STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	
Annual formula rate update and revenue	**:**	**14-0312**
requirement reconciliation under Section	**:**	
16-108.5 of the Public Utilities Act.	**:**	

ORDER

December 10, 2014

Table of Contents

I. Introduction 1

II. Overall Revenue Requirement 2

- A. 2015 Initial Rate Year Revenue Requirement 3
- B. 2013 Reconciliation Adjustment 3
- C. ROE Collar and ROE Penalty Calculation 3
- D. 2015 Rate Year Net Revenue Requirement 3

III. Scope of Proceeding 4

IV. Rate Base 4

- A. Overview 4
  - 1. 2013 Reconciliation Rate Base 4
  - 2. 2015 Initial Rate Year Rate Base 4
- B. Uncontested Issues 5
  - 1. Plant in Service 5
    - a. Distribution Plant 5
    - b. General and Intangible Plant 5
    - c. Plant Additions 5
  - 2. Materials & Supplies 5
  - 3. Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset 6
  - 4. Construction Work In Progress 6
  - 5. Regulatory Assets and Liabilities 6
  - 6. Deferred Debits 6
  - 7. Other Deferred Charges 6
  - 8. Accumulated Provisions for Depreciation and Amortization 7
  - 9. Accumulated Miscellaneous Operating Provisions 7
  - 10. Asset Retirement Obligation 7
  - 11. Customer Advances 7
  - 12. Customer Deposits 8
  - 13. Original Cost Finding 8
  - 14. Cash Working Capital 8

a. Overview of CWC and ComEd's lead/lag study 8

b. Payroll and withholding expense lead days and derivative changes to FICA tax and employee benefits – other Expense Leads 9

c. Final CWC calculation should reflect applicable adjustments to inputs 9

15. Other (including derivative adjustments) 9

C. Contested Issues 9

1. Cash Working Capital 9

a. Pension and OPEB Expense Leads 10

b. Pass-through Taxes Revenue Lags for the IEET and CIMF 14

c. Pass-through Taxes Expense Leads 18

d. Intercompany Billings Expense Lead 20

V. Operating Expenses 24

A. Uncontested Issues 24

1. Distribution O&M Expenses 24

2. Customer-Related O&M Expenses 24

3. Administrative and General Expense 25

4. Charitable Contributions 26

5. 2013 Merger Expense 26

6. Sales and Marketing Expense 26

7. Depreciation and Amortization Expense 26

8. Regulatory Asset Amortization 27

9. Operating Cost Management Efforts 27

10. Lobbying Expense 27

11. Rate Case Expenses 27

12. Corporate Credit Cards 28

13. Gross Revenue Conversion Factor 29

B. Contested Issues 29

1. Depreciation for the Filing Year Revenue Requirement 29

2. Incentive Compensation Program Expenses 29

a. Annual Incentive Program ("AIP") 29

b. Key Manager Long Term Performance Plan ("LTPP") 52
c. Long-Term Performance Share Awards Program ("LTPSAP") 55
3. Collection Agency Costs 59
VI. Rate of Return 62
A. Overview 62
B. Capital Structure 63
C. Cost of Capital Components 63
1. Rate of Return on Common Equity 63
2. Cost of Long-Term Debt 64
3. Cost of Short-Term Debt 64
VII. Reconciliation 64
A. Calculation of Interest on Reconciliation Balance Net of Tax 64
VIII. Revenues 77
A. Overview 77
B. Contested Issues 77
1. Billing Determinants 77
IX. Cost of Service and Rate Design 83
A. Overview 83
B. Uncontested Issues 83
1. Embedded Cost of Service Study 83
2. Distribution System Loss Factor Study 83
3. Secondary and Service Loss Study 84
4. Other 84
a. Rate Design 84
b. SBO Credit and DLFs 85
X. Other 85
A. Uncontested Issues 85
1. Intercompany Receivable and Payables Management Model Document 85

2. Wages and Salaries Allocator Utilized in Rider PE and Rate BESH 85

3. Reporting Requirements 85

a. EIMA Investments 85

b. Reconciliation Year Plant Additions 87

c. Contributions to Energy Low-Income and Support Programs 87

B. Contested Issues 87

1. Update of Exelon Business Services Company General Services Agreement 87

2. Customer Care Costs 92

3. Capacity Unbundling 104

XI. Conclusion 105

XII. Findings and Ordering Paragraphs 105

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Annual formula rate update and revenue requirement reconciliation under Section 16-108.5 of the Public Utilities Act.	:	**14-0312**

ORDER

By the Commission:

I. Introduction

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

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

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

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

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

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

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

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

An evidentiary hearing was convened in this docket at the Commission's Chicago Office before duly authorized Administrative Law Judges ("ALJs") on August 27th and 28th, 2014. The parties filed and served Initial Briefs on September 10, 2014. Reply Briefs were filed and served on September 17, 2014. The record was marked "heard and taken" on September 22, 2014.

The ALJ's Proposed Order was served on October 15, 2014. Statutorily, this docket must conclude by December 12, 2014. 220 ILCS 5/16-108.5(d)(3).

II. Overall Revenue Requirement

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

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

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

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

A. 2015 Initial Rate Year Revenue Requirement

ComEd presented evidence showing that its calculated 2015 Initial Rate Year revenue requirement, as adjusted in its rebuttal testimony (there were no further adjustments in its surrebuttal), is $2,361,589,000. ComEd Ex. 13.0 at 5; ComEd Ex. 13.01, Sch FR A-1 REC, line 23. Staff recommends an 2015 Initial Rate Year Revenue Requirement (for the Filing Year Ending December 31, 2014), before Reconciliation Adjustment and ROE Collar, of $2,316,585,000 as presented on Line 1 of Appendix A, Schedule 1, to its Initial Brief. The Commission's determination regarding the 2015 Initial Rate Year Revenue Requirement is set forth later in this Order.

B. 2013 Reconciliation Adjustment

ComEd presented evidence showing that its calculated 2013 Reconciliation Adjustment, reflecting the difference between the rates in effect in 2013 and the actual 2013 Reconciliation Revenue Requirement, is $257,621,000 (including $33,756,000 interest). *E.g.*, ComEd Ex. 13.01, Sch A-1, line 24. Staff recommends a 2013 Reconciliation Adjustment, with interest, of $199,532,000 as presented on Line 3 of Appendix A, Schedule 1 to its Initial Brief. The Commission's determination regarding the 2013 Reconciliation Adjustment is set forth later in this Order.

C. ROE Collar and ROE Penalty Calculation

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

The Commission approves ComEd's figure based on the evidence in the record and the reasons indicated later in this Order with respect to the contested issues.

D. 2015 Rate Year Net Revenue Requirement

ComEd presented evidence that its calculated 2015 Rate Year Net Revenue Requirement, reflecting the adjustments made in rebuttal testimony is $2,619,210,000. *E.g.*, ComEd Ex. 13.0 at 1, 5; ComEd Ex. 13.01, Sch FR A-1, line 36. Staff states that the 2015 Net Rate Year Revenue Requirement (for the Filing Year Ending December 31, 2014) is the sum of the Initial Rate Year Revenue Requirement, the Reconciliation Adjustment, and the ROE Collar. Staff recommends a 2015 Net Rate Year Revenue Requirement of $2,516,177,000 as presented on Line 5, Column (j) of Appendix A,

Schedule 1 to its Initial Brief. The Commission's determination regarding the 2015 Rate Year Net Revenue Requirement is set forth later in this Order.

III. Scope of Proceeding

This proceeding was initiated pursuant to Section 16-108.5(d) of the PUA, a provision of EIMA that defines this proceeding and limits its scope. The statutory purpose of this proceeding is to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the applicable 2014 rate year that are reflected in the inputs to the performance-based formula rate derived from the utility's FERC Form 1. 220 ILCS 5/16-108.5(d). While input data is updated annually, the formula itself is not. Parties to this proceeding have commented about the scope of this proceeding and the comments are duly noted.

Section 16-108.5(d) of the Act specifies that the Commission is not granted authority in an annual update and reconciliation proceeding to consider or order any changes to the structure or protocols of a performance-based formula rate. 220 ILCS 5/16-108.5(d). The Commission agrees that EIMA requires that any changes to the formula rate structure be made in a utility rate filing or by the Commission after an investigation as set forth in Section 9-201 of the PUA. In Docket 14-0316, the Commission addressed both the definition of the formula rate structure as well as the adjustment proposed by Staff regarding the depreciation expense for the filing year revenue requirement. The appendix to this Order reflects the conclusions on those issues as determined in Docket No. 14-0316.

IV. Rate Base

A. Overview

1. 2013 Reconciliation Rate Base

ComEd submitted evidence that its calculated 2013 Reconciliation Year Rate Base, as adjusted in its rebuttal testimony, is $6,595,626,000. *E.g.*, ComEd Ex. 13.0 at 6; ComEd Ex. 13.01, Sch. FR B-1, line 28. Staff recommends a total 2013 Reconciliation Year Rate Base (for the Reconciliation Year Ending December 31, 2013) of $6,463,682,000 as presented on Appendix B, Schedule 3 RY in its Initial Brief. The Commission's determination regarding the 2013 Reconciliation Rate Base is set forth later in this Order.

2. 2015 Initial Rate Year Rate Base

ComEd also submitted evidence that its calculated 2015 Initial Rate Year rate base, as adjusted in its rebuttal testimony, is $7,368,745,000. *E.g.*, ComEd Ex. 13.0 at 6; ComEd Ex. 13.01, Sch. FR B-1, line 36. Staff recommends a total 2015 Initial Rate Year Rate Base (for the Filing Year Ending December 31, 2014) of $7,233,430,000 as presented on Appendix A, Schedule 3 FY in its Initial Brief. The Commission's determination regarding the 2015 Initial Rate Year Rate Base is set forth later in this Order.

B. Uncontested Issues

1. Plant in Service

a. Distribution Plant

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

b. General and Intangible Plant

ComEd contends that its General and Intangible ("G&I") Plant in rate base for the 2013 Reconciliation Revenue Requirement and 2015 Initial Rate Year Revenue Requirement should be approved. ComEd asserts that its G&I Plant for the 2013 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further states that its G&I Plant for the 2015 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. *E.g.*, ComEd Ex. 6.0 at 16-18. Neither Staff nor any intervenor disagreed. The Commission approves the foregoing G&I Plant costs.

c. Plant Additions

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

2. Materials & Supplies

ComEd states that its Distribution Plant Materials & Supplies ("M&S") inventory for the 2013 Reconciliation Revenue Requirement rate base and 2015 Initial Rate Year Revenue Requirement rate base should be approved. ComEd Ex. 13.01, Sch. FR B-1, line 18. ComEd maintains that its Distribution Plant M&S are prudent and reasonable and that the underlying assets are used and useful. *E.g.*, ComEd Ex. 6.0 at 18-19. Neither Staff nor any intervenor disagreed. The Commission therefore approves this component of rate base.

3. Accumulated Deferred Income Taxes on Merger Cost Regulatory Asset

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

4. Construction Work In Progress

ComEd asserts that its Construction Work in Progress ("CWIP") for the 2013 Reconciliation Revenue Requirement rate base should be approved. ComEd maintains that its CWIP for the 2013 Reconciliation Revenue Requirement is prudent and reasonable. *E.g.*, ComEd Ex. 6.0 at 20. Neither Staff nor any intervenor disagreed. The Commission approves this component of rate base.

5. Regulatory Assets and Liabilities

ComEd asserts that its Regulatory Assets are comprised of: (1) a regulatory asset representing the unamortized balance (as of year-end 2013) of capitalized incentive compensation costs, (2) the unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot, and (3) the unrecovered balance of the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI pilot). ComEd Ex. 3.0 at 23; ComEd Ex. 13.01, App 5, line 4. The Regulatory Assets and Liabilities for the 2013 Reconciliation Revenue Requirement and the 2015 Initial Rate Year Revenue Requirement are uncontested. The Commission approves this component of rate base.

6. Deferred Debits

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

7. Other Deferred Charges

ComEd asserts that its Other Deferred Charges relating to incremental distribution costs for storms greater than $10 million should be approved. ComEd included in its 2013 Reconciliation Revenue Requirement rate base and its 2015 Initial Rate Year Revenue Requirement rate base Other Deferred Charges relating to incremental distribution storm costs, which ComEd is amortizing over five years

pursuant to Section 16-108.5(c)(4)(F). In addition, ComEd removed certain merger expenses from its operating expenses, and is amortizing them over a five-year period. ComEd Ex. 3.0 at 24. Neither Staff nor any intervenor disagreed. The Commission approves this component of rate base.

8. Accumulated Provisions for Depreciation and Amortization

ComEd's Accumulated Provisions for Depreciation and Amortization related to ComEd's rate base is uncontested as to the amount included in the reconciliation revenue requirement for the year ended December 31, 2013. ComEd Ex. 13.01, Sch. FR B-1, lines 7-12; ComEd Ex. 3.0 at 17. However, the Accumulated Provision for Depreciation related to ComEd's rate base for the filing year revenue requirement for the year ended December 31, 2014 is contested and included in the scope of Docket No. 14-0316. Discussion of the parties' positions and the Commission conclusion on that issue can be found in Docket No. 14-0316.

9. Accumulated Miscellaneous Operating Provisions

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

10. Asset Retirement Obligation

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

11. Customer Advances

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

12. Customer Deposits

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

13. Original Cost Finding

ComEd requests that the Commission, as it has in prior Orders in formula rate cases, approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2013. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2013 is $16,299,132,000. *Id*.; ComEd Ex. 3.0 at 15.

ComEd also notes that in Staff witness Ebrey's direct testimony, Ms. Ebrey recommends an original cost determination of $16,275,590,000. Staff Ex. 1.0 at 39-41. According to ComEd, this reduction of $23,541,000 from the amount sought by ComEd represents the removal from the original cost determination of certain capital costs recovered through Rider EDA – Energy Efficiency and Demand Response Adjustment, Rider PORCB – Purchase of Receivables with Consolidated Billing, and Rider PE – Purchased Energy. ComEd agreed to accepts Staff witness Ebrey's original cost determination of $16,275,590,000 and the language proposed by Ms. Ebrey so long as the Commission makes clear in its final Order that a separate original cost finding will be made in future non-formula rate update proceedings where plant assets apply, resulting in multiple original cost findings as opposed to one for assets that come under the jurisdiction of the Commission. ComEd Ex. 13.0 at 10. Staff indicated that it does not oppose ComEd's proposal. Therefore, this issue is uncontested.

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

14. Cash Working Capital

a. Overview of CWC and ComEd's lead/lag study

In the final Order in Docket No. 11-0721, the Commission directed ComEd to provide an updated lead/lag study once every three years to determine the amount of Cash Working Capital ("CWC") ComEd required. *See Commonwealth Edison Co*., Docket No. 11-0721, Order at 56 (May 29, 2012). In accordance with the Commission's directive, ComEd updated its study and presented it in direct testimony in this proceeding. *Id.*

ComEd's revenue lag calculation is generally uncontested with the exception of its calculation related to certain pass-through taxes. This calculation is discussed in Section IV.C.1.b below. ComEd's expense lead calculations related to pension and

OPEB, intercompany billings, and certain pass-through taxes are contested. These calculations are discussed in Section IV.C. below.

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

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

c. Final CWC calculation should reflect applicable adjustments to inputs

Staff and ComEd agree that the final CWC figures in the reconciliation and filing year rate bases should reflect the derivative impacts on the inputs to the CWC calculations resulting from applicable adjustments to expenses or revenues, if any, ordered by the Commission's final Order. ComEd Ex. 14.0 at 18. This approach is reasonable and it is approved.

15. Other (including derivative adjustments)

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

C. Contested Issues

1. Cash Working Capital

ComEd states that its CWC requirement is based on its updated lead/lag study, a study similar to that approved by the Commission in Docket No. 11-0721. *See* Docket No. 11-0721, Order at 55-56. ComEd asserts that its final revised CWC figures of ($6,860,000) for the rate year and ($8,576,000) for the filing year represent its real CWC requirement resulting from the applicable actual cash outflows and inflows during calendar year 2013. ComEd Ex. 13.01, App 3, line 40; ComEd Ex. 13.01, App 3, line 80. The various contested Staff and intervenor adjustments to ComEd's CWC requirement would result in a reduction to rate base of approximately $112,000,000 for the rate year and approximately $111,000,000 for the filing year, with a revenue requirement reduction of approximately $11,000,000 for both the rate and filing year. *See* Staff Ex. 7.03, Sch. 7.03 RY, line 7; Staff Ex. 7.03, Sch. 7.03 FY, line 7; Staff Ex. 7.05 RY, line 11; Staff Ex. 7.05 RY, line 7.

a. Pension and OPEB Expense Leads

(i) ComEd's Position

ComEd argues that it has submitted evidence demonstrating that it correctly attributes zero expense lead time to its pension and Other Post-Employment Benefits ("OPEB") expense in its CWC calculation and that Staff's proposal to use 203.24 lead days for these expenses should be rejected. ComEd asserts that ComEd witness Houtsma thoroughly explained that the cash flow impacts of the $153.5 million of accrued expense amounts for both pension and OPEB, and for periodic cash payments to the trusts (cash outflows) for both pension and OPEB, are already fully accounted for in ComEd's rate base outside the CWC calculation under its approved EIMA formula rate and revenue requirements. *See* ComEd Ex. 15.0 at 2; ComEd Ex. 28.0 at 2. ComEd contends that if the Commission adopts Staff's recommendation to include this expense in CWC calculations, it would result in a significant and improper "double count" reduction to ComEd's rate base.

Specifically, ComEd states that the $153.5 million includes $97 million for pension expense that has been applied as a reduction to ComEd's pension asset for pension asset financing cost recovery purposes, and $55 million for OPEB expense that is already included as a component of operating reserves, which reduces rate base. ComEd Ex. 15.0 at 3-4; ComEd Ex. 15.01. The Company maintains that Staff's recommendation must be rejected because ComEd's treatment of these items as reductions to rate base for OPEB accruals and to the pension asset for pension accruals is equivalent to including those expense accruals in the lead/lag study and assigning them a 365-day lead – substantially longer than the 203.24-day lead suggested by Staff. *See* ComEd Ex. 4.0 at 13.

ComEd observes that Staff presents no evidence denying that its proposal results in a double count, and that Staff also acknowledges that pension accruals reduce the pension asset and OPEB accruals reduce rate base. ComEd notes that Staff, in rebuttal, presents a flawed justification regarding the matching of expenses and revenue within the CWC calculation that was rejected by the Commission in Docket Nos. 11-0721 and 10-0467. ComEd explains that the Commission has repeatedly affirmed ComEd's proposal to reflect zero lead days for ComEd's Pension and OPEB expense. *See* Docket No. 11-0721, Order at 51; *Commonwealth Edison Co.,* Docket No. 10-0467, Order at 48 (May 24, 2011). ComEd notes that in Docket No. 11-0721, the Commission properly found that "expense leads for the various operating expenses are calculated independently of revenue lag and can be positive, negative or zero." Docket No. 11-0721, Order at 51. ComEd maintains that Staff has provided no basis for the Commission to abandon its practice in this proceeding and the Commission should accordingly decline to adopt Staff's recommendation.

ComEd points out that Staff attempts to show that its CWC Adjustment schedule ("Schedule 10 FY") does not double count pension and OPEB expense by referencing its CWC treatment of ComEd's pension asset funding and return on equity in its CWC calculation. ComEd asserts that this apples to oranges comparison is unavailing because it is factually inaccurate.

With respect to pension, ComEd observes that Staff claims that Schedule 10 FY shows that "the cash inflows and cash outflows associated with the Pension Asset are removed from CWC calculations (Staff Init. Br., Appendix A, Sched. 10, page 2 lines 5 and 22)." *See* Staff Init. Br. at 11. According to ComEd, this is incorrect and misleading. Lines 5 and 22 of Staff's Schedule 10 FY do not represent the cash inflow/outflow associated with pension expense. Instead, ComEd states, those lines represent $53M of pension asset funding cost removed from the CWC calculation – i.e., the debt-based return on the $1,063.3 million net pension asset. *See* Staff Ex. 7.0, Sch. 10 FY, lines 5 and 22; *see also* ComEd Ex. 15.0 at 5. ComEd states that it does not contend that the pension asset funding cost is double counted. Instead, ComEd states that it is the $97 million of pension expense (cash outflow) that Staff includes in its CWC calculation at line 17 that is double counted because that amount is also included as a reduction to ComEd's pension asset. *Id*.

With respect to OPEB, ComEd observes that Staff claims that "[t]he only component for the OPEB liability included in revenues [to compute CWC] is the return on rate base which is also effectively accounted for in the CWC calculation through the reduction for return on equity (Appendix A, Schedule 10, p. 2, line 8) and the interest expense. (*Id.*, p. 1, line 28.)" *See* Staff Init. Br. at 11. According to ComEd, Staff's statement misses the point, as it completely ignores OPEB expense. ComEd contends that, as with pension expense, it is actually the $55 million in OPEB expense that Staff includes in its adjustment at line 17 that is double counted in rate base because OPEB accruals are already included as a component of operating reserves, which reduces rate base. *See* Staff Ex. 7, Sch. 10 FY, line 17; *see also* ComEd Ex. 15.0 at 4-5. ComEd explains that in sum, Staff's new argument only underscores the fact that Staff's CWC calculation double counts pension and OPEB expense by failing to consider CWC in the context of ComEd's entire revenue requirement and provides no new support for its proposed lead.

ComEd further explains that Staff witness Ebrey errs when she claims that because ComEd uses the accrual method rather than cash basis method of accounting that the pension and OPEB cash payment amounts included in rate base are not reflective of the cash requirement that is measured by CWC. *See* Staff Ex. 1.0 at 13. In fact, the amounts reflected in rate base consider both the accounting accruals as well as the cash contributions. ComEd Ex. 15.0 at 6-8; ComEd Ex. 15.01. Additionally, ComEd states that Staff's 203.24 lead-day calculation is flawed. Unlike most vendor and payroll related costs, pension and OPEB accruals are determined independently from the cash contributions and the timing of the cash payments cannot be directly assigned to particular accruals. ComEd Ex. 15.0 at 9. In any event, ComEd explains that its inclusion of the amounts elsewhere in the revenue requirement at the equivalent of a full 365-day lead eliminates the need for such direct assignment.

ComEd also contends that Ms. Ebrey's references to the Commission's Order in North Shore Gas Company's ("North Shore") and The Peoples Gas Light and Company's ("Peoples Gas") last rate case (Docket Nos. 12-0511/12-0512 (Consol.)) in support of her proposal (Staff Ex. 1.0 at 13-14) are equally unavailing. ComEd notes that the facts of that case differ substantially from the relevant facts in this proceeding.

Specifically, Docket Nos. 12-0511/12-0512 (Consol.) did not involve participating utilities under EIMA pursuant to which pension and OPEB accrued expense amounts and cash trust payments are fully accounted for in the revenue requirement. ComEd Ex. 15.0 at 8. In addition, intercompany billing lead values were used in Docket Nos. 12-0511/12-0512 (Consol.), which Staff asserts here would be 45 days. *See* Staff Ex. 1.0 at 24. Yet, ComEd notes, in this case Staff is proposing a longer lead value of approximately 203 days. Moreover, ComEd explains that, historically, Commission Orders on this issue relating to Peoples Gas and North Shore utilized the intercompany billing lead value while, as discussed above, ComEd Orders have included zero lead for those expenses. ComEd Ex. 14.0 at 13; *see also* ComEd Ex. 15.0 at 2; ComEd Ex. 28.0 at 2.

Finally, ComEd also asks the Commission to reject Staff's flawed assertion that the inclusion of lag days is "more reasonable" because cash inflows and outflows associated with recovery of payment of pension or OPEB costs should match as is the case with other lead/lag study items. *See* Staff Ex. 1.0 at 12-13; *see also* Staff Ex. 7.0 at 8. According to ComEd, this matching premise could only be sound if one ignores the fact that the cash outflows are accounted for elsewhere in the revenue requirement, as they are here. Further, the Commission has expressly rejected this matching justification in Docket Nos. 10-0467 and 11-0721. ComEd Ex. 28 at 3.

(ii) Staff's Position

Staff proposes a payment lead of 203.24 days for pension and OPEB expense instead of the zero days utilized by the Company. Staff explains that its proposal is based on actual payment information provided by the Company during discovery since the Company had not performed a study of the actual cash inflows and outflows associated with pension expense. Staff notes that while the Company does not agree with its proposal to use 203.24 days, the Company does not take issue with the calculation of that amount for the lead days.

Staff disagrees with the Company's claim that since the payments for pension and OPEB costs are included in the pension asset recorded on the Company's books as well as the OPEB liability included in rate base, then Staff's proposed treatment for CWC purposes would double-count those costs.

Staff explains that the Company's total operating revenues (source of cash) includes a component for both the pension asset cost funding amount as well as the pension and OPEB expense since both are included in the Company's operating statement. The Company reduces the total operating revenues on ComEd Ex 3.02 WP3 for only the pension asset cost funding when deriving the total revenues for the CWC calculation (Staff Init. Br., App A, Sch. 10, line 5) and does not make a reduction for the pension and OPEB expense included in revenues. Therefore, Staff asserts the source of cash in the CWC calculation includes pension and OPEB expense, yet according to the Company, the cash outlays or uses of cash for the CWC calculation should not reflect the pension and OPEB expense. Thus, Staff avers the CWC calculated by the Company is overstated since it includes a component for the cash inflows (revenues) but not the cash outflows (expenses) associated with the pension and OPEB expense.

According to Staff, a review of the CWC schedules shows that both the cash inflows and cash outflows associated with the Pension Asset are removed from the CWC calculations. Staff Init. Br., App A, Sch. 10, lines 5 and 22. The only component for the OPEB liability included in revenues is the return on rate base which is also effectively accounted for in the CWC calculation through the reduction for return on equity (Staff Init. Br., App A, Sch. 10, line 8) and the interest expense. *Id.* at line 28. Staff maintains that there is no double-counting of pension and OPEB expense as the Company claims.

Staff argues its proposal in this case is consistent with the Commission's recent decision in Docket Nos. 12-0511/12-0512 (Consol.) concerning the expense lead for Pension and OPEB costs in a lead/lag study. Staff observes that in Docket Nos. 12-0511/12-0512 (Consol.), the Commission rejected the proposal of Peoples Gas and North Shore to set lead values for pension and OPEB expense at zero in the lead-lag study. In that case, Peoples Gas and North Shore argued that because the Commission approved the use of zero lead days for pension and OPEB costs in Docket No. 11-0721, it was appropriate to also use zero lead days for Peoples and North Shore Gas. Staff notes that the Order disagreed with the Companies, stating:

> The Commission finds Staff's proposal that the expense leads for inter-company billing should be for pension and OPEB expenses in the CWC calculation is more appropriate and is hereby adopted. The Utilities' proposal to set lead values for Pension and OPEB at zero in the lead-lag study is not appropriate based on the evidence in the record. Staff's recommendation is consistent with the Companies' own methodology in the last rate case and this was approved by this Commission. Consistent with Staff's recommendations, the Commission assigns an expense lead of negative 33.91 days for pension and OPEB expenses in North Shore's CWC calculation and negative 35.23 days for Peoples Gas. The Commission finds that this method is more appropriate than the recommendations of the AG and the AG's proposal is rejected.

North Shore Gas Co., et al., Docket Nos. 12-0511/12-0512 (Consol.), Order at 80 (June 18, 2013).

(iii) Commission Analysis and Conclusion

The Commission approves ComEd's proposal to reflect zero lead days for its pension and OPEB expense in the CWC calculations. The evidence shows that ComEd's pension expense has been applied as a reduction to ComEd's pension asset and that the OPEB expense is included as a component of operating reserves, which reduces rate base. Because these amounts are therefore already accounted for in ComEd's formula rate and revenue requirements, the Commission concludes that applying Staff's proposed payment lead of 203.24 days for pension and OPEB expense would improperly result in a double count reduction to ComEd's rate base. This conclusion is consistent with the Commission's decisions in Docket Nos. 10-0467 and

11-0721. Staff has not provided any reason that warrants a change in the treatment of ComEd's pension and OPEB expense in this proceeding. Accordingly, the Commission adopts ComEd's proposal.

b. Pass-through Taxes Revenue Lags for the IEET and CIMF

(i) ComEd's Position

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

ComEd opposes Staff's proposal to remove the service lag component from the pass-through tax revenue lag and asserts that Staff's proposal is based on the faulty premise that the pass-through taxes are somehow separate from the provision of utility service. Staff Ex. 1.0 at 15. ComEd notes, pass-through taxes are part of the bill for utility service and customers pay the amounts for pass-through taxes at the same time they pay all other components of their bill. ComEd Ex.14.0 at 4. ComEd contends that Staff's Initial Brief states nothing that refutes this fact, and observes that Staff simply disregards it and argues that pass-through taxes are somehow separate from the provision of utility service in its effort to support the erroneous removal of the service lag from its pass-through tax lag calculation.

ComEd asserts that CCI makes a similar and equally incorrect claim that the billing and collecting of pass-through taxes represent a separate service because the taxes are not known, measurable or calculated until the bill is prepared. *See* CCI Ex. 2.0 at 3. According to ComEd, the fact that the taxes are not known, measurable or calculated until the bill is prepared is irrelevant. That point applies to many components of a bill until the meter is read and the volume of electricity delivered to (and used by) the customer is known. Indeed, even if a customer takes no delivery of electricity in a given monthly service period and thus no IEET or CIMF amounts are calculated or due, the billing and collection processes for the customer would still occur. ComEd contends that CCI's claim that the pass-through tax revenue lag and expense lead should begin with the billing date is incorrect for the same reason. ComEd notes that because electricity is the service ComEd delivers and not the billing and collection of taxes as CCI claims, the lead and lag should begin when the electricity is delivered to the customer. *See* ComEd Ex. 27.0 at 5.

ComEd further notes that removing the service lag for IEET and CIMF without removing the corresponding service lead, as Staff and CCI propose, would be inconsistent and inappropriate under the mid-point methodology upon which ComEd's

service lag and service lead are based. *Id.* According to ComEd, that methodology assumes that service is provided to a customer evenly over an entire month. The 15.21 service lag days at issue here must be included in the overall lag calculation in order to properly capture the inflow of funds as well as the fact that customers are delivered service over an entire month. *Id.;* ComEd Ex. 4 at 9. ComEd asserts that Staff and CCI have not rebutted this fact and have instead relied on citations to previous Orders which is an inadequate response to this factual point.

ComEd explains that Staff's and CCI's proposal to remove only the service lag for IEET and CIMF is also not consistent with the treatment of pass-through tax lead and lag in multiple Commission dockets. ComEd states that it has provided undisputed evidence that shows that in Docket No. 10-0467 both the service lag and service lead were excluded in direct testimony. ComEd Ex. 27.01. ComEd further states that, contrary to what CCI claims in its Initial Brief, the Order in Docket Nos. 12-0511/12-0512 (Consol.) disproves CCI's and Staff's position that it is de facto improper to include a service lag in the calculation of pass-through tax revenue lag. ComEd explains that in that Order, the Commission approved the inclusion of a service lag and service lead value in the calculation of revenue lag associated with the ICC Gas Revenue Tax – a pass-through tax. *See* Docket Nos. 12-0511/12-0512 (Consol.), Order at App B, line 2. ComEd contends that the Commission should similarly include the service lag for IEET and CIMF here.

ComEd submits that although the final Order in Docket No. 11-0721 excluded the service lag for IEET and CIMF, including both a service lag and a service lead for pass-through taxes is more appropriate for the reasons set forth above, and recommends that the Commission allow ComEd its full 49.54 days of revenue lag for IEET and CIMF in this proceeding. In order to narrow the contested issues (without waiving any rights to contest this issue in future proceedings), ComEd offers an alternative solution. ComEd states that because in this instance the service lead and the service lag are an identical 15.21 days and the appropriate impact on CWC can also be obtained by eliminating both, ComEd is willing to eliminate the service lag of 15.21 days for the IEET and CIMF if the service lead of 15.21 days is also eliminated. ComEd Ex. 14.0 at 7. According to ComEd, this treatment would be consistent with the treatment of pass-through taxes in Docket No. 10-0467, where both the service lead and service lag were excluded. *Id.*

(ii) Staff's Position

Staff proposes that the service lag should be eliminated from the pass-through tax revenue lag because pass-through taxes do not represent payment for utility services. Staff's proposal to deduct service lag from the Company's total operating revenue lag would result in revenue lag days for these pass-through taxes of 34.33 days (49.54 days less 15.21 days). ComEd Ex. 4.0 at 8.

Staff argues its position is consistent with the Commission's decisions in prior ComEd rate cases. For example, Staff points out that in Docket No. 11-0721, the Company's most recent case that considered a lead/lag study, the Commission agreed "with Staff's use of 36.04 lag days for pass-through taxes Illinois Excise Taxes and City of Chicago Infrastructure Maintenance Fees rather than the 51.25 lag days used by the

Company." Docket No. 11-0721, Order at 46. This decision reflected the removal of the 15.21 service lag days for these pass-through taxes from the total revenue lag calculation. Staff observes that this issue was not raised in the subsequent ComEd formula rate proceedings, Docket Nos. 12-0321 or 13-0318, because a new lead/lag study was not offered for consideration in those cases.

Staff notes that in Docket No. 10-0467, ComEd's last general rate case, revenue lag days were set by the Commission to 39.26 days for the pass-through taxes, IEET and CIMF. Docket No. 10-0467, Order at App A, lines 4-5. Staff points out that the revenue lag of 39.26 days was equal to the operating revenue lag of 54.47 days less the service lag of 15.21 days. Staff states that while the Company claims that the exclusion of the service lag in that case was somehow connected to the exclusion of the service lead, that dependency is not evident in the record or in the Commission conclusions for CWC.

(iii) CCI's Position

CCI point out that contrary to the revenue lags established by the Commission in Docket No. 11-0721 for the IEET and CIMF, ComEd witness Hengtgen proposes to add a service lag of 15.21 days to the revenue lag in the calculation of the Company's cash working capital. *See* ComEd Ex. 4.0 at 7, 9; CCI Ex. 1.0 at 8. CCI witness Gorman recommends that the Commission reject Mr. Hengtgen's proposal and continue to recognize the leads and lags previously approved by the Commission for these taxes.

CCI note that the revenue lag is composed of the following three components: (1) service lag; (2) billing lag; and (3) payment lag. CCI further note that CCI witness Gorman explained that the service lag component measures the midpoint of the period during which ComEd's electric service is provided to its customers. CCI Ex. 2.0 at 3. Mr. Gorman also stated that the taxes at issue are included in a customer's monthly statement through ComEd's billing process. *Id*. The taxes owed by any particular customer are not known and measurable by ComEd until that customer's bill is prepared. CCI argue that the "service" provided to the customer in relation to IEET and CIMF taxes consist of ComEd's billing and collection of the subject taxes. *Id*. CCI conclude, therefore, that the revenue lag should begin at the time of billing in order to reflect a revenue lag equal to the total revenue lag less the service lag. *Id*.

CCI observe that, although certain portions of ComEd's proposed cash working capital have been contested by Staff and other parties in ComEd's formula rate cases since the Commission's decision in Docket No. 11-0721, the Commission has not changed its ruling on the issue of revenue lag for pass-through taxes, except to acknowledge changes in applicable law. *See Commonwealth Edison Co.,* Docket No. 13-0318, Order at 19 (December 18, 2013) ("…the final approved cash working capital figure in rate base should reflect the leads and lags approved by the Commission in Docket No. 11-0721, revised to reflect changes in law, and the applicable dollar figure inputs from the instant case"); *Commonwealth Edison Co.,* Docket No. 12-0321, Order at 9-11 (December 19, 2012). CCI also observe that the Commission has not approved the addition of any service lag to the revenue lag for either IEET or CIMF in ComEd's rate cases since the Commission's ruling on the issue in Docket No. 11-0721. *See* CCI Ex. 2.0 at 2.

CCI confirm that, in its initial ruling on the issue in Docket No. 11-0721, the Commission noted that it was being consistent with its previous finding in Docket No. 10-0467, and that ComEd's process for collecting and remitting pass-through taxes had not changed since that prior ruling. Docket No. 11-0721, Order at 45-46 ("This was also the decision of this Commission in the Company's prior docket, Docket 10-0467").

CCI further note that, since the Commission's ruling in Docket No. 11-0721, the only change that ComEd could identify in its process for collecting and remitting past-through taxes is a requirement by the City of Chicago to change the payment date for Municipal Utility Tax and CIMF from the last day of the month to the 15th day of the month. CCI Ex. 1.0 at 8. As CCI witness Gorman explained, this change affects the expense lead but not the revenue lag for those taxes. *Id.* CCI assert that ComEd witness Hengtgen did not respond to this observation except to note the Commission's decision in Docket Nos. 12-0511/12-0512 (Consol.). ComEd Ex. 27.0 at 6-7. CCI opine that Mr. Hengtgen's reliance on the Commission's decision in Docket Nos. 12-0511/12-0512 (Consol.) is misplaced, however, because in that ruling the Commission was not deciding the appropriate lag to be associated with the two taxes at issue here. Docket Nos. 12-0511/12-0512 (Consol.), Order at 76. CCI argue that even if the Commission's decision on revenue lag were applicable to the taxes at issue in this proceeding, the Commission clearly concluded that "…the revenue lag for pass-through taxes and EACs, except for the ICC Gas Revenue Tax, should be zero in the Utilities' lead-lag study." *Id* (emphasis added). Accordingly, CCI state that this conclusion does not support Mr. Hengtgen's proposal to add days to ComEd's revenue lag for IEET and CIMF.

CCI assert that ComEd has failed to identify sufficient changes in its process of collecting and remitting pass-through taxes that would justify a change in the Commission's ruling to exclude the service lag from the revenue lag for IEET and CIMF. CCI conclude that the Commission should adopt Mr. Gorman's recommendation to reject Mr. Hengtgen's proposal to add a service lag of 15.21 days to the revenue lag associated with IEET and CIMF pass-through taxes.

(iv) Commission Analysis and Conclusion

Staff and CCI recommend that the Commission remove the 15.21 day service lag component from the IEET and CIMF pass-through tax revenue lag calculation. The Commission finds that this adjustment is reasonable and it is adopted. The question of the proper length of the pass-through tax revenue lag was considered in Docket No. 11-0721, and the Commission concluded that Staff's calculation, reflecting the removal of the service lag component of the revenue lag, was appropriate. The pass-through tax revenue lag for these taxes was also calculated in the same manner in the Commission's Order in Docket No. 10-0467. ComEd has not demonstrated any changed circumstances that would justify a departure from the use of zero service lag days in the pass-through tax revenue lag calculation of these taxes in this case. Accordingly, the Commission concludes that based on the record, the service lag component of the revenue lag for these taxes should remain excluded.

The Commission declines to adopt ComEd's alternative proposal that the service lead component should be eliminated from the expense lead calculation for these taxes

if the service lag component is excluded from the revenue lag calculation. ComEd argues that it would be inappropriate to remove the service lag for these taxes without removing the corresponding service lead. This argument has been rejected by the Commission on several occasions, including in Docket No. 11-0721. In that proceeding, the Commission ruled that the expense lead and the revenue lag do not have to match because revenue and expense are calculated independently. The Company has failed to provide a compelling argument to support a change in the method approved in Docket 11-0721 for the CWC calculation of these pass-through taxes.

c. Pass-through Taxes Expense Leads

(i) ComEd's Position

ComEd states that its pass-through tax expense leads of 31.46 days for Energy Assistance Charges/Renewable Energy Charges ("EAC/REC"), 37.35 days for Gross Receipts Tax/Municipal Utility Tax ("GRT/MUT"), 0.24 days for IEET and 26 days for CIMF are supported by the evidence and should be approved. ComEd Ex. 4.0 at 9.

ComEd explains that Staff's Initial Brief provides no reason for the Commission to order ComEd to incur unnecessary risk by adopting Staff's proposal to increase the lead for ComEd's pass-through taxes by using the due date of the taxes instead of the actual payment date. ComEd contends that Staff provides no argument refuting ComEd's analysis of the heightened risk that would be incurred by adopting Staff's proposal.

ComEd contends that Staff's statement that ComEd calculates pass-through taxes based on the payment due date for EAC/REC and "Other Taxes" is both factually inaccurate and irrelevant. ComEd first contends that the calculation of the EAC/REC lead is shown on page 32 of ComEd Ex. 4.02 and not on pages 36-39. *See* ComEd Ex. 4.02 at 32. According to ComEd, a review of the calculation on page 32 reveals that, contrary to what Staff asserts, the payment lead is calculated using the actual payment date (Column E) and not the payment due date (Column D). *See Id*. ComEd further explains that it makes many tax payments for many different types of taxes over the course of a given month. ComEd Ex. 14.0 at 8. ComEd states that for that reason, the fact that ComEd may or may not calculate any other taxes based on the payment due date is irrelevant to the fact that the evidence demonstrates that for the taxes at issue here, paying taxes three or four days early is a prudent practice in light of the severe penalties and interest payments associated with these taxes. *See* ComEd Ex.14.0 at 9. ComEd notes that both Staff and the Commission recognized the prudence of ComEd's approach in Docket No. 11-0721.

ComEd also asserts that, contrary to what Staff witness Ebrey now asserts, dropping a tax payment in a mail box on the due date or setting up a payment on the due date through an Automated Clearing House ("ACH") is no guarantee that late payments and the resulting severe interest and penalty payments will be avoided. ComEd explains that ACH transactions are settled in one to two business days. *Id*. at 8. If ComEd initiates an ACH payment on the due date as Staff suggests, the funds would not settle for at least one day and possibly two days after the amounts are due. ComEd Ex. 27.0 at 8. As ComEd notes, this would mean that the payment arrives to the

receiving party late and, consequently, ComEd could be liable under severe penalty and interest provisions resulting in payments of possibly hundreds of thousands of dollars. *Id*.; ComEd Ex. 14.0 at 10. Moreover, ComEd argues, ACH failures do occur (and a payor may not be aware of such a failure for days), and there is a significant likelihood that mail dropped in a post office box on the due date will not arrive at its destination, much less be processed, on that same day. ComEd contends that the Commission should accept the prudence of ComEd's proposed pass-through tax expense leads, and reject Staff's unnecessarily risky approach.

(ii) Staff's Position

Staff proposes the expense lead days for the pass-through taxes should be based on the payment due dates rather than actual payment dates used by the Company. Staff notes that the Company responds that certain taxes were being paid several days prior to the due dates to mitigate the risk of interest and penalties, which could be significant. Staff argues, however, that a number of other payments that are made via electronic means are not remitted "early" simply because "failure" might occur. Moreover, Staff points out that the EAC/REC pass-through taxes as well as "Other Taxes" shown on ComEd Ex. 4.02, on pages 36 through 39 are all calculated based on payment due dates rather than actual payment dates. Additionally, Staff asserts that the Company has offered no explanation for the disparate treatment of payment lead measurement for pass-through taxes paid via the same electronic process. Staff Ex. 1.0 at 23; Staff Ex. 7.0 at 11.

(iii) CCI's Position

CCI recommend that the Commission approve a method to calculate the expense leads associated with IEET and CIMF pass-through taxes that begins with the date ComEd bills its customers. CCI Ex. 2.0 at 3, 5-6. CCI observe that, in response to CCI and Staff criticism of ComEd's proposal, Mr. Hengtgen claims that if the service lag is removed from the total revenue lag (as CCI recommend in Section IV.C.1.b. above), then the service lead must also be removed from the total expense lead for IEET and CIMF. ComEd Ex. 27.0 at 7. CCI opine that its witness Mr. Gorman illustrated through his testimony, there is no service lead included in the expense lead calculation associated with the subject taxes. CCI conclude that, as a result, no change to the expense lead for these taxes is necessary.

CCI point out that ComEd issues bills to its customers throughout any given month. CCI recommend that the start of the expense lead for IEET and CIMF taxes, which become known and measurable during each billing period, should be the average billing date (or midpoint) of each month. CCI Ex. 2.0 at 3. CCI argue that the "service" associated with these taxes is the billing and collection function, which begins with the date upon which each customer is billed. *Id.* at 3. CCI cite Mr. Gorman's testimony that the expense lead associated with the subject taxes should measure the time period between the average billing day of ComEd's customers during the month and the actual payment date of those billed taxes. *See Id*. at 3-4. CCI confirm that, for a month with 30 days, the midpoint of the month (average billing day) is the 15th, fifteen days from the end of the previous month and fifteen days from the beginning of the following month.

CCI illustrate through a table what it believes to be a proper calculation of the expense lead for CIMF based on the time period from the average billing date to the actual payment date. *See* Table 2, CCI Initial Br. at 8. CCI's table shows that the average billing date for the month of April, 4/15/13, is the midpoint between the end of the prior month and the end of the current billing month (3/31/13 to 4/30/13). CCI opine based on this table that the time period between the average billing date and the actual payment date remains 25 days (4/15/13 to 5/10/13), as it was in the last lead/lag study that the Commission approved for ComEd.

CCI assert that Mr. Hengtgen did not respond to Mr. Gorman's table, except to repeat his assertion regarding the services provided by ComEd. *See* ComEd Ex. 27.0 at 2-8. CCI further observe that Mr. Hengtgen did not provide the Commission a reason to depart from its previously-approved methodology. Thus, CCI conclude that the Commission should adopt Mr. Gorman's recommendation to calculate expense leads associated with IEET and CIMF pass-through taxes using the period between the average date ComEd bills its customers and the date payment is made to taxing authorities. CCI state that as a result, no change is necessary to the current expense leads.

CCI note that while Staff witness Ebrey has proposed using the tax payment due date rather than the actual payment date, CCI takes no position with regard to that issue. CCI assert that its recommended method of calculating the revenue lag for these pass-through taxes, as described by CCI witness Gorman, simply uses the Commission-approved method.

(iv) Commission Analysis and Conclusion

The Commission declines to adopt Staff's proposal to increase the expense leads for ComEd's pass-through taxes – EAC/REC, GRT/MUT, IEET, and CIMF – by using the payment due date instead of the actual payment date when calculating the expense leads. The Commission finds that the record evidence supports ComEd's practice of calculating its pass-through tax expense leads based on the actual payment date instead of the payment due date as proposed by Staff. The evidence demonstrates that the penalties and interest associated with late payment of the taxes at issue are severe. The Commission recognizes that most of the payments for these taxes are made electronically via ACH. The Commission also recognizes that ACH failures do occur from time to time, and therefore ComEd's practice of paying a few days early is a prudent approach given the potential penalties and interest associated with late payment of these taxes. For these reasons, the Commission agrees with ComEd that paying these taxes three or four days early to avoid the possibility of severe penalty and interest payments is prudent, reasonable, and in the ratepayers' interest.

d. Intercompany Billings Expense Lead

(i) ComEd's Position

ComEd proposes an intercompany billing expense lead of 31.54 days, including 16.33 days allocated for the payment lead component. ComEd states that it has calculated this lead based on actual billing amounts and payment dates, and it reflects the actual CWC requirement of ComEd for intercompany billings. ComEd Ex. 14.0 at

14. ComEd contends that these expense leads are therefore fully supported by the evidence.

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

ComEd also contends that Staff and CCI wrongly complain that ComEd's payment of amounts owed to its affiliate, Business Services Company ("BSC"), is cross-subsidization. ComEd asserts that there is no valid legal or factual basis that supports their complaint and that paying amounts owed in a timely manner consistent with corporate policy is not cross-subsidization. According to ComEd, a large part of the charges that BSC bills to ComEd is for BSC labor, that if performed by ComEd employees, would be included in the CWC calculation at the Payroll and Withholdings lead, which, at approximately 16 days, is a much shorter lead time than the 31.54 days ComEd proposes in this proceeding for its intercompany billing expense and significantly shorter than the number of days being proposed by Staff and CCI witnesses. ComEd Ex. 14.0 at 15-16; *see also* Staff Ex. 1.0 at 24; CCI Ex. 1.0 at 10.

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

(ii) Staff's Position

Staff proposes to increase the Company's payment lead for intercompany billings to 30 days which results in the CWC calculation reflecting the payment of intercompany billings being paid 30 days after the month of service, which is the equivalent payment terms for non-affiliated vendors. Staff avers that the Company's expense lead days for intercompany billings is based on payment by the 15th of the month following service (ComEd Ex. 4.0 at 13) which, when included in the CWC calculation, results in the subsidization of the non-regulated operations by the regulated ratepayers.

Staff believes that since the timing of payments to affiliated interests is within the Company's discretion, CWC should not be based upon payment lead days for goods and services provided by the Company's affiliates being less than payment lead-days for goods and services provided by non-affiliated vendors. Staff asserts that ratepayers should not be subsidizing the utility's affiliates through an increased cost of CWC. According to Staff, the Commission has previously made findings consistent with this position in its Orders in Docket Nos. 10-0467 and 11-0721. Staff points out that the issue was not raised in the subsequent ComEd formula rate proceedings, Docket Nos.

12-0321 or 13-0318, because a new lead/lag study was not offered for consideration in those cases.

Staff observes that the subsidization of affiliates is prohibited as set forth in Section 5 of the BSC General Services Agreement ("GSA") which states "that the determination of the costs as used in this Agreement shall be consistent with, and in compliance with, the rules and regulations of the SEC, as they now exist or hereafter may be modified by the Commission." Staff notes that the FERC, successor to the Securities and Exchange Commission ("SEC") in the governance of the allocation of costs between utility affiliates, issued Order No. 707 on February 7, 2008 "to ensure that customers of franchised public utilities do not inappropriately cross-subsidize the activities of 'non-regulated' affiliates, and are not otherwise harmed as a result of affiliate transactions and activities." "Cross-Subsidization Restrictions on Affiliate Transactions" at 2, 122 FERC ¶ 61,155 (Issued Feb. 21, 2008).

Staff points out that the Company's calculation of expense lead days for payments to vendors that provide other operation and maintenance services ("Other O&M") are reflected on ComEd Ex. 4.02, pages 24 - 30. The Other O&M expense lead is composed of weighted averages of service leads, payment leads and float for the various payments. Staff asserts that the 15 day payment lead used by the Company for intercompany billings is only 28.6% of the 52.41 day simple average payment lead the Company used for Other O&M CWC calculation.

Staff notes that in the Orders in Docket Nos. 10-0467 and 11-0721, the Commission increased the payment lead for intercompany billings by 15 days. It is Staff's position that its proposal in this case is consistent with the treatment of intercompany billing expense lead days in these Orders. Staff observes that the Order in Docket No. 11-0721 states:

> The Commission agrees with Staff and finds that CWC should be reduced through a higher number of expense lead days on intercompany obligations consistent with the Final Order in the Company's most recent rate case, Docket 10-0467. The Commission finds that allowing ComEd to charge ratepayers a higher CWC requirement in order to pay the Company's affiliates earlier than non-affiliated vendors are paid is a form of cross-subsidization. The Commission also recognizes that ComEd's process for paying intercompany obligations has not changed since Docket 10-0467. That being the case, the Commission reasons that the conclusion here should mirror that of the Company's most recent rate case and accepts Staff's adjustment.

Docket No. 11-0721, Order at 48.

Staff further observes that the Order in Docket No. 10-0467 states:

> Finally, with respect to payments of intercompany obligations, ComEd has not shown the need to reject Staff's adjustments in this area. According to the Company's initial

> brief, ComEd's affiliate invoices it on a monthly basis, on time, and the invoices require payments on or around the 15th of the month following the provision of service. Staff's adjustment is based on this statement. There was no mention of an affiliate agreement to the contrary. Therefore, the Commission accepts Staff's proposed number of expense lead days of 45.35, based on the fact that such payments are within the Company's discretion.

Docket No. 10-0467, Order at 48.

Staff contends that ComEd has failed to provide compelling evidence to support a change by the Commission to its conclusion from two prior cases considering the appropriate expense lead days for intercompany obligations.

(iii) CCI's Position

CCI point out that this issue concerns the proper calculation of the expense lead associated with payment of billings between ComEd and its affiliated service company. CCI witness Gorman recommended that the Commission continue its practice established in previous ComEd rate cases. CCI Ex. 1.0 at 10. CCI witness Gorman noted that in Docket No. 11-0721, the Commission extended the payment lead by 15 days. Docket No. 11-0721, Order at 48. CCI witness Gorman further noted that this additional time reflected an approximate movement in the payment due date from the 15th day to the 30th day of the month following the month of service in recognition of the longer payment lead used for non-affiliate vendors. *Id*. at 46-47. CCI opine that Mr. Hengtgen proposes to disturb this conclusion by recommending an expense lead that reflects the weighted average of the actual payment dates, which is 16.33 days. ComEd Ex. 4.02 at 15.

CCI argue that the Commission should reject Mr. Hengtgen's proposal as an unjustified departure from Commission practice. CCI state that Mr. Hengtgen's proposal is not reasonable when compared with the Company's own practices for other vendors, since the payment lead proposed by Mr. Hengtgen for intercompany billings is far less than the payment lead used for non-affiliate vendors of approximately 73 days. *See* ComEd Ex. 4.02 at 30. In addition, CCI argue that, although payments are due on the 15th day of the month following service, ComEd exercises discretion with regard to the actual payment date, since the record evidence establishes that those actual payments occurred as late as the 22nd day following the end of the service month. CCI Ex. 1.0 at 10. Therefore, CCI conclude that the Commission's practice of extending the intercompany expense lead should be continued.

CCI observe that ComEd witness Hengtgen claims that the expense lead should reflect actual payment dates, that the payments were routine and that the services provided by its affiliates are different than those provided by unaffiliated vendors. ComEd Ex. 27.0 at 15. CCI observe these arguments are not new, and they have already been rejected by the Commission. In ComEd's initial formula rate proceeding, the Commission was aware that the expense lead it approved for intercompany billings did not reflect the actual payment dates. CCI note that in that case, the Commission

was also aware that intercompany billings were routine and for services that are different from those provided by non-affiliate vendors. Docket No. 11-0721, Order at 46-48. CCI note that in spite of these arguments, the Commission instead accepted an alternative adjustment to add days to the intercompany billing expense lead.

CCI propose that the Commission continue its practice of adding 15 days to the expense lead for intercompany billings. Further, CCI suggest that the Commission reject ComEd witness Hengtgen's use of actual payment dates for reasons that have already been examined and rejected by the Commission. CCI assert that ComEd has failed to meet its burden of proof by failing to provide evidence of record that a change in circumstances justifies a departure from established Commission practice on this issue.

(iv) Commission Analysis and Conclusion

The Commission agrees with Staff's proposal to increase ComEd's payment lead for intercompany billing to 30 days which results in a CWC calculation reflecting the payment of intercompany billings 30 days after the month of service. The Commission continues to believe that allowing ComEd to charge ratepayers a higher CWC requirement in order to pay the Company's affiliate earlier than non-affiliated vendors are paid is a form of cross-subsidization. This conclusion is consistent with past Commission decisions on this issue in Docket Nos. 10-0467 and 11-0721. The Commission notes that there has been no change in the intercompany services provided or billing practices which would justify the Commission's departure from its past practice of approving a 30 day payment lead for intercompany billing. Accordingly, the Commission adopts Staff's proposed adjustment.

V. Operating Expenses

A. Uncontested Issues

1. Distribution O&M Expenses

ComEd states that its Distribution Operating and Maintenance ("O&M") expenses were $438,781,000 for 2013. ComEd explains that after reflecting adjustments, a revised total of $432,760,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement.

With the exception of proposed adjustments to depreciation on transportation equipment, credit card expenditures, and certain incentive compensation costs discussed further below, no parties contested the amount of distribution O&M expenses. Therefore, the Commission approves this amount subject to its conclusions on the issues set forth below.

2. Customer-Related O&M Expenses

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

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

(2) $33,132,000 reduction to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904, costs recovered through Rider UF;

(3) $647,000 reduction to remove the non-jurisdictional amount of Outside Agency Collection Fees related to uncollectibles;

(4) $30,000 increase to include interest on customer deposits in operating expenses;

(5) $2,618,000 reduction to remove costs recovered under Rider PORCB;

(6) $860,000 reduction to remove customer assistance costs incurred as part of the $10,000,000 EIMA customer assistance program;

(7) $1,970,000 reduction to remove certain customer communications costs recorded in FERC Account 908;

(8) $2,660,000 increase for a donation to the Illinois Science and Technology Foundation;

(9) $106,000 reduction for Residential real-time pricing; and

(10) $45,000 reduction for amounts associated with ComEd's PCards.

ComEd Ex. 3.0 at 30. ComEd states that after these adjustments, $218,224,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function are included in the revenue requirement.

In addition, the Commission adopts ComEd's Alternative Study of its customer care costs, which allocates approximately $11 million of ComEd's call center costs to the supply function. Thus, the total adjustment of ComEd's customer-related expense must be reduced by $11 million to reflect this allocation. After the reduction, $207,224,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function would be included in the revenue requirement.

The Commission notes that no party has objected to the amount of customer-related O&M expenses. The Commission finds the customer-related O&M expenses to be reasonable and this amount is approved.

3. Administrative and General Expense

ComEd states that its Administrative and General ("A&G") expenses were $430,366,000 for 2013. ComEd explains that A&G costs are recorded in FERC Accounts 920-935 and include corporate support and overhead costs that benefit or derive from more than one business function; costs of employee pension benefits; regulatory expenses; and certain other non-operation costs. ComEd states that after subtracting $9,133,000 of deferred merger related costs to achieve (which will be recovered over the next four years), $421,233,000 in A&G expense is included in the revenue requirement.

No party has objected to the amount of A&G expense. This amount is reasonable and, thus, it is approved.

4. Charitable Contributions

ComEd states that it included $7,956,000 of charitable contribution expense in its revenue requirement. ComEd Ex. 13.01, App 7, line 5. ComEd has included in its operating expenses a jurisdictional amount based on the W&S allocator of $7,332,000. ComEd Ex. 3.0 at 46.

No party has objected to the adjusted amount of charitable contribution expense. The Commission finds this amount to be reasonable and it is approved.

5. 2013 Merger Expense

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

The Commission approves Staff's proposed adjustments to correct the Deferred Debit and Amortization of 2012 Merger Costs as well as the Calculation of the Deferred Debit and Amortization of 2013 Merger Costs. The proposed adjustments, as accepted by ComEd, are reasonable.

6. Sales and Marketing Expense

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

7. Depreciation and Amortization Expense

ComEd states that its revenue requirement includes $482,096,000 of depreciation and amortization expense. ComEd explains that the level of 2013 depreciation and amortization expenses included in the revenue requirement is $451,588,000, comprised of $353,607,000 related to Distribution Plant and $97,981,000 related to G&I Plant. ComEd Ex. 3.0 at 39. ComEd further explains that the 2015 Initial Rate Year Revenue Requirement and 2015 Rate Year Net Revenue Requirement include $30,508,000 of depreciation expense associated with the 2014 projected plant additions.

The Commission notes that no party objects to the amount of depreciation and amortization expense. The requested amount is reasonable and it is approved.

8. Regulatory Asset Amortization

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

The proposed regulatory asset amortization is reasonable and the Commission approves this amount.

9. Operating Cost Management Efforts

ComEd submits that during 2013, it continued its aggressive and successful measures to manage and reduce its costs.

No party has objected to the measures that ComEd has taken to manage its costs. The Commission finds these measures to be prudent.

10. Lobbying Expense

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

11. Rate Case Expenses

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

(1) ComEd's rate case expenses of $25,000 incurred in 2013 for Docket No. 07-0566;

(2) ComEd's rate case expenses of $2,000 incurred in 2013 for Docket No. 10-0467;

(3) Amortization of $66,667 of allowed expenses incurred in 2011 for Docket No. 11-0721 and approved in Docket No. 12-0321;

(4) Amortization of $694,000 of allowed expenses incurred in 2012 for Docket No. 11-0721 and approved in Docket No. 13-0318;

(5) Amortization of $72,000 of expenses incurred in 2013 for Docket No. 11-0721;

(6) ComEd's rate case expenses of $248,000, offset by a credit of $295,000 in legal fees recorded in 2013 for Docket No. 12-0321;

(7) ComEd's rate case expenses of $2.3 million incurred in 2013 for Docket No. 13-0318; and

(8) ComEd's rate case expenses of $10,000 incurred in 2013 for this proceeding.

ComEd supported these expenses with an affidavit (ComEd Ex. 2.07) and supporting invoices.

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

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

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

12. Corporate Credit Cards

ComEd explains that in the course of discovery and developing rebuttal, it voluntarily excluded approximately $441,000 in credit card charges. In order to limit the issues in this proceeding, and without waiving any right to object to the same or a

similar proposal in a future proceeding, ComEd accepted an additional adjustment proposed by Mr. Bridal relating to ComEd credit card charges and agreed to voluntarily remove $253,565 of such costs from its revenue requirement. ComEd stated in its surrebuttal testimony that this additional adjustment is not reflected in the rebuttal schedules and revenue requirement. ComEd agreed to make the necessary adjustment to the revenue requirement used to develop delivery service charges to be computed in compliance with the Commission's final Order in this proceeding. *Id.*

The Commission notes that no party other than ComEd and Staff submitted testimony in this proceeding regarding ComEd's credit card charges. The Commission therefore approves the credit card charges subject to the adjustment.

13. Gross Revenue Conversion Factor

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

B. Contested Issues

1. Depreciation for the Filing Year Revenue Requirement

ComEd and Staff provided testimony on this issue in the instant docket, but both agree that the issue will be decided in Docket No. 14-0316, ComEd's Petition to Make Housekeeping Revisions and a Compliance Change to Filed Rate Formula. That docket is pending and a final order is expected by November 30, 2014. *Commonwealth Edison Co.*, Docket No. 14-0316, Interim Order at 5 (Aug. 19, 2014). Based on that decision, ComEd should either make, or not make, the depreciation adjustment in the Compliance filing for this Docket 14-0312. Thus, the Commission finds it unnecessary to address this issue in this docket at this time.

2. Incentive Compensation Program Expenses

a. Annual Incentive Program ("AIP")

(i) ComEd's Position

ComEd asserts that the Annual Incentive Program ("AIP") expense (roughly $66 million dollars), challenged by the AG, is highly beneficial to customers. ComEd states that its AIP is based on eight operational and cost control metrics that are expressly permitted by EIMA. ComEd further notes that ComEd's employees worked towards those metrics on a daily basis, and that customers benefited from their achievement of above target performance on those metrics. The portion of AIP that the AG challenges is the Shareholder Protection Feature ("SPF") that limits the amount of AIP paid by reference to Exelon's earnings per share ("EPS"). ComEd argues, however, that the SPF is not a metric on which employees earn their AIP compensation. Instead, it is a "limiter" that can never increase but can only decrease (as it has the last two years) the amounts that employees are paid and decrease the amount that is incorporated into the revenue requirement.

ComEd contends that the AG's proposal to disallow these prudent and reasonable costs of providing delivery service should be rejected because the program

is consistent with: (1) EIMA; (2) canons of statutory interpretation and construction; (3) recent Commission practice and legislative intent; and (4) prior Commission practice.

ComEd states that under EIMA, incentive compensation expense based on operational and cost control metrics is recoverable. 220 ILCS 5/16-108.5(c)(4)(A). ComEd further states that incentive compensation expense based on net income or an affiliate's earnings per share is not recoverable. *Id.* ComEd maintains that it constructed its AIP to comply with these two requirements and contends that the evidence shows that ComEd's incentive compensation expense does in fact reflect only the achievement of those recoverable operational and cost control metrics.

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

The AIP metrics are weighted, and the sum of that weighting adds up to 100%. According to ComEd, the metrics are the entire universe on which the incentive compensation award is based. ComEd further states that none of ComEd's AIP expense resulted from anything other than ComEd's achievement of those KPIs and the resulting customer benefits. Indeed, ComEd notes that EIMA discusses "expense" which ComEd understands to be a positive number. The EPS limiter only limits the amount of AIP paid – it will never increase the payment – and thus it can never form the basis of an expense.

ComEd also contends that its position is the most consistent with the purpose of EIMA. ComEd notes that it is evident that the General Assembly wanted to ensure that incentive compensation only enhance customer benefits, not provide employees with incentives to enhance the profitability of utility affiliates. That was the way that the Commission interpreted the statute in Docket No. 11-0721: "the new statute prohibits recovery, through rates, of incentive compensation that is based upon increasing the profitability of affiliates." *Commonwealth Edison Company*, Docket No. 11-0721, Order at 87 (May 29, 2012). In that light, for incentive compensation to be impermissible, the incentive compensation must be designed to, or have the effect of, incentivizing employees to achieve that goal. In ComEd's opinion, the AIP at issue here is not designed to and does not have the effect of incentivizing ComEd employees to increase Exelon's EPS and is thus not "based on" Exelon's EPS.

ComEd observes that the parties' interpretation of the statute would broaden the meaning of the term "based on" to mean "determined by" or "impacted by" without regard to whether incentive compensation actually incentivizes employees to enhance

affiliate profitability. ComEd states that this interpretation conflicts with the plain purpose of the statute as reflected on its face and as understood by the Commission and violates rules of statutory construction and interpretation, including the most basic rule that a statute should be read as a whole and in a manner that furthers the underlying statutory purposes. ComEd also notes that the AG's position violates the well-known principles of statutory interpretation that courts should not interpret statutes in a way that produces an absurd result or renders portions of the statutory language superfluous. *Antunes v. Sookhakitch*, 146 Ill. 2d 477, 486, 588 N.E.2d 1111, 1115 (1992) (statutes should be construed to give reasonable meaning and avoid absurdity); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting the word "law" broadly could render other words superfluous).

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

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

ComEd asserts that each of the cases relied upon by the AG actually undermines its position and that the AG misinterprets the point of the first case it cites regarding criminal sentencing guidelines. According to ComEd, in that case, the court specifically stated that "based on" does not mean influenced by or even that something may finally impact the numerical value reached. *U.S. v. Ray*, 598 F.3d 407, 409 (7th Cir. 2010). ComEd explains that in determining whether a plea agreement was based on sentencing guidelines, the court stated, "it is a far cry from the unremarkable observation that the Guidelines influenced the negotiations that ultimately resulted in the agreed term of 263 months to the more dubious contention that the sentence was 'based on' the Guidelines." *Id*. ComEd contends that if the Commission applied the court's reasoning to the instant case, the Commission would find that ComEd's AIP award is not based on EPS even if one accepts that the final dollar amount of the award – like the final number of months in the plea deal – is "influenced by" EPS.

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

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

According to ComEd, the Commission should not interpret "based on" in a vacuum and without regard to whether incentive compensation actually incentivizes employees to enhance affiliate profitability. According to ComEd, looking to the definition of "based on" in other statutes that have different purposes, and without regard to the phrase that "based on" modifies, is simply not informative. ComEd contends that its interpretation, by contrast, is consistent with the purpose of EIMA. ComEd witness Brookins explained that due to the formula rate structure in place since 2011, the ability of ComEd employees to increase Exelon's EPS is extremely limited. The way to increase earnings within those caps would be to increase capital spending. This would increase ComEd's rate base and the total amount of investment on which ComEd can earn its allowed rate of return, in turn increasing ComEd's net income and Exelon's EPS. Under formula rates, increases or decreases in operating and maintenance expense do not impact ComEd or Exelon's earnings because they flow through to customers dollar for dollar, and ComEd does not earn a return on operating expenses. In other words, under ComEd's interpretation, operating expenses do not contribute to net income and do not impact Exelon's EPS. Tr. at 321-347.

ComEd states that it has provided evidence that even when employees' awards are limited, employees continue to work to increase customer benefits. See generally ComEd Ex. 19.0 at 7-14. ComEd notes that the facts show that ComEd's performance on its customer-focused metrics was better in 2012 and 2013 – when AIP awards were limited – than in 2011 – when the AIP awards were not limited. ComEd Ex. 25.0 at 5-6. According to ComEd, the bottom line is that ComEd's AIP cannot and does not

incentivize employees to increase the profitability of Exelon and cannot therefore be "based on" Exelon's EPS as the Commission has logically interpreted that term.

In addition, ComEd provided evidence that the limiter at issue has benefited customers in that it reduced incentive compensation expense by $8.5 million in 2013. ComEd also states that in 2012, the limiter likewise reduced ComEd's AIP award by $17 million. ComEd notes that while other ratemaking adjustments to the 2012 figure ultimately lowered the recoverable amount before ratemaking adjustments, those figures nonetheless add up to $25.5 million. ComEd contends that these amounts constitute significant customer savings. In contrast, ComEd notes, there is no evidence to suggest that the limiter provides any benefit to shareholders. To the contrary, Mr. Brookins' and Mr. Prescott's testimony shows that without the limiter, these increased compensation expenses would simply flow through to customers. Tr. at 347; ComEd Ex. 18.0 REV. at 9.

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

ComEd notes that subsequent to the Orders in Docket Nos. 11-0721 and 12-0321, the General Assembly passed PA 98-0015 on May 22, 2013. This amendment to EIMA states that its express legislative purpose is to correct errant Commission decision-making under EIMA. PA 98-0015, Section 1, eff. May 22, 2013. ComEd notes that this amendment does not change or correct anything regarding the Commission's decisions on incentive compensation. See generally PA 98-0015, eff. May 22, 2013. "[W]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent." *In re Marriage of O'Neill*, 138 Ill. 2d 487, 495-96, 563 N.E.2d 495, 498 (1990) (internal quotations omitted). ComEd also notes that the Illinois Supreme Court has indicated that legislative acquiescence is particularly powerful, where, as here, the legislature has amended other portions of the same law but left the relevant provision unchanged. *See State Bank of Cherry v. CGB Enters., Inc.*, 2013 IL 113836, ¶ 61. ComEd thus asserts that here, the General Assembly has acquiesced in the Commission's view that an incentive compensation plan is not "based on" EPS even though earned awards can be reduced by an EPS or net income limiter.

ComEd notes that over the past decade, the Commission has consistently allowed incentive compensation based on customer focused metrics and disallowed the portion of ComEd's AIP expense that reflects achievement of metrics that are based on Exelon's EPS or ComEd's net income. ComEd further notes that in that same time frame, the Commission has never disallowed ComEd's AIP expense when it was subject to a limiter based on EPS or net income. As ComEd explains, this is the

distinction between AIP compensation earned, i.e., based on a metric – and AIP compensation paid, i.e., subject to a limiter.

As an example, ComEd points to its 2004 AIP, which included an Exelon EPS metric and an Exelon EPS limiter with a minimum threshold EPS performance requirement, very similar to the limiter at issue in this case. ComEd explains that in that year's AIP, the EPS metric accounted for 50% of the total award. In Docket No. 05-0597, the Commission disallowed recovery of 50% of the award – the portion that was based on the EPS metric – but allowed recovery of the remainder of the award that was subject to the Exelon EPS limiter.

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

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

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

ComEd explains that Staff's alternative recognizes that ComEd's AIP compensation is materially based on statutorily prescribed operational metrics and to allow recovery of nothing would be fundamentally unfair. ComEd states that in every FRU since EIMA's enactment – and for almost a decade before that – ComEd's AIP has utilized either a net income or an EPS limiter. ComEd contends that for the Commission to suddenly change course now, without warning and without any changes

in fact or law, and disallow the entire AIP compensation of each and every ComEd employee – over 6,000 employees who achieved operational and cost control targets that provided substantial benefits to customers – is disproportionately harsh and unprecedented.

ComEd explains that the purpose of EIMA was to enable utilities to make significant investment in infrastructure by ensuring cost recovery of certain categories of expenditures – including incentive compensation. Compare 220 ILCS 5/16-108.5 (b) with (c)(4). According to ComEd, this certainty is critical to proper implementation of EIMA. ComEd further explains that it is undisputed that ComEd has been open and transparent about the fact that its incentive compensation plans have utilized EPS or net income limiters for the past decade. ComEd contends that the undisputed evidence shows that ComEd provided incentive plan documents in discovery and as testimonial exhibits in previous dockets. See AG Cross Ex. 13, specifically ComEd Data Request Response to AG 17.03 subpart (a)(ii), (b), (c)(i).

ComEd contends that the AG also ignores that the Commission's approval of costs included in the revenue requirement is not limited to issues raised by the parties. See AG Second Corr. Init. Br. at 35-36. ComEd explains that, to the contrary, the Commission makes its own determination and has certainly disallowed costs that it believes do not meet statutory requirements even when no party has disputed the recoverability of those costs. See, e.g., 2012 Rate Case Order at 52-59 (disallowing rate case expenses even though no party contested their recovery).

ComEd states that if despite the strong evidence to the contrary, the Commission concludes that ComEd employees may be incentivized to some extent to increase Exelon's EPS because of the limiter in place, the Commission should reject the disproportionately harsh remedy proposed by the AG and exercise its business judgment to adopt Staff's alternative limiter that would allow recovery of 102.9% of target. Staff Ex. 8.0 at 16, 33. ComEd states that disallowing the AIP expense entirely would require the Commission to knowingly disallow incentive compensation when at the very least a portion of that incentive compensation is clearly recoverable. ComEd further states that Staff's alternative limiter solves this problem because it "effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation." Staff Init. Br. at 45.

(ii) AG's Position

The structure of ComEd's AIP and its associated Shareholder Protection Feature are largely undisputed. The record contains the formal plan document that governs all AIP programs at Exelon Corp. operating companies, including ComEd (AG Ex. 3.6 at 2-8); the informational guide to the ComEd AIP that is distributed to ComEd employees (ComEd Ex. 2.01); and the informational guide to the Exelon AIP, including the Shareholder Protection Feature that applies to ComEd's AIP. AG Ex. 1.7 at 2-12.

The AIP provides what ComEd calls "pay at risk" (ComEd Ex. 18.0 Rev. at 4) to all ComEd employees based on achievement of KPIs related to ComEd operational performance. AG Ex. 1.7 at 5; ComEd Ex. 2.01 at 3. The ComEd AIP in 2013 had eight operational metrics, two of which relate to ComEd cost controls and six of which

relate to ComEd operations. ComEd Ex. 2.0 at 17. An aggregate index of the eight operational KPIs, ranging from 50% to 200%, is calculated and called the Company Performance Multiplier. AG Ex. 1.7 at 5, 11. In order to determine the actual AIP payout for an employee, the Company Performance Multiplier is then multiplied against a percentage of the employee's incentive-eligible base salary referred to as the "target opportunity" that can range up to 30% depending on seniority and job type. AG Ex. 1.7 at 3; Tr. at 258, 271. Non-represented employees, who represent 38.3 percent of the ComEd employee base (AG Cross Ex. 14 at 1), also have their AIP payout multiplied by an additional index, known as the Individual Performance Multiplier (AG Ex. 1.7 at 2), based on certain individual achievements, that ranges from 50% up to 120%. AG Ex. 1.7 at 2, 8; Tr. at 258, 272. Although the Company Performance Multiplier could be reduced to zero if KPI achievement is poor, it (and thus incentive pay) can never be negative; that is, AIP incentive pay can only increase and would never reduce base salary. Tr. at 111-112.

The Shareholder Protection Feature impacts the amount of AIP incentive payouts depending on the realized value of Exelon Corp. non-GAAP earnings per share ("EPS") and applies to all ComEd employees. ComEd Ex. 2.0 at 17. The Shareholder Protection Feature also applies to all AIP pay paid to Exelon Business Services Company employees, some of which has been included in ComEd's asserted revenue requirement in this proceeding. Tr. at 277-278.

In 2013, the Shareholder Protection Feature set a "threshold" level of Exelon Corporation's non-GAAP earnings per share of $2.22, a "target" level of $2.49, and a "distinguished" level of $2.72. AG Ex. 1.7 at 4; AG Ex. 3.5 at 1. Exelon Corp. earnings per share achievement of $2.22, $2.49 or $2.72 would impose a limitation upon the Company Performance Multiplier of 70% (50% plus 20 percentage points), 120% (100% plus 20 percentage points) and 220% (200% plus 20 percentage points). EPS results between those points would impose proportional limitations. AG Ex. 1.7 at 4; AG Ex. 3.5 at 1. Under the terms of the Shareholder Protection Feature, the Company Performance Multiplier cannot exceed these Exelon Corp. earnings per share percentages, and Company Performance Multipliers that exceed this limit would be reduced down to the cap equal to the EPS percentage including the extra 20 percentage points. AG Ex. 1.7 at 7.

If Exelon Corp. earnings per share is below the threshold value of $2.22, instead of the ordinary rule regarding 20 percentage points, AIP payout is reduced to zero, regardless of how well ComEd employees perform and how many KPIs are met, subject only to the CEO discretionary feature. AG Ex. 1.7 at 7; AG Ex. 3.0C at 21. The AIP program imposes this risk that employee incentive compensation may be limited based on a metric that ComEd employees have little control over. In 2013 the Company Performance Multiplier based on the operational KPIs was 140.39%. However, the Exelon Corp. earnings per share for 2013 was $2.50, which fell slightly above the "target" earnings per share level of $2.49 set in the Shareholder Protection Feature, resulting in a 104.35% plus 20% (124.35%) cap on the Company Performance Multiplier. As a result, the effective Company Performance Multiplier was reduced from

140.39% to 124.35% (20 percentage points above 104.35%). ComEd Ex. 2.0 at 23; AG Ex. 3.4 at 3; AG Ex. 3.5.

The Shareholder Protection Feature reduced ComEd's 2013 AIP payout to employees by approximately $8.5 million. ComEd Ex. 12.0 at 6. Not only does the Shareholder Protection Feature impact AIP payouts in a direct way, but it is designed to be highly sensitive to the ultimate achieved value of Exelon EPS. The AG notes that Exelon EPS has a probabilistic character and could take many different possible values. ComEd witness Prescott confirmed in cross-examination that the threshold, target, and distinguished levels in the Shareholder Protection Feature are set by estimating the probability that Exelon EPS will achieve various levels. Tr. at 263-264. As Mr. Brosch noted in his rebuttal testimony, if Exelon Corp.'s actual earnings per share had been just four cents higher in 2013, at $2.54 instead of $2.50, the calculated EPS percentage for purposes of the Shareholder Protection Feature would have been 121.74% and thus the maximum allowed Company Performance Multiplier would have been 141.74% – meaning that the actual Company Performance Multiplier of 140.39% would not have been reduced or limited. AG Ex. 3.0C at 23.

The controlling legal rule for recovery of incentive compensation by large electric utilities in Illinois is found in Section 16-108.5(c)(4)(A) of EIMA. 220 ILCS 5/16-108.5(c)(4)(A). The AG maintains that ComEd's 2013 AIP expense was based on an affiliate's earnings per share and thus is not recoverable, pursuant to Section 108.5(c)(4)(A).

According to the AG, the factual contours of ComEd's 2013 AIP and its Shareholder Protection Feature are largely undisputed. The main legal question for resolution of this issue is how to interpret the statutory term "based on". If ComEd's 2013 actual AIP expense is "based on" the earnings per share of Exelon, its corporate parent (and thus its affiliate), then the expense is not recoverable. While this question has not been previously litigated since the EIMA amendments to the PUA were passed in 2011, the Seventh Circuit Court of Appeals recently considered the meaning of the term "based on" in a federal criminal sentencing law, 18 U.S.C. § 3582(c). *U.S. v. Ray*, 598 F.3d 407, 409 (7th Cir. 2010). The Court stated its holding clearly:

> Does the plea agreement clearly reflect an intent to tie the sentence to the Guidelines so that, if the Guidelines are subsequently adjusted, the sentence should be similarly adjusted? If so, the sentence may be said to be "based on" the Guidelines.

Id. The AG argues that in the instant matter, the Shareholder Protection Feature, based on Exelon EPS, establishes a potential range for AIP payout as a percentage of the target opportunity. AG Exhibit 1.7, the Exelon AIP guide, clearly reflects an intent to shrink the range of potential payout to the extent that the performance percentage of Exelon EPS falls lower, or to increase the range of potential payout to the extent that realized Exelon EPS falls higher. If the top of the SPF-determined range falls below the realized value of the Company Performance Multiplier and thus becomes a binding constraint, then, under the express terms of the Shareholder Protection Feature, any upward or downward movement of Exelon EPS (compared to what was expected, or

compared to what was preliminarily calculated) necessitates a like adjustment of actual AIP payout. Thus, the AG avers that under the 7th Circuit's logic, AIP expense is clearly "based on" Exelon EPS.

The AG presents an alternate approach to interpreting the term "based on," drawing on a slightly older Illinois appellate case, in which a high school student had injured herself on school grounds and sued the school district. The district moved to dismiss based on a statute that provides immunity to local public entities "where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes." 745 ILCS 10/3-106. Interpreting this statutory language, the Fifth District held that "[t]he plain and ordinary meaning of the phrase 'liability is based on' is that the entity's duty must be derived from its control of the property". *Manuel v. Red Hill Community Unit School Dist. No. 10 Bd. Of Educ.*, 324 Ill.App.3d 279, 284 (5th Dist. 2001). The evidence shows that Exelon Corp. earnings per share was integral to determining the amount of actual AIP payout or expense. Hence, it is entirely reasonable and appropriate for the Commission to conclude that AIP expense was "derived from" Exelon EPS.

In Docket Nos. 06-0070/0071/0072 (consol.), the Commission denied 100% of the Ameren utilities' test-year incentive compensation expense, which had the following restriction, as stated in Ameren's own filing: "If the organization does not meet pre-defined EPS goals (as stated in the Plans), incentive awards are not available." The Commission found that, under the Ameren incentive plans, "all operational goals are dependent upon meeting the EPS target first" and thus it decided to "disallow[] funding measures that primarily depend on meeting financial goals." Similarly, in ComEd's 2013 AIP, the payout of any incentive pay depends on Exelon's meeting the pre-set threshold non-GAAP EPS level (set at $2.22 in 2013).

The AG asserts that parent company financial targets have consistently led to Commission disallowance of incentive pay. For example, in Docket No. 07-0507, the Commission denied recovery of 100% of Illinois-American Water Company's test-year incentive compensation expense because it was dependent on the parent company's reaching certain financial performance targets. In Docket No. 07-0585, the Commission allowed recovery of only 50% of the Ameren Illinois Utilities' test-year incentive compensation expense, because the other 50% of incentive compensation was dependent on the parent company's meeting financial targets.

In Docket No. 05-0597, the Commission found that 50% of ComEd's test-year incentive compensation expense was based on Exelon EPS and thus disallowed recovery of that amount. The AG also emphasizes that the Appellate Court upheld the Commission's disallowance of the 50% of test-year AIP expense in Docket No. 05-0597 that was based on Exelon EPS in *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 398 Ill. App. 3d 510 (2nd Dist. 2009). Here, the Court held that "the Commission could have reasonably concluded that the earnings-per-share portion of the plan provided only a tangential benefit to ratepayers", 398 Ill. App. 3d 510, 552. The Court also held that "the notion that an earnings-per-share-based employee incentive plan provides benefits to shareholders is hardly a controversial proposition." *Id*. at 553.

In Docket No. 07-0566, the Commission disallowed "100% of AIP costs related to the financial net income goal which primarily benefits shareholders." While Ms. Brinkman asserted in a discovery response in this case that ComEd's 2006 AIP plan at issue in Docket No. 07-0566 "contain[ed] an Exelon EPS limiter" and that ComEd provided the plan information to the parties during discovery (AG Cross Ex. 13 at 5), during cross-examination she was unable to say whether that information was entered into the record in Docket No. 07-0566. Tr. at 183-184. The AG's review of the Initial Briefs dated May 29, 2008 filed by ComEd, the AG, Staff, IIEC, and CUB in that proceeding shows that, while the parties debated the incentive compensation issue spiritedly, no party mentioned any Exelon EPS limiter, and the Commission's Order similarly did not mention it.

ComEd's first rate case following passage of EIMA in October 2011 was Docket No. 11-0721, which set a revenue requirement for 2012 based on 2010 expenses. Under ComEd's 2010 AIP program, a ComEd net income limiter was in place – but it applied to limit 2010 pay "only if the composite payout exceed[ed] target level," according to a discovery response by ComEd entered into that proceeding's record by the Staff. Thus, notes the AG, it did not have the potential to reduce actual AIP payout all the way to zero, as the Shareholder Protection Feature in 2013's AIP did. Moreover, while the net income limiter was calculated to be 102.9% for 2010 and the KPI index was 110.3% for that year, seemingly creating a binding constraint of 102.9% on AIP payout, ComEd leadership decided under the CEO Discretionary Feature to increase the net income limiter to 112.9%, according to a separate discovery response from ComEd entered into the record. As Staff suggested in briefing, as summarized by the Commission, "[t]he net income limiter feature is deceiving . . . because management can at its discretion increase that limit with board approval." In other words, the AG argues that ComEd incentive pay for 2010 was not based in any way on net income, because as actual experience revealed, the CEO Discretionary Feature rendered the net income limiter non-operational; the purported constraint had no bite. No party argued that the net income limiter per se warranted disallowance of recovery of all 2010 AIP pay, and, regardless of what parties may have said, the Commission had no reason to disallow ComEd AIP expense for 2010 based on a § 16-108.5(c)(4)(A) argument.

Subsequently, notes the AG, the Commission in both of Docket Nos. 12-0321 and 13-0318 did not discuss in its respective Orders any ComEd net income limiter or Exelon EPS limiter applicable to the 2011 or 2012 ComEd AIPs, respectively, and no party mentioned any such limiter in briefs. In fact, it is clear from the Docket No. 13-0318 Order that the Shareholder Protection Feature in the ComEd AIP was also an uncontested issue there. Although the several rate cases from 2005 through 2007 discussed above are very instructive, the AG asserts that no lesson can be drawn from any of ComEd's previous three formula rate cases as to whether ComEd's 2013 AIP expense based on the Shareholder Protection Feature should be recoverable or not, and that current law requires that the AIP expenses be removed from ComEd's revenue requirements under 108.5(c)(4)(A), because it was based on an affiliate's earnings per share and thus is not recoverable under the law.

The AG supports disallowing the AIP because of its effect on customer service and employee motivation as well as strictly on a legal basis. The AG notes that several ComEd witnesses insisted in their testimony that the alignment of AIP pay with operational KPIs is intended to incent ComEd employees to work toward the Company's realization of operational goals, but the totality of the evidence suggests otherwise. See, e.g., ComEd Ex. 2.0 at 19-20; ComEd Ex. 18.0 Rev. at 5; ComEd Ex. 19.0 at 14. As Mr. Brookins admitted during cross-examination, ComEd communicates the Shareholder Protection Feature to its employees each year in a way "designed to inform our employees that the amount of AIP earned could be limited by the Shareholder Protection Feature." Tr. at 320. Relatedly, Mr. Brookins admitted during cross-examination that Exelon's EPS is publicly reported in financial media (Tr. at 330). The AG pointed out that ComEd witness Brookins admitted that ComEd employees were "very proud" of their operational and cost control achievements in 2013 and were "disappointed" when their incentive compensation was limited by the Shareholder Protection Feature. AG Cross Ex. 14 at 2.

The AG asserts that the premise of incentive compensation is that employees will respond to financial incentives in ways that produce tangible operational benefits and/or cost savings that exceed the costs of the additional compensation. Under this premise, insertion of a Shareholder Protection Feature based upon Exelon EPS serves to dilute or completely eliminate the intended linkage between operational performance and the incentive payouts actually received by the employees. AG Ex. 3.0C at 25. Moreover, "[i]f an EPS Shareholder Protection Feature has the effect of constraining the compensation paid to employees for exceptional operational performance, the employees' focus can be expected to shift toward efforts that improve Exelon EPS, rather than focusing solely upon operational performance." *Id.* at 25-26.

ComEd witness Prescott stated in a discovery response that the Shareholder Protection Feature "is intended to provide an indicator to the Exelon family of companies as to whether funds are available for incentive compensation pay in a given year." AG Ex. 3.7 at 2. Mr. Prescott also stated that the "purpose" of the Shareholder Protection Feature is to not "reward the wrong behaviors" or "create unintended consequences with your rewards." Tr. at 259. However, the AG points out that if ComEd expects all AIP expense to be recoverable from ComEd ratepayers through its annual formula rate updates under EIMA, it is not clear why Exelon Corp. shareholders need "protection" from paying out AIP incentive pay to ComEd employees even if Exelon as a whole has a bad year.

The AG further points out that programs like the Shareholder Protection Feature are not common among similar utilities. While ComEd witness Wathen, an outside compensation consultant, stated in his testimony that "limiters or modifiers" such as the Shareholder Protection Feature in ComEd's AIP "are found in investor-owned utility short-term incentive plans," ComEd Ex. 20.0 at 9:167-168, under cross-examination, he admitted that only one out of the nineteen peer utilities in his study had a modifier based on financial metrics. Tr. at 119; *see also* AG Cross Ex. 11 at 2.

The AG also comments on ComEd's efforts to imply that disallowance of 2013's AIP expense, due to the Shareholder Protection Feature, would permanently end

incentive compensation for ComEd employees. The AG does not disagree with ComEd's repeated contentions that incentive pay based solely on operational goals is a good idea. The Commission should also consider that Section 16-108.5 requires that rates, including the reconciliation adjustment, be based on actual historical costs, and 2013's ComEd AIP expense is in the past. It has been calculated and paid pursuant to the terms in effect in 2013 and described in AG Exhibits 1.7 and 3.6 and ComEd Ex. 2.01. Any future removal of the Shareholder Protection Feature from ComEd's AIP, effective in 2014, 2015, or beyond, would not convert the 2013 AIP into a lawful program.

While several ComEd witnesses, including Mr. Prescott (ComEd Ex. 18.0 Rev. at 9) and Ms. Brinkman (ComEd Ex. 12.0 Rev. at 7) sought to characterize the Shareholder Protection Feature as a "customer protection feature" or one that provides benefits for customers by reducing Company expenses, it is not clear that the triggering mechanism of the Shareholder Protection Feature – Exelon Corp. earnings per share being lower than certain pre-set target levels – relates to any real need to protect customers from higher rates. As AG witness Brosch stated in his rebuttal testimony, "[i]f AIP awards payable for achievement of operational performance are excessive, this would be true without regard to Exelon's achieved EPS." AG Ex. 3.0C at 27. Additionally, it is unclear how or why a "customer protection" character of the Shareholder Protection Feature, if any, would save an otherwise unlawful incentive compensation program that is based on a corporate affiliate's earnings per share.

The AG also recommended that the Illinois Chamber of Commerce ("Illinois Chamber") and Chicagoland Chamber of Commerce ("Chicagoland Chamber") testimonies be given no weight. Both representatives filed testimony supporting incentive pay and warning that the AG's proposal could lead to the end of ComEd's AIP program. The AG provided the Commission with information about the relationship between the Chambers and Exelon that show that Exelon is an active and valued member of the Chambers. For example, ComEd and Exelon Corp. gave around $140,000 to the Chicagoland Chamber in each of 2012 and 2013. Tr. at 371; AG Cross Ex. 17. The AG also demonstrated that the Chamber representatives did not have a clear understanding of the AIP or of ComEd's alternatives, let alone the law. Mr. Maisch suggested in testimony that Mr. Brosch is "seeking to erase" the Shareholder Protection Feature from the ComEd AIP (IL Chamber Ex. 1.0 at 6), and also that Mr. Brosch's proposal would have the effect of "dismantling incentive compensation in its entirety." *Id*. at 7; *see also* AG Cross Ex. 7 at 4. Both the Illinois Chamber and the Chicagoland Chamber witnesses admitted that they had no contention as to how ComEd would actually respond if the Commission hypothetically disallowed AIP expense recovery, and that ComEd could "do any of a number of things", with "many options to consider." AG Cross Ex. 7 at 2; Tr. at 77-78, AG Cross Ex. 15 at 2; Tr. at 376. The Illinois Chamber witness admitted that "I don't know what ComEd would do" under the hypothetical Commission disallowance (Tr. at 79) and that he was not even aware of whether ComEd can remove the Shareholder Protection Feature. AG Cross Ex. 7 at 3; Tr. at 80-81. The Chicagoland Chamber's witness Carpenter testified that while he knows that the Shareholder Protection Feature "could cause the ComEd AIP [payout] to be lesser than it would be otherwise" he admitted that he has no working knowledge of

the provision or any understanding of what would cause the "limiter" to be invoked. Tr. at 377. The AG maintains that there are many good reasons why the Commission should not give weight to the testimony filed by the two Chamber representatives.

Both Staff and ComEd have offered alternative proposals to the AG's proposed 100% disallowance of ComEd AIP expense. Staff witness Bridal suggests in his rebuttal testimony that the Commission use the same 102.9% allowance percentage as it used to decide the contested incentive compensation issue in Docket No. 11-0721. Staff Ex. 8.0 at 33. However, the 102.9% in Docket No. 11-0721 related to the percentage that ComEd would have paid before its Compensation Committee intervened and upended the terms of the 2010 AIP to increase that year's AIP pay. The lawfulness of ComEd's net income limiter was not at issue in Docket No. 11-0721, and the Commission's decision in that proceeding was not an endorsement of the legality of the net income limiter. Because the issues related to AIP incentive pay differ significantly between Docket No. 11-0721 and the instant proceeding, there is no prudential or legal basis to import the Commission's approved AIP expense recovery cap from that proceeding into this one. The AG observes that ComEd witness Brinkman admitted that the 102.9% figure was based on facts specific to the 2010 AIP plan and does not specifically relate to the 2013 AIP plan. ComEd Ex. 25.0 at 3, 60.

The AG asserts that the Commission should find that 100% of ComEd's 2013 AIP expense was based on the earnings per share of Exelon Corp. and thus is not recoverable in rates. The Commission should disallow all of the Exelon Business Services Company AIP expense that has been included in ComEd's asserted revenue requirement, for the same reason. The AG further maintains that the Commission should disallow the portion of ComEd's LTPSAP expense that it seeks to include in revenue requirement. The numerical impact upon revenue requirement of the AG's proposed adjustments are found at AG Exhibit 3.1, page 2 ($39,145,065 for the AIP adjustment) and page 3 ($187,437 for the LTPSAP adjustment).

(iii) Staff's Position

Staff has two recommendations related to ComEd's incentive compensation expense. Staff's primary recommendation is that the Commission adopt the AG adjustment to disallow the ComEd Annual Incentive Program ("AIP") incentive compensation. Staff's alternative position is to allow ComEd to recover 102.9% of its incentive compensation expense.

In support of its primary position, Staff states the entire ComEd AIP which the Company seeks to recover through its formula rate filing, approximately $50 million, intermingles operational goals, which benefit ratepayers, with protections benefitting shareholders in a manner that is: (1) contradictory to established Commission practice and (2) contrary to Section 16-108.5(c)(4)(A). Because the determining factor for incentive compensation expense under ComEd's current AIP is Exelon's earnings per share, and not solely ComEd's "achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance," 220 ILCS 5/16-108.5(c)(4)(A), ComEd's plan creates mixed incentives for employees thereby calling into question the equity of charging ratepayers (as opposed to shareholders) for the

expenses associated with such plan. Notwithstanding ComEd's testimony that the incentive compensation under the AIP plan is "awarded" and "earned" based upon the achievement of ComEd operational goals, ultimately, the amount of the AIP payout (or even if any is paid at all) and therefore the incentive compensation expense is contingent upon Exelon's earnings per share, regardless of whether ComEd employees meet goals of the eight operational metrics. Staff notes that neither "awarded" nor "earned" are used in Section 16-108.5(c)(4)(A). Tr. 148-150. In addition, Staff argues, any claim that such compensation is "awarded" or "earned" prior to application of the Shareholder Protection Feature ("SPF") is inaccurate as the employees have no claim, at any time, to the incentive compensation that is "awarded" or "earned" if the SPF would prohibit its payment. *Id*.

Staff witness Bridal has no policy objection to incentive compensation plans per se. Mr. Bridal understands that generally such programs can provide useful incentives to employees and, depending on the structure of such programs, can provide value to ratepayers. ComEd's entire AIP intermingles operational goals, which benefit ratepayers, with EPS protections benefitting shareholders in a manner that is contradictory to established Commission practice and is at odds with Section 16-108.5(c)(4)(A). Staff Ex. 8.0 at 15-16. Further, as became clear in ComEd's surrebuttal testimony and during the cross examination of ComEd witnesses at hearing, the AIP incentive compensation payout – the expense that was ultimately recorded in the ComEd financial statements and included in the ComEd revenue requirement in this proceeding – is impacted, determined, or based on Exelon EPS achievement.

In the event the Commission does not agree that all of the AIP payout should be disallowed, the Commission can review the ComEd AIP expense and determine what portion of the AIP expense should reasonably be borne by ratepayers consistent with the Commission's past practice. One reasonable alternative that the Commission could consider is allowing ComEd to recover the same level of Company KPI performance of 102.9% (which represents essentially a 2.9% bonus plus 100% of the fair market value of employee salaries, as determined by the Company) that the Commission authorized in prior ComEd formula rate dockets. This would result in an adjustment of approximately $(6,104,000) to the operating statement and $(4,006,000) to rate base. ComEd Ex. 25.01. Similar to its impact on the 2012 ComEd AIP incentive compensation expenses ultimately allowed in ComEd's prior formula rate proceeding, Docket No. 13-0318, the alternative 102.9% limiter proposed in this proceeding effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation. ComEd Ex. 25 at 6. Allowing ComEd to recover 102.9% also allows ComEd to recover close to market-level compensation. ComEd Ex. 18.0 REV at 4-5; ComEd Ex. 25.0 at 3.

The ComEd AIP incentive compensation "award" is one component of total employee compensation that applies to all of ComEd's employees. ComEd Ex. 2.0 at 16-17. Employee compensation is structured by first determining market salaries for its employees and then putting a portion of that market salary "at risk" as incentive compensation (for example, 20% at risk, AG Ex. 1.7 at 3) if operational goals are met. As stated by ComEd witness Prescott, "if ComEd employees want to earn market-level

compensation, they need to ensure ComEd meets its operational metrics." ComEd Ex. 18.0 at 4.

The first part of ComEd's AIP is contingent upon ComEd performance on the eight operational goals or metrics called KPI. ComEd Ex. 2.0 at 18. The second part of the AIP is the SPF, which relies on a reference to Exelon's EPS.

The recovery of incentive compensation expense is specifically addressed under the performance-based formula rate legislation. 220 ILCS 5/16-108.5(c)(4)(A). It is Staff's position that "expense" or "expenses" as used in the statute means costs flowing through the Company's income statement. Specifically, incentive compensation "expense" from an accounting perspective in the context of formula rate determinations means the operating expenses that are largely reflected in the Company's FERC Form 1 or that are otherwise reflected in the Company's books and records. Staff Ex. 8.0 at 22. ComEd confirms that the ComEd AIP expense recorded in the financial statements is the total ComEd AIP payout. Tr. 150-151. Past Commission practice has been to treat capitalized incentive compensation costs in parallel with its treatment of incentive compensation expense. Staff Ex. 8.0 at 22.

The phrase "based on," which appears in two places in Section 16-108.5(c)(4)(A) and again in 16-108.5(c) ("The utility shall file, together with its tariff, final data based on its most recently filed FERC Form 1…"), is not defined. The Merriam Webster dictionary defines the verb "base" as follows: to find a basis <she based her argument against the death penalty on careful research>. Synonyms of the verb "base" are identified as follows: ground, hang, predicate, rest. While Staff views this definition as supportive of its view that the SPF determines the amount of incentive compensation paid and therefore the incentive compensation expense rests upon the SPF, Staff recognizes that the verb "base" has some ambiguity in this context. Clearly ComEd's AIP payout is contingent upon Exelon achieving a particular EPS in the same way that ComEd's formula rates are contingent upon ComEd's FERC Form 1 data. ComEd's use of the Shareholder Protection Feature which relies on Exelon's earnings per share is contrary to prior Commission Orders that have adopted a policy of disallowing incentive compensation expenses that rely on the financial performance of the public utility or its affiliate.

Staff states that EIMA appears to permit incentive compensation plans that reward the achievement of operational goals provided that such plans are prudent and reasonable and consistent with Commission practice. EIMA does not appear to address hybrid plans, such as the ComEd AIP at issue here, which "limit[] the payout of incentive compensation awarded under operational metrics by reference to measures of the company's financial condition." ComEd Ex. 12.0 REV at 4. Instead, Section 16-108.5(c)(4)(A) of EIMA prohibits recovery from ratepayers of incentive compensation expenses if such expenses are "based on" affiliate earnings per share or net income, both clearly "measures of the company's financial condition." *Id*.

In response to ComEd witness Brinkman's statement that "ComEd's AIP could not have been based on Exelon earnings because no matter how high Exelon's earnings were in 2013, those earnings did not and could not increase ComEd's total payout" (ComEd Ex. 18.0, p. 6.), Staff states that Ms. Brinkman's statement is a simply

a play on words for two reasons. First, Ms. Brinkman's statement relies on her assertion that the AIP is "earned" and "awarded" prior to the SPF is applied. However, no payout occurs, and none is earned or awarded, until the SPF determines the incentive compensation payout. Ms. Brinkman, relying on these assertions, interprets the statutory prohibition in Section 16-108.5(c)(4)(A) against recovery from ratepayers of incentive compensation expense based on earnings to apply only if recovery of the "earned" or "awarded" incentive compensation would result in an increase in that award. There is nothing in the EIMA which supports this conclusion. While it is true that ComEd's AIP payout will not increase past a certain point defined in the plan regardless of how high Exelon's EPS is, it is Exelon's earnings which determine the AIP payout and if Exelon's earnings in 2013 were too low, ComEd's AIP payout would have been zero.

Second, Ms. Brinkman, like ComEd witness Brookins, ignores the simple fact that ComEd's AIP is determined by reference to Exelon's earnings. ComEd witness Brookins inaccurately states, "[a]ll of ComEd's AIP expense is strictly related to ComEd operational and cost control metrics, and these are the metrics." ComEd Ex. 19.0 at 5. In actuality, while ComEd uses the eight operational KPIs to make an initial or threshold determination as to whether its employees are eligible to receive incentive compensation in any particular year, to determine the AIP payout, ComEd then must apply the SPF, which is entirely based on Exelon EPS and always serves to determine the existing payout or "expense." Staff states that it is simply untrue that all of ComEd's AIP expense is strictly related to ComEd operational and cost control metrics. Because the amount ComEd is seeking to recover for 2013 used the SPF, which is Exelon's earnings per share, ComEd's expense appears to be (in accordance with the dictionary definition of the verb "base") "based on" an affiliate's earnings per share, in contravention of Section 16-108.5(c)(4)(A).

The Commission has on multiple occasions considered the recovery of incentive compensation costs from ratepayers. The prior Commission practice, affirmed by the Appellate Court, has been to disallow incentive compensation where ratepayers received no benefit or questionable benefit. *North Shore Gas Co./The Peoples Gas Light and Coke Co.*, Docket Nos. 09-0166/09-0167 (Consol.), Order at 58-59 (January 21, 2010). The Commission similarly decided this issue in a ComEd Energy Efficiency reconciliation docket. *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, Docket No. 10-0537, Order at 24 (October 17, 2012).

Further, the Commission previously denied rate recovery of incentive compensation when payout of the non-financial performance goals was dependent upon achievement of financial goals. For example, the Commission denied rate recovery of 100% of Illinois-American Water Company's annual incentive plan costs including non-financial performance goals since the payout under the AIP was dependent on the utility's parent company reaching its financial earnings goals. *Illinois American Water Co.*, Docket No. 07-0507, Order at 25-26 (July 30, 2008).

In Docket No. 07-0566 concerning ComEd, the Commission disallowed 100% of ComEd's Annual Incentive Plan ("AIP") net income goals. *Commonwealth Edison Co.*, Docket No. 07-0566, Order at 61 (September 10, 2008). In adopting Staff's adjustment

in Docket No. 07-0566, the Commission agreed with Staff's concern, among other things, that a financial based metric introduces an inappropriate circular relationship between rates and the expenses such rates are designed to recover - the larger the rate increase granted the more success ComEd will have in achieving its earnings, i.e., net income, goal.

In a Nicor rate case, Docket No. 08-0363, Nicor agreed to remove the costs of all its financially based plans except one, the Incentive Compensation Units ("ICU") plan. The Commission concluded that the ICU plan was also tied to financial goals and denied cost recovery of the ICU expense. *Northern Illinois Gas Company d/b/a Nicor Gas Company*, Docket No. 08-0363, Order at 28 (March 25, 2009). The Commission further elaborated on its policy to deny recovery of costs for goals based on achievement of financial metrics in an Ameren Order. *Central Illinois Light Company d/b/a AmerenCILCO et al.*, Docket Nos. 07-0585/07-0586/07-0587/07-0588/07-0589/07-0590 (Consol.), Order at 108 (September 24, 2008). *See also* Docket No. 93-0183 Order at 52 (April 6, 1994); Docket No. 99-0534 Order at 9 (July 11, 2000); Docket Nos. 11-0281/11-0281 (Consol.) Order at 54 (January 10, 2012); Docket Nos. 12-0511/12-0512 (Consol.) (June 18, 2013); Docket No. 08-0363, Order at 28 (March 25, 2009); and Docket No. 07-0575 et al., Order at 106-108 (September 24, 2008).

With regard to the Commission's treatment of AIP incentive compensation in formula rate proceedings, the Commission has not specifically assessed AIP incentive compensation since its Order in ComEd's initial formula rate proceeding, Docket No. 11-0721. In that Order, the Commission adopted Staff's AIP incentive compensation cap (limiter) of 102.9%. *See Commonwealth Edison Company*, Docket No. 11-0721, Order at 90 (May 29, 2012), *aff'd*, *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 122860. In Docket No. 12-0321, ComEd's AIP was not a contested issue. Thus, the AIP costs included in the revenue requirement were approved without Staff or Commission comment. The Order does not identify the total Company KPI performance or cap, if any, reflected in the AIP cost. *Commonwealth Edison Co.*, Docket No. 12-0321, Order at 31-32 (December 19, 2012). In Docket No. 13-0318, although ComEd's AIP included an Exelon EPS limiter similar to that found in this proceeding, the Company proposed, and the Commission approved, a pro forma adjustment which reduced the AIP incentive compensation down to the 102.9% limit adopted by the Commission in its 11-0721 Order. *See* Docket No. 13-0318, ComEd Ex. 3.0 at 39-40. The AIP itself was again not specifically addressed by Staff or the Commission.

ComEd argues that the Commission has not previously taken issue with the SPF or other EPS or Net Income related limiters and approved AIP incentive compensation that included the SPF as a component of the AIP design in its Order in recent ComEd proceedings including Docket No. 13-0318. ComEd Ex. 25.0 at 4-5. However, this argument rings hollow and a similar argument by ComEd has been previously rejected by the Commission. *See* Docket No. 10-0537, Order at 24 (October 17, 2012). As ComEd stated in this proceeding, limiting AIP to 102.9% effectively negates the SPF component of the ComEd AIP design. ComEd Ex. 25.0 at 6. Further, Staff notes that the Company argument lacks specific reference to where the Commission explicitly

stated its approval of net income or EPS limiters. Any argument that the absence of adjustment to, or discussion of, net income or EPS limiters in prior ComEd Orders is binding on the current proceeding are ineffective, as the decision to allow or disallow recovery of incentive compensation in the current proceeding must be made pursuant to an evaluation of the evidence in this proceeding. The Commission has "the authority to address each matter before it freely, even if it involves issues identical to a previous case." *Lakehead Pipeline Co. v. Illinois Commerce Comm'n*, 296 Ill. App. 3d 942, 956 (3d Dist. 1998). Further, the approval of a revenue requirement in absence of the discussion of all of its components does not provide implicit approval of every cost included in the development of the approved revenue requirement. The Commission need not make a finding on each issue or evidentiary fact. Instead, the Commission is required to make findings only as to those facts which are essential to its determination. *Citizens Utilities Co. v. Illinois Commerce Comm'n*, 49 Ill. 2d 458, 463 (1971).

ComEd witness Prescott states that "[p]ay at risk directly ties compensation to performance – if employees want to earn market-level compensation, they need to ensure that ComEd meets its operational metrics." ComEd Ex. 18.0 at 4. While it may be true that each incentive compensation plan must be reviewed on its terms to ensure that employees are being incented appropriately to meet goals that provide useful and appreciable benefits to customers and in reasonable amounts, it is also true that ComEd's AIP can also create certain disincentives for some employees, particularly in years when Exelon's earnings are low or volatile. Staff Ex. 8.0 at 30. Mr. Prescott's argument that pay at risk programs tie compensation to performance is overstated. Due to ComEd's SPF, if Exelon's EPS is below a threshold EPS, employee performance is irrelevant. High performers and low performers alike miss out on AIP and fail to receive their targeted market compensation. Therefore, there is no incentive for employees to work to "increase customer benefits" if the employees know that ultimately, their performance is not the determining factor in whether they receive the AIP incentive compensation payout. *Id*. at 30-31. This may be especially likely in a year when employees are aware that the Exelon EPS is known to be consistently low. Despite ComEd's assertions that "ComEd's employees are not informed about Exelon's EPS," these assertions are not credible as the Exelon EPS is obtainable on a daily basis by a simple Google search or scan in the newspapers' stock pages. ComEd Ex. 32.0 at 3; Tr. at 329.

Additionally, the SPF relies on the EPS of ComEd's parent, Exelon. Thus, if ComEd employees meet or exceed the operational KPIs, but PECO or another affiliate has a poor year, Exelon's EPS may be below the threshold amount. ComEd's employees receive limited or zero AIP payout due to forces entirely outside of their control. While employees do not have official word until the end of the year as to Exelon's EPS, a low earning or volatile EPS may be tracked by employees unofficially. Therefore, such employees would have less incentive to work hard in order to achieve the operational metric goals. While ComEd's witnesses emphasize that the AIP program benefits ratepayers, this is simply unclear particularly in connection with ComEd's hybrid AIP program. Staff Ex. 8.0 at 31.

Finally, despite ComEd's repeated claims that the AIP is compensation, not a bonus, employees receiving over 140% of at risk pay certainly seems more akin to a bonus than regular salaried compensation. ComEd Ex. 2.0 at 17; Tr. 137-138. It is unclear whether it is reasonable for ratepayers to pay for ComEd employees to receive 140% of market-based at risk pay, especially when individual performance is not taken into consideration for a substantial number of ComEd's employees. As ComEd witness Brinkman confirmed, ComEd employees that operate under a collective bargaining agreement (over 50% of ComEd's employees) will still receive the full AIP payout if they are personally underperforming. Tr. at 148. Staff claims it is unreasonable for ratepayers to pay for 140% of ComEd employees' at risk compensation if those employees perform poorly.

For all of the foregoing reasons, Staff views the ComEd AIP expense as contrary to both the law and Commission practice. As an alternative to disallowing 100% of the ComEd AIP, similar to Docket No. 11-0721, when the Commission found the Company's AIP to be problematic given the potential for manipulation, it did not disallow 100% of ComEd's AIP, but rather capped it at 102.9%. *See* Docket No. 11-0721, Order at 90.

Staff also recognizes this issue is a tough one because the disallowance of 100% of the incentive compensation expense includes expenses for the market value component of employee salaries that would typically be recoverable. Therefore, it may be more equitable to allow legitimate salary expenses to be recoverable. Further, although incentives are mixed in this hybrid plan, the AIP appears to produce some incentive for employees to satisfy legitimate operational metrics that benefit ratepayers. Thus, in the event the Commission does not agree that all of the AIP payout should be disallowed, the Commission could consider allowing ComEd to recover the same level of Company KPI performance of 102.9% that the Commission authorized in Docket No. 11-0721 which would result in recovery of 100% of the fair market value of employees' salaries plus a small, reasonable bonus.

This alternative would result in an adjustment of approximately $(6,104,000) to the operating statement and $(4,006,000) to rate base. ComEd Ex. 25.01. Further, similar to its impact on the 2012 ComEd AIP incentive compensation expenses ultimately allowed in ComEd's prior formula rate proceeding, Docket No. 13-0318, the alternative 102.9% limiter proposed in this proceeding effectively negates any impact of the controversial EPS-based SPF on 2013 ComEd AIP incentive compensation. ComEd Ex. 25 at 6. Allowing ComEd to recover 102.9% also allows ComEd to recover close to market-level compensation, in addition to being consistent with past Commission practice. ComEd Ex. 18.0 REV at 4-5; ComEd Ex. 25.0 at 3.

(iv) Commission Analysis and Conclusion

Section 16-108.5(c)(4) and (c)(4)(A) provide that the performance-based formula rate approved by the Commission shall among other things:

> (4) Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following:

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

220 ILCS 5/16-108.5(c)(4)(A).

At issue is ComEd's Annual Incentive Compensation Plan ("AIP") which consists of eight operational goals or metrics referred to as Key Performance Indicators ("KPI") and a Shareholder Protection Feature ("SPF"), or limiter, which relies on a reference to Exelon's EPS. ComEd Ex. 2.0 at 18-23. ComEd explained it designs its incentive compensation plan such that its employees' salaries are partially recovered through base pay and partially recovered through at risk pay. In other words, ComEd identifies what the salary of each individual should be (100%) and it pays 80% through base pay and 20% through the AIP. The first part of ComEd's AIP is contingent upon the Company's performance on the eight operational goals or metrics. *Id.* After the Company's performance is determined, the SPF, which relies on a reference to Exelon's EPS, is applied. The Commission agrees with this explanation of the program structure, and understands it to demonstrate that the KPI and the EPS limiter can be separated. For this reason, the Commission is reluctant to adopt the AG's 100% disallowance of the AIP.

The Commission agrees with the AG and Staff that the EPS limiter of the AIP is contrary to EIMA, but the remedy the AG seeks – total cost disallowance – is disproportionate. There is no question that the EPS limiter is "based on net income or an affiliate's earnings per share", as its name directly conveys. Thus it is the Commission's prerogative to separate the effect of the EPS from the AIP compensation rather than to completely disallow program expenses that are recoverable under the statute. No party appears to dispute that ComEd's KPI metrics alone are consistent with the operational metrics specified in this section of EIMA. In addition, the record is clear that these metrics incent ComEd employees to meet these goals which are beneficial to ratepayers. The Commission therefore agrees with Staff's alternate position that the appropriate remedy is to eliminate the EPS limiter from ComEd's incentive compensation plan and to adopt a reasonable proxy that allows for recovery of only reasonable and prudent expenses associated with incentive compensation for ComEd employees. The Commission finds that the alternative 102.9% limiter proposed in this proceeding is appropriate and allows for reasonable cost recovery while ameliorating the impact of the controversial EPS-based shareholder protection feature on ComEd's 2013 AIP incentive compensation.

It appears that if ComEd employees do not receive their AIP, they receive below market wages. Staff's proposal of 102.9% represents a 2.9% bonus plus 100% of the fair market value of employee salaries. This would result in an adjustment of approximately $(6,104,000) to the operating statement and $(4,006,000) to rate base.

ComEd Ex. 25.01. The Commission agrees with Staff that allowing the Company to recover 102.9% allows ComEd to recover close to market-level compensation.

The record shows that if Exelon's EPS is high enough, employees can receive over 140% of at risk pay. In Docket No. 11-0721, the Commission stated that:

> The Commission does, however, find that a cap on incentive compensation benefits that are recoverable through rates is necessary, given the potential for manipulation between the two incentive compensation programs. The Commission therefore adopts Staff's cap of 102.9% for any incentive program. Doing so allows for some growth in incentive compensation for ComEd's employees, while placing a damper on the ability of ComEd's management to manipulate the caps on these programs in a manner that increases rates without evidence that adequate benefits flow to ratepayers.

Docket No. 11-0721, Order at 90. Although manipulation is not suggested here, it was also not shown that the possible incentive compensation rewards are reasonable and prudent. Thus, applying the 102.9% cap again in this proceeding insures that ComEd recovers the market-based salary for their employees plus a reasonable bonus which further serves to encourage employees' continued achievement of the operational goals to the benefit of ratepayers, without allowing for excessive cost recovery.

With regard to ComEd's EPS, the Company's refusal to call the limiter a metric does not make it statutorily permissible. EIMA requires the Commission to approve incentive compensation expense that is based on the achievement of certain operational metrics. The Commission is prohibited from approving incentive compensation expense that is based on net income or an affiliate's EPS. The first sentence of Section 16-108.5(c)(4)(A) speaks of metrics; the second sentence does not. The Commission must assume that this omission was intentional on the part of the legislature. Considering Section 16-108.5(c)(4)(A) in that light requires a finding that ComEd's EPS limiter is prohibited. Any incentive compensation expense that is based on income or EPS, whether through a metric or otherwise, is prohibited.

The record is clear that the amount ComEd is seeking to recover for its 2013 incentive compensation expense is impacted by Exelon's EPS. Expense means operating expenses that are reflected in the Company's FERC form 1 or otherwise reflected in the Company's books and records. Staff Ex. 8.0 at 22. The question is whether the dollar amount paid to its employees and sought to be recovered from ComEd's ratepayers is "based on" Exelon's EPS, as under Section 16-108.5(c)(4)(A) the Company is prohibited from recovering incentive compensation based on net income or an affiliate's earnings per share. As the Commission sees it, ComEd employees earn their incentive compensation "based on" meeting the operational goals and KPI metrics which benefit ratepayers and are undisputedly recoverable under EIMA. Following the employees meeting those metrics and earning their incentive compensation, the amount of compensation that is actually paid to those employees can be reduced by, or impacted by, the limiter. It "limits" the amount of incentive pay

they receive and does not provide for any increase in the payment amount beyond what the employees have already earned based on the KPI metrics. (ComEd IB at 38). Further, it does not actually result in an additional expense to be recovered from ratepayers. That this limiter is "based on" Exelon's earnings per share is what makes it prohibited under EIMA and inappropriate to include in any incentive compensation plan. However, the amount of incentive compensation subject to limiting by the EPS was first earned by the employees based on their performance in meeting the KPI goals. ComEd Ex. 31.0, 2:44-3:56. This distinction allows for the separation of the EPS from the rest of the AIP.

Although the Commission finds that the KPI and EPS can be separated, the Commission is concerned about the EPS limiter's potentially detrimental effect on ratepayers in a scenario where Exelon's EPS is too low and ComEd employees receive no AIP compensation regardless of their performance on operational metrics. While there is no evidence in the record to suggest that failing to reach the minimum EPS threshold is correlated with employees' performance on operational metrics, the potential exists for such a situation and the Commission seeks to avoid any scenario in which an incentive program provides a disincentive for employees to produce the maximum available benefits for ratepayers.

The Commission agrees with Staff's rationale for its alternative proposal. In particular, the Commission finds that: 1) the alternative proposal is consistent with past Commission practice and law (*See*, Docket No. 11-0721, Order at 90; *Commonwealth Edison Co.*, 2014 IL App. (1st) 130302 June 30, 2014 p * 3); and 2) the alternative ameliorates the potentially mixed incentives inherent in ComEd's current AIP. For these reasons, the Commission finds the alternative to be consistent with EIMA.

Pursuant to EIMA, ComEd will recover all of its reasonably and prudently incurred actual costs for 2013 – including employee salaries. With this in mind, the purpose of the EPS limiter is unclear. It does not benefit ratepayers, as suggested by ComEd, because it could potentially provide a disincentive to employees to meet the operational metrics when Exelon's earning per share are low. Also, the design of the AIP could result in above market salaries if the performance on the operational metrics and the earnings per share are high enough. In a footnote to its Reply Brief, ComEd states that the EPS limiter is in place to provide consistency across the Exelon family. ComEd Reply Brief at 24. The Commission notes that ComEd strenuously argued that the EPS limiter is not prohibited by EIMA, but failed to convince the Commission that its annual incentive plan with its EPS limiter is reasonable and prudent. The Commission directs ComEd to develop an incentive compensation plan that is consistent with EIMA and does not include an SPF based on Exelon's EPS or any other financial performance metrics. In order to demonstrate that the entirety of the Company's incentive compensation expenses are reasonable and prudent, the Commission expects that this revised plan will be reflected in ComEd's next formula rate update or the Company will run the risk of continued disallowance of such expenses.

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

(i) ComEd's Position

ComEd notes that CCI seeks to disallow all of ComEd's Long Term Performance Plan ("LTPP") compensation – roughly $1.1 million in expense and $0.5 million in rate base. ComEd observes that Mr. Gorman's proposed disallowance is based solely on his fundamental misunderstanding of ComEd's total compensation package. Mr. Gorman believes that because the LTPP shares the same KPIs as the AIP, it is duplicative of the AIP. CCI Ex. 1.0 at 12; CCI Ex. 2.0 at 8.

ComEd believes that Mr. Gorman fails to understand that the AIP is a short-term incentive plan and the LTPP is a long-term incentive plan. ComEd Ex. 18.0 REV. at 14. ComEd explains that the AIP and the LTPP work together, with different eligibility requirements and vesting periods but identical performance goals, definitions, and metrics and are part of a total compensation package at market levels. *Id.* In other words, the AIP is designed to immediately compensate all ComEd employees for high levels of performance that benefit customers. In contrast, the LTPP is designed to defer compensation for certain employees – applicable only to key managers – with the goal of retaining those employees for the long-term. *Id.*

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

ComEd explains that a ComEd employee who participates only in ComEd's AIP would have a total compensation mix broken down between base salary (80%) and short term incentive compensation (20%). ComEd then notes that if that employee participates in the LTPP, the compensation mix changes. The total compensation is not increased, but more of the employee's total compensation is "at risk," and a portion is designated as long term incentive compensation (12%) as opposed to base salary (now 70%) or short term incentive compensation (now 18%). ComEd notes that CCI seeks to disallow the long term piece of that pie, leaving a hole in ComEd's cost recovery of this prudently and reasonably incurred labor cost.

Nonetheless, ComEd provided evidence that as ComEd has revised its incentive compensation programs generally to focus on customer centric metrics, ComEd's performance on those metrics has improved and customer benefits have increased. ComEd explains that because the AIP includes the goals that are most critical to ComEd's business, those goals are also used in the LTPP to ensure ComEd's key managers retain focus on them. ComEd notes that Staff agrees with ComEd, astutely observing that using "similar operational metrics places even more emphasis on the achievement of metrics that provide ratepayer benefits." Staff Ex. 8.0 at 38.

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

(ii) Staff's Position

Staff recommends that ComEd's LTPP be fully recoverable. The ComEd LTPP incentive compensation award is one component of total employee compensation that applies only to key managers and mid-level management employees. ComEd Ex. 2.0 at 25. The LTPP is contingent upon performance towards the same eight metrics utilized within the ComEd AIP. LTPP is paid at 100% if performance towards the LTPP metrics meets or exceeds 100% and no payout is made in the event that LTPP performance is less than 100%. *Id.* In Staff's view, while the metrics may be the same between the AIP and LTPP programs, the programs are different in that (1) the metrics are not weighted the same (AIP KPI performance is calculated as a weighted average, while LTPP KPI performance is calculated as a simple average) and (2) AIP is a short term incentive plan, whereas LTPP is a long term plan. Further, use of similar operational metrics places even more emphasis on the achievement of metrics that provide ratepayer benefits. Staff Ex. 8.0 at 37-38.

(iii) CCI

CCI address the ComEd Key Manager Long Term Performance Plan ("LTPP") which was designed to replace the Restricted Stock Award Program for ComEd Key Managers. CCI Ex. 1.0 at 11-12. CCI point out that in ComEd's 2010 rate case, the Commission disallowed 100% of ComEd's 2009 Key Manager Restricted Stock Award Program, because "the purpose of this plan is to further the financial and operational success of Exelon." *Commonwealth Edison Company*, Docket No. 10-0467, Order at 65 (May 24, 2011). ComEd has since revised its plan, such that the performance goals, definitions and metrics of the LTPP mirror those of the AIP". CCI Ex. 1.0 at 12; ComEd Ex. 18.0 at 14. CCI note the fact that the LTPP and AIP goals are identical is not in dispute, nor is the fact that the employees who are eligible for this plan are also eligible for the AIP. CCI Ex. 1.0 at 12; ComEd Ex.18.0 at 14. CCI believe that precisely because the goals are identical, the costs of the LTPP are redundant and, thus, imprudent and not recoverable under the EIMA.

CCI find the standards articulated in EIMA closely follow declarations in previous Commission decisions regarding allowable incentive compensation. CCI aver that the Commission has repeatedly stated that, in order for a Company to recover the cost of its incentive program, the plan must confer upon ratepayers specific dollar savings or other tangible benefits. *Commonwealth Edison Company*, Docket No. 05-0597, Order at 95-96 (July 26, 2006). Furthermore, CCI assert the EIMA does not provide for recovery of multiple incentive compensation packages based on the same achieved performance. CCI conclude, therefore, that because the performance goals, definitions, and metrics of the LTPP mirror those of the AIP, ratepayers receive no additional tangible benefit from the recovery of the cost of LTPP.

CCI take issue with ComEd's claim that the LTPP was not duplicative of the AIP because the AIP is designed to immediately compensate ComEd employees for high levels of performance that benefit customers, while the goal of the LTPP is retaining employees for the long term. ComEd Ex. 18 at 14. Though ComEd witness Prescott claims that LTPP has met its objective in encouraging key employees to stay with ComEd (ComEd Ex. 18.0 at 13), CCI contend he pointed to no specific link tying employee longevity to the existence of the LTPP in its current form. CCI opine ComEd encourages employee longevity in several other ways as well. CCI support this argument noting employee vacation time is earned based on length of service with the company, as is the pension benefit earned by certain employees. Tr. at 284-87. CCI additionally assert that employees receive gifts on milestone anniversaries with the Company, and the Company offers a retiree medical plan that has both an age and length-of-service component. Tr. at 286-287. CCI argue that, given that ComEd offers several benefits to LTPP-eligible employees with a length of service component, Mr. Prescott's claim that it is the LTPP that has caused a high employee retention rate is unproven. Further, CCI state even if such a link could be proven, longevity with a utility is not one of the examples of a recoverable operational metric listed in the EIMA, nor should it be considered an operational metric since it does not require specific actions to either control cost, improve utility service, or comply with environmental requirements. CCI Ex. 2.0 at 9.

CCI note that ComEd retains the burden of proof, even in the formula rate structure, to establish the justness and reasonableness of the proposed rates or other charges. *See* 220 ILCS 5/16-108.5(c); 220 ILCS 5/9-201(c). CCI suggest ComEd has not met its burden here, and the metrics of the LTPP are duplicative of the metrics of the AIP and provide no additional, tangible ratepayer benefits. The longevity that the LTPP supposedly encourages, in the opinion of CCI, has neither been proven nor shown to be a recoverable metric under the EIMA. CCI conclude that, though ComEd re-designed this previously-disallowed program in an attempt to recover its costs from ratepayers, its latest attempt should be rejected by the Commission as was its previous attempt. Therefore CCI suggest the Commission disallow the costs of this plan.

(iv) Commission Analysis and Conclusion

The Commission agrees with ComEd and Staff and finds that the AIP is a short-term incentive plan and the LTPP is a long-term incentive plan. The Commission understands that the AIP and the LTPP work together, with different eligibility

requirements and vesting periods but identical performance goals, definitions, and metrics and are part of a total market level compensation package. The Commission finds that because the AIP includes the goals that are most critical to ComEd's business, those goals are also used in the LTPP to ensure ComEd's key managers remain focused on them.

Use of the same metrics does not render the LTPP duplicative of the AIP. The Commission finds compelling ComEd's explanation that a ComEd employee who participates only in ComEd's AIP would have a total compensation mix broken down between base salary (80%) and short term incentive compensation (20%). If that employee participates in the LTPP, the compensation mix changes. The total compensation is not increased, but more of the employee's total compensation is "at risk," and a portion is designated as long term incentive compensation (12%), with base salary (now 70%), and short term incentive compensation (now 18%). Moreover, although ComEd can encourage retention of experienced employees through other means than the LTPP, ComEd may still designate a portion of those employees' at risk pay as long term incentive compensation. CCI's adjustment is not adopted.

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

(i) ComEd's Position

ComEd initially requested recovery of 13.5% of its Long-Term Performance Share Awards Program ("LTPSAP") expense in this proceeding, or $588,000. *See* ComEd Ex. 13.03, Sched. C-2.4. The AG seeks to disallow 100% of ComEd's LTPSAP expense. AG Ex. 1.0 2nd CORR. at 27; AG Ex. 1.3 REV. at 3. CCI seeks to allow only 4.5% of ComEd's LTPSAP expense, or $137,000. CCI Ex. 1.0 at 11. Staff states that the Commission could disallow all of ComEd's LTPSAP expense because it is "dependent, in part, on financial measures of the type that the Commission has disallowed in previous proceedings." Staff Ex. 8.0 at 35. To limit the issues in this proceeding, ComEd proposed a true 1/3 approach that results in 5.7% recovery, or $174,000. Mr. Gorman accepted ComEd's alternate proposal.

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

ComEd contends that the AG's only basis for disallowing these prudent and reasonable costs is Mr. Brosch's contention that the payout was limited by the Compensation Committee of the Exelon Board of Directors from 147.8% to 125%. AG

Ex. 1.0 2nd CORR. at 27; ComEd Ex. 12.0 REV. at 11. He then deduces that because the payout was limited, ComEd's assertion that 13.5% of payouts are based on ComEd's operations performance is not supportable. AG Ex. 1.0 2nd CORR. at 27; ComEd Ex. 12.0 REV. at 11. ComEd argues that the opposite is true. The 13.5% is based on target performance. ComEd contends that since its performance met the distinguished level in 2013, a higher percentage of payout is supportable for ComEd. ComEd further notes that ComEd's reduction of its request to 5.7% in accordance with Mr. Gorman's recommendation essentially moots Mr. Brosch's argument.

ComEd accepts Staff witness Bridal's observation that it is true that the LTPSAP payouts are subject to an overall Total Shareholder Return ("TSR") modifier. ComEd Ex. 31.0 at 5. But ComEd also notes that TSR is not the same thing as net income or EPS. Id. ComEd therefore asserts that while Mr. Bridal's description of TSR in his rebuttal testimony is accurate (see Staff Ex. 8.0 at 34-35), his characterization of TSR as "financial measures of the type that the Commission has disallowed in previous proceedings" is not (*id.* at 35; ComEd Ex. 31.0 at 5). ComEd explains that the Commission has disallowed ComEd's incentive compensation when the amount earned was based on Exelon's EPS or ComEd's net income. ComEd notes that the Commission has never disallowed incentive compensation in past ComEd proceedings because the amount was subject to a total shareholder return modifier.

ComEd notes that the AG claims that the ability of the Compensation Committee of the Board of Directors of Exelon to exercise discretion to limit the LTPSAP payout – and the exercise of that discretion in 2013 – requires disallowance of these costs. See AG Second Corr. Init. Br. at 42-43. ComEd contends that this position is ironic considering the AG's contrary position regarding recovery of AIP costs. *See id.* at 38. ComEd notes that the AG specifically distinguishes the recoverable AIP expenses in Docket No. 11-0721 from what it claims are unrecoverable AIP expenses in this docket because the expenses in Docket No. 11-0721 were subject to management discretion, which "rendered the net income limiter non-operational; the purported restraint had no bite." *Id.* ComEd asserts that the AG cannot have it both ways. According to ComEd, if the board discretion rendered a purportedly taboo restraint – and ComEd does not accept that characterization – non-operational and thereby rendered incentive compensation expenses recoverable in Docket No. 11-0721, it should have the same effect here for both ComEd's AIP and LTPSAP expenses.

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

(ii) AG's Position

Following the recommendation of AG witness Brosch, the AG also recommended the disallowance of 100% of ComEd's 2013 Executive LTPSAP expense. AG witness Brosch observed in his direct testimony that the "metric weighting" values in the LTPSAP are not discretely calculated and applied based solely upon ComEd performance. Instead, as ComEd admitted in a discovery response, for two of the operational goals, equally weighted values for all three Exelon Operating Companies,

including Philadelphia Electric ("PECO"), Baltimore Gas & Electric ("BGE"), and ComEd, enter into the calculation for purposes of LTPSAP achievement. AG Ex. 1.8 at 2. Thus, the relative weight afforded operational performance at ComEd is only one-third the weight used in the Company's modified disallowance. AG Ex. 1.0C2 at 26. Additionally, the LTPSAP payouts remain subject to an overall Total Shareholder Return modifier that can increase or decrease overall LTPSAP plan awards by up to 25%, which is a larger overall weighting than has been afforded the CAIDI and SAIFI reliability factors relied upon for ComEd's proposed 13.5 percent recovery rate. AG Ex. 1.0C2 at 26; AG Ex. 1.8 at 3-6; ComEd Ex. 2.01 at 12-13. Finally, according to AG Exhibit 1.9, the weighted average results achieved in 2013 under Exelon's LTPSAP totaled 147.8 percent, but "[t]he Compensation Committee of the Exelon Board of Directors reviewed the results of the LTPSAP plan and limited the total payout percentage to 125%."

The AG cited Mr. Brosch's direct testimony that this type of subjective, high-level modification of LTPSAP calculated results is not supportive of ComEd's assertion that 13.5 percent of payouts under the plan are now directly tied to ComEd operational performance. AG Ex. 1.0C2 at 27. ComEd witness Brinkman stated in her direct testimony that ComEd's LTPSAP plan was changed in 2013 "to directly assign payout percentages to individual goals allowing for greater transparency regarding what portion of an award is related to ComEd's operational performance and what portion(s) related to EPS metrics and the operations of other Exelon subsidiaries." ComEd Ex. 2.0 at 27. While it is true that individual performance goals have now been given a quantified weighting (see ComEd Ex. 2.01 at 17), it is still true that awards are based on the performance of multiple Exelon subsidiaries and affiliates, including PECO, BGE, and Exelon Nuclear. Moreover, the majority of plan metrics are driven by financial performance, with 30% of the LTPSAP award based on the return on equity of Exelon Corp. and another 30% based on funds from operations ("FFO") as a ratio of outstanding debt. The Total Shareholder Return feature remains, as does the Compensation Committee's power to make ad hoc reductions to LTPSAP expense.

Because ComEd is now, as of its rebuttal testimony, seeking recovery of only 5.7% of 2013 recorded LTPSAP expenses (ComEd Ex. 12.0 at 11), the AG recommends disallowance of the 5.7% that ComEd seeks to include in revenue requirement.

(iii) Staff's Position

Staff states that the Commission should adopt AG witness Brosch's adjustment to disallow 100% of the LTPSAP" incentive compensation expense. The ComEd LTPSAP incentive compensation award is one component of total employee compensation that applies only to upper management employees. ComEd Ex. 2.0 at 14. The first part of the LTPSAP is contingent upon performance towards six individual metrics. ComEd Ex. 2.1 at 13. The second part of the LTPSAP is the application of the Total Shareholder Return ("TSR") modifier. *Id.* In 2013, the LTPSAP award was limited at the discretion of the Compensation Committee of the Exelon Board of Directors. AG Ex. 1.0 at 27. TSR "is a standard measure of the performance of a company's stock over time." AG Ex. 1.8. It represents a composite of share price appreciation and

dividends paid, expressed as an annualized percentage. The TSR is compared to the average TSR performance of an Exelon peer group and the variance of Exelon's TSR from the average TSR determines the LTPSAP TSR modifier. The TSR modifier acts to adjust the LTPSAP award by up to plus or minus 25%. ComEd Ex. 2.01 at 13. The TSR modifier did not impact 2013 LTPSAP. AG Ex. 1.8.

Staff states that only a portion of the LTPSAP amount being sought for recovery by ComEd is related to ComEd operational performance. ComEd's rebuttal testimony reduces the amount of recovery it is seeking for LTPSAP accordingly. ComEd Ex. 12.0, p. 11. The remaining LTPSAP costs are dependent, in part, on financial measures of the type that the Commission has disallowed in previous proceedings. The Compensation Committee reduced the LTPSAP payout "to better align the payout with shareholder returns, taking into consideration that Total Shareholder Return was down for the year." Staff Ex. 8.0, Attach. G. Shareholder return is a financial measure similar to the type that the Commission has disallowed in previous proceedings.

Staff notes that EIMA precludes performance-based formula rate recovery of incentive compensation expense that is based on net income or an affiliate's EPS. The Act also subjects the recovery of incentive compensation to the restriction that such recovery must be consistent with Commission practice and law and be prudent and reasonable. The LTPSAP incentive compensation expense is not recoverable as the expense amount is based on the achievement of financial measures similar to net income and affiliate EPS which, Staff asserts, the Commission has on several occasions disallowed.

(iv) CCI

CCI aver that ComEd's LTPSAP was changed in 2013 to assign specific weightings to award categories, two of which are customer-oriented (outage duration and outage frequency). CCI Ex. 1.0 at 10. CCI find each of those customer-oriented categories is weighted 6.7%, for a total of approximately 13.5% of the total of all award categories. *Id*. at 10-11. CCI witness Gorman proposed disallowing two-thirds of the 13.5% of the LTPSAP for which ComEd sought recovery, because only one-third of that award was related to ComEd performance. *Id*. at 11. CCI witness Gorman notes the other two-thirds were related to Baltimore Gas and Electric Company and Philadelphia Electric Company. *Id*. at 11.

CCI assert that ComEd accepted Mr. Gorman's proposal, with a slight modification to recognize that the level of performance in 2013 exceeded the target goal. CCI Ex. 2.0 at 8. CCI state their proposal, as modified and accepted by ComEd, is reasonable for this proceeding.

(v) Commission Analysis and Conclusion

The Commission agrees with ComEd and CCI and rejects the AG's proposed 100% disallowance. The 2013 LTPSAP includes payout percentages for individual customer-focused goals, specifically Customer Average Interruption Duration Index ("CAIDI") and System Average Interruption Frequency Index ("SAIFI"). No party disputes ComEd has shown that its CAIDI and SAIFI metrics performed at distinguished levels. The basis for Staff's and the AG's proposed disallowance is that the LTPSAP

award is subject to a Total Shareholder Return ("TSR") modifier. Staff witness Bridal testified that:

> TSR 'is a standard measure of the performance of a company's stock over time.' It represents a composite of share price appreciation and dividends paid, expressed as an annualized percentage. The TSR is compared to the average TSR performance of an Exelon peer group, and the variance of Exelon's TSR from the average TSR determines the LTPSAP TSR modified. The TSR modifier acts to adjust the LTPSAP award by up to plus or minus 25%. The TSR modifier did not impact 2013 LTPSAP.

Staff Ex. 8.0 at 34-35 (citations omitted). The TSR modifier is based on the achievement of financial measures that provide no benefit to ratepayers and is, thus, inconsistent with Commission practice. The Commission finds the TSR modifier, like the EPS limiter, to be prohibited by EIMA. The Commission finds the adjustment proposed by CCI witness Gorman appropriately reduces the amount recovered to remove the prohibited TSR portion of this incentive compensation plan.

Because only one-third of that award is related specifically to ComEd's performance, CCI proposes disallowing two-thirds of the 13.5% of the LTPSAP for which ComEd sought recovery. ComEd accepted CCI's proposal with a slight modification to recognize that the level of performance in 2013 exceeded the target goal. The Commission approves the additional partial disallowance of the LTPSAP costs which are not reflective of specific company performance, as proposed by CCI and modified and accepted by ComEd. Consistent with the AIP decision above, this conclusion attempts to recognize that portions of this plan are beneficial to ratepayers and attempts to remove from recovery that part of the incentive compensation plan that is based on net income or an affiliate's EPS, as prohibited by EIMA.

3. Collection Agency Costs

a. ComEd's Position

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

ComEd notes that ICEA has taken issue with Staff's recommendation that collection agency costs related to PORCB should be recovered through Rider PORCB. ICEA takes the position that these costs should be recovered through delivery services.

ComEd and Staff agree that the remaining $647,000 in collection agency fees can be attributed to ComEd supply and should be recovered through Rider PE – Purchased Energy ("Rider PE"). ComEd Ex. 3.0 at 33; Staff Ex. 2.0 at 12; ComEd Ex. 13.0 at 12.

b. Staff's Position

Staff recommends that the Commission adopt its adjustment to remove from the revenue requirement collection agency costs associated with PORCB service and with ComEd supply service. These costs should be excluded from the revenue requirement and should be recovered as appropriate through Rider PORCB and through Rider PE (and associated Rate BESH). The associated Rider PORCB and Rider PE tariff changes set forth in ComEd Ex. 13.09, 13.10, and 13.11 should likewise be approved. Staff Ex. 8.0 at 6-7. Finally, the Commission should approve Staff's proposal regarding ComEd's request for an affirmative finding regarding the appropriate recovery mechanism for certain collection agency costs. Staff notes that ComEd does not object to its proposal.

The collection agency costs associated with PORCB service should not be recovered through delivery service rates. Section 16-118(c) of the Act states the utility shall purchase receivables at a just and reasonable discount rate and that the discount rate shall be based in part on administrative costs associated with PORCB service. 220 ILCS 5/16-118(c). Collection agency costs associated with PORCB service are an administrative cost that would not be incurred if not for ComEd's provision of PORCB service. Thus, such collection agency costs are an administrative cost associated with PORCB service. Ultimately all costs associated with the provision of PORCB service are to be recovered from Retail Electric Suppliers ("RESs"). Commonwealth Edison Co., ILL. C. C No 10, 2nd Revised Sheet No. 393. Thus, it would be inappropriate for these PORCB costs to be recovered through delivery service rates. Staff Ex. 2.0 at 10-11.

Costs associated with PORCB service in excess of those recovered from the RESs are to be recovered temporarily from retail customers in accordance with the provisions of the Purchase of Receivables Adjustment section of ComEd Rider RCA – Retail Customer Assessments ("Rider RCA"). Commonwealth Edison Co., ILL. C. C No 10, 2nd Revised Sheet No. 399. At such a time that the total historical amounts recovered from the RESs via Rider PORCB exceed the total historical costs associated with the provision of PORCB service, the excess is to be refunded back to retail customers in accordance with the provisions of the Purchase of Receivables Adjustment section of Rider RCA, to provide reimbursement to such retail customers for amounts previously recovered from such retail customers for accrued costs associated with PORCB service. *Id*. Under this approach, all costs associated with the provision of PORCB service are ultimately recovered from the RESs and not retail customers. Staff Ex. 2.0 at 11.

In the event that the Commission agrees with Staff's recommendations, the collection agency costs associated with PORCB service and ComEd supply service must be removed from the revenue requirement to ensure they are not recovered twice – once through the riders and once through base rates. Staff Ex. 8.0 at 6-7.

c. ICEA's Position

ICEA asserts that collecting PORCB-related collection agency costs through Rider PORCB leads to a regulatory lag that potentially divorces costs from their causers. ICEA argues that because customers may switch back and forth relatively freely between RES and bundled service—subject to some bundled hold restrictions—the collection agency costs set in the present docket will likely be outdated within a short period of time. ICEA further argues that the lag has a muted effect if collection agency costs are recovered through delivery costs, because delivery service customers are far less likely to leave delivery service than a RES or bundled service customer is likely to switch between the two. ICEA recommends that costs would be better matched to causers by recovering collection agency costs through delivery charges.

ICEA responds to Staff's statutory and tariff arguments by noting that both Section 16-118(c) of the PUA and ComEd's Rider PORCB allow PORCB-related costs to be recovered from "retail customers." ICEA notes the significance of the statutory and tariff language is that it would allow ComEd to recover its collection agency costs for all customers through the delivery charge. ICEA urges the Commission, based on the evidence regarding the regulatory lag and the legality of collection through delivery charges, to order ComEd to collect collection agency costs through delivery charges.

d. Commission Analysis and Conclusions

It appears that ComEd has not previously sought recovery of these particular costs. ComEd Ex. 3.0 at 32. Staff recommends that collection agency costs related to supply be recovered through either Rider PORCB (for RES customers) or Rider PE (for utility bundled supply customers). In contrast, ICEA recommends that all collection agency costs be recovered through delivery charges. The Commission turns to the statute and previous orders decide how these costs should be recovered. Section 5/16-118(c) states that:

> The tariff filed pursuant to this subsection (c) shall permit the electric utility to recover from retail customers any uncollected receivables that may arise as a result of the purchase of receivables under this subsection (c), may also include other just and reasonable terms and conditions, and shall provide for the prudently incurred costs associated with the provision of this service pursuant to this subsection (c).

220 ILCS 5/16-118(c). The Commission discussed this section in Docket 10-0138 and stated the following:

> the General Assembly did specify certain structures for POR and UCB. Those structures are contained in Section 16-118 of the Act. And, in fact, they are very specific. They are to create, for purchase of receivable programs, a rate that is just and reasonable, after notice and a hearing that is based upon a utility's historical bad debt and also, any reasonable start-up costs, as well as administrative costs. 220 ILCS 5/16-118(c).

Commonwealth Edison Co., Docket 10-0138, Order on Rehearing at 5 (August 17, 2011). Also, in that Docket, the Commission denied an intervenor's request to have these costs borne by all eligible ComEd customers. Docket 10-0138, Order at 27 (December 15, 2010). It is clear that the administrative costs associated with PORCB are to be recovered from RESs through Rider PORCB.

The collection agency costs at issue here are administrative costs related to supply service and should be recovered through Rider PORCB or Rider PE. If a RES did not take service under PORCB, these are costs that a RES would incur itself. Staff's proposal is consistent with this reasoning and is adopted.

With respect to ICEA's argument regarding the term "retail customer" in Section 5/16-118, the Commission does not find it to support recovering these costs from all delivery service customers. Although, the definition of "retail customer," contained in Section 5/16-102, appears to encompass all of ComEd's delivery customers, the Commission finds that as used in Section 5/16-118 the meaning is less definite. It states:

> The electric utility retains the right to impose the same terms on retail customers with respect to credit and collection, including requests for deposits, and retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services or purchased receivables, in the same manner that it would be permitted to if the retail customers purchased power and energy from the electric utility.

220 ILCS 5/16-118. This first use of "retail customer" in this sentence must mean RES customers on Rider PORCB or it does not make sense. The second use of "retail customer" defines itself as those customers on ComEd supply. So in this sentence "retail customers" are those customers receiving supply from a RES that has signed up for Rider PORCB as opposed to if "retail customer purchased power and energy from the electric utility", who are customers on ComEd supply. To be consistent then, in the very next sentence the administrative costs that are permitted to be recovered from "retail customers" should only be recovered from RES customers receiving service pursuant to Rider PORCB.

The Commission adopts Staff's position, and ComEd is directed to adjust its revenue requirement to reflect the Commission's finding that these costs are properly recovered through Rider PORCB and Rider PE. This is consistent with the statute and the general principle of rate design based on cost causation. Accordingly, ComEd is authorized to file corresponding Rider PORCB, Rate BESH and Rider PE tariff changes and informational sheets, as applicable, reflecting this finding with its compliance filing.

VI. Rate of Return

A. Overview

Staff and the Company both recommend a 7.06% rate of return on rate base for 2015 rate setting and a 7.04% rate of return on rate base for 2013 reconciliation for

ComEd's electric delivery services, based on the following capital structure and capital costs:

Filing Year:

Capital Component	Percent of Total Capital	Cost	Weighted Cost
Short-term Debt	0.22%	0.40%	0.00%
Long-term Debt	54.01%	5.16%	2.79%
Common Equity	45.77%	9.25%	4.23%
Credit Facility Fees			0.04%
Total	100.00%		7.06%

Reconciliation Year:

Capital Component	Percent of Total Capital	Cost	Weighted Cost
Short-term Debt	0.22%	0.40%	0.00%
Long-term Debt	54.01%	5.16%	2.79%
Common Equity	45.77%	9.20%	4.21%
Credit Facility Fees			0.04%
Total	100.00%		7.04%

Staff Ex. 3.0 at 4; ComEd Ex. 3.01, Schedule FR D-1.

B. Capital Structure

Staff and the Company agree that an end-of year 2013 capital structure comprising 0.22% short-term debt, 54.01% long-term debt and 45.77% common equity (excluding goodwill) is appropriate for setting rates in 2015 and the reconciliation for 2013. Specifically, Staff agrees that ComEd's capital structure is appropriate for the reasons set forth in Docket No. 13-0318, ComEd Ex. 4.01 at 23-25. Staff Ex. 3.0 at 2.

ComEd has updated its rate of return through agreement with Staff. Therefore, the Commission approves ComEd's rates of return for the 2013 Reconciliation Year and the 2015 Initial Rate Year.

C. Cost of Capital Components

1. Rate of Return on Common Equity

Staff and ComEd agree that the cost of equity is 9.25% for the 2015 filing year revenue requirement and 9.20% for the 2013 reconciliation year revenue requirement. The 9.25% return equals the 3.45% monthly average 30-year U.S. Treasury bond yield, plus 580 basis points, as required under Section 16-108.5 of the Act. ComEd did not meet a service reliability target outlined in Section 16-108.5, therefore, it incurred a five basis point penalty reduction to the cost of equity applied to the reconciliation year revenue requirement. Staff Ex. 3.0 at 4; ComEd Ex. 5.0 at 5.

2. Cost of Long-Term Debt

Staff and the Company agree that a cost of long-term debt of 5.16% is appropriate for both 2015 rate setting and the 2013 reconciliation. Staff Ex. 3.0 at 4; ComEd Ex. 3.0, Schedule FR D-1.

3. Cost of Short-Term Debt

The Company presented a short-term debt cost of 0.40%, which equals the weighted cost of short-term borrowings reported in the Company's 2013 Form 10-K, page 327. Nevertheless, because there was a relatively small short-term balance as of the end of the year, this does not affect the overall cost of capital. Staff Ex. 3.0 at 2-4; ComEd Ex. 5.0 at 4.

In addition, ComEd's annual credit facility commitment fees, when divided by the total capitalization, produce a credit facility fee of 4 basis points, which should be added to ComEd's overall cost of capital. (Staff Ex. 3.0 at 4; ComEd Ex. 3.02 at 87.

VII. Reconciliation

A. Calculation of Interest on Reconciliation Balance Net of Tax

1. ComEd's Position

ComEd observes that both the AG and CCI propose reducing the reconciliation balance upon which interest is calculated by the amount of accumulated deferred income taxes ("ADIT") said to be related to that balance. That would mean that interest would be paid on only a portion of the reconciliation balance at the end of 2013. ComEd Ex. 12.0 REV. at 29. According to ComEd, three independent reasons compel rejection of this proposal: (i) the proposal is contrary to the law and Commission decisions; (ii) the proposal is without merit; and (iii) the proposal is inconsistent and asymmetrical. ComEd also believes the AG's "alternative proposal" must be rejected.

ComEd notes that the same proposal has been rejected in at least five prior ComEd cases and that no new argument in support of the proposal is advanced here. ComEd Ex. 12.0 REV. at 24-25. ComEd also notes that while the General Assembly has amended the relevant sections of EIMA since the Commission first rejected this proposal, the General Assembly did not change any statutory language to authorize the subtraction of ADIT as proposed here, thus evincing, in ComEd's view, a legislative endorsement of the correctness of the Commission's rejection of that proposal. *Id.* at 25.

ComEd asserts that beginning with ComEd's initial formula rate case, the AG and others advanced proposals designed to erode recovery of the full reconciliation balance. ComEd explains that among these, the AG proposed the same ADIT adjustment that it continues to argue in this docket, and also joined others to argue that the interest rate applicable to the reconciliation balance should be set at ComEd's short-term debt rate rather than ComEd's weighted average cost of capital ("WACC"). See generally Docket 11-0721, Order at 166-167, 161-166. As ComEd notes, the Commission rejected the proposed ADIT adjustment on the merits, but set the interest rate based on a formula that produced a much lower rate than ComEd's WACC. *Id*. On rehearing, that rate was

further lowered to ComEd's short-term debt rate. Docket No. 11-0721, Order on Rehearing at 36.

ComEd explains that because the Commission did not correct all of these issues on rehearing, the legislature made a number of clarifying changes to EIMA, including language specifying that the "interest" applicable to the reconciliation balance is the utility's WACC. See, e.g., PA 98-0015, 220 ILCS 5/16-108.5(d). ComEd stresses that PA 98-0015 made no changes to overturn the Commission's rejection of the AG's proposed ADIT adjustment, evincing the legislature's acquiescence in the Commission's ruling on this issue.

ComEd contends that although the AG had no basis upon which to continue proposing the same ADIT adjustment rejected in Docket No. 11-0721, it nevertheless continued to argue for adoption of this proposal in four subsequent ComEd cases. See AG Ex. 1.0 CORR. at 18 (citing to Docket Nos. 11-0721, 12-0321, 13-0318, 13-0386, and 13-0553). According to ComEd, while the Commission rejected the ADIT proposal in each of these cases, it was not until Docket No. 13-0553 that the Commission had the opportunity to synthesize and apply the legislative history and recently enacted provisions of PA 98-0015 to the issues surrounding the reconciliation balance and interest rate.

ComEd states that, at the AG's prompting, the Commission initiated Docket No. 13-0553 to investigate three issues regarding ComEd's formula rate tariff (Rate DSPP). Two of these issues involved adjustments to the reconciliation balance and associated interest rate: (i) ComEd proposed that the WACC interest rate applicable to the reconciliation balance should be "grossed up" to account for the taxes that apply to that interest, and (ii) the AG proposed the same adjustment it advances here – to reduce the reconciliation balance by the associated ADIT. ComEd notes that in addressing these "reconciliation balance" issues, the Commission turned to the recent passage of PA 98-0015 and the legislative history to inform its analysis. The Commission set WACC as the interest rate to be applied to the reconciliation balance without any mention of a "gross-up" for the effect of income taxes is determinative. *Commonwealth Edison Co.*, Docket No. 13-0553, Order at 18 (Nov. 26, 2013). ComEd also notes that, consistent with this plain and direct reading of the statute's language, the Commission also rejected the proposed ADIT adjustment to the reconciliation balance. Thus, according to ComEd, the Commission addressed these reconciliation balance issues in a consistent, holistic manner that was faithful to PA 98-0015, the legislative history and the principle of legislative acquiescence. ComEd emphasizes that this is precisely what ComEd witness Warren sought to elucidate in his testimony when he characterized these two conclusions as reflective of a "prescribed" rather than "cost-based" approach. See generally ComEd Ex. 23.0 at 4-11. In other words, ComEd notes, the Commission interpreted EIMA and the legislative history as plainly prescribing the reconciliation balance and interest rate without further adjustment.

The central principle of EIMA is to "[p]rovide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law." 220 ILCS 5/16-108.5(c)(1). ComEd witness Brinkman explains that an ADIT liability generally represents a deferred tax

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

ComEd explains that in the case of a positive reconciliation balance, the payment of the income taxes associated with the future recovery of that balance is deferred until that balance is recovered through the revenue requirement. There is no mismatch. The benefit and tax are both deferred. ComEd notes that the AG and other proponents have provided no proof that any reconciliation balance results in reduced cash tax payments in the rate year. Rather, ComEd explains that the reconciliation balance is simply that—an accounting balance that will be paid to the utility in the future. It provides no source of funds to the utility.

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

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

ComEd witness Warren offers a further conceptual basis in opposition to the AG and CCI proposals, and explains why logic and consistency require that these proposals be rejected. According to Mr. Warren, two possible models exist for the treatment of reconciliation balances and the related tax issues, including treatment of ADIT. ComEd therefore asserts that tax impacts either should be fully considered or not considered at all; however, according to ComEd, the AG and CCI approach treats those issues in an asymmetrical manner. ComEd explains that if ADIT were to reduce the reconciliation balance (the only other factor that determines the reconciliation amount to be refunded or surcharged to customers), as those parties propose, the interest rate applicable to the reconciliation balance (the weighted average cost of capital) should also be

"grossed up" to account for the taxes that apply to that interest. ComEd Ex. 23.0 at 11. ComEd contends that AG and CCI do not advocate this symmetrical approach to the treatment of tax issues. By contrast, ComEd notes, the Commission's approach to date has been internally consistent. The Commission has rejected consideration of tax impacts in applying the interest rate to the reconciliation balance (by holding that the rate may not be "grossed up" for income tax effects), while its prior treatment of the reconciliation balances has rejected proposals to reduce that balance by the associated ADIT. Id. at 9-10. ComEd urges that this approach be followed here.

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

ComEd notes that its witness Ms. Brinkman testifies extensively about the accounting rationale for ADIT; no issue exists with the concept generally. ComEd Ex. 12.0 REV. at 23-35; ComEd Ex. 25.0 at 18-27. Indeed, ComEd adds, it is that very accounting logic that requires that the ADIT adjustment be rejected here (i.e., because there is no cash benefit to ComEd). ComEd further notes that, for these same reasons, CCI's discussion of an Ameren appellate case and the AG's discussion of a Hawaii case are irrelevant. ComEd contends that neither speaks to the specific facts, law or legislative history at issue here with respect to whether adjustments are allowed to the reconciliation balance. *See Ameren Ill. Co. v Ill. Commerce Comm'n et al*., 2013 IL App (4th) 121008, ¶¶ 34-39; ComEd Ex. 33.0 at 5-7.

ComEd opposes AG witness Brosch's proposed alternative to subtracting ADIT from the reconciliation balance – to include the ADIT related to the reconciliation balance in rate base, i.e., deduct that ADIT from ComEd's overall rate base. ComEd explains that this proposal, also proposed by the AG in prior cases, would reduce ComEd's revenue requirement even more than the principal reconciliation balance/ADIT proposal, and suffers from the same, and additional, defects as the principal proposal. First, ComEd notes that this proposal also fails to recognize that this ADIT does not provide any rate year cash benefit or source of financing to ComEd. ComEd also contends that it is conceptually improper to deduct from rate base ADIT that relates to an item that itself is not given rate base treatment, in this case the reconciliation balance. ComEd explains that on rate base items, it recovers a return of and on its investment as well as its associated income tax liability (the tax "gross up"). On the

reconciliation balance, by contrast, ComEd recovers only its weighted average cost of capital without any tax gross up.

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

2. AG's Position

The statute creating the new formula rate process is clear that the formula must "[p]rovide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law." 220 ILCS 5/16-108.5(c)(1). The statute further requires the formula to provide for an annual reconciliation of the revenue requirement established for a calendar year and the subsequently determined "actual" revenue requirement for that year. 220 ILCS 5/16-108.5(c)(6) and (d)(1). The statute provides that the reconciliation shall be recovered or refunded "with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year." *Id*.

Consistent with the overall purpose of the statute to enable the utility to recover its actual costs, the AG asserts that the interest charge is intended to compensate the utility for the time value of money for the period of time it must finance the reconciliation balance. The General Assembly directed that the interest rate equal the "utility's weighted average cost of capital approved by the Commission for the prior rate year," but did not specify how to determine the amount to which the interest should be applied. The AG maintains that, consistent with the statute's overall purpose to match revenues with costs, the Commission should only apply the interest rate to amounts that the utility will actually have to finance during the reconciliation period. Stated differently, interest should be applied to only the net cash flow that was foregone by the utility while awaiting recovery of the reconciled revenue requirement.

In responding to the Commission's stated interest in its last formula rate order in additional information about the People's recommendation to apply interest to the net-of-tax reconciliation balance, AG witness Effron explained how the reconciliation balance is calculated. He pointed out that "[t]he actual reconciliation revenue requirement appears on Schedule FR A-1-REC. As can be seen on Lines 16-20, there is a 'gross-up' of the return component to provide for income taxes." AG Ex. 2.0 at 7. Moreover, the reconciliation revenue requirement "implicitly includes any income taxes due on the difference between the actual revenue requirement and the revenue requirement in effect." *Id*. at 7.

Mr. Effron demonstrated that the reconciliation balance presented by ComEd actually is made up of several components, including revenues representing a return for shareholders (the return on equity) and revenues that will be used to pay taxes in the year the revenues are received. *Id*. at 8. While shareholders have a claim to the revenues representing the additional income that is due them, entitling them to interest on that amount during the reconciliation period, they have no claim on the revenues

recovered to pay taxes. *Id*. Significantly, the income tax is not due or paid until after the reconciliation revenue is actually received, eliminating any actual financing costs to ComEd. *Id*. at 9; AG Ex. 1.0C2 at 5.

Mr. Effron presented AG Exhibit 2.1 showing the calculation of taxes on the reconciliation balance. While the reconciliation amount, or the actual revenue requirement Additional Net Income Required to Earn the Authorized ROE was $133,293,000, consumers will pay an additional $93,300,000 for the taxes ComEd will pay when this revenue is received, resulting in a total reconciliation charge of $226,593,000. AG Ex. 2.0 at 9; AG Ex. 2.1. There is no dispute that consumers will provide ComEd with the revenues necessary to cover the $93,300,000 in taxes. Consumers should not pay interest on that tax amount now because (1) it is not payable in cash until after the revenues are received, as Ms. Brinkman revealed in her rebuttal testimony, ComEd Ex. 12.0 (Rev.) at 29, and (2) therefore ComEd does not need to finance that amount pending recovery of the reconciliation revenues.

The interest associated with the reconciliation balance excluding the $93,300,000 in taxes due the government after reconciliation revenues are received equals $20,099,000, which is $14,068,000 less than the $34,167,000 calculated by the Company. AG Ex. 2.0 at 9. This results in a total "Reconciliation with Interest" that should appear on ComEd Ex. 3.01, Sch. A-4, line 31 of $246,692,000. Id. at 9; AG Ex. 2.1.

AG witness Brosch explains the issue somewhat differently, but arrives at the same conclusion as Mr. Effron. He also presented in his rebuttal testimony an example where another state's public utilities commission, in this case Hawaii, recently found that income tax deferrals should be recognized as an offset to the balance of accrued revenues that is allowed to earn interest within the Revenue Balancing Accounts of the Hawaiian Electric Companies ("HECO Companies").

EIMA is intended to provide the utility with the recovery of its actual costs. It would be unreasonable and inconsistent with ComEd's actual tax liability to compensate it with interest as if it paid taxes before the reconciliation revenues are received. However, that is the effect of ComEd's application of interest to the reconciliation under-collection, increased for taxes. AG Ex. 2.0 at 7. The AG requests that the Commission adjust the reconciliation balance to reflect the net-of-tax under-collection, and restate the interest applicable to the reconciliation under-collection to $20,099,000, representing an adjustment of $14,068,000 to the Company's requested interest amount.

The AG presented the testimony of both Mr. Effron and Mr. Brosch that the most accurate way to account for the interest on ComEd's reconciliation balance is to recognize that ComEd will not have an income tax expense related to the reconciliation revenues until it receives those revenues. However, in ComEd's 2013 formula rate docket, the Commission declined to adopt their recommendation because it was concerned that the statute did not expressly authorize the net-of-tax adjustment. Docket 13-0318, Order at 63 (Dec. 18, 2014). In a related docket to amend the formula to reflect the net-of-tax treatment the Commission declined to adopt the People's recommended net-of-tax reconciliation. Docket No. 13-0553, Final Order at 43 (Nov.

26, 2013). While the AG has presented the interpretation of EIMA and specifically the Commission's decision not to make the accounting adjustment necessary to apply the interest to the actual amount subject to financing, to the Appellate Court, no decision has been issued to date. See Case No. 14-0275, Appellate Court of Illinois, First Judicial District.

As an alternative to its primary position, the AG proposes a deduction to the delivery services rate base to remove the Accumulated Deferred Income Taxes, or ADIT, associated with the reconciliation balance is necessary to protect consumers from paying a rate base return on the non-investor-supplied ADIT funds arising from ComEd's delayed receipt of reconciliation revenues. AG Ex. 1.0C2 at 7. Mr. Brosch explained that "[u]tilities are capital-intensive businesses that invest continuously in newly constructed or acquired assets. These large annual capital investments generate persistently large income tax deductions for bonus/accelerated depreciation and other tax deductions and credits that must be recognized by recording ADIT under Generally Accepted Accounting Practices ("GAAP") rules. … [ADIT] represents a significant source of capital to the utility." *Id.* The AG emphasized that ADIT balances represent a form of zero-cost capital to the utility created by the income tax savings permitted under tax law. The Commission routinely recognizes ADIT balances as rate base reductions in electric delivery service and other rate proceedings so that consumers do not provide the utility with a return on this non-investor resource. *See Ameren Ill. Co. v. Ill. Commerce Comm'n*, 2013 IL App (4th) 121008, ¶ 34.

ComEd recognizes jurisdictional ADIT generally in this case. See ComEd Ex. 13.01, Sch. B-1, Line 17 & App. 4. ComEd only deducts "jurisdictional" ADIT, or deferred taxes related to Illinois delivery operations. As pointed out by AG witness Brosch, "ComEd has cumulatively recorded $164.9 million of ADIT, representing the deferred income taxes associated with the Company's cumulative reconciliation balance as of December 31, 2013." AG Ex. 1.0C2 at 8. However, ComEd treats this ADIT balance as if it were non-jurisdictional.

ComEd suggests that this ADIT can be ignored notwithstanding its association with the EIMA reconciliation process that plainly stem from Illinois jurisdictional delivery services. ComEd argues that the reconciliation balance is not included in rate base so the associated ADIT should not be treated as jurisdictional. See, e.g., ComEd Ex. 25.0 at 26. The AG pointed out that allowing WACC-based interest on the full reconciliation balance is comparable to including the reconciliation balance in rate base (including the tax portion), by making ratepayers responsible for a return on this investment.

It is well-established that ADIT represents non-investor capital. E.g., Ameren, supra; AG Ex. 2.0 at 7-8. It is also without question that ComEd has recorded $164.9 million in deferred taxes arising from the Company's right to receive the reconciliation revenues in the future. AG Ex. 1.0C2 at 8. The question then becomes whether the Commission has the power to protect consumers given the fact that ComEd has $164.9 million in deferred tax benefits associated solely with the reconciliation recovery. As Mr. Brosch explained, "…distribution service ratepayers will provide a full return on this regulatory asset in the form of interest at the WACC. There is no basis to treat reconciliation-related ADIT balances as if they are non-jurisdictional in setting formula

delivery service rates. Yet this non-jurisdictional treatment is precisely how ComEd has accounted for its recorded reconciliation-related ADIT balances." AG Ex. 1.0C2 at 8-9.

The Appellate Court has affirmed the Commission's power under EIMA to deduct ADIT from rate base even when that authorization is not expressly stated. *Ameren*, 2013 IL App (4th) 120081 at ¶ 37 ("Ameren argues the Modernization Act did not provide the Commission with the authority to deduct ADIT because, while the statute provides guidance for other adjustments, the statute fails to mention an adjustment for ADIT"). The Court, recognizing the function of ADIT and its provision of non-investor capital, stated: "As it was consistent with the common practice of the Commission to include ADIT in the ratemaking process, we conclude the Commission did not err by including the ADIT adjustment for projected plan additions in its ratemaking calculation." *Id*. at ¶ 40.

Both AG witnesses Effron and Brosch have recommended that the Commission account for the fact that ComEd will not pay income taxes on the reconciliation balance until the reconciliation revenues are actually received by the company. Therefore, consumers should not be required to pay interest on that tax liability as part of the reconciliation recovery. If the Commission declines to make the adjustment recommended by Mr. Effron within the interest calculation, the AG requests that, in the alternative, the Commission recognize ComEd's recorded ADIT balance as a deduction to rate base. Adoption of one of these options is essential so that consumers do not pay (1) interest on the deferred reconciliation-related income taxes before they are due while (2) the ADIT amount recorded on ComEd's books is ignored and benefits only the Company's shareholders. The revenue requirement effect of this alternative adjustment is shown at AG Exhibit 3.1, page 1.

3. CCI

CCI contend the ADIT adjustment to the reconciliation balance proposed by CCI and the AG is necessary to produce just and reasonable rates. CCI claims that ComEd overstates the reconciliation balance on which its interest is calculated by calculating interest without consideration of offsetting tax benefits, causing the calculation of the interest on that balance to be inflated by over 40%. CCI Ex. 1.0 at 2-4. In the current case, ComEd seeks to recover a total reconciliation balance of $260.76 million (ComEd Ex. 3.01, Sch FR A-1, Line 24) that includes over $34 million of interest (ComEd Ex. 3.01, Sch FR A-4, Line 31 minus Line 1e). CCI Ex. 1.0 at 4. CCI note that ComEd calculates the interest by multiplying the entire reconciliation balance by its weighted average cost of capital ("WACC"). CCI and the AG each argue, instead, that interest should be calculated only after the under- or over-collection amount is adjusted for income tax benefits. That is, ComEd should calculate interest on only the reconciliation balance, less Accumulated Deferred Income Taxes ("ADIT"), to reflect ComEd's net cash investment in the reconciliation balance. *Id*. CCI argue doing so would reduce the reconciliation interest by approximately $14 million. *Id.* at 5.

CCI state that under formula rate ratemaking (pursuant to Section 16-108.5 of the PUA), ComEd's current reconciliation balance is the total difference between the revenue requirement actually incurred in 2013 and the revenue requirements that were determined for 2013. This balance will be recovered in 2015. CCI point out ComEd's

current filing, has a positive reconciliation balance, which means it incurred costs that were not recovered in the rates in place during 2013. CCI note this also means the additional costs incurred in 2013 were deductible for income taxes and, as a result, ComEd experienced a temporary income tax savings and cash benefit associated with the tax deductibility of these costs.

The essence of the ADIT adjustment recommended by CCI witness Gorman is that the reconciliation balance must be reduced by the temporary income tax savings ComEd enjoyed in 2013, in order to determine ComEd's actual net cash investment in the reconciliation balance. CCI argue that is the only balance on which interest can properly be calculated, because the Company received additional cash in the form of lower income tax expense due to higher income tax deductions. CCI Ex. 2.0 at 15. Those tax savings, in the opinion of CCI, mean that ComEd's out-of-pocket cash position is not the total reconciliation balance, but rather the net-of-tax reconciliation balance. *Id*. at 11. CCI posit ComEd should not receive interest on any more than its actual net cash investment, which is the reconciliation balance net of the income tax benefits. *Id.* at 7.

CCI assert ratepayers typically provide the utility with more tax related revenue than the utility pays out, and the utility retains this revenue as accumulated deferred income taxes or ADIT. *Id*. CCI opine that, from a ratemaking perspective, a utility's persistently large credit ADIT balance caused by its deferred payment of recorded tax expenses included in the revenue requirement represents a significant source of capital to the utility. *Id*. CCI point out that ADIT balances represent a form of zero-cost capital to the utility created by the income tax savings permitted under tax laws and regulations that are not immediately "flowed through" to ratepayers. *Id*. CCI contend regulators typically reduce rate base by the ADIT balances, so as to properly quantify the net amount of investor-supplied capital to support rate base assets. *Id*. The Commission, CCI observe, routinely recognizes ADIT balances as rate base reductions in electric delivery service and other rate proceedings. *Id*.

CCI argue that ComEd resorts to ill-conceived interest "Models" for the purpose of undermining the sound regulatory rationale for Mr. Gorman's ADIT Adjustment to the reconciliation balance. CCI contend Mr. Warren's "models" are not an appropriate basis for the Commission to evaluate the ADIT issue for three reasons. First, CCI say the models are a product of Mr. Warren's own invention and are not prescribed in EIMA or anywhere else in the Act. Tr. 25-26. Second, CCI point out Mr. Warren's cost-based model inappropriately assumes the carrying charge rate is based on 100% common equity capital and he has proposed to gross-up the common equity carrying charge rate for income taxes. CCI Ex. 2.0 at 10. CCI believe the interest rate provided for in EIMA is not a rate of return, but rather an interest rate based on the utility's WACC. *Id*. at 11. CCI contend the WACC applied to the reconciliation balance is simply the interest received in recognition of ComEd incurring a carrying cost for the reconciliation balance. *Id*. Because, as CCI suggest, interest is tax deductible it should not be factored-up for taxes as suggested by Mr. Warren's second model. *Id*. Third, CCI aver the Commission previously found merit in the adjustment proposed by Mr. Gorman and AG in the 2013 FRU proceeding and the Commission found it to be in line with GAAP

accounting, consistent with standard regulatory practice that matches ADIT elements to the associated assets included in rate base and properly recognizes the cash benefit to the utility that would otherwise have been paid out for income taxes on the amount. See Docket No. 13-0553, Order at 43 (Nov. 26, 2013). Thus, CCI argue that ComEd's latest attempt at deflecting the Commission's attention away from the fact that the reconciliation balance, on which interest should be calculated, is inflated should be ignored.

CCI contend Mr. Gorman's ADIT adjustment to the reconciliation balance does not disturb Schedules FR A-1 or FR-A-1 REC and therefore can be effectuated in this proceeding. CCI state the Commission recently examined the definition of "formula rate structure," as that term is used in EIMA, and also determined which ratemaking adjustments were appropriately considered in a FRU proceeding and which required a separate 9-201 proceeding to effectuate. The Commission concluded (in the bifurcated, second-phase portion of the companion docket to Ameren's last FRU proceeding), that only changes to Schedules FR A-1 and FR A-1REC require Commission approval through a Section 9-201 filing. Docket Nos. 13-0501 & 13-0517, Aug. 19, 2014 Order at 37. According to CCI, the Commission reasoned that these were the only schedules adopted as the "formula rate structure," and were the only schedules explicitly approved as such. CCI further note the Commission is currently examining this same issue as it relates to ComEd in Docket No. 14-0316. CCI conclude that, until that proceeding is concluded, the Order in Docket No. 13-0501/13-0517 should serve as useful guidance on the issue, as the conclusions are equally relevant and applicable to ComEd and the ADIT adjustment proposed by CCI in this proceeding.

CCI suggest Mr. Gorman's ADIT adjustment in this proceeding is unlike the adjustments proposed in the previous FRUs, as it does not disturb either Schedule FR A-1 or Schedule FR A-1REC, and therefore can – and should – be made in this FRU proceeding. CCI point out that currently, ComEd calculates reconciliation interest on the amount in Mr. Menon's Exhibit 3.01, Sch FR A-4, Line 1e, entitled "Variance With Collar." CCI Ex. 1.0 at 4-5. CCI believe Mr. Gorman's adjustment corrects the amount of interest currently calculated on this schedule to reflect the tax savings/benefits associated with the reconciliation balance at the tax rate of 41.175%. Id. CCI note ComEd's Sch FR A-4 allows an adjustment on line 30a from Workpaper 26. Id. Mr. Gorman calculated the adjustment on Workpaper 26 that CCI contend is necessary to reflect the reduction of the interest on the reconciliation balance. Id. CCI Exhibit 1.02 shows the calculation on Workpaper 26, reflecting the adjustment to the interest on the reconciliation balance, based on the Company's filed calculation in ComEd Ex. 3.01, Sch FR A-4. CCI suggest that no part of the "formula rate structure," as evidenced in Schedules FR A-1 or FR A-1REC, was disturbed in producing the adjustment.

CCI argue the Commission has the legal authority to adopt the ADIT adjustment on the reconciliation balance recommended by CUB and the AG. CCI observe that this issue has been raised in each of ComEd formula rate proceedings to date. In ComEd's initial formula rate proceeding, Docket No. 11-0721, AG witness Brosch raised concerns about the issue of the reconciliation balance that is allowed to earn interest. CCI assert at that time, the Commission did not make a definitive ruling and instead, cited concerns

about the completeness of the record. Docket 11-0721, Order at 167 (May 29, 2012). CCI note Mr. Brosch also raised the issue in Docket Nos. 12-0001 and 12-0293, Ameren Illinois Company's initial formula rate setting docket and its first reconciliation, but the net-of-tax concern was not addressed in the Commission's analysis and conclusions in those orders. *See* Docket No. 12-0001, Order (Sept. 6, 2012); Docket No. 12-0293, Order (Dec. 5, 2012). Finally, CCI note the issue was also raised in each of ComEd's and Ameren's last FRU proceeding, Docket Nos. 13-0318 and 13-0301, respectfully.

CCI point out that, subsequent to the initiation of those dockets, the Commission, on its own motion, initiated Docket No. 13-0553, (companion case to Docket No. 13-0318), under Section 9-201 of the PUA to, among other items, address whether ComEd correctly reflected the appropriate tax treatment in calculating interest on the reconciliation balance in the formula rate tariff as authorized by the PUA. Docket No. 13-0553, Initiating Order at 2 (Oct. 2, 2013). CCI observe the same issue was also addressed in consolidated Docket Nos. 13-0501/13-0517 with respect to Ameren. According to CCI, in those dockets, the Commission expressed policy support for the recommended ADIT adjustments to the reconciliation balance, but ultimately rejected the adjustments out of concern that the language in Section 16-108.5(d)(1) of the Act did not require or reference the netting of ADIT. Docket No. 13-0553, Order at 43 (Nov. 26, 2013); Docket Nos. 13-0501/13-0517 (consol.), Interim Order at 26 (Nov. 26, 2013). However, CCI note that the Commission said it would revisit the issue if the parties presented further arguments. *Id.*

CCI reiterate that in its Order in Docket No. 13-0553, the Commission concluded that the position advanced by the People and CUB was the one with "merit." *See* Docket No. 13-0553, Order at 43 (Nov. 26, 2013). As the Commission explained, the AG and CUB proposed "that accumulated deferred income tax, or ADIT should be netted against the reconciliation balance before calculating the interest amount." *Id*. "This concept," according the Commission, "[1] is consistent with Generally Accepted Accounting Principles, [2] is consistent with standard regulatory practice that matches ADIT elements to the associated assets included in rate base and…[3] properly recognizes the cash benefit to the utility that would otherwise have been paid out for income taxes on the amount." *Id.*

CCI point out that nevertheless, the Commission concluded that it did not have the latitude to interpret Section 16-108.5(d)(1) — the interest provision — in such a way as to incorporate the revision offered by the People and CUB. *Id*. The Commission was "troubled by the fact that although Section 16-108.5(d)(1) fails to prohibit such accounting treatment, the converse is also true — it does not appear to require or even reference it." *Id*. CCI argue the Commission was also given pause by its perception that, when the PUA "does intend that adjustments be made to an amount of a balance, it has done so specifically." *Id*. The Commission therefore found it "difficult . . . to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express. . . ." *Id*.

CCI find the Commission's sole reason for not adopting the proposal advanced by the AG and CUB —that EIMA fails to expressly mention an adjustment for ADIT —

has recently been rejected by the Appellate Court. CCI state that in *Ameren Ill. Co. v. Ill. Commerce Comm'n*, the Court was asked to review Ameren's proposed rate template pursuant to section 16-108.5(c) of the EIMA. 2013 IL App (4th) 121008, ¶¶ 10, 33-34. There, Ameren complained that the Commission acted improperly by reducing its "rate base by ADIT for projected plant additions." *Id*. at ¶ 33-34. CCI note Ameren argued, among other things, that "the Modernization Act did not provide the Commission with the authority to deduct ADIT because, while the statute provides guidance for other adjustments, the statute fails to mention an adjustment for ADIT." *Id*. at ¶ 37. CCI assert that the Court disagreed with Ameren's argument.

CCI contend that in Ameren, the Commission pointed to Section 16-108.5(c) — the EIMA subsection that provides guidance for the establishment and amendment of template formula rate tariffs — as the source of its authority "to rely on its common practices in determining a just and reasonable rate." *Id*. at ¶ 38. According to CCI, that section expressly empowers the Commission to approve a utility's rate template only if it is "just and reasonable." 220 ILCS 5/16-108.5(c). The Court noted that, "[w]hile the Commission agrees the statute does not expressly allow an adjustment for ADIT, the Commission explains the statute does not expressly disallow the adjustment, but authorizes the Commission to exercise its discretion in determining just and reasonable rates." *Ameren*, 2013 IL App (4th) 121008, ¶ 38. The Court agreed. CCI observe that the Court held that the Commission, when reviewing an electric utility's template formula rate filing, and even absent an express statutory reference to ADIT, had authority to prevent "a result which is neither just nor reasonable for ratepayers." *Id*. at ¶ 39.

CCI suggest *Ameren* has direct application in the present case. Here, the Commission has already found that the proposal to net ADIT "is consistent with standard regulatory practice." Having made that determination, CCI argue the Commission was empowered — as it was in Ameren — "to rely on its common practices" to adopt CCI's ADIT adjustment to the calculation of reconciliation interest.

CCI further argue that, even in the absence of an express reference to ADIT in the EIMA, it is "well-settled . . . that administrative agencies have both express and implied powers to do all that is reasonably necessary to accomplish statutory objectives, and not every agency power must be explicitly articulated in the governing statute." *Ikpoh v. Dep't of Prof. Reg.*, 338 Ill. App. 3d 918, 926-27 (1st Dist. 2003) (agency authority "can arise 'by fair implication and intendment from express statutory provisions, as an incident to achieving the objectives for which the agency was created'" (citations and punctuation omitted)). CCI point out the Supreme Court has held that the Commerce Commission is responsible for "determining that a utility's rates are just and reasonable and that its services are adequate." *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶40. CCI aver that this obligation, by fair implication and intendment, creates authority in the Commission to adopt a method for calculating interest which the Commission has already found to be "consistent with Generally Accepted Accounting Principles [and]…standard regulatory practice," and which "properly recognizes the cash benefit to the utility."

CCI further show that the recognition of deferred income taxes only appears once in Section 16-108.5, yet the Commission routinely nets out ADIT in other contexts

without an explicit mention in EIMA. In Section 16-108.5(c)(4)(D) a carrying cost equal to the weighted cost of long-term debt is applied to the pension asset, net of "deferred tax benefits." CCI argue all other recognition of ADIT in formula ratemaking was not the result of reliance on specific wording in the Act. For example, CCI observes the offset for ADIT is a significant component of the rate base used to determine the revenue requirement for formula rates but does not appear to be based on any specific reference to ADIT in Section 16-108.5. CCI Ex. 1.0 at 7. CCI reasons the failure of the statute to explicitly speak to netting the reconciliation balance should not, then, be interpreted as a prohibition against the Commission adopting that routine ratemaking approach.

While, according to CCI, EIMA does not explicitly refer to each instance the Commission recognizes ADIT, EIMA does explicitly state that the formula rates will 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. 220 ILCS 5/16-108.5(c)(1). CCI propose applying the WACC to the reconciliation balance, net of the associated deferred income taxes, would reflect the actual carrying cost on ComEd's out-of-pocket net cash investment, and is therefore more closely aligned to the fundamental precept guiding the formula rate law. In addition, CCI contend, netting deferred income taxes prior to the application of a carrying charge rate is consistent with Commission practice. CCI Ex. 1.0 at 7.

CCI maintain the Commission should not allow ComEd to recover interest on an amount that exceeds its own actual investment. If interest is calculated on any more than ComEd's net cash investment, CCI claim the result will be recovery of an inflated reconciliation balance. In order to avoid allowing ComEd to recover interest on a balance over 40% higher than its actual net investment, CCI insist the Commission should adopt Mr. Gorman's and Mr. Effron's adjustments to allow ComEd to only recover interest on its net cash investment.

4. Commission Analysis and Conclusion

Consistent with the Commission's prior orders, the Commission declines to adopt both the adjustment and the alternative adjustment proposed by the AG and CCI. In Docket No. 13-0553, the Commission stated the following:

> While there may be merit to the AG and CCI's proposal and while there may be some debate as to the plain meaning of the Act, the Commission is troubled by the fact that although Section 16-108.5(d)(1) fails to prohibit such accounting treatment, the converse is also true—it does not appear to require or even reference it. Further, as ComEd points out, where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically, as in the case of projected plant additions which are to be included on a net basis considering updated depreciation reserve and expense, 220 ILCS 5/16-108.5(c)(6), or in the ROE collar calculation where the utility is required to apply a credit or charge that "reflects an amount equal to the value of that portion of the earned rate of return on common equity that is

> more than 50 basis points higher [or lower] than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c)…for the prior rate year, adjusted for taxes." 220 ILCS 5/16-108.5(c)(5).

Docket No. 13-0553, Final Order at 43 (Nov. 26, 2013). The Commission has not been provided sufficient reason to overturn its previous decisions on either proposal. The decision in Docket No. 13-0553 has been appealed and if it is overturned, then ComEd is directed to recalculate the interest on the reconciliation balance, consistent with the AG/CCI proposal.

VIII. Revenues

A. Overview

With the exception of the billing determinants issue, discussed in Section VIII.B.1 below, there are no issues regarding revenues.

B. Contested Issues

1. Billing Determinants

a. ComEd's Position

ComEd states that billing determinants ("BD" in the following equation) are used to translate the revenue requirement ("RR") into charges, or rates, recovered from customers. The general formula is $\frac{RR}{BD}$ = rates. ComEd notes that three types of billing determinants are applicable to ComEd's delivery services: (1) the volume of their use, measured in kilowatt-hours ("kWh"); (2) the maximum rate of their use, or demand, measured in kilowatts ("kW"); and (3) the number of separate customers requiring services. ComEd Ex. 2.0 at 46-47. ComEd explains that if the determinants are set too high, the rates will be insufficient to recover the revenue requirement; conversely if they are set too low, the rates will over-recover the revenue requirement. ComEd further explains that it is neither unusual, nor cause for legitimate complaint, for billing determinants to be set that turn out, after the fact, to be too high or low due to factors beyond anyone's control. Those kinds of variations have always been inherent in the rate-making process, but the process was not systematically biased either for or against utilities or customers. Here, however, ComEd argues that there is a systematic bias against utilities that is one-sided, unusual and improper, and that will result in a permanent downward adjustment of the utility's revenues. Accordingly, ComEd contends that while the proposed billing determinants incorporate the adjustment adopted by the Commission in ComEd's last formula rate update, the Commission should depart from that ruling here because the evidence in this docket does not support the adjustment. *See* Docket No. 13-0318, Order at 80.

As an initial matter, ComEd notes that no party challenges the Commission's authority to make the adjustment. ComEd also notes that the parties also agree that the Commission is not required to make the adjustment. However, ComEd observes that the parties disagree over whether making the adjustment on the facts of this case is a sound exercise of the Commission's ratemaking role in setting just and reasonable

rates. ComEd contends that making the adjustment would not serve any useful purpose and would result in rates that would permanently deprive ComEd of the opportunity to recover the revenue requirement reflecting 2013 costs. ComEd argues that such an outcome cannot possibly represent lawful, just, and reasonable rates.

ComEd asserts that the Initial Briefs of AG, CCI and Staff devote little attention to the matter, reflecting the incorrect assumption that they are now entitled to the billing determinants adjustment in each case regardless of what the facts show. Yet, ComEd observes, as each of these parties readily admitted in recent briefing, the Commission is entirely free to depart from past rulings based on the record in the current case. And, ComEd further observes, if the adjustment did follow simply from the law and the nature of EIMA ratemaking without need of specific factual support, the Commission's imposition of an adjustment on ComEd and not Ameren would necessarily be arbitrary and discriminatory.

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

ComEd explains that intervenors have not provided the evidence required to support adoption of the adjustment again in this docket. ComEd emphasizes that what is at issue is an adjustment to the EIMA protocol calling for the determination of "historical weather normalized billing determinants." *Id*. While the historical period (2013) is not at issue, ComEd notes that the modification to the matching historical billing determinant to increase the number of customers beyond the number actually served in 2013 is at issue, and intervenors have not proffered the substantial evidence necessary to again support modification to the EIMA protocol.

Moreover, in ComEd's view, the proposed adjustment is a solution in search of a problem and its implementation poses serious cost recovery risk to ComEd. First, ComEd notes, an adjustment to account for 2014 plant additions is not needed. ComEd asserts that the only justification advanced for the proposed adjustment for the 2014 customer count is that rates are based in part on plant additions to be made in 2014. According to the AG, "the additions of the 2014 plant additions to the 2013 rate base is the basic justification for the adjustment to billing determinants." *See* AG Ex. 4.0 at 3. ComEd contends that this is no justification at all – any over-collection because of the inclusion of new plant additions will be temporary and corrected by the reconciliation, with interest. ComEd suggests that AG witness Effron himself concedes this point when he states, "because of the reconciliation process, the inclusion of New Business plant additions in the pro forma rate base does not ultimately affect the revenues recovered

by ComEd after the reconciliation process is complete." AG Ex. 2.0 at 5. Thus, according to ComEd, no further adjustment need be made to protect customers, and especially not an adjustment like the intentional upward adjustment of billing determinants that cannot and will not be corrected through reconciliation and that will permanently deprive the utility of a fair opportunity to recover its revenue requirement.

Second, ComEd notes that adoption of this unnecessary adjustment would harm ComEd by permanently depriving it of the opportunity to recover the revenue requirement reflecting 2013 costs. In other words, ComEd explains that overstating the billing determinants results in a shortfall that is never reconciled and corrected. ComEd states that while CCI claim otherwise, they are clearly mistaken and fundamentally misunderstand formula ratemaking under EIMA. Thus, according to ComEd, although EIMA provides a reconciliation of the initial and actual revenue requirement, it does not provide a mechanism whereby ComEd can recover revenues which it failed to receive during 2015 due to incorrect (overstated) billing determinants. As ComEd explained earlier, the utility can be expected to bear the risk that billing determinants turn out to have been overstated because of, for example, actual kWh sales lower than those forecasted. In later years, the utility might benefit from higher than forecasted kWh sales. But what is at issue here, according to ComEd, is an overstatement that is intentional and one-sided, with the result that the utility will always and consistently under-recover.

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

ComEd also contends that all of the arguments for an adjustment prove too much. As ComEd witness Brinkman notes, "All of the arguments Mr. Effron makes apply equally to any Illinois utility using EIMA. Yet, ComEd notes, the Commission has made no analogous adjustments to Ameren Illinois Company's (or its predecessors') historical weather normalized billing determinants." ComEd Ex. 12.0 REV. at 22-23. ComEd suggests that the same is true of the effort by Staff witness Rukosuev, the only other witness to support the adjustment, to simply rely on past decisions, without addressing the testimony in this record. ComEd asserts that if there were something

universal in EIMA's two-year rate cycle or the resulting reconciliation lag that warranted the use of non-2013 billing determinants when 2013 costs are at issue, such a statutory feature would demand that the adjustment be applied universally. Yet, while Ameren's formula rates are calculated and collected on the same schedules as are ComEd's, no billing determinants adjustment as is proposed here has been made. ComEd concludes that since no factual basis supports treating Ameren's billing determinants differently from ComEd's, continuing to apply the adjustment only to ComEd "would be arbitrary." *Id.* at 23.

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

b. Staff's Position

Staff asserts that ComEd proposes a change to the methodology for billing determinants. However, Staff recommends that the Commission continue to use the methodology for billing determinants reflected by ComEd in compliance with prior Commission Orders. Staff notes that AG witness Effron continues to advocate for the methodology previously approved by the Commission. AG Exhibit 2.0 at 5-6. The methodology increases the number of customers corresponding to the Company's inclusion of plant to serve New Business plant that ComEd included in its rate design model. *See* ComEd Ex. 10.03; Staff Ex. 9.0 at 39. Staff explains that the methodology properly matches the billing determinants used in the determination of pro forma revenues to the plant used to provide service included in rate base. Staff points out that the methodology used should be an adjustment to customer billing determinants only. According to Staff, this is the same methodology approved by the Commission in ComEd's last three formula rate cases, Docket Nos. 11-0721, 12-0321 and 13-0318, which had similar facts. Staff Ex. 9.0 at 39.

Staff notes that this billing determinant methodology first arose in the Company's initial formula rate case, Docket No. 11-0721. In that docket the AG/AARP pointed out that if the billing determinants do not match the number of customers that are actually served by plant additions and customer growth, the revenue requirement will be collected from too few customers, resulting in the rate per customer being higher than it should be. Docket No. 11-0721, Order at 73-74. Staff also notes that the Commission agreed, consequently, in its Order in Docket No. 11-0721, in which the Commission concluded that the AG/AARP methodology adjustment to billing determinants was appropriate. *Id*. at 75. Specifically, the Commission noted that "[t]he AG/AARP proposal is reasonable" and directed ComEd to "adjust its billing determinants accordingly." *Id.* at 76.

Staff believes the Company has not provided sufficient evidence in this proceeding to justify a change in the billing determinant methodology previously approved by the Commission, nor any evidence to warrant any additional adjustment to the billing determinant methodology. Accordingly, Staff argues that the Commission

should approve the rate design calculation ComEd filed in compliance with the Commission's previous Orders cited above which reflects the previously approved methodology. ComEd Ex. 12.0 REV at 20-23; Staff Ex. 9.0 at 39. Staff points out that ComEd indicated, in its direct testimony, that it had increased the customer billing determinants associated with New Business plant in the ECOSS and rate design model in this proceeding, as directed by the Commission in Docket No. 13-0318. In order to preserve its position on appeal, ComEd goes on to state that it takes issue with the methodology and believes the AG/AARP adjustment should not be made in this case. ComEd Ex. 2.0 at 46-48; ComEd Ex. 10.0 at 7-8; ComEd Ex. 10.03. Staff states that ComEd's arguments merely point to the mechanics of the formula rate model that have not changed throughout any of the formula rate cases. Therefore, Staff asserts these facts have all been considered in the prior cases and ComEd's proposed change to the billing determinant methodology should be rejected again. Staff Ex. 9.0 at 39.

c. AG's Position

The AG notes that billing determinants are used to establish the rates that produce the revenue requirement authorized by the Commission. AG Ex. 2.0 at 5; ComEd Ex. 2.0 at 46. The AG also notes that ComEd has made the billing determinants adjustment affirmed by the Appellate Court in its reviews of ComEd's 2011 and 2012 formula rate dockets (Docket Nos. 11-0721 and 12-0321). The AG explains that the Appellate Court in its review of Docket No. 11-0721 described the billing determinant issue as a "population adjustment" based on the fact that ComEd had "proposed the building of new facilities to accommodate growth in the number of customers it serves." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 122860 at ¶ 19. The Court related the AG's position that "without any adjustment for the expected increase in the number of customers… ComEd will systematically collect sums in excess of its revenue requirement." *Id*. The Court concluded that ComEd had not shown that the law precluded this adjustment, that the Commission had acted "contrary to the manifest weight of the evidence," or that the Commission acted "unreasonably." *Id*. at ¶¶ 57-58. The AG points out that in its review of the Commission's decision in Docket No. 12-0321, the Court again affirmed the Commission and further found ComEd collaterally estopped from further challenging the Commission's authority to make this adjustment. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 130302 at ¶¶ 50-62.

However, the AG observes that ComEd argues that this adjustment should not be made notwithstanding the prior binding Commission and Court decisions.

Consistent with the prior formula rate cases and Appellate Court decisions in this docket, AG witness Effron supported the now well-established adjustment to the billing determinants for 2015 to include the effect of the growth in customers associated with ComEd's 2014 plant additions included in rate base. AG Ex. 2.0 at 5-6. The AG points out that no adjustment needs to be made to implement Mr. Effron's billing determinants recommendation, which is consistent with the recent Appellate Court rulings on the issue. The AG thus recommends that the Commission adopt the rate design ComEd has proposed that includes service to customers associated with the projected plant additions included in rate base under the formula. *See* 220 ILCS 5/16-108.5(c)(5).

d. CCI's Position

CCI argue ComEd's practice of employing 2013 billing determinants to allocate the 2015 revenue requirement results in a mismatch between the year rates are recovered and the customer base over which those rates are spread. CCI support AG witness Effron's proposal to use 2014 billing determinants to allocate the revenue requirement that will be in place in 2015. According to CCI, the revenue requirement that ComEd will recover in 2015 is a projected revenue requirement comprised of the 2013 revenue requirement plus projected 2014 plant additions, not the actual 2015 revenue requirement. AG Ex. 4.0 at 3-4. CCI agree with Mr. Effron's suggestion that the additional customers associated with the 2014 plant additions should be reflected in the billing determinants used to establish 2015 rates. *Id*. CCI note that Mr. Effron opines that under the Company's proposed method, the rates to produce those 2015 actual revenues would be based on 2013 billing determinants, which is a clear mismatch.

CCI agree with Mr. Effron that ComEd is not at risk for under recovery of its revenue requirement or lost revenues, because the recovery of the actual 2015 revenue requirement by means of the reconciliation in 2017 will include carrying charges on any over or under-recovery. *Id*. According to Mr. Effron and CCI, this puts the Company in exactly the same financial and economic position as if the actual 2015 revenue requirement were recovered currently in 2015. *Id*. That is, although the full recovery does not take place until two years after the costs are incurred, CCI argue the Company is compensated by the inclusion of carrying charges on the incremental amount recovered, so that the present value of the recovery is the same as if all the costs had been recovered contemporaneously. *Id*. CCI agree that a mechanism that mitigates this mismatch is reasonable, does not result in any unjustified loss of revenues to the Company, and should therefore be adopted.

e. Commission Analysis and Conclusion

In compliance with the Commission's directive in Docket No. 13-0318, ComEd has proposed billing determinants for 2015 that reflect an adjustment to include the effect of the growth of customer billing determinants associated with ComEd's 2014 plant additions included in rate base. ComEd contends that the Commission should depart from its ruling in Docket No. 13-0318 because the evidence in this docket does not support this adjustment. Staff, CCI, and the AG recommend that the Commission continue to use the methodology for billing determinants reflected in ComEd's filing. The Commission agrees with Staff, CCI and the AG and adopts the billing determinant calculation filed by ComEd. This is the same methodology approved by the Commission in ComEd's last three formula rate cases (Docket Nos. 11-0721, 12-0321, and 13-0318) which all had similar facts. This methodology was also recently affirmed by the Appellate Court in its review of the Commission's Orders in Docket Nos. 11-0721 and 12-0321. The Company has failed to provide sufficient evidence in this proceeding to justify a change in the billing determinant methodology previously approved by the Commission, nor any evidence to warrant any additional adjustment to the billing determinant methodology.

IX. Cost of Service and Rate Design

A. Overview

Cost of service issues in formula rate proceedings are traditionally uncontested. ComEd has fully supported all of the cost of service issues in this docket, and neither Staff nor any intervenor has disagreed. Rate design issues are not at issue in this formula rate update case – instead, they are being addressed in the rate design tariff that was filed April 30, 2013 in the Rate Design Investigation proceeding (Docket No. 13-0387).

B. Uncontested Issues

1. Embedded Cost of Service Study

ComEd submitted its updated Embedded Cost of Service Study ("ECOSS") as ComEd Ex. 10.01. This updated ECOSS is based upon the ECOSS ComEd submitted to Staff on January 16, 2014 in compliance with the Commission's final Order in the Docket No. 13-0387. The updated ECOSS includes modifications from the ECOSS approved in Docket No. 13-0318 to comply with the final Order in Docket No. 13-0387. ComEd Ex. 10.0 at 4-6; *see also* ComEd Ex. 10.01.

ComEd explains that the updated ECOSS presented in this proceeding is the same as the ECOSS submitted in compliance with the Commission's final Order in Docket No. 13-0387 except for a correction to formulas related to the addition of the Indirect Uncollectible sub-function. ComEd further explains that the updated ECOSS reflects the updated input values that reflect the costs and data for calendar year 2013. ComEd Ex. 10.0 at 6-7. In addition, the ECOSS is constructed so that it is able to reflect the approved 2015 Rate Year Net Revenue Requirement as well as applicable billing determinants and delivery class load and loss data from the updated Distribution System Loss Study presented by ComEd witness Michael Born. ComEd Ex. 10.0 at 7; ComEd Ex. 9.0 at 4-7; ComEd Ex. 9.01.

ComEd's updated ECOSS is generally uncontested, with the exception of the issue of the proposed adjustment to billing determinants discussed in Section VIII.B.1. of this Order. Consistent with the resolution of this issue in Section VIII.B.1., the Commission finds that ComEd's updated ECOSS reasonably allocates costs among customer classes and is approved.

2. Distribution System Loss Factor Study

ComEd explains that it uses distribution losses – the difference between energy that is delivered to the distribution system and the energy that actually reaches customers – in the development of its ECOSS. ComEd Ex. 9.0 at 4. ComEd notes that in its final Order in Docket No. 13-0387, the Commission directed ComEd to submit an updated Distribution System Loss ("DSL") Study along with a revised Secondary and Service Loss ("SSL") Study in this proceeding. *See Commonwealth Edison Co*., Docket No. 13-0318, Order at 109 (December 18, 2013); ComEd Ex. 9.0 at 5. In that rate design investigation, Staff recommended that ComEd extend its sample size beyond those surveyed previously and use actual customer loads and conductor information for the remaining customer categories that use secondary and service elements. Docket

No. 13-0318, Order at 110-111; ComEd Ex. 9.0 at 5. Accordingly, ComEd updated the DSL Study using 2013 customer and zone loads, 2013 transformer data, and the results of an updated SSL Study (ComEd Ex. 9.02) that includes information obtained from field surveys of secondary and service conductors used to serve customers in seven categories that were not included in the prior SSL Study. ComEd Ex. 9.0 at 5; ComEd Ex. 9.01.

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

3. Secondary and Service Loss Study

ComEd states that the results of the SSL Study are a direct input to the DSL Study. ComEd explains that the purpose of the SSL Study is to provide a basis for estimating losses for each customer category by the use of field surveys of the type, length and load of a representative set of sample customers for each category. This study determined average losses at the annual customer peak load as a percent of the peak load by customer category. ComEd further explains that it used the results from field surveys of 419 customers in the Single Family Electric Space Heat, Watt Hour, Medium, Large, Very Large, Extra Large, and Lighting categories to determine typical secondary and service conductor losses during peak load conditions. ComEd Ex. 9.0 at 6-7.

No party has contested the updated SSL study, and Staff witness Rockrohr recommends that the Commission accept the study and find that ComEd has met the requirement to separately identify losses on secondary and service elements. Staff Ex. 5.0 at 5-6. Accordingly, the Commission approves ComEd's SSL study.

4. Other

a. Rate Design

ComEd submitted its updated Rate Design Model as ComEd Ex. 10.03. This updated model is based upon the rate design model ComEd submitted to Staff on January 16, 2014 in compliance with the Commission's final Order in Docket No. 13-0387. The updated rate design model includes modifications from the rate design model approved in Docket No. 13-0318 to comply with the final Order in Docket No. 13-0387.

ComEd explains that the updated rate design model presented in this proceeding is the same as the rate design model submitted in compliance with the Commission's final Order in Docket No. 13-0387, except that it includes updated input values that reflect the costs from the updated ECOSS presented in ComEd Ex. 10.01 and billing determinant data for calendar year 2013. In addition, the rate design model is constructed to allow for the recovery of the approved 2015 Rate Year Net Revenue Requirement with no over recovery.

ComEd's updated rate design model is generally uncontested, with the exception of the issue of the proposed adjustment to billing determinants discussed in Section VIII.B.1. of this Order. Consistent with the resolution of this issue in Section VIII.B.1.,

the Commission finds that ComEd's updated rate design reasonably provides for the recovery of costs from the customer classes and is approved.

b. SBO Credit and DLFs

ComEd submitted an updated Single Bill Option ("SBO") credit and updated Distribution Loss Factors ("DLFs") for its customer classes. ComEd states that the methodologies used to determine these values are consistent with the manner in which these values have been determined as approved by the Commission in previous proceedings. ComEd Ex. 10.0 at 20-22, ComEd Ex. 10.06, ComEd Ex. 10.07. Neither Staff nor any intervenor disagreed. The Commission finds that these update methodologies are reasonable and they are approved.

X. Other

A. Uncontested Issues

1. Intercompany Receivable and Payables Management Model Document

Staff witness Ebrey recommends that ComEd address its plan to finalize and execute the document titled "Settling Certain Intercompany Receivables and Payables Procedures." Staff Ex. 1.0 at 41. On July 22, 2014, ComEd provided an updated and final version of this document and, accordingly, no party has contested this issue.

Accordingly, the Commission approves ComEd's plan to finalize and execute this document.

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

In his direct testimony, Staff witness Bridal recommended that ComEd provide the wages and salaries allocator applicable to supply so that he could recommend a wages and salaries allocator to be used in the determination of rates under Rider PE. Staff Ex. 2.0 at 14-15. ComEd provided this data in ComEd Ex. 13.12, and Mr. Bridal agreed that the wages and salaries allocator applicable to supply is 0.44% and had no objection to ComEd's calculation of the allocator. ComEd Ex. 13.12; Staff Ex. 8.0 at 3-4. ComEd agreed with the language proposed by Mr. Bridal.

The Commission notes that no other party contested the calculation or objected to the proposed language. The Commission therefore accepts the use of ComEd's wages and salaries allocator applicable to supply.

3. Reporting Requirements

a. EIMA Investments

ComEd presented evidence in its case in chief identifying separately its EIMA-related expenditures included in the Rate Year 2013 Reconciliation Revenue Requirement and in the projected plant additions included only in the Initial Rate Year 2015 Revenue Requirement. ComEd Init. Br. at 70. This data meets the Commission's requirements as set forth in Docket No. 12-0321. Docket 12-0321, Order at 98. Furthermore, in Docket No. 13-0318, the Commission noted that ComEd had agreed to

Staff's recommendation that it identify by category cumulative actual EIMA Investments in addition to annual actual investments for each year as well as the format of the data and the language to be included in the Order. Docket 13-0318, Order at 85; ComEd Ex. 5.0 at 15.

The Commission is setting a revenue requirement in this proceeding for the recovery of $257.7 million in actual 2013 plant additions and $449.0 million of projected 2014 plant additions in compliance with Section 16-108.5. The details of these actual and projected plant additions by category, as required by Section 16-108.5(b)(1), are as follows:

	CATEGORY	Actual 2012 (In Millions)	Actual 2013 (In Millions)	Projected 2014 (In Millions)	Cumulative 2014 (In Millions)
(A)(i)	Distribution Infrastructure Improvements	$92.8	$128.4	$153.8	$374.9
(A)(ii)	Training Facility Construction or Upgrade Projects	2.4	0.4	0.0	2.8
(A)(iii)	Wood Pole Inspection, Treatment, and Replacement	9.4	18.7	19.9	48.1
(A)(iv)	Reducing the susceptibility of certain circuits to storm-related damage	24.6	12.6	33.4	70.6
	Total Electric System Upgrades, Modernization Projects, and Training Facilities	$129.2	$160.2	$207.1	$496.4
(B)(i)	Additional Smart Meters	$0.1	$31.7	$148.4	$180.1
(B)(ii)	Distribution Automation	37.8	60.5	62.8	161.0
(B)(iii)	Associated Cyber Secure Data Communications Network	0.0	0.0	0.0	0.0
(B)(iv)	Substation Micro-processor Relay Upgrades	7.0	5.4	30.7	43.1
	Total Upgrade and Modernization of Transmission and Distribution Infrastructure and Smart Grid Electric System Upgrades	$44.8	$97.5	$241.9	$384.2
	Total Plant Additions in Compliance with Section 16-108.5(b)(1) of the Act	$174.0	$257.7	$449.0	$880.7

The Commission, therefore, approves ComEd's reporting of EIMA Investments.

b. Reconciliation Year Plant Additions

In the Commission's final Order in Docket No. 13-0318, Findings paragraph 13 set forth a table with details for the plant additions placed in service in 2012. Docket No. 13-0318, Order at 90-91. In this proceeding, ComEd provided a similar summary of the $257,679,181 investment amount by category placed in service in 2013 by ComEd under Section 16-108.5(b) of the PUA. ComEd Ex. 5.0 at 17-18. ComEd also provided a similar table for the $449,004,969 of plant additions projected to be placed in service in 2014. Id. at 18-19.

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

c. Contributions to Energy Low-Income and Support Programs

ComEd presented evidence demonstrating that it met its commitment to make certain contributions to low-income and other energy assistance programs, as required by EIMA. See 220 ILCS 5/16-108.5(b-10). This evidence was presented both in testimony and in the Annual Customer Assistance Report for 2012 as filed by ComEd on February 20, 2013. ComEd Ex. 7.0 at 28-30; ComEd Ex. 7.01.

No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by EIMA. Staff witness Bridal agrees that ComEd has made the required contributions in 2013 and that the contributions were properly excluded from the revenue requirement. Staff Ex. 2.0 at 15. Therefore, the Commission approves ComEd's reporting of Contributions to Energy Low-Income and Support Programs.

B. Contested Issues

1. Update of Exelon Business Services Company General Services Agreement

a. ComEd's Position

ComEd notes that Staff recommends that ComEd update its GSA for Commission approval. ComEd states that this recommendation would require it to engage in a burdensome and wholly unnecessary endeavor that will inevitably increase its costs and should not be adopted by the Commission.

According to ComEd, Staff's recommendation is rooted in its concern that the GSA is obsolete because it references the Public Utility Holding Company Act of 1935 ("PUHCA 1935"). *See* Staff Ex. 1.0 at 41-42. In 2005, the United States Congress repealed PUHCA 1935 and subsequently enacted the Public Utility Holding Company Act of 2005 ("PUHCA 2005"). Nonetheless, ComEd explains that even though the GSA references the outdated PUHCA 1935, it is in fact compliant with the PUHCA 2005, including all of the citations to the Code of Federal Regulation that Ms. Ebrey references in her testimony. ComEd Ex. 25.0 at 13-14. ComEd also notes that in 2009, Exelon

completed an Implementation Plan to comply with corrective actions identified through a 2008 FERC audit of Exelon affiliated transactions. *Id*.

In addition, ComEd notes that, on an annual basis, BSC prepares Service Level Arrangements ("SLA") which are the operational documents governing services provided by BSC to ComEd. ComEd states that these documents reflect the then-current services being provided. ComEd provided BSC's 2012 SLAs to Staff in Docket No. 13-0318. ComEd also keeps Staff abreast of BSC costs through the numerous and varied reports regarding BSC costs that ComEd submits to Staff throughout the year. *Id*.

ComEd contends that this evidence shows that the references to the PUHCA 1935 in the GSA in no way affect any of the transactions, procedures or regulatory oversight that takes place under the GSA. Moreover, ComEd explains, any change to the GSA would impact all Exelon Operating Companies and would require approval from several state Commissions. ComEd Ex. 12.0 REV. at 18-19. ComEd maintains that such a process would create substantial costs and burdens for all the companies associated with obtaining such approval. Citing those costs and the lack of any necessity to revise the GSA, ComEd opposes Staff's recommendation and requests that it not be adopted by the Commission.

b. Staff's Position

Staff recommends that the Company update the GSA because some provisions contain obsolete references. Staff Ex. 1.0 at 41-42. Staff urges the Commission to disregard ComEd's argument that the GSA does not need to be updated and order ComEd to update the GSA for the seven reasons presented below.

First, Staff notes that the provisions of the GSA that provide the authority for the allocation of costs of multi-state electric holding companies to individual operating subsidiaries are obsolete as the provisions refer to laws that are no longer effective and regulatory bodies that no longer have the stated authority. Staff observes that the introductory paragraphs of the GSA approved by the Commission in Docket No. 00-0295, include the following statements:

> WHEREAS, Client Companies, including EXELON CORPORATION, which has **filed for registration under the terms of the Public Utility Holding Company Act of 1935 (the "Act")** and its others subsidiaries, desire to enter into this agreement for providing for the performance by Service Company for the Client Companies of certain services as more particularly set forth herein;
>
> WHEREAS, Service Company is organized, staffed and equipped and has **filed with the Securities and Exchange Commission (the "SEC") to be a subsidiary company under Section 13 of the Act** to render to EXELON CORPORATION, and other subsidiaries of EXELON CORPORATION, certain services as herein provided;

ComEd Response to Staff DR 11.01, Attachment 1 (emphasis added).

Staff explains that Exelon Corporation is no longer subject to the PUHCA 1935, and the Service Company is no longer registered with the SEC. The Service Company is now subject to the rules of the FERC under the PUHCA 2005. In addition, Staff notes that the PUHCA 1935 in relevant part was repealed on August 8, 2005 and the PUHCA 2005 became effective February 8, 2006. Thus, the references to PUHCA 1935 and the governance by the SEC are no longer applicable. Therefore, Staff argues the introductory paragraphs of the GSA are not valid.

Second, Staff points out that Section 2 of the GSA derives its authority from Section 13 of the PUHCA 1935 which has been repealed. Staff notes that Section 2 states, in part:

> Section 2. Services to be Provided
>
> **no change in the organization of the Service Company, the type and character of the companies to be serviced, the factors for allocating costs to associate companies, or in the broad general categories of services to be rendered subject to Section 13 of the Act**, or any rule, regulation or order thereunder, shall be made unless and until the Service Company shall **first have given the SEC written notice of the proposed change** not less than 60 days prior to the proposed effectiveness of any such change. If, upon the receipt of any such notice, **the SEC shall notify the Services Company within the 60-day period that a question exists as to whether the proposed change is consistent with the provisions of Section 13 of the Act, or of any rule, regulation or order thereunder, then the proposed change shall not become effective unless and until the Services Company shall have filed with the SEC an appropriate declaration regarding such proposed change and the SEC shall have permitted such declaration to become effective.**

Id. (emphasis added).

Staff explains that this section concerns the rules, regulations, and orders concerning changes in the Service Company, the type and character of the companies to be serviced, the factors for allocating costs to associate companies, and the broad general categories of services to be rendered by the Service Company to its affiliates. Staff asserts that contrary to the provisions of Section 2, the SEC no longer provides notification as to whether any changes can become effective under Section 13 of PUHCA 1935. The GSA no longer sets forth current procedures by which changes to the type and character of companies to be serviced, changes in the factors for allocating costs to associate companies or changes in the broad general categories of services are to be declared permissible by a governing regulatory body. Accordingly, Staff argues Section 2 is void.

Third, Staff observes that Section 4 of the GSA establishes that the rules for the compensation of costs to the Service Company shall be permitted by the SEC. But, Staff points out the SEC no longer has regulatory authority over the Service Company. Thus, Staff maintains that Section 4 (which is set forth below) is also void.

> Section 4. Compensation of Service Company
>
> As compensation for the services to be rendered hereunder, Client Companies listed in Attachment A hereto, as revised from time to time, shall pay to Services Company all costs which reasonably can be identified and related to particular services provided by Services Company for or on Client Company's behalf (**except as may otherwise be permitted by the SEC**). All other Client Companies and their affiliates and associates (see Attachment B) shall pay to Services Company charges for services that are to be no less than cost (**except as may otherwise be permitted by the SEC**), insofar as costs can reasonably be identified and related by Services Company to its performance of particular services for or on behalf of Client Company.

Id. (emphasis added).

Fourth, Staff notes that Section 5 of the GSA states that the determination of costs shall be consistent with the rules and regulations of the SEC. Staff asserts that the parties to the GSA are no longer subject to the rules and regulations of the SEC governing compliance under the GSA. Thus, Staff contends that Section 5 (which is set forth below) is void.

> Section 5. Securities and Exchange Commission Rules
>
> **It is the intent of the Parties that the determination of the costs as used in this Agreement shall be consistent with, and in compliance with, the rules and regulations of the SEC, as they now exist or hereafter may be modified by the Commission.**

Id. (emphasis added).

Fifth, Staff points out that the SEC no longer has the authority to provide the rule, regulation, or order to effectuate Section 9 of the GSA that states that Exelon Corporation, or any person employed by Exelon Corporation may provide services for other Parties, or any companies associated with the Parties, except as authorized by rule, regulation, or order of the SEC. Staff argues that since the parties to the GSA are no longer subject to the rule, regulation, or order of the SEC governing compliance under the GSA, Section 9 (which is set forth below) of the GSA is void.

> Section 9. EXELON CORPORATION
>
> **Except as authorized by rule, regulation, or order of the SEC**, nothing in this Agreement shall be read to permit EXELON CORPORATION, or any person employed by or acting for EXELON CORPORATION, to provide services for other Parties, or any companies associated with said Parties.

Id. (emphasis added).

Sixth, Staff observes that the SEC no longer has the authority to effectuate Section 10 of the GSA that states that Client Companies, their subsidiaries, affiliates and associates may provide services described within the GSA to other Client Companies on the same terms and conditions as set out in the GSA for the Service Company as limited by law or order of the SEC. Staff notes that Section 10 states, in part:

> Section 10. Client Companies
>
> **Except as limited by law or order of the SEC**, Client Companies, their subsidiaries, affiliates and associates may provide services described herein to other Client Companies, their subsidiaries, affiliates and associates on the same terms and conditions as set out for the Services Company.

Id. (emphasis added).

Staff avers that the GSA is no longer subject to the rule, regulation, or order of the SEC governing compliance under the GSA. Therefore, Staff argues the GSA is void.

Seventh, Staff asserts that the Commission does not review or approve the SLAs discussed by ComEd that are established as the operational documents governing services provided by BSC to ComEd and reflect current services. ComEd Ex. 12.0 REV. at 19. Staff notes that while certain documents were provided to Staff via discovery in Docket No. 13-0318, documents obtained through that means are not normally made available for Commission review or approval.

Staff contends that the Commission takes its responsibilities under Section 7-101 of the Act seriously, and the Company should provide timely periodic updates to the GSA to comply with current regulations. Staff asserts that PUHCA 1935 is no longer effective. Service Companies are no longer subject to the rules and oversight by the SEC; Service Companies are subject to the regulation of FERC. Staff also asserts that the GSA approved by the Commission in Docket No. 00-0295 on November 7, 2001 is nearly thirteen years old and needs to be updated to require compliance by the Service Company with the Uniform System of Accounts set forth in 18 CFR 367; require compliance with the preservation of records set forth in 18 CFR 368; require submission

of the FERC Form 60 as required by 18 CFR 369; and require compliance with the cross-subsidization restrictions on affiliate transactions set forth in 18 CFR 35.43 and 35.44. In addition, Staff states that the contention that such an update would be burdensome does not excuse ComEd from periodically updating its GSA to be in compliance with current applicable laws and regulations.

Staff points out that Company witness Brinkman responded to Staff testimony with a listing of reports of BSC costs provided to Staff each year. ComEd Ex 25.0 at 13-14. Staff argues that these reports do not take the place of an updated GSA. Staff also argues that Ms. Brinkman's statement that the GSA approved by the Pennsylvania Public Utility Commission is the same document under discussion in this case is irrelevant since this Commission is not bound by any approvals in other jurisdictions. *Id*. at 15.

For these reasons, Staff recommends that the Commission should order ComEd to provide an updated GSA for approval by this Commission within 90 days of the date of the final Order in this proceeding.

c. Commission Analysis and Conclusion

The Commission agrees with Staff that the GSA needs to be updated to comply with current applicable laws and regulations. The GSA has not been updated by ComEd since the Commission's approval on November 7, 2001 despite a change in the legal authority and regulatory body referenced throughout the agreement. The authority cited by the GSA – the PUHCA 1935 – has been repealed and superseded by the PUHCA 2005, and as a result the FERC, as a successor to the SEC, has become the applicable regulatory body instead of the SEC. The GSA has not been updated to address these changes, and it does not contain a provision that contemplates such changes in the law. The GSA is a legal document and as such it is imperative that it be updated periodically to ensure that it remains valid and enforceable. Staff's analysis of the GSA demonstrates that it is necessary at this time to update the agreement because it has become outdated. Accordingly, the Commission directs ComEd to provide an updated GSA for Commission approval within 90 days of the date of this Order.

2. Customer Care Costs

a. ComEd's Position

ComEd presented two updated cost studies that evaluated its customer care costs using 2013 actual costs. The first, entitled the Allocation Study, examined the costs ComEd incurs in providing customer services and allocates these costs between delivery and supply. The second, entitled the Switching Study, analyzed the costs ComEd incurs in providing customer services to determine if these costs are sensitive to customers switching from ComEd to retail electric suppliers ("RESs"). Additionally, ComEd presented a third approach, entitled the Alternative Analysis, which considers the results of the Switching Study by identifying and allocating costs associated with business activities that are sensitive to changes in customer switching. ComEd contends that the Commission should utilize the Switching Study to assess how to

allocate its customer care costs because it is based on actual operations and experience.

ComEd states that the Switching Study shows that despite more than two-thirds of ComEd's customers switching to RES-provided supply, there has been a de minimis change to its level of customer care costs. ComEd argues that the Allocation Study should not be employed because it is not based on ComEd's actual experience and ComEd realizes virtually no cost savings when its supply customers switch to a RES. According to ComEd, the evidentiary record demonstrates that ComEd's updated Switching Study presents the most accurate approach to apportioning responsibility for ComEd's customer care costs. ComEd also argues that recovering such costs through delivery charges is consistent with the manner in which other Illinois utilities recover such costs. Additionally, ComEd argues that the vast majority of other jurisdictions where retail competition exists also allow utilities to recover such costs through delivery charges. Thus, ComEd explains, the adjustments to ComEd's allocators and recommendations of RESA regarding the use of the Allocation Study should be rejected as unsupported by the record.

ComEd states that the Switching Study examined the impact on ComEd's costs at customer switching levels of 64%, 69%, and 100%. ComEd also notes that both the Switching Study and the Allocation Study started by identifying ComEd's embedded customer care costs for 2013, at a time when 69% of ComEd's delivery service customers switched to RES supply. ComEd Ex. 7.0 at 40, 43. ComEd explains that by considering costs at the 64%, 69% and 100% levels, ComEd's Switching Study captures the impact on ComEd's costs if additional customers switch to RES supply or if the level of switching to RES supply decreases. ComEd Ex. 7.0 at 39.

ComEd states that the results of the Switching Study show whether customer service costs are inherently related to delivery service, or to supply service. ComEd Ex. 8.0 at 23. ComEd explains that the Switching Study determines how customer care costs actually change due to customers taking supply service from a RES. ComEd Ex. 7.0 at 65. ComEd avers that the evidence presented showed that ComEd's customer care costs do not decrease as customers switch from ComEd to RES-provided supply service. ComEd Ex. 2.0 at 40.

ComEd explains that the Allocation Study, on the other hand, is premised on the assumption that some level of customer care costs should be attributed to ComEd's supply function and then applies allocation factors to assign a percentage of costs to that function. ComEd Ex. 7.0 at 41, 65; ComEd Ex. 8.0 at 24. ComEd contends that the evidentiary record does not support such an approach to allocate customer care costs between supply and delivery because it is inherently arbitrary. According to ComEd, the adoption of this premise would fail to acknowledge ComEd's actual experience and the reality of ComEd's operations, thereby yielding inherently flawed results. ComEd Ex. 7.0 at 65. For example, the Allocation Study assumes that 17% of the costs of bill printing activities are related to ComEd's supply function. According to ComEd, even if 100% of ComEd's delivery service customers take supply service from a RES, ComEd would continue to incur the cost to print bills and would not enjoy any "savings" in the delivery service function.

ComEd contends that the Allocation Study also fails to recognize ComEd's statutory role as the provider of last resort ("POLR"). ComEd explained that its POLR obligation requires that it must ensure that it has the applicable systems, procedures and operations in place to be ready to serve all customers. ComEd Ex. 24.0 at 3. ComEd cannot simply avoid common customer care costs because of its role as the POLR, no matter how many customers obtain electric supply services from RESs. ComEd Ex. 11.0 at 6. ComEd contends that the Switching Study ComEd presented in this proceeding comports with the Commission's past treatment of customer care costs as part of delivery services costs. ComEd Ex. 2.0 at 35. ComEd also states that the record supports that the Switching Study more accurately captures how costs actually change due to customers taking supply service from a RES. ComEd Ex. 7.0 at 64.

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

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

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

ComEd contends that it is clear from the record that adoption of any of the Allocation Study options is premised on the Commission reaching the threshold conclusion that it is appropriate to allocate customer care costs to ComEd's supply function. ComEd also argues that the evidence presented shows that ComEd's customer care costs are incurred to serve all customers, regardless of which entity provides supply. ComEd claims that based upon the record in this proceeding, it is not appropriate to allocate customer care costs to ComEd's supply function as RESA suggests.

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

b. RESA's Position

RESA notes that in ComEd's last rate design proceeding (Docket No. 13-0387), the Commission directed ComEd "to provide an updated Customer Cost Allocation Study that allocates customer care costs between supply and delivery service functions in the next formula rate update filing." *Commonwealth Edison Company*, Docket No. 13-0387, Order at 57 (Dec. 18, 2013). On April 16, 2014, ComEd filed an application to initiate its annual formula rate update and revenue requirement reconciliations. ComEd's filing included an Allocation Study. In addition, ComEd also filed an Alternative Study and a Switching Study. In rebuttal testimony, ComEd updated each of these studies to reflect ComEd's indirect costs.

RESA states that Section 20-102 of the PUA provides "(a) competitive wholesale electricity market alone will not deliver the full benefits of competition to Illinois consumers. For Illinois consumers to receive products, prices and terms tailored to meet their needs, a competitive wholesale electricity market must be closely linked to a competitive retail electric market." 220 ILCS 5/20-102. And Section 9-250 of the Public Utilities Act provides that "whenever the Commission . . . shall find that the rates or other charges . . . are unjust, unreasonable, discriminatory or preferential . . . the Commission shall determine the just, reasonable or sufficient rates or other charges." 220 ILCS 5/9-250.

RESA's position is that ComEd and Staff incorrectly rely upon the Switching Study to allocate zero customer care costs to the default supply rate. Further, RESA claims that ComEd's Switching Study analysis is based on the fundamentally flawed premise that cost allocation should be contingent on customer care costs decreasing as customers switch from Rate BES supply service. This argument was also rejected by the Commission in Docket 13-0387, when it stated that the "increase in customer care costs and the concomitant increase in number of delivery services customers does not prove the total absence of costs for ComEd's supply customers." Docket 13-0387, Order at 56.

RESA highlighted in its testimony that RESs must provide customer care services to their customers and that those costs cannot be recovered through ComEd's

delivery rates; rather, those costs are reflected in the supply prices RESs charge customers. RESA Ex. 1.0 at 7. Under the current methodology, and ComEd's Switching Study, 100% of the customer care costs are allocated to delivery service, and 0% of those costs are allocated to supply service. RESA argues that default supply service is thus leveraging distribution assets to provide customer care service to default supply customers at zero cost, and this subsidy artificially distorts the competitive landscape by making default service appear to be lower priced than it actually is in comparison with RES-provided supply service. Since ComEd's delivery rates recover all of these costs, ComEd's default supply rate avoids a category of costs that must be recovered in RES competitive prices. This amounts to discriminatory and preferential treatment given to the supply rate and a requirement that RES customers pay twice for customer care costs. Furthermore, an allocation of zero customer care costs to ComEd's supply function appears to be an arbitrary allocation in the face of the reality that some level of these costs are needed for ComEd to provide its Rate BES service.

RESA also submits that default supply service is a product that competes against all other products in the retail electric market. Customers must either choose to enroll in the default rate product or a product offered by a RES, so in the most basic logical sense (as opposed to one that is based on statutory definitions), default service is a competitive product. RESA notes that this approach is grounded on the premise that the supply service rates ComEd offers are compared by customers on a competitive basis to those prices offered by RESs in the competitive market. Thus, by requiring RESs to recover customer care costs through their rates and charges from Choice customers but allowing ComEd to recover its customer care costs through distribution rates from all customers, including Choice customers, the default supply rate has an anti-competitive advantage. To correct ComEd's preferential, discriminatory, arbitrary and anticompetitive rates, RESA submits that the Commission should allocate a portion of ComEd's customer care costs to the default supply rate.

Allocating customer care costs to the supply rate will not prejudice ComEd nor will it impede ComEd's ability to provide POLR service. RESA states that ComEd's status as the POLR has no bearing on whether the supply rate should rightly reflect the cost of providing customer care needed to support supply service and that it is crucial, to maintain a competitive market, that costs incurred by those utilities that maintain a merchant function be collected in a manner appropriate to the service provided. To do otherwise can, as here, lead to a rate tilt that disadvantages competitive services on price. Customers shop, and make their service choices based on those price signals.

RESA states that whether ComEd receiving calls related to RES activity does not justify allocating zero customer care costs to the default supply rate. This number is a tiny fraction compared to the calls that ComEd receives relating to supply service or supply charges on the ComEd bill. And, RESA notes, customers call into RES call centers to discuss matters that relate to distribution service. RESA Ex. 1.0 at 26.

RESA notes that other jurisdictions, including New York, Pennsylvania, and Maryland, are continuing to unbundle services, such as customer care costs. RESA believes that the Commission should follow their example and continue to take a leading role in further development of competitive markets.

RESA states that, as a general principal the Commission should allocate to the default supply rate a portion of the same categories of cost that are currently being recovered through delivery rates that other competitive retail electric products in the market must incur. RESA argues that to provide competitive parity, the Commission should adopt as a starting point ComEd's Updated Allocation Study, which was updated to include indirect costs and which would allocate approximately $21 million to the supply function. RESA witness White testified that the allocation factors used by ComEd in its Updated Allocation Study were skewed toward allocating costs toward the distribution function. RESA witness White utilized modified allocation factors which he analyzed and RESA finds to be more equitable. RESA's Modified Allocation Study would allocate approximately $52 million to ComEd's default supply rate. RESA Ex. MW 2.1. RESA contends that its Modified Allocation Study provides the closest proxy to the amount of customer care costs necessary to support default supply service. RESA states that, in the alternative, at a minimum, the Commission should adopt ComEd's Updated Alternative Study, which was updated to include indirect costs and which would allocate approximately $10,927,146 million to the supply function, as modified by RESA witness White (RESA Ex. MW 2.1), to allocate approximately $34 million of ComEd's call center expenses to the default supply rate.

RESA states that an allocation of customer care costs does not need to be an administratively burdensome process, as claimed by ComEd. RESA witness White developed a streamlined and easy to apply set of allocation factors based on the relationship of default service revenue to total distribution revenue. RESA Ex. MW 2.1. The Commission may use its discretion to implement that goal. Thus, the Commission may consider a range of proposals in the future to simplify the process of allocating customer care costs to the default supply rate. RESA states that if the Commission utilizes RESA witness White's streamlined allocation factors, there is no risk of a last man standing problem, as argued by ComEd. The streamlined approach recommended by Mr. White would not lead to this problem because it utilizes the Revenue Allocation factor to allocate customer care costs. As customers switch, the Revenue Allocation Factor would decrease and thus allocate a smaller amount of customer care costs to the default supply rate.

RESA states that the Commission should reject ComEd's underdeveloped proposal to allocate customer care costs to RES customers. Under the three-way model, RES customers would first pay for the customer care costs for distribution service in distribution rates; however, under the proposal RES customers would also be required to pay ComEd customer care costs related to supply service through a separate rider charged to RES customers. ComEd's three-part allocation does not address the lack of competitive parity between the default supply rate and RES prices. Instead it allocates an additional group of costs to customers taking service from a RES in addition to the customer care costs that RES customers must already pay in their rates and charges. ComEd's proposal is also procedurally inappropriate as it first advanced its three-part theory in its rebuttal testimony which does not allow for a full vetting of that approach, rendering it ill-advised. From a practical stand-point ComEd stated in discovery in response to Staff's data requests that it does not keep track of customer care costs as they relate to customers taking service from a RES or default

supply service, so ComEd could not even implement its proposed allocation at this juncture even if it seriously desired to do so.

In conclusion, RESA urges the Commission to provide competitive parity between the treatment of the default supply rate and the treatment of all other competitive retail electric products. Competitive parity is essential for a robust and vibrant competitive retail market to develop over the long run. In order to achieve parity, RESA states the Commission should reject ComEd's Switching Study. Also, the Commission should utilize an allocation study to allocate customer care costs between the delivery function and the supply function. While ComEd's updated Allocation Study (ComEd Ex. 16.01) provides a good starting point and would allocate over $21 million of customer care costs to the supply function, RESA's Modified Allocation Study is less skewed toward the delivery function. The Commission should adopt RESA's modified version of ComEd's Allocation Study, as shown in RESA Ex. MW 2.1. That study would allocate approximately $52 million in customer care costs to the default supply rate.

If the Commission does not adopt RESA's Modified Allocation Study, RESA recommends that, at a minimum, the Commission adopt ComEd's updated Alternative Study (ComEd Ex. 16.03) which would allocate approximately $10,927,146 million to the supply function, as modified in the rebuttal testimony of Mr. White. RESA's Modified Alternative Study would allocate $34 million in call center costs to the default supply rate.

c. ICEA's Position

ICEA recommends that the Commission not adopt the three-part allocation concept initially raised by ComEd witness Brinkman in her Rebuttal Testimony. ICEA produced evidence that the best result of the three-part allocation would be an allocation equivalent to the Switching Study, but that there was great potential for misallocation. ICEA avers that RESA and ComEd have acknowledged, and Staff has not disputed, that the three-part allocation as raised by ComEd has flaws. *See* ICEA Reply Brief at 4-5; see also RESA Reply Brief at 16 (disfavoring three-part methodology as proposed by ComEd); ComEd Ex. 25.0 at 32 (acknowledging limitations of three part allocation).

d. Staff's Position

Staff notes that the Commission has addressed ComEd's allocation of customer care costs in five prior proceedings. *See Commonwealth Edison Co.*, Docket No. 05-0597, Order at 257 (July 26, 2006); *Commonwealth Edison Co.*, Docket No. 07-0566, Order at 170 (September 10, 2008); *Commonwealth Edison Co.*, Docket No. 08-0532, Order at 69 (April 21, 2010); *Commonwealth Edison Co.*, Docket No. 10-0467, Order at 210 (May 24, 2011); and *Commonwealth Edison Co.*, Docket No. 13-0387, Order at 57 (Dec. 18, 2013). In Docket No. 13-0387, the 2013 Rate Design Investigation ("2013 RDI"), the Commission concluded that accurate Customer Care Cost allocation would require ComEd to provide an updated customer care cost Allocation Study that allocates customer care costs between supply and delivery service functions in the Company's next formula rate update filing. *See* Staff Ex. 4.0 at 7.

Consistent with the Commission's direction in Docket No. 13-0387 and in light of the fact that market conditions have in fact evolved significantly since this issue first arose, ComEd provided updated analyses with respect to the allocation of customer care costs utilizing three different methodologies. First, the Company identified the amount of customer care costs that were incurred to serve customers ($374,578,469). ComEd Ex. 16.0 at 8. Then it developed three separate methods of allocating those costs between the distribution and supply function: Allocation Study, Switching Study, and Alternative Study.

Staff opines that there are a number of reasons as to why the Switching Study is superior to the Allocation Study. First, the Switching Study recognizes that the cost of providing customer care for unbundled customers is almost equal to the combined cost for bundled customers. That is, customer care costs did not decline significantly even though fewer customers stayed with ComEd supply. Staff Ex. 4.0 at 12. It is worth contrasting the results of the current version of the Switching Study to the one ComEd provided in Docket No. 10-0467. In Docket No. 10-0467, ComEd projected that if customer switching were to increase ten-fold from 1% to 10%, only a few hundred thousand dollars in additional customer care costs would be expended or saved as a result. In Docket No. 10-0467, ComEd also projected that its Customer Care Costs would increase under the 100% switching scenario, which strengthened the argument that there was no justification for allocating costs away from the distribution function. ComEd is currently experiencing switching levels of roughly 69%. However, ComEd has realized no reduction in its customer care costs even though approximately 70% of ComEd's customers receive electric supply service from RESs. Staff Ex. 4.0 at 13.

The Switching Study also recognizes that ComEd is the default provider that must stand ready to serve customers that have chosen to receive supply service from a RES. As the default supply service provider, see 220 ILCS 5/16-103(c), ComEd must meet its obligations as the Provider of Last Resort ("POLR"). Due to this obligation, ComEd simply cannot avoid costs which support its supply function because it cannot eliminate its role as the POLR, regardless of the number of customers obtaining electric supply from a RES. Id. at 14.

Staff also disputes RESA's argument that the Switching Study is inconsistent with embedded cost principles. The Switching Study is not inconsistent or incompatible with ComEd's embedded cost of service study. The Switching Study is merely another means of determining and demonstrating what portion of the remaining common costs are distribution-related and which are not. It is an added step in the direct assignment of costs that are attributable to the delivery service function, like meter reading. In fact, direct assignments were the starting point for both the Switching Study and Allocation Study. The direct assignment of costs is a common part of the development of an embedded cost of service study. Utilities such as ComEd utilize a fully embedded and allocated cost of service study that breaks down the complexities of all direct, joint, and common costs by function and classification of cost causation. Staff Ex. 9.0 at 9.

The Allocation Study, on the other hand, allocates customer care costs between the supply and distribution functions on an embedded cost basis. While RESA contends that the Switching Study is faulty partly because it does not adhere to

embedded cost principles (RESA Ex. 1.0, p. 4), Staff states that it is doubtful that the Allocation Study, (whether ComEd's version or RESA's "corrected" version), would achieve this goal instead. Because ComEd's embedded cost of service study does not separate out the customer care costs identified in the Allocation Study nor does it include any identification of what supply choices residential or nonresidential customers have made, the Allocation Study does not closely adhere to embedded cost of service principles either, and therefore, it is not more accurate than the Switching Study in examining customer care costs. Staff Ex. 9.0 at 10.

Furthermore, the application of the Allocation Study would shift a significant share of customer care costs to the supply function from ComEd's distribution service related revenue requirement. Under this approach, an unbundled delivery service customer could potentially bypass the supply-related portion of the customer care costs, assuming they are allocated and charged to bundled supply customers only. In fact, each switch from ComEd supply service to a RES's supply service could cause the charges for the recovery of such costs from the remaining ComEd supply service customers to increase. This result inevitably follows from the reality that these costs are not "avoidable". That is, these costs do not decrease as additional customers opt for RES supply. Staff Ex. 4.0 at 23. Fundamentally, Staff claims the application of the Allocation Study would result in a subsidy. Subsidies do not foster efficient competition and do not support the concept of cost causation. Such subsidies distort prices, create inefficiencies, and potentially could increase costs to customers. Staff strongly believes that the Commission should not underprice what unbundled customers would pay for customer care costs, and overprice bundled customers in an effort to create an artificial allocation of these costs. Staff Ex. 9.0 at 17.

Another consideration for Staff is that ComEd's treatment of customer care costs is similar to the treatment used by other utilities in Illinois. Staff is not aware of any electric or gas utility where customer care costs are allocated on an embedded cost basis between distribution and supply. In Staff's view, if the Commission were to accept the Allocation Study instead, this would set an undesirable precedent not only for other electric utilities in Illinois, but for gas utilities as well. The same arguments could apply to any utility with significant supply costs relative to distribution costs. Ever since the restructuring of the electric industry and the creation of delivery service rates, the Commission has consistently treated customer care costs as delivery service costs and allowed for their recovery through delivery service rates. What's more, ComEd's treatment of customer care costs is similar to the treatment used by other utilities in the United States. Out of the 21 regulatory jurisdictions throughout the United States identified in an industry-wide review offered by ComEd, there is not one jurisdiction that reallocates customer care costs among regulated entities from delivery to supply. ComEd Ex. 8.02.

If the Commission decides to adopt RESAs proposal to allocate customer care costs based upon an embedded cost basis using an Allocation Study, the issue of allocators for the Allocation Study comes into play. Staff notes that the starting point for RESA's analysis is the Allocation Study presented by ComEd, to which RESA proposes several adjustments. Staff has a number of concerns about the specific allocators RESA

proposes for these costs. Staff Ex. 9.0 at 22. RESA contends that ComEd developed faulty allocators for its Allocation Study and that ComEd's proposed allocators generate implausible results. See RESA Ex. 1.0 at 4, 12. To address these perceived shortcomings, RESA identifies various adjustments that would further reallocate anywhere from $36.5 to $59 million to the default supply rate, depending which allocation methodology the Commission would chose. RESA Ex. 2.0 at 30-31. RESA adjusted a number of ComEd's allocators, namely: revenue allocation, Id. at 13-15, Bill Allocator, Id. at 15, and bill calculation allocator, Id. at 17, and presented a few other miscellaneous adjustments. Staff Ex. 9.0 at 22-23.

Staff notes that RESA dismisses ComEd's Allocation Study's ability to allocate costs between distribution and supply alleging that many of the allocators seem to have little to do with the costs they are purportedly allocating. *See generally* RESA Ex. 1.0 at 9-20. According to Staff, RESA fails to provide cost justification for the alternative allocators it proposes. RESA's use of revenues (i.e., use of a revenue allocator in place of where ComEd utilized another type of allocator which recognizes the labor-driven nature of these costs) as a basis for allocating costs between delivery and supply produces inappropriate results that do not reflect cost causation. Staff asserts that ComEd has established the proper methodology for establishing cost causation when performing its Allocation Study via the use of direct assignments, special studies and generally accepted functional allocators. Direct assignments establish the highest degree of correlation between the cost and the cause of the cost. The second best alternative for properly identifying cost causation with a function, class, or service would be some sort of special study such as the call center study that identifies a group of costs that can be split among two or more functions. The third alternative is to use a meaningful relationship such as an allocation study or generally accepted functional allocator (i.e., labor and/or rate base, etc.). Staff Ex. 9.0 at 30. Finally, when all else fails, revenue could be considered as a method for functionalizing costs to functions, class or service. According to Staff, this is where RESA commits an error by using revenues as the allocation method of choice, according to which RESA adjusts ComEd's allocation of costs. *Id.* RESA's arbitrary adjustment appears to be a self-serving adjustment without any regard to ComEd's operations. *Id.* at 25. A comparable subjective allocation methodology was rejected time and again by the Commission in Docket Nos. 05-0597, 07-0566, 08-0532, and 10-0467. The fundamental underlying rationale for such a proposal remains unsupported in this proceeding as well. Essentially, Staff argues that adoption of RESA's allocation proposal would create disparities in rates between sales and delivery customers that would be difficult to justify from a cost standpoint.

While Staff does not support the use of allocation factors to segment customer care costs between delivery and supply functions, if the Commission adopts such an approach from a policy perspective, Staff recommends that the Commission adopt the results of ComEd's Alternative Analysis, ComEd Ex. 16.03, consisting of a two-step costing method that relies upon combination of embedded and avoided costing principles, which allocates $10,927,146 of ComEd's customer service costs to its supply function. Staff recommends that the Commission utilize the results of the Alternative Analysis because this approach will minimize the impact of unbundling the costs of a

utility's customer service activities between its delivery and supply functions. Staff states this unbundling is not easy or straightforward, and is not generally undertaken elsewhere in the electric utility industry. ComEd Ex. 8.0 at 28. This costing approach recognizes the common cost aspect associated with ComEd's customer service activities and the desire to quantify the portion of the associated costs that can be allocated to ComEd's supply function using acceptable and widely recognized costing principles. *Id*. at 28-29.

In the alternative, the Commission can adopt the results of ComEd's Allocation Study, ComEd Ex. 16.01, which would allocate $21,386,393 of customer care costs from delivery to supply, and reject RESA's adjustments to ComEd's Allocation Study which would allocated $36.5 to $59 million dollars of ComEd's customer service costs to its delivery and supply functions. However, Staff cautions the Commission to not adopt the results of the Allocation Study, because it would undoubtedly create additional unnecessary complications, which will have to be dealt with in future years to come. Staff Ex. 9.0 at 37.

e. Commission Analysis and Conclusion

This issue involves ComEd's total direct and indirect customer care costs – approximately $375,000,000 – and how they should be allocated. This issue has been addressed repeatedly and, for the most part, consistently by the Commission. The Commission most recently addressed this issue in Docket No. 13-0387, wherein the Commission stated that:

> The record in this case identifies that there may be customer care costs that are attributable to the supply function and should therefore be allocated to the supply function to adhere to cost causation principles. Therefore, the Commission directs ComEd to provide an updated Customer Cost Allocation Study that allocates customer care costs between supply and delivery service functions in the next formula rate update filing. Parties can argue the merits of either accepting or rejecting the results at that time. The Commission directs Staff in the next formula rate case to present analysis to assist the Commission in determining whether a subset of customer care costs are properly attributable to bundled supply customers.

Commonwealth Edison Co., Docket 13-0387, Order at 56-58 (December 18, 2013). In response, the parties have submitted five customer care cost studies for the Commission's consideration. They are:

- ComEd's Switching Study, advocated by ComEd and Staff, which would allocate zero costs to ComEd's default supply function;
- ComEd's Allocation Study, as updated to include indirect costs, which would allocate approximately $21 million to the supply function;

- RESA's Modified Allocation Study, which would allocate approximately $52 million to ComEd's supply function;
- ComEd's Alternative Study, which would allocate approximately $11 million of ComEd's call center costs to the supply function; and
- RESA's Modified Alternative Study which would allocate approximately $34 million of ComEd's call center costs to the supply function.

In addition, ComEd's testimony discussed the concept of a three-part allocation which would allocate some amount of customer care costs to ComEd's distribution customers, some to ComEd's bundled supply customers, and some to customers receiving RES supply. The Commission notes the limited agreement among the parties that this approach is flawed to some degree. The Commission agrees with this limited consensus and explicitly rejects the three-part allocation approach.

Having reviewed the evidence presented by all parties on the customer care cost issue, the Commission determines, consistent with Docket 13-0387, that some portion of ComEd's customer care costs must be allocated to ComEd's supply customers. Therefore, the Commission rejects the Switching Study, because it fails to account for the fact that a portion of ComEd's customer care costs are related to providing electric supply service to default supply customers. In Docket 13-0387, the Commission stated that:

> ComEd and Staff point out that as the number of delivery service customers has increased, its customer care costs have increased not declined. ComEd contends that this is proof that all customer care costs are properly delivery service costs. The Commission is not entirely convinced. The increase in customer care costs and the concomitant increase in number of delivery service customers does not prove the total absence of costs for ComEd's supply customers. The increase in customer service costs may only reflect that billing and other services supplied to delivery service customers could be more complex and expensive than those for supply customers. In addition, a simple correlation between number of delivery service customers and the level of customer care costs provides no information regarding cost causation.

Docket 13-0387, Order at 56-58. Although Staff witness Rukosuev argues, as support for the Switching Study, that ComEd's customer care costs have increased as switching from ComEd supply to RES supply increased (Staff Ex. 4.0 at 15), the Commission finds that RESA argues convincingly that ComEd's customer care costs have remained on pace with inflation. RESA Ex. MW 2.0, p. 28. Thus, this correlation does not support the use of the Switching Study.

Having reviewed the evidence presented by all parties, the Commission determines that ComEd's Updated Alternative Study provides a good starting point for allocating customer care costs to the default supply function. The evidence indicates

that ComEd's call center expenses do in fact decrease as customers switch to RESs. ComEd Ex. 8.0 at 27-28. Allowing ComEd to recover these costs through distribution rates provides a subsidy to ComEd's supply rate. Finally, RESA, ComEd, and Staff each agree that the Alternative Study may provide an acceptable basis for allocating customer care costs to the default supply rate if the Commission rejects the Switching Study. Any error in allocation is based on ComEd's failure to track whether calls are supply or distribution related. Thus, the Commission adopts ComEd's Alternative Analysis, ComEd Ex. 16.03, which consists of a two-step costing method that relies upon a combination of embedded and avoided costing principles and allocates $10,927,146 of ComEd's customer service costs to its supply function. Thus, ComEd should allocate this amount of customer care costs to its supply function.

ComEd's statutorily required POLR obligations are a convincing argument against a strict application of the general principle of rate design based on cost causation. This statutory obligation could lead to the problem of very few customers being on ComEd's supply service which ComEd must offer even if it does not make economic sense. Those few customers could arguably not support the cost of their own service. At this point in time, this is not the status of ComEd's service and allocating $10,927,146 is reasonable. This further supports the Commission's adoption of the Alternative Study, as opposed to the Allocation Study. Accordingly, ComEd is authorized to file corresponding Rider PE and Rate BESH tariff changes and informational sheets, as applicable, reflecting this finding with its compliance filing.

3. Capacity Unbundling

a. ComEd's Position

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

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

b. ICEA's Position

According to ICEA, capacity unbundling is an approach for ComEd to allocate capacity charges amongst residential and small commercial customers in a way that better tracks a customer's peak load use, rather than the current proxy of a flat rate per kilowatt-hour used. *See* ICEA Ex. 1.0C at 9. Such an approach, ICEA states, would involve breaking out capacity as a separate line item in a residential and small

commercial customer's bill. *See id.* at 9. ICEA argues that the current approach puts RESs at a disadvantage. *See id.* at 10.

ICEA urges the Commission to order ComEd to file a tariff for capacity unbundling, which the stakeholders and ultimately the Commission can address on the merits. ICEA candidly acknowledges that based on the timing of its testimony, other parties did not present (or did not have an opportunity to present) evidence on capacity unbundling, thus making a Commission decision on the merits premature at this time. Instead, ICEA recommends that the Commission find a procedural mechanism to place the issue in front of the Commission for full vetting but also timely resolution.

Although not requesting final decision on the merits, ICEA notes that it provided sufficient evidence to demonstrate to the Commission that capacity unbundling is a significant and worthwhile issue. ICEA demonstrated that capacity unbundling will not be new for the mass market, given that a version is already used for utility residential real time pricing ("RRTP") customers. ICEA also sets out several potential benefits to a wide variety of customers. ICEA argues that the evidence it has presented is sufficient to allow the Commission to urge further investigation into this issue with an eye toward timely resolution.

c. Staff's Position

Staff agrees with the position set forth by ComEd that this is not the appropriate docket to consider capacity unbundling.

d. Commission Analysis and Conclusion

The Commission finds that ICEA has not provided evidence in a way that the Commission can rule on the merits of its proposal in this docket. The Commission anticipates that this issue will reappear in a procedural and substantive way that allows the Commission to rule on the merits and urges Staff and stakeholders to proceed in a manner that allows a full record to be presented to the Commission in a timely manner.

XI. Conclusion

For the reasons stated herein, the Commission approves ComEd's annual formula rate update and revenue requirement reconciliation, including the ROE Collar adjustment relating to 2013, as set forth in the attached appendices, to be applicable to delivery services provided by ComEd beginning on the first day of its January 2015 billing period, subject to ComEd's final compliance filing and the rulings in this Order.

The Commission also wishes to emphasize that it appreciates the comments provided on the e-Docket system, as well as the time and effort expended by those who prepared and provided them. These comments have been considered by the Commission in reaching its decisions in this Order, to the extent permitted by the law.

XII. Findings and Ordering Paragraphs

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

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over the parties and the subject matter herein;

(3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;

(4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is $6,574,279,000 for the 2013 Reconciliation Year Revenue Requirement and $7,344,017,000 for the Initial 2015 Rate Year Revenue Requirement;

(5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 7.04% for the 2013 Reconciliation Year and 7.06% for the 2015 Rate Year Initial Revenue Requirement, this rate of return incorporating a return on common equity of 9.20% and 9.25%, respectively, on long-term debt of 5.16%, and on short term debt of 0.40%;

(6) the rates of return set forth in Finding (5) result in tariffed operating revenues of $2,582,014,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of $518,488,000;

(7) the Commission, based on ComEd's proposed original cost of distribution plant in service as of December 31, 2013, before adjustments, of $16,299,132,000, and reflecting the Commission's determination adjusting that figure, unconditionally approves $16,275,590,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2013. The Commission will make separate original cost findings with respect to the assets excluded from the original cost determination in this case;

(8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual tariffed revenues of $2,347,549,000 (in addition to the $129,785,000 of Other Revenues), which represent an increase of $160,232,000 over total revenues established in Docket No. 13-0318 for the 2014 Rate Year Net Revenue Requirement. Such revenues in addition to other revenues will provide ComEd with an opportunity to earn the rates of return set forth in Finding (5);

(9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;

(10) new charges authorized by this Order shall become effective beginning with the first day of the January 2015 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated informational sheets to be effective with the first day of the January 2015 monthly billing period; Commonwealth Edison Company shall provide supporting work papers to the Staff of the Commission concurrently with such informational compliance filing;

(11) the approved 2015 Rate Year Initial Revenue Requirement includes $449,004,969 of projected plant additions expected to be placed in service in 2014 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16 108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

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

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

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	128,384,659
Training facility construction or upgrade programs (construction of training facilities program)	$396,163
Wood pole inspection, treatment, and replacement	18,728,239
Reducing the susceptibility of storm-related damage (storm hardening program)	12,647,799
Total electric system upgrades, modernization programs, and training facilities	**$160,156,859**
Additional smart meters	$31,655,718
Distribution automation and associated cyber secure data communication network	60,470,214
Substation micro-processor relay upgrades	5,396,390
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	**$97,522,322**
Total actual incremental 2013 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	**$257,679,181**

(13) Commonwealth Edison Company shall file, for Commission approval, an updated General Services Agreement that complies with current applicable laws and regulations within 90 days of the date of this Order.

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

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

IT IS FURTHER ORDERED that Commonwealth Edison Company shall file, for Commission approval, an updated General Services Agreement that complies with current applicable laws and regulations within 90 days of the date of this Order.

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

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

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

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

By Order of the Commission this 10th day of December, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman