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.	: : :	No. 16-0259

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

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INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("ComEd"), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the "Commission" or "ICC") and the scheduling order of the Administrative Law Judges, submits this Initial Brief.

I. INTRODUCTION/STATEMENT OF THE CASE

This is the sixth ComEd rate filing under the portion of the Public Utilities Act ("PUA") known as the Energy Infrastructure and Modernization Act ("EIMA").[1] In this formula rate update ("FRU") proceeding, the scope of the parties' disputes is narrowed, reflecting the parties' continued efforts to minimize litigation. For example, Staff of the Illinois Commerce Commission ("Staff") and ComEd have, through the exchange of data and testimony, resolved all open issues between them. Moreover, ComEd has accepted for the purpose of this case several Staff proposals to remove costs from the revenue requirement.

The Attorney General ("AG") seeks to disallow approximately $2.3 million of ComEd's costs that are prudent, reasonable, and recoverable costs of providing delivery service. The majority of the AG's testimony, however, focused not on ComEd's costs and rates in periods relevant to this update proceeding, but on long-term future strategies about two broad types of technology: data analytics ("DA") and voltage optimization ("VO"). Such testimony is well

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

beyond the scope of the formula rate update. The AG's proposals are inconsistent with the objective of EIMA ratemaking, and are contrary to the best interests of customers.

The specific issues contested in this case are:

1) The AG asks the Commission to direct ComEd to adopt a more aggressive plan for deployment of VO technology. Aside from raising no issue germane to this proceeding and the costs and rates at issue here, the AG's argument is premised on unsupported criticism of ComEd's existing prudent VO validation efforts. There is no basis for upsetting that program.

2) The AG asks the Commission to direct ComEd to adopt an expansive strategy for business data analytics, based largely on the erroneous assumption that ComEd does not have a strategy or that it ignores potential solutions. In fact, the evidence shows that ComEd's current strategy considers a wide range of relevant factors in selecting solutions. As with VO, the AG's arguments are unsubstantiated and not directed at any particular cost at issue in this proceeding.

3) The AG proposes to disallow $2,281,456 associated with ComEd's settlement of a Telephone Consumer Protection Act ("TCPA") lawsuit that was prudently incurred and reasonable in amount. In doing so, the AG substitutes the hindsight analysis of an unqualified witness for the real-time guidance provided by the expert federal administration charged with interpreting the TCPA – guidance upon which ComEd relied and pursuant to which ComEd did not reasonably foresee a substantial risk of TCPA litigation.

In this cost-update cycle, ComEd urges the Commission to look beyond these efforts to impair cost recovery and to erode the simplicity, clarity, and transparency intended by formula ratemaking.

II. OVERVIEW OF THE RATE FORMULA AND UPDATE

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

> ... ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable

> calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

220 ILCS 5/16-108.5(d)(1). To accomplish that, EIMA requires that each FRU involve both a final reconciliation of the revenue requirement "for the prior rate year," for which actual costs will be known by the time of filing, and a provisional projection of the revenue requirement for the following calendar year. That provisional Initial Revenue Requirement will be reconciled two years hence. EIMA requires ComEd to base that projection on "historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." 220 ILCS 5/16-108.5(d)(1). EIMA thereby establishes a two-year cycle of before-the-fact estimation based on actual and projected costs for years earlier than the rate year and a subsequent after-the-fact reconciliation, with appropriate interest, of that estimated Initial Rate Year Revenue Requirement with the actual data. Thus, in the end, the rates for each year should be based purely on actual cost.[2]

III. OVERALL REVENUE REQUIREMENT

This FRU proceeding sets ComEd's distribution rates applicable during 2017. Those rates are set in order to recover the balance of ComEd's fully reconciled actual costs for 2015 as well as the initial projection of ComEd's 2017 costs. The 2017 Rate Year Net Revenue Requirement used to set those rates derives from the following figures:

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[2] This process is conducted using the rate formula exactly as approved and found compliant with EIMA in Docket Nos. 11-0721, 13-0386, and 13-0553. Moreover, this structure replicates the structure used in Docket Nos. 15-0287, 14-0312, 13-0318, 12-0321, and, insofar as is possible given the special start up rules, also mirrors the process followed in Docket No. 11-0721. *See generally Commonwealth Edison Co.*, ICC Docket No. 15-0287, Final Order (Dec. 9, 2015) ("2015 Rate Case Order"); *Commonwealth Edison Co.*, ICC Docket No. 14-0312, Final Order (Dec. 10, 2014) ("2014 Rate Case Order"); *Commonwealth Edison Co.*, ICC Docket No. 13-0318, Final Order (Dec. 18, 2013) ("2013 Rate Case Order"); *Commonwealth Edison Co.*, ICC Docket No. 12-0321, Final Order (Dec. 19, 2012) ("2012 Rate Case Order"); *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 28, 2012) ("2011 Rate Case Order").

1. The 2015 Reconciliation Adjustment – the difference between ComEd's 2015 Initial Rate Year Revenue Requirement used to set rates in effect in 2015 and the 2015 Reconciliation Revenue Requirement determined based on ComEd's actual 2015 costs as reported in its FERC Form 1 for 2015, corrected for the lost time value of money;

2. The 2017 Initial Rate Year Revenue Requirement – a projection of 2017 costs based on ComEd's actual 2015 operating costs and rate base plus projected 2016 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, ADIT and;

3. Any "ROE Collar" adjustment relating to 2015 and the "ROE Penalty Calculation" applicable to 2015.

See Brinkman Dir., ComEd Ex. 1.0, 10:181-18:378. ComEd presented substantial evidence supporting this revenue requirement through the testimony of nine witnesses and the attachments, schedules, and exhibits they sponsored. Very little remains at issue.

A. 2017 Initial Rate Year Revenue Requirement

ComEd's properly calculated 2017 Initial Rate Year revenue requirement as adjusted in its surrebuttal testimony is $2,568,747,000. Newhouse Sur., ComEd Ex. 13.0, 5:81-86. ComEd Ex. 13.01, Sch FR A-1, line 23.

B. 2015 Reconciliation Adjustment

ComEd's properly calculated 2015 Reconciliation Adjustment (including interest), reflecting the difference between the rates in effect in 2015 and the actual 2015 Reconciliation

Revenue Requirement, as adjusted in its surrebuttal testimony is $71,829,000. ComEd Ex. 13.01, Sch FR A-4, line 31.

C. ROE Collar and ROE Penalty Calculation

ComEd's properly calculated ROE Collar adjustment is $7,104,000. 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 Ex. 13.01, Sch FR D-1; *see also* ComEd Ex. 2.02, WP 23. 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 8.59%. Brinkman Dir., ComEd Ex. 1.0, 15:295-305; ComEd Ex. 13.01, Sch FR D-1, lines 9, 11.

D. 2017 Rate Year Net Revenue Requirement

Accordingly, ComEd's properly calculated 2017 Rate Year Net Revenue Requirement reflecting the adjustments made in surrebuttal testimony is $2,647,680,000. Newhouse Sur., ComEd Ex. 13.0, 5:87-94; ComEd Ex. 13.01, Sch FR A-1, line 36.

IV. RATE BASE

A. Overview

ComEd fully supported its 2015 Reconciliation Year rate base and its 2017 Initial Rate Year rate base through the testimony of multiple witnesses.[3] ComEd's figures should be approved. The prudence and reasonableness of ComEd's rate base was supported by detailed testimony and documentation. No witness proposes any rate base disallowance.

[3] Primarily ComEd witnesses Brinkman, Newhouse, Siambekos, Montague, and Moy.

1. 2015 Reconciliation Rate Base

ComEd's properly calculated 2015 Reconciliation Year rate base as adjusted in its rebuttal and surrebuttal testimony is $7,781,270,000. Newhouse Reb., ComEd Ex. 9.0, 8:147-151; ComEd Ex. 13.01, Sch FR B-1, line 28.

2. 2017 Initial Rate Year Rate Base

ComEd's properly calculated 2017 Initial Rate Year rate base as adjusted in its rebuttal and surrebuttal testimony is $8,831,123,000. ComEd Ex. 9.01, Sch FR B-1, line 36; ComEd Ex. 13.01, Sch FR B-1, line 36.

B. Potentially Uncontested Issues

1. Plant in Service

a. Distribution Plant

ComEd's Distribution Plant in rate base for the 2015 Reconciliation Revenue Requirement and the 2017 Initial Rate Year Revenue Requirement is uncontested and should be approved. ComEd's Distribution Plant in service as of December 31, 2015 includes the Chicago Training Center (ITN 47300), TDC 525 Normantown (ITN 51023), Customer Project (ITN 49134), OMS Lifecycle Upgrade (ITN 46246), and 3P160001 TSS 174 University Install Transformer (Dist) (ITN 52008). ComEd Ex. 5.01, Sch F-4, lines 1-5; Moy Dir., ComEd Ex. 5.0, 29:610-41:840. ComEd's 2016 projected plant additions consist of $1,950,071,000 of Distribution Plant additions expected to be in service as of December 31, 2016. Newhouse Dir., ComEd Ex. 2.0, 26:536-542; ComEd Ex. 2.01, Sch FR B-1, lines 29 and 31. These additions were described in accordance with 83 Ill. Admin. Code § 285.6100.

ComEd demonstrated that its Distribution Plant for the 2015 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its Distribution Plant for the 2017 Initial Rate

Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful in providing delivery service. Moy Dir., ComEd Ex. 5.0, 24:495-26:532. These facts are uncontested.

b. General and Intangible Plant

ComEd's General and Intangible ("G&I") Plant in rate base for the 2015 Reconciliation Revenue Requirement and 2017 Initial Rate Year Revenue Requirement is uncontested and should be approved. ComEd's 2016 projected plant additions include $298,986,000 of G&I Plant additions. Newhouse Dir., ComEd Ex. 2.0, 26:539-540; ComEd Ex. 2.01, Sch FR B-1, line 31. ComEd demonstrated that its G&I Plant for the 2015 Reconciliation Revenue Requirement was prudently acquired at a reasonable cost and was used and useful when placed into service. ComEd further demonstrated that its G&I Plant for the 2017 Initial Rate Year Revenue Requirement is prudent and reasonable and the underlying assets are used and useful. Moy Dir., ComEd Ex. 5.0, 24:495-26:532.

2. Regulatory Assets and Liabilities

ComEd included in its 2015 Reconciliation Revenue Requirement rate base and its 2017 Initial Rate Year Revenue Requirement rate base Regulatory Assets amounting to $147,089,000. ComEd Ex. 2.01, Sch FR B-1, line 19. These Regulatory Assets are comprised of: (1) a regulatory asset representing the unamortized balance (as of year-end 2015) of $7,203,000 for capitalized incentive compensation costs, (2) the unrecovered costs of $2,466,000 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) of $137,420,000. Newhouse Dir., ComEd Ex. 2.0, 22:447-459; ComEd Ex. 2.01, App 5, line 4. ComEd's Regulatory Assets are uncontested and reasonable and should be approved.

3. Deferred Debits

ComEd included in its 2015 Reconciliation Revenue Requirement rate base and its 2017 Initial Rate Year Revenue Requirement rate base Deferred Debits amounting to $34,034,000. Newhouse Dir., ComEd Ex. 2.0, 22:460-23:471; ComEd Ex. 2.01, Sch FR B-1, line 20. The 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 future long-term debt issuances. Newhouse Dir., ComEd Ex. 2.0, 22:462-23:471; ComEd Ex. 2.01, App 5, lines 5-9. These Deferred Debits are uncontested and reasonable and should be approved.

4. Other Deferred Charges

ComEd included in its 2015 Reconciliation Revenue Requirement rate base and its 2017 Initial Rate Year Revenue Requirement rate base Other Deferred Charges relating to incremental distribution storm costs greater than $10 million. Newhouse Dir., ComEd Ex. 2.0, 23:472-24:488. These costs include certain storm expenses, which ComEd is amortizing over five years pursuant to Section 16-108.5(c)(4)(F). In addition, ComEd removed certain merger expenses related to the Exelon/Constellation Energy Group ("CEG") merger from its operating expenses, and is amortizing them over a five-year period. *Id.* No party contested these issues.

ComEd is amortizing over five years the expenses of three 2011 storms, two 2012 storms, two 2013 storms, and two 2014 storms, each of which incurred costs in excess of $10 million. In 2011, 2012, 2013, and 2014, these storm costs totaled $68,201,000, $21,271,000, $21,987,000, and $38,139,000, respectively. Newhouse Dir., ComEd Ex. 2.0, 23:476-480. The unamortized balances of the 2011, 2012, 2013, and 2014 storm expenses, $0, $4,249,000, $8,795,000, and $22,883,000, respectively, are included in rate base. *Id*., 23:480-482; ComEd Ex. 2.02, WP 8, lines 10-13. No storm expenses were greater than $10 million in 2015. *Id.,* 23:482. Additionally, ComEd initially recorded CEG merger expenses of $31,912,000, and $11,432,000 in 2012 and 2013, respectively, and unamortized merger expense balances for 2012 and 2013 of $6,291,000 and $4,566,000, respectively. *Id*., 23:483-24:486. The total unamortized balance related to all of these merger and storm-related expenses is $46,784,000. *Id*., 24:486-488; ComEd Ex. 2.01, Sch FR B-1, line 24; ComEd Ex. 2.02, WP 5, page 1, lines 2, 15, 30.

ComEd's Other Deferred Charges, including the unamortized storm expenses and merger expenses and other liabilities, after adjustments, are uncontested and reasonable and should be approved.

5. Accumulated Provisions for Depreciation and Amortization

The total Accumulated Depreciation related to ComEd's rate base, as of December 31, 2015, is $6,697,788,000. This total was comprised of $5,826,795,000 related to Distribution Plant and $870,993,000 related to G&I Plant. ComEd Ex. 13.01, Sch FR B-1, lines 7-12. This figure is uncontested and should be approved.

6. Accumulated Miscellaneous Operating Provisions

ComEd has also included other liabilities in its rate base. These liabilities, after adjustments, are Operating Reserves of $311,319,000, Asset Retirement Obligations of $22,055,000, and Deferred Credits of $115,148,000. ComEd Ex. 2.02, WP 5, pages 3-4. ComEd's Operating Reserves and Deferred Liabilities for the 2015 reconciliation year and 2016 filing year are uncontested and should be approved. ComEd Ex. 2.01, Sch FR B-1, lines 21 through 23; Newhouse Dir., ComEd Ex. 2.0, 24:489-495.

7. Asset Retirement Obligation

ComEd's Asset Retirement Obligation represents asset removal costs recovered through depreciation accounts. The Asset Retirement Obligation consists of $22,055,000 and is recorded in Account 230, as noted in the testimony of Mr. Newhouse. The Asset Retirement Obligation costs were previously recorded in Account 108 – Accumulated Depreciation and were reclassified in 2005 in accordance with the Uniform System of Accounts ("USOA"). ComEd Ex. 2.01, Sch FR B-1, line 22; Newhouse Dir., ComEd Ex. 2.0, 25:506-512. ComEd's Asset Retirement Obligation is uncontested and should be approved.

8. Customer Advances

Under the terms of Rider DE – Distribution System Extensions, ComEd receives refundable distribution system extension deposits from customers as customer advances to begin construction. ComEd has reduced rate base for these deposits as of December 31, 2015 in the amount of $107,807,000. Newhouse Dir., ComEd Ex. 2.0, 26:529-535; ComEd Ex. 2.01, Sch FR B-1, line 26. ComEd's Customer Advances are uncontested and should be approved.

9. Customer Deposits

ComEd receives refundable deposits from certain new customers as a condition of initiating electric service. ComEd applied its year-end balance of those refundable customer deposits to its rate base, which resulted in a reduction to the rate base of $131,133,000. Newhouse Dir., ComEd Ex. 2.0, 25:522-26:528; ComEd Ex. 2.01, Sch FR B-1, line 25, and App 2 "Customer Deposits Information." ComEd's quantification and treatment of deposits are uncontested and should be approved.

10. Cash Working Capital

The Cash Working Capital ("CWC") reflected in ComEd's rate base is the amount of cash that ComEd maintains in order to meet its expenses and other cash outflow obligations.

ComEd determines the amount of CWC based on its lead/lag study, which is a specific analysis of the timing of applicable cash inflows to and cash outflows from a utility. Newhouse Dir., ComEd Ex. 2.0, 19:382-387.

ComEd's rate base includes a deduction as adjusted in its rebuttal and surrebuttal testimony of $50,297,000 for CWC, impacting both the 2015 Reconciliation Revenue Requirement and the 2017 Initial Rate Year Revenue Requirement. ComEd Ex. 13.01, Sch FR B-1, line 16. In accordance with the final Order in Docket No. 13-0318 (2013 Rate Case Order at 18), ComEd has adjusted the formula rate App 3 to include a calculation of CWC specifically for the 2016 Initial Rate Year Revenue Requirement. Newhouse Dir., ComEd Ex. 2.0, 19:391-396. This 2017 Initial Rate Year Revenue Requirement adjustment was a deduction of $2,379,000 as shown on ComEd Ex. 13.01, Sch FR B-1, line 34a. The leads and lags used to determine CWC were approved in ICC Docket No. 14-0312. *Id.*, 19:397-20:401. ComEd's CWC is uncontested and should be approved.

11. Construction Work in Progress

ComEd's Construction Work in Progress ("CWIP") for the 2015 Reconciliation Revenue Requirement rate base is uncontested. CWIP related costs can be recovered in one of two ways: for projects in excess of $25,000 and with construction periods greater than 30 days, an Allowance for Funds Used During Construction ("AFUDC") is accrued and added to the total cost of such projects in order to capture the associated financing costs. Alternatively, for projects that do not meet the above standards, ComEd may recover its CWIP costs through its reconciliation rate base. Moy Dir., ComEd Ex. 5.0, 20:412-21:439; Newhouse Dir., ComEd Ex. 2.0, 18:361-377. ComEd has included $40,654,000 of CWIP for projects that do not accrue AFUDC in its rate base for the 2015 Reconciliation Rate Year. Newhouse Dir., ComEd Ex. 2.0, 18:373-376; ComEd Ex. 2.01, Sch FR B-1, line 14. ComEd demonstrated that its CWIP for the

2015 Reconciliation Revenue Requirement is prudent and reasonable. Moy Dir., ComEd Ex. 5.0, 21:425-439. Thus, ComEd's CWIP should be approved.

12. Accumulated Deferred Income Taxes

The appropriate level of ADIT to be deducted from rate base as of December 31, 2015 is $3,562,361,000, after adjustments, as shown in ComEd Ex. 13.01, Sch FR B-1, line 17. This amount was derived through an analysis of the components of the deferred tax balances which are then either directly assigned or allocated based on the assignment or allocation of the operating items to which they relate. The 2015 ADIT balance is reflective of the 50% bonus depreciation applicable to 2015 capital investments as well as of the current year deduction under the safe harbor method of tax accounting for repair costs. The jurisdictional amounts allocated to delivery service are presented in ComEd Ex. 9.01 App 4 "Accumulated Deferred Income Taxes Information." The calculation complies with the determinations of the Commission and of the Courts concerning this issue. Newhouse Dir., ComEd Ex. 2.0, 20:408-21:420.[4]

13. Materials & Supplies

ComEd's Materials & Supplies ("M&S") balance includes items purchased primarily for use in the construction and maintenance of utility property. These items are kept in inventory until needed, and include, for example, building and construction materials, hand tools, and paints and adhesives. Newhouse Dir., ComEd Ex. 2.0, 21:430-435. ComEd included in its rate base the year-end balance of Materials and Supplies less the associated accounts payable. The balance of Materials and Supplies related to distribution is $94,730,000. ComEd Ex. 2.01, App

[4] Notably, an Accounting Standard Update ("ASU") was issued in November 2015 by the Financial Accounting Standards Board ("FASB") to simplify the presentation of deferred income taxes by requiring that deferred tax liabilities and assets be classified as non-current in a classified statement of financial position. As a result, deferred tax assets and liabilities with a current and non-current designation have been combined and reflected as non-current within their respective FERC accounts (190, 282, or 283) and presented as such in ComEd Ex. 9.01, App 4. This presentation change does not, in any way, have an impact on ComEd's revenue requirement. *Id.*, 21:421-429.

1, line 53. The accounts payable related to distribution was calculated by multiplying the distribution related Materials and Supplies balance by the O&M factor included in cash working capital. The result of the calculation is an accounts payable balance of $22,665,000. ComEd Ex. 2.01, App 1, line 54. The net amount of Materials and Supplies included in rate base is $72,065,000. ComEd Ex. 2.01, Sch FR B-1, line 18. Newhouse Dir., ComEd Ex. 2.0, 21:436-22:446.

C. Operations and Planning

As noted above, ComEd substantiated its rate base as reasonable in amount and as prudently acquired and placed into service, and provided details about the processes ComEd undertakes to ensure its investments meet those standards. No witness identified *any* asset in ComEd's rate base – in general or specifically related to VO or data analytics – that should be disallowed.

In the joint issue outline, however, the AG identifies as rate base issues two topics discussed by its panel witnesses Messrs. Fagan and Chang. These issues – and the testimony of Messrs. Fagan and Chang – are immaterial to this proceeding and even if they were valid and supported, which they are not, would not result in any disallowance of ComEd's rate base or any downward adjustment to its rates. While the purpose of this proceeding is to review ComEd's "updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new charges" (220 ILCS 5/16-108.5(d)), the Fagan-Chang testimony instead focuses on long-term business strategies and policy-level recommendations divorced from the rates at issue.

Messrs. Fagan and Chang focus not on VO costs in the rates at issue, claiming instead that what is "at issue" is "finding the appropriate technologies and investments to implement voltage optimization where prudent on the Company's system," a planning question extending far beyond the rate horizon. Fagan-Chang Dir., AG Ex. 2.0, 10:5-6. Likewise, their recommendation that "the Commission require [ComEd] to develop a comprehensive, long-term plan to identify BI/DA [business intelligence / data analytics] solutions" (Fagan-Chang Reb., AG Ex. 4.0, 17:7-8) not only ignores ComEd's existing comprehensive business intelligence / data analytics strategy, but would not affect ComEd's 2015 costs, its 2016 investments, or its 2017 rates. When it comes to the actual rate base assets at issue, Messrs. Fagan and Chang acknowledge that they "have no basis to question the prudency of specific investments in this proceeding." Fagan and Chang Dir., AG Ex. 2.0, 29:13-14. While long-term policy questions can be raised in proper forums, their acknowledgment of that fact should end the debate over these questions in this case.

1. Voltage Optimization ("VO")

ComEd established the reasonableness and prudence of the VO-related investments included in its proposed rates. In addition to the evidence supporting its overall rate base and the rigorous process of evaluating and monitoring investments discussed above, ComEd offered the testimony of a professional engineer with extensive actual experience, including in the systems at issue. His testimony not only confirmed ComEd's commitment to investigating and implementing VO efficiently, cost-effectively, and reliably, but also specifically supported the prudence of the decisions underlying the design of the validation study. Prueitt Reb., ComEd Ex. 10.0, 3:64-4:69; Prueitt Sur., ComEd Ex. 14.0, 6:114-130.

The record shows that ComEd completed a review of potential VO technologies, including through a comprehensive study conducted by Applied Energy Group ("AEG"), an engineering firm with specialized knowledge and experience in that area.[5] Brinkman Reb., ComEd Ex. 8.0, 8:154-166; Prueitt Reb., ComEd Ex. 10.0 5:93-100; Prueitt Sur., ComEd Ex. 14.0, 6:118-123. That study is complete and its costs are not at issue in this update. What is added to rate base in this update are certain capitalized costs of the recommended follow-up study that will validate on the ComEd system specific AEG's conclusions. Prueitt Reb., ComEd Ex. 10.0, 4:72-74, 8:155-158, 9:188-191. Approximately $4 million of the cost of that study is capitalized and included in projected 2016 plant. Brinkman Reb., ComEd Ex. 8.0, 2:26-28; Prueitt Reb., ComEd Ex. 10.0, 9:188-191. The record shows that this ongoing validation study project is properly designed, including its scope. Prueitt Reb., ComEd Ex. 10.0, 3:64-4:77, 5:91-104.

Messrs. Fagan and Chang fail to make or substantiate a claim that ComEd's study costs are imprudent in any ratemaking sense of that word. Although they make a conclusory claim that ComEd's validation study design is not "prudent," they also do not state, apply, or evaluate the established legal standards for determining prudence. Prudence has a specific legal meaning defined by Illinois courts and the Commission: the "standard of care which a reasonable person would be expected to exercise under the circumstances encountered by utility management at the time decisions had to be made." *E.g.*, *Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 435 (5th Dist. 2003); *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, ICC Docket No. 84-0395, Order (Oct. 7, 1987) ("*ComEd '87*"), at 17.

[5] This study, referred to throughout the testimony as the AEG study, preceded and is distinct from the subsequent validation study at issue in this case. The AEG study was included in ComEd's 2015 annual Smart Grid Advanced Metering Implementation Progress Report ("AIPR"). *Id.,* 8:156-157. On motion of the AG, and without objection from ComEd, the Commission has taken administrative notice of that document. Tr. at 20:13-21:2. The costs of the AEG study are not part of the rate base update nor the operating expenses at issue in this case.

Messrs. Fagan and Chang instead simply express an after-the-fact opinion disagreeing with ComEd's decisions. The law, however, makes clear that, even when such a dissenting view is offered by an equally qualified and informed expert and supported by other evidence, which is not the case here, prudent decision-makers can and do disagree, even about what is reasonable. A finding of "[i]mprudence cannot be sustained by substituting one's judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being 'imprudent'." *ComEd '87* at 17 (emphasis added); *accord Illinois Power Co.*, 339 Ill. App. 3d at 435; *BPI '96,* 279 Ill. App. 3d at 828. To be imprudent, an action or omission must not only be shown to have been wrong, but to have been outside the realm of reasoned disagreement based on the information available at the time it was made. There is no evidence of that here.

In particular, ComEd will study nineteen diverse feeders. Yet, Messrs. Fagan and Chang posit that because those feeders are supplied by one substation, that sample "may not be sufficient." Fagan-Chang Dir., AG Ex. 2.0, 5:5-8. Aside from the tentativeness of their claim, they fail to provide data or analysis to support it. They neither identified nor produced a single workpaper, and they did not communicate with any outside expert on the underlying design or engineering. DRRs ComEd → AG 1.02 & 2.01, ComEd Group CX Ex. 1.0. And, other than claiming that ComEd should study more than one substation, they do not identify the minimum characteristics of what they believe a "prudent" study would be. DRR ComEd → AG 3.01, ComEd Group CX Ex. 1.0. In contrast, Mr. Prueitt not only rejects their views but explains why the study's scope is sufficient and appropriate, a question on which their subsequent rebuttal testimony is silent. Prueitt Reb., ComEd Ex. 10.0, 6:119-7:152. Mr. Prueitt's conclusions are also consistent with the AEG study itself and with the available engineering data.

ComEd's validation study was, moreover, not presented for the first time in this case. ComEd, in its 2016 AIPR, discussed the approach and projected cost of the validation study. That report was filed with and accepted without investigation by the Commission, and without any request for investigation by the AG or any other party. Brinkman Reb., ComEd Ex. 8.0, 9:169-173; ComEd Ex. 8.01 AEG's own recommendation that there be such a targeted validation study has also been part of ComEd's annual AIPR filings since 2014; no party opposed the VO validation project in those instances, either. *Id.,* 4:72-77.

Finally, even if it were substantiated, the dissenting view of the AG's witnesses would not support the conclusion that ComEd's validation study is excessively costly or that its costs should be disallowed. To the contrary, Messrs. Fagan and Chang assert that the study is *too limited* and that what they consider to be "[a] prudent study may be ***more*** costly … ." Fagan-Chang Dir., AG Ex. 2.0, 22:3-20. Furthermore, Messrs. Fagan and Chang do not claim that a larger, more costly study like they envision would exclude the nineteen feeders selected by ComEd. They cannot, therefore, conclude that the costs to study those nineteen feeders are excessive, let alone imprudent, even under their view that still more feeders must also be studied.

In the end, far from reducing ComEd's rate base, the upshot of the AG witnesses claims is that ComEd should invest still more in these two areas and, if anything, do it faster. Brinkman Reb., ComEd Ex. 8.0, 6:109-113; Brinkman Sur., ComEd Ex. 12.0, 3:63-4:67. *See also*, *e.g.*, Fagan-Chang Dir., AG Ex. 2.0, 4:18-20 ("… investments proposed by [ComEd] and the amount of money that has been spent thus far on voltage optimization have been unreasonably small"); AG Ex. 2.0, 21:4-5 ("[W]e are concerned that the scope of the validation project is too limited"). And, given that they acknowledge that ComEd could fully recover the greater costs of their hypothetical expanded study (assuming they were correct that such a study is actually required), they cannot justify any rate reduction. *See* DRR ComEd → AG 3.02, ComEd Group CX Ex. 1.0.

2. Data Analytics – Cloud Computing

ComEd's rate base update includes $6.2 million related to the ongoing development of ComEd's data analytics platform. These costs include the ongoing development and implementation of ComEd's Business Intelligence/Data Analytics ("BI/DA")[6] strategy to define and implement "a common data management layer" within ComEd that allows applications, including "applications related to the customer, grid and business support functions" to easily connect to a broad range of data. Brinkman Reb., ComEd Ex. 8.0, 11:219-223.

ComEd's BI/DA strategy is detailed and complex, and contains a data platform and five functional domains that fall within three main categories: Grid (T&D) (which includes both AMI and Grid (T&D)), Customer (which includes Smart Energy Services and Customer Experience), and Business Support. Brinkman Sur., ComEd Ex. 12.0, 5:99-103; AG Ex. 2.4.[7] In developing that strategy, ComEd and its sister Exelon-owned utilities collaborated and considered present and developing technologies, including potential business intelligence and data analytics opportunities and initiatives. AG Ex. 2.4.

The record shows that ComEd's BI/DA strategy is implemented in each domain through three stages: exploring, engaging, and establishing potential functions and applications. Brinkman Reb., ComEd Ex. 8.0, 11:223-225, 12:242-244; AG Ex. 2.6; Brinkman, Tr. 30:12-31:8. That implementation is already far along in the first domain, Smart Energy Services, and

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[6] Data analytics, as used consistently throughout this proceeding, is defined as: "the tools and techniques used to understand and forecast business outcomes by analyzing the relationships among data." Brinkman Reb., ComEd Ex. 8.0, 10:205-207; AG Ex. 2.4 BI/DA is defined as: "a system of tools and technologies that fit together to assemble, transform, display and analyze data collected from a variety of sources." AG Ex. 2.4.

[7] A document reflecting ComEd's overall layered BI/DA strategy is attached to the direct testimony of Messrs. Fagan and Chang as AG Ex. 2.4.

ComEd is currently working on implementing the remainder. Brinkman, Tr. 32:12-14. That work will require the involvement of multiple departments, including not only information services areas, but also AMI Operations and Revenue Protection. Brinkman Reb., ComEd Ex. 8.0, 10:207-209; AG Ex. 2.4. The resources ComEd devotes to the evaluation, piloting, and installation of these solutions will also enable future enhancements to the system and help identify areas in which additional functionality may be required. *Id.,* 11:234-12:239.

The record backs up the prudence and reasonableness of the costs associated with ComEd's data analytics strategy and investments. Included in that support is the Data Analytics strategy presentation and a formal benchmarking study prepared for ComEd by the Boston Consulting Group ("BCG"). *See* AG Ex. 2.4; AG Ex. 2.6. ComEd's investment in the development and execution of its BI/DA strategy is appropriate in scope and length, especially when compared with the "overall maturity of the industry with regard to data analytics." Brinkman Reb., ComEd Ex. 8.0, 12:251-252. Indeed, as the BCG benchmarking study explains, the "majority of utilities are in the very early stages of the BI/DA journey," and there are currently "no clear winning technologies or solutions across the utility industry…" *Id.*, 12:251-255; AG Ex. 2.4. ComEd's investment in its BI/DA strategy is also in line with other utilities, and its overall data strategy is appropriate in its scope and detail. *Id.,* 12:250-13:258. In the domains where applications are already being used, that evidence shows that success.

> ComEd AMI Operations and Revenue Protection are using Operations Optimizer (formerly Detectent) software and algorithms to monitor the health and performance of the AMI network and related equipment, examine meter outage events and last gasp messages, meter alarms, meter voltage levels to ensure safe and regular levels at the customer premise, and to ensure the accuracy of billing data to prevent inaccurate bills to customers, among other analytics metrics.

AG Ex. 2.4.

AG witnesses Fagan and Chang can deny none of this evidence, yet they nonetheless claim that ComEd does not have "an overall data strategy." Fagan-Chang Dir., AG Ex. 2.0, 23:16-17. Without conducting any comparable study or analysis, they assert that the Commission should "require ComEd to develop a long-term plan to fully utilize the extensive data that is becoming available due to the installation of smart meters and modern distribution infrastructure." *Id.*, 23:16-17; 24:5-7. These criticisms, like the criticisms Messrs. Fagan and Chang offered with regard to ComEd's VO validation project, are unfounded and irrelevant.

As discussed above, ComEd's long-term data analytics strategy has no impact on the "prudence and reasonableness of the costs incurred by [ComEd] to be recovered during [2017]." *See* 220 ILCS 5/16-108.5(d) ("[T]he Commission shall have the authority … to enter upon a hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year"). Putting aside that ComEd does have such a strategy, Messrs. Fagan and Chang fail to show that any cost or rate input is excessive or that their recommendation would have made any difference in ComEd's rates this year. Beyond that, the question of how ComEd should invest in data analytics in subsequent years is not a rate case issue, nor one the Commission can or should take up in any annual rate update. Brinkman Reb., ComEd Ex. 8.0, 4:71-5:91; Brinkman Sur., ComEd Ex. 12.0, 3:55-4:77.

As for the costs actually at issue, Messrs. Fagan and Chang never challenge them. Their statement that "the prudence and reasonableness of ComEd's expenditures on data analytics needs to be understood in light of ComEd's overall data analytics/business intelligence approach" (Fagan-Chang Dir., AG Ex. 2.0, 33:12-14) neither alleges nor shows any imprudence or even excessive cost. They neither refer to any investment or component of ComEd's rate base nor provide any reasoning or justification for any claim that any related cost is excessive or imprudent. Indeed, they admit that there is no basis for such findings. *Id.*, 29:13-14.

In sum, the AG's recommendation that the Commission "require the Company to provide updates on its progress in considering and implementing the five domains identified in the Exelon BI/DA effort" is unjustified and unrelated to the rate setting function of this case. *See* Fagan-Chang Reb., AG Ex. 4.0, 3:20-22. This proceeding is not the appropriate forum to litigate long-term future business strategies having no impact on the rates at issue. Moreover, even were the issues conceptually germane, the evidence supports no disallowance whatsoever. Messrs. Fagan and Chang cannot support their recommendations.

V. OPERATING EXPENSES

A. Overview

ComEd's properly calculated actual 2015 total operating expenses, adjusted to reflect the depreciation expense associated with the projected 2016 plant additions, as presented in its surrebuttal testimony are $1,883,410,000. ComEd Ex. 13.01, Sch FR A-1, line 11. The prudence and reasonableness of those expenses were supported by detailed testimony[8] and documentation which, with limited exceptions addressed herein, was uncontested. *See generally* Moy Dir. ComEd Ex. 5.0, 55:1069-72:1445.

B. Potentially Uncontested Issues

1. Distribution O&M Expenses

ComEd Distribution Operating and Maintenance ("O&M") expenses were $465,652,000 for 2015. After reflecting adjustments, a revised total of $460,095,000 in distribution O&M expenses recorded in FERC Accounts 580-598 is included in the revenue requirement.

[8] Primarily ComEd witnesses Brinkman, Moy, Montague, Leick, Luedtke, and Newhouse.

Newhouse Dir., ComEd Ex. 2.0, 28:590-29:597; ComEd Ex. 13.01, Sch FR A-1, line 1; Sch FR C-1, lines 1 and 11. No parties contest the amount of distribution O&M expenses.

2. Customer-Related O&M Expenses

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, customer service, and billing and credit activities. Newhouse Dir., ComEd Ex. 2.0, 29:598-603. In determining the revenue requirement, ComEd has adjusted the $498,865,000 of customer related expense for the following:

(1) $213,348,000 reduction to remove the costs associated with ComEd's energy efficiency and demand response program recovered under Rider EDA;

(2) $38,762,000 reduction to reflect the total amount of uncollectible accounts expense recorded in FERC Account 904, costs recovered through Rider UF;

(3) $13,106,000 reduction to remove customer care costs related to supply.

(4) $481,000 reduction to remove the non-jurisdictional amount of Outside Agency Collection Fees related to uncollectibles;

(5) $17,000 increase to include interest on customer deposits in operating expenses;

(6) $1,437,000 reduction to remove costs recovered under Rider PORCB;

(7) $959,000 reduction to remove customer assistance costs incurred as part of the $10,000,000 EIMA customer assistance program;

(8) $124,000 reduction for company credit card costs;

(9) $2,661,000 increase for a donation to the Illinois Science and Technology Foundation;

(10) $826,000 reduction to remove costs associated with the 401(k) profit sharing match; and

(11) $74,000 reduction to remove costs associated with employee recognition expenses.

Newhouse Dir., ComEd Ex. 2.0, 29:606-30:627; *see also* ComEd Ex. 13.01, App 7, lines 5 through 22. After these adjustments, $232,426,000 of FERC Accounts 901-910 directly relate to and support the delivery service function and are included in the revenue requirement. Newhouse Dir., ComEd Ex. 2.0, 30:627-631; ComEd Ex. 13.01, Sch FR A-1, lines 2 and 3 and Sch FR A-1 - REC, line 2 and 3. No party has objected to the amount of customer-related O&M expenses and these amounts should be approved.

3. Uncollectibles Expense

ComEd has removed $38.8 million from FERC Account 904 related to uncollectible expense and therefore has included no uncollectible customer balance in its delivery service revenue requirement. ComEd has included in the delivery service revenue requirement the costs associated with ComEd's activities to collect past due accounts. Montague Dir., ComEd Ex. 4.0, 10:210-216; Newhouse Dir., ComEd Ex. 2.0, 29:611-612; ComEd Ex. 13.01, App 7, line 11. These amounts should be approved.

4. Administrative and General Expenses

ComEd included Administrative and General ("A&G") expenses of $374,212,000, as adjusted on surrebuttal, in the revenue requirement for 2015. 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-operational costs. Newhouse Dir., ComEd Ex. 2.0, 31:643-654; ComEd Ex. 13.01, Sch FR A-1, line 4; *see also* Siambekos Dir., ComEd Ex. 3.0, 10:198-13:257; Montague Dir., ComEd Ex. 4.0, 9:181-10:209; Moy Dir., ComEd Ex. 5.0, 59:1167-61:1199. No party has objected to the amount of A&G expenses. ComEd's A&G costs were prudently incurred and are reasonable in amount and should be approved.

5. Charitable Contributions

ComEd has included in its operating expenses a pre-jurisdictionalized amount of $6,920,000. Of this amount, $2,661,000 is included in customer accounts, $4,259,000 is included in A&G accounts, and based on the W&S allocator applied to the A&G portion, $6,386,000 is included in the revenue requirement. Newhouse Dir., ComEd Ex. 2.0, 43:907-44:916. ComEd provided a description of each charitable organization, the purpose of each donation, and how the donation meets the requirements set by Section 9-227 of the PUA. ComEd Ex. 2.02, WP 7, page 4, subpages 42-67. No party has objected to the amount of charitable contribution expenses.

6. Merger Expense

On April 14, 2014, Exelon and Pepco Holdings, Inc. ("PHI") signed an agreement and plan of merger to combine the two companies. Exelon and PHI received final approval for the merger on March 23, 2016. ComEd incurred in 2015 a total of approximately $10.4 million in merger related costs to achieve. The Illinois jurisdictional amount is approximately $9.1 million, and is included in ComEd's total A&G. Newhouse Dir. ComEd Ex. 2.0, 35:737-36743; ComEd Ex. 13.01, Sch FR A-1, line 4 and FR A-1 REC, line 4.

In addition, while there were no costs (expense or capital) incurred in 2015 related to the prior merger of Exelon with Constellation Energy ("CEG"), ComEd has included in the revenue requirement the continuing amortization and return on rate base related to CEG merger costs greater than $10 million (jurisdictional) incurred in 2012 and 2013. A breakdown of the expense and rate base components included in the revenue requirement for the CEG merger is shown in ComEd Ex. 2.08. Newhouse Dir., ComEd Ex. 2.0, 36:744-749.

ComEd's 2017 Net Revenue Requirement is increased by $12.6 million in CTA related to the CEG merger and $19.4 million in CTA related to the PHI merger for a total impact of $32.0 million. ComEd's 2017 Initial Rate Year Revenue Requirement is increased by $22.7 million ($13.6 million for CEG and $9.1 million for PHI) and the 2015 Reconciliation is increased by $9.3 million (($1.1) million for CEG and $10.4 million for PHI). These amounts include the amortization of CEG merger-related costs approved in ICC Docket Nos. 13-0318 and 14-0312. The calculations supporting these amounts are included in ComEd Ex. 2.08. Newhouse Dir., ComEd Ex. 2.0, 36:750-758. No party has objected to any of these amounts, and they should be approved.

7. Charges for Services Provided by BSC

BSC is the service company within the Exelon family of affiliated companies that provides services such as information technology, supply, finance, and human relations to ComEd and Exelon's other business units. Siambekos Dir., ComEd Ex. 3.0, 6:108-112. In 2015, ComEd incurred $295.8 million in costs for services provided by BSC. Siambekos Dir., ComEd Ex. 3.0, 6:118-120; ComEd Ex. 2.10, page 4, column (b). Pursuant to a data request by the AG, ComEd noted that $534,000 of those costs were inadvertently included in A&G FERC Account 923. Newhouse Reb., ComEd Ex. 9.0, 21:426-433. ComEd removed those costs. *Id.* Staff witness Bridal noted that ComEd inadvertently included $534,000 in BSC costs related to FERC Account 923, lobbying activities, and transmission services in the revenue requirement. Bridal Dir., Staff Ex. 2.0, 9:197-10:213. ComEd removed those costs. Newhouse Reb., ComEd Ex. 9.0, 21:426-433; ComEd Ex. 9.02, WP 7, page 2, lines 37-38. The BSC charges for the services provided to ComEd are uncontested and should be approved.

8. Depreciation and Amortization Expense

As adjusted on surrebuttal, ComEd's revenue requirement includes $569,140,000 of depreciation and amortization expense. ComEd Ex. 13.01, Sch FR C-2, line 10. The level of 2015 depreciation and amortization expense included in the revenue requirement is $510,562,000, comprised of $403,771,000 related to Distribution Plant and $106,791,000 related to G&I Plant. ComEd Ex. 13.01, Sch FR C-2, lines 4, 6. Additionally, the 2017 Initial Rate Year Revenue Requirement and 2017 Rate Year Net Revenue Requirement include $58,578,000 of depreciation expense associated with the 2016 projected plant additions. ComEd Ex. 13.01, Sch FR C-2, line 9b. No party has objected to the amount of depreciation and amortization expense. Newhouse Dir., ComEd Ex. 2.0, 37:772-38:785; ComEd Ex. 13.01, Sch FR C-2.

9. Taxes

The amount of taxes other than income included in the revenue requirement is $146,022,000. These taxes include real estate taxes, the Illinois Electricity Distribution Tax ("IEDT"), payroll taxes, and several other taxes. Newhouse Dir., ComEd Ex. 2.0, 38:786-790; ComEd Ex. 2.01, App 7, page 2, lines 41 through 62; ComEd Ex. 2.01, Sch FR C-1, line 10.

Regarding IEDT, ComEd recorded an accrual in 2015 for an estimated IEDT credit of $13,788,000 related to its actual 2015 IEDT of $114,903,000, and a credit adjustment of $204,000 to the estimated IEDT credits for the year 2014, reflecting the net amount of $100,911,000 in operating expense. *Id.*, 38:801-805. Also, in compliance with the Commission's final Order in ICC Docket No. 13-0318, ComEd has excluded $264,000 of payroll taxes related to previously disallowed incentive compensation. *Id.*, 38:795-800; *see* ComEd Ex. 2.02, WP 7, page 2, line 39.

The amount of income taxes included in the 2015 Reconciliation Revenue Requirement is $198,494,000. ComEd Ex. 13.01, Sch FR A-1- REC, lines 15, 18 and 19. The amount of income taxes included in the 2017 Initial Rate Year Revenue Requirement, which includes the impact of the projected 2016 plant additions, is $227,152,000. ComEd Ex. 13.01, Sch FR A-1, lines 15, 18, and 19. Income taxes have been calculated based on the expenses and miscellaneous revenues assigned or allocated to the delivery service function. ComEd has also analyzed differences in book and tax treatment of 2015 revenues and expenses and assigned or allocated those differences to the delivery service function as described in ComEd Ex. 13.01, Sch

FR C-4 “Taxes Computation” and App 9 “Permanent Tax Impacts Information.” Newhouse Dir., ComEd Ex. 2.0, 39:813-818.

10. Lobbying Expense

No lobbying expenses are included in ComEd’s revenue requirement. ComEd Ex. 2.05, Sch C-5 FY, page 2, line 6.

11. Rate Case Expenses

In this proceeding, ComEd seeks to recover rate case expenses totaling $713,000, comprised of the following:

(1) Amortization of $65,994 of allowed expenses incurred in 2013 for ICC Docket No. 11-0721 and approved in ICC Docket No. 14-0312;

(2) Amortization of $23,691 of expenses incurred in 2014 for ICC Docket No. 11-0721 and approved in ICC Docket No. 15-0287;

(3) ComEd’s rate case expenses of $49 incurred in 2015, for ICC Docket No. 12-0321;

(4) ComEd’s rate case expenses of ($51) incurred in 2015, or $49 incurred in 2015 offset by an accrual of $100 reversed in 2015, for ICC Docket No. 13-0318;

(5) ComEd’s rate case expenses of $130,977 incurred in 2015 for ICC Docket No. 14-0312; and

(6) ComEd’s rate case expenses of $492,706 incurred in 2015 for ICC Docket No. 15-0287.

ComEd supported these expenses with an affidavit (ComEd Ex. 2.12) and supporting invoices. Newhouse Dir., ComEd Ex. 2.0, 45:929-49:1021; ComEd Ex. 9.02, WP 7, page 8, lines 12, 16, 20, and 24.

This evidence supports a Commission finding consistent with Section 9-229 of the PUA that the expenses incurred were just and reasonable. The attachments to the affidavit provide the evidentiary support for each ICC proceeding for which ComEd seeks recovery. *See* ComEd Ex.

2.12 APO-04 (ICC Docket No. 12-0321), Ex. 2.12 APO-05 (ICC Docket No. 13-0318), Ex. 2.12 APO-06 (ICC Docket No. 14-0312), Ex. 2.12 APO-07 (ICC Docket No. 15-0287). 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. 2.12 APO-01 (identifying individuals and qualifications).

In order to limit the issues in this case, and without waiving its right to contest other proposed disallowances based on similar arguments in this case, or disallowances based on this or similar arguments in any other proceeding, ComEd has agreed not to contest Staff witness Mr. Bridal's proposed adjustment to disallow approximately $2,100 of rate case expense related to amounts not associated with rate case expense, completely redacted line items, and miscellaneous charges for attorney and witness meals. Newhouse Reb. ComEd Ex. 9.0, 21:434-22:452; Bridal Dir., Staff Ex. 2.0, 10:214-12:266. ComEd made an adjustment to rate case expense in that amount, reducing ComEd's 2017 Rate Year Net Revenue requirement by $6,000. Newhouse Reb., ComEd Ex. 9.0, 22:445-452; Staff Ex. 2.0, Sched. 2.04, page 3.

12. Employee Recognition

As alluded to in Section V.B.2. above, Mr. Bridal initially proposed an adjustment to disallow all expenditures related to employee recognition. Bridal Dir., Staff Ex. 2.0, 5:110-9:196. Mr. Bridal subsequently revised his proposed disallowance to distinguish between safety and service/longevity awards on the one hand and achievement/performance awards on the other. Mr. Bridal continued to propose a disallowance "to remove from the revenue requirement only employee recognition costs associated with safety awards and service/longevity awards." Bridal Reb., Staff Ex. 5.0, 5:84-88. *See also* Newhouse Reb., ComEd Ex. 9.0, 15:308-21:425. Mr. Bridal, however, agreed that "[c]osts associated with employee achievement/performance awards are retained as a recoverable cost. … As such, the costs of awards which ComEd claims are for employee performance above and beyond what is required in the ordinary course of employment will be recovered from ratepayers." Bridal Reb., Staff Ex. 5.0, 5:89-95.

Although ComEd does not agree with the portion of Staff's proposal regarding safety awards and employee service/longevity awards, in order to limit the issues in this case and without waiving its right to contest other proposed disallowances based on similar arguments in this case, or disallowances based on this or similar arguments in any other proceeding, ComEd accepts Mr. Bridal's proposal to remove those specific employee recognition expenditures resulting in the removal of $1,596,000 from the revenue requirement. Newhouse Sur., ComEd Ex. 13.0, 6:103-115.

13. Incentive Compensation Program Expenses

In its May 29, 2012 final Order in ICC Docket No. 11-0721, the Commission decided that "ComEd should be required to file, with its initial performance-based rate filing, evidence establishing that its employees have achieved the statutory [incentive compensation] metrics," including evidence "as to what its employees did to achieve the performance metrics in Section 16-108.5." *Commonwealth Edison Co.*, ICC Docket No. 11-0721, Final Order (May 29, 2012) at 92. ComEd's testimony regarding the incentive compensation plans – ComEd witnesses Ms. Brinkman (ComEd Ex. 1.0), Mr. Siambekos (ComEd Ex. 3.0), Mr. Moy (ComEd Ex. 5.0), and Ms. Montague (ComEd Ex. 4.0) – substantiated ComEd's entitlement to recover its incentive compensation expenses and described the metrics set forth in ComEd's incentive compensation plans, how ComEd performed under the metrics, and what employees did to achieve their performance on those metrics. Brinkman Dir., ComEd Ex. 1.0, 19:380-396.

In brief, in 2015 ComEd offered an Annual Incentive Program ("AIP"), a Key Manager and Executive Long Term Performance Program ("LTPP"), an Executive Long Term

Performance Cash Award Program ("LTPCAP"), and an Executive Long Term Performance Share Award Program ("LTPSAP") to its employees. The total compensation that ComEd pays its employees is based on the levels needed in the marketplace to attract and retain qualified personnel. Instead of paying the entire amount of an employee's compensation through base salaries, ComEd makes a portion of each employee's pay subject to the achievement of operational metrics specified in the incentive compensation plans. By structuring compensation in this manner, ComEd's employees are at risk of receiving less than the marketplace level of compensation if the metrics of the plans are not achieved. Brinkman Dir., ComEd Ex. 1.0, 19:399-20:414. No party contested that the 2015 incentive compensation costs, which resulted in market-based compensation levels, were prudently incurred and reasonable in amount. Brinkman Dir., ComEd Ex. 1.0, 20:415-419. Each plan is discussed briefly below.

a. Annual Incentive Program ("AIP")

ComEd's 2015 AIP had nine operational metrics. Brinkman Dir., ComEd Ex. 1.0, 22:434-436. The AIP, as to each of its metrics, includes three levels: (1) a threshold level that must be met in order for any payment to be made under the metric, and which, if met, results in 50% payment of the target payment level for the metric; (2) a target level, which, if met, results in 100% payment of the target level for the metric; and (3) a more rigorous distinguished level, which, if met, could result in up to 200% payment of the target level for the metric. *Id.*, 23:474-24:480.

The following is a summary of 2015 performance under the AIP metrics:

- With respect to SAIFI (weather-normalized), performance of 0.78 surpassed the threshold level of .87;

- The 82 minute CAIDI performance of ComEd's employees met the distinguished performance level of 82;
- The customer Satisfaction Index result of 7.85 in 2015 surpassed the target level of 7.79;
- The OSHA Recordable Rate of 0.57 achieved by ComEd's employees was better than the target level of .77 and was ComEd's best OSHA performance on record for the second year in a row;
- ComEd employees achieved a Service Level rating of 91.3%, exceeding the distinguished performance threshold level of 90.1%;
- Call Center Satisfaction performance was 81.2, exceeding the target of 80.3;
- Total capital expenditures were $109 million lower (favorable) than the threshold level;
- Total O&M costs were $9 million lower (favorable) than the target level; and
- Performance on the EIMA Performance Metrics Index was 156% and exceeded the target rating of 100%.

Brinkman Dir., ComEd Ex. 1.0, 24:497-25:514. Overall, ComEd employee performance resulted in a calculated AIP payout of 131.3%. *Id.*, 25:515. In sum, by performing their respective duties skillfully and efficiently, ComEd employees contributed to the achievements in 2015 under the AIP. *Id.*, 25:516-519. The inclusion of the costs associated with AIP is uncontested and should be approved in this docket.

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

The LTTP grants a cash award that vests over three years. Brinkman Dir., ComEd Ex. 1.0, 27:554-28:564. LTPP goals mirror the goals of the AIP. *Id*. The inclusion of the costs associated with LTTP is uncontested and should be approved in this docket.

c. Long-Term Performance Cash Awards Program ("LTPCAP")

The LTPCAP also grants a cash award that vests at the end of a three year performance cycle. *Id*.; See ComEd Ex. 1.01 at 22. The goals of LTPCAP similarly mirror the goals of the AIP. Brinkman Dir., ComEd Ex. 1.0, 27:554-28:564. The inclusion of the costs associated with LTPCAP is uncontested and should be approved in this docket.

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

Certain ComEd executives were eligible for the Long Term Performance Share Award Program ("LTPSAP"). Consistent with the Commission's Order in ICC Docket No. 14-0312, ComEd has excluded 95% or approximately $3.0 million in related 2013, 2014 and 2015 LTPSAP costs vesting in 2015. The 5% of LTPSAP costs, approximately $0.2 million, which is included in the 2017 Rate Year net revenue requirement, represents the 2015 incentive compensation payout for the achievement of CAIDI and SAIFI performance by ComEd. *See* Ex. 2.01, App 7, line 21 and ComEd Ex. 2.02, WP 7, page 12. Brinkman Dir., ComEd Ex. 1.0, 28:565-572. The inclusion of the costs associated with LTPSAP is uncontested and should be approved in this docket.

14. Gross Revenue Conversion Factor

ComEd's Gross Revenue Conversion Factor ("GRCF") is 1.6677. No party has objected to the GRCF. Newhouse Dir., ComEd Ex. 2.0, 49:1028-1031; ComEd Ex. 2.01, Sch FR C-4, line 13.

15. #SmartMeetsSweet ("SMS") Initiative

#SmartMeetsSweet is a program used for distributing information and educating customers on automated metering infrastructure ("AMI") meters. Newhouse Reb., ComEd Ex. 9.0, 10:196-199. ComEd voluntarily excluded $33,000 related to ice cream costs incurred as part of the #SmartMeetsSweet Initiative in 2015. Newhouse Dir., ComEd Ex. 2.0, 35:725-736. Mr. Bridal initially proposed a disallowance of the remainder of the costs of the program. Bridal Dir., Staff Ex. 2.0, 2:46-5:109. In rebuttal, however, Mr. Bridal withdrew his recommended disallowance. Bridal Reb., Staff Ex. 5.0, 3:53-56. Mr. Bridal noted:

> Mr. Newhouse stated that the entire SMS initiative is built around ComEd's goal to educate customers on the benefits of smart meters at locations where the smart meters are being deployed, and explains details regarding the educational messages communicated as part of the SMS initiative. (citation omitted) Further, in response to subsequent Staff data requests, additional support for the recovery of SMS costs was provided.

Id., 3:51-52. Mr. Bridal further agreed that "Mr. Newhouse's rebuttal testimony and the subsequent data request responses demonstrate that the costs of the SMS initiative which ComEd seeks to recover through its revenue requirements in this proceeding are associated with customer education and informational advertising that is allowable under Section 9-225(3) of the Public Utilities Act." Bridal Reb., Staff Ex. 5.0, 3:57-4:61. *See also* Newhouse Reb., ComEd Ex. 9.0, 10:196-15:307; Newhouse Sur., ComEd Ex. 13.0, 5:96-102. Based on the record in this case, the Commission should allow these expenses.

C. Potentially Contested Issues

1. Telephone Consumer Protection Act ("TCPA") Settlement

AG witness Mr. Michael L. Brosch recommends disallowing $2,281,456 associated with ComEd's settlement of *Michael Grant v. Commonwealth Edison Co.*, Case No. 1:13-cv-08310 ("*Grant*"). Brosch Dir., AG Ex. 1.0, 2:31-3:47, 6:107-111. *Grant* was a TCPA class action lawsuit alleging that ComEd, through its outage alert program, sent unsolicited text messages to customers' cell phones without those customers' prior express consent. Polek-O'Brien Reb., ComEd Ex. 11.0, 4:66-68.

Mr. Brosch's recommended disallowance is based on his after-the-fact opinion that "ComEd could and should have designed its Outage Alert Program to [sic] in such a way as to avoid *potential* litigation and liability under the TCPA." Brosch Dir., AG Ex. 1.0, 5:87-89 (emphasis added). To be clear: Mr. Brosch does <u>not</u> claim that ComEd acted imprudently or unreasonably in settling the *Grant* case. Brosch Dir., AG Ex. 1.0, 5:91-95. Indeed, as explained below, the undisputed evidence shows that ComEd's decision to settle the case was prudent and the amount for which ComEd settled the case was reasonable. Polek-O'Brien Reb., ComEd Ex. 11.0, 5:87-6:109.

Likewise, Mr. Brosch does <u>not</u> claim that ComEd's outage alert program actually violated the TCPA. *See generally* Brosch Dir., AG Ex. 1.0. To the contrary, as also explained below, the undisputed evidence shows that ComEd's outage alert program complied with the rules and regulations promulgated by the Federal Communications Commission ("FCC"), the federal administrative agency charged with administrative oversight and interpretation of the TCPA and authorized to make rules and to render decisions interpreting and applying the TCPA. *See generally In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 7 FCC 8752, (Oct. 16, 1992) ("1992 FCC Order); *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-0278, Declaratory Ruling (Aug. 4, 2016) ("2016 FCC Order").

Mr. Brosch does not even opine that based on circumstances known or knowable at the time ComEd designed the outage alert program, if ComEd had incorporated certain features or designed the program in a certain way, ComEd would have avoided litigation similar to *Grant*. And even had he so opined – and he did not – there is nothing in his training or experience that remotely qualifies him to express that opinion. *See* Brosch Dir., AG Ex. 1.0, 2:39-3:47. In short, Mr. Brosch offers nothing in the way of facts or evidence showing imprudent design or implementation at the time ComEd rolled out the outage alert program. And he brings to bear no knowledge or expertise regarding the state of the art of utility outage alert programs in 2013.

What Mr. Brosch does claim is that based on present knowledge, ComEd should have known that someone would eventually file a claim that would incorrectly but artfully allege that ComEd's outage alert program violated the TCPA. *See* Brosch Dir., AG Ex. 1.0, 5:91-106. Mr. Brosch asks the Commission to substitute his view – an impermissible hindsight view – that ComEd's program should have been "designed" to avoid "potential litigation and liability under the TCPA" for the relevant historical view of the FCC that programs like ComEd's were appropriate. *Compare* Brosch Dir., AG Ex. 1.0, 5:88-89 *with* 1992 FCC Order and 2016 FCC Order. As more fully explained below, the Commission should reject Mr. Brosch's theory.

a. Amounts Associated with the *Grant* Settlement are Recoverable Operating Expenses that ComEd Prudently Incurred and that are Reasonable in Amount

The Commission has long encouraged settlements and allows recovery of prudent and reasonable settlement amounts included in a utility's revenue requirement. *See, e.g.*, *Nat'l Cas. Co. v. White Mountain Reinsurance Co. of Am.*, 735 F.3d 549, 556 (7th Cir. 2013) (American legal system favors the compromise and settlement of disputes); *Advanced Bodycare Sols., LLC v. Thione Int'l, Inc.*, 524 F.3d 1235, 1241 (11th Cir. 2008) (adjudicatory bodies are often empowered to encourage settlements, thereby discouraging litigation and its associated expense); Polek-O'Brien Reb., ComEd Ex. 11.0, 2:42-3:63. To do otherwise would discourage settlements as non-recoverable and encourage litigation expenses that are recoverable. To be sure, virtually every rate case ComEd files includes litigation-related settlements in the revenue requirement.

Therefore, the Commission analyzes litigation settlement costs exactly the same as other utility costs, *i.e.*, subject to a prudence and reasonableness standard: actual prudent and reasonable costs of providing delivery service are recoverable through a utility's formula rate. 220 ILCS 5/16-108.5(c)(1). *See also* 220 ILCS 5/1-102 (a)(iv) (applying same standard to traditional rate cases). In short, the Commission allows recovery of settlement costs as long as the underlying activity relates to delivery service, the decision to settle is prudent, and the settlement amount is reasonable. Polek-O'Brien Reb., ComEd Ex. 11.0, 2:42-3:53.

The *Grant* settlement clearly meets these standards of recovery. First, the messaging program sought to improve the speed and efficiency of ComEd's communications with its customers concerning power outages. *Id.*, 4:72-73. This is undoubtedly related to delivery service. *Id.*, 4:69-74. Mr. Brosch does not contend otherwise. *See generally* Brosch Dir., AG Ex. 1.0.

Second, as mentioned above, Mr. Brosch does not challenge whether it was prudent for ComEd to settle the potential liability. Brosch Dir., AG Ex. 1.0, 5:91-93. Again, the evidence affirmatively shows the decision to settle was prudent. This was a large claim, with a range of exposure of approximately $600 million to $1.8 billion. Polek-O'Brien Reb., ComEd Ex. 11.0., 5:90-91. Although ComEd was prepared to fully and vigorously defend this matter because it believed that it had two defenses that were strong and that Plaintiff's claim was flawed, proceeding to a decision or judgment was not without risk. *Id.*, 5:91-94. Despite ComEd's conviction that it had not violated the law, the manner in which the court would interpret ComEd's first defense was uncertain and no binding legal precedent addressed ComEd's second defense. Moreover, a loss of this magnitude would have been catastrophic. *Id*., 5:94-95. Faced with this legal uncertainty, it was a prudent business decision to settle the *Grant* case. *Id*., 5:95-96. Indeed, literature indicates that any TCPA lawsuit is "a destructive force" that can threaten a company with "annihilation" for actions that caused no real harm to consumers. *See* Becca J. Wahlquist, *The Juggernaut of TCPA Litigation: The Problems with Uncapped Statutory Damages,* U.S. CHAMBER INSTITUTE FOR LEGAL REFORM (Oct. 2013) at 1; Polek-O'Brien Reb., ComEd Ex. 11.0, 5:96-100.

Third, as also stated above, the settlement amount was reasonable. And again, Mr. Brosch does not challenge this, nor could he. Brosch Dir., AG Ex. 1.0, 5:91-95. A settlement of \$4.95 million – less than 1% of the potential exposure – is quite small in relation to the maximum exposure and is undoubtedly reasonable in amount. Polek-O'Brien Reb., ComEd Ex. 11.0, 5:105-107. Moreover, TCPA cases frequently involve settlements ranging from \$6 million to as much as \$47 million. *The Juggernaut of TCPA Litigation* at 3. ComEd's *Grant* settlement is at the very low end of this range. Polek-O'Brien Reb., ComEd Ex. 11.0, 5:107-6:109.

This should be the end of the inquiry and the Commission should allow recovery of the full amount at issue. Mr. Brosch, however, argues that the Commission should continue its review and analyze the design of ComEd's outage alert program. While ComEd disagrees as to whether this is necessary or appropriate, as explained below, a further inquiry shows that ComEd prudently designed its outage alert program and that the Commission should reject Mr. Brosch's proposed disallowance.

b. ComEd Prudently Designed its Outage Alert Program, which did not Violate the TCPA and Expressly Complied with FCC TCPA Rules and Regulations

Mr. Brosch presumes that the mere fact that Mr. Grant sued ComEd – and that ComEd in turn settled the case – indicates that ComEd did something wrong. That is an invalid after-the-fact inference and a factually incorrect conclusion. ComEd acted reasonably when it designed the outage alert program, including the opt-out aspect of the program. Polek-O'Brien Reb., ComEd Ex. 11.0, 6:110-113. Mr. Brosch does not suggest an alternative program design that – based on the facts and evidence known in 2013 – would have avoided similar litigation. His analysis is nothing more than an impermissible hindsight review. And even had he so opined, nothing in his training or experience remotely qualifies him to express that opinion.

With the wave in recent years of extreme weather conditions across the country leading to mass, prolonged power outages, ComEd sought to harness emerging communications technologies and practices to improve the speed and efficiency of its communications with its customers, particularly those concerning power outages. *Id.*, 6:115-118. The outage alert program provided an efficient two-way means of delivering emergency power-outage related information. *Id.*, 6:127-7:129. Enrolling customers in the text messaging program allowed ComEd to provide customers with critical updates regarding power outages and with the ability to report power outages using a distinctly efficient and effective means. *Id.*, 7:129-132.

Prior to implementing the program, ComEd conducted an inquiry into whether the outage alert program, including the opt-out feature, was consistent with Federal requirements for disseminating text messages. *Id.*, 7:143-146. In conducting this inquiry, ComEd learned that the FCC plainly stated that outage-related communications by power companies are "within either the broad exemption for emergency calls, or the exemption for calls to which the called party has given prior express consent." 1992 FCC Order at 8777-78. This comported with ComEd's understanding that the TCPA was designed to address telemarketing calls, not informational text messages that alert customers to an outage alert program, particularly when the customers voluntarily provide their cell phone numbers and the text message provides an opportunity to opt-out of the program. Polek-O'Brien Reb., ComEd Ex. 11.0, 8:150-154. The statute therefore restricts unsolicited advertisements – messages sent for commercial gain. In contrast, ComEd had no commercial motive to send text messages: ComEd sent the text messages in an effort to enhance public safety during electric power outages. *Id.*, 8:156-159.

ComEd utilized an opt-in feature on ComEd's website during the pilot stages of the program, and successfully enrolled a small group of customers. Polek-O'Brien Reb., ComEd Ex. 11.0, 9:194-196. However, this required customers to affirmatively visit ComEd's website, and as a result, many customers never became aware of this valuable safety service. *Id.*, 9:196-198. To make this emergency notification service available to a wide range of customers, ComEd switched to an opt-out mechanism, under which all customers who had provided their cell phone numbers as a point of contact would learn that the program existed and could easily enjoy the benefits of the program. *Id.*, 9:198-10:201. ComEd had reviewed the applicable law and analyzed the change from opt-in to opt-out and reasonably believed that the change did not pose a substantial risk of liability. *Id.*, 10:201-203. Weighing the pros and cons, ComEd chose the path that would allow it to reach many more customers with this effective, desirable, and valuable emergency safety service. *Id.*, 10:203-205.

Therefore, in the fall of 2013, and in advance of what turned out to be an unprecedented winter storm season, ComEd rolled the program out as part of its standard electric service to all of its customers who provided cell phone numbers as a point of contact. Polek-O'Brien Reb., ComEd Ex. 11.0, 6:118-121. ComEd implemented the program by sending the following text message to those customers, which provided simple instructions on how to unsubscribe: "You are now subscribed to ComEd outage alerts. Up to 21 msgs/mo. Visit ComEd.com/text for details. T&C:agent511.com/tandc. STOP to unsubscribe. HELP for info." *Id.*, 6:122-126. Based on ComEd's diligent inquiry and good faith understanding of the law and its exemptions, ComEd acted reasonably when it implemented the outage alert program and disseminated the text messages.

The FCC further validated ComEd's design and implementation of the outage alert program earlier this summer, when the FCC issued a ruling restating and clarifying that programs like ComEd's outage alert program are in fact lawful and desirable. In the 2016 FCC Order, the FCC stated:

> we clarify that consumers who provide their wireless telephone number to a utility company when they initially sign up to receive utility service, subsequently supply the wireless telephone number, or later update their contact information, have given prior express consent to be contacted by their utility company at that number with messages that are closely related to the utility service so long as the consumer has not provided 'instructions to the contrary.'

2016 FCC Order at 13, ¶ 29 (citing 1992 FCC Order).

The FCC went on to state that the types of communications that were the subject of the *Grant* case are "critical to providing safe, efficient and reliable service" and that "customers would welcome" these types of communications. *Id.* at 14, ¶ 30. The FCC went on to note that "low-income households -- especially those in urban and minority communities more reliant upon wireless phones as their primary source of communications -- are particularly vulnerable to service interruptions, making it even more imperative that they receive appropriate notice, *especially before, during and after emergency situations.*" *Id.* at 14, ¶ 30 (emphasis added).

As shown in both the 1992 FCC Order and the 2016 FCC Order, as well as in the motion to dismiss the *Grant* case attached to Ms. Polek-O'Brien's testimony, two strong and independent bases supported the design of the outage alert program: consent and emergency purpose. *See generally* 1992 FCC Order; 2016 FCC Order; ComEd Exs. 11.01 and 11.03. In brief, with regard to the consent defense, by providing their cell numbers in connection with establishing or maintaining their electric service, customers consented to be contacted at that number with informational text messages such as the ones at issue in the suit. The text messages at issue – which were part of an outage alert program – also fall under the emergency purpose exemption of the TCPA. Thus, ComEd acted reasonably when it designed and implemented the outage alert program.

Mr. Brosch, however, asks the Commission to substitute his contention that ComEd's program should have been "designed" to avoid what, in his view, was "potential litigation and liability under the TCPA" for the view clearly articulated by the FCC that the program was appropriate – the view that ComEd relied on in designing and implementing its outage alert program. *Compare* Brosch Dir., AG Ex. 1.0, 5:88-89 *with* 1992 FCC Order; 2016 FCC Order. Mr. Brosch offers no evidence in support of his proposed disallowance. There is nothing in the record indicating that he performed any kind of comparison or analysis of outage alert programs designed circa 2013. It is one thing to state that given the facts known at the time, and the behavior of other similarly situated companies, ComEd acted imprudently. It is quite another to state that given the facts that we know *now*, ComEd should have made a different choice. Mr. Brosch does the latter, claiming that despite ComEd's reasonable and diligent actions, ComEd should have known that Mr. Grant would institute his class action lawsuit against ComEd and that ComEd should have incorporated the "prospective relief" that ComEd included in the settlement agreement in its initial design of the outage alert program. Brosch Dir., AG Ex. 1.0, 5:87-106.

Mr. Brosch's contention is unlawful. The Commission is not permitted to engage in this type of hindsight review. *Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 428 (5th Dist. 2003). "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." *Id.* And, as noted above in regard to VO, "The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being 'imprudent.'" *Id.* at 435 (citation omitted). At a minimum, Mr. Brosch's views do not supplant those of the FCC.

Mr. Brosch's argument also runs counter to the well-settled principle in the context of cases alleging negligence that evidence of remedial measures that make an earlier injury or harm less likely to occur are not admissible to show a prior failure of due care. *See*, *e.g.*, Fed. R. Evid. 407 ("When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove … negligence."); *Schaffner v. Chicago & N.W. Transp. Co.*, 541 N.E.2d 643, 647-48 (Ill. 1989) ("The rationale for this long-standing rule is twofold: correction of unsafe conditions should not be deterred by the possibility that such an act will constitute an admission of negligence, and, more fundamentally, a post-occurrence change is insufficiently probative of prior negligence, because later carefulness does not necessarily imply prior neglect.") (internal citations and quotation marks omitted). Mr. Brosch should not be permitted to use vague references to changes that ComEd subsequently implemented to prove prior imprudence on the part of ComEd. Brosch Dir., AG Ex. 1.0, 5:98-

106. ComEd should be permitted to continually update the services it provides to customers without fear that the AG will claim that the prior service was imprudently designed.

Moreover, in support of his proposed disallowance, Mr. Brosch relies on his “prior experience with the regulation of public utilities over the past 38 years, including significant experience with alternative forms of regulation for energy utilities in Illinois and other states.” Brosch Dir., AG Ex. 1.0, 2:39-3:47. But that experience has nothing to do with the design of an effective outage alert program. He is simply not qualified to testify as an expert witness on the prudence and reasonableness of an outage alert program designed in 2013. The Commission should reject Mr. Brosch’s proposed disallowance in its entirety.

VI. RATE OF RETURN

A. Overview

ComEd has in large part incorporated Staff’s proposed adjustment to the balances of the components of capital structure. The rates of return (weighted average costs of capital) to be applied in the instant Docket, *i.e.*, 6.69% for the 2015 Reconciliation Year and 6.71% for the 2017 Initial Rate Year, are not contested. Freetly Dir., Staff Ex. 3.0, 5:96-6:107; Newhouse Dir., ComEd Ex. 2.0, 50:1032-1039; ComEd Ex. 2.01, Sch FR D-1, line 21; Newhouse Reb., ComEd Ex. 9.0, 22:453-24:492.

B. Capital Structure

Staff witness Ms. Freetly and ComEd witness Mr. Newhouse concur with ComEd’s capital structure and cost for purposes of determining both the 2015 Reconciliation Year and the 2017 Initial Rate Year. Freetly Dir., Staff Ex. 3.0, 2:23-28; Newhouse Dir., ComEd Ex. 2.0, 50:1039-51:1054; ComEd Ex. 2.01, Sch FR D-1, line 21; ComEd Ex. 2.01, Sch FR D-2. ComEd’s capital structure is illustrated in the table below.

2015 Reconciliation Year

Capital Structure Component	*Weighting*	*Cost*	*Weighted Cost*
Common Equity	45.62%	8.59%[(1)]	3.92%
Long Term Debt	54.11%	5.06%	2.74%
Short Term Debt	0.27%	0.53%	0.00%
Credit Facility Cost			0.03%
Total Weighted Average	100.00%		6.69%

2017 Initial Filing Year

Capital Structure Component	*Weighting*	*Cost*	*Weighted Cost*
Common Equity	45.62%	8.64%	3.94%
Long Term Debt	54.11%	5.06%	2.74%
Short Term Debt	0.27%	0.53%	0.00%
Credit Facility Cost			0.03%
Total Weighted Average	100.00%		6.71%

(1) Incorporates 5 basis points penalty for missing EIMA reliability metric in 2015

Newhouse Dir., ComEd Ex. 2.0, 50:1039.

C. Cost of Capital Components

1. Rate of Return on Common Equity

See Section VI.B., *supra*.

2. Cost of Long-Term Debt

See Section VI.B., *supra*.

3. Cost of Short-Term Debt

See Section VI.B., *supra*.

4. Overall Weighted Cost of Capital

See Section VI.B., *supra*.

VII. REVENUES

ComEd deducted a total of $134,383,000, after adjustments, of miscellaneous revenues from its revenue requirement. ComEd Ex. 13.01, App 10, line 59. None of the individual revenue amounts reflected in this total have been contested.

VIII. COST OF SERVICE AND RATE DESIGN

This docket is intended to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the 2017 Rate Year. Basic rate design issues are not at issue in this formula rate update case – instead, they were addressed in the rate design tariff filing that was filed on April 30, 2013 in Docket No. 13-0387, the 2013 Rate Design Investigation ("2013 RDI"). The Commission entered a final Order in that docket on December 18, 2013 and the Order was affirmed by the Appellate Court of Illinois for the Second District on March 6, 2015. *See Coalition to Request Equitable Allocation of Costs Together (REACT) v. Illinois Commerce Comm'n*, 2015 IL App (2d) 140202 (Ill. App. Ct. March 6, 2015). The cost of service and rate design issues are uncontested and should be approved.

IX. OTHER FINDINGS

A. Original Cost Finding

ComEd requests that the Commission, as it has in past FRU Orders,[9] 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, 2015. *See* Newhouse Dir., ComEd Ex. 2.0, 14:295-15:319. 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, 2015 is $18,481,492,000. *Id.*, 14:295-302. Subtracting Asset Retirement costs, capitalized incentive compensation, costs recovered in riders, other costs

[9] 2011 Rate Case Order at 178; 2012 Rate Case Order at 106; 2013 Rate Case Order at 88-89; 2014 Rate Case Order at 8; 2015 Rate Case Order at 5-6.

disallowed in prior ICC orders, and such costs capitalized in 2015, from the total of ComEd's Distribution gross plant and Illinois jurisdictional General and Intangible gross plant results in the original cost of plant in service as of December 31, 2015, of $18,436,012,000. Newhouse Sur., ComEd Ex. 13.0, 7:125-132; Staff Ex. 4.0, 7:137-138. ComEd requests that the Commission approve this amount.

Per the 2014 and 2015 Rate Case Orders, the original cost calculation excludes assets that are recovered through Rider Energy Efficiency and Demand Response Adjustment ("Rider EDA"), Rider Purchased Electricity ("Rider PE"), and Rider Purchase of Receivables with Consolidated Billing ("Rider PORCB"). As stated in the 2014 and 2015 Rate Case Orders, for these assets excluded from original cost, the Commission will make separate original cost findings. 2014 Rate Case Order at 106; 2015 Rate Case Order at 6.

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

In his direct testimony, Staff witness Mr. Tolsdorf affirmed that ComEd provided the information necessary for Staff to make a recommendation regarding the value of the W&S allocator to be used in the determination of rates under Rider PE. Tolsdorf Dir., Staff Ex. 1.0, 16:313-17:338. ComEd provided this data in ComEd Ex. 2.04, and Mr. Tolsdorf agreed that the W&S allocator applicable to supply is 0.40% and had no objection to ComEd's calculation of the allocator. ComEd Ex. 2.04, WPA-5, page 1, line 1; Newhouse Reb., ComEd. Ex. 9.0, 25:511-526; Tolsdorf Dir., Staff Ex. 1.0, 17:339-352. ComEd agrees with the language proposed by Mr. Tolsdorf (Staff Ex. 1.0, 17:339-352), and no other party has contested the calculation or objected to the proposed language.

C. Reporting Requirements

1. EIMA Investments

In its final Order in ICC Docket No. 12-0321, the Commission stated that Section 16-108.5 of the PUA requires ComEd to provide specific evidence in its case-in-chief as to what it intends to spend its EIMA funds on and further requires ComEd to distinguish between projected plant additions and reconciliation of previous years' expenditures. 2012 Rate Case Order at 98; Newhouse Dir., ComEd Ex. 2.0, 16:320-17:347; Siambekos Dir., ComEd Ex. 3.0, 14:294-15:316. Furthermore, in ICC Docket No. 13-0318, the Commission noted that ComEd had agreed to Staff's recommendation that it identify by category cumulative actual EIMA investments in addition to annual actual investments for each year. 2013 Rate Case Order at 85; Siambekos Dir., ComEd Ex. 3.0, 15:317-331. To these ends, and in compliance with these orders, ComEd provided this information as ComEd Ex. 3.01. Siambekos Dir., ComEd Ex. 3.0, 17:332-18:375; ComEd Ex. 3.01. No party contests that ComEd has provided the required information.

2. Reconciliation Year Plant Additions

In the Commission's final Order in Docket No. 13-0318, Findings paragraph 13 set forth a table with details for the plant additions placed in service in 2012. 2013 Rate Case Order at 90-91. In this proceeding, ComEd provided a similar summary of the $666,144,031 investment amount by category placed in service in 2015 by ComEd under Section 16-108.5(b) of the Public Utilities Act. Siambekos Dir., ComEd Ex. 3.0, 17:368-18:375. ComEd also provided a similar table for the $641,515,121 of plant additions projected to be placed in service in 2016. *Id.*, 18:376-19:380. No party contests that ComEd has provided the required information.

3. Contributions to Energy Low-Income Assistance and Support Programs

EIMA requires ComEd to make certain contributions to low-income and other energy assistance programs. *See* 220 ILCS 5/16-108.5(b-10). These contributions include $10 million per year, over five years, in customer assistance costs that are not recoverable and that ComEd has removed in full from the determination of its revenue requirement. ComEd presented evidence demonstrating that these EIMA commitments have been met through the sponsorship of various initiatives under ComEd's CARE programs; through these programs, ComEd assists customers that face financial hardships and have difficulty paying their electric utility bills by helping them to avoid disconnection. Montague Dir., ComEd Ex. 4.0, 28:582-29:618. Moreover, on February 19, 2016, ComEd filed its Annual Customer Assistance Report for 2015 with the Commission. This Report specifies the programs that were funded and reports the amount of money each program received, further demonstrating ComEd's compliance with its obligation to fund EIMA customer assistance programs. *Id.*, 29:623-30:629; ComEd Ex. 4.01. No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by EIMA.

X. CONCLUSION

Based on the record and the arguments made herein, the Commission should approve ComEd's proposed 2017 Rate Year Net Revenue Requirement as presented in ComEd's surrebuttal testimony (including ComEd's acceptances of proposals of others, whether to narrow the issues or otherwise), approve the original costs of ComEd's electric plant in service as of December 31, 2015, make the required factual findings in support thereof, and authorize and direct ComEd to make a compliance filing implementing the resulting rates and charges.

Dated: September 9, 2016

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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