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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :
:
Annual formula rate update and revenue : **16-0259**
requirement reconciliation under :
Section 16-108.5 of the Public Utilities Act. :

PROPOSED ORDER

I. PROCEDURAL HISTORY

On April 13, 2016, Commonwealth Edison Company (“ComEd” or “Company”) filed with the Illinois Commerce Commission (“Commission”) ComEd’s annual formula rate update and revenue requirement reconciliation and requested the Commission to authorize and direct ComEd to make the compliance filings necessary to place into effect the resulting charges to be applicable to delivery services provided by ComEd beginning on the first day of ComEd’s January 2017 billing period, as authorized by Section 16-108.5(d) of the Public Utilities Act (“Act” or “PUA”), 220 ILCS 5/16 108.5(d).

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

1. updated inputs to the performance-based formula rate for the applicable rate year (2017) that are based on final historical data reflected in the utility’s most recently filed annual Federal Energy Regulatory Commission (“FERC”) Form 1 (for 2015) plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed (2016).
2. a reconciliation of the revenue requirement that was in effect for the prior rate year (2015) (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 (for 2015) that reports the actual costs for the prior rate year).

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

Statutorily, this docket must conclude by December 9, 2016. 220 ILCS 5/16-108.5(d)(3).

The following ComEd witnesses testified in this case: Christine M. Brinkman, Chad A. Newhouse, Christ T. Siambekos, Jennifer Montague, Michael C. Moy, Frank A. Luedtke, P.E., John L. Leick, John Prueitt, P.E., and Anastasia M. Polek-O’Brien.

The following Commission Staff (“Staff”) witnesses testified in this case: Scott Tolsdorf, Richard W. Bridal II, and Janis Freetly.

In addition to ComEd and Staff, the Illinois Attorney General’s Office (“AG”) submitted testimony. The following witnesses testified on behalf of the AG in this case: Michael L. Brosch, Robert M. Fagan and Maximilian Chang.

During the course of the proceeding, Staff and the AG proposed adjustments and changes to the Company’s proposed revenue requirements. ComEd accepted some of these adjustments and changes.

An evidentiary hearing was convened in this docket at the Commission’s Chicago Office before duly authorized Administrative Law Judges on August 24, 2016. Staff, the AG, and the Citizens Utility Board (“CUB”) filed Initial Briefs on September 9, 2016. Reply Briefs were filed on September 21, 2016.

II. OVERVIEW OF THE RATE FORMULA AND UPDATE

ComEd states that the Energy Infrastructure Modernization Act (“EIMA”), which includes 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, 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 this objective, EIMA requires that each formula rate update (“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). ComEd states that 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 of that estimated Initial Rate Year Revenue Requirement with the actual data. Thus, in the end, and after adjustment for interest, the rates for each year should be based purely on actual cost.

ComEd explains that 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.

ComEd further states 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.*, Docket No. 15-0287, Final Order (Dec. 9, 2015) (“2015 Rate Case Order”); *Commonwealth Edison Co.*, Docket No. 14-0312, Final Order (Dec. 10, 2014) (“2014 Rate Case Order”); *Commonwealth Edison Co.*, Docket No. 13-0318, Final Order (Dec. 18, 2013) (“2013 Rate Case Order”); *Commonwealth Edison Co.*, Docket No. 12-0321, Final Order (Dec. 19, 2012) (“2012 Rate Case Order”); *Commonwealth Edison Co.*, Docket No. 11-0721, Final Order (May 28, 2012) (“2011 Rate Case Order”). ComEd Init. Br. at 2-3.

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 rate year 2015 as well as the initial projection of ComEd’s 2017 costs as provided for by EIMA. The 2017 Rate Year Net Revenue Requirement used to set those rates derives from the following figures:

1. The 2015 Reconciliation Adjustment – the difference between ComEd’s 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, accumulated deferred income taxes (“ADIT”); and
3. The “ROE Collar” adjustment relating to 2015 and the “ROE Penalty Calculation” applicable to 2015.

E.g., ComEd Ex. 1.0 at 10-18.

The Commission’s determinations on the subject of rate base issues are reflected and set forth below in the applicable sections of this Order.

A. 2017 Initial Rate Year Revenue Requirement

ComEd presented evidence showing that its calculated 2017 Initial Rate Year Revenue Requirement as adjusted in its surrebuttal testimony is \$2,568,747,000. ComEd Ex. 13.0 at 5; ComEd Ex. 13.01, Sch. FR A-1, line 23. Staff recommends a 2017 Initial Rate Year Revenue Requirement of \$2,568,745,000. Staff Init. Br., Appendix A, Sch. 1 FY, line 1. The Commission’s determination regarding the 2017 Initial Rate Year Revenue Requirement is set forth later in this Order.

B. 2015 Reconciliation Adjustment

ComEd asserts that its 2015 Reconciliation Adjustment (including interest), reflecting the difference between the rate in effect in 2015 and the actual 2015 Reconciliation Revenue Requirement as adjusted in surrebuttal testimony is

\$71,829,000. ComEd Ex. 13.01, Sch. FR A-4, line 31. Staff also recommends a 2015 Reconciliation Adjustment of \$71,829,000 as provided in Staff's Initial Brief, Appendix A, Schedule 8 FY. Staff's method of calculating the reconciliation adjustment presented on this schedule is identical to that included in the appendix to the Commission Orders in Docket Nos. 12-0321, 13-0318, 14-0312 and 15-0287. The Commission's determination regarding the 2015 Reconciliation Adjustment is set forth later in this Order.

C. ROE Collar and ROE Penalty Calculation

Staff explains that an adjustment is necessary when the Company's earned return on common equity falls outside of the parameters of the earnings collar established by the EIMA. Staff's calculation uses the actual operating expenses, rate base, and capital structure for 2015, inclusive of ratemaking adjustments and Commission disallowances as proposed by Staff. The delivery service revenues reflect actual revenues reported by the Company on the 2015 FERC Form 1. The resulting adjustment is incorporated into the revenue requirement which is the basis for the 2017 delivery service rates. Staff Init. Br., Appendix A, Schedule 9 FY demonstrated that ComEd's Delivery Service ("DS") ROE during 2015 fell below the ROE collar by 0.12%; therefore, Staff recommends an ROE collar adjustment of \$7,104,000.

ComEd presented evidence that its 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 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%. ComEd Ex. 1.0 at 15; ComEd Ex. 13.01, Sch. FR D-1, lines 9, 11.

The Commission approves an ROE Collar adjustment of \$7,104,000 based on the evidence presented.

D. 2017 Rate Year Net Revenue Requirement

ComEd provided evidence that its properly calculated 2017 Rate Year Net Revenue Requirement, reflecting the adjustments made in surrebuttal testimony, is \$2,647,680,000. ComEd Ex. 13.0 at 5; ComEd Ex. 13.01, Sch. FR A-1, line 36. Staff's recommended 2017 Rate Year Net Revenue Requirement is \$2,647,679,000. Staff Init. Br., Appendix A, Sch. 1 FY, line 5. The Commission's determination regarding the 2017 Rate Year Net Revenue Requirement is set forth later in this Order.

IV. RATE BASE

A. Overview

ComEd supports its 2015 Reconciliation Year rate base and its 2017 Initial Rate Year rate base through the testimony of multiple witnesses. The AG raises two issues related to Voltage Optimization and Data Analytics.

1. 2015 Reconciliation Rate Base

ComEd submitted evidence that its calculated 2015 Reconciliation Year rate base, as adjusted in its rebuttal and surrebuttal testimony is \$7,781,270,000. ComEd Ex. 9.0 at 8; ComEd Ex. 13.01, Sch. FR B-1, line 28. Staff's calculation is consistent with ComEd's. The Commission's determination regarding the 2015 Reconciliation Rate Base is set forth later in this Order.

2. 2017 Initial Rate Year Rate Base

ComEd submitted evidence that its 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. Staff's calculation is consistent with ComEd's. The Commission's determination regarding the 2017 Initial Rate Year rate base is set forth later in this Order.

B. 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. 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; ComEd Ex. 5.0 at 29-41. 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. ComEd Ex. 2.0 at 26; 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. ComEd Ex. 5.0 at 24-26. ComEd Init. Br. at 6-7. Neither Staff nor the AG disagreed. The Commission therefore approves the foregoing Distribution Plant costs.

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. ComEd's 2016 projected plant additions include \$298,986,000 of G&I Plant additions. ComEd Ex. 2.0 at 26; 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. ComEd Ex. 5.0 at 24-26. ComEd Init. Br. at 7. Neither Staff nor the AG disagreed. The Commission therefore approves the foregoing G&I Plant costs.

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. ComEd's Regulatory Assets are comprised of: (1) a regulatory asset representing the unamortized balance (as of year-end 2015) of capitalized incentive compensation costs, (2) the unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot, and (3) the unrecovered balance of the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI pilot). ComEd Ex. 2.0 at 22; ComEd Ex. 2.01, App 5, line 4. The Regulatory Assets and Liabilities for the 2015 Reconciliation Revenue Requirement and the 2017 Initial Rate Year Revenue Requirement are uncontested. ComEd Init. Br. at 7. Therefore, the Commission approves this component of rate base.

3. Deferred Debits

ComEd includes 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. ComEd Ex. 2.0 at 22-23; ComEd Ex. 2.01, Sch. FR B-1, line 20. ComEd's 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 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. ComEd Ex. 2.0 at 22-23; ComEd Ex. 2.01, App 5, lines 5-9. The Deferred Debits for the 2015 Reconciliation Revenue Requirement rate base and the 2017 Initial Rate Year Revenue Requirement rate base are uncontested and therefore approved.

4. Other Deferred Charges

ComEd states that it 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. ComEd Ex. 2.0 at 23-24. These costs include certain storm expenses, which ComEd is amortizing over five years pursuant to Section 16-108.5(c)(4)(F). Specifically, 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. ComEd Ex. 2.0 at 23. 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.*; ComEd Ex. 2.02, WP 8, lines 10-13. No storm expenses were greater than \$10 million in 2015. ComEd Ex. 2.0 at 23.

In addition, ComEd explains that it has 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.* ComEd Init. Br. at 8. ComEd 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.* at 23-24.

The total unamortized balance related to all of these storm-related and merger expenses is \$46,784,000. *Id.* at 24; ComEd Ex. 2.01, Sch. FR B-1, line 24; ComEd Ex. 2.02, WP 5, page 1, lines 2, 15, 30. No party contests these issues. ComEd Init. Br. at 9. The Commission therefore approves this component of rate base.

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. ComEd's Accumulated Provisions for Depreciation and Amortization related to ComEd's rate base is uncontested. ComEd Ex. 13.01, Sch. FR B-1, lines 7-12. ComEd Init. Br. at 9. The Commission approves this component of rate base.

6. Accumulated Miscellaneous Operating Provisions

ComEd explains that it 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. ComEd Ex. 2.0 at 24; ComEd Ex. 2.01, Sch. FR B-1, lines 21 through 23. ComEd Init. Br. at 9. The Commission therefore approves this component of rate base.

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. ComEd Ex. 2.01, Sch. FR B-1, line 22; ComEd Ex. 2.0 at 25. ComEd's Asset Retirement Obligation is uncontested. ComEd Init. Br. at 10. Therefore, the Commission approves this component of rate base.

8. Customer Advances

ComEd explains that 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. ComEd Ex. 2.0 at 26; ComEd Ex. 2.01, Sch. FR B-1, line 26. These items are uncontested. ComEd Init. Br. at 10. The Commission therefore approves this component of rate base.

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. ComEd Ex. 2.0 at 25-26; ComEd Ex. 2.01, Sch. FR B-1, line 25, and App 2 “Customer Deposits Information.” ComEd’s Customer Deposits for the 2015 Reconciliation Revenue Requirement rate base and the 2017 Initial Rate Year Revenue Requirement rate base are uncontested. ComEd Init. Br. at 10. Therefore, the Commission approves this component of the rate base.

10. Cash Working Capital

ComEd states that the Cash Working Capital (“CWC”) reflected in its rate base is the amount of cash that ComEd maintains in order to meet its expenses and other cash outflow obligations. ComEd Init. Br. at 10. ComEd explains that the amount of CWC is 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. ComEd Ex. 2.0 at 19. ComEd Init. Br. at 10-11.

ComEd’s rate base includes a deduction as adjusted in its rebuttal and surrebuttal testimony of \$50,297,000 for CWC that impacts both the 2015 Reconciliation Revenue Requirement and the 2017 Initial Rate Year Revenue Requirement. ComEd Ex. 13.01, Sch. FR B-1, line 16. ComEd states that in accordance with the final Order in Docket No. 13-0318 (2013 Rate Case Order at 18), ComEd adjusted the formula rate App 3 to include a calculation of CWC specifically for the 2016 Initial Rate Year Revenue Requirement. ComEd Ex. 2.0 at 19. ComEd further states that this 2017 Initial Rate Year Revenue Requirement adjustment was a deduction in the amount of \$2,379,000. ComEd Ex. 13.01, Sch. FR B-1, line 34a. The leads and lags used to determine CWC were approved in Docket No. 14-0312. ComEd Ex. 2.0 at 19-20. These items are uncontested. ComEd Init. Br. at 11. The Commission therefore approves this component of rate base.

11. Construction Work in Progress

ComEd’s Construction Work in Progress (“CWIP”) for the 2015 Reconciliation Revenue Requirement rate base is uncontested. ComEd has included \$40,654,000 of CWIP for projects that do not accrue Allowance for Funds Used During Construction in its rate base for the 2015 Reconciliation Rate Year. ComEd Ex. 2.0 at 18; ComEd Ex. 2.01, Sch. FR B-1, line 14. ComEd states that its CWIP for the 2015 Reconciliation Revenue Requirement is prudent and reasonable. See ComEd Ex. 5.0 at 21. ComEd Init. Br. at 11-12. Neither Staff nor the AG disagrees. Therefore, the Commission approves this component of rate base.

12. Accumulated Deferred Income Taxes

ComEd states that the appropriate level of ADIT to be deducted from rate base as of December 31, 2016 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. ComEd Ex. 2.0 at 20-21. ComEd also notes that 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.* at 21. ComEd Init. Br. at 12. These items are uncontested. The Commission therefore approves this component of rate base.

13. Materials & Supplies

ComEd states that its Materials & Supplies (“M&S”) balance includes items purchased primarily for use in the construction and maintenance of utility property. ComEd explains that these items are kept in inventory until needed, and include, for example, building and construction materials, hand tools, and paints and adhesives. ComEd Ex. 2.0 at 21. ComEd included in its rate base the year-end balance of M&S less the associated accounts payable. The balance of M&S related to distribution is \$94,730,000. ComEd Ex. 2.01, App 1, line 53. The accounts payable related to distribution was calculated by multiplying the distribution related M&S balance by the operating and maintenance (“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 M&S included in rate base is \$72,065,000. ComEd Ex. 2.01, Sch. FR B-1, line 18. ComEd Ex. 2.0 at 21-22. ComEd Init. Br. at 12-13. These items are uncontested. The Commission therefore approves this component of rate base.

C. Contested Issues

1. Voltage Optimization

a) ComEd’s Position

ComEd states that no witness identified any asset in ComEd’s rate base related to Voltage Optimization (“VO”) that should be disallowed. ComEd Init. Br. at 13. ComEd notes the evidence substantiates its rate base as reasonable in amount and as having been acquired and placed into service prudently. ComEd points out that the evidence also detailed the processes that it undertakes to ensure its investments meet those standards.

ComEd argues that the claims made by AG witnesses Fagan and Chang focus on future investments beyond the rate horizon. 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)), ComEd notes that the Fagan-Chang testimony instead focuses on long-term business strategies and policy-level recommendations divorced from the rates at issue. ComEd Init. Br. at 13.

ComEd explains that, even if the Fagan-Chang claims concerning these technologies were valid and supported, they would not justify any disallowance of ComEd’s rate base or any downward adjustment to its rates in this case. Thus, with

respect to VO, ComEd observes that Messrs. Fagan and Chang do not focus on VO costs in the rates, but instead claim 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 at issue in this proceeding. AG Ex. 2.0 at 10. According to ComEd, while long-term policy questions can be raised in proper forums, the AG’s acknowledgment that they have no basis to question the prudence of investments in this proceeding should end the debate over these questions in this case. ComEd Init. Br. at 13-14.

ComEd emphasizes that the AG fails to apply the well-established prudence standard to the evidence, which asks whether a past management decision was within the range of reasonability when made, based on the information then available. ComEd asserts that such a finding must be supported by a preponderance of the evidence, and not by the “substantial evidence” standard advanced by the AG.

ComEd notes that the AG argues that a “finding of imprudence and unreasonableness” requires only “substantial evidence, meaning ‘more than a mere scintilla; however, it does not have to rise to the level of a preponderance of the evidence’” AG Init. Br. at 6. ComEd points out that the “substantial evidence” test the AG cites is an appellate standard, designed to be applied on review of a Commission decision based on the record, and that Illinois law calls on the Commission to base its determinations on the preponderance of the evidence. ComEd notes that this argument implies that the Commission should adopt findings of fact even where the evidence, on balance, shows those findings to be - more likely than not - incorrect, and argues that such a result would not be just, reasonable, or lawful.

ComEd explains that it established the reasonableness and prudence of the VO-related investments included in its proposed rates through the testimony of a professional engineer with extensive actual experience, including in the systems at issue. According to ComEd, 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. ComEd Ex. 10.0 at 3-4; ComEd Ex. 14.0 at 6; ComEd Init. Br. at 14.

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. ComEd Ex. 8.0 at 8; ComEd Ex. 10.0 at 5; ComEd Ex. 14.0 at 6. ComEd explains that 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”). ComEd Ex. 8.0 at 8. The costs of the AEG study are not part of the rate base update nor the operating expenses at issue in this case. ComEd states 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 conclusions. ComEd Ex. 10.0 at 4, 8, 9. According to ComEd, approximately \$4 million of the cost of that study is capitalized and included in projected 2016 plant. ComEd Ex. 8.0 at 2; ComEd Ex. 10.0 at 9. ComEd argues that the

record shows that this ongoing validation study project is properly designed, including its scope. ComEd Ex. 10.0 at 3-4, 5; ComEd Init. Br. at 14-15.

ComEd further explains that 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. As argued by ComEd, 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. And as explained by ComEd, 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., *Ill. Power Co. v. Ill. Commerce Comm'n*, 339 Ill.App.3d 425, 435 (5th Dist. 2003); *Ill. Commerce Comm'n v. Commonwealth Edison Co.*, Docket No. 84-0395, Order (Oct. 7, 1987) ("ComEd '87") at 17; ComEd Init. Br. at 15.

ComEd states that 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 ComEd argues 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; *accord Ill. Power Co.*, 339 Ill.App.3d at 435; *Business and Prof'l People for Public Interest v. Ill. Commerce Comm'n*, 279 Ill.App.3d 824, 828, 665 N.E.2d 553, 555 (1996). 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. According to ComEd, there is no evidence of that here. ComEd Init. Br. at 16. Moreover, ComEd notes that Messrs. Fagan and Chang affirmed that they "have no basis to question the prudence" of the actual rate base investments at issue. AG. Ex. 2.0 at 29.

ComEd also asserts that the AG fails to address the evidence, data, and studies presented in support of the Company's position. In particular, ComEd explains it 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." AG Ex. 2.0 at 5. ComEd contends that aside from the tentativeness of their claim, they fail to provide data or analysis to support it. ComEd further argues that 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, ComEd argues, 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, ComEd explains that 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. ComEd Ex. 10.0 at 6-7. ComEd notes that Mr. Prueitt's conclusions are also consistent with the AEG study itself and with the available engineering data. ComEd Init. Br. at 16.

ComEd explains that its 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. ComEd further notes 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. ComEd Ex. 8.0 at 9; ComEd Ex. 8.01. ComEd states that AEG's own recommendation that there be such a targeted validation study has also been part of ComEd's annual AIPR filings since 2014 and no party opposed the VO validation project in those instances, either. ComEd Ex. 10.0 at 4. ComEd Init. Br. at 17.

Additionally, as ComEd argues, 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, ComEd contends, 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*" AG Ex. 2.0 at 22 (emphasis supplied). Furthermore, ComEd explains that Messrs. Fagan and Chang do not claim that a larger, more costly study like they envision would exclude the nineteen feeders selected by ComEd. ComEd argues that they cannot, therefore, conclude the costs to study those nineteen feeders are excessive, let alone imprudent, under their view that still more feeders must also be studied. ComEd Init. Br. at 17.

ComEd also responds to the AG's claims that ComEd has not "made much progress in planning to implement VO" (AG Init. Br. at 10), pointing to ComEd's 2012 Revised Smart Grid Advanced Metering Infrastructure Deployment Plan ("AMI Plan"). ComEd emphasizes that the AG bases this argument on a misinterpretation of a metric that measures something else entirely. ComEd explains that the AMI Plan measures deployment of AMI systems that can enable certain forms of VO. The AMI Plan does not commit to deploying any particular VO technology on any particular schedule; nor could it do so in advance of the studies now underway. Likewise, ComEd asserts, the metric at issue is "not a measure of the status of ComEd's study or deployment of VO generally." ComEd Ex. 10.0 at 9. Instead, ComEd states that it measures the "number and percentage of distribution lines using sensing from an AMI meter as part of ComEd's voltage regulation scheme" (AMI Plan at 39) and is designed to "determine the number of feeders that could use sensing data from AMI meters to monitor or regulate voltage." ComEd Ex. 14.0 at 4.

ComEd also responds to the AG's claims that certain legislative proposals supported by ComEd that, if adopted, would among other things, support future VO investment and also call ComEd's current VO investments into question. See AG Init. Br. at 10; see *also* AG Ex. 2.0 at 13-14. ComEd emphasizes that these legislative proposals do not state or imply that there is any deficiency in ComEd's investment or commitment to VO and, moreover, have no relevance to the specific VO investments at issue in this case. That proposed legislation, which remains just that, makes no reference to the VO validation project at issue here, or to VO validation at all. Tr. at 112-113. Nor does the proposed legislation address the costs at issue here. See ComEd Ex. 8.0 at 9.

ComEd requests that the Commission find that the record shows that ComEd is prudently and effectively proceeding to investigate, validate, and plan for the reliable deployment of VO, that the validation study at issue has been proven prudent, and that no disallowance is warranted.

b) AG's Position

The AG questions the prudence of the VO study, and calls into question whether the \$4 million expenditure was reasonable and should be included as projected plant. The AG explains that the AEG report identified 2,890 viable VO feeders, and two possible project scopes, costing \$425 million and \$574 million. See AG Ex. 2.0 at 14; 2015 AIPR at page A-12. The AEG report included a recommendation that a validation study be conducted.

AG witnesses Fagan and Chang testified that VO has been used in emergency situations for more than twenty years, but recently voltage management studies for ordinary utility operations have been updated and are available. AG Ex. 2.0 at 8-9. Several utilities (including three ComEd affiliates) have implemented limited deployment of VO. *Id.* at 9, 11. The AG points out that in contrast with VO savings in Maryland and Pennsylvania, ComEd has reported no change in its voltage regulation efforts and no associated savings or benefits. AG Ex. 2.0 at 10. ComEd claims it is only “generally aware” of the VO activities of its sister utilities. *Id.* at 12.

The AG states that, while AEG recommended a relatively small validation study, it was half the cost of ComEd’s request in this docket (\$2 million versus \$4 million) for 2 substations rather than one. *Id.* at 18. The AG argues that while ComEd witness Prueitt stated that the single substation (Hayford) is representative in design, configuration and diversity of customers, he did not address how the results of a single substation can validate VO for substations with substantially higher or lower benefit/cost ratios or other physical characteristics.

In response to the concerns raised by the AG, ComEd argues that the AG “simply express[es] an after-the-fact opinion disagreeing with ComEd’s decisions.” ComEd Init. Br. at 16. However, the AG points out that this argument ignores that their testimony (1) is not “after-the-fact” because the validation study is not finalized and (2) contains substantial, factual evidence of factors that ComEd should be considering as it designs and implements a multi-million dollar validation study. Messrs. Fagan and Chang identified several key factors that the present study does not appear to address.

The AG argues that the request-for-proposal for the VO validation study was inadequate in that it was (1) to implement VO in a single substation and (2) to implement VO on all viable feeders identified by AEG, limiting the approaches that can be tested. AG Ex. 2.0 at 21. While Messrs. Fagan and Chang identified several approaches to VO, and ComEd witness Prueitt recognized that “using AMI sensing data is not the only, or necessarily the best, way to implement VO,” ComEd witnesses Prueitt and Brinkman did not testify that ComEd will select a vendor that can test and implement multiple technologies and approaches. ComEd Ex. 14.0 at 5. The AG argues that limiting consideration of technologies based on full-scale deployment may unreasonably limit the application of different technologies to different system configurations and needs. According to the AG, the RFP process does not allow ComEd to test various approaches as each vendor has an “all or nothing” option. The AG further notes that the validation study is not currently on schedule.

AG witnesses Fagan and Chang pointed out that last May legislation was introduced in the Illinois General Assembly directing ComEd to implement VO. AG Ex.

2.0 at 13-14. However, the AG states that the evidence produced in this docket demonstrates that, other than commissioning the AEG study, ComEd has only made limited effort to address voltage regulation in the Oak Park substation, where the first ComEd substation was modernized. The 2011-12 Oak Park voltage study failed to produce the results expected, and a follow-up study in 2015-16 (which so far has produced the expected result) is still in progress. AG Ex. 4.0 at 6-10. The AG asserts that the \$4 million validation study included as projected plant will not provide a full validation of VO implementation or potential.

The AG argues that the proposed validation study should not be considered prudent at this time. The AG maintains that it is unclear whether the Company ultimately spends more than proposed to do a more comprehensive study or simply fails to complete the study by the end of the 2016 rate year. Messrs. Fagan and Chang asserted that the validation project as proposed is “insufficient to prudently and properly evaluate and validate the appropriate technology and savings available from VO. It is simply not prudent to limit the study when the range of substation savings potential, of feeder lengths, types and conditions, and of geography (urban, suburban and rural) is so great.” AG Ex. 2.0 at 22. In the 2016 reconciliation of costs, the Commission will reconcile projected plant additions with actual 2016 plant additions. According to the AG, at that time the Commission should revisit the prudence and reasonableness of the VO validation study in light of the study’s actual cost, design, and implementation and reject costs that prove to have been imprudently incurred.

ComEd asserted that the validation study was not first proposed in this docket and that somehow the Commission should not consider its prudence and reasonableness here. ComEd Init. Br. at 17. The AG points out that this is the first time that ComEd has sought to recover the costs of the validation study (as projected plant, so the actual cost will be subject to review on reconciliation). The AG argues that Section 16-108.5 does not insulate ComEd from prudence review because it referred to a validation study in another study (AEG) and in its AIPRs. Those reports do not evaluate the cost or implementation of ComEd’s plans.

c) Commission Analysis and Conclusion

ComEd includes approximately \$4 million in capitalized costs in projected plant related to a VO validation study. The AG questions whether the expenditures are reasonable and prudent; however, the AG does not make a recommendation to disallow any of the costs. The AG claims the VO validation study is insufficient and disagrees with the design of the study, but does not disagree that there should be VO investments.

In this proceeding, the Commission is making a determination on the prudence and reasonableness of including \$4 million in capitalized costs in projected plant relating to the VO validation study. The Commission takes note of the AG’s concerns regarding the VO validation study and future VO policy issues. However, as ComEd points out, 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 insufficient evidence to make any such determination of imprudence here that would support a reduction of these expenditures. There is no evidence in this proceeding that shows the costs at issue are unnecessary or

excessive, or would necessarily be without benefit. Nevertheless, nothing in this docket will limit the Commission's authority to assess the reasonableness and prudence of actual expenditures in future FRU proceedings.

2. Data Analytics – Cloud Computing

a) ComEd's Position

ComEd argues that no witness identified any asset in ComEd's rate base that should be disallowed. With respect to business intelligence/data analytics ("BI/DA"), ComEd points to the AG's recommendation that "the Commission require [ComEd] to develop a comprehensive, long-term plan to identify BI/DA solutions" (AG Ex. 4.0 at 17), and notes that it not only ignores the fact that ComEd already has a comprehensive BI/DA strategy, but also that it would not affect ComEd's 2015 costs, its 2016 investments, or its 2017 rates. ComEd also notes the acknowledgment by Messrs. Fagan and Chang that they "have no basis to question the prudence of specific investments in this proceeding." AG Ex. 2.0 at 29. According to ComEd, while long-term policy questions can be raised in proper forums, the AG's acknowledgment that they have no basis to question the prudence of investments in this proceeding should end the debate over these questions in this case. ComEd Init. Br. at 13-14.

Regarding the issue of ComEd's data analytics, ComEd states that its 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 BI/DA 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. ComEd Ex. 8.0 at 11. ComEd Init. Br. at 18. 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." ComEd Ex. 8.0 at 10; 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.

As ComEd explains, its 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. ComEd Ex. 12.0 at 5; AG Ex. 2.4. 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 further explains, 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. ComEd Init. Br. at 18.

ComEd states that 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. ComEd Ex. 8.0 at 11, 12; AG Ex. 2.6; Tr. at 30-31. That implementation is already far along in the first domain, Smart Energy Services, and ComEd is currently working on implementing the remainder. Tr. at 32. That work will require the involvement of multiple departments, including not only information services

areas, but also AMI Operations and Revenue Protection. ComEd Ex. 8.0 at 10; AG Ex. 2.4. As ComEd explains, 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.* at 11-12. ComEd Init. Br. at 18-19.

ComEd notes that 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 argues that its 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." ComEd Ex. 8.0 at 12. As ComEd further argues, 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.* at 12; AG Ex. 2.4. According to ComEd, its 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.* at 12-13.

As ComEd stated 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, ComEd argues that 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, according to ComEd, 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. ComEd Ex. 8.0 at 4-5; ComEd Ex. 12.0 at 3-4; ComEd Init. Br. at 20.

ComEd responds to the AG's claims concerning a report purporting to "quantify" the value of the services offered by a vendor who had commissioned the report are baseless. See AG Init. Br. at 19; AG Ex. 2.9. ComEd notes that the "report" – a short slide deck promoting a particular vendor and its product – was neither offered nor admitted into evidence for the proof of any claim made therein. Tr. at 59. Further, ComEd argues that the "report" was not entered into the record because it lacked any foundation, was not shown to be reliable, and was not substantiated by any witness. Indeed, Ms. Brinkman confirmed that the report was "stale and limited, as it only addresses one vendor's technology solutions." ComEd Ex. 12.0 at 6.

In sum, ComEd claims that 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 AG Ex. 4.0 at 3. ComEd states that this proceeding is not the appropriate forum to litigate long-term future business strategies having no impact on the rates at issue. Moreover as ComEd explains, even if the issues were conceptually germane, the evidence supports no disallowance whatsoever. According to

ComEd, Messrs. Fagan and Chang cannot support their recommendations. ComEd Init. Br. at 21.

b) AG's Position

AG witnesses Fagan and Chang investigated how ComEd is managing the vast amounts of data that are becoming available as a result of its installation of smart meters and distribution automation. AG Ex. 2.0 and 4.0. They questioned whether ComEd has developed a strategy for managing this data so that it can drive operational efficiencies in areas such as customer service and operations. Ultimately, they recommend that the Commission require ComEd to provide updates on the progress of its BI/DA efforts and report on its investigation and adoption of data analytics solutions so that the Commission can be assured that the vast amounts of data available as a result of AMI and distribution automation are used to achieve operating efficiencies and cut utility costs. AG Ex. 4.0 at 17.

Messrs. Fagan and Chang reviewed ComEd's various services and service providers and concluded that they could not determine whether spending on data analytics to date is "consistent with an overall business intelligence/data analytics strategy." AG Ex. 2.0 at 29. While ComEd witness Brinkman testified that AG Exhibit 2.4 represents ComEd's data analytics strategy, ComEd Ex. 8.0 at 10, the AG concludes that a review of the actual data analytics spending shows a more piecemeal approach and notes that ComEd explained that "its 2015 software projects were evaluated on a project-by-project basis." AG Ex. 2.0 at 31. The AG further asserts that a review of ComEd projects to date confirms this approach, and while "[t]his approach, in and of itself, may be appropriate to maintain and modify existing software needs as evidenced in the original in-service date of on-premise solutions, some dating as early as 1998, [] it appears that the Company's 2015 software projects have provided only incremental enhancements to existing software systems, rather than innovative functions and solutions." AG Ex. 2.0 at 31.

ComEd asserts that its overall data analytics strategy is the same as the Exelon approach. Tr. at 34. The AG believes that the Exelon documents present a more forward-looking, positive approach than is evident from ComEd. The AG argues that there does not appear to be any coordination between the Exelon representations of its data analytics approach and the ComEd data analytics and information technology expenditures.

ComEd further describes the purported scope of its data analytics/cloud computing efforts as "detailed and complex," and containing a "data platform and five functional domains." *Id.* In response, the AG argues that it is hard to imagine a data analytics strategy that covers AMI, Grid (T&D), Smart Energy Services, Customer Experience and Business Support (see AG Ex. 4.0 at 17), but involves only \$6.2 million. The AG argues that the insignificant size of the spending ComEd identified compared to the spending identified by ComEd witness Montague for customer-related operating expenses and rate base assets (including expenses involving managing customer data and AMI systems and data as well as projected 2016 plant additions) demonstrates that ComEd is not pursuing a coordinated data strategy. The AG asserts that the investments identified by

ComEd are very small and show a lack of commitment to using the expanded data available from its smart grid update to reduce costs and improve operations.

c) Commission Analysis and Conclusion

ComEd incurred \$6.2 million related to the ongoing development of ComEd's data analytics platform. ComEd provided evidence that these costs include the ongoing development and implementation of ComEd's BI/DA 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 connect to a broad range of data.

The AG does not take issue with any particular cost or expenditure related to BI/DA. Rather, the AG questions ComEd's long-term business strategy and vendor choices. In fact, the AG indicates that ComEd should potentially be expending more money on BI/DA. The Commission takes note of the AG's concerns and agrees that it is important to review ComEd's expenditures in information technology, software and data analytics in light of whether the Company is using these tools to drive efficiencies and save consumers money by reducing utility expenses and offering consumers opportunities to manage their energy usage and bills. However, the current proceeding involves the reasonableness and prudence of the \$6.2 million. Absent any evidence in the record indicating that any portion of these costs are somehow imprudent, the Commission finds ComEd provided sufficient evidence to demonstrate the prudence and reasonableness of these costs, and they are approved.

V. OPERATING EXPENSES

A. Overview

ComEd supported its 2015 total operating expenses, adjusted to reflect the depreciation expense associated with the projected 2016 plant additions, which as presented in its surrebuttal testimony are \$1,883,410,000. ComEd Ex. 13.01, Sch. FR A-1, line 11. There is only one contested issue, as addressed below.

B. Uncontested Issues

1. Distribution O&M Expenses

ComEd states that its Distribution O&M expenses were \$465,652,000 for 2015. ComEd explains that 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. ComEd Ex. 2.0 at 28-29; ComEd Ex. 13.01, Sch. FR A-1, line 1 and Sch. FR C-1, lines 1 and 11. No parties contest the amount of distribution O&M expenses. ComEd Init. Br. at 21-22. The Commission approves this amount.

2. Customer-Related O&M Expenses

ComEd states that its customer-related expenses are expenses recorded in FERC Accounts 901-910, which include the costs of maintaining and servicing customer accounts, *e.g.*, meter reading, customer service, and billing and credit activities. ComEd Ex. 2.0 at 29. ComEd explains that in determining the revenue requirement, ComEd has adjusted the \$498,865,000 of customer related expenses 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.

ComEd Ex. 2.0 at 29-30; see *also* ComEd Ex. 13.01, App 7, lines 5 through 22; ComEd Init. Br. at 22.

ComEd states that after these adjustments, \$232,426,000 of FERC Accounts 901-910 directly related to and supporting the delivery service function are included in the revenue requirement. ComEd Ex. 2.0 at 30; ComEd Ex. 13.01, Sch. FR A-1, lines 2 and 3 and Sch. FR A-1-REC, lines 2 and 3. No party objects to the amount of customer-related O&M expenses. ComEd Init. Br. at 22-23. The Commission approves this amount.

3. Uncollectibles Expense

ComEd states that it 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 also states that it has included in the delivery service revenue requirement the costs associated with ComEd's activities to collect past due accounts. ComEd Ex. 4.0 at 10; ComEd Ex. 2.0 at 29; ComEd Ex. 13.01, App 7, line 11. ComEd Init. Br. at 23. The Commission approves these amounts.

4. Administrative and General Expenses

ComEd states that its Administrative and General (“A&G”) expenses were \$374,212,000 for 2015, as adjusted in surrebuttal testimony. ComEd explains that A&G costs are recorded in FERC Accounts 920-935 and include corporate support and overhead costs that benefit or derive from more than one business function; costs of employee pension benefits; regulatory expenses; and certain other non-operation costs. ComEd Ex. 2.0 at 31; ComEd Ex. 13.01, Sch. FR A-1, line 4; see also ComEd Ex. 4.0 at 9-10; ComEd Ex. 5.0 at 59-61. No party objects to the amount of A&G expenses. ComEd Init. Br. at 23. The Commission approves this amount.

5. Charitable Contributions

ComEd states that it 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 Wages and Salaries allocator applied to the A&G portion, \$6,386,000 is included in the revenue requirement. ComEd Ex. 2.0 at 43-44. 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 objects to the amount of charitable contribution expenses. ComEd Init. Br. at 23-24. The Commission approves this amount.

6. Merger Expense

ComEd states that 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 (“CTA”). The Illinois jurisdictional amount is approximately \$9.1 million, and is included in ComEd’s total A&G. ComEd Ex. 2.0 at 35-36; ComEd Ex. 13.01, Sch. FR A-1, line 4 and FR A-1 REC, line 4. ComEd Init. Br. at 24.

In addition, as ComEd explains, while there were no costs (expense or capital) incurred in 2015 related to the prior merger of Exelon with 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. ComEd Ex. 2.0 at 36; ComEd Ex. 2.08. ComEd Init. Br. at 24.

ComEd states that its 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 million. ComEd further states that its 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 Docket Nos. 13-0318 and 14-0312. The calculations supporting these amounts are included in ComEd Ex. 2.08. ComEd Ex. 2.0 at 36. No party objects

to any of these amounts. ComEd Init. Br. at 24. The Commission approves these amounts.

7. Charges for Services Provided by BSC

ComEd states that Business Services Company (“BSC”) is an Exelon affiliate service company that provides services such as information technology, supply, finance, and human relations to ComEd and Exelon’s other business units. ComEd Ex. 3.0 at 6. In 2015, ComEd states it incurred \$295.8 million in costs for services provided by BSC. ComEd Ex. 3.0 at 6; ComEd Ex. 2.10, page 4, column (b). Pursuant to a data request by the AG, ComEd notes that \$534,000 of those costs were inadvertently included in A&G FERC Account 923. ComEd Ex. 9.0 at 21. ComEd removed those costs. *Id.* Staff witness Bridal notes that ComEd inadvertently included \$534,000 in BSC costs related to FERC Account 923, lobbying activities, and transmission services in the revenue requirement. Staff Ex. 2.0 at 9-10. ComEd removed those costs. ComEd Ex. 9.0 at 21; ComEd Ex. 9.02, WP 7, page 2, lines 37-38. No party contests the BSC charges for the services provided to ComEd. ComEd Init. Br. at 25. Therefore, the Commission approves the amount of charges.

8. Depreciation and Amortization Expense

ComEd states that its revenue requirement, adjusted in surrebuttal testimony, includes \$569,140,000 of depreciation and amortization expense. ComEd Ex. 13.01, Sch. FR C-2, line 10. ComEd explains that 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. 2.0 at 37; ComEd Ex. 13.01, Sch. FR C-2, lines 4, 6. ComEd further explains that the 2017 Initial Rate Year Revenue Requirement and the 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 objects to the amount of depreciation and amortization expense. ComEd Init. Br. at 26. Therefore, the Commission approves this amount.

9. Taxes

ComEd states that the amount of taxes other than income included in its revenue requirement is \$146,022,000. ComEd explains that these taxes include real estate taxes, the Illinois Electricity Distribution Tax (“IEDT”), payroll taxes, and several other taxes. ComEd Ex. 2.0 at 38; ComEd Ex. 2.01, App. 7, page 2, lines 41 through 62; ComEd Ex. 2.01, Sch. FR C-1, line 10. ComEd states that 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.* at 38. ComEd also states that in compliance with the Commission’s final Order in Docket No. 13-0318, it excluded \$264,000 of payroll taxes related to previously disallowed incentive compensation. *Id.* at 38; See ComEd Ex. 2.02, WP 7, page 2, line 39. ComEd Init. Br. at 26.

ComEd further states that the amount of income taxes included in the 2015 Reconciliation Revenue Requirement is \$198,494,000 and that 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- REC, lines 15, 18 and 19; ComEd Ex. 13.01, Sch. FR A-1, lines 15, 18, and 19. ComEd explains that income taxes have been calculated based on the expenses and miscellaneous revenues assigned or allocated to the delivery service function. ComEd further explains that it 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." ComEd Ex. 2.0 at 39. No party contests ComEd's tax expense. ComEd Init. Br. at 26-27. Therefore, the Commission approves the amounts.

10. Lobbying Expense

ComEd has not included any lobbying expenses in its revenue requirement. ComEd Init. Br. at 27. The Commission finds that lobbying expenses are not at issue in this docket.

11. Rate Case Expenses

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

- 1) Amortization of \$65,994 of allowed expenses incurred in 2013 for Docket No. 11-0721 and approved in Docket No. 14-0312;
- 2) Amortization of \$23,691 of expenses incurred in 2014 for Docket No. 11-0721 and approved in Docket No. 15-0287;
- 3) ComEd's rate case expenses of \$49 incurred in 2015 for 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 Docket No. 13-0318;
- 5) ComEd's rate case expenses of \$130,977 incurred in 2015 for Docket No. 14-0312; and
- 6) ComEd's rate case expenses of \$492,706 incurred in 2015 for Docket No. 15-0287.

ComEd supported these expenses with an affidavit (ComEd Ex. 2.12) and supporting invoices. ComEd Init. Br. at 27.

ComEd submits that this evidence allows the Commission to make a finding pursuant to Section 9-229 of the PUA that the expenses incurred were just and reasonable. ComEd explains that the attachments to the affidavit provide the evidentiary support for each Commission proceeding for which ComEd seeks recovery. See ComEd Ex. 2.12 APO-04 (Docket No. 12-0321), Ex. 2.12 APO-05 (Docket No. 13-0318), Ex. 2.12 APO-06 (Docket No. 14-0312), Ex. 2.12 APO-07 (Docket No. 15-0287). ComEd further explains that the affidavit also describes the services provided in connection with the fees for which recovery is sought, identifies the individuals working on the matters and their qualifications, and discusses the market rates charged by regulatory lawyers in Chicago

to support the reasonableness of the fees charged. ComEd Ex. 2.12 APO-01 (identifying individuals and qualifications). ComEd Init. Br. at 27-28.

In response to Staff witness Bridal's proposed adjustment to disallow \$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, 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 agreed not to seek recovery for this expense in this docket and made the adjustment, thus reducing ComEd's 2017 Rate Year Net Revenue requirement by \$6,000. ComEd Ex. 9.0 at 22; Staff Ex. 2.0, Sch. 2.04, page 3. ComEd Init. Br. at 28.

The Commission reviewed the costs expended by the Company during 2015 to compensate attorneys and technical experts to prepare and litigate rate case proceedings and finds, pursuant to Section 9-229 of the PUA, that the amount included as rate case expense in the revenue requirements of \$713,336 is just and reasonable. This amount includes the following costs: (1) \$89,685 amortized rate case expense associated with the initial formula rate proceeding, Docket No. 11-0721; (2) \$49 associated with Docket No. 12-0321; (3) (\$51) associated with Docket No. 13-0318; and (3) \$130,977 associated with Docket No. 14-0312; and \$492,706 associated with Docket No. 15-0287.

The Commission notes that ComEd's request in its briefs to recover rate case expenses totaling \$713,000 appears to be a typographical error because the underlying costs amount to \$713,336, as supported by ComEd's and Staff's testimony. ComEd Ex. 9.0 at 22; Staff Ex. 2.0, Sch. 2.04.

12. Employee Recognition

ComEd explains that as alluded to in Section V.B.2 above, Mr. Bridal initially proposed an adjustment to disallow all expenditures related to employee recognition. Staff Ex. 2.0 at 5-9. 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." Staff Ex. 5.0 at 5; see also ComEd Ex. 9.0 at 15-21. Staff argues that these costs were not shown to be prudent, reasonable, or necessary for the provision of delivery services and have not been shown to have any direct benefit to customers. Staff Ex. 5.0 at 5-6. ComEd states that 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." Staff Ex. 5.0 at 5; ComEd Init. Br. at 28-29.

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. ComEd Ex. 13.0 at 6; ComEd Init. Br. at 29. The Commission approves the adjusted amount.

13. Incentive Compensation Program Expenses

ComEd explains that in the 2011 Rate Case Order, 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.” Docket No. 11-0721, Final Order at 92. ComEd states that its testimony regarding the incentive compensation plans – ComEd witnesses Brinkman (ComEd Ex. 1.0), Siambekos (ComEd Ex. 3.0), Moy (ComEd Ex. 5.0), and 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. ComEd Ex. 1.0 at 19; ComEd Init. Br. at 29.

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. ComEd explains that 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. ComEd further explains that 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. ComEd Ex. 1.0 at 19-20. No party contests that the 2015 incentive compensation costs were prudently incurred and reasonable in amount. ComEd Ex. 1.0 at 20. ComEd Init. Br. at 29-30. Therefore the Commission approves the incentive compensation program expenses. Each plan is discussed briefly below.

a) Annual Incentive Program (“AIP”)

ComEd states that ComEd’s 2015 AIP had nine operational metrics. ComEd Ex. 1.0 at 22. 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.* at 23-24; ComEd Init. Br. at 30.

ComEd summarizes the 2015 performance under the AIP metrics as follows. 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%. ComEd Ex. 1.0 at 24-25. ComEd states that overall, ComEd employee performance resulted in a calculated AIP payout of 131.3%. *Id.* at 25. As ComEd explains, by performing their respective duties skillfully and efficiently, ComEd employees contributed to the achievements in 2015 under the AIP. *Id.* at 25; ComEd Init. Br. at 30-31. The inclusion of the costs associated with AIP is uncontested and are therefore approved.

b) Key Manager Long-Term Performance Plan (“LTTP”)

ComEd states that the LTTP grants a cash award that vests over three years. ComEd Ex. 1.0 at 27-28. LTTP goals mirror the goals of the AIP. *Id.*; ComEd Init. Br. at 32. The inclusion of the costs associated with LTTP is uncontested and are therefore approved.

c) Long-Term Performance Cash Awards Program (“LTPCAP”)

ComEd states that the LTPCAP also grants a cash award that vests at the end of a three year performance cycle. ComEd Ex. 1.0 at 27-28; ComEd Ex. 1.01 at 22. The goals of LTPCAP similarly mirror the goals of the AIP. ComEd Ex. 1.0 at 27-28; ComEd Init. Br. at 32. The inclusion of the costs associated with LTPCAP is uncontested and are therefore approved.

d) Long-Term Performance Share Awards Program (“LTPSAP”)

ComEd states that certain ComEd executives were eligible for the LTPSAP. ComEd explains that consistent with the Commission's Order in 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 ComEd Ex. 2.01, App 7, line 21; ComEd Ex. 2.02, WP 7, page 12; ComEd Ex. 1.0 at 28; ComEd Init. Br. at 32. The inclusion of the costs associated with LTPSAP is uncontested and are therefore approved.

14. Gross Revenue Conversion Factor

ComEd submits that its Gross Revenue Conversion Factor (“GRCF”) is 1.6677. No party objects to the GRCF. ComEd Init. Br. at 32. Therefore, the Commission approves ComEd's GRCF.

15. #SmartMeetsSweet (“SMS”) Initiative

ComEd states that SMS is a program used for distributing information and educating customers on AMI meters. ComEd Ex. 9.0 at 10. ComEd voluntarily excluded \$33,000 related to ice cream costs incurred as part of the SMS Initiative in 2015. ComEd Ex. 2.0 at 35. Mr. Bridal initially proposed a disallowance of the remainder of the costs of the program. Staff Ex. 2.0 at 2-5. ComEd explains that in rebuttal, however, Mr. Bridal withdrew his recommended disallowance noting:

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.

Staff Ex. 5.0 at 3. ComEd states that 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.” *Id.* at 3-4. See also ComEd Ex. 9.0 at 10-15; ComEd Ex. 13.0 at 5; ComEd Init. Br. at 33. Based on the record in this case, the Commission approves these expenses.

C. Contested Issue

1. Telephone Consumer Protection Act (“TCPA”) Settlement

a) ComEd’s Position

ComEd contests AG witness Brosch’s recommendation disallowing \$2,281,456 associated with ComEd’s settlement of *Michael Grant v. Commonwealth Edison Co.*, Case No. 1:13-cv-08310 (“*Grant*”). AG Ex. 1.0 at 2-3, 6. *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. ComEd Ex. 11.0 at 4; ComEd Init. Br. at 33-34.

ComEd contends that the recommended disallowance is based on Mr. Brosch’s 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.” AG Ex. 1.0 at 5 (emphasis added). ComEd clarifies that Mr. Brosch does not claim that ComEd acted imprudently or unreasonably in settling the *Grant* case. AG Ex. 1.0 at 5. Indeed, as ComEd argues and explains further below, the evidence shows that ComEd’s decision to settle the case was prudent and the amount for which ComEd settled the case was reasonable. ComEd Ex. 11.0 at 5-6; ComEd Init. Br. at 34.

Likewise, ComEd further clarifies, Mr. Brosch does not claim that ComEd’s outage alert program actually violated the TCPA. See *generally* AG Ex. 1.0. ComEd argues, Mr. Brosch offers nothing in the way of facts or evidence showing imprudent design or implementation at the time ComEd rolled out the program. According to ComEd, he

brings to bear no knowledge or expertise regarding the state of the art of utility outage alert programs in 2013. ComEd Init. Br. at 34-35.

ComEd states that 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 AG Ex. 1.0 at 5. ComEd further states that Mr. Brosch asks the Commission to substitute his 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 AG Ex. 1.0 at 5 with *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"). According to ComEd, the Commission should reject Mr. Brosch's theory. ComEd Init. Br. at 35.

ComEd notes that the Commission has long encouraged settlements and allows recovery of prudent and reasonable settlement amounts included in a utility's revenue requirement. To do otherwise would discourage settlements as non-recoverable and encourage litigation expenses that are recoverable. According to ComEd, virtually every rate case ComEd files includes litigation-related settlements in the revenue requirement. *Id.* at 35-36.

ComEd asserts that 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. ComEd Ex. 11.0 at 2-3; ComEd Init. Br. at 36. ComEd argues that the *Grant* settlement clearly meets these standards of recovery.

First, as ComEd states, the messaging program sought to improve the speed and efficiency of ComEd's communications with its customers concerning power outages. ComEd Ex. 11.0 at 4. According to ComEd, this is undoubtedly related to delivery service. *Id.* Mr. Brosch does not contend otherwise. See generally AG Ex. 1.0; ComEd Init. Br. at 36.

Second, Mr. Brosch does not challenge whether it was prudent for ComEd to settle the potential liability. AG Ex. 1.0 at 5. Again, ComEd argues that 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. ComEd Ex. 11.0 at 5. Despite ComEd's conviction that it had not violated the law, the manner in which the court would interpret ComEd's first defense, ComEd states, was uncertain and no binding legal precedent addressed ComEd's second defense. Therefore, faced with this legal uncertainty, ComEd argues that it was a prudent business decision to settle the *Grant* case. *Id.*

Third, as also stated above, ComEd states that the settlement amount was reasonable. And again, ComEd argues that Mr. Brosch does not challenge this, nor could he. AG Ex. 1.0 at 5. ComEd notes that 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. ComEd Ex. 11.0 at 5.

ComEd contends that a further inquiry shows that ComEd prudently designed its outage alert program and that the Commission should reject Mr. Brosch's proposed disallowance. ComEd Init. Br. at 37. ComEd explains that the program provided an efficient two-way means of delivering emergency power-outage related information. ComEd Ex. 11.0 at 6-7. 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.* at 7; ComEd Init. Br. at 38.

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. ComEd Ex. 11.0 at 7. ComEd explains that 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. ComEd Ex. 11.0 at 8. The statute therefore restricts unsolicited advertisements – messages sent for commercial gain. In contrast, as ComEd states, 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.*; ComEd Init. Br. at 38-39.

ComEd states that it utilized an opt-in feature on ComEd's website during the pilot stages of the program, and successfully enrolled a small group of customers. ComEd Ex. 11.0 at 9. 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.* 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.* at 9-10. ComEd states that it 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.* at 10.

In the fall of 2013, 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. ComEd Ex. 11.0 at 6. 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.* ComEd argues that based on its 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. ComEd Init. Br. at 39-40.

According to ComEd, the FCC further validated ComEd's design and implementation of the 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). ComEd Init. Br. at 40.

ComEd notes that 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. 2016 FCC Order at 14, ¶ 30.

ComEd contends that 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 program: consent and emergency purpose. See *generally* 1992 FCC Order; 2016 FCC Order; ComEd Exs. 11.01 and 11.03. ComEd argues, 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 posits that it acted reasonably when it designed and implemented the program. ComEd Init. Br. at 41.

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 AG Ex. 1.0 at 5 with 1992 FCC Order; 2016 FCC Order. ComEd argues that Mr. Brosch offers no evidence in support of his proposed disallowance. ComEd argues that 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. ComEd notes that Mr. Brosch does the latter. AG Ex. 1.0 at 5; ComEd Init. Br. at 41-42.

ComEd states that the Commission is not permitted to engage in this type of hindsight review. *Illinois Power Co.*, 339 Ill.App.3d 425, 428. "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, ComEd states, "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, ComEd argues, Mr. Brosch's views do not supplant those of the FCC. ComEd Init. Br. at 42.

ComEd contends that 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). ComEd argues that 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. AG Ex. 1.0 at 5. ComEd further argues that it 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. ComEd Init. Br. at 42-43.

According to ComEd, Mr. Brosch is simply not qualified to testify as an expert witness on the prudence and reasonableness of an outage alert program designed in 2013. ComEd argues that the Commission should reject Mr. Brosch's proposed disallowance in its entirety. ComEd Init. Br. at 43.

ComEd states that the AG misunderstands the import of the FCC's recent decision. The AG argues that ComEd engages in impermissible hindsight review in citing the 2016 FCC Order because it "was issued more than three years after ComEd altered its opt-in program, and has no retroactive application." AG Init. Br. at 29. But, as ComEd clarifies, the portion of the 2016 FCC Order that ComEd cites is simply a clarification of the pre-existing FCC position on this issue. See 1992 FCC Order. ComEd explains that it is that pre-existing position as expressed in the 1992 FCC Order that ComEd relied on in designing its outage alert program. ComEd Ex. 11.0 at 7-8; ComEd Init. Br. at 34-35, 38-43. ComEd Reply Br. at 13.

Second, the AG then does precisely what it complains ComEd is doing: it attempts to apply a prospective portion of the 2016 FCC Order retrospectively. ComEd explains that the AG characterizes this prospective FCC guidance as "clarifying" when in fact that part of the guidance discusses completely new findings. ComEd contends that in contrast to when the FCC used the word "clarify" or "clarification" in the portion of the 2016 FCC Order that ComEd has cited, the portion of the 2016 FCC Order the AG cites uses the prospective words: "we conclude that the utility company should be responsible ... the utility company will bear the burden ... we strongly encourage ... [t]his additional safeguard" 2016 FCC Order at 14, ¶ 31; AG Init. Br. at 29-30. ComEd posits that these are forward looking additional safeguards that do not in any way reflect the FCC's position in 1992 or even in 2013. ComEd also argues that they are also clearly suggestions as opposed to mandates or binding interpretations. ComEd Reply Br. at 14.

Third, ComEd states that the AG misapplies the October 2013 article that ComEd cites regarding the destructive force of TCPA litigation. See AG Init. Br. at 27. As Ms. Polek-O'Brien testified, ComEd relied on that article only when deciding whether to settle the TCPA claim in 2015. ComEd Ex. 11.0 at 5. In any event, ComEd explains that the evidence shows that ComEd could not have been aware of that October 2013 article

when it designed and approved its program because ComEd was already implementing its outage alert program with the opt-out feature in September 2013, prior to the October 2013 article's publication. AG Ex. 1.4 at 2016FRU 001477, ComEd's Answer and Affirmative Defenses to PI's Compl. at ¶ 20. There is no evidence that ComEd immediately became aware of the article and its contents once it was published. ComEd argues that the AG's attempt to institute hindsight review is unavailing. ComEd Reply Br. at 14-15.

Fourth, ComEd contends that the AG obfuscates the facts by insinuating – without citation – that ComEd affirmatively misrepresented whether its program was opt-in or opt-out. See AG Init. Br. at 27, 30. According to ComEd, the significance of the AG's point, even if it were true, is unclear. ComEd argues that the AG makes no showing that this is in any way related to the prudence or reasonableness of ComEd's design and implementation of the program. Moreover, according to ComEd, the AG's point is not true. ComEd states that there is no evidence in the record that it made any affirmative statements to customers regarding the opt-in status of the outage alert program

Fifth, ComEd argues that the AG attempts to make something out of the fact that the program is presently opt-in “notwithstanding the FCC's decision.” AG Init. Br. at 30. ComEd freely admitted that it had not changed the opt-in status of its program in the 14 days between when the FCC issued the 2016 FCC Order and when ComEd responded to the AG's data request on this topic. 2016 FCC Order; AG Cross Exs. 5 and 6 (Data Request Response served August 17, 2016).

Sixth, ComEd states that CUB also misinterprets the 2016 FCC Order. CUB states that the 2016 FCC Order “relates to the ‘emergency purpose’ exception of the TCPA.” CUB Init. Br. at 3. CUB further states: “That Order relates to school systems that make automated calls and send automated text messages for an emergency purpose,’ and finds such messages are outside the requirements of the TCPA.” *Id.* ComEd explains that is true of the first eleven pages of the 2016 FCC Order. Those pages contain the findings related to school systems and the emergency purpose defense. ComEd Reply Br. at 16.

With regard to the portion of the 2016 FCC Order related to utilities – the portion that ComEd draws the Commission's attention to – ComEd argues that CUB could not be further from the truth. Beginning on page 12, the 2016 FCC Order specifically states:

Because we grant in part the Edison Petition as modified on other grounds, we do not reach the question of whether the communications sent by utility companies to their customers would fall within the TCPA's “emergency-purpose” exception, which Edison has requested that we forego, and, as requested, do not rule at this time on the other remaining calls. We emphasize that our clarification in no way alters the Commission's prior statements regarding how the TCPA's “emergency-purpose” exception applies to calls made by utility companies.

2016 FCC Order at 12-13 (footnotes omitted). As ComEd explains, the 2016 FCC Order goes on to clarify that calls from utilities that are closely related to utility service have been

and remain within the prior express consent exception to the TCPA. 2016 FCC Order at 12-14. As ComEd also explains at length, that exception is separate and distinct from the emergency purpose exception and provides a complete defense to a TCPA action. ComEd Init. Br. at 38-39, 40; ComEd Reply Br. at 16.

Seventh, ComEd argues that CUB mirrors the AG and attempts to improperly use the changes ComEd prospectively agreed to make in the 2015 *Grant* settlement to infer that ComEd imprudently designed the outage alert program in 2013. CUB Init. Br. at 4; AG Ex. 1.4 at 2016FRU 0001502, ¶ 2.2. As ComEd explains in its Initial Brief, this is contrary to the well-settled rule against using prospective relief measures to argue initial imprudence. ComEd Init. Br. at 42-43. Moreover, ComEd argues that there is no evidence that those prospective measures would have made the *Grant* lawsuit less likely. There is however, as ComEd claims, much evidence that ComEd's program was already TCPA compliant, even without those prospective relief measures. See, e.g., 2016 FCC Order; 1992 FCC Order; ComEd Ex. 11.0 at 4-10; ComEd Init. Br. at 38-43; ComEd Reply Br. at 16-17.

In conclusion, ComEd argues that the AG's and CUB's proposed disallowance is ill-founded; there are no legal or evidentiary bases that support their position. For all of those reasons, ComEd argues that the Commission should reject the AG's and CUB's proposed disallowance.

b) AG's Position

AG witness Brosch reviewed the materials supplied by ComEd and testifies that ratepayers should not bear the 2015 portion of expenses for outside counsel and settlement payments resulting from this litigation. AG Ex. 1.0 at 4-5. He notes that ratepayers have already reimbursed more than half of these costs in last year's formula rate calculations, because no issue was raised for consideration by the Commission until now. He explains that non-recovery is appropriate because the evidence shows that ComEd could and should have designed its Outage Alert Program in such a way as to avoid the potential litigation and immense liability under the TCPA. *Id.*

ComEd originally designed its program in January 2012 as an opt-in service, whereby customers could register their cell phone numbers in the Program via ComEd's website. AG Ex. 1.3 (ComEd response to AG 13.02(d)); AG Ex. 1.4, ComEd Response to AG 5.03, Attachment 2. The litigation was triggered when ComEd sent customers a text message informing them that the program was now structured as an opt-out service.

According to the class-action complaint ("Complaint"), filed in June of 2014, ComEd used the "Short Message Services" or "SMS" messaging system. The Complaint alleges that SMS messages can "actually cost their recipients money because cell phone users must pay their wireless service providers either for each text message call they receive or incur a usage allocation deduction to their text messaging plan, regardless of whether the message is authorized." AG Ex. 1.4A, ComEd Response to AG 5.03, Attachment 2. The Complaint alleges that "ComEd unilaterally enrolled thousands of Illinois residents without their consent or permission and transmitted, or had transmitted on its behalf, the same or substantially the same text messages to them *en masse.*" *Id.*

The AG states that this particular text message was not sent for emergency purposes, and did not provide notification of an outage or emergency of any kind. AG Ex. 1.4A, ComEd Response to AG 5.03, Attachment 2. ComEd admitted that the sending of the text messages created financial exposure in the class action suit of \$600 million to \$1.8 billion. AG Ex. 1.3. ComEd opted to settle the lawsuit for \$4.95 million, and called that decision prudent. The AG argues that whether it was appropriate to settle a lawsuit is not the issue for the Commission's consideration. As noted by Mr. Brosch, at issue in this case is whether the Company's unexplained decision to switch the program from an opt-in basis to an opt-out design imprudently risked ratepayer and shareholder exposure under the TCPA. The fact is ComEd admits that its actions to switch the program from an opt-in to an opt-out basis resulted in a range of financial exposure up to \$1.8 billion. According to the AG, that decision was imprudent given that risk of exposure, and should not be rewarded with recovery of those costs from ratepayers.

The AG argues that ComEd's response that the settlement was the prudent action to take in order to minimize financial exposure misses the point. In analyzing this issue, the AG states that the Commission must consider whether the Company's decision to unilaterally change the texting terms of a program from an opt-in to an opt-out design, and send notification of that change via text messaging, was prudent. The AG states that the record evidence shows ComEd witness O'Brien stated that literature published around the time the opt-out change was made "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." ComEd Ex. 11.0 at 5. Assuming this fact, ComEd acted imprudently in risking potential TCPA lawsuits through their program re-design and texting action, the AG avers. The AG argues that altering the program as ComEd did and sending millions of texts to customers who had been told that the program was an opt-in program, without a clear understanding of the implications of that action relative to the TCPA, was reckless and imprudent.

The AG further argues that its disallowance recommendation is not hindsight review based on new facts as ComEd suggests. The record evidence shows that the Company originally designed its outage alert program as an opt-in service, whereby customers could register their cell phone numbers in the Program via ComEd's website. AG Ex. 1.3 (ComEd response to AG 13.02(d)); AG Ex. 1.4, ComEd Response to AG 5.03, Attachment 2. ComEd states, "After making changes and improvements to the Program, ComEd decided to include subscription into the Program as part of its standard electric service on an 'opt-out' basis in the fall of 2013." AG Ex. 1.3. The litigation that triggered the settlement expense was prompted when ComEd sent customers a text message informing them that the program was now structured as an opt-out service. AG Ex. 1.4A, ComEd Response to AG 5.03, Attachment 2. ComEd likewise admitted that this change created financial exposure for ratepayers and Company shareholders of \$600 million to \$1.8 billion. AG Ex. 1.3. There can be no doubt that "ComEd unilaterally enrolled thousands of Illinois residents without their consent or permission", as alleged in the Complaint that triggered the settlement. AG Ex. 1.4A, ComEd Response to AG 5.03, Attachment 2.

The AG further states that the conclusion that this was imprudent behavior was not based on any sort of hindsight assessment applying facts or case law known today. The

adjustment was based on the facts cited above. In addition, ComEd's own evidence in support of the expense supports Mr. Brosch's opinion. For example, ComEd witness Polek-O'Brien herself admitted in testimony that "the manner in which the court would interpret the consent argument was uncertain and no binding legal precedent addressed the emergency purpose defense." ComEd Ex. 11.0 at 4. Given this admission and that the lawsuit was filed nearly a full year after ComEd decided in the fall of 2013 to reverse course and include enrollment into the Program as part of its standard electric service on an 'opt-out' basis, there clearly was "no binding legal precedent" addressing the emergency purpose defense at the time the change in protocol decision was made.

The AG argues that ComEd never justified why that unilateral decision was made, notwithstanding that the Company originally designed its program as an opt-in service, whereby customers could register their cell phone numbers in the Program via ComEd's website. AG Ex. 1.3 (ComEd response to AG 13.02(d)); AG Ex. 1.4, ComEd Response to AG 5.03, Attachment 2. And, importantly, even if ComEd could point to an emergency purpose defense at the time the text was sent, which the AG asserts they could not, the particular text messages that triggered the filing of the lawsuit were not sent for emergency purposes, and did not provide notification of an outage or emergency of any kind. *Id.*

The AG further challenges ComEd's assertion that it "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." ComEd Init. Br. at 39. The AG is particularly critical of ComEd's claim that it "weighed the pros and cons" and "chose the path that would allow it to reach many more customers with this effective desirable and valuable emergency safety service." *Id.* The law it relies on was a 1992 FCC Order that, according to ComEd, "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 consent." ComEd Brief at 39, citing 1992 FCC Order at 8752. According to the AG, this argument is not persuasive.

First, the AG points out that ComEd's purported basis for its understanding of the law related to sending a cell phone text predated the ubiquitous arrival of cell phones as we know them today, not to mention the ability to text. See AG Ex. 1.4A, ComEd Response to AG 5.03, Attachment 2. The AG argues that ComEd simply should not have relied upon a 20-year-old decision that did not address the fact that sending a text message would cause cell phone users to either pay their wireless service providers for each text message call they receive or incur a usage allocation deduction to their text messaging plan, regardless of whether the message is authorized, as a basis for sending the texts.

Second, the 1992 decision that ComEd states formed the basis of their assumption that sending the texts *en masse* was prudent was a ruling that clearly states "amended rules and regulations to establish procedures for avoiding unwanted telephone solicitations to *residences*, and to regulate the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines." 1992 FCC Order at 1 (emphasis added). The AG notes that there is no indication that the decision applies to cell phone text messages or that it addressed the financial implications of sending such texts. In addition, the emergency purpose utility exemption

that ComEd asserts the Order clarifies also specifically references calls made to residences – not customer cell phones. *Id.* at ¶ 51. Moreover, the AG argues that even if the 1992 FCC could be viewed as providing cover for ComEd’s decision to switch unannounced to an opt-out program design, the fact remains that the text at the center of the litigation and settlement was not an outage alert message.

ComEd further argues that it believed the TCPA was designed to address telemarketing calls, and that the decision to switch to an opt-out protocol was prudent “particularly when the customers voluntarily provide their cell phone numbers”. ComEd Init. Br. at 39. But the AG states that ComEd omits the point that in fact its customers had been previously told by ComEd that the program was an opt-in program. Clearly, customers had not provided consent under those circumstances, according to the AG. Again, it points to the fact that making such an assumption was imprudent in light of the extreme financial liability created by the decision. See AG Ex. 1.4, ComEd Response to AG 13.02(d).

The AG notes that ComEd asserts in its Brief that another FCC decision – this one from August 5, 2016 – supports its decision to alter the program and send the texts. ComEd Init. Br. at 40, citing 2016 FCC Order. This argument, too, fails, according to the AG and notes that, in the 2016 decision, the FCC tailored the relief requested by Edison Electric Institute, which had requested that the Commission confirm, under the TCPA, that providing a wireless telephone number to an energy utility constitutes “prior express consent” to receive, at that number, non-telemarketing, informational calls related to the customer’s utility service. 2016 FCC Order at 5, ¶ 9. The FCC did *not* reach the question of whether the communications sent by utility companies to their customers would fall within the TCPA’s “emergency purpose” exception, the AG notes.

Again, in its decision, the AG points out that the FCC clarified 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. In doing so, however, the FCC made clear that this was not a “blanket exemption from the TCPA for utility companies.” *Id.* at 14, ¶ 30.

In addition, the AG states that the decision was issued more than three years after ComEd altered its opt-in program, and has no retroactive application. As noted earlier, too, hindsight review – in this instance, applying the June 2016 FCC ruling to action taken in the fall of 2013 -- is impermissible. *Ill. Power Co. v. Ill. Commerce Comm’n*, 245 Ill.App.3d 367, 371.

The AG urges the Commission to adopt Mr. Brosch’s proposed disallowance. The AG recommends that the Commission remove \$2,281,456 of expense associated with ComEd’s settlement of the TCPA Complaint, reducing the 2017 net revenue requirement by \$4,889,037, and reducing the increase to \$130,407,963. AG Init. Br. Brief at 7.

c) CUB's Position

CUB supports the adjustment raised by the AG. Specifically, CUB urges the Commission to reduce ComEd's expenses by removing expenses unreasonably incurred in connection with a lawsuit alleging that the Company violated provisions of the TCPA. While ComEd asserts that it did not violate the TCPA, it incurred \$4.95 million in costs to settle the lawsuit. AG Ex. 1.0 at 5. CUB states that, while a portion of those costs have already been recovered from ratepayers, about half of the settlement amount was accrued in 2015. *Id.* at 4. CUB supports Mr. Brosch's recommendation that expenses should be reduced by \$2,281,456. *Id.* at 6.

CUB notes that ComEd estimated its exposure for the TCPA lawsuit would have been potentially catastrophic." ComEd Ex. 11.0 at 5. CUB cites ComEd's statement that, "[f]aced with this legal uncertainty, it was a prudent business decision to settle the [] case." *Id.* at 5. CUB avers that issue here is not whether it was prudent to settle the case, or whether the settlement was reasonable. Rather, CUB contends, the issue is whether ComEd acted imprudently in sending texts potentially in violation of the TCPA thus creating the liability to begin with, and thus whether it is appropriate to recover (the yet unrecovered portion of) the settlement from ratepayers. CUB notes that ComEd focuses much argument on whether it was prudent of ComEd to settle the case as opposed to litigating it, while CUB states that the Commission should determine whether ComEd's shift from an opt-in outage alert program to an opt-out program, and accompanying message, unreasonably exposed the Company to costly litigation to begin with. CUB avers that, by ComEd's logic, any settlement it enters into, regardless of the underlying cause of action, would be recoverable if it was reasonable to settle the case and if the settlement amount was reasonable. CUB argues that is not a precedent the Commission should set. CUB maintains that, where a utility acted imprudently, and such action then became the subject of civil or criminal litigation, the costs associated with that litigation (or with settlement of that litigation) are not recoverable.

Following the settlement, ComEd agreed to "provide training concerning TCPA compliance to its key managers responsible for customer communications," and added a Preference Center to its website and mobile application where customers can control when and how they prefer to be contacted. AG Ex. 1.0 at 5. CUB contends that these are measures that ComEd should have incorporated into the initial design of its customer contact policies and systems, and it was imprudent of ComEd to launch the opt-out system, and to send text messages, without those policies and systems in place. *Id.* at 5. CUB makes clear, however, that mention of the training program and customer portal that ComEd has now implemented provide examples of the actions ComEd could have taken to avoid litigation, but there is ample additional evidence that ComEd's actions were imprudent otherwise. See CUB Init. Br. at 1-4.

While ComEd takes issue with consideration of such examples, CUB states that ComEd's discussion of remedial measures as evidence of negligence is inapplicable here. First, says CUB, no party has asserted a claim of negligence in this case. CUB avers that it cannot be disputed that the applicable standard here is just and reasonableness, 220 ILCS 5/9-101, 5/9-201(c), and that a participating utility may recovery only its actual costs that are "prudently incurred and reasonable in amount consistent with Commission practice and law." 220 ILCS 5/16-108.5(c)(1). Moreover,

CUB argues that evidence of the Company's remedial measures was not presented as proof that the manner in which the Company changed its program to opt-out was imprudent. Mention of the training program and customer portal that ComEd has now implemented provides examples of the actions ComEd could have taken to avoid litigation, and show that such steps were possible, but there is ample additional evidence that ComEd's actions were imprudent otherwise. See CUB Init. Br. at 1-4.

CUB interpreted the 2016 FCC Order, for which ComEd sought administrative notice, which relates to the "emergency purpose" exception of the TCPA. CUB states that FCC Order relates to school systems that make automated calls and send automated text messages for an "emergency purpose," and finds such messages are outside the requirements of the TCPA. 2016 FCC Order at 8 ¶17. In its Motion requesting Administrative Notice of the Order, ComEd argues that the FCC Order allows for autodialed calls and automated texts from a utility company "concerning matters closely related to the utility service, such as a service outage or warning about potential service interruptions due to severe weather conditions..." ComEd Motion to Take Administrative Notice of Order of the Federal Communications Commission, citing 2016 FCC Order at 8 ¶17. However, CUB responds that the Order is clear that the emergency purpose of the exception of the TCPA is "narrow," and does not apply to every automated call made by an educational organization, or to all categories of utility calls. *Id.* at 8 ¶18. It does not, in CUB's opinion, support ComEd's claim that it acted prudently and reasonably in sending a non-emergency related message.

CUB argues that ComEd created an unreasonable, potentially "catastrophic" TCPA claim exposure in switching from an opt-in to an opt-out outage alert program in the manner it did. CUB argues that, by switching from an opt-in to an opt-out alert program, by sending at least one non-emergency related message, and by doing those things without providing the appropriate management training and customer portal (or similar measures), ComEd acted imprudently and exposed itself to the risk of the class action at issue. CUB states that ComEd could and should have designed the program in such a way as to avoid potential liability under the TCPA, and ratepayers should not shoulder the expense of ComEd's imprudent failure to do so. CUB notes that, while ComEd has unfortunately already recovered a substantial portion of the expense that was recorded in 2014, because no issue was raised before now (AG Ex. 1.0 at 4-5), the Commission should disallow ComEd's expenses to eliminate the expenses accrued in 2015 as unjust and unreasonable.

d) Commission Analysis and Conclusion

In 2015 ComEd recorded expenses in connection with the settlement of a lawsuit alleging the Company violated provisions of the TCPA. ComEd and the plaintiff agreed in principle to settlement of the suit for approximately \$5 million, with payments to the class commencing in the fourth quarter 2015." AG Ex. 1.0 at 3. In addition to the 2015 expenses, a prior-year provision for \$2.5 million of anticipated claims cost plus \$0.7 million of litigation expenses were recorded as expense in 2014. Because no party challenged recovery of those costs in that docket, these expenses have already flowed into formula rates in the filing submitted by the Company last year.

The AG and CUB urge the Commission to reduce ComEd's expenses by removing expenses incurred in connection with this lawsuit. ComEd asserts that while it did not violate the TCPA, it incurred costs to settle the lawsuit. AG Ex. 1.0 at 5. While a portion of those costs have already been recovered from ratepayers, about half of the settlement amount was accrued in 2015. The AG and CUB argue that ComEd's expenses should be reduced by \$2,143,015 for the 2015 settlement accrual, plus \$138,441, in related outside legal expenses, for a total adjustment of \$2,281,456.

In support of its argument, ComEd estimated its exposure for the TCPA lawsuit, ranging from \$600 million to \$1.8 billion, was potentially catastrophic. ComEd's argues that it was a prudent business decision to settle the case. CUB and the AG contend that the issue here is not whether it was prudent to settle the case, or whether the \$4.95 settlement was a reasonable settlement in relation to the liability. Rather, CUB and the AG argue the issue is whether ComEd acted imprudently in sending texts potentially in violation of the TCPA thus creating the exposure, and thus whether it is appropriate to recover the settlement from ratepayers.

Pursuant to ComEd's theory, any settlement, regardless of the underlying cause of action, would be recoverable if it was reasonable to settle the case and if the settlement amount was reasonable. Although ComEd focuses on the prudence of settling the case as opposed to litigating it, the Commission believes that the real issue is whether ComEd's shift from an opt-in outage alert program to an opt-out program, and sending text messages potentially violating the TCPA, unreasonably exposed the Company to costly litigation.

In evaluating whether ComEd should be permitted to recover the TCPA settlement expense in customer rates, the Commission is guided by Section 16-108.5(c) of the Act, which applies the ratemaking provisions of Article IX of the Act to the formula ratemaking process, to the extent they do not conflict with Section 16-108.5(c). 220 ILCS 5/16-108.5(c). Section 9-201 of Article IX requires that all utility rates be just and reasonable. The burden of proving the justness and reasonableness of its claimed expenses is on the utility. 220 ILCS 9-201(c). In utility ratemaking, costs are recoverable if they are reasonable and prudent. *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 146 Ill.2d 175, 247 (1991).

The Company originally designed its program in January 2012 as an opt-in service, whereby customers could register their cell phone numbers in the program via ComEd's website. The evidence shows that ComEd unilaterally decided to include subscription into the program as part of its standard electric service on an 'opt-out' basis in the fall of 2013. The litigation was triggered when ComEd sent customers a text message informing them that the program was now structured as an opt-out service.

ComEd witness Polek-O'Brien acknowledged that "the manner in which the court would interpret the consent argument was uncertain and no binding legal precedent addressed the emergency purpose defense." ComEd Ex. 11.0 at 4. ComEd's claim that it "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" is not persuasive. ComEd Init. Br. at 39. ComEd's purported basis for its understanding of the law related to sending a cell phone text predated cell phones and texting. ComEd simply

should not have relied upon a 20-year-old decision that did not address the fact that sending a text message would cause cell phone users to either pay their wireless service providers for each text message call they receive or incur a usage allocation deduction to their text messaging plan, regardless of whether the message is authorized, as a basis for sending the texts.

Moreover, the 1992 decision that ComEd states formed the basis of their assumption that sending the texts was prudent was a ruling that clearly states “amended rules and regulations to establish procedures for avoiding unwanted telephone solicitations to residences, and to regulate the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.” 1992 FCC Order at 1. There is no indication that the decision applies to cell phone text messages or that it addressed the financial implications of sending such texts. In addition, the emergency purpose utility exemption that ComEd asserts the Order clarifies also specifically references calls made to residences – not customer cell phones. *Id.* at ¶ 51.

ComEd argues that it believed the TCPA was designed to address telemarketing calls, and that the decision to switch to an opt-out protocol was prudent because customers voluntarily provide their cell phone numbers. However, ComEd customers had been specifically told by ComEd that the program was an *opt-in* program. Clearly, customers had not provided consent under those circumstances. Relying on a 1992 decision in 2013 that did not address the financial implications of text messaging as a basis for switching a previously identified opt-in program to an opt-out program, and sending millions of customers a text message notifying them of that change, thereby exposing the Company to significant financial liability, did not constitute prudent action such that the ramifications of that action should be paid for by customers.

Finally, ComEd asserts in its briefs that another FCC decision from August 5, 2016 supports its decision to alter the program and send the texts. ComEd Init. Br. at 40, citing 2016 FCC Order. The Commission notes that the decision was issued more than three years after ComEd altered its opt-in program, and has no retroactive application. Applying a June 2016 FCC Order to action taken in the fall of 2013 is impermissible hindsight review. *Ill. Power Co.*, 245 Ill.App.3d at 371. Even if it did carry weight in the Commission’s analysis, the ruling in fact supports Mr. Brosch’s conclusion that the program change and subsequent texting needlessly exposed ComEd shareholders and customers to financial risk.

Specifically, the FCC ruling provided clear instructions to utilities on the issue of ensuring consent concluding that the utility company should be responsible for demonstrating that the consumer provided prior express consent. 2016 FCC Order at 14, ¶ 31. Applying this guidance to the facts at issue, ComEd not only cannot show such express consent but also admits that its customers who supplied phone numbers prior to the change in program were informed by the company that the program was an opt-in service. In this regard, ComEd would likely have failed to demonstrate express consent to a court. Moreover, the 2016 FCC Order is clear that the emergency exception is narrow and does not apply to all automated calls or categories of utility calls. As the AG and CUB point out, ComEd’s text message was not in fact an emergency communication.

For these reasons, ComEd's reliance on the 1992 and 2016 FCC decisions as a basis for concluding that ComEd acted prudently at the time it altered the enrollment protocol and sent the texts, and that ratepayers should pay for the resulting settlement expense, is not persuasive. Altering the program as ComEd did and sending millions of texts to customers who had been told that the program was an opt-in program, without a clear understanding of the implications of that action relative to the TCPA, was imprudent. By its actions the Company risked substantial shareholder and ratepayer damages. The Commission therefore disallows the accrued 2015 TCPA litigation expense.

VI. RATE OF RETURN

A. Overview

ComEd states that it 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. Staff Ex. 3.0 at 5-6; ComEd Ex. 2.0 at 50; ComEd Ex. 2.01, Sch. FR D-1, line 21; ComEd Ex. 9.0 at 22-24; ComEd Init. Br. at 43.

B. Capital Structure

ComEd states that Staff witness Freetly and ComEd witness Newhouse concur with ComEd's capital structure and cost for purposes of determining both the 2015 Reconciliation Year and the 2017 Initial Rate Year. Staff Ex. 3.0 at 2; ComEd Ex. 2.0 at 50-51; ComEd Ex. 2.01, Sch. FR D-1, line 21; ComEd Ex. 2.01, Sch. FR D-2. Therefore, the Commission approves ComEd's rates of return for the 2015 Reconciliation Year and the 2017 Initial Rate Year. ComEd's capital structure is illustrated in the table below.

2015 Reconciliation Year

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

2017 Initial Filing Year

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

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

ComEd Ex. 2.0 at 50; ComEd Init. Br. at 43-44.

C. Cost of Capital Components

1. Rate of Return on Common Equity

See Section VI.B., *supra*. Staff and ComEd agree that the cost of equity is 8.64% for the 2017 revenue requirement and 8.59% for the 2015 reconciliation year revenue requirement. The 8.64% return equals the 2.84% monthly average 30-year U.S. Treasury bond yield, plus 580 basis points, as required under Section 16-108.5 of the Act. ComEd did not meet a service reliability target outlined in Section 16-108.5, therefore it incurred a five basis point penalty reduction to the cost of equity for the 2015 reconciliation revenue requirement. ComEd Ex. 3.0 at 5; Staff Ex. 3.0 at 6-7.

2. Cost of Long-Term Debt

See Section VI.B., *supra*. Staff and the Company agree that a cost of long-term debt of 5.06% is appropriate for both the 2017 rate setting and the 2015 reconciliation. ComEd Ex. 3.0 at 4; Staff Ex. 6.0 at 4.

3. Cost of Short-Term Debt

See Section VI.B., *supra*. Staff and ComEd agree that a cost of short-term debt of 0.53% is appropriate for both the 2017 rate setting and the 2015 reconciliation. ComEd Ex. 3.0 at 4; Staff Ex. 6.0 at 4. In addition, ComEd's annual credit facility commitment fees, when divided by total capitalization, produce a credit facility fee of 3 basis points,

which should be added to ComEd's overall cost of capital. ComEd Ex. 9.02 at 79; Staff Ex. 6.0 at 4.

4. Overall Weighted Cost of Capital

See Section VI.B., *supra*. Staff and ComEd agree that the fair rate of return on rate base for ComEd is 6.71% for the filing year (based on an 8.64% return on common equity) and 6.69% for the reconciliation year (based on an 8.59% return on common equity).

VII. REVENUES

The record shows that ComEd deducted a total of \$134,383,000, after adjustments, of miscellaneous revenues from its revenue requirement. ComEd Ex. 13.01 at App 10, line 59. None of the individual revenue amounts reflected in this total are contested. ComEd Init. Br. at 45. The Commission approves ComEd's revenue amount.

VIII. COST OF SERVICE AND RATE DESIGN

Cost of service issues in formula rate proceedings are traditionally uncontested. This docket is intended to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the 2017 Rate Year. ComEd supported all of the cost of service issues in this docket, and neither Staff nor any Intervenor has disagreed. 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. 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. Ill. Commerce Comm'n*, 2015 IL App (2d) 140202 (Ill. App. Ct. March 6, 2015). ComEd Init. Br. at 45. The cost of service and rate design issues are uncontested and are therefore approved.

IX. OTHER

A. Original Cost Finding

ComEd requests that the Commission, as it has in past FRU Orders (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), 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 ComEd Ex. 2.0 at 14-15. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2015 is \$18,481,492,000. *Id.* at 14. Subtracting Asset Retirement costs, capitalized incentive compensation, costs recovered in riders, other costs disallowed in prior Commission 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. ComEd Ex. 13.0 at 7; Staff Ex. 4.0 at 7. The Commission approves this amount.

ComEd explains that 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; ComEd Init. Br. at 46.

Staff also recommends that the Commission approve \$18,436,012,000 as the original cost of plant as of December 31, 2015. Staff Ex. 4.0 at 7. Staff further recommends the Commission include language in the Findings and Ordering paragraphs of this Order reflecting the original cost of plant and any adjustments.

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

Rider PE, the tariff under which ComEd recovers the costs of purchased power and the costs of procuring the purchased power, utilizes a wages and salaries allocator applicable to supply, the value of which is to be approved in each formula rate update proceeding. In his direct testimony, Staff witness Tolsdorf affirmed that ComEd provided the information necessary for Staff to make a recommendation regarding the value of the wages and salaries allocator to be used in the determination of rates under Rider PE. Staff Ex. 1.0 at 16-17. ComEd provided this data in ComEd Ex. 2.04, and Mr. Tolsdorf agreed that the wages and salaries 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; ComEd Ex. 9.0 at 25; Staff Ex. 1.0 at 17. ComEd agreed with the language proposed by Mr. Tolsdorf (Staff Ex. 1.0 at 17), and no other party has contested the calculation or objected to the proposed language. ComEd Init. Br. at 46.

The Commission finds that the wages and salaries allocator applicable to supply of 0.40%, as calculated in this proceeding, should be used to develop charges determined and filed with the Commission under Rider PE and Rate BESH to be effective with the January 2017 monthly billing period. Subsequent calculations of the wages and salaries allocator applicable to supply made in subsequent ComEd Formula Rate Update proceedings must be applied in the corresponding subsequent determination and filing of charges under Rider PE and Rate BESH.

C. Reporting Requirements

1. EIMA Investments

The Commission is setting a revenue requirement in this proceeding for the recovery of \$666.1 million in actual 2015 plant additions and \$641.5 million of projected 2016 plant additions in compliance with Section 16-108.5(b) of the Act. Actual 2015 plant additions and projected 2016 plant additions, combined with actual 2012 through 2014 plant additions of \$894.9, total \$2,202.5 million of actual and projected 2016 plant additions. In compliance with previous FRU orders, ComEd identified by category cumulative actual EIMA investments in addition to annual actual investments for each year. ComEd Ex. 3.01; Staff Ex. 1.0 at 15-16.

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

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 Act. ComEd Ex. 3.0 at 17-18. ComEd also provided a similar table for the \$641,515,121 of plant additions projected to be placed in service in 2016. *Id.* at 18-19. No party contests that ComEd has satisfied its obligation to provide the required information. ComEd Init. Br. at 47. Accordingly, the Commission finds that ComEd has satisfied its obligation to provide the required plant addition information.

3. Contributions to 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. ComEd Ex. 4.0 at 28-29. Moreover, as ComEd explains, 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.* at 29-30; 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. ComEd Init. Br. at 48. Therefore, the Commission approves ComEd's reporting of Contributions to Energy Low-Income and Support Programs.

X. CONCLUSION

For the reasons stated herein, the Commission approves ComEd's 2017 Rate Year Net Revenue Requirement as set forth in the attached appendices, approves the original costs of ComEd's electric plant in service as of December 31, 2015, makes the required factual findings in support thereof, and authorizes and directs ComEd to make a compliance filing implementing the resulting rates and charges. These updates are applicable to delivery services provided by ComEd beginning on the first day of its January 2017 billing period, subject to ComEd's final compliance filing and the rulings in this Order.

The Commission also wishes to emphasize that it appreciates the comments provided on the e-Docket system, as well as the time and effort expended by those who

prepared and provided them. These comments have been considered by the Commission in reaching its decisions in this Order, to the extent permitted by the law.

XI. FINDINGS AND ORDERING PARAGRAPHS

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;
- (4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is \$7,781,032,000 for the 2015 Reconciliation Year Revenue Requirement and \$8,830,885,000 for the Initial 2017 Rate Year Revenue Requirement;
- (5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 6.69% for the 2015 Reconciliation Year and 6.71% for the 2017 Rate Year Initial Revenue Requirement, these rates of return incorporating a return on common equity of 8.59% and 8.64%, respectively, on long-term debt of 5.06%, and on short term debt of 0.53%;
- (6) the rates of return set forth in Finding (5) result in tariffed operating revenues of \$2,642,737,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of \$592,552,000;
- (7) the Commission, based on Commonwealth Edison Company's proposed original cost of plant in service as of December 31, 2015, before adjustments, of \$18,481,492,000, and reflecting the Commission's determination adjusting that figure, approves \$18,436,012,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2015;
- (8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual tariffed revenues of \$2,642,737,000. Such revenues in addition to other revenues will provide Commonwealth Edison Company with an opportunity to earn the rates of return set forth in Finding (5);

- (9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;
- (10) new charges authorized by this Order shall become effective beginning with the first day of the January 2017 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated informational sheets to be effective with the first day of the January 2017 monthly billing period; Commonwealth Edison Company shall provide supporting work papers to the Staff of the Commission concurrently with such informational compliance filing;
- (11) that the approved 2017 Rate Year Initial Revenue Requirement includes \$641,515,121 of projected plant additions expected to be placed in service in 2016 by Commonwealth Edison Company in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	\$249,501,210
Training facility construction or upgrade programs (construction of training facilities program)	\$0
Wood pole inspection, treatment, and replacement	\$26,128,150
Reducing the susceptibility of storm-related damage (storm hardening program)	\$62,693,322
Total electric system upgrades, modernization programs, and training facilities	<u>\$338,322,682</u>
Additional smart meters	\$239,102,369
Distribution automation and associated cyber secure data communication network	\$36,148,330
Substation micro-processor relay upgrades	\$27,941,740

Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	\$303,192,439
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Total projected incremental 2015 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	<u>\$641,515,121</u>
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- (12) that the approved Reconciliation Revenue Requirement for 2015 includes \$666,144,031 of plant additions placed in service in 2015 by Commonwealth Edison Company in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. The detail of these actual plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	\$274,653,289
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Training facility construction or upgrade programs (construction of training facilities program)	\$6,040,222
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Wood pole inspection, treatment, and replacement	\$20,711,951
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Reducing the susceptibility of storm-related damage (storm hardening program)	\$72,942,880
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Total electric system upgrades, modernization programs, and training facilities	<u>\$374,348,343</u>
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Additional smart meters	\$230,400,343
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Distribution automation and associated cyber secure data communication network	\$54,369,358
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Substation micro-processor relay upgrades	\$7,025,988
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Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	\$291,795,689
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Total actual incremental 2014 plant additions in compliance with Section 16-108.5(b)(1) of the PUA	<u>\$666,144,031</u>
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IT IS THEREFORE ORDERED that the updated charges in Commonwealth Edison Company's initial filing shall not go into effect.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file a compliance filing in accordance with Findings (8), (9) and (10) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said compliance filing, with updated charges to be effective with the first day of the January

2017 monthly billing period; work papers supporting the compliance filing shall be provided to the Staff of the Commission concurrently with the filing of said compliance filing.

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding (8) above reflects \$666,144,031 of plant additions placed in service in 2015 by Commonwealth Edison Company, and \$641,515,121 of projected plant additions expected to be placed in service in 2016 by Commonwealth Edison Company, in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Act.

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

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

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

DATE:	October 21, 2016
BRIEFS ON EXCEPTIONS DUE:	October 28, 2016
REPLY BRIEFS ON EXCEPTIONS DUE:	November 4, 2016

Terrance Hilliard
Heather Jorgenson
Administrative Law Judges