

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY

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

REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company (“ComEd”), by its counsel, under Section 10-111 of the Public Utilities Act (the “Act”), 220 ILCS 5/10-111, 83 Ill. Admin. Code § 200.830, and the order of the Administrative Law Judges (“ALJs”), submits this Reply Brief on Exceptions to the ALJs’ Proposed Order (“Proposed Order” or “PO”).

I. INTRODUCTION / STATEMENT OF THE CASE

ComEd, in this Reply Brief on Exceptions responds to several proposals to alter the Proposed Order that are, as shown herein, unlawful and unsupported in the record:

- 1) The Attorney General’s (“AG”) Exception proposing to disallow the entirety of ComEd’s Annual Incentive Program (“AIP”) expense;
- 2) The Citizens Utility Board, City of Chicago, and Illinois Industrial Energy Consumers’ (collectively “CCI”) Exception seeking to disallow recovery of ComEd’s Long Term Performance Plan (“LTPP”) expense;
- 3) CCI and the AG’s Exceptions proposing to reduce the reconciliation balance upon which interest is calculated by the amount of accumulated deferred income taxes (“ADIT”) purportedly related to that balance, or to reduce rate base by that same amount;
- 4) Staff of the Illinois Commerce Commission’s (“Staff”) Exceptions relating to two portions of ComEd’s cash working capital (“CWC”) calculation; and
- 5) The Retail Energy Supply Association’s (“RESA”) Exceptions regarding customer care.

All of these proposals are contrary to the portion of the Public Utilities Act (“PUA”) known as the Energy Infrastructure and Modernization Act (“EIMA”), the Commission’s past practice, and the facts of this case.¹ On these topics the Proposed Order has reached just and reasonable conclusions supported by the record evidence, subject to ComEd’s modest Exceptions filed on October 23, 2014. The Illinois Commerce Commission (“Commission” or “ICC”) should therefore adopt the Proposed Order’s findings on these topics, as modified slightly by ComEd’s Exceptions, and reject the corresponding AG, CCI, Staff, and RESA Exceptions.

II. OVERALL REVENUE REQUIREMENT

- A. 2015 Initial Rate Year Revenue Requirement**
- B. 2013 Reconciliation Adjustment**
- C. ROE Collar and ROE Penalty Calculation**
- D. 2015 Rate Year Net Revenue Requirement**

III. SCOPE OF THIS PROCEEDING

- A. Changes to the Structure or Protocols of the Performance-Based Formula Rate**
- B. The Definition of Rate Year and the Reconciliation Cycle**
- C. Original Cost Finding**
- D. Issues Pending on Appeal**

IV. RATE BASE

- A. Overview**
- B. Potentially Uncontested Issues**
 - 1. Plant in Service**
 - 2. Materials & Supplies**

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

3. **Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset**
4. **Construction Work in Progress**
5. **Regulatory Assets and Liabilities**
6. **Deferred Debits**
7. **Other Deferred Charges**
8. **Accumulated Provisions for Depreciation and Amortization**
9. **Accumulated Miscellaneous Operating Provisions**
10. **Asset Retirement Obligation**
11. **Customer Advances**
12. **Customer Deposits**
13. **Cash Working Capital (issues not identified in IV.C.)**
14. **Other (including derivative adjustments)**

C. **Potentially Contested Issues**

1. **Cash Working Capital**
 - a. **Pension and OPEB expense leads**

The Proposed Order properly rejects Staff's proposal to adjust ComEd's CWC for pension and Other Post-Employment Benefits ("OPEB") expense. *See* PO at 13. Based on the evidentiary record, the Proposed Order correctly concludes that Staff's proposed 203.24 day lead for these expenses would result in an impermissible double count reduction to ComEd's rate base as these expenses are already accounted for elsewhere in the revenue requirement. *Id.* As the Proposed Order recognizes, "[t]he evidence shows that ComEd's pension expense has been applied as a reduction to ComEd's pension asset and that the OPEB expense is included as a component of operating reserves, which reduces rate base." *Id.* Thus, contrary to what Staff claims in its Brief on Exceptions ("BoE"), the application of the pension and OPEB expense is

not merely “a journal entry” (Staff BoE at 6) but represents the use and application of real dollar amounts – amounts that cannot be assumed to be available to finance both the pension asset and rate base as well as the CWC requirements.

Staff does not address this dispositive fact. Instead, Staff continues to argue for a CWC calculation that does not consider the context of ComEd’s whole revenue requirement calculation. Staff’s assertion that the Proposed Order mischaracterizes its position by stating that Staff is arguing that the expense lead and revenue lag associated with pension and OPEB should match (*see* Staff BoE at 6) misses the point. Regardless of how Staff chooses to characterize its argument, the fact remains that the adoption of Staff’s recommendation results in pension and OPEB *revenues* being accounted for once in CWC and pension and OPEB *expenses* being improperly double counted, once in CWC and again in pension asset and operating reserves.

Moreover, Staff recommends language to the Commission indicating that its position is consistent with the decision in ICC Docket Nos. 12-0511/12-0512 (Cons.) (Staff BoE at 7-8) despite the fact that the facts of that case differ substantially from the relevant facts here. *See* ComEd Init. Br. at 25. The Proposed Order’s recommendation to attribute zero lag days to pension and OPEB expense, on the other hand, is consistent with the Commission’s decisions on this issue in ComEd’s recent rate cases, ICC Docket Nos. 10-0467 and 11-0721. *See* Houtsma Sur. ComEd Ex. 28, 3:53-71; *see also Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011), at 48; *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 24, 2012) (“2011 Rate Case Order”), at 51. For these reasons, the Commission should adopt the Proposed Order’s conclusion and reject Staff’s proposed adjustment.

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

c. Pass-through taxes expense leads

The Proposed Order correctly declines to adopt Staff's proposal to increase the lead for ComEd's pass-through taxes by using the due date of the taxes instead of the actual payment date. PO at 20. The record supports the Proposed Order's conclusion that, due to the severe penalties associated with these taxes, ComEd's practice of paying its pass-through taxes early is prudent. *See* Hengtgen Reb., ComEd Ex. 14.0, 7:151-11:227; Hengtgen Sur., ComEd Ex. 27:144-8:169; *see also* PO at 20. In light of this evidence, Staff's reply is limited to an irrelevant claim regarding the calculation of other taxes not at issue here. Staff's claim is a red-herring and should not distract from the fact that ComEd has provided ample evidence demonstrating that with respect to pass-through taxes – the only taxes at issue here – paying the taxes three to four days early is a prudent practice that should not be discouraged by the Commission. The Proposed Order's recommendation regarding ComEd's calculation of ComEd's pass-through tax leads should be adopted.

d. Intercompany billings expense lead

2. Other

V. OPERATING EXPENSES

A. Overview

B. Potentially Uncontested Issues

- 1. Distribution O&M Expenses (issues not identified in V.C.)**
- 2. Customer-Related O&M Expenses (issues not identified in V.C.)**
- 3. Administrative and General Expenses (issues not identified in V.C.)**
- 4. Charitable Contributions**
- 5. 2013 Merger Expense**
- 6. Sales and Marketing Expenses**

7. **Depreciation and Amortization Expense (issues not identified in V.C.)**
8. **Regulatory Asset Amortization**
9. **Operating Cost Management Efforts**
10. **Lobbying Expense**
11. **Rate Case Expenses**
12. **Corporate Credit Cards**
13. **Gross Revenue Conversion Factor**

C. **Potentially Contested Issues**

1. **Depreciation for the Filing Year Revenue Requirement**
2. **Incentive Compensation Program Expenses**
 - a. **Annual Incentive Program (“AIP”)**

Overall, the Proposed Order arrives at a reasonable, proportionate, and legally sound conclusion in allowing recovery of a portion of ComEd’s AIP expense. The 102.9% limiter that Staff proposed and that the PO applies in lieu of the earnings per share (“EPS”) limiter to which certain parties objected is a just and reasonable result given the facts of this case. Neither Staff nor ComEd take exception to this conclusion.

ComEd recognizes that certain language in the Commission Analysis and Conclusion section of the Proposed Order is arguably inconsistent with, and not necessary to support, that ultimate finding, and ComEd proposed modest Exceptions to rectify that inconsistency while still maintaining the Commission’s ultimate conclusion. ComEd BoE at 10; Exception No. 6 to ComEd’s BoE at 51-53. ComEd did this even though the Proposed Order’s conclusion disallows approximately \$6,104,000 in operating expenses and \$4,006,000 in rate base. PO at 49; ComEd Ex. 25.01. To be clear: ComEd maintains that the evidentiary record and Commission practice over the last decade support recovery of the entirety of ComEd’s AIP expense, but ComEd also

understands the Commission can exercise its business judgment to apply this alternative limiter to reach a pragmatic solution. *Commonwealth Edison Co v. Illinois Commerce Comm'n, et al.*, 405 Ill. App. 3d 389, 398-402, 937 N.E. 2d 685, 698-701 (2d Dist. 2010) (Commission is entitled to exercise its “business judgment” to reach “pragmatic solutions”). The Commission has elected to do so here, and ComEd does not oppose this decision.

The AG, however, rejects the Proposed Order’s pragmatic solution entirely. Ignoring the evidentiary record and pursuing a strained reading of the Act, the AG continues to argue for a complete disallowance of ComEd’s AIP expense. In its Brief on Exceptions, the AG purports to offer several reasons why the Commission should reject the Proposed Order’s conclusion and instead disallow \$66 million dollars of prudent and reasonable incentive compensation costs that have undoubtedly benefited customers. AG BoE at 2-11. The AG’s position is not only unfair and unreasonable and therefore contrary to the underlying purpose of the Act, it is also factually and legally incorrect.

As a preliminary matter, the Act provides that one of “the goals and objectives” of regulation of utilities in Illinois “shall be to ensure ... Equity: the fair treatment of consumers and investors” 220 ILCS 5/1-102(d). As the Proposed Order recognizes, the AG’s proposed Exception is hardly equitable, it is “disproportionate.” PO at 49. Indeed, the AG does not dispute or take exception to the language in the Proposed Order that finds that “ComEd’s KPI metrics are consistent with the operational metrics specified in this section of EIMA. The record is clear that these metrics incent ComEd employees to meet these goals which are beneficial to ratepayers.” PO at 48. In short, all parties agree that ComEd has already spent the money to incentivize its employees to perform in ways that have benefited customers, and customers have in fact benefitted. *Id.*; *Brookins Reb.*, ComEd Ex. 19.0, 4:87-14:257. Despite these undisputed

facts, the AG now wishes to prohibit ComEd from recovering a single penny of that expenditure. That is patently inequitable and unfair, and therefore contrary to the Act.

The AG's position is also factually and legally inaccurate. The AG offers several variations on its theme that the 102.9% recovery allowed by the Proposed Order is indefensible because that figure does not "arise" from the 2013 AIP or is more strongly related to the 2010 AIP. *See* AG BoE at 2-5. This is a red herring. The Commission is charged with reviewing the expenses ComEd seeks to recover and allowing recovery of those expenses that are prudently incurred and reasonable in amount. 220 ILCS 5/9-211 (Commission shall include prudent investment in determination of rates or charges); 220 ILCS 5/16-108.5(c) ("Performance based formula rate shall ... provide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law."). Sometimes the Commission finds that the amount ComEd actually incurred and the amount that is prudent and reasonable are one and the same, and sometimes the Commission finds that they are not. The Commission is charged with allowing recovery of the portion of costs that are prudent and reasonable and disallowing the rest.

While ComEd believes that the record in this case shows that the entirety of ComEd's AIP expense that "arose" from the 2013 AIP was prudent and reasonable, the ALJs disagreed. The ALJs specifically found that ComEd had only shown that a portion of its AIP expense was prudent and reasonable: the portion resulting in market based salaries (an AIP payout at 100%) and a small increase above market rates in recognition of above target and exceptional achievement on the customer focused KPI metrics (an additional 2.9%). PO at 49-50. *See also* Staff Init. Br. at 26-27; Staff Reply Br. at 10; Prescott Reb., ComEd Ex. 18.0 REV., 4:77-80; Prescott Sur. ComEd Ex. 31.0 at 3:57-4:67; Bridal Reb., Staff Ex. 8.0, 16:378-17:385. The

record shows that ComEd's performance was actually 140.4% of target. Brinkman Dir., ComEd Ex. 2.0, 21:440-441. No party has disputed the prudence and reasonableness of these expenses. It is therefore irrelevant whether this 102.9% figure specifically "arose" from ComEd's 2013 AIP – it is the amount that the Proposed Order found was just and reasonable and the amount that was supported by the evidence.

The AG also attempts to paint the entire AIP expense as "based on" EPS and therefore "non-prudent and non-reasonable" because the EPS limiter "creates employee disincentives." AG BoE at 5-8. This hypothetical concern about disincentives is belied by the record evidence. ComEd clearly and concisely explained that due to the formula rate structure in place since 2011, the ability of ComEd employees to increase Exelon's EPS is nearly impossible and is inconsistent with ComEd's KPIs as explained below. Tr. at 321:5-323:20, 344:21-350:3 (Brookins, Aug. 28, 2014). ComEd also provided compelling and uncontroverted evidence that employees are not motivated to benefit shareholders by increasing Exelon's EPS. ComEd Init. Br. at 44-45; ComEd Reply Br. at 20. ComEd showed mathematically that in 2013, in order to accomplish a one penny EPS increase, ComEd employees would miss the threshold for the capital spend metric and they would have lost 25% of their AIP award. Tr. at 346:4-347:10 (Brookins, Aug. 28, 2014). The bottom line is that ComEd's AIP cannot and does not incentivize employees to increase the earnings of Exelon and cannot therefore be "based on" Exelon's EPS as the AG states.

Moreover, as the Proposed Order recognizes, even if the Commission determines that ComEd's AIP expense is in some way based on EPS, the 102.9% limiter "effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation." Staff Init. Br. at 45; PO at 48. This is because "ComEd's KPI metrics are consistent with the

operational metrics specified in this section of EIMA. The record is clear that these metrics incent ComEd employees to meet these goals which are beneficial to ratepayers.” *Id.* And the AIP earned by ComEd employees pursuant to those operational metrics – without the limiter – would result in an AIP payout of 140.4%. ComEd Init. Br. at 50; ComEd Reply Br. at 17-18. Obviously ComEd cannot recover more AIP expense than it has actually incurred, but because a recovery of 140.4% would be consistent with EIMA, it follows that recovery of less than 140.4% (*i.e.*, 102.9%) is also consistent with EIMA.

The AG also renews its attempt to discount the Commission decisions that have allowed recovery of similar AIP expense because the Commission has not always addressed this issue in depth. AG BoE at 5. ComEd has laid out the history of this issue at length in both its Initial and Reply Briefs, and will not rehash the entirety of that history here. ComEd Init. Br. at 45-49; Reply Br. at 18. Suffice it to say that in Docket No. 11-0721, the Commission specifically based the amount of AIP recoverable under ComEd’s 2010 plan on the amount determined pursuant to the net income limiter applicable to that plan. Brinkman Dir., ComEd Ex. 2.0, 23:479-24:494; Brinkman Sur., ComEd Ex. 25.0, 3:56-4:69; 2011 Rate Case Order at 89, 90. Likewise, the AIP plans at issue in Docket Nos. 12-0321 (2011 plan), and 13-0318 (2012 plan) contained net income and Exelon EPS limiters, respectively, and no disallowance was made on the basis of those limiters. Brinkman Sur., ComEd Ex. 25.0, 4:78-80; *Commonwealth Edison Co.*, ICC Docket No. 12-0321, Final Order (Dec. 19, 2012) (“2012 Rate Case Order”) at 31-32; *Commonwealth Edison Co.*, ICC Docket No. 13-0318, Final Order (Dec. 18, 2013) (“2013 Rate Case Order”) at 38-61.

These three cases represent the Commission’s interpretation of ComEd’s allowable AIP protocols since the passage of EIMA. And prior to EIMA, over the past decade, the Commission

has consistently allowed incentive compensation based on customer focused metrics and disallowed the portion of ComEd's AIP expense that reflects achievement of metrics that are based on Exelon's EPS or ComEd's net income. ComEd Init. Br. at 48-50. In that same time frame, the Commission has never disallowed ComEd's AIP expense when it was subject to a limiter based on EPS or net income. *Id.* In light of this fulsome history of Commission practice, it is immaterial whether or not the Commission "specifically address[ed] the issue" in every single order. *See* AG BoE at 5.

Indeed, as Staff has stated, "[t]he Commission need not make a finding on each issue or evidentiary fact." Staff Init. Br. at 41 (citing 49 Ill. 2d 458, 463 (1971)). When the Commission issues a rate case order, the entirety of the costs that make up the revenue requirement are approved even when the Commission does not specifically address each and every cost in its findings. *See, e.g., Citizens Utils. Bd.*, 291 Ill. App. 3d 300, 304-305 (1st Dist. 1997) ("The Commission, however, is not required to make particular findings as to each evidentiary fact or claim."); *Lakehead Pipeline Co. v. Illinois Commerce Comm'n*, 296 Ill. App. 3d 942, 957 (3d Dist. 1998) (same); *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2011 IL App (1st) 101776 ¶ 10 (same); *Business and Professional People for Public Interest v. Illinois Commerce Comm'n*, 279 Ill. App. 3d 824, 833-34 (1st Dist. 1996) (same).

In conclusion, the Commission should reject the AG's proposed Exceptions and allow recovery of ComEd's actual, prudent, and reasonable AIP expense as limited in the Proposed Order and as supported by Staff and ComEd. This is a pragmatic, fair, and lawful solution that effectuates the Act generally and EIMA specifically, and is consistent with Commission practice over the last decade. ComEd's employees have performed exceptionally and ComEd's

customers have reaped the resulting benefits. The Commission cannot justify a further disallowance.

b. Key Manager Long Term Performance Plan (“LTPP”)

CCI’s proposed Exception regarding ComEd’s LTPP stems from a misunderstanding of both ComEd’s LTPP and EIMA. CCI claims that ComEd’s LTPP uses longevity as a metric and then argues that “longevity is not a recoverable metric” under EIMA. CCI BoE at 2. In reality, CCI is the only party under the mistaken impression that longevity is an LTPP metric. To be clear: length of employment is an eligibility requirement to participate in ComEd’s LTPP but it is not an LTPP metric. Both ComEd and the Proposed Order understand this. PO at 53; ComEd Init Br. at 50-51; Reply Br. at 26-30.

As explained in testimony and briefing, ComEd’s LTPP is the long term portion of ComEd’s incentive compensation package, which is part of ComEd’s total pay mix. ComEd Init Br. at 50-51. A minimum of 3 years of employment is an *eligibility requirement* to participate in the LTPP, but it is not a *metric* that award amounts are based on. Prescott Reb., ComEd Ex. 18.0 REV., 13:248-252; Prescott Sur., ComEd Ex. 31.0, 7:131-139. This is not different from other eligibility requirements for participation in ComEd’s LTPP or other incentive compensation programs. For example, an employee must actually be employed by ComEd to receive LTPP. Yet no party – not even CCI – claims that this LTPP eligibility requirement – employment at ComEd – is actually an unrecoverable metric and thereby renders the entirety of ComEd’s LTPP expenses unrecoverable. The same is true for the AIP: all ComEd employees are eligible to participate in ComEd’s AIP. Brinkman Dir., ComEd Ex. 2.0, 17:348-350; Prescott Reb., ComEd Ex. 18.0 REV., 7:137-138. Again, no one would argue that employment at ComEd is an unrecoverable metric and therefore all of ComEd’s AIP expense should be disallowed. But that is precisely CCI’s position with regard to LTPP.

In addition, CCI continues to argue that the LTPP is duplicative, despite its admission that: “It is true that an individual employee’s total compensation may not be increased based on participation on [sic] the LTPP, because of the shift in the compensation ‘mix.’” CCI BoE at 3. CCI’s admission proves ComEd’s point. If ComEd did not have the LTPP as part of its market competitive pay mix, employees who are eligible to receive awards under the LTPP would simply be eligible for larger AIP awards or increased base salaries. Prescott Sur., ComEd Ex. 31.0, 7:131-139. The total compensation of these employees is not increased by their participation in the LTPP – a portion of their total compensation has simply been designated as long term incentive compensation as opposed to base salary or short term incentive compensation. *Id.* Stated another way, the total size of their compensation pie is still the same, but the incentive compensation piece has been cut into two slices. *Id.* Clearly then, the LTPP substitutes in part for, but is not duplicative of the AIP.

In conclusion, ComEd is simply trying to make its investment in people perform better: to encourage achievement of customer benefits *and* to retain employees with valuable institutional knowledge. This is imminently prudent and reasonable. There is no duplicative or prohibited recovery and the Commission should reject this misguided proposal to disallow ComEd’s prudent and reasonable compensation expenses.

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

3. **Collection Agency Costs**

VI. **RATE OF RETURN**

A. **Overview**

B. **Capital Structure**

C. **Cost of Capital Components**

1. **Rate of Return on Common Equity**
2. **Cost of Long-Term Debt**
3. **Cost of Short-Term Debt**
4. **Overall Weighted Cost of Capital**

VII. RECONCILIATION

A. Overview

B. Potentially Contested Issues

1. Calculation of Interest on Reconciliation Balance

CCI and the AG both take exception to the Proposed Order's finding regarding calculation of interest on the reconciliation balance. Neither party offers new evidence or argument – the parties simply reiterate their positions that the ALJs have rejected in this case and that the Commission has already rejected in several previous cases. Indeed, the Commission has rejected these or similar proposals in every ComEd formula rate case and Commission investigations of ComEd's formula rate tariffs. *See* 2011 Rate Case Order at 166-167; 2012 Rate Case Order at 84-86; 2013 Rate Case Order at 63; *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, ICC Docket No. 13-0553, Final Order, (Nov. 26, 2013) ("13-0553 Final Order") at 30-43; *see generally Illinois Commerce Comm'n.*, ICC Docket No. 13-0386, Final Order (June 5, 2013). While the AG and CCI certainly have the right to preserve these arguments while they are on appeal (*see generally* Docket No. 1-14-0114 in the Illinois Appellate Court First Judicial District), the relevant facts have not changed and the General Assembly in 2013 acquiesced in the Commission's prior decisions. *See* ComEd Reply Br. at 32-36. Under these circumstances, rehashing the merits of the same arguments is pointless. The Commission should reject these meritless proposals for the sixth and hopefully final time.

a. **CCI's Exception Is Not Supported by Evidence and is Unlawful**

CCI's Exception urges the Commission to reduce the reconciliation balance upon which interest is calculated by the amount of accumulated deferred income taxes ("ADIT") purportedly related to that balance. CCI argues that the Proposed Order does not adequately support its analysis of this issue because it simply adopts the Commission's conclusion in ComEd Docket No. 13-0553, which was a Commission investigation of ComEd's formula rate tariff. CCI BoE at 5. This argument is incorrect for three reasons. First, the Proposed Order adopts the same conclusion that it reached in Docket No. 13-0553 because CCI and the AG have failed to offer any new evidence or argument on this issue – as the Commission invited them to do in its final order in Docket No. 13-0553. 13-0553 Final Order at 43 ("In the future, if further arguments from the parties are presented or clarity from the legislature is provided on this topic, the Commission will revisit the issue"). There is simply nothing more for the Commission to say or do on this topic. The Final Order in Docket No. 13-0553 was the fifth time that the Commission had addressed this issue and the Commission is entirely within its discretion to simply refer back to that decision.

Second, the Proposed Order's analysis on this issue is sufficient as a matter of law. "In making adequate findings, the Commission is not required to provide findings on each evidentiary claim; its findings are sufficient if they are specific enough to enable the court to make an informed and intelligent review of its order." *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2011 IL App (1st) 101776, quoting *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389, 398, 344 Ill.Dec. 662, 937 N.E.2d 685 (2010), and citing 220 ILCS 5/10-201(e)(iii) (West 2010). Despite CCI's claim to the contrary, CCI has not provided the Commission with any new evidence that reducing the reconciliation balance is

appropriate in this case. *See* CCI BoE at 5. To the contrary, the Commission has correctly adopted its conclusions in Docket No. 13-0553 that: (1) the legislature has spoken on this exact issue; (2) this proposal is directly contrary to EIMA; and (3) the Commission must therefore reject this proposal. PO at 75-76; Docket No. 13-0553 Order at 43; *see also* ComEd Reply Br. at 32-36.

Third, as ComEd has explained, CCI's continued reliance on the Fourth District *Ameren* case is misplaced. That case involved a completely different issue and does not speak to the specific facts, law, or legislative history at issue here with respect to whether ADIT adjustments are allowed *to the reconciliation balance*. Indeed, the ADIT issue in the *Ameren* case concerned *projected plant additions*, which has nothing to do with the reconciliation balance at all. *See Ameren Ill. Co. v. Ill. Commerce Comm'n et al.*, 2013 IL App (4th) 121008, ¶¶34-39. As ComEd has repeatedly and clearly explained – and as the Commission clearly understands – the reconciliation balance is a creature of EIMA and the Illinois legislature has explicitly directed the Commission on how it should calculate the reconciliation balance. *See* ComEd Reply Br. at 31-38; PO at 75-76; Docket No. 13-0553 Order at 43. In contrast, the Commission had a method for calculating ADIT on projected plant additions prior to EIMA, and EIMA did not change that Commission practice and procedure. *Ameren*, 2013 IL App (4th) 121008, ¶¶34-40. In short, the calculation of ADIT on projected plant additions is completely unrelated to the calculation of ADIT on the reconciliation balance. CCI's proposal that the Commission treat them as one and the same is contrary to the legislature's specific direction.

b. AG Witness Brosch's "Alternative" is Equally Without Basis and Would Make an Improper Adjustment to Rate Base.

The AG's Exception focuses on what it claims is an alternative to subtracting ADIT from the reconciliation balance, and that is to subtract the ADIT related to the reconciliation balance

from ComEd's overall rate base. AG BoE at 11-15. There is, of course, no statutory basis whatsoever for such a deduction, which would result in the use of a rate base divorced from the FERC Form 1 balance the law calls for and Commission decisions have approved. Indeed, the AG essentially admits that this proposal is an end-run around the "language of the statute," which law the AG apparently believes "constrained" the Commission. *Id.* at 12.

On its merits, this proposal, also supported by the AG in prior cases, would reduce ComEd's revenue requirement even more than the principal reconciliation balance/ADIT proposal (*see* Warren Reb., ComEd Ex. 23.0, 13:268-281, 15:310-318), and suffers from the same, and additional, defects as the principal proposal. As ComEd explained in its Initial Brief, both the principal and alternative proposals fail to recognize that this ADIT does not provide any rate year cash benefit or source of financing to ComEd. *See* ComEd Init. Br. at 56-62; Brinkman Sur., ComEd Ex. 25.0, 27:540-543.

Beyond that, ComEd has explained that it is conceptually improper to deduct from rate base ADIT that relates to an item that itself is not given rate base treatment, in this case the reconciliation balance. Brinkman Sur., ComEd Ex. 25.0, 26:516-520. The AG continues to push this proposal despite the fact that the reconciliation balance ADIT does not relate to any asset in rate base. Warren Reb., ComEd Ex. 23.0, 13:263-264 ("As a threshold matter, the ADIT Mr. Brosch proposes to include in rate base has nothing whatsoever to do with anything else in that rate base calculation."); Brinkman Reb., ComEd Ex. 25.0, 19:383-385. The creation of an unrelated rate base deduction is particularly unfair because ComEd recovers a return of and on its investment as well as its associated income tax liability (the tax "gross up") on rate base items. On the reconciliation balance, by contrast, ComEd recovers only its weighted average cost of capital without any tax gross up. As Ms. Brinkman succinctly explains:

[It] is unfair and unreasonable to propose reducing the rate base on which ComEd earns a full return (including tax costs) on account of a deferral related to an asset on which tax costs are not recover[ed]. It is unfair enough that the AG's primary position treats tax awareness inconsistently – adjusting the reconciliation balance down for taxes while not adjusting the rate up for tax costs – but that AG's alternative proposal compounds that unfairness by attempting to reduce a balance (rate base) on which all parties acknowledge ComEd is entitled to earn a return that includes its tax costs.

Brinkman Sur., ComEd Ex. 25.0, 26:529-27:535; *see also* Brinkman Reb., ComEd Ex. 12.0 REV., 33:677-696. In short, there is no statutory inconsistency or inequity in the Proposed Order's finding as the AG alleges (AG BoE at 13), nor is there any jurisdictional transformation, whatever that may be, as the AG also alleges (BoE at 13). The only inequity lies in the AG's own proposals.

For all the foregoing reasons, as well as those elaborated on in ComEd's Initial and Reply briefs (ComEd Init. Br. at 56-61; Reply Br. at 31-38), the Commission should reject the CCI proposed Exception to reduce the reconciliation balance by the related ADIT, as well as the AG's proposed Exception to reduce ComEd's rate base by ADIT related to the reconciliation balance.

VIII. REVENUES

A. Overview

B. Potentially Contested Issues

1. Billing Determinants

IX. COST OF SERVICE AND RATE DESIGN

A. Overview

B. Potentially Uncontested Issues

1. Embedded Cost of Service Study

2. Distribution System Loss Factor Study

3. **Secondary and Service Loss Study**
4. **Other**

X. OTHER

A. Overview

B. Potentially Uncontested Issues

1. **Intercompany Receivables and Payables Management Model Document**
2. **Wages and Salaries Allocator Utilized in Rider PE and Rate BESH**
3. **Reporting Requirements**

C. Potentially Contested Issues

1. **Update of Exelon Business Services Company General Services Agreement**
2. **Customer Care Costs**

The record contains substantial and compelling evidence supporting the Updated Switching Study (“Switching Study”) as the best tool to assess responsibility for ComEd’s customer care costs (“CCCosts”). The Switching Study confirms that ComEd’s CCCosts are properly attributable to the delivery services function as ComEd does not incur significant differences in CCCosts for supply and delivery service customers. Staff Init. Br. 75. ComEd’s CCCosts do not generally change with the level of customer switching. Staff BoE at 26. It is appropriate for ComEd to recover CCCosts from “all its customers, without some portion being recovered from just ComEd’s supply service customers. Allocating some portion of customer care costs [CCCosts] to the supply function results in ComEd’s bundled service customers subsidizing those customers who purchase supply from another supplier.” *Id.* at 27. As explained in the Briefs on Exceptions submitted by both Staff and ComEd, the Proposed Order of the Administrative Law Judges (“ALJs”) erroneously assigns CCCosts in accordance with

ComEd's Updated Alternative Analysis ("Alternative Analysis") and allocates almost \$11 million in delivery service costs to the supply function. ComEd BoE at 14-15. *See also*, Staff BoE at 23. Accordingly, ComEd does not oppose Staff's proposed modifications to the ALJs Proposed Order.

ComEd opposes, however, RESA's exceptions that would greatly increase the costs that would be reallocated to the supply function. RESA BoE 3. ComEd maintains that any allocation factor employed to divide CCCosts between delivery and supply is inherently arbitrary. Donovan Dir., ComEd Ex. 7.0, 65:1415-1417. Staff agrees that the use of any allocation factor is inherently arbitrary. Rukosuev Reb., Staff Ex. 9.0, 25:631-632. However, if the Commission were to accept the recommendation contained within the Proposed Order and adopt the Alternative Analysis, RESA's proposed modifications and the allocators RESA advocates should be rejected as they are "unsupported assumptions" that "have little relation to the actual facts and circumstances of ComEd's business operations." *Id.*, 24:598-600. ComEd's allocators were at least developed using "ComEd's knowledge of its own business and based on how ComEd's business operates." *Id.*, 24:595-598. If allocators are approved, they are the allocators the record shows to be the most probative.

RESA's effort to substitute a modified Revenue Allocation Factor for all categories of costs that it claims are related to the default supply rate ignores the labor-driven nature of CCCosts. *Id.*, 25:623-624. RESA specifically proposes removal of ComEd's Bill Allocation Factors in favor of a modified Revenue Allocation Factor. As Staff put it, "allocating costs on the basis of revenues ignores the nature of these costs and the Company's on-going incurrence of these costs in connection with delivery service ... allocating billing costs based on revenues assumes it costs more to send bills with higher amounts due than it does to send bills with a

lower amount due.” *Id.*, 25:623-628. This RESA assumption simply is not accurate. In contrast, to derive its allocators ComEd reviewed costs for each activity and assigned costs to the appropriate function. If the Alternative Analysis is to be adopted to allocate CCCosts, the record clearly and convincingly shows that ComEd’s allocators are much more reasonable and logical.

RESA’s second adjustment – removing PORCB revenues from the equation used to calculate ComEd’s Revenue Allocation Factor – is also unreasonable. The PORCB revenues represent receivables related to RES supply charges which ComEd, by statute, is required to purchase from RESs at a discount. Feingold Reb., ComEd Ex. 17.0, 15:309-310. ComEd must purchase RES receivables as a condition of providing consolidated billing, a function for which ComEd is responsible by virtue of its role as a delivery service provider. ComEd has appropriately classified these revenues as delivery-related for the purpose of developing allocators in these studies. *Id.*, 15:310-314. Excluding these revenues as suggested by RESA would effectively create an inappropriate subsidy, funded by ComEd’s default supply rate customers, to customers served by RESs. *Id.*, 15:314-317. As described in ComEd’s Brief on Exceptions, the recommendation of the ALJs already improperly relieves RES-supplied customers from some costs properly attributable to them. ComEd BoE at 17. Removing PORCB revenues without an allocation to RES-supplied customers would further increase the subsidy.

Accordingly, RESA exceptions one and two must be rejected as unsupported by the record.² This is necessary to avoid exacerbating the subsidy to RES-supplied customers necessarily attendant to use of the Alternative Study.

² ComEd was unable to verify the impacts described within RESA’s Brief on Exceptions on the Alternative Study. If the Commission were to adopt either adjustment contained within RESA’s Brief on Exceptions, ComEd should be directed in the Final Order to work with Staff in the development of implementing adjustments to be reflected in its compliance filing.

3. Capacity Unbundling

XI. CONCLUSION

Based on the record and the arguments made herein, the Commission should issue a final Order consistent with ComEd's Brief on Exceptions and its separate Exceptions to the Proposed Order and this Reply Brief on Exceptions, approve ComEd's proposed 2015 Rate Year Net Revenue Requirement consistent with the positions ComEd has taken on Exceptions, and authorize and direct ComEd to make a compliance filing implementing the resulting rates and charges.

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Respectfully submitted,

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