Commission was not required to and did not rule on which Schedules and Appendices constituted the formula rate structure. The Commission ultimately directed that a rulemaking should commence, because it would "add clarity to the reconciliations that will take place pursuant to this statute, which should provide greater clarity for utilities, ratepayers and Commission Staff." *Commonwealth Edison Co.*, Docket No. 11-0721, Order at 153 (May 29, 2012). In doing so, the Commission stated "that the sooner the rulemaking takes place, the sooner all involved in the rulemaking will familiarize themselves with what formula rates will entail." *Id*.

In ComEd's first formula rate update ("FRU") proceeding, similar questions were raised about use of the formula rate Schedules and Appendices in testimony and as attachments to final Orders, but again, the Commission indicated that "there will be a rulemaking in which ComEd and other interested parties are encouraged to address this and other relevant issues regarding future formula rate filings." *Illinois Commerce Comm'n, On its own Motion, vs. Commonwealth Edison Co.*, Docket No. 12-0321, Order at 105 (Dec. 19, 2012). However, a rulemaking was not initiated, and ComEd states the desired "clarity" has not yet been achieved. This has resulted in challenges by Staff and intervenors to different aspects of ComEd's formula rate in the annual formula rate updates, challenges that ComEd asserts were to be kept out of the FRUs, and instead addressed in Article IX dockets, under EIMA.

ComEd asserts that Staff's position that the Commission should define formula rate "structure" to mean ComEd's Rate DSPP, Tariff Sheet Nos. 417-437, which contain full recitation of summary Schedules Sch FR A-1 and FR A-1 REC should be rejected because it is contrary to EIMA and is not supported by the Commission's prior rulings on ComEd's formula rate. According to ComEd, Staff also takes the position that the

Commission may change the approved formula rate "protocols" only in a separate Article IX Docket, and only as consistent with EIMA, and further indicates that its understanding is that the "protocols" are the components of the formula rate that address the items in Section 16-108.5(c)(4)(A) through (I). Staff Ex. 1.0 at 4, 6. ComEd does not disagree with that portion of Staff's position. Thus, ComEd states it is uncontested that the protocols can be changed only in a separate Article IX docket.

ComEd states that EIMA ratemaking allows utilities to recover their prudent and reasonable costs to ensure that a "participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and the [EIMA ratemaking and reconciliation] process …." 220 ILCS 5/16-108.5(b). ComEd explains that unlike the annually updated input data (e.g., in Docket No. 14-0312), the formula itself is not annually revised or updated under EIMA. That is, 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 an annual formula rate update proceeding, but rather may be the subject of a separate Section 9-201 proceeding.

Therefore, ComEd continues, the rate formula under EIMA is to provide certainty, specificity and transparency to allow for a set structure and protocols, with annual updates to the rate formula inputs using actual FERC Form 1 data as a foundation. ComEd submits that its rate formula structure, made up of all of the Schedules and Appendices incorporated in Rate DSPP, is consistent with EIMA and the Company's annual update filings provide all of the necessary data and documentation required by the formula rate structure and protocols expressly set forth in EIMA.

ComEd further explains that subsequent to Docket No. 11-0721, the Commission has approved changes to ComEd's rate formula in separate Article IX dockets. In June 2013, the Commission approved an update to ComEd's rate formula and tariffs to comply with the adoption of Public Act 98-0015. *Commonwealth Edison Co.*, Docket No. 13-0386, Order (June 5, 2013). The latter filing included more substantial changes to the rate formula as a result of the issues addressed by the General Assembly. In that docket, the Commission held that ComEd's formula "rate sheets, and the revenue requirement calculations filed with and supporting them, are consistent with the provisions of Public Act 98-15 ...." Docket No. 13-0386, Order at 3, 4. The Commission ordered into effect ComEd's filed rate schedule sheets and approved the resulting revenue requirement modifications. *Id*.

ComEd submits that the Commission has similarly ruled in a formula rate update proceeding that changes to ComEd's formula in a FRU proceeding are improper. In Docket No. 13-0318, the Commission ruled that three contested issues were beyond the scope of the annual update and reconciliation proceeding. ComEd asserts that the three contested issues in Docket No. 13-0318 did not change Sch FR A-1 or Sch FR A-1 REC, but rather required changes to ComEd's related Schedules and Appendices. According to ComEd, this Order indicates that the Commission recognized that the formula is not simply defined as Sch FR A-1 and Sch FR A-1 REC. All three issues were ultimately addressed in Docket No. 13-0553, a follow-on proceeding initiated "pursuant to Section 10-113(a) of the Public Utilities Act (220 ILCS 5/10-113(a)) to determine whether the company has complied with Public Act 98 [00]15."

Commonwealth Edison Co., Docket No. 13-0553, Order at 3 (Oct. 2, 2013). ComEd ultimately made related rate formula changes pursuant to the Commission's November 26, 2013, final Order in Docket No. 13-0553, in its compliance filing dated December 5, 2013.

According to ComEd, its current Commission approved formula rate governs the calculation of ComEd's 2015 Initial and 2013 Reconciliation Revenue Requirements, and any adjustment attributable to the "ROE Collar" in ComEd's pending FRU. Specifically, ComEd's Rate DSPP (ComEd Ex. 1.01) establishes and incorporates the formulae that determine the delivery service revenue requirement and the resulting delivery service charges to customers, as well as the cost components that form the inputs to those formulae. It does so (in combination with the incorporated Schedules and Appendices) with sufficient specificity for the process to operate in a standardized and transparent manner and with annually updated inputs that reflect ComEd's actual costs to be recovered during the applicable year. Rate DSPP includes the detailed view of Sch FR A-1 and Sch FR A-1 REC, which effectively are executive summary schedules of ComEd's rate formula, to show the final rolled up revenue requirement. But equally important and necessary, ComEd argues, Rate DSPP also specifies and incorporates by explicit reference the other Schedules and Appendices in ComEd's rate formula that develop the data rolled up into Sch FR A-1 and Sch FR A-1 REC. ComEd Ex. 1.0 at 7-9.

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ComEd submits that its Schedules and Appendices are necessary to achieve the standardization, transparency, and certainty called for by EIMA in Section 16-108.5(c) of the Act. For example, in order to use data from ComEd's FERC Form 1 in a manner that is transparent, the rate formula must specify what data to use. Further, for the data to be applied in a standardized manner, it must be set out and defined in the formula. ComEd asserts that this detail and transparency cannot be seen on Sch FR A-1 and Sch FR A-1 REC alone. The other Schedules and Appendices provide this transparency as they contain the references to the FERC Form 1 and to the specific workpapers that contain the source input data. Sch FR A-1 and Sch FR A-1 REC do not contain or identify specific cost inputs, but rather provide a high level summary of ComEd's Initial Rate Year, Reconciliation Year, and Rate Year Net Revenue Requirements. ComEd Ex. 1.0 at 5-9.

ComEd notes that although Staff and Intervenors do not dispute that the Commission's Order in Docket Nos. 13-0501/13-0517 does not apply to ComEd, they argue that the Commission should reach the same conclusion here as it did in the Ameren proceeding. ComEd asserts that this argument glosses over the evolution of the formula rate structure definition from a promised rulemaking (in various dockets over three years), to addressing the issue in a one-off proceeding involving Ameren (and excluding ComEd), to the instant Docket, where the proposed redefining of ComEd's formula rate was injected at a late stage in this originally narrow housekeeping proceeding. ComEd submits that the Ameren Order concluded that not only will the results of the Ameren proceeding not be automatically applied to ComEd, but "the Commission will consider the record in [ComEd's] case before deciding whether to do so." *Id.* ComEd asserts that the Commission must decide this case "exclusively on the record for decision" in this case. 220 ILCS 5/10-103. Thus, according to ComEd, the

Ameren decision cannot control the decision in this case. Moreover, it is well established that "orders [of the Commission] are not res judicata in later proceedings before it," *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953), and they certainly cannot bind parties like ComEd, who were not even a party to the other case.

According to ComEd, that the Ameren case cannot decide what filed sheets are part of ComEd's rates is not just a product of the Commission's jurisdiction and due process. As a factual matter, nothing requires Ameren and ComEd to include the same level of detail on each type of sheet or to have identical rate formulae – and the record establishes they do not. *See* ComEd Ex. 2.0, at 14. ComEd submits that it is impossible to determine the structure or protocols of ComEd's Commission-approved formula rate without considering ComEd's actual formula rate. ComEd concludes that Staff's and Intervenors' assertion that ComEd will somehow be bound to follow and apply the determination in the Ameren case to which it was not a party and in which ComEd's Commission-approved formula rate was not at issue makes highly improper presumptions, could not be supported by substantial evidence based on relevant and necessary record evidence, and would violate both the Act's direction that Commission decisions be made exclusively on the record in that case, and due process hearing requirements.

ComEd argues that Staff witness Ebrey proposes to arbitrarily and narrowly define ComEd's formula rate structure and to make adjustments that are counter to EIMA and to the established formula approved by the Commission. According to ComEd, Staff's position complicates, not simplifies, the annual FRU process, and results in the expenditure of more, not less, resources by the participating utility, Staff, and intervenors. ComEd states that by taking complex arguments about the formula structure and protocols out of the annual updates, the detail in the tariff serves to preserve resources and reduce the workload of the parties and the Commission. The debate that should occur in annual update proceedings should center on the specific inputs; and there should not be inefficient, costly, and uncertain re-litigation of the formula structure and protocols themselves year-after-year in the FRU proceedings, which defeats the express language and intent of EIMA. But ComEd states that is what would result from the adoption of Staff's position.

EXCEPTION No. 1

ComEd points to the Commission's May 29, 2012 Order in Docket No. 11-0721, testimony and compliance filings in that Docket, and testimony and evidence in the instant proceeding to show that the supporting schedules and appendices to Sch FR A-1 and FR A-1 REC were the subject of Commission review, analysis, and approval in Docket No. 11-0721 – and that it would be contrary to what actually occurred in that Docket to find otherwise. ComEd notes that the May 29 Order specifically reviewed and approved adjustments to those schedules, and ordered ComEd to revise the formula template consistent with the determinations in the Order. Thus, ComEd asserts that there is no impediment to concluding that the formula rate structure contained in the supporting schedules and appendices to Sch FR A-1 and FR A-1 REC are subject to the restriction under EIMA against changing such structures in an FRU proceeding. ComEd also asserts that the supporting schedules and appendices are necessary to comply with EIMA's requirements for inputs to the formula to be based on FERC Form 1

data and for the formula rate to provide a standardized and transparent means to develop annual rates based on such data. Thus, those supporting schedules and appendices were a necessary component of the Commission's approval of Rate DSPP. ComEd also contends that the argument that its position will delay Commission consideration of any needed formula structure changes is factually incorrect and contrary to EIMA. The prohibition on considering formula structure changes in an FRU proceeding is an explicit requirement of EIMA. ComEd points to the instant docket as proof that an Article IX proceeding can be decided in the same or even shorter time period than an FRU proceeding, notes that parties do not have to wait for an FRU proceeding to raise an Article IX structure issue, and explains that the timeline for Article IX proceedings is a maximum rather than a minimum time limit.

ComEd contends the argument that the formula rate structures should be limited to summary Schedules Sch FR A-1 and Sch FR A-1 REC is analogous to asserting that blue prints for a house are limited to the cover page elevation drawing. The detailed drawings for constructing each room and floor of a house constitute a critical part of the blue prints for building that house, just as the supporting schedules and appendices for arriving at ComEd's formula rates constitute a critical part of ComEd's formula rate. The two summary schedules, without looking to the supporting schedules and appendices, as a practical matter have almost no meaning on their face. The Act prohibits changes to the structure (or protocols) of the formula rate, not just the tariff; and there is no reason to exempt or exclude changes to the structure of ComEd's formula rate as reflected in the supporting schedules and appendices from the Act's prohibition on considering structure changes in an FRU proceeding.

ComEd contends there is no basis for concluding that its rate formula structure is anything other than all of the Schedules and Appendices incorporated in Rate DSPP, which collectively provide the certainty, standardization, and transparency required by EIMA. Sch FR A-1 and Sch FR A-1 REC present the applicable revenue requirements at a summary level. They do not provide the certainty, standardization, and transparency required by EIMA and provided by the other Schedules and Appendices in the rate formula spreadsheet. *See* Rate DSPP, 1st Revised Sheet Nos. 423-425 (in ComEd Ex. 1.01); ComEd Ex. 1.0 at 13-14. ComEd submits it is highly unlikely that someone could determine how the revenue requirements are calculated (or discern many of the rulings made by the Commission regarding the rate formula) if they simply had the tariff in one hand and the FERC Form 1 in the other hand. ComEd Ex. 1.0, at 12-13. Sch FR A-1 and Sch FR A 1 REC do not directly refer to any specific data in the FERC Form 1. To discern how the FERC Form 1 data feeds into the overall revenue requirement, one would have to review the other Schedules and Appendices, which drive Sch FR A-1 and Sch FR A-1 REC, and which also are listed in Rate DSPP (1st Revised Sheet No. 426). The Schedules and Appendices also incorporate data in work papers listed in Rate DSPP (2nd Revised Sheet No. 427). Looking solely at the tariff and Sch FR A-1 and Sch FR A-1 REC, as Staff proposes for the purpose of determining how much of the formula rate is in play in an FRU, does not set forth the entirety of ComEd's rate formula structure and certainly does not provide the certainty, standardization, and transparency that EIMA requires.

B. Staff's Position

Staff states that the Commission should specifically define "formula rate structure" to mean the Commission-approved formula rate tariff set forth in ComEd's tariffs as Rate DSPP, Tariff Sheet Nos. 417 - 437 which contain Schedules FR A-1 and FR A-1 REC. In addition, the Commission should find "protocols" to mean items (A) through (I) set forth in Section 16-108.5(c)(4) of the Public Utilities Act ("Act") which are not at issue in this proceeding.

With regard to formula rate structure, Staff's position is based on the Commission's Order in Docket No. 11-0721, ComEd's first formula rate proceeding wherein the Commission approved only Schedules FR A-1 and FR A-1 REC as ComEd's formula rate tariff, Rate DSPP. Staff Ex. 1.0 at 4. Staff maintains that the Commission effectively defined the "formula rate structure" to be limited to those two tariff formula rate schedules. No other schedule, appendix, or workpaper was determined by the Commission to be part of ComEd's formula rate tariff. Staff's position is bolstered by Section 16-108.5(c) of the Act, which requires that the Commission shall by order approve the "performance-based formula rate." 220 ILCS 5/16-108.5(c).

ComEd's "performance-based formula rate, including the initial rates," was approved by the Commission and set forth in the Rate DSPP tariff as Tariff Sheet Nos. 417 – 437 and approved by the Commission in Docket No. 11-0721 and later revised in Docket No. 13-0386, the filing implementing the requirements of SB-9 (P.A. 98-0015). The formats for only two schedules are included within those tariff sheets, Schedules FR A-1 (Net Revenue Requirement Computation on Sheet Nos. 423 - 424) and FR A-1 REC (Revenue Requirement Reconciliation Computation on Sheet No. 425). Additional schedules, appendices and workpapers are listed by number and name on Sheet Nos. 426 and 427, but no specific information regarding what is to be included on those ancillary documents is presented in the Rate DSPP tariff, outside of titles for those documents.

Section 16-108.5(c) of the Act provides that "[s]ubsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act..." 220 ILCS 5/16-108.5(c). According to Staff, this section refers to changes in the structure of the formula rate or the protocols established for ComEd in Docket No. 11-0721, pursuant to Section 16-108.5(c) of the Act. Therefore, this provision that refers to Section 9-201 would only apply to changes to Schedules FR A-1 and FR A-1 REC of ComEd's formula rate tariff, Rate DSPP. The Company maintains, however, that all of the schedules and appendices listed in ComEd's Rate DSPP (Tariff Sheets 423-426) constitute the formula rate structure for purposes of Sections 16-108.5(c) and (d) of the Act. ComEd Cross Ex. 1. Staff disagrees. The supporting schedules and their related appendices are not part of the "formula structure" because the Commission has previously found that the supporting schedules were merely a guideline or template in its Order in Docket No. 12-0321, concerning ComEd's second formula rate proceeding. *See* Docket No. 12-0321, Order at 105.

In Docket No. 12-0321, the Commission did not consider a formula rate template/guideline (i.e., those other supporting schedules not specifically set forth in the approved formula rate tariffs) to be an "approved" document for the formula rate update

cases. Further, in Staff's view, the Commission's reference to the "the very complex template" meant the numerous formula rate schedules, appendices and workpapers that, while not themselves included in the formula rate tariff, support the two lone schedules (i.e., FR A-1 and FR A-1 REC) that are included in ComEd's formula rate tariff. Specifically, Staff states that ComEd's formula rate template consists of the two tariff pages FR A-1 and FR A-1 REC which are supported by 11 schedules, 11 appendices, and 26 workpapers that total in excess of 100 pages.

Company witness Brinkman agrees with Staff that ComEd Rate DSPP "establishes and incorporates the formulae that determine the delivery service revenue requirement and the resulting delivery service charges to customers, as well as the cost components that form the inputs to those formulae." ComEd Ex. 1.0 at 7. Ms. Brinkman explains that Schedules FR A-1 and FR A-1REC present the "Executive Summary" of the revenue requirement. ComEd Ex. 1.0 at 7-8. The term "Executive Summary" is a new term, according to Staff, and does not appear in the Rate DSPP tariff, nor in Section 16-108.5 of the Act. Thus, the term "Executive Summary" is merely ComEd's own description of the Schedules FR A-1 and FR A-1 REC and conveys no other significance.

Ms. Brinkman also describes the supporting schedules and appendices that develop the data summarized in Schedules FR A-1 and FR A-1 REC, claiming that the data supporting Schedules FR A-1 and FR A-1REC "provide the certainty, standardization, and transparency required by EIMA." *Id.* at 8. However, as is readily apparent from a review of the Rate DSPP tariff, only the title of each supporting schedule, appendix and workpaper is included in the tariff; there is no detail of the information that is to be included on the schedules, appendices, or workpapers that support Schedules FR A-1 and FR A-1 REC. Furthermore, the Commission has not specified how information should appear on the supporting schedules, appendices, and workpapers that are merely listed in ComEd's Commission-approved tariff. In contrast, the Commission has approved the information and formatting that is to appear on Schedules FR A-1 and FR A-1 REC. ComEd Ex. 1.01.

ComEd claims that "the certainty, specificity and transparency established by defining ComEd's rate formula as the full set of Schedules and Appendices set forth and listed in Rate DSPP [do not] impair the Commission's ability to review ComEd's costs." ComEd Ex. 1.0 at 9. It is not "the Commission's ability to review ComEd's costs" that is at issue here; rather, it is the Commission's ability to approve just and reasonable costs within a formula rate proceeding. In Staff's view, ComEd's position that any change to any spreadsheet included in "the full set of Schedules and Appendices set forth and listed in Rate DSPP" must be approved in a separate Section 9-201 proceeding substantially impairs the Commission's ability to approve just and reasonable rates in every formula rate proceeding. Under the Company's recommendation, the physical format of supporting schedules and appendices can affect how an issue is considered for recovery in a formula rate proceeding. Specifically, an adjustment could only be allowed if the schedules and appendices, as currently formatted, could accommodate the adjustment or if the formatting changes resulting from such an adjustment had received prior Commission approval in a Section 9-201 proceeding. Any regulatory review or examination subject to such significant constraints effectively frustrates the

main purpose of the regulatory review or examination, rendering them a meaningless, if not a greatly impaired, exercise. Form should not supersede function, particularly when the result would be to ignore the substance of the applicable law.

Staff agrees with the Company that it is desirable to avoid unnecessary litigation. If the Company's definition of formula rate structure is adopted, however, the Commission would need to annually initiate Section 9-201 proceedings to approve every minor formatting change to a supporting formula rate schedule or appendix in order to effectuate adjustments the Commission found to be just and reasonable in every annual formula rate proceeding prior to issuing a final order in the annual formula rate proceeding. Therefore, in addition to limiting the Commission's authority, the Company's recommendation would also result in unnecessarily burdening the Commission with numerous additional Section 9-201 proceedings.

Staff notes that in its August 19, 2014 Order Docket Nos. 13-0501/0517 (Consol.), the Commission made a decision regarding the definition of "formula rate structure" as it applies to Ameren. *Ameren Illinois Co.*, Docket Nos. 13-0501/-13-0517 (Consol.) Order at 19 (August 19, 2014). Staff states that it is clear that the Order in Docket Nos. 13-0501/0517 (Cons.) specifically indicates that it applies only to Ameren and that the issue for ComEd would be considered in a separate proceeding (*id.* at 6); however, Staff urges the Commission to consider the reasoning behind its conclusion in that case as instructive in the instant proceeding. The facts in the Ameren case mirror the facts in the instant ComEd case. Therefore, the Commission's reasoning in the Ameren case to not limit its "ability to take reasonable actions in future annual rate and update reconciliation proceedings" should be considered in the instant case, and the Commission should reach the same conclusion here.

Further, in reference to Docket No. 13-0318, Staff notes that ComEd argues that the Commission noted the possibility that the compliance change would need to be made in a separate Article IX filing, but ComEd fails to provide the appropriate context of that Commission statement in this proceeding. Nevertheless, in Docket No. 13-0318, the Commission merely deferred certain issues to be decided in a different previously-initiated docket, and as such, that remark cannot support ComEd's position. Docket No. 13-0318, Order at 63. More specifically, the Commission moved three issues out of the formula rate case (Docket No. 13-0318) and into Docket No. 13-0553, an investigation in response to a verified complaint filed by the AG. That procedural move by the Commission in response to a Staff Report and an AG complaint cannot be reasonably construed to be a Commission conclusion on the substantive issue that is now the subject of this current proceeding.

Moreover, the Commission Order in Docket No. 13-0318 supports Staff's recommendation in this case: it concluded an additional cash working capital ("CWC") calculation not provided for in the schedules and appendices originally filed by the Company was necessary, even if it meant changing the physical format of a few supporting schedules and appendices. The Commission did not base its decision there concerning the second CWC calculation on whether the existing format of supporting schedules would accommodate the additional calculation. Rather, it based its decision on whether such an adjustment was just and reasonable. The Commission did not consider itself to be bound by the format of supporting schedules or appendices in

making its determination to accept the CWC adjustment. Staff argues that the Commission's decision in the Interim Order in this case reaffirms its decision in Docket No. 13-0318 that is squarely at odds with ComEd's position both in Docket No. 13-0318 and in the instant proceeding.

C. AG's Position

The AG states that Section 16-108.5(c) of the PUA authorizes certain electric utilities to request a tariff setting forth a "performance-based formula rate" that will "operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs." The formula rate shall "[p]rovide for the recovery of the utility's actual costs that are prudently incurred and reasonable in amount consistent with Commission practice and law" but specifically ensures that the Commission's ability to investigate the proposed formula rates under Article IX ratemaking provisions remain. 220 ILCS 5/16-108.5(c). This provision also requires separate Section 9-201 filings for discrete changes to the formula rate tariff. 220 ILCS 5/16-108.5(c)(6). Of course, how "formula rate tariff structure or protocols" is defined determines whether such a separate proceeding is, indeed, necessary – a question at the heart of this proceeding. Section 9-201(b) of the Act provides that the Commission may suspend and hold a hearing on any tariff filing upon its own motion or upon a complaint. 220 ILCS 5/9-201(b).

Section 16-108.5(d) further addresses the Commission's responsibility to consider the reasonableness and prudency of the utility's costs that will be included in formula rates in the annual formula rate update and reconciliation proceedings. 220 ILCS 5/16-108.5(d)(3). The AG asserts that the statute and the record evidence support the position presented by Staff witness Ebrey on the issue of how to define the formula rate tariff, and whether proposed changes to the formula rate schedules, appendices, and workpapers that support Schedules FR A-1 and FR A-1 REC in ComEd's formula rate tariff would require a Section 9-201 proceeding in order to implement those changes.

The AG notes that ComEd's definition of the formula rate tariff structure and protocols would include, in addition to Schedules FR A-1 and FR A-1 REC, all schedules and appendices referenced in the formula rate tariff (i.e., Schedule FR A-3 through Schedule FR D-2, the appendices, App 1 through App 11.). The AG argues that ComEd's definition of the formula rate tariff would result in the untenable position that any change to any spreadsheet included in "the full set of Schedules and Appendices set forth and listed in Rate DSPP" must be approved in a separate Section 9-201 proceeding, thereby impairing the Commission's ability to set just and reasonable rates in each formula rate update proceeding.

If adopted, ComEd's definition would preclude Staff and Intervenors from proposing adjustments to operating expenses and rate base that are not currently included in the Company's definition of "formula rate structure," thereby limiting the Commission's statutory authority to ensure that the rates established under Section 16-108.5 are, indeed, just and reasonable. Under such a scenario, neither Staff nor intervening parties could propose simple prudence-based adjustments to operating expense or rate base values if the formula rate filing sheets did not provide for or left no

room for such adjustments. That result is inconsistent with the EIMA provisions that specifically authorize the Commission to analyze the proposed rates under Section 16-108.5(c)(6) and 16-108.5(d)(3) by incorporating the Article IX ratemaking standards of justness, reasonableness and prudence in the annual rate analysis. In addition, ComEd's definition of the formula rate tariff is inconsistent with prior, recent Commission orders addressing the topic.

The AG recommends that the Commission adopt Staff witness Ebrey's recommendation to define ComEd's formula rate tariff as Schedules FR A-1 and FR A-1 REC and that only changes to those specific schedules should require Commission approval through a Section 9-201 filing. Those are the only schedules included in the Company's formula rate tariffs, which set forth the Commission-approved formula rate structure.

Indeed, adoption of this finding is consistent with the Commission's Interim Order in this case. There, the Commission found that the Section 9-201 approval of another set of housekeeping and compliance changes to implement the same Cash Working Capital calculation changes previously approved in Docket No. 13-0318 and already implemented for the 2014 rate year to schedules other than FR A-1 and FR A-1REC was not required. Interim Order of August 19, 2014 at 4.

ComEd's definition of the formula rate tariff, on the other hand, would likely trigger annual Section 9-201 proceedings if Staff- and Intervenor-proposed adjustments to the Company's annual revenue requirements could not be specifically identified as a line item in Schedules FR A-1 and FR A-1 REC. The AG submits that such a scenario is contrary to the intent of the General Assembly when it approved the EIMA provisions. The EIMA anticipated that prudence and reasonableness adjustments would be an ordinary part of the formula rate process – not an annual exercise in filing Section 9-201 complaints. The Act makes clear that this ability to make adjustments to the utility's presentation of annual costs, forecasted plant and reconciled revenue requirement is inherent in the annual formula rate update process. 220 ILCS 5/16-108.5(d)(3). Section 16-108.5(d)(3) read in conjunction with Section 16-108.5(c)(6), which requires a Section 9-201 proceeding to change the formula rate structure after the original formula rate tariff is established, must be read to accommodate the Commission's authority and responsibility to apply Article IX prudence and reasonableness evidentiary standards. Any interpretation of the formula rate structure that would exclude consideration of issues or adjustments based on prudence, reasonableness evidentiary standards would be inconsistent with EIMA requirements.

In response to ComEd's arguments regarding prior Commission orders, the AG states that these arguments miss the mark. First, as noted by Staff witness Ebrey, by approving only Schedules FR A-1 and FR A-1 REC for Rate DSPP as the formula rate tariff in its Order in 11-0721, the Commission effectively defined the "formula rate structure" to be limited to those two formula rate schedules. Staff Ex. 1.0 at 3. Moreover, the Commission designated ComEd's formula rate, Rate DSPP tariff, as Tariff Sheet Nos. 417 - 437 that were approved by the Commission in Docket No. 11-0721 and later revised in Docket No. 13-0386, the filing implementing the requirements of SB-9 (P.A. 98-0015). Ms. Ebrey noted that the formats for only two schedules are included within those tariff sheets, Schedules FR A-1 (Net Revenue Requirement

Computation on Sheet Nos. 423 - 424) and FR A-1 REC (Revenue Requirement Reconciliation Computation on Sheet No. 425). *Id.* at 4. Additional schedules, appendices and workpapers are listed by number and name on Sheet Nos. 426 and 427, but no specific information regarding what is to be included on those ancillary documents is presented in the Rate DSPP tariff, outside of titles for those documents.

Second, while the Commission did defer resolution of three issues to a separate investigation, Docket No. 13-0553, that investigation was predicated on a complaint filed by the AG as a protective measure, given ComEd's position in its then pending formula rate update case, Docket No. 13-0318, that certain adjustments being recommended by the People were outside of the formula rate tariff update analysis. Rather than debate that definition within the context of the 13-0318 FRU proceeding, the AG filed a tandem complaint requesting that the Commission initiate an investigation of the certain changes made to the formula rate tariff approved in Docket 13-0386 following the passage of Public Act 98-0015 in order to ensure that the Commission would consider the recommended adjustments. As a result, the Commission initiated Docket No. 13-0553 pursuant to Section 10-113(a) of the Public Utilities Act ("the Act") to determine whether the Company complied with Public Act 98-0015. *ICC v. Commonwealth Edison Co.*, Docket No. 13-0553, Order at 3 (October 2, 2013).

In addition, while the Commission did state in Docket 13-0318 that the adjustments were "beyond the scope of this Section 16-108.5(d) annual update and reconciliation proceeding" (Order at 63), the Company fails to mention that the Order also states in the very next sentence, "This issue was decided in Docket No. 13-0553." Docket No. 13-0318, Order at 63 (December 18, 2014). The relied upon reference, thus, appears simply to point out the fact that the topics were being addressed in another docket. The Commission's order in Docket No. 13-0553 had already been issued in the month prior when the Commission noted that fact. That recognition in no way amounted to a declaration of how to define the formula rate tariff. Certainly, it must be said that the definition of what constitutes ComEd's formula rate tariff was not litigated in Docket No. 13-0318, or for that matter, in Docket No. 13-0553.

ComEd further argues that its formula rate tariff definition is the correct one because the supporting FRU schedules and appendices provide the certainty, standardization and transparency required by Section 16-108.5(c) of EIMA. This argument, too, fails. Again, as pointed out by Staff witness Ebrey, only the title of each supporting schedule, appendix and workpaper is included in the tariff. These schedules include no detail of the information that is to be included on the schedules, appendices or workpapers that support FR A-1 and FR A-1 REC. Staff Ex. 2.0 at 3. She further noted that unlike the Commission's approval of specific information and formatting that is to appear on Schedules FR A-1 and FR A-1 REC, the Commission has not specified how information should appear on the supporting schedules, appendices and workpapers that are merely listed in ComEd's approved formula rate tariff. *Id.*

ComEd's supplementary argument that Staff's definition "complicates, not simplifies, the annual FRU process, and results in the expenditure of more, not less, resources by the utility, Staff and intervenors," is not a credible argument in support of its proposed formula rate tariff definition, and in fact would nearly ensure that Article IX proceedings accompany every FRU docket. The fact that adjustments are proposed by

Staff and Intervenors in ComEd's FRU dockets that are litigated in the cases is not something that the General Assembly sought to eliminate. Again, both Section 16-108.5(c) and Section 16-108.5(d)(3) contemplate Commission application of Article IX analysis of the reasonableness and prudency of proposes rates. 220 ILCS 5/16-108.5(c) and 16-108.5(d)(3). Adopting ComEd's view of the formula rate structure would, in fact, supplement the litigation that occurs in each FRU docket with regular, necessary Section 9-201 proceedings each time Staff or Intervenor proposed an adjustment that referenced the schedules that accompany the FR A-1 and FR A-1 REC tariff pages. That view of the tariff in no way simplifies the annual formula rate update process.

D. CUB's Position

CUB states that while it did not present testimony in this case, CUB generally agrees with Staff witness Ebrey on each of these issues. CUB contends that Ms. Ebrey's proposed definition of "formula rate structure" is in line with the statutory language of 16-108.5(c) and (d), and appropriately sets the parameters of what the Commission may consider in the context of a formula rate update proceeding (and, conversely, what may only be considered in the context of a 9-201 proceeding). CUB asserts that Ms. Ebrey's proposal that only changes to the "formula rate structure" (with "structure" defined as Rate DSPP, Tariff Sheet Nos. 417-437 – Schedules FR A-1 and FR A-1 REC) should require a 9-201 proceeding while changes to all other rate schedules, appendices and workpapers that support FR A-1 and FR A-1 REC can take place in an annual formula rate update proceeding is reasonable and should be adopted. CUB contends this definition allows the Commission to retain the authority granted in 16-108.5(c) while recognizing the legislature's intent to keep formula rate update proceedings to a narrower scope than 9-201 proceedings. CUB asserts that ComEd has not provided evidence to persuade the Commission to come to any other result.

CUB notes that the EIMA is clear that, in a FRU, the Commission shall not make changes to the "structure or protocols" of an EIMA formula rate. 220 ILCS 5/16-108.5(d)(3). Changes to a formula rate's "structure or protocols" shall be made as set forth in Section 9-201. 220 ILCS 5/16-108.5(c). CUB points out that what constitutes a formula rate's "structure and protocols" can, thus, be critical, as it dictates what the Commission may consider in a 16-108.5(c) formula rate update proceeding and what must take place in a separate 9-201 proceeding.

CUB further notes that the EIMA provides explicit direction as to what it intended should constitute formula rate "protocols." In Section 108.5(c)(4), the Act, the Commission is directed to approve performance-based formula rates that "Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following: ..." The "protocols" are then listed in sub-sections (c)(4)(A)-(I). The formula rate "structure," however, is not defined, CUB states. CUB observes that, when interpreting a statute, the primary objective is to ascertain, and give effect to, the intent of the legislature. *Metro Utility Co. v. Illinois Commerce Comm'n*, 262 Ill.App.3d 266, 274 (1994). CUB additionally observes that the best indication of what the legislature intended is the statutory language itself. *Id.* According to CUB, the Commission must define the term "formula

rate structure" consistent with the apparent intent of the legislature, based upon the context of the EIMA.

CUB avers that the Commission has already taken steps to define the term in the context of formula rate proceedings. First, in Docket No. 11-0721, the Commission found that formula rate "workpapers and schedules, etc. may be part of a filing, but they are not to be part of the tariffs." Docket No. 11-0721, Order at 153. Similarly, in Docket No. 12-0321, ComEd's first formula rate update, the Commission stated that "[a] template is merely a guideline," and not an "approved" document for formula rate update cases. Docket No. 12-0321, Order at 105. The Commission also only approved Schedules FR A-1 and FR A-1 REC, in its approval of the initial formula rate. Staff Ex. 1.0 at 4. CUB maintains these findings are consistent with the overall context of the EIMA, which contains multiple references to the authority retained by the Commission to ensure the prudence and reasonableness of rates. See 220 ILCS 5/16-108.5(c), (d)(3). Finally, in Docket No. 13-0501/13-0517 (consol.), the Commission held that, with respect to Ameren (the only other participating utility under the EIMA besides ComEd), the definition of "formula rate structure" should include only schedules FR A-1 and FR A-1 REC, and thus only changes to those two schedules require a 9-201 proceeding. Ameren Order at 19, 36-37. The Ameren Order held that, apart from those two schedules, changes to the format of the remaining schedules, appendices and workpapers can take place in the context of an FRU. Id. at 36.

CUB notes that the Commission's Order in Docket Nos. 13-0510/13-0517 states that it shall not be automatically applied to ComEd. Ameren Order at 6. No party has argued that the Ameren Order alone is sufficient to mandate the precise conclusion, and it is true that Commission decisions are not res judicata in later proceedings. *Mississippi River Fuel Corp et al. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953). However, CUB observes that Commission decisions are entitled to less deference when they drastically depart from past practice. *Business and Prof'l People for the Public Interest et al. v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 227 (1989). ComEd and Ameren are the only two participating utilities under the EIMA, and CUB contends that ComEd has presented no evidence to support a different definition of the statutory term "formula rate structure" than what the Commission determined with regard to Ameren. CUB suggests that the Ameren Order, which considered this exact same definitional question, though not "automatically" applicable to ComEd, should be carefully considered by the Commission in deciding this case. CUB notes that a drastic departure from the Ameren Order would be entitled to less deference by a reviewing court.

CUB argues that the same evidence and legal authority that supported the Commission's decision in the Ameren Order are present in this case. CUB therefore concludes that there are no differences between ComEd and Ameren that would justify a different statutory interpretation for each participating utility.

CUB argues that ComEd's view, that all accompanying schedules and appendices that feed into the only two schedules actually filed in the tariffs – Schedules FR A-1 and FR A-1REC – should be considered the "formula rate structure," conflicts with the Commission's prior rulings on this issue. ComEd argues that, when the Commission is considering what constitutes the formula rate structure, the

Commission's view of the FRUs "should center on the specific inputs" of the formula – that is, the Commission should simply accept the formula proposed by the Company and insert calculations. ComEd Ex. 1.0 at 9:180-81. In ComEd's ideal world, says CUB, the Commission's examination in FRUs would be limited to simply reviewing the "updated input data" ComEd proffers each year. See ComEd Init. Br. at 7. CUB responds that reviewing "inputs" alone in an FRU does indeed impair the Commission's ability to review the reasonableness and prudence of costs in rates. More than just math-checking is required in order for the Commission to fulfill its statutory duty. CUB contends that ComEd's restricted view of Commission authority is not what the EIMA intended, and that limiting the Commission to only reviewing could force the Commission to approve rates that are unjust and unreasonable until they can be remedied in a separate 9-201 proceeding. CUB observes that is clearly an absurd result.

CUB notes that the plain language of the Act makes it clear that the Commission should apply the same standards of review to a formula rate as it does under traditional regulation. The statute states: "The Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this subsection (c) and the provisions of Article IX to the extent they do not conflict with this subsection (c)." 220 ILCS 5/16-108.5(c). The statute further lays out that the Commission's review of a formula rate "shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act." 220 ILCS 5/16-108.5(c)(6). CUB maintains that this language clearly allows for broad Commission review in formula rate cases so that the Commission is able to uphold its duty to ensure that only just and reasonable rates are charged to ratepayers. CUB avers that Ms. Ebrey's proposed definition of "formula rate structure" is consistent with that broad authority.

CUB maintains that requiring that every change to a supporting schedule or workpaper a utility files take place in a 9-201 proceeding is inefficient and contrary to the statute's intent for the Commission to efficiently and effectively regulate rates and ensure their prudence and reasonableness. CUB states that form should not supersede function, and the Company's position that certain changes cannot take place in the context of a formula rate update proceeding has already resulted in unnecessary, costly litigation. CUB observes that the statute only requires a 9-201 proceeding for very specific formula rate changes. CUB argues that broadening the scope of what requires a 9-201 proceeding would cause undue burden upon all parties, and would be contrary to the intent of the EIMA.

CUB points out ComEd's references to rate changes that were made in 9-201 proceedings in 2013 to support its position that those changes could only take place in Article IX proceedings. ComEd Init. Br. at 8. CUB responds that the fact that the Commission has changed some of ComEd's schedules and appendices in Section 9-201 proceedings does not mean that those changes could not have taken place in an FRU. CUB observes that ComEd fails to mention in its Initial Brief is that it was the Company that initiated Docket No. 13-0339, choosing to file it as a 9-201 proceeding, and the Commission did not consider whether those changes actually required 9-201

proceedings or whether they could have taken place in FRUs. Docket No. 13-0339, Verified Petition to Make Housekeeping and Technical Corrections to Commonwealth Edison Company's File Performance Based Delivery Service Rate Formula. Similarly, notes CUB, Docket No. 13-0386 was initiated in response to tariffs filed by ComEd outside of the FRU proceeding. Docket No. 13-0386, Order of June 5, 2013 at 2-3. Thus, CUB maintains that no conclusions on the Commission's authority can be gleaned from those dockets. It was ComEd – not the Commission's – choice that those issues would be addressed in 9-201 proceedings. CUB contends that the Commission did not consider in either of those dockets whether it could have approved those changes in an FRU.

CUB avers that Ms. Brinkman in testimony, and ComEd in its Initial brief, relied on language in the Commission's Order in ComEd's last FRU, Docket No. 13-0318 ("13-0318 Order"), out of context in arguing that the Commission previously ruled that changes to schedules and appendices (other than schedules FR A-1 and FR A-1 REC) are inappropriate in an FRU. See ComEd Ex. 1.0 at 10, ComEd Init. Br. at 9. In actuality, says CUB, the Docket 13-0318 Order references Docket No. 13-0553, stating that three specific issues were beyond the scope of that proceeding and were decided in Docket No. 13-0553. Docket 13-0318, Order at 63. Docket No. 13-0553 was decided more than three weeks before Docket No. 13-0318 (on November 26 and December 18, 2013, respectively). Therefore, says CUB, it cannot be claimed that the Commission's finding that the three issues were "beyond the scope" of that docket was a definitive ruling that the issues constituted improper changes to the formula rate structure. The Commission made no such finding, and did not include analysis or specific findings on the definition of "formula rate structure." The fact that the three issues referenced were "beyond the scope" of Docket No. 13-0318 simply referenced the fact that the issues had already been decided, in Docket No. 13-0553.

CUB further avers that argues that separating out many (if not most) proposed adjustments into a separate 9-201 proceeding could prevent reasonable adjustments from being made in a timely manner. Assuming Staff or an intervenor discovered an issue requiring an adjustment to a schedule or appendix immediately upon the Company's May 1 FRU filing, the 11-month 9-201 proceeding would conclude after rates for the next year have already been set. See 220 ILCS 5/9-201(b); 220 ILCS 5/16-108.5(d)(3). Thus, says CUB, it could take almost two years from the time issues are discovered until they are actually reflected in rates, even if those accounting issues do not require a fundamental change in the formula rate initially set by the Commission. ComEd's proposal could allow it to collect unreasonable rates for over a year, simply because of the technicality that a 9-201 proceeding and a 16-108.5 proceeding function on different statutory deadlines.

E. Commission Analysis and Conclusion

Although various statements have been made by the Commission regarding the scope of FRU dockets and the definition of formula rate structure, the Commission has not decisively ruled on the definition of formula rate structure as it applies to ComEd. In Docket No. 11-0721, the Commission first considered the issue of how to define the formula rate structure for ComEd. While the Commission ruled on what schedules to attach to the Order itself and which formula rate Schedules and Appendices to set forth

in full in Rate DSPP and which to include as part of the compliance filing, the Commission did not rule on which Schedules and Appendices constitute the formula rate structure. The Commission ultimately directed that a rulemaking should commence, because it would "add clarity to the reconciliations that will take place pursuant to this statute, which should provide greater clarity for utilities, ratepayers and Commission Staff." Docket No. 11-0721, Order at 153. In doing so, the Commission stated "that the sooner the rulemaking takes place, the sooner all involved in the rulemaking will familiarize themselves with what formula rates will entail." *Id*.

In ComEd's first formula rate update proceeding, similar questions were raised, but the Commission indicated that "there will be a rulemaking in which ComEd and other interested parties are encouraged to address this and other relevant issues regarding future formula rate filings." *Commonwealth Edison Co.*, Docket No. 12-0321, Order at 105 (Dec. 19, 2012). In the Interim Order in this proceeding, the Commission stated that in the second phase it would consider the definition of "formula rate structure" as it applies to ComEd. The Commission intends to take a fresh look at the definition of "formula rate structure" as it applies to ComEd

Turning first to EIMA, Section 16-108.5(c) states, in part:

> A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year
>
> ….
>
> Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act.

220 ILCS 5/16-108.5(c). Also, Section 16-108.5(d)(3) states in part:

> The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section.

220 ILCS 5/16-108.5 (d)(3).

The Commission finds that the statute does not define "formula rate structure". Because EIMA does not define "formula rate structure" and because the Commission has not initiated a rulemaking to determine an industry-wide definition of "formula rate structure" the Commission must look at each utility individually.

We disagree with arguments that we must interpret formula rate structure and protocols for ComEd to refer to Sch FR A-1 and Sch FR A-1 REC to protect the

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Commission's ability to establish just and reasonable rates. Staff and all parties may raise, and the Commission may consider, all applicable arguments as to the prudence and reasonableness of the cost inputs to Rate DSPP in an annual FRU proceeding. If and to the extent needed to ensure just and reasonable rates, the Commission may revise the structure and protocols of Rate DSPP in a Section 9-201 proceeding. We do not find any record support for the assertion that our ability to establish just and reasonable rates will be lost or diminished in any material way if we do not define ComEd's formula rate structure and protocols as summary Schedules Sch FR A-1 and FR A-1 REC contained in Rate DSPP. Further, while the restriction on considering changes to the formula rate structure or protocols is new in comparison to traditional pre-EIMA rate cases, the Commission finds nothing improper with this procedural limitation and it is clearly called for by the Act.

Subsections (c) and (d)(3) of Section 16-108.5 of the Act make clear that the structure and protocols "of a performance-based formula rate" are not to be reconsidered in an annual FRU proceeding under subsection (d). 220 ILCS 5/16-108.5(c) and (d). This is not disputed. What is at issue here is what constitutes the structure and protocols of a performance-based formula rate. Section 16-108.5(c) of the Act specifically provides that a formula rate must "specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year …." 220 ILCS 5/16-108.5(c). The clear intent of EIMA in this regard is to make the process by which costs are translated into rates on an annual basis clear, transparent, and certain. Thus, conceptually, the formula rate structure necessarily includes those Commission-approved documents explaining and describing how a participating utility meets such requirements.

The record here establishes that, for ComEd, those documents include the supporting Schedules and Appendices referenced in Rate DSPP. Rate DSPP identifies the specific lines from those other Schedules and Appendices with amounts that flow directly into Sch FR A-1 and FR A-1 REC. ComEd Ex. 1.01 (1st Revised Sheet No. 423; 5th Revised Sheet No. 424; 3rd Revised Sheet No. 425). The other Schedules and Appendices similarly identify the specific source data for each line, whether another Schedule or Appendix or the particular page, column, and line from ComEd's FERC Form 1. Verified Petition, Attachment B. As ComEd notes, it is only the other Schedules and Appendices – and not Sch FR A-1 and Sch FRA-1 REC – that contain specific references to ComEd's FERC Form 1 consistent with EIMA's requirement that "inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 …." 220 ILCS 5/16-108.5(c) and (d)(1). Thus, the Commission finds that under EIMA changes to the Schedules and Appendices supporting Sch FR A-1 and Sch FR A-1 REC of Rate DSPP constitute part of ComEd's formula rate structure that may not be revised in a subsection (d) FRU proceeding. In the event such changes are deemed necessary and appropriate, they must be considered and made in accordance with Section 9-201 of the Act in an Article IX proceeding.

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~~The Commission adopts Staff's proposed definition for several reasons. First, as noted by Staff witness Ebrey, the Commission has not specified how information should appear on the supporting schedules, appendices, and workpapers that are merely listed in ComEd's Commission-approved tariff. In contrast, the Commission has approved the information and formatting that is to appear on Schedules FR A-1 and FR A-1REC. The Commission cannot declare the supporting schedules, etc. to be part of the formula rate structure without having specifically approved them.~~

~~Also, the Commission sees that ComEd argues that its proposal will result in "specificity, standardization, or transparency" in the FRU process; the Commission does not agree. If an intervenor or Staff wants to challenge any part of Sch FR A-1 and Sch FR A-1 REC or the supporting Schedules and Appendices then the Commission must hear and decide that issue. Although ComEd's proposal may lessen the number of issues in the FRU, it will not lessen the number of issues that must be decided by the Commission. ComEd's proposal results in formula rate issues being decided in two dockets instead of one. This lends further support to Staff's position.~~

~~The only apparent reason for requiring two separate dockets with two separate timelines is that it could result in a year-long delay in implementing any changes. CUB points out that separating out proposed adjustments into a separate 9-201 proceeding could prevent reasonable adjustments from being made in a timely manner. Assuming Staff or an intervenor discovered an issue requiring an adjustment to a schedule or appendix immediately upon the Company's May 1 FRU filing, the 11-month 9-201 proceeding would conclude after rates for the next year have already been set. *See* 220 ILCS 5/9-201(b); 220 ILCS 5/16-108.5(d)(3). Thus, it could take almost two years from the time issues are discovered until they are actually reflected in rates. ComEd's proposal could allow it to collect unreasonable rates for over a year, simply because of the technicality that a Section 9-201 proceeding and a Section 16-108.5 proceeding function on different statutory deadlines. The Commission cannot support this outcome.~~

~~Thus, for the reasons stated herein, only changes to Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing because those are the only schedules included in the Company's formula rate tariffs, which set forth the Commission-approved formula rate structure. Staff's position is adopted.~~

Also, it is uncontested that the protocols are the components of the formula rate that address the items in Section 16-108.5(c)(4)(A) through (l). The protocols may only be changed in a separate Article IX docket.

III. DEPRECIATION

A. ComEd's Position

ComEd asserts that given the definition of formula rate "structure" and "protocols" set forth in EIMA and in the past Commission decisions discussed above, only the instant Article IX docket (or another Article IX docket) would be the proper docket to consider Staff's proposed change to ComEd's calculation of depreciation on projected plant additions. ComEd further asserts, as explained below, that it is inappropriate and unnecessary to effect a change as to the reconciliation year data based on a change in

the depreciation rates after the reconciliation year and in the filing year for Initial Rate Year rate-setting purposes.

ComEd states that its Commission-established rate formula calculates depreciation for the Initial Rate Year revenue requirement different than depreciation for the reconciliation revenue requirement. ComEd Ex. 1.0 at 14-15. ComEd explains that to the extent it has updated depreciation rates as a result of an updated depreciation study that is performed once every five years and that is filed after the reconciliation year (and thus not reflected in the FERC Form 1 for the reconciliation year), it reflects those new rates in relation to projected plant additions for the Initial Rate Year revenue requirement. ComEd maintains that calculating depreciation for the Initial Rate Year in this manner follows the methodology agreed to by ComEd and Staff in Docket No. 11-0721. EIMA requires that "inputs to the performance-based formula rate for the applicable rate year [(here, 2015)] shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 [(here, 2013)] plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed [(here, 2014)]." 220 ILCS 5/16-108.5(d)(1). ComEd asserts this is what it has done and what was agreed to and established in Docket No. 11-0721. According to ComEd, Staff unnecessarily proposes to further adjust the amounts reflected in the final historical data from ComEd's most recent FERC Form 1.

ComEd states that Docket No. 11-0721 included a well-vetted agreement between ComEd and Staff witnesses, which can be summarized as follows:

- In ComEd's direct testimony in Docket No. 11-0721, the initial proposal to calculate projected depreciation expense in the formula was to apply depreciation rates to the total projected plant additions without the use of weighting (Docket No. 11-0721, ComEd Ex. 4.1, App 8);

- In Staff's direct testimony, a recommendation was made to use "average" plant additions to calculate the projected depreciation expense (Docket No. 11-0721, Staff Ex. 5.0 at 6);

- In response to this proposed adjustment, ComEd provided an alternative calculation for App 8 in rebuttal testimony in that proceeding (ComEd Ex. 12.5) to address the concerns of Staff. ComEd Ex. 12.5 included the weighting of the plant additions taking the rate year additions and the forecasted additions and dividing by two (2);

- Staff, in their rebuttal testimony, agreed to this calculation of depreciation expense;

- ComEd further agreed with Staff to adjust the proposed method of calculating depreciation on the projected plant additions as originally presented in ComEd Ex. 12.5 to include a footnote to indicate that if FERC Form 1 depreciation rates are different from the most recent deprecation study, then the rates from the most recent depreciation study will be applied to the projected plant additions. See ComEd Ex. 13.01, App 8 in

> ComEd's current rate formula update proceeding, Docket No. 14-0312, for this footnote. Staff's Initial Brief in Docket No. 11-0721 also acknowledged the acceptance of the updated ComEd Ex. 12.5 and included the formula with footnote.

ComEd Ex. 1.0 at 14-15; *see also* ComEd Ex. 2.0 at 17-19. ComEd indicates that given Staff's agreement with ComEd in Docket No. 11-0721, it is concerned that in ComEd's current rate formula update, Docket No. 14-0312, Staff proposes to use an alternate calculation to derive the projected depreciation expense for the Initial Rate Year.

ComEd asserts that the crux of the issue in Docket No. 11-0721 involved projected depreciation, and as discussed in ComEd witness Brinkman's testimony, ComEd's position was fully vetted and agreed to by Staff not only in testimony but in Staff's Initial Brief, which cited the exhibit containing the calculation that both Staff and ComEd agreed to. ComEd Ex. 2.0 at 17-18. ComEd contends that the mere fact that depreciation rates, an input, have changed should not be reason for the entire calculation of the Initial Rate Year projected depreciation to change.

Further, according to ComEd, Staff appears to introduce a new element to the calculation by removing the use of weighted average additions in the calculation of projected depreciation and basing the calculation on year end projections. ComEd has used weighted additions in the calculation of projected depreciation in the last two formula rate update proceedings with no challenge from any party. The updated depreciation study does not change that calculation. ComEd Ex. 2.0 at 17. ComEd submits that it is precisely this back and forth – what is acceptable and agreed to one year is challenged or rejected the next year – that EIMA was intended to eliminate.

ComEd notes that projected depreciation expense is only one input of many into the total revenue requirement calculation. The formula rate uses FERC Form 1 balances for both the reconciliation and Initial Rate Year calculations (with limited exceptions directed by the statute or by the Commission) with a later reconciliation as to the rate year (the year in which the rates being set are in effect) for those amounts that are under- or over-stated in the revenue requirement used to set rates that were collected. ComEd submits that it is unnecessary to change the calculation of depreciation expense related to the Initial Rate Year as Staff now proposes considering the infrequency of depreciation rate adjustments, the impact to the already approved formula structure, and the fact that the Initial Rate Year calculation is an estimate that will ultimately be reconciled in any event. ComEd Ex. 1.0 at 19.

ComEd argues that Staff's proposal can be considered only in an Article IX docket even under Staff's legal theory since Staff witness Ebrey's proposed adjustment requires a tariff change as it effects a change to Sch FR A-1 (related to transportation equipment). ComEd observes that Ms. Ebrey compares ComEd's calculation to Ameren's, stating that they are the same. Staff Ex. 1.0 at 13. However, it appears that Ameren only reflected the changes in depreciation expense (and resulting changes to Accumulated Depreciation and Accumulated Deferred Income Taxes ("ADIT")), not changes to Distribution expense, in its formula rate changes. These changes to Distribution expense arise from depreciation expense changes related to transportation

equipment, which drives changes to Sch FR A-1 and the tariff. Therefore, according to ComEd, it appears that Ms. Ebrey advocates for what she sees as theoretical precision but her proposal stops short of a complete acknowledgment of the total impact of the depreciation rate change. ComEd posits that a full reflection of her proposed depreciation rate change would affect one of the Schedules that even Staff agrees may be changed only in an Article IX docket. ComEd Ex. 2.0 at 14; *see also* ComEd Cross Ex. 1.

ComEd also contends that Ms. Ebrey's position fails to reflect that in order to correctly and fully apply her proposed adjustment, as it would actually appear on ComEd's books, the revenue requirement on Sch FR A-1 would require an adjustment to Distribution expense, which would make the amount different than is reflected on Sch FR A-1 REC. ComEd Ex. 2.0 at 15. In fact, ComEd asserts that no matter how you adjust other Schedules and Appendices in the formula, including Sch FR C-1 and App 7, to adjust for a change in Distribution expense so that the amount recorded is different on Sch FR A-1 and Sch FR A-1 REC, a change to Sch FR A-1 would be necessary. *Id*. at 15-16.

ComEd states that it does not favor Ms. Ebrey's proposed adjustment under any scenario. It believes this calculation has been established, is an estimate as is Ms. Ebrey's proposal, and there is no reason to change it now. ComEd argues that any increase or decrease to a reconciliation amount will have an impact on interest; however, the mere fact that interest is calculated on a revenue requirement including estimated depreciation is not harmful to customers. ComEd Ex. 1.0 at 16. In other words, no matter whether the estimate is slightly higher or slightly lower, customers only pay interest on the reconciliation balance resulting from that specific estimate. ComEd maintains that customers will not pay too much interest or too little, regardless of whether the depreciation rate adjustment is done now or at the time of reconciliation. If the estimate is low, the eventual reconciliation balance will be greater. Customers will pay more interest, but they will also pay lower initial rates and gain the benefit of the use of those funds pending reconciliation. If the estimate is high, more costs are recovered up front, but the reconciliation balance and any interest will necessarily be reduced. Additionally, ComEd contends that to the extent there is any over-recovery, it pays interest to customers on that over-recovery. ComEd Ex. 1.0 at 16-17.

ComEd submits that the current methodology used to calculate projected depreciation expense should continue to be used in ComEd's formula rate update cases. ComEd asserts that the current methodology of calculating projected depreciation expense for the Initial Rate Year is just that, a projection. Any other methodology would similarly be a projection as the actual data is not available. The Initial Rate Year revenue requirement will be reconciled using actual FERC Form 1 data for that year. ComEd Ex 2.0 at 16; *see also* ComEd Cross Ex. 1. Further, ComEd performs depreciation studies once every five years, thus ComEd's depreciation rates will more often than not be the same for the Reconciliation Year as well as the Initial Rate Year. Additionally, this calculation was litigated in Docket No. 11-0721 and a methodology was agreed upon. For these reasons, ComEd is adamant that there is no need to change this calculation now.

B. Staff's Position

Staff recommends that the Commission approve its proposed adjustment to reflect the updated depreciation rates effective January 2014. Staff points out that Staff Ex. 7.0, Schedule 7.11 FY (Attachment A), in Docket No. 14-0312, presents Staff's adjustment to reflect the impact of applying depreciation rates from ComEd's updated depreciation rate study, which was effective January 2014, to calculate depreciation expense as well as ADIT for the filing year. The adjustment consists of two parts:

- Applying the new depreciation rates to the gross 2014 projected plant additions rather than the weighted average 2014 plant additions as calculated by the Company; and
- Applying the new depreciation rates to the December 31, 2013 plant in service.

Staff observes that the Commission considered the treatment of depreciation expense due to depreciation rate changes in the last Ameren formula rate proceeding, Docket Nos. 13-0501/13-0517 (Consol.). Staff argues that its methodology to calculate filing year depreciation due to updated depreciation rates is consistent with the treatment approved by the Commission in Docket Nos. 13-0501/13-0517 (Consol.), which was an extension of another Ameren case, Docket No. 13-0301, the first formula rate proceeding that considered the treatment of a depreciation rate change. Staff notes that the Interim Order in Docket Nos. 13-0501/13-0517 (Consol.), included the following finding by the Commission:

> The Commission notes that Staff proposes an adjustment to reflect the incremental amount of depreciation expense and related changes to rate base components due to the utilization of depreciation rates from AIC's updated depreciation rate study that became effective January 1, 2013. Staff states that it recommends reflecting the impact of the utilization of AIC's updated depreciation rates only in the FY Revenue Requirement, as the RY Revenue Requirement is based on 2012 actual information, and would, therefore, not be affected by the new 2013 depreciation rates. CUB also supports Staff's position on this issue.
>
> Likewise, the Commission notes that AIC agrees that Mr. Ostrander's adjustment is appropriate because it appropriately matches the 2013 projected plant additions with the best available estimate of the 2013 depreciation expense. The Commission notes that AIC believes use of the updated depreciation rates for 2013 has the additional benefit of limiting the reconciliation adjustment that will be required in the formula rate reconciliation proceeding concerning 2013. AIC notes that implementation of this adjustment will require a number of modifications to Schedule FR C-2 and its source information.

. . .

> The Commission believes that based on the evidence presented in the record in this docket that the proposal offered by Staff, supported by AIC and CUB, and partially supported by the AG, is appropriate and therefore it will be adopted in this proceeding. The Commission finds that it is unable to adopt the language offered by the AG, in light of the concerns expressed by AIC. The Commission does encourage AIC's efforts to bring clarity to the schedules and workpapers provided in these dockets, and will therefore encourage AIC to study the proposal offered by the AG as AIC's attempts to ensure that the documents provided assist in the understanding of each proceeding.

Ameren Illinois Co., Docket Nos. 13-0501/13-0517 (Consol.), Interim Order at 31-32 (November 26, 2013).

Staff asserts that its recommendation in this case mirrors the method that was approved by the Commission in Docket Nos. 13-0501/13-0517 (Consol.) in its Interim Order. Therefore, Staff argues that in order to maintain consistency in the application of Section 16-108.5, the Commission should approve the same treatment for ComEd that it approved for Ameren.

Staff contends that the Company opposes its adjustment based on the unfounded claim that it would require changes to Schedules FR A-1 and FR C-2, as well as Rate DSPP, and would be inconsistent with the approved rate formula. ComEd Ex. 2.0 at 4. According to Staff, its proposed adjustment for the change in depreciation rates in this case is similar to the adjustment that it proposed and the Commission accepted in Ameren Docket No. 13-0301 and further considered in Docket Nos. 13-0501/13-0517 (Consol.). In that case, all of the necessary changes to reflect the revised depreciation rate were reflected on four lines of Schedule FR C-2 so that the amounts from Schedule FR C-2 flowed through to already existing lines on Schedule FR A-1. Staff Ex. 1.0, Attachments B and C. Thus, Staff notes in avoiding a change to Schedule FR A-1, Staff's adjustment in Docket Nos. 13-0501/13-0517 (Consol.) was effectuated without being inconsistent with the approved formula rate structure.

Staff maintains that a comparison of the ComEd formula rate Schedules FR A-1, FR C-1 and FR C-2 (Staff Ex. 1.0, Attachment D) with the corresponding Ameren formula rate schedules, (Staff Ex. 1.0, Attachment C), reveals that they are almost identical. In other words, ComEd's Schedule FR C-2 or supporting workpapers or appendices can be revised similarly such that no changes would be necessary to ComEd's formula rate tariff, including the format for Schedule FR A-1. Therefore, according to Staff, such revisions would not constitute a violation of Section 16-108.5(d) of the Act because Schedule FR C-2 and its supporting workpapers are not part of the performance-based formula rate structure. As previously stated in this Order, it is Staff's position that only changes to Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing because those are the only

schedules included in the Company's formula rate tariffs, which set forth the Commission-approved formula rate structure.

Staff states that ComEd also incorrectly argues that since its cost for transportation expense is reflected as distribution expense, the schedule changes that were reflected in the Ameren docket would not accommodate the adjustment for ComEd. Staff challenges ComEd's position, asserting that the error in this argument can be seen by an examination of Column C of ComEd's Appendix 7 (ComEd Cross Ex. 1 at 44), which provides for the Operating Expense Adjustments\Rate Making Adjustments for Distribution Expense. Staff explains that most lines on that appendix reference workpaper WP 7 as the source for the data appearing in Column C. Since ComEd's position is that workpapers are not part of the "approved formula rate structure," the depreciation expense adjustment on transportation equipment reflected as distribution expense by the Company could easily be accommodated in that same workpaper and its resulting amount flowed through to Schedule FR A-1 without making any revisions to the format of Schedule FR A-1.

Staff believes ComEd's criticism that its current position is inconsistent with Staff's position in Docket No. 11-0721 is without merit because the initial formula rate filing for ComEd (Docket No. 11-0721) did not address the issue of how to reflect updated rates from a depreciation study in a filing year revenue requirement. While the Company and Staff agreed to add the footnote on Appendix 8 in Docket No. 11-0721, that footnote does not indicate that rates from the most recent depreciation study will be applied to only the projected plant additions. Rather, the footnote reads as follows:

> If ComEd's FERC Form 1 does not reflect the most recent depreciation study, ComEd will update the formula with the most recent rates submitted to the ICC.

Docket No. 14-0312, ComEd Ex. 13.01 at 28, App 8.

Staff asserts that it interpreted that footnote to mean everything in the formula will be updated to reflect the most recent depreciation study rates. Staff does not believe that understanding is inconsistent with the adjustment Staff proposes in the current case.

Staff disagrees with the Company's statement that "the use of weighted additions in the calculation of projected depreciation expense was established as a result of a well-vetted agreement between ComEd and Staff in Docket No. 11-0721. Staff contends that the record is clear that Docket No. 11-0721 did not include either a depreciation study that established new depreciation rates or a reconciliation of a revenue requirement used to establish rates with the "actual" revenue requirement for a reconciliation year. Because both of those components are present in ComEd's current formula rate case, Staff took a critical view when analyzing and reviewing how those components are impacted depending on the treatment in the formula rate revenue requirement. Therefore, Staff asserts that its analysis was not dependent on the method of establishing depreciation expense that was used in Docket No. 11-0721.

Staff notes that while the Company correctly cites Staff's recommendation in Docket No. 11-0721 to use "average plant additions to calculate the projected

depreciation expense" (ComEd Ex. 1.0 at 14), the Company overlooks Staff's recommendation to reflect overall average rate base in the revenues requirement. Staff further notes that since the final determination on rehearing in Docket No. 11-0721 approved the use of year-end rate base, the use of average plant additions for the calculation of depreciation expense is no longer reasonable. Staff opines that it is no longer reasonable because the expenses that are derivative of rate base must be calculated on a consistent basis with the approved measurement of rate base, i.e. year-end versus average.

Staff states that ComEd erroneously claims that Staff's adjustment is unnecessary since there will be a "true-up" of the revenue requirement in a future proceeding, and down-plays the significance of interest that is applied to the reconciliation balance resulting from that reconciliation. ComEd Ex. 1.0 at 16. According to Staff, ComEd is wrong in its claim that the future reconciliation "neutralizes" the customer impact of the adjustment proposed by Staff. By updating the depreciation expense on both the December 31, 2013 embedded plant and the 2014 gross projected plant additions for an entire year's depreciation at the depreciation rates that became effective January 1, 2014, it is Staff's adjustment that minimizes the future reconciliation balance (either positive or negative) that will impact customer rates.

Staff takes issue with the Company's insinuation that there is as likely a possibility that ComEd would pay interest to customers as it would charge interest. Staff believes an over-recovery resulting in interest payments to customers is an unlikely scenario. As the Company indicates in its response to Staff DR TEE 1.02 (Staff Ex. 2.0, Attachment B), the depreciation included in the "Initial Rate Year Revenue Requirement" (referred to as filing year revenue requirement or FY in Staff testimony and exhibits in Docket No. 14-0312) includes the depreciation expense as reported in the 2013 FERC Form 1 plus the projected depreciation expense on 2014 plant additions. Staff explains that the depreciation expense amount included in the revenue requirement in Docket No. 14-0312 would then be reconciled with the actual depreciation expense on actual plant in service for the year ending December 31, 2015 in the formula rate proceeding to be filed in 2016 (Docket No. 16-XXXX). This typical two year lag is illustrated in the table below:

Reconciliation of Depreciation Expense	
Filing Year (FY)	**Reconciliation Year (RY)**
14-0312 - Actual 2013 plant plus 2014 projected plant.	16-XXXX - Actual 2015 plant.
13-0318 – Actual 2012 plant plus 2013 projected plant.	15-XXXX – Actual 2014 plant.
12-0321 - Actual 2011 plant plus 2012 projected plant.	14-0312 – Actual 2013 plant.

Staff further explains that in a period where plant investment exceeds the cost of plant being retired (such as the remaining years that EIMA is in effect), each succeeding year's depreciation expense would increase, due to increasing total plant in service. The reconciliation of costs included in the filing year revenue requirement in Docket No. 14-0312 will be compared with the actual 2015 costs provided in the 2016 rate year revenue requirement. Staff asserts that the actual 2015 depreciation expense reported in the Docket No. 16-XXXX RY revenue requirement would be under-recovered because the Docket No. 14-0312 FY revenue requirement does not consider depreciation expense on plant additions occurring in 2015. That is, as long as the total plant in service increases, the depreciation expense is also going to increase as plant is added. Therefore, the added depreciation expense on 2015 additions would be under-recovered. Thus, Staff concludes it would be very unlikely, if not impossible, for customers to collect interest based on an over-recovery as the Company hypothesizes.

Staff argues its explanation, limited to depreciation expense, would still hold true in periods of decreasing investment because the depreciation expense on any actual level of investment in 2015 would not have been included in the "Initial Rate Year Revenue Requirement" determined in Docket No. 14-0312 and would result in an under-recovery of costs for the reconciliation year. The only scenario in which the Company's illustration would apply would be if the cost of plant being retired during the year exceeded the cost of plant additions during the year and the total plant in service decreases from the prior year. However, Staff notes that as illustrated in the Company response to Staff DR TEE 1.04 (Staff Cross Exhibit 1), the Company has a history of net increases to plant in service over the five years provided, both prior to and since the inception of EIMA plant additions.

Finally, Staff states that if the Commission accepts its recommendation in this proceeding that changes to the formula rate schedules, appendices and workpapers that support Schedules FR A-1 and FR A-1 REC do not require a Section 9-201 filing, then it is unnecessary for the Commission to determine which supporting schedules, appendices and workpapers should reflect the change in ComEd's depreciation rates between the reconciliation year and the filing year. The Commission can simply approve Staff's adjustment and instruct the Company to reflect that adjustment in the determination of the revenue requirement on which to set rates, similar to the Commission's conclusion regarding Cash Working Capital in Docket No. 13-0318.

EXCEPTION No. 2

C. Commission Analysis and Conclusion

Based on the arguments and testimony submitted in this proceeding, the Commission finds that Staff's proposed depreciation adjustment would require changes not only to the Schedules and Appendices incorporated in and supporting Sch FR A-1 and Sch FR A-1 REC, but Sch FR A-1 and Sch FR A-1 REC themselves. Thus, we find that it would violate EIMA to make Staff's proposed depreciation adjustment outside of an Article IX proceeding. Therefore, the Commission will address Staff's proposed depreciation adjustment in this Article IX proceeding.

The Commission finds that considering the infrequency of depreciation rate adjustments, the impact to the already approved formula structure, and the fact that the Initial Rate Year calculation is an estimate that will ultimately be reconciled in any event,

it is unnecessary to change the calculation of depreciation expense related to the Initial Rate Year as Staff now proposes. The current methodology was the result of the specific consideration of this issue in ICC Docket No. 11-0721, and we find no valid reason to change it now. While new depreciation rates were not at issue in ICC Docket No. 11-0721, ComEd has established that the process established in that Docket was specifically designed and intended to address future FRU proceedings where new depreciation rates are applicable. Thus, the current Commission-approved methodology to calculate projected depreciation in ComEd's formula update cases is reasonable and approved, and should continue to be used by ComEd in its FRU filings, including Docket No. 14-0312, to calculate depreciation expense as well as ADIT for the Initial Rate Year revenue requirement.

~~Based on the evidence presented in this proceeding, the Commission finds that Staff's adjustment to reflect the impact of applying depreciation rates from ComEd's updated depreciation rate study, which was effective January 2014, to calculate depreciation expense as well as ADIT for the filing year is appropriate and it is approved. Staff's adjustment provides the best projection of the depreciation expense for the filing year. The Commission agrees with Staff that this adjustment will limit the reconciliation adjustment that will be required in the formula rate proceeding for 2014 and it will minimize any interest that would impact customer rates subsequent to the reconciliation. This finding is consistent with the Commission's decision in Docket Nos. 13-0501/13-0517 (Consol.), which is an extension of Docket No. 13-0301, the first formula rate proceeding that considered the treatment of a depreciation rate change.~~

~~As stated by Staff, the facts in Docket No. 11-0721 are materially different from the facts in this proceeding. Specifically, unlike Docket No. 11-0721, this proceeding involves updated depreciation rates and a reconciliation of rates set in a formula rate proceeding. As a result, the Commission is not persuaded by ComEd's argument that Staff's position is inconsistent with its position in Docket No. 11-0721 or that the Commission should reach the same conclusion in this proceeding that it reached in Docket No. 11-0721. In fact, it appears the Commission must address additional related issues in this proceeding that were not at issue in Docket No. 11-0721.~~

~~The Commission also agrees with Staff that it would not violate EIMA to make Staff's proposed depreciation adjustment outside of an Article IX proceeding. It is clear from the record that this adjustment, which is the same adjustment approved in Docket Nos. 13-0501/13-0517 (Consol.), can be reflected through changes to workpapers that can flow through to Schedule FR A-1 without making any revisions to the format of Schedule FR A-1. As previously determined by the Commission in this Order, only changes to Schedules FRA-1 and FRA A-1 REC require Commission approval through a Section 9-201 filing because those are the only schedules included in ComEd's formula rate tariff, which sets forth the Commission-approved formula rate structure. Thus, this approach would not require any changes to ComEd's formula rate tariff.~~

~~Accordingly, the Commission finds that the 2014 depreciation rates from ComEd's updated depreciation rate study should be used in Docket No. 14-0312 to calculate depreciation expense as well as ADIT for the filing year.~~

EXCEPTION No. 2

IV. 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 subject-matter jurisdiction and jurisdiction over the parties;

EXCEPTION No. 1

(3) ComEd's formula rate structure consists of Sch FR A-1 and Sch FR A-1 REC, along with the other Schedules and Appendices expressly incorporated by reference in ~~means the Commission-approved formula rate tariff set forth in ComEd's tariffs as~~ Rate DSPP, Tariff Sheet Nos. 417 - 437 which contain Schedules FR A-1 and FR A-1 REC; and

EXCEPTION No. 2

(4) ComEd's continued use of its current Commission-approved methodology to calculate depreciation expense and accumulated depreciation as well as ADIT for the Initial Rate Year revenue requirement in ComEd's formula rate update cases, including Docket No. 14-0312, is reasonable and approved~~ComEd shall use the 2014 depreciation rates from its updated depreciation study in its current formula rate update proceeding, Docket No. 14-0312, to calculate the depreciation expense as well as ADIT for the filing year~~.

EXCEPTION No. 1

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Commonwealth Edison Company's formula rate structure consists of Schedules Sch FR A-1 and Sch FR A-1 REC, along with the other Schedules and Appendices expressly incorporated by reference in ~~the Commission-approved formula rate tariff set forth in ComEd's tariffs as~~ Rate DSPP, Tariff Sheet Nos. 417 - 437 which contain Schedules FR A-1 and FR A-1 REC.

EXCEPTION No. 2

IT IS FURTHER ORDERED that Commonwealth Edison Company shall continue to use its current Commission-approved methodology to calculate depreciation expense and accumulated depreciation as well as ADIT for the Initial Rate Year revenue requirement in its formula rate update proceedings. ~~the 2014 depreciation rates from its updated depreciation study in its current formula rate update proceeding,~~ including Docket No. 14-0312~~, to calculate the depreciation expense as well as Accumulated Depreciation and Accumulated Deferred Income Taxes for the filing year~~.

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.

~~DATED: October 23, 2014~~
~~BRIEFS ON EXCEPTIONS DUE: October 29, 2014~~

~~REPLY BRIEFS ON EXCEPTIONS DUE: November 3, 2014~~

~~Leslie Haynes,~~
~~Sonya Teague Kingsley,~~
~~Administrative Law Judges~~

By order of the Commission this ____ day of November, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman