

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
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 :
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. :

**APPLICATION FOR REHEARING OF
COMMONWEALTH EDISON COMPANY**

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Commonwealth Edison Company (“ComEd” or the “Company”), by its counsel, under 220 ILCS 5/10-113(a), 83 Ill. Adm. Code § 200.880 and/or other applicable law, submits this Application for Rehearing as to the Illinois Commerce Commission’s (the “Commission”) Interim Order of April 1, 2002, as amended by its Amendatory Interim Order of April 10, 2002 (the Interim Order”). The Commission should grant rehearing as to the issues specified herein.

INTRODUCTION

ComEd supports or accepts numerous rulings in the Interim Order. ComEd brings this Application because the Interim Order nonetheless errs in several respects, some of which are particularly grave in terms of their rationales and their short and long term consequences. Those errors should be corrected now rather than persisting until the final Order.

The main focus of this Application is on a relatively small number of erroneous rulings that reduce ComEd’s jurisdictional revenue requirement below that supported by the evidentiary record and allowed ComEd by law. Those reductions unfairly harm ComEd, even if no residential customer elects to take delivery services before entry of the final Order, and it is essential that those errors be corrected at this time. Moreover, contrary to some suggestions, the

largest of the reductions -- the use of an “across the board” general labor allocator (altered per the Commission’s Staff’s [“Staff”] proposal) to account for General Plant, Intangible Plant, and Administrative and General (“A&G”) costs -- is not a “policy” issue that should, or lawfully may, be decided on a “uniform” basis across utilities. Rather, like other cost issues, the issue must be assessed based on the evidence in the record of ComEd’s own costs, using the most accurate method(s) of assigning and/or allocating them to jurisdictional delivery services.

The secondary focus of this Application is the Interim Order’s rulings regarding rate design issues. Those determinations also matter. However, the rate design rulings that ComEd contests are limited in number and in significance at this interim stage of this Docket.

This Application also addresses certain other substantive issues and certain errors and omissions in the discussion of the parties’ respective positions and responses. Finally, this Application also lists a limited number of non-substantive errors that should be corrected.*

Revenue Requirement Issues. The Interim Order sets a jurisdictional revenue requirement of \$1,526,975,000, a reduction of \$259,995,000 from ComEd’s initial request and of \$143,764,000 from its final revised request.† The Interim Order, in approving the contested disallowances, errs in several respects. All of the errors should be corrected, but several are exceptionally serious in light of their rationales and possible consequences in this interim period.

The most serious incorrect disallowance is the Interim Order’s rejection of ComEd’s accounting for specific General Plant, Intangible Plant, and A&G costs in favor of an “across the board” general labor allocator (altered per Staff’s proposal). That erroneous ruling alone resulted

* There are, of course, other matters at issue in this Docket. However, the Interim Order expressly reserves decision on those issues. ComEd does not waive its rights with respect to any such issue and their omission from this Application is not an admission or a waiver of any rights relating to such issues.

† All revenue requirement figures herein are stated after subtracting Miscellaneous Revenues.

in a net jurisdictional rate base disallowance of \$403,570,000 (after offsets) and a net jurisdictional revenue requirement disallowance of \$110,390,000.

The use of an “across the board” labor allocator is incorrect for a host of reasons and is plainly reversible error. Among the most important of these reasons are the following:

- ComEd submitted extensive and detailed evidence supporting its accounting for its General Plant, Intangible Plant, and A&G costs, including specific evidence as to each and every individual Account. No party identified even one dollar of General Plant or Intangible Plant costs that ComEd included in its revised proposed jurisdictional revenue requirement that was not incurred to provide jurisdictional delivery services. The same is true of the A&G costs that were included, except that Staff questioned whether a small fraction of these costs -- certain legal and research and development (“R&D”)/special projects costs -- was incurred to provide jurisdictional delivery services. Staff, as to that fraction, erred. Yet, even if Staff were right as to that fraction, that fraction is tiny and it already was disallowed through the Interim Order’s approval of Staff’s proposed adjustments to legal costs and R&D/special projects costs (the labor allocator thus double-counts with those disallowances).
- ComEd’s allocation was based on real costs incurred for real activities actually part of providing jurisdictional delivery services. ComEd’s accounting reflected ComEd’s actual restructured balance sheets and directly assigned costs only where there was sufficient data to make such assignment accurate. ComEd used allocators, including the general labor allocator (without Staff’s alteration) for the remaining costs, but, instead of using only one allocator, ComEd selected for each specific category of costs the allocator that best reflected the activities that caused those costs. The use of any “across the board” allocator is necessarily less accurate. Thus, the issue is not “direct assignment versus the labor allocator” but whether to reject the use of the combination of methods, including the labor allocator, that was proven to most accurately allocate each item or category of cost in favor of use of a less accurate “across the board” (and altered) labor allocator.
- As to those costs that ComEd accounted for based on its restructured balance sheets and direct assignment, no party identified even one dollar of costs that was not amenable to direct assignment. Some parties delight in pointing to the Commission’s finding in Docket 99-0117 that executive compensation costs (which are not General Plant or Intangible Plant costs, and which are only a small fraction of 1% of A&G costs) are not amenable to direct assignment. ComEd did not disagree here and, in fact, ComEd accounted for executive compensation costs using the unaltered general labor allocator. ComEd is not opposed to the use of the unaltered general labor allocator, or any other, where that is the best way to account for particular costs. However, as to those costs for which ComEd used

the restructured balance sheets, direct assignment, or other allocators, no party even attempted to refute ComEd's evidence that ComEd's accounting better reflected true cost causation.

- The failure of any other party to show any flaw in ComEd's accounting and analysis cannot be ignored or excused. All data supporting the restructured balance sheets, including all data regarding the General Plant and Intangible Plant Accounts, was available to the parties for several months in this Docket. The same is true of, among other things, ComEd's detailed 82 page A&G cost study (55 pages of analysis, including over 4,000 lines of multi-columned data, plus 27 pages regarding the allocators used).
- The argument that no common cost can be directly assigned is incorrect. As noted above, ComEd presented evidence discussing each and every individual Account. A particularly telling example is Intangible Plant. ComEd's \$179,899,429 in Intangible Plant consists of just five different items -- mainly large software systems -- and ComEd supported its accounting with specific evidence as to each of the five individual items. The Interim Order simply rejects that accounting for Intangible Plant, without any analysis or evidence disputing the assignment of even a single one of these items. This erroneous ruling, standing alone, resulted in a \$58,738,000 disallowance from net jurisdictional rate base and a \$12,771,000 disallowance (\$7,271,000 due to reduced return of and on investment and \$5,500,000 due to impact on the magnitude of the disallowance of A&G costs) from the jurisdictional revenue requirement.*
- Moreover, the argument that none of the costs at issue can be directly assigned is contradicted by Staff's testimony both in Docket 99-0117 and in this Docket, and by the Interim Order itself. Staff, in Docket 99-0117, testified that ComEd's accounting for its General Plant and Intangible Plant was reasonable and should be adopted. Staff, in this case, proposed a downward adjustment to ComEd's R&D/special projects costs, which, again, are A&G costs, based on *Staff's criticizing ComEd for not doing more direct assignment* of these costs. Staff, in this case, also proposed a downward adjustment to ComEd's legal costs, which, again, also are A&G costs, based in part on *Staff's own direct assignment* of certain of these costs. As noted above, the Interim Order approved both of those adjustments, and it did so on those grounds. Those two rulings are irreconcilable with the alleged rationale for use of an "across the board" labor allocator: that none of the costs at issue can be directly assigned.
- Nor can any failure of other utilities to propose or justify the use of methodologies other than an "across the board" labor allocator affect the decision in this Docket.

* Staff, perhaps tellingly, submitted an alternative calculation of its adjustment that applied its altered labor allocator to General Plant and A&G costs but not to Intangible Plant.

ComEd is entitled, as a matter of law, to have its rates determined based exclusively on the evidence in the record in this Docket.

- Any “across the board” labor allocator, and to an even greater degree the particular altered general labor allocator that was adopted by the Interim Order, simply ignores that ComEd has been restructured since the last rate case. There is no doubt that ComEd did not own any fossil plants during the 2000 test year; it sold them, along with the associated General Plant, in 1999. Yet, Staff’s “across the board” altered general labor allocator, which was approved by the Interim Order, uses certain 1999 data rather than 2000 data solely so as to ignore that fact. Whether or not one supports an “across the board” labor allocator, there is no valid basis for such pretense. That distortion of the labor allocator alone resulted in a \$42,366,000 disallowance from net jurisdictional rate base and an \$11,589,000 disallowance from the jurisdictional revenue requirement.[†]

For those reasons and many other reasons shown below, the Interim Order should be revised on rehearing to adopt ComEd’s accounting of the costs at issue.

The Interim Order also is troubling in that it adopts five disallowances that not only are entirely unjustified but that are based on grounds that appear in essence to prejudice, at least on an interim basis, matters that in whole or in part are, or are related to, items within the scope of the pending audit, even while disclaiming that any such prejudgment is being made. Those five disallowances are the two rate base adjustments relating to alleged “premiums” and capitalized overtime and the three operating expense adjustments relating to distribution salaries and wages, storm restoration, and tree management costs, respectively. ComEd does not believe that the audit, if properly performed, nor the further proceedings to be conducted in this Docket, will support any of those disallowances. However, the existing evidentiary record did not warrant those disallowances, and their adoption at this time nonetheless runs the risk of prejudicing the

[†] Staff, again perhaps tellingly, also submitted an alternative calculation of its adjustment without the above alteration. The impact of the application of the labor allocator to Intangible Plant, discussed earlier, and the impact of the alteration of the labor allocator, discussed here, overlap slightly, i.e., the aggregate net impact of these two determinations is slightly less than the sum of their individual impacts.

auditors' analysis. The Interim Order should be revised on rehearing to reject those disallowances, while stating that the rulings are without prejudice to the further proceedings.

The Interim Order also errs in adopting various other contested disallowances, i.e., the partial disallowance of the costs of certain distribution plant placed in service in the second quarter of 2001, the two earlier referenced disallowances for legal and R&D/special projects costs, and certain other operating expense disallowances. That rate base disallowance is particularly egregious because it simply lacks any valid basis whatsoever and plainly is unlawful. Each of those disallowances should be rejected on rehearing.

Rate Design Issues. The Interim Order correctly decided certain rate design issues, and it appropriately did not reach various other rate design issues that bear only on non-residential delivery services rates. The Interim Order did, however, incorrectly decide certain rate design issues. The most serious errors are its adoption of embedded cost methodologies for purposes of determining charges, the unbundled metering credits (which are expressed through charges), and the single billing option ("SBO") credit. This Application only briefly addresses these issues, not because of any judgment about their merits or their long term importance but rather because they have limited significance at this interim stage of this Docket.

Other Issues. As noted earlier, this Application also addresses certain other substantive issues, certain errors and omissions in the discussion of the parties' respective positions and responses, and a limited number of non-substantive errors. Those matters warrant revision on rehearing.

ARGUMENT

I.

The Order Errs In Rejecting The Only Accurate Accounting For General Plant, Intangible Plant, And A&G Costs

A. General Plant And Intangible Plant

The Administrative Law Judges' Proposed Interim Order (the "ALJPIO") approved ComEd's accounting for General Plant and Intangible Plant. (ALJPIO, pp. 36-37). ComEd took exception only to the extent of proposing that the ALJPIO's discussion be supplemented and corrected in certain respects. (ComEd's Brief on Exceptions ["BoE"] at 11-13; ComEd's "Exceptions Order" ["Exc. Order"] at 34-41). However, Staff, the "ARES Coalition", the "Governmental and Consumer" intervenors ("GCI"), and the Illinois Industrial Energy Consumers ("IIEC") each took exception to the ALJPIO's conclusions and made or purported to support varying proposals for use of "across the board" labor allocators. (Staff BoE at 3-8; ARES BoE at 7-8, 38-41; ARES Exc. Order at 28-29, 50-58; GCI BoE at 16-18; IIEC BoE at 4-7). Only GCI and IIEC had even argued for across the board labor allocators in direct testimony, and IIEC then did not suggest its application to Intangible Plant. Staff argued for an across the board (and altered) general labor allocator for the first time in rebuttal. The ARES Coalition filed no testimony on the subject, other than a few spurious potshots at ComEd and its general ledger accounting system -- the Competitive Business Management System ("CBMS").

The Interim Order erroneously rejects the ALJPIO's conclusion as to both General Plant and Intangible Plant and adopts Staff's altered version of the across the board general labor allocator, which resulted in a net disallowance from net jurisdictional rate base of \$403,570,000 (\$344,832,000 for General Plant and \$58,738,000 for Intangible Plant) (after offsets) and a net

disallowance from the jurisdictional revenue requirement of \$49,962,000 for reduced return of and on investment (\$42,690,000 for General Plant and \$7,272,000 for Intangible Plant).^{*} (Interim Order at 40). As previewed in the Introduction, above, and as shown in detail below, ComEd submitted overwhelming detailed evidence that proved the accuracy of its accounting for both General Plant and Intangible Plant and its underlying analysis, and no party has submitted evidence showing otherwise. The advocates of across the board labor allocators instead rely on hollow rhetoric and circular arguments. The Interim Order's adoption of an across the board labor allocator for both General Plant and Intangible Plant is erroneous. Indeed, that ruling is reversible error.[†]

1. ComEd Proved Its Accounting And Analysis

The Interim Order states in part that: "The Company has failed to provide any new argument or evidence that would warrant a change of the Commission's conclusion in the 1999 DST proceeding." (Interim Order at 40). That statement is utterly mistaken. ComEd is not the same company that was before the Commission in Docket 99-0117, although the advocates of across the board labor allocators want to pretend otherwise. The simple truth is that ComEd has since been restructured, and ComEd now primarily is a "wires company" with restructured balance sheets that assign assets and liabilities actually within the separate companies. ComEd also now has a general ledger accounting system (CBMS) that went into operation on January 1,

^{*} The revenue requirement impact stated here does not reflect the related impact on A&G costs.

[†] The Interim Order also omits certain portions of ComEd's requested supplementation, including ComEd's identification of certain serious inconsistencies on the parts of Staff and IIEC (inconsistencies within Staff's testimony in this Docket, between Staff's position in this Docket and its positions in three other Dockets, and between IIEC's position in this Docket and its position in another Docket) and ComEd's identification of certain facts relating to CBMS. (*Compare* ComEd Exc. Order at 39-40 *with* Interim Order at 39-40). That supplementation should be added.

1998, that includes the restructured balance sheets and other data that just were not obtainable in relation to the adjusted 1997 test year used in Docket 99-0117. The availability of the restructured balance sheets sharply limited the amount of direct assignment that needed to be performed in the instant Docket.

ComEd submitted a wealth of evidence regarding the accuracy of its accounting for General Plant and Intangible Plant, including evidence regarding the restructuring, the restructured balance sheets, and CBMS, as well as much additional evidence. (*E.g.*, Hill Direct [“Dir.”], ComEd Exhibit [“Ex.”] 4.0 CR, pp. 1:19-2:23, 7:145-9:186 and Appendix [“App.”] A; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 16:288-21:385; Strobel Rebuttal [“Reb.”], ComEd Ex. 18.0, pp. 6:126-7:152; Hill Reb., ComEd Ex. 23.0 CR, pp. 4:87-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Surrebuttal [“Sur.”], ComEd Ex. 45.0, pp. 5:88-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 17:345-18:369 and App. B (discussing A&G costs); Heintz Dir., ComEd Ex. 14.0 CR, pp. 21:387-23:440 (same); ComEd Cross Ex. 29 (the 55 pages of analysis in ComEd’s A&G costs study, including over 4,000 lines of multi-columned data)).

The basic facts regarding the restructuring, the balance sheets, and CBMS are undisputed:

- Docket 99-0117 involved an adjusted 1997 test year. *In re Commonwealth Edison Co.*, Docket 99-0117, p. 9 (Order August 26, 1999). ComEd in 1997 was a vertically integrated electric utility that owned numerous fossil generating plants and the nation’s largest nuclear fleet. *E.g.*, *id.* at 9, *et seq.*
- The instant Docket uses an adjusted 2000 test year. (Interim Order at 32). By December 1999, ComEd had sold all its fossil units. (*E.g.*, Hill Sur., ComEd Ex. 5.0, p. 19:392-93). In August or September 2000, ComEd began its restructuring into separate entities -- at that time, the movement of entities, departments, and personnel, and the accounting necessary to implement the restructuring, occurred. (*E.g.*, Hill Reb., ComEd Ex. 23.0 CR, pp. 6:114-16, 7:149-53, ComEd Ex. 23.1; Hill, Transcript [“Tr.”] 3203:3-3206:5, 3210:3-18, 3545:9-3546:13). By January 2001, ComEd formally concluded its restructuring into separate entities. At that time, generation and other competitive businesses

formally were separated from the “wires company” and given separate balance sheets that assigned assets and liabilities actually within the separate companies. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, pp. 8:168-9:174; Strobel Reb., ComEd Ex. 18.0, pp. 6:130-7:138; Hill Sur., ComEd Ex. 45.0, pp. 5:104-6:110).

- ComEd’s independent auditor, PricewaterhouseCoopers, as part of its first quarter 2001 interim audit procedures, reviewed the balance sheets of the restructured entities and, in large part, their other financial statements, and found no irregularity. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, p. 9:175-76; Strobel Reb., ComEd Ex. 18.0, p. 7:148-51; Hill Sur., ComEd Ex. 45.0, p. 6:110-11).
- In this Docket, ComEd also had use of CBMS. As ComEd witness Jerome Hill explained, beginning on January 1, 1998, ComEd “adopted an activity-based cost tracking and reporting process that is supported by a new general ledger accounting system -- [CBMS]. CBMS allows for transactions to be recorded using a variety of identifying characteristics. These characteristics include business unit, funding center department, activity description, account charged, project (if applicable), and cost type (labor, contractors, materials, etc).” (Hill Dir., ComEd Ex. 4.0 CR, App. B, p. 2:24-34). CBMS is, and has been since January 1, 1998, ComEd’s general ledger, and thus CBMS has been subject to three independent audits (as well as interim audit procedures). (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118). The restructured balance sheets are included in CBMS. (*Id.*)

ComEd’s restructuring has affected not only its balance sheets but also its actual costs. To pretend otherwise is unreasonable and wrong. For example, in 1999, when ComEd owned generation, its fossil production expenses were 21.3% of its O&M expenses, but in 2000 they were just 0.16% of those expenses. (Hill Sur., ComEd Ex. 45.0, p. 19:392-99).

The evidence also is undisputed that ComEd used the actual restructured balance sheets, not estimates, in this Docket to determine the General Plant and Intangible Plant used to provide jurisdictional delivery services. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A, pp. 1:20-2:25; Hill Sur., ComEd Ex. 45.0, pp. 8:170-9:176). Because those balance sheets addressed all assets and liabilities of ComEd, including General Plant and Intangible Plant, the only direct assignment or allocation of those costs that was necessary was in two areas: (1) removing the Federal Energy Regulatory Commission (“FERC”) jurisdictional transmission component from the ComEd balance sheet and (2) assigning or allocating the appropriate amount of General Plant and

Intangible Plant of Exelon Business Services Company (“Exelon BSC”) back to ComEd for ratemaking purposes. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A, pp. 1:20-2:25; Hill Sur., ComEd Ex. 45.0, pp. 8:170-9:175). Where necessary detail to directly assign General Plant and Intangible Plant items was not available, ComEd used appropriate allocation factors based on cost causation. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 2:26-34). ComEd in its direct case and again thereafter described in detail how each and every individual General Plant and Intangible Plant Account correctly was assigned or allocated. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, p. 9:175-81 and App. A; Hill Sur., ComEd Ex. 45.0, pp. 7:148-10:213, 11:228-13:276). The foregoing undisputed facts are at the heart of why ComEd’s accounting for General Plant and Intangible Plant is correct and the Interim Order is wrong in rejecting that accounting.

The subject of Intangible Plant is particularly telling in illustrating why the Interim Order is incorrect. ComEd showed that its \$179,899,429 in Intangible Plant consists of only five items -- essentially four large software systems and a minimal amount of non-depreciable expense -- and ComEd supported its accounting for those costs with specific evidence. (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 11:228-13:276; ComEd Ex. 45.1; *accord* Hill Dir., ComEd Ex. 4.0 CR, p. 8:166-68 and App. A, pp. 7:141-8:160).

- One of the five items is the NG Indus Passport project cost and work management system used by the nuclear production business function: ComEd included *none* of the costs of that system in its jurisdictional revenue requirement. (*E.g.*, Hill Sur., ComEd Ex. 45.0, p. 13:265-67; ComEd Ex. 45.1). The Interim Order, by virtue of the approved labor allocator, mistakenly allocates a portion of these costs to jurisdictional delivery services when *none* should be included.
- Another of the five items is the CIMS billing system, which is owned, maintained, and used exclusively by the energy delivery business function: ComEd appropriately assigned all of these costs to the jurisdictional customer function as it did in Docket 99-0013, where the Commission made no adjustment to that accounting for these costs. (*E.g.*, Hill Sur., ComEd Ex. 45.0, p. 12:251-58; ComEd Ex. 45.1). The Interim Order, by using the approved labor allocator, errs by allocating too little of these costs to jurisdictional delivery services.

- Another of the five items is the PowerPath system, which is owned, maintained, and used exclusively by the energy delivery business function: ComEd appropriately assigned these costs to that function and then appropriately allocated 91.84% of these costs to jurisdictional delivery services based on the operating expense payroll allocator excluding sales. (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 12:259-13:264; ComEd Ex. 45.1). The Interim Order, by using the approved labor allocator, again errs by allocating too little of these costs to jurisdictional delivery services.
- Another of the five items is CBMS itself: ComEd appropriately assigned 5.43% of these costs to the energy delivery business function and then appropriately allocated 90.85% of that 5.43% to jurisdictional delivery services based on an employees allocator, and ComEd appropriately assigned the remaining 94.57% of these costs to Corporate Center of which 69.22% were assigned to jurisdictional delivery services based on signed Service Level Agreements. (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 12:246-50; ComEd Ex. 45.1). The Interim Order, by using the approved labor allocator, errs by allocating too little of these costs to jurisdictional delivery services.
- The fifth item is a relatively miniscule amount of non-depreciable costs: ComEd appropriately assigned these costs to the energy delivery business function and then appropriately allocated 89.40% of these costs to jurisdictional delivery services based on the operating expense payroll allocator. (*E.g.*, ComEd Ex. 45.1). The Interim Order, by using the approved labor allocator, errs by allocating too little of these costs to jurisdictional delivery services.

No party even tried to refute that specific evidence. Yet, the Interim Order rejects ComEd's accounting for Intangible Plant in favor of the across the board altered labor allocator, which plainly errs in both directions as to various of these items. That ruling, standing alone, resulted in a \$58,738,000 disallowance from net jurisdictional rate base and a \$12,771,000 disallowance (\$7,271,000 due to reduced return of and on investment and \$5,500,000 due to impact on the magnitude of the disallowance of A&G costs) from the jurisdictional revenue requirement.

As noted earlier, ComEd also adduced detailed evidence as to each and every individual General Plant Account, and that evidence shows that ComEd's accounting for these costs is accurate as well. (*E.g.*, Hill. Dir., ComEd Ex. 4.0 CR, p. 9:175-81 and App. A; Hill Sur., ComEd Ex. 45.0, pp. 7:148-10:213). For example, as to General Plant Account 389, Land and Land

Rights, in brief, ComEd began with its land and land rights (none had been transferred to Exelon BSC) and then assigned them to the transmission, distribution, and customer functions based on the percentage of facility square footage occupied by each function. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A at p. 2:36-46). ComEd knows what personnel exist in each building by square footage. (Hill Sur., ComEd Ex. 45.0, p. 9:187-188). The facts are similar as to General Plant Account 390, Structures and (Leasehold) Improvements, except that there a portion of Exelon BSC's costs was assigned back to ComEd, which was done based on signed Service Level Agreements, and then functionalized between transmission and jurisdictional delivery services based on ComEd's gross plant at year end 2000. (*E.g.*, Hill Dir., ComEd Ex. 4.0, App. A at p. 3:47-61; Hill Sur., ComEd Ex. 45.0, p. 9:186-192). ComEd's methodology for these Accounts plainly is more accurate than using the across the board altered labor allocator. Indeed, the National Association of Regulatory Utility Commissioners ("NARUC") Electric Utility Cost Allocation Manual specifically indicates that a detailed analysis of office space occupancy is an acceptable approach to functionalizing this General Plant cost type. (Hill Sur., ComEd Ex 45.0, p. 9:188-192). It should be emphasized that the foregoing are just examples. Again, ComEd put on detailed evidence as to each and every individual General Plant Account.

As stated earlier, no party has submitted any evidence disproving any of the above, nor identified even a single inaccuracy in ComEd's accounting for General Plant and Intangible Plant or its underlying analysis. Their failure cannot be ignored or excused. Among other things, all data supporting the restructured balance sheets, including the General Plant and the Intangible Plant Accounts, were available to the parties for several months in this Docket. (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:108-6:111, 8:166-68).

Nor can ComEd's accounting here be challenged based on its aggregate results, even supposing that were a valid mode of evaluation. ComEd proved all of its costs. Moreover, Staff witness Peter Lazare showed that, under ComEd's accounting, its jurisdictional General Plant increased by only 3.97% from what it requested in Docket 99-0117 (where Staff supported ComEd's accounting for General Plant and Intangible Plant) to the instant Docket (and that its proposed jurisdictional A&G costs had increased by only 8.41%), and that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10). The increase in Intangible Plant is entirely explained by the evidence regarding those costs, referred to earlier.

Finally, ComEd has pointed out that its restructuring and the resulting accounting, even if treated as a *pro forma* adjustment on the theory that part of it occurred outside the test year, meets the standards for a *pro forma* adjustment. (*E.g.*, ComEd Reply Brief ["Rep. Br."] at 17, 18). No party has attempted to show otherwise. They cannot, especially given Staff's accepted proposal for a *pro forma* adjustment reflecting sale of generation outside the test year in *In re Central Illinois Public Service Co., et al.*, Docket 00-0802, pp. 7-8, 9 (Order Dec. 11, 2001).

The Commission must render its decision here based on the law and 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). The Order in Docket 99-0117 is based on a different evidentiary record that relates to a 1997 test year, just as other Orders are based on their respective evidentiary records, and, like all Commission Orders, is not *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).

Because what matters is the law and the evidence -- not Staff's, the ARES Coalition's, GCI's, and IIEC's desires to pretend this is Docket 99-0117 and to turn a blind eye to the actual evidence -- the Interim Order is incorrect. ComEd proved its case.

2. Staff's Arguments Are Incorrect

The Interim Order erred by adopting Staff's position. Staff makes three overall arguments: (1) the Commission approved a general labor allocator for the allocation of General Plant (and A&G costs) (but not for Intangible Plant) in Docket 99-0117 (and for all three categories in some other Dockets), and ComEd offered no credible evidence to deviate from that approach; (2) ComEd's evidence or analysis contained inconsistencies; and (3) Staff's particular labor allocator should be used because, Staff emphasizes, it has been altered by the substitution of 1999 production labor data for 2000 production labor data so as to reflect the labor for the fossil plants ComEd sold to Midwest in 1999 (as well as reflecting the labor for the nuclear plants now owned by Exelon Generation Company LLC). (Staff BoE at 3-8).

Staff, perhaps recognizing that the incorrectness its argument for an across the board labor allocator is particularly obvious as to Intangible Plant, also showed the reduced effects of applying Staff's labor allocator only to General Plant (and A&G costs). (Lazare Reb., Staff Ex. 21.0, p. 18:377-81 and Sch. 21.2, p. 3). Similarly, Staff, perhaps recognizing the capriciousness of pretending that ComEd still owns the fossil units it sold in 1999, also showed the reduced effects of applying the unaltered labor allocator to General Plant and Intangible Plant (and A&G costs). (Lazare Reb., Staff Ex. 21.0, p. 18:377-81 and Sch. 21.2, p. 1).

All of Staff's arguments and proposals are wrong. First, the Commission cannot base its decision here on its decision to use a labor allocator for General Plant and A&G costs (not Intangible Plant) in Docket 99-0117 and for General Plant, Intangible Plant, and A&G costs in

other Dockets. The Commission must render its decision here based on the law and exclusively on the evidence in the record. The Order in Docket 99-0117 is based on a different evidentiary record and is not *res judicata*. ComEd submitted overwhelming detailed evidence that proved the correctness of its accounting for its General Plant and its Intangible Plant costs and its underlying analysis in the instant Docket. No party refuted that evidence.

Second, Staff's reliance on those Commission orders also is unwarranted and inconsistent for several additional reasons, even setting aside that ComEd proved the correctness of its accounting for General Plant and Intangible Plant and its underlying analysis.

- The Commission has made clear that it prefers direct assignment where feasible, because it inherently is more accurate, as illustrated by the Order on Rehearing in Docket 99-0117, where the Commission accepted ComEd's evidence directly assigning certain costs that had been recorded in FERC "sales and marketing" Accounts, and as expressly held in the Order in Docket 99-0013. (Hill Sur., ComEd Ex. 45.0, p. 7:138-46). *In re Commonwealth Edison Co.*, Docket 99-0117 (Order on Rehearing March 9, 2000); *In re Illinois Commerce Comm'n On Its Own Motion v. Central Illinois Light Co., et al.*, Docket 99-0013, pp. 44-45 (Order Oct. 4, 2000).
- Staff witnesses, including Staff witness Peter Lazare, testified in Docket 99-0117 that ComEd's accounting for General Plant and Intangible Plant was reasonable and should be adopted. (Hill Sur., ComEd Ex. 45.0, pp. 11:224-26, 13:274-76; Lazare, Tr. 2802:4-18). Staff has made no convincing attempt in this Docket to explain away that testimony.
- Staff witness Carolyn Bowers, when addressing certain A&G costs in this Docket -- i.e., R&D/special projects costs -- criticized use of an allocator where (in her opinion) direct assignment is feasible. (Bowers Dir., Staff Ex. 4.0, p. 6:133-7:145; Hill Sur., ComEd Ex. 45.0, p. 17:354-58).
- Staff witness Bowers also proposed a downward adjustment to other A&G costs in this Docket -- i.e., legal costs -- based in part on her own direct assignment of certain of these costs. (Bowers Reb., Staff Ex. 18.0, pp. 11:240-12:260; Hill. Sur., ComEd Ex. 45.0, pp. 36:780-38:812).*

* Staff witness Bowers started with ComEd's split between non-jurisdictional and jurisdictional legal costs, directly assigned 100% of the former to non-jurisdictional (although she did not use the terminology of direct assignment), and then mistakenly used only a portion of ComEd's allocator to

- Staff, in Docket 00-0802, in contrast to this Docket, argued that the general labor allocator should be modified to reflect restructuring through sale of generation even though that event occurred after the test year, the utility did not disagree, and the Commission approved Staff's proposal. *In re Central Illinois Public Service Co., et al.*, Docket 00-0802, pp. 7-8, 9 (Order Dec. 11, 2001).
- Staff also successfully argued for a differently modified labor allocator in Docket 01-0432 in light of its results, opposing the unaltered general labor allocator where its results favored the utility. *In re Illinois Power Co.*, Docket 01-0432, pp. 10-13, 17-18 (Order March 28, 2002).
- Also, as discussed below, IIEC, while advocating the unaltered general labor allocator in this Docket, opposed the unaltered general labor allocator in Docket 01-0432 in light of its results. *In re Illinois Power Co.*, Docket 01-0432, pp. 13-17 (Order March 28, 2002).
- Also, as noted below, while the ARES Coalition now supports Staff's labor allocator in this Docket (without submitting any supporting evidence and no doubt because of its results), the ARES Coalition also indicates that it anticipates relying on direct assignment in ComEd's next rate case. (ARES BoE at 7-8, 40-41).
- Finally, while Staff and the other parties advocating across the board labor allocators here criticize ComEd for not using such a methodology in view of the decision in Docket 99-0117, their complaints ring hollow. Staff and some of those other parties had no compunction in Docket 99-0117 about attacking nearly two decades of Commission decisions approving marginal cost ratemaking. *In re Commonwealth Edison Co.*, Docket 99-0117, pp. 52-54 (Order August 26, 1999). They successfully proposed in the instant Docket, among other things, to extend embedded cost ratemaking to the remaining over 90% of ComEd's customers who still are on rates based on Commission-approved marginal cost principles (less the statutory residential rate cuts); Staff unsuccessfully proposed to use a nine-year levelization period for storm restoration costs even though the Commission ordered a five-year period in Docket 99-0117; and Staff unsuccessfully challenged the Commission's determination that end users are liable for transmission charges under ComEd's FERC-approved Open Access Transmission Tariff. (E.g., Staff Initial Brief ["Init. Br."] at 85-95; Staff BoE at 17-18). Indeed, in connection with that last point, Staff witness David Borden testified that "It is my understanding that Staff opposed ComEd on this issue in Docket 99-0117, but the conclusions set forth in the Commission's Order did not rule in favor of Staff's position. However, nothing prevents Staff, or any other party for that matter, from arguing similar or identical positions before the Commission, even when those positions have been decided against in a prior

divide what remained between non-jurisdictional and jurisdictional. (Bowers Reb., Staff Ex. 18.0, pp. 11:240-12:260; Hill. Sur., ComEd Ex. 45.0, pp. 36:780-38:812).

docket.” (Borden Reb., Staff Ex. 25.0, p. 2:41-46). They cannot have it both ways.

Third, Staff’s claims of inconsistencies on ComEd’s part are wrong, as ComEd repeatedly has shown. Staff’s claims are founded on its failure to recognize the different steps in ComEd’s analysis.

- Staff claims that ComEd offered two inconsistent explanations for how it analyzed transportation equipment. (Staff BoE at 4). Staff’s claim is false. ComEd’s evidence is entirely consistent. ComEd first used its restructured balance sheets for the split in transportation equipment between ComEd and the other restructured entities, and ComEd then used a 1999 study to determine the transmission versus distribution split within ComEd’s transportation equipment (in this instance, no analysis of Exelon BSC assets was needed because it owned no transportation equipment). (Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 4:75-85; Hill Sur., ComEd Ex. 45.0, p. 10:199-205; Hill, Tr. 3212:16-3215:7). There were two steps, not one. Staff’s claim of inconsistency rests entirely on Staff’s continued failure to recognize that there was more than one step.
- Staff’s claim of inconsistency regarding communication equipment (Staff BoE at 4-5) again suffers from Staff’s failure to understand that there was more than one step utilized in the direct assignment process, as well as from Staff’s confusion about the fact that determining the precise location of the equipment (which is recorded in ComEd’s property records) provides information regarding the equipment’s purposes. (Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 6:118-32; Hill. Sur., ComEd Ex. 45.0, p. 10:206-209; Hill, Tr. 3218:20-3220:16).
- Staff’s claim of inconsistency regarding miscellaneous equipment (Staff BoE at 6) also suffers from the failure to recognize that there was more than one step. (Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 6:133-38; Hill Sur., ComEd Ex. 45.0, p. 10:210-13; Hill, Tr. 3220:21-3223:13, 3548:1-3552:18). The very plain explanation and illustration of the two-step process in Mr. Hill’s redirect here (Hill, Tr. 3548:1-3552:18), in particular, made Staff’s continuing to pursue these claims of inconsistency in briefing entirely unjustified.
- Staff’s claim of overall inconsistency in ComEd’s approach between Docket 99-0117 and the instant Docket rests on the spurious logic that because some of the particular results differed (which is not surprising in the slightest given the difference in test years and ComEd’s restructuring, discussed above), the methodologies must be inconsistent. (Staff BoE at 5-7). ComEd pursued the same overall approach in both Dockets, *i.e.*, using direct assignment where feasible and otherwise using the allocator that best reflects cost causation for the particular costs at issue. ComEd had more and better data, in large part due to CBMS, which was implemented on January 1, 1998, however, thus allowing it to improve the accounting and analysis in this Docket. (*E.g.*, Hill Dir., ComEd

Ex. 4.0 CR, App. A (General Plant and Intangible Plant costs), App. B (A&G costs, noting that CBMS was particularly helpful as to those costs); Hill Reb., ComEd Ex. 23.0 CR, pp. 7:142-9:183; Hill Sur., ComEd Ex. 45.0, p. 15:308-24; Hill, Tr. 3546:21-3547:21). Staff's comparison actually illustrates that ComEd's approach now is more accurate. (Hill Sur., ComEd Ex. 45.0, p. 18:371-88). Also, Staff's arguments are internally inconsistent: Staff simultaneously claims that ComEd's approach was rejected in Docket 99-0117 and that ComEd's approach here is different from its approach in Docket 99-0117. Staff cannot have it both ways. Moreover, Staff's claim of inconsistency based on results is inconsistent with Staff's argument in its February 21, 2002, Brief on Exceptions (at 2-4) in Docket 01-0465 Etc. Consol. that a labor allocator should be used for A&G costs even though its results differed greatly from its results in the 1999 delivery services rate case involving the same utility.

Fourth, Staff's criticism of ComEd witness Mr. Hill, that he was unable to recall on cross-examination whether ComEd used the same approach for Intangible Plant in Docket 99-0117 that ComEd used in the instant Docket (Staff BoE at 6), is meaningless and inconsistent. Staff witness Peter Lazare, when seeking to explain away the fact that the Commission did not approve a labor allocator for Intangible Plant in Docket 99-0117, pointed out that ComEd had only \$80,375 of Intangible Plant to functionalize in Docket 99-0117, not the \$179,899,429 ComEd had in the 2000 test year, and he asserted that that meant it was not an issue in Docket 99-0117 but is relevant in the instant Docket. (Lazare Reb., Staff Ex. 21.0, pp. 13:263-14:275).

Finally, Staff's argument, that its proposal, including its alteration of the general labor allocator by substituting 1999 production labor data, is justified because ComEd, in determining the amount of General and Intangible Plant to include in the 1999 sale of its fossil units relied on an analysis that produced an amount that was not as large as that that would follow from the general labor allocator,[†] which Staff here refers to as "the Commission-approved methodology" (Staff BoE at 6-7), makes no sense on its face, is circular, and is wrong for numerous reasons.

[†] The Commission ordered the filing of accounting entries when it approved the transaction which included the sale of the fossil units. *In re Commonwealth Edison Co.*, Dockets 99-0273, 99-0282

- Staff's criticism assumes, without proof, that ComEd's accounting of the sale, including the amount of General and Intangible Plant that went with the sale, was wrong simply because it did not use a figure as large as that which would result from the labor allocator. That is circular.
- Staff does not and cannot claim that there was any such objection in Dockets 99-0273 and 99-0282 Consol.
- The fact that a major real world transaction did not include the amount of other assets that an arbitrary labor allocator would suggest is no reason to use that allocator here. Quite the opposite is true.
- As to the proceeds of the sale, the ability of ComEd to mitigate its stranded costs through such asset sales is entirely lawful under the Act. 220 ILCS 5/16-111(g). ComEd's mitigating its stranded costs, too, is no reason to adopt Staff's distorted labor allocator. Indeed, by arguing that ComEd's General and Intangible Plant balances should be treated as if ComEd had sold more of such plant with its fossil units, Staff proposes effectively to review retroactively the assets that ComEd sold as part of that sale. Section 16-111(g)(4)(vi), 220 ILCS 5/16-111(g)(4)(vi), specifically prohibits such an attempt to review retroactively and effectively to recast the scope of the fossil unit sale.
- That ComEd stated that its sale of the fossil units would promote competitive generation also cannot, as Staff would have it, somehow be distorted into an argument for the labor allocator. (Staff BoE at 7).
- Staff's unsupported argument that ComEd's fossil unit sale transaction has "penalized" customers not only is unsupported and circular, it is disproved by Staff's own witnesses. As discussed earlier, Staff witness Peter Lazare showed that ComEd's jurisdictional General Plant had increased by only 3.97% from what it proposed in Docket 99-0117 (where Staff supported ComEd's accounting for General Plant and Intangible Plant) to the instant Docket (and that its proposed A&G costs had increased by only 8.41%), and that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10). The increase in Intangible Plant has been completely explained. Staff simply has no basis in law or fact for suggesting that the sale of the fossil units supports the labor allocator.
- Staff's proposal also is unreasonable. Having sold the entire fossil business in 1999, ComEd had no material General Plant or Intangible Plant (or A&G) costs related to that business in 2000 (*e.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-13:276, 19:390-20:422), which is why Staff could achieve its desired result only by

Consol., (Order Aug. 3, 1999), Finding (10)). The Notice of Accounting Entries filed in that Docket in compliance with that Order shows FERC Account 101 Utility Plant in Service - General Plant sold as \$24,590,000, which yielded net General Plant sold of \$17,345,000.

substituting that 1999 data. While Staff claims that including the fossil plants is appropriate, it identifies no General Plant or Intangible Plant items included by ComEd in its jurisdictional rate base that do not belong there or that should be attributed to the fossil plants.

- In addition, as noted above, Staff cannot credibly contend that its across the board labor allocator accurately reflects cost causation in this case. 220 ILCS 5/16-108(c). Even the other parties that proposed a labor allocator, GCI and IIEC, did not include the fossil plants.

The Interim Order errs, both in adopting an across the board labor allocator at all, and in approving Staff's distortion of the general labor allocator.

3. The ARES Coalition's Arguments Are Incorrect

The ARES Coalition, which offered no relevant evidence on the subject at hand, in briefing offered a concoction of unsupported and incorrect arguments for Staff's proposed labor allocator. (ARES BoE at 8, 38-41; ARES Exc. Order at 28-29, 50-58).

The ARES Coalition suggested that ComEd's accounting and analysis are flawed or at least questionable to the extent that ComEd relied on CBMS. (ARES BoE at 38-39). The ARES Coalition's disingenuous attempt to paint ComEd's general ledger, CBMS, as some sort of mysterious and dubious new entity, including the ARES Coalition's attempt to distort the facts regarding Staff's field audit and relevant testimony, is without merit. The ARES Coalition's innuendo was unsupported, mischaracterized the ComEd and Staff testimony cited and the facts regarding Staff's field audit, and was wrong. (Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118; Strobel Reb., ComEd Ex. 18.0, pp. 6:126-7:152; Gorniak, Tr. 1656:13-1661:21). CBMS is, and has been since January 1, 1998, ComEd's general ledger, and thus CBMS has been subject to three independent audits (as well as interim audit procedures). (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118). Among other things, ComEd witness Jerome Hill testified, with regard to

ARES witnesses Dr. Phillip O'Connor and Richard Spilky's assertions of ComEd's shifting expense items from the supply function to the distribution function by use of CBMS, that:

Their assertions are simply unfounded in fact. The CBMS accounting system is the Company's general ledger system, and it has been since 1998. It contains all accounting transactional records of the Company whether those transactions relate to balance sheet or income statement accounts. In short, the CBMS system is the Company's accounts and records. As a reporting company under the rules of the Securities and Exchange Commission, ComEd is required to have its accounts and records audited by independent auditors who in turn render an opinion on the accuracy of the Company's financial statements. As part of this, tests are conducted on account variances from prior year results. The CBMS account activity has been verified via this process since 1998. In addition, as described in Appendix A in my direct testimony (ComEd Ex. 4.0 [CR]), the balance sheet accounts in CBMS of the prior vertically integrated ComEd utility were split-up to reflect the changed and restructured business functions, including ComEd's energy delivery function. Because Exelon Generation Company, Exelon Energy Delivery Company (which includes ComEd as a separate subsidiary), and Exelon Business Services Company (which includes Exelon's Corporate Center) are separate legal entities, it was necessary to accurately assign assets and liabilities on a functional basis to the appropriate entity. The simple fact is that each and every balance sheet item, including General Plant and Intangible Plant accounts, were analyzed and assigned to one or more of these entities. The Company's independent auditor reviewed this analysis and assignment and all data supporting this split was available to the parties.

The workpapers of the independent auditor review were made available to Staff during its field audit. At least five members of Staff were given a presentation on the CBMS system during their field audit. Staff has made no adjustments nor raised an issue regarding the integrity of CBMS data based on that review.

(Hill Sur., ComEd Ex. 45.0, pp. 5:92-6:115) (emphasis added). Indeed, as noted earlier, all the underlying data were available to all parties for several months in this Docket. (*E.g., id.*, pp. 6:110-11, 8:166-68). Staff's testimony and briefs contained no criticism of CBMS or of the opportunity provided to Staff in its field audit to obtain information about or from CBMS.

4. GCI's Arguments Are Incorrect

While GCI did submit evidence on the subject at hand, its arguments were nothing more than summaries of a subset of Staff's arguments. (GCI BoE at 16-18). Moreover, GCI's witness

admitted that direct assignment is more accurate when costs are amenable to direct assignment and can be attributed solely to a particular function. (Effron, Tr. 2081:19-2082:3).

5. IIEC's Arguments Are Incorrect

IIEC, which initially did not propose a labor allocator for Intangible Plant, began its arguments at the exceptions stage by, in essence, complaining about the results of ComEd's accounting for both General Plant and Intangible Plant. (IIEC BoE at 4). That IIEC would prefer a methodology that results in lower rates is no surprise, but it is not a valid argument here. Moreover, IIEC's complaint rings hollow when, as noted previously, Staff witness Peter Lazare showed that ComEd's jurisdictional General Plant had increased by only 3.97% from Docket 99-0117 (where Staff supported ComEd's accounting for General Plant and Intangible Plant) to the instant Docket (and that its A&G costs had increased by only 8.41%), and that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10). Again, the increase in Intangible Plant has been completely explained.

IIEC next relied on the rejection of "a methodology very similar to that given by ComEd in this case" in Docket 99-0117, asserting that "[t]he only major difference is the addition of Appendices on the subject in this case." (IIEC BoE at 4-5). IIEC's reliance on the Order in Docket 99-0117 and on other Orders (IIEC BoE at 6) is no more valid than that of Staff here. IIEC's attempted dismissal of ComEd's overwhelming evidence, which exceeds in quantity and quality that available in Docket 99-0117, as "the addition of Appendices" is, of course, incorrect, because, among other things, it ignores CBMS and the 82 page A&G costs study (ComEd submitted Appendices in both Dockets, although, of course, the Appendices in the current Docket reflect the 2000 test year and the vast new information now available). Also, as noted

earlier, IIEC argued against the unaltered general labor allocator in Docket 01-0432 in light of its results. *In re Illinois Power Co.*, Docket 01-0432, pp. 13-17 (Order March 28, 2002).

IIEC suggested that the ALJPIO relied only on the quantity of ComEd's evidence, and IIEC argued that sheer numbers of witnesses does not mean a party is right. (IIEC BoE at 5). The latter is true, but the former is false. The ALJPIO found that ComEd had proven the correctness of its accounting for General Plant and Intangible Plant (ALJPIO at 36), and it expressly referenced not only the quantity but also the "scope and nature" of the evidence (*id.*).

IIEC suggested that ComEd's restructured balance sheets may not be accurate. (IIEC BoE at 5-6). There is absolutely no evidence for that suggestion. The evidence discussed earlier regarding the balance sheets, the independent auditor's review, and the availability to the parties of the data underlying the balance sheets all stands uncontradicted. IIEC has never even tried to identify a flaw in the balance sheets. IIEC's own witness acknowledged that direct assignment is more accurate where feasible (Chalfant Dir., IIEC Ex. 2.0 CR, p. 7:15-16; Chalfant Reb., IIEC Ex. 4.0 CR, p. 2:7-16), although he arbitrarily refused to admit it is feasible as to any costs here.

Finally, IIEC's suggestion that the Commission previously found or could find that no General Plant and Intangible Plant costs are amenable to direct assignment (IIEC BoE at 7) is unfounded and wrong. That is illustrated by, among other things, the example of ComEd's Intangible Plant costs, discussed earlier, which consist of just five items. Moreover, again, ComEd's evidence addressed each individual General Plant and Intangible Plant Account and ComEd relied on the restructured balance sheets and direct assignment only where appropriate. IIEC, like every other party that argued for an across the board labor allocator, failed to identify a single dollar of General Plant or Intangible Plant in ComEd's revised proposed jurisdictional

revenue requirement that does not belong there, nor any flaw in ComEd's accounting and analysis.

The Interim Order, on rehearing, should be revised to accept ComEd's accounting for General Plant and Intangible Plant. In the alternative, the Interim Order should reiterate that its determination as to this subject is not a final ruling, as it did on page 40, reject Staff's alteration of the labor allocator, apply the unaltered labor allocator only to General Plant (or specified General Plant Accounts), and approve ComEd's accounting for Intangible Plant.

B. A&G Costs

The ALJPIO approved ComEd's accounting for its A&G costs. (ALJPIO at 61-62). Staff, the ARES Coalition, GCI, and IIEC all took exception and made or purported to support varying proposals for use of across the board labor allocators here. (Staff BoE at 10-15; ARES BoE at 8, 44-45; ARES Exc. Order at 84-91; GCI BoE at 26-27; IIEC BoE at 7-10).

The Interim Order erroneously rejects the ALJPIO's conclusion and adopted Staff's across the board altered labor allocator. (Interim Order at 68). ComEd proved its A&G costs. No party refuted that evidence. The Interim Order's adoption of an across the board (and altered) labor allocator for A&G costs is erroneous. Indeed, that ruling is reversible error.

1. ComEd Proved Its Accounting And Analysis

ComEd submitted overwhelming detailed evidence that proved the accuracy of its accounting for its A&G costs and its underlying analysis. ComEd proved that it used direct assignment only where that could be done accurately and where the requisite data were available, and that those categories of A&G costs that could not be directly assigned were allocated using appropriate allocators based on cost causation in relation to those categories, including, in many instances, the unaltered general labor allocator. (Hill Dir., ComEd Ex. 4.0 CR, pp. 1: 20-2:22,

17:345-18:369 and App. 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; ComEd Cross Ex. 29; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 8:149, 8:153-55, 8:160-9:186 and App. A (General Plant and Intangible Plant); Heintz Dir., ComEd Ex. 14.0 CR, pp. 16:288-21:385 (General Plant and Intangible Plant); Hill Sur., ComEd Ex. 45.0, pp. 7:147-13:276, 19:400-20:422 (General Plant and Intangible Plant)).

Just as it did with its General Plant and its Intangible, ComEd presented detailed evidence as to each and every individual A&G Account. (Hill Dir., ComEd Ex. 4.0 CR, pp. 17:345-369 and App. B). Moreover, ComEd's underlying analysis included its 82 page A&G costs study (55 pages of analysis, including over 4,000 lines of multi-columned data, plus 27 pages regarding the allocators used). (Hill Dir., ComEd Ex. 4.0 CR, App. B, p. 2:24-37; Hill Sur., ComEd Ex. 45.0, pp. 15:308-17:346; ComEd Cross Ex. 29 (the 55 pages of analysis)).

While Staff, the ARES Coalition, GCI, and IIEC have asserted, as they did in relation to General Plant and Intangible Plant costs, that ComEd's accounting and analysis of its A&G costs should be rejected, those parties do not challenge the accuracy of ComEd's analysis in any respect, except to a very limited degree by Staff. Indeed, IIEC's witness admitted that he did not even review all of that analysis (Chalfant, Tr. 2554:7-16), nor apparently did those other parties' witnesses do so, although some Staff witnesses reviewed some portions.

The incessant complaint of some parties that executive compensation costs, in particular, are not amenable to direct assignment (*e.g.*, IIEC Init. Br. at 6; Staff BoE at 10, 11), which is echoed in the Interim Order (at 68), ignores both that ComEd in its analysis of A&G costs allocated executive compensation costs using the unaltered general labor allocator and that these

costs are only a small fraction of 1% of A&G costs. (*E.g.* Hill Dir., ComEd Ex. 4.0 CR, App. B; Hill Reb., ComEd Ex. 23.0 CR., p. 8:172-75; Hill Sur., ComEd Ex. 45.0, p. 15:312-18; ComEd Cross Ex. 29; Chalfant, Tr. 2556:22-2557:3).

ComEd proved its A&G costs. The Interim Order should be revised on rehearing.

2. The Opposing Parties' Arguments Are Incorrect

The arguments of the advocates of an across the board labor allocator are without merit. Staff once more relies on the Order in Docket 99-0117 and other prior Orders, and seeks to distinguish the Order in Docket 99-0013 on the theory that ComEd's evidence is insufficient. (Staff BoE at 10-11, 13-14). As discussed earlier in relation to General Plant and Intangible Plant, Staff's arguments in relation to those Orders and ComEd's evidence fail.

Staff also asserts that having a "double standard in favor of those utilities that disregard Commission opinions over utilities that adhere to those opinions" "would be a dangerous precedent indeed". (Staff BoE at 14). ComEd has neither disobeyed nor circumvented any Commission Order. It presented evidence here that not only supports, but mandates, a different result than was reached based on the different evidentiary record presented in Docket 99-0117. Staff's argument also is contrary to Staff positions and testimony on other issues in the instant and other Dockets, as discussed in relation to General Plant and Intangible Plant, above. Indeed, as noted earlier, for example, one of Staff's witnesses here proposed a downward adjustment for certain A&G costs, arguing that ComEd should have done more direct assignment of those costs, and proposed another downward adjustment to certain other A&G costs based in part on Staff's own direct assignment. (Bowers Dir., Staff Ex. 4.0, pp. 6:133-7:145; Bowers Reb., Staff Ex. 18.0, pp. 11:240-12:260; Hill Sur., ComEd Ex. 45.0, pp. 36:780-38:812)

Moreover, Staff's claim also is undercut by the facts that, as discussed earlier, Staff witness Peter Lazare showed that ComEd's proposed A&G costs had increased by only 8.41% from what it proposed in Docket 99-0117, and that that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10).

Staff theorizes that, because the results of ComEd's analyses as to some Accounts differ significantly from those in Docket 99-0117, ComEd must have employed inconsistent approaches. (Staff BoE at 12). Staff's inference is not logical and Staff itself is inconsistent. (*See* Staff BoE at 13 (Staff's simultaneous inconsistent argument that "the Company is essentially recycling a proposal that the Commission has already found to be deficient")). As discussed earlier, ComEd used the same general approach in each Docket, but here ComEd had CBMS and more and better data. Staff is correct that in Docket 99-0117, unlike here, ComEd did not use a number of employees allocator for FERC Accounts 920-922 (Staff also refers to Account 923 but the evidence Staff cites does not address that Account). (Staff BoE at 12-13). However, ComEd never claimed that its analyses in the two Dockets were utterly identical, and Staff simply fails to provide any evidence or explanation that transforms that particular difference, or any other alleged difference between the methods used in the two Dockets, into a reason to reject ComEd's accounting and analysis in this Docket. Staff cannot credibly do so given, among other things, that it has proposed materially different versions of the labor allocator in different 2001-2002 delivery services rate cases, as discussed earlier.

Staff reiterates that there are A&G costs that cannot be directly assigned. (Staff BoE at 14). That is true. What Staff does not and cannot do, however, is point to any evidence that

ComEd's analysis directly assigned any A&G cost that cannot be directly assigned. The subject of executive compensation is a red herring, as noted earlier.

The ARES Coalition and GCI offer nothing here that was not refuted by ComEd in relation to General Plant and Intangible Plant. (ARES BoE at 8, 44-45; GCI BoE at 26-27). Also, GCI's witness admitted direct assignment is more accurate when costs are amenable thereto and can be attributed solely to a particular function. (Effron, Tr. 2081:19-2082:3).

IIEC, while primarily repeating what it said in relation to ComEd's General Plant and Intangible Plant costs, did offer some different arguments as to A&G costs. (IIEC BoE at 7-10). IIEC's arguments are without merit. IIEC's heavy reliance on the Order in Docket 99-0117 (IIEC BoE at 7-8) is unwarranted, as shown in relation to General Plant and Intangible Plant. Also, as noted earlier, IIEC opposed an unaltered labor allocator in Docket 01-0432. Again, IIEC's witness also has admitted that direct assignment is more accurate where feasible (Chalfant Dir., IIEC Ex. 2.0 CR, p. 7:15-16; Chalfant Reb., IIEC Ex. 4.0 CR, p. 2:7-16), although he unreasonably will not admit that it is feasible as to any costs here.

IIEC seeks to rationalize the facts that it cannot identify any flaw in ComEd's analysis, and that IIEC's witness did not even review all of it, on the theory that the Order also rejects ComEd's positions on other subjects where ComEd submitted massive amounts of data. (IIEC BoE at 8-9). That is illogical. IIEC's tardy attempt to suggest that ComEd's analysis might be flawed (IIEC BoE at 9) suffers from the lack of any specific flaw even being alleged.

Finally, IIEC cites the NARUC manual and two 1978 FERC Orders. (IIEC BoE at 9). IIEC can point to nothing in those documents that casts any doubt on ComEd's analysis. Indeed, with IIEC being one of those parties that felt no compunction about advocating embedded cost ratemaking in Docket 99-0117 despite nearly two decades of Commission Orders supporting

marginal cost ratemaking, and with IIEC opposing an unaltered labor allocator in Docket 01-0432, IIEC is poorly situated to make those kinds of arguments.

IIEC's reliance on FERC decisions also is erroneous. Alan Heintz, former Section Chief in FERC's Division of Applications, debunked that claim, showing that it no longer reflects FERC's actions. (Heintz Dir., ComEd Ex. 14.0 CR, p. 2:27-32; Heintz Reb., ComEd Ex. 33.0, p. 11:240-55; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54). On cross-examination, IIEC's witness acknowledged that fact. (Chalfant, Tr. 2557:9-21). Moreover, even were FERC inflexibly committed to a labor allocator for transmission rates, which FERC recently confirmed is not the case, *In re Central Illinois Light Company*, 98 FERC para. 61,242 (March 1, 2002), that would not justify its use across the board here where direct assignment or a more accurate allocator is feasible and available as to numerous costs. While the Commission is to defer to FERC as to FERC-jurisdictional rates, 220 ILCS 5/16-108(a), it is required to set jurisdictional delivery services rates that allow ComEd full cost recovery and are cost based. 220 ILCS 5/16-108(c). The across the board (and altered) labor allocator does not do that.

The Interim Order or rehearing should be revised to approve ComEd's accounting for its A&G costs. In the alternative, the Interim Order should reiterate that its determination as to this subject is not a final ruling, as it did on page 68, reject Staff's alteration of the labor allocator, and apply the unaltered general labor allocator to ComEd's A&G costs.

II.

The Interim Order Errs In Approving Other Disallowances

A. Alleged "Premiums" and Capitalized Overtime

The ALJPIO rejected Staff's proposed disallowances of alleged "premiums" and certain capitalized overtime incurred and paid in connection with certain distribution capital projects.

(ALJPIO at 47, 51-52). Staff did not take even exception to the rejection of those disallowances. The Interim Order nonetheless approves them. (Interim Order at 52-53). The first disallowance resulted in a net decrease of \$15,469,000 in net jurisdictional rate base and a net decrease of \$2,522,000 in the jurisdictional revenue requirement. The second disallowance resulted in a net decrease of \$8,811,000 in net jurisdictional rate base and a net decrease of \$1,333,000 in the jurisdictional revenue requirement. The Interim Order errs.

To begin with, the Interim Order finds, at least on an interim basis, that the distribution plant in question is used and useful and necessary. (Interim Order at 53). The evidentiary record does not permit any other conclusion. (*E.g.*, DeCampli Dir., ComEd Ex. 6.0, pp. 4:57-19:406).

In addition, ComEd submitted uncontradicted detailed evidence based on extensive analysis and vast documentation establishing that the total cost incurred and paid for each individual distribution capital project at issue was prudent and reasonable. (*E.g.*, DeCampli Dir., ComEd Ex. 6.0, pp. 15:311-19, 17:364-18:389; ComEd Ex. 6.1; DeCampli, Tr. 1430:7-21, 1431:4-6; Williams Reb., ComEd Ex. 25.0 CR, pp. 2:39-5:99; Williams Sur., ComEd Ex. 47.0, pp. 2:28-40, 4:71-5:88; Williams, Tr. 838:20-839:15, 859:14-861:10; Helwig, Tr. 2716:6-2717:8). No “premium” was paid to any contractor for any of those projects. (*E.g.*, Williams Reb., ComEd Ex. 25.0 CR, pp. 2:39-5:99; Williams Sur., ComEd Ex. 47.0, pp. 2:33-40, 4:71-5:88; Williams, Tr. 838:20-839:15).

Moreover, 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 435, 442-43, 478 N.E.2d 1369, 1375 (1st Dist. 1985); *The Peoples Gas Light and Coke Co.*,

Docket 91-0586, 1992 Ill. PUC Lexis 376 at **152-154 (Order Oct. 6, 1992); *In re North Shore Gas Co.*, Docket 91-0010, 1991 Ill. PUC Lexis 636 at **125-127 (Order Nov. 8, 1991).

ComEd's above evidence never was rebutted. No party submitted any evidence that any of the projects in question had a total cost that was anything other than prudent and reasonable.

Moreover, the evidence also is uncontradicted that ComEd's work force already was working on overtime in the years preceding the test year, and that hiring and training new employees instead of using overtime would not have been more cost-effective. (*E.g.*, Voltz Reb., ComEd Ex. 24.0 CR, pp. 3:43-4:70; Williams Reb., ComEd Ex. 25.0 CR, p. 5:100-108).

The two disallowances at issue therefore are unwarranted and improper. Even where a utility has acted imprudently, a disallowance is not warranted if it did not result in an incremental increase in costs over that which is prudent and reasonable. *In re Central Illinois Light Co.*, Docket 94-0040, 1994 Ill. PUC Lexis 577 at **38-42 (Order Dec. 12, 1994).

Each of those disallowances is problematic now, regardless of the level of residential switching, because the audit is underway. The disallowances in effect assume the outcome of the audit and the further proceedings to be conducted in this Docket as to the costs at issue, which naturally tends to prejudice the conduct of the audit as to these costs even though the Interim Order expressly states that it is not intending to prejudge the results. The Interim Order should be revised on rehearing to reject the disallowances, while stating that the rulings are without prejudice to the further proceedings.

B. Distribution Salaries and Wages

The ALJPIO rejected Staff's proposed downward adjustment to distribution salaries and wages. (ALJPIO at 72). The Interim Order approves the adjustment, resulting in a net decrease

of \$9,808,000 in the jurisdictional revenue requirement. (Interim Order at 79). The Interim Order's ruling is in error.

The evidence submitted by ComEd in support of the prudence and reasonableness of its jurisdictional operational expenses as a whole, and the evidence specifically refuting Staff's and other 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; DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480; Voltz Reb., ComEd Ex. 24.0 CR, pp. 10:205-14:280; DeCampli Reb., ComEd Ex. 26.0 CR, pp. 5:139-6:154, 11:269-13:329; Helwig Reb., ComEd Ex. 19.0, pp. 2:24-3:55, 3:61-5:100, 7:142-54, 8:171-11:245; Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 1:18-2:31, 2:44-12:259; Voltz Sup. Reb., ComEd Ex. 39.0, pp. 1:15-9:184; DeCampli Sup. Reb., ComEd Ex. 40.0, pp. 1:8-2:45; Voltz Sur., ComEd Ex. 46.0, pp. 3:54-4:80, 7:145-8:168, 9:184-16:348).

Staff made assertions about "a large unexplained and unsupported increase in salaries and wages" that are adopted by the Interim Order as the rationale for the disallowance. (Staff BoE at 18-19; Interim Order at 79). Staff's assertions cannot be reconciled with the evidence in the record. The evidence shows quite plainly that when the data regarding distribution salaries and wages increases from 1998 to 2000 is corrected to account for inflation, refunctionalization of transmission costs under FERC's "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 largely disappear. (*E.g.*, Voltz Sup. Reb., ComEd Ex. 39.0, p. 2:27-40 (distribution salaries and wages); Voltz Sur., ComEd Ex. 46.0, pp. 9:184-10:214 (same); *see also* Helwig Reb., ComEd Ex. 19.0, pp. 2:28-33, 3:45-55; 3:61-6:116, 11:234-240 (distribution O&M);

DeCampli Reb., ComEd Ex. 26.0 CR, pp. 11:269-13:315 (same); Helwig Sur., ComEd Ex. 43.0, ComEd Exs. 43.1-43.2 (same); GC Cross Ex. 65 at A-2 (same)). For example, ComEd witness Philip Voltz testified in part as follows:

- Q. Mr. Sant shows the total distribution salaries and wages expenses to be \$111 million, \$138 million, and \$190 million for 1998, 1999, and 2000 respectively. (Staff Ex. 14.0, page 3, lines 63-65). Does the apparent increase Mr. Sant cites reflect a substantial increase in real spending?
- A. No, for the most part it does not. In 2000, ComEd accounted for refunctionalization of transmission costs to distribution, and also accounted for annual incentives at a distribution level. Previously, these costs were not accounted for at this level. Further, an annual 3.5% inflation factor and ComEd's proposed downward adjustments need to be taken into account. Once these items have been factored in, the spending in 1998, 1999, and 2000 (shown in 2000 dollars) is \$118 million, \$139 million, and \$131 million, respectively. This represents a \$21 million increase from 1998-1999 and an \$8 million decrease from 1999-2000. The net \$13 million increase, from 1998 to 2000, in salaries and wages is a reflection of the substantial changes ComEd has made to its practices in order to maintain and improve reliability.

(Voltz Sup. Reb., ComEd Ex. 39.0, p. 2:27-40).

In addition, Staff in its rebuttal proposed a revised downward adjustment to incentive compensation, which removed \$24,561,000 from distribution salaries and wages, ComEd accepted that revised adjustment, and the Interim Order approved that revised adjustment, resulting in a net decrease of \$24,735,000 in the jurisdictional revenue requirement. (Interim Order at 110-11).

The Interim Order's approval of the distribution salaries and wages adjustment also is problematic because it relates to matters that are the subject of the pending audit. As with the rate base determinations regarding alleged "premiums" and capitalized overtime, the decision here appears to prejudge the outcome of the audit, while disclaiming any prejudgment, and risks prejudicing the conduct of the audit. The Interim Order on rehearing should be corrected to reject the adjustment.

C. Second Quarter 2001 Plant Additions

ComEd proposed a *pro forma* adjustment in the gross amount of \$126,592,000, yielding a net increase to jurisdictional net rate base of \$122,765,000, for certain distribution plant reasonably expected to be (and in fact) placed in service in the second quarter of 2001. (Interim Order at 41, 43-44). The Interim Order rejects a portion of that adjustment, disallowing a net \$10,709,000 from ComEd's jurisdictional net rate base, resulting in a net disallowance of \$1,605,000 from the jurisdictional revenue requirement. (Interim Order at 44). That disallowance is unprecedented and, even more importantly, has no valid basis.

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 twelve months of the initiation of this proceeding, which began on June 1, 2001. (Interim Order at 44).

ComEd submitted uncontradicted evidence of the reasonably expected gross aggregate cost of \$126,592,000 for the distribution plant at issue, including the costs that the Interim Order disallows. (Voltz Dir., ComEd Ex. 5.0, pp. 7:136-14:300, 15:317-16:330; ComEd Exs. 5.2-5.3; *accord* Hill Dir., ComEd Ex. 4.0 CR, pp. 23:475-24:503 and App. C, Schs. B-2.1, B-2.2). The \$126,592,000 figure was based on the reasonably estimated final asset value (costs incurred and paid) of those projects. (Voltz Dir., ComEd Ex. 5.0, pp. 13:269-14:300 and ComEd Ex. 5.3). No party submitted any evidence that ComEd would not incur that \$126,592,000.

Only GCI contested any part of that \$126,592,000 in direct testimony. GCI proposed the partial disallowance of the gross amount of \$11,038,000, which results in the net figure of \$10,709,000, based on the fact that ComEd had stated, in its corrected response to Staff data request GEG-1.01, that ComEd had expended or incurred \$115,554,000 (\$11,038,000 less than

the proposed adjustment of \$126,592,000) for the projects at issue through June 30, 2001. (Effron Dir., GCI Ex. 2.0, pp. 35:15-36:9; GCI Ex. 2.1, Sch. DJE-6.1). It was not until rebuttal testimony, filed on October 16, 2001, that Staff first supported that proposed disallowance, and Staff simply adopted GCI's erroneous argument. (Gorniak Reb., Staff Ex. 15.0 CR, p. 3:47-62).

GCI's argument assumes, incorrectly, that the adjustment is limited to amounts expended or incurred as of June 30, 2001, 29 days after the initiation of this Docket. GCI's witness confirmed that its choice of a 29-day cutoff is entirely arbitrary. (Effron, Tr. 2093:2-2097:13).

In any event, ComEd, in the surrebuttal testimony of Philip Voltz filed on October 24, 2001, presented uncontradicted evidence that, as of the latest date for which data were then available, September 30, 2001, ComEd actually had incurred and paid \$123,680,000 for the projects at issue, and that because trailing expenditures on some of the projects would continue, the original gross figure of \$126,592,000 for the adjustment remained appropriate. (Voltz Sur., ComEd Ex. 46.0, p. 2:26-42). Neither GCI nor Staff even cross-examined Mr. Voltz on this subject. Mr. Voltz's testimony here contains no inherent improbability, nor has it been impeached, and thus it must be accepted. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273, 277 (1995); *Thigpen v. Retirement Bd. of Fireman's Annuity and Benefit Fund of Chicago*, 317 Ill. App. 3d 1010, 1021, 741 N.E.2d 276, 284-85 (1st Dist. 2000).

Staff's and GCI's assumption, that all of the costs of any major distribution capital project will not only be incurred and invoiced, but paid, in advance or no later than the moment when the facility is energized, simply is not plausible on its face. That idea is nothing more than unfounded speculation. It is unlawful for the Commission to disallow ComEd's proven costs on the basis of speculation. *E.g., Peoples Gas Light & Coke Co. v. Slattery*, 373 Ill. 31, 61, 25

N.E.2d 482, 497 (1940); *Ameropan Oil Corp. v. Illinois Commerce Comm'n*, 298 Ill. App. 3d 341, 348, 698 N.E.2d 582, 587 (1st Dist. 1998).

Unable to refute Mr. Voltz's testimony, Staff, at the post-hearing briefing stage, argued that ComEd was obligated to provide specific types of additional documents to support Mr. Voltz's unrebutted testimony. (Staff Init. Br. at 21; Staff Rep. Br. at 7-8). Staff's argument is unwarranted, unfair, and incorrect.

- First, the "issue" of ComEd's proof of how much it expended or incurred for the projects at issue after June 30, 2001, is not the real issue. ComEd's burden was to prove its reasonably expected costs. ComEd met that burden. No party submitted any contrary evidence.
- Second, Staff's argument -- which the Interim Order (at 44) adopts -- that Mr. Voltz's surrebuttal testimony is insufficient because it is not supported by documentation, is unsupported and unlawful. That argument parallels and even goes beyond (by virtue of the attempted extension to actual costs) the Commission rulings regarding the alleged insufficiency of sworn testimony to prove expected costs that were reversed by the Appellate Court in the appeals from Docket Nos. 99-0117 and 99-0013. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 322 Ill. App. 3d 846, 751 N.E.2d 196 (2d Dist. 2001); *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, No. 2-00-1397 (Ill. App. Ct. 2d Dist., October 11, 2001).[†]
- Finally, Staff's complaint, that Mr. Voltz made a "sudden claim" that capital costs were incurred or expended on the projects at issue from July through September 2001 in his surrebuttal filed on October 24, 2001 (*e.g.*, Staff Init. Br. at 21), is erroneous and unfair. The original figure for the capital costs reasonably expected to be incurred for those projects is entirely consistent with Mr. Voltz's surrebuttal testimony. Also, the figure for capital costs actually expended or incurred through September 2001 obviously could not have been included in ComEd's rebuttal testimony filed on September 20, 2001. Staff itself first advocated the disallowance at issue in its rebuttal testimony filed on October 16, 2001.

Staff's remaining theory -- that because ComEd did not supplement its response to Staff data request GEG-1.01, ComEd should be denied inclusion of the gross \$11,038,000 in its rate

[†] Although the latter decision is unpublished, it may be cited here under Ill. S. Ct. R. 23(e).

base -- is punitive, unreasonable, and unfair, especially given the chronology shown above. Indeed, Staff and GCI do not and cannot claim that Staff data request GEG-1.01 even requested any documentation of the costs at issue. In other words, Staff suggested that the Commission disallow a gross \$11,038,000 of used and useful distribution plant in service because ComEd, while it provided sworn testimony of those costs, did not also provide other corroborating documents that it was not required, or even asked, to provide. There is no valid basis for that theory. The Interim Order should be revised on rehearing to reject the disallowance.

D. Storm Restoration And Tree Management

The Interim Order also approves GCI's proposed downward adjustments to storm restoration and tree management costs, which reduce the jurisdictional revenue requirement by net amounts of \$5,812,000 and \$4,736,000 respectively. (Interim Order at 72, 75). ComEd has demonstrated that those two downward adjustments, which are made on top of ComEd's voluntary downward adjustments to these two categories of costs, are unjustified. (ComEd BoE at 29-37; ComEd RBOE at 87-92).

The Interim Order's approval of those adjustments also is problematic to the extent that it relates to matters that are the subject of the pending audit. As with the various determinations discussed earlier, the decision here appears to prejudge the outcome of the audit, while disclaiming any prejudgment, and risks prejudicing the conduct of the audit. The Interim Order on rehearing should be revised to reject the storm restoration and tree management adjustments.

E. Other Disallowances

The Interim Order also approves contested disallowances for legal costs (resulting in a net decrease in the jurisdictional revenue requirement of \$3,679,000), advertising costs (\$1,206,000), R&D/special projects costs (\$3,554,000, of which \$1,182,000 is contested), bank

commitment fees (\$908,000), and State use tax costs (\$510,000), and charitable contributions (\$111,000). (Interim Order at 98-99, 95, 102, 96-97, 108-09, 100). The Interim Order, as to each of those determinations, errs. (ComEd BOE at 45-50; ComEd RBOE at 99-103, 105-06).

In addition, the grounds for the downward adjustments for legal and R&D/special projects costs, which are A&G costs, are inconsistent with the rationale for the downward adjustment to A&G costs, discussed earlier, and result in double-counting with the latter adjustment. None of those three adjustments is valid. In any event, the Commission cannot simultaneously grant all three of those adjustments.

Moreover, the Interim Order errs in stating that ComEd does not contest the R&D/special projects cost adjustment and in relying on that finding . (Interim Order at 102). ComEd, in order to narrow the issues, offered to accept only a portion of that adjustment and contested the remaining \$1,182,000. (ComEd BoE at 47). The Interim Order on rehearing should be corrected to reject each of the foregoing adjustments, except that, in the case of the R&D/special projects adjustment, the Interim Order should reject only the contested portion.

III.

**The Order Errs As To
Certain Rate Design Issues**

The Interim Order adopts embedded cost methodologies for purposes of determining distribution and customer charges, the unbundled metering credits (which are expressed through charges), and the single billing option credit. (Interim Order at 124, 128-29, 138, 140).

Each of the above rate design determinations is incorrect. The evidentiary record plainly shows that the use of embedded cost ratemaking for purposes of determining distribution and customer charges is inferior both to marginal cost ratemaking and to the alternative proposal that ComEd presented providing for use of its embedded cost study to make the top level division of

the jurisdictional revenue requirement between non-residential and residential customers and for use of its marginal cost study to allocate costs among the respective customer classes within those two groups. (ComEd BOE at 51-53; ComEd RBOE at 111). The embedded cost approach simply does a poorer job of allocating costs in accordance with cost causation and thus of sending customers correct price signals, and therefore retards the development of an efficient competitive market. (ComEd BOE at 52-53; ComEd RBOE at 111). Delivery services costs should be allocated in accordance with cost causation. 220 ILCS 5/16-108(c). Moreover, while ComEd does not believe that the Commission may or should base its determination simply on a side by side comparison of the results of the competing approaches, ComEd would note that the marginal and alternative approaches result in lower distribution charges for customers in the over 10 MW class. (Alongi-Kelly Reb., ComEd Ex. 32.0, Attachment [“Att.”] G; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, Att. D).

The Interim Order’s determination regarding the methodologies for unbundled metering credits (charges) and the SBO credit suffer from the same flaws as embedded cost ratemaking in terms of inferior allocation of costs and price signals plus the added flaw of denying ComEd full recovery of its costs of providing delivery services both in the economic short term and in the economic long term, in violation of 220 ILCS 5/16-108(c). (ComEd BOE at 57-66; ComEd RBOE at 111). The argument of Staff and other parties that the embedded cost methodology, in the economic long term, eventually will result in a correctly priced credit is incorrect because, among other things, it ignores ComEd’s ongoing costs incurred due to its obligations as the “provider of last resort” for standard metering and billing under 220 ILCS 5/16-102, 16-103. (ComEd BOE at 57-60). In any event, that argument, even if it were valid, ignores that the embedded cost methodology, and the rate design approved by the Interim Order, provide no

mechanism by which ComEd may recover the revenue shortfall that, it is undisputed, necessarily results from the credit being too high in the lengthy period of years leading up to the economic long term. (ComEd BOE at 59-61).

The Interim Order on rehearing should be revised to approve marginal cost based distribution and customer charges or, alternatively, ComEd's alternative proposal. In addition, the Interim Order should be revised to approve ComEd's net avoided costs based methodologies for calculating the unbundled metering and SBO credits.

IV.

The Order Errs As To Certain Other Substantive Issues

A. ComEd's Storm Reserve Proposal

The Interim Order rejects ComEd's variable storm restoration cost reserve proposal on three grounds: (1) the proposal is unnecessary, (2) the proposal may result in an unreasonable level of reserves coupled with the potential for uneven benefits, and (3) the proposal may be on the cusp of violating ratemaking principles. (Interim Order at 77). The Interim Order errs.

The evidence in the record shows that, while the proposal is not "necessary" in the sense of being a prerequisite for the ability to offer delivery services, it is in the interests of all market participants, as evidenced by the fact that no intervenor other than Staff has opposed the proposal. (Voltz Reb., ComEd Ex. 24.0 CR, pp. 21:426-27, 23:485-24:512; Sant, Tr. 1741:13-1745:15; Chalfant, Tr. 2553:1-19). In addition, the evidence shows that the Interim Order's concerns regarding the level of reserves and uneven benefits are unwarranted and do not justify the rejection of the proposal. The level of reserves is set based on the Commission's own determination of the proper level of storm restoration costs for ratemaking purposes. (Voltz Dir., ComEd Ex. 5.0, p. 23:487-499). If actual costs turn out to be lower, ComEd's shareholders

nonetheless must fully fund the reserve until ComEd sets a new level of storm restoration costs in a subsequent rate case. (Voltz Reb., ComEd Ex. 24.0 CR, pp. 23:485-24:493). If actual costs turn out to be higher, the excess is financed by the shareholders until the next rate case. (Voltz Reb., ComEd Ex. 24.0 CR, pp. 23:485-24:493). Over the long term, the proposal inherently eliminates both over-recoveries and under-recoveries of storm restoration costs. (Voltz Dir., ComEd Ex. 5.0, p. 24:502-08; Voltz Reb., ComEd Ex. 24.0 CR, pp. 23:485-24:493).

In addition, ComEd has shown that the proposal is consistent with the concept of a test year and with the rule against single issue ratemaking. (Voltz Dir., ComEd Ex. 5.0, pp. 23:490-24:508; Voltz Reb., ComEd Ex. 24.0 CR, pp. 21:428-22:466; Voltz Sur., ComEd Ex. 46.0, pp. 22:471-87, 24:519-26:561). While ComEd agrees that the proposal raises a more serious concern in terms of the rule against retroactive ratemaking, it also believes that the Commission properly may conclude that it does not violate that rule for reasons that are unique to the proposal and that create no adverse “precedent”. (Voltz Dir., ComEd Ex. 5.0, pp. 24:513-25:524; Voltz Reb., ComEd Ex. 24.0 CR, pp. 23:481-24:508). For those reasons, unless the Commission concludes that the proposal in fact violates the rule against retroactive ratemaking, the Interim Order on rehearing should be revised to approve the proposal.

B. Other Substantive Issues, Including Policy and Language Issues

The Interim Order should be corrected and supplemented in the following respects:

- The Interim Order, like the ALJPIO, sets forth Staff’s position on the scope of a utility’s right to cost recovery, and the Interim Order adds a discussion of GCI’s position. (Interim Order at 9). The Interim Order therefore should set forth ComEd’s response, for which ComEd submitted appropriate language in its Exceptions Order. (ComEd BoE at 7; ComEd Exc. Order at 9).
- The Interim Order in part misstates that the standard for proof of *pro forma* adjustments, using the term “particular certainty”. (Interim Order at 9). That error should be corrected by substitution of the term “reasonable certainty”, so

that there is no unnecessary confusion regarding whether the Commission, without explanation, intended to create a new standard that conflicts with a host of prior Commission decisions over the last two decades. (ComEd BoE at 6-7; ComEd Exc. Order at 9; e.g., *In re Central Illinois Public Service Co., et al.*, Docket 00-0802 at 23-24 (Order Dec. 11, 2001); *In re Consumers Illinois Water Co.*, Docket 97-0351, 1998 Ill. PUC Lexis 479 at *18 (Order June 17, 1998); *In re Inter-State Water Co.*, Docket 85-0166, 1986 Ill. PUC Lexis 27 at *6 (Order Feb. 26, 1986); *In re Kankakee Water Co.*, Docket 85-0056, 1985 Ill. PUC Lexis 3 at **25, 27 (Order Nov. 26, 1985).

- The Interim Order reorganizes and expands the ALJPIO's discussion of other parties' contentions regarding the subject of customer impacts but, like the ALJPIO, sets forth a materially incomplete summary of ComEd's responses and sets forth no "Commission Analysis and Conclusion" section. (Interim Order at 13-16). The Interim Order therefore should set forth a more complete version of ComEd's response and such a conclusion section, for each of which ComEd submitted appropriate language in its Exceptions Order. (ComEd BoE at 7-8; ComEd Exc. Order at 14-16).
- The Interim Order adds to the ALJPIO's discussion of the Building Owners and Managers Association's ("BOMA") arguments relating to impacts on cost based rates. (Interim Order at 16-17). The Interim Order therefore should set forth a more complete version of ComEd's responses, for which ComEd submitted appropriate language in its Exceptions Order. (ComEd BoE at 8-9; ComEd Exc. Order at 17-19).
- The Interim Order adds to the ALJPIO's discussion of the ARES Coalition's arguments relating to impacts on the development of the retail market. (Interim Order at 20-21). The Interim Order therefore should set forth a more complete version of ComEd's responses, for which ComEd submitted appropriate language in its Exceptions Order. (ComEd BoE at 9; ComEd Exc. Order at 20-21).
- The Interim Order slightly misstates portions of ComEd's position regarding impacts on capital markets, and thus should be revised as proposed in ComEd's Exceptions Order. (Interim Order at 24; ComEd BoE at 9-10; ComEd Exc. Order at 23).
- The Interim Order sets forth certain accusations of the ARES Coalition and IIEC regarding ComEd's evidence and its conduct in discovery but fails to set forth ComEd's responses. (Interim Order at 26-27). ComEd submitted appropriate language summarizing ComEd's responses in its Exceptions Order. (ComEd BoE at 10; ComEd Exc. Order at 26, 27).
- The Interim Order fails to insert certain appropriate language proposed by ComEd in its Exceptions Order regarding its evidence, the jurisdictional revenue requirement, and the ARES Coalition's position; that proposed language should

be added. (Interim Order at 28; ComEd BoE at 10-11; ComEd Exc. Order at 28, 29-30, 30).

- The Interim Order on page 30 should state a jurisdictional revenue requirement of \$1,725,538,000 with Miscellaneous Revenues or \$1,670,739,000 without Miscellaneous Revenues, for the reasons shown in ComEd's Initial Brief (at 41-138), Reply Brief (at 10-99), Brief on Exceptions (10-69), Exceptions Order (27-146), Reply Brief on Exceptions (41-146), and this Application.
- As noted previously, the Interim Order omits portions of ComEd's responses pointing out what ComEd believes to be serious inconsistencies on the part of Staff and IIEC in relation to the subject of General Plant, Intangible Plant, A&G costs, and the labor allocator. (Interim Order at 39). The Interim Order, while adding to the ALJPIO's discussion of the ARES Coalition's position, also omits portions of ComEd's responses thereto. (*Id.* at 38, 39-40). The omitted language, which may be found in ComEd's Exceptions Order, should be added. (ComEd BoE at 11-13; ComEd Exc. Order at 39-40).
- The Interim Order errs by rejecting ComEd's arguments for a composite depreciation rate on certain proposed downward adjustments to rate base, and omits ComEd's responses on this subject. (Interim Order at 47-48, 48-49). Staff itself showed an appropriate methodology for determination of a composite depreciation rate, and both ComEd's position and its proposed language should be approved. (ComEd BoE at 21-23; ComEd Exc. Order at 47, 48, 49).
- The Interim Order adds discussion regarding the ARES Coalition's arguments on the subject of the effect of alleged imprudence on rates, including the ARES Coalition's grotesque distortion of ComEd's arguments. (Interim Order at 51-52). In addition, the Interim Order in its "Commission Analysis and Conclusion" section errs here by not accurately setting forth ComEd's position, rejecting that misstated version of ComEd's position. (Interim Order at 52). The Interim Order, in its summary of ComEd's responses, should add the sentence: "The Company also contends that the ARES Coalition's arguments misstate the Company's positions and are unsupported and inaccurate." In addition, the Interim Order should adopt ComEd's proposed language for the "Commission Analysis and Conclusion" section, which maybe found in ComEd's Exceptions Order. (ComEd BoE at 23-25; ComEd Exc. Order at 51-52).
- The "Commission Analysis and Conclusion" section on page 58 of the Interim Order is, in part, erroneous, and should be replaced by the language proposed by ComEd. (Interim Order at 58; ComEd BoE at 25-26; ComEd Exc. Order at 57).
- The Interim Order on page 62 omits a portion of ComEd's responses, for which appropriate language may be found in ComEd's Exceptions Order. (Interim Order at 62; ComEd BoE at 27-29; ComEd Exc. Order at 61).

- The Interim Order on page 71 omits portions of ComEd’s responses, for which appropriate language may be found in ComEd’s Exceptions Order. (Interim Order at 71; ComEd BoE at 29-32; ComEd Exc. Order at 70).
- The Interim Order on page 89 omits portions of ComEd’s responses, for which appropriate language may be found in ComEd’s Exceptions Order. (Interim Order at 89; ComEd BoE at 43; ComEd Exc. Order at 89).
- The Interim Order on page 90 contains language criticizing ComEd’s approach to *pro forma* adjustments and its calculations relating the subject of bill payment center that is incorrect and grossly unfair, as shown in great detail in ComEd’s Brief on Exceptions; that language should be deleted. (Interim Order at 90; ComEd BoE at 41-43; ComEd Exc. Order at 89).
- The Interim Order on page 95 omits a portion of ComEd’s responses, for which appropriate language may be found in ComEd’s Exceptions Order. (Interim Order at 95; ComEd BoE at 45; ComEd Exc. Order at 95).
- The Interim Order on page 110 omits a portion of ComEd’s responses, for which appropriate language may be found in ComEd’s Exceptions Order. (Interim Order at 110; ComEd BoE at 50; ComEd Exc. Order at 109).
- The Interim Order on page 111 deletes an entire section of the ALJPIO on prudence of operating expenses. (Interim Order at 111). The entire section, with the three non-substantive corrections found in ComEd’s Exceptions Order, should be reinserted. (ComEd Exc. Order at 111-12). Alternatively, the entire section, with those three corrections, and with such further modifications as are necessary in order to reflect any contested operating expense disallowances that are approved on rehearing, if any, should be reinserted.
- The Interim Order on page 148 in the “Commission Analysis and Conclusion” section omits certain findings and conclusions that are appropriate, including that ComEd should not be at risk if a Retail Electric Supplier chooses to employ electronic signatures and a customer later contends that such a signature is invalid. (Interim Order at 148). That section should be corrected and supplemented as proposed in ComEd’s Exceptions Order. (ComEd BoE at 70-73; ComEd Exc. Order at 149-50).
- The wording on page 149 of the Interim Order regarding the exception to the general rule against residential off-cycle switching should be clarified as proposed in ComEd’s Exceptions Order. (Interim Order at 149; ComEd BoE at 73-74; ComEd Exc. Order at 151).
- The Interim Order on page 152 omits a portion of ComEd’s response, for which appropriate language may be found in ComEd’s Exceptions Order. (Interim Order at 152; ComEd BoE at 74; ComEd Exc. Order at 152).

- The Interim Order on page 152 in Finding (5) should approve a net jurisdictional rate base of \$4,018,471,000 for the reasons shown in ComEd’s Initial Brief (41-61), Reply Brief (10-40), Brief on Exceptions (10-25), Exceptions Order (27-57), Reply Brief on Exceptions (41-77), and this Application.
- The Interim Order on page 152 in Finding (6) should state a jurisdictional revenue requirement of \$1,725,538,000 with Miscellaneous Revenues or \$1,670,739,000 without Miscellaneous Revenues, for the reasons shown in ComEd’s Initial Brief (at 41-138), Reply Brief (at 10-99), Brief on Exceptions (10-69), Exceptions Order (27-146), Reply Brief on Exceptions (41-146), and this Application.
- The corrected Appendix that was issued with the Amendatory Interim Order should be revised to reflect the revisions requested in this Application for the reasons stated herein and in ComEd’s Initial Brief (at 41-138), Reply Brief (at 10-99), Brief on Exceptions (10-69), Exceptions Order (27-146), and Reply Brief on Exceptions (41-146).

V.

Non-Substantive Errors

The Interim Order should be corrected and supplemented in the following respects:

- On page 32 of the Interim Order, in first sentence of Section II.C, the words “rate base” should be the words “net rate base”.
- In the first sentence of the first full paragraph on page 34 of the Interim Order, the words “Docket No. 99-0117” should be the word “Rebuttal”.
- On page 59 of the Interim Order, the words “ComEd indicates that its revised proposal is only 4.82%...” should be “ComEd indicates that its revised proposal, setting aside that proposed adjustment, is only 4.82%....”
- On page 98 of the Interim Order the first full sentence of the first full paragraph is partly garbled, resulting in a misstatement; it should be corrected as shown in ComEd’s Exceptions Order. (ComEd Exc. Order at 98).
- On page 104 of the Interim Order the sequence of the ARES Coalition’s position and ComEd’s responses is reversed.
- On page 134 the Interim Order omits that no party disagrees with ComEd’s position and that the Commission agrees.

- The three “before” figures in the Amendatory Interim Order are incorrect and should be changed to \$1,570,150,000, \$3,590,583,000, and \$1,570,150,000 respectively.
- The following portions of corrected Appendix A are superfluous and should be deleted: Page 6 of Schedule 2, pages 4-6 of Schedule 4 (two of which bear an inappropriate comment), Schedule 6, the worksheet regarding cost of capital, and the copies of Schedules 17.7 and 17.8 of Staff Exhibit 17.0.

CONCLUSION

For the foregoing reasons, for the reasons stated in ComEd’s Initial Brief, Reply Brief, Brief on Exceptions, Exceptions Order, and Reply Brief on Exceptions, and all other grounds of record, the Commission should grant rehearing and the Interim Order on rehearing should be corrected and revised as requested herein.

Dated: May 1, 2002

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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CERTIFICATE OF SERVICE

I, Paul H. Hanzlik, do hereby certify that a copy of the foregoing Application For Rehearing Of Commonwealth Edison Company was served upon all parties on the attached Service List by electronic mail and by deposit in the United States Mail, first class postage prepaid, at Three First National Plaza, 70 W. Madison St., Chicago, Illinois 60602, on May 1, 2002.

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