

# Attachment H

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STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

|   |   |         |
|---|---|---------|
| Commonwealth Edison Company                   | : |         |
|   | : |         |
| Annual formula rate update and revenue        | : | 18-0808 |
| requirement reconciliation under              | : |         |
| Section 16-108.5 of the Public Utilities Act. | : |         |

ORDER

December 4, 2018



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

|  |   |                |
|--|---|----------------|
| <b>Commonwealth Edison Company</b>                   | : |                |
|  | : |                |
| <b>Annual formula rate update and revenue</b>        | : | <b>18-0808</b> |
| <b>requirement reconciliation under</b>              | : |                |
| <b>Section 16-108.5 of the Public Utilities Act.</b> | : |                |

**ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On April 16, 2018, Commonwealth Edison Company (“ComEd”) filed with the Illinois Commerce Commission (the “Commission”) ComEd’s annual formula rate update and revenue requirement reconciliation and requested the Commission to authorize and direct ComEd to make the compliance filings necessary to place into effect the resulting charges to be applicable to delivery services provided by ComEd beginning on the first day of ComEd’s January 2019 billing period, as authorized by Section 16-108.5(d) of the Public Utilities Act (the “Act” or “PUA”), 220 ILCS 5/1-101 *et.seq.*

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

1. updated inputs to the performance-based formula rate for the applicable rate year (2019) that are based on final historical data reflected in the utility’s most recently filed annual Federal Energy Regulatory Commission (“FERC”) Form 1 (for 2017) plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed (2018); and
2. a reconciliation of the revenue requirement that was in effect for the prior rate year (2017) (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 (for 2017) that reports the actual costs for the prior rate year).

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

Statutorily, this docket must conclude by December 12, 2018. 220 ILCS 5/16-108.5(d)(3).



The Citizen's Utility Board ("CUB") and the Illinois Competitive Energy Association were given leave to intervene. The Office of the Attorney General of the State of Illinois ("AG") filed an appearance in this matter.

The following ComEd witnesses testified in this case: Chad A. Newhouse; Susan L. Tracy; Jeffrey A. Bonfanti; Jennifer Montague; Michael C. Moy; Frank A. Luedtke; John L. Leick; Shay Bahramirad; Nickolaos Z. Bafaloukos; and Susan F. Tierney.

The following Commission Staff ("Staff") witnesses testified in this case: Bonita A. Pearce; Scott Tolsdorf; and Janis Freetly. The AG sponsored the testimony of Michael L. Brosch and Mary E. Selvaggio.

An evidentiary hearing was convened in this docket at the Commission's Chicago office before a duly authorized Administrative Law Judge on August 28, 2018. ComEd, Staff, the AG, and CUB filed and served Initial Briefs on September 11, 2018. ComEd, the AG and CUB filed and served Reply Briefs on September 25, 2018. A Proposed Order was issued on October 25, 2018. ComEd, Staff, the AG and CUB filed and served Briefs on Exceptions on November 1, 2018. ComEd and the AG filed and served Reply Briefs on Exceptions on November 9, 2018.

## **II. LEGAL STANDARDS**

Section 16-108(c) of the PUA provides that:

Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs. Such costs shall include the costs of owning, operating and maintaining transmission and distribution facilities.

220 ILCS 5/16-108(c).

The Energy Infrastructure Modernization Act ("EIMA") establishes an annual process by which ComEd's rate year costs and revenue requirements are first estimated, and then finally fixed and reconciled when actual costs are known. The objective of this process is to:

... ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

220 ILCS 5/16-108.5(d)(1).

ComEd explains that to accomplish this objective, EIMA requires that each formula rate update ("FRU") involve both a final reconciliation of the revenue requirement "for the prior rate year," for which actual costs will be known by the time of filing, and a provisional

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

### **III. OVERALL REVENUE REQUIREMENT**

This FRU proceeding sets ComEd’s retail delivery rates applicable to 2019 billing periods based on ComEd’s 2019 Rate Year Net Revenue Requirement. Those rates will recover the balance of ComEd’s fully reconciled actual costs for 2017 as well as ComEd’s projected rate year costs, subject to later reconciliation. The 2019 Rate Year Revenue Requirement, therefore, includes an Initial Rate Year Revenue Requirement, which quantifies the projected cost of providing delivery services for the 2019 rate year, and the Reconciliation Adjustment, which quantifies the difference between the initial revenue requirement and the actual cost of service for the year being reconciled. *See generally* ComEd Ex. 1.0 at 7-10. ComEd states that it has presented substantial evidence supporting its revenue requirement through the testimony of its witnesses and the attachments, schedules, and exhibits those witnesses sponsored.

During the course of the proceeding, Staff and the AG proposed adjustments and changes to the Company’s proposed revenue requirements. ComEd accepted some of these adjustments and changes. The Commission’s determination on the subject of rate base and the derivative expense issues are reflected and set forth below in the applicable sections of this Order.

#### **A. 2019 Initial Rate Year Revenue Requirement**

ComEd presented evidence showing that its 2019 Initial Rate Year Revenue Requirement as adjusted in its rebuttal testimony is \$2,578,770,000. ComEd Ex. 9.01, Sch. FR A-1, line 23. Staff agrees with ComEd’s calculation. In consideration of the contested issues in this proceeding, the Commission’s determination regarding the 2019 Initial Rate Year Revenue Requirement is set forth later in this Order.

#### **B. 2017 Reconciliation Adjustment**

ComEd presented evidence that its 2017 Reconciliation Adjustment, including interest, is \$86,337,000. ComEd Ex. 9.01, Sch. FR A-1, line 24. Staff presented evidence that ComEd’s 2017 Reconciliation Adjustment, including interest, is 86,335,000. Staff Init. Br., Appendix A, Sch. 8 FY. In consideration of the contested issues in this proceeding, the Commission’s determination regarding the 2017 Reconciliation Adjustment is set forth later in this Order.

#### **C. ROE Collar and ROE Penalty Calculation**

ComEd states its jurisdictional return on equity (“ROE”) is a measure of the income ComEd earns in relation to shareholders’ equity. ComEd Ex. 1.0 at 13. Section 16-

108.5(c)(5) of the PUA creates a collar that sets upper and lower boundaries on the potential difference between (a) the actual ROE ComEd earns in a Rate Year and (b) the ROE calculated under the statutory formula set forth in Section 16-108.5(c)(3) of the PUA. If the difference lies outside those bounds, an offsetting adjustment is applied. See 220 ILCS 5/16-108.5(c)(5). In the past, ComEd explains, this ROE Collar defined a “deadband” of 100 basis points, *i.e.*, an adjustment was made only if and when there was a difference of more than 50 basis points in either direction. ComEd Ex. 1.0 at 13.

The Illinois Future Energy Jobs Act (“FEJA”), PA 99-0906, authorized ComEd to effectively eliminate the ROE Collar deadband by reducing the upper and lower boundaries of the collar from 50 basis points to zero basis points. ComEd Ex. 1.0 at 13. Pursuant to FEJA, ComEd states it reduced its ROE Collar to zero basis points – that change is reflected in ComEd’s formula rate tariffs now on file with the Commission. ComEd’s current “Zero Basis Point ROE Collar” calculation is set forth on Sch. FR A-3. See ComEd Ex. 2.01. No other aspect of the ROE Collar calculation was altered. ComEd Ex. 1.0 at 13. ComEd states it did not incur a ROE Penalty. See Sch. FR D-1, line 9.

The 2017 Reconciliation Revenue Requirement is \$2,630,984,000. See ComEd Ex. 9.01, Sch. FR A-1 REC. ComEd’s Initial Rate Year Revenue Requirement in effect during 2017 was \$2,559,065,000, resulting in a reconciliation adjustment of \$71,919,000 before interest and before considering the Zero Basis Point ROE Collar. See ComEd Ex. 9.01, Sch. FR A-4.

The Commission approves ComEd’s ROE Collar and ROE Penalty calculation based on the evidence in the record.

#### **D. 2019 Rate Year Net Revenue Requirement**

ComEd provided extensive evidence that its properly calculated 2019 Rate Year Net Revenue Requirement, reflecting adjustments, is \$2,696,799,000. ComEd Ex. 9.0 at 2; ComEd Ex. 9.01, Sch. FR A-1, line 36. Staff states the overall 2019 Rate Year Net Revenue Requirement is \$2,696,797,000. Staff Init. Br., Appendix A, Schedule 1 FY, line 5. The Commission’s determination regarding the 2019 Rate Year Net Revenue Requirement is set forth later in this Order.

### **IV. RATE BASE**

#### **A. Overview**

ComEd argues its 2017 Reconciliation Year Rate Base and its 2019 Initial Rate Year Rate Base are supported by the record and should be approved. The AG proposes to reduce ComEd’s rate base by \$6,012,000 to remove the costs of ComEd’s two battery energy storage system (“BESS”) pilot projects (collectively, the “BESS Projects” or “BESS pilots”).

#### **1. 2017 Reconciliation Rate Base**

ComEd states its 2017 Reconciliation Year Rate Base as adjusted in its rebuttal testimony is \$9,512,652,000. ComEd Ex. 9.0 at 6; ComEd Ex. 9.01, Sch. FR B-1, line 28. Staff’s calculation is consistent with ComEd’s. The Commission’s determination regarding the 2017 Reconciliation Rate Base is set forth later in this Order.

## **2. 2019 Initial Rate Year Rate Base**

ComEd also submitted evidence that its 2019 Initial Rate Year Rate Base as adjusted in its rebuttal testimony is \$10,675,237,000. ComEd Ex. 9.01, Sch. FR B-1, line 36. Staff's calculation is consistent with ComEd's. The Commission's determination regarding the 2019 Initial Year Rate Base is set forth later in this Order.

### **B. Uncontested Issues**

#### **1. Accumulated Provisions for Depreciation and Amortization**

The total amount of Accumulated Depreciation related to ComEd's rate base, as of December 31, 2017, is \$7,045,789,000. This total is comprised of \$6,002,270,000 related to Distribution Plant and \$1,043,519,000 related to General and Intangible Plant. ComEd Ex. 2.0 at 14; ComEd Ex. 2.01, Sch. FR B-1, lines 7-12. ComEd's Accumulated Provisions for Depreciation and Amortization related to ComEd's rate base were uncontested, but were impacted by the BESS Projects adjustment adopted *infra*. The Commission approves this component of rate base.

#### **2. Plant in Service**

ComEd's calculated level of electric utility plant in service rate base as of December 31, 2017, before projected plant additions, is \$21,189,824,000. ComEd Ex. 2.0 at 54.

ComEd projects Distribution Plant additions of \$1,511,010,000, and General and Intangible Plant additions of \$245,962,000, for a total \$1,756,972,000, to be in-service as of December 31, 2018. ComEd Ex. 5.0 at 21; ComEd Ex. 2.01, Sch. FR B-1, lines 29, 31. These additions were described in accordance with 83 Ill. Adm. Code 285.6100. ComEd Ex. 5.01.

ComEd states that its Distribution Plant, General Plant, and Intangible Plant assets in service at year-end 2017 were prudently acquired at a reasonable cost and are used and useful when placed into service. ComEd Ex. 5.0 at 21-25. ComEd also shows that the additional assets projected to be included in Distribution Plant that are included in the 2018 Initial Rate Year revenue requirement are being, or will be, acquired prudently and at reasonable cost, consistent with the costs of well-managed projects. ComEd asserts that they also are reasonably expected to be used by ComEd in the provision of delivery services to its customers by December 31, 2018, and are necessary to provide such services. *Id.* The Commission therefore approves the foregoing Plant in Service costs.

#### **3. Construction Work in Progress**

ComEd's Construction Work in Progress ("CWIP") for the 2017 Reconciliation year rate base is uncontested. ComEd has included \$22,442,000 of CWIP in its rate base for the 2017 Reconciliation Revenue Requirement for projects that do not accrue AFUDC. ComEd Ex. 2.0 at 15-16; ComEd Ex. 5.0 at 19-21. ComEd demonstrated that the level of CWIP included in ComEd's reconciliation rate base is prudent, reasonable, and representative of ComEd's current construction activities. *Id.* Neither Staff nor any intervenor disagreed. Therefore, the Commission approves this component of rate base.

#### **4. Property Held for Future Use**

There is no property held for future use included in ComEd's delivery service rate base.

#### **5. Cash Working Capital**

ComEd's filing year rate base includes an increase of \$11,420,000 for Cash Working Capital ("CWC"). ComEd Ex. 9.01, Sch. FR B-1, line 34a; ComEd Ex. 9.01, App 3. CWC is the amount of cash that ComEd maintains in order to meet its expenses and other cash outflow obligations. ComEd determined the amount of CWC based on updating the leads and lags from its last lead/lag study, which was performed for and approved in Docket No. 17-0196. ComEd Ex. 2.0 at 16-17; ComEd Ex. 2.01, App 3. There is no dispute on the method of calculating CWC; however, the final balance of CWC is set forth later in this Order using the approved revenue requirement.

#### **6. Accumulated Deferred Income Taxes**

ComEd states the appropriate level of Accumulated Deferred Income Taxes ("ADIT") to be deducted from rate base as of December 31, 2017, is \$4,353,232,000. ComEd Ex. 9.05 at 1; ComEd Ex. 2.01, Sch. FR B-1, line 17. ComEd asserts this amount was derived through an analysis of the components of the deferred tax balances, which were either directly assigned or allocated based on the assignment or allocation of the operating items to which they relate. ComEd's 2017 ADIT balance is reflective of the 50% bonus depreciation applicable to 2017 capital investments through September 27, 2017, as well as of the current year deduction under the safe harbor method of tax accounting for repair costs. ComEd Ex. 2.0 at 18. The calculation complies with the determinations of the Commission and of the courts concerning this issue. Due to the adjustment to the BESS Projects adopted *infra*, ADIT must also be adjusted. Therefore, the amount of ADIT is \$4,353,725,000.

#### **7. Net Operating Losses**

ComEd submitted evidence that it reflected a Net Operating Loss ("NOL") carryforward that was generated primarily by the 50% bonus depreciation deduction allowed under the 2015 Protecting Americans from Tax Hikes ("PATH") Act (originally extended through 2019, but repealed as of September 28, 2017). The NOL carryforward is a deferred tax asset ("DTA") because it will reduce taxes in a future period. ComEd reflected a DTA of \$33,025,000 (jurisdictional portion) for the NOL. ComEd Ex. 2.0 at 18-19; ComEd Ex. 2.02, WP 4, line 22.

While the NOL belongs to ComEd, ComEd files its Federal tax return as part of a consolidated tax return, which allows ComEd to utilize its NOL if sufficient taxable income in the consolidated group exists in which to use the NOL. In 2017, taxable income for the consolidated group was lower than allowable deductions, and as a result, ComEd's NOL could not be fully utilized in 2017. ComEd Ex. 2.0 at 19. ComEd's cumulative NOL as of December 31, 2017 will be carried forward until it is fully used or expires. *Id.* This figure is uncontested and is therefore approved.

## **8. Materials and Supplies**

ComEd's Materials and Supplies ("M&S") balance includes items purchased primarily for use in the construction and maintenance of utility property. ComEd included in its rate base the actual 2017 year-end balance of M&S, less the associated accounts payable. The net amount of M&S included in the rate base used for calculating ComEd's 2019 rates is \$74,744,000. ComEd Ex. 2.01, Sch. Fr B-1, line 18. This amount is uncontested and is therefore approved.

## **9. Other Assets and Liabilities**

### **a. Assets**

Other assets typically represent costs ComEd has incurred, but has not yet recovered, and which increase rate base. ComEd asserts it has included three categories of other assets in rate base: regulatory assets, deferred debits, and other deferred charges consisting of unamortized balances of certain one-time expenses in excess of \$10 million. None of these amounts are contested and they are therefore approved.

#### **(i) Regulatory Assets**

ComEd included in its 2017 Reconciliation Revenue Requirement rate base and its 2019 Initial Rate Year Revenue Requirement rate base Regulatory Assets amounting to \$161,433,000. ComEd Ex. 2.01, Sch. FR B-1, line 19. ComEd's Regulatory Assets are comprised of: (i) a regulatory asset representing the unamortized balance (as of year-end 2017) of capitalized incentive compensation costs; (ii) unrecovered costs related to ComEd's Advanced Metering Infrastructure ("AMI") pilot; and (iii) the unrecovered balance of the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI Pilot). ComEd Ex. 2.0 at 20. The Regulatory Assets and Liabilities for the 2017 Reconciliation Revenue Requirement and the 2019 Initial Rate Year Revenue Requirement are uncontested. Therefore, the Commission approves this component of rate base.

#### **(ii) Deferred Debits**

ComEd included in its 2017 Reconciliation Revenue Requirement rate base and its 2019 Initial Rate Year Revenue Requirement rate base Deferred Debits totaling \$23,782,000. ComEd Ex. 2.01, Sch. FR B-1, line 20. ComEd's Deferred Debits include: (i) Cook County Forest Preserve fees related to licensing fees for distribution lines; (ii) a Long Term Receivable from the Mutual Beneficial Association Plan related to payments that ComEd has made and for which it is awaiting reimbursement; (iii) a deferred debit associated with ComEd's capitalized vacation pay not included in plant-in-service; (iv) expected recoveries from insurance on claims made by the public against ComEd; and (v) payments to the Commission for authorization fees related to future long-term debt issuances. ComEd Ex. 2.0 at 21. The Deferred Debits for the 2017 Reconciliation Revenue Requirement rate base and the 2019 Initial Rate Year Revenue Requirement rate base are uncontested and therefore approved.

#### **(iii) Other Deferred Charges**

ComEd states that it included in its 2017 Reconciliation Revenue Requirement rate base and its 2019 Initial Rate Year Revenue Requirement rate base the unamortized

balances of certain one-time expenses greater than \$10 million. ComEd Ex. 2.0 at 21-23. These costs include certain storm expenses, which ComEd is amortizing over five years pursuant to Section 18-108.5(c)(4)(F). Specifically, ComEd is amortizing over five years the costs of two 2013 storms and two 2014 storms, each of which exceeded \$10 million. ComEd Ex. 2.0 at 22. In 2013 and 2014, these storms resulted in expenses of \$21,987,000, and \$38,139,000, respectively. *Id.* The unamortized balance of the 2014 storm expense, \$7,628,000, is included in rate base. *Id.* As of December 31, 2017, the 2013 storm regulatory asset balance was fully amortized. *Id.* No storms incurred expenses greater than \$10 million in 2015, 2016, or 2017. *Id.*

ComEd explains that it has removed certain merger expenses from its operating expenses and instead amortized them over a 5-year period, as required by Section 16-108.5(c)(4)(F). ComEd recorded merger expenses in 2013 and 2016, in the amounts of \$11,416,000 and \$10,584,000, respectively. ComEd Ex. 2.0 at 22. The unamortized balance of the 2016 merger expenses, \$6,351,000, is included in ComEd's rate base. *Id.* As of December 31, 2017, the 2013 merger regulatory asset balance was fully amortized. *Id.*

ComEd asserts it is also amortizing over five years costs related to non-recurring A-base meter upgrades and other electrician repairs and replacements required as part of the smart meter deployment plan. *Id.* In 2016 and 2017, ComEd incurred \$29,309,000 and \$21,441,000, respectively, of such costs. *Id.* ComEd's unamortized balance related to these expenses is \$34,738,000. ComEd Ex. 2.01, Sch. FR B-1, line 24; ComEd Ex. 2.02, WP 8.

Finally, ComEd states that, in 2017 it incurred \$12,003,000 of costs related to a mitigation program to address the unique issue of Emerald Ash Borer tree infestation. ComEd Ex. 2.0 at 22-23. ComEd explains Emerald Ash Borer is an invasive insect that inhabits and infects Ash trees, causing mortality and resulting in risk of branch breakage and trunk failure. The mitigation program serves to minimize service interruptions and safety risks by topping, trimming or removing affected trees. *Id.* ComEd's unamortized balance related to these expenses is \$9,602,000. ComEd Ex. 2.01, Sch. FR B-1, line 24; ComEd Ex. 2.02, WP 8.

No party contested these issues. The Commission therefore approves this component of rate base.

## **b. Liabilities**

Other liabilities typically refer to costs that ComEd has not yet incurred, but with respect to which ComEd has recovered some amounts through delivery service charges, and are a reduction to rate base. ComEd asserts that it has included three categories of other year-end 2017 liabilities in rate base: operating reserves, asset retirement obligations, and deferred credits. None of these amounts are contested, and they are therefore approved.

### **(i) Operating Reserves**

ComEd included in its 2017 Reconciliation Revenue Requirement rate base and its 2019 Initial Rate Year Revenue Requirement rate base Operating Reserves amounting to \$279,961,000. ComEd Ex. 2.0 at 23. These jurisdictional amounts consist of the

following: (1) OPEB and other benefits of \$224,149,000; (2) injuries and damages of \$53,243,000 related to workers' compensation and public claims; (3) other miscellaneous environmental liabilities of \$1,542,000, primarily related to the reserve for the remediation of Superfund sites; and (4) management retention and incentive liabilities of \$1,027,000. *Id.*; Sch. FR B-1, line 21.

### **(ii) Asset Retirement Obligations**

ComEd included in its 2017 Reconciliation Revenue Requirement rate base and its 2019 Initial Rate Year Revenue Requirement rate base Asset Retirement Obligations of \$18,859,000. *Id.* at 23-24. This amount represents asset removal costs recovered through depreciation expense. *Id.*; ComEd Ex. 2.01, Sch. FR B-1, line 22.

### **(iii) Deferred Credits**

ComEd included in its 2017 Reconciliation Revenue Requirement Rate base and its 2019 Initial Rate Year Revenue Requirement rate base Deferred Credits that reduce rate base by a total of \$96,012,000. ComEd Ex. 2.0 at 24. The deferred credits recorded in FERC Account 253 include \$1,490,000 for deferred rents, \$2,758,000 for deferred revenues associated with the lease of fiber optic cable, and \$574,000 for post-retirement benefit obligations. *Id.*; ComEd Ex. 2.01, Sch. FR B-1, line 23; ComEd Ex. 2.02, WP 5.

## **10. Customer Deposits**

ComEd receives refundable deposits from certain new customers as a condition of initiating electric service. ComEd Ex. 2.0 at 24. ComEd applied its year-end 2017 balance of customer deposits to its rate base, which resulted in a reduction to rate base of \$112,460,000. ComEd Ex. 2.01, Sch. FR B-1, line 25. ComEd's Customer Deposits for the 2017 Reconciliation Revenue Requirement rate base and the 2019 Initial Rate Year Revenue Requirement rate base are uncontested. Therefore, the Commission approves this component of rate base.

## **11. Customer Advances**

ComEd explains that, under the terms of Rider DE – Distribution System Extensions, ComEd receives refundable distribution system extension deposits from customers as customer advances to begin construction. ComEd Ex. 2.0 at 25. ComEd has reduced rate base for these deposits as of December 31, 2017, in the amount of \$131,660,000. *Id.*; ComEd Ex. 2.01, Sch. FR B-1, line 26; ComEd Ex. 2.01, App 1 lines 23-30. This item is uncontested. The Commission therefore approves this component of rate base.

## **C. Contested Issue**

### **1. BESS Pilot Projects**

#### **a. ComEd's Position**

ComEd's proposed 2018 capital additions include two pilot projects regarding the use of BESS technology to defer capacity-related distribution system upgrades. ComEd states the BESS Projects have a total revenue requirement impact of \$730,000, which is less than the revenue requirement impact of the otherwise-necessary investments they defer, but ComEd asserts the larger reason these projects should be approved is the



experience and learnings that they offer. ComEd Ex. 13.0 REV at 8. ComEd states those benefits dwarf the costs of the projects. Thus, ComEd maintains that its decision to implement these pilot projects was prudent and the project costs are reasonable.

ComEd states that, like many other utilities around the country, it is exploring how new technologies such as BESS can meet distribution system needs more efficiently than investments in traditional “wires” alternatives, such as a new distribution feeder line or expanded substation, while continuing to provide the reliable distribution service that customers, utilities, and regulators expect. ComEd Ex. 15.0 REV at 7-8. ComEd avers that the BESS Projects will provide meaningful real-world information and experience about the design, construction, and operation of BESS as a component of the distribution system. ComEd Ex. 10.0 at 3. Given the promise of BESS technologies, ComEd asserts that it is prudent to learn more about how to plan for and use such resources to meet distribution system needs and operational challenges. *Id.*

ComEd notes that no evidence contradicts ComEd’s testimony establishing that the BESS Projects serve distribution purposes by deferring otherwise-necessary capacity-related upgrades to distribution substations and feeders, or that the Projects’ costs are reasonable. The AG is the only party to take issue with the Projects, but ComEd states that AG witness Selvaggio has no professional engineering training or expertise and simply ignores the substantial record evidence concerning how ComEd will use the BESS Projects and the distribution functions they will provide, in favor of unsupported assertions. ComEd concludes the Commission should reject the AG’s adjustment.

ComEd explains that the BESS Projects will defer otherwise required capacity-related upgrades to ComEd’s distribution infrastructure. ComEd Ex. 10.0 at 5-6. ComEd states that, traditionally, these capacity-related issues might be resolved by installation of larger transformers, or construction of additional feeders and/or alteration of the feeder switching and automation schemes. ComEd Ex. 10.0 at 7. However, ComEd explains, the BESS Projects alleviate distribution capacity needs by discharging stored electricity to relieve peak loading, allowing existing substation transformers and the existing feeder to accommodate a certain level of additional load, enabling ComEd to defer investment in the traditional “wires” solutions. ComEd states that the BESS Projects do not generate electricity; rather, they store and later release electricity produced by other sources. ComEd Ex. 13.0 at 4-5; Tr. at 65-66.

ComEd asserts the record clearly establishes that the BESS Projects are reasonable and prudent. ComEd explains the BESS Projects will meet distribution system operational needs and help ComEd learn how to best use BESS technology to meet distribution needs across ComEd’s system.

ComEd states that the BESS Projects will defer upgrades necessary to meet forecasted load at both a Zion-area substation, which is expected to be higher than the station’s allowable rating in 2019, and on a feeder near Plainfield, which is projected to be overloaded in 2019. ComEd Ex. 10.0 at 7; ComEd Ex. 13.0 REV at 5. ComEd states that if it does not undertake the BESS Projects, it must undertake traditional solutions and investments, and those costs would be a component of its revenue requirement in this case. ComEd witness Dr. Bahramirad testified that the required transformer replacement at Zion is estimated to cost approximately \$9.5 million, more than double the cost of the

Zion BESS Project, while upgrading the Plainfield feeder is estimated to cost approximately \$700,000. *Id.* ComEd states that the BESS Projects enable ComEd to defer those traditional solutions, for a period of approximately five years (ComEd Ex. 13.0 REV at 7) or even longer if load growth slows due, for example, to the growth of distributed energy resources (“DER”) in the area or increased energy efficiency (ComEd Ex. 10.0 at 10). Dr. Bahramirad also testified that “depending on the length of the deferred achieved, changes in load growth over time, and future redeployment, the projects may also have a zero to modest net cost to the distribution system over the long term.” ComEd Ex. 13.0 REV at 11-12. She explained further that “[t]he potential savings from even a single successful future distribution substation or feeder expansion deferral will offset the costs, even putting aside the other benefits of proper application of BESS technology on the distribution system, including added distribution flexibility, reliability and resiliency.” ComEd Ex. 10.0 at 10. ComEd notes no party disputes ComEd’s load projections, or its estimate that the BESS Projects will defer the need for capacity upgrades for a period of five years, based on those load projections.

ComEd states that the two BESS Projects collectively reduce the total projected plant additions in 2018 and lower the 2019 Rate Year revenue requirement, as compared to traditional “wires” alternatives. See *id.* Moreover, ComEd contends these cost estimates are conservative given that BESS like the ones ComEd is piloting: (1) typically have a useful life longer than the deferral time planned for the BESS Projects; and (2) are modular and capable of relocation to other locations for similar purposes. ComEd Ex. 10.0 at 12. If, or when, the need for increased capacity at the substation or on the feeder can no longer be deferred, ComEd explains, the BESS facilities installed as part of the two pilot projects can be moved and redeployed. *Id.* at 9. ComEd states it will use the learnings gained during the course of these BESS Projects to guide the choice of future locations for the assets. ComEd Ex. 13.0 REV at 7.

ComEd states that there is no engineering, operational, or system planning testimony that disputes, or even addresses, the prudence of pursuing alternatives that defer the need for expensive capacity upgrades, no testimony disputing the estimated costs of the BESS Projects, or the estimated costs of the traditional “wires” projects they defer, and no testimony that questions the value of the operational flexibility the Projects provide.

ComEd states that, as compelling as the operational benefits are, the far larger and more important benefits of the BESS Projects flow from the experience they will give ComEd in the characteristics, benefits, and limitations of using BESS technologies on ComEd’s distribution system. ComEd Ex. 10.0 at 4-5.

ComEd explains that the BESS Projects will provide hands-on experience with the operation, installation, maintenance, costs, and other challenges and opportunities of using BESS as a component of the distribution system, especially using BESS to meet local capacity needs. *Id.* at 7-8. According to ComEd’s testimony, the learnings will include: (i) how and where to use BESS technology within the distribution system to achieve the highest cost and operation efficiencies; (ii) how to design, procure, install, and operationalize BESS to support distribution functions; (iii) understanding the costs of using BESS for distribution capacity deferral purposes; and (iv) how BESS installed on the distribution system may enable it to accommodate increasing amounts of third-party-

owned DER, and how distribution-system BESS interacts with third-party-owned DER. *Id.* ComEd states that the two BESS Projects together allow ComEd to learn about the comparative advantages associated with installing BESS for capacity deferral in different places on the system. ComEd Ex. 10.0 at 7-8; ComEd Ex. 13.0 REV at 8. ComEd asserts the benefits extend far beyond Zion and Plainfield; the learnings gained can be applied elsewhere on the distribution system, for the benefit of the system as a whole and customers throughout the system. ComEd Ex. 10.0 at 5.

ComEd further states that pilot projects play an important role in utilities' use of new technology to benefit customers. ComEd points to the testimony of former utility regulator and Assistant Secretary of Energy for Policy, ComEd witness Tierney, who explained, "[r]egulators need to (and in many cases do) recognize the many new roles these DERs [including BESS] can play and allow utilities to incorporate those distribution system resources where appropriate, to promote network reliability and capability, and to minimize costs. In light of the newness of such issues, distribution utilities also need to learn more about how to plan for and use such resources to meet distribution system needs and operational challenges." ComEd Ex. 15.0 REV at 7-8.

ComEd also notes the Commission itself has a long history of approving prudent and innovative technology pilots like these, and recognizing that pilots are a valuable tool to help utilities, regulators, and stakeholders learn whether new technologies warrant larger-scale deployments. See, e.g., *Commonwealth Edison Co.*, Docket No. 09-0263, Order (Oct. 14, 2009); *Commonwealth Edison Co.*, Docket No. 17-0331, Order (Feb. 28, 2018). ComEd states the Commission's support for pilots recognizes that utilities must proactively seek out opportunities to use new technologies and, as the Commission recently concluded, "pilots and demonstration projects help stakeholders and regulators learn whether larger-scale, more-permanent or longer-term deployments might be worthwhile and, if so, to learn more about how to take those steps." *Commonwealth Edison Co.*, Docket No. 17-0331, Order at 20-21.

ComEd observes that the AG dismissed the testimony of ComEd witness Tierney regarding the value of pilot projects, including these BESS Projects, based on what the AG characterized as Dr. Tierney's lack of knowledge about certain aspects of ComEd's contractual relationships with its affiliates. See AG Init. Br. at 10. However, ComEd maintains those contractual arrangements have no bearing on Dr. Tierney's conclusions or the value of these or any pilots. ComEd notes it is odd that, if the AG actually thought these inquiries were relevant, it did not put them to any of the ComEd employees who testified. ComEd states that Dr. Tierney provided credible testimony as an expert on energy regulation, policy, and economics, the current need for learnings as the industry evolves, the value of pilot programs in producing learnings, and regulators' role in encouraging innovation. See *generally* ComEd Ex. 15.0 REV. ComEd states that Dr. Tierney's testimony on those subjects is uncontradicted, and it stands as a powerful endorsement of the value of pilots and their learnings from an economist, former regulator, and head of energy policy development for the United States government. In contrast, ComEd notes, the AG's witness on this subject has no background or experience in planning, operations, or engineering. Tr. at 122-24. ComEd states the AG's witness failed to conduct any research regarding the use of BESS for distribution purposes, and was unable to explain, under cross-examination, any manner – BESS or

not – in which a distribution utility might increase the capacity of its distribution facilities. Tr. at 125-29, 139-40. ComEd relates the AG witness did not know whether installation of a BESS unit on an electrical system requires the system to incorporate incrementally more or less generation. Tr. at 136-39. ComEd maintains the testimony of a witness who does not understand how BESS function, or what alternatives to BESS are available, is simply not credible when the question presented is whether an investment in BESS is prudent and reasonable.

ComEd states that the BESS Projects provide distribution functions, and their costs are therefore properly included in ComEd's distribution revenue requirements. ComEd Ex. 13.0 at 10. ComEd explains that the process of assigning utility assets to categories for regulatory and ratemaking purposes is known as "functionalization." ComEd states that assets and costs are properly functionalized based on the purpose they serve in the system – versus the type or category of machine or item. ComEd Ex. 13.0 REV at 9-10. Functionalization should "take into account the technical characteristics of the facilities," which must "be evaluated on a case-by-case basis." *FERC Order No. 888*, 75 F.E.R.C. ¶ 61,080 (1996). Thus, ComEd explains, a wire, a transformer, or a device that stores and discharges electricity can serve distribution, transmission, or even production functions, depending on how each asset is actually used.

ComEd states that unrefuted evidence demonstrates the BESS Projects serve distribution functions. ComEd Ex. 13.0 REV at 9-10. ComEd notes the BESS Projects are engineered and will be operated as part of the distribution system, serve the same functions as an upgraded distribution substation transformer or a reconfigured distribution line, do not generate energy, and do not change the need for generation on the system. Tr. at 65-66; ComEd Ex. 10.0 at 6-7; ComEd Ex. 13.0 REV at 4-5. Indeed, ComEd states it has long owned and continues to use batteries for distribution functions (ComEd Ex. 13.0 REV at 10), and while new technologies allow them to be used in new ways, there is nothing odd or suspect about utilities owning and using batteries as part of the distribution function.

ComEd states that while AG witness Selvaggio obliquely challenged the functionalization of the BESS Projects as distribution, she invoked accounting arguments rather than any analysis of the function the assets will actually perform. See AG Ex. 4.0 at 5-6. Moreover, her claims were refuted, since the provisions of the Uniform System of Accounts ("USOA") on which Ms. Selvaggio relied in making this statement do not support functionalization of a BESS asset based on its capability to be relocated; rather, ComEd explains, they simply require that the costs of relocation be recorded in accounts other than those identified in Ms. Selvaggio's testimony. ComEd Ex. 12.0 at 14-15.

ComEd notes that the AG argued incorrectly in briefing that "energy storage technology is considered an energy supply and transmission resource." AG Init. Br. at 6. However, ComEd states, the AG did not specify any type of storage or what function that storage actually services, nor did the AG specify who supposedly "considers" BESS to be exclusively a supply and transmission resource. ComEd explains utilities have owned and used batteries for distribution purposes in the past, ComEd Ex. 13.0 REV at 10, and, just last year, the Commission approved ComEd's ownership and operation of BESS for distribution purposes as part of the Bronzeville Community Microgrid ("Bronzeville Microgrid"). *Commonwealth Edison Co.*, Docket No. 17-0331, Order at 18 (Feb. 28,

2018). ComEd states that determination was based on the functions that the assets would provide, as is appropriate. *Id.* at 73.

Despite the AG's implication to the contrary, ComEd states that FERC does not consider BESS to be properly used exclusively in supply or transmission. ComEd notes FERC has held that storage may be used by distribution utilities for distribution purposes, and expressly recognized the distribution functions of BESS, even though those functions generally lie outside its jurisdiction. ComEd points to a recent rulemaking on the subject of storage, where FERC held that "nothing in this Final Rule is intended to affect or implicate the responsibilities of distribution utilities to maintain the safety and the reliability of the distribution system or their use of electric storage resources on their systems." *Electric Storage Participation in Markets Operated by Reg'l Transmission Orgs. and Indep. Syst. Operators*, Order No. 841, 162 FERC ¶ 61,127 at ¶ 36 (Feb. 15, 2018). According to ComEd, no jurisdiction in the country has ruled that a delivery utility is prevented from installing BESS systems when those systems are used for distribution purposes. On the contrary, ComEd explains, jurisdictions across the country are encouraging utilities to use storage in distribution applications, and ComEd's BESS Projects are in line with those underway in other leading jurisdictions. ComEd cites the New York Public Service Commission, which found that utilities "should be striving to develop their abilities to plan and use storage as a normal part of their business," including by implementing at least two separate storage projects "deployed and operating at no fewer than two separate distribution substations or feeders" by year-end 2018. *Proceeding on Mot. of the Comm'n in regard to Reforming the Energy Vision*, NY PSC Case Nos. 14-M-0101, 16-M-0411 (cons.), Order on Distributed System Implementation Plan Filings at 29-30 (Mar. 9, 2017). ComEd notes the New York commission found that utility ownership of BESS "where energy storage will be integrated into distribution grid architecture, is a permissible exception to the basic presumption that utility ownership of DER conflicts with [the] tenet that competitive markets and risk-based capital should fund asset development." *Id.* Similarly, ComEd states, the Massachusetts Department of Public Utilities recently approved, in a rate case proceeding, two projects that demonstrate the use of BESS for distribution purposes. *In re NSTAR Elec. Co., d/b/a Eversource Energy*, MA DPU Docket No. 17-05, Order Establishing Eversource's Revenue Requirement at 443-70 (Nov. 30, 2017). ComEd notes one of those projects uses BESS to enable an increase in the capacity of a distribution feeder. *Id.* And ComEd points to a 2016 order by the Colorado Public Utilities Commission permitting a utility to undertake two projects using BESS for distribution purposes, one of which used BESS to maintain reliability on a distribution feeder. *In re Pub. Svc. Co. of Colo.*, CO PUC Docket 15A-0847E, Decision C16-0196, Decision Granting Motion and Approving Settlement (Mar. 8, 2016). Finally, ComEd notes, California has, since 2013, required its utilities to invest in and own BESS, and has set a minimum megawatt target for such storage ownership. *Order Instituting Rulemaking Pursuant to AB 2514*, CA PUC Docket R.10-12-007, Decision 13-10-040 (Oct. 17, 2013); see also *Order Instituting Rulemaking to Consider Policy and Implementation Refinements to Energy Storage Procurement Framework*, CAP PUC Docket R.15-03-011, Decision 16-01-032 (Jan. 28, 2016), Decision 17-04039 (Apr. 27, 2017).

ComEd explains that it is not arguing that the Commission should look to these decisions for the details of specific policies. Instead, ComEd maintains all those decisions

underscore a broad recognition that batteries can and should be part of the delivery system, and that there are a broad range of use-cases for delivery system storage. ComEd asserts the decisions also express a consistent expectation that investigating the use of battery technology on the distribution system will benefit customers.

Finally, ComEd notes the AG implies that permitting ComEd to recover the costs of these BESS Projects will “subsidize research into generation technologies of value to ComEd affiliate generation and battery storage businesses.” AG Init. Br. at 6. ComEd states there is no evidence supporting this speculative claim: all of the evidence about how these BESS Projects are designed and will be used, and the entire body of evidence about the learnings that will result, focus on the delivery system. ComEd asserts it has not and will not coordinate with generation affiliates concerning these pilots. ComEd Ex. 13.0 REV at 11; see also AG Cross Ex. 1, at 2. In any event, ComEd explains, the learnings gained from these pilots concern the use of BESS as a component of the distribution system, a use-case that is of no value to ComEd affiliates outside of the distribution space. *Id.* at 10-11.

ComEd further asserts that the AG’s discussion of “cost-benefit” analyses is unsupported and proves nothing relevant. ComEd states that the applicable standard is prudence and reasonableness, and maintains that the BESS pilot projects meet that standard, both individually and collectively. Nevertheless, ComEd contends that a cost-benefit analysis (while not required here) must consider, by definition, both costs and benefits. ComEd notes the AG did not consider benefits at all. *Id.* at 9.

ComEd explains the AG’s analysis compares only the Feeder BESS Project’s initial investment cost to the initial investment cost of the “wires” alternative. However, ComEd states that this shows that both BESS projects enable future cost savings that, even under pessimistic assumptions, will more than offset their initial costs, and asserts these future benefits should be considered as well. See ComEd Ex. 10.0 at 10; 12-13. Further, ComEd contends the evidence shows that the larger of the two BESS Projects – the Substation project – is actually substantially less than the cost of the traditional “wires” alternative. See ComEd Ex. 10.0 at 6-7.

Finally, ComEd explained, the BESS Projects will also provide valuable real world and hands on experience in using batteries on the distribution system. ComEd maintains there is no dispute that these learnings are valuable. ComEd asserts the opportunity to learn is the single greatest benefit of these projects, yet it goes unmentioned in the AG’s discussion of cost-benefit analysis.

ComEd states that, in concluding that the costs of both BESS Projects should be disallowed, the AG ignores the fact that there is no viable “no-action” alternative for the BESS Projects. If ComEd does not implement the BESS Projects, it must immediately invest in upgrades to increase the capacity of the substation and the feeder. ComEd Ex. 10.0 at 7; ComEd Ex. 13.0 REV at 5. ComEd states it cannot do nothing, and it cannot delay action – ComEd projects that the facilities will be overloaded in 2019. ComEd Ex. 10.0 at 7; ComEd Ex. 13.0 REV at 5. ComEd notes while the AG does not dispute that capacity-related upgrades at the Zion substation and on the Plainfield feeder are necessary, the AG simply assumes the existence of an as-yet unidentified \$0 alternative that would maintain the reliability and operability of the substation and the feeder. If the

Commission determines that ComEd should not undertake the BESS Projects, ComEd contends it must permit ComEd to recover the cost of those traditional “wires” alternatives which are needed now because the feeder near Plainfield and the substation near Zion are each projected to be overloaded in 2019.

ComEd notes the AG offers a smattering of other legal arguments in support of its proposed disallowance. None of these arguments is a basis for a disallowance.

First, the AG argues that FEJA does not “include specific authorization for ComEd ownership/rate basing” of BESS. AG Init. Br. at 6. ComEd maintains it does not have to. ComEd contends the record shows that these BESS Projects are distribution assets as much as any wire, pole, or transformer. For its entire history, long before the passage of FEJA, ComEd states the PUA has permitted utilities to invest in distribution assets, and to include the costs of prudent and reasonable investments in rate base. The PUA does not list the particular types of distribution assets that utilities are permitted to own. ComEd states FEJA made no change to that essential structure.

Second, the AG faults ComEd for “fail[ing] to inform the Commission the pilots were even occurring.” *Id.* at 5. ComEd states it engages in numerous pilots of new equipment, technologies, and applications each year – they are not extraordinary at all. ComEd states neither the PUA nor the Commission’s rules require ComEd to notify the Commission of such pilots, and notes the AG does not articulate any special reason why ComEd was required to here.

Third, the AG argues that “funding for the projects at issue here should be rejected until ComEd files a petition requesting Commission approval of any BESS pilot.” *Id.* at 7. ComEd notes the AG does not articulate a legal basis for this request, and ComEd contends there is none. There is no provision of the PUA or the Commission Rules that requires a utility to seek pre-approval for individual investments in distribution infrastructure within its service territory. Rather, ComEd explains, the Commission’s Rules require that utilities individually identify, within standard rate case filing documents, capital projects that meet a certain threshold dollar value. 83 Ill. Adm. Code 285.6100(a). For ComEd, in this case, that threshold is \$14 million. See ComEd Ex. 5.0 at 28. ComEd states the two BESS Projects are nowhere near that threshold, either individually or collectively; the total 2018 cost of the Substation BESS pilot is \$2.7 million, while the total 2018 cost of the Feeder BESS pilot is \$2.1 million. ComEd Ex. 10.0 at 6-7. ComEd complied with all filing and information requirements.

Finally, the AG claims that a separate proceeding would “develop the facts necessary to establish a regulatory framework” for BESS. AG Init. Br. at 7. But, ComEd states, there is already an existing, long-standing, “regulatory framework” that applies to utility investments in distribution assets, and that framework covers distribution BESS investments just like any other distribution assets. 220 ILCS 5/16-108.5(c); see also 220 ILCS 5/9-201. ComEd explains that framework requires the Commission to permit recovery of the prudent and reasonable costs of delivery investments. ComEd notes the AG has not articulated any reason why the existing framework is insufficient. And, the AG did not perform any analysis of the wealth of engineering, operational, and planning data that was made available in this docket to support the BESS Projects and their status

as distribution assets. ComEd contends that failure does not warrant an additional proceeding outside of the statutory ratemaking process.

In the alternative, the AG argues that the Commission should “direct ComEd to identify each BESS project that is included ... in each future formula rate update proceeding until there is established criteria” for evaluating the recoverability of BESS. AG Init. Br. at 12. Once again, ComEd notes the AG articulated no basis for this requirement. ComEd states existing rules require identification of individual plant additions that may have a material impact on the revenue requirement, and the AG and every other party is entitled to pursue discovery concerning any project, even those that have no material financial impact. ComEd maintains there is simply no reason that one type of distribution infrastructure requires heightened scrutiny, particularly when the investments fall below the materiality thresholds in the Commission’s own rules. ComEd concludes there is no legal basis for this requirement.

In sum, as a distribution utility, ComEd maintains it is fully entitled to make prudent and reasonable investments in distribution assets, and to recover the costs of such investments. ComEd states there is no credible evidence in the record that the BESS Projects serve any purpose other than distribution, there is no evidence whatsoever that the substation and feeder do not require capacity-related upgrades, and there is no evidence that the BESS Projects could have been accomplished for a lower cost. In fact, ComEd states the conclusive record evidence demonstrates that the BESS Projects have a lower cost, collectively, than the “wires” projects they defer. Based on the record, the Commission should determine ComEd properly and prudently invested in these BESS Projects, and permit ComEd to recover its reasonable costs of doing so.

**b. Staff’s Position**

Staff takes no position regarding the BESS Projects.

**c. AG’s Position**

The AG posits that the record evidence in this case reveals that ComEd seeks to include in customer rates two BESS pilots. The AG explains that the parties to this case were only made aware of these pilot projects for which ComEd seeks rate recovery as a result of a data request issued by the AG that asked whether the Company has any plans for investing in battery storage resources other than the Bronzeville Microgrid – a multi-million project, funded through the U.S. Department of Energy and ratepayer financing, following a fully litigated docket before the Commission. But for that discovery request, the AG states, the Company would have failed to inform the Commission the pilots were even occurring. The AG argues that in this docket, ComEd failed to: (1) seek specific Commission authorization for ratepayer funding of the battery storage pilots through a petition, as it did in Docket No. 17-0331 involving the Bronzeville Microgrid pilot; (2) provide an explanation of pilot hypotheses, evaluation metrics or pilot evaluation methodology; (3) explain how lessons learned from the pilot would be shared with the Commission and ratepayers, who would be financing the pilots; and (4) demonstrate that it will not share with its affiliate companies, including other delivery service companies, and its generation affiliates, parent Exelon Corporation (“Exelon”) and Constellation New Energy (“Constellation”) at ratepayer expense (and without reciprocal compensation) lessons learned from the BESS pilots. The AG urges the Commission to reject ComEd’s



claims that the Commission should require ratepayers to pay for the pilots without the missing documentation and information.

The AG states that FEJA does not include specific authorization for ComEd ownership/rate basing of battery energy storage technology. The AG reasons that the General Assembly in no way authorized utility investment in and recovery in rates of battery energy storage technology per se.

The AG notes that public utility delivery service company investment in and cost recovery of battery energy storage systems remains controversial because energy storage technology is considered an energy supply and transmission resource. The AG highlights for the Commission that FERC earlier this year authorized electric storage participation in markets operated by Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) in a February 15, 2018 order. The AG observes that Exelon has a vast energy generation fleet. AG Ex. 4.0 at 6. As noted by AG witness Selvaggio, it is more than likely that batteries may add value to intermittent renewable generation resources (such as photovoltaic and wind). Both Constellation and Exelon, are currently engaged in battery energy storage research and, in Constellation’s case, BESS product provision. *Id.* at 6, n. 8. The AG reasons that ComEd’s distribution service operations should not subsidize research into generation technologies of value to ComEd affiliate generation and battery storage businesses.

The AG notes that ComEd witness Bahramirad testified that the true measure of the success of the BESS pilots will be “the learnings ComEd will gain from implementation.” ComEd Ex. 13.0 at 8. The AG further notes that this witness also claims that undertaking the pilots will, among other benefits, allow ComEd to “learn about how BESS installed on the distribution system may enable it to accommodate additional third-party-owned DER (distributed energy resources), and how distribution-purpose BESS interacts with third-party-owned DER”. *Id.* at 8. The AG argues that this testimony, however, is less than persuasive given the Company’s objection to the intervention of two third-party battery storage suppliers: Direct Energy and Glidepath Development LLC. The AG further argues that if ComEd truly was interested in understanding the interaction between utility-owned BESS and third-party provided DER, including issues related to interconnection and impact on third-party owned DER, it would have welcomed those parties’ intervention. The AG argues that the Commission will not receive an informed and even-handed analysis by industry participants of the interaction between a utility-owned BESS and a third-party owned DER, and the interconnection and competitive interest issues that arise when utilities are permitted to invest in BESS and receive ratepayer subsidization of that investment.

The AG urges the Commission to reject ComEd’s under-the-radar request for funding for the BESS Projects at issue here until ComEd files a petition requesting Commission approval of any BESS pilot to develop the facts necessary to establish a regulatory framework that will allow for the efficient and appropriate testing, ownership and use of energy-storage devices as well as other relevant technologies within the permitted functions of monopoly delivery service companies, and in accordance with the Act and Commission rules. The AG further argues that unlike the Bronzeville Microgrid docket and this proceeding, third party providers of DER/battery storage should be permitted to participate in such a proceeding.

The AG further argues that ComEd failed to assess the costs and benefits of the proposed BESS pilots. The AG explains that ComEd claims that the one BESS pilot is designed to defer otherwise required capacity-related substation upgrades near Zion using equipment designed to also be relocatable, and is projected to cost \$3.986 million; a second pilot is designed to defer otherwise required capacity-related feeder upgrades near Plainfield, and is projected to cost approximately \$2.115 million. ComEd Ex. 13.0 at 6, 13. The AG further explains that Ms. Selvaggio testified that a number of important facts related to the BESS pilots, including more detail on the capacity-related upgrades, the projected timing for those upgrades and whether specific customers are triggering the need for the upgrades, were missing from ComEd's evidentiary presentation. She noted that the fact that the projects are labelled "pilots" suggests that the Company is uncertain about the benefits associated with the investments, and that without a more rigorous analysis or explanation of the costs and benefits of the BESS pilots, their costs should be disallowed from the Company's authorized revenue requirement. AG Ex. 2.0 at 4.

In rebuttal testimony, the AG notes that ComEd witness Bahramirad described the BESS pilots and provided information concerning the projects, addressed the value of technology pilots in general, and indicated what ComEd hopes to learn from the pilots. Dr. Bahramirad's testimony indicates that the BESS Projects would defer the transformer upgrade project that was estimated to cost approximately \$9.5 million and the feeder reinforcement near Plainfield that was estimated to cost approximately \$700,000. However, the AG explains that she did not address how long the transformer upgrade project or the feeder reinforcement would be deferred due to the BESS pilots. The AG reasons that the value of deferment of the projects is thus unknown. *Id.* at 4.

In addition, the AG argues that Dr. Bahramirad's testimony reveals that the feeder battery pilot will cost an estimated \$2,115,000, while the estimated cost of that feeder reinforcement is approximately \$700,000. That pilot, according to the AG, therefore fails basic cost/benefit principles. *Id.* at 4-5. The AG concludes that for these reasons alone, the projects should be disallowed. The AG explains that the adjustment to remove the costs of the BESS Projects from the delivery services filing year revenue requirement reduces net plant by \$6.032 million (\$6.168 million reduction of plant less \$0.118 million for the reduction of the depreciation reserve less \$0.018 million for the reduction of accumulated deferred income taxes) and reduces amortization expense by \$0.169 million. AG Ex. 4.0 at 7.

The AG notes that ComEd witness Tierney testified in support of the inclusion in rates of ComEd's BESS Projects, arguing that "sound regulatory and ratemaking policies should encourage utilities to pilot new and innovative technologies to learn more about how they perform as part of the distribution-system operations, especially at a time of great change in the electric industry." ComEd Ex. 1.50 at 1. The AG observes that Dr. Tierney argued, too, that distribution utilities in New York, California and Massachusetts are investing in BESS "to gain understanding about their performance as well as to support distribution functions on their grids." *Id.* at 2.

The AG maintains that cross-examination revealed this witness had conducted a very limited review of the projects at issue. The AG explains that she revealed that her testimony only focused on ComEd's claim that it would use the battery energy storage systems "for distribution purposes, not for energy usage, per se." The AG further explains

that she testified, for example, that she was unaware of and has not studied what ComEd's parent company, Exelon Corporation, is engaged in in terms of battery storage activities and research, or whether any pilot "learnings" would be shared with ComEd affiliates, such as Exelon or Constellation New Energy. Tr. at 66-68. The AG notes that she testified that she had not studied Exelon's examination of battery storage functions, either generally or specifically. Tr. at 66. The AG further notes that she also did not know whether ComEd affiliate Constellation is involved in the battery storage business or research. Tr. at 67. In addition, the AG observes, she did not know if any sort of reciprocal compensation agreement between ComEd and its affiliates exists with regard to the information gained from any battery storage pilots approved in this docket. Tr. at 67-68. The AG further observes that she testified that she had not examined whether there will be, as a result of these pilots and the lessons learned, information provided about an impact on the need or lack thereof of generation. Tr. at 60. Accordingly, the AG reasons that given that this witness was unaware of what ComEd affiliate battery storage activities are, in general or specifically, or whether agreements exist, compensated or otherwise, with affiliates to share lessons learned, the Commission cannot rely on her testimony as evidence that these affiliates will not benefit from ComEd's use of battery technology.

The AG also argues that Dr. Tierney's reference to other states' investments in BESS technology – specifically, New York, Massachusetts and California – is similarly not persuasive. In particular, the AG reasons that decisions made in those states are distinguishable for a few reasons. First, the AG notes that Massachusetts has a specific statute that authorizes distribution utility investment in battery storage technology. Mass. Gen. Laws ch. 188, Sec. 9 (An Act to Promote Energy Diversity); Tr. at 51. Hence, the AG reasons, comparing Illinois Commission action to Massachusetts Public Service Commission ("PSC") action is inapposite.

Secondly, the AG observes that as Dr. Tierney admitted during cross-examination, the foundation for New York PSC action on battery storage investments is rooted in the New York Reforming the Energy Vision ("NYREV") proceeding, a multi-docketed, multi-year, two-phase process initiated by the New York PSC to explore through broad utility and stakeholder participation policy decisions related to the evolving electric grid and the impact of distributed generation resources on that grid. The AG notes that Dr. Tierney concurred that the NYREV process therein included "many orders and many provisions." Tr. at 50. The AG reasons that this proceeding, on the other hand, is a formula rate update proceeding, wherein the implications of monopoly utility investment in and rate recovery of BESS has not been thoroughly analyzed – at least not in any kind of comprehensive manner as occurred in New York.

Finally, the AG argues Dr. Tierney's reference to California is likewise inapposite here given the fact that California, unlike Illinois, is not a fully restructured state, and California investor-owned utilities, unlike ComEd, also own and supply generation. Tr. at 52-53.

The AG submits, for the reasons highlighted above, that if ComEd wants to pursue the development of BESS within regulated delivery services, ComEd should file a petition requesting Commission approval of any pilot to develop the facts necessary to establish a regulatory framework that will allow for the efficient and appropriate testing, ownership and use of energy-storage devices as well as other technologies within the permitted

functions of monopoly delivery service companies according to the Act and Commission rules. The AG argues that among the questions to be answered by the Commission in any such proceeding would be whether the services to be provided by the BESS project are already available in the competitive marketplace, to be provided by third parties or customers themselves, how ComEd's investment in the technology impacts the competitive marketplace and how third-party DER providers' ability to interconnect is impacted.

The AG observes that ComEd further claims that the record evidence is "substantial" in showing how ComEd will use the BESS Projects and the distribution functions they provide. ComEd Init. Br. at 18. The AG argues that this claim is questionable. The AG highlights the fact that specific information on the two projects combined is limited. The AG observes that engineering, operational or system planning testimony supporting the projects was light, and not detailed until the surrebuttal filing – just days before the evidentiary hearing.

The AG observes that ComEd claims that "[t]here is no engineering, operational, or system planning testimony that disputes, or even addresses, the prudence to pursuing alternatives that defer the need for expensive capacity upgrades." ComEd Init. Br. at 21. However, according to the AG, ComEd's support was lacking, and the support provided was late in coming (and indeed never would have been provided until the AG challenged the inclusion in projected plant of the projects).

The AG argues that the claim that no engineer or system planning expert testimony was provided rings hollow for other reasons. First, the AG reasons that it is entirely appropriate to challenge plant in service inclusions by an accountant who observes that (1) the plant in question is a "pilot" that has been characterized as generation-related technology; and (2) fails to find any cost/benefit detail attached to the ratemaking request. The AG argues that it was up to ComEd to prove the engineering relevance of the pilots in its direct case – not the AG's office.

In addition, as for the engineering/system planning expert testimony ComEd claims is missing, the AG again notes that ComEd itself objected when two parties with such potential testimony sought to intervene in the case. The AG concludes that the Commission thereby lost the opportunity to assess expert evidence that challenged ComEd's BESS pilot claims and the anti-competitive issues raised by the AG. Accordingly, the AG reasons that ComEd's observation on this point is less than meaningful.

Should the Commission approve recovery of the costs of the BESS Projects in the filing year revenue requirement in this proceeding, Ms. Selvaggio testified on behalf of the AG that the Commission should direct ComEd to include in its next filing of its formula rate update in April 2019 the following information for each of the BESS pilot projects: (1) the final project cost; (2) in-service date; (3) the effect on the 2018 Filing Year Revenue Requirement and the 2019 Rate Year Revenue Requirement with supporting calculations; (4) status of the BESS project to date including its location(s); (5) realized benefits of the pilot to date; (6) assessment of what the Company has learned from the pilot; (7) evaluation of milestones that have been completed; (8) milestones for remaining term of the pilot; and (9) anticipated outcome of the asset after expiration of the pilot.

The AG urges the Commission to further direct ComEd to specifically identify each BESS Project that is included in the projected capital additions in each future formula update rate proceeding until there is established criteria by which BESS Projects are determined to be appropriately recoverable from delivery services. The AG reasons that each project would need to be properly supported as a delivery service investment.

**d. Commission Analysis and Conclusion**

The AG proposes to disallow \$6,012,000 to remove the costs of ComEd's BESS pilots. The AG argues that ComEd failed to: (1) seek specific Commission authorization for ratepayer funding of the battery storage pilots through a petition, as it did in Docket No. 17-0331 involving the Bronzeville Microgrid pilot; (2) provide an explanation of pilot hypotheses, evaluation metrics or pilot evaluation methodology; (3) explain how lessons learned from the pilot would be shared with the Commission and ratepayers, who would be financing the pilots; and (4) demonstrate that it will not share with its affiliate companies, including other delivery service companies, and its generation affiliates Exelon and Constellation at ratepayer expense (and without reciprocal compensation) lessons learned from the BESS pilots.

The record reflects that the BESS Projects serve a distribution function. Installed by ComEd as part of the distribution system, they are designed to defer capacity-related upgrades to a distribution substation and a distribution feeder and are necessary in the immediate term to address projected overloads. ComEd will own the BESS, install them in a Zion-area substation and on a Plainfield-area feeder, and use them to accommodate additional load in those areas. The evidence concerning the design and use of the BESS Projects is uncontested. Further, the Commission notes without a BESS solution, ComEd would immediately need to install larger transformers at the substation, construct additional feeders, and/or alter the feeder switching and automation schemes, so as to protect the facilities from overloading. The parties have referred to these non-battery means of addressing the capacity constraints as "wires alternatives." The record shows that load in the area served by the Zion-area substation and Plainfield-area feeder is projected to continue to grow over the coming years, and if actual load growth matches the projections, the BESS Projects will allow ComEd to defer the wires alternatives for approximately 5 years. At the point the load at the substation or on the feeder surpasses the capacity of the BESS, the BESS assets can be relocated elsewhere on ComEd's system and be used for similar purposes. However, if load growth is slower than currently anticipated, the BESS Projects may allow deferral for longer than 5 years. The Commission notes that there is no evidence in the record that calls into question ComEd's load projections, the design or engineering of the BESS Projects, or the estimated costs to accomplish either the BESS Projects or the wires alternatives.

The record also contains undisputed evidence concerning ComEd's decision to undertake the projects. ComEd explained that the projects will allow it to learn about how and where to incorporate BESS within the distribution system, the costs and efficiencies of using BESS for distribution capacity purposes, and the interactions between distribution-system BESS and third-party-owned DER. The evidence demonstrates that the learnings will enable ComEd to utilize BESS efficiently in the future. For example, the learnings gained during the course of these BESS Projects will guide the deployment of BESS to lower the cost of wires upgrades via deferment. Because the wires alternatives

are anticipated to cost approximately \$10.2 million, while the BESS Projects will cost only \$4.8 million, collectively, implementation of the BESS Projects reduces the revenue requirement in this proceeding. Moreover, the evidence shows that the Projects have flexibility, reliability, and resiliency benefits and that the potential savings from even a single successful future distribution substation or feeder expansion deferral can completely offset the Project costs. Based on this uncontested evidence, the Commission finds the BESS Projects to be prudent, and their costs to be reasonable.

Only the AG opposed the Projects. With regard to the AG's first issue, the Commission agrees with ComEd that there is no rule specifically requiring a utility to seek pre-approval for individual investments in distribution infrastructure within its service territory. As ComEd explains, it is required to identify capital projects that meet a threshold dollar value, for which the BESS Projects do not qualify. Nevertheless, the fact that the BESS Projects fall short of the threshold for identification does not insulate the BESS Projects from Commission scrutiny.

With regard to the AG's second issue, concerning the pilot hypothesis, the Commission notes that the purpose of these pilots is not just experimentations, but to gain real world, hand on experience with developing battery technologies. To the extent that there is a pilot "hypothesis," it is that the Projects will provide valuable experience, and ComEd has provided evidence of that fact. Moreover, the Commission notes that the future battery deployments generally will be monitored annually in the context of annual rate update proceedings.

The Commission has a long history of approving prudent and innovative technology pilots like the BESS Projects, and recognizing that pilots are a valuable tool to help utilities, regulators, and stakeholders learn whether new technologies warrant larger-scale deployments.

The Commission rejects the AG's contention that the learnings gained from these projects will benefit or subsidize ComEd affiliates by providing competitive generation and/or supply services. ComEd's witness testified that it has not and will not coordinate with generation affiliates concerning these pilots, and the AG offers no evidence that such coordination will occur. Moreover, the record is clear that these BESS Projects will function as a component of the distribution system, and the AG has not demonstrated how ComEd affiliates would benefit from ComEd's learning about distribution system uses for BESS. In any event, improper subsidies and communication with market participants are not permitted. The existing Commission rules and oversight, including in future formula rate update proceedings, can and will ensure that no improper cross-subsidization occurs.

As discussed above, the record contains sufficient information to find the BESS Projects to be prudent and reasonable, and to support their functionalization as distribution assets. There is no reason to exclude these assets from the distribution rate base, or disallow their costs from the delivery rates.

**V. OPERATING EXPENSES****A. Uncontested Issues****1. Distribution O&M Expense**

ComEd states that its Distribution Operations and Maintenance (“O&M”) in 2017 was \$465,285,000, and a total of \$460,172,000 was included in ComEd’s jurisdictional revenue requirements. ComEd Ex. 2.01, Sch. FR C-1, lines 1, 3. ComEd explains Distribution O&M expenses are incurred for the normal day-to-day activities needed to operate, monitor, and switch the system to maintain service, and restore it when equipment is out of service for maintenance or due to failure, and is recorded in FERC Accounts 580 through 598. ComEd Ex. 2.0 at 27; ComEd Ex. 5.0 at 53-54. No party contested the amount of ComEd’s distribution O&M expenses. The Commission finds these expenses were prudently incurred and reasonable in amount, and they are therefore approved.

**2. Customer-Related O&M Expense**

ComEd states that its customer-related O&M expense in 2017, after adjustments, totaled \$213,417,000. ComEd Ex. 9.01, Sch. FR A-1, lines 2-3. ComEd explains customer-related O&M expense includes the costs of maintaining and servicing customer accounts, such as meter reading, billing questions and disputes, providing information on service options, and revenue management functions that include activities related to collection and uncollectible accounts, and is recorded in FERC Accounts 901-910. ComEd Ex. 2.0 at 27; ComEd Ex. 5.0 at 6-7. No party contested the amount of ComEd’s customer-related O&M expenses. The Commission finds these expenses were prudently incurred and reasonable in amount, and they are therefore approved.

**3. Administrative and General Expense**

ComEd states that its Administrative and General (“A&G”) expense includes the cost of a wide variety of corporate support and overhead costs that benefit more than one business function, such as Human Resources, Finance, Legal, Supply Management, Information Technology, and Corporate Governance, as well as the costs of employee pensions and benefits, rents, injuries and damages expense, and regulatory expense. ComEd Ex. 2.0 at 33; ComEd Ex. 3.0 at 15. ComEd explained that it employs cost control processes to manage its A&G expense and ensure the costs are prudently incurred and reasonable in amount. ComEd Ex. 3.0 at 16-17. No party contested the amount of ComEd’s A&G expenses. The Commission approves this amount.

**4. Return on Pension Asset**

ComEd’s 2017 expense includes the investment cost associated with the jurisdictional portion of the pension asset, net of ADIT, calculated using a debt-only rate of return. ComEd Ex. 2.0 at 30. This amount totaled \$32,714,000. ComEd Ex. 2.01, Sch. FR C-3. No party proposed an adjustment to the return on pension asset in this proceeding. The Commission approves this amount.

**5. Sales and Marketing Expense**

ComEd did not include sales and marketing expense in its revenue requirement. ComEd Ex. 2.0 at 30.

## **6. Depreciation and Amortization of Electric Utility Plant**

ComEd's revenue requirements include \$467,621,000 in depreciation and amortization expense associated with electric utility plant. ComEd Ex. 9.05 at 4. ComEd states it used the same depreciation rates to calculate depreciation expense for the 2017 Reconciliation Revenue Requirement and the 2019 Initial Rate Year Revenue Requirement. *Id.*

ComEd notes that this expense amount includes a ratemaking adjustment in the amount of \$205 million related to the advancement of the 2019 estimated benefit of the Tax Cuts and Jobs Act ("TCJA") that would not otherwise flow through the formula until ComEd's 2019 expenses were reconciled. *Id.* ComEd explains it included this amount in the forecasted section of depreciation and amortization expense so that this estimated amount of tax benefit will be reconciled at a future date, and customers will receive the full impact of the tax benefits. *Id.*; see also ComEd Ex. 2.01, Sch. FR C-2, line 9a; FR B-1, line 30a.

No witness proposed an adjustment to depreciation rates, or the total depreciation and amortization expense for utility plant; however, the rate base adjustment due to the BESS Projects impacted depreciation expense. The Commission finds this adjusted level of expense was prudently incurred and reasonable in amount, and it is therefore approved.

## **7. Taxes Other than Income**

ComEd's revenue requirements include \$144,031,000 in expense for taxes other than income taxes, including the Illinois Electricity Distribution Tax ("IEDT"), real estate taxes, payroll taxes, and several other taxes. ComEd Ex. 2.0 at 32; ComEd Ex. 2.01, App 7, page 2, lines 41-65. ComEd excluded from its revenue requirements payroll taxes related to previously-disallowed incentive compensation. ComEd Ex. 2.0 at 32. ComEd recorded a true-up in 2017 for the 2016 annual tax return related to its 2017 IEDT accrual, and a true-up adjustment to the estimated IEDT refund for 2016. *Id.* at 32. No party proposed an adjustment to ComEd's expense for taxes other than income taxes. The Commission approves this amount.

## **8. Income Taxes**

ComEd's 2017 Reconciliation Revenue Requirement includes \$274,861,000 in income taxes. ComEd Ex. 9.01, Sch. FR A-1 REC, lines 15, 18, 19. ComEd's 2019 Initial Rate Year Revenue Requirement includes \$307,374,000 in income taxes, after accounting for the impact of projected 2018 plant additions. ComEd Ex. 2.01, Sch. FR A-1, lines 15, 18, 19. ComEd notes the Illinois corporate income tax rate increased from 7.75% to 9.5% on July 1, 2017. ComEd Ex. 2.0 at 38. Because this change was made halfway through the year, ComEd used a blended rate that reflects six months of the previous rate (7.75%) and six months of the new rate (9.5%), or 8.63% as the input for the Illinois tax rate for 2017. *Id.* No party proposed an adjustment to ComEd's income tax expense. The Commission approves this amount.

## **9. Regulatory Asset Amortization**

ComEd's revenue requirements include \$44,351,000 of regulatory asset amortization expense. ComEd Ex. 9.01, Sch. FR A-1 REC, line 8. This amount includes



the effects of the Commission's Order in Docket No. 10-0467, which revised the amount of amortization for several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. *Id.* No party proposed an adjustment to ComEd's regulatory asset amortization expense. The Commission approves this amount.

#### **10. EIMA Credits**

ComEd did not include in its revenue requirements any expense associated with the \$10 million in EIMA credits it incurred in 2017. ComEd Ex. 2.0 at 39-40.

#### **11. Charges for Services Provided by BSC**

ComEd states that Business Services Company ("BSC") is the company within the Exelon family of affiliated companies that provides information technology, supply, finance, legal, and human relations to ComEd and Exelon's other business units. ComEd Ex. 3.0 at 6-15. During 2017, ComEd states it incurred \$380,219,000 in costs for services provided to ComEd by BSC. *Id.* at 8. No party contests the BSC charges for services provided to ComEd. The Commission finds these expenses were prudently incurred and reasonable in amount, and they are therefore approved.

#### **12. BSC Allocator**

ComEd states its revenue requirements include BSC costs that are allocated to ComEd in accordance with the Commission's Order in Docket No. 13-0318. ComEd Ex. 2.0 at 47. In response to a data request, ComEd voluntarily agreed to reduce the revenue requirement by the jurisdictional amount of \$240,909, to reflect a newer and larger allocation of the net benefits of the BSC credit card program to ComEd. ComEd Ex. 9.0 at 7. That adjustment was not disputed, and no party proposed any other adjustment to the BSC allocator. The portion of BSC expenses included in the revenue requirements were prudently incurred and reasonable in amount, and are therefore approved.

#### **13. Professional Fees**

In response to discovery received in this proceeding, ComEd noted that certain professional fees were inadvertently recorded to above the line FERC accounts. ComEd Ex. 9.0 at 7. ComEd made an adjustment to record those professional fees below the line. *Id.*; WP 7, page 2, column E, line 35-2. No party objected to ComEd's removal of these costs from the revenue requirement.

#### **14. Reputation Management**

In response to discovery received in this proceeding, ComEd noted that certain reputation management costs had been inadvertently included in a FERC A&G account. ComEd Ex. 9.0 at 6-7. ComEd removed \$324,000 (\$279,000 jurisdictional) of those costs from the distribution revenue requirement. *Id.* at 7; WP 7, page 2, column F, line 35. No party objected to ComEd's removal of these costs from the revenue requirement.

#### **15. Industry Association Membership Dues**

In response to discovery received in this proceeding, ComEd noted that certain industry association membership dues had been inadvertently included in a FERC A&G account. ComEd Ex. 9.0 at 6-7. ComEd removed the jurisdictional portion of those costs

from the distribution revenue requirement. *Id.* at 7; WP 7, page 2, column F, line 35. No party objected to ComEd's removal of these costs from the revenue requirement.

## **16. Rate Case Expense**

ComEd seeks to recover rate case expenses totaling \$698,522, comprised of the following: (1) \$4,283 incurred in 2017 for Docket No. 15-0287; (2) \$90,376 incurred in 2017 for Docket No. 16-0259; and (3) \$603,863 incurred in 2017 for Docket No. 17-0196. ComEd Ex. 2.0 at 45. ComEd supported its rate case expense with an affidavit and other documentation. ComEd Ex. 2.12. ComEd submits that this evidence allows the Commission to make a finding pursuant to Section 9-229 of the PUA that the expenses incurred were just and reasonable. ComEd explains that the documentation provides the evidentiary support for each Commission proceeding for which ComEd seeks recovery. ComEd 2.12\_APO-01 – APO-08. ComEd further explains that the affidavit describes the services provided in connection with the expense for which recovery is sought, identifies the individuals working on the matters and their qualifications, and discusses market rates charged by regulatory lawyers in Chicago to support the reasonableness of the fees charged. *Id.* No party contests these expenses.

The Commission has considered the costs expended by the Company during 2017 to compensate attorneys and technical experts to prepare and litigate rate case proceedings and assesses that the amount included as rate case expense in the revenue requirements of \$699,000 is just and reasonable. This amount includes the costs described above. Therefore, the Commission approves the amount of rate case expense.

## **17. Incentive Compensation Program Expense**

ComEd explains that, in Docket No. 11-0271, the Commission adopted a “proposal to require ComEd to include, in its initial filing ... evidence establishing that its employees have achieved the statutory [incentive compensation] metrics,” including evidence as to “what its employees did to achieve the performance metrics in Section 16-108.5.” *Commonwealth Edison Co.*, Docket No. 11-0721, Order at 92 (May 29, 2012). ComEd states that its testimony regarding the incentive compensation plans substantiates its entitlement to recover its incentive compensation expenses, and describes the metrics set forth in the incentive compensation plans, how ComEd performed under the metrics, and what employees did to achieve their performance on those metrics. See ComEd Ex. 1.0 at 18-28; ComEd Ex. 3.0 at 18-19; ComEd Ex. 4.0 at 27-34; ComEd Ex. 5.0 at 59-68.

No party contested that the 2017 incentive compensation costs, which resulted in market-based compensation levels, were prudently incurred and reasonable in amount. Therefore, the Commission approves the incentive compensation program expenses.

## **18. Gross Revenue Conversion Factor**

ComEd submits that its Gross Revenue Conversion Factor (“GRCF”) is 1.6838. ComEd Ex. 9.01, Sch. FR C-4, line 13. The GRCF is uncontested. Therefore, the Commission approves ComEd's GRCF.

### **B. Contested Issues**

#### **1. Marketplace Expense**

##### **a. ComEd's Position**

ComEd states the Marketplace is an innovative web-based self-service platform that provides customers with access to information about energy-related products, programs, and services. ComEd Ex. 11.0 at 2. ComEd explains it is an important customer service function that provides users with an effective, easy, and centralized means of learning how particular products can help them understand their energy use and how they can use energy more effectively. *Id.* at 2-3. Acting on that knowledge, customers may use the Marketplace to purchase products and take advantage of offers and rebates with minimal friction and effort. *Id.* ComEd states the Commission recognized in Docket No. 17-0196 that this web-based platform supports ComEd's provision of delivery services. *Commonwealth Edison Co.*, Docket No. 17-0196, Order (Dec. 6, 2017) (the "2017 FRU").

ComEd contends the AG's proposed disallowance of Marketplace costs is based on an unlawfully restrictive view of the definition of delivery services that was rejected by the Commission less than one year ago. ComEd maintains the record does not contain evidence or compelling argument warranting a different conclusion in this proceeding. Instead, ComEd observes the AG repeats this year essentially the same arguments the Commission rejected last year, again supported by the testimony of only a single witness without relevant experience in designing or operating customer service or communication systems, and who asserts broad conclusions without support. ComEd asserts the AG continues to be wrong, on the facts and on the law, and that the disallowance it advocates should be rejected.

ComEd notes the fundamental question underlying the AG's adjustment to disallow the costs to support ComEd's Marketplace – whether ComEd is entitled to recover its prudent and reasonable jurisdictional costs of the Marketplace platform – was considered by the Commission in detail just last year. See 2017 FRU, Order at 26-35. There, the Commission approved recovery of ComEd's jurisdictional net operating expenses related to the Marketplace, concluding that:

the Marketplace pilot program provides an easy, user-friendly platform for customers to engage in learning about and purchase available energy efficient products. As technology advances and consumers' needs change, new initiatives should be developed to address those needs. ComEd has demonstrated that the benefits of the Marketplace are real and quantifiable, and that there is a connection between the Marketplace and the provision of delivery services.

2017 FRU, Order at 34.

ComEd states that the purposes and function of the Marketplace remain essentially unchanged since the 2017 FRU. In that case, ComEd notes the Commission found that the expenses of the Marketplace could "justifiably be included in jurisdictional expenses as part of delivery services," and expressly rejected the AG's argument that the Marketplace does not provide delivery services, making it clear that "the costs of providing delivery services include not only the costs of physically moving electricity, but also other prudent and reasonable costs of business and customer service functions that enable

ComEd to provide them, and enable customers to use them safely, efficiently, and reliably.” *Id.* at 34-35.

In this case, ComEd states the AG’s proposed disallowance rests on the premise that, because the information available on the Marketplace is also provided by other retailers or elsewhere on ComEd’s website, the prudently incurred cost of the Marketplace should be disallowed. See AG Ex. 4.0 at 11. ComEd contends this is a false syllogism: the fact that customers may gain access to any customer service via more than one channel does not negate the value of providing that service through a channel that customers value. 2017 FRU, Order at 34-35. Moreover, ComEd notes the AG’s premise was rejected by the Commission just last year.

ComEd maintains the Marketplace need not be the exclusive means of offering a benefit to customers in order to qualify as a prudent and reasonable cost of providing delivery services. Furthermore, ComEd states the evidence demonstrates that providing program and product information via multiple channels, including the Marketplace, helps customers by making information available to them wherever they choose to engage with the Company. ComEd Ex. 14.0 at 8. ComEd asserts consumer behavior is not generic, and the adoption of a “one-size-fits-all” approach would not be in the best interest of ComEd’s customers. ComEd explains that providing information and access to products via multiple channels takes advantage of all of the available tools, and is prudent, reasonable, and in the best interest of its customers. *Id.* at 9.

ComEd observes AG witness Selvaggio asserted that the Marketplace does not satisfy the “least cost” requirements of Section 8-104 of the PUA. AG Ex. 4.0 at 14. ComEd contends that the argument that the least cost standard can only be met by the cheapest minimum level of service and that the costs of better, more efficient, more effective, or easier to use service cannot therefore be recovered is contrary to law. Indeed, ComEd notes the Commission plainly rejected this argument in the 2017 FRU, concluding, “providing services in the ‘least cost’ means does not prohibit innovations or improvements to utility services.” 2017 FRU, Order at 35.

ComEd argues that the Marketplace provides a beneficial and effective customer support and communication function. Among the most important activities ComEd undertakes are customer service functions. ComEd states the Commission has universally allowed recovery of the prudent and reasonable costs of customer service functions that facilitate customers’ interactions with ComEd. More recently, ComEd has learned that customers expect, and use effectively, a variety of internet-based self-service functionalities that proactively share information with them over multiple channels. ComEd Ex. 14.0 at 8-9.

Since its launch in 2016, ComEd states the Marketplace has become a valuable tool for ComEd’s customers. In the 2017 FRU, the Commission concluded that ComEd’s Marketplace provided “real and quantifiable” benefits to customers by offering an “easy, user-friendly platform for customers to engage in learning about and purchasing available energy efficient products.” 2017 FRU, Order at 34. Since that time, ComEd states customers’ use of the Marketplace has only grown.

ComEd notes that none of these benefits were contested by AG witness Selvaggio. Indeed, ComEd observes Ms. Selvaggio’s testimony did not mention the needs of

customers or the effectiveness of the Marketplace in meeting them. See ComEd Ex. 14.0 at 6-8. Likewise, ComEd notes the AG's brief did not cite any evidence disputing the benefits the Marketplace provides to customers. ComEd states that none of the AG's broad assertions about the supposed "negative" impacts of the Marketplace are substantiated by any data, studies, reports, or analyses. Tr. at 132-135; ComEd Cross Ex. 1. ComEd asserts this contrasts starkly with the undenied, empirical data ComEd provided supporting the benefits of the Marketplace, including customers' own decisions to use the platform and to do so in increasing numbers.

With respect to the AG's assertion that "several of the products offered on the Marketplace can be purchased at lower prices elsewhere" (see AG Init. Br. at 18, 21), ComEd asserts that the AG's assertion ignores the evidence in the record demonstrating that the opposite is true. ComEd states there is no legal requirement that the benefits of Marketplace be exclusive in order for the Marketplace costs to be recoverable, nor would such a requirement make any sense. If the presence of an alternative source for information or products made all other platforms redundant and incapable of delivering benefits, ComEd asserts we would all be shopping on one web site. Further, ComEd notes the Commission rejected this same argument just last year, finding, "[t]here is nothing in the Act or Commission rules requiring that customers receive an exclusive benefit from a utility service that is not available through other resources in order to justify cost recovery." 2017 FRU, Order at 34-35.

ComEd notes that AG witness Selvaggio's own testimony conceded ComEd "communicates with its customers via digital channels via social media, text messages, and web and mobile apps." AG Ex. 4.0 at 12. ComEd observes AG witness Selvaggio made this statement to highlight the existence of other channels of communications besides Marketplace, but ComEd contends it undermines her position because, ironically, the methods she praises supplement other more traditional communications channels such as the call center. ComEd asserts the statement also begs the question of whether the mobile app – or any new communication channel for that matter – could pass muster under the standards the AG's brief advocates.

In sum, ComEd states the Marketplace is an additional channel of communication that responds to customers' demands for more streamlined, automated customer service interactions. ComEd contends acceptance of the AG's position on the Marketplace would operate as a disincentive to utilities' efforts to innovate and would deny customers the benefit of continued innovation.

In briefing, the AG argued that providing information and products to customers through the Marketplace is not a proper function of a delivery service utility and that the Marketplace's costs are therefore not recoverable. ComEd contends this position presumes an unrealistically and unlawfully narrow view of delivery services, limited to only those functions or activities that are "essential" to delivering power. AG Init. Br. at 15. ComEd asserts the AG's position is neither lawful nor sensible.

ComEd explains that the scope of the costs properly recovered in delivery services rates is well-established. ComEd states recoverable costs are not limited to the costs of functions that physically deliver power; rather, as the Commission clearly articulated in its Order in the 2017 FRU, "[u]tilities are entitled to recover reasonable and prudently

incurred costs of providing delivery services.” 2017 FRU, Order at 34; *citing* 220 ILCS 5/16-108(c). In addition to the obvious fact that ComEd and every other utility uses a host of functions that do not themselves move electrons – including customer service functions – to provide delivery services, ComEd notes that Section 3-115 of the Act confirms that “services” is to be:

*... used in its broadest and most inclusive sense, and includes not only the use or accommodation afforded consumers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any public utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public.*

220 ILCS 5/3-115 (emphasis added).

ComEd explains that, in the 2017 FRU Order, based on analysis of the applicable law, recognition that both the scope of delivery services and recoverable delivery service costs must be given rational definitions, and analysis and review of the Marketplace’s functions, the Commission flatly rejected the AG’s argument that “utility services that are not necessary or essential in the provision of delivering power should not be recoverable.” See 2017 FRU, Order at 34.

ComEd maintains nothing has changed to call that ruling into question this year. ComEd’s customer service functions continue to include a wide range of activities to communicate with customers and that enhance the experience of customers in using the electricity ComEd delivers in a manner that is informed, safe, and efficient. ComEd asserts that the functions of the Marketplace have not changed since last year; it continues to provide that important customer service and educational function. ComEd notes the AG, however, seeks to avoid the Commission’s decision in the 2017 FRU and the plain import of the law by arguing that inapplicable standards govern the recovery of Marketplace costs. ComEd states its delivery services rates must allow for the recovery of ComEd’s prudently incurred and reasonable costs of providing delivery services. 220 ILCS 5/16-108, 5/16-108.5(c)(1). ComEd contends the standards the AG tries to erect in their stead are inapplicable and would not, in any event, support disallowance.

First, ComEd states the AG argues incorrectly that “customers should not fund utility expenses that do not provide a tangible benefit to ratepayers” and “the utility has the burden of demonstrating a sufficient nexus between that expense and a customer benefit.” AG Init. Br. at 18. ComEd states this argument – that a utility must show a separate benefit from a particular function or activity, above and beyond the benefits of providing the underlying utility service – is a unique construct which has been applied only to the recovery of “salary-related expense,” and incentive salary expense at that. ComEd Reply Br. at 24-25. To the extent that it remains good law even as to that specific class of expense after enactment of the statutory incentive compensation criteria of EIMA, 220 ILCS 5/16-108.5(c)(4)(A), ComEd maintains there is no basis for applying it here. ComEd asserts the concerns that the Commission had with incentive compensation

expenses pre-EIMA have not been expressed here, and the record does not support them. To the contrary, even if ComEd was required to demonstrate a “nexus” between the Marketplace and customer benefits, ComEd contends the record demonstrates benefits that flow directly from the Marketplace. See, e.g., ComEd Ex. 11.0 at 2-4, 7-11; ComEd Ex. 14.0 at 4, 7-8.

Second, ComEd rejects the AG’s claims that the Marketplace “violates the Act’s requirement that rates be least cost.” AG Init. Br. at 15. ComEd states the Commission rejected this mischaracterization of the law in the 2017 FRU, when it found that, “providing services in the ‘least cost’ means does not prohibit innovation or improvements to utility services. A determination of least cost involves the consideration and balancing of costs and benefits.” 2017 FRU, Order at 35, *citing Ameren Transmission Co. of Ill.*, Docket No. 15-0278, Order at 13 (Nov. 12, 2015), *Ameren Transmission Co. of Ill.*, Docket No. 12-0598, Order at 76-78 (Aug. 20, 2013). ComEd states no rule, law, or regulation requires ComEd to limit its services in the interest of providing the cheapest possible service. Customers demand access to communication channels and services, notably web platforms, and ComEd states the Marketplace provides those services at a reasonable cost. Furthermore, ComEd asserts the PUA requires ComEd to “promote the safety, health, comfort, and *convenience*” of its customers. 220 ILCS 5/8-101 (emphasis added). ComEd maintains the Marketplace does just that – it promotes the convenience of ComEd’s customers by providing an innovative platform that provides customers with options to manage their energy use and access to energy-efficient products and rebates.

Third, while the AG asserts the Marketplace costs must meet the “just and reasonable” standard set forth in Sections 9-101 and 9-201 of the PUA, ComEd states the AG conflates and confuses standards. ComEd explains that rates and charges, not costs, must be just and reasonable. 220 ILCS 5/9-101. And, ComEd contends, the legislature and courts have defined the standards applicable to costs recovered in just and reasonable rates: the prudent and reasonable costs of providing service are recoverable. Indeed, ComEd asserts that a just and reasonable rate must provide utilities the opportunity to recover their reasonable and prudent costs of service. *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 405 Ill. App. 3d 389, 394 (2d Dist., 2010); see also *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

Fourth, as in the 2017 FRU, ComEd notes the AG argues that the Commission should disallow the costs of the Marketplace because it is not operating at a financial gain, and that the Marketplace should be subject to a “wholly different cost recovery review framework.” AG Init. Br. at 16-17. ComEd states this claim was wrong last year and it remains wrong today. The Marketplace is a customer service, and, just like the provision of wires, bills, call center services, or storm restoration, it has a cost. ComEd maintains the profitability of any particular component of utility service has nothing to do with the recoverability of its costs, a fact that the Commission acknowledged in the 2017 FRU. See 2017 FRU, Order at 35 (“[T]he Commission notes that it does not generally look to the profitability of specific utility programs in determining whether expenses are prudent and reasonable.”). And, ComEd notes, almost no individual components of utility service are “profitable.” ComEd explains this is why utilities have rates that recover their costs; if utility services had to be “profitable” to avoid disallowance of their costs, there would be no costs to recover in rates.

Fifth, although the AG characterizes the Marketplace as a subsidized competitive service, ComEd contends that characterization is contradicted by the record. ComEd maintains the record evidence demonstrates that the sole purpose of the Marketplace is to provide a service, not to earn a profit. Indeed, ComEd notes, every dollar of net revenue is credited back to customers. ComEd Ex. 11.0 at 13. Moreover, ComEd states, the Marketplace provides a customer service function that supports ComEd's provision of delivery services. Therefore, ComEd asserts, customers no more subsidize the Marketplace by virtue of its reasonable and prudent costs being recovered than customers subsidize the call center, bill processing, outage reporting, or any other customer service function. Similarly, ComEd states, customers do not provide a subsidy to Marketplace users that live outside of ComEd's service territory. *Contra* AG Init. Br. at 23. ComEd explains the costs being recovered are those incurred to make the platform available and support its delivery services functions. There are no incremental costs associated with any out-of-state residents accessing the Marketplace or purchasing a product there. In fact, every sale of a product to an out-of-state resident provides a benefit to ComEd customers because all sales revenue is credited against the revenue requirement.

The AG also contends that the Marketplace "encourages higher pricing for products on the site, all else being equal," in order to increase its revenues. AG Init. Br. at 22. ComEd asserts this is unsupported speculation, and is directly contradicted by the fact that Marketplace prices do not deviate from market norms. The AG also claims that the "pricing decisions for individual products ... is controlled by Simple Energy." *Id.* at 23. ComEd explains that this, too, is factually incorrect (Tr. at 105), but ComEd states that whether, and the extent to which, product prices are set by a contractor has no bearing on the recoverability of the costs.

Finally, the AG asserts that the Marketplace is anti-competitive. ComEd notes that the AG offered not a single piece of data or analysis supporting this claim, and ComEd states there is no evidence that ComEd is impacting the retail market for energy products in any way, much less that the Marketplace "puts other e-commerce outlets at a competitive disadvantage." *Id.* at 14. ComEd asserts it is hard to take seriously the claim that the presence of the Marketplace is damaging the e-commerce market when Amazon, with all of the resources of one of the most valuable companies on the planet, exists alongside a vibrant market. ComEd states the AG's competitive damage claim is also undermined and contradicted by its own arguments, including its repeated assertions that "other ecommerce websites offered better and more complete information" and lower prices than the Marketplace. *Id.* at 21. ComEd explains the Marketplace cannot harm competitors if, as the AG asserts, its prices are higher and its resources are inferior.

ComEd also asserts the Commission should reject the AG's meritless alternative request that ComEd be limited to offering on the Marketplace products available with an instant rebate, and that ComEd's recovery of Marketplace costs should be limited accordingly. AG Init. Br. at 24. ComEd contends there is no basis for such a limitation. ComEd states that the recommendation appears designed to redefine the Marketplace as nothing but a tool for deployment of energy efficiency program products, but ComEd maintains that is not the purpose of the Marketplace or the extent of its benefit.



Moreover, ComEd explains, the AG's recommendation is completely inconsistent with its concurrent efforts to disallow in the energy efficiency rider docket the entire portion of the Marketplace costs that are allocated to the energy efficiency revenue requirement. See *Commonwealth Edison Co.*, Docket No. 18-1101, AG Ex. 2.0, 4-5. If the AG's recommendations were adopted, ComEd states it would not change the manner in which ComEd recovers Marketplace costs, as the AG implies in its brief, it would leave ComEd in a "trick bag" where it will be prevented from recovering *any* of its Marketplace costs. ComEd notes Ms. Selvaggio admits as much. Tr. at 170:11-14. ComEd asserts that outcome should be rejected.

Finally, ComEd notes that no party took issue with ComEd's allocation of costs between the delivery services and energy efficiency ("EE") revenue requirements. Although Ms. Selvaggio asserted that ratepayers should be paying for the cost of enabling the EE rebate process through the energy efficiency formula rate rider, ComEd contends this argument disregards that ComEd recovers the incremental costs of any products sold with a rebate as part of its Commission-approved EE program through its EE revenue requirement. ComEd Ex. 11.0 at 14. In particular, ComEd explains, the costs incurred to set-up, develop, and support the Marketplace platform are appropriately recovered through delivery services rates. See ComEd Ex. 11.0 at 13. In 2017, ComEd states it allocated the remainder of the costs incurred to support the Marketplace – *i.e.* product support and website management costs – between the delivery services and EE revenue requirements in accordance with the purpose which the costs served. See ComEd Ex. 11.0 at 13; AG Ex. 4.2 Attach B. ComEd contends the AG's unsupported assertion that costs are not properly allocated between the EE formula rate rider and delivery service rates lacks merit and should be rejected. ComEd asserts all net revenues from the Marketplace are flowed back to all customers through the delivery services rates, which is also appropriate because both the near- and long-term benefits of the Marketplace flow to all customers, not just those who buy a product under the EE programs. ComEd Ex. 11.0 at 13.

**b. Staff's Position**

Staff takes no position regarding the Marketplace Expense.

**c. AG's Position**

The AG finds that ComEd has failed to justify ratepayer financing of the Marketplace. The AG reasons that the evidence shows that the product sales aspect of the Marketplace is available through other competitive ecommerce retailers. In addition, the AG also reasons evidence showed that the higher the price of products offered through the Marketplace the higher the revenue contribution to ComEd's Marketplace expense recovery. According to the AG, that fact belies claims that users of ComEd's Marketplace who purchase products are receiving a benefit by ComEd's enabling of online purchases of the offered products. Moreover, the AG finds that claims that the Marketplace should be subsidized by ratepayers because it supplies users with information about energy saving products and other ComEd energy usage programs, such as peak time rebates, is not persuasive because all of the information provided is also available at either other ComEd website locations or other ecommerce platforms. Finally, the AG reasons that the fact that ComEd ratepayers are being forced to pay for

the Marketplace portal through rates – regardless of whether they use the Marketplace – puts other e-commerce outlets at a competitive disadvantage.

As discussed below, the AG urges the Commission to adopt the AG's proposed adjustment that removes the costs of the Marketplace that were allocated to delivery services in 2017 from the 2017 reconciliation year revenue requirement and the 2018 filing year revenue requirement. The AG reasons that the alleged benefits that ComEd claims its delivery service customers will receive from funding what is clearly a competitive service already, available through other ecommerce platforms, are non-existent, anti-competitive and already provided through other ComEd services and website platforms.

First, the AG argues that ComEd's ratepayers should not be asked to pay for a service through their monopoly utility rates that is accessible through other competitive ecommerce offerings. AG witness Selvaggio testified that she has several concerns regarding ComEd's demand that ratepayers continue to fund a service that is available in the competitive marketplace and, evidence shows, provides no tangible benefit to ComEd customers. The AG argues that ComEd's Energy Marketplace is a discretionary merchandising operation that is not essential to the provision of energy efficiency measures or electric delivery services. The AG reasons that ComEd is asking customers to pay for a service that, for the most part, is otherwise available through the competitive marketplace at other ecommerce websites, including bestbuy.com, amazon.com, smarthome.com, homedepot.com enervee.com and others. AG Ex. 4.0 at 11. The AG further reasons that asking ratepayers to finance a competitive service through noncompetitive monopoly utility delivery service rates violates the Act's requirement that rates be least cost. See 220 ILCS 5/8-401. Moreover, the AG finds that there is nothing just and reasonable about a monopoly delivery service rate that includes the costs of providing a competitive service. See 220 ILCS 5/9-101, 9-201. The alleged benefits of the Marketplace, according to the AG, including the provision of energy saving information that are in fact available at other non-Marketplace locations of the ComEd website, are insufficient to compensate ratepayers for the net cumulative cost customers have paid for this project since the Company began recovering it in rates in 2018, particularly when products are already available through the competitive marketplace at a cheaper price. AG Ex. 2.0 at 7-8.

The AG notes that while the Commission found that "there is a connection between the Marketplace and the provision of delivery services" in its 2017 formula rate update order in Docket No. 17-0196, it is not binding on the Commission's decision in this proceeding. Moreover, the AG notes that the Commission in its order in that docket expressed concerns about the future recoverability of the expenses of the Marketplace to qualify as delivery services:

This does not mean, however, that the nature or content of the Marketplace will remain sufficiently connected to energy-related customer services so as to qualify as delivery services in the future so that the expenses are recoverable by ratepayers.

2017 FRU, Order at 35. Clearly, the AG reasons, the Commission questioned whether the nature of the Marketplace would remain sufficiently connected to delivery-related

customer services to be recovered as delivery services in the future. The AG concludes that the Commission fully expected the funding of the Marketplace through delivery service rates to be reconsidered in future proceedings.

As the Commission analyzes whether ComEd ratepayers should be required to continue to pay for a service that ComEd admits (1) serves customers outside of the ComEd service territory and (2) is already available in the competitive marketplace or, in terms of energy saving information, at other locations on the ComEd website, the AG argues that several facts must be considered. First, the AG notes that upfront costs of \$778,000 were included in customer rates in the 2016 reconciliation year revenue requirement. AG Ex. 2.0 at 10. In this year's rate presentation, ComEd noted that net revenues of \$73,000 were recorded within the 2017 jurisdictional test year revenue requirement. AG Ex. 2.0 at 10. Thus, the AG notes that ComEd ratepayers are still in the hole financially on the Marketplace investment to the tune of \$705,000.

The AG also notes that the Commission stated in its previous 2017 FRU Order that "Profitability of a program may come into question to the extent an argument can be made that the benefits of a program are outweighed by the costs...." While the Commission made no such finding last year, the AG finds that the question arises as to how long will the Commission ask ratepayers to finance, through their monopoly electric delivery service rates, a service that is available elsewhere (the antithesis of a monopoly service) without a cost. The AG also explains that it should be noted, too, that in raising the lack of profitability of the Marketplace, the AG is not suggesting that the various services associated with providing electric delivery services must be profitable, contrary to ComEd's suggestions, and indeed the Commission's Order in Docket No. 17-0196. The AG's point is that ComEd has embarked on the provision of a service that is already available in the competitive marketplace and is asking ratepayers to finance that service at a financial loss. The AG argues that is a wholly different cost recovery review framework than the traditional request for ratepayer funding of operational expenses incurred to provide monopoly delivery service.

The AG reasons that it is relevant, too, that when specifically asked, ComEd witness Bafaloukos could not provide a single example of another ecommerce website that charges non-users of the website for the cost of operating that service. Tr. at 107-108. The AG reasons that is the case, of course, because no such financial arrangement exists in the competitive market. The AG observes that all ComEd customers – regardless of whether or not they purchase a product on the Marketplace – must subsidize the Marketplace costs even though those services (such as the informational content) are already being paid for through the recovery of costs of the ComEd website in general or through content and offerings paid for through ComEd's energy efficiency rider. The AG asks the Commission to end that inequity here.

Second, the AG argues that the ComEd Marketplace provides no tangible benefits and does not fall within the definition of delivery services under the Act. The AG explains that the Commission and Illinois courts have made clear in past orders and rulings that customers should not fund utility expenses that do not provide a tangible benefit to ratepayers. *Northern Ill. Gas Co. – Proposed Increase in Delivery Service Rates*, Docket No. 04-0779, Order at 44 (Sept. 20, 2005) ("2004 Nicor Rate Order"). In order to be recovered in rates, the AG further explains, the requesting utility has the burden of

demonstrating a sufficient nexus between that expense and a customer benefit. *People ex rel. Madigan v. Ill. Commerce Comm’n*, 2011 IL App (1st) 100654 (“Madigan”) (the Court upheld a Commission ruling that the utility, ComEd, “did not demonstrate a sufficient nexus between the earnings-per-share portion of the employee incentive compensation plan and a benefit to ratepayers.” *Madigan*, 2011 IL App (1st) 100654, ¶52.); see also *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 398 Ill.App.3d 510, 517, 924 N.E.2d 1065 (2009).

The AG observes that additional evidence has come to light in this case that Illinois ratepayers, and ComEd ratepayers in particular, can and will be negatively impacted financially by the existence of the Marketplace, thereby eviscerating the notion of benefit from the Marketplace. For example, the AG observes that the evidence showed that several of the products offered on the Marketplace can be purchased at lower prices elsewhere. The AG also notes that the evidence showed that a person can purchase a Nest Cam through either Best Buy’s online portal or amazon.com for a significantly lower price than ComEd charges through its Marketplace. See also, AG Ex. 2.1, Attachment D, p.2 of 2; AG Ex. 4.0 at 12; Tr. at 109-111.

The AG notes that ComEd also points to the ability to obtain instant rebates offered through the ComEd energy efficiency program through the Marketplace as a benefit that justified ratepayer financing. ComEd Ex. 14.0 at 4 and ComEd Ex. 14.02. However, the AG reasons that the evidence shows that other ecommerce websites likewise enable an instant rebate. AG Ex. 4.0 at 11-12.

While the AG observes that ComEd witness Bafaloukos further describes the Marketplace as a “communication method with customers” that provides information on how to save energy with various energy saving products, that argument is unpersuasive to justify cost recovery of the Marketplace expense. The AG notes that 1.2 million ComEd customers have downloaded the ComEd mobile app (without accessing the Marketplace) and ComEd now communicates with its customers via digital channels via social media, text messages, and web and mobile apps. AG Ex. 4.0 at 12.

In short, the AG reasons that the Marketplace informational function is duplicative and not a cost-effective way to distribute energy efficiency information. The AG argues that the question again arises: how many times should ratepayers be required to subsidize these “informational” functions? The AG submits that the ComEd website as an online communication channel is sufficient. Additionally, the AG notes that a comparison of several products for sale on the Marketplace with the same products offered through other ecommerce websites revealed that the other ecommerce websites offered better and more complete information than the information available on comedmarketplace.com about the product. AG Ex. 4.0 at 11-12.

Third, the AG argues that ratepayer financing of a service that is already available in the competitive marketplace is anti-competitive. The AG highlights the fact that at issue in this case is ComEd’s position that its delivery service customers should fund ComEd’s venture as a competitive retailer – a function not envisioned by the General Assembly when it established the monopoly utility regulatory compact under the Act that ensures utility recovery of prudent investments, just and reasonable expenses and a reasonable

rate of return through utility rates in exchange for the delivery of least cost utility service. See 220 ILCS 5/9-101, 8-401.

As noted by AG witness Selvaggio, why should ComEd delivery service customers provide a subsidy to discount the cost of the products to customers that live outside the ComEd service territory and in other U.S. states? Moreover, the AG observes that a customer in another utility territory who may be eligible for that utility's energy efficiency rebates will not be able to access those rebates through the Marketplace platform. Tr. at 98-100. The AG reasons that a ComEd ecommerce website that negatively impacts retail stores in other utility service territories (and those utility customers who miss out on access to their own energy efficiency program rebates) is anti-competitive and certainly not beneficial to those non-ComEd utility customers.

By virtue of its very existence, the AG notes that ComEd's Marketplace negatively impacts the business of other competitive retailers because its operation is funded by ComEd ratepayers – a competitive advantage other ecommerce platforms do not enjoy.

Fourth, the AG argues that the Commission's 2017 FRU Order is not *res judicata*. The AG explains that the Commission is not a judicial body, and its orders are not *res judicata* in later proceedings before it. *Miss. Fuel Corp. v. Ill. Commerce Comm'n*, 1 Ill.2d 509, 513 (1953). The AG further explains that the concept of public regulation includes of necessity the philosophy that the Commission shall have power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding. *Miss. Fuel*, 1 Ill.2d at 513.

Fifth, the AG argues that asking customers to pay for a competitive enterprise is unreasonable and inconsistent with the requirement that rates be least cost. ComEd challenges the AG's argument and points to the Commission's conclusion in the 2017 FRU Order that "providing services in the 'least cost' means does not prohibit innovations or improvement to utility services." ComEd Init. Br. at 36, citing 2017 FRU Order at 35. But, according to the AG, that observation is inapplicable here. The AG argues there is nothing "innovative" about a utility engaging in a competitive enterprise and asking ratepayers to assume the risk of losing money at that venture. The AG reasons there is nothing "least cost" about asking utility customers to pay for a service through utility service rates – remembering that utility service is an essential service that is unavailable in the competitive marketplace – to finance a competitive venture of the utilities. The AG states that is inconsistent with the monopoly compact and this Commission's obligation to ensure that utility rates remain affordable and least cost.

Sixth, the AG notes that ComEd argues that the costs incurred to set-up, develop and support the Marketplace platform are appropriately recovered through delivery services rates. ComEd Init. Br. at 40. Again, the AG maintains that it is not challenging the recovery of energy efficiency rebates associated with some of the products on the Marketplace through the energy efficiency rider. The AG reasons that rebates are, in fact, a critical component of the energy efficiency program.

The AG argues that ComEd then confuses the issue by asserting that the "AG's unsupported assertion that costs are not properly allocated between the EE formula rate rider and delivery service rates lacks merit and should be rejected." ComEd Init. Br. at 40. The AG explains that this argument is a red herring. According to the AG, Ms.

Selvaggio's testimony simply observed that ComEd's ratepayers should be paying for the cost of enabling the energy efficiency rebate process through the energy efficiency program rider – not by creating a utility service foray into the ecommerce business. That point remains true, the AG further explains, and the Commission should not be confused by ComEd's claims as to what the AG is alleging on that point.

Finally, if the Commission rejects Ms. Selvaggio's proposed adjustment, the AG argues that the Commission should direct ComEd to make certain revisions to the Marketplace to truly enable customer benefit while minimizing costs to ratepayers. The AG explains that if the Commission rejects this expense disallowance, the AG proposes, as an alternative recommendation, that the Commission should set certain terms on permitting recovery of the costs of the Marketplace. Those terms should include:

- (1) A limitation on the provision of products to only those that are incented through the ComEd Rebate and Discounts program and that are not otherwise available for an instant rebate;
- (2) No recovery of costs through general delivery service rates – only the energy efficiency rider; and
- (3) The continued accrual of net revenues from the Marketplace to ComEd's delivery service customers until the cumulative cost that has been funded by ComEd's delivery service customers has been refunded.

AG Ex. 4.0 at 22.

In order to accomplish this, the AG urges the Commission to direct the Company to enable ComEd customers to access energy efficiency program rebates through the ComEd website, with that cost recovered through the energy efficiency formula rate rider. The AG finds that it should be noted, too, that this could be accomplished through simply including links to competitive businesses that already are working with ComEd to provide the instant rebate. Likewise, the AG argues that the Company should be required to enable easier one-stop access to information about ComEd demand response and other programs that encourage reduced energy usage through ComEd's website without requiring customers to sift through various webpage locations.

The AG reasons that what is not necessary, and should not be funded by ratepayers is the financing of an ecommerce Marketplace website that benefits customers whenever higher prices for products are set, and increases the Company's revenue requirement at lower product prices. The AG reasons that incongruity between customer benefit and ratemaking highlights why utilities should not be permitted to venture into and subsidize activities that are already available in the competitive marketplace.

#### **d. Commission Analysis and Conclusion**

Utilities are entitled to recover the reasonable and prudently incurred costs of providing delivery services. 220 ILCS 5/16-108(c). As the Commission concluded in ComEd's last formula rate update proceeding, the costs of providing delivery services include not only the costs of physically moving electricity, but also other prudent and reasonable costs of business and customer service functions that enable ComEd to provide them, and enable customers to use them safely, efficiently, and reliably. The Act

supports this understanding of delivery services, since it provides that services should be construed broadly and inclusively. 220 ILCS 5/3-115.

The record in this proceeding shows that customers use the Marketplace and benefit from it, and this evidence is undisputed. The Commission found in ComEd's prior formula rate update proceeding that there is nothing in the Act or the Commission's Rules limiting utilities' cost recovery to only those benefits or services with respect to which the utility is the exclusive supplier. The AG's arguments in this case do not support a deviation from that conclusion. Furthermore, the Commission is not inclined to dissuade ComEd from developing and providing its customers with services that customers actually use and perhaps may prefer.

Although the AG argues that the Marketplace represents a competitive venture, the costs of which should be excluded from rates, the Commission finds that it is instead a customer service initiative. As a delivery services utility, ComEd can and should seek to serve its customers, these efforts are not competitive ventures, and the costs of undertaking them are properly considered recoverable. As ComEd points out, there is no evidence that the Marketplace has had any impact on the retail market for energy products, or put any other provider of such products at a disadvantage.

The Commission rejects the AG's argument that the Marketplace should be evaluated by the pre-EIMA standard applicable to incentive compensation expenses – the “tangible benefits” standard – although, as mentioned, the Commission finds that customers do benefit from the Marketplace. The Commission finds the record of this proceeding does not support the application of a unique construct which has been applied in the past only to the recovery of “salary-related expense,” and incentive salary expense.

Likewise, the Commission rejects the AG's argument that the Marketplace should be disallowed because it does not operate at a financial gain. As the Commission found in ComEd's last formula rate update proceeding, the profitability of individual utility programs is not a factor in the Commission's evaluation of prudence and reasonableness.

The Commission also rejects the AG's argument that utility rates should be “least cost.” The least-cost standard is not applicable in this formula rate update proceeding, and, in any case, does not prohibit innovation or improvements in the provision of utility services. Similarly, the AG's contention that the Marketplace costs must be “just and reasonable” misstates the applicable legal standard. The overall rates that a utility charges must be just and reasonable, meaning that they must provide the utility an opportunity to recover the reasonable and prudent costs of service. *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). There is no evidence that the Marketplace costs are unreasonable, and the record supports the conclusion that ComEd has acted prudently in enabling the Marketplace. As a result, the costs of the Marketplace are a proper component of ComEd's just and reasonable rates.

Finally, the Commission rejects the AG's argument that the Commission should require ComEd to limit the Marketplace so that only products that are subject to energy efficiency rebates are offered, and limit cost recovery accordingly. The Commission notes that the Marketplace also contains information about demand response programs offered by ComEd, such as Peak Time Savings, Central AC Cycling, and Hourly Pricing, and finds that efforts to correlate customer education on these programs with purchases of

energy-related products may assist participation in the programs. These and other customer service and education efforts are appropriate, and the Commission declines to require ComEd to exclude them from the Marketplace.

The Commission finds that the costs associated with ComEd's Marketplace platform are related to the provision of delivery services, were prudently and reasonably incurred, and are recoverable. There is no dispute these costs have been appropriately allocated. These costs are approved.

## **2. Amortization of Excess Deferred Income Taxes**

### **a. ComEd's Position**

ComEd explains that, in 2017 and 2018, Illinois and federal corporate tax rates applicable to ComEd changed. On July 1, 2017, Illinois increased its total corporate tax rate from 7.75% to 9.5%. The TCJA reduced the federal corporate income tax rate from 35% to 21%, effective January 1, 2018. ComEd Ex. 1.0 at 28. ComEd states that there is no dispute that ComEd has reflected those changes in its revenue requirement calculation.

However, ComEd explains that there is disagreement among the AG, CUB, and ComEd about the most appropriate amortization period for one specific category of Excess Deferred Income Taxes ("EDIT") stemming from those tax changes, namely EDIT related to what is referred to as "unprotected property." ComEd states that it proposes amortizing all types of EDIT over periods consistent with the useful lives of the underlying assets and with the accounting treatment of the related underlying ADIT. Thus, ComEd's position is that EDIT created by the new lower tax rates should be recognized in rates over the same period as underlying assets that gave rise to the EDIT are paid for – prospectively over the life of that plant. ComEd contends that amortization period ensures current and future customers will pay for the underlying assets and taxes, and receive any tax benefits, on a consistent basis. ComEd explains that it also protects customers from harmful side-effects, including rate shock.

ComEd states that AG witness Brosch, however, proposed an arbitrary 5- or 10-year amortization period for one category of ComEd's EDIT, its unprotected property-related EDIT. ComEd notes that CUB adopted this position in briefing, although CUB submitted no testimony on the issue. ComEd asserts that the amortization periods advocated by the AG and CUB are inconsistent with both the depreciation of the underlying assets and with the treatment of other categories of EDIT. ComEd contends that, while the shortened amortization period would accelerate the flow-through of EDIT to customers, it would not benefit customers overall; rather, it would: (1) deny benefits to the customers who are actually paying for the assets over their long-term, full lives; (2) create needless rate volatility and risk of rate shock; and (3) risk increasing ComEd's cost of debt, which hurts all customers.

ComEd maintains that its proposal represents principled approach, and is consistent with good policy, since the 39.47-year amortization period assures that EDIT related to unprotected property and non-property is amortized over the same period that the original underlying book to tax differences, or ADIT, reverse and the same time period over which customers pay for the underlying assets through depreciation expense.



ComEd Ex. 8.0 at 5. ComEd contends this is not only sensible and fair, it minimizes potential harms.

ComEd asserts that, because the average useful life for all ComEd's property is 39.47 years and those assets are being paid for by customers over 39.47 years, recognition of a change in tax rate over that timeframe ensures ratemaking fairness to customers, or intergenerational equity. That is, the same customers that are paying for the assets should receive any tax benefits related to the assets arising out of the tax rate change. In this case, ComEd explains, amortizing the EDIT over a period consistent with the period over which the underlying deferred tax liability reverses ensures the tax benefits related to the corporate tax rate reduction will offset the reversal of the deferred tax liability that was established at the original higher tax rate. Indeed, ComEd asserts, because the deferred tax liability continues to include a balance based on the higher tax rate that was in force, it is critical to flow the EDIT though to customers over the same time period the underlying deferred tax liability reverses – namely, the life of the underlying asset. ComEd Ex. 8.0 at 9.

ComEd contends that it is important for this “matching” principle to be applied to ensure that customers who are ultimately paying for the underlying assets through depreciation and related ADIT, inclusive of the original higher tax rate over time, are also getting the benefit of the related EDIT from the new lower tax rate over that same period of time. In contrast, ComEd argues that the AG's approach utilizes different amortization periods for protected (39.47 years) and unprotected (5 years) plant-related EDIT, without recognizing that portions of both categories represent the same type of long-term, property-related assets. ComEd Ex. 8.0 at 5, 6.

ComEd asserts that while its proposal promotes intergenerational equity, the AG's approach ensures intergenerational *inequity*. ComEd explains that if different amortization periods are applied, as the AG suggests, a different group of customers will receive the benefits of the tax change than those who actually pay for the underlying assets. ComEd states the record contains illustrations of both the consistent treatment ComEd proposes and the AG's inconsistent periods, and contends that these illustrations demonstrate ComEd's proposal provides proper intergenerational equity or “matching,” while revealing the intergenerational inequity that occurs when the EDIT reversal occurs over a timeframe different from depreciation expense and the related ADIT reversal, as the AG proposes. Specifically, ComEd explains, these illustrations demonstrate that, in order to ensure customers who are paying for the asset and related taxes over its 10-year useful life also receive the benefit of the lower tax rate, the EDIT must be amortized over the remaining life of the asset. ComEd Ex. 12.0 at 4-5. If EDIT is reversed more rapidly than the rate at which depreciation expense and the original ADIT gets reflected in rates, customers in early years receive a benefit that is denied to customers in later years even though those customers will be paying for the underlying asset and the related ADIT. *Id.* at 5.

ComEd notes that AG witness Brosch claimed customers have already paid for the ADIT and that this pre-payment requires ComEd to flow through the EDIT on an expedited basis, *i.e.*, to “return” the EDIT to customers that he asserts have already paid the related ADIT. AG Ex. 1.0 at 9; AG Ex. 3.0 at 10-11. However, ComEd maintains the

evidence indisputably shows that ComEd customers have not already paid for the underlying ADIT. ComEd Ex. 12.0 at 6-8; Tr. at 205-213, 216; 246-249.

First, ComEd explains that, unlike other elements of the revenue requirement, when a tax deduction is taken, the difference in taxes is not funded by shareholders or customers – it is analogous to the difference in taxes being funded as an interest-free loan by the federal or state government. ComEd Ex. 12.0 at 6; Tr. at 216; ComEd Init. Br. at 47.

Second, ComEd states that, when a tax deduction is taken, two journal entries are recorded – one to establish a deferred tax liability, and one to establish a current tax payable. Both journal entries are for the same amount, and they have opposite effects on the revenue requirement, essentially cancelling each other out. Thus, ComEd explains, customers do not pay for ADIT because they receive an equal credit of current tax expense that negates this “payment”; there is no increase in the revenue requirement that could result in customers paying for the ADIT or EDIT. ComEd Ex. 12.0 at 6; ComEd Ex. 12.01; ComEd Ex. 9.05, Sch. C-5 FY Page 4 of 4, Lines 90 and 93; Tr. at 205-13, 246-49. As a result, ComEd contends, the net impact from a ratemaking perspective is zero. ComEd Ex. 12.0 at 7.

ComEd asserts that because current customers have not funded the ADIT, there is no justification to view the EDIT as a pending “refund” that should be made as quickly as possible. ComEd Ex. 12.0 at 6. Moreover, because past payments have appropriately reflected the tax rates in existence in those years, no customer has yet paid deferred taxes associated with the new, lower rates. ComEd maintains there is no mismatch in its proposal between what customers have paid for the assets to date and what they will pay under the tax rates that will be applied only prospectively. The benefits of new tax rates should, thus, apply prospectively, just as the new rates apply prospectively, both over the life of the assets. ComEd avers that the AG is mistaken to assert otherwise. ComEd Ex. 8.0 at 10.

In summary, ComEd contends that to treat the benefits of the lower tax rate and the funding of the underlying asset through depreciation and ADIT incongruously, as the AG proposes to do, would provide all of the tax benefit to customers in the first five years, leaving nothing for the customers who are still funding the related assets and taxes in the later years. Thus, ComEd emphasizes that Mr. Brosch’s recommendation is actually less equitable to customers than ComEd’s approach, and diminishes intergenerational equity. ComEd asserts the AG’s recommendation provides an immediate payment of disproportionate benefits to current customers and unfairly penalizes future customers who continue to fund long-lived utility assets over their remaining useful lives. ComEd Ex. 8.0 at 8.

ComEd asserts that the AG and CUB arguments are based entirely on an assumption about how tax deferrals are “funded” that is simply wrong. And, their appeals for acceleration ignore the inequity and harm their proposal will inflict on customers. Specifically, ComEd notes the AG’s entire argument for an abbreviated amortization period for unprotected property-related EDIT is based on the false premise that customers have already funded the balances being amortized. See, e.g., AG Init. Br. at 25-27, 31. ComEd contends the record evidence proves that ComEd’s customers have not

previously funded any of the outstanding underlying ADIT or the related EDIT. As ComEd proved in its pre-filed written testimony, confirmed during live cross-examination, and explained again in briefing, ComEd only collects the current year's income taxes from customers. See ComEd Ex. 12.0 at 6; Tr. at 205-13, 216, 246-49.

ComEd explains that, unlike other elements of the revenue requirement, when a tax deduction is taken, the difference in taxes is not funded by shareholders or customers, but in a manner analogous to an interest-free loan from the federal or state government. ComEd Ex. 12.0 at 6; Tr. at 216. ComEd asserts that the AG simply ignores this evidence. Moreover, ComEd notes the AG and CUB have not – and cannot – rebut this evidence. ComEd states that, to the extent they address it at all, the AG argues that the Commission should ignore it because it “is contrary to common sense.” AG Init. Br. at 31. ComEd states that the AG simply conflates the concepts of deferred taxes and depreciation, and muddles the definition of ADIT. *Id.* at 31-33. ComEd explains that the AG claimed ADIT arises from “a timing difference between *collection* of the income tax expense from ratepayers and the *payment* of those taxes by ComEd to the government.” *Id.* at 33. However, ComEd explains, ADIT actually arises from temporary differences between when an expense (or revenue) is recognized on a company's “*books*” and when the company recognizes that expense (or revenue) on its *tax return*. ComEd Ex. 8.0 at 2. ADIT does not arise from a difference between *collections* from customers and *payments* to the federal government. ComEd notes that difference between *collections* and *payments* may influence the leads and lags utilized in calculating cash working capital, but it is most definitely not ADIT.

Indeed, ComEd exposed that the AG is actually contemplating cash working capital when it incorrectly stated that “income taxes are collected through rates at full statutory rates,” but “utilities do not currently pay all the income taxes being collected from ratepayers to the government.” AG Init. Br. at 26. ComEd states the AG pointed to ComEd Ex. 9.01, Page 19, Line 30, asserting that document proves this point. *Id.* However, as ComEd explained, that page plainly reflects only cash working capital information. ComEd Reply Br. at 39, *citing* ComEd Ex. 9.01, Page 19 (clearly titled “Cash Working Capital Information”).

ComEd notes that CUB similarly states: “The utility will pay less federal income tax than the amount that is actually collected from ratepayers as deferred income tax expenses,” and that ComEd's proposal to use the average rate assumption method (“ARAM”) “simply does not ‘match’ the customers who paid the ADIT with the customers who will receive the credit for EDIT. The Company instead is attempting to match the credit of taxes already paid by customers with the depreciation paid by customers in the future.” CUB Init. Br. at 5, 10 (emphases in original). ComEd affirms that CUB's claim is also wholly inaccurate. As noted above, the deferred tax arises from differences in when an item is recognized for tax and book purposes, not from a difference between when a utility collects revenues from customers and when it makes payments. And, in ComEd's view, while ComEd's amortization proposal does match depreciation, the more important point is that it matches reversal of the underlying related ADIT.

ComEd states that ADIT assets and liabilities are netted out prior to the tax gross up in the formula, which occurs at ComEd Ex. 9.01, Page 2, Lines 17 and 18 – not on Page 19, Line 30. Tr. at 246-49. Thus, ComEd explains, it only collects income taxes

from customers – at the currently applicable statutory income tax rates – that are currently due and payable. Because past tax payments have appropriately reflected the tax rates in existence in those years on currently payable taxes, no customer has yet paid deferred taxes associated with the new, lower rates. ComEd asserts that by definition these taxes have been deferred – neither ComEd nor its customers have paid them. ComEd contends these facts show that the request for accelerated amortization is without any foundation in reality and the arguments of AG and CUB are premised in error. ComEd explains that, because current customers have not funded the ADIT, there is no justification to view the EDIT as a pending “refund” that should be made as quickly as possible. ComEd Ex. 12.0 at 6. ComEd asserts there is no mismatch in ComEd’s proposal between the taxes that customers have paid for the assets to date and what they will pay under the tax rates that will be applied only prospectively. Rather, ComEd states, the benefits of new tax rates should apply prospectively, just as the new rates apply prospectively, both over the life of the assets.

ComEd further argues that ComEd’s proposed amortization period stabilizes costs and rates whereas the AG’s proposal risks rate shock. ComEd asserts the evidence shows that Mr. Brosch’s recommendation artificially decreases the revenue requirements in the short term – by approximately \$109 million this year, under his primary 5-year proposal or approximately \$55 million under his alternative 10-year proposal. ComEd maintains that artificial decrease comes at the expense of offsetting substantial increases in rates from Year 6 on. ComEd illustrated that under the AG’s 5-year proposal, the Year 6 revenue requirement increases by approximately \$109 million; while under the AG’s 10-year alternative, required revenues rise by \$55 million in Year 11. ComEd Ex. 12.0 at 8. Aside from the intergenerational inequity, ComEd states that the result of Mr. Brosch’s proposal is needless rate volatility that ComEd’s proposal avoids. In ComEd’s proposal, the impact of the tax rate change on the revenue requirement will be consistent over nearly 40 years, with an increase in the revenue requirement of only approximately \$14 million in Year 41.

ComEd states Mr. Brosch himself recognizes that smoothing out the revenue requirement impact of these changes is important; indeed, he agrees that amortization over a number of years is appropriate. AG Ex. 3.0 at 6. But, ComEd notes, Mr. Brosch provided no reasoned basis for his choice of 5 years, or his alternative amortization period of 10 years. ComEd Ex. 12.0 at 9. Instead, ComEd explains, Mr. Brosch’s proposal would reduce rates by approximately \$109 million (about \$95 million more than the decrease ComEd is currently proposing) in the short term only, and only at the cost of imposing an equally dramatic rate increase when the 5-year amortization period ends. ComEd contends this dramatic and needless down-and-up bouncing in the revenue requirement is the type of “rate shock” and revenue requirement volatility that the Act helps to avoid in other circumstances. ComEd Ex. 8.0 at 12 (citing 220 ILCS 5/16-108.5(c)(4)(F)).

ComEd acknowledges that changes in rates, even significant changes, cannot always be avoided. Rates, must, after all, reflect costs. But ComEd notes that even Mr. Brosch agrees “abruptly large increases in utility rates should be avoided when possible.” ComEd Ex. 8.01 (AG Response to ComEd→AG 2.06). While not every increase or decrease in the revenue requirement results in rate shock, ComEd asserts the particular

down-and-up bouncing caused by Mr. Brosch's proposal, absent other rate-related impacts, will likely cause rate shock. ComEd Ex. 12.0 at 9; ComEd Ex. 8.0 at 11-14.

While revenue requirement volatility is not always avoidable, ComEd notes in this instance it is almost completely avoidable using ComEd's approach. By matching the EDIT benefits with the related payments for the plant, ComEd notes that revenue requirement volatility is reduced and the dramatic up and down bounce inherent in the AG and CUB proposals is eliminated, thereby eliminating the risk of "rate shock." ComEd Ex. 8.0 at 13. In contrast, ComEd states that Mr. Brosch's approach is counterproductive from a rate normalization perspective.

ComEd notes that the AG states rate shock generally refers to a rate increase, not a rate decrease, and that "it is difficult to believe ComEd's argument that ratepayers would be harmed, disadvantaged, or even concerned by a rate *decrease* that occurs suddenly." AG Init. Br. at 32. However, ComEd explains that its concern is not primarily with the artificial decrease to the revenue requirement that Mr. Brosch proposes in the short term. ComEd clarifies that its concern is that this artificial decrease only comes at the expense of an offsetting and needless *increase* in the longer term. Under Mr. Brosch's 5-year proposal, ComEd notes the Year 6 revenue requirement increases by approximately \$109 million; under his 10-year alternative, required revenues rise by \$55 million in Year 11. ComEd Ex. 12.0 at 8.

ComEd maintains that its proposal avoids this needless rate volatility. In ComEd's proposal, the impact of the tax rate change on the revenue requirement will be consistent over nearly 40 years, with an increase to the revenue requirement of only approximately \$14 million in Year 41. ComEd Ex. 12.0 at 8; see also ComEd Init. Br. at 49-50 (graph illustrating the volatility under Mr. Brosch's 5-year amortization proposal, versus ComEd's 39.47 year amortization period). Notably, ComEd states that the AG cannot "submit" that there will be zero customer complaints of rate shock at the end of Mr. Brosch's artificially short amortization period, when rates will increase significantly without any related benefits or investments.

In addition, ComEd notes that Mr. Brosch initially stated that the EDIT at issue is subject to a mandatory 5-year amortization period under provisions of the Act dealing with the amortization of one-time costs, 220 ILCS 5/16-108.5(c)(4)(F). AG Ex. 1.0 at 14-15. ComEd states that assertion is incorrect: that section provides that certain large, non-recurring expenses in a given year not be fully recovered in that year, but be spread out over a 5-year period to smooth out the rate impact over that period rather than have customers pay for that large expense in a single year. ComEd states the provision does not apply here, because the state and federal tax rate changes in question are not one-time events, but will be applied every year and will continue to affect ComEd's ADIT, among other things, until and unless the tax rates change again. ComEd Ex. 8.0 at 11. Indeed, ComEd notes, in prior cases, Mr. Brosch agreed that tax savings resulting from tax rate changes "are permanent and ongoing expense savings and are not abnormal or non-recurring in nature." See ComEd Ex. 12.02, *Ameren Ill. Co.*, Docket No. 12-0293, Brosch Reb., AG/AARP Ex. 3.0, 32:666-73; see also *Ameren Ill. Co.*, Docket No. 12-0293, Order at 91-92 (Dec. 5, 2012). ComEd further notes Mr. Brosch has also agreed that such savings are not comparable to the type of "large and unusual storm restoration

or one-time severance events that are routinely deferred and normalized” under the Act, 220 ILCS 5/16-108.5(c)(4)(F), “for ratemaking purposes.” ComEd Init. Br. at 50-51.

ComEd notes that CUB adopted in its brief the amortization recommendation of AG witness Brosch, but attempted to justify that recommendation with an argument based on Section 16-108.5(c)(4)(F) that Mr. Brosch himself abandoned. ComEd maintains this provision does not apply here, because the state and federal tax rate changes in question are not one-time events, but will be applied every year and will continue to affect ComEd’s ADIT, among other things, until and unless the tax rates change again. ComEd Ex. 8.0 at 11.

Moreover, ComEd asserts that applying the 5-year amortization provided for by Section 16-108.5(c)(4)(F) to the EDIT at issue would actually frustrate the policy objective of that section, which is rate stability. The shorter amortization period would, ComEd contends, increase rate volatility, not moderate it. Ironically, ComEd notes CUB’s logic would only require the Commission to apply the 5-year amortization provided for by Section 16-108.5(c)(4)(F) of the to the largest EDIT amounts – those that meet the threshold amount specified in Section 16-108.5(c)(4)(F), for ComEd \$10 million or more. ComEd Ex. 8.01. This means that, instead of smoothing out rates by amortizing larger amounts over longer periods of time, CUB’s application of Section 16-108.5(c)(4)(F) would increase rate volatility, amortizing the larger amounts over shorter periods of time and the smaller amounts over longer periods of time. ComEd Ex. 8.0 at 12-13. ComEd asserts the Commission should reject this argument.

ComEd also argues that the AG’s proposal impacts ComEd’s cash flow, potentially increasing ComEd’s cost of debt, which would negatively impact customers. ComEd observes the AG claimed that ComEd may have an ulterior motive in using a longer amortization period for EDIT: that a longer amortization period improves a utility’s cash flow. AG Ex. 3.0 at 7. But ComEd asserts the record evidence clearly shows that ComEd chose to use ARAM (39.47 years) because it is the right decision, on principle and for customers.

Moreover, ComEd explains, while customers pay the same total amount over time, Mr. Brosch’s arbitrarily short amortization period can increase customers’ overall costs. This is because it will artificially reduce ComEd’s cash flow by about \$95 million annually over the next five years, by shifting cost recovery into the future. ComEd Ex. 12.0 at 10. ComEd explains credit rating agencies evaluate ComEd’s credit metrics as an indicator for credit risk, and a significant shift in cash flow could negatively impact ComEd’s credit metrics and ultimately its credit rating. ComEd states this could increase the cost of debt for ComEd which would be passed along to customers through rates. Therefore, ComEd concludes, Mr. Brosch’s recommendation of a shorter amortization period could be a detriment to customers. *Id.* at 10; *contra* AG Ex. 3.0 at 7, 8-9, 15.

ComEd also notes that Mr. Brosch’s recommendation actually increases ComEd’s earnings. This is because reversing the EDIT more quickly via a shorter amortization period accelerates a net increase to ComEd’s rate base. Through an accelerated increase to rate base, ComEd’s earnings would increase. ComEd asserts this further proves that ComEd recommended a 39.47-year amortization period because it is the

most fair and appropriate method for customers, given the long lives of the underlying assets – not because it is in the best interest of shareholders. ComEd Ex. 12.0 at 11.

Regarding the AG's misplaced reliance on an Ameren Missouri stipulation, ComEd observes that the AG claimed Mr. Brosch relied on an Ameren Missouri stipulation in which the parties agreed to a 10-year amortization period for unprotected EDIT as support for his alternative 10-year amortization proposal. First, ComEd states that Mr. Brosch did not rely on the Ameren Missouri stipulation for his alternative proposal. *Compare* AG Ex. 1.0 at 14 (suggesting 10 year amortization alternative) *with* AG Ex. 3.0 at 18-19 (subsequently mentioning the Ameren Missouri stipulation).

Second, ComEd explains that the Ameren Missouri stipulation should not be relied on this case, as neither ComEd nor the Commission knows all of the potential reasons that Ameren Missouri and stakeholders in its Missouri litigation found it appropriate to settle on a 10-year amortization period. ComEd contends that Missouri is a different jurisdiction, with different stakeholders, lawmakers, and even a different recovery mechanism (no formula rates). ComEd also notes that the amortization period in that stipulation for "unprotected non-plant Excess ADIT" was a 10-year period, as opposed to the shorter five year period ComEd has proposed here. AG Ex. 3.4 at 2, ¶ 3. ComEd asserts that this is not a compelling, apples-to-apples comparison. ComEd Ex. 12.0 at 11-12.

Further, even though it is not a formula rate update, ComEd asserts a more appropriate comparison is to Ameren Illinois Company d/b/a Ameren Illinois' ("Ameren Illinois") current gas rate case, where unprotected property-related EDIT amortization is at issue. ComEd Ex. 12.0 at 12; *see also Ameren Ill. Co.*, Docket No. 18-0463. There, ComEd notes that Ameren Illinois proposed an unprotected property amortization period of approximately 35 years, consistent with the underlying life of their property at ARAM. Although the AG's witness in that case has also attempted to argue for a 5-year amortization period, Ameren Illinois has not agreed to an amount lower than 35 years. *See generally, Ameren Ill. Co.*, Docket No. 18-0463. Moreover, Ameren Illinois and Staff have a stipulation specifying 35 years as the appropriate unprotected property-related EDIT amortization period. *Ameren Ill. Co.*, Docket No. 18-0463, Ameren Ex. 28.1. ComEd maintains that these facts are more relevant as a comparison to an Illinois jurisdictional case than a case in Missouri.

Ultimately, ComEd asserts the Commission has discretion to establish an appropriate amortization period. ComEd states that the Commission has the ability to determine the amortization period for all EDIT that is not protected, including the unprotected property-related EDIT at issue in this case.

ComEd asserts that the record evidence shows ComEd's recommended 39.47-year period matches asset lives. However, ComEd states, if the Commission wishes to choose a shorter period, it should keep in mind that alternative amortization periods longer than Mr. Brosch's, but shorter than ComEd's, are less inequitable for customers over time than Mr. Brosch's proposal, create less rate shock, less cash flow impact, and ultimately less risk of a cost of debt implications than Mr. Brosch's recommendations. In short, ComEd maintains, the longer the period of time the Commission chooses, up to

and including 39.47 years, the fairer the outcome will be for customers. ComEd Ex. 12.0 at 13.

**b. Staff's Position**

Staff takes no position regarding the amortization of EDIT.

**c. AG's Position**

The AG argues that ComEd proposes an unnecessarily long amortization period—a patently unreasonable 39.47 years—that the AG explains would deny ratepayers the timely return of monies already paid to the Company as deferred income taxes, in what amounts to nothing less than an inequitable retention of funds that will never be necessary to pay ComEd's tax obligations in the future. Instead of this unnecessarily long 39.47 year proposal, the AG argues that the Commission should adopt a reasonable 5-year amortization period, as recommended by AG witness Brosch. AG Ex. 1.0 at 2-3. The AG explains that utilization of a shorter amortization period is more equitable to ratepayers, by more quickly returning the excess ADIT amounts to the customers who previously paid these deferred taxes through the rates reflected in their ComEd bills.

Overall, the AG argues that ComEd's arguments for using an ARAM-calculated, extended amortization period of 39.47 years to return EDIT to ratepayers are unsupported, illogical, and leads to an inequitable result for ComEd's ratepayers who have paid ComEd money they are now owed back in lower rates. The AG further argues the result of ComEd's proposal to retain an approximately \$95 million annual cash flow is a benefit for itself, while unreasonably delaying the flowback of funds to ratepayers. Yet, ComEd claims that such an approach is more equitable to ratepayers and provides more stable (but, admittedly, higher) rates. ComEd Ex. 12.0 at 8. The AG finds that neither rationalization is sufficient to support ComEd's use of a 39.47-year amortization period for these discretionary EDIT amounts. The AG notes that ComEd also claims that its ratepayers have not yet actually "paid" the funds reflected within ComEd's ADIT balances because ComEd has not yet paid the government the deferred taxes and customers are therefore not entitled to a return of those funds. ComEd Ex. 12.0 at 7. The AG reasons that this argument attempts to obfuscate the fundamental realities of ADIT and should be wholly ignored by the Commission.

First, the AG argues ComEd's claim of equity to ratepayers is contrary to common sense. In his surrebuttal testimony, ComEd witness Newhouse insists that "matching" the time period over which an asset is paid for to the application of a tax deduction on that asset is necessary for "intergenerational equity." *Id.* at 3-5. The AG explains that this represents an unreasonably narrow focus on the accounting treatment of assets which give rise to timing differences and misses the point of the concept of intergenerational equity. The AG further explains that the argument of intergenerational equity in this context is simple: customers who paid deferred taxes now rendered excessive by a reduction in income tax rates should be the same customers who receive the benefit of a credit to income tax expense to amortize the excess ADIT. AG Ex. 3.0 at 14-15. The AG reasons that the time period over which that recognition of excess ADIT is reflected in rates is the issue for intergenerational equity concerns, not whether the remaining time period for depreciation of assets and amortization of excess ADIT related to that asset is "matched." *Id.*



Second, the AG argues that ComEd's claim of improved rate stability to the benefit of consumers is similarly illogical. The AG notes that the common understanding of rate shock is in reference to a rate increase—not a rate decrease. Even assuming, *arguendo*, that a rate decrease could produce “rate shock” because it occurs rapidly, the AG reasons that it is difficult to believe ComEd's argument that ratepayers would be harmed, disadvantaged, or even concerned by a rate decrease that occurs suddenly. ComEd Ex. 12.0 at 9. It is abundantly obvious to the AG that all ratepayers would prefer to pay as little as possible for safe, reliable electric service—not more. The AG argues that ComEd has offered no showing that ratepayers would prefer to wait longer for the return of EDIT rendered excessive by the TCJA, so that their rates in the distant future might be a bit lower with expended amortization of EDIT credits proposed by the Company. See *e.g.*, Tr. at 222.

The AG explains that the argument that ComEd's ratepayers are better off receiving smaller portions of the EDIT they are owed over a longer period of time is contradicted by the fact that ratepayers benefit from lower rates in the near-term and that the ratepayers who funded the EDIT balance are entitled to seeing the benefits of the federal corporate income tax rate decrease, including EDIT amortizations. AG Ex. 3.0 at 15-16. The AG reasons that the idea that rate changes downward from a more rapid amortization of EDIT somehow harm ratepayers ignores the time value of money for ratepayers and serves to change the focus from properly flowing benefits back to ratepayers that paid ComEd income tax expenses now rendered excessive. As noted by Mr. Brosch, the Company's position on this issue simply ensures that ComEd shareholders retain for the maximum amount of time the cash flow tax savings related to these unprotected excess ADIT balances. AG Ex. 3.0 at 15.

The AG observes that ComEd insisted on the need for the Commission to avoid “needless” shifting of rates up and down. ComEd Ex. 12.0 at 9; Tr. at 224. The AG does not dispute that EDIT amortization will impact the timing of rate changes, but argues that it actually supports the opposite argument ComEd offers: there is a specific need for rates to change downward in the near-term. That need exists, as the AG explains, because ComEd's ratepayers that funded through rates ComEd's ADIT balances that have now become, in part, EDIT are the same ratepayers that should benefit from the return of EDIT. AG Ex. 3.0 at 15-16. Clearly, the AG posits, it is not “needless” for rates to change sooner rather than later to account for this reasonable approach to flowing EDIT back to the appropriate group of ratepayers. *Id.* The AG reasons in support that ratepayers receiving service 40 years from now will be too dissimilar to warrant an avoidance in a downward shift in rates for purposes of rate stability. *Id.*

Furthermore, while Mr. Brosch's adjustment would have an impact on ComEd's rates (downward) for the first five years after new rates go into effect, the AG notes that there would be no discernible impact in the subsequent years. *Id.* at 17. The AG explains that the chart that ComEd offers to dramatize changes in its revenue requirement, as a result of more accelerated amortization periods of unprotected property-related EDIT shows only the change in revenue requirement on the Y-axis. ComEd Init. Br. at 50; ComEd Ex. 12 at 14. If the overall revenue requirement and not the change is used instead, the AG shows that the impact appears quite different and does not depict any rate “shock” concern.

Finally, the AG argues that ComEd's attempt to claim that ratepayers have not paid the balances represented within ComEd's recorded ADIT balances, and that instead ratepayers have not yet been obligated to pay, is simply incorrect. ComEd Ex. 12.0 at 7. While it is certainly true that ComEd has not yet paid the deferred income taxes that its ADIT balances represent, the AG notes that does not mean that ComEd's ratepayers have not filled the Company's ADIT accounts with actual money charged in bills. AG Ex. 3.0 at 4. The AG explains that ComEd's tax obligations, which are influenced by depreciation and bonus depreciation on many different assets, are simply not the same as ratepayers' obligations to pay income tax expense at statutory rates in ComEd's formula rates to ComEd via their monthly bills. *Id.* Indeed, the AG asks why else would there be an ADIT balance that offsets ComEd's rate base if there was not actually a timing difference between collection of the income tax expense from ratepayers in rates and the payment of those taxes by ComEd to the government? *Id.*

ComEd's theory, according to the AG, that ratepayers will actually fund ADIT balances in rates once ComEd's obligation to pay the income tax amounts reflected in ADIT balances comes about in the future, is contrary to the fact that ComEd has deferred payment to the IRS in the past due to accelerated depreciation while ComEd's ratepayers still paid income tax expense at statutory tax rates to ComEd as if it did not have the benefit of large accelerated depreciation offsets. ComEd Ex. 12.0 at 7; *id.* The AG notes that ComEd's recorded ADIT balances represent a liability of the Company's, not a liability of ratepayers. As noted by Mr. Brosch, "In reality, customers have already paid deferred taxes at what is now an excessive rate. Customers do not owe ComEd any additional deferred taxes at the new lower rate as implied by Mr. Newhouse. Just the opposite is true, because of the tax rate reduction, ComEd owes EDIT amounts as a regulatory liability that must be returned to customers." AG Ex. 3.0 at 11.

As described by Mr. Brosch, instead of an unnecessarily long 39.47 year amortization period of EDIT funds that have resulted from the tax rate change, the AG proposes a reasonable 5-year amortization period. *Id.* at 2-3. The AG reasons that the utilization of a shorter amortization period is generally more equitable to ratepayers, by more quickly returning the excess ADIT amounts to the customers who previously paid these deferred taxes through the rates reflected in their ComEd bills. It is not a stretch of the imagination to the AG to anticipate that many of the ComEd ratepayers who previously paid deferred taxes at a rate now rendered excessive will have moved out of the ComEd service territory or died in a 40-year span of time, thereby depriving them the full return of excess ADIT collected from them and implicating legitimate inter-generational equity concerns. Five years, in contrast, does not present the same concerns to the AG of depriving certain customers of the return of excess ADIT that they paid for and granting it to a generation of customers that made no such payment of deferred taxes to ComEd under the old, higher tax rate. Since no ARAM or other restrictions apply to these plant-related excess ADIT balances, the AG reasons there is no need to delay the timing of the return of these amounts to ratepayers. *Id.* at 14.

As noted by Mr. Brosch, Commission adoption of his proposed adjustment would have no negative impact upon ComEd's reported earnings. The AG explains that regulatory approval of a shortened amortization period will cause ComEd to record the faster amortization as a reduction to annual expense. The AG further explains that the

resulting expense reduction will directly offset the associated reduction in revenues caused by the shortened amortization and is therefore income neutral to the utility. *Id.* at 15. The AG notes that ComEd's rationale for proposing the 39.47 year amortization period benefits only the Company, as the EDIT that is owed to customers can be retained by the utility for longer periods of time. But the AG also notes that any improvements in utility cash flow comes at the expense of ratepayers' cash flow.

In support of its position, the AG points to recent action taken by the Missouri PSC taken to address TCJA impacts in Missouri. The AG explains that pursuant to the "Unanimous Stipulation and Agreement" Ameren Missouri reached in its most recent rate case in Missouri, Missouri Case No. ER-2018-0362, the utility agreed to "...an annual amortization amount of \$73,885,399 to return to customers the excess accumulated deferred income taxes ("Excess ADIT") created by the TCJA." With regard to plant-related EDIT that are not "protected" and required to employ ARAM, a 10-year amortization period was agreed-upon by all parties.

But the Commission, as Mr. Brosch and the AG conclude, should view this alternative 10-year amortization period as a second-best alternative to the AG-recommended 5-year amortization proposal. The AG asserts that ratepayers deserve a return of these excess ADIT balances as soon as practicable.

The AG also observes that ComEd argues that tax deduction journal entries fully offset each other – one to establish a deferred tax liability, and one to establish a current tax payable. As such, ComEd argues, customers do not pay for ADIT because they receive an equal credit of current tax expense that negates this "payment." ComEd Init. Br. at 47-48. The AG maintains that this argument is inapposite, a red herring and not reflective of what occurs in ratemaking.

In support, the AG explains that as ComEd's incremental tax gross up and cash working capital study show, ComEd has not yet paid many of those taxes despite collecting tax expense from ratepayers in its revenue requirement. ComEd Ex. 9.01 at 2 (showing ratepayers are obligated to pay \$403.9 million into the revenue requirement to cover ComEd's taxes); *id.* at 9.01 at 19 (showing ComEd's current federal income tax obligation as negative \$93 million). Indeed, the AG notes that is why ComEd has an ADIT balance at all. According to the AG, it was reasonably expected that ComEd would ultimately pay the income tax expenses that it deferred (due in large part to bonus depreciation) at the same rate at which it was collected from ratepayers. AG Ex. 3.0 at 6. The AG explains that the TCJA changed that situation, giving rise to the excess deferred income tax expense funds at issue. *Id.*

The AG argues that in the absence of a specific Internal Revenue Service ("IRS") rule to use ARAM for determining the amortization period of unprotected property-related EDIT, there is no good reason for ComEd to retain the EDIT it currently holds for an excessive amount of time. AG Ex. 3.0 at 7. The AG reasons that ratepayers are entitled to a return of their funds that will never be needed to cover ComEd's tax liability now reduced by the TCJA; that group of ratepayers should be as similar to the group of ratepayers that paid the EDIT in the first place. *Id.* at 9.

**d. CUB's Position**

With respect to certain plant-related or “protected” excess accumulated deferred income tax balances, CUB explains utilities must follow IRS normalization rules in setting the period for amortization credits to expense. The unprotected excess ADIT balances, however, can be amortized over a period of time that is determined at the Commission’s discretion. CUB recommends the Commission utilize its discretion set the amortization period for refunding these balances to customers at period of 5 years, as recommended by AG witness Brosch. CUB asserts this action would provide material savings to customers in a timely manner, without threatening the adequacy of ComEd’s internal cash flows or credit rating.

CUB argues that ComEd proposed an extremely long 39.47 year amortization periods for the “Code Protected – Liberalized Depreciation” and “Plant Related – Not Protected” excess ADIT (EDIT) categories. With respect to the former category, Internal Revenue Code regulations require the use of the ARAM to determine the length of the amortization period. No such requirements to utilize ARAM apply to the latter category; however, CUB asserts the Company unreasonably proposes to the same methodology resulting in this extremely long amortization period for those excess balances. AG Ex. 1.0 at 10. The proposed use of a 39.47 year amortization period for all plant-related EDIT results in \$37 million per year of tax expense savings for ComEd customers over the almost 40 years that ComEd would use to return the EDIT balances. For the EDIT associated with “Other – Not Plant Related” category, CUB states ComEd proposes a more reasonable amortization period of 5 years, resulting in about \$21 million per year of tax expense savings for its customers. *Id.* Finally, CUB notes ComEd’s Net Operating Loss carryforward balance is made of deferred tax assets, that are actually deficient rather than excessive, for which the Company proposes an extended amortization period properly linked to the amortization period applicable to liberalized depreciation excess ADIT balances. *Id.*

CUB argues that the Commission should not approve the 39.47 year amortization period for the “Plant Related – Not Protected” category of EDIT, and instead should approve a 5-year amortization period, as proposed by ComEd for the “Other – Not Plant Related” category based upon the expert testimony of AG witness Brosch. AG Ex. 1.0 at 11. Mr. Brosch testified that the 39.47 year period is not required under either the TCJA or Internal Revenue Code for unprotected assets. *Id.* CUB agrees with Mr. Brosch’s statement that, in the absence of a restriction under the tax code, there is no reason to delay the return of EDIT to customers who previously paid deferred taxes at the higher 35% federal business income tax (“FIT”) rate. CUB asserts the approval of a 5-year amortization period will have no effect on the Company’s internal cash flows or impact its credit rating. CUB explains that regulatory approval of a 5-year amortization period will cause ComEd to record the faster amortization as a reduction to annual expense, which in turn will directly offset the associated reduction in revenues. AG Ex. 1.0 at 15. Therefore, CUB states the impact on the Company’s income is entirely neutral.

CUB argues that the EDIT balance in the “Plant Related – Not Protected” category should be returned to ratepayers quickly, using the same 5-year amortization period proposed by ComEd for the “Other – Not Plant Related” EDIT balances. Under an almost 40 year amortization period, it is unlikely that the customers who actually paid the ADIT

balances will benefit from their return. Conversely, if those balances are credited on a 5-year amortization period, the likelihood that ratepayers who contributed to the EDIT balance will recover the benefits is significantly greater. CUB urges the Commission to utilize its discretion to ensure that customers who actually paid the excess taxes receive the appropriate credits and approve a more reasonable amortization period of five years.

In the absence of guidelines under the TCJA and Internal Revenue Code, CUB states the Commission can look to the Act for instruction as to a reasonable amortization period for the balances of the unprotected plant-related EDIT. Section 16-108.5(c)(4)(F) of the Act provides in relevant part that performance-based formula rates utilized by a participating utility, such as ComEd, permit and set forth protocols for, among other things:

amortization over a 5-year period of the full amount of each charge or credit that exceeds \$3,700,000 for a participating utility that is a combination utility or \$10,000,000 for a participating utility that serves more than 3 million retail customers in the applicable calendar year and that relates to a workforce reduction program's severance costs, changes in accounting rules, changes in law, compliance with any Commission-initiated audit, or a single storm or other similar expense, provided that any unamortized balance shall be reflected in rate base. For purposes of this subparagraph (F), changes in law includes any enactment, repeal, or amendment in a law, ordinance, rule, regulation, interpretation, permit, license, consent, or order, *including those relating to taxes*, accounting, or to environmental matters, or in the interpretation or application thereof by any governmental authority occurring after October 26, 2011

220 ILCS 5/16-108.5(c)(4)(F) (emphasis added). CUB asserts ComEd's EDIT balance in the unprotected plant-related category exceeds \$388 million, which meets the threshold for amortization over five years under the Act.

According to CUB, ComEd argues that Section 16-108.5(c)(4)(F) is only applicable to "certain large non-recurring expenses in a given year," and, because the new FIT rate is assumed to be permanent and ongoing, this subsection of the Act does not pertain to EDIT. CUB explains ComEd's position is fundamentally flawed, based upon an incorrect reading of the Act, and must be rejected. CUB asserts the plain language of 16-108.5(c)(4)(F) clearly states that the 5-year amortization period is appropriate for both expenses and credits which exceed a certain monetary threshold. Furthermore, the subsection specifically contemplates changes in tax laws as the type of expense or credit that may be amortized. The matter at issue is a credit owed to customers as a result of a permanent tax change. There will not be any "recurring credit" to customers as a result of the change in the FIT rate – other than the fact that the excess ADIT amount is so large that it cannot be credited to customers at once. CUB argues the credit due to customers is an amount of excess deferred taxes calculated at the end of the former tax rate that exceeds the minimum threshold for a 5-year amortization of the credit under 16-108.5(c)(4)(F), and accordingly, a 5-year amortization period is appropriate.

CUB explains ComEd witness Newhouse testified as to the amortization periods proposed by the Company for EDIT. See ComEd Ex. 8.0. Mr. Newhouse testified that with respect to the unprotected EDIT, the Company utilized the ARAM again to establish the amortization period because it “ensures that customers who are paying for the underlying property assets through depreciation and related ADIT [...] are the same customers who will receive the benefits of the lower tax rate provided through the related EDIT.” ComEd Ex. 8.0 at 4. Mr. Newhouse argues that the funding of the plant asset and its related tax impact is funded over many years, and the new lower tax rate should be applied over the same period of time for which the plant at issue is paid. *Id.* at 8. CUB argues this proposal simply does not “match” the customers who paid the ADIT with the customers who will receive the credit for EDIT. CUB argues ComEd instead is attempting to match the credit of taxes already paid by customers with the depreciation paid by customers in the future. ComEd claims that there is no “mismatch between what customers have paid for the assets to date under a calculation based on the tax rates then in effect and what they will pay under the tax rates that will be applied prospectively. The benefits of those new rates should apply prospectively, just as the new rates apply prospectively, over the life of the assets.” ComEd Ex. 8.0 at 10. CUB asserts this statement is misleading and in fact validates the AG’s proposal. ComEd has in fact collected an excess of deferred taxes for these assets to date. *Id.* The two items – taxes already paid and depreciation to be paid – do not line up in terms of time, and accordingly may not line up in terms of the actual customers who pay them. CUB argues the customers who have already paid ADIT are the ones that should receive a credit for the excess payment. There is no legitimate reason to amortize the credit over such a long time period when it is not required. CUB urges the Commission to adopt the AG’s proposal to amortize the EDIT balance for the unprotected plant over a 5-year period, rather than 39.47 years as proposed by ComEd.

CUB responds to the Company’s argument that its 39.47-year amortization period is more equitable for customers because it ensures that the same customers who are paying over time for the underlying assets giving rise to the EDIT also see the benefits of lower tax rates. ComEd Init. Br. at 4. CUB asserts ComEd’s argument stretches the limits of the definition of equity, as it completely ignores the fact that the customers paying for the underlying assets over the next 39.47 years may not be the same customers who prepaid the taxes on those assets. ComEd argues that intergenerational equity requires “EDIT created by the new lower tax rates [to] be recognized in rates over the same period as underlying assets that gave rise to the EDIT are paid for – prospectively over the life of the plant.” ComEd Init. Br. at 41. CUB states this fundamentally flawed argument fails to recognize a simple fact: monies previously collected for payment of federal income taxes at the rate of 35% now will never be paid to the IRS; rather, the Company will pay the new federal income tax rate of 21%. CUB states the excess tax dollars collected from customers by ComEd must be promptly returned to customers.

CUB urges the Commission to reject ComEd’s argument that a “matching principle” requires that the refund of these excess deferred taxes should be amortized over 5 years to avoid customer harm. ComEd Init. Br. at 42, 45. ComEd argues that the shorter amortization period does not align the refund of EDIT with the underlying asset, results in intergenerational inequity, and customers would be “harmed” because the customers who are actually paying for the assets over their long-term, full lives will not

reap the tax benefits later. CUB urges the Commission to reject these arguments for several reasons. First, CUB states any argument by a utility that the refund of customer overpayments back to customers would “harm” those same customers must be viewed with extreme skepticism.

Second, CUB explains, the argument is illogical. The most equitable approach would be to refund excess deferred taxes to the customers who paid those taxes in the first place – not customers over the next 39.47 years. Today’s customer rates include the taxes that the utility owes to the federal government, and the utility, under the Internal Revenue Code, defers payment on some of those taxes to the federal government. Today’s customers, who are paying for both taxes to be paid in the future and the underlying asset itself, are always providing a benefit to future customers in the form of paying that deferred tax. Because the EDIT represents only the excess deferred tax, future customers still receive the benefit of the taxes that are being paid today by today’s customers. Today’s customers receive the refund on the taxes that they paid in excess, which is an equitable outcome that provides benefits to ComEd’s current and future customers.

CUB asserts ComEd muddles the matter by arguing that the ADIT are “not funded” and “no customer has yet paid deferred taxes associated with the new, lower rates.” ComEd Init. Br. at 48. As explained by AG witness Brosch, however, customers have met their obligations to pay income tax expenses via monthly bills at statutory rates set in ComEd’s formula rates. AG Ex. 3.0 at 4. ComEd’s obligation to pay those taxes depends on the timing of the obligation to remit those taxes to the federal government. *Id.* ComEd has deferred payments of federal income taxes due to accelerated depreciation, while customers have paid federal income tax expenses at the statutory rates – that is, not offset for the accelerated depreciation. ComEd Ex. 12.0 at 7. As Mr. Brosch clearly explained in his testimony, “customers have already paid deferred taxes at what is now an excessive rate. ... ComEd owes EDIT amounts as a regulatory liability that must be returned to customers.” AG Ex. 3.0 at 11.

CUB explains that ComEd further argues customers would be harmed by the AG’s proposal because it decreases the revenue requirement in the short term, which results in an increase to the revenue requirement at the end of the amortization period, which in turn may result in rate shock. ComEd Init. Br. at 49. ComEd claims that its unnecessarily prolonged amortization period reduces revenue requirement volatility and the risk of customer rate shock. *Id.* CUB asserts the Company’s position illogically argues that a rate decrease will harm customers. Rate shock occurs when a rate increase occurs, not a rate decrease. Indeed, as noted by the AG, “never in the history of the Commission’s regulation of electric utilities in Illinois has a petition for an investigation been filed by a non-utility party to investigate whether rates are too low.” AG Init. Br. at 32. The net effect of the AG’s proposal to amortize EDIT over five years results in decrease in the revenue requirement during that period. At the end of the 5-year amortization period, the reduction to the revenue requirement will end – just as it will at the end of the Company’s proposed 39.47-year amortization period. The Company argues that the change in the revenue requirement at the end of the 5-year period will result in rate shock, but seemingly not the change in the revenue requirement at the end of the almost 40-year period. CUB asserts the Company does not seem concerned with the impact of the rate shock from its

previous formula rate updates, such as its \$127,499,000 increase in the revenue requirement in 2016, or its \$95,583,000 increase in the revenue requirement in 2017. When viewed in light of the significant increases to ComEd's revenue requirement that have occurred since the beginning of formula rates, CUB argues the Company's argument for a longer amortization period to prevent possible rate shock appears disingenuous.

CUB asserts that ultimately, ComEd has failed to meet its burden of proof to show why the unprotected property-related EDIT that must be credited to customers should be amortized over 39.47 years. CUB asserts ComEd customers who have funded the ADIT to the excess of \$1.56 billion deserve an equitable refund of this amount in a reasonable period of time. The 39.47 years calculated by the Company using the ARAM where it is not required by IRS normalization guidelines is unreasonable and inappropriate. CUB urges the Commission to exercise its discretion to credit these funds back to customers using a more reasonable 5-year amortization period in accordance with the Section 16-018.5(c)(4)(F) of the Act

#### **e. Commission Analysis and Conclusion**

ComEd, the AG, and CUB disagree about the appropriate amortization period proposed by ComEd for unprotected plant-related EDIT arising from tax law changes in 2017 and 2018. ComEd proposes to use a uniform 39.47-year amortization period for unprotected plant-related EDIT. The AG proposes to use a 5- or 10-year amortization period.

The Commission notes that the TCJA requires the gradual return of "excess" ADIT balances of assets where book depreciation exceeds tax depreciation and adopts the ARAM methodology. Other excess ADIT amortization periods are discretionary. For unprotected plant-related EDIT, the choice of an amortization period is within the Commission's discretion, and the Commission finds the record supports ComEd's proposed 39.47-year amortization period, which also uses the ARAM methodology. This period aligns the amortization of the EDIT with the useful life of the underlying assets, ensuring that the same customers who are paying over time for the underlying assets and taxes giving rise to the EDIT also see the benefits of the new lower tax rates. ComEd's proposed amortization of unprotected plant-related EDIT appears equitable.

ComEd demonstrates that there are possible inequities in shorter amortization periods. Specifically, ComEd explains that if EDIT is reversed more rapidly than the rate at which depreciation expense and the original ADIT gets reflected in rates, customers in early years receive a benefit that is denied to customers in later years even though those customers will be paying for the underlying asset and the related ADIT. The Commission notes ComEd's concerns and finds that ComEd's longer amortization period for unprotected plant-related to EDIT is reasonable.

The Commission further notes that the AG's argument for an abbreviated amortization period is based on the premise that customers have already funded the balances being amortized. However, as ComEd explains, when a tax deduction is taken, two journal entries are recorded – one to establish a deferred tax liability, and one to establish a current tax payable. ComEd asserts that both journal entries are for the same amount, and they have opposite effects on the revenue requirement, essentially



cancelling each other out. Thus, as ComEd explains, customers do not pay for ADIT because they receive an equal credit of current tax expense that negates this “payment.” The Commission rejects the premise relied upon by AG and CUB – namely that ComEd’s customers have already funded the underlying ADIT.

## **VI. RATE OF RETURN**

### **A. Capital Structure**

ComEd states that it used its actual capital structure as of December 31, 2017 to determine its proposed 2017 Reconciliation and 2019 Initial Rate Year Revenue Requirements. ComEd Ex. 3.0 at 4-5. ComEd notes that its actual capital structure excludes goodwill, and is comprised of 47.11% equity and 52.89% long-term debt. *Id.* Staff believes this capital structure reasonably balances the cost advantage of tax deductible interest expense that results from employing debt as a source of capital with the financial strength needed to raise capital under most capital market conditions that results from employing common equity as a source of capital. Staff Ex. 3.0 at 2-3. No party proposed an adjustment to ComEd’s capital structure. Therefore, the Commission approves ComEd’s rates of return for the 2017 Reconciliation Year and the 2019 Initial Rate Year.

### **B. Cost of Capital Components**

#### **1. Rate of Return on Common Equity**

ComEd asserts that its total allowed ROE is 8.69%. ComEd Ex. 3.0 at 6; ComEd Ex. 2.01, Sch. FR D-1. In 2017, ComEd achieved all of its performance metrics, and therefore made no metrics-related ROE adjustment. ComEd Ex. 3.0 at 6. No party contests ComEd’s total allowed ROE, and it is therefore approved.

#### **2. Cost of Long-Term Debt**

ComEd asserts that its 2017 cost of long-term debt is 4.56%. ComEd Ex. 3.0 at 5; ComEd Ex. 2.01, Sch. FR D-1, line 12. No party contests ComEd’s cost of long-term debt, and it is therefore approved.

#### **3. Cost of Short-Term Debt**

ComEd asserts that its 2017 cost of short-term debt is 1.24%. ComEd Ex. 3.0 at 5; ComEd Ex. 2.01, Sch. FR D-1, line 13. No party contests ComEd’s cost of short-term debt, and it is therefore approved.

#### **4. Overall Weighted Cost of Capital**

ComEd asserts that the overall weighted cost of capital in the 2017 Reconciliation Year is correctly determined as follows:

|                           | Weight | Cost  | Weighted Cost |
|---------------------------|--------|-------|---------------|
| Common Equity             | 47.11% | 8.69% | 4.09%         |
| Long-Term Debt            | 52.89% | 4.56% | 2.41%         |
| Short-Term Debt           | 0.00%  | 1.24% | 0.00%         |
| Cost of Credit Facilities |        |       | 0.02%         |
| Total Weighted Average    | 100%   |       | 6.52%         |

ComEd Ex. 2.01, Sch. FR D-1, line 21.

ComEd states that the overall weighted cost of capital in the 2019 Initial Rate Year is identical, and correctly determined as follows:

|                           | Weight | Cost  | Weighted Cost |
|---------------------------|--------|-------|---------------|
| Common Equity             | 47.11% | 8.69% | 4.09%         |
| Long-Term Debt            | 52.89% | 4.56% | 2.41%         |
| Short-Term Debt           | 0.00%  | 1.24% | 0.00%         |
| Cost of Credit Facilities |        |       | 0.02%         |
| Total Weighted Average    | 100%   |       | 6.52%         |

ComEd Ex. 2.01, Sch. FR D-1, line 21.

No party contests ComEd's overall weighted cost of capital, and it is therefore approved.

## **VII. REVENUES<sup>1</sup>**

The Commission approves ComEd's revenue amount.

## **VIII. COST OF SERVICE AND RATE DESIGN**

Cost of service issues are generally uncontested in FRU proceedings. This docket is intended to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the 2019 Rate year. Rate design matters are not at issue in this formula rate update case; instead they were addressed in a separate rate design tariff filing. See, e.g., *Commonwealth Edison Co.*, Docket No. 13-0318, Order (Dec. 18, 2013); *Commonwealth Edison Co.*; Docket No. 17-0049, Order (July 26, 2017). The cost of

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<sup>1</sup> To the extent there are any contested issues regarding the revenues generated by the Marketplace, net of expenses, these issues are addressed in Section V.B.1, above.

service, rate design, and the resulting charges are uncontested, and are therefore approved.

### **1. Updated Embedded Cost of Service Study**

ComEd's updated Embedded Cost of Service Study ("ECOSS") incorporates two changes approved in Docket No. 17-0049. See *Commonwealth Edison Co.*, Docket No. 17-0049, Order. First, it incorporates a seven-year rolling average of historical residential and non-residential coincident peak ("CP") and non-coincident peak ("NCP") cost allocators to weather-normalize the CP and NCP cost allocation factors. ComEd Ex. 7.0 at 5-7. Second, it removes the cost allocator and related calculations associated with the AMI pilot. *Id.* The ECOSS is uncontested and is therefore approved.

### **2. Updated Billing Determinants**

ComEd presented historical weather-normalized billing determinants for 2017, which are based on the same methodology used in all of ComEd's rate cases and formula rate updates since 2009. ComEd Ex. 7.0 at 8. ComEd adjusted the number of customers in certain delivery classes consistent with the methodology approved in Docket No. 11-0721 and as directed in subsequent rate design tariff filings. *Id.* The updated billing determinants are uncontested and are therefore approved.

### **3. Updated Delivery Service Charges**

ComEd updated its delivery service charges by populating the rate design model with Commission directives from Docket 17-0049. ComEd Ex. 7.0 at 9-13. The updated charges are uncontested and are therefore approved.

### **4. Bill Impacts**

ComEd presented the class rates of return at the delivery service charges approved by the Commission in the 2017 FRU, and the rates of return at the updated delivery service charges, which will be effective beginning in the January 2019 monthly billing period. ComEd Ex. 7.0 at 13-16; ComEd Ex. 7.04. ComEd also presented an analysis of the overall electric service bill impacts that may result from the application of the updated delivery service charges, compared to the charges effective January 2018. ComEd Ex. 7.0 at 13-16; ComEd Ex. 7.05.

## **IX. TARIFF UPDATES**

### **A. SBO Credit Update**

ComEd updated the Single Bill Option ("SBO") credit to properly reflect the changes in the embedded costs associated with this credit that are included in the updated ECOSS. ComEd Ex. 7.0 at 17; ComEd Ex. 7.06. No party proposed an adjustment to the updated SBO credit. It is therefore approved.

### **B. Distribution Loss Factor Update**

As a result of its updated Distribution Loss Study, ComEd also updated its Distribution Loss Factors. ComEd Ex. 7.0 at 17-18. The updated Distribution Loss Factors were not contested in this case, and are therefore approved.

## **X. OTHER FINDINGS**

### **A. Original Cost Finding**

ComEd requests that the Commission, as it has in past FRU Orders, approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2017. ComEd Ex. 2.0 at 54. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2017 is \$21,245,845,000. *Id.* Subtracting capitalized incentive compensation, costs recovered in riders, other costs disallowed in prior Commission orders, and such costs capitalized in 2017 results in the original cost of plant in service of \$21,189,824,000. *Id.* at 54. The Commission approves this amount.

ComEd explains that, per the final Orders in Docket Nos. 14-0312, 15-0287, 16-0259, and 17-0196, the original cost calculated excludes assets that are recovered through Rider Energy Efficiency and Demand Response Adjustment ("Rider EDA"), Rider Purchased Electricity ("Rider PE"), and Rider Purchase of Receivables with Consolidated Billing ("Rider PORCB"). As stated in the 2014, 2015, and 2016 FRU Orders, for those assets excluded from original cost, the Commission will make separate original cost findings. See *Commonwealth Edison Co.*, Docket No. 14-0312, Order at 106 (Dec. 10, 2014); *Commonwealth Edison Co.*, Docket No. 15-0287, Order at 6 (Dec. 9, 2015); *Commonwealth Edison Co.*, Docket No. 16-0259, Order at 44 (Dec. 6, 2016); 2017 FRU, Order at 39.

### **B. Reporting Requirements**

#### **1. EIMA Investments**

ComEd presented evidence in its case in chief identifying its EIMA-related expenditures included in the 2017 Reconciliation Revenue Requirement and in the projected plant additions included only in the Initial Rate Year 2019 Revenue Requirement. ComEd asserts this data meets the Commission's requirements as set forth in Docket No. 12-0321. *Commonwealth Edison Co.*, Docket No. 12-0321, Order at 98 (Dec. 19, 2012). Furthermore, in Docket No. 13-0318, the Commission noted that ComEd agreed to Staff's recommendation that it identify by category cumulative actual EIMA investments in addition to annual actual investments for each year. *Commonwealth Edison Co.*, Docket No. 13-0318, Order at 85. ComEd states that it provided this data in ComEd Ex. 3.01.

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

#### **2. Reconciliation Year Plant Additions**

In the Commission's final Order in Docket No. 13-0318, the Commission set out a table detailing the plant additions placed into service in the reconciliation year. *Commonwealth Edison Co.*, Docket No. 13-0318, Order at 90-91. In this proceeding, ComEd provided a similar summary of the investments placed into service under Section 16-108.5 during 2017. ComEd Ex. 3.0 at 22. ComEd also provided a similar table detailing the plant additions projected to be placed into service during 2018. *Id.* at 23. No party contests that ComEd has provided the required information. Accordingly, the

Commission finds that ComEd has satisfied its obligation to provide the required plant addition information.

### **3. Contributions to Energy Low-Income and Support Programs**

The PUA requires ComEd to make certain contributions to low-income and other energy assistance programs. See 220 ILCS 5/16-108.5(b-10). These contributions included \$10 million per year, over five years, in customer assistance costs that are not recoverable, and that ComEd has removed in full from its revenue requirement. ComEd Ex. 4.0 at 26. ComEd states it has presented evidence demonstrating that its commitments have been met through the sponsorship of various initiatives under ComEd's CARE programs, through which ComEd assists customers that face financial hardship and have difficulty paying their electric utility bills by helping them avoid disconnection. *Id.* at 26. Moreover, ComEd notes that, on February 20, 2018, it filed its Annual Customer Assistance Report for 2017 with the Commission. *Id.* at 27. This report specifies the programs that were funded and reports the amount of money each program received, further demonstrating ComEd's compliance with its obligation to fund customer assistance programs. *Id.* at 27. No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by Section 16-108.5. Therefore, the Commission approves ComEd's reporting of Contributions to Energy Low-Income and Support Programs.

### **C. Wages and Salaries Allocator Utilized in Rider PE and Rate BESH**

In direct testimony, Staff affirmed that ComEd provided the information necessary for Staff to make a recommendation regarding the value of the wages and salaries ("W&S") allocator to be used in the determination of rates under Rider PE. Staff Ex. 1.0 at 13. ComEd provided this data in ComEd Ex. 2.04, and Staff agreed that the W&S allocator applicable to supply is 0.45% and had no objection to ComEd's calculation of the allocator. *Id.*; ComEd Ex. 2.04, WPA-5, page 1, line 1. ComEd agrees with the language Staff proposed, and no other party has contested the calculation or objected to the proposed language.

## **XI. CONCLUSION**

For the reasons stated herein, the Commission approves Commonwealth Edison Company's proposed 2019 Rate Year Net Revenue Requirement as set forth in the attached appendices, approves the original costs of ComEd's electric plant in service as of December 31, 2017, makes the required factual findings in support thereof, and authorizes and directs ComEd to make a compliance filing implementing the resulting rates and charges. These updates are applicable to delivery services provided by ComEd beginning on the first day of its January 2019 billing period, subject to ComEd's final compliance filing and the rulings in this Order.

## **XII. FINDINGS AND ORDERING PARAGRAPHS**

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;
- (4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is \$9,512,652,000 for the 2017 Reconciliation Year Revenue Requirement and \$10,675,257,000 for the 2019 Initial Rate Year Revenue Requirement;
- (5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 6.52% for the 2017 Reconciliation Year and 6.52% for the 2019 Rate Year Initial Revenue Requirement; these rates of return incorporating a return on common equity of 8.69% in each year, on long-term debt of 4.56%, and on short term debt of 1.24%;
- (6) the rates of return set forth in Finding (5) result in tariffed operating revenues of \$2,696,799,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of \$696,027,000;
- (7) the Commission, based on Commonwealth Edison Company's proposed original cost of plant in service as of December 31, 2017, before adjustments, of \$21,245,845,000, and reflecting the Commission's determination adjusting that figure, unconditionally approves \$21,189,824,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2017;
- (8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual tariffed revenues of \$2,696,799,000. Such revenues in addition to other revenues will provide ComEd with an opportunity to earn the rates of return set forth in Finding (5);
- (9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;
- (10) new charges authorized by this Order shall become effective beginning with the first day of the January 2019 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated informational sheets to be effective with the first day of the January 2019 monthly billing period; Commonwealth Edison Company shall provide supporting work

papers to the Staff of the Commission concurrently with such informational compliance filing;

- (11) that the approved 2019 Initial Rate Year Revenue Requirement includes \$94,850,501 of projected plant additions expected to be placed in service in 2018 by Commonwealth Edison Company in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

|  |                     |
|--|---------------------|
| Distribution infrastructure improvements<br>(URD program, mainline cable system<br>refurbishment and replacement program,<br>Ridgeland 69kV cable replacement program) | \$0                 |
| Training facility construction or upgrade<br>programs (construction of training facilities<br>program)   | \$0                 |
| Wood pole inspection, treatment, and<br>replacement  | \$0                 |
| Reducing the susceptibility of storm-related<br>damage (storm hardening program)   | \$0                 |
| Total electric system upgrades, modernization<br>programs, and training facilities   | <u>\$0</u>          |
| Additional smart meters  | \$76,669,833        |
| Distribution automation and associated<br>cyber secure data communication network  | \$0                 |
| Substation micro-processor relay upgrades  | \$18,180,668        |
| Total upgrade and modernization of transmission<br>and distribution infrastructure and Smart Grid<br>electric system upgrades  | \$94,850,501        |
| Total projected incremental 2018 plant<br>additions in compliance with Section 16-<br>108.5(b)(1) of the PUA   | <u>\$94,850,501</u> |

- (12) that the approved Reconciliation Revenue Requirement for 2017 includes \$296,659,925 of plant additions placed in service in 2017 by ComEd in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. The detail of these actual plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements  
(URD program, mainline cable system

|   |                      |
|---|----------------------|
| refurbishment and replacement program,<br>Ridgeland 69kV cable replacement program)   | \$113,925,076        |
| Training facility construction or upgrade<br>programs (construction of training facilities<br>program)                        | \$0                  |
| Wood pole inspection, treatment, and<br>replacement   | \$246,946            |
| Reducing the susceptibility of storm-related<br>damage (storm hardening program)  | \$33,832,248         |
| Total electric system upgrades, modernization<br>programs, and training facilities  | <u>\$148,004,270</u> |
| Additional smart meters   | \$132,629,083        |
| Distribution automation and associated<br>cyber secure data communication network   | \$2,948,605          |
| Substation micro-processor relay upgrades   | \$13,077,967         |
| Total upgrade and modernization of transmission<br>and distribution infrastructure and Smart Grid<br>electric system upgrades | \$148,655,655        |
| Total projected incremental 2017 plant<br>additions in compliance with Section 16-<br>108.5(b)(1) of the PUA                  | <u>\$296,659,925</u> |

IT IS THEREFORE ORDERED that the updated charges in Commonwealth Edison Company's initial filing shall not go into effect.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file a compliance filing in accordance with Findings (8), (9) and (10) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said compliance filing, with updated charges to be effective with the first day of the January 2019 monthly billing period; work papers supporting the compliance filing shall be provided to the Staff of the Commission concurrently with the filing of said compliance filing.

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding (8) above reflects \$296,659,925 of plant additions placed in service in 2017 by Commonwealth Edison Company, and \$94,850,501 of projected plant additions expected to be placed in service in 2018 by Commonwealth Edison Company, in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Public Utilities Act.

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



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

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

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

By Order of the Commission this 4<sup>th</sup> day of December, 2018.

(SIGNED) BRIEN SHEAHAN

Chairman