STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	
Revenue-neutral tariff changes related to rate design.	**:**	**24-0378**
	:	

ORDER

Dated: January 16, 2025

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By the Commission:

I. INTRODUCTION

On May 23, 2024, Commonwealth Edison Company ("ComEd") filed with the Illinois Commerce Commission ("Commission") a Petition pursuant to Section 16-105.5(a) and (c) of the Public Utilities Act ("Act"), 220 ILCS 5/16-105.5 (a) and (c), to approve its proposed revenue-neutral tariff changes and its proposed delivery time of use rate. The tariff filing included ComEd's direct testimony and attached exhibits.

The purpose of this rate design investigation ("RDI") proceeding is to consider "revenue-neutral tariff changes…which shall present the Commission with an opportunity to suspend the tariffs and consider revenue-neutral tariff changes related to rate design." 220 ILCS 5/16-105.5(c)(1). Pursuant to Sections 16-105.5(a) and (c) of the Act, ComEd is required to either propose revenue-neutral tariff changes or refile existing tariffs without changes every three years. Section 16-105.5 also authorizes a utility that files a Multi-Year Rate Plan ("MYRP") pursuant to Section 16-108.18, as ComEd did, to file a revenue neutral RDI separate from the MYRP. 220 ILCS 5/16-105.5(a) and (c). Section 5/16-105.5 (c)(1) states: "the electric utility must submit its separate revenue-neutral rate design filing no later than 3 years after the date on which the Commission's most recent final rate design order was entered for the electric utility." ComEd's most recent rate design order was entered on May 27, 2021, in Docket No. 20-0832. *Commonwealth Edison Co*., Docket No. 20-0832, Order (May 27, 2021).

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

ComEd, Staff of the Commission ("Staff"), the Office of the Illinois Attorney General ("AG"), and the City of Chicago ("City" or "COC") filed appearances. The following parties filed for and were granted leave to intervene in this proceeding: the Chicago Transit Authority ("CTA"); Citizens Utility Board ("CUB"); Retail Energy Supply Association ("RESA"); the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively known as "Metra"); Illinois Competitive Energy Association ("ICEA"); Nucor Steel Kankakee, Inc. ("Nucor"); Illinois Industrial Consumers ("IIEC"); Walmart, Inc. ("Walmart"); Environmental

Defense Fund ("EDF"); Environmental Law & Policy Center ("ELPC"), Vote Solar ("VS"), and Union of Concerned Scientists ("UCS") (collectively known as "ELPC/VS/UCS"); Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively known as "Joint Solar Parties" or "JSP"); Data Center Coalition; Building Owners and Managers Association of Chicago ("BOMA/Chicago"); CITGO Petroleum, Charter Dura-Bar, Inc., Magid Glove and Manufacturing Company, Metropolitan Water Reclamation District of Greater Chicago as members of the Coalition to Request Equitable Allocation of Costs Together (collectively known as "REACT").

B. Procedural History

Pursuant to notice as required by law and the rules and regulations of the Commission, duly authorized Administrative Law Judges ("ALJs") held a hearing via teleconference on June 27, 2024 and entered a schedule for this matter. On July 17, 2024, the ALJs granted ComEd's Motion for Entry of a Protective Order.

On or about July 24, 2024, Staff, the City, and the following intervenors filed direct testimony: Walmart, IIEC, CTA, Metra, CUB/EDF, ICEA/RESA, Nucor, ELPC/VS/UCS, and REACT. ComEd filed its rebuttal testimony on August 19, 2024. On September 16, 2024, Staff, the City, and the following intervenors filed their rebuttal testimony: Metra, IIEC, CTA, CUB/EDF, BOMA/Chicago, REACT, and ICEA/RESA.

An evidentiary hearing was held on October 10, 2024. A status hearing was held on October 16, 2024, to allow the parties to conduct further discovery limited to ComEd witness Leick's modification to the allocation of the Beneficial Electrification Plan ("BE Plan") Customer Education costs between the residential and non-residential sectors from a 50/50 split to a 15/85 split. On October 24, 2024, the ALJs granted the uncontested motions by ComEd, Staff, and REACT to admit additional exhibits.

On October 28, 2024, Initial Briefs ("IB") were filed by ComEd, Staff, the AG, the City, REACT, ICEA/RESA, Nucor, CUB/EDF, Metra, IIEC, CTA, BOMA/Chicago, and ELPC/VS/UCS. On November 7, 2024, ComEd, Staff, the AG, the City, REACT, ICEA/RESA, CUB/EDF, IIEC, Metra, CTA, ELPC/VS/UCS, and JSP filed Reply Briefs ("RB"). On November 8, 2024, ComEd, Staff, the AG, the City, REACT, ICEA/RESA, Nucor, CUB/EDF, Metra, IIEC, CTA, and BOMA/Chicago filed Position Statements or Draft Orders. On November 12, 2024, the record was marked "Heard and Taken."

A Proposed Order was served on December 4, 2024. On December 13, 2024, ComEd, Staff, the City, REACT, ICEA/RESA, CUB/EDF, ELPC/VS/UCS, Metra, CTA, and IIEC filed Briefs on Exceptions ("BOE"). On December 20, 2024, ComEd, Staff, the City, REACT, ICEA/RESA, CUB/EDF, Metra, CTA, and Walmart filed Reply Briefs on Exceptions ("RBOE").

III. SCOPE OF THE PROCEEDING

A. ComEd's Position

ComEd states that this proceeding is the rate design portion of ComEd's MYRP. *See generally Commonwealth Edison Co*., Docket Nos. 22-0486/23-0055/24-0181 (Consol.) ("MYRP Docket"). By statute, the scope of RDIs is limited to revenue-neutral tariff changes to the allocation of delivery service costs among ComEd's rate classes and

changes to the rate design of Rate MRPP – Multi-Year Rate Plan Pricing ("Rate MRPP"). *See* 220 ILCS 5/16-105.5(a), (c) (referencing the "revenue-neutral rate design component" of an electric utility's MYRP for delivery service rates). Specific issues raised by REACT, ICEA/RESA, CUB/EDF, CTA, Metra, and the City are out of scope for an RDI because they are unrelated to the allocation of ComEd's Commission-approved delivery service revenue requirement, propose that the Commission exceed its authority, and/or are not revenue neutral.

According to ComEd, the Commission has only the authority granted to it by the legislature through statutes, and an agency's statutory power to act defines its jurisdiction. *See Bus. & Pro. People v. Ill. Com. Comm'n*, 136 Ill. 2d 192, 243 (1989); *Ill. Power Co. v. Ill. Com. Comm'n*, 111 Ill. 2d 505, 510 (1986). In every ComEd RDI brought under Section 16-108.5(e), the Commission has concluded that the scope of the proceeding was "limited to considering revenue neutral tariff changes to allocation of delivery service costs among ComEd's rate classes and possible changes to the rate design formula of Rate DSPP – Delivery Service Pricing and Performance ("Rate DSPP") in accordance with provisions of subsections 16-108.5(e) of the Act." *Commonwealth Edison Co*., Docket No. 13-0387, Order at 3 (Dec. 18, 2013) ("2013 RDI Order"); *see also Commonwealth Edison Co*., Docket No. 17-0049, Order at 2 (Jul. 26, 2017) ("2017 RDI Order"); *see also Commonwealth Edison Co*., Docket No. 20-0832, Order at 2 (May 27, 2021) ("2020 RDI Order"). The language of Section 16-105.5 mirrors its predecessor statute, Section 16-108.5(e), so these rulings remain instructive in the current proceeding. In addition, the Commission has consistently concluded that ComEd's RDIs are "not about determining, or adjusting, ComEd's Commission-approved delivery service revenue requirement." 2017 RDI Order at 3.

In direct contravention of the scope as defined above, ComEd states that ICEA/RESA seek to move a substantial amount – $500 million – which is nearly 25% of ComEd's Commission-approved delivery service revenue requirement to supply service. *See generally* ICEA/RESA Ex. 1.0; ICEA/RESA Ex. 2.0. The Commission must reject this position because it is, by definition, not a revenue neutral proposal and is in contravention of the statutory parameters of Section 16-105.5. The Commission has previously decided that this exact issue is outside the scope of a revenue neutral rate design investigation and is instead appropriately decided in a rate case. *See* 2013 RDI Order at 57-58 (addressing customer care costs and directing that the merits of these costs be addressed in a rate case). ICEA/RESA witness Giacchino even admitted that under his narrow view of his proposal, at the very least, a portion of the proposed shift would not be revenue neutral. ICEA/RESA Ex. 2.0 at 13. That is, in Giacchino's view, he admits his proposal would reduce the total revenue that ComEd collects, i.e., the return on the capital assets that he shifts to supply. *See id*. The Commission should make that same determination again here and reject ICEA/RESA's proposal to alter the apportionment of any costs between distribution and supply as out of scope.

Regarding modifying Rider NS – Nonstandard Services and Facilities ("Rider NS"), as a threshold matter, changes to other tariffs – the revenue requirements of which are not established in ComEd's MYRP – fall outside the delivery service rate design component of this filing. 220 ILCS 5/16-102 (defining delivery service). ComEd states that the City, Metra, and CTA seek to modify ComEd's Rider NS in ways that run contrary

to fundamental RDI principles. For example, revenues collected under Rider NS are not part of ComEd's delivery service revenue requirement, but rather are collected directly from the customer requiring the service. Rider NS, ILL. C. C. No. 10, 1st Revised Sheet No. 277 (noting ComEd will provide nonstandard services or facilities "provided [that ComEd] is allowed to recover from the retail customer the costs of furnishing, installing, owning, operating, replacing, and maintaining such services or facilities"). Furthermore, the City seeks to amend Rider NS in a manner that would ultimately shift costs from the City to all other ComEd customers. *See* COC Ex. 1.0 at 18-19; ComEd Ex. 10.0 at 8-9; ComEd Ex. 9.0 REV. at 5. The Commission should reject such proposals here in favor of workshops where potential modifications to Rider NS can be evaluated more fully.

ComEd states that CTA and Metra propose changes to ComEd's Rider DE – Distribution System Extensions ("Rider DE") that are similarly flawed. *See* CTA/Metra Ex. 1.0 at 17 (requesting wholesale exclusion from Rider DE for public transit agencies); ComEd Ex. 5.0 at 69 (noting the Commission rejected this same proposal in the BE Plan 1 Order (*citing Commonwealth Edison Co.*, Docket Nos. 22-0432/22-0442 (Consol.), Order at 251 (Mar. 23, 2023) ("BE Plan 1 Order"). ComEd argues that the Commission should reject these proposals and find that the proposed changes to ComEd's Rider DE are outside the scope of an RDI and better addressed in other forums like ComEd's rate cases.

ComEd explains that REACT proposes changes to ComEd's Rider CFRA – Carbon-Free Resource Adjustment ("Rider CFRA"), recommending that ComEd increase the frequency of its updates to the Carbon-Free Resource ("CFR") Adjustment. While the REACT proposal is not contested and should be adopted, the Commission should also determine generally that issues pertaining to ComEd's Rider CFRA are not related to the allocation of ComEd's delivery service revenue requirement.

ComEd argues that REACT's proposal to modify ComEd's Rider SPWS REBATE – Solar Paired with Storage Rebate ("Rider SPWS") is both a collateral attack on the SPWS RH Order, and out of scope for this RDI. *See Commonwealth Edison Co.*, Docket No. 21-0812, Order on Rehearing at 24 (Aug. 11, 2022) ("SPWS RH Order"). The proposal should be rejected. ComEd explains that REACT's proposed changes to ComEd's Rider SPWS would alter the Commission-approved way ComEd calculates Incremental Interconnection Costs, which are a subset of the costs rebated under Rider SPWS. *See* REACT Ex. 3.0 at 10, 12. The Commission already explicitly evaluated and rejected REACT's proposal in the SPWS RH Order. *See generally* SPWS RH Order. Indeed, the same witness (REACT witness Marhoefer) who offered the testimony at issue in this proceeding offered testimony on behalf of Magid Glove (a member of REACT) in the Rider SPWS proceeding. REACT Ex. 3.0 at 4. Furthermore, costs rebated under Rider SPWS are not part of ComEd's distribution revenue requirements and the mechanics are not related to ComEd's delivery service rate design. ComEd Ex. 4.0 at 6. Therefore, ComEd asserts that the Commission should find that REACT's proposal also falls outside the scope of this delivery service rate design investigation.

ComEd states that CUB/EDF made two proposals that violate the statutory scope of this proceeding and must be rejected. First, CUB/EDF propose that ComEd deduct from its distribution revenue requirement projected deferred distribution system investments that could result from adoption of ComEd's proposed distribution time of use

("TOU") ("DTOU") rate. CUB/EDF Ex. 1.0 at 20-21. According to ComEd, the Commission should reject this proposal because it is not revenue neutral and is therefore outside the statutory scope of Section 16-105.5. *See* ComEd Ex. 4.0 at 16-17.

Second, CUB/EDF propose that ComEd be ordered to offer a supply TOU ("STOU") rate. CUB/EDF Ex. 1.0 at 24. CUB/EDF's proposal asks the Commission to exceed its authority under Section 16-103(e) of the Act, which states that "[t]he Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section." 220 ILCS 5/16-103(e). Because CUB/EDF's proposals for a supply TOU cannot be granted by the Commission, and because they are not relevant to the cost allocation of ComEd's delivery service revenue requirement, the proposals must be rejected as out of scope for this proceeding.

All of these intervenor proposals are out of scope because they are not revenue neutral, are unrelated to the allocation of ComEd's Commission-approved MYRP delivery service revenue requirement, and/or propose that the Commission exceed its authority. Inclusion of these issues in this proceeding has turned this statutorily focused revenue neutral delivery service allocation proceeding into something much more cumbersome and difficult for all parties to litigate. In its final Order, the Commission should reaffirm the limited scope of this statutory RDI. This proceeding is not a catch-all for any and every concern with a filed rate or rider; it is a proceeding to address the revenue-neutral cost allocation of ComEd's Commission-approved delivery service revenue requirement.

B. Staff's Position

Staff states that pursuant to Section 16-105.5(a) and (c) of the Act, ComEd is required to either propose revenue-neutral tariff changes or refile existing tariffs without changes. In other words, any changes made must be revenue neutral, ensuring that no additional costs are transferred between customer groups.

Staff further states that Section 16-108.18 authorized ComEd to file an MYRP. Specifically, Section 16-108.18(d)(1) provides that, if an electric utility had a performance-based formula rate in effect under Section 16-108.5 as of December 31, 2020, the utility may file a petition proposing tariffs implementing a 4-year MYRP for *delivery service rates* to be effective for January 1, 2024, through December 31, 2027. Section 16-105.5, pursuant to which this docket was initiated, authorizes a utility to file the RDI petition separate from an MYRP to establish the rate design for the rates established in the MYRP. Thus, this proceeding is limited to evaluating the design of delivery service rates.

C. City's Position

The City's proposals to address ComEd's unjust and unreasonable administration of Rider NS fall squarely within the confines of this proceeding. The City refutes ComEd's baseless assertions otherwise, noting that ComEd's position contravenes the unambiguous language of the Act, prior Commission findings on Rider NS, and ComEd's position in other proceedings.

The City explains that the Act expressly authorizes the Commission to consider revenue neutral tariff changes related to rate design in this proceeding. 220 ILCS 5/16-105.5(c)(1). Here, the City has persuasively demonstrated that ComEd's administration of Rider NS is unjust and unreasonable and therefore in need of revision in this case.

Thus, the City states that pursuant to its authority under the Act the Commission must act to address this deficiency in this proceeding.

The City argues that ComEd's unduly narrow read of the scope of this case cannot be squared with the legislature's directives set forth in P.A. 102-0662, which directs the Commission to holistically consider the impact of all of ComEd's tariffs and rate design options. The purpose of this rate design investigation must be read in conjunction with the statutory provisions relating to ComEd's Multi-Year Integrated Grid Plan ("MYIGP"), which provides in part that:

> It is the policy of this State that holistic consideration of all related investments, planning processes, ***tariffs***, rate design options, programs, and other utility policies and plans shall be required. To that end, the Commission shall consider, comprehensively, the impact of all related plans, ***tariffs***, programs, and policies on the Plan and on each other[.]

220 ILCS 5/16-105.17(f)(4) (emphasis added). This mandate to conduct a holistic consideration of all related tariffs further supports the City's position to revise Rider NS in this case.

The City asserts that the Commission's prior findings on Rider NS, as well as the record evidence in this case, make clear that issues pertaining to Rider NS are properly within the scope of this rate design investigation. The City cites the Commission's prior findings that Rider NS "concerns a basic principle of rate design." *Commonwealth Edison Co.*, Docket No. 05-0597, Order on Reh'g at 68 (Dec. 20, 2006) (*citing* ComEd Ex. 62.0 at 13-14). The City's witness further explained in this case how Rider NS implicates cost causation questions:

> Those customers paying for standard service and facilities pay base rate charges. If a customer requires nonstandard service and facilities, then that customer must pay for the costs of such service and facilities that exceed the cost of standard service and facilities. Without the necessary clarity and transparency around the costs recovered under Rider NS, ComEd could be collecting rate base related expenses from individual customers under Rider NS or recovering the costs of Rider NS facilities under other Riders. Furthermore, as Rider NS specifies, a portion of the nonstandard service and facilities could be used for other retail customers (COC Ex. 1.02 at 3), further raising cost causation questions.

COC Ex. 1.0 at 8-9. ComEd witness Perkins confirmed that "Rider NS embodies a cornerstone principle of distribution ratemaking and has for decades" (ComEd Ex. 9.0 REV. at 6) and also explained the relationship between costs recovered under Rider NS and those under base rates. *See id.* at 9 ("[i]n the last five years, the collection of these customer advances has avoided at least $500 million of incremental costs that would have been borne by all customers if they had not been collected from these cost-causers.").

The City also highlights the Commission's prior findings that this rate design investigation is the appropriate forum to address revisions to Rider NS. In ruling on arguments pertaining to Rider NS in ComEd's initial Grid Plan proceeding in the MYRP Docket, the Commission stated that "any concerns regarding the rate design delivery service cost allocation and rate design methodologies shall be considered in ComEd's forthcoming [Rate Design Investigation] proceeding." MYRP Docket at 500; *see also* MYRP Docket, Proposed Order on Refiling at 332 (Oct. 18, 2024) ("[t]he Commission further agrees with ComEd and the City that revenue-neutral modifications to Rider NS should be raised in ComEd's rate design investigation proceeding."). The City states that it relied on these findings, and the Commission has no reasoned basis to depart from them here.

Finally, the City notes that ComEd's argument that Rider NS tariff revisions are outside of the scope of this proceeding directly contradicts its position in other proceedings. ComEd's position in the Refiled Grid Plan proceeding is that "changes to tariff language and rate design, if revenue neutral, would be properly addressed in the pending rate design investigation." MYRP Docket, Proposed Order on Refiling at 332. Thus, the City makes clear that Rider NS issues are appropriately within the scope of this proceeding, and the Commission has an obligation to resolve these concerns in this docket.

D. CUB/EDF's Position

It appears to CUB/EDF that in rate design proceedings under Section 16-105.5, the intent of the General Assembly is to pursue the policy objectives of the rate plan and performance metric statute (Section 16-108.18), which must be consistent with the grid plan statute (Section 16-105.17). Under Section 16-105.17(f)(4), it is the policy of the State that "holistic consideration of all related investments, planning processes, tariffs, rate design options, programs, and other utility policies and plans shall be required." 220 ILCS 5/16-105.17(f)(4). CUB/EDF thus conclude that this rate design proceeding must proceed with the purpose of accomplishing the policy directives of the comprehensive performance metrics, grid plan, and rate plan statutes of Sections 16-105.17 and 16-108.18.

To achieve the same policy objectives in this rate design proceeding, CUB/EDF assert the Commission should consider its authority in those performance metric and grid planning statutes, which include authority to consider TOU rates for both delivery and supply. 220 ILCS 5/16-108.18(e)(2)(A)(v). Similarly, the Commission's authority includes consideration of "time-variant or dynamic pricing programs." 220 ILCS 5/16-105.17(f)(4)(A). And Public Act ("P.A.") 102-0662 is designed to require "rate design options, technologies or programs that facilitate load flexibility." 220 ILCS 5/16-105.17(f)(2)(K). CUB/EDF argue TOU rates and load flexibility are important tools in pursuing the General Assembly's finding that Illinois must "reduce energy usage generally and especially during times of greatest reliance on fossil fuels, and enhance customer engagement opportunities." 220 ILCS 5/16-105.17(a)(2). P.A. 102-0662 further states the Commission should similarly encourage efficient energy use. 220 ILCS 5/16-105.17(a)(6). And finally, P.A. 102-0662 provides that the Commission should consider rate designs that "enable greater customer engagement, empowerment, and options for energy services." 220 ILCS 5/16-105.17(d)(4).

In its Order approving ComEd's Rate Residential Time of Use Pricing Pilot ("RTOUPP"), the Commission recognized that TOU pricing for bundled electric service achieves many goals set forth in P.A. 102-0662, including load flexibility, reduced greenhouse gas emissions, customer value and choice, and improved competition:

> The Commission further finds that Rate RTOUPP will make the benefits of time-variant rates available to residential customers in a manner that involves less price risk than hourly or real-time pricing. The time-sensitive rates will be based on historic prices which will be designed to encourage users to shift their load. Load-shifting has the potential to lower individual's bills, benefit the grid by promoting grid resilience, benefit the environment through [Greenhouse Gas] reduction, positively impact distribution system investments, *and provide for flexible rate design while promoting value, choice and competition*.

Commonwealth Edison Co., Docket Nos. 18-1725/18-1824 (Consol.), Order at 8 (Oct. 2, 2019) (emphasis added) ("RTOUPP Order"). In this docket, CUB/EDF witness McCann also testified that a TOU rate could accomplish legislative goals of peak load flexibility, reduced and efficient energy usage, increased customer engagement, and customer options. CUB-EDF Ex. 1.0 at 9-11.

Finally, the Illinois General Assembly instructed the Commission not to approach rate design cases under P.A. 102-0662's Section 16-105.5 like it did under formula rates law Section 16-108.5. P.A. 102-0662 found that processes and outcomes under the formula rates law were not sufficiently transformative in urgently moving utilities to the State's energy policy goals and may have resulted in excess utility spending and guaranteed profits without meaningful improvements in customer experience, rate affordability, or equity. 220 ILCS 5/16-108.18(a). Rate design proceedings under the formula rates law, Section 16-108.5, limited rate design changes to "performance-based formula rates." 220 ILCS 5/16-108.5(e). In contrast, Section 16-105.5 contains no limiting language, leading CUB/EDF to conclude it provides general and relatively unlimited authority to explore rate design issues so long as they are revenue neutral:

> The electric utility's separate revenue-neutral rate design filing may either propose revenue-neutral tariff changes or refile the existing tariffs without change, *which shall present the Commission with an opportunity to suspend the tariffs and consider revenue-neutral tariff changes related to rate design*.

220 ILCS 5/16-105.5(c) (emphasis added). The Commission has broad authority to consider utility actions beyond any specific conduct questions in a docket, even a rate case filed under Section 9-201. *Ill. Power Co. v. Ill. Com. Comm'n*, 382 Ill. App. 3d 195, 203 (2003).

CUB/EDF dispute Staff and ComEd's interpretation of Section 16-105.5. Both Staff and ComEd argue that this docket is limited to delivery service rates. CUB/EDF contend both ComEd and Staff's arguments leave out the important regulatory mandates under P.A. 102-0662 to focus on load flexibility and reducing electricity usage during times

of fossil fuel reliance. CUB/EDF argue Staff and ComEd also fail to acknowledge the Commission's broad authority to consider utility actions beyond the specific conduct in question in a docket. *Ill. Power Co.,* 382 Ill. App. 3d 195, 203.

First, CUB/EDF contend ComEd's reading of Section 16-105.5 is so narrow that it would require the Commission to dismiss large and important sections of ComEd's own Petition. ComEd takes the position that this case is "limited to revenue-neutral tariff changes to the allocation of delivery service costs among ComEd's rate classes and changes to the rate design of [Rate MRPP']" ComEd IB at 5. Yet, CUB/EDF note, ComEd's own Petition ventures beyond Rate MRPP, asking for Commission approval to change Rate Basic Electric Service Hourly Pricing ("BESH"), Rate Retail Delivery Service ("RDS"), Rate RESS (Retail Electric Supplier Service), and Rider DG (Distributed Generation) Rebate. ComEd IB at 56-57 *citing* ComEd Exs. 3.01 and 6.01. ComEd also proposes a new Rider Electric Vehicle Elective Notification ("EVEN"), which CUB/EDF point out, again, is not Rate MRPP. Therefore, CUB/EDF contend, ComEd's argument on the scope of this proceeding is inconsistent with ComEd's own Petition. CUB/EDF urge the Commission to reject ComEd's approach.

Second, ComEd compares Sections 16-105.5 and 16-108.5, and argues that Section 16-105.5 "mirrors" 16-108.5. As noted above, P.A. 102-0662 states that Illinois' formula rates law, including Section 16-108.5, was not sufficiently transformative in urgently moving Illinois' utilities to the State's energy and climate goals. Section 16-108.5, the formula rate design statute, repeatedly limited rate design issues to "performance-based formula rates." 220 ILCS 5/16-108.5. P.A. 102-0662's rate design statute, Section 16-105.5, contains no such limiting language.

Third, CUB/EDF take issue with ComEd's revenue neutrality argument. Revenue neutrality, explained CUB/EDF witness McCann, requires the Commission to avoid rate designs that would create windfall profits, and it should minimize cost shifting among customers. CUB-EDF Ex. 2.0 at 5. Dr. McCann contended the purpose of implementing TOU rates is to lower overall utility costs. *Id*. Dr. McCann testified that rate design must assign billing determinants accordingly in determining the contributions to revenues of customers on the TOU rate compared to customers not on the TOU rate. *Id*. Assuming the cost of service is equal for both sets of customers misses the entire goal of TOU rates, in Dr. McCann's view, and it would result in an overcollection of revenues. *Id*. Despite this, ComEd assumes that customer behavior will not change, which Dr. McCann argued violates these revenue neutrality principles. *Id*. CUB-EDF argue their proposal addresses the flaws in ComEd's approach and consequently is revenue neutral. *Id*.

Fourth, CUB/EDF contend Staff's reading that Section 16-105.5 is limited strictly to distribution rates as part of the Section 16-108.18 MYRP cannot be correct. The scope of this proceeding includes all rate design issues within the Commission's authority, with the only limit being that rate designs be revenue neutral. 220 ILCS 5/16-105.5. Rate design decisions here go beyond the MYRP filed by ComEd under Section 16-108.18. For instance, ComEd is required by the Commission's Order to propose EVEN to incentivize electric vehicle ("EV") owners to participate in TOU rate offerings. BE Plan 1 Order at 258. That rate design requirement springs from proceedings held under Illinois' Electric Vehicle Act ("EVA"), 20 ILCS 627/45, and not ComEd's multi-year integrated grid plan under Section 16-108.18. CUB/EDF argue Staff's overly narrow reading of the scope

of this proceeding is not consistent with Commission practice and prior orders and must be rejected.

Fifth, CUB/EDF argue ComEd's reliance on Section 16-103(e) is misplaced. CUB/EDF maintain the Commission has authority to consider and require a supply TOU rate in this proceeding. CUB/EDF ask the Commission to find that the issues raised in this case are within the scope of this proceeding and rule accordingly.

E. Metra's Position

Metra argues that there is no dispute that the Flow-Through Adjustment issues raised by Metra and CTA fall squarely within the scope of this proceeding. As such, that issue is uncontested.

However, ComEd contends that issues relating to Rider NS and Rider DE may not fall within the scope of this proceeding. While Metra was not the target of ComEd's August 12, 2024 Motion to Strike Portions of the Pre-Filed Direct Testimony of certain REACT, ICEA, and CUB/EDF Witnesses ("ComEd's Motion to Strike"), ComEd stated in a footnote that among other Intervenors, Metra "submitted testimony that is also beyond the narrow scope of this case." ComEd Motion to Strike at 2, n.1. Specifically, ComEd argues that testimony in CTA/Metra Joint Ex. 1.0 related to Rider NS and Rider DE is outside the scope of this proceeding. *Id*. at 3. The ALJs denied ComEd's Motion to Strike "because the testimony raises questions of fact that should be resolved based on the weight of the evidence" and because the testimony "allows the Commission to review a complete factual record to serve as a basis for a correct and legally sustainable decision as set forth by 83 Ill. Adm. Code 200.25(a)." Notice of ALJs Ruling (Aug. 27, 2024). Accordingly, Rider NS and Rider DE issues are appropriately raised here.

Expanding further on the ALJs' ruling, Metra notes that both the Illinois Rules of Evidence and Commission Rules call for a comprehensive and complete evidentiary record. To begin, Illinois Rule of Evidence 401 defines "relevant evidence" as:

> Evidence having *any tendency* to make the existence of *any fact* that is of consequence to the determination of the action *more probable or less probable* than it would be without the evidence.

Ill. R. of Evid. 401 (emphasis added). Under Illinois Rule of Evidence 402 "[a]ll relevant evidence is admissible, except as otherwise provided by law." Ill. R. of Evid. 402. The Commission adopts an expanded standard, as compared to civil cases in Illinois, for the admissibility of evidence. Section 200.610(b) of the Commission Rules states:

> Evidence - In contested cases, and licensing proceedings, the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed. *However, evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs*.

83 Ill. Adm. Code 200.610(b) (emphasis added). This provision originates from the Rules of Evidence provision in the Illinois Administrative Procedure Act ("APA"). *See* 5 ILCS 100/10-40(a).

Metra contends that consistent with this expansive standard, the Commission Rules also advocate for an expansive evidentiary record. Section 200.25(a) of the Commission Rules addresses "Standards for Discretion" and states the goal of the hearing process:

> Integrity of the fact-finding process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable decision.

83 Ill. Adm. Code 200.25(a). Section 200.340 states:

> It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information.

83 Ill. Adm. Code 200.340. Therefore, so long as Metra demonstrates that its testimony regarding Rider NS and Rider DE are relevant to the substance of this proceeding, the Commission may consider and weigh the evidence that it presents.

Metra's arguments on Rider NS and Rider DE are directly relevant to ComEd's Rate Design. Indeed, ComEd initiated this proceeding by petitioning the Commission "under Section 16-105.5(a) and (c) of the [ ] Act…to approve its proposed revenue-neutral tariff changes and its proposed delivery time of use rate." ComEd Pet. For Approval of Revenue-Neutral Tariff Changes Related to Rate Design at 1. Section 16-105.5(a) permits ComEd to file the rate design component of its MYRP separately from its underlying MYRP filing. 220 ILCS 5/16-105.5(a).

As REACT correctly notes in its Response to ComEd's Motion to Strike, Section 16-105.5(c)(1) of the Act enables the Commission to consider "revenue-neutral tariff changes related to rate design" that do not change the amount of revenue ComEd is entitled to collect, and the Commission may change which customers ComEd collects the revenue from or how ComEd collects those costs. Docket No. 24-0378, Verified Response of the Coalition to Request Equitable Allocation of Costs Together to the Motion to Strike of Commonwealth Edison Company at 2–3 (Aug. 19, 2024).

CTA/Metra propose revisions to Rider NS that are "revenue-neutral tariff changes related to rate design," which would direct ComEd to change how it collects revenues under Rider NS and Rider DE. Namely, the revisions would exempt members of the Railroad ("RR") Class from "any non-standard service charges or fees" under Rider NS for:

> (i) any line extension by the Company or any design, installation, or construction for facilities that are used to provide charging of electric transit buses, (ii) extensions or additions to support electric rail service, or (iii) design, installation, or construction of facilities that are used to provide charging for battery-powered train sets.

CTA/Metra Joint Ex. 1.03 at 1. Instead, ComEd would treat those services as standard services for the RR Class. *Id*. Because CTA/Metra's proposed revisions to Rider NS only direct ComEd to change how ComEd classifies its service under Rider NS for the RR Class and do not deny ComEd any cost recovery, they are revenue neutral.

CTA/Metra's proposed revisions to Rider DE would exempt the RR Class from providing a deposit or letter of credit for "any line extension by the Company or the design, installation, or construction of facilities that are used to provide charging of electric transit buses, extensions to service electric trains, or charging for battery-powered train sets." *Id*. at 3. Metra contends that because this proposed change would only alter ComEd's procedure for transactions with the RR Class under Rider DE and does not deny ComEd any cost recovery, it is revenue neutral.

ComEd witness Perkins testified that Metra witness Bachman's testimony on Rider DE and Rider NS is out of scope because "[t]he mechanics and application of [Rider DE and Rider NS] are not related to ComEd's delivery services rate design" and "[t]hey do not allocate costs of ComEd's delivery services or its delivery services revenue requirement." ComEd Ex. 4.0 at 11. Staff agrees with ComEd's interpretation.

Both parties argue that since ComEd filed a Multi-Year Integrated Grid Plan ("MYIGP") and an MYRP for delivery service rates, that necessarily means that the rate design under review here only concerns delivery service rates. ComEd IB at 5; Staff IB at 4. However, that limitation is not present in the plain language of Section 16-108.18 and Section 16-105.5 of the Act. Metra observes that Section 16-108.18, the statute through which ComEd files the MYRP, states, in relevant part, that:

> The Commission shall approve tariffs establishing rate design *for all delivery service customers* unless the electric utility makes the election specified in Section 16-105.5, in which case the *rate design shall be subject to the provisions of that Section*.

220 ILCS 5/16-108.18(d)(10) (emphasis added). Accordingly, Metra asserts there is no requirement that this proceeding's rate design review be limited to delivery service rates; rather, the statute requires that the rate design be established for delivery service customers. Metra notes that this interpretation is shared by multiple intervenors in this proceeding; indeed, such intervenors request tariff amendments outside of delivery service rates. This interpretation makes sense given ComEd's delivery service customers are often subject to rate design issues unrelated to and independent from setting delivery service rates. Section 16-108.18(d)(10) also states that if the utility "makes the election specified in Section 16-105.5," then "rate design shall be subject to" the provisions of Section 16-105.5. *Id*. Section 16-105.5 does not include a requirement or limitation for rate design to only be related to delivery service rates.

ComEd states that subsections (a) and (c) of Section16-105.5 support its argument that the rate design investigation is "limited to revenue-neutral tariff changes to the allocation of delivery service costs among ComEd's rate classes and changes to the rate design of [Rate MRPP]." ComEd IB at 5. However, ComEd's constrained statutory interpretation is not supported by the plain language of such subsections. Subsection (a)

of Section 16-105.5 simply permits ComEd to file the rate design component of its MYRP separately from its MYRP:

> An electric utility that files a general rate case pursuant to Section 9-201 of this Act or a Multi-Year Rate Plan pursuant to Section 16-108.18 of this Act *may omit the rate design component of such filing and subsequently separately file this component with the Commission*, subject to the requirements of subsections (b) and (c) of this Section.

220 ILCS 5/16-105.5(a) (emphasis added). Nothing in subsection (a) constrains the rate design review solely to the rate design of delivery service rates. And, as previously established, Section 16-108.18 does not limit ComEd's rate design proceeding to only delivery service rates. Nor does Subsection (c) of Section 16-105.5. That provision clearly states that if ComEd elects to make the separate rate design filing, then Section 16-105.5(c) applies.

Similarly, the statute does not limit the Commission to consider only issues related to "delivery service rate design" or cost allocation concerning ComEd's "delivery services revenue requirement." *See also* Verified Response of the Coalition to Request Equitable Allocation of Costs Together to the Motion to Strike of Commonwealth Edison Company at 3.

Moreover, Metra contends that ComEd's and Staff's arguments directly contradict the Commission's finding in the MYIGP proceeding regarding the proper case in which to address revisions to the terms of Rider NS and Rider DE. There, Metra and CTA proposed modifications to Rider NS and Rider DE. Metra states that in its Order, the Commission declined to consider those modifications, expressly referring them to this proceeding:

- In response to CTA/Metra's proposed revisions to Rider NS, the Commission stated that "any concerns regarding the rate design delivery service cost allocation and rate design methodologies shall be considered in ComEd's forthcoming RDI proceeding." MYRP Docket, Order at 500.
- Likewise, in response to CTA/Metra's proposed revisions to Rider DE, the Commission clearly reiterated that "any concerns regarding the rate design delivery service cost allocation and rate design methodologies shall be considered in ComEd's forthcoming RDI proceeding." *Id*. at 497.

While the Commission's directive resolves this issue, in that same case, Staff witness Hamidu agreed with the Commission that this proceeding is the appropriate venue for CTA/Metra to present their rate design methodologies. MYRP Docket, Staff Ex. 21.0 RGP at 9 (July 17, 2024). Further, ComEd witness Leick argued that CTA/Metra should address rate design issues in this RDI proceeding. MYRP Docket, ComEd Ex. 61.0 at 3 (Aug. 14, 2023). In particular, Mr. Leick testified that CTA/Metra raised two rate design-related issues: first, that ComEd should use a cost allocation methodology distinct from the Commission-approved embedded cost of service study ("ECOSS"); and second, that Rider NS and Rider DE should be revised. *Id*. at 4, 6. Metra contends that in addition to the Commission's directive, these statements from ComEd and Staff show that it is

entirely appropriate for the Commission to consider revisions to Rider NS and Rider DE in this proceeding.

As such, the Commission should find that Metra's proposed revisions to Rider NS and Rider DE fall directly within the scope of this proceeding.

F. REACT's Position

REACT maintains that ComEd improperly challenged certain issues raised by REACT and other parties as being "beyond the scope" of the instant proceeding. REACT explains ComEd improperly asserts that this proceeding is limited to "the rate design portion of ComEd's [MYRP]" and "the allocation of Commission-approved delivery service revenue requirement[.]" ComEd IB at 5. REACT notes that ComEd filed a motion to strike testimony earlier during this proceeding raising the identical issues. The ALJs rejected ComEd's attempt to bar certain issues from being addressed, concluding that "the testimony raises questions of fact that should be resolved based on the weight of the evidence." Notice of ALJs Ruling (Aug. 27, 2024). The ALJs also found that "denying the Motion allows the Commission to review a complete factual record to serve as a basis for a correct and legally sustainable decision as set forth by 83 Ill. Adm. Code 200.25(a)." *Id*.

REACT explains that ComEd's arguments are contrary to the plain meaning of the statute and are an improper and untimely collateral attack on the ALJs' prior ruling in the instant proceeding.

As an initial matter, REACT notes that ComEd mischaracterizes the testimony that was presented. Specifically, ComEd asserts that issues related to shifting delivery service revenue to supply revenue to reflect the utilization of ComEd customer call centers is outside the scope of this proceeding because it is not "revenue neutral". *See* ComEd IB at 6. However, REACT is not advocating that ComEd should collect less revenue; rather, REACT's position is that ComEd should recover supply-related costs from its supply customers. *See* REACT Ex. 6.0 at 20-24. ComEd further asserts that the Commission cannot address issues related to the way in which ComEd is implementing Rider SPWS Rebate because it is a "collateral attack on the Commission's orders in . . . Docket No. 21-0812" and because costs rebated under Rider SPWS "are not part of ComEd's distribution revenue requirements and the mechanics are not related to ComEd's delivery service rate design." ComEd IB at 8. However, REACT's testimony explained that it is ComEd's current administration of Rider SPWS that is contrary to the SPWS RH Order – thus, REACT's position is the exact opposite of a collateral attack on those Orders. *See* REACT Ex. 7 at 6. Further, this is a clear case of a revenue-neutral rate design issue: ComEd is overcharging one set of delivery services customers (customers eligible for a Rider SPWS rebate) and undercharging all other customers (who cover the costs of the rebate).

REACT notes that it is the plain text of Section 16-105.5 of the Act that defines the scope of this proceeding stating, "The electric utility's separate revenue-neutral rate design filing may either propose revenue-neutral tariff changes or refile the existing tariffs without change, which shall present the Commission with an opportunity to suspend the tariffs and consider revenue-neutral tariff changes related to rate design." 220 ILCS 5/16-105.5(c)(1). REACT observes that this language empowers the Commission in this proceeding to consider all "revenue-neutral tariff changes *related to rate design*." *Id*.

(emphasis added). That is, although the Order in this case may not alter the amount of revenue ComEd is entitled to collect, it may change which customers ComEd collects that revenue from (e.g. residential, small commercial, large and extra-large load customers) or how it collects those costs (e.g. customer charge, demand charge, energy charge). These are the types of issues that the Commission historically addressed in the "rate design" portions of ComEd's general rate cases. *See, e.g*., *Commonwealth Edison Co.*, Docket No. 01-0423, Order at 138-154 (Mar. 28, 2003); *Commonwealth Edison Co*., Docket No. 05-0597, Order at 176-272 (July 26, 2006).

REACT explains that it would be improper for the Commission to read limitations into the Act as requested by ComEd. *See, e.g*., *People v. Glisson*, 202 Ill. 2d 499, 504 (2002) ("where a statute is clear and unambiguous, courts cannot read into the statute limitations, exceptions, or other conditions not expressed by the legislature").

First, REACT notes that the statute does not limit this case to "allocation of *delivery service* costs *among* ComEd's rate classes and possible changes to the rate design *of* [Rate MRPP])." ComEd IB at 5 (emphasis added). Although those are examples of the types of rate design issues that may be addressed, there is nothing in the statute that suggests that the Commission is limited to considering only those issues. Rather, the statute broadly references "changes related to rate design," refers generally to "tariffs," not just a single rate, and is not limited to only "delivery services" rate design. 220 ILCS 5/16-105.5(c)(1). The plain language of the Act makes it clear that it is appropriate for the Commission to address the rate design of rates and riders, including but not limited to Rate MRPP.

Second, REACT observes that the statute does not prohibit the Commission from revisiting previously issued rulings regarding rate design, what ComEd refers to as "collateral attacks." *See, e.g*., ComEd IB at 8. Rather, the statute expressly contemplates that the Commission will consider "revenue-neutral tariff changes" to rates that the Commission previously approved. 220 ILCS 5/16-105.5(c)(1).

Moreover, ComEd provides no reason for why the General Assembly would have limited the scope of the Commission's authority as ComEd proposes or why the Commission should read into the statute limitations that would tie the Commission's hands and prevent it from considering issues that parties have raised, addressed and fully briefed. REACT maintains that the result ComEd seeks is directly contrary to the way in which the Commission is to exercise its discretion. *See* 83 Ill. Adm. Code 200.25. To remove these issues into separate proceedings as ComEd proposes, with fewer parties to review the testimony and arguments set forth would undermine the fact-finding process and be less expeditious, less convenient and more costly.

Finally, REACT explains that ComEd's argument also is an improper attack on the prior ALJs' decision that ComEd did not appeal. ComEd did not request an interlocutory review of that decision, making ComEd's arguments on this issue in its briefs untimely and improper. *See* 83 Ill. Adm. Code 200.520.

G. ICEA/RESA's Position

ICEA/RESA argue that the allocation of costs between delivery and supply is clearly within the scope of the present docket. According to ICEA/RESA, ComEd's

arguments attempting to limit or restrict the scope of this docket to exclude supply-delivery allocation are not supported and lack merit. ICEA/RESA urge that the Commission can and should direct ComEd to fairly allocate costs between supply and delivery.

As an initial matter, ICEA/RESA begins, the ALJs already acknowledged and implicitly held that supply-delivery allocation is very much in scope in this docket. ICEA/RESA note that ComEd moved to strike all the testimony of ICEA/RESA witnesses Lacey and Giacchino, along with the testimony of other parties including CUB/EDF and REACT. ICEA/RESA further note that ComEd made the scope of this proceeding (both independently and relative to the Commission's Order in Docket No. 23-0055) a centerpiece of its argument that ICEA/RESA witness Lacey and Giacchino's testimony should be stricken. ComEd Motion to Strike at 9. ICEA/RESA highlight that ComEd further argued that "[t]here is no universe in which this proposal can be seen as anything but a collateral attack on that Commission order approving ComEd's distribution revenue requirements for 2024 through 2027." *Id*. at 10.

ICEA/RESA counter that such a universe not only exists but was reflected when the ALJs rejected ComEd's Motion to Strike "because the testimony raises questions of fact that should be resolved based on the weight of the evidence." ALJs Ruling (Aug. 27, 2024). ICEA/RESA argue that the existence of a fact question to which the testimony responds necessarily means that the facts are within scope. ICEA/RESA note that ComEd did not seek interlocutory review of the ALJs' August 27, 2024, ruling denying ComEd's Motion to Strike, nor did ComEd file a renewed Motion to Strike at the deadline prior to the evidentiary hearing.

ICEA/RESA conclude that the ALJs got it right. First, ICEA/RESA argue, the statutory framework supports addressing ComEd's allocation of costs between supply and delivery functions in the present docket. ICEA/RESA highlight that Section 16-105.5(b) provides in full, describing the initial filing made by ComEd in this docket, that:

> If the electric utility makes the election described in this Section, then the filing shall be consistent with the rate design and cost allocation across customer classes approved in the Commission's most recent order regarding the electric utility's request for a general adjustment to its rates entered under Section 9-201, subsection (e) of Section 16-108.5, or Section 16-108.18 of this Act.

220 ILCS 5/16-105.5(b). ICEA/RESA contend that the General Assembly chose the words "general adjustment in rates" when describing the proceedings under Sections 9-201, 16-108.5(e), or 16-108.18 when it could have chosen a more specific term such as "delivery rates" to describe the relevant scope of the predicate case. *Cf*. 220 ILCS 5/16-108.25 (referring to transition of "delivery rates"). ICEA/RESA note that not once in Section 16-105.5 are the terms "delivery" or "distribution" used. *See* 220 ILCS 5/16-105.5.

However, and more to the point, ICEA/RESA continue, Section 16-105.5(b) only describes a starting point ("the filing") and merely requires it to be "consistent" with "rate design and cost allocation" from, in this case, the 2020 RDI Order (the most recent 16-108.5(e) case involving ComEd). According to ICEA/RESA, even if the Commission

found that "the Commission's most recent order" referred to ComEd's MYRP (which remains under litigation), Section 16-105.5 only presents that order as a starting point with which ComEd's initial filing must be "consistent." ICEA/RESA detail that Dr. Giacchino presents allocation factors and principles for choosing allocation factors for any set of costs based on the nature of the costs — even if the Commission changed the total universe of costs that ComEd could recover, Dr. Giacchino's principles could easily be applied. ICEA/RESA note that nothing in either Mr. Lacey's or Dr. Giacchino's testimony seeks to modify or otherwise change any of ComEd's costs to be allocated in this proceeding. *See, e.g.*, ICEA/RESA Ex. 1.0 at 4; ICEA/RESA Ex. 2.0.at 13.

ICEA/RESA reiterate that the statute provides no indication that the proceeding should be restricted to delivery. Instead, ICEA/RESA counter, Section 16-105.5 uses broad language to describe the scope, giving the Commission an opportunity to consider revenue-neutral tariff changes related to rate design. And that is exactly what ICEA/RESA state they have proposed in this case – a revenue-neutral rate design proposal for the Commission's consideration. According to ICEA/RESA, ComEd's overall revenue will remain neutral without regard to whether any particular cost or costs are recovered through supply or delivery as long as the costs are not reduced. ICEA/RESA state they do not propose to reduce any recoverable costs.

ICEA/RESA note that Staff, separately, makes a statutory-based argument that supply-delivery allocation is out of scope in the present docket. Respectfully, ICEA/RESA continue, Staff's statutory interpretation is not accurate and leads to absurd results. ICEA/RESA argue that Staff's basis appears to be that this docket is triggered by the MYRP, which is delivery-focused, meaning this docket must also be delivery-focused. ICEA/RESA conjecture that while Staff does not quote actual statutory language, it appears from context that Staff is relying on the following passage:

> An electric utility that files a general rate case pursuant to Section 9-201 of this Act or a Multi-Year Rate Plan pursuant to Section 16-108.18 of this Act may omit the rate design component of such filing and subsequently separately file this component with the Commission, subject to the requirements of subsections (b) and (c) of this Section.

220 ILCS 5/16-105.5(a). However, ICEA/RESA counter, when read in context of the entire statute, filing of an MYRP while omitting the rate design component is only the *trigger* for the present docket. ICEA/RESA highlight that subsections (b) and (c) do not reference delivery and only require revenue neutrality.

Moreover, ICEA/RESA continue, Staff's interpretation would lead to absurd results, essentially allowing ComEd to evade accountability for proper supply-delivery allocation. ICEA/RESA note that ComEd successfully sought to keep supply-delivery allocation out of its MYRP docket:

> There is nothing in Section 16-105.17, which governs this proceeding concerning the Refiled Grid Plan, that allows or enables adjustments to rate designs or cost allocations. Rate design and cost allocation issues are explicitly within the scope of Section 16-108.18, or, if the utility elects to litigate

> them separately from a multi-year rate plan, governed by Section 16-105.5. See 220 ILCS 5/16-105.5; 220 ILCS 5/16-108.18(d)(10). *Indeed, ComEd has recently filed a petition for revenue neutral rate design changes in . . . Docket No. 24-0378 under Section 16-105.5, in which ComEd seeks a Commission determination on rate design and cost allocation*.

MYRP Docket, ComEd Motion to Strike (June 7, 2024) (emphasis added). ICEA/RESA state that the ALJs in the consolidated MYRP docket accepted ComEd's arguments, holding "Similarly, testimony related to cost allocation and rate design is also beyond the scope of this proceeding and would be more appropriately addressed in ComEd's currently docketed rate design investigation or some other proceeding." MYRP Docket, ALJ Ruling (June 17, 2024). ICEA/RESA note that ComEd explicitly argued — and the ALJs (and ultimately the Commission on interlocutory review) agreed — that "cost causation" was out of scope in ComEd's MYRP. ICEA/RESA contend that if the Commission accepts Staff's interpretation, then there is no docketed proceeding where cost allocation can be addressed as long as ComEd elects to exclude it from its MYRP.

Second, ICEA/RESA highlight that Commission precedent supports that supply-delivery allocation is within scope of a revenue-neutral allocation docket. ICEA/RESA note that the Commission rejected arguments by ComEd in the 2013 RDI Order that allocation between supply and delivery was not revenue neutral or outside the scope of the proceeding (initiated under Section 16-108.5(e)). According to the final Order's summary of positions, ICEA/RESA recount:

> ComEd argues that the REACT adjustment is improper because it seeks to reduce ComEd's Commission-approved delivery service revenue requirement in delivery service charges. ComEd states that the proposal is not revenue requirement neutral and thus, outside the scope of this proceeding.

2013 RDI Order at 52. ICEA/RESA note that ComEd raised concerns that supply-delivery allocation was outside of the scope of a revenue-neutral allocation docket and thus the issue was properly before the Commission for determination. ICEA/RESA counter that the Commission held clearly and explicitly that supply-delivery cost allocation was a proper issue to be addressed in a revenue-neutral allocation docket. *Id*. at 57. ICEA/RESA contend that the Commission makes clear the relief reflected the lack of record evidence due to ComEd's refusal to provide responsive evidence and not because the issue was out of scope. *See id*. ICEA/RESA conclude that allocating between supply and delivery — whether just for "customer care costs" in the 2013 RDI Order or all costs as recommended by ICEA/RESA witnesses Lacey and Giacchino — is within scope in a revenue-neutral allocation docket.

ICEA/RESA state that thanks to the ALJs' August 27, 2024 ruling and as explicitly contemplated in the ruling itself, the Commission has a full evidentiary record to address proper allocation of supply and delivery costs. The Commission has been provided with the full and complete factual record it needs to issue a substantive ruling on supply-delivery allocation. The Commission should clearly and expressly hold that supply-

delivery allocation is within the scope of this docket and use the full evidentiary record developed in this docket to make a substantive ruling properly allocating costs between supply and delivery.

H. Commission Analysis and Conclusion

In this proceeding ComEd elected to file the rate design component of its MYRP, as permitted under Section 16-105.5 of the Act. The Commission maintains that its authority under Section 16-105.5 is limited to consideration of revenue-neutral changes to the rate design and allocation of costs among ComEd's rate classes, including possible changes to the rate design of Rate MRPP and other delivery services tariffs.

While cognizant of these constraints, the Commission examines specific proposals ComEd alleges are outside the scope. For reasons specific to these proposals, the Commission finds that additional rate design-related issues should be addressed in this proceeding. The bases for examining these issues are discussed in the relevant sections of this Order. Broadly, review of such issues is supported by consideration of: administrative efficiency, including conservation of already strained time and resources; prior directives to address specific issues in this proceeding; and P.A. 102-0662's mandate that the impact of ComEd's tariffs and rate design be holistically considered. 220 ILCS 5/16-105.17(f)(4). Reasonable anticipation of new services and tariffs in furtherance of P.A. 102-0662's objectives support more inclusive rate design proceedings.

IV. SUPPLY-DELIVERY REVENUE REQUIREMENT ALLOCATION

A. Proposed Movement of Delivery Costs to Supply

1. ICEA/RESA's Position

ICEA/ RESA strongly disagree with the statement or implication that the allocations addressed by ICEA/RESA witnesses Lacey and Giacchino allocate ComEd's revenue requirement. According to ICEA/RESA, Mr. Lacey and Dr. Giacchino recommend allocation of costs between supply and delivery. ICEA/RESA further contend that neither Mr. Lacey nor Dr. Giacchino seek to modify ComEd's capital investments, nor ComEd's rate of return.

ICEA/RESA counter that as the Illinois Supreme Court identified, costs are only one component of the revenue requirement:

> In establishing the rates that a public utility is to charge its customers, the Commission bases the determination on the company's operating costs, rate base, and allowed rate of return. A public utility is entitled to recover in its rates certain operating costs. A public utility is also entitled to earn a return on its rate base, or the amount of its invested capital; the return is the product of the allowed rate of return and rate base. The sum of those amounts—operating costs and return on rate base—is known as the company's revenue requirement. The components of the ratemaking determination may be expressed in the classic ratemaking

> formula R (revenue requirement) = C (operating costs) + Ir (invested capital or rate base times rate of return on capital).

Citizens Utils. Co. of Ill. v. Ill. Com. Comm'n, 124 Ill.2d 195, 200-201 (1988) (internal quotes omitted). ICEA/RESA argue that the only question raised by Mr. Lacey and Dr. Giacchino is where portions of "C" are recovered — through supply or through delivery. ICEA/RESA note that nothing in this fundamental formula has changed. ICEA/RESA note that if the Commission believes removing capital costs to preserve revenue neutrality, ICEA/ RESA believe the Commission has the factual record and authority to do so.

Accordingly, ICEA/RESA continue, the Commission should view this common outline heading for what it is — an administrative convenience to organize issues to be decided by the Commission. ICEA/RESA argue that the common outline heading should not be read as making a substantive conclusion as to the various parties' arguments organized underneath it. Indeed, ICEA/RESA conclude, they strongly disagree that revenue requirements are being allocated in this docket.

ICEA/RESA note that the Commission set out the foundational principal for the approach of ICEA/RESA witnesses Lacey and Giacchino in the 2013 RDI Order:

> The Commission agrees that ComEd is entitled to collect its customer care costs and entitled to a profit over and above those costs, but pursuant to long established policy, costs are to be collected from the cost causers, who in this case may include supply customers.

2013 RDI Order at 57. ICEA/RESA contend that there is no dispute in this docket whether ComEd's costs are recoverable, meaning it is revenue neutral. ICEA/RESA contend that the relevant question is from whom, which includes to ComEd supply customers — as the Commission pointed out in the 2013 RDI Order, a revenue-neutral allocation docket under a predecessor statute to Section 16-105.5. ICEA/RESA highlight that, as the Commission held in the 2013 RDI Order, a revenue-neutral allocation docket under a predecessor statute, ComEd must recover its costs from the customers that cause them:

> ComEd also argues that because this is a proceeding to determine delivery service costs it would [be] improper to reduce the overall assessment of costs. However, if a fraction of customer service costs are attributable only to supply customers, they should be collected from supply customers and not through delivery service tariffs. *ComEd can recover its costs, just not from the wrong customers*.

2013 RDI Order at 57 (emphasis added).) Thus, ICEA/RESA conclude, the Commission can and should address ICEA/ RESA's arguments on their merits.

In support of their request for reallocation between supply and delivery, ICEA/RESA demonstrate why the Commission must find, based on the record, that: (1) ComEd is currently over-allocating to delivery and under-allocating to supply; (2) this misallocation harms ratepayers, industries including the renewables, efficiency, and retail supply, and the State's policy goals; and (3) ICEA and RESA have presented a fair allocation that ComEd must adopt.

On exceptions, ICEA/RESA provide an alternative reallocation of costs if the Commission decides that allocating costs from delivery to supply is not revenue neutral. ICEA/RESA contend there is sufficient basis in the record to exclude capitalized costs identified by ICEA/RESA witness Giacchino. This alternative proposal would reallocate $343 million to supply services.

a. ComEd is currently over-allocating to delivery and under-allocating to supply.

ICEA/RESA first note that ComEd, through separate proceedings, receives permission to recover a vast array of costs, from operational expenses to capital investments and many categories in between. However, according to ICEA/RESA, while ComEd is a single entity, ComEd essentially operates two Commission rate-regulated businesses: a delivery utility and a supplier to default supply customers. ICEA/RESA note that while ComEd has the exclusive right to deliver electricity to "retail customers" in its service area and has franchise agreements to provide delivery service with many municipalities within that area, ComEd provides default supply service on a non-exclusive, optional basis. ICEA/RESA note that default service is the supply component of Rate BES – Basic Electric Service ("Rate BES") (and Rate BESH – Basic Electric Service Hourly Pricing ("Rate BESH") for larger customers) that any customer may take. *See* ICEA/RESA Ex. 1.0 at 4-5.

ICEA/RESA contend that they presented extensive evidence in this docket on the proper allocation of ComEd's costs between the supply and delivery functions. ICEA/RESA note that witnesses Lacey and Giacchino looked at all aspects of ComEd's service to identify functions that, in part, support default supply. ICEA/RESA argue that while the Commission has several times addressed allocation of "customer care costs" between supply and delivery functions, "[c]ustomer care costs are just a fraction of the total costs to serve default service. Customer care is just one function out of many that provide services that support the provision of default service." ICEA-RESA Ex. 1.0 at 8; *see id*. at 5-6. Thus, note ICEA/RESA, in this docket, the Commission is being asked to apply cost-allocation concepts it has seen and used many times before to a more complete set of costs than those solely related to customer care.

According to ICEA/RESA, the stakes of proper allocation of costs are massive. ICEA/RESA highlight that Mr. Lacey points out, when viewed as a line of business within ComEd, ComEd's default service function is a significant enterprise: "the scope of the default service business in 2023 was an approximately 30 billion kilowatt hour ("kWh") business sold to approximately 3.2 million customers. Over 80% of that load was from residential and small commercial customers. This equates to almost $2 billion in revenue to ComEd." ICEA/RESA Ex. 1.0 at 8. ICEA/RESA contend that ComEd performs an extensive set of transactions and functions in order to operate this business. *See id*. at 9.

ICEA/RESA note that from general economic theory to utility-specific scholars such as Professor James Bonbright and the National Association of Regulatory Utility Commissioners ("NARUC"), all agree that accurate allocation of costs to different functions (such as supply vs. delivery) are of critical importance. ICEA/RESA highlight that Prof. Bonbright explained that the purpose of rate-regulation is to have — in the

absence of competition — rates set to reflect the market price if utilities were subject to competitive forces. *See* ICEA/RESA Ex. 1.0 at 26-27, 35-36. ICEA/RESA further highlight that NARUC has directed that costs be allocated to causers and even (or especially) if utility cost segments such as default service are considered to be like a competitive service, full costs and value should be reflected in the rate. *See id.* at 27-28, 30-33. ICEA/RESA state that it is also common and prudent practice in the (non-rate regulated) business world to allocate costs accurately between business segments to ensure proper investment incentives and to avoid inefficiencies and incorrect internal signals. *See id*. at 37-41.

However, according to ICEA/RESA, ComEd does not follow these principles. ICEA/RESA emphasize that Mr. Lacey argued:

> Neither ComEd's proposed distribution rates nor its default service rates are designed to recognize the costs that ComEd would have incurred to offer an identical product competitively. Instead, its rates appear to be designed to capture the "natural business incentive" articulated in the NARUC Guidelines, by subsidizing the competitive product with services from the regulated entity (i.e. distribution rates), with a captive customer base and a guaranteed collection of rates. ComEd's default service rates are priced at a level that is under-market and the corresponding distribution rates, which are not subject to competitive pressures, are priced above what a fair-market price would yield.

ICEA/RESA Ex. 1.0 at 36-37. ICEA/RESA contend that the result is an over-allocation to distribution and an under-allocation to supply.

More specifically, ICEA/RESA note that Mr. Lacey identified that ComEd arrived at an over-allocation to delivery and under-allocation to supply because its cost categories that address services were primarily directly assigned to delivery rather than allocated between supply and delivery. ICEA/RESA Ex. 1.0 at 21. ICEA/RESA contend that the ultimate result is hundreds of millions of dollars in costs that were 100% directly assigned to the delivery function should have been allocated between supply and delivery based on appropriate allocation factors. *See* ICEA/RESA Ex. 5.0 at 8.

In response to two ComEd arguments, first, ICEA/RESA note that ComEd argues that because "delivery services" are defined broadly by statute, all costs related to delivery services must be directly assigned to the delivery function. *See* ComEd IB at 11-12. ICEA/RESA argue that ComEd appears to conflate the definition of "delivery services" in Section 16-102 — related to ComEd's service obligation to provide "delivery services" under Section 16-103(b) — and a requirement that all costs at all related to delivery services must be directly and exclusively allocated to delivery service customers. ICEA/RESA counter that the Act provides no such requirement. To the contrary, ICEA/RESA respond, in Docket No. 14-0312, the Commission rejected a ComEd "switching study" approach to allocating customer care costs, which only attributed ComEd's perceived marginal cost savings due to customer switching as supply related. *See Commonwealth Edison Co*., Docket No. 14-0312, Order at 103 (Dec. 10, 2014).

ICEA/RESA continue that the Commission also noted the same inconsistency in rejecting ComEd's proposed allocation of $0 from customer care costs to supply in the 2013 RDI Order:

> The Commission notes that ComEd's analyses on all other cost issues are presented as embedded cost studies. On this issue, it has repeatedly emphasized avoided cost studies. It has invariably concluded on the basis of these avoided cost studies that even when there were only a relative handful of delivery service customers, no customer care costs were allocable specifically to its supply customers.

2013 RDI Order at 56. ICEA/RESA argue that consistent with its criticisms and conclusions in the 2013 RDI Order and Docket No. 14-0312, the Commission should once again reject ComEd's marginal cost approach and instead adopt ICEA/RESA's allocation that takes an embedded (average) cost of service approach to properly allocate ComEd's costs to its supply and delivery functions.

ICEA/RESA further note that ComEd argued that ICEA/RESA's model is flawed because it does not assign costs directly to alternative retail electric supplier ("ARES") customers even though ComEd receives substantial revenue from or on behalf of ARES customers for the services that ComEd provides. ICEA/RESA state that ComEd's argument lacks merit. ICEA/RESA respond that ComEd admitted in discovery that ARES already pay for services such as Rider PORCB – Purchase of Receivables with Consolidated Billing ("Rider PORCB") — assigning those costs for recovery again from ARES customers would be requiring double payment. *See* ICEA/RESA Ex. 1.04. ICEA/RESA further respond that Mr. Lacey correctly identified in testimony that Rider PORCB revenue should be excluded from the revenue allocator. *See* ICEA/RESA Ex. 4.0 at 20.

Second, and relatedly, ICEA/RESA note that ComEd cites to criticisms in ComEd witness Leick's direct testimony regarding Dr. Giacchino's allocation model. *See* ComEd IB at 12-13. ICEA/RESA respond that both Mr. Lacey and Dr. Giacchino addressed Mr. Leick's criticisms in rebuttal testimony — frequently accepting in the spirit of narrowing issues ComEd witness Leick's representations for the purposes of this docket in the absence of additional information. *See, e.g.*, ICEA/RESA Ex. 4.0 at 5-9; ICEA/RESA Ex. 5.0 at 2-4. ICEA/RESA highlight that where Mr. Lacey or Dr. Giacchino did not agree, they provided substantive responses. *See, e.g.*, ICEA/RESA Ex. 4.0 at 10-15; ICEA/RESA Ex. 5.0 at 3-5. ICEA/RESA state that ComEd does not cite at all to how Mr. Leick responded to Mr. Lacey's or Dr. Giacchino's issue narrowing or substantive responses. Instead of critiquing the particular allocators proposed by Dr. Giacchino or providing a basis for excluding additional categories from embedded cost allocation, ICEA/RESA point out that Mr. Leick takes an all-or-nothing position that offers only blanket opposition to Dr. Giacchino's proposed allocation. *See* ComEd Ex. 11.0 at 30-31. ICEA/RESA conclude that the Commission has rejected similar all-or-nothing arguments from ComEd in allocating customer care costs many times over, continually rejecting the premise that no customer care costs were attributable to the supply function.

ICEA/RESA assert that ComEd simply cannot justify directly assigning virtually all of its costs to delivery services, even though those costs also support ComEd's supply function. According to ICEA/RESA, the Commission should thus find that ComEd over-allocated to delivery and under-allocated to supply.

b. The consequences of ComEd's over-allocation include impeding Illinois' policy goals favoring expansion of distributed generation and uptake of time-variant supply options.

ICEA/RESA note that contrary to its assertions in its opening Petition, ComEd is not meeting the Commission's directives "in the best way possible" as it alleges. *See* ComEd Petition at 1. Instead, ICEA/RESA retort, ComEd's over-allocation to delivery impedes several policy goals of the General Assembly set out the Act and Illinois Power Agency ("IPA") Act. ICEA/RESA highlight Mr. Lacey's explanation that:

> [C]omEd's proposed under allocation of costs to default service undercompensates net metering customers and subscribers to community renewable generation projects and also artificially make time-variant products (offered by ARES) and time-variant supply rates (offered by ComEd) to appear less attractive. As a result, these changes have not met the Commission's directives in "the best way possible."

ICEA/RESA Ex. 1.0 at 11. According to ICEA/RESA, each of the concerns raised by Mr. Lacey directly and adversely impacts customers, the renewable industry, the efficiency industry, and the state's policy goals — all while allowing ComEd to recover the same costs as it would have with a proper allocation.

First, ICEA/RESA argue that Mr. Lacey demonstrated that when the supply rate is artificially lowered, residential and small commercial customer with net metered behind-the-meter generation eligible for supply-only net metering are undercompensated for their exports to ComEd's distribution system. *See* ICEA/RESA Ex. 1.0 at 12. ICEA/RESA continue that P.A. 102-0662 requires the IPA to procure at least 242 megawatts of distributed renewable energy generation devices powered by solar photovoltaics per year statewide through 2030; artificially suppressing supply net metering value makes achieving those goals unnecessarily more difficult. *See* Docket No. 23-0714, Final 2024 Long-Term Renewable Resources Procurement Plan ("LTRRPP") at 159 (Apr. 19, 2024); 20 ILCS 3855/1-75(c)(1)(C) (new solar procurement requirements from the Adjustable Block program); 1-75(c)(1)(K)(i)-(ii) (requiring at least 40% of the Adjustable Block Program to be from distributed renewable generation devices powered by solar photovoltaics).

Second, ICEA/RESA further argue that Mr. Lacey explained that subscribers to a community renewable generation project receive bill credits at the "price to compare" (i.e. default supply) rate, so under-allocation to supply means that subscribers receive fewer bill credits than they are entitled to receive. *See* ICEA/RESA Ex. 1.0 at 12. ICEA/RESA similarly argue that P.A. 102-0662 requires the IPA to procure at least 174 megawatts of community renewable generation projects powered by solar photovoltaics per year through 2030; unfairly reducing bill credit values from which subscribers derive benefits

benefit and making development riskier. *See* Docket No. 23-0714, Final 2024 LTRRPP at 159; 20 ILCS 3855/1-75(c)(1)(C) (new solar procurement requirements from the Adjustable Block program); 1-75(c)(1)(K)(iii) and (v) (requiring at least 35% of the Adjustable Block Program to be from community renewable generation devices powered by solar photovoltaics).

ICEA/RESA highlight that Mr. Lacey explained that undermining deployment of distributed energy resources such as behind-the-meter solar or community solar impedes the energy transition contemplated by P.A. 102-0662 that seeks to retire fossil-based generation and replace it with new renewable generation — with a large portion of it net metered solar. *See* ICEA/RESA Ex. 1.0 at 14. ICEA/RESA continue that federal policies supporting distributed energy resources such as Federal Energy Regulatory Commission ("FERC") Order 2222 are further undermined by artificially suppressing the value of default supply and thus disincentivizing deployment of new distributed energy resources. *See id.* at 14-16.

In contrast, ICEA/RESA respond, ComEd witness Leick argues the opposite, suggesting that increasing allocation to supply (and in equal amount away from delivery) would subsidize net metering customers and subscribers. *See* ComEd Ex. 5.0 at 48. In response, ICEA/RESA note that Mr. Lacey contended:

> Given that the General Assembly has spoken quite clearly in the net metering statute (16-107.5 of the Public Utilities Act), it is a mere mechanical calculation to take the supply retail rates — which both ComEd and I expect to increase based on accurately allocated costs — and translate them to net metering benefits. It is not for me or anybody else to question the General Assembly's policy decisions in this venue. All I know is the answer is not to artificially deflate retail supply rates by misallocating what should be supply-related costs to the delivery function. Today Rider POGNM [Purchase of Generation Net Metering] and POGCS [Parallel Operation of Retail Customer Generating Facilities Community Supply] customers are not being compensated for a true value of energy but that will change with an accurate allocation of costs to the supply function.

ICEA/RESA Ex. 4.0 at 24-25. ICEA/RESA respond that the Commission should not be fooled by an attempt to turn ComEd's undermining of the State's policy goals on its head by accepting ComEd's self-serving proposition that accurate allocation is a subsidy.

Third, ICEA/RESA continue, Mr. Lacey showed that by under-allocating to supply, the fixed-rate Price to Compare artificially appears more attractive and lower priced relative to time-of-use rates or products offered by both ARES and ComEd. *See* ICEA/RESA Ex. 1.0 at 13. This in turn, ICEA/RESA posit, disincentivizes customer switching to (and encourages customer switching away from) time-of-use rates and other products. ICEA/RESA argue that the General Assembly recently passed P.A. 103-237 that provided foundational data access in support of ARES time-variant products and services, while the General Assembly enacted Section 16-107 of the Act to require

ComEd and Ameren Illinois Company d/b/a Ameren Illinois ("Ameren") to offer residential real-time pricing. ICEA/RESA argue that ComEd's under-allocation to supply undermines the goals of these (in the case of P.A. 103-237, very recently effective) requirements and opportunities.

Fourth, ICEA/RESA note that Mr. Lacey explained that any service — from ARES supply service to efficiency and other curtailment or load shifting — that relies on accurate pricing of supply looks artificially less attractive in the face of under-allocation to (and thus artificially low pricing for) default supply. *See* ICEA/RESA Ex. 1.0 at 13. ICEA/RESA note that the Commission oversees and ComEd administers a massive energy efficiency portfolio. ICEA/RESA argue that all of the values for efficiency and load shifting measures would increase with accurately priced supply rates, while ARES products and services would not be subject to unfair and unmerited competition from an artificially low supply rate.

ICEA/RESA state that it is important to note that the artificially suppressed supply price with all of these adverse practical and policy effects is not a discount or free money for customers. Instead, ICEA/RESA counter, ComEd is simply hiding costs in its delivery function (paid by all customers) that should be allocated to supply function, as explained by Mr. Lacey:

> My proposal, to allocate costs fairly to default service, is also a revenue-neutral tariff change. I do not request a single dime of disallowance of ComEd costs. Instead, my testimony and [ICEA/RESA] witness Dr. Giacchino simply present an approach to accurately allocate costs between supply and delivery functions.

ICEA/RESA Ex. 1.0 at 16. In other words, ICEA/RESA clarify, ComEd's misallocation between supply and delivery harms customers, the distributed renewable generation industry, the efficiency industry, and state policy goals — all while ComEd recovers all the same costs but simply in a way that disadvantages all of these groups.

On reply, ICEA/RESA contend both ComEd and Staff make some form of rate shock argument. ICEA/RESA respond that in this docket are several entities with statutory obligations to act as consumer advocates (including for residential customers) or that function as advocates for a subset of ComEd's customers. ICEA/RESA counter that based on their review, none of those entities have raised rate shock concerns. However, ICEA/RESA continue, even if the Commission takes these rate shock concerns at face value, rate shock is a basis for mitigation and using the Commission's principal of gradualism — not a basis to remain with the status quo.

For instance, ICEA/RESA argue, in Docket No. 10-0467, the Commission rejected arguments that rate shock concerns should prevent increases to cost allocations to certain classes — instead, rate shock meant that increases in allocations should be gradual over time. *See Commonwealth Edison Co*., Docket No. 10-0467, Order at 264 (May 24, 2011). ICEA/RESA note that neither ComEd nor Staff has proposed rate shock mitigation from ICEA and RESA's proposed reallocation of costs and has instead suggested no movement of allocations to accurate reflection of cost causation. ICEA/RESA aver that ICEA and RESA have seen many instances of the Commission

addressing rate shock arguments and the Commission ordering mitigants, but to the knowledge of ICEA and RESA the Commission has not rejected even a proposed rate increase (rather than impose mitigations) due to rate shock.

Second, ICEA/RESA contend that ComEd makes a specious argument that ARES will receive a windfall with increased costs, particularly for a specialized product where the ARES charges the same as ComEd. ICEA/RESA note that the perception of a windfall was debunked:

> ICEA and RESA note that if a product or service has a large profit margin, competitors will be able to offer competing products with less of a profit margin. In other words, if an ARES product tied to Rate BES was no longer competitive in the marketplace, ICEA and RESA as a general matter would expect customers (or in this case municipalities — local governments with access to brokers and consultants) to comparison shop for better pricing. Furthermore, under 815 ILCS 505/2EE(c)(9), all residential and small commercial retail customers may terminate their ARES contract with no early termination fee.

ComEd Ex. 10.07 at 3. ICEA/RESA argue that ComEd incorrectly interpreted this response as supporting its windfall theory (*see* ComEd Ex. 10.0 at 37) when in reality it explains why customers are likely to see the competitive market offer savings compared to the (properly allocated) supply price.

ICEA/RESA conclude that neither the rate shock argument nor ComEd's specious ARES windfall argument address the negative impact ComEd's misallocation have on net metering customers, customers considering or implementing energy efficiency, or customers considering or on TOU rates or ARES products. ICEA/RESA argue that ComEd does not — because it cannot — rebut that its misallocation directly undermines the goals of P.A. 102-0662 and its ambitious clean energy goals from deployment of solar to expansion of energy efficiency to uptake of TOU supply options.

ICEA/RESA urge the Commission to thus find that ComEd's misallocation causes harm to customers and the policy goals of the State of Illinois.

c. ICEA/RESA witness Giacchino's allocation factors fairly allocate between supply and delivery.

ICEA/RESA argue that the Commission should adjust ComEd's supply-delivery allocation to fairly allocate costs and avoid the harms from its current under-allocation to supply, which the Commission can do by adopting ICEA/RESA witness Giacchino's allocation methodology. ICEA/RESA highlight that Dr. Giacchino, in collaboration with Mr. Lacey, identified the universe of cost categories (updated after ComEd provided additional information in the rebuttal testimony of Mr. Leick) that impact both supply and delivery and a fair allocator for each category based on the type of cost. ICEA/RESA continue that Dr. Giacchino provided his model and results using available data (as opposed to ComEd's actual future costs), and the Commission should direct ComEd to apply the allocation approach identified by Dr. Giacchino.

ICEA/RESA highlight that according to Dr. Giacchino, ComEd, generally, did not allocate costs between supply and delivery services. *See* ICEA/RESA Ex. 2.0 at 3. ICEA/RESA set out that in order to create a proper allocation in his direct testimony — reflected in ICEA/RESA Ex. 2.03 — Dr. Giacchino took the following steps:

- First, Dr. Giacchino reviewed ComEd Ex. 2.01 (ComEd's 2026 test year base ECOSS).
- Second, Dr. Giacchino used switching statistics from the Commission's Office of Retail Market Development to create a "customers" allocator and used responses from ComEd in discovery regarding its 2022 revenues to create a revenue allocator. *See* ICEA/RESA Ex. 2.0 at 5; *see also* ICEA/RESA Ex. 2.03.
- Third, Dr. Giacchino applied the allocator data to ComEd's ECOSS, specifically applying the number of customers allocators to Uniform System of Accounts ("USoA") accounts that in Dr. Giacchino's judgment are "reasonably considered a fixed cost from an economic point of view" and the revenue allocator to USoA accounts that in Dr. Giacchino's judgment are "reasonably considered a variable cost from an economic point of view." *See* ICEA/RESA Ex. 2.0 at 5-6.
- Fourth, Dr. Giacchino recalculated the cost of service for each customer class. *See id.* at 6.

ICEA/RESA argue that in rebuttal testimony, Dr. Giacchino updated his model to reflect: (1) ComEd's updated ECOSS in ComEd Ex. 5.03; and (2) updated 2023 revenue from ComEd's Customer Care Supply Allocation ("CCSA") Study. *See* ICEA/RESA Ex. 5.0 at 2. ICEA/RESA point out that Dr. Giacchino also made several corrections based on hard-coded (i.e. non-formulaic) entries in ComEd Ex. 2.01 that he later caught or were pointed out by ComEd witness Leick. *See id.* at 2, 5. ICEA/RESA further point out that because Dr. Giacchino and Mr. Lacey were not able to conduct an independent study to confirm or refute, Dr. Giacchino for the purposes of modeling accepted several representations by ComEd witness Leick about the nature of costs that ComEd had placed in certain USoA. *See id*. at 3-4; *see also* ICEA/RESA Ex. 4.0 at 5-7. ICEA/RESA argue that these changes were reflected in Dr. Giacchino's updated model, ICEA/RESA Ex. 5.01. ICEA/RESA state that these changes and modifications reflect the extent of the good-faith efforts by Dr. Giacchino to provide accurate and fair allocation, rather than simply maximizing allocation to one category over another.

According to ICEA/RESA, it is critically important that the Commission recognize that the allocation approach proposed by Dr. Giacchino is designed specifically to not only reflect accurate allocations for a snapshot in time but to also ensure the allocations remain fair. ICEA/RESA Ex. 1.0 at 22. ICEA/RESA argue that the Commission previously expressed concerns about allocating costs to default customers during times of high switching, but Dr. Giacchino's allocators remove those concerns by then allocating more to delivery at times when the number of customers and revenue from supply customers shrink. *See id*. at 6-7. However, ICEA/RESA respond, if the Commission remains concerned, Mr. Lacey proposed an additional mitigation mechanism to add a rider that

reconciles the resulting charges from the last supply-delivery allocation with what they would have been (respectively) under an up-to-date allocation. *See id.* at 43-46.

On reply, ICEA/RESA stress the importance of the embedded (average) cost model. ICEA/RESA contend that applying the embedded cost of service methodology proposed by ICEA and RESA in this case and using stand-in values provided by ComEd as placeholders until the Commission issues an order on reopening in the MYRP Docket, Dr. Giacchino identifies costs that should be reallocated from ComEd's delivery service to its supply service based on cost-causation principles. ICEA/RESA note that amount would then be allocated between Rate BES and Rate BESH ComEd supply customers. ICEA/RESA Ex. 5.0 at 6; ICEA/RESA Ex. 5.0 at 7. ICEA/RESA note that Dr. Giacchino translated the additional revenue from supply per rate class into a per kilowatt-hour impact using recent data for usage for each customer class taking service on ComEd supply (both the default rate and hourly). ICEA/RESA Ex. 5.0 at 8.

ICEA/RESA concede that in a vacuum, these values may appear to be cost increases — but ICEA/RESA counters that they are not. First, ICEA/RESA note, for every additional dollar in costs allocated to supply for a particular customer class, that customer class's delivery charges are reduced by an equal amount. According to ICEA/RESA, Dr. Giacchino's model does not modify interclass allocations of costs — only allocations within a customer class between supply and delivery.

Second, ICEA/RESA continue, ComEd argues that "[t]o put in the context of the bill impact, a single-family without electric space heating Rate BESH customer using an average of 615 kWh per month would see *a monthly bill increase of over $120*." ComEd IB at 13 (emphasis in original). ICEA/RESA state that even accepting ComEd's assertion that 615 kWh per month is average and ignoring the benefits from reduced delivery charges, Dr. Giacchino addressed this very issue and identified its root cause as ComEd's ECOSS. ICEA/RESA Ex. 5.0 at 8-9. Thus, ICEA/RESA note, if the Commission is concerned about the issues raised by ComEd, the Commission need only approve Dr. Giacchino's alternative allocators.

Accordingly, ICEA/RESA argue that while approximately $492 million may seem like a lot, this revenue would still be collected by ComEd, just from the appropriate customers (or, more specifically, supply customers or delivery customers) that caused the costs to be incurred. ICEA/RESA raise that Dr. Giacchino describes in great detail how he conducted his analysis using the embedded cost of service methodology, and how the Commission could take proactive steps to address any rate shock concerns on top of other potential mitigants.

In this case, ICEA/RESA request that the Commission direct ComEd to use the embedded cost of service methodology proposed by Dr. Giacchino (including, if the Commission prefers, Dr. Giacchino's alternatives to resolve the perceived bias against residential customers from ComEd's ECOSS) to allocate costs between its supply and delivery service functions. Then, ICEA/RESA conclude, the Commission should direct ComEd to utilize the allocation factors to the costs approved in the Commission's Order on Reopening in Docket Nos. 23-0055/24-0181 (Consol.) to allocate costs fairly between supply and delivery functions.

2. ComEd's Position

ComEd argues that the Commission should reject ICEA/RESA's proposal to shift nearly $500 million from ComEd's delivery service revenue requirement to the supply revenue requirement, a proposal that ComEd argues would essentially be a transfer of wealth from customers to retail electric suppliers ("RESs"). *See* ICEA/RESA Ex. 4.0 at 8. According to ComEd, the net effect of this proposal would be to shift nearly 13% of ComEd's Commission-approved delivery service revenue requirement to *only* ComEd-supplied customers. ComEd also notes that, if adopted, ICEA/RESA's proposal would result in a monthly bill increase of over $120 for a residential (single family; without electric space heat) customer taking supply under ComEd's hourly supply rate. ComEd Ex. 5.0 at 32. ICEA/RESA do not contest ComEd's impact calculations. In addition, ComEd argues that ICEA/RESA fail to provide evidentiary support that the proposed cost shifts are actually supply-related or are services provided by RESs, thus failing to adhere to principles of cost causation. ComEd notes that this would unfairly saddle ComEd-supplied customers with RES-attributable supply costs and would result in increased rates for both ComEd-supplied customers and RES customers. ComEd argues that the only group to benefit from this proposal are the RESs, who would experience lower costs for the same service. ComEd also notes that Staff agrees with ComEd that ICEA/RESA's proposal could lead to "significant rate increases for customers who continue to take supply service from ComEd," potentially leading to "rate shock" and "further economic hardship, especially for vulnerable populations." Staff IB at 5. Staff also noted that ICEA/RESA's proposal constituted an "unsubstantiated reclassification of costs[.]" *Id*.

ComEd argues that, as a preliminary matter, ICEA/RESA's claim that their proposal only seeks to shift "costs" between delivery and supply and does not impact ComEd's "revenue requirement" is incorrect and fundamentally misunderstands the revenue requirement formula. ICEA/RESA IB at 7-8; ComEd RB at 9. ComEd notes that ICEA/RESA admit that "costs are …one component of the revenue requirement." ICEA/RESA IB at 7. ComEd argues that any movement of costs therefore alters ComEd's revenue requirement, and the Commission should reject it outright.

According to ComEd, ICEA/RESA propose to move nearly $500 million from a number of delivery subfunction-related FERC accounts to supply because ICEA/RESA claim that those accounts "were not directly assigned to supply or delivery, [but] are included in ComEd's [ECOSS] results and which include costs related to the provision of default service." ICEA/RESA Ex. 1.0 at 19. ComEd notes that ICEA/RESA initially proposed to shift nearly $1 billion of ComEd's delivery service revenue requirement to supply. *See* ICEA/RESA Ex. 1.0 at 17 (recommending shift of $924 million). ComEd also notes that ICEA/RESA later reduced this proposed amount to $492 million after ComEd witness Leick noted in rebuttal testimony numerous flaws in ICEA/RESA's analysis (including ICEA/RESA's double counting of the Illinois Electricity Distribution Tax and proposal to shift this amount to supply). *See* ComEd Ex. 5.0 at 51-60; ICEA/RESA Ex. 4.0. at 8. ComEd argues that such a massive amount of erroneous proposed cost shifting raises questions regarding ICEA/RESA's modeling. ComEd further argues that ICEA/RESA asserted, without support, that the proposed cost shifts are not delivery service and are instead attributable to or related to supply. ICEA/RESA Ex. 1.0 at 18. According to ComEd, the Act defines "delivery services" as "those services provided by

the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services." 220 ILCS 5/16-102. ComEd argues that all the costs ICEA/RESA propose to shift to supply are necessary for ComEd to deliver power to customers, whether they take supply service from ComEd or RESs. *See* ComEd 10.0 at 31, 33.

ComEd explains that ICEA/RESA's proposal identifies several FERC accounts that ICEA/RESA claim are not directly assigned to either supply or delivery, but are allegedly related to the provision of default ComEd-supplied service. ICEA/RESA Ex. 1.0 at 19-21; ComEd Ex. 5.0 at 45-46. ICEA/RESA then propose to allocate those costs, using either a Revenue allocator (derived from the revenues attributable to customers on various ComEd or RES supply rates) or a Customer allocator (derived from the number of customers on various ComEd or RES supply rates). ComEd Ex. 5.0 at 47 (*citing* ICEA/RESA Ex. 2.0 at 11-12). ComEd argues that ICEA/RESA's studies are flawed and fail to identify what functions their proposed shifted costs serve and why it would be reasonable to allocate any of the costs for those subfunctions to supply.

ComEd argues that the costs that ICEA/RESA propose to shift go beyond the customer care costs that ComEd already allocates to supply using its CCSA Study and extend into basic distribution equipment. ComEd Ex. 5.0 at 43. ComEd argues that witness Leick explained in extensive testimony that these costs are appropriately allocated to the delivery function. *Id*. at 52-60. According to ComEd, he explains the purpose of each sub-function from which ICEA/RESA proposed to shift costs and provides evidence that they are either not provided by RESs or that their function does not change when customers shift from ComEd supply to RES supply. *Id*.

ComEd notes that ICEA/RESA argue that eight cost categories reflecting a "service-oriented classification" were misallocated and should be allocated between delivery and supply. ICEA/RESA IB at 11. These "service-oriented" subfunctions that allegedly have supply-related components are: (1) Shared Distribution Lines (Over 4kV); (2) Secondary Voltage Distribution Lines; (3) Customer Installation – Other; (4) Metering Services; (5) Bill Issue & Processing; (6) Billing – Computation & Data Management; (7) Indirect Uncollectibles; and (8) Customer Information. *See* ComEd Ex. 5.0 at 30. ComEd argues that ICEA/RESA do not identify the supply-related components of any of the eight cost categories – nor can they – because either no supply-related components exist, or they have already been allocated to supply.

ComEd explains that both Shared Distribution Lines (Over 4kV) and Secondary Voltage Distribution Lines are used to provide delivery service and do not implicate supply services whatsoever. *See id.* at 52-54. Similarly, ComEd explains that Customer Installation – Other relates predominantly to transformers and other facilities located on customers' property to provide them delivery service. *Id*. at 55-56. ComEd argues that RESs do not provide any of this distribution equipment and the need for this equipment does not change when customers switch between suppliers. *Id*. ComEd argues that ICEA/RESA have offered no evidence why any of these categories are supply-related and none of these costs should be allocated to supply.

ComEd then explains that Metering Services relate to costs for providing, installing, testing, exchanging, and removing metering equipment; installing and maintaining meter communication devices; and reading and processing meter usage data. *See id*. at 56-57. ComEd notes that Bill Issuing and Processing relates to costs for printing and mailing bills to customers (as well as determining credits provided to RESs that issue single supply and delivery bills to customers). *Id*. at 58-59. ComEd argues that, under the Act, both standard metering and billing services are statutorily defined as "delivery services," and none of these costs should be allocated to supply. *See* 220 ILCS 5/16-102.

ComEd then explains that Billing – Computations and Data Management relates to costs for "Customer Accounts" that ComEd already allocates fairly between delivery and supply using the CCSA Study and that no additional costs should be allocated to supply. ComEd Ex. 5.0 at 57-58.

ComEd explains that Indirect Uncollectibles relate to costs incurred to connect or disconnect service and engage in revenue management with customers that may eventually have their bill moved to uncollectible expenses. *Id*. at 57. ComEd argues that these costs do not change when customers shift from ComEd to RES supply and any uncollectible costs for customers on RES supply are already captured under Rider PORCB – Purchase of Receivables with Consolidated Billing. *Id*.

Additionally, ComEd explains that Customer Information relates to information to encourage safe, efficient, and economic use of electricity, including safe behavior around electrical equipment, energy efficiency, demand response and dynamic pricing, and customer satisfaction surveys. *Id*. at 59. ComEd argues that this information is not related to supply issues and is targeted at all ComEd's customers and none of these costs should be allocated to supply. *Id*.

ComEd also argues that an even more troubling aspect of ICEA/RESA's proposal is that their proposed Revenue and Customer allocators contain proportions attributable to retail electricity supplier "RES" customers ranging from roughly 11% to 21%. *See id*. at 47. ComEd notes that ICEA/RESA remain silent on these portions, and because ComEd does not currently have a mechanism to bill RESs or their customers for these amounts, they are, by definition, left in the delivery function that all ComEd's customers pay. *Id*. at 47-48. ComEd argues that ICEA/RESA is essentially proposing that ComEd-supplied customers shoulder a disproportionate share of delivery costs, and that RES-specific supply costs be included in ComEd's delivery function and socialized across all its customers. *Id*. According to ComEd, not only is the proposal to shift these delivery service costs to supply fundamentally flawed in this RDI proceeding, but such a result would be patently inequitable.

ComEd also argues that, if implemented, ICEA/RESA's proposal would likely constitute rate shock for some ComEd-supplied customers. ComEd calculates that supply rates for single-family without electric space heating Rate BES customers would increase by 2.55 cents/kWh and supply rates for single-family without electric space heating Rate BESH customers would increase by 19.77 cents/kWh. ComEd notes that, to put this in the context of the bill impact, a single-family without electric space heating Rate BES customer using an average of 615 kWh per month would see a monthly bill increase of over $15 and a single-family without electric space heating Rate BESH

customer using an average of 615 kWh per month would see a monthly bill increase of over $120. *Id*. at 32; *see also* ComEd Ex. 10.0 at 35 (calculating that the supply rate for the Watt-Hour Delivery Class would have more than doubled under ICEA/RESA's proposal if it were included in the recently updated October 2024 rate). ComEd notes that ICEA/RESA do not contest ComEd's rate impact calculations.

Finally, ComEd argues that ICEA/RESA's proposal would also harm customers served by RESs. This is because certain RESs utilize ComEd's Price-to-Compare feature – which is a combination of ComEd Rate BES supply and transmission rate – to set their own supply prices. ComEd Ex. 10.0 at 35. ComEd argues that, if ComEd's default supply rate is increased by ICEA/RESA's proposal to move $500 million of delivery costs to the supply function, then the price RES customers pay under the Price-to-Compare will increase commensurately with no change in service. *See id*. at 36. In ComEd's view, the windfall price increase that RESs could command by increasing the Price-to-Compare under ICEA/RESA's proposal could be captured entirely by the RESs as profit. *See id*. at 36-37; ComEd Ex. 10.07 at 2. Conversely, ComEd argues that RES customers and municipal leaders that entered into municipal aggregation agreements could see increased supply prices in excess of $39 million. ComEd Ex. 10.0 at 36-37 (presenting representative example of estimated additional cost to municipal aggregation participants).

ComEd argues that ICEA/RESA's proposal only furthers their own interests to the detriment of customers, and that the Commission should reject their BOE that is not supported by the evidentiary record. Further, and aside from whether this issue is outside the scope of this proceeding, ComEd argues that ICEA/RESA's contention that the Commission "order additional factfinding through the rehearing process" is improper because all the facts necessary to make a determination on this issue were in existence and presented during the course of this proceeding – any alleged shortcoming in their presentation lies entirely with ICEA/RESA.

3. Staff's Position

Staff states that the Commission should reject ICEA/RESA's proposal to allocate additional costs to default service because the proposal would change the delivery service revenue requirement and thus the proposal is not revenue neutral. Staff Ex. 5.0 at 21.

Staff explains that "default service" is the utility supply rate charged to a customer who takes supply from ComEd. ComEd allocates some call center services costs, which it refers to as "customer care costs" to default service. ComEd Ex. 5.0 at 30. ICEA/RESA argue ComEd should increase this amount and that over $900 million should be shifted from ComEd's delivery service revenue requirement to ComEd customers who take default service. ICEA/RESA Ex. 2.0 at 9. However, this proceeding is limited to making revenue-neutral adjustments to ComEd's delivery service rate design. ICEA/RESA's proposal to shift over $900 million in delivery costs to ComEd's supply function is not revenue neutral. As ComEd noted, ICEA/RESA appear to recognize this fact. ICEA/RESA witness Giacchino "identified approximately $149 million of capital costs that they believe that ComEd would no longer be able to earn a return, roughly lowering ComEd's revenue requirement several million dollars." ComEd Ex. 5.0 at 31. Staff states

that any proposed changes from delivery costs to supply charges that would result in a change to the revenue requirement, are not revenue neutral and thus outside the scope of this proceeding.

Moreover, Staff agrees with the policy concerns about ICEA/RESA's proposal raised by ComEd. Implementation of ICEA/RESA's proposal could lead to significant rate increases for customers who continue to take supply service from ComEd, because the proposal would decrease delivery service rates for all customers but increase supply rates for only ComEd customers. An increase in supply rates creates potential rate shock for those customers. ComEd Ex. 5.0 at 32. This could lead to further economic hardship, especially for vulnerable populations. In Staff's opinion, shifting delivery costs to supply in the manner proposed by ICEA/RESA would not only violate the statutory requirement for revenue neutrality in this proceeding, but it could also lead to unfair rate impacts and an unsubstantiated reclassification of costs that could harm supply customers. Staff Ex. 5.0 at 20-21. For these reasons, Staff recommends that the proposal be rejected. *Id*

Staff further states that this proceeding is limited to delivery service rates, but ICEA/RESA's proposal requires a change to supply rates. Staff explains that the portion of customer care costs assigned to ComEd default service is determined annually pursuant to CCSA, which was approved in ComEd's 2014 formula rate update, Docket No. 14-0312. ComEd Ex. 5.0 at 33. Changes to the inputs to or results of the allocation study may impact ComEd's delivery service revenue requirement and thus future MYRP proceedings may be a more appropriate venue to consider this proposal. Staff states that it is also possible the issue could be addressed through a separate investigation docket or through a rider; Staff takes no position on how or where any changes in allocation should be addressed, other than to oppose changes in allocation in this docket that is, by statute, a revenue neutral rate design investigation into ComEd's delivery service rates.

4. REACT's Position

REACT explains that certain costs that are related to ComEd's provision of supply services are being improperly recovered in ComEd's delivery services rates. *See* REACT Ex. 6.0 at 20-24. Specifically, REACT has highlighted apparent errors in ComEd's CCSA Study. To address this misallocation, REACT requests that the Commission order ComEd to allocate costs for ComEd customer care call centers based on: (i) whether the customers using the call center services receive supply from ComEd or an ARES; and (ii) if the topic of calls received by the call centers relate to supply issues.

REACT supports the arguments advanced by ICEA/RESA explaining that customers are harmed when ComEd's supply rate is artificially lowered. *See* ICEA/RESA Ex. 1.0 at 14. REACT notes that ICEA/RESA have not proposed disallowing any cost recovery, but rather has requested that all costs be accurately allocated between ComEd's supply and delivery functions. *See id.* at 12-15. Accurate cost allocation benefits the competitive market and benefits customers, consistent with the direction given to the Commission by the General Assembly. *See* 220 ILCS 5/16-101A(d) ("The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.").

5. Commission Analysis and Conclusion

ICEA/RESA propose to reallocate approximately $492 million from ComEd's delivery service revenue requirement to supply services. ICEA/RESA contend that ComEd is over-allocating costs to delivery services and under-allocating costs to ComEd's supply service customers. ICEA/RESA argue that their proposal is revenue neutral and therefore falls within the scope of this proceeding. The Commission disagrees. ICEA/RESA's proposal alters ComEd's delivery services revenue requirement and is not revenue neutral. As Staff and ComEd note, even ICEA/RESA appear to recognize this fact when witness Giacchino admits that a capital cost allocated to default supply would not be able to earn a rate of return. ICEA/RESA Ex. 2.0 at 13; ComEd Ex. 5.0 at 30-31. ComEd highlights the Company would no longer be able to earn a return on approximately $149 million of capital costs. ComEd Ex. 5.0 at 31. Accordingly, the Commission finds that ICEA/RESA's proposal is not revenue neutral, and therefore it is rejected as being outside the scope of this proceeding.

ICEA/RESA's alternative proposal raised in their BOE is untimely. Further, it is not clear that shifting only the costs identified within the alternative proposal is revenue neutral or appropriate.

Notwithstanding that determination, the Commission is concerned with the potential impacts caused by misallocation between supply and delivery service costs. The Commission finds the possible negative impact on the State's ability to meet P.A. 102-0662 procurement goals and incentivize participation in renewable programs particularly concerning. The record lacks complete evidence as to the validity of ICEA/RESA's complaints. Accordingly, the Commission directs Staff to conduct an investigation into the appropriate allocation between supply and delivery service costs and to engage with the Company and interested stakeholders on the appropriate allocation method. Staff shall file a report with the Commission discussing its findings and providing recommended revisions or actions no later than one year of the date of this final Order.

The Commission shares ComEd and Staff's policy concerns with reallocation leading to substantial increases to ComEd supply customers' bills and what would inevitably lead to rate shock. Under ICEA/RESA's revised proposal, a ComEd supply customer's monthly bill would increase by over $61 for a residential (single family; without electric space heat) customer taking supply under ComEd's hourly rate. *See* ICEA-RESA Ex. 5.01, Table "Taking Hourly Price Service from ComEd". The Commission emphasizes that even if the allocation of supply and delivery costs needs to be remedied, any proposal that, as a result, would increase customer's costs must be reviewed by the Commission under the relevant ratemaking provisions.

B. Proposed Revisions to Customer Care Supply Allocation Study

1. ComEd's Position

ComEd argues that the Commission should reject REACT and ICEA/RESA's proposals to revise the CCSA Study to shift additional customer care costs from delivery to supply. ComEd claims that REACT's proposal to revise the CCSA Study lacks any evidentiary support, and its cost shifting proposal is based on an under-developed and

unreasonable allocator, and therefore must be rejected. *Id*. at 3, 27 (referencing REACT Ex. 6.0 CORR.).

ComEd explains that, in ComEd's 2014 formula rate update case, Docket No. 14-0312, ComEd presented three options to allocate certain customer care costs between the delivery and supply functions. ComEd Ex. 5.0 at 33. The Commission approved the CCSA Study as the means by which ComEd would allocate costs. *Id*. at 34; *see also* Docket No. 14-0312, Order at 103-104.

The CCSA Study identifies whether any costs change with changes in the level of customers switching between ComEd and RES supply and uses the embedded cost method to allocate the amount of those costs between delivery and supply functions. ComEd Ex. 5.0 at 34. The CCSA Study operates by: (1) compiling current costs recorded in FERC Account 903 – Customer Records and Collection Expenses; (2) compiling call center activities and allocators; (3) computing the call center allocator; and (4) assigning indirect costs. *Id*. at 35-42. ComEd notes that application of the CCSA Study to 2023 call center costs resulted in allocating $10 million of direct costs and $11 million of indirect costs (for a total of $21 million) to the supply function. *Id*. at 43.

ComEd notes that it has presented the CCSA Study, updated with recent data, in its annual rate cases (both formula rate updates and annual reconciliations under Rider DSPR – Delivery Service Pricing Reconciliation). ComEd also notes that Staff and any interested intervenors have had the opportunity to review and comment on it in each filing. *See* ComEd Ex. 10.0 at 27. In each of the last three CCSA Study updates, ComEd has allocated over $20 million in customer care costs to supply. ComEd Ex. 5.0 at 34-35 (citing updates in 2022 formula rate update case and 2023 and 2024 Rider DSPR reconciliations). ComEd notes that, in this proceeding, Staff supported ComEd's CCSA Study, found ComEd's assignment of costs and application of factors to be reasonable, and that ComEd's explanation addressed the concerns raised by REACT. *See* Staff Ex. 5.0 at 23.

ComEd argues that REACT claims that, because the CCSA Study was developed and approved during the "formula rates era," the regulatory structure "prioritized expediency in approving rate increases by not allowing the Commission to formally review costs and cost recovery mechanisms." REACT Ex. 6.0 CORR. at 22. ComEd argues that REACT is wrong and explains that ComEd updates the CCSA Study every year and any interested party has had the opportunity to review and comment on its customer care supply allocation, regardless of whether it is a formula rate update proceeding or an MYRP proceeding (or their respective annual reconciliations). *See* ComEd Ex. 10.0 at 27.

ComEd explains that REACT also argues that the CCSA Study fails to allocate costs based on cost causation because it does not track the number of calls received by the call center that were directly concerned with supply-related issues or the number of callers taking supply under ComEd versus a RES. REACT Ex. 6.0 CORR. at 5-7, 23, 26-27. First, ComEd does not have a means of identifying whether a call directly concerns supply-related issues; indeed, calls will often touch on multiple topics and not necessarily be limited strictly to "supply-related issues." *Cf*. REACT Cross Ex. 9 (ComEd's Data Request Response to REACT 6.05(b)(i)-(ii)). Second, there is no indication that just

because a RES-supplied customer calls ComEd that their question concerns supply. *See* ComEd Ex. 10.0 at 28. ComEd argues that neither of these allocators would result in costs being allocated between delivery and supply in a manner consistent with cost-causation.

REACT recommends that the Commission find an alternative to the CCSA Study and, in the interim, utilize a proposed "Average Number of Services" allocator to allocate customer care costs between delivery and supply based on the relative proportions of ComEd and RES-supplied customers. REACT Ex. 6.0 CORR at 23. Under this proposal, REACT identified roughly $61 million of customer care costs it claimed should be allocated to only ComEd-supplied customers. *Id*. at 24.

ComEd argues that REACT's proposed allocator suffers from two flaws. First, ComEd argues that it assumes – without evidence or explanation – that entire calls related to "Revenue" or "Bill" categories are supply-related based only on the relative percentages of customers taking supply from ComEd versus a RES. ComEd explains that the absence of any evidence that such calls were in fact supply-related means there is no logical connection between the costs and REACT's proposed allocation. *See id*. at 28.

Second, ComEd argues that REACT's proposal directly attributes 13.9% of calls to "Customers on Retail Supply," yet presents no mechanism to assign those costs to RES customers. In ComEd's view, this would ensure that the portion that REACT assigned as being attributable to RESs would stay in delivery rates and be paid by both RES-supplied and ComEd-supplied customers. *Id*. at 28. ComEd notes that, while REACT downplays this concern, such a crucial detail should not be summarily dismissed and ComEd argues that it is REACT's burden to present the Commission with a full proposal that could be implemented. ComEd argues that, if REACT's proposal is adopted, all ComEd customers would unfairly subsidize RES customers.

ComEd argues that the Commission should also reject ICEA/RESA's proposal to revise the CCSA Study to include additional costs functionalized to supply. ComEd explains that ICEA/RESA criticized ComEd's CCSA Study and claimed that ComEd: (1) misallocated calls to ComEd's call center related to start/stop service requests and outage and account history; and (2) included revenue related to neither supply nor delivery in the calculation of its Revenue allocator. ICEA/RESA IB at 19-20. ComEd notes that ICEA/RESA also claim that ComEd utilized a "meaningless" allocator to calculate its Billing allocator. ICEA/RESA IB at 20. However, ComEd notes that, in testimony, ICEA/RESA witness Lacey mentioned this criticism only in passing as an issue that he would have addressed if ICEA/RESA viewed the purpose of this proceeding as seeking to correct the CCSA Study. *See* ICEA/RESA Ex. 4.0 at 22. ComEd argues that witness Lacey made clear, however, that ICEA/RESA did not view the purpose of this docket as seeking to correct the CCSA Study and did not further elaborate on the critique of ComEd's Billing allocator as "meaningless." *Id.* ComEd argues that, because ICEA/RESA expressly disclaimed analyzing this alleged critique in testimony, the Commission should find that ICEA/RESA has waived this issue. *See* ComEd RB at 15 n.3 (*citing Del Real v. N.E. Ill. Reg'l Commuter R.R. Corp*., 404 Ill. App. 3d 65, 74 (2010) (holding arguments that are not properly developed are waived). ComEd argues that ICEA/RESA's critiques are unfounded and misunderstand the nature of the various

accounts in FERC Uniform System of Accounts ("FERC Accounts"). *See* ComEd Ex. 10.0 at 34.

ComEd first argues that it did not misallocate calls to its call center between delivery and supply. ComEd notes that calls made to start and stop service are fundamentally related to delivery service and that they are a request to either deliver electricity or cease delivering electricity. *See* ComEd Ex. 5.0 at 37 (explaining that calls related to "Moving" are delivery-related). They are not calls related to ComEd's procurement of electricity supply. ComEd explains that, if a customer places a start service call, but utilizes no electricity supply, ComEd is still obligated to utilize its distribution system to be able to deliver supply. Additionally, ComEd argues that calls related to outages and account history are related to delivery service. *See id*. ComEd argues that outages are overwhelmingly caused by issues with the distribution system, rather than a lack of available supply, so they are properly allocated to the delivery function. Finally, ComEd argues that calls related to account history concern the history of ComEd's delivery of electricity to customers.

ComEd next argues that ICEA/RESA's understanding of ComEd's calculation of its Revenue allocator is incorrect. ComEd explains that ICEA/RESA claimed that ComEd included $970 million in "Other Operating Revenue" from various FERC Accounts (i.e., Account Nos. 450-457.2) that are unrelated to delivery service in the calculation of its Revenue allocator. ComEd explains that it did not include revenue from the aforementioned accounts in the calculation of its Revenue allocator. ComEd argues that the $970 million that ICEA/RESA claim are included in the calculation are not present and produced an analysis matching the revenues it used in its calculation of the Revenue allocator with FERC Accounts other than Account Nos. 450-457.2. *Id*. ComEd also argues that ICEA/RESA's critique of its inclusion of revenues related to Rider PORCB is unfounded because the Commission approved inclusion of those revenues when it approved the CCSA Study in ComEd's 2014 formula rate update proceeding. *See id.* at 18 (*citing* Docket No. 14-0312, Order at 104 (adopting CCSA Study with no mention of striking out Rider PORCB costs)).

2. Staff's Position

Staff does not oppose using ComEd's CCSA Study to allocate customer care costs because the study considers the indirect costs raised in REACT's concern. Staff Ex. 5.0 at 21. Staff proposes such a study being limited to customer service costs that are already included in the delivery service revenue requirement. *See* Section IV.A for Staff's position on why Staff opposes the allocation of additional costs to default service as part of this proceeding. REACT raised concerns that the use of the CCSA Study may lead to the potential misallocation of overhead and building-related costs to ARES-supplied customers. REACT Ex. 2.0 at 27. More specifically, REACT witness Pruitt questioned whether ComEd had appropriately included indirect costs, such as those associated with building structures, furnishings, utilities, capital equipment, and depreciation related to call centers, in its allocation of Supply Administration charges. *Id*. If these costs were not properly allocated, REACT argued that ARES customers would bear an undue portion of these expenses through delivery service charges. REACT Ex. 2.0 at 27-28. However, ComEd clarified that its CCSA Study included both indirect and direct costs, including the indirect costs raised in REACT's concern; therefore, Staff does not find REACT's

proposed changes necessary and is unopposed to ComEd's use of the CCSA study to allocate customer care costs. ComEd Ex. 5.0 at 63.

3. ICEA/RESA's Position

ICEA/RESA argue that customer care costs are a subset of the supply-delivery allocation issues presented by ICEA and RESA in the present docket. ICEA/RESA Ex. 1.0 at 8. ICEA/RESA contend that Mr. Lacey testified that allocating only customer care costs would not address the systemic issues with over-allocation to delivery and under-allocation to supply. *See* ICEA/RESA Ex. 4.0 at 16-17, 22. ICEA/RESA report that Mr. Lacey testified, "the purpose of this docket is not to correct [ComEd's customer care cost allocation] — flawed as it is — but address the broader misallocation between default service and delivery." *Id*. at 22. ICEA/RESA argue that the Commission should thus not simply allocate customer care costs but instead should approve the broader allocation between supply and delivery identified in Section IV.A supra.

ICEA/RESA explain that Mr. Lacey testified that massive changes since 2014 (when the Commission first approved the CCSA), including FERC Order 2222, emphasize "the need for more accurate consumer pricing signals." *Id*. at 23. ICEA/RESA warn that the General Assembly's ambitious renewable energy targets will be hindered by underpayment for net metering due to supply-delivery misallocation. *See id*. at 23.

ICEA/RESA continue that, in the alternative, if the Commission were to focus on customer care costs alone, the Commission should reject ComEd's CCSA Study and use the allocation of customer care costs identified by Mr. Lacey and Dr. Giacchino. ICEA/RESA notes that while Mr. Lacey's critiques of the CCSA "are to further illustrate how and why some of ComEd's costs have been misallocated" (*Id*. at 22) and Mr. Lacey disagrees with ComEd's methodology (*see id*. at 21), Mr. Lacey offered several corrections.

First, ICEA/RESA highlight that Mr. Lacey explained that ComEd's allocation of 2.5 million calls for the call center to delivery and 0.5 million to supply misallocates 500,000 start/stop service calls as delivery (even though the delivery apparatus is already in place and the customer is seeking or ceasing supply) and 400,000 related to outage, account history, and other similar inquiries as purely delivery. *See* ICEA/RESA Ex. 4.0 at 18-19.

Second, ICEA/RESA continue, in creating a revenue allocator, ComEd adds in $970 thousand of revenue that is neither supply nor delivery (such as transmission, which in Illinois is the obligation of the energy supplier to pay for) as if it is delivery to allocate revenue between supply and delivery. *See* ICEA/RESA Ex. 4.0 at 19-21. As a result, ICEA/RESA argue, ComEd overestimates delivery revenue and underestimates supply revenue by almost nine percentage points. ICEA/RESA highlight that as Mr. Lacey testified, the proper allocation (within the flawed CCSA framework) is 63.43% delivery-36.57% supply, not 72.29% delivery-27.71% supply as the CCSA provides. *See id*.

Third, ICEA/RESA argue that Mr. Lacey criticized ComEd's use of "meaningless" allocators, such as number of lines on the bill to allocate billing costs. *See id.* at 22. ICEA/RESA note that as Mr. Lacey describes, the purposes of these critiques are not to modify the CCSA because the CCSA looks at only a subset of relevant costs. However, ICEA/RESA continue, these critiques highlight examples of ComEd's flawed allocation

methodology and provide further basis for the Commission to grant the relief sought by ICEA and RESA as identified in Section IV.A supra.

On reply, ICEA/RESA note that REACT raise several concerns related to allocation of call center costs. ICEA/RESA note that REACT argued that they continue to believe a broader allocation beyond customer care costs is necessary; ICEA/RESA agree and note that Mr. Lacey raised similar concerns. *See* ICEA/RESA Ex. 4.0 at 18-21. ICEA/RESA note that ComEd raises several criticisms of REACT's arguments, but they all appear to mirror the unpersuasive critiques that ComEd leveled at Mr. Lacey and Dr. Giacchino's broader allocation. *See* ComEd IB at 16-17 (raising argument regarding allocators and classification of calls related to ARES service). ICEA/RESA counter that allocating customer care costs generally — or call center costs specifically — is inadequate to address the larger problems that Mr. Lacey identified, REACT at minimum exposes the flaws in ComEd's approach that should be remedied by the Commission in this docket.

4. REACT's Position

REACT explains that ComEd's CCSA Study is a cost allocation methodology that has not been critically reviewed since the State formally rejected formula rates. *See* REACT Ex. 6.0 at 23-24. The result of using this flawed, dated methodology is that all delivery services customers are paying for costs that should be recovered solely from ComEd customers that receive their electricity supply from ComEd. An example of this misallocation of costs can be seen in the method used by ComEd to allocate a portion of the cost of the ComEd call centers (a resource shared by ComEd supply customers and ARES supply customers). The flaw is apparent because ComEd chooses to allocate only 17% of call center costs to ComEd supply customers even though over 78% of all ComEd customers are ComEd supply customers. *See* ComEd Ex. 5.0 at 35.

REACT notes that even though ComEd has had the ability to categorize customers as being either ComEd supply customers or ARES supply customers for more than 20 years, ComEd has chosen to not collect and apply this information to accurately allocate call center and other shared-services costs. Absent the availability of these data points, REACT witness Pruitt proposed a cost allocation methodology for the call centers that reflected the proportion of ComEd customers that are served by ComEd supply. *See* REACT Ex. 6.0 at 24.

Under REACT's approach, ComEd would use a two-step analysis to allocate call center costs to ComEd supply customers based on two appropriate and currently available data points: the allocator category to which ComEd assigns calls to the call center, and the percentage of ComEd customers that are ComEd supply customers. *See* REACT Ex. 6.0 at 23-24.

For Step 1, ComEd should utilize the call center counts provided in the ComEd CCSA in each allocator category: Revenue Allocator (1,674,931 calls), Bill Allocator (365,352 calls), and Distribution Allocator (1.069.911 calls). The sum of all calls recorded for the Revenue Allocator and Bill Allocator categories (2,040,283) should be considered as "Distribution + Supply" because, as noted by ComEd, these calls touched on both supply and distribution issues.

For Step 2, ComEd should apply the percentages of ComEd customers served by ARES (21.2%) and ComEd Supply (78.8%) to the "Distribution + Supply" value to allocate those call volumes proportionate to the supply status. As a result, customers served under retail supply are allocated 13.9% of call center calls while ComEd Supply customers are allocated 51.7% of call center calls. When those percentages are applied to the $118 million in call center costs reported by ComEd for 2023, it is revealed that ComEd Supply customers represent $61,264,257 of call center expenses which is $40,203,914 more than the $21,060,343 currently assigned under the ComEd CCSA. *See id*. at 24.

REACT notes that ComEd has mischaracterized Mr. Pruitt's proposed allocation approach as being "based on an under-developed and unreasonable allocator." ComEd IB at 14. REACT provided a comparison of the current ComEd cost allocation approach and the alternative allocation approach proposed by Mr. Pruitt demonstrates that it is ComEd's allocation method that is unreasonable and not reflective of cost causation principles.

REACT maintains that ComEd's current methodology is based on arbitrary variables that in no way reflect cost causation and therefore are unreasonable and inappropriate from a ratemaking perspective. *See* 220 ILCS 5/1-102(d)(iii); 220 ILCS 5/16-108(c). ComEd deems that 27.7% of call center calls that are assigned to the "Revenue Allocator" to be "Supply" related simply because 27.7% of ComEd's reported revenue is derived from supply. *See* ComEd Ex 5.0 at 39. ComEd fails to provide any logical connection to explain how the percentage of ComEd's revenue resulting from supply in any way relates to the number of calls to its call centers or their associated costs. Similarly, ComEd deems that 24.2% of call center calls that are assigned to the "Bill Allocator" to be supply-related because ComEd has determined that 24.2% of the "amount of space the bill uses for the delivery and supply functions[.]" ComEd Ex 5.0 at 39-40. Again, there is no attempt to explain how the number of lines on the bill in any way indicates whether calls to the ComEd call center should be classified as supply related. In sum, REACT explains that ComEd's cost allocation methods under the CCSA are far removed from the concept of cost causation.

REACT notes that if ComEd cannot adopt the most relevant cost allocators (e.g., the supply status of callers, whether the call is related to supply issues), then the Commission should require ComEd to adopt allocators that reflect the number of ComEd customers that utilize ComEd supply and ARES supply.

REACT explains that neither ComEd nor Staff performed any additional analysis or review of the accuracy of the existing CCSA Study but nevertheless each assert that no changes should be made to this cost allocation method. However, REACT observes that neither ComEd nor Staff disputes that ComEd's current approach fails to identify the extent to which ComEd supply customers use the call center to address supply-related issues -- which should be the goal of the allocation.

REACT explains that the two "flaws" ComEd claims to have identified in REACT's proposal do not provide a valid basis for ComEd to continue to fail to take steps needed to allocate the costs to the cost causers. First, ComEd incorrectly asserts that under REACT's proposal entire calls related to "Revenue" or "Bill" categories are classified as

supply related. *See* ComEd Ex. 10.0 at 28. However, this criticism is simply a misreading of REACT's proposal.

Second, ComEd asserts that because REACT did not detail the mechanism to assign costs to RES customers, those costs would stay in delivery rates and be paid by both ARES supply and ComEd supply customers, resulting in improper cross-subsidization. However, in its Initial Brief REACT explained that ComEd already collects for the cost of providing billing services to ARES customers and that it should use the same mechanism to collect these costs. *See* REACT IB at 12, *citing* Tr. at 154. In its Reply Brief, ComEd just repeats its criticism that no mechanism had been identified but provides no reason why the more accurate REACT cost allocation approach could not be used in combination with the existing mechanism used for collecting billing costs.

5. JSP's Position

JSP state that ICEA/RESA are correct that ComEd's under-allocation of costs to supply, which artificially reduces ComEd's supply rate, harms net metering customers that receive supply-only net metering (rather than full retail net metering) by undercompensating them for the value of the energy that they export from their net metered systems to ComEd's grid. All else equal, a higher supply rate will encourage more customers to install net metered systems than a lower supply rate. As a result, ComEd's artificially low supply rate fails to encourage as many customers to install net metered systems as a supply rate that accurately reflects ComEd's supply-related costs would, which impedes the solar development policies set forth in P.A. 102-0662.

JSP point out that ICEA/RESA note that the IPA must procure at least 242 MW of distributed renewable energy generation devices per year through the Adjustable Block Program through 2030. Artificially reducing the value of new net metered systems through an artificially low supply rate makes achieving this policy mandate more difficult. Moreover, this requirement is a floor, not a ceiling; many more megawatts of distributed generation are achievable, provided the value these systems provide to customers is not undermined by an artificially low supply rate. Absent an accurate allocation of its supply and delivery costs, however, ComEd disincentivizes renewable program participation as customers are denied the full benefits of the bargain associated with renewable energy programs.

In addition to undermining the value of net metered systems to customers, JSP continue, ICEA/RESA further correctly point out that ComEd's artificially low supply rate results in an artificially low Price to Compare, which is the bill credit rate that subscribers to community solar projects receive. As a result, community solar subscribers are not being compensated for the full value of the energy that their community solar projects provide to ComEd. Here again, JSP note, a higher supply rate (and the higher Price to Compare that it will produce) will encourage more customers to subscribe to community solar than a lower supply rate. ComEd's artificially low Price to Compare that results from its artificially low supply rate fails to encourage as many customers to subscribe to community solar as a higher, accurate supply rate would. Failing to compensate subscribers for the full value of their subscriptions makes it more difficult for the IPA to procure the 174 MW of community solar projects the IPA is required to procure.

Distributed energy resources, both front-of-meter community solar and behind-the-meter net metered solar, are critical parts of the clean energy transition. *See, e.g.,* 20 ILCS 3855/1-75(c)(1)(C). Achieving the ambitious distributed energy resource goals of P.A. 102-0662 requires that customers that install or subscribe to distributed energy resources receive the full economic value of their investments or subscriptions. In JSP's opinion, ICEA/RESA, for its part, established that ComEd's current cost allocation methodology fails to comply with that statutory mandate. Simply put, by failing to compensate customers for the full value of installing distributed energy resources, ComEd's artificially low supply rate discourages customers from "going solar." In effect, the result of misallocating supply costs to ComEd's delivery function is to undermine the Commission's own efforts to establish the policies and programs required by P.A. 102-0662 to achieve the law's energy transition goals.

JSP respectfully recommend that the Commission find that, consistent with ICEA/RESA's analysis, ComEd has misallocated supply costs to its delivery function and direct ComEd to adopt ICEA/RESA's revenue neutral allocation proposal to mitigate further harm to customers, the solar industry, and the solar development goals set forth in P.A. 102-0662.

6. Commission Analysis and Conclusion

The CCSA Study has been used since its adoption in Docket No. 14-0312 as a means by which customer care costs are allocated between delivery and supply. ICEA/RESA criticize the CCSA Study but state that the purpose of this proceeding is not to modify the CCSA. As part of ICEA/RESA's overall contention that ComEd is over-allocating costs to delivery services, ICEA/RESA urge the Commission to reject ComEd's CCSA Study and use the allocation of customer care costs proposed by ICEA/RESA witnesses in the overall reallocation of supply versus delivery service costs. As determined above, the Commission finds ICEA/RESA's proposal outside the scope of this proceeding.

REACT also raises criticism of the CCSA Study. REACT proposes that the Commission reject the CCSA Study and in the interim use an Average Number of Services allocator to allocate customer care costs between supply and delivery. ComEd notes that this proposal would reallocate approximately $61 million of customer care costs to ComEd supply customers. The Commission finds REACT's proposal is rejected as REACT's concerns should be addressed in the investigation directed above.

V. COST OF SERVICE AND COST ALLOCATION

A. Base ECOSS and Rate Design Model

1. ComEd's Position

ComEd argues that its ECOSS methodology and proposed rate design are reasonable and appropriate and should be adopted. ComEd presented the ECOSS filed in its consolidated Refiled Grid Plan and Rate Plan Adjustments case (MYRP Docket) as a "Base ECOSS." ComEd Ex. 2.0 at 35-36. Using the Base ECOSS, ComEd then developed several alternative and illustrative ECOSSs for this proceeding that examine shifts in cost allocation among the delivery classes that occur when certain inputs and cost allocation methodologies are revised. *See id*. ComEd argues that, as presented in

this proceeding, ComEd's ECOSS and proposed rate design reflect the principle that cost functionalization and allocation should reflect cost causation to the extent that costs can be assigned in a practical manner, and that they provide adequate foundation for ComEd's proposed revenue-neutral tariff changes. *Id*. at 4. ComEd notes that it will file updated ECOSS models, rate design models, delivery service rate informational sheets, and related tariffs that implement the final cost allocations from this RDI, the revenue requirements from the MYRP proceeding, and any other requirements in the final Order in this RDI as a compliance filing. ComEd also notes that no party contests ComEd's underlying ECOSS methodology – they merely propose revisions to certain inputs or individual allocation decisions.

ComEd's Base ECOSS functionalizes and classifies ComEd's costs as one of four functions: (i) *Production*, which pertains to facilities, personnel, and activities involved in the generation of electric power and energy ; (ii) *Transmission*, which pertains to facilities, personnel, and activities involved in the movement of electric power and energy from generation facilities over high-voltage electric conductors; (iii) *Distribution*, which pertains to facilities, personnel, and activities involved in the transfer of electric power and energy from high-voltage transmission conductors to customers; and (iv) *Customer*, which pertains to facilities, personnel, and activities that are involved in interactions with customers. *Id*. at 9-10. ComEd notes that it owns no production facilities but does purchase electric power and energy through a Commission-approved process. Costs incurred by ComEd related to these purchases, such as administrative costs, are functionalized as Supply Administration.

ComEd explains that it functionalizes the costs in its Base ECOSS either by direct assignment or functionalization factors, using as much detail as is available to classify costs in a manner that reflects cost causation. *Id*. at 14. Functionalized costs are allocated among ComEd's delivery classes and sub-classes to determine the charges, on a class basis, that provide for the recovery of the total cost. *Id*. at 19-20. ComEd notes that costs functionalized to Transmission and Supply Administration are not allocated to delivery classes because they are not included in the determination of ComEd's Rate Year Net Revenue Requirement.

In addition to the Base ECOSS and illustrative ECOSSs, ComEd presents an updated rate design model to allow the Commission to examine the shifts in revenue responsibility among ComEd's delivery classes that would result if changes to allocation methodologies are approved in this proceeding. *Id*. at 26-27. ComEd explains that the rate design model is used to determine the delivery service charges that will recover the Rate Year Net Revenue Requirement and shows how much of that revenue requirement is expected to be recovered from each delivery class. *Id*. at 28. ComEd notes that the Base Rate Design is the updated rate design model filed in the consolidated MYRP Docket. *Id*. at 35. ComEd states that it is not proposing any changes at this time to the equations or methodologies in the rate design model that was previously approved by the Commission. *Id*. at 28. In addition, ComEd explains that it submitted illustrative rate designs that reflect revised rates that occur when certain inputs and cost allocation methodologies are revised. *See, e.g.*, ComEd Exs. 5.04, 10.06.

2. Staff's Position

Staff recommends the Commission adopt an ECOSS and rate design that does the following:

1. incorporates the updated 2021 Coincident Peak/Non-coincident Peak ("CP/NCP") weather normalized cost;
2. allocates BE Plan costs based on ComEd's revised allocation methodology as described by ComEd, with Staff's proposed modifications;
3. includes the Next Step to 89.2% of full revenue responsibility in rate design for the RR class;
4. eliminates the flow through credit to the RR Class; and
5. reflects non-substantive housekeeping charges.

Staff Ex. 5.0 at 19; Staff Cross Ex. 2.0.

Staff's ECOSS and rate design recommendation reflects a comprehensive and balanced approach to cost allocation and rate design, ensuring that ComEd's rates are both fair and reflective of the costs to serve different customer classes while also aligning with statutory and regulatory requirements. Staff states that each element is grounded in the data and analysis provided in the evidentiary record. ComEd Ex. 5.0 at 6-7; Staff Ex. 5.0 at 19.

3. Commission Analysis and Conclusion

The methodology of ComEd's Base ECOSS and Rate Design models is undisputed and ComEd's Base ECOSS and Rate Design Models are approved consistent with the modifications and updates designated in this Order, including:

(1) incorporating the updated 2021 CP/NCP weather normalized costs;

(2) allocating BE Plan costs based on ComEd's revised allocation methodology as described by ComEd, with Staff's proposed modifications;

(3) including the Next Step to 89.2% of full revenue responsibility in rate design for the RR Class;

(4) eliminating the RR Class Flow-Through Adjustment; and

(5) reflecting non-substantive housekeeping changes.

The Commission's approval also incorporates any additional modifications and updates detailed elsewhere in this Order.

B. Railroad Class Flow-Through Adjustment

1. ComEd's Position

The RR Class Flow-Through Adjustment is a Commission-directed policy-related adjustment specific to the RR Delivery Class. *See* Docket No. 10-0467, Order at 274-275 (ordering RR Flow-Through Adjustment for the first time). The adjustment provides a revenue requirement reduction to the RR Delivery for electricity flowing through RR-

owned substations to serve non-RR customers in ComEd's service territory. ComEd Ex. 2.0 at 47.

ComEd notes that it takes no position on whether the Commission should award the RR Class an additional adjustment for prior use of railroad facilities; however, to the extent the Commission elects to order such compensation, ComEd argues that its methodology, presented in testimony, is a reasonable approach to calculate the value and is supported by reliable, publicly available sources over the duration of the prior use. ComEd Ex. 5.0 at 8-9. ComEd argues that, where data was not readily available due to the extended timeframe of the analysis, the values used in estimating the compensation amount are reasonable and appropriate. *Id*. at 9.

In the 2020 RDI, the Commission directed ComEd to "initiate [a] working group, including any additional interested stakeholders, to determine a present dollar value of compensation for prior use of RR facilities, if any, and provide a report, including an explanation for how such amount was developed, in the next rate design investigation proceeding." 2020 RDI Order at 19. ComEd explains that, per the Commission's directive, it initiated a series of meetings with interested stakeholders to discuss and determine the present dollar value for its use of RR substations in prior years, specifically from 1958 (the year in which ComEd first began supplying electricity to each CTA substation) through to 2010 (the last year before ComEd began providing an annual RR Flow-Through Adjustment amount to RR Delivery Class customers). ComEd Ex. 2.0 at 51-52. In this current RDI, ComEd argues that it developed an approach to calculate the present dollar value for compensating the RR Class for the previous utilization of their traction power substations using the 2010 Commission-approved methodology for determining the present Flow-Through Adjustment amount. *Id*. at 53-55 (describing inputs and calculation); *see also* Docket No. 10-0467, Order at 275. ComEd notes that, in the event the Commission elects to order such compensation, the optional compensation amount for past use of RR facilities is $8,365,299. ComEd Ex. 2.0 at 54-55.

ComEd notes that it also takes no position on whether the Commission should discontinue the RR Delivery Class Flow-Through Adjustment. However, ComEd argues that, if the Commission elects to discontinue the Flow-Through Adjustment, the Commission should adopt ComEd's proposed 12-year phase-out period as reasonable and appropriate. ComEd also argues that the Commission should reject Staff witness Ashbaugh's proposal presented in his rebuttal testimony for ComEd and CTA/Metra to reconfigure their systems to end physical flow-through conditions. *See* Staff Ex. 7.0 at 15-16. ComEd argues that such a reconfiguration would saddle both ComEd and CTA/Metra with unnecessary costs when the Commission could simply end the Flow-Through Adjustment amount for policy reasons. *See* ComEd Ex. 10.0 at 13-14. ComEd notes that the Commission previously rejected a similar proposal in ComEd's 2020 RDI case as not being revenue neutral. *See* 2020 RDI Order at 19

ComEd argues that, in the event the Commission elects to order an adjustment to the RR Delivery Class for past use of traction power substations to serve other customers, and elects to phase out the compensation for current use over ComEd's proposed 12-year timeline, the total annual RR Class Flow-Through Credit is described in ComEd Ex.

2.15. *See also* ComEd Ex. 2.14 (calculations showing Flow-Through Amount determination).

2. Staff's Position

The Commission should approve Staff's recommendation to eliminate the flow-through adjustment to the RR Class, which consists solely of Metra and the CTA. The Flow-Through Adjustment was designed to compensate the RR Class for the incidental flow of electricity through its substations based on purported benefits to customers outside of the RR Class. ComEd Ex. 2.0 at 47. It would reduce the revenue requirement allocated to the RR Class to account for the electricity that flows through substations owned by the RR Class to non-RR Class customers in ComEd's service territory. The Adjustment would increase the revenue requirement allocated to non-RR customers by the same amount, ensuring revenue neutrality.

Staff explains that an adjustment was initially proposed in 2005 to account for the flow-through of electricity through the RR substations, based on the premise that the RR Class provided a benefit to the broader system, although the specific purpose and impact of this benefit were not consistently articulated over time. Docket No. 05-0597, Order at 255. However, the Commission determined that there was insufficient evidence to confirm that ComEd or its other customers received meaningful benefits from this flow-through and consequently declined to approve an adjustment at that time. *Id*. The first adjustment was approved in 2010, when the Commission determined ComEd was dependent on some railroad facilities to provide electricity to some other, non-RR customers. Docket No. 10-0467, Order at 273. The Commission approved compensation in the amount of $678,103 annually starting in 2011; the amount was later modified to $668,008 annually in the 2020 RDI, based on updated cost inputs. Docket No. 10-0467, Order at 274-275; 2020 RDI Order at 19.

Importantly, the Commission made clear it did not intend for the adjustment to be permanent. Instead, the Commission noted that:

> …the CTA, Metra, ComEd and the general public are best served by finding a solution, or solutions, to this dilemma. These interests are not well-served by a great amount of compensation to Metra and the CTA, as such an amount only provides the CTA and Metra with the motivation to continue being compensated, instead of solving the problem.

Docket No. 10-0467, Order at 274. In 2017, Staff recommended elimination of the Flow-Through Adjustment. While the Commission declined to adopt Staff's recommendation, it again noted the solution was intended to be temporary and directed ComEd "to address whether, and to what extent, the Flow-Though Adjustment should be modified in its next RDI proceeding." 2017 RDI Order at 43. In 2020, the Commission once again reiterated that the Flow-Through Adjustment was intended to be temporary and directed ComEd to evaluate how to reduce and/or phase out the Flow-Through Adjustment in the next RDI proceeding. 2020 RDI Order at 19.

Both CTA and Metra continue to suggest the Commission is presented with a binary choice between reconfiguring the remaining traction power stations or continuing

to provide an adjustment to the RR Class. However, elimination of the Flow-Through Adjustment does not necessitate system reconfiguration. Just as there are no operational benefits that support continuing the adjustment, there are no operational benefits that requires reconfiguration in the alternative. While both CTA and Metra lament about the high cost of reconfiguring the power stations, neither party has demonstrated that reconfiguring is necessary in the absence of a continued payment. As Staff noted in testimony, the Flow-Through Adjustment has become a subsidy rather than a true adjustment (Staff Ex. 7.0 at 13) and it should be eliminated. It does not follow, however, that reconfiguration is necessary.

Staff points out that the Flow-Through Adjustment was intended to "both compensate, to some extent, the RR Class for prior years' use of [railroad] facilities and to compensate the [railroad] class for current use of RR facilities." 2017 RDI Order at 43. Thus, the Commission must make two determinations: first, whether the adjustment should continue and second, if so, whether the adjustment should include compensation for past use. Staff states the short answer to both these queries is no.

a. There are no operational benefits that justify continued adjustments.

Staff states that the core issue is not the mere existence of flow-through but whether that flow-through provides operational benefits to non-RR customers or indicates a dependence on RR Class facilities — neither of which has been demonstrated. The mere existence of flow-through does not equate to a benefit. Staff explains that electricity flows through RR Class substations due to the laws of physics — electricity naturally follows the path of least resistance, which means it can flow through the RR facilities to reach other customers incidentally. Staff Ex. 3.0 at 12. Thus, although flow-through conditions may technically exist, this incidental power flow no longer provides significant operational benefits to non-RR customers. Staff Ex. 7.0 at 15-16.

The Commission has consistently questioned whether the flow-through provides sufficient operational benefits to non-RR customers to justify the adjustment. *See e.g.*, Docket No. 05-0597, Order at 254; 2017 RDI Order at 43. For example, in Docket No. 05-0597, the Commission expressed doubt about the flow-through's operational value, noting insufficient evidence to support a meaningful benefit to non-RR customers. "The fact that electricity flows onto and off of CTA's system according to the laws of physics does not necessarily mean that significant benefits accrue to ComEd or its other customers." Docket No. 05-0597, Order at 255.

A crucial distinction must also be made between incidental flow-through and actual dependence. The Commission has repeatedly ruled that non-RR customers do not depend on RR Class facilities for reliable electricity service. The Commission confirmed in its 2020 RDI Order that ComEd is no longer dependent on RR Class substations, describing the use of these substations as more of a convenience than a necessity. 2020 RDI Order at 17. This conclusion is supported by the Commission's findings in 2017 RDI Order, in which the Commission explicitly concluded that "ComEd's system would not experience fault conditions or overloads if electricity could no longer flow through [RR] Class power stations." 2017 RDI Order at 43. This outcome was the result of ComEd's compliance with the 2013 Commission directive to eliminate its dependence on RR

traction power facilities while maintaining the looped circuits benefiting the RR Class. 2020 RDI Order at 17. Furthermore, Staff's review of ComEd's data request responses in this docket supports this conclusion, showing no quantifiable evidence of any reliability improvements attributable to the flow-through arrangement. Staff Ex. 7.0 at 7.

Metra suggests that Staff's position on this issue is flawed, in part because Staff did not conduct any independent analysis. Not only is it nonsensical to suggest that Staff had an obligation to conduct any sort of analysis to disprove a claim the RR Class failed to support, but this suggestion also conflates the issues. Staff considered the flow-through data provided by the parties in this docket, as well as those publicly available in Docket Nos. 05-0597, 07-0566, 10-0467, 11-0721, 13-0387, 17-0049, and 20-0832, when making its recommendation but did not conduct any further analyses because Staff does not question the accuracy or reliability of the data. Rather, Staff questioned the accuracy of making conclusions about the level of flow-through or the benefit to non-RR customers from 1958 through 2010 based on data collected starting in 2010. Staff Cross Ex. 1.0 at 1. Moreover, ComEd's admission that "ComEd is not dependent on the substation traction power substations, in that ComEd would not have overload conditions without the closed bus tie under normal operating conditions" made further analysis moot. Metra Cross Ex. 3.0 at 1 (ComEd response to Metra Data Request 4.01).

Staff notes that, although flow-through still exists, it does not confer a measurable operational benefit on non-RR customers. Staff Ex. 3.0 at 10; Staff Ex. 7.0 at 14. Since the adjustment was first implemented in 2011, the total kWh flow through these substations has been declining, with a 46% reduction from 2011 to 2023 as the percentage of energy flowing through RR Class facilities has decreased from 33.9% in 2011 to 26.03% in 2023. ComEd Ex. 2.0 at 48-49. This decline in flow-through further underscores that, even if incidental electricity passing through RR Class facilities provided a benefit at some past point, it is no longer provides the same magnitude of benefits at present. Additionally, ComEd's eight infrastructure projects, completed between January 2014 and October 2015, eliminated the risk of overloads, proving that the flow-through no longer impacts reliability. Staff Ex. 7.0 at 16. ComEd's system has been designed to operate independently of these substations, demonstrating that the flow-through does not materially affect reliability. Staff Ex. 7.0 at 15-16.

Staff states that, if the adjustment continues, non-RR customers will be subsidizing the infrastructure costs of the RR Class, even though the non-RR customers derive little to no benefit from these facilities. *Id*. Neither the RR Class nor ComEd has explored options to eliminate flow-through, and both have advocated for continued subsidization. ComEd proposes a 12-year phase-out, gradually reducing the adjustment until it is eliminated. ComEd Ex. 2.0 at 57. The RR Class, on the other hand, advocates for a 25-year phase-out. CTA/Metra Joint Ex. 1.0 at 13. Given that the facilities have a 40-year lifespan and payments began in 2011, approximately 25 years remain in the useful life of the facilities. 2020 RDI Order at 17.

According to Staff, CTA and Metra's arguments misrepresent the actual beneficiaries of RR infrastructure. Both parties appear to assume that all ComEd ratepayers benefit from RR facilities. This assumption conflates general societal benefits with power delivery or reliability benefits specifically resulting from the Flow-Through Adjustment - benefits that have not been proven to apply uniquely or operationally to

ComEd's non-RR customers. CTA, for example, emphasizes its broader societal and environmental contributions, suggesting these benefits extend to all ratepayers, justifying continued support from other ratepayers for RR Class infrastructure. Similarly, Metra argues for the continuation of the Flow-Through Adjustment based on "important public policy considerations," implying that RR services broadly benefit ComEd's entire customer base. Metra IB at 5.

Staff states that these assumptions fail to consider the many non-RR customers who derive no direct benefit from RR-owned facilities and who do not rely on these services. Non-RR customers should not be required to subsidize infrastructure that serves only a specific customer segment unless the RR class can demonstrate reliability or operational advantages, which it has failed to do. Further, as it did with CTA's argument about modifications to Rider NS, the Commission has already decided that non-RR customers should not bear the responsibility for infrastructure on the RR's side of the meter making this argument unpersuasive. BE Plan 1 Order at 69 (CTA's proposal for full cost of make-ready infrastructure on CTA's side of the meeting to be included in standard service was rejected as "unfairly preferential to a specific customer"). By charging non-RR customers, including those outside RR-served areas, for services they neither use nor depend on, CTA and Metra ignore critical distinctions within ComEd's customer base. Cost allocation should reflect the direct benefits conferred, not generalized societal impacts.

Staff argues that CTA and Metra also fail to explain why ComEd's broader ratepayer base should be compelled to subsidize RR-owned infrastructure. The Commission has consistently championed equitable rate design principles, mandating that costs be proportionately borne by those who benefit directly from specific infrastructure investments. *A. Finkl & Sons Co. v. Ill. Com. Comm'n*, 250 Ill. App. 3d 317, 329 (1993). Subsidizing RR facilities through the Flow-Through Adjustment unfairly burdens non-RR customers who receive no direct benefit, which violates the Commission's principle of fair, benefit-based cost allocation intended to prevent cross-subsidies that disproportionately impact one ratepayer group to benefit another. *See* 220 ILCS 5/16-108(c) ("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.").

Staff states that the RR Class members' proposal to continue the adjustment for 25 more years contradicts the Commission's directive that the adjustment be treated as temporary, not a long-term financial commitment. 2020 RDI Order at 18. Moreover, the Commission previously rejected ComEd's 2020 proposal to phase out the adjustment by amortizing construction costs over the remaining lifespan of the RR Class facilities, as it would have effectively made the adjustment a permanent credit, which Staff argues was never the Commission's original intention. 2020 RDI Order at 18.

Staff explains that if the flow-through did result in any benefit to non-RR customers or an operational necessity for ComEd, such benefits would not cease merely because an approved payment period ended. However, the proposed solution to extend the adjustment during the phase-out period includes no reconfiguration during the phase out to address any identified problem. This underscores Staff's recommendation to eliminate

the adjustment now, as maintaining it provides no operational benefits to the customers who would fund it and the "solution" is not designed to address a problem. Staff's recommendation aligns with the Commission's consistent rulings rejecting similar arguments for compensation. For example, in Docket No. 05-0597, the Commission rejected the CTA's proposal for credits, citing insufficient evidence that the RR Class facilities provided a meaningful benefit to ComEd or its customers stating that:

> While it is true that physics dictate the flow of electrons on the ComEd/CTA distribution system, the CTA has not proven that its equipment, either by design or by chance, improves the reliability of ComEd's system or allows ComEd to avoid incurring costs. The fact that electricity flows onto and off of CTA's system according to the laws of physics does not necessarily mean that significant benefits accrue to ComEd or its other customers.

Docket No. 05-0597, Order at 255.

Staff states that the current situation mirrors this earlier ruling, as the RR Class has not demonstrated that non-RR customers receive a substantial or measurable benefit from RR Class infrastructure. Staff Ex. 3.0 at 10; Staff Ex. 7.0 at 14.

Additionally, the Commission's directive in the 2020 RDI Order instructed ComEd to evaluate and present a proposal for reducing or phasing out the Flow-Through Adjustment, or discontinuing it entirely if warranted by the facts, reiterating that this adjustment was initially intended to be temporary and should not continue indefinitely, 2020 RDI Order at 17. Staff proposes discontinuing the Flow-Through Adjustment entirely. If the Commission declines to immediately eliminate the adjustment, Staff proposes two alternative options: reconfiguration or a phase-out over a maximum of 12 years as follows:

(1) Option A (Reconfiguration Option): This option involves reconfiguring the system to eliminate flow-through conditions entirely, ensuring that no incidental power from Railroad class facilities flows to non-RR customers. Staff Ex. 7.0 at 16. While not Staff's primary recommendation, Staff witness Ashbaugh testified that reconfiguring the system to eliminate the flow-through conditions entirely would remove the flow-through condition ensuring no incidental power flows from RR Class facilities to non-RR customers, providing a long-term solution. Staff Ex. 7.0 at 16. The RR Class agrees this is possible. CTA/Metra Ex. 1.0 at 10-11. This option should only be considered if the Commission disagrees with Staff's primary recommendation and determines that any flow-through warrants a payment to the RR customers despite the fact that the flow-through does not benefit non-RR customers.

(2) Option B (Phase-Out Option) (maximum of 12-Year): If the Commission declines to immediately eliminate the Flow-Through Adjustment, Staff supports a 12-year phase-out of the adjustment as proposed by ComEd, as a preferable alternative to the 25-year phase-out proposed by CTA and Metra. *Id*. This option allows for a gradual reduction of the adjustment,

> giving RR class customers time to adjust while easing the burden on non-RR customers. *Id*. A 12-year period may strike a reasonable balance between immediate elimination and a lengthy adjustment period. *Id*. Staff recommends the Commission reject the 25-year phase-out proposed by Metra and CTA, as it unnecessarily prolongs the financial burden on non-RR customers. It is also contrary to the Commission directive that the phase-out be temporary and not to be based on the remaining life of the equipment, which in this case is likely the 25-year period suggested by the RR Class. 2020 RDI Order at 18; Staff Ex. 7.0 at 16.

b. Compensation for past flow-through is retroactive ratemaking.

Staff opposes compensating the RR Class for past use of their facilities, as it violates the prohibition against retroactive ratemaking. ComEd's 12-year phase out plan includes annual payments comprising compensation for past use and credit for ongoing flow-through during the 12-year phase out period. ComEd Ex. 2.0 at 62. While the credit for on-going flow-through would gradually decrease over 12 years, reaching $0 in year 13, proposed compensation for past use would remain at $697,108 per year, for 12 years, for a total of $8,365,296. The RR class does not specify the proposed annual amount for past use over a 25-year phase out but agrees that ComEd's approach to arrive at the total amount is "one reasonable way to determine the dollar amount." CTA/Metra Joint Ex. 1.0 at 9.

Setting aside Staff's significant reservations about the validity of this sum (Staff Ex. 7.0 at 9), Staff states that there is no question that the proposal is compensation is for past use. The meetings detailed by ComEd about this issue were:

> …to discuss and determine the present dollar value for its use of RR substations *in prior years, specifically from 1958 through to 2010*. The specified time period is appropriate because 1958 is when ComEd and the CTA entered an Electric Service Agreement wherein ComEd agreed to supply electricity at each CTA Substation. This period encompasses Metra as well because ComEd and Metra entered into an Electric Service Agreement wherein ComEd agreed to supply electricity at each Metra Substation in 1984. And, in 2011, ComEd started providing the annual RR Flow-Through [A]djustment amount to compensate RR customers.

ComEd Ex. 2.0 at 52 (emphasis added). It is also clear that any adjustment for past use would be retroactive ratemaking. The request for compensation for past use is premised on the RR Class's allegation that their past rates were too high because rates did not include reimbursement for use of the RR substations which allowed electricity to flow-through to non-RR customers, and that non-RR rates were too low because the non-RR customers would fund any reimbursement to the RR to ensure the rate design was revenue neutral. The RR Class is asking non-RR customers to pay an additional $697,108 per year to essentially payback the RR class for past use of its equipment.

Staff explains that the prohibition against retro-active ratemaking is a long-established principle in Illinois law. The Illinois Supreme Court and appellate courts have consistently ruled that utility rates must reflect current costs and conditions, not be adjusted to correct past discrepancies. The Court held that "the rule against retroactive ratemaking prohibits refunds or surcharges to compensate for utility revenues that were too high or too low in a past period." *Citizens Util. Co. v. Ill. Com. Comm'n*, 124 Ill. 2d 195, 207 (1988). This principle was reaffirmed in *People ex rel. Hartigan v. Ill. Com. Comm'n*, 148 Ill. 2d 348, 391 (1992), in which the Court underscored that adjustments for past periods are impermissible because they undermine regulatory stability. *See also Mandel Bros., Inc. v. Chi. Tunnel Terminal Co*., 2 Ill. 2d 205, 211-12, 117 N.E.2d 774, 777 (1954) ("…the rate approved by the Commerce Commission as just and reasonable was the rate which the utility was required to charge so long as the order of the commission remained in effect. It cannot therefore be said that in charging that rate the utility charged an excessive rate which gave rise to a claim for reparations."); *Bus. & Pro. People v. Ill. Com. Comm'n*, 146 Ill. 2d 175, 243 (1991) ("Once the Commission establishes rates, the Act does not permit refunds if the established rates are too high, or surcharges if the rates are too low…This rule is consistent with the prospective nature of the Commission's legislative function in ratemaking. In addition, this rule promotes stability in the ratemaking process.").

According to Staff, this legal framework underscores that retroactive adjustments are inconsistent with the principles of stability and predictability in rate-setting. Metra suggests it was unable to address this concern in its IB "because Staff has not explicitly stated the legal basis for its suggestions about retroactive ratemaking." Metra IB at 29. This suggestion is somewhat surprising, Staff notes, both because the proposition has been enshrined in Illinois law for over half a century and because there has never been any doubt that the rationale for the adjustment and calculation of the adjustments itself are premised on the idea that the RR Class should be compensated for past use of its facilities. As Staff detailed, the portion of the adjustment attributed to compensation for past use would remain constant over any phase out period, while the compensation for actual present-day use would decline over time.

Moreover, Staff states, even if the Commission were to approve compensation for past use, it is not clear that the value for past compensation is appropriate. While the post-2010 flow-through data measured by ComEd is likely reliable, ComEd did not begin measuring the current flowing through the RR Class substations until 2011. ComEd Ex. 2.0 at 48-49. Given that reliable flow-through data was only collected starting in 2011, compensating for periods prior to this is based on speculation rather than verifiable evidence, further rendering any retroactive adjustments inappropriate and unreliable. Staff Ex. 3.0 at 9. Additionally, the substation cost data provided by the RR Class for periods before 2011 has not been independently verified. *Id*. Given the speculative nature of the data, compensating RR Class customers for past use would be unjustifiable and unreliable. Even if retroactive adjustments were allowable in theory, there is no verifiable flow-through data from before 2011 from which to calculate an adjustment in practice. Without definitive historical data linking RR Class facilities to documented reliability or operational benefits for non-RR customers, any claims for retroactive adjustments are speculative and unreliable, as no reliable records demonstrate the extent of any historical benefits to non-RR customers. Staff Ex. 3.0 at 6-7. This absence of

verification makes retroactive adjustments both impractical and legally unviable, as it forces the regulatory framework to depend on assumptions that cannot be substantiated. Allowing retroactive adjustments based on unverifiable historical data would also set a dangerous precedent, potentially undermining regulatory consistency by permitting modifications without a reliable factual basis. Staff states that this approach would contradict Illinois' commitment to fair, evidence-based rate determinations that maintain stability and protect customers from the uncertainty of unsupported retroactive claims. *Citizens Util. Co*., 124 Ill. 2d 195, 206-07.

3. CTA's Position

The CTA explains that the need for ComEd to compensate the RR Class for ComEd's use of the CTA's traction power facilities as described above was recognized by the Commission in Docket No. 10-0467. In Docket No. 10-0467, the Commission found that the RR Class has "a unique relationship with ComEd whereby ComEd uses facilities on the CTA's and Metra's premises to provide electricity to other customers." Docket 10-0467, Order at 273. The Order also noted that "[t]his relationship should be approached with caution because disentanglement of this relationship could prove to be costly for all parties." *Id*. To compensate the RR Class for the use of the RR Class facilities, the Commission adopted the RR Class flow-through credit that over time "may vary, as these substations are reconfigured and redesigned." *Id*. at 274. The Commission also found, because of the long-time use of RR Class facilities, that "some additional amount of compensation is warranted, due to the fact that ComEd has been using these facilities for decades, without compensation." *Id*. at 275.

The CTA explains that the RR Class differs from other ComEd classes in several significant ways. First, there are only two members of the RR Class — the CTA and Metra. Second, this Commission through its orders in previous dockets has determined that there are public policy considerations that must be taken into account to avoid any adverse effects on the RR Class. Third, because power flows through the CTA's traction power substations to serve other ComEd customers, the Commission adopted the RR Class flow-through adjustment to partially compensate the RR Class members for ComEd's use of the RR Class member's equipment. CTA/Metra Joint Ex. 1.0 at 3.

The CTA states that the electricity delivered by ComEd to the RR Class powers the CTA's electric trains. For over 75 years, the CTA traction power substations have received and continue to receive service from ComEd using two separate, independent 12.6 kV lines. The reason for the two-line feed is to ensure that there is uninterrupted power to the substation (and ultimately the rapid transit trains) so that, if power is lost on one ComEd line, the other line can instantly pick up the service so that a rapid transit train does not lose power. A loss of power to a train can be hazardous, especially if the train is on an elevated track or in the underground subway. Such a stoppage between passenger stations creates a danger to the passengers, potentially the general public, and it disrupts train operations. CTA Ex. 2.00 at 3. The two lines are connected to breakers in the CTA traction power substation. This breaker is normally operated in the closed position so that the power flows from one line to the other. If the breaker operates in the open position then the railroads lose the dual feed necessary to operate the trains. CTA Ex. 2.00 at 4.

According to the CTA, no qualified, credible witness in the docket disputes that power flows through certain CTA traction power substations to serve other ComEd customers. The CTA points out that even Staff agreed that the fact that "power flows though the substations is not in dispute in this proceeding and the power flow studies included in the records are not contested." CTA Cross Ex. 2. The CTA has 64 traction power substations. For 41 of the CTA traction power substations, the two main breakers are operated in the above described "closed" position. The configuration of the substations has remained unchanged for over 75 years — two feed lines connected to each traction power substation connected together at a breaker operating in the closed position so that the power can, and does, flow in both directions. In other words, by operation of physics, power has flowed into and out of the traction power substations to serve other ComEd customers. No party to this proceeding has concluded "that the meter readings by ComEd for the CTA traction power substations are inaccurate or unreliable." CTA Cross Ex. 4. Further, no party to the proceeding claims "that the flow-through data by CTA traction power substations is inaccurate or unreliable" nor has any party concluded that "the accuracy or reliability of the flow-through data" is invalid.

The CTA explains that the number of traction power substations with kWh flow through has been declining and will continue to decline as more CTA traction power substations are reconfigured over time. The CTA explains that 23 of its traction power substations have been reconfigured by changing out CTA-owned equipment. After the reconfiguration, only one main breaker is operated in the closed position, resulting in the elimination of ComEd power flowing through the CTA substation to serve other ComEd customers. If the ComEd line fails or faults, then the other breaker closes.

The CTA is in the process of converting one additional traction power substation by 2025. Because the CTA lacks funds and resources to immediately reconfigure all the remaining substations to eliminate the closed two-breaker operation, reconfiguration occurs only when there is a major reconstruction of one of the transit lines. In addition, the CTA currently is building three new traction power substations that will have no flow-through capabilities. CTA Ex. 2.00 at 6.

ComEd Ex. 2.00 Table 7 shows the overall flow through has decreased from nearly 34 percent in 2011-2012 to 25.9 percent in 2023/2024, reflecting the fact that the total number of stations with no flow through has increased from 8 to 30. For traction power substations where flow through does exist, it accounts for nearly 40 percent of the power delivered to and through the substation. This is not an incidental flow but rather is significant and relies on facilities owned and operated by the CTA. The costs on the CTA facilities must be compensated. As the CTA reconfigures its traction power substations and brings new substations on line in the reconfigured mode, the amount of the flow-through will continue to decline.

The CTA explains that in Docket No. 20-0832, the Commission recognized that the flow-through has been declining as the stations are redesigned and reconfigured. As a result, the Commission directed ComEd in its next RDI docket "to evaluate, and present a proposal about how to reduce and/or phase-out the Flow-Through Adjustment." 2020 RDI Order at 18. In Docket No. 20-0832, the Commission also ordered ComEd to initiate a working group "to determine a present dollar value of compensation for prior use of railroad facilities." 2020 RDI Order at 18.

In response to the Commission Order, the CTA observes that in this docket ComEd offered modifications to the flow-through credit calculation of the present dollar value for prior use of railroad facilities and to set a 12-year phase out of the credit. Mr. Leick originally proposed to a stakeholder group comprised of ComEd, the RR Class, and Staff a 25-year phase out considering the remaining life span of the RR Class facilities based on when the flow-through started. He changed his recommendation based on objections from Staff, noting in a data response to Staff:

> Staff indicated that 25 years—the remaining asset life—was too long of a time period even if energy still flows through the railroad facilities because the Commission indicated that it may not be reasonable to use the remaining useful life and that a phase-out period should be reasonably short. [*See* 2020 RDI Order at 18]. Consequently, ComEd revised its proposal and reduced the time period by more than half, proposing a 12-year phase-out.

CTA/Metra Joint Ex. 1.02.

CTA/Metra witness Bachman testified that ComEd's proposed 12-year phase out is not based on any rational data. Rather, the 12 years is a decision by ComEd:

> …to "split-the-baby" between the [ICC] Staff's apparent desire (as expressed in the working group setting) to terminate the flow-through credit either immediately or on a much more expedited schedule and the 25-year period. In short, ComEd switched from using the rational, fact-based useful life standard as explained by Mr. Leick at ComEd Exhibit 2.0 at 57 and ComEd's response to Data Request DLA 2.07 . . . to proposing the 12-year phase-out period that does not provide adequate time for either ComEd or the railroads to reconfigure the substations and lines in an orderly, cost-effective manner.

CTA/Metra Joint Ex. 1.0 at 12-13.

In surrebuttal testimony, ComEd evaluated Staff's options that the Commission either "(1) mandate an evaluation and implementation of a system reconfiguration to eliminate the flow-through conditions, with all reconfiguration costs incurred fairly distributed among all ComEd customers; or (2) adopt ComEd's proposal to phase out the Flow-Through Adjustment over a 12-year period." ComEd Ex. 10.0 at 13. Of Staff's two options, ComEd noted the second option "is consistent with ComEd's proposal." *Id*. ComEd's rejection of Staff's proposal to require ComEd to reconfigure the RR Class traction power substations is consistent with the Commission's previous rejection of a similar Staff proposal in Docket No. 20-0832. 2020 RDI Order at 19.

The CTA states that the cost to replace the switchgear on the CTA side of the meter at a single traction power substation is estimated to be $3.3 million. CTA Ex. 2.00 at 7. It is unclear whether Staff's first option would reimburse the CTA for the costs for this work. This figure does not include the costs that ComEd imposes on the CTA for any work on ComEd's side of the meter. *Id*. at 7. In other words, the cost to immediately

reconfigure the remaining 41 traction power substations would be over $135 million "an amount that could not be immediately funded in today's environment." CTA Ex. 3.00 at 4. The CTA lacks funds and resources to immediately reconfigure all the remaining substations to eliminate the closed two-breaker operation. *Id*. at 6. The original 25-year phase-out proposal by ComEd gives the CTA time to continue the process of converting the existing traction power substations to eliminate the flow. As previously noted, all new traction power substations or routine rebuilding of existing substations are being planned so that there is no flow-through.

Adding compensation for ComEd's prior use of CTA facilities ($697,108 per year over a 12-year period) to the flow-through credit has insignificant to no impact on ComEd's other customers. ComEd Ex. 2.0 at 63. The CTA argues that in other words, Staff's concern about impact on customers of the flow-through credit and compensation to the CTA for ComEd's prior use of CTA facilities is not valid.

The CTA opines that as this Commission has found in the past, "the Commission must consider the potential adverse impact of utility rate increases on entities that provide public transportation." Docket No. 05-0597, Order at 190. Imposing additional costs on the RR Class "runs counter to this Commission's policy of encouraging the use of public transportation for environmental reasons." *Commonwealth Edison Co*., Docket No. 09-0263, Order at 43 (Oct. 14, 2009). Allowing for an orderly phase-out over 25 years avoids rate shock, allows for an orderly transition, and complies with the Commission's directive in Docket No. 20-0832 that ComEd and the parties "present a proposal about how to reduce and/or phase-out the Flow Through Adjustment and to "determine a present dollar value of compensation for prior use of railroad facilities." 2020 RDI Order at 18.

Staff argues that recovering this amount, which is consistent with the calculation methodology of the flow-through credit since 2011, would be retroactive ratemaking. The CTA argues that Staff's analysis is incorrect. The CTA notes that the Commission would be setting ComEd's rates on a going-forward basis. As the court found in *United Cities Gas Co. v. Ill. Com. Comm'n*, 163 Ill. 2d 1 (1994), there is no retroactive ratemaking when the proceeding does "not make adjustments to or rescind" orders of previous cases. 163 Ill. 2d at 16. *United Cities* distinguished the results from *Citizens Util. Co. v. Ill. Com. Comm'n,* 124 Ill. 2d 195 (1988), cited by Staff, noting that, unlike *United Cities*, *Citizens* disturbed prior Commission findings. Here, the rates are being set on a going-forward basis and there is no reversal or disturbing of prior Commission cases.

Mandel Bros., Inc. v. Chi. Tunnel Terminal Co., 2 Ill. 2d 205, cited by Staff, is inapplicable. Mandel concerned a request by a customer for a refund of a Commission-approved rate. While the court in *People ex rel. Hartigan v. Ill. Com. Comm'n*, 148 Ill. 2d 348 (1992) affirmed the finding in Mandel that the "Commission's function is legislative in nature and the rates that it sets are prospective in operation," the court approved refunds to customers under its equitable powers. 148 Ill.2d at 397. Unlike *Mandel* and *Hartigan*, there is no request for a refund in this docket. The flow-through credit is based upon usage of RR Class owned facilities and equipment — not a refund for past charges. In other words, ComEd is paying for facilities it uses and the Commission has previously found payment should be made for this use.

Staff cites *Bus. & Prof'l People for Pub. Interest v. Ill. Com. Comm'n*, 146 Ill. 2d 175, in support of its retroactive ratemaking argument. However, in that case, the Commission allowed ComEd to recover deferred charges because the "charges are not intended to correct an error made in prior rate orders which had included these plants in rate base. Rather, Edison argues deferred charges are merely one aspect of the reasonable and prudent costs of the plants which should be included in rate base. We agree with Edison. The fact that deferred charges represent capital costs incurred in the past does not make recovery of these costs retroactive." 146 Ill. 2d at 243-244. The flow-through credit is based upon usage of RR Class-owned facilities and equipment — not a refund for past charges. In other words, ComEd is paying on a deferred basis for facilities it has used and continues to use. The Commission has previously found payment should be made for this use. The CTA concludes that the flow-through credit portion for past use is not retroactive ratemaking.

The CTA urge the Commission to adopt ComEd's calculation for past usage of railroad facilities and continue the RR Class flow-through credit for the full term of 25 years as originally advocated by ComEd.

4. Metra's Position

Metra states the Commission should direct ComEd to continue the RR Class Flow-Through Adjustment for 25 years, or in the alternative, for 12 years.

Metra notes that the Commission first adopted the Flow-Through Adjustment in 2011 to compensate CTA/Metra because "ComEd uses facilities on the CTA's and Metra's premises to provide electricity to other customers" and "disentanglement of this relationship could prove to be costly for all parties." Docket No. 10-0467, Order at 273. ComEd initially proposed an estimate of 33% of the cost of replacement facilities for the credit owed to CTA/Metra, but Metra recommended a figure of 50% or 100% of the cost of replacement facilities because ComEd has had "unfettered use of these facilities for at least 40 years without any compensation." *Id*. at 275.

Since then, the Commission has continued to reaffirm the Flow-Through Adjustment in ComEd rate increase and rate design proceedings since 2011. Docket No. 13-0387, Order at 118; 2017 RDI Order at 43; 2020 RDI Order at 19. In addition, Metra notes that the Commission directed ComEd and other interested stakeholders to convene a working group to determine a "present dollar value of compensation for prior use of RR facilities, if any, and provide a report, including an explanation for how such amount was developed, in the next rate design investigation proceeding." 2020 RDI Order at 19.

Since the Flow-Through Adjustment started in 2011, the Commission has acknowledged that ComEd's use of CTA/Metra's substations has started to lessen, but also that ComEd continues to use CTA/Metra's substations to serve the RR Class and non-RR Class customers, as indicated in ComEd's annual reports. ComEd Ex. 2.0 at 48–49. Metra argues that on this basis, and with consideration of historical Commission precedent, the Commission should direct ComEd to continue compensating the RR Class with the Flow-Through Adjustment because it continues to use the substations.

Metra notes that Staff argues that the Flow-Through Adjustment was meant to be temporary. Metra does not dispute that point, however from the outset, the Commission

has declined to "impose a deadline upon [ComEd and the RR Class]" to determine how to reconfigure the substations. Docket No. 10-0467, Order at 274. In addition, the Commission has determined that "because ComEd continues to use RR facilities, the RR class should continue to receive some compensation for the use of the facilities." 2017 RDI at Order at 43. Metra notes that Staff does not point to any Commission language to equate a "temporary" Flow-Through Adjustment to an immediate termination of the Flow-Through Adjustment. Metra states that all parties (including Staff) agree that the reconfiguration of the substations would be complex and expensive. ComEd Ex. 2.0 at 58; Metra Ex. 3.01. That means, at least for the foreseeable future, ComEd will continue to use the substations to serve non-RR Class customers. Metra argues the implication of Staff's position is that ComEd should be permitted to do so for free. That outcome would contradict past Commission decisions, the entire rationale for the Flow-Through Adjustment concept, and basic cost allocation principles. Staff's position should be rejected.

Metra contends that the Commission should direct ComEd to continue providing the Flow-Through Adjustment because the substations benefit both the RR Delivery and non-RR Class customers. The benefits of the Metra substations to Metra are clear. According to Mr. Vitalis, the substations provide reliable energy to the Metra Electric District ("MED"), which allows Metra to meet the train schedules upon which its passengers rely. Metra Ex. 1.0 at 4. Most of the communities served by the MED are equity investment eligible communities ("EIECs") as defined in P.A. 102-0662. Metra Ex. 2.0 REV. at 3–4; Metra Ex. 2.02 REV.

It is equally clear that Metra's RR Class substations also benefit non-RR class customers because they allow flow-through of power to meet non-RR customers' needs. As stated above, the Commission has long recognized the mutually beneficial relationship between the RR Class and ComEd, repeatedly finding that ComEd utilizes the substations to serve its customers. That remains true in this proceeding — ComEd itself states that it uses the RR Class facilities to serve non-RR Class customers and that "[e]lectrons do flow through the RR facilities to serve other ComEd customers." ComEd Ex. 2.0 at 56; Metra Cross-Ex 3.0; *see also* Metra Cross-Ex. 1.0.

Staff witness Ashbaugh describes the benefits of the flow-through of electricity that serves the interest of both ComEd and its non-RR Class customers such as the University of Chicago Hospital as merely "incidental", due to "[e]lectricity naturally follow[ing] the path of least resistance" suggesting that there are "no deliberate or substantial advantage being provided to ComEd's customers." Staff Ex. 3.0 at 12. But, Metra states, Mr. Ashbaugh's position is contradicted by historic Commission findings that confirm the benefits of the use of Metra-owned substations for ComEd and its non-RR Class customers and the record in this proceeding.

Metra argues that first, Mr. Ashbaugh's claims are not grounded in any substantial evidence. As admitted in Staff's responses to Metra's data requests:

- Mr. Ashbaugh did not perform any power flow analysis regarding the Metra Substations;
- Mr. Ashbaugh did not perform any studies or analysis "to determine the operational effects on ComEd and/or the Metra if the Metra immediately

> opened all breakers at the Metra traction power substation where power flows through the substations to serve other ComEd customers"; and
>
> - Mr. Ashbaugh did not perform any studies or analysis to determine the cost to ComEd and Metra to redesign all the Substations.

See CTA/Metra Joint Ex. 2.01, 2.02, 2.03; Metra Cross-Ex. 6.0.

Second, the Commission did not historically authorize the Flow-Through Adjustment due to any "deliberate" or intentional effort on the part of the RR Class to provide benefits to non-RR Class consumers. Instead, the Commission authorized the Flow-Through Adjustment based on ComEd's use of the RR Class's facilities:

> Regarding the amount of credit that the Railroad Class customers should receive for use of these facilities, the Commission notes at the outset that any determination herein shall not serve as precedent for future rate cases. While it may be appropriate in future rate cases to allocate some credit *for use of these facilities*, the amount of credit may vary…

See Docket No. 10-0467, Order at 274 (emphasis added). No party disputes that ComEd continues to use the substations to deliver electricity to non-RR Class customers, and because of this undisputed fact, the Commission should continue to direct ComEd to compensate the RR Class through the Flow-Through Adjustment.

Metra notes that the record evidence indicates that ComEd still utilizes RR Class substations. CTA/Metra Joint Ex. 1.0 at 9–10. Metra contends that the reliable power that flows through the Metra's substations provide essential services to ComEd and non-RR Class customers, specifically in the form of enabling a flow-through of electricity to customer facilities that require reliable, constant power such as the University of Chicago and the University of Chicago Hospital. Metra Ex. 1.0 at 5.

Staff argues that the "core issue" in the Commission's decision to continue the Flow-Through Adjustment hinges on "whether [the] flow-through provides operational benefits to non-RR customers or indicates a dependence on [RR] [C]lass facilities." Staff IB at 10. Staff cites the Commission's reasoning in ComEd's 2005 rate case (Docket No. 05-0597) to justify Commission consideration of operational benefits as part of its consideration of the continuation of the Flow-Through Adjustment. Staff IB at 13. But, Metra contends, Staff does not adequately consider the subsequent Commission RDI decisions that approved and continued the Flow-Through Adjustment due to ComEd's *use* of the substations — not due to the *operational benefits* of the substations. From the outset, the Commission has grounded its authorization of the Flow-Through Adjustment on ComEd's *use* of the RR Class's facilities. Docket No. 10-0467, Order at 274 (referring twice in a single paragraph to Flow-Through credit deriving from ComEd" "*use* of these [RR Class] facilities") (emphasis added). This was reiterated in subsequent Commission decisions. *See* Docket No. 13-0387, Order at 118; 2017 RDI Order at 43. And yet again, in ComEd's 2020 RDI, the Commission stated:

> In opposition to Metra's and CTA's recommendations to increase the Flow-Through Adjustment, Staff recommends discontinuing the Flow-Through Adjustment altogether, which

> it also recommended in the 2017 RDI. Other than changes in the number of substations that have flow-through and the volume of energy flowing through those substations, the general facts remain the same in this docket as in the 2017 RDI, specifically that (1) ComEd is not dependent on RR facilities, and (2) *ComEd still uses RR facilities*. The Commission finds, as it did in the 2017 RDI Order, that *the RR Class should continue to receive some compensation for the use of the facilities* at this time.

2020 RDI Order at 19 (emphasis added).

Notably, ComEd also agrees that the Flow-Through Adjustment is not strictly based on operational benefits, but rather on use: "The adjustment provides a revenue requirement reduction to the RR Delivery Class as a result of electricity flowing through RR-owned substations to serve non-RR customers in ComEd's service territory." ComEd Ex. 2.0 at 47. In short, Staff's operational benefits argument does not negate the Commission's multiple prior RDI decisions approving the Flow-Through Adjustment. Nor is there any dispute that ComEd continues to use the RR Class substations to serve non-RR class customers. This is confirmed unequivocally by ComEd in its discovery response to Metra-ComEd 4.01, which is in the record as Metra Cross-Ex. 3.0.

Metra argues that even if operational benefits were part of the calculus, record evidence shows that ComEd and non-RR Class customers do in fact benefit from use of the substations that the RR Class owns and maintain. It is undisputed that "[e]lectrons do flow through the RR facilities to serve other ComEd customers" at a total kWh Flow Through of 140,945,611. ComEd Ex. 2.0 at 49, 56. Notwithstanding, Staff argues that even though the flow-through still exists, there are no operational benefits to non-RR Class customers. Metra contends that Staff disregards Mr. Vitalis's testimony, which states that the electricity that flows through Metra's Substations goes to certain customer facilities that require reliable, constant power, such as the University of Chicago and the University of Chicago Hospital. Metra Ex. 1.0 at 5. Metra is responsible for maintaining the substations in the MED and ensures that the flow through is reliable. *Id*. at 7. Mr. Vitalis states that Metra spends approximately $3.29 million annually to maintain the substations in the MED. *Id*.

Staff also argues that since ComEd's system no longer relies on the substations, this demonstrates "that the flow-through does not materially affect reliability." Staff IB at 12. Metra argues that this ignores the fact that ComEd agrees with CTA/Metra that reconfiguring the substations to eliminate the flow-through would be complex: "to do so in 12 years would be a challenging task." ComEd IB at 21 n.7. And while ComEd may not rely on the substations to the degree that it did in 2011 (when the Flow-Through Adjustment was first authorized), the Substations are significantly embedded into ComEd's system, enough so that it would require a significant and lengthy timeline for ComEd to end such use.

Metra states that Staff's argument also underestimates the degree of ComEd's reliance on the substations, which is demonstrated by the need for the RR Class to obtain ComEd permission to open the substations breakers. As Mr. Bachman explained:

> Both CTA and Metra witnesses testify that they are unable to open the breakers without ComEd's permission and cannot do so during peak times. Neither Staff witnesses nor any other witnesses take issue with this fact. This is a critical point. If ComEd does not rely on the CTA and Metra-owned substations to serve non-RR Class customers, then ComEd would not need to control how and when CTA and Metra operate those substations, and ComEd would not dictate, for example, when CTA or Metra may implement planned outages and other substation-related work. But the uncontested facts show that ComEd does rely on the RR Class-owned substations and therefore does dictate how and when CTA and Metra can work on those substations. In other words, ComEd relies upon the [RR] Class's facilities to serve other customers.

CTA/Metra Joint Ex. 2.0 at 8. Mr. Vitalis also documented the difficulty of obtaining a planned outage from ComEd, noting that the Metra substations clearly provide a valuable service to non-RR Class customers because ComEd and Metra need to extensively coordinate and plan even the most routine scheduled outages. Metra Ex. 3.0 at 3.

Finally, Mr. Leick confirms the operational importance of the RR Class substations, testifying that "ComEd does request advance notice of when a RR Delivery Class bus tie will be opened to be sure that systems are in a configuration that does not create atypical load conditions and operators can plan accordingly." ComEd Ex. 2.0 at 56 (reconfirmed by ComEd's response to the data request in the record as Metra Cross-Ex. 3.0).

Metra states that Staff's argument that the Commission should discontinue the Flow-Through Adjustment is premature and is not in accord with previous Commission decisions authorizing the Flow-Through Adjustment. So long as ComEd uses the substations, it should not do so for free. Accordingly, Metra recommends that the Commission direct ComEd to compensate the RR Class for such use with a Flow-Through Adjustment. In addition, even if operational importance were required to justify the Flow-Through Adjustment, the record evidence shows that the electricity flowing through the substations provides reliable power to those non-RR class customers requiring consistent and reliable electricity.

Metra states that if the Commission decides that the Flow-Through Adjustment should be phased out, that phase out should occur gradually over 25 years, as ComEd initially proposed. As ComEd explained, the 25-year phase-out period is aligned with the life span of the substations, based on subtracting the period that ComEd began providing the Flow-Through Adjustment to present (15 years) from the 40-year useful life of the substations. ComEd Ex. 2.0 at 56. Mr. Bachman noted and agreed that the ComEd approach is well reasoned and appropriate. CTA/Metra Joint Ex. 1.0 at 11-12.

Metra asserts that ComEd's modified recommendation of a 12-year phase out period appears to be based on Staff's suggestion that ComEd propose a "reasonably short phase-out time period." ComEd Ex. 2.0 at 57. ComEd confirmed this in response to data request DLA 2.07, stating that in working group meetings to discuss the Flow-

Through Adjustment, ComEd initially proposed a 25-year phase-out period and later revised it after Staff opined that the 25-year period was too long. CTA/Metra Joint Ex. 1.02. Mr. Bachman accurately describes ComEd's 12-year phase out as "an apparent attempt to mollify . . . Staff that wanted the flow-through to be stopped immediately." CTA/Metra Joint Ex. 2.0 at 2. Metra urges the Commission to choose the phase out period that has a rational basis and is supported by substantial evidence — the 25-year phase out period.

Metra notes that no party disputes that reconfiguring the substations to stop the flow of electricity through the substations will be a complex, expensive, and time-consuming endeavor. Mr. Vitalis sponsored Metra Ex. 1.02, which details the cost of reconstruction and modernization of the substations, with each set of updates requiring at least $500,000. Metra Ex. 1.02. In his rebuttal testimony, Mr. Vitalis details the extensive communication and advanced planning required even for routine scheduled outages to execute routine maintenance. Metra Ex. 3.0 at 3–4; Metra Ex. 3.02. For example, Mr. Vitalis explains (and provides supporting documentation to show) that even with advanced communication and planning, Metra's attempts to coordinate with ComEd often result in delays and/or non-responsiveness from ComEd. For example, during a period in 2024, notwithstanding numerous advanced communications from Metra, ComEd was only able to accommodate one out of 18 planned outages that Metra requested from May 2024 through July 2024. Metra Ex. 3.02 at 1.

Metra observes that Mr. Leick agrees that phasing out the use of Metra and CTA substations to serve non-RR Class customers would be challenging for ComEd. Mr. Leick states that it would first require the RR Class to modify their facilities to eliminate the flow-through of energy, and then only afterwards would ComEd be able to make the necessary investments in the substations to stop the flow-through of electricity. ComEd Ex. 2.0 at 58. Mr. Leick also states that this order of operations for the phase-out makes any substation phase-out timeline uncertain, emphasizing that ComEd cannot compel the RR Class to modify their facilities if the facilities are not creating safety or reliability concerns. *Id*. at 60. Mr. Leick makes clear that the 12-year substation phase-out period would be difficult to meet: "phase out the flow-through of energy at 50 traction power stations at a pace of just over one substation every 3 months would be a challenging task." ComEd Ex. 10.0 at 14.

For these reasons, if the Commission determines that the Flow-Through Adjustment should be phased out, it should adopt a 25-year phase out period to align with the life span of the substations versus ComEd's unsupported compromise position, that ComEd itself doubts is practicable.

Metra states that in his rebuttal testimony, Mr. Ashbaugh proffered two options for the Commission if it decides not to immediately eliminate the Flow-Through Adjustment – Option A (Reconfiguration Option) and Option B (12- year phase out)

ComEd disagrees with Option A because it would pass costs onto other ratepayers without providing a commensurate, measurable benefit. ComEd Ex. 10.0 at 13. Metra agrees with ComEd, highlighting that Option A would unnecessarily rush any reconfiguration process and would force both ComEd and the RR Class to incur costs associated with the reconfiguration. Further, there is no additional benefit to ratepayers

justifying the reconfiguration. For these reasons, the Commission should choose Option B if it decides between Staff's proposed options.

Metra further argues that the Commission should authorize ComEd to compensate the RR Class for past use of its facilities. Metra notes that in Docket No. 20-0832, the Commission recognized that the Flow-Through Adjustment was designed to both partially compensate the RR Class for ComEd's prior years' use of RR Class facilities and directed ComEd to initiate a working group to determine a present dollar value of compensation for prior use of RR facilities. 2020 RDI Order at 18–19. Mr. Leick presented a present dollar value calculation based on the 2010 Commission approved methodology for determining the Flow-Through Adjustment. ComEd Ex. 2.0 at 53.

Staff argues that ComEd should not compensate the RR Class for historical use, notwithstanding that the Commission in Docket No. 20-0832 specifically directed that steps be taken to compensate the RR Class for ComEd's past usage of the RR Class Substations. Metra argues that none of Staff's arguments stand up to scrutiny.

First, Staff argues that ComEd's present dollar value calculation is based on speculative data due to lack of reliable or precise historical records on power flows and associated costs. Staff Ex. 3.0 at 9. However, Mr. Leick explains that the calculation of payments that ComEd utilizes is supported by "reliable, publicly available sources from 1958 to 2010" and when the data was not readily available, ComEd used appropriate assumptions to supplement the inputs. ComEd Ex. 5.0 at 9. Mr. Bachman also notes that Staff did not present any analysis or workpapers to the working group to question ComEd's calculations. CTA/Metra Joint Ex. 2.0 at 6.

Second, Mr. Ashbaugh argues that there is no evidence to support the historical number of substations used in ComEd's calculations and that numbers provided by Metra and CTA were presented without "verification or detailed records." Staff Ex. 3.0 at 9. Mr. Bachman explains that in the working groups, ComEd and the RR Class worked collaboratively to determine the historical number of substations for each year from 1958 through 2010. CTA/Metra Joint Ex. 2.0 at 5. Further, Mr. Ashbaugh admits that he did not "conclude that the historical number of Metra traction power substations is inaccurate or unreliable." Metra Ex. 3.03.

Third, Mr. Ashbaugh states that ComEd lacked evidence to support the value of substations and that it was inappropriate for ComEd to utilize the 2010 values for the cost of substations as it may not reflect the historical costs of the facilities. Staff Ex. 3.0 at 9. However, both Mr. Bachman and Mr. Leick note that the formula to determine compensation for ComEd's historical use of the substations is based on the 2010 Commission-approved methodology in Docket No. 10-0647. CTA/Metra Joint Ex. 2.0 at 7; ComEd Ex. 2.0 at 52. Mr. Leick makes clear that "ComEd used the Commission-approved formula utilizing the 2010 values for the cost of substations and the revenue requirement factor." ComEd Ex. 2.0 at 52–53. Metra argues that the estimated value of the compensation owed to the RR Class should reflect ComEd's "unfettered use of [the] facilities for at least 40 years" and thus the Flow-Through Adjustment should be either 50% or 100% of the replacement costs of the Substations, valued at 2010 levels. Docket No. 10-0467, Order at 275. The Commission stated that it agreed with Metra's argument that the Flow-Through Adjustment should account for ComEd's historical use of the

substations, and therefore "concluded[d] that the correct credit should be the 50% figure, or $678,104." *Id*. The Commission's prior decision demonstrates that the Flow-Through Adjustment formula's inputs and assumptions already contemplate using the Flow-Through Adjustment to compensate the RR Class for ComEd's historical use of substations. Mr. Ashbaugh does not provide any evidence to show that the historical value of substations should be significantly different than the 2010 value of the substations. Therefore, Metra contends the Commission should defer to its own prior decisions and expertise in this matter.

Fourth, Mr. Ashbaugh disputes the energy usage factor of 33% used by ComEd because "the absence of precise historical data on power flows undermines the validity of the proposed compensation amounts." Staff Ex. 3.0 at 9. However, Metra notes, Mr. Ashbaugh admits that he did not "review, analyze or prepare any data" related to power flow through the Substations," and Mr. Ashbaugh did not testify to the accuracy or reliability of flow-through data. CTA/Metra Joint Ex. 2.0 at 7; CTA/Metra Joint Ex. 2.02. Metra urges the Commission to ignore Mr. Ashbaugh's unsupported assertion that the energy usage factor used by ComEd is flawed.

Finally, Mr. Ashbaugh argues that the RR Class and ComEd must provide evidence to support their claims and ComEd "must demonstrate that any offered amount is directly related to the use of railroad facilities." Staff Ex. 3.0 at 10. As Metra has pointed out, it is well settled by the RR Class, ComEd, and the Commission that the Flow-Through Adjustment is partially designed to compensate the RR Class for ComEd's historical use of their substations. Docket No. 10-0467, Order at 275. Mr. Ashbaugh cites Docket No. 05-0597 and states that the Commission rejected "CTA's proposal due to the lack of evidence showing meaningful benefits to ComEd and other customers" and claims that "[i]t is unclear what evidence exists now to support Metra and CTA's claim that did not exist 20 years ago." Staff Ex. 3.0 at 10. However, Mr. Ashbaugh disregards the record evidence. In Docket Nos. 10-0467, 13-0837, 17-0049, and 20-0832, the RR Class and ComEd have repeatedly justified the Flow-Through Adjustment and the Commission has repeatedly reaffirmed the continuation of the Flow-Through Adjustment. Metra IB at 17–19. Mr. Ashbaugh also states that neither the RR Class nor ComEd has the incentive to "negotiate the most cost-effective or justified solution." Staff Ex. 3.0 at 10. However, Metra contends that the Commission, a neutral arbiter in this situation, has weighed the evidence presented before it and has determined that the Flow-Through Adjustment is a necessary and appropriate component of ComEd's rate design, and the fact that the parties, including Staff, entered into a working group process to negotiate and arrive at a cost-effective and justified solution supports that determination.

Staff further argues that the substation cost data provided by the RR Class has not been independently verified. However, Metra notes that the RR Class provided the historical number of substations for each year to ComEd's satisfaction. ComEd Ex. 2.0 at 52. In sum, Metra argues Staff has failed to provide any reasoning or evidence demonstrating why the historical number of substations provided by the RR Class is inaccurate. CTA/Metra Joint Ex. 2.0 at 6.

Metra contends that Staff also did not point to any authority requiring the RR Class's substation cost data be "independently verified." Staff IB at 17. Metra states that it is not even clear what such a requirement would mean in the context of a Commission

proceeding wherein each party has its own witnesses, and there is no witness that is "independent" of a given party. In any event, expert witnesses for both ComEd and CTA/Metra supported the suitability and accuracy of the calculations based on the available data. Indeed, Metra observes that the Commission quite regularly accepts and approves those types of calculations made by utilities and other parties, without applying an "independent verification" requirement. *See, e.g.,* Staff IB at 29–31 (detailing Staff's proposal for a DTOU charge).

Metra further argues that Staff is incorrect to characterize the Flow-Through Adjustment as retroactive ratemaking. Metra observes that in ComEd's 2020 RDI, the Commission specifically directed ComEd and interested stakeholders to calculate the compensation to be paid prospectively for past use of the RR Class Substations. 2020 RDI Order at 18–19. Notwithstanding, Staff now argues that calculating prospective compensation to the RR Class for ComEd's past use of RR facilities constitutes retroactive ratemaking. Metra asserts that this argument is not only contrary to prior Commission direction, but contrary to the Commission's previously-stated rationale for the Flow-Through Adjustment and is unsupported by applicable law.

Metra contends the touchstone for evaluating potential retroactive ratemaking is whether a Commission order adjusts or rescinds a prior order. In *United Cities Gas Co. v. Ill. Com. Comm'n*, 163 Ill. 2d 1 (1994), the Illinois Supreme Court found that there was no retroactive ratemaking when the proceeding "did not make adjustments to or rescind" orders of previous cases. 163 Ill. 2d at 16. *United Cities* distinguished the results from *Citizens Util. Co. v. Ill. Com. Comm'n*, 124 Ill. 2d 195 (1988), which is cited by Staff, noting that, unlike *United Cities*, *Citizens* disturbed prior Commission findings. Metra points out that unlike *Citizens*, this proceeding is establishing the rate design on a prospective basis, and there is no request or need for reversal or disturbance of a prior Commission order or cases. Indeed, the whole point of the payment calculation at issue is to conform with and fulfill the Commission's directive in ComEd's 2020 RDI.

Metra explains that under Illinois case law, the prohibition against retroactive ratemaking is expressed as follows: "Once the Commission establishes rates, the Act does not permit refunds if the established rates are too high, or surcharges if the rates are too low." *Bus. and Prof. People for Pub. Int. v. Ill. Com. Comm'n*, 136 Ill. 2d 192, 209; *see also Mandel Bros. v. Chi. Tunnel Terminal Co*., 2 Ill. 2d 205, 211–12 ("It follows that the rate approved by the Commerce Commission as just and reasonable was the rate which the utility was required to charge so long as the order of the commission remained in effect. It cannot therefore be said that in charging that rate the utility charged an excessive rate which gave rise to a claim for reparations."). In sum, retroactive ratemaking occurs when a utility establishes a scheme whereby it provides refunds to its consumers when its rates are too high and surcharges when its rates are too low. *People ex rel. Madigan v. Ill. Com. Comm'n*, 2013 IL App (2d) 120243, ¶ 9. Once the Commission approves a ratemaking plan, "it cannot later modify that plan to correct an error." *Id*. at ¶ 24. These principles clearly do not apply to the Flow-Through Adjustment.

Metra notes that all of the cases cited by Staff involve issues about refunds or reparations. Metra states that the Flow-Through Adjustment does not confer a refund or reparations, nor has the RR Class made a claim for such a refund or reparation. Metra asserts that in this proceeding, the rate design being set is prospective and there is no

request by any party to modify any prior Commission cases or orders. Metra notes the entire point of the payment calculation at issue is to comply with the direction contained in the Commission's Order in ComEd's 2020 RDI. Metra observes that through its historic, repeated approval of the Flow-Through Adjustment, the Commission has not engaged in any refund process or attempted to change the amount of revenue eligible for ComEd to recover. Nor would the Commission be doing so now through an extension of the Flow-Through Adjustment, including partial compensation for ComEd's past use of the RR Class Substations. Metra contends the Commission would not even be retroactively changing how the compensation ComEd provides to the RR Class is calculated because ComEd has utilized the Commission-approved formula to calculate the compensation for past use. ComEd Ex. 2.0 at 52–53.

Staff further argues that the compensation for past use would be retroactive ratemaking because the request for past use "is premised on the RR [C]lass's allegation that their past rates were too high because rates did not include reimbursement for use of the railroad substations…and that non-railroad rates were too low because the non-railroad customers would fund any reimbursement to the RR to ensure the rate design was revenue neutral." Staff IB at 16. Again, Metra argues that Staff's argument falls flat in light of the Commission's specific direction that ComEd work with Staff and stakeholders to calculate the present value of its past use of the RR Class's facilities for prospective payment. CTA/Metra Joint Ex. 1.0 at 7.

5. Commission Analysis and Conclusion

The Commission approved the Flow-Through Adjustment in 2011 on the basis that ComEd was reliant on RR Class facilities to provide service to non-RR customers – "approximately 12 facilities." Docket No. 10-0467, Order at 273. In that proceeding, the Commission adopted a flow-through adjustment based upon the record and included a consideration for past use of CTA and Metra facilities. *Id*. at 275. In this proceeding, CTA and Metra continue to support the flow-through adjustment and request an increase. Though the Commission acknowledges the temporary intention of this adjustment, the record demonstrates that flow-through continues to occur at levels that warrant compensation. Accordingly, the Commission adopts the 12-year phase-out, gradually reducing the adjustment until it is eliminated, as proposed by ComEd. ComEd Ex. 2.0, at 62, Table 8.

The Commission does not agree discontinuation of the flow-through adjustment necessitates reconfiguration. The record evidence indicates that it is not cost beneficial to reconfigure the system to eliminate electricity from flowing through RR facilities. While Staff suggests that reconfiguring the system to eliminate flow-through conditions is an option, no party, including Staff, ultimately supports this option. Moreover, as the Commission previously determined, this proposal is not revenue neutral as it would require ComEd to invest in reconfiguring RR Class substations and is therefore outside the scope of this proceeding. 2020 RDI Order, at 19. The Commission affirms reconfiguration is not revenue neutral and declines to require it. The Commission agrees with ComEd that discontinuation of the flow-through adjustment, rather than requiring reconfiguration, may be determined as a matter of policy.

The Commission finds the 12-year phase out reasonably and appropriately compensates the RRs while considering the sustained decline of flow-through. In Docket No. 20-0832, the Commission recognized the decline of flow-through and directed ComEd to present a reduction, elimination, or phase-out option for the Flow-Through Adjustment. The total kWh flow-through of RR substations declined 46% between 2011 and 2023. ComEd Ex. 2.0, at 48-49. ComEd, CTA, and Metra have all conducted projects that contribute to the decrease in flow-through. CTA admits that flow-through will continue to decline as each party continues to update and reconfigure its system. However, for the substations where flow-through exists, it accounts for nearly 40% of the power delivered to and through the substation. The Commission agrees with CTA that this is not incidental flow. The 12-year phase-out option provided by ComEd appropriately addresses flow-through while considering its decline and the Commission's prior Order.

CTA and Metra contend that, if electricity flows through its facilities that connect to non-RR Class customers, the RR Class should get a subsidy. Alternatively, CTA and Metra support a 25-year phase-out to account for the useful life of the RR equipment. The Commission is not convinced the fact that electricity flows through RR facilities as a matter of physics is justification for a lasting subsidy. Further, the record does not support the proposition that ComEd will continue to use the facilities for the rest of the equipment's useful life. In the 2020 RDI docket, the Commission stated, "it is not reasonable to require non-RR Delivery Class customers to subsidize the RR Delivery Class for the remaining useful life of the RR facilities regardless of whether those facilities are actually used by ComEd in the future to serve non-RR customers." Docket No. 20-0832, Final Order, at 18. The Commission in the 2020 RDI Order emphasized the temporary intention of the adjustment and advised use of a shorter phase-out option. The Commission finds past Commission decisions and the record evidence demonstrating a sustained decrease in flow-through supports a 12-year phase-out over either a 25-year phase-out or a continuation of the adjustment.

The Commission appreciates parties' efforts to quantify any potential compensation for ComEd's prior use of RR facilities as directed in the 2020 RDI Order. The directive to calculate such compensation was not implicit approval that it was allowed or warranted. The Commission agrees with Staff that compensation for past use would constitute retroactive ratemaking as it would provide an adjustment to correct past discrepancies. Further, the Commission, though not bound by previous Commission Orders, acknowledges the long discussion of this adjustment starting in the early 2000s. Despite arguments by CTA and Metra in support, the Commission did not find the Flow-Through Adjustment appropriate until 2011. The Commission finds that there should be no additional compensation for prior use of RR facilities going back to 1958. Accordingly, the Commission adopts a 12-year phase out of the Flow-Through Adjustment, without consideration of past use as presented in ComEd Ex. 2.0, at 62, Table 8.

C. Next Step to Full Revenue Responsibility for the RR Delivery Class

ComEd notes that the Commission has been moving the RR Delivery Class toward 100% revenue responsibility in steps since 2008, the most recent of which was step 4 out of 10 in the 2020 RDI. 2020 RDI Order at 23. The RR Delivery Class is currently at 87.0% revenue responsibility and ComEd has calculated the next step revenue responsibility to be 89.2% (step 5 of 10). *See* ComEd Ex. 2.0 at 66-67. ComEd explains

that, if the Commission chooses to assign the RR Delivery Class 89.2% of revenue responsibility, the remaining 10.8% will be reassigned to all other delivery classes based upon their assigned revenue from the ECOSS, and the change would become effective beginning with the January 2026 monthly billing period and continue until ComEd's next RDI, at which time the RR Delivery Class's progress toward the next subsequent step to full revenue responsibility can be evaluated. *Id*. at 67. ComEd notes that Staff supports moving the RR Delivery Class to the next step toward 100% revenue responsibility, and no party opposed this recommendation. *See* Staff Ex. 2.0 at 9-10; ComEd Ex. 5.0 at 11.

The Commission finds that ComEd should take the next step – step 5 of 10 – towards full revenue responsibility for the RR Class. The Commission directs ComEd to assign the RR Delivery Class 89.2% of revenue responsibility beginning with the January 2026 monthly billing period and reassign the remaining 10.8% of the RR Delivery Class's revenue responsibility to all other delivery classes based upon their assigned revenue from the ECOSS.

D. Beneficial Electrification Allocation

1. ComEd's Position

ComEd argues that the Commission should approve ComEd's proposed BE Plan cost allocation. ComEd argues that it has proposed a reasonable and appropriate allocation of BE Plan costs that reflects its considered judgment on assigning costs using the information currently available to ComEd. ComEd's allocation includes revisions to certain aspects proposed by Staff and various intervenors in this proceeding. ComEd requests that the Commission reject certain intervenors' proposals that would alter which allocation factors are applied to BE Plan costs.

ComEd proposes in direct testimony an allocation of the BE Plan costs. *See* ComEd Ex. 2.0 at 67-68. This allocation resulted in 12.1% of BE Plan costs being assigned to residential delivery classes using the forecasted usage (in kWhs) for each delivery class and 87.9% of BE Plan costs being assigned to the non-residential/lighting delivery classes using the forecasted billing demands (with the load profile of the Watt-Hour and Lighting Delivery Classes being used to compute an equivalent billing demand). *See id*. at 68; *see also* REACT Cross Ex. 12.0 (explaining how ComEd developed its BE Plan cost allocation methodology). ComEd allocates no BE Plan costs to the RR Delivery Class because the two members of that delivery class are already electrified. ComEd Ex. 2.0 at 68. ComEd proposes using billing demand as an allocation factor for non-residential BE Plan costs after considering intervenor feedback on the issue in the BE Plan 1 docket. *See* REACT Cross Ex. 12 (explaining that ComEd originally proposed to use total kWhs as an allocation factor for BE Plan costs but revised its proposal to use billing demand in response to recommendations from intervenor Walmart). Billing demand is a reasonable and appropriate approximation of delivery classes' use of ComEd's distribution system and the fact that all customers benefit from a reduction in emissions (which are predominantly caused by larger load customers). ComEd Ex. 10.0 at 16--17. ComEd also proposes in its direct testimony to revise how it allocates BE Plan costs within the High Voltage ("HV") Delivery Class's subfunctions, affecting the Primary Voltage Distribution Facilities Charge ("DFC"), Secondary Voltage DFC, and High Voltage DFC for that delivery class. ComEd Ex. 10.0 at 69-71.

ComEd argues that its proposed BE Plan allocation, as of Initial Briefs, reflects collaboration between ComEd, Staff, and intervenors. For example, in its rebuttal testimony, ComEd incorporated some of REACT's feedback and proposals, and revised aspects of its BE Plan cost allocation. *See* ComEd Ex. 5.0 at 18-19. Specifically, ComEd (1) revised its cost allocation between residential and non-residential delivery classes for certain BE Plan Pilot costs; (2) allocated Customer Education and Awareness ("CE&A") costs evenly (50/50) between residential and non-residential delivery classes; and (3) removed the allocation of BE Plan costs to HV distribution facilities' billing demand while maintaining billing demand allocation for service points connected at Primary Voltage and Secondary Voltage demands. *See* ComEd Ex. 5.0 at 18-19. In surrebuttal testimony, ComEd accepted and implemented additional proposals from Staff related to allocation of certain BE Plan pilots. *See* ComEd Ex. 10.0 at 15-16. And in response to a REACT data request, ComEd also revised its BE Plan CE&A residential/non-residential spend allocations to 15/85% based on the actual and estimated BE Plan 1 CE&A spend allocation from November 2023 through December 2024. *See* Staff Cross Ex. 2.0. ComEd notes that these revisions result in an overall residential/non-residential BE Plan cost allocation of 17.75/82.25%. *See* REACT Cross Ex. 10.

ComEd notes that certain intervenors criticize ComEd's proposed BE Plan cost allocation, particularly the HV Delivery Class's allocation (*see, e.g.*, Nucor Ex. 1.0 at 10-11; IIEC Ex. 1.0 at 2, 17-18; REACT Ex. 2.0 at 12) and ComEd's methodology of allocating BE Plan costs in the non-residential sector (*see* IIEC Ex. 2.0 at 11-12; REACT Ex. 6.0 CORR. at 11-12). ComEd argues that both criticisms are wrong. ComEd argues that its proposed BE Plan cost allocation methodology is a reasonable and appropriate means of implementing these new programs, particularly given the short time period over which the BE Plan rebates have been available. Moreover, ComEd notes that it has agreed to present rebate cost information by delivery class (or other information as available) in its next RDI after the rebates have been distributed for a longer period of time. ComEd Ex. 10.0 at 18. ComEd states that interested parties will be able to utilize that information to inform their proposals on future allocation and recovery of BE Plan costs. *Id*.

Additionally, ComEd argues that the alternative allocation proposals suggested by certain intervenors cannot be adopted because they would lead to an inequitable allocation or would not reflect BE Plan budget forecasts for residential and non-residential sectors. *See* ComEd Ex. 5.0 at 14-16. Specifically, intervenors criticize ComEd's allocation among non-residential customer classes using billing demand and ComEd's allocation of CE&A costs between residential and non-residential customer classes.

ComEd argues that the Commission should reject criticisms and proposals by BOMA/Chicago, IIEC, Nucor, and REACT regarding ComEd's use of billing demand to allocate BE Plan costs among non-residential classes. *See* BOMA/Chicago IB at 4-5 n.1 (noting alternatively that "[i]t may be fair to allocate BE Plan costs among delivery classes based on their percentage of the non-residential MYRP revenue requirement" or allocating costs through "the use of a fixed charge"); IIEC IB at 5, 7 (proposing to allocate costs using overall delivery service revenue requirements of each class due to the purported "public benefit" nature of the BE Plan costs); Nucor IB at 5-6 (proposing to

allocate costs using overall non-BE Plan delivery service revenue requirements); REACT IB at 18-21 (proposing to allocate costs using Average Number of Customer Accounts).

ComEd explains that BOMA/Chicago argues that billing demand should not be used to allocate BE Plan costs because, in BOMA/Chicago's view, BE Plan costs are not traditional delivery service costs. ComEd argues that this argument is incorrect because the Commission has previously rejected it. In ComEd's BE Plan 1 docket, the Commission denied ComEd's request for rider treatment for BE Plan costs and ordered that those costs be recovered in ComEd's delivery service rates in its MYRP proceeding. BE Plan 1 Order at 222. ComEd argues that, as a result of that Order, the Commission has clearly determined that BE Plan costs are "delivery services" for costs recovery purposes.

ComEd argues that the Commission should reject IIEC's and Nucor's proposal to allocate non-residential BE Plan costs using non-BE Plan delivery service revenue requirements. ComEd argues that use of such an allocator would not reflect BE Plan budget forecasts to the residential and non-residential sector. *See* ComEd Ex. 5.0 at 15. Furthermore, in ComEd's view, it would not consider the relative contributions of various customers to conditions (such as total emissions) that the BE Plan was designed to ameliorate – a factor that ComEd argues the Commission has discretion to consider. *See* ComEd Ex. 10.0 at 17.

ComEd also argues that the Commission should reject REACT's proposed Average Number of Customers allocator. ComEd argues that this allocator would underestimate both the benefits received by larger, non-residential delivery classes and their contribution to greater emissions. *See* ComEd Ex. 10.0 at 17; ComEd Ex. 5.0 at 13-14. ComEd explains that, under REACT's proposal, the recipients of rebates would then need to be responsible for their costs, effectively eliminating the rebates. ComEd argues that this is at odds with the goals of beneficial electrification, which include incentivizing lower emissions through electrification of various sectors of the economy. *See* 20 ILCS 627/45(b).

ComEd also argues that REACT provides no support for its assumption that rebate adoption or cost causation is proportional to the number of customers in the class. REACT's reasoning is that "the BE Program is intended to support EV adoption in Illinois, and the majority of automobiles in Illinois are owned by individual customers[.]" REACT IB at 14. ComEd argues that this betrays a fundamental misunderstanding of the features of ComEd's BE Plan, which ComEd notes is predominantly aimed at incentivizing fleet vehicle adoption: ComEd's Commission-approved BE Plan 1 includes $8 million for Residential programs and $58 million for Non-Residential programs. *See* BE Plan 1 Order at 130. The percentage of BE Plan budget directed toward the non-residential sector is 82%, a breakdown that ComEd argues in no way resembles REACT's proposal to assign 90% of BE Plan costs to the residential sector. ComEd argues that the Commission should reject REACT's proposal to use the Average Number of Customers allocator. ComEd notes that REACT also requests that the Commission order ComEd to categorize future BE Plan expenditures and budgets based on the various programs and customers served, and "create clear metrics for those expenditures and then track which customer class is participating[.]" ComEd argues that it already categorizes BE Plan expenditures and budgets by program. *See* BE Plan 1 Order, Compliance Filing (May

25, 2023) at 31-44. ComEd also argues that the correct forum in which to advocate for substantive changes to tracking metrics for expenditures and customers is the BE docket – not this revenue-neutral rate design investigation, and ComEd has already agreed to provide parties with updated rebate information by delivery class. *See* ComEd Ex. 10.0 at 18.

ComEd argues that the Commission should reject BOMA/Chicago's, REACT's, and IIEC's criticisms regarding ComEd's allocation of CE&A costs. ComEd explains that CE&A is its own distinct program within the BE Plan and "the [CE&A] budget, and consequently the CE&A spend, is separate and distinct from other BE Plan Program and Sub-Program budgets and spend." Staff Cross Ex. 3.0. The "CE&A budget and spend is separate and distinct from any delivery and marketing efforts under each Program and Sub-Program." *Id*. In response to REACT data requests, ComEd notes that it separately analyzed whether its CE&A budget and spend was related to residential or non-residential customers. *Id*.

ComEd argues that each party criticized ComEd's allocation of CE&A costs despite evidence showing that, in BE Plan 1, 85% of CE&A costs were directed at non-residential customers and 15% of CE&A costs were directed at residential customers from the period November 2023 through December 2024. *See* Staff Cross Ex. 2.0. ComEd notes that BOMA/Chicago argues that the 85%/15% split should be rejected because "there is no evidence that the spend trend will continue or that it accurately reflects BE Plan 2 costs." BOMA/Chicago IB at 3. ComEd notes that IIEC argues that CE&A costs should be split equally between the residential and non-residential sectors (essentially ignoring updated evidence), and REACT criticized the substance of the conclusion, reiterating its request that all BE Plan costs be allocated using the Average Number of Customers Allocator. *See* IIEC IB at 4-5; REACT IB at 15-18. ComEd maintains that all of these arguments are without merit and the Commission should reject them.

ComEd argues that its proposed 85%/15% split is based on actual spend and reflects the most recent data available about the allocation of CE&A costs between the non-residential and residential sectors. *See* Staff Cross Ex. 2. ComEd argues that the record evidence in this case is uncontroverted: the BE Plan 1 spend breakdown is the best proxy for the BE Plan 2 spend breakdown. *See id*. ComEd argues that BOMA/Chicago's claim that the spend might change in the future would unnecessarily elevate hypothetical speculation over uncontroverted, up-to-date evidence and the Commission must reject it. ComEd notes that BOMA/Chicago also advocated for a "mechanism for annual reconciliation of BE Plan costs" based on the same assumption that future spending may differ from BE Plan 1 spending that formed the basis for ComEd's allocation. BOMA/Chicago IB at 4. ComEd notes that it presented that feature in its proposed Rider BE, which the Commission rejected. *See* ComEd Ex. 10.0 at 18-19. ComEd argues that, moreover, the suggestion is unnecessary because BE Plan costs are already subject to annual reconciliation as part of ComEd's MYRP. *See* Rate MRPP, ILL. C. C. No. 10, Original Sheet No. 620.

ComEd argues that REACT's claims that "ComEd has not explained how it determined what portion of the [CE&A] is 'related to' residential or non-residential customers" are also unfounded. REACT IB at 17. ComEd notes that it responded to data requests from REACT explaining the cost breakdown to residential and non-residential

customers by tactics, vendor, and advertising channel. ComEd argues that, in short, REACT's disagreement with the evidence does not mean ComEd has offered no explanation. *See* Staff Cross Ex. 4.0.

ComEd notes that REACT also questioned ComEd's CE&A cost split, arguing that "'mass market advertising' [] is general in nature and is not targeted." REACT IB at 17. ComEd argues that REACT does not cite any evidence in the record for this proposition and the Commission should disregard this unsupported speculation. ComEd notes that REACT did cite to the website of one vendor (PACO Collective) that ComEd employed to undertake part of its advertising. However, ComEd argues that the Commission should reject REACT's reliance on hearsay statements from a website that ComEd notes are not in the record. *See* Ill. R. Evid. 801(c). ComEd argues that, even if the Commission is inclined to give credence to REACT's citation, there is no connection between "inclusive marketing," i.e., marketing focused on reaching diverse audiences, and limiting such marketing to individuals as REACT insinuates – it could just as plausibly be directed to business owners or decisionmakers from diverse audiences.

ComEd argues that REACT appears to fundamentally misunderstand how the BE Plan budget operates, and its CE&A allocation proposals are meritless. ComEd requests that the Commission reject REACT's critiques of ComEd's proposed CE&A spend allocation and approve ComEd's proposed allocation.

ComEd argues that the Commission should adopt ComEd's proposal, as updated over the course of this proceeding.

2. Staff's Position

Staff explains that several intervenors, including IIEC, Nucor, and REACT, made recommendations regarding ComEd's proposed allocation of BE Plan costs. Staff recommends that the Commission reject IIEC, NUCOR, and REACT's allocation proposals related to exemption for classes other than RR and replacing demand as the allocation factor. Staff Ex. 5.0 at 2. In response to concerns made by several parties, ComEd modified their BE allocation proposal. ComEd Ex. 5.0 at 18-19. Staff recommended that the Company propose further modifications to the BE Pilot allocation for Curbside Charging, Submetering, and Air Quality Monitoring to "ensure a more refined allocation method that better reflects the actual costs and efforts required to implement each pilot across both residential and non-residential sectors." Staff Ex. 5.0 at 18. In response, ComEd agreed to set the BE Pilot split to 50% residential and 50% non-residential for the Curbside Charging, Submetering, and Air Quality Monitoring pilots. ComEd Ex. 10.0 at 15. This modification to the BE Pilot allocation methodology appears to be uncontested.

Additionally, Staff explains that ComEd subsequently updated the BE cost estimates for CE&A programs and recommend costs be allocated 15% to residential customers and 85% to non-residential classes as reflected in the proposed spend. ComEd Cross Ex. 5.0. Staff supports this allocation as it reflects a more accurate distribution of costs based on the different levels of usage and benefits derived from BE initiatives and is in line with Staff's proposed approach for BE Pilot allocation methodology, "[t]he Company should develop a more refined allocation method that better reflects the actual costs and efforts required to implement each pilot across both

residential and non-residential sectors, ensuring a fairer and more accurate distribution of the BE Pilot expenses." Staff Ex. 5.0 at 18.

BOMA/Chicago argues ComEd's proposed BE Plan CE&A allocation, which includes a 15% allocation to residential customers and 85% percent allocation to non-residential customers, should be rejected. While there may be some validity to this argument, in the absence of confirmed BE Plan 2 program budgets, using the initial BE Plan's spending as a reference provides a reasonable basis for future projections. Staff opposes BOMA/Chicago's proposal to return to the 50/50 split of CE&A allocation costs.

Staff notes that IIEC's primary proposal to the Commission was that ComEd should adopt a uniform allocation of a 2% share of BE costs to customers classes in the ECOSS rather than using demand as an allocation factor. IIEC Ex. 1.0 at 11. Staff witness Sanders expressed concern that this allocation would not accurately reflect the varying contributions of different customer classes to BE Plan efforts or of the impacts to those different classes. Staff Ex. 5.0 at 6. As a result, it oversimplifies the allocation because it does not consider the relative contributions of large customers versus small users to BE goals such as emissions reduction and increased electrification. *Id*. Larger industrial and commercial customers generally have greater energy demands and emissions footprints. *Id*. IIEC's alternative proposal calls for using ComEd's assignment of costs to residential and non-residential customer groups as a baseline, and then updating it to allocate BE Plan costs. IIEC Ex. 1.0 at 17. Staff also disagrees with this approach because, according to ComEd, the delivery class data that would be required is not yet available. Staff Ex. 5.0 at 6. Staff witness Sanders testified, that, "[w]hile alternative methods for allocating BE Plan costs might be developed in the future, Staff considers the Company's current proposal to be more appropriate and reflective of the available data…[.]" *Id*.

IIEC took issue with Staff's approach to addressing the allocation of BE Plan costs in this docket and recommends that the Commission give little weight to Staff's position. IIEC suggests Staff's position is somehow flawed because Staff responded to IIEC's concerns regarding ComEd's proposed BE plan cost allocation in rebuttal testimony rather than initial testimony. *Id*. Staff asserts that this is nonsensical. Staff did not raise IIEC's concerns in Staff's initial testimony because Staff did not share IIEC's concerns and could not predict and therefore preemptively respond to IIEC's position before it filed testimony introducing those concerns.

IIEC also implied that ComEd and Staff sought to "modify their testimony positions based on twelfth-hour responses to 'data requests,' which were allowed into the record as purported 'cross-examination' exhibits." *Id*. Assuming IIEC is referring to ComEd Cross Exhibit 5.0, Staff did not change its testimony but rather provided a response to new information provided by ComEd during and after the evidentiary hearing in this docket. *Id*. This is an appropriate part of the litigation process and not a reason to disregard Staff's position.

Lastly, IIEC took issue with Staff's position that BE costs should "primarily be socialized to ensure broad participation and shared responsibility" but, Staff notes, failed to acknowledge or respond to Staff's testimony in response to IIEC's position. Staff Ex. 5.0 at 8. Additionally, while IIEC acknowledges "Illinois law is silent on how the BE Plan

costs are to be allocated and collected among the customer classes" (IIEC IB at 3), IIEC also suggests it is problematic that Staff provided no statutory authority to support its position. *Id*. at 8. Staff's recommendation to socialize BE Plan costs is in line with the statutory objectives of 20 ILCS 627/45(a) to encourage the decarbonization of the transportation sector. The benefits of decarbonization reach all customers and so spreading responsibility among customers is appropriate and will support achieving P.A. 102-0662's climate objectives. Staff Ex. 5.0 at 8-9. Furthermore, IIEC failed to address Staff's response to IIEC's position that, "[t]he unique characteristics and usage patterns of each class necessitate a more nuanced approach to cost allocation. While alternative methods for allocating BE Plan costs might be developed in the future, Staff considers the Company's current proposal to be more appropriate and reflective of the available data compared to the approaches suggested by the intervenors." Staff Ex. 5.0 at 6. Staff states that IIEC's proposals should be rejected.

Staff further states that both Nucor and REACT propose to use the number of customers as a factor to allocate BE costs rather than using demand as the allocation factor. REACT Ex. 2.0 at 22; Nucor Ex. 1.0 at 7. Staff opposes this proposal as it fails to recognize the broader impact of larger customers on system demand and emissions. Staff Ex. 5.0 at 8. Using the number of customers as an allocation factor accounts for neither the increased financial capacity nor the greater emissions-impact of larger customers. *Id*. Additionally, Nucor and REACT both propose a process for exemption from BE Plan costs for "fully electrified" classes other than the RR class. REACT Ex. 2.0 at 23; Nucor Ex. 1.0 at 10. ComEd opposes this proposal, and Staff agrees. The RR class should remain as the only exception to standard BE Plan cost recovery, because the two members of the RR class – CTA and Metra - have unique characteristics that warrant exclusion from BE costs. *Id*. As recommended by both ComEd and Staff, the RR Class should continue to be treated distinctly in rate design, reflecting their specialized operational needs and minimal contribution to BE objectives. Staff Ex. 5.0 at 8, 11-12.

Staff concludes that ComEd's revised BE allocation provides a more balanced and reasonable approach to distributing BE costs.

3. REACT's Position

REACT observes that there is unanimous agreement that the Commission should direct ComEd to revise the way in which it recovers the costs associated with its BE program. REACT notes that as a result, the question for the Commission is which allocator most accurately reflects cost causation.

REACT proposes a single, straightforward approach: assign all BE Program costs using the Average Number of Customers in each delivery services class. *See* REACT Ex. 2.0 at 22. The Average Number of Customers allocator should be used both to divide the cost between residential and non-residential customers, as well as to allocate these costs among the non-residential customer classes. The one exception is that REACT agrees the RR Class should be assigned no costs since they can receive no benefit under these programs.

REACT observes that ComEd's position regarding the allocation of its BE Plan costs has shifted significantly throughout this proceeding and has not been tied to an overarching allocation philosophy. In its most recent iteration, ComEd proposes to

allocate 17.75% of all BE Program costs to residential customer classes and 82.25% to the non-residential customer classes. Further, ComEd proposes to allocate costs among the non-residential customer classes based on customer class billing demand. Staff agrees with ComEd's position, even though neither ComEd nor Staff have performed any analysis that demonstrates a relationship between customer billing demand and participation in the BE Program.

REACT has consistently advocated for the use of the Average Number of Customers allocator to allocate BE Program costs between residential and non-residential customers. Because the BE Program is intended to support EV adoption in Illinois, and the majority of automobiles in Illinois are owned by individual consumers, REACT notes that it is logical to conclude that individual consumers present the highest possibility for participating in and benefitting from the BE Program. REACT cites a recent Illinois Secretary of State report which confirms that over 75% of motor vehicles in Illinois are registered to individuals. *See* All Active Registrations Based on Expiration Date, November 2024 (last visited Nov. 7, 2024). REACT concludes that the Average Number of Customers allocator would most closely track the scalar potential of individual and commercially owned vehicles and thereby provide the most accurate allocation of BE Program costs to BE Program causers.

REACT notes that ComEd dismissed the use of the Average Number of Customers allocator and other recommendations out of hand, asserting without any analysis that "the alternative allocation proposals suggested by certain intervenors cannot be adopted because they would lead to an inequitable allocation or would not reflect BE Plan budget forecasts for residential and nonresidential sectors." ComEd IB at 25. However, REACT observes that ComEd's own proposal to assign costs based on customer demand is an inequitable allocation as it bears no relationship to the BE Plan budget forecasts and by ComEd's own admission has no connection to likely participation in the BE Program. *See* REACT Cross Ex. 8.03.

REACT explains that Staff likewise suggests that the Average Number of Customers allocator is inappropriate because it fails to account for "the increased financial capacity" and "the greater emissions-impact of larger customers." Staff IB at 20. However, Staff provided no evidence regarding the financial capacity or the emissions impact of various customer classes. Moreover, such considerations have no bearing on the cost causation principles that are to guide the Commission in this proceeding. *See* 220 ILCS 5/1-102(d)(iii); 220 ILCS 5/16-108(c).

REACT closely analyzed ComEd's varied treatment of the CE&A program costs for the BE Program, which is a primary reason for ComEd shifting its allocation of BE Program costs between residential and non-residential customer classes. The CE&A budget amounts to $8.2 million per year and is supposed to inform ComEd customers of the opportunities available through the BE Program. *See* Staff Cross Ex. 4.0. However, ComEd has no workpapers to support the "residential – nonresidential" split reflected in its budget and the CE&A budget lacks a level of completeness, detail, and structure that would be required to properly allocate these costs. *See* REACT Cross Ex. 10. For instance, the CE&A budget does not mention or allocate costs to support primary outreach programs for large energy users (e.g., engagement by existing account managers, a "Fleet Electrification Assessment" tool) that ComEd claims will occur in its

BE Plan. *See* Docket No. 24-0484, ComEd Beneficial Electrification Plan 2 at 46. Instead, ComEd indicates that $6.2 million (76%) of the CE&A budget is committed to engaging a third-party company that has no evidence of experience in marketing EV infrastructure to commercial or industrial clients. *See id.* at 46-47. REACT concludes that this and other aspects of the CE&A budget suggest that non-residential customer classes would be saddled with costs for outreach that will never orient towards their needs.

REACT also advocates for use of the Average Number of Accounts allocator to assign BE Program costs among the non-residential customer classes, noting that this approach would more accurately represent the potential for non-residential customers to participate in the BE Program. REACT Ex. 2.0 at 21-22. This approach would more appropriately result in BE Program costs reflecting the relatively smaller likelihood of large vehicle fleets being operated by customers in the Very Large, Extra Large, and HV customer classes. *See id*. at 22.

REACT notes that multiple parties agree that there is no relationship between cost causation and cost allocation under ComEd's proposal to assign BE Program costs among non-residential customer classes based on customer class demand. ComEd was not able to produce any workpapers to support its unsupported assertion that customer class demand was an appropriate allocator for the BE Program costs among non-residential customers. *See* REACT Cross Ex. 11. ComEd's own witness could not provide any evidence, analysis, rationale or even a hint at how customer class demand for electricity in any way determines that a customer is more or less likely to participate in or benefit from the BE Program. *See* Tr. 181-182.

4. IIEC's Position

IIEC points out that ComEd includes $77 million of BE Plan costs in its cost of service study for developing rates for service beginning in 2026. This amount was approved by the Commission as the average annual cost of BE in the period 2023-2025. IIEC asserts that the amount for 2026 is not yet known, but presumably ComEd will include, in 2026 and beyond rates, only that amount which, eventually, is approved for spending in those years.

IIEC notes that Illinois law is silent on how the BE Plan costs are to be allocated and collected among the customer classes. *See*, inter alia, IIEC Ex. 1.0 at 4, ComEd Ex. 5.0 at 11; *see generally*, 20 ILCS 627/45. IIEC maintains that BE Plan costs are not delivery services, as those are defined in Section 16-102 of the Act (220 ILCS 5/16-102). IIEC reasons that although the BE Plan costs may not be delivery services, per se, normal rate making principles and fundamental fairness suggest that they should be allocated and recovered from customers similar to delivery services, i.e., in accordance with Section 16-108(c) of the Act, which states: "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." 220 ILCS 5/16-108(c). IIEC believes that the Commission should allocate costs consistent with normal cost of service principles, to the extent feasible, and that such a determination should be made in this case.

IIEC states that the BE Plan costs were introduced into ComEd's rates during the pendency of ComEd's recent MYRP Docket. ComEd Ex. 2.0 at 67; IIEC Ex. 1.0 at 3. However, IIEC points out that both ComEd and the ALJs in that case indicated that testimony related to cost allocation and rate design were to be addressed in this rate design investigation case. *See* IIEC Ex. 2.0 at 10. Thus, IIEC posits that the method proposed and adopted in the ComEd MYRP case has no precedential or determinative value in this case, as the merit of the allocation and recovery method was not addressed by other parties until this case.

IIEC notes that in its proposed cost of service study, ComEd followed a two-step process for assigning BE Plan costs to the rate classes. First, ComEd estimates the cost of BE Plan programs directed to the two large customer sectors, residential and non-residential, based on estimated distribution of subsidies like vehicle rebates and other BE Plan costs to these two sectors, and segregates those costs between these two sectors accordingly. Second, ComEd proposes to allocate the BE Plan costs allocated to the two sectors among the customer classes within these sectors in proportion to the forecasted energy consumption of the classes for the residential classes, and forecasted billing demand units of each class for the non-residential classes. IIEC also observes that ComEd proposes to exempt the RR Class from BE Plan cost recovery, under the guise of it already being fully electrified. ComEd Ex. 2.0 at 68.

Several parties, including IIEC, take exception to ComEd's proposed allocation of costs arguing they are not cost justified, nor fair in application. *See* IIEC Exs. 1.0, 2.0; REACT Exs. 2.0, 6.0; Nucor Ex. 1.0. IIEC notes that Staff was silent on the allocation of BE Plan costs in its direct testimony and waited until its rebuttal testimony to support ComEd's position. *See generally* Staff Exs. 2.0, 5.0. IIEC asserts that this procedural approach effectively deprived intervenor parties an opportunity to respond to Staff's position in testimony. Further, IIEC maintains that this deprivation of opportunity is exacerbated, due to the fact that ComEd and Staff modified their testimony positions based on twelfth-hour responses to data requests, which were allowed into the record as purported cross-examination exhibits. IIEC argues that the Commission should give such un-vetted and procedurally unfair position changes little weight in its determination on this issue.

IIEC presented the direct and rebuttal testimonies of IIEC witness Stephens, a former Staff employee and long-time expert on electric utility cost of service matters. IIEC Exs. 1.0, 2.0. Mr. Stephens explained that ComEd's BE Plan costs are for items that are not associated with traditional delivery service. He also explained that the nature of these costs, which are not delivery service costs, does not lend itself well to standard classification and allocation methods within a typical cost of service study. IIEC argues that rather, ComEd's BE Plan costs, which are primarily for subsidies associated with rebates for EVs and associated charging equipment and infrastructure, should be allocated to classes based on the overall delivery service revenue requirements of each class. IIEC witness Stephens noted this is the same method used for allocating the cost of the ongoing subsidy to the RR Class, which the Commission determined was warranted due largely to the public benefit aspect of mass transit. IIEC Ex. 1.0 at 12; Docket No. 10-0467, Order at 259-260. IIEC reasons that, as in the case in which the railroad subsidy was approved, the costs here should be associated with purported public

benefits. Further, the allocation of the RR Class subsidy has been previously vetted and approved by the Commission. IIEC Ex. 1.0 at 2, 5-12. Thus, IIEC asserts that the Commission's accepted approach for allocating these public benefit costs should be extended to the BE Plan costs, since much of the cost is for public benefits associated with mass transit. *Id*. at 12.

IIEC points out that although Mr. Stephens' initial position would not have required segregation between customer sectors at all, in rebuttal testimony, Mr. Stephens accepted ComEd's step 1 segregation proposal as an effort to assign the BE Plan costs to the cost causers as much as possible. Mr. Stephens indicated that the Commission should require ComEd to be as granular as possible in this segregation, i.e., assign such costs to more than two sectors, residential and non-residential. *Id*. at 2, 17; IIEC Ex. 2.0 at 6-7. However, he noted that ComEd indicated in rebuttal testimony that assigning the costs to only two sectors is as granular as ComEd can get at this time for segregating based on cost. ComEd Ex. 5.0 at 15. Mr. Stephens concluded that such granularity will have to suffice until such time as it can be improved. IIEC Ex. 2.0 at 7.

IIEC notes that in rebuttal testimony, ComEd modified its segregation of costs between the residential and non-residential sectors to a more reasonable value proportion than ComEd presented in direct testimony, i.e., BE Plan costs allocated to the residential sector changing from 12.1% to 21.3%, and the non-residential section changing from 87.90% to 78.63%. ComEd Ex. 5.0 at 19; ComEd Ex. 5.02. IIEC supports the values in ComEd's rebuttal testimony. IIEC points out that ComEd also modified its treatment of the HV class, to utilize only the determinants of the primary and secondary voltage portions of the customers in the allocation. ComEd Ex. 5.0 at 19. IIEC supports this change as well.

Considering step 2 of ComEd's BE Plan cost proposal, IIEC insists that with regard to the allocation of the segregated sector costs to the rate classes within the sectors, there simply is no cost basis on which to allocate the charges as would be done with traditional delivery service costs. IIEC Ex. 1.0 at 8, 10. ComEd proposed the use of the billing demands of each class, which IIEC argues has no bearing on or relation to BE Plan costs. As such, IIEC witness Stephens proposed an alternative allocation than the one proposed by ComEd. Specifically, he proposed to recognize the similarities between ComEd's BE Plan costs, which are primarily for subsidies associated with rebates for EVs and associated charging equipment and infrastructure, and the subsidy afforded the RR Class, and recommended that the BE Plan costs should be allocated to rate classes within the two large sectors based on the overall delivery service revenue requirements of each class, which he noted is the same method used for allocating the cost of the ongoing subsidy to the RR Class. IIEC points out that in both cases, the costs are associated with purported public benefits, and the allocation of the RR Class subsidy has been previously approved by the Commission. IIEC Ex. 1.0 at 2, 10-12. Accordingly, IIEC argues that allocation based on delivery service revenue is not only a similar and valid precedent for how to treat the BE Plan costs but is also reasonable. ComEd's approach is completely novel and is not reasonable.

IIEC argues that ComEd's use of billing demands as an allocation factor is unprecedented in its experience. IIEC Ex. 1.0 at 9. IIEC notes that Staff also confirmed this novelty in its response to IIEC Data Request 1.03. IIEC points out that in the

response, Staff indicates it is not aware of any instance in which class billing demands have been used to allocate costs in a cost of service study. IIEC Cross Ex. 1.0. IIEC explains that billing demands are not used in cost of service allocations generally; rather, they are used in the rate design process, once cost of service determinations have been made. IIEC asserts that actual measures of external allocation factors used in a cost of service study, such as class demands, whether coincident peak, non-coincident peak, or temporal peaks are used for allocations, not billing demands. IIEC Ex. 2.0 at 9. IIEC does not find a logical nexus between BE Plan costs and the customers' unrelated usage. IIEC claims that if the Commission approves a billing unit as a cost of service allocator, it may be the only public service commission in the country to reverse the uses of these factors, and in IIEC's opinion, would be doing so without good reason. IIEC states that its proposal recognizes the Commission's clear precedent on allocation of costs of transportation for public benefit subsidies and allows for consistency with prior Commission determinations and should be adopted.

IIEC finds Staff witness Sanders' testimony that "[BE Plan] costs should primarily be socialized to ensure broad participation and shared responsibility" to be troubling. Staff Ex. 5.0 at 8-9. IIEC points out that Staff fails to cite to any statutory authority for this socialization. In addition, IIEC notes that Staff fails to explain why IIEC's proposed method of allocation would not provide an acceptable form of socialization as well, albeit different from ComEd's baseless approach. IIEC points out that in instances where the Illinois General Assembly wished to socialize costs, such as for renewable energy and carbon mitigation, it specified the recovery method. IIEC suggests that because the General Assembly did not do so for BE Plan costs, the Commission should direct ComEd to recover the costs fairly and with as much cost basis as possible, as is generally mandated under the Act. 220 ILCS 5/1-102(d)(iii). IIEC says that its proposal best fits these criteria. IIEC posits that absent any support for the ComEd allocation over the IIEC allocation, the Commission should approve IIEC's allocation recommendation, as consistent with precedent for the RR Class subsidy costs.

Responding to Staff's claim that IIEC's proposal "does not consider the relative contributions of large customers versus small users to BE goals such as emissions reduction and increased electrification," Staff Br. at 19, IIEC avers that this is not a legitimate criterion for allocation. Staff cites to no legislative authority relating BE to contributions to emissions reduction or increased electrification, as none exists. The relevant statutory authority for BE costs is 20 ILCS 627/45, which is focused on reducing emissions from the transportation sector and increasing access to electrification for all consumers. IIEC claims that this is not related to allocating BE Plan costs among delivery service rate classes. Further, IIEC avers that even if such legislative authority existed, which it does not, Staff has identified no metric for assessing the relative contributions of existing customer class loads which could be use in allocating costs. Certainly customers' electric billing demand has no relationship to emissions reduction in the transportation sector or increased electrification.

5. Metra's Position

Metra supports the BE cost allocation methodology proposed by ComEd. Metra agrees with setting the RR Class cost allocation to zero because the RR Class's infrastructure is already electrified. ComEd Ex. 2.0 at 68. Metra notes that the

Commission has approved ComEd's recommended approach. *Id*. Since the MED is fully electrified, Metra would receive none of the benefits from ComEd's BE Plan. CTA/Metra Joint Ex. 2.0 at 9–10.

6. BOMA/Chicago's Position

BOMA/Chicago's position is that it generally supports the BE Plan cost apportionment between residential and commercial customers proposed by ComEd witness Leick in his rebuttal testimony (ComEd Ex. 5.0 at 20). BOMA/Chicago Ex. 2.0(Rev) at 3. This allocates 78.63% of BE Plan costs to non-residential customers and the remaining BE Plan costs to residential customers based on anticipated program budgets and customer participation levels between residential and non-residential customers. BOMA/Chicago Ex. 2.0(Rev) at 4. BOMA/Chicago's position is that BE Plan cost recovery should adhere as closely to direct assignment as possible between residential and non-residential customer groups because a critical objective of fair rate design is "ensuring that customer groups that cause program costs due to participation are assigned a commensurate cost responsibility to the program." *Id*. Thus, "direct assignment is a more appropriate basis for allocating BE Plan costs." *Id*.

Further, BOMA/Chicago opposes ComEd's reallocation of CE&A costs as presented in ComEd's surrebuttal testimony. BOMA/Chicago explains that until more robust data can be collected, BOMA/Chicago supports the recommendation made by ComEd witness Leick in rebuttal testimony to "allocate Customer Education costs evenly between residential and non-residential customers." ComEd Ex. 5.0 at 18. During evidentiary hearings Mr. Leick expressed that his proposed reallocation of these costs in surrebuttal to a 15% residential and 85% non-residential split was due to the fact that he was "able to speak to people within the BE plan program that are more familiar with the customer education spend plan 1, and they told me that their budget plan and actual spend to date would be based on 15[%]residential, 85[%] non-residential, and not the 50/50 split." Tr. at 111-112. However, BOMA/Chicago's position is that this 15% residential and 85% non-residential split discussed by Leick based on internal discussions should be rejected because it is based on limited experience and information, and there is no evidence that the spend trend will continue or that it accurately reflects BE Plan 2.0 costs.

BOMA/Chicago also states that, while ComEd has provided current expectations for BE Plan program budgets and customer participation levels, actual budgets and participation are subject to uncertainty and potential future changes. ComEd acknowledges that BE Plan rebates have been available only for a "short time period." ComEd IB at 25. Given the limited history of BE Plan expenditures, "[a]ctual expenditures are likely to vary significantly relative to initial program budgets as ComEd gains more experience with customer preferences and actual update of rebates." *Id*. at 94-96. BOMA/Chicago is supportive of ComEd's agreement to present actual rebate cost information in the next rate design investigation, after rebates have been distributed for a longer period of time, so that proposals for BE Plan cost allocation in that proceeding can more fairly align with principles of cost causation. ComEd IB at 25, BOMA/Chicago RB at 1. However, BOMA/Chicago is supportive of the Commission adopting a mechanism for reconciliation of BE Plan costs as part of this rate design proceeding so that apportionment between residential and non-residential customers reflect actual BE Plan

budget and spending as they change compared to current expectations. BOMA/Chicago Ex. 2.0(rev) at 3.

BOMA/Chicago further agrees with positions taken by other intervenors noting that, BE Plan costs are different from traditional delivery service costs as defined in Section 16-102 of the Act and BE Plan cost causation is not driven by distribution demand. *Id*. at 10; *see also* IIEC Ex. 1.0 at 5-6, 11-12; Nucor Ex. 1.0 at 7, 9. BOMA/Chicago notes:

> BE programs are defined in statute as those "that lower carbon dioxide emissions, replace fossil fuel use, create cost savings, improve electric grid operations, reduce increases to peak demand, improve electric usage load shape, and align electric usage with times of renewable generation" and "provide for incentives such that customers are induced to use electricity at times of low overall system usage or at times when generation from renewable energy sources is high."

BOMA/Chicago Ex. 2.0(Rev) at 8 (*citing* 20 ILCS 627/45(b)); IIEC Ex. 1.0 at 5. BOMA/Chicago's position is that an allocation based on peak demand is not fair because "[c]ustomer peak demand is unrelated to BE Plan costs and consumer adoption of BE Plan rebates." *Id*. at 8; *see also*, REACT Ex. 2.0 at 20-22, IIEC Ex. 1.0 at 2, 6, 8; Nucor Ex. 1.0 at 9. "Since BE Plan programs are not core delivery service functions, it is unreasonable to allocate costs to customers on that basis." *Id*. at 9. BOMA/Chicago notes that BE Plan costs are intended to support programs that incentivize use during periods of low overall demand and "[a]ll customers benefit to some degree from the environment improvements generated by BE programs such as reduced emissions and increased utilization of the distribution system through off-peak EV charging and other off-peak electrification measures. As a result, it is important to recognize these widespread benefits of BE Plan programs in a rate design that distinguishes these charges from demand-driven delivery service costs." *Id*.; 20 ILCS 627/45(b). BOMA/Chicago requests that the Commission consider these fairness issues before assigning BE Plan costs to non-residential customers based on peak demand, noting that base rates for ComEd customers may be based on peak demand but may also be assigned in alternate ways.

7. Nucor's Position

Nucor witness Pollock expressed concern that ComEd is proposing two different and completely inconsistent methods to allocate BE costs; not using the same direct assignment approach to allocate BE costs within the residential and non-residential customer classes. Nucor Ex. 1.0 at 4-5. Mr. Pollock explained that using billing demand to allocate BE costs among the non-residential customer classes fails to recognize the nature of the costs incurred and, thus, is not consistent with cost causation. Nucor Ex. 1.0 at 5-6. Mr. Pollock testified that there is no evidence that larger customers benefit more from emissions reductions than smaller customers and that use of billing demand, or any other metric such as kWh usage, as a proxy for measuring customer benefits is illogical. Nucor Ex. 1.0 at 7. Mr. Pollock's recommendations included BE costs allocated to the HV class being recovered either as a per meter charge or as a percentage uplift to

the delivery charge, the latter being essentially a revenue requirement allocation. Nucor Ex. 1.0 at 11.

Nucor supports the following ComEd revisions to the ECOSS model for the allocation of BE Plan costs:

(1) Revise the cost allocation to residential and non-residential sectors by changing how the BE Pilot costs are allocated to residential and non-residential as seen in ComEd Ex. 5.02.

(2) Allocate Customer Education costs evenly between the residential and non-residential sector (in other words, split it 50/50 between sectors).

See ComEd Ex. 5.0 at 18. In addition, Nucor supports ComEd's modification in its treatment of the HV Class to the extent the Company utilizes only the determinants of the primary and secondary voltage portions of the customers in the allocation.

Among Nucor witness Pollock's primary concerns was that the use of billing demand to spread BE Plan costs within the non-residential customer classes is not consistent with cost-causation principles. For this reason, Nucor recommended that BE Plan costs be recovered as either a monthly charge per meter or "uplifted" to the delivery charges, which would effectively allocate and recover these costs in proportion to all other delivery charges. *See* Nucor Ex. 1.0 at 5-9.

The Commission should, consistent with the testimony and. recommendations of IIEC witness Stephens and Nucor witness Pollock (*see* Nucor Ex. 1.0 at 4-7), direct ComEd to allocate BE costs within both the residential and non-residential sectors in accordance with non-BE Plan class revenue requirements.

8. Commission Analysis and Conclusion

There is no specific mandate in P.A. 102-0662 on how BE Plan costs should be allocated or recovered. The Commission primarily supports cost causation-based allocation. Nevertheless, given the limited data currently available for these programs and the goals of P.A. 102-0662, the Commission must also consider whether BE Plan cost allocation strikes a fair balance between BE Plan program users and customers' ability to contribute to those costs.

No party appears to contest zero allocation of costs to the RR Class, and the Commission finds this a reasonable proposal given the unique nature of that class.

The primary issues raised by intervenors are ComEd's use of billing demand to allocate costs among non-residential customers and the proposed allocation of CE&A costs between residential and non-residential classes. BOMA/Chicago, IIEC, Nucor, and REACT oppose using billing demand as an allocator for non-residential customers and recommend various adjustments. ComEd urges the Commission to reject intervenors' alternative allocator recommendations for various reasons including: (1) the allocator does not reflect BE Plan budget forecasts; (2) the allocator does not consider contributions of various customers to conditions such as total emissions; (3) the allocator underestimates both benefits received by larger non-residential classes and their greater contributions to emissions; (4) the information to effectuate the allocator is not yet available; and (5) the proposal is unclear. The Commission agrees with ComEd's

concerns regarding the various proposals proffered by intervenors and those proposals are rejected. ComEd asserts that the billing demand allocation is appropriate because "that is the primary driver for the allocation amount." ComEd Ex. 2.0 at 69. The Commission accepts this reasoning for now given the evidentiary record. As more data becomes available, the Commission expects that there may be appropriate adjustments to the cost allocation methodology adopted in this proceeding.

BOMA/Chicago, IIEC, and REACT also recommend the Commission reject ComEd's proposal to allocate CE&A costs as 15% directed to residential customers and 85% to non-residential customers. In rebuttal testimony, ComEd supported a 50/50 split of CE&A costs between the residential and non-residential because "education and marketing materials are often designed as joint residential/non-residential material." ComEd Ex. 5.0 at 18-19. It is apparent that ComEd's BE Plan allocation recommendations have changed throughout the course of this proceeding in response to alternative proposals and as more information became available. ComEd's final recommendation of a 15/85 split between the residential and non-residential classes for CE&A costs is based on actual spend and reflects the most recent data available. While BOMA/Chicago's support of a 50/50 split and caution to wait until more data is available prior to making further changes to the CE&A allocation is reasonable, the Commission finds ComEd's updated actual spend of 15/85 split persuasive and more in line with cost causation.

The Commission finds ComEd's BE Plan cost allocation as updated throughout this proceeding and supported by Staff reasonable and it is adopted.

E. HV Transformer Issues

1. HV Transformer Charges

a. ComEd's Position

ComEd explains that HV transformers are transformers and related equipment that bring power and energy to HV Delivery Class customers at high voltages (>69kV). *See* ComEd 2.0 at 18; ComEd Ex. 5.0 at 25. ComEd allocates costs for HV transformers to HV Delivery Class customers through the HV Transformer Charge. ComEd Ex. 5.0 at 25. In recent years, the HV Transformer Charge has increased in price. *See id*. at 26.

ComEd argues that the Commission should adopt ComEd's proposal regarding the HV Transformer Charge and reject REACT's proposal. ComEd argues that its proposal preserves revenue neutrality by providing a mechanism to reallocate those costs – via adjusting the HV Delivery Class's DFC – and is the best solution to this issue. ComEd argues that REACT's proposal is inappropriate for consideration because it does not include a method of recovering the revenue requirement that would be transferred from the HV Transformer Charge and thus is not revenue neutral.

As an interim measure, ComEd proposes to change the 2026 and 2027 HV Transformer Charge back to the level of the 2024 HV Transformer Charge and reassign the unrecovered costs to the corresponding HV Delivery Class sub-class's DFC, ensuring relief from escalating HV Transformer Charges and, importantly, maintaining revenue neutrality. ComEd Ex. 5.0 at 29. Under this illustrative proposal, the Over 10 MW HV Transformer Charge would change from $2.68/kW to $2.45/kW and their HV DFC would

change from $0.52/kW to $0.68/kW, moving $1,485,480 of revenue requirement from the HV Transformer Charge to the HV DFC for this sub-class. The Up to 10 MW HV Transformer Charge would change from $5.02/kW to $4.56/kW and their HV DFC would change from $0.61/kW to $0.90/kW, moving $178,868 of revenue requirement from the HV Transformer Charge to HV DFC for this sub-class. *Id*. at 29-30. ComEd notes that IIEC supports this proposal. ComEd notes that, while IIEC supports ComEd's proposal to reset charges for 2026 and 2027 to 2024 levels, it stated in a footnote that the Commission could initiate a proceeding on its own motion under Section 9-250 of the Act to modify ComEd's MYRP and revise the 2025 HV Transformer Charge to 2024 levels as well. IIEC IB at 9 n.3. ComEd argues that this RDI is not the appropriate forum to request such a proceeding. *See* 220 ILCS 5/9-250. Furthermore, ComEd argues there is no evidence in this docket to suggest that any of the conditions required to initiate a Section 9-250 proceeding (i.e., that ComEd's rates are "unjust, unreasonable, discriminatory or preferential") have been met, or that reopening the MYRP is justifiable on the grounds that IIEC suggests. *Id*. Moreover, even if such a drastic step were appropriate in this proceeding, ComEd argues there is no reason for the Commission to take it because IIEC participated as an intervenor in ComEd's MYRP and could have raised this issue there, but did not.

ComEd argues that the Commission should reject REACT's proposal, which would revert the HV Transformer Charge back to either 2011 or 2021 levels. *See* REACT Ex. 6.0 CORR. at 19-20. ComEd argues that REACT's proposal is not revenue neutral, because REACT witness Pruitt proposes no method of reallocating and recovering the revenue requirement that would be transferred from the HV Transformer Charge. ComEd Ex. 10.0 at 23.

ComEd explains that, in support of his proposal, REACT witness Pruitt theorizes that a potential reason for the increase in HV Transformer Charge is that "cross-subsidization" occurs with respect to the interconnection of new data center customers. REACT Ex. 6.0 CORR. at 16. ComEd notes that several of the data centers that witness Pruitt references are not even HV Delivery Class customers, making reliance on them even less relevant to the issue of HV Transformer Charge increases. *See* ComEd Ex. 10.0 at 24. ComEd argues that witness Pruitt misunderstands how ComEd recovers costs associated with HV transformers and the distinction between standard and nonstandard service. *See* ComEd Ex. 10.0 at 23. ComEd explains that the practice of functionalizing standard facilities costs to delivery classes and allocating them based on an appropriate methodology is in no sense a "cross-subsidization" or "cost shifting." *Id*. If HV transformers are required as part of a customer's standard service, those costs are appropriately allocated to the HV Transformer Charge and recovered from all customers receiving the service and subject to the charge. *Id*. ComEd notes that, in the specific example of data centers, the costs of HV transformers required by data centers as part of their standard service are shared among the approved class of customers, as are the revenues that the customers pay to use those and all other system facilities. *Id*. at 25. A corollary to the HV Transformer Charge is that if a customer requires nonstandard facilities or services to serve its electricity needs, such costs are attributed directly to and paid by that customer. *Id*. at 24.

b. Staff's Position

Staff agrees with ComEd that this rate design proceeding must be revenue neutral. REACT's proposal would change ComEd's revenue requirement, which is not revenue neutral and thus outside the scope of this proceeding. ComEd's proposed compromise, while not a perfect solution, would address REACT's concern by reducing HV Transformer Charges in a way that is revenue neutral while anticipating a review of how costs are assigned to the HV Transformer Charge in ComEd's next rate case and Staff recommends the Commission approve it. Staff Ex. 6.0 at 10.

Staff recommends that the Commission reject REACT's recommendation that it should direct the Company to "roll back [T]ransformer [C]harge rates to 2011 levels (the last time the Commission had the full authority to review and adjust [T]ransformer [C]harge rates prior to formula ratemaking) until the causes of [T]ransformer [C]harge rates have been investigated and validated." REACT IB at 32. This is a revenue neutral proceeding and any such changes that would change the revenue requirement are not revenue neutral.

c. REACT's Position

REACT explains that ComEd's HV Transformer Charge is imposed upon large energy users who require higher voltage electric service and elect to use transformers provided by ComEd rather than purchasing and maintaining their own transformers. If correctly calculated, the Transformer Charges should reflect the capital and maintenance costs associated with providing high voltage transformers and related facilities to these customers as well as the approved returns for ComEd.

REACT presented an analysis demonstrating that this single charge has been rapidly escalating in recent years – already increasing by 379% since 2013, it would increase by 500% over the 2013 level in 2027 under the rates proposed by ComEd in its MYRP case. *See* REACT Ex. 1.0 at 10. REACT notes that ComEd confirmed the magnitude of these estimated cost increases but has been unable to explain why the increases have occurred. *See* Tr. at 128. Despite repeated calls from REACT and Staff, ComEd has not been able to demonstrate how these costs are identified, characterized, or allocated in a manner that is consistent with the principle of cost causation. Thus, it appears that these massive increases have been imposed on these customers even when it appears they have done nothing to increase the transformation costs and ComEd has done nothing to improve the quality of the transformation service it provides to these customers. *See* REACT Ex. 1.0 at 11-12.

REACT maintains that ComEd's continued failure to provide any rationale for both the historical and proposed increases in the Transformer Charges may be indicative of cross-subsidization within the overall ComEd rate structure. *See* REACT Ex. 6.0 at 15-16. ComEd's vague theories concerning the potential causes of the increases in transformer costs have been invalidated by ComEd's own data, which shows that the number, voltage, and utilization of the portfolio of high voltage transformers that are supported by the Transformer Charge have not materially changed over the past decade. *See id*. at 14. REACT witness Pruitt explained that the three data centers that have been connected at the high voltage level in the ComEd service area since 2017 could be a

cause for these increases if improper allocation of standard costs resulting from the data centers were applied to other high voltage customers. *See id*.

Mr. Pruitt recommended that the Commission reset the transformer rate to the 2011 level, the last time the Commission heard a full rate case before the application of formula ratemaking under the Electric Infrastructure and Modernization Act, which is the point in time when ComEd's Transformer Charge rates began their dramatic increases. *See id*. at 13, 19. Alternatively, Mr. Pruitt suggested it could be set at the 2021 level, which is when P.A. 102-0662 was passed. *See id.*

REACT explains that this proposed adjustment of rates should be structured to achieve revenue neutrality by (1) resetting the Transformer Charge to the level it was set when a higher level of Commission review of Transformer Charges may have occurred; and then (2) characterizing any unrecovered revenues resulting from the adjustment in Transformer Charges as being general revenue requirements in nature. That is, since ComEd cannot demonstrate that they are specific to any particular class of customers they should be considered general revenue requirements to support ComEd's operations and the costs should be allocated to all ComEd customers using an appropriate allocator.

REACT notes allocating unrecovered revenues resulting from the adjustment of Transformer Charges on a kWh basis to all ComEd customers would result in de minimis impacts for ratepayers of less than two hundred millionths of a cent per kilowatt hour. *See* REACT RB at 28. This reallocation should continue until ComEd can discover why its ECOSS has generated the questionable cost allocations to HV Transformer Charge.

d. IIEC's Position

IIEC points out that ComEd's HV Transformer Charges have increased dramatically over the last several years, and with little explanation. IIEC notes further that these same costs are expected to rise even more in 2025 through 2027. IIEC points out that the HV transformers, for many of these customers, are long-lived assets and in most cases there have been no changes to the assets serving them which would warrant any increase, let alone large increases. *See* IIEC Ex. 2.0 at 13 (citing to REACT testimony). IIEC notes that in response to arguments made, ComEd witness Leick proposed to change the 2026 (first year under rates resulting from this case) and 2027 HV Transformer Charge back to the level of the 2024 HV Transformer Charge. Mr Leick goes on to propose that costs that will not be recovered from the HV Transformer Charge, due to changing the 2026 and 2027 HV Transformer Charge back to the level of the 2024 HV Transformer Charge, will be assigned to the corresponding HV Delivery Class and that ComEd will review the charges in the context of its next rate case. ComEd Ex. 5.0 at 29.

IIEC supports ComEd's approach as a step in the right direction, but notes that ComEd should have been reviewing the assignment of costs all along, i.e. before they got so high. IIEC Ex. 2.0 at 16-17.

e. Commission Analysis and Conclusion

REACT's proposal is not revenue neutral as it would change ComEd's revenue requirement and is therefore outside the scope of this proceeding. REACT's proposal offers no method for recovery of costs that would no longer be recovered through the HV Transformer Charge. The Commission notes that Transformer Charges have been

rapidly escalating in recent years. The Commission finds that ComEd's revenue-neutral proposal in this proceeding will offer some relief from these escalating costs, and it is adopted.

2. Proposed Requirement to Offer HV Transformer Customer Purchase Option

a. ComEd's Position

ComEd argues that the Commission should reject REACT's proposal (which is supported by IIEC) to require ComEd to sell its existing HV transformers to customers at net book value. *See* REACT Ex. 2.0 at 26; IIEC Ex. 2.0 at 16. ComEd notes that it is not in the business of selling used HV transformer equipment – it is in the business of building and maintaining an electric grid for the safe, reliable, and affordable distribution of electricity. ComEd argues that REACT's proposal would adversely impact ComEd's performance of this mission and is contrary to the law and public policy. ComEd explains that, if adopted, REACT's proposal would also create uncertainty around ComEd's planning and maintenance of its grid facilities that it initially purchased with the understanding that it would own them over their useful life. ComEd Ex. 5.0 at 28. Furthermore, ComEd notes that customers have always been allowed to purchase their own transformers up-front, so REACT's proposal is not necessary. *Id*. at 24. ComEd notes that Staff agreed with ComEd that it should not be forced to sell its HV transformers, acknowledging that ComEd's purpose in acquiring the HV transformers was to provide a service, not resell them to its customers. *See* Staff Ex. 6.0 at 9.

ComEd argues that REACT's proposal to force ComEd to sell its HV transformers is contrary to the statutory requirements of this RDI. ComEd explains that REACT's proposal is not revenue neutral because it would remove assets from rate base and therefore lower ComEd's distribution revenue requirement. ComEd Ex. 5.0 at 24. ComEd argues that, based on the simple fact that REACT's proposal falls outside the scope of this revenue neutral proceeding, it must be rejected. *See* 220 ILCS 16-105.5(c)(1). ComEd notes that REACT claims that the Commission can simply set the purchase price at a level that would be revenue neutral from ComEd's perspective. REACT IB at 27. ComEd argues, however, that it is not the Commission's job to formulate a statutorily compliant plan for REACT and REACT has proposed none.

ComEd argues that REACT's proposal would also violate Section 16-103(e) if implemented, as it would be an additional required tariffed service not otherwise required by Section 16-103. Section 16-103(e) prohibits the Commission from requiring "an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service." 220 ILCS 5/16-103(e). The services that utilities are required to offer are "delivery services in accordance with this Article, the power purchase options described in Section 16-110 and real-time pricing as provided in Section 16-107." 220 ILCS 5/16-103(b). ComEd argues that the Act nowhere states that ComEd must offer customers the ability to purchase any kind of equipment from its rate base, let alone HV transformers. ComEd argues that forcing it to do so would constitute an entirely additional service that the Commission is not statutorily authorized to require.

ComEd argues that REACT's proposal would unfairly deprive ComEd and its customers overall of the benefit of assets that it purchased with the intention of owning them for the duration of their useful lives. A transformer has an asset life over decades. If a transformer is still capable of safely and reliably being deployed after its net book value reaches $0, ComEd argues that its customers should be allowed to continue benefiting from that transformer at no additional cost. ComEd argues that a forced sale at $0 net book value would require ComEd (and its customers) to unnecessarily incur the cost for a replacement. Furthermore, ComEd claims that setting a single point in time at the current rate of return for the "sale point" could allow customers to arbitrage the point at which the transformer has a low enough "book life" value to incentivize the customer to move forward with the purchase of their transformers. In addition, ComEd notes that REACT has not proposed any methodology for determining the appropriate net book value for sale purposes, which may be different for example, than the net book value for tax purposes.

ComEd also argues that customers might face unanticipated risks if they were to take possession of ComEd's used HV transformers (particularly if they were able to buy them at very low net book values), including unexpected purchase costs (which could be in the millions of dollars); the lead time on ordering additional parts or equipment (which could be several months or longer); potential difficulties in finding qualified workers to perform maintenance (especially on older transformers); and handling successor customer or service reconfiguration needs (i.e., successor customers requiring HV transformers due to the predecessor taking the customer-owned HV transformer off-site). ComEd Ex. 5.0. at 27. ComEd notes that REACT's proposal could negatively impact ComEd's Commission-approved Performance Metrics related to outage frequency and duration if customers are unprepared for the challenges associated with HV transformer ownership and are not able to maintain them in a way that ensures they do not adversely impact ComEd's distribution system overall. *Id.* at 28. Staff likewise agreed that there may be reliability concerns with allowing any customer to purchase their used transformer, noting that "it is unclear from a policy perspective that the same level of assurance [in planning for risks by customers who purchase their transformers up-front] would exist if any customer could opt to buy a transformer." Staff IB at 23. ComEd argues that the Commission should reject REACT's proposal to deprive ComEd and its customers of the benefit of its assets by forcing ComEd to sell them.

ComEd notes that REACT and IIEC argue that, because HV Delivery Class customers are "highly sophisticated customers," they would be able to make informed decisions on the purchase HV transformers and the risks involved. REACT IB at 28; IIEC IB at 10. ComEd argues that this assertion is belied by the very fact that REACT's and IIEC's members chose not to purchase their transformers when they were originally presented with the option and REACT now claims they have been subject to an unanticipated risk of cost increases. *Id*.

b. Staff's Position

Staff does not believe the Company should be forced to give its customers the option of buying the Company's transformers and opposes REACT's recommendation. Staff Ex. 6.0 at 9. Staff disagrees with the proposed requirement to give HV customers an option to purchase transformers because the purpose of acquiring the transformers

was not to resell them to the Company's customers but to provide a service to its customers. Staff Ex. 6.0 at 9-10. Staff believes the sale of transformers raises numerous questions, such as how long someone must be a ComEd customer to be regarded as an "existing customer" and how transformer sales would affect rates of customers in that customer class. *Id*. Additionally, Staff is concerned that there may be reliability concerns. ComEd testified that customers who own transformers know and plan for the risk associated with owning them. ComEd Ex. 5.0 at 28. However, it is unclear from a policy perspective that the same level of assurance would exist if any customer could opt to buy a transformer. Staff Ex. 6.0 at 9-10.

c. REACT's Position

REACT notes that high voltage customers currently served by ComEd-owned transformers currently do not have any recourse to address these unjustified high and rising transformer rental charges. REACT requests that the Commission provide these large and sophisticated customers the option to escape ComEd's continuous rate increases that represent millions of dollars of added costs to these businesses by allowing them to purchase the transformers from ComEd at a rate that ensures revenue neutrality for ComEd. *See* REACT Ex. 2.0 at 25; REACT Ex. 6.0 at 20.

REACT explained why each of ComEd's objections should not prevent the Commission from providing this self-help option to the aggrieved customers. First, ComEd incorrectly claimed that REACT's proposal is not revenue neutral. *See* ComEd Ex. 5.0 at 24. However, REACT has made it clear that the Commission should set the purchase price in a way that makes this revenue neutral from ComEd's perspective. *See* REACT Ex. 6.0 at 19.

ComEd next asserted that it is not "in the business of selling used HV transformer equipment – it is in the business of building and maintaining an electric grid for the safe, reliable, and affordable distribution of electricity." ComEd IB at 28. REACT clarified that it does not intend to change ComEd's business structure, but ComEd is not providing "affordable" service when it is increasing rates to individual customers by more than $1 million per year without explanation. REACT's proposal is a reasonable method for addressing the unaffordability of this unjustified component of ComEd's delivery services rates.

ComEd further asserted "customers have always been allowed to purchase their own transformers upfront, so REACT's proposal is not necessary." ComEd IB at 28. Thus, ComEd appeared to blame the very customers that are suffering under exponentially increasing rates for not anticipating that ComEd would impose unjustified increases, continuing to punish them for deciding decades ago not to purchase their own transformers. Such a viewpoint is a reminder why it is the role of the Commission to ensure that utility monopolies cannot simply dismiss legitimate concerns of captive customers.

ComEd also asserted that allowing these customers to purchase the transformers would expose them to new costs and risks. *See* ComEd Ex. 5.0 at 28. However, REACT has explained that these are the same large, sophisticated customers that were given the option to purchase these exact transformers upfront; they are fully capable of making the cost-benefit analysis to determine whether exercising this option would be beneficial. *See*

REACT Ex. 5.0 at 8, REACT 6.0 at 19. Moreover, ComEd witness Leick admitted that ComEd's system is designed to address any safety or reliability concerns. *See* Tr. at 121. REACT clarified that any costs associated with system reconfiguration should be part of the purchase price to the customer if and when it exercises this option.

Finally, for the first time in this proceeding, ComEd asserts in its Reply Brief that this proposal is prohibited by Section 16-103(e) of the Act. This untimely attempt to restrict the Commission's ability to grant relief likewise lacks merit. Section 16-103(e) states that the Commission "shall not require an electric utility to offer any competitive service." 220 ILCS 5/16-103(e). Thus, ComEd would have to explain how selling the existing transformers that are serving the customers' facilities is a "competitive service." To be clear, REACT is requesting the Commission direct ComEd to offer to its captive customers the option to purchase the transformers that are currently servicing these facilities; no other company can provide that service. Moreover, as ComEd has made clear, ComEd already offers the option to purchase transformers. *See* ComEd IB at 28 ("customers have always been allowed to purchase their own transformers upfront ….") This proposal would simply change the rate design of that existing service by allowing existing customers an additional opportunity to exercise that option.

In sum, REACT notes that there is no legitimate reason to deny these customers the opportunity to purchase their transformers, empowering them to avoid an unjustified charge that seems destined to continue to rapidly increase.

d. IIEC's Position

IIEC points out that REACT proposed that the Commission should direct ComEd to allow affected HV Transformer customers to terminate their obligations under the Transformer Charges by allowing current customers the option of purchasing their existing transformers at a price that reflects the depreciated value of those assets and then be excluded from future Transformer Charges. REACT Ex. 2.0, at 12. IIEC supports this proposal.

IIEC points out that ComEd responded to this proposal in the rebuttal testimony of Mr. Leick, where he concluded that that existing customers should not be given the option to purchase their existing HV transformers. ComEd Ex. 5.0 at 27-28. Mr. Leick testified that selling HV transformers will lower ComEd's distribution rate base and claims that a one-time payment will not cover the financing costs nor afford the company any opportunity to earn a return on the asset. *Id*. at 5. Mr. Leick also expresses concerns that these customers may not realize the risks associated with owning high voltage equipment, such as: the costs, which might be in the millions of dollars; the lead time on ordering which could be several months or longer; the potential difficulty in finding qualified workers; and how to handle successor customer or service reconfiguration needs. *Id*. at 27.

Regarding Mr. Leick's final point, IIEC respectfully suggests that customers contemplating such a purchase are sophisticated and will take these considerations into account before such a purchase. IIEC suggests that hypothetical concerns regarding the risks is not a reasonable justification for denying sophisticated customers the option. Regarding the point related to recovery of financing costs and earning a return on assets, IIEC witness Stephens pointed out that ComEd will have been earning a return of the cost

of the asset, through depreciation expense, as well as a return on the asset for years. Also, IIEC points out that the sale of a transformer asset at net book value will both fully return ComEd's undepreciated investment and provide a financial contribution that will allow ComEd to invest in other delivery service assets and earn a return on such new investment, should it choose to do so. IIEC Ex. 2.0 at 14-15. Thus, IIEC argues that unless ComEd knows its charges for HV Transformers are too high, it should be largely indifferent as to how it recovers its remaining investment, i.e., its net book value through rates or through a direct payment by customers. Finally, IIEC notes that because no ComEd investment or cost recovery would be disallowed, ComEd's claims regarding upsetting revenue neutrality, e.g. ComEd Ex. 10 at 23, should not control. Notwithstanding, if there is a net impact on ComEd, then IIEC avers that the Commission should grant customers this option at the first available instance where ComEd's revenues are subject to change, whether that occurs in the next MYRP case, in the annual adjustment process set forth in Section 16-108.18(f)(6) of the Act, or in the special circumstances prescribed in Section 16-108.18(d)(15) of the Act.

e. Commission Analysis and Conclusion

REACT requests that the Commission require ComEd to offer a mandatory customer purchase option for ComEd's used HV transformers. Customers have an initial option to purchase their HV transformers. If not initially purchased by the customer, ComEd purchases and maintains HV transformers to service its customers, which comes with associated charges. The purpose of any purchase of HV transformers is to provide a service to customers.

The Commission is concerned REACT's proposal would remove assets from rate base and therefore lower the distribution revenue requirement, rendering the proposal not revenue neutral and outside the scope of this proceeding. REACT asserts that the Commission should set the purchase price to make this proposal revenue neutral from ComEd's perspective. It is not clear exactly how the Commission would accomplish this. An HV transformer could safely and reliably be deployed after its net book value reaches $0. The Commission agrees that ComEd customers should be able to continue benefiting from used HV transformers at no additional cost under those circumstances. The Commission further notes that there are questions as to the methodology in determining an appropriate net book value for resale purposes. Even if REACT's proposal was within scope of this proceeding, the record does not provide the Commission the information necessary to establish an appropriate price methodology.

The Commission notes there are potential reliability concerns raised by ComEd and Staff associated with this proposal. For all the aforementioned reasons, the Commission rejects REACT's proposal to mandate an optional purchase option for used HV transformers.

The Commission acknowledges REACT's desire to purchase a previously rented piece of equipment at a depreciated price. An optional purchase of already installed and used equipment may be appealing should rental cost variances occur. Nonetheless, the Commission acknowledges this proposal could have an impact on rates. The Commission encourages the parties to work with one another to find a solution that appropriately balances the interest of all parties and ratepayers.

3. Proposed Use of Rider NS in Lieu of Future Transformer Rental Charges

a. ComEd's Position

ComEd argues that REACT's proposal to recover costs for future HV transformer installations through Rider NS should also be rejected. Like REACT's first proposal to force ComEd to sell its HV transformers, this proposal is not revenue neutral. This proposal removes costs from rate base and denies ComEd an opportunity to earn a rate of return over the life of the HV transformer. ComEd Ex. 5.0 at 24. ComEd also argues that such a proposal is discriminatory, as existing HV customers will have their transformer costs socialized, but new HV customers will not.

ComEd notes that, in its initial brief, REACT claimed that ComEd's normal practice of functionalizing costs for standard facilities and service to delivery classes and allocating them based on an appropriate methodology – as opposed to using Rider NS – is "cross-subsidization" or "cost-shifting." *See* REACT IB at 29. In arguing for the necessity of its proposal to require ComEd to recover costs for future HV transformer installations through Rider NS, ComEd notes that REACT claimed that the "logical conclusion" of the HV Transformer Charge increase and ComEd's current inability to pinpoint the exact cause is that the increases are the result of "potential cross-subsidization" or the inclusion of "non-transformer costs incurred elsewhere in the ComEd system." REACT IB at 29. ComEd argues that there are various reasons that could explain why the HV Transformer Charge has been increasing (including some proposed by ComEd witness Leick in his rebuttal testimony), but there is no single "logical conclusion" that can be drawn without more information and study. *See* ComEd Ex. 5.0 at 27, 29. ComEd argues that, contrary to REACT's contention, ComEd's practice of allocating costs for standard installations allows these costs to go into ComEd's rate base and be recovered from all customers in the delivery class over the life of the asset, as those assets benefit all customers who use them. ComEd Ex. 10.0 at 25.

ComEd notes that Staff recommends that ComEd "identify costs that are caused by new HV customers which can be assigned to new HV customers … consistent with [cost] causation principles as part of any further discussion." Staff IB at 24. ComEd argues that, while not directly advocating for cost recovery under Rider NS, Staff appears to be suggesting that ComEd assign costs incurred by new HV Delivery Class customers directly to those customers. ComEd argues that this proposal suffers from the same flaws discussed above, namely that this is not how ComEd allocates costs incurred by HV customers (or any other customers) for standard service – ComEd pools costs and allocates them on a delivery class-wide basis using an appropriate allocation factor. ComEd Ex. 2.0 at 12. ComEd argues that it would be inequitable to other customers if certain costs for standard service are applied on a delivery class-wide basis and other costs for standard service are applied directly to individual customers. ComEd requests that the Commission therefore reject both Staff and REACT's proposals to utilize Rider NS to recover costs from HV transformers for customers going forward.

b. Staff's Position

Staff recommended ComEd identify costs that are caused by new HV customers and assign such cost to the new customers responsible to be consistent with cause

causation. Staff Ex. 6.0 at 11. In surrebuttal, ComEd responded that it would take the Company months to develop a new methodology for HV Transformer Charges. ComEd Ex. 10.0 at 22. However, the Company stated they are not opposed to addressing this issue and welcomes discussions on revising the methodology outside of this case. *Id*.

Staff does not oppose to the Company collaborating with REACT and HV Class customers on this issue outside this docket to develop a billing system that is consistent with cost-causation principles, and which is agreeable to both the Company and customers. Staff Ex. 6.0 at 11. However, Staff continues to recommend the Company identify costs that are caused by new HV customers which can be assigned to new HV customers and assign such cost to the new customers consistent with cause causation principles as part of any further discussion. *Id*.

c. REACT's Position

Although ComEd has offered to study this issue to determine whether and to what extent there is improper cross-subsidization, REACT warns that an elongated study period or lack of resolution on the matter presents significant risks to those customers that currently rent transformers from ComEd. To provide more immediate relief, REACT has proposed that the Commission require ComEd to utilize Rider NS - Nonstandard Services and Facilities to recover high voltage transformer costs from any new customers who choose not to purchase their own facilities.

REACT notes that ComEd witness Leick identified that data center development could be a contributing factor to the increases in transformer rental rates. *See* Tr. at 150. Multiple data centers with a combined peak demand of approximately 5,000 MWs are under some level of development in the ComEd region. REACT warns that, based on how ComEd has socialized prior data center service extension costs, these new data centers represent potentially billions of dollars of socialized costs to consumers. If there is even a slight possibility that socialized costs for data center development have been or could be inordinately applied to renters of transformers owned by ComEd, then it would be prudent for the Commission to adopt additional measures to ensure that the principles of cost causation are maintained.

REACT requests that Rider NS be used as a mechanism for recovering transformer costs for all future new customers that require ComEd to provide high voltage transformers as part of their service. *See* REACT Ex. 6.0 at 20. Essentially, the Commission would "close" the over-10 MW high voltage transformer rental rate, and it would be unavailable to new customers after the date of the Commission's Order in the instant proceeding. REACT clarifies that the pricing associated with this revision should result in this being revenue neutral to ComEd. REACT explains that this approach is consistent with Staff's recommendation that "the Company identify costs that are caused by new HV customers which can be assigned to new HV customers and assign such cost to the new customers consistent with cause causation principles as part of any further discussion." Staff IB at 24.

d. Commission Analysis and Conclusion

REACT proposes that costs for all new HV transformer installations be recovered through Rider NS. Adopting this proposal could deny ComEd an opportunity to earn a

rate of return over the life of the HV transformer because "if the rate of return changes at a future point in time because Rider NS rentals are not periodically updated and do not always reflect recent O&M charges." ComEd Ex. 5.0 at 24. Accordingly, the Commission finds that REACT's proposal is not revenue neutral and therefore outside the scope of this proceeding. Moreover, the Commission notes that Rider NS is for nonstandard services for which customers generally pay for such services at the outset and HV transformer customers already have the option to initially purchase the transformer.

4. HV Transformer Rate Study

a. ComEd's Position

ComEd proposes to conduct an HV Transformer Rate Study. ComEd acknowledges REACT's concern that HV Transformer Charges have increased in recent years. Therefore, ComEd proposes that in its next rate case filing, it will review the assignment of costs to HV transformers to see if unexpected costs are assigned to the HV Transformer Charge and what, if any, action should be taken to revise its methodology. ComEd Ex. 5.0 at 29. This additional data and analysis will require careful consideration of the current allocation methodology, and a review of how new customers impact the charge, including any HV transformer costs being recovered under Rider NS. ComEd Ex. 10.0 at 22. ComEd states that this process will take several months or longer. ComEd has committed to having further discussions with stakeholders regarding this issue outside of this proceeding. *Id*.; *see also* REACT Cross Ex. 7.0.

ComEd notes that REACT recommends that the Commission "[o]pen an investigation to oversee the high voltage rate study to allow parties to issue and respond to data requests and to ensure transparency and timeliness of results." REACT IB at 31. ComEd argues that such a step is premature at this time and REACT has not presented evidence that the statutory standard for an investigation has been met. ComEd argues that the Commission can only open an investigation when there are "reasonable grounds to believe that the audit or investigation is necessary to assure that the utility is providing adequate, efficient, reliable, safe, and least-cost service and charging only just and reasonable rates therefor, or that the audit or investigation is likely to be cost-beneficial in enhancing the quality of service or the reasonableness of rates therefor." *See* ComEd IB at 39, 45 (*quoting* 220 ILCS 5/8-102). ComEd argues that REACT has identified no evidence that this standard has been met. ComEd requests that the Commission reject REACT's recommendation to open an official investigation and instead allow the parties to informally work together to study this issue.

a. Staff's Position

REACT recommends the Commission open an investigation to oversee a high voltage rate study. Staff does not oppose this recommendation and continues to recommend a collaborative engagement between the Company and stakeholders. ComEd proposed to review the assignment of costs to HV transformers in its next rate case to know if unexpected costs are being assigned and if anything could be done about the methodology. ComEd Ex. 5.0 at 29. Staff recommends the Company collaborate with REACT and customers in the HV class to develop a billing methodology that works for both parties and is consistent with the principal of cost causation. Staff Ex. 6.0 at 11.

b. REACT's Position

REACT notes that ComEd has proposed working with Staff, REACT, as well as other large customers and interested stakeholders to identify the underlying causes of the enormous increases in transformer rental rates. ComEd witness Leick estimated that ComEd could begin its evaluation of transformer rental rates within a few months' time. *See* Tr. at 140-141. As part of this process, ComEd would review its ECOSS, Rider NS charges to its existing Over-10 MW HV customers, and the loading on the transformers serving those customers to confirm that there are no distribution facilities costs improperly included in the transformer rental charge. *See* Tr. at 139-140.

REACT explains that this proposed study is essential to the interests of large energy users served by ComEd and requests that the Commission enforce a high level of transparency in the process by ensuring that participating parties can obtain, test and confirm the appropriate data. One tool available to the Commission would be initiate an investigation regarding this charge, which would enable Commission oversight of the timing and production of the relevant data and provide a forum for parties to develop and propose solutions to address this issue. Further, REACT requests that the Commission make clear that the proposed study will investigate whether past ComEd rates for high voltage transformer rental have cross-subsidized other customer classes and also determine the veracity of the reasons for further rate increases.

c. Commission Analysis and Conclusion

The Commission adopts ComEd's proposal to conduct an HV Transformer Rate Study. ComEd is directed to work with interested stakeholders to investigate its cost allocation methodology to the HV Transformer Charge. REACT's proposal for an official Commission investigation into this issue is denied. The Commission is not persuaded that an investigation proceeding is warranted at this time and finds that a less formal collaborative effort among ComEd and interested stakeholders to investigate HV Transformer Charges is appropriate.

F. Updating CP/NCP Allocators to Reflect Recent Weather Normalization

ComEd requests that the Commission approve its proposal to update the weather normal coincident peak/non-coincident peak ("CP/NCP") cost allocators from 2018 to 2021. According to ComEd, this will minimize dramatic increases in costs to residential customers and eliminate anomalous weather events from the data set. *See* ComEd Ex. 2.0 at 39-40. Staff supports ComEd's proposal to update the weather normal CP/NCPs from 2018 to 2021, and no party opposes ComEd's proposal. *See* Staff Ex. 2.0 at 6; ComEd Ex. 5.0 at 7.

ComEd states that ComEd periodically updates its CP/NCP cost allocators to weather normalize them so that weather-sensitive customers will not be allocated a higher-than-normal amount of costs if the CP/NCP data set was captured during a year with an abnormally hot summer or cold winter. ComEd Ex. 2.0 at 39-40. ComEd analyzed data from 2019-2023 to determine which year would be the most suitable to use to update the weather normal CP/NCP cost allocators and concluded that 2021 would be the most appropriate because it was not affected by the COVID-19 pandemic (2020), it was not

affected by abnormally hot temperature peaks compared to 10-year averages (2022 and 2023), and it is not outdated data (2019). *See id*. at 41-44.

This issue is uncontested. The Commission approves ComEd's proposal to update the weather normal CP/NCP cost allocators from 2018 to 2021.

VI. TARIFFS

A. Rider NS – Nonstandard Services and Facilities

1. Rider NS Overview

a. ComEd's Position

According to ComEd, Rider NS – Nonstandard Services and Facilities ("Rider NS") allows ComEd to address and charge for the unique service needs of its customers. Rider NS, ILL. C. C. No. 10, Sheet Nos. 277-281; ComEd Ex. 9.0 REV. at 7. Rider NS ensures that those same customers pay the costs associated with their nonstandard electric needs, i.e., to ensure the costs associated with nonstandard service are not socialized among all customers. Rider NS, ILL. C. C. No. 10, Sheet Nos. 278-280; *see also* ComEd Ex. 5.0 at 63-64. This rider furthers the principle: "the cost of supplying public utility services is allocated to those who cause the costs to be incurred," or simply put, "cost causation." 220 ILCS 5/1-102(d)(iii); ComEd Ex. 9.0 REV. at 7-8.

In accordance with the Act and its Commission-approved rates, ComEd provides an individual customer with facilities that are adequate to serve that customer's electric usage requirements at a single delivery point. *See* General Terms and Conditions, ILL. C. C. No. 10, 5th Revised Sheet No. 155. These are called "standard" services or facilities. *Id.* ComEd works with new customers to appropriately size facilities to provide standard service at a single delivery point. ComEd Ex. 5.0 at 63. Standard facilities can range from a simple secondary voltage connection to serve a small lighting customer, to a high voltage electric service station to serve a large non-residential customer. *Id.* at 63-64. There are additional parameters related to standard distribution facilities provided in the General Terms and Conditions section of ComEd's Schedule of Rates. *Id.* at 64; *see also* General Terms and Conditions, ILL. C. C. No. 10, Sheet Nos. 154.1-186.

Rider NS is also the mechanism by which a customer pays the incremental costs above those that are included in base rates for standard service for any customer requesting that ComEd provide services that are larger, more, or different than standard, i.e. "nonstandard." ComEd Ex. 5.0 at 63. Rider NS also allows ComEd to collect the costs of relocating facilities to accommodate customer construction, such as when a residential customer plans to build a deck for a swimming pool that could conflict with their service line and requests the line to be relocated. ComEd Ex. 9.0 REV. at 8.

There are two formulas in Rider NS to determine the incremental dollar amount above costs for standard service paid by a customer for its nonstandard services and facilities. First, a single cost payment formula on Sheet Nos. 278-280 determines one-time costs, like incremental ComEd labor costs and nonreusable ComEd material costs, to determine a customer's Contribution In Aid of Construction ("CIAC"). ComEd Ex. 5.0 at 64. Second, a monthly rental cost payment formula on Sheet No. 280 determines the incremental costs of materials, such as transformation or switching facilities, that could

potentially be reused elsewhere on the ComEd system if they were no longer needed by the original customer. *Id*.

On average, ComEd collects CIAC payments from approximately 4,000 customers per year and monthly rental payments from approximately 16,000 customers per year under Rider NS. ComEd Ex. 9.0 REV. at 9. In the last five years, ComEd has avoided at least $500 million of incremental costs that would have been borne by all customers if they had not been collected from these cost-causers through Rider NS. *Id.* ComEd has billed approximately 20,000 customers a year in the last five years under Rider NS. *Id.* During this five-year period, there has not been a single formal complaint filed with the Commission relating to ComEd's administration of Rider NS. *Id.*

b. City's Position

In addition to the overview provided by ComEd, the City notes that, in certain cases, ComEd applies a standard services credit on invoices. As ComEd witness Donovan explains:

> There are instances when ComEd does additional work as part of a customer requested project for the benefit of ComEd's system. When this occurs, ComEd does not charge the customer for that additional work. Instead, ComEd will provide a credit (called a "standard service credit"), designed to ensure that the customer is not paying anything extra. This Standard Service Credit appears on the design and construction invoices. For example, if a customer requests that we relocate a pole and ComEd already planned upgrades to that pole, ComEd will perform both the upgrade and the relocation at the same time. ComEd will then issue the customer a credit for the upgrade work since it was not needed to complete the customer's request.

ComEd Ex. 13.0 REV. (Public) at 5.

Mr. Donovan also explains that certain charges are paid upfront, whereas others are recurring monthly charges. He states: "[w]hen a project is nonstandard, project costs must be paid upfront. Once the project is complete and in service, recurring monthly rental costs are applied to facilities and equipment like transformers and switchgears." *Id.* at 9-10. Mr. Donovan adds that "[o]nce a customer no longer has a need for the equipment, ComEd can cease the monthly rental charge and use the equipment for another customer. That new customer will then incur the monthly rental charges." *Id.* at 10.

2. Suggested Changes

a. City of Chicago and BOMA/Chicago

(i) City's Position

The City demonstrates that it has experienced substantial difficulty in trying to understand the manner in which ComEd implements Rider NS and calculates charges assessed to the City. The City's efforts to resolve these issues with ComEd have been

unsuccessful. In addition, the City believes that the record evidence also shows that other Rider NS customers have experienced the same problems.

The City asserts that the Commission is authorized by the Act to ensure that "[a]ll rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable." 220 ILCS 5/9-101. When those regulations and rules are found to be unjust and unreasonable, the Commission must take action to correct those regulations and rules. *See* 220 ILCS 5/9-250. As the City demonstrates throughout, real-world experience with ComEd's administration of Rider NS has proven that the tariff and/or ComEd's implementation of the tariff are unjust and unreasonable. When asked reasonable questions about the manner in which it implements Rider NS, the City points out that ComEd has flouted the basic obligation under the Act to ensure that "the application of rates is based on public understandability and acceptance of the rate structure and level." 220 ILCS 5/1-102(d)(ii); *see also* 220 ILCS 5/9-101. The City has offered tariff revisions that are crafted to resolve the specific problems identified by Rider NS customers and to ensure, on a prospective basis, that ComEd's rules and regulations pertaining to its implementation of Rider NS are just and reasonable. The City advises that the Commission should adopt those changes and enshrine in the tariff basic customer rights and accountability provisions.

The City expresses that its proposed revisions to Rider NS are rooted in foundational principles of transparency, fairness, and due process that other administrative bodies have embraced in similar contexts. As one example, the City cites the FERC requirement that public utilities' formula rate tariffs include minimum protocols to provide transparency, ensure that customers can have a sufficient understanding of the rate being charged, and establish an enforceable process whereby customers have an adequate opportunity to challenge costs that have not been justified. *See*, *e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), order on investigation, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), order on reh'g, 146 FERC ¶ 61,209, order on compliance, 146 FERC ¶ 61,212 (2014) ("MISO Compliance Order"), order on reh'g, 150 FERC ¶ 61,024, order on compliance, 150 FERC ¶ 61,025 (2015) ("MISO Compliance Order II"). The City avers that these fundamental principles are not unique to FERC proceedings. Rather, they are basic customer protections that should apply across the board to ComEd's administration of all its tariffs.

The City presents substantial evidence in this proceeding to support a finding that ComEd's administration of Rider NS is unjust and unreasonable. The City avers that the evidence shows ComEd's failure to: (1) detail how the line items on each invoice align with the NS COST equation specified in Rider NS, and (2) provide reasonable documentation to support each line item. ComEd states that it uses the NS Cost Equation specified in Rider NS to determine cost estimates. COC Cross Ex. 11. That equation specifies the following components: Direct labor cost, department overhead, paid absence, general and administrative overhead, indirect labor cost, material cost, material handling cost, common indirect cost, company engineering cost, State use tax, federal and State combined statutory income tax rate, related contractor services cost, and present value of the tax write-off. COC Ex. 1.02 at 3-5. However, the City contends that the level of detail ComEd provides on invoices does not align with these components. COC Ex. 1.0 at 13; *see also* COC Ex. 1.04 (Public) at 2 (excerpt from a ComEd invoice).

The City further argues that ComEd fails to sufficiently explain how the line items listed on the invoices (i.e., ComEd Labor + Burden, Supervision & Project Support, Material, Contracting, Other, Rental, and Corporate Overheads) relate to the categories of costs listed in the Nonstandard Cost Single Payment equation set forth in Rider NS.

While ComEd states that it "develops workpapers or other documents to determine its calculation of the single cost payment amount on Sheet Nos. 278-280 and the monthly cost payment amount on Sheet No. 280" (COC Cross Ex. 15 at 1), the City asserts that it has repeatedly refused to provide this information to the City Department of Aviation ("CDA"). The City points out ComEd witness Donovan's remarkable admission that the Company does not "provide reasonable documentation to support each line item" specified in the NS Cost equation in Rider NS. ComEd Ex. 13.0 REV. (Public) at 3; *see also* COC Cross Ex. 11 at 1.

The City emphasizes that most troubling is ComEd's failure or inability to substantiate the category of costs labeled "Corporate Overhead" charges, which can comprise a significant percentage of the total project cost. *See, e.g.*, COC Ex. 1.04 at 2 (listing $2,029,102.47 in Corporate Overhead charges). CDA has previously asked for invoice documentation and reiterated that request in this case. *See* COC Ex. 2.06 at 1 ("Please provide all invoices, documents, or other records to support the $2,675,185.43 in "Corporate Overheads."). Again, the City asserts that ComEd has refused to provide basic documentation which would allow CDA to verify the component costs of its invoices. *See* COC Ex. 2.06 (refusing to provide the requested information and stating that "any questions regarding specific invoices can be addressed in conversation between the utility and customer.").

Mr. McHugh's own analysis of the Corporate Overhead line-item further underscores why substantiation of this line-item is needed. Mr. McHugh analyzed ComEd invoices associated with the O'Hare Modernization Program, provided in COC Ex. 2.05, and came to two troubling conclusions. First, the City demonstrates that the variability of this line item is significant, making it difficult to predict and understand. COC Ex. 2.0 REV. (Public) at 18. Second, the City maintains that the Corporate Overhead charges can exceed fifty percent of the total bill. COC Ex. 2.05 at 1. The City states that ComEd never responded to, much less refuted, this evidence.

The City demonstrates that ComEd's administration of the Rider NS tariff is unjust and unreasonable. The City believes the tariff revisions it proposes would address these problems on a prospective basis. The City emphasizes that the proposed audit is necessary to review ComEd's past administration of ComEd's tariff given the Company's inability or refusal to demonstrate the propriety of its actions.

The City asserts that ComEd also admits its prior failure to adhere to the provisions of Rider NS. Mr. Donovan explains that in "2021, ComEd initiated an internal review of its billing practices with CDA and determined that its billing practices to CDA were not sufficiently aligned with the tariff." ComEd Ex. 13.0 REV. (Public) at 8.

The City expresses that these same concerns persist today. The City asserts that ComEd's decision-making is not sufficiently documented. As Mr. McHugh explained, "[l]ittle to no disclosure is provided by ComEd when they change their project scopes and schedules during construction. Decisions are made in the field with no official notice or

approval from CDA, leading to increased ComEd project costs." COC Ex. 1.0 at 11. The City argues there is no procedure mandating that ComEd provide support or explanation for total invoice costs. Mr. McHugh also noted that "without clear expectations of how the total amount on each design and construction invoice is calculated in the first place, it is difficult to gauge whether any deviations from project scope are reasonable." COC Ex. 2.0 REV. (Public) at 10; *see also id.* at 9 ("there is no obligation for the Company to monitor costs or to communicate when the costs exceed the initial estimate."). Further, the City believes that even where the Company has strived to document its processes, such as its proposed ComEd/CDA Change Order Form, "there is no obligation for the Company to complete this form and share it with CDA," rendering its value "minimal" at best. *Id.* at 10. The City argues that this discussion shows ComEd's administration of Rider NS is unjust and unreasonable because decisions are not clearly communicated or documented, perpetuating ComEd's prior failure to adhere to the terms of its own tariff. The City asserts that its recommendations in this proceeding would address these concerns, provide needed clarity and transparency, and ensure the public's confidence in ComEd's administration of Rider NS. *See generally* COC Ex. 1.03 (City's proposed revisions to Rider NS).

The City states that compounding the deficiencies detailed above are a host of issues CDA has experienced with ComEd. *See* COC Ex. 2.0 REV. (Public) at 1. Each of these seven issues will be detailed in turn below.

First, the City argues that ComEd requires Rider NS customers to pay design and construction invoices upfront, despite any proposal or quote detailing how those charges were calculated. COC Ex. 1.0 at 10. The design and construction invoices are typically one page with a single dollar amount and minimal description of the cost components that comprise the total dollar amount. For example, as shown in COC Ex. 2.01, the current requested payment for this invoice is $521,695.60. This dollar amount is purportedly associated with "the estimated project cost required to upgrade customer switchgears in all of Terminal 5 Feed from ComEd NC5635," as well as "[t]emp service needed to allow for the upgrades," "Labor hours," "Material," "engineering," and "metering for the temp services." COC Ex. 2.01 at 1. However, as Mr. McHugh explained, there are no estimates of the quantity of materials, the unit price of such materials, the number of labor hours, or the hourly rate for that time. COC Ex. 2.0 REV. (Public) at 7. The City explains that this contravenes customary billing practices, which "specify both a breakdown of the quantity of materials and the price." *Id.* at 13. Even more troubling, this lack of detail makes it difficult to later ascertain whether changes in project scope are reasonable, and renders ComEd's administration of Rider NS unjust and unreasonable. The City asserts its proposed revisions to Rider NS would fix these problems by obligating ComEd to provide written information, with reasonable documentation, that customers need to make informed decisions about the nature and scope of their projects. *See, e.g.*, COC Ex. 1.03 at 5 (requiring ComEd to provide "reasonable supporting documentation" to substantiate the nonstandard cost single payment).

Second, the City cites ComEd's statement that "the inputs used in computing a new or updated Rider NS rental amount are updated annually." COC Cross Ex. 1 at 1. Yet, ComEd witness Leick concedes that "Rider NS rentals are not periodically updated and do not always reflect recent O&M charges." ComEd Ex. 5.0 at 24. The City maintains

that for ComEd's administration of Rider NS to be just and reasonable, it needs to provide transparent information on monthly rentals "upfront as part of the design and construction invoices, with a clear delineation of which materials trigger monthly charges and how those costs can be expected to change over time." COC Ex. 2.0 REV. (Public) at 8. Again, the City shows that its proposed revisions to Rider NS would resolve these concerns. COC Ex. 1.03 at 6 (requiring ComEd to provide "reasonable supporting documentation" to support the calculation of the nonstandard cost monthly payment).

Third, the City asserts that ComEd's design and construction invoices specify: "[i]f the final true cost exceeds the initially estimated cost," the customer is "required to pay the remaining balance." COC Ex. 2.01 at 1. However, as Mr. McHugh explained, there is "no mechanism to reconcile or ensure that actual costs incurred are consistent with, and do not vastly exceed, the estimated upfront payment." COC Ex. 1.0 at 10. Mr. McHugh further stated that "[t]his places all of the risk on a customer for a process that is largely controlled by the Company. Furthermore, there is no obligation for the Company to monitor costs or to communicate when the costs exceed the initial estimate. The City makes clear this is an unfair allocation of risk that should be corrected through additional processes set forth in the tariff." COC Ex. 2.0 REV. (Public) at 9. Based on its experience, the City crafted narrow revisions to Rider NS to ensure these problems do not persist. *See* COC Ex. 1.03 at 4 (requiring ComEd to continually monitor costs and immediately notify the customer if the costs incurred are greater than 10% of the estimated initial cost); *see id.* (explaining that the customer will not be responsible for costs that are not properly disclosed).

Fourth, the City argues that little to no disclosure is provided by ComEd when it changes project scopes and schedules during construction. Decisions are made in the field with no official notice or approval from CDA, leading to increased ComEd project costs. In many instances, CDA has become aware of these changes only after receiving unexpectedly high invoices from ComEd. COC Ex. 1.0 at 11. The City states that further compounding these concerns is the fact that the customer must bear all of the risk for scope changes and project delays. As one example of a ComEd invoice provides: "Please keep in mind that any changes associated with this material order may generate additional charges to CDA. All sunk costs associated with CDA project cancelations, project delays and/or scope changes will be passed on to CDA. CDA is expected to cover any costs associated with additional storage and handling for the received material beyond August 2025." *See* COC Ex. 1.07 at 1. In the City's view, this unfair allocation of risk renders ComEd's administration of Rider NS unjust and unreasonable. The City believes that the informational and notice requirements the City proposes to add to Rider NS would resolve these concerns. COC Ex. 1.03 at 4 (requiring ComEd to continually monitor costs and immediately notify the customer if the costs incurred are greater than 10% of the estimated initial cost).

Fifth, the City argues that the delineation between standard and nonstandard facilities appears to be a continually moving target. ComEd states that it "cannot in the abstract categorize specific equipment as standard or nonstandard at airports as it is the load and the nature of the service that determines standard or nonstandard. For example, a given piece of equipment might be standard when serving a certain level of load at a single point of service, but nonstandard when used to serve less load or a part of a

nonstandard design." COC Ex. 2.03 at 4. When CDA has requested clarity on specific types of equipment such as community transformers, the City points out that ComEd has provided conflicting guidance. COC Ex. 2.0 REV. (Public) at 11.

BOMA/Chicago witness Brookover further validates the City's concerns: "the definitions of standard services and nonstandard services (as reflected in ComEd's General Terms and Conditions Sheets No. 155 and 156 and in Rider NS) are unclear and appear to provide ComEd with broad discretion over what constitutes "larger, more, or different" facilities or services while providing customers with little information regarding ComEd's basis for determining whether a service or facility is "larger, more or different." BOMA/Chicago Ex. 1.0 at 4. The City states that without further documentation of ComEd's decision making on this issue, the Commission cannot reasonably conclude that ComEd's administration of Rider NS is just and reasonable. The City believes its proposed tariff revisions and audit are designed to remedy this untenable situation and provide needed clarity and transparency. *See* COC Ex. 1.03 at 3 (requiring a written Preliminary Assessment to "detail with specificity all proposed new services and facilities and explain why the nonstandard services and facilities qualify as larger, more, or different services and/or facilities").

Sixth, the City states that when CDA asked ComEd to explain "how the Company determines the amount of the standard service credit," ComEd stated that "amount of the standard service credit is proportional to the cost of standard portions of the project." COC Ex. 2.07 at 1. But all that is provided on the invoice is one line item with a percentage figure. *See* COC Ex. 1.04 (Public) at 2.

The City believes that without an explanation of how that percentage was calculated and which particular standard facilities were identified as part of that calculation, ComEd's practice is unjust and unreasonable. COC Ex. 2.0 REV. (Public) at 11. The City argues that its proposed tariff revisions would resolve this problem. *See* COC Ex. 1.03 at 3 (requiring a written Preliminary Assessment to "detail with specificity all proposed new services and facilities and explain why the nonstandard services and facilities qualify as larger, more, or different services and/or facilities").

Seventh, the City explains that there are at least eight other entities with infrastructure at the City's airports. COC Ex. 2.0 REV. (Public) at 19. CDA has repeatedly requested the Company to provide Computer-Aided Design ("CAD") or Geographic Information System ("GIS") files with the appropriate georeferenced detail, which would allow CDA to visually "layer" ComEd facilities on top of other layers of infrastructure at the airports. Mr. McHugh explained that this "layering" feature is important because it would allow CDA to better keep track of existing facilities owned by all entities and conduct facility locates in a safe and efficient manner. *Id*. at 19. While ComEd has provided a PDF file of the Midway Airport property (*see* ComEd Ex. 8.04 (Confidential)), the City argues that format does not enable CDA to perform the "layering" of assets described above, diminishing its usefulness. CDA has repeatedly asked for CAD/GIS files for the O'Hare Airport but this information has not yet been provided. *See* COC Ex. 2.03 at 4 ("The O'Hare map is still in progress as there have been significant new infrastructure additions. ComEd will supplement this response as soon as the current CAD file for O'Hare Airport is available."). The City asserts that ComEd never supplemented its response to this data request.

The information CDA is seeking is foundational to its ability to safely and efficiently operate its airports. ComEd's perpetual refusal to provide this basic information demonstrates that its administration of Rider NS is unjust and unreasonable. The City believes its proposed revisions to Rider NS would provide a formal process whereby customers could request (and ComEd would be required to provide) this type of information. COC Ex. 1.03 at 6 (Miscellaneous General Provision).

The City argues that ComEd's failure or refusal to provide reasonable information that would enable the City to verify the accuracy of Rider NS costs constrains the City's ability to develop coherent budgets and conduct business with its partners. COC Ex. 2.0 REV. (Public) at 9. The City stresses that this frustrating situation has persisted for years. Mr. McHugh explained that pursuant to CDA's Airline Use and Lease Agreement with its airline tenants, capital projects are funded by airport tenants and CDA has an obligation to carefully maintain budgets for all its capital projects and disclose changes to these budgets to its airline tenants. COC Ex. 1.0 at 15. The City underscores that the unpredictability of costs incurred under Rider NS threatens to compromise CDA's obligations under its Airline Use and Lease Agreement and strain the important business relationships it has with its airline tenants. *Id*. at 15.

Moreover, the City advises that CDA is subject to the Federal Aviation Administration's grant assurance prohibition on revenue diversion. This means that airport revenues cannot be used to fund non-airport purposes. Thus, the City explains that any shared facilities located at O'Hare must properly correspond only to CDA usage and not to usage by other customers. The City maintains that it needs sufficient detail from ComEd to make these determinations. *Id.* at 15-16. These challenges can be rectified by adopting the City's proposed set of solutions, described in further detail below.

The City argues that ComEd's attempts to paint Rider NS issues as a City-specific concern are untethered from the record evidence. ComEd Ex. 5.0 at 66 ("These recommendations are not necessary and would create substantial administrative burden from reporting when only the COC is expressing a concern."). The City cites the concerns raised by BOMA/Chicago, CTA, and Metra. BOMA/Chicago witness Brookover states, "BOMA/Chicago members have experienced similar issues and frustrations with Rider NS as those described by City of Chicago witness Joseph McHugh." BOMA/Chicago IB at 6. CTA/Metra witness Mr. Bachman explains that "CTA and Metra believe the Commission should revisit and order ComEd to provide, as the City notes, more accountability, transparency, and notice concerning Rider NS costs and implement the language changes I proposed in my direct testimony." CTA/Metra Ex. 2.0 at 3; *see also* CTA IB at 20 ("This lack of transparency and the significant costs Rider NS imposes have caused the CTA to request modifications of Rider NS language not only for the RR Class but also for the transitioning of the CTA's diesel bus fleet to electric, which requires installation of charging facilities."); Metra IB at 31 ("It is evident that Rider NS is a point of contention for multiple parties, including not only the RR Class, but also the City of Chicago and the BOMA/Chicago, each of which has advanced proposals regarding Rider NS in this proceeding."). Thus, the City emphasizes, the issues plaguing Rider NS are pervasive and are much larger than a single customer complaint.

The City states that even more broadly, the use of Rider NS to recover electric vehicle make-ready infrastructure demonstrates that increasing numbers of costs will flow

through this tariff provision, particularly as the City achieves the electrification objectives in its Climate Action Plan. COC Ex. 1.0 at 17. In the BE Plan 1 Order, the Commission approved ComEd's proposal to use Rider NS for cost recovery of make-ready facilities. BE Plan 1 Order at 249. As Mr. McHugh explains, "[p]ursuant to this ruling, ComEd and the retail customer would need to determine the infrastructure facilities needed for electric charging and the costs of this make-ready infrastructure would be recovered through individual customer-specific charges under Rider NS." COC Ex. 1.0 at 17. The City argues that Rider NS will need to be durable enough to accommodate this increasing volume of upgrades. This further underscores the need for Commission review and scrutiny of Rider NS. *Id.* at 17.

The City argues it presents substantial evidence to support a finding that ComEd's administration of Rider NS is unjust and unreasonable. The City also argues it presents substantial evidence to support a finding that its proposed solutions to these problems are just and reasonable. Consequently, the City requests that the Commission direct ComEd to: (1) revise Rider NS to include basic customer protections that improve transparency and clarity regarding the costs for providing nonstandard service and the equipment needed to provide that service, as well as establish a formal process whereby customers can submit questions and information requests to ComEd and receive timely responses; (2) engage a third-party auditor to verify the accuracy of the costs ComEd has recovered for Rider NS service in light of ComEd's inability to substantiate its calculations; and (3) provide an annual report to improve transparency and clarity regarding costs, nonstandard versus standard equipment, service credits, and monthly rental charges. The City details each of these requests below.

The City states that its proposed tariff revisions are set forth in redline in COC Ex. 1.03 and would bring clarity and transparency to Rider NS. The City first recommends that ComEd be required to conduct a Preliminary Assessment before ComEd enters into an agreement with the retail customer, if the total estimated cost of the nonstandard facilities and services exceeds $100,000. *Id.* at 18. The City explains that its Preliminary Assessment would: (1) detail with specificity all proposed new services and facilities and explain why the nonstandard services and facilities qualify as larger, more, or different services and/or facilities; (2) advise the retail customer of the feasibility of alternative solutions to achieving the intended project implementation compatible with ComEd infrastructure, including potential retail customer purchase, installation; and ownership of equipment; (3) explain whether a portion of such nonstandard services and facilities may reasonably be used for other retail customers, and if so, identify such retail customer(s) as well as the estimated total cost and/or monthly payment payable by such other retail customer(s); and (4) provide an estimated, itemized cost breakdown of the cost of furnishing nonstandard services and facilities (i.e., the "NS COST", which is the amount that must be paid to the Company for the installation or provision of nonstandard services and facilities prior to such installation or provision) consistent with the categories specified in the NS COST equation, including reasonable supporting documentation for each category; and (5) specify whether any costs will be recovered under any other Company riders, an explanation of why those riders are implicated, and the estimated costs to be recovered under the other riders. *Id.* at 18-19.

In addition to the Preliminary Assessment, the proposed tariff revisions include: a process whereby the retail customer is given the choice of whether to proceed with the installation of the nonstandard facilities and services, once an explanation of the estimated costs has been provided; a requirement that the agreement between the retail customer and ComEd must be in writing; an obligation to (1) continually monitor costs and timely communicate to the retail customer if the costs incurred are 10% greater than the initial estimate provided to the retail customer and (2) provide a reconciliation of the estimated cost of the nonstandard services and facilities with the actual costs incurred; a requirement to provide support for all components of the NS COST equation and Nonstandard Cost Monthly Payment in writing prior to payment in reasonable detail with reasonable supporting documentation; and a requirement that the Company provide further information regarding nonstandard services, including a deadline to respond to such requests within 14 business days. *Id.* at 19.

Based on ComEd's inability or failure to respond to reasonable questions about the propriety of its administration of Rider NS, the City recommends that the Commission direct ComEd to hire an independent auditor to provide oversight of costs recovered under Rider NS. *Id.* at 17. The City maintains that the auditor's review should culminate in a report to be filed with the Commission, allowing customers impacted by Rider NS to meaningfully respond. *Id.* at 17. The City argues this evaluation is needed so that customers such as CDA, who pay for both standard and nonstandard service, pay rates that are just and reasonable. *Id.* at 17-18. The magnitude of the costs recovered under Rider NS further underscores the importance of this recommendation. *See* COC Cross Ex. 10 at 2 (showing $424,290,000 in total jurisdictional distribution customer advances for construction in 2023); *see also* ComEd Ex. 9.0 REV. at 9 ("[i]n the last five years, the collection of these customer advances has avoided at least $500 million of incremental costs that would have been borne by all customers if they had not been collected from these cost-causers."); *see also* COC Ex. 1.0 at 11 (noting that the total cost of design and construction invoices CDA has paid to ComEd over the last ten years equals approximately $84 million).

The City has satisfied the standard for the Commission to initiate an audit. Pursuant to Section 8-102, an audit and tariff investigation is commenced when the Commission:

> [H]as reasonable grounds to believe that the audit or investigation is necessary to assure that the utility is providing adequate, efficient, reliable, safe, and least-cost service and charging only just and reasonable rates therefor, or that the audit or investigation is likely to be cost-beneficial in enhancing the quality of service or the reasonableness of rates therefor.

220 ILCS 5/8-102. Here, the City has offered substantial record evidence demonstrating the lack of transparency, notice, and detail that render ComEd's administration of Rider NS unjust and unreasonable. The City explains that this evidence includes ComEd's failure to: (1) detail how the line items on each invoice align with the NS COST equation specified in Rider NS and provide reasonable documentation to support each line item; (2) correct the root causes of its prior failure to adhere to its tariff; (3) explain upfront the

charges that will be included in a design and construction invoice; (4) provide a mechanism to reconcile or ensure that actual costs incurred are consistent with, and do not vastly exceed, the estimated upfront payment; (5) provide sufficient disclosure and notice when project scopes and schedules change during construction; and (6) explain the application of the standard service credit on certain invoices and how that credit changes over time.

While the City agrees with ComEd that the request for an audit "should never be taken lightly" (ComEd Ex. 9.0 REV. at 9), the breadth and depth of the City's concerns—coupled with the tenure of their persistence—shows that such a step is needed here. The City avers that if an audit is not warranted in these circumstances, it is difficult to imagine the circumstances where an audit would be warranted. In particular, the City notes it has exhausted informal channels for resolution of these issues. COC Ex. 1.0 at 16. The futility of that process has made clear to the City the need for Commission intervention to direct an audit, as the Commission has routinely authorized in the past. *See*, *e.g.*, *Citizens Util. Bd. v. Ill. Energy Savings Corp.*, Docket No. 08-0175, Order at 50 (Apr. 13, 2010); *Peoples Gas Light & Coke Co.*., Docket No. 06-0556, Order at 2 (Aug. 16, 2006); *City of Chi.*, Docket No. 01-0664, Order at 2 (Feb. 6, 2002). The City maintains that ensuring the just and reasonable administration of Rider NS is surely worth any additional minimal administrative burden that may accompany any auditor's scrutiny of this rider, as BOMA/Chicago has demonstrated. BOMA/Chicago IB at 9 ("Given the monetary impact of Rider NS upon customers and the current lack of transparency/clarity over how Rider NS costs are assigned, BOMA/Chicago believes the benefits of an independent auditor review will outweigh any administrative burden placed upon ComEd for participating in the audit process.").

The City further shows that, contrary to ComEd's suggestion, its concerns are not unique to just one customer. *See* ComEd IB at 39 ("Audits and tariff investigations should not be used as tools to address discrete customer questions or concerns."). The City asserts that it is telling that ComEd touts the cost-causation rationale underlying Rider NS but opposes an audit that would ensure whether it assessed Rider NS charges in adherence to cost-causation principles. All customers have an interest in ensuring that costs are accurately allocated. For these reasons, the City requests that the Commission direct an audit of ComEd's Rider NS.

Mr. McHugh recommended that the Commission direct ComEd to provide the City with an annual report on Rider NS, including but not limited to the following information: (1) the most recent engineering review of actual peak CDA usage, including the electric power and energy requirements of CDA calculated pursuant to ComEd's General Terms and Conditions Sheet No. 155 and an explanation of whether CDA tenants' usage are included in the calculations; (2) CDA's currently effective Electric Facilities Service Acknowledgement, including a description of where all existing ComEd cabling, equipment, and other infrastructure is located on airport property, supplemented with information about its physical size, whether it is standard or nonstandard, whether it incurs monthly rental charges, and whether it is shared with other entities at the airport (e.g., transformers serving both CDA and airline tenants); and (3) the total annual costs ComEd has charged the City via Rider NS, including supporting documentation to establish the reasonableness of charges on each invoice and an explanation of whether, and if so why,

a standard service credit was applied to each City invoice. COC Ex. 2.0 REV. (Public) at 2.

The City explains that ComEd's objection to providing the City with an annual report on Rider NS is both troubling and further demonstrates why the City's proposals for customer protections and transparency are needed. The City emphasizes that central to the Act is the requirement that customers understand the rates they are asked to pay. 220 ILCS 5/1-102; *see also* 220 ILCS 5/9-101 ("All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable."). Contrary to ComEd's assertion, the City shows that ComEd does not "provide[] much of the information that the City witness McHugh suggested should be provided in an annual report to the City on a regular basis." ComEd IB at 38-39.

The City notes that one key item of the City's proposed annual report is the obligation to "provide the total annual costs ComEd has charged the City via Rider NS, including supporting documentation to establish the reasonableness of charges on each invoice and an explanation of whether, and if so why, a standard service credit was applied to each City invoice." COC Ex. 2.0 REV. (Public) at 2. As the record here shows, the City has repeatedly asked for, but ComEd has never provided, itemized billing with backup documentation to verify invoice costs. COC Ex. 2.0 REV. (Public) at 18; *see also* COC Ex. 2.06 at 1 ("Please provide all invoices, documents, or other records to support the $2,675,185.43 in "Corporate Overheads."); *Id.* at 1 (ComEd objecting to the City's request, stating that "any questions regarding specific invoices can be addressed in conversations between the utility and customer."). The City has tried for years to obtain answers to these questions. *See* COC Ex. 2.0 REV. (Public) at 19. Obtaining additional information is particularly important to understanding ComEd's Corporate Overhead charges, which vary significantly and can be as high as 50% of the total invoice. COC Ex. 2.05. Obligating ComEd to provide this report to the City would help to alleviate these identified deficiencies, the City maintains.

The City argues that the foregoing discussion demonstrates the need for and reasonableness of the City's proposals in this proceeding. While no further showing is needed to support adoption of the City's proposals, the City is compelled to respond to arguments ComEd advanced in this proceeding in an attempt to undermine the City's proposals.

The City explains that ComEd witness Perkins attempts to downplay the serious nature of the issues the City has raised by characterizing the City's issues as involving "discrete customer questions[.]" ComEd Ex. 9.0 REV. at 9-10. Mr. Perkins also suggested that the City's concerns involve issues with "disclosure and presentation of information" that would be "better addressed in other processes." *Id.* at 10. As another example, the City states that ComEd diminishes the significance of the City's concerns on the grounds that they relate to issues with "invoices and costs" and not the "Rider itself." ComEd Ex. 13.0 REV. (Public) at 15.

Contrary to ComEd's characterizations, the City believes its concerns go to the heart of Rider NS and the substantial costs ComEd recovers through that tariff. Regardless of whether Rider NS is reasonable on its face (and CDA's experience demonstrates that it is not), the City demonstrates that there is no substantive distinction

between ComEd's failure to adhere to a reasonable tariff and ComEd's administration of an unreasonable tariff. The City maintains that both circumstances warrant corrective action, and this proceeding is the appropriate venue for the Commission to review the City's concerns and make a substantive ruling on the propriety of Rider NS and ComEd's implementation of it.

Finally, the City refutes ComEd's unsubstantiated claims and unsupported rhetoric. In particular, Mr. Perkins claimed, without qualification, that adopting the City's proposed revisions to Rider NS "will increase the cost of administration borne by all customers[.]" ComEd Ex. 9.0 REV. at 7. The City states that neither Mr. Perkins nor any other ComEd witness offered any evidence to support the veracity of that claim. Mr. Perkins also warned the Commission that adopting the City's proposed revisions will "expose other customers to greater risk of cost shifts." *Id.* at 7; *see also id.* at 5 (claiming that the City "seeks to amend Rider NS in a manner that would shift costs from the CDA to all other customers[.]"). Again, the City argues that neither Mr. Perkins nor any ComEd witness presented any meaningful evidence that would support a finding that this claim has merit. These omissions are not surprising given that the City's proposed revisions would improve—not degrade—transparency and provide the Commission and customers with confidence that ComEd is implementing its tariff in adherence to cost causation principles.

The City also stresses that ComEd's unsupported rhetoric defies common sense. The City's tariff revisions would establish basic customer rights of transparency and empowerment, which P.A. 102-0662 recognizes to be paramount. 220 ILCS 16-105.17(d)(4) (explaining the importance of "greater customer engagement" and "empowerment"). Most of the City's requests simply ask ComEd to provide "reasonable supporting documentation." COC Ex. 1.03 at 3, 4, 5, and 6 (adding tariff revisions that would require ComEd to supports its calculation of costs with "reasonable supporting documentation"). The City maintains that presumably ComEd already has this documentation, otherwise it would not have been able to calculate the amounts shown on invoices for Rider NS service. Other requests are narrowly tailored in their application, such as the requirement to perform a "Preliminary Assessment," which would only be triggered if the nonstandard services and facilities are estimated to exceed a dollar threshold of $100,000. COC Ex. 1.03 at 3. The City's proposals would shed more light on the costs recovered under Rider NS, further elucidating whether costs are being recovered consistent with cost causation principles. They would instill confidence in the manner in which ComEd implements its tariff. The City requests the Commission to dismiss ComEd's unsubstantiated arguments.

The City explains that ComEd makes the baseless argument that the City's proposed modifications "would be duplicative of the current Rider NS language." ComEd IB at 35. If the revisions were duplicative, then the City notes it would not have had the experiences with ComEd's implementation of Rider NS that led the City to make these proposals. But more importantly, the City shows that ComEd's claim is demonstrably false.

The City contends that Rider NS is devoid of any obligations for ComEd to meaningfully detail how it calculated charges incurred under design and construction invoices. ComEd admits in this case that it does not "provide reasonable documentation

to support each line item" specified in the NS Cost equation in Rider NS. ComEd Ex. 13.0 REV. (Public) at 3; COC Cross Ex. 11. The City shows that this flatly contravenes the Act's pronouncement that "the application of rates [be] based on public understandability and acceptance of the rate structure and level." 220 ILCS 5/1-102(d)(ii). The City explains that other administrative bodies have similarly concluded that public utilities' formula rate tariffs must include minimum protocols to provide transparency, ensure that customers can have a sufficient understanding of the rate being charged, and establish an enforceable process whereby customers have an adequate opportunity to challenge costs that have not been justified. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), order on investigation, 143 FERC ¶ 61,149 (2013), order on reh'g, 146 FERC ¶ 61,209, order on compliance, 146 FERC ¶ 61,212 (2014), order on reh'g, 150 FERC ¶ 61,024, order on compliance, 150 FERC ¶ 61,025 (2015)).

The City explains that the policy ComEd cites in support of its statement that it "detail[s] charges in writing" is merely a Company document that specifies internal Company obligations. ComEd IB at 36 (*citing* COC Cross Ex. 16.0). The City asserts that the fact that ComEd sends its customers a written invoice in no way fulfills its obligations to meaningfully explain how the charges assessed on the invoices were calculated in the first instance. ComEd also states that "[t]ransparency is embedded in this process since ComEd will not initiate Rider NS work until a customer has agreed to the work outlined on the invoice, and remitted payment for nonstandard work." ComEd IB at 36. But as the City's witness has detailed, those invoices contain a problematic lack of detail, raising significant transparency and notice concerns. *See* City IB at 19 (COC Ex. 2.0 REV. (Public) at 13) (explaining that ComEd's practice contravenes customary billing practices, which "specify both a breakdown of the quantity of materials and the price."); *see also* City IB at 13-23 (detailing substantial record evidence demonstrating the lack of transparency, notice, and detail that accompany ComEd's invoices).

The City takes issue with ComEd's baseless assertions that the City's revisions to Rider NS are not appropriate or feasible. ComEd objects (ComEd IB at 37) to the City's tariff revisions which would require ComEd to "[a]dvise the retail customer of the feasibility of alternative solutions to achieving intended project implementation compatible with ComEd infrastructure, including potential retail customer purchase, installation, and ownership of equipment[.]" COC Ex. 1.03 at 3. First, to be clear, the City emphasizes that this obligation would only apply in very specific situations where the cost of the nonstandard project exceeds $100,000. *Id*. ComEd next complains that it "does not, and cannot, know the status of every Rider NS customer's equipment inventory." ComEd IB at 38. The City is not asking ComEd to detail its equipment inventory; it is asking for information to understand available alternatives. The obligation to assess alternatives and provide information to empower customer choice is central to P.A. 102-0662's objectives and should not be ignored under Rider NS. 220 ILCS 5/16-105.17(f)(4) (requiring holistic consideration of all related investments, planning processes, tariffs, rate design options, programs, and other utility policies and plans) (emphasis supplied); *see also* 220 ILCS 16-105.17(d)(4) (explaining the importance of "greater customer engagement" and "empowerment"). The City notes that the millions of dollars ComEd recovers from CDA and other customers under Rider NS (COC Ex. 1.0 at 11; ComEd Ex. 9.0 REV. at 6) further underscores the importance of an alternatives assessment.

The City also offered revisions to Rider NS that would allow optionality for customer ownership. COC Ex. 1.03 at 3 ("Nonstandard services and facilities are, and at all times remain, the sole property of the Company unless otherwise agreed to by the Company and retail customer."). The City insists there is nothing in this provision that would mandate "that ComEd would be required to consider selling its assets." ComEd IB at 38. The tariff clearly requires agreement between ComEd and its customers before any changes regarding property ownership would be made. The City is simply requesting that ComEd consider alternatives that would better empower customer choice. As discussed above, the City demonstrates that this is fully consistent with the objectives of P.A. 102-0662. 220 ILCS 16-105.17(d)(4), (f)(4).

The City highlights ComEd's acknowledgement that transparency with its customers on the application of Rider NS is important, and ongoing dialogue with these complex customers to improve processes and communication is necessary." ComEd Ex. 9.0 REV. at 11. Nonetheless, the City explains that ComEd asks that the Commission reject the City's proposals in their entirety. ComEd IB at 35-40. To the extent any improvements should be made to Rider NS or the manner in which ComEd implements that tariff, ComEd argues that this proceeding is not the appropriate forum for engaging in discussions about those improvements. As a threshold matter, the City asks the Commission to reject ComEd's arguments and address the merits of the City's concerns and its related proposals in this proceeding.

First, the City states it has exhausted informal challenges for resolution. COC Ex. 1.0 at 16. As Mr. McHugh explains, the City has repeatedly asked, but has never received, itemized billing with backup documentation to verify invoice costs. COC Ex. 2.0 REV. (Public) at 18. Again in this proceeding, the City repeated its request for invoice verification. COC Ex. 2.06 at 1 ("Please provide all invoices, documents, or other records to support the $2,675,185.43 in "Corporate Overheads."). ComEd objected to the City's request, stating that "any questions regarding specific invoices can be addressed in conversations between the utility and customer." *Id.* As Mr. McHugh observes, "[t]his answer leaves the City in the same place it started in November 2022." COC Ex. 2.0 REV. (Public) at 19. The City has unsuccessfully tried for years the process the Company now proposes for resolution, and its questions remain unanswered.

The City also explains that the other "customer support" options ComEd cites do not resolve the City's concerns. *See* ComEd IB at 36 (*citing* ComEd Cross Ex. 4.0) ("ComEd also provides the City with additional customer service and has employees on-site 24 hours a day at O'Hare, who are willing and able to assist CDA with any questions."). While the City appreciates that on-site ComEd staff person, that presence is no substitute for the relief the City seeks here, which includes tariff revisions, an audit, and an annual report. *See* COC Ex. 1.0 at 2; *see also* COC Ex. 1.03 (City's proposed changes to Rider NS).

Second, the City notes that parties have devoted substantial resources in this proceeding to have the dialogue that ComEd concedes is necessary. Parties have developed a robust evidentiary record upon which the Commission can make reasoned decisions about the merits of the City's concerns and the propriety of the City's proposals for addressing those concerns. City IB at 13-23 (detailing the record evidence in support of its position that ComEd's administration of Rider NS is unjust and unreasonable). The

City states it would be unreasonable and administratively inefficient for the Commission to adopt ComEd's position.

Setting aside the wasted resources that would result by declining to rule on the City's proposals here, the City explains that there are two fundamental problems with ComEd's arguments about the appropriate scope of this proceeding—one practical and one legal. As a practical matter, the City stresses that ComEd's conduct in this proceeding strongly suggests, if not conclusively establishes, that alternative processes such as workshops would not provide realistic opportunities for relief. ComEd has summarily rejected the City's proposed tariff revisions on the grounds that they: (1) are "unnecessary[;]" (2) "appear to be designed only to further [the City's] own special interests[;]" (3) would "undermine Rider NS[;]" (4) "will increase the cost of administration borne by all customers[;]" and (5) would "expose other customers to greater risk of cost shifts." ComEd Ex. 13.0 REV. (Public) at 15; *see also id.* at 16; ComEd Ex. 9.0 REV. at 7. The City points out that ComEd also summarily rejected the City's proposed audit as "unnecessary" and the "wrong mechanism" for addressing the City's concerns. ComEd Ex. 9.0 REV. at 9; *see also* ComEd Ex. 13.0 REV. (Public) at 17. Indeed, ComEd goes so far as to claim (which the City disputes) that it is either in the process of resolving or has already resolved the City's concerns. ComEd Ex. 13.0 REV. (Public) at 1 ("ComEd has already, or is in the process of, mitigating the specific concerns [City witness McHugh] raises[.]"); *see also id.* at 2-3. ComEd's position in this case demonstrates that the City's concerns and proposals can only be addressed through Commission action in these proceedings.

The City expresses that there are other process-related concerns with ComEd's suggestion for a workshop. First, as BOMA/Chicago notes, a "drawn-out workshop process . . . may not produce any results." BOMA/Chicago IB at 8. In workshop processes, parties have no discovery and limited recourse when issues arise. The stakes for ComEd's administration of Rider NS are quite high for CDA, which risks compromising important business relationships and other legal obligations as it struggles to understand the costs it is asked to pay under Rider NS. *See* City IB at 23-24. The City warns that cabining discussion of Rider NS to a workshop process would inappropriately constrain customers' rights.

As a legal matter, the City explains that questions about whether ComEd is appropriately implementing the "filed rate" cannot be "punted" or delegated to informal processes. Rather, any changes to the manner in which ComEd implements Rider NS must be memorialized in tariff revisions that contain binding requirements. Otherwise, customer protections remain illusory and unenforceable, in direct contravention to the interest of transparency that underlies the filed rate doctrine. *See Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) (explaining that the filed rate doctrine prohibits public utilities from "charg[ing] rates for its services other than those properly filed with the appropriate federal regulatory authority"). The City explains that although this case focused on federal regulatory agencies, Illinois has incorporated the filed rate doctrine through Section 9-240 of the Act. 220 ILCS 5/9-240 ("no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product, or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates or other charges applicable to such product or commodity or service as

specified in its schedules on file and in effect at the time"). As the City explains, the filed rate doctrine provides that once a tariff becomes effective, a customer has no rights to receive service on rates, terms, or conditions different from those in the effective tariff.

ComEd's suggestion that the City's concerns could be resolved through the "customer complaint process" (ComEd IB at 35) is likewise legally untenable, the City maintains. As the Commission has already determined, "revisions to a utility's tariffs cannot be considered in a consumer complaint proceeding, as more than just [the complainant] would be impacted by any change." *Berberick v. Commonwealth Edison Co.*, Docket No. 19-0131, Order at 4-5 (Sept. 5, 2019). In any event, the City notes that the Commission has already determined that revisions to Rider NS are within scope of this proceeding. MYRP Docket, Order at 500 (Dec. 14, 2023); *see also* MYRP Docket, Proposed Order at 332 (Oct. 18, 2024) (ALJ Proposed Order confirming the same). For these reasons, the City respectfully asks the Commission to adopt its requests for relief in this case.

In its RBOE, the City asks the Commission to reject ComEd's request to file an amendment to Rider NS in lieu of an investigation because it would prejudice the City by further delaying relief.

(ii) BOMA/Chicago's Position

BOMA/Chicago expresses support for Rider NS revisions recommended by the City and BOMA/Chicago to ensure a more fair and transparent process for customers incurring Rider NS charges. BOMA/Chicago witness Brookover explains that BOMA/Chicago members have experienced similar issues and frustrations as the City associated with a lack of transparency in the application of Rider NS. BOMA/Chicago Ex. 1.0 at 79-100. Particularly, BOMA/Chicago agrees that it is unclear from ComEd's current Rider NS billing process how ComEd is defining what constitutes "larger, more, or different" facilities or services and what basis ComEd is using to determine whether a service or facility is "larger, more, or different" such that Rider NS applies. *Id.* BOMA/Chicago also agrees that Rider NS is unclear regarding what nonstandard facilities or services result in rental charges and when rental charges may cease or change. *Id.* at 4. Additionally, ComEd currently provides minimal information on customer bills regarding Rider NS charges, and BOMA/Chicago agrees that customers would benefit from invoices that include further detail regarding Rider NS costs, including the components of the NS Cost equations (contained with Rider NS), so customers may "properly understand what services are being charged under Rider NS and how costs associated with those services (and the NS Cost equation in Rider NS) are being assigned and allocated." *Id.* at 5.

BOMA/Chicago is supportive of the following revisions to Rider NS proposed by the City. BOMA/Chicago supports the City's proposed revision to Rider NS clarifying that any Rider NS charges must be subject to a written agreement between the customer and ComEd. COC Ex. 1.03. BOMA/Chicago members have experienced situations where the terms of an agreement with ComEd for nonstandard services are unavailable for a variety of reasons, including because they are historical in nature and/or carried over from a previous owner or tenant. ComEd should have a written agreement for all Rider NS

charges and be required to provide copies of those agreements to the customers whose bills are impacted upon request.

BOMA/Chicago supports the proposed requirement that ComEd perform and provide a preliminary assessment regarding the scope and cost of nonstandard services for any new project, including alternative solutions to achieving project implementation, other customers that will benefit from the nonstandard services, and an itemized cost breakdown for providing the nonstandard services with supporting documentation. COC Ex. 1.03. BOMA/Chicago further recommends that this preliminary assessment specify what infrastructure/equipment ComEd is classifying as a standard service for a project, including the costs associated with what ComEd is classifying as standard services. Additionally, with respect to the NS COST breakdown recommended in the City's testimony, BOMA/Chicago agrees ComEd should be required to disclose to customers the NS COST in at least as much detail as outlined under the Determination of Nonstandard Cost Single Payment section of Rider NS. BOMA/Chicago supports further clarification in the Rider noting that ComEd should be required to provide the numbers or assumptions it is using for each variable of the NS COST equation and the basis for each of those numbers and assumptions.

BOMA/Chicago supports the requirement that ComEd monitor costs during construction and immediately notify the customer if there is more than a 10% escalation from the original estimate. COC Ex. 1.03. BOMA/Chicago recommends that the Rider further clarify that this immediate notification should occur no later than two business days after ComEd becomes aware of the cost escalation. To the extent any applicable agreement between the parties related to the nonstandard service(s) already exists, it should be amended prior to ComEd billing for any escalated costs.

BOMA/Chicago supports the proposal for ComEd to reconcile the estimated budget for nonstandard services and facilities with actual costs upon completion of its installation of the nonstandard services and facilities. COC Ex. 1.03. The proposed revisions are based on the fundamental principles of fairness. Customers should have the ability to understand the costs they incur on their bills. ComEd may believe that it is properly defining facilities and services as nonstandard, but customers should have the ability to review ComEd's decision making process to ensure it is being applied correctly and appropriately. The revisions supported by BOMA/Chicago are geared towards ensuring transparency by allowing the customer access to information ComEd is generating that directly impacts their bill. *See* BOMA/Chicago Ex. 1.0 at 5-7. Additionally, BOMA/Chicago notes that steps to increase the transparency of the Rider NS process recommended by the City of Chicago should benefit existing customers with ongoing Rider NS charges in addition to new Rider NS customers/charges. *Id*. at 7. Accordingly, the Commission should also require revision of Rider NS, or separately require through its Order in this proceeding, that "ComEd provide to any customer being charged with Rider NS with an itemized accounting of what facilities and services ComEd is charging under Rider NS, the location of any nonstandard physical equipment [for that customer], whether charges are monthly rental charges, and how charges on the customer's bill relate to the NS Cost equation." *Id.* at 7:151-155.

ComEd has suggested that customer issues regarding Rider NS transparency should be addressed through conversations between the utility and individual customers

or through a workshop process. *See e.g.* ComEd Ex. 10.0 at 6; COC Cross Ex. 11; ComEd IB at 34. BOMA/Chicago appreciates ComEd's willingness to engage with customers to discuss Rider NS issues through a workshop process and otherwise, but as ComEd has explained, its only legal obligation to meet with customers on Rider NS issues is through the Utility Complaint process (83 Ill. Adm. Code 280.220). COC Cross Ex. 13. Often, a customer may not know whether it has a complaint without the transparency that is afforded through receiving relevant information regarding its bill. As ComEd itself points out, currently its determination of nonstandard services and costs is an internal process, subject to the application of internal policy and practice documents. ComEd Ex. 10.0 at 7-8. Rather than require the City, BOMA/Chicago members, and other customers interested in gaining transparency in Rider NS costs to engage in a drawn-out workshop process that may not produce any results or to engage in individual discussions with ComEd, the Commission should adopt the Rider NS amendments and other proposals discussed herein. These recommendations will help formalize the Rider NS data sharing process. This formalization should result in efficiencies by clearly spelling out what information ComEd is required to provide to customers regarding Rider NS and keep customers (particularly those with limited resources) from having to engage in tedious back and forth, either individually or through a workshop process, to receive and understand data from ComEd regarding their Rider NS charges.

BOMA/Chicago acknowledges ComEd's suggestion that some of the revisions BOMA/Chicago supports are not needed because they reflect ComEd's current policy and practices. ComEd IB at 36-37, 40; ComEd Ex. 10.0 at 11. In response, BOMA/Chicago notes that if these changes are, in fact, reflective of current implementation, policy and practices, their formalization should not present an administrative burden upon ComEd or have any cost impacts and ComEd should have no objection to formalizing its current policy into a requirement. BOMA/Chicago IB at 9; BOMA/Chicago RB at 2-3. BOMA/Chicago argues that formalization of Rider NS documentation and information sharing requirements will allow customers to have the transparency necessary to understand Rider NS costs, how they are defined and calculated, and to ensure Rider NS is being applied just and reasonably.

Finally, BOMA/Chicago supports the City's proposal for independent auditor review of Rider NS that would include review of ComEd's existing nonstandard service agreements, as well as ComEd's process for determining whether a service is nonstandard and to apply the NS Cost equation. BOMA/Chicago Ex. 1.0 at 7-8. "Given the monetary impact of Rider NS upon customers and the current lack of transparency/clarity over how Rider NS costs are assigned, BOMA/Chicago believes the benefits of an independent auditor review will outweigh any administrative burden placed upon ComEd for participating in the audit process." *Id*. at 8.

(iii) ComEd's Position

It is ComEd's position that the Commission should reject the City's proposed modifications to Rider NS because they are unnecessary and would be duplicative of the current Rider NS language and ComEd's practices. Specifically, the City requested changes it claims would increase transparency by modifying Rider NS to include a written agreement, a preliminary assessment, notification of cost increases in excess of 10%, and a reconciliation between estimated and actual budgets. *See* COC Ex. 1.03. ComEd

asserts that it follows its policies, tariff, and Rider NS as written, which provides for transparent invoicing. *See* ComEd Ex. 10.0 at 11. ComEd also provides the City with additional customer service and has employees on-site 24 hours a day at O'Hare, who are willing and able to assist CDA with any questions. *See* ComEd Cross Ex. 4.0. The City has further access to ComEd during any of the regular scheduled meetings between the parties. *See* ComEd Ex. 13.0 REV. at 6. ComEd asserts that all these existing mechanisms equate to transparency thus nullifying the need for changes to Rider NS.

It is ComEd's position that the Commission reject the City's recommendation that Rider NS be modified to require that Rider NS charges must be subject to a written agreement between the customer and ComEd. *See* COC Ex. 1.03. ComEd maintains that it is duplicative of ComEd's current policy and practices, and therefore is unnecessary. ComEd's policy requires that ComEd detail charges in writing, including charges under Rider NS. *See* COC Cross Ex. 16.0. Costs for Rider NS projects are collected up front. *See* General Terms and Conditions, ILL. C. C. No. 10, 3rd Revised Sheet No 205.3. Under ComEd's current practices, a Rider NS customer will receive an invoice for upfront costs. ComEd Ex. 13.0 REV. at 7; COC Cross Ex. 16.0. ComEd asserts that transparency is embedded in this process since ComEd will not initiate Rider NS work until a customer has agreed to the work outlined on the invoice, and remitted payment for nonstandard work. *See* General Terms and Conditions, ILL. C. C. No. 10, 3rd Revised Sheet No 205.3 ("Charges assessed by the Company to recover the costs of providing nonstandard services and facilities must be paid to the Company in total prior to installation . . . ."). It is ComEd's position that the signed invoice, plus ComEd's tariffs and ComEd's invoicing procedure (*see* COC Cross Ex. 16.0) constitute the written agreement.

In the case of the City, specifically the CDA, ComEd asserts that ComEd goes beyond providing just the written explanations and invoices for Rider NS, and provides extensive, in-person, customer support to ensure that there is transparency and understanding between ComEd and the CDA. For example, ComEd personnel attend CDA's O'Hare construction and finance meeting in-person every Wednesday, as well as every other Friday. ComEd Ex. 13.0 REV. at 6. During those meetings, ComEd provides the construction and finance status update of current projects through a continuously updated tracking sheet to ensure that the most accurate and current financial information is provided to the City. *See*, *e.g.*, ComEd Ex. 13.01. The meetings between CDA and ComEd also discuss whether a project is considered nonstandard or standard. ComEd Ex. 13.0 REV. at 5. ComEd will also walk the CDA through Design and Construction invoices and answer any questions from the CDA about charges and credits. *Id.* ComEd communicates that those charges include design and engineering costs, specifically: (1) costs for materials; (2) labor costs; (3) costs for any planned civil work; and (4) other projected costs (including all corporate overhead costs). *Id.* at 3. ComEd also communicates with the City (and all Rider NS customers) that these incremental costs for nonstandard CIAC include direct and indirect costs, such as labor, supervision, and project support costs. *Id.* at 3.

ComEd asserts that some of the other revisions proposed by the City to Rider NS are not appropriate or feasible. For example, the City proposed to revise Rider NS to require ComEd to: "[a]dvise the retail customer of the feasibility of alternative solutions to

achieving intended project implementation compatible with ComEd infrastructure, including potential retail customer purchase, installation, and ownership of equipment . . . ." COC Ex. 1.03. It is ComEd's position that this proposal would require ComEd to research how a customer could provide their own equipment in lieu of taking the nonstandard facilities from ComEd. *See* ComEd Ex 10.0 at 9. ComEd suggests that this proposal should be rejected as inappropriate and unnecessary. *Id.* ComEd asserts that it does not, and cannot, know the status of every Rider NS customer's equipment inventory. *Id.* at 9. That is the customer's, not ComEd's, responsibility. *Id.* In addition, ComEd's other customers should not be forced to pay for that comparison shopping in their rates. *Id.*

The City also proposed to revise Rider NS to require ComEd to "[s]pecify whether any costs will be recovered under any other Company riders, an explanation of why those riders are implicated, and the estimated costs to be recovered under the other riders." COC Ex. 1.03. It is ComEd's position that this proposal is both too vague and too broad. It is ComEd's position that it is not practical to require ComEd to explain to every Rider NS customer how every Rider NS payment or rental impacts ComEd's plant and rate determination. ComEd also asserts that it would also significantly increase the administrative difficulty and cost of providing service to Rider NS customers. ComEd Ex. 10.0 at 9.

ComEd asserts that there is no practical or legal basis for the City's request to add language to Rider NS. The City proposed to revise Rider NS by adding: "Nonstandard services and facilities are, and at all times remain, the sole property of the Company *unless otherwise agreed to by the Company and retail customer*." COC Ex. 1.03 (proposed revision emphasized). The proposed revision implies that ComEd would be required to consider selling its assets. ComEd Ex. 10.0 at 9.

It is ComEd's position that the City's proposed annual Rider NS Report is unnecessary and should be rejected. ComEd asserts that it already provides much of the information that City witness McHugh suggested should be provided in an annual report to the City on a regular basis, such as in the weekly meetings between CDA and ComEd. *See* COC Ex. 2.0 REV. at 15-16; ComEd Ex. 13.0 REV. at 16. The City also requested information in the annual report that ComEd does not maintain in the ordinary course of its business or would not necessarily be updated on any regular basis. ComEd Ex. 13.0 REV. at 16. For example, witness McHugh requested that the report contain "the most recent engineering review," but engineering reviews are typically only done for new customers. COC Ex. 2.0 REV. at 15; ComEd Ex. 13.0 REV. at 16-17. The only other time engineering reviews are conducted is when the customer exceeds their existing standard, and a new engineering review is required. *Id.*

It is ComEd's position that the Commission should reject the City's proposal for an audit and tariff investigation of Rider NS. It is ComEd's position that there is no evidence in this case that warrants such a step and that audits and tariff investigations should not be used as tools to address discrete customer questions or concerns. *See* ComEd Ex. 9.0 REV. at 9-10. ComEd asserts that any concerns regarding disclosure and information presentation, including at intermediate steps in a construction project, are better addressed in other processes, such as workshops (described below), conversations

between ComEd and the CDA (or any other customers), and, if the CDA or other customer remains unsatisfied, a customer complaint, if appropriate.

The Commission should also reject BOMA/Chicago's proposals to modify Rider NS. BOMA/Chicago's recommendations are unnecessary, vague, and potentially problematic to other customers. Specifically, BOMA/Chicago witness Brookover requested a written agreement, a preliminary assessment, notification of cost increases in excess of 10%, and a reconciliation between estimated and actual budgets. BOMA/Chicago Ex. 1.0 at 4- 8.

ComEd argues that its policy is already to implement Rider NS as suggested by BOMA/Chicago, so no additional changes are necessary. ComEd Ex. 10.0 at 11. ComEd provides the type of Rider NS documentation and customer-specific communication that BOMA/Chicago requested. *Id.* at 11. ComEd provides the customer the invoice detailing the charges and requires payment before work can proceed. Rider NS, ILL. C. C. No. 10, 3rd Revised Sheet No. 278. The invoice, plus ComEd's tariffs and ComEd's invoicing procedure (*see* COC Cross Ex. 16.0) constitute the written agreement. It is ComEd's position that to the extent a customer would like additional information regarding various aspects of their Rider NS projects, ComEd makes efforts to provide the level of detail the customer needs to make an informed decision on how to proceed. *See* ComEd Ex. 10.0 at 11. Because BOMA/Chicago's Rider NS modifications are duplicative of ComEd's current Rider NS implementation and practices, the Commission should reject them.

On exceptions, ComEd offered as an alternative to an investigation to file an amendment to Rider NS within 60 days of the final Order in this proceeding.

(iv) Staff's Position

Staff indicates in its BOE that it is opposed to initiating an investigation into Rider NS and that instead, ComEd should be directed to file a revised Rider NS tariff. Staff explains that upon filing, the Commission can decide whether the tariff should go into effect as revised, or to suspend the tariff and open an investigation.

(v) Commission Analysis and Conclusion

ComEd argues Rider NS is out of scope; however, the Commission previously directed that revenue-neutral modifications be considered in this proceeding. The Commission's December 14, 2023, final Order and December 19, 2024, final Order on Refiling in Docket Nos. 22-0486/23-0055/24-0181 (Cons.) instructed parties to address Rider NS in this docket. The City and BOMA/Chicago have raised sufficient concerns to warrant Commission direction regarding Rider NS. The Commission agrees with the City and BOMA/Chicago that workshops are not the appropriate forum to address their concerns with Rider NS due to the nature of the issues and lack of resolution amongst the parties to date. The City offered tariff provisions in this docket to address its identified concerns. *See* COC Ex. 1.03. Accordingly, the Commission finds certain revisions will enhance the clarity and transparency of Rider NS and adopts the City's recommendations in part.

The Commission acknowledges that the City is but one of ComEd's Rider NS customers. However, the record in this case demonstrates that the City is not the only customer to experience similar issues with Rider NS as described by the City. *See*

BOMA/Chicago Ex. 1.0 at 4. While transparent and accurate billing is important to any ratepayer, it is particularly important when that ratepayer is subject to additional rules and regulations that may require informational granularity the Company does not provide. For example, the CDA is subject to the Federal Aviation Administration's grant assurance prohibition on revenue diversion and needs certain information to comply with the grant requirements. The Commission emphasizes that it is critical for CDA's grant compliance to verify and ensure proper billing so that taxpayers are not being charged for private entities' expenses.

The Company is directed to revise its Rider NS tariff to establish a Preliminary Assessment before it enters into an agreement with the retail customer if the total estimated cost of the nonstandard facilities and services exceeds $100,000. The Preliminary Assessment shall: (1) detail with specificity all proposed new services and facilities and explain why the nonstandard services and facilities qualify as larger, more, or different services and/or facilities; (2) explain whether a portion of such nonstandard services and facilities may reasonably be used for other retail customers, and if so, identify such retail customer(s) as well as the estimated total cost and/or monthly payment payable by such other retail customer(s); and (3) provide an estimated, itemized breakdown of the cost of furnishing nonstandard services and facilities (i.e., the "NS COST") consistent with the categories specified in the NS COST equation, including supporting documentation for each category.

Further, the Commission adopts BOMA/Chicago's recommendations that this Preliminary Assessment: (1) specify what infrastructure/equipment ComEd is classifying as a standard service for a project, including the costs associated with what ComEd is classifying as standard service; (2) disclose to customers the NS COST in at least as much detail as outlined under the "Determination of Nonstandard Cost Single Payment" section of Rider NS; and (3) provide the numbers or assumption the Company is using to each variable of the NS COST equation and the basis for each of those numbers and assumptions. *See* BOMA/Chicago Ex. 1.0 at 6.

In addition to the Preliminary Assessment for projects with estimates exceeding $100,000, the Commission directs the Company to incorporate the following components of the City's proposed tariff revisions in its updated tariff filing.

(1) A process whereby the retail customer is given the choice of whether to proceed with the installation of the nonstandard facilities and services, once an explanation of the estimated costs has been provided.

(2) A requirement that the agreement between the retail customer and ComEd must be in writing.

(3) Obligations for the Company to: (a) continually monitor costs and communicate to the retail customer within 5 business days if the costs incurred are 10% greater than the initial estimate provided to the retail customer and (b) provide a review of the estimated cost of the nonstandard services and facilities with the actual costs incurred.

(4) A requirement to provide support for all components of the NS COST equation and Nonstandard Cost Monthly Payment in writing prior to payment in detail with supporting documentation.

(5) A requirement that the Company provide further information regarding nonstandard services, including a deadline to respond to such requests within 14 business days.

The Commission finds that the record evidence sufficiently justifies an audit. 220 ILCS 5/8-102. The record demonstrates the City repeatedly asked for itemized billing with backup documentation to verify invoice costs but has not received it. *See* COC Ex. 2.0 REV (Public) at 18; COC Ex. 2.06 at 1. Obtaining additional information is particularly important to understanding ComEd's Corporate Overhead charges, which vary significantly and can be as high as fifty percent of the total invoice. COC Ex. 2.05. The Commission agrees with the City that this information is needed so that customers that pay both standard and nonstandard rates, like CDA, pay just and reasonable rates. The magnitude of the costs recovered under Rider NS further underscores the importance of the audit. *See* ComEd Ex. 9.0 REV at 9 ("[i]n the last five years, the collection of these customer advances has avoided at least $500 million of incremental costs that would have been borne by all customers if they had not been collected from these cost-causers").

Accordingly, the Commission orders Staff to procure an independent auditor to review ComEd's prior five years of Rider NS administration to begin within 30 days of the procurement of the auditor by Staff. The auditor shall file a report with its findings, as a compliance filing in this docket, within six months of the audit's initiation. Pursuant to Section 8-102 of the Act, the cost of an independent audit shall be borne initially by the utility but shall be recovered as an expense through normal ratemaking procedures. *See* 220 ILCS 5/8-102. The scope of this audit shall include, but not be limited to: (1) how line items on prior ComEd invoices align with the NS COST equation specified in Rider NS; (2) whether ComEd has provided reasonable documentation to support each line item; (3) an analysis of whether ComEd failed to adhere to its tariff; and (4) whether the standard service credit is reasonably explained on invoices and how that credit changes over time.

Finally, the Commission grants the City's request for an annual report to address the identified transparency concerns. ComEd shall provide to the City, and any Rider NS customer that requests, an annual report on Rider NS, including, but not limited to, the following information: (1) the most recent engineering review of the customer's actual peak usage, including the customer's electric power and energy requirements calculated pursuant to ComEd's General Terms and Conditions Sheet No. 155 and, if applicable, an explanation of whether the customer's tenants' usage is included in the calculations; (2) the customer's currently effective Electric Facilities Service Acknowledgement, including a description of where all existing ComEd cabling, equipment, and other infrastructure is located on customer property, supplemented with information about its physical size, whether it is standard or nonstandard, whether it incurs monthly rental charges, and whether it is shared with other entities at the customer's facilities (e.g., transformers serving both CDA and airline tenants); and (3) the total annual costs ComEd has charged the customer via Rider NS and an explanation of whether, and if so why, a standard service credit was applied to each invoice. The Commission directs ComEd to provide this information annually to the City and any other requesting Rider NS customer by March 1st of each year.

b. RR Delivery Class

(i) CTA's Position

Rider NS is used to calculate ComEd charges to customers for what it terms "nonstandard services and facilities." In short, the CTA explains, this rider applies to all new construction or other work performed by ComEd to provide service. It means that any additional service or changes to the service to the traction power substations means the CTA must pay under Rider NS based upon ComEd's own calculations. CTA/Metra Ex. 1.0 at 16. In addition, any changes that the CTA makes to its bus garages and bus maintenance facilities to accommodate charging facilities for the new electric bus fleet are subject to ComEd's Rider NS. As a result, Rider NS makes it more costly to convert traction power substations to eliminate power flow-through and to convert bus garages to charging facilities for electric buses. The CTA asserts Rider NS as it currently exists is contrary to the Commission's earlier findings concerning the importance of mass transit and its benefits to the area's economy and environment, and Rider NS is contrary to the intent of the EVA.

The CTA requests language changes in Rider NS in part to assist the CTA in meeting its goal to electrify its more than 1,800 diesel buses. To support the transition to electric buses, the CTA must upgrade and modernize its seven existing garages and its heavy maintenance facility for bus charging and electric bus maintenance. CTA Ex. 1.00 at 8. The modifications at the garages will require up to 10 to 20 MW of capacity to support charging equipment. The total cost for the electric system changes on the CTA side of the meter is estimated to be $20 million to $30 million for each garage. CTA Ex. 2.00 at 11. In addition to the CTA costs, under Rider NS, ComEd will impose an additional charge for upgrades on its side of the meter in the range of $3 million to $7 million per garage. CTA Ex. 2.00 at 11. The ComEd charges should be considered as "make-ready infrastructure" that the utility should pay as required by the EVA.

In enacting the EVA, the General Assembly found that the adoption and use of electric vehicles would benefit the State of Illinois by improving the health and environmental quality of the residents of the State. 20 ILCS 627/5. The General Assembly desired to promote "beneficial electrification" to decrease reliance on fossil fuels and reduce pollution from the transportation sector. 20 ILCS 627/45(a). To accomplish this goal, the General Assembly required electric utilities to prepare "beneficial electrification programs" to include incentives for electrification for all consumers and incentives and infrastructure targeted to vehicles used by transit agencies. 20 ILCS 627/45(a)(10)(5-6). "Make-ready infrastructure" under the EVA is the electrical and construction work necessary from the distribution circuit to the connection point of charging equipment. 20 ILCS 627/45. The EVA further provides that a utility should include as part of its beneficial electrification programs "incentives for electrification and associated infrastructure targeted to medium-duty and heavy-duty vehicles used by transit agencies." 20 ILCS 627/45. Modification of Rider NS as requested by the CTA would meet this requirement. Because the EVA specifically called-out transit agencies to receive benefits under the EVA, it is reasonable that the Commission promote and not inhibit transit agencies in their electrification transition.

Thus, the CTA argues, modifying the language to Rider NS meets the goals and requirements under the EVA as specifically called out by the EVA.

The CTA asserts that the Staff erroneously claims that the CTA is "collaterally estopped" from requesting language changes in Rider NS relating to the definition of "nonstandard services and facilities" that the CTA believes is required to fulfill the utility's obligations under the EVA. Staff Brief at 25. Staff's argument is contrary to the law.

In *Commonwealth Edison Co. v. Ill. Com. Comm'n*, 405 Ill. App. 3d 389, 407-08, 937 N.E.2d 685, 705 (2d Dist. 2010), the court said:

> Illinois courts have consistently held that "decisions of the Commission are not res judicata." *See, e.g., A. Finkl & Sons Co. v. Illinois Commerce Comm'n*, 250 Ill.App.3d 317, 323, 189 Ill.Dec. 824, 620 N.E.2d 1141 (1993). The concept of public regulation requires that the Commission have power to deal freely with each situation that comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding. *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n,* 1 Ill.2d 509, 513, 116 N.E.2d 394 (1953). A record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a different result. See 220 ILCS 5/10–103 (West 2006) ("any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case"). Thus, we agree with IIEC that the decisions the Commission cited as precedent did not compel the Commission to disregard the increase in accumulated depreciation of the embedded plant during the post-test-year period.

405 Ill. App. 3d at 407-08. Staff's claim that the CTA is estopped from requesting changes to Rider NS is not supported by the law, and that claim has been rejected by the Commission.

Rather than modifying Rider NS to exempt mass transit agencies from certain infrastructure costs charged by ComEd, Staff wants the CTA to "pass infrastructure costs onto their riders." Staff IB at 25. Staff's proposal to pass on the costs to mass transit riders contradicts the Commission's long-standing policy expressed in ComEd cases that rates for mass transit should not unduly burden their riders. Staff's proposal that mass transit agencies increase their fares in lieu of the Commission modifying Rider NS is rejected.

In Docket No. 05-0597, the Commission stated it "is very concerned that any changes to the provisions of service providers of mass transit will not unduly burden the millions of passengers who depend on public transportation." Final Order at 189. In Docket No.09-0263, the Commission rejected ComEd's attempt to pass costs onto the RR Class because it ran "counter to this Commission's policy of encouraging the use of public transportation for environmental reasons." *Commonwealth Edison Co.*, Docket No. 05-0597, Order at 43 (Jul. 26, 2006). In the 2017 RDI Order, the Commission again found

that the use of mass transit "reduces the level of total energy consumption and provides environmental benefits. . . The Commission has repeatedly recognized the benefits that the RR Class provides to ComEd's service area and its customers and affirmed the public policy that, in setting the rates for the RR Class, these societal benefits must be considered."

The CTA recommends the Commission finds Staff's recommendation that the CTA simply increase its rates to riders ignores these cases, ignores the benefits of mass transit, and is rejected and instead adopts the language modifications to Rider NS as provided in CTA/Metra Joint Ex. 1.03.

The CTA voices opposition in its RBOE to Staff's suggested bar on its participation in any Rider NS investigation.

(ii) Metra's Position

Metra requests that the Commission direct ComEd to revise Rider NS to state that service related to Metra's planned battery-powered train sets shall not be subject to any non-standard service charges or fees under Rider NS, and that service related to Metra's battery powered train sets will be considered standard services. CTA/Metra Joint Ex. 1.0 at 16-17; CTA/Metra Joint Ex. 1.03. In addition, Metra proposes an additional edit that would require ComEd to reserve, without charge to Metra, distribution system capacity to provide for increased load that may be needed for battery-powered train sets. CTA/Metra Joint Ex. 1.03.

Metra argues that Rider NS as currently drafted is contrary to the EVA, 20 ILCS 627/45. CTA/Metra Joint Ex. 1.0 at 16-17. The EVA makes clear that "[i]t is the intent of the General Assembly to decrease reliance on fossil fuels, [and] reduce pollution from the transportation sector…" 220 ILCS 627/45(a). One of the methods by which the General Assembly plans to reduce pollution from the transportation sector is to encourage "[e]xpanded infrastructure investment" that "will help Illinois more rapidly decarbonize the transportation sector." 220 ILCS 627/45(a)(5).

Metra contends that it is at the forefront of a decarbonized transportation sector in Illinois. Ms. Ciavarella's testimony demonstrates the positive environmental impact Metra has in ComEd's service territory, especially EIEC communities. Metra's commuter rail lines remove single occupancy vehicles from the road, thereby reducing carbon emissions from the primary contributor to carbon emissions in Illinois. Metra Ex. 2.0 REV. at 4-5. Ms. Ciavarella also demonstrates that the MED serves several EIECs, which are disproportionately vulnerable to the effects of air pollution. *Id*. at 3-4. Metra notes that both ComEd and Staff agree that Metra's train lines facilitate environmental benefits, reduce traffic congestion and serve EIECs. Metra Cross Exs. 4.0; 5.0; 7.0; 8.0. Metra observes that the Commission has repeatedly made similar findings both in previous ComEd rate increase and rate design cases, as well as in other cases. CTA/Metra Joint Ex. 1.0 at 14-16. Metra's requested revisions to Rider NS are entirely in keeping with those findings and would expand positive environmental impacts by facilitating Metra's adoption and use of battery powered trains. Additional battery powered trains will allow Metra to retire old, non-electric locomotives that do not confer as great an environmental benefit as its fully electrified counterparts do.

Accordingly, Metra recommends that the Commission direct ComEd to make the suggested revisions to Rider NS. In the alternative, Metra recommends that the Commission open a separate investigation into Rider NS. CTA/Metra Joint Ex. 2.0. It is evident that Rider NS is a point of contention for multiple parties, including not only the RR Class, but also the City of Chicago and the Building Owners and Managers Association of Chicago ("BOMA/Chicago"), each of which has advanced proposals regarding Rider NS in this proceeding. *See* ComEd Ex. 10.0 at 1.

ComEd argues that the Commission should reject Metra's proposed Rider NS revisions. ComEd Ex. 5.0 at 68. First, ComEd argues that the issue was already decided by the Commission in the 2023 BE Plan proceeding. *Id*. However, Metra notes that the language proposed in this proceeding includes the addition of references to Metra's charging infrastructure, so it is distinct from the language proposed by the CTA in the 2023 BE Plan Proceeding. *See Commonwealth Edison Co*., Docket Nos. 22-0432/22-0442 (Consol.), CTA and City of Chicago's Initial Hearing Brief at 27-28 (Jan. 4, 2023). Moreover, in the BE Plan 1 Order, the Commission rejected CTA's revisions to Rider NS based on "CTA/City's interpretation of make-ready infrastructure," which was a subject specific to the EVA. Commonwealth Edison Co., BE Plan 1 Order at 250. Metra notes that in this proceeding the Commission is evaluating revenue-neutral tariff changes.

Metra notes that Staff takes this argument a step further, claiming that the RR Class is "collaterally estopped from raising [the Rider NS revisions] again." Staff IB at 25. Staff cites *Ill. Com. Comm'n v. Ill. Power Co.*, which stated "[t]he proper means by which to correct perceived errors in Commission orders is through the rehearing and appeal processes. Such corrections should not be sought in other dockets." Staff IB at 25. To confirm, Metra is not trying to "correct perceived errors" in the BE Plan 1 docket; rather, it is requesting that the Commission direct ComEd to make revenue-neutral tariff changes to Rider NS in the current proceeding—the sole purpose of this proceeding. Moreover, Metra points out that Staff witness Hamidu expressly agreed with the Commission that CTA/Metra should present its arguments in the current proceeding. MYRP Docket, Staff Ex. 21.0 RGP at 9.

Second, ComEd argues that the Rider NS revisions are not revenue neutral because by reclassifying certain nonstandard services as standard services, the cost is collected through ComEd's base rates rather than Rider NS. ComEd Ex. 5.0 at 68. ComEd argues that the RR Class's costs would then be socialized to other delivery classes. *Id.* at 69. Staff shares ComEd's concerns that the RR Class's revisions to Rider NS would cause costs to be shifted to all other delivery classes. Staff Ex. 7.0 at 21-22. Metra contends that these arguments overstate the cost causation concern. While the Commission does indeed generally adopt a cost causation approach, the Commission also does not strictly adhere to that approach, depending on public policy considerations. *See* Docket No. 05-0597, Order at 189, 190 ("Accordingly, the Commission finds that minimizing the change to existing contractual terms as necessitated by the post-2006 market changes, as well as avoiding rate shock to the railroad customers, is in the public's best interest."). The Commission has repeatedly found that public policy considerations such as electrification, environmental protection, public health issues, and transportation/congestion concerns dictate somewhat modified treatment of the RR Class in terms of rate design. Metra IB at 5-8. Metra's suggested modifications to Rider NS

are justified precisely because of these considerations—facilitating deployment of Metra electric trains will align with all of those public policy considerations. The RR Class's public transportation is a critical tool to decarbonizing the transportation sector, and ComEd could play an essential role in further incentivizing environmentally positive actions.

Finally, Staff argues that CTA/Metra should pass the costs of electrification infrastructure onto its customers because it is more equitable. Staff IB at 25. Metra states that this position entirely ignores that the Commission has previously recognized the unique public policy considerations associated with passing on additional costs for ComEd service onto public transportation passengers:

> [T]he fact that the CTA and Metra are providers of mass public transportation raises an additional public interest concern. ComEd's proposal fails to account for the potential impact of increased utility rates for entities providing public transportation on the citizens of Illinois. The Commission is very concerned that any changes to the provisions of service providers of mass transit will not unduly burden the millions of passengers who depend on public transportation. This Commission also believes that it must consider the public policy implications of establishing delivery rates that encourage energy conservation and encourage electric usage during off-peak periods. While the Commission is not prepared to disregard cost of service, the Commission believes that important public policy considerations cannot be ignored.

Docket No. 05-0597, Order at 189. Metra asserts that if the RR Class is forced to pass on additional costs to its passengers, that could impact fares and ridership. The record establishes that Metra's ridership is expected to return to only 60% of pre-pandemic levels by the end of 2025. Metra Ex. 2.0 at 8. Increased economic pressures on Metra will only exacerbate concerns, undermining the highly positive public policy attributes of increased public transportation that the Commission has previously noted.

Accordingly, Metra urges the Commission to direct ComEd to adopt the RR Class's revisions to Rider NS.

In its RBOE, Metra notes that while its preference is for the Commission to address changes to Rider NS in this proceeding, it does not object to ComEd's proposal for a revised Rider NS filing and proceeding so long as Metra and CTA are not restricted in their participation.

(iii) ComEd's Position

ComEd argues that the Commission should reject CTA and Metra's recommendation to exempt the RR Delivery Class from Rider NS. CTA and Metra propose that Rider NS be modified so that it no longer applies to new construction or other work performed by ComEd to upgrade or provide service to the RR Delivery Class for electric train or bus charging facilities or traction power substations. *See* CTA/Metra

Joint Ex. 1.0 at 16-17; *see also* CTA/Metra Ex. 1.03. It is ComEd's position that the application of Rider NS to CTA bus depots and the RR Delivery Class traction power substations is the same as its application to all other customers: costs for new or additional points of service or other modification, in the absence of increased load requiring an additional standard point of service, will be recovered from the customer under Rider NS. *See* ComEd Ex. 5.0 at 68-69. The exemption requested by CTA and Metra would only benefit them as the only members of the RR Delivery Class, at the expense of all other customers. *Id.* at 69. Staff witness Ashbaugh agreed with ComEd that allocating the costs to CTA and Metra is best, "rather than being unfairly distributed among all customers." Staff Ex. 7.0 at 21-22, 23. ComEd argues that CTA/Metra cannot justify their Rider NS exemption request by claiming that public transit agencies cannot upgrade or change their facilities under Rider NS to do things like accommodate charging facilities for the new electric bus fleet or accommodate their planned battery-power train sets. *See* CTA/Metra Joint Ex. 1.0 at 16-17.

ComEd argues that there are two reasons to reject CTA/Metra's requests for special exemption to exclude themselves from the application of Rider NS. If adopted, CTA/Metra's proposed exemption for themselves would shift costs currently collected from them specifically through Rider NS to ComEd's customer base more broadly through base rates. *See* ComEd Ex. 10.0 at 12. Second, the Commission already considered and rejected CTA's similar recommendations seeking exclusion from Rider NS for electric bus charging infrastructure in ComEd's BE Plan 1 Docket. CTA argued in that proceeding that the lines and equipment to be used for charging electric buses in its garages should be defined as "standard service" and such infrastructure should be carved out from Rider NS's application. *See* BE Plan 1 Order at 248 (describing CTA's position that Rider NS should not impose additional fees on the CTA for make-ready electric bus infrastructure). The Commission, however, rejected CTA's argument and held that make-ready electric bus infrastructure was not part of CTA's standard service, and that Rider NS would not be modified to exclude the CTA's garages. *Id.* at 249-250. The practical effect of the Commission's holding is that Rider NS applies to electric bus infrastructure installed at CTA garages (or to Metra's electric trains) if they are not otherwise meeting their standard. *Id.* at 249 ("Under Rider NS, customers would pay for the actual cost of make-ready infrastructure[.]").

(iv) Staff's Position

The current Rider NS framework correctly requires the Railroad Class, as the direct beneficiaries, to cover the costs of the infrastructure built specifically to serve its needs. Staff IB at 24-25. This approach is consistent with the Commission's established cost-causation principles, which mandate that customers benefiting from infrastructure investments should proportionately bear the associated costs.

CTA and Metra's proposed adjustments to reduce Railroad Class contributions (CTA IB at 20-22; Metra IB at 31-33) would disrupt this balance, shifting a financial burden to non-RR customers who neither benefit from nor rely on Railroad infrastructure. Such a shift would create an inequitable cost allocation, essentially subsidizing the Railroad Class at the expense of non-RR customers. Staff opposes the changes to Rider NS proposed by the Railroad class. CTA and Metra claim the Rider, in its current form, places a burden on mass transit agencies because it requires them to fund necessary

infrastructure improvements to support electric vehicle charging stations and other needs. CTA/Metra Joint Ex. 1.0 at 17. The changes sought by CTA and Metra would eliminate their financial responsibility for upgrades. They argue that the costs for upgrading infrastructure, such as electric bus charging stations and traction-power substations, should not be solely borne by the transit agencies. *Id.*

CTA raised this same argument in ComEd's first BE Plan 1 Docket, arguing that make-ready infrastructure necessary for charging stations at CTA garages should be considered standard service. The Commission rejected this definition and declined to modify Rider NS. BE Plan 1 Order at 248. Accordingly, this issue has already been decided and the Railroad class is collaterally estopped from raising it again. *See, e.g., Ill. Com. Comm'n v. Ill. Power Co.*, Docket No. 01-0701, Order at 7 (Feb. 19, 2004) ("The proper means by which to correct perceived errors in Commission orders is through the rehearing and appeal processes. Such corrections should not be sought in other dockets.").

Staff witness Ashbaugh testified that CTA and Metra can pass infrastructure costs onto their riders, "ensuring that those who directly benefit from the services contribute toward the necessary investments." Staff Ex. 7.0 at 22. Passing costs onto railway riders allocates the costs to the customers who benefit from them, which is more equitable than socializing costs across all ComEd customers regardless of whether they utilize the railroads.

Additionally, Staff agrees with ComEd that modifying Rider NS to shift costs for the two customers in the Railroad class to other customers may not be revenue neutral (ComEd Ex. 5.0 at 68) and thus, for the reasons discussed previously, is outside the scope of this docket.

On exceptions, Staff proposes language prohibiting the railroad class from raising this issue for a third time in any investigation into a revised Rider NS.

(v) Commission Analysis and Conclusion

The Commission finds it has previously addressed the proposed Rider NS exemption in the BE Plan 1 Order. While Metra may amplify the CTA's arguments by joining its request here, the evidence is insufficient for the Commission to revisit its recent ruling in this proceeding. Accordingly, the Commission declines to adopt CTA's and Meta's revisions to Rider NS. The Commission declines to specifically bar the CTA or Metra from raising these arguments in any investigation into a revised Rider NS as requested by Staff.

B. Rider DE – Distribution System Extensions

1. Metra's Position

Metra requests that ComEd revise Rider Deposit for Extension of Electric Service ("Rider DE") to remove the requirement for the RR Class to pay a deposit or provide a letter of credit for the cost of make-ready facilities on ComEd's side of the meter. CTA/Metra Joint Ex. 1.0 at 17. Mr. Bachman states that this revision is justified because there have not been any instances of the RR Class not complying with payment obligations. *Id.* In addition, Mr. Bachman argues that the money spent on a deposit, or a letter of credit reduces the amount of available public funding for projects under Rider

DE. *Id.* Metra notes that ComEd confirmed through discovery that it has never drawn down or otherwise applied funds from Metra deposits or letters of credits related to Rider DE in the past 10 years and is not aware of any instance more than 10 years ago. Metra Cross Ex 2.0. Thus, Metra believes that its requested revisions to Rider DE ought to be viewed as a non-controversial modification that that would remove the requirement for it to pay a deposit or provide a letter credit for projects related to Rider DE, and would, consistent with public policy, free up additional Metra financial resources to advance Metra's core goal of public transportation.

ComEd argues that this issue was previously adjudicated in the 2023 BE proceeding and that CTA/Metra do not introduce additional evidence that should persuade the Commission from deviating from its decision in the 2023 BE case. ComEd Ex. 5.0 at 69. Metra notes that it was not a participant in the 2023 Rider BE proceeding, and the previous proceeding did not include evidence pointing to Metra's funding issues, a downward trend in Metra ridership, or the lack of any prior history of ComEd drawing down on Metra funds from deposits or letters of credit. Metra Ex. 2.0 REV. at 8-9. Metra argues that the Commission can now weigh the public benefit of incentivizing both CTA and Metra to pursue projects under Rider DE against any possible harms of exempting the RR Class from Rider DE's financial assurance requirements. Metra recognizes that it does and will continue to play a central role in reducing carbon emissions through the expansion of public transportation options in northern Illinois. With Metra's budgets already stretched thin, the additional money required to provide financial assurance to ComEd under Rider DE makes electrification projects under Rider DE more difficult for Metra to pursue. Metra urges ComEd and the Commission make Rider DE a more accessible option for Metra to pursue by adopting Metra's recommended revisions to Rider DE.

2. CTA's Position

The CTA requests that, as a public entity and provider of mass transit, it be exempt from the requirements of Rider DE. Rider DE gives ComEd the option to request that customers either pay an upfront deposit or provide a letter of credit to ComEd for any line extension work done by ComEd.

The unrebutted testimony is that the CTA must pay a financial institution to obtain a letter of credit. The problem is that the cost of the letter of credit must come from funds that the CTA otherwise could use to pay for facilities. This is because the CTA is prohibited from using any federal funding for a letter of credit. CTA Ex. 1.00 at 11.

The record is void of any instance where ComEd has suffered any economic loss as the result of the CTA's failure to pay ComEd charges. As a result, Staff's contention that "waiving these requirements for public transit agencies would lead to increased financial risk for ComEd and its customers." Staff IB at 26.

ComEd receives no funds when a letter of credit is posted. The costs to obtain the letter of credit are paid by the CTA. Unless there is a default by the CTA, ComEd does not receive any of the letter of credit funds. "ComEd is not in any way impacted by eliminating the letter of credit requirement for the CTA and other public mass transit providers." CTA Ex. 1.00 at 11.

Because the proposed changes to Rider DE do not lead to increased risk for ComEd, CTA recommends the Commission adopt the language changes proposed in CTA/Metra Joint Ex. 1.03.

3. ComEd's Position

ComEd argues that the Commission should reject CTA/Metra's request to modify Rider DE to exempt themselves. ComEd explains that Rider DE provides the conditions under which ComEd requires a deposit, letter of credit, or nonrefundable payment to extend its distribution system to provide standard electric service to a premises because there is either a new customer, or an existing customer is increasing its electrical usage. ComEd Ex. 5.0 at 64. ComEd argues that Rider DE protects all ComEd's customers by requiring a deposit for proposed distribution system extensions in the event that such extensions do not come to fruition. *Id.* at 64.

Pursuant to Rider DE, prior to constructing a distribution system extension, ComEd collects a deposit determined by the formula in Rider DE, which is the cost of the extension minus a credit. *Id.* at 65. The base extension credit, which is the cost equivalent of 5,000 feet of three-phase overhead construction, is currently $250,000. *Id.* But a customer can increase their credit up to the projected delivery service revenues for five years if the customer successfully completes a credit evaluation and risk screening. *Id*. The deposit can be either monetary or a letter of credit. *Id.* Once the system extension is placed into service, ComEd provides annual refunds based on actual usage for up to ten years. *Id.* at 65. Customers that reach their projected electrical usage can have their deposits refunded in less than 10 years. *Id.*

ComEd argues that the Commission rejected an argument to exclude the RR Delivery Class from Rider DE's application in the BE Plan 1 Docket, where it was proposed by CTA and the City. There, the Commission held that exempting CTA and the City from Rider DE would disrupt Rider DE's important purpose of protecting other customers from new customers' costs. Specifically, the Commission found:

> Rider DE's deposit requirement reduces the risk that other customers would have to cover the costs of the construction of facilities for a particular customer. The Commission notes that, according to ComEd, customers are likely to have their deposits refunded assuming their estimated demands were reasonable accurate. CTA/City's recommendation to modify Rider DE is rejected.

BE Plan 1 Order at 251.

ComEd argues that CTA/Metra have identified no new or additional facts or information to warrant the Commission's reconsideration of its decision, and despite the fact that Metra did not participate in the BE Plan 1 proceeding, the Commission's logic applies equally regardless. ComEd notes that Staff concurs, recommending that "the Commission maintain the financial security requirements under Rider DE for all customers, including public mass transit agencies like CTA and Metra. These requirements are essential for protecting ComEd and its customers from financial risk and

ensuring that the costs of infrastructure projects are fairly and fully recovered." Staff Ex. 7.0 at 25.

ComEd argues that, if approved, CTA/Metra's proposal would shift the RR Delivery Class's risk onto ComEd's entire customer base. ComEd notes that Staff agrees that Rider DE's "requirements are critical for maintaining the financial integrity of ComEd's operations and ensuring that all customers are treated equitably" and "[b]y maintaining these financial security provisions, the Commission upholds equitable treatment for all customers and protects ComEd's financial stability." Staff IB at 26.

ComEd argues that Metra attempts to justify its proposal by claiming that "there have not been any instances of the RR Class not complying with payment obligations." Metra IB at 33. ComEd notes that the fact that Rider DE is working as intended (i.e., to reduce risks that all ComEd's customers would be responsible for costs of system extensions that may not come to fruition) is not a reason to exempt the RR Delivery Class from its application. Additionally, ComEd argues that the fact that ComEd has not needed to draw on any previous Metra deposits or letters of credit in the past does not mean that it would not need to do so in the future. ComEd argues that, under Metra's logic, any customer who has not previously needed to draw on a deposit or letter of credit could request exclusion from Rider DE's application. As a result, the risks to ComEd's customer base would greatly increase because there would be no means for ComEd to protect its customer base from projects that do not come to fruition.

ComEd notes that Metra cites to evidence of "funding issues" and a "downward trend in Metra ridership" since the COVID-19 pandemic, but these issues show why Rider DE is needed for the RR Delivery Class more than ever – a weakened financial position may compromise Metra's ability to adequately fund its transit system extensions requiring additional ComEd distribution system extensions, and weakened ridership numbers may compromise Metra's ability to meet its estimated electricity demand for those projects. *See* Metra IB at 33-34; ComEd IB at 40.

ComEd also argues that CTA/Metra's request for an investigation into Rider DE lacks legal or factual justification and that CTA/Metra have not identified any reason to open such an investigation. ComEd notes that no additional party has expressed any issues with Rider DE and, therefore, an investigation into Rider DE is unwarranted.

4. Staff's Position

Staff notes that this issue was previously raised about the RR class, and the Commission previously rejected it; the Commission found the deposit requirement "reduces the risk that other customers will have to cover the costs of the construction of the facilities for a specific customer." BE Plan 1 Order at 251. Staff agrees. Staff witness Ashbaugh testified that the "requirements are critical for maintaining the financial integrity of ComEd's operations and ensuring that all customers are treated equitably. Waiving these requirements for public transit agencies would lead to increased financial risk for ComEd and its customers." Staff Ex. 7.0 at 24. By maintaining these financial security provisions, the Commission upholds equitable treatment for all customers and protects ComEd's financial stability.

5. Commission Analysis and Conclusion

As with Rider NS, the Commission declines to make the CTA and Metra's proposed exemption to Rider DE. The Commission declined to adopt this proposal in the BE Plan 1 Order. The Commission restates that Rider DE's deposit requirement reduces the risk that other customers would have to cover the costs of the construction of facilities for a particular customer. The Commission notes that, according to ComEd, customers are likely to have their deposits refunded assuming their estimated demands were reasonable accurate.

C. Rider CFRA – Carbon Free Resource Adjustment

1. REACT's Position

REACT identified a problem with ComEd using stale market data to adjust the charges under Rider CFRA – Carbon-Free Resource Adjustment ("Rider CFRA"). That is, during the year forecasted prices will be changing, sometimes significantly, and those changes may not be captured using ComEd's current methodology. As a result, there is an unnecessary risk that during times of high prices, customers would experience significant CFRA charges. *See* REACT Ex. 1.0 at 9.

REACT notes that Rider CRFA is one of the ways in which nuclear power is subsidized in Illinois. Specifically, Rider CFRA implements a provision of P.A. 102-0662 designed to provide financial support for the Braidwood, Byron, and Dresden nuclear power plants for a five-year period, through a tariff that became effective on June 1, 2022. *See* 220 ILCS 5/16-108(k); *see also* REACT Ex. 1.0 at 12.

P.A. 102-0662 required that the Commission approve a tariff for ComEd that would result in customers subsidizing the nuclear power plants when wholesale prices are "low" and customers receiving a credit when wholesale prices are "high" compared to a base price (the "Base Price") that was to be set by the Commission. Every May, ComEd calculates the CFR Adjustment for the summer period (June through September billing months) and for the non-summer period (October through May billing months). In September of each year, ComEd updates the CFR Adjustment for the non-summer period. *See* Rider CFRA, ILL. C. C. No. 10, Original Sheet No. 390.1. ComEd may also update the CFR Adjustment "if the Company determines such revised CFR Adjustment results in a better match between the Company's applicable incurred and expected costs and its recovery of those costs." *Id*. ComEd uses forecasted prices to determine the monthly CFR Adjustment, and then includes another true-up adjustment four months after the current month. The four-month true-up adjustment is the difference between the CFRA adjustment and actual prices during the month.

REACT witness Fults testified that customers have been frustrated with the whole Rider CFRA process. *See* REACT Ex. 1.0 at 16-17; REACT Ex. 5.0 at 9. As he explained: "The way in which Rider CFRA is currently designed, there unnecessarily is a significant risk that when wholesale power prices are high, customers will receive a Rider CFRA charge, and when wholesale power prices are low, customers will receive a Rider CFRA credit. This is exactly opposite of how Rider CFRA should work." REACT Ex. 5.0 at 9. Mr. Fults proposed a straightforward solution: use the most recent market forecast data to make monthly adjustments. *Id.* at 11.

REACT notes that Staff agreed with Mr. Fults that a closer forecast should be more accurate than one that looks farther into the future and recommended that the Company be required to update the adjustment three times each year. *See* Staff Ex. 6.0 at 6.

REACT reports that ComEd agreed that adjusting the CFR three times a year would "help produce a forecast that is more reflective of the market price and will also give customers a more consistent CFR Adjustment for four months." ComEd Ex. 12.0 at 6-7. ComEd proposed tariff language that would provide that the updates would be filed in May, September and December every year and committed to make those revisions as part of a compliance filing in the instant proceeding. *See id.*at 7; ComEd Ex. 12.1; REACT Cross Ex. 1.0 at 3.

REACT and Staff agreed with ComEd's proposal but noted that if ComEd does not update its CFR Adjustment in December 2024, that it should update the forecast in January 2025 as part of its compliance filing in this case. *See* REACT Cross Ex. 2 at 2.

2. ComEd's Position

ComEd notes REACT proposed changes to Rider CFRA, recommending that ComEd increase the frequency of its updates to the Carbon-Free Resource ("CFR") Adjustment. Specifically, Staff witness Hamidu proposed that ComEd update the CFR Adjustment three times a year, to produce a forecast that is more reflective of the market price and to give customers a consistent CFR Adjustment for four months. Staff Ex. 6.0 at 7. In response ComEd agreed with Staff's proposal and submitted ComEd Ex. 12.01, which contains revisions to Rider CFRA to implement an update to the CFR Adjustment three times a year: in May, September, and December. ComEd Ex. 12.0 at 6-7; ComEd Ex. 12.01.

While the REACT proposal is not contested and should be adopted, the Commission should also determine generally that issues pertaining to ComEd's Rider CFRA are not related to the allocation of ComEd's delivery service revenue requirement.

3. Staff's Position

Staff believes a closer forecast period is better than a forecast that is far out in the future. However, a monthly forecast for the CFRA, as proposed by REACT, will lead to a possible monthly change in the CFR Adjustments which will not provide consistency or allow customers to know what to expect. Staff Ex. 6.0 at 6. Staff believes that updates to the CFRA three times a year will help reduce the Carbon-Free Resource Monthly Reconciliation or the "true up" amount and produce a forecast that is more reflective of the actual price and will also give customers a consistent four-month CFRA. Staff Ex. 6.0 at 7. Staff recommended the Company agree to provide three updates a year; with the first update being for the June-September period, the second update, representing the October to January period, and third update, to cover the February – May period. Staff believes this approach will help produce a forecast that is more reflective of the market price and will also give customers a consistent CFRA for four months. Staff Ex. 6.0 at 7. The Company proposed three updates in its surrebuttal: in May, September, and December. ComEd Ex. 12.0 at 7. Staff agrees with this proposal with one caveat. Given the agreed upon schedule for this docket, it is not clear that a final Order will be entered by December of this year. If ComEd does not update the forecast in December 2024,

Staff recommends ComEd update the forecast in January 2025 as part of its compliance filing and update the forecast in May, September, and December thereafter. Staff understands this issue is now uncontested. REACT Cross Ex. 2.

4. Commission Analysis and Conclusion

The Commission notes that this issue is uncontested and approves the proposed revisions to Rider CFRA set forth in ComEd Ex. 12.01 to update the CFR Adjustment three times a year, in May, September, and December. Nonetheless, the Commission reiterates that Rider CFRA falls outside of ComEd's delivery service revenue requirement as noted above.

D. Rider SPWS – Solar Paired with Storage Rebate

1. REACT's Position

REACT has identified a flaw in the way in which ComEd is implementing Rider SPWS Rebate – Solar Paired With Storage Rebate ("Rider SPWS") that results in ComEd failing to provide the Commission-approved incentive that is designed to encourage customer participation in the PJM Interconnection, L.L.C. ("PJM") frequency regulation market. *See* REACT Ex. 3.0; REACT Ex. 7.0. Specifically, REACT notes that ComEd's tariff needs to be revised to ensure that ComEd is including in the rebate the "Part 466 and 467" interconnection costs that are paid to ComEd as it was directed to do in the Solar Paired With Storage Order on Rehearing. *See* REACT IB at 36 (citing SPWS RH Order at 24); REACT RB at 37.

REACT underscores the importance of this rebate. Frequency regulation is an essential service that helps keep the grid in balance, responding instantaneously to changes that occur to match generation to load. REACT Ex. 3.0 at 6. REACT notes that ComEd witness Perkins recognized this service will become more important in the future with a higher penetration of renewable generation and the retirement of conventional power plants. Tr. at 35-36.

REACT asks that the Commission dismiss ComEd's claims that this issue is "beyond the scope" of this proceeding. There is no legitimate basis to contest that REACT is requesting a revenue-neutral rate design change and thus this issue is properly considered within this proceeding. There also is no legitimate basis for ComEd to assert that REACT's position is an improper collateral attack on the Commission's prior Order. The statute that governs this proceeding authorizes the Commission to "consider revenue-neutral tariff changes related to rate design." 220 ILCS 5/16-105.5(c)(1). This language requires that the Commission revisit its prior decisions that created the rate design contained in the existing tariffs. Moreover, far from "attacking" the prior Order, REACT is requesting that the Commission compel ComEd abide by its express terms.

Further, REACT explains that to accept ComEd's position would require that a new complaint be filed regarding ComEd's implementation of Rider SPWS, testimony would have to be presented again, and briefs would have to be rewritten, in a proceeding with fewer parties to review the testimony and arguments. This issue has been fully litigated and briefed in the instant proceeding. To the extent that the Commission finds there is any ambiguity in the statute, REACT explains the Commission should reject ComEd's proposed reading of the Act because such a result would undermine the fact-finding

process and would be less expeditious, less convenient and more costly. *See* 83 Ill. Adm. Code Part 200.25. Issues related to the scope of the proceeding are further addressed supra in Section III.

Regarding the merits of this issue, REACT explains that the Commission has directed ComEd to use a "differential approach" to quantify the interconnection costs that are to be rebated under Rider SPWS. *See* REACT IB at 36 (citing SPWS RH Order at 25). Essentially, the differential approach is a math equation:

$$B - A = C$$

B are the interconnection cost assuming the battery is participating in the frequency regulation market;

A are the interconnection cost assuming the battery is not participating in the frequency regulation market; and

C are the interconnection cost that are to be rebated to the customer.

See also Tr. at 61. As REACT explained, the way in which ComEd is performing this calculation is improper because it results in ComEd refunding none of the "Part 466 and 467" interconnection costs that are paid to ComEd. *See* REACT IB at 37 (citing SPWS RH Order at 25).

REACT maintains that ComEd improperly asserts that REACT's proposed revisions ignore the costs of interconnection. According to REACT, ComEd has it wrong. REACT does not "ignore" the fact that there are interconnection costs that ComEd must recover if ComEd assumes that the owner of the facility is utilizing the full extent of its technical and operational capabilities. Rather, REACT explains that by making that assumption both for purposes of calculating what interconnection costs would be for a battery that is participating in the PJM frequency regulation market as well as for purposes of calculating what interconnection costs would be for a battery that is not participating in the PJM frequency regulation market, ComEd's methodology ignores the "use case" and ends up failing to refund any "Part 466 and 467" interconnection costs that are paid to ComEd.

Thus, the result under ComEd's current methodology is precisely the result that the Commission rejected in the proceeding that authorized the creation of Rider SPWS. *See* SPWS RH Order at 24 ("the clearest reading of 'interconnection facilities' in Section 16-107.6(b-5) includes costs identified during the Part 466 or 467 interconnection process").

REACT explains that ComEd should only assume that the owner of the facility is utilizing the full extent of the battery's technical and operational capabilities for purposes of calculating what interconnection costs would be for a battery that is participating in the PJM frequency regulation market ("B" in the equation above). When ComEd is calculating what interconnection costs would be for a battery that is not participating in the PJM frequency regulation market ("A" in the equation above), ComEd should be required to assume that the use of the battery is to reduce the customer's load or support the functions of the solar panels. *See* REACT Ex. 3.0 at 11-12. This methodology will appropriately consider the "use case" of the battery and should result in ComEd

appropriately refunding "Part 466 and 467" interconnection costs that are paid to ComEd as was directed by the Commission.

ComEd admitted that it has only received twelve Rider SPWS applications since the tariff was approved more than two years ago. ComEd also confirmed that in none of these cases has ComEd identified any incremental cost for upgraded transformers, switch gear, or line upgrades that would be included as part of the rebate. *See* REACT Ex. 7.0 at 4; Tr. at 68. REACT witness Marhoefer presented uncontroverted evidence that ComEd's failure to include these costs in the rebate calculation is preventing projects from moving forward. *See* REACT Ex. 7.0 at 7.

REACT notes that Staff agreed that ComEd is not properly taking into consideration the "use case" of customers' batteries as required by the Commission's prior Orders, and requests that the Commission direct ComEd to revise its methodology "since the use case drives the amount of this component of the Rider SPWS rebate." Staff IB at 28-29.

2. ComEd's Position

ComEd argues REACT's proposal to modify ComEd's Rider SPWS is both a collateral attack on the SPWS RH Order, and out of scope for this RDI. The proposal should be rejected. REACT's proposed changes to ComEd's Rider SPWS would alter the Commission-approved way ComEd calculates Incremental Interconnection Costs, which are a subset of the costs rebated under Rider SPWS. *See* REACT Ex. 3.0 at 10, 12. The Commission already explicitly evaluated and rejected REACT's proposal in SPWS RH Order. *See generally* SPWS RH Order. Indeed, the same witness, REACT witness Marhoefer, who offered the testimony at issue in this proceeding offered testimony on behalf of Magid Glove (a member of REACT) in the Rider SPWS proceeding. REACT Ex. 3.0 at 4. Furthermore, costs rebated under Rider SPWS are not part of ComEd's distribution revenue requirements and the mechanics are not related to ComEd's delivery service rate design. ComEd Ex. 4.0 at 6. Therefore, the Commission should find that REACT's proposal also falls outside the scope of this delivery service rate design investigation.

ComEd explains that it currently calculates the incremental interconnection costs by: (1) calculating what interconnection costs would be for an energy storage system ("ESS") assuming it would not participate in the PJM frequency regulation market; (2) calculating what the interconnection costs would be for the same ESS assuming it intends to fully participate in the PJM frequency regulation market; and (3) subtracting the non-frequency regulation costs from the frequency regulation costs. SPWS RH Order at 25; *see also* ComEd Ex. 4.0 at 14. This calculation was proposed by Staff and approved in the Rider SPWS RH Order.

ComEd notes that it evaluates the battery in the context of participation in the PJM frequency regulation market when considering the frequency regulation costs portion of the rebate under Rider SPWS. Tr. at 64. Therefore, it argues, the Commission should not change its decision from the SPWS Final Order or SPWS RH Order regarding the methodology with which ComEd calculates Incremental Interconnection Costs.

ComEd should not be "required to assume that the use of the battery is to reduce the customer's load or support the functions of the solar panels[,]" and that ComEd be "required to determine the costs necessary to prevent distribution grid issues to the way in which the battery will operate," as requested by REACT. REACT IB at 39. ComEd explained that it evaluates the proposed device for all potential adverse system impacts, as defined by Parts 466 and 467, such that ComEd can mitigate those adverse impacts and prevent disruption to grid operations. *See* ComEd Ex. 9.0 REV. at 15; *see also* 83 Ill. Adm. Code 466 and 467. Requiring that ComEd assume any specific use case for a battery when evaluating interconnection costs would artificially limit ComEd's study of the battery and its adverse system impacts and is not reasonable, ComEd argues. ComEd urges the Commission to reject REACT's proposal to artificially limit ComEd's study of the battery when calculating interconnection costs.

3. Staff's Position

In addition to the incremental cost calculation recommended by Staff, the Commission's SPWS RH Order noted that:

> Staff also recommends that the Commission require ComEd to provide a good faith estimate of costs that will be eligible for the rebate under Rider SPWS after the customer applies for the tariff. *Id.* at 4-5. The Commission adopts Staff's proposal because it will allow for the most accurate identification of incremental interconnection costs.

SPWS RH Order at 25.

Staff notes REACT's recommendation that the Commission direct ComEd to revise this calculation "to give meaning to each component of that rebate." REACT Ex. 3.0 at 5. Staff originally disagreed with REACT, as there is no new information demonstrating or explaining why the Commission should reconsider a decision on an issue about which it has already definitely ruled. Staff Ex. 6.0 at 5. Staff agrees with the Company that the Commission should retain the incremental interconnection cost calculation methodology approved by the Commission in the SPWS RH Order. *Id.* However, Staff now understands that REACT is not requesting the Commission change its decision on this issue, but rather that the Commission direct ComEd to revise its calculation as its current approach does not fully align with the Commission's decision in that case. REACT Ex. 7.0 at 6; REACT Cross Ex. 2. Staff agrees that use case should be considered when reviewing an interconnection application for ESS, as stated in Commission conclusion in the SPWS RH Order at 24. REACT Cross Ex. 2. The Commission also concluded "that both the bright-line and differential cost approaches must be performed on a case-by-case basis, just as interconnection studies performed pursuant to Parts 466 and 467 are performed on a case-by-case basis." SPWS RH Order at 24.

As noted above, the Commission adopted Staff's recommendation to require consideration of the specific use case in each application, since the use case drives the amount of this component of the Rider SPWS rebate. REACT Cross Ex. 2. Accordingly, the Commission should clarify this in its final Order in this proceeding and direct ComEd to comply with these provisions.

4. Commission Analysis and Conclusion

The Commission finds the way in which ComEd is implementing Rider SPWS is troubling. The Commission was clear when it previously directed ComEd to calculate the "incremental interconnection costs" component of this rebate in a manner that results in ComEd including in the rebate those costs that are paid to ComEd for facilities that are identified during the Part 466 or 467 interconnection process. ComEd's current methodology for calculating this rebate does not comply with that prior direction.

To be clear, the Commission directs ComEd to retain the incremental interconnection cost calculation methodology and to consider the use case when reviewing an interconnection application for ESS, as stated in the Commission conclusion on page 24 of the SPWS RH Order. To the extent this omission from the Rider SPWS Rebate is impeding projects from moving forward, the Commission emphasizes that its goal was and continues to be to incent solar projects, not to inhibit them. While Rider SPWS falls outside the delivery service requirement, this conclusion is merely restating the Commission's position and correcting the Company's misinterpretation of it. The Commission directs ComEd to provide Staff with an update regarding how it plans to comply with the Commission's Order moving forward.

E. Distribution Time of Use Rate

1. Overview

a. ComEd's Position

Pursuant to Commission directives in the BE Plan 1 Order, ComEd proposed a DTOU rate and presented corresponding data and analyses. BE Plan 1 Order at 258; *see generally* ComEd Ex. 3.0. No party disputes that ComEd has fulfilled these directives, and the Commission should find that ComEd met all its obligations stemming from the BE Plan 1 Order. *Id.* ComEd also notes that the Commission is not required to approve a TOU rate proposal at this time.

Nonetheless, ComEd notes CUB/EDF propose that ComEd deduct from its distribution revenue requirement projected deferred distribution system investments that could result from adoption of ComEd's proposed DTOU rate. CUB/EDF Ex. 1.0 at 20-21. The Commission should reject this proposal because it is not revenue neutral and is therefore outside the statutory scope of Section 16-105.5. ComEd Ex. 4.0 at 16-17.

b. AG's Position

ComEd asks that the Commission approve its proposed DTOU, which contains four pricing periods and rates and would require customers who sign up for time-variant supply rates to also enroll in the DTOU. This proposal arises from BE Plan 1 Order, in which the Commission ordered ComEd "to develop and propose a [DTOU] rate in its next rate design investigation proceeding." ComEd Ex. 3.0 at 4; BE Plan 1 Order at 258. A DTOU "is a rate structure where cost of electric delivery charges varies depending on the time of day it is delivered. Under this structure, delivery charges are higher during peak demand periods and lower during off-peak periods." ComEd Ex. 1.0 at 10.

Like any rate, ComEd has the burden to prove that its proposed DTOU is just and reasonable. 220 ILCS 5/9-201(c). The AG iterates that ComEd has failed to meet this

burden because it did "not provide any evidence that it has developed a program that will achieve reasonable goals, or provide customers enough value to justify the costs." ELPC/VS/UCS IB at 1-2. ComEd witness Kremer did not provide any cost-benefit analysis or other evidence to support the reasonableness of its proposed program costs, which she quantified as between 5 and 10 million dollars for the first time during the evidentiary hearing. *Id.* at 3.

The AG explains that ComEd's lack of support for its proposed costs is particularly concerning, given that the record shows that ComEd's proposed DTOU time periods are inconsistent with its own peak usage data, that it does not account for significant usage differences between the summer months and the rest of the year, and that it seeks to require all residential customers who enroll in a time-variant supply rate from an ARES or ComEd's Residential Real Time Pricing Program ("RRTP") to enroll in the DTOU—even though the savings periods between the supply side and distribution side programs may be inconsistent with each other. While the AG does not oppose the implementation of a voluntary opt-in DTOU, it urges the Commission to adopt CUB/EDF's modifications to ComEd's proposal as discussed below.

c. ELPC/VS/UCS' Position

The purpose of TOU rates is to encourage customers to shift their usage from peak times to off peak to limit the need for new power plants, grid investment, and reduce pollution from fossil fuel. ComEd witness Kremer notes:

> A TOU rate must contain differences between on-peak and off-peak periods that are significant enough to encourage customers to shift usage without deterring customers from signing up for the rate.

ComEd Ex. 3.0 at 4. ComEd proposes to offer only a delivery rate, and Ms. Kremer estimates savings at only $2.31 per month, or approximately 5% of an average customer's delivery cost. Tr. at 84. Given that delivery rates make up only about 1/3 of the customer's bill, offering a supply TOU rate would greatly enhance this differential.

The Commission must address whether ComEd's proposal accomplishes that goal of shifting enough customer behavior that the program meets just and reasonable standards. ComEd's proposal and its testimony do not provide any evidence that it has developed a program that will achieve reasonable goals or provide customers enough value to justify the costs.

ELPC/VS/UCS allege that ComEd fails to provide any persuasive argument that its program will induce customers to shift usage off-peak. ComEd correctly states that its DTOU rate, "must contain differences between on-peak and off-peak rates that are significant enough to encourage customers to shift usage without deterring customers from signing up for the rate." ComEd IB at 49 (citing BE Plan 1 Order at 258). ComEd's IB claims it demonstrates this incentive and cites to witness Kremer's direct testimony. ComEd Ex. 3.0 at 12; ComEd IB at 50. Ms. Kremer's testimony lacks any substantive analysis that demonstrates she or anyone at ComEd has any idea whether the program will shift enough behavior to make a difference in customers actually using energy off-peak when they rely more on renewable supply. Ms. Kremer merely states the conclusion

that the program includes financial incentives to encourage customers to enroll. ComEd Ex. 3.0 at 12. That conclusory statement does not demonstrate that this program is likely to produce results.

ELPC/VS/UCS assert ComEd has the burden of proof to demonstrate that its program will shift behavior and that the costs provide actual benefits. 220 ILCS 5/9-201(c)). ComEd fails to meet that burden. ComEd provides no estimates about how many customers it anticipates will sign up for TOU, how many suppliers it anticipates will offer supply TOU, or any data from other states that allow the Commission to reach a finding on the merits of its proposal. ComEd offers only details on the time periods and prices it intends to offer. That is not enough to demonstrate ComEd's TOU offering will shift customer behavior.

Ideally, ELPC/VS/UCS hope the Commission will conclude it has legal authority to order ComEd to offer TOU rates. If the Commission determines it lacks that authority or no party has sufficiently made the case for ComEd to order Supply TOU rates, then it must reject ComEd's filing and order it to design a better program.

d. Commission Analysis and Conclusion

The Commission approves ComEd's DTOU rate, subject to the modifications discussed below. Through the development and implementation of its DTOU rate, and its recent RTOUPP, the Commission expects ComEd to use the data and lessons learned to refine and improve incorporation of TOU rates in the near future. The Commission finds that a well-designed TOU rate can cost-effectively deliver benefits to customers, including bill savings resulting from shifts in customer load and the deferral of distribution system investments. ComEd should examine how its DTOU rate delivers savings to customers and consider further modifications or expansion of TOU rates to enhance these benefits, leveraging AMI meter investments and capabilities for all customers. Data from the DTOU and ComEd's RTOUPP could inform the development of a bundled supply and distribution TOU rate, as contemplated by ELPC/VS/UCS in Section E.3.f of this Order.

The Commission acknowledges ELPC/VS/UCS's position regarding an STOU and further addresses it in Section VI.F.4.

2. Time Periods

a. ComEd's Position

ComEd's DTOU rate proposal includes four pricing periods: Morning (6 AM to 1 PM), Mid-Day Peak (1 PM to 7 PM), Evening (7 PM to 10 PM), and Overnight (10 PM to 6 AM). ComEd Ex. 6.0 at 10. The DTOU rate is meant to provide a pricing structure that is flexible enough to provide for different rates in four distinct time periods to account for changing profiles in the future due to factors such as solar or EV charging habits. *Id.* at 13-14. These time periods are based on the feeder peaking data of ComEd's distribution system and thus correlate with times when demand on ComEd's distribution grid is highest. ComEd Ex. 3.0 at 15. ComEd also chose the names because they are intuitive, using common terms that customers can easily remember. *Id.* at 16.

ComEd argues that a seasonal factor, whereby the DTOU rate being artificially higher in the summer and lower in non-summer, is not logical for a distribution rate

because it defeats the efficiency of the DTOU rate design. ComEd Ex. 6.0 at 14. ComEd explains that its DTOU rate is designed to recover costs throughout the year in a way that ensures customers will pay their fair share of delivery costs under either the flat rate or the DTOU rate based upon average customer usage for each delivery class and a seasonal factor would disrupt this design. ComEd Ex. 11.0 2nd CORR. at 7. ComEd argues that ultimately, a seasonal factor is not necessary for the DTOU rate because the costs that ComEd incurs to build and maintain its distribution grid do not follow the same seasonal profile as supply rates. *Id.* at 15.

b. Staff's Position

In compliance with the Commission's BE Plan 1 Order, ComEd worked with stakeholders in advance of this proceeding to develop the DTOU that ComEd proposes in this docket. ComEd Ex. 3.0 at 4. The DTOU would apply to the DFC which includes distribution costs. ComEd witness Kremer testified that distribution costs "are generally related to the purchase and maintenance of equipment like poles, conduit, wire and cable, and transformers." *Id.* at 7. Currently for ComEd residential customers, the DFC is a per kWh charge, multiplied by the total kWh usage during the month; there is no distinction based on the day of the week or time of day. *Id.* at 11. ComEd's DTOU proposes four different DFCs for four different time periods of the day. Collectively, the DFCs would recover the same amount of revenue the existing fixed-price DFC recovers. *Id.* at 15.

Staff is supportive of ComEd's DTOU proposal generally. However, Staff recommends the Commission adjust ComEd's proposed DFC scheduling blocks. The four scheduling blocks are Morning, Mid-Day Peak, Evening, and Overnight; ComEd initially proposed the Overnight period start at 11:00 PM and continue until 6:00 AM. *Id.* at 16. Staff witness Martin testified that the Overnight period as proposed by ComEd is too short to create real incentives for non-EV customers to change their behavior. Staff Ex. 1.0 at 6. Staff recommends the overnight period begins two hours earlier, at 9:00 PM instead of 11:00 PM, to be more attractive to the entire residential customer base. *Id.* at 3. In rebuttal testimony, ComEd modified the Overnight period in response to Staff, proposing to start it at 10:00 PM. ComEd 6.0 at 10. While Staff appreciates this change, the 9:00 hour should be included in the Overnight period if the objective is to incentivize customers to shift load; Staff notes that, according to ComEd's data, only 0.6% of total feeders reach maximum load during the 9:00 hour, meaning over 99% of feeders have capacity. Staff Ex. 4.0 at 12. ComEd should have no issues serving customers who are incentivized to shift load without impacting peak load. Accordingly, Staff continues to recommend the Overnight period start at 9:00 PM.

To ensure DTOU scheduling blocks remain revenue neutral, Staff recommends rates in other time periods be adjusted to reflect the shift in hours from the Evening period to the Overnight period. Staff Ex. 1.0 at 11-13. Specifically, Staff witness Martin recommends that the difference in rates from the adjustment from the Evening and Overnight Periods be added onto and spread across the thirteen hours of the Morning and Mid-Day Peak Periods while keeping the rate in the Morning Period below the DFC rate. Staff Ex. 1.0 at 12. Staff's recommendation in total is:

DTOU Time Period	Start Time	End Time	Staff Recommended Rate Adjustments
Morning	6:00 AM	1:00 PM	$0.03747 < "New Morning Rate" <
Mid-Day Peak	1:00 PM	7:00 PM	"New Mid-Day Peak Rate" > $0.10276
Evening	7:00 PM	9:00 PM	$0.03747
Overnight	9:00 PM	6:00 AM	$0.02984
(Flat) Fixed DFC	-	-	$0.05568
Note: This table is using Single Family No Electric Space Heat Rates as an example but the same suggestive adjustments are for the other residential rate classes relative to their individual respective rates mentioned in ComEd Ex. 3.0.			

Staff's recommendation is intended to make the DTOU rate attractive to all residential customers, not just EV owners. Specifically, Staff believes this change will financially incentivize non-EV owners to shift usage of heavy electric load appliances to later in the evening when electric demand is lowest.

Addressing the needs of non-EV customers is important, as currently ComEd's residential customer base is approximately 3.3 million customers but only around 80,000 (about 2.4%) own an EV. Staff Ex. 1.0 at 11. Accordingly, most residential customer electricity consumption is related to heavy electric load appliances. *Id.* at 10. Since household appliances are not replaced as often as smaller-use items such as light bulbs, even if customers are incentivized to transition to energy efficient appliances, that transition will happen over a long period. *Id.* Accordingly, Staff's proposal for a DTOU schedule with four time periods, three of which are below the Flat DFC, and the least expensive of which, the Overnight Period, begins at 9:00 PM, will be attractive to all residential customers and provide them with the financial incentives necessary to change their electrical consumption behaviors. *Id.* at 13. CUB/EDF witness McCann proposed matching the proposed DTOU periods with the time periods used in the RTOUPP. CUB/EDF 1.0 at 15. Staff examined the direct testimonies of the intervenors relating to DTOU program and their suggestive changes to ComEd's proposed time periods. Staff witness Martin testified that consistency with RTOUPP time periods is unnecessary, as that pilot program has ended. Staff Ex. 4.0 at 6. However, Staff does not oppose the changes CUB/EDF proposes to other time periods, so long as those changes can be implemented consistent with Staff's proposal to change the start time of the Overnight period. *See* CUB/EDF Ex. 1.0 at 14, 16. Specifically, Staff is not opposed to CUB/EDF's proposed shifts in the "Morning" and "Mid-Day" periods which are also supported by the AG (CUB/EDF IB at 9; AG IB at 5-6), provided that any such changes: (1) are implemented concurrent with Staff's proposal to change the start time of the Overnight period to 9 PM; (2) there are no changes to the evening period rate, and (3) the rate in the Morning Period stays below the DFC rate. Staff Ex. 1.0 at 12.

CUB/EDF witness McCann also recommended a DTOU should reflect seasonal differences between June to September ("summer") and October to May ("non-summer"). ComEd opposed this change, arguing that seasonal patterns do not impact distribution

costs in the same way they might affect supply costs. ComEd Ex. 6.0 at 14-15. Staff agrees with this assessment. Staff agrees with ComEd that delivery rates do not vary significantly with the seasons, making a seasonal rate unnecessary. Staff Ex. 4.0 at 7. ComEd testified that CUB/EDFs specific proposal, which would result in a summer Mid-Day Peak rate almost 4.5 times the flat rate, has the potential to disproportionately benefit the limited number of residential customers with solar taking service under Rider Purchase of Generation Net Metering; this would unfairly shift revenues to these net metering customers and the cost shift would be borne by non-solar customers. ComEd Ex. 6.0 at 15-16. Staff agrees that CUB/EDF's proposal would result in an unfair advantage to customers who own solar systems. Staff Ex. 4.0 at 7.

c. AG's Position

The AG notes TOU rates "divide each 24-hour day into two or more pricing periods, and a specific, pre-determined price applies to all consumption within each period." ComEd Ex. 3.0 at 8. CUB/EDF witness McCann raised several concerns with ComEd's proposal. First, ComEd "does not quantify the criteria used to segment hours by load period" and neither Ms. Kremer "nor anyone else with the utility performed any analysis considering alternative time periods." CUB/EDF Ex. 1.0 at 12. To remedy these deficiencies, Dr. McCann analyzed ComEd's feeder peak data and proposed modifications to ComEd's pricing periods based on lower the peak rate during the hours of 1-2PM. *Id.* at 12-14. He then recommended that the Commission adopt the same pricing period names that ComEd used in its supply-side RTOUPP, as shown on Table 3 below, because this "is more consistent with what other utilities use and, of course, what Commonwealth Edison used in its own TOU pilot." *Id.*

Table 3: CUB/EDF's Proposed DTOU Time Periods

Period Name:	Start Time:	End Time:
Peak	6:00 AM	2:00 PM
Super Peak	2:00 PM	7:00 PM
Peak	7:00 PM	10:00 PM
Off Peak	10:00PM	6:00 AM

Id. at 13-14. The AG asks that the Commission adopt CUB/EDF's proposed DTOU time periods, shown on Table 3 above.

Dr. McCann also explained that ComEd's proposal erroneously fails to account for seasonal differences in peak loads—particularly between summer months (June–September) and the rest of the year. *Id.* at 16, 17. A figure used to demonstrate these differences shows, "[n]o hours during the October to May Season approaches the Super Peak loads" from the summer and "the highest average load in the non-summer evening is in the bottom third of summer loads." *Id.* at 17. Given these clear usage differentials, Dr. McCann asked that customers not be expected to pay Super Peak rates (like those proposed for ComEd's mid-day period) during non-summer months.

ComEd argues that differentiating between seasons "is not pragmatic for a distribution rate" because "ComEd's DTOU rate is designed to recover costs throughout the year in a way that ensures customers will pay their fair share of delivery costs under either the flat rate or DTOU rate based on average customer usage for each delivery class." ComEd IB at 51. ComEd also claims that while supply rates "are driven by the cost of the kWh load in the wholesale supply market and are thus higher in summer months and lower in non-summer months," ComEd's costs "to build and maintain its distribution grid do not follow the same seasonal profile." *Id.* While ComEd may incur these costs throughout the year, Dr. McCann demonstrates that customers' usage patterns vary significantly between summer and non-summer months and ComEd's proposed rate should reflect this variance. CUB/EDF Ex. 1.0 at 17.

The AG states that if the purpose of the DTOU is to encourage ratepayers to use less energy during system peaks, then it only makes sense for the Company to provide ratepayers a reprieve from high super peak rates during months where there is less demand on ComEd's system. "Charging customers a Super Peak rate during non-summer months is not reflective of cost causation and the benefits of load-shifting are far stronger in the summer than in the non-summer" and "Summer Peak does not reflect cost of service in the non-summer months." CUB/EDF IB at 11. Given these clear usage differentials, the AG asks that the Commission adopt CUB/EDF's proposal to only charge customers a Super Peak (or in ComEd's proposal "Mid-Day Peak") rate during summer months.

d. CUB/EDF's Position

CUB/EDF agree with some aspects of ComEd's proposed DTOU. CUB/EDF generally agree with four time periods over the course of a 24-hour day, and strongly encourage the implementation of a TOU rate. Further, CUB/EDF witness McCann suggested in his direct testimony a shift to the start time of the Overnight time period from the Company's initially proposed 11 PM to 10 PM, in order to align with the Company's successful TOU pilot and because of the lack of feeder peaks during the hour ending at 11 PM. CUB/EDF Ex. 1.0 at 12-13. CUB/EDF continues to support this shift and appreciates the Company's decision to make this adjustment.

CUB/EDF disagree with the Company on other aspects of the TOU proposal. First, CUB/EDF argue the 1pm hour should be in what ComEd proposes to call the "Morning" time period instead of the highest peak rate period. *Id.* This aligns with the RTOUPP the Company conducted. CUB/EDF contend, and no party disputes, that RTOUPP was a successful pilot, and it proved that its hourly periods are effective in achieving customer load-shifting and savings. *Id.* at 11. CUB/EDF contend this proven success indicates the initial TOU rate should follow the time periods of the pilot, with the understanding that in the future the time periods may shift to reflect data demonstrating future system load pattern changes. ComEd admitted that it did not analyze or consider any other time periods when developing its proposed DTOU. CUB/EDF Ex. 1.2. ComEd further admitted the time periods were based solely on percentage of feeder peak, and not on any analysis of customer behavior. *See id.*; Tr. at 81-83, 85-88, 93-95, & 97-99.

Second, CUB/EDF propose the TOU should only have three rates. CUB/EDF argue the two "shoulder" periods – the time periods between the highest-cost peak period

and the lowest-cost overnight period – should share the same name and rate. CUB/EDF Ex. 2.0 at 10-11. This matches the RTOUPP and simplifies the rate for customers. CUB/EDF pose having different prices, especially a difference less than $0.005 per kWh as the Company proposes, will only cause confusion for customers. *Id.* Further, ComEd's initial proposal on direct was for the two shoulder periods to have the same rate. *Id.* It was only after adjusting the 10 PM to 11 PM hour to appropriately be in the overnight period that the shift in rates occurred. *Id*. CUB/EDF contend the Company cannot credibly claim there is some inherent need for the rates to be different, as ComEd originally intended them to be the same. CUB/EDF propose revenue neutrality can be achieved through other shifts, not arbitrarily charging very slightly more for one off-peak shoulder period than the other. CUB/EDF argues the difference is too small to warrant separate treatment.

Dr. McCann also suggested naming the time periods to be clearer as to which rates are the highest and lowest. Dr. McCann proposed Off-Peak, Peak, and Super-Peak should be used as it matches ComEd's own pilot and typical industry practice. CUB/EDF Ex. 1.0 at 13-14. Dr. McCann suggested that if the Commission ultimately approves four different rates, Off-Peak, Pre-Peak, Post-Peak, and Peak is an appropriate naming convention, because it conveys more about relative prices than listing the time of day does. CUB/EDF Ex. 2.0 at 12. CUB/EDF posits customers know when times of day from the hours and do not need to be told by the name what to consider, for example, morning or afternoon, but they do not typically know how that correlates to the price they face.

In surrebuttal, ComEd suggested Super-Off Peak, Morning Off-Peak, Evening Off-Peak, and Peak. ComEd Ex. 11.0 2nd CORR at 15-16. CUB/EDF consider the addition of the "Off-Peak" language an improvement, but objects to ComEd still proposing to name the rates for specific time periods that, in future rate design cases, would be subject to change. To avoid the need for customer reeducation when load patterns change, CUB/EDF recommend naming the rate periods based on their relative cost and relationship to peak. Otherwise, ComEd may be in the position of having to explain to customers in the future that, for example, the peak is now in the morning instead of the afternoon and customers will have to reorient their usage accordingly. CUB/EDF consider Dr. McCann's suggestions more adaptable and note his proposed rate period names would not require renaming if the peak periods change in future years. CUB/EDF argue this reduces customer confusion and conveys to customers the most important information they need: price.

Finally, because ComEd has two distinct load profiles between the "summer" (June to September) and "non-summer" (October to May) months, CUB/EDF contend the time of use periods should reflect seasonal differences in cost causation. CUB/EDF Ex. 1.0 at 16-17; CUB/EDF Ex. 2.0 at 13-17. The highest hourly average load in the non-summer evening is in the bottom third of summer loads, and no hours during the non-summer months approaches Super-Peak loads. *Id.* CUB/EDF explain charging customers a Super Peak rate during non-summer months is not reflective of cost causation, and the benefits of load-shifting are far stronger in the summer than in the non-summer. *Id.* In other words, CUB/EDF argue, the Super Peak does not reflect cost of service in the non-summer months. CUB/EDF state applying the Super Peak rate to usage in the non-summer months unduly punishes customers for usage that does not impose a

commensurate cost on the system. CUB/EDF argue peak usage during the summer months drives system costs for ComEd customers, and the TOU rate should reflect that reality.

ComEd claims seasonality of the rate is not necessary because distribution costs do not vary by season. ComEd Ex. 6.0 at 14-15. CUB/EDF argue this is a result of mistakenly applying accounting depreciation principles to physical reality. As Dr. McCann explained, assets experience physical wear and tear differently throughout the year depending largely on load and thermal stress. CUB/EDF Ex. 2.0 at 15. Delivery infrastructure experiences more stress when demands are placed on them, and more demands are placed on them in the summer. *Id.* Dr. McCann testified this physical depreciation is relevant for determining costs by time period and is why seasonality is important when considering the necessity of load shifting. *Id.* CUB/EDF therefore conclude the TOU rate must consider this physical depreciation cost.

In testimony, Ms. Kremer also presented a rate arbitrage concern for the seasonality proposal: If a customer is free to switch back and forth between rates, they can game predictable seasonal rate variation patterns to avoid paying their full share of cost of service. ComEd Ex. 11.0 2nd CORR at 6-7. To address Ms. Kremer's rate arbitrage concern, CUB/EDF propose ComEd simply apply the same 12-month stay off provision to the TOU rate that it already applies to Rate BESH. CUB/EDF Cross Exs. 1.0, 2.0 & 4.0. The tariff for ComEd Rate BESH requires, "Following a termination of service hereunder for a residential retail customer, such residential retail customer is not eligible to receive service hereunder for a period of at least twelve (12) months following the date of such termination." CUB/EDF Cross Ex. 12.0. In response to discovery, ComEd confirmed that this solution to seasonable rate arbitrage applies to several of its tariffs. ComEd Ex. 11.0 2nd CORR at 6-7. Identical language exists in ComEd's RTOUPP tariff. CUB-EDF Cross Ex. 10.0 at 15 (Ill. C.C. No. 10 1st Rev'd Sheet No. 28.13). Moreover, the Company proposes to incorporate language implementing the DTOU into the tariff for Rate BESH, while retaining this 12-month stay-out requirement, therefore applying it to the DTOU as well. *See* CUB/EDF Cross Ex. 12.0. ComEd confirmed that incorporating this language would mitigate rate arbitrage. CUB/EDF Cross Ex. 2.0. CUB/EDF thus concludes Ms. Kremer's concern is without merit, and a seasonal approach to a TOU should be implemented.

CUB/EDF note ComEd failed to engage in its IB Brief with CUB/EDF witness McCann's proposal to include the 1 PM hour (ending at 2 PM) in the "Morning" time period. ComEd IB at 50-51. Dr. McCann noted this shift would adjust the DTOU to match the successful RTOUPP time periods. CUB/EDF IB at 9. CUB/EDF maintain that the RTOUPP program was successful and remains the only time period proposal with any data support or analysis. *Id.* With the exception of the 1 PM hour, the time periods proposed by ComEd are otherwise already identical to RTOUPP. CUB/EDF post the success of RTOUPP should be weighed heavily when determining the appropriate time periods for the first iteration of the DTOU. Dr. McCann's proposal does so.

Second, CUB/EDF state ComEd appears to misunderstand Dr. McCann's argument regarding seasonality of the time periods. The Company, relying on their accounting witness Ms. Kremer, points to the cost to purchase the needed equipment for distribution not varying throughout the year. ComEd IB at 51-52. Dr. McCann never

disputed this fact. CUB/EDF contend that what the Company did not address, because it cannot without conceding Dr. McCann's point, is that the amount of use on the equipment increases during high use seasons causing physical depreciation. CUB/EDF IB at 10-12. CUB/EDF argue this physical depreciation goes unaccounted for in ComEd's proposal. Dr. McCann testified that while accounting practices may reflect a standard rate of depreciation across the year, the reality is the physical depreciation fluctuates based on use and should be accounted for in a DTOU. *Id.* Dr. McCann added that encouraging less use during peak periods reduces wear and tear on the distribution equipment and will prolong the useful life of infrastructure. *Id.* Also, CUB/EDF point out, reducing peak demand reduces the need to invest in capacity-expanding infrastructure, thereby reducing system costs long-term. CUB/EDF takes issue with ComEd's insistence on applying accounting principles to physical realities, rather than adjusting to real-world impacts. CUB/EDF conclude the DTOU should account for seasonality to properly consider all costs on the distribution system.

Staff pushes for the 9 PM hour, (ending at 10 PM) to be included in the "Overnight" time period. Staff IB at 29-32. CUB/EDF consider Staff's support for this conjecture devoid of analysis or empirical basis. *Id.* In fact, CUB/EDF note, Staff witness Martin admitted to having done no analysis in arriving at his proposal. CUB/EDF Cross Ex. 6.0. To maintain revenue neutrality from this hour shift, Staff would increase the cost in the Morning and Mid-day peak periods, instead of increasing the cost in the Evening period (where the hour is removed) or the Overnight period (where the hour is placed), or maintaining the originally proposed three rates for the four periods by equally increasing the Morning and Evening periods. CUB/EDF point out Mr. Martin provided no analysis to support this proposal, and when asked for additional information in discovery, Staff was unable to provide anything beyond a restatement of testimony. CUB/EDF Cross Ex. 5.0. CUB-EDF urge the Commission not to adopt Staff's proposed revenue shifting in this manner.

Staff joins the Company in opposing a seasonality component to the DTOU. Staff IB at 32-33. CUB-EDF argue much of Staff's reasoning is merely stating an agreement with ComEd's misunderstanding of Dr. McCann's proposal and should be ignored for the reasons stated above. *Id.* Staff also raises a concern that a seasonal approach would disproportionately benefit certain rooftop solar customers. *Id.* CUB/EDF note Staff provides no analysis in support of this claim, and no explanation for why it is concerning a proposal may benefit some customers more than others. CUB/EDF point out there is no requirement that optional programs or services available to customers must equally benefit all potential customers. CUB/EDF argue there is certainly no logical reason to oppose a rate structure on the grounds that it that could potentially aid Illinois in reaching renewable energy goals by compensating rooftop solar customers for the system benefits they contribute. Further, CUB/EDF note, Staff witness Martin provided no analysis in support of this claim, nor had he determined to any degree what portion of ComEd's customers participate in rooftop solar. CUB/EDF Cross. Ex. 7.0. CUB/EDF conclude Mr. Martin's concerns are entirely based on his own, unsupported assumptions and the Commission should ignore Staff's position accordingly.

e. Commission Analysis and Conclusion

The DTOU proposed by ComEd includes four scheduling blocks with corresponding rates. Staff supports naming these blocks as initially proposed by ComEd: Morning, Mid-Day Peak, Evening, and Overnight. CUB/EDF counter that labeling the scheduling blocks as Off-Peak, Peak, and Super-Peak would be easier for consumers to remember because the names would be tied to price. The Commission appreciates CUB/EDF's consumer friendly perspective but agrees with ComEd that the names it initially proposed are intuitive, using common terms that customers can easily remember. The Commission declines to adopt CUB/EDF's modifications.

Staff recommends the Commission adopt ComEd's DTOU scheduling blocks with one modification: shifting the overnight period to begin at 9:00 PM. In response to concerns, ComEd already shifted this block from 11:00 PM to 10:00 PM, a shift CUB/EDF also supported. Staff argues that this earlier time would be more attractive to the entire residential customer base, not just EV customers. The AG supports CUB/EDF's proposal to reject this change, which they argue is unsupported and instead suggest including the 1 PM hour in the Morning block to better align with the RTOUPP. Staff states that these changes are unnecessary because the RTOUPP has ended but does not oppose the changes.

There are three considerations in developing a TOU which the Commission previously set forth in the BE Plan 1 Order:

> (1) that any TOU rate developed contain difference between peak and off peak that are significant enough to encourage customers to shift usage without deterring customers from signing up for the rate; (2) the rates on-peak and off-peak periods should coincide with the distribution system on-peak and off-peak periods; and (3) the Company's rate proposal should include an incentive for EV owners (i.e., monthly/annual bill credits) to go on the rate, but the rate should not be available exclusively to EV owners.

BE Plan 1 Order at 258. The Commission finds that Staff's proposal to move the Overnight block to 9:00 PM is supported by ComEd's data indicating only 0.6% of total feeders reach maximum load during the 9:00 hour, meaning over 99% of feeders have capacity. *See* Staff Ex. 4.0 at 12. Moving the block to this hour also aligns with the directives set forth above. In particular, the main objective of a TOU is to incent customer usage to off-peak period. By shifting the Overnight period earlier, it is possible that customers who may not own EV or appliances that have timing capabilities may be more inclined to manually start their appliances at 9:00 PM if they can take advantage of off-peak pricing. The Commission therefore adopts Staff's modification to shift the Overnight block to start at 9:00 PM and make its recommended pricing changes to maintain revenue neutrality.

The Commission declines to adopt CUB/EDF's proposal to include the hour of 1 PM in the Morning block because it is unnecessary to maintain consistency with the RTOUPP. Furthermore, in an extension of the reasoning supporting the scheduling blocks names, its inclusion may be confusing to customers.

Finally, CUB/EDF suggest the DTOU should account for seasonality to properly consider all costs on the distribution system. Staff agrees with ComEd's position that seasonal patterns do not impact distribution costs in the same way they might affect supply costs and that a seasonal DTOU would result in an unfair advantage to customers who own solar systems. ComEd also expressed concerns about rate arbitrage, which CUB/EDF suggested could be resolved with a 12-month stay off provision. Nonetheless, the Commission rejects CUB/EDF's proposal in the interest of maintaining simplicity and fairness to all customers.

3. Pairing with Time-Variant Supply Rates

a. ComEd's Position

ComEd proposes that the DTOU rate should be automatically applied when a customer chooses to be on a time-variant supply rate because the DTOU rate design is flexible and maximizes the value of a customer's load-shifting decisions at minimal risk to the customer. Staff witness Martin concurred that ComEd customers should either elect a time variant supply rate coupled with ComEd's DTOU rate, or that customers should elect to be on a fixed rate for both supply and distribution. Staff Ex. 4.0 at 9-10. ComEd's proposed DTOU rate is designed to be automatically applied to customer bills for those who elect a time-variant supply rate and is not available as a separate rate for individual election. ComEd Ex. 3.0 at 13. ComEd argues that pairing of the DTOU rate with time-variant supply is intended to reduce confusion and maximize benefits to customers that wish to make decisions to shift their load. *Id.* at 13-14.

In support thereof, ComEd argues that under its proposed structure, DTOU rate customers have lower DFCs than ComEd's flat delivery rate as long as they shift load out of the Mid-Day Peak Period. *See*, *e.g.*, ComEd Ex. 3.0 at 350; ComEd Ex. 6.0 at 12. At most, customers on the DTOU rate would only see a difference of less than 5 cents per kWh between the flat rate and the Mid-Day Peak period on the DTOU rate. ComEd Ex. 6.0 at 8. ComEd states that this rate design is low risk and makes the DTOU rate flexible enough to accommodate customer behavior in response to a wide variety of supply-side price signals. ComEd Ex. 11.0 2nd CORR. at 8-9.

b. Staff's Position

The Commission should reject ICEA/RESA's and CUB/EDF's suggestions to make DTOU rates voluntary rather than compulsory for customers who are on an STOU rate. ICEA/RESA Ex. 60 at 3; CUB/EDF Ex. 1.0 at 10. ComEd witness Kremer testified that the delivery service price risk is low compared to the price risk for the supply rate, so an STOU, rather than a DTOU, will incentivize a customer to switch. ComEd Ex. 11.0 at 11. Staff witness Martin also opposed making the DTOU rate voluntary for a customer on an STOU because the customers will retain the ability to choose their electric supplier and thus their supply rate; pairing the STOU with the DTOU will reduce customer confusion. Staff Ex. 4.0 at 5.

c. AG's Position

ComEd proposes that all residential customers who enroll in a supply rate from an ARES or ComEd's RRTP be required to enroll in the DTOU. ComEd Ex. 3.0 at 13. According to Ms. Kremer, this is because "[i]f a customer would like to find a rate that

rewards shifting their energy usage, it would be counterintuitive for ComEd to offer a non-time-variant distribution option to go with the time-variant supply election the customer just made." *Id.* at 13-14. Ms. Kremer further notes that "[w]ithout this pairing, ComEd would need to program its systems to allow for several different rate combinations . . . rather than assigning each supply election to one corresponding distribution election." *Id.* at 14. The AG points out that customers who are currently enrolled in ARES or RRTP variable rates are not required to enroll in a DTOU and "[f]orcing many of the existing [R]RTP and other time variant rate customers onto a new rate schedule could be disruptive for them" and require them to take part in a program that they neither anticipated nor wanted to enroll in. CUB/EDF Ex. 1.0 at 10. In addition, the AG notes that ComEd's proposal would add unnecessary complexity and competing incentives to the DTOU and make it harder for customers to understand, assess, and take advantage of the potential benefits of these programs.

ComEd argues that "[u]nder time-variant rates of any kind, the price a customer pays for electricity is based upon when the customer uses electricity." ComEd IB at 52. The AG explains that ComEd fails to recognize that the time periods of these varying ARES and RRTP rates may not match the time periods of its proposed DTOU, and that its proposal will likely lead to situations where supply rates are higher during periods where distribution rates are lower and vice versa. CUB/EDF IB at 15. ComEd's proposal would require customers "to track two separate, and at times conflicting price signal streams" which "are likely to blunt the intended customer response." CUB/EDF Ex. 1.0 at 8. For example, ComEd's RRTP varies unpredictably with changes in the wholesale electricity market rather than a customer's time of use. *Id.* at 7-8. This means that on a sunny afternoon in spring, a customer might pay less for electricity supply because it is in abundant supply due to solar power on the grid. *Id*. By contrast, DTOU rates always vary on a strict schedule. Customers would always find it cheaper under DTOU rates to set their dishwasher to run at 3:00 AM as opposed to 3:00 PM, because the DTOU rate is much lower at 3:00 AM. *See id.* However, the STOU is more variable and may offer opportunities to use lower-priced supply at other times of the day. Adding to the confusion, Ms. Kremer testified that she was unaware if any ARES in ComEd's service territory currently offers an STOU, or whether any ARES will offer an STOU in 2026—when ComEd's proposal would go into effect. ELPC/VS/UCS IB at 3. The AG maintains that this situation creates a clear catch-22 for the consumer: on a sunny afternoon with abundant solar energy available, the same electricity would be both cheaper (from the RRTP supply perspective) and more expensive (from the DTOU perspective). *Id.*

To grapple with these concerns, Ms. Kremer called for consumers to research supply-side rate options to maximize affordability under ComEd's new proposal—but her responses missed the point. *See* ComEd Ex. 11.0 2d Corr. at 9. Ms. Kremer admitted that the volatility in supply-focused rates would create risk for the consumer, stating "[t]he primary risk to the customer's bill lies with the customer's supply election, as it always has." *Id*. at 9. The AG iterates that building ComEd's rate around the assumption that consumers will research supply elections goes against its alleged goal of being "customer-friendly." ComEd Ex. 3.0 at 14. The AG further points out that while ComEd's RRTP coupled with the DTOU could create competing incentives, as discussed in the paragraph above, ARES supply TOU rates pose additional problems that cannot be solved with "customer research." There are currently 87 ARES operating in ComEd's

service territory. Illinois Commerce Commission Office of Retail Market Development, *Annual Report to the Illinois Commerce Commission, the General Assembly, and the Governor, Submitted Pursuant to Section 20-110 of the Illinois Public Utilities Act* at 11 (July 2024). *https://icc.illinois.gov/api/web-management/documents/downloads/public/icc-reports/2024%20ORMD%20Section%2020-110%20Report.pdf.* Residential customers who receive their supply from an ARES currently pay approximately 3 cents more per kWh than customers who receive their supply from ComEd. *Id.* at 29. As a result, ARES customers in ComEd's service territory pay $13.9 million more per month, or $167 million more per year, than customers who receive their supply from ComEd. *Id.* The AG notes that asking customers to "research" the best supply rate to couple with the DTOU is unreasonable given the excessive rates charged by ARES, particularly when it would be simpler for ComEd to offer its own STOU, as discussed below.

The AG asserts that a more "customer-friendly" rate would provide customers with a straightforward STOU that matches the time periods of the DTOU, thus eliminating the complexity and competing incentives of ComEd's proposal. And that if ComEd's goal is, as Ms. Kremer claims, to create "[t]he most straightforward and customer-friendly offering . . . one where our customers can maximize the effects of any actions they will take to shift load," then the Commission should adopt CUB/EDF's modifications to ComEd's DTOU and direct ComEd to offer an STOU with corresponding pricing periods.

The AG explains that the danger of competing and often high supply rates and the need to coordinate the supply and DTOU rates apply to all customers but are particularly concerning for low-income customers who are unable to absorb unexpectedly high bills. RTOUPP Order at 11. In ComEd's own supply RTOUPP, early reports showed that low-income participants paid more in the aggregate than they would have paid under default rates. RTOUPP Docket, Residential Time-of-Day Pricing Pilot Semi Annual Compliance Filing #6 at 23 (April 12, 2023). However, ComEd "proactively monitored income eligible customers" and communicated directly with those "showing a significant loss in any single month, or those demonstrating a trend of losses across two or more months." RTOUPP Docket, Residential Time-of-Day Pricing Pilot Semi Annual Compliance Filing #8 at 23 (April 12, 2024). Complicating the supply election process for consumers makes it less likely that they will be able to maximize affordability, putting low-income consumers at risk of higher bills that they should not be asked to shoulder. Low-income customers are less likely to take advantage of cost-saving benefits when they must proactively select an alternate supply rate from a market that, as demonstrated above, often charges customers significantly more than they would pay under ComEd's default rate. As such, under ComEd's proposal, consumers cannot and should not be required to take the time needed to research strategic supply elections to utilize the DTOU. *See id.*; ComEd Ex. 11.0 2d Corr. at 9. Rather, many customers are more likely to stick with their default or preexisting supply election, even when they could save more with a simple STOU paired with the DTOU. *Id.* This could lead to significantly higher rates for some customers, despite the potential benefits of the DTOU.

To maximize cost-saving potential, the AG asks that the Commission order ComEd to offer an STOU rate that customers can choose to combine with the DTOU rate. *See* CUB/EDF Ex. 1.0 at 3. Given outstanding uncertainties about the savings potential of TOU rates and the effect on ratepayers, the AG emphasizes that both the STOU and

DTOU rates should be offered solely on a voluntary opt-in basis. Further requiring customers who select a time-varying supply rate to also accept a DTOU rate magnifies the effect of the customers' ability to control when they use electricity. A customer may want to experiment with either a supply or delivery TOU to see how it affects the bill, or to hedge the effect of TOU pricing. For these reasons, the AG asks that the Commission adopt CUB/EDF's proposed STOU, paired with their recommended modifications to ComEd's DTOU on a voluntary opt-in basis.

d. CUB/EDF's Position

CUB/EDF oppose ComEd's proposal to automatically apply the DTOU rate to all residential and small commercial customers taking service on any time-variant supply rate and to offer it to no other customers. Instead, CUB/EDF propose that the DTOU be its own separate rate offering, available on an opt-in basis to ComEd distribution customers regardless of the customer's choice of supplier or supply rate, with one exception. CUB/EDF Ex. 1.0 at 5-6. CUB/EDF argue that provided the Commission adopts CUB/EDF's proposal for ComEd to offer an STOU and DTOU with matching hourly rate periods, the identical designs of these rates mean it is most sensible for any customer who signs up for ComEd's supply TOU to be enrolled as well in the DTOU, on an opt-out basis. *Id.* at 6, 24. CUB/EDF maintain this approach balances ComEd's stated interest in minimizing election points that customers face to sign up for a simple combined TOU rate without forcing any customers into taking service on a confusing hodgepodge of misaligned rates. *See* ComEd Ex. 3.0 at 13-14. Further, because ARES cannot offer distribution rates, default-enrolling a customer who has selected ComEd's STOU rate in a DTOU, while also making this DTOU available on an opt-in basis for any ARES customer, does nothing to inhibit retail competition.

CUB/EDF contend making the DTOU available as its own separate rate offering is necessary to: (1) conform with the clear intent of the Commission's order approving the Company's Beneficial Electrification Plan, (2) ensure the DTOU is an available and appealing option for ComEd customers who do not necessarily wish to also enroll in Rate BESH, and (3) avoid undue discrimination against ARES and their customers. Further, while CUB/EDF agree with ComEd that Illinois' net energy metering law makes the pairing of a time-variant distribution rate with a flat supply rate unappealing to net metering customers, CUB/EDF argue the Company need not automatically pair time-variant supply rates with the DTOU to account for this contingency. CUB/EDF propose ComEd instead simply include in the sign-up process for net metering and time-variant rates a disclaimer explaining the financial implications of their options. Thus, CUB/EDF conclude ComEd's proposed constraint on customer choice is overbroad and wholly unnecessary to address the concerns the Company raises.

In approving ComEd's BE Plan 1, the Commission "require[ed] ComEd to develop and propose a TOU distribution rate in its next rate design investigation proceeding," which is the immediate docket. BE Plan 1 Order at 258. Further, "the Commission direct[ed] ComEd to work with Staff and stakeholders in the development of the new proposed distribution rate." *Id*. at 263. The Commission consistently referred to the required proposal as a new rate offering. *Id.* at 258, 263. In response, CUB/EDF argue, ComEd has not proposed a new rate offering; rather, the Company proposes only adding terms to its existing Real Time Pricing rate offering, Rate BESH, and its Rate RDS for

ARES customers. ComEd Ex. 3.02 at 1-2. CUB/EDF explain that no new rate offering would be created, and customers still would not have the option to enroll in a DTOU rate by itself. There are at present no ARES time-variant rates available to these customers. CUB/EDF Cross Ex. 3.0. Thus, for the foreseeable future, to take service on a DTOU rate, customers would have to enroll in ComEd's Rate BESH for supply service as well, thereby subjecting themselves to unpredictable variable and fixed charges that undermine the point of offering a predictable TOU rate design. *See* CUB/EDF Ex. 1.0 at 7-9. Under ComEd's proposal, there still would be no such thing as a straightforward TOU rate available to its customers. CUB/EDF conclude this arrangement would fail to satisfy the Commission's clear intent in the BE Plan 1 Order for ComEd to propose, for the Commission's consideration and potential adoption, a TOU rate per se.

CUB/EDF argue automatic pairing, especially with Real Time Pricing, unnecessarily increases complexity and risk, likely dissuading customer participation. Further, automatically pairing the DTOU with Rate BESH makes it significantly less attractive to customers. Dr. McCann testified, "Time variant rate schedules must be simple for customers to understand and use to be widely adopted." CUB/EDF Ex. 1.0 at 7. Accordingly, CUB/EDF propose that ComEd offer customers a TOU rate that applies the same price per kilowatt hour each day to usage during each of an establish range of hours. CUB/EDF states whether a customer elects to take service on an STOU rate, a DTOU rate, or both, their experience is simple. CUB/EDF argue this simplicity is especially evident if, as CUB/EDF proposes, ComEd's STOU and DTOU rate offerings feature matching hourly interval ranges. CUB/EDF contend this design feature would maximize ease of use by providing customers a unified price signal, seamlessly integrating the STOU and DTOU rates to where, from the customer's perspective, they are indistinguishable from a single combined TOU rate. Thus, CUB/EDF conclude their proposal maximizes simplicity and customer choice.

CUB/EDF contrast their own straightforward approach to ComEd's rigid, convoluted proposal to automatically enroll every residential or small commercial customer taking service on a time-variant supply rate to also take service on a DTOU, regardless of whether these rates are even remotely consistent with each other. CUB-EDF point out ComEd's proposal fails to provide customers with the option to simply take service on a TOU rate. Instead, unless and until ARES develop other time-variant supply rates, the only option for a ComEd customer to take service on a TOU rate is a DTOU, which is then automatically paired with ComEd's Real Time Pricing rate, Rate BESH. Dr. McCann testified, "having one portion of a customer's bill determined on an hourly basis and another on a multipart time period basis complicates a customer's decision rather than simplifies it." CUB/EDF Ex. 1.0 at 7. Dr. McCann further explained that Rate BESH applies real time prices in the PJM wholesale market, which often diverge drastically from the preset DTOU prices. *Id.* at 7-8. "For example, higher solar power production in the early afternoon in the spring can push PJM prices below nighttime prices while the distribution TOU price would be higher at the same time." *Id.* at 8. In this common situation, and many others like it, a customer would be forced to perform a multivariate analysis considering multiple price signals, one of which is known in advance while the other is not. *Id.* at 147-148; CUB/EDF Ex. 2.0 at 7. In fact, Rate BESH's energy price for each hour does not settle until the end of the hour. *Id.* at 141-145. Thus, CUB/EDF explain, Rate BESH customers are not responding to price signals so much as they are

attempting to predict future shifts in volatile energy markets. Dr. McCann observed, "This situation will be challenging to a computer scientist much less a typical customer." *Id.* at 7. Dr. McCann concluded, "These confusing signals are likely to blunt intended consumer response. A single unified overall price, such as one delivered through a combined TOU rate, avoids that problem." CUB/EDF Ex. 1.0 at 8.

Pairing the DTOU with ComEd's Rate BESH imposes another layer of complexity, and an additional source of risk: the Capacity Charge. CUB/EDF Ex. 2.0 at 8. The Capacity Charge is a fixed monthly charge accounting for roughly 40% of participants' supply costs, resetting once every twelve months. *Id*. at 8; *see also* CUB/EDF Cross Ex. 12.0. The Capacity Charge is calculated as the PJM Net Load Price for the PJM Planning Year, adjusted by uncollectible factors, multiplied by the customer's volumetric usage during the five highest peak systemwide usage hours across ComEd's service territory, and the same for PJM's service territory, with overlapping hours counting double, for the previous year. CUB/EDF Ex. 2.0 at 150-153; CUB/EDF Cross Ex. 12.0 at 13. When ComEd proposed to incorporate the same capacity charge mechanism into a supply TOU rate (RTOUPP), the Company's own witness admitted ComEd "cannot precisely predict which days will be the system peak demand days." CUB/EDF Ex. 2.0 at 8. A witness for the AG further testified that ComEd cannot know in advance which 5 to 10 of the 8,760 hours in a year will matter in determining the amount of the Capacity Charge, thereby providing not so much a price signal as a guessing game with significant financial consequences. *Id.* at 8. In response, the Commission rejected ComEd's previous attempt to automatically pair the Capacity Charge with a TOU rate, finding it likely that "customers will never make the connection between a fixed Capacity Charge on their current bill to their usage during a few peak hours the summer before." RTOUPP Order at 27-28. CUB/EDF ask the Commission to do so again here.

CUB/EDF maintain, given the complexity and inherent uncertainty of determining the cost of using electricity at any given time for Rate BESH customers, it is no surprise that, as of this past December, only 1.1% of ComEd residential customers and 1.3% of ComEd small commercial customers take service on the rate. *See* ComEd Ex. 3.0 at 8. CUB/EDF argue it stands to reason customers' hesitance to enroll in Real Time Pricing does not stem from the rate being too simple. Now, the Company proposes to add another layer of complexity to what CUB/EDF consider an already difficult program for customers to comprehend. If a customer prefers to take service on both the DTOU and Rate BESH or an ARES time-variant rate, CUB/EDF suggest they should be at liberty to do so, but on an opt-in basis. CUB/EDF Ex. 2.0 at 9. CUB/EDF argue offering the DTOU only as a package deal with a rate that is either already established to be repellently risky (Rate BESH) or as of yet strictly hypothetical (an ARES time-variant rate) would undermine the effort to introduce ComEd's customers to the benefits of a TOU rate. *Id.* at 9; CUB/EDF Cross Ex. 3.0.

CUB/EDF argue that automatic pairing would unnecessarily hinder retail competition and choice. ICEA witness Wright testified that Illinois law reflects a policy preference to allow customers to choose their preferred ARES. ICEA/RESA Ex. 3.0 at 6. Mr. Wright elaborated:

> Not all time-variant supply rates or products are the same because they will cater to different customer risk tolerances

> and ability to reliably shift load. Each customer will make independent evaluations of risk tolerance along with potential upside. While some customers may (as [ComEd witness] Ms. Kremer suggests) seek to maximize the value of load-shifting, other customers will be less able to consistently shift load and thus will not want to take on the additional risk on their delivery bill. This should be the *customer's* choice and not ComEd's.

Id. (emphasis in original). Accordingly, Mr. Wright arrives at the same conclusion as CUB/EDF: The Commission should reject ComEd's proposal to automatically pair the DTOU rate with any time-variant supply rate and instead should offer the DTOU as its own separate tariff. *Id.* at 8.

CUB/EDF contend ComEd's proposal further threatens retail competition by extending an automatic 12-month stay off provision to the DTOU and pairing the DTOU, and by extension this requirement, with all time-variant supply rates. In discovery, the Company explained that its proposed automatic pairing of the DTOU with all time-variant supply rates means, "the application of such a requirement would prevent a customer from taking service under any time-of-use rate, including the DTOU rate, for a period of twelve months." CUB/EDF Cross Ex. 2.0. Thus, if a customer were to unenroll from Rate BESH, they would have to wait 12 months to enroll in a time-variant rate offered by an ARES. CUB/EDF agree with ComEd that rate arbitrage is a concern for customers leaving and returning to the same time-variant rate within 12 months, but offer that it would be problematic to apply the same stay off requirement to switching from one time-variant rate to another, as ComEd proposes. CUB-EDF suggest the Commission can avoid this problem by ordering ComEd to offer the DTOU as its own separate tariff, so the associated stay off provision does not adversely impact retail supplier choice.

CUB/EDF argue the net metering credits problem ComEd points to does not require automatic pairing to solve. Ms. Kremer explained in testimony that Illinois' net energy metering law is structured to prevent a net metering customer who takes service on both a flat supply rate and the DTOU from accessing a potentially large portion of the customer's net metering bill credits. ComEd Ex. 11.0 at 12-13. Ms. Kremer elaborated that net metering customers can avoid this problem if they enroll in either (1) a time-variant supply rate and a flat distribution rate or (2) a time-variant supply rate and a time-variant distribution rate. *Id.* at 13. She further noted the net metering statute requires ComEd to offer the same rates to net metering customers that it offers to non-net metering customers, and therefore, the Company cannot offer the DTOU rate as a standalone tariff without also offering it as such to net metering customers. *Id.* at 14.

CUB/EDF agree with ComEd's reading of the statute. However, CUB/EDF explain ComEd's proposed solution – prohibiting all customers from pairing a time-variant distribution rate with a flat supply rate or vice versa – is unnecessary. CUB/EDF point to a simpler solution: ComEd can offer the DTOU rate as a standalone tariff but provide net metering customers the necessary information during the sign-up process to make an informed choice. If, after receiving the necessary information about how their rate options affect their bill credits, the customer still insists on signing up for the DTOU and a flat supply rate, that is their own choice. They would retain the option to enroll in a time-variant supply rate or to unenroll from the DTOU or net metering, depending on their

preference. It is simply not necessary to impose the aforementioned negative consequences of automatic pairing to address this issue. ComEd knows which of its customers take service on which of its tariffs and can provide the necessary disclaimers to any customers who find themselves in this situation. Merely offering a rate does not force a customer to enroll, and net metering customers are not the only ones who may not benefit from enrolling in this rate. CUB/EDF maintain to design around just one small subset of customers to only mitigate their risk is unnecessary. CUB/EDF argue state policy encouraging customer choice supports the approach to provide customers with the relevant information and let them make their own decisions. CUB/EDF conclude purporting to protect customers by taking away rate choices is the type of paternalistic ratemaking that customer choice was intended to move away from.

For the foregoing reasons, CUB-EDF request the Commission should reject ComEd's proposal to automatically pair the DTOU with time-variant supply rates.

CUB/EDF oppose ComEd's proposal to automatically and exclusively apply the DTOU rate to every residential and small commercial customer who is on a time-variant supply rate. *See* ComEd IB at 52-53. The Company claims this is appropriate because the DTOU rate is "flexible and maximizes the value of a customer's load-shifting decisions at minimal risk to the customer." *Id.* at 52. CUB/EDF note ComEd offers no record support for this statement.

CUB/EDF agree there are many potential benefits for customers who take service on a DTOU rate. However, CUB/EDF argue requiring that all time-variant supply rate customers also take service on the DTOU rate, and not offering the DTOU rate to anyone else, certainly is not a policy choice in the direction of flexibility. CUB/EDF maintain a rate offering cannot be said to be flexible if it limits, rather than increases, customer choice.

Further, CUB/EDF, ICEA/RESA, and the AG note, while taking service on a DTOU can maximize customer benefits, not every customer on a time-variant supply rate is necessarily better off also taking service on the DTOU, and vice versa. ICEA/RESA IB at 20-22; AG IB at 7-11. CUB/EDF explain because individual customers' circumstances vary, some customers' benefits from taking service on either a time-variant supply rate or a DTOU would actually be reduced by being forced to also take service on both.

For example, a Rate BES customer who previously made no effort to shift their usage away from peak hours, as they had no incentive to do so, may have had high usage during system peak hours the previous year. Thus, their past behavior would lock them into a high Capacity Charge were they to take service on ComEd's Rate BESH. Absent a better-suited ARES time-variant supply rate offering that currently does not exist becoming available and known to the customer by then, this customer would be unable to take service on the DTOU rate without also taking on a large monthly fixed Capacity Charge under Rate BESH that would reduce, perhaps even entirely offset, the benefits that customer can reasonably expect to otherwise achieve. For this customer to save, they would have to shift load during the year's system peak hours without any compensation at the time, avoid guessing wrong about when those hours are, and then sign up for both the DTOU and Rate BESH the following year.

Without automatic pairing, that same customer would be able to take service on the DTOU, be rewarded for shifting load that then produces system benefits for others,

and only sign up for Rate BESH if and when it makes sense for that customer to do so. CUB/EDF argue this approach far better conforms to any coherent definition of the word "flexible" and allows the customer to unlock benefits that otherwise would not be available to them.

Finally, ComEd attempts to minimize the risk impact of automatically pairing the DTOU rate with any time-variant supply rate by noting, under the Company's proposed design, the difference between the highest DTOU hourly price and Rate BES would be "only" roughly 5 cents per kWh. *Id.* at 53. CUB/EDF state this attempt to downplay the implications of forced pairing of time-variant rates ring hollow. CUB/EDF contend a nearly 5-cent per kWh price difference is actually quite significant. The current price to compare for ComEd, which combines supply and transmission, is 6.47 cents per kWh. PLUGIN ILL., *Understanding the Price to Compare*, https://plugin.illinois.gov/understanding-the-price-to-compare/price-to-compare-comed.html (last accessed Nov. 5, 2024). CUB/EDF explain adding almost 5 cents per kWh via the DTOU would virtually eliminate any potential room for net savings from a time-variant supply rate. Moreover, CUB/EDF propose to apply the highest peak DTOU price only during the summer months, which would make the difference between this highest peak DTOU price and Rate BES larger. *See* CUB/EDF Ex. 1.0 at 16-17. CUB/EDF conclude a customer cannot safely ignore the cost impacts of the DTOU rate, as ComEd suggests.

For these reasons, CUB/EDF urge the Commission to reject ComEd's proposal to automatically pair the DTOU and time-variant supply rates together and instead allow customers to decide their choice of rates for themselves.

e. ICEA/RESA's Position

ICEA/RESA register opposition to ComEd's proposed requirement that any customer taking a time-of-use supply option must take ComEd's proposed optional time-of-use delivery rate. ICEA/RESA instead urge the Commission to allow any residential or small commercial customer to take or refuse the proposed DTOU rate.

According to ICEA/RESA, the primary reason that the Commission should allow all residential or small commercials to take or refuse ComEd's proposed DTOU rate is preserving and enhancing customer choice. ICEA/RESA highlight that Mr. Wright explained that the Act empowers customers to make their own energy choices through voluntary real-time pricing utility supply rates for residential customers and allowing ARES to receive authorization to access critical customer interval data. *See* ICEA-RESA Ex. 3.0 at 6. According to ICEA/RESA, not all customers will benefit from all TOU options because of each customer's different risk tolerance and ability to shift load according to the specific design of any time-variant rate. *See id.* at 6. ICEA/RESA argue that some customers may seek to maximize their upside, but others may, despite the potential upside, not wish to expose themselves to the risk of both an STOU and DTOU rate. *See id.* at 6.

According to ICEA/RESA, there are also many reasons that even customers with a higher risk appetite that is reflected in their STOU option may not want ComEd's DTOU option: the supply option and ComEd's delivery rate may have inconsistent or conflicting incentives. ICEA/RESA highlight that according to Mr. Wright, a particular time-variant supply option may incentivize customers to shift or reduce load in a way that is not

advantageous under ComEd's proposed delivery time-of-use tariff. *See id.* at 6; ICEA/RESA Ex. 6.0 at 7; *see also* ICEA/RESA Ex. 3.01. ICEA/RESA continue that Mr. Wright identified the specific example of a free nights and weekends supply product, which would incentivize very different behavior than ComEd's three-tiered time-of-use delivery rate. *See* ICEA-RESA Ex. 6.0 at 7. ICEA/RESA urge that the Commission should not artificially limit a customer's ability to choose their supply and delivery options by requiring that a time-of-use supply rate must be paired with ComEd's DTOU and vice versa.

ICEA/RESA highlight that CUB/EDF summarized several compelling reasons for the Commission to not link ComEd's DTOU rates with necessarily taking a supply time-of-use ComEd rate or ARES product:

> Making the DTOU available as its own separate rate offering is necessary to (1) conform with the clear intent of the Commission's order approving the Company's Beneficial Electrification Plan, (2) ensure the DTOU is an available and appealing option for ComEd customers who do not necessarily wish to also enroll in Rate BESH, and (3) avoid undue discrimination against ARES and their customers.

CUB/EDF IB at 13. According to ICEA/RESA, CUB-EDF also agree that requiring a customer to take an STOU rate or ARES product with delivery time-of-use is confusing to customers. *See id.* at 14. ICEA/RESA note that while they disagree that the solution is Commission approval of a new ComEd STOU rate (which is prohibited under Section 16-103(e) for reasons addressed in Section VI.F.1 infra), ICEA and RESA fully agree with CUB/EDF's reasoning about why a required pairing is not appropriate.

ICEA/RESA further highlight that CUB/EDF oppose pairing because of the impact it will have on customers' time-of-use ARES supply choices. *See* CUB/EDF IB at 17-18. According to ICEA/RESA, CUB/EDF in particular highlights the switching restrictions ComEd proposed under its DTOU rates. *See id.* at 18. ICEA/RESA agree that ComEd's proposed switching restrictions would further inhibit retail competition and negatively impact customer time-of-use choices.

According to ICEA-RESA, the AG, like ICEA and RESA, notes the disconnect between price incentives on ComEd's DTOU rates and an STOU rate, in their case ComEd's Rate BESH. ICEA-RESA note the AG's explanation that: "This situation [pairing ComEd's Rate BESH with ComEd's delivery time-of-use rate] creates a clear catch-22 for the consumer: on a sunny afternoon with abundant solar energy available, the same electricity would be both cheaper (from the RRTP supply perspective) and more expensive (from the DTOU perspective)." AG IB at 8. ICEA/RESA agree, noting this is one example from the wide range of potentially available time-of-use supply products and services that ARES may offer.

On reply, ICEA/RESA note that unlike CUB/EDF and the AG, Staff and ComEd support requiring a customer selecting the DTOU rate to take an STOU rate or ARES product and vice versa. According to ICEA/RESA, ComEd provided little support for its position in briefing, relying solely on the unsupported contention from Ms. Kremer that customers on ComEd's DTOU rate will modify usage patterns to optimize savings under

both ComEd's DTOU rate and the customer's selected STOU option. *See* ComEd IB at 52-53. ICEA/RESA reiterate that ComEd is ignoring the misalignment of incentives between ComEd's DTOU rate and available or potential STOU options. *See supra* at VI.E.2 (agreeing with AG argument).

Similarly, ICEA/RESA continue, Staff provided little basis for its position, simply restating Ms. Kremer's positions and argument that required pairing is acceptable because "the customers will retain the ability to choose their electric supplier and thus their supply rate." Staff IB at 33. ICEA/RESA note that they agree that a customer will be able to choose an ARES time-of-use supply product under ComEd's proposal—subject of course to the switching limits CUB/EDF raised that ICEA and RESA agree with supra—nevertheless the ability to choose an ARES is different from the ability for the customer to choose their product. ICEA-RESA point out that once the technical changes for Rider Interval Meter Usage Data ("IMUD") as ordered in Docket No. 23-0773 are in place, ICEA witness Mr. Wright expects more ARES TOU options to be available. *See* ICEA/RESA Ex. 3.0 at 3. However, ICEA/RESA respond, that does little to relieve the misalignment between ComEd's proposed DTOU rate and the myriad possible STOU rates as highlighted by ICEA and RESA and the AG and described in response to ComEd's similar argument. ICEA/RESA urge that the Commission should thus not adopt Staff's position.

ICEA/RESA note that ComEd raised concerns that programming the ability for a customer to elect a time-variant supply with the current delivery rate or the time-variant delivery rate with a fixed-rate supply option would be challenging. *See* ComEd Ex. 3.0 at 14. ICEA/RESA respond that given that ComEd's challenges with their Customer Care & Billing ("CC&B") system upgrades have directly and seriously impacted all ARES serving customers in the ComEd service territory since February 2024, ICEA and RESA do appreciate ComEd's candor about programming challenges. However, ICEA/RESA counter that Mr. Wright noted that ComEd will be upgrading its systems twice (once for Rider IMUD as ordered in Docket No. 23-0773 and again for the proposed DTOU rate). *See* ICEA/RESA Ex. 3.0 at 8. ICEA/RESA note that Mr. Wright further warned that he is "highly concerned that ComEd will experience similar defects and failures in fully executing critical systems that ARES need to serve their customers (all customers, not just customers on time-variant products and services)." *Id.* at 8. On the other hand, ICEA/RESA continue, ComEd admitted in discovery that it does not know whether its proposed DTOU rate will have conflicting or inconsistent incentives as any particular ARES TOU option. *See* ICEA/RESA Ex. 3.01.

According to ICEA/RESA, the record has clearly established that ComEd's justification that customers want to maximize their load shifting potential (*see* ComEd Ex. 3.0 at 13-14) is mere speculation. ComEd admitted in discovery that ComEd "does not have the information to estimate the number of customers that would take an additional step to elect the DTOU in combination with a ComEd or RES time-variant supply rate." ICEA/RESA 3.01. ICEA/RESA contend that ComEd also does not know whether any customers would actually benefit from requiring its time-variant delivery rate to solely and exclusively be paired with STOU options. *See id*. In other words, ICEA/RESA note, ComEd is attempting to force customers into a choice that ComEd admits it has no idea whether customers actually want or would benefit from.

ICEA/RESA note that while ComEd does highlight the very real risks posed to customers and ARES from ComEd's billing system upgrades, the proper remedy is greater oversight and accountability rather than artificially restricting customer choice. ICEA/RESA argue that none of ComEd's other voluntary options require a specific or different delivery rate structure—ComEd's proposed DTOU rate would be the outlier. *See* ICEA/RESA Ex. 6.0 at 5-6. ICEA/RESA conclude that ComEd provided no convincing justifications for why its DTOU rate should be treated differently than any other of its voluntary programs.

f. ELPC/VS/UCS' Position

ComEd proposes to offer only a TOU delivery rate, and its plan requires that customers must combine its DTOU rate with an STOU rate. Given that ComEd offers no supply rate, customers must sign up for an STOU rate from a competitive supplier to get the TOU delivery rate. In support of this, ComEd argues:

> If a customer would like to find a rate that rewards shifting their energy usage, it would be counterintuitive for ComEd to offer a non-time variant distribution option to go with the time-variant supply election the customer just made. The most straightforward and customer-friendly offering for a time-variant rate is one where our customers can maximize the effects of any actions they will take to shift load. Pairing time-time variant supply rates with a time-variant distribution rate accomplishes this goal.

ComEd Ex. 3.0 at 13. ELPC/VS/UCS agree with Kremer's assessment. However, "the most straight forward customer friendly offering" is for ComEd to offer customers an STOU and DTOU as a bundled rate. ComEd presents no evidence that customers will find it appealing to shop for TOU rates under the split framework it proposes.

CUB/EDF witness McCann testifies extensively in support of ComEd aligning its supply and distribution time variant rate tariffs. CUB/EDF Ex. 1.0 at 5. He notes, "[g]iven that the utility is arguing that matching supply and distribution time variant rates is required for customers to have simpler 'customer friendly' choices, the lack of such a proposal is surprising and inconsistent with the utility's reasoning." *Id.* at 7. ELPC/VS/UCS agree with this analysis.

ELPC/VS/UCS highlight that Ms. Kremer testifies that she does not know how if any competitive suppliers in its territory currently offer an STOU rate, and ComEd has no estimate of how many suppliers will offer an STOU rate in 2026. Tr. at 95. Nor does ComEd have any projections for how many customers will sign up for TOU rates. Tr. at 91. Most importantly, ComEd has no requirement that supplier TOU periods match up with ComEd's four TOU periods. Ms. Kremer acknowledges that the TOU offerings could have eight or more time periods for customers to remember depending on the supplier offerings. "They could potentially have many more than eight time periods, in the example that we provide with the residential time of -- sorry, Residential Real-Time Pricing program, it's a different price in every hour." Tr. at 96. According to Ms. Kremer, "[a] fully 'unified' price signal is not necessarily desirable, because staggered periods allow for more flexibility in customer behavior." ComEd Ex. 11.0 at 8. But she also could not

answer a question about how she thinks having so many time periods may affect the number of customers who sign up for TOU. Tr. at 97. ELPC/VS/UCS strongly agree with CUB/EDF witness McCann, who emphasizes that ComEd should offer a bundled TOU rate to make it easy for customers to understand and achieve wide adoption. CUB/EDF Ex. 1.0 at 7.

For any program, the Commission should look at the cost-benefit analysis. ComEd's direct testimony provides no estimate for the cost of this program, which raises concerns about the cost-benefit analysis that the utility should do. Then on cross, Ms. Kremer estimates the cost at $5 to 10 million dollars. Nowhere does ComEd look at how those costs compare to the benefits.

g. Commission Analysis and Conclusion

The Commission will not require ComEd's DTOU to be mandatory if a customer elects to participate in a time-variant supply rate. Instead, the Commission agrees with the AG and CUB/EDF and approves ComEd's DTOU as a separate rate offering available on an opt-in basis. In arriving at this conclusion, the Commission agrees with the AG that ComEd's proposal would add unnecessary complexity and competing incentives to the DTOU and make it harder for customers to understand, assess, and take advantage of the potential benefits of these programs. The Commission also emphasizes the risk to low-income customers as highlighted by the AG and illustrated by ComEd's own supply RTOUPP. The Commission also agrees with CUB/EDF that if the DTOU was paired with Rate BESH, the capacity charge would add complexity and customer risk, while diminishing the effectiveness of the price signal that the DTOU is intended to transmit.

The Commission notes that ICEA/RESA also joins CUB/EDF's reasoning in opposing the pairing and emphasizes the Commission's priorities in preserving and enhancing customer choice. CUB/EDF suggest that ComEd offer its own STOU. The AG supports this proposal along with ELPC/VS/UCS, which do not oppose a pairing of a DTOU and STOU so long as it is proposed by ComEd. The Commission addresses the STOU proposal below in Section F.4.

4. Revenue Requirement Allocation to DTOU Customers

a. ComEd's Position

ComEd states neither CUB/EDF's proposal nor Staff's proposal for tracking the impact of DTOU rate adoption and providing those benefits back to customers is appropriate for consideration. ComEd states that it cannot track any deferred distribution system investments as a result of DTOU load shifting, nor pass on any itemized or calculated benefits to the customers enrolled in the DTOU rate. *See* ComEd Ex. 9.0 REV. at 20-21.

ComEd asserts that its DTOU rate already provides immediate, tangible benefits to customers by allowing them to shift load to a DFC below what they would be charged on the flat delivery rate, thus saving money on their bill. *Id.* It also benefits them in the future, to the extent that ComEd can avoid investments as a result of DTOU load-shifting and reduce its revenue requirement. *Id.* Therefore, the benefits of DTOU rate participation are already inherently and automatically passed through to customers and no additional benefits need be returned. *Id.*

First, ComEd argues that it does not have the ability to capture data to prove out the assumption that DTOU customers will identifiably shift load because of the DTOU rate. It is not possible to accurately isolate deferrals of investment caused by a customer's load shifting under the DTOU rate because many factors could influence a change in a particular customer's usage. *Id.* at 21. ComEd proposes that its DTOU rate be paired with time-variant supply rates, whether from ComEd or a RES so is not possible to isolate whether a customer's subsequent load shifting was driven by the DTOU rate or by their time-variant supply rate, let alone apportion benefits achieved between the two. *Id.* at 21-22.

In addition, ComEd argues, there would be administrative and operational costs associated with attempting to track the supposed benefits of DTOU rate participation, and those costs would be borne by all customers. ComEd Ex. 9.0 REV. at 20-21. Existing, approved ratemaking structures do not provide for the pass-back of unspecified future grid savings to individual customers. *Id.* at 21.

ComEd notes that proposals also assume customers will shift load on the DTOU rate, which they may not. ComEd Ex. 9.0 REV. at 21. Furthermore, ComEd argues, Staff's and CUB/EDF's proposals suggest that ComEd return "additional" measured benefits to DTOU rate customers, irrespective of whether any of those customers is individually shifting load. *See* CUB/EDF Ex. 2.0 at 23; Staff Ex. 6.0 at 14. Therefore, because some DTOU rate customers make decisions to shift load, all DTOU rate customers would receive a pass-back of benefits that are paid for by other ComEd customers—including other customers on the DTOU rate.

Finally, ComEd argues that these supplemental benefits would blunt the clear price signals inherent to TOU rate design. *See* ComEd Ex. 6.0 at 22 (explaining the DTOU rate's price signals and the negative impact of additional compensation). Ultimately, these proposals do not advance the "fairness" advocated for by their proponents and, even if it were possible to implement them, these proposals fundamentally undermine the design of the DTOU rate. As ComEd explained, all benefits from participation are already automatically and directly provided to DTOU rate customers through reduced charges on their bill, so additional credit would result in double counting benefits for those DTOU rate customers.

ComEd states in its RBOE that it does not object to Staff's proposed next steps for additional discussion and data collection on this issue.

b. Staff's Position

Staff recommends that the Company should use actual usage data for customers who enroll in the DTOU rate, after the fact, to calculate any impacts. The Company should determine the avoided or deferred investment due to the change in customer behavior within the year and pass on such benefits to the customers that adopted the DTOU. Using the actual benefits realized will help reduce the issue of over or under forecast and provide customers with the actual benefits that their adoption of DTOU provides them. Staff Ex. 6.0 at 14.

CUB/EDF recommend that projected system cost savings from reduced peak period use should be deducted when calculating the benchmark for allocating revenue

requirements for STOU and DTOU schedules. CUB/EDF Ex. 1.0 at 3. Staff disagrees with CUB/EDF because the proposed benefits are contingent on customers' decisions to opt into a DTOU and any resulting change in electricity usage and it is not clear the forecast accurately predicts customer adoption rates or behavior change. Staff Ex. 6.0 at 14. Instead, ComEd should use actual data on customer adoption rates and behavior changes to determine the benefits of DTOU adoption. *Id.* The Company does not yet have such data available. ComEd Ex. 4.0 at 17. The lack of actual data may cause potential issues with the forecast which can make it difficult to tell if the Company forecast of benefits of the DTOU is exaggerated. While Staff does not support CUB/EDF's methodology to calculate savings, Staff agrees that customers should benefit. Staff recommends that, within a year of implementing a DTOU, ComEd determine the amount of avoided or deferred investments attributable to adoption of a DTOU and pass those savings on to customers. Staff Ex. 6.0 at 14.

ComEd disagrees with both Staff and CUB/EDF, saying the calculations are unnecessary. ComEd Ex. 9.0 REV. at 20. Staff disagrees with the Company and recommends that the Company should use actual data to determine the avoided or deferred investment due to the change in customer behavior both because this will help reduce the issue of over or under forecast and because it will ensure customers realize the actual benefits associated with adopting a DTOU rate. Staff Ex. 6.0 at 14.

As requested by the Proposed Order, on exceptions Staff stated that future discussion and data are necessary prior to implementation and provided suggestions on how to achieve those objectives.

c. CUB/EDF's Position

As Dr. McCann testified, "[t]he point of adopting TOU rates is to create system wide savings for all customers," yet in allocating revenues between DTOU customers and other customers, ComEd "assumes there are no such savings." CUB/EDF Ex. 1.0 at 20. ComEd bases this assumption on a misapplication of the requirement that the Company's rate design be "revenue neutral." CUB Ex. 2.0 at 5. As Dr. McCann explained, "Revenue neutrality, which is required specifically of distribution rates, is intended to avoid creating windfall profits for the utility and to minimize cost shifting among customers." *Id*. at 5. CUB/EDF explain the principle of revenue neutrality prevents ComEd from knowingly deviating from its revenue requirement via rate design, but it does not preclude the Company from allocating revenues differently to subsets of its customers that take service on a different tariff. In fact, CUB/EDF argue, intentional allocation of revenues between customers who take service under different terms is a core purpose of a rate design investigation.

CUB/EDF contend the Company calculates the DTOU's hourly period rates as if customers taking service on the DTOU will ignore the time-variance of these prices and behave the same, causing the same costs, as a flat-rate customer would. CUB/EDF Ex. 1.0 at 20-21. Dr. McCann summarized his concerns about this approach as follows:

> the sole purpose of implementing TOU rates is reduce overall utility costs by lowering investment and power purchase requirements. To be revenue neutral requires that ComEd recover distribution revenues equal to its authorized

> distribution revenue requirement. To achieve this, any utility that serves customers on a TOU rate must anticipate the likely change in customers' usage induced by taking service on a TOU rate and assign billing determinants accordingly in determining TOU and non-TOU customers' appropriate contributions to overall revenues. If ComEd simply assumes the cost of service will be identical for these customers regardless of which rate they are on, then ComEd is assuming customer behavior will be unchanged, that utility revenue requirements will be unchanged, and that state policy to reduce energy costs will fail. Also ComEd would consistently overcharge TOU customers, and as a result, overcollect revenues.

CUB/EDF Ex. 2.0 at 5.

To remedy these flaws, CUB/EDF propose that the Commission order ComEd to determine TOU and non-TOU customers' respective distribution revenue responsibilities to reflect the change in relative costs of service for the two groups, based on reasonable assumptions regarding DTOU customers' load patterns. *Id*. at 6. One resource that can inform such expectations is the results of ComEd's RTOUPP program. CUB-EDF Ex. 2.0 at 70-79. This pilot featured a TOU rate designed similarly to ComEd's proposed DTOU, and even more similarly to CUB/EDF's proposed DTOU, and documented significant load-shifting by participating customers. *See* CUB/EDF Ex. 1.0 at 11.

CUB/EDF further recommend the Company and the Commission revisit assumptions about DTOU customers' load patterns and their resulting contribution to cost of service in subsequent rate design investigations, to reflect updated data. *Id.* at 6. In doing so, Dr. McCann testified, the Commission "can create a virtuous cycle where customers are attracted to the rate schedule which then creates more savings which are then passed on to those customers." *Id*. at 7.

CUB/EDF argue the Commission should reject all of ComEd's attempts to defend the Company's refusal to assume load-shifting when allocating ComEd's revenue requirement between DTOU and flat distribution rate customers. First, CUB/EDF contend ComEd misapplies the concept of revenue neutrality to suggest CUB/EDF's proposal is out of scope. ComEd IB at 53. ComEd's case in chief on this point consists of two sentences, reproduced here in their entirety: "CUB-EDF's first proposal for ComEd to deduct projected system cost savings due to DTOU-motivated reduced peak period use from its distribution revenue requirement amount must be rejected. This is not a revenue neutral proposal and is thus inappropriate to suggest in this proceeding." *Id.* at 53 (citations omitted). CUB/EDF note the Company made no attempt to define revenue neutrality. CUB/EDF addressed this matter in the IB:

> As [Dr.] McCann explained, "Revenue neutrality, which is required specifically of distribution rates, is intended to avoid creating windfall profits for the utility and to minimize cost shifting among customers." [CUB Ex. 2.0] at 5:90-92. The principle of revenue neutrality prevents ComEd from

> knowingly deviating from its revenue requirement via rate design, but it does not preclude the Company from allocating revenues differently to subsets of its customers that take service on a different tariff. In fact, intentional allocation of revenues between customers who take service under different terms is a core purpose of a rate design investigation.

CUB/EDF IB at 20. CUB/EDF contend the Company's IB offers no substantive arguments in support of the outcome ComEd desires. CUB/EDF implore the Commission to reject the Company's request to dismiss CUB/EDF's proposal for lack of basis.

Second, ComEd claims "it is not possible to match deferred investments to DTOU rate adoption." ComEd IB at 54. The Company bases its position on the insistence of ComEd witness Perkins that the Company cannot verify that "DTOU rate customers will actually shift load in a detectable way solely because of the DTOU rate." *Id.* (citing ComEd Ex. 9.0 REV. at 20, 21). CUB/EDF explain this premise is disproven by ComEd's own reports detailing the results of its years-long TOU rate pilot (RTOUPP) and Rate BESH and measuring load-shifting by participants. CUB/EDF Ex. 1.0 at 10-11; CUB/EDF Ex. 2.0 at 4-5. CUB/EDF assert the point of conducting RTOUPP, a 4-year pilot program, in particular was to collect this type of data and use it to inform future rate design. *See* RTOUPP Order at 38-41. CUB/EDF consider it puzzling ComEd refuses to utilize the fruits of its own labor to reasonably allocate revenue responsibilities between rate classes in this rate design investigation.

Third, ComEd argues "DTOU customers will already receive all benefits generated by their load-shifting" without the Company intentionally reallocating revenue responsibility between DTOU and non-DTOU customers based on expected load-shifting. ComEd IB at 54-56. While CUB/EDF agrees that DTOU customers would stand to benefit from load-shifting even under ComEd's proposal, Dr. McCann explained DTOU customers as a group would overpay:

> If ComEd simply assumes the cost of service will be identical for these customers regardless of which rate they are on, then ComEd is assuming customer behavior will be unchanged, that utility revenue requirements will be unchanged, and that state policy to reduce energy costs will fail. Also, ComEd would consistently overcharge TOU customers, and as a result, overcollect revenues.

CUB/EDF Ex. 2.0 at 5.

The Company then rehashes its claim that rate design cannot reasonably assume DTOU customers will shift load in response to price signals. ComEd IB at 55. In response, CUB/EDF point again to ComEd's own reports documenting the Company's extensive experience with time-variant rate customers responding to such price signals by shifting load. CUB/EDF Ex. 1.0 at 10-11; CUB/EDF Ex. 2.0 at 4-5. ComEd further argues that it would be unfair to allocate DTOU rate customers' collective revenue responsibility based on the group's aggregated load shape. ComEd IB at 55-56. CUB/EDF express disbelief that the Company can possibly believe such a practice is inherently inappropriate, seeing as allocating revenues to rate classes based on

assumptions about the total cost to serve each of those rate classes is the fundamental basis for much of ComEd's entire approach to rate design in this proceeding. CUB-EDF point out each customer does not get their own personalized revenue allocation either way. CUB/EDF argue rate design necessarily requires the application of informed assumptions regarding the cost of service and magnitude (and, for time-variant rates, timing) of billing determinants for each rate class as a whole, which then provide the foundation for designing the pricing formula that applies the same to customers within each respective rate class. CUB/EDF maintain that none of these considerations are unique to a DTOU rate. CUB/EDF and Staff ask that ComEd not exempt the DTOU rate from the cost-causation principle that generally applies to rate design.

CUB/EDF suggest on exceptions that RTOUPP data could be used to implement these benefits, while the parties wait to obtain actual data.

d. Commission Analysis and Conclusion

The Commission agrees with Staff and CUB/EDF that customers should realize the actual benefits associated with adopting a DTOU rate. To calculate those benefits, the Commission directs the Company to use actual data to determine the avoided or deferred investment due to the change in customer behavior as suggested by Staff. Therefore, the Commission directs the Company to take the following steps as recommended by Staff in an effort to determine the amount of avoided or deferred investments attributable to adoption of a DTOU.

First, the Commission directs ComEd to track the amount of avoided or deferred investments attributable to adoption of a DTOU. Second, the Commission directs ComEd to coordinate with Staff, CUB/EDF, and any additional stakeholders that notify the Company of an interest to coordinate on this issue to select methodologies to be used to identify investments that are avoided or deferred due to DTOU adoption, including quantifying changes in customer energy usage patterns to determine peak demand reduction, prior to the implementation of the DTOU rate in January 2026. Third, the Commission directs ComEd to calculate savings attributable to the DTOU after implementation of the DTOU rate starting no later than January 2026. Fourth, the Commission directs ComEd to apply the selected methodologies to track data on deferred and avoided investments and report out on the progress related to this issue, including any identified savings, in its annual Grid Plan report so that the information may be available to Staff and interested stakeholders. Whether there are tangible savings and how those savings are passed on to ratepayers should be discussed among the parties. The Commission notes that ComEd does not object to this approach. The Commission declines to utilize RTOUPP data in the interim as suggested by CUB/EDF.

5. Customer Outreach and Educational Materials

a. ComEd's Position

ComEd recommends the Commission memorialize its commitment to work with Staff and stakeholders regarding the development of customer education materials to facilitate understanding of the DTOU rate and how it is paired with time-variant supply rates. Specifically, ComEd agrees with Staff's proposed schedule for collaboration, beginning no later than August 31, 2025, with the deadline for production of finalized

materials by November 1, 2025. ComEd Ex. 11.0 2nd CORR. at 16. ComEd further agrees to provide notification and educational materials no less than 30 days prior to a RES-supplied customer being automatically switched from the flat DFC to the DTOU rate in January 2026, which means that the notification would go out no later than December 1, 2025. *Id.*

b. Staff's Position

The Commission should direct ComEd to create a clear plan for onboarding customers into the DTOU program. Staff Ex. 1.0 at 14-15. ComEd witness Kremer agrees with ICEA/RESA's and Staff's recommendation to work collaboratively with its marketing team, Elevate Energy, the Commission's Office of Retail Market Development ("ORMD"), and RES parties including ICEA and RESA to develop customer outreach and marketing materials and provide them to the parties mentioned above by August 31, 2025. ComEd Ex. 6.0 at 18. Staff agrees with ICEA/RESA's recommendation that the Commission should direct ComEd to provide ARES and Staff with advance copies of any marketing/educational materials and create a collaborative forum where interested ARES can provide ComEd with feedback on their marketing materials. Staff Ex. 4.0 at 10-11.

c. CUB/EDF's Position

CUB/EDF note that if net metering customers have the option to enroll in both a supply rate and a DTOU, ComEd will need to ensure any customer attempting to participate in both the DTOU and net metering is informed of the potential impact on their bill credits, and how to avoid that situation, before sign-up can be completed.

d. ICEA/RESA's Position

ICEA/RESA aver they raised two issues regarding customer outreach and education—one of which appears to be uncontested and the other of which is related to ComEd's proposal to require a customer taking an STOU rate to also take its proposed DTOU rate and vice versa.

ICEA/RESA note that Mr. Wright recommended that if ComEd's proposed marketing materials for their voluntary DTOU rate discusses ARES-provided products or services that ComEd should collaborate with ICEA, RESA, and the ORMD. *See* ICEA/RESA Ex. 3.0 at 7. ICEA/RESA concede that ComEd appears to have accepted this proposal by pledging to work with Staff, ICEA, RESA, and other interested parties regarding "specific content of the educational materials" by and provide materials by August 31, 2025. *See* ComEd Ex. 6.0 at 18. ICEA/RESA note that Mr. Wright agreed with ComEd's response.

Despite agreement about collaboration, ICEA/RESA note that Mr. Wright disagreed with ComEd that marketing materials would be too challenging or complex if a customer on STOU options could choose any delivery option or a customer on ComEd's time-of-use delivery option could make any supply choice. *See* ICEA/RESA Ex. 3.0 at 7; *see also* ComEd Ex. 3.0 at 13, 14. ICEA/RESA argue that despite not identifying a single additional cost, ComEd supports its proposed compelled pairing of STOU options and delivery rate by speculating that allowing customers more choices will be too expensive to explain. *See id*. ICEA/RESA further note that ComEd also provides no evidence as to what customers actually want or benefit from other than its own speculation and did not

attempt to study or ascertain customer demand. *See* ICEA/RESA Ex. 6.0 at 6 (citing ICEA/RESA Ex. 3.01).

ICEA/RESA conclude that while the Commission should approve ComEd's plan to collaborate with Staff, ICEA, and RESA, the Commission should also direct ComEd to develop marketing materials in support of ICEA/RESA's proposal to allow customers in ComEd's DTOU rate to choose any supply option.

e. Commission Analysis and Conclusion

The Commission memorializes ComEd's commitment to work with Staff and stakeholders regarding the development of customer education materials. The Commission agrees with Staff's proposed schedule and directs the parties to convene no later than August 31, 2025, with the deadline for production of finalized materials by November 1, 2025. It is noteworthy that Staff, CUB/EDF, and ICEA/RESA all generally support a collaborative process. In agreement with ICEA/RESA, the Commission directs ComEd to provide ARES and Staff with advance copies of any marketing/educational materials and create a collaborative forum where interested ARES can provide ComEd with feedback on their marketing materials. Parties should ensure that ARES customers are also provided with necessary customer education materials. In addition, the Commission directs ComEd to create customer education materials for net metering customers who have the option to enroll in both a flat supply rate and DTOU so they are aware of the potential impact on their bill credits, and how to avoid that situation, before sign-up can be completed as proposed by CUB/EDF.

6. Required Tariff Revisions

a. ComEd's Position

ComEd proposes to implement its DTOU rate proposal through modifications to its existing rates. ComEd Exs. 3.01 and 6.01; *see also* ComEd Exs. 3.02 and 6.02. ComEd states that this proposal is consistent with how distribution rates are implemented in ComEd's ratebook, i.e., not as separate tariffs, but as DFCs in other rates. ComEd Ex. 3.0 at 10 (explaining that a customer's delivery class determines the DFC applicable to the customer's Delivery section of their bill). ComEd notes that Staff concurs with ComEd that the DTOU rate does not need to be a separate tariff. Staff Ex. 4.0 at 11.

b. Staff's Position

ICEA/RESA recommends ComEd offer a new DTOU, through a separate tariff, rather than make changes to Rate BESH and Rate RDS to include that new rate. ICEA/RESA Ex. 3.0 at 8. Staff recommends the Commission reject ICEA/RESA's proposal. ICEA/RESA witness Wright expressed concerns that residential customers participating in Rider DG Rebate for storage facilities are currently prohibited from taking ARES supply service pursuant to Section 16-107.6(c)(2). *Id.* ComEd responded to this issue by making revisions to Rider DG Rebate; Staff recommends the Commission approve the revised tariff changes to Rider DG as they resolve ICEA-RESA's concern. ComEd Exs. 6.01 and 6.02. ICEA/RESA witness Wright also claimed that ComEd's proposed tariff changes would cause a divergence in Rate BESH and Rate RDS with future changes to either tariff. *Id*. at 9. ComEd testified these proposed changes would not intentionally cause a divergence and any changes to Rate BESH and Rate RDS would

have to be filed with the Commission, giving parties the opportunity to review the proposed modifications and investigate formally if it decided that was appropriate. ComEd Ex. 6.0 at 6. Staff agrees.

c. CUB/EDF's Position

CUB/EDF propose that ComEd file the DTOU as its own separate tariff rather than as a revision to Rate BESH.

d. ICEA/RESA's Position

ICEA/RESA raised two changes to ComEd's proposed tariff, one of which ComEd accepted and is uncontested and the other of which remains contested. ICEA/RESA argue that the Commission should approve ComEd's proposed change to Rider DG Rebate, supported by ICEA and RESA, to allow a customer on ARES supply but taking ComEd's DTOU rate to qualify for a 2B Rebate. ICEA/RESA further argue that the Commission should resolve the contested issue by directing ComEd to modify its tariff structure to allow Rate BES customers and ARES non-TOU customers to take ComEd's proposed DTOU rate.

ICEA/RESA urge that the Commission should direct ComEd to restructure their delivery rates to have a separate delivery service rate to allow for universal access (rather than for just customers taking an STOU option) to the DTOU rate. ICEA/RESA highlight that Mr. Wright noted that ComEd's proposed changes implementing DTOU rates were actually changes embedded within Rate BESH and Rate RDS, preventing Rate BES customers from participating at all and restricting access to ARES time-of-use customers. *See* ICEA/RESA Ex. 3.0 at 8, 9. ICEA/RESA contend that one implication of this issue is that customers taking the DG Rebate offered for storage paired with solar are required to take service under Rate BESH—even though an ARES TOU customer even under ComEd's proposed structure would be on a ComEd DTOU rate and thus eligible under Section 16-107.6(c)(2). *See id.* at 8-9; *see also* IL C.C. No. 10, 5th Revised Sheet No. 248.1 (conditions 11 and 12); 220 ILCS 5/16-107.6(c)(2).)

ICEA/RESA argue that ComEd's proposed fix to ICEA and RESA's specific example is to modify Rider DG REBATE to allow any customer taking ComEd's DTOU rate to qualify for the 2B Rebate. *See* ComEd Ex. 6.02 at 5; ComEd Ex. 6.0 at 5. ICEA/RESA note Mr. Wright supported ComEd's change even though he emphasized that he still believes that ARES customers on fixed rates should also be eligible for ComEd's DTOU rate and thus the 2B Rebate. *See* ICEA/RESA Ex. 6.0 at 4. Thus, according to ICEA/RESA, the specific changes to Rider DG REBATE are not contested, but ComEd's proposal to solely and exclusively pair its DTOU rate with STOU options remains contested.

ICEA/RESA contend that the increasingly convoluted changes required to Rate BES and Rate RDS to facilitate ICEA and RESA's recommendation to allow decoupling of ComEd's proposed DTOU rate and STOU options show that ComEd should adopt Ameren's approach from Rider EVCP and create a separate tariff for DTOU rates. *See* ICEA/RESA Ex. 3.0 at 8. ICEA/RESA conclude that the Commission should direct ComEd to make conforming changes to its proposed delivery tariff changes.

On reply, ICEA/RESA noted that CUB/EDF recommend that ComEd file its DTOU rate as a separate tariff rather than as part of a revision to other rates. *See* CUB/EDF IB at 22. ICEA/RESA note that ComEd simply rehashed the reasoning for why DTOU should not be its own tariff (and Staff appears to have not offered any additional argument while supporting ComEd), but ICEA and RESA rebutted ComEd's position in their IB. *See* ComEd IB at 56-57; Staff IB at 36; ICEA/RESA IB at 24-25.

e. Commission Analysis and Conclusion

The Commission directs ComEd to update its existing tariffs to implement its DTOU rate proposal. By updating DFCs in other rates, ComEd will remain consistent with how distribution rates are implemented in ComEd's ratebook. Both ComEd and Staff support this approach. The Commission rejects CUB/EDF and ICEA/RESA's proposal for ComEd to file a separate tariff.

7. Rider EVEN – Electric Vehicle Elective Notification

a. ComEd's Position

ComEd proposes Rider EVEN, which provides for a $2 per month credit for a total of 24 months, so long as the customer is enrolled on a time-variant supply rate paired with the DTOU rate and notifies ComEd that they own an EV. ComEd Ex. 3.0 at 44-45; ComEd Ex. 3.05. ComEd states that the purpose of this credit is to provide an incentive for EV owners to adopt time-variant rates, as instructed, and ComEd's proposal does that. BE Plan 1 Order at 258.

CUB/EDF proposed an incentive level of either $463 per year or $9 per month for an indefinite period. CUB/EDF Ex. 1.0 at 22. ComEd explains that this is approximately 18 times greater than ComEd's proposal and CUB/EDF has not justified such a substantial increase to the credit. ComEd Ex. 6.0 at 22-23. ComEd urges the Commission to reject this unnecessary increase to the Rider EVEN credit and approve its proposal of $2 per month for 24 months.

b. Staff's Position

Staff supports ComEd's proposed Rider EVEN, which provides a $2 per month credit for up to 24 monthly billing periods to customers who sign up for a supply rate paired with the DTOU rate and identify themselves as an EV owner. ComEd Ex. 3.0 at 44-45. Rider EVEN provides an additional $2 per month for an additional EV that is registered at the same address while the customer is on a supply rate paired with the DTOU rate. *Id.* Customers could receive an additional 24-monthly billing period credits if they move to a new residence and remain in an eligible supply rate paired with the DTOU rate. ComEd Ex. 3.0 at 45. The only obligation for the customer to continue to receive the rebate provided under Rider EVEN is to remain on the DTOU rate. Customers can voluntarily leave the DTOU rate without penalty and simply forego any remaining monthly credits. ComEd Ex. 3.0 at 22.

Staff recommends the Commission reject CUB/EDF's proposed alternative enrollment incentive payment for EV owners in Rider EVEN, which would be based on the project resource savings from the customer's participation and offer either a payment of $463 a year for two years or a monthly payment of $9 a month for as long as the customer is enrolled in Rider EVEN. CUB/EDF Ex. 1.0 at 22. ComEd witness Kremer

opposed this program because Rider EVEN is not intended to offset the purchase of an EV nor to provide compensation based upon the "system value." ComEd Ex. 6.0 at 21. Staff agrees with ComEd. Staff Ex. 4.0 at 8.

c. CUB/EDF's Position

In the Commission's BE Plan 1 Order, the Commission ordered the Company to include in its proposal "an incentive for EV owners (i.e., monthly/annual bill credits) to go on the [DTOU] rate." BE Plan 1 Order at 162-163. In response, ComEd proposes in this docket Rider EVEN, which provides a $2 bill credit each month ($4 for a 2-EV household), for a maximum of 24 months, to EV owners who are enrolled in the DTOU. ComEd Ex. 3.0 at 44-45. CUB/EDF argue ComEd's Rider EVEN falls short of meeting the Commission's mandate, as the amount of the bill credit is so small as to be unlikely to induce additional enrollment. CUB/EDF Ex. 1.0 at 21. Dr. McCann testified an EV owner already will have spent thousands of dollars more than the cost of an equivalent internal combustion engine vehicle and received up to $11,500 in state and federal incentives. *Id.* at 21. Dr. McCann noted they also likely will have paid a substantial sum to install a home charger and received a ComEd rebate of up to $3,750, which also requires time-variant rate enrollment. *Id.* at 21. For a customer who already has gone through this series of hefty transactions, Dr. McCann determined a $2 per month bill credit, capped at a total of $48 over 2 years, is unlikely to sway any decisions. *Id.* at 21. CUB/EDF conclude the record does not demonstrate that allocating $2 a month in bill credits to customers adds any system benefit, let alone enough to justify the administrative costs. *Id.* at 22.

CUB/EDF contend ComEd provides no supporting analysis for this apparently arbitrary $2 amount. *Id.* at 21-22. Staff witness Martin voiced support for the Company's approach but admitted in testimony that he had performed no research or analysis to support that conclusion. Staff Ex. 4.0 at 8; CUB/EDF Cross Ex. 8.0. In contrast, CUB/EDF witness McCann presented what CUB/EDF consider the only approach supported by empirical evidence. CUB/EDF Ex. 1.0 at 22.

CUB/EDF recommend that the Commission adopt an incentive closer to Dr. McCann's proposed system benefit-based incentive of $463 per year for 2 years or $9 per month indefinitely. *Id.* at 365-370. To determine this valuation, Dr. McCann cited the findings of ComEd's report on the results of the RTOUPP, which found participant EV charging increased 1.03 kilowatts during the overnight "Off-Peak" period and attributed this load-shifting to the TOU rate design. *Id.* at 22. Accordingly, assuming the Super Peak reduction is equivalent to the Off-Peak increase, Dr. McCann proposed that the incentive payment can be based on compensating the value of a 1-kilowatt reduction in required capacity per PJM Interconnection's reliability capacity benchmark (i.e., the cost of a new combustion turbine). *Id.* at 22.

Dr. McCann noted the ComEd pilot results on which he based this calculation are consistent with other empirical studies of TOU rates across several jurisdictions. CUB-EDF Ex. 2.0 at 19-20. Moreover, he explained his use of a combustion turbine resource as a proxy for reducing peak demand conformed with industry standards. *Id.* at 20. In fact, it matches PJM's valuation of battery storage as a capacity resource, thereby recognizing that an EV is battery storage on wheels. *Id.*

CUB/EDF consider ComEd witness Kremer's response to Dr. McCann a strawman argument. Ms. Kremer claimed Dr. McCann's proposed bill credits would be overly costly to apply to one million EVs. *Id*. at 21. There are less than 100,000 EVs across all of Illinois, ComEd serves only 58.6% of Illinois households, and thus, CUB/EDF conclude, there is no credible basis for basing a program cost estimate on the assumption that one million ComEd customers would receive Rider EVEN bill credits at any time in the foreseeable future. *Id.* at 21-22. Applying Ms. Kremer's calculation method to what Dr. McCann considered a more accurate count of ComEd customers with EVs brings the estimated program cost to $216,000, less than half the $480,000 figure Ms. Kremer admitted she considered reasonable. *Id.* at 22.

For the foregoing reasons, CUB/EDF urge the Commission to adopt a Rider EVEN incentive amount more in line with Dr. McCann's proposal. CUB/EDF assert theirs is the only EV incentive recommendation in the record that is supported by empirical evidence, and that the foregoing analysis demonstrates its reasonableness.

CUB/EDF note Staff expresses agreement with ComEd on Rider EVEN. Staff IB at 36-37. After summarizing the Company's proposal, Staff offers one substantive argument in favor of its position. Staff quotes ComEd witness Kremer's opinion that Rider EVEN is not intended to compensate for system value created or offset the cost of purchasing an EV. *Id.* at 36. To clarify, CUB/EDF never suggested that Dr. McCann's proposed adjustment to Rider EVEN would "offset the purchase of an EV." *See id*. Dr. McCann's testimony referenced the cost to purchase an EV not to suggest that Rider EVEN should somehow seek to "offset" that cost, but rather merely to illustrate how trivial an amount ComEd's proposed $2 per month bill credit is in that context. *See* CUB/EDF Ex. 1.0 at 21-22. This describes Ms. Kremer's conception of her own proposal, but CUB/EDF note nothing in the Commission's BE Plan 1 Order that gave rise to Rider EVEN suggested the Commission shares this view.

CUB/EDF consider ComEd's proposal that Staff supports entirely arbitrary. CUB/EDF note neither the Company nor Staff provides any reason the amount should be $2 per month. Staff witness Martin admitted he conducted no analysis on the subject. CUB/EDF Cross Ex. 8.0. In contrast, CUB/EDF propose for there to be a relationship between the amount of the Rider EVEN incentive payment and the value contributed to the system when an EV owner elects to take service on a time-variant rate.

d. Commission Analysis and Conclusion

The Commission finds that the proposed incentive level of $2/month for 24 months contained in Rider EVEN is reasonable given the information available and need not be increased as suggested by CUB/EDF. Furthermore, it complies with the Commission's directive in the BE Plan 1 Order. In its next rate design proceeding, the Commission directs ComEd to reexamine the $2/month incentive level with the most recently available data to ensure it is functioning appropriately.

F. Supply Time of Use Rate

1. Commission Authority

a. ComEd's Position

ComEd did not propose an STOU rate in this proceeding. Therefore, ComEd argues that the Commission must reject any of CUB/EDF's, ELPC/VS/UCS', and the AG's requests that ComEd be ordered to propose or adopt an STOU rate.

The Commission cannot require ComEd to adopt a new service that is not otherwise required by statute, and the Commission has consistently held this perspective across multiple proceedings. *See* 220 ILCS 5/16-103(e); *see also*, *e.g.*, BE Plan 1 Order at 258 (stating that Section 16-103(e) contains a plain limitation on the Commission's authority to order new rates other than as required in 16-103(e)). Section 16-103(e) of the Act states that "[t]he Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section." ComEd has not offered an STOU in this case and argues that the Commission does not have the statutory authority to require ComEd to do so. 220 ILCS 5/16-103(e). Because CUB/EDF's proposals for an STOU cannot be granted by the Commission, and because they are not relevant to the cost allocation of ComEd's delivery service revenue requirement, the proposals must be rejected as out of scope for this proceeding.

b. Staff's Position

CUB/EDF recommend the Commission direct ComEd to offer an STOU rate. CUB/EDF Ex. 1.0 at 3. Staff strongly disagrees for three key reasons.

First, as discussed in detail in Section III.B., this docket is a revenue-neutral investigation into the design of ComEd's delivery service rates. Supply service rates are, by definition, outside the scope of the docket.

Second, and perhaps most important, a ComEd STOU is contrary to the Commission's Rules. Part 452, promulgated pursuant to Section 16-119A of the Act, Functional Separation, states in relevant part that "[a]n Integrated Distribution Company shall not promote, advertise or market with regard to the offering or provision of any retail electric supply service." 83 Ill. Adm. Code 452.240(a). While Part 452.140 states a utility "may" petition for a waiver of certain provisions of Part 452, that provision is discretionary rather than mandatory and it is not clear the Commission can order ComEd to provide a supply rate should it not seek to do so. Moreover, the waiver requires a showing of six specific things by ComEd and a determination by the Commission that the waiver will not cause undue discrimination and will promote or create efficient competition. *See generally* 83 Ill. Admin. Code 452.140. There is no record evidence adduced in this docket to make the necessary showing by ComEd or to support the necessary conclusions by the Commission. Moreover, the Commission's BE Plan 1 Order explicitly states that it "is a creature of statute and is limited to its authority provided in the statute. Section 16-103(e) contains a plain limitation on the Commission's authority to order new rates other than as required in Section 16-103(e)." BE Plan 1 Order at 258.

CUB/EDF argue that authority can be found in Section 16-103(a) which allows the Commission to "approve, allow or order modifications in the rates, terms and conditions… for continued bundled electric service." CUB/EDF IB at 25. CUB/EDF correctly note, "No

part of a statute should be rendered superfluous, and no provision should be interpreted so as to render another provision meaningless" (*id.* at 24 (citing *City of Chi. v. Ill. Com. Comm'n*, 233 Ill. App. 3d 992, 1001 (1st Dist. 1992))), and yet CUB/EDF do exactly that. Section 16-103(e) clearly states the Commission cannot require ComEd to "offer any competitive service." 220 ILCS 5/16-103(e). ICEA/RESA and ComEd agree with Staff that the Commission cannot not approve an STOU in this docket. ICEA/RESA IB at 26; ComEd IB at 58.

Comparison to the RTOUPP is not persuasive. CUB/EDF suggest the primary difference between RTOUPP and its proposed STOU in this proceeding is the suggestion that the STOU be paired with a DTOU rate. CUB/EDF IB at 25. While this is a difference, the primary difference is that the STOU in this proceeding was proposed by CUB/EDF while the RTOUPP was proposed by ComEd. *See generally,* RTOUPP Order. Importantly, the Commission limited participation in the pilot program precisely because of concerns with competition. *See*, *e.g.,* RTOUPP Order at 13. While ComEd requested a waiver of Part 452 to implement RTOUPP, it is not clear that the Commission can direct the Company to offer an STOU. Because ComEd did not propose an STOU in this proceeding, the Commission lacks authority to consider CUB/EDF's proposal. *See also,* ICEA/RESA IB at 26; ComEd IB at 58.

The AG argues that "[t]he Commission has the authority to order ComEd to institute a companion supply-side TOU rate" based on the premise Section 16-103 does not apply to rates but only to services. AG IB at 11-12. Even assuming this is correct, it is irrelevant as STOU rates are strictly beyond the scope of this proceeding, as explained above because, even if ComEd wanted to pursue an STOU, it would still have to seek and be granted a waiver of Part 452 which it has not done. The AG's arguments blatantly ignore the Commission's rules and negative retail competition consequences and implications of a Commission decision on this matter at this time.

c. AG's Position

The AG states that ComEd insinuates that an STOU rate would be a massive undertaking beyond the scope of this proceeding, in large part because it would involve the creation of a new "service" as opposed to merely a new "rate." ComEd Ex. 9.0 REV. at 17; 18. ComEd witness Perkins stated "I am not aware that the Commission has ever taken the position that it can require ComEd to offer any competitive service or rate or any tariffed service or rate other than the services required by statute." ComEd Ex. 9.0 REV. at 17 (citing 220 ILCS 5/16-103(e)). The AG asserts that Mr. Perkins mischaracterizes both the Act and Dr. McCann's proposal.

The Act requires the Commission "to approve, allow or order modifications" to a utility's rates and conditions of service, but prevents the Commission from requiring a utility to "to offer any tariffed service other than the services" or "require an electric utility to offer a competitive service." 220 ILCS 5/16-103(a), (e). Importantly, this Section only limits the Commission's authority to require the Company to provide additional "services;" it does not limit the Commission's authority to modify a Company's proposed "rates." The AG asserts that Mr. Perkins tries to sidestep this distinction by claiming that "[s]aying that there is a difference between a service and a rate is like saying a dog is not a dog because it is on a leash." ComEd Ex. 9.0 REV. at 17. However, an Illinois appellate court has

found that rates and services are distinct when the issue at hand is what customers will pay for electricity, not whether the utility will continue to supply electricity to customers. *Commonwealth Edison Co. v. Ill. Com. Comm'n*, 398 Ill. App. 3d 510, 523-24 (2d Dist. 2009) (citing 220 ILCS 5/16-103(a) (finding that the Commission did not exceed its authority when it terminated a special rate for BOMA because "there is no protected interest in the continuation of a favorable utility rate" and eliminating a specific rate is not the same as eliminating a service)). That is precisely the issue here. Section 16-103(c) provides that "the electric utility shall . . . offer . . . bundled service options at rates which reflect recovery of all cost components for providing the service." 220 ILCS 5/16-103(c). Dr. McCann does not claim that ComEd should provide additional services to its customers, but simply proposes that ComEd formulate a rate for existing electric supply services that permits customers to pay an STOU rate that is consistent with the proposed DTOU rate. CUB/EDF Ex. 2.0 at 3. Therefore, the AG concludes that Dr. McCann's proposal is consistent with the statute and within the Commission's authority. For these reasons, the AG respectfully requests that the Commission require ComEd to adopt CUB/EDF's proposed STOU and allow it to be paired with its modified DTOU on a voluntary basis.

d. CUB/EDF's Position

CUB/EDF contend the Commission has authority to approve CUB/EDF's proposal for a residential and small commercial TOU rate for bundled electric service, which are the same bundled electric services as ComEd's successful RTOUPP. CUB/EDF reason just as the Commission's authority to approve RTOUPP was lawful, so is its authority to approve CUB/EDF's TOU proposal.

Rate design and cost allocation are "uniquely a matter for the Commission's discretion." *Coal. to Request Equitable Allocation of Costs Together v. Ill. Com. Comm'n,* 28 N.E.3d 223, 241 (2d Dist. 2015). Here, CUB/EDF consider Sections 16-105.5 and 16-103 as governing the Commission's rate design authority. In construing Sections 16-105.5 and 16-103, the Commission must ascertain and give effect to the intent of the legislature. *Bus. & Pro. People for Pub. Int. v. Ill. Com. Comm'n*, 146 Ill. 2d 175, 205-11 (1991) (citing *People v. Beam*, 74 Ill. 2d 240 (1979); *MCI Telephone Cor. v. Ill. Com. Comm'n,* 168 Ill. App. 3d 1008 (1988)). The Commission is bound by the plain meaning of unambiguous statutory language. *Id.* No part of a statute should be rendered superfluous, and no provision should be interpreted so as to render another provision meaningless. *City of Chi. v. Ill. Com. Comm'n*, 233 Ill. App. 3d 992, 1001 (1st Dist. 1992) (citing *In re Application of County Collector*, 132 Ill. 2d 72 (1989)).

Under Section 16-103(a), the Commission retains its authority to "approve, allow or order modifications in the rates, terms and conditions… for continued bundled electric service." Utilities like ComEd are required to provide "bundled electric service" to all residential customers as a tariffed service "consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997." A "tariffed service" means services provided to customers, "but shall not include competitive services." 220 ILCS 5/16-102. CUB/EDF conclude because "bundled electric services" must be provided as a "tariffed service," they therefore cannot also be a "competitive service." *Id.*

Here, CUB/EDF propose that ComEd offer to residential and small commercial customers a TOU rate for bundled electric service. CUB/EDF Ex. 1.0 at 2. The bundled electric service in CUB/EDF's proposal is the same bundled electric service in ComEd's RTOUPP tariff. CUB/EDF Ex. 1.0 at 3. The primary difference between ComEd's RTOUPP and CUB/EDF's proposed TOU offering in this case is that CUB/EDF's proposed TOU for bundled electric service would be paired with ComEd's proposed TOU for delivery service. CUB/EDF contend this distinction is not material, as the Commission's authority to approve ComEd's proposed TOU for delivery service is not disputed. For the avoidance of doubt, CUB/EDF note, the Commission has already approved ComEd's RTOUPP tariff stating that TOU for bundled electric service satisfies ComEd's obligation under Section 16-103(c):

> Bundled electric service provided to retail customers receiving service with time of use pricing satisfies the Company's requirements to provide bundled electric power and energy service in according with the terms of this Bundled Electric Service subsection.

CUB-EDF Ex. 10.0 at 4 (Ill. C.C. No. 10, 1st Rev'd Sheet No. 28.2).

To reiterate, CUB/EDF maintain they do not propose any new services in its TOU rate for bundled electric service. CUB/EDF note the TOU rates that CUB/EDF propose here would apply to the same bundled electric services in ComEd's RTOUPP. The bundled electric services under ComEd's RTOUPP tariffs include:

> direct procurement through PJM-administered markets of all the component services the Company requires to meet retail customer instantaneous electric power and energy requirements at any given time under the Company's tariffs, applicable tariffs on file with the FERC, and other applicable laws, including, without limitation, all required electric energy, energy to satisfy losses, electric generation capacity, volumetric risk management, transmission services, ancillary transmission services, administrative services, and other necessary services procured by the Company.

CUB/EDF Ex. 10.0 at 4 (Ill. C.C. No. 10, 1st Rev'd Sheet No. 28.2) (under "NATURE OF SERVICE. Bundled Electric Service."). The bundled electric services provided under RTOUPP are the same bundled electric services provided under ComEd's Rate BES. CUB/EDF Ex. 9.0 at 1 (Ill. C.C. No. 10). They are also the same bundled electric services provided under ComEd's Rate BESH. CUB/EDF Ex. 12.0 at 2 (Ill. C.C. No. 10, 1st Rev'd Sheet No. 30).

CUB/EDF argue because their proposal satisfies an obligation under 16-103(c), it cannot simultaneously be a violation of 16-103(e). Moreover, CUB/EDF contend Section 16-103(e) must be read in harmony with other provisions of P.A. 102-0662, several of which authorize the Commission to approve an STOU rate (i.e., for bundled electric services) by incumbent electric utilities. For example, Section 108.18 authorizes the Commission to incentivize "time of use rates for delivery and supply" through performance metrics. 220 ILCS 5/16-108.18(e)(2)(A)(v).

CUB/EDF argue the Commission should not literally extend apparently unintentional phrasing in its BE Plan 1 Order to this case, as suggested by two parties in testimony. *See* ICEA/RESA Ex. 6.0 at 2; Staff Ex. 8.0 at 4-5. First, the BE case was filed under the EVA, 20 ILCS 627/45. In that context, the Commission found that it was a creature of statute, and limited to its statutory authority, and declined to adopt a whole house time of use rate that went beyond the promotion of electric vehicle adoption. BE Plan 1 Order at 258. The Commission's reasoning does not apply to this case, where Section 16-105.5 is not limited to electric vehicles, and where the Commission retains general discretionary authority over all issues of rate design.

Second, CUB/EDF point out Staff and ICEA/RESA's testimony contain no analysis or explanation. To the extent they argue that the Commission cannot order new rate designs for existing services, CUB/EDF argue they are misapplying dicta in the BE Plan 1 Order. Where Section 16-103(e) says the Commission "shall not require an electric utility to offer any tariffed service other than the services required by this Section," the BE Plan 1 Order replaced the words "tariffed service" with the word "rate" in concluding that "Section 16-103(e) limits the Commissions' authority to order new rates other than as required in Section 16-103(e)." BE Plan 1 Order at 258. The word "rate" does not appear in Section 16-103(e). The distinction between "services" and "rates" for purposes of the Act was not raised as an issue by any party in the Beneficial Electrification case, it was not explicitly addressed in the BE Plan 1 Order, and it made no difference in the outcome of that case, which turned on the Commission's authority under the EVA Section 45.

In this case, however, the distinction is material, and failing to recognize the difference between a service and a rate would go against the plain meaning of the law and lead to absurd results.

The Act distinguishes between "services" and "rates." "Rates" are:

> every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility or any two or more such individual or joint rates, fares, tolls, charges, rental or other compensation of any public utility or any schedule or tariff thereof, and any rule, regulation, charge, practice or contract relating thereto.

220 ILCS 5/3-116. "Services," in contrast, are:

> 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 use and accommodation of the public.

220 ILCS 5/3-115.

More colloquially, CUB/EDF explain services are provided to a customer, and rates are the prices paid by the customer for that service. CUB/EDF Ex. 2.0 at 3. Section 16-103(e) prohibits new tariffed services, not new rates. As explained above, bundled electric services are nothing new, and CUB/EDF proposes that the tariffed services for bundled electricity here are the same tariffed services under ComEd's RTOUPP, Rate BES, and Rate BESH tariff sheets. CUB/EDF therefore conclude they propose new rates, not new services. The "Nature of Service" provision under CUB/EDF's proposal would be the same as in all other bundled electric service tariffs (Rate BES, Rate BESH, RTOUPP); only the "Monthly Charges" (i.e., rates) would be unique. *See* CUB/EDF Cross Ex. 10.0 at Sheet No. 28.2 through 28.3 ("Nature of Service"); and *id.* at Sheet No. 28.4 through 28.12 ("Monthly Charges").

In summary, CUB/EDF urge the Commission to reject Staff and ICEA/RESA's overly restrictive reading of Section 16-103. CUB/EDF contend the Commission has authority to consider and approve CUB/EDF's TOU rate proposal for bundled electric services.

CUB/EDF argue for the reasons stated above, CUB-EDF's proposals are within the scope of this proceeding, contrary to Staff's assertion. The AG concurs with CUB/EDF on this issue. AG IB at 11-12.

CUB/EDF argue both ComEd and Staff misapply Section 16-103(e) and dicta, as explained above. *See* ComEd IB at 58; Staff IB at 38. CUB/EDF contend both ComEd and Staff misquote Section 16-103(e) to say that "Section 16-103(e) contains a plain limitation on the Commission's authority to order new rates other than as required in Section 16-103(e)." ComEd IB at 58; Staff IB at 38. CUB/EDF claim the first problem with ComEd's and Staff's citation is that Section 16-103(e) does not refer to rates. CUB/EDF point out it prohibits new services, not new rates. *Id.* As explained above, CUB/EDF maintain an electric STOU rate is not a service, but rather simply the pricing formula applied to customers who utilize an existing bundled electric supply service. CUB/EDF IB at 24-29.

CUB/EDF's second problem with ComEd's and Staff's citation is that Section 16-103(e) does not require anything. The services required by Section 16-103 are identified in subsections 16-103(a), (b), and (c). *Citizens Util. Bd. v. Ill. Com. Comm'n*, 2016 Ill. App. (1st) 152936 ¶ 10, 55 N.E.3d 736 (2016). That case involved a virtual net metering proposal, and therefore raised questions of what constituted a "new service" under subsection 16-103(a), which required "distinct and identifiable" services provided in 1997. *Id.* In contrast, the present case involves "bundled electric service" required under subsection 16-103(c). CUB/EDF IB at 25. CUB/EDF do not propose any new services, only a new rate design for services ComEd is already required to provide under Section 16-103(c).

Third, Staff alleges issues with Part 452 of the Commission's regulations on Integrated Distribution Companies ("IDC"). Staff IB at 38-39. Staff relies on 83 Ill. Adm. Code 452.240(a), which prohibits IDCs from promoting, advertising, or marketing with regard to the offering of any retail electric supply service. Section 452.240(b) clarifies that this provision does not prohibit IDCs from consumer education programs as set forth in 220 ILCS 5/16-117, and it does not prohibit an IDC from "otherwise engaging in

legitimate consumer education efforts." Section 16-117(e) includes consumer education information like "services that an electric utility is required to provide pursuant to tariffed rates." This section expressly covers bundled electric service required by Section 16-103(c), which is the service provided for under ComEd's RTOUPP and which would be provided for under CUB/EDF's proposal. CUB/EDF conclude Section 452.240(a) does not prohibit ComEd from offering an STOU rate that meets its obligations to provide bundled electric service under Section 16-103(c).

Moreover, CUB/EDF note Staff does not acknowledge that ComEd has already received, in the RTOUPP Order, all necessary waivers to provide an STOU to meet its bundled electric service obligations. RTOUPP Order at 54-55. That Order concluded:

> The Commission approves ComEd's requested temporary revisions to its IDC Implementation Plan. These revisions will enable ComEd to market Rate RTOUPP to customers, inform them of the benefits, and are necessary to support a successful RTOUPP pilot. In addition, the revisions align with waivers granted by the Commission in past cases to support new innovative rate structures.

Id. at 54.

Finally, CUB/EDF argue the Commission's authority to grant waivers is not limited to circumstances in which the utility asks for those waivers. *See* Staff IB at 38. Section 10-113 of the Act expressly provides the Commission with authority to rescind, alter, or amend any rule, regulation, order or decision "at any time, upon notice to the public utility affected, and after opportunity to be heard." 220 ILCS 5/10-113(a).

For the reasons stated above, CUB/EDF contend Staff and ComEd ignore important P.A. 102-0662 mandates, misapply Section 16-103(e), and improperly rely on dicta from the BE Plan 1 Order. CUB/EDF conclude the Commission has authority to grant CUB/EDF's proposal.

e. ICEA/RESA's Position

ICEA/RESA contend that while nothing prohibits ComEd from proposing an STOU rate in this docket or another docket for evaluation on its merits, ComEd's failure to propose an STOU rate fully divests the Commission of authority to order it. According to ICEA/RESA, Section 16-103(e) is clear: "The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service." 220 ILCS 5/16-103(e). ICEA/RESA argue that the Commission held in ComEd's and Ameren's respective initial beneficial electrification plan approval dockets that even the EVA does not disturb this general rule: "Section 16-103(e) contains a plain limitation on the Commission's authority to order new rates other than as required in Section 16-103(e)." *See, e.g., Ameren Ill. Co. d/b/a Ameren Ill.*, Docket Nos. 22-0431/22-0443 (Consol.), Order at 70 (Mar. 23, 2023); *see also* BE Plan 1 Order at 258 (identical language).)

ICEA/RESA argue that in this docket, CUB/EDF propose that the Commission compel ComEd to offer an STOU rate. ICEA/RESA highlight that ComEd proposes no such rate. *See*, *e.g.*, ComEd Ex. 9.0 REV. at 16 ("ComEd has not proposed a supply

TOU rate"). ICEA/RESA contends that whatever the merits of CUB/EDF's proposal—which ICEA and RESA oppose—the Commission lacks authority to grant CUB/EDF's proposal in this docket because ComEd did not propose an STOU rate.

To be clear, ICEA/RESA clarify, ComEd could have proposed an STOU rate in this docket. ICEA/RESA note that they would likely have vigorously opposed (for reasons explained in Section VI.F.3 infra), ICEA and RESA understand that ComEd likely has authority to do so. *See*, *e.g.,* ICEA/RESA Response to ComEd Motion to Strike at 2-3 (Aug. 19, 2024). ICEA/RESA conclude that while it was inappropriate to strike CUB/EDF's STOU as out of scope in this proceeding (see *id.* at 3, 4), the indisputable fact that ComEd did not propose an STOU rate is sufficient to strip the Commission of authority to consider CUB/EDF's proposal in this instance.

On reply, ICEA/RESA note that Staff appears to agree with ICEA and RESA's argument that Section 16-103(e) prohibits the Commission from requiring ComEd to adopt a new STOU rate when ComEd did not propose one itself. *See* Staff IB at 38. ICEA/RESA contends that Staff provides an additional compelling reason no STOU rate can be accepted in this docket. According to ICEA/RESA, Staff notes that a waiver under Part 452, specifically Section 452.240, to advertise an STOU rate. *See id.* at 37-38. ICEA/RESA state that they agree—Part 452 protects market participants from ComEd from advertising supply rates that compete with ARES products and services without Commission approval.

ICEA/RESA highlight that ComEd also argues that Section 16-103(e) prohibits the Commission from directing ComEd to implement an STOU rate in this particular docket: "ComEd has not offered a supply TOU in this case, and the Commission does not have the statutory authority to require ComEd to do so." ComEd IB at 58. Once again, ICEA/RESA state that they agree.

ICEA/RESA note that the prohibition under Section 16-103(e) is predicated on ComEd's decision not to propose an STOU rate in this proceeding. According to ICEA/RESA, ELPC/VS/UCS appear to misapprehend the argument as prohibiting ComEd from proposing one at all. *See* ELPC/VS/UCS IB at 4-5. ICEA/RESA believe there are interesting legal questions regarding ComEd offering any new supply rates but the Commission need not reach that issue. ICEA/RESA contend that Section 16-103(e) simply provides, in its plain language, that the Commission cannot direct ComEd to offer a new tariffed rate (such as an STOU rate).

According to ICEA/RESA, the AG makes a clever but fatally flawed argument that Section 16-103(e)'s use of the term "tariffed services" rather than "rates" somehow does not apply to supply service. *See* AG IB at 11-12. ICEA/RESA respond that Section 16-103(a) provides that "tariffed services" include those not "declared competitive pursuant to Section 16-113." 220 ILCS 5/16-103(a). ICEA/RESA counter that, to their knowledge, the only tariffed services that have been declared competitive are supply rates—thus, "rates" (and in particular supply rates) must be included within the term "tariffed services." *See, e.g.*, *Commonwealth Edison Co.,* Docket No. 02-0479, Interim Order (Nov. 14, 2002) (declaring supply service to customers over 3MW competitive); *Commonwealth Edison Co.,* Docket No. 07-0478, Final Order (Oct. 11, 2007) (declaring supply service to customers 100-400 kW competitive). ICEA/RESA continue that similarly, in Section 16-

103(b), tariffed services explicitly include the Power Purchase Option and real-time pricing, both of which are supply services. *See* 220 ILCS 5/16-103(b). ICEA/RESA contend that the AG proposes to add a new rate for ComEd—specifically STOU—where ComEd does not propose that change itself. Therefore, ICEA/RESA conclude, Section 16-103(e) clearly prohibits the relief that AG request.

ICEA/RESA note that CUB/EDF make a variant of the same argument—essentially that it is proposing a change to ComEd's bundled service and thus it is only a tariff modification rather than a new rate. *See* CUB/EDF IB at 25-28. According to ICEA/RESA, Section 16-103(c) requires that "bundled electric power and energy delivered to the customer's premises consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997." 220 ILCS 5/16-103(c). ICEA/RESA argue that CUB/EDF provided no evidence that ComEd provided STOU pricing under its bundled service in 1997. ICEA/RESA respond that changing the pricing of Rate BES would be to change the nature of Rate BES. ICEA/RESA contend that while they would not object to migrating Rate BES to only TOU from a policy perspective, changes inconsistent with bundled service provided in 1997 are not permitted to bundled service.

ICEA/RESA note that CUB/EDF argue that the Commission should modify supply pricing under bundled service because ComEd is proposing to modify DTOU pricing and "The difference is not material, as the Commission's authority to approve ComEd's proposed TOU for delivery service is not disputed." *See* CUB/EDF IB at 25. ICEA/RESA argues that this is incorrect on multiple levels. First, ICEA/RESA begin, ComEd is not proposing to modify Rate BES, its bundled supply rate tracing back to 1997. ICEA/RESA argue that while ComEd Rate BESH is nominally named "bundled electric service," it is the specific hourly pricing rate authorized (and in fact mandated) by Section 16-107. In any event, ICEA/RESA continue, ICEA and RESA oppose changes to implement TOU delivery through Rate BESH (or Rate BES) and instead propose a separate delivery TOU tariff—as does CUB/EDF. *See* CUB/EDF IB at 22; ICEA/RESA IB at 20-21.

ICEA/RESA conclude that the Commission should thus reject attempts to compel ComEd to offer a supply time-of-use rate in this docket.

f. ELPC/VS/UCS' Position

ComEd and Staff interpret Section 16-103(e) as prohibiting ComEd from offering TOU supply rates. ComEd Ex. 4.0 at 7; Staff Ex. 8.0 at 4. ELPC/VS/UCS disagree with their legal conclusions. In a perfect world, the legislature would have made it clearer that ComEd can offer a bundled STOU and DTOU, but when read carefully, the Act does give ComEd authority to offer an STOU rate. First, Section 16-103 outlines the service obligations of electric utilities. Section (a) directs utilities to continue "offering to retail customers each tariffed service that it offered as a distinct and identifiable service" on the date of the 1997 amendatory Act. 220 ILCS 5/16-103(a). Then Section 16-103(b) authorizes the utility to offer real-time pricing under Section 16-107. 220 ILCS 5/16-103(b); 220 ILCS 16-107. While the statute references real time pricing and not supply side TOU rates, the purpose of real time pricing is to send the proper price signals and shift customer behavior. ELPC/VS/UCS note CUB/EDF witness McCann's compelling point that ComEd has already offered two time variant rates, real time pricing, and

RTOUPP. CUB/EDF Ex. 1.0 at 6. STOU is essentially a version of real time pricing, in that the TOU rates reflect supply costs in a comparable way to real time pricing which offers customers rates that vary by the hour.

Importantly, when the Commission approved ComEd's RTOUPP it interpreted that TOU rate for delivery and supply service is a bundled service consistent with the Act under Section 16-103(c):

> Bundled electric service provided to retail customers receiving service with TOU pricing satisfies the Company's requirements to provide bundled electric power and energy service in according with the terms of this Bundled Electric Service subsection.

CUB/EDF Cross Ex. 10.0 at 4 (Ill. C.C. No. 10, 1st Rev'd Sheet No. 28.2).

Despite the sections outlined above, ELPC/VS/UCS recognize that in the BE case the Commission rejects the proposed DTOU and STOU stating, "220 ILCS 16-103(e) contains a plain limitation on the Commission's authority to order new rates other than as required in Section 16-103(e)." BE Plan 1 Order at 258. However, as argued above, TOU for supply and delivery is a different pricing of the same bundled service ComEd offered in 1997 and is simply a variation of real time pricing. While the Commission generally follows precedent, it has the flexibility to revisit its past decisions and make an alternative finding. Docket No. 01-0614, Order on Remand (Phase II) at 1–2 (Nov. 22, 2005) (citing *Ill. Bell Tel. Co. v. Wright*, No. 02 C 6002, Court Order (N.D. Ill. May 17, 2004)). ELPC/VS/UCS urge the Commission to reconsider its previous interpretation of Section 16-103(e) to clarify that a bundled STOU and DTOU rate is consistent with the Act under Section 16-103(c).

Interestingly, in response to CUB/EDF, ComEd witness Perkins states, "[w]ithout waiving its rights under Section 16-103(e) on what services it will offer, ComEd is open to engage and collaborate with stakeholders outside this proceeding to discuss supply TOU rates." ComEd Ex. 4.0 at 18. If ComEd is willing to do this in the future, it should fix this problem now.

2. Design

a. ComEd's Position

ComEd notes that CUB/EDF's STOU proposal is essentially a reinstatement of ComEd's expired Rate RTOUPP. ComEd notes that regardless of the Commission's authority to order this new rate, RTOUPP was a pilot program and should not be reinstated wholesale without an analysis of the final learnings and an opportunity for the Commission to weigh the evidence on such a design. ComEd Ex. 9.0 REV. at 16-17.

b. Staff's Position

Staff offers no position on the design of an STOU because the Commission should not authorize an STOU.

c. AG's Position

See Section E.2, above.

d. CUB/EDF's Position

Because of the success of the RTOUPP, CUB/EDF's proposed STOU follows its design, as indicated by the proposed adjustments to the DTOU outlined above. The RTOUPP was done as a pilot to determine if customers would save money, and CUB-EDF note that they did. CUB/EDF contend its proposed TOU rate design is the only proposal in the docket with evidence backing its likelihood of success. *See* RTOUPP Order at 38-41. As discussed above, CUB/EDF argue the Company's proposed time periods for the DTOU have no evidentiary backing of success. Further, CUB/EDF state the Company's refusal to entertain an STOU rate renders the successful pilot meaningless and ignores the important information gleaned from it. The Company even admits customers would likely want to be able to take one action and save on two programs. Tr. at 91.

Dr. McCann explained research has shown that TOU rates can accomplish 60% to 70% of the load shifting effects of an RTP [real-time pricing rate], and the gap can be closed with the addition of either critical peak pricing or peak time rebates. CUB/EDF Ex. 1.0 at 9. Dr. McCann testified, with higher enrollment rates than a Real Time Pricing rate and little resistance even to being implemented on an opt-out default basis, a TOU rate has a "much higher potential overall impact on reducing ComEd's Super Peak loads." *Id*. Under ComEd's RTOUPP, Super Peak loads decreased 0.10 kilowatts, or 6.7%, while loads increased in Peak and Off-Peak periods, as customers shifted usage from the former to the latter. *Id*. at 11. ComEd found customers in ComEd's TOU pilot "appear to have reduced peak loads about eight times more than those on the RTP tariff and 75% more even for the most responsive subset." *Id*. at 9. Dr. McCann also explained that the RTOUPP rate seemed to "offer at least the same level of load reduction benefits with much simpler rate structure for customers to follow." *Id*. at 11.

CUB/EDF contend ComEd's analysis of its distribution-only TOU rate proposal cannot match the proven performance of its RTOUPP. ComEd admits that the purpose of a TOU rate is to incentivized customers to shift usage from peak to off-peak periods and lower stress on the grid. Tr. at 78-79. Yet ComEd provides no estimate of how many customers it thinks will end up on ComEd's proposed new TOU rate. *Id*. at 86. While ComEd is trying to incentivize customers to shift load, it did not forecast the load that might be shifted. *Id.* at 88. ComEd claims it cannot tell how much additional shifting behavior it expects from its distribution-only TOU proposal; it believes "the customer is already shifting their load in response to the supply price signal." *Id*. at 91. Thus, the Company's reasoning suggests, the distribution TOU is merely additional savings on top of behavior that already exists. *Id*. Similarly, ComEd did not analyze how much its program could save in grid investments. *Id*. at 93. As for complexity, ComEd's proposal could result in eight or more time periods, and that, "From customer ease of review, [Ms. Kremer] would agree that the unified would perhaps be easier to remember." *Id*. at 96-97.

For the above reasons, CUB/EDF's proposal builds on ComEd's successful RTOUPP to achieve demonstrable customer load shifts, environmental benefits, and customer savings. CUB/EDF point out that ComEd's proposal is not backed by any analysis showing any such benefit.

ComEd argues that CUB/EDF's proposal, which is based on reinstating and expanding access to the RTOUPP "should not be reinstated wholesale without an analysis of the final learnings and an opportunity for the Commission to weigh the evidence on such a design." ComEd IB at 59. CUB/EDF respond by noting they have already provided the Commission with the analysis of the final learnings of the RTOUPP. ComEd's own report found RTOUPP had positive effects on shifting load, and customers overwhelmingly saved money on the program. Specifically, under RTOUPP the Super Peak Period loads decreased 0.10 kilowatts, or 6.7%, while loads increased in Peak and Off Peak Periods as customers shifted usage. CUB/EDF Ex. 1.0 at 11. In contrast, the control group on the standard Rate BES increased their peak load contribution by 7.0%. *Id*. at 11. Consequently, the net total reduction was close to 10.4%. *Id*. That translates to an average of 0.26 kilowatts per participant. *Id*. at 11.

Dr. McCann observed the RTOUPP also appears to offer at least the same level of load reduction benefits with a much simpler rate structure than ComEd's real time pricing. CUB/EDF Ex. 1.0 at 11. He found customers in the RTOUPP appear to have reduced peak loads by about eight times (8X) more than those on the hourly rate BESH, and 75% more even for the most responsive subset. CUB/EDF Ex. 1.0 at 11.

Neither Staff nor ICEA/RESA took a position on CUB/EDF's proposed design. Staff IB at 38; ICEA/RESA IB at 25.

For the reasons stated above, CUB/EDF request that the Commission adopt their proposal to adopt an STOU design based on ComEd's successful RTOUPP, which has been shown to lower peak demand and save customers money.

3. Public Policy

a. ComEd's Position

ComEd notes that without waiving its rights under Section 16-103(e) on what services it will offer, it remains willing to engage with parties in discussions on STOU rates.

b. Staff's Position

Staff asserts that not only is there no evidence to support a finding that Part 452 could or should be waived, but the Commission should also decline to approve an STOU as a matter of public policy. The Commission, and specifically the ORMD, is charged with promoting retail electric competition in Illinois as well as identifying barriers to competition and proposing solutions to overcome those barriers. CUB/EDF's proposal would allow ComEd to encroach into the competitive retail electric supply market. Allowing ComEd to offer a new supply rate would go against the Commission's mandate to promote retail competition in Illinois because distribution utilities already provide delivery to all supply customers which would give them an unfair advantage in promoting or marketing supply products.

Staff highlights ELPC/VS/UCS make a number of dubious arguments, perhaps the least meritorious of which is its argument regarding public policy. ELPC/VS/UCS IB at 6-7. ELPC/VS/UCS assert that,

> … on cross[-examination Staff witness Tanya Capellan] fails to explain or support her statement [that "offering innovative supply rates, such as a supply TOU rate, should be left up to the retail market"] in terms of whether that will produce results. (citations) … Ms. Capellan testifies that the ComEd bundled offer is not a barrier to competition. (citations). Then when ELPC, VS, and UCS asked Ms. Capellan, "is it possible that ComEd offering a supply-side TOU rate would encourage competitive suppliers to offer a better supply side TOU rate than ComEd?" Staff objected to the question and Ms. Capellan never answered it. (citations). Similarly, when ELPC, VS, and UCS asked Ms. Capellan if she had an estimate of how many customers would sign up for TOU supply rates from competitive suppliers, she had no estimate. (citations). The bottom line is that Ms. Capellan fails to support her premise that ComEd offering a supply TOU hurts the competitive market, or more importantly that it hurts customers.

ELPC/VS/UCS IB at 6-7 (citations omitted).

Ms. Capellan's failure, if it can be characterized as such, to answer the question posed to her regarding whether ComEd's offering of an STOU rate would encourage competitive suppliers to offer a better supply rate is readily explained by a fact ELPC/VS/UCS conveniently omitted – that Staff counsel's objection to the question was sustained, on the basis that it sought information outside the scope of the proceeding. Tr. at 196-199. Sustaining an objection constitutes a finding that the question is improper and should not be considered by the trier of fact. *Allen v. Sarah Bush Lincoln Health Ctr.*, 2021 IL App (4th) 200360, ¶213. Accordingly, it was highly improper for ELPC/VS/UCS to even reference this question in its IB, let alone urge the Commission to draw adverse inferences from the fact that Ms. Capellan did not answer it.

ELPC/VS/UCS's assertion that Ms. Capellan's opinion is somehow defective because she offered no estimate of how many customers would sign up for (unknown) STOU rates from (unknown) competitive suppliers, subject to (unknown) terms and conditions, is almost equally farcical. While it is true that Ms. Capellan sensibly offered no such estimate, she explained that neither she nor anyone else knowledgeable about such matters would or could offer such an estimate because competitive suppliers have, until recently, been effectively prohibited by Section 16-122 of the Act from obtaining individual customers' AMI interval data. Tr. at 201, 202-4; *see also* 220 ILCS 5/16-122 as it existed prior to June 30, 2023. Ms. Capellan stated, with respect to such data, that "I think we're looking at a completely different landscape in 2026, again given that suppliers will barely have access to the data needed in order to develop [TOU] rates come June of 2025, so I think it's premature to even come up with an estimate." Tr. at 202-3.

Competitive suppliers agree with Ms. Capellan on this point, having long argued that the lack of access to individual customer AMI interval data has prevented them from offering TOU rates. *See*, *e.g.,* Rate RTOUPP Final Order at 56 (ICEA states that it "strongly believes greater access to [AMI] interval data would remove one of the primary barriers to new ARES time-variant products."). Accordingly, Ms. Capellan gave a

sensible, circumspect, and well-informed answer to a question that would have required her to offer an estimate of customer behavior in response to as-yet nonexistent TOU offerings from competitive suppliers that are not at issue in this proceeding, especially when the competitive suppliers themselves admit that they lack sufficient information to even formulate such offerings.

ELPC/VS/UCS suggest that a ComEd STOU would "not preclude competitive suppliers from offering a better rate." ELPC/VS/UCS IB at 6. However, this statement conveniently ignores the fact, discussed above, that competitive suppliers do not yet possess the information necessary to offer an STOU. As Ms. Capellan noted, "ComEd is at a distinct…advantage to offer a TOU rate given…that they hold the customer data, whereas at the present moment supplie[r]s are not able to access that type of data to the point where they can make it useful." Tr. at 195-196. As noted, Ms. Capellan explained that ARES will not have this data until June 2025. *Id*.

ELPC/VS/UCS further suggest that Staff offered no evidence to support its contention that a ComEd STOU would negatively impact competition. ELPC/VS/UCS IB at 7. However, it is self-evident that ComEd would have a distinct competitive advantage so long as it alone has access to the customer data necessary to design an STOU. Moreover, ELPC/VS/UCS offer no evidence that a ComEd STOU would shift customer usage off peak other than a general statement that they "believe" it would. ELPC/VS/UCS IB at 7.

Even if ComEd were to seek authorization to offer an STOU in future proceeding, it should not be allowed to do so until ARES have the information they need to develop STOU rates. Once ARES can develop and offer STOUs, the Commission will be in a position to evaluate the impact of ComEd's possible entry into the competitive supply market.

c. AG's Position

See Section E.2, above.

d. CUB/EDF's Position

CUB/EDF consider their proposed TOU rate for bundled electric service to be consistent with Illinois public policy. CUB-EDF's proposal is built on ComEd's successful RTOUPP. In its Order approving ComEd's RTOUPP, the Commission found that TOU rates are consistent with public policy, including flexible rate design, customer choice, and competition:

> The Commission further finds that Rate RTOUPP will make the benefits of time-variant rates available to residential customers in a manner that involves less price risk than hourly or real-time pricing. The time-sensitive rates will be based on historic prices which will be designed to encourage users to shift their load. Load-shifting has the potential to lower individual's bills, benefit the grid by promoting grid resilience, benefit the environment though GHG reduction, positively impact distribution system investments, and provide for

> flexible rate design while promoting value, choice and competition.

RTOUPP Order at 8.

CUB/EDF argue their proposal is also consistent with approaches in other states that have enacted electric supply competition. Many restructured states have authorized their incumbent utilities to offer TOU rates with supply costs included. CUB/EDF Ex. 1.0 at 8-9 (identifying California); *see also* Del. Code Ann. Tit. 26 § 1005 (Restructuring plan for DP&L requiring "[a]n optional residential time of use rate with three daily time of use periods to be available for any residential customer who elects such a rate structure."); *Dauphin City. Indus. Dev. Auth. v. Pa. Pub. Util. Comm'n*, 123 A.3d 1124, 1131, 1136 (Pa. Commw. Ct. 2015) (reversing PUC decision allowing incumbent utility to avoid its obligation to provide time-of-use rates by transferring that obligation to competitive generation suppliers); Finding and Order at 1, 14-16, Case No. 13-1937/17-1234 (Oh. Pub. Util. Comm'n, Jul. 14, 2021) (approving application by AEP Ohio to include time-of-use rates in its Generation Capacity (GENC) Rider and denying competitors' requests to deny the application and terminate AEP's other time variant rates); Order No. 75757, Case No. 8749/8804 (Md. Pub. Serv. Comm'n, Nov. 10, 1999) (approving stipulation in which "BGE had also agreed to file for approval for an optional time-of-use-rate schedule by November 1, 1999."); Order, Docket No. ER2303013 (NJ Bd. Of Pub. Utils., May 24, 2023) (noting that "the Board believed a BGS Time of Use ('TOU') rate could be created and ordered the DFCs to create a similar solution on the residential supply side to take effect June 1, 2023.").

Here, while public policy allows TOU rates for bundled electric service, CUB-EDF acknowledge that rate design should consider any potential impacts on competition. In its order approving RTOUPP, the Commission noted its "disappointment regarding the lack of ARES TOU products." RTOUPP Order at 52. The Commission found that RTOUPP did not change the manner in which ARES access customer data. *Id*. Yet, CUB/EDF contend, the Commission was cognizant that RTOUPP did not undermine competition.

CUB/EDF argue it is therefore important to remember that the Commission Order in ComEd's IMUD Docket, is designed to provide ARES, by June 2025, with the interval data necessary to develop their own TOU rates. *Commonwealth Edison Co.*, Docket No. 23-0773, Order (June 24, 2024) ("IMUD Order"). ComEd's IMUD will be in effect no later than June 2025, while ComEd's rate design from this docket will not take effect until 2026. 220 ILCS15/6-105.5(c)(2) (tariffs take effect "at the commencement of the first January monthly billing period that begins no earlier than 30 days after the Commission issues its order adopting such changes"); *see also* Tr. at 196 ("…there was a recent law passed where ComEd will now be required to provide ARES with that information as of June 2025…."). Informed by the data available in Rider IMUD, the ARES will be in position to take advantage as first movers providing TOU rates. CUB/EDF conclude it stands to reason that authorizing a ComEd TOU rate for bundled electric service in 2026 will motivate ARES to act with requisite haste in developing their own TOU rates starting in 2025.

For the reasons stated above, CUB/EDF support a Commission order requiring ComEd to offer an STOU rate to residential and small commercial customers in this docket, based on the successful design tested in ComEd's RTOUPP pilot. CUB/EDF have presented the learnings from ComEd's successful RTOUPP in this docket, and argues those findings demonstrate that an STOU rate similar to RTOUPP will reduce peak load and save customers money. CUB/EDF Ex. 1.0 at 10-11. Participants in RTOUPP reduced peak load by an average of 0.26 kilowatts per participant, and more than 98% of customers on RTOUPP had bill savings. *Id*. No party disputes the RTOUPP's findings in this docket. E.g., Staff IB at 38-39; ComEd IB at 59. Therefore, while CUB/EDF request the Commission approve an STOU rate consistent with ComEd's successful RTOUPP in this docket, CUB-EDF agree that an STOU rate could be adopted in the future regardless of the outcome of this docket.

In the alternative, if the Commission were to decline CUB/EDF's proposal, CUB/EDF would request that the Commission direct ComEd to work with stakeholders to develop an STOU rate in the future. CUB/EDF agree with ComEd that the learnings from RTOUPP have provided a meaningful foundation for future discussion. CUB/EDF appreciate ComEd's offer to engage in discussions on STOU rates in the future. *See* ComEd IB at 59.

ICEA/RESA agree that ComEd could offer an STOU in the future, but that ARES face a temporary barrier to entry. ICEA/RESA IB at 26-27. ICEA/RESA argue that ComEd must first develop its system of sharing interval data and address issues with its Customer Care & Billing system before it offers a supply TOU rate. *Id*. CUB/EDF are sensitive to these concerns. CUB/EDF IB at 32. However, CUB/EDF maintain the Commission should not assume that ComEd will fail to comply with the Commission's IMUD Order or that ComEd's CC&B System issues will continue indefinitely. Nevertheless, to address ICEA/RESA's concerns, the Commission could include a contingency in its Order here that provides sufficient lead time for ARES to develop their own STOU offerings first. For example, the Commission could order that a ComEd STOU would take effect no earlier than six months after both IMUD tariffs are in operation and ComEd's CC&B System issues are resolved. The six months lead is based on the same lead time ARES would have from June 2025 to January 2026 if the IMUD tariffs are in effect and all CC&B System issues are resolved by June 2025.

CUB/EDF oppose Staff's arguments in opposition to CUB-EDF's proposal. CUB/EDF note Staff's IB on this topic contains a single conclusory paragraph lacking any citation to record evidence. Staff IB at 38-39. CUB/EDF contend Staff's arguments cannot be reconciled with the Commission's Order in the RTOUPP docket, where the Commission found that a TOU rate with a supply element included lowers risk to residential customers compared to real time pricing, saves customers money, promotes grid resilience, lowers greenhouse gas emissions, positively impacts distribution system investments, provides for flexible rate design, and promotes value, choice and competition. Docket Nos. 18-1725/18-1824 (Consol.), Order at 8.

CUB/EDF offer it is not clear that Staff suggests the Commission should prohibit ComEd from offering an STOU in the future, but to the extent that is Staff's position, CUB/EDF argue it lacks evidentiary support. Staff's witness on this issue, Tanya Capellan, is the Director of the ORMD. Tr. at 184. Ms. Capellan testified that she does

not believe that ComEd should offer a supply TOU "at this time." Tr. at 195-196. While ComEd currently holds the customer usage data needed to develop STOU rates, "there was a recent law passed where ComEd will now be required to provide ARES [alternative retail electric suppliers] with that information as of June 2025." Tr. at 195-196. CUB/EDF point out Ms. Capellan merely testified that an STOU offering from ComEd was "premature" at this point in time. Tr. at 196. CUB/EDF explain that nothing in Ms. Capellan's testimony or cross-examination disputes that the barrier to entry for ARES to offer competing supply TOU rates will be resolved before ComEd's STOU offering would become available in 2026.

In conclusion, CUB/EDF support a Commission order requiring ComEd to offer an STOU rate in this docket for residential and small commercial customers. CUB/EDF argue in no case should the Commission's order prohibit ComEd from offering an STOU rate in future proceedings, because such an order would be based on flawed legal analysis and lacks any evidentiary basis in the record in this case. Therefore, CUB/EDF ask in the alternative that if the Commission were to decline CUB/EDF's proposal to require an STOU rate in this proceeding, the Commission's order should direct ComEd to work with stakeholders to develop an STOU rate that the Company would offer in the future.

e. ICEA/RESA's Position

ICEA/RESA contend that while the Commission lacks authority to consider CUB/EDF's proposal in this docket, the Commission may encounter a future proceeding where the prerequisites under Section 16-103(e) to its authority to approve an STOU rate have been met. ICEA/RESA caution that the Commission should not approve a new STOU rate at all because it will harm the nascent competitive retail market for time-variant supply products and services.

According to ICEA/RESA, the primary reasons that the Commission should not approve a new ComEd STOU rate is because ARES are currently facing substantial but temporary barriers to entry. ICEA/RESA note that Mr. Wright testified:

> I expect that ARES will develop and market time-variant products and services despite substantial costs (collectively $2.15 million, excluding carrying costs) imposed on ARES in ICC Docket No. 23-0773 for access to the basic information that ComEd should have been providing to ARES for many years.

ICEA/RESA Ex. 3.0 at 3. ICEA/RESA note that, in addition, ComEd's CC&B system "have not worked for at least five months" at the time of ICEA/RESA witness Wright's direct testimony (*see id.* at 3-4) and the record does not contain evidence that the CC&B system is currently fully functional for ARES TOU products and services.

ICEA/RESA observe that CUB/EDF suggest that because Rider IMUD is expected to be operational in June 2025 that ARES will get a competitive head start and thus a ComEd supply time-of-use rate is appropriate. *See* CUB/EDF IB at 32. ICEA/RESA respectfully disagree. First, ICEA/RESA argue, given the troubles that ComEd has had with implementing CC&B—which remain ongoing for ARES nearly nine months after the

changeover—ICEA and RESA urge the Commission and other stakeholders to not assume the June 2025 deadline is a guarantee. Second, ICEA/RESA continue, because ARES face risk in designing time-of-use products and services, marketing those products and services, and dealing with compliance and contracting issues, the "head start"—even if Rider IMUD is on time—will be negligible with all of the work that must go into new product offers.

f. ELPC/VS/UCS' Position

ComEd's proposal emphasizes that the "public policy" here is to shift customer electricity usage off peak. Staff opposes ComEd offering an STOU rate because, "allowing ComEd to offer a supply TOU rate would be in direct conflict with the Commission's mandate to promote retail competition in Illinois and its final Order in Docket Nos. 22-0432/22-0442." Staff Ex. 8.0 at 3. While promoting competition bears consideration, the Commission has many public policies to consider here including reduction of carbon emissions. The General Assembly specifically cites the need to, "reduce energy usage generally and especially during times of greatest reliance on fossil fuels, and enhance customer engagement opportunities." 220 ILCS 5/16-105.17(a)(2). Shifting usage off peak directly relates to this goal.

Ms. Capellan testifies that, "offering innovative supply rates, such as an STOU rate, should be left up to the retail market." Staff Ex. 8.0 at 5. However, in testimony and on cross she fails to explain or support this statement in terms of whether that will produce results. *See* Staff Ex. 8.0; Tr. at 186-210. Certainly, ComEd offering an STOU rate does not preclude competitive suppliers from offering a better rate—the essence of competition. In fact, ComEd currently provides customers a standard offer of bundled services, and competitive suppliers compete to offer a better rate. Ms. Capellan testifies that the ComEd bundled offer is not a barrier to competition. Tr. at 190. Then when ELPC/VS/UCS asked Ms. Capellan, "is it possible that ComEd offering a supply-side TOU rate would encourage competitive suppliers to offer a better supply side TOU rate than ComEd?" Staff objected to the question and the objection was sustained. Tr. at 199-201. Similarly, when ELPC/VS/UCS asked Ms. Capellan if she had an estimate of how many customers would sign up for TOU supply rates from competitive suppliers, she had no estimate. Tr. at 202-203. The bottom line is that Ms. Capellan fails to support her premise that ComEd offering an STOU hurts the competitive market, or more importantly that it hurts customers.

4. Commission Analysis and Conclusion

The Commission agrees that there are many benefits to an STOU. In the RTOUPP docket, the Commission found that a TOU rate with a supply element lowers risk to residential customers compared to real time pricing, saves customers money, promotes grid resilience, lowers greenhouse gas emissions, positively impacts distribution system investments, provides for flexible rate design, and promotes value, choice, and competition. The Commission acknowledges the arguments pertaining to the Commission's statutory authority and the lack of sufficient record evidence to formulate such a rate in this case. The Commission recognizes ComEd's willingness to collaborate with stakeholders to explore the development of an STOU or a bundled TOU rate. Accordingly, the Commission directs ComEd to engage with stakeholders on the potential

structure and mechanics of an STOU and a bundled TOU rate. Within 120 days of this Order, ComEd shall submit a compliance filing in this docket that details the issues and topics raised by parties and provides a strawman proposal for both an STOU and a bundled TOU rate. The Commission further encourages ComEd to consider developing and proposing an expanded TOU tariff in the near future as a means to advance the objectives of P.A. 102-0662 and enhance its response to changing grid needs.

VII. MISCELLANEOUS CHARGES AND ADJUSTMENTS

A. Kilowatt-based Recovery of Transmission Charges for Rate BESH

ComEd's Rate BESH is a bundled service rate that is available to ComEd retail customers who are not served by an ARES. REACT Ex 8.0 at 2. PJM bills ComEd for some costs on a demand basis (per kW), but ComEd recovers these costs from customers on a volumetric (per kWh) basis. *Id*. at 3. Initially, the Company wanted to maintain the per kWh recovery mechanism. ComEd Ex. 12.0 at 9. Staff and REACT recommend ComEd bill for Transmission Service for customers on Rider BESH in the same way it is billed by PJM, on a cost per kW basis to encourage consistency in how costs are incurred and how they are recovered. REACT Ex 8.0 at 9; Staff Ex. 6.0 at 12-13. ComEd agrees with Staff and REACT's recommendation and agrees to make a tariff filing by January 31, 2026, and subsequently to make program changes to Rate BESH by January 2027. ComEd Ex. 12.0 at 8.

This issue is uncontested. The Commission approves the recommended change to bill for Transmission Service for customers on Rider BESH on a cost per kW basis and ComEd's proposal to make a tariff filing by January 31, 2026, and implement the changes by January 2027.

B. Electric Vehicle Charging in the Watt-Hour Delivery Class

Staff recommended ComEd provide an updated ECOSS that displays revenues from EVs in the Watt-Hour Delivery Class. Staff Ex. 5.0 at 25. ComEd opposed Staff's proposal because modifying the ECOSS would take significant effort but would not change the revenue allocation. ComEd Ex. 5.0 at 22. As an alternative, ComEd proposes providing load profiles related to the kWh and customer count data informally on an annual basis. *Id*. at 23. Staff agrees this is a practical short-term response to the need for better insight into how EV charging customers within the Watt-Hour Delivery Class impact the overall class load. Staff states that providing this data on an annual basis allows for regular updates that can inform future cost allocation decisions and improve the transparency of the ECOSS. Staff Ex. 2.0 at 14. In Staff's view, while ComEd's proposal may not completely address the concerns about fully separating EV charging revenues in the ECOSS, it provides a foundation to assess the growth and impact of EV charging customers over time and is a reasonable compromise that allows for ongoing monitoring without requiring immediate and complex modifications to the ECOSS model. Staff further states that it reserves the right to propose alternative methods or improvements to cost allocation in future cases, should the annual load profile data reveal significant impacts from EV charging customers on peak demand or infrastructure needs, to ensures the Commission retains flexibility to adapt to new data and evolving market conditions as the state continues its transition to EVs and clean energy. Staff Ex. 5.0 at 25.

This issue is uncontested. The Commission approves ComEd's alternative proposal to provide Staff and interested parties, on an informal basis, with annual load profiles for EV charging customers in the Watt-Hour Delivery Class and other customers in the Watt-Hour Delivery Class as part of its annual BE report.

C. Other Miscellaneous Charges and Adjustments

ComEd proposes to update its Meter Rental Charges ("MRCs") and Standard Meter Allowances ("SMAs") that it uses to determine meter lease rental amounts associated with the provision of nonstandard meter installation under Rider ML – Meter Lease ("Rider ML"). ComEd Ex. 2.0 at 71-72. ComEd proposes to update its MRCs and SMAs with updated cost data using the same methodology approved by the Commission in the 2020 RDI. *Id*. at 72. Staff witness Sanders agrees that ComEd's proposed updates to the MRCs and SMAs are consistent with the methodologies approved by the Commission in the 2020 RDI and no other party commented on this issue. Staff Ex. 2.0 at 14.

ComEd also proposes to update several other miscellaneous charges and adjustments contained in its Schedule of Rates. ComEd Ex. 2.0 at 73. These miscellaneous charges and adjustments were last updated in the 2020 RDI, and they are not standard delivery service charges designed to provide for the recovery of the Rate Year Net Revenue Requirement. *Id*. ComEd presented in direct testimony a table of currently effective and proposed rates, as well as exhibits showing how the updated values were computed. *Id*., Table 12. These proposed rates were all computed using the methodology most recently approved by the Commission in the 2020 RDI. *Id*. In responding to discovery from Staff, ComEd discovered that a value in calculating the Non-AMI Meter Reconnection fee was mistakenly inflated, and ComEd proposes a revised calculation for that fee in rebuttal testimony. *See* ComEd Ex. 5.0 at 70.

This issue is uncontested. The Commission finds ComEd's proposal to update the MRCs and SMAs to be reasonable and the updates are approved. The Commission also finds that ComEd's proposed revised miscellaneous charges and adjustments are reasonable and ComEd's proposal is approved.

VIII. 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;

(4) the determinations regarding cost of service, rate design, and terms and conditions of service contained in earlier sections of this Order are reasonable for purposes of this proceeding; the tariffs filed by Commonwealth Edison Company should incorporate the rates, rate design, and terms and conditions set forth and referred to herein;

(5) Commonwealth Edison Company is directed to make a compliance filing consistent with the conclusions set forth herein within 14 days of the entry of this Order. Staff has 7 days after Commonwealth Edison Company has made the filing to review it to confirm compliance; and

(6) 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.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file new tariff sheets with supporting work papers in accordance with Findings (4) and (5) of this Order.

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 16th day of January, 2025.

(SIGNED) DOUGLAS P. SCOTT

Acting Chairman