

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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|--|---|-------------|
| COMMONWEALTH EDISON COMPANY                            | : |             |
|  | : |             |
| Petition for approval of delivery services tariffs and | : |             |
| tariff revisions and of residential delivery services  | : | No. 01-0423 |
| implementation plan, and for approval of certain       | : |             |
| other amendments and additions to its rates, terms,    | : |             |
| and conditions.  | : |             |

**INITIAL BRIEF OF**  
**COMMONWEALTH EDISON COMPANY**

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**INITIAL BRIEF OF**  
**COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”) hereby submits its Initial Brief in this proceeding to establish ComEd’s unbundled delivery service rates for all retail customers. Only by “getting the price right” in the first instance can the Illinois Commerce Commission (“Commission”) foster efficient and effective competition and ensure a viable, stable electricity market. As demonstrated below, the record amply supports ComEd’s proposed rates -- rates that will serve the dual statutory requirements of allowing ComEd to recover its reasonable and prudent costs, while ensuring the development of an effectively competitive and efficient market. The Commission should approve the tariffs proposed in ComEd’s Petition, together with the subsequent amendments and improvements described in ComEd’s testimony.

**INTRODUCTION**

The Commission, customers, mayors, and legislators have all demanded that ComEd devote more capital to distribution service and put greater resources into operating its system. ComEd has responded. Our efforts have substantially and measurably improved reliability -- outage frequency and duration have both improved by approximately 40% since 1999. ComEd has borne the increased operating costs, and the carrying costs on the capital investments, and for

most customers ComEd will continue to do so through the end of 2004, pursuant to the rate freeze for bundled services.

This proceeding presents the Commission with its first opportunity to set rates that reflect actual, historical costs of providing delivery services to customers in an unbundled, competitive market. Moreover, ComEd's proposed delivery rates reflect a far more reliable level of distribution service, and a larger customer base, than in any prior proceeding. Those rates will promote reliable and efficient retail service, and allow ComEd to recover the reasonable and prudent costs of providing delivery services. It is only appropriate that ComEd's unbundled delivery service tariffs reflect those costs.

To portray this proceeding as simply the setting of cost-based rates pursuant to the Commission's obligations under the Public Utilities Act,<sup>†</sup> however, would not do justice to the significance of the Commission's undertaking. While ComEd has a vital interest in recovering its reasonable and prudent costs, far more is at stake. Since ComEd's last rate case, the need for a stable distribution company and for delivery rates that reflect the real costs of distribution service has been driven home. We have seen the failure of competition and of utilities in California, where rates were not adequate and where they were set to shield customers and competitors from market risks -- all supposedly to facilitate competition. Illinois wisely charted a different path. The Act makes it clear that in Illinois, utilities' delivery services business is not to be subject to uncompensated costs and risks. This is not only for the benefit of utilities, but in no small measure ensures that the providers that customers depend upon will continue to be viable, stable, and attractive to the market.

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<sup>†</sup> 220 ILCS 5/1-101, *et seq.* (the "Act").

Nonetheless, some parties suggest (with little or no evidentiary support) that ComEd's proposed delivery services rates should be sharply reduced for reasons *unrelated* to the actual cost of providing delivery services. For example, some suggest that ComEd's rates should be slashed because the requested increase is "massive," "unprecedented," or a "Trojan horse." Others suggest an audit is needed. But there is nothing behind this rhetoric. The unrefuted evidence shows that much of the apparent increase in rates is attributable to growth in load, to the refunctionalization of transmission costs (fully offset in ComEd's transmission rate proposal), to costs found by the Appellate Court to have been wrongly disallowed in the last case, and to accounting changes resulting from the separation of ComEd into the very type of delivery-only company that the Act envisioned and allowed. The balance is largely due to the addition of facilities and operating improvements that were undeniably necessary to serve reliably both existing and rapidly growing new load. The exaggerated rhetoric also ignores that ComEd has accepted reasonable compromise proposals by the Commission's Staff ("Staff") and others on a number of issues that reduce ComEd's initially-requested \$1.786 billion revenue requirement by more than \$104 million. And, the uncontradicted evidence shows that, even with the full increase proposed, ComEd's delivery services rates will remain comparatively low -- *below* the norm for comparable U.S. delivery utilities.

The Commission will face arguments from various parties that delivery services rates should not be increased where customers or competitors would prefer (at least in the short term) lower rates, or where customers have the option to take bundled services at attractive below-cost rates frozen by the Act. Those arguments are simply wrong. While the Commission may and should consider both efficiency and demonstrated impact on customers in designing rates, the Commission has a responsibility to ensure recovery of delivery services costs by utilities, even if

customers would prefer that those costs be borne by shareholders. Nor may competitors, who encouraged their customers to sign fixed price contracts, shift the risks of that strategy to ComEd by arguing that their desire to preserve their full margins means that the utility must provide below-cost delivery services.

The Commission may also be confronted with arguments that this rate case should be, in effect, the “penalty phase” of the reliability investigations that the Commission, the City, Cook County, and the Attorney General seek to have conducted. Some parties invite the Commission to penalize ComEd by *assuming* that because ComEd did not make capital additions and operating improvements earlier, those investments must now be more expensive and result in increased rates. The evidence does not support this theory. ComEd proved, with the testimony of its most senior officers as well as of responsible engineering, planning, and construction executives and managers, that ComEd’s requested revenue requirement represents the reasonable and prudent costs of providing reliable delivery services. That testimony is largely unrefuted, with actual *evidentiary* disputes involving only a few percent of the proposed increase in the revenue requirement. Not only was the assertion that ComEd’s revenue requirement must be inflated as a result of past imprudence devoid of evidentiary support, it was flatly disproved through ComEd’s evidence. The Commission must be vigilant in separating speculation and hyperbole from the record evidence upon which the Commission must make its decision.

The evidence shows that ComEd and its shareholders have *already* borne hundreds of millions of dollars of reliability and system expansion costs, with no possibility of present or future recovery. These costs include not only the costs of remediating past errors, but other operating and maintenance costs and returns on capital investments that will never be recovered

from bundled service customers, or from the majority of delivery services customers for whom rate changes are fully offset by CTC reductions.

These facts should not be surprising. Improved reliability is not free; the parties who assert that ComEd has historically underspent on distribution system reliability make this very point. Nor is it inexpensive to develop and implement open access, or to expand the system to meet new load in the City of Chicago and in rapidly growing suburban zones. The Act prevents ComEd from recovering the lion's share of this money during the transition period. It freezes ComEd's bundled rates, and reduces them for residential customers. It even offsets much of any change in delivery rates against stranded cost recovery. ComEd should not be penalized further.

The record proves that the proposed rates, as revised in ComEd's testimony, reflect the actual costs of providing delivery services, and are just and reasonable. The Commission should approve them.

### **EXECUTIVE SUMMARY OF THE ARGUMENT**

As the Commission embarks on the critical task of setting delivery rates that will both reflect the real costs of distribution service and ensure a viable and stable market, it is important to heed the lessons learned from the Commission's prior work in Docket No. 99-0117. In that docket the Commission and the parties took important steps towards development of a retail electric market within the framework established by the Act. In many instances the Commission adopted ComEd's proposals, despite the prophecies of doom and gloom uttered from some quarters. The results are apparent: non-residential open access, by any fair measure, has been a success in ComEd's service territory. *E.g.*, Juracek Direct ("Dir."), ComEd Ex. 1.0, p. 4:79-99.

While Staff and some intervenors have undoubtedly played constructive roles in this proceeding, others have once again offered up vituperous outrage, fear, speculation, and

misinformation, as was done in Docket 99-0117. There is no place for such tactics in this proceeding. The Commission must distinguish speculation and rhetoric from the actual evidence of record. The evidence unequivocally shows that ComEd's proposals are the right rates at the right time to move the development of the market forward and ensure a sound and reliable delivery system.

Delivery services rates must be cost based, provide for full recovery of reasonable and prudent costs, facilitate reliability and safety, and be practical and economically sound. *E.g.*, Juracek Direct ("Dir."), ComEd Ex. 1.0, pp. 10:279-17:445. The Commission's order in this proceeding, as in all contested rate cases, must be within its jurisdiction and authority, lawful, and based exclusively on the evidence in the record. 220 ILCS 5/10-103, 10-201(e)(iv); *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 227, 555 N.E.2d 693, 697, 709 (1989) ("*BPI 1989*"). These fundamental principles support the adoption of ComEd's proposals.

The evidence supporting ComEd's proposal is compelling, detailed, and complete. It includes the testimony of 54 witnesses who filed some 2,185 pages of direct, rebuttal, and surrebuttal testimony, as well as over 3,000 pages of hearing transcripts adduced over eleven days of evidentiary hearings. In preparation for the hearing, ComEd responded to over 3,000 distinct inquiries and produced, at the request of other parties, well over 30,000 pages of documentation. As this Brief will show, both the law and the -- in many respects uncontradicted -- evidence support ComEd's proposals. They compel the conclusions that:

- (i) ComEd's rate proposals are cost-based and allow all eligible retail customers to elect to take delivery services on just and reasonable terms and conditions;

- (ii) ComEd has proven that its jurisdictional rate base is used and useful, and that its new distribution investments were prudent and made at a just and reasonable cost;
- (iii) ComEd has proven that its proposed rate design is appropriate, is based on cost causation, and reduces unjustified cross subsidies; and
- (iv) ComEd's proposal does not have unjust and unreasonable or improper customer impacts.

Each of these points, including responses to the primary arguments of other parties, is addressed below. In each case, application of the statutory standards to the evidence of record compels acceptance of ComEd's proposals.

1. ComEd's Proposals Further the Requirements of the Act. ComEd's proposals are fully consistent with and further the requirements of the Act, including each of the specific requirements governing delivery services tariffs and implementation plans, (e.g., 220 ILCS 5/16-104, 16-105, 16-108, 16-118(b)), and the general requirement that tariffs adopted in a contested proceeding before the Commission be just and reasonable to the utility, its stockholders, and its customers. 220 ILCS 5/9-201(c); *Business and Professional People for the Pub. Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 208, 585 N.E.2d 1032, 1045 (1991).

a. Just and Reasonable Terms and Conditions. ComEd has carefully developed its proposed delivery services tariffs to allow all eligible retail customers to take delivery services on just and reasonable terms and conditions. 220 ILCS 5/9-201(c), 16-104(a), 16-108(a). Clair-Crumrine Dir., ComEd Ex. 12.0 Corrected ("CR"), pp. 5:101-04, 6:131-42, 7:164-8:170, 8:185-89, 10:224-12:279; Alongi-Kelly Dir., ComEd Ex. 13.0 CR, p. 4:76-8:169, Attachments ("Atts") AP, (the initial proposed delivery services tariffs and tariff revisions and the other proposed amendments and additions to rates, terms, and conditions). There are only a handful of

open issues regarding the proposed terms and conditions, and as to each issue ComEd's solution is just and reasonable.

b. Cost Based Rates. ComEd's proposed delivery services charges are "cost based, and ... allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs." 220 ILCS 5/16-108(c). Getting the price right is an essential foundation for the development of an economically sound and sustainable retail electric market. *E.g.*, Gordon Dir., ComEd Ex. 2.0. To that end -- as discussed in detail below -- ComEd has utilized a rate design that is appropriate and, as to non-residential customers, is superior in assigning costs by cost causation and in reducing cross subsidies.

c. Compliance With All Other Statutory Requirements. ComEd's proposed new and revised delivery services tariffs comply with all other applicable provisions of the Act, such as those relating to aggregation of load, partial requirements service, customer classes, and service voltage levels. *E.g.*, 220 ILCS 5/16-102, 16-104(b)-(c), (e)-(f), 16-108(c)-(j), 16-110, 16-118(b).

d. Timeliness of Rate Proposal. In light of the substantial investments ComEd has made in response to the demands of the Commission and the public, and the importance of developing a sustainable retail electric market, there is no question that ComEd's proposals must be adopted now. Suggestions to the contrary are based on a fundamental misunderstanding of the governing law. The "ARES Coalition"<sup>†</sup> is, for example, simply wrong in asserting that, under the Act, ComEd may not propose, and the Commission may not approve, an increase in non-residential delivery services charges at this time. They mischaracterize the law, as has been

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<sup>†</sup> The "ARES Coalition" includes the now-bankrupt Enron Energy Services, AES New Energy, and Blackhawk Energy Services. It represents a minority of the certified ARES in ComEd's territory and includes only one entity actually operating as an ARES, rather than as a largely unregulated "billing agent."

demonstrated in detail in the briefs previously filed by ComEd, Staff, and Illinois Power Company (“IP”), and the ARES Coalition’s arguments have been rejected by the Administrative Law Judges. It has long been settled that, under Article IX of the Act, 220 ILCS 5/9-101, *et seq.*, a utility may propose a rate increase at any time. *E.g.*, *BPI 1989*, 136 Ill. 2d at 219, 555 N.E.2d at 715. (“As we indicated earlier, however, the Act does not appear to permit that type of limitation inasmuch as a utility may file for a rate increase at any time.”). Indeed, two members of the Coalition expressly made that exact point in relation to delivery services tariffs in three different briefs in Commission Docket No. 99-0013. Moreover, Sections 16-108(a) and (b) of the Act, 220 ILCS 5/16-108(a)-(b), expressly provide for modification of delivery services tariffs. Among other things, Section 16-108(b) affirms that: “The Commission may subsequently modify such tariff pursuant to this Act.” Nothing in Section 16-111(a) of the Act, 220 ILCS 5/16-111(a), bars ComEd from proposing, or the Commission from approving, increased delivery services charges at any time. To the contrary, Section 16-111(a)(3) expressly confirms the Commission’s authority relating to delivery services tariffs under Section 16-108. 220 ILCS 5/16-108.

e. Implementation Plan. Finally, ComEd’s proposed residential delivery services implementation plan fully comports with Section 16-105 of the Act. 220 ILCS 5/16-105. Staff witness Dr. Eric Schlaf recommends that ComEd’s plan be adopted as proposed, Schlaf Dir., Staff Ex. 10.0, p. 23:538-43, and the record contains no evidence to the contrary.

2. ComEd has proven that its proposed revenue requirement is just and reasonable. ComEd’s proposals reflect for the first time the actual, historical costs of providing unbundled delivery services in a competitive market -- including recovery of capital investments and increased operating expenses that ComEd has incurred in responding to public demand. ComEd

has properly and accurately calculated its jurisdictional revenue requirement as a provider of reliable and safe delivery services.<sup>†</sup> Hill Dir., ComEd Ex. 4.0 CR, pp. 6:120-7:135. The bottom line is that the evidence demonstrated that ComEd's proposed revenue requirement is appropriate, and just and reasonable for a provider of reliable and safe delivery services. *E.g.*, Helwig Rebuttal ("Reb."), ComEd Ex. 19.0, pp. 2:23-3:55, 4:80-5:100, 9:199-10:210. ComEd's revised proposed revenue requirement reflects not only the proposed accord on a reduced rate of return, but also the downward adjustments to net rate base and operating expenses made or agreed to in ComEd's rebuttal and surrebuttal testimony. The revised revenue requirement is \$1,682,705,000. Schedules showing the requirement and the accepted adjustments are attached hereto as Appendix A.

Although some object to the increase simply based on its magnitude, the *evidence is uncontradicted* that ComEd's proposed revenue requirement and the resulting proposed delivery services charges are quite reasonable compared to the approved delivery charges of other utilities in open access jurisdictions. Juracek Dir., ComEd Ex. 1.0, pp. 19:498-20:518. This critical point, made by Arlene Juracek in her direct testimony, has never been refuted or questioned by any witness. The agreed adjustments to ComEd's proposed revenue requirement reinforce this conclusion, driving ComEd's proposed unit revenue requirement even lower, below 2¢/kWh. The claim that ComEd's delivery services rates will be high is simply a myth.

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<sup>†</sup> A jurisdictional revenue requirement has three components: (1) carrying charges on jurisdictional net rate base *plus* (2) jurisdictional operating expenses *minus* (3) jurisdictional miscellaneous revenues. *E.g.*, Hill Dir., ComEd Ex. 4.0 CR, p. 5:101-103, and Appendix ("App.") C, Schs. A-2, A-2.1 (also showing that the revenue requirement is modified by the Gross Revenue Conversion Factor to reflect taxes and uncollectibles); Hill Supplemental ("Sup.") Rebuttal ("Reb."), ComEd Ex. 38.0 CR, pp. 3:65-4:73; Helwig Reb., ComEd Ex. 19.0, p. 5:102-08; Bodmer, Tr. 1833:19-1834:5. The first component is determined on a cumulative basis, while the other two components are determined on a "test year" basis with appropriate adjustments. *E.g.*, Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 4:74-5:110; Helwig Reb., ComEd Ex. 19.0, pp. 5:109-6:116; Bodmer, Tr. 1834:9-1835:1. These are long-established principles of ratemaking, and they are not disputed by any party in this proceeding.

Objections to ComEd's test year operating expenses and investments are equally unfounded. ComEd witnesses described in detail how ComEd managed the process of improving its system reliability without incurring imprudent expenses and without incurring excess costs included in the test year, and demonstrated the reasonableness of those amounts. In addition, ComEd Executive Vice President David Helwig responded to the core claim that ComEd's requested rates should be reduced on the theory that ComEd's level of distribution capital investments and distribution operating expenses might decline in the future. Mr. Helwig demonstrated mathematically that, because ComEd's investments in new distribution facilities exceed -- and will continue to exceed -- depreciation by a wide margin, even substantial decreases in the levels of ComEd's future distribution investments and distribution operating expenses would not mean that ComEd's proposed jurisdictional revenue requirement is overstated.

In fact, over a substantial range of cases, rates based on the 2000 test year will under-recover ComEd's actual costs because rate base has grown and will continue to grow. Helwig Reb., ComEd Ex. 19.0, pp. 3:45-55, 9:183-11:228; ComEd Exs. 19.1, 19.2. As a result, all other things being equal, based on 2001 distribution capital budgets and on distribution operating expenses through the Autumn of this year, ComEd's initial test year revenue requirement is \$44 million too low. Stated differently, even if ComEd's jurisdictional capital costs and operating expenses otherwise were to decrease by an aggregate \$44 million, the proposed jurisdictional revenue requirement would be correct. Helwig Reb., ComEd Ex. 19.0, pp. 9:199-10:210; ComEd Ex. 19.1. The under-recovery amount will grow in 2002. No witness contested this conclusion in any way. Thus, when the Commission distinguishes superficial pleas of supposedly excessive expenses and investments from the actual evidence of record, only one

conclusion follows: that ComEd's revenue requirement is in line with comparable utilities in other jurisdictions, and is appropriate, just, and reasonable to meet its duty to provide reliable and safe delivery services.

a. Rate of Return. As noted above, ComEd has reached a proposed accord with Staff and the "Governmental and Consumer" intervenors (the "GCI") regarding the rate of return of and on investment in jurisdictional net rate base. ComEd initially proposed a rate of return of 9.95%. Hill Dir., ComEd Ex. 4.0 CR, p. 5:101-103, App. C, Sch. A-2. ComEd and the GCI, in order to narrow the issues in this proceeding, have agreed to support Staff's proposed rate of return of 8.99%, which is supported by the record. Freetly Sup. Reb., Staff Ex. 27.0, p. 2:11-12.

b. Jurisdictional Net Rate Base -- Distribution Plant. ComEd has submitted overwhelming, and in large part uncontradicted, evidence supporting the distribution plant component of its jurisdictional net rate base. The objections to ComEd's distribution plant component are either wholly unsupported by evidence or are based on fundamental conceptual flaws. For example, David DeCampli described ComEd's investment in its distribution system since 1997 (the test year used in ComEd's first delivery services rate case, Commission Docket No. 99-0117), showing that these distribution additions are used and useful in serving retail customers, and that the associated costs were prudent and reasonable. DeCampli Dir., ComEd Ex. 6.0, pp. 4:57-19:406; ComEd Ex. 6.1. Additional detail with respect to significant projects was also provided. No party questions that ComEd's rate base is used and useful.

Some parties, however, question whether past failures by ComEd may have led to its investing more in its distribution system than it otherwise would have during this period. They claim that ComEd could have completed and paid for some distribution capital projects earlier and that it ultimately performed those projects on an accelerated schedule with a resulting

incremental increase in costs. Some parties also request a management audit to review ComEd's transmission and distribution expenditures reaching back to the early 1990's. Such a review would be a massive undertaking, of no use in the current rate case because it could not be completed in sufficient time to meet the statutory deadline of May 1, 2002 for the setting of delivery services rates for residential customers, and is legally improper. Under Illinois law, the Commission must decide in this case whether ComEd's proposed charges are just and reasonable. Thus, the Commission must determine whether ComEd's investments in distribution capital additions were prudently incurred and are used and useful in providing service.

About this, there is no dispute, and the record amply supports ComEd's investments. To begin with, net rate base is determined on a cumulative basis, not a test year basis. The rate base is not the investment in the test year, but the cumulative investment as of the test year. Thus, even if ComEd had made the same distribution plant investments earlier, they would have been included in the rate base earlier, perhaps in an earlier ComEd ratemaking proceeding. Because these investments are depreciated over decades, *they still would be in the rate base for this proceeding.* *E.g., Helwig Reb., ComEd Ex. 19.0, pp. 6:130-7:138.* While depreciation would have started earlier, so, too, would have ComEd's recovery of its investment. Customers, therefore, save the "time value of money" when such an investment is made later. *E.g., id.* Furthermore, if ComEd had performed any of the accelerated distribution capital projects at issue (other than those taking less than several weeks<sup>†</sup> or costing under \$25,000) over a longer period, then they would have accrued more "Allowance for Funds Used During Construction," thereby increasing the costs of such projects. *Larson, Tr. 2101:10-2106:1; Bodmer, Tr. 1874:21-1875:14.*

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<sup>†</sup> There is some question to whether the correct accounting rules cuts off this exception at 30 or 60 days. It matters little. The vast majority of projects, if built more slowly, would accrue more AFUDC.

Staff witness Bruce Larson has challenged ComEd's use of overtime labor on some distribution capital projects, theorizing that the projects could have been completed earlier and speculating both that, if they were, ComEd could have used less overtime and lowered ComEd's labor costs. Larson Dir., Staff Ex. 9.0, p. 8:259-63. While these are reasonable questions, the evidence showed that ComEd's work force already was working on overtime in the earlier (*i.e.*, pre-test year) periods, and, moreover, that hiring and training new employees instead of using overtime would not, in fact, have been more cost-effective. Voltz Reb., ComEd Ex. 24.0 CR, pp. 3:43-4:70; Williams Reb., ComEd Ex. 25.0 CR, l. p. 5:100-08.

Mr. Larson also claimed that ComEd paid "premiums" to outside contractors for accelerated work on some distribution capital projects. After review, he challenged \$16,293,000 of time-related incentives that ComEd paid for certain of the "six pack" distribution capital projects, as well as an additional \$449,000 ComEd paid for a single transformer where a lower bidder was not selected due in part to its longer shipping schedule.<sup>†</sup> Larson Dir., Staff Ex. 9.0, pp. 2:28-31, 10:321-12:349; Larson Reb., Staff Ex. 23.0, p. 11:226-32. ComEd demonstrated, however, that the time-related incentives on the "six pack" were not "premiums" and did not increase the total costs of the projects above reasonable levels. *E.g.*, Williams Reb., ComEd Ex. 25.0 CR, pp. 2:39-5:99; Williams Surrebuttal ("Sur."), ComEd Ex. 47.0, pp. 2:33-40, 4:71-5:88. ComEd also showed that the transformer cost was justified. Voltz Sur., ComEd Ex. 46.0, pp. 4:82-5:99, 5:108-6:113. Finally, while some have asserted that there simply "must be" more "premiums," the evidence does support that speculation.

The evidence also shows that ComEd performed no distribution capital project, and incurred no added project cost, due to past imprudence. Helwig Dir., ComEd Ex. 19.0,

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<sup>†</sup> The "six pack" refers to six large substation projects located in or near the central business district of Chicago.

pp. 6:117-27, 7:142-8:163; Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 3:61-70, 36:847-52. The facilities ComEd constructed and placed in service had to be built in order to provide reliable service going forward -- and would have been built even if ComEd's past reliability had been perfect. The claims to the contrary are not supported by evidence, but are merely speculation. No party has submitted any evidence that any one of the thousands of distribution capital projects performed since 1997 would not have been needed but for past imprudence, or that any of those projects had a cost that, due to past imprudence, was higher than was reasonable. Indeed, apart from Mr. Larson, no witness made any meaningful effort to discuss the costs of individual distribution capital projects at all. *E.g.*, Larson Dir., Staff Ex. 9.0, and Staff Ex. 9.1. The Commission must base its findings on the evidence of record, not on unsupported generalizations and speculation.

c. Jurisdictional Net Rate Base -- General and Intangible Plant. ComEd has shown that the General and Intangible Plant including in its jurisdictional rate base is used and useful and that the costs of this plant are prudent and reasonable. ComEd's evidence in these respects stands uncontradicted. *E.g.*, DeCampli Dir., ComEd Ex. 6.0, pp. 16:326-17:362. ComEd has also proven that its analysis of the functionalization of this plant is accurate, and reflects the reality that ComEd is now a delivery company that has defined and ascertainable delivery costs, as discussed further below. Heintz Dir., ComEd Ex. 14.0, pp. 16:304-21:407. Requests by some intervenors to use instead a generic labor allocator that assigns actual ComEd delivery services costs to generating facilities that ComEd no longer even owns are not only unfounded, but fundamentally unreasonable and unfair.

d. The Test Year. ComEd properly used the 2000 test year, with appropriate adjustments, because: ComEd operates on a calendar year basis, the year 2000 is the only full

year of retail open access, and the year 2000 is the most recent full year for which ComEd has complete data and a filed FERC Form 1. Hill Dir., ComEd Ex. 4.0 CR, pp. 4:80-5:99. While some intervenors claim that 2000 was “abnormal” in some respects, it is significant that not a single witness proposed any different test year, or testified that a different test year could be more appropriate.

e. Operating Expenses. ComEd has also shown that its jurisdictional operating expenses -- distribution operating and maintenance (“O&M”) expenses, Administrative and General (“A&G”) expenses, and related customer expenses -- are prudent and just and reasonable. *E.g.*, Voltz Dir., ComEd Ex. 5.0, pp. 16:332-23:485; DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480. Certain parties have argued that ComEd’s distribution O&M expenses in the 2000 test year were abnormally high in some respects, and that this was due to past imprudence or the need to perform an excessive amount of “catch-up” work. As with the similar assertions made as to ComEd’s distribution capital additions, these claims are nothing more than unsupported generalizations and inferences. They are also inconsistent in their premises and methodologies. For example, some parties have questioned the level of distribution salary and wages, pointing to nominal increases from 1998 to 2000. Yet, when their theories are corrected to account for inflation, refunctionalization of transmission costs under the FERC “seven factor” test, accounting changes in the FERC accounts in which incentive compensation is recorded, and the downward adjustments proposed by ComEd itself in its direct testimony, the nominal increases in distribution salaries and wages in those years disappear. Voltz Sup. Reb., ComEd Ex. 39.0, p. 2:27-40; Voltz Sur., ComEd Ex. 46.0, pp. 9:184-10:214. Related claims about other expenses suffer from similar flaws. In sum, ComEd in 2000 had

higher operating costs and provided more and better services than in 1997. But that was not due to imprudence, and it is not unjust or unreasonable.

f. Functionalization of General and Intangible Plant and A&G. ComEd presented overwhelming evidence supporting its functionalization of its General and Intangible Plant costs (which are capital costs) and its A&G expenses (which are operating expenses). Despite this evidence, some intervenors assert that the Commission should reject ComEd's functionalization. Although some intervenors object to ComEd's proposal, *e.g.*, Chalfant Dir., Illinois Industrial Energy Consumers ("IIEC"), Ex. 2.0 CR, pp. 2:7-10:8), they do not challenge the *accuracy* of ComEd's analysis in any respect, and some did not even bother to review that analysis. Chalfant, Tr. 2554:7-16. Instead, they argue that ComEd's functionalization should be rejected because the Commission used a general labor allocator in Docket No. 99-0117 and, therefore, must do so again in this proceeding -- even though ComEd itself has structurally changed.

The premise of this argument is fundamentally flawed. The Commission must base its order exclusively on the evidence in the record in this proceeding. The evidence supporting ComEd's functionalization of General and Intangible Plant and A&G expenses in this proceeding significantly exceeds that available in Docket No. 99-0117, and, for all practical purposes, stands unrefuted. ComEd provided detailed work papers and analyses supporting these allocations. Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-2:22, 8:149-9:186, 17:345-18:369 and Apps. A, B, C; ComEd A&G Study, ComEd Cross Ex. 29.0; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 16:288-22:405; Hill. Reb., ComEd Ex. 23.0 CR, pp. 4:82-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill. Sur., ComEd Ex. 45.0, pp. 5:88-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54.

Moreover, it is undeniable that ComEd has restructured itself into a delivery company since the 1997 test year used in Docket No. 99-0117. ComEd's former generating functions have been transferred to other entities, together with the assets and costs associated with them. ComEd's proposed revenue requirement accurately reflects the real costs of the delivery services company. It is patently unreasonable to ignore the fact that ComEd has restructured, and to advocate the use of a labor allocator that would, for example, allocate significant year 2000 delivery services costs to fossil fuel generating stations that are no longer even owned by ComEd.<sup>†</sup>

3. ComEd has proposed a just and reasonable rate design. ComEd's proposed rate design is appropriate for residential and non-residential customers and enjoys widespread support in the record. Through its use of marginal cost and cost causation principles, ComEd's proposal properly allocates costs and incorporates several major improvements over the existing non-residential rate design.

First, ComEd has proposed a new High Voltage Delivery Services ("HVDS") credit for delivery services customers served at 69,000 volts and above. The proposed HVDS credit, which is based on marginal cost principles, dramatically improves the allocation of costs in accordance with cost causation by eliminating cross subsidies flowing from high voltage customers to other customers. *E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:211-15, 32:735-33:759; *See generally*, Swan Dir., United States Department of Energy ("DOE") Ex. 1.0 CR; Schink Reb., Midwest Generation Ex. 5.0, pp. 3:52-54, 10:215-12:254. DOE and Midwest Generation, LLC ("Midwest") also support ComEd's proposal. *Id.* The IIEC, while it generally

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<sup>†</sup> The ARES Coalition also has asserted that ComEd improperly functionalized "supply" costs to the distribution functions. That is simply false. *E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118, 17:362-18:370, 22:466-24:513.

advocates embedded cost ratemaking in this proceeding, and proposes a phase-in period for the HVDS credit, also supports the HVDS credit (as calculated by ComEd in its surrebuttal testimony). Chalfant Reb., IIEC Ex. 4.0 CR, p. 13:1-12; Chalfant, Tr. 2535:19-2536:13. The IIEC and some other parties also argue that ComEd should have a new high-voltage credit for customers served at 34,500 volts, but that proposal is erroneous in terms of both engineering and ratemaking. *E.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 21:463-22:501; *see also* Chalfant, Tr. 2558:12-2561 (acknowledging that the IIEC proposal was based on data as to only a fraction of the customers served at 34,500 volts). For ComEd, 34 kV is not the proper “boundary” between high-voltage and lower-voltage service, and does not correspond to a meaningful cost-of-service distinction. Moreover, the opposition to the HVDS credit comes from parties that benefit directly or indirectly from the existing cross subsidies, and should be rejected.

Second, ComEd has proposed a twelve-month “demand ratchet” for non-residential delivery services customers. There can be little doubt that use of an annual demand ratchet better allocates delivery services costs in accordance with cost causation, because it reduces cross subsidies flowing from high load factor customers to lower load factor customers. *E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:211-18, 13:308-19:430. While the Commission declined to adopt a demand ratchet in Docket No. 99-0117, the more extensive supporting evidence in the record in this proceeding warrants a different result. In any event, ComEd has certainly demonstrated that, regardless of how the Commission resolves the issue of a demand ratchet in general, unless an annual ratchet is approved for generation customers, there will be essentially no recovery from such customers for many distribution facilities and their costs will be unreasonably shifted to other customers. Clair-Crumrine Dir., ComEd Ex. 12.0 CR,

pp. 13:308-19:430. Refusing to approve a demand ratchet in this special case would not only plainly depart from principles of cost-causation, it would be patently unjust and unreasonable to the customers who will subsidize the costs imposed by generators. Gordon Dir., ComEd Ex. 2.0, pp. 16:429-17:458; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 15:330-19:430; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 12:261-13:288; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 7:156-8:171; Haynes Tr. 1019:10-1022:2, 1033:17-1034:3.

Third, ComEd's proposed rate design is based on a marginal cost approach, *i.e.*, the use of ComEd's marginal cost of delivery services study with an Equal Percentage of Marginal Cost ("EPMC"). While the Commission, departing from more than twenty years of precedent, chose to use ComEd's embedded cost of service study in Docket No. 99-0117, the Commission's decision here must be based exclusively on the evidence in this proceeding. The evidence supporting the renewed use of a marginal cost based approach here is compelling -- that approach improves the allocation of costs in accordance with cost causation and facilitates the setting of rates that send correct price signals. *E.g.*, Gordon Dir., ComEd Ex. 2.0, pp. 3:56-23:632; Makhholm Dir., ComEd Ex. 15.0, pp. 4:126-8:231; Swan Dir., DOE Ex. 1.0 CR, pp. 2-9; Schink Reb., Midwest Ex. 5.0, pp. 3:52-54, 10:215-12:254.

ComEd is not alone in recognizing this. Intervenors DOE and Midwest -- major ComEd customers -- also advocate use of ComEd's marginal cost based approach. Even the ARES Coalition, while opposing marginal cost ratemaking in this particular proceeding (for unsound reasons), acknowledges the economic importance of marginal costs, and admits that there may be merit to marginal cost ratemaking. Ulrich, Tr. 917:11-22. Some witnesses even suggest that marginal cost ratemaking might be adopted at the end of the mandatory transition period. O'Connor-Spilky Dir., ARES Ex. 1.0, p. 61:1418-31. Any notion that "inertia" supports the use

of embedded cost ratemaking in this proceeding turns reality on its head. Over three million residential customers -- approximately 90% of ComEd's retail customers -- currently take service under rates set using a marginal cost based approach, less the aggregate 20% rate reductions provided for in Section 16-111 of the Act. 220 ILCS 5/16-111. Adopting embedded cost based rates would, in fact, cause an inconsistency between ComEd's existing bundled and delivery services rates.

Fourth, ComEd's proposed rate design uses the net avoided cost approach, rather than an embedded cost approach, in determining the standard metering services charges and the single bill option credit. *E.g.*, Gordon Dir., ComEd Ex. 2.0, pp. 18:490-19:513; Makhholm Dir., ComEd Ex. 15.0, pp. 8:234-11:332; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:219-20, 19:431-20:450; Swan Dir., DOE Ex. 1.0 CR, pp. 8-9. DOE supports ComEd's proposals. In particular, ComEd has demonstrated that failure to adopt avoided cost credits would, in this case, deny ComEd full cost recovery because the shortfall is not made up. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 41:930-942; Lazare, Tr. 2781:4-9. Previously, in Docket Nos. 99-0117 and 99-0013, this issue had been viewed as an abstract one of theory, and the Appellate Court noted that in those cases the record contained conflicting evidence regarding whether a long-term failure of cost recovery would occur, while acknowledging that the evidence showed a shortfall in the short term. That critical fact is not present here. There is no remaining doubt that the average embedded cost of these services far exceeds what ComEd can and will save when a customer takes them from another provider. It is, therefore, clear that failure to approve avoided costs credits -- at least in the absence of non-existent alternative mechanism to make up the shortfall -- will unlawfully deny ComEd cost recovery.

4. ComEd's proposal is just and reasonable and takes into account customer impacts.

The overall impact on customers is quite simple -- better service at little or no increased cost. The most important impact on customers is the very favorable outcome resulting from large expenditures on the distribution system at a time when bundled rates were frozen and delivery services cost increases were offset by the customer transition charge. ComEd's improvements to its distribution system have benefited customers tremendously without increasing customer bills. All customers receive better service and, during the transition, typically pay little or nothing for it. ComEd's rate design also benefits customers as a whole by reflecting cost causation and reducing cross subsidies. Parties who claim to be on the losing end of these reforms are, in fact, the parties who have reaped the parochial benefits of the very cross subsidies being eliminated.

Compared to the overwhelmingly favorable impact that ComEd's distribution improvements have had on customers, the customer impact issues raised by various intervenors are decidedly less significant and, in most cases, non-existent. While some parties claim that customers would prefer lower delivery services rates, nonetheless, the question of justness and reasonableness is not one of customer preference. Any customer of any vendor would certainly be happy to pay below-cost rates for any valuable service.

Moreover, in large measure, the effect on total customer payments that some ascribe to ComEd's proposed increase in the revenue requirement is sharply limited because of CTC offsets. The evidence shows that even with the delivery services charges proposed in ComEd's direct case and with the current market values for the "Period A" under approved Rider PPO, customer classes and groups comprising well over 90% of ComEd's non-residential customers will be in customer classes or groups that have positive CTCs, so that any proposed increases in delivery services collections will *in toto* be offset by reductions in their CTCs. Alongi-Kelly

Dir., ComEd Ex. 13.0 CR, pp. 6:126-30, 7:143-46, 40:886-41:904, Att. G.<sup>†</sup> For such classes and groups, any proposed increases in delivery services revenues will *in toto* be offset by reductions in CTCs. As Arlene Juracek explained:

[A] substantial portion of the increase in ComEd's revenue requirement will have no effect on total charges to delivery services customers. It will simply decrease, or eliminate, ComEd's collection of monies through CTCs applicable to delivery services customers. In essence, to this extent, the increase in the costs of providing delivery services is being funded by reductions in ComEd's stranded cost recovery.

Juracek Dir., ComEd Ex. 1.0, pp. 20:528-21:533.

Claims to the contrary are premised on a distortion of ComEd's proposed transmission rates, recently filed at FERC, and on a variety of mistaken assumptions about the market value of power and energy. The record shows that the proposed transmission rate increase would have a very limited impact on customers who are in groups and classes with positive CTCs, even were it to be entirely approved. *E.g.*, Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 6:126-130, 7:143-146, 40:886-41:904, Att. G; Alongi-Kelly, Tr. 1235:7-1237:4, 1238:1-1239:12, 1330:22-1331:20, 1336:21-1337:4. Moreover, as Ms. Juracek pointed out, market prices for electricity have fallen significantly since the market values in the current Period A under Rider PPO were set. Juracek Reb., ComEd Ex. 20.0, pp. 16:412-17:424, 18:458-19:462, 19:473-21:506, 22:535-24:586, ComEd Exs. 20.1 (class CTCs), 20.2 (group CTCs).

Forecasts of dire customer impacts based upon contrary assumptions not only are unrealistic, but also confuse the purpose of the delivery and market value credits in the CTC calculation. Indeed, the record shows that widespread loss of savings is unlikely under ComEd's

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<sup>†</sup> In this proceeding, ComEd has proposed no revision to the methodology for determination of market values under ComEd's Rider PPO - Power Purchase Option ("Rider PPO"). The Commission previously approved that methodology under Sections 9-201(c) and 16-112 of the Act, 220 ILCS 5/9-201(c), 16-112. Order, ICC Docket 00-0259/ 00-0395/ 00-0461 (April 11, 2001). The PPO rates will be reset periodically as provided therein.

proposal. Even with the transmission revenue requirement recently proposed to FERC, current forward market prices yield similar if not even more favorable results in terms of positive CTCs, including a positive CTC for the largest residential customer class. Juracek Sur., ComEd Ex. 41.0, pp. 4:79-81, 13:319-322, 23:538-24:559, ComEd Exs. 41.2, 41.3, 41.4, 41.5. A positive CTC means that the customer, group, or class is receiving the full mitigation factor under the CTC formula. Mitigation factors are currently eight percent of the *entire bundled rate* for non-residential customers and increase to ten percent on January 1, 2003 (subject to a 0.5 cents/kWh minimum). Customer savings opportunities have never been brighter, and that bright picture completely accommodates the rates being requested in this proceeding.

In any event, even were customers to lose savings opportunities because of high market prices, that would not be a reason to reduce delivery services rates. ComEd's delivery rates are not a "safety net" for high energy prices. The idea of open access is to show customers real costs and real prices, not to gin up interest in higher cost power by setting delivery rates below cost. Likewise, ComEd's action in seeking an appropriate increase in its transmission revenue requirement is not a valid reason for denying it the appropriate cost recovery and cost based rates mandated by the Act in this proceeding. Juracek Sur., ComEd Ex. 41.0, p. 17:405-12.

In sum, the evidence of record firmly establishes that approval of ComEd's proposals will serve the dual requirements of ensuring a sound and reliable delivery system and providing for full recovery of reasonable and prudent costs. ComEd's proposals should be approved.

## ARGUMENT

### I.

#### Legal Issues and Standards for Decision

##### A. **Substantive Standards and Policies** **Governing Requested Rates**

The central legal principles governing this proceeding are clear. As in all contested rate proceedings, the Commission's order must be within the Commission's jurisdiction and authority, must lawfully implement the substantive mandates the General Assembly stated in the Act, and must be based exclusively on the evidence in the record. 220 ILCS 5/10-103, 10-201(e)(iv); *BPI 1989*, 136 Ill. 2d at 201, 227, 555 N.E.2d at 697, 709. The Act requires the Commission to approve rates that are cost based and that provide for full recovery of utilities' prudent costs of providing delivery services from the customers that take those services. 220 ILCS 5/16-108. Delivery services rates should also facilitate reliability and safety, and be practical and economically sound. *E.g.*, Juracek Dir., ComEd Ex. 1.0, pp. 10:279-17:445.

In this case, the Commission has the opportunity to approve rates that meet these standards and that lay the foundation for the continued operation of a viable, reliable delivery services company. That ultimately benefits all parties.

Delivery service tariffs and implementation plans should:

- Allow for the competitive retail sale of electric power and energy in the manner provided for in the Act;
- Be functional, practical, and economical;
- Maintain reliability for delivery services and bundled services customers;
- Provide full recovery by the utility of its costs of providing delivery services, as provided for in the Act; and
- Implement a rate design that is cost-based and efficient, and sends correct price signals to customers.

Juracek Dir., ComEd Ex. 1.0, p. 10:281-90. Ms. Juracek elaborated in detail on those basic principles and the grounds for them. *Id.*, pp. 10:291-17:445; *See also, e.g.*, Gordon Dir., ComEd Ex. 2.0. ComEd's proposals comport with such principles.

Other parties to this proceeding have expressed no general disagreement with the principles identified by Ms. Juracek, although in many instances their proposals run afoul of them. While a few intervenors have sought to identify and promote other basic "principles," they often ignore the law, reflect self-interested support for unnecessary and unjust cross subsidies, and advocate in the name for competition for the benefit of competitors rather than for the ultimate benefit of customers. The fact remains that it is not in customers' real interests to set delivery rates below cost. And, for obvious reasons, regulatory bodies rarely, if ever, promote or encourage unnecessary cross subsidies. *E.g.*, Chalfant, Tr. 2552:19-22. Notably, even intervenors generally acknowledge the importance of setting delivery services rates that reflect real cost causation. *E.g.*, Chalfant, Tr. 2551:13-16; Bodmer Dir., GC Ex. 1.0 CR, p. 62:1228; Bodmer, Tr. 1911:5-11.

A central governing provision of the Act, and one that is vital to setting economically correct prices, is that delivery services charges must be "cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs." 220 ILCS 5/16-108(c). *See, e.g.*, Gordon Dir., ComEd Ex. 2.0 (regarding setting economically correct prices). The right of a utility to recover fully its costs of providing delivery services follows not only from Section 16-108(c) and the general requirement that rates be just and reasonable under Section 9-201(c), but also from underlying principles of constitutional law. 220 ILCS 5/9-201(c); *e.g.*, *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Federal Power Comm'n*

*v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks v. Public Service Comm'n*, 262 U.S. 679 (1923). But, this is not only a bulwark of fairness to utilities. It is by providing cost-based rates that efficient prices are set and reliable and viable delivery services providers are maintained.

ComEd's proposals implement Section 16-108(c), and they do so in several ways that are superior to the existing non-residential rate design. In contrast, many of the challenges to ComEd's proposals in this proceeding constitute improper attempts to deny ComEd recovery of its costs of providing delivery services and/or to deviate unnecessarily from rates that reflect cost causation and to preserve cross subsidies.

The Act also requires the Commission to "take into account customer impacts when establishing such [delivery services] charges." 220 ILCS 5/16-108(d). To a very large degree, there simply are no or limited adverse impacts on customers resulting from the increase in ComEd's jurisdictional revenue requirement, because of the inherent way in which delivery services rate increases reduce transition charges by a like amount. Moreover, the objective and effects of ComEd's proposed rate design are salutary, *i.e.*, they are appropriately based on cost causation and the reduction of cross subsidies.

Finally, the Commission should apply the established law regarding the burden and order of proof. ComEd bears the burden of proof that its proposed new and revised delivery services tariffs are just and reasonable. 220 ILCS 5/9-201(c). ComEd more than amply has proven its case for the prudence of its costs of providing jurisdictional delivery services without relying on any legal presumption. In addition, once ComEd made a *prima facie* case as to the costs needed to be incurred in order to provide jurisdictional delivery services, the burden of going forward with the evidence shifted to objecting parties to show that ComEd's costs are unreasonable

because of inefficiency or bad faith, as shown in Section II.C.6 of this Initial Brief. While ComEd more than made its *prima facie* case, other parties did not show any valid grounds for reducing ComEd's proposed jurisdictional revenue requirement, with very limited exceptions that are reflected in downward adjustments to the revenue requirement made or agreed to by ComEd in its rebuttal or surrebuttal testimony. Moreover, other parties cannot defeat ComEd's showing by submitting only evidence of real or alleged past errors or shortcomings. Rather, they must establish that such shortcomings resulted in a quantifiable incremental increase in the costs that ComEd seeks to recover. They have not done so. ComEd, by contrast, has submitted a wealth of evidence not only to prove its costs, but also to establish that past errors have not led to any incremental increase in costs sought to be recovered through the proposed revenue requirement.

For these legal and policy reasons, the Commission should take the opportunity to ensure that ComEd's proposed new and revised delivery services tariffs (and any competing proposals made by others) comply with the Act, including each of the specific requirements governing delivery services tariffs and implementation plans, *e.g.*, 220 ILCS 5/16-104, 16-105, 16-108, 16-118(b), and the general requirement that tariffs adopted in a contested proceeding before the Commission are to be just and reasonable to the utility, its stockholders, and its customers, 220 ILCS 5/9-201(c); *BPI 1991*, 146 Ill. 2d at 208, 585 N.E.2d at 1045.

**B. Procedural Issues (e.g., Admissibility) Not Addressed in Specific Arguments**

All procedural issues have been addressed in other submissions, including ComEd's responses to motions and to various parties' Petitions for Interlocutory Review.

**C. Other Policy Issues (Note: each party may address policy issues in any order)**

**1. Impact on Customers**

In the long run, customers benefit from delivery services rates that are set correctly, to recover prudently incurred costs fully, without needless subsidies. Gordon Dir., ComEd Ex. 2.0, p 8:195-200; Gordon Sur., ComEd Ex. 44.0, p. 2:34-42. So set, regulated rates can promote efficiency and reliability. Any suggestion that considering “customer impacts” means yielding to short-run desires to just “hold rates down” is misplaced and inconsistent with the balance of the Act. It is not sound policy, or in customers’ interests, to establish below-cost delivery rates.

ComEd’s distribution system is much stronger today than it was when the Commission last set ComEd’s delivery services rates in Docket 99-0117. Distribution facilities have been added to handle load growth from existing and new customers, as well as to respond to geographic shifts in existing demand. Completion of construction projects has enabled ComEd to serve demand that has relocated to different areas of its service territory and to meet the needs of customers, such as internet server “hotels,” with special requirements. Juracek Dir., ComEd Ex. 1.0, p. 4:100-12. Along with the steps taken to address these new developments, improvements to preexisting facilities have been made to serve better and more reliably customers in the long-term. Juracek, Tr. 3684:9-3685:17. During 1998, 1999, and 2000 ComEd added:

- 24,308 wholly-owned new poles;
- 2,600 miles of overhead conductors;
- 4,550 miles of underground cables;
- 19,121 distribution transformers;
- eight new high-voltage substations properly functionalized as distribution;
- and

- many other substations, as well as numerous upgrades, replacements, and additions to existing substations.

DeCampli Dir., ComEd Ex. 6.0, p. 14:294-99 (all jurisdictional).

Although significant distribution investments have been made and substantial expenses have been incurred to meet service needs of customers, the majority of those expenditures will not be paid by customers for three principal reasons. First, bundled rates are frozen and will not increase during the mandatory transition period. Throughout this period, customers taking bundled service will benefit from the new and improved distribution facilities without any additional cost. Helwig Reb., ComEd Ex. 19.0, pp. 4:80-5:91. Second, much of the operating expense was incurred outside the test year. Because these expenses exceeded the amount included in existing rates, ComEd's shareholders bore those expenses, and will never recover them. Helwig Reb., ComEd Ex. 19.0, pp. 4:80-5:91; Helwig Sur., ComEd Ex. 43.0, pp. 9:204-10:213. Third, as discussed in the Executive Summary and further below, many customers taking delivery services will also avoid paying for new investments and additional test year and post-test year expenses because any growth in delivery charges to customers will largely be offset by reductions in CTCs (over 90% of non-residential customers are in classes with positive CTCs), resulting in no net increase in customers' bills. Helwig Sur., ComEd Ex. 43.0, pp. 9:204-10:213.

While it was not necessary to establish that ComEd shareholders bore the lion's share of distribution costs, a rough estimate calculated by ComEd shows that, all else being equal, for the 1999-2001 period, shareholders, not customers, absorbed more than \$800 million of new costs for the distribution system. Strobel, Tr. 708:1-21; Juracek, Tr. 3657:5-3658:9. While various intervenors have raised questions about the particulars of the \$800 million estimate, there is no basis for disagreement about the basic point. No retail customer paid for increased distribution

costs in 1999-2001, because their rates were frozen, legislatively reduced, or set based on a 1997 test year. Nonetheless, there were increased costs, and shareholders shouldered the burden. Although ComEd acknowledges that the rough estimate is based on assumptions, in many ways it is quite conservative, disregarding costs for other years during the mandatory transition period and applying an overstated whole-company sales growth offset, rather than a wires-only revenue growth deduction. Strobel, Tr. 708:1-709:13.

The first “impact” issue raised by some parties is an overall charge that ComEd ignored the impact that its proposals would have on customers’ charges. The evidence demonstrates this is simply not true. Several intervenors try to make much of the fact that ComEd’s delivery services revenue requirement will increase. For many delivery services customers, although not all, it is true that their Rate RCDS charges will go up. This is not, however, synonymous with “customer impacts” even in the narrow view that focuses only on delivery customers’ bills in the short run. Total delivery charges include CTCs. A key factor in assessing the extent to which higher distribution charges will affect customers’ payment is the extent to which delivery rates simply offset transition charges, resulting in no net increase in customer payments. It bears repeating that ComEd’s testimony addresses that question in detail, and demonstrates that, for many customers (again, as discussed in the Executive Summary and further below, over 90% of non-residential customers are in classes with positive CTCs), there will be no increase. The short answer to intervenors’ contentions is that ComEd did assess the impact of its proposals and determined that many customers would experience no net increase in their bills.

Attachment G to the direct testimony of Lawrence Alongi and Sharon Kelly shows that -- with the delivery services charges proposed in ComEd’s direct case, with ComEd’s FERC-approved transmission revenues allocated under the methodology proposed in Rider TS -

Transmission Service, and with the current market values for the “Period A” under approved Rider PPO -- well over 90% of ComEd’s non-residential retail customers are in customer classes or groups that have positive CTCs. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 7:143-46, 40:886-41:904 and Att. G. For those classes or groups that have positive CTCs, any proposed increases in delivery services collections are offset by reductions in their CTCs. As Ms. Juracek testified:

[A] substantial portion of the increase in ComEd’s revenue requirement will have no effect on total charges to delivery services customers. It will simply decrease, or eliminate, ComEd’s collection of monies through CTCs applicable to delivery services customers. In essence, to this extent, the increase in the costs of providing delivery services is being funded by reductions in ComEd’s stranded cost recovery.

Juracek Dir., ComEd Ex. 1.0, pp. 20:528-21:533.

The ARES Coalition seeks to make much of the fact that ComEd in August 2001 asked FERC to increase its transmission revenue requirement. *E.g.*, O’Connor-Spilky Reb., ARES Ex. 3.0 CR, p. 8:178-186. However, the impact of that proposed increase, even assuming the entire amount were to be approved, on the number of customers who are in groups and classes with positive CTCs is very limited. *E.g.*, Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 7:143-46, 40:886-41:904 and Att. G; Alongi-Kelly, Tr. 1235:7-1237:4, 1238:1-1239:12, 1330:22-1331:20, 1336:21-1337:4; Juracek Reb., ComEd Ex. 41.3. Also, of course, ComEd’s seeking an appropriate increase in its transmission revenue requirement is not a valid reason for denying it the appropriate cost recovery and cost based rates mandated by the Act in this proceeding. Juracek Sur., ComEd Ex. 41.0, p. 17:405-12.

The ARES Coalition’s specific claims are predicated on unrealistic market values -- many scenarios assume a sizeable increase in market values from last spring despite the market’s substantial downward movement. As Arlene Juracek demonstrated, forward market prices for

electricity have fallen significantly below where they were when the market values in the current Period A under Rider PPO were set, and if they remain lower as some parties now project then even more customers will be in customer classes with positive CTCs. Juracek Reb., ComEd Ex. 20.0, pp. 16:412-17:424, 18:458-19:462, 19:473-21:506, 22:535-24:586; ComEd Exs. 20.1 (class CTCs), 20.2 (group CTCs). Indeed, IIEC witness Robert Stephens noted that, under current prices, if Period A Rider PPO prices were to be set now, they would be approximately 25% lower than the current Period A prices. Stephens Dir., IIEC Ex. 1.0 CR, pp. 9:20-10:3.

The contentions that the impact of ComEd's proposals may be to drive some customers back to bundled service are exaggerated and miss the point. First, they are exaggerated because, as a result of the CTC offset, most customers who would achieve savings by electing to take delivery services under present rates and terms, will continue to achieve savings under the rates and terms proposed by ComEd in this case. Juracek Reb., ComEd Ex. 20.0, pp. 24:587-25:599. Simply stated, the economics will not change dramatically as a result of ComEd's proposals and customers will continue to participate in open access. Second, the return to bundled service arguments miss the point because, during the transition period, bundled service is not some disfavored status. If the true cost of unbundled services in the year 2000 is more than the frozen 1995 bundled rates (in some cases, less an additional 20%) for a small group of customers, then that is not evidence of harmful customer impacts. Juracek Sur., ComEd Ex. 41.0, p. 26:610-21. Customers are entitled to compare and choose the best option allowed under the Act; indeed, exercising this choice is the essence of the 1997 amendments to the Act. That choice is an example of one feature of the transition system in operation, insulating customers from cost increases for a considerable interim period on the road to a new restructured electric system.

The record, however, shows that widespread loss of savings is unlikely. Even with ComEd's proposed jurisdictional revenue requirement and its proposed FERC transmission revenue requirement, the current status of forward market prices and projections yields similar if not even more favorable results in terms of positive CTCs, including a positive CTC for the largest residential customer class. Juracek Sur., ComEd Ex. 41.0 CR, pp. 13:317-24, 14:355-15:363, 23:538-24:559, ComEd Exs. 41.2, 41.3, 41.4, 41.5. In any event, even were some customers to lose savings opportunities because of high market prices, that would not be a reason to reduce delivery services rates. The idea of open access is to show customers real costs and real prices, not to gin up interest in higher cost power by setting delivery rates below cost.

Similar contentions by some intervenors that the "impacts" of ComEd's proposal on customers eligible for special bundled rates (*e.g.*, Rider 25) requires that special, below-cost delivery services rates be set up for customers, are simply inconsistent with the Act. The 1997 legislation gave customers the right to artificially low, frozen (or, in the case of residential customers, reduced) rates until January 1, 2005. If customers find that these below-market, frozen rates are more attractive than the alternative of paying cost-based delivery services rates (including the CTC) and the lowest cost generation services available in the competitive marketplace, they are entitled to remain on bundled service. The choice of bundled service under those circumstances is not an adverse customer impact requiring or authorizing action by the Commission. It is the exercise of a basic right that customers are entitled to choose during the transition period as provided under the law.

With respect to rate design decisions, ComEd also gave considerable attention to the impact of its proposals. Rate design decisions do not increase ComEd's revenues. ComEd's only goal is to treat customers fairly when dividing the costs of providing delivery services

among customer classes. The rate design proposals ComEd has made – including the annual demand ratchet and Rider HVDS, which have received so much attention – were advanced to reduce cross subsidies among customer groups that would otherwise result. That is an important goal and ComEd’s efforts to achieve it are appropriate and uninfluenced by any competing self-interest.

In summary, the impact on customers is quite simple – better service at little or no increased cost. The most important impact on customers that emerges from the evidence in this case is the very favorable outcome resulting from large expenditures on the distribution system at a time when bundled rates were frozen and delivery services cost increases were offset by the customer transition charge. ComEd’s improvements to its distribution system have benefited customers tremendously without increasing customer bills. All customers receive better service and, during the transition, typically pay little or nothing for it. Compared to the overwhelmingly favorable impact that ComEd’s distribution improvements have had on customers, the customer impact issues raised by various intervenors are decidedly less significant and, in most cases, non-existent.

## **2. Impact on Cost Based Rates**

The General Assembly directed that delivery services rates be based on delivery services costs. ComEd proved that its costs were prudent and that its distribution capital investments are used and useful. The assumption that some unnecessary costs must have been incurred in the effort to address distribution reliability issues beginning in 1999 is not supported by the evidence, and has in fact been disproved.

First, ComEd selected a 2000 test year, which automatically excludes from the revenue requirement all of the expenses incurred in 1999 when the analysis of the distribution system was underway and when emergency restoration of power efforts were taking place. Juracek,

Tr. 3395:11-3396:14. These 1999 events are the principal basis for the inference that unnecessary costs “must have” been incurred. The cost-based rates proposed in this case are unaffected by the level of 1999 operating expenses. Second, one aspect of the 1999 investigation that spilled into 2000 was addressed when ComEd voluntarily excluded from 2000 test year expenses the costs of the Vantage and Liberty reports, as discussed in Section II.D.3.d.ii, below. *E.g.*, Juracek, Tr. 3378:12-21, 3396:16-3397:16. ComEd also normalized tree management and variable storm restoration costs, eliminating any basis for contending that these components of the revenue requirement contain unnecessary costs, as discussed below.

The record also shows that ComEd’s distribution capital costs were prudent and reasonable, and contain no unnecessary or excess increment of the type that the intervenors suggest may have existed. David Helwig, who led the distribution system investigation and improvement program, has vast experience with distribution construction projects, as well as distribution maintenance and operating expenses. He knows the costs of building and improving distribution facilities. He is intimately familiar with the work that ComEd performed. And he knows from first-hand experience that the contentions that some unidentified, unnecessary costs must have been incurred are simply baseless. As Mr. Helwig explained, the aggressive scheduling and focused efforts made by ComEd following the distribution system failures in 1999 did not add unnecessary costs:

... most of the additional work that we accomplished in this period was accomplished with the same ... level of resources and was achieved without large increases in cost due to major improvements that we made in organization, in management process resulting in significant productivity increases.

Our analysis of many, many accounts of our activities identifies that we accomplished significantly increased amounts of work without incurring increased costs ... [I]n order to control the cost and make sure that we did not incur any additional costs due to short schedules, we used very different contracting techniques, very different forms of contracts, very different

commercial structures and had a very different management team in order to accomplish that ....

Helwig, Tr. 2716:6-2717:7.

Finally, the impact on cost-based rates from ComEd’s expenditures on ComEd’s distribution system cannot be considered in a vacuum. It is clear that ComEd’s proposed delivery services revenue requirement and the resulting delivery services rates are very reasonable in comparison to the rates charged for delivery services in other open access jurisdictions. A review of the delivery services revenue requirements per kilowatt-hour of other restructured peer-group utilities around the nation demonstrates how reasonable ComEd’s existing and proposed delivery services charges are:

| <u>Delivery Services Provider</u> | <u>Avg. Delivery Rev. Req. (¢/kWh)</u> |
|-----------------------------------|--|
| NSTAR (composite)                 | 3.54                                   |
| SDG&E                             | 3.17                                   |
| PSE&G                             | 2.90                                   |
| PG&E                              | 2.70                                   |
| PECO                              | 2.52                                   |
| Southern Cal. Edison              | 2.46                                   |
| AmerenCIPS (proposed)             | 2.06                                   |
| <b>ComEd (proposed)</b>           | <b>2.05</b>                            |
| Detroit Edison                    | 1.90                                   |
| FirstEnergy (CEI)                 | 1.70                                   |
| ComEd (current)                   | 1.50                                   |
| Reliant                           | 1.27                                   |

Juracek Dir., ComEd Ex. 1.0, 20:506-18. Moreover, even this calculation of ComEd’s unit revenue requirement is high, because it does not reflect the more than \$104 million reduction in the requested revenue requirement agreed to by ComEd since its initial filing. Adjusting for this, ComEd’s proposed unit revenue requirement drops to about 1.93 ¢/kWh. In short, ComEd’s proposed rates will result in a revenue requirement per kilowatt-hour that is significantly below the rates in effect in many other service territories. Indeed, few comparable utilities are lower.

Like the impact on customers, the impact on cost-based rates is simple. ComEd accomplished vast improvements in the distribution system, making those improvements available to customers when they needed them, and it did it without incurring any unnecessary costs. To the contrary, productivity increases resulting from “best practices”, Helwig, Tr. 2717:13-15, enabled ComEd to provide these improvements at lower costs than if the work had been accomplished in earlier periods. The impact on cost-based rates has been highly favorable, achieving more for less. And customers are the winners in any event because they will bear little if any of the costs of the effort.

### **3. Impact on the Development of an Effectively Competitive and Efficient Electricity Market**

No party has done more to foster the development of a competitive and efficient market in Illinois than ComEd. ComEd’s efforts have included promoting the development of new merchant generation, designing and implementing effective and efficient business processes, spearheading PPO pricing that correctly reflects the market value of freed up power and energy, proposing Rider ISS pricing that will eliminate inappropriate “gaming” of the supply market using supply deliberately procured through Rider ISS, and establishing of pro-competitive terms and conditions for Retail Energy Imbalance Service, including provisions specially designed to make retail open access work for customers with highly unpredictable and variable loads. ComEd has offered transmission cost collection mechanisms designed to reduce Retail Electric Suppliers’ (“RESs”) credit costs, as well as wholesale power services (*e.g.*, FRP Service) to provide others access to energy on terms that they desired. Juracek Reb., ComEd Ex. 20.0, p. 7:195-96.

ComEd’s efforts to promote competition in its service territory have been extremely successful. Since August 16, 1999, when the first Direct Access Service Request (“DASR”) was

accepted by ComEd, the number of customers exercising choice has grown considerably and the number of certified suppliers has increased as well. The success of the open access system in ComEd's service territory was recognized in the Fall 2000 Report of Chairman Mathias concerning implementation of the Electric Service Customer Choice And Rate Relief Law of 1997. The Chairman's Report indicated that, as of July 31, 2000, 42% of the load of ComEd's customers who were then eligible to switch from bundled services had done so. As of December 31, 2000, over 9,500 non-residential customers, representing approximately 27% of ComEd's retail kilowatt-hour sales for the twelve months prior to the introduction of retail competition, had chosen to take delivery services. The total number of customers who, during this process, have elected delivery services continues to increase and, at the time this case was filed, included more than 12,250 customers, representing approximately 5,000 MW of load. Juracek Dir., ComEd Ex. 1.0, p. 4:79-99.

ComEd has the most competitive, least concentrated, service territory in Illinois. *E.g.*, Makhholm Reb. ComEd Ex. 34.0, pp. 15:359-16:373. The Commission's April 2001 assessment of competition in the Illinois electric industry applauded ComEd's efforts, noting that customer switching rates in ComEd's service territory "continue to be high" and are "impressive." In fact, the report observed that "nearly 62% of eligible usage had switched from bundled to delivery services." ComEd's proposals in this proceeding build on these past successes and pave the way for continued development of the competitive market, making all retail customers eligible for delivery services. Juracek Reb., ComEd Ex. 20.0 pp. 17:433-35.

#### **4. Impact on Future Rate Cases**

This is the second proceeding in which the Commission has considered ComEd's delivery service tariffs. The decisions that the Commission will make in this proceeding, as in Docket No. 99-0017, are important to all market participants, in terms of the continuing

development of the retail electric market within the framework mandated by the Act. The Commission should continue to follow the dictates of the Act, and approve rates based on ComEd's reasonable and prudent delivery services cost.

The implications of the Commission's order in this proceeding for future proceedings, however, should not be overstated. Indeed, some parties claim that ComEd's request is a "Trojan Horse" – a wholly inapt analogy given that these same parties are loudly warning of the presence of concealed Greeks, when in fact there are none. The fact is that in any future contested rate proceeding, as in this rate proceeding, the Commission's decisions will have to be based exclusively on the evidence in the record of the particular proceeding. 220 ILCS 5/10-103, 10-201(e)(iv); *BPI 1989*, 136 Ill. 2d at 201, 227, 555 N.E.2d at 697, 709. Second, Commission orders are not legal precedents, nor are they *res judicata*. *E.g.*, *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953). Finally, as to the operating expense and miscellaneous revenues components of a revenue requirement, any concern that a particular test year used in a particular ratemaking proceeding is "abnormal" has little, if any, bearing on subsequent ratemaking proceedings. As to base rate ratemaking proceedings, the Commission's test year rules narrowly limit the range of test years that may be employed. 83 Ill. Adm. Code § 285.150. A test year used in a prior rate case almost inevitably will fall outside that range. While, as to delivery services rate proceedings, the Commission does not have any formally adopted test year rules, it simply is not plausible or credible to suggest that the Commission will permit, for example, use of the 2000 test year in a base rate or a delivery services rate proceeding commenced at the end of the transition period or thereafter. Hill Sur. Sup., ComEd Ex. 38.0 CR, pp. 2:44-4:91. Thus, any

supposed concerns that the adjusted 2000 test year employed in this proceeding would not be appropriate for any future ratemaking proceeding have no relevance or merit.

## II.

### Revenue Requirement Issues

#### A. Calculation of Revenue Requirement

ComEd's initial proposed jurisdictional revenue requirement was \$1,786,970,000. Hill Dir., ComEd Ex. 4.0 CR, p. 5:101-03 and Att. C, Sch. A-2. ComEd's revised proposed jurisdictional revenue requirement, reflecting the proposed accord on a reduced rate of return and also reflecting the downward adjustments to jurisdictional net rate base and jurisdictional operating expenses made or agreed to in ComEd's rebuttal and surrebuttal testimony, and their respective financial impacts, is \$1,682,705,000.<sup>†</sup> A chart reflecting these adjustments is attached hereto as Appendix A.

#### B. Selection of Test Year

In determining its proposed jurisdictional revenue requirement, ComEd properly used the 2000 test year, with appropriate adjustments -- including downward adjustments made by ComEd itself in its direct case. Hill Dir., ComEd Ex. 4.0 CR, pp. 4:80-5:99.

The Company operates on a calendar basis for various financial purposes. The year 2000 is the most recent calendar year for which the Company has complete results. Also, each year the Company is required to prepare and file with the Federal Energy Regulatory Commission (the "FERC") a "FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees and Others", commonly referred to as a "FERC Form 1". The FERC Form 1 uses the FERC Uniform System of Accounts (the "FERC USOA"), which has been adopted by the ICC with limited modifications. The Company's most recent FERC Form 1 is for the year 2000. The FERC Form 1 is the starting point in many respects for the

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<sup>†</sup> In ComEd's rebuttal testimony ComEd also reversed two downward adjustments that it had made in its direct case because further analysis and factual developments showed that these downward adjustments were unwarranted. Hill Reb., ComEd Ex. 23.0 CR, pp. 25:536-26:562. Those reversals also are reflected in the above figure.

financial aspects of ratemaking. The year 2000 is the only full calendar year in which the Company has had any customers eligible for open access. The adjustments to these data are appropriate for the determination of the revenue requirement in this proceeding, as I will discuss below. In my opinion, for each of above reasons, use of the 2000 test year, with adjustments, for ratemaking purposes in this proceeding is the most appropriate approach.

Hill Dir., ComEd Ex. 4.0 CR, p. 5:86-99; *see also, e.g.*, Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 1:20-2:29, 2:44-9:196.

### **C. Rate Base**

In its direct case, ComEd proposed a jurisdictional net rate base of \$4,083,927,000. Hill Dir., ComEd Ex. 4.0 CR, p. 7:131-35 and Att. C, Schs. A-2 and B-1. Given the downward adjustment in ComEd's rate base proposed by the GCI that ComEd agreed to in its rate base in its rebuttal testimony and the further downward adjustment that ComEd voluntarily made to its rate base in its surrebuttal testimony, its revised proposed jurisdictional net rate base is \$4,018,471,000. ComEd's revised proposed jurisdictional rate base is prudent and just and reasonable.

#### **1. Functionalization of Distribution Plant**

The portion of ComEd's distribution plant that is used to serve retail customers, including, among other things, correctly identifying that plant that appropriately is refunctionalized to the distribution function under the FERC "seven factor" test and correctly excluding distribution plant used to serve wholesale municipal customers, was properly functionalized. Voltz Dir., ComEd Ex. 5.0, pp. 3:60-4:66, 5:86-106, 6:118-14:300, 15:317-21; Born Dir., ComEd Ex. 17.0, pp. 1:7-10, 4:77-7:138; Sterling Dir., ComEd Ex. 16.0, pp. 12:253-16:350. Although the IIEC initially evinced confusion on this subject arising out of a misinterpretation of Arlene Juracek's direct testimony, that confusion apparently has been resolved. Stephens Dir., IIEC Ex. 1.0 CR, pp. 3:5-11, 14:18-15:10; Naumann Reb., ComEd Ex.

35.0, pp. 20:432-21:461; Stephens Reb., IIEC Ex. 3.0 CR, pp. 17:2-18:13; Juracek Sur., ComEd Ex. 41.0, p. 17:413-18; Naumann Sur., ComEd Ex. 58.0, pp. 15:321-16:344. No party now appears to contest ComEd's functionalization of distribution plant. In any event, no party has identified any error in the functionalization.

**2. General and Intangible Plant --  
Direct Assignment and Allocation**

ComEd has submitted overwhelming and for all practical purposes uncontradicted evidence that it has correctly accounted for General and Intangible Plant costs. Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 8:149-55, 9:160-10:186 and Att. A; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 16:288-21:385; Hill Reb., ComEd Ex. 23.0 CR, pp. 4:87-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sur., ComEd Ex. 45.0, pp. 5:88-13:276, 19:400-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 17:345-18:369 and Att. B; Heintz Dir., ComEd Ex. 14.0 CR, pp. 21:387-22:405; Hill Sur., ComEd Ex. 45.0, pp. 13:278-20:422 (discussing functionalization of A&G expenses). The Commission should remember that the task of assigning General Plant is much different in this Docket from in past cases. ComEd has been restructured. Pamela Strobel, ComEd's Chair, confirmed that, because of this restructuring, "the costs assigned to ComEd are the costs *actually* incurred by ComEd.... Any suggestions that the costs borne by ComEd are arbitrary or artificial is simply wrong." Strobel Reb., ComEd Ex. 18.0, p. 7:148-152 (emphasis added). Its account balances reflect, almost exclusively, assets used for delivery services. Strobel Reb., ComEd Ex. 18.0, pp. 5:109-6:116. No major functional allocation is necessary because of the company restructuring.

Some parties have, nonetheless, asserted that ComEd's functionalization of its General and Intangible Plant costs should be rejected. *E.g.*, Chalfant Dir., IIEC Ex. 2.0 CR, pp. 2:7-10,

2:2-10:8; Lazare Reb., Staff Ex. 21.0, pp. 2:24-18:381. However, those parties do not challenge the accuracy of ComEd's analysis in any respect; indeed, some, if not all of them, did not even review all of that analysis. Chalfant, Tr. 2554:14-16. Their arguments for rejecting ComEd's functionalization essentially rely on the erroneous premise that, because the Commission rejected ComEd's functionalization of General Plant and A&G in favor of a general labor allocator in Docket No. 99-0117, the Commission should do so again in this proceeding. *E.g.*, Effron Dir., GC Ex. 2.0, pp. 6:16-7:6. In the case of Staff witness Peter Lazare, he espouses that position even though he and another Staff witness testified in ComEd's 1999 delivery services rate case (Docket No. 99-0117) that ComEd's functionalization of General and Intangible Plant should be adopted. Hill Sur., ComEd Ex. 45.0, pp. 11:224-26, 13:274-76; Lazare, Tr. 2802:4-22.

As noted earlier, the Commission must base its order exclusively on the evidence in the record. The record here shows that the common costs included in the revenue requirement correctly reflect the actual costs of providing delivery services. Strobel Reb., ComEd Ex. 18.0, pp. 5:109-6:116. Where functionalization was required, the evidence supporting ComEd's functionalization of General and Intangible Plant and A&G in this proceeding significantly exceeds that available in Docket No. 99-0117. Indeed, it is overwhelming, and, for all practical purposes, stands unrefuted. For those intervenors to ignore that ComEd in fact has been restructured since Docket No. 99-0117, and to advocate use of a labor allocator that would, for example, allocate significant costs to fossil fuel generation when ComEd sold its fossil plants in 1999 is, to say the least, patently unreasonable, especially given that ComEd's restructured

balance sheets were reviewed as part of the first quarter 2001 audit procedures conducted by the Company's independent auditor.<sup>†</sup>

### **3. Known & Measurable Changes to Test Year Plant Balances**

In its direct case, ComEd proposed three upward adjustments to its distribution plant included in rate base, the first of which is not a *pro forma* adjustment, and the second and third of which are *pro forma* adjustments. These three adjustments, in brief, consist of (1) \$96,501,000 (net jurisdictional rate base amount including AFUDC, accumulated depreciation, and taxes) (related gross jurisdictional plant of \$99,519,000), in distribution plant that was in service and serving retail customers in 2000 but that was not recorded in the ComEd's year 2000 FERC Form 1 in Accounts 360-373 and instead was formally recorded in those accounts in early 2001; (2) \$33,042,000 (net jurisdictional rate base amount) (related gross jurisdictional plant of \$34,104,000) in distribution plant that was placed in service and serving retail customers in the first quarter of 2001; and (3) \$122,765,000 (net jurisdictional rate base amount) (related gross jurisdictional plant of \$126,592,000) in distribution plant that was reasonably expected to be (and in fact ultimately was) placed in service and serving retail customers in the second quarter of 2001. Voltz Dir., ComEd Ex. 5.0, pp. 7:136-14:300; ComEd Exs. 5.1-5.3; Hill Dir., ComEd Ex. 4.0 CR, pp. 23:475-24:503 and Att. C, Schs. B-2.1, B-2.2.

ComEd legally is entitled to seek upward *pro forma* adjustments for all rate base additions reasonably expected to be placed in service and serving customers on or before the date of the Commission's order in this proceeding, or within 12 months of the initiation of this proceeding, which was filed on June 1, 2001. *E.g., In re Consumers Illinois Water Co.,*

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<sup>†</sup> As noted earlier, the ARES Coalition also has asserted that ComEd improperly functionalized "supply" costs to the distribution function, but that is false. *E.g., Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118, 17:362-18:370, 22:466-24:513.*

No. 97-0351, 1998 Ill. PUC Lexis 479 at \*45-48 (Order June 17, 1998). Thus, ComEd has been conservative in making these upward adjustments. ComEd included only portions of the distribution plant additions it made in the first and second quarters of 2001, and it included no such adjustments for the third and fourth quarters of 2001 or any period in 2002 even though ComEd continues and will continue to make such additions. Voltz Dir., ComEd Ex. 5.0, pp. 11:237-12:247, 12:260-13:265, 13:279-14:297; Helwig Reb., ComEd Ex. 19.0, pp. 3:45-55, 9:193-11:228; ComEd Exs. 19.1 - 19.2.

The only challenge to any of these adjustments appears to be the contention of Staff witness Garret Gorniak that the third adjustment should be reduced to \$115,554,000 (jurisdictional plant amount), on the theory that that is what ComEd had incurred as of June 30, 2001, for these projects.<sup>†</sup> Gorniak Reb., Staff Ex. 15.0, p. 3:53-56. This position should be rejected. As of September 30, 2001, ComEd had incurred \$123,680,161 (jurisdictional plant amount) for these projects, and it is reasonable to expect that ComEd will continue to incur additional costs; thus, its entire original adjustment is warranted. Voltz Sur., ComEd Ex. 46.0, p. 2:26-42.

However, ComEd in its surrebuttal testimony did identify a voluntary downward adjustment of \$1,014,000 (gross jurisdictional plant amount) that it is willing to make to its distribution plant in rate base based on how certain costs were booked in the second quarter of 2001. Voltz Sur., ComEd Ex. 46.0, pp. 2:43-3:52. That downward adjustment should be made.

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<sup>†</sup> At one point another intervenor witness erroneously suggested that one of the second quarter 2001 projects was not placed in service in that quarter. That mistake was based on the witness' failure to read a corrected data request response. Thus, there is no open issue on that point.

**4. Other Adjustments to Rate Base (Non-Plant)**

**a. Budget Payment Plan Balances**

Staff witness Burma Jones has proposed a downward adjustment to ComEd's jurisdictional rate base relating to budget payment plan balances, but that adjustment is unwarranted. *E.g.*, Hill Reb., ComEd Ex. 23.0 CR, p. 14:301-312; Hill. Sur., ComEd Ex. 45.0, pp. 20:424-21:446.

**b. Accumulated Deferred Income Taxes**

GCI witness David Effron proposed a number of downward adjustments to ComEd's jurisdictional rate base relating to Accumulated Deferred Income Taxes ("ADIT"). Effron Dir., GC Ex. 2.0, pp. 41:21-44:28. While most of Mr. Effron's proposals are unwarranted, Mr. Effron did correctly identify five particular ADIT items that, through inadvertence, ComEd included in its jurisdictional rate base, and ComEd in its rebuttal testimony has agreed that those particular five items should be removed. Hill Reb., ComEd Ex. 23.0 CR, pp. 33:729-34:742.

**5. Plant Adjustments**

**a. Plant Expenditures for Q2 2001**

This subject has been addressed in Section II.C.3, above.

**b. Proposed Retired Plant**

Staff witness Garret Gorniak discussed the subject of retired plant in connection with distribution plant recorded in ComEd's 2000 FERC Form 1 and proposed an adjustment that pertains to plant and well as to related expense. Gorniak Dir., Staff Ex. 1.0, pp. 3:60-4:76 and Sch. 1.1. ComEd agrees with Mr. Gorniak on this subject, that the net result of the adjustment to jurisdictional net plant in service is zero. Hill Reb., ComEd Ex. 23.0 CR, pp. 2:40-3:55; Sant Reb., Staff Ex. 17.0 CR, p. 2:35; Staff Ex. 17.4, columns B-E.

GCI witness Edward Bodmer offered speculation on the same subject without proposing any adjustment. Bodmer Dir., GC Ex. 1.0, p. 39:747-752; Bodmer Reb., GC Ex. 4.0, p. 20:404-19. Mr. Bodmer's speculation is unsupported, reflects an incomplete understanding of utility plant accounting, does not accurately characterize ComEd's testimony on this subject, and is incorrect. Hill Reb., ComEd Ex. 23.0 CR, pp. 3:46-4:50, 3:62-4:79; Hill Sur., ComEd Ex. 45.0, pp. 3:62-4:72. Thus, had Mr. Bodmer proposed an adjustment, it would have been without merit.

**c. Retirements Related to 2001 Replacement Plant**

Staff witness Garret Gorniak also discussed the subject of retired plant in connection with ComEd's *pro forma* adjustments for distribution plant placed in service 2001 and proposed an adjustment that pertains to plant as well as to related expense. Gorniak Dir., Staff Ex. 1.0, pp. 4:78-5:94 and Sch. 1.2. ComEd agrees with Mr. Gorniak on this subject, as well, that the result of this adjustment to jurisdictional net plant in service is zero. Hill Reb., ComEd Ex. 23.0 CR, p. 2:40-3:55.

**d. Accumulated Depreciation Adjustment Related to Overtime and Alleged Premiums Paid**

Mr. Larson proposes that ComEd's jurisdictional rate base be reduced for depreciation expenses related to time-based incentives. Larson Dir., Staff Ex. 9.0, pp. 10:321-11:330. No adjustment is warranted, as is explained in the Executive Summary portion of this brief and discussed more fully in Section II.C.6.b, below.

**e. Accumulated Deferred Taxes  
Adjustment Related to Overtime  
and Alleged Premiums Paid**

There is no issue regarding deferral of taxes for overtime and alleged premiums paid, as discussed more fully in Section II.C.6, below.

**6. Prudence of Distribution  
Capital Investment Costs**

The overwhelming evidence supports ComEd's additions to Distribution Plant included in jurisdictional rate base. David DeCampli identified the additions to ComEd's Distribution Plant made since 1997 (expenditures not included in the Commission's review in Docket No. 99-0117), including five major projects that, standing alone, constitute approximately 12% of Distribution Plant additions, and explained that all the additions were reasonably necessary in order for ComEd to offer and provide delivery services at an acceptable level of reliability, and that the associated costs were prudent and reasonable. DeCampli Dir., ComEd Ex. 6.0, pp. 4:71-15:324; ComEd Ex. 6.1. That these expenditures were all prudent, and the facilities used and useful in serving retail customers in ComEd's service territory, was further supported in additional testimony presented by ComEd. Voltz Dir., ComEd Ex. 5.0, pp. 7:136-16:330; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 5:132-6:172; Voltz Reb., ComEd Ex. 24.0 CR, p. 2:22-41; Voltz Sur., ComEd Ex. 46.0, p. 2:26-42; Helwig Reb., ComEd Ex. 19.0, pp. 4:67-5:100; DeCampli Sur., ComEd Ex. 48.0, pp. 4:93-10:211.

No party contended that ComEd should not have made these additions to Distribution Plant. No party, for example, claimed that ComEd should not have added poles, overhead conductors, underground cables, and distribution transformers. Nor did any party state that ComEd should not have built new substations or made the upgrades, replacements, or additions to the existing substations that it did. Bodmer, Tr. 1846:18-1850:9; Schlissel,

Tr. 2196:3-2197:10. Staff witness Bruce Larson noted that he knew of no project undertaken by ComEd to enhance capacity that it did not need, and considered the construction of all such projects to be prudent. Larson, Tr. 2230:6-18. Mr. Larson further acknowledged that ComEd's capital projects that increased distribution capacity are used and useful, and, in fact, have resulted in increased reliability for retail customers in ComEd's service territory. Larson, Tr. 2230:19-2231:14.

ComEd has amply made its case for the prudence of its Distribution Plant additions (and its other costs of providing jurisdictional delivery services, as discussed below), and for the reasonableness of its costs, without relying on any legal presumption. Of course, "[o]nce a utility makes a showing of the costs necessary to provide service under its proposed rates, it has established a *prima facie* case, and the burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith." *City of Chicago v. People of Cook County*, 133 Ill. App. 3d 435, 442-43, 478 N.E.2d 1369, 1375 (1st Dist. 1985). The utility does not have the burden of disproving in advance all other issues conceivably relevant to the reasonableness of its rates. *Id.* at 442, 478 N.E.2d at 1375.<sup>†</sup>

Certain parties have suggested that ComEd's under-funding of capital projects in its distribution system in the past may have caused ComEd to expend more money in its distribution

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<sup>†</sup> Moreover, although ComEd has proved its case without relying on the presumption, utilities are entitled to a rebuttable presumption that the costs of constructing and installing plant needed to provide service are reasonable, a presumption that has been eliminated only as to those generation plant construction costs subject to mandatory audit under Section 9-213 of the Act, 220 ILCS 5/9-213. *See, City of Chicago*, 133 Ill. App. 3d at 442-43, 478 N.E.2d 1375; *The Peoples Gas Light and Coke Co.*, No. 91-0586, 1992 Ill. PUC Lexis 376 at \*\*152-154 (Order Oct. 6, 1992) (holding that the burden of proof and burden of going forward with the evidence were correctly stated in *City of Chicago* and also reaffirming the presumption of reasonableness of utility costs with the exception of costs subject to mandatory audit under Section 9-213); *In re North Shore Gas Co.*, No. 91-0010, 1991 Ill. PUC Lexis 636 at \*\*125-127 (Order Nov. 8, 1991) (same). *See also In People ex rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill. 2d 120, 133, 510 N.E.2d 865, 870 (1987) (presumption of reasonableness of costs eliminated as to generation plant construction costs subject to mandatory audit under Section 9-213).

system in recent years than would otherwise have been the case. *See, e.g.*, Larson Dir., Staff Ex. 9.0, pp. 7:246-8:257; Effron Dir., GC Ex. 2.0, pp. 36:11-38:2. They contend that deferrals of distribution projects and related expenditures created a need to perform work on ComEd's distribution system on an accelerated basis, thereby artificially inflating the costs associated with such projects. These claims are based upon speculation and flawed analysis, and are directly contradicted by the overwhelming evidence in the record. *See, e.g.*, Voltz Reb., ComEd Ex. 24.0 CR, pp. 2:21-10:202; Voltz Sur., ComEd Ex. 46.0, pp. 4:82-7:143; Williams Reb., ComEd Ex. 25.0 CR, pp. 2:22-9:189; DeCampli Dir., ComEd Ex. 6.0, pp. 6:108-15:324; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 8:214-11:267.

**a. Effect of Alleged Imprudence on Rates**

ComEd's net rate base is determined on a cumulative, rather than a test year, basis. *E.g.*, Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 4:74-5:110; Helwig Reb., ComEd Ex. 19.0, pp. 5:109-6:116; Bodmer, Tr. 1834:14-18. Certain parties have made sweeping statements that deferrals of distribution capital projects must have increased ComEd's costs for such projects. *See, e.g.*, Effron Dir., GC Ex. 2.0, pp. 36:11-38:2. However, as noted by Staff witness Larson, when a utility should have begun to build and how quickly that utility should have built a particular project are difficult questions to answer. Larson Tr. 2239:19.

Moreover, deferrals of capital expenditures do not adversely affect customers and, in fact, generally financially benefit customers. Juracek Reb., ComEd Ex. 20.0, p. 11:291-99. Had ComEd built certain of its Distribution Plant additions earlier and had these projects been included in ComEd's rate base in an earlier ratemaking proceeding, customers would have been paying ComEd a return of and on the investment during the entire deferral period *Id.*; Helwig Reb., ComEd Ex. 19.0, pp. 6:117-7:141. Other parties ignore that simple truth. They admit they performed no analysis of the benefit of such a deferral as compared to the alleged additional cost

of capital projects due to inflation. Effron, Tr. 2101:17-2103:17. Other parties also fail to recognize that, if certain distribution capital projects (projects lasting more than a few weeks and exceeding \$25,000) had been completed over a longer period of time than it actually took to build those projects, ComEd would have been entitled to earn a greater return as a result of AFUDC (allowance for funds used during construction). Effron, Tr. 2104:13-2105:1 Bodmer, Tr. 1874:21-1875:14. Again, no intervenor has calculated that additional cost to compare it to the alleged additional cost of capital projects due to inflation or otherwise.

The question to be answered in this Docket is whether ComEd's expenditures provided ComEd the capability to operate and maintain a reliable distribution system. Strobel, Tr. 673:17-674:5. As described above, ComEd has satisfied its burden by demonstrating that the costs included in ComEd's Distribution Plant included in its jurisdictional rate base were prudently incurred. In order to reduce ComEd's rate base, other parties must do more than offer conjecture and unsupported claims that ComEd allegedly mismanaged or neglected its distribution system in the past. Rather, they must provide evidence demonstrating that such alleged past mistakes have led to a quantifiable incremental cost included in ComEd's proposed revenue requirement which would not have been incurred "but for" ComEd's alleged past management. No party has done so. Indeed, no party has even begun to suggest a principled test to separate the cost of work done to remedy alleged past mistakes from work ComEd's witnesses have testified was necessary to meet sharp increases in demand that were not reasonably foreseeable. DeCampli Dir., ComEd Ex. 6.0, pp. 13:268-14:283, 15:320-324; ComEd Ex. 6.1. Consequently, such expenditures are properly included in ComEd's jurisdictional rate base, regardless of whether particular projects could have been completed at some speculative earlier point in time.

**b. Prudence of Specific Distribution Capital Investments in Rate Base**

ComEd has designed a detailed procurement process to protect against overpayment for capital projects. Through the use of volume-based purchasing and competitive bidding, ComEd ensures that contracts are awarded to the contractor that is best able to perform the quality of the work required on a particular project, within the necessary time frame, at the lowest total cost. DeCampli Dir., ComEd Ex. 6.0, pp. 10:211-11:219. In addition, ComEd's business processes ensure that invoices and disbursements are consistent with contract pricing, and that project budgets and construction schedules are maintained. *Id.* at 11:219-31. The record overwhelmingly demonstrates that ComEd did not increase its revenue requirement due to any purported past mistakes of ComEd. Juracek Dir., ComEd Ex. 1.0, pp. 18:472-19:484; DeCampli Sup. Reb., ComEd Ex. 40.0, pp. 1:7-3:47; Voltz Reb., ComEd Ex. 24.0 CR, p. 2:22-41; Helwig Reb., ComEd Ex. 19.0, pp. 7:142-54, DeCampli, Tr. 1348:1-3.

General Claims of Increased Costs Resulting From Mismanagement Are Flawed

Aside from Staff witness Larson, intervenor witnesses make unsupported generalizations that ComEd's capital distribution expenditures are excessive and are the product of mismanagement during the 1990s. These spurious claims ignore the extensive evidence presented by ComEd that additions to distribution plant were made necessary, in part, as the result of rapid and unanticipated load growth. DeCampli Dir., ComEd Ex. 6.0, pp. 13:268-14:283, 15:320-324; ComEd Ex. 6.1. In the course of this Docket, ComEd made available approximately 30,000 pages of project documents, scheduling documents, invoices, and contract documents. Schlissel, Tr. 2202:11-16. Intervenors made no attempt to conduct even a cursory review of this detailed record of ComEd's distribution capital projects. Bodmer, Tr. 1844:15-1845:1. Other than Mr. Larson, no party identified any specific plant or substation

that may have experienced enhanced, inflated, or escalated costs, or specified any amount of such costs. Effron, Tr. 2106:2-15; Schlissel, Tr. 2209:6-12. As to Mr. Larson's comments, ComEd provided evidence showing that the specific expenses on which he commented were, in fact, reasonable and prudent, as discussed in detail below.

A number of parties also asserted, without any evidence, that the completion of certain substation projects – sometimes referred to as the “six pack” -- occurred on “accelerated” project schedules, resulting in increased costs. Larson Reb., Staff Ex. 23.0, pp. 6:133-7:157. These claims are without merit. Six pack project schedules did not deviate from ComEd historical project schedules, Williams Sur., ComEd Ex. 47.0, p. 3:46-61, and no premiums were paid for “accelerated” schedules, Williams, Tr. 839; Williams Reb., ComEd Ex. 25.0 CR, pp.4:71-5:99; Williams Sur., ComEd Ex. 47.0, pp. 1:15-3:61. ComEd “raised the bar” with the Diversey substation project by accelerating the permitting process through cooperation from the City of Chicago, and by executing engineering and construction work concurrently, making project completion a reality in a mere six months. Williams Sur., ComEd Ex. 47.0, pp. 1:15-3:45; Williams, Tr. 834:1-18; DeCampli, Tr. 1443:5-1444:8. This new streamlined process reflects proper utility planning and construction, and is now used whenever possible. Williams Tr. 848:15-22. While completion of significant projects within historical project schedules were the result, inflated costs were not.

#### ComEd Did Not Pay “Premiums” to Contractors

Staff witness Bruce Larson asserts that, in the context of certain distribution capital projects from 1999 to Summer 2001, “premiums” were paid to contractors by ComEd for expedited work or early completion of projects. Larson Dir., Staff Ex. 9.0, pp. 2:28-31, 11:340-46. Based upon that assumption, Mr. Larson challenged \$16,293,000 of time-related

incentives that ComEd paid to contractors in connection with certain distribution projects, as well as \$449,000 ComEd paid in connection with the acquisition of two transformers, as to which transformers ComEd awarded the bid to the second-lowest bidder based in part on an earlier promised delivery date. Larson Dir., Staff Ex. 9.0, pp. 2:28-31, 10:321-12:349; Larson Reb., Staff Ex. 23.0, p. 11:226-32.

The evidence indicates that, though ComEd included time-based incentives for completion of certain distribution capital projects, ComEd did not pay a “premium” – *i.e.*, a price significantly above market value -- for any of those projects. Williams Reb., ComEd Ex. 25.0 CR, pp. 3:52-56, 4:71-5:99; DeCampli Reb., ComEd Ex. 26.0 CR, p. 7:173-88; DeCampli Sur., ComEd Ex. 48.0, p. 4:74-83; DeCampli, Tr. 1428:17-1429:11; Voltz, Tr. 2004:16-18. There are a number of flaws in Mr. Larson’s conclusion that time-based incentives amounted to a “premium” for accelerating a project completion date. First, distribution capital projects involving contracts that included time-based incentives were completed in a time frame consistent with ComEd historical project schedules and standard industry project schedules. Williams Reb., ComEd Ex. 25.0 CR, p. 3:52-56. Second, time-based incentives are a common practice in the construction industry, and are in the best interests of customers and the utility in that they ensure that contractors timely perform work necessary for the reliable and efficient operation of ComEd’s distribution system, while transferring certain risks of untimely completion away from ComEd. Williams Reb., ComEd Ex. 25.0 CR, pp. 3:57-4:70; DeCampli Reb., ComEd Ex. 26.0 CR, p. 7:173-88; Williams, Tr. 860:16-861:10; Williams Sur., ComEd Ex. 47.0, p. 4:71-84. As described in detail in the rebuttal testimony of James Williams, ComEd utilized time-based incentives in only the most critical, complex, and risky projects. Williams Reb., ComEd Ex. 25.0 CR, pp. 4:71-5:99. Ultimately, the aggregate costs for such contracts,

including time-based incentive payments, were reasonable for the work performed, even contemplating a longer project schedule. Williams Reb., ComEd Ex. 25.0 CR, pp. 4:71-5:99.

The conclusion that ComEd did not pay a premium above-market price for these critical projects is further borne out by the careful review conducted of such projects, in which the individual components of major capital distribution projects were disaggregated and separately evaluated. DeCampli, Tr. 1439:22-1440:11. For example, analysts disaggregated the transformer and other major components to ascertain whether the prices for such components were reasonable and in line with what the work should cost, based upon industry norms. ComEd's analysis revealed that the price ComEd paid, including the time-based incentives, overtime, and all contract terms, was consistent with known prevailing costs. DeCampli, Tr. 1439:22-1440:11; Williams, Tr. 859:17-861:10; Voltz Reb., ComEd Ex. 24.0 CR, pp. 7:129-9:175. As Mr. Larson admits, he arrived at his adjustment for alleged "premiums" on account of accelerated work by simply adding up the dollar value of time-based incentives in certain distribution capital projects. Mr. Larson did not break up the component pieces of the contracts at issue, as ComEd did, to determine whether ComEd had, in fact, paid contractors in excess of what the fair market price for such contracts would otherwise have been. Larson Tr. 2242:13-2243:6.

Mr. Larson proposes an additional adjustment of \$449,000 relating to ComEd's purchase of two 138 kV transformers from the second-lowest bidder. Larson Dir., Staff Ex. 9.0, p. 11:333-38; Larson Reb., Staff Ex. 23.0, p. 11: 226-232. ComEd did not incur any significant incremental costs in connection with expedited delivery of the two transformers between 1998 and 2000. Voltz Reb., ComEd Ex. 24.0 CR, pp. 8:147-9:175; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 7:189-8:196; Voltz Sur., ComEd Ex. 46.0, pp. 4:81-6:113; DeCampli, Tr. 1429:1-11. In

fact, a review of all transformers purchased annually during 1998 to 2000 revealed that the difference in price between the most expensive and the least expensive transformer of each transformer type ranged from only 2% to 5%. Voltz Reb., ComEd Ex. 24.0 CR, pp. 8:159-61. Further, as conceded by Mr. Larson, stockpiling materials and equipment, such as transformers, could itself result in higher costs. Larson, Tr. 2254:8-12.

#### ComEd's Capitalized Overtime Was Reasonable

Mr. Larson also asserted that ComEd paid premiums on certain capital distribution projects in the form of overtime pay to ComEd employees. He proposed that ComEd's gross jurisdictional rate base be reduced on account of capitalized overtime by \$4,091,000 for 1999, \$4,900,000 for 2000, and \$231,000 for 2001. Larson Dir., Staff Ex. 9.0, pp. 2:28-31, 10:309-19; Staff Ex. 9.1; Larson Reb., Staff Ex. 23.0, p. 8:159-68; Staff Ex. 23.2; Larson, Tr. 2247:10-2248:21; *see also* Gorniak Reb., Staff Ex. 15.0 CR, p. 5:96-107; Sant Reb., Staff Ex. 17.0 CR, p. 2:35, Staff Ex. 17.4, p. 2 (totaling gross adjustment to \$9,222,000). As Mr. Larson admits, there are a number of reasons why a utility may be required to incur capitalized overtime expenditures that are wholly unrelated to whether ComEd timely performed a particular project. Larson, Tr. 2249:14-22. Yet, Mr. Larson did not analyze whether any portion of the incremental capitalized overtime ComEd paid employees during the 1999-2001 period was a result of any alleged failure of the past. Nor did he even attempt to trace capitalized overtime to specific projects. Larson, Tr. 2248:22-2249:5. Mr. Larson simply calculated the total amount of capitalized overtime labor ComEd paid and compared the total for each year to the total capitalized overtime ComEd paid in 1998. Larson, Tr. 2250: 15-20. By his own admission, Mr. Larson's use of 1998 overtime costs was a poor benchmark, given the fact that ComEd's 1998

costs fell below the spending level necessary to maintain a high reliability system. Larson, Tr. 2236:10-15; Williams Reb., ComEd Ex. 25.0 CR, p. 7:135-49.

Contrary to Mr. Larson's approach, use of overtime is normal construction industry practice and may, in fact, drive down costs in at least two separate ways. First, because ComEd pays for equipment 24 hours a day, whether the equipment is used or not, manning a project with additional shifts or extended hours leads to reduced equipment costs. Williams, Tr. 858:5-18. Second, ComEd cuts down on indirect project costs of management and overhead when paying for a project completed over the course of one year rather than two years. *Id.* In addition, if work on particular capital distribution projects involving capitalized overtime expenses had been performed prior to 1999, ComEd would have required more overtime at that time or, in the alternative, would have been required to hire additional personnel. Voltz Reb., ComEd Ex. 24.0 CR, pp. 3:43-4:70, 5:86-6:113; Williams Reb., ComEd Ex. 25.0 CR, p. 5:100-08; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 9:230-10:241. As Mr. Larson acknowledged, if ComEd had hired additional workers, ComEd's fixed costs would have been roughly equivalent to its savings in not paying overtime costs. Larson, Tr. 2251:21-2252:7; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 9:238-10:241; Voltz Reb., ComEd Ex. 24.0 CR, p. 6:110-11. Therefore, ComEd (and its customers) would not have experienced any savings attributable to capitalized overtime had ComEd performed any of the distribution capital projects earlier. Moreover, ComEd's 1999-2000 overtime expenditures, as a percentage of base payroll, closely correspond to its percentage of overtime expenditures in the preceding three years. Voltz Reb., ComEd Ex. 24.0 CR, p. 3:55-58.

### ComEd Properly Utilized “Out of Town” Labor

Certain intervenors also challenged ComEd’s use of “out of town” labor on distribution capital projects, speculating that out of town labor was used because of “hurried expenditures,” resulting in unquantified alleged increased costs for capital projects. Bodmer Dir., GC Ex. 1.0, p. 38:728-32. Such claims are pure conjecture, unsupported by any evidence in the record. As previously explained, ComEd’s procurement process ensures that it does not overpay for contracts but, rather, receives high quality workmanship within the desired time frame at the lowest possible cost. DeCampli Dir., ComEd Ex. 6.0, pp. 10:205-11:219; Williams Reb., ComEd Ex. 25.0 CR, pp. 8:162-9:189; Williams, Tr. 858:19-859:3. Asea Brown Boveri (“ABB”), ComEd’s contractor on several major distribution projects, has significant expertise in the design, manufacturing, and construction of electric distribution systems, making it one of the few companies in the world capable of constructing ComEd’s major distribution system projects. DeCampli Reb., ComEd Ex. 26.0 CR, p. 8:197-213. Moreover, as Mr. Williams explained, ABB was not in a position to charge ComEd inflated prices for the six pack projects. It had every interest to negotiate a fair market price to ensure a continuing role as ComEd’s “partner” in future substantial distribution plant capital projects. Williams, Tr. 866:8-18. Finally, the physical location of skilled labor forces necessary to perform work on the capital projects at issue is irrelevant, given the limited number of contractors possessing the essential skills. Such work force has long traveled the country to perform work where it was available. Imprudent inflated costs do not result from the use of such “travelers.” Williams, Tr. 858:19-859:8.

### ComEd Should Recover Its Costs

Finally, Mr. Larson improperly analogizes ComEd’s Distribution Plant capital expenditures to a previous case in which the Commission disallowed recovery of certain costs

another utility incurred to replace the utility's gas mains. Larson Dir., Staff Ex. 9.0, pp. 8:265-9:290. However, unlike ComEd, the gas utility had engaged in fraudulent activity by underreporting the number and severity of gas leaks, creating serious public health and safety risks. DeCampli Reb., ComEd Ex. 26.0 CR, pp. 10:242-11:267; Larson, Tr. 2239:20-2240:2. Even so, the gas utility recovered all but its incremental costs due to imprudence. Larson, Tr. 2250:6-8. Moreover, no evidence has been presented here as to the amount of any inflated incremental construction costs. To the contrary, the evidence demonstrates that there was no inflated increment to the cost of its critical projects. Instead, based upon careful analysis, ComEd's witnesses concluded that the price for its work was fair and consistent with the market. DeCampli Reb., ComEd Ex. 26.0 CR, p. 7:173-88; DeCampli Sur., ComEd Ex. 48.0, p. 4:74-83; DeCampli, Tr. 1428:17-1429:11; Williams Reb., ComEd Ex. 25.0 CR, pp. 3:52-56, 4:71-5:99.

**c. Request for Audit of New Distribution  
Capital Investment Costs**

As has been shown above, the evidence presented in this case is complete and detailed. All parties had an opportunity to develop and present evidence. *E.g.*, Juracek Sur., ComEd Ex. 41.0, pp. 8:213-9:245. That evidence more than adequately supports ComEd's proposed rates in general, and the reasonableness and prudence of its new distribution capital investments in particular. Ms. Juracek explained several reasons why the argument for an audit as part of this proceeding is properly rejected:

First, the Commission must establish a delivery services rate base and a revenue requirement in this case so delivery services can be made available to residential customers beginning on May 1, 2002. There is no basis to set such rates otherwise.

Second, the Commission must make a decision on ComEd's request for revisions to its other rates, terms, and conditions. The Commission cannot properly defer ComEd's request for a change in rates much beyond that provided by the schedule in this Docket.

Third, the Commission must act on evidence, not supposition, *ad hominem* attacks, and manufactured claims of “missing data.” ComEd in this case has produced the testimony of a battery of witnesses defending its revenue requirement and rate base. ComEd has, as I said, produced a vast volume of data concerning its books and records, its capital structure and costs, its assets, its revenues, its customers’ usage and costs, its employee compensation, its overheads, and made available 30,000 plus pages of data relating to the planning and project management of virtually every recent material project or system program. All that is in addition to the wealth of data already produced to the Staff and various intervenors in connection with the ongoing monitoring of ComEd’s reliability improvement program, the reports of which ComEd offered to produce again. Most parties chose not to review the majority of these data. Not a single intervenor witness, for example, reviewed the collection of planning and project files produced by ComEd. There is no evidence that an audit is required.

Juracek Sur., ComEd Ex. 41.0, pp. 8:206-9:255. Additional reasons were discussed by other witnesses. Voltz Reb., ComEd Ex. 24.0 CR, p. 25:514-533; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 2:48-55, 13:317-329; DeCampli Sur., ComEd Ex. 48.0, p. 11:239-252; Williams Reb., ComEd Ex. 25.0 CR, pp. 9:190-10:197; Williams Sur., ComEd Ex. 47.0, pp. 5:103-6:127. Nor, as explained above, has there been any attempt to reverse the burden of proof. Rather, ComEd has proven that its revenue requirement is just and reasonable and that the included costs are reasonable and prudent, as illustrated in this Initial Brief. The request for an audit is best viewed instead as an attempt by the parties to “try again.” This request is improper and must be rejected.

#### **7. Other Rate Base Issues**

The costs contained within ComEd’s General and Intangible Plant support the distribution function and are necessary to meet ComEd’s obligation to offer and provide delivery services to eligible retail customers. DeCampli Dir., ComEd Ex. 6.0, pp. 16:325-17:357, 22:451-467. No party challenged the prudence or costs of ComEd’s expenditures relating to General and Intangible Plant. The correct functionalization of General and Intangible Plant was shown in Section II.C.2, above.

**D. Operating Revenues and Expenses**

**1. Recommended Operating Income Statement**

ComEd presented compelling and, in many respects, uncontradicted evidence in support of its proposed operating income statement. Through the testimony of Jerome Hill, ComEd explained how it arrived at its initially proposed jurisdictional operating expenses of \$1,267,842,000, plus income taxes attributable to the jurisdictional delivery services business. Hill Dir., ComEd Ex. 4.0 CR, p. 15:299-304, and Att. C, Schs. A-2, A-6, C-1. ComEd's revised proposed jurisdictional operating expenses, reflecting the adjustments made or agreed to by ComEd in its rebuttal and surrebuttal testimony, is \$1,240,297,000. Various witnesses testified on behalf of ComEd that such operating expenses are prudent and just and reasonable and must be included in ComEd's jurisdictional delivery services rates. The testimony of many of these witnesses is identified above in the Introduction and Executive Summary section of this Initial Brief and in subsequent analysis in this Argument section.

**2. Operating Revenues**

ComEd in its direct case presented an appropriate and accurate calculation of its jurisdictional miscellaneous revenues: \$54,799,000. Hill Dir., ComEd Ex. 4.0 CR, pp. 21:450-22:466, Att. C, at Schs. C-1, C-20. ComEd made no adjustments in determining that figure, *id.* pp. 22:464-466, and has not revised it. No party has challenged that figure.

**3. Operating Expenses**

As noted earlier, ComEd initially proposed jurisdictional operating expenses of \$1,267,842,000, Hill Dir., ComEd Ex. 4.0 CR, p. 15:299-304, Att. C, Schs. A-2, A-6, C-1, and based on the adjustments proposed or agreed to by ComEd in its rebuttal and surrebuttal testimony, has proposed revised jurisdictional operating expenses of \$1,240,297,000. ComEd's

revised proposed jurisdictional operating expenses have been correctly functionalized, were incurred in order to provide jurisdictional delivery services to retail customers, are prudent, and are just and reasonable.

**a. Functionalization of Generation, Transmission, and Distribution Expenses**

ComEd correctly functionalized its jurisdictional operating expenses, *i.e.*, its jurisdictional distribution, customer, Administrative and General, and system black start expenses, as well as the associated depreciation and amortization expenses and taxes other than income taxes. *E.g.*, Hill Dir., ComEd Ex. 4.0 CR, pp. 14:285-21:448, 25:531-29:607, Att. B, Att. C and Schs. A-2, A-5 - A-6.1, C-1 - C-22; Voltz Dir., ComEd Ex. 5.0, pp. 1:12-15, 16:332-17:365, 18:377-19:401; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 21:387-22:405; Sterling Dir., ComEd Ex. 16.0, pp. 4:74-11:232, 12:252-22:478, 29:618-626; Born Dir., ComEd Ex. 17.0, p. 1:7-9, 4:77-7:147; Hill Reb., ComEd Ex. 23.0 CR, pp. 4:82-9:183, 9:187-14:299, 17:363-20:434, 21:449-68, 28:610-29:35, 30:666-34:7490; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 12:260-13:291; Hill Sur., ComEd Ex. 45.0, pp. 5:88-7:146, 13:278-20:422, 22:466-24:513, 26:550-27:566, 29:618-33:712, 36:780-38:812; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54.

Various parties have challenged the functionalization of certain jurisdictional operating expenses, including, most prominently, ComEd's A&G expenses. As discussed in the Introduction and Executive Summary, those challenges are without merit. The functionalization of jurisdictional A&G expenses is addressed in the next subsection. The functionalization of other jurisdictional operating expenses is addressed to the extent appropriate in later subsections.

**b. A&G Expenses -- Direct Assignment and Allocation**

ComEd has submitted overwhelming and for all practical purposes uncontradicted evidence that it has correctly functionalized its A&G expenses, using direct assignment only where that could be done accurately and where the requisite data were available. Those A&G costs that could not be directly assigned used appropriate allocators tailored to allocate reasonably the particular remaining expenses to functions that caused the costs to be incurred. Hill Dir., ComEd Ex. 4.0 CR, pp. 1: 20-2:22, 17:345-18:369, Att. B; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 21:387-22:405; Hill. Reb., ComEd Ex. 23.0 CR, pp. 4:82-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sur., ComEd Ex. 45.0, pp. 5:88-7:146, 13:278-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 8:149, 8:153-55, 8:160-9:186 and Att. B; Heintz Dir., ComEd Ex. 14.0 CR, pp. 16:288-21:385; Hill Sur., ComEd Ex. 45.0, pp. 7:147-13:276, 19:400-20:422 (discussing functionalization of General and Intangible Plant costs).

Some parties have asserted, as they did in relation to General and Intangible Plant costs, that ComEd's functionalization of its A&G expenses should be rejected. *E.g.*, Chalfant Dir., IIEC Ex. 2.0 CR, pp. 2:7-10, 3:2-10:8; Lazare Reb., Staff Ex. 21.0, pp. 2:24-18:381. However, those parties do not challenge the accuracy of ComEd's analysis (which included a ten-page study supported by 82 pages of extremely detailed workpapers) in any respect; indeed, some, if not all of them, did not even review all of that analysis. Chalfant, Tr. 2554:7-16. Their arguments for rejecting ComEd's functionalization essentially rely on the erroneous premise that, because the Commission rejected ComEd's functionalization of general plant and A&G in favor of a general labor allocator in Docket No. 99-0117, the Commission should do so again in this

proceeding. However, as noted earlier, the Commission must base its order exclusively on the evidence in the record.

The evidence supporting ComEd's functionalization of General and Intangible Plant and A&G in this proceeding significantly exceeds that available in Docket No. 99-0117, is overwhelming, and, for all practical purposes, stands unrefuted. For any party to ignore that ComEd in fact has been restructured since Docket No. 99-0117, and to advocate use of a labor allocator that would, for example, allocate significant costs to fossil fuel generation when ComEd sold its fossil plants in 1999 is, to say the least, patently unreasonable. The specious nature of these parties' arguments also is illustrated, for example, by their emphasizing that A&G expenses such as the Chief Executive Officer's compensation are not amenable to direct assignment when, in fact, ComEd did not directly assign executive compensation and instead used a labor allocator, albeit one more refined and appropriate to allocation of these expenses than the crude -- "one size fits all" expenses -- general labor allocators advocated by such other parties. *E.g.* Hill Dir., ComEd Ex. 4.0, App. B; Hill Reb., ComEd Ex. 23.0 CR., p. 8:172-75; Hill Sur., ComEd Ex. 45.0, p. 15:312-18; Chalfant, Tr. 2556:22-2557:3. ComEd's functionalization of A&G expenses plainly is the most accurate and reasonable methodology.

**c. Proposed Known and Measurable  
Changes to Test Year Expenses**

**(i) Expense Adjustments Related To Rate  
Base Adjustments**

ComEd, in its direct case, made five adjustments (upward and downward) to its proposed jurisdictional net rate base and, in each instance, also made appropriate related changes to its test year expenses in order to arrive at a correct and just and reasonable calculation of the proposed jurisdictional revenue requirement. Hill Dir., ComEd Ex. 4.0 CR, pp. 22:469-25:529, 25:531-36, 26:541-45 and Att. C, Schs. B-2.1 - B-2.4, C-2 - C-2.4.

In addition to these five adjustments and as noted earlier, ComEd, in its rebuttal testimony, accepted Staff witness Garret Gorniak's proposed adjustments to rate base relating to retired and replacement plant. Hill Reb., ComEd Ex. 23.0 CR, pp. 2:40-3:60. ComEd also agreed with the corresponding depreciation expense adjustments. *Id.* p. 3:56-60. Assuming that Mr. Gorniak's proposed adjustments to rate base are adopted, it is essential to make the necessary related changes to expenses in order to arrive at a correct and just and reasonable calculation of the proposed jurisdictional revenue requirement. (Of course, the same is true of all adjustments to jurisdictional net rate base, *i.e.*, they should be reviewed to determine to what extent, if any, they affect jurisdictional operating expenses.)

As noted earlier, ComEd, in its rebuttal testimony, also accepted five particular ADIT adjustments to jurisdictional rate base proposed by GCI witness David Effron, but those adjustments have no effect on jurisdictional operating expenses. Hill Reb., ComEd Ex. 23.0 CR, pp. 33:738-34:742.

Finally, as stated earlier, ComEd, in its surrebuttal testimony, also made a voluntary downward adjustment to distribution plant in rate base. Voltz Sur., ComEd Ex. 46.0, pp. 2:43-3:52. That adjustment, assuming it is approved, will need to reflect the related jurisdictional depreciation expense adjustment in order to derive the correct and just and reasonable jurisdictional revenue requirement.

## **(ii) "Levelization" Adjustments**

Staff and some intervenors have claimed that some of ComEd's test year or adjusted test year jurisdictional operating expenses are abnormally high, and in several instances they have proposed various downward "levelizing" adjustments to certain of ComEd's jurisdictional operating expenses. None of those claims and adjustments is justified, as discussed further below.

Where warranted, ComEd has employed levelizing methodologies in three adjustments in this proceeding, but it is important to recognize that in each instance ComEd **voluntarily** was proposing an adjustment or calculation that **reduced** its proposed jurisdictional revenue requirement in comparison to what it would have been using unadjusted test year data (two adjustments used three-year averages, one simply eliminated a particular cost). A utility's voluntarily decreasing the revenue requirement that it is seeking in certain specified respects in no way constitutes an agreement to, or grounds for a relaxation of the proof requirements applicable to, disputed adjustments proposed by other parties. *See, e.g., Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 1:20-2:29, 244-9:196* (discussing the role of a test year in ratemaking, adjustments to test year data including "levelizing" and "normalizing" adjustments, and inconsistencies in the approaches of Staff and other intervenors to these subjects). In each of those three cases, ComEd did so after analyzing the events and the resulting costs, and making a determination that the test year events and costs warranted levelization in order to more accurately reflect the true test year delivery services costs. This is in marked contrast to a "Sherman through Georgia" approach of levelizing costs whenever the exercise mathematically results in an apparent disallowance. Other parties simply have neither overcome ComEd's proof that its test year expenses were proper, nor justified additional levelization.

**(1) Tree Management Expense**

ComEd proposed a downward adjustment to its operating expenses for tree management using a three year levelization methodology because of changes in its approach and practices relating to tree removal and trimming over the 1998-2000 period. A three year levelization methodology is appropriate for this proceeding and the longer levelization periods advocated by Staff and the GCI would be inappropriate. *Voltz Dir., ComEd Ex. 5.0, pp. 21:443-23:485; Voltz*

Reb., ComEd Ex. 24.0 CR, pp. 14:282-17:347; Voltz Sur., ComEd Ex. 46.0, pp. 16:350-18:399. Thus, ComEd's proposed downward adjustment should be approved.

Staff proposes a downward adjustment to tree management expense in the amount of \$7,028,000. Jones Dir., Staff Ex. 2.0 pp. 8-10, Schedule 2.6. The basis for the adjustment is the supposition that because ComEd in 1999-2000 switched to a four year tree trimming cycle, the jurisdictional expense must have been inflated. Staff witness Jones acknowledged that she had not independently determined that, in fact, there was an incremental increase in tree management expense as a result of the switch to the four year cycle. Tr. 1710-12. There is simply no evidence in the record to support the premise upon which Staff proposes its adjustment and it therefore should be rejected.

### **(2) Storm Restoration Costs**

ComEd proposed a downward adjustment to its operating expenses relating to variable storm damages using a three year levelization methodology because of changes in its approach and practices relating to emergency storm restoration over the 1998-2000 period. This use of a three year levelization methodology is appropriate for this proceeding and the longer levelization periods advocated by Staff and the GCI would be inappropriate. Voltz Dir., ComEd Ex. 5.0, pp. 19:402-21:442; Voltz Reb., ComEd Ex. 24.0 CR, pp. 17:349-20:415; Voltz Sur., ComEd Ex. 46.0, pp. 19:401-22:469. ComEd's proposed downward adjustment should be approved.

### **(3) Reserve for Levelized Variable Storm Damage Expenses**

ComEd proposed an accounting reserve treatment for its variable storm damage expenses based on a three year levelization methodology. The storm reserve proposal is in all parties' interests. The concerns raised by Staff through its witness Bryan Sant, the only party to present any opposition to the proposal, are unwarranted and are in part based on a misunderstanding of

the facts. Voltz Dir., ComEd Ex. 5.0, pp. 23:487-25:524; Voltz Reb., ComEd Ex. 24.0 CR, pp. 20:417-24:512; Voltz Sur., ComEd Ex. 46.0, pp. 22:471-26:571. The cross-examination of Mr. Sant demonstrated that shareholders and customers alike may benefit from the proposal (although not necessarily in perfectly equal measure) and that no one will be worse off as a result of the proposal. Sant, Tr. 1741:13-1744:18. Absent unlawfulness (or some other valid and sufficient non-economic objection), a “Pareto optimal” proposal -- one that benefits some or all and harms no one -- should be adopted from a standpoint of economic efficiency. *See* Chalfant, Tr. 2553:1-13. ComEd’s proposal should be adopted.<sup>†</sup>

#### **(4) Other**

As indicated above in the introduction to Subsection II.D.3.c.ii, Staff and some intervenors have claimed that ComEd’s test year and adjusted test year jurisdictional operating expenses are in part abnormally high, and they have proposed various downward levelizing adjustments to certain other of ComEd’s test year jurisdictional operating expenses besides tree management and variable storm damages expenses, but none of those claims and adjustments is warranted. In each instance, Staff and those other intervenors have failed to demonstrate any alleged abnormality or the need for any downward adjustment. That is, they have failed to refute ComEd’s overwhelming evidence that the relevant operating expenses are prudent and just and reasonable, and they have failed to present any evidence of any other valid and sufficient ground for a downward adjustment. Indeed, the evidence shows quite plainly that each of the claims that the various challenged expenses are abnormally high is wrong, and that the claims overlook various documented and uncontradicted facts such as appropriate accounting changes that moved

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<sup>†</sup> Perhaps it also should be noted that, while the heading of this subsection of this Argument section is “Reserve for Levelized Variable Storm Expenses,” the storm reserve proposal is an independent proposal and, regardless of whether or how ComEd’s variable storm damages expenses are adjusted in this proceeding, the storm reserve proposal’s merits are unaffected.

costs from one FERC Account to another (including some accounting changes directed by the Commission in Docket No. 99-0117), refunctionalization of expenses in accordance with the FERC “seven factor” test, inflation, and specific changes in policies and practices that improved the reliability of distribution service. In each case, Staff and those other intervenors also have failed to make the case for their various adjustment quantification methodologies, which are highly inconsistent among these parties and internally, which unjustifiably seek to incorporate periods before and including the 1997 adjusted test year reviewed in Docket No. 99-0117, and which, in the case of the intervenors, apparently are driven entirely by the results desired.

The evidence submitted by ComEd in support of the prudence and the justness and reasonableness of its jurisdictional operational expenses, and the evidence specifically refuting Staff’s and intervenors’ various levelization (or “normalization”) adjustments, is extensive, highly detailed, compelling, and in numerous respects uncontradicted. *E.g.*, Voltz Dir., ComEd Ex. 5.0, pp. 16:332-18:376 (supporting distribution operating expenses); DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480 (supporting distribution operating and A&G expenses); Voltz Reb., ComEd Ex. 24.0 CR, pp. 10:205-14:280 (refuting intervenors regarding distribution operating expenses); DeCampli Reb., ComEd Ex. 26.0 CR, pp. 5:142-6:154, 11:269-13:329 (same); Helwig Reb., ComEd Ex. 19.0, pp. 2:24-3:55, 3:61-5:100, 7:142-54, 8:171-11:245 (same); Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 1:18-2:31, 2:44-12:259 (refuting intervenors regarding distribution and other operating expenses); Voltz Sup. Reb., ComEd Ex. 39.0, pp. 1:15-9:184 (refuting intervenors regarding distribution operating expenses); DeCampli Sup. Reb., ComEd Ex. 40.0, pp. 1:8-2:45 (same); Voltz Sur., ComEd Ex. 46.0, pp. 3:54-4:80,

7:145-8:168, 9:184-16:348 (refuting intervenors regarding distribution and other operating expenses).<sup>†</sup>

In sum, ComEd's evidence is overwhelming. Moreover, having made its *prima facie* case, the burden shifted to objecting parties to refute that evidence, as discussed in Section II.C.6, above, but no party did so. Each of Staff's and other intervenors' levelization adjustments should be rejected.

**(iii) Salary and Wage Adjustment  
for General Pay Increases**

ComEd made an appropriate and correctly calculated *pro forma* adjustment for the general pay increase provided for in collective bargaining agreements ratified earlier this year. Hill Dir., ComEd Ex. 4.0 CR, pp. 25:538-26:545, 27:572-80, Att. C, Schs. C-2 and C-2.7. No party has submitted evidence in opposition. ComEd's adjustment should be approved.

**(iv) Adjustments for Post-Test Year "Merger  
Savings"**

ComEd removed from its test year jurisdictional revenue requirement all incremental merger-related costs, and has reflected all jurisdictional test year merger savings in its adjusted test year. Hill Dir., ComEd Ex.4.0 CR, Sch. C-2.5; Hill Sur., ComEd Ex. 45.0, p. 39:842-50. Nevertheless, Messrs. Sant and Effron propose additional adjustments based upon further purported merger savings. Mr. Sant proposes an adjustment of \$8,096,000, excluding related payroll taxes based upon public statements that ComEd would be eliminating certain positions as a result of the Unicom Corporation/PECO Energy merger. Sant Dir., Staff Ex. 3.0, p. 7:110-24, Sch. 3.7; Sant Reb., Staff Ex. 17.0 CR, pp. 27:521-32:623, Sch. 17.10. Mr. Effron proposes a \$27,487,000 adjustment, including payroll tax reduction and amortization of severance costs

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<sup>†</sup> Those citations do not include ComEd's evidence regarding tree management and variable storm damage expenses discussed above.

relating to anticipated Exelon Corporation layoffs to occur well outside the 2000 test year. Effron Dir., GC Ex. 2.0, p. 22:5-15. Both proposed adjustments should be rejected.

Mr. Sant's proposed \$8,096,000 adjustment is improper for several reasons. First, though ComEd announced the elimination of 154 employees. ComEd will not realize any actual savings from force reductions until well into 2002. Hill Reb., ComEd Ex. 23.0 CR, pp. 26:580-27:590. Any adjustment must accurately reflect the full financial impact of actions that benefit customers, which necessarily includes the costs that ComEd has incurred and will incur, such as severance compensation, payroll taxes, and other related costs. Hill Sur., ComEd Ex. 45.0, p. 40:854-64. However, Mr. Sant's proposed adjustment fails to consider or amortize these costs properly, effectively denying ComEd recovery of the costs that it incurred in the test year to achieve savings beyond the test year.

Mr. Sant cites to the Commission's decision in the Ameritech/SBC merger case as a basis for denying ComEd recovery of the severance costs included in ComEd's revenue requirement. Sant Reb., Staff Ex. 17.0 CR, p. 30:581-86. Mr. Sant's reliance is misplaced. In the Ameritech case, Docket No. 98-0555, the Commission conditioned its approval of the Ameritech/SBC merger with the understanding that certain costs, including severance costs, not be recovered from customers. *In re SBC Communications, Inc.*, 1999 Ill. PUC LEXIS 978 at 1-2, 12-13, Docket No. 98-0555 (Nov. 15, 1999, Amendatory Order on Rehearing). In contrast, the Commission lacked the authority to review, or impose conditions on, the Unicom/PECO merger. Consequently, no conditions limit ComEd's recovery of its severance costs. The remaining orders cited by Mr. Sant in which Illinois electric utilities did not recover merger-related costs, Sant Reb., Staff Ex. 17.0 CR, p. 22:420-36, are equally distinguishable, in that the petitioners in those cases affirmatively accepted Staff's proposed disallowance (Docket Nos. 00-0228, 00-

0340, and 93-0252); did not challenge Staff's proposed disallowance (Docket Nos. 98-0545/98-0546 (consol)); or attempted to include within the revenue requirement merger costs incurred several years prior to the test year (Docket No. 99-0121). In any event, ComEd eliminated all jurisdictional merger-related severance costs from the test year. Of course, there were some non-merger related severance costs in test year expenses; there is nothing unusual or inappropriate about this. ComEd, therefore, properly included in its jurisdictional revenue requirement recoverable severance costs it incurred during the 2000 test year, and objects to Staff's proposed disallowance of such costs.

Mr. Effron's proposed net adjustment of \$27,487,000 for salaries and wages related to future Exelon Corporation employee reductions, Effron Dir., GC Ex. 2.0, pp. 19:18-22:15, is without merit, for the reasons articulated above. Additionally, Mr. Effron's proposal does not meet the "known and measurable" standard required for *pro forma* adjustments, nor has Mr. Effron demonstrated that the proposed Exelon force reductions on which he relies will decrease ComEd's costs in providing jurisdictional delivery services. Hill Reb., ComEd Ex. 23.0 CR, p. 27:597-98. Further, the proposed employee reductions reported by Exelon will occur long after the test year, Hill Reb., ComEd Ex. 23.0 CR, p. 27:592-58, and is not evidence that ComEd's costs to provide delivery services will change at all in the short term. Significantly, even Staff witness Sant concluded that Mr. Effron's proposed adjustment is inappropriate, for the reasons articulated. Sant Reb., Staff Ex. 17.0 CR, pp. 31:616-32:623.

**d. Other Proposed Adjustments to Expenses**

In addition to the adjustments itemized below, ComEd proposed a downward adjustment to the revenue requirement for credit for obsolete materials. Hill Dir., ComEd Ex. 4.0 CR, p. 27:563-65 and App. C, Sch. C-2.9. No witness criticized ComEd's proposed adjustment. It should be approved.

**(i) Exclusion of Incremental Expenses  
Related to Unicom/PECO Merger**

ComEd, in its direct case, voluntarily removed all of its incremental jurisdictional operating expenses incurred in the test year related to the Unicom Corporation / PECO Energy merger, including the merger-related incentive compensation, resulting in an aggregate downward adjustment of \$34,515,000. Hill Dir., ComEd Ex. 4.0 CR, pp. 21:432-36, 25:536-37, 26:546-59 and App. C, Schs. C-2, C-2.5, C-2.6. No party submitted evidence in opposition to that adjustment. ComEd's adjustment should be approved.

**(ii) Exclusion of Audit-Related Costs**

ComEd, in its direct case, voluntarily removed all of its incremental jurisdictional operating expenses incurred in the test year related to the Liberty and Vantage audits, resulting in an aggregate downward adjustment of \$2,098,000. Hill Dir., ComEd Ex. 4.0 CR, p. 28:595-99, App. C, Schs. C-2, C-2.13; Voltz Dir., ComEd Ex. 5.0, pp. 16:346-17:353, 18:377-19:401. No party submitted evidence in opposition to that adjustment. ComEd's adjustment should be approved.

**(iii) Environmental Remediation Expenses**

ComEd voluntarily reduced its operating expenses for environmental remediation by \$16,850,000. Hill Dir., ComEd Ex. 4.0 CR, p. 28:586-94, App. C, Schs. C-2, C-2.10. The GCI proposes use of a levelization methodology to increase the adjustment. Effron Dir., GC Ex. 2.0, pp. 26:21-28:9. That proposal is without merit. Hill Reb., ComEd Ex. 23.0 CR, pp. 15:332-17:361; Sant Reb., Staff Ex. 17.0 CR, p. 44:868-82.

The ARES Coalition somewhat tardily suggested that environmental remediation expenses should be excluded to the extent they are not costs of providing delivery services. O'Connor-Spilky Reb., ARES Ex. 3.0 CR, p. 50:1188-94. However, these expenses are properly

included because they are corporate expenses that should not be bypassed by any retail customer. Hill Sur., ComEd Ex. 45.0, p. 22:466-72; *see also, e.g., Citizens Utility Bd. v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 124, 651 N.E.2d 1089 (1995) (holding that costs of doing business include necessary costs to comply with legally mandated environmental remediation). Thus, again, ComEd's adjustment should be approved.

**(iv) Advertising Costs**

ComEd included \$1,379,000 in the revenue requirement relating to Informational and Instructional Advertising Expenses. Hill Dir., ComEd Ex. 4.0 CR, App. C, Sch. C-6. Staff witness Carolyn Bowers proposed a reduction of the revenue requirement in the amount of \$1,199,000 related to this expense. Bowers Dir., Staff Ex. 4.0, p. 4:72-89; Bowers Reb., Staff Ex. 18.0 CR, pp. 4:69-6:117, 6:124-7:140, Sch. 18.2. Ms. Bowers' proposed adjustment should be rejected.

Section 9-225 of the Act, 220 ILCS 5/9-225, provides, in relevant part:

The following categories of advertising shall be considered allowable operating expenses for gas or electric utilities:

- (a) Advertising which informs consumers how they can conserve energy or can reduce peak demand for electric or gas energy;...
- (c) Advertising regarding service interruptions, safety measures or emergency conditions; ...
- (e) Advertising which promotes the use of energy efficient appliances, equipment or services ....

220 ILCS 5/9-225(3)(a), (c) and (e).

ComEd demonstrated that the advertising expenses included in its revenue requirement are proper. They relate to, among other things, promotion of an energy conservation program entitled "Energy Start" and publication of a monthly informational bill insert entitled "The Source" which included informational and educational material -- including topics such as

conservation/energy efficiency measures, safety information, bill payment options, and environmentally beneficial pricing experiments -- all of which fall squarely within the parameters of Section 9-225 of the Act, and are therefore recoverable. Hill Reb., ComEd Ex. 23.0 CR, pp. 9:187-13:278.

Following Mr. Hill's testimony, Ms. Bowers altered her theory of disallowance. She stated "it is my position ... that even if the advertisement falls under Section 9-225, a relationship to delivery services should be evident or supported by additional data to be allowable in a delivery services revenue requirement." Bowers Reb., Staff Ex. 18.0 CR, p. 6:124-27. Ms. Bowers then relied upon this "direct relationship test" to claim that the substance of much of ComEd's advertising fails to pass muster. Bowers Reb., Staff Ex. 18.0 CR, pp. 4:69-7:140.

Ms. Bowers correctly acknowledges that the "direct relationship" test is not set forth anywhere in the Act. Bowers, Tr. 1768:12-22. As to her application of the test, she acknowledged that she lacks the expertise to evaluate the relationship between the substance of one of ComEd's principal advertisements relating to energy conservation, the Energy Star program, and the provision of delivery services. Bowers Tr. 1765:8-1768:11. In sum, there is no legal or factual basis for Ms. Bowers' advertising disallowances and the Commission should disregard them.

Advertisements for which recovery is permissible under Section 9-225 of the Act benefit all customers, including delivery services customers. Hill Sur., ComEd Ex. 45.0, pp. 32:682-33:712. This conclusion is borne out by the Commission's decision in Docket 99-0117, ComEd's initial delivery services filing. The Commission's Order in that Docket stated, in relevant part, "[t]he Commission finds in accordance with the Act certain types of advertising as

enumerated in Section 9-225(3)(a) through (j) shall be considered allowable operating expenses for utilities.” *In re Commonwealth Edison Company*, Docket No. 99-0117, p. 38 (Order August 26, 1999). *See also* Hill Sur., ComEd Ex. 45.0, p. 32:687-689. ComEd has demonstrated that its advertising expenses meet the standard articulated in Section 9-225, possessing benefits to jurisdictional delivery services customers, and are properly recovered under the Act.

**(v) Bank Commitment Fees**

ComEd properly included as an operating expense the jurisdictional portion of ComEd’s bank commitment fees in the amount of \$902,000. Hill Dir., ComEd Ex. 4.0 CR, App. C, Sch. C-2.15. Bank commitment fees are associated with lines of credit and credit agreements and have been routinely approved by the Commission as a component of utility operating expenses in prior ComEd rate cases such as Docket No. 99-0117. Hill Reb., ComEd Ex. 23.0 CR, pp. 13:286-14:99.

Staff witness Bowers proposes to disallow 100% of \$902,000 of bank commitment fees, Bowers Dir., Staff Ex. 4.0, Sch. 4.3, on the grounds that ComEd could not specifically tie each bank commitment fee to a delivery services project. Bowers Dir., Staff Ex. 4.0, p. 5:95-105; Bowers Reb., Staff Ex. 18.0 CR, p. 7:151-8:170; Bowers, Tr. 1757:18-20. As Mr. Hill described,

[b]ank commitment fees are associated with credit arrangements which support the overall capital structure of ComEd. The cash resulting from the lines of credits and credit agreements is not earmarked for specific projects. Instead, the cash is used to supplement working capital and it becomes a portion of a larger pool that supports projects throughout the corporation. As part of this larger pool, cash from credit lines is necessarily commingled with funds from many other sources. Because direct assignment of these costs is therefore not possible, the most reasonable means of identifying jurisdictional usage from the test year is through allocations.

Hill Reb., ComEd Ex. 23.0 CR, pp. 13:287-94.

Using an appropriate allocator, ComEd determined that approximately 37% of its total bank commitment fees are jurisdictional. Hill Reb., ComEd Ex. 23.0 CR, pp. 13:287-14:299. Staff witness Bowers did not address use of this allocator in her testimony, nor did she state that such expenses were unnecessary to run the delivery service business. She simply disallowed all commitment fees because of the lack of a paper trail identifying each fee to a delivery service project.

Witness Bowers did point out that ComEd, in response to a data request, stated: “[b]enefits derived from financing requiring commitment fees include lower interest rates and financing flexibility at minimum costs.” Bowers Reb., Staff Ex. 18.0 CR, p. 8:163-64. In fact, on cross examination, Staff witness Bowers agreed that a funding mechanism that reduces the overall costs of providing delivery services benefits customers. Bowers, Tr. 1763:6-1764:1.

ComEd met its burden of establishing that bank commitment fees are a necessary operating expense, appropriately included in the revenue requirement. Staff does not claim imprudence. In fact, it acknowledges that expenses of this type benefit customers. The Commission should not preclude recovery of this expense solely due to the very real business practicality that such expenses are not identifiable to specific delivery service projects.

#### **(vi) Legal Expenses**

During the test year, inside and outside legal expenses incurred by ComEd company-wide was \$28.1 million. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.6, p.1. Of this amount, ComEd had sufficient data to assign directly legal expenses charged to one FERC account, Account 928. The \$5.4 million charged to this account were related to specific docketed regulatory matters that were easily identified to a discrete aspect of ComEd’s business. ComEd determined that \$2,510,276 of the expenses charged to Account 928 were jurisdictional. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.6, p. 1.

As to the remaining \$22.7 million, ComEd did not have complete detailed information concerning the nature of all other legal matters which would allow for direct assignment of such costs. Therefore, ComEd determined that such costs should be allocated among the business functions. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.6, p.1.

ComEd sought to utilize an allocator that would best approximate the test year legal expenses attributed to each aspect of its business. In 2001 ComEd's parent corporation, Exelon Corporation, restructured its businesses into three operating entities and a shared services company: Exelon Generation; Exelon Enterprises; Exelon Energy Delivery; and Exelon Business Services Company (which included the former ComEd corporate center). Hill Dir., ComEd Ex. 4.0 CR, Att. A, p. 1:3-19. In order to comply with regulatory requirements, each of Exelon Generation, Exelon Enterprises, and Exelon Energy Delivery was required to estimate the level and cost of legal services that each anticipated in 2001. As a result of this analysis, each entity entered into a Service Level Arrangement (the "SLA(s)") with Exelon Business Services Company. Each SLA identified the level of legal resources anticipated in 2001 for each entity. ComEd utilized the SLAs to calculate an appropriate allocator for the remaining \$22.7 in legal fees it incurred in the test year. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.6, p. 2.

Upon completion of its SLA analysis, ComEd determined that the unallocated test year legal expenses should be allocated to the following business functions in the following percentages: production 26.74%; transmission 5.72%; sales 2.23%; distribution 43.6%; and customer 21.71%. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.6, p.3, ComEd Cross Ex. 29, p.2 The percentage allocations appear in the 55 page A&G study, ComEd Cross Ex. 29, prepared by ComEd in columns J through N at each place within the study where specific legal expenses were allocated. *See, e.g.*, ComEd Cross Ex. 29, p. 2:96-123. Column H of that exhibit identifies

the total company expense and columns P through T identify the dollar amount of the expense attributable to each function. *Id.* Legal expenses are identified in the exhibit at the following pages and line numbers: ComEd Cross Ex. 29.0, pp. 2:96-123, 32:2424-28, 36:2750-53, 36:2807-09, 38:2945-47, 40:3095, 44:3419, 45:3450, 47:3664, 48:3704, 48:3741. The expenses relating to the distribution and customer functions are jurisdictional and the total amount of test year legal expenses allocated to these functions using the SLA allocator is \$14.8 million.

No party disputes the prudence of test year legal expenses. No party disputes the methodology employed by ComEd in determining the jurisdictional portion of this expense. Staff witness Bowers proposes an adjustment to legal expenses in the amount of \$3,653,000. Bowers Reb., Staff Ex. 18.0 CR, Sch. 18.3. The essence of Ms. Bowers' position appears to be that if the Company lacks sufficient data to assign directly all legal expenses, then it should only be allowed to recover a portion of such costs, without regard to the prudence of the expense. Bowers Reb., Staff Ex. 18.0 CR, p. 11:245-12:260.

ComEd provided Staff with the information described above in response to a data request (admitted as ComEd Ex. 45.6) over a month before Staff's rebuttal testimony was filed. Witness Bowers apparently chooses to evaluate only a portion of ComEd's legal expenses (outside legal expenses) which were the subject of seven data requests (relating only to amounts that appear on lines 116 through 120 and 122 through 123 of ComEd Cross Ex. 29). Of this amount, \$8,511,000, Ms. Bowers recommends that the Commission apply "the company proposed allocator" of 43.6% to obtain a resulting jurisdictional legal expense of \$3,710,000. Bowers Reb., Staff Ex. 18.0 CR, p. 12:258-60, Sch. 18.3 CR p.2.

This analysis is flawed on additional fronts. The amount that Ms. Bowers concludes is ComEd's proposed jurisdictional legal expenses (\$7,541,000), Bowers Reb., Staff Ex. 18.0 CR,

Sch. 18.3 CR is \$10 million less than the actual jurisdictional amount described above and identified in response to a data request. The “allocator” that Ms. Bowers utilizes is the allocator used by ComEd concerning only the distribution function of delivery services. Bowers, Tr. 1754: 7-1755:7. It does not incorporate the legal expenses associated with the customer aspect of delivery services (the 21.71% allocator described above).

In sum, Staff ignores legitimate legal expenses incurred by ComEd and appropriately allocated to the delivery services function because data do not exist to assign those costs directly. Staff ultimately allocates a portion of such expenses, but apparently determines that legal expenses associated with the customer function are wholly not recoverable, and understates ComEd’s proposed jurisdictional legal expense by more than \$10 million. Staff has suggested no legitimate factual or legal basis supporting an adjustment to jurisdictional legal expenses and ComEd respectfully submits that Staff’s proposal not be adopted by the Commission.

**(vii) Charitable Contributions & Memberships**

ComEd requests recovery of \$2,231,406 in charitable contributions and membership dues to various industry organizations. Hill Dir., ComEd Ex. 4.0 CR, Schs. C-3.4, 3.5; Hill Reb., ComEd Ex. 23.0 CR, p. 15:317-30; Hill Sur., ComEd Ex. 45.0, ComEd Exs. 45.2, and 45.3. Recovery of charitable and philanthropic donations is permitted by Section 9-227 of the Public Utilities Act, 220 ILCS 5/9-227, and the Commission has approved such expenses in prior rate proceedings.

Staff Witness Bowers proposes to reduce jurisdictional test year costs by \$110,000 for charitable contributions made by ComEd to organizations located outside ComEd’s service territory. Bowers Dir., Staff Ex. 4.0, pp. 3:63-4:68 and Sch. 4.1; Bowers Reb., Staff Ex. 18.0 CR, pp. 9:188-10:209. This proposed adjustment is not reasonable and should not be accepted

by the Commission for a number of reasons. The Commission should accept the proposed recovery of charitable contribution costs for several reasons.

First, ComEd provided Staff with specific information as to the benefits that delivery services customers reap from ComEd's charitable contributions outside the company's service territory, such as matching gift programs to institutional organizations and support for engineering schools in disciplines critical to company operations (*e.g.*, the University of Illinois at Urbana, the University of Wisconsin at Madison, and Purdue University). ComEd's charitable contributions to these institutions encourage sustainable curriculum in electric and mechanical engineering. These skills are important to ComEd and its customers. Hill Sur., ComEd Ex. 45.0, p. 27:577-84 and ComEd Ex. 45.3.

Staff Witness Bowers originally opposed ComEd's inclusion of a portion of Edison Electric Institute dues but later reversed her position agreeing with Mr. Hill that lobbying expenses had already been removed by ComEd. Bowers Reb., Staff Ex. 18.0 CR, p. 10:215-18, Sch. 18.2. Ms. Bowers continues to object to ComEd's recovery of dues paid to the National Association of Regulatory Utility Commissioners (NARUC). Bowers Reb., Staff Ex. 18.0 CR, p. 10:218-20. However, Ms. Bowers fails to acknowledge that the amount related to NARUC is for National Regulatory Research Institute ("NRRRI") dues. NRRRI is an affiliate of NARUC that conducts research beneficial to customers. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.2. Such expenses were recognized as appropriate in Docket No. 99-0117.

ComEd's proposed recovery of both charitable contributions and industry-related memberships is reasonable and should be approved.

#### **(viii) Special Projects**

ComEd included in the revenue requirement as a Miscellaneous General Expense, a portion of "Other Experimental and General Research Expenses." Of the total company expense

of \$8,745,000, the amount of \$4,459,000 is jurisdictional. Hill Dir., ComEd Ex. 4.0 CR, Sch. C-16, line 4. Staff refers to Other Experimental and General Research Expenses as “Research and Development” expenses. Bowers Dir., Staff Ex. 4.0, Sch. 4.6. These expenses were functionalized as part of the A&G study, ComEd Cross Ex. 29. There are seven “Activities” in ComEd’s accounting system that constitute this expense, including Activity 1322, entitled “Conduct special studies.” Hill Sur., ComEd Ex. 45.0, p. 28:595-604; ComEd A&G Study, ComEd Cross Ex. 29 at lines 3448, 3459, 3480, 3576, 3585, 3590, 3603, and 3642, *see also* Hill Sur., ComEd Ex. 45.0, Sch. 45.4.

Ms. Bowers proposes to disallow \$1,174,000 of jurisdictional expenses relating to the Conduct special studies activity. Bowers Dir., Staff Ex. 4.0, Sch. 4.5. Specifically, on line 3642 of ComEd Cross Ex. 29, ComEd identified a special studies total company cost of \$3,170,000, of which \$1,174,000 is jurisdictional. Ms. Bowers claims that 100% of the jurisdictional portion of this expense should be disallowed because “the descriptive term predominantly applied to these costs was ‘generator(s).’ In light of this, the Company failed to demonstrate a relationship to Delivery Services.” Bowers Dir., Staff Ex. 4.0, p. 6:126-28. The expense at issue (of which only 37% is allocated to delivery services) relates to a project through which “back-up generators and other distribution facilities have been installed at various CHA facilities to offer outage protection and reliability improvements, including improvements to the distribution system serving such facilities.” ComEd Data Request Response CLB 1.15, ComEd Cross Ex. 32. This expense clearly bears a direct relationship to delivery services and is otherwise properly included as a miscellaneous general expense allocated through the A&G study.

Additionally, if the Commission were to accept Staff’s proposed adjustment for Special Projects and Staff’s proposed adjustment for Research and Development described below, the

amount of \$1,174,000 will be deducted from the revenue requirement twice. Hill Reb., ComEd Ex. 23.0 CR, p. 20:429-34. As described above, “Special Projects” expenses are included in the revenue requirement as an activity within Research and Development. In other words, the jurisdictional amount ComEd proposes for Research and Development, \$4,459,000, includes \$1,174,000 attributable to Special Projects. Hill Sur., ComEd Ex. 45.0, ComEd Ex. 45.4, pp. 1, 5.

**(ix) Research and Development Costs**

ComEd incurred \$8,745,000 in “Other Experimental and General Research Expenses” during the test year, \$4,459,000 of which is jurisdictional. Hill Dir., ComEd Ex. 4.0 CR, Sch. C-16. Staff refers to this as Research and Development expense. Bowers Dir., Staff Ex. 4.0, Sch. 4.6. This expense is one of ComEd’s miscellaneous general expenses and ComEd allocated this cost to the various business functions by utilizing a cost driver appropriate for allocating expenses of this type. The allocation appears in ComEd’s A&G study. ComEd A&G study, ComEd Cross Ex. 29.

Staff witness Bowers proposed to disallow 79% of this expense (\$3,529,000) solely because she claims that ComEd does not have sufficient data to assign these costs directly. Bowers Dir., Staff Ex. 4.0, Sch. 4.1. In fact, witness Bowers admittedly disregarded the expenses identified in ComEd’s A&G study, ComEd A&G study, ComEd Cross Ex. 29. Ms. Bowers also acknowledged that she only evaluated \$1.9 million in research and development expenses. Bowers Tr. 1774:5-10; ComEd Cross Ex. 31. The \$1.9 million represents ComEd company-wide research and development expenses that are tied to a specific project number. ComEd Cross Ex. 31. If an expense was not related to a specific project number, Staff disregarded it. In other words, if Staff witness Bowers is unable to assign the expense directly, it is disallowed. Staff does not dispute the research and development expenses on prudence

grounds, Staff's argument is based solely upon the lack of a sufficient "paper trail" for direct assignment. ComEd respectfully submits that Staff's disallowance on these grounds is neither reasonable nor legally supportable.

**(x) Interest On Customer Deposits**

ComEd proposes to deduct \$919,000 of interest on customer deposits from its jurisdictional expenses. Hill Reb., ComEd Ex. 23.0 CR, p. 20:444-47. The balance of interest on customer deposits assigned to jurisdictional expenses is just and reasonable and is based upon the estimated jurisdictional delivery services revenues as a percent of total year 2000 revenues. ComEd's proposal, as modified by Staff's adjustment discussed below, is reasonable and should be accepted by the Commission. Hill Dir., ComEd Ex. 4.0 CR, p. 12:236-42.

Staff Witness Jones proposed two adjustments to ComEd's test year operating expenses related to customer deposits, one of which ComEd agrees with and the other of which ComEd opposes. Hill Reb., ComEd Ex. 23.0 CR, p. 20:439-47. ComEd agrees with Staff's adjustment that corrects an inadvertent error in the calculation of jurisdictional interest on customer deposits. Hill Reb., ComEd Ex. 23.0 CR, p. 20:444-47; Jones Dir., Staff Ex. 2.0, p. 5:93-114. Staff witness Jones' adjustment corrects the interest expense number on which the jurisdictional interest rate was calculated. The original number proposed by ComEd inadvertently included an adjustment made on the books in 2000 that related to periods prior to 2000. Jones Dir., Staff Ex. 2.0, p. 5:106-09; Hill Reb., ComEd Ex. 23.0 CR, p. 20:444-47.

ComEd does not agree with the Staff witness Jones' proposal to change the annual interest rate applicable to customer deposits, even though this adjustment favors ComEd. ComEd opposes this suggested adjustment because the change in interest rate looks at only one cost item included in the test year. Hill Reb., ComEd Ex. 23.0 CR, p. 20:439-43; Hill Sur., ComEd Ex. 45.0, p. 22:462-63. This adjustment is not comparable to a *pro forma* adjustment, as

suggested by Staff witness Jones. Unlike the company's *pro forma* adjustments, the interest rate on customer deposits can and usually does change from one year to the next and is merely one cost item in the test year. Hill Sur., ComEd Ex. 45.0, pp. 21:448-22:463. Given this, Staff's proposed adjustment for the interest rate on customer deposits is neither reasonable nor fair, and it should not be accepted.

**(xi) Uncollectibles Expense**

\$16.3 million of ComEd's proposed revenue requirement properly represents the jurisdictional portion of uncollectible expense during the test year. The sum is based upon ComEd's complete analysis of uncollectible account expense activity by customer class for the year 2000. Hill Dir., ComEd Ex. 4.0 CR, pp. 16:329-30; 16:334-43, and Sch. C-12; Hill Reb., ComEd Ex. 23.0 CR, p. 21:452-68.

Staff witness Jones and GCI witness Effron are the only witnesses that suggest an adjustment to this expense. Jones Dir., Staff Ex. 2.0, p. 6:116-37; Effron Dir., GC Ex. 2.0 CR, pp. 23:7-24:6. Neither asserts that ComEd's test year calculation of uncollectible expense is inaccurate or otherwise incorrect. Rather, each performed a calculation based upon non test year uncollectible data and then provided an "estimate" of an amount such witness deems "more appropriate" than the actual test year amount. Jones, Tr. 1701:22-1704:5; Effron Dir., GC Ex. 2.0 CR, p. 23:12-18. Their approach is flawed for several reasons. First, because test year actual expense is known, it is the expense, and that there is simply no reason to "estimate" this expense. Hill Sur., ComEd Ex. 45.0, p. 30:646-31:659. Second, the approach of estimating a known test year expense is counter to the principles underlying the use of a historical test year and smacks of single issue ratemaking. There is simply no valid reason to replace ComEd's actual, cost-based analysis with an artificial "estimate," and ComEd respectfully urges the Commission to reject the proposed adjustments to ComEd's uncollectible expense.

**(xii) Taxes Other Than Income Taxes**

In ComEd's rebuttal testimony, ComEd reversed two downward adjustments in an aggregate amount of \$4,967,000 that it had made in its direct case relating to Taxes Other than Income Taxes -- relating, in particular, to the Illinois Electricity Distribution Tax -- because further analysis and factual developments showed that one of these downward adjustments (amounting to \$1,192,000) was unwarranted due to an inadvertent error. The second adjustment (amounting to \$3,775,000) follows from the logic of the GCI's proposed adjustment to real estate taxes. Hill Reb., ComEd Ex. 23.0 CR, pp. 25:536-26:562. No party contested the reversal of either adjustment. ComEd's reversals of those adjustments should be approved.

Staff and the GCI do propose various other downward adjustments to certain components of Taxes Other Than Income Taxes -- relating, in particular, to State use tax, real estate taxes, and, to the extent that any downward adjustments to payroll expenses are made, payroll taxes. Jones Dir., Staff Ex. 2.0, pp. 7:156-8:166; Effron Dir., GC Ex. 2.0 CR, pp. 29:1-31:2. The adjustments relating to State use tax and real estate taxes are unwarranted and incorrect. Staff proposes a 100% disallowance of ComEd's proposed State Use tax expense of \$1,401,000. Jones Dir., Staff Ex. 2.0, Schedule 2.5. Staff acknowledges that the use tax is a legitimate business expense. Jones Reb., Staff Ex. 16.0, p. 6. The sole basis for the disallowance is that the amount at issue primarily relates to a use tax audit that covers a period prior to the test year. Jones Dir., Staff Ex. 2.0, p. 7. Staff acknowledges that, had ComEd paid the subject use taxes during the prior years, the amount ,of such taxes would properly be included in the revenue requirement. Jones, Tr. 1700-01. Staff also acknowledges that the use tax at issue would also be properly included in the revenue requirement if ComEd's accounting policy resulted in the application of the use tax to the specific assets to which it relates. Jones, Tr. 1700-01. In sum,

Staff's adjustment results from a "form over substance" analysis and it should be rejected by the Commission.

ComEd, in order to narrow the issues, is willing to accept the GCI's proposed adjustment to real estate taxes if its logic also is applied to the Electricity Distribution Tax related adjustment discussed above, while an adjustment to payroll taxes should be made (and made correctly) if and only if the downward adjustments to payroll expenses, which ComEd opposes, are approved. Hill Dir., ComEd Ex. 4.0 CR, pp. 14:297-98; 19:400-20:416, App. C, Schs. C-1, C-13; Hill Reb., ComEd Ex. 23.0 CR, pp. 22:478-24:534; Hill Sur., ComEd Ex. 45.0, pp. 29:618-30:640.

### **(xiii) Incentive Compensation**

Staff witness Bryan Sant, in his corrected rebuttal testimony, proposed a revised downward adjustment to jurisdictional incentive compensation of \$24,561,000. Sant Reb., Staff Ex. 17.0 CR, pp. 32:624-33:641, Sch. 17.11 p. 1. While ComEd does not agree that any downward adjustment is warranted, ComEd, in order to narrow the issues in this proceeding, is willing to defer to Mr. Sant as to the revised downward adjustment. Hill Sur., ComEd Ex. 45.0, p. 38:815-21.

The GCI propose that jurisdictional incentive compensation be "levelized", while the ARES Coalition suggests that incentive compensation be treated as part of A&G expenses (as it was accounted for in prior years), even though what is at issue is incentive compensation paid to employees performing jurisdictional delivery services. Effron Dir., GC Ex. 2.0 CR, p. 26:12-18; O'Connor-Spilky Reb., ARES Ex. 3.0 CR, pp. 56:1341-57:1365. The GCI's levelization proposal is unwarranted, arbitrary, and results-driven, while the ARES Coalition's position is a transparent attempt to take operating expenses that are 100% jurisdictional and to move them into the category of A&G expenses in the hope that this will result in only a portion of them

being allocated to jurisdictional operating expenses by virtue of use of an inappropriate labor allocator for A&G expenses (a position that is inconsistent with the ARES Coalition's approach regarding generation-related incentive compensation). Hill Reb., ComEd Ex. 23.0 CR, pp. 28:637-29:643, 34:751-36:798; Hill Sur., ComEd Ex. 45.0, pp. 22:474-24:513; *see also* Hill Reb., ComEd Ex. 23.0 CR, pp. 28:610-29:635 (responding to Mr. Sant's previous position); Meischeid Reb., ComEd Ex. 22.0, pp. 2:31-7:147. The GCI's and the ARES Coalition's approaches should be rejected.

**(xiv) Rate Case Expenses**

In this Docket (No. 01-0423), ComEd adjusted its Illinois jurisdictional rate base to reflect an outstanding recovery of prior rate case expenses previously approved by the Commission in Docket No. 99-0117. In Docket No. 99-0117 (Order, August 26, 1999, at p. 20), the Commission allowed ComEd to recover certain rate case expenses over three years. The amortization of these approved costs began in October 1999. Hill Dir., ComEd Ex. 4.0 CR, p. 24:508-17; Schs. B-2.3 and C-2.3. The Commission should reaffirm its approval of ComEd's recovery of these costs as reflected in ComEd's calculations in this Docket.

Additionally, ComEd is proposing the recovery of its legal fees and expenses in the current proceeding over a three year period for ratemaking purposes. Hill Dir., ComEd Ex. 4.0 CR, p. 24:514-15; Sch. C-7. No other party to this proceeding objects to ComEd's proposed recovery of its rate case expenses. Sant Reb., Staff Ex. 17.0 CR, p. 25:487-89 (in which witness Sant withdraws previous objections to ComEd's proposed adjustment). ComEd's proposed rate case expenses include expenses incurred in 2001 and those expenses expected to be incurred in 2002 primarily for consultant fees, legal fees, and related expenses in connection with Docket 01-0423, including post-hearing briefs and any appeals. Hill Reb., ComEd Ex. 23.0 CR, p. 30:651-64. ComEd proposes that these expenses be deferred and amortized over three years

for ratemaking purposes. Hill Dir., ComEd Ex. 4.0 CR, Schs. B-2.3, Sch. C-2.3. This proposal is consistent with the treatment of rate case expenses approved by the Commission in ComEd's last delivery services proceeding 99-0117, as noted above. As none of the parties to the current proceeding, including Staff, any longer objects to ComEd's proposed adjustment to rate base for rate case expenses, the Commission should approve this adjustment as proposed in ComEd's filing and subsequently amended with updated information. Hill Dir., ComEd Ex. 4.0 CR, p. 24:510-17; Hill Reb., ComEd Ex. 23.0 CR, pp. 29:645-30:664; Hill Sur., ComEd Ex. 45.0, p. 38:825-39:840.

#### **4. Prudence of Expenses**

Based on the same unsupported generalizations articulated with respect to ComEd's Distribution Plant expenditures, discussed above in II.C.6, other parties claim that some part of ComEd's test year O&M expenses must result from past mistakes and mismanagement, and should not be included in ComEd's revenue requirement. Schlissel Dir., GC Ex. 3.0B, pp. 7:8-12. Not surprisingly, neither Mr. Schlissel nor any other intervenor witness is able to quantify any specific O&M expenditures that could have been avoided. Schlissel Dir., GC Ex. 3.0B, pp. 19:14-20:3; Schlissel, Tr. 2219:12:15.

ComEd imposes thorough financial controls and procedures in order to manage and control its expenses, ensuring that it does not incur imprudent or excessive costs. Voltz Dir., ComEd Ex. 5.0, pp. 17:366-18:376; DeCampli Dir., ComEd Ex. 6.0, p. 21:433-37; DeCampli Reb., ComEd Ex. 26.0 CR, p. 11:269-76. ComEd's test year O&M expenses were subject to those controls, ensuring that no imprudent or excessive costs were incurred. DeCampli Reb., ComEd Ex. 26.0 CR, p. 11:269-76. In addition to the imposition of customary controls, Mr. DeCampli performed a comprehensive review of the major components of ComEd's O&M and A&G expenses both internally, and as compared to analogous expenses of others. DeCampli

Dir., ComEd Ex. 6.0, p. 20:421-26. Mr. DeCampli concluded that ComEd's adjusted O&M and A&G expenses were reasonable and prudently incurred. *Id.* at pp. 20:427-21:432. No other party performed such an analysis, nor did any party challenge Mr. DeCampli on cross-examination regarding either his review or the conclusion he reached.

The suggestion that ComEd's test year O&M expenses were inflated by past mistakes or mismanagement is erroneous, *see, e.g.*, Schlissel Sup. Dir., GC Ex. 3.1, p. 7:4-11, and is based almost exclusively on the assumption that since ComEd's test year O&M expenses exceeded O&M expenses from 1997, they must have been imprudently inflated. However, even the other party witnesses who suggest some imprudent O&M expense increment agreed that ComEd had not spent enough maintaining its distribution system in 1997 and earlier years. Schlissel, Tr. 2190:17-2191:19; Larson, Tr. 2235:8-12. In addition, major expenses specifically related to the 1999 outages were performed in 1999 and are therefore not included in the test year. DeCampli, Tr. 1442:11-16.

There are a variety of reasons for the test year increase in O&M expenses as compared with O&M expenses in 1997, none of which involves "make up" costs for past imprudence. Significantly, over 40% of the apparent increase in O&M expenses from FERC Accounts 580-598 is attributable to accounting changes, rather than actual spending increases. Voltz Sup. Reb., ComEd Ex. 39.0, p. 5:99-105. These include a change in the accounting for distribution related incentive compensation at a distribution FERC account level, as well as refunctionalization of expenses from transmission to distribution, which is discussed in Section II.D.3.a, above. *Id.* p. 5:103-05. Another significant increase was driven by the need to serve increased load. *E.g.*, Juracek Dir., ComEd Ex. 1.0, p. 4:109-12. Other increases involve tree trimming and storm expenses, which are discussed above. The final major component of the increase in O&M

expense results from new maintenance procedures designed to improve the reliability of ComEd's distribution system. Voltz Reb., ComEd Ex. 24.0 CR, p. 12:239-45, 14:282-20:415; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 12:290-13:315.

There is a difference between incurring imprudent "catch up" expenses and incurring costs of initiating a planned maintenance program intended to enhance reliability on a sustained basis, as even Mr. Schlissel acknowledged. Schlissel, Tr. 2196:3-9. In late 1999, ComEd installed an aggressive maintenance campaign to inspect, monitor, repair, replace, or upgrade major equipment, such as transmission lines, substations, and feeder cables, as part of ComEd's commitment to enhance maintenance and corresponding reliability, and not as part of any need to "catch up" due to any past mistakes or failures. DeCampli Reb., ComEd Ex. 26.0 CR, pp. 12:306-13:315; DeCampli Sur., ComEd Ex. 48.0, p. 3:56-73; DeCampli, Tr. 1378-81, 1378:22-1381:14, 1419:3-1420:1, 1441:4-10). Mr. Schlissel admits that ComEd's funding of its inspection and repair program for 2000 and 2001 is consistent with an enhanced level of ongoing O&M expense. Schlissel, Tr. 2220:20-2221:8.

ComEd's test year O&M expenses are an accurate reflection of its future O&M expenses. This is demonstrated by the fact that ComEd's test year O&M is not significantly different from its year 2001 budgets and actual expenses. DeCampli, Tr. 1440:21-1441:3.

##### **5. Other Revenue and Expense Issues**

Mr. Efron proposes a \$177,713,000 adjustment to the jurisdictional O&M Expense component of ComEd's revenue requirement, approximately 79% (\$140,543,000) of which is based upon Mr. Efron's purported "normalization" of various FERC account O&M expenses. Efron Reb., GC Ex. 5.0, Att. 5.1, Schs. DJE-1R and DJE-2R; Efron, Tr. 2054:12-20. Mr. Efron's "analysis" is flawed, for at least seven reasons, each of which is discussed below.

First, the years selectively chosen by Mr. Effron predate substantive, ongoing changes to ComEd's distribution planning, operation and maintenance activities. These changes involve increased distribution O&M expenses as compared to earlier years. Voltz Reb., ComEd Ex. 24.0 CR, pp. 12:253-14:292; 17:356-19:381; Voltz Sup. Reb., ComEd Ex. 39.0, p. 1:19-21; Voltz Sur., ComEd Ex. 46.0, pp. 11:238-12:246. Other parties repeatedly claim that ComEd's distribution expenditures in years predating 1999 were inadequate. That Mr. Effron has chosen to "normalize" based upon data from years that these parties admit are not representative of what a reliable distribution company should spend flies in the face of reason.

Second, Mr. Effron inexplicably omits 2000 test year data from his normalization of various FERC account O&M expenses. An Illinois utility's rates are to be based upon data from its selected test year, taking into account known and measurable changes from the test year through *pro forma* adjustments. Mr. Effron has eliminated consideration of what should be the starting point of any analysis, and what ComEd has shown to be not only the most recent, but also the most representative, year, as discussed in Section II.B, above. *See also* Voltz Sur., ComEd Ex. 46.0, p. 12:246-52.

Third, Mr. Effron inappropriately uses, for purposes of "normalizing," ComEd's O&M expenses incurred in 1995 and 1996. Expenses incurred in 1995 and 1996 occurred even before the 1997 test year that was used in ComEd's initial delivery services case, Docket No. 99-0117. Expenses from 1995 and 1996 were accounted for and used to set ComEd's delivery services rates in ComEd's previous delivery services rate case. Voltz Sup. Reb., ComEd Ex. 39.0, pp. 8:172-9:184. It is improper to continue to use those outdated expense figures to set new delivery services rates in this proceeding.

Fourth, use of “normalization”, as proposed by Mr. Effron, fails to capture expenses that were previously recorded in different FERC accounts. Changes in accounting, including changes in the recording of incentive compensation, are the most significant reasons for the apparent increase in O&M expenses from 1998 to 2000, and together with refunctionalization, accounted for almost 40% of the increase from 1998 to 2000, and 60% of the increase from 1999 to 2000. Voltz Reb., ComEd Ex. 24.0 CR, pp. 10:205-11:218; Voltz Sup. Reb., ComEd Ex. 39.0, pp. 5:99-105, 6:114-32; Voltz Sur., ComEd Ex. 46.0, p. 12:254-61. Mr. Effron does not make any adjustments for the fact that O&M expenses that are now contained within FERC Account 580 were formerly contained within FERC Accounts 920 and 921. *Id.* Instead, he simply ignores those expenses, thereby denying ComEd recovery of almost \$43 million in costs. *Id.*

Fifth, ComEd recently refunctionalized certain of its costs from the transmission function to the distribution function. As with accounting changes, Mr. Effron’s proposed “normalization” period includes years prior to the refunctionalization of costs, but does not include any years after the refunctionalization. In fact, these refunctionalized costs first appeared in distribution FERC accounts in the 2000 test year. Voltz Reb., ComEd Ex. 24.0 CR, p. 11:215-18; Voltz Sur., ComEd Ex. 46.0, p. 12:261-13:270. Mr. Effron’s conclusion would effectively prohibit ComEd from recovering its costs that were appropriately refunctionalized from transmission to distribution, totaling approximately \$27 million. *Id.*

Sixth, the implementation of open access marked a dramatic change in the way in which Illinois electric utilities conducted business. ComEd changed its business processes and information systems to accommodate open access, thereby increasing its costs. Voltz Sup. Reb., ComEd Ex. 39.0, pp. 6:133-7:137; Voltz Sur., ComEd Ex. 46.0, p. 13:270-71. ComEd will continue to incur future costs as a result of open access. Leitzell/Meehan Dir., ComEd Ex. 7.0,

pp. 13:270-16:342. Mr. Effron's proposed normalization omits from consideration the only full calendar year in which open access existed.

Seventh, by his own admission, Mr. Effron uses inconsistent years to "normalize" costs for his various proposed adjustments. Effron Tr. 2062:10-2064:17. For example, Mr. Effron uses the following averages: a five-year average of 1995-1999 to "normalize" distribution O&M expenses in FERC accounts 580, 590, 592, 593 and 594, Effron Tr. 2054:12-2055:18; a four-year average of 1995-1998 to "normalize" FERC Account 903, Effron Tr. 2063:3-18; a six-year average of 1995-2000 to "normalize" tree trimming expenses, Effron Tr. 2038:5-2039:5; and a four-year average of 1996 through 2000 to "normalize" storm expenses, Effron Tr. 2043:17-2044:1. Mr. Effron's "process" amounts to nothing more than a result oriented manipulation of data. Mr. Effron first determined what he considered an "appropriate" revenue requirement, after which he worked backwards to selectively normalize and reduce test year expenditures selectively in order to achieve his desired result. Voltz Sur., ComEd Ex. 46.0, pp. 11:238-41, 13:271-277. Even Mr. Effron admits that his approach to "normalizing" ComEd's test year results is "somewhat judgmental". Effron Tr. 2064:2-4, 2088:3-8.

## **E. Cost of Capital**

### **1. Capital Structure**

In the direct testimony of John Ebright, ComEd presented evidence supporting a capital structure with a common equity ratio of 46.01%. Ebright Dir., ComEd Ex. 11.0, Sch. 11.1. Without conceding the merit of the arguments made in opposition to the capital structure proposed in Mr. Ebright's direct testimony, in order to narrow the issues in this proceeding, ComEd will accept, and therefore recommends, Commission approval of the capital structure proposed by Staff witness Janis Freetly, with a common equity ratio of 42.86%. Freetly Sup.

Reb., Staff Ex. 27.0, p. 2:27-30 and Sch. 27.1. In support of this recommendation, the remainder of this section will summarize the testimony addressing capital structure issues.

The 46.01% common equity ratio capital structure proposed by ComEd reflected appropriate *pro forma* adjustments to the long-term debt balance to take into account principal repayments scheduled through December 31, 2002 on Transitional Funding Instruments Notes (“TFI”). Ebright Dir., ComEd Ex. 11.0, p. 8:147-53, Sch. 11.1. The resulting long-term debt balance was \$6,963,798,000. *Id.*, Sch. 11.1. A *pro forma* adjustment was also made to reflect ComEd’s corporate restructuring in January 2001, *Id.*, Sch. 11.1, resulting in a year-end 2000 common equity balance of \$5,933,786,000. *Id.*

In her supplemental rebuttal testimony, Staff witness Janis Freetly recommends approval of ComEd’s proposed *pro forma* adjustments to the long-term debt balance to take into account TFI principal repayments scheduled through December 31, 2002. However, Staff proposes as a starting point that the Commission use a March 31, 2001 balance of long-term debt, resulting in a balance of long-term debt of \$6,965,641,050. Freetly Sup. Reb., Staff Ex. 27.0, pp. 1:6-2:20, Sch. 27.1. Ms. Freetly also recommends approval of a common equity balance of \$5,224,000,000. *Id.*

In his direct testimony, City of Chicago witness Steven Walter proposed a capital structure with a common equity ratio of 44.82%. Walter Dir., COC Ex. 1.0 CR, Att. 3. In his rebuttal testimony, Mr. Walter supported the capital structure then being proposed by Ms. Freetly. Walter Reb., COC Ex. 2.0, p. 7:185-92. GCI witness David Effron’s direct testimony proposed a capital structure with what Mr. Walter referred to as a “generic” common equity ratio of 40%. Effron Dir., GC Ex. 2.0 CR, GC Ex. 2.1, Sch. DGE-7; Walter Reb., COC Ex. 2.0,

p. 3:72-84. ComEd understands that both Mr. Walter and Mr. Effron now support the capital structure recommended by Ms. Freetly in her supplemental rebuttal testimony.

Given ComEd's agreement to support Ms. Freetly's recommended capital structure, there are no disputes for resolution concerning known and measurable changes to test year capital structure (Section II.E.1.a. of the Brief), purchase accounting adjustments (Section II.E.1.b.), or the note receivable from Exelon (Section II.E.1.).

## **2. Cost of Debt**

In John Ebright's direct testimony, ComEd presented calculations supporting a 7.14% cost of long-term debt. Ebright Dir., ComEd Ex. 11.0, pp. 3:61-4:63, Sch. 11.2. GCI witness David Effron's direct testimony also proposed a 7.14% cost of long-term debt, but assumed a "generic" long-term debt ratio of 60%. Effron Dir., GC Ex. 2.0 CR, GC Ex. 2.1, Sch. DGE-7. In his direct testimony, City of Chicago witness Steven Walter proposed a cost of long-term debt of 6.80%. Walter Dir., COC Ex. 1.0 CR, Att. 3. In his rebuttal testimony, Mr. Walter supported the 6.82% cost of debt then being proposed by Ms. Freetly. Walter Reb., COC Ex. 2.0, pp. 7:172-8:199; Freetly Sup. Dir., Staff Ex. 12.0, Sch. 12.1.

In her supplemental rebuttal testimony, Staff witness Janis Freetly recommends a 6.95% cost of long-term debt. Freetly Sup. Reb., Staff Ex. 27.0, pp. 2:13-3:20, Sch. 27.1.

Without conceding the merit of the arguments made in opposition to ComEd's approach, in order to narrow the issues in this proceeding, ComEd accepts and recommends the 6.95% cost of long-term debt proposed by Ms. Freetly, resulting in a weighted cost of long-term debt of 3.97%. Freetly Sup. Reb., Staff Ex. 27.0, Sch. 27.1. ComEd understands that both Mr. Walter and Mr. Effron now support the cost of long-term debt recommendation in Ms. Freetly's supplemental rebuttal testimony.

There is no dispute concerning purchase accounting adjustments (Section II.E.2.a.). In the event that the information is needed for use in future rate cases, ComEd has agreed to continue to track and record separately the unamortized balance and annual amortization of original debt discount and premium. Similarly, there is no dispute concerning variable rate long-term debt (Section II.E.2.b.).

### **3. Cost of Preferred Stock**

Because ComEd had no outstanding preferred stock as of December 31, 2000, all witnesses who address cost of capital issues agree that the cost of preferred stock for ComEd is 0%. Ebright Dir., ComEd Ex. 11.0, p. 4:64-67, Sch. 11.1; Walter Dir., COC Ex. 1.0 CR, Att. 3; Effron Dir., GC Ex. 2.0 CR, GC Ex. 2.1, Sch. DGE-7; Freetly Dir., Staff Ex. 5.0 CR, p. 6:100-02; Freetly Sup. Reb., Staff Ex. 27.0, Sch. 27.1. ComEd supports Ms. Freetly's recommendation that no portion of ComEd's weighted average cost of capital be attributable to preferred stock. Freetly Dir., Staff Ex. 5.0 CR, p. 6:100-02; Freetly Sup. Reb., Staff Ex. 27.0, Sch. 27.1.

### **4. Cost of Common Equity**

ComEd witness Daniel E. Thone conservatively estimated ComEd's cost of equity at 13.25%. Thone Dir., ComEd Ex. 8.0, p. 26:479-85. Mr. Thone used three different methods to determine ComEd's cost of equity capital -- the capital asset pricing model ("CAPM"), the discounted cash flow ("DCF") approach, and the Value Line comparable return on equity ("ROE") expectations approach. Thone Dir., ComEd Ex. 8.0, p.8:161-66. Mr. Thone performed his analysis using two groups of comparable companies. One group included ten publicly traded electric utilities with credit ratings similar to ComEd's. The companies in the group derived most of their revenues from utility operations and did not focus on generation assets. Another

group included eight gas utilities, which also had credit ratings similar to ComEd. The gas companies primarily functioned as delivery service providers.

Because the companies in the groups had different capital structures, resulting in different financial risk from leverage, Mr. Thone adjusted his DCF and CAPM analyses using the Miller and Hamada models – two highly respected models used to measure the effect on the cost of common equity of changes in leverage. Thone Dir., ComEd Ex. 8.0, pp. 8:167-12:244; Culp Dir., ComEd Ex. 10.0, pp. 8:163-9:185; *See*, Culp Reb., ComEd Ex. 30.0, pp 1:16-6:135. No adjustments for leverage were made to the Value Line comparable return on equity expectations results.

Mr. Thone's analysis of the ten comparable electric companies produced a cost of equity of 11.78% using the CAPM approach, 14.13% using the Value Line ROE method, and 13.20% using the DCF model. The average of the three electric company methods was a 13.04% cost of common equity. Thone Dir., ComEd Ex. 8.0, ComEd Ex. 8.1, Sch. 8.

Mr. Thone's analysis of the eight comparable gas companies produced a cost of equity of 13.40% using the CAPM approach, 13.37% using the Value Line ROE method, and 16.68% using the DCF model. The average of the three gas company methods was a 14.49% cost of common equity. Thone Dir., ComEd Ex. 8.0, ComEd Ex. 8.1, Sch. 8.

Mr. Thone calculated a 13.46% weighted average cost of equity for the two sample groups. *Id.* Based on this analysis, Mr. Thone conservatively estimated ComEd's cost of equity to be at least 13.25%. Thone Dir., ComEd Ex. 8.0, p. 24:479-85.

City of Chicago witness Steven Walter did not perform an independent, top-to-bottom analysis of ComEd's cost of equity. Instead, he reviewed Mr. Thone's calculations and proposed certain modifications, including elimination of the sample of gas utilities, removal of four of the

companies in the group of electric utilities, use of DCF results unadjusted for leverage, and exclusion of the Value Line ROE method. Walter Dir., COC Ex. 1.0 CR, pp. 3:17-5:20. After making these modifications to Mr. Thone's analysis, Mr. Walter arrived at a cost of equity for ComEd of 11.93%. Walter Dir., COC Ex. 1.0 CR, p. 5:7-11. In his rebuttal testimony, Mr. Walter supported Ms. Freetly's recommended cost of equity. Walter Reb., COC Ex. 2.0, pp. 7:170-8:199.

GCI witness David Effron did not perform an analysis of ComEd's cost of equity. However, he did propose adoption of the same 10.8% cost of equity approved by the Commission in Docket 99-0117. Effron Dir., GC Ex. 2.0 CR, p. 6:2-14, GC Ex. 2.1, Sch. DGE-7.

Staff witness Janis Freetly estimated ComEd's cost of equity to be 11.72%. Freetly Sup. Reb., Staff Ex. 27.0, pp. 2:35-3:38, Sch. 27.1. Like Mr. Thone, Ms. Freetly also used two sample groups of companies from the electric and gas industries, respectively. Four of the electric utilities and five of the gas companies in Ms. Freetly's samples are also included in Mr. Thone's sample groups. Freetly Reb., Staff Ex. 19.0 CR, pp. 10:173-19:344, Schs. 19.3, 19.4. Ms. Freetly performed DCF and risk premium (CAPM) analyses, but concluded that no leverage adjustments were appropriate. Ms. Freetly's analysis of the electric company group produced a cost of equity of 13.34% using the DCF model and 10.94% using the risk premium approach, with an average cost of 12.14%. Freetly Sup. Dir., Staff Ex. 12.0 CR, pp. 1:17-2:30. Her analysis of the gas company group produced a cost of equity of 11.97% using the DCF model and 11.06% using the risk premium approach, with an average cost of 11.52%. Freetly Sup. Dir., Staff Ex. 12.0, pp. 1:17-2:30. Ms. Freetly gave two-thirds weight to the gas sample results and arrived at a recommended cost of equity of 11.72%. *Id.*

ComEd understands that both Mr. Walter and Mr. Effron now support Ms. Freetly's 11.72% cost of equity recommendation in her supplemental rebuttal testimony.

Mr. Thone's analysis clearly shows that there is no basis for finding that ComEd's cost of common equity is lower than the 11.72% cost proposed by Staff witness Janis Freetly. Although ComEd does not concede the merit of the arguments made in opposition to Mr. Thone's determination, in order to narrow the issues in this proceeding, ComEd is willing to accept Ms. Freetly's estimate. Ms. Freetly's estimate should be approved by the Commission provided that her proposed capital structure with a common equity ratio of 42.86% also is adopted, resulting in a weighted average cost of capital for ComEd of 8.99%. If the Commission were to reject Staff's proposed capital structure and adopt a capital structure with a lower common equity ratio, then the cost of equity would have to be increased for the reasons described in Mr. Thone's testimony. Thone Dir., ComEd Ex. 8.0, pp. 8:167-12:244.

Given ComEd's agreement to support Ms. Freetly's 11.72% recommended cost of equity, there are no disputes for resolution concerning comparable groups (Section II.E.3.a.), methodological issues (Section II.E.3.c.), or market versus book issues (Section II.E.3.c.).

##### **5. Overall Rate of Return**

After operating expenses, the next largest cost attributable to the provision of delivery services is the cost of capital devoted to the delivery service function. For ComEd, which has no preferred stock, the cost of capital comprises the cost of debt and the cost of common equity. ComEd determined the cost of each of these components of its capital structure, and then applied these individual capital costs to each component of the company's 2000 capital structure, with appropriate *pro forma* adjustments, to arrive at a 9.95% weighted average cost of capital, as reflected in the following Schedule 11.1 from John Ebright's direct testimony. Ebright Dir., ComEd Ex. 11.0, p. 3:56-60, Sch. 11.1.

**Cost Of Capital Summary**  
**Pro forma End Of Year 2000**

| <u>Class of Capital</u>    | <u>Amount</u><br><u>(000's)</u> | <u>Percent</u><br><u>of Total</u> | <u>Cost or Earnings</u>      |                 |
|----------------------------|---------------------------------|-----------------------------------|------------------------------|-----------------|
|                            |                                 |                                   | <u>End of</u><br><u>Year</u> | <u>Weighted</u> |
| Long Term Debt             | \$6,963,798                     | 53.99%                            | 7.14%                        | 3.85%           |
| Preference/Preferred Stock | 0                               | 0.00%                             | 0.00%                        | 0.00%           |
| Common Equity              | <u>5,933,786</u>                | <u>46.01%</u>                     | 13.25%                       | <u>6.10%</u>    |
| Total                      | <u>\$12,897,584</u>             | <u>100.00%</u>                    |                              | <u>9.95%</u>    |

To arrive at ComEd's overall annual cost of capital for purposes of determining ICC-jurisdictional delivery services rates, this 9.95% cost of capital was applied to the proposed delivery services rate base of \$4,083,927,000. Hill Dir., ComEd Ex. 4.0 CR, p. 7:131-35, App. C, Sch. A-2. Although this cost of capital is supported by the testimony, and without conceding the merit of the arguments made in opposition to ComEd's approach, in order to narrow the issues in this proceeding, ComEd recommends that the Commission approve the 8.99% weighted average cost of capital recommended by Staff witness Janis Freetly, Freetly Sup. Reb., Staff Ex. 27.0, p. 1:9-12, Sch. 27.1, based on the following capital structure:

**Cost Of Capital Summary**  
**Pro forma End Of Year 2001**

| <u>Class of Capital</u>    | <u>Amount</u><br><u>(000's)</u> | <u>Percent</u><br><u>of Total</u> | <u>Cost or Earnings</u>      |                 |
|----------------------------|---------------------------------|-----------------------------------|------------------------------|-----------------|
|                            |                                 |                                   | <u>End of</u><br><u>Year</u> | <u>Weighted</u> |
| Long Term Debt             | \$6,965,641                     | 57.14%                            | 6.95%                        | 3.97%           |
| Preference/Preferred Stock | 0                               | 0.00%                             | 0.00%                        | 0.00%           |
| Common Equity              | <u>5,224,000</u>                | <u>42.86%</u>                     | 11.72%                       | <u>5.02%</u>    |
| Total                      | <u>\$12,189,641</u>             | <u>100.00%</u>                    |                              | <u>8.99%</u>    |

**F. Cost of Service and Rate Design**

**1. Cost of Service Study Issues**

The Commission must render its decisions regarding all disputed issues in this proceeding -- including whether to use marginal, embedded, or “across the board” methodologies in allocating ComEd’s revenue requirement -- in accordance with the law and based exclusively on the evidence in the record in this proceeding. 220 ILCS 5/10-103, *BPI 1989*, 136 Ill. 2d at 201, 227, 555 N.E.2d at 697, 709. Moreover, Commission orders are neither legal precedents nor *res judicata*. *E.g.*, *United Cities Gas Co. v. Illinois Commerce Comm’n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Fuel Corp. v. Illinois Commerce Comm’n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953). That is not to say that prior Commission orders on any of these subjects are irrelevant. For example, for nearly two decades, the Commission consistently has employed marginal cost ratemaking regarding ComEd’s bundled service rates (including in dockets where embedded and “across the board” proposals or studies were presented). The aberration is Docket No. 99-0017, where the Commission selected embedded cost ratemaking for non-residential delivery services rates. In any event, the foregoing legal principles are fundamental and must be recognized and followed.

ComEd respectfully submits that, given the law and the evidence in the record, the Commission should adhere to marginal cost ratemaking and should reject embedded and “across the board” approaches. The law is clear. Section 16-108(c) of the Act, 220 ILCS 5/16-108(c), mandates that delivery services charges must be “cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs.”

The evidence in support of marginal cost based ratemaking that has been submitted by ComEd, DOE, and Midwest in this proceeding, while disputed in many respects by Staff and

some other parties, is overwhelming. That evidence demonstrates that the legal mandate of cost based rates, the associated principle of assigning costs in accordance with cost causation, and the concerns of economic efficiency and sending economically correct price signals that are pivotal to the proper development of the market, are all best served by the marginal cost based approach. Juracek Dir., ComEd Ex. 1.0, pp. 7:197-8:201, 9:265-68, 13:349-63, 15:389-17:439; Gordon Dir., ComEd Ex. 2.0, pp. 2:47-16:428, 17:460-25:676; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:219-20, 19:431-20:457, 28:639-29:661, 41:930-42; Makhholm Dir., ComEd Ex. 15.0, pp. 1:32-11:332; Swan Dir, DOE Ex. 1.0 CR, pp. 4:59-9:170; Juracek Reb., ComEd Ex. 20.0, pp. 4:84-87, 5:134-39, 5:146-48; Gordon Reb., ComEd Ex. 21.0, pp. 1:16-4:84, 5:111-9:213; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 2:30-3:68; Makhholm Reb., ComEd Ex. 34.0, pp. 1:12-3:65, 4:89-12:283; Swan Reb., DOE Ex. 2.0 CR, pp. 2:17-18:401; Schink Reb., Midwest Ex. 5.0, pp. 3:52-54, 10:215-12:254; Gordon Sur., ComEd Ex. 44.0, pp. 1:8-13, 1:22-2:33; 4:110-6:160; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 5:101-13; Makhholm Sur., ComEd Ex. 55.0 CR, pp. 1:18-26, 3:57-14:338. Even the ARES Coalition, while opposing marginal cost ratemaking in this particular proceeding (for unsound reasons), acknowledges that there may be merit to marginal cost ratemaking and even suggests that it might be adopted at the end of the mandatory transition period. O'Connor-Spilky Dir., ARES Ex. 1.0, p. 61:1418-26.

The underlying economic rationale for marginal cost based ratemaking is compelling. As Dr. Dale Swan testified:

Contrary to Mr. Lazare's suggestion that, "The argument [for marginal cost pricing] is fundamentally flawed," there is an extensive literature in economics promoting the use of marginal cost pricing in regulating monopoly utilities. The long list of economists who favor the use of marginal cost pricing includes such luminaries in the field of economics and regulation as Professor William Baumol, who testified in the initial delivery services case for the Company, Professor James Bonbright and Dr. Alfred Kahn.

Swan Reb., DOE Ex. 2.0 CR, p. 3:53-59. In contrast, the lack of a valid economic rationale for embedded costs ratemaking is exemplified by, among other things, the concession by even its advocates that it is not supported by **any** current economic literature. (*E.g.*, Lazare, Tr. 2790:15-2791:12; Chalfant, Tr. 2540:5-17). Staff witness. Lazare candidly acknowledges that “people who are considered among the noted experts in the field generally favor marginal costs.” (Lazare, Tr. 2791:10-12).

Any notion that, despite the lack of a valid economic rationale, “inertia” supports the use of embedded cost ratemaking in this proceeding fails. ComEd’s over 3 million residential customers -- approximately 90% of its retail customers -- are on rates that were set using a marginal cost based approach, modified by the aggregate 20% rate reductions provided for in Section 16-111 of the Act, 220 ILCS 5/16-111. Of course, the same also is true of most non-residential customers -- those that have not elected open access generally are on bundled rates set using marginal cost ratemaking.

The Commission, in order to establish cost based rates, set rates that comport with cost causation, and “get the price right,” should approve ComEd’s marginal cost based rate design. The Commission’s decision in Docket No. 99-0117 does not require or support the Commission’s making a decision that is not consistent with the evidence in the record in this proceeding. Nor does it justify setting incorrect prices. As Dr. Swan stated:

I cannot provide the Commission with a more eloquent or cogent explanation why marginal costs should be used than was offered by Professor Baumol in his rebuttal testimony in Docket No. 99-0117. Nor can I provide a more succinct rejoinder to the notions raised by Staff witness Lazare than was provided by Dr. Jeff Makhholm in his rebuttal testimony in the same proceeding. In my view, the testimony of these two witnesses should have eliminated any doubt that marginal costs are the proper costs to use in designing regulated rates, and should have laid to rest once and for all the peculiar notions raised by Mr. Lazare. I would urge the Commission to revisit the testimony of both of these witnesses.

Swan Dir., DOE Ex. 1.0 CR, p. 7:119-127. Moreover, the IIEC has acknowledged that the marginal cost of delivery services study in this proceeding contains an improvement that the IIEC itself urged in Docket No. 99-0117. (Chalfant, Tr. 2541:3-12).

The remaining approach that in various forms has been urged by three parties in this proceeding, the IIEC, Central Illinois Light Company (“CILCO”), and TrizecHahn -- the “across the board” rate increase approach -- is entirely spurious and transparently result-driven. Based on the evidence in the record, that approach deviates dramatically and unjustifiably from setting cost based rates, from allocating costs in accordance with cost causation, and from economically correct prices. *E.g.*, Juracek Reb., ComEd Ex. 20.0, p. 34:806-15; Juracek Sur., ComEd Ex. 41.0, p. 29:677-85; Makhholm Sur., ComEd Ex. 55.0 CR, pp. 2:40-49, 16:388-17:421; Heintz Sur., ComEd Ex. 57.0, p. 4:69-78. All of the grounds for using the marginal cost based approach, and for that matter, many, if not all, of the grounds or claimed grounds for using the embedded cost approach, are reasons not to use the “across the board” approach. In addition, as shown below, ComEd properly and correctly performed both its marginal cost of delivery services study and its embedded cost of delivery services study, although the former is the one that should be used for ratemaking purposes. The “across the board” approach is employed where there is not an accurate cost study. (*See* Chalfant, Tr. 2534:21-2535:6). The Commission should adopt the marginal cost based approach, and under no circumstances should adopt the “across the board” approach, in this proceeding.

**a. Marginal Cost Study**

ComEd, in addition to correctly selecting to employ a marginal cost based rate design, properly and correctly performed its marginal cost of delivery services study and used the Equal Percentage of Marginal Cost (“EPMC”) method in order to develop the resulting rate design. (*E.g.*, Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 3:43-47, 4:63-75, 9:187-10:203,

14:300-24:516, 25:539-26:573 and Atts. 13.1, 13.2, 13.3; Swan Dir., DOE Ex. 1.0 CR, pp. 4:59-9:170; Schink Reb., Midwest Generation Ex. 5.0, p. 12:248-54. Indeed, as noted above, the IIEC has acknowledged that the marginal cost of delivery services study in this proceeding is improved over the study in Docket No. 99-0117. Chalfant, Tr. 2541:3-12. The criticisms that have been leveled at ComEd's marginal cost of delivery services study and its resulting rate design are without merit, and in many instances they proceed from an evident lack of understanding, a plainly erroneous understanding of the facts, or an apparent desire to achieve a particular result. *E.g.*, Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 2:23-15:314 and Atts. A, B, C, E; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 1:19-7:134 and Atts. C, D.

**b. Embedded Cost Study**

While ComEd's marginal cost of delivery services study should be used for ratemaking purposes, ComEd also properly and correctly performed its embedded cost of services study, revising the study in its rebuttal testimony to incorporate two improvements proposed, respectively, by Staff witness Luth and the GCI, and correcting the study in its surrebuttal testimony to eliminate an error in allocation relating to a street lighting customer class. Heintz Dir., ComEd Ex. 14.0 CR, pp. 5:79-27:500 and ComEd Exs. 14.1, 14.2, 14.3; Heintz Reb., ComEd Ex. 33.0, pp. 1:15-15:348 and ComEd Ex. 33.1; Heintz Sur., ComEd Ex. 57.0, pp. 3:55-4:68 and ComEd Ex. 57.1. IIEC witness Alan Chalfant acknowledged that his testimony identified only one difference between ComEd's embedded cost study in Docket 99-0117 and its embedded cost study in this proceeding: the addition of the high voltage electric service station ("HVESS") subfunction. Chalfant, Tr. 2543:7-2544:16. Although its basic structure and functioning have not been changed, certain improvements were made to the embedded cost study in this proceeding, along with other changes effectuating or reflecting rulings by the Commission in prior dockets, and one of the improvements was the addition of the

HVESS subfunction, which increased the accuracy of cost assignment. Heintz Dir., ComEd Ex. 14.0 CR, pp. 6:97-9:159, 10:177-11:203. Mr. Chalfant also acknowledged that he had identified no mathematical error in the embedded cost study (Chalfant, Tr. 2546:9-11), and that its results followed from its methodology and its data inputs (*id.* at Tr. 2547:9-15).

## **2. Interclass Revenue Allocation**

As the above discussion has established, the Commission should use a marginal cost based approach to ratemaking in this proceeding. However, it should be noted that, as to the allocation of the proposed jurisdictional revenue requirement between residential customers as a whole (in the aggregate) and non-residential customers as a whole (in the aggregate), ComEd has stated that, in this particular proceeding, it does not propose, but is willing to accept that highest level allocation (and only that allocation) being made based on ComEd's embedded cost of services study, and ComEd explained the unique reasons for that willingness in this proceeding. Juracek Dir., ComEd Ex. 1.0, pp. 15:405-17:436. The latter approach would result in a slightly smaller portion -- 52.7% versus 56.5% -- of the revenue requirement being allocated to residential customers. *Id.*; Heintz Sur., ComEd Ex. 57.0, ComEd Ex. 57.1, (revising Heintz Dir., ComEd Ex. 14.0 CR, ComEd Ex. 14.1, Sch. 2a p.13:239) (embedded)); Alongi-Kelly Sur., ComEd Ex 50.0 CR, Att. C (marginal). While various parties have taken positions on the merits of marginal versus embedded cost ratemaking, no party appears to have directly addressed in any substantive way ComEd's statement on this particular point.

## **G. Rate Design**

### **1. RCDS Rate Design**

#### **a. Demand Ratchet**

##### **(i) General Service Ratchet**

ComEd has proposed a twelve month “demand ratchet” for non-residential delivery services customers (if demand-metered).<sup>†</sup> The proposed demand ratchet improves the allocation of costs in accordance with cost causation, reduces intra-class cross subsidies flowing from high load factor customers (in brief, customers with more level demands) to lower load factor customers (in brief, customers with “peakier” demands), sends economically correct price signals, and encourages economic demand-side management (and other “peak-shaving” tools) and distributed generation, which promotes market stability and supply reliability. *E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:211-18, 13:308-19:430; Gordon Dir., ComEd Ex. 2.0, pp. 15:404-17:458. Customers with more level demands tend to cause fewer distribution system costs than do customers with “peakier” demands because ComEd must take such peaks (among other factors) into account in planning and installing distribution facilities. *E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 15:330-45. Because the proposed demand ratchet is calculated on a rolling 12 month basis and because it applies only to demand-metered non-residential customers, the economic concerns that sometimes have been raised in opposition to demand ratchets are of significantly reduced magnitude and the end result is a fair balance of the competing considerations. *E.g., id.* at pp. 18:413-19:427. The proposed demand ratchet does not increase ComEd’s jurisdictional revenue requirement. The proposed demand ratchet is designed to be revenue neutral, *i.e.*, the higher “ratcheted” demand levels are offset by lower unit

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<sup>†</sup> Approximately 99% of non-residential load is demand-metered. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 12:267-68.

charges so that the product of the billing units and the charges yields the same revenue requirement per class. *E.g., id.* at p. 14:318-322. DOE supports the proposed demand ratchet. *E.g., Swan Dir., DOE Ex. 1.0 CR, pp. 3:49-4:53, 18:367-22:457.* The proposal should be adopted.

Staff and certain intervenors have expressed opposition to or concerns about the proposed demand ratchet. Many of their professed concerns, such as the theory offered by TrizecHahn witness Lawrence Haynes that the proposal somehow is anti-competitive, are specious and without merit. *Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 14:318-15:334.* Some of their professed concerns, while exaggerated, do raise legitimate issues to some extent, but what none of the opposing parties has done is perform an objective and fair comparison of all of the competing considerations for and against the proposed demand ratchet -- it is evident that any such comparison yields the conclusion that the benefits far outweigh those concerns, particularly when, to a large degree, those concerns constitute little more than a desire to avoid or delay rates that provide for more accurate cost causation or to blunt customers' responsibility for their own electricity usage. *E.g., id.* at pp. 10:228-11:247, 14:304-15:334, 20:442-48; *Gordon Reb., ComEd Ex. 21.0, pp. 9:214-10:235; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 5:115-6:130; Swan Dir., DOE Ex. 1.0 CR, pp. 3:49-4:53, 18:367-22:457.*

**(ii) Special Ratchet for Standby Customers**

While ComEd believes that it has made a sound case for the general implementation of an annual demand ratchet, the case for an annual ratchet for generation and standby customers is overwhelming. ComEd reiterates its request that, even if the Commission were to reject the general demand ratchet, it should be adopted for these special customers. *Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 17:388-18:412.*

The reasons for this are direct and persuasive. Unless an annual ratchet is used for standby and generation customers, many such customers will essentially evade delivery services facilities charges. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp.15:330-16:369; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 12:269-73. This is not only plainly unjust and unreasonable, it will create significant and unfair cross subsidies that will harm other customers. *Id.* The IIEC's concerns about this alternative proposal do not warrant rejection of the proposed demand ratchet as to these customers. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 15:336-20:452; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 6:131-8:171.

**b. Definition of Billing Demand in Rate RCDS**

ComEd's Rate RCDS uses the correct definition of billing demand. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 33:756-34:789. The arguments and counter-proposal of the ARES Coalition rely on an incorrect premise and are unwarranted, impractical, and infeasible. *Id.*; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 17:367-72. The arguments and proposal of the Building Owners and Managers Association of Chicago in support of altering the billing demand definition for Rider 25 (space heating) customers also are without merit and should be rejected. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 16:351-65. ComEd's approach should be approved.

**c. Impact on CTCs**

The subject of the effects of ComEd's proposals on CTCs (and the extent to which the effects of ComEd's proposals are mitigated by CTC offsets) have been addressed at length and in detail in the Introduction and Executive Summary and in Section I.C.2, above.

**d. Generation Facilities Under Rate RCDS**

**(i) Proposals for Production Credit**

**(ii) Proposals for Production Adder**

Like other retail customers, generating facilities consume electric power and energy. Naumann Reb., ComEd Ex. 35.0, p. 11:234-50; Naumann Sur., ComEd Ex. 58.0, p. 3:61-66; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 28:643-29:647. They consume electricity when they are not operating. Naumann Reb., ComEd Ex. 35.0, p. 11:231-40. They consume it during the process of starting up and shutting down. Naumann Reb., ComEd Ex. 35.0, p. 11:246-50. And, even when its unit(s) are running, a generating station may take and consume electricity to run ancillary facilities, such as water pumps, fuel handling equipment, and cooling facilities. Naumann Reb., ComEd Ex. 35.0, p. 11:231-50. It is clear that generators using electricity supplied by utilities, or delivered over utility facilities, are retail customers and use distribution services. 220 ILCS 5/16-102 (defining “retail customer”); McLeod Reb., Midwest Ex. 4.0, p. 4:74-80; Naumann Reb., ComEd Ex. 35.0, p. 11:231-50, 15:319-38; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 8:176-79. The Act contains no special exemption for end use of energy by entities that also generate electricity. 220 ILCS 5/16-102. Moreover, FERC has held that, under federal law, use of electricity by generators, just like by other customers, is a retail use and, further, that if transmission or distribution services and facilities are used to deliver that electricity, delivery rates must be paid. Naumann Reb., ComEd Ex. 35.0, pp. 12:251-14:309, 15:319-25, 18:383-400.

In this case, ComEd proposed initially that generating facilities taking delivery services do so at rates, and on terms and conditions, identical to those for other retail customer of similar demand taking service at similar voltage. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, Att. C, 2<sup>nd</sup> Revised Sheet No. 119. The proposal made no distinction between generators and other

customers. Midwest protested this rate design, as well as initially claiming that its facilities should not be subject to most delivery services charges. Midwest based this claim on the argument that its service at high-voltage points of connection were generally designed and constructed to allow its units also to deliver power and energy to the grid and did not use any (or, at most an immaterial quantity) distribution facilities. Long Dir., Midwest Ex. 1.0 CR, pp. 3:59-4:85; McLeod Dir., Midwest Ex. 2.0, pp. 2:34-4:71. Based on this premise, Midwest proposed an exemption from most distribution charges.<sup>†</sup> McLeod Dir., Midwest Ex. 2.0, pp. 2:37-3:57; Long Dir., Midwest Ex. 1.0 CR, pp. 4:81-5:106.

There are two fundamental problems with Midwest's initial proposal. First, it was based on a faulty premise. The record demonstrated that:

- Delivery of power to Midwest coal stations, even through connections also designed to be capable of receiving power from Midwest's units, can and do use distribution facilities. Naumann Reb., ComEd Ex. 35.0, p. 16:339-55; Naumann Sur., ComEd Ex. 58.0, p. 3:61-66; Born Sur., ComEd Ex. 59.0, p. 4:66-72; Long, Tr. 3148:9-3169:6.
- Service to Midwest's base load facilities also includes high-voltage connections that do not provide an output path for their generating units (*e.g.*, for fuel handling and cooling). These facilities are properly functionalized entirely as distribution and account for significant distribution assets. Born Reb., ComEd Ex. 37.0, p. 8:149-56; Long, Tr. 3148:9-3169:6
- Midwest's base load facilities also each have a number of lower voltage interconnections, not designed for outflow. Naumann Reb., ComEd Ex. 35.0, p. 15:326-32; Long, Tr. 3148:9-3152:15, 3156:16-3160:20, 3163:21-3166:2. Midwest acknowledges that these are best thought of as conventional distribution connections. McLeod Reb., Midwest Ex. 4.0, p. 2:38-41, 4:74-80.
- In addition to directly using distribution facilities, this service is properly allocated a share of the General and Intangible Plant and A&G Expenses that are allocated based on use of distribution facilities. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 31:700-04.

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<sup>†</sup> Midwest, however, did not -- and does not -- contest that it must pay normal distribution rates for service to low-voltage points of connection through which outbound supply does not flow. McLeod Dir., Midwest Ex. 2.0, p. 14:291-93. ComEd agrees.

- Service to Midwest’s natural gas peaking facilities is generally provided at lower voltages. Long Dir., Midwest Ex. 1.0, pp. 5:107-6:119. Service to these facilities use significant distribution assets, including distribution lines and substation facilities. Long, Tr. 3152:16-3156:15, 3160:21-3163:20, 3166:3-3169:5.
- When interconnections are designed to be capable of handling generator outflow, that does not mean, either theoretically or in practice, that distribution facilities are not used, especially when those connections are also carrying inflow. Naumann Reb., ComEd Ex. 35.0, pp. 16:356-17:382; Born Sur., ComEd Ex. 59.0, p. 4:66-72; Long, Tr. 3148:9-3152:15, 3156:16-3160:20; 3163:21-3166:2.

Midwest’s initial proposal suffered from a second flaw: by proposing a distribution facilities charge that would under-recover the cost of providing Midwest with distribution service, Midwest’s initial proposal needlessly shifted costs to other distribution customers. Naumann Reb., ComEd Ex. 35.0, p. 19:407-20; Naumann Sur., ComEd Ex. 58.0, pp. 3:45-54; 5:99-101, 11:230-45. As a result, Midwest’s initial proposal was an unacceptable rate design and was opposed by ComEd. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 28:637-32:716. For these reasons, Midwest’s proposed “production credits” should be rejected. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 9:194-11:230.

However, the testimony of both ComEd and Midwest recognized that the high-voltage interconnections to Midwest’s facilities that were also designed to carry generator outflow are not typical distribution interconnections. The type of facilities installed may be unlike those installed at most “load-only” interconnections, and the degree to which the costs of those facilities may be recovered through transmission rates can also vary widely. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 29:661-30:676. In addition, because of the nature of the interconnections -- they are at very high voltages and were specially engineered -- there is not a readily identifiable “standard” set of facilities. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 11:237-50; Naumann Reb., ComEd Ex. 35.0, pp. 13:287-14:298. That being said, however, the uniqueness of these interconnections also offers an advantage: ComEd has detailed records of

its distribution facilities, including each such interconnection, enabling ComEd to make an individual assessment of the specific distribution facilities, and their costs, at each such interconnection with reasonable effort. Born Dir., ComEd Ex. 17.0, pp. 6:127-7:130; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 11:231-50.

Given these facts, and after reviewing Midwest's direct and rebuttal testimony, ComEd proposed an alternative rate design that is designed to meet Midwest's stated objective of only paying for the distribution facilities that it uses, while meeting ComEd's objectives of recognizing Illinois jurisdiction over distribution facilities rates and of properly charging Midwest for the costs of distribution services it uses without cross subsidies that unfairly increase other customers' rates. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 9:194-12:277. In sum, ComEd proposes to charge Midwest for distribution service to its high-voltage connections that are principally designed to carry the outflow of generating units, a rate based on the actual distribution facilities used at that interconnection point. *Id.* The rate would consist of:

- A standard customer charge, based upon the distribution service class in which each facility's use falls. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, 12:251-275; Schink, Tr. 2291:10-2292:11.
- A zero distribution facilities charge, recognizing that the distribution equipment installed will vary widely. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 10:222-24; Schink, Tr. 2291:10-2292:11.
- An optional or "non-standard" facilities charge based on ComEd's existing tariffed rates (e.g., Riders 6 & 7) for all distribution facilities installed at such interconnections. Consistent with the zero standard facilities charge, the zero-based standard ensures that Midwest will properly be assigned the costs of all of the distribution facilities it uses, without cross subsidies that harm other customers. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 10:224-11:50; Schink, Tr. 2291:10-2292:11.

This proposal meets Midwest's legitimate objectives, while both recognizing the Commission's jurisdiction over retail rates and establishing cost-based rates designed to recover the costs of providing distribution facilities used by Midwest from Midwest. Clair-Crumrine Sur., ComEd

Ex. 49.0 CR, pp. 9:194-12:277; Schink, Tr. 2291:10-2296:6; McLeod, Tr. 2307:4-21. The Commission should approve ComEd's proposal.

## **2. Rider HVDS**

ComEd has proposed a new High Voltage Delivery Services ("HVDS") credit for delivery services customer load served at 69,000 volts and above. The proposed HVDS credit, which is based on marginal cost principles, dramatically improves the allocation of costs in accordance with cost causation by eliminating cross subsidies flowing from high voltage customers to other customers. *E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:211-15, 32:735-33:759; Swan Dir., DOE Ex. 1.0 CR, pp. 3:40-44, 12:240-272; Schink Reb., Midwest Generation Ex. 5.0, pp. 3:52-54, 10:215-12:254. Thus, the DOE and Midwest Generation support ComEd's proposal. The IIEC, while it generally advocates embedded cost ratemaking in this proceeding, and proposes a phase-in period for the credit, also supports the HVDS credit as revised by ComEd in its surrebuttal testimony (the revision was based on an updated calculation factoring in a change in the status of ComEd's largest customer, which had a significant impact on the data and resulted in a material reduction in the size of the credit). Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 9:174-10:193 and Att. B; Chalfant Reb., IIEC Ex. 4.0 CR, p. 13:1-10; Chalfant, Tr. 2535:19-2536:6.

The opposition to the HVDS credit comes from parties that benefit directly or indirectly from the existing cross subsidies and, far more importantly, is not grounded in any valid objection. *E.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 20:454-22:501, 24:534-25:559, 26:590-27:611, 28:628-35; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 2:28-3:64; Swan Reb., DOE Ex. 2.0 CR, pp. 22:508-31:724. The proposed credit (as revised) should be adopted.

**a. Eligibility**

ComEd has shown that the credit is warranted as to customer load served at 69,000 volts and higher, as discussed above. The IIEC and some other intervenors argue that ComEd also should have a new smaller high voltage credit for customers served at 34,500 volts, but that proposal is misguided and erroneous in terms of both engineering and ratemaking. *E.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 21:463-22:501; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 2:28-3:64; *see also* Chalfant, Tr. 2558:12-2560:9 (acknowledging that the IIEC proposal was based on data as to only a fraction of the customers served at 34,500 volts). The eligibility for the proposed credit should not be extended to, nor should a smaller credit be adopted for, customers served at 34,500 volts.

**b. Calculation of Credit**

The revised proposed HVDS credit is correctly calculated (as noted above, it was revised based on an updated calculation factoring in a change in the status of ComEd's largest customer, which had a significant impact on the data and resulted in a material reduction in the size of the credit), and the arguments to the contrary are erroneous. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 4:66-69, 8:163-64, 25:550-51, 45:989-98, Att. N, and ComEd Ex. 13.3; Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 20:419-21:432; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 25:556-59, 26:590-93; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 7:135-10:193 and Att. B; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 3:56-59, 3:63-64; Swan Reb., DOE Ex. 2.0 CR, pp. 22:508-23:541; Chalfant Reb., IIEC Ex. 4.0 CR, p. 13:1-10; Chalfant, Tr. 2535:19-2536:6.

The HVDS credit should be presented in tariffs as a credit. Staff witness Michael Luth suggests that, rather than being presented as a credit, the HVDS credit should be presented through the creation of a new high voltage rate class. That suggestion is not itself a criticism of the calculation. The reasons not to adopt Mr. Luth's suggestion are discussed in Section II.G.4.

(The even broader suggestion of the ARES Coalition that ComEd's entire rate design be reformulated along voltage based lines rather than the existing demand based approach also is refuted in Section II.G.4.)

**c. Allocation of Costs to Other Customers**

ComEd designed and calculated the proposed HVDS credit in a manner that is in accordance with cost causation and appropriately revenue-neutral -- the irresponsible suggestion by the ARES Coalition that ComEd's rate design for the HVDS credit and its calculation of its impact on other charges might have improperly shifted costs to other customers is disingenuous, unsupported, and false. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 25:550-51, 27:597-28:602, 28:605-13, 34:755-35:762, 35:766-78; Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 17:339-20:418; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 24:534-25:559.

**d. Exemption From Rate RCDS Facility Charges**

ComEd's Rate RCDS is applicable to, and designed to recover the costs of, delivery services provided to customers at all voltages. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, Att. C, 2<sup>nd</sup> Revised Sheet No. 109. This is in recognition of three plain facts:

- All retail customers take distribution service. Naumann Reb., ComEd Ex. 35.0, pp. 8:181-82, 10:217-24. To conclude otherwise would be to deny the authority of the state, and of the Commission, to regulate any of the rates, terms, and conditions of service to retail customers who happen to be served at high voltage levels.
- All retail connections include distribution facilities, the costs of which must be recovered through distribution rates. Naumann Reb., ComEd Ex. 35.0, p. 19:412-20.
- All retail customers use remote distribution facilities and distribution services that they support. These include customer service, system engineering, system planning, services provided by ComEd's Energy Services Organization, and in almost all cases, standard billing and metering. Naumann Reb., ComEd Ex. 35.0, pp. 8:181-82, 10:217-24. All retail customers should pay an appropriate share of these costs.

ComEd has proposed Rider HVDS to recognize properly the reduced, but still substantial cost, of serving high-voltage retail customers. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 32:737-54; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 24:538-46.

ARES witness Marc Ulrich nonetheless proposes that high-voltage customers should be permitted to take retail service “directly” under the transmission tariff, without paying any distribution charges. This suggestion is illegal under both federal and state law, and is an unjust and unreasonable rate design.<sup>†</sup> It should be rejected for several reasons.

- All retail customers, regardless of voltage, in fact use distribution facilities and services. Naumann Reb., ComEd Ex. 35.0, pp. 8:181-82, 10:217-24. Some of those facilities -- wire, transformers, switches, meters, etc. -- are tangible and on-site. Others -- engineering and planning service, retail metering and billing, customer service -- are also provided to all retail customers regardless of voltage, and may be accounted for in distribution accounts or in general plant and A&G expense. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 31:698-704; Naumann Reb., ComEd Ex. 35.0, p. 8:177-81. But, all of these services are real and impose real costs. These customers plainly should not receive those services for free.
- The fact that facilities operate at high-voltage is no reason to conclude that they are not distribution facilities. The distribution facilities used by high-voltage customers and the rules for classifying them as distribution, were identified specifically or by functional rule in ComEd’s Commission- and FERC-approved functionalizations. Naumann Reb., ComEd Ex. 35.0, pp. 9:192-202, 10:221-27; Sterling Dir., ComEd Ex. 16.0, pp. 12:253-15:314. Witness Ulrich admits that he has no knowledge of the distribution facilities actually used to serve ComEd’s high-voltage customers, or of ComEd’s functionalization. Ulrich, Tr., 915:21-916:3.
- As a matter of Illinois law, all unbundled retail customers are delivery services customers. The Act contains no exemption for high-voltage customers, 220 ILCS 5/16-102 (defining delivery services and retail customers), 16-104 (obligating utilities to offer distribution services to all retail customers)). Not only is ComEd entitled to recover its costs from those customers, the Commission is empowered to set and regulate the rates and terms of service for the non-transmission services provided to those customers.

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<sup>†</sup> Note that this argument is quite different from Midwest’s proposal, discussed in Section II.G.1.d, above. Midwest proposed only a zero facilities charge for some interconnections, based upon the (incorrect) premise that there were few if any such facilities at these interconnections. Midwest did not dispute that it is a retail customer, that its retail service was subject to Commission-approved rates, or that it should pay an appropriate portion of the other distribution costs.

- ComEd’s OATT, and the RTO OATTs pending before FERC, do not allow retail customers to take service “directly.” Naumann Reb., ComEd Ex. 35.0, pp. 6:132-7:139. Transmission service is provided under those tariffs to customers who are eligible to take unbundled retail service under state law. Sterling Dir., ComEd Ex. 16.0, p. 9:187-90; Sterling Sur., ComEd Ex. 56.0, p. 3:47-52; Naumann Reb., ComEd Ex. 35.0, pp. 6:131-7:145, 7:150-8:171. Under federal law and approved federal tariffs, there is no such thing as unbundled retail transmission-only service. Naumann Reb., ComEd Ex. 35.0, p. 7:145-49.

Indeed, it appears that the effort to characterize unbundled retail service as “transmission-only” is a renewed attempt impermissibly to avoid plain requirements of state law, such as the requirement to pay transition charges and taxes, and to support common benefit funds, while at the same time shifting the distribution costs of services actually used by such high-voltage customers to other, lower-voltage customers. It is also noteworthy that the witnesses for the high-voltage customers themselves, including Midwest and IIEC, did not support this proposal. The effort to require ComEd to offer high-voltage customers delivery services while exempting them from any delivery services rate should, and must, be rejected.

**e. Adoption Prior to Bundled Rate  
Tariff Change**

As shown above, the HVDS credit is justified and correctly calculated. The proposal from the IIEC to phase in the HVDS credit and the respective proposals from the CILCO and TrizecHahn to postpone the introduction of the HVDS credit (in the case of TrizecHahn until ComEd’s bundled rates contain a parallel HVDS credit) are unwarranted, given the grounds for the credit, its correct calculation, and the lack of any valid objections *e.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 14:318-15:334, 26:594-27:611, especially in light of the materially smaller size of the revised credit as calculated in ComEd’s surrebuttal and the resulting significantly reduced impact on customers not eligible for the credit. Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 7:135-10:193 and Atts. B and C. Moreover, Section 16-108(c) of the Act, 220

ILCS 5/16-108(c), entitles ComEd to delivery services charges that are “cost based, and ... allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs.” There is no valid legal or factual ground for deviating from Section 16-108(c)’s mandate based on the theory that ComEd’s bundled rates do not contain the same HVDS credit and instead contain the existing smaller Rider 11 high voltage credit.

**3. Rider ISS**

**a. Pricing**

ComEd proposes that Rider ISS - Interim Supply Service (“Rider ISS”) be extended to residential customers, and that the charges in Rider ISS be set equal to the seasonal Power Purchase Option (“PPO”) energy rate plus an additional ten percent charge. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 25:584-86. The direct panel testimony of Sally Clair and Paul Crumrine described how ComEd’s proposed pricing methodology, including the additional ten percent charge, protects customers from involuntary exposure to spot market fluctuations, while providing ComEd with some limited protection from long-term risks associated with the service offering, and promotes fair and efficient competition. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 26:587-604.

ComEd explained in detail why various alternative pricing proposals -- use of Rate HEP - Hourly Energy Pricing, use of a bundled rate plus an additional ten percent charge, and the removal/reduction of an additional ten percent charge -- are all inappropriate. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 6:120-9:209; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 13:279-16:349. Staff witness Cheri Harden acknowledged that ComEd’s proposal is a reasonable alternative to her pricing proposal for residential customers, which is based upon a bundled rate plus an additional ten percent charge. Harden Dir., Staff Ex. 8.0, pp. 3:66-4:74;

Harden Reb., Staff Ex. 22.0, p. 2:29-33. ComEd's interim supply service has always been priced based upon a seasonal market value index methodology, and was approved by the Commission in ComEd's initial delivery services filing, Docket No. 99-0117. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 3:70-5:119. Pricing ComEd's interim supply service in the manner proposed by ComEd is reasonable and appropriate, and should be approved by the Commission.

**b. Commission Authority to Alter ComEd's Proposal**

The Commission lacks authority to alter ComEd's proposed service offering for Rider ISS. ComEd is not required to provide tariffed service under Rider ISS under the Act. 220 ILCS 5/16-103. ComEd has agreed voluntarily to offer interim supply service on terms and conditions proposed by ComEd to address the situation that would confront retail customers if their RES service were abruptly terminated. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 24:547-64, 25:570-77; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 10:223-26. However, ComEd has not offered or agreed to offer this service on terms other than those proposed by ComEd and, because Rider ISS is a voluntary offering, ComEd cannot be compelled to do so. 220 ILCS 5/16-103(e).

**4. Other Customer Class Definition Issues**

Staff witness Michael Luth suggests that, rather than being presented as a credit, the proposed HVDS credit should be presented through the creation of a new high voltage customer class. That suggestion is not itself a criticism of the calculation of the credit. Mr. Luth's suggestion should not be adopted, however, because it is unwarranted and impractical and would impose material unnecessary burdens on ComEd's information systems. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 25:569-26:589; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 3:65-4:75. Staff witness Luth also acknowledges that eligible customers can easily

understand that the proposed HVDS credit is a much larger replacement for the existing Rider 11 credit, and concedes a lack of knowledge of what burdens his customer class proposal would place on ComEd's information systems. Luth, Tr. 979:9-980:16 .

The ARES Coalition's suggestion that high voltage customers should not be subject to Rate RCDS at all and should be placed in a new rate is addressed in Section II.G.8.

The even broader suggestion of the ARES Coalition that ComEd's entire rate design be reformulated along voltage based lines rather than demand based lines is vastly more unwarranted and impractical. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 22:502-23:520; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 17:382-88. While each contested rate proceeding must be decided based exclusively on the evidence in that proceeding, it may be noted that that proposal was rejected for multiple good reasons by the Commission in Docket No. 99-0117. *In re Commonwealth Edison Company*, Commission Docket No. 99-0117, pp. 50-51 (Order August 26, 1999).

ComEd's rate design proposal includes separate customer classes for street lighting customers that provide their own poles and secondary wires. *E.g.*, Alongi-Kelly Dir., ComEd Ex. 13.0 CR, p. 12:251-52, ComEd Ex. 13.3; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 35:791-96; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, Att. C. The GCI's "proposal" for such a class therefore is superfluous. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 35:791-96.

Finally, the subject of a possible separate customer class for Independent Power Producers has been addressed in Section II.G.1.d. *See, e.g.*, Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 8:173-12:277.

**5. Residential Customer Eligibility for Rider PPO**

Residential customers are not eligible customers under ComEd's proposed revised Rider PPO. E.g., Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 23:527-28. That is appropriate because an electric utility is not legally required to offer the power purchase option to residential customers. 220 ILCS 5/16-110. The Act is express and clear on that point.

**6. SBO Credit**

The Single Bill Option ("SBO") Credit properly is calculated based on the net costs that ComEd will avoid when RESs elect the single bill option (the credit is based on an average of the savings), and not based on an embedded cost approach. Use of average embedded costs for this purpose undeniably overstates the savings that ComEd realizes: (a) it ignores the inherent costs of ComEd's obligations as a provider of last resort in relation to standard billing; (b) it also admittedly deviates from cost based rates and the allocation of costs in accordance with cost causation; moreover, (c) it necessarily either improperly denies ComEd recovery of its costs of providing delivery services or, if ComEd's shortfall were to be funded through rates (something which none of the parties advocating the embedded cost approach proposes), then requires customers not on the SBO to pay cross subsidies to customers who are on the SBO. E.g., Gordon Dir., ComEd Ex. 2.0, pp. 17:460-25:676; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 19:431-20:457, 41:930-42; Makhholm Dir., ComEd Ex. 15.0, pp. 2:43-3:81, 8:234-11:332; Gordon Reb., ComEd Ex. 21.0, pp. 7:154-9:213; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 2:30-3:68; Makhholm Reb., ComEd Ex. 34.0, pp. 1:1-7, 1:12-3:65, 4:89-10:243; Gordon Sur., ComEd Ex. 44.0, pp. 4:110-6:160; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 5:101-13; Makhholm Sur., ComEd Ex. 55.0 CR, pp. 1:18-26, 3:57-14:338.

ComEd, in its direct case, proposed an SBO credit of \$0.03 (three cents), further providing that customers would not be entitled to the credit while they had a past due bundled service balance. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 38:827-41 and Att. C at 1st Revised Sheet Nos. 176 and 122.2. ComEd's proposal in its direct case was based on its calculation of the net costs that ComEd actually will avoid due to customers electing the SBO, except that ComEd noted that the \$0.03 figure actually overstated the savings because it did not factor in the extra costs that ComEd incurs due to the manual work-around (relating to outstanding bundled balances) that has been the least cost approach to implementing the Commission's order relating to the SBO in Commission Docket No. 00-0494.<sup>†</sup> Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 8:165-67, 38:827-44 and Att. O. However, ComEd, in its rebuttal case, determined based on further analysis that its original calculation also otherwise overstated ComEd's savings and that, if correctly calculated on a net avoided cost basis, the SBO credit actually would be negative \$0.02 (negative two cents), even without factoring in the extra costs that ComEd incurs due to the manual work-around that at this time is the least cost approach to implementing the Commission's order relating to the SBO in Commission Docket No. 00-0494; however, ComEd did not propose to actually reduce the credit from \$0.03. Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 24:499-25:521 and Att. F. ComEd also showed that the costs of the work-around amounted to approximately \$225.00 per account<sup>‡</sup>, or \$4.58 per month if spread over a 60 month period and subjected to appropriate interest and annuity calculations. *Id.*

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<sup>†</sup> Whether or when residential and non-residential customers with outstanding bundled balances should be placed on the SBO is addressed in Section III.A.

<sup>‡</sup> Note that \$225 is the amount required if every non-residential SBO customer were to pay the fee. If only customers with an undisputed bundled services balance pay this fee, the calculated fee would be \$1,125, based on 20% nonresidential customers with a bundled services balance. *See* Alongi-Kelly Reb. ComEd Ex. 32.0, Att. F, n.3.

ComEd, in its rebuttal case, also showed that the SBO credit, if calculated on an embedded cost basis, which exaggerates ComEd's actual savings, would be \$0.28 (twenty-eight cents), before factoring in the costs of the work-around. *Id.* If the Commission were to adopt the embedded cost based approach, then ComEd would be entitled to deduct the costs of the work-around (unless the Commission determines that customers with outstanding bundled balances will not be eligible for the SBO). ComEd does not waive its right to that deduction.

The idea that ComEd theoretically will experience material savings in the short run or the long run by virtue of the SBO also is undercut by another fact. Even though the current SBO credit is based on an embedded cost methodology and thus is inflated, based on recent data, only approximately 5% of delivery services customers have been placed on the SBO. Clair-Crumrine, Tr. 1119:19-1120:3. If only some customers elect to take delivery services, and if only a fraction of them are placed on the SBO, then obviously ComEd's opportunity to avoid fixed costs or long term variable costs by virtue of the SBO is non-existent or negligible even in the long run. And, ComEd's ability to avoid any short-run costs is extremely limited, as the citations in the first two paragraphs of this subsection show. Gordon Dir., ComEd Ex. 2.0, pp. 20:536-22:594; Gordon Reb., ComEd Ex. 21.0, pp. 8:191-9:213.

ComEd's advocacy of a net avoided cost based SBO credit is in no way inconsistent with the decision of the Appellate Court in the appeal from the Commission's Order in Docket No. 99-0117. While the court affirmed the Commission's order of an embedded cost based SBO credit based on the evidence in the record in that proceeding, it also stated that: "ComEd correctly notes that the 'embedded cost' methodology fails to account fully for ComEd's short term costs, the Commission accepted its staff's conclusion that the 'embedded cost' methodology is 'cost based' in that it reflects ComEd's costs over the long run." *Commonwealth*

*Edison Company v. Illinois Commerce Commission*, 322 Ill. App. 3d 846, 854, 751 N.E.2d 196, 203 (Ill. App. 2001). As shown above, the theory that an embedded cost based SBO credit fairly reflects ComEd's long run savings now even more plainly is untenable, even setting aside that it was analytically unsound to begin with due to ComEd's provider of last resort obligation and the theory's inherent methodological flaws. ComEd's proposed SBO credit is more than generous (it plainly is overstated) and should be approved.

**7. Metering Service Charge (Credit)**

The Commission, in its Docket No. 99-0013, ordered ComEd and other electric utilities to offer unbundled metering service. The Commission, in relation to rate design, ordered use of an embedded cost approach to determining the savings by customer class that the utilities (in theory) would experience when customers elect unbundled metering service. However, the Commission directed that the rate design not include an unbundled metering service credit denominated as such, and instead that the difference in costs be expressed through charges. Thus, ComEd's existing Rate RCDS identifies what in substance are unbundled metering services credits calculated by class on an embedded cost basis as standard metering charges and states that customers pay that charge unless, if eligible, they elect unbundled metering service. Ill. C. C. No. 4, 3rd Revised Sheet Nos. 116 and 117, and Original Sheet No. 117.1.

Although ComEd believes that expressing the credits as credits would be preferable, ComEd has adhered to the "charges" approach in its proposed revised Rate RCDS. However, ComEd has renewed its position that the credits should be determined on a net avoided cost basis, and thus ComEd's proposed standard metering charges are calculated on a net avoided cost basis. (The metering costs that will not be avoided are included in the customer charges.)

The standard metering charges (the credits) properly are calculated based on the net costs that ComEd will avoid when customers elect unbundled metering service (the charges [credits])

are based on an average of the savings per customer class), and not based on an embedded cost approach, because the latter approach overstates the savings that ComEd incurs both because it inherently assumes that ComEd will experience more savings than will ever actually occur and because it ignores ComEd's obligations as a provider of last resort in relation to standard metering, deviates from cost based rates and the allocation of costs in accordance with cost causation, and thereby, depending on the rate design, either improperly denies ComEd recovery of its costs of providing delivery services or, if ComEd's shortfall were to be funded through rates (something which none of the parties advocating the embedded cost approach propose), then requires customers not electing unbundled metering service to pay cross subsidies to customers who do elect unbundled metering service. *E.g.*, Gordon Dir., ComEd Ex. 2.0, pp. 17:460-25:676; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 19:431-20:457, 28:639-29:661; Makholm Dir., ComEd Ex. 15.0, pp. 2:43-3:81, 8:234-11:332; Gordon Reb., ComEd Ex. 21.0, pp. 7:154-9:213; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 2:30-3:68; Makholm Reb., ComEd Ex. 34.0, pp. 1:12-3:65, 4:89-10:243; Gordon Sur., ComEd Ex. 44.0, pp. 4:110-6:160; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 5:101-13; Makholm Sur., ComEd Ex. 55.0 CR, pp. 1:18-26, 3:56-14:338.

ComEd properly and correctly calculated the standard metering charges (credits) on a net avoided cost basis. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 8:168-69, 31:686-32:702 and Att. P. Some intervenors assert that ComEd has not made correct calculations, but their assertions are erroneous. Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 22:463-24:497; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 1:19-2:30, 10:194-11:213.

The idea that ComEd theoretically will experience material savings in the short run or the long run by virtue of the offer of unbundled metering service also is undercut by another fact.

Even though the current standard metering service charges (credits) are based on an embedded cost methodology and thus are inflated, no delivery services customers have elected unbundled metering service. Clair-Crumrine, Tr. 1119:7-13. If only some customers elect to take delivery services, and if none or only a fraction of them elect unbundled metering service, then obviously ComEd's opportunity even in the long run to avoid fixed costs or long term variable costs by virtue of the offer of unbundled metering service is non-existent or negligible, and its ability to avoid any short-run costs is extremely limited.

ComEd's advocacy of net avoided cost based standard metering charges (credits) is in no way inconsistent with the decision of the Appellate Court in the appeal from the Commission's Order in Docket No. 99-0013. While the court affirmed the Commission's order of embedded cost based standard metering service charges (credits) based on the evidence in the record in that proceeding, it relied upon its opinion in the appeal from the Commission's Order in Docket No. 99-0117, and stated that: "Furthermore, although we agreed that the [embedded cost] methodology 'fail[ed] to account fully for ComEd's short term costs,' we deferred to the Commission's conclusion that the methodology 'reflect[ed] ComEd's costs over the long run.'" *Commonwealth Edison Company v. Illinois Commerce Commission*, No. 2-00-1397 at 7 (Ill. App. 2001) (Rule 23 Order). As shown above, the theory that embedded cost based standard metering service charges (credits) fairly reflect ComEd's long run savings now even more plainly is untenable, even setting aside that it was analytically unsound to begin with due to ComEd's provider of last resort obligation and the theory's inherent methodological flaws. ComEd's proposed standard metering service charges should be approved.

#### **8. Rider TS – Transmission Service**

ComEd's existing delivery services rates are largely based on the premise that ComEd provides transmission services and ancillary transmission services under its own Open Access

Transmission Tariff (“OATT”). Soon, a Regional Transmission Organization (“RTO”) such as the Alliance RTO, will begin providing these services -- to retail customers and to ComEd -- at rates, terms, and conditions governed by an RTO OATT under the jurisdiction of FERC. Sterling Dir., ComEd Ex. 16.0, pp. 4:74-5:93, 9:187-97, 22:480-24:519; Sterling Reb., ComEd Ex. 36.0, p. 8:176-84. ComEd’s proposed Rider TS - Transmission Service justly and reasonably adapts ComEd’s Illinois-jurisdictional delivery services tariffs to this new paradigm. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 6:131-42; Sterling Reb., ComEd Ex. 36.0, pp. 2:46-3:50.

To do this, Rider TS accomplishes three things. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 31:709-32:733. First, it appropriately charges retail customers of ComEd who take unbundled tariff service -- customers under Riders PPO and ISS -- the cost paid on behalf of those customers by ComEd to the RTO to procure their transmission service. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 6:126-7:139, and Att. E; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:710-17; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 23:525-24:533; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:424-34. Proposed Rider TS Sheets 218, 219. Second, Rider TS credits unbundled retail customers’ CTCs with the costs of transmission services and ancillary transmission services imposed under the RTO tariff. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, and Att. G; Proposed Rider TS Sheets 218, 219; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:718-24. Finally, Rider TS allows ComEd to collect overdue transmission charges for an RTO in order to reduce overall collection costs and promote efficient retail competition. Sterling Reb., ComEd Ex. 36.0, pp. 2:41-3:50. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 31:725-32:733. *See*, Sterling Dir., ComEd Ex. 16.0; Proposed Rider TS Sheets 218, 221.

Rider TS Properly Accounts for Transmission Services Used by Retail Customers Using Riders PPO and ISS. Retail customers taking unbundled service under ComEd's Riders ISS and PPO, including those taking service through RESs who take the customers' PPO energy via "PPO assignment," use transmission services and ancillary transmission services currently provided by ComEd. Under ComEd's existing rates, the cost of that service is passed on to those customers in a manner reflective of ComEd's rates. Sterling Dir., ComEd Ex. 16.0, pp. 25:544-26:569; Rider PPO. Under an RTO like the Alliance RTO, ComEd will procure these services from the RTO, and pay the RTO for those services. Sterling Dir., ComEd Ex. 16.0, p. 24:506-19. Rider TS provides a just and reasonable mechanism, analogous to that in current rates, to pass on these transmission costs to Rider ISS and Rider PPO customers. Sterling Dir., ComEd Ex. 16.0, pp. 10:215-11:222, 25:548-51, 26:558-69; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:709-17; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:424-34. A mechanism such as this is necessary for ComEd to recover the costs of procuring transmission services and ancillary transmission services on behalf of these customers, but also for ComEd to avoid artificially subsidizing service to Rider PPO and ISS customers, at the expense of other sources of supply. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:718-24; Sterling Dir., ComEd Ex. 16.0, pp. 26:556-28:617.

Rider TS passes these costs through on a strictly revenue-neutral basis -- Rider ISS and PPO customers are charged just what ComEd pays. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:718-24; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 23:525-31; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:428-34. It does this through the use of a single, transmission charge, which reflects ComEd's costs spread across the Rider ISS and Rider PPO load on a retrospective per kWh basis. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:428-34. This is an entirely

appropriate rate design. The Alliance RTO rates, as with most new RTO OATTs, do not -- and cannot -- price transmission services and ancillary transmission services at different unit costs to members of the different retail rate classes maintained by each distribution utility. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:425-34. Because ComEd's costs under the RTO transmission tariff will not vary depending upon the Rate RCDS class of the customer, and because the customers will impose like costs on the system, Rate RCDS uses a corresponding equal and level unit charge for all such customers. Proposed Rider TS Sheets 218, 221.

Rider TS preserves the CTC credit for transmission and transmission ancillary services charges paid by customers. Currently, ComEd credits unbundled retail customers' CTCs with the costs of transmission services and transmission ancillary services<sup>†</sup> provided by ComEd, pursuant to Section 16-102 of the Act. 220 ILCS 5/16-102 (defining the deduction from transition charges for delivery services); Rider TS Sheet No. 218; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:709-17. Although an RTO will soon become the transmission provider, ComEd acknowledges that it (or the purchaser of its transmission business) will directly or ultimately receive revenue for the provision of these services under the RTO OATT. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, Att. E; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 31:709-32:733. Accordingly, Rider TS implements a mechanism to credit CTCs for transmission services and transmission ancillary services charges imposed by an RTO that will, in turn, compensate the owner of the transmission assets. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, Att. C; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 31:709-18. No party has criticized ComEd's approach, which is both fair and consistent with the Commission's order with respect

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<sup>†</sup> The energy component of Energy Imbalance Service is credited at the PPO rate for Rider PPO customers, since all energy, including imbalance energy, is sold to these customers at this price. Final Order, Docket 99-0117, pp. 98-99, August 26, 1999. ComEd proposes no change in this necessary adaptation.

to credits for transmission services and transmission ancillary services in Docket 99-0117. Sterling Dir., ComEd Ex. 16.0, p. 11:229-32; August 26, 1999, Final Order 99-0117, p. 90. ComEd's approach is just and reasonable and should be approved.

Rider TS provides a pro-competitive mechanism that allows an RTO to collect unpaid retail transmission charges using existing ComEd billing systems. Rider TS allows the RTO to use ComEd's billing system to collect overdue transmission charges payable, under federal law, by retail customers. Sterling Reb., ComEd Ex. 36.0, pp. 2:41-3:71; Proposed Rider TS Sheets 218, 221. ComEd receives no direct financial benefit from this proposal. Sterling Reb., ComEd Ex. 36.0, p. 4:93-96; Borden Tr. 2281:16-2282:11. Rather, allowing an RTO to use ComEd's existing billing and collection systems not only reduces total costs of collection, which are ultimately borne by customers, but also promotes efficient retail competition. Borden Tr. 2281:16-2284:1; Sterling Reb., ComEd Ex. 36.0, pp. 2:41-3:50, 4:75-92. By providing a cost-effective mechanism for RTOs to rely on the credit and resources of the underlying customers -- from whom they are entitled to collect transmission charges under federal law -- the need of RTOs to impose independent wholesale credit requirements on RESs is avoided. Sterling Reb., ComEd Ex. 36.0, pp. 2:44-3:50, 4:87-92, 5:112-6:125; Sterling Dir., ComEd Ex. 16.0, pp. 27:578-28:603.

Although no party disputes ComEd's intent, Staff and the IIEC question this function of Rider TS. Borden Dir., Staff Ex. 11.0, p. 3:41-49; Borden Tr. 2274:9-16. However, the record shows such criticism to be misplaced. First and foremost, nothing in ComEd's proposal increases the liability of retail customers. Sterling Reb., ComEd Ex. 36.0, pp. 2:36-40, 4:75-81; Sterling Tr. 2370:18-2371:4. A claim that retail customers should not be liable for transmission charges not only misstates federal law, but also is simply not material to ComEd's proposal.

Sterling Reb., ComEd Ex. 36.0, pp. 1:16-2:35, 3:51-71, 4:77-81. Neither Rider TS in particular, nor ComEd's Illinois tariffs in general, are the source of retail customers' liability for transmission charges. No objection to, or change in, Rider TS could alter that liability. Sterling Reb., ComEd Ex. 36.0, pp. 2:36-4:81; Sterling Tr. 2356:17-2357:7, 2370:18-2371:4. Retail customers, both under ComEd's OATT and under and an RTO OATT, are the eligible transmission customers and, as such, are liable for charges for the transmission services that they use under federal law. Sterling Reb., ComEd Ex. 36.0, p. 4:75-81; Sterling Sur., ComEd Ex. 56.0, pp. 2:29-33, 4:76-79; Sterling Tr. 2357:1-6. The Commission inherently recognized this fact in its Order in ComEd's original delivery services rate case. Final Order, 99-0117, pp. 151-152, August 26, 1999. All rejection of this portion of Rider TS would do is to make recovery of overdue transmission services bills more difficult and expensive. Sterling Reb., ComEd Ex. 36.0, p. 3:41-50.

ComEd's proposal offers a real benefit to the market. It offers an RTO a practical and cost-effective means of relying on the credit of retail customers in supplying the transmission service ordered by a RES on behalf of those customers. Sterling Dir., ComEd Ex. 16.0, pp. 27:570-29:603; Sterling Reb., ComEd Ex. 36.0, pp. 2:44-3:50, 4:87-92, 5:112-6:125. Unless a mechanism like Rider TS is approved, the RTO will have no choice but to impose wholesale-style credit requirements RESs, even where a RES's base of customers would provide ample protection. Sterling Dir., ComEd Ex. 16.0, p. 27:578-88; Sterling Reb., ComEd Ex. 36.0, pp. 5:112-6:125. The transmission provider is certainly entitled to credit security, but where adequate security is already provided by the diverse customer base, there is no need to impose additional costs on the RES. Moreover, conscientious, stable RESs may incur significant costs to comply with wholesale credit security requirements. Sterling Dir., ComEd Ex. 16.0,

pp. 27:578-28:603. Finally, the events of the last ten days with respect to Enron highlight that even apparently well-capitalized RESs can rapidly be left in jeopardy.

In sum, the record shows that ComEd's proposal benefits the market by reducing the costs of collection and by mitigating RES credit security costs that would be unnecessary under ComEd's tariff. Sterling Dir., ComEd Ex. 16.0, p. 27:578-95. This provision is just and reasonable and should be approved.

Timing of Rider TS. Staff suggests that, because the changes implemented in Rider TS work in conjunction with an RTO OATT, its provisions should not be triggered until the RTO tariff is operational. Borden Dir., Staff Ex. 11.0, pp. 3:40-46, 4:69-5:91; Borden Tr. 2273:17-2274:5. ComEd concurs with Staff and suggests that Rider TS be approved with an amendment that expressly provides that its provisions become effective upon the effective date of an RTO OATT in ComEd's service territory. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 32:717-25; Borden Tr. 2274:20-2275:6. This suggestion addresses Staff's concern and protects both ComEd and customers by providing a seamless switch-over to Rider TS when the RTO OATT become effective. Sterling Sur., ComEd Ex. 56.0, p. 2:29-33.

**9. 24-Month Return to Bundled Service Requirements**

Under ComEd's proposed revised Rate RCDS, small commercial and residential delivery services customers that return to bundled service are subject to a 24 month minimum period before they may again elect delivery services. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 4:85-5:88 and Att. C at 2nd Revised Sheet No. 109, Original Sheet No. 133.2, 2nd Revised Sheet No. 159. ComEd is entitled as a matter of law to impose that restriction. 220 ILCS 5/16-103(d). *Accord* Juracek Reb., ComEd Ex. 20.0, p. 32:766-70. Delivery services customers return to bundled service only under two scenarios: (1) by their own voluntary election; or (2)

by, after having been placed on Rider ISS (of which they promptly are notified), their failing to select another Retail Electric Supplier or, if eligible, the power purchase option, despite having approximately three months in which to make such a selection under Rider ISS. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 4:85-5:88 and Att. C at 2nd Revised Sheet No. 109, 3rd revised sheet No. 133, 3rd revised sheet No. 152, 2nd Revised Sheet No. 159. Thus, there is no scenario under which a customer will become subject to the 24 month minimum period except by choice.

Staff has requested that ComEd consider reducing the 24 month minimum period to 12 months. ComEd has taken that proposal under advisement, but ComEd has not determined to accept any reduction at this time. Juracek Reb., ComEd Ex. 20.0, p. 32:766-70. The Commission therefore should approve the proposed 24 month period.

#### **10. Rider 25**

Some Intervenors have argued that ComEd's rate design discriminates against electric space heating customers served under Rider 25, depriving them of the opportunity to participate in and to enjoy savings from the open access system. Brown Reb., BOMA Ex. 1.0, pp. 15:287-16:316. These contentions are incorrect for three reasons.

First, Rider 25 customers have not been excluded from the open access marketplace. They are eligible to participate, just as other customers are. They are participating and are receiving the benefits that the open access legislation was intended to provide.

Second, the suggestion that whatever savings Rider 25 customers could have achieved under present circumstances will be lost as a result of the proposed increase in delivery services rates is simply incorrect. The rebuttal testimony of Arlene Juracek demonstrates that the Rider 25, Space Heating class will have a positive CTC (0.607 cents/kWh) based on a current snapshot of market prices provided by IIEC witness Stephens. Juracek Reb., ComEd Ex. 20.0, pp. 19:475-20:486, ComEd Ex. 20.2. These positive CTCs will be available to offset increased

delivery service charges. Juracek Sur., ComEd Ex. 41.0, p. 23:535-42. Updating the CTC calculations to reflect both more recent market values and ComEd's full transmission filing request (Juracek Sur., ComEd Exs. 41.0, 41.2, 41.3, 41.4, and 41.5), shows that CTCs not only continue to be positive, but have increased significantly in magnitude. Juracek Sur., ComEd Ex. 41.0, p. 23:542-45. Thus, the evidence strongly supports the conclusion that Rider 25 customers will continue to participate in the open access system and, if anything, will have even more opportunities to achieve savings.

Third, there is no basis under the law for the contention that Rider 25 customers must receive special, below-cost delivery services rates in order to make it attractive for them to switch from the favorable bundled rates that they would otherwise pay. As with other eligible customers, ComEd must offer Rider 25 customers the option to take delivery services at rates based on the actual cost of the delivery services (plus the CTC, if any), not below cost rates artificially set to beat bundled service pricing. 220 ILCS 5/16-108(c); O'Connor/Spilky Direct, ARES Ex. 1.0, p. 35:790-93. If they take delivery services, customers can also seek additional savings by choosing another generation supplier. However, customers can also currently choose bundled rates, which in many cases have artificially low charges that are legislatively frozen (and, in the case of residential customers, substantially reduced) until January 1, 2005. 220 ILCS 5/16-111(a). All customers are free to choose a bundled rate for which they are eligible, if that rate produces more savings than choosing to take delivery services and buy their power and energy on the market. Indeed, the General Assembly would not have devoted so much effort to bundled rates, and when and how they could be abandoned or declared competitive, if it did not realize and intend that, for some customers, such rates would be a choice they might freely make.

In short, if Rider 25 customers find the open access alternative unattractive, and instead choose to pay below-market, frozen prices available through bundled service, they are not being adversely impacted by ComEd's rates. They are exercising a right granted by the law to choose the lowest cost alternative available to them. Manufacturing a third choice, as would witnesses such as Dr. O'Connor and Mr. Spilky -- that customers who might be more likely to opt for bundled service during the transition period be given the right to elect below-cost delivery services -- is simply not part of the open access system.

**11. Other Topics**

ComEd is aware of no other topics at this time.

**III.**

**Terms and Conditions Issues**

**A. SBO Credit Eligibility (Customers With Past Due Bundled Service Balances)**

ComEd's proposal for SBO eligibility is reasonable and appropriate, and has not been contested by any party. ComEd, in its direct case, proposed that residential customers with past due bundled services balanced owed to ComEd be precluded from being placed on the SBO and from receiving the SBO credit, and explained the reasons why the proposal was appropriate. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 39:900-41:928. Staff, through its witness Dr. Eric Schlaf, approved of ComEd's proposal, with the clarification that residential customers with legitimate billing disputes should be permitted to take the SBO, and to receive the SBO credit. Schlaf Dir., Staff Ex. 10.0, pp. 11:273-13:315. Dr. Schlaf further indicated that Staff knew of no reason that ComEd's proposal could not be applied to nonresidential delivery services customers, as well. Schlaf Dir., Staff Ex. 10.0, p. 13:323-26.

Staff indicated that, as an alternative to prohibiting customers with unpaid bundled services balances from taking the SBO, ComEd could potentially charge a fee to a customer with an undisputed bundled services balance that would cover ComEd's costs of collecting an outstanding balance directly from the customer. Schlaf Dir., Staff Ex. 10.0, p. 14:328-48. The alternative raised by Staff to permit customers with undisputed bundled balances to take the SBO for a fee is not viable, from either a financial or practical perspective. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 43:973-45:1019. A fee of \$225 per account would be required to cover ComEd's costs of collecting a past due bundled services balance, as indicated in Section II.G.6, above.

ComEd, in its rebuttal, amended its proposal to incorporate Staff's suggestions, and agreed to revise its Rider SBO – Single Bill Option (“Rider SBO”) tariff accordingly. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 40:911-43:964). ComEd's Rider SBO, as modified, states that customers (residential and nonresidential) with a bundled services balance owed to ComEd are not eligible to be placed on the SBO until such time as the balance is paid in full. Customers with legitimate billing disputes with ComEd remain eligible for the SBO, and the SBO credit. *Id.* No party objected to ComEd's proposal, as modified, nor did any party challenge ComEd on its proposal during cross-examination.

**B. Enrollment Issues**

The record raises no enrollment issues.

**C. Release and Use of Customer Specific Information**

ComEd's Plan and tariffs operate to protect the release and use of customer specific information as required by law, including the requirements of Section 16-122 of the Act. 220

ILCS 5/16-122. None of the witnesses providing testimony in the current proceeding challenges the fact that ComEd's Plan and tariffs appropriately protect customer specific information.

**D. Off-Cycle or Non-Standard Switching for Residential Customers**

ComEd proposes that, in general, switching for residential customers occur only on the regularly scheduled meter reading date. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 49:1107-50:1123. The only exception would be made for residential customers on Interim Supply Service as discussed further below. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 49:1107-50:1123; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 45:1021-46:1047.

Staff and other parties to this proceeding do not oppose ComEd's revised proposal to restrict off-cycle switching to non-residential customers and residential ISS customers. Schlaf Reb., Staff Ex. 24.0, p. 4:85-91. Staff acknowledges that the reasoning behind ComEd's restrictions on off-cycle switching is "understandable." Schlaf Dir., Staff Ex. 10.0, pp. 17:401-18:428. However, Staff Witness Schlaf also suggests that ComEd use "best efforts" to accommodate residential off-cycle switching requests if it would not disrupt typical business operations. Schlaf Dir., Staff Ex. 10.0, p. 18:430-35. In response to Schlaf's suggestions, ComEd is willing to offer fee-based off-cycle switching for residential Interim Supply Service ("ISS") customers except in situations where a RES is switching a large number of customers from ISS at one time. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 45:1021-46:1047. ComEd would charge residential customers the fee which is in effect for non-residential customers for the same service and would be applied only when a meter reading is required. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 21:474-79. Thus, the Commission should approve ComEd's revised proposal for off-cycle residential switching.

**E. General Account Agency Issues**

ComEd's proposes to provide clear rules for customers appointing General Account Agents. To do so, ComEd has added a section entitled "General Account Agents" to define how and when a retail customer may designate a General Account Agent, to specify the authority of such Agents and to detail the means of communication among ComEd, the Agent and the retail customer. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 30:688-94, 41:945-44:996.

Staff generally supports ComEd's "attempts to define the rights and responsibilities of customer, agents, and utilities." Schlaf Dir., Staff Ex. 10.0, pp. 6:151-9:236. Staff also has no objections to ComEd's revised general account agent form and agrees that it provides an appropriate explanation of the rights and responsibilities as between ComEd, the customer, and the agents involved. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, ComEd Ex. 31.2 CR; Schlaf Reb., Staff Ex. 24.0, p. 1:18-20; Schlaf, Tr. 1817:18-22. Dr. Schlaf also agreed that ComEd's proposal preserves the benefits that agents bring to the energy market. Schlaf, Tr. 1818:2-6.

The ARES coalition erroneously claims that ComEd has proposed an unnecessary level of bureaucracy for commercial and industrial customers who choose to work with agents. Ulrich Dir., ARES Ex. 2.0, p. 24:465-78. ComEd has done no such thing. In fact, ComEd's proposed agency form standardizes agency documentation, reducing overhead. Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 21:473-79.

**F. Value-Added Aggregation Services**

ComEd believes that customers should be offered the opportunity to aggregate their load. While these are not delivery services, ComEd's filing describes three offerings that can facilitate aggregation. Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 56:1252-57:1282.

Staff Witness Borden recommends that ComEd file contracts for Customer Aggregation and Targeted Consulting Services with the Commission. Borden Dir., Staff Ex. 11.0,

pp. 14:287-15:305. ComEd disagrees with Staff Witness Borden's recommendations. The proposed services are not tariffed services and ComEd is not required to offer them under the Act. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 37:848-40:909. There is no basis in the Act for requiring ComEd, unlike other competitors, to file contracts for services such as this.

Mr. Borden also raises a concern unique to the third service ComEd proposes, an information service targeted to inexperienced market entrants interested in providing aggregation to customers. Borden Dir., Staff Ex. 11.0, pp. 14:287-15:305. Mr. Borden's concern is unwarranted. This service would not involve marketing by ComEd of retail electric services and therefore will not violate any of the Commission's rules or regulations. Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 39:890-904.

Finally, ComEd made it clear that "the Commission believes that the offerings of any of these services would potentially violate Commission rules, ComEd would willingly withdraw that service proposal from consideration." Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 40:905-09. ComEd offers these services with the understanding that they are pro-competitive unregulated services.

**G. Collection of FERC Charges Under DSTs**

This issue is discussed fully in the context of Rider TS, section II.G.8, *supra*. ComEd proposes a mechanism to collect charges due an RTO using its existing billing system. That proposal does not expand liability for, or change the price of, any delivery service provided to retail customers.

**IV.**

**Other Issues**

ComEd is aware of no other issues at this time.

**CONCLUSION**

For the foregoing reasons, ComEd's Petition should be approved subject to the modifications set forth herein, and ComEd should be authorized and directed to file with the Commission complying tariffs to be effective, without further order, on May 1, 2002.

Dated: December 10, 2001

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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