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Hon. Robin L. Morrison, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

RE: *Tennessee-American Water Company's Response to Commission's Investigation of Impacts of Federal Tax Reform on the Public Utility Revenue Requirements, TPUC Docket No. 18-00039*

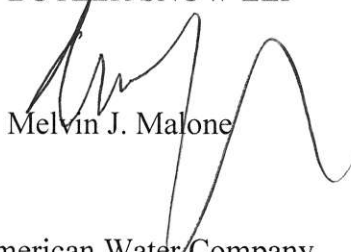
Dear Chairman Morrison:

Attached for filing please find the *Rebuttal Testimony of John R. Wilde* in the above-captioned matter. This filing contains CONFIDENTIAL INFORMATION which is being submitted **UNDER SEAL** as **CONFIDENTIAL INFORMATION and PROPRIETARY**. Both a public version and a nonpublic, CONFIDENTIAL version are attached. The CONFIDENTIAL version should not be posted to the Commission's website.

As required, an original of this filing, along with four (4) hard copies, will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachment

cc: Elaine K. Chambers, Tennessee-American Water Company
Daniel Whitaker, Assistant Attorney General, Consumer Advocate Unit
Karen Stachowski, Assistant Attorney General, Consumer Advocate Unit

PUBLIC VERSION

TENNESSEE-AMERICAN WATER COMPANY, INC.

DOCKET NO. 18-00039

REBUTTAL TESTIMONY

OF

JOHN R. WILDE

ON

**TENNESSEE-AMERICAN WATER COMPANY'S RESPONSE TO COMMISSION'S
INVESTIGATION OF IMPACTS OF FEDERAL TAX REFORM ON THE PUBLIC
UTILITY REVENUE REQUIREMENTS**

December 19, 2019

1 **Q. Please state your name.**

2 A. My name is John R. Wilde.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by American Water Works Service Company, Inc. ("Service Company")
5 as Vice President - Tax. The Service Company is a subsidiary of American Water Works
6 Company, Inc. ("American Water") that provides services to American Water's
7 subsidiaries, including Tennessee-American Water Company ("Tennessee-American,"
8 "TAWC" or the "Company").

9 **Q. Are you the same John R. Wilde who submitted written direct and supplemental**
10 **testimony in this proceeding?**

11 A. Yes. My pre-filed direct testimony was filed in this docket on or about April 2, 2018, and
12 my pre-filed supplemental testimony was filed on or about September 16, 2019.

13 **Q. What is the purpose of your rebuttal testimony?**

14 The purpose of this rebuttal testimony is to present the Company's response to the
15 recommendations of David N. Dittmore on behalf of the Consumer Advocate Unit in the
16 Financial Division of the Tennessee Attorney General's Office in his pre-filed testimony
17 submitted in Docket No. 18-00039 on or about November 21, 2019. I will also update the
18 Tennessee Public Utility Commission ("TPUC" or "Commission") on ongoing IRS
19 guidance initiatives referred to by Mr. Dittmore in his pre-filed testimony.

20 **Q. What are Mr. Dittmore's recommendations?**

21 A. As outlined in his pre-filed testimony, including on pages 3-4, Mr. Dittmore's
22 recommendations can be summarized as follows:

1 Mr. Dittemore agrees with the Company's determination of its excess accumulated
2 deferred taxes ("EADIT") that were created by the passage of the federal Tax Cuts and
3 Jobs Act ("TCJA").

4 Mr. Dittemore also agrees with our proposed application of the Average Rate
5 Assumption Method ("ARAM") to determine the amortization periods for all plant-related
6 excess ADIT, including repairs-related EADIT.

7 Mr. Dittemore recommends that the EADIT amortization that the Company has
8 accumulated to date during the "stub" or "catch-up" period of January 1, 2018 through
9 December 31, 2019 should be flowed back to customers, together with the 2020 EADIT
10 amortization, as a credit within the Company's Docket No. 19-00105 Capital Riders filing.

11 Mr. Dittemore further recommends that the Company be directed to report to this
12 Commission IRS pronouncements in the form of a response to a certain private letter ruling
13 ("PLR") request filed by TAWC's affiliate, Indiana-American Water Company, and/or
14 guidance issued in response to IRS Notice 2019-33. According to Mr. Dittemore, if the
15 IRS issues guidance in Notice 2019-33 or concludes in the PLR that American Water
16 Works Company's affiliates' repairs-related EADIT is not subject to normalization
17 pursuant to ARAM, the Commission should initiate a subsequent proceeding to determine
18 the appropriate amortization of the remaining portion of repairs-related EADIT. In the
19 event that repairs-related EADIT is deemed not subject to ARAM normalization, Mr.
20 Dittemore states that the Company's unamortized, unprotected plant-related EADIT
21 balances (which are a net asset) should be used to offset the repairs-related EADIT liability
22 balance.

1 **Q. Are Mr. Dittmore's recommendations consistent with Tennessee-American's**
2 **EADIT amortization proposal?**

3 **A.** To a certain extent, yes. The principal difference is that while Mr. Dittmore agrees with
4 normalization of all plant-related EADIT pursuant to ARAM at this time, he would like
5 the Commission to revisit the issue if the IRS determines that such normalization is not
6 required for repairs-related EADIT. In contrast, and as outlined in my pre-filed
7 supplemental testimony, Tennessee-American believes that it is in the long-term best
8 interests of our customers and sound public policy to use ARAM to normalize all plant-
9 related EADIT, including repairs-related EADIT, whether or not there is a tax
10 normalization requirement to do so. In addition, while Mr. Dittmore suggests the
11 Commission should revisit the use of ARAM for tax repairs-related EADIT as an isolated
12 issue, and suggests the Commission should base its actions on a singular finding of the IRS
13 with respect to tax repairs-related EADIT, Tennessee-American disagrees. If the
14 Commission wishes to re-evaluate the use of ARAM for tax repairs-related ADIT, it should
15 do so in the context of and subject to all relevant guidance needed to address the subject of
16 using methods other than ARAM for all plant-related ADIT. The following statement
17 taken from Mr. Dittmore's testimony seems to indicate that he agrees that all unprotected
18 plant-related EADIT balances should be addressed as a net balance: "if the Repair
19 Deduction is eventually determined to be Unprotected, these unamortized debits should be
20 used to offset the EADIT liability balance associated with the Repairs Deduction."
21 (*Dittmore's Pre-filed Testimony* at p. 9, ll 22-24). However, that is an assumption on my
22 part. Mr. Dittmore also only cites the uncertainty with respect to the categorization of
23 certain parts of the tax repairs EADIT balance. The determinations of which plant related

1 EADIT balances should be categorized as protected, and of how unprotected plant related
2 EADIT balances could be separated from protected balances in the context of using
3 ARAM, pose a broader set of questions needing guidance from the IRS.

4 **Q. Does Mr. Dittemore explain why the Commission should initiate a subsequent**
5 **proceeding to determine the appropriate amortization of the remaining portion of**
6 **repairs-related EADIT if the IRS decides that normalization of tax repairs is not**
7 **required?**

8 A. Yes, Mr. Dittemore's apparent position (*Dittemore's Pre-filed Testimony* at p. 5, ll 5-8) –
9 that if the IRS does not require that a normalization method of accounting be used for tax
10 repairs, then the use of ARAM should be revisited by the Commission – seems to be
11 supported by his citation of the terms of a settlement CAD reached with Atmos Energy
12 Corporation in TPUC Docket No. 18-00034.

13 **Q. Did the Company use ARAM to determine the amortization for any plant-related**
14 **EADIT, other than repairs-related EADIT, that may or may not be subject to the tax**
15 **normalization rules?**

16 A. Yes. As shown on Exhibit JRW – 2S, which was submitted with my prefled supplemental
17 testimony, the Company used ARAM to determine the amortization for plant-related
18 EADIT balances that are “unprotected” and plant-related EADOT balances, like tax
19 repairs, as to which there is uncertainty as to whether they are unprotected or subject to tax
20 normalization.

1 **Q. Does Mr. Dittmore propose that the Commission use or consider using a method**
2 **other than ARAM for any plant-related EADIT balance other than tax repairs**
3 **regardless of whether it is protected or unprotected?**

4 **A. No.**

5 **Q. Other than a tax designation of “protected” or “unprotected” is there anything**
6 **unique about the plant-related EADIT balances that were identified by the Company**
7 **in Exhibit JRW – 2S that would distinguish them from protected balances from the**
8 **perspective of cost of service rate making?**

9 **A. No, all of these EADIT balances relate to the comparative book-to-tax treatment of utility**
10 **plant, and relate to a cumulative book-to-tax treatment that will normalize or resolve to**
11 **zero over the life of the underlying assets. This is the same period over which customers**
12 **will fund the investments the Company made in this utility plant, and the same period over**
13 **which ARAM would resolve both ADIT and EADIT balances to zero. EADIT balances,**
14 **like residual ADIT balances, are estimates and are subject to remeasurement over the useful**
15 **life of the underlying assets. All plant-related ADIT and EADIT originated from the same**
16 **investments in utility plant – investments that will be recovered from customers over the**
17 **useful life of the underlying assets.**

18 **Q. Do you know of any tax normalization rule or cost of service ratemaking principal**
19 **with respect to recording tax impact that would explain Mr. Dittmore’s inconsistent**
20 **position on which plant-related EADIT balances should be subject to a method of**

1 **accounting other than one that normalizes the tax benefit into rates over the life of**
2 **the underlying utility plant balance that gave rise to the tax benefit?**

3 A. No. In fact, it would be more consistent with the tax normalization rules and ratemaking
4 principals to use a normalized method of accounting such as ARAM or, if allowed as an
5 alternative, RSGM for all plant-related EADIT. As far as I am aware, it has been the
6 practice of this Commission to normalize both the permanent and temporary tax impacts
7 related to plant over the life of the underlying assets. Picking and choosing which plant-
8 related tax balances to use a flow-through accounting method for is complicated to navigate
9 and track over time and can lead to inadvertent and indirect violations of the tax
10 normalization rules. An indirect violation occurs when you are viewed as undermining the
11 tax normalization rules with offsets to other items in cost of service rate making. For
12 example, if you don't use ARAM for an unprotected tax repairs EADIT liability, but you
13 use ARAM for other unprotected EADIT assets, then that inconsistency in the treatment of
14 unprotected plant-related EADIT balances could be viewed as an intentional undermining
15 and circumvention of the result intended by the tax normalization rules.

16 **Q. Mr. Dittmore states as follows in support of his recommendations: "The balance of**
17 **Accumulated Deferred Income Taxes represents income taxes that have been funded**
18 **by ratepayers, but which the Company will, in theory, pay to the federal and state**
19 **government at some point in the future. These customer-provided funds partially**
20 **finance rate base since they reduce the amount of funds necessarily provided by the**
21 **Company." (*Dittmore's Pre-filed Testimony* at p. 3, ll 3-7). Do you agree?**

22 A. No. The income tax expense collected from customers is not increased or decreased as a
23 result of recording ADIT as book-to-tax differences that accrue and reverse. ADIT is a

1 liability to or benefit due from the government, and as such reduces rate base and rates
2 until that ADIT balance is resolved to zero. Plant-related ADIT, specifically, is the product
3 of Company-funded and not customer-funded capital investments in utility plant. To
4 illustrate, tax repairs-related ADIT exists because the Company, when repairing plant, was
5 able to immediately deduct the total cost of that investment in plant for tax purposes, thus
6 producing a temporary tax benefit that will reverse as the funding for those investments is
7 recovered from customers pursuant to book depreciation in a future cost of service rate
8 making proceeding. Therefore, it is the government, not the customer, that is funding the
9 ADIT in the first instance. The customers will fund the deduction that gave rise to the
10 ADIT, but they will do so over the life of the underlying asset, and thus would not have
11 pre-funded the investment or tax deductions in a prior revenue requirement computation.
12 The customer benefits directly from the interest free loan being available to the Company
13 through a direct reduction in rate base, and indirectly as a result of the Company's ability
14 to displace debt and equity on its balance sheet and/or make needed additional investments
15 in Utility Plant.

16 **Q. Do you agree with Mr. Dittimore's statement at page 3 of his pre-filed testimony that**
17 **the reduction in the tax rate had the effect of canceling a portion of these future**
18 **payments (ADIT balance), and that these reductions in future tax obligations are**
19 **referred to as EADIT?**

20 **A.** Yes, although for the sake of clarity and completeness, I would describe the effect of the
21 TCJA legislation as the lender (the government) forgiving a portion of the loan balance
22 that is ADIT. The act of forgiveness could be viewed as the government turning a
23 temporary tax benefit into to a permanent benefit that reduces the cost to the Company of

1 having invested in Utility Plant. I would also make clear, as I did in my supplemental
2 testimony (*Wilde's Pre-filed Supplemental Testimony* at p.11, ll 10-18), that these plant-
3 related ADIT and EADIT balances are estimates that are subject to remeasurement and
4 recategorization as protected or unprotected until they are resolved to zero.

5
6 **Q. Contrary to Mr. Dittmore's position, why is it in the long-term best interests of**
7 **Tennessee-American's customers to use ARAM to normalize all plant-related**
8 **EADIT, including repairs-related EADIT, whether or not it is subject to the tax**
9 **normalization rules?**

10 A. As I explained in my pre-filed supplemental testimony, all plant-related EADIT is a
11 permanent tax benefit accrued as a result of the Company making investments in plant in
12 service and claiming tax deductions in excess of book at a time when the federal corporate
13 income tax rate was 35%, which as a result of the enactment of federal legislation will
14 reverse as book depreciation is recovered as a cost from customers at a time when the tax
15 rate is 21%. Tennessee-American believes this permanent difference, which relates to the
16 deduction of costs not yet recovered in rates from customers, should be ratably credited to
17 those customers who will be required to pay the costs of the plant to which those permanent
18 differences and associated tax benefits relate. The use of ARAM closely aligns the
19 amortization of these permanent differences to the investments that gave rise to the
20 benefits, and thus to the customers who will bear the cost of those investments over their
21 lives. The use of ARAM will lower the total cost of capital recovered from customers over
22 the underlying useful life of the plant in service investment. The use of ARAM also will
23 add to the stability of cost of service rates over the useful life of the property. ARAM

1 produces an amortization of EADIT that is patterned off of the book depreciation that
2 occurs during that year, and is fairly consistent on a year over year basis, as compared to a
3 flow-through method that disconnects the EADIT from the recovery of the underlying
4 assets, creating a rate subsidy in the form of artificially lower rates of customers who take
5 service from those assets during only part to their useful life, and increasing the cost of
6 using those same assets for customers in the later years after the subsidy ends.
7 Alternatively, severing the amortization of EADIT from the related plant in service will
8 increase cost of service recovered from customers over the life of the property, distribute a
9 tax benefit to customers that is disproportionate to the cost to which the benefit relates, and
10 thus benefit customers during the abbreviated amortization period to the detriment of
11 customers who continue to pay for these investments over the property's remaining useful
12 life. Using ARAM to normalize all EADIT related to plant in service, in contrast, promotes
13 inter-generational equity, and rate stability and certainty

14 **Q. Does the use of ARAM for the outstanding plant related ADIT and EADIT balances**
15 **provide customers today and throughout the life of the underlying assets a benefit in**
16 **the form of a cost of service rate reduction?**

17 A. Yes. The outstanding balances of plant-related ADIT and EADIT reduce rate base, and
18 customers' rates are thus reduced by the working average cost of capital associated with
19 those reductions in rate base.

20 **Q. Is the Company's "matching principle" approach novel?**

21 A. No. On December 4, 2019, the Illinois Commerce Commission ("ICC") issued an Order
22 in a rate proceeding involving Commonwealth Edison Company ("ComEd") in which the
23 ICC affirmed its previous approval of the use of ARAM to calculate a 39.5-year

1 amortization period for unprotected property-related EADIT. *See Commonwealth Edison*
2 *Co. Annual formula rate update and revenue requirement reconciliation*, Docket No. 19-
3 0387, slip op. at 37 (Ill. Commerce Comm'n Dec. 4, 2019) (a copy is attached as **Exhibit**
4 **A**) (the "*Illinois Order*"). The ICC concluded as follows:

5 [T]he Commission finds that an amortization period for unprotected property-
6 related EDIT that is calculated using ARAM aligns the amortization of EDIT with
7 the underlying assets and is reasonable and equitable. As Staff points out, this
8 method is consistent with cost of service ratemaking principles that try to allocate
9 annual costs to ratepayers using the utility service during each annual period. The
10 Commission agrees with ComEd and Staff that using ARAM for EDIT ensures that
11 the same customers who are paying over time for the underlying assets also realize
12 benefits of the lower tax rates. The Commission therefore rejects the AG's
13 recommended 5-year amortization period for EDIT. (*Id.*)
14

15 **Q. In your pre-filed supplemental testimony and in Mr. Dittimore's pre-filed testimony,**
16 **the Commission is referred to pending IRS proceedings that will yield more guidance**
17 **and more certainty as to the categorization of a plant related EADIT balance as**
18 **"protected" or "unprotected", and as to when and how ARAM or in the alternative**
19 **the RSGM should be used. Do you have any updates?**

20 **A.** As of the date of filing this testimony, Indiana-American Water has not received a ruling
21 on the question whether the Company's Consent Agreement requires the use of a
22 normalized method of accounting and thus the use of ARAM for tax repairs EADIT created
23 by the TCJA.
24

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15

1
2
3 **Q. Did Mr. Dittmore address all the areas of uncertainty with respect to the application**
4 **of the tax normalization rules on which the IRS is presently engaged in providing**
5 **guidance or that might arise as a result of further guidance?**

6 A. No. Notice 2019-33 requested input on a much wider set of uncertainties than those
7 addressed by Mr. Dittmore. The Notice also likely caused some PLR requests, both filed
8 and unfiled, covering an even wider set of uncertainties to be put on hold. Often in
9 providing guidance the IRS raises new uncertainties for taxpayers to navigate. Today,
10 uncertainties still exist with respect to the designation of plant-related EADIT balances
11 between protected and unprotected; uncertainties still exist regarding whether the
12 designation between what is protected and unprotected can change in the context of future
13 changes in methods of tax accounting or other changes in facts; and uncertainties still exist
14 as to how and under what circumstances an unprotected plant-related EADIT balance can
15 be flowed through as a rate subsidy.

16 **Q. Is the position of the Company inconsistent with the Commission's approach in TPUC**
17 **Docket No. 18-00034 that Mr. Dittmore discusses on pages 12-13 of his pre-filed**
18 **testimony?**

19 A. No. TAWC's position here is in fact consistent with the status in No. 18-00034. According
20 to the *Order Approving Joint Petition to Approve Stipulation and Settlement Agreement* in
21 Docket No. 18-00034, even if the IRS concludes in response to the PLR request submitted
22 by Atmos Energy Corporation that repairs-related EADIT is not subject to the tax
23 normalization rules, the Commission retains the discretion to resolve the pending issue,

1 and Atmos Energy Corporation and the Consumer Advocate will thereafter have the
2 opportunity to submit their respective positions to the Commission.

3 **Q. Other than adopting TAWC's matching principle position here, is there another**
4 **approach that the Commission could consider?**

5 A. Yes. If the Commission wishes to take an approach somewhat similar to that proposed by
6 Mr. Dittmore, the Commission could adopt ARAM for all plant-related excess ADIT,
7 including repairs-related EADIT, and revisit the use of ARAM for unprotected plant related
8 EADIT at a later date, such as thirty (30) days after the issuance of IRS guidance in IRS
9 Notice 2019-33. While TAWC is not advancing here that the guidance from IRS Notice
10 2019-33 will be dispositive, it appears that the current landscape, with, among other things,
11 differing regulatory outcomes and opinions in arguably somewhat similar contexts,
12 including, for instance, the Commission's *Order Approving Stipulation and Partial*
13 *Settlement Agreement and Adjudicating Contested Issues Presented by the Parties*, TPUC
14 Docket No. 18-00040 (Aug. 6, 2019) (*Piedmont Order*) and the *Illinois Order*,¹ the public
15 interest will certainly benefit from the Commission foregoing any further adjudications
16 until clearer and more complete guidance is available to it. Under this alternative approach,
17 the IRS will have the time to sort through all the requests for guidance that it has before it
18 now and those it will likely receive in the course of providing guidance. As I have outlined
19 in my rebuttal testimony above, there is guidance needed covering a wider set of
20 complexities and uncertainties that need to be resolved that are inextricably intertwined
21 with the issue of providing unprotected plant related EADIT balance, including tax repairs
22 using a method other than ARAM, and not undermining the tax normalization rules. This

¹ See also *Piedmont Order* at pp. 10-11 (Piedmont outlining that other jurisdictions have approved longer amortization periods for excess unprotected ADIT.).

1 additional guidance is necessary so the Commission, the Company, and the Consumer
2 Advocate will have all the relevant authoritative guidance to properly navigate the tax
3 normalization rules. Until then, Customers will receive amounts pursuant to ARAM and
4 the benefit of any plant related EADIT balance being a reduction in the rate base further
5 reducing rates.

6 **Q. Does this conclude your rebuttal testimony?**

7 **A. Yes.**

EXHIBIT A

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Annual formula rate update and revenue	:	19-0387
requirement reconciliation under	:	
Section 16-108.5 of the Public Utilities Act.	:	

ORDER

December 4, 2019

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Annual formula rate update and revenue	:	19-0387
requirement reconciliation under	:	
Section 16-108.5 of the Public Utilities Act.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On April 8, 2019, Commonwealth Edison Company ("ComEd" or "Company") filed with the Illinois Commerce Commission (the "Commission") ComEd's annual formula rate update and revenue requirement reconciliation and requested the Commission authorize and direct ComEd to make the compliance filings necessary to place into effect the resulting charges to be applicable to delivery services provided by ComEd beginning on the first day of ComEd's January 2020 billing period, as authorized by Section 16-108.5(d) of the Public Utilities Act (the "Act"), 220 ILCS 5/1-101 *et seq.*

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

1. updated inputs to the performance-based formula rate for the applicable rate year (2020) that are based on final historical data reflected in the utility's most recently filed annual Federal Energy Regulatory Commission ("FERC") Form 1 (for 2018) plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed (2020); and
2. a reconciliation of the revenue requirement that was in effect for the prior rate year (2018) (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (as reflected in the applicable FERC Form 1 (for 2018) that reports the actual costs for the prior rate year).

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

Statutorily, this docket must conclude by December 4, 2019. 220 ILCS 5/16-108.5(d)(3).

The Citizens Utility Board ("CUB") and the Illinois Industrial Energy Consumers ("IIEC") (jointly "IIEC/CUB") were given leave to intervene. The Office of the Attorney General of the State of Illinois ("AG") filed an appearance in this matter.

The following ComEd witnesses testified in this case: Chad A. Newhouse; Susan L. Tracy; Scott G. Georgetti; Nicole Owens; Michael C. Moy; Frank A. Luedtke; Wyatt J. Bohn; and Nickolaos Z. Bafaloukos.

The following Commission Staff ("Staff") witnesses testified in this case: Dianna Trost; Scott Tolsdorf; and Sheena Kight-Garlich. The AG sponsored the testimony of Michael L. Brosch and Mary E. Selvaggio. IIEC/CUB sponsored the testimony of Michael P. Gorman.

An evidentiary hearing was convened in this docket at the Commission's Chicago office before duly authorized Administrative Law Judges on August 29, 2019. ComEd, Staff, the AG, and IIEC/CUB filed and served Initial Briefs ("IB") on September 12, 2019 and Reply Briefs ("RB") on September 26, 2019. On October 7, 2019, ComEd filed a Verified Motion to Reopen the Evidentiary Record to Admit Affidavit ("ComEd's Motion") and Staff filed a Response to ComEd's Motion ("Staff's Response") on October 8, 2019. No other parties responded, and ComEd's Motion was granted, the Affidavit of Susan L. Tracy was admitted into the record, and the record was marked "Heard and Taken" on October 11, 2019. A Proposed Order was issued on October 23, 2019. ComEd, IIEC/CUB and the AG filed Briefs on Exceptions ("BOE") on October 30, 2019. ComEd and Staff filed Reply Briefs on Exceptions ("RBOE") on November 6, 2019. The AG requested oral argument in its Brief on Exceptions, which the Commission granted on November 14, 2019. The Commission held oral argument on November 25, 2019.

II. LEGAL STANDARDS

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

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

220 ILCS 5/16-108(c).

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

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

actual cost information for the applicable calendar year been available at the filing date.

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

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

Subsection 16-108.5(d) of the Act also provides that:

. . . the Commission shall have the authority, either upon complaint or its own initiative, but with reasonable notice, to enter upon a hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year that are reflected in the inputs to the performance-based formula rate derived from the utility's FERC Form 1 . . . The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act.

220 ILCS 5/16108.5(d)

III. OVERALL REVENUE REQUIREMENT

This FRU proceeding sets ComEd's retail delivery rates applicable to the 2020 billing period based on ComEd's 2020 Rate Year Net Revenue Requirement. Those rates will recover the balance of ComEd's fully reconciled actual costs for 2018 as well as ComEd's projected 2019 costs, subject to later reconciliation. The 2020 Rate Year Revenue Requirement, therefore, includes an Initial Rate Year Revenue Requirement, which quantifies the projected cost of providing delivery services for the 2020 rate year, and the Reconciliation Adjustment, which quantifies the difference between the initial revenue requirement and the actual cost of service for the year being reconciled. See ComEd Ex. 1.0 at 9. ComEd states that it has presented evidence supporting its revenue requirement through the testimony of its witnesses and the attachments, schedules, and exhibits those witnesses sponsored.

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

A. 2020 Initial Rate Year Revenue Requirement

ComEd presented evidence showing that its properly calculated 2020 Initial Rate Year Revenue Requirement as adjusted in its surrebuttal testimony, and later adjusted in ComEd's Motion concerning the agreement discussed in Section B.1. of this Order regarding Marketplace Expense, is \$2,629,571,000. ComEd Ex. 12.0 at 4; ComEd Ex. 12.01, Sch. FR A-1, line 23. Staff's recommended 2020 Initial Rate Year Revenue Requirement presented in Attachment A to Staff's Response to ComEd's Motion ("Staff's Response"), reflects Schedule 1 FY, line 1 is \$2,629,571,000.

The AG observes that, for 2020, ComEd requests a \$2,679,860,000 net revenue requirement, representing a \$16,939,000 reduction in revenues when compared to total revenues authorized in ComEd's last FRU. *Commonwealth Edison Co.*, Docket No. 18-0808, Order (Dec. 4, 2018) ("18-0808 Order"); ComEd Ex. 12.01, Sch. FR A-1, as adjusted in ComEd's Motion. The AG further observes that the net revenue requirement includes a revenue requirement for 2020, plus an additional \$74,595,000 to reconcile the 2018 revenue requirement and a credit of \$24,306,000 because ComEd earned more than its cost of capital in 2018. *Id.*

In consideration of the contested issues in this proceeding, the Commission's determination regarding the 2020 Initial Rate Year Revenue Requirement is set forth later in this Order.

B. 2018 Reconciliation Adjustment

ComEd presented evidence that its properly calculated 2018 Reconciliation Adjustment, including interest, is \$74,595,000. ComEd Ex. 12.01, Sch. FR A-1, line 24, as adjusted in ComEd's Motion. Staff presented evidence that ComEd's 2018 Reconciliation Adjustment, including interest, is \$74,595,000. Staff's Response, Sch. 8 FY. In consideration of the contested issues in this proceeding, the Commission's determination regarding the 2018 Reconciliation Adjustment is set forth later in this Order.

C. ROE Collar and ROE Penalty Calculation

ComEd states its jurisdictional return on equity ("ROE") is a measure of the income ComEd earns in relation to shareholders' equity. ComEd Ex. 1.0 at 11. Section 16-108.5(c)(5) of the Act creates a collar that sets upper and lower boundaries on the potential difference between (a) the actual ROE ComEd earns in a Rate Year and (b) the ROE calculated under the statutory formula set forth in Section 16-108.5(c)(3). See 220 ILCS 5/16-108.5(c)(5). The Illinois Future Energy Jobs Act ("FEJA"), PA 99-0906, authorized ComEd to use a zero basis point ROE collar adjustment calculation, to ensure that ComEd's revenue matches its authorized prior year revenue requirement, without regard to outside factors like weather or changes in load or demand, which could cause actual revenues to deviate from the revenue requirement rates were designed to recover. ComEd Ex. 1.0 at 12. ComEd calculated an ROE Collar adjustment of \$(24,306,000).

ComEd Ex. 12.01 at 2. ComEd states it did not incur a ROE penalty. See Sch. FR D-1, line 9.

Staff states that ComEd's Delivery Service ROE during 2018 fell above the maximum allowed ROE for the ROE Collar; therefore, a ROE Collar adjustment of \$(24,306,000) is necessary. Staff concurs that there is no ROE penalty calculation this year related to performance metrics.

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

D. 2020 Rate Year Net Revenue Requirement

ComEd provided evidence that its properly calculated 2020 Rate Year Net Revenue Requirement, reflecting adjustments, is \$2,679,860,000. ComEd Ex. 12.0 at 4; ComEd Ex. 12.01, Sch. FR A-1, line 36, as adjusted in ComEd's Motion. Staff states the overall 2020 Rate Year Net Revenue Requirement is \$2,679,860,000. Staff's Response, Sch. 1 FY, line 5. The Commission's determination regarding the 2020 Rate Year Net Revenue Requirement is set forth later in this Order.

IV. RATE BASE

A. Overview

1. 2018 Reconciliation Rate Base

ComEd states that the 2018 Reconciliation Year Rate Base, as adjusted during the course of this proceeding, is \$10,350,118,000. ComEd Ex. 12.0 at 5; ComEd Ex. 12.01, Sch. FR B-1, line 28, as adjusted in ComEd's Motion. Staff's calculation is consistent with ComEd's. The Commission's determination regarding the 2018 Reconciliation Rate Base is set forth later in this Order.

2. 2020 Initial Rate Year Rate Base

ComEd submitted evidence that its 2020 Initial Rate Year Rate Base, as adjusted during the course of this proceeding, is \$11,355,140,000. ComEd Ex. 12.01, Sch. FR B-1, line 36, as adjusted in ComEd's Motion. Staff's calculation is consistent with ComEd's. The Commission's determination regarding the 2020 Initial Year Rate Base is set forth later in this Order.

B. Uncontested Issues

1. Accumulated Provisions for Depreciation and Amortization

The total amount of accumulated depreciation related to ComEd's rate base, as of December 31, 2018, was \$7,364,864,000. This total was comprised of \$6,214,636,000 related to Distribution Plant and \$1,150,228,000 related to General and Intangible Plant. ComEd Ex. 2.0 at 14-15; ComEd Ex. 12.01, Sch. FR B-1, lines 7-12. The Commission's determination regarding Accumulated Provisions for Depreciation and Amortization is set forth later in this Order.

2. Plant in Service

ComEd's Plant in Service in rate base for the 2018 Reconciliation Revenue Requirement and the 2020 Initial Rate Year Revenue Requirement are uncontested.

ComEd's calculated level of electric utility plant in service at original cost in rate base as of December 31, 2018, before projected plant additions, is \$22,485,903,000. ComEd Ex. 12.01, Sch. FR B-1, line 6. In addition, ComEd requests that the Commission make an original cost finding in this proceeding to approve the original cost of plant in service as of December 31, 2018, before adjustments.

ComEd's 2019 projected plant additions consist of \$1,323,582,000 of Distribution Plant additions and \$299,380,000 of General and Intangible Plant additions. ComEd Ex. 2.01, Sch. FR B-1, lines 29, 31. After adjusting for accumulated reserve, Accumulated Deferred Income Taxes ("ADIT") and Cash Working Capital ("CWC"), the total 2019 net projected plant additions are \$1,005,022,000. These are expected to be in-service as of December 31, 2019. *Id.* at line 35, ComEd Ex. 5.0 at 21. ComEd states that these additions were described in accordance with 83 Ill. Adm. Code 285.6100. ComEd Ex. 5.01.

In discovery, ComEd accepted an adjustment to remove two projected plant additions in its rebuttal testimony. First, ComEd agreed to an adjustment to remove ITN 59640 EdiSun LLC because the project was mistakenly included as a projected plant addition. AG Ex. 2.0 at 24; AG Ex. 2.2; *See also*, ComEd Ex. 5.02, p. 9 – Row 712. This adjustment resulted in a reduction to the 2019 Filing Year rate base by \$1,062,000 the 2019 Filing Year expense by \$52,000, and the 2020 Net Rate Year Revenue Requirement by \$140,000. ComEd Ex. 9.0 at 6; ComEd Ex. 9.02, WP 19; ComEd Ex. 9.07.

Second, ComEd agreed to an adjustment to remove ITN 58820 Energy Storage because the Company did not intend to implement any battery energy storage projects in 2019. AG Ex. 2.0 at 24; AG Ex. 2.2; ComEd Ex. 5.02, p. 2 – Row 82.

This adjustment resulted in a reduction to the 2019 Filing Year rate base by \$1,772,000 the 2019 Filing Year expense by \$47,000, and the 2020 Net Rate Year Revenue Requirement by \$192,000. ComEd Ex. 9.0 at 6; ComEd Ex. 9.02, WP 19; ComEd Ex. 9.07.

With the exception of three projected plant additions, discussed *infra*, the Plant in Service is uncontested. The Commission therefore approves the uncontested Plant in Service costs.

3. Construction Work in Progress

Construction work in progress ("CWIP") is the amount of money, at any given time, which has been spent on rate base assets that have not yet gone into service. There are always projects under construction; thus investment costs include CWIP at any given time. For projects in excess of \$25,000 with construction periods greater than 30 days, a carrying cost is calculated and added to the overall cost of the project and capitalized. This carrying cost is referred to as the Allowance for Funds Used During Construction ("AFUDC"). ComEd Ex. 2.0 at 15.

ComEd's CWIP for the 2018 Reconciliation year rate base is uncontested. ComEd includes \$42.6 million of CWIP in its rate base for the 2018 Reconciliation Revenue Requirement for projects that are not accruing Allowance for Funds Used During Construction. ComEd Ex. 2.0 at 15-16; ComEd Ex. 5.0 at 20. ComEd demonstrates that the level of CWIP included in ComEd's reconciliation rate base is prudent, reasonable,

and representative of ComEd's current construction activities. ComEd Ex. 5.0 at 20. ComEd's CWIP is uncontested. Therefore, the Commission approves this component of rate base.

4. Property Held for Future Use

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

5. Cash Working Capital

Cash working capital ("CWC") is the amount of cash that ComEd maintains in order to meet its expenses and other cash outflow obligations. ComEd determines the amount of CWC based on a lead/lag study, which is an analysis of the timing of applicable cash inflows to and cash outflows from a utility. ComEd Ex. 2.0 at 16; ComEd Ex. 12.01, App. 3. These leads and lags were updated in ComEd's 2017 FRU proceeding, Docket No. 17-0196. ComEd Ex. 2.0 at 17; *Commonwealth Edison Co.*, Docket No. 17-0196, Order (Dec. 6, 2017). ComEd's reconciliation year rate base includes CWC of \$20,164,000 (ComEd Ex. 9.03 Schedule B-1 RY, line 10), while the filing year rate base includes a decrease to that amount by \$1,838,000 for CWC. ComEd Ex. 12.01, Sch. FR B-1, line 34a; ComEd Ex. 12.01, App. 3, as adjusted in ComEd's Motion.

In discovery, ComEd adjusted the CWC workpapers to jurisdictionalize the administrative and general wages, resulting in a reduction to rate base in the filing year and the rate year. ComEd Ex. 9.0 at 5-6. This adjustment is uncontested.

There is no dispute on the method of calculating CWC; however, the final balance of CWC is set forth later in this Order using the approved revenue requirement.

6. Accumulated Deferred Income Taxes

Generally speaking, Accumulated Deferred Income Taxes ("ADIT") reflects a temporary difference between when an expense (or revenue) is recognized in a company's financial and accounting records, commonly referred to as a company's "books," versus when the company recognizes that expense (or revenue) on its tax return. ComEd Ex. 2.0 at 17.

After adjustments, ComEd states the appropriate level of 2018 ADIT to be deducted from rate base, as of December 31, 2018, is \$4,514,549,000. ComEd Ex. 2.0 at 17; ComEd Ex. 12.01, Sch. FR B-1, line 17. This amount was derived through an analysis of the components of the deferred tax balances, which are then either directly assigned or allocated based on the assignment or allocation of the operating items to which they relate. ComEd Ex. 2.0 at 17. ComEd's 2018 ADIT balance is reflective of the current year deduction under the safe harbor method of tax accounting for repair costs. *Id.*; see also ComEd Ex. 12.01, App. 4.

Staff recommended an adjustment to calculate ADIT associated with prior plant disallowances using current tax rates rather than historical tax rates. Staff Ex. 2.0 at 4. ComEd agreed to Staff's adjustment. ComEd Ex. 9.0 at 6.

The AG recommended an adjustment to correct the calculation of the ADIT on the projected plant additions to remove the impact of bonus depreciation to reduce rate base by \$13,371,000. AG Ex. 4.0R at 14-15. ComEd agreed to the AG's adjustment since

bonus depreciation is no longer effective due to the Tax Cuts and Jobs Act. ComEd Ex. 12.0 at 5-6.

ADIT, excluding the amount under consideration for the excess deferred income taxes ("EDIT"), is uncontested and therefore approved.

7. Materials and Supplies

Materials and Supplies ("M&S") include items purchased primarily for use in the construction and maintenance of utility property. These items are kept in inventory until needed, and include, for example, building and construction materials, hand tools, and paints and adhesives. ComEd. Ex. 2.0 at 18.

ComEd's M&S balance includes items purchased primarily for use in the construction and maintenance of utility property. ComEd included in its rate base the actual 2018 year-end balance of M&S, less the associated accounts payable. The net amount of M&S included in rate base is \$62,258,000. ComEd Ex. 12.01, Sch. FR B-1, line 18. This amount is uncontested and is approved.

8. Other Assets and Liabilities

a. Assets

Other assets typically represent costs ComEd has incurred, but has not yet recovered, and therefore is an increase to rate base. ComEd. Ex. 2.0 at 18. ComEd asserts it has included three categories of other assets in rate base: regulatory assets, deferred debits, and other deferred charges consisting of unamortized balances of certain one-time expenses in excess of \$10 million. None of these amounts are contested and they are therefore approved.

(i) Regulatory Assets

ComEd included in its 2018 Reconciliation Revenue Requirement rate base and its 2020 Initial Rate Year Revenue Requirement rate base Regulatory Assets amounting to \$142,326,000. ComEd Ex. 12.01, Sch. FR B-1, line 19. These assets include: (i) a regulatory asset representing the unamortized balance (as of year-end 2018) of \$6,434,000 for capitalized incentive compensation costs; (ii) unrecovered costs of \$654,000 related to ComEd's Advanced Metering Infrastructure ("AMI") pilot; and (iii) the unrecovered balance of \$135,238,000 for the accelerated depreciation associated with ComEd's AMI investment (apart from the AMI Pilot). ComEd Ex. 2.0 at 20. The Regulatory Assets and Liabilities for the 2018 Reconciliation Revenue Requirement and the 2020 Initial Rate Year Revenue Requirement are uncontested. Therefore, the Commission approves this component of rate base.

(ii) Deferred Debits

ComEd included in its 2018 Reconciliation Revenue Requirement rate base and its 2020 Initial Rate Year Revenue Requirement rate base Deferred Debits totaling \$45,599,000. ComEd Ex. 12.01, Sch. FR B-1, line 20. ComEd's Deferred Debits include: (i) Cook County Forest Preserve fees of \$3,749,000 related to licensing fees for distribution lines; (ii) a Long Term Receivable from the Mutual Beneficial Association Plan related to payments that ComEd has made totaling \$625,000 and for which it is awaiting reimbursement; (iii) a deferred debit of \$19,100,000 associated with ComEd's capitalized

vacation pay not included in plant-in-service; (iv) expected recoveries from insurance on claims made by the public against ComEd of \$19,665,000; (v) pre-payments of \$458,000 to secure rights to renewable Distributed Energy Resources for the Bronzeville Community Microgrid; and (vi) payments of \$2,002,000 to the Commission for authorization fees related to future long-term debt issuances. ComEd Ex. 2.0 at 19-20. The Deferred Debits for the 2018 Reconciliation Revenue Requirement rate base and the 2020 Initial Rate Year Revenue Requirement rate base are uncontested and therefore approved.

(iii) Other Deferred Charges

ComEd included in its 2018 Reconciliation Revenue Requirement rate base and its 2020 Initial Rate Year Revenue Requirement rate base the unamortized balances of certain one-time expenses greater than \$10 million. ComEd Ex. 2.0 at 20. In this proceeding, ComEd has removed certain expenses related to storms, merger, non-recurring upgrade, repair or replacement expenses to install AMI meters, and Emerald Ash Borer risk mitigation program expenses, from its operating expenses and instead amortized them each over a five year period, as required by Section 16-108.5(c)(4)(F). The total unamortized balance of \$80,891,000 related to these expenses is shown on ComEd Ex. 12.01, Sch FR B-1, line 24; ComEd Ex. 2.0 at 20.

As to storms, ComEd is amortizing over five years the costs of two 2014 storms totaling \$38,139,000 and one 2018 storm totaling \$25,981,000. ComEd Ex. 2.0 at 20. The unamortized balance of the 2018 storm expense, \$20,785,000, is included in rate base. *Id.* As of December 31, 2018, the 2014 storm regulatory asset balance was fully amortized. *Id.* No storms incurred expenses greater than \$10 million in 2015, 2016, or 2017. *Id.*

As to merger, ComEd removed certain merger expenses from its operating expenses and instead amortized them over the required five year period. ComEd recorded merger expenses of \$10,584,000 in 2016. *Id.* The unamortized balance of the 2016 merger expenses of \$4,234,000 is included in ComEd's rate base. *Id.*

As to AMI meters, ComEd is amortizing over five years costs related to non-recurring A-base meter upgrades, other electrician repairs and replacements required as part of the smart meter deployment plan. *Id.* In 2016, 2017, and 2018, ComEd incurred \$29,309,000, \$21,441,000, and \$17,197,000 respectively, of such costs. *Id.* ComEd's total unamortized balance related to these expenses is \$38,346,000. ComEd Ex. 12.01, Sch. FR B-1, line 24; ComEd Ex. 2.02, WP 8.

Finally, as to the Emerald Ash Borer mitigation program, ComEd states that, in 2017 and 2018 it incurred \$12,003,000 and \$12,906,000, respectively. ComEd Ex. 2.0 at 21. ComEd's unamortized balance related to these expenses is \$17,526,000. ComEd Ex. 12.01, Sch. FR B-1, line 24; ComEd Ex. 2.02, WP 8.

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

b. Liabilities

Other liabilities typically refer to costs that ComEd has not yet incurred, but with respect to which ComEd has recovered some amounts through delivery service charges,

and are a reduction to rate base. ComEd Ex. 2.0 at 21. ComEd asserts that it has included three categories of Other year-end 2018 liabilities in rate base: (i) operating reserves, (ii) asset retirement obligations (ii) and deferred credits. None of these amounts are contested, and they are therefore approved.

(i) Operating Reserves

ComEd included in its 2018 Reconciliation Revenue Requirement rate base and its 2020 Initial Rate Year Revenue Requirement rate base Operating Reserves amounting to \$281,224,000. ComEd Ex. 2.0 at 21. These jurisdictional amounts consist of the following: (i) Other Post-Employment Benefits and other benefits of \$204,800,000; (ii) injuries and damages of \$74,558,000 related to workers' compensation and public claims; (iii) other miscellaneous environmental liabilities of \$1,577,000 primarily related to the reserve for the remediation of Superfund sites; and (iv) management retention and incentive liabilities of \$289,000. ComEd Ex. 12.01, Sch. FR B-1, line 21.

(ii) Asset Retirement Obligations

ComEd included in its 2018 Reconciliation Revenue Requirement rate base and its 2020 Initial Rate Year Revenue Requirement rate base Asset Retirement Obligations of \$18,687,000. *Id.* at 22. This amount represents asset removal costs recovered through depreciation expense. *Id.*; ComEd Ex. 12.01, Sch. FR B-1, line 22.

(iii) Deferred Credits

ComEd included in its 2018 Reconciliation Revenue Requirement rate base and its 2020 Initial Rate Year Revenue Requirement rate base Deferred Credits that reduce rate base by a total of \$108,068,000. ComEd Ex. 2.0 at 22; ComEd Ex. 12.01, Sch. FR B-1, line 23; ComEd Ex. 12.02, WP 5. The deferred credits recorded in FERC Account 253 include \$959,000 for deferred rents and \$271,000 for post-retirement benefit obligations. ComEd Ex. 2.0 at 23.

9. Customer Deposits

ComEd receives refundable deposits from certain new customers as a condition of initiating electric service. ComEd Ex. 2.0 at 23. ComEd applied its year-end 2018 balance of customer deposits as a reduction to rate base of \$111,399,000. ComEd Ex. 12.01, Sch. FR B-1, line 25. This figure is uncontested and therefore approved by the Commission.

10. Customer Advances

ComEd receives refundable distribution system extension deposits from customers under the terms of Rider DE - Distribution System Extensions as customer advances to begin construction. ComEd has reduced rate base for these deposits as of December 31, 2018 in the amount of \$130,789,000. *Id.*; ComEd Ex. 12.01, Sch. FR B-1, line 26; ComEd Ex. 12.01, App. 1 lines 23-30. This item is uncontested. The Commission therefore approves this component of rate base.

11. Updated Depreciation Rates

In January 2019, ComEd submitted to the Commission an updated depreciation study, which was performed by qualified experts, and independently reviewed by public

accountants ("2019 Depreciation Study"). ComEd Ex. 8.0 at 6-7. The depreciation expense included in ComEd's calculation of its 2020 Initial Rate Year Revenue Requirement is based on the depreciation rates supported by that study (the "2019 Depreciation Rates"). Pursuant to Section 5-104 of the Act, ComEd explains, the depreciation rates were made effective upon filing. 220 ILCS 5/5-104. ComEd states that it applied those depreciation rates in this proceeding. Initially, both the AG and IIEC/CUB recommended that the Commission initiate an investigation of ComEd's depreciation rates, pursuant to Section 5-104(b) of the Act, arguing that, pending the conclusion of any such investigation, the Commission should order ComEd to revert to using depreciation rates from 2014 to calculate ComEd's revenue requirement.

The depreciation represents the loss in value that occurs in connection with the consumption of utility plant in the course of service, via wear and tear, deterioration, action of the elements, inadequacy, obsolescence, changes in demand, or the requirements of public authorities. See ComEd Ex. 8.0 at 4-5.

From an accounting perspective, depreciation is a method of distributing the cost of the capital asset, less any net salvage value, over a period of time by allocating annual amounts to expense. Each annual amount of depreciation expense is part of that year's total cost of providing utility service.

The most prevalent method of depreciating assets, known as the straight-line method of depreciation, distributes an equal amount of the cost of the asset to each year of its service life. The service life of an asset is based on the type and age of the asset; therefore, the depreciation rate applicable to a pool or group of assets will be based on the nature and age of the included assets. As new assets enter service and older assets are retired, the aggregate service lives associated with the collection of capital assets in rate base is constantly changing.

In Docket No. 07-0566, the Commission found it reasonable for ComEd to conduct depreciation studies every five years and use the results of those studies to update ComEd's depreciation rates. *Commonwealth Edison Co.*, Docket No. 07-0566, Order at 235 (Sept. 10, 2008).

At the November 25, 2019 Oral Argument, ComEd, the AG and IIEC/CUB indicated to the Commission that the disputed issue of the depreciation study was no longer contested. The parties further averred that a stipulation memorializing the agreement between the parties would be filed. On November 27, 2019, the parties filed a Stipulation and Withdrawal of Objections Regarding Depreciation ("Stipulation"). The Stipulation, among other, notes that IIEC/CUB and the AG withdrew their objections to using the 2019 Depreciation Rates in the calculation of ComEd's 2020 initial revenue requirement. They also withdrew their request to initiate a separate proceeding or to extend this proceeding to investigate the 2019 Depreciation Study. Stipulation at 2. ComEd agreed to submit the 2019 Depreciation Study to the Commission by May 1, 2020, as part of its annual formula rate update filing. *Id.* ComEd will provide IIEC, CUB, and the AG, within 30 days of this Order, with the "working copies of any workpapers supporting the 2019 Depreciation Study, to the extent not already provided." *Id.* The Commission hereby adopts the Stipulation.

The Commission also adopts Staff's recommendation that ComEd be required, in future proceedings, to include in direct testimony the entire depreciation study used to support depreciation rates in effect for the applicable calendar year. The disclosure of the entire depreciation study at the onset of the case in future proceedings will ensure parties have more time to evaluate the depreciation study. ComEd is directed to disclose the entire depreciation study for the applicable year in its direct testimony in future proceedings.

Therefore, the depreciation rates filed with the Commission on January 23, 2019 are deemed appropriately applied by ComEd in this proceeding.

C. Contested Issues

1. Projected Plant Additions

a. ComEd's Position

ComEd states that it submitted with its initial filing in this case projected plant additions, consistent with Section 16-108.5(d)(1). The projection of plant additions is a forecast created at a point in time based on information known at that time of plant additions expected to be placed in service in the filing year. ComEd Ex. 9.0 at 6. At the time the forecast was made, ComEd states that it projected 2019 plant additions in the amount of \$1,625,740,000. ComEd Ex. 12.0 at 5; ComEd Ex. 2.0 at 24. In response to discovery, ComEd removed two items that had been mistakenly included in the list of projected plant additions. ComEd Ex. 9.0 at 6. These were ITN 59640 EdiSun project and ITN 58820 Energy Storage project, discussed *supra*. These are uncontested.

In dispute are projects ITN 59083, ITN 58371, and ITN 52757, all of which relate to the Bronzeville Community Microgrid, and which the AG asks these to be disallowed or removed from projected plant. ComEd notes that the AG does not dispute that these three ITNs were properly forecasted to be placed in service in 2019 at the time the projections were made. ComEd states that because the projects were anticipated to be in-service in 2019 at the time the forecast was made, the dollars for these projects are appropriately included in projected plant additions in rate base.

ComEd points out that the AG presents no evidence to show that the forecast was improper. Although AG witness Selvaggio argues that Section 16-108.5(c)(6) does not permit recovery for plant additions that are not projected to be in-service in the filing year, ComEd reiterates that, at the time ComEd's total projected plant additions were determined, the available information supported the forecast. ComEd Ex. 9.0 at 6. ComEd asserts that although the projected in-service dates for these three ITNs were later updated, this does not warrant a retroactive revision of the forecast or rate base, as suggested by the AG, because the projects were properly forecasted based on the information available at the time of filing.

ComEd notes that the AG asserts – without citation to law or precedent – that the “purpose of a formula rate update review is to base rates on the best available evidence” and that the “best evidence” demonstrates these three specific projects will not be in service in 2019. AG IB at 6. ComEd explains that this is not the statutory standard, and the “best evidence” the AG relies on is selective and a biased application of hindsight.

First, under 220 ILCS 5/16-108.5(c)(6), ComEd asserts that the Act does not require the utility to update its projection of plant additions throughout the formula rate update proceeding. ComEd contends such a requirement would impose an unreasonable burden outside the requirements set forth in the Act. ComEd explains that any imprecision in the forecast of projected plant additions is best addressed through the statutory reconciliation process, which makes customers whole for differences between forecast and actual costs, by applying interest to the reconciliation balance. 220 ILCS 5/16-108.5(d). In light of the reconciliation, ComEd asserts that it is unnecessary, inappropriate, and wasteful to require that the value of projected plant additions be updated during the course of the formula rate update proceeding. ComEd notes that the AG ignores the statutory reconciliation process.

Second, ComEd contends that removing these projects from projected plant additions would result in an inconsistent projection. ComEd Ex. 12.0 at 6. ComEd explains that emergent and accelerated projects not included in the forecast will also go into service this year, and that while some projects properly forecast to be placed into service in 2019 will end up being put into service in 2020, other projects properly forecast for 2020 may go into service in 2019. *Id.* Adoption of the AG's proposed adjustment would remove items from projected plant additions but would not capture any advancements or emergent projects. This would result in a less accurate overall projection and a systematic underestimate of the actual plant additions taking place in 2019. *Id.* at 8. Such underestimated projected plant will increase the amount for recovery through the reconciliation in the next year.

b. Staff's Position

In direct testimony, Staff presented an adjustment to remove certain projected plant additions from the Company's filing year rate base. Staff Ex. 2.0 at 5. The adjustment also removed the accompanying depreciation expense, accumulated depreciation, and ADIT. *Id.* The reason for the adjustment was that during the discovery process, ComEd identified several projects included in the list of projected plant additions which would not be placed into service until after 2019. *Id.* Staff proposed the disallowance of five projected plant additions. Staff Ex. 5.0 at 3. In Staff's rebuttal testimony, Staff no longer proposed disallowing all five projected plant addition projects after review of the Company's rebuttal testimony. *Id.* The Company agreed to withdraw two of the projects, discussed *supra*, and Staff is no longer proposing the disallowance of the remaining three projected plant addition projects. *Id.* The Company noted in surrebuttal testimony there is no remaining dispute between ComEd and Staff concerning projected plant additions. ComEd Ex. 12.0 at 6.

c. AG's Position

The AG notes that the Commission found that the Bronzeville Microgrid Demonstration Project pilot (the "Microgrid" or "Project") was approved as a unique project intended to provide "important experience and learnings regarding the value and use of microgrids, and the use of distributed energy resources ("DER") in a distribution function to support microgrid operations," and that "the experience and learnings gained from the Project will benefit customers and the public generally by advancing distribution grid design and operation." *Commonwealth Edison Co.*, Docket No. 17-0331, Order at 1

(February 28, 2018) (“17-0331 Order”). ComEd estimated its maximum net Project cost at \$25 million. *Id.*

The AG argues that in this docket, ComEd seeks to prematurely include in rate base three projected plant additions related to the Bronzeville Microgrid that the Company admits will not be in service in 2019 despite the fact that it included the projects in its initial filing. AG Ex. 2.0 at 7 (citing the Company’s supplemental response to AG data request (“DR”) 5.06); ComEd Ex. 9.0 at 6. The AG contends that including these projects in rate base violates Section 16-108.5(c)(6) of the Act which requires that the formula rate tariff be based on the Company’s “most recently filed FERC Form 1, plus projected plant additions . . . for the calendar year in which the tariff and data are filed . . .” 220 ILCS 5/16-108.5(c)(6) (emphasis in original). The AG further adds that the Act does not authorize the Company to circumvent the statute and extend the period of time for which it can include projected plant additions beyond “the calendar year in which the tariff and data are filed . . .” 220 ILCS 5/16-108.5(c)(6).

ComEd concedes that the three projected plant additions at issue - ITN 59083, ITN 58371, and ITN 52757 - will not in fact not be in service by the end of 2019, but nevertheless argues that the projections are proper because it anticipated that the projects would be placed in service in 2019 at the time the projections were made. The AG asserts that it is irrelevant whether ComEd believed its projections were proper at the time of ComEd’s initial filing. At issue is whether the Commission should use the best, most accurate and most recent record evidence in populating the formula for projected plant additions. *Id.* at 4.

The AG cites to Section 16-108.5(d) of the Act showing that the Commission has the authority and obligation to “apply the same evidentiary standards, including, but not limited to, those concerning prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act.” 220 ILCS 5/16-108.5(d)(3). The AG concludes that the Commission cannot ignore undisputed evidence that plant will not be in service in the filing year in its review of the Company’s projected plant and should direct the Company to remove these plant additions from rate base.

The Company argues that “removing these projects from projected plant additions would result in an inconsistent projection.” ComEd IB at 18. It posits that such removal would “result in a less accurate overall projection and a systematic understatement of the actual plant additions taking place because “some projects properly forecast to be placed into service in 2019 will end up being put into service in 2020, [while] other projects properly forecast for 2020 may go into service in 2019.” *Id.* The AG notes that the Company does not point to a single project that it projected would be in service in 2020 but has since been accelerated to be in service in 2019 – it merely asserts this possibility exists. The AG argues that ComEd’s argument is speculative as to what projects have been or will be accelerated or delayed, is entirely unsupported by the record, and is contradicted by ComEd’s own adjustment of its projected plant in surrebuttal testimony.

The AG stresses that ComEd’s own adjustment of its projected plant in surrebuttal testimony contradicts its argument that removal of projected plant additions renders inaccurate overall projections. In response to two AG data requests, ComEd modified its

initial projection of plant in service by removing two projected projects, with ComEd Exhibit 12.01 showing total Adjusted Projected Plant Additions and Accumulated Reserve that is \$15,764,000 less than ComEd initially projected. *Id.*; *Cf.* ComEd Ex. 12.01, Sch. FR B-1, lines 29-35 and ComEd Ex. 2.01, Sch. FR B-1, lines 29-35. This demonstrates that the Company has and does make downward adjustments to its projected plant during an ongoing proceeding to conform with the evidence produced in discovery.

The AG concludes that the Company's failure to articulate and support with objective evidence the existence of its alleged accelerated project(s) that offset plant that is known not to be in service in 2019 renders meritless the Company's argument that "the reconciliation [of the formula rate update process] makes customers and the utility, whole, because interest is applied to the reconciliation balance." ComEd IB at 17. However, the AG notes that the reconciliation is not a license to overstate rate base by known amounts, or to ignore undisputed evidence that certain plant will not be in service in the relevant year.

The AG asks the Commission to adopt the adjustment to remove the Microgrid costs presented on AG Ex. 4.1R, Schedule 1, which reduces rate base by \$4,721,974 and reduces depreciation expense by \$342,781.

d. Commission Analysis and Conclusion

Section 16-108.5(c)(6) requires a utility to submit "final data based on its most recently filed FERC Form 1, plus projected plant additions ... for the calendar year in which the tariff and data are filed" and mandates that data be used to "populate the performance-based formula rate and set the initial delivery services rates under the formula." 220 ILCS 5/16-108.5(c)(6).

The AG proposes an adjustment to remove three projected plant additions from ComEd's filing year rate base. ComEd argues it appropriately included the three projected plant additions. Staff initially opposed inclusion of the three plant additions that remain at issue, but later removed any objection after reviewing ComEd's rebuttal testimony.

There is no dispute that the three projected plant additions were properly included in ComEd's forecast when it was completed. A forecast, by its very nature, involves uncertainty. This is a lengthy proceeding, and as the year goes by, ComEd would inherently have a better understanding of which plant additions may or may not be placed into service by 2019. However, the Act does not require ongoing updates to the value of projected plant additions throughout the FRU proceeding. What the Act does provide is a way for the uncertainty in any forecast of projected plant additions to be reconciled and the customers or a utility made whole for any difference between forecasted and actual costs. 220 ILCS 5/16-108.5(d). This reconciliation mechanism provides a balanced means of addressing any differences between forecasted and actual costs.

The Commission agrees with ComEd that if the Commission adopted AG's request to remove the contested plant additions, it may lead to a counter-productive expansion of contested issues during the later stages of future FRU proceedings. The Commission finds that there is no evidence that projects ITN 59083, ITN 58371, and ITN 52757 projected plant additions were improperly included in ComEd's forecasted plant additions

and therefore the Commission approves the value of projects ITN 59083, ITN 58371, and ITN 52757 additions as set out in ComEd's rebuttal testimony.

V. OPERATING EXPENSES

A. Uncontested Issues

1. Distribution O&M Expense

ComEd states that its distribution Operations and Maintenance ("O&M") in 2018 was \$465,822,000 and a total of \$459,326,000 was included in ComEd's jurisdictional revenue requirements. ComEd Ex. 12.01, Sch. FR C-1, lines 1, 3. ComEd explains distribution O&M expenses are incurred for the normal day-to-day activities needed to operate, monitor, and switch the system to maintain service, and restore it when equipment is out of service for maintenance or due to failure, and is recorded in FERC Accounts 580 through 598. ComEd Ex. 2.0 at 26; ComEd Ex. 5.0 at 43.

No party contested the amount of ComEd's distribution O&M expenses. The Commission finds these expenses were prudently incurred and reasonable in amount, and they are therefore approved.

2. Customer-Related O&M Expense

ComEd states that its customer-related O&M expense in 2018, after adjustments, totaled \$206,686,000. ComEd Ex. 12.01, Sch. FR A-1, lines 2-3. ComEd explains customer-related O&M expense includes the costs of maintaining and servicing customer accounts, such as meter reading, billing questions and disputes, providing information on service options, and revenue management functions that include activities related to collection and uncollectible accounts, and is recorded in FERC Accounts 901-910. ComEd Ex. 2.0 at 26; ComEd Ex. 4.0 at 4-5.

No party contested the amount of ComEd's customer-related O&M expenses. The Commission finds these expenses were prudently incurred and reasonable in amount, and they are therefore approved.

3. Administrative and General Expense

ComEd states that its Administrative and General ("A&G") expense includes the cost of a wide variety of corporate support and overhead costs that benefit more than one business function, such as Human Resources, Finance, Legal, Supply Management, Information Technology, and Corporate Governance, as well as the costs of employee pensions and benefits, rents, injuries and damages expense, and regulatory expense. ComEd Ex. 2.0 at 31-32. ComEd explains that it employs cost control processes to manage its A&G expense and ensure the costs are prudently incurred and reasonable in amount. *Id.*

Staff proposed two adjustments to A&G expense. Staff witness Trost proposed an adjustment related to the corporate jet. Ms. Trost's adjustment was based upon a ComEd data request response. ComEd indicated in response to Staff DR DLT 1.09 that a \$2,000 downward adjustment to A&G expense was appropriate as ComEd determined the costs should not be recoverable from ratepayers. Ms. Trost's adjustment was to both the filing year and reconciliation year and was reflected in Schedules 1.10 FY and RY. Staff Ex. 1.0 (Rev.) at 11.

Ms. Trost also proposed an adjustment to A&G expense related to Restricted Stock Compensation. Ms. Trost's adjustment was based upon a ComEd DR response. ComEd indicated in response to Staff DR DLT 2.05 that a \$6,000 downward adjustment to A&G expense was appropriate as ComEd determined the costs should not be recoverable from ratepayers. Ms. Trost's adjustment was to both the filing year and reconciliation year and was reflected in Schedules 1.11 FY and RY. Staff Ex. 1.0 (Rev.) at 11.

ComEd agreed to Staff's adjustments and they are uncontested.

The AG notes that while ComEd's IB only lists two adjustments to A&G expense (ComEd IB at 21), ComEd also reduced its A&G expense to remove long-term incentive compensation costs for certain energy efficiency ("EE") employees that should be recovered through Rider EEPP – Energy Efficiency Pricing and Performance identified in discovery in Docket No. 19-0580. The AG explains that the adjustment reduced the 2019 Initial Rate Year rate base, the 2019 Initial Rate Year expenses, and the 2020 Net Rate Year Revenue Requirement. The AG also notes that the Company reflected this adjustment on ComEd Ex. 9.02 at WP 7, p. 2, line 36-2 and ComEd Ex. 9.02 at WP 1, p. 16, fn. (1). ComEd Ex. 9.0 at 8; ComEd Ex. 9.07.

The Commission adopts each of the uncontested adjustments and finds the resulting level of A&G expense was prudently and reasonable in amount and is therefore approved.

4. Return on Pension Asset

ComEd's 2018 expense includes the recovery of the investment cost of the jurisdictional portion of the pension asset net of ADIT, calculated using a debt-only rate of return. ComEd Ex. 2.0 at 29. This amount totaled \$24,988,000. *Id.* No witness proposed an adjustment to the return on pension asset in this proceeding. The Commission approves this amount.

5. Sales and Marketing Expense

ComEd did not include sales and marketing expense in its revenue requirement. ComEd Ex. 2.0 at 29.

6. Depreciation and Amortization of Electric Utility Plant

In discovery, the AG requested that ComEd address why a depreciation rate for Non-AMI Meters should be applied to projected plant additions when the depreciation rate for Non-AMI Meters was set to 0% in September 2018. AG Ex. 2.0 at 23. In response, ComEd adjusted its depreciation expense on projected plant additions, which reduced depreciation expense by \$542,000. ComEd Ex. 9.0 at 8-9; ComEd Ex. 9.07.

The issue of depreciation and amortization of electric utility plant is further addressed in Sections IV.B.11 and V.B.2 of this Order.

7. Taxes Other than Income

ComEd's revenue requirements include \$152,900,000 in expense for taxes other than income taxes, including the Illinois Electricity Distribution Tax, real estate taxes,

payroll taxes, and several other taxes. ComEd Ex. 2.0 at 30; ComEd Ex. 12.01 at App. 7, p. 2, lines 41-62, as adjusted in ComEd's Motion.

The AG and Staff identified and supported an adjustment to Taxes Other than Income regarding income for payroll taxes on executive compensation. ComEd indicated in response to AG DR 5.16 that a \$1,250,000 downward adjustment to operating expenses was appropriate as ComEd determined the payroll tax costs related to executive compensation should not be recoverable from ratepayers. Staff witness Trost's adjustment was to both the filing year and reconciliation year and was reflected in Schedules 1.12 FY and RY. Staff Ex. 1.0 (Rev.) at 11-12. The Company reflected this adjustment on ComEd Ex. 9.02, WP 7. See ComEd Ex. 9.0 at 8; ComEd Ex. 9.07.

The expenses for Taxes Other than Income are uncontested and the Commission approves this amount.

8. Income Tax Expense

ComEd's 2018 Reconciliation Revenue Requirement includes \$100,941,000 in income taxes. ComEd Ex. 12.01, Sch. FR A-1 REC, lines 15, 18, 19. ComEd's 2020 Initial Rate Year Revenue Requirement includes \$118,052,000 in income taxes, after accounting for the impact of projected 2019 plant additions. ComEd Ex. 12.01, Sch. FR A-1, lines 15, 18, 19, as adjusted in ComEd's Motion. ComEd calculated its income taxes based on the expenses and miscellaneous revenues assigned or allocated to the delivery services function. ComEd Ex. 2.0 at 36. ComEd also analyzed differences in book and tax treatment of 2018 revenues and expenses and assigned or allocated those differences to the delivery services function. *Id.* No witness proposed an adjustment to ComEd's income tax expense. The Commission approves this amount.

9. Regulatory Asset Amortization

ComEd's revenue requirements include \$44,982,000 of regulatory asset amortization expense. ComEd Ex. 2.0 at 37. This amount includes the effects of the Commission's Order in Docket No. 10-0467, which revised the amount of amortization for several existing regulatory assets, authorized amortization of new regulatory assets, and eliminated amortization of others. *Id.* No witness proposed an adjustment to ComEd's regulatory asset amortization expense. The Commission approves this amount.

10. EIMA Credits

ComEd did not include in its revenue requirements any expense associated with the \$10 million in EIMA credits it incurred in 2018. ComEd Ex. 2.0 at 37-38; see also ComEd Ex. 2.02 at WP 7, p. 13.

11. Charges for Services Provided by BSC

ComEd states that Business Services Company ("BSC") is the company within the Exelon Corporation family of affiliated companies that provides information technology, supply, finance, legal, and human relations to ComEd and Exelon's other business units. ComEd Ex. 3.0 at 6-13. During 2018, ComEd incurred \$399,400,000 in costs for services provided to ComEd by BSC. *Id.* at 8. Of that total, approximately \$184,400,000 of jurisdictional BSC costs are included in operating expense. *Id.* at 8. No party contests the BSC costs included in the revenue requirements. The Commission finds these

expenses were prudently incurred and reasonable in amount, and they are therefore approved.

12. BSC Allocator

ComEd states its revenue requirements include BSC costs that are allocated to ComEd in accordance with the Commission's Order in Docket No. 13-0318. ComEd Ex. 2.0 at 44. No witness proposed an adjustment to the BSC allocation. The portion of BSC expenses included in the revenue requirement were prudently incurred and reasonable in amount and are therefore approved.

13. Rate Case Expense

ComEd seeks to recover rate case expenses totaling \$641,679 comprised of the following: (i) rate case expenses of (\$55,000) incurred in 2018 for Docket No. 16-0259; (ii) rate case expenses of \$8,825 incurred in 2018 for Docket No. 17-0196; and (iii) rate case expenses of \$687,854 incurred in 2018 for Docket No. 18-0808. ComEd Ex. 2.0 at 42. ComEd supported its rate case expense with an affidavit and other documentation. ComEd Ex. 2.12; ComEd Ex. 9.08. ComEd submits that this evidence allows the Commission to make a finding pursuant to Section 9-229 of the Act that the expenses incurred were just and reasonable. ComEd explains that the documentation provides the evidentiary support for each Commission proceeding for which ComEd seeks recovery. ComEd Ex. 2.12, APO-01 – APO-08. ComEd further explains that the affidavit describes the services provided in connection with the expense for which recovery is sought, identifies the individuals working on the matters and their qualifications, and discusses market rates charged by regulatory lawyers in Chicago to support the reasonableness of the fees charged. *Id.*

The Commission has considered the costs expended by the Company during 2018 to compensate attorneys and technical experts to prepare and litigate rate case proceedings and assesses that the amount included as rate case expense in the revenue requirements of \$641,679 is just and reasonable. This amount includes the following costs: (1) \$(55,000) associated with Docket No. 16-0259; (2) \$8,825 associated with Docket No. 17-0196; and (3) \$687,854 associated with Docket No. 18-0808. ComEd Ex. 2.11 at 1-3; ComEd Ex. 9.08.

14. Incentive Compensation Program Expense

ComEd explains that, in Docket No. 11-0271, the Commission adopted a "proposal to require ComEd to include, in its initial filing ... evidence establishing that its employees have achieved the statutory [incentive compensation] metrics," including evidence as to "what its employees did to achieve the performance metrics in Section 16-108.5." *Commonwealth Edison Co.*, Docket No. 11-0721, Order at 92 (May 29, 2012). ComEd states that its testimony regarding the incentive compensation plans substantiates its entitlement to recover its incentive compensation expenses, and describes the metrics set forth in the incentive compensation plans, how ComEd performed under the metrics, and what employees did to achieve their performance on those metrics. See ComEd Ex. 1.0 at 16-26; ComEd Ex. 3.0 at 15-17; ComEd Ex. 4.0 at 22-29; ComEd Ex. 5.0 at 49-58.

ComEd reduced its A&G expense to remove long-term incentive compensation costs for certain EE employees that should be recovered through Rider EEPP – Energy

Efficiency Pricing and Performance identified in discovery in Docket No. 19-0580. The adjustment reduced the 2019 Initial Rate Year rate base by \$15,000, the 2019 Initial Rate Year expenses by \$282,000, and the 2020 Net Rate Year Revenue Requirement by \$608,000. ComEd Ex. 9.0 at 8; ComEd Ex. 9.02, WP 1 and WP 7; ComEd Ex. 9.07.

No party contested that the 2018 incentive compensation costs, which resulted in market-based compensation levels, were prudently incurred and reasonable in amount. Therefore, the Commission approves the incentive compensation program expense.

15. Gross Revenue Conversion Factor

ComEd submits that its Gross Revenue Conversion Factor ("GRCF") is 1.3987. ComEd Ex. 2.0 at 46; ComEd Ex. 12.01, Sch. FR C-4, line 13. The GRCF is uncontested. Therefore, the Commission approves ComEd's GRCF.

B. Contested Issues

1. Marketplace Expense

a. ComEd's Position

ComEd states that the Marketplace was introduced in late 2016 and is a web-based self-service platform that provides customers with access to information and selected products and services to help them better manage and control their energy use. Through the Marketplace, customers can learn how particular products can help them understand their energy use and are enabled to choose how to meet their energy service needs on their terms.

ComEd further states that although the Marketplace's primary function is a customer service function that is within the scope of delivery services, the Marketplace also serves some functions that are more closely related to ComEd's EE programs. Therefore, ComEd explains, it allocated Marketplace costs between delivery services and EE formula rates consistently with the function of the underlying activity. ComEd Ex. 13.0 at 3. ComEd states that there are two major categories of costs related to the Marketplace, and that ComEd allocated each category of costs differently to reflect the functions those costs support. ComEd explains that the costs allocated to delivery services in 2018 are associated with supporting the Marketplace platform and with customer service functions unrelated to specific EE projects and are properly recoverable in delivery services rates. ComEd asserts its method of allocating costs between delivery services and EE is supported by detailed record evidence.

The first category of Marketplace costs included in the revenue requirement are those associated with services provided by Halcyon Plus, LLC ("Halcyon") to support the day-to-day activities of the Marketplace, including daily oversight of the Marketplace platform, customer escalation, and coordination with the EE team regarding rebates and associated marketing campaigns. ComEd Ex. 10.0 CORR at 6. ComEd explains that these costs are allocated based on the purpose of the activity Halcyon performs: if a Halcyon activity primarily serves the EE program, the associated cost is allocated to Rider EEP; otherwise, the costs are allocated to delivery services. *Id.* Using that methodology, ComEd allocated approximately 93% of the cost of Halcyon's services in 2018 to delivery services, and the remaining 7% to EE. ComEd Ex. 13.0 at 3-4.

ComEd notes that the AG would allocate 10% of the cost of services provided by Halcyon to the delivery services revenue requirement, with the remaining 90% allocated to the EE revenue requirement. AG Ex. 4.0R at 12. ComEd explains the primary difference between ComEd's allocation methodology and the AG's is that, rather than allocating the Halcyon costs according to the purpose of Halcyon's activities, the AG would allocate those costs according to the ratio of products sold with, and without, a rebate funded via Rider EEPP. AG Ex. 2.0 at 14.

First, while the AG would allocate Halcyon's costs using product sales data, ComEd asserts that there is no link between Halcyon's services and the quantity of product sales. Second, ComEd urges the Commission to reject the AG's claims that ComEd's methodology is "subjective and subject to error." ComEd asserts that the record evidence overwhelmingly supports ComEd's allocation of Marketplace costs, and demonstrates that it is based on objective data. Finally, ComEd contends the Commission should reject the AG's characterization of ComEd's allocation methodology is "overly complex." AG Ex. 4.0R at 12. ComEd explains that utility costs are commonly allocated according to the purpose or function that they serve, and the allocation methodology applied to Halcyon's services is no more complex than any other function-driven allocation.

Additionally, ComEd states that the second category of costs are those for services provided by Simple Energy, including core technology (i.e., software) costs, product catalog curation (i.e., dealing with merchants, recommending product changes), customer service (i.e., live chat, email, phone support channels), and marketing support. ComEd Ex. 10.0 CORR at 6. ComEd explains that some of these functions are more closely linked to particular products, so ComEd allocates the costs associated with those activities according to the ratio of products sold via the Marketplace with a rebate funded through the EE program to the total number of products sold. In order to arrive at the allocation factor, ComEd explains that it calculates the ratio of rebated to non-rebated products sold in a 12-month period, as determined using the available data at the most recent renewal of ComEd's contract with Simple Energy. ComEd Ex. 13.0 at 9-10.

Although the AG proposes to allocate Simple Energy's costs based on a ratio of rebated to non-rebated products sold, calculated on a calendar year basis, ComEd argues that its allocation methodology is reasonable, and reflects the drivers of the costs at issue.

Finally, while the AG states in its brief that its recommendation concerning Simple Energy costs is based on "a mismatch between when products are returned and when ComEd accounted for the returns," (AG IB at 19), ComEd states that it has already voluntarily addressed that issue and no further adjustment is necessary. ComEd Ex. 12.0 at 11.

b. AG's Position

The AG explains that the Marketplace is an online energy-related product sales platform within ComEd's website. Like other e-commerce "platform" websites such as Amazon.com, ComEd's Marketplace allows users to purchase, through ComEd, products manufactured and distributed by companies other than ComEd. What distinguishes the Marketplace from Amazon.com and its e-commerce platform website peers, the AG

notes, is the feature of “instant rebates” and “instant online savings” on certain EE products that “are available exclusively to ComEd residential customers.” <https://www.comed.com/WaysToSave/ForYourHome/Pages/ComEdMarketplace.aspx>.

The AG further explains that the savings are the Company’s EE program rebates, which are in turn financed by ratepayers through an EE formula rate allowed by Section 8-103B of the Act. Importantly, the AG argues, ComEd’s ability to achieve the savings goals outlined in Section 8-103B impacts whether ComEd receives bonuses or penalties on its ROE on EE expenditures (which are a regulatory asset by virtue of Section 8-103B). Due to differences in the regulatory treatment of EE costs compared to delivery services costs, the AG maintains that it is important to accurately allocate the Marketplace costs to reflect its role in providing EE rebates. The AG maintains that ComEd’s EE budget (which has a statutory spending cap) should include all of ComEd’s EE-related expenses in order to accurately measure ComEd’s costs and savings.

In light of the relationship of the Marketplace to ComEd’s ratepayer-funded EE rebates and ComEd’s EE budget, AG witness Selvaggio recommends allocating the costs of the Marketplace to properly reflect its EE functions and customer use of the site. Specifically, Ms. Selvaggio recommends that Marketplace platform vendor costs be allocated between EE and delivery service rates based upon the proportion of the number of products sold that have an EE rebate or incentive to the number of products sold that do not over a 12-month product sales history period. This results in a 90% allocation to EE rates and a 10% allocation to delivery services rates. AG Ex. 2.0 at 12.

The AG notes that while ComEd allocated Simple Energy’s cost in the manner they recommended, ComEd misallocated Simple Energy’s costs due to a mismatch between when products are returned and when ComEd accounts for the returns for purposes of the product sales ratio allocation. AG Ex. 4.0 at 6-7.

ComEd initially declined to allocate Halcyon’s costs, which provides operational services and customer service, on the same basis as Simple Energy costs. The AG’s proposed adjustment to the Simple Energy and Halcyon costs would reduce delivery operating expenses by \$178,280 in this proceeding. AG Ex. 4.0R at 12.

In Docket No. 19-0580, ComEd’s EE formula rate update proceeding, the AG raised the same issue regarding the allocation of Marketplace vendor costs. The AG submits that the parties to that proceeding, including the AG and ComEd, have agreed to a Stipulation resolving all contested issues (“EE Stipulation”). ComEd, contemporaneously with its Position Statement, filed a motion to admit an affidavit of ComEd witness Tracy describing the portion of the EE Stipulation relevant to this proceeding. ComEd Ex. 14.0. The AG further submits that while the EE Stipulation contains several provisions, for purposes of this proceeding the EE Stipulation provides that ComEd will adopt and use the AG’s proposed methodology to allocate Simple Energy’s and Halcyon’s costs associated with the Marketplace based upon the ratio of rebated products sold to non-rebated products sold.

The AG concludes that this issue is therefore resolved, should be treated as uncontested in this proceeding, and the methodology proposed by Ms. Selvaggio and accepted by ComEd via the EE Stipulation should be adopted by the Commission in this proceeding.

c. Commission Analysis and Conclusion

ComEd and the AG reached an agreement that resolves this issue. On October 7, 2019, an unopposed motion was made to reopen the record of this proceeding to admit an affidavit from ComEd witness Tracy, which explains that an EE Stipulation was reached among the parties to the pending proceeding concerning ComEd's update and reconciliation of its EE formula rate update, Docket No. 19-0580. The parties to the EE Stipulation agreed, for purposes of resolving contested issues in Docket No. 19-0580 and on a non-precedential basis to jointly recommend to the Commission that 90% of 2018 Marketplace costs be allocated to ComEd's EE revenue requirement, for calendar year 2018 only. The unopposed motion and affidavit explain that a corresponding reduction in the Marketplace costs allocated to the delivery services revenue requirement should be made in this proceeding so that the total amount assigned to the two revenue requirements equals the total recoverable costs.

Because the adjustment in ComEd's EE formula rate outlined by the EE Stipulation would result in double-counting of expenses if an adjustment is not made in this proceeding, the Commission finds that it is necessary, reasonable and prudent to make a downward adjustment to ComEd's expenses of \$178,000 in this proceeding.

2. Amortization of Excess Deferred Income Taxes

a. ComEd's Position

ComEd asserts that the AG and IIEC/CUB collaterally attack the Commission's analysis and conclusion concerning "unprotected property-related" excess deferred income taxes ("EDIT") in the *18-0808 Order* but provide no basis to overturn the Commission's decision of just one year ago conclusively resolving that very issue. ComEd argues both the AG and IIEC/CUB ignore the facts and the record establishing them for a second year, and instead make unsupported arguments and inaccurate claims. According to ComEd, the Commission should once again reject the AG and IIEC/CUB arguments in their entirety and reaffirm that the most appropriate amortization period for the category of "unprotected property-related" EDIT at issue is the Average Rate Assumption Method ("ARAM"), which for ComEd is approximately 39.5 years.

ComEd states that in 2017 and 2018, Illinois and federal corporate tax rates applicable to ComEd changed. On July 1, 2017, Illinois increased its total corporate tax rate from 7.75% to 9.5%. The Tax Cuts and Jobs Act ("TCJA") reduced the federal corporate income tax rate from 35% to 21%, effective January 1, 2018. ComEd Ex. 1.0 at 25-27. There is no dispute that ComEd has reflected those changes in its revenue requirement calculation. ComEd and Staff disagree with the AG and IIEC/CUB about the most appropriate amortization period for one specific category of EDIT stemming from those tax changes, namely EDIT related to what is referred to as "unprotected property."

ComEd explains that in 2018, the Commission expressly considered and rejected the very argument that the AG makes here. *18-0808 Order* at 57-58. Last year, after full litigation and a detailed examination of the evidence, the Commission approved a uniform amortization period for EDIT – ARAM, which is currently approximately 39.5 years. *18-0808 Order* at 57-58. ComEd states that the AG seeks to alter the amortization period approved by the Commission just last year for that unprotected property-related EDIT,

which ComEd appropriately used. ComEd explains that this amortization period is consistent with ComEd's approach to amortize all types of EDIT over periods consistent with the useful lives of the underlying assets and with the accounting treatment of the related underlying ADIT. ComEd Ex. 8.0 at 37-38. ComEd argues that the AG, on the other hand, proposes an arbitrary 5-year amortization period for this EDIT. Thus, ComEd's position is that the AG's proposed period is inconsistent with both the depreciation of the underlying assets and with the treatment of other categories of EDIT. *Id.* at 24-25. The Commission has already addressed this issue in detail and ComEd notes that the AG offers nothing new in support of its arguments.

ComEd asserts that at the center of this dispute is a basic misunderstanding by the AG. ComEd explains that the AG's arguments in favor of an abbreviated amortization period rely entirely on the incorrect premise that ComEd's customers have already funded the underlying ADIT, so the AG believes the related EDIT that is a product of the TCJA should be "refunded" to customers quickly, using an arbitrary time period. ComEd contends that the AG is wrong. According to ComEd, there is no refund at issue because ComEd's customers have not pre-paid any deferred taxes. Moreover, the amortization period approved by the Commission and currently in effect is more equitable for customers, ensuring that the same customers who are paying over time for the underlying assets giving rise to the EDIT also see the benefits of the lower tax rates. ComEd argues that the Commission should reject the AG's argument and affirm its decision with regard to EDIT amortization. ComEd Ex. 8.0 at 17.

ComEd explains that both ComEd and Staff agree that since last year, there have been no changes in material facts or governing law regarding this issue. ComEd Ex. 8.0 at 18; Staff Ex. 4.0 at 10; *see also* ComEd Ex. 8.01. According to ComEd, almost every argument that AG witness Brosch makes in his testimony in this case was made in his testimony in last year's FRU. *See* ComEd Ex. 8.0 at 18. Moreover, ComEd contends, the evidence in support of the Commission's decision last year was overwhelming. Contrary to Mr. Brosch's testimony, ComEd explains, the Commission did not rely on "incorrect assumptions" nor did it "ignore[] established Illinois case law." AG Ex 1.0 at 11. ComEd avers that the Commission's conclusion in Docket No. 18-0808 was well-reasoned, principled, and correct. According to ComEd, there is no need to revisit the issue and the Commission has no basis to change its decision.

ComEd explains that although the Commission is not legally bound by its prior orders, it must articulate a reasoned basis for a departure from them. *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d. 111, 132, 651 N.E.2d 1089, 1099 (1995). ComEd notes too that the Commission must have substantial evidence to support its decision. *Id.* Moreover, the parties advocating a change should identify "meaningful differences between the facts and circumstances" relating to both proceedings. *Ill. Commerce Comm'n v. Consumers Gas Co.*, Docket No. 07-0570, Order at 32 (Nov. 6, 2014). ComEd further explains that in order for the Commission "to do an about face with regard to its prior decision," a party must make a clear showing with proper evidentiary and legal support." *Ameren v. Ill. Commerce Comm'n*, 2012 IL App (4th) 100962, ¶¶ 68, 79, 967 N.E.2d 298, 311 (adopting roll forward adjustments for ADR and ADIT where new legal arguments and evidence were presented); *see also Mt. Vernon Educ. Ass'n v. Ill. Educ. Labor Relations Bd.*, 278 Ill. App. 3d 814, 823, 663 N.E.2d 1067, 1074 (4th Dist. 1996)

(while an agency is not bound by its prior determinations, changes to agency standards can only be made where they are not arbitrary or capricious); ComEd Ex. 8.0 at 18.

ComEd notes that while the AG suggests the Commission should reach a conclusion that is directly contrary to the conclusion it reached in Docket No. 18-0808, just one year ago, the AG does not provide a reasoned basis for distinguishing it from the instant case. And as a practical matter, ComEd asserts, this issue has the potential to recur annually over the next 38 years. Both ComEd and Staff agree that ComEd should not be forced to re-litigate this issue every year during that time period. ComEd Ex. 18.0 at 18; Staff Ex. 4.0 at 7. ComEd contends that doing so would be a waste of resources for the Commission, ComEd's customers, and the AG. ComEd Ex. 8.0 at 18. ComEd states that the record once again supports ComEd's proposed – and now Staff-supported and Commission-approved – amortization period.

ComEd explains that the AG's attempt to undo the Commission's approved EDIT amortization period also represents a prohibited collateral attack on the Commission's Order in Docket No. 18-0808. ComEd further explains that a party cannot collaterally attack an agency order unless the order is "void on its face as being unauthorized by statute." *Newkirk v. Bigard*, 109 Ill. 2d 28, 39, 485 N.E.2d 321, 325 (1985). The law is well established in this regard and provides that a collateral attack occurs when (1) the issue decided in the prior adjudication is identical with the one presented; (2) there was a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted was a party to the prior adjudication. *Pedersen v. Vill. of Hoffman Estates*, 2014 IL App (1st) 123402 at ¶ 42, 8 N.E.2d 1083, 1094 citing *Gumma v. White*, 216 Ill. 2d 23, 38 (2005).

ComEd illustrates that each of these factors is present here. First, as ComEd explains, Mr. Brosch's testimony addresses the identical issue: the appropriate amortization of EDIT that resulted from the change in tax law. AG Ex. 1.0 at 2. ComEd states that Mr. Brosch offers nothing new – no change in facts or law that would require a change in the amortization period. Instead, he simply argues that the Commission got it wrong in Docket No. 18-0808, and should reach a different conclusion here.

Moreover, ComEd notes, there is only one balance of EDIT related to the TCJA. No new EDIT arose in 2018, and none will arise in 2019 or future years. If any EDIT arises in the future, ComEd explains, it would be as a result of another change in the federal or state income tax rate. See AG Ex. 1.0 at 4 (noting that ComEd has been accounting for its income tax obligations at the updated tax rates); see also AG Ex. 3.0 at 21 (describing EDIT as "the one-time impacts recorded by [ComEd] to remeasure their deferred income tax balances"). Thus, ComEd explains that unlike many other issues presented to the Commission that recur in each rate case because the underlying activity recurs, there was no new or different re-measurement of deferred taxes that occurred in 2018 that would form the basis of an appropriate argument in this case. In sum, ComEd notes both the EDIT balance at issue, and the disputed question – what amortization period to apply to that balance – are identical to those at issue in Docket No. 18-0808.

Second, ComEd avers that there is no dispute that the Commission's determination in Docket No. 18-0808 to apply a 39.5-year amortization period to the EDIT was within the scope of its statutory authority. According to ComEd, the AG

acknowledged in Docket No. 18-0808 that the selection of an amortization period for the EDIT at issue was squarely within the Commission's discretion. Indeed, the Commission itself found that "the choice of an amortization period is within the Commission's discretion." *18-0808 Order* at 57.

Third, ComEd states that the Commission's Order in Docket No. 18-0808 was a final adjudication on the merits, and the AG was undoubtedly a party to that proceeding. See *id.* at 66 ("[T]his Order is final[.]"). The AG petitioned for rehearing, asserting the same arguments it advances here, and the Commission denied that request. See *Commonwealth Edison Co.*, Docket No. 18-0808, Notice of Comm'n Action (Jan. 22, 2019). The AG did not initiate an appeal. Therefore, as ComEd explains, the Commission's Order stands as final.

ComEd states that if the Commission chooses to substantively address this issue again, it bears reviewing the facts about EDIT and ADIT. As ComEd explains, ADIT reflects the temporary difference between when an expense (or revenue) is recognized in a company's "books" and when the company recognizes that expense (or revenue) on its tax return. Deferred income taxes can be liabilities or assets. A deferred tax liability, *i.e.* a future tax liability, occurs when ComEd realizes a tax benefit before it recognizes the item for financial accounting purposes. When this happens, ComEd generally reduces rate base to reflect the deferral of the liability. Conversely, a deferred tax asset occurs when the tax benefit is realized in the future, after it has been recognized for financial accounting purposes. When this happens, ComEd generally increases rate base (or offsets deferred tax liabilities) to recognize the delay. ComEd Ex. 8.0 at 3, 20.

ComEd explains that investments in plant assets can affect deferred income taxes over many years. When a utility asset is put into service, a deferred tax liability arises from the difference between when associated depreciation is recognized for book versus tax purposes (tax depreciation can generally be faster through the permitted use of accelerated depreciation methods). Over the useful life of the asset those differences, and the corresponding impact on deferred taxes, are reversed. Critically, the reversal of the deferred tax asset or liability occurs over the same period as the useful life of the asset. As ComEd witness Newhouse explained, customers pay for assets over their useful lives – for ComEd, the average useful life for all property is 39.5 years. ComEd Ex. 8.0 at 37.

ComEd further explains that when corporate income tax rates change, ComEd remeasures its ADIT balances to reflect the new rate at which future tax benefits will occur and ADIT will be correspondingly reversed. The jurisdictionalized portion of this remeasurement amount – the EDIT – is included in a Regulatory Asset/Liability and amortized over time. The amortization of this EDIT has the effect of either increasing (if the tax rate increased, as was the case with the Illinois tax rate change) or decreasing (if the tax rate decreased, as was the case with the federal tax rate change) ComEd's revenue requirement. ComEd Ex. 1.0 at 25-26; ComEd Ex. 8.0 at 19-20. ComEd states that these principles are not in dispute. ComEd notes that another impact of a corporate income tax rate change is in the calculation of ComEd's return. This is because ComEd's return is grossed up by the applicable tax rates to include the amount of income taxes ComEd would be expected to pay on the revenue associated with its return. Increasing or decreasing the tax rate impacts the amount of tax that ComEd would be required to

pay, and therefore impacts the revenue requirement. ComEd Ex. 1.0 at 25; ComEd Ex. 8.0 at 19. ComEd further notes that the gross up is also not disputed in this case.

As ComEd explains, under Internal Revenue Service regulations, EDIT is segregated into three categories: “protected” plant-related EDIT, unprotected plant-related EDIT, and unprotected non-property related EDIT. ComEd also refers to plant-related EDIT as property-related EDIT. The EDIT related to each of these categories is amortized and flows through to customers over a certain period. ComEd Ex. 8.0 at 21. The “protected” EDIT relates to ADIT balances arising from accelerated tax depreciation that, pursuant to the federal tax code, must be flowed through to customers using the prescribed methodology referred to as ARAM. *Id.*

ComEd further states that amortization based on underlying asset lives is not just a requirement of federal law applicable to protected EDIT. ComEd explains that amortizing any EDIT in this way ensures that the customers who are paying for the underlying property assets through depreciation and related ADIT – over approximately 39.5 years – are the same customers who will receive the benefits of the lower tax rate provided through the related EDIT. ComEd Ex. 8.0 at 22.

ComEd states that it applied a principled approach, consistent with good policy, in amortizing EDIT related to unprotected property and non-property related EDIT. ComEd explains that because the average useful life for all of ComEd’s property is 39.5 years and those assets are being paid for by customers over 39.5 years, recognition of a change in tax rate over that timeframe ensures ratemaking fairness to customers, or intergenerational equity. ComEd Ex. 8.0 at 37. ComEd notes that because the deferred tax liability continues to include a balance based on the higher tax rate that was in force, it is critical to flow the EDIT through to customers over the same time period the underlying deferred tax liability reverses – namely, the life of the underlying asset. ComEd Ex. 8.0 at 17, 24-25.

ComEd contends that it is important for this “matching” principle to be applied to ensure that customers who are ultimately paying for the underlying assets through depreciation and related ADIT, inclusive of the original higher tax rate over time, are also getting the benefit of the related EDIT from the new lower tax rate over that same period of time. ComEd Ex. 8.0 at 23. In contrast, ComEd avers, the AG’s approach in this case utilizes different amortization periods for protected (39.5 years) and unprotected (5 years) plant-related EDIT, without recognizing that both categories represent the same type of long-term, property-related assets. *Id.* at 25.

According to ComEd, its proposal promotes intergenerational equity, while the AG’s approach ensures intergenerational inequity. ComEd explains that if different amortization periods are applied, as the AG suggests, a different group of customers will receive the benefits of the tax change than those who actually pay for the underlying assets.

ComEd asserts that AG witness Brosch tries to avoid these facts by claiming that customers have already paid for the ADIT and that this pre-payment requires ComEd to flow through the EDIT on an expedited basis, i.e., to “return” the EDIT to customers that he asserts have already paid the related ADIT. AG Ex. 1.0 at 15; AG Ex. 3.0 at 3-5. ComEd contends that the evidence shows that Mr. Brosch is wrong and ComEd

customers have not already paid for the underlying ADIT. ComEd Ex. 8.0 at 31; ComEd Ex. 11.0 at 15.

First, ComEd argues that unlike other elements of the revenue requirement, when a tax deduction is taken, the difference in taxes is not funded by shareholders or customers – it is analogous to the difference in taxes being funded as an interest-free loan by the federal or state government. ComEd Ex. 8.0 at 32; Staff Ex. 4.0 at 9. ComEd argues that the AG misrepresents legal authority on this topic. The AG states: “case law concludes that ADIT represents ratepayer-supplied funds.” AG Ex 1.0 at 12-15; *see also* *Id.* at 6. As ComEd explains, upon closer inspection, the case law that Mr. Brosch references does not state that ADIT constitutes ratepayer-supplied funds as Mr. Brosch claims.

ComEd explains the decisions Mr. Brosch quotes state that if utilities do not net ADIT against rate base then – and only then – would ADIT amount to an expense to customers. *See Ameren Ill. Co. v. Ill. Commerce Comm’n*, 2013 IL App (4th) 121008, ¶¶ 34-40, 2 N.E.2d 1087, 1094-1096; *Commonwealth Edison Co.*, Docket No. 11-0721, Order at 56-60 (May 29, 2012). But according to ComEd, that is not the case here.

Second, ComEd argues that when a tax deduction is taken, two journal entries are recorded – one to reduce the amount of current tax that is no longer payable (reducing a current tax expense and a current tax payable) and another to establish that the tax will be deferred and paid in the future (increasing a deferred tax expense and establishing a deferred tax liability). Both journal entries are for the same amount, and they have opposite effects on the revenue requirement, essentially cancelling each other out. Specifically, when ComEd records jurisdictional ADIT (the deferred tax liability) and the related deferred tax expense, it also simultaneously records a credit to current tax expense for an identical amount, which offsets the deferred tax expense in its entirety. Thus, ComEd explains that customers do not pay for ADIT because they receive an equal credit of current tax expense that negates this “payment” of deferred tax expense.

ComEd explains that the record contains copious testimony and evidence explaining exactly how and why ComEd has not already collected these amounts from customers. ComEd Ex. 8.0 at 31-32; ComEd Ex. 11.0 at 15-18; *18-0808 Order* at 41-49. ComEd asserts that evidence proves that ComEd’s customers have not previously funded any of the outstanding underlying ADIT or the related EDIT. *Id.*

ComEd explains that it is important to note that ComEd does pay current taxes, and customers do eventually pay deferred taxes (at the rate in effect at the time of the future payment). But ComEd states that the customer impact of the deferred taxes occurs as the book to tax timing difference reverses in the future. ComEd Ex. 8.0 at 24; Tr. at 56. At the time the deferred taxes become due in the future, they are passed through to customers. ComEd Ex. 8.0 at 24. Specifically, as ADIT reverses over time, the previous reduction of rate base is reversed, increasing rate base. ComEd explains that higher rate base = higher earnings = higher taxes (at the current rate). Customers pay taxes on that higher rate base attributable to the ADIT reversal. This is the current tax due at the current statutory rate, and these are the taxes that ComEd’s customers pay. ComEd Ex. 8.0 at 24; Tr. at 56, 126-127.

ComEd further explains that ComEd only collects – and ComEd’s customers only pay – the current year’s income tax expense at the currently applicable statutory rate. ComEd argues that this is exactly why it is important to ensure that the EDIT reversal matches the ADIT reversal – to ensure that the overall tax impact equals the amount that customers should pay at the current tax rate (ADIT reversal amount + EDIT reversal amount = deferred taxes paid at the current rate). ComEd Ex. 8.0 at 31, 24.

ComEd also explains that the AG claims that a five-year amortization period will benefit customers because it will “reduc[e] the revenue requirement effect of the cost of capital on undepreciated plant.” AG IB at 24. ComEd states that the AG appears to be arguing that because the rate impact of each asset – when viewed in isolation from the rest of plant – is highest when it is first put into service and not yet amortized or depreciated, EDIT should be passed through to customers sooner (over five years) rather than later (over the life of the asset), so as to offset that higher initial rate base impact. *Id.* at 24-26. ComEd argues that this argument is misplaced and incorrect for three reasons.

First, ComEd contends, the AG’s argument ignores the fact that whereas there is only one balance of EDIT related to the TCJA and no new EDIT will arise to further reduce rate base unless there is another change in the federal or state income tax rate, ComEd’s plant additions are ongoing investments, occurring on an annual basis. See AG Ex. 3.0 at 21 (describing EDIT as “the one-time impacts recorded by [ComEd] to remeasure their deferred income tax balances”). Thus, ComEd explains, when viewed in relation to total rate base as opposed to just one hypothetical asset, accelerating the flow through of EDIT actually has the opposite effect compared to what the AG intends to accomplish.

Second, as ComEd explains, the chart in the AG’s IB and in Mr. Brosch’s testimony shows the declining net book value of a hypothetical asset: the asset’s original book value less accumulated depreciation, which is the amount ComEd earns a return on. See AG Ex. 3.0 at 28-30; AG IB at 25. ComEd’s books typically reflect straight-line depreciation, meaning that the same amount of depreciation is taken each year. ComEd Ex. 11.0 at 15 fn. 1. This is the return of the investment, not to be confused with the return on the investment. *Id.* The return on the investment does decrease as the book value of the asset decreases through depreciation. *Id.* But ComEd asserts that issue – depreciation and return on equity – is not in dispute in this case and this graph is fundamentally unrelated to the EDIT issue that is disputed, which involves depreciation and related deferred taxes, not return on equity.

Third, ComEd explains that the AG and IIEC/CUB are complaining here that the regulatory asset for EDIT should be amortized more quickly, over a timeframe significantly shorter than the underlying assets’ useful lives, while at the same time the AG and IIEC/CUB witnesses complain that ComEd’s general and intangible plant assets should be depreciated more slowly than their useful lives, as measured in the updated depreciation study. AG Ex. 3.0 at 2, 5, 28-30; AG Ex. 2.0 at 18-23. ComEd argues that these positions are clearly inconsistent and adoption of either one would be arbitrary.

Finally, ComEd explains that the AG states that its proposed five-year amortization period is consistent with amortization periods adopted by other states. But, ComEd contends, the Commission should not rely on those cases. ComEd argues that those

stipulations and orders for other utilities in other jurisdictions have no bearing on the Commission's obligation to determine the appropriate amortization period for ComEd in Illinois based on the facts presented to the Commission in this case, which are the same as the facts presented to the Commission regarding this same issue last year. ComEd Ex. 8.0 at 34.

In its RBOE, ComEd takes issue with the AG introducing new legal arguments and citing case law for the first time in its BOE. In its BOE, the AG states "[t]he Illinois Supreme Court addressed the precise issue presented here in the seminal case, *Business and Professional People in the Public Interest v. Illinois Commerce Commission* ('BPI II')." AG BOE at 7; 146 Ill. 2d 175, 255-57, 585 N.E.2d 1032, 1066-1067 (1991). The AG points out that *BPI II* included a Commission order to refund excess ADIT over three years, following a reduction in the federal income tax rate from 46% to 40% to 34%. AG BOE at 7. ComEd asserts that the AG's claim that *BPI II* addressed the precise issue in this proceeding is inaccurate. ComEd points out that *BPI II* was a traditional Article IX rate case and not an FRU case, and the facts in *BPI II* were different. Moreover, ComEd states that the AG has not put any facts in evidence to show that there is any similarity between the accounting treatment that ComEd used in *BPI II* and what ComEd uses now with the formula rate mechanism in place, and certainly cannot be done at this late juncture.

Additionally, ComEd disagrees with the AG's insinuation that all cash that ComEd has on hand is equivalent to customer supplied funds. AG BOE at 12, n.3. ComEd explains that the term "customer supplied funds" has a specific meaning and refers to funds directly traceable to customers, such as customer deposits. According to ComEd, items like revenue and retained earnings, while perhaps originating from customer payments for delivery service, are not "customer supplied funds" as that phrase is used in ratemaking. ComEd concludes that the Commission should issue a final Order in accordance with the Commission's finding in the 18-0808 Order.

b. Staff's Position

In rebuttal testimony, Staff witness Trost (1) supported ComEd's amortization period of approximately 39.5 years for EDIT and (2) expressed concerns with AG witness Brosch's amortization period of five years for EDIT. Staff Ex. 4.0 at 9-12. The approximate 39.5-year amortization period was determined using the ARAM. Staff explains that ARAM aligns the amortization period with the remaining useful life of the underlying assets. *Id.* at 9. Ms. Trost did not address EDIT in her direct testimony, as she did not take issue with ComEd's proposed amortization period and, therefore, did not propose an EDIT adjustment for ComEd. Staff explains that the Commission approved essentially the same amortization period for the Company's formula rate case last year as ComEd proposes for this year. 18-0808 Order at 57.

In addressing the issue, Ms. Trost first explained what EDIT represents. She stated that EDIT is somewhat analogous to a forgiven loan. Staff Ex. 4.0 at 9. EDIT occurs when the deferred taxes previously recorded are recalculated due to a change in the tax rate. Prior to 2018, ComEd owed in the future to the federal government income taxes that had been deferred based on a tax rate of 35%. *Id.* In 2018, the federal tax rate was lowered to 21%. *Id.* The new federal tax rate, in essence, forgave that part of

ComEd's accumulated tax debt for the difference between the 35% prior tax rate versus the lower 21% new tax rate. *Id.* The result is that only the portion of the accumulated tax debt based on the 21% rate is now owed to the Federal government. *Id.* According to Ms. Trost, ComEd is not correcting for prior period errors nor should it, since ComEd booked the prior year's taxes at the correct statutory rate; rather, it is capturing the impact of a change in federal tax policy lowering the tax rate to 21% that was effective beginning in 2018 and going forward. *Id.*

Staff notes that there is no dispute between Staff, the Company, and the AG on the amount of EDIT. Staff Ex. 4.0 at 8. According to Staff, the sole dispute is whether the regulatory liability should be amortized over five years as the AG proposes or 39.47 years based upon the ARAM as the Company proposes, which Staff supports.

Staff witness Trost supported ComEd's position and opposed the AG's proposal for a number of reasons. As an initial matter, Ms. Trost agreed with ComEd that this issue has the potential to recur annually over the next 38 years and it is a waste of resources for all parties to re-litigate an issue that the Commission addressed just last year. Staff Ex. 4.0 at 7. Also, while Staff recognizes that Commission decisions do not have the effect of *res judicata* (*Lakehead Pipeline Co. v. Ill. Commerce Comm'n*, 296 App.3d 942, 956 (1998)), Commission decisions are entitled to less deference when the Commission drastically departs from past practice. *Business & Prof. People for the Public Interest v. Ill. Commerce Comm'n*, 136 Ill.2d 192, 228 (1989). Here, Staff states that the adoption of the AG's position would be a drastic departure from the Commission decision reached just one year ago.

Ms. Trost further testified that, while the ARAM method is not mandatory for unprotected assets, it is a sound, rational approach that balances the amortization throughout the life of the assets rather than an arbitrary time period. Staff Ex. 4.0 at 10. Ms. Trost explained that another advantage of using a longer amortization period based on ARAM is that, if there are future tax increases that impact EDIT, using the ARAM methodology adopted by the Commission in Docket No. 18-0808 and reflected in distribution rates presently would help to partially offset the deferred tax deficiency resulting from such a tax increase, which would result in lower distribution rates, all else equal. This is because any remaining unamortized EDIT at the time of a future tax rate increase would offset the deferred tax deficiency resulting from such a tax rate increase. *Id.* at 10. She also testified that the application of the longer ARAM amortization period now could be used as a guide in future cases to ensure that distribution rates are not increased to collect a deferred tax deficiency too quickly. *Id.* at 10-11. For example, if the Commission adopts the AG's five-year amortization period, a party could be more likely to succeed in arguing that the use of a shorter amortization period to address the deferred tax deficiency for a future tax increase is also appropriate. In the same way that the shorter amortization period proposed by the AG for EDIT leads to a larger revenue requirement decrease in the current proceeding, that same shorter amortization period applied in a tax increase/deferred tax deficiency scenario would lead to a larger revenue requirement increase. Ms. Trost further observed that the current 21% maximum corporate income tax rate is the lowest since 1939 and that, while no one can predict the future, it seems more likely that income tax rates in the future will increase rather than decrease. Thus, she ascertained that the scenario described above is likely. *Id.* at 11.

Finally, Ms. Trost concluded that using ARAM is reasonable since it considers the actual remaining useful lives of the assets in determining the amortization period. She explained that ARAM is consistent with cost of service ratemaking principles, which attempt to create the proper allocation of annual costs to the ratepayers using the utility service during each annual period. ARAM avoids shifting of costs from ratepayers in early years of the property life to ratepayers in later years of the property life. *Id.* at 11-12.

Based upon the above, Staff concludes that the Commission should adopt ARAM which results in an amortization period of 39.47 years for EDIT and reject the AG's proposed five-year amortization period.

In its BOE, Staff notes that the AG appears to suggest that the *BPI II* order is binding on the Commission on the issue of the EDIT amortization period. AG BOE at 7. Staff recommends that the Commission reject this argument. Staff points out that orders of the Commission do not have the effect of *res judicata* in later proceedings. Therefore, Staff concludes, the AG's reliance on *BPI II* should be given little weight in this proceeding. Staff explains that the issue here is whether a 5 or 38 years amortization period is reasonable. Staff states it raised a number of reasons why the Commission should choose 38 years instead of 5 years. Staff continues to conclude that the Commission should reject the AG's and IIEC/CUB's position.

c. AG's Position

According to the AG, the issue before the Commission on the topic of amortization of EDIT is very simple: how quickly should deferred taxes that were collected from ratepayers prior to 2018 and that have been now rendered "excess" by tax law changes and are "unprotected" by tax law, be returned to ratepayers. There is no factual dispute that the amounts involved must be returned to ratepayers. The only question is timing, that is: how the Commission will use its discretion to set the refund period.

The AG acknowledges that last year, in Docket No. 18-0808, the Commission allowed ComEd to amortize close to \$500 million in unprotected EDIT over 39.5 years, but argues that the Commission's decision was based on erroneous premises. Further, the AG emphasizes that the law is well-settled that Commission orders are not *res judicata*. The Illinois Appellate Court has confirmed that "the Commission is authorized to determine each case before it, even when it considers issues identical to those in a previous case. See *Lakehead Pipeline Co.*, 296 Ill. App. 3d at 956, 696 N.E.2d at 354." *Ameren*, 2012 IL App. (4th) 100962 at ¶ 77.

The AG maintains that caselaw and Commission practice are clear: the Commission has the authority to review prior decisions and correct errors or change policy, based on the record before it. In this docket, the AG asserts, the record makes it clear that ComEd's version of how ADIT is funded and how unprotected EDIT should be treated conflicts with standard utility cost accounting.

The AG points out that fundamental ratemaking principles create the framework for ADIT and EDIT and that it is reasonable, fair, and necessary to refund EDIT to consumers over a five year, rather than the 39.5 years period ComEd requests. The AG relates that in each formula rate year, the government allows ComEd to defer payment of some portion of the income taxes collected at the statutory rate due to various tax

deductions generally reduce taxable income. The impact of deferred taxes on the income tax expense included in the revenue requirement is “zero” because consumers pay the statutory rate regardless of the extent of deferred taxes. Tr. at 67.

The AG explains that, when tax payments are deferred, ratepayers receive a reduction to rate base for the resulting ADIT, recognizing that ratepayers have paid income taxes at the full, statutory tax rate, but ComEd retained the cash from ratepayers when it deferred payment to the taxing authorities. Ratepayers are not expected to pay the utility a return on investment dollars that investors did not supply. *Ameren*, 2012 IL App. (4th) 100962 at ¶ 34 (“ADIT reduces the utility’s rate base because it is treated as no-cost capital.”).

The AG highlights that ComEd’s ADIT balance in this docket is substantial: \$4.5 billion, or about 30% of ComEd’s total rate base. ComEd Ex. 12.01, Sch. FR B-1, Line 17. EDIT represents approximately \$1.6 billion of that balance and the unprotected Plant-Related EDIT subject to the amortization period approved by the Commission equals about \$384 million. AG Ex. 1.3 at 8. The AG argues that the customers whose rates included income tax expenses at the higher 35% rate, collected before the 2018 tax law change, should receive the refund of this excess amount currently in the ADIT balance. Amortizing this excess amount over 39.5 years denies refunds to the very customers who paid ComEd’s tax expense at the previously higher rate and, in the AG’s opinion, is fundamentally unfair to current ratepayers.

In response to ComEd’s argument that EDIT is akin to a “government loan,” and that ratepayers did not fund the EDIT, the AG emphasizes that ComEd witness Newhouse confirmed on cross-examination that “both current taxes and deferred taxes are recovered through the revenue requirement.” Tr. at 66. The record shows that the funds for the ADIT rate base adjustment, and for the subset that is EDIT, represent that (1) ComEd collected taxes at the statutory rate, (2) ComEd can defer some of that tax liability to a future date, and (3) it holds funds to pay that future tax liability in the ADIT account until the tax treatment “reverses” and the taxes become due. The AG points out that ComEd witness Newhouse admitted that the notion that EDIT (and ADIT) is a “government loan” is just an analogy. It does not conform to actual regulatory accounting whereby deferred taxes are accumulated over time and used by the utility as no-cost capital provided by ratepayers.

In response to ComEd’s and Staff’s position that the refund of EDIT, paid in rates prior to 2018, should be paid out over the average life of ComEd plant, the AG points out that the 39.5 years period is the average of all of ComEd’s assets – not just assets associated with the EDIT that must be returned to ratepayers. The AG states that ComEd did not attempt to segregate the tax effect of pre-2018 taxes on its plant-related tax obligation from the total deferred taxes ComEd expects to incur or pay over the coming 39.5 years. In the AG’s view, ComEd has not “matched” pre- and post-2018 deferred taxes, customer benefit, and plant life, and the blunt instrument of applying the pre-2018 excess accumulated deferred taxes to ComEd’s 39.5 years average plant life is in fact inequitable to customers who have already paid the excess taxes in pre-2018 rates.

The AG notes that while ComEd argues that there is an “inequity” when “a different group of customers will receive the benefits of the tax change than those who actually

pay for the underlying assets," in fact, all customers pay for the underlying assets (through the depreciation expense in rates) and will continue to do so as long as ComEd invests in plant. They also pay a return (the cost of capital) on the undepreciated portion of ComEd's original plant investment. In the AG's view, this is another instance of fundamental utility accounting. Returning EDIT sooner rather than later offsets the higher cost of capital during the early years of an investment (before much depreciation has accumulated) and benefits all customers. The AG asserts that there is nothing inequitable about returning excess tax money to consumers sooner rather than later.

The AG also shows that other states have adopted a shorter amortization for EDIT. The state commissions in Missouri (for Ameren-Missouri), Virginia, New Jersey and Kansas all adopted five-year amortizations for unprotected EDIT.

In response to Staff's argument that there is a possibility that federal tax rates will increase at some time in the future and so ComEd should slowly refund EDIT over almost 40 years, the AG stresses that neither the Commission nor courts ordinarily base their decisions on speculation. The AG argues that the direction or magnitude of future federal tax changes is presently unknown and cannot form the basis of a reasoned decision.

Finally, the AG explains that EDIT is a form of ADIT, which is ordinarily treated as a reduction to rate base. If ComEd refunds the EDIT over the full 39.5 years ComEd proposes, ComEd will be obligated to include the EDIT balance in the ADIT that is deducted from rate base. Consumers receive a modest benefit by not paying for the cost of capital associated with the EDIT/ADIT deduction. However, this is a relatively small benefit when amortized over the 39.5 years and denies consumers \$62 million per year that a five-year amortization would provide. In the AG's view, it is certainly equitable to provide the benefits of this \$62 million per year to consumers and to the economy in the form of consumer spending.

The AG adds that while the five-year amortization provides a tangible benefit to consumers and to Illinois's economy, it has no effect on ComEd's revenues or net income. AG witness Brosch did not recommend retroactively changing the amortization reflected in ComEd's 2018 reconciliation schedules, but instead proposed that the Commission approve the five-year amortization effective at January 1, 2019.

In its BOE, the AG argues, for the first time, that ADIT and its subset, EDIT, are not funded by ratepayers directly conflicts with Illinois caselaw. The AG states that the Illinois Supreme Court addressed the issue presented here in *BPI II*. According to the AG, that case included a Commission order to refund excess ADIT over three years, following a reduction in the federal income tax rate from 46% to 34%. The *BPI II* Court rejected ComEd's argument that the refund of ADIT should match the life of the underlying assets – the argument ComEd makes here and that the Commission allowed last year.

The AG further states that in 1960, the Illinois Supreme Court addressed the treatment of ADIT and recognized that deferred taxes represent funds provided by consumers. In *City of Alton v. Illinois Commerce Commission*, the Court reversed a Commission order that had failed to deduct ADIT from rate base. *City of Alton v. Ill. Commerce Comm'n*, 19 Ill.2d 76, 91, 165 N.E.2d 513, 522 (1960). The AG claims that these discussions of ADIT are consistent with the current, standard regulatory practice of

deducting ADIT from rate base as non-investor funds and demonstrate that ratepayers do fund ADIT.

The AG continues to argue that the Commission should reject ComEd's position that tries to disassociate ADIT from the customer rates that fund it. In addition to the fact that Illinois caselaw and regulatory accounting explain how customer rates cover both current and deferred taxes, federal and Commission regulations, the formula rate template, as well as the cross-examination of ComEd's witness Newhouse all demonstrate that ADIT is funded by ratepayers. The AG concludes that the Commission should depart from the 18-0808 Order to reflect the governing law and adopt a shortened amortization period to return these funds to the consumers who provided them in the pre-2018 rates they paid.

d. IIEC/CUB's Position

IIEC/CUB support the AG in urging the Commission to revisit the matter of the amortization period for the return of certain EDIT balances to customers. IIEC/CUB suggest that despite the exceptionally complex conversation surrounding EDIT, including how it is funded and recorded, the question before the Commission is rather straightforward: whether it is reasonable for ComEd to take over 39 years to refund these balances to customers, or whether it would be more appropriate to return these funds to customers over the next 5 years. IIEC/CUB state that all parties to this proceeding agree that the EDIT balances are due to be returned to ComEd customers and that the Commission may use its discretion in setting the amortization period over which those amounts will be refunded. IIEC/CUB agree with AG witness Brosch that the Commission should reduce the amortization period from almost 40 years to 5, refunding the balances to customers in a much shorter timeline with a more equitable outcome for ratepayers.

IIEC/CUB agree with Mr. Brosch that the TCJA, which reduced the federal corporate income tax rate from 35% to 21%, has multiple impacts upon regulated utilities organized as for-profit corporations, including ComEd. *Id.* First, because regulated utility rates have generally included federal income tax ("FIT"), a significant reduction to those utilities' revenue requirements are triggered by the reduced FIT. *Id.* at 3. Second, ADIT balances which were historically collected from ratepayers at the higher 35% FIT rate are now "excess" ADIT balances to be returned to customers. *Id.* Third, cumulative savings from both lower FIT rates and amortization of EDIT balances beginning in January 2018 would significantly impact utility revenues until rates were adjusted as required to reflect the benefits of the TCJA. *Id.* IIEC/CUB observe that ComEd addressed each of these impacts within its 2018 FRU proceeding, as well as through the employment of a tariff rider to accelerate the recognition of certain TCJA benefits to customers. *Id.* at 4.

IIEC/CUB next point out that Mr. Brosch provides the Commission with a straightforward explanation of how and why a utility may accumulate deferred income taxes. Mr. Brosch explains that timing differences occur today between the recognition of revenues and expenses for book accounting, as compared to income tax accounting, deferred taxes are recorded as expenses on the utility's books to recognize the liability to pay higher income taxes in the future. *Id.* at 5. IIEC/CUB agree with Mr. Brosch that a large component of deferred taxes arises from accelerated depreciation deductions allowed under the tax code, compared to much lower straight-line book depreciation

expenses. *Id.* IIEC/CUB cite to Mr. Brosch's testimony that the tax code allows for accelerated depreciation expenses to be taken as a tax deduction, reducing a utility's tax liability to support the notion that a utility that utilizes this tax benefit will pay less federal income tax than the amount that is actually collected from ratepayers in the form of deferred income tax expenses. *Id.* at 6. IIEC/CUB observe that Mr. Brosch testifies that traditionally ADIT balances are treated as a reduction to rate base for ratemaking purposes in order to recognize that the utility has collected deferred income taxes from ratepayers that it has not paid to the government. *Id.* at 6. IIEC/CUB point out that, in changing the FIT rate from 35% to 21%, the TCJA created a need for utilities, including ComEd, to re-value its recorded ADIT balances and identify the amounts that are now "excess" ADIT balances to be returned to ratepayers. *Id.* at 7.

IIEC/CUB state that utilities that utilized these accelerated depreciation benefits in the past collected from their customers significant amounts of federal income tax expenses at the previously effective 35% FIT rate, applying accounting normalization procedures for the tax deferral benefits and other timing differences. *Id.* at 7. According to IIEC/CUB, the normalization provisions assumed that when the deferred taxes were payable in the future, it would be at the 35% FIT rate; however, the TCJA reduction in the FIT rate has changed those assumptions. *Id.* at 7. IIEC/CUB reason that, as a result, utilities – including ComEd – were required to re-value their ADIT balances to reflect the lower FIT rate of 21%, creating significant amounts of "excess" ADIT. *Id.* at 7. IIEC/CUB observe that ComEd has classified these balances as regulatory liabilities for eventual return to ratepayers over an amortized timeline. *Id.* at 7.

IIEC/CUB aver that the equitable outcome in this proceeding would be to accelerate the return of previously collected EDIT to customers who previously paid the excess taxes at the old higher tax rates. According to IIEC/CUB, the record evidence clearly demonstrates that the proposal put forward by AG witness Brosch to amortize the unprotected regulatory asset balances over 5 years is the most equitable. IIEC/CUB maintain that the Company will never be required to remit those excess collected deferred taxes to the federal government (created by the 14% change in the FIT rate), and thus it is both reasonable and equitable to return those excess tax collections to customers as quickly as possible.

IIEC/CUB argue that ComEd witness Newhouse was wrong in claiming that Mr. Brosch relies on an "incorrect premise" that ComEd's customers have already funded the underlying excess EDIT. Nonetheless, according to IIEC/CUB, Mr. Newhouse agrees that "the benefits of the related EDIT arising as a result of [the TCJA] should flow through to customers[.]" ComEd Ex. 11.0 at 11. IIEC/CUB note that Mr. Newhouse agrees with IIEC/CUB and the AG that the Commission has the discretion to determine the appropriate amortization period for those "benefits" – in other words, refunds – to flow through. *Id.* at 11-12.

IIEC/CUB conclude that the Commission not only has the ability to depart from its previous ruling on this topic, but also the discretion to change the amortization period regardless of its findings as to whether or not the EDIT balances were previously funded by ratepayers. IIEC/CUB believe that the record evidence substantiates this finding and a departure from the Commission's order in Docket No. 18-0808. IIEC/CUB urge the Commission to adopt Mr. Brosch's recommendation to amortize the unprotected plant-

related EDIT balances over 5 years, as it is reasonable and equitable to both customers and the Company.

e. Commission Analysis and Conclusion

The Commission notes that the TCJA requires the gradual return of “excess” ADIT balances where book depreciation exceeds tax depreciation and adopts the ARAM methodology. Other excess ADIT amortization periods are discretionary. For unprotected plant-related EDIT, the choice of an amortization period is within the Commission’s discretion.

The Commission addressed this very issue in the last ComEd FRU proceeding. ComEd, Staff, the AG and IIEC/CUB disagree about the appropriate amortization period for unprotected plant-related EDIT arising from tax law changes in 2017 and 2018. ComEd supports approval of the ARAM amortization period previously approved by the Commission in the *18-0808 Order*, which is also supported by Staff in this docket. The AG and IIEC/CUB request that the Commission “revisit” this issue and instead adopt a 5-year amortization period. As repeatedly stated in party positions, Commission decisions do not have the effect of *res judicata*, but are entitled to less deference by an examining court when the Commission’s decision drastically departs from past practice.

In this proceeding, the AG and IIEC/CUB request that the Commission in effect reverse its decision made in the *18-0808 Order*, which according to ComEd, amounts to a collateral attack on the Commission’s prior order. The AG and IIEC/CUB rely on many of the same arguments and reasoning that the Commission previously considered and rejected. The AG and IIEC/CUB have not provided any new facts or governing law that would support a drastic change from the Commission’s prior decision. Moreover, the Commission notes and agrees with ComEd’s and Staff’s concerns that re-litigating this same issue over the next approximately 38 years (the remainder of the previously approved amortization period) would be a waste of resources.

Here, as in the *18-0808 Order*, the Commission finds that an amortization period for unprotected property-related EDIT that is calculated using ARAM aligns the amortization of EDIT with the underlying assets and is reasonable and equitable. As Staff points out, this method is consistent with cost of service ratemaking principles that try to allocate annual costs to ratepayers using the utility service during each annual period. The Commission agrees with ComEd and Staff that using ARAM for EDIT ensures that the same customers who are paying over time for the underlying assets also realize benefits of the lower tax rates. The Commission therefore rejects the AG’s recommended 5-year amortization period for EDIT.

3. Updated Depreciation Rates

This issue is addressed in Section IV.B.11. of this Order.

4. Costs of NextGrid Facilitation

a. ComEd’s Position

ComEd states that NextGrid was initiated by a Resolution of the Commission in March 2017 in order to bring together “national and local thought leaders, subject matter experts, academic researchers, and stakeholders representing all sectors of the Illinois

energy community to share ideas about evolving energy, in general, and the electricity landscape, in particular.” NextGrid Draft Final Report, https://nextgrid.illinois.gov/draft_finalreport.pdf. The Commission required that the NextGrid process be managed with the assistance of “an expert, independent third-party facilitator” and that “electric utilities will provide funding to support the work of the facilitator, including any necessary project management, meeting hosting, and expert assistance costs the facilitator may require.” *Ill. Commerce Comm’n*, Resolution regarding Illinois’ Consideration of the Utility of the Future: “NextGrid” Grid Modernization Study (April 20, 2017) (“Resolution”). ComEd notes there was no challenge to that Resolution when issued.

ComEd states it provided funding for the NextGrid facilitator in compliance with the Commission directive. ComEd’s operating expense includes approximately \$386,000 associated with its support for the NextGrid facilitator. ComEd. Ex 9.0 at 9 (noting that ComEd excluded \$2,034,000 of its own costs of participating in the process); *see also*, ComEd WP 7 at 19. ComEd notes that no party argues that these expenses were imprudently incurred or are unreasonable in amount, or that they are unrelated to delivery services. There is no argument, for example, that ComEd should not have provided those funds to the facilitator in compliance with the Resolution, or that ComEd should have provided less funding.

Nevertheless, ComEd notes that the AG argues the costs of supporting the work of the NextGrid facilitator, which the Commission directed ComEd to bear, should be disallowed, because the Commission Resolution requiring utilities to fund the work of the facilitator did not itself state that those costs would be recoverable. ComEd argues the AG is manufacturing a hurdle and then claiming the Commission and ComEd failed to jump it. ComEd states there is no order, statute, or principle that supports the idea that the costs of complying with a regulatory order must be excluded simply because the regulator did not specify that the costs of compliance are recoverable.

To the contrary, ComEd explains that utilities are permitted to include in their revenue requirements the reasonable and prudent costs of performing their utility functions, including the costs of compliance with regulatory directions. *Central Ill. Pub. Serv. Co. v. Ill. Commerce Comm’n*, 243 Ill. App. 3d 421, 432, 610 N.E.2D 1356, 1364 (4th Dist. 1993) (costs incurred by a utility to prepare and present a rate case are properly recoverable as an ordinary and reasonable cost of doing business). ComEd states the costs associated with ComEd’s compliance with the Commission Resolution are precisely this type of cost – they are a cost of operating a regulated utility business, analogous to the costs of permits, taxes, and franchise fees. As such, ComEd maintains that they are recoverable.

ComEd states the Commission has permitted recovery of utilities’ costs associated with supporting other Commission-ordered collaborative processes. In connection with the process of piloting AMI, the Commission ordered Ameren Illinois and ComEd to engage in a “Statewide Smart Grid Collaborative” that would develop a plan for implementing smart grid technologies. *See Commonwealth Edison Co.*, Docket No. 07-0566, Order (Sept. 10, 2008); *Cent. Ill. Light Co.*, Docket Nos. 07-0585, et al. (cons.), Order (Sept. 24, 2008). ComEd states that collaborative process involved retention of a facilitator, much like the NextGrid process, and that the utilities’ costs associated with

supporting the facilitator and facility rentals for the collaborative workshops were recoverable.

Contrary to the AG's assertion, ComEd asserts that the fact that NextGrid is currently the subject of a lawsuit pending in Circuit Court does not call into question the prudence or reasonableness of the facilitator costs. ComEd explains that prudence is evaluated according to the facts that were known at the time the decision was made. *Ill. Power Co. v. Ill. Commerce Comm'n*, 339 Ill. App. 3d 425, 428, 790 N.E.2d 377, 379 (5th Dist. 2003) (hindsight review is impermissible). At the time ComEd provided funding for the facilitator, it did so in compliance with a lawfully-issued Commission directive. ComEd maintains that cannot be found to be an imprudent decision.

ComEd asserts that the fact that the NextGrid process was intended to produce a "regulatory model that supports innovation," rather than to establish rates or seek other statutory relief is also irrelevant to the question of whether the cost of ComEd's support for the facilitator is recoverable. Resolution at 3, *Cf.* AG IB at 30. ComEd states the investigation was in furtherance of the Commission's regulatory function and the Commission Resolution expressly required ComEd to provide financial support for the facilitator because ComEd is an electric utility in Illinois. *Id.* Thus, ComEd maintains, the associated costs are costs of doing business as an electric public utility, and like all other costs of doing business as a public utility, the facilitator costs are recoverable. *Central Ill. Pub. Serv. Co.*, 243 Ill. at 432.

b. AG's Position

The AG explains that the Resolution stated that the Commission resolved to "initiate a collaborative process called 'NextGrid' in which the industry and other stakeholders can develop a shared base of information and work to build consensus on critical issues facing the electric utility industry now and as it continues to rapidly transform[.]" Resolution at 2. The AG highlights that while the Resolution and all other official Commission announcements, meetings, conference calls, webinars, documents, and reports were issued without being docketed, the Resolution did direct "the Illinois electric utilities" (i.e. ComEd) to "provide funding to support the work of the facilitator, including any necessary project management, meeting hosting, and expert assistance costs that the facilitator may require[.]" *Id.* at 3. In this crucial portion of the Resolution, the AG explains that the Commission made no mention of recovery of costs "to support the work of the facilitator [etc.]" in jurisdictional rates. Instead, the AG notes that the Resolution unequivocally stated that "the Illinois electric utilities will provide funding[.]" *Id.* at 3. The AG argues this Commission directive required utilities and not ratepayers to fund the NextGrid facilitator. AG Ex. 2.0 at 18.

However, the AG avers that ComEd seeks to include \$386,215 out of \$2,034,000 (approximately 19%) of its expenditures associated with NextGrid in its jurisdictional retail rates. The AG maintains that this position is not supported by the Commission's Resolution, Illinois law, Commission rules, or any other authority. The AG further argues that in fact, clear, foundational legal and regulatory precedent requires that all components of rates be reviewed and approved as prudent, just, and reasonable, by the Commission before being included in rates paid by ratepayers. 220 ILCS 5/9-201; 220 ILCS 5/16-108.5. While the Commission directed ComEd, as an electric utility, "to provide

funding” for the Next Grid process, the AG notes that the Commission did not authorize ComEd to include that cost in rates. Accordingly, the AG offers its witness Ms. Selvaggio’s adjustment to remove \$386,215 associated with NextGrid that ComEd included in its proposed rates.

Notably, the AG observes, ComEd did not include \$1,647,785 worth of NextGrid costs voluntarily. The AG explains that in testimony, ComEd witness Tracy explains that costs associated with the facilitator, not ComEd’s own costs to participate, are what ComEd seeks to include in jurisdictional rates. ComEd Ex. 9.0 at 9. As an initial matter, the AG notes that the Resolution states that “the Illinois electric utilities will provide funding to support the work of the facilitator” and does not make the distinction that Ms. Tracy attempts to create in her testimony. Resolution at 3. The AG observes that Ms. Tracy argues that these costs associated with the facilitator are reasonably categorized as “compliance with regulatory directions” and therefore “reasonable and prudent costs of utility functions.” *Id.* at 10. She further argues that NextGrid costs “are normal costs of operating a regulated utility business.” *Id.*

First, the AG explains, NextGrid was not a “normal” part of providing regulated utility service in Illinois. As the Resolution notes, the un-docketed, informal process envisioned by the Commission was intended to “put into action a new proactive collaboration among stakeholders ... and identify and recommend to the Commission and the General Assembly a range of tangible actions and policies that can maximize benefits to our citizens and economy[.]” Resolution at 2. The AG argues that Ms. Tracy is correct that the focus of NextGrid is clearly on “the future *grid*” but she is incorrect in categorizing costs associated with participation as “regulatory compliance costs of providing regulated retail delivery services.” ComEd Ex. 12.0 at 10 (emphasis in original). Instead, the AG opines that it is more accurate to describe NextGrid as “an informal series of discussions open to a discrete set of interest group representatives but not to the public, and conducted outside the ratemaking provisions of the Act, without any review, investigation, or input from the Commission’s technical or regulatory experts.” AG Ex. 4.0 at 13.

The AG notes that the closed-door nature of NextGrid is the subject of a pending lawsuit brought against the Commission under the Open Meetings Act. *III. PIRG*, No. 18-CH-7943 (Cir. Ct. Cook County, filed June 25, 2018). More importantly, it is clear to the AG that “[t]he processes was not designed to lead to the establishment of utility rates or classification or service.” AG Ex. 4.0 at 13. Instead, the AG argues, NextGrid was intended by the Commission to “result in a final report that outlines relevant issues, opportunities, and challenges, identifies areas of consensus and disagreement, educates policy makers, and provides a range of recommendations aimed at empowering customers and communities, driving economic development, optimizing the electric utility industry, and creating a 21st Century regulatory model that supports innovation[.]” Resolution at 3. The AG explains that each of the enumerated goals in the Resolution are independent of the establishment of utility rates or classifications or service. Therefore, the AG argues, it is not appropriate, prudent, or reasonable to include in rates costs associated with an informal discussion process intended to produce a report, particularly when the report is not publicly available. *III. PIRG*, No. 18-CH-7943 (Cir. Ct. Cook County, January 14, 2019) (see Cir. Ct. Order granting Plaintiff’s Amended Motion for Preliminary Injunction).

The AG notes that ComEd insists that it “provided funding for the NextGrid facilitator in compliance with the Commission directive” and that the Company should therefore be permitted to include in its operating expense “approximately \$386,000 associated with its support for the NextGrid facilitator. ComEd IB at 59. The AG insists that they are not, as ComEd claims, “manufacturing a hurdle and then claiming the Commission and ComEd failed to jump it.” *Id.* The AG responds that it is well-established in Illinois that the Act requires all components of rates be reviewed and approved as prudent, just, and reasonable by the Commission before being included in rates paid by ratepayers. 220 ILCS 5/9-201; 220 ILCS 5/16-108.5. Contrary to ComEd’s claims, the Commission has the authority and responsibility to review ComEd’s costs and specify which costs are recoverable.

The AG also responds to ComEd’s claim that rate case expense, permits, taxes, and franchise fees as examples of recoverable “cost[s] of operating a regulated utility business[.]” *Id.* at 60. The AG maintains that each of these examples is recoverable by virtue of the Act, a Commission rule, or a Commission order permitting the recovery in rates and therefore undermines the very point ComEd seems to attempt to make, citing Sections 9-229, 9-221, 9-220.1, 9-222; 83 Ill. Adm. Code 288 (Rate Case Expense); 83 Ill. Adm. Code 285 Section 3085, 3090 (Rate Case Expense and Rate Case Expense Comparisons); 83 Ill. Adm. Code 285 Section 285.3035 (Income Taxes), Section 285.3175 (Taxes Other Than Income Taxes), Section 285.3180 (Property Taxes), Section 285.3185 (Local Taxes, Municipal Taxes, and Franchise Taxes); *18-0808 Order* at 25-27 (approving, inter alia, for inclusion in ComEd’s operating expense Taxes Other than Income, Income Taxes, and Rate Case Expense).

The AG concludes that the Commission Resolution directed ComEd to provide funding for the NextGrid facilitator and did not authorize it to pass these costs on to consumers. The AG accordingly urges the Commission to remove \$386,215 associated with NextGrid from ComEd’s expenses.

c. Commission Analysis and Conclusion

The Commission finds that ComEd’s expenses to support the NextGrid facilitator were prudently incurred, and that ComEd has included a reasonable amount of the expense in the revenue requirement in this proceeding. ComEd states that the costs associated with ComEd’s compliance with the Commission Resolution are a cost of operating a regulated utility business, analogous to the costs of permits, taxes, and franchise fees. While the Commission cannot agree with ComEd that the costs of participating in NextGrid are analogous to the costs of permits, taxes and franchise fees, it can agree that some costs related to NextGrid participation, as operating expenses, are the costs of doing business in Illinois. It is well established that the “utility has the burden of proving that any operating expense for which it seeks reimbursement directly benefits the ratepayers or the services which the utility “renders.” *Central Ill. Pub. Serv. Co.*, 243 Ill. App. 3d at 432. Therefore, the specific costs sought to be recovered in this case by ComEd for its participation in NextGrid at the Commission’s behest, do not necessarily need to be outlined as recoverable costs in the Resolution.

The NextGrid initiative was created to ultimately benefit ratepayers and ComEd’s participation in this initiative, as it relates to the support of the NextGrid facilitator, is

indeed the cost of operating a regulated utility business in the State of Illinois. The Commission declines to analyze the additional participation costs that ComEd incurred through its participation in NextGrid, as they are not at issue in this case. However, the costs that ComEd seeks to recover at this time for its support of the NextGrid facilitator are reasonable.

The Commission finds that ComEd's expenses incurred in supporting the NextGrid facilitator were prudently incurred, and that the costs of complying with Commission directives regarding NextGrid in this case are reasonable costs of business and are appropriately recoverable. The AG's proposal to disallow these costs is rejected.

VI. RATE OF RETURN

A. Capital Structure

ComEd states that it used its actual capital structure as of December 31, 2018 to determine its proposed 2018 Reconciliation and 2020 Initial Rate Year Revenue Requirements. ComEd Ex. 3.0 at 4. ComEd notes that its actual capital structure excludes goodwill and is comprised of 47.97% equity and 52.03% long-term debt. *Id.* No party proposed an adjustment to ComEd's capital structure. Therefore, the Commission approves ComEd's rates of return for the 2018 Reconciliation Year and the 2020 Initial Rate Year.

B. Cost of Capital Components

1. Rate of Return on Common Equity

ComEd asserts that its total allowed ROE is 8.91%. ComEd Ex. 3.0 at 5; ComEd Ex. 2.01, Sch. FR D-1. In 2018, ComEd achieved all of its performance metrics, and therefore made no metrics-related ROE adjustment. ComEd Ex. 3.0 at 5. No party contests ComEd's total allowed ROE, and it is therefore approved.

2. Cost of Long-Term Debt

ComEd asserts that its 2018 cost of long-term debt is 4.28%. ComEd Ex. 3.0 at 5; ComEd Ex. 12.01, Sch. FR D-1, line 12. No party contests ComEd's cost of long-term debt, and it is therefore approved.

3. Cost of Short-Term Debt

ComEd asserts that its 2018 cost of short-term debt is 2.14%. ComEd Ex. 3.0 at 5; ComEd Ex. 12.01, Sch. FR D-1, line 13. No party contests ComEd's cost of short-term debt, and it is therefore approved.

4. Overall Weighted Cost of Capital

ComEd asserts that the overall weighted cost of capital in the 2018 Reconciliation Year is correctly determined as follows:

	Weight	Cost	Weighted Cost
Common Equity	47.97%	8.91%	4.27%
Long-Term Debt	52.03%	4.28%	2.23%
Short-Term Debt	0.00%	2.14%	0.00%
Cost of Credit Facilities			0.01%
Total Weighted Average	100.00%		6.51%

ComEd Ex. 12.01, Sch. FR D-1, line 21.

ComEd states that the overall weighted cost of capital in the 2020 Initial Rate year is identical, and correctly determined as follows:

	Weight	Cost	Weighted Cost
Common Equity	47.97%	8.91%	4.27%
Long-Term Debt	52.03%	4.28%	2.23%
Short-Term Debt	0.00%	2.14%	0.00%
Cost of Credit Facilities			0.01%
Total Weighted Average	100.00%		6.51%

ComEd Ex. 12.01, Sch. FR D-1, line 21.

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

VII. REVENUES

ComEd states that it deducted a total of \$149,784,000, after adjustments in miscellaneous revenues from its revenue requirements. ComEd Ex. 2.0 at 38; ComEd Ex. 2.01 at App. 10; ComEd Ex. 2.01 at App. 11. None of these revenue items are contested. The Commission approves ComEd's revenue amount; however, to the extent there are any contested issues regarding the revenues generated by the Marketplace, net of expenses, these issues are addressed in Section V. B.1. of this Order.

VIII. COST OF SERVICE AND RATE DESIGN

Cost of service issues are generally uncontested in FRU proceedings. This docket is intended to evaluate the prudence and reasonableness of the costs incurred by ComEd to be recovered during the 2020 rate year. Rate design matters are not at issue in this FRU case; instead they were addressed in a separate rate design tariff filing. See, e.g., *Commonwealth Edison Co.*, Docket No. 13-0318, Order (Dec. 18, 2013); *Commonwealth Edison Co.*; Docket No. 17-0049, Order (July 26, 2017). The cost of service, rate design, and the resulting charges are uncontested, and are therefore approved.

A. Updated Embedded Cost of Service Study

ComEd's updated Embedded Cost of Service Study ("ECOSS") is based on the ECOSS model that ComEd submitted to Staff in December 2018, in compliance with the Commission's Order in Docket No. 18-0808, and is consistent with the methodologies approved by the Commission in rate design investigations. ComEd Ex. 7.0 at 3-4; see also *Commonwealth Edison Co.*, Docket No. 17-0049, Order (July 26, 2017). The ECOSS is uncontested and is therefore approved.

B. Updated Billing Determinants

ComEd presented historical weather-normalized billing determinants for 2018, which are based on the same methodology used in all of ComEd's rate cases and formula rate updates since 2009. ComEd Ex. 7.0 at 4-5. ComEd adjusted the number of customers in certain delivery classes consistent with the methodology approved in Docket No. 11-0721 and as directed in subsequent rate design tariff filings. *Id.* The updated billing determinants are uncontested and are therefore approved.

C. Updated Delivery Service Charges

ComEd updated its delivery service charges by populating the rate design model with Commission directives from Docket No. 17-0049. ComEd Ex. 7.0 at 5-9. The updated charges are uncontested and are therefore approved.

D. Bill Impacts

ComEd presented the class rates of return at the delivery service charges approved by the Commission in the 2018 FRU, and the rates of return at the updated delivery service charges, which will be effective beginning in the January 2020 monthly billing period. ComEd Ex. 7.0 at 9; ComEd Ex. 7.04. ComEd also presented an analysis of the overall electric service bill impacts that may result from the application of the updated delivery service charges, compared to the charges effective January 2018. ComEd Ex. 7.0 at 10-13; ComEd Ex. 7.05.

IX. TARIFF UPDATES

A. SBO Credit Update

ComEd updated the Single Bill Option ("SBO") credit to properly reflect the changes in the embedded costs associated with this credit that are included in the updated ECOSS. ComEd Ex. 7.0 at 14; ComEd Ex. 7.06. No party proposed an adjustment to the updated SBO credit. It is therefore approved.

B. Distribution Loss Factor Update

ComEd updated its Distribution Loss Study to reflect 2018 customer and zone loads and 2018 transformer data. ComEd Ex. 6.0 at 5; ComEd Ex. 6.01. As a result of its updated Distribution Loss Study, ComEd also updated its Distribution Loss Factors. ComEd Ex. 7.0 at 17-18. The updated Distribution Loss Factors were not contested in this case and are therefore approved.

X. OTHER FINDINGS

A. Original Cost Finding

ComEd requests that the Commission, as it has in past FRU Orders, approve ComEd's original cost of plant in service as of the end of the reconciliation rate year which, in this case, is as of December 31, 2018. ComEd Ex. 2.0 at 50. ComEd states that the record shows that the original cost of gross investment in electric utility plant in service in ComEd's rate base as of December 31, 2018 is \$22,548,761,000. According to ComEd, subtracting capitalized incentive compensation, costs recovered in riders, other costs disallowed in prior Commission orders, and such costs capitalized in 2018 results in the original cost of plant in service of \$22,482,970,000. *Id.* However, Staff recommends that the Commission approve ComEd's original cost of plant in service as of the end of the reconciliation year as \$22,548,761,000. Staff Ex. 2.0 at 6.

ComEd explains that, per the final Orders in Docket Nos. 14-0312, 15-0287, 16-0259, 17-0196, and 18-0808, the original cost calculated excludes assets that are recovered through Rider Energy Efficiency and Demand Response Adjustment ("Rider EDA"), Rider Purchased Electricity ("Rider PE"), and Rider Purchase of Receivables with Consolidated Billing ("Rider PORCB"). As stated in the Commission Order in Docket No. 14-0312, the Commission will make separate original cost findings for these assets excluded from the original cost. See *Commonwealth Edison Co.*, Docket No. 14-0312, Order at 106 (Dec. 10, 2014); *Commonwealth Edison Co.*, Docket No. 15-0287, Order at 6 (Dec. 9, 2015); *Commonwealth Edison Co.*, Docket No. 16-0259, Order at 44 (Dec. 6, 2016); 17-0196 Order at 39; 18-0808 Order at 61.

The Commission agrees with ComEd that capitalized incentive compensation, costs recovered in riders, other costs disallowed in prior Commission orders, as well as costs disallowed in the current case should be deducted in the determination of the original cost finding. In the Company's calculation of its original cost recommended amount, it failed to reflect the jurisdictional amount of the PORCB software (ComEd Ex. 2.03 Schedule B-2.3) and the software assets recovered through Rider PE (ComEd Ex. 2.03 Schedule B-2.7), using the amount of total plant in service for those two items. In addition, the Company did not adjust the original cost of plant in service for its adjustment in rebuttal testimony to remove the capitalized EE Long Term Incentive Compensation totaling \$86,000 (ComEd Ex. 9.02, p. 17, WP1, Note (1)). The Commission calculates the original cost of distribution plant in service as follows:

2018 Original Cost Calculation (in 000s)			
		<u>Amount</u>	<u>Source</u>
1	Distribution Gross Plant	\$ 20,100,849	FR B-1, Line 1
2	Distribution Asset Retirement Costs	\$25,810	FR B-1, Line 2
3	Jurisdictional G&I Plant Before Adjustments	\$2,473,722	FR B-2, Line 18
4	Line 1 - Line 2 + Line 3	<u>\$ 22,548,761</u>	

5	Prior Docket Adjustments	\$30,752	Com Ed Ex. 9.01, App 1, Line 3
6	Adjustments - Assets Base Recovered in Riders	\$31,209	Com Ed Ex. 9.01, App 1, Line 2, Com Ed Ex. 9.03, p, 4, col (M)
7	2018 Test Year Adjustments	\$897	Com Ed Ex. 9.01, App 1, Line 4
8	Line 5 + Line 6 + Line 7	<u>\$62,858</u>	
9	Original Cost	<u>\$ 22,485,903</u>	Line 4 - Line 8

Therefore, the Commission approves the amount of \$22,485,903,000 as the original cost of plant in service as of December 31, 2018. This amount agrees with the total plant in service reflected on Appendix B, Schedule 3 RY.

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

Staff witness Trost affirmed that ComEd provided the information necessary for Staff to make a recommendation regarding the value of the wages and salaries ("W&S") allocator to be used in the determination of rates under Rider PE. Staff Ex. 1.0 (Rev.) at 13-14; ComEd Ex. 2.04. Ms. Trost agreed that the W&S allocator applicable to supply is 0.49% and had no objection to ComEd's calculation of the allocator. Staff Ex. 1.0 (Rev.) at 13-14; ComEd Ex. 2.04, WPA-5, page 1, line 1. ComEd agrees with the language proposed by Ms. Trost (Staff Ex. 1.0 (Rev.) at 14), and no other party has contested the calculation or objected to the proposed language.

C. Reporting Requirements

1. EIMA Investments

ComEd presented evidence identifying its EIMA-related expenditures included in the 2018 Reconciliation Revenue Requirement and in the projected plant additions included only in the Initial Rate Year 2020 Revenue Requirement. ComEd asserts this data meets the Commission's requirements as set forth in Docket No. 12-0321. *Commonwealth Edison Co.*, Docket No. 12-0321, Order at 98 (Dec. 19, 2012). Furthermore, in Docket No. 13-0318, the Commission noted that ComEd agreed to Staff's recommendation that it identify by category cumulative actual EIMA investments in addition to annual actual investments for each year. *Commonwealth Edison Co.*, Docket No. 13-0318, Order at 85 (Dec. 18, 2013). ComEd states that it provided this data in ComEd Ex. 3.01.

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

2. Reconciliation Year Plant Additions

In the Commission's final Order in Docket No. 13-0318, the Commission set out a table detailing the plant additions placed into service in the reconciliation year.

Commonwealth Edison Co., Docket No. 13-0318, Order at 90-91 (Dec. 18, 2013). In the instant proceeding, ComEd provided a similar summary of the investments placed into service under Section 16-108.5 during 2018. ComEd Ex. 3.0 at 19-20. ComEd also provided a similar table detailing the plant additions projected to be placed into service during 2019. *Id.* at 20. No party contests that ComEd has provided the required information. Accordingly, the Commission finds that ComEd has satisfied its obligation to provide the required plant addition information.

3. Contributions to Energy Low-Income and Support Programs

The Act requires ComEd to make certain contributions to low-income and other energy assistance programs. See 220 ILCS 5/16-108.5(b-10). These contributions included \$10 million per year, over five years, in customer assistance costs that are not recoverable, and that ComEd has removed in full from its revenue requirement. ComEd Ex. 4.0 at 21-22. ComEd states it has presented evidence demonstrating that its commitments have been met through the sponsorship of various initiatives under ComEd's CARE programs, through which ComEd assists customers that face financial hardship and have difficulty paying their electric utility bills by helping them avoid disconnection. *Id.* Moreover, ComEd notes that, on February 7, 2019, it filed its Annual Customer Assistance Report for 2018 with the Commission. *Id.* at 22. This report specifies the programs that were funded and reports the amount of money each program received, further demonstrating ComEd's compliance with its obligation to fund customer assistance programs. *Id.* No party contests that ComEd has met its obligations to low-income and other energy assistance programs as required by Section 16-108.5. Therefore, the Commission approves ComEd's reporting of contributions to energy low-income and support programs.

D. Contents of Commission Orders and Future ComEd Testimony

1. ComEd's Position

ComEd notes that AG witness Selvaggio recommended, for the Bronzeville Community Microgrid and the Marketplace, the Commission (i) include in its final Order a separate cumulative summary of the costs of each activity; and (ii) direct ComEd to update that summary in its direct testimony in future formula rate update proceedings. AG Ex. 4.0R at 28-30. In brief, however, ComEd states the AG maintains its recommendation only with respect to the Microgrid. See AG IB at 7-9. Thus, ComEd states that it appears the AG no longer believes that summaries of Marketplace costs should be included in Commission orders or ComEd direct testimony. ComEd agrees. There is no record evidence supporting the need for, or relevance of, summaries of Marketplace costs over time.

ComEd contends there is also no record evidence supporting the need for, or relevance of, summaries of Microgrid costs, and the Commission should reject the AG's recommendation concerning the Microgrid. First, although the AG argues that "standardized reporting" of costs will allow the Commission to track the budget and the progress of the Microgrid project, (ComEd states the Commission is already monitoring the progress of the project through the certifications and annual reporting that ComEd is required to submit in Docket No. 17-0331. AG IB at 10; 17-0331 Order at 84 (approving reporting requirements including annual reports, special reporting on DER procurement,

reporting at the close of Phase I, an initial metrics/cost-benefit report, and a final report at the conclusion of the 10-year study period); see *also* ComEd Cert. Concerning Microgrid Master Controller (filed Jan. 3, 2019), ComEd Annual Report (filed Feb. 28, 2019), ComEd Cert. Concerning SHINES Grant Qualification (filed May 6, 2019), ComEd Cert. Reporting on Applicable Limited Set of Metrics (filed July 1, 2019). ComEd maintains that this reporting is sufficient to keep the Commission apprised of ComEd's progress in implementing the Microgrid, and to support discovery and inquiry by the Commission and parties in formula rate update cases regarding costs incurred in implementation. ComEd states the AG has not explained, in light of the already-available information-gathering processes, why it believes the estimate presented in Docket No. 17-0331 changes the Commission's ability to evaluate the prudence and reasonableness of actual costs, in this case or in future cases. ComEd notes that the AG does not argue that any component of the revenue requirement is imprudent or unreasonable. ComEd Ex. 8.0 at 14.

In addition, ComEd asserts that a cumulative total of costs associated with Phase I and Phase II of the Microgrid project will not aid the Commission in determining the prudence and reasonableness of those costs. ComEd maintains that a cumulative total of costs incurred, and approved by the Commission, in prior years is not relevant to the Commission's evaluation of the prudence and reasonableness of actual costs incurred in the rate year at issue. ComEd notes the Commission does not review prudence in hindsight, and therefore cannot re-evaluate the prudence of past expenditures in future proceedings. *Ill. Power Co.*, 339 Ill. App. 3d at 428 (hindsight review is impermissible); see *also Cent. Ill. Light Co.*, Docket No. 90-0127, Order (Aug. 2, 1991). Rather, ComEd states that the prudence and reasonableness of costs included in the revenue requirement in any given formula rate update proceeding must be assessed based on facts relevant to the time period at issue in that proceeding.

Finally, ComEd asserts that the AG's recommendations concerning the contents of ComEd's future testimony, and the Commission's future orders, are untenable from a policy perspective because they would impose heightened burdens on recovery of costs associated with innovative projects. Utilities should not be discouraged from pursuing such projects by the prospect that they will be subject to greater burdens – extending over the life of the projects.

2. AG's Position

AG witness Selvaggio recommends that the Order in this proceeding set forth the costs related to the Microgrid that are included in this proceeding's revenue requirement pursuant to the table in her direct testimony on page 5, titled "Summary of Microgrid Costs and Related Funding" (the "Table"). AG Ex. 2.0 at 5 at 8. She also recommends that the Commission direct the Company to use the table to provide Microgrid information in its direct testimony in its formula rate update for 2020 and going forward. *Id.* at 8. Ms. Selvaggio testified that the summary of costs and related funding is required for the Commission to determine the reasonableness and prudence of the Project's expenditures because they are not otherwise readily identifiable.

While the Company argues that "the record does not contain evidence that supports treating the Microgrid Pilot Program differently than any other category of costs," ComEd IB at 68, the AG asserts that these arguments completely ignore Ms. Selvaggio's

analysis and conclusion of the record data. ComEd argues that the Microgrid project is subject to various sources of grant funding and complex accounting, and that the data used to articulate a clearer financial picture for the Commission are scattered throughout a matrix of data request responses and witness attachments. It cannot be said, the AG argues, that without special reporting the Commission “remain[s] cognizant of all of the [Microgrid] components of ComEd’s revenue requirement [] via the formula rate update and reconciliation process.” ComEd 8.0 at 13.

Ms. Selvaggio testified that the Project “is subject to an estimated maximum budget of \$25 million; that the Project is partially funded by various grants through the United States Department of Energy and third party payments; and that there are contracts and payments to energy suppliers, all of which complicate and affect the overall cost of the project. AG Ex. 2.0 at 3 (citing *17-0331 Order* at 26, 59). To complicate matters further, the AG adds that ComEd records transactions using the accrual basis of accounting and not the cash basis. *Id.*

The AG points out that in the *17-0331 Order*, where the Commission approved ComEd’s request to build and fund through formula rates its Project, the Commission also approved Staff’s accounting recommendation, including:

(5) The Final Order in this proceeding should state that the prudence and reasonableness of costs incurred for each phase of the microgrid demonstration project will be determined by the Commission in a future rate case and based on supporting documentation provided at that time.

17-0331 Order at 75. The AG argues that Ms. Selvaggio has simplified the Commission’s review by creating the Table and locating the data. Her recommendations, they add, simply ask the Company to fill in the blanks moving forward, consolidating the identified Microgrid data and presenting it in an understandable and comprehensive format.

The AG lastly argues that this standardized reporting of costs will allow the Commission and interested parties to easily track both the budget and the progress of the Project. This, the AG notes, will aid the Commission in determining the “prudence and reasonableness of costs incurred for each phase of the Microgrid demonstration project” by identifying costs as Phase I or Phase II and identifying the sources of grants or other funds. AG IB at 10. The AG argues that this requirement should continue as long as ComEd seeks to add Microgrid costs to its revenue requirement. Therefore, the AG concludes, the Commission should direct the Company to update the identified information in its direct testimony in its FRU filed in 2020 and annually going forward.

3. Commission Analysis and Conclusion

The AG recommends that (1) the Commission include in its Final Order a separate cumulative summary of the costs of each activity and (2) require ComEd to provide Microgrid data as presented in AG witness Selvaggio’s Table going forward in future FRU proceedings.

ComEd argues that there is no evidence supporting the need for or relevance of these summaries, and that providing such information would place a heightened burden on recovery of costs associated with such pilot projects. The Commission does not find

that providing such information in the format supported by Ms. Selvaggio would unduly burden ComEd or necessarily inhibit future innovative projects.

ComEd already provides information regarding its Microgrid pilot to the Commission via various reports. The Commission does not find that consolidating the identified Microgrid data and presenting it in an understandable and comprehensive format would be that much of a burden, rather it would aid the Commission and interested parties in understanding the costs associated with the Project. ComEd is directed to provide such updated summaries as presented in Ms. Selvaggio's Table in future annual FRU proceedings until such time as the Commission directs otherwise or ComEd is no longer including Microgrid costs in its revenue requirement. However, the Commission does not find it necessary to include a separate cumulative summary of such costs in any final Order.

XI. CONCLUSION

For the reasons stated herein, the Commission approves Commonwealth Edison Company's proposed 2020 Rate Year Net Revenue Requirement as set forth in this Order and the attached appendices, approves the original costs of ComEd's electric plant in service as of December 31, 2018, makes the required factual findings in support thereof, and authorizes and directs ComEd to make a compliance filing implementing the resulting rates and charges. These updates are applicable to delivery services provided by ComEd beginning on the first day of its January 2020 billing period, subject to ComEd's final compliance filing and the rulings in this Order.

XII. FINDINGS AND ORDERING PARAGRAPHS

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations;
- (4) for purposes of this proceeding, as adjusted, Commonwealth Edison Company's rate base is \$10,350,118,000 for the 2018 Reconciliation Year Revenue Requirement and \$11,355,140,000 for the 2020 Initial Rate Year Revenue Requirement;
- (5) the rate of return which Commonwealth Edison Company should be allowed to earn on its net original cost rate base is 6.51% for the 2018 Reconciliation Year and 6.51% for the 2020 Rate Year Initial Revenue Requirement; these rates of return incorporating a return on common equity of 8.91% in each year, on long-term debt of 4.28%, and on short term debt of 2.14%;

- (6) the rates of return set forth in Finding (5) result in tariffed operating revenues of \$2,679,860,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of \$739,220,000;
- (7) the Commission, based on Commonwealth Edison Company's proposed original cost of plant in service as of December 31, 2018, before adjustments, of \$22,548,761,000, and reflecting the Commission's determination adjusting that figure, approves \$22,485,903,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2018;
- (8) Commonwealth Edison Company is authorized to place into effect tariff sheets and associated informational sheets designed to produce annual tariffed revenues of \$2,679,860,000. Such revenues in addition to other revenues will provide ComEd with an opportunity to earn the rates of return set forth in Finding (5);
- (9) the determinations regarding other subjects contained in the prefatory portion of this Order are reasonable for purposes of this proceeding; the compliance filing to be filed by Commonwealth Edison Company shall incorporate such determinations to the extent applicable;
- (10) new charges authorized by this Order shall become effective beginning with the first day of the January 2020 monthly billing period consistent with the requirements set forth in Section 16-108.5 of the Act; Commonwealth Edison Company shall be allowed four business days after the issuance of this Order to submit its compliance filing for informational purposes; the new tariff sheets and associated informational sheets authorized to be filed by this Order shall take effect the next business day after the date of filing, with updated charges listed on said tariff sheets, and associated informational sheets to be effective with the first day of the January 2020 monthly billing period; Commonwealth Edison Company shall provide supporting work papers to the Staff of the Commission concurrently with such informational compliance filing;
- (11) that the approved 2020 Initial Rate Year Revenue Requirement includes \$24,073,546 of projected plant additions expected to be placed in service in 2019 by Commonwealth Edison Company in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in a future formula rate update and reconciliation filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	\$11,749
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Training facility construction or upgrade programs (construction of training facilities program)	\$0
Wood pole inspection, treatment, and replacement	\$0
Reducing the susceptibility of storm-related damage (storm hardening program)	\$0
Total electric system upgrades, modernization programs, and training facilities	\$11,749
Additional smart meters	\$13,801,213
Distribution automation and associated cyber secure data communication network	\$0
Substation micro-processor relay upgrades	\$10,260,584
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	\$24,061,797
Total projected incremental 2019 plant additions in compliance with Section 16-108.5(b)(1) of the Act	<u>\$24,073,546</u>

- (12) that the approved Reconciliation Revenue Requirement for 2018 includes \$78,738,132 of plant additions placed in service in 2018 by Commonwealth Edison Company in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. The detail of these actual plant additions in the categories as required by Section 16-108.5(b)(1) are as follows:

Distribution infrastructure improvements (URD program, mainline cable system refurbishment and replacement program, Ridgeland 69kV cable replacement program)	(\$9,704)
Training facility construction or upgrade programs (construction of training facilities program)	\$0
Wood pole inspection, treatment, and replacement	(\$10,236)
Reducing the susceptibility of storm-related damage (storm hardening program)	(\$118,978)
Total electric system upgrades, modernization programs, and training facilities	(\$138,918)
Additional smart meters	\$62,833,983

Distribution automation and associated cyber secure data communication network	(\$7,936)
Substation micro-processor relay upgrades	\$16,051,003
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	\$78,877,050
Total projected incremental 2018 plant additions in compliance with Section 16-108.5(b)(1) of the Act	<u>\$78,738,132</u>

- (13) the Commission directs Commonwealth Edison Company, in future proceedings, to include in direct testimony the entire depreciation study used to support depreciation rates in effect for the applicable calendar year; and
- (14) the Commission directs Commonwealth Edison Company, in future proceedings, to include a Summary of Microgrid Costs and Related Funding as presented in the testimony of Mary E. Selvaggio.

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

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file a compliance filing in accordance with Findings (8), (9) and (10) and the prefatory part of this Order, applicable to service furnished on and after the effective date of said compliance filing, with updated charges to be effective with the first day of the January 2020 monthly billing period; work papers supporting the compliance filing shall be provided to the Staff of the Commission concurrently with the filing of said compliance filing.

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding (8) above reflects \$78,738,132 of plant additions placed in service in 2018 by Commonwealth Edison Company, and \$24,073,546 of projected plant additions expected to be placed in service in 2019 by Commonwealth Edison Company, in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Public Utilities Act.

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

IT IS FURTHER ORDERED that in future proceedings Commonwealth Edison Company is directed to include in direct testimony the entire depreciation study used to support depreciation rates in effect for the applicable calendar year.

IT IS FURTHER ORDERED that in future proceedings Commonwealth Edison Company is directed to include in direct testimony an updated Summary of Microgrid Costs and Related Funding as presented in the testimony of Mary E. Selvaggio.

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 4th day of December, 2019.

(SIGNED) CARRIE ZALEWSKI

Chairman

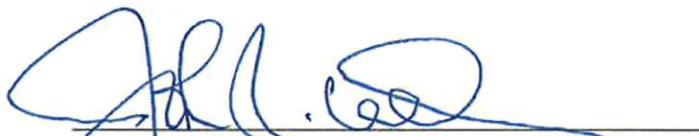
EXHIBIT B

PUBLIC VERSION

STATE OF New Jersey)
COUNTY OF Camden)

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared John R. Wilde, being by me first duly sworn deposed and said that:

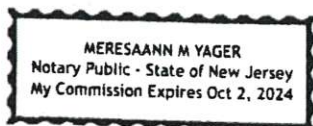
He is appearing as a witness on behalf of Tennessee-American Water Company before the Tennessee Public Utility Commission, and if present before the Commission and duly sworn, his testimony would be as set forth in his pre-filed testimony in this matter.


John R. Wilde

Sworn to and subscribed before me
this 19 day of December, 2019.

Meresa Ann M. Yager
Notary Public

My Commission Expires: 10/2/2024

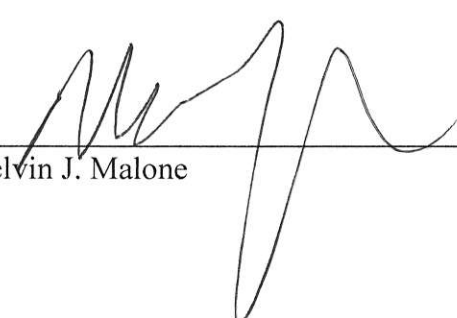


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Daniel P. Whitaker III
Karen H. Stachowski
Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate Unit, Financial Division
P.O. Box 20207
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This the 20th day of December, 2019.



Melvin J. Malone