STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)	
	)	
Reconciliation of revenues collected under Rider EDA with actual costs associated with energy efficiency and demand response programs.	)))	Docket No. 14-0567

DRAFT POSITION STATEMENTS
SUBMITTED BY COMMONWEALTH EDISON COMPANY

Dated: March 10, 2016

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By the Commission:

I. Procedural History

On September 18, 2014, the Illinois Commerce Commission ("Commission") entered an Order commencing this reconciliation proceeding. The Order required Commonwealth Edison Company ("ComEd") to reconcile the revenues it collected under its Energy Efficiency and Demand Response Adjustment Rider ("Rider EDA"), from June 1, 2013 through May 31, 2014 ("Plan Year 6," "PY6," or "reconciliation period"), with the costs it prudently incurred with respect to energy efficiency and demand response measures, as that term is defined in Rider EDA.

On August 29, 2014, ComEd filed its Annual Report to the Commission Concerning the Operation of Rider EDA for Plan Year 6 beginning June 1, 2013 and ending May 31, 2014. The Annual Report was accompanied by the Direct Testimony of Michael S. Brandt, Manager – Energy Efficiency Planning and Measurement of ComEd. ComEd posted notice of the filing in its offices and in newspapers with general circulation in ComEd's service territory in the manner prescribed by 83 Ill. Admin. Code § 255, in compliance with the Commission's Order initiating this proceeding. On December 9, 2014, ComEd filed a Corrected Annual Report for Plan Year 6 ("Annual Report") (ComEd Exhibit ("Ex.") 1.0 CORR.) that was accompanied by the Corrected Direct Testimony of Michael S. Brandt (ComEd Ex. 2.0 CORR.). Mr. Brandt's Corrected Direct Testimony referred to and attached ComEd Exs. 2.1 through 2.4.

On July 9, 2015, Staff of the Illinois Commerce Commission ("Staff") filed the Direct Testimony of Scott Tolsdorf, an accountant in the Accounting Department of Financial Analysis Division of the Commission (Staff Ex. 1.0). The Direct Testimony of Mr. Tolsdorf attached Schedules ("Sched.") 1.01 through 1.03, and Attachment A.

In response to Staff's Direct Testimony, on August 14, 2015, ComEd filed the Rebuttal Testimony of Mr. Brandt (ComEd Ex. 3.0). Mr. Brandt's Rebuttal Testimony referred to and attached ComEd Ex. 3.1.

Staff filed the Rebuttal Testimony of Mr. Tolsdorf (Staff Ex. 2.0) on September 24, 2015. Mr. Tolsdorf's Rebuttal Testimony referred to and attached Attachment A.

ComEd filed the Surrebuttal Testimony of Mr. Brandt (ComEd Ex. 4.0) on November 5, 2015.

On January 8, 2016, ComEd filed the Affidavit of Michael S. Brandt (ComEd Ex. 5.0) and on January 11, 2016, Staff filed the Affidavit of Scott Tolsdorf (Staff Ex. 2.1).

Pursuant to notice given as required by law and by the rules and regulations of the Commission, the evidentiary hearing in this proceeding was held at the Commission's offices in Chicago, Illinois on January 12, 2016, before a duly authorized Administrative Law Judge ("ALJ"). Appearances were entered by counsel on behalf of ComEd and Staff. ComEd presented the affidavit, the Annual Report, and the testimony with attachments of Michael Brandt. Staff presented the affidavit and testimony with attachment of Scott Tolsdorf. The following exhibits were admitted into the evidentiary record: ComEd Exhibits 1.0 CORR., 2.0 CORR., 2.1 – 2.4, 3.0, 4.0, and 5.0, and Staff Exhibits 1.0, 2.0, and 2.1. At the conclusion of the hearing the record was marked heard and taken.

The parties filed and served Initial Briefs on February 11, 2016. Reply Briefs were filed and served on March 3, 2016. Draft Position Statements were filed and served on March 10, 2016.

II. Overview of ComEd's Energy Efficiency and Demand Response Plan and Rider EDA

Mr. Brandt testified regarding: (i) ComEd's 2011-2013 Energy Efficiency and Demand Response Plan ("Plan"); (ii) the various energy efficiency and demand response measures ComEd implemented for Plan Year 6 and ComEd's accounting for Plan Year 6 expenditures; (iii) the various energy efficiency measures implemented under the separate Illinois Power Agency ("IPA") Procurement Plan ("IPA Plan") and procured by ComEd for the IPA year beginning June 1, 2013 and ending May 31, 2014 and ComEd's accounting for these expenditures; (iv) ComEd's process for the selection and oversight of contractors to ensure costs are reasonable; (v) the reasonableness and prudence of Plan Year 6's measures and associated costs; (vi) the reconciliation of revenues collected under Rider EDA with the costs incurred by ComEd associated with the implementation of the energy efficiency and demand response measures approved in the Plan, as recorded on ComEd's books, for the period beginning June 1, 2013 and extending through May 31, 2014; and (vii) the planning and implementation costs ComEd incurred during PY6 related to its Commission-approved On-Bill Financing ("OBF") Program, and the prudence and reasonableness of those costs. ComEd Ex. 2.0 CORR. at 1-2.

In addition to implementing the programs set forth in its Plan, ComEd worked closely with the Stakeholder Advisory Group ("SAG") throughout the Plan Year on many matters, highlighted by the Commission's approval of ComEd's 2014-2017 Energy

Efficiency and Demand Response Plan. Mr. Brandt stated that ComEd employed appropriate business standards to ensure that measures were implemented according to the Commission-approved Plan while also minimizing costs to customers. These standards include a competitive bidding process for the hiring of consultants and contractors, use of standardized documents and procedures for contractors, and approval and ongoing monitoring, tracking and reviewing of consultant and contractor work and invoices. ComEd Ex. 2.0 CORR. at 3.

III. ComEd's Filing

A. Summary of ComEd's Energy Efficiency and Demand Response Plan's Energy Savings Goals and Spending Screen

Mr. Brandt stated that on October 1, 2010, ComEd filed its Plan pursuant to the requirements imposed by Section 8-103 of the Public Utilities Act ("the Act"). The core of ComEd's Plan is a portfolio of energy efficiency and demand response measures designed to meet the annual energy savings and demand response goals within the annual spending screens in each of the three Plan years. For Plan Year 6, Section 8-103(b) required that ComEd "implement cost-effective energy efficiency measures" to achieve an annual energy savings goal of 1.4% of energy delivered during Plan Year 6. 220 ILCS 5/8-103(b). Section 8-103(c) mandated that ComEd "implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act." 220 ILCS 5/8-103(c); ComEd Ex. 2.0 CORR. at 5-6. Section 8-103(d) established a "spending screen," which provided that, for Plan Year 6, ComEd "reduce the amount of energy efficiency and demand-response measures implemented … by an amount necessary to limit the estimated average net increase due to the cost of these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011." 220 ILCS 5/8-103(d); ComEd Ex. 2.0 CORR. at 6. Applying these goals to Plan Year 6, ComEd's Plan calculated a statutory energy efficiency savings goal of 1,294,739 megawatt hours ("MWhs"), a demand response savings goal of 10.8 megawatts ("MWs"), and a spending screen of $162.8 million. ComEd Ex. 2.0 CORR. at 6.

According to Mr. Brandt, ComEd was responsible for implementing all of the demand response measures in the Plan; however, under Section 8-103(e), ComEd shared responsibility for the implementation of energy efficiency measures with the Department of Commerce and Economic Opportunity ("DCEO"). The statute provided that ComEd was to implement 75% of the energy efficiency measures and DCEO was responsible for implementing the remaining 25%. 220 ILCS 5/8-103(e); ComEd Ex. 2.0 CORR. at 6-7. Mr. Brandt explained that ComEd and DCEO calculated the split by considering the performance of each entity over the first two Plan years. Because DCEO was unable to achieve more than 21% of the savings with 25% of the funding during those two years, ComEd and DCEO proposed to reduce DCEO's goal while maintaining the same level of funding, which ultimately increased ComEd's goal without providing ComEd with any additional funding to achieve that higher goal. ComEd Ex. 2.0 CORR. at 7.

In its December 21, 2010 Order approving ComEd's Plan, the Commission approved the calculations of the modified energy efficiency savings goals (as set forth in the Stipulated Settlement), the spending screen, and the split with DCEO. *See Commonwealth Edison Co*., ICC Docket No. 10-0570, Order (Dec. 21, 2010) (the "Order"); ComEd Ex. 2.0 CORR. at 7. Mr. Brandt testified that as a result, of the 920,987 MWh energy efficiency saving goal for PY6, ComEd was responsible for 805,719 MWhs and DCEO was responsible for 115,258 MWhs.

Mr. Brandt further testified that consistent with the Commission's Order, ComEd recalculated the spending screen to reflect the average amount paid by retail customers and revised its forecast for energy to be delivered. The recalculation resulted in an adjusted spending screen of $155.5 million, which was $7.3 million less than the spending screen originally calculated in the Plan for Plan Year 6. ComEd Ex. 2.0 CORR. at 7. Mr. Brandt testified that, consistent with the Order, ComEd recalculated the PY6 savings goal based on several factors, resulting in a revised goal of 787,432 MWhs. *Id.* at 8.

B. Overview of Energy Efficiency and Demand Response Measures Implemented during Plan Year 6 and Plan Year 6 Incremental Costs

1. Energy Efficiency Programs Offered under the Plan during PY6

Mr. Brandt described the individual energy efficiency measures that ComEd implemented in Plan Year 6 to achieve its energy savings goals. He explained that the individual energy efficiency measures were organized into an overall portfolio consisting of a variety of program elements. The basic building block of the portfolio is the energy efficiency measure – an individual technology or service that reduces the amount of electricity used when installed or performed. An energy efficiency program or program element consists of the bundling of one or more of these energy efficiency measures into an entire program concept, which includes program delivery mechanisms, incentive rebate levels, and marketing approaches. The measure is one component of the program element. Mr. Brandt testified that a program represents a bundle of program elements. ComEd Ex. 2.0 CORR. at 8.

Mr. Brandt testified that the portfolio was designed to blend together the program elements under two broad solutions-based programs for Residential and Business customers – "Smart Ideas for Your Home" and "Smart Ideas for Your Business." ComEd's final Plan Year 6 portfolio consisted of a set of energy efficiency program elements that included nine residential program elements and eight commercial and industrial ("C&I") program elements. ComEd Ex. 2.0 CORR. at 8.

Mr. Brandt added that an enhancement of the 2011-2013 Plan over the 2008-2010 Plan was the inclusion of the two gas companies, Integrys and Nicor, into the energy efficiency planning process. Where possible and practicable, ComEd worked with the two gas companies to design and develop joint program offerings for both electric and gas measures. ComEd Ex. 2.0 CORR. at 9.

As Mr. Brandt explained, the "Smart Ideas for Your Home" program elements provided a wide range of options for residential energy management during Plan Year 6. These program elements were intended to offer customers multiple opportunities to participate in the energy efficiency services offered by ComEd while at the same time promoting comprehensive actions that create the most value for customers. They included the Residential Lighting program element, the Home Energy Reports ("HER") program element, the Appliance Recycling program element, the Multi-Family Home Performance program element, the Single Family Home Performance program element, the Complete System Replacement program element, the Joint Elementary Energy Education program element, the Residential New Construction program element, and the Air Conditioning ("AC") Cycling program element. ComEd Ex. 2.0 CORR. at 9-14. Mr. Brandt further testified that the "Smart Ideas for Your Business" program elements offered a complementary set of energy efficiency options to C&I customers during Plan Year 6. These included the Prescriptive Incentive program element, the Custom Incentive program element, the Retrocommissioning program element, the C&I New Construction program element, the Compressed Air program element, the Midstream Incentives program element, the Small Business Direct Installation program element, and the Data Center Efficiency program element. ComEd Ex. 2.0 CORR. at 14-18.

Mr. Brandt testified that in addition to the residential and C&I Smart Ideas programs, ComEd continued to implement the Third Party Program Administration program element, which was first introduced in Plan Year 4. This program was not offered under either of the Smart Ideas banners, but rather provided the opportunity for a third party to implement an energy efficiency program in ComEd's service territory. Mr. Brandt explained that after ComEd solicited program concepts through a Request For Proposal ("RFP") process, ComEd and select external energy efficiency experts selected three bids for implementation as part of this program element, which began in Plan Year 5. Mr. Brandt testified that the three vendors chosen to implement third-party administered programs were Efficiency 2.0, RSG, and RLD Resource Management. In Plan Year 6, this program element produced an estimated 6,900 MWhs of savings. ComEd Ex. 2.0 CORR. at 19.

Mr. Brandt explained that the estimated MWhs of savings that ComEd identified for each program element are not the final MWhs of savings for Plan Year 6. Rather, the results presented are the *ex ante* results that ComEd calculated based on the best information known at the time. He further explained that the independent evaluation team, led by Navigant Consulting, will complete the Plan Year 6 evaluations. The results presented in these evaluations will be the *ex post* results, which will be considered the final Plan Year 6 results. Mr. Brandt testified that after receiving the final evaluation reports, ComEd will prepare a Plan Year 6 Annual Report of Results, similar to the annual reports produced in prior Plan years. He testified that ComEd would commit to producing this report within 30 days upon receiving the final evaluation report. ComEd Ex. 2.0 CORR. at 19-20.

2. Costs Incurred during Plan Year 6 under the 2011-2013 Plan

Mr. Brandt also testified about the incremental costs ComEd incurred related to implementing energy efficiency and demand response measures during Plan Year 6. He explained that the incremental costs included costs for: (i) residential program elements, (ii) C&I program elements, (iii) third party program administration costs, (iv) education and market transformation activities, (v) DCEO costs, and (vi) portfolio-level costs. ComEd Ex. 2.0 CORR. at 20. Mr. Brandt described the incremental costs associated with each of the program elements ComEd implemented during Plan Year 6 as follows: Residential Lighting – $13,782,316; Home Energy Reports – $1,788,260; Appliance Recycling – $6.817,036; Multi-Family Home Performance – $4,815,028; Single Family Home Performance – $1,405,687; Complete System Replacement – $4,858,147; Joint Elementary Energy Education – $813,434; Residential Joint New Construction – $22,875; Air Conditioner Cycling – $1,197,008; C&I Prescriptive Incentive – $32,112,224; C&I Custom Incentive – $4,405,093; C&I Retrocommissioning – $4,568,931; C&I New Construction – $4,906,211; C&I Compressed Air – $4,391,117; C&I Midstream Incentive – $11,966,763; C&I Small Business Direct Installation – $11,180,834; and C&I Data Center Efficiency – $1,000,609. ComEd Ex. 2.0 CORR. at 20-21.

According to Mr. Brandt, ComEd also undertook a variety of education and market transformation activities that were designed to promote energy efficiency education as well as awareness of ComEd's Plan. These activities included: (i) providing Energy Insights Online and Energy Data Services for business customers, (ii) participating in trade ally events to promote the programs, and (iii) conducting general marketing, educational and awareness outreach activities. Mr. Brandt testified that the incremental costs associated with these activities during Plan Year 6 were $4,133,504. ComEd Ex. 2.0 CORR. at 21.

Mr. Brandt also explained that because ComEd collects 100% of the revenue, it must reimburse DCEO for its incremental costs relating to the energy efficiency measures DCEO implemented. As DCEO executed grants or contracts for energy efficiency measures during Plan Year 6, it would submit to ComEd an invoice including the necessary supporting documentation for these grants and contracts. ComEd reviewed the invoice documentation to ensure completeness and then released the money to DCEO. Mr. Brandt explained that this process provided the required oversight and ensured that the money was being allocated towards energy efficiency measures. ComEd reimbursed DCEO $31,563,417 for its incremental costs associated with these activities during Plan Year 6. ComEd Ex. 2.0 CORR. at 21-22.

Mr. Brandt testified that the Plan Year 6 portfolio-level costs included the operation and administration costs of the Plan and consisted of three categories – portfolio administration costs, measurement and verification costs, and research and development/emerging technologies expenditures. The portfolio administration costs included costs associated with: (i) internal ComEd labor for new, incremental positions added to implement ComEd's Plan, (ii) market research and baseline studies across all customer classes, (iii) tracking system expenses, and (iv) general portfolio expenses.

According to Mr. Brandt, during Plan Year 6 the incremental costs were $3,504,433. ComEd Ex. 2.0 CORR. at 22.

The evaluation, measurement and verification ("EM&V") costs were related to expenses incurred in retaining a consultant to conduct the required independent evaluation function for the portfolio. Mr. Brandt explained that the hiring of the consultant was subject to the Commission Staff's approval. Consistent with the agreement reached between ComEd and Staff in ICC Docket No. 11-0646, the EM&V costs reflect all EM&V costs actually incurred and invoiced during Plan Year 6. Mr. Brandt explained that this includes PY4 EM&V costs of $37,177, PY5 EM&V costs of $3,150,077, and PY6 EM&V Costs of $884,503. He noted that ComEd will seek to recover the remaining costs relating to PY5 and PY6 evaluations in the subsequent Plan year(s) in which they are incurred and invoiced. According to Mr. Brandt, during Plan Year 6, the incremental costs incurred for EM&V were $4,071,757. ComEd Ex. 2.0 CORR. at 22-23.

Mr. Brandt stated that research and development ("R&D") and emerging technologies costs could be divided into three groups: (i) pilot programs, (ii) energy efficiency industry memberships, and (iii) technology research. He testified that during Plan Year 6 these incremental R&D costs totaled $1,849,544. ComEd Ex. 2.0 CORR. at 23.

Summarizing the PY6 incremental costs, Mr. Brandt testified that the actual incremental costs ComEd incurred related to the implementation of the Plan during Plan Year 6 totaled $155,526,871. ComEd Ex. 2.0 CORR. at 23. Mr. Brandt explained that ComEd accounts for the expenditures associated with the measures by assigning each program and activity a unique project number within ComEd's accounting system.

C. Overview of Energy Efficiency Programs Offered and Costs Incurred under the IPA Plan during Plan Year 6

1. Energy Efficiency Programs Offered under the IPA Plan during PY6

Mr. Brandt testified that the energy efficiency programs proposed under Section 16-111.5B are separate from those approved under Section 8-103 of the Act. The Energy Infrastructure Modernization Act added new Section 16-111.5B to the Act, and requires that utilities provide, as part of the annual IPA procurement process, analyses of opportunities to expand existing energy efficiency programs or to implement new programs. Mr. Brandt testified that if the Commission approves this incremental energy efficiency procurement, the costs are not subject to the spending screens set forth in Section 8-103(d) of the Act. ComEd Ex. 2.0 CORR. at 24-25.

Mr. Brandt also testified regarding ComEd's PY6 energy efficiency commitment as part of the IPA Plan. He explained that in July 2012, the IPA filed its 2013 Electricity Procurement Plan ("IPA Plan"), and proposed seven energy efficiency program elements for ComEd, which the Commission ultimately accepted and approved. *See Illinois Power Agency,* ICC Docket No. 12-0544 (Dec. 19, 2012) at 271. These approved program elements included the expansion of three of ComEd's current 2011-2013 Plan programs and the addition of four third party administered programs. Mr. Brandt noted that each program was approved at a certain kWh savings goal and with a set budget. ComEd Ex. 2.0 CORR. at 25-27.

Mr. Brandt explained that the estimated MWhs of savings for each of the program elements is not the final MWhs of savings for PY6. These estimated MWhs of savings for each of the program elements are *ex ante* results, which have been calculated by ComEd based on the best information available at the time. The independent evaluation team, led by Navigant Consulting, will complete the PY6 evaluations. The results presented in the evaluations will be the *ex post* results, which will be the final PY6 results. ComEd Ex. 2.0 CORR. at 27.

2. Costs Incurred during PY6 to Implemented Energy Efficiency Programs under the IPA Plan

Mr. Brandt testified that all costs related to the IPA programs are assigned a unique project number within ComEd's accounting system, and that the costs are tracked on a program or activity basis. Mr. Brandt testified that the IPA Plan PY6 energy efficiency incremental costs included costs for (i) ComEd expanded program elements, (ii) third-party administered programs, and (iii) general administrative costs associated with these IPA Plan programs. The incremental costs associated with the ComEd expanded program elements during PY6 were: Energy Efficient Lighting – $5,230,561; Multi-Family Common Area Lighting – $2,829,875; and Small Business Direct Install – $19,503,901. The incremental costs associated with the third-party administered programs during PY6 were: Conservation Service Group – $37,763; OneChange – $500,000; Shelton Solutions – $60,000; and Willdan Energy Solutions – $800,000. Mr. Brandt explained that ComEd allocates the general administrative costs across several categories – (i) general program costs, (ii) Plan Year 7 (June 1, 2014-May 31, 2015, "PY7") start-up costs, and (iii) market research costs. The general program costs are the costs incurred by ComEd to set-up and monitor the third-party programs. The PY7 start-up costs are costs incurred in PY6 to expand the scope and size of the Home Energy Report program element so that it was fully functional by the beginning of PY7. The market research costs include the potential study. The incremental costs associated with those general administrative costs for the IPA Plan programs in PY6 were: General Program Costs – $68,162; PY7 Start-Up Costs – $390,000; and Market Research Costs – $48,921. Mr. Brandt testified that the total actual incremental energy efficiency expenditures pertaining to the implementation of the IPA Plan energy efficiency programs in PY6 were $29,469,183. The cost breakdown is as follows: ComEd IPA Program Elements – $27,564,337; Third-Party Administered IPA Programs – $1,397,763; and General IPA Administrative Costs – $507,083. ComEd Ex. 2.0 CORR. at 28-30.

D. Prudence and Reasonableness of Plan Year 6 Costs Under the 2011-2013 Plan and IPA Plan

1. Contractor Selection and Oversight

Mr. Brandt described the types of activities for which ComEd retains third-party consultants and contractors. Specifically, these roles include: (i) program implementation, (ii) program evaluation, (iii) market research, and (iv) program tracking system development and implementation. Mr. Brandt explained that to ensure the consultant and contractor costs are reasonable and prudent, ComEd uses a standard competitive solicitation process administered by its affiliate, Exelon Business Services Company ("BSC"). According to Mr. Brandt, ComEd, in conjunction with BSC, developed RFP documents that detailed the requirements for the programs. A list of qualified vendors was created for the various types of programs and projects based on numerous sources, and then the RFPs were sent to the vendors for bid. For each RFP, ComEd and BSC put together an internal team to review each bid based on specific qualifications, including previous experience and cost. In all cases, contract negotiations were conducted by the BSC procurement team and followed standard procedures. Mr. Brandt explained that in the case of the evaluation contract, Staff was also offered the opportunity to review all bids, participate in any vendor interviews, and have sign-off on the vendor selection. In addition, the SAG members were kept apprised of all steps in the process and had the opportunity to comment on the process at any time. Mr. Brandt noted that for the Plan years comprising the 2011-2013 Plan, many of the contracts that expired at the end of the 2008-2010 Plan cycle were renegotiated with the existing contractor to ensure continuity in the marketplace. Again, BSC conducted the contract negotiations following standard procurement procedures. ComEd Ex. 2.0 CORR. at 30-31.

Mr. Brandt further testified that during the contract implementation phase, ComEd's program managers reviewed the invoices submitted by the consultants and contractors to ensure the invoices reflected only those charges that related to work that had been authorized. He explained that to assist its review of expenditures, ComEd requires that invoices include detailed backup documentation. ComEd Ex. 2.0 CORR. at 31.

Mr. Brandt testified that in order to ensure that the incremental costs ComEd incurs related to the IPA Plan are prudent and reasonable, ComEd used the same cost control procedures that it applies to the rest of its energy efficiency portfolio. Specifically, ComEd used the standard competitive solicitation process administered by its BSC. ComEd, in conjunction with BSC, developed an RFP document that detailed the requirements for submittal to the IPA. A list of qualified vendors was created for the various types of programs and projects based on numerous sources, and then the RFPs were sent to the vendors for bid. For each RFP, ComEd and BSC put together an internal team to review each bid based on specific qualifications, including previous experience and cost. In all cases, contract negotiations were conducted by the BSC procurement team and followed standard procedures. In addition, the SAG members were also involved in the RFP review and selection process. In the contract implementation phase, ComEd's program managers review the invoices submitted by the consultants and contractors to ensure the invoices reflect only those charges that relate to work that has been authorized. Mr. Brandt noted that in order to assist its review of expenditures, ComEd requires that invoices include detailed backup documentation. ComEd Ex. 2.0 CORR. at 31-32.

Mr. Brandt also identified the primary consultants and contractors that are involved in the implementation, administration and evaluation of the portfolio. ComEd Ex. 2.0 CORR. at32-33.

E. Reconciliations under Rider EDA

1. Overview of Operation of Rider EDA

Mr. Brandt testified that Rider EDA prescribes the method of computing the charges that reflect the recovery of incremental costs associated with energy efficiency and demand response measures. He explained that the purpose and intent of Rider EDA is to pass through to retail customers the incremental costs incurred by ComEd associated with the measures, without markup or profit. Each May, ComEd files with the Commission an Informational Filing, which includes its projected costs for measures to be implemented during the next Plan year and the calculations necessary to determine the Rider EDA charges for the coming Plan year for each of the three customer classes identified in the rider. Rider EDA also provides that the Rider EDA charges may be revised by ComEd during a given Plan year if ComEd determines that, "a revised EDA results in a better match between EDA revenues and applicable Incremental Costs." Rider EDA, Ill. C. C. No. 10, Original Sheet No. 248.1; ComEd Ex. 2.0 CORR. at 33-34.

Mr. Brandt further explained that a key component of the Rider EDA calculation is the Automatic Reconciliation Factor ("ARF"), which Rider EDA defines as "equal to the cumulative over collection or under collection from applicable retail customers, pursuant to plans approved by the ICC, resulting from the application of then applicable EDAs through the end of the following May monthly billing period." Rider EDA, Ill. C. C. No. 10, 1st Revised Sheet No. 248. He explained that because the Plan Year 6 ARF reflected an over collection of Plan Year 5 Rider EDA revenues by approximately $19.9 million, its application during Plan Year 6 decreased the amount that would be recovered from retail customers by approximately $19.9 million. *See* ComEd Ex. 1.0 CORR.; ComEd Ex. 2.0 CORR. at 34.

Mr. Brandt also testified that all incremental costs associated with the measures were recoverable under Rider EDA. ComEd Ex. 2.0 CORR. at 34. He stated that Rider EDA defines "Energy Efficiency and Demand Response Measures (Measures)" as "activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Economic Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC." Rider EDA, Ill. C. C. No. 10, 1st Revised Sheet No. 245. Rider EDA defines "Incremental Costs" as:

> [C]osts incurred after August 28, 2007 by the Company or recovered on behalf of DCEO in association with the Measures and include, but are not limited to (a) fees, charges, billings, or assessments related to the Measures; (b) costs or expenses associated with equipment, devices, or services that are purchased, provided, installed, operated, maintained, or monitored for the Measures; (c) the revenue requirement equivalent of the return of and on a capital investment associated with a Measure, based on the most recent rate of return approved by the ICC; and (d) all legal and consultative costs associated with the Measures.
>
> Incremental Costs also include incremental expenses for wages, salaries, and benefits of Company employees, including direct and indirect incremental costs associated with such Company employees, who are hired for positions that are specifically related to the Measures and that were created after August 28, 2007. Incremental Costs may not include any expenses for wages, salaries, and benefits of Company employees in positions that are related to the Measures, employed either before or after August 28, 2007, that are otherwise recovered under other effective tariffs.

Rider EDA, Ill. C. C. No. 10, 1st Revised Sheet No. 246. ComEd Ex. 2.0 CORR. at 34-35.

Mr. Brandt testified that in addition, Section 16-111.5B, which created the IPA energy efficiency programs requirement, directs that its associated costs be covered through Rider EDA:

> (6) An electric utility shall recover its costs incurred under this Section related to the implementation of energy efficiency programs and measures approved by the Commission in its order approving the procurement plan under Section 16-111.5 of this Act, including, but not limited to, all costs associated with complying with this Section and all start-up and administrative costs and the costs for any evaluation, measurement, and verification of the measures, from all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act, provided, however, that the limitations described in subsection (d) of that Section shall not apply to the costs incurred pursuant to this Section or Section 16-111.7 of this Act.

220 ILCS 5/16-111.5B; ComEd Ex. 2.0 CORR. at 35.

2. Calculation of the Rider EDA Charges

Mr. Brandt explained that ComEd Exhibits 2.1 and 2.2 to his corrected direct testimony showed how ComEd calculated the Rider EDA charges for the reconciliation period. After filing its initial Rider EDA Adjustment in May 2013 as required by the rider, Mr. Brandt stated that ComEd revised the EDA Adjustment, effective with the November 2013 monthly billing period, to reflect the final true-up of actual expenses by customer class for PY5. ComEd Ex. 2.0 CORR. at 36.

Mr. Brandt stated that for each of the five customer classes, the following information was included in the calculations for Plan Year 6: (1) the Plan Year 6 projected incremental costs associated with the measures, (2) the Plan Year 6 ARFs, (3) the Total Dollar Amount to be recovered through the rider, (4) the Projected Energy to be Delivered to each of the five classes of Retail Customers (in kWhs), (5) the Uncollectible Factor, and (6) the Plan Year 6 Rider EDA Adjustments, rounded to the nearest thousandth of a cent. ComEd Ex. 2.0 CORR. at 37.

Moreover, Mr. Brandt explained that the methodology used to calculate the Rider EDA charges, described in Rider EDA, takes into account the Reimbursements of Incremental Costs ("RIC"), which is equal to reimbursement funds from any source other than the application of the Rider EDA charges to the bills of retail customers. If the RIC is greater than zero, then the amount of the RIC is subtracted from the projected incremental costs to obtain the total amount to be charged through the rider. Mr. Brandt testified that in Plan Year 6 the value of the RIC used to set the Rider EDA charges for PY6 was $125,939. He clarified that these dollars reflect the projected PJM credits for load reduction for Rider EDA AC cycling customers. ComEd Ex. 2.0 CORR. at 37-38.

Mr. Brandt also explained how ComEd determined the projected energy to be delivered during Plan Year 6 to retail customers in the Rider EDA calculations, stating that ComEd obtained a forecast of the projected energy to be delivered to its retail customers in Plan Year 6 from its Load Forecasting Division, which is part of ComEd's Financial Planning and Analysis department. He also testified as to how ComEd determined the Uncollectible Factor. Mr. Brandt stated that consistent with the Commission's Order in ICC Docket No. 09-0433, the Uncollectible Factor is 1.0. ComEd Ex. 2.0 CORR. at 38.

According to Mr. Brandt, the Rider EDA charges for each customer group were determined by dividing the projected incremental costs associated with the measures for Plan Year 6 for that customer group by the projected energy to be delivered to that customer group in Plan Year 6, multiplying that figure by the Uncollectible Factor, and rounding to the nearest thousandth of a cent. He explained that, as shown in ComEd's "Tariff Charges Determined by Formula – Energy Efficiency and Demand Response Adjustments ("EDAs")" submitted to the Commission on May 15, 2013, the Rider EDA charges appearing on retail customers' bills beginning with the June 2013 monthly billing period and extending through the October 2013 monthly billing period were as follows: Residential (EDA-R) – 0.186 cents per kWh; Small C&I (EDA-NSN) – 0.339

cents per kWh; Small C&I (EDA-NSC) – 0.184 cents per kWh; Large C&I (EDA-NLN) – 0.175 cents per kWh; and Large C&I (EDA-NLC) – 0.175 cents per kWh. ComEd Ex. 2.1; ComEd Ex. 2.0 CORR. at 38-39.

Mr. Brandt further explained that, as shown on ComEd's "Tariff Charges Determined by Formula – Energy Efficiency and Demand Response Adjustments ("EDAs")" submitted to the Commission on September 30, 2013, the Rider EDA charges appearing on retail customers' bills beginning with the November 2013 monthly billing period and extending through the May 2014 monthly billing period were as follows: Residential (EDA-R) – 0.155 cents per kWh; Small C&I (EDA-NSN) – 0.347 cents per kWh; Small C&I (EDA-NSC) – 0.192 cents per kWh; Large C&I (EDA-NLN) – 0.077 cents per kWh; and Large C&I (EDA-NLC) – 0.077 cents per kWh. ComEd Ex. 2.2; ComEd Ex. 2.0 CORR. at 39.

The relevant Rider EDA charge was then applied to each kWh of electricity delivered to ComEd's retail customers, and the total charge or credit applied in accordance with the provisions of Rider EDA is separately stated on each retail customer's monthly bill as "Energy Efficiency Programs." ComEd Ex. 2.0 CORR. at 40.

3. Description of the Annual Report

Mr. Brandt testified that ComEd filed an annual report, ComEd Ex. 1.0 CORR., with the Commission, consistent with Rider EDA, which requires that the annual report summarize the operation of Rider EDA and compare actual incremental cost recovery from customers in Plan Year 6 with the incremental costs incurred in accordance with the provisions of Rider EDA for Plan Year 6. Mr. Brandt testified that the first page of the Annual Report provides a summary of the PY6 incremental costs incurred and recovered through Rider EDA. The second page shows a summary of revenue of (1) the amounts recovered through rates by class of retail customers, to whose bills the Rider EDA charges were applied in PY6 and (2) the Reimbursement of Incremental Costs ("RIC") for PJM revenues. The third page details prior period adjustments identified in PY6. The fourth page shows the incremental costs incurred by ComEd and associated with the measures during Plan Year 6. The costs are broken down by program and activities, and then by customer group. The fifth page shows the annual costs across the high-level cost categories for the life of the portfolio, with a summary column showing lifetime portfolio costs. Finally, the sixth page presents a summary of EM&V expenses incurred to date for each Plan year, the Plan year in which the expenses were recovered, and the total EM&V budget for each Plan year. ComEd Ex. 2.0 CORR. at 40-41.

Mr. Brandt explained that ComEd identified two adjustments that were required to the portfolio accounting to ensure accuracy and consistency within the portfolio. He stated that the first adjustment (PY5 Adjustments – Light Bulb Incentives) reallocates costs for the Residential Lighting Program from the residential customer class to the small C&I customer class based on findings in the Residential Lighting evaluation that approximately 3% of the light bulbs were installed in small C&I premises. The second adjustment (PY5 Adjustments – Midstream Incentives) reallocates costs for the

Midstream Incentive Program from the small C&I customer class to the residential customer class. This is based on findings in the Midstream evaluation that 6% of the program participants were residential customers. ComEd Ex. 2.0 CORR. at 41.

With respect to the calculation of the ARF for Plan Year 6 activity, Mr. Brandt explained that, for the Plan Year 6 reconciliation period, each ARF is equal to the amount of the under or over collection of incremental costs resulting from the application of the Rider EDA adjustments to retail customers' bills. According to Mr. Brandt's direct testimony, the difference between the incremental costs incurred for four of the customer classes and the amounts recovered in rates from each of the customer classes resulted in an over collection for the residential, small C&I competitive, the large C&I non-competitive and the large C&I competitive classes of $444,954, $7,083,385, $60,480 and $8,579,654, respectively. The small C&I non-competitive customer class had an under collection of $7,020,433. This resulted in a total over collection of $9,148,040. *See* ComEd Ex. 1.0 CORR.; ComEd Ex. 2.0 CORR. at 41.

Mr. Brandt also testified that ComEd made changes to its Rider EDA charges for Plan Year 7. Specifically, ComEd identified two changes to the Rider EDA adjustment in its May 15, 2014 submission to set the PY7 Rider EDA adjustments (applicable beginning with the June 2014 monthly billing period). First, ComEd reduced the PY7 projected incremental costs by the estimated $448,301 of projected PJM credits due to the AC Cycling program element, which were subtracted from the estimated incremental costs from the residential customer class for Plan Year 7. Second, ComEd reduced the PY7 projected incremental costs by $224,887, which was the PY4 Ordered Reconciliation Factor ("ORF"). ComEd Ex. 2.0 CORR. at 42.

Mr. Brandt further explained that following the May 15, 2014 submission and the close of Plan Year 6 on May 31, 2014, ComEd began finalizing the Plan Year 6 figures, which resulted in a final over-collection amount of $9,148,040 for PY6. With the exception of the under collection associated with the small C&I non-competitive customer class, an over collection occurred for the other four customer classes. Mr. Brandt testified that ComEd then prepared a revised informational filing that updated the Rider EDA charges, as appropriate, to reflect the over collection identified in ComEd's September 23, 2014. This over collection amount also includes the PY6 adjustments shown on page 3 of the Annual Report. *See* ComEd Ex. 1.0 CORR.; ComEd Ex. 2.0 CORR. at 42.

4. Results of Internal Audit

Mr. Brandt testified that as required by Rider EDA, the Annual Report included "the results of an internal audit verified by an officer of the Company." Rider EDA, Ill. C. C. No. 10, Original Sheet No. 248.1; *see* ComEd Ex. 2.4. He explained that consistent with Rider EDA, Exelon's internal audit team performed testing to ensure that: (1) incremental costs recovered through Rider EDA were associated with the programs and were not recovered through other approved tariffs; (2) retail customer bills accurately reflected the appropriate EDA rate; (3) billed revenue collected through Rider EDA was correctly stated; and (4) funds from any source other than those collected through the rider were identified and reflected in the computation of the EDA and ARF. According to Mr. Brandt, the audit found that "costs recovered through Rider EDA were recovered pursuant to the rider and were not recovered through other tariffs" and "EDA adjustments were properly calculated and applied to customers' bills and revenue collected through Rider EDA was correctly stated." No issues were discovered as a result of the above tests. ComEd Ex. 2.4; ComEd Ex. 2.0 CORR. at 43.

5. Other Program Costs

Mr. Brandt further testified that in addition to Plan implementation costs, ComEd also incurred expenses related to its Commission-approved On-Bill Financing Program. ComEd Ex. 2.0 CORR. at 44.

Mr. Brandt testified that during PY6, ComEd incurred $132,562 in expenses related to the implementation of its On-Bill Financing ("OBF") Program, which was approved by the Commission in ICC Docket No. 10-0091. *See Commonwealth Edison Co.*, ICC Docket No. 10-0091, Order (June 2, 2010) ("*OBF Order*"). He explained that the OBF Program offers qualifying residential customers the ability to finance select energy-efficient products. The financing of these products can be repaid through the customers' ComEd electric bill over a period of time. According to Mr. Brandt, in PY6, select ENERGY STAR® rated refrigerators, clothes washers and central air conditioning systems could be financed for a period of up to 10 years. Through the end of PY6, the OBF Program had made over 380 loans totaling over $1,400,000. Mr. Brandt testified that during Plan Year 6, ComEd incurred various implementation costs for the OBF Program, including costs associated with the preparation of marketing materials, consultative costs associated with the Illinois Energy Association and the Energy Efficiency Finance Corporation, and legal fees. ComEd Ex. 2.0 CORR. at 44.

Mr. Brandt explained that all costs related to the OBF Program are assigned a unique project number within ComEd's accounting system, and costs are therefore tracked on a program or activity basis. He further explained that the statute that created the OBF program directs that OBF Program costs be recovered through Rider EDA. As a result, the *OBF Order* approved modifications to Rider EDA to provide for the recovery of the costs ComEd incurs related to its OBF Program. He testified that Rider EDA includes the following incremental costs associated with the OBF Program: (1) start-up and administrative costs; (2) evaluation costs; (3) the revenue requirement equivalent of the return of and on a capital investment based on the most recent rate of return approved by the ICC; (4) all legal and consultative costs; and (5) incremental expenses for wages and salaries and benefits of ComEd employees who are hired for positions that are specifically related to any on-bill financing program that are not otherwise recovered under other effective tariffs. ComEd Ex. 2.0 CORR. at 45-46.

In order to ensure that the incremental costs ComEd incurs related to the OBF Program are prudent and reasonable, Mr. Brandt testified that ComEd, in conjunction with other Illinois utilities, completed a joint RFP to secure a financial institution to provide loans to the participants. He stated that the joint RFP process was designed to achieve a variety of efficiencies, including the consolidation of four separate RFP processes into one and aggregating the utilities' lending facilities to attract a broader range of financial institutions. According to Mr. Brandt, ComEd believes this process ensured that the utilities obtained the best loan terms for the customers who participated in the Program. For miscellaneous expenses, ComEd leveraged its current agreements with some of the Plan vendors where pricing has already been negotiated. Mr. Brandt explained that because the OBF Program was only available to residential customers during PY6, ComEd is only recovering PY6 Program costs from such customers through Rider EDA. ComEd Ex. 2.0 CORR. at 46-47.

IV. Uncontested Issues

A. Original Cost Determination

Mr. Tolsdorf proposed that the Commission make an original cost determination in this proceeding related to certain capital costs recovered through Rider EDA – namely for Air Conditioner ("AC") Cycling units recovered through Rider EDA as of May 31, 2014. In rebuttal testimony, ComEd joined Staff's request that the Commission make an original cost determination in this proceeding related to the capital costs of the AC Cycling units, which were installed during earlier Plan Years under the Nature First demand response program. Specifically, Staff and ComEd both request that the Commission approve $3,269,423 as the original cost of the AC Cycling units recovered through Rider EDA as of May 31, 2014. Staff Ex. 1.0 at 9-1; ComEd Ex. 3.0 at 16; ComEd Init. Br. at 7.

The issue is not contested, and the Commission therefore approves $3,269,423 as the original cost of the AC Cycling units recovered through Rider EDA as of May 31, 2014.

B. Great Energy Stewards Program

ComEd's Position

The Great Energy Stewards ("GES") program is a third-party behavioral energy efficiency program designed to generate energy savings by providing ComEd residential customers with information on their energy usage and energy-saving tips through periodic postcards mailed to their homes, as well as small financial incentive payments for energy savings. ComEd Ex. 3.0 at 15, fn 6. Mr. Brandt testified that Staff proposed a $60,000 disallowance regarding the GES program because the independent evaluator found that the program achieved zero kWh savings during PY6. *Id*. at 15. In response to Staff's proposal, Mr. Brandt explained that because this was a pay-for-performance contract and the program did not perform, this money is owed back to ComEd. Mr. Brandt further noted that unlike the vendor Project Porchlight, the third-party vendor overseeing the GES program is not insolvent, completed implementation of the program during PY7, and is currently under contract to continue to implement the program until the end of PY9. As a result, the vendor has acknowledged that this money is due back to ComEd, and is applying the $60,000 owed to ComEd as a credit for the work being performed in PY7 (or PY8 or PY9, if necessary). Mr. Brandt explained that this means the vendor will not bill ComEd in PY7 (or PY8 or PY9, if necessary) until the original $60,000 has been fully credited back. ComEd Ex. 3.0 at 15.

Mr. Brandt explained that the pay-for-performance contract was working exactly as intended – the $60,000 credit would be applied to the ongoing work of this vendor under the same program. According to Mr. Brandt, Staff's proposal to disallow the $60,000 is therefore premature and wrongfully interferes with ComEd's and the vendor's performance under the contract. He further acknowledged that in subsequent reconciliation dockets, Staff will be able to review the status of the $60,000 credit to ensure it is fully applied. In the event that the vendor's performance does not result in the full application of the credit, the vendor must repay whatever portion of the $60,000 is owed, as required by the contract, which would be credited back to customers through Rider EDA. According to Mr. Brandt, because the contract ensures the repayment of the funds in the event the vendor fails to perform, Staff's disallowance is premature. ComEd Ex. 3.0 at 15-16.

In his surrebuttal testimony, Mr. Brandt summarized that although ComEd incurred the $60,000 cost during PY6, Staff proposed to disallow recovery of the costs during PY6 because the program's goal was not achieved. He then testified that in order to limit the issues in this docket, ComEd agreed to Staff's proposed adjustment to disallow recovery of the $60,000 in Plan Year 6, but that ComEd reserves the right to recover the $60,000 in a future Plan Year in which the vendor achieves the promised energy savings and thus is entitled to the $60,000 under the contract. ComEd Ex. 4.0 at 2-3.

Staff's Position

Commission Analysis and Conclusion

This issue is no longer contested. ComEd and Staff agree that the $60,000 incurred in Plan Year 6 should not be recovered in this proceeding, and ComEd reserves the right to recover the $60,000 in a future Plan Year in which the vendor achieves the promised energy savings and thus is entitled to the $60,000 under the contract. The Commission accordingly approves the withdrawal of the $60,000 from recovery in this proceeding, and ComEd is permitted to recover this amount for the Plan Year in which the vendor achieves the promised energy savings.

V. Contested Issues

<u>ComEd's Position</u>

ComEd opposes Staff's proposals to disallow costs associated with two Commission-approved IPA programs that were implemented by third-party vendor Project Porchlight who became insolvent early in Plan Year 7. Staff seeks to disallow

27.5% or $137,500 of the costs associated with the first Commission-approved program – One Change CFL Distribution program. Tolsdorf Dir., Staff Ex. 1.0, Sched. 1.02. For the second Commission-approved program – One Change Small Commercial Power Strip program – Staff seeks to disallow $250,000 in start-up costs. *Id*., Sched. 1.03.

A. Overview of Statutory Framework and Cost Recovery

1. Commission-Mandated Energy Efficiency Programs

ComEd explained that Illinois law requires that ComEd offer or procure – through two principle platforms – various energy efficiency programs for the purpose of reducing energy consumption. The legislature established the first platform in 2007 through the enactment of Section 8-103's Energy Efficiency Portfolio Standard ("EEPS"), which requires that electric utilities prepare triennial energy efficiency plans that are designed to achieve the statutorily-mandated energy savings goals over the relevant three-year period. 220 ILCS 5/8-103. The Commission approved ComEd's first energy efficiency plan ("Plan 1") in Docket No. 07-0540, which covered the period June 1, 2008 through May 31, 2011 (*i.e.*, Plan Years 1 through 3). Thereafter, the Commission approved ComEd's second energy efficiency plan in Docket No. 10-0570 ("Plan 2"), which covered the period June 1, 2011 through May 31, 2014 (*i.e.*, Plan Years 4 through 6). The present reconciliation docket involves Plan Year 6, the final year of ComEd's Plan 2. ComEd Init. Br. at 3-4.

In late 2011, ComEd explained that the General Assembly created a second platform for delivering energy efficiency when it enacted Section 16-111.5B of the Act. Unlike the utility-designed and implemented energy efficiency plans under Section 8-103's EEPS, the core of Section 16-111.5B's efficiency procurement is an RFP process where third-party bidders implement those winning programs that are approved by the Commission. The IPA procurement plan proposed in the fall of 2012 thus was the first plan to include proposed third-party energy efficiency programs, which would be offered during Plan Year 6 beginning June 1, 2013. According to ComEd, Staff's proposed disallowances are, in essence, an attack on the General Assembly's third-party IPA energy efficiency programs. ComEd Init. Br. at 4-6; 220 ILCS 5/16-111.5B(a)(2)-(5).

2. Cost Recovery for Energy Efficiency Programs

ComEd stated that the same statutes establishing the energy efficiency program requirements also provide for and ensure the recovery of the programs' costs. Section 8-103, which governs the EEPS requirements, addresses cost recovery in subsections (e) and (f):

> (e) … A utility providing approved energy efficiency and demand-response measures in the State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission.

* * * *

> (f) … In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:
>
> * * * *
>
>> (6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

220 ILCS 5/8-103(e), (f)(6); ComEd Init. Br. at 6.

ComEd explained that pursuant to these provisions, ComEd proposed Rider EDA for recovery of the energy efficiency and demand response-related costs, which the Commission approved in Docket No. 07-0540. *Commonwealth Edison Co.*, ICC Docket No. 07-0540, Final Order (Feb. 6, 2008) at 56-57. Similarly, Section 16-111.5B ensures recovery of the costs associated with the IPA energy efficiency programs, which is effected through Section 8-103's cost recovery mechanism, Rider EDA:

> (6) An electric utility shall recover its costs incurred under this Section related to the implementation of energy efficiency programs and measures approved by the Commission in its order approving the procurement plan under Section 16-111.5 of this Act, including, but not limited to, all costs associated with complying with this Section and all start-up and administrative costs and the costs for any evaluation, measurement, and verification of the measures…through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act….

220 ILCS 5/16-111.5B(a)(6). As such, ComEd also seeks to recover through Rider EDA the IPA-related energy efficiency program costs it incurred during PY6. ComEd Init. Br. at 6-7.

B. Nature of the Project Porchlight Costs

1. Overview of the IPA Procurement Process to Procure Programs

ComEd stated that as required by Section 16-111.5B, ComEd solicited bids for cost-effective energy efficiency programs that could be submitted as part of ComEd's procurement submittal to the IPA for PY6. As ComEd explained in its Initial Brief, it was ComEd's responsibility, assisted by several independent stakeholders, to review the bids, conduct the cost-effectiveness analysis, and determine if the proposals would be duplicative or competitive with other programs in the market. Those proposed PY6 programs that ComEd determined would be cost effective and not duplicative or competitive with other programs in the market had to be included in ComEd's procurement submittal to the IPA. The IPA then reviewed ComEd's submittal of the proposed energy efficiency programs, and included the programs in its final plan filed with the Commission. The Commission approved the programs as part of its approval of the overall IPA procurement plan. *Illinois Power Agency*, ICC Docket No. 12-0544, Final Order (Dec. 19, 2012) at 271. ComEd Init. Br. at 9.

Following the Commission's approval of the 2013 Procurement Plan in ICC Docket No. 12-0544, ComEd entered into contract negotiations with the third-party vendors that the Commission approved to implement the energy efficiency programs, and negotiated a "pay-for-performance" structure for each contract. ComEd explained that this structure is designed to protect customers from a vendor's failure to perform by requiring the vendor to give back funds in proportion to any shortfall in promised kWh savings, as determined by the independent evaluator. While vendors can begin receiving payment to cover start-up costs or in-progress payments throughout the Plan Year, at the end of the year expenses are "trued up" under the pay-for-performance structure based on the actual net kWh savings achieved by the program as validated by the independent evaluator. After the contracts for PY6 programs were executed, the vendors proceeded with the implementation of the programs, and ComEd's involvement was limited to the contract manager role. ComEd Ex. 3.0 at 8; ComEd Init. Br. at 9-10.

ComEd further explained that since this first procurement of IPA energy efficiency programs, this same process has repeated itself for each of Plan Years 7 through 9. *See generally Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013); *Illinois Power Agency*, ICC Docket No. 14-0588, Final Order (Dec. 17, 2014); *Illinois Power Agency*, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015). ComEd Init. Br. at 10.

2. The Project Porchlight Programs

ComEd stated that Staff's proposed disallowances relate to two Commission-approved IPA energy efficiency programs offered by third-party vendor Project Porchlight. The Commission approved the first program – One Change CFL Distribution program – in its order approving the IPA procurement plan for the period June 1, 2013 through May 31, 2014 (PY6). *Illinois Power Agency*, ICC Docket No. 12-0544, Final Order (Dec. 19, 2012) at 35-36, 268-272. In sum, ComEd explained, this program was designed to deliver[ ] CFLs free of charge to those residential customers who were determined to be the least likely to respond to typical retail lighting offers." Staff Ex. 1.0, Attach A at 5. ComEd stated that at no time did Staff or any party object to the proposed One Change CFL Distribution program, and like all other third-party administered programs, ComEd executed a pay-for-performance contract with the vendor, Project Porchlight, to implement the program as required by the Commission's order. *Illinois Power Agency*, ICC Docket No. 12-0544, Final Order (Dec. 19, 2012) at 35-36, 268-272. Consistent with its contractual objection, Project Porchlight offered the program during Plan Year 6, but the independent evaluator's subsequent review found that the program fell short of its goal. As a result, monies were due back to ComEd under the pay-for-performance contract in an amount that was proportionate to the shortfall. Project Porchlight became insolvent early in Plan Year 7, however, and could not return the funds owed under the contract. ComEd Ex. 3.0 at 12-13. ComEd Init. Br. at 10-11.

The Commission approved the second program – Small Commercial Power Strip program – in its order approving the IPA procurement plan for the period June 1, 2014 through May 31, 2015 (PY7). *Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 37-38, 205-206. As summarized by Staff witness Mr. Tolsdorf, this program was also "a third party energy efficiency program," and "designed to target 25,000 small commercial customers and provide each with two energy efficiency power strips." Staff Ex. 1.0 at 5. ComEd stated that as with the One Change CFL Distribution program, neither Staff nor any other party objected to the proposed Small Commercial Power Strip program, and ComEd proceeded to execute a pay-for-performance contract as required by the Commission's order. ComEd explained that like most of its other energy efficiency programs, ComEd funded start-up costs for the Small Commercial Power Strip program beginning in PY6 to ensure that the program could begin to be offered at the start of PY7. As ComEd further explained, because Project Porchlight became insolvent early in PY7 and was unable to implement the program, however, the promised energy savings were not achieved, and the pay-for-performance contract required that the advanced funds were owed back to ComEd. ComEd Ex. 3.0 at 13-14. ComEd Init. Br. at 11.

ComEd further noted that it aggressively sought repayment from Project Porchlight, which resulted in recovery during Plan Year 7 of approximately half of the funds paid under the Plan Year 7 contract. This recovery is being credited to customers in the Plan Year 7 reconciliation, which was filed on October 30, 2015 in ICC Docket No. 15-0546. ComEd Init. Br. at 12.

C. The Prudence and Reasonableness of the Project Porchlight Costs

ComEd contended that the statutory framework leaves no question regarding the legal standard applicable to the recovery of these costs. Section 8-103 "ensure[s] the recovery of the prudently and reasonably incurred costs of Commission-approved programs" (220 ILCS 5/8-103(f)(6)), and, more specifically, Section 16-111.5B equally assures the utility of cost recovery for the third-party administered energy efficiency programs (220 ILCS 5/16-111.5B(a)(6)). ComEd Init. Br. at 12.

Importantly, ComEd asserted, no dispute exists regarding the prudence and reasonableness of the Project Porchlight costs. The Commission's well-established prudence and reasonableness standard is clearly satisfied: "Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made …. When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible. *Illinois Power Co. v. Illinois Commerce Comm'n,* 339 Ill. App. 3d 425, 428, 435 (5th Dist. 2003) (internal citation omitted). As ComEd observed, Staff never alleged, and could not allege, that anyone knew or had reason to know – at the time these programs were proposed and approved – that Project Porchlight would become insolvent. Rather, Staff, along with all other parties to the procurement dockets, had the opportunity to review the proposed third-parties programs, and no one found any reason to question or challenge the viability of the programs or their vendor. That ComEd then executed the pay-for-performance contracts as ordered by the Commission and subsequently paid the vendors under the terms of those contracts is unquestionably prudent and reasonable. According to ComEd, the pay-for-performance contract structure is itself a best practice and prudent means of protecting customers by ensuring that vendors perform as promised and refund any shortfall. ComEd Ex. 3.0 at 8; ComEd Ex. 4.0 at 4-5.

In its Reply Brief, ComEd noted that Staff mischaracterizes the structure and operation of the pay-for-performance contracts. According to ComEd, Staff's Initial Brief exclusively devotes its attention to casting aspersions on the wisdom of the pay-for-performance contracts that utilities execute with third-party energy efficiency vendors, while nowhere does Staff cite to any real-world example of the sort of contracting that Staff's advocates – namely, withholding payment until years after the work has been performed. As ComEd observed, this is because no example exists, and these obfuscatory tactics cannot prevail or hide the glaring ruling against Staff in the Procurement order in ICC Docket No. 15-0541. ComEd asserted that the pay-for-performance contracting currently used by utilities under Section 16-111.5B of the Act is a sound, prudent method for protecting customers from performance risk while also ensuring that the General Assembly's directive to implement third-party energy efficiency programs is not frustrated. ComEd Reply Br. at 3.

Critically, and contrary to Staff's claims, ComEd clarified that payment is not provided in full to vendors upfront. With respect to the One Change CFL Distribution program implemented during Plan Year 6, the contract attached to Staff witness Mr. Tolsdorf's Rebuttal Testimony states that the vendor would be compensated through monthly payments as implementation progresses, which is precisely what occurred and Staff does not claim otherwise. Tolsdorf Reb., Staff Ex. 2.0, Attach A at 2014CEDA 0002756 – 0002757.[1] Similarly, for the Plan Year 7 ("PY7") Small Commercial Power Strips program, the total cost of the program was estimated at $1.2 million, yet ComEd had only provided start-up and progress payments of $250,000 at the time the vendor became insolvent early in Plan Year 7, which meant that nearly $1 million in costs remained to be paid. Tolsdorf Reb., Staff Ex. 2.0, 9:190-203; *Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) ("*2014 Procurement Plan Order*" at 37-38, 205-206. ComEd Reply Br. at 4.

According to ComEd, the pay-as-you-go model is unquestionably prudent, and reflects the way in which business is conducted in the real world. ComEd explained that if Staff's proposal were applied to new home construction, homes would rarely be built.

[1] *See also Illinois Power Agency*, ICC Docket No. 12-0544, Final Order (Dec. 19, 2012) ("*2013 Procurement Plan Order*") at 35-36; ICC Docket No. 12-0544, Illinois Power Agency 2013 Electricity Procurement Plan (filed on eDocket on Sept. 28, 2012) at 64, Appendix C-2 (filed on eDocket on Sept. 28, 2012).

Builders cannot afford to front construction costs for months or years (to pay for materials, employees, and subcontractors) while waiting to receive the entire payment for the home only after the home passes the final inspection. Of course, this is not the way construction operates, and the home purchaser is required to provide payments to the builder as construction progresses (whether out of the purchaser's pocket or through a loan). Issues regarding the builder's nonperformance, moreover, are typically governed by the purchase contract. According to ComEd, contracting with third-party vendors to build and implement energy efficiency programs should be treated no differently. ComEd Reply Br. at 5.

D. The Commission Has Already Rejected Staff's Argument That Utilities Should Withhold Payment from Vendors

ComEd also explained that the Commission recently rejected the only argument Staff has made in support of its proposed disallowance – namely, that the current pay-for-performance contracting should be replaced with hindsight vendor review and payment. *Illinois Power Agency*, Final Order (Dec. 16, 2015) at 110. According to ComEd, Staff's refusal to acknowledge that the Commission has already ruled on the issue does not render the ruling any less forceful – the Commission has clearly held that it "rejects Staff's proposals to require the utilities to withhold payment and to disallow under-performing programs…." *Illinois Power Agency*, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) at 110. ComEd Init. Br. at 14. ComEd Reply Br. at 7.

ComEd stated that under Staff's proposal, vendors would receive no start-up or in progress payments to fund the implementation of Commission approved programs, and would be forced to continue to wait for payment until the independent evaluator completes its final review of the programs' achieved energy savings. Using the present Plan Year 6 timeframe as an example, the Plan Year covered the period June 1, 2013 through May 31, 2014, but the independent evaluator's reports are still pending and not yet final or filed. *See generally* ICC Docket No. 15-0274. This would mean that a vendor who began incurring start-up costs in early 2013 to implement its program(s) beginning June 1, 2013 would still be awaiting payment under Staff's proposal *nearly three years later*. As ComEd has explained in the present docket (and as ComEd, the IPA, and ELPC explained in the IPA procurement docket (ICC Docket No. 15-0541)), requiring vendors to front costs for over three years without any payment is virtually certain to terminate IPA energy efficiency programs. ComEd asserted that no vendor is likely to participate in an RFP whose contracts refuse payment for years. ComEd Ex. 3.0 at 11; ComEd Ex. 4.0 at 2; *Illinois Power Agency*, Final Order (Dec. 16, 2015) at 105-112. ComEd Init. Br. at 13-14.

In its Reply Brief, ComEd further noted that the issue was extensively litigated in the 2016 Procurement Plan docket, with the IPA, ELPC and ComEd articulating serious concerns about withholding payment from vendors for years after they incur the costs. As summarized by the order in the 2016 Procurement Plan docket, the IPA noted:

> [The IPA] agrees that a single vendor's insolvency does not demonstrate a malfunctioning process. [The IPA] opines that the existing process of vetting vendors and programs is comprehensive and it demonstrates a genuine commitment to soliciting and valuing stakeholder input. The IPA maintains that the existing pay-for-performance contract structure may not completely insulate ratepayers from all potential contingencies, instead, it generally demonstrates a fair balancing of competing goals. It argues that steps taken to eliminate all risk, such as those contemplated in Staff's Objections, would upset this balance and cause more harm than good. The IPA believes that the Commission should not hastily order the utilities to make changes to a contract structure that has generally worked effectively. It, however, agrees with ComEd that workshops are the appropriate forum for addressing performance risk concerns and what steps can be taken to mitigate those risks.

Illinois Power Agency, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) at 106.[2]

As a final matter, ComEd observed that it is well settled that the Commission cannot arbitrarily depart from its past practice and decisions (*see United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 28 (1994)) and nothing has changed to alleviate the concerns voiced by ComEd, the IPA, and ELPC regarding the chilling effect that Staff's proposal would have on the IPA programs. As a result, the Commission thus should again reject Staff's extreme proposal, which has no legal basis and, if adopted, would have the effect of dismantling the IPA energy efficiency programs – all because of a single vendor insolvency in eight years of offering energy efficiency programs. ComEd Init. Br. at 14.

E. The Commission Has Already Provided a Forum for Additional Discussion of Third-Party Vendor Contracts

ComEd stated that while the Commission flatly rejected Staff's proposal to withhold payment for years, the Commission also encouraged interested stakeholders to further discuss the pay-for-performance contracting as part of the SAG. *Illinois Power Agency*, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) at 112. The collaborative SAG process has been very effective in working through a variety of energy efficiency issues, and, consistent with the Commission's direction in the 2016 Procurement Plan order, that process should be allowed to proceed and Staff's proposal again be rejected. If any changes or refinements are identified, they would of

[2] ELPC further noted that "[t]he current RFP requirements, stakeholder and utility screening process, and pay-for-performance model of the IPA third party efficiency programs sufficiently insulate ratepayers from risk of these third-party programs underperforming." ICC Docket No. 15-0541, Replies of ELPC (Oct. 30, 2015) at 6.

course be applied prospectively consistent with well-established ratemaking principles. ComEd Reply Br. at 7.

<u>Staff's Position</u>

<u>Commission Analysis and Conclusion</u>

The legal standard that governs the recoverability of the energy efficiency costs at issue in this docket, including the Project Porchlight costs, is the well-established prudence and reasonableness standard, which has been articulated as follows: "Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made …. When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible. *Illinois Power Co. v. Illinois Commerce Comm'n,* 339 Ill. App. 3d 425, 428, 435 (5th Dist. 2003) (internal citation omitted).

While the Commission did not conclusively decide the present docket in the 2016 Procurement Plan docket, we did consider, *at Staff's prompting*, the very same argument that Staff offers in this docket to support its disallowance – namely, that utilities should withhold payments from vendors and that utilities should be subject to disallowances for underperforming programs. Recognizing the damage that would occur to the IPA energy efficiency programs if such hindsight policies were implemented, we rejected Staff's proposals then, and reiterate our rejection of those same proposals here. The Commission is indeed perplexed that Staff now claims that the *2016 Procurement Plan Order* is of no consequence after Staff used this very docket as part of its argument in the 2016 Procurement Plan docket. Staff's proposed disallowances are rejected.

As we advised in our *2016 Procurement Plan Order*, moreover, we encourage stakeholders to further discuss the pay-for-performance contracts in the SAG workshop process.

VI. Findings and Orderings Paragraphs

The Commission, having given due consideration to the entire record 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, sale and distribution 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 Commonwealth Edison Company and the subject matter of this proceeding;

(3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

(4) for the period June 1, 2013 through May 31, 2014, ComEd prudently incurred Rider EDA program expenditures of $185,068,616; and

(5) for the period June 1, 2013 through May 31, 2014, ComEd recovered $170,795,723 from ratepayers in accordance with the terms of Rider EDA, Taking into account the cumulative over-recovery from the prior reconciliation periods, the resulting over-recovered amount is $9,208,040, as reflected in Appendix A attached hereto.

IT IS THEREFORE ORDERED that the reconciliation submitted by Commonwealth Edison Company of the energy efficiency and demand response measures and associated costs actually incurred with the revenues received under Rider EDA covering the period beginning June 1, 2013 and ending May 31, 2014 is hereby approved.

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

By order of the Commission this ______ day of __________________, 2016.

(SIGNED) BRIEN J. SHEAHAN

Chairman